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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.) CASE NO. BC429385
)
JEFFREY GUNDLACH, ET AL.,)
)
DEFENDANTS.)
-----)

REPORTERS' **DAILY** TRANSCRIPT OF PROCEEDINGS
WEDNESDAY, AUGUST 24, 2011

APPEARANCES:

FOR TCW: QUINN, EMANUEL, URQUHART,
OLIVER & HEDGES
BY: **JOHN D'AMATO**
JOHN B. QUINN
STEVEN G. MADISON
DOMINIC SURPRENANT
865 SOUTH FIGUEROA STREET
10TH FLOOR
LOS ANGELES, CALIFORNIA 90017
(213) 443-3000

FOR DOUBLE LINE: MUNGER, TOLLES & OLSON
BY: **BRAD D. BRIAN**
MARK B. HELM
LAURA SMLOWE
GREGORY J. WEINGART
355 SOUTH GRAND AVENUE, 35TH FLOOR
LOS ANGELES, CALIFORNIA 90071-1560
(213) 683-9280

WENDY OILLATAGUERRE, CSR #10978
RAQUEL RODRIGUEZ, CSR #9485
OFFICIAL REPORTERS

1 CASE NUMBER: BC429385
2 CASE NAME: TRUST COMPANY OF THE WEST VS.
3 JEFFREY GUNDLACH, ET AL
4 LOS ANGELES, WEDNESDAY, AUGUST 24, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 8:24 A.M.

10
11
12 (THE FOLLOWING PROCEEDINGS WERE
13 HELD IN OPEN COURT OUTSIDE THE
14 PRESENCE OF THE JURY:)

15
16 THE COURT: GOOD MORNING, LADIES AND
17 GENTLEMEN.

18
19 (ALL COUNSEL RESPONDED "GOOD MORNING, YOUR HONOR.")

20
21 THE COURT: IN THE TCW VERSUS GUNDLACH MATTER,
22 WE'RE OUT OF THE PRESENCE OF THE JURY. WE WERE GOING
23 TO CONVENE EARLY THIS MORNING SO WE COULD ADDRESS THE
24 ISSUE REGARDING THE GREG WARD NOTES, EXHIBITS 506 AND
25 509.

26 I'VE GONE THROUGH THE BRIEFS ON THESE,
27 AND MY INCLINATION IS TO ADMIT THE NOTES AS REDACTED BY
28 THE COURT ORIGINALLY. AND THAT IS THE THREE

1 RECOMMENDATIONS, WITH THE ASTERISK THAT, IN MY VIEW,
2 EVIDENCES A COMMUNICATION FROM MR. GUNDLACH TO
3 MR. WARD, OR TO THE PARTIES IN THAT CONVERSATION.

4 I DON'T KNOW WHETHER THE NOTES ARE BEING
5 OFFERED AS HEARSAY OR FOR THE TRUTH OF THE MATTER, BUT 08:25AM
6 NECESSARILY THAT THE PARTIES WERE, MR. WARD AND
7 MR. GUNDLACH, HAD THIS INFORMATION AVAILABLE TO THEM
8 THAT MAY GO TO THEIR STATE OF MIND.

9 SO WITH THAT SAID, WHO WANTS TO BE HEARD
10 ON IT? 08:25AM

11 MR. MADISON: I'LL BE VERY BRIEF, YOUR HONOR.

12 WE BRIEFED THIS AND TALKED ABOUT IT.
13 BUT THE NOTES IN QUESTION ARE GREG WARD'S NOTES OF
14 STATEMENTS MADE, NOT BY MR. GUNDLACH. AND THERE'S NO
15 DISPUTE ABOUT THIS, BUT BY THE GOLDMAN SACHS' 08:25AM
16 REPRESENTATIVE IN THE MEETING.

17 AND THEN I BELIEVE THE TESTIMONY WAS
18 THAT MR. WARD INDICATED THAT MR. GUNDLACH AGREED WITH
19 THOSE OPTIONS, OR THOUGHT THAT A PARTICULAR OPTION WAS
20 ONE THAT HE WANTED TO PURSUE. 08:26AM

21 SO IT'S REALLY DOUBLE OR TRIPLE, FROM
22 THE ACTUAL STATE OF MIND OF MR. GUNDLACH. IT'S THE
23 GOLDMAN SACHS' PERSON SPEAKING, THEN MR. WARD CHOOSING
24 WHAT TO WRITE DOWN. WE'VE ALREADY HAD THE TESTIMONY
25 FROM MR. WARD ABOUT THAT CONVERSATION. 08:26AM

26 IF IT WERE PAST RECOLLECTION RECORDED,
27 WHICH I THINK IS REALLY, AT BEST, WHAT IT IS, IT COULD
28 SIMPLY BE READ TO THE JURY. IT'S ALREADY BEEN READ TO

1 THEM AND DISPLAYED TO THEM.

2 WE THINK THERE IS A RISK, APART FROM THE
3 HEARSAY, THERE'S A RISK THAT'S SEEING IT IN WRITING,
4 THAT THE JURY COULD BE CONFUSED AND THINK THAT THESE
5 WERE THE STATEMENTS OF MR. GUNDLACH, WHICH THERE'S NO
6 DISPUTE THEY WEREN'T.

08:26AM

7 I'LL SUBMIT ON IT, YOUR HONOR.

8 THE COURT: MR. BRIAN?

9 MR. BRIAN: BRIEFLY, YOUR HONOR.

10 I THINK MR. MADISON IS WRONG ABOUT THAT
11 LAST POINT. WHAT MR. WARD TESTIFIED IN HIS DEPOSITION
12 TESTIMONY THAT WAS READ TO THE JURY, OR PLAYED TO THE
13 JURY, WAS THAT THE ASTERISK NEXT TO ITEM NUMBER 3 ON
14 THIS EXHIBIT, QUOTE, WAS THE OPTION THAT JEFFREY
15 INDICATED THAT HE WANTED TO PURSUE, AND GOLDMAN AGREED.
16 SO THESE ARE ACTUALLY STATEMENTS BY MR. GUNDLACH, AS
17 WELL AS STATEMENTS IT'S A CONVERSATION.

08:26AM

08:27AM

18 FROM THE BEGINNING OF THIS TRIAL, IT'S
19 BEEN NO SECRET THAT TCW HAS ARGUED THAT MR. GUNDLACH'S
20 INTENT WAS TO LEAVE TCW AND ITS INVESTORS IN THE LURCH.
21 I THINK THAT'S ALMOST A DIRECT QUOTE FROM MR. QUINN'S
22 OPENING STATEMENT. THIS CLEARLY REBUTS THAT CLEARLY
23 GOES TO THE STATE OF MIND, BOTH OF MR. GUNDLACH OF HIS
24 AGENT, MR. WARD.

08:27AM

25 I WOULD ALSO NOTE THAT TCW HAS OFFERED
26 IN EVIDENCE, EXHIBITS 468 AND 507, WHICH ARE MR. WARD'S
27 NOTES OF HIS CONVERSATION WITH THE STUDLEY PEOPLE.
28 THIS IS THE SAME THING. THIS REFLECTS -- ONLY IN THIS

08:27AM

1 CASE, ACTUALLY MR. GUNDLACH WAS PRESENT.

2 THE ONLY THING I WOULD -- I WOULD
3 DISAGREE WITH, YOUR HONOR, IN TWO RESPECTS, AND ASK YOU
4 TO THINK ABOUT. ONE, I DO THINK THEY ARE CLEARLY
5 RELEVANT TO STATE OF MIND. EVERYBODY AGREES WITH THAT,
6 I THINK. 08:28AM

7 BUT THEY ALSO ARE, I THINK, ADMISSIBLE
8 FOR THE TRUTH. THEY ARE BUSINESS RECORDS OF ABLE
9 GRAPE. THEY MADE A BIG DEAL ABOUT THE FACT THAT ABLE
10 GRAPE WAS FORMED. IT WAS REGISTERED. AND ALTHOUGH IT
11 WASN'T, QUOTE, DOING BUSINESS IN THE SENSE OF OPERATING
12 A BUSINESS, IT WAS TAKING PRELIMINARY STEPS TO BE READY
13 TO DO BUSINESS; AND THAT WAS THE BUSINESS IT WAS IN. 08:28AM

14 SO I THINK IT ACTUALLY DOES QUALIFY AS A
15 BUSINESS RECORD. AND THEREFORE, WOULD COME IN FOR THE
16 TRUTH. I WOULD SUBMIT ON THAT. 08:28AM

17 AND I ALSO THINK THAT FOR THE SAME
18 REASONS YOUR HONOR IS INCLINED TO ADMIT THE EXHIBIT AS
19 REDACTED, I WOULD SUBMIT THAT THE ENTIRE EXHIBIT SHOULD
20 COME IN. 08:28AM

21 THE COURT: ALL RIGHT.

22 FIRST OF ALL, I HAVE A DIFFICULT TIME
23 ACCEPTING IT AS A BUSINESS RECORD BECAUSE THERE'S NOT
24 ANY EVIDENCE OF FOUNDATION LAID ESTABLISHING IT AS A
25 BUSINESS RECORD. BOTH SIDES TAKE KIND OF DIFFERENT
26 VIEWS ON THE STATUS OF ABLE GRAPE, WHAT ABLE GRAPE WAS. 08:28AM

27 BUT AT ANY RATE, I'M NOT GOING TO ADMIT
28 IT ON THAT BASIS. I'M GOING TO ADMIT IT AS NON HEARSAY

1 AND AS AN ADMISSION AS TO JEFFREY GUNDLACH, BECAUSE I
2 DO BELIEVE THERE IS TESTIMONY THAT THE ASTERISK
3 REFLECTED HIS COMMENT AND STATEMENT AS TO HIS PREFERRED
4 APPROACH TO THE CASE. BUT IT WILL BE ADMITTED AS
5 REDACTED.

08:29AM

6 THERE'S TOO MUCH OTHER INFORMATION IN
7 THERE THAT SEEMS TO ME DOES NOT QUALIFY FOR ADMISSION
8 UNDER ANY OF THESE THEORIES, SO --

9 MR. BRIAN: THAT'S FINE, YOUR HONOR. I'LL
10 SUBMIT IT.

08:29AM

11 MR. MADISON: YOUR HONOR, WILL THERE BE A
12 LIMITING INSTRUCTION, BECAUSE IT SHOULD NOT BE OFFERED
13 FOR ANY TRUTH. AND IT'S ACTUALLY NOT AN ADMISSION AS
14 TO MR. GUNDLACH, BECAUSE HE'S OFFERING THE EXHIBIT. IT
15 WOULD ONLY BE AN ADMISSION IF IT WERE HIS STATEMENT AND
16 WE WERE OFFERING IT. SO I DO THINK THE COURT'S
17 ORIGINAL TENTATIVE WOULD BE CORRECT. IF THE COURT WERE
18 ADMITTING IT, IT WOULD ONLY GO TO THE STATE OF MIND.

08:29AM

19 THE COURT: I THINK THERE WOULD BE A NUMBER --
20 HAVE BEEN AND MAY BE MORE EXHIBITS ADMITTED UNDER THIS
21 STATE OF MIND EXCEPTION.

08:30AM

22 AND MY SENSE IS THAT AN ADMONISHMENT OR
23 CLARIFYING INSTRUCTION TO THE JURY AS TO EACH OF THOSE
24 EXHIBITS WOULD BE APPROPRIATE. AND I WILL LOOK TO THE
25 PARTIES TO COME BACK TO ME WITH A LIST OF THOSE
26 EXHIBITS, SO THAT WE CAN GIVE AN APPROPRIATE
27 INSTRUCTION IN ADVANCE OF THE DELIBERATIONS.

08:30AM

28 MR. BRIAN: I THINK THAT'S APPROPRIATE. THERE

1 ARE A LOT OF DOCUMENTS.

2 THE COURT: THERE ARE A LOT OF THEM. AND MANY
3 OF THEM HAVE BEEN ADMITTED WITHOUT OBJECTIONS, BUT I
4 BELIEVE ON THE ASSUMPTION THAT THE REASON THEY ARE
5 BEING ADMITTED WAS NOT NECESSARILY FOR THE TRUTH OF THE
6 MATTER ASSERTED, AND WITHOUT ANYONE DISPUTING THAT THEY
7 CONSTITUTE HEARSAY, BUT WERE BEING ADMITTED FOR ANOTHER
8 PURPOSE. SO WE NEED TO GET THAT LIST TOGETHER.

08:30AM

08:30AM

9 I'M NOT INCLINED TO DO IT MYSELF, SO I
10 WOULD LIKE YOU TO WORK TOGETHER TO BRING ME THAT LIST,
11 WITH AN APPROPRIATE INSTRUCTION. AND THEN WE'LL
12 ADMONISH THE JURY APPROPRIATELY.

13 MR. BRIAN: WE'LL DO THAT, YOUR HONOR.

14 THE COURT: AND THERE MAY BE A FEW THAT YOU
15 DISPUTE AND I'LL DEAL WITH THOSE.

08:31AM

16 MR. BRIAN: AND THERE MAY BE A FEW THAT
17 FRANKLY DON'T MATTER, AND WE'LL JUST LET IT GO.

18 THE COURT: THAT'S FINE.

19 MR. BRIAN: YOUR HONOR, THERE WAS ONE OTHER
20 ISSUE.

08:31AM

21 THE COURT: I GET NERVOUS WHEN MR. BRIAN SAYS
22 SOMETHING DOESN'T MATTER.

23 ANYWAY, WE GET TO GET GOING.

24 MR. BRIAN: THERE WAS ONE ISSUE, YOUR HONOR.
25 THERE'S AN ISSUE THAT COMES UP REGARDING A
26 TAPE-RECORDING ON DECEMBER 7TH. WE INQUIRED WHETHER
27 THERE WAS AN OBJECTION. WE LEARNED YESTERDAY AFTERNOON
28 THERE WAS. WE EXCHANGED AUTHORITY. WE FILED A SHORT

08:31AM

1 BRIEF ON THAT.

2 I DON'T EXPECT THERE'S ANY WAY I WILL
3 GET TO THAT THIS MORNING BEFORE THE BREAK, SO I DON'T
4 THINK THERE'S ANY NEED TO TAKE THAT UP NOW.

5 THE COURT: WHEN DID YOU FILE YOUR SHORT BRIEF
6 ON THAT? I HAVEN'T SEEN IT. 08:31AM

7 MR. HELM: LAST EVENING. I FILED IT AROUND
8 6:00 AND THEN A CORRECTED VERSION AROUND 7:00 LAST
9 EVENING.

10 THE COURT: OKAY. YOU SERVED IT BUT YOU
11 DIDN'T FILE IT. YOUR DOORS WERE LOCKED. 08:31AM

12 MR. HELM: WE FILED IT ON LEXISNEXIS.

13 THE COURT: DID YOU BRING HARD COPIES IN
14 TODAY?

15 MR. HELM: I ASSUME THAT WE DID. 08:32AM

16 THE COURT: I HAVEN'T SEEN THEM YET, AND I
17 DIDN'T GO AND CHECK EVERYTHING THAT WAS FILED AFTER
18 SIX O'CLOCK LAST NIGHT.

19 MR. BRIAN: THE QUESTION WILL BE WHETHER
20 THERE'S AN EXPECTATION OF CONFIDENTIALITY. 08:32AM

21 THE COURT: WELL, AT SOME POINT, I HAVE TO
22 LOOK AT THE BRIEF, AND I'LL THINK ABOUT IT.

23 BUT UNTIL WE DO, I SHOULD NOT BE DEALING
24 WITH THE TAPE RECORDING.

25 MR. BRIAN: I UNDERSTAND, YOUR HONOR. 08:32AM

26 THE COURT: ALL RIGHT.

27 EVERYBODY READY?

28 MR. MADISON: WE HAVE A BRIEF ON THAT, AS

1 WELL, YOUR HONOR, BUT I'M NOT SURE WHERE IT IS.

2 THE COURT: JUST GET THE TWO HARD COPIES
3 TOGETHER. IF YOU DO ME THE FAVOR OF GIVING THEM TO ME
4 TOGETHER, I'LL TAKE A LOOK AT THEM AT ONE OF THE
5 BREAKS.

08:32AM

6

7 (AT 8:33 A.M. THE JURY ENTERS
8 THE COURTROOM AND THE FOLLOWING
9 PROCEEDINGS WERE HELD:)

08:35AM

10

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

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

15

16 MARC STERN,
17 THE WITNESS ON THE STAND THURSDAY, AUGUST 18,
18 HAVING BEEN PREVIOUSLY SWORN, RESUMED THE
19 STAND AND TESTIFIED FURTHER AS FOLLOWS:

20

21 THE COURT: MR. STERN IS ON THE STAND.

22 PLEASE RECALL, SIR, YOU HAVE BEEN
23 PREVIOUSLY SWORN, AND YOU ARE UNDER OATH.

24 AND MR. QUINN, YOU MAY CONTINUE WITH
25 YOUR DIRECT EXAMINATION OF MR. STERN.

26

MR. QUINN: THANK YOU, YOUR HONOR.

27 //

28 //

08:36AM

1 DIRECT EXAMINATION

2

3 BY MR. QUINN:

4 Q. GOOD MORNING, MR. STERN.

5 A. GOOD MORNING.

08:36AM

6 MR. QUINN: AND GOOD MORNING, LADIES AND
7 GENTLEMEN OF THE JURY.

8 THE JURY: GOOD MORNING.

9 MR. QUINN: YOUR HONOR, LAST THURSDAY, I'M
10 TOLD WE SHOWED IT TO THE JURY, EXHIBIT 1098. I'M TOLD
11 I DID NOT MOVE IT INTO EVIDENCE. I DON'T THINK THERE'S
12 AN OBJECTION TO IT.

08:36AM

13 THE COURT: ANY OBJECTION?

14 MR. QUINN: THAT'S THE CONGRATULATIONS ON
15 BEING NAMED FIXED INCOME.

08:36AM

16 MR. BRIAN: NO OBJECTION.

17 MR. QUINN: IF WE CAN PUT IT UP ON THE SCREEN,
18 JUST TO REMIND EVERYONE WHAT IT IS. I THINK IT
19 ACTUALLY MAY BE IN EVIDENCE ALREADY, UNDER A DIFFERENT
20 NUMBER.

08:36AM

21 THE COURT: IT WILL BE ADMITTED WITHOUT
22 OBJECTION, AND WE'LL CORRELATE THE NUMBERS IF WE HAVE
23 TO.

24

25 (EXHIBIT 1098 ADMITTED.)

08:36AM

26

27 MR. QUINN: ALL RIGHT.

28 THANK YOU, YOUR HONOR.

1 THE COURT: THANK YOU.

2 Q. BY MR. QUINN: MR. STERN, JUST TO ORIENT
3 OURSELVES. LAST THURSDAY WE WERE TALKING ABOUT THE
4 SITUATION THAT YOU FACED WHEN YOU CAME BACK TO TCW IN
5 JUNE OF 2009, INCLUDING THE ISSUES WITH RESPECT TO
6 MR. GUNDLACH.

08:37AM

7 DO YOU RECALL THAT?

8 A. YES.

9 Q. AND IF WE COULD LOOK, PLEASE, AT EXHIBIT 200.

10 IS THIS AN E-MAIL THAT YOU RECEIVED FROM
11 DIANE JAFFEE ON JUNE 2ND, 2009?

08:37AM

12 A. YES, IT IS.

13 MR. QUINN: COULD WE OFFER THIS, YOUR HONOR?

14 MR. BRIAN: NO OBJECTION.

15 THE COURT: IT WILL BE ADMITTED.

08:37AM

16

17 (EXHIBIT 200 ADMITTED.)

18

19 MR. QUINN: IF WE COULD PUT THAT UP ON THE
20 SCREEN.

08:37AM

21 Q. COULD YOU PLEASE REMIND THE JURY WHO DIANE
22 JAFFEE IS?

23 A. DIANE JAFFEE WAS THE -- IS THE EQUITY MANAGER
24 OF OUR LARGEST EQUITY STRATEGY AT TCW.

25 Q. AND WHAT SHE WROTE TO YOU ON JUNE 1ST IS THAT
26 (READING):

08:37AM

27 MY TACTIC WOULD BE, WE'D LOVE
28 TO RETAIN YOU, YOUR FIRM. AND OUR

1 CLIENTS VALUE YOU. BUT WE CANNOT
2 DO WHATEVER IT IS YOU ARE ASKING
3 BECAUSE IT IS DETRACTING FROM TCW'S
4 END GOAL OF BEING A GREAT,
5 DIVERSIFIED ASSET MANAGER AND
6 RESPECTED, COLLEGIAL FIRM. IF YOU
7 CAN SEE YOUR WAY CLEAR TO
8 PARTICIPATE AS A HIGHLY REGARDED
9 AND INCREDIBLY IMPORTANT HEAD OF A
10 KEY BUSINESS OF THE FIRM, AND AS
11 THE FIRM'S CIO, AS THE FIRM IS
12 MEANT TO BE, GREAT. WE COULD NOT
13 BE HAPPIER. THEN IT IS YOUR
14 CHOICE, NOT OURS.

08:38AM

08:38AM

15 NOW, IS THIS -- YOU TOLD US LAST
16 THURSDAY THAT WHEN YOU CAME BACK TO TCW, YOU SPENT SOME
17 TIME COLLECTING INPUT FROM PEOPLE AT THE FIRM?

08:38AM

18 A. YES.

19 Q. AND WOULD THIS BE AN EXAMPLE OF SOME INPUT
20 THAT YOU GOT, THAT ASKING DIFFERENT PEOPLE THEIR POINTS
21 OF VIEW ABOUT WHAT TO DO ABOUT THE SITUATION?

08:38AM

22 A. YES.

23 Q. NOW, SHE WROTE THAT WE CAN'T DO WHATEVER IT IS
24 YOU ARE ASKING.

25 CAN YOU TELL US WHETHER OR NOT ACTUALLY
26 FINDING OUT WHAT IT WAS ACTUALLY THAT MR. GUNDLACH
27 WANTED THAT WOULD MAKE HIM HAPPY, WAS THAT SOMETIMES
28 DIFFICULT TO FIGURE OUT?

08:39AM

1 A. YES. THAT WAS DIFFICULT, TO KNOW EXACTLY WHAT
2 HE WANTED, YES.

3 Q. AND SHE REFERS TO HERE AS BEING TCW'S END GOAL
4 OF BEING A GREAT DIVERSIFIED ASSET MANAGER AND
5 RESPECTED COLLEGIAL FIRM.

08:39AM

6 WHAT DOES DIVERSIFIED MEAN, IN THIS
7 CONTEXT?

8 A. A FIRM THAT IS MULTI STRATEGY. EQUITIES,
9 FIXED INCOME ALTERNATIVES, THE TYPE OF FIRM THAT TCW
10 WAS -- IS.

08:39AM

11 Q. HAD TCW ALWAYS BEEN A MULTI STRATEGY FIRM WITH
12 EQUITY OFFERINGS AND FIXED INCOME OFFERINGS, AS WELL AS
13 OTHER TYPES OF INVESTMENTS?

14 A. YES.

15 TWO YEARS, I THINK, AFTER MR. DAY
16 FOUNDED THE FIRM, A FIXED INCOME COMPONENT WAS ADDED TO
17 THE FIRM, YES.

08:39AM

18 Q. IF WE COULD TAKE A LOOK, PLEASE, AT EXHIBIT
19 209.

20 AND I ACTUALLY BELIEVE THIS IS IN
21 EVIDENCE. YES, IT'S IN EVIDENCE.

08:40AM

22 THE COURT: ALL RIGHT.

23 Q. BY MR. QUINN: THIS IS AN E-MAIL FROM SUSAN
24 LEADER TO YOU, AMONG OTHERS, DATED JUNE 11TH.

25 DO YOU RECALL THE EPISODE THAT'S RELATED
26 HERE?

08:40AM

27 A. I RECALL RECEIVING THIS E-MAIL, YES.

28 Q. AND SHE IS SUMMARIZING A CONVERSATION THAT SHE

1 WAS ON, A PHONE CALL OR A PRESENTATION WHICH
2 MR. GUNDLACH PARTICIPATED IN WITH A CLIENT BY THE NAME
3 OF NORTHERN TRUST?

4 A. YES.

5 Q. AND AT THE BOTTOM SHE WRITES, (READING):

08:40AM

6 IN TERMS OF TIMING, JEFFREY
7 EMPHASIZED THAT MARC IS A
8 TRANSITIONAL CEO, AND THAT IT WAS
9 HIS OPINION THAT MARC WOULD NOT BE
10 IN THIS POSITION BY YEAR END.
11 ONGOING MANAGEMENT IS NECESSARY,
12 AND MARC ISN'T THE FUTURE OF THE
13 FIRM.

08:41AM

14 IS THAT SOMETHING THAT HAD BEEN
15 DISCUSSED, THAT YOU PROBABLY WOULD BE GONE BY YEAR END?

08:41AM

16 A. THERE HAD BEEN NO TIMETABLE FOR ME LEAVING.

17 NO, THAT HAD NOT BEEN DISCUSSED.

18 Q. DID YOU PERSONALLY FIND IT OFFENSIVE THAT SHE
19 WOULD SAY THIS?

20 A. NO, I DIDN'T FIND IT OFFENSIVE THAT SHE WOULD
21 SAY THIS.

08:41AM

22 I FOUND IT SURPRISING THAT SHE WOULD SAY
23 THIS TO A CLIENT.

24 Q. AND SHE GOES ON TO SAY THAT EXPLAINING THAT
25 VIEW, JEFFREY SAID THAT WE'RE TALKING ABOUT A GRADUAL
26 BUYBACK OF THE FIRM FROM SOCIETE GENERALE, WHO WANTS TO
27 EXIT THE ASSET MANAGEMENT BUSINESS AND WANTS TO BEGIN
28 SELLING TCW.

08:41AM

1 NOW, SO FAR AS YOU WERE AWARE, WAS THAT
2 SOMETHING THAT WAS BEING DISCUSSED AT THAT TIME?

3 A. NO, IT WAS NOT.

4 Q. AND THEN IN THE SECOND PAGE, SHE SAYS, THAT IN
5 ANSWER TO THEIR QUESTION ABOUT THE SELECTION OF THE
6 FUTURE CEO, JEFFREY SAID, I'M THE NUMBER ONE CHOICE,
7 AND THAT I WOULD DEFINE THE ROLES SIMILAR TO ROBERT
8 DAY. AND IT GOES ON.

08:42AM

08:42AM

08:42AM

08:42AM

08:42AM

9 HAD THERE BEEN ANY DISCUSSION, AS FAR AS
10 YOU ARE AWARE, AS OF THIS TIME, JUNE 11TH, THAT HE
11 WOULD BE THE NUMBER ONE CHOICE TO BE THE NEXT CEO?

12 A. NO.

13 Q. AND DID YOU -- WAS THERE A FOLLOW-UP TO
14 THESE -- THIS CONVERSATION WITH THIS CLIENT, NORTHERN
15 TRUST?

16 A. YES.

17 Q. IF WE COULD TAKE A LOOK AT EXHIBIT 210.

18 AND THIS IS ALSO IN EVIDENCE, YOUR
19 HONOR.

20 WE CAN LOOK AT THE BOTTOM E-MAIL IN THE
21 STRING, WHICH IS IN THE SECOND PAGE.

22 DO YOU RECALL IF THIS CLIENT, NORTHERN
23 TRUST, AFTER THIS CONVERSATION WITH MS. -- MR. GUNDLACH
24 AND MS. LEADER, FOLLOWED UP WITH SOME QUESTIONS THEY
25 HAD?

26 A. YES.

27 Q. IT SAYS HERE, LUIS.

28 LUIS IS THE REPRESENTATIVE OF THE

1 CLIENT, NORTHERN TRUST?

2 A. YES.

3 Q. (READING):

4 LUIS CALLED ME WITH FOLLOW-UP
5 QUESTIONS THAT CLEARLY HAVE AN
6 IMPACT ON THEIR POTENTIAL SELECTION
7 OF TCW AS A CORE-PLUS FIXED INCOME
8 MANAGER ON THEIR PLATFORMS. IF YOU
9 DO BECOME CEO --

08:43AM

08:43AM

10 AND THIS IS ADDRESSED TO MR. GUNDLACH,
11 CORRECT?

12 A. YES.

13 Q. AND (READING):

14 IF YOU DO BECOME CEO, WOULD
15 YOU STILL CONTINUE AS THE HEAD OF
16 FIXED INCOME TEAM --

08:43AM

17 AND THEN ON THE NEXT PAGE, MR. GUNDLACH
18 RESPONDS TO THAT?

19 A. YES.

20 Q. HE SAYS, (READING):

08:43AM

21 I WILL CONTINUE AS HEAD OF
22 FIXED INCOME IN ANY CASE. FIXED
23 INCOME IS VERY LIKELY TO BE 90
24 PERCENT OF THE FIRM'S ASSETS IN A
25 FEW QUARTERS. AS SUCH, BEING THE
26 HEAD OF FIXED INCOME -- BEING THE
27 HEAD OF THE FIRM AND THE HEAD OF
28 FIXED INCOME ARE REALLY THE SAME

08:43AM

1 THING.

2 DO YOU SEE THAT?

3 A. YES.

4 Q. AND THEN THIS WAS FORWARDED ON TO YOU, ALONG
5 WITH SOME COMMENTS FROM MR. STALLINGS AND MS. LEADER?

08:44AM

6 A. YES.

7 Q. AND YOU SAID, (READING):

8 I COULDN'T AGREE MORE WITH YOU
9 ABOUT HOW INAPPROPRIATE AND
10 UNPROFESSIONAL THE DISCUSSION WAS.

08:44AM

11 WHY DID YOU REGARD THIS AS
12 INAPPROPRIATE?

13 A. WELL, FIRST OF ALL, THE PRINCIPAL CLIENT AT
14 THE TIME WAS AN EQUITY CLIENT. AND TO TALK ABOUT THE
15 FACT THAT EQUITIES WERE BEING MARGINALIZED, AND THAT
16 FIXED INCOME WAS THE FIRM, UNDERCUT THEIR POSITION, AND
17 THEY ALREADY HAD ASSETS. THEY HAD A COUPLE HUNDRED
18 MILLION DOLLARS WITH THE CLIENT.

08:44AM

19 Q. SO WHEN YOU SAY YOU WERE AN EQUITY CLIENT --

20 A. A CLIENT -- YES, WENT OVER EQUITY STRATEGIES.

08:44AM

21 Q. AND DID IT SEEM TO YOU TO BE A WISE THING TO
22 TELL THEM THAT FIXED INCOME IS VERY LIKELY TO BE 90
23 PERCENT OF THE FIRM?

24 A. NO.

25 MR. QUINN: YOUR HONOR, I MADE A MISTAKE.
26 THIS IS NOT IN EVIDENCE, APPARENTLY.

08:45AM

27 I MOVE IT INTO EVIDENCE. I APOLOGIZE.

28 MR. BRIAN: NO OBJECTION.

1 MR. QUINN: THANK YOU.

2 THE COURT: ARE WE TALKING ABOUT 210?

3 MR. QUINN: YES.

4 THE COURT: 209 WAS IN EVIDENCE. I KNEW THAT.
5 IT WILL BE ADMITTED.

08:45AM

6

7 (EXHIBIT 210 ADMITTED.)

8

9 MR. QUINN: RIGHT. MY MISTAKE.

10 Q. BY MR. QUINN: I MEAN, DID YOU THINK THIS WAS
11 A GOOD STRATEGY FOR DEALING WITH AN EQUITY CLIENT, TO
12 BE TELLING THEM BASICALLY EQUITIES -- EQUITY IS NOT THE
13 FUTURE OF OUR FIRM?

08:45AM

14 A. NO.

15 Q. WHAT IS -- ARE THERE SOME ADVANTAGES TO HAVING
16 A FIRM THAT OFFERS BOTH EQUITY STRATEGIES AND FIXED
17 INCOME AND OTHER STRATEGIES?

08:45AM

18 A. YES, I BELIEVE SO.

19 Q. AND WHAT DO YOU THINK THOSE ADVANTAGES ARE?

20 A. WELL, MARKETS CHANGE.

08:45AM

21 IN ONE MARKET CYCLE EQUITIES ARE
22 FAVORITES; THE NEXT MARKET CYCLE FIXED INCOME IS
23 FAVORED; IN THE NEXT MARKET CYCLES ALTERNATIVES ARE
24 FAVORED. AND TO HAVE A DIVERSIFIED FIRM WHERE ALL
25 DIFFERENT ELEMENTS ARE REPRESENTED, I THINK ADDS TO THE
26 STABILITY OF THE FIRM.

08:46AM

27 SECONDLY, IT'S HELPFUL, IF YOU HAVE A
28 GOOD RELATIONSHIP WITH A CLIENT IN ONE STRATEGY, AND

1 THEY ARE LOOKING FOR ANOTHER STRATEGY, THEY HAVE A GOOD
2 FEELING ABOUT THE FIRM.

3 IF YOU OFFER THAT OTHER STRATEGY, YOU
4 CAN WHAT YOU CALL CROSS SELL. AND THAT, I THINK, IS A
5 POWERFUL ELEMENT OF THE ASSET MANAGEMENT BUSINESS.

08:46AM

6 Q. DO CLIENTS HAVE -- THESE INSTITUTIONAL CLIENTS
7 THAT TCW HAS, DO THEY TEND TO COME TO TCW WITH NO IDEA
8 HOW THEY WANT TO INVEST THEIR MONEY, BASICALLY?

9 WE'VE GOT A COUPLE HUNDRED MILLION
10 DOLLARS TO INVEST, WE WANT YOUR ADVICE AS TO PUT IT IN
11 EQUITY OR FIXED INCOME OR SOMETHING ELSE?

08:46AM

12 A. NOT INSTITUTIONAL CLIENTS.

13 INSTITUTIONAL CLIENTS PRETTY MUCH, WITH
14 RARE EXCEPTIONS HAVE A SPECIFIC STRATEGY, OR AREA THEY
15 ARE LOOKING FOR.

08:47AM

16 Q. WHAT DO YOU MEAN BY THAT?

17 A. WELL, THEY WANT TO INVEST IN FIXED INCOME.
18 THEY WANT TO INVEST IN EQUITY.

19 AND IT CAN BE EVEN MORE DEFINED THAN
20 THAT. THEY WANT TO INVEST IN THAT -- EQUITY VALUE,
21 EQUITY GROWTH. AND THEY COME TO YOU LOOKING TO INVEST
22 IN THAT PARTICULAR STRATEGY.

08:47AM

23 Q. SO, FOR EXAMPLE, IF TCW DID NOT HAVE AN EQUITY
24 DEPARTMENT, OR WASN'T TAKING ANY NEW EQUITY
25 INVESTMENTS, IF A CLIENT CAME IN SAYING, I'VE GOT A
26 COUPLE OF HUNDRED MILLION DOLLARS I WANT TO INVEST IN
27 EQUITY, DOES THAT MEAN THAT YOU ARE NOT GOING TO BE
28 ABLE TO SERVICE THAT CLIENT, THAT THEY ARE GOING TO GO

08:47AM

1 SOMEPLACE ELSE?

2 A. YES.

3 Q. LAST WEEK, WHEN YOU DESCRIBED FOR US SOME OF
4 THE -- MR. GUNDLACH'S BEHAVIOR THAT CAME TO YOUR
5 ATTENTION THAT CAUSED YOU SOME CONCERN, YOU MADE
6 REFERENCE TO COMMENTS OR PRONOUNCEMENTS THAT
7 MR. GUNDLACH WOULD MAKE IN THE DINING ROOM.

08:48AM

8 DO YOU RECALL THAT?

9 A. YES.

10 Q. AND I'D ASK TO YOU TAKE A LOOK, PLEASE, AT
11 EXHIBIT 283.

08:48AM

12 AND IS THIS A MEMORANDUM WITH AN
13 ATTACHMENT THAT YOU RECEIVED FROM MICHAEL REILLY?

14 A. YES.

15 MR. QUINN: COULD WE OFFER THIS, YOUR HONOR?

08:48AM

16 THE COURT: ANY OBJECTION?

17 MR. BRIAN: IT'S HEARSAY, BUT I ASSUME IT'S
18 BEING OFFERED FOR STATE OF MIND, YOUR HONOR.

19 MR. QUINN: YES, YOUR HONOR.

20 MR. BRIAN: NO OBJECTION.

08:48AM

21 THE COURT: IT WILL BE ADMITTED, WITH THAT
22 LIMITATION.

23

24 (EXHIBIT 283 ADMITTED.)

25

08:48AM

26 Q. BY MR. QUINN: SO IF WE COULD LOOK AT THE
27 FIRST PAGE THAT TRANSLATES MICHAEL REILLY --

28 THE JURY HAS HEARD FROM MR. REILLY.

1 HE'S BEEN A WITNESS HERE.

2 THIS TRANSMITS A MEMO THAT HE WROTE ON
3 SEPTEMBER 10TH?

4 A. YES.

5 Q. ALL RIGHT. SO THIS IS OUTSIDE THE SUMMER
6 PERIOD WE'RE TALKING ABOUT.

08:49AM

7 BUT HE -- CAN YOU TELL US WHAT'S
8 ATTACHED TO THAT? IF WE COULD GO FORWARD?

9 A. WELL, THESE ARE NOTES OR A MEMO FROM
10 MR. REILLY, JUST TELLING ME ABOUT SOME OF THE COMMENTS
11 THAT HE MADE IN THE LUNCHROOM THAT DAY.

08:49AM

12 Q. SO IS THIS, ALTHOUGH THIS IS IN SEPTEMBER, IS
13 THIS TYPICAL OF THE KINDS OF REPORTS THAT YOU WERE
14 GETTING THAT SUMMER ABOUT MR. GUNDLACH'S COMMENTS HE
15 WAS MAKING IN THE DINING ROOM?

08:49AM

16 MR. BRIAN: OBJECTION. FORM, OVERBROAD,
17 VAGUE.

18 THE COURT: SUSTAINED.

19 Q. BY MR. QUINN: DID YOU HEAR REPORTS IN THE
20 SUMMER OF MR. GUNDLACH MAKING LOUD CRITICAL COMMENTS IN
21 THE LUNCHROOM?

08:49AM

22 A. YES.

23 Q. AND IF WE COULD LOOK, PLEASE, AT EXHIBIT 6139.

24 AND MY QUESTION TO YOU WILL BE, IS THIS
25 AN E-MAIL STRING BETWEEN YOU AND MR. ATTANASIO, AMONG
26 OTHERS?

08:50AM

27 A. YES.

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

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

2 THE COURT: JUST SO WE'RE CLEAR, THIS IS IN
3 THE JUNE 8TH, 2009 TIME FRAME. IS THAT --

4 MR. QUINN: YES. THE FIRST E-MAIL.

5 THE COURT: JUNE 6TH THROUGH 8TH, IS THE TIME
6 FRAME?

08:50AM

7 MR. QUINN: YES, YOUR HONOR.

8 MR. BRIAN: NO OBJECTION.

9 THE COURT: IT WILL BE ADMITTED WITHOUT
10 OBJECTION.

08:50AM

11

12 (EXHIBIT 6139 ADMITTED.)

13

14 Q. BY MR. QUINN: AND IF WE COULD START AT THE
15 BOTTOM OF THIS E-MAIL STRING.

08:50AM

16 IT'S AN E-MAIL FROM MR. ATTANASIO TO
17 YOU, DATED JUNE 6TH.

18 HE WRITES, (READING):

19 MARC, I'M IN MALIBU TODAY, AND

20 DECIDED YOU ARE CRAZY FOR COMING

08:51AM

21 BACK, SMILEY FACE. MAYBE WE SHOULD

22 LET JPM MANAGE THE FIRM FROM

23 LONDON, AND WE ALL ENJOY THE BEACH.

24 JPM IS?

25 A. MR. MUSTIER.

08:51AM

26 Q. IN PARIS?

27 A. YEAH.

28 BUT HE ALSO HAD OFFICES IN LONDON.

1 Q. BY MR. QUINN: DID YOU SOMETIMES FEEL LIKE YOU
2 WERE CRAZY FOR COMING BACK?

3 A. SOMETIMES, YES.

4 Q. AND YOU RESPONDED, (READING):

5 I AM CRAZY, BUT I REALLY
6 BELIEVE WE FACED, AND STILL MAY
7 FACE, THE REAL POSSIBILITY OF
8 IMPLODING AS A FIRM. IN THAT
9 SITUATION, THERE ARE USUALLY NO
10 WINNERS. I THOUGHT, AND ON THE
11 MARGIN, STILL THINK I HAD THE BEST
12 CHANCE TO PREVENT THAT.

13 DOES THAT REFLECT YOUR STATE OF MIND AT
14 THE TIME, AND YOUR REASONS FOR COMING BACK?

15 A. YES.

16 Q. AND THEN I'LL SHOW YOU EXHIBIT 2153.

17 AND I'M ASSURED BY MR. MADISON THAT THIS
18 IS IN EVIDENCE; SO IT'S HIS FAULT IF IT ISN'T.

19 IS THIS A DRAFT OF MR. SHEDLIN'S REPORT,
20 THAT STRATEGIC REVIEW, THAT HE DID IN JULY OF 2009?

21 A. IT IS.

22 Q. AND IF WE COULD LOOK AT PAGE 2153-4.

23 AND IF WE COULD JUST ENLARGE THE TOP,
24 MIKE.

25 HE MAKES SOME COMMENTS THERE ABOUT
26 MR. GUNDLACH, BASED ON HIS INTERVIEW WITH MR. GUNDLACH.

27 DO YOU SEE THAT?

28 A. YES.

1 Q. AND DO YOU RECALL RECEIVING THIS AT THE TIME?

2 A. RECEIVING THE DRAFT?

3 Q. YES.

4 A. YES.

5 Q. AND HE SAYS THAT MR. GUNDLACH HAS EXPLICITLY
6 MENTIONED HE WANTS TO BE THE CEO, AND VARIOUS DEMANDS
7 THAT HE HAS, AND THAT OTHER PMS -- IS THAT PORTFOLIO
8 MANAGERS?

08:53AM

9 THIS IS ON PAGE DASH 4?

10 I'M LOOKING AT THE SECOND BULLET ON THE
11 TOP THERE.

08:53AM

12 HE SAYS, OTHER PMS, OTHER PORTFOLIO
13 MANAGERS?

14 THE COURT: THAT'S NOT ON THE SCREEN WE'RE
15 LOOKING AT.

08:53AM

16 MR. QUINN: DO WE HAVE DASH 4?

17 THE COURT: WE'RE ON THE PAGE, BUT THEY WERE
18 SHOWING A SMALLER CUTOUT.

19 ALL RIGHT.

20 Q. BY MR. QUINN: THE SECOND BULLET THERE, OTHER
21 PMS.

08:53AM

22 AND PMS REFERS TO OTHER PORTFOLIO
23 MANAGERS?

24 A. YES.

25 Q. DON'T BELIEVE THAT MR. GUNDLACH HAS THE
26 NECESSARY SKILLS FOR BEING CEO?

08:53AM

27 A. YES.

28 Q. AND THEN IF WE COULD SKIP OVER TO PAGE -7.

1 AT THE RIGHT-HAND SIDE, IT SAYS, KEY MAN
2 RISK FOR PMS. IF WE COULD JUST ENLARGE THAT.

3 MR. SHEDLIN WRITES THAT GUNDLACH'S GROUP
4 CONSTITUTES 70 PERCENT OF THE ASSETS OF THE FIRM. IF
5 GUNDLACH LEAVES THE FIRM WITH SOME KEY INDIVIDUALS, HE
6 MIGHT BE ABLE TO SHIFT HIS CLIENTS WITH HIM.

08:54AM

7 DO YOU SEE THAT?

8 A. YES.

9 Q. THAT'S A RISK THAT YOU HAD ALREADY IDENTIFIED
10 AND WERE CONCERNED ABOUT; IS THAT CORRECT?

08:54AM

11 A. YES.

12 Q. AND DID YOU ACTUALLY SPEAK TO MR. SHEDLIN?

13 IN ADDITION TO GETTING THIS WRITTEN
14 REPORT, DID YOU ACTUALLY SPEAK TO HIM?

15 A. I BELIEVE WE HAD A PHONE CONVERSATION, YES.

08:54AM

16 Q. IN HIS PHONE CONVERSATION, DID HE RELATE TO
17 YOU, OTHER THINGS THAT MR. GUNDLACH HAD SAID WHEN HE
18 INTERVIEWED HIM?

19 A. HE WAS --

20 MR. BRIAN: I THINK THAT CALLS FOR A YES OR
21 NO, YOUR HONOR.

08:54AM

22 THE COURT: I THINK THAT'S CORRECT.

23 THE WITNESS: I APOLOGIZE. YES.

24 Q. BY MR. QUINN: AND WAS HE MORE EXPLICIT IN THE
25 KINDS OF COMMENTS AND THREATS THAT MR. GUNDLACH HAD
26 MADE?

08:55AM

27 A. YES.

28 Q. AND THEN IF WE COULD LOOK AT EXHIBIT 236, IS

1 THIS AN E-MAIL BETWEEN AND YOU MR. CHAPUS, DATED
2 AUGUST 1?

3 A. YES.

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

5 MR. BRIAN: NO OBJECTION.

08:55AM

6 THE COURT: IT WILL BE ADMITTED.

7

8 (EXHIBIT 236 ADMITTED.)

9

10 Q. BY MR. QUINN: AND IF WE COULD ENLARGE THAT,
11 MIKE.

08:55AM

12 MR. CHAPUS WRITES TO YOU, (READING):

13 I SPOKE WITH MARK LAST NIGHT.

14 AND DO YOU UNDERSTAND THAT TO BE MARK
15 ATTANASIO, WHO'S COPIED HERE?

08:55AM

16 A. YES.

17 Q. (READING):

18 SINCE I SPOKE WITH MARK LAST

19 NIGHT, AND HE TOLD ME ABOUT YOUR

20 CALL WITH HIM YESTERDAY AFTERNOON,

08:55AM

21 FROM WHAT I HEARD, APPARENTLY PARIS

22 CAN'T SEE A WORLD WITHOUT JEFFREY.

23 AFTER SLEEPING ON IT, AND SPEAKING

24 FOR MYSELF, I DON'T BELIEVE THERE'S

25 ANY FURTHER TO GO WITH HIM. I'VE

08:56AM

26 COME TO THIS POINT IN OBSERVING --

27 BEFORE I GO ON, HE SAYS, I DON'T

28 BELIEVE THERE'S ANY FURTHER TO GO WITH HIM.

1 AROUND THIS TIME FRAME, THAT SUMMER, WAS
2 THERE DISCUSSION ABOUT SOME TYPE OF RESTRUCTURING
3 WITHIN THE COMPANY THAT WOULD INVOLVE MR. GUNDLACH,
4 MR. CHAPUS, AND MR. ATTANASIO WORKING TOGETHER IN SOME
5 FASHION?

08:56AM

6 A. YES. THERE WERE SEVERAL ITERATIONS THAT WOULD
7 ACCOMPLISH THAT, YES.

8 Q. AND HE SAYS, (READING):

9 I DON'T BELIEVE THERE'S ANY
10 FURTHER TO GO WITH HIM. I'VE COME
11 TO THIS POINT AFTER OBSERVING TOO
12 MANY INSTANCES OF HIS POOR
13 DECISIONS, INSECURITY AND BAD
14 BEHAVIOR. AND WHILE VOLATILE, HE
15 HAS BEEN REMARKABLY CONSISTENT OVER
16 THE YEARS, MY TIME FRAME ON THIS IS
17 IMMEDIATE. SO LET ME KNOW YOUR
18 DECISION.

08:56AM

08:56AM

19 DO YOU SEE THAT?

20 A. YES.

08:56AM

21 Q. NOW, DURING THIS TIME FRAME, WERE YOU TALKING
22 WITH MR. CHAPUS AND MR. ATTANASIO ABOUT REDOING THEIR
23 DEAL WITH TCW?

24 A. YES.

25 Q. AND AFTER THIS, DID YOU THEN -- DID YOU START
26 TALKING TO THEM, AND ACTUALLY ULTIMATELY REDO THEIR
27 DEAL WITH THE COMPANY?

08:57AM

28 A. YES. I THINK THAT WE DIDN'T HAVE TO START

1 IMMEDIATELY AFTER THIS; BUT SOMETIME LATER IN THE YEAR,
2 WE DID START TALKING ABOUT REDOING THEIR DEAL, YES.

3 MR. BRIAN: YOUR HONOR, BEFORE WE MOVE ON, I
4 JUST WANT TO MAKE SURE THAT EXHIBIT 236 IS FOR THE
5 STATE OF MIND OF THE WITNESS, I BELIEVE, NOT FOR THE
6 TRUTH.

08:57AM

7 MR. QUINN: YES, YOUR HONOR. THAT'S MY
8 UNDERSTANDING, AS WELL.

9 THE COURT: OKAY.

10 Q. BY MR. QUINN: SO DID, DID MR. CHAPUS EVER
11 TELL YOU, LOOK, IT'S ME OR GUNDLACH. I'M GOING TO
12 LEAVE TCW, IF YOU DON'T FIRE MR. GUNDLACH.

08:57AM

13 DID THAT EVER HAPPEN?

14 A. NO.

15 Q. AND IF YOU WERE EVER PUT TO THAT CHOICE, WOULD
16 THAT BE A DIFFICULT CHOICE FOR YOU TO MAKE?

08:57AM

17 A. WELL, IT WOULD BE A DIFFICULT CHOICE ON AN
18 EMOTIONAL BASIS, BUT NOT ON A BUSINESS BASIS.

19 MR. GUNDLACH WAS CLEARLY THE MOST
20 SIGNIFICANT PERSON AT THE FIRM. AND IF I HAD TO MAKE A
21 CHOICE, I WOULD HAVE TO CHOOSE, FROM A BUSINESS POINT
22 OF VIEW, TO GO WITH MR. GUNDLACH.

08:58AM

23 MERCIFULLY, THAT WAS NOT THE QUESTION.

24 Q. SO MR. CHAPUS NEVER SAID, I'M OUT OF HERE, IF
25 HE'S NOT OUT OF HERE?

08:58AM

26 A. NO.

27 Q. BUT YOU DID MAKE A DECISION AFTER THAT TO GO
28 FORWARD AND RENEGOTIATE MR. CHAPUS' DEAL?

1 A. ULTIMATELY, YES.

2 Q. AND THEN IF WE COULD LOOK AT EXHIBIT 234,
3 WORKING OUR WAY STILL THROUGH THE SUMMER, IS THIS AN
4 E-MAIL EXCHANGE BETWEEN YOU AND MR. MUSTIER?

5 A. YES.

08:58AM

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

7 THE COURT: ANY OBJECTION?

8 MR. BRIAN: I'M LOOKING, YOUR HONOR.

9 NO OBJECTION, FOR THE SAME PURPOSE, YOUR
10 HONOR.

08:59AM

11 THE COURT: IT WILL BE ADMITTED.

12

13 (EXHIBIT 234 ADMITTED.)

14

15 THE COURT: LADIES AND GENTLEMEN, LET ME JUST
16 EXPLAIN TO YOU, SOME OF THESE EXHIBITS ARE BEING
17 ADMITTED, AND THEY MAY BE WHAT WOULD BE KNOWN AS
18 HEARSAY, WHICH WOULD PREVENT THEIR ADMISSION.

08:59AM

19 THEY ARE ADMITTED BECAUSE MR. STERN MAY
20 HAVE READ THEM, OR SOMEONE ELSE READ THEM, AND IT GOES
21 TO WHAT THEY WERE THINKING.

08:59AM

22 WE WILL GIVE YOU A LIST AND A FURTHER
23 ADMONITION, BEFORE YOU START YOUR DELIBERATIONS, OF
24 EXHIBITS THAT HAVE BEEN ADMITTED FOR THIS PURPOSE.

25 WHAT IT MEANS IS YOU CAN'T ACCEPT THE
26 EXHIBIT FOR THE TRUTH OF THE MATTER, AS FAR AS BEING A
27 STATEMENT MADE BY SOMEBODY THAT'S TRUE, BUT YOU CAN
28 CONSIDER IT FOR THE EFFECT IT HAD ON THE PERSON THAT.

08:59AM

1 IT SOUNDS A LITTLE COMPLICATED. I'LL
2 TRY AND GET A SIMPLER EXPLANATION FOR YOU; BUT
3 UNDERSTAND THAT, SO WHEN WE HAVE THIS LIMITED
4 ADMISSION, WE DON'T HAVE TO GO THROUGH EVERY EXHIBIT
5 LIKE THAT, BUT WE WILL GIVE YOU A LIST OF THEM.

09:00AM

6 MR. QUINN: AND THAT'S OBVIOUSLY TRUE FOR BOTH
7 SIDES.

8 THE COURT: BOTH SIDES.

9 WE'VE ALREADY ADMITTED A NUMBER OF
10 THINGS WITHOUT COMMENTS ON THEM, BUT WE'LL LET YOU
11 KNOW.

09:00AM

12 Q. BY MR. QUINN: SO IF WE LOOK AT THE BOTTOM
13 E-MAIL HERE, THIS IS FROM YOU TO MR. MUSTIER IN PARIS,
14 DATED AUGUST 1?

15 A. YES.

09:00AM

16 Q. AND YOU WRITE, JEAN-PIERRE, I JUST WANTED YOU
17 TO KNOW THAT I HAD LUNCH WITH ROBERT DAY, AND I TOLD
18 HIM THAT WHILE WE WERE TRYING TO FIND A WAY TO WORK
19 WITH AND ACCOMMODATE JEFFREY, WE WERE NOT OPTIMISTIC.
20 I SAID WE HAD NOT GIVEN UP HOPE, BUT THAT WE MAY HAVE
21 TO MOVE TO PLAN B.

09:00AM

22 HE IS OFF TO PARIS TOMORROW, SO I WANTED
23 YOU TO BE AWARE OF OUR DISCUSSION.

24 DO YOU SEE THAT?

25 THE COURT: NOW, DO YOU RECALL WHAT YOU WERE
26 REFERRING TO HERE, WHEN YOU REFERRED TO PLAN B?

09:00AM

27 THE WITNESS: YES.

28 WELL, THIS WAS, I BELIEVE, IMMEDIATELY

1 AFTER THE BUCHANAN STREET INCIDENT AT THE MANAGEMENT
2 MEETING, SO I WAS NOT FEELING REAL GOOD ABOUT THINGS.

3 Q. BY MR. QUINN: BUT IN TERMS OF PLAN B, DO YOU
4 RECALL SPECIFICALLY THAT THERE WAS A PLAN B?

5 A. THERE WASN'T A SPECIFIC PLAN B. 09:01AM

6 PLAN B WAS KIND OF EVERYTHING THAT WE
7 COULD THINK OF, APART FROM OUR PREFERRED ROUTE, WHICH
8 IS TO FIND A WAY TO WORK WITH MR. GUNDLACH FOR THE LONG
9 TERM.

10 Q. AS OF THIS TIME, DID PLAN B, WERE YOU THINKING 09:01AM
11 AS PART OF PLAN B, THAT PLAN B WAS TO TERMINATE
12 MR. GUNDLACH?

13 A. NO.

14 Q. DID YOU HAVE SOME IDEAS IN MIND, BACK IN THIS
15 TIME FRAME, ABOUT HOW TO DEAL WITH THE JEFFREY GUNDLACH 09:01AM
16 SITUATION, THAT DID NOT INVOLVE EITHER -- DID NOT
17 INVOLVE ACCOMMODATING HIM OR SOMETHING THAT FROM HIS
18 STANDPOINT, WOULD NOT BE REGARDED AS ACCOMMODATING?

19 MR. BRIAN: OBJECTION.

20 THE COURT: SUSTAINED. 09:01AM

21 TRY AND REPHRASE THAT.

22 MR. BRIAN: COULD WE STRIKE THE ANSWER, YOUR
23 HONOR?

24 THE COURT: I'LL STRIKE THE RESPONSE.

25 Q. BY MR. QUINN: YOU WROTE, THAT (READING): 09:02AM

26 WE'RE TRYING TO FIND A WAY TO
27 WORK WITH AND ACCOMMODATE JEFFREY,
28 BUT WE ARE NOT OPTIMISTIC. YOU

1 SAID, WE HAD NOT GIVEN UP HOPE, BUT
2 WE MAY HAVE TO MOVE TO PLAN B.

3 AND MY QUESTION IS WHETHER YOU CAN
4 RECALL THAT, BACK IN THIS TIME FRAME, YOU HAD SOME
5 OPTIONS THAT YOU WERE CONSIDERING THAT DIDN'T
6 NECESSARILY INVOLVE ACCOMMODATING MR. GUNDLACH?

09:02AM

7 A. YES.

8 Q. AND WHAT WERE THOSE?

9 A. WELL, THERE WERE SEVERAL.

10 ONE OPTION THAT WE WERE THINKING OF IS
11 THAT PERHAPS CHANGING THE COMPENSATION STRUCTURE.

09:02AM

12 Q. HOW SO?

13 A. WELL, HE WAS AN AT-WILL EMPLOYEE, SO THAT WE
14 COULD TAKE THE COMPENSATION THAT FLOWED THROUGH HIM,
15 AND GIVE IT DIRECTLY FROM TCW TO THE OTHER PORTFOLIO
16 MANAGERS, AND HAVE A CONCEPT OF MORE DIRECT INTERFACE
17 WITH TCW.

09:02AM

18 Q. WHEN YOU SAY COMPENSATION FLOWED THROUGH HIM,
19 COULD YOU EXPLAIN WHAT YOU MEAN BY THAT?

20 A. UNDER THE FEE SHARING ARRANGEMENT THAT HE HAD,
21 OTHER THAN A FEW EXCEPTIONS, HE WAS ABLE TO ALLOCATE TO
22 MEMBERS OF THE TEAM, THE MORTGAGE-BACKED TEAM.

09:03AM

23 AND WE WERE THINKING OF POTENTIALLY
24 CHANGING THAT.

25 SO WE WOULDN'T NECESSARILY CHANGE THE
26 AMOUNT OF COMPENSATION, BUT IT WOULD BE DIRECTLY WITH
27 TCW, NOT THROUGH MR. GUNDLACH.

09:03AM

28 Q. LET ME MAKE SURE I UNDERSTAND.

1 SO UNDER THE COMPENSATION SYSTEM THAT
2 EXISTED, HE, OUT OF THE FEES THAT HE RECEIVED UNDER HIS
3 FEE SHARING DEAL, HE DECIDED HOW MUCH WOULD GO TO THE
4 PEOPLE IN HIS GROUP? HE ALLOCATED THAT?

5 A. WITH A FEW EXCEPTIONS, YES. 09:03AM

6 Q. AND YOUR THOUGHT WAS, ONE THING THAT WOULD NOT
7 BE ACCOMMODATING THAT YOU WERE CONSIDERING, WAS WHAT?

8 A. MAKING THOSE PAYMENTS DIRECTLY FROM TCW TO THE
9 INDIVIDUALS.

10 Q. AND WERE THERE ANY OTHER OPTIONS THAT YOU WERE 09:04AM
11 CONSIDERING THAT DIDN'T NECESSARILY INVOLVE
12 ACCOMMODATING MR. GUNDLACH?

13 A. YES. WE WERE THINKING OF POTENTIALLY
14 RESTRUCTURING THE DEPARTMENT.

15 I HAVE BEEN IN DISCUSSIONS WITH 09:04AM
16 MR. ATTANASIO AND CHAPUS ABOUT WHETHER THEY MIGHT BE
17 WILLING OR INTERESTED IN TAKING A SUPERVISORY ROLE. WE
18 EVEN HAD DISCUSSIONS ABOUT THE POTENTIAL OF MR. BEYER
19 COMING BACK AND TAKING A SUPERVISORY ROLE IN THE FIXED
20 INCOME AREA. 09:04AM

21 Q. DID YOU THINK THAT THOSE CHANGES THAT YOU HAVE
22 NOW DESCRIBED WERE THINGS THAT WOULD NOT NECESSARILY BE
23 WELCOMED BY MR. GUNDLACH?

24 A. THEY WOULD NOT BE WELCOMED BY MR. GUNDLACH,
25 NO. 09:04AM

26 Q. BUT AT LEAST IN THAT SUMMER, UP UNTIL THE END
27 OF AUGUST, OR SEPTEMBER 3, WOULD -- CAN YOU TELL US
28 WHETHER OR NOT YOU WERE CONSIDERING TERMINATING

1 MR. GUNDLACH?

2 A. AS I'VE SAID BEFORE, THE ONLY REASON THAT WE
3 WOULD TERMINATE MR. GUNDLACH WOULD BE IF SOMEHOW HE
4 WENT OVER THE LINE AND DID SOMETHING THAT PUT US IN A
5 POSITION WHERE WE HAD NO CHOICE.

09:05AM

6 THE COURT: OKAY.

7 MR. STERN, LISTEN CAREFULLY TO THE
8 QUESTION, AND ANSWER THE QUESTION, IF YOU WILL.

9 AND I THINK THE QUESTION WAS, AT THAT
10 TIME, WERE YOU CONSIDERING TERMINATING HIM?

09:05AM

11 MR. BRIAN: I'LL MOVE TO STRIKE THE ANSWER.

12 THE COURT: I'LL STRIKE THE RESPONSE, AND WE
13 CAN HAVE THE QUESTION REREAD.

14 OR YOU CAN REASK IT, MR. QUINN.

15 LET'S FOCUS ON THE QUESTION.

09:05AM

16 THE WITNESS: I'M SORRY.

17 Q. BY MR. QUINN: I THINK YOU CAN ANSWER THIS YES
18 OR NO.

19 WERE THERE ANY CIRCUMSTANCES UNDER
20 WHICH, DURING THAT SUMMER, YOU WERE CONSIDERING
21 TERMINATING MR. GUNDLACH?

09:05AM

22 A. YES.

23 Q. AND WHAT WERE THOSE CIRCUMSTANCES?

24 A. IT WOULD BE THE CIRCUMSTANCE WHERE
25 MR. GUNDLACH DID SOMETHING THAT WENT OVER THE LINE.

09:05AM

26 WE'RE A HIGHLY REGULATED INDUSTRY AND --
27 IF HE DID SOMETHING WHERE WE'D HAVE NO CHOICE BUT TO
28 TERMINATE HIM.

1 Q. AND WHEN YOU SAY, WE'RE A HIGHLY REGULATED
2 INDUSTRY, WHAT DO YOU MEAN BY THAT?

3 A. I JUST MEAN THAT THE INVESTMENT MANAGEMENT
4 INDUSTRY IS REGULATED BY MULTIPLE REGULATORY BODIES,
5 LOTS OF RULES AND REGULATIONS, LOTS OF THINGS THAT HAVE
6 TO BE COMPLIED WITH.

09:06AM

7 AND IF ANY OF THOSE WERE SERIOUSLY
8 BREACHED OR VIOLATED, WE'RE PUT IN A POSITION WHERE WE
9 HAVE NO CHOICE BUT TO TAKE CERTAIN ACTIONS.

10 Q. I MEAN, WERE THERE PEOPLE WHO DISAGREED WITH
11 THAT? WERE THERE PEOPLE WHO SAID, THE SITUATION IS
12 SUCH THAT IT IS SO RISKY, THAT HE MIGHT LEAVE; AND
13 WE'RE SO VULNERABLE THAT YOU NEEDED TO BE PROACTIVE AND
14 ACTUALLY TERMINATE HIM?

09:06AM

15 MR. BRIAN: OBJECTION. LEADING AND
16 CUMULATIVE.

09:06AM

17 THE COURT: SUSTAINED, ON THE FIRST ONE.

18 Q. BY MR. QUINN: WERE THERE PEOPLE IN SENIOR
19 MANAGEMENT WHO GAVE YOU CONTRARY ADVICE?

20 A. I'M SORRY, CONTRARY TO?

09:06AM

21 Q. ADVICE AS TO WHETHER YOU SHOULD BE PROACTIVE
22 AND TERMINATE HIM?

23 A. YES.

24 Q. AND IS THAT SOMETHING THAT WAS DISCUSSED IN
25 MEETINGS THAT SUMMER AT TCW AND AMONG MEMBERS OF
26 MANAGEMENT?

09:07AM

27 A. YES.

28 Q. AND I THINK YOU MENTIONED THIS LAST WEEK.

1 WE INDICATED THAT THERE WERE SOME
2 PEOPLE, AND YOU IDENTIFIED THEM, WHO ACTUALLY SAID YOU
3 NEEDED TO BE PROACTIVE, AND YOU SHOULD TERMINATE
4 MR. GUNDLACH.

5 DO YOU RECALL THAT?

09:07AM

6 A. YES.

7 Q. AND YOU MENTIONED ONE INDIVIDUAL BY THE NAME
8 OF HOWARD MARKS.

9 DO YOU RECALL THAT?

10 A. YES.

09:07AM

11 Q. WHO IS MR. MARKS?

12 A. MR. MARKS IS, I BELIEVE, CHAIRMAN OF OAKTREE
13 FINANCIAL.

14 Q. AND WHAT WERE THE CIRCUMSTANCES THAT YOU HAD
15 THIS CONVERSATION WITH MR. MARKS, WHERE HE GAVE YOU
16 THAT ADVICE?

09:07AM

17 A. WELL, HE CAME -- HE CALLED ME AND ASKED ME IF
18 I WOULD HAVE LUNCH WITH HIM. AND WE HAD LUNCH ON A
19 REGULAR BASIS, A COUPLE OF TIMES A YEAR.

20 Q. HOW IS IT YOU KNEW MR. MARKS?

09:08AM

21 A. MR. MARKS USED TO WORK AT TCW.

22 Q. RIGHT.

23 SO HE CALLED AND ASKED YOU TO LUNCH?

24 A. WELL, HE SAID, COULD WE HAVE LUNCH, AND I
25 ACTUALLY ASKED HIM TO LUNCH.

09:08AM

26 BUT WE HAD LUNCH.

27 Q. YOU FIGHT OVER THE CHECK, TOO, OR -- NEVER
28 MIND. NEVER MIND.

1 SO CAN YOU GIVE US A TIME FRAME,
2 ROUGHLY, WHEN IT WAS YOU HAD THIS LUNCH?

3 A. MID TO LATE AUGUST OF 2009.

4 Q. WHEN YOU GOT TOGETHER, DO YOU RECALL WHAT THE
5 OCCASION WAS THAT HE HAD CONTACTED YOU FOR?

09:08AM

6 A. YES. THERE WAS ANOTHER EMPLOYEE THAT WAS AT
7 TCW AND HAD GONE TO OAKTREE, AND THERE WAS SOME --

8 MR. BRIAN: OBJECTION, YOUR HONOR.

9 MAY WE APPROACH?

10 THE COURT: YEAH. I JUST WANT A BRIEF -- I
11 THINK YOU'VE ANSWERED THE QUESTION.

09:08AM

12 MR. QUINN: OKAY.

13 MR. BRIAN: THIS HAS BEEN --

14 THE COURT: LET'S NOT --

15 MR. QUINN: I THINK I CAN SATISFY MR. BRIAN.

09:08AM

16 THE COURT: WE KNOW WHAT THIS ISSUE IS. YES,
17 OKAY.

18 MR. QUINN: I'M NOT GOING TO GO INTO --

19 THE COURT: DON'T GO THAT FAR.

20 MR. QUINN: I'M NOT GOING TO DO WHAT YOU THINK
21 I'M GOING TO.

09:09AM

22 THE COURT: LISTEN CAREFULLY TO THE QUESTION,
23 AND DON'T ANSWER BEYOND THE QUESTION.

24 THANK YOU.

25 THE WITNESS: YES.

09:09AM

26 Q. BY MR. QUINN: ALL RIGHT. SO LET'S FOCUS ON
27 WHATEVER THE REASON WAS THAT YOU GOT TOGETHER,
28 DISCUSSIONS PERTAINING TO MR. GUNDLACH.

1 DID MR. GUNDLACH COME UP AS A TOPIC OF
2 DISCUSSION AT THIS LUNCH BETWEEN AND YOU MR. MARKS?

3 A. YES.

4 Q. AND WHAT WAS SAID?

5 A. WELL, HOWARD SAID TO ME, HOW IS IT GOING IN
6 THE NEW ROLE? AND I SAID THAT MY BIGGEST ISSUE OF THE
7 THINGS -- THERE ARE LOTS OF ISSUES I HAD TO DEAL WITH,
8 BUT THE BIGGEST ISSUE I HAD TO DEAL WITH WAS TRYING TO
9 FIGURE OUT HOW TO DEAL WITH MR. GUNDLACH.

10 Q. ALL RIGHT.

11 AND DID HE SAY SOMETHING IN RESPONSE TO
12 THAT?

13 A. YES. HE SAID THAT I THINK IT WAS, I HAD
14 DIRECT SUPERVISION OF MR. GUNDLACH FOR ABOUT SIX MONTHS
15 AT TCW, AND IT WAS ONE OF THE WORST EXPERIENCES THAT I
16 HAD.

17 Q. WHEN YOU SAY I, YOU ARE --

18 A. I, MR. MARKS.

19 Q. ALL RIGHT.

20 DID HE SAY ANYTHING ELSE?

21 A. I ASKED HIM, WHAT DO YOU THINK WE SHOULD DO
22 WITH MR. GUNDLACH? WHAT SHOULD WE DO ABOUT IT?

23 Q. AND DID HE MAKE A RESPONSE TO THAT?

24 A. YES. HE SAID THAT THEY HAD A SIMILAR
25 SITUATION AT OAKTREE WITH A --

26 MR. BRIAN: OBJECTION, YOUR HONOR.

27 THE COURT: SUSTAINED.

28 MR. QUINN: STATE OF MIND, YOUR HONOR.

1 MR. BRIAN: THERE'S BEEN A RULING ON THIS.

2 THE COURT: YOU'VE GOT TO NARROW IT.

3 MR. QUINN: ALL RIGHT.

4 Q. DID HE RELATE SOMETHING TO YOU --

5 THE COURT: THE QUESTION WAS, WHAT DID HE
6 RELATE TO YOU ABOUT MR. GUNDLACH.

09:10AM

7 THAT DOES NOT GO BEYOND THAT.

8 Q. BY MR. QUINN: IN RESPONSE -- IN RESPONSE TO
9 YOUR QUESTION TO HIM ABOUT WHAT DO YOU THINK -- WHAT DO
10 YOU, MR. MARKS, THINK I, MR. STERN, OUGHT TO DO ABOUT
11 MR. GUNDLACH, DID HE SAY SOMETHING TO YOU?

09:11AM

12 A. YES.

13 Q. AND WHAT DID HE SAY IN RESPONSE TO THAT?

14 A. HE RELATED A CIRCUMSTANCE WITH AN EMPLOYEE AT
15 OAKTREE.

09:11AM

16 Q. AND JUST WITHOUT GOING INTO ANY DETAIL, WHAT
17 DID HE TELL YOU?

18 MR. BRIAN: OBJECTION, YOUR HONOR.

19 THE COURT: SUSTAINED.

20 MR. QUINN: YOUR HONOR, MAY WE APPROACH?

09:11AM

21 THE COURT: YES. COME ON UP.

22

23 (THE FOLLOWING PROCEEDINGS WERE

24 HELD AT SIDEBAR:)

25

09:11AM

26 THE COURT: WE'VE CROSSED THIS ISSUE, AND
27 WE'RE NOT GOING TO GET INTO THE OAKTREE EMPLOYEE
28 RELATIONSHIP.

1 NOW, YOU MAY ASK HIM WHAT MARKS'
2 ULTIMATE RECOMMENDATION WAS, OR WHAT HE SAID TO HIM
3 ABOUT WHAT HE SHOULD DO ABOUT GUNDLACH, BUT HE CAN'T
4 RELATE ALL THIS OTHER STUFF. AND I THOUGHT WE HAD A
5 RULING ON THAT.

09:12AM

6 MR. QUINN: THAT WAS THE HAYBAR (PHONETIC)
7 ARBITRATION, WHICH IS THE FIRST THING HE THOUGHT I WAS
8 GOING TO GET INTO, WHICH I'M NOT.

9 BUT WHAT HE WOULD SAY, YOUR HONOR, IS
10 THAT MR. MARKS TOLD HIM, LOOK, WE HAD A SIMILAR
11 SITUATION AT OAKTREE, AND WE DECIDED WE HAD TO BE
12 PROACTIVE, AND WE FIRED HIM, AND THINGS WERE A LOT
13 BETTER SINCE THEN.

09:12AM

14 AND HE WOULD SAY HIS UNDERSTANDING OF
15 THAT WAS THAT MR. MARKS WAS SUGGESTING TO HIM THAT HE
16 SHOULD FIRE MR. GUNDLACH.

09:12AM

17 THE COURT: AND I DON'T HAVE A PROBLEM WITH
18 THAT. I JUST DON'T WANT TO GET INTO THIS OTHER ISSUE.

19 AND I THINK THAT'S YOUR CONCERN, IS IT
20 NOT?

09:12AM

21 MR. BRIAN: YEAH. I THOUGHT THE TESTIMONY WAS
22 GOING TO BE THAT HE -- 'CAUSE I THOUGHT I HEARD HIM SAY
23 LAST WEEK THAT MR. MARKS RECOMMEND THAT HE BE FIRED.

24 APPARENTLY NOW HIS TESTIMONY IS SLIGHTLY
25 DIFFERENT. AND IF HIS TESTIMONY IS SLIGHTLY DIFFERENT,
26 I THOUGHT THERE WAS A RULING THAT THAT WAS EXCLUDED.

09:12AM

27 THE COURT: WE'RE NOT GOING TO GET INTO THE
28 PARTICULARS OF ANY OF THAT.

1 BUT IF THE GIST OF THE COMMENT WAS, I
2 HAD A SIMILAR SITUATION, AND I FIRED THE PERSON, AND I
3 RECOMMEND YOU DO THAT TO MR. GUNDLACH --

4 MR. BRIAN: I DON'T THINK HE'S GOING TO SAY
5 THAT.

09:13AM

6 MR. QUINN: HE'S NOT GOING TO SAY THAT LAST
7 PART, YOUR HONOR.

8 WHAT HE'S GOING TO SAY IS, IN RESPONSE
9 TO THAT, WE HAD A SIMILAR SITUATION. WE DECIDED WE HAD
10 TO BE PROACTIVE. WE FIRED HIM, AND THINGS GOT BETTER.

09:13AM

11 HIS UNDERSTANDING WAS, MR. MARKS WAS
12 TELLING HIM, IT'S MY ADVICE THAT YOU SHOULD FIRE HIM.

13 THE COURT: AND IS MARKS GOING TO TESTIFY?

14 MR. BRIAN: I DON'T KNOW. I DON'T KNOW YET.
15 IT REALLY DEPENDS.

09:13AM

16 THE COURT: I'LL LET HIM GO THAT FAR. I JUST
17 DON'T WANT TO GET INTO THIS OTHER INCIDENT, OR ANY
18 OTHER PARTICULARS OF WHAT HAPPENED AT OAKTREE WITH
19 ANOTHER EMPLOYEE.

20 ALL RIGHT. THANK YOU.

09:13AM

21
22 (THE FOLLOWING PROCEEDINGS
23 WERE HELD IN OPEN COURT IN
24 THE PRESENCE OF THE JURY:)

09:14AM

25
26 Q. BY MR. QUINN: SO IN YOUR -- IN RESPONSE TO
27 MR. MARKS -- TO YOUR QUESTION TO MR. MARKS, WHAT DO YOU
28 THINK I SHOULD DO ABOUT MR. GUNDLACH, WHAT DID

1 MR. MARKS SAY?

2 A. MR. MARKS SAID THAT THEY HAD A SIMILAR
3 SITUATION WITH AN EMPLOYEE AT OAKTREE WHO HAD A SIMILAR
4 CHARACTERISTIC, NATURE, ET CETERA, AND THAT THEY PARTED
5 WAYS WITH HIM, AND THAT THE FIRM WAS A BETTER FIRM FOR
6 THAT.

09:14AM

7 AND I TOOK THAT TO MEAN THAT HE WAS
8 SUGGESTING THAT WE DO THE SAME WITH MR. GUNDLACH.

9 Q. AND WHEN YOU SAY PARTED WAYS, DO YOU MEAN --
10 WHAT DO YOU MEAN BY THAT?

09:14AM

11 A. THEY HAD TERMINATED HIM OR HER. I DON'T KNOW.

12 THE COURT: WHAT WAS THAT LAST?

13 THE WITNESS: I JUST SAID I DIDN'T KNOW
14 WHETHER THEY TERMINATED HIM OR HER, I DIDN'T KNOW.

15 THE COURT: GO AHEAD.

09:14AM

16 THE WITNESS: SORRY.

17 Q. BY MR. QUINN: AND THEN LAST WEEK, YOU ALSO
18 REFERRED TO A MR. SONNEBORN?

19 A. YES.

20 Q. WHO IS MR. SONNEBORN?

09:15AM

21 A. MR. SONNEBORN WAS FORMERLY PRESIDENT OF TCW.
22 AND I THINK HE LEFT IN 2008, I BELIEVE.

23 Q. WHEN WAS IT THAT YOU HAD THIS CONVERSATION
24 WITH MR. SONNEBORN?

25 A. SOMETIME, I BELIEVE, IN LATE AUGUST OF 2009.
26 MID TO LATE AUGUST OF 2009.

09:15AM

27 Q. AND DO YOU RECALL WHAT THE CIRCUMSTANCES WERE
28 WHERE YOU SPOKE TO MR. SONNEBORN?

1 A. YES. WE WERE ACTUALLY TAKING A WALK ON THE
2 BEACH TOGETHER.

3 Q. AND DID THE SUBJECT OF MR. GUNDLACH COME UP?

4 A. IT DID.

5 Q. AND WHAT WAS SAID BETWEEN THE TWO OF YOU?

09:15AM

6 A. WELL --

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

8 THE COURT: IT'S NOT OFFERED.

9 MR. QUINN: IT'S NOT OFFERED FOR THE TRUTH.

10 THE COURT: IT WILL BE ADMITTED.

09:15AM

11 OR I'LL OVERRULE THE OBJECTION.

12 GO AHEAD.

13 THE WITNESS: I'M SORRY. COULD YOU ASK THE
14 QUESTION AGAIN?

15 Q. BY MR. QUINN: WHAT WAS SAID BETWEEN YOU AND
16 MR. SONNEBORN ON THE SUBJECT OF MR. GUNDLACH?

09:15AM

17 A. YEAH. WELL, HE ASKED ME HOW THINGS WERE
18 GOING. AND I TOLD HIM THAT THE BIGGEST ISSUE I WAS
19 CONFRONTED WITH WAS MR. GUNDLACH.

20 Q. AND DID HE MAKE ANY RESPONSE TO THAT?

09:16AM

21 A. YES. HE SAID THAT HE FELT PARTIALLY
22 RESPONSIBLE, BECAUSE HE ADVOCATED MAKING MR. GUNDLACH
23 THE CHIEF INVESTMENT OFFICER.

24 Q. WHEN HE, MR. SONNEBORN, HAD BEEN THERE?

25 A. YES, WHEN HE WAS THERE, YEAH.

09:16AM

26 Q. AND DID HE SAY ANYTHING ELSE?

27 A. YEAH. HE SAID THAT I SHOULD TERMINATE
28 MR. GUNDLACH.

1 Q. AND AT THAT POINT, DID YOU AGREE WITH HIM?

2 A. NO. I TOLD HIM THAT I DIDN'T WANT TO DO THAT,
3 THAT I WANTED TO WORK THINGS OUT WITH MR. GUNDLACH. HE
4 WAS JUST TOO IMPORTANT TO TAKE THAT ACTION.

5 Q. IF WE COULD LOOK AT EXHIBIT 5199.

09:16AM

6 IS THIS AN E-MAIL BETWEEN AND YOU
7 MR. DEVITO, DATED AUGUST 5, 2009?

8 A. YES.

9 MR. QUINN: WE'D OFFER THAT.

10 MR. BRIAN: NO OBJECTION.

09:17AM

11 THE COURT: IT WILL BE ADMITTED.

12

13 (EXHIBIT 5199 ADMITTED.)

14

15 MR. QUINN: IF WE COULD PUT THAT ON THE
16 SCREEN, MIKE.

09:17AM

17 Q. YOU MAKE REFERENCE HERE TO A -- MR. DEVITO, HE
18 WAS THEN THE CHIEF FINANCIAL OFFICER?

19 A. I BELIEVE HE WAS CHIEF ADMINISTRATIVE OFFICER.

20 Q. OKAY.

09:17AM

21 A. BUT I'M PRETTY CERTAIN HE WAS CHIEF
22 ADMINISTRATIVE OFFICER AT THAT TIME.

23 Q. AND THIS MAKES REFERENCE TO A MEETING THAT YOU
24 ARE GOING TO HAVE, REFERRING TO PROJECT G.

25 DO YOU SEE THAT?

09:17AM

26 A. YES.

27 Q. AND IS IT TRUE, IN THIS TIME FRAME, YOU HAD A
28 NUMBER OF SUCH MEETINGS WHERE YOU WERE TALKING ABOUT

1 HOW TO DEAL WITH MR. GUNDLACH?

2 A. IT WAS A CONSTANT DISCUSSION AMONG THE PEOPLE
3 THAT I WAS INVOLVED WITH, YES.

4 Q. AND IN THOSE MEETINGS, DID SOME PEOPLE EXPRESS
5 THE VIEW THAT YOU NEED TO BE PROACTIVE AND TERMINATE
6 HIM? 09:18AM

7 A. YES.

8 Q. AND WAS THERE CONCERN ABOUT HOW THAT WOULD BE
9 PERCEIVED, IF MR. GUNDLACH WERE TERMINATED?

10 A. YES. 09:18AM

11 Q. WHY WOULD THAT BE A CONCERN?

12 A. WELL, IF -- AGAIN, THIS IS IN THE CONTEXT OF
13 MR. GUNDLACH CROSSING OVER THE LINE, AND WE BEING
14 FORCED TO TERMINATE HIM.

15 IF THAT HAPPENED, WE WOULD HAVE TO GIVE
16 AN EXPLANATION TO THE MARKETPLACE, TO OUR INVESTORS. 09:18AM

17 Q. WHY IS THAT?

18 A. BECAUSE HE WAS THE MOST IMPORTANT PORTFOLIO
19 MANAGER IN THE COMPANY, AND HE WAS THE FACE OF THE
20 FIRM. 09:18AM

21 AND YOU JUST CAN'T SAY WE'VE TERMINATED
22 SOMEONE LIKE THAT, WITHOUT AN EXPLANATION.

23 Q. AND DID YOU -- DID PEOPLE COME UP WITH
24 CONTINGENCY PLANS ABOUT WHAT YOU MIGHT SAY IF YOU WERE
25 FORCED TO TERMINATE HIM? 09:19AM

26 A. YES.

27 Q. DID YOU, AT ANY TIME BEFORE SEPTEMBER 3, AGREE
28 WITH THOSE WHO THOUGHT YOU OUGHT TO BE A HAWK, THAT YOU

1 OUGHT TO BE PROACTIVE AND TERMINATE MR. GUNDLACH?

2 A. NO.

3 Q. BUT DID YOU GAME OUT DIFFERENT SCENARIOS WHAT
4 IT WOULD LOOK LIKE, WHAT BUSINESS YOU MIGHT LOSE, WHAT
5 THE COST WOULD BE, THAT SORT OF THING, IF HE WERE
6 TERMINATED?

09:19AM

7 A. WELL, NOT ONLY IF HE WERE TERMINATED; BUT
8 ALSO, AT THAT TIME, HE WAS A FLIGHT RISK. WE KNEW HE
9 WAS INTERVIEWING, SO HE COULD EITHER LEAVE OF HIS OWN
10 VOLITION, OR WE COULD BE FORCED INTO THIS POSITION.

09:19AM

11 SO YES, WE WERE DOING MULTIPLE SCENARIOS
12 AND CONTINGENCY PLANS. THAT'S WHAT MY JOB AS A CEO WAS
13 TO DO, TO BE READY.

14 Q. AND DID THOSE CONTINGENCY PLANS INCLUDE COMING
15 UP WITH FINANCIAL MODELS, WHAT THE LOST BUSINESS WOULD
16 BE, WHAT THE COST SAVINGS MIGHT BE, HOW TCW'S FINANCIAL
17 SITUATION WOULD BE DIFFERENT, IF HE LEFT?

09:20AM

18 A. YES.

19 Q. IF YOU CAN TAKE A LOOK AT EXHIBIT 5215.

20 AND I WILL YOU IF THAT'S AN E-MAIL
21 STRING WITH AN ATTACHMENT BETWEEN AND YOU MR. CONN --
22 I'M SORRY -- YEAH, 5215.

09:20AM

23 A. YES.

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

25 MR. BRIAN: NO OBJECTION.

09:20AM

26 THE COURT: IT WILL BE ADMITTED.

27

28 (EXHIBIT 5215 ADMITTED.)

1 Q. BY MR. QUINN: AND CAN YOU REMIND US WHO
2 MR. CONN IS?

3 A. MR. CONN, AT THAT TIME, WAS MY PROFESSIONAL
4 ASSISTANT. HE WAS HELPING ME, GENERALLY.

5 Q. KIND OF YOUR RIGHT HAND PERSON, ON A
6 PROFESSIONAL SIDE?

09:20AM

7 A. YES, THAT'S A GOOD WAY TO DESCRIBE IT.

8 Q. HE SAYS -- THIS IS AUGUST 21, AND HE SAYS
9 THERE IN THE FIRST PARAGRAPH --

10 THE COURT: IT SAYS IT'S JUNE 10.

09:21AM

11 MR. QUINN: I THINK THE TOP E-MAIL, YOUR
12 HONOR. I'M STARTING AT THE TOP.

13 YES, THE LOWER E-MAIL IS JUNE 10TH.

14 THE COURT: OKAY. I'M SORRY. THANK YOU.

15 Q. BY MR. QUINN: THE TOP E-MAIL, AUGUST 21, THAT
16 FIRST PARAGRAPH, HE SAYS, (READING):

09:21AM

17 I'M NOT SURE WHAT MOVEMENT

18 THERE'S BEEN ON THIS RECENTLY, BUT

19 I'M RESENDING YOU THE FILE I

20 PREVIOUSLY PUT TOGETHER FOR YOU

09:21AM

21 BACK IN JUNE, IN CASE YOU WOULD

22 LIKE TO REFER TO IT.

23 DO YOU SEE THAT?

24 A. YES.

25 Q. AND THEN HE ATTACHES TO THAT, THE E-MAIL THAT
26 HE HAD SENT YOU BACK IN JUNE, RIGHT?

09:21AM

27 A. YES.

28 Q. WHICH IS ALREADY IN EVIDENCE, YOUR HONOR, AS

1 EXHIBIT 5157.

2 AND ATTACHED TO THAT, WHAT HE SENT YOU
3 IN JUNE, AND HE'S RESENDING YOU IN AUGUST --

4 IF WE COULD LOOK AT PAGE -2, -3, SO THE
5 JURY CAN WE WHAT WE'RE LOOKING AT, -4, ARE A LIST OF
6 MORTGAGE INVESTMENT MANAGERS, INDIVIDUALS?

09:22AM

7 A. YES.

8 Q. AND IS THIS WHAT YOU HAD ASKED FOR FROM
9 MR. CONN, CLEAR BACK IN JUNE?

10 A. YES.

09:22AM

11 Q. AND REMIND US WHY IT WAS THAT YOU HAD ASKED
12 FOR THIS LIST OF INDIVIDUALS BACK IN JUNE.

13 A. IF MR. GUNDLACH LEFT THE FIRM, I WAS THINKING
14 THAT WE WOULD NEED TO BRING IN SOMEBODY WITH EXPERTISE
15 TO SHORE UP THE GROUP, AND THAT THAT WOULD BE SOMETHING
16 THAT I WOULD WANT TO BE PREPARED FOR.

09:22AM

17 SO I WAS JUST SURVEYING THE UNIVERSE, TO
18 SEE WHO WAS OUT THERE WITH THAT TYPE OF EXPERTISE.

19 Q. AND AT THAT POINT IN TIME, IN JUNE, OR EVEN IN
20 AUGUST, WERE YOU CONSIDERING MAKING AN ACQUISITION OF
21 ANOTHER FIRM?

09:22AM

22 A. NO.

23 Q. WHY NOT?

24 A. WELL, AT THAT TIME, I WAS MAYBE NAIVELY
25 THINKING THAT IF MR. GUNDLACH LEFT, THE BULK OF HIS
26 TEAM WOULD REMAIN; AND THAT IF WE WERE ABLE TO SHORE UP
27 THE TEAM AFTER HE LEFT, THAT WE WOULD BE ABLE TO SERVE
28 OUR CLIENTS.

09:23AM

1 Q. SHORE UP THE TEAM WITH ONE PERSON, LIKE A
2 REALLY GOOD MORTGAGE MANAGER?

3 A. YES.

4 Q. AND DID THAT VIEW, AS YOU'VE JUST DESCRIBED
5 IT, CHANGE AFTER SEPTEMBER 3?

09:23AM

6 A. YES.

7 Q. IF WE COULD LOOK AT PAGE -3 HERE AT THE TOP,
8 IS TAD RIVELLE OF METROPOLITAN WEST.

9 THIS WAS ONE OF THE INDIVIDUALS THAT
10 MR. CONN IDENTIFIED WHO MIGHT BE A CANDIDATE FOR
11 SHORING UP THE TEAM, IF MR. GUNDLACH LEFT?

09:23AM

12 A. YES.

13 Q. NOW, IF WE CAN GO BACK TO THE FIRST PAGE, HAD
14 YOU GOTTEN -- THIS IS THE TOP E-MAIL, IS AUGUST 21.

15 HAD YOU GOTTEN BACK TO MR. CONN ABOUT
16 THIS LIST SINCE HE SENT IT TO YOU, ON JUNE 10TH?

09:23AM

17 A. I DON'T THINK I DID.

18 I THINK THAT'S WHY HE RE-SENT IT.

19 Q. I'D LIKE YOU TO PLEASE TAKE A LOOK NOW AT
20 EXHIBIT 5224.

09:24AM

21 AND YOU'VE INDICATED THAT MR. CONN WAS
22 YOUR PROFESSIONAL ASSISTANT.

23 IN THAT CAPACITY, DID YOU BECOME
24 FAMILIAR WITH HIS HANDWRITING?

25 A. YES.

09:24AM

26 Q. AND IF YOU COULD TAKE A LOOK AT EXHIBIT 5224,
27 I'D ASK YOU IF THOSE DOCUMENTS IN THERE HAVE HIS
28 HANDWRITING ON THEM?

1 A. YES.

2 Q. AND DOES THIS APPEAR TO BE -- DOES THE FIRST
3 PAGE APPEAR TO BE THE COVER PAGE, OR THE -- I DON'T
4 KNOW WHAT YOU WOULD CALL IT, THE PAGE OF A FILE WITH
5 THE TAB AT THE TOP THAT SAYS PROJECT G?

09:24AM

6 THIS IS PAGE -1, 5224-1.

7 A. YES.

8 Q. AND DOES THIS APPEAR TO BE SOME DOCUMENT WITH
9 MR. CONN'S HANDWRITING ON IT, RELATING TO PROJECT G?

09:25AM

10 A. YES.

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

12 MR. BRIAN: WE JOIN IN THAT, YOUR HONOR, NOT
13 WITH THE LIMITATION.

14 THE COURT: IT WILL BE ADMITTED.

09:25AM

15
16 (EXHIBIT 5224 ADMITTED.)

17
18 Q. BY MR. QUINN: SO IF WE COULD LOOK FIRST AT
19 THE FIRST PAGE, SO -1, SO THE JURY CAN SEE THAT PROJECT
20 G AT THE TOP. IT LOOKS LIKE A PHOTOCOPY OF THE TAB OF
21 THE TOP OF A FILE LABEL.

09:25AM

22 IS THAT WHAT IT LOOKS LIKE TO YOU, SIR?

23 A. YES.

24 Q. AND THEN ON PAGE DASH -- IF WE COULD SKIP
25 FORWARD TO -4.

09:25AM

26 THERE'S SOMETHING THAT SAYS, POTENTIAL
27 LOSS BUSINESS, DASH, SCENARIO ONE.

28 DO YOU SEE THAT?

1 A. YES.

2 MR. QUINN: AND THEN IF WE COULD, MIKE, JUST
3 FLIP THROUGH FOUR, FIVE, SIX, SEVEN, EIGHT.

4 Q. THESE APPEAR TO BE -- WELL, CAN YOU TELL US
5 WHAT THESE ARE, IF WE LOOK AT FOUR, FIVE, SIX, SEVEN,
6 WHAT ARE WE LOOKING AT HERE? 09:26AM

7 A. WE'RE LOOKING AT ESTIMATES OF HOW MUCH
8 BUSINESS WE THINK WE MIGHT LOSE UNDER VARIOUS
9 ASSUMPTIONS OR SCENARIOS WERE MR. GUNDLACH NOT TO BE
10 WITH THE FIRM. 09:26AM

11 Q. NOW, DO YOU HAVE SPECIFIC RECOLLECTION OF
12 DISCUSSIONS OF THIS DOCUMENT?

13 A. NOT OF THIS PARTICULAR DOCUMENT.

14 WE -- THERE WERE JUST LOTS AND LOTS OF
15 SCENARIOS THAT WE RAN; SO I DON'T HAVE SPECIFIC
16 RECOLLECTION OF THESE DOCUMENTS. 09:26AM

17 Q. SO IF WE LOOK AT PAGE -4 UP AT THE -- OR ANY
18 ONE OF THOSE, UP AT THE TOP, THEY ARE ALL DATED THE
19 SAME DATE, AUGUST 20, 2009.

20 DO YOU SEE THAT? 09:27AM

21 MAYBE WE CAN GO TO -6, MIKE, UP IN THE
22 UPPER RIGHT-HAND CORNER.

23 THE DATE OF THE DOCUMENT IS AUGUST 20.

24 A. YES.

25 Q. AND THEN -9. 09:27AM

26 THEY ARE ALL DATED AUGUST 20, JUST IN
27 THE UPPER RIGHT?

28 A. YES.

1 Q. AND IF WE COULD SKIP FORWARD TO -10, THERE'S A
2 FOOTNOTE AT THE BOTTOM OF THESE VARIOUS SCENARIOS. IT
3 SAYS KEY MAN COLUMN.

4 DO YOU SEE THAT?

5 A. YES.

09:27AM

6 Q. AND IF WE COULD ENLARGE THAT, IT SAYS GNO
7 NOTIFICATION. IF JEFFREY GUNDLACH ALONE TERMINATES,
8 AND THEN KPNO NOTIFICATION, IF KEY PERSONNEL JEFFREY
9 GUNDLACH, AMONG OTHERS, TERMINATES.

10 DO YOU SEE THAT?

09:28AM

11 A. YES.

12 Q. AND DOES IT, I UNDERSTAND, INDICATE TO YOU
13 THAT AS OF AUGUST 20, 2009, WHAT WAS BEING MODELED WAS
14 THE CONSEQUENCES IF MR. GUNDLACH LEFT VOLUNTARILY?

15 MR. BRIAN: OBJECTION. LEADING, MISSTATES THE
16 DOCUMENT.

09:28AM

17 THE COURT: SUSTAINED.

18 Q. BY MR. QUINN: WELL, WHEN IT SAYS TERMINATES,
19 HOW DO YOU UNDERSTAND THAT? IF HE TERMINATES?

20 MR. BRIAN: OBJECTION. CALLS FOR SPECULATION.

09:28AM

21 THE COURT: THE DOCUMENT HAS BEEN ADMITTED.

22 MR. QUINN: ALL RIGHT.

23 VERY WELL, YOUR HONOR.

24 Q. THEN IF WE COULD TAKE A LOOK AT THE NEXT
25 DOCUMENT IN THE FILE, -11.

09:28AM

26 THIS IS DATED, IN THE UPPER LEFT,
27 AUGUST 21, 2009; IS THAT CORRECT?

28 A. YES.

1 Q. AND IF WE COULD LOOK AT UNDER ANALYSIS, IF WE
2 COULD LOOK AT THE SECOND TO THE LAST BULLET, MY
3 ASSESSMENT AS TO WHETHER -- DO YOU KNOW WHO AUTHORED
4 THIS DOCUMENT, DO YOU KNOW?

5 A. YES.

09:29AM

6 Q. WHO AUTHORED THIS DOCUMENT?

7 A. JOE BURSCHINGER.

8 Q. AND WAS THIS AN EFFORT TO MODEL WHO MIGHT BE
9 RETAINED IN THE GROUP, IF MR. GUNDLACH WERE TO DEPART?

10 A. YES.

09:29AM

11 Q. AND IT SAYS THERE, MY ASSESSMENT AS TO WHETHER
12 THEY ARE A FLIGHT RISK, IF JEG, WE PROBABLY WERE --

13 A. YES.

14 Q. -- TO DEPART?

15 A. YES.

09:29AM

16 Q. AND THEN DOWN AT THE -- IF WE LOOK UNDER
17 OBSERVATIONS .3, MR. BURSCHINGER REFERS TO RETENTION
18 RATE.

19 DO YOU SEE THAT?

20 A. YES.

09:29AM

21 Q. AND WHAT DO YOU UNDERSTAND RETENTION RATE TO
22 MEAN HERE, IN THIS DOCUMENT DATED AUGUST 21?

23 A. RETENTION OF EMPLOYEES.

24 Q. RELATING -- IN THE GROUP THAT MR. GUNDLACH
25 HEADED UP?

09:30AM

26 A. YES.

27 Q. AND THEN THE LAST PARAGRAPH ON THAT PAGE, IT
28 SAYS, (READING):

1 WE SHOULD ASSUME THAT JEG WILL
2 RESPOND IN A VOLATILE AND DIVISIVE
3 MANNER. HE WILL QUICKLY SEEK
4 RETRIBUTION BY CONTACTING KEY
5 EMPLOYEES AND CLOSE MEMBERS OF THE
6 PRESS, PETRUNO AT LAT, THE FEMALE
7 REPORTER, AT PMI AND OTHER
8 REPORTERS, IN ORDER TO INFLICT
9 MAXIMUM DAMAGE.

09:30AM

10 DO YOU SEE THAT?

09:30AM

11 A. YES.

12 Q. AND DO YOU HAVE AN UNDERSTANDING AS TO WHAT IT
13 WAS THAT, FROM READING THIS, GAVE YOU AN UNDERSTANDING
14 ABOUT WHAT IT WAS THAT WAS THOUGHT THAT MR. GUNDLACH
15 WOULD REACT IN A VOLATILE AND DIVISIVE MANNER TO?

09:30AM

16 A. WELL, IF MR. GUNDLACH LEFT, AND WE WERE TRYING
17 TO RETAIN EMPLOYEES, OR IF WE WERE FORCED TO TERMINATE
18 HIM BECAUSE HE CROSSED OVER THE LINE, THIS WAS OUR
19 ASSESSMENT OF -- NOT OUR ASSESSMENT -- THIS WAS
20 MR. BURSCHINGER'S ASSESSMENT OF WHAT HIS REACTION WOULD
21 BE.

09:31AM

22 Q. BACK IN JUNE, YOU INDICATED THAT WHEN YOU
23 FIRST -- EVEN BEFORE YOU STARTED AGAIN, YOU REACHED OUT
24 TO MR. BARACH? YOU CALLED HIM?

25 A. YES.

09:31AM

26 Q. DID IT EVER COME TO YOUR ATTENTION THAT
27 MR. GUNDLACH'S REACTION TO THAT WAS, THE WAR IS ON?

28 A. YES.

1 Q. AND THEN THE TOP OF THE SECOND PAGE.

2 MR. BRIAN: NO FOUNDATION AS TO TIME, YOUR
3 HONOR.

4 THE COURT: YOU CAN ESTABLISH THAT.

5 I THINK WE'VE GOT EVIDENCE ON IT, BUT GO
6 AHEAD. JUST CLARIFY THE POINT IN TIME. I THINK WE
7 HAVE AN EXHIBIT IN EVIDENCE ON THIS.

09:31AM

8 MR. QUINN: YEAH.

9 Q. YOU ARE AWARE OF AN E-MAIL THAT MR. GUNDLACH
10 WROTE, BACK IN THE MAY TIME FRAME -- MAY 2009?

09:31AM

11 MR. BRIAN: OBJECTION. FOUNDATION AS TO TIME,
12 AS TO HIS KNOWLEDGE, YOUR HONOR.

13 THE COURT: SUSTAINED.

14 Q. BY MR. QUINN: ALL RIGHT. WELL, THE TOP OF
15 THE SECOND PAGE, -12, IT SAYS, (READING):

09:32AM

16 HE MAY ATTEMPT TO PUBLICLY
17 DEGRADE TCW'S BRAND AND INVESTMENT
18 OPERATIONS, PRICING ALLOCATIONS,
19 ET CETERA.

20 DO YOU SEE THAT?

09:32AM

21 A. YES.

22 Q. WAS THAT A CONCERN, THAT IF MR. GUNDLACH LEFT
23 ABRUPTLY, AND YOU FOUGHT TO RETAIN SOME OF THE
24 EMPLOYEES, OR IF HE HAD GONE OVER THE LINE, AND YOU
25 WERE FORCED TO FIRE HIM, THAT THIS MIGHT BE AN ISSUE?

09:32AM

26 A. THIS IS MR. BURSCHINGER'S ASSESSMENT, AND I
27 AGREED WITH IT.

28 Q. ALL RIGHT. IF WE COULD LOOK AT THE FINAL

1 DOCUMENT IN MR. CONN'S FILE, THAT'S ON PAGE -2. IF WE
2 COULD PUT THAT UP ON THE SCREEN.

3 HAVE YOU SUGGESTED TO MR. CONN THAT HE
4 GET PENMANSHIP LESSONS?

5 A. MAYBE I SHOULD.

09:33AM

6 Q. SO THIS IS KIND OF HARD TO READ.

7 BUT IF WE LOOK ABOUT -- IF WE COULD
8 ENLARGE THE SECOND HALF, IT SAYS -- IF I'M READING THIS
9 RIGHT, (READING):

10 TALKED TO LAW FIRM ABOUT JG'S
11 BEHAVIOR, TO SEE IF IT REPRESENTS
12 CAUSE.

09:33AM

13 DO YOU SEE THAT?

14 A. YES.

15 Q. AND DO YOU SPECIFICALLY RECALL -- THIS IS
16 DATED AUGUST 27TH, RIGHT?

09:33AM

17 DO YOU SEE THAT, IN THE UPPER RIGHT-HAND
18 CORNER OF THESE NOTES?

19 A. YES.

20 Q. DO YOU SPECIFICALLY RECALL THAT THERE WAS A
21 MEETING ON AUGUST 27TH?

09:33AM

22 A. I RECALL THERE WAS A MEETING ON AUGUST 27TH.

23 Q. DO YOU RECALL WHAT WAS DISCUSSED IN THAT
24 MEETING?

25 A. ONLY THAT IT WAS ABOUT MR. GUNDLACH.

09:33AM

26 BUT SPECIFICALLY WHETHER ITEMS WERE
27 DISCUSSED BEFORE, AFTER, SPECIFIC ITEMS, DURING THAT
28 MEETING, NO.

1 Q. IT SAYS HERE, TALKED TO LAW FIRM ABOUT JG'S
2 BEHAVIOR, TO SEE IF IT REPRESENTS CAUSE.

3 AND THEN BELOW THAT, DUTY OF LOYALTY
4 STATUTE BREACHED BY JG.

5 DO YOU SEE THAT?

09:34AM

6 A. YES.

7 Q. I MEAN, WAS THAT -- WAS IT AN ISSUE AT THE
8 TIME, IF YOU HAD TO TERMINATE MR. GUNDLACH, HOW THAT
9 MIGHT BE EXPLAINED TO THE PUBLIC, OR THE INVESTMENT
10 PUBLIC?

09:34AM

11 A. YES.

12 Q. AND WERE THERE SOME PEOPLE OF THE VIEW THAT
13 THERE WAS A REASON TO TERMINATE MR. GUNDLACH'S
14 EMPLOYMENT, AND THAT OUGHT TO BE DONE NOW?

15 A. YES.

09:34AM

16 Q. AND AS OF AUGUST 27TH, IS THAT SOMETHING THAT
17 YOU WERE IN FAVOR OF?

18 A. NO.

19 Q. THEN BELOW THAT, IT SAYS -- AND THIS APPEARS
20 TO BE IN QUOTES, (READING):

09:34AM

21 UNFORTUNATELY, WE HAD TO
22 TERMINATE JG FOR CAUSE, WE'LL TAKE
23 THE HIGH ROAD. DON'T WANT TO SULLY
24 HIS REPUTATION, SO WON'T REVEAL
25 WHAT HAPPENED, BUT HAD NO IMPACT ON
26 CLIENTS. WE RESERVE THE RIGHT TO
27 DEFEND OURSELVES, ET CETERA, CLOSED
28 QUOTE.

09:35AM

1 DID YOU SEE THAT?

2 A. YES.

3 Q. NOW, WERE THERE CONTINGENCY PLANS ABOUT WHAT
4 REASONS THAT YOU MIGHT GIVE IF MR. GUNDLACH LEFT, OR IF
5 YOU WERE FORCED TO TERMINATE HIM?

09:35AM

6 A. YES.

7 Q. AND DID YOU EVER ASK SOMEBODY AT TCW TO KIND
8 OF COME UP WITH SOME LANGUAGE THAT MIGHT BE USED, IF
9 YOU WERE FORCED TO TERMINATE HIM?

10 A. I BELIEVE AT SOME --

09:35AM

11 THE COURT: IT'S A YES OR NO, SIR.

12 THE WITNESS: YES.

13 Q. BY MR. QUINN: BUT I TAKE IT YOU DON'T HAVE A
14 SPECIFIC -- DO YOU HAVE A SPECIFIC RECOLLECTION OF
15 SOMEBODY SUGGESTING THAT YOU OUGHT TO MAKE AN
16 ANNOUNCEMENT THAT SAYS THIS?

09:35AM

17 A. NO.

18 Q. ALL RIGHT.

19 LET ME -- DID YOU HAVE --

20 THANKS, MIKE. YOU CAN TAKE THAT DOWN.

09:36AM

21 DID YOU -- DID TCW HAVE, AT THE LATE
22 SUMMER 2009, DID IT HAVE ANY OUTSIDE PUBLIC RELATIONS
23 COUNSEL THAT IT USED?

24 A. WE HAD A GENTLEMAN, HIS NAME WAS JOSH
25 PEKARSKY, WHO USED TO BE WITH CAST AND CO, BUT HE HAD
26 MOVED TO VANCOUVER, CANADA.

09:36AM

27 Q. SO WERE YOU -- IN THE SUMMER OF 2009, WERE YOU
28 LOOKING FOR NEW PR COUNSEL?

1 A. I WAS.

2 Q. AND CAN YOU RECALL ROUGHLY WHEN IT WAS THAT
3 THAT SEARCH STARTED?

4 A. PROBABLY, JULY, AUGUST, IN THE SUMMER, YES.

5 Q. AND DO YOU RECALL THAT -- WHETHER OR NOT
6 THERE -- THIS IS AN ISSUE, GETTING OUTSIDE PR COUNSEL
7 IS SOMETHING THAT REALLY CAME TO A HEAD, YOU KNOW,
8 AROUND SEPTEMBER 1, OR THE END OF AUGUST?

9 A. YES.

10 Q. AND WHY? WERE THERE SOME THINGS HAPPENING
11 THAT CAUSED YOU TO BE -- TO REALLY FOCUS ON THAT?

12 A. WELL, THERE WERE LOTS OF THINGS HAPPENING, AND
13 I WAS CONCERNED THAT WE NEEDED THE EXTRA HELP.

14 BUT WE HAD PRETTY MUCH CONDUCTED OUR
15 SEARCH, AND WE KIND OF KNEW WHO WE WANTED TO CHOOSE.

16 AND THERE WAS A --

17 Q. LET ME GET BACK TO THE QUESTION.

18 WERE THERE SPECIFIC THINGS THAT WERE
19 HAPPENING AT THAT TIME THAT CAUSED YOU TO FOCUS ON THE
20 NEED FOR PR COUNSEL?

21 A. YES.

22 Q. AND WHAT ARE THOSE?

23 A. WELL, ANY SITUATION THAT MIGHT HAPPEN WITH
24 MR. GUNDLACH, WHETHER IT WOULD BE HE WAS A FLIGHT RISK,
25 OR IF WE HAD BEEN FORCED TO TERMINATE HIM, WE WERE
26 WORKING WITH OUR ENERGY GROUP TO COME UP WITH A REVISED
27 WAY IN WHICH WE WOULD WORK TOGETHER.

28 Q. WHY WOULD THAT CAUSE A NEED FOR PR COUNSEL,

09:36AM

09:37AM

09:37AM

09:37AM

09:37AM

1 THE ENERGY GROUP SITUATION?

2 A. BECAUSE IF WE CAME UP WITH A NEW STRUCTURE,
3 WE'D HAVE TO ANNOUNCE IT AND EXPLAIN IT TO THE CLIENTS,
4 TO THE PRESS, ET CETERA.

5 Q. IS THAT BLAIR THOMAS -- WHAT WE'VE HEARD WAS
6 BLAIR THOMAS' GROUP?

09:38AM

7 A. YES.

8 Q. AND WAS THIS A SITUATION WHERE THEY WOULD
9 ACTUALLY, WHAT WAS CONTEMPLATED, THEY WOULD ACTUALLY BE
10 LEAVING TCW?

09:38AM

11 A. WELL, THE WAY IT WORKED OUT, THEY WOULD STAY
12 FOR A PERIOD OF TIME AND GRADUALLY LEAVE, YES.

13 Q. BUT IF THAT HAPPENED, CAN YOU TELL US WHETHER
14 YOU THOUGHT THAT WOULD BE NEWSWORTHY, AND SOMETHING YOU
15 WOULD HAVE TO ADDRESS IN THE MARKETPLACE?

09:38AM

16 A. DEFINITELY NEWSWORTHY, AND HAVE TO ADDRESS,
17 YES.

18 Q. AND AROUND THE FIRST OF SEPTEMBER, WERE THERE
19 ALSO SOME ARTICLES ABOUT TCW THAT WERE COMING OUT, THAT
20 YOU CAN RECALL?

09:38AM

21 A. YES.

22 Q. AND HOW DID YOU KNOW THOSE WERE COMING OUT?

23 A. WELL, THERE WAS AN -- I THINK IT WAS A
24 NEW YORK POST ARTICLE ABOUT US BEING TAKEN OVER BY KKR.

25 AND I THINK THERE WAS A REUTERS ARTICLE,
26 ACTUALLY, WHERE MR. GUNDLACH WAS QUOTED ABOUT SOME OF
27 THESE THINGS HAPPENING.

09:39AM

28 Q. AND DID THAT HAVE SOMETHING TO DO WITH YOUR

1 SEARCH FOR PR COUNSEL AT THE TIME?

2 A. WELL, I JUST FELT LIKE WITH THAT HAPPENING, WE
3 SHOULD JUST GET PR COUNSEL IN PLACE, YES.

4 Q. NOW, YOU'VE TOLD US THAT IN THE SUMMER YOU
5 WERE VERY CONCERNED ABOUT MR. GUNDLACH, THE MOST
6 IMPORTANT GUY AT THE FIRM, LEAVING THE FIRM WITHOUT
7 NOTICE; BUT YOU THOUGHT THAT WAS SOMETHING YOU COULD
8 PERHAPS DEAL WITH, RIGHT?

9 MR. BRIAN: OBJECTION. LEADING, YOUR HONOR.

09:39AM

10 THE COURT: SUSTAINED.

09:39AM

11 Q. BY MR. QUINN: YOU HAVE TOLD US ABOUT YOUR
12 SEARCH FOR, OR AT LEAST COLLECTING NAMES OF POTENTIAL
13 MANAGERS WHO COULD SHORE UP, IF MR. GUNDLACH LEFT?

14 A. YES.

15 Q. THAT CHANGED AFTER SEPTEMBER 3?

09:39AM

16 A. I'M SORRY. WHAT CHANGED?

17 Q. WELL, YOUR CONCERN, YOUR ASSESSMENT OF THE
18 SITUATION, AND YOUR EXPOSURE, DID THAT CHANGE AFTER
19 SEPTEMBER 3?

20 A. YES.

09:40AM

21 Q. WE'VE HEARD ABOUT A MEETING THAT TOOK PLACE ON
22 SEPTEMBER 3; SO I'D LIKE TO FIRST ASK YOU HOW YOU --
23 HOW THAT MEETING CAME TO BE SCHEDULED.

24 A. WELL, I WAS IN COLORADO, AND I GOT A CALL FROM
25 MY SECRETARY THAT SAID JEFFREY CAME BY, OR CALLED, AND
26 SAID HE'D LIKE TO SCHEDULE A MEETING WITH ME.

09:40AM

27 Q. WAS THAT A USUAL OCCURRENCE OR AN UNUSUAL
28 OCCURRENCE?

1 A. VERY UNUSUAL.

2 Q. AND DID YOU SCHEDULE A MEETING WITH HIM?

3 A. YES.

4 Q. AND THAT MEETING WAS SCHEDULED FOR WHEN?

5 A. A COUPLE OF DAYS AFTER THE CALL, OR -- A DAY
6 OR TWO AFTER HE TALKED TO MY SECRETARY.

09:40AM

7 Q. AND DID YOU COME BACK SPECIALLY FOR THE
8 MEETING?

9 A. I DID.

10 Q. FROM VACATION?

09:41AM

11 A. YES.

12 Q. WHY DID YOU COME BACK SPECIALLY TO MEET WITH
13 MR. GUNDLACH?

14 A. WELL, BECAUSE FIRST OF ALL, IT WAS AN UNUSUAL
15 REQUEST.

09:41AM

16 AND SECONDLY, ON THE POSITIVE SIDE, I
17 THOUGHT THIS COULD BE A GOOD THING. MAYBE SOME OF THE
18 TENSION THAT HAD BUILT UP COULD BE RELIEVED, AND WE'D
19 TALK ABOUT THINGS.

20 BUT ON THE NEGATIVE SIDE, I THOUGHT
21 SINCE I HAD HEARD THAT HE WAS INTERVIEWING, THIS MIGHT
22 BE THE TIME WHEN HE SUBMITTED HIS RESIGNATION.

09:41AM

23 Q. SO YOU CAME BACK.

24 AND WHAT HAPPENED AT THE TIME THAT HAD
25 BEEN SCHEDULED FOR THE MEETING?

09:41AM

26 A. WELL, I DON'T KNOW. 15 MINUTES, HALF AN HOUR
27 BEFORE JEFFREY CALLED ME AND SAID, DO YOU MIND COMING
28 DOWN TO MY OFFICE?

1 HE WAS -- THE MEETING WAS GOING TO BE IN
2 MY OFFICE. HE ASKED IF I MINDED COMING TO HIS OFFICE.

3 AND I SAID NO; SO I DID.

4 Q. DID YOU GO DOWN TO HIS OFFICE?

5 A. WELL, ACTUALLY TO A CONFERENCE ROOM, YES. 09:42AM

6 Q. AND WHO WAS THERE?

7 A. WHEN I GOT THERE, EITHER THERE OR WALKING IN
8 AT SORT OF THE SAME TIME I GOT THERE, WERE MR. BARACH,
9 MR. LUCIDO, MR. SANTA ANA, MR. GALLIGAN, MR. ARENTSEN.

10 I THINK I HAVE ALL OF THEM, BUT I MAY
11 HAVE MISSED A NAME. 09:42AM

12 Q. FIVE OR SIX OF HIS TOP PEOPLE?

13 A. YES.

14 Q. HAD YOU KNOWN THAT THEY WERE GOING TO BE
15 THERE? HAD HE TOLD YOU HE WAS GOING TO HAVE ALL THOSE
16 FOLKS THERE? 09:42AM

17 A. NO.

18 Q. AND THEN WHAT, AS BEST YOU CAN RECALL, WAS THE
19 FIRST THING THAT HAPPENED IN THE MEETING?

20 A. WELL, HE SAID THAT HE HEARD THAT MR. OUDEA,
21 WHO IS THE CHAIRMAN OF SOC-JEN, WAS COMING TO
22 LOS ANGELES. 09:42AM

23 Q. YES.

24 A. AND HE ASKED ME WHETHER MR. -- AND HE SAID, I
25 HEAR HE'S COMING TO FIRE ME. 09:43AM

26 Q. AND DID YOU MAKE A RESPONSE TO THAT?

27 A. YES.

28 I TOLD HIM NO, THAT'S NOT TRUE.

1 Q. AND THEN WHAT HAPPENED?

2 A. I THEN EXPLAINED TO HIM THAT MR. OUDEA WAS
3 HERE BECAUSE HE HAD US INVESTORS, AND WAS ON A WHAT WE
4 CALL A ROAD SHOW.

5 Q. WHAT'S A ROAD SHOW? IT DOESN'T SOUND LIKE A
6 MOBILE THEATRICAL PRODUCTION.

09:43AM

7 A. NO. IT'S WHEN YOU GO AND MEET WITH YOUR
8 INVESTORS, AND BRING THEM UP TO DATE WITH WHAT'S
9 HAPPENING WITH THE COMPANY.

10 Q. SO YOU TELL HIM MR. OUDEA WASN'T COMING TO
11 L.A. TO FIRE HIM?

09:43AM

12 A. RIGHT.

13 Q. AND THEN WHAT WAS SAID?

14 A. I BELIEVE HE ASKED ME WHETHER I WAS GOING TO
15 FIRE HIM.

09:43AM

16 Q. AND YOU RESPONDED?

17 A. I TOLD HIM NO, I WASN'T GOING TO FIRE HIM.

18 Q. WHAT ELSE WAS SAID?

19 A. WELL, THERE WERE A LOT OF THINGS SAID.

20 AND JUST REMEMBER, THERE'S ABOUT SIX OF
21 THEM, AND THERE'S ME; SO I'LL TRY TO SAY IT AS -- THE
22 BEST OF MY -- THE BEST THAT I CAN RECALL.

09:44AM

23 HE SAID SOMETHING TO THE EFFECT THAT WE
24 DON'T FEEL THAT WE'RE IN A SAFE AND SECURE ENVIRONMENT.
25 AND IF I'M FIRED, OR IF I LEAVE THE FIRM, HOW MANY OF
26 YOU, TURNING TO THE PEOPLE IN THE ROOM, WILL LEAVE WITH
27 ME?

09:44AM

28 Q. AND WHAT HAPPENED WHEN HE SAID THAT?

1 A. THEY ALL RAISED THEIR HANDS.

2 Q. DO YOU RECALL ANYTHING ELSE THAT WAS
3 DISCUSSED?

4 A. YES. WE HAD LOTS OF DISCUSSIONS. PEOPLE
5 WERE --

09:44AM

6 Q. MAYBE I SHOULD ASK, HOW LONG WAS THE MEETING,
7 ROUGHLY?

8 A. I DON'T KNOW. I'D SAY PROBABLY AN HOUR AND A
9 HALF OR SO, MAYBE; MAYBE A LITTLE LESS, MAYBE A LITTLE
10 MORE.

09:45AM

11 Q. CAN YOU RECALL ANYTHING ELSE THAT WAS
12 DISCUSSED?

13 A. YEAH. THERE WERE A SERIES OF THINGS.

14 SO WHEN HE TALKED ABOUT THE SAFE AND
15 SECURE, I SAID WELL, WHAT IS IT THAT WE CAN DO. LET'S
16 TALK ABOUT THAT.

09:45AM

17 AND EITHER FROM HIM OR FROM OTHERS,
18 THERE WERE A NUMBER OF SUGGESTIONS THAT WERE MADE, OR
19 ISSUES THAT WERE RAISED.

20 Q. DO YOU RECALL ANYTHING SPECIFIC THAT -- ON
21 THAT SUBJECT?

09:45AM

22 A. YEAH. ONE OF THE THINGS THEY WERE CONCERNED
23 ABOUT WAS, THEY THOUGHT THAT IT WASN'T CLEAR, FROM
24 SOC-JEN'S SIDE THAT THE FIRM WASN'T FOR SALE.

25 SOC-JEN HAD BEEN SAYING IT WASN'T FOR
26 SALE, BUT IT WASN'T CLEAR THAT IT WASN'T FOR SALE; SO
27 THERE WAS A SUGGESTION THAT SOC-JEN AFFIRM THAT THE
28 FIRM WASN'T FOR SALE.

09:45AM

1 Q. IN SOME FASHION, AFFIRMING IN SOME PARTICULAR
2 FASHION?

3 A. PERHAPS THROUGH A PRESS RELEASE, OR SOMETHING
4 LIKE THAT.

5 Q. AND WHAT WAS YOUR REACTION TO THAT?

09:46AM

6 A. I THOUGHT THAT WAS SOMETHING THAT WAS DOABLE.

7 I TRIED TO BASICALLY LISTEN TO AS MANY
8 THINGS AS I COULD, AND NOT MAKE SPECIFIC RESPONSES,
9 'CAUSE I WANTED TO HEAR WHAT IT WAS.

10 I WAS JUST SITTING THERE WITH ALL OF
11 THEM, JUST TRYING TO GET A SENSE OF WHAT WAS GOING ON.

09:46AM

12 Q. SO, WAS THIS A SITUATION WHERE THEY WERE
13 TAKING TURNS ASKING YOU QUESTIONS, OR WERE SORT OF
14 QUESTIONS COMING FROM DIFFERENT PEOPLE, DIFFERENT
15 DIRECTIONS?

09:46AM

16 A. THEY WERE DEFINITELY NOT TAKING TURNS ASKING
17 ME QUESTIONS. THEY WERE COMING FROM DIFFERENT PEOPLE
18 AT DIFFERENT TIMES.

19 Q. DO YOU RECALL ANYTHING ELSE THAT WAS SAID IN
20 THIS MEETING?

09:46AM

21 A. YES.

22 THEY FELT THAT THEY WERE
23 UNDERREPRESENTED ON THE MANAGEMENT COMMITTEE.

24 Q. DID YOU MAKE A RESPONSE TO THAT?

25 A. AGAIN, I JUST NOTED IT, AND ASKED, WHAT ELSE.

09:46AM

26 Q. AND BY UNDERREPRESENTED ON THE MANAGEMENT
27 COMMITTEE, WHAT DID YOU UNDERSTAND THAT TO MEAN?

28 A. WELL, SPECIFICALLY, MR. GUNDLACH THOUGHT THAT

1 MR. BARACH AND MR. LUCIDO SHOULD BE ADDED TO THE
2 MANAGEMENT COMMITTEE, BECAUSE THE ASSET BASE OF THE
3 FIXED INCOME GROUP WAS LARGER THAN OTHERS, SO THEY
4 NEEDED MORE REPRESENTATION.

5 Q. ANYTHING ELSE THAT YOU CAN RECALL THAT WAS
6 SAID?

09:47AM

7 A. ALSO THAT THE ROLE OF THE CIO SHOULD BE
8 REFINED, OR REDEFINED.

9 Q. ANYTHING ELSE?

10 A. THOSE WERE THE SPECIFIC THINGS THAT I REMEMBER
11 ON THE, YOU KNOW, SAFE AND SECURE.

09:47AM

12 Q. RIGHT.

13 ON ANY OTHER SUBJECT, DO YOU RECALL
14 ANYTHING ELSE THAT WAS SAID?

15 A. YES. WE GOT INTO A DISCUSSION ABOUT CEO.

09:47AM

16 AND I'M NOT QUITE SURE HOW IT STARTED,
17 BUT I EXPLAINED TO MR. GUNDLACH, WHO HAD BEEN

18 INDICATING THAT HE WANTED TO BE CEO, THAT THAT WASN'T
19 GOING TO BE POSSIBLE, BECAUSE THE BOARD AND THE

20 SHAREHOLDER FELT THAT SOMEONE WHO WAS DOING SUCH AN

09:48AM

21 IMPORTANT JOB IN MANAGING ASSETS, COULDN'T ALSO RUN THE
22 FIRM.

23 Q. AND WAS THERE ANY FURTHER DISCUSSION ON THAT
24 SUBJECT OF CEO?

25 A. YES. HE SAID, HOW DID ROBERT DAY DO IT?

09:48AM

26 AND I SAID --

27 Q. WHEN MR. DAY WAS CEO?

28 A. WHEN MR. DAY WAS CEO. AND I SAID I WAS

1 THINKING IT WAS A LESS COMPLICATED WORLD THEN.

2 BUT I SAID THAT FROM THE BEGINNING, HE
3 HAD A CO-CEO.

4 Q. HE, BEING?

5 A. HE, MR. DAY.

09:48AM

6 ERNIE ELLISON, WHO HANDLED A LOT OF THE
7 ADMINISTRATIVE STUFF IN THE OTHER AREAS.

8 Q. ANYTHING ELSE ON THAT SUBJECT?

9 A. YEAH.

10 MR. GUNDLACH SAID, WELL, SO I COULD
11 POSSIBLY BE CO-CEO, BUT NOT CEO?

09:49AM

12 AND I SEE THAT AS SOMETHING WORTHWHILE
13 TALKING ABOUT, AND I SAID, IS THAT SOMETHING YOU WOULD
14 LIKE TO HAVE A CONVERSATION ABOUT? IS THAT SOMETHING
15 WE CAN TALK ABOUT?

09:49AM

16 AND HE SAID, NOT WITH YOU.

17 Q. MEANING NOT THE CO-CEO WITH YOU?

18 A. RIGHT, RIGHT.

19 Q. ANYTHING ELSE DISCUSSED IN THIS MEETING?

20 A. YES.

09:49AM

21 WELL, HE ALSO SAID, MAYBE I SHOULD BUY
22 THE FIRM.

23 Q. AND DID HE ACTUALLY -- WAS THERE THEN A
24 DISCUSSION OF SOME TERMS UNDER WHICH HE MIGHT BUY THE
25 FIRM?

09:49AM

26 A. YES. HE SAID I -- I VALUE THE FIRM AT ABOUT
27 700 MILLION.

28 DO YOU WANT ME TO WAIT UNTIL YOU --

1 Q. NO. GO AHEAD.

2 A. I VALUE THE FIRM AT ABOUT 700 MILLION. I
3 WOULD BUY 51 PERCENT FOR A LITTLE MORE THAN 350
4 MILLION, AND I WOULD PUT UP A HUNDRED MILLION IN CASH,
5 AND I WOULD EXPECT THAT SOC-JEN WOULD FINANCE THE
6 BALANCE OF IT.

09:50AM

7 Q. RIGHT. SO YOUR RECOLLECTION IS, HE SAID A
8 HUNDRED MILLION IN CASH, RATHER THAN ONE HALF OF THE
9 350 MILLION IN CASH?

10 A. YES. THAT'S MY RECOLLECTION.

09:50AM

11 Q. AND THE BALANCE OF THE -- HE'S PROPOSING TO
12 BUY 51 PERCENT FOR 350 MILLION?

13 A. A LITTLE OVER, OBVIOUSLY, 350 MILLION.

14 Q. AND THE BALANCE OF THE 350 MILLION, HE PUT A
15 HUNDRED MILLION IN CASH.

09:50AM

16 THE REST OF THAT, HE PROPOSED WOULD COME
17 FROM WHO?

18 A. SOC-JEN.

19 Q. IN THE FORM OF WHAT?

20 A. IN THE FORM OF A NONRECOURSE LOAN.

09:50AM

21 Q. NONRECOURSE.

22 AND WHAT DOES NONRECOURSE MEAN?

23 A. WELL, NONRECOURSE MEANS THAT IF ANYTHING WENT
24 WRONG, YOU COULDN'T GO -- YOU COULD ONLY GO AGAINST THE
25 ASSETS. YOU COULDN'T GO AGAINST THE PURCHASER'S
26 PERSONAL ASSETS; YOU COULD ONLY GO AGAINST THE ASSETS
27 OF THE COMPANY.

09:51AM

28 Q. SO IF MR. GUNDLACH DIDN'T PAY, YOU COULDN'T --

1 SOC-JEN COULDN'T LOOK TO HIM, PERSONALLY, TO MAKE GOOD
2 ON THAT?

3 A. YES.

4 Q. WHAT WAS YOUR -- DID YOU SAY ANYTHING IN
5 RESPONSE TO THAT?

09:51AM

6 A. WELL, NO. THERE WERE OTHER --

7 Q. ELEMENTS OF THAT?

8 A. -- ELEMENTS OF THAT.

9 Q. OKAY.

10 WHAT ELSE?

09:51AM

11 A. WELL, HE ALSO SAID THAT HE WOULD WANT TO BE
12 ABLE TO PUT HIS SHARES TO TCW -- I'M SORRY, TO SOC-JEN.

13 Q. WHAT IS A PUT?

14 A. THAT WOULD MEAN AT SOME SORT OF A FORMULA, HE
15 WOULD BE ABLE TO GIVE THE SHARES BACK TO SOC-JEN.

09:51AM

16 Q. GIVE, OR MAKE SOC-JEN REPURCHASE?

17 A. MAKE SOC-JEN REPURCHASE THEM.

18 AND I SAID, WELL, WOULD SOC-JEN HAVE A
19 CALL?

20 Q. CALL, YOU MEAN?

09:52AM

21 A. THE SAME RECIPROCAL RIGHT.

22 AND HE SAID NO.

23 Q. OKAY.

24 A. SO THAT WAS PRETTY MUCH THE OUTLINE OF WHAT HE
25 PROPOSED.

09:52AM

26 Q. AND DID YOU SAY ANYTHING IN RESPONSE TO THAT?

27 A. I MAY HAVE SAID, SOC-JEN ISN'T FOR SALE.

28 Q. SOC-JEN?

1 A. YEAH. WELL, THAT'S FOR SURE.

2 TCW IS NOT FOR SALE.

3 I'M NOT SURE WHETHER I SAID THAT.

4 Q. AND DID YOU SAY ANYTHING ON THIS PROPOSAL?

5 A. I THINK I SAID, I'LL THINK ABOUT IT. I'LL GET
6 BACK TO YOU.

09:52AM

7 Q. AND WHAT WAS YOUR REACTION TO THE TERMS THAT
8 HE OUTLINED?

9 A. WELL, IT WAS -- IN MY VIEW, A NONSTARTER.

10 Q. IT WAS --

09:52AM

11 A. YES. FIRST OF ALL, I THINK THE VALUATION OF
12 SOC-JEN FOR 700 MILLION -- OF TCW, 700 MILLION, WAS
13 VERY LOW.

14 AND SECONDLY, IT WOULD PUT SOC-JEN IN A
15 POSITION WHERE THEY WERE A MINORITY OWNER, 'CAUSE HE
16 ALSO SAID THAT HE WANTED TO BE CEO, WHERE THE MINORITY
17 OWNER OF 49 PERCENT OF THE CONTRACTS OF MR. GUNDLACH,
18 AS CEO, AND WITH AROUND 250 MILLION OF DEBT, AND IT
19 JUST SEEMED LIKE SOMETHING THAT WAS JUST NOT VERY
20 ATTRACTIVE OFFER AT ALL.

09:53AM

09:53AM

21 Q. DO YOU RECALL ANYTHING ELSE THAT WAS DISCUSSED
22 IN THE SEPTEMBER 3 MEETING?

23 A. I THINK THAT'S PRETTY MUCH IT.

24 Q. CAN YOU DESCRIBE FOR THE JURY WHAT THE TONE OF
25 THE MEETING WAS LIKE?

09:54AM

26 A. IT WAS HOSTILE.

27 I REALLY FELT LIKE I HAD BEEN PULLED
28 INTO A MEETING, WITHOUT GIVING ME A CHANCE TO MAYBE

1 BRING A PERSON OR TWO WITH ME, JUST TO BE THERE. AND
2 THAT I WAS GETTING ALL KINDS OF QUESTIONS AND ISSUES
3 THROWN AT ME.

4 AND I TRIED TO HANDLE THAT AS
5 PROFESSIONALLY AS I COULD, AND I THINK I DID. BUT IT
6 WAS A VERY HOSTILE MEETING.

09:54AM

7 Q. HOW WAS IT LEFT AT THE END OF THE MEETING?

8 A. AT THE END OF THE MEETING, I SAID THAT I FELT
9 REALLY LIKE IT WOULD BE DIFFICULT.

09:54AM

10 OH, I REMEMBER THERE WAS ALSO --
11 MR. GUNDLACH ALSO BROUGHT UP THE DILUTION ISSUE THAT HE
12 HAD RAISED AT MR. DAY'S HOUSE, ABOUT HOW HE HAD BEEN
13 DILUTED.

14 Q. RIGHT. AND THAT'S SOMETHING YOU HAD DISCUSSED
15 WITH HIM BEFORE?

09:55AM

16 A. I DISCUSSED WITH HIM BEFORE.

17 AND I EXPLAINED IT AT THAT MEETING, AS
18 TO WHAT THAT WAS, AND WHY IT HAPPENED, AND WHY -- WHAT
19 WAS THE DILUTION ISSUE.

20 Q. THE JURY HAS HEARD SOMETHING ABOUT THIS.

09:55AM

21 A. WELL, ESSENTIALLY, MR. GUNDLACH FELT THAT WHEN
22 TCW WAS SOLD, THAT HE, AT ONE POINT, HE HAD OWNED ABOUT
23 FOUR PERCENT OF TCW. AND BY THE TIME IT WAS SOLD, HE
24 OWNED ABOUT THREE PERCENT OF TCW, BECAUSE OTHER PEOPLE
25 BOUGHT SHARES IN BETWEEN.

09:55AM

26 AND WHAT I EXPLAINED TO HIM WAS THAT
27 EVERYBODY BUT THE PEOPLE THAT BOUGHT SHARES WERE
28 DILUTED TO THE SAME PERCENTAGE EXTENT AS MR. GUNDLACH.

1 I WAS DILUTED EXACTLY THE SAME WAY AS MR. GUNDLACH.

2 MR. DAY WAS DILUTED, EXACTLY THE SAME
3 WAY AS MR. GUNDLACH. I BELIEVE THERE WERE ABOUT 70
4 OTHER SHAREHOLDERS THAT WERE DILUTED IN EXACTLY THE
5 SAME PROPORTION AS MR. GUNDLACH. MR. BARACH WAS
6 DILUTED IN EXACTLY THE SAME PORTION AS MR. GUNDLACH.

09:56AM

7 Q. IS THAT SOMETHING, THAT DILUTION, DOES THAT
8 ALWAYS HAPPEN, WHEN NEW PEOPLE COME IN AND BUY STOCK IN
9 A COMPANY?

10 A. YES.

09:56AM

11 AND I EXPLAINED TO MR. GUNDLACH, WHEN HE
12 BOUGHT HIS SHARES, HE DILUTED EVERYBODY PRIOR TO THAT
13 WHO HAD PURCHASED THEIR SHARES.

14 Q. WAS THERE SOME GOOD REASON THAT YOU THOUGHT IT
15 WAS A -- TO SELL THE SHARES TO NEW SHAREHOLDERS, BACK
16 WHEN THAT WAS DONE?

09:56AM

17 A. YES.

18 Q. AND WHAT WAS THAT?

19 A. WELL, JUST LIKE WHEN WE SOLD SHARES TO
20 MR. GUNDLACH, WE FELT THAT THAT WOULD ENCOURAGE HIM TO
21 PARTICIPATE IN THE COMPANY, ET CETERA.

09:56AM

22 WHEN WE SOLD SHARES TO THE OTHER
23 SHAREHOLDERS, AFTER MR. GUNDLACH, IT WAS THE SAME
24 RATIONALE, THAT THEY WOULD BE MORE ENGAGED, BETTER
25 PARTICIPANTS, AND THAT IT WOULD HELP THE OVERALL
26 BUSINESS.

09:57AM

27 Q. DID MR. BARACH MAKE ANY COMMENTS IN RESPONSE
28 TO THAT?

1 A. MR. BARACH TOLD ME THAT HE THOUGHT THAT -- HE
2 APPRECIATED THE EXPLANATION, THAT HE ACCEPTED IT, BUT
3 THAT HE WISHED I HAD BEEN -- HAD MADE THAT EXPLANATION
4 EARLIER.

5 Q. AND HAD YOU GIVEN MR. GUNDLACH THIS
6 EXPLANATION THAT YOU TOLD US NOW, AND THAT YOU TOLD
7 MR. GUNDLACH ON SEPTEMBER 3, HAD YOU GIVEN HIM AN
8 EXPLANATION EARLIER?

09:57AM

9 A. YES.

10 Q. ONCE, OR MORE THAN ONCE?

09:57AM

11 A. I DON'T REMEMBER THE NUMBER OF TIMES.

12 Q. OKAY.

13 SO HOW WERE MATTERS LEFT AS OF THE
14 CONCLUSION OF THE SEPTEMBER 3 MEETING?

15 A. WELL, I SAID I REALLY DIDN'T WANT TO MEET WITH
16 ONLY MR. GUNDLACH, BECAUSE HE HAD REALLY BEEN ABUSIVE
17 TO ME.

09:57AM

18 BUT I SAID I WOULD MEET -- SINCE HE HAD
19 DESIGNATED MR. LUCIDO AND MR. BARACH'S PEOPLE WHO
20 THOUGHT SHOULD BE PART OF THE MANAGEMENT COMMITTEE,
21 THAT I'D MEET WITH THEM WITH THE THREE OF THEM, JUST
22 ME, AND THAT I WANTED TO ABSORB WHAT THEY HAD SAID, AND
23 THAT I'D GET BACK TO THEM EARLY THE NEXT WEEK.

09:58AM

24 Q. ALL RIGHT.

25 TO SET UP A FOLLOW-UP MEETING?

09:58AM

26 A. YES.

27 Q. AND WAS THAT DONE?

28 A. YES.

1 Q. BEFORE WE GET TO THAT, DID THIS MEETING THAT
2 YOU HAD, CHANGE YOUR THINKING ABOUT THE RISK THAT TCW
3 FACED WITH RESPECT TO MR. GUNDLACH AND HIS POSSIBLE
4 DEPARTURE?

5 A. YES.

09:58AM

6 Q. HOW SO?

7 A. WELL, BEFORE, I BELIEVED THAT UNDER WHATEVER
8 SCENARIO MR. GUNDLACH LEFT, THAT WE WOULD BE ABLE TO
9 KEEP A SIGNIFICANT AMOUNT OF THE INDIVIDUALS IN THE
10 GROUP; AND IF I WAS ABLE TO BRING IN A TALENTED
11 MORTGAGE MANAGER TO SHORE IT UP, THAT WE COULD GO ON
12 AND SERVICE OUR CLIENTS.

09:59AM

13 Q. HOW WAS YOUR THINKING DIFFERENT AFTER THAT
14 MEETING?

15 A. WELL, AFTER THE MEETING, WHEN I SAW PRETTY
16 MUCH ALL OF THE FIRST TIER KEY LIEUTENANTS SAYING THAT
17 THEY WOULD LEAVE WITH HIM, I REALLY BEGAN TO THINK, I
18 THOUGHT I HAD A MUCH BIGGER PROBLEM THAN I HAD
19 ANTICIPATED BEFORE.

09:59AM

20 Q. BIGGER PROBLEM, MEANING WHAT?

09:59AM

21 A. THAT I COULD BE IN A POSITION WHERE I WOULD BE
22 UNABLE TO FULFILL MY OBLIGATIONS TO MY INVESTORS, AND
23 MANAGE THEIR ASSETS, IF THIS WHOLE GROUP LEFT.

24 Q. OKAY.

25 AND WERE YOU CONCERNED ABOUT THE
26 CONSEQUENCES OF THAT, FOR TCW?

09:59AM

27 A. YES. I WAS VERY CONCERNED ABOUT THE
28 CONSEQUENCES.

1 Q. HOW SO?

2 A. WELL, IF THE WHOLE GROUP LEFT, IT WOULD
3 ESSENTIALLY PUT US IN A POSITION WHERE THE FIRM WOULD
4 BE AT RISK, IF I HAD NO BACKUP PLAN, IF I HAD NO
5 RESPONSE TO THAT.

10:00AM

6 Q. THE FIRM WOULD BE AT RISK, AND THE JOBS FOR
7 HOW MANY EMPLOYEES?

8 MR. BRIAN: OBJECTION.

9 THE COURT: SUSTAINED.

10 MR. BRIAN: 352.

10:00AM

11 Q. BY MR. QUINN: HOW MANY JOBS -- HOW MANY
12 EMPLOYEES DID TCW HAVE AT THE TIME?

13 MR. BRIAN: OBJECTION. 352.

14 THE COURT: SUSTAINED.

15 I THINK IT'S IN EVIDENCE. GO AHEAD.

10:00AM

16 Q. BY MR. QUINN: DID YOU SEE MR. GUNDLACH AGAIN
17 ON THAT DAY, LATER THAT DAY?

18 A. YES.

19 Q. WHAT HAPPENED?

20 A. WELL, ABOUT AN HOUR OR HOUR AND A HALF AFTER
21 THE MEETING, I WAS AT ANOTHER MEETING, AND MY SECRETARY
22 CAME AND SAID, JEFFREY IS HERE TO SEE YOU.

10:00AM

23 Q. DID YOU SEE HIM?

24 A. YES. I WALKED OUT OF THE MEETING TO SEE HIM.

25 Q. WHAT WAS SAID?

10:00AM

26 A. WELL, HE SAID, MY GUYS SAY THAT I WAS TOO
27 TOUGH ON YOU. THEY THINK IT WAS A CONSTRUCTIVE
28 MEETING, AND I THINK WE CAN MAKE SOME PROGRESS;

1 SOMETHING LIKE THAT.

2 Q. DID HE SHAKE YOUR HAND?

3 A. YES.

4 Q. AFTER THAT -- AS A RESULT OF -- DID YOU DO
5 ANYTHING AS A RESULT OF THE THREAT, OR THE CHANGE TO --
6 THE POINT OF VIEW YOU HAD CONCERNING THE THREAT, AS A
7 RESULT OF THIS MEETING?

10:01AM

8 MR. BRIAN: OBJECTION, FORM --

9 THE COURT: OVERRULED.

10 THE WITNESS: YES.

10:01AM

11 Q. BY MR. QUINN: WHAT DID YOU DO?

12 A. WELL, THE NEXT DAY, I IMMEDIATELY CALLED
13 MR. RIPOLL AND TOLD HIM WHAT WAS -- WHAT HAD HAPPENED.

14 I TOLD HIM THAT, FIRST OF ALL, THE
15 BIGGEST FEAR THAT I HAD --

10:01AM

16 MR. BRIAN: OBJECTION. HEARSAY.

17 THE COURT: SUSTAINED.

18 Q. BY MR. QUINN: SO YOU CALLED MR. RIPOLL?

19 A. YES.

20 Q. AND DID YOU DO ANYTHING ELSE?

10:01AM

21 A. I REPORTED TO MR. RIPOLL ABOUT WHAT WE WANTED.

22 Q. AS A RESULT OF THIS?

23 A. I REPORTED TO MR. RIPOLL ABOUT WHAT WENT ON AT
24 THE MEETING.

25 Q. AND WERE THERE ANY OTHER STEPS THAT YOU TOOK
26 AS A RESULT?

10:02AM

27 A. YES.

28 I CALLED MR. SHEDLIN.

1 Q. AND WHAT WAS YOUR PURPOSE IN CALLING
2 MR. SHEDLIN?

3 A. TO EXPLAIN THAT I THOUGHT WE NOW HAD A MUCH
4 MORE SIGNIFICANT PROBLEM THAN I HAD BEFORE, AND THAT I
5 WANTED HIM TO START LOOKING AT ALTERNATIVES.

10:02AM

6 Q. ALTERNATIVES, MEANING WHAT?

7 A. MORE HOLISTIC ALTERNATIVES.

8 I TOLD HIM THAT I WANTED HIM TO GET IN
9 TO SEE -- TO THINK ABOUT WHETHER MET WEST MADE ANY
10 SENSE, WHETHER THERE WERE OTHER OPTIONS OUT THERE THAT
11 I COULD HAVE -- START HAVING DISCUSSIONS WITH, SINCE I
12 THAT'S WHAT I NEEDED MUCH MORE THAN JUST A MORTGAGE
13 MANAGER THEN.

10:02AM

14 Q. SO YOU SAID THAT SEPTEMBER 3 MEETING ENDED
15 WITH THE IDEA OF HAVING A FOLLOW-UP MEETING?

10:03AM

16 A. YES.

17 Q. AND WAS THAT SET UP, AND DID THAT HAPPEN?

18 A. WELL, I THINK ON -- I THINK -- LABOR DAY WAS
19 MONDAY.

20 AND I THINK ON TUESDAY, I SET UP A
21 MEETING WITH MR. GUNDLACH WITH MR. BARACH AND WITH
22 MR. LUCIDO.

10:03AM

23 Q. AND DID THEY COME TO SEE YOU?

24 A. YES.

25 Q. AND WHAT HAPPENED -- DID YOU DO ANYTHING TO
26 PREPARE FOR THAT MEETING WITH THEM, THE FOLLOW-UP
27 MEETING?

10:03AM

28 A. WELL, OVER THE WEEKEND, I HAD, AS I SAID,

1 DISCUSSIONS WITH MR. RIPOLL.

2 I THOUGHT ABOUT SOME OF THE THINGS THAT
3 THEY HAD SUGGESTED.

4 Q. SPECIFICALLY?

5 A. THE EXPANSION OF THE MANAGEMENT COMMITTEE.
6 THE PRESS RELEASE, REDEFINING THE ROLE OF THE CIO.

10:03AM

7 I EVEN HAD SOME IDEAS ABOUT HOW MAYBE WE
8 COULD WORK OUT SOME SORT OF A SUCCESSION PLAN FOR ME
9 THAT MIGHT SATISFY MR. GUNDLACH.

10 SO I CAME PREPARED TO HAVE A DISCUSSION
11 OF ALL OPTIONS.

10:04AM

12 Q. AND WHAT HAPPENED IN THE MEETING ON -- THEY
13 SAID THE MEETING WAS SEPTEMBER 8TH?

14 A. I THINK SO. I THINK THE DAY AFTER LABOR DAY,
15 YES.

10:04AM

16 Q. AND WHAT HAPPENED IN THE MEETING?

17 A. WELL, IT WAS BIZARRE.

18 WE SAT DOWN, AND --

19 Q. WHO WAS THERE?

20 A. MR. LUCIDO, MR. BARACH, MR. GUNDLACH, AND ME.

10:04AM

21 WE SAT DOWN, AND I -- AND JEFFREY SAID,
22 WHO CALLED THIS MEETING? WHAT'S THIS MEETING ABOUT,
23 WHICH --

24 Q. WHAT WAS YOUR REACTION TO THAT?

25 A. I WAS SORT OF STUNNED.

10:04AM

26 I MEAN, IT WAS, YOU KNOW, IMPORTANT. I
27 HAD SPENT THE WEEKEND THINKING ABOUT IT, ET CETERA.

28 AND I BELIEVE THAT WE ALL LOOKED AT EACH

1 OTHER, AND FINALLY, I THINK IT WAS LOU LUCIDO THAT SAID
2 THE MEETING -- THIS WAS THE FOLLOW-UP ON THE MEETING WE
3 HAD LAST WEEK. AND, YOU KNOW, WE WANT TO FOLLOW UP ON
4 THE IDEAS, OR WHATEVER IT IS.

5 SO THEN JEFFREY --

10:05AM

6 Q. AND JEFFREY SAID?

7 A. HE SAID WELL, LOU HAD A GOOD IDEA.

8 Q. WHAT WAS THAT?

9 A. THAT WAS THE PRESS RELEASE IDEA.

10 Q. TELL US ABOUT THAT.

10:05AM

11 A. AGAIN, THAT WHATEVER THEIR CONCERNS WAS, THAT
12 SOC-JEN APPEARED TO THEM NOT TO BE COMMITTED TO HOLDING
13 TCW, AND THAT THEY WANTED A FIRM STATEMENT THAT TCW
14 WASN'T FOR SALE.

15 Q. AND WAS THAT IDEA THEN DISCUSSED AT THE
16 MEETING?

10:05AM

17 A. WELL, YES.

18 Q. WHAT WAS SAID?

19 A. WELL, FIRST OF ALL, I WENT AND I GOT SOME
20 MATERIAL, WHICH I THOUGHT INDICATED THAT SOC-JEN
21 WOULD -- WHAT HAPPENED, DEMONSTRATE TO THEM THAT
22 SOC-JEN HAD ALREADY SAID IT WASN'T FOR SALE.

10:06AM

23 BUT THEY DID NOT THINK THAT THAT WAS
24 CONCRETE ENOUGH.

25 Q. SO WHAT ELSE WAS SAID?

10:06AM

26 A. SO I SAID, OKAY. I'LL GET THAT DONE.

27 BUT IF WE --

28 Q. WHEN YOU SAY, GET THAT DONE, WHAT ARE YOU

1 REFERRING TO?

2 A. I'LL GET SUCH A STATEMENT OR A RELEASE OR
3 SOMETHING FROM SOC-JEN.

4 BUT I SAID THAT IF WE JUST WENT OUT AND
5 SAID IT --

10:06AM

6 Q. SAID IT'S NOT FOR SALE?

7 A. IT'S NOT FOR SALE, YOU KNOW THE OLD -- ME
8 THINKS HE DOST PROTEST TOO MUCH.

9 YOU NEED SOME REASON TO SAY THAT. SO --

10 Q. WHAT WAS YOUR CONCERN ABOUT AN ANNOUNCEMENT,
11 TCW IS NOT FOR SALE?

10:06AM

12 A. WELL, IF IT JUST CAME OUT OF THE BLUE, I JUST
13 THOUGHT THAT IT WOULD BE, WHY ARE YOU SAYING THIS?

14 SO I SUGGESTED THAT WE WERE IN THE
15 PROCESS OF ANALYZING THE CITY REPORT, AND I SUGGESTED
16 THAT WE TIE IT TO WHEN WE COMPLETED OUR ANALYSIS OF THE
17 CITY REPORT, SAY THAT WE'VE -- 'CAUSE THAT HAD BEEN
18 PUBLICLY -- MADE PUBLIC, THAT WE WERE DOING THIS. THAT
19 WHEN WE WOULD SAY, WE'VE COMPLETED THE CITI REPORT, AND
20 THE CONCLUSION IS, TCW ISN'T FOR SALE, THAT THERE WOULD
21 BE A PEG, A LOGIC TO IT.

10:06AM

10:07AM

22 AND ACTUALLY, MR. GUNDLACH THOUGHT THAT
23 THAT MADE SENSE?

24 Q. HE AGREED WITH THAT.

25 A. HE AGREED WITH THAT, YES?

10:07AM

26 Q. AND WAS ANYTHING ELSE SAID?

27 A. I SAID, OKAY. WELL, WHAT ABOUT THE REST OF
28 THE ITEMS -- THE REST OF THE THINGS WE DISCUSSED?

1 AND HE SAID, NO, NO, I -- I'VE BEEN
2 THINKING ABOUT IT AND THINKING ABOUT IT.

3 WITH THAT, WE'RE GOOD. THINGS ARE OKAY.

4 Q. WHO SAID THAT?

5 A. MR. GUNDLACH.

10:07AM

6 Q. HOW ABOUT THE OTHER ISSUES HE HAD RAISED, THE
7 MANAGEMENT COMMITTEE, THE INCREASED ROLE FOR THE CIO,
8 BUYING THE FIRM? HOW ABOUT THOSE OTHER ISSUES?

9 A. I SAID, DON'T YOU WANT TO TALK ABOUT ANY OF
10 THE OTHER ISSUES THAT WERE RAISED?

10:08AM

11 HE SAID, NO. IF YOU DO THIS, WE'RE
12 OKAY.

13 Q. AND WAS ANYTHING ELSE -- DID ANYTHING ELSE
14 HAPPEN IN THE MEETING AFTER THAT?

15 A. NO. I MEAN, THAT WAS IT.

10:08AM

16 I SAID -- I TALKED TO MR. RIPOLL AND
17 CONFIRMED THAT WHEN THE CITY REPORT WAS PUT TO BED, WE
18 COULD DO SUCH A STATEMENT, AND WE'D MOVE FORWARD ON
19 THAT BASIS.

20 Q. BUT THAT WAS THE END OF THE FOLLOW-UP MEETING?

10:08AM

21 A. YES.

22 Q. SO WAS IT LONG OR SHORT, OR COULD YOU TELL US
23 HOW LONG THE FOLLOW-UP MEETING WAS?

24 A. IT WAS PRETTY SHORT.

25 Q. WERE YOU SURPRISED BY MR. GUNDLACH'S REACTION
26 THAT, NO, WE'RE GOOD?

10:08AM

27 A. YES, I WAS, BECAUSE ON SEPTEMBER 3RD, THERE
28 SEEMED TO BE SO MANY THINGS TROUBLING HIM, AND THIS

1 ISOLATING THE PRESS RELEASE THING, AND THAT BEING THE
2 ONLY THING THAT NEEDED TO BE DEALT WITH AT THE TIME, I
3 JUST WAS TRYING TO FIGURE OUT WHAT THAT ALL MEANT.

4 Q. WERE YOU COMFORTED BY THE FACT, AT THAT TIME,
5 THAT MR. GUNDLACH WAS SAYING NO, WE'RE GOOD?

10:09AM

6 A. I WAS COMFORTED THAT THERE WAS NO IMMEDIATE
7 ISSUE. I WAS COMFORTED THAT I DIDN'T THINK THAT MEANT
8 THAT HE WAS LEAVING TOMORROW.

9 BUT IT JUST REALLY GOT ME THINKING ABOUT
10 WHAT ELSE MIGHT BE GOING ON, AND THAT I WASN'T GETTING
11 THE FULL PICTURE.

10:09AM

12 MR. QUINN: YOUR HONOR, DO WE TYPICALLY BREAK
13 AROUND NOW?

14 THE COURT: USUALLY 10:15.

15 MR. QUINN: 10:15? OKAY.

10:09AM

16 Q. SO AFTER THAT MEETING, THE FOLLOW-UP MEETING,
17 WERE -- YOU HAVE SAID THAT YOU WEREN'T REALLY
18 COMFORTED, AND YOU WEREN'T SURE WHAT WAS GOING ON, DID
19 YOU TAKE SOME ACTIONS?

20 A. YES.

10:09AM

21 Q. WHAT DID YOU DO?

22 A. WELL, I ASKED MR. CAHILL, OUR GENERAL COUNSEL,
23 WHETHER WE COULD BEGIN TO MONITOR E-MAILS OF
24 MR. GUNDLACH, TO SEE IF WE COULD FIND OUT WHAT WAS
25 REALLY HAPPENING.

10:10AM

26 Q. AND IS THAT SOMETHING THAT WAS DONE?

27 A. YES.

28 Q. AND DID THAT INCLUDE -- WAS THAT ONLY LOOKING

1 AT E-MAILS THAT WERE BEING WRITTEN THEN, AND GOING
2 FORWARD, OR ALSO LOOKING AT E-MAIL TRAFFIC FROM THE
3 PAST?

4 A. FORWARD AND BACKWARD, YES.

5 Q. AND THAT ACTUALLY HAPPENED? THAT STARTED TO
6 HAPPEN AFTER THAT, REVIEWING THE E-MAILS?

10:10AM

7 A. YES.

8 Q. AND WAS IT JUST MR. GUNDLACH'S E-MAILS, OR
9 WERE THERE SOME NUMBER OF PEOPLE WHOSE E-MAILS WERE
10 REVIEWED?

10:10AM

11 A. I JUST ASKED MR. CAHILL TO DO IT.

12 I DON'T KNOW EXACTLY WHO WAS INVOLVED,
13 OR WHAT E-MAILS WERE REVIEWED. I JUST SAID, I WANT THE
14 E-MAILS REVIEWED.

15 SO WHETHER IT WAS MORE THAN
16 MR. GUNDLACH, I DON'T KNOW.

10:10AM

17 Q. AS A RESULT OF THE REVIEW OF THOSE E-MAILS,
18 DID YOU LEARN ANYTHING THAT WAS SIGNIFICANT TO YOU?

19 A. YES.

20 Q. WHAT DID YOU LEARN?

10:11AM

21 A. WELL, I LEARNED --

22 MR. BRIAN: VAGUE AS TO TIME, YOUR HONOR.

23 Q. BY MR. QUINN: SO BEFORE THE END OF, SAY, UP
24 TO OCTOBER 1ST, LOOKING AT SEPTEMBER, DID YOU LEARN
25 ANYTHING THAT WAS SIGNIFICANT TO YOU?

10:11AM

26 A. YES.

27 Q. WHAT DID YOU LEARN?

28 A. I LEARNED THAT THERE WERE ONGOING DISCUSSIONS

1 WITH WAMCO. MR. GUNDLACH WAS HAVING ONGOING
2 DISCUSSIONS WITH WAMCO.

3 I LEARNED THAT THERE WAS CONTACT WITH
4 REAL ESTATE AGENTS ABOUT SPACE.

5 I LEARNED THAT THERE WAS SUSPICIOUS
6 COPYING OF DOCUMENTS, OF TRADE TICKETS, OF CLIENT
7 INFORMATION, OF CONTRACTS; AND OTHER THINGS THAT MADE
8 ME SUSPICIOUS.

10:11AM

9 MR. QUINN: WOULD NOW BE A GOOD TIME, YOUR
10 HONOR?

10:12AM

11 THE COURT: YOU CAN BREAK NOW.

12 ALL RIGHT, LADIES AND GENTLEMEN. WE'LL
13 TAKE OUR 20-MINUTE RECESS. WE'LL COME BACK AT 25
14 MINUTES TO 11:00.

15
16 (AT 10:12 A.M. THE JURY WAS
17 EXCUSED, AND THE FOLLOWING
18 PROCEEDINGS WERE HELD:)

19
20 THE COURT: ALL RIGHT. WE'RE OUT OF THE
21 PRESENCE OF THE JURY.

10:12AM

22 ARE THERE ANY MATTERS ANYBODY WISHES TO
23 TAKE UP?

24 MR. BRIAN: I DON'T THINK SO.

25 MR. MADISON: YOUR HONOR, I WAS TOLD THAT OUR
26 BRIEF IS ON THE WAY TO THE COURTHOUSE, ON THE ISSUE WE
27 TALKED ABOUT, THE TAPE-RECORDING.

10:13AM

28 THE COURT: I HAVEN'T SEEN THERE SET, EITHER,

1 SO I WAS NOT GOING TO LOOK AT IT UNTIL AFTER WE'RE
2 FINISHED TODAY. SO THANK YOU.

3 MR. HELM: I'VE BEEN TOLD OURS HAS BEEN FILED.

4 THE COURT: OKAY. THANK YOU.

5 MR. BRIAN: THANK YOU, YOUR HONOR.

10:13AM

6

7 (RECESS TAKEN.)

8

9 (THE NEXT PAGE NUMBER IS 4901.)

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1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA AUGUST 24, 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

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10

10:39AM

11

THE COURT: IN THE TCW MATTER, ALL OF OUR
12 JURORS ARE PRESENT, AS ARE COUNSEL.

13

MR. QUINN, YOU MAY CONTINUE YOUR DIRECT
14 OF MR. STERN.

15

MR. QUINN: THANK YOU, YOUR HONOR.

10:39AM

16

17

DIRECT EXAMINATION (RESUMED) +

18

19

BY MR. QUINN:

20

Q MR. STERN, YOU TOLD US AFTER THE SEPTEMBER 3
21 MEETING YOU REACHED OUT TO MR. SHEDLIN AND ASKED HIM IF
22 HE COULD MAKE CONTACT WITH MET WEST?

10:40AM

23

A GET INFORMATION ABOUT MET WEST, YES.

24

Q AND WAS A MEETING WITH MET WEST ARRANGED
25 BETWEEN YOU AND SOMEONE FROM MET WEST?

10:40AM

26

A YES.

27

Q WHO DID YOU MEET WITH?

28

A I MET WITH DAVID LIPPMAN.

1 Q AND WHAT WAS HIS POSITION AT MET WEST?

2 A HE WAS CEO OF MET WEST.

3 Q HAD YOU EVER MET WITH HIM BEFORE?

4 A NO.

5 Q OR MET WITH ANY OF THE INDIVIDUALS AT
6 MET WEST?

10:40AM

7 A NO.

8 Q WHEN WAS IT THAT YOU MET WITH MR. LIPPMAN?

9 A I THINK AROUND WEDNESDAY OR THURSDAY OF THE
10 WEEK AFTER LABOR DAY.

10:40AM

11 Q SO THAT WOULD HAVE BEEN SEPTEMBER, ROUGHLY?

12 A 12TH, ROUGHLY, SEPTEMBER 12TH, AROUND THEN.

13 Q AND WHAT WAS YOUR PURPOSE, YOU KNOW, BEFORE
14 THE TIME YOU ACTUALLY MET MR. LIPPMAN AND HAVING THE
15 MEETING SET UP, WHAT WAS YOUR PURPOSE AT THAT TIME IN
16 MEETING WITH HIM?

10:41AM

17 WHAT WERE YOU THINKING?

18 A I WANTED TO SEE WHETHER WE COULD EXPLORE THE
19 POSSIBILITY OF THEM BEING ABLE TO IN SOME WAY HELP US
20 IF WE WERE PUT IN A POSITION WHERE THE ENTIRE TEAM LEFT
21 AND WE DIDN'T HAVE THE CAPACITY TO MANAGE THE ASSETS.

10:41AM

22 Q WAS THAT YOUR THOUGHT IMMEDIATELY PRIOR TO
23 MEETING MR. LIPPMAN? I MEAN, PRIOR TO MEETING
24 MR. LIPPMAN, THAT WAS WHAT YOU WERE THINKING?

25 A YES. WHETHER THERE COULD BE AN ARRANGEMENT WE
26 COULD COME UP WITH THAT WOULD HELP US, THAT WOULD --
27 AGAINST THAT POSSIBILITY, YES.

10:41AM

28 Q DID YOU FLESH THAT OUT A LITTLE BIT WHEN YOU

1 SAY HELP US, WHAT FORM MIGHT THAT TAKE THAT YOU WERE
2 THINKING OF AT THE TIME?

3 A I WAS THINKING MAYBE SOME SORT OF A BACKUP
4 SITUATION WHERE THEY COULD BE READY TO STEP IN, IF
5 NECESSARY. MAYBE AT A REMOTE, MAYBE THERE COULD BE
6 SOME SORT OF A DEAL THAT WE COULD STRIKE WITH THEM.

10:42AM

7 BUT I JUST WANTED TO MEET WITH THEM AND
8 SEE AND EXPLORE WHETHER THERE MIGHT BE SOMETHING WE
9 COULD DO TOGETHER TO HELP DEAL WITH MY PROBLEM.

10 Q WHEN YOU MET WITH MR. LIPPMAN, THE CEO OF
11 MET WEST, HOW DID THE MEETING GO BETWEEN THE TWO OF
12 YOU?

10:42AM

13 A IT WENT VERY WELL.

14 MR. BRIAN: OBJECTION, VAGUE.

15 THE COURT: OVERRULED.

10:42AM

16 I'LL A ALLOW THE ANSWER TO STAND.
17 BY MR. QUINN:

18 Q WHEN YOU SAY VERY WELL, WHAT DO YOU MEAN BY
19 THAT?

20 A WELL, WE ENDED UP THAT WE KNEW A LOT OF THE
21 SAME PEOPLE, AND WE KIND OF RELATED ONTO EACH OTHER ON
22 A HUMAN BASIS. AND HE WAS OPEN TO EXPLORING THE
23 POSSIBILITY OF DOING SOMETHING TOGETHER.

10:42AM

24 Q ALL RIGHT.

25 DID YOUR -- YOUR THINKING ABOUT WHAT
26 TYPE OF ARRANGEMENT YOU MIGHT MAKE WITH MET WEST, DID
27 THAT KIND OF CHANGE PRETTY QUICKLY?

10:43AM

28 A WELL, IT -- AFTER THE MEETING, I THOUGHT MAYBE

1 THERE'S A REAL POSSIBILITY THAT WE COULD DO AN
2 ACQUISITION, EVEN THOUGH I KNEW THERE WERE HUGE NUMBER
3 OF HURDLES TO GETTING SOMETHING LIKE THAT DONE.

4 Q WHEN YOU SAY HUGE NUMBER OF HURDLES, WHAT ARE
5 YOU REFERRING TO? 10:43AM

6 A OBVIOUSLY, YOU HAVE TO AGREE ON THE TERMS ON,
7 FIRST, BASIC TERMS WITH THEM.

8 THEN YOU'D HAVE TO GET THE APPROVAL OF
9 THE SHAREHOLDER, OF TCW BOARD OF DIRECTORS, ALL OF --
10 OF ALL THE REGULATORY APPROVALS. 10:43AM

11 IT'S JUST AN ENORMOUS NUMBER OF THINGS
12 THAT NEED TO BE DONE TO GET A TRANSACTION DONE. AND IT
13 WOULD NEED TO BE DONE IN A CONFIDENTIAL WAY.

14 Q WHY DID IT NEED TO BE DONE -- IF YOU DID THIS,
15 IF YOU WENT DOWN THIS ROAD, WHY WOULD IT NEED TO BE
16 DONE IN A CONFIDENTIAL WAY? 10:44AM

17 A BECAUSE I THOUGHT THAT IF MR. GUNDLACH WAS
18 AWARE THAT I WAS LOOKING AT SUCH A SITUATION, THAT
19 COULD PRECIPITATE EXACTLY WHAT I DIDN'T WANT TO HAPPEN,
20 WHICH IS THAT HE CHOOSES TO LEAVE VERY QUICKLY WITHOUT
21 MY HAVING ANY KIND OF A BACKUP PLAN AND BEING
22 COMPLETELY EXPOSED. 10:44AM

23 Q WHAT WAS IT ABOUT MET WEST THAT YOU THOUGHT
24 WAS ATTRACTIVE?

25 A WELL, FIRST OF ALL, THEY HAD, ON THE LIMITED
26 INFORMATION I HAD FOUND, A VERY GOOD TRACK RECORD.
27 TAD RIVELLE AND HIS TEAM HAD BEEN MORNING STAR MANAGER
28 OF THE YEAR THE YEAR BEFORE MR. GUNDLACH HAD BEEN NAMED 10:44AM

1 MORNING STAR MANAGER OF THE YEAR.

2 I THINK THEY HAD BEEN NOMINATED AS MANY
3 TIMES AS TCW HAD. THEY WERE ONLY A FIXED INCOME SHOP,
4 WHICH WOULD MEAN THAT ANY KIND OF INTEGRATION ISSUES WE
5 HAD IN OVERLAPS IN OTHER AREAS WOULD BE MINIMAL.

10:45AM

6 THEY WERE LOCAL. THAT WAS -- THAT WAS
7 VERY IMPORTANT.

8 AND WELL OVER HALF OF THEIR ASSETS WERE
9 IN THE MORTGAGE AREA.

10 Q SO, AFTER MEETING WITH MR. LIPPMAN, DID YOU
11 THEN START TO EXPLORE THE POSSIBILITY OF ACTUALLY DOING
12 AN ACQUISITION OF MET WEST?

10:45AM

13 A YES.

14 Q AND DID THOSE NEGOTIATIONS CARRY ON FOR A
15 PERIOD OF MONTHS?

10:45AM

16 A YES.

17 Q ALL RIGHT.

18 AND WHEN WAS IT THAT YOU WERE ACTUALLY
19 ABLE TO SIGN UP ON AN AGREEMENT WITH MET WEST?

20 A DECEMBER 4TH, 2009.

10:45AM

21 Q YOU INDICATED THAT TO DO A DEAL LIKE THIS YOU
22 WOULD NEED THE APPROVAL OF YOUR SHAREHOLDER, SOCIÉTÉ
23 GÉNÉRALE?

24 A YES.

25 Q AND WAS THIS SOMETHING THAT THEY WERE URGING
26 YOU TO DO OR YOU WERE URGING THEM TO DO?

10:46AM

27 OR HOW DID THAT GO?

28 A WELL, WHEN YOU SAY -- WHAT DO YOU MEAN BY

1 THIS?

2 Q AN ACQUISITION OF MET WEST.

3 WAS THIS AN IDEA THAT YOU WERE URGING ON
4 YOU OR SOME SOMETHING YOU HAD TO SELL TO THEM?

5 A NO. THIS WAS SOMETHING THAT I CAME UP WITH AS
6 A POTENTIAL SOLUTION TO A HUGE PROBLEM, AND I HAD TO
7 GET THEM ON BOARD.

10:46AM

8 Q ALL RIGHT.

9 IF WE COULD TAKE A LOOK, PLEASE, AT
10 EXHIBIT 5379.

10:46AM

11 IS THIS A BRIEFING DOCUMENT RELATING TO
12 THE MET WEST TRANSACTION WHICH YOU SENT TO -- OR YOU
13 HAD MR. CONN SEND TO THE FOLKS IN PARIS?

14 A YES.

15 MR. QUINN: WE'LL OFFER IT.

10:47AM

16 MR. BRIAN: NO OBJECTION.

17 THE COURT: IT WILL BE ADMITTED.

18

19 (EXHIBIT 5379 ADMITTED.) +

20

10:47AM

21 BY MR. QUINN:

22 Q THE FIRST PAGE IS A DOCUMENT MR. CONN SENT TO
23 MR. RIPOLL AND -- MR. CHOUKROUN?

24 A I'VE NEVER BEEN ABLE TO PRONOUNCE HIS NAME.
25 WE CALL HIM FABRICE.

10:47AM

26 Q FABRICE?

27 A OKAY.

28 Q IT SAYS PROJECT ANGEL BRIEFING DOCUMENT

1 DOCUMENT.

2 WHAT WAS PROJECT ANGEL, THE SECOND PAGE?

3 A IT WAS THE POTENTIAL ACQUISITION OF MET WEST.

4 Q IS THAT LIKE A CODE NAME THAT WAS ASSIGNED TO
5 THIS?

10:47AM

6 A YES.

7 Q IF WE COULD LOOK AT PAGE -5, IT SAYS:

8 SITUATION OVERVIEW STRATEGIC
9 RATIONALE, FRANCHISE PRESERVATION,
10 MARC STERN WILL DISCUSS VERBALLY.

10:47AM

11 I THINK IT'S OBVIOUS FROM YOUR TESTIMONY
12 WHAT FRANCHISE PRESERVATION REFERS TO.

13 A YES. I HOPE IT'S OBVIOUS WITH MY TESTIMONY.

14 Q DID YOU ACTUALLY GO TO PARIS AND KIND OF PITCH
15 THIS TO THE PEOPLE IN PARIS AS SOMETHING THAT YOU
16 THOUGHT IMPORTANT TO DO?

10:48AM

17 A YES.

18 Q AND IF WE LOOK AT THE NEXT PAGE, -6, IT SAYS:
19 REVENUE AT RISK.

20 WHAT ARE YOU REFERRING TO THERE BY
21 REVENUE AT RISK?

10:48AM

22 A WELL, I'M REFERRING TO BASICALLY THE REVENUE
23 OF THE -- OF THE GROUP. MR. GUNDLACH'S -- THE GROUP
24 MR. GUNDLACH HEADED.

25 AND HOW MUCH REVENUE WAS AT RISK UNDER
26 VARIOUS SCENARIOS.

10:48AM

27 Q AND THEN THE NEXT PAGE, -7.

28 IT SAYS:

1 STRATEGIC RATIONALE FOR M-CO
2 TRANSACTION.

3 IF WE CAN ENLARGE THE BOTTOM HALF.
4 YOU IDENTIFY POSITIVE ASPECTS AND THINGS
5 THAT YOU THINK FROM A POSITIVE STANDPOINT THAT COULD
6 HAPPEN AS A RESULT OF THIS TRANSACTION?

10:48AM

7 A YES.

8 Q AND IF WE LOOK AT -8, THESE ARE EARLY
9 CONTENDERS FOR FIXED INCOME MANAGER OF THE YEAR, FOR
10 THAT YEAR, 2009?

10:49AM

11 A YES.

12 Q AND THE FIRST PERSON LISTED IS SOMEBODY FROM
13 MET WEST, AND MR. GUNDLACH IS LISTED AS THE SECOND
14 PERSON THERE?

15 A YES.

10:49AM

16 Q AND THEN IF WE JUMP FORWARD TO PAGE 39.

17 IF WE CAN ENLARGE MAYBE THE FIRST BULLET
18 POINT, THE PROJECT TIMELINE. IT SAYS:

19 INTENDED TO LAYOUT THE NUMEROUS
20 TASKS, PRE TERMINATION, CURRENTLY
21 TARGETED FOR FRIDAY, NOVEMBER 13TH.
22 AND TERMINATION DATE.

10:49AM

23 DO YOU SEE THAT?

24 A YES.

25 Q WHAT ARE YOU REFERRING TO HERE AS TERMINATION
26 DATE?

10:49AM

27 A WELL, THAT MEANS WHEN WE COULD ACTUALLY SIGN
28 THE TRANSACTION WITH MET WEST. BECAUSE I -- I WOULDN'T

1 HAVE TERMINATED MR. GUNDLACH WITHOUT A BACKUP PLAN.

2 Q SO TERMINATION DATE ALSO REFERS TO THE DATE
3 THAT YOU'RE PROJECTING THAT YOU WOULD TERMINATE
4 MR. GUNDLACH?

5 A YES. 10:50AM

6 Q NOW, THIS SAYS A PROJECTED DATE, PRE
7 TERMINATION DATE, NOVEMBER 13TH.

8 DID THE ANTICIPATED DEAL-SIGNING DATE
9 STRETCH OUT OVER TIME? YOU HAD TO DELAY IT A COUPLE
10 TIMES BECAUSE IT WAS TAKING LONGER TO NEGOTIATE THE
11 DEAL? 10:50AM

12 A YES.

13 Q BUT WHEN YOU WERE TALKING ABOUT A TERMINATION
14 DATE -- LET ME JUST ASK YOU.

15 WHEN WAS IT THAT YOU FINALLY,
16 DEFINITELY DECIDED THAT MR. GUNDLACH WAS GOING TO BE
17 TERMINATED? 10:50AM

18 A ON DECEMBER 4TH.

19 Q COULD YOU EXPLAIN THAT.

20 WHY DECEMBER 4? 10:50AM

21 A WELL, THERE WAS -- FOR TWO REASONS:

22 FIRST OF ALL, I WOULD NOT HAVE
23 TERMINATED MR. GUNDLACH IF WE DIDN'T HAVE THE ABILITY
24 TO MANAGE THE ASSETS FOR A CLIENT. SO I NEEDED TO HAVE
25 A BACKUP PLAN IN PLACE. 10:51AM

26 Q WHAT DO YOU MEAN BY THAT, THE BACKUP PLAN IN
27 PLACE?

28 A IN THIS INSTANCE, IT WAS THE MET WEST

1 TRANSACTION SO THAT I COULD GO ON AND MANAGE THE ASSETS
2 FOR MY CLIENTS.

3 Q CAN YOU TELL US WHETHER OR NOT IT WAS A
4 FOREGONE CONCLUSION PRIOR TO DECEMBER 4 AT ANY POINT
5 THAT YOU WERE GOING TO BE ABLE TO SIGN UP THIS DEAL?

10:51AM

6 A NO.

7 Q WHY NOT?

8 A BECAUSE AT VARIOUS POINTS THERE WERE STILL
9 DEAL POINTS THAT NEEDED TO BE DETERMINED AT VARIOUS
10 POINTS. THERE WAS STILL APPROVALS THAT WERE NEEDED TO
11 BE DETERMINED.

10:51AM

12 AND THERE WERE REGULATORY APPROVALS,
13 WHICH WE HAD NO CONTROL, WHICH WE NEEDED TO HAVE
14 CONCURRENCE ON.

15 Q I MEAN, IN THE COURSE OF THESE NEGOTIATIONS,
16 WERE THERE KIND OF UPS AND DOWNS IN A NEGOTIATION, IN
17 THE NEGOTIATIONS?

10:51AM

18 A YES.

19 Q YOU SAID YOU WEREN'T GOING TO TERMINATE -- YOU
20 WOULDN'T MAKE THE DECISION UNTIL WHEN YOU ACTUALLY
21 SIGNED ON DECEMBER 4 BECAUSE IT WASN'T UNTIL THEN YOU
22 KNEW YOU HAD A REPLACEMENT?

10:52AM

23 A YES.

24 Q WAS THERE ANY OTHER REASON WHY YOU DIDN'T MAKE
25 THE FINAL AND DEFINITIVE DECISION TO TERMINATE HIM
26 UNTIL DECEMBER 4?

10:52AM

27 A YES.

28 I ALWAYS HOPED, MAYBE NAIVELY AND MAYBE

1 IT WAS REMOTE, THAT HE WOULD HAVE A CHANGE OF HEART AND
2 REVERSE COURSE AND THAT WE COULD HAVE A DISCUSSION
3 ABOUT MOVING FORWARD TOGETHER.

4 THAT WAS ALWAYS A BETTER ECONOMIC DEAL
5 FOR TCW AND A CERTAINLY MUCH LESS DISRUPTIVE DEAL FOR
6 OUR CLIENT BASE.

10:52AM

7 Q AND WHY WAS IT THAT THAT WOULD BE IMPORTANT TO
8 YOU, THAT -- I MEAN, IF YOU COULD -- IF MR. GUNDLACH
9 WOULD REVERSE COURSE OR IF YOU COULD -- OR THERE WERE
10 CHANGE OF HEART, I MEAN, WHY WAS THAT SOMETHING THAT
11 WAS HARD FOR YOU TO GIVE UP ON?

10:52AM

12 A BECAUSE I'M AN OPTIMIST AND BECAUSE THAT WAS
13 THE ABSOLUTE BEST SOLUTION, IF WE'D BEEN ABLE TO DO
14 SOMETHING.

15 Q DID YOU HAVE IN MIND THAT, EVEN IF YOU WERE
16 ABLE TO CLOSE THE DEAL, YOU KNOW, SIGN THE DEAL WITH
17 MET WEST, AND EVEN IF MR. GUNDLACH DIDN'T HAVE A CHANGE
18 OF HEART, THAT HE WOULD NECESSARILY BE COMPLETELY
19 TERMINATED FROM TCW?

10:53AM

20 A NO.

10:53AM

21 WE WERE HOPING THAT THERE WAS A
22 POSSIBILITY OF WORKING OUT SOME LIMITED ROLE FOR HIM,
23 IN PARTICULAR WITH THE PPIP PROGRAM.

24 AND MAYBE COME UP WITH SOMETHING
25 WHERE -- WHERE WE COULD COME UP WITH A FACE-SAVING
26 MECHANISM, AND SO WE PUT HIM ON ADMINISTRATIVE LEAVE
27 AND THEN HAD THOSE DISCUSSIONS.

10:53AM

28 Q THAT WAS ADMINISTRATIVE LEAVE AS OF WHAT DATE?

1 A DECEMBER 4TH.

2 Q IF YOU TURN NOW TO PAGE 51 --

3 IF WE COULD, MIKE, BLOW UP THE TOP HALF
4 OF THAT.

5 THIS IS ENTITLED REVIEW OF PROCESS FOR
6 SOURCING ALTERNATIVE SOLUTIONS.

10:54AM

7 IT SAYS:

8 JUNE 2009, MARC STERN INITIATED
9 EFFORTS TO FIND AN ALTERNATIVE
10 SOLUTION FOR TCO'S FIXED INCOME
11 MANAGER AREA AND IDENTIFIED A
12 NUMBER OF LOS ANGELES-BASED FIRMS
13 THAT SEEMED ATTRACTIVE.

10:54AM

14 NOW, AS WRITTEN HERE, DO YOU AGREE WITH
15 HOW THAT'S WRITTEN?

10:54AM

16 A NO.

17 Q WHY NOT?

18 A BECAUSE AT THAT POINT WE WEREN'T LOOKING AT
19 FIRMS. WE WERE LOOKING AT INDIVIDUAL MANAGERS.

20 Q AND THAT'S THAT LIST THAT MR. CONN GOT YOU IN
21 JUNE?

10:54AM

22 A YES.

23 Q OKAY.

24 IF YOU'D LOOK, PLEASE, AT EXHIBIT 5365.

25 LET ME ASK YOU: FROM AN ECONOMIC
26 STANDPOINT, YOU SAID YOU ALWAYS THOUGHT YOU'D BE BETTER
27 OFF IF YOU COULD SOMEHOW KEEP MR. GUNDLACH, IF HE WOULD
28 REVERSE COURSE?

10:54AM

1 A YES.

2 Q WHY IS THAT?

3 A WELL, I ALWAYS -- THE ASSET LOSS THAT WE'D
4 SUFFER WOULD FAR OUTWEIGH ANY OTHER CONSIDERATIONS.

5 SO I ALWAYS THOUGHT IF WE COULD KEEP
6 HIM, THAT THAT WOULD BE THE BEST APPROACH.

10:55AM

7 Q OKAY.

8 WERE YOU LOOKING AT -- I MEAN, WERE YOU
9 IN ANY SENSE LOOKING TO TERMINATE MR. GUNDLACH IN ORDER
10 TO SAVE MONEY?

10:55AM

11 A NO.

12 Q I MEAN, FROM YOUR STANDPOINT, WOULD THAT BE A
13 LOGICAL THING TO DO?

14 A NO.

15 Q WHY NOT?

10:55AM

16 A BECAUSE IT WOULDN'T SAVE MONEY.

17 ANY -- THE LOSS OF ASSETS THAT WE WOULD
18 SUFFER BECAUSE OF HIS LEAVING WOULD FAR OUTWEIGH ANY
19 BUFFER THAT WE MIGHT HAVE BECAUSE OF A DIFFERENTIAL ON
20 FEE-SHARING ARRANGEMENTS.

10:55AM

21 Q WELL, THIS IS IN AN E-MAIL IN EVIDENCE, DATED
22 OCTOBER 13TH FROM YOU TO MR. RIPOLL.

23 HE HAD ASKED YOU HOW THE FEE SHARING --
24 THIS IS IN THE MIDDLE OF THE -- AS OF OCTOBER 13TH.

25 HAVE THE NEGOTIATIONS WITH MET WEST
26 BEGUN BY THEN?

10:56AM

27 A CERTAINLY, YES.

28 Q AND IN THE MIDST OF THESE NEGOTIATIONS HE

1 WRITES YOU AND ASKS YOU TO COMPARE THE EXISTING FEE
2 ARRANGEMENTS WITH THE GUNDLACH M.B.S. GROUP WITH THE
3 WHAT YOU'RE NEGOTIATING WITH THE MET WEST PEOPLE?

4 A YES.

5 Q AND YOU INDICATE HERE THAT YOU KNOW:

10:56AM

6 THE GUNDLACH GROUP IS 35 --
7 I'M LOOKING AT THE LAST SENTENCE HERE.

8 IT SAYS:

9 THIS 35 PERCENT FEE SHARING RATE
10 FOR THE GUNDLACH GROUP COMPARES
11 FAVORABLY TO THE 10 PERCENT FEE
12 SHARING RATE REFLECTED IN THE TERM
13 SHEET FOR ANGEL -- MEANING
14 MET WEST -- BY 25 PERCENT OR
15 ROUGHLY \$50 MILLION AT A
16 \$200 MILLION REVENUE LEVEL.

10:56AM

10:56AM

17 DO YOU SEE THAT?

18 A YES.

19 Q ON THE FACE OF IT, IT SEEMS LIKE YOU'RE
20 TELLING MR. RIPOLL THAT THERE'S A -- YOU'RE SAVING
21 MONEY ON FEE SHARING IF YOU COULD DO THIS DEAL.

10:57AM

22 A YES.

23 Q COULD YOU EXPLAIN THAT?

24 WHY DOESN'T THAT MEAN THIS IS MORE
25 ATTRACTIVE FROM A COST SAVING STANDPOINT?

10:57AM

26 A BECAUSE IT DIDN'T -- DOESN'T TAKE INTO ACCOUNT
27 THE RETENTION OF \$75 MILLION RETENTION, PAYMENT THAT WE
28 NEED TO MAKE TO MET WEST, THE \$225 MILLION PURCHASE

1 PRICE, NOR DOES IT TAKE INTO ACCOUNT THE FACT THAT WE
2 WOULD ALMOST CERTAINLY LOSE SOME ASSETS.

3 Q THIS IS -- THIS WAS MARKED FOR IDENTIFICATION
4 AS EXHIBIT 2223, SOMETHING I DREW WITH THE HELP OF
5 MR. VILLA IN THIS TRIAL.

10:58AM

6 I DON'T KNOW IF YOU CAN SEE THAT FROM
7 THERE.

8 A SORT OF.

9 Q YOU'RE REFERRING TO THE \$225 MILLION.

10 THAT'S THE ACQUISITION COST?

10:58AM

11 A YES.

12 Q AND YOU ALSO REFERRED TO SOMETHING ELSE AS
13 RETENTION COSTS --

14 A YES.

15 Q -- WHICH HAVE TO BE TAKEN OUT AND INTO ACCOUNT
16 AS WELL?

10:58AM

17 A YES.

18 Q EVEN IF YOU TAKE THOSE TWO INTO ACCOUNT, THE
19 FEE SHARING FOR, YOU KNOW, THE MET WEST DEAL SEEMS TO
20 BE A LOWER NUMBER THAN THE FEE SHARING FOR THE GUNDLACH
21 GROUP DEAL?

10:58AM

22 A YES. WHEN YOU ADD BACK THE OTHER SALARIES,
23 BONUSES, ET CETERA.

24 Q WASN'T THAT, YOU KNOW, WHAT ROLE, THEN, DID
25 THE COST SAVINGS HAVE IN YOUR CONSIDERATION ABOUT
26 WHETHER THIS WAS A GOOD DEAL FOR TCW?

10:58AM

27 A THE ONLY ROLE WAS THAT IT COULD IN SOME WAY
28 BUFFER THE EFFECT OF THE ASSET LOSS.

1 Q IF YOU COULD TAKE A LOOK, PLEASE, AT
2 EXHIBIT 493.

3 MY QUESTION WOULD BE WHETHER THIS IS
4 A --

5 A EXCUSE ME. MY SCREEN -- DID I --

10:59AM

6 Q SOMETIMES IF YOU KICK A PLUG.

7 THE COURT: KICK IT BACK. KICK IT THE OTHER
8 WAY. WE'VE HAD SOME ISSUES WITH THAT HAPPENING. MINE
9 WENT OFF, TOO.

10 THE WITNESS: IT'S COMING BACK.

10:59AM

11 THE COURT: OKAY. WE'RE IN GOOD SHAPE NOW.

12 MR. QUINN: FIRST THING ON A COMPUTER I EVER
13 FIXED.

14 Q LOOKING AT EXHIBIT 493, CAN YOU IDENTIFY THIS
15 DOCUMENT FOR US, PLEASE.

11:00AM

16 A YES.

17 THIS IS A DOCUMENT THAT I SUBMITTED TO
18 MY COLLEAGUES IN PARIS ON NOVEMBER 27TH ASKING FOR
19 APPROVAL TO GO FORWARD WITH THE MET WEST ACQUISITION.

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

11:00AM

21 MR. BRIAN: NO OBJECTION.

22 THE COURT: IT WILL BE ADMITTED.

23

24 (EXHIBIT 493 ADMITTED.) +

25

11:00AM

26 BY MR. QUINN:

27 Q IS THIS THE KIND OF THE FORMAL DOCUMENT THAT
28 YOU SUBMIT TO SOCIÉTÉ GÉNÉRALE ASKING FOR APPROVAL TO

1 GO FORWARD?

2 A YES.

3 Q IF WE COULD LOOK AT PAGE -2, AND ENLARGE JUST
4 THE TOP THROUGH THE BULLETS IF WE COULD, MIKE.

5 LET'S GO HALFWAY DOWN THE PAGE. IT
6 SAYS:

11:00AM

7 STRATEGIC RATIONALE - FRANCHISE
8 PRESERVATION.

9 THE RATIONALE FOR THIS
10 TRANSACTION INITIALLY STARTED OUT
11 AS A DEFENSIVE ONE.

11:00AM

12 OVER THE PAST SEVERAL MONTHS,
13 JEFFREY GUNDLACH ENGAGED IN A
14 PERSISTENT PATTERN OF DISRUPTIVE
15 AND SELF-SERVING ACTIONS.
16 INCLUDING -- THESE ACTIONS INCLUDE:

11:01AM

17 THREATENING TO LEAVE AND TAKE
18 KEY PERSONNEL WITH HIM.

19 DESTROYING COOPERATIVE EFFORTS
20 ACROSS THE FIRM.

11:01AM

21 DEMEANING OTHER AREAS OF THE
22 FIRM.

23 ATTEMPTING TO BLOCK MONETIZATION
24 OPPORTUNITIES FOR SOCIÉTÉ GÉNÉRALE
25 (I.E. LEAVING SOCIÉTÉ GÉNÉRALE WITH
26 ONLY THEORETICAL VALUE) AND
27 DESTROYING TCW FRANCHISE VALUE.

11:01AM

28 POSSIBLY APPROPRIATING

1 PROPRIETARY INFORMATION OF TCW FOR
2 IMPROPER PURPOSES.

3 NOW, IT GOES ON TO SAY:

4 WE CONCLUDED THAT JG HAD
5 BREACHED HIS FIDUCIARY DUTIES TO 11:01AM
6 THE FIRM AND CREATED AN ENVIRONMENT
7 INAPPROPRIATE FOR THE PROFESSIONAL
8 MANAGEMENT OF CLIENT ASSETS.

9 JG'S RECKLESS AND, POTENTIALLY,
10 UNLAWFUL BEHAVIOR HAS LEFT TCW WITH 11:01AM
11 NO ALTERNATIVE BUT TO TAKE THE
12 NECESSARY STEPS TO ENSURE THE
13 CONTINUITY AND STABILITY OF ITS
14 FIXED INCOME BUSINESS AND THE
15 HIGHEST STANDARD OF ATTENTION TO 11:01AM
16 OUR CLIENTS' INTERESTS.

17 NOW, AS TIME WENT ON THAT FALL, YOU'RE
18 NEGOTIATING WITH MET WEST WAS THIS PROJECT OF REVIEWING
19 OF E-MAIL TRAFFIC CONTINUING?

20 A YES. 11:02AM

21 Q AND AS TIME WENT ON, DID YOU LEARN MORE
22 INFORMATION ABOUT ACTIVITIES THAT WERE OF CONCERN TO
23 YOU?

24 A YEAH.

25 MR. BRIAN: MAY WE APPROACH? 11:02AM

26 THE COURT: YES, YOU MAY.

27

28 (SIDE-BAR CONFERENCE HELD.) +

1 MR. BRIAN: THERE WAS AN IN LIMINE RULING ON
2 THIS ISSUE. I WANTED TO INQUIRE AS TO WHERE COUNSEL'S
3 GOING.

4 I THOUGHT THERE WAS A RULING MR. HELM
5 HAS THAT WOULD PRECLUDE THE WITNESS FROM TESTIFYING
6 ABOUT -- I MAY BE MISSTATING -- INFORMATION HE GOT FROM
7 MR. CAHILL, CAHILL, OR THE DATE HE GOT IT FROM
8 MR. CAHILL.

9 MR. HELM CAN SPEAK TO IT.

10 MY FIRST QUESTION IS, WHERE ARE YOU
11 GOING WITH THIS? THERE'S A MOTION IN ORDER THAT SPEAKS
12 TO THIS, I THINK.

13 MR. QUINN: HE'S JUST GOING TO SAY BASICALLY
14 THIS IS IT. AS TIME WENT ON, HE LEARNED MORE, AND
15 THAT'S WHAT HE TESTIFIED TO IN HIS DEPOSITION. IT'S
16 NOTHING THAT HE DIDN'T ALREADY TESTIFY TO. I'M NOT --

17 THE COURT: ARE YOU GOING TO ASK THE SOURCE OF
18 WHAT HE LEARNED OR JUST GENERIC?

19 MR. QUINN: I'M NOT GOING TO ASK FOR THE
20 SOURCE. I'M GOING TO SAY HE LEARNED MORE AND --

21 THE COURT: ON A GENERIC BASIS?

22 MR. QUINN: YES.

23 THE COURT: THE QUESTION IS THE SCOPE OF YOUR
24 CROSS-EXAMINATION.

25 MR. BRIAN: I NEED TO THINK ABOUT THAT. I
26 MIGHT --

27 THE COURT: THAT'S OKAY.

28 MR. BRIAN: IF HE WANTS TO DO IT, I MIGHT DO

1 IT.

2 MR. QUINN: HE HAS TESTIFIED TO THIS IN HIS
3 DEPOSITION.

4 THE COURT: OKAY. THAT'S OKAY. THERE WE GO.
5 NOT A PROBLEM.

11:03AM

6

7 (SIDE-BAR CONFERENCE CONCLUDED.) +

8

9 BY MR. QUINN:

10 Q SO, MR. STERN, AS TIME WENT ON, DID YOU LEARN
11 ABOUT ADDITIONAL TROUBLING ACTIVITY, ABOUT INFORMATION
12 BEING COLLECTED AND THINGS OF THAT NATURE?

11:03AM

13 A YES.

14 Q IS THAT WHAT YOU'RE REFERRING TO HERE IN THE
15 LAST BULLET: POSSIBLY APPROPRIATING PROPRIETARY
16 INFORMATION OF TCW FOR IMPROPER PURPOSES?

11:04AM

17 A YES.

18 Q JUST TO JUMP FORWARD, DID YOU LEARN MORE AFTER
19 DECEMBER 4 ABOUT WHAT HAD GONE ON?

20 MR. BRIAN: OBJECTION. RELEVANCE.

11:04AM

21 THE COURT: SUSTAINED.

22 BY MR. QUINN:

23 Q WELL, THIS LAWSUIT WAS FILED IN JANUARY, IT'S
24 YOUR UNDERSTANDING, 2010?

25 A YES.

11:04AM

26 Q BETWEEN DECEMBER 4 AND THE TIME THIS LAWSUIT
27 WAS FILED, WERE YOU ABLE TO PUT TOGETHER AND LEARN MORE
28 ABOUT WHAT HAD BEEN DONE ON THIS SUBJECT ABOUT

1 APPROPRIATING PROPRIETARY INFORMATION?

2 A YES.

3 Q AND THEN IF WE GO DOWN, THERE'S A PHRASE WHERE
4 YOU SAY:

5 AND THUS, THIS DEFENSIVE
6 TRANSACTION -- THIS DEFENSIVE
7 TRANSACTION HAS BECOME STRATEGIC IN
8 NATURE.

11:04AM

9 YOU SEE THAT?

10 A YES.

11:05AM

11 Q BEFORE, IT SAYS:

12 THE RATIONALE FOR THIS
13 TRANSACTION INITIALLY STARTED OUT
14 AS A DEFENSIVE ONE.

15 CAN YOU EXPLAIN WHAT YOU MEAN BY A
16 TRANSACTION THAT STARTED OUT DEFENSIVE HAS BECOME
17 STRATEGIC?

11:05AM

18 A YES.

19 Q PLEASE DO.

20 A OKAY.

11:05AM

21 INITIALLY, WHEN I APPROACHED MET WEST, I
22 APPROACHED THEM WITH THE IDEA THAT I HAD A HUGE
23 PROBLEM, AND TO SEE WHETHER I COULD FASHION WITH THEM A
24 SOLUTION TO THAT PROBLEM.

25 BUT AS I GOT TO KNOW THEM AND AS I GOT
26 TO UNDERSTAND THEIR BUSINESS, THERE WERE ALSO, BESIDES
27 THE DEFENSIVE APPROACH, ALSO SOME VERY POSITIVE THINGS
28 THAT I LEARNED.

11:05AM

1 Q YOU'RE REFERRING TO WHAT, JUST VERY BRIEFLY?

2 A BRIEFLY, THAT THEY HAD A MORE BROAD-BASED
3 FIXED INCOME PRACTICE, WHERE WE HAD BEEN PRINCIPALLY
4 MORTGAGE-BACKED, THAT THEIR CULTURE WAS A MORE
5 CONGENIAL AND COOPERATIVE CULTURE.

11:06AM

6 SO I THOUGHT THAT, IN ADDITION TO
7 SOLVING A PROBLEM IN A DEFENSIVE THING, THERE WERE
8 ACTUALLY POSITIVE REASONS, SOME STRATEGIC REASONS TO
9 MOVE FORWARD WITH THE TRANSACTION.

10 Q IF YOU TURN TO THE NEXT PAGE, -3, DOWN AT THE
11 BOTTOM YOU IDENTIFY SOME RISKS FOR THE TRANSACTION.

11:06AM

12 A YES.

13 Q THAT INCLUDES, I THINK YOU'VE REFERRED TO
14 THIS, THE LIKELY LOSS OF ASSETS?

15 A YES.

11:06AM

16 Q YOU SAY:

17 THIS WILL BE BUFFERED IN PART BY
18 REDUCED COMPENSATION LEVELS.

19 A YES.

20 Q DID YOU THINK THOSE WOULD BE MADE UP FOR
21 COMPLETELY --

11:06AM

22 MR. BRIAN: OBJECTION. ASKED AND ANSWERED.

23 THE COURT: SUSTAINED.

24 BY MR. QUINN:

25 Q AND THEN YOU ALSO SAY AT THE BOTTOM, YOU
26 IDENTIFY POTENTIAL LITIGATION LIST OR LITIGATION FROM
27 J.G. AND CLIENTS.

11:06AM

28 DO YOU SEE THAT?

1 A YES.

2 Q WHAT ARE YOU REFERRING TO THERE?

3 A WELL, I -- I THOUGHT THERE WAS A POSSIBILITY
4 THAT MR. GUNDLACH COULD BRING LITIGATION, AND AS FAR AS
5 CLIENTS ARE CONCERNED, HE HAS SOME VERY -- CLIENTS THAT
6 ARE VERY, VERY FRIENDLY TO HIM, AND I HAD SOME CONCERN
7 THAT THERE COULD BE SOME LITIGATION FROM THAT SIDE
8 ALSO.

11:07AM

9 Q AND IF WE TURN TO THE NEXT PAGE, THE BULLETS
10 IN THE MIDDLE OF THE PAGE, FOURTH ONE SAYS:

11:07AM

11 TERMINATE J.G. ON FRIDAY, DECEMBER 4.

12 DO YOU SEE THAT?

13 A YES.

14 Q AND, AGAIN, I MEAN, WAS THAT DECISION
15 DEFINITELY MADE BEFORE DECEMBER 4?

11:07AM

16 A NO.

17 Q AND ON DECEMBER 4 WAS MR. GUNDLACH PUT ON
18 ADMINISTRATIVE LEAVE?

19 A YES.

20 Q AND WAS HE ULTIMATELY TERMINATED?

11:08AM

21 A YES.

22 Q AND WHAT -- WHAT DAY DID YOU FINALLY SIGN UP
23 THE MET WEST AGREEMENT?

24 A DECEMBER 4.

25 Q SO, IN TERMS OF TIMING, THE SIGNING UP OF THE
26 MET WEST AGREEMENT AND MR. GUNDLACH BEING PUT ON
27 ADMINISTRATIVE LEAVE, IN TERMS OF TIME OF DAY OF
28 DECEMBER 4, DO YOU KNOW WHICH HAPPENED WHEN?

11:08AM

1 A WELL, THE -- THE AGREEMENT WAS SIGNED BEFORE
2 MR. GUNDLACH WAS PUT ON ADMINISTRATIVE LEAVE. I DON'T
3 KNOW THE NUMBER OF HOURS BETWEEN THE TWO.

4 Q AND DID YOU MAKE AN EFFORT TO RETAIN
5 MR. BARACH?

11:08AM

6 A YES.

7 Q WHEN DID YOU DO THAT?

8 A WELL, I THINK I HAD, OVER THAT WEEKEND, COUPLE
9 OF PHONE CONVERSATIONS WITH HIM.

11:08AM

10 AND I WENT TO VISIT HIM AT HIS HOME.
11 DECEMBER 4TH WAS A FRIDAY, I BELIEVE. I WENT TO VISIT
12 HIM AT HIS HOME ON DECEMBER 5TH, ON SATURDAY.

13 Q DID HE SAY ANYTHING TO YOU ABOUT THE MEETING
14 ON SEPTEMBER 3 AT THAT TIME?

15 A YES.

11:09AM

16 Q WHAT DID MR. BARACH SAY TO YOU ON DECEMBER 5
17 WHEN YOU MET WITH HIM AT HIS HOME?

18 MR. BRIAN: OBJECTION. HEARSAY.

19 THE COURT: SUSTAINED.

20 BY MR. QUINN:

11:09AM

21 Q DID MR. -- MR. BARACH WENT WITH DOUBLELINE,
22 CORRECT?

23 A YES.

24 Q HE MADE SOME COMMENTS TO YOU ON DECEMBER 4
25 ABOUT THE SIGNIFICANCE OF THE SEPTEMBER 3 MEETING?

11:09AM

26 MR. BRIAN: OBJECTION. HEARSAY. LEADING.

27 THE COURT: SUSTAINED.

28 BY MR. QUINN:

1 Q I'D LIKE TO CHANGE SUBJECTS NOW AND ADDRESS
2 THE PERIOD AFTER SEPTEMBER 4.

3 WE'VE HEARD A FAIR AMOUNT ABOUT THESE
4 SPECIAL MORTGAGE CREDIT FUNDS WHICH, OBVIOUSLY, YOU'RE
5 VERY FAMILIAR WITH, CORRECT?

11:10AM

6 A YES.

7 Q CAN YOU TELL US WHO -- GENERALLY SPEAKING,
8 WHAT TYPES OF INVESTORS ARE IN THE SPECIAL MORTGAGE
9 CREDIT FUNDS?

10 A PRINCIPALLY INSTITUTIONS, BUT SOME I-NET WORTH
11 INDIVIDUALS.

11:10AM

12 Q DO THESE TEND TO BE SOPHISTICATED INVESTORS OR
13 NOT SOPHISTICATED INVESTORS?

14 A SOPHISTICATED, YES.

15 Q COULD YOU TELL THE JURY, ROUGHLY,
16 APPROXIMATELY, BALLPARK, HOW MANY INVESTORS WE'RE
17 TALKING ABOUT IN THE SPECIAL MORTGAGE CREDIT FUNDS,
18 FUND I AND II?

11:10AM

19 A I THINK ABOUT 300.

20 Q AND WHEN YOU WERE CONSIDERING A POSSIBILITY
21 OF -- YOU KNOW, THE EXPECTATION YOU WERE GOING TO BE
22 TERMINATING MR. GUNDLACH, DID YOU THINK THAT YOU WERE
23 GOING TO BE FORCED TO MAKE CHANGES TO THE AGREEMENTS
24 THAT THE INVESTORS HAD WITH TCW IN THOSE FUNDS?

11:10AM

25 A NO.

11:11AM

26 Q THESE WERE WHAT'S BEEN REFERRED TO AS
27 CLOSED-END FUNDS?

28 A YES.

1 Q AND DO THE INVESTORS HAVE AGREEMENTS WITH TCW?

2 A YES.

3 Q DO THOSE AGREEMENTS ADDRESS HOW LONG THEIR
4 MONEY WILL STAY IN THE FUNDS, HOW LONG THEY AGREE THE
5 MONEY WILL STAY IN THE FUNDS?

11:11AM

6 A YES.

7 Q DO THOSE AGREEMENTS ALSO ADDRESS THE
8 COMPENSATION THAT TCW WILL RECEIVE IN TERMS OF
9 MANAGEMENT FEES AND INCENTIVE FEES?

10 A YES.

11:11AM

11 Q NOW, YOU SAY YOU DIDN'T THINK IN ADVANCE IN
12 ANTICIPATING TERMINATING MR. GUNDLACH, THAT YOU NEED TO
13 MAKE -- BE FORCED TO MAKE ANY CHANGES TO THE AGREEMENTS
14 WITH INVESTORS.

15 WHY DIDN'T YOU THINK YOU'D BE REQUIRED
16 TO MAKE CHANGES TO THOSE CONTRACTS?

11:11AM

17 A BECAUSE THERE WAS A PROVISION, PROVISIONS, IN
18 THE CONTRACTS THAT SPECIFICALLY DEALT WITH THE
19 SITUATION WHERE MR. GUNDLACH AND THE OTHER KEY -- KEY
20 MEN, I THINK THAT'S WHAT THE CLAUSE WAS, WOULDN'T BE
21 THERE.

11:12AM

22 Q AND IF WE COULD TAKE A LOOK AT EXHIBIT 5224-3.

23 THERE IS ALREADY IN EVIDENCE,
24 DASH 5224-3. WHOOPS, WRONG ONE.

25 5224-4. THIS IS ALREADY IN EVIDENCE.

11:12AM

26 WE LOOKED AT THIS EARLIER. THE LOSS OF BUSINESS
27 SCENARIOS THAT WERE CREATED ON AUGUST 20.

28 DO YOU SEE THAT? THIS IS AUGUST 20, UP

1 HERE (INDICATING)?

2 A YES.

3 Q AND DO YOU SEE THE REFERENCE TO THE SPECIAL
4 MORTGAGE CREDIT FUNDS THERE?

5 A YES.

11:13AM

6 Q AND IN THE COLUMN FOR LOSS BUSINESS, HOW MUCH
7 DO YOU INDICATE YOU -- IS ANTICIPATED WOULD BE LOST IF
8 MR. GUNDLACH -- I THINK THERE'S ACTUALLY TWO SCENARIOS,
9 IF MR. GUNDLACH ALONE, OR MR. GUNDLACH AND OTHERS WERE
10 TO LEAVE?

11:13AM

11 A NONE.

12 Q AND, AGAIN, WHY IS THAT?

13 A AGAIN, BECAUSE THERE WERE PROVISIONS IN THE
14 AGREEMENT THAT PROVIDED HOW THAT SITUATION WOULD BE
15 DEALT WITH.

11:13AM

16 Q AND, SIMILARLY, IF WE LOOK AT EXHIBIT 5379-6.
17 THIS IS A -- FROM THAT BRIEFING DOCUMENT
18 THAT YOU SENT TO PARIS?

19 A YES.

20 Q THEN, AGAIN, IN TERMS OF LOSS BUSINESS AND
21 LOSS FEES FROM THE SPECIAL MORTGAGE CREDIT FUNDS, DO
22 YOU PROJECT ANY LOSS THERE FROM THOSE TWO FUNDS?

11:14AM

23 A NO.

24 Q YOU DESCRIBED THIS KEY MAN PROCESS THAT
25 EXISTED IN THE CONTRACTS BETWEEN INVESTORS AND TCW.

11:14AM

26 DID THAT PROCESS THAT'S IN THE
27 PARTNERSHIP AGREEMENT PROVIDE IN ANY WAY THAT IF
28 MR. GUNDLACH LEFT, YOU'D BE REQUIRED TO LOWER YOUR

1 FEES?

2 A NO.

3 Q DID IT PROVIDE THAT IF MR. GUNDLACH LEFT, THAT
4 YOU WOULD -- INVESTORS WOULD HAVE AN OPPORTUNITY TO GET
5 OUT EARLY AND CASH OUT, GET THEIR MONEY BACK?

11:14AM

6 A NO.

7 Q AND YOU INDICATED IT DID PROVIDE FOR A
8 REPLACEMENT OF MR. GUNDLACH, A KEY MAN REPLACEMENT
9 PROVISION?

10 A YES.

11:15AM

11 Q ALL RIGHT.

12 SO, AFTER DECEMBER 4, WHEN
13 MR. GUNDLACH'S LET GO, WERE YOU CONTACTED BY INVESTORS
14 IN THE SPECIAL MORTGAGE CREDIT FUNDS?

15 A YES.

11:15AM

16 Q AND WERE THERE SOME INVESTORS WHO WERE VERY
17 DISAPPOINTED THAT MR. GUNDLACH HAD BEEN, AT THAT POINT,
18 BEEN PLACED ON A LEAVE OF ABSENCE?

19 A YES.

20 Q AND AT THAT POINT DID YOU EXPECT THAT YOU WERE
21 GOING TO NEED TO BE ABLE -- HAVE TO MAKE SOME
22 CONCESSIONS, YOU KNOW, LOWER YOUR FEES OR GIVE THEM THE
23 RIGHT TO GET THEIR MONEY BACK EARLY, AS A RESULT OF
24 MR. GUNDLACH'S BEING LET GO?

11:15AM

25 A I -- NO. NOT AT THAT POINT.

11:15AM

26 Q WHY NOT? I MEAN, YOU'VE GOT THESE
27 DISAPPOINTED INVESTORS, AND SAYING WE'RE REALLY UNHAPPY
28 MR. GUNDLACH'S GONE.

1 WHY DIDN'T YOU THINK YOU WERE GOING TO
2 HAVE TO MAKE CHANGES?

3 A WELL, THERE WAS A MECHANISM THAT THERE WOULD
4 BE A REVIEW PROCESS. WE'D NOMINATE A SUBSTITUTE
5 MANAGER THAT THE ADVISORY COMMITTEE HAD TO BE DONE
6 WITHIN 90 DAYS, I THINK. 11:16AM

7 THE ADVISORY COMMITTEE WOULD DETERMINE
8 WHETHER THAT WAS ACCEPTABLE. AND WE THOUGHT THAT THE
9 MET WEST PEOPLE, ALONG WITH SOME OF THE LEGACY TCW
10 PEOPLE THAT WERE THERE, WERE COMPETENT. 11:16AM

11 AND THAT ONLY IF THEY DETERMINED THAT
12 THEY DIDN'T APPROVE THAT, WOULD IT GO TO A VOTE OF THE
13 PARTNERSHIP. AND EVEN IN THAT INSTANCE, IT WOULD TAKE
14 66-2/3 BY ASSETS UNDER MANAGEMENT TO CHANGE THE SCOPE
15 OF THE ARRANGEMENTS. 11:16AM

16 Q WERE THERE SOME PEOPLE WITHIN TCW WHO THOUGHT,
17 YOU KNOW, FROM THE VERY BEGINNING TO MAKE THESE
18 INVESTORS HAPPY, WE SHOULD LOWER OUR FEES OR LET THEM
19 GET OUT?

20 A YEAH. 11:17AM

21 Q SOME PEOPLE IN TCW THOUGHT THAT?

22 A YES.

23 Q WAS THAT VIEW EXPRESSED BY SOME PEOPLE?

24 A YES.

25 Q DID YOU AGREE WITH THEM? 11:17AM

26 A NO.

27 Q OVER TIME, DID YOUR ASSESSMENT OF THE
28 SITUATION AND WHAT TCW NEEDED TO DO CHANGE?

1 A YES.

2 Q ALL RIGHT.

3 IN THE WEEKS AFTER DECEMBER 4 --

4 A YES.

5 Q -- DID YOU LEARN THAT MR. GUNDLACH HAD
6 CONDUCTED CONFERENCE CALLS, WERE SAYING THINGS LIKE --

11:17AM

7 MR. BRIAN: OBJECTION. LEADING.

8 THE COURT: SUSTAINED.

9 BY MR. QUINN:

10 Q WELL, DID YOU RECEIVE TRANSCRIPTS OF CALLS
11 THAT MR. GUNDLACH MADE WITH INVESTORS?

11:17AM

12 A YES.

13 Q INCLUDING SPECIAL MORTGAGE CREDIT FUNDS I AND
14 II INVESTORS?

15 A YES.

11:17AM

16 Q YOU RECEIVED THOSE?

17 A YES.

18 Q DID THOSE ENTER INTO YOUR THINKING IN THE
19 DECISIONS YOU THEN MADE?

20 A YES.

11:18AM

21 Q DID YOU RECEIVE CALLS FROM INVESTORS WHO
22 INDICATED THAT THEY HAD LISTENED TO THOSE CALLS AS
23 WELL?

24 A YES.

25 Q DID YOU LEARN THAT MR. GUNDLACH HAD SAID, YOU
26 KNOW, WE THINK OF THESE INVESTMENTS AS OUR CHILDREN
27 WHICH ARE LOSS --

11:18AM

28 MR. BRIAN: OBJECTION, LEADING, YOUR HONOR.

1 THE COURT: SUSTAINED.

2 MR. QUINN: I'D LIKE TO -- IT IS IN EVIDENCE,
3 EXHIBIT 2140. 22-23. WE CAN START OVER ON 21. AT THE
4 BOTTOM.

5 THE COURT: THE POINT IS YOU MAY ASK HIM
6 QUESTIONS ABOUT THE TRANSCRIPT, BUT WE'RE JUST NOT
7 GOING TO READ THE TRANSCRIPT. IT'S IN EVIDENCE.

11:18AM

8 MR. QUINN: ALL RIGHT.

9 Q YOU WERE AWARE OF THE TRANSCRIPT, OF THE
10 THINGS THAT MR. GUNDLACH WAS SAYING?

11:18AM

11 A YES.

12 Q IF WE COULD LOOK AT EXHIBIT 2141-26.

13 THE COURT: PAGE 26?

14 MR. QUINN: YES, 26.

15 THE COURT: ALL RIGHT.

11:19AM

16 MR. QUINN: IF WE CAN ENLARGE THE TOP, CARRIED
17 OVER PARAGRAPH ON -26.

18 Q DID YOU HEAR THAT MR. GUNDLACH WAS SAYING THAT
19 THE CONTRACTS ARE BLOWN TO HIGH HELL --

20 A YES.

11:20AM

21 Q -- AND OTHER REMARKS? I WON'T TAKE THE TIME
22 TO GO THROUGH THEM NOW.

23 A YES.

24 MR. BRIAN: OBJECTION. YOUR HONOR.

25 THE COURT: HE HEARD OTHER REMARKS.

11:20AM

26 THE TRANSCRIPT IS IN EVIDENCE. YOU CAN
27 ASK HIM TO READ IT AND THEN YOU CAN ASK HIM QUESTIONS
28 ABOUT IT.

1 MR. QUINN: RIGHT.

2 THE COURT: BUT -- THAT'S ENOUGH.

3 MR. QUINN: ALL RIGHT.

4 Q AFTER DECEMBER 4, AND -- DID YOU HEAR THAT
5 MR. GUNDLACH HAD CALLS ON DECEMBER 8TH, DECEMBER 22,
6 AND DECEMBER 29?

11:20AM

7 A YES.

8 Q AND DID THE TIMING OF THESE CALLS WITH
9 INVESTORS HAVE ANY RELATIONSHIP TO THE TIME THAT TCW
10 HAD CALLS WITH THE INVESTORS?

11:20AM

11 A YES.

12 Q AND WHAT WAS THE RELATIONSHIP?

13 A I BELIEVE TWO OF THE CALLS WERE IMMEDIATELY
14 AFTER CALLS THAT TCW SCHEDULED WITH INVESTORS.

15 Q DID YOU THINK THAT WAS COINCIDENTAL?

11:20AM

16 MR. BRIAN: OBJECTION. 352. FORM.

17 THE COURT: SUSTAINED.

18 BY MR. QUINN:

19 Q WOULD YOU LOOK AT EXHIBIT 751, PLEASE.

20 CAN YOU IDENTIFY THIS DOCUMENT?

11:21AM

21 A YES.

22 Q WHAT IS IT?

23 A THIS IS A DOCUMENT BY DOUBLELINE TO THE
24 INVESTORS OF SPECIAL CREDIT FUNDS I AND II.

25 MR. QUINN: OFFER THIS, YOUR HONOR.

11:21AM

26 MR. BRIAN: NO OBJECTION.

27 THE COURT: IT WILL BE ADMITTED.

28 ///

1 (EXHIBIT 751 ADMITTED.) +

2

3 BY MR. QUINN:

4 Q THIS IS JANUARY 7, 2010 FROM DOUBLELINE TO THE
5 TCW SPECIAL MORTGAGE CREDIT FUNDS I AND II.

11:21AM

6 DEAR VALUED INVESTOR.

7 DO YOU SEE THAT?

8 A YES.

9 Q IF WE COULD SKIP TO THE LAST PAGE, AND IF WE
10 COULD -- FIRST OFF, IT'S SIGNED ON THE LAST PAGE BY
11 MR. GUNDLACH, MR. BARACH, AND MR. LUCIDO?

11:22AM

12 A YES.

13 Q IF WE COULD BLOW UP THE NUMBERED PARAGRAPH 5,
14 MIKE, WHERE IT SAYS:

15 PLEASE INSIST THAT TCW OFFER YOU
16 MORE OPTIONS THAN CONTINUING UNDER
17 MET WEST AS REPLACEMENT MANAGER OR
18 LIQUIDATION. AS AN INVESTOR, YOU
19 SHOULD BE A -- SHOULD BE ALLOWED TO
20 DICTATE YOUR OWN TERMS.

11:22AM

21 DO YOU SEE THAT?

22 A YES.

23 Q IN YOUR UNDERSTANDING, DID THE CONTRACTS THAT
24 TCW HAD WITH ITS INVESTORS PERMIT THE INVESTORS TO
25 DICTATE THEIR OWN TERMS?

11:22AM

26 A OF COURSE NOT.

27 Q DID THERE COME A TIME WHEN YOU DECIDED THAT
28 YOU HAD TO MAKE CHANGES TO THE AGREEMENTS?

1 A YES.

2 Q AND WHEN WAS THAT?

3 A SOMETIME IN JANUARY, MID TO LATE JANUARY.

4 Q WERE THE CHANGES THAT YOU MADE, WERE THEY
5 SOMETHING THAT THE AGREEMENTS REQUIRE?

11:23AM

6 A NO.

7 Q WHAT WAS YOUR -- WHAT WERE THE CHANGES THAT
8 WERE MADE?

9 A THE MANAGEMENT FEE WAS REDUCED FROM 2 PERCENT
10 TO 1 PERCENT.

11:23AM

11 INCENTIVE FEE WAS REDUCED FROM
12 20 PERCENT TO 5 PERCENT.

13 AND WE OFFERED THE INVESTORS A LIQUIDITY
14 OPTION TO HAVE US DO A RAPID LIQUIDATION AND RETURN
15 THEIR MONEY.

11:23AM

16 Q I MEAN, WHAT WAS YOUR MOTIVATION FOR OFFERING
17 THE OPTION TO INVESTORS OF TAKING THEIR MONEY OUT EARLY
18 AND LOWERING THE FEES?

19 A MY MOTIVATION WAS THAT THE PRESSURE THAT I
20 BELIEVED THAT WAS GENERATED BY MR. GUNDLACH WAS SUCH
21 THAT I WAS FORCED INTO THAT POSITION.

11:23AM

22 Q I MEAN, WERE YOU -- DID YOU, AS A MONEY
23 MANAGER, WERE YOU CONCERNED ABOUT THAT, YOU KNOW,
24 HAPPINESS OF THE INVESTORS AND WHETHER THEY'D BE GOOD
25 REPEAT CUSTOMERS?

11:24AM

26 A YES.

27 Q ALL RIGHT.

28 WAS THAT A CONSIDERATION AS WELL?

1 A IT WAS A CONSIDERATION, YES.

2 Q BUT DID YOU BELIEVE THAT MR. GUNDLACH'S
3 COMMENTS THAT HE WAS MAKING WERE A SUBSTANTIAL FACTOR
4 IN YOUR DECISION TO CHANGE THE CONTRACTS TO LOWER FEES
5 AND ALLOW INVESTORS TO TAKE THEIR MONEY OUT EARLY?

11:24AM

6 MR. BRIAN: OBJECTION. CALLS FOR OPINION.

7 THE COURT: OVERRULED.

8 THE WITNESS: YES.

9 BY MR. QUINN:

10 Q AND WAS THAT, COULD YOU TELL US, IN TERMS OF
11 THE REASONS AND YOUR MOTIVATION FOR MAKING THOSE
12 CHANGES, WHAT WAS THE MOST SIGNIFICANT FACTOR IN
13 CAUSING YOU TO DO THAT?

11:24AM

14 A THE MOST SIGNIFICANT FACTOR WAS THE PRESSURE
15 THAT WE GOT FROM THE INVESTORS AS A CONSEQUENCE OF
16 MR. GUNDLACH'S ACTIVITIES.

11:24AM

17 MR. BRIAN: MOVE TO STRIKE THE LAST PART AS
18 SPECULATIVE, YOUR HONOR.

19 THE COURT: I'LL STRIKE THE LAST PART.

20 MR. BRIAN: AS A CONSEQUENCE OF.

11:25AM

21 THE COURT: YES.

22 BY MR. QUINN:

23 Q DID YOU HAVE INVESTORS CALL YOU, COMMUNICATE
24 WITH YOU REFERRING TO THINGS THAT MR. GUNDLACH HAD
25 SAID?

11:25AM

26 A YES.

27 Q AND DID THAT ENTER INTO YOUR THINKING?

28 A YES.

1 Q AND CAN YOU TELL US WHETHER OR NOT THAT WAS A
2 BASIS FOR THE DECISION THAT WAS MADE TO CHANGE THE
3 CONTRACTS?

4 A YES.

5 Q MR. STERN --

11:25AM

6 IF I MAY APPROACH THE WITNESS, YOUR
7 HONOR?

8 THE COURT: YES, YOU MAY.

9 BY MR. QUINN:

10 Q DO YOU RECALL --

11:26AM

11 THE COURT: DO WE HAVE AN EXHIBIT WE'RE
12 REFERENCING?

13 MR. QUINN: 546. NOT IN EVIDENCE.

14 MR. BRIAN: IS THIS IN THE BINDER?

15 MR. QUINN: I HAVE NO IDEA.

11:26AM

16 MR. MADISON: IT'S ON THE SCREEN, YOUR HONOR.
17 IT'S ONE PAGE.

18 HE'S GOT IT.

19 MR. QUINN: OH, YOU'VE GOT IT.

20 Q MR. STERN, DO YOU RECALL WHEN MR. BARACH
21 SUBMITTED HIS RESIGNATION FROM TCW?

11:26AM

22 A YES.

23 Q DOES SEEING THIS REFRESH YOUR RECOLLECTION AS
24 TO THE DATE AND TIME OF HIS RESIGNATION?

25 A YES.

11:26AM

26 Q AND WHEN DID MR. BARACH RESIGN?

27 A SATURDAY MORNING.

28 Q AFTER THAT HE WAS STARTING A BUSINESS WITH

1 MR. GUNDLACH --

2 MR. BRIAN: OBJECTION. NO FOUNDATION.

3 THE COURT: SUSTAINED.

4 MR. QUINN: I BELIEVE THERE'S TESTIMONY ABOUT
5 THAT, YOUR HONOR.

11:27AM

6 MR. BRIAN: STILL NO FOUNDATION.

7 THE COURT: I GUESS IT'S DIRECT EXAMINATION,
8 SO WHY DON'T YOU JUST ASK A QUESTION AND GO FROM THERE.

9 MR. QUINN: I'LL -- I'LL REVISIT AN EARLIER
10 QUESTION.

11:27AM

11 THE COURT: THAT'S FINE.

12 BY MR. QUINN:

13 Q THAT IS, AFTER YOU RECEIVED THE RESIGNATION OF
14 MR. BARACH IS WHEN YOU MET WITH HIM THAT EVENING AT HIS
15 HOME?

11:27AM

16 A YES.

17 Q AT THAT TIME, DID HE SAY SOMETHING TO YOU,
18 AFTER HE'S RESIGNED FROM TCW, ABOUT THAT SEPTEMBER 3
19 MEETING?

20 MR. BRIAN: OBJECTION. HEARSAY.

11:27AM

21 MR. QUINN: IT'S ADMISSION, YOUR HONOR.

22 MR. BRIAN: HE'S NOT A PARTY.

23 THE COURT: SUSTAINED.

24 MR. QUINN: CAN WE DISCUSS THIS AT SIDE-BAR,
25 YOUR HONOR.

11:27AM

26 THE COURT: WE CAN DISCUSS IT AT THE BREAK.

27 MR. QUINN: AT THE BREAK.

28 THE COURT: I DON'T KNOW. IF YOU'RE FINISHING

1 UP, WE CAN.

2 MR. QUINN: OKAY. FINAL SUBJECT.

3 Q WE'VE HEARD SOME TALK ABOUT OTHER PEOPLE FROM
4 TCW WHO HAVE NEGOTIATED OUT, NEGOTIATED DEPARTURES.

5 LET ME ASK YOU: HAS THAT EVER HAPPENED? 11:28AM

6 A YES.

7 Q AND THERE'S BEEN TESTIMONY THAT MR. ATTANASIO
8 AND MR. CHAPUS NEGOTIATED A SEPARATION FROM TCW?

9 A YES.

10 Q IS THAT TRUE, TO YOUR PERSONAL KNOWLEDGE? 11:28AM

11 A I'M SORRY --

12 Q IS THAT TRUE? DO YOU KNOW, IS THAT TRUE, THEY
13 NEGOTIATED SEPARATIONS FROM TCW?

14 A YES.

15 Q AND I JUST WANT TO TALK TO YOU ABOUT THAT
16 PROCESS FOR THESE OTHER NEGOTIATED DEPARTURES. 11:28AM

17 WHEN DID THE NEGOTIATIONS WITH
18 MR. ATTANASIO AND MR. CHAPUS BEGIN?

19 A AS EARLY AS 2005.

20 Q AND WHEN WAS IT THAT THEY ULTIMATELY
21 NEGOTIATED OUT, THAT THOSE NEGOTIATIONS WERE OVER? 11:28AM

22 A I THINK IN THE SUMMER OF 2010.

23 Q SO, IT WENT ON FOR FIVE YEARS?

24 A OFF AND ON, YES.

25 Q DURING THAT PERIOD, WAS ANYTHING -- DID IT
26 EVER COME TO YOUR ATTENTION THAT MR. ATTANASIO OR
27 MR. CHAPUS HAD, YOU KNOW, FOR EXAMPLE, GOTTEN REAL
28 ESTATE FOR A SEPARATE BUSINESS IN ADVANCE? 11:29AM

1 A NO.

2 Q OR HAD RECRUITED OTHER EMPLOYEES IN ADVANCE?

3 A NO.

4 Q OR ASSEMBLED OR TAKEN TCW INFORMATION IN
5 ADVANCE?

11:29AM

6 A NO.

7 Q AS FAR AS YOU'RE CONCERNED, IN YOUR DEALINGS
8 WITH MR. CHAPUS AND MR. ATTANASIO, WAS THIS NEGOTIATED
9 DEPARTURE SOMETHING THAT WAS COMPLETELY TRANSPARENT
10 AND, YOU KNOW, THEY PUT THEIR CARDS ON THE TABLE AND
11 YOU NEGOTIATED A DEAL?

11:29AM

12 A YES.

13 Q WE'VE ALSO HEARD THAT MR. BLAIR THOMAS
14 NEGOTIATED A SEPARATION?

15 A YES.

11:29AM

16 Q AND HE'S IN THE -- HE WAS THE ENERGY GROUP?

17 A YES.

18 Q WHEN -- OVER WHAT PERIOD OF TIME DID THAT
19 NEGOTIATION TAKE PLACE?

20 A THAT TOOK PLACE FROM MAY OF 2009, I THINK IT
21 WAS CONSUMMATED, THE ARRANGEMENTS, IN OCTOBER OF 2009.

11:30AM

22 Q ALL RIGHT.

23 SO THAT -- IT WENT ON FOR A PERIOD OF
24 SEVERAL MONTHS?

25 A YES.

11:30AM

26 Q SIMILARLY, IN THE CASE OF MR. BLAIRE, WERE YOU
27 AWARE OF ANY KIND OF SECRET PREPARATIONS HE DID THAT HE
28 DIDN'T TELL YOU ABOUT?

1 A NO.

2 Q THOSE NEGOTIATIONS WERE ALSO COMPLETELY
3 TRANSPARENT AND ABOVE BOARD IN HIS DEALINGS WITH YOU?

4 A YES.

5 Q WOULD YOU HAVE NEGOTIATED A SEPARATION FROM,
6 YOU KNOW, THE FIXED INCOME GROUP? IS THAT SOMETHING
7 YOU WOULD HAVE ENTERTAINED?

11:30AM

8 A NO.

9 Q WHY?

10 A BECAUSE THAT WAS OUR SEED CORN. THAT WAS
11 OUR --

11:30AM

12 Q OUR -- WHAT IS THIS?

13 A I GUESS IT'S THE OLD FARMER IN ME.

14 WHEN YOU PLANT CORN, YOU ALWAYS, YOU
15 DON'T EAT IT ALL. YOU SAVE SOME AND LET IT GO TO SEED
16 SO YOU'LL HAVE IT FOR THE NEXT YEAR'S CROP.

11:31AM

17 SO THAT WAS OUR SEED CORN. THAT WAS OUR
18 ESSENCE OF OUR BUSINESS, FIXED INCOME AND EQUITIES.

19 SO I NEVER WOULD CONSIDER A NEGOTIATED
20 DEPARTURE FOR THAT TYPE OF BUSINESS.

11:31AM

21 Q BECAUSE TCW WOULDN'T BE TCW WITHOUT A FIXED
22 INCOME ARM?

23 A THAT'S CORRECT.

24 Q AND I'M TOLD I DID NOT MOVE INTO EVIDENCE,
25 YOUR HONOR, EXHIBIT 5365.

11:31AM

26 THE COURT: 5365.

27 MR. BRIAN: I'M SORRY. WHAT'S THE EXHIBIT
28 NUMBER?

1 THE COURT: 5365.

2 MR. QUINN: 5365.

3 MR. BRIAN: NO OBJECTION.

4 THE COURT: IT WILL BE ADMITTED.

5

11:31AM

6 (EXHIBIT 5365 ADMITTED.) +

7

8 MR. QUINN: NOTHING FURTHER, YOUR HONOR.

9 THE COURT: DO YOU WANT TO APPROACH FOR A

10 MINUTE?

11:32AM

11 MR. QUINN: SURE.

12

13 (SIDE-BAR CONFERENCE HELD) +

14

15 THE COURT: ON THE BARACH STATEMENTS REGARDING

11:32AM

16 THE SEPTEMBER 3RD MEETING THAT WERE MADE BY MR. BARACH

17 ON DECEMBER 5TH, I GOT A HEARSAY OBJECTION. I'VE

18 SUSTAINED IT.

19

20 I DON'T BELIEVE THAT THERE'S ANY
21 EVIDENCE THAT, AS OF THAT DATE, HE WAS AN EMPLOYEE OF
22 DOUBLELINE. AND YOU'RE SAYING IT'S AN ADMISSION.

11:32AM

23 AND I DON'T KNOW HOW IT CAN BE AN
24 ADMISSION AGAINST A PARTY OPPONENT WHEN HE'S NOT AT THE
25 TIME AN EMPLOYEE OF THEM.

26

27 THEY WEREN'T IN EXISTENCE YET.

11:32AM

28 MR. QUINN: SURE, THEY WERE.

THE COURT: ABLE GRAPE WAS. BUT HE WASN'T AN
EMPLOYEE. I DON'T KNOW WHERE THAT EVIDENCE IS, AND I

1 JUST WANT TO CLARIFY IT. IT SEEMED TO ME MAYBE IT WAS
2 A GOOD OBJECTION. I DON'T KNOW.

3 MR. MADISON: TWO THINGS.

4 MR. BRIAN: MOST ARE.

5 MR. MADISON: HE TESTIFIED THAT HE RESIGNED AT
6 9:00 A.M. ON SATURDAY MORNING --

11:33AM

7 THE COURT: RIGHT.

8 MR. MADISON: -- TO JOIN MR. GUNDLACH AND GO
9 TO WORK WITH HIS NEW VENTURE.

10 THE COURT: RIGHT.

11:33AM

11 MR. MADISON: NOW, THE VENTURE DIDN'T
12 ALREADY -- DID ALREADY EXIST. IT WAS CALLED ABLE
13 GRAPE. THEY SAY THEY WEREN'T DOING BUSINESS, BUT WE
14 KNOW BEGINNING THAT WEEKEND THEY BEGAN MAKING CALLS.

15 THE COURT: LET ME ASK YOU THIS: WHAT IS THE
16 OFFER? WHAT DOES HE SAY ABOUT --

11:33AM

17 MR. MADISON: MR. BARACH WAS ALREADY EXAMINED
18 ABOUT THIS.

19 MR. BRIAN: IT WAS CUMULATIVE.

20 MR. MADISON: NO. HE WAS ASKED, DIDN'T YOU
21 TELL MR. STERN ON DECEMBER 5TH, X, Y AND Z ABOUT THE
22 SEPTEMBER 3RD MEETING?

11:33AM

23 AND MR. BARACH SAID, I CAN'T RECALL.

24 MR. QUINN: I CAN'T RECALL SPECIFICALLY.

25 MR. MADISON: I CAN'T DENY THAT I SAID THAT.

11:33AM

26 SO NOW --

27 THE COURT: ALL RIGHT. ALL RIGHT. THEN IT
28 MAY BE. YOU KNOW.

1 MR. BRIAN: WHAT IS --

2 MR. QUINN: HE'S GOING TO SAY THAT I KNEW YOU
3 HAD TO DO SOMETHING AFTER SEPTEMBER 3.

4 MR. BRIAN: I THINK IT'S HEARSAY, YOUR HONOR.
5 HE'S NOT --

11:34AM

6 THE COURT: NOW, IT GOES TO THE CREDIBILITY OF
7 MR. BARACH AND HIS LEGITIMATE INQUIRY.

8 IF HE SAID: "I DON'T REMEMBER WHAT WAS
9 SAID AT THE MEETING. I CAN'T RECALL THAT I SAID THAT,
10 BUT I MIGHT HAVE," THEN IT SEEMS LIKE, TO ME, IT COULD
11 BE AN EXPLANATION OF HIS TESTIMONY AND WHETHER IT COMES
12 IN AS A PRIOR INCONSISTENT STATEMENT OF MR. BARACH.

11:34AM

13 AND ON THAT GROUNDS, I'LL ALLOW YOU TO
14 ASK THAT.

15

11:34AM

16 (SIDE-BAR CONFERENCE CONCLUDED.) +

17

18 BY MR. QUINN:

19 Q DECEMBER 5 YOU GO TO SEE MR. BARACH AT HIS
20 HOME.

11:34AM

21 DID HE MAKE A STATEMENT TO YOU
22 CONCERNING THE SEPTEMBER 3 MEETING?

23 A YES.

24 Q WHAT DID MR. BARACH SAY TO YOU AT THAT TIME?

25 A HE SAID, I KNEW AFTER THE MEETING ON
26 DECEMBER 3RD THAT YOU HAD TO DO SOMETHING.

11:34AM

27

28 (COUNSEL CONFER OFF THE RECORD.)

1 BY MR. QUINN:

2 Q DID YOU SAY "DECEMBER"?

3 HE SAID HE REFERRED TO WHAT MEETING?

4 A THE SEPTEMBER 3RD MEETING.

5 Q I KNEW AFTER THE SEPTEMBER 3RD MEETING YOU HAD
6 TO DO SOMETHING?

11:35AM

7 A YES.

8 THE COURT: CROSS-EXAMINATION.

9 MR. BRIAN: WE MAY NEED A FEW MINUTES TO GET
10 SOME HOUSEKEEPING IN ORDER.

11:35AM

11 THE COURT: LADIES AND GENTLEMEN, WE'LL TAKE A
12 FIVE-MINUTE RECESS. IF ANY OF YOU WOULD LIKE A QUICK
13 BREAK.

14 WE'LL COME BACK, STRETCH, DO YOU WHAT
15 YOU WANT, BUT GET ALL THE BOOKS AROUND AND EVERYBODY
16 SET UP.

11:35AM

17 IF YOU WANT TO STEP OUT, JUST COME RIGHT
18 BACK IN.

19 THE WITNESS: THANK YOU.

11:35AM

21 (RECESS.)

22
23 THE COURT: ALL MEMBERS OF OUR JURY ARE AGAIN
24 PRESENT.

25 MR. BRIAN, YOU MAY COMMENCE YOUR
26 CROSS-EXAMINATION OF MR. STERN;

11:42AM

27
28 ///

1 CROSS-EXAMINATION +

2 BY MR. BRIAN:

3 Q MORNING.

4 A GOOD MORNING, MR. BRIAN.

5 Q GOOD MORNING, LADIES AND GENTLEMEN.

11:42AM

6 MR. STERN, LAST THURSDAY, I THINK IT WAS
7 WHEN YOU TESTIFIED, YOU SAID THAT YOU'D RETIRED AS
8 PRESIDENT OF TCW IN 2005; IS THAT RIGHT?

9 A YES.

10 Q I WANT TO READ FROM YOUR TRANSCRIPT OF LAST
11 THURSDAY, PAGE 4122, LINE 24 TO 27. I'VE GIVEN
12 COUNSEL, AND I THINK YOUR HONOR A COPY OF THE
13 TRANSCRIPT AND THE WITNESS, YOUR HONOR.

11:43AM

14 MAY I PROCEED?

15 THE COURT: IS THERE ANY OBJECTION?

11:43AM

16 MR. QUINN: JUST A SECOND.

17

18 (PAUSE) +

19 MR. QUINN: THAT'S FINE.

20 MR. BRIAN:

11:43AM

21 QUESTION: WAS THIS PART OF A
22 GENERATIONAL CHANGE THING?

23 ANSWER: YES.

24 QUESTION: AND WAS IT YOUR IDEA?

25 ANSWER: YES, IT WAS.

11:43AM

26 Q THAT WAS YOUR TESTIMONY LAST THURSDAY, WAS IT
27 NOT, SIR?

28 A YES.

1 Q NOW, YOU WERE ASKED AT YOUR DEPOSITION ABOUT
2 THE GENERATIONAL THING, WERE YOU NOT?

3 A I HAD TWO DAYS OF DEPOSITIONS AND PERHAPS I
4 WAS, YES.

5 Q PERMISSION TO PLAY, YOUR HONOR, THE CLIP THAT
6 WE CALL CLIP 4. I JUST SHOWED IT TO MR. QUINN,
7 PAGE 17, LINE 13. TO 18, LINE 5.

11:43AM

8 PAGE 18, LINE --

9 THE COURT: JUST A MINUTE. 17, LINE 13.

10 MR. BRIAN: TO 18, LINE 5.

11:44AM

11 THE COURT: TO 18, 5.

12 MR. BRIAN: 18, LINE 7 TO 20.

13 18, LINE 22. TO 19, LINE 2.

14 19, 11. TO 19, 15.

15 AND 19, 20. TO PAGE 20, LINE 11.

11:44AM

16 THAT'S PART OF THE DESIGNATIONS. I'VE
17 INCLUDED THE OTHER SIDE'S QUESTIONS AS WELL, YOUR
18 HONOR.

19 MR. QUINN: THAT'S FINE, YOUR HONOR. NO
20 OBJECTION.

11:44AM

21 THE COURT: ALL RIGHT. YOU MAY PROCEED.

22 MR. BRIAN: THANK YOU

23

24 (VIDEO DEPOSITION PLAYED OF MR. STERN.) +

25

11:44AM

26 BY MR. BRIAN:

27 Q I TAKE IT, MR. STERN, SINCE THE TIME OF YOUR
28 DEPOSITION, AND YOUR TESTIMONY LAST WEEK, YOU DID

1 RECALL THAT, IN FACT, IN 2005, YOU'RE STEPPING DOWN AND
2 MR. DAY STEPPING DOWN WAS INTENDED AS A SIGNAL OF A
3 GENERATIONAL SHIFT IN THE LEADERSHIP AT TCW, CORRECT?

4 A MR. BRIAN, WHAT I WAS ASKED --

5 Q SIR, THAT CALLS FOR A YES OR NO.

11:48AM

6 DO YOU NOW RECALL THAT?

7 A DO I RECALL WHAT?

8 Q DO YOU RECALL YOUR RESIGNATION IN 2005 AND
9 MR. DAY'S RESIGNATION IN 2005 WERE PART OF A
10 GENERATIONAL SHIFT IN THE LEADERSHIP?

11:48AM

11 A YES.

12 Q AND, IN FACT, YOU SAID LAST WEEK IT WAS YOUR
13 IDEA, RIGHT?

14 A YES.

15 Q NOW, YOU RETIRED FROM -- AS PRESIDENT OF TCW
16 IN 2005, BUT YOU DID NOT RETIRE FROM SOCIÉTÉ GÉNÉRALE,
17 DID YOU, SIR?

11:48AM

18 A YES.

19 Q NOW, I THINK YOU TESTIFIED LAST WEEK THAT
20 AFTER YOU RETIRED AS PRESIDENT OF TCW YOU CONSULTED
21 WITH SOCIÉTÉ GÉNÉRALE; IS THAT RIGHT?

11:48AM

22 A YES.

23 Q NOW, IT'S A FACT, IS IT NOT, THAT YOU BECAME A
24 MEMBER OF SOCIÉTÉ GÉNÉRALE'S MANAGEMENT COMMITTEE;
25 ISN'T THAT RIGHT?

11:49AM

26 A WHAT TIME FRAME, SIR?

27 Q ANYTIME AFTER 2005.

28 A AT SOME POINT AFTER 2005, YES.

1 Q AND YOU BECAME, SOMETIME AFTER 2005, THE
2 CHAIRMAN OF SOCIÉTÉ GÉNÉRALE'S GLOBAL INVESTMENT ANAGES
3 MANAGEMENT AND SERVICES NORTH AMERICA UNIT, DIDN'T YOU,
4 SIR?

5 A YES. 11:49AM

6 Q YOU ALSO JOINED THE BOARD OF DIRECTORS OF
7 SOCIÉTÉ GÉNÉRALE, DID YOU NOT?

8 A NO.

9 Q DID YOU JOIN A BOARD OF DIRECTORS OF SOME
10 SOCIÉTÉ GÉNÉRALE COMPANY? 11:49AM

11 A YES.

12 Q WHICH COMPANY DID YOU JOIN THE BOARD OF
13 DIRECTORS OF?

14 A I -- I DON'T KNOW THAT I JOINED THE BOARD.

15 I THINK WAS ALREADY A DIRECTOR OF THE 11:49AM
16 ASSET MANAGEMENT COMPANY. I THINK I CONTINUED.

17 Q ARE YOU STILL A MEMBER OF THAT BOARD?

18 A NO.

19 Q WHEN DID YOU STEP OFF?

20 A I DON'T RECALL. 11:49AM

21 Q NOW, YOU SPENT BETWEEN 60 AND 65 PERCENT OF
22 YOUR TIME BETWEEN 2005 AND 2009 DOING WORK FOR SOCIÉTÉ
23 GÉNÉRALE; IS THAT CORRECT?

24 A YES.

25 Q YOU DIDN'T DO THAT WORK FOR FREE, DID YOU,
26 SIR? 11:50AM

27 A NO.

28 Q YOU GOT PAID, DIDN'T YOU?

1 A YES.

2 Q HOW MUCH?

3 A ABOUT \$2 MILLION A YEAR.

4 Q AND THAT DOES NOT INCLUDE, DOES IT, THE MONEY
5 YOU RECEIVED FOR THE SALE OF YOUR STOCK TO TCW IN
6 CONNECTION WITH SOCIÉTÉ GÉNÉRALE'S PURCHASE OF TCW
7 STOCK BETWEEN 2001 AND 2007, DOES IT, SIR?

11:50AM

8 A THAT'S CORRECT.

9 Q HOW MUCH STOCK DID YOU OWN THAT WAS SOLD TO
10 SOC-GEN?

11:50AM

11 A I DON'T RECALL THE NUMBER OF SHARES.

12 Q HOW MUCH MONEY DID YOU GET?

13 A I --

14 MR. QUINN: OBJECTION, RELEVANCE.

15 THE COURT: OVERRULED.

11:50AM

16 THE WITNESS: I DIDN'T GET MONEY.

17 I RECEIVED SG SHARES.

18 BY MR. BRIAN:

19 Q YOU TESTIFIED LAST THURSDAY THAT EVERY YEAR
20 THAT YOU WERE AT TCW MR. GUNDLACH WAS PAID MORE THAN
21 YOU.

11:50AM

22 IS THAT -- THAT WAS YOUR TESTIMONY,
23 WASN'T IT, SIR?

24 A YES.

25 Q DID YOU OR DID YOU NOT HAVE MORE STOCK IN TCW
26 THAT WAS SOLD TO SOCIÉTÉ GÉNÉRALE THAN MR. GUNDLACH?

11:51AM

27 A I DID.

28 Q TWICE AS MUCH?

1 A A LITTLE MORE THAN TWICE AS MUCH, YES.

2 Q SO HE SOLD ABOUT 3 PERCENT YOU SAID EARLIER
3 TODAY, RIGHT?

4 A YES.

5 Q AND THERE WAS TESTIMONY EARLIER IN THE TRIAL
6 THAT HE GOT SOMEWHERE BETWEEN 40 AND \$50 MILLION FOR
7 HIS SHARES; YOU RECEIVED THE EQUIVALENT OF AT LEAST
8 \$100 MILLION FOR YOUR SHARES THAT WERE SOMEHOW
9 EXCHANGED FOR SOCIÉTÉ GÉNÉRALE STOCK, RIGHT?

11:51AM

10 A YES. I WASN'T TRYING TO -- I CAN TRANSLATE
11 IT.

11:51AM

12 Q SIR?

13 A I CAN TRANSLATE --

14 MR. QUINN: YOUR HONOR --

15 BY MR. BRIAN:

11:51AM

16 Q IS THAT RIGHT?

17 A -- THE DOLLARS INTO SHARES. I'M NOT TRYING --
18 YOU ASKED WHETHER I GOT CASH. AND I WAS SAYING I GOT
19 SHARES.

20 Q THAT'S FINE.

11:51AM

21 A I CAN TRANSLATE THAT INTO SHARES FOR YOU.

22 Q I WANT TO KNOW APPROXIMATE VALUE OF THAT
23 EXCHANGE WAS IN EXCESS OF \$100 MILLION, WAS IT NOT?

24 A ALL OF THE EXCHANGES, YES.

25 Q YES, OKAY.

11:52AM

26 AND SO YOU ALSO SAT -- CONTINUED TO SIT
27 ON THE BOARD OF TCW GROUP INC. AFTER YOU RETIRED AS
28 PRESIDENT IN 2005, CORRECT?

1 A YES.

2 Q I TAKE IT YOU DID NOT FEEL THERE WAS ANY
3 CONFLICT SITTING ON THE BOARD OF DIRECTORS OF TCW
4 GROUP, INC., AND ALSO THE SOCIÉTÉ GÉNÉRALE BOARD THAT
5 YOU JOINED, DID YOU?

11:52AM

6 MR. QUINN: MISSTATES THE EVIDENCE. ASSUMES
7 FACTS NOT IN EVIDENCE.

8 THE COURT: I THINK IT'S A DIRECT QUESTION.
9 I'LL OVERRULE IT.

10 MR. BRIAN: I'LL WITHDRAW IT.

11:52AM

11 Q DID YOU THINK THERE WAS ANY CONFLICT IN YOUR
12 SERVICE AS A BOARD MEMBER OF TCW GROUP, INC., AND YOUR
13 SERVICE ON THE MANAGEMENT COMMITTEE OF SOCIÉTÉ GÉNÉRALE
14 AND THE SERVICE ON THE BOARD OF DIRECTORS OF THE
15 SOC-GEN ENTITY THAT YOU WERE ON?

11:52AM

16 A NO.

17 Q OKAY.

18 AND THE REASON YOU DIDN'T THINK THERE
19 WAS A CONFLICT WAS BECAUSE SOCIÉTÉ GÉNÉRALE WAS THE
20 100 PERCENT SHAREHOLDER OF TCW GROUP, INC., RIGHT?

11:53AM

21 A NO.

22 Q WAS IT 100 PERCENT SHAREHOLDER?

23 A YOU HAVE TO TELL ME WHAT POINT OF TIME.

24 THE COURT: WAIT A MINUTE. WE GOT AN ANSWER
25 TO A QUESTION.

11:53AM

26 AND THEN YOU'RE ASKING ANOTHER QUESTION
27 THAT THERE'S A DISCONNECT.

28 LET'S TRY TO KEEP IT ON --

1 BY MR. BRIAN:

2 Q AFTER THE PURCHASE OF ALL THE STOCK IN TCW BY
3 SOCIÉTÉ GÉNÉRALE --

4 A 2008.

5 Q -- 2008, DID IT BECOME THE 100 PERCENT
6 SHAREHOLDER OF TCW GROUP, INC.?

11:53AM

7 A YES.

8 Q AND YOU UNDERSTAND THAT, AS THE 100 PERCENT
9 SHAREHOLDER OF TCW GROUP, INC., SOCIÉTÉ GÉNÉRALE HAD
10 THE RIGHT TO TELL TCW WHAT TO DO, RIGHT?

11:53AM

11 MR. QUINN: THAT'S VAGUE.

12 THE COURT: SUSTAINED.

13 BY MR. BRIAN:

14 Q WELL, IT WAS SOCIÉTÉ GÉNÉRALE THAT ASKED YOU
15 TO COME BACK IN 2009 TO SERVE AS CEO, RIGHT?

11:53AM

16 A IT WAS ACTUALLY THE BOARD OF DIRECTORS OF TCW.
17 THEY ARE THE ONES THAT HAVE THE POWER.
18 NOT -- NOT THE SHAREHOLDERS.

19 Q THE FIRST PERSON WHO APPROACHED YOU, WHOM YOU
20 DESCRIBED AS YOUR PARIS COLLEAGUE, WAS MR. MUSTIER,
21 CORRECT?

11:54AM

22 A YES.

23 Q HE WORKED FOR SOCIÉTÉ GÉNÉRALE, WAS HE NOT?

24 A YES.

25 Q HE ALSO SERVED ON THE BOARD OF TCW GROUP, INC.
26 WITH YOU, DID HE NOT?

11:54AM

27 A YES.

28 Q IN FACT, HE WAS ON THE EXECUTIVE COMMITTEE OF

1 TCW GROUP, INC., WASN'T HE?

2 A YES.

3 Q TCW GROUP, INC., BY THE WAY, IS A HOLDING
4 COMPANY THAT OWNS TCW, RIGHT?

5 A THAT OWNS TCW?

11:54AM

6 Q YEAH.

7 A THERE ARE -- THERE'S NO SUBSIDIARY BY THE NAME
8 OF TCW IN THAT GROUP. I'M SORRY.

9 Q WOULD YOU AGREE WITH ME, THEN, THAT TCW GROUP,
10 INC. IS THE ENTITY THAT DECIDES, AS A BOARD SUPERVISES
11 THE ACTIVITIES OF THE ASSET MANAGEMENT FIRM YOU'VE BEEN
12 TESTIFYING ABOUT FOR TWO DAYS?

11:54AM

13 A YES.

14 Q OKAY.

15 NOW, LAST WEEK -- I'LL READ FROM
16 PAGE 4123, LINE 18 TO 20.

11:55AM

17 THE COURT: ANY OBJECTION?

18 MR. QUINN: NO OBJECTION.

19 MR. BRIAN: (READING):

20 QUESTION: BUT DID YOU HAVE ANY
21 DAY-TO-DAY INVOLVEMENT WITH TCW AT
22 TCW AFTER 2005?

11:55AM

23 ANSWER: NO DAY-TO-DAY
24 INVOLVEMENT.

25 Q IT IS A FACT, IS IT NOT, EVEN AFTER YOU
26 RESIGNED AS PRESIDENT, YOU MAINTAIN AN OFFICE ON THE
27 17TH FLOOR AT THE MAIN BUILDING OF TCW, RIGHT?

11:56AM

28 A YES.

1 Q AND THAT OFFICE WAS SITUATED BETWEEN THE
2 OFFICES OF BOB BEYER, THE CEO, AND MR. SONNEBORN, THE
3 PRESIDENT, RIGHT?

4 A NO.

5 Q OKAY.

11:56AM

6 WAS IT NEXT TO ONE OR THE OTHER?

7 A YES.

8 Q WHICH ONE?

9 A IT WAS -- ACTUALLY, IT WASN'T NEXT TO EITHER.
10 THERE WAS ANOTHER OFFICE BETWEEN MY OFFICE AND
11 MR. BEYER'S OFFICE.

11:56AM

12 Q SO YOU COULD WALK, WHAT, 40 FEET DOWN TO
13 MR. BEYER'S OFFICE?

14 A YES.

15 Q OKAY.

11:56AM

16 AND IS IT TRUE THAT, EVEN THOUGH YOU HAD
17 RETIRED AS PRESIDENT IN 2005, MR. MUSTIER AND YOUR
18 OTHER COLLEAGUES AT SOCIÉTÉ GÉNÉRALE, OFTEN LOOKED TO
19 YOU FOR YOUR INSIGHTS ABOUT THE BUSINESS AFFAIRS OF
20 TCW?

11:56AM

21 A I DIDN'T HAVE ANY RELATIONSHIP WITH
22 MR. MUSTIER ABOUT TCW UNTIL, I THINK, LATE 2008 OR
23 EARLY 2009.

24 Q OKAY.

25 IT IS A FACT THAT, BEGINNING IN AT LEAST
26 NO LATER THAN EARLY 2009, MR. MUSTIER LOOKED TO YOU FOR
27 INSIGHTS ABOUT TCW, DIDN'T HE?

11:57AM

28 A YES.

1 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS
2 EXHIBIT 142.

3 DO YOU SEE EXHIBIT 142 ON THE SCREEN?

4 A YES.

5 Q AND THIS IS AN E-MAIL -- THE TOP TWO E-MAILS
6 ON PAGE 1 ARE E-MAILS BETWEEN YOU AND MR. MUSTIER DATED
7 FEBRUARY 17TH OF 2009, CORRECT?

11:57AM

8 A THE -- I'M SORRY? THE ONES YOU'RE SHOWING ME
9 NOW?

10 Q THE TOP TWO ON PAGE 1 ARE E-MAIL EXCHANGES
11 WITH YOU AND MR. MUSTIER DATED FEBRUARY 17TH, 2009,
12 CORRECT?

11:58AM

13 A YES.

14 MR. BRIAN: I'LL OFFER EXHIBIT 142, YOUR
15 HONOR.

11:58AM

16 MR. QUINN: NO OBJECTION.

17 THE COURT: IT WILL BE ADMITTED.

18

19 (EXHIBIT 142 ADMITTED.) +

20

11:58AM

21 MR. BRIAN: LET'S PUT THAT UP ON THE SCREEN.

22 DENNIS, IF YOU COULD TURN TO THE SECOND
23 PAGE AND DISPLAY THE E-MAIL FROM MR. GUNDLACH TO
24 MR. PAGNI.

25 Q NOW, I PUT ON THE SCREEN AN E-MAIL FROM.
26 MR. GUNDLACH TO MR. PATRICK PAGNI?

11:58AM

27 A PAGNI, YES.

28 Q HE WAS AN INDIVIDUAL CO-EMPLOYEE BY SOCIÉTÉ

1 GÉNÉRALE AND TCW; IS THAT RIGHT?

2 A I THINK HE WAS EMPLOYED BY TCW.

3 I THINK SG PICKED UP HALF HIS
4 COMPENSATION.

5 Q OKAY.

11:58AM

6 HE'S FRENCH, RIGHT?

7 A HE IS, YES.

8 Q AND YOU UNDERSTOOD THAT HE WAS SOMEBODY WHO
9 WAS EFFECTIVELY PLACED BY SOCIÉTÉ GÉNÉRALE TO WORK AT
10 TCW?

11:59AM

11 A ACTUALLY, NO.

12 Q IN ANY EVENT, I'LL MOVE ON TO THIS ONE, THEN.

13 THIS E-MAIL FROM MR. GUNDLACH TO
14 MR. PAGNI WAS FORWARDED TO YOU AS PART OF EXHIBIT 142,
15 RIGHT?

11:59AM

16 A ALL I HAVE, MR. BRIAN, I'M SORRY, IS THE
17 E-MAIL FROM GUNDLACH TO PAGNI.

18 Q AND YOU'RE FAMILIAR WITH E-MAIL CHAINS, AREN'T
19 YOU, SIR?

20 A I AM. I JUST DON'T HAVE THE --

11:59AM

21 Q DO YOU HAVE THE EXHIBIT IN THE BINDER IN FRONT
22 OF YOU?

23 A OKAY. SO WHERE DO YOU WANT ME TO LOOK?

24 Q I WANT YOU TO LOOK AT PAGE 2.

25 A YES.

11:59AM

26 Q IF YOU LOCATE ON PAGE 2 THE E-MAIL FROM
27 MR. GUNDLACH TO PAGNI.

28 A YES.

1 Q TRACE THAT THROUGH THE E-MAILS, AND YOU'LL SEE
2 THAT WAS FORWARDED EVENTUALLY BY MR. MUSTIER TO YOU ON
3 FEBRUARY 17, 2009, WAS IT NOT?

4 A YES.

5 Q SO YOU WERE AWARE -- IF WE COULD HIGHLIGHT
6 THAT.

7 -- YOU SEE WHERE IT SAYS MR. GUNDLACH
8 SAYS TO MR. PAGNI:

9 I AM CONFUSED ABOUT THE SG/CA DEAL
10 REGARDING THEIR ASSET MANAGEMENT
11 BUSINESSES.

12 DO YOU SEE THAT?

13 A YES.

14 Q YOU UNDERSTOOD CA WAS REFERENCE TO CREDIT
15 AGRICOLE?

16 A YES.

17 Q THAT'S ANOTHER LARGE FRENCH BANK, ISN'T IT?

18 A YES, IT IS.

19 Q YOU UNDERSTAND THAT WAS REFERENCE TO
20 ANNOUNCEMENT IN EARLY 2009 THEY WERE FORMING SOME SORT
21 OF BUSINESS ARRANGEMENT TO POOL THEIR ASSET MANAGEMENT
22 BUSINESS, RIGHT?

23 MR. QUINN: CALLS FOR SPECULATION.

24 THE COURT: I THINK WE'VE HAD TESTIMONY ABOUT
25 IT.

26 AND I SEE THIS BACKGROUND. I'LL
27 OVERRULE THE OBJECTION.

28 GO AHEAD.

12:00PM

12:00PM

12:00PM

12:00PM

12:00PM

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

3 BY MR. BRIAN:

4 Q YOU UNDERSTOOD THE REFERENCE TO THE SG/CA DEAL
5 WAS THE REFERENCE TO THE ANNOUNCEMENT IN EARLY
6 JANUARY 2009 ABOUT A BUSINESS ARRANGEMENT BETWEEN
7 SOCIÉTÉ GÉNÉRALE AND CREDIT AGRICOLE, CORRECT?

12:01PM

8 A YES.

9 Q IT INVOLVED THEIR ASSET MANAGEMENT BUSINESS,
10 RIGHT?

12:01PM

11 A YES.

12 Q OKAY.

13 AND YOU SEE WHERE MR. GUNDLACH THEN
14 SAYS:

15 SPECIFICALLY, I CANNOT
16 UNDERSTAND WHY SG WANTS TO HOLD ON
17 TO TCW WHILE SELLING ALL THE REST.
18 WOULDN'T -- I THINK YOU MEANT IT --
19 IT BE EASIER TO ALSO SELL TCW. IN
20 THAT REGARD, I AM INTERESTED IN
21 OFFERING A RESPECTFUL AND CORDIAL
22 PROPOSAL IN THE BEST OF FAITH TO.
23 M. OUDEA SO THAT PERHAPS A CLEAN
24 SOLUTION COULD BE ARRIVED UPON THAT
25 MIGHT BENEFIT ALL PARTIES.

12:01PM

12:01PM

12:01PM

26 DO YOU SEE THAT?

27 A YES.

28 Q AND NOW IF WE CAN GO BACK, DENNIS, TO THE

1 FIRST PAGE. PAGE 1 OF -- IF YOU COULD JUST ENLARGE THE
2 FIRST TWO E-MAILS AT THE TOP:

3 FIRST OF ALL, IS IT MR. OUDEA, IS THAT
4 HOW --

5 A YES.

12:02PM

6 Q HE WAS THE NO. 1 GUY IN SOCIÉTÉ GÉNÉRALE,
7 RIGHT?

8 A I THINK SO. I DON'T REMEMBER WHEN MR. BOUTON
9 RESIGNED. HE WAS THE GUY IN CHARGE. WHETHER HE WAS
10 NO. 1 OR NOT AT THAT POINT, I DON'T KNOW.

12:02PM

11 Q OKAY.

12 SO, IN ANY EVENT, MR. MUSTIER ENDS UP
13 FORWARDING YOU THIS E-MAIL EXCHANGE AND ASKS FOR YOUR
14 REACTION TO THE E-MAIL EXCHANGE BETWEEN MR. GUNDLACH
15 AND MR. PAGNI, RIGHT?

12:02PM

16 A HE'S FORWARDING ME THAT WHOLE CHAIN, YES.

17 Q DO YOU HAVE ANY RECOLLECTION OF YOUR
18 CONVERSATION WITH MR. MUSTIER AFTER HE SENT YOU THIS
19 E-MAIL?

20 A I -- I DON'T HAVE A RECOLLECTION, NO.

12:02PM

21 Q DID YOU GET BACK TO MR. GUNDLACH?

22 A DID I GET BACK TO MR. GUNDLACH?

23 Q YEAH.

24 A MR. GUNDLACH WAS ASKING MR. PAGNI FOR
25 MR. OUDEA'S E-MAIL ADDRESS.

12:03PM

26 Q I'LL REFRAME IT.

27 A I'M SORRY.

28 Q DID YOU EVER, IN RESPONSE TO THIS E-MAIL

1 CHAIN, GO TO MR. GUNDLACH AND SAY, I'M AWARE THAT
2 YOU'RE INTERESTED IN MAKING A PROPOSAL TO BUY THE FIRM?
3 DID YOU DO THAT?

4 A NO.

5 Q TAKE A LOOK AT EXHIBIT 1940.

12:03PM

6 JOANETTE, IF YOU COULD SHOW THAT TO
7 MR. STERN.

8 NOW, THE TOP E-MAIL, 1940, IS ANOTHER
9 E-MAIL FROM MR. MUSTIER TO YOU, DATED FEBRUARY 27TH,
10 2009, IS IT NOT?

12:04PM

11 A YES.

12 MR. BRIAN: I WOULD OFFER EXHIBIT 1940.

13 MR. QUINN: NO OBJECTION.

14 THE COURT: IT WILL BE ADMITTED.

15 12:04PM

16 (EXHIBIT 1940 ADMITTED.) +

17

18 MR. BRIAN: IF WE COULD PUT THAT UP ON THE
19 SCREEN, DENNIS.

20 Q THE E-MAIL HE IS FORWARDING IS AN E-MAIL FROM
21 MR. BOB BEYER TO MR. MUSTIER, CORRECT?

12:04PM

22 A YES.

23 Q AND IF WE COULD MAYBE ENLARGE THE FIRST TWO
24 PARAGRAPHS OF THE TEXT OF THAT E-MAIL.

25 MR. BEYER WRITES TO MR. MUSTIER ON
26 FEBRUARY 27TH:

12:04PM

27 I WANT TO SUMMARIZE MY MEETING
28 TODAY SO WE DON'T NEED TO WASTE

1 TIME TOMORROW ON OUR CALL.

2 I MET WITH BLAIR THOMAS

3 (ENERGY), DIANE JAFFEE (LARGE CAP

4 EQUITY), MARK ATTANASIO (LEVERAGE

5 FINANCE) AND JEFFREY GUNDLACH (MBS) 12:04PM

6 FOR ABOUT TWO HOURS AT THEIR

7 REQUEST. THEY WANTED TO EXPLORE

8 THE CONCEPT OF A PARTNERSHIP

9 COMMITTEE TO MEET REGULARLY AND

10 "HAVE GOVERNANCE LIKE 12:05PM

11 GOLDMAN SACHS." THERE WAS A FOUR

12 POINT AGENDA, THE LAST OF WHICH WAS

13 "WHO AND HOW" TO RUN TCW, BUT WE

14 NEVER GOT TO THAT SUBJECT.

15 NOW GO TO THE NEXT PARAGRAPH AND MAYBE 12:05PM

16 ENLARGE THAT. STARTING WITH: THE MAIN ISSUE:

17 THE MAIN ISSUE THAT EMERGED WAS

18 NOT DIRECTED AT ME PERSONALLY, BUT

19 WAS THEIR BELIEF THAT THE FIRM IS

20 WORTH SUBSTANTIALLY LESS THAN THE 12:05PM

21 \$1 BILLION STRIKE PRICE AND

22 THEREFORE THEY ARE NOT INTERESTED

23 IN THE OPTION PROGRAM. THE

24 CONSENSUS SEEMS TO BE THAT, NOW

25 THAT SG BEGUN ITS EXIT FROM ASSET 12:05PM

26 MANAGEMENT, WE (LOOSE TERM) SHOULD

27 BUY THE BUSINESS (MAJORITY+) FOR A

28 FAR REDUCED VALUE. IN DOING, SO

1 THE REVENUE GENERATORS WOULD
2 CONTROL THEIR OWN DESTINY. WE
3 SPOKE OPENLY ABOUT THE
4 OPPORTUNITIES AND CHALLENGES OF
5 THIS HYPOTHETICAL TRANSACTION, AND 12:06PM
6 I WAS CANDID ABOUT THE DIFFERENT
7 AGENDAS IN THE ROOM AND THE
8 UNLIKELY MARRIAGE OF EACH OF THEM
9 (I CAN ELABORATE ON THESE WHEN WE
10 SPEAK, IF YOU WISH). THEY HAVE 12:06PM
11 ASKED TO SEE EACH OTHERS' P&L, SO
12 EACH IS ALREADY THINKING OF HOW TO
13 DIVIDE EQUITY AMONG THEM.

14 NOW, WHEN YOU GOT THIS E-MAIL IN
15 FEBRUARY OF 2009, FROM MR. MUSTIER, YOU UNDERSTOOD, DID 12:06PM
16 YOU NOT, THAT THE SIGNIFICANT PORTFOLIO MANAGERS
17 MENTIONED IN THIS EXHIBIT WERE INTERESTED IN, ONE, SOME
18 SORT OF GOVERNANCE CHANGES WITHIN THE FIRM, RIGHT?

19 A YES.

20 Q AND, SECONDLY, POSSIBLY PUTTING TOGETHER A 12:06PM
21 PROPOSAL TO BUY BACK TCW FROM SOCIÉTÉ GÉNÉRALE, RIGHT?

22 A THAT'S WHAT THE DOCUMENT SAYS, YES.

23 Q NOW, AFTER YOU GOT THIS DOCUMENT, DID YOU GO
24 TALK TO MR. GUNDLACH?

25 A NO. THIS DOCUMENT WAS NOT ADDRESSED TO ME, 12:07PM
26 SIR.

27 Q I'M ASKING YOU WHETHER YOU DID OR DIDN'T.

28 A NO.

1 Q DID YOU GO TO MR. THOMAS?

2 A NO.

3 Q DID YOU TALK TO MR. ATTANASIO?

4 A NO.

5 Q NOW, YOU ALSO TESTIFIED EARLIER TODAY, ABOUT
6 AN HOUR AGO, I THINK, THAT MR. ATTANASIO AND
7 MR. CHAPUS, BETWEEN 2005 AND 2009 WERE NEGOTIATING
8 THEIR DEPARTURE.

12:07PM

9 IS THAT YOUR TESTIMONY?

10 A NO.

12:07PM

11 Q IN FACT, AT LEAST AS OF FEBRUARY 2009, THEY
12 WERE TALKING TO MR. BEYER ABOUT POSSIBLY PARTICIPATING
13 IN A BUYOUT OF TCW, WEREN'T THEY?

14 A THAT'S WHAT THIS DOCUMENT SAYS.

15 Q BY THE WAY, I'VE SHOWED YOU SOME E-MAILS
16 BETWEEN YOU AND MR. MUSTIER.

12:07PM

17 WHEN YOU COMMUNICATED WITH MR. MUSTIER
18 IN THE 2009 TIME PERIOD, YOU USUALLY DID IT BY
19 TELEPHONE OR VIDEO CONFERENCE, DIDN'T YOU?

20 A ARE YOU TALKING TO PRIOR TO MY -- MY COMING
21 BACK AS CEO?

12:08PM

22 Q I'M TALKING ABOUT 2009.

23 A I'M -- I THINK -- I THINK PRINCIPALLY BY
24 PHONE, YES.

25 Q I TAKE IT MR. MUSTIER WAS A MEMBER OF THE TCW
26 GROUP BOARD.

12:08PM

27 WAS MR. RIPOLL ALSO AT SOME TIME A
28 MEMBER OF THE TCW GROUP, INC. BOARD OF DIRECTORS?

1 A YES.

2 AND AS FAR AS MR. MUSTIER IS CONCERNED,
3 MR. BRIAN, IF YOU WANT TO KNOW THE DATE THAT HE WENT ON
4 THE BOARD, I'D HAVE TO CHECK THAT.

5 HE -- IT WAS CERTAINLY NOT FOR THE WHOLE
6 PERIOD, AND I JUST DON'T RECALL WHEN HE WENT ON THE
7 BOARD.

12:08PM

8 Q HIS LEVEL OF INVOLVEMENT IN THE AFFAIRS OF TCW
9 INCREASED IN JUNE AND JULY OF 2009, DID THEY NOT?

10 A YES.

12:09PM

11 Q AND HE ACTUALLY SERVED ON THE MANAGEMENT
12 COMMITTEE THAT MET BIWEEKLY, DIDN'T HE?

13 A YES.

14 Q AND YOU USUALLY SAT NEXT TO HIM AT THOSE
15 MEETINGS, DIDN'T YOU?

12:09PM

16 A NO.

17 Q MR. MUSTIER WAS REPLACED BY JACQUES RIPOLL AS
18 THE HEAD OF, WHAT YOU CALL IT, "GIMS" OR "GIMS"?
19 SOMETIME IN 2009?

20 A YES.

12:09PM

21 Q THAT'S THE GLOBAL INVESTMENT MANAGEMENT
22 SERVICE ARM OF SOC-GEN, RIGHT?

23 A YES.

24 Q AND MR. RIPOLL WAS THE PERSON AT GIMS WHO
25 SUCCEEDED MR. MUSTIER AS THE GUY WHO WAS IN FACT IN
26 CHARGE OF TCW; ISN'T THAT RIGHT?

12:09PM

27 A YES.

28 Q TAKE A LOOK AT EXHIBIT 5339 ALREADY IN

1 EVIDENCE.

2 NOW, THIS IS IN EVIDENCE, EXHIBIT --
3 MR. SHEDLIN.

4 MR. SHEDLIN WAS AN INVESTMENT BANKER AT
5 CITIGROUP, RIGHT? 12:10PM

6 A YES.

7 Q HE'S SOMEBODY YOU HIRED IN JUNE OR JULY OF
8 2009 TO LEAD A STRATEGIC REVIEW OF TCW, WAS HE NOT?

9 A HE WAS HIRED.

10 Q AND HE WAS HIRED JOINTLY BY TCW AND SOCIÉTÉ
11 GÉNÉRALE, WAS HE NOT? 12:10PM

12 A I BELIEVE THAT'S CORRECT.

13 Q AND SO HE REPORTED BOTH TO YOU AND ALSO TO THE
14 FRENCH, RIGHT?

15 A YES. 12:10PM

16 Q AND IF YOU LOOK AT THIS E-MAIL --

17 DENNIS, IF YOU COULD FIND IN THE MIDDLE
18 IT TALKS ABOUT A -- SEE WHERE IT SAYS: AS WE HAVE
19 DISCUSSED BEFORE -- BELOW THAT.

20 RIGHT THERE: 12:11PM

21 AS WE'VE DISCUSSED BEFORE, I AM
22 AN ADVOCATE OF A PROACTIVE APPROACH
23 TO THE ISSUES SURROUNDING J.G. I
24 STRONGLY BELIEVE THAT TERMINATING
25 J.G. AND HAVING A CREDIBLE
26 REPLACEMENT PLAN TO EXECUTE WILL
27 PRESERVE SIGNIFICANTLY MORE VALUE
28 THAN REACTING TO HIS DEPARTURE. 12:11PM

1 THAT'S WHAT MR. SHEDLIN WROTE IN PART TO
2 MR. RIPOLL OF SOCIÉTÉ GÉNÉRALE ON OCTOBER 5TH --
3 OCTOBER 5TH OF 2009, CORRECT?

4 A YES.

5 Q AND LET'S GO DOWN A LITTLE BIT MORE WHERE HE
6 SAYS:

7 THERE ARE A VARIETY OF
8 THEORETICAL REPLACEMENT PLANS.

9 DO YOU SEE THAT?

10 A I SEE THAT.

11 Q THERE ARE A VARIETY OF THEORETICAL REPLACEMENT
12 PLANS. THEY INCLUDE TRYING TO SPLIT J.G.'S TEAM, I.E.,
13 RETAINING SOME.

14 SHEDLIN WROTE BACK TO MR. RIPOLL, DIDN'T
15 HE, SIR?

16 A YES.

17 Q MR. RIPOLL RESPONDED TO THIS, DIDN'T HE, SIR?

18 A IF YOU CAN SHOW ME THE RESPONSE, THAT WOULD BE
19 HELPFUL.

20 Q OKAY.

21 DENNIS, IF YOU COULD DO THAT. HIGHLIGHT
22 IT. RIGHT UP IN HERE.

23 HE WROTE:

24 THANKS GARY, I THINK THIS IS A
25 FAIR VISION OF WHERE WE STAND AND
26 WHERE WE SHOULD GO. SIGNED
27 JACQUES.

28 DO YOU SEE THAT?

12:11PM

12:12PM

12:12PM

12:12PM

12:12PM

1 A YES.

2 Q AND THEN MR. SHEDLIN FORWARDED BOTH HIS E-MAIL
3 AND JACQUES'S RESPONSE, DIDN'T HE?

4 A YES.

5 Q YOU INTERPRETED MR. RIPOLL'S RESPONSE AS
6 AGREEING WITH MR. SHEDLIN'S RECOMMENDATION THAT YOU
7 TAKE A PROACTIVE APPROACH AND TERMINATE MR. GUNDLACH.

12:12PM

8 ISN'T THAT HOW YOU INTERPRETED
9 MR. RIPOLL'S RESPONSE?

10 A NO.

12:13PM

11 Q NOW, THERE'S BEEN SOME DISCUSSION OF THE WORD
12 TERMINATE.

13 YOU SAW THE WORD TERMINATE IN A NUMBER
14 OF DOCUMENTS YOU WERE SHOWN THIS MORNING BY MR. QUINN,
15 DIDN'T YOU, SIR?

12:13PM

16 A I DID.

17 Q BY THE WAY, YOU HAVE A LAW DEGREE, DON'T YOU,
18 SIR?

19 A I DO.

20 Q YOU ACTUALLY SERVED AS THE GENERAL COUNSEL TO
21 A MAJOR COMPANY IN LOS ANGELES BEFORE YOU JOINED TCW,
22 DID YOU NOT?

12:13PM

23 A NO.

24 Q OKAY.

25 DID YOU PRACTICE LAW?

12:13PM

26 A I DID.

27 Q OKAY.

28 YOU UNDERSTAND THERE'S A DIFFERENCE

1 BETWEEN TERMINATING AN EMPLOYEE, AND AN EMPLOYEE
2 RESIGNING, DON'T YOU?

3 A I DO. YES.

4 Q YOU KEPT THE FRENCH APPRISED REGULARLY OF YOUR
5 ACTIVITIES WITH RESPECT TO MR. GUNDLACH IN 2009,
6 BEGINNING IN ABOUT JUNE AND THROUGH -- ALL THE WAY
7 THROUGH DECEMBER, DIDN'T YOU, SIR?

12:14PM

8 A I DID.

9 MR. BRIAN: WOULD THIS BE A GOOD TIME TO
10 BREAK?

12:14PM

11 THE COURT: YES. WE'LL TAKE OUR 20-MINUTE
12 RECESS.

13 (RECESS.)

14

15

16

17

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1 CASE NUMBER: BC429385
2 CASE NAME: TRUST COMPANY OF THE WEST VS.
3 JEFFREY GUNDLACH, ET AL
4 LOS ANGELES, WEDNESDAY, AUGUST 24, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 12:40 P.M.

10
11
12 (AT 12:40 P.M. THE JURY
13 ENTERS THE COURTROOM AND THE
14 FOLLOWING PROCEEDINGS WERE
15 HELD:)

16
17 THE COURT: ALL RIGHT. ALL MEMBERS OF OUR
18 JURY ARE PRESENT AGAIN.

19 MR. BRIAN, YOU MAY CONTINUE YOUR
20 CROSS-EXAMINATION OF MR. STERN.

12:37PM

21
22
23 CROSS-EXAMINATION (RESUMED)

24
25 BY MR. BRIAN:

26 Q. GOOD AFTERNOON.

27 MR. STERN, YOU CAME BACK AS CEO IN MID
28 2009, AFTER MR. BEYER HAD RESIGNED, CORRECT?

1 A. YES.

2 Q. AND MR. BEYER HAD BEEN APPOINTED BACK IN 2009,
3 CORRECT?

4 A. YES.

5 Q. AND MR. SONNEBORN HAD ALSO BEEN APPOINTED
6 PRESIDENT IN 2009; IS THAT CORRECT?

12:38PM

7 A. YES.

8 Q. HE LEFT TCW IN 2008; IS THAT RIGHT?

9 A. I BELIEVE SO, YES.

10 Q. NOW, MR. BEYER NEVER SERVED ON THE BOARD OF
11 ANY SOCIETE GENERALE ENTITY, DID HE, SIR?

12:38PM

12 A. NO. HE DID.

13 Q. HE DID?

14 A. YES.

15 Q. WHEN HE RESIGNED IN 2009, WERE YOU PRESENT AT
16 ANY CONVERSATIONS BETWEEN MR. BEYER AND THE FRENCH THAT
17 LED TO HIS RESIGNATION?

12:38PM

18 MR. QUINN: ASSUMES FACTS NOT IN EVIDENCE.

19 THE COURT: I'LL SUSTAIN THE OBJECTION.

20 YOU CAN ASK IT A DIFFERENT WAY.

12:38PM

21 Q. BY MR. BRIAN: WERE YOU PRESENT AT ANY
22 CONVERSATION BETWEEN MR. BEYER AND THE FRENCH ABOUT HIS
23 RESIGNATION, BEFORE HE RESIGNED?

24 A. I DON'T RECALL -- I KNEW THAT HE WAS
25 CONSIDERING WHETHER TO CONTINUE OR NOT.

12:39PM

26 BUT WHETHER THERE WAS A SPECIFIC
27 CONVERSATION WITH HIM, SOMEBODY FROM FRANCE AND ME IN
28 THE SAME ROOM, I JUST DON'T KNOW.

1 Q. IT WAS ALL PRETTY SUDDEN, WHEN HE RESIGNED,
2 AND YOU WERE ASKED TO COME ON, WASN'T IT, SIR?

3 A. YES.

4 Q. AND TAKE A LOOK AT EXHIBIT 2153.

5 IT'S IN EVIDENCE. WE CAN PUT THAT ON
6 THE SCREEN.

12:39PM

7 THIS IS THE DOCUMENT MR. QUINN ASKED YOU
8 ABOUT, THE CITIGROUP PRELIMINARY REVIEW, IN THE SUMMER
9 OF 2009, IS IT NOT?

10 A. YES.

12:40PM

11 Q. AND IF WE COULD TURN, DENNIS, TO PAGE 2. AND
12 HIGHLIGHT AND ENLARGE THE VERY FIRST RECTANGLE RIGHT
13 THERE, WITH THE THREE BULLETS.

14 DO YOU SEE, MR. STERN, WHERE CITIGROUP
15 REFERRED TO HIGH LIFE -- FIRST OF ALL, YOU UNDERSTOOD
16 HIGH LIFE WAS A CODE NAME FOR TCW IN THIS PROJECT,
17 RIGHT?

12:40PM

18 A. SORRY. LET ME JUST GET ORIENTED.

19 YES, HIGH LIFE REPORTED TCW.

20 Q. AND YOU SEE WHERE IT SAYS THAT (READING):

12:40PM

21 HIGH LIFE OPERATES AS A,
22 QUOTE, CONFEDERATION OF BOUTIQUES,
23 WITH VARIOUS DIVISIONS, SILOS,
24 OPERATING RELATIVELY INDEPENDENTLY,
25 WITHOUT A CENTRALLY INTEGRATED
26 INVESTMENT OR ORGANIZATIONAL
27 STRUCTURE.

12:40PM

28 DO YOU SEE THAT?

1 A. YES.

2 Q. AND THEN IT STATES THAT THIS IS A LEGACY FROM
3 THE HISTORY OF THE FIRM, WHERE VARIOUS GROUPS WERE
4 ACQUIRED AT DIFFERENT TIMES, AND CONTINUED TO WORK
5 INDEPENDENTLY THEREAFTER.

12:40PM

6 DO YOU SEE THAT?

7 A. I DO.

8 Q. AND THAT'S A FAIR DESCRIPTION OF TCW, AS IT
9 EXISTED WHEN YOU CAME BACK IN 2009, IS IT NOT?

10 A. IT'S MR. SHEDLIN'S DESCRIPTION, BUT I WOULD
11 NOT DISAGREE WITH IT.

12:41PM

12 Q. AND HISTORICALLY, TCW GREW BY ACQUIRING
13 BUSINESS GROUPS THAT OPERATED RELATIVELY INDEPENDENTLY
14 WITHIN THE STRUCTURE OF TCW; ISN'T THAT TRUE?

15 A. WELL, WHEN YOU SAY ACQUIRING, I ONLY REMEMBER,
16 AT LEAST THE TIME THAT I WAS THERE, TWO ACQUISITIONS.

12:41PM

17 Q. MARK ATTANASIO'S GROUP, FOR ONE, RIGHT?

18 A. YES.

19 BUT -- SO I ONLY REMEMBER TWO
20 ACQUISITIONS.

12:41PM

21 Q. AND BLAIR THOMAS RAN THE ENERGY GROUP?

22 A. YES.

23 Q. AND MARK ATTANASIO AND JEAN-MARC CHAPUS RAN
24 SOME SORT OF FIXED INCOME, HIGH YIELD GROUP; IS THAT
25 RIGHT?

12:41PM

26 A. I WOULD CALL IT LEVERAGED FINANCE, WOULD BE A
27 BETTER DESCRIPTION.

28 Q. TAKE A LOOK AT EXHIBIT 5015.

1 NOT YET IN EVIDENCE, YOUR HONOR?

2 5015 IS THE FINAL REPORT OF CITIGROUP AS
3 PART OF ITS STRATEGIC REVIEW OF PROJECT HIGH LIFE; IS
4 IT NOT?

5 A. YES. THAT'S WHAT IT APPEARS TO BE. 12:42PM

6 MR. BRIAN: I'LL OFFER EXHIBIT 5015.

7 MR. QUINN: NO OBJECTION.

8 THE COURT: IT WILL BE ADMITTED.

9

10 (EXHIBIT 5015 ADMITTED.) 12:42PM

11

12 Q. BY MR. BRIAN: IF YOU COULD TURN TO 5015-0011
13 IF WE CAN PUT THAT UP.

14 NOW, THAT'S A BAR CHART THAT REFLECTS
15 THE VARIOUS ASSETS UNDER MANAGEMENT OF EQUITIES -- 12:43PM

16 A. CAN I GET IT IN FRONT OF ME?

17 Q. I'M SORRY.

18 THAT'S A BAR CHART THAT CITIGROUP
19 PREPARED THAT SHOWS THE AMOUNT OF ASSETS UNDER
20 MANAGEMENT BY THE VARIOUS BUSINESS GROUPS WITHIN TCW 12:43PM
21 BETWEEN 2005 AND THE YEAR TO DATE IN 2009, CORRECT?

22 A. YES.

23 Q. OKAY.

24 AND WHAT IT SHOWS AS THE -- IF WE CAN
25 MAYBE HIGHLIGHT THE SENTENCE ABOVE IT, IS THAT THE 12:43PM
26 EQUITY BUSINESS HAS BECOME SUBSCALE, WHILE FIXED INCOME
27 NOW REPRESENTS 60 PERCENT OF ASSETS UNDER MANAGEMENT?

28 DO YOU SEE THAT?

1 A. YES.

2 Q. I TAKE IT YOU ARE WELL AWARE, IN YOUR
3 BUSINESS, OF THE FINANCIAL CRISIS THAT CONFRONTED THIS
4 COUNTRY, BEGINNING IN LATE 2007, AND CONTINUING TO 2008
5 AND 2009, CORRECT?

12:43PM

6 A. YES.

7 Q. AND THAT HAD AN EFFECT ON TCW'S BUSINESS,
8 DIDN'T IT, SIR?

9 A. YES.

10 Q. AND ISN'T IT A FACT THAT DURING THAT TIME
11 PERIOD, A MUCH GREATER PERCENTAGE OF ASSETS UNDER
12 MANAGEMENT WERE IN FIXED INCOME THAN IN EQUITIES,
13 RIGHT?

12:44PM

14 A. COULD YOU REPEAT THE QUESTION AGAIN, I'M
15 SORRY.

12:44PM

16 Q. ISN'T IT TRUE THAT BETWEEN 2005 AND 2009, A
17 GREATER PERCENTAGE OF THE TOTAL ASSETS UNDER MANAGEMENT
18 AT TCW WERE IN FIXED INCOME THAN IN EQUITIES?

19 A. YES.

20 Q. AND THE STOCK MARKET DURING THAT TIME PERIOD
21 WENT FROM ABOUT 14,000 DOWN TO 6500, RIGHT?

12:44PM

22 A. FRANKLY, I DON'T RECALL THE SPECIFICS.

23 Q. ALL RIGHT.

24 ISN'T IT A FACT THAT DESPITE THIS CHANGE
25 IN THE ASSETS UNDER MANAGEMENT, TCW STILL PREFERRED TO
26 REFER TO ITSELF AS AN EQUITIES FRANCHISE, AS AN
27 EQUITIES FIRM, RIGHT?

12:44PM

28 MR. QUINN: THAT'S VAGUE.

1 THE COURT: IF YOU UNDERSTAND THE QUESTION,
2 SIR, YOU CAN ANSWER IT.

3 THE WITNESS: THIS WAS A PERIOD WHEN I WAS NOT
4 ACTIVELY INVOLVED IN THE MANAGEMENT.

5 AND I BELIEVE THAT AT ONE POINT THERE
6 WAS BALANCE IN THE WAY TCW REFERRED TO ITSELF. 12:45PM

7 Q. ISN'T IT TRUE THAT CITIGROUP COMMENTED THAT
8 DESPITE THIS SHIFT, HIGH LIFE HAS TRIED TO REPRESENT
9 ITSELF AS AN EQUITY MANAGER, THAT ALSO HAS A FIXED
10 INCOME FRANCHISE; ISN'T THAT TRUE? 12:45PM

11 A. COULD YOU SHOW ME WHERE THAT IS?

12 Q. TAKE A LOOK AT EXHIBIT 2153, AGAIN PAGE 2.

13 IF WE COULD PUT THAT UP ON THE SCREEN,
14 DENNIS.

15 A. I SEE IT, YES. 12:45PM

16 THAT'S DEFINITELY WHAT MR. SHEDLIN SAID.

17 Q. LET ME SEE IF I CAN DISPLAY THAT.

18 THE SECOND BOX, DENNIS.

19 WHERE IT STATES, OVER TIME, HIGH LIFE
20 HAS TRIED TO REPRESENT ITSELF AS, QUOTE, AN EQUITY
21 MANAGER THAT ALSO HAS FIXED INCOME FRANCHISE; HOWEVER,
22 70 PERCENT OF THE CURRENT ASSETS OF THE FIRM ARE FIXED
23 INCOME ASSETS. 12:46PM

24 THAT'S WHAT MR. SHEDLIN WROTE, IN JULY
25 OF 2009, AS PART OF THE PROJECT THAT YOU COMMISSIONED,
26 CORRECT? 12:46PM

27 A. THAT'S WHAT MR. SHEDLIN WROTE, YES.

28 Q. NOW, THERE'S BEEN SOME TESTIMONY IN THIS CASE,

1 SIR, AND I THINK SOME BY YOU, ABOUT STATEMENTS THAT
2 MR. GUNDLACH MADE ABOUT THE RELATIVE IMPORTANCE TO TCW
3 OF THE FIXED INCOME GROUP IN 2009 VERSUS THE EQUITIES
4 GROUP.

5 DO YOU RECALL THAT?

12:47PM

6 A. YES.

7 Q. MR. GUNDLACH, IN 2008 AND 2009, WAS, AS YOU
8 HAVE DESCRIBED OFTEN, THE FACE OF TCW, WASN'T HE?

9 A. YES.

10 Q. HE WAS SOMEONE WHO APPEARED ON TELEVISION TO
11 ANSWER QUESTIONS ABOUT INVESTMENT ADVICE, AMONG OTHER
12 THINGS, CORRECT?

12:47PM

13 A. YES.

14 Q. HE WAS OFTEN ASKED FOR HIS OPINION ABOUT WHERE
15 INVESTORS SHOULD PUT THEIR MONEY, DURING ONE OF THE
16 WORST ECONOMIC CRISES IN THE HISTORY OF THIS COUNTRY,
17 CORRECT?

12:47PM

18 A. YES.

19 Q. AND HE TOLD PEOPLE THAT THEIR INVESTMENTS, IN
20 MANY CASES, WOULD BE BETTER IN FIXED INCOME THAN IN
21 EQUITIES, RIGHT?

12:47PM

22 A. I BELIEVE SO, YES.

23 Q. NOW, THAT RUBBED A FEW PEOPLE WRONG AT TCW;
24 SPECIFICALLY THE PEOPLE WHO RAN EQUITIES, RIGHT?

25 A. YES.

12:48PM

26 Q. WHEN MR. GUNDLACH WAS ASKED A QUESTION IN THE
27 PUBLIC, ABOUT HOW PEOPLE SHOULD INVEST THEIR MONEY, YOU
28 WOULD AGREE WITH ME, WOULDN'T YOU, THAT YOU EXPECTED

1 HIM TO TELL THE TRUTH?

2 A. YES.

3 Q. YOU WOULDN'T WANT MR. GUNDLACH TO MISLEAD
4 INVESTORS, TO TRY TO INDUCE THEM IN INVEST IN EQUITIES,
5 IF HE DID NOT THINK THAT THAT WAS THE PREFERRED
6 INVESTMENT, WOULD YOU?

12:48PM

7 A. NO.

8 Q. IT WOULD BE A CRIME TO DO OTHERWISE, WOULDN'T
9 IT, SIR?

10 A. I'M NOT AN EXPERT ON CRIMINAL JUSTICE.

12:48PM

11 Q. WELL, LET'S TALK ABOUT THAT.

12 YOU TESTIFIED LAST WEEK THAT -- LET ME
13 SEE IF I CAN FIND THIS.

14 I'M GOING TO READ FROM PAGE 4139, LINES
15 18 TO 22.

12:49PM

16 ACTUALLY, I'LL READ FROM 13 TO 22.

17 THE COURT: ANY OBJECTION?

18 MR. QUINN: I'M SORRY. TO 22?

19 MR. BRIAN: TO 22.

20 MR. QUINN: THAT'S FINE. NO OBJECTION.

12:49PM

21 Q. BY MR. BRIAN:

22 "Q IN ADDITION TO ISSUES
23 RELATING TO HIS COMMITMENT, WERE
24 THERE ANY OTHER ISSUES RELATING TO
25 MR. GUNDLACH AT THAT TIME THAT WERE
26 OF CONCERN?

12:49PM

27 A YES. THERE WAS.

28 Q WHAT ARE THEY?

1 A OKAY. I WAS CONCERNED THAT
2 THERE WAS ALWAYS THE POSSIBILITY THAT
3 HE COULD DO SOMETHING THAT WOULD BE
4 ILLEGAL OR CROSS THE LINE. WE'RE A
5 HIGHLY REGULATED INDUSTRY. AND WHETHER
6 I WANTED TO OR NOT, I COULD BE FORCED
7 TO TERMINATE HIM.

12:50PM

8 THAT WAS YOUR TESTIMONY ABOUT YOUR STATE
9 OF MIND IN JUNE AND JULY OF 2009, WASN'T IT, SIR?

12:50PM

10 A. YES.

11 Q. NOW, TCW DOES OPERATE IN A HIGHLY REGULATED
12 INDUSTRY, DOESN'T IT, SIR?

13 A. YES.

14 Q. AND IT'S IMPORTANT FOR TCW TO BE CANDID AND
15 FORTHCOMING WITH ITS REGULATORS, RIGHT?

12:50PM

16 A. YES.

17 Q. AND ONE OF THE REGULATORS IS THE SECURITIES
18 AND EXCHANGE COMMISSION, CALLED THE SEC, RIGHT?

19 A. YES.

20 Q. NOW, YOU DIDN'T CONTACT THE SEC IN JUNE OR
21 JULY, AND TELL THEM THAT YOU WERE CONCERNED ABOUT
22 MR. GUNDLACH DOING SOMETHING ILLEGAL OR CROSSING THE
23 LINE, DID YOU, SIR?

12:50PM

24 A. NO.

25 Q. YOU DIDN'T INSTRUCT YOUR GENERAL COUNSEL
26 MR. CAHILL, TO DO THAT, EITHER, DID YOU, SIR?

12:50PM

27 A. NO.

28 Q. NOW, ANOTHER REGULATOR IN THE FINANCIAL

1 INDUSTRY, REGULATORY AUTHORITY SOMETIMES CALLED FINRA,
2 RIGHT?

3 A. YES.

4 Q. YOU DIDN'T TELL FINRA, IN JUNE OR JULY OF
5 2009, THAT YOU WERE CONCERNED ABOUT MR. GUNDLACH DOING
6 SOMETHING THAT CROSSED THE LINE OR WAS ILLEGAL, DID
7 YOU?

12:51PM

8 A. NO.

9 Q. YOU DIDN'T SEND AN E-MAIL OR A MEMO TO SOC-JEN
10 TELLING THEM, IN JUNE OR JULY OF 2009, THAT YOU WERE
11 CONCERNED ABOUT MR. GUNDLACH DOING SOMETHING ILLEGAL,
12 DID YOU?

12:51PM

13 A. I WOULD HAVE TO CHECK ALL MY E-MAILS TO SEE
14 WHETHER I DID.

15 Q. YOU DIDN'T TALK TO MR. GUNDLACH AND TELL HIM
16 THAT, DID YOU, SIR?

12:51PM

17 A. NO.

18 Q. YOU DIDN'T -- THE BOARD OF DIRECTORS OF TCW
19 GROUP INC. MET IN JULY OF 2009, DIDN'T IT, SIR?

20 A. I BELIEVE SO.

12:51PM

21 Q. YOU DIDN'T TELL THE BOARD OF DIRECTORS, IN
22 JULY OF 2009, THAT YOU WERE CONCERNED ABOUT
23 MR. GUNDLACH DOING SOMETHING ILLEGAL, DID YOU, SIR?

24 A. NO.

25 Q. AND DURING THIS ENTIRE TIME WHEN YOU SAY YOU
26 HAVE THIS CONCERN THAT HE MIGHT STEP OVER THE LINE, TCW
27 CONTINUED TO RECEIVE HUNDREDS OF MILLION OF DOLLARS
28 FROM INVESTORS, DIDN'T YOU, SIