

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 322

HON. CARL J. WEST, JUDGE

TRUST COMPANY OF THE WEST,

PLAINTIFFS,

VS.

JEFFREY GUNDLACH, ET AL.,

DEFENDANTS.)

CASE NO. BC429385

COPY

REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

TUESDAY, AUGUST 2, 2011

APPEARANCES:

FOR TCW:

QUINN, EMANUEL, URQUHART,
OLIVER & HEDGES

BY: **JOHN B. QUINN**
ERIC EMANUEL
STEVEN G. MADISON
SUSAN ESTRICH
DIANE CAFFERATA HUTNYAN
JOHN PIERCE
DOMINIC SURPRENANT
DAVID SERGENIAN

865 SOUTH FIGUEROA STREET
10TH FLOOR
LOS ANGELES, CALIFORNIA 90017
(213) 443-3000

FOR DOUBLELINE:

MUNGER, TOLLES & OLSON

BY: **BRAD D. BRIAN**
MARK B. HELM
ALLISON B. STEIN
KEVIN S. ALLRED
GREGORY J. WEINGART

355 SOUTH GRAND AVENUE, 35TH FLOOR
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(213) 683-9280

1 APPEARANCES (CONTINUED):

2 FOR GUNDLACH, ET AL:

3 KELLEY, DRYE, WHITE, O'CONNOR
4 BY: **EDWARD E. WEIMAN**
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9
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25 **WENDY OILLATAGUERRE**, CSR 10978
26 **RAQUEL A. RODRIGUEZ**, CSR 9485
27 600 SOUTH COMMONWEALTH AVENUE
28 DEPARTMENT 322 - 17TH FLOOR
LOS ANGELES, CA 90005
(213) 351-8610

I N D E X

TUESDAY, AUGUST 2, 2011

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B = MR. BRIAN
Q = MR. QUINN

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DEFENSE

WITNESSES:

DIRECT CROSS REDIRECT RECROSS

(NONE WERE PRESENTED IN THIS VOLUME)

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I N D E X

TUESDAY, AUGUST 2, 2011

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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, TUESDAY, AUGUST 2, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 8:30 A.M.

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

13
14 (PEOPLE IN THE COURTROOM RESPONDED "GOOD MORNING, YOUR
15 HONOR.")

16
17 THE COURT: IN THE TCW VERSUS GUNDLACH MATTER,
18 WE'RE SET TO CONTINUE TRIAL.

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

21
22 JEFFREY MAYBERRY,
23 THE WITNESS ON THE STAND AT THE TIME OF THE EVENING
24 RECESS, HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND
25 AND TESTIFIED FURTHER AS FOLLOWS:

26
27 THE COURT: MR. MAYBERRY, PLEASE RECALL, YOU
28 ARE UNDER OATH, AND YOU HAVE PREVIOUSLY BEEN SWORN.

08:59AM

08:33AM

1 MR. MADISON, YOU MAY CONTINUE WITH YOUR
2 DIRECT EXAMINATION OF MR. MAYBERRY.

3 MR. MADISON: THANK YOU, YOUR HONOR.

4
5
6 DIRECT EXAMINATION +
7 BY MR. MADISON:

8 Q. MR. MAYBERRY, YESTERDAY WE WERE TALKING ABOUT
9 PROPRIETARY INFORMATION THAT WAS CREATED AT TCW.

10 AND I WANT TO ACTUALLY PLAY ANOTHER CLIP
11 FROM YOUR DEPOSITION.

12 AND THIS WILL BE PAGE 11, LINE 14,
13 THROUGH PAGE 12, LINE 7, YOUR HONOR.

14 THE COURT: ALL RIGHT. JUST A MOMENT.

15 MR. MADISON: YOUR HONOR, MAY I APPROACH, JUST
16 SO YOUR HONOR HAS A COPY OF THE TRANSCRIPT?

17 I DON'T KNOW THAT YOU WILL NEED IT.

18 THE COURT: I HAVE IT.

19 MR. BRIAN: MAY I GET THE PAGE NUMBERS AGAIN?

20 THE COURT: IT'S PAGE 11, LINE 14, THROUGH
21 PAGE 12, LINE 7.

22 MR. BRIAN: THAT'S FINE.

23 THE COURT: ALL RIGHT. YOU MAY PROCEED.

24
25 (VIDEO DEPOSITION PLAYED OF JEFFREY MAYBERRY)

26
27 Q. BY MR. MADISON: THAT WAS YOUR SWORN
28 TESTIMONY, SIR?

1 A. YES.

2 Q. SO EVERYONE THAT YOU WERE SUPERVISING IN THE
3 MORTGAGE-BACKED SECURITIES GROUP WAS CREATING
4 PROPRIETARY INFORMATION?

5 A. CORRECT, YES.

08:35AM

6 Q. NOW, YOU ALSO WERE AWARE, WHEN YOU WERE AT
7 TCW, THAT THERE WAS CONFIDENTIAL CLIENT INFORMATION, AS
8 WELL, CORRECT?

9 A. YES.

10 Q. SO AS A REGISTERED INVESTMENT ADVISOR, YOU
11 UNDERSTOOD TCW WAS REGULATED BY THE GOVERNMENT, FOR
12 EXAMPLE, CORRECT?

08:35AM

13 A. YES.

14 Q. YES. YOU WERE NOT -- TCW, AS A FIRM, WAS
15 REGULATED BY THE GOVERNMENT, FOR EXAMPLE?

08:36AM

16 A. YES.

17 Q. THANK YOU FOR CLARIFYING THAT.

18 A. YES.

19 Q. YOU WERE NOT A REGISTERED INVESTMENT ADVISOR?

20 A. NO, I WAS NOT.

08:36AM

21 Q. BUT TCW AS A FIRM WAS A REGISTERED INVESTMENT
22 ADVISOR WITH THE SEC?

23 A. CORRECT.

24 Q. AND AS PART OF THAT, FOR EXAMPLE, THEY WERE
25 REGULATED IN THE WAY THAT YOU AND THE OTHERS THERE HAD
26 TO CARE FOR NONPUBLIC CLIENT FINANCIAL INFORMATION?

08:36AM

27 A. CORRECT.

28 Q. SO IF YOU WERE HERE YESTERDAY, WHEN

1 MR. WEINGART WAS ASKING ABOUT WHETHER A CLIENT COULD
2 GET HIS OR HER ACCOUNT INFORMATION, ITS ACCOUNT
3 INFORMATION, WE ALL KNOW THAT, RIGHT?

4 A. RIGHT, OF COURSE.

5 Q. THE FIRM COULDN'T WITHHOLD INFORMATION ABOUT A
6 CLIENT'S ACCOUNT FROM A CLIENT, COULD IT?

08:36AM

7 A. NO.

8 Q. BUT IF ONE CLIENT WALKED IN AND SAID, I WANT
9 TO SEE ALL THE OTHER CLIENTS' ACCOUNT HOLDINGS, YOU
10 WOULDN'T GIVE THEM THAT, WOULD YOU?

08:36AM

11 A. NO, I WOULD NOT.

12 Q. IN OTHER WORDS, YOU TREATED THE INFORMATION OF
13 THE HOLDINGS OF EACH CLIENT AS STRICTLY CONFIDENTIAL,
14 CORRECT?

15 A. YES.

08:37AM

16 Q. AND YOU WOULD NOT REVEAL THAT INFORMATION TO
17 ANYONE OTHER THAN THE CLIENT, WITHOUT EITHER THE
18 CLIENT'S PERMISSION OR THE PERMISSION OF TCW, RIGHT?

19 A. YES.

20 Q. AND YOU UNDERSTOOD THAT THAT WAS WHAT THE
21 POLICIES AND PROCEDURES AT TCW PROVIDED, AS WELL,
22 CORRECT?

08:37AM

23 A. YES.

24 Q. THE MBS DATABASE THAT WE TALKED ABOUT
25 YESTERDAY, THAT WAS ONE OF THE PROPRIETARY SYSTEMS THAT
26 ALL OF THESE PROGRAMMERS YOU IDENTIFIED ON THE VIDEO
27 WERE CREATING AND DEVELOPING, CORRECT?

08:37AM

28 A. YEAH. SOME OF THEM WORKED ON IT.

1 Q. HOW MANY PEOPLE, TOTAL, DID YOU SUPERVISE AT
2 TCW?

3 A. AS OF DECEMBER 2009, IT WAS APPROXIMATELY 15.

4 Q. AND ALL OF THEM WERE WORKING ON CREATING THESE
5 PROPRIETARY SYSTEMS THAT YOU DESCRIBED IN THE VIDEO, IN
6 WHOLE OR IN PART?

08:38AM

7 A. NOT NECESSARILY, BUT I WOULD SAY A MAJORITY OF
8 THEM WORKED ON SYSTEMS, YES.

9 Q. WE HEARD MR. KALE'S TESTIMONY YESTERDAY ABOUT
10 THERE BEING APPROXIMATELY 70 I.T. PEOPLE AT TCW, AS
11 WELL.

08:38AM

12 DO YOU RECALL THAT?

13 A. YES, I DO.

14 Q. ARE YOU COUNTING THE 15 PEOPLE THAT WORKED FOR
15 YOU AS BEING PART OF THAT 70 IN I.T. OR ARE THEY
16 DIFFERENT?

08:38AM

17 A. THOSE ARE SEPARATE PEOPLE.

18 Q. SO IF THE I.T. DEPARTMENT, AS MR. KALE
19 TESTIFIED, ALSO WORKS ON PROPRIETARY SYSTEMS, THAT
20 WOULD BE AS MANY AS 85 PEOPLE, APPROXIMATELY, THAT
21 WOULD WORK ON THIS PROPRIETARY INFORMATION AT TCW,
22 CORRECT?

08:38AM

23 A. YES.

24 Q. NOW, THERE CAME A TIME -- LET ME WITHDRAW
25 THAT, AND JUST ASK YOU:

08:38AM

26 YOU HAD, FOR SOME TIME PRIOR TO 2009,
27 BEEN IN THE HABIT OF DOWNLOADING INFORMATION AT TCW,
28 HADN'T YOU?

1 A. YES.

2 Q. AND LET'S MAKE SURE WE'RE SPEAKING THE SAME
3 LANGUAGE TECHNICALLY.

4 CAN YOU DESCRIBE FOR US, WHAT DOES IT
5 MEAN TO COPY INFORMATION THAT'S IN A COMPUTER?

08:39AM

6 A. I'M NOT SURE WHAT YOU MEAN.

7 Q. WELL, LET ME TRY IT THIS WAY: YOU CAN GO INTO
8 A COMPUTER AT TCW, FOR EXAMPLE, AND COPY INFORMATION,
9 AND MOVE IT FROM ONE PLACE INTO -- IN THE TCW COMPUTER
10 TO ANOTHER FILE IN THE TCW COMPUTER, RIGHT?

08:39AM

11 A. SURE, YEAH.

12 Q. AND CAN WE CALL THAT, COPYING?

13 A. OKAY. THAT MAKES SENSE.

14 Q. BUT DOWNLOADING IS SOMETHING DIFFERENT, ISN'T
15 IT?

08:39AM

16 A. YES.

17 Q. WHAT IS DOWNLOADING?

18 A. WELL, TO ME, IT WOULD MEAN, DOWNLOADING WOULD
19 MEAN DOWNLOADING -- COPYING IT FROM THE COMPUTER TO A
20 DEVICE THAT IS NOT A COMPUTER.

08:39AM

21 Q. AND SOMETIMES WE WOULD CALL THAT EXTERNAL
22 DEVICES, RIGHT?

23 A. RIGHT.

24 Q. AND I USED THE EXAMPLE YESTERDAY OF THE THUMB
25 DRIVE, THE SMALLER -- WHICH I HELD UP, THE SMALLER
26 DEVICE THAT'S AN EXTERNAL DEVICE ONE CAN DOWNLOAD TO,
27 RIGHT?

08:39AM

28 A. CORRECT.

1 Q. AND ANOTHER EXAMPLE IS SOMETHING CALLED AN
2 EXTERNAL HARD DRIVE, WHICH CAN ALSO BE ATTACHED TO A
3 COMPUTER, AND CAN BE USED TO DOWNLOAD, CORRECT?

4 A. YES.

5 Q. AND JUST FOR THE RECORD, YOUR HONOR, I'M
6 HOLDING UP, THIS IS ACTUALLY EXHIBIT 2119, AND IT'S A
7 COMPUTER HARD DRIVE. IT'S ABOUT TWO AND A HALF INCHES
8 BY FOUR AND A HALF INCHES BY A HALF AN INCH DEVICE.

08:40AM

9 AND THE EXTERNAL HARD DRIVES HOLD MORE
10 INFORMATION THAN THE THUMB DRIVES, RIGHT?

08:40AM

11 A. GENERALLY, YES.

12 Q. SO, BEFORE 2009, THE REASON THAT YOU WOULD
13 FROM TIME TO TIME DOWNLOAD TCW'S INFORMATION WAS THAT
14 YOU WANTED TO BE ABLE TO WORK ON THAT INFORMATION WHEN
15 YOU WEREN'T AT TCW, CORRECT?

08:40AM

16 A. YEAH, I WORKED ON THAT INFORMATION WHEN I
17 WASN'T IN THE BUILDING, BUT DOING TCW BUSINESS.

18 Q. WELL, PRIOR TO 2009, YOU WOULD SOMETIMES USE
19 EXTERNAL DEVICES SO THAT YOU COULD WORK ON THE
20 WEEKENDS, OR WORK AT HOME, AND YOU WOULD HAVE THAT
21 INFORMATION, RIGHT?

08:41AM

22 A. RIGHT.

23 Q. AND YOU THOUGHT OF THIS AS SORT OF YOUR OWN
24 KIND OF DISASTER RECOVERY SYSTEM, RIGHT?

25 A. CORRECT.

08:41AM

26 Q. IN OTHER WORDS, IF FOR WHATEVER REASON,
27 GENERALLY OR EVEN PERSONALLY TO YOU, YOU WEREN'T ABLE
28 TO WORK IN THE OFFICE, YOU WANTED TO HAVE SOME

1 INFORMATION FOR WORK THAT YOU COULD DO SOMEWHERE ELSE,
2 RIGHT?

3 A. CORRECT.

4 Q. AND YOU HAD A LAPTOP COMPUTER, RIGHT?

5 A. YES.

08:41AM

6 Q. AND YOU HAD DESKTOP COMPUTERS AT HOME, RIGHT?

7 A. RIGHT.

8 Q. BUT THERE CAME A TIME, IN 2009, WHEN YOU
9 STARTED DOWNLOADING FOR A DIFFERENT REASON; ISN'T THAT
10 RIGHT?

08:41AM

11 A. YES, THAT'S CORRECT.

12 Q. AND I WANT TO PLAY NOW, ANOTHER CLIP FROM YOUR
13 SWORN TESTIMONY, WHICH IS PAGE 38, LINES 15, OVER TO
14 PAGE 39, LINE 2.

15 THE COURT: ANY OBJECTION?

08:42AM

16 MR. WEINGART: 37, LINE 8.

17 THE COURT: 38, LINE 17, TO 39, LINE 2, IS
18 WHAT I HAVE.

19 MR. BRIAN: MAY I HAVE A MOMENT, YOUR HONOR?

20 NO OBJECTION.

08:42AM

21 THE COURT: YOU MAY PROCEED.

22
23 (VIDEO DEPOSITION PLAYED OF JEFFREY MAYBERRY)
24

25 Q. BY MR. MADISON: NOW, YOU USED A COUPLE -- I
26 USED RATHER, IN MY QUESTION, A COUPLE OF TERMS. AND
27 ONE OF THEM IS BUSINESS CONTINUITY. THAT IS GENERALLY
28 THE SAME IDEA AS DISASTER RECOVERY; THAT IS, THE IDEA

08:43AM

1 THAT IF THERE'S SOME REASON THAT YOU CAN'T WORK ON THE
2 SYSTEM AT TCW, YOU WILL BE ABLE TO STILL CONDUCT
3 BUSINESS SOMEWHERE ELSE, RIGHT?

4 A. YES.

5 Q. SO SOMETIMES IT'S CALLED DISASTER RECOVERY,
6 SOMETIMES IT'S CALLED BUSINESS CONTINUITY.

08:43AM

7 AND THEN ANOTHER PHRASE THAT WE HEARD,
8 WHICH MEANS THE SAME THING, IS RISK RECOVERY, OR
9 RECOVERY, CORRECT?

10 A. YES.

08:44AM

11 Q. AND YOU HEARD TESTIMONY YESTERDAY FROM
12 MR. KALE ABOUT HOW TCW HAS A WHOLE SYSTEM SET UP, AS A
13 FIRM, TO DO THOSE SORTS OF THINGS, CORRECT?

14 A. YES.

15 Q. YOU WERE AWARE, WHEN YOU WERE AT TCW, THAT
16 MR. BURSCHINGER, THE HEAD OF RISK MANAGEMENT, AND
17 OTHERS, HAD A WHOLE SYSTEM OF BACKING UP THE SYSTEM
18 REMOTELY, SO THAT IF THERE WERE SOME SORT OF EVENT,
19 LIKE AN EARTHQUAKE OR ANYTHING, THE INFORMATION WOULD
20 BE INTACT OFF SITE, RIGHT?

08:44AM

21 A. YES.

22 Q. AND YOU PARTICIPATED IN REGULAR ANNUAL AND
23 EVEN MORE FREQUENTLY, EXERCISING AT TCW, TO TEST THAT
24 SYSTEM, RIGHT?

25 A. WELL, I TRIED TO. IT DIDN'T ALWAYS WORK, BUT
26 THERE WAS ATTEMPTS TO MAKE SURE THAT THE PLAN WORKED.

08:44AM

27 Q. OKAY.

28 WELL, WOULD YOU AGREE WITH ME,

1 MR. MAYBERRY, THAT TCW, AS A FIRM, THAT THE FIRM'S
2 BUSINESS CONTINUITY PROGRAM WAS NOT HAVING PEOPLE CARRY
3 FLASH DRIVES IN THE CONSOLES OF THEIR CARS?

4 A. I DON'T KNOW THE SPECIFICS OF EVERY PART OF
5 THE PLAN, BUT I THINK THAT IT'S PROBABLY NOT, YOU KNOW,
6 AS -- I MEAN, IT DOESN'T SEEM LIKE THAT WOULD BE A GOOD
7 PLAN TO HAVE -- THAT'S YOUR BACKUP PLAN.

08:45AM

8 Q. NOBODY EVER TOLD YOU, HERE'S WHAT WE'LL DO.
9 IN CASE THERE'S AN EARTHQUAKE, EVERYBODY SHOULD
10 DOWNLOAD, WHEN THEY REMEMBER TO DO THAT AND PUT THE
11 FLASH DRIVES IN THEIR POCKETS OR AT HOME OR IN THEIR
12 CAR. THAT WASN'T THE OFFICIAL BUSINESS CONTINUITY
13 PROGRAM.

08:45AM

14 A. BUT THAT WAS THE MORTGAGE GROUP'S PLAN. I
15 DON'T KNOW IF IT WAS OFFICIAL, THERE WAS A TCW PLAN AT
16 THAT POINT OR NOT.

08:45AM

17 Q. ALL RIGHT. SO WE HEARD THAT YOU STARTED
18 DOWNLOADING FOR SOME DIFFERENT REASON, ON SEPTEMBER
19 3RD.

20 AND I WANT TO NOW PLAY ANOTHER PART OF
21 YOUR SWORN TESTIMONY. AND THIS WILL BE PAGE 39, LINE 3
22 THROUGH LINE 19, YOUR HONOR.

08:45AM

23 MR. BRIAN: NO OBJECTION.

24 THE COURT: YOU MAY PROCEED.

25
26 (VIDEO DEPOSITION PLAYED OF JEFFREY MAYBERRY)
27

08:46AM

28 Q. BY MR. MADISON: SO, THAT WAS THE DISCUSSION

1 YOU HAD WITH MR. SANTA ANA WHERE HE DIRECTED YOU TO DO
2 DOWNLOADING FOR SOME OTHER PURPOSE RELATED TO THIS
3 MEETING THAT WAS GOING TO OCCUR WITH MR. STERN AND
4 MR. GUNDLACH, CORRECT?

5 A. YES.

08:47AM

6 Q. AND YOU DIDN'T BELIEVE AT THAT TIME, YOU
7 DIDN'T QUESTION MR. SANTA ANA'S DIRECTIONS, DID YOU,
8 SIR?

9 A. NO, I DID NOT.

10 Q. AND YOU DIDN'T STOP AND THINK, WELL, IF
11 MR. GUNDLACH IS GOING TO BE FIRED, THAT GIVES US THE
12 RIGHT TO TAKE INFORMATION THAT'S NOT OURS, DID YOU?

08:47AM

13 A. NO, I DID NOT.

14 Q. YOU DON'T -- AS YOU SIT HERE TODAY, YOU DON'T
15 BELIEVE THAT, DO YOU, SIR?

08:47AM

16 A. I'M SORRY. BELIEVE WHAT?

17 Q. THAT IF MR. GUNDLACH WERE GOING TO BE FIRED,
18 THAT WOULD SOMEHOW GIVE PEOPLE IN THE GROUP THE RIGHT
19 TO TAKE INFORMATION THAT WASN'T THEIRS?

20 A. WELL, I DON'T THINK IT WAS THE -- YEAH, I
21 WOULD AGREE WITH THAT.

08:48AM

22 Q. THERE ARE OTHER REMEDIES, IF YOU THINK YOU ARE
23 BEING FIRED WRONGFULLY, OTHER THAN STEALING, RIGHT?

24 A. REMEDIES FOR WHAT?

25 Q. FOR FEELING YOU ARE BEING WRONGFULLY FIRED?

08:48AM

26 A. THEY ARE NOT -- IN MY MIND, THOSE AREN'T
27 CORRELATED. THOSE AREN'T TOGETHER.

28 Q. ALL RIGHT.

1 LET ME THEN PLAY PAGE 40, LINE 4,
2 THROUGH LINE 14.

3 MR. MADISON: I'M SORRY, YOUR HONOR. I'M TOLD
4 I MADE A MISTAKE. IT'S ACTUALLY LINE 3, NOT 4.

5 THE COURT: THREE THROUGH 14?

08:48AM

6 MR. MADISON: YES, YOUR HONOR.

7 MR. BRIAN: NO OBJECTION.

8 THE COURT: YOU MAY PROCEED.

9
10 (VIDEO DEPOSITION PLAYED OF JEFFREY MAYBERRY)

08:48AM

11
12 Q. BY MR. MADISON: SO, BASED ON THAT, YOU
13 FOLLOWED MR. SANTA ANA'S DIRECTIONS THAT DAY, AND YOU
14 DOWNLOADED SPECIFIC INFORMATION THAT HE ASKED YOU TO
15 DOWNLOAD FOR THESE REASONS, CORRECT?

08:49AM

16 A. YES.

17 Q. AND THE DOWNLOADING DIDN'T JUST STOP THAT DAY,
18 DID IT?

19 A. NO, IT DID NOT.

20 Q. SO YOU LEARNED, AFTER THE MEETING BETWEEN
21 MR. STERN AND THE OTHERS, AND MR. GUNDLACH, THAT
22 MR. GUNDLACH HAD NOT BEEN FIRED THAT DAY, CORRECT?

08:49AM

23 A. YES.

24 Q. BUT YOU SPOKE TO MR. SANTA ANA, AND YOU TWO
25 AGREED THAT YOU STILL THOUGHT IT WOULD BE A GOOD IDEA
26 TO KEEP DOWNLOADING, CORRECT?

08:50AM

27 A. I DON'T KNOW IF WE HAD A SPECIFIC
28 CONVERSATION; BUT IT CAME OUT THAT IT WOULD -- JUST

1 BECAUSE MR. STERN SAID JEFFREY WASN'T GOING TO BE FIRED
2 THAT DAY, DIDN'T MEAN HE COULDN'T BE FIRED THE NEXT DAY
3 OR, YOU KNOW, TWO WEEKS LATER, WHATEVER THE CASE MAY
4 BE.

5 Q. SO IT WAS YOUR UNDERSTANDING THAT THE
6 DOWNLOADING SHOULD BE CONTINUE FOR THESE REASONS,
7 UNRELATED TO BUSINESS CONTINUITY, THAT IS. SO -- THE
8 REASONS THAT WE JUST HEARD, IN CASE THE INFORMATION
9 COULD BE USEFUL AT WHEREVER JEFFREY WAS GOING TO BE
10 NEXT, RIGHT?

11 A. YES.

12 Q. AND THE DOWNLOADING PRETTY MUCH CONTINUED,
13 FROM THAT DAY FORWARD, DIDN'T IT, SIR?

14 A. YES, IT DID.

15 Q. NOW, YOU WEREN'T THE ONLY ONE DOWNLOADING, TO
16 YOUR KNOWLEDGE, FOR THESE REASONS, WERE YOU?

17 A. NO, I WAS NOT.

18 Q. IN FACT, YOU KNEW THAT MR. SANTA ANA WAS,
19 HIMSELF, ALSO DOWNLOADING, CORRECT?

20 A. YES, THAT'S CORRECT.

21 Q. YOU LEARNED, FROM YOUR OWN OBSERVATIONS, AND
22 FROM SPEAKING TO MR. SANTA ANA, THAT HE HAD ACTUALLY
23 ACQUIRED AN EXTERNAL HARD DRIVE SO THAT HE COULD
24 DOWNLOAD EVEN MORE INFORMATION THAN COULD BE DOWNLOADED
25 ONTO FLASH DRIVES, RIGHT?

26 A. YES.

27 Q. AND HE WAS DOING THAT ON AN ALMOST DAILY
28 BASIS, WASN'T HE?

1 A. I'M NOT SURE WHAT THE FREQUENCY WAS. IT WAS
2 FAIRLY FREQUENT.

3 MR. MADISON: LET ME PLAY PAGE 53 LINE 3
4 THROUGH LINE 12, YOUR HONOR.

5 AND I'LL CONTINUE, IF I MAY, AND ALSO
6 PLAY 53, LINE 24, OVER TO 54, LINE 8; AND THEN I'LL
7 EXAMINE THE WITNESS.

08:51AM

8 MR. BRIAN: MAY I HAVE THAT LAST LINE, PLEASE?

9 MR. MADISON: 53, 24, OVER TO 54, 8, YOUR
10 HONOR.

08:52AM

11 MR. BRIAN: NO OBJECTION.

12 THE COURT: YOU MAY PROCEED.

13
14 (VIDEO DEPOSITION PLAYED OF JEFFREY MAYBERRY)

08:54AM

15
16 MR. MADISON: MAY I APPROACH WITH AN EXHIBIT,
17 YOUR HONOR?

18 THE COURT: YES, YOU MAY.

19 Q. BY MR. MADISON: MR. MAYBERRY, I'VE PLACED
20 BEFORE YOU WHAT'S BEEN MARKED AS EXHIBIT 2119. IT'S AN
21 EXTERNAL HARD DRIVE IN A CASE.

08:54AM

22 CAN YOU LOOK AT THAT, PLEASE, AND TELL
23 US IF, IN FACT, THAT APPEARS TO YOU TO BE THE HARD
24 DRIVE YOU WERE DESCRIBING, BELONGING TO MR. SANTA ANA?

25 A. I DON'T KNOW IF IT'S THE EXACT ONE, BUT
26 IT'S -- THE HARD DRIVE HE HAD WAS NOT -- IF NOT THE
27 EXACT SAME ONE, IT WAS VERY SIMILAR.

08:54AM

28 Q. AND THOSE EXTERNAL HARD DRIVES CAN HOLD

1 MILLIONS OF PAGES OF DATA.

2 A. I DON'T KNOW HOW MANY PAGES. THOUSANDS OF
3 THOUSANDS OF PAGES OF DATA. IT CAN HOLD GIGABYTES
4 WORTH OF DATA.

5 MR. QUINN: CAN YOU EXPLAIN?

08:55AM

6 THE WITNESS: WELL, I THINK DAN KALE EXPLAINED
7 IT. A GIGABYTE IS A THOUSAND MEGABYTES. AND A
8 GIGABYTE SEEMS TO BE KIND OF THE STANDARD SIZE, THESE
9 DAYS, OF DATA.

10 Q. HOW MANY GIGABYTES CAN THE EXTERNAL HARD
11 DRIVES HOLD?

08:55AM

12 A. I DON'T KNOW FOR SURE. 500, SOMETHING LIKE
13 THAT.

14 Q. IT'S A LOT OF DATA?

15 A. A LOT OF DATA, YES.

08:55AM

16 Q. AND YOU MENTIONED THERE, ON THE SWORN
17 TESTIMONY VIDEO, THAT YOU ONLY DID IT A FEW TIMES.

18 WHAT YOU WERE REFERRING TO IS ACTUALLY
19 YOU WERE DOWNLOADING ON MR. SANTA ANA'S HARD DRIVE,
20 CORRECT?

08:55AM

21 A. YES, THAT'S CORRECT.

22 Q. SO THERE CAME A TIME -- ONE OF THE WAYS THAT
23 YOU KNEW ABOUT THIS WAS THAT THERE CAME A TIME, IN
24 OCTOBER OF 2009, WHERE MR. SANTA ANA WAS GOING ON
25 VACATION, RIGHT?

08:55AM

26 A. YES.

27 Q. AND HE DIRECTED YOU TO DO THE DOWNLOADING ONTO
28 THE EXTERNAL HARD DRIVE, FOR THE REASONS WE'VE SEEN,

1 WHILE HE WAS AWAY ON VACATION, CORRECT?

2 A. YES.

3 Q. AND YOU DID THAT, DIDN'T YOU?

4 A. YES, I DID.

5 Q. AND YOU MENTIONED THE MBS DATABASE, TCW'S AS
6 BEING ONE OF THE THINGS THAT WAS DOWNLOADED, CORRECT?

08:56AM

7 A. YES.

8 Q. AND THAT WAS PROPRIETARY TO TCW, AS YOU HAVE
9 ALREADY TESTIFIED, RIGHT?

10 A. YES.

08:56AM

11 Q. YOU MENTIONED IN THE VIDEO THERE, DAILY
12 PORTFOLIO HOLDINGS.

13 THOSE WERE HOLDINGS OF INVESTMENTS OF
14 TCW, CORRECT?

15 A. YES. THOSE WERE THE CLIENT HOLDINGS.

08:56AM

16 Q. AND THAT'S -- AS WE'VE ALREADY TALKED ABOUT
17 THIS MORNING, THAT WAS NONPUBLIC CLIENT FINANCIAL
18 INFORMATION, CORRECT?

19 A. CORRECT.

20 Q. YOU DOWNLOADED CONTACT INFORMATION FOR
21 CLIENTS, CORRECT?

08:56AM

22 A. YES.

23 Q. THAT INFORMATION ALSO WAS NONPUBLIC, WASN'T
24 IT, SIR?

25 A. I'M NOT SURE APPROXIMATELY HOW MUCH OF IT WAS
26 PUBLIC OR NOT.

08:56AM

27 Q. YOU DOWNLOADED INVESTMENT MANAGEMENT
28 AGREEMENTS BETWEEN TCW AND INVESTORS, CORRECT?

1 A. THERE WERE SOME OF THEM ON THERE, I'M NOT SURE
2 THE EXACT EXTENT.

3 Q. AND HERE AGAIN, THOSE WERE NOT PUBLIC, WERE
4 THEY, SIR?

5 A. NO, THEY WERE NOT.

08:56AM

6 Q. YOU WOULD NEVER RELEASE AN INVESTMENT
7 MANAGEMENT AGREEMENT WITH A CLIENT, UNLESS THE CLIENT
8 HAD GIVEN YOU PERMISSION, OR SOMEONE SENIOR AT TCW HAD
9 TOLD YOU TO DO THAT, WOULD YOU?

10 A. NO, I WOULD NOT RELEASE THAT.

08:57AM

11 Q. AND THIS MAY BE OBVIOUS, BUT YOU DIDN'T HAVE
12 PERMISSION FROM ANY CLIENT TO DO WHAT YOU'VE DESCRIBED,
13 DID YOU?

14 A. NO, I DID NOT.

15 Q. YOU DIDN'T HAVE PERMISSION FROM THE BOARD OF
16 DIRECTORS AT TCW TO DO THIS, DID YOU, SIR?

08:57AM

17 A. NO.

18 Q. YOU WERE DOING IT ALL BECAUSE MR. SANTA ANA
19 HAD DIRECTED YOU TO DO IT, FOR THE REASONS THAT YOU'VE
20 DESCRIBED TO US, CORRECT?

08:57AM

21 A. YES.

22 MR. MADISON: LET ME JUST SHOW QUICKLY -- IT'S
23 IN EVIDENCE, YOUR HONOR, EXHIBIT 373. IT'S THE FLOOR
24 PLAN, SO WE HAVE A SENSE OF THE PHYSICAL SPACE.

25 AND MR. MAYBERRY, I BELIEVE, IF I CAN
26 RECALL, IF WE EXPAND THE BOTTOM PART OF THE TRADING
27 FLOOR THERE, THAT YOUR WORK SPACE OUT ON THE FLOOR IS
28 THERE, AND IT'S BEEN HIGHLIGHTED FOR US OVER THE THIRD

08:57AM

1 TABLE. IT SAYS, 1633, UP AT THE TOP, CORRECT?

2 A. YES.

3 Q. AND MR. SANTA ANA WAS RIGHT NEXT TO YOU,
4 CORRECT?

5 A. YES, THAT'S CORRECT.

08:58AM

6 Q. RIGHT ABOVE YOU THERE.

7 SO HE WOULD ACTUALLY KEEP THIS HARD
8 DRIVE AT HIS WORK SPACE, WOULDN'T HE?

9 A. YES. DURING THE DAY, YES.

10 Q. SOMETIMES HE WOULD KEEP IT DOWN UNDERNEATH THE
11 DESK, CORRECT?

08:58AM

12 A. WELL, THE TABLE IS NOT VERY LONG; SO IN ORDER
13 TO PLUG IT INTO THE COMPUTER, YOU HAVE GOT TO CRAWL
14 UNDER THERE AND HOOK IT UP.

15 Q. THE COMPUTERS WERE UNDER THE DESKS THERE?

08:58AM

16 A. YES. THEY WERE UNDER THE DESK.

17 Q. AND YOU OBSERVED THIS, THAT HE WAS USING IT ON
18 AN ALMOST DAILY BASIS, AS WE HEARD, RIGHT?

19 A. YES.

20 Q. SO, PUTTING ASIDE NOW THE HARD DRIVE THAT YOU
21 USED -- AND BY THE WAY, THIS CONTINUED RIGHT UP UNTIL
22 DECEMBER 4TH, DIDN'T IT?

08:58AM

23 A. YES, IT DID.

24 Q. AND IN FACT, YOU WERE AWARE THAT MR. SANTA ANA
25 HAD THE HARD DRIVE THERE AT HIS WORK SPACE, THAT
26 AFTERNOON WHEN HE WAS PUT ON LEAVE, RIGHT?

08:58AM

27 A. I DON'T REMEMBER WHETHER IT WAS THERE OR NOT.

28 Q. SO, SETTING ASIDE THE HARD DRIVE NOW, YOU,

1 YOURSELF, CONTINUED TO DO REGULAR DOWNLOADING, FOR THE
2 REASONS WE'VE HEARD, AFTER SEPTEMBER 3RD, RIGHT UP TILL
3 DECEMBER 4TH, CORRECT?

4 A. YES, THAT'S CORRECT.

5 Q. AND AGAIN, THAT WAS NOT FOR BUSINESS
6 CONTINUITY, IT WAS FOR THE REASONS THAT YOU'VE
7 DESCRIBED, THAT THE INFORMATION COULD BE USEFUL IN
8 MR. GUNDLACH'S NEW VENTURE, CORRECT?

9 A. YES.

10 Q. ANOTHER THING THAT YOU DOWNLOADED AT DIFFERENT
11 TIMES WERE SOMETHING CALLED THE TED DATABASE, CORRECT?

12 A. I DOWNLOADED PART OF IT, YES.

13 Q. AND CAN YOU DESCRIBE FOR US WHAT TED IS,
14 PLEASE?

15 A. WELL, I THOUGHT OF TED AS THE PLACE WHERE YOU
16 GET PORTFOLIO PERFORMANCE, CLIENT PERFORMANCE, CLIENT
17 CONTACT, THE CLIENT STRATEGY. AND THERE WAS CERTAIN
18 CLIENT CONTACT INFORMATION LIKE PHONE MEMBERS AND
19 E-MAILING ADDRESSES IN THAT DATABASE.

20 Q. AND THAT WAS CLIENT INFORMATION, CORRECT?

21 A. YES, IT WAS.

22 Q. AND IN FACT, THERE WERE EVEN SOCIAL SECURITY
23 NUMBERS OF CLIENTS IN TED, CORRECT?

24 A. NOT THAT I KNOW OF.

25 Q. SO YOU DON'T KNOW ONE WAY OR THE OTHER?

26 A. I DON'T KNOW, ONE WAY OR THE OTHER.

27 Q. THERE WAS SOMETHING ELSE CALLED THE AVENUE
28 SARATOGA DATABASE THAT YOU DOWNLOADED, CORRECT?

08:59AM

08:59AM

08:59AM

08:59AM

09:00AM

1 A. WELL, I THINK TED WAS THE PRECURSOR TO AVENUE
2 SARATOGA, SO THEY WEREN'T IN EXISTENCE AT THE SAME
3 TIME. THEY TOOK TED AND MODERNIZED IT.

4 Q. ALL RIGHT.

5 SO THE AVENUE SARATOGA DATABASE ALSO HAD
6 PORTFOLIO NUMBERS, CLIENT NAMES, CLIENT ADDRESSES,
7 CLIENT PHONE NUMBERS, AND OTHER CLIENT INFORMATION, ON
8 A LIST OF LIKE 10 OR 15 TABLES, CORRECT?

09:00AM

9 A. YES, THAT'S CORRECT.

10 Q. AND YOU HAD THE CONTACT DATABASE AND SARATOGA
11 DATABASE DOWNLOADED ALSO ONTO YOUR FLASH DRIVE, RIGHT?

09:00AM

12 A. I DOWNLOADED CERTAIN FIELDS OR TABLES.

13 Q. SO ALL OF THESE THINGS THAT WE'VE JUST BEEN
14 TALKING ABOUT, WERE -- THEY INCLUDED PROGRAMS AND DATA
15 COMPILATIONS THAT TCW HAD CREATED, RIGHT?

09:01AM

16 A. YES.

17 Q. I MEAN, REMEMBER WE HEARD YESTERDAY ABOUT
18 THERE WERE PLACES WHERE YOU CAN GO BUY A LIST OF PHONE
19 NUMBERS AND NAMES, AND THINGS LIKE THAT.

20 YOU WEREN'T DOWNLOADING THAT SORT OF
21 THING, WERE YOU?

09:01AM

22 A. I WASN'T DOWNLOADING THAT LIST, NO.

23 Q. RIGHT. YOU WERE DOWNLOADING THINGS THAT TCW
24 HAD DEVELOPED OVER MANY YEARS, USING TCW EMPLOYEES, TCW
25 RESOURCES TO CREATE?

09:01AM

26 A. YES.

27 Q. AND AS I THINK YOU'VE TOLD US, THOSE THINGS
28 WERE -- THERE WAS SOME EFFORT AT TCW TO KEEP THOSE

1 THINGS PROPRIETARY AND CONFIDENTIAL TO TCW, CORRECT?

2 A. I GUESS THERE WAS SOME EFFORT, YES.

3 Q. AND TCW DERIVES ECONOMIC VALUE FROM KEEPING
4 AND MAINTAINING THESE SYSTEMS?

5 MR. BRIAN: OBJECTION, FOUNDATION.

09:01AM

6 THE COURT: SUSTAINED.

7 Q. BY MR. MADISON: WELL, YOU AND THE OTHER
8 INVESTMENT PROFESSIONALS AT TCW USED THESE THINGS THAT
9 WE'RE TALKING ABOUT SO AS TO DO THE BUSINESS OF TCW,
10 CORRECT?

09:02AM

11 A. YEAH. WE WOULD USE THEM, YES.

12 Q. AND THE WHOLE POINT OF SELECTING THE THINGS TO
13 DOWNLOAD TO BE USED AT MR. GUNDLACH'S NEW VENTURE WAS,
14 THOSE WERE THINGS THAT MIGHT BE USEFUL, AS YOU
15 TESTIFIED, RIGHT?

09:02AM

16 A. YEAH, THEY MIGHT BE USEFUL.

17 Q. USEFUL TO MAKE MONEY, RIGHT?

18 A. THE HOPE WOULD BE TO MAKE MONEY, YES.

19 Q. AND THAT WAS THE IDEA IN SELECTING THOSE ITEMS
20 TO TAKE?

09:02AM

21 A. YES.

22 Q. NOW, THERE CAME A TIME WHEN YOU ASKED ANOTHER
23 MEMBER OF THE MBS GROUP, ANOTHER TCW EMPLOYEE, TO
24 PROVIDE INFORMATION FOR THESE SAME PURPOSES; ISN'T THAT
25 RIGHT?

09:02AM

26 A. YES, THAT'S CORRECT.

27 Q. AND WE ALL SORT OF HAVE BECOME USED TO CALLING
28 HIM JP. I'M GOING TO TRY ONCE TO PRONOUNCE HIS NAME.

1 I BELIEVE IT'S JIRAINDIRA PURUSHOTHAMAN?

2 A. THAT'S PRETTY CLOSE, AS FAR AS I CAN TELL.

3 Q. FIRST ATTEMPT. I'M GOING TO GO BACK TO
4 CALLING HIM JP.

5 A. YEAH, JP.

09:03AM

6 Q. AND JP WAS SOMEONE THAT WORKED IN THE GROUP,
7 CORRECT?

8 A. YES.

9 Q. AND WAS A PROGRAMMER?

10 A. AMONG OTHER THINGS, YES.

09:03AM

11 Q. WHAT OTHER THINGS?

12 A. HE WOULD DO THE NORMAL ANALYTICAL WORK ALSO.
13 WELL, HE WASN'T SOLELY A PROGRAMMER, BUT A HYBRID.

14 Q. AND HE WAS VERY ADEPT AT WORKING IN THESE
15 COMPUTER SYSTEMS, WITH DATA AND THE LIKE, CORRECT?

09:03AM

16 A. YES. THAT'S WHY WE LIKED HAVING HIM AROUND.

17 Q. AND HE WAS A MORE JUNIOR EMPLOYEE, CORRECT?

18 A. THAN ME?

19 Q. YES. WE'LL START THERE.

20 A. HE WAS -- I SUPERVISED HIM, YES.

09:03AM

21 Q. SO HE REPORTED TO YOU. AND WHEN YOU GAVE HIM
22 DIRECTION, YOU EXPECTED THAT HE WOULD CARRY THOSE
23 DIRECTIONS OUT; ISN'T THAT RIGHT?

24 A. YES, THAT'S CORRECT.

25 Q. SO YOU REQUESTED THAT HE ALSO BEGIN
26 DOWNLOADING INFORMATION, AFTER SEPTEMBER 3RD, FOR THE
27 SAME REASONS THAT WE'VE TALKED ABOUT THIS MORNING,
28 RIGHT?

09:04AM

1 A. NO, I DON'T BELIEVE THAT'S CORRECT.

2 Q. DID YOU ASK HIM TO PROVIDE INFORMATION TO YOU
3 OR MR. SANTA ANA SO THAT YOU COULD DOWNLOAD IT?

4 A. YES.

5 Q. FOR THOSE SAME REASONS WE'VE TALKED ABOUT,
6 CORRECT?

09:04AM

7 A. CORRECT.

8 Q. AND YOU WERE CONCERNED, WHEN YOU WERE DOING
9 THIS, THAT TCW MIGHT FIND OUT, WEREN'T YOU?

10 A. YES.

09:04AM

11 Q. AND SO ONE OF THE THINGS THAT YOU DID TO
12 PREVENT TCW FROM FINDING OUT IS THAT YOU USED A FOLDER
13 THAT HAD A TITLE THAT WOULDN'T INDICATE WHAT IT WAS
14 BEING USED FOR; ISN'T THAT TRUE?

15 A. NO, I DON'T THINK THAT'S TRUE.

09:04AM

16 Q. WELL, DO YOU REMEMBER THERE CAME A TIME WHEN
17 JP BEGAN DOWNLOADING INFORMATION TO A FOLDER IN THE MBS
18 INTERN/DISASTER RECOVERY FILE?

19 A. DID YOU ASK, DO I REMEMBER THAT?

20 Q. YES.

09:05AM

21 A. YES, I REMEMBER THAT.

22 Q. AND YOU GOT E-MAILS FROM HIM WHERE HE WAS
23 TALKING ABOUT HOW THAT WAS HOW HE WAS GOING TO BE DOING
24 IT, RIGHT?

25 A. YES.

09:05AM

26 Q. AND THAT WAS IN DIRECT RESPONSE TO YOUR
27 DIRECTIONS TO HIM TO PROVIDE CERTAIN INFORMATION FOR
28 THE PURPOSES THAT WE'VE HEARD ABOUT THIS MORNING?

1 A. YES, THAT'S CORRECT.

2 Q. SO LET ME PLAY SOME TESTIMONY HERE. IT WOULD
3 BE FROM -- WELL, AND BY THE WAY, CAN YOU TELL THOSE OF
4 US THAT AREN'T AS COMPUTER LITERATE, WHAT IS A FOLDER?

5 A. I MEAN, I DON'T KNOW HOW TO EXPLAIN WHAT A
6 FOLDER IS. IT'S JUST A PLACE WHERE YOU CAN PUT A WHOLE
7 BUNCH OF FILES. THAT'S HOW I KIND OF LOOK AT IT.

09:05AM

8 Q. SO IF WE LOOK AT IT LIKE A PAPER FOLDER, IT'S
9 NOT A PAPER FOLDER IN THE COMPUTER, IT'S JUST A PLACE
10 IN THE COMPUTER WHERE INFORMATION RESIDES?

09:05AM

11 A. CORRECT.

12 Q. AND THE DISASTER RECOVERY THING WAS UNTRUE,
13 BECAUSE YOU WERE DOING THESE THINGS, AS YOU HAVE
14 ALREADY TOLD US, FOR THESE OTHER PURPOSES, CORRECT?

15 A. WELL, IT WOULD ALSO BE USEFUL IN A DISASTER
16 RECOVERY SCENARIO. SO IT'S NOT NECESSARILY UNTRUE; BUT
17 THERE WAS ALTERNATE, YOU KNOW, POTENTIAL USES.

09:06AM

18 Q. THAT WASN'T THE REASON YOU HAD BEEN ASKING HIM
19 TO DO THIS DISASTER RECOVERY, WAS IT?

20 A. NO, BUT IT WOULD ALSO BE USEFUL IN THAT
21 SCENARIO.

09:06AM

22 Q. SO LET ME PLAY PAGE 240, LINE 3, THROUGH 241,
23 LINE 6, YOUR HONOR.

24 MR. BRIAN: NO OBJECTION.

25 THE COURT: YOU MAY PROCEED.

09:06AM

26 MR. MADISON: THANK YOU, YOUR HONOR.

27
28 (VIDEO DEPOSITION PLAYED OF JEFFREY MAYBERRY)

1
2 Q. BY MR. MADISON: SO I WANT TO JUST QUICKLY
3 LOOK AT A COUPLE OF THE E-MAILS THAT YOU JUST DESCRIBED
4 THERE.

5 IF YOU COULD TURN TO LOOK IN THE BINDER 09:08AM
6 THAT'S IN FRONT OF YOU, TO LOOK AT EXHIBIT 271. IT'S
7 EXHIBIT 271, YOUR HONOR.

8 AND THIS IS AN E-MAIL FROM JP TO
9 MR. MAYBERRY. I MOVE 271.

10 MR. BRIAN: NO OBJECTION. 09:09AM

11 THE COURT: IT WILL BE ADMITTED.

12
13 (EXHIBIT 271 ADMITTED.)
14

15 Q. BY MR. MADISON: SO IF WE CAN JUST DISPLAY 09:09AM
16 THAT, AND EXPAND IT SO WE CAN SEE IT.

17 THIS ONE IS ACTUALLY SEPTEMBER 3RD. AND
18 IT'S AN E-MAIL WHICH SIMPLY CONTAINS A LOCATION IN THE
19 G DRIVE FOR INFORMATION, RIGHT?

20 A. YES. 09:09AM

21 Q. SO DOES THIS REFRESH YOUR RECOLLECTION THAT
22 ACTUALLY ON SEPTEMBER 3RD, YOU HAD THE FIRST
23 CONVERSATION WITH JP ABOUT DOING THIS KIND OF COPYING?

24 A. YES.

25 Q. AND EXHIBIT 271 IS ONE OF THESE E-MAILS THAT I 09:09AM
26 BELIEVE WE HEARD YOU DESCRIBE, WHERE HE WOULD LET YOU
27 KNOW THAT THIS INFORMATION HAD BEEN COPIED, AND NOW YOU
28 COULD GO IN AND DOWNLOAD IT IF YOU WANTED TO?

1 A. RIGHT.

2 Q. IF YOU LOOK AT 298, PLEASE.

3 THIS IS ANOTHER E-MAIL EXCHANGE.

4 I'D MOVE 298.

5 MR. BRIAN: NO OBJECTION.

09:10AM

6 THE COURT: IT WOULD BE ADMITTED.

7

8 (EXHIBIT 298 ADMITTED.)

9

10 Q. BY MR. MADISON: SO HERE WE SEE THE SERIES OF
11 E-MAILS BETWEEN JP, YOURSELF, AND MR. SANTA ANA. AND
12 THERE'S ALSO -- AND MR. SANTA ANA IS ALSO A RECIPIENT.
13 AND YOU ARE TALKING ABOUT -- HE'S DESCRIBING -- WELL,
14 LET'S START DOWN TOWARD THE BOTTOM.

09:10AM

15 IF YOU LOOK AT THE VERY BOTTOM, HE SAYS,
16 THERE'S A NEW EXCEL FILE AVAILABLE, AND IT'S GOT
17 THAT -- A SIMILAR TITLE.

09:10AM

18 THIS WAS THE SAME THING WE JUST TALKED
19 ABOUT, RIGHT?

20 A. YES. THIS WAS JUST AN AUTOMATED WAY TO
21 PRODUCE IT.

09:10AM

22 Q. AND THEN HE DESCRIBES HOW HE WROTE HIS SCRIPT
23 TO SAVE ALL OUR MD HOLDINGS IN THE DISASTER RECOVERY
24 FOLDER AND ON THE FIFTH BD -- WAS THAT THE BUSINESS
25 DAY?

09:11AM

26 A. YES, BUSINESS DATE.

27 Q. -- OF EACH MONTH. IT'S AN EXCEL FILE. SO
28 WHAT YOU UNDERSTOOD THAT TO MEAN WAS HE CREATED

1 SOMETHING THAT WOULD AUTOMATICALLY DO WHAT YOU ASKED
2 HIM TO DO?

3 A. RIGHT. ON THE FIFTH BUSINESS DAY, IT WOULD
4 SAVE THE MONTH-END HOLDINGS.

5 Q. AND M --

09:11AM

6 A. -- HE HOLDINGS.

7 Q. ALL RIGHT. SO THOSE ARE THE PORTFOLIO
8 HOLDINGS FOR ALL OF THE INVESTMENTS THE GROUP WAS
9 MAKING, CORRECT?

10 A. YES, THAT'S THE MONTH-END CLIENT HOLDINGS.

09:11AM

11 Q. AND THERE AGAIN, THAT'S HIGHLY CONFIDENTIAL
12 INFORMATION, ISN'T IT, SIR?

13 A. YES.

14 Q. SO THEN IF YOU GO UP TO THE NEXT EXCHANGE,
15 THERE'S A QUESTION FROM YOU, WILL THAT BE ABLE TO
16 INTERACT WITH THE DATABASE?

09:11AM

17 AND YOU WERE TALKING ABOUT THE MBS
18 DATABASE THERE?

19 A. YES, I WAS.

20 Q. AND MR. JP SAYS, YEP, I SEPARATED THEM INTO
21 THREE TABS: PORTFOLIO REPORTING, HOLDINGS REPORTING,
22 SECURITY REPORTING. YOU JUST NEED TO PASTE THEM INTO
23 THOSE THREE TABLES IN THE DATABASE. IT'S ONLY GIVING
24 YOU MONTH-END VALUES RIGHT NOW. I WANT TO GET DATA FOR
25 EVERY DAY UPDATED WEEKLY, BUT EACH FILE WAS -- DOES
26 THAT SAY 60 MB?

09:11AM

09:12AM

27 A. YES, IT DOES.

28 Q. AND SO THE IDEA HERE WAS THAT YOU WERE

1 CREATING SOMETHING WHERE YOU WOULD GET THIS INFORMATION
2 FROM JP, AND THEN YOU COULD JUST PASTE IT INTO
3 SOMETHING THAT YOU WERE DOWNLOADING, RIGHT?

4 A. YEAH, YOU COULD PASTE IT INTO THE MBS DATABASE
5 AND HAVE FUNCTIONALITY.

09:12AM

6 Q. AND FUNCTIONALITY MEANT YOU COULD USE IT?

7 A. RIGHT.

8 Q. AND YOU WOULD DOWNLOAD THE MBS DATABASE,
9 CORRECT?

10 A. YES.

09:12AM

11 Q. AND UP AT THE TOP YOU SAY, WHAT ABOUT A SCRIPT
12 THAT WOULD RUN DAILY AND SAVE THE MOST RECENT DAY ALSO?

13 SO YOU WERE PUSHING JP TO ACTUALLY GO
14 FROM MONTHLY TO WEEKLY TO EVEN A DAILY SYSTEM WHERE
15 AUTOMATICALLY YOU WOULD BE ABLE TO GET THIS INFORMATION
16 EVERY DAY, RIGHT?

09:12AM

17 A. YES. WELL, HE SAID THAT HE WAS THINKING HE'D
18 DO IT EVERY WEEK. AND I SAID, WHY DON'T WE JUST SAVE
19 THE MOST RECENT DAY. THERE'S NO NEED TO HAVE A WHOLE
20 BUNCH OF FILES. WE NEED TO HAVE -- THE MOST RECENT ONE
21 WOULD SUFFICE.

09:13AM

22 Q. AND SO FOR DISASTER RECOVERY, THE IDEA IS, YOU
23 WANT TO BE ABLE TO HAVE ALL THE INFORMATION THAT YOU
24 MIGHT NEED IN CASE THERE'S A DISASTER, CORRECT?

25 A. YEAH, THAT'S CORRECT.

09:13AM

26 Q. IF YOU WANT TO TAKE THE INFORMATION TO USE IN
27 A NEW BUSINESS, DISASTER RECOVERY IS THE PERFECT ALIBI,
28 ISN'T IT?

1 A. YEAH, BECAUSE IT'S THE SAME -- YOU WANT
2 EVERYTHING THAT YOU COULD USE IN CASE YOU CAN'T BE IN
3 THE BUILDING.

4 Q. JUST SAY, HEY, I'M JUST COPYING AND
5 DOWNLOADING ALL THIS STUFF BECAUSE DISASTER RECOVERY,
6 RIGHT?

09:13AM

7 A. RIGHT.

8 Q. BUT AT TCW, THERE WAS A WHOLE OTHER DEPARTMENT
9 DEDICATED TO THAT, WASN'T THERE?

10 A. RIGHT. BUT AS I SAID, IT DIDN'T ALWAYS WORK
11 FOR ME, SO --

09:13AM

12 Q. I GET THAT.

13 BUT AS YOU HAVE ALSO ALREADY SAID, YOU
14 WERE DOING THIS FOR YOUR OWN PURPOSES, NOT DISASTER
15 RECOVERY, WEREN'T YOU?

09:14AM

16 A. YES, CORRECT.

17 Q. SO IF WE GO THEN TO EXHIBIT 300, WE SEE
18 ANOTHER EXCHANGE, ACTUALLY 299, AND THEN 300.

19 AND I'D MOVE 299 FIRST.

20 MR. BRIAN: NO OBJECTION TO EITHER, YOUR
21 HONOR.

09:14AM

22 THE COURT: THEY WOULD BE ADMITTED.

23
24 (EXHIBITS 299 AND 300 ADMITTED.)

09:14AM

25
26 MR. MADISON: SO THEN HERE WE SEE -- LET ME
27 JUST CHECK SOMETHING.

28 Q. SO THE LAST MESSAGE FROM 298 WAS AT 9:54 A.M.

1 HERE AT 299, IT'S 10:45 A.M. AND NOW MR. JP IS SENDING
2 YOU SOMETHING WITH, HE INDICATES IN THE PARENTHETICAL,
3 THE -- WELL, THAT IT'S A NEW EXCEL FILE, CORRECT?

4 A. YES, THAT'S CORRECT.

5 Q. SO YOU TOOK IT THAT HE HAD DONE SOME OF THE
6 THINGS HE HAD BEEN TALKING ABOUT IN 298?

7 A. RIGHT.

8 Q. AND THEN THERE'S AN E-MAIL EXCHANGE AT 300,
9 ABOUT THE SAME SUBJECT.

10 I'D MOVE THAT, YOUR HONOR.

11 THE COURT: THEY ARE BOTH ADMITTED, WITHOUT
12 OBJECTION.

13 MR. MADISON: VERY WELL.

14 THANK YOU, YOUR HONOR.

15 Q. AND AGAIN, ANOTHER E-MAIL EXCHANGE HERE. THIS
16 IS, WELL, AT LEAST AT THE TOP, THIS IS A LATER E-MAIL
17 FROM THAT SAME STRING. AND IT SAYS, JP SAYS DONE. YOU
18 WILL GET A DAILY E-MAIL AND A MONTHLY E-MAIL, CHRIS.
19 YOU CAN COPY THE FOLDER NOW.

20 SO YOU HAD DISCUSSED WITH JP THAT CHRIS
21 SANTA ANA WAS GOING TO BE COPYING AND DOWNLOADING ALSO?

22 A. NOT THAT I REMEMBER.

23 Q. DO YOU HAVE ANY OTHER EXPLANATION FOR THIS
24 STATEMENT BY JP?

25 MR. BRIAN: OBJECTION. FORM, CALLS FOR A
26 NARRATIVE.

27 THE COURT: SUSTAINED.

28 MR. MADISON: I'LL WITHDRAW THAT.

09:14AM

09:15AM

09:15AM

09:15AM

09:15AM

1 Q. IT'S CLEAR TO YOU, THOUGH, THAT JP IS TALKING
2 ABOUT THE SAME THINGS THAT YOU HAD TALKED TO
3 MR. SANTA ANA ABOUT, THEN, RIGHT?

4 A. I'M NOT SURE WHAT YOU MEAN BY THAT.

5 Q. YOU ARE TALKING ABOUT USING THIS INFORMATION,
6 TO BE ABLE TO COPY IT AND DOWNLOAD IT?

09:15AM

7 A. YES.

8 MR. MADISON: MAY I JUST HAVE ONE MOMENT, YOUR
9 HONOR?

10 THE COURT: YES.

09:16AM

11 Q. BY MR. MADISON: HAVE YOU, IN YOUR BINDER,
12 MR. MAYBERRY, AN EXHIBIT THAT'S BEEN MARKED AS 784?
13 AND IT'S A 38-PAGE LIST OF WHAT APPEAR TO BE COMPUTER
14 FILES. CAN YOU LOOK AT THAT, PLEASE.

15 IT'S NOT IN EVIDENCE, YOUR HONOR, SO I'M
16 NOT GOING TO DISPLAY IT.

09:16AM

17 THE COURT: YOU CAN PUT IT ON THE SCREEN FOR
18 THE WITNESS, AND THEN WE CAN PUBLISH IT.

19 MR. MADISON: YES, YOUR HONOR.

20 Q. DO YOU RECOGNIZE 784, SIR?

09:17AM

21 A. YES, I DO.

22 Q. CAN YOU TELL US WHAT 784 IS?

23 A. IT APPEARS TO BE A LIST OF FILES THAT I
24 DOWNLOADED TO MY FLASH DRIVE.

25 Q. AND WELL, I'LL MOVE 784.

09:17AM

26 CAN I APPROACH, AND MAKE SURE WE HAVE
27 THE RIGHT EXHIBIT? I'M LOOKING AT ONE THAT MAY BE
28 SLIGHTLY DIFFERENT.

1 THE COURT: I'M LOOKING AT ONE WITH VERY SMALL
2 PRINT THAT MY GLASSES DON'T WORK FOR. IT CONSISTS OF
3 38 PAGES.

4 MR. MADISON: YES, YOUR HONOR.

5 THE COURT: YOU MAY APPROACH. MAKE SURE
6 THAT'S WHAT I HAVE.

7 MR. MADISON: MAY WE PUBLISH THAT, THEN? I
8 THINK WE STRAIGHTENED IT OUT.

9 THE COURT: ANY OBJECTION?

10 MR. BRIAN: NO OBJECTION.

11 THE COURT: IT WILL BE ADMITTED.

12
13 (EXHIBIT 784 ADMITTED.)
14

15 Q. BY MR. MADISON: SO THESE ARE THE COMPUTER
16 FILES THAT YOU DOWNLOADED ONTO YOUR FLASH DRIVE, FOR
17 THE PURPOSES THAT YOU HAVE ALREADY TOLD US, CORRECT?

18 A. YES, THAT'S CORRECT.

19 Q. IF WE GO, FOR EXAMPLE, TO PAGE 14, AND IF YOU
20 LOOK THERE, BEGINNING ALMOST HALFWAY DOWN THE PAGE, YOU
21 WILL SEE A SERIES OF FILES THAT START WITH 2009, OVER
22 ON THE LEFT.

23 AND CAN WE EXPAND THAT, MIKE, EVEN MORE,
24 PLEASE. EVEN LARGER.

25 SO WE'VE LOOKED AT THOSE. IT LOOKS TO
26 BE LIKE A SERIES OF FILES. AND OVER ON THE RIGHT-HAND
27 SIDE, IT SAYS -- IT'S GOT THAT LANGUAGE, DISASTER
28 RECOVERY DATA BACKUP --

1 THE COURT: WAIT A MINUTE.

2 MR. MADISON: -- ET CETERA.

3 DO YOU HAVE THAT, YOUR HONOR?

4 THE COURT: THAT'S NOT WHAT WE HAVE ON THE
5 SCREEN HERE.

09:19AM

6 MR. MADISON: OKAY. I'M AT PAGE 14.

7 THE COURT: I'M AT PAGE 14. BUT WHAT WE JUST
8 BLEW UP HERE, I DON'T KNOW IF ANYBODY ELSE CAN SEE IT.

9 MR. MADISON: LET ME USE THE POINTER, YOUR
10 HONOR, IF I MAY.

09:19AM

11 Q. LET'S DO IT THIS WAY, MR. MAYBERRY.

12 MR. BRIAN: YOUR HONOR, MAY I?

13 Q. BY MR. MADISON: MR. MAYBERRY?

14 MR. BRIAN: YOUR HONOR, MAY I CONSULT WITH
15 COUNSEL, YOUR HONOR, JUST FOR A MOMENT?

09:19AM

16 THE COURT: YES.

17

18 (SOTTO VOCE DISCUSSION BETWEEN COUNSEL.)

19

20 MR. MADISON: LET ME JUST APPROACH, YOUR
21 HONOR. I THINK IT WILL SAVE TIME.

09:20AM

22 THE COURT: SURE.

23 YOU ARE LOOKING AT SOMETHING DIFFERENT?

24 MR. MADISON: YEAH.

25 WE'RE GOING TO USE THE ELMO, YOUR HONOR,
26 IF WE COULD, THE PROJECTOR.

09:20AM

27 THE COURT: ALL RIGHT.

28 MR. MADISON: THE WITNESS HAS THE CORRECT

1 EXHIBIT.

2 MR. BRIAN: SO JUST TO CLARIFY, WE'RE USING
3 THE ONE IN THE BINDER?

4 THE COURT: ARE WE STILL LOOKING AT PAGE 384,
5 PAGE 14?

09:20AM

6 MR. MADISON: WE ARE, YOUR HONOR. 784.

7 THE COURT: 784.

8 MR. MADISON: 784, YOUR HONOR, YES.

9 Q. BY MR. MADISON: ALL RIGHT. SO WE'RE ON PAGE
10 14 OF EXHIBIT 784.

09:21AM

11 AND IF WE LOOK OVER HERE ON THE
12 RIGHT-HAND SIDE, CAN YOU JUST READ ONE OF THOSE LINES
13 TO US, MR. MAYBERRY?

14 A. SURE. IT SAYS, COLON: NEW DISASTER RECOVERY
15 DATA BACKUP MONTH END, AND THEN 2009, 08/31 DATA .XLSM.

09:21AM

16 Q. SO THESE ARE THE PORTFOLIO HOLDINGS THAT YOU
17 HAD DOWNLOADED ONTO YOUR FLASH DRIVE, RIGHT?

18 A. RIGHT. THAT WOULD BE THE CLIENT HOLDINGS AS
19 OF AUGUST 31ST, 2009.

20 Q. AND EACH ONE IS FOR A DIFFERENT DAY, CORRECT?

09:21AM

21 A. RIGHT. DIFFERENT MONTH END.

22 Q. SO IF WE KNEW THE -- DIFFERENT MONTH END OR
23 DIFFERENT DAYS?

24 A. WELL, DIFFERENT ENDS -- DIFFERENT MONTH END.
25 SO ONE IS MARCH MONTH END, AND THEN APRIL AND MAY.

09:22AM

26 Q. SO EACH ONE CORRESPONDS TO A MONTH OF
27 PORTFOLIO HOLDINGS?

28 A. JUST A SNAPSHOT AS OF THE LAST DAY OF THE

1 MONTH.

2 Q. OKAY. AND IF WE THEN GO TO PAGE 15, OVER TO
3 THE NEXT PAGE. AND UP AT THE TOP, WE'LL SEE, MAYBE A
4 THIRD OF THE WAY DOWN, WE'LL SEE THAT THOSE
5 DESCRIPTIONS, WHICH ARE ALL -- CONTINUE TO BE SIMILAR,
6 STOP. AND THEN THERE'S ONE RIGHT HERE.

09:22AM

7 DO YOU SEE THAT ONE, MR. MAYBERRY?

8 A. SO RIGHT AFTER THE MONTH END ONES?

9 Q. YES, SIR.

10 A. YES, I SEE THAT.

09:22AM

11 Q. AND THAT IS THE TASK LIST, IS WHAT IT SAYS,
12 CORRECT?

13 A. YES.

14 Q. AND CAN YOU TELL US WHAT THE TASK LIST WAS,
15 PLEASE?

09:22AM

16 A. THAT WAS A DATABASE I HAD BUILT, PROBABLY
17 EIGHT OR NINE YEARS EARLIER, THAT DETAILED ALL OF THE
18 REGULAR REPORTING THAT WOULD GO TO THE CLIENTS, AND WHO
19 IT WENT TO, AND THE DUE DATES.

20 Q. AND THEN THE ONE RIGHT AFTER THAT IS THE MBS
21 DATABASE, ISN'T IT, SIR?

09:23AM

22 A. YES.

23 Q. CAN YOU JUST READ THAT INTO THE RECORD SO
24 WE'RE CLEAR? OVER ON THE LEFT IT SAYS MBD?

25 A. YES. SAYS "NEW/DISASTER
26 RECOVERY/MBSDATABASE_LAPTOPDMDB.

09:23AM

27 Q. NOW, IF WE GO TO THE VERY LAST PAGE, AS WE'RE
28 DOING THAT, DO YOU HAVE ANY IDEA HOW MANY GIGABYTES OF

1 DATA THESE 38 PAGES OF FILES REPRESENT?

2 A. NO, I DO NOT.

3 Q. DO YOU KNOW HOW MANY PAGES IT WOULD BE IF YOU
4 PRINTED IT OUT?

5 A. NO, BECAUSE YOU DON'T -- I'VE NEVER PRINTED
6 OUT A DATABASE. THAT'S THE PURPOSE OF A DATABASE.

09:23AM

7 Q. GIVEN YOUR EXPERTISE, IF I TOLD YOU IT WAS
8 APPROXIMATELY SEVEN MILLION PAGES, WOULD THAT SURPRISE
9 YOU?

10 A. I HAVE NO REFERENCE POINT FOR THAT.

09:24AM

11 Q. SO IF WE GO TO THAT LAST PAGE, THEN, THE VERY
12 LAST DOCUMENT, OR FILE, RATHER, AT THE BOTTOM, PERHAPS
13 YOU COULD -- THANK YOU, MIKE. IT SAYS CONTACTS.

14 CAN YOU TELL US WHAT THAT IS, PLEASE?

15 A. THAT WOULD BE THE PERSON'S NAME, PHONE NUMBER,
16 E-MAIL ADDRESS, PROBABLY -- MAILING ADDRESS FOR THE
17 TCW'S CLIENTS.

09:24AM

18 Q. AND AGAIN, THAT'S ALL NONPUBLIC INFORMATION,
19 ISN'T IT, SIR?

20 A. YES.

09:24AM

21 Q. NOW, ALL OF THIS INFORMATION WAS FROM TCW'S
22 COMPUTER SYSTEMS, RIGHT?

23 A. I DON'T KNOW -- WHAT DO YOU MEAN FROM THEIR
24 SYSTEMS?

25 Q. WELL, YOU DOWNLOADED IT ONTO YOUR FLASH DRIVE
26 FROM TCW'S COMPUTER SYSTEMS, RIGHT?

09:24AM

27 MR. BRIAN: OBJECTION, ASKED AND ANSWERED,
28 CUMULATIVE.

1 THE COURT: OVERRULED.

2 CAN YOU EXPLAIN IT, OR JUST ANSWER YES
3 OR NO?

4 THE WITNESS: YES.

5 Q. BY MR. MADISON: DO YOU SEE ANYTHING HERE THAT
6 WASN'T INFORMATION THAT YOU DOWNLOADED FROM TCW'S
7 SYSTEMS?

09:25AM

8 A. NO, BECAUSE I WAS AT TCW -- I WAS SITTING AT
9 MY DESK WHEN I DOWNLOADED IT.

10 Q. NOW, THE FLASH DRIVE -- YOU CAN COME ON BACK,
11 MIKE. THANK YOU.

09:25AM

12 THE FLASH DRIVE THAT YOU DESCRIBED FOR
13 US YESTERDAY, THAT'S THE FLASH DRIVE THAT HAD THESE 38
14 PAGES OF FILES, CORRECT?

15 A. WE TALKED ABOUT TWO FLASH DRIVES.

09:25AM

16 Q. PARDON ME. THE ONE THAT YOU CHOSE NOT TO TURN
17 IN TO THE INVESTIGATOR AT YOUR CAR?

18 A. YES, THAT'S CORRECT.

19 Q. AND SO THIS IS THE INFORMATION, EXHIBIT 784,
20 THAT'S THE INFORMATION THAT YOU DID NOT WANT TCW TO GET
21 BACK?

09:25AM

22 A. TCW ALREADY HAD THIS INFORMATION. I DIDN'T --
23 I COPIED THE INFORMATION TO MY FLASH DRIVE, SO THE
24 INFORMATION WAS STILL ON THE COMPUTER. IT WAS
25 INFORMATION I INTENDED TO KEEP TO USE FOR OTHER
26 PURPOSES, EVENTUALLY.

09:26AM

27 Q. AND YOU DIDN'T WANT TCW TO HAVE THAT COPY
28 BACK?

1 A. RIGHT.

2 Q. YOU DID ALL THIS DOWNLOADING ON WORK HOURS AT
3 TCW?

4 A. WELL, WE DIDN'T REALLY KEEP HOURS; BUT I WAS
5 AT THE OFFICE, YES.

09:26AM

6 Q. I MEAN, YOU WERE AT WORK? YOU WERE AT WORK?

7 A. RIGHT.

8 Q. AND SO HOW DO WE KNOW THAT THIS IS ALL THE
9 INFORMATION THAT WAS ON THE FLASH DRIVE?

10 A. I DON'T KNOW IF THAT'S ALL THE INFORMATION
11 THAT'S ON THE FLASH DRIVE.

09:26AM

12 Q. WELL, CAN WE CHECK BY LOOKING AT THE FLASH
13 DRIVE?

14 A. NO. BUT I WOULD IMAGINE THAT YOU CAN CHECK BY
15 LOOKING AT THE COMPUTER THAT THE FLASH DRIVE WAS
16 PLUGGED INTO.

09:26AM

17 Q. OKAY. SO LET'S GO BACK TO THE AFTERNOON OF
18 DECEMBER 4.

19 I THINK WHERE WE LEFT THAT YESTERDAY WAS
20 YOU HAD THE FLASH DRIVE THAT HAD THIS INFORMATION NOW
21 IN YOUR CAR. YOU TOLD THE INVESTIGATOR YOU DIDN'T HAVE
22 IT. HE LEFT, AND YOU LEFT?

09:27AM

23 A. I DON'T REMEMBER WHAT I TOLD THE INVESTIGATOR,
24 BUT I WENT TO THE -- AFTER HE LEFT, I WENT TO THE --
25 CALLED MAGNOLIA, DOWNSTAIRS IN THE BUILDING AT TCW.

09:27AM

26 Q. MAGNOLIA IS A RESTAURANT/BAR IN THE BOTTOM OF
27 THE BUILDING WHERE TCW IS LOCATED DOWNTOWN, RIGHT?

28 A. YES, THAT'S CORRECT.

1 Q. AND A NUMBER OF PEOPLE FROM THE MBS GROUP,
2 INCLUDING PEOPLE WHO WERE PUT ON LEAVE, AND PEOPLE WHO
3 HADN'T WERE GATHERED THERE HAVING DRINKS, RIGHT?

4 A. RIGHT.

5 WHEN I WAS ESCORTED TO MY CAR, WE
6 HAPPENED TO WALK RIGHT BY IT, AND OBVIOUSLY EVERYBODY
7 IS SAYING, COME BACK WHEN YOU ARE -- WHEN YOU CAN.

09:27AM

8 Q. AND IN FACT, YOU SAW MS. CODY THERE, AS YOU
9 WALKED BY WITH THE INVESTIGATOR ON YOUR WAY TO THE CAR,
10 DIDN'T YOU?

09:27AM

11 A. I DON'T REMEMBER THAT, SPECIFICALLY, BUT IT
12 SEEMS REASONABLE.

13 Q. WOULD YOU RECALL THAT MS. CODY YELLED OUT TO
14 YOU, "JEFF, WERE YOU FIRED?"

15 A. NO, I DON'T REMEMBER THAT.

09:28AM

16 Q. DO YOU RECALL TELLING MS. CODY, "NO, RACHEL, I
17 WASN'T FIRED. I'LL BE RIGHT BACK"?

18 A. NO.

19 Q. YOU WERE PUT ON LEAVE ON DECEMBER 4.

20 DO YOU RECALL THAT?

09:28AM

21 A. YES.

22 Q. AND THEN YOU WERE GIVEN NOTICE THAT YOU WERE
23 TERMINATED ON DECEMBER 7TH.

24 DO YOU RECALL THAT?

25 A. YEAH, THAT'S CORRECT.

09:28AM

26 Q. SO AFTER YOU FINISHED WITH THE INVESTIGATOR AT
27 THE CAR, THE INVESTIGATOR DEPARTED, AND YOU CAME BACK
28 TO MAGNOLIA TO HAVE DRINKS WITH THE OTHERS FROM THE

1 GROUP, RIGHT?

2 A. RIGHT. BECAUSE AT THAT POINT, I HADN'T TALKED
3 TO ANYONE IN HOURS, AND I WANTED TO SEE WHAT WAS GOING
4 ON WITH EVERYBODY ELSE.

5 Q. PROBABLY COULD USE A DRINK AT THAT POINT, TOO?

09:28AM

6 A. DEFINITELY.

7 Q. OKAY.

8 SO AT SOME POINT, THOUGH, YOU THEN WENT
9 BACK TO YOUR CAR AND DEPARTED TCW, THE BUILDING, FOR
10 THE LAST TIME, RIGHT?

09:28AM

11 A. WELL, MY CAR WAS IN THE PARKING LOT ACROSS THE
12 STREET; BUT YEAH.

13 Q. AND YOU HAD THE FLASH DRIVE IN YOUR PARKED
14 CAR, WHEN YOU LEFT THAT EVENING, ON DECEMBER 4TH,
15 RIGHT?

09:29AM

16 A. YES, THAT'S CORRECT.

17 Q. AND YOU KNEW THAT YOU STILL HAD THE FLASH
18 DRIVE THAT HAD ALL THIS INFORMATION, CORRECT?

19 A. RIGHT.

20 Q. AND YOU WERE THINKING ABOUT WHAT TO DO WITH
21 IT, WEREN'T YOU?

09:29AM

22 A. YEAH, YES. I WAS WONDERING WHAT I WANTED TO
23 DO WITH IT, WHAT THE NEXT STEP WAS.

24 Q. AND YOU THOUGHT THAT, IN TERMS OF USING IT AT
25 THE NEW VENTURE, MR. SANTA ANA AND MR. GUNDLACH WOULD
26 HAVE TO BE THE ONES TO DECIDE THAT, NOT YOU, RIGHT?

09:29AM

27 A. THEM, IN CONCERT WITH COUNSEL.

28 Q. SO YOU WERE ACTUALLY THINKING AT THAT MOMENT

1 ABOUT LAWYERS?

2 A. WELL, I DIDN'T THINK THAT THEY WOULD MAKE A
3 RASH DECISION AND DECIDE TO USE IT, IF THEY FELT LIKE
4 IT WAS NOT PROPER TO USE.

5 Q. SO YOU KNEW THAT TCW WANTED IT BACK, BUT YOU
6 WANTED TO GIVE MR. SANTA ANA AND MR. GUNDLACH, AND
7 WHOEVER ELSE THEY WANTED TO CONSULT, THE OPPORTUNITY TO
8 HAVE THE DATA. IT WOULD BE BETTER TO HAVE IT THAN NOT,
9 RIGHT?

09:29AM

10 A. YES, THAT'S CORRECT.

09:30AM

11 Q. BUT YOU WERE CONCERNED THAT THE INVESTIGATOR
12 MIGHT COME TO YOUR HOME TO GET ANY INFORMATION THAT YOU
13 HAD THERE, RIGHT?

14 A. YES, THAT WAS A CONCERN.

15 Q. AND ANOTHER CONCERN WAS, IF HE CAME TO YOUR
16 HOME, YOU WOULD -- AND YOU HAD THE FLASH DRIVE THERE,
17 THAT THEN YOU WOULD HAVE TO COUGH IT UP, RIGHT?

09:30AM

18 A. YEAH. NOT SO GOOD AT LYING TO PEOPLE.

19 Q. WELL -- THAT'S NOT FOR YOU OR ME TO JUDGE.

20 A. I'M JUST -- I MEAN, LIKE IF HE CAME TO ME AND
21 SAID, "DO YOU HAVE THE FLASH DRIVE?" I WOULD HAVE BEEN
22 HESITANT, AND SAID, "YES."

09:30AM

23 Q. WELL, YOU DIDN'T HAVE ANY PROBLEM NOT GIVING
24 IT TO HIM WHEN YOU KNEW HE CAME DOWN TO YOUR CAR TO GET
25 IT, DID YOU?

09:30AM

26 A. WELL, I -- THAT WAS A DIFFERENT CIRCUMSTANCE.
27 I WAS MORE EMOTIONAL.

28 Q. YOU DIDN'T HAVE ANY PROBLEM GIVING HIM ONE

1 THAT YOU KNEW WAS EMPTY WHEN THE ONE THAT YOU KNEW HAD
2 ALL THIS INFORMATION WAS SITTING RIGHT THERE IN YOUR
3 CONSOLE, DID YOU?

4 A. THAT WAS MORE OF AN EMOTIONAL-TYPE DECISION.

5 Q. AN EMOTIONAL DECISION?

09:31AM

6 A. YES.

7 Q. YOU WEREN'T THINKING?

8 A. PART OF ME WAS, PART OF ME WASN'T.

9 Q. SO IN ANY EVENT, WHAT YOU DECIDED TO DO WAS TO
10 GO AND CONSULT WITH YOUR PARENTS?

09:31AM

11 A. EVENTUALLY.

12 WELL, THEY HAPPENED TO BE THERE, OR I
13 WENT OUT TO THEIR HOUSE, BECAUSE I HAD MY KIDS THAT
14 WEEKEND, AND IT SEEMED LIKE THEY WERE THE ONLY OPTION
15 TO TALK TO ABOUT WHAT TO DO.

09:31AM

16 Q. WELL, WHEN DID YOU GO TO SEE YOUR PARENTS TO
17 TALK ABOUT THE FLASH DRIVE?

18 A. WELL, I WENT OUT THERE TO SEE MY KIDS ON
19 SATURDAY.

20 Q. I UNDERSTAND, SIR.

09:31AM

21 SO SATURDAY MORNING, YOU WENT TO YOUR
22 PARENTS' HOUSE?

23 A. YES.

24 Q. AND AT THAT TIME, YOU SAT DOWN IN YOUR
25 PARENTS' KITCHEN, WITH YOUR MOM AND YOUR DAD, AND YOU
26 TALKED TO THEM ABOUT IT?

09:31AM

27 A. NOT ON THAT SATURDAY, NO.

28 Q. WHEN DID YOU SPEAK WITH THEM, SIR?

1 A. I WENT BACK OUT TO THEIR HOUSE ON SUNDAY,
2 DECEMBER 6TH.

3 Q. DID YOU HAVE THE FLASH DRIVE WITH YOU, WHEN
4 YOU WENT THERE ON SATURDAY, THE 5TH?

5 A. YES, I DID.

09:32AM

6 Q. DID YOU DO ANYTHING WITH IT AT THAT TIME?

7 A. I TOOK THE ENTIRE CONTENTS OF THE FLASH DRIVE
8 AND COPIED THEM ONTO MY PARENTS' DESKTOP COMPUTER.

9 Q. AND YOU DID THAT SO THAT JUST IN CASE YOU NO
10 LONGER HAD THE FLASH DRIVE FOR ANY REASON, YOU KNEW YOU
11 WOULD HAVE ALL THIS INFORMATION THAT YOU COULD USE FOR
12 THE REASONS YOU DESCRIBED?

09:32AM

13 A. YES, THAT'S CORRECT.

14 Q. AND DID YOU TELL YOUR PARENTS YOU WERE DOING
15 THAT?

09:32AM

16 A. NO, I DID NOT.

17 Q. DID YOU THINK ABOUT THE POSITION THAT MIGHT
18 PUT YOUR PARENTS IN?

19 A. WELL, AT THAT POINT, I JUST DECIDED THAT IT
20 WAS MORE -- THE LESS PEOPLE THAT KINDA KNEW, THE
21 BETTER.

09:32AM

22 Q. SO THAT MEANS YOU DIDN'T TELL THEM?

23 A. RIGHT. I DID NOT TELL THEM.

24 Q. AND THEN THE NEXT DAY, YOU CAME BACK, AND YOU
25 DID HAVE A CONVERSATION WITH THEM, DIDN'T YOU, SIR?

09:32AM

26 A. YES. I TALKED TO THEM ABOUT IT.

27 Q. DID YOU TELL THEM, YOU KNOW, MOM AND DAD, I
28 DID SOMETHING THAT MAYBE I SHOULDN'T HAVE DONE?

1 A. I DON'T REMEMBER THE SPECIFICS OF THE
2 CONVERSATION.

3 Q. IN FACT, SIR, WHAT YOU TOLD THEM IS, I'VE GOT
4 THIS FLASH DRIVE, AND I WON'T TO BE ABLE TO USE IT, AND
5 WE NEED TO FIGURE OUT A WAY FOR ME TO KEEP IT FROM TCW
6 AND STILL USE IT, DIDN'T YOU? 09:33AM

7 A. WELL, I WANTED TO BE ABLE TO HAVE ACCESS TO
8 THE DATA. THAT WAS MY CONCERN.

9 Q. AND YOU SHARED THAT WITH THEM, DIDN'T YOU?

10 A. I BELIEVE SO, YES. 09:33AM

11 Q. AND TOGETHER, THE THREE OF YOU CAME UP WITH A
12 WAY TO ENSURE THAT YOU WOULD STILL HAVE THE FLASH DRIVE
13 AND THE INFORMATION, AND TCW WOULDN'T BE ABLE TO GET
14 IT, DIDN'T YOU?

15 A. THAT WAS THE PLAN. 09:33AM

16 Q. AND THE PLAN THAT THE THREE OF YOU CAME UP
17 WITH WAS THAT YOU WOULD PUT THE FLASH DRIVE IN THE MAIL
18 TO YOUR PARENTS' BUSINESS, RIGHT?

19 A. YEAH, THAT WAS --

20 Q. AND YOU THOUGHT ABOUT MAILING IT TO THEIR
21 HOME, OR LEAVING IT AT THEIR HOME, BUT YOU WERE
22 ACTUALLY CONCERNED THAT TCW INVESTIGATORS OR OTHERS
23 MIGHT COME TO THEIR HOME, TOO, LOOKING FOR IT, RIGHT? 09:33AM

24 A. WELL, I DIDN'T HAVE IT WITH ME ON THAT SUNDAY,
25 SO I COULDN'T JUST GIVE IT TO THEM. IT HAD TO BE ON A
26 LATER DATE. 09:34AM

27 AND YES, IT SEEMED LIKE A PROBABLE PLACE
28 FOR THEM TO LOOK, WOULD BE AT MY PARENTS' HOUSE.

1 Q. AND BY "THEY," YOU MEAN TCW OR OTHERS?

2 A. RIGHT.

3 Q. AND YOU DIDN'T WANT THEM TO FIND IT?

4 A. THAT'S CORRECT.

5 Q. SO WHAT YOU DID WAS, YOU PUT IT IN AN
6 ENVELOPE, AND ON MONDAY -- WAS IT MONDAY OR SUNDAY,
7 WHEN YOU SAY YOU MAILED IT?

09:34AM

8 A. ON MONDAY.

9 Q. ON MONDAY, YOU MAILED IT TO YOUR PARENTS' CAR
10 DEALERSHIP?

09:34AM

11 A. THAT'S CORRECT.

12 Q. AND THAT WAY, YOU THOUGHT, WELL, NOBODY KNOWS
13 ABOUT MY PARENTS' CAR DEALERSHIP; SO IF IT'S THERE, TCW
14 WOULDN'T GET IT?

15 A. IT WOULD NOT HAVE BEEN HARD TO FIND THE CAR
16 DEALERSHIP, BUT IT WAS ANOTHER STEP THAT WOULD HAVE
17 BOUGHT A LITTLE BIT MORE TIME.

09:34AM

18 Q. OKAY.

19 SO DO YOU HAVE THE FLASH DRIVE?

20 A. NO, I DO NOT.

09:35AM

21 Q. WHY NOT?

22 A. IT GOT LOST IN THE MAIL.

23 Q. IT GOT LOST IN THE MAIL?

24 A. YEAH.

25 Q. AND -- WELL, YOU DID MAIL IT, RIGHT?

09:35AM

26 A. DID I MAIL IT, YES.

27 Q. BUT YOU BELIEVE THAT WHEN IT ARRIVED AT THE
28 CAR DEALERSHIP -- WELL, DID THE ENVELOPE EVER ARRIVE,

1 TO YOUR KNOWLEDGE?

2 A. YES. THE ENVELOPE ARRIVED, WITH A HOLE IN IT.

3 Q. A FLASH DRIVE-SIZED HOLE?

4 A. PERFECTLY-SIZED FLASH DRIVE HOLE.

5 Q. WHEN DID YOU DISCOVER THAT, SIR?

09:35AM

6 A. IT WAS LATER ON THAT WEEK. I DON'T REMEMBER
7 THE EXACT DATE. AROUND DECEMBER 9TH OR 10TH.

8 Q. DO YOU HAVE THE ENVELOPE?

9 A. NO, I DON'T.

10 Q. WAS THERE ANYTHING ELSE IN THE ENVELOPE THAT
11 YOU PUT IN THERE, OTHER THAN THE FLASH DRIVE?

09:35AM

12 A. NO. IT WAS JUST THE FLASH DRIVE.

13 Q. DID YOU PUT A RETURN ADDRESS?

14 A. I DON'T REMEMBER.

15 Q. DID YOU MAIL IT CERTIFIED MAIL?

09:35AM

16 A. NO.

17 Q. YOU MENTIONED THAT YOU WERE TRYING TO BUY A
18 LITTLE TIME.

19 A LITTLE TIME TO DO WHAT?

20 A. SO THAT IT COULD BE DETERMINED WHETHER IT WAS
21 PROPER TO USE THE INFORMATION OR NOT.

09:36AM

22 Q. DETERMINED BY WHOM?

23 A. AS WE DISCUSSED, JEFFREY GUNDLACH, CHRIS
24 SANTA ANA, IN CONCERT WITH COUNSEL.

25 Q. OKAY. SO, MONDAY WAS DECEMBER 7.

09:36AM

26 DID YOU TALK TO MR. GUNDLACH AND
27 MR. SANTA ANA ABOUT THIS?

28 A. NO, I DID NOT.

1 Q. SO I MEAN, YOU WERE THINKING ABOUT IT FRIDAY,
2 SATURDAY, SUNDAY.

3 MONDAY DID YOU TALK TO ANYBODY ABOUT IT?

4 A. NO.

5 Q. SO IT'S YOUR TESTIMONY THAT EVEN THOUGH YOU
6 HAD KEPT IT, AND DONE ALL THE THINGS YOU HAVE TOLD US
7 ABOUT SO THAT MR. GUNDLACH AND MR. SANTA ANA COULD
8 DECIDE, YOU NEVER EVEN MENTIONED IT TO THEM?

9 MR. BRIAN: OBJECTION, ARGUMENTATIVE.

10 THE COURT: SUSTAINED.

11 Q. BY MR. MADISON: YOU NEVER MENTIONED IT TO
12 MR. SANTA ANA OR MR. GUNDLACH?

13 MR. BRIAN: SAME OBJECTION.

14 THE COURT: SUSTAINED.

15 HE SAID HE DIDN'T TALK TO THEM. SO IF
16 YOU WANT TO GO TO ANOTHER TIME FRAME, THAT'S FINE.

17 MR. MADISON: YES, YOUR HONOR.

18 Q. DID YOU TALK TO THEM AT ALL THAT WEEK ABOUT
19 THIS INFORMATION?

20 A. NO, I DID NOT.

21 Q. DID YOU TALK TO ANYONE THAT WEEK ABOUT THIS
22 INFORMATION?

23 A. WELL, I TALKED TO MY PARENTS THAT WEEK. AND I
24 MIGHT HAVE TALKED TO MS. CODY ABOUT IT. I DON'T
25 REMEMBER FOR SURE.

26 Q. RACHEL CODY?

27 A. YES.

28 Q. WELL, DID YOU REPORT IT TO THE AUTHORITIES,

1 WHEN ALL THIS INFORMATION WAS -- YOU SAY, TURNED UP
2 MISSING?

3 A. WHAT DO YOU MEAN, "AUTHORITIES"?

4 Q. THE POLICE? THE POSTAL SERVICE?

5 A. I MEAN, TO ME, IT WAS JUST LOST. IT WAS GONE.

09:37AM

6 Q. 38 PAGES OF FILES WITH PEOPLE'S FINANCIAL
7 INFORMATION?

8 A. WELL, I'M NOT SURE THERE'S FINANCIAL
9 INFORMATION IN THERE.

10 Q. WELL, WAIT A SECOND, SIR.

09:37AM

11 A. WELL, THEY ARE HOLDINGS. IF YOU WANT TO
12 CONSIDER THAT FINANCIAL INFORMATION.

13 Q. WHAT ELSE IS IT?

14 A. IT'S CLIENT HOLDINGS. THAT'S WHAT I THINK
15 ABOUT IT AS.

09:37AM

16 Q. SO 38 PAGES, INCLUDING CLIENT FINANCIAL
17 HOLDINGS, YOU DIDN'T THINK THAT THAT WOULD BE A CONCERN
18 TO TCW'S CLIENTS, IF THAT WERE OUT IN THE PUBLIC
19 DOMAIN?

20 MR. BRIAN: OBJECTION, ARGUMENTATIVE.

09:38AM

21 THE COURT: SUSTAINED.

22 Q. BY MR. MADISON: SO DID THE THOUGHT EVER CROSS
23 YOUR MIND, I NEED TO REPORT THIS RIGHT AWAY?

24 A. NO, IT DID NOT.

25 Q. AND IT'S 38 PAGES OF FILES. I MAY HAVE
26 MISSPOKE.

09:38AM

27 BUT EACH FILE HAS INFORMATION ON IT,
28 CORRECT?

1 MR. BRIAN: OBJECTION, CUMULATIVE. ASKED AND
2 ANSWERED.

3 THE COURT: OVERRULED; BUT LET'S MOVE ALONG.

4 MR. MADISON: YES, YOUR HONOR.

5 THE WITNESS: YES. EVERY FILE HAS DATA IN IT.

09:38AM

6 MR. MADISON: THANK YOU.

7 IF I MAY JUST HAVE A MOMENT, YOUR HONOR.

8 Q. BY MR. MADISON: YOU NEVER INFORMED TCW THAT
9 YOU HAD THIS INFORMATION, DID YOU, SIR?

10 A. WELL, THEY ALREADY KNEW IT. THEY CONFRONTED
11 ME WITH EVIDENCE OF THE DOWNLOADING; SO IT NEVER
12 OCCURRED TO ME TO TELL THEM ABOUT SOMETHING THEY
13 ALREADY KNEW. NO.

09:38AM

14 Q. THEY ALREADY KNEW THAT YOU HAD MAILED THE
15 FLASH DRIVE, AND IT HAD BEEN LOST?

09:39AM

16 A. YOU ASKED IF I NOTIFIED THEM ABOUT THE
17 INFORMATION.

18 Q. LET ME ASK YOU ABOUT THAT.

19 YOU NEVER TOLD TCW ABOUT THE FLASH DRIVE
20 BEING LOST IN THE MAIL, DID YOU, SIR?

09:39AM

21 A. NO, I NEVER DID. NO.

22 Q. AND HAD YOU DOWNLOADED THAT FLASH DRIVE TO ANY
23 OTHER COMPUTERS OTHER THAN YOUR PARENTS' COMPUTER?

24 A. NO, I DID NOT.

25 Q. LET ME JUST HAVE ONE MOMENT, YOUR HONOR.

09:39AM

26 THE COURT: SURE.

27 MR. MADISON: I DON'T HAVE ANYTHING FURTHER AT
28 THIS TIME, YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 MR. BRIAN?

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

4 THE COURT: YES, YOU MAY.

5 MR. BRIAN: MAY I APPROACH THE WITNESS,
6 BRIEFLY, YOUR HONOR?

09:40AM

7 THE COURT: YES, YOU MAY.

8 MR. MADISON: WE'LL HAVE A SCOPE OBJECTION TO
9 THIS, YOUR HONOR.

10 THE COURT: ALL RIGHT. HOLD ON. LET ME LOOK
11 AT IT.

09:40AM

12 MR. MADISON: COULD WE APPROACH ON THIS?

13 THE COURT: WHY DON'T YOU COME ON UP.

14 THIS IS EXHIBIT 5590; IS THAT RIGHT?

15 09:40AM

16 (THE FOLLOWING PROCEEDINGS WERE HELD AT
17 SIDEBAR OUTSIDE THE HEARING OF THE JURY:)

18

19 THE COURT: ALL RIGHT.

20 WHAT IS THIS?

09:40AM

21 MR. BRIAN: IT'S THE FIRST DAY THAT DOUBLELINE
22 OPENED, AND INSTRUCTIONS WENT OUT TO RETURN ALL
23 DEVICES. AND THAT'S WHAT HE DID. AND HE'S GOING TO
24 TALK ABOUT THE STEPS HE TOOK.

25 HE'S BEEN ASKED AT LENGTH ABOUT THIS
26 FLASH DRIVE, AND WHAT HAPPENED TO IT, AND WHAT HAPPENED
27 TO THE DATA. AND HE'S GOING TO TESTIFY WHY HE DID
28 CERTAIN THINGS ON DECEMBER 4TH, AND THE FACT THAT HE

09:41AM

1 THEN TURNED IN HIS EQUIPMENT, AND SUBSEQUENTLY
2 RETRIEVED HIS PARENTS' DESKTOP, AND TURNED THAT IN,
3 PURSUANT TO THE INSTRUCTIONS THAT HE RECEIVED FROM HIS
4 SUPERVISORS AND THE FIRM THAT THE COMPANY HIRED AS PART
5 OF THE REMEDIATION EFFORT.

09:41AM

6 THE COURT: ALL RIGHT.

7 AND MR. MADISON, WHAT'S YOUR ISSUE?

8 MR. MADISON: IT'S BEYOND THE SCOPE.

9 I INTENTIONALLY DID NOT ASK HIM A SINGLE
10 QUESTION ABOUT ANYTHING HE DID WHILE HE WAS AN EMPLOYEE
11 OF DOUBLELINE.

09:41AM

12 THE COURT: WELL, IT'S NOT A MATTER OF WHILE
13 HE'S AN EMPLOYEE OF DOUBLELINE.

14 YOU ASKED HIM DIRECTLY, DID YOU EVER
15 TELL TCW OR ANYONE WHAT TO DO AFTER THAT. AND I DON'T
16 SEE IT AS AN ISSUE.

09:41AM

17 QUITE FRANKLY, DIDN'T WE AGREE THAT
18 WITNESSES WERE GOING TO BE PUT ON AND GET THROUGH THEIR
19 TESTIMONY?

20 MR. MADISON: QUITE TO THE CONTRARY.

09:42AM

21 AND I CAN SHOW YOU 58 PAGES FROM MY OUTLINE
22 THAT I DID NOT GO INTO, BECAUSE I WANTED TO KNOW HOW TO
23 DO THIS TIME PERIOD JUST UP UNTIL THE WEEKEND AFTER THE
24 4TH. AND I HAVE LOTS OF QUESTIONS ABOUT REMEDIATION
25 AND USE AND ALL THE REST, BUT I DIDN'T ASK HIM A SINGLE
26 QUESTION ABOUT THAT.

09:42AM

27 MR. BRIAN: SCOPE IS NOT DEFINED BY TIME
28 PERIOD. HE DELIBERATELY LEFT THE IMPRESSION THAT THIS

1 WITNESS TOOK NO STEPS TO REMEDY THE SITUATION.

2 THE COURT: I'M GOING TO ALLOW IT.

3 MR. MADISON: I NEVER ASKED HIM ABOUT USE,
4 YOUR HONOR. BROADLY, WE'RE JUST IN THE REMEDIATION
5 PART.

09:42AM

6 THE COURT: I'M GOING TO ALLOW THE INQUIRY
7 ABOUT WHAT HE DID CONCERNING THE MATTERS THAT HE
8 DOWNLOADED. THE FACT IF HE DID TURN THESE THINGS, HE
9 CAN INQUIRE, DID YOU RECEIVE THIS, AND WHAT DID YOU DO.

10 MR. MADISON: SO THAT'S REMEDIATION, BUT IT'S
11 NOT USE.

09:42AM

12 MR. BRIAN: I'M GOING TO ASK HIM WHETHER HE
13 USED THE INFORMATION.

14 MR. MADISON: I DIDN'T ASK HIM --

15 MR. BRIAN: I DON'T CARE WHAT YOU DID. IT'S
16 WITHIN THE SCOPE.

09:43AM

17 THE COURT: I'M GOING TO ALLOW THIS, BECAUSE
18 YOU CAN'T LEAVE IT OUT ON THE TABLE. THE IMPLICATION
19 IS, TAKE ALL THIS INFORMATION.

20 IF YOU WANT TO STIPULATE THERE WAS NO
21 USE, THEN I'LL TAKE THAT.

09:43AM

22 MR. MADISON: WELL, THEN, I SHOULD BE ALLOWED
23 TO DO THE PART OF MY EXAMINATION ABOUT THAT.

24 THE COURT: WELL, YOU CAN DO IT ON REDIRECT.

25 MR. MADISON: OKAY.

09:43AM

26 THE COURT: ALL RIGHT, MR. BRIAN. YOU MAY
27 PROCEED.

28 MR. BRIAN: THANK YOU, YOUR HONOR.

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

CROSS-EXAMINATION

BY MR. BRIAN:

Q. GOOD MORNING, MR. MAYBERRY.

GOOD MORNING, LADIES AND GENTLEMEN.

A. MORNING.

09:43AM

Q. HOW ARE YOU FEELING TODAY?

A. LESS NERVOUS THAN YESTERDAY.

Q. MR. MADISON ASKED YOU A NUMBER OF QUESTIONS
YESTERDAY AND TODAY ABOUT THIS FLASH DRIVE, SO LET ME
JUST START RIGHT THERE.

09:43AM

LET'S GO BACK TO DECEMBER 4TH. YOU WERE
ASKED SOME QUESTIONS ABOUT GOING TO THE CAR WITH THE
INVESTIGATOR.

DO YOU RECALL THAT?

A. YES, I DO.

09:44AM

Q. AND DO YOU RECALL TESTIFYING THAT YOU HAD, IN
YOUR CONSOLE OF THE CAR, A FLASH DRIVE THAT HAD ON IT
TCW INFORMATION, CORRECT?

A. YES, THAT'S CORRECT.

Q. AND YOU KNEW IT HAD TCW INFORMATION, CORRECT?

09:44AM

MR. MADISON: OBJECTION. LEADING, YOUR HONOR.

THE COURT: GO AHEAD.

MR. BRIAN: JUST FOUNDATION, YOUR HONOR.

1 Q. BY MR. BRIAN: DID YOU DECIDE TO GIVE THAT
2 FLASH DRIVE TO THE INVESTIGATOR AT THAT TIME?

3 A. NO.

4 Q. AND WHY DIDN'T YOU GIVE IT TO HIM AT THAT
5 TIME, IF YOU KNEW IT HAD TCW INFORMATION ON IT?

09:44AM

6 A. WELL, TWO THINGS.

7 ONE, I WAS ANGRY AT TCW AND HOW I'D BEEN
8 TREATED THAT AFTERNOON.

9 AND TWO, TO GIVE THEM -- TO GIVE THAT
10 INFORMATION WAS TO DEPRIVE OTHER PEOPLE WHO MIGHT HAVE
11 HAD RIGHTS TO THAT INFORMATION, USE OF THAT
12 INFORMATION.

09:44AM

13 Q. NOW, I'M GOING TO GET TO BOTH OF THOSE.

14 ON THE SECOND ONE, DID YOU EVER USE, AT
15 DOUBLELINE, THE INFORMATION THAT WAS ON THAT FLASH
16 DRIVE?

09:44AM

17 A. NO, I DID NOT.

18 Q. NOW, WHY WERE YOU ANGRY, WHEN YOU WERE AT THE
19 CAR WITH THE INVESTIGATOR?

20 A. BECAUSE THERE WAS ALL THESE EVENTS THAT
21 HAPPENED FROM, CALL IT 1 O'CLOCK IN THE AFTERNOON UNTIL
22 WHATEVER TIME IT WAS THAT I WAS AT MY CAR.

09:45AM

23 Q. MR. MADISON ASKED YOU YESTERDAY WHETHER, IN
24 THE AFTERNOON OF DECEMBER 4TH, YOU WERE ASKED BY
25 SOMEONE ON BEHALF OF TCW TO ANSWER QUESTIONS.

09:45AM

26 DO YOU RECALL THAT?

27 A. YES. IT WAS -- I WAS -- AFTER MARC STERN HAD
28 COME DOWN TO THE 16TH FLOOR, AFTER THE E-MAIL HAD COME

1 OUT THAT JEFFREY GUNDLACH WAS BEING FIRED, AND HE SAID,
2 I WISH MORE PEOPLE WOULD HANG AROUND, SO YOU CAN TALK
3 TO PEOPLE -- MY IMPRESSION WAS, MEET THE MET WEST
4 PEOPLE, AND KIND OF SEE WHAT YOUR ROLE MIGHT BE IN THE
5 FUTURE.

09:45AM

6 I WAS -- I WENT INTO THE CONFERENCE ROOM
7 TO TALK TO FIFI HUANG, OR SHE PULLED ME INTO A
8 CONFERENCE ROOM, BECAUSE SHE WAS LIKE, WHAT'S GOING ON?
9 AND I WAS LIKE, I DON'T KNOW.

10 AND HILLARY LORD, THE CHIEF OF
11 COMPLIANCE AT TCW, WALKED INTO THE CONFERENCE ROOM AND
12 SAID, "I NEED BOTH OF YOU TO COME WITH ME." SHE LED US
13 UP TO CONFERENCE ROOM ON THE 18TH FLOOR, WITH NO
14 EXPLANATION OF WHY WE WERE THERE.

09:46AM

15 Q. OKAY. LET ME STOP YOU THERE.

09:46AM

16 SO YOU GOT TO THE CONFERENCE ROOM ON THE
17 18TH FLOOR.

18 AND DID YOU GO INSIDE?

19 A. YES.

20 Q. AND DID YOU GO IN WITH FIFI HUANG?

09:46AM

21 A. YES. WE BOTH WALKED IN AT THE SAME TIME.

22 Q. AND WAS THERE ANYONE ELSE IN THE CONFERENCE
23 ROOM WHEN YOU ENTERED?

24 A. DUKE HEGER WAS IN THERE. HE WAS THE LIAISON
25 BETWEEN THE ACCOUNTING SIDE AND OUR BACK OFFICE.

09:46AM

26 AND THEN THERE WAS ANOTHER COMPLIANCE
27 PERSON THERE WHO WAS THERE TO KIND OF BABY SIT US.

28 Q. AND WERE YOU QUESTIONED AS SOON AS YOU GOT TO

1 THE CONFERENCE ROOM?

2 A. NO. WE WERE IN THE CONFERENCE ROOM FOR -- IT
3 SEEMED LIKE A LONG TIME. IT WAS PROBABLY AN HOUR TO AN
4 HOUR AND A HALF, SOMETHING LIKE THAT.

5 Q. AND DID OTHER PEOPLE COME AND GO DURING THIS
6 HOUR TO HOUR AND A HALF?

09:46AM

7 A. YEAH. EVENTUALLY, THERE WAS THREE OR FOUR
8 OTHER PEOPLE THAT WERE IN THERE THAT WORKED IN THE MBS
9 GROUP.

10 AND SLOWLY, ONE BY ONE, SOMEONE WOULD
11 COME UP AND TAKE THEM AWAY, AND WE WOULD NEVER -- WE
12 WOULDN'T SEE THEM. THEY WOULDN'T COME BACK. AND THE
13 PERSON WHO TOOK THEM AWAY WOULD COME BACK, TAKE SOMEONE
14 ELSE.

09:47AM

15 Q. DID YOU FEEL AS IF YOU WERE ALLOWED TO LEAVE?

09:47AM

16 A. I'M SORRY.

17 Q. DID YOU FEEL AS IF YOU WERE ALLOWED TO LEAVE
18 THE CONFERENCE ROOM?

19 A. NO. THERE WAS -- THEY HAD TAKEN OUR -- THEY
20 ASKED TO TAKE OUR CELL PHONES AWAY.

09:47AM

21 I REFUSED. I HAD TO TRY -- I HAVE KIDS,
22 SO I WANTED TO MAKE SURE, IF SOMETHING HAPPENED, MY
23 FAMILY OR SOMEONE COULD GET IN CONTACT WITH ME.

24 I EVEN HAD TO ASK PERMISSION TO USE THE
25 CONFERENCE ROOM PHONE TO CALL MY MOM, SO THAT SHE CAN
26 GO PICK UP MY KIDS FROM SCHOOL THAT DAY.

09:47AM

27 BUT IT WAS KIND OF APPARENT THAT WE
28 COULDN'T LEAVE. I THINK WHEN PEOPLE HAD TO GO TO THE

1 REST ROOM, THEY WERE BEING ESCORTED TO THE REST ROOM
2 AND BACK.

3 Q. AND WERE YOU EVENTUALLY ASKED TO COME WITH
4 THEM OUT OF THE CONFERENCE ROOM TO BE QUESTIONED?

5 A. EVENTUALLY, AFTER A FEW PEOPLE HAD LEFT, THERE
6 WERE NOT VERY MANY PEOPLE LEFT, WHEN MICHAEL CAHILL
7 CAME UP AND ASKED ME TO COME WITH HIM.

09:48AM

8 Q. AND DID YOU THEN GO TO A DIFFERENT ROOM, WHERE
9 YOU WERE ASKED SOME QUESTIONS?

10 A. YES. WE WERE TAKEN DOWN TO THE 17TH FLOOR
11 CONFERENCE ROOM.

09:48AM

12 Q. AND DURING THAT INTERVIEW SESSION, DID YOU
13 ADMIT THAT YOU HAD BEEN DOWNLOADING TCW INFORMATION?

14 A. YES, I BELIEVE SO.

15 Q. NOW, YOU SAID THERE WERE TWO REASONS. ONE,
16 YOU WERE ANGRY.

09:48AM

17 AND I THINK THE SECOND THING YOU SAID A
18 COUPLE OF TIMES, WAS THAT YOU WANTED TO LET SOMEONE
19 ELSE DETERMINE WHETHER YOU COULD MAKE USE OF IT.

20 WHAT DO YOU MEAN BY THAT?

09:48AM

21 A. WELL, IN MY MIND, THERE -- TCW HAD THE RIGHTS
22 TO THIS INFORMATION.

23 BUT CERTAINLY, AS THE COMPANY KIND OF
24 MADE CLEAR HERE, CLIENTS ALSO HAVE RIGHTS TO THEIR
25 INFORMATION REGARDING THEIR PORTFOLIO. AND MY BELIEF
26 IS THAT JEFFREY GUNDLACH ALSO HAS RIGHTS TO THIS
27 INFORMATION, BEING THAT IT WAS CREATED IN HIS GROUP,
28 UNDER HIS MANDATE AND HIS AUTHORITY.

09:49AM

1 Q. DID YOU EVER BELIEVE, ON OR ABOUT DECEMBER
2 4TH, UNTIL THE TIME YOU WENT DOUBLELINE, THAT YOU, JEFF
3 MAYBERRY, WOULD MAKE THAT DECISION WHETHER TO MAKE USE
4 OF THIS INFORMATION?

5 A. NO, NEVER.

09:49AM

6 Q. NOW, YOU NOW WORK AT DOUBLELINE; IS THAT
7 RIGHT?

8 A. YES, THAT'S CORRECT.

9 Q. AND DO YOU REMEMBER WHEN YOU STARTED WORKING
10 AT DOUBLELINE?

09:49AM

11 A. I BELIEVE IT WAS DECEMBER 9TH OR SO, I
12 STARTED, KIND OF.

13 IT WASN'T DOUBLELINE, AT THE TIME. IT
14 WAS JUST A GROUP OF PEOPLE WHO USED TO WORK AT TCW.

15 Q. AND AT SOME POINT, DID YOU RECEIVE
16 INSTRUCTIONS FROM OTHERS AT DOUBLELINE AS TO WHAT YOU
17 SHOULD DO WITH ANY TCW DATA, INFORMATION, DEVICES THAT
18 YOU MIGHT HAVE IN YOUR POSSESSION?

09:49AM

19 A. YEAH. WITHIN LIKE THE FIRST COUPLE OF DAYS OF
20 WORKING WITH, I GUESS WHAT WAS GOING TO BECOME
21 DOUBLELINE, IT BECAME CLEAR THAT IT WAS DIRECTED --
22 THERE WERE MANY CONVERSATIONS ABOUT DON'T USE ANY TCW
23 INFORMATION. IF YOU HAVE ANYTHING THAT EVEN HAS SOME
24 SEMBLANCE OF POSSIBILITY OF TCW INFORMATION, THAT WE'RE
25 TO TURN IT IN.

09:50AM

26 THERE WAS MULTIPLE TIMES WHEN I GUESS
27 COURIERS WOULD COME AND TAKE COMPUTERS AND LAPTOPS AND
28 BLACKBERRYS AWAY.

09:50AM

1 Q. I PUT IN FRONT OF YOU, EXHIBIT 5590. DO YOU
2 SEE THAT?

3 A. YES.

4 Q. DO YOU RECOGNIZE THAT?

5 A. YES, I DO.

09:50AM

6 Q. AND WHAT IS IT?

7 A. IT'S AN E-MAIL FROM CHRIS SANTA ANA ON
8 DECEMBER 14TH, SAYING, I KNOW THAT I'VE -- THAT THERE'S
9 BEEN -- GREG WARD AND I HAVE TALKED TO YOU; BUT DON'T
10 USE ANY TCW INFORMATION. DON'T USE ANYTHING CREATED
11 USING TCW RESOURCES OR TCW INFORMATION.

09:51AM

12 THE IDEA BEHIND DOUBLELINE IS TO BUILD
13 SOMETHING THAT WAS BETTER THAN WHAT WE HAD WHEN WE WERE
14 AT TCW.

15 MR. BRIAN: YOUR HONOR, I WOULD OFFER
16 EXHIBIT 5590.

09:51AM

17 THE COURT: ANY OBJECTION?

18 MR. MADISON: JUST ONE MOMENT, YOUR HONOR.

19 NO OBJECTION, YOUR HONOR.

20 THE COURT: IT WOULD BE ADMITTED.

09:51AM

21
22 (EXHIBIT 5590 ADMITTED.)

23
24 MR. BRIAN: MAY WE DISPLAY THAT INFORMATION?

25 THE COURT: YES, YOU MAY.

09:51AM

26 Q. BY MR. BRIAN: AND IF WE COULD JUST ENLARGE IT
27 FROM DOWN TO THE SUBJECT LINE, PLEASE.

28 AND IS THIS THE E-MAIL YOU JUST

1 IDENTIFIED, FROM MR. SANTA ANA?

2 A. YES, IT IS.

3 Q. AND ARE YOU ONE OF THE RECIPIENTS OF THAT
4 E-MAIL?

5 A. YES, I AM.

09:52AM

6 Q. AND DO YOU SEE WHERE IT SAYS SUBJECT, IN ALL
7 CAPS, MUST READ, WITH THREE EXCLAMATION POINTS?

8 A. YES.

9 Q. DID YOU READ IT?

10 A. YES.

09:52AM

11 Q. COULD WE ENLARGE, PLEASE, THE FIRST PARAGRAPH
12 OF THE TEXT OF THE E-MAIL.

13 IT SAYS, I KNOW GREG AND I HAVE SPOKEN
14 TO ALL OF YOU ABOUT THIS MATTER, BUT I CANNOT STRESS
15 HOW IMPORTANT THIS MESSAGE IS.

09:52AM

16 DO YOU SEE THE REFERENCE TO GREG?

17 A. YES, I DO.

18 Q. WHO IS THAT?

19 A. THAT'S GREG WARD.

20 Q. AND WHO WAS GREG WARD?

09:52AM

21 A. HE WAS THE -- WELL, HE WAS THE CFO, I GUESS,
22 AT THE TIME, OF DOUBLELINE.

23 Q. AND -- CHIEF FINANCIAL OFFICER?

24 A. CHIEF FINANCIAL OFFICER.

25 WE DIDN'T HAVE POSITIONS AT THE TIME,
26 BUT HE WAS TO BECOME ITS CFO, I GUESS.

09:52AM

27 Q. AND THE SECOND SENTENCE SAYS, DON'T USE ANY
28 FILE THAT WAS CREATED AT TCW, INCLUDING PERSONNEL FILES

1 OR ANY FILES OR PROGRAMS YOU CREATED USING TCW
2 RESOURCES OR INFORMATION. DO YOU SEE THAT?

3 A. YES, I DO.

4 Q. DID YOU COMPLY WITH THAT?

5 A. YES, I DID.

09:53AM

6 Q. COULD WE NOW EXPAND THE NEXT TWO PARAGRAPHS OF
7 THE E-MAIL, PLEASE, BEGINNING WITH MOREOVER.

8 LET'S DO ONE AT A TIME, THEN, TO MAKE IT
9 LARGER.

10 LET'S JUST DO THE PARAGRAPH THAT SAYS
11 MOREOVER.

09:53AM

12 CAN ALL THE MEMBERS OF THE JURY SEE
13 THAT?

14 MR. BRIAN: I'M JUST GOING TO GIVE THE JURY A
15 MINUTE TO READ IT, YOUR HONOR.

09:53AM

16 Q. WHY DON'T WE NOW ENLARGE THE NEXT PARAGRAPH,
17 PLEASE.

18 OKAY. YOU CAN TAKE THAT DOWN. THANK
19 YOU.

20 MR. MAYBERRY, IN RESPONSE TO THE VERBAL
21 INSTRUCTIONS THAT YOU GOT, AND THIS E-MAIL, DID YOU
22 TAKE STEPS TO TURN IN ANY OF YOUR OWN ELECTRONIC
23 DEVICES?

09:54AM

24 A. YES. THE VERY NEXT DAY I TURNED MY PERSONAL
25 LAPTOP IN.

09:55AM

26 Q. AND THAT WAS -- SO THAT WOULD BE DECEMBER
27 15TH, YOU TURNED THAT IN?

28 A. YES.

1 Q. NOW, YOU TESTIFIED EARLIER THAT YOU HAD -- I'M
2 NOT VERY ELECTRONIC -- COPIED ONTO OR DOWNLOADED ONTO
3 YOUR PARENTS' DESKTOP, THE INFORMATION FROM THIS FLASH,
4 RIGHT? IS THAT RIGHT?

5 A. YES. THAT'S CORRECT.

09:55AM

6 Q. DID YOU DO ANYTHING AT ALL IN THOSE FIRST FEW
7 DAYS TO RETRIEVE YOUR PARENTS' DESKTOP?

8 A. YEAH. ON DECEMBER 16TH, I ASKED IF I COULD
9 BRING IN -- I WAS GOING OUT TO MY PARENTS' THAT
10 WEEKEND, SINCE I HAD THE KIDS AGAIN THAT WEEKEND, AND I
11 ASKED IF I COULD BRING IT IN ON MONDAY, TO AVOID AN
12 EXTRA TRIP OUT TO SANTA CLARITA.

09:55AM

13 AND I WAS TOLD, NO, YOU MUST HAVE IT
14 BACK IMMEDIATELY. AND I THINK IT WAS A MONDAY NIGHT.
15 AND I DROVE OUT THAT THURSDAY NIGHT TO GET MY PARENTS'
16 DESKTOP.

09:56AM

17 THEY WEREN'T VERY HAPPY ABOUT LOSING
18 THEIR COMPUTER. I HAD TO GET THEIR DESKTOP, AND
19 BROUGHT IT INTO THE OFFICE THE NEXT DAY.

20 Q. AND JUST TO SET THE CALENDAR, DECEMBER 14TH,
21 THAT WAS A MONDAY, WASN'T IT?

09:56AM

22 A. YES.

23 Q. AND SO YOU DROVE THERE ON THE 16TH, 17TH?

24 A. ON THE 16TH, AND TURNED THEIR DESKTOP IN ON
25 THE 17TH.

09:56AM

26 Q. NOW, COMPUTERS HAVE BACKUPS, DON'T THEY?

27 A. SOME OF THEM DO, YEAH.

28 Q. DID YOU DO ANYTHING AT ALL WITH RESPECT TO THE

1 BACKUP SYSTEMS EITHER FOR YOUR OWN LAPTOP OR YOUR
2 PARENTS' DESKTOP?

3 A. YEAH. I TURNED THOSE IN IN EARLY FEBRUARY.
4 JUST FORGOT ABOUT THEM FOR A MONTH.

5 Q. SO SLOW DOWN HERE.

09:56AM

6 WHY IT DID IT TAKE SO LONG, BETWEEN
7 DECEMBER 14TH, 15TH, AND EARLY FEBRUARY, TO TURN THOSE
8 TWO BACKUPS IN?

9 A. WELL, IT DIDN'T OCCUR TO ME, THAT, ACTUALLY.
10 I DIDN'T USE THAT BACKUP THAT FREQUENTLY, SO IT DIDN'T
11 OCCUR TO ME THAT THERE MIGHT BE POTENTIAL TCW
12 INFORMATION ON THE BACKUP.

09:57AM

13 BUT ONCE I REALIZED THAT, I KEPT MEANING
14 TO BRING IT IN. AND IT JUST -- YOU KNOW, IT WAS KIND
15 OF A BUSY TIME, WHAT WITH -- WE WERE STARTING
16 DOUBLELINE UP; SO I JUST KEPT ON FORGETTING IT, UNTIL I
17 SENT MYSELF AN E-MAIL, FINALLY.

09:57AM

18 Q. SO YOU TURNED IT IN IN EARLY FEBRUARY.

19 AND WHAT WAS THE REACTION OF YOUR BOSSES
20 AT DOUBLELINE WHEN YOU TURNED THAT IN IN FEBRUARY?

09:57AM

21 A. THEY WERE, TO PUT IT MILDLY, NOT HAPPY WITH
22 ME.

23 Q. BECAUSE OF THE DELAY?

24 A. CORRECT.

25 Q. AND WERE YOU SUBJECT TO DISCIPLINE?

09:57AM

26 A. YES, I WAS.

27 Q. AND WHAT WAS THE DISCIPLINE YOU WERE SUBJECT
28 TO?

1 A. I WAS -- I -- THEY KIND OF PUT ME ON LEAVE FOR
2 FOUR WEEKS, TWO OF WHICH WERE UNPAID.

3 Q. SO YOU WERE ESSENTIALLY OFF THE PREMISES FOR
4 MOST OF FEBRUARY OF 2010?

5 A. YES. I WASN'T CHECKING E-MAIL, WASN'T DOING
6 ANYTHING.

09:58AM

7 Q. YOUR PARENTS LIVE IN SANTA CLARITA?

8 A. YES, THAT'S CORRECT.

9 Q. AND BY THE WAY, YOU WERE ASKED SOME QUESTIONS
10 ABOUT THE MAILING OF THE FLASH DRIVE TO YOUR PARENTS,
11 AND THE ENVELOPE BEING TORN.

09:58AM

12 WHO DID YOU GET THAT INFORMATION FROM,
13 THAT AN ENVELOPE ARRIVED TORN?

14 A. MY FATHER TOLD ME.

15 Q. DID YOU GROW UP IN THE SANTA CLARITA AREA?

09:58AM

16 A. YEAH. I WENT TO JUNIOR HIGH ON OUT THERE.

17 Q. THERE WAS SOME TESTIMONY FROM RACHEL CODY LAST
18 THURSDAY, AND THEN YESTERDAY.

19 WERE YOU HERE FOR PART OF HER TESTIMONY?

20 A. YES, I WAS.

09:58AM

21 Q. AND I THINK MR. MADISON PUT UP THE SCHEMATIC
22 SHOWING WHERE SHE SAT ON THE TRADING FLOOR, AND I THINK
23 THE JURY HAS SEEN THAT.

24 BUT JUST GENERALLY SPEAKING, WHERE WAS
25 RACHEL CODY ON THE HIERARCHY OF THE MBS GROUP AT TCW?
26 WAS SHE A SENIOR PERSON? A VERY JUNIOR PERSON? WHERE
27 WAS SHE IN THE HIERARCHY?

09:59AM

28 A. SHE WAS A VERY JUNIOR PERSON. SHE HAD JUST

1 STARTED A YEAR AND A HALF BEFORE, OR SOMETHING LIKE
2 THAT.

3 Q. YOU WERE ASKED A LOT OF QUESTIONS ABOUT YOUR
4 DOWNLOADING OF TCW INFORMATION INTO THE VARIOUS FILES.

5 DO YOU RECALL THAT TESTIMONY THIS
6 MORNING?

09:59AM

7 A. YES, I DO.

8 Q. YESTERDAY, THERE WAS TESTIMONY FROM MR. KALE
9 BY MR. -- QUESTIONS BY MR. QUINN AND QUESTIONS BY
10 MR. MADISON -- SORRY, BY MR. WEINGART, ABOUT THE MBS
11 DATABASE.

09:59AM

12 YOU ARE FAMILIAR WITH THAT, ARE YOU?

13 A. YES, I AM.

14 Q. DID YOU EVER DOWNLOAD ANY OF TCW'S ANALYTIC
15 SYSTEMS, LIKE THE BWIC BROWSER OR THE SECURITY
16 ANALYZER?

10:00AM

17 A. NO, I DID NOT.

18 Q. DID YOU DOWNLOAD THE CODE FROM THESE ANALYTIC
19 SYSTEMS?

20 A. NO.

10:00AM

21 Q. DID MR. SANTA ANA EVER ASK YOU TO DOWNLOAD THE
22 CODE FOR THOSE SYSTEMS?

23 A. NO, HE DIDN'T.

24 Q. WAS THE SOURCE CODE FOR TCW'S ANALYTIC SYSTEMS
25 ON YOUR FLASH DRIVE?

10:00AM

26 A. NO, IT WAS NOT.

27 MR. BRIAN: I HAVE NO FURTHER QUESTIONS.

28 THE COURT: ALL RIGHT.

1 MR. MADISON, REDIRECT?

2 MR. MADISON: YES, I DO, YOUR HONOR.

3

4 REDIRECT EXAMINATION

5 BY MR. MADISON:

10:01AM

6 Q. MR. BRIAN ASKED YOU THIS IN A QUESTION. I
7 DIDN'T THINK I HEARD YOU SAY IT, BUT ON DECEMBER 4, YOU
8 WERE ANGRY?

9 A. YES.

10 Q. AFTER THREE MONTHS OF DOWNLOADING SECRET
11 INFORMATION AND PROPRIETARY INFORMATION, YOU WERE
12 ANGRY?

10:01AM

13 MR. BRIAN: OBJECTION. ARGUMENTATIVE.

14 THE COURT: SUSTAINED.

15 MR. MADISON: WELL, YOU WERE ANGRY ABOUT THE
16 WAY YOU HAD BEEN TREATED THAT AFTERNOON, SIR?

10:01AM

17 THE WITNESS: YES.

18 Q. BASED ON ALL THE INFORMATION THAT HAD BEEN
19 STOLEN, YOU DIDN'T THINK TCW HAD A RIGHT TO BE
20 CONCERNED ABOUT THAT?

10:01AM

21 A. I DON'T THINK THEY HAD A RIGHT TO TREAT ME THE
22 WAY THEY DID.

23 Q. WELL, SIR, DO YOU UNDERSTAND, HILLARY LORD IS
24 THE HEAD OF COMPLIANCE AT TCW?

25 A. YEAH. I THINK THAT'S WHAT I SAID EARLIER.

10:01AM

26 Q. DID YOU APPRECIATE THE ISSUES THAT IT WOULD
27 CREATE FOR A HIGHLY REGULATED FINANCIAL FIRM LIKE TCW,
28 TO HAVE EMPLOYEES DOWNLOADING ALL THE NONPUBLIC CLIENT

1 AND FINANCIAL INFORMATION?

2 A. YES.

3 Q. NOW, LET ME ASK ABOUT THIS MEMO THAT MR. BRIAN
4 SHOWED YOU, EXHIBIT 5590. THIS IS MONDAY, DECEMBER
5 14TH.

10:02AM

6 AND LET ME -- BY THAT TIME, OF COURSE,
7 YOU KNEW THAT TCW KNEW ABOUT THE DOWNLOADING, RIGHT?

8 A. RIGHT. THEY KNEW ABOUT IT ON DECEMBER 4TH.

9 Q. RIGHT.

10 AND SO YOU KNEW THAT DOUBLELINE HAD
11 CONSULTED WITH LAWYERS ABOUT THE MATTER, RIGHT?

10:02AM

12 A. I'M NOT SURE EXACTLY WHEN I KNEW THAT, BUT
13 AROUND THAT TIME, YES.

14 Q. AND WELL, YOU SEE THERE ARE LAWYERS' NAMES ON
15 THE BOTTOM OF THE EXHIBIT ITSELF?

10:02AM

16 A. YES.

17 Q. AND YOU KNEW THAT TCW HAD ALREADY TOLD
18 MR. GUNDLACH THAT WE HAVE THE BASIS FOR A LAWSUIT HERE?

19 A. AT THAT TIME, I DIDN'T KNOW THAT.

20 Q. NOW, ON THIS FLASH DRIVE, IS IT YOUR TESTIMONY
21 THAT MR. SANTA ANA NEVER ASKED YOU ABOUT IT, AFTER
22 DECEMBER 4?

10:03AM

23 A. YES, THAT'S CORRECT.

24 Q. AND THAT YOU JUST FORGOT ABOUT IT?

25 A. I DON'T THINK --

10:03AM

26 MR. BRIAN: OBJECTION, MISSTATES HIS
27 TESTIMONY.

28 THE COURT: SUSTAINED.

1 Q. BY MR. MADISON: SO THE FLASH DRIVE WAS
2 MISSING, AND YOU DECIDED TO JUST NOT TELL DOUBLELINE
3 ABOUT IT, EVEN THOUGH YOU HAD GOTTEN THIS DIRECTIVE
4 ABOUT DOWNLOADING IT?

5 A. YEAH. IT'S KIND OF EMBARRASSING TO SAY IT WAS
6 LOST IN THE MAIL. 10:03AM

7 Q. SO THE EMBARRASSMENT WAS WORSE TO YOU, THAN
8 THE NOTION THAT 38 PAGES OF COMPUTER FILES CONTAINING
9 CLIENT INFORMATION WAS OUT THERE?

10 MR. BRIAN: OBJECTION, ARGUMENTATIVE. 10:03AM

11 THE COURT: SUSTAINED.

12 Q. BY MR. MADISON: WAS THAT THE CALCULUS YOU
13 DID, SIR? WAS THE EMBARRASSMENT WORSE THAN THE HARM
14 THAT COULD COME TO YOU?

15 A. WELL, IN MY MIND, THE FLASH DRIVE WAS LOST.
16 THE INFORMATION WAS GONE. 10:03AM

17 AND IT WASN'T LIKE IT WAS IN A VERY
18 USEABLE FORMAT. IT WOULD TAKE SOMEONE WHO HAD INTIMATE
19 KNOWLEDGE OF THE MBS DATABASE TO ACTUALLY MAKE USE OF
20 THAT DATA. 10:04AM

21 Q. AND IN FACT, WHEN YOU WERE DISCIPLINED BY
22 DOUBLELINE, IT WASN'T JUST FOR DELAY, AS MR. BRIAN
23 SUGGESTED; IT WAS ALSO BECAUSE YOU HAD NOT BEEN
24 TRUTHFUL WITH DOUBLELINE; ISN'T THAT RIGHT?

25 A. YES. I HAD NOT TOLD THEM ABOUT THE MISSING
26 FLASH DRIVE. 10:04AM

27 Q. WELL, WHAT THEY TOLD YOU WAS THAT YOU WERE NOT
28 CANDID WHEN WE INTERVIEWED YOU; ISN'T THAT RIGHT?

1 A. WHO'S THE "WE," IN THAT PHRASE?

2 Q. DOUBLELINE AND THEIR LAWYERS.

3 A. I DON'T THINK THERE WAS ANY INTERVIEW.

4 I DON'T REMEMBER EXACTLY WHAT THEY SAID;
5 BUT MY UNDERSTANDING WAS THEY WERE -- PART OF IT WAS
6 THAT I DID NOT KIND OF NOTIFY THEM ABOUT THE -- THAT
7 THE FLASH DRIVE WAS MISSING, YES.

10:04AM

8 Q. SO THAT WAS THE LACK OF CANDOR ON YOUR PART,
9 NOT TELLING THEM ABOUT IT?

10 A. RIGHT.

10:04AM

11 Q. NOW, YOU SAID YOU NEVER USED THE INFORMATION
12 THAT WAS IN THE FLASH DRIVE, OR ANY OF THE INFORMATION
13 THAT YOU DOWNLOADED AT DOUBLELINE; IS THAT YOUR
14 TESTIMONY, SIR?

15 A. YES, IT IS.

10:05AM

16 Q. AND ARE YOU A PROGRAMMER AT DOUBLELINE?

17 A. NO, I'M NOT.

18 Q. SO YOU WOULDN'T BE THE PERSON THAT WOULD USE
19 SOURCE CODE, IF YOU WERE GOING TO USE IT TO CREATE NEW
20 SYSTEMS AT DOUBLELINE, WOULD YOU?

10:05AM

21 A. NO, I WOULD NOT.

22 Q. AND DID YOU KNOW -- BY THE WAY, YOU WERE ASKED
23 ABOUT WHETHER YOU EVER DOWNLOADED SOURCE CODE.

24 DID YOU KNOW THAT CASEY MOORE, ONE OF
25 THE PROGRAMMERS, DID DOWNLOAD SOURCE CODE?

10:05AM

26 MR. BRIAN: OBJECTION, YOUR HONOR. NO
27 FOUNDATION.

28 THE COURT: SUSTAINED.

1 Q. BY MR. MADISON: DO YOU KNOW WHETHER ANY OF
2 THE PROGRAMMERS AT TCW WHO THEN WENT TO DOUBLELINE AS
3 PART OF THIS GROUP HAD DOWNLOADED SOURCE CODE?

4 MR. BRIAN: OBJECTION. ASSUMES FACTS NOT IN
5 EVIDENCE, NO FOUNDATION.

10:05AM

6 THE COURT: SUSTAINED.

7 Q. BY MR. MADISON: DO YOU KNOW ONE WAY OR THE
8 OTHER, WHETHER SOURCE CODE WAS DOWNLOADED BY OTHERS
9 WORKING IN CONCERT WITH MR. GUNDLACH?

10 A. DO I KNOW? LIKE WHAT? ON DECEMBER 14TH, DID
11 I KNOW, OR WHAT ARE YOU TALKING ABOUT?

10:05AM

12 Q. LET'S START THEN.

13 DID YOU KNOW ON DECEMBER 4TH, THAT THAT
14 HAD BEEN DONE BY OTHERS?

15 MR. BRIAN: OBJECTION. ASSUMES A FACT NOT IN
16 EVIDENCE.

10:05AM

17 THE COURT: SUSTAINED.

18 Q. BY MR. MADISON: DID YOU KNOW ONE WAY OR THE
19 OTHER, ABOUT THAT? DID YOU HAVE ANY INFORMATION ABOUT
20 THAT?

10:06AM

21 A. YOU MEAN NOW?

22 THE COURT: NO. ON DECEMBER 4TH, WAS THE
23 QUESTION.

24 THE WITNESS: NO.

25 THE COURT: IS THAT RIGHT, MR. MADISON?

10:06AM

26 MR. MADISON: YES, YOUR HONOR, THAT'S RIGHT.

27 THE WITNESS: I DID NOT KNOW, ONE WAY OR THE
28 OTHER.

1 Q. BY MR. MADISON: NOW, DID YOU KNOW THAT --
2 WHEN DID YOU GO TO WORK FOR DOUBLELINE?

3 A. WELL, I WENT TO WORK WITH THE PEOPLE WHO USED
4 TO WORK AT TCW ON, I BELIEVE, DECEMBER 9TH.

5 I DON'T KNOW IF IT WAS OFFICIALLY
6 DOUBLELINE AT THAT TIME OR NOT.

10:06AM

7 Q. ALL RIGHT.

8 WERE YOU AWARE THAT THERE WERE CALLS AND
9 WEBCASTS BEGINNING THAT WEEK, WITH TCW'S CLIENTS, FROM
10 DOUBLELINE?

10:06AM

11 A. I KNEW THERE WERE WEBCASTS ON, STARTING
12 DECEMBER 9TH. I DON'T KNOW WHO WAS ON THE CALL OR NOT.

13 Q. DID YOU EVER LEARN HOW THE PEOPLE AT
14 DOUBLELINE WHO ARRANGED THOSE WEBCASTS GOT THE LIST OF
15 INVITEES TO TCW CLIENTS?

10:06AM

16 A. I DO NOT KNOW.

17 Q. NOW, DID YOU -- LET ME ASK YOU TO LOOK AT A
18 COUPLE OF EXHIBITS.

19 FIRST OF ALL, THERE'S ONE THAT SHOULD BE
20 IN YOUR FOLDER, IT'S 2116. THIS IS AN E-MAIL FROM YOU
21 TO MS. VANEVRY AND MS. ALI, MS. CODY AND MS. HO; AND
22 THEN A RESPONSE FROM MS. CODY.

10:07AM

23 I'D MOVE 2116.

24 MR. BRIAN: OBJECTION. THIS IS BEYOND THE
25 SCOPE.

10:07AM

26 THE COURT: HOLD ON JUST A MINUTE.

27 SUSTAINED.

28 Q. BY MR. MADISON: MY OFFER WOULD BE, IT GOES TO

1 USE, YOUR HONOR, AND THE DOOR WAS OPENED ON CROSS.

2 THE COURT: THE OBJECTION IS SUSTAINED.

3 MR. MADISON: CAN I REOPEN, TO BRIEFLY ADDRESS
4 THIS ISSUE?

5 THE COURT: NO. I DON'T THINK THIS GOES TO
6 THIS WITNESS' TESTIMONY, SO I'LL SUSTAIN THE OBJECTION.

7 MOVE ON.

8 Q. BY MR. MADISON: OKAY. NOW, WERE YOU AWARE,
9 AFTER DECEMBER 14, WHEN THAT MEMO WENT OUT, THAT
10 DOUBLELINE WAS MAKING STATEMENTS ABOUT ITS PROPRIETARY
11 SYSTEMS?

12 MR. BRIAN: OBJECTION. BEYOND THE SCOPE.

13 THE COURT: SUSTAINED.

14 MR. MADISON: GOES TO USE, YOUR HONOR.

15 THE COURT: NO. THIS WITNESS -- LET'S FOCUS
16 ON THIS WITNESS.

17 MR. MADISON: YES.

18 Q. YOU WERE AWARE THAT DOUBLELINE WAS MAKING
19 STATEMENTS ABOUT THE PROPRIETARY SYSTEMS THAT YOU WERE
20 WORKING WITH AT DOUBLELINE, AFTER YOU JOINED
21 DOUBLELINE, CORRECT?

22 MR. BRIAN: OBJECTION, BEYOND THE SCOPE.

23 THE COURT: IT'S BEYOND THE SCOPE OF WHAT
24 WE'RE TALKING ABOUT HERE, MR. MADISON.

25 Q. BY MR. MADISON: LET ME PUT EXHIBIT 982 IN
26 FRONT OF YOU, SIR.

27 DO YOU RECOGNIZE EXHIBIT 982, SIR?

28 A. YES, I'VE SEEN IT BEFORE.

1 Q. THIS IS A STATEMENT OF DOUBLELINE, YOUR HONOR?

2 I'D OFFER 982.

3 MR. BRIAN: OBJECTION, BEYOND THE SCOPE.

4 THE COURT: IT IS.

5 Q. BY MR. MADISON: WELL, MR. BRIAN ASKED YOU A
6 SERIES OF QUESTIONS ABOUT WHETHER YOU USED THE
7 INFORMATION AT DOUBLELINE.

10:09AM

8 YOU WERE THE DIRECTOR OF RISK MANAGEMENT
9 ANALYTICS IN DECEMBER AND JANUARY, 2009 AND '10,
10 WEREN'T YOU, SIR?

10:09AM

11 A. I DON'T KNOW WHEN -- I DON'T KNOW IF THAT WAS
12 MY TITLE THEN, BUT KIND OF OPERATIONALLY, YEAH.

13 Q. OKAY.

14 SO I WANT TO ASK YOU SOME QUESTIONS
15 ABOUT THE STATEMENTS ABOUT RISK MANAGEMENT ANALYTICS?

10:09AM

16 MR. BRIAN: OBJECTION, BEYOND THE SCOPE.

17 THE COURT: IF THERE'S SOME FOUNDATION FOR
18 THIS WITH THIS WITNESS, THAT'S FINE, MR. MADISON. BUT
19 I'M NOT SURE WHERE WE'RE GOING HERE. IT IS BEYOND THE
20 SCOPE OF THE CROSS-EXAMINATION; SO GO AHEAD.

10:09AM

21 MR. MADISON: WELL, I WANT TO ASK YOU ABOUT
22 USE, BECAUSE THIS PARAGRAPH TALKS ABOUT DOUBLELINE'S
23 PROPRIETARY SYSTEMS.

24 SO I'M GOING TO ASK YOU, SIR, ABOUT THE
25 PARAGRAPH THAT TALKS ABOUT RISK MANAGEMENT ANALYTICS.

10:10AM

26 AGAIN, THAT WAS YOUR RESPONSIBILITY AT
27 DOUBLELINE, WASN'T IT?

28 MR. BRIAN: OBJECTION. BEYOND THE SCOPE, YOUR

1 HONOR.

2 THE COURT: SUSTAINED.

3 MR. MADISON: CAN WE APPROACH, YOUR HONOR?

4 THE COURT: NO.

5 WE'RE GOING TO TAKE OUR MORNING RECESS
6 IN A MOMENT. GO AHEAD.

10:10AM

7 Q. BY MR. MADISON: DO YOU RECALL HEARING
8 MR. GUNDLACH MAKING STATEMENTS, IN YOUR PRESENCE, ABOUT
9 THE PROPRIETARY SYSTEMS AT DOUBLELINE, AND HOW THEY
10 WERE THE SAME SYSTEMS THAT EXISTED AT TCW?

10:10AM

11 MR. BRIAN: OBJECTION. BEYOND THE SCOPE.
12 ASSUMES FACTS NOT IN EVIDENCE.

13 THE COURT: SUSTAINED.

14 MR. MADISON: I DO NEED TO MAKE AN OFFER, YOUR
15 HONOR, WITH THE EXHIBITS THAT I HAVE.

10:10AM

16 THE COURT: ALL RIGHT.

17 DO YOU HAVE ANY FURTHER QUESTIONS?

18 MR. MADISON: LET ME JUST TAKE A MOMENT.

19 Q. WELL, IF I WANTED TO KNOW WHETHER THE
20 PROGRAMMERS AT DOUBLELINE HAD USED THE INFORMATION THAT
21 HAD COME FROM TCW, I'D HAVE TO ASK THEM, WOULDN'T I?

10:11AM

22 A. I WOULDN'T KNOW WHETHER THEY USED IT OR NOT.

23 Q. SO TO FIND THAT OUT, WE'D HAVE TO LOOK AT THE
24 WORK THE PROGRAMMERS DO, CORRECT?

25 A. I WOULD THINK THAT WOULD BE A REASONABLE WAY
26 TO DO IT, YEAH.

10:11AM

27 MR. MADISON: SUBJECT TO MY OFFER, YOUR HONOR,
28 OUTSIDE THE PRESENCE, I DON'T HAVE ANYTHING FURTHER.

1 THE COURT: ALL RIGHT.

2 LADIES AND GENTLEMEN, WE'LL TAKE OUR
3 MORNING RECESS AT THIS TIME. WE'LL TAKE 20 MINUTES.
4 WE'LL COME BACK AT 25 MINUTES TILL 11:00. YOU ARE
5 EXCUSED.

10:11AM

6
7 (THE FOLLOWING PROCEEDINGS WERE
8 HELD IN OPEN COURT OUTSIDE THE
9 PRESENCE OF THE JURY:)

10:12AM

10
11 MR. BRIAN: SHOULD THE WITNESS BE EXCUSED,
12 YOUR HONOR?

13 THE COURT: NO. FOR A MOMENT, LET'S FIND OUT
14 WHAT'S GOING ON HERE.

15 ALL RIGHT. WE'RE OUT OF THE PRESENCE
16 OF THE JURY.

10:12AM

17 MR. MADISON: COULD WE EXCUSE THE WITNESS FOR
18 THIS?

19 MR. BRIAN: THAT'S WHAT I MEANT. HE KNOWS
20 HE'S NOT BEING EXCUSED PERMANENTLY, YOUR HONOR.

10:12AM

21 THE COURT: WE'RE OUT OF THE PRESENCE OF THE
22 JURY.

23 MY CONCERN, HERE MR. MADISON, AND I'M
24 WILLING TO TAKE YOUR OFFER AND CONSIDER IT, BUT --

25 MR. MADISON: EXCUSE ME ONE SECOND, YOUR
26 HONOR.

10:13AM

27 THE COURT: WE'RE STILL IN SESSION, FOR THOSE
28 OF YOU IN THE BACK OF THE COURT. THANK YOU.

1 YOU MAY NOT OBTAIN EVERY ELEMENT OF YOUR
2 CASE FROM EVERY WITNESS. THIS WITNESS HAS SAID HE
3 DIDN'T USE ANYTHING FROM HIS FLASH DRIVE. AND THE FACT
4 THAT OTHERS MAY HAVE DONE OTHER THINGS WILL HAVE TO
5 COME FROM OTHER WITNESSES.

10:13AM

6 NOW, IF YOU WANT TO LAY A FOUNDATION
7 THAT HE CREATED SOMETHING FROM THE INFORMATION THAT HE
8 DOWNLOADED, I'LL ALLOW YOU TO PURSUE THAT. BUT THERE'S
9 SOME CONSIDERABLE OVERLAP HERE, IN WHAT YOU SEEM TO
10 WANT TO PROVE WITH EACH WITNESS. AND SOME WITNESSES
11 AREN'T THE ONES TO PROVE THAT WITH.

10:14AM

12 SO WHAT IS YOUR OFFER AT THIS POINT?

13 MR. MADISON: WELL, FOR EXAMPLE, YOUR HONOR,
14 EXHIBIT 2116 IS --

15 THE COURT: JUST A MOMENT.

10:14AM

16 MR. MADISON: YES, YOUR HONOR.

17 THE COURT: 2116 IS A JANUARY 22ND, 2010
18 E-MAIL FROM MAYBERRY TO OTHERS?

19 MR. MADISON: YES.

20 THE COURT: TALKING ABOUT MATTERS THAT DON'T
21 RELATE TO WHAT HE DOWNLOADED, AND HIS STATEMENT THAT HE
22 DIDN'T USE ANY INFORMATION ON HIS FLASH DRIVE.

10:14AM

23 MR. MADISON: WELL, THAT'S HIS POSITION.

24 I BELIEVE THAT THIS E-MAIL GOES DIRECTLY
25 TO THIS WHOLE REMEDIATION ISSUE, WHICH MR. BRIAN RAISED
26 OVER MY OBJECTION, BECAUSE I DIDN'T GET INTO ANYTHING
27 IN MY DIRECT ABOUT USE AT DOUBLELINE.

10:14AM

28 THE COURT ALLOWED THAT; AND OBVIOUSLY,

1 THAT'S APPROPRIATE.

2 BUT NOW, SINCE THEY PUT THIS MEMO IN
3 SAYING WE'RE REMEDIATING EVERYTHING, WE'RE NOT USING
4 ANYTHING, NOW I HAVE A STATEMENT FROM THIS WITNESS
5 SAYING, YOU KNOW WHAT, GUYS, LET'S NOT USE THE TERM
6 "PROPRIETARY" HERE.

10:15AM

7 WHY? BECAUSE WE WANT TO SAY IN THE
8 LITIGATION THAT NOTHING IS PROPRIETARY. AND THAT WILL
9 HELP US, JUST LIKE THE REMEDIATION DEFENSE DOES.

10 IT'S ALL A COVER, YOUR HONOR.

10:15AM

11 NOW, THE COURT MAY NOT AGREE, AS A
12 MATTER OF FACT, THAT THAT'S WHAT WAS GOING ON. BUT
13 THAT'S OUR THEORY, THAT THE REMEDIATION WAS A COVER,
14 AND THAT TO SEND MESSAGES LIKE THIS, WHERE HE SAYS, WE
15 WON'T CALL IT PROPRIETARY, EVEN THOUGH IT IS, BECAUSE
16 THAT WILL HELP US IN COURT SHOW THAT WE DON'T HAVE
17 ANYTHING PROPRIETARY FROM TCW.

10:15AM

18 THE OTHER EXHIBIT, 982 IS A STATEMENT OF
19 DOUBLELINE AT THE TIME THAT THIS WITNESS WAS THE
20 DIRECTOR OF RISK MANAGEMENT AND ANALYTICS. I HAVE DEPO
21 TESTIMONY ON THAT EVEN THOUGH HE NOW SAYS HE DOESN'T
22 REMEMBER THAT THAT WAS HIS TITLE.

10:15AM

23 AND THIS PARTICULAR PARAGRAPH SAYS THAT
24 WE HAVE REBUILT OUR SYSTEMS, IMPLEMENTING IMPROVEMENTS
25 AND ENHANCEMENTS THAT ARE A NATURAL EVOLUTION OF OUR
26 TECHNOLOGY.

10:16AM

27 THIS IS WHEN THE BUSINESS IS JUST A
28 COUPLE OF WEEKS OLD. AND SO WHEN MR. BRIAN ASKS SOME

1 GENERAL QUESTIONS, LIKE WELL, YOU NEVER USED THE STUFF,
2 DID YOU? OUR POSITION IS WE SHOULD BE ABLE TO ASK THE
3 DIRECTOR OF RISK MANAGEMENT ANALYTICS ABOUT A PARAGRAPH
4 IN A COMPANY STATEMENT THAT HE PROVIDED TO CLIENTS AND
5 OTHERS, WHERE THEY SAY, WE JUST REBUILT THE SYSTEMS
6 THAT WE HAD. THIS OPENS THE DOOR TO ALL OF THAT.

10:16AM

7 THE COURT: ALL RIGHT.

8 MR. BRIAN: MAY I RESPOND?

9 THE COURT: I BELIEVE IT'S BEYOND THE SCOPE OF
10 WHAT MR. BRIAN ASKED. I WILL PERMIT YOU TO REOPEN.
11 THIS IS YOUR WITNESS. YOU CAN ASK HIM WHAT YOU WANT.

10:16AM

12 BUT I DON'T WANT THIS TO GO ON AD
13 INFINITUM.

14 MR. BRIAN, DO YOU WISH TO BE HEARD ON
15 THIS?

10:16AM

16 MR. BRIAN: HERE'S THE ISSUE THEY WANT TO
17 CONSTANTLY FUDGE, YOUR HONOR. THERE'S A DIFFERENCE
18 BETWEEN -- AND MR. KALE WAS PRETTY GOOD ABOUT THIS.
19 THERE'S A DIFFERENCE BETWEEN THE MBS DATABASE AND THE
20 INFORMATION THAT ENDED UP ON MR. MAYBERRY'S FLASH
21 DRIVE, ON THE ONE HAND; AND THE ANALYTICS AND THE
22 SOURCE CODE ON THE OTHER.

10:17AM

23 THE FIRST WITNESS THAT HE TALKED TO --
24 THAT HE REFERENCED 2116, THERE'S A REFERENCE TO CASEY
25 MOORE AND OTHER PEOPLE. THEY ARE GOING TO BE
26 TESTIFYING. THOSE ARE THE PEOPLE THAT WILL BE ASKED
27 QUESTIONS ABOUT HOW THEY DEVELOPED THE ANALYTICS AT
28 DOUBLELINE, AND WHETHER THAT WAS SOMEHOW TAINTED BY

10:17AM

1 INFORMATION THEY GOT FROM TCW.

2 THAT'S NOT THIS WITNESS' EXPERTISE. ALL
3 I ASKED HIM WAS, I HAD HIM IDENTIFY, AGAIN, WHAT WAS ON
4 THE FLASH DRIVE. AND I SAID, DID YOU MAKE USE OF THAT?
5 I HAD HIM SAY THERE WAS NO SOURCE CODE INFORMATION, AND 10:17AM
6 HE DIDN'T DOWNLOAD ANY ANALYTICS TO MAKE THAT
7 DISTINCTION.

8 WE DID NOT OFFER, AND DO NOT INTEND TO
9 OFFER, FROM THIS WITNESS, THE EXTENSIVE INFORMATION OR
10 TESTIMONY HAVING TO DO WITH A REMEDIATION PLAN. HE'S 10:17AM
11 NOT A REMEDIATION PERSON.

12 THE COURT: I UNDERSTAND, MR. BRIAN.

13 MR. BRIAN: ALL HE'S SAYING IS WHAT HE DID IN
14 RESPONSE TO THE INSTRUCTIONS.

15 THE COURT: THE POINT IS THE PLAINTIFFS HAVE 10:18AM
16 CALLED MR. MAYBERRY UNDER 776. HE IS A DEFENDANT IN
17 THE CASE.

18 I DO AGREE THAT WHAT MR. MADISON WAS
19 PURSUING IS BEYOND THE SCOPE OF THE AREAS YOU
20 DISCUSSED. I'LL ALLOW HIM TO REOPEN. THEY CAN ASK HIM 10:18AM
21 WHAT HE WANTS.

22 2116 IS AN E-MAIL FROM MR. MAYBERRY TO
23 OTHERS, SO THEY CAN ASK HIM ABOUT HIS OWN E-MAIL.

24 AND TO THE EXTENT THAT 982 WAS SOMETHING
25 THAT HE WAS INVOLVED IN CREATING, YOU MAY QUESTION HIM 10:18AM
26 ABOUT IT. BUT YOU NEED TO LAY APPROPRIATE FOUNDATION.

27 AND I'LL GO BACK TO MY EARLIER COMMENT,
28 MR. MADISON. YOU CAN'T GET EVERYTHING FROM EVERY

1 WITNESS. AND IF THEY WEREN'T INVOLVED IN IT, I'M NOT
2 GOING TO ALLOW IT. WE NEED TO JUST MOVE ALONG. THERE
3 WILL BE PLENTY OF WITNESSES TO GET ALL THE EVIDENCE I'M
4 SURE YOU WANT TO OFFER.

5 SO WITH THAT SAID, WE'LL RECONVENE AT 25
6 MINUTES TO 11:00.

10:19AM

7 YOU MAY REOPEN TO BRIEFLY PURSUE THESE
8 TWO EXHIBITS.

9 AND THEN, MR. BRIAN, IF YOU WANT TO ASK
10 HIM ANY MORE QUESTIONS, YOU CAN DO THAT, TOO.

10:19AM

11 MR. BRIAN: YOU WILL INSTRUCT THE JURY HE'S
12 REOPENING HIS QUESTIONING, YOUR HONOR?

13 THE COURT: YES.

14 MR. BRIAN: THANK YOU.

15 THE COURT: ALL RIGHT.

10:19AM

16
17 (RECESS TAKEN.)

18
19 (THE NEXT PAGE NUMBER IS 1001.)
20
21
22
23
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25
26
27
28

1 NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA AUGUST 2, 2011
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR
7 TIME: B SESSION 10:35 A.M.
8
9

10 THE COURT: IN THE TCW VERSUS GUNDLACH. ALL
11 MEMBERS OF OUR JURY ARE PRESENT, AS ARE COUNSEL.

10:38AM

12 LADIES AND GENTLEMEN, LET ME JUST
13 EXPLAIN SOME OF WHAT GOES ON HERE. YOU KNOW, WHEN A
14 PARTY CALLS A WITNESS, THEY GET A CHANCE TO ASK
15 QUESTIONS ABOUT THE AREAS THEY WANT TO INQUIRE INTO
16 THAT DEFINES THE SCOPE OF THAT WITNESS'S TESTIMONY.

10:38AM

17 AND THEN THE OTHER SIDE ASKS QUESTIONS.
18 WE TRY TO KEEP IT WITHIN THAT SCOPE. AND THERE WERE
19 SOME OBJECTIONS BACK AND FORTH AT THE END OF OUR LAST
20 SESSION.

10:38AM

21 IN ORDER TO RESOLVE THAT, A PARTY THAT
22 CALLS A WITNESS REALLY GETS TO DETERMINE WHAT QUESTIONS
23 THEY WANT TO ASK. AND SO I'LL ALLOW MR. MADISON TO
24 REOPEN, AS THOUGH HE WERE ASKING HIS ORIGINAL
25 QUESTIONS. SOME OF THESE RULES MAY SOUND A LITTLE
26 CONFUSING. I JUST WANT TO TRY TO EXPLAIN IT TO YOU SO
27 YOU UNDERSTAND WHAT WE'RE DOING.

10:38AM

28 MR. MADISON, YOU MAY PROCEED.

1 MR. MADISON: I PROMISE I WON'T ASK ALL THE
2 SAME QUESTIONS.

3 THE COURT: I KNOW WE WON'T START FROM THE
4 BEGINNING.

5
6 DIRECT EXAMINATION +
7 (RE-OPENED)

8 BY MR. MADISON:

9 Q MR. MAYBERRY, I WANT TO ASK YOU QUESTIONS
10 ABOUT YOUR TIME AT DOUBLELINE AFTER YOU JOINED THERE,
11 AND I BELIEVE YOU TOLD US THAT WAS ABOUT DECEMBER 7TH
12 OR 9TH?

13 A DECEMBER 9TH WAS THE FIRST DAY I WAS WORKING
14 WITH THE PEOPLE WHO BECAME DOUBLELINE.

15 Q OKAY.

16 SO WHEN YOU FIRST STARTED, YOU WERE
17 INVOLVED IN RISK MANAGEMENT ANALYTICS AND RESEARCH AND
18 INVESTMENT TECHNOLOGY, CORRECT?

19 A YEAH. IT WAS A VERY SMALL GROUP OF PEOPLE, SO
20 EVERYONE HAD TO WEAR A BUNCH OF HATS AS THEY SAY.

21 Q IF YOU LOOK AT 9802, IT'S A STATEMENT THAT WAS
22 PREPARED AT DOUBLELINE, AND I BELIEVE YOU ALREADY
23 TESTIFIED BEFORE THE BREAK THAT YOU WERE FAMILIAR WITH
24 THIS.

25 SO I MOVE THE EXHIBIT.

26 MR. BRIAN: OBJECTION. MAY WE HAVE A
27 FOUNDATION, PLEASE?

28 THE COURT: I THINK YOU NEED TO LAY FOUNDATION

1 FOR IT. HE DID REFER TO IT.

2 MR. MADISON: SURE. YES.

3 Q SO, DO YOU HAVE THE DOCUMENT IN FRONT OF YOU,
4 MR. MAYBERRY?

5 A I'LL GET TO IT.

10:39AM

6 I DO NOW.

7 Q OKAY.

8 I DON'T WANT TO PUBLISH THE CONTENTS OF
9 IT, BUT IF YOU READ THE SECOND PARAGRAPH --

10 THE COURT: ASK HIM THE FOUNDATIONAL QUESTIONS
11 AS TO HIS INVOLVEMENT WITH THIS.

10:40AM

12 BY MR. MADISON:

13 Q I DON'T KNOW IF YOU WERE INVOLVED IN, BUT
14 PROBABLY THE COMMUNICATIONS PEOPLE AT DOUBLELINE PUT
15 THIS STATEMENT TOGETHER?

10:40AM

16 A I WOULD THINK SO, YES.

17 Q YOU WOULD REFUTE THE STATEMENT AS IT PERTAINED
18 TO THE WORK THAT YOU AND YOUR GROUP WERE DOING,
19 CORRECT?

20 A I DON'T THINK I REVIEWED THIS, NO.

10:40AM

21 Q YOU'VE NEVER SEEN THIS BEFORE?

22 A I DON'T THINK I REVIEWED IT WHEN IT WAS
23 CREATED.

24 Q OKAY.

25 WELL, I WANT TO ASK YOU SOME QUESTIONS
26 ABOUT THE STATEMENTS ABOUT YOUR GROUP, AND I DON'T
27 BELIEVE THERE'S ANY CONTROVERSY ABOUT AUTHENTICATION.
28 THIS IS A DOUBLELINE DOCUMENT.

10:40AM

1 THE COURT: YOU CAN ASK HIM THE QUESTIONS.

2 MR. MADISON: OKAY.

3 Q WELL, WERE YOU, IN FACT, ONE OF THE LEADERS OF
4 THE RISK MANAGEMENT ANALYTICS AND RESEARCH AND
5 INFORMATION TECHNOLOGY TEAMS?

10:40AM

6 MR. BRIAN: FOUNDATION AS TO TIME, YOUR HONOR.

7 THE COURT: SUSTAINED.

8 BY MR. MADISON:

9 Q WHEN DOUBLELINE STARTED OUT, WAS THAT WHAT YOU
10 WERE DOING?

10:40AM

11 A YES. I WAS.

12 Q AND WERE YOU AND MR. SANTA ANA OVERSEEING
13 THOSE SAME EFFORTS, WORKING BASICALLY WITH THE SAME
14 PEOPLE AT TCW FOR ALMOST A DECADE, RIGHT?

15 A YES, THAT'S CORRECT.

10:41AM

16 Q ALL RIGHT.

17 AND, IN FACT, AT DOUBLELINE, WHAT
18 HAPPENED IS PROPRIETARY SYSTEMS WERE BEING DEVELOPED
19 THAT REBUILT THE SYSTEMS THAT HAVE BEEN AT TCW?

20 MR. BRIAN: OBJECTION. LACKS FOUNDATION.

10:41AM

21 THE COURT: SUSTAINED.

22 BY MR. MADISON:

23 Q WELL, WOULD IT BE TRUE TO SAY, IN REFERENCE TO
24 THE WORK YOU AND MR. SANTA ANA WERE DOING WITH THE
25 TEAM, THAT YOU WERE REBUILDING THE SYSTEMS,
26 IMPLEMENTING ENHANCEMENTS AND IMPROVEMENTS ON THE
27 SYSTEM AS IT EXISTED PREVIOUSLY?

10:41AM

28 MR. BRIAN: OBJECTION. NO FOUNDATION.

1 THE COURT: MR. MADISON, YOU HAVE TO ASK HIM
2 THE QUESTIONS ABOUT WHAT HE WAS DOING AT THAT POINT IN
3 TIME IT SEEMS TO ME.

4 BY MR. MADISON:

5 Q WERE YOU OR WERE YOU NOT, ALONG WITH
6 MR. SANTA ANA, LEADING THE EFFORT TO DEVELOP
7 PROPRIETARY SYSTEMS AT DOUBLELINE?

10:41AM

8 A YES, WE WERE.

9 Q OKAY.

10 SO, GIVEN THAT, WOULD IT BE FAIR TO SAY
11 THAT THE PROPRIETARY SYSTEMS PROVIDED A CENTRALIZED
12 PLATFORM TO ENHANCE COMMUNICATIONS, EFFICIENCY AND RISK
13 MANAGEMENT OVERSIGHT IN EVERY ASPECT OF DOUBLELINE'S
14 BUSINESS?

10:42AM

15 A THAT'S THE ULTIMATE GOAL, YES.

10:42AM

16 Q ALL RIGHT.

17 WOULD IT ALSO HAVE BEEN TRUE WHEN
18 DOUBLELINE BEGAN AND YOU STARTED THERE, THAT DOUBLELINE
19 REBUILT OUR SYSTEMS, IMPLEMENTING IMPROVEMENTS AND
20 ENHANCEMENT THAT ARE A NATURAL EVOLUTION OF OUR
21 TECHNOLOGY?

10:42AM

22 MR. BRIAN: OBJECTION. NO FOUNDATION.

23 THE COURT: OVERRULED.

24 IS THAT WHAT YOU WERE TRYING TO DO, SIR?

25 THE WITNESS: YEAH, WE WERE TRYING TO REBUILD
26 THE FUNCTIONALITY WE HAD WHEN WE WERE AT TCW.

10:42AM

27
28 BY MR. MADISON:

1 Q WHAT WERE THE "OUR SYSTEMS"?

2 A THE SYSTEMS THAT WERE BEING CREATED.

3 Q SO YOU WERE REBUILDING OUR SYSTEMS. DIDN'T
4 THAT MEAN THE SYSTEMS THAT YOU HAD AT TCW?

5 MR. BRIAN: OBJECTION. MISSTATES --

10:42AM

6 THE COURT: SUSTAINED.

7 MR. BRIAN: -- HIS TESTIMONY.

8 MR. MADISON: I MOVE THE EXHIBIT. IT'S A
9 STATEMENT OF THE DEFENDANT, ADMISSION OF DOUBLELINE.

10 MR. BRIAN: NO OBJECTION TO THE ADMISSIBILITY.

10:43AM

11 THE COURT: IT WILL BE ADMITTED.

12
13 (EXHIBIT 9802 ADMITTED.) +
14

15 BY MR. MADISON:

10:43AM

16 Q WOULD YOU AGREE, IT SAYS THE PORTFOLIO
17 MANAGEMENT AND TRADING TEAMS ARE SUPPORTED BY OUR RISK
18 MANAGEMENT ANALYTICS AND RESEARCH INFORMATION
19 TECHNOLOGY TEAMS?

20 THAT'S A TRUE STATEMENT WHEN DOUBLELINE
21 STARTED OUT?

10:43AM

22 A YES.

23 Q IT SAYS:

24 THESE GROUPS ARE LED BY
25 CRIS SANTA ANA, CHIEF OPERATING
26 OFFICER, AND JEFFREY MAYBERRY, LEAD
27 ANALYST AND TECHNOLOGY DIRECTOR.

10:43AM

28 WAS THAT YOUR JOB DESCRIPTION WHEN YOU

1 STARTED AT DOUBLELINE?

2 A YES, IT WAS.

3 Q SO, AS TECHNOLOGY DIRECTOR, WERE YOU IN CHARGE
4 OF ALL THE TECHNOLOGY AT DOUBLELINE?

5 A ON -- ON KIND OF -- OVER MANAGEMENT TEAM
6 LEVEL.

10:43AM

7 Q WHICH LEVEL?

8 A LIKE A MANAGEMENT LEVEL.

9 Q ALL OF IT WAS UNDER YOU?

10 A AGAIN, THERE WAS A VERY FEW PEOPLE, SO YES.

10:43AM

11 Q OKAY. IT SAYS?

12 TOGETHER THEY HAVE OVERSEEN
13 THESE EFFORTS FOR THE DOUBLELINE
14 TEAM FOR THE PAST DECADE.

15 OBVIOUSLY, THAT REFERRED TO TCW, RIGHT?

10:44AM

16 MR. BRIAN: OBJECT. YOUR HONOR, HE'S
17 TESTIFIED HE DID NOT PREPARE THE DOCUMENT OR REVIEW IT.

18 THE COURT: OVERRULED.

19 THE WITNESS: I WOULD ASSUME SO, YES.

20 BY MR. MADISON:

10:44AM

21 Q IT SAYS:

22 OUR PROPRIETARY SYSTEMS --

23 LET ME STOP RIGHT THERE.

24 NOW IT'S TALKING ABOUT DOUBLELINE'S
25 PROPRIETARY SYSTEMS?

10:44AM

26 MR. BRIAN: OBJECTION. NO FOUNDATION.

27 MR. MADISON: I WANT YOUR UNDERSTANDING AS THE
28 HEAD OF THE GROUP HERE.

1 THE COURT: YES. OVERRULED.

2 GO AHEAD.

3 THE WITNESS: YES, DOUBLELINE'S PROPRIETARY
4 SYSTEMS.

5 BY MR. MADISON:

10:44AM

6 Q (READING):

7 -- PROVIDE A CENTRALIZED PLATFORM
8 TO ENHANCE COMMUNICATIONS,
9 EFFICIENCY AND RISK MANAGEMENT
10 OVERSIGHTING EVERY ASPECT OF OUR
11 BUSINESS.

10:44AM

12 THEN IT SAYS:

13 WE HAVE REBUILT OUR SYSTEMS
14 IMPLEMENTING IMPROVEMENTS AND
15 ENHANCEMENTS THAT ARE A NATURAL
16 EVOLUTION OF OUR TECHNOLOGY.

10:44AM

17 WAS THAT LAST SENTENCE A TRUE STATEMENT,
18 IN YOUR MIND?

19 A WELL, I DON'T THINK WE -- WE DIDN'T HAVE A
20 SYSTEM TO START WITH, SO WE WERE REBUILDING THE
21 FUNCTIONALITY WE HAD WHEN WE WERE AT TCW.

10:44AM

22 Q YOU'RE SAYING YOU CAN'T REBUILD OUR SYSTEMS
23 AND IMPLEMENT IMPROVEMENTS AND ENHANCEMENTS THAT ARE A
24 NATURAL EVOLUTION UNLESS YOU'RE BUILDING ON SOMETHING
25 THAT ALREADY EXISTED, RIGHT?

10:45AM

26 MR. BRIAN: MISSTATES TESTIMONY.

27 THE COURT: SUSTAINED.

28 BY MR. MADISON:

1 Q WHAT DID YOU MEAN, SIR, WHEN YOU SAID IT
2 WASN'T QUITE ACCURATE?

3 A THAT THERE WAS NO SYSTEM TO START WITH. BUT,
4 WE HAD THE KNOWLEDGE THAT WE HAD GAINED WHEN WE WERE AT
5 TCW REGARDING WHAT FUNCTIONALITY WE WANTED IN THE
6 SYSTEMS.

10:45AM

7 AND IT MAKES SENSE TO THEM, IF YOU'RE
8 GOING TO BUILD A SYSTEM, YOU'LL BUILD IT BETTER -- IT
9 DOESN'T MAKE SENSE TO BUILD IT WORSE THAN YOU HAD
10 BEFORE. IT MAKES SENSE TO BUILD IT BETTER.

10:45AM

11 Q DO YOU AGREE THAT SENTENCE SUGGESTS THAT THERE
12 WAS A PREEXISTING SYSTEM THAT WAS BEING REBUILT,
13 ENHANCED AND IMPROVED?

14 MR. BRIAN: NO FOUNDATION.

15 THE COURT: SUSTAINED.

10:45AM

16 BY MR. MADISON:

17 Q AS THE DIRECTOR OF TECHNOLOGY FOR DOUBLELINE
18 WITH ALL THE TECHNOLOGY UNDERNEATH YOU, DO YOU AGREE
19 WITH WHAT THAT STATEMENT SAYS?

20 MR. BRIAN: OBJECTION. YOUR HONOR, CALLS FOR
21 SPECULATION.

10:45AM

22 THE COURT: SUSTAINED. THE DOCUMENT'S IN
23 EVIDENCE, MR. MADISON.

24 MR. MADISON: ALL RIGHT.

25 THE COURT: YOU CAN -- WELL --

10:45AM

26 BY MR. MADISON:

27 Q LET ME PUT EXHIBIT 2116 IN FRONT OF YOU.

28 A 2116?

1 Q 2116. IT SHOULD BE IN THE BINDER.

2 THIS IS AN E-MAIL EXCHANGE BETWEEN YOU
3 AND OTHERS.

4 I MOVE 2116, YOUR HONOR.

5 THE COURT: ANY OBJECTION?

10:46AM

6 MR. BRIAN: NO OBJECTION.

7 THE COURT: ADMITTED.

8
9 (EXHIBIT 2116 ADMITTED.) +

10
11 BY MR. MADISON:

12 Q IF WE PUBLISH THIS IN YOUR E-MAIL TO
13 MS. VANEVERY, MS. ALI, MS. CODY, AND MS. HO
14 JANUARY 22ND, 2010, THIS IS AT DOUBLELINE, CORRECT?

15 A YES.

10:46AM

16 Q THEY ALL WORK AT DOUBLELINE WITH YOU?

17 A YES, THEY DO.

18 Q IT SAYS:

19 RFP'S AND PRESENTATIONS.

20 RFP'S ARE -- CLIENTS ISSUE AN RFP
21 TO SEE IF YOU'LL BE APPROPRIATE TO
22 MANAGE THEIR MONEY, RIGHT?

10:46AM

23 A RFP IS FOR REQUEST FOR PROPOSAL.

24 Q YOU'RE TALKING ABOUT PRESENTATIONS AND RFP
25 STATEMENTS THAT ARE GOING TO BE MADE TO POTENTIAL
26 CLIENTS, RIGHT?

10:46AM

27 A OR CURRENT CLIENTS.

28 Q SAYS:

1 FOR LEGAL REASONS WHEN WE ARE
2 REFERRING TO DOUBLELINE'S FRONT END
3 APPLICATIONS, THAT CASEY/FAN/JP --
4 THAT CASEY/FAN/JP ARE BUILDING,
5 PLEASE DO NOT USE THE WORD
6 PROPRIETARY. INSTEAD, USE
7 CUSTOMIZE. THANKS.

10:47AM

8 YOU WERE DIRECTING SOME OF YOUR PEOPLE
9 TO NOT USE THE WORD PROPRIETARY IN DESCRIBING
10 PROPRIETARY SYSTEMS, RIGHT?

10:47AM

11 A THAT'S CORRECT.

12 Q AND WE SAW, IN 9802, THAT THERE WAS ALREADY AT
13 LEAST ONE STATEMENT DESCRIBING PROPRIETARY SYSTEMS AT
14 DOUBLELINE, CORRECT?

15 A YES.

10:47AM

16 Q AND THE LEGAL REASONS WERE THAT YOU WANTED TO
17 TAKE THE POSITION THAT NOTHING WAS PROPRIETARY;
18 THEREFORE, THERE WAS NOTHING WRONG IF ANY OF IT WAS
19 TAKEN FROM TCW, RIGHT?

20 A NO. IT WAS -- THIS WAS AFTER THE LAWSUIT WAS
21 FILED, AND THERE WAS A LOT OF BIG -- THE WORD
22 PROPRIETARY BECAME A -- I DON'T KNOW, LIKE A
23 BUZZ-WORD-TYPE WORD.

10:47AM

24 AND, YOU KNOW, IN MY MIND WE CAN CHANGE
25 PROPRIETARY TO CUSTOMIZE AND NOT LOSE IMPACT FROM
26 MARKETING OR MARKETING PRESENTATION OR RFP.

10:47AM

27 Q DO YOU AGREE, AS HEAD OF TECHNOLOGY AT
28 DOUBLELINE AT THAT TIME AT LEAST, DOUBLELINE HAD

1 PROPRIETARY SYSTEMS?

2 A YES.

3 Q SO YOU WERE DIRECTING THE PEOPLE TO CALL
4 PROPRIETARY SYSTEMS SOMETHING ELSE?

5 A YES.

10:48AM

6 Q IT RELATED TO THE LAWSUIT?

7 A THAT'S CORRECT.

8 Q NOW, I BELIEVE YOU WERE ASKED ABOUT SOURCE
9 CODE AND ANALYTICS.

10 AND I WANTED JUST TO HAVE YOU LOOK AT
11 EXHIBIT 260. THIS IS IN EVIDENCE, PAGE 3 VERY QUICKLY.
12 I THINK WE'VE LOOKED AT THIS ALREADY THIS WEEK.

10:48AM

13 IT'S TCW M.B.S. INVESTMENT TECHNOLOGY
14 MATERIALS. THEN IF YOU GO TO PAGE 3, DO YOU HAVE THAT,
15 MR. MAYBERRY?

10:48AM

16 A YES, I DO.

17 Q REMEMBER, THIS IS THE TWO BOXES THAT DESCRIBE
18 THE THIRD-PARTY SUBSCRIPTIONS AND SERVICES ON THE LEFT
19 AND THE PROPRIETARY SYSTEMS AT TCW ON THE RIGHT.

20 CORRECT?

10:49AM

21 A RIGHT. YES.

22 Q ALL RIGHT.

23 IF WE LOOK IN THE LOWER RIGHT-HAND
24 CORNER OF THE BOX ON THE RIGHT, UNDER PROPRIETARY
25 SYSTEMS, THE M.B.S. REPORTING DATABASE IS LISTED THERE,
26 CORRECT?

10:49AM

27 A YES.

28 Q THAT'S ONE THING THAT WE KNOW YOU DID DOWNLOAD

1 ONTO YOUR FLASH DRIVE, CORRECT?

2 MR. BRIAN: THIS WAS COVERED YESTERDAY. ASKED
3 AND ANSWERED.

4 THE COURT: WE'VE BEEN THROUGH IT ONCE.

5 MR. MADISON: NOT ON THE FLASH DRIVE. I JUST
6 HAVE ONE OR TWO QUESTIONS.

7 THE COURT: GO AHEAD.

8 BY MR. MADISON:

9 Q THIS WAS DOWNLOADED ONTO YOUR FLASH DRIVE,
10 CORRECT?

11 A THE M.B.S. DATABASE?

12 Q YES, SIR.

13 A YES.

14 Q THAT WAS A PROPRIETARY SYSTEM THAT WAS ON YOUR
15 FLASH DRIVE, FROM --

16 A YES.

17 Q YOU WERE ASKED A NUMBER OF QUESTIONS ABOUT
18 USE, AND WE HAVE TWO DOCUMENTS THAT ARE ALREADY IN
19 EVIDENCE, AND I WANT TO JUST ASK YOU IF YOU'VE HAD A
20 CHANCE TO LOOK AT THEM.

21 ONE IS EXHIBIT 393. AND THIS IS A
22 CLIENT PRESENTATION FROM TCW.

23 IT'S IN EVIDENCE, YOUR HONOR.

24 IF I COULD JUST DISPLAY THE FIRST PAGE.

25 MR. WEINGART: I'M NOT SURE THIS IS IN
26 EVIDENCE.

27 MR. BRIAN: IT'S NOT IN EVIDENCE.

28 THE COURT: 393.

1 MR. MADISON: MAY I HAVE JUST ONE MOMENT?

2 THE COURT: IT'S NOT.

3
4 (PAUSE) +

5
6 MR. MADISON: I THINK IT'S IN EVIDENCE IN
7 ANOTHER ITERATION, YOUR HONOR.

8 LET ME GO TO ANOTHER EXHIBIT. I BELIEVE
9 IT IS IN, AND THAT'S 981. HOLD ON A SECOND.

10 THE COURT: DO WE HAVE EXHIBIT 981?

11 THE CLERK: NO, YOUR HONOR.

12 THE COURT: 981 IS NOT IN EVIDENCE, EITHER.

13 MR. MADISON: LET ME USE 719. THAT HAS THE
14 SAME INFORMATION, YOUR HONOR.

15 THE COURT: HAS THAT BEEN ADMITTED?

16 THE CLERK: YES.

17 THE COURT: ALL RIGHT.

18 MR. BRIAN: I THINK WE NEED A BINDER FOR THAT,
19 THEN.

20 THE WITNESS: I DON'T HAVE 719.

21 THE COURT: WE'LL PUT IT UP ON THE SCREEN.

22 CAN YOU SEE THIS? CAN YOU SEE IT ON THE
23 SCREEN?

24 THE WITNESS: YEP. UH-HUH.

25 MR. MADISON: THIS IS IN EVIDENCE, YOUR HONOR.
26 I'M GOING TO DISPLAY IT.

27 Q THIS IS THE DOUBLELINE PRESENTATION TO EITHER
28 A CLIENT OR POTENTIAL CLIENT, CALLED NEW HAMPSHIRE

1 RETIREMENT SYSTEM.

2 DO YOU REMEMBER SEEING THIS IN COURT
3 YESTERDAY?

4 A NO, I DON'T.

5 Q IF WE GO TO PAGE 12, THERE'S A DISCUSSION OF
6 THE M.B.S. INVESTMENT PROCESS AT DOUBLELINE.

10:52AM

7 IF WE GO TO THE NEXT PAGE.

8 THE COURT: NOW WE'RE ON 13?

9 MR. MADISON: PAGE 13, YES, YOUR HONOR.

10 THERE ARE A SERIES OF BOXES THERE.

10:52AM

11 Q YOU WOULD HAVE HAD RESPONSIBILITY, AT LEAST IN
12 THE EARLY MONTHS AT DOUBLELINE, FOR HOW MANY OF THESE
13 DIFFERENT BOXES, SIR, IN WHOLE OR IN PART?

14 A THREE OUT OF THE FIVE.

15 Q WHICH WOULD THOSE BE, SIR?

10:52AM

16 A RESEARCH.

17 CERTAINLY RISK MANAGEMENT.

18 AND PORTFOLIO ANALYTICS.

19 AND SOME OVERVIEW OF THE INVESTMENT
20 TECHNOLOGY.

10:52AM

21 Q THEN IF WE GO TO THE NEXT PAGE, 14, THIS IS A
22 DESCRIPTION OF RESEARCH AT DOUBLELINE.

23 DO YOU RECALL --

24 THE COURT: WAIT A MINUTE.

25 OKAY. GO AHEAD. EXCUSE ME.

10:53AM

26 MR. MADISON: I'M SORRY.

27 Q DO YOU RECALL MR. KALE WAS ON THE STAND
28 YESTERDAY, AND WE WERE COMPARING THIS TO AN ALMOST

1 IDENTICAL DOCUMENT FROM TCW?

2 MR. BRIAN: OBJECTION. YOUR HONOR, FORM.
3 MISSTATES THE TESTIMONY.

4 THE COURT: YES, LET'S REFER TO THE DOCUMENT.
5 YOU GOT SOMETHING IN EVIDENCE WE'LL LOOK
6 AT IT? 10:53AM

7 MR. MADISON: OKAY. VERY WELL. GO TO THE
8 NEXT PAGE.

9 Q THIS WOULD BE YOUR JURISDICTION AT DOUBLELINE,
10 RIGHT, UNDER RESEARCH? 10:53AM

11 A YEAH, LITTLE BIT, YES.

12 Q IF WE GO TO THE NEXT PAGE, 15.

13 THIS, TOO, WOULD HAVE BEEN YOUR
14 BAILIWICK AT DOUBLELINE, RISK MANAGEMENT AND PORTFOLIO
15 ANALYTICS, RIGHT? 10:53AM

16 A YES, YES.

17 Q IF WE LOOK AT THE FIRST BULLET POINT UNDER THE
18 FIRST PARAGRAPH --

19 THE COURT: NOW PAGE 15?

20 MR. MADISON: YES, YOUR HONOR. 10:54AM

21 THE COURT: ALL RIGHT.

22 BY MR. MADISON:

23 Q -- IT SAYS:

24 BUILDING AND MAINTAINING ALL
25 SYSTEMS PROPRIETARY AND
26 THIRD-PARTY. 10:54AM

27 SO, AGAIN, THAT WOULD BE A REFERENCE TO
28 A DOUBLELINE PROPRIETARY SYSTEM?

1 A YES, IT WOULD.

2 Q AS WELL AS THIRD-PARTY SYSTEMS, CORRECT?

3 A CORRECT.

4 Q IF WE GO TO THE NEXT PAGE, IT TALKS ABOUT
5 PORTFOLIO MANAGEMENT.

10:54AM

6 THAT WAS AN AREA NOT UNDER YOUR PURVIEW
7 AT DOUBLELINE, CORRECT?

8 A CORRECT.

9 Q AND THEN IF WE GO TO THE NEXT PAGE, IT SAYS:
10 PORTFOLIO MANAGEMENT.

10:54AM

11 THIS IS INVESTMENT TECHNOLOGY. HERE
12 AGAIN, THIS IS YOUR RESPONSIBILITY AT DOUBLELINE AS OF
13 EARLY 2010, CORRECT?

14 A YES.

15 Q IF WE LOOK AT THE SECOND BULLET POINT, IT
16 SAYS:

10:54AM

17 PROPRIETARY SYSTEMS CENTRALIZE,
18 INTEGRATE DATA FROM LEADING
19 INDUSTRY PROVIDERS INTO OUR
20 ANALYTICS PLATFORM.

10:55AM

21 THEN, FINALLY, ON TRADING, THE LAST
22 PAGE, I TAKE IT THIS WAS THE PORTFOLIO MANAGERS, NOT
23 YOU?

24 A CORRECT. I WASN'T INVOLVED IN THIS.

25 Q THE SECOND LINE SAYS:

10:55AM

26 PROPRIETARY TRADING SYSTEMS.

27 DO YOU HAVE ANY FAMILIARITY WITH
28 THOSE -- WHAT THOSE PROPRIETARY SYSTEMS ARE?

1 A I THINK IT'S -- I DON'T -- I DIDN'T REALLY
2 CREATE THIS DOCUMENT. I DON'T KNOW EXACTLY WHAT IT'S
3 REFERRING TO. BUT THE SAME SYSTEMS USED FOR ANALYTICS
4 YOU CAN USE FOR TRADING.

5 Q OKAY.

10:55AM

6 I BELIEVE THE OTHER DOCUMENT WE SAW
7 YESTERDAY, THAT IS IN EVIDENCE, YOUR HONOR, IS 948.

8 THE COURT: ALL RIGHT.

9 MR. MADISON: SO IF WE CAN DISPLAY THESE SIDE
10 BY SIDE FOR MR. MAYBERRY.

10:56AM

11 THE COURT: I THINK WE DID THE SAME THING WITH
12 MR. KALE, DIDN'T WE?

13 MR. MADISON: WE DID. I WANT TO ASK
14 MR. MAYBERRY ABOUT THE AREAS HE HAS.

15 LET'S JUST GO TO THE NEXT PAGE ACTUALLY,
16 TO SAVE A LITTLE TIME, HERE.

10:56AM

17 Q WE'VE LOOKED AT THE ONE ON THE RIGHT OF THE
18 SCREEN, 719, AND YOU CAN SEE BY LOOKING AT 948, PAGE 2,
19 THAT ESSENTIALLY IT HAS THE SAME INFORMATION, JUST
20 DISPLAYED DIFFERENTLY IN DIFFERENT GEOMETRIC SHAPES?

10:57AM

21 THE COURT: IS THAT A QUESTION?

22 MR. MADISON: IT IS, YOUR HONOR.

23 MR. BRIAN: OBJECTION AS TO FORM.
24 ARGUMENTATIVE.

25 THE COURT: OKAY.
26 BY MR. MADISON:

10:57AM

27 Q DO YOU KNOW WHO ACTUALLY PUT TOGETHER THE
28 DOUBLELINE VERSION OF THIS INFORMATION?

1 A NO, I DO NOT.

2 Q WHO WOULD YOU ASK IF YOU WANTED TO FIND THAT
3 OUT?

4 A SOMEONE IN THE COMMUNICATIONS DEPARTMENT.

5 Q SO MS. VANEVERY, FOR EXAMPLE, THE DIRECTOR OF
6 COMMUNICATIONS?

10:57AM

7 A SHE WOULD BE A GOOD CHOICE, YES.

8 Q IF WE GO TO THE NEXT PAGE, WHICH I BELIEVE WAS
9 YOUR -- ONE OF YOUR AREAS, GO OVER TO RESEARCH.

10 AGAIN, IF WE COMPARE, WE'LL SEE IT'S
11 ESSENTIALLY WORD FOR WORD --

10:57AM

12 MR. BRIAN: OBJECTION. CUMULATIVE, YOUR
13 HONOR.

14 THE COURT: SUSTAINED.

15 MR. MADISON: WELL --

10:58AM

16 THE COURT: IF YOU HAVE A QUESTION,
17 MR. MADISON, ASK A QUESTION.

18 MR. MADISON: OKAY.

19 Q SINCE THIS WAS YOUR AREA AT DOUBLELINE, DO YOU
20 KNOW HOW IT WAS THAT DOUBLELINE CAME TO PUBLISH THE
21 EXACT SAME DESCRIPTION OF THIS FUNCTION --

10:58AM

22 THE COURT: WE HAVE -- GO AHEAD.

23 THE WITNESS: NO, I DON'T.

24 BY MR. MADISON:

25 Q IT WOULD BE THE SAME ANSWER TO MS. VANEVERY WE
26 SHOULD DIRECT THAT?

10:58AM

27 A YES, YES.

28 Q AND AS TO THE OTHER PAGES, WOULD IT BE THE

1 SAME ANSWER AS WELL?

2 A YEAH, I DON'T KNOW WHO CREATED ANY OF THE
3 PAGES.

4 Q BEING THE HEAD OF TECHNOLOGY AT DOUBLELINE,
5 WOULD YOU AGREE THAT A CLIENT RECEIVING THESE TWO
6 DOCUMENTS WOULD UNDERSTAND THAT THEY WERE DESCRIBING
7 THE EXACT SAME SYSTEM?

10:58AM

8 MR. BRIAN: OBJECTION, CALLS FOR SPECULATION.

9 THE COURT: SUSTAINED.

10 BY MR. MADISON:

10:58AM

11 Q WOULD THAT BE YOUR UNDERSTANDING AS THE HEAD
12 OF TECHNOLOGY, IF YOU WERE LOOKING AT THE EXACT SAME
13 WORDS, THAT WOULD BE THE SAME SYSTEM --

14 MR. BRIAN: OBJECTION. FOUNDATION.
15 ARGUMENTATIVE.

10:58AM

16 THE COURT: SUSTAINED.

17 BY MR. MADISON:

18 Q MR. BRIAN ASKED YOU A NUMBER OF QUESTIONS
19 ABOUT USE OF THE DOWNLOADED ITEMS AT DOUBLELINE, BEFORE
20 YOU WERE CONFRONTED BY TCW ON DECEMBER 4, YOUR
21 UNDERSTANDING WAS THAT MR. GUNDLACH AND MR. SANTA ANA
22 WERE CONSIDERING, OR WOULD CONSIDER, WHETHER OR NOT TO
23 USE THE INFORMATION IN THE NEW BUSINESS, RIGHT?

10:59AM

24 MR. BRIAN: I'LL OBJECT, YOUR HONOR. THAT'S
25 BEYOND THE SCOPE OF THE REOPENED.

10:59AM

26 THE COURT: OVERRULED.

27 I THINK IT'S -- HE'S ALREADY TESTIFIED
28 TO THIS, MR. MADISON.

1 BUT GO AHEAD. I WANT TO MOVE ALONG.
2 DO YOU UNDERSTAND THAT, SIR, THE
3 QUESTION.

4 THE WITNESS: YES.

5 THE COURT: ANSWER.

10:59AM

6 THE WITNESS: MY UNDERSTANDING, THEY WOULD
7 CONSULT WITH LAWYERS AND MAKE A DETERMINATION WHETHER
8 IT WAS PROPER TO USE OR NOT.

9 MR. MADISON: THANK YOU.

10 NOTHING FURTHER.

10:59AM

11 MR. BRIAN: I JUST HAVE A COUPLE REALLY QUICK
12 QUESTIONS. I'LL DO THEM FROM HERE IF THE LADIES AND
13 GENTLEMEN DON'T MIND.

14
15 CROSS-EXAMINATION +

10:59AM

16 BY MR. BRIAN:

17 Q THIS DOCUMENT, ENTITLED NEW HAMPSHIRE
18 RETIREMENT SYSTEM, DID YOU PREPARE THAT DOCUMENT?

19 A NO, I DID NOT.

20 Q DID YOU ATTEND A PRESENTATION TO THE NEW
21 HAMPSHIRE RETIREMENT SYSTEM?

10:59AM

22 A NO, I DID NOT.

23 Q DO YOU EVEN KNOW WHICH PAGES OF THIS WERE
24 ACTUALLY -- ACTUALLY PHYSICALLY PRESENTED?

25 A I DON'T KNOW AT ALL.

11:00AM

26 Q THIS OTHER DOCUMENT, 9802, THAT HE SHOWED YOU
27 THE ONE PAGE THAT HE PUT UP ON THE SCREEN, DID YOU
28 PREPARE THAT DOCUMENT?

1 A NO, I DID NOT.

2 MR. BRIAN: NOTHING FURTHER.

3 THE COURT: ALL RIGHT.

4 MR. MAYBERRY, THANK YOU FOR YOUR
5 TESTIMONY. YOU MAY STEP DOWN.

11:00AM

6 THE WITNESS: THANK YOU.

7 MR. QUINN: TRUST COMPANY OF THE WEST CALLS
8 MATTHEW BRAINARD.

9 THE COURT: ALL RIGHT.

10 MR. QUINN: HE'S ENTERING THE COURTROOM, YOUR
11 HONOR.

11:01AM

12 THE COURT: ALL RIGHT. THANK YOU.

13

14 MATTHEW BRAINARD +
15 CALLED AS A WITNESS BY THE PLAINTIFF WAS SWORN AND
16 TESTIFIED AS FOLLOWS:

17

18 THE CLERK: YOU DO SOLEMNLY STATE THAT THE
19 TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW
20 PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE
21 WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU
22 GOD?

23 THE WITNESS: I DO.

24 THE CLERK: PLEASE BE SEATED.

25 SIR, PLEASE STATE AND SPELL YOUR NAME
26 FOR THE RECORD.

11:01AM

27 THE WITNESS: MATTHEW BRAINARD.

28 THE CLERK: SPELL IT, PLEASE.

1 THE WITNESS: M-A-T-T-H-E-W. LAST NAME
2 B-R-A-I-N-A-R-D.

3 THE CLERK: THANK YOU.

4 THE COURT: GOOD MORNING, MR. BRAINARD.

5 THE WITNESS: GOOD MORNING.

11:01AM

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

7 MR. QUINN: THANK YOU.

8
9 DIRECT EXAMINATION +

10 BY MR. QUINN:

11:01AM

11 Q GOOD MORNING.

12 A GOOD MORNING.

13 Q MY NAME IS JOHN QUINN. I REPRESENT TRUST
14 COMPANY OF THE WEST.

15 WE'VE NEVER MET BEFORE?

11:02AM

16 A NO.

17 Q OR SPOKEN?

18 A NO.

19 Q YOUR DEPOSITION WAS TAKEN IN THIS CASE, AS I
20 UNDERSTAND IT; IS THAT CORRECT?

11:02AM

21 A YES.

22 Q IN YOUR DEPOSITION YOU WERE REPRESENTED BY
23 THESE LAWYERS OVER HERE, LAWYERS FOR DOUBLELINE?

24 A YES. I -- I'VE NEVER MET EITHER ONE OF THEM,
25 BUT ...

11:02AM

26 Q THE SAME LAW FIRM?

27 A YES.

28 Q AND THE COST OF THAT WAS PAID FOR YOUR

1 REPRESENTATION OF YOUR -- AT YOUR DEPOSITION, YOU
2 DIDN'T PAY THAT FOR YOURSELF?

3 A YES, CORRECT.

4 Q THAT WAS PAID FOR BY DOUBLELINE, CORRECT?

5 A YES.

11:02AM

6 Q NOW, IN SEPTEMBER, YOU'RE IN THE BUSINESS, YOU
7 WORK FOR A COMPANY CALLED STUDLEY?

8 A CORRECT.

9 Q THAT'S A COMMERCIAL REAL ESTATE FIRM?

10 A YES.

11:02AM

11 Q WHAT YOU DO IS YOU HELP PEOPLE WHO NEED OFFICE
12 SPACE LOCATE OFFICE SPACE HERE IN LOS ANGELES?

13 A GENERALLY, YES.

14 Q AND YOU GOT A PHONE CALL IN SEPTEMBER OF 2009
15 FROM A BARBARA VANEVERY?

11:02AM

16 MR. BRIAN: OBJECT. LEADING.

17 THE COURT: I DON'T KNOW THAT THIS IS -- THIS
18 WITNESS ISN'T CALLED UNDER 776, IS HE?

19 MR. QUINN: I WILL PHRASE THE QUESTIONS --

20 THE COURT: I'LL GIVE YOU LEEWAY FOR
21 FOUNDATION MATTERS, BUT LET'S --

11:03AM

22 MR. QUINN: ALL RIGHT.

23 Q CAN YOU TELL US WHETHER YOU'VE SPOKEN --
24 WHETHER IN THE FALL OF 2009, WHETHER OR NOT YOU SPOKE
25 WITH A WOMAN BY THE NAME OF BARBARA VANEVERY?

11:03AM

26 A YES, I DID.

27 Q CAN YOU TELL US APPROXIMATELY WHEN THAT WAS?

28 A MIGHT HAVE BEEN SEPTEMBER.

1 Q IF YOU TAKE A LOOK, THERE'S -- IN THE UPPER
2 LEFT-HAND --

3 IF I MAY APPROACH THE WITNESS?

4 THE COURT: YES.

5 MR. QUINN: -- CORNER HERE, THERE'S A BINDER
6 WITH DOCUMENTS IN IT.

11:03AM

7 LET ME GET SOME OF THESE OUT OF THE WAY
8 FOR YOU.

9 Q IF YOU TAKE A LOOK IN THAT BINDER AT THE TO BE
10 WITH 321. THAT'S AN E-MAIL STRING EXCHANGE BETWEEN YOU
11 AND MS. VANEVERY?

11:03AM

12 A YES.

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

14 MR. BRIAN: NO OBJECTION.

15 THE COURT: ADMITTED.

11:04AM

16
17 (EXHIBIT 321 ADMITTED.) +
18

19 MR. QUINN: IF WE COULD PUBLISH THAT, AND YOU
20 LOOK AT THE -- IF WE CAN ENLARGE THE E-MAIL DOWN AT THE
21 BOTTOM.

11:04AM

22 YOU WRITE THERE:

23 HI BARBARA,

24 IT WAS A PLEASURE TALKING WITH
25 YOU EARLIER TODAY.

11:04AM

26 DO YOU SEE THAT?

27 A I DO.

28 Q AND THAT'S DATED SEPTEMBER 29, 2000?

1 A YES.

2 Q AND DOES THAT SEEM LIKE THAT THAT WAS PROBABLY
3 THE FIRST CONTACT YOU HAD WITH MS. VANEVERY?

4 THE COURT: IT WAS 9-29-2009.

5 MR. QUINN: WHAT DID I SAY?

11:04AM

6 THE COURT: 2000. I DON'T KNOW HOW FAR BACK
7 THIS GOES. I WANT TO MAKE SURE WE'RE ON TRACK.

8 MR. BRIAN: WE COULD BE HERE A WHILE.

9 MR. QUINN: SORRY.

10 THE COURT: IF WE NARROW THE PERIOD, LADIES
11 AND GENTLEMEN, IT WON'T TAKE THEM AS LONG.

11:04AM

12 BY MR. QUINN:

13 Q SEEMS LIKE THAT WAS THE FIRST CONTACT THAT YOU
14 GOT FROM HER?

15 A YES.

11:04AM

16 Q AND WHAT DID SHE TELL YOU?

17 A I'M SORRY. IN -- IN OUR CONVERSATION, OUR
18 E-MAIL?

19 Q YEAH, IN YOUR CONVERSATION, DO YOU RECALL
20 WHAT -- DID SHE TELL YOU WHY SHE WAS CALLING?

11:05AM

21 A YES. IT WAS VERY VAGUE, THOUGH.

22 Q DID SHE SAY ANYTHING ABOUT WHETHER SHE WAS
23 LOOKING FOR SPACE?

24 A YES.

25 Q AND DID SHE ACTUALLY GIVE YOU SOME PARAMETERS
26 ABOUT WHAT SHE WAS LOOKING FOR?

11:05AM

27 A YES.

28 Q NOW, DID SHE TELL YOU THAT SHE HAD BEEN

1 REFERRED TO YOU BY MR. JEFFREY GUNDLACH?

2 A YES.

3 Q AND BECAUSE -- HAVE YOU DONE PRIOR
4 TRANSACTIONS, REAL ESTATE TRANSACTIONS, WITH
5 MR. GUNDLACH?

11:05AM

6 A YES.

7 Q AND WHAT PARAMETERS DID SHE GIVE YOU IN TERMS
8 OF THE AMOUNT OF SPACE THAT SHE WAS LOOKING FOR?

9 A I BELIEVE WE WERE TALKING AROUND 20- TO 30,000
10 SQUARE FEET OF CLASS A OFFICE SPACE.

11:05AM

11 Q DID SHE INDICATE TO YOU WHETHER OR NOT THIS
12 WOULD BE FOR A NEW BUSINESS OR FOR AN EXISTING
13 BUSINESS?

14 A IT SOUNDED LIKE A NEW VENTURE.

15 Q IF YOU TAKE A LOOK AT EXHIBIT 355, AT THE
16 SECOND PAGE OF THAT EXHIBIT, DO YOU RECALL HER -- DOES
17 THIS REFRESH YOUR RECOLLECTION THAT SHE TOLD YOU THIS
18 WOULD BE FOR A, AS YET AN INVESTMENT MANAGEMENT
19 VENTURE? DID SHE TELL YOU THAT?

11:06AM

20 A YES.

11:06AM

21 Q AND SHE TOLD YOU IT WAS -- TOLD YOU IT WAS
22 GOING TO BE IN THE INVESTMENT BUSINESS?

23 A YES.

24 Q AND DID YOU THEN -- CAN YOU TELL US WHETHER
25 YOU THEN SET UP A MEETING WITH HER?

11:06AM

26 A YES, WE DID.

27 Q AND WHAT WAS THAT?

28 A GENERALLY GOT TOGETHER FOR LUNCH --

1 Q ALL RIGHT.

2 A -- AND TALKED A BIT MORE ABOUT THE
3 REQUIREMENT.

4 Q AND AT THAT TIME DID SHE TELL YOU WHETHER OR
5 NOT MR. GUNDLACH WAS GOING TO BE INVOLVED IN THIS NEW
6 VENTURE?

11:07AM

7 A I BELIEVE IT CAME OUT AT THAT POINT.

8 Q RIGHT.

9 AND DID SHE TELL YOU WHETHER OR NOT HE
10 WAS ACTUALLY GOING TO BE IN CHARGE OF THIS NEW BUSINESS
11 MANAGEMENT VENTURE?

11:07AM

12 A THAT WAS UNCLEAR.

13 Q BUT YOU KNEW, AT LEAST AT THAT POINT, THAT HE
14 WAS GOING TO BE A PART OF IT?

15 A I BELIEVE SO.

11:07AM

16 Q DID YOU COME TO A POINT WHERE YOU ACTUALLY
17 SHOWED PROPERTIES TO MS. VANEVERY?

18 A YES.

19 Q WAS MR. GUNDLACH THERE ALSO?

20 A AT TIMES.

11:07AM

21 Q SO, AT LEAST SOMETIMES, WERE THEY BOTH THERE
22 AND YOU WERE TOURING PROPERTIES WITH THE TWO OF THEM?

23 A YES, SOMETIMES.

24 Q DID SHE TELL YOU WHAT THE NAME -- DID SHE GIVE
25 YOU A NAME FOR THIS NEW BUSINESS VENTURE?

11:07AM

26 A NOT AT THAT TIME.

27 Q AT SOME POINT, DID SHE TELL YOU A NAME FOR IT?

28 A I'M NOT SURE IF IT WAS HER OR SOMEBODY ELSE

1 THAT GAVE ME A TEMPORARY NAME.

2 Q THEY GAVE YOU A TEMPORARY NAME?

3 A YES.

4 Q AND WHAT WAS THAT TEMPORARY NAME?

5 A ABLE GRAPE.

11:08AM

6 Q CAN YOU TELL US WHO THE POSSIBILITIES ARE?
7 YOU SAY YOU WEREN'T SURE IF IT WAS HER WHO TOLD YOU
8 ABOUT THIS TEMPORARY NAME, ABLE GRAPE. IS THERE
9 SOMEBODY ELSE WHO MIGHT POSSIBLY HAVE TOLD YOU THAT
10 TEMPORARY NAME?

11:08AM

11 A YES.

12 Q WHO IS THAT?

13 A GREG WARD.

14 Q ALL RIGHT.

15 DID YOU KNOW ABOUT THIS TEMPORARY NAME
16 AS OF OCTOBER 3RD, 2009, DO YOU RECALL?

11:08AM

17 A I DON'T RECALL.

18 Q I WANT YOU TO TAKE A LOOK AT EXHIBIT 401 IN
19 YOUR BOOK.

20 DO YOU HAVE THAT BEFORE YOU?

11:08AM

21 A I DO.

22 Q AND IS THIS A REQUEST FOR PROPOSAL THAT YOU
23 SENT OUT FOR THIS NEW FINANCIAL MANAGEMENT BUSINESS?

24 A YES, IT APPEARS THAT WAY.

25 Q IT'S SIGNED BY YOU, I THINK AT THE END. IF
26 YOU LOOK AT THE FOURTH PAGE.

11:09AM

27 A YES.

28 MR. QUINN: WE'D OFFER EXHIBIT 401, YOUR

1 HONOR.

2 MR. BRIAN: OBJECTION. HEARSAY.

3 THE COURT: OVERRULED. IT WILL BE ADMITTED.

4
5 (EXHIBIT 401 ADMITTED.) +

11:09AM

6
7 MR. QUINN: WE'D REQUEST THAT THAT BE
8 PUBLISHED, YOUR HONOR.

9 THE COURT: IT MAY BE PUBLISHED.

10 BY MR. QUINN:

11:09AM

11 Q THIS IS A REQUEST FOR PROPOSAL DATED -- THIS
12 ONE'S DATED NOVEMBER 2ND, 2009, CORRECT?

13 A YES.

14 Q AND THIS IS BASICALLY SOMETHING THAT YOU SEND
15 TO A LANDLORD OR SOMEBODY WHO'S MANAGING SOME SPACE TO
16 SEE IF THEY'VE GOT SOME SPACE AVAILABLE THAT MIGHT MEET
17 YOUR CLIENT'S NEEDS?

11:10AM

18 A YES, REQUEST FOR PROPOSAL.

19 Q THAT'S WHAT IT DOES, IN EFFECT, RIGHT?

20 A YES.

11:10AM

21 Q AND IF YOU'D LOOK -- IF WE COULD ENLARGE THAT
22 FIRST INDENTED PARAGRAPH, IT SAYS SUBTENANT.

23 WHAT YOU WROTE IS:

24 THE SUBTENANT WOULD BE ABLE
25 GRAPE LLC, A TEMPORARY ENTITY NAME
26 FOR AN ASSET MANAGEMENT BUSINESS
27 LED BY WELL-KNOWN INDUSTRY VETERANS
28 WITH A HIGHLY SUCCESSFUL -- AM I

11:10AM

1 BLOCKING FOLKS' VIEW -- HIGHLY
2 SUCCESSFUL AND PROVEN TRACK RECORD.

3 ABLE GRAPE LLC HAS -- IS IN
4 EXCESS OF DOLLARS -- THERE'S A
5 BLANK -- UNDER MANAGEMENT.

11:11AM

6 DO YOU SEE THAT?

7 A YES.

8 Q SO, AT LEAST AS OF NOVEMBER 2ND, 2009, YOU
9 KNEW THE NAME ABLE GRAPE, RIGHT?

10 A YES.

11:11AM

11 Q YOU'VE TOLD US YOU LEARNED THAT NAME FROM
12 EITHER BARBARA VANEVERY AND OR GREG WARD, RIGHT?

13 A YES.

14 Q BUT YOU DIDN'T ACTUALLY HAVE ANY COMMUNICATION
15 WITH GREG WARD UNTIL WELL AFTER NOVEMBER 2ND; ISN'T
16 THAT TRUE?

11:11AM

17 MR. BRIAN: LEADING.

18 THE COURT: SUSTAINED.

19 BY MR. QUINN:

20 Q DO YOU REMEMBER WHETHER OR NOT --

11:11AM

21 A I DO NOT REMEMBER.

22 Q YOU DON'T REMEMBER WHETHER YOU'D SPOKEN TO
23 GREG WARD OR HAD COMMUNICATION WITH HIM AS OF
24 NOVEMBER 2?

25 A I DON'T REMEMBER THE TIMING.

11:11AM

26 Q WELL, TAKE A LOOK, IF YOU WOULD, PLEASE, AT
27 EXHIBIT 1203.

28 A IS THAT TAB 203?

1 Q YES. 1203. SHOULD BE THE SAME AS THE TAB,
2 WITH ANY LUCK.

3 A GOT IT.

4 Q IS THAT AN E-MAIL WHICH YOU RECEIVED FROM
5 GREG WARD?

11:11AM

6 A IT APPEARS THAT WAY.

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

8 THE COURT: ANY OBJECTION?

9 MR. BRIAN: MAY I HAVE A MOMENT, YOUR HONOR?

10 (PAUSE) +

11:12AM

11
12 MR. BRIAN: NO OBJECTION.

13 THE COURT: IT WILL BE ADMITTED.

14
15 (EXHIBIT 1203 ADMITTED.) +

11:12AM

16
17 BY MR. QUINN:

18 Q SO THIS IS AN E-MAIL FROM A GREGORY WARD TO
19 YOU, DATED NOVEMBER 18TH.

20 THAT'S A COUPLE OF WEEKS AFTER THAT
21 REQUEST FOR PROPOSAL WE WERE JUST LOOKING AT, RIGHT?

11:12AM

22 A YES.

23 Q AND HE'S INDICATING:

24 I HAVEN'T BEEN FORMALLY
25 INTRODUCED TO YOU YET, BUT I'M THE
26 CFO OF ABLE GRAPE LLC,. THUS FAR I
27 HAVE FOLLOWED THE SEARCH FOR OFFICE
28 SPACE THROUGH BARBARA AND JEFFREY,

11:12AM

1 AND HE SAYS HE'S NOW GOING TO GET
2 INVOLVED AND WANTS TO MEET WITH
3 YOU.
4 RIGHT?

5 A YES.

11:12AM

6 Q ALL RIGHT.

7 DO YOU RECALL HAVING ANY COMMUNICATION
8 WITH MR. WARD PRIOR TO GETTING THIS E-MAIL,
9 NOVEMBER 18TH?

10 A I DO NOT RECALL.

11:12AM

11 Q ALL RIGHT.

12 NOW, AS YOU LOOK AT THIS, IF WE CAN GO
13 BACK, THEN, TO EXHIBIT 401, DATED NOVEMBER 2ND, DOES IT
14 SEEM TO YOU NOW THAT, AS OF THE DATE OF THIS DOCUMENT,
15 YOU HAD NOT YET COMMUNICATED WITH MR. WARD, THAT HE
16 DIDN'T INTRODUCE HIMSELF UNTIL ABOUT NOVEMBER 18TH?

11:13AM

17 A YES.

18 Q ALL RIGHT.

19 SO, THE NAME ABLE GRAPE THAT APPEARS
20 HERE, YOU MUST HAVE LEARNED THAT FROM BARBARA VANEVERY?

11:13AM

21 A PROBABLY.

22 Q YOU SAID THERE WERE TWO PEOPLE --

23 A FROM WHAT I REMEMBER, YES.

24 Q RIGHT.

25 IT WAS, AS YOU THINK ABOUT IT, YOU
26 PROBABLY LEARNED ABOUT THAT FROM BARBARA VANEVERY
27 BECAUSE YOU HADN'T -- YOU DIDN'T KNOW GREG WARD EXISTED
28 AS OF NOVEMBER 2ND?

11:13AM

1 A RIGHT.

2 Q AND THE SPACE HERE REFERS TO, THIS IS FOR A
3 REQUEST FOR PROPOSAL AT 2000 AVENUE OF THE STARS?

4 A YES.

5 Q AND IS THAT ALSO KNOWN AS THE C.A.A. BUILDING?

11:13AM

6 A YES.

7 Q IF YOU'D LOOK AT EXHIBIT 402, PLEASE.

8 IS THIS ANOTHER REQUEST FOR PROPOSAL YOU
9 SUBMITTED ON DIFFERENT SPACE ON BEHALF OF ABLE GRAPE?

10 A YES.

11:14AM

11 Q AND THIS ONE'S DATED OCTOBER 3RD, 2009, THE
12 NEXT DAY, RIGHT?

13 A CORRECT.

14 MR. QUINN: WE'D OFFER THAT, EXHIBIT 402.

15 MR. BRIAN: I THINK HE SAID OCTOBER 3RD. I
16 MAY HAVE MISHEARD.

11:14AM

17 MR. QUINN: NOVEMBER 3RD.

18 THE COURT: OKAY.

19 THE WITNESS: I'M LOOKING AT THE HIGHLIGHT.

20 MR. BRIAN: I WOULD HAVE THE SAME HEARSAY
21 OBJECTION.

11:14AM

22 THE COURT: I'LL ADMIT IT.

23

24 (EXHIBIT 402 ADMITTED.) +

25

11:14AM

26 MR. QUINN: IF WE CAN PUT THAT UP ON THE
27 SCREEN.

28 Q THIS RELATES TO DIFFERENT SPACE, AND UNDER

1 SUBTENANT WE HAVE THAT SAME LANGUAGE. YOU IDENTIFY
2 ABLE GRAPE LLC AS A TEMPORARY ENTITY NAME OR AN ASSET
3 MANAGEMENT BUSINESS LED BY WELL-KNOWN INDUSTRY VETERANS
4 WITH A HIGHLY SUCCESSFUL AND PROVEN TRACK RECORD. ABLE
5 GRAPE LLC HAS ASSETS IN EXCESS OF \$50 BILLION UNDER
6 MANAGEMENT.

11:15AM

7 DO YOU SEE THAT?

8 A YES.

9 Q WHERE WOULD YOU HAVE GOTTEN THIS INFORMATION
10 THAT YOU HAD ABOUT ABLE GRAPE?

11:15AM

11 MR. BRIAN: OBJECTION. FORM.

12 THE COURT: OVERRULED.

13 DO YOU UNDERSTAND THE QUESTION?

14 THE WITNESS: YES, I BELIEVE SO. HE'S JUST
15 ASKING WHERE I WOULD HAVE GOT THAT INFORMATION.

11:15AM

16 THE COURT: RIGHT.

17 THE WITNESS: SOMEBODY FROM THE ABLE GRAPE
18 TEAM.

19 MR. QUINN: ALL RIGHT.

20 Q AT THIS POINT, AS OF THIS DATE, YOU INDICATE
21 YOU HADN'T SPOKEN TO GREG WARD --

11:15AM

22 A I HAD NOT?

23 Q YOU HAD NOT, AS OF THIS DATE? WE JUST LOOKED
24 AT THAT.

25 A CORRECT. RIGHT.

11:15AM

26 Q WHO ON THE ABLE GRAPE TEAM HAD YOU SPOKEN TO
27 AS OF NOVEMBER 3RD, 2009 WHEN YOU SUBMITTED THIS
28 REQUEST FOR PROPOSAL?

1 A IT WAS MOST LIKELY BARBARA.

2 Q BARBARA?

3 A CORRECT.

4 Q AND HAD YOU YET -- SPOKEN WITH MR. GUNDLACH
5 YET?

11:16AM

6 A IN PERSON.

7 Q I'M SORRY?

8 A ON A TOUR.

9 Q OKAY.

10 SO I ASSUME YOU SPOKE TO EACH OTHER AS
11 YOU'RE TOURING PROPERTIES?

11:16AM

12 A YES.

13 Q SO, WOULD THAT BE THE COMPLETE UNIVERSE OF
14 PEOPLE ASSOCIATED WITH ABLE GRAPE WHO YOU HAD SPOKEN TO
15 AS OF THIS DATE?

11:16AM

16 A YES.

17 Q ALL RIGHT.

18 WHO WOULD HAVE BEEN THE SOURCES FOR THIS
19 INFORMATION, INCLUDING \$50 BILLION OF ASSETS UNDER
20 MANAGEMENT?

11:16AM

21 A YES.

22 MR. BRIAN: OBJECTION. NO FOUNDATION. CALLS
23 FOR SPECULATION.

24 THE COURT: OVERRULED. I'LL ALLOW THE ANSWER
25 TO STAND.

11:16AM

26 BY MR. QUINN:

27 Q IF WE COULD LOOK AT EXHIBIT 370.

28 IS THIS AN E-MAIL STRING BETWEEN YOU AND

1 LANDLORD REPRESENTATIVE RELATED TO, AGAIN, INQUIRIES
2 ABOUT SPACE FOR ABLE GRAPE?

3 A YES.

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

5 MR. BRIAN: OBJECTION, HEARSAY.

11:17AM

6 THE COURT: SUSTAINED.

7 BY MR. QUINN:

8 Q YOU KNEW AT THE TIME, OR AT LEAST YOUR
9 UNDERSTANDING WAS THAT, BASED UPON YOUR CONVERSATIONS
10 WITH MS. VANEVERY AND MR. GUNDLACH, THAT THIS WAS A
11 HIGH-PROFILE ASSET MANAGEMENT GROUP; IS THAT TRUE?

11:17AM

12 MR. BRIAN: OBJECTION, YOUR HONOR, FORM,
13 HEARSAY.

14 THE COURT: OVERRULED. I'LL ALLOW THAT.

15 GO AHEAD.

11:18AM

16 THE WITNESS: PLEASE REPEAT THE QUESTION.

17 BY MR. QUINN:

18 Q DID YOU UNDERSTAND THAT YOU -- THIS WAS A
19 HIGH-PROFILE ASSET MANAGEMENT GROUP THAT YOU WERE
20 WORKING ON BEHALF OF?

11:18AM

21 A YES.

22 Q AND, AGAIN, THAT WOULD HAVE BEEN BASED ON
23 INFORMATION THAT YOU RECEIVED FROM EITHER MS. VANEVERY
24 OR MR. GUNDLACH?

25 A YES.

11:18AM

26 Q IF YOU'D LOOK AT EXHIBIT 4-, WE JUST LOOKED AT
27 EXHIBIT 466. THIS IS NOT IN EVIDENCE, YET. IF YOU'D
28 TURN PLEASE TO EXHIBIT 466.

1 THIS IS A -- IS THIS AN E-MAIL WHICH YOU SENT TO
2 MR. WARD ON NOVEMBER 19TH, 2009?

3 A YES.

4 Q AND DID YOU UNDERSTAND, BASED UPON YOUR
5 CONVERSATIONS WITH MR. WARD, THAT HE WAS COMMUNICATING
6 WITH MR. GUNDLACH AND THAT MR. GUNDLACH WAS REALLY THE
7 ONE CALLING THE SHOTS HERE?

11:19AM

8 MR. BRIAN: OBJECTION. YOUR HONOR, NO
9 FOUNDATION.

10 THE COURT: SUSTAINED.

11:19AM

11 BY MR. QUINN:

12 Q DID MR. WARD, ON BEHALF OF ABLE GRAPE, THANK
13 YOU, TELL YOU HE NEEDED TO CHECK WITH MR. GUNDLACH WITH
14 RESPECT TO DECISIONS REGARDING SPACE?

15 A YES.

11:19AM

16 Q NOW, WERE YOU GIVEN, BY MS. VANEVERY OR
17 MR. GUNDLACH, A TIMEFRAME AS TO WHEN THEY NEEDED TO BE
18 IN THE SPACE? DID THEY GIVE YOU A MANDATE?

19 A FROM WHAT I RECALL, THERE WAS A TIMELINE.

20 Q AND DID THEY ACTUALLY TELL YOU THAT WE HAVE A
21 PARTICULAR TIME PERIOD WHICH IS A MANDATE?

11:20AM

22 A THAT WORD RINGS A BELL.

23 Q ALL RIGHT.

24 WHAT WAS IT? WHAT WAS THE MANDATE?

25 A I DON'T REMEMBER THE EXACT DATE.

11:20AM

26 Q IN TERMS OF MONTH, DO YOU REMEMBER A MONTH?

27 A MARCH, APRIL 2010.

28 Q LET'S TAKE A LOOK AT EXHIBIT 1535.

1 DO YOU HAVE A COLLEAGUE BY THE NAME OF
2 WILLIAM ROBERTSON WHO WAS WORKING WITH YOU,
3 MR. BRAINARD, AT STUDLEY?

4 A YES.

5 Q WAS HE ALSO WORKING ON THIS PROJECT? 11:20AM

6 A YES.

7 Q AND DO YOU RECALL DISCUSSING A MARCH MANDATE
8 THAT YOU HAD BEEN GIVEN TO GET INTO SPACE?

9 A SOUNDS VAGUELY FAMILIAR.

10 Q I MEAN, DIDN'T HE TELL YOU THAT THAT WAS THE 11:21AM
11 MANDATE THAT THEY NEEDED TO BE IN, IN MARCH?

12 MR. BRIAN: OBJECTION. HEARSAY.

13 THE COURT: SUSTAINED.

14 BY MR. QUINN:

15 Q IS THIS A -- CAN YOU IDENTIFY THIS EXHIBIT, 11:21AM
16 EXHIBIT 1535? IS THIS AN E-MAIL STRING ON WHICH YOU'RE
17 COPIED BETWEEN MR. ROBINSON, MR. WARD, MS. VANEVRY,
18 DATED NOVEMBER 17TH, 2009?

19 A I SEE IT.

20 Q OKAY. 11:21AM

21 IS THAT WHAT THAT IS? IT'S AN E-MAIL
22 STRING IN WHICH YOU WERE COPIED?

23 A YES.

24 Q IN WHICH THE TERMS OF THIS ENGAGEMENT WERE
25 DISCUSSED? 11:21AM

26 A YES.

27 MR. QUINN: WE'D OFFER EXHIBIT 1535.

28 MR. BRIAN: OBJECTION, HEARSAY.

1 THE COURT: SUSTAINED.

2 BY MR. QUINN:

3 Q DO YOU RECALL THAT MARCH WAS THE TARGETED
4 OCCUPANCY DATE FOR THIS NEW HIGH-PROFILE INVESTMENT
5 MANAGEMENT BUSINESS WHICH HAD THE TEMPORARY NAME OF
6 ABLE GRAPE?

11:22AM

7 A IT WOULD APPEAR THAT'S THE CASE BY LOOKING AT
8 THIS E-MAIL.

9 MR. BRIAN: MOVE TO STRIKE, YOUR HONOR.

10 THE COURT: I'LL STRIKE THE RESPONSE.

11:22AM

11 HE'S ASKING IF YOU HAVE A RECOLLECTION.
12 YOU'VE TOLD US EARLIER, MARCH, APRIL IS YOUR
13 UNDERSTANDING.

14 THE WITNESS: YES.

15 THE COURT: ALL RIGHT.

11:22AM

16 MR. QUINN: I'M NOT SURE -- WHAT THE "YES"
17 WAS FOR --

18 THE WITNESS: MARCH, APRIL WAS MY
19 RECOLLECTION.

20 MR. QUINN: ALL RIGHT.

11:22AM

21 Q ACTUALLY, IF YOU TAKE A LOOK AT YOUR
22 DEPOSITION THERE, THERE SHOULD BE A COPY OF IT THERE,
23 UNDER THE BINDER, MR. BRAINARD.

24 A YES.

25 Q IF YOU TURN TO PAGE 129, I'M GOING TO ASK YOU,
26 IF YOU WOULD, PLEASE, TAKE A LOOK AND READ TO YOURSELF
27 LINES 7 TO 18.

11:22AM

28

1 (PAUSE) +

2

3 THE WITNESS: OKAY.

4 BY MR. QUINN:

5 Q DOES THAT REFRESH YOUR RECOLLECTION THAT YOU 11:23AM
6 WERE GIVEN AN END OF MARCH MANDATE AS THE TARGET
7 OCCUPANCY DATE?

8 A YES.

9 Q AND THEN YOUR DEALINGS WITH THESE FOLKS --
10 BY THE WAY, DID YOU EVER LEARN THE NAME 11:23AM
11 OF THE ENTITY ABLE GRAPE HAD BEEN CHANGED TO
12 DOUBLELINE?

13 A WAS I AWARE IT WAS CHANGED TO DOUBLELINE?

14 Q YEAH, DID YOU EVER LEARN THAT?

15 A YES. 11:23AM

16 Q AND DID YOU HEAR THAT FROM MR. WARD, OR
17 MS. VANEVERY, OR MR. GUNDLACH?

18 A HONESTLY, I DON'T RECALL HOW I HEARD IT.

19 Q YOUR DISCUSSIONS WITH THESE PEOPLE ABOUT
20 FINDING SPACE FOR THIS NEW BUSINESS, KIND OF -- IT 11:24AM
21 ENDED AFTER DECEMBER 4; IS THAT TRUE?

22 A THAT SOUNDS RIGHT.

23 Q ALL RIGHT.

24 I MEAN, WHAT YOU -- BASICALLY, IT WENT
25 IN A DIFFERENT DIRECTION? 11:24AM

26 A RIGHT.

27 MR. QUINN: NOTHING FURTHER.

28 THE COURT: ALL RIGHT.

1 CROSS-EXAMINATION.

3 CROSS-EXAMINATION +

4 BY MR. BRIAN:

5 Q GOOD MORNING. I'M GOING TO BE REALLY BRIEF. 11:24AM

6 A OKAY.

7 Q WE'VE NEVER MET BEFORE, HAVE WE?

8 A NO.

9 Q AND DID MS. VANEVERY, MR. WARD, OR
10 MR. GUNDLACH EVER SIGN A LEASE ON ANY OF THESE 11:25AM
11 PROPERTIES THAT YOU WERE LOOKING AT IN THE NOVEMBER
12 TIME PERIOD OF 2009?

13 A NO.

14 Q AND I THINK YOU TESTIFIED, MAYBE JUST TO CLEAR
15 THIS UP, YOUR PRINCIPAL CONTACTS OR COMMUNICATION ON 11:25AM
16 THIS PROJECT WERE MS. VANEVERY AND MR. WARD, RIGHT?

17 A CORRECT.

18 Q HAVE YOU EVER MET A CRIS SANTA ANA?

19 A AT SOME POINT ALONG THE WAY.

20 Q OKAY. 11:25AM

21 HAVE YOU EVER MET A MR. JEFF MAYBERRY?

22 A I DON'T BELIEVE SO.

23 Q HAVE YOU EVER MET A RACHEL CODY?

24 A I DON'T BELIEVE SO.

25 Q AND I TAKE IT YOU WERE NEVER A PARTICIPANT IN 11:25AM
26 ANY DISCUSSIONS BETWEEN MARC STERN AT TCW AND
27 JEFFREY GUNDLACH WITH RESPECT TO HIS FUTURE AT TCW,
28 WERE YOU, SIR?

1 A NO.

2 Q DO YOU KNOW WHETHER OR NOT MR. QUINN'S FIRM
3 REPRESENTED ANY WITNESSES IN THIS LAWSUIT AT
4 DEPOSITIONS?

5 A I DON'T KNOW.

11:25AM

6 MR. BRIAN: NOTHING FURTHER.

7 THE COURT: ALL RIGHT.

8 REDIRECT?

9 MR. QUINN: NOTHING FURTHER, YOUR HONOR.

10 THE COURT: ALL RIGHT.

11:25AM

11 SIR, THANK YOU VERY MUCH FOR YOUR
12 TESTIMONY. YOU'RE EXCUSED.

13 THE WITNESS: OKAY.

14 MR. MADISON: YOUR HONOR -- YOUR HONOR, TCW
15 CALLS ONE OF THE DEFENDANTS, BARBARA VANEVERY.

11:26AM

16 MR. BRIAN: MAY I HAVE A MOMENT, YOUR HONOR?

17 THE COURT: YES.

18

19 (PAUSE) +

20

11:26AM

21 MR. BRIAN: WE MAY NEED A FEW MINUTES, YOUR
22 HONOR.

23 THE COURT: ALL RIGHT.

24 MR. BRIAN: MAY WE APPROACH, BRIEFLY?

25 MR. QUINN: CLOCK'S NOT RUNNING YET, YOUR
26 HONOR.

11:26AM

27 THE COURT: OKAY.

28 MR. BRIAN: SO STIPULATED, YOUR HONOR.

1 THE COURT: IT'S TICKING ALL THE TIME.

2
3 (SIDE-BAR CONFERENCE HELD) +
4

5 THE COURT: I APPRECIATE THAT COUNSEL ON BOTH
6 SIDES ARE --

11:28AM

7 MR. BRIAN: I APPRECIATE COUNSELS ARE
8 CONCERNED ABOUT THE TIME CONSTRAINTS, BUT THIS IS THE
9 SECOND OR THIRD TIME THIS HAS HAPPENED. WE'RE SPENDING
10 COUNTLESS TIMES GOING THROUGH DEPOSITIONS, AND THEY'RE
11 BEING WITHDRAWN AT THE LAST MOMENT. THIS IS THE FIRST
12 TIME I REALIZE THEY'RE NOT PLAYING A TWO-HOUR
13 DEPOSITION OF MS. VANEVERY.

11:28AM

14 THE COURT: YOU'RE SAYING NOW YOU ONLY HAVE
15 FIVE OR TEN MINUTES?

11:29AM

16 MR. MADISON: I HAVEN'T TIMED IT.

17 THE COURT: WELL --

18 MR. MADISON: I KNOW IT'S MUCH LESS THAN THAT.

19 THE COURT: I WILL SAY THE COURT SPENT SEVERAL
20 HOURS GOING THROUGH OBJECTIONS --

11:29AM

21 MR. MADISON: I UNDERSTAND.

22 THE COURT: -- TO A LENGTHY PORTION THAT WAS
23 PROPOSED TO BE USED.

24 AND IF IT'S A MOVING TARGET, AND IT
25 KEEPS CHANGING, THEN, YOU KNOW, MAYBE WE SHOULDN'T BE
26 GOING THROUGH ALL THE OBJECTIONS.

11:29AM

27 BUT, THAT SAID, YOU KNOW, EVERYBODY CAN
28 PUT ON THEIR OWN CASE, BUT I DON'T EXPECT THINGS TO

1 CONTINUE TO CHANGE MINUTE TO MINUTE OR MOMENT TO
2 MOMENT.

3 MR. MADISON: I UNDERSTAND.

4 THE COURT: THERE OUGHT TO BE SOME OPEN
5 DISCOURSE ABOUT WHAT THE WITNESS IS GOING TO DO. BUT
6 THE TIMING IS FOR THE WITNESSES, WHAT DEPOSITION
7 TESTIMONY'S GOING TO BE USED. WE HAD THESE
8 DESIGNATIONS AND COUNTERDESIGNATIONS MONTHS AGO.

9 SO, AT ANY RATE, LET'S MOVE FORWARD.

10 MR. BRIAN: I DO NEED TO SEE A TRANSCRIPT,
11 THEN.

12 STEVE, YOU MAY HAVE GIVEN IT TO ME.

13 MR. MADISON: WE DID --

14 MR. BRIAN: I DON'T HAVE IT.

15 MR. MADISON: -- THIS MORNING.

16 MR. BRIAN: I DON'T HAVE IT.

17 THE COURT: WE DON'T WANT TO BE RECEIVING
18 THINGS AT 8:30 IN THE MORNING WHEN IN THE MIDDLE OF
19 TRIAL.

20 MR. BRIAN: YOU MAY HAVE GIVEN IT TO ME. I'M
21 NOT SAYING YOU DIDN'T. I DIDN'T REALIZE IT WAS A
22 SHORTENED VERSION.

23 THE COURT: WHERE IS IT?

24 MR. MADISON: I'LL TRY TO GET ANOTHER COPY.

25 THE COURT: ALL RIGHT. LET'S GO.

26
27 (SIDE-BAR CONFERENCE CONCLUDED.) +

28 ///

11:29AM

11:29AM

11:29AM

11:30AM

11:30AM

1 THE COURT: I'M TOLD MS. VANEVERY HASN'T LEFT
2 THE BUILDING.

3 MR. BRIAN: SHE'S IN THE COURTROOM NOW. I'M
4 WAITING TO SEE WHAT'S GOING TO BE PLAYED, YOUR HONOR.

5 (PAUSE) +

11:31AM

6
7 THE COURT: ARE WE READY TO PROCEED HERE?

8 MR. BRIAN: MAY I APPROACH MR. MADISON, YOUR
9 HONOR?

10 THE COURT: YES.

11:32AM

11
12 (PAUSE) +

13
14 MR. BRIAN: WE'RE IN ORDER, YOUR HONOR.

15 THE COURT: READY TO PROCEED?

11:32AM

16 MR. MADISON: WAITING FOR THE WITNESS, YOUR
17 HONOR.

18 THE COURT: I THOUGHT SHE WAS HERE.

19 MR. BRIAN: SHE IS HERE. IF IT'S GOING TO BE
20 SHORT, SHE CAN TAKE THE STAND.

11:33AM

21 THE COURT: THAT'S FINE.

22 MR. MADISON: MAY I APPROACH AND GIVE YOU A
23 COPY OF THE TRANSCRIPT, YOUR HONOR?

24 THE COURT: YES.

25
26 BARBARA VANEVERY +
27 CALLED AS A WITNESS BY THE PLAINTIFF WAS SWORN AND
28 TESTIFIED AS FOLLOWS:

1 THE CLERK: YOU DO SOLEMNLY STATE THAT THE
2 TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW
3 PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE
4 WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU
5 GOD.

11:33AM

6 THE WITNESS: I DO.

7 GOOD MORNING.

8 THE COURT: GOOD MORNING.

9 THE CLERK: PLEASE STATE AND SPELL YOUR FIRST
10 AND LAST NAME.

11:33AM

11 THE WITNESS: BARBARA, B-A-R-B-A-R-A.
12 VANEVERY, V-A-N-E-V-E-R-Y.

13 THE CLERK: THANK YOU.

14 THE COURT: MR. MADISON.

15 MR. MADISON: YOUR HONOR, WE'RE GOING TO START
16 BY PLAYING THREE CLIPS FROM MS. VANEVERY'S SWORN
17 DEPOSITION.

11:34AM

18 IF I COULD, YOUR HONOR, WE'VE STIPULATED
19 THE DEPO EXHIBITS NOW RELATE TO TRIAL EXHIBIT NUMBERS.
20 AND IF I COULD, IN THE FIRST CLIP WE'LL HEAR ABOUT AN
21 EXHIBIT, TRIAL EXHIBIT 401.

11:34AM

22 I WOULD ACTUALLY MOVE 401 BECAUSE WE'RE
23 GOING TO DISPLAY IT AS PART --

24 MR. BRIAN: AND THE -- ARE THEY IN THE
25 BINDERS?

11:34AM

26 MR. MADISON: THEY ARE IN THE BINDERS, YOUR
27 HONOR.

28 THE COURT: JUST A MOMENT.

1 MR. MADISON: I BELIEVE THIS ONE --

2 MR. BRIAN: THIS EXHIBIT WAS ADMITTED.

3 THE COURT: ALL RIGHT.

4
5 DIRECT EXAMINATION +

11:34AM

6
7 (VIDEO DEPOSITION PLAYED OF BARBARA VANEVERY.) +

8
9 MR. MADISON: IN THE SECOND CLIP, YOUR HONOR,
10 WE'RE GOING TO USE THREE EXHIBITS IN THE DEPO, 10, 9,
11 AND 13. AT TRIAL THEY'RE 433, 424 AND 434.

11:36AM

12 AND I WOULD MOVE THOSE AS WELL.

13 MR. BRIAN: MAY I HAVE A MOMENT?

14 GIVE ME NUMBERS AGAIN, PLEASE.

15 THE COURT: 433, 423, AND -- WHAT WAS THE
16 THIRD ONE?

11:36AM

17 MR. MADISON: 433, 424, AND 434.

18 THESE ARE E-MAILS, YOUR HONOR.

19 MR. BRIAN: NO OBJECTION TO 433.

20 NO OBJECTION TO 434.

11:37AM

21 AND, I'M SORRY, I DIDN'T CATCH THE OTHER
22 ONE.

23 THE COURT: I HAD 433, 424, AND 434.

24 MR. BRIAN: NO OBJECTION TO 434.

25 THE COURT: HOW ABOUT 424?

11:37AM

26 MR. BRIAN: I'M LOOKING FOR IT.

27 NO OBJECTION FOR 424, EITHER, YOUR HONOR.

28 THE COURT: ALL THESE THREE EXHIBITS WILL BE

1 ADMITTED.

2
3 (EXHIBITS 424, 433, AND 434 ADMITTED.) +

4
5 THE COURT: GO AHEAD.

11:37AM

6
7 (VIDEO DEPOSITION PLAYED OF BARBARA VANEVERY.) +

8
9 MR. MADISON: IN THE FINAL CLIP, YOUR HONOR,
10 GOING TO SHOW EXHIBIT 16 FROM THE DEPO, BUT THE TRIAL
11 EXHIBIT IS EXHIBIT 447. PAGE 34. PAGE 447 --

11:41AM

12 AT THIS POINT I WOULD JUST MOVE THAT
13 PAGE INTO EVIDENCE.

14 THE COURT: EXHIBIT 447, PAGE?

15 MR. MADISON: 34, YOUR HONOR.

11:42AM

16 THE COURT: ANY OBJECTION?

17 MR. MADISON: PAGE 34, YOUR HONOR.

18 THE COURT: EXHIBIT 447, PAGE 34.

19 MR. MADISON: I'LL ACTUALLY MOVE ALL OF 437 --

20 THE COURT: JUST A MOMENT.

11:42AM

21 MR. MADISON: -- BUT WE DON'T NEED TO LOOK AT
22 THEM.

23 MR. BRIAN: NO OBJECTION TO PAGE 34.

24 MR. MADISON: THERE WILL COME A TIME WHEN I'LL
25 MOVE ALL OF IT.

11:42AM

26 THE COURT: IT WILL BE ADMITTED.

27
28 (EXHIBIT 437 PAGE 34 ADMITTED.) +

1 MR. MADISON: THANK YOU.

2 BY MR. MADISON:

3 Q MS. VANEVERY, THAT WAS SWORN TESTIMONY YOU
4 GAVE IN THE CASE ON MAY 28, 2010, CORRECT?

5 A YES.

11:45AM

6 Q OF COURSE, THAT WAS CLOSER IN TIME TO THE
7 EVENTS THAT WE WERE TALKING ABOUT THERE, WHICH WERE IN
8 THE LAST PART OF 2009, CORRECT?

9 A YES.

10 Q AND I MEAN, AS YOU SIT HERE TODAY, YOU DO
11 RECALL, DON'T YOU, THERE CAME A TIME IN SEPTEMBER OF
12 2009 WHEN JEFFREY GUNDLACH DIRECTED YOU TO GO OUT AND
13 FIND OFFICE SPACE FOR A NEW BUSINESS, RIGHT?

11:45AM

14 A I DON'T THINK I WAS DIRECTED. I THINK IT WAS
15 MY SUGGESTION.

11:45AM

16 Q SO YOU SUGGESTED TO MR. GUNDLACH THAT YOU GO
17 OUT AND LOOK FOR NEW OFFICE SPACE?

18 A YES, I DID.

19 Q AND WHAT YOU DID IN THAT REGARD IS YOU ENDED
20 UP COMMUNICATING WITH SOMEBODY NAMED MATT BRAINARD, A
21 REALTOR, WHO KNEW ABOUT COMMERCIAL OFFICE SPACE IN
22 LOS ANGELES, RIGHT?

11:45AM

23 A YES. I DID.

24 Q MR. GUNDLACH ACTUALLY REFERRED YOU TO
25 MR. BRAINARD, DIDN'T HE?

11:45AM

26 A YES, HE DID.

27 Q AND DO YOU RECALL THAT YOU ACTUALLY GOT A
28 LETTER FROM A MR. BRAINARD IN LATE SEPTEMBER WITH

1 REGARD TO THIS NEW PROJECT?

2 A YES, I DID.

3 Q IF YOU COULD LOOK AT EXHIBIT 320, PLEASE. IT
4 SHOULD BE IN THE BINDER IN FRONT OF YOU. I'M NOT SURE
5 IF IT'S VOLUME I OR II, BUT THERE ARE TABS ON THE
6 RIGHT-HAND SIDE. IT'S IN VOLUME I.

11:46AM

7 A WHAT NUMBER?

8 Q 320.

9 MR. BRIAN: I HAVE NO OBJECTION TO THIS IF
10 HE'S -- IT'S -- IF IT'S EASIER TO JUST TO DISPLAY IT.

11:46AM

11 MR. MADISON: WE'LL MOVE IT.

12 THE COURT: IT WILL BE ADMITTED.

13
14 (EXHIBIT 320 ADMITTED.) +

11:46AM

15
16 BY MR. MADISON:

17 Q THIS IS A LETTER FROM MR. BRAINARD TO YOU --
18 PARDON ME, IT'S ACTUALLY FROM SOMEONE NAMED
19 MIKE CATALANO.

20 IF WE GO TO THE SECOND PAGE, WE CAN SEE
21 THE SIGNATURE PAGE LINE, ALTHOUGH THE ONLY SIGNATURE
22 APPEARS HERE IS YOUR SIGNATURE, CORRECT?

11:46AM

23 A YES.

24 Q THIS INDICATES, ON OR ABOUT SEPTEMBER 30,
25 2009, YOU AGREED AND ACCEPTED WHATEVER WAS IN THE
26 LETTER, RIGHT?

11:46AM

27 A YES.

28 Q IF WE GO BACK TO THE FIRST PAGE, THEN, WE'LL

1 SEE THAT AT THE TOP IT'S A LETTER TO YOU, APPEARS TO BE
2 SENT BY E-MAIL, AND IT'S REGARDING REAL ESTATE SERVICES
3 TENANT REPRESENTATION.

4 DO YOU RECALL THIS?

5 A YES.

11:47AM

6 Q IN THE FIRST PARAGRAPH IT SAYS:

7 DEAR BARBARA,

8 BARBARA VANEVERY, AS AN

9 INDIVIDUAL AND IN CONJUNCTION WITH

10 HER UNNAMED INVESTMENT MANAGEMENT

11:47AM

11 VENTURE, ET CETERA, HEREBY APPOINTS

12 STUDLEY INC. AS ITS EXCLUSIVE REAL

13 ESTATE BROKER.

14 SO YOU WERE APPOINTING STUDLEY TO BE A
15 REAL ESTATE BROKER TO DO SOMETHING ON BEHALF OF YOU AND
16 YOUR UNNAMED INVESTMENT MANAGEMENT VENTURE, CORRECT?

11:47AM

17 A I WAS ASKING THEM TO LOOK AT REAL ESTATE.

18 Q COULD YOU PULL THE MICROPHONE TOWARD YOU,
19 MA'AM. I'M HAVING TROUBLE HEARING YOU.

20 YOU ASKED THEM WHAT?

11:47AM

21 A I WAS ASKING THEM TO LOOK AT REAL ESTATE FOR
22 ME.

23 Q FOR YOU AND AN UNNAMED INVESTMENT MANAGER
24 VENTURE AS IT SAYS, RIGHT?

25 A YES.

11:48AM

26 Q THAT INFORMATION WAS ALL OBTAINED FROM YOU IN
27 YOUR CONVERSATION WITH MR. BRAINARD, RIGHT?

28 A IT MUST HAVE BEEN. I DON'T REMEMBER SAYING

1 IT.

2 BUT I'M SURE I MUST HAVE.

3 Q IT WAS WHAT YOU AND MR. GUNDLACH HAD DISCUSSED
4 SOMETIME PRIOR TO THIS, CORRECT?

5 A THE ONLY THING I DISCUSSED AT THAT TIME WITH
6 MR. GUNDLACH WAS THAT I WAS GOING TO LOOK FOR REAL
7 ESTATE. I DON'T THINK I HAD A CONVERSATION WITH HIM
8 ABOUT WHAT IT WAS FOR.

11:48AM

9 Q IT COULD HAVE BEEN RESIDENTIAL REAL ESTATE?
10 OR A VACATION HOME? OR WHAT? ANYTHING?

11:48AM

11 A NO. I TOLD HIM I WAS LOOKING AT COMMERCIAL
12 REAL ESTATE.

13 Q IT WAS GOING TO BE FOR A NEW BUSINESS?

14 A YES.

15 Q AND IF YOU LOOK AT THE LAST PAGE OF THE
16 EXHIBIT, YOU ACTUALLY FAXED THIS TO MR. BRAINARD ON TCW
17 FAX SHEET FROM TCW'S OFFICES, CORRECT?

11:48AM

18 A YES.

19 Q YOU WERE WORKING ON THIS AT WORK AT TCW?

20 A YES.

11:49AM

21 Q CAN YOU EXPLAIN TO US HOW THIS RELATED TO
22 TCW'S BUSINESS?

23 MR. BRIAN: OBJECTION, ARGUMENTATIVE.

24 THE COURT: SUSTAINED.

25 BY MR. MADISON:

11:49AM

26 Q THIS DIDN'T HAVE ANY RELATIONSHIP TO TCW
27 BUSINESS, DID IT?

28 A IT WAS IN RELATION TO THE FACT THAT I THOUGHT

1 I WAS BEING FIRED AND I MIGHT NEED A BACKUP OPTION OR
2 PLAN. AND THAT WOULD BE IN RELATION TO TCW, INTO THEM
3 FIRING ME. THAT'S ALL.

4 Q SO YOU KNEW BACK IN SEPTEMBER THAT YOU'D BE
5 FIRED ON -- IN DECEMBER 2009?

11:49AM

6 A NO. I HAD HEARD RUMORS THAT I WOULD BE FIRED.

7 Q OKAY.

8 A I DIDN'T KNOW WHEN.

9 Q BASED ON THOSE RUMORS, YOU AND MR. GUNDLACH
10 DECIDED THAT YOU WOULD BEGIN TO GO ABOUT THE STEPS
11 NECESSARY TO TAKE UP A NEW BUSINESS?

11:49AM

12 A I THOUGHT IT WOULD BE A GOOD IDEA TO TRY AND
13 LOOK FOR OFFICE SPACE IN CASE I NEEDED IT.

14 Q OKAY.

15 AND IF YOU LOOK AT EXHIBIT 335, WHICH IS
16 IN EVIDENCE, THIS IS A -- IF WE GO TO THE SECOND
17 PAGE -- LET ME MAKE SURE I HAVE THE -- YES, THERE IT
18 IS.

11:49AM

19 MR. BRIAN: MAY I HAVE A MOMENT?

20 THE COURT: YES.

21 THE WITNESS: I DON'T HAVE A 335.

22 THE COURT: JUST HOLD ON.

23 MR. MADISON: LET ME WITHDRAW IT. I'LL USE A
24 DIFFERENT ONE YOU DO HAVE.

11:50AM

25 IT'S 2065. THE SAME DOCUMENT, JUST A
26 DIFFERENT NUMBER.

11:50AM

27 THE WITNESS: 2065?

28 THE COURT: IT'S IN A DIFFERENT BOOK.

1 NOTHING'S EVER EASY.

2 2065?

3 MR. MADISON: YES, YOUR HONOR.

4 DO YOU HAVE THAT, MA'AM?

5 THE WITNESS: YES, I DO.

11:51AM

6 THE COURT: ALL RIGHT. 2065, HAS IT BEEN
7 ADMITTED?

8 THE CLERK: NO, YOUR HONOR.

9 THE COURT: THIS HAS NOT BEEN ADMITTED.

10 MR. MADISON: YES, YOUR HONOR. I'D MOVE 2065,
11 YOUR HONOR.

11:51AM

12 MR. BRIAN: NO OBJECTION.

13 THE COURT: IT WILL BE ADMITTED.

14
15 (EXHIBIT 2065 ADMITTED.) +

11:51AM

16
17 BY MR. MADISON:

18 Q IF WE DISPLAY THAT, WE'LL SEE THIS IS ACTUALLY
19 A DOCUMENT CREATED AT TCW ON TCW'S -- OUT OF TCW'S
20 DOCUMENT DATABASE, CORRECT?

11:51AM

21 A IT -- YES.

22 Q WELL, YOU CAUSED THIS TO BE CREATED, DIDN'T
23 YOU, MS. VANEVERY?

24 A I -- I BELIEVE THAT I USED A STANDARD TEMPLATE
25 THAT WAS USED AT TCW, AND I JUST CHANGED THE LANGUAGE.

11:52AM

26 Q SO YOU CREATED IT YOURSELF?

27 A YEAH. I HAD TO CHANGE THE LANGUAGE. I DON'T
28 THINK THEY HAD ANYTHING ABOUT REAL ESTATE.

1 Q SO YOU CREATED IT FROM A TEMPLATE THAT WAS ON
2 THE TCW DATABASE?

3 A IT -- IT -- I THINK IT CAME FROM TCW. I DON'T
4 KNOW IF IT WAS ON THEIR DATABASE.

5 Q ALL RIGHT.

11:52AM

6 IF WE LOOK IN THE LOWER LEFT, THERE'S A
7 TCW FOOTER THERE. IT INDICATES A DOCUMENT NUMBER FOR
8 THE DOCUMENT.

9 DO YOU RECALL THAT?

10 A I --

11:52AM

11 THE COURT: WAIT A MINUTE.

12 WHAT ARE YOU LOOKING AT?

13 MR. MADISON: THE FOOTER, YOUR HONOR, IN THE
14 VERY LOWER LEFT-HAND --

15 THE COURT: GO AHEAD.

11:52AM

16 THE WITNESS: I DIDN'T KNOW IT CREATED THAT,
17 NO.

18 BY MR. MADISON:

19 Q PARDON ME?

20 A I DIDN'T KNOW IT CREATED THAT.

11:52AM

21 Q YOU DIDN'T NOTICE THAT AT THE TIME?

22 A NO.

23 Q DO YOU RECALL ASKING KATHERINE ALI IF SHE HAD
24 A STANDARD CONFIDENTIALITY AGREEMENT THAT YOU COULD
25 USE?

11:52AM

26 A NO. I DIDN'T.

27 Q SO THIS AGREEMENT WAS TO PROTECT CONFIDENTIAL
28 AND PROPRIETARY INFORMATION, IF IT MIGHT COME UP IN

1 BETWEEN YOU AND STUDLEY.

2 THAT IS MR. BRAINARD'S FIRM, RIGHT?

3 A I THINK THIS WAS JUST I WANTED TO KEEP IT
4 CONFIDENTIAL THAT I WAS LOOKING FOR REAL ESTATE.

5 Q OKAY.

11:53AM

6 AND SO IF WE LOOK AT THE AGREEMENT, IT
7 SAYS THAT IT'S EFFECTIVE AS OF THE FIRST DAY OF OCTOBER
8 2009 BY AND BETWEEN BARBARA VANEVERY, TENANT.

9 THEN IT SAYS, TOGETHER WITH ITS UNNAMED
10 INVESTMENT MANAGEMENT VENTURE.

11:53AM

11 SO HERE, AGAIN, THAT WAS LANGUAGE THAT
12 YOU PUT INTO THE AGREEMENT WHEN YOU CREATED IT TO
13 DESCRIBE THE NEW VENTURE THAT YOU AND MR. GUNDLACH MAY
14 PURSUE?

15 A I DID. I THINK I TOOK THAT OFF OF
16 MATT BRAINARD'S CONFIDENTIALITY AGREEMENT THAT HE SENT
17 ME. I'M NOT SURE.

11:53AM

18 Q YOU MEAN THE RETAINER AGREEMENT HE SENT YOU?

19 A I THINK SO.

20 Q AND THE TITLE IS AGREEMENT FOR USE AND NOT --
21 NONDISCLOSURE OF CONFIDENTIAL AND PROPRIETARY
22 INFORMATION. AND/OR PROPRIETARY INFORMATION.

11:53AM

23 SO YOU HAD IN YOUR MIND, ON OCTOBER 1ST,
24 2009, THERE WAS GOING TO BE POTENTIALLY CONFIDENTIAL
25 AND PROPRIETARY INFORMATION THAT WOULD BE SHARED WITH
26 MR. BRAINARD?

11:54AM

27 A NO. NO, I ACTUALLY DIDN'T REALLY READ THE TOP
28 OF IT. I WAS JUST USING A TEMPLATE. SO ...

1 Q ALL RIGHT.

2 THE IDEA WAS HE SHOULDN'T SHARE ANY
3 INFORMATION ABOUT THE WORK THAT HE WAS DOING FOR YOU
4 AND YOUR UNNAMED VENTURE, RIGHT?

5 A I JUST WANTED SOME AGREEMENT THAT IT WOULD BE
6 KEPT CONFIDENTIAL. I PROBABLY SHOULD HAVE JUST GOOGLED
7 THE STANDARD CONFIDENTIALITY AGREEMENT.

11:54AM

8 Q MY QUESTION ISN'T SO MUCH WHERE YOU GOT THE
9 FORM, BUT YOUR INTENT -- I MEAN, IT'S WHAT, TWO PAGES
10 OF LOTS OF LEGALESE ABOUT CONFIDENTIALITY AND
11 PROPRIETARY INFORMATION.

11:54AM

12 YOUR INTENT WAS YOU DIDN'T WANT ANYBODY
13 TO KNOW WHAT YOU AND MR. BRAINARD WERE TALKING ABOUT,
14 RIGHT?

15 A I DIDN'T WANT ANYONE TO KNOW I WAS LOOKING FOR
16 REAL ESTATE. THIS WAS A FORM THAT WAS USED MANY YEARS
17 AGO ON A DIFFERENT PRODUCT THAT TCW USED. AND SO I
18 JUST TOOK IT AND CHANGED THE LANGUAGE.

11:54AM

19 Q AND YOU WERE FAMILIAR WITH THE IDEAS OF
20 CONFIDENTIAL AND PROPRIETARY INFORMATION FROM YOUR WORK
21 AT TCW, WERE YOU NOT?

11:55AM

22 A YES.

23 Q HOW LONG HAD YOU WORKED AT TCW BY -- BY
24 SEPTEMBER OF 2009?

25 A I HAD BEEN THERE FOR 16 YEARS.

11:55AM

26 Q PARDON ME?

27 A 16 YEARS.

28 Q ALL RIGHT. I'M JUST HAVING TROUBLE HEARING

1 YOU, MA'AM. I DON'T KNOW IF YOU CAN PULL THAT
2 MICROPHONE ANY FURTHER. I'M CONCERNED OTHERS CAN'T
3 HEAR YOU AS WELL.

4 THE WITNESS: I CAN LEAN FORWARD.

5 THE COURT: THAT'S BETTER. TRY TO GET CLOSER. 11:55AM

6 THE WITNESS: OKAY. SORRY.

7 BY MR. MADISON:

8 Q SO, MR. BRAINARD DID PROCEED TO LOOK FOR REAL
9 ESTATE FOR YOU AND YOUR UNNAMED INVESTMENT BUSINESS,
10 CORRECT? 11:56AM

11 A YES, HE DID.

12 Q AND YOU ENDED UP VISITING A NUMBER OF
13 PROPERTIES, DIDN'T YOU?

14 A I DID.

15 Q AND, ULTIMATELY, YOU CHOSE ONE PROPERTY IN
16 PARTICULAR THAT WAS OF MOST INTEREST TO YOU AND
17 MR. GUNDLACH; ISN'T THAT CORRECT? 11:56AM

18 A I THINK I -- I NARROWED IT DOWN TO TWO.
19 AND...

20 Q AND WHAT? 11:56AM

21 A I HAD NARROWED IT DOWN TO TWO, AND THEN I
22 THINK THERE WAS ONE IN PARTICULAR THAT I LIKED A LITTLE
23 BIT BETTER.

24 Q AND THAT WAS THE ONE AT 2000 AVENUE OF THE
25 STARS IN CENTURY CITY, RIGHT? 11:56AM

26 A YES.

27 Q AND THAT WAS ALSO KNOWN AS THE C.A.A. BUILDING
28 BECAUSE THERE WAS AN AGENCY BUSINESS, CREATIVE ARTISTS,

1 THAT WAS THE ANCHOR TENANT IN THAT SPACE, CORRECT?

2 A YES.

3 Q NOW, WE SAW SOME E-MAILS IN THE VIDEO ABOUT
4 INTERVIEWS THAT YOU WERE SETTING UP.

5 AS WE SIT HERE NOW, DO YOU RECALL WHAT
6 THOSE INTERVIEWS WERE ABOUT?

11:56AM

7 A YES.

8 Q CAN YOU TELL US NOW WHAT YOU RECALL.

9 A THE -- MATT BRAINARD HAD SUGGESTED THAT I USE
10 A PROJECT MANAGER, AND SO HE SUGGESTED THAT I TALK WITH
11 WILLIAM ROBERTS.

11:57AM

12 AND THE REASON WHY WAS BECAUSE, IF I
13 NEEDED A SPACE AND WE NEEDED TO DO CONSTRUCTION, THAT
14 IT WOULD TAKE ABOUT A MINIMUM OF THREE MONTHS TO DO IT,
15 AND THAT I WOULD NEED SOMEONE TO OVERSEE THAT PROJECT
16 IN ORDER TO GET IT DONE ON TIME AND IN THE MOST
17 EFFICIENT WAY.

11:57AM

18 SO ...

19 Q AND SO, DO YOU KNOW WHY IT WAS THAT YOU DIDN'T
20 RECALL THAT BACK IN MAY OF 2010 WHEN YOUR DEPOSITION
21 WAS TAKEN?

11:57AM

22 MR. BRIAN: OBJECTION. ARGUMENTATIVE.

23 THE COURT: SUSTAINED.

24 BY MR. MADISON:

25 Q WELL, DO YOU RECALL THEN THERE CAME A TIME
26 WHEN YOU ACTUALLY FORMED A BUSINESS, WITH MR. GUNDLACH
27 AND MR. WARD AND MR. SANTA ANA, THAT WOULD ACTUALLY
28 BECOME THIS UNNAMED VENTURE THAT WAS REFERRED TO?

11:57AM

1 A I WASN'T AWARE OF WHEN OR WHAT THE TIMEFRAME
2 WAS IN THE FORMING OF BUSINESS.

3 I DID KNOW GREG WARD. I HAD TOLD HIM I
4 WAS LOOKING FOR COMMERCIAL REAL ESTATE. AND HE SAID, I
5 WILL HELP YOU.

11:58AM

6 AND I SAID, WELL, THEY'RE ASKING ME FOR
7 A COMPANY NAME. I DON'T KNOW WHAT TO PUT ON HERE.

8 AND HE SAID, PUT ABLE GRAPE.

9 SO I PUT TWO AND TWO TOGETHER, THAT THAT
10 MUST HAVE BEEN A TEMPORARY PLACEHOLDER COMPANY NAME.

11:58AM

11 Q THAT BECAME THE NAME THAT YOU USED IN DEALING
12 WITH MR. BRAINARD AND THE OTHER PEOPLE THAT YOU DEALT
13 WITH ON THE NEW SPACE?

14 A THAT WAS THE NAME I GAVE MR. BRAINARD.

15 Q ONLY MR. BRAINARD?

11:58AM

16 A I -- I'M SURE I MUST HAVE GIVEN IT TO
17 WILLIAM ROBERTS. HE MAY HAVE ALREADY KNOWN ABOUT IT
18 BECAUSE MATT HAD REFERRED ME TO HIM.

19 Q OKAY.

20 IF WE LOOK AT EXHIBIT 401, WHICH WE SAW
21 IN THE VIDEOTAPE, TALKS ABOUT 2000 AVENUE OF THE STARS
22 AND -- IN CENTURY CITY. THIS IS NOVEMBER 2ND. AND NOW
23 WE SEE THAT THE SUBTENANT IN THE FIRST SUBPARAGRAPH IS
24 ACTUALLY ABLE GRAPE LLC, TEMPORARY ENTITY NAME FOR
25 ASSET MANAGEMENT BUSINESS.

11:59AM

26 I'LL JUST STOP THERE.

27 SO THAT WAS THE TEMPORARY NAME FOR THE
28 NEW BUSINESS?

11:59AM

1 A YES.

2 Q ALL RIGHT.

3 AND YOU HAD TALKED TO MR. GUNDLACH OVER
4 THE YEARS ABOUT FORMING A NEW BUSINESS, HADN'T YOU?

5 A I DON'T THINK I TALKED TO HIM ABOUT -- I THINK
6 HE MAYBE DREAMT ABOUT ONE DAY HAVING HIS OWN BUSINESS.
7 AND, YOU KNOW, I NEVER KNEW IF IT WOULD COME TO
8 FRUITION OR NOT.

11:59AM

9 Q MY QUESTION WASN'T WHAT HE DREAMT OR WHAT HE
10 KNEW, BUT, RATHER, IF YOU AND MR. GUNDLACH HAD
11 DISCUSSED SOMETIME PRIOR TO SEPTEMBER 2009 A NEW
12 BUSINESS.

12:00PM

13 A I THINK HE -- HE -- HE PUT TOGETHER A LOGO
14 BASED ON MON JOHN. I THINK HE WAS VERY INSPIRED BY
15 MON JOHN AT THE TIME. AND WE TALKED ABOUT, OH,
16 WOULDN'T THIS REALLY BE A NEAT LOGO FOR A COMPANY.

12:00PM

17 THAT WAS THE EXTENT OF IT.

18 Q WE'LL ASK YOU ABOUT THE LOGO THAT HAD BEEN
19 CREATED.

20 RIGHT NOW I'M ASKING ABOUT DISCUSSIONS
21 THAT YOU AND MR. GUNDLACH HAD, LET'S SAY, PRIOR TO
22 JUNE 2009 ABOUT A NEW BUSINESS.

12:00PM

23 DID YOU HAVE THOSE QUESTIONS OR NOT?
24 THAT'S A YES OR NO.

25 A I DON'T REMEMBER ANY SPECIFIC CONVERSATIONS
26 ABOUT STARTING A NEW BUSINESS.

12:00PM

27 Q SO, AS YOU SIT HERE TODAY, YOU JUST DON'T
28 RECALL ONE WAY OR THE OTHER?

1 A I RECALL THAT WE TALKED ABOUT A LOGO. THAT HE
2 ACTUALLY HAND DREW ONE. HE WANTED ME TO DO IT IN
3 POWER POINT FOR HIM.

4 Q DO YOU RECALL WHEN THE FIRST TIME WAS THAT YOU
5 DISCUSSED WITH MR. GUNDLACH THE -- THAT THERE COULD BE
6 A BUSINESS CALLED DOUBLELINE THAT HE WOULD RUN?

12:01PM

7 A I THINK THAT -- I KNEW THAT HE USED THAT -- HE
8 LIKED THAT NAME FROM THE LOGO. SO, I THINK WHEN HE WAS
9 IN TALKS WITH WAMCO, HE MAY HAVE REFERRED TO THE NAME,
10 DOUBLELINE.

12:01PM

11 BUT IT WASN'T IN RELATION TO A BUSINESS
12 THAT HE WAS GOING TO BE RUNNING. IT WAS JUST IN
13 RELATION TO HIS TALKS WITH THEM. AND I THINK HE USED
14 IT TO REPRESENT HIS PORTION OF THAT.

15 Q WELL, RIGHT NOW I JUST WANT TO GET THE WHO,
16 WHAT, WHEN, AND WHERE, AND THEN I'LL ASK YOU MORE
17 QUESTIONS.

12:02PM

18 WHEN WAS THE FIRST TIME THAT YOU TALKED
19 TO MR. GUNDLACH ABOUT SOMETHING THAT WOULD BE CALLED
20 DOUBLELINE?

12:02PM

21 A I DON'T RECALL THE FIRST TIME I --

22 Q OKAY.

23 A -- I'M NOT SURE.

24 Q FAIR ENOUGH.

25 NOW, YOU TOLD US A MINUTE AGO SOMETHING
26 ABOUT WAMCO.

12:02PM

27 THAT'S A COMPANY HERE IN L.A. COUNTY
28 CALLED WESTERN ASSET MANAGEMENT COMPANY, RIGHT?

1 A YES.

2 Q THEY ARE A BIG COMPETITOR OF TCW'S, AREN'T
3 THEY?

4 A YES.

5 Q IN FACT, FOR L.A., THEY WOULD BE LIKE THE
6 PEPSI AND THE COKE OF THE ASSET MANAGEMENT BUSINESS,
7 WOULDN'T THEY?

12:02PM

8 A SURE.

9 Q IN OTHER WORDS, THEY'RE THE TWO BIGGEST IN
10 LOS ANGELES COUNTY, RIGHT?

12:02PM

11 A NO. PIMCO.

12 Q PIMCO'S DOWN IN ORANGE COUNTY, ISN'T IT,
13 MA'AM?

14 A WELL, IF YOU WANT TO GET TECHNICAL, BUT --
15 SURE.

12:03PM

16 Q IN ANY EVENT, YOU KNEW WHEN YOU FIRST HEARD
17 THAT MR. GUNDLACH WAS TALKING TO WAMCO, THAT WAMCO WAS
18 A BIG COMPETITOR AT TCW, RIGHT?

19 A YES.

20 Q AND THAT THERE WAS INFORMATION THAT YOU AND
21 MR. GUNDLACH HAD AT TCW THAT SHOULD NOT BE SHARED WITH
22 COMPETITORS LIKE WAMCO, RIGHT?

12:03PM

23 A I DON'T -- I'M NOT SURE WHAT YOU'RE ASKING ME.
24 BECAUSE HE'S TALKING WITH THEM DOESN'T MEAN WE'RE
25 SHARING INFORMATION WITH THEM.

12:03PM

26 Q I DIDN'T SAY YOU WERE, MA'AM.

27 RIGHT NOW I'M ASKING WHETHER OR NOT AT
28 THAT TIME YOU KNEW THAT THERE WAS INFORMATION THAT

1 SHOULD NOT BE SHARED WITH A COMPETITOR, AT LEAST SO
2 LONG AS YOU WERE STILL WORKING AT TCW.

3 A I DON'T BELIEVE THERE WAS INFORMATION SHARED.
4 I DON'T KNOW. I WASN'T --

5 Q THAT WASN'T MY QUESTION, MA'AM.

12:03PM

6 A WELL --

7 Q DO YOU UNDERSTAND MY QUESTION: WHETHER YOU
8 KNEW AT THAT TIME THAT THERE WAS INFORMATION THAT
9 SHOULD NOT BE SHARED?

10 A I DON'T THINK THERE WAS INFORMATION SHARED.
11 I'M NOT SURE.

12:03PM

12 Q MY QUESTION ISN'T WHETHER IT WAS OR WASN'T,
13 MA'AM.

14 WOULD YOU KNOW THAT? DID YOU SIT IN ON
15 ALL THE INTERVIEWS THAT MR. GUNDLACH HAD WITH WAMCO?

12:04PM

16 A NEVER WENT THERE. NEVER SAT IN. THAT'S WHY I
17 DON'T HAVE INFORMATION ABOUT WHAT WAS TALKED ABOUT OR
18 WHAT WAS SAID.

19 Q RIGHT. THAT'S WHY I WON'T ASK YOU ABOUT THAT.

20 I WANT TO KNOW, IN YOUR MIND, WHEN YOU
21 LEARNED MR. GUNDLACH WAS TALKING TO WAMCO, YOU KNEW
22 THAT THERE WAS INFORMATION THAT COULD NOT BE SHARED
23 PROPERLY WITH WAMCO FROM TCW BECAUSE THEY'RE
24 COMPETITORS, RIGHT?

12:04PM

25 A SURE.

12:04PM

26 Q OKAY.

27 NOW, IN FACT, YOU LEARNED THAT
28 MR. GUNDLACH WAS TALKING TO WAMCO BACK IN FEBRUARY OF

1 2009, RIGHT?

2 A YES.

3 Q AND WHEN YOU TALKED TO MR. GUNDLACH ABOUT
4 THAT, HE TALKED ABOUT IT IN TERMS OF SOMETHING CALLED
5 DOUBLELINE BEING PART OF WAMCO, DIDN'T HE?

12:04PM

6 A I THINK HE MAY HAVE USED THAT AS A PLACEHOLDER
7 FOR HIS PORTION OF WHATEVER THEIR NEGOTIATED DEAL WAS
8 GOING TO BE, IF THERE WAS ONE.

9 Q HIS PORTION WOULD BE THE GROUP OF PEOPLE AND
10 ACCOUNTS AND CLIENTS THAT HE WOULD TAKE FROM TCW OVER
11 TO WAMCO, RIGHT?

12:05PM

12 A NO. I THINK --

13 MR. BRIAN: NO FOUNDATION.

14 THE COURT: SUSTAINED.

15 BY MR. MADISON:

12:05PM

16 Q I'M ASKING ABOUT YOUR CONVERSATIONS WITH HIM.

17 DID YOU TALK ABOUT, WITH MR. GUNDLACH,
18 WHAT HE MEANT WHEN HE USED THE WORD DOUBLELINE AS BEING
19 SOMETHING THAT WOULD BE, AS YOU SAY, PART OF WAMCO?

20 A I THINK HE MEANT FEE SHARING.

12:05PM

21 MR. BRIAN: I'M SORRY, YOUR HONOR. COULD WE
22 HAVE THE --

23 THE COURT: THE ANSWER WAS, I THINK HE MEANT
24 FEE SHARING.

25 BY MR. MADISON:

12:05PM

26 Q IN ANY EVENT, THAT WAS BACK IN FEBRUARY WHEN
27 YOU FIRST LEARNED ABOUT THAT.

28 DO YOU RECALL WHEN MR. STERN CAME BACK

1 TO TCW TO BE INTERIM CEO?

2 A YES.

3 Q THAT WAS IN JUNE 2009, RIGHT?

4 A YES.

5 Q SO, MONTHS BEFORE MR. STERN CAME BACK,
6 MR. GUNDLACH WAS TALKING TO YOU ABOUT CONVERSATIONS HE
7 WAS HAVING INVOLVING WAMCO AND SOMETHING CALLED
8 DOUBLELINE, RIGHT?

12:06PM

9 A HE HAD TALKED TO WAMCO AND -- IN FEBRUARY, I
10 BELIEVE, AND I THINK THE CONVERSATIONS JUST ENDED AND
11 HE WASN'T INTERESTED IN LEAVING.

12:06PM

12 SO, BY THE TIME STERN GOT BACK IN JUNE,
13 THEY'RE NOT REALLY RELATED.

14 Q SO YOU THINK BY JUNE THE CONVERSATION BETWEEN
15 MR. GUNDLACH AND WAMCO HAD ENDED?

12:06PM

16 A I THINK SO, YEAH.

17 Q ALL RIGHT.

18 WELL, YOU HAVEN'T SEEN, FOR EXAMPLE, THE
19 COMPENSATION PROPOSAL THAT MR. GUNDLACH WAS PROVIDED BY
20 WAMCO IN MID JUNE 2009?

12:06PM

21 A I NEVER SAW --.

22 MR. BRIAN: OBJECTION, ASSUMES FACTS.

23 THE COURT: SUSTAINED.

24 BY MR. MADISON:

25 Q DID MR. GUNDLACH SHARE WITH YOU ANY
26 CONVERSATIONS AND COMMUNICATIONS HE WAS HAVING WITH
27 WAMCO THROUGHOUT THE SUMMER AND INTO THE FALL OF 2009?

12:06PM

28 A I DIDN'T SEE THOSE.

1 Q OKAY.

2 LET ME GO BACK TO THIS SPACE THAT YOU
3 WERE LOOKING AT IN THE FALL. AND I WANT TO SHOW YOU
4 EXHIBIT 441, WHICH, AGAIN, SHOULD BE IN ONE OF THE
5 BINDERS IN FRONT OF YOU.

12:07PM

6 THE COURT: 441?
7 BY MR. MADISON:

8 Q YOU RECOGNIZE EXHIBIT 441?

9 A I DON'T RECOGNIZE IT, BUT ...

10 Q THIS IS AN E-MAIL EXCHANGE BETWEEN
11 MR. ROBERTSON FROM STUDLEY, AND MR. WARD, THAT YOU WERE
12 COPIED ON, CORRECT?

12:07PM

13 A YES.

14 MR. MADISON: I'D MOVE 441.

15 MR. BRIAN: OBJECTION, HEARSAY.

12:08PM

16 THE COURT: SUSTAINED.

17 BY MR. MADISON:

18 Q THIS IS A DOCUMENT YOU RECEIVED FROM
19 MR. ROBERTSON AT STUDLEY IN NOVEMBER 2009, CORRECT?

20 A I -- YES.

12:08PM

21 Q THE DOCUMENT ACTUALLY BEGINS WITH AN E-MAIL
22 FROM YOU TO MR. ROBERTSON, IN WHICH YOU'RE DISCUSSING
23 HAVING A PROJECT MANAGER, CORRECT?

24 THE COURT: WHERE ARE WE LOOKING AT NOW?

25 MR. MADISON: I'M SORRY, YOUR HONOR. PAGE 4
26 OF EXHIBIT 441.

12:08PM

27 BY MR. MADISON:

28 Q DO YOU SEE THAT, MS. VANEVERY?

1 A WHAT WAS THE QUESTION?

2 Q DO YOU SEE YOUR E-MAIL TO MR. ROBERTSON AT THE
3 BOTTOM OF PAGE 4, GOING OVER TO PAGE 5?

4 A YES.

5 Q OKAY.

12:08PM

6 MOVE 441, YOUR HONOR?

7 MR. BRIAN: WITHDRAW THE OBJECTION.

8 THE COURT: IT WILL BE ADMITTED.

9
10 (EXHIBIT 441 ADMITTED.) +

12:09PM

11
12 BY MR. MADISON:

13 Q IF WE START AT THAT AND DISPLAY THAT PAGE,
14 NOVEMBER 13, YOU CAN SEE YOUR WRITING -- YOU'RE WRITING
15 TO MR. ROBERTSON:

12:09PM

16 HI, BILL,

17 I JUST WANTED TO LET YOU KNOW I
18 THINK WE AGREED A PROJECT MANAGER
19 WOULD BE OF VALUE WITH THIS
20 PROJECT. GREG WARD WILL BE
21 CONTACTING YOU IN THAT REGARD.

12:09PM

22 AND THE PROJECT WAS BUILDING OUT THE
23 SPACE TO BE USED FOR ASSET MANAGEMENT BUSINESS,
24 CORRECT?

25 A YEAH. IT WAS HIRING A PROJECT MANAGER TO
26 OVERSEE IF THERE WAS A BUILDOUT ON A SPACE.

12:09PM

27 Q AND THE SPACE WOULD BE FOR 50 PEOPLE TO OCCUPY
28 IN A NEW ASSET MANAGEMENT BUSINESS, CORRECT?

1 A THAT WAS MY ESTIMATE, YEAH.

2 Q AND YOU SEE THE EXHIBIT A THAT TALKS ABOUT
3 ABLE GRAPE AND SOME OF THE NEEDS OF THE PROJECT THERE?

4 WE CAN GO TO PAGE 6, YOUR HONOR.

5 THIS WAS STUDLEY'S PROPOSAL ABOUT WHAT
6 SOME OF THE SERVICES THAT COULD BE PROVIDED TO ABLE
7 GRAPE IN TERMS OF A PROJECT MANAGER, CORRECT?

12:09PM

8 A YEAH, I THINK THIS WAS WILLIAM ROBERTSON'S
9 SELLING HIS SERVICE.

10 Q YOU WERE INDICATING THAT YOU WERE INTERESTED
11 IN EXPLORING HAVING THAT PROJECT MANAGER, CORRECT?

12:10PM

12 A YES.

13 Q NOW, DID YOU HAVE A TIMELINE FOR THE PROJECT?

14 A I WAS UNDER THE IMPRESSION THAT SOMETHING WAS
15 GOING TO HAPPEN BY DECEMBER. I FIGURED BY THE END OF
16 THE YEAR, EITHER WE WERE GOING TO BE FIRED, WE WERE
17 GOING TO NEGOTIATE A DEAL TO STAY, NEGOTIATE A DEAL TO
18 LEAVE.

12:10PM

19 THINGS WERE KIND OF COMING TO A HEAD,
20 AND I THOUGHT THAT, YOU KNOW, BY YEAR END THIS --
21 SOMETHING WOULD HAPPEN.

12:10PM

22 SO WHEN I TALKED TO WILLIAM ABOUT, HEY,
23 IF SOMETHING HAPPENS AT YEAR END, HOW LONG WOULD IT
24 TAKE TO BUILD OUT A SPACE?

25 AND HE TOLD ME THAT IT PROBABLY WOULD BE
26 A MINIMUM OF THREE MONTHS.

12:11PM

27 Q AND SO YOUR TIMELINE -- YOU DID HAVE A
28 TIMELINE, YES?

1 A I THOUGHT BY THE END OF THE YEAR THAT
2 SOMETHING WOULD HAPPEN.

3 Q OKAY.

4 SO THE TIMELINE FOR THE OCCUPATION OF
5 THE NEW SPACE WOULD BE SOMETIME IN JANUARY -- MARCH --
6 EXCUSE ME -- CORRECT?

12:11PM

7 A IF I WERE FIRED, I WOULD HOPE IT WAS THE NEXT
8 DAY. I HOPE I WOULD HAVE SOMETHING, A PLACE TO LAND.
9 HE TOLD ME THAT IF I HAD TO BUILD SOMETHING OUT, IT
10 WOULD TAKE A MINIMUM OF THREE MONTHS.

12:11PM

11 Q SO, BASED ON THAT, YOU ASSUMED THAT -- WELL,
12 WHY, THEN, DID YOU NEED UNTIL DECEMBER OR JANUARY TO
13 BEGIN THAT THREE-MONTH PROCESS?

14 A WELL, LIKE I SAID, I THINK THINGS WERE COMING
15 TO A HEAD. I WAS UNDER THE IMPRESSION IN OCTOBER AND
16 THE BEGINNING OF NOVEMBER THAT WE WERE BEING FIRED.

12:11PM

17 AND THEN NOVEMBER 5TH TCW SIGNED AN
18 AGREEMENT WITH THE U.S. TREASURY ON THE PPIP PROGRAM
19 SAYING THAT JEFFREY WOULD BE THE KEY MAN ON THAT DEAL.

20 AND SO I THOUGHT, OH, THEY'RE GOING TO
21 KEEP US. THAT MEANS THEY'RE GOING TO WORK OUT A DEAL,
22 AND WE'RE GOING TO EITHER STAY OR NEGOTIATE OUR WAY
23 OUT.

12:12PM

24 Q WHAT DATE WAS THAT, MA'AM?

25 A THE DATE THEY SIGNED THAT AGREEMENT?

12:12PM

26 Q YEAH.

27 A I THINK IT WAS NOVEMBER 5TH.

28 Q ON NOVEMBER 5TH YOU ASSUMED YOU WERE STAYING

1 AT TCW?

2 A I ASSUMED THAT SOME KIND OF NEGOTIATION WOULD
3 OCCUR. SO, EITHER WE WERE GOING TO STAY THERE, OR WE
4 WOULD STILL NEED SPACE BECAUSE WE WOULD NEGOTIATE OUR
5 WAY OUT, BUT WE'D STILL BE SUB ADVISING THOSE DEALS.
6 THAT'S WHAT I THOUGHT.

12:12PM

7 Q OKAY. SO YOU THOUGHT THINGS WERE GOING TO BE
8 OKAY, BUT YOU STILL WANTED TO MOVE FORWARD WITH
9 SOMETHING CALLED ABLE GRAPE AND LOOKING FOR SPACE, JUST
10 IN CASE?

12:13PM

11 A I WAS MOVING FORWARD WITH LOOKING FOR SPACE IN
12 CASE WE NEEDED IT.

13 Q NOW, IF WE LOOK AT EXHIBIT 447, PAGE 34 AGAIN
14 THAT WAS ALREADY ADMITTED, SO WE CAN DISPLAY THAT.

15 IT TALKS ABOUT THE TRADING DESK UP AT
16 THE TOP, BUILDOUT FOR 50 PEOPLE. AND THERE'S A NOTE UP
17 IN THE UPPER RIGHT-HAND SIDE.

12:13PM

18 IS THAT YOUR HANDWRITING THERE IN THE
19 UPPER RIGHT?

20 A YES, IT IS.

12:13PM

21 Q YOU'RE TALKING ABOUT TOURING THE SPACE AT --
22 ON 12-1 AND AT 4:30 DOES HE WANT TO COME.

23 WAS THAT MR. GUNDLACH?

24 A PROBABLY, YEAH.

25 Q AND SO YOU'RE TALKING ABOUT HAVING THE NEED
26 FOR MECHANICAL ENGINEER, NO. 1; NO. 2, DESIGN THE
27 TRADING AREA.

12:13PM

28 AND THEN NO. 3 WAS WHAT WE HEARD ABOUT

1 ON THE VIDEO, THE JUDD STACK ART PIECE. AND I MEAN, IN
2 THE VIDEO WE SAW THAT YOU WEREN'T -- YOU TOOK SOME TIME
3 TO FIGURE OUT WHETHER YOU KNEW SOMEBODY WHO HAD THAT OR
4 NOT.

5 YOU KNEW EXACTLY WHAT THAT PIECE WAS,
6 DIDN'T YOU? 12:14PM

7 A YOU KNOW WHAT, I HAVE TO APOLOGIZE. I WAS --
8 I'M SORRY. I WAS NOT FORTHCOMING AT MY DEPOSITION. I
9 DID NOT GIVE YOU THE DETAILS THAT YOU WANTED AT THAT
10 TIME. AND I APOLOGIZE FOR NOT DOING THAT. 12:14PM

11 UNFORTUNATELY, I REGRET THAT I COULDN'T
12 GET PAST MY EMOTIONAL STATE AT THAT TIME. IF YOU WANT
13 TO TALK ABOUT THAT, I'D BE HAPPY TO.

14 Q BECAUSE OF YOUR EMOTIONAL STATE AT THE TIME,
15 YOU WERE UNTRUTHFUL IN YOUR SWORN TESTIMONY? 12:14PM

16 A I WASN'T UNTRUTHFUL. I WAS JUST NOT
17 FORTHCOMING WITH DETAILS LIKE THE JUDD STACK.

18 Q I MEAN, YOU KNEW ALL ALONG DURING ALL THAT,
19 THOSE ANSWERS THAT WE SAW, YOU KNEW EXACTLY WHAT WE
20 WERE TALKING ABOUT, DIDN'T YOU? 12:14PM

21 A YES.

22 Q AND THE JUDD STACK ART PIECE IS JUST A
23 SCULPTURE BY AN ARTIST NAMED JUDD THAT GUNDLACH WANTED
24 TO PUT IN YOUR NEW BUSINESS?

25 A YES. 12:14PM

26 Q YOU KNEW THAT BACK IN DECEMBER OF 2009, RIGHT?

27 A I -- I WROTE IT DOWN, YEAH.

28 Q WELL, OKAY. YOU DIDN'T JUST WRITE IT DOWN.

1 YOU KNEW THAT THAT'S WHY YOU WROTE IT DOWN?

2 A YES.

3 Q YOU KNEW JEFFREY WANTED TO HAVE A PARTICULAR
4 PIECE OF ART AT THE NEW SPACE, RIGHT?

5 A WE HAD TALKED ABOUT IT, YEAH.

12:15PM

6 Q OKAY.

7 AND SO, I MEAN, YOU WERE DOWN TO THAT
8 LEVEL OF DETAIL ABOUT TALKING ABOUT SLEEVES BEING
9 DRILLED AND BOLTED FOR THE PIECE OF ART THAT YOU KNEW
10 JEFFREY WANTED TO PUT IN HIS NEW BUSINESS, RIGHT?

12:15PM

11 A I -- WAS -- YEAH, I WAS DOWN TO A LEVEL OF
12 DETAIL, BUT I DIDN'T HAVE AN EXACT SPACE. I HADN'T
13 SIGNED A LEASE ON ANYTHING.

14 SO I WAS TRYING TO -- TO GATHER DETAILS
15 HOW IT WOULD BE DONE.

12:15PM

16 Q DO YOU RECALL, ACTUALLY RIGHT AROUND THE TIME
17 OF DECEMBER 3RD, DECEMBER 4TH, THESE DOCUMENTS WERE
18 BEING EXCHANGED, LEASE DOCUMENTS, WERE YOU INVOLVED IN
19 THAT?

20 A I WAS NOT.

12:15PM

21 Q IT WAS YOUR UNDERSTANDING NO LEASE HAD YET
22 BEEN SIGNED AS OF DECEMBER 4TH?

23 A I DIDN'T SIGN A LEASE, NO.

24 Q MR. BRAINARD WAS ACTUALLY STILL WORKING FOR
25 YOU ON DECEMBER 4TH ON THIS PROJECT WHEN YOU WERE PUT
26 ON LEAVE, WASN'T HE?

12:16PM

27 A I DIDN'T TALK TO MR. BRAINARD ON DECEMBER 4TH.

28 Q THAT WASN'T MY QUESTION, MA'AM.

1 A I'M SURE HE WAS UNDER THE IMPRESSION THAT I
2 STILL WANTED TO HAVE SPACE.

3 Q BECAUSE YOU HAD TOLD HIM TO KEEP MOVING
4 FORWARD, RIGHT?

5 A I THINK THAT HE WANTED TO GET A DEAL DONE SO
6 THAT HE COULD GET HIS COMMISSION, PROBABLY, YEAH.

12:16PM

7 Q BUT YOU HAD TOLD HIM TO KEEP MOVING FORWARD
8 WITH THAT, RIGHT?

9 A I ASSUMED HE WOULD BE GOING FORWARD. I DIDN'T
10 TELL HIM TO DO IT.

12:16PM

11 Q IN FACT, DOUBLELINE HAD TO ENTER INTO AN
12 AGREEMENT WITH MR. BRAINARD LATER, TO COMPENSATE HIM
13 FOR THE WORK THAT HE HAD DONE, RIGHT?

14 A I WASN'T INVOLVED IN THAT.

15 Q YOU WEREN'T INVOLVED IN THAT ONE?

12:16PM

16 A HUH-UH.

17 THE COURT: WE'LL TAKE OUR SECOND RECESS.

18 MR. MADISON: SURE.

19 THE COURT: WE'LL COME BACK AT 25 MINUTES TO
20 1:00.

12:16PM

21
22 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

23
24 THE COURT: WERE OUT OF THE PRESENCE OF THE
25 JURY. ANY MATTERS ANYBODY WANTS TO TAKE UP.

12:17PM

26 MR. BRIAN: NO, YOUR HONOR.

27 THE COURT: ALL RIGHT.

28 (RECESS.)

1 CASE NUMBER: BC429385
2 CASE NAME: TRUST COMPANY OF THE WEST VS.
3 JEFFREY GUNDLACH, ET AL
4 LOS ANGELES, TUESDAY, AUGUST 2, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 12:41 P.M.

10
11
12 (AT 12:41 P.M. THE JURY ENTERED
13 THE COURTROOM, AND THE FOLLOWING
14 PROCEEDINGS WERE HELD:)

15
16 THE COURT: ALL RIGHT. IN THE TCW VERSUS
17 GUNDLACH MATTER, THE JURORS ARE PRESENT AS ARE ALL
18 COUNSEL.

19 LADIES AND GENTLEMEN, I RECEIVED A
20 QUESTION FROM ONE OF YOU, OR MAYBE A COLLECTIVE
21 QUESTION. YOU ASKED WHAT IS MEANT BY FOUNDATION.

22 GENERALLY, AND A BASIC RULE IS THAT A
23 WITNESS CAN ONLY TESTIFY TO MATTERS ABOUT WHICH THEY
24 HAVE PERSONAL KNOWLEDGE. SO IF THERE'S AN OBJECTION
25 THAT SAYS NO FOUNDATION, IT MEANS THAT THE PERSON
26 DOESN'T HAVE PERSONAL KNOWLEDGE OF WHATEVER THEY ARE
27 BEING ASKED TO TESTIFY ABOUT, AND WE DON'T WANT THEM
28 SPECULATING OR GUESSING OR TESTIFYING ON RUMORS.

12:42PM

12:42PM

12:42PM

1 SO PERSONAL KNOWLEDGE WOULD BE, I HEARD
2 SOMEBODY SAY SOMETHING TO ME, OR I SAID SOMETHING TO
3 SOMEBODY ELSE.

4 BUT IF SOMEBODY SAYS, SO-AND-SO SAID
5 SOMETHING, THAT'S HEARSAY. THEY DON'T HAVE PERSONAL
6 KNOWLEDGE OF WHAT WAS SAID, SO WE SAY THEY DON'T HAVE
7 THE FOUNDATION TO GIVE THE TESTIMONY.

12:42PM

8 THE OTHER QUESTION YOU HAD WAS, WHAT IS
9 MEANT IF A WITNESS IMPEACHES. IMPEACHMENT TESTIMONY IS
10 TESTIMONY OFFERED TO BASICALLY CHALLENGE THE
11 CREDIBILITY OR THE ACCURACY OF PRIOR TESTIMONY GIVEN BY
12 A WITNESS. SO IF THEY SAY ONE THING, AND ON ANOTHER
13 DAY, THEY SAID SOMETHING ELSE, THEY MAY OFFER THE PRIOR
14 TESTIMONY TO IMPEACH THE CURRENT TESTIMONY, OR BACK AND
15 FORTH. SO I HOPE THAT HELPS YOU OUT.

12:43PM

16 MR. MADISON, YOU MAY CONTINUE YOUR
17 EXAMINATION OF MS. VANEVERY.

12:43PM

18 MR. QUINN: THANK YOU.

19
20
21 DIRECT EXAMINATION (RESUMED)
22 BY MR. MADISON:

12:43PM

23 Q. I WANT TO ASK YOU ABOUT SOMETHING YOU SAID
24 BEFORE THE BREAK, THAT YOU WEREN'T FORTHCOMING IN THE
25 DEPOSITION.

12:43PM

26 I MEAN, YOU RECALL THAT YOU HAD THE
27 LAWYERS FROM THE MUNGER FIRM WITH YOU AT THE
28 DEPOSITION?

1 A. YES. THEY WERE THERE.

2 Q. AND YOU ALSO HAD SOME OF THE SAME LAWYERS WHO
3 ARE HERE IN COURT THIS MORNING, WERE YOU WITH YOU THEN,
4 RIGHT?

5 A. ONE OF THEM, YES. 12:44PM

6 Q. AND YOU HAD AN OPPORTUNITY TO MEET WITH THEM
7 BEFORE THE DEPOSITION, CORRECT?

8 A. YES.

9 Q. AND YOU HAD LAWYERS FROM ANOTHER FIRM THERE AS
10 WELL? THE CO-COUNSEL FIRM WAS THERE AS WELL? 12:44PM

11 A. YES.

12 Q. AND YOU DIDN'T -- YOU UNDERSTOOD THE
13 IMPORTANCE OF GIVING SWORN TESTIMONY IN ANY PROCEEDING,
14 RIGHT?

15 A. YES, I DO. 12:44PM

16 Q. IT WASN'T THAT YOU DIDN'T APPRECIATE THAT YOU
17 WERE UNDER OATH, AND TESTIFYING UNDER PENALTY OF
18 PERJURY.

19 YOU UNDERSTOOD THAT, RIGHT?

20 A. YES. 12:44PM

21 Q. AND HAVE YOU HAD AN OPPORTUNITY TO GO THROUGH
22 THE DEPO TRANSCRIPTS?

23 A. I'VE READ IT OVER.

24 Q. WHEN WAS THAT?

25 A. I THINK IT WAS A FEW WEEKS AGO. 12:44PM

26 Q. OKAY.

27 WELL, I MEAN, ARE THERE OTHER THINGS,
28 OTHER THAN THE LITTLE SNIPPETS THAT WE SHOWED, THAT YOU

1 WEREN'T FORTHCOMING ABOUT IN YOUR DEPO?

2 MR. BRIAN: OBJECTION. FORM, CALLS FOR A
3 NARRATIVE.

4 THE COURT: SUSTAINED.

5 Q. BY MR. MADISON: WELL, WHAT DID YOU HAVE IN
6 MIND, WHEN YOU WERE APOLOGIZING TO US A BIT AGO ABOUT
7 NOT BEING FORTHCOMING? DID YOU HAVE SPECIFIC TESTIMONY
8 IN MIND?

12:44PM

9 A. YOU WERE ASKING ME ABOUT THE JUDD STACK, AND I
10 WASN'T FORTHCOMING BECAUSE I DID KNOW WHO HAD ONE.

12:45PM

11 Q. OTHER THAN THAT TESTIMONY, IS THERE ANYTHING
12 THAT YOU RECALL, AS YOU SIT HERE RIGHT NOW, THAT YOU
13 KNOW YOU WEREN'T FORTHCOMING ABOUT?

14 MR. BRIAN: OBJECTION. CALLS FOR A NARRATIVE.

15 THE COURT: SUSTAINED.

12:45PM

16 Q. BY MR. MADISON: IS THAT RIGHT? THERE'S SO
17 MUCH THERE, THAT YOU COULDN'T LIST IT?

18 MR. BRIAN: OBJECTION. THAT'S ARGUMENTATIVE.

19 THE COURT: LET'S MOVE ON, MR. MADISON.

20 HOW MANY DAYS DID HER DEPOSITION TAKE?

12:45PM

21 MR. QUINN: JUST ONE, YOUR HONOR.

22 THE COURT: AND HOW LARGE A VOLUME IS IT?

23 IT'S AN INAPPROPRIATE QUESTION. MOVE ON.

24 Q. BY MR. MADISON: AND YOU DID HAVE AN
25 OPPORTUNITY, AFTER YOUR DEPOSITION, TO CORRECT YOUR
26 TESTIMONY, DIDN'T YOU?

12:45PM

27 A. YES.

28 Q. AND MAKE CHANGES OR CORRECTIONS, IF YOU

1 THOUGHT THAT WAS APPROPRIATE?

2 A. YES.

3 Q. AND YOU CHOSE NOT TO CORRECT, FOR EXAMPLE, THE
4 PART ABOUT THE JUDD STACK SCULPTURE, RIGHT?

5 A. I JUST WASN'T FORTHCOMING WITH INFORMATION, SO
6 THERE WASN'T REALLY ANYTHING TO CORRECT.

12:45PM

7 Q. EVEN AT THE TIME OF THE CORRECTIONS?

8 A. YES.

9 Q. I MEAN, YOU UNDERSTOOD THAT YOU COULD ADD
10 INFORMATION, AS PART OF THE CORRECTIONS, TOO, RIGHT?

12:45PM

11 A. I DIDN'T KNOW THAT, BUT I CORRECTED ANYTHING
12 THAT WAS WRONG.

13 Q. OKAY.

14 SO NOW, YOU WERE TELLING US ABOUT THE
15 TIMELINE THAT YOU HAD IN YOUR MIND FOR THE NEW
16 BUSINESS.

12:46PM

17 AND WAS IT YOUR TESTIMONY THAT HOW LONG
18 IT WOULD TAKE TO BUILD IT OUT WAS WHAT WAS DICTATED IN
19 THE TIME LINE?

20 A. I HAD ASKED WILLIAM ROBERTS TO -- YOU KNOW,
21 HOW FAST COULD THIS BE DONE. AND IT WAS HIS
22 ESTIMATION, AND HE BUILT OUT A TIMELINE, AND WENT WEEK
23 BY WEEK OF HOW LONG IT WOULD TAKE. SO IT WAS HIS BEST
24 GUESS THAT IT WOULD BE THREE MONTHS.

12:46PM

25 Q. BUT YOU HAD YOUR OWN TIMELINE IN MIND, BEFORE
26 HE ESTIMATED HOW LONG IT WOULD TAKE TO BUILD IT OUT,
27 DIDN'T YOU?

12:46PM

28 A. THE ONLY THING I KNEW WAS, BY THE END OF THE

1 YEAR, THAT SOMETHING WAS GOING TO HAPPEN. IT WAS KIND
2 OF COMING TO A HEAD.

3 I -- BY THE TIME THE PPIP AGREEMENT WAS
4 DONE, I THOUGHT THAT WE WERE GOING TO BE NEGOTIATING.

5 Q. OKAY. WHEN YOU SAID "COMING TO A HEAD," I
6 THOUGHT YOU TOLD US THAT IN EARLY NOVEMBER, YOU
7 BELIEVED EVERYTHING WAS GOING BE OKAY FOR A WHILE?

12:47PM

8 MR. BRIAN: OBJECTION. MISSTATES TESTIMONY.

9 THE COURT: SUSTAINED.

10 Q. BY MR. MADISON: WHAT WAS COMING TO A HEAD,
11 AND WHEN?

12:47PM

12 A. I FELT LIKE THERE WAS GOING TO BE SOME KIND OF
13 SEPARATION.

14 Q. YOU JUST FELT THAT?

15 A. WELL, THERE WERE RUMORS THAT WE WERE GOING TO
16 BE FIRED.

12:47PM

17 Q. OKAY.

18 A. I FELT BETTER WHETHER THEY SIGNED THE
19 AGREEMENT, BECAUSE THEN I THOUGHT WE WERE GOING TO BE
20 STAYING, OR WE WOULD BE NEGOTIATING OUR WAY OUT, AND WE
21 WOULD BE AT LEAST SUB-ADVISING THAT.

12:47PM

22 Q. OKAY. AND YOU UNDERSTOOD, IN ANY NEGOTIATION,
23 BOTH SIDES WOULD HAVE TO AGREE?

24 A. OF COURSE.

25 Q. AND WE HEARD TESTIMONY YESTERDAY, I BELIEVE IT
26 WAS FROM MS. CODY, PERHAPS IT WAS MONDAY, ABOUT
27 FEELINGS THAT MR. GUNDLACH HAD TOWARD MR. STERN AND TCW
28 THAT WERE NOT FRIENDLY. YOU HEARD HIM EXPRESS FEELINGS

12:47PM

1 LIKE THAT, DIDN'T YOU?

2 A. I HEARD MR. GUNDLACH, AND I HAD SEVERAL -- OH,
3 SURE, WE HAD SPOKEN ABOUT IT. I CAN'T REMEMBER A
4 CERTAIN CONVERSATION, BUT HE WAS NOT THRILLED ABOUT
5 COMING BACK -- ABOUT MR. STERN COMING BACK IN JUNE.

12:48PM

6 AND OBVIOUSLY, OTHER PEOPLE WEREN'T VERY
7 THRILLED ABOUT IT EITHER, BECAUSE THEY SENT THE FRENCH
8 A LETTER STATING THAT THEY DIDN'T WANT HIM TO COME
9 BACK.

10 Q. AND THE FRENCH WERE THE SHAREHOLDERS OF THE
11 FIRM?

12:48PM

12 A. THEY WERE THE OWNERS OF THE FIRM.

13 Q. AND THE BOARD OF DIRECTORS GOT TO DECIDE WHO
14 WOULD BE CEO, NOT MR. GUNDLACH, RIGHT?

15 A. I GUESS. I DON'T KNOW.

12:48PM

16 Q. YOU UNDERSTOOD THAT, THAT THE DECISION HAD
17 BEEN MADE, THAT MR. STERN WAS GOING TO BE CEO, NOT
18 MR. GUNDLACH?

19 MR. BRIAN: OBJECTION. NO FOUNDATION.

20 THE COURT: OVERRULED.

12:48PM

21 DO YOU UNDERSTAND THAT?

22 THE WITNESS: YES.

23 I UNDERSTOOD THAT HE CAME BACK AS
24 INTERIM CEO.

25 Q. BY MR. MADISON: LET ME ASK YOU TO LOOK AT
26 EXHIBIT 1835, WHICH SHOULD BE IN YOUR BINDER THERE.

12:48PM

27 DO YOU RECALL THIS E-MAIL THAT YOU SENT
28 TO MR. BRAINARD, RESPONDING TO ONE FROM HIM?

1 A. YES, I'VE READ IT.

2 MR. MADISON: WE'D MOVE 1835.

3 MR. BRIAN: NO OBJECTION, YOUR HONOR.

4 THE COURT: ADMITTED.

5
6 (EXHIBIT 1835 ADMITTED.)

12:49PM

7
8 Q. BY MR. MADISON: SO HERE WE ARE, IN EARLY
9 NOVEMBER 2009, AND MR. BRAINARD IS ATTACHING SOME
10 SAMPLE PROJECT TIMELINES PREPARED BY MR. -- YOU GO DOWN
11 TO THE BOTTOM PART THERE -- THERE YOU GO.

12:49PM

12 IT SAYS ATTACHED PLEASE FIND TWO SAMPLE
13 PROJECT TIMELINES PREPARED BY WILLIAM ROBERTSON. HE
14 WAS TALKING ABOUT ONE OF THEM BEING FOR SECOND
15 GENERATION BUILD-OUT SPACE, AND THE OTHER FOR NEW
16 SPACE.

12:50PM

17 AND THEN, COUPLE OF LINES DOWN, TALKS
18 ABOUT, HE SAYS WITH REGARD TO THE FIRST LOOK SPACE, THE
19 TIMELINE MAY BE ABLE TO BE COMPRESSED, IF THE LEASE IS
20 SIGNED SOONER.

12:50PM

21 THE FIRST LOOK SPACE WHICH WAS THE SPACE
22 IN THE CAA BUILDING AT 2000 AVENUE OF THE STARS,
23 CORRECT?

24 A. I THINK SO, YES.

25 Q. AND THEN IF WE GO UP TO YOUR RESPONSE, YOU
26 STATE, FOR THE SECOND GENERATION SPACE, MAY IS NOT
27 GOING TO CUT IT FOR OUR TIMELINE. WE NEED TO BE ON
28 TRACK AND TARGETING END OF MARCH, EARLY APRIL.

12:50PM

1 SO YOUR DIRECTION TO YOUR REALTOR,
2 MR. BRAINARD, WAS YOU NEEDED TO BE ABLE TO MOVE INTO
3 THE NEW SPACE IN MARCH OR APRIL, CORRECT?

4 A. IF SOMETHING WERE GOING TO HAPPEN, I NEEDED TO
5 BE IN THE SPACE AS SOON AS POSSIBLE.

12:51PM

6 Q. OKAY, MA'AM. THAT WASN'T MY QUESTION, THOUGH.
7 YOUR DIRECTION HERE TO YOUR REALTOR IS
8 MARCH OR END OF APRIL. THAT WAS WHAT YOU WERE TELLING
9 HIM YOU NEEDED, TO BE ON TRACK AND TARGETING?

10 MR. BRIAN: OBJECTION. BEST EVIDENCE,
11 DOCUMENT SPEAK FOR ITSELF.

12:51PM

12 THE COURT: WELL, IT'S MARCH OR EARLY APRIL.

13 MR. MADISON: MARCH, EARLY APRIL. EXCUSE ME.

14 THE COURT: CAN YOU ANSWER THE QUESTION,
15 MA'AM?

12:51PM

16 THE WITNESS: YES.

17 I WANTED TO BE IN THERE AS SOON AS
18 POSSIBLE, AND WILLIAM ROBERTSON HAD GIVEN ME THE
19 ESTIMATE OF, IT TAKES THREE MONTHS.

20 Q. BY MR. MADISON: OKAY. WELL, YOU COULD HAVE
21 SAID, AS SOON AS POSSIBLE, IF YOU WANTED, RIGHT?

12:51PM

22 A. WELL, I WAS BASING THAT ON DECEMBER 31ST,
23 BEING SOMETHING WAS GOING TO HAPPEN BY THE END OF THE
24 YEAR.

25 AND WILLIAM ROBERTSON HAD TOLD ME PRIOR
26 TO THAT, BASED ON HIS TIMELINE, IT WOULD BE A MINIMUM
27 OF THREE MONTHS; SO I THOUGHT THE END OF MARCH, EARLY
28 APRIL, WOULD BE A MOVE-IN DAY ON ANY SPACE.

12:51PM

1 Q. IN FACT, MS. VANEVERY, THE BONUSES AT TCW WERE
2 PAID AT THE END OF FEBRUARY, CORRECT?

3 A. YES.

4 Q. AND IN YOUR MIND, THE IDEA WAS GOING TO BE, IF
5 YOU WERE GOING TO LEAVE TCW, YOU WANTED TO MAKE SURE
6 THE BONUSES WERE COLLECTED BEFORE YOU DID THAT, RIGHT?

12:52PM

7 A. IF WE WERE LEAVING ON A NEGOTIATED BASIS, I
8 WOULD EXPECT THAT THEY WOULD PAY BONUSES WHENEVER THAT
9 NEGOTIATED DEAL WAS DONE.

10 Q. SO, YOU WEREN'T THINKING ABOUT BONUSES BEING
11 PAID, AS A FACTOR IN THE TIMING OF THE MOVE?

12:52PM

12 A. NOT REALLY.

13 Q. OKAY.

14 AND YOU ALSO KNEW THAT MORNINGSTAR WAS
15 GOING TO MAKE AN ANNOUNCEMENT ABOUT CERTAIN AWARDS IN
16 JANUARY OF 2010, RIGHT?

12:52PM

17 A. I KNOW THEY DO THAT, YES.

18 Q. IF YOU LOOK BACK AT 441, ON THE START OF THE
19 FIRST PAGE OF THAT EXHIBIT.

20 REMEMBER, THIS WAS MR. ROBERTSON
21 TALKING, I THINK IT'S A COUPLE OF WEEKS LATER, IF WE
22 LOOK AT THE DATE. AND HE SAYS, DOWN IN THE MIDDLE
23 PARAGRAPH THERE, HE'S TALKING ABOUT THE PROPOSAL
24 REFLECTING A DISCOUNT. AND THEN DOWN ON THE THIRD
25 LINE, IF I AM ABLE TO SUCCESSFULLY GET YOU IN BY YOUR
26 END OF MARCH MANDATE.

12:53PM

27 SO YOUR MANDATE TO HIM WAS TO GET US IN
28 BY THE END OF MARCH, RIGHT?

12:53PM

1 A. MY MANDATE WOULD HAVE BEEN TO GET US IN AS
2 SOON AS POSSIBLE. HIS ESTIMATE WAS THREE MONTHS; SO I
3 THINK THAT'S HIS OWN MANDATE FOR GETTING A BONUS.

4 Q. WELL, SO, BUT THREE MONTHS WOULD HAVE BEEN
5 SOONER THAN MARCH, RIGHT?

12:53PM

6 A. FROM DECEMBER TO MARCH WOULD BE THREE MONTHS.

7 Q. SO GET US IN AS SOON AS POSSIBLE, BUT NOT
8 STARTING BEFORE END OF DECEMBER; THAT WAS YOUR MANDATE?

9 MR. BRIAN: OBJECTION. VAGUE AND AMBIGUOUS.

10 THE COURT: YOU CAN REPHRASE IT.

12:54PM

11 Q. BY MR. MADISON: THE ONLY MANDATE THAT YOU
12 WERE GIVING WAS END OF MARCH, RIGHT?

13 A. I THINK THIS IS AN E-MAIL FROM GREG WARD TO
14 WILLIAM ROBERTSON, NEGOTIATING WHAT THEIR PAYMENT WAS
15 GOING TO BE.

12:54PM

16 AND SO WILLIAM ASSUMES THAT IF HE GETS
17 THE JOB DONE BY MARCH, HE'LL RECEIVE A BONUS.

18 Q. LET ME SHOW YOU EXHIBIT 1211.

19 AND I'M NOT SURE THIS IS IN YOUR BINDER,
20 SO MAY I APPROACH, YOUR HONOR?

12:54PM

21 THE COURT: YES, YOU MAY.

22 MR. MADISON: IT'S A ONE-PAGE EXHIBIT.

23 MR. BRIAN: MAY I SEE IT FOR A MOMENT?

24 MR. MADISON: DOES YOUR HONOR NEED A HARD
25 COPY?

12:54PM

26 THE COURT: I CAN SEE IT ON THE SCREEN.

27 Q. BY MR. MADISON: DO YOU RECOGNIZE EXHIBIT 1211
28 TO BE AN E-MAIL YOU SENT TO MR. GUNDLACH?

1 A. YES.

2 Q. AND IF WE CAN MOVE THAT AND DISPLAY IT, YOUR
3 HONOR?

4 MR. BRIAN: NO OBJECTION.

5 THE COURT: IT WOULD BE ADMITTED.

12:55PM

6

7 (EXHIBIT 1211 ADMITTED.)

8

9 Q. BY MR. MADISON: SO HERE ON DECEMBER 1ST, YOU
10 ARE TALKING TO MR. GUNDLACH ABOUT A MEETING AT FIRST
11 LOOK.

12:55PM

12 AGAIN, THAT'S THE NEW SPACE AT
13 2000 AVENUE OF THE STARS, CORRECT?

14 A. YES.

15 AND YOU SAID MATT SAID, PARTNERS FROM
16 FIRST LOOK WANTED TO MEET WITH YOU TODAY AT 4:30. I
17 SAID, NO WAY THAT WOULD WORK, BUT I COULD DO IT. I
18 SAID YOU WOULD DO IT TOMORROW. THEY WANT TO MEET
19 TODAY, AS THEY WILL ALL BE THERE. I THOUGHT I WOULD
20 LET YOU KNOW, GREG WILL BE WITH ME. HOPE THEY LIKE ME.
21 IF FOR SOME BIZARRE REASON YOU COULD COME CLOSE UP THE
22 DEAL, THAT WOULD BE GREAT. THANKS.

12:55PM

23 Q. SO AS OF DECEMBER 1, YOU WANTED THE DEAL TO BE
24 CLOSED WITH THE NEW SPACE AT 2000 AVENUE OF THE STARS,
25 CORRECT?

12:55PM

26 A. THE FIRST LOOK PEOPLE HAD REQUESTED A MEETING
27 WITH US, AND SO I THOUGHT THAT WAS UNUSUAL. I'VE
28 NEVER -- EVEN MATT BRAINARD THOUGHT THAT WAS UNUSUAL,

1 THAT THE TENANT WANTED TO MEET THE POSSIBLE SUBLEASE
2 TENANT.

3 SO I THOUGHT THIS WAS MORE OF AN
4 APPROVAL PROCESS FROM THE FIRST LOOK OWNERS, BECAUSE
5 THEY WERE REQUESTING AN IN-PERSON MEETING, WHERE
6 USUALLY, THESE NEGOTIATIONS WERE DONE BY THE REALTORS.

12:56PM

7 Q. SO AS OF DECEMBER 1, YOU WERE WANTING
8 MR. GUNDLACH TO COME AND CLOSE UP THE DEAL FOR THE NEW
9 SPACE?

10 A. I WAS HOPING THAT HE COULD ATTEND THE MEETING
11 TO MEET THE FIRST LOOK PEOPLE, SO THEY WOULD KNOW WHO
12 THE TENANTS WERE.

12:56PM

13 Q. AND CLOSE UP THE DEAL, MEANT TO REACH
14 AGREEMENTS ON THE NEW SPACE?

15 A. SO THAT THE REALTORS COULD START WORKING ON --

12:56PM

16 Q. ON WHAT?

17 A. ON GETTING THE SUBLEASE TOGETHER.

18 Q. AND DO YOU KNOW WHETHER SUBLEASE DOCUMENTS HAD
19 ALREADY BEEN DRAFTED, BY THIS TIME?

20 A. I WASN'T AWARE THAT THEY WERE. I DON'T THINK
21 SO.

12:57PM

22 Q. DID YOU EVER SEE THE SUBLEASE DOCUMENTS?

23 A. I DID NOT.

24 Q. NOW, EXHIBIT 447 IS SOME MATERIAL THAT YOU HAD
25 IN YOUR OFFICE AT TCW.

12:57PM

26 DO YOU RECALL THAT?

27 THIS IS NOT YET IN EVIDENCE, I DON'T
28 BELIEVE. IT'S ONE PAGE, YOUR HONOR.

1 THE COURT: IS THAT EXHIBIT 442?

2 MR. MADISON: 447, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 MR. MADISON: I WOULD MOVE 447.

5 THE COURT: ANY OBJECTION?

12:57PM

6 MR. BRIAN: I'M JUST LOOKING AT IT. IT'S MANY
7 PAGES.

8 NO OBJECTION.

9 THE COURT: IT WOULD BE ADMITTED.

12:58PM

10
11 (EXHIBIT 447 ADMITTED.)

12

13 Q. BY MR. MADISON: DO YOU RECALL, MS. VANEVERY,
14 THAT ON DECEMBER 4TH, YOU HAD THESE DOCUMENTS IN A
15 FOLDER IN YOUR OFFICE AT TCW, MARKED PERSONAL?

12:58PM

16 A. YOU MEAN THE WHOLE 447, FROM PAGE 1 TO PAGE
17 67?

18 Q. YES.

19 A. I THINK SOME OF THEM WERE IN A FOLDER.

20 Q. WELL, LET US KNOW IF YOU SEE ONE THAT YOU
21 BELIEVE WEREN'T IN A FOLDER TOGETHER.

12:58PM

22 A. I SAW ONE AT THE END. BECAUSE ALL OF THESE
23 WERE RELATED TO THE REAL ESTATE I WAS LOOKING AT, BUT
24 63 WAS NOT IN THAT FOLDER.

25 Q. 63 IS A DRAWING.

12:59PM

26 CAN WE GO TO 63, YOUR HONOR?

27 THE COURT: YES, YOU MAY.

28 MR. MADISON: IT'S ACTUALLY --

1 THE COURT: I'M LOOKING AT EXHIBIT 447, PAGE
2 63, SOME HANDWRITTEN SCRIBBLES OR DIAGRAMS?

3 MR. MADISON: CAN I APPROACH THE PROJECTOR?

4 THE COURT: THAT'S NOT WHAT I HAVE HERE.

5 MR. MADISON: OUR PAGINATION HERE IS OFF. LET
6 ME JUST APPROACH THE ELMO.

12:59PM

7 THE COURT: GO AHEAD.

8 Q. BY MR. MADISON: SO WHOSE HANDWRITING IS
9 THERE, DO YOU KNOW?

10 A. I THINK IT'S JEFFREY GUNDLACH'S.

12:59PM

11 Q. AND THESE ARE SOME OF THE DRAWINGS THAT I
12 BELIEVE YOU TOLD US ABOUT EARLIER, OF THE MONDRIAN-LIKE
13 LOGO, CORRECT?

14 A. YEAH. YOU ASKED ME WHEN THE FIRST TIME I
15 HEARD ABOUT DOUBLELINE. AND I THINK HE HAD DONE THESE
16 SKETCHES IN ABOUT 2007, AND THEY WERE IN A STACK OF
17 PAPERS ON MY DESK THAT WERE ABOUT THIS HIGH. I WASN'T
18 VERY GOOD AT ORGANIZING.

01:00PM

19 Q. WELL, IT LOOKS LIKE, ON ONE OF THE BOXES
20 THERE -- I MEAN, MONDRIAN IS AN ARTIST WHO USES LINES
21 AND GEOMETRIC SHAPES, RIGHT?

01:00PM

22 A. HE USES BLACK AND WHITE. MOSTLY WHITE
23 BACKGROUNDS, BLACK LINES AND PRIMARY COLORS.

24 Q. MY QUESTION WASN'T ABOUT THE COLORS.

25 MONDRIAN IS AN ARTIST WHO USES GEOMETRIC
26 SHAPES, RIGHT?

01:00PM

27 A. YES.

28 Q. AND IN THE ONE ON THE LOWER LEFT THERE, CAN

1 YOU READ WHAT THAT SAYS, WHAT THE WORD SAYS THAT'S
2 WRITTEN THERE?

3 A. I THINK IT SAYS DOUBLELINE.

4 Q. SO THIS WAS SOMETHING THAT YOU AND
5 MR. GUNDLACH HAD DISCUSSED, AND HE HAD DRAWN UP LOGOS
6 FOR GOING BACK TO 2007?

01:00PM

7 A. YES.

8 Q. AND IF WE GO TO THE NEXT -- I'M GOING TO
9 APPROACH THE PROJECTOR, SO I CAN MAKE SURE WE HAVE THE
10 RIGHT NUMBERS HERE, YOUR HONOR.

01:01PM

11 MR. BRIAN: COULD I GET A PAGE NUMBER, YOUR
12 HONOR?

13 MR. MADISON: I BELIEVE IT'S 59, ON MY
14 EXHIBIT.

15 Q. DO YOU RECOGNIZE THIS DOCUMENT FROM THE PILE
16 OF DOCUMENTS THERE?

01:01PM

17 A. YES.

18 Q. AND THIS IS ONE OF THE TIMELINES THAT HAD BEEN
19 PREPARED BY SOMEONE AT STUDLEY, CORRECT?

20 A. THIS IS SOMETHING I THINK WILLIAM ROBERTS DID.
21 THIS WAS WHAT HE PREPARED, SO YOU CAN GET AN IDEA OF
22 HOW LONG THINGS WOULD TAKE AND IN WHAT WEEK THINGS WERE
23 HAPPENING.

01:01PM

24 Q. SO THE ANSWER TO MY QUESTION IS YES?

25 A. YES.

01:01PM

26 THE COURT: WELL, ROBERTS WASN'T AT STUDLEY.

27 MR. MADISON: NO.

28 THE COURT: I THOUGHT HE WAS SOMEWHERE ELSE.

1 Q. BY MR. MADISON: HE WAS WITH STUDLEY, RIGHT,
2 MS. VANEVERY?

3 A. HE WAS THE PROJECT MANAGER THAT THEY WERE
4 TRYING TO GET ME TO HIRE.

5 Q. OKAY. AND IF YOU COULD GO TO THE NEXT PAGE,
6 AND DISPLAY THE PAGE NUMBER THERE. THIS IS 61.

01:02PM

7 AND MS. VANEVERY, THIS LOOKS LIKE
8 ANOTHER VERSION OF THE TIMELINE, BUT WITH SOME
9 HANDWRITING ON IT.

10 AND THAT'S YOUR HANDWRITING, MA'AM?

01:02PM

11 A. YES, IT IS.

12 Q. AND CAN YOU JUST TELL US WHAT THE NATURE OF
13 THE NOTES IS AROUND THE TIMELINE?

14 MR. BRIAN: OBJECTION, YOUR HONOR. FORM OR
15 COMPOUND, A LOT OF NOTES.

01:02PM

16 THE COURT: IF YOU HAVE A SPECIFIC REFERENCE.
17 ARE YOU ASKING HER TO READ THEM, OR --

18 MR. MADISON: NO.

19 Q. I'M JUST ASKING, WERE YOU MAKING NOTES ABOUT
20 THE PROJECT, OR IS THIS UNRELATED TO THE PROJECT, OR
21 BOTH?

01:02PM

22 A. IT SEEMS RELATED TO THE PROJECT.

23 Q. OKAY. SO YOU ARE TALKING ABOUT DIFFERENT
24 DATES THAT DIFFERENT THINGS WERE GOING TO HAPPEN.

25 ON THIS VERSION, IT LOOKS LIKE THE DATE
26 IS DOWN AT THE VERY BOTTOM FOR PROJECT CLOSEOUT.

01:03PM

27 MOVE-IN, IT LOOKS LIKE, IS APRIL 14 OR
28 APRIL 19.

1 DO YOU SEE THAT?

2 A. YES, I DO.

3 Q. AND SO AT THAT TIME -- DO YOU KNOW WHAT DATE
4 IT WAS THAT YOU RECEIVED THIS?

5 A. I DON'T KNOW.

01:03PM

6 Q. THERE'S A DATE OF, IT LOOKS LIKE SEPTEMBER 11,
7 OVER IN THE UPPER RIGHT HAND, OR SEPTEMBER 12.

8 DO YOU SEE THAT?

9 DOES THAT TELL US ANYTHING ABOUT WHAT
10 THE DATE --

01:03PM

11 A. THAT SAYS, INTERVIEW ARCHITECTS.

12 Q. SO DOES THAT SUGGEST TO YOU THAT THIS WAS FROM
13 SOMETIME PRIOR TO THAT DATE?

14 A. I'M NOT SURE WHAT YOU ARE ASKING ME.

15 PRIOR TO WHAT DATE?

01:03PM

16 Q. WHEN DID YOU MAKE THE NOTES?

17 A. I DON'T KNOW.

18 Q. OKAY. AND THEN I THINK WE HAVE ONE MORE
19 THERE.

20 AGAIN, JUST ANOTHER VERSION OF THE --
21 THE COURT: WHAT ARE WE LOOKING AT NOW?

01:04PM

22 MR. MADISON: THIS IS PAGE 62, YOUR HONOR.

23 Q. WHAT DOES YOUR HANDWRITTEN NOTE UP AT THE TOP
24 THERE SAY, MS. VANEVERY?

25 A. BUSINESS DAYS.

01:04PM

26 Q. BUSINESS WHAT?

27 A. BUSINESS DAYS, LIKE DAYS OF THE WEEK, BUSINESS
28 DAYS.

1 Q. AND THEN THERE'S A CIRCLED DATE NEXT TO
2 EXECUTE LEASE. IT SAYS JANUARY 11 -- JANUARY 10, AND
3 THAT IS CIRCLED.

4 SO WAS THAT THE DATE YOU WERE
5 ANTICIPATING THERE WOULD BE A LEASE SIGNOFF, AS OF THE
6 TIME YOU MADE THESE NOTES? 01:04PM

7 A. I GUESS THAT'S WHEN WILLIAM WAS ESTIMATING A
8 LEASE WOULD BE SIGNED.

9 Q. AND THEN WHERE DESIGN DEVELOPMENT STANDARD,
10 17 DECEMBER OF '09, IT SAYS, JEG. 01:04PM

11 DO YOU KNOW WHY MR. GUNDLACH'S INITIALS
12 WERE THERE?

13 A. I WOULD HAVE WANTED HIM TO DO DESIGN
14 DEVELOPMENT, I GUESS.

15 Q. NOW, YOU HAD WORKED WITH MR. GUNDLACH FOR A
16 NUMBER OF YEARS AT TCW, DID YOU NOT? 01:04PM

17 A. I WORKED AT TCW FOR 16 YEARS, AND FOR THE GOOD
18 MAJORITY OF THAT TIME, YEAH.

19 Q. AND YOU REPORTED DIRECTLY TO MR. GUNDLACH,
20 CORRECT? 01:05PM

21 A. AT WHAT TIME?

22 Q. WELL, ANY TIME.

23 A. WELL, WHEN I FIRST STARTED THERE, I WAS AN
24 ADMINISTRATIVE ASSISTANT, AND I REPORTED TO FOUR
25 PEOPLE, AT LEAST. 01:05PM

26 AND PHIL AND JEFFREY HAD THEIR OWN
27 SECRETARY, SO I DIDN'T DIRECTLY REPORT TO THEM.

28 Q. SO DID THERE COME A TIME WHEN YOU REPORTED TO

1 MR. GUNDLACH?

2 A. YES.

3 Q. AND WHEN WAS THAT?

4 A. I'M NOT SURE WHEN THAT STARTED.

5 Q. FOR AT LEAST THE LAST SIX OR EIGHT YEARS AT
6 TCW, YOU REPORTED TO MR. GUNDLACH?

01:05PM

7 A. I REPORTED TO MR. GUNDLACH AND MR. BARACH.

8 Q. NOW, YOU -- THERE CAME A TIME WHEN YOU
9 DEVELOPED A PERSONAL RELATIONSHIP WITH MR. GUNDLACH,
10 CORRECT?

01:05PM

11 A. YES.

12 Q. AND THAT WAS AT LEAST BY 2006 OR '7, CORRECT?

13 A. YES.

14 Q. AND SO IF WE LOOK AT SOME COMMUNICATIONS
15 BETWEEN THE TWO OF YOU, YOU HAD A VERY CLOSE
16 RELATIONSHIP, AND WERE ALWAYS TRUTHFUL WITH ONE
17 ANOTHER, CORRECT?

01:06PM

18 A. I WOULD ASSUME HE WAS TRUTHFUL WITH ME. I
19 DON'T KNOW.

20 Q. AND YOU WOULD TRAVEL A GREAT DEAL WITH
21 MR. GUNDLACH ON BUSINESS AND ON PLEASURE, CORRECT?

01:06PM

22 A. I TRAVELED WITH MR. GUNDLACH AND OTHER PEOPLE,
23 YES.

24 Q. ON BOTH BUSINESS AND ON PLEASURE, CORRECT?

25 A. I TRAVELED WITH HIM FOR BOTH, YES.

01:06PM

26 Q. AND SO, FOR EXAMPLE, THERE CAME A TIME IN
27 NOVEMBER WHEN YOU TRAVELED WITH MR. GUNDLACH BACK TO
28 NEW YORK, AND PART OF THAT TRIP WAS TCW BUSINESS,

1 RIGHT?

2 THE COURT: NOVEMBER OF WHAT YEAR?

3 MR. MADISON: I'M SORRY, YOUR HONOR. 2009.

4 THE COURT: THANK YOU.

5 THE WITNESS: YES.

01:06PM

6 Q. BY MR. MADISON: AND PART OF THAT TRIP ALSO
7 INVOLVED ACTIVITIES RELATED TO THE NEW BUSINESS
8 VENTURE, DIDN'T IT?

9 A. I BELIEVE SO.

10 Q. SO, FOR EXAMPLE, DURING THAT TRIP YOU VISITED
11 A LAW FIRM IN NEW YORK THAT WAS HELPING WITH THE
12 CORPORATE ACTIVITIES OF THE NEW VENTURE, RIGHT?

01:07PM

13 A. NO.

14 Q. DO YOU REMEMBER VISITING THE CADWALADER LAW
15 FIRM IN NEW YORK?

01:07PM

16 A. NO.

17 Q. DO YOU REMEMBER VISITING WITH INVESTMENT
18 BANKING FIRMS TO TALK ABOUT POTENTIAL BUSINESS THAT THE
19 NEW FIRM WOULD DO?

20 A. I BELIEVE I MET WITH TALK POINT TO DISCUSS A
21 WEBCAST, AND I DID ATTEND A MEETING AT GOLDMAN SACHS
22 AND A MEETING AT UBS, IF THAT'S THE SAME TRIP.

01:07PM

23 Q. AND GOLDMAN SACHS IS AN INVESTMENT BANKING
24 FIRM?

25 A. YES.

01:07PM

26 Q. AND THE PURPOSE OF THAT WAS TO TALK ABOUT
27 DIFFERENT WAYS TO FINANCE THE NEW BUSINESS, RIGHT?

28 A. I THINK THE PURPOSE OF THAT WAS, I THOUGHT, TO

1 HAVE THEM HELP FIGURE OUT A WAY THAT WE COULD WORK OUT
2 A DEAL WITH TCW.

3 Q. AND THAT WOULD ALLOW YOU AND MR. GUNDLACH AND
4 OTHERS TO TAKE THE GROUP TO THE NEW FIRM THAT YOU HAD
5 FORMED, ABLE GRAPE?

01:08PM

6 A. WE WERE TRYING TO WORK OUT A DEAL WITH THEM,
7 YES.

8 Q. TRYING TO WORK OUT A DEAL WITH WHO?

9 A. WITH TCW.

10 Q. HOW DID YOU TRY TO DO THAT?

01:08PM

11 A. WELL, WE WERE ASKING GOLDMAN SACHS IF THEY
12 WOULD BE ABLE TO DO IT FOR US.

13 Q. DID YOU EVER HEAR ONE COMMUNICATION WITH TCW
14 ABOUT THAT?

15 A. I DIDN'T HAVE ANY COMMUNICATIONS FROM TCW
16 ABOUT THAT.

01:08PM

17 Q. I DIDN'T ASK IF YOU HAD, BUT DID YOU EVER
18 HEAR? DID YOU EVER SEE ANYTHING IN WRITING THAT
19 RELATED TO THAT NEGOTIATION YOU KEEP TALKING ABOUT?

20 A. ARE YOU TALKING ABOUT FROM THIS MEETING?

01:08PM

21 Q. ANY MEETING?

22 A. AT THAT PARTICULAR MEETING, I KNOW GREG WARD
23 WAS TAKING NOTES, AND IT HAD ON THERE THAT THEY WERE
24 GOING TO CONTACT TCW, AND TRY AND WORK OUT A DEAL.

25 Q. WHO WAS GOING TO DO THAT?

01:08PM

26 A. I THINK THAT WE WERE TALKING WITH GOLDMAN
27 SACHS ABOUT HAVING THEM NEGOTIATE A DEAL, OR HELP US
28 FIGURE OUT WHAT TERMS WOULD BE REASONABLE.

1 Q. AND IN THAT MEETING, GOLDMAN SACHS SAID, YOU
2 HAVE TO TELL TCW WHAT YOU ARE DOING, DIDN'T THEY?

3 A. I DON'T REMEMBER IF THEY SAID THAT OR NOT.

4 Q. AND WHEN THAT MEETING ENDED, THE IDEA WAS THAT
5 GOLDMAN SACHS WASN'T GOING TO TALK TO TCW, BUT THE
6 GROUP THAT WAS THERE HAD TO GO TALK TO TCW, RIGHT?

01:09PM

7 A. I THINK THE MEETING ENDED WITH WE WOULD DO A
8 FOLLOW-UP CALL.

9 Q. BETWEEN THE GROUP THERE AND GOLDMAN SACHS, NOT
10 INVOLVING TCW, RIGHT?

01:09PM

11 A. YES.

12 Q. WHAT ELSE, IF ANYTHING, DO YOU RECALL? YOU
13 SAID YOU MET WITH UBS AT THAT TIME, AS WELL?

14 A. YES, I DID.

15 Q. WHAT WAS THE PURPOSE OF THAT MEETING?

01:09PM

16 A. WE WERE TALKING ABOUT DOING A CLOSED END FUND
17 THAT UBS WOULD BE DISTRIBUTING.

18 Q. FOR THE NEW FIRM?

19 A. THAT WAS FOR TCW, YES.

20 Q. NOT THE NEW FIRM?

01:09PM

21 A. NO.

22 Q. NOW, YOU WERE ACTUALLY AN OFFICER OF ABLE
23 GRAPE, WEREN'T YOU?

24 A. I LEARNED THAT AFTER I WAS FIRED, YES.

25 Q. YOU -- DID THAT HAVE SOME RELATIONSHIP TO YOUR
26 FIRING -- THE FACT YOU WERE AN OFFICER IN THE NEW FIRM?

01:10PM

27 A. I DON'T BELIEVE SO. I WASN'T AWARE OF THE
28 FACT I WAS AN OFFICER OF A NEW FIRM AT THAT TIME.

1 Q. SO MR. GUNDLACH OR MR. WARD DIDN'T TELL YOU
2 THAT THEY HAD MADE YOU AN OFFICER OF ABLE GRAPE?

3 A. I DID NOT KNOW ABOUT THAT.

4 Q. SO AT THE TIME THAT YOU WERE SIGNING CONTRACTS
5 ON BEHALF OF ABLE GRAPE WITH MR. BRAINARD AND
6 COMMUNICATING WITH MR. ROBERTSON ON BEHALF OF ABLE
7 GRAPE, YOU DIDN'T KNOW YOU WERE, IN FACT, AN OFFICER,
8 YOURSELF, OF ABLE GRAPE LLC?

01:10PM

9 A. NO. I DIDN'T LEARN THAT UNTIL AFTER I WAS
10 FIRED.

01:10PM

11 Q. NOW, IN FACT, ABLE GRAPE WAS THE FIRM THAT
12 THEN, ON DECEMBER 8TH, BECAME DOUBLELINE; ISN'T THAT
13 RIGHT?

14 A. I WAS INFORMED OF THAT.

15 Q. SO YOU WERE AN OFFICER OF ABLE GRAPE, AND THEN
16 ABLE GRAPE BECAME DOUBLELINE; SO YOU BECAME AN OFFICER
17 OF DOUBLELINE?

01:10PM

18 A. I WAS NOT AN OFFICER AT DOUBLELINE.

19 Q. AT ANY TIME?

20 A. NOT THAT I KNOW OF, NO.

01:11PM

21 Q. WELL, DID SOMEONE TELL YOU THAT YOU HAD
22 ACTUALLY BEEN REMOVED AS AN OFFICER AT SOME POINT PRIOR
23 DOUBLELINE BEING FORMED OUT OF ABLE GRAPE?

24 A. I WAS NEVER TOLD I WAS REMOVED. I FOUND OUT
25 THAT I WAS LISTED, THROUGH COUNSEL, BUT I DIDN'T -- NO
26 ONE TOLD ME I WAS REMOVED.

01:11PM

27 Q. OKAY.

28 NOW, IF I WERE TO ASK YOU TO TELL ME

1 ABOUT ALL COMMUNICATIONS INVOLVING TCW PERSONNEL ABOUT
2 A NEGOTIATION IN NOVEMBER OF 2009, WOULD YOU BE ABLE TO
3 TELL US ABOUT ANY?

4 A. I WOULD NOT. I WOULDN'T BE THE ONE DOING THE
5 NEGOTIATING.

01:11PM

6 Q. SO YOU WOULDN'T HAVE ANY INFORMATION ABOUT
7 THAT?

8 A. THE -- I JUST TOLD YOU, I JUST KNEW THAT
9 THE --

10 Q. I'M NOT ASKING YOU SOMETHING ELSE. I'M JUST
11 ASKING IF YOU KNEW ABOUT ANY NEGOTIATIONS THAT ACTUALLY
12 WERE HAPPENING BETWEEN MR. GUNDLACH AND TCW, IN
13 NOVEMBER?

01:11PM

14 A. NO, I DID NOT.

15 Q. HOW ABOUT IN OCTOBER?

01:12PM

16 A. NO.

17 Q. HOW ABOUT IN THE EARLY PART OF DECEMBER?

18 A. I ONLY KNEW THAT THAT WAS OUR INTENTION.

19 Q. I UNDERSTAND THAT.

20 MY QUESTION NOW IS A DIFFERENT ONE,
21 THOUGH.

01:12PM

22 DID ANYBODY EVER ACT ON THAT INTENTION,
23 TO YOUR KNOWLEDGE?

24 A. I DON'T KNOW.

25 Q. SO YOU DON'T HAVE ANY INFORMATION TO THAT
26 EFFECT?

01:12PM

27 A. I DON'T HAVE PERSONAL KNOWLEDGE AT ALL ABOUT
28 ANY E-MAILS OR MEETINGS OR ANYTHING LIKE THAT.

1 Q. AND DURING THAT TIME, OCTOBER, NOVEMBER, EARLY
2 DECEMBER, YOU WERE KEEPING SECRET THE ACTIVITIES YOU
3 WERE UNDERTAKING WITH REGARD TO ABLE GRAPE, WEREN'T
4 YOU?

5 A. I WAS KEEPING IT SECRET FROM TCW?

01:12PM

6 Q. I DIDN'T INCLUDE THAT, BUT IS THAT WHAT -- WAS
7 THAT THE CASE?

8 A. I WASN'T GOING AROUND TELLING PEOPLE, REALLY.

9 Q. WELL, YOU DIDN'T DISCUSS IT WITH ANYONE OTHER
10 THAN THE OTHER PEOPLE THAT YOU KNEW WERE INVOLVED,
11 CORRECT?

01:13PM

12 A. NO.

13 Q. THAT'S NOT CORRECT, OR IT IS?

14 A. I DIDN'T DISCUSS IT WITH PEOPLE.

15 Q. AND THE PEOPLE THAT YOU KNEW YOU WERE
16 INVOLVED, WERE MR. GUNDLACH, MR. SANTA ANA AND
17 MR. WARD, CORRECT?

01:13PM

18 A. YES.

19 Q. LET ME HAVE ONE MOMENT, YOUR HONOR.

20 LET ME ASK YOU TO LOOK AT EXHIBIT 363,
21 MS. VANEVERY. AND THESE ARE THE CORPORATE DOCUMENTS
22 FOR ABLE GRAPE, SUBJECT TO ANY OBJECTION.

01:13PM

23 THE COURT: ANY OBJECTION?

24 MR. BRIAN: 363?

25 THE COURT: YEAH.

01:13PM

26 MR. BRIAN: NO OBJECTION.

27 THE COURT: IT WILL BE ADMITTED.

28 //

(EXHIBIT 363 ADMITTED.)

Q. BY MR. MADISON: SO IF WE CAN DISPLAY THESE, YOU WILL SEE ON THE FIRST PAGE, IT'S AN OPERATING AGREEMENT OF ABLE GRAPE, LLC.

01:13PM

AND AGAIN, THERE'S A LOT OF LEGALESE HERE. IN THE FIRST PARAGRAPH, THOUGH IT SAYS IT'S EFFECTIVE AS OF OCTOBER 22ND, 2009.

AND DID YOU COME TO LEARN FROM MR. GUNDLACH OR MR. WARD OR MR. SANTA ANA THAT A LAW FIRM HAD BEEN ENGAGED TO FILE THESE DOCUMENTS IN DELAWARE?

01:14PM

A. I WASN'T AWARE OF THAT, NO.

Q. AND IF YOU LOOK OVER TO THE VERY LAST PAGE, YOU WILL SEE IT'S AN ATTACHMENT, SHOWS THE OWNERSHIP, AND IT WAS A HUNDRED PERCENT OWNED BY JEFFREY GUNDLACH.

01:14PM

DID YOU UNDERSTAND THAT AT ANY TIME, OR AT THAT TIME, MR. GUNDLACH OWNED THE FIRM?

A. I DIDN'T KNOW THAT, NO.

Q. AND THEN IF YOU LOOK AT THE PAGE BEFORE THAT, SCHEDULE A IS A LIST OF THE OFFICERS, AND IT LISTS GREG WARD AS PRESIDENT, AND BARBARA VANEVERY AS VICE PRESIDENT AND CHRIS SANTA ANA, III, AS VICE PRESIDENT.

01:14PM

I TAKE IT IT'S YOUR TESTIMONY THAT THIS IS ALL NEWS TO YOU, OR AT LEAST YOU DIDN'T KNOW ABOUT IT AT THAT TIME?

01:14PM

A. I DIDN'T KNOW ABOUT IT TILL AFTER I WAS FIRED.

Q. AND THEN IF YOU LOOK AT THE SIGNATURE PAGE,

1 WHICH IS THE PAGE BEFORE THAT, THE MEMBER HAS EXECUTED
2 THE AGREEMENT, AND THAT'S MR. GUNDLACH.

3 YOU KNOW MR. GUNDLACH'S SIGNATURE,
4 RIGHT?

5 A. YES.

01:15PM

6 Q. AND THAT'S HIS SIGNATURE, ISN'T IT, MA'AM?

7 A. YES.

8 Q. OKAY.

9 LET ME ASK YOU TO LOOK AT 589, WHICH IS
10 ANOTHER CORPORATE DOCUMENT OF ABLE GRAPE?

01:15PM

11 DO YOU HAVE THAT, MA'AM?

12 THE COURT: IT'S ON THE SCREEN. IT'S A SINGLE
13 PAGE, IT LOOKS LIKE.

14 THE WITNESS: OKAY. HERE IT IS. I SEE IT.

15 MR. MADISON: OKAY. I'D MOVE 589, YOUR HONOR.

01:15PM

16 MR. BRIAN: NO OBJECTION.

17 THE COURT: IT WILL BE ADMITTED.

18
19 (EXHIBIT 589 ADMITTED.)

20
21 Q. BY MR. MADISON: THIS IS AN AMENDMENT TO THE
22 FORMATION OF ABLE GRAPE, DATED DECEMBER 8, 2009.

01:16PM

23 AND IT INDICATES THERE IN THE RECITALS
24 THAT WHEREAS THE COMPANY WAS FORMED AS A LIMITED
25 LIABILITY COMPANY UNDER THE NAME ABLE GRAPE, LLC, ET
26 CETERA, AND THEN THE NEXT, WHEREAS PURSUANT TO THIS
27 AMENDMENT, THE NAME SHALL BE CHANGED TO DOUBLELINE,
28 LLC.

01:16PM

1 SO WERE YOU AWARE, AS AN OFFICER OF ABLE
2 GRAPE, THAT THIS HAD OCCURRED ON DECEMBER 8TH?

3 A. I HAD NEVER SEEN THIS BEFORE.

4 I WASN'T AWARE, NO.

5 Q. AND MR. WARD WAS THE PRESIDENT OF ABLE GRAPE. 01:16PM

6 YOU DID HAVE AN UNDERSTANDING THAT HE
7 WAS AN OFFICER, RIGHT?

8 A. I DIDN'T KNOW MUCH ABOUT ABLE GRAPE AT ALL.

9 Q. NOW, BASED ON YOUR RELATIONSHIPS WITH
10 MR. WARD, MR. SANTA ANA -- BUSINESS RELATIONSHIPS, AND 01:17PM
11 YOUR BUSINESS RELATIONSHIP AND PERSONAL RELATIONSHIP
12 WITH MR. GUNDLACH, DID ANY OF THE THREE OF THEM EVER
13 SAY ONE THING TO YOU ABOUT ACTUALLY HAVING HAD A
14 COMMUNICATION WITH TCW ABOUT NEGOTIATING ON BEHALF OF
15 ABLE GRAPE? 01:17PM

16 A. I DON'T REMEMBER ANYONE SAYING ANYTHING LIKE
17 THAT.

18 Q. AND YOU AND MR. GUNDLACH EXCHANGED E-MAILS,
19 AND YOU SPOKE EVERY SINGLE DAY IN SEPTEMBER, OCTOBER,
20 NOVEMBER, DECEMBER OF 2009, DIDN'T YOU? 01:17PM

21 A. WE PROBABLY SPOKE ON A DAILY BASIS, YES.

22 Q. AND IT'S A FACT, HE NEVER SAID ONE THING ABOUT
23 HAVING TALKED TO TCW ABOUT NEGOTIATING ANY DEPARTURE ON
24 BEHALF OF ABLE GRAPE OR DOUBLELINE?

25 MR. BRIAN: OBJECTION. ASKED AND ANSWERED. 01:17PM

26 THE COURT: SUSTAINED.

27 Q. BY MR. MADISON: NOW, DID THERE COME A TIME
28 WHEN YOU LEARNED THAT DOWNLOADING OF TCW INFORMATION

1 WAS GOING ON?

2 A. I WASN'T AWARE THAT DOWNLOADING WAS GOING ON.

3 Q. DID THERE COME A TIME WHEN YOU REALIZED THAT
4 THERE WAS INFORMATION THAT BELONGED TO TCW THAT YOU,
5 MR. WARD, MR. SANTA ANA, MR. GUNDLACH HAD, FOR THE
6 PURPOSES OF ABLE GRAPE?

01:18PM

7 A. NO.

8 Q. DO YOU RECALL, ON THE WEEKEND OF -- AFTER
9 DECEMBER 4TH, TRYING TO ARRANGE A WEBCAST WITH TCW
10 CLIENTS?

01:18PM

11 A. I REMEMBER THAT MR. GUNDLACH WAS GETTING PHONE
12 CALLS AT HOME FROM CLIENTS THAT WERE CONCERNED ABOUT
13 WHAT WAS GOING ON, AND -- WHAT WAS GOING ON WITH THEIR
14 PORTFOLIOS, AND WHAT WAS HAPPENING. AND SO THEY WERE
15 APPARENTLY CALLING HIM AND PHIL AND JOEL, ANY PORTFOLIO
16 MANAGER IN OUR GROUP THAT THEY COULD GET AHOLD OF.

01:18PM

17 SO JEFFREY THOUGHT IT WOULD BE BEST IF
18 WE COULD DO A WEBCAST, WHERE HE COULD CONTACT AND LET
19 PEOPLE KNOW, SO THAT THEY WOULD STOP CALLING HIM.

20 Q. MA'AM, I'M JUST GOING TO ASK YOU SOME
21 QUESTIONS ABOUT IT. AND LET ME TRY TO NOT GET INTO
22 WHAT OTHER PEOPLE THOUGHT, BUT JUST ABOUT WHAT YOUR
23 INVOLVEMENT WAS, OKAY?

01:19PM

24 SO, WERE YOU IN POSSESSION OF A LIST OF
25 TCW CLIENT CONTACTS AFTER DECEMBER 4TH?

01:19PM

26 A. I -- WHEN HE ASKED ME ABOUT SETTING UP A
27 WEBCAST --

28 Q. MA'AM, YOU CAN EXPLAIN, IF YOU NEED TO.

1 THE COURT: JUST ANSWER THE QUESTION.

2 MR. MADISON: IT'S JUST A YES OR NO QUESTION.

3 THE WITNESS: I ROUTINELY TOOK WORK HOME.

4 AND YES, I DID HAVE SOMETHING FROM
5 SEPTEMBER OF THAT YEAR.

01:19PM

6 Q. BY MR. MADISON: SO YOU BELIEVED THAT YOU HAD
7 SOMETHING FROM SEPTEMBER THAT YOU HAD TAKEN HOME FOR
8 WORK?

9 A. IT WAS ON MY LAPTOP, MY PERSONAL LAPTOP, YES.

10 Q. ALL RIGHT. AND LET ME SHOW YOU EXHIBIT 551.

01:19PM

11 DO YOU HAVE THAT IN THE BINDER?

12 A. YES.

13 Q. DO YOU RECOGNIZE THAT?

14 A. I'M TRYING TO FIGURE OUT WHAT IT IS, BECAUSE
15 PAGES 3 THROUGH 49 ARE -- THEY LOOK LIKE THEY ARE ALL
16 THE SAME SPREADSHEET, BUT THE COLUMNS DIDN'T FIT ON THE
17 PAGES.

01:20PM

18 Q. OKAY.

19 A. AND THEN STARTING ON PAGE 50, IT LOOKS LIKE
20 WHAT IT ACTUALLY SHOULD BE.

01:21PM

21 Q. OKAY. DO YOU RECOGNIZE IT, OR NOT?

22 A. IT JUST LOOKS LIKE A LIST OF E-MAIL NAMES AND
23 PHONE NUMBERS.

24 Q. OKAY. IS THE E-MAIL ON THE FIRST PAGE
25 HELPFUL?

01:21PM

26 A. YOU MEAN MIKE WARNER?

27 THE COURT: NO, THE FIRST PAGE, EXHIBIT 551-1
28 APPEARS TO BE AN E-MAIL.

1 DO YOU SEE THAT?

2 THE WITNESS: YES.

3 THE COURT: OKAY. TAKE A LOOK AT IT, AND SEE
4 IF YOU CAN ANSWER MR. MADISON'S QUESTION.

5 THE WITNESS: WHAT'S THE QUESTION?

01:21PM

6 Q. BY MR. MADISON: DO YOU RECOGNIZE THE E-MAIL?

7 A. YES.

8 Q. OKAY. SO I'D MOVE 551, YOUR HONOR.

9 MR. BRIAN: NO OBJECTION, YOUR HONOR.

10 THE COURT: IT WILL BE ADMITTED.

01:21PM

11

12 (EXHIBIT 551 ADMITTED.)

13

14 Q. BY MR. MADISON: SO WE'D DISPLAY THIS E-MAIL.

15 AND HERE YOU ARE E-MAILING MR. GUNDLACH,

01:22PM

16 AND THE SUBJECT LINE -- THIS IS ON SUNDAY,

17 DECEMBER 6TH, 2009. AND YOU SAY, I FOUND WHAT YOU

18 NEEDED.

19 SO MR. GUNDLACH NEEDED SOMETHING, BY

20 YOUR UNDERSTANDING?

01:22PM

21 A. YES. HE ASKED ME TO SET UP A WEBCAST.

22 Q. ALL RIGHT.

23 AND THEN IT SAYS, ATTACHMENTS,

24 PARTICIPANT LIST, CONFERENCE CALL AND WEBCAST

25 9.9.09XLF. IT SAYS CALL ME TOMORROW WHEN YOU HAVE A

01:22PM

26 FREE MOMENT.

27 AND ATTACHED IS WHAT LOOKS TO BE A LIST

28 OF TCW CLIENTS, CORRECT?

1 A. I AGREE THERE MIGHT BE SOME CLIENTS ON HERE.
2 BUT GENERALLY, THE WEBCASTS WERE
3 PARTICIPATED BY ANYONE WHO WANTED TO LISTEN. MOST OF
4 THEM WERE FINANCIAL ADVISORS, REGISTERED INVESTMENT
5 ADVISORS, ANYONE THAT WOULD GIVE YOU FINANCIAL ADVICE
6 AT A SCHWAB OFFICE.

01:22PM

7 CLIENTS TENDED NOT TO REALLY LISTEN TO
8 THE WEBCASTS, BECAUSE THEY WERE ORIENTED TOWARD THE
9 MUTUAL FUNDS, AND THEY COULD DEMAND A MEETING IF THEY
10 WANTED. SO IT WASN'T NECESSARILY A CLIENT LIST.

01:23PM

11 Q. AND THIS WAS A TCW DOCUMENT, CORRECT?

12 A. THIS WAS, YES.

13 Q. SO THIS WAS A DOCUMENT THAT HAD BEEN CREATED
14 AT TCW BY TCW EMPLOYEES, TO BE USED TO SET UP TCW
15 WEBCASTS, RIGHT?

01:23PM

16 A. THIS WAS A LIST THAT WAS ACTUALLY CREATED BY
17 THE VENDOR THAT DOES THE WEBCAST.

18 SO I BELIEVE THE VENDOR THAT TCW USED AT
19 THE TIME WAS THOMSON REUTERS. SO THIS LIST IS SENT TO
20 THEM AFTER EACH WEBCAST.

01:23PM

21 Q. THE LIST WAS SENT TO THOMSON REUTERS?

22 A. NO. THOMSON REUTERS SENT IT TO TCW, AND TCW
23 SENDS IT AROUND TO WHEREVER THEY -- TO A LOT OF PEOPLE.

24 Q. SO IT BELONGS TO TCW AT THAT POINT?

25 A. YES.

01:24PM

26 Q. AND SO YOU WERE PROVIDING IT TO MR. GUNDLACH
27 TO USE, NOT FOR TCW BUSINESS, BUT TO USE FOR YOUR NEW
28 BUSINESS?

1 A. I WAS PROVIDING IT, THINKING THAT THAT'S WHO I
2 WOULD INVITE TO THE WEBCAST, SINCE THEY PARTICIPATED IN
3 THE LAST ONE THAT HE DID.

4 Q. AND THE ANSWER TO MY QUESTION IS?

5 A. YES, I PROVIDED IT.

01:24PM

6 Q. BUT NOT TO USE IT FOR TCW BUSINESS; TO USE FOR
7 DOUBLELINE'S BUSINESS?

8 A. YES.

9 Q. AND THE ADVISORS, THE CONSULTANTS THAT
10 PARTICIPATED IN THESE, OFTEN ADVISED CLIENTS ABOUT
11 THEIR INVESTMENTS, CORRECT?

01:24PM

12 A. YES.

13 Q. AND THE VENDORS ARE PAID FOR BY THE FIRM
14 HOSTING THE WEBCAST, CORRECT?

15 A. YES.

01:24PM

16 Q. SO TCW WOULD PAY THE VENDOR TO HOST ITS
17 WEBCASTS, AND THEN ABLE GRAPE, AT THIS TIME, SOON TO BE
18 DOUBLELINE, WOULD BE PAYING FOR ITS WEBCASTS, RIGHT?

19 A. ACTUALLY, I PAID FOR THIS ONE.

20 Q. ON BEHALF OF WHOM?

01:24PM

21 A. I DIDN'T KNOW IF IT WAS DOUBLELINE OR -- I WAS
22 JUST SETTING UP A CALL. I HAD JUST GOTTEN FIRED. I --

23 Q. YOU DIDN'T KNOW?

24 A. HE ASKED ME TO SET IT UP, AND I KNEW A VENDOR,
25 AND SO I PAID FOR IT MYSELF.

01:25PM

26 Q. JUST PERSONALLY?

27 A. YEAH.

28 Q. NOT ON BEHALF OF ANY FIRM OR COMPANY OR

1 ANYTHING?

2 A. NO.

3 Q. WELL, LOOK AT 2069. WE'LL COME BACK TO THE
4 LIST, BUT -- THAT'S THE CREDIT CARD AUTHORIZATION FORM
5 YOU FILLED OUT TO PAY FOR IT, ISN'T IT?

01:25PM

6 A. YES.

7 MR. MADISON: AND DO YOU SEE -- I'LL MOVE
8 2069, YOUR HONOR.

9 MR. BRIAN: NO OBJECTION.

10 THE COURT: IT WOULD BE ADMITTED.

01:25PM

11

12 (EXHIBIT 2069 ADMITTED.)

13

14 Q. BY MR. MADISON: OKAY. SO IT IS AN INVOICE,
15 AND IT'S TO A JEFFREY GUNDLACH, ABLE GRAPE, LLC, AND
16 THEN YOUR NAME, CORRECT?

01:26PM

17 A. YES.

18 Q. AND THEN IF WE GO TO THE SECOND PAGE, IT LOOKS
19 LIKE SOME SORT OF RECEIPT.

20 AND THEN IF WE GO TO THE THIRD PAGE,
21 THERE'S THE CREDIT CARD AUTHORIZATION FORM, AND IT
22 SAYS, FIRM COMPANY, ABLE GRAPE, LLC.

01:26PM

23 SO IN FACT, YOU DID PAY FOR IT ON BEHALF
24 OF A FIRM, DIDN'T YOU?

25 A. YES, I GUESS, YEAH. I PAID FOR IT. I -- I
26 DIDN'T HAVE A CREDIT CARD FROM THEM, SO I PAID FOR IT.

01:26PM

27 Q. BUT IT WAS ON BEHALF OF THE NEW BUSINESS,
28 RIGHT?

1 A. YES.

2 Q. AND DO YOU RECALL THAT YOU WANTED TO BE SURE
3 THAT YOU COULD EXCLUDE CERTAIN PEOPLE FROM LISTENING TO
4 THE WEBCAST?

5 A. YOU CAN DO THAT, YEAH.

01:26PM

6 Q. NO, MA'AM. MY QUESTION WASN'T WHETHER YOU CAN
7 OR CAN'T.

8 YOU WANTED TO DO THAT, DIDN'T YOU?

9 A. I SUPPOSE.

10 Q. SUPPOSE WHY?

01:27PM

11 A. DID I WANT TCW PEOPLE LISTENING TO IT?

12 PROBABLY NOT.

13 Q. EVEN IF THEY WERE INVESTORS IN THE FUNDS THAT
14 WERE GOING TO BE TALKED ABOUT?

15 A. WE WEREN'T TALKING ABOUT ANY FUNDS. WE DIDN'T
16 HAVE ANY FUNDS AT THAT TIME.

01:27PM

17 Q. SO THERE WAS NO DISCUSSION OF ANY FUNDS IN
18 THIS WEBCAST?

19 A. THIS WEBCAST WAS BECAUSE PEOPLE WERE CALLING
20 US AT HOME. THEY WANTED TO KNOW WHAT WAS GOING ON WITH
21 THEIR PORTFOLIOS. THEY WANTED INFORMATION FROM US. WE
22 DIDN'T HAVE ANY FUNDS AT THE TIME, BUT THESE PEOPLE
23 WERE INVESTED IN TCW FUNDS, AND THEY WERE CONCERNED
24 ABOUT THE CONDITION THAT THE PORTFOLIOS WERE LEFT IN.
25 THEY WERE CONCERNED ABOUT WHETHER THEY WERE BEING
26 MANAGED.

01:27PM

01:27PM

27 Q. OKAY.

28 SO DID YOU RECEIVE ANY OF THOSE CALLS

1 YOURSELF?

2 A. I DID NOT HAVE PEOPLE CALLING ME AT HOME, NO.

3 Q. ALL RIGHT. AND YOU SAY MR. GUNDLACH DID, AND
4 HE TOLD YOU ABOUT THAT, OR WERE YOU AT HIS HOME?

5 A. I HAD SEVERAL PEOPLE TELL ME THAT.

01:28PM

6 Q. ALL RIGHT.

7 AND THE PEOPLE WHO CALLED, COULD BE
8 TOLD, WHEN THEY CALLED, WHAT WAS GOING ON, RIGHT?

9 A. I THINK THAT THEY WERE PROBABLY TOLD AT THAT
10 TIME, YES.

01:28PM

11 BUT THE CONCERN WAS THERE THAT OTHER
12 INVESTORS WERE CLAMORING FOR INFORMATION.

13 Q. AND DID THERE COME A TIME WHEN YOU ASSISTED
14 MR. GUNDLACH AND DOUBLELINE IN SETTING UP CALLS TO TALK
15 SPECIFICALLY ABOUT TCW FUNDS?

01:28PM

16 A. YES.

17 Q. AND THAT WAS LATER, AFTER THAT FIRST WEEK?

18 A. YES.

19 Q. AND YOU USED THE SAME LISTS OF CONTACTS THAT
20 YOU HAD TO SET UP THOSE WEBCASTS, DIDN'T YOU?

01:28PM

21 A. I DID NOT.

22 Q. WHERE DID YOU GET THOSE WEBCAST CONTACTS?

23 A. I GOT THEM FROM AN INVESTOR IN THOSE FUNDS,
24 BOB BORDEN, WHO WAS THE HEAD OF SOUTH CAROLINA
25 RETIREMENT EMPLOYEES, SENT ME THE LIST, BECAUSE HE WAS
26 AN ADVISOR TO THOSE FUNDS. AND HE WAS VERY CONCERNED,
27 AND WANTED MR. -- HE WANTED TO TALK TO MR. GUNDLACH.
28 HE WANTED HIS OPINION. HE WANTED MR. GUNDLACH TO

01:29PM

1 ADDRESS ALL OF THE INVESTORS IN THOSE FUNDS.

2 Q. AND DO YOU RECALL THAT MR. BORDEN GOT THE
3 INFORMATION FROM TCW?

4 A. I BELIEVE HE DID, YES.

5 Q. AND DID YOU REMEMBER THAT WHAT HE DID WAS, HE
6 GOT THAT INFORMATION FROM TCW BY SAYING THAT HE WAS A
7 MEMBER OF THE ADVISORY BOARD, AND HE NEEDED IT TO
8 ADVISE THE ADVISORY BOARD?

01:29PM

9 A. I DON'T KNOW WHAT HE TOLD TCW.

10 Q. DO YOU RECALL RECEIVING SOME E-MAILS THAT HE
11 FORWARDED TO YOU ABOUT THAT?

01:29PM

12 A. YES, I DO.

13 Q. DO YOU RECALL THAT ON OCCASION, HE WOULD
14 ACTUALLY GET THE TCW INFORMATION, AND THEN FORWARD IT
15 TO YOU FROM HIS HOME E-MAIL, WHERE HE WOULD FORWARD IT?

01:29PM

16 A. HE SENT ME TWO E-MAILS WITH LISTS.

17 Q. IS THAT YES OR NO?

18 A. THAT'S A YES.

19 Q. AND HE WOULD USE HIS HOME ADDRESS TO DO THAT?

20 A. I WASN'T PAYING ATTENTION, BUT PROBABLY.

01:30PM

21 Q. AND BY THE WAY MR. BORDEN IS ACTUALLY SOMEONE
22 WELL KNOWN IN THE INVESTMENT ARENA?

23 A. YES. WE'D KNOWN HIM A LONG TIME.

24 Q. AND HAS HE INVESTED ANY MONEY WITH DOUBLELINE?

25 A. I DON'T BELIEVE HE HAS. I DON'T KNOW.

01:30PM

26 Q. AND IN FACT, HIS INVESTMENTS THROUGH HIS
27 PENSION FUND ARE STILL AT TCW, AREN'T THEY, MA'AM?

28 A. I DON'T KNOW.

1 MR. MADISON: IF I COULD JUST HAVE ONE MOMENT,
2 YOUR HONOR.

3 THERE'S JUST ONE EXHIBIT I WANT TO GET
4 MY HANDS ON, YOUR HONOR, IF I COULD JUST HAVE ONE
5 MOMENT.

01:31PM

6 THE COURT: ALL RIGHT.

7 MR. MADISON: LET ME JUST TURN TO SOMETHING
8 ELSE, AND THEN WE'LL COME BACK TO THAT EXHIBIT WHEN WE
9 GET IT.

10 Q. YOU BECAME THE DIRECTOR OF COMMUNICATIONS AT
11 DOUBLELINE, CORRECT?

01:32PM

12 A. YES.

13 Q. AND DID YOU USE ANY TCW INFORMATION IN
14 CREATING INFORMATION THAT YOU WOULD SEND OUT ON BEHALF
15 OF DOUBLELINE?

01:32PM

16 A. I DON'T BELIEVE SO.

17 Q. OKAY. LET ME SHOW YOU A COUPLE OF EXHIBITS.
18 LET ME ASK TO DISPLAY 719, FIRST, YOUR
19 HONOR.

20 AND I BELIEVE THIS IS IN EVIDENCE, YOUR
21 HONOR, 719?

01:33PM

22 THE COURT: IT IS.

23 Q. BY MR. MADISON: DO YOU HAVE THAT IN FRONT OF
24 YOU, MA'AM?

25 A. YES. I'M LOOKING AT IT ON THE SCREEN.

01:33PM

26 Q. OKAY. AND SO IF WE CAN GO TO THE FIRST PAGE,
27 WE SEE IT'S A DISCUSSION OF -- IT'S A PRESENTATION FOR
28 A POTENTIAL CLIENT AT DOUBLELINE, CORRECT?

1 A. YES.

2 Q. AND IT'S -- MR. GUNDLACH WOULD MAKE
3 PRESENTATIONS LIKE THIS AT DOUBLELINE, CORRECT?

4 A. HE DOES OCCASIONALLY NOW.

5 I THINK THIS WAS THE FIRST ONE THAT WAS
6 EVER DONE, AND I'M NOT SURE IT WAS EVER USED.

01:33PM

7 HE GENERALLY DIDN'T TAKE BOOKS -- IF HE
8 HAD A BOOK AT A MEETING, HE NEVER USED THEM.

9 Q. NEVER USED A BOOK, EVEN AT TCW?

10 A. HE DOES. THE MARKETING PEOPLE LIKE TO TAKE
11 THEM WITH HIM, BUT HE DOESN'T REALLY REFER TO THEM TOO
12 MUCH. USUALLY IT'S JUST A CONVERSATION WITH THE
13 CLIENT.

01:34PM

14 Q. DO YOU RECALL WHY THIS ONE WAS PREPARED WITH
15 ONLY HIS NAME ON IT, IF HE WASN'T GOING TO USE IT?

01:34PM

16 A. I THINK IT WAS GENERAL PRACTICE FOR US -- HE
17 MAY HAVE WANTED TO USE IT. I DON'T KNOW. EITHER
18 ALLYSON OR I MUST HAVE PREPARED IT, AND THEY MUST HAVE
19 EITHER BEEN COMING IN OR HE WAS TRAVELING THERE. I'M
20 NOT SURE.

01:34PM

21 BUT WE WEREN'T MARKETING VERY MUCH.
22 NOBODY WANTED TO TALK TO US AT THIS TIME. THIS WAS
23 AFTER THE LAWSUIT WAS FILED, AND NOBODY WAS INTERESTED
24 IN HEARING ABOUT OUR PRODUCTS, REALLY.

25 Q. RIGHT NOW I JUST WANT TO ASK YOU ABOUT THIS
26 DOCUMENT.

01:34PM

27 YOU SAY YOU AND ALLYSON PREPARED IT?

28 A. ONE OF US MUST HAVE.

1 Q. OKAY. SO LET ME ASK YOU SOME QUESTIONS AS THE
2 DIRECTOR OF COMMUNICATIONS FOR DOUBLELINE. IF YOU GO
3 TO, I BELIEVE IT BEGINS ON PAGE 14 OR 15, THE PART THAT
4 I WANT TO SHOW YOU; SO -- LET'S JUST START HERE, 13.

5 DO YOU KNOW WHO ACTUALLY DID THE
6 GRAPHICS FOR THIS?

01:35PM

7 A. I THINK ALLYSON DID.

8 Q. WHAT WAS HER LAST NAME?

9 A. PFEIFFER.

10 Q. AND SHE HAD ALSO BEEN AT TCW?

01:35PM

11 A. YES.

12 Q. AND CAME OVER?

13 A. YES.

14 Q. DID SHE BRING INFORMATION WITH HER WHEN SHE
15 CAME?

01:35PM

16 A. I DON'T KNOW.

17 Q. SO IF YOU LOOK, AND I'M GOING TO COMPARE THIS
18 TO THIS OTHER EXHIBIT THAT'S IN EVIDENCE, 948. AND AS
19 WE LOOK AT THESE, MS. VANEVERY, WE'LL SEE THAT
20 BASICALLY, THEY ARE WORD FOR WORD, IDENTICAL.

01:35PM

21 HAVE YOU HAD A CHANCE TO REVIEW THESE
22 PREVIOUSLY?

23 A. I ACTUALLY CREATED THE FIRST ONE THAT --

24 Q. THE ONE ON THE LEFT?

25 A. YES.

01:35PM

26 Q. WHEN YOU WERE A TCW EMPLOYEE?

27 A. YES.

28 Q. YOU CREATED IT FOR TCW?

1 A. YES.

2 Q. DESCRIBING TCW'S METHODS AND SYSTEMS?

3 A. YES.

4 Q. SO IF YOU LOOK HERE ON THE LEFT, IT SAYS
5 INVESTMENT CAPABILITIES AND PROCESS.

01:36PM

6 AND THEN THE TITLE AT DOUBLELINE IS MBS
7 INVESTMENT PROCESS, SO A COUPLE OF WORDS HAVE CHANGED.

8 AND THEN THE BOXES SORT OF ON THE LEFT
9 BECOME RECTANGLES, AND ON THE RIGHT; BUT IT'S THE EXACT
10 SAME WORDS, RIGHT?

01:36PM

11 A. YES.

12 Q. SO PRETTY CLEARLY, SOMEBODY JUST WANTED TO
13 COPY IT, BUT KIND OF MAKE IT LOOK A LITTLE DIFFERENT?

14 MR. BRIAN: OBJECTION. CALLS FOR SPECULATION.
15 ARGUMENTATIVE.

01:36PM

16 THE COURT: SUSTAINED.

17 Q. BY MR. MADISON: WELL, AS THE DIRECTOR OF
18 COMMUNICATIONS, DO YOU KNOW WHY THOSE CHANGES WERE
19 MADE?

20 A. I THINK THOSE TERMS ARE STANDARD, USED IN THE
21 INDUSTRY.

01:36PM

22 EVERYBODY DOES RESEARCH. EVERYONE HAS
23 RISK MANAGEMENT. EVERYONE HAS PORTFOLIO MANAGEMENT,
24 TRADING AND INVESTMENT TECHNOLOGY.

25 Q. SO IT'S OKAY TO JUST COPY IT FROM ANOTHER
26 FIRM? IS THAT WHAT YOU ARE TELLING ME?

01:36PM

27 MR. BRIAN: OBJECTION. ARGUMENTATIVE.

28 THE COURT: SUSTAINED.

1 Q. BY MR. MADISON: WELL, I'M NOT SURE WHAT THAT
2 HAS TO DO WITH WHY SOMEONE WOULD MAKE THE CHANGES.

3 THE QUESTION WAS WHY WOULD YOU MAKE THE
4 CHANGES --

5 MR. BRIAN: OBJECTION TO THE FORM, YOUR HONOR.

01:36PM

6 THE COURT: JUST ASK A QUESTION.

7 Q. BY MR. MADISON: YOU DON'T KNOW ANYTHING ABOUT
8 WHO MADE THESE CHANGES IN THIS WAY, DO YOU?

9 A. I THINK THE WAY THAT THEY LOOK IS REALLY NOT
10 THAT IMPORTANT. THEY ARE JUST STANDARD INDUSTRY TERMS
11 THAT EVERY PORTFOLIO MANAGER, INVESTMENT FIRM USES.

01:37PM

12 Q. CAN YOU GIVE US AN EXAMPLE?

13 A. WELL, I'M SURE THAT PIMCO DOES RESEARCH.

14 Q. AND YOU THINK PIMCO HAS A SHEET JUST LIKE
15 THIS?

01:37PM

16 A. I DON'T KNOW HOW THEY EXPLAIN THEIR RESEARCH.

17 Q. WELL, LET'S GET TO THE NEXT PAGE, AND WE'LL
18 SEE IF THE PATTERN CONTINUES.

19 SO THIS NEXT ONE, AT TCW, IT WAS CALLED
20 INVESTMENT CAPABILITIES AND PROCESS-RESEARCH; AND THEN
21 OVER AT DOUBLELINE, IT'S CALLED JUST RESEARCH, IN THE
22 BOX.

01:37PM

23 AND THEN IF WE LOOK, IT'S -- DOWN HERE,
24 IT'S PRETTY MUCH WORD FOR WORD, A DESCRIPTION OF THE
25 EXACT SAME THING, CORRECT?

01:38PM

26 A. I AGREE WITH YOU. IT DOES LOOK LIKE IT'S THE
27 SAME.

28 Q. BUT IF WE GO TO THE NEXT PAGE, WE'RE TALKING

1 ABOUT INVESTMENT CAPABILITIES AND PROCESS RISK
2 MANAGEMENT AND PORTFOLIO ANALYSIS, AND THAT'S BEEN
3 CHANGED TO RISK MANAGEMENT AND PORTFOLIO ANALYTICS.

4 AGAIN, IT PRETTY MUCH LOOKS LIKE IT'S
5 WORD FOR WORD, CORRECT?

01:38PM

6 A. SEEMS THAT WAY, YES.

7 Q. AND DO YOU KNOW WHY?

8 A. I THINK ALLYSON PREPARED THESE REALLY EARLY
9 ON. AND I THINK SHE SENT THEM AROUND, AND NO ONE
10 RESPONDED TO HER AS TO WHETHER WE COULD USE THEM OR
11 NOT.

01:38PM

12 Q. DO YOU HAVE AN E-MAIL TO THAT EFFECT?

13 A. I THINK THAT I DO.

14 Q. OKAY. BECAUSE THEN IT ENDED UP IN THE
15 NEW HAMPSHIRE PRESENTATION. THE ONE ON THE RIGHT IS
16 FROM AT LEAST A PRESENTATION THAT WAS MADE FOR A
17 CLIENT.

01:39PM

18 A. YES. YEAH, IT'S AN ELECTRONIC COPY THAT MUST
19 HAVE BEEN MADE AROUND THAT TIME.

20 Q. OKAY.

01:39PM

21 AND IF YOU LOOK AT THE FIRST SENTENCE OF
22 THE TEXT IN THE TCW VERSION, IT SAYS, IN ADDITION TO
23 TCW'S SEPARATE RISK MANAGEMENT OFFICER.

24 AND THEN IF YOU LOOK OVER IN THE
25 DOUBLELINE VERSION IT SAYS, IN ADDITION TO SEPARATE
26 RISK MANAGEMENT OFFICER. IT LOOKS LIKE SOMEONE --
27 ALLYSON JUST MADE A MISTAKE AND FORGOT TO FILL IN THE
28 WORD SHE TOOK OUT?

01:39PM

1 MR. BRIAN: OBJECTION. ARGUMENTATIVE.

2 THE COURT: SUSTAINED.

3 Q. BY MR. MADISON: YOU WOULD AGREE WITH ME THAT
4 THE DOUBLELINE VERSION DOESN'T MAKE SENSE, BECAUSE
5 THERE SEEMS TO BE A WORD MISSING, RIGHT?

01:39PM

6 A. I GUESS -- I'M NOT SURE. I DON'T KNOW. I
7 DIDN'T LOOK AT THE PAGES.

8 SO I SHOULD HAVE LOOKED AT THEM AT THE
9 TIME, AND SENT HER COMMENTS. BUT I WAS -- WE WEREN'T
10 MARKETING ANYTHING, SO WE DIDN'T NEED THESE PAGES.

01:40PM

11 Q. SO THERE WAS NO MARKETING AT DOUBLELINE?

12 A. NOT REALLY. ONCE THE LAWSUIT WAS FILED
13 AGAINST US, NO ONE WANTED TO TALK TO US, SO THERE
14 WASN'T ANY POINT. WE HAD LIKE TWO CLIENTS.

15 Q. SO IF WE GO ON THROUGH THE DOCUMENT -- WE'LL
16 JUST SEE AGAIN THAT IT'S WORD FOR WORD.

01:40PM

17 YOU WOULD AGREE WITH ME, WOULDN'T YOU,
18 MS. VANEVERY, THAT IF DO YOU GIVE SOMETHING TO THE
19 CLIENTS, IT SHOULD BE TRUE?

20 A. I WOULD AGREE WITH THAT, YES.

01:40PM

21 Q. AND YOU WOULD AGREE ALSO, AS A DIRECTOR OF
22 COMMUNICATIONS -- AND COMMUNICATIONS IS YOUR SPECIALTY,
23 RIGHT?

24 A. YES.

25 Q. THAT IF YOU LOOKED AT THESE TWO PRESENTATIONS,
26 YOU WOULD, AS A CLIENT, YOU WOULD BELIEVE THEY WERE
27 DESCRIBING THE EXACT SAME SYSTEMS?

01:40PM

28 MR. BRIAN: OBJECTION. CALLS FOR SPECULATION.

1 ARGUMENTATIVE.

2 THE COURT: SUSTAINED.

3 MR. HELM: CUMULATIVE, TOO.

4 Q. BY MR. MADISON: WELL, AS A DIRECTOR OF
5 COMMUNICATIONS, YOU WOULD NOT COPY ANOTHER FIRM'S
6 MATERIALS WORD FOR WORD, WOULD YOU?

01:40PM

7 MR. BRIAN: OBJECTION.

8 THE COURT: SUSTAINED.

9 Q. BY MR. MADISON: WELL, AS DIRECTOR OF
10 COMMUNICATIONS AT AN INVESTMENT FIRM, YOU WOULD REALIZE
11 THAT IF YOU TOOK ANOTHER FIRM'S DESCRIPTION OF THEIR
12 BUSINESS AND USED IT AS YOUR OWN, CLIENTS WOULD RELY ON
13 THAT, RIGHT?

01:41PM

14 MR. BRIAN: SAME OBJECTION. CUMULATIVE.

15 THE COURT: SUSTAINED.

01:41PM

16 I THINK WE'VE BEEN THROUGH THESE SEVERAL
17 TIMES ALREADY TODAY.

18 MR. MADISON: SURE. OKAY.

19 Q. WHEN YOU WERE LOOKING AT THE SPACE,
20 MR. GUNDLACH ACTUALLY DID PARTICIPATE IN SOME OF THE
21 MEETINGS, DIDN'T HE?

01:41PM

22 A. I THINK MR. GUNDLACH LOOKED AT SOME OF THE
23 SPACE.

24 Q. CAME OUT WITH YOU TO TOUR DIFFERENT BUILDINGS,
25 FOR EXAMPLE, CORRECT?

01:41PM

26 A. YES.

27 Q. HE WAS THE ONE THAT ULTIMATELY WOULD HAVE TO
28 DECIDE, RIGHT?

1 A. YES.

2 MR. BRIAN: OBJECTION. ASKED AND ANSWERED.

3 THE COURT: SUSTAINED.

4 Q. BY MR. MADISON: WELL, DO YOU RECALL, DID
5 MR. GUNDLACH ACTUALLY INVEST ANY MONEY IN ABLE GRAPE,
6 WHEN YOU WERE ALL STILL WORKING AT TCW?

01:41PM

7 A. I HAVE NO IDEA.

8 Q. DON'T YOU RECALL ARRANGING FOR THE -- FOR
9 MR. GUNDLACH TO SEND MONEY TO MR. WARD IN NEW YORK TO
10 BE USED TO INCORPORATE THE NEW FIRM?

01:42PM

11 A. I HAVE NO IDEA WHAT THAT WAS FOR.

12 Q. WHAT WHAT WAS FOR?

13 A. MR. WARD ASKED ME TO SEND HIM A FEDEX. I
14 DIDN'T KNOW WHAT IT WAS FOR.

15 Q. DO YOU KNOW WHAT WAS IN THE FEDEX?

01:42PM

16 A. NO.

17 Q. DIDN'T YOU KNOW ACTUALLY THAT IT WAS MONEY
18 THAT YOU NEEDED TO TALK TO MR. GUNDLACH ABOUT GETTING A
19 CHECK TO GO INTO THE FEDEX?

20 A. I THINK HE DID ASK ME TO GET A CHECK, BUT I
21 DON'T THINK HE EVER GAVE IT TO ME.

01:42PM

22 MR. BRIAN: YOUR HONOR, ARE WE DONE WITH THE
23 EXHIBITS ON THE SCREEN?

24 THE COURT: I BELIEVE SO.

25 MR. MADISON: YEAH, WE CAN TAKE IT DOWN, YOUR
26 HONOR. THAT'S FINE.

01:42PM

27 Q. SO YOU DON'T BELIEVE MR. GUNDLACH EVER
28 ACTUALLY DID SEND THE CHECK TO MR. WARD?

1 A. I DON'T THINK I EVER SENT A CHECK.

2 Q. YOU DIDN'T SEND A FEDEX TO MR. WARD?

3 A. I DIDN'T SEND -- I THINK MR. WARD WANTED ME TO
4 TALK TO JEFFREY ABOUT GETTING SOMETHING THAT HE NEEDED
5 TO INCLUDE A CHECK, AND I DON'T THINK I EVER SENT IT.

01:42PM

6 Q. DO YOU RECALL, THERE CAME A TIME AT DOUBLELINE
7 WHEN MR. GUNDLACH GAVE ADVICE TO CERTAIN CLIENTS OF TCW
8 AS TO WHAT THEY SHOULD DO WITH THEIR INVESTMENTS AT
9 TCW?

10 A. I THINK THAT ON A WEBCAST, THEY WERE ASKING
11 HIM QUESTIONS.

01:43PM

12 Q. IS THAT ALL THAT YOU RECALL ABOUT THAT?

13 A. SPECIFICALLY, I MEAN -- WHAT -- I REMEMBER THE
14 FIRST WEBCAST THAT WE DID, MR. GUNDLACH TOLD PEOPLE NOT
15 TO WORRY, THAT HE HAD SET UP THEIR PORTFOLIOS IN THE
16 MUTUAL FUND IN A WAY THAT IT WOULD BE FINE, IN THE
17 SHORT TERM, AND TO KEEP YOUR MONEY WHERE IT IS.

01:43PM

18 Q. WELL, LET ME ASK YOU TO LOOK AT EXHIBIT 2071,
19 MA'AM.

20 THE COURT: WHAT IS THE NUMBER AGAIN? I'M
21 SORRY.

01:43PM

22 MR. MADISON: 2071, YOUR HONOR.

23 Q. THIS IS AN E-MAIL YOU SENT, MS. VANEVERY, TO
24 TCW'S INVESTORS.

25 DO YOU RECALL THAT?

01:44PM

26 A. YES, I MUST HAVE.

27 Q. OKAY. MOVE 2071.

28 MR. BRIAN: NO OBJECTION.

1 THE COURT: IT WOULD BE ADMITTED.

2
3 (EXHIBIT 2071 ADMITTED.)
4

5 Q. BY MR. MADISON: SO IF WE LOOK AT THE COVER
6 E-MAIL, IT'S DATED FEBRUARY 15, 2010.

01:44PM

7 A. UH-HUH.

8 Q. AND DO YOU RECALL THAT AROUND THIS TIME, TCW
9 WAS GIVING INVESTORS, THERE'S AN OPTION AS TO WHAT TO
10 DO WITH CERTAIN FUNDS?

01:44PM

11 A. I HEARD ABOUT THAT FROM A FEW PEOPLE THAT
12 WORKED AT DOUBLELINE THAT WERE INVESTORS IN THESE
13 FUNDS, YES.

14 Q. OKAY. AND SO HERE YOU ATTACH A LETTER, YOU
15 SAY, ATTACHED PLEASE FIND A LETTER FROM DOUBLELINE'S
16 CEO, JEFFREY GUNDLACH, DISCUSSING HIS --

01:45PM

17 WHAT DOES THAT SAY?

18 A. ARE YOU ASKING ME TO READ IT?

19 Q. YEAH, THAT LAST WORD.

20 A. DISCUSSING HIS OPTING.

01:45PM

21 Q. OPTING TO IMMEDIATELY LIQUIDATE ALL OF HIS TCW
22 SMCF ONE AND TWO HOLDINGS. MR. GUNDLACH WILL BE
23 HOSTING TWO CONFERENCE CALLS, TOMORROW AND WEDNESDAY.

24 AND SO THEN IF WE GO TO THE ATTACHMENT,
25 IT'S A LETTER FROM MR. GUNDLACH IN WHICH HE'S TELLING
26 TCW INVESTORS THAT THEY SHOULD PULL THEIR MONEY OUT OF
27 TCW.

01:45PM

28 MR. BRIAN: OBJECTION, DOCUMENT SPEAKS FOR

1 ITSELF.

2 THE COURT: SUSTAINED.

3 Q. BY MR. MADISON: WELL, YOUR DESCRIPTION OF IT
4 WAS WHAT HE WAS OPTING TO DO.

5 WHAT DID YOU UNDERSTAND HE WAS OPTING TO
6 DO? 01:45PM

7 A. HE WAS OPTING TO LIQUIDATE HIS INVESTMENTS IN
8 THOSE FUNDS.

9 Q. AND WHAT THAT MEANT WAS TAKE THE MONEY FROM
10 TCW, CORRECT? 01:46PM

11 A. THAT'S WHAT LIQUIDATE MEANS, IS GET CASH OUT.

12 Q. OKAY.

13 AND SO, I MEAN, DID YOU UNDERSTAND FROM
14 TALKING TO MR. GUNDLACH AT DOUBLELINE, THAT WHAT HE WAS
15 DOING HERE WAS ADVISING DOUBLELINE INVESTORS TO DO THE
16 SAME THING -- EXCUSE ME -- TCW INVESTORS TO DO THE SAME
17 THING? 01:46PM

18 MR. BRIAN: OBJECTION. DOCUMENT SPEAKS FOR
19 ITSELF.

20 THE COURT: SUSTAINED. 01:46PM

21 THE DOCUMENT IS IN EVIDENCE,
22 MR. MADISON.

23 MR. MADISON: YES, I UNDERSTAND.

24 Q. SO HE'S TALKING ABOUT WHAT HE'S GOING TO BE
25 ELECTING TO DO. 01:46PM

26 YOU KNEW AT THIS TIME, WHEN YOU SENT
27 THIS E-MAIL, THAT THAT COULD BE HARMFUL TO TCW, IF
28 CLIENTS TOOK THEIR MONEY OUT, RIGHT?

1 MR. BRIAN: OBJECTION. NO FOUNDATION.
2 RELEVANCE.

3 THE COURT: SUSTAINED.

4 Q. BY MR. MADISON: WELL, IN AN ASSET MANAGEMENT
5 FIRM LIKE TCW, IS IT A GOOD THING TO HAVE ASSETS UNDER
6 MANAGEMENT?

01:46PM

7 A. YES.

8 Q. AND DID YOU KNOW THAT -- WHETHER OR NOT THERE
9 WERE CONTRACTS BETWEEN TCW AND THE INVESTORS?

10 A. YES.

01:46PM

11 Q. AND THERE WERE, WEREN'T THERE?

12 A. ON A -- I BELIEVE ON REGULAR INSTITUTIONAL
13 BUSINESS, THERE WAS IMA, INVESTMENT MANAGEMENT
14 AGREEMENTS.

15 Q. WITH THE CLIENTS?

01:47PM

16 A. YES.

17 Q. AND THOSE AGREEMENTS GOVERNED THE
18 RELATIONSHIPS BETWEEN THE CLIENTS AND TCW, CORRECT?

19 A. YES.

20 Q. NOW, DO YOU RECALL GOING ON A TRIP TO MARTHA,
21 TEXAS, WITH MR. GUNDLACH AND OTHERS, IN OCTOBER OF
22 2009?

01:47PM

23 A. YES.

24 Q. AND DO YOU RECALL THERE WERE ONLY A SMALL
25 GROUP OF EMPLOYEES FROM THE MBS GROUP ON THE TRIP,
26 CORRECT?

01:47PM

27 A. YES. I THINK THERE WAS EIGHT OF US.

28 Q. TCW PAID FOR THE TRIP, CORRECT?

1 A. YES.

2 Q. AND WOULD YOU AGREE, IT WAS A TEAM BUILDING
3 EXERCISE?

4 A. YES.

5 Q. AND ALL OF THE TEAM ULTIMATELY WOULD GO FOR
6 SOME PERIOD OF TIME TO DOUBLELINE TOGETHER, CORRECT?

01:47PM

7 A. EVERYONE DID, EXCEPT FOR ONE.

8 Q. MR. ERB, ARE YOU TALKING ABOUT?

9 A. YES.

10 Q. AND HE EVENTUALLY CAME BACK TO TCW?

01:47PM

11 A. YES.

12 Q. MS. CODY WAS PART OF THE TRIP, CORRECT?

13 A. YES.

14 Q. WAS SHE A JUNIOR EMPLOYEE?

15 A. YES.

01:48PM

16 Q. DO YOU KNOW WHY MR. GUNDLACH INVITED MS. CODY?

17 A. THAT TRIP WAS -- MR. GUNDLACH WAS A HUGE ART
18 FAN. AND MARTHA, TEXAS HAS THIS REALLY FANTASTIC
19 EXHIBIT BY DONALD JUDD. AND HE WANTED TO TAKE PEOPLE
20 THAT HE THOUGHT WOULD APPRECIATE THE ART, AND WHO HE
21 HAD HAD PREVIOUS CONVERSATIONS WITH ABOUT ART. AND SO
22 RACHEL WAS ONE OF THOSE PEOPLE.

01:48PM

23 Q. NOW, YOU SET UP THE LOGISTICS OF THE TRIP?

24 A. YES.

25 Q. AND ARRANGED FOR THE PAYMENT OF THE TRIP?

01:48PM

26 A. YES.

27 Q. AND TCW PAID FOR THE TRIP?

28 A. YES.

1 Q. IT WAS QUITE EXPENSIVE, WAS IT NOT?

2 A. COMPARED TO?

3 Q. COMPARED TO ALMOST ANYTHING?

4 A. IT WAS EXPENSIVE.

5 Q. I MEAN, PRIVATE JET, RIGHT?

01:49PM

6 A. YES.

7 Q. AND THAT'S QUITE EXPENSIVE, ISN'T IT?

8 A. THAT'S THE ONLY WAY YOU CAN GET IN THERE.

9 Q. THE ONLY WAY TO GET TO THAT PLACE IN THE
10 WORLD?

01:49PM

11 A. NO. BUT OTHERWISE, YOU HAVE TO FLY TO A MAJOR
12 CITY, AND IT'S A SEVERAL HOUR DRIVE BACK AND FORTH, SO.

13 Q. DIDN'T WANT TO DO THAT?

14 AND TCW PAID FOR THE PRIVATE JET, RIGHT?

15 A. YES.

01:49PM

16 Q. AND WE SAW EVIDENCE EARLIER THIS WEEK THAT --
17 OR HEARD EVIDENCE, THAT PART OF THAT TRIP WAS TO
18 CELEBRATE THE NEW BEGINNING IN 2010.

19 WOULD YOU AGREE WITH THAT?

20 A. IT WAS MR. GUNDLACH'S 50TH BIRTHDAY. SO IF
21 YOU HEARD ANYTHING ABOUT CELEBRATING, IT WOULD BE ABOUT
22 HIS BIRTHDAY.

01:49PM

23 Q. WELL, WHAT WE DID HEAR WAS ABOUT CELEBRATING A
24 NEW ERA, TO BEGIN WITH THE OPENING OF THE NEW FIRM.

25 YOU WOULD DISAGREE WITH THAT, I TAKE IT?

01:49PM

26 A. TOTALLY.

27 Q. AND DO YOU RECALL A DINNER AT MELISSE RIGHT
28 AROUND THAT SAME TIME; LATE SEPTEMBER, PERHAPS?

1 A. YES.

2 Q. AND THAT WAS QUITE EXPENSIVE AS WELL, RIGHT?

3 A. THAT WAS A CELEBRATION FOR THE MUTUAL FUND.

4 WHILE WE WERE AT TCW, WE HAD BEEN ABLE
5 TO RAISE \$10 BILLION IN THE FUND THAT YEAR, BASED ON
6 SOME -- MR. GUNDLACH'S PERFORMANCE AND OUR EFFORTS.

01:50PM

7 I PERSONALLY WORKED ON A MARKETING
8 PROJECT WITH THE MARKETING GROUP, TO MAKE SURE THAT
9 THOSE CALLS GOT DONE. AND WE WERE ABLE TO RAISE A LOT
10 OF MONEY. SO IT WAS A CELEBRATION THAT WE HAD RAISED A
11 LOT OF MONEY FOR THE FUND.

01:50PM

12 Q. AND WAS PART OF THAT ALSO TO CELEBRATE THE NEW
13 BUSINESS THAT WAS TO COME?

14 A. NO.

15 Q. AND IF ANYONE WERE TO SAY THAT, YOU WOULD
16 DISAGREE WITH THAT?

01:50PM

17 A. TOTALLY.

18 Q. AND TCW PAID FOR THAT, AS WELL?

19 A. I'M NOT SURE IF TCW, OR FOR IT COMES OUT OF
20 THE FUND. I DON'T KNOW.

01:50PM

21 Q. COULD YOU TELL US, JUST BASED ON THE TIME THAT
22 YOU WORKED IN THE GROUP, AND FOR MR. GUNDLACH, PRIOR TO
23 THAT MARTHA, TEXAS TRIP, AND THE DINNER AT MELISSE,
24 WHAT ARE WE TALKING ABOUT, TOTAL, FOR THOSE TWO EVENTS?
25 HUNDRED THOUSAND DOLLARS OR MORE?

01:51PM

26 A. NO.

27 Q. LESS?

28 A. I WOULD SAY LESS.

1 Q. FOR BOTH, COMBINED?

2 A. YES.

3 Q. WHATEVER IT WAS, CAN YOU TELL US WHEN THE LAST
4 TIME WAS BEFORE THAT THAT MR. GUNDLACH HAD HAD A TEAM
5 BUILDING EXERCISE LIKE THAT, LIKE EITHER OF THOSE?

01:51PM

6 A. WE HAD A TEAM BUILDING EVENT IN PALM DESERT
7 WHERE WE HAD LIFE-SIZED JENGA. WE PASSED THE -- WE
8 PLAYED GAMES. AND THEN WE TALKED ABOUT WHAT OUR FOCUS
9 WAS GOING TO BE FOR THE NEXT YEAR.

10 IT WAS PROBABLY IN 2008. MAYBE EARLIER,
11 2007, I'M NOT SURE.

01:51PM

12 Q. OKAY. LET ME ASK YOU TO LOOK AT EXHIBIT 139.

13 THE COURT: IS THAT IN THE BOOK, OR --

14 THE WITNESS: I DON'T HAVE IT.

15 MR. MADISON: LET ME APPROACH, THEN.

01:52PM

16 MAY I HAVE A MOMENT WITH COUNSEL?

17 THE COURT: YES, YOU MAY.

18 WELL, IT'S NUMBER 4 IN THE REDACTION
19 NOTEBOOK?

20 MR. MADISON: YES, IT IS.

01:53PM

21 YOUR HONOR, WE'RE GOING TO DEAL WITH
22 THAT. MAY I APPROACH?

23 MR. BRIAN: MAY WE APPROACH, YOUR HONOR? I
24 THINK I CAN DEAL WITH THIS.

25 THE COURT: I HAVE IT HERE. MAY WE JUST USE
26 THE REDACTED COPY?

01:53PM

27 MR. MADISON: WE DON'T HAVE THAT LOADED, YOUR
28 HONOR.

1 BUT WHAT WE'LL DO IS WE WON'T SHOW THE
2 PART THAT'S REDACTED.

3 MR. BRIAN: WELL, WHY DON'T WE JUST USE THE
4 ELMO?

5 THE COURT: YEAH, LET'S SEE IT ON THE SCREEN,
6 WHAT YOU ARE GOING TO SHOW, WITHOUT PUBLISHING IT.

01:53PM

7 LADIES AND GENTLEMEN, THESE ARE JUST
8 ISSUES WITH WHICH YOU DON'T NEED TO BE CONCERNED.

9 MR. BRIAN: WE CAN ACTUALLY DISPLAY IT FOR
10 THEM. THEIR CONSULTANT CAN SHOW THAT, IF THAT'S
11 ACCEPTABLE.

01:53PM

12 THE COURT: THAT'S FINE.

13 SO WE'RE LOOKING AT EXHIBIT 139, AS
14 REDACTED?

15 MR. BRIAN: YES.

01:54PM

16 THE COURT: ALL RIGHT.

17 MR. MADISON: I'D MOVE THAT, YOUR HONOR.

18 IS THAT ADMITTED?

19 THE COURT: ANY OBJECTION?

20 MR. HELM: NO.

01:54PM

21 MR. BRIAN: YOUR HONOR, I THINK I NEED TO
22 CONSULT FURTHER. SORRY.

23 THE COURT: ALL RIGHT.

24 CAN WE GO ON TO SOMETHING ELSE, AND WE
25 CAN PICK THIS UP?

01:54PM

26 MR. BRIAN: OR WE CAN JUST USE THE ELMO, I
27 THINK.

28 //

1 (MR. MADISON AND MR. BRIAN
2 CONFERRED SOTTO VOCE.)
3

4 MR. BRIAN: MAY WE SEE IT ON OUR SCREEN, YOUR
5 HONOR, BEFORE IT'S DISPLAYED?

01:54PM

6 THE COURT: YES. WE'D LIKE TO SEE IT FOR THE
7 COURT, COUNSEL, AND THE WITNESS ONLY.

8 MR. MADISON: DO YOU HAVE IT?

9 THE COURT: NOT YET.

10 MR. MADISON: YOU SHOULD.

01:55PM

11 THE COURT: NOT WORKING.

12 THAT'S MY WAY OF FIXING COMPUTERS.

13 MR. MADISON: I HOPE YOU DON'T FIX LAWYERS
14 LIKE THAT.

15 MR. BRIAN: IT'S FINE ON OUR SCREEN, YOUR
16 HONOR.

01:55PM

17 MR. HELM: THIS IS CORRECT.

18 MR. MADISON: WE'LL MOVE 139.

19 THE COURT: I HAVE IT IN FRONT OF ME, NOW.

20 IF WE CAN ADMIT IT?

01:55PM

21 MR. BRIAN: YES.

22 THE COURT: IT WILL BE ADMITTED AS REDACTED.

23 GO AHEAD AND PUT IT UP.

24
25 (EXHIBIT 139 ADMITTED.)

01:55PM

26
27 Q. BY MR. MADISON: ALL RIGHT.

28 SO DO YOU REMEMBER EARLIER, WE WERE

1 TALKING ABOUT A TIME IN FEBRUARY 2009, WHEN YOU AND
2 MR. GUNDLACH WERE TALKING ABOUT WESTERN ASSET, WAMCO?

3 A. YES.

4 Q. AND DOES THIS E-MAIL REFRESH YOUR RECOLLECTION
5 AS TO ROUGHLY THE TIME THAT THOSE CONVERSATIONS
6 OCCURRED?

01:55PM

7 A. YES.

8 Q. AND IF WE START AT THE BOTTOM OF THE FIRST
9 PAGE, AND LOOK AT MR. GUNDLACH'S E-MAIL TO YOU, IT
10 SAYS, IT COMES DOWN TO THIS: WESTERN'S ASSETS EXCEED
11 THEIR REPUTATION. AND OUR REPUTATION EXCEEDS OUR
12 ASSETS. I THINK, THEREFORE, CONCEPTUALLY, BOTH SIDES
13 SHOULD PROBABLY BE WILLING TO TAKE HALF OF THE AVERAGE
14 FIRM CREATED BY COMBINING.

01:55PM

15 FOR EXAMPLE, I WOULD THINK THAT IF
16 WESTERN COULD TRADE THEIR \$500 BILLION IN TRADING PAST,
17 MERELY RIOTOUS CLIENT BASE FOR A 200-BILLION-DOLLAR
18 TOLERANT CLIENT BASE WITH SOME GROWTH POTENTIAL, THAT
19 THEY WOULD DO IT.

01:56PM

20 SIMILARLY, IF I COULD TRADE MY
21 60-BILLION-DOLLAR MOSTLY HAPPY CLIENT BASE WITH
22 EXCELLENT GROWTH POTENTIAL FOR A 200-BILLION-DOLLAR
23 TOLERANT CLIENT BASE WITH SOME GROWTH POTENTIAL, I
24 WOULD LIKELY DO IT.

01:56PM

25 SO LET ME JUST STOP THERE.

01:56PM

26 AND DO YOU RECALL COMMUNICATING WITH
27 MR. GUNDLACH ABOUT SOME SORT OF MERGER OR COMBINATION
28 OF BUSINESSES WITH WAMCO?

1 A. YES.

2 Q. AND WHEN HE'S TALKING ABOUT MY \$60 BILLION
3 MOSTLY-HAPPY CLIENT BASE, THOSE WERE MONIES INVESTED AT
4 TCW, CORRECT?

5 A. YES.

01:57PM

6 Q. AND THOSE WERE MONIES INVESTED PURSUANT TO
7 THOSE CONTRACTS BETWEEN TCW AND THE INVESTORS, CORRECT?

8 A. YES.

9 Q. AND THERE WERE NO CONTRACTS THAT MR. GUNDLACH
10 HAD ON THE SIDE WITH ANY TCW CLIENTS THAT SAID, YOU
11 KNOW, I'VE ACTUALLY GOT THE CONTRACT WITH YOU, NOT TCW,
12 WERE THERE?

01:57PM

13 A. I AGREE WITH YOU ON THAT.

14 BUT MR. GUNDLACH WAS THE ONLY ONE THAT
15 COULD MANAGE THAT PRODUCT. SO IF SOMEONE SIGNED UP FOR
16 A MORTGAGE-BACKED SECURITIES STRATEGY, HE WAS THE ONLY
17 GUY THAT COULD DELIVER THAT.

01:57PM

18 SO YES, IT'S TRUE THAT THE AGREEMENT WAS
19 WITH TCW, BUT I THINK WHAT HE'S TALKING ABOUT IS HIS
20 CLIENT BASE WANTS A MORTGAGE-BACKED SECURITY
21 SPECIALIST, AND THAT WAS HIM.

01:57PM

22 Q. WELL, YOU MEAN -- DID YOU MEAN THAT LITERALLY,
23 HE WAS THE ONLY PERSON IN THE WORLD THAT COULD DO THAT
24 JOB?

25 A. I THINK HE'S THE ONE THAT THOSE CLIENTS HIRED
26 TO DO THAT JOB.

01:57PM

27 Q. SO YOU MEAN LIKE PHIL BARACH COULDN'T MANAGE
28 THAT MONEY?

1 A. I THINK THE CLIENTS HIRED JEFFREY GUNDLACH AND
2 PHIL BARACH AS A TEAM.

3 Q. OKAY.

4 BUT WHEN YOU SAID HE WAS THE ONLY ONE,
5 YOU UNDERSTAND THERE ARE OTHER TALENTED ASSET MANAGERS
6 IN THE UNITED STATES THAT COULD DO THE SAME JOB?

01:58PM

7 A. I COMPLETELY AGREE; BUT HE WAS THE ONLY ONE AT
8 TCW.

9 Q. I UNDERSTAND.

10 AND THE CONTRACTS WITH THE CLIENTS WERE
11 BETWEEN TCW AND THE CLIENTS, NOT MR. GUNDLACH AND THE
12 CLIENTS, RIGHT?

01:58PM

13 A. TRUE.

14 Q. SO WHETHER OR NOT HE COULD TAKE ASSETS WOULD
15 DEPEND ON THE CONTRACTS, AND ON WHAT THE CLIENTS WANTED
16 TO DO, TOO, RIGHT?

01:58PM

17 A. IT'S TOTALLY DEPENDENT ON WHAT THE CLIENTS
18 WANT TO DO.

19 Q. WELL, IF THERE WERE CONTRACTS, THAT FOR
20 EXAMPLE, CREATE LONG-TERM INVESTMENTS, WHERE PEOPLE
21 AGREE THAT THEY WERE GOING TO INVEST FOR FIVE OR 10
22 YEARS IN SOMETHING, DOESN'T IT ALSO DEPEND ON WHAT THE
23 CONTRACTS SAY?

01:58PM

24 A. YOU ARE TALKING ABOUT INVESTMENT MANAGEMENT
25 AGREEMENTS BETWEEN TCW AND AN INSTITUTIONAL CLIENT?

01:59PM

26 Q. NOT ONLY THOSE, NO.

27 A. WELL, THOSE ONES DON'T HAVE LOCK-UP PERIODS.

28 AND WHAT YOU ARE TALKING ABOUT IS A

1 LOCK-UP PERIOD, WHICH WOULD BE DIFFERENT FROM AN
2 INSTITUTIONAL CLIENT, THAT CAN LEAVE AT ANY TIME.

3 Q. SO THERE ARE SUCH LOCK-UP CONTRACTS, OR ARE
4 THERE NOT?

5 A. THERE ARE SPECIAL FUNDS THAT ARE LOCK-UP.

01:59PM

6 Q. OKAY.

7 AND SO I MEAN, FOR EXAMPLE, MR. BORDEN
8 DECIDED THAT THE MANAGERS AT TCW COULD MANAGE HIS FUNDS
9 WITHOUT MR. GUNDLACH, RIGHT, AS HE TOLD US EARLIER?

10 A. YOU ASKED ME IF I KNEW --

01:59PM

11 MR. BRIAN: OBJECTION. CALLS FOR SPECULATION.

12 THE COURT: SUSTAINED.

13 I'M NOT SURE THAT'S WHAT SHE TOLD YOU
14 EARLIER, SO GO AHEAD.

15 MR. MADISON: YES, YOUR HONOR.

01:59PM

16 Q. WHEN YOU SAY NO ONE ELSE COULD MANAGE THE
17 FUNDS, YOU'VE ALREADY -- THIS MORNING YOU MENTIONED ONE
18 CLIENT, MR. BORDEN, WHO KEPT HIS MONEY ON BEHALF OF THE
19 PENSION FUND WITH MR. GUNDLACH AFTER MR. GUNDLACH AND
20 MR. BARACH WERE GONE, RIGHT?

01:59PM

21 A. I SAID THAT NO ONE ELSE COULD MANAGE
22 MORTGAGE-BACKED SECURITIES PORTFOLIO.

23 Q. BUT CERTAINLY CLIENTS APPEAR TO HAVE DISAGREED
24 WITH THAT, BECAUSE THERE WERE A NUMBER OF THEM WHO KEPT
25 THOSE FUNDS WITH TCW AFTER --

02:00PM

26 A. I DON'T KNOW WHAT STRATEGY HE'S IN.

27 Q. OKAY.

28 SO THE NEXT PARAGRAPH SAYS, THAT WAY OF

1 THINKING ABOUT IT ALLOWS FOR THE COMBINED FIRM TO
2 STABILIZE AT ABOUT \$400 BILLION, THE HALF. BOTH SIDES
3 WOULD BE HAPPY WITH ITS 200 BILLION.

4 WESTERN WAS AT 513 BILLION AT YEAR END,
5 PER THEIR WEBSITE. AND YOU KNOW IT IS SHRINKING FAST.
6 THE HALF OF -- PARDON ME.

02:00PM

7 BUT LET'S SAY THIS COMBO CAN STABILIZE
8 THE WESTERN LOSS AT ONLY ANOTHER 40 PERCENT; SO THEY
9 FALL FROM 513 TO 308.

10 MEANWHILE, WE CAN MARKET THE DOUBLELINE
11 PRODUCTS UP TO \$92 BILLION FROM \$60 BILLION.

02:00PM

12 SO WHAT WERE DOUBLELINE PRODUCTS?

13 A. WELL, HE'S TALKING ABOUT MERGING WITH WESTERN
14 ASSET. SO WHEN HE'S REFERRING TO PRODUCTS, HE'S
15 REFERRING TO HIS STRATEGIES. AND IF HE'S GOING TO GO
16 TO WESTERN ASSET, THEN THERE IS NO DOUBLELINE.

02:01PM

17 SO I THINK HE'S JUST USING THAT AS A
18 PLACEHOLDER FOR HIS OWN ASSETS THAT HE WOULD BRING
19 OVER.

20 Q. SO YOU ARE USING THE TERM -- I MEAN, UP IN
21 YOUR REPLY, IF WE CAN JUST JUMP AHEAD YOU SAY, I WOULD
22 THINK YOU SHOULD GET MORE THAN 20 PERCENT OF
23 DOUBLELINE; SO YOU ARE BOTH TALKING ABOUT SOMETHING
24 CALLED DOUBLELINE.

02:01PM

25 CAN YOU TELL US WHAT THAT WAS?

02:01PM

26 A. I WAS JUST USING HIS WORDING FROM BELOW.

27 Q. TO MEAN WHAT?

28 A. WELL, HE'S TALKING ABOUT MERGING WITH WESTERN

1 ASSET MANAGEMENT, AND SO IT WOULD BE WITH THEM, IF
2 THERE IS NO DOUBLELINE.

3 Q. MERGING TCW WITH WESTERN ASSET?

4 A. HE'S TALKING ABOUT MERGING HIMSELF, AND GOING
5 TO WORK FOR THEM.

02:01PM

6 Q. AND HE'S CALLING HIMSELF A COMPANY CALLED
7 DOUBLELINE, ISN'T HE?

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

9 THE COURT: I THINK THE DOCUMENT IS IN
10 EVIDENCE.

02:02PM

11 Q. BY MR. MADISON: WELL, YOUR UNDERSTANDING,
12 WHEN YOU REPLIED AND USED THE TERM DOUBLELINE IS,
13 THERE'S GOING TO BE THIS NEW BUSINESS CALLED
14 DOUBLELINE, AND WE'LL MERGE IT WITH WESTERN ASSET,
15 CORRECT?

02:02PM

16 MR. BRIAN: OBJECTION. DOCUMENT SPEAKS FOR
17 ITSELF.

18 THE COURT: WAIT. WAIT. JUST A MINUTE. I'M
19 LOOKING AT 139 ONE AND TWO, RIGHT?

20 MR. MADISON: YES, YOUR HONOR.

02:02PM

21 THE COURT: IT STARTS FROM THE BOTTOM?

22 MR. MADISON: YES, YOUR HONOR.

23 THE COURT: GUNDLACH TO VANEVERY?

24 MR. MADISON: YES.

25 THE COURT: AND IN THE MIDDLE, IT'S VANEVERY
26 TO GUNDLACH, AND THEN IT'S GUNDLACH TO VANEVERY?

02:02PM

27 MR. MADISON: YES, YOUR HONOR.

28 THE COURT: ALL RIGHT.

1 AND WHERE --

2 MR. MADISON: IN THE MIDDLE, MS. VANEVERY
3 SAYS, I WOULD THINK YOU SHOULD GET MORE THAN 20 PERCENT
4 OF DOUBLELINE, PRESUMABLY RESPONDING TO WHAT
5 MR. GUNDLACH SAID BELOW ABOUT COMBINING THESE TWO
6 COMPANIES.

02:02PM

7 Q. IS THAT RIGHT, MS. VANEVERY?

8 A. WELL, HE'S ACTUALLY TALKING ABOUT FEE SHARING
9 AND REVENUES AMONGST SEVERAL PARTIES. HE'S TALKING
10 ABOUT DOUBLELINE, WESTERN.

02:03PM

11 MAYBE IT'S A DIFFERENT E-MAIL, BUT I
12 THOUGHT HE WAS ALSO TALKING ABOUT FEE SHARING WITH
13 SOCIETE GENERALE.

14 Q. WELL, DOUBLELINE DIDN'T EXIST YET, IN FEBRUARY
15 OF 2009, DID IT, MA'AM?

02:03PM

16 A. NO, IT DID NOT.

17 Q. YOU AND MR. GUNDLACH WERE MAKING PLANS OF A
18 SORT FOR DOUBLELINE, WEREN'T YOU?

19 A. THAT'S NOT TRUE.

20 Q. AND MR. STERN WASN'T GOING TO BE COMING BACK
21 TO TCW FOR ANOTHER FOUR MONTHS, AT THIS POINT, WAS HE?

02:03PM

22 A. I HAD NO IDEA HE WAS COMING BACK AT ALL.

23 Q. NOBODY DID, IN FEBRUARY OF 2009, DID THEY?

24 A. NO.

25 Q. BUT YOU AND MR. GUNDLACH WERE TALKING ABOUT
26 MOVING THIS ENTIRE BUSINESS, PICKING IT UP, CALLING IT
27 DOUBLELINE, AND TAKING IT SOMEWHERE ELSE, WEREN'T YOU?

02:03PM

28 A. NO. HE WAS TALKING ABOUT THE POSSIBILITY OF

1 MERGING AND GOING TO WORK FOR WESTERN ASSET.

2 Q. MERGING WHAT?

3 MR. BRIAN: OBJECTION. ASKED AND ANSWERED,
4 YOUR HONOR.

5 THE COURT: SUSTAINED.

02:04PM

6 MR. MADISON: NOW WOULD BE A GOOD TIME, YOUR
7 HONOR.

8 THE COURT: WELL, WE CAN BREAK FOR THE EVENING
9 AND COME BACK TOMORROW MORNING AT 8:30.

10 LADIES AND GENTLEMEN, REMEMBER THE
11 ADMONITION. YOU ARE NOT TO DISCUSS THE MATTER AMONG
12 YOURSELVES, OR FORM ANY OPINIONS OR CONCLUSIONS
13 CONCERNING ANY ASPECT OF THE CASE UNTIL YOU HAVE HEARD
14 ALL OF THE EVIDENCE.

02:04PM

15 WE'LL SEE YOU TOMORROW MORNING. HAVE A
16 NICE EVENING.

02:04PM

17
18 (AT 2:05 P.M. THE JURY WAS
19 EXCUSED, AND THE FOLLOWING
20 PROCEEDINGS WERE HELD:)

02:04PM

21
22 THE COURT: ALL RIGHT. WE'RE OUT OF THE
23 PRESENCE OF THE JURY.

24 ANY MATTERS ANYBODY WANTS TO TAKE UP?

25 MR. BRIAN: I JUST WANT TO INQUIRE OF THE
26 COURT TO INQUIRE OF MR. MADISON, HOW MUCH MORE TIME HE
27 THINKS HE HAS WITH THIS WITNESS, SO WE CAN BUDGET OUR
28 TIME.

02:05PM

1 MR. MADISON: I WOULD THINK A HALF HOUR OR
2 LESS.

3 MR. BRIAN: I THOUGHT HE WAS DONE A HALF HOUR
4 AGO.

5 THE COURT: THAT'S FINE.

02:05PM

6 AND WE HAVE OUR WITNESSES LINED UP FOR
7 TOMORROW. EVERYBODY IS HAPPY AND KNOWS WHAT'S COMING?

8 WELL, MAYBE NOT HAPPY.

9 MR. BRIAN: I THINK WE'RE FINE. WE DON'T NEED
10 TO BOTHER YOU WITH THAT.

02:05PM

11 MR. QUINN: REALLY, YOUR HONOR, WE NEED TO DO
12 SANTA ANA VIDEO TOMORROW.

13 THE COURT: HOW WILL IT BE DONE TOMORROW, IF I
14 HAVEN'T LOOKED AT THE OBJECTIONS AND I HAVEN'T RECEIVED
15 THEM?

02:06PM

16 MR. BRIAN: WE'RE --

17 MR. MADISON: MR. QUINN RAISED THIS EARLIER.
18 WE'VE INQUIRED. I DON'T KNOW WHERE -- MR. WEINGART
19 INQUIRED IMMEDIATELY.

20 MR. WEINGART: I HAVEN'T HAD A CHANCE.

02:06PM

21 MR. BRIAN: WE WILL CHECK --

22 MR. QUINN: THE BALL'S IN THEIR COURT.

23 WE'RE HOPING TO GET IT TO YOU THIS
24 AFTERNOON.

25 THE COURT: WELL, I DON'T HAVE ANYTHING TO DO
26 THIS EVENING. SO IF YOU CAN GET IT TO ME, I'LL MAKE
27 SURE I GET IT TAKEN CARE OF. I'LL TAKE CARE OF IT.

02:06PM

28 IF YOU GET IT HERE BY 4:30. IT'S NOT --

1 IS IT VERY LENGTHY? IT'S LIKE THE OTHER ONES?

2 MR. QUINN: THE TOTAL PLAYING TIME IS GOING TO
3 BE LIKE 25 MINUTES, SOMETHING LIKE THAT.

4 THE COURT: GIVE IT TO ME BY 4:30, AND I'LL
5 HAVE IT TO YOU IN THE MORNING.

02:06PM

6 MR. BRIAN: THANK YOU, YOUR HONOR.

7 THE COURT: THANK YOU VERY MUCH.

8 HAVE A NICE EVENING.

9

10 (AT 2:07 P.M. AN ADJOURNMENT
11 WAS TAKEN UNTIL WEDNESDAY,
12 AUGUST 3, 2011 AT 8:30 A.M.)

13

14 (THE NEXT PAGE NUMBER IS 1201.)

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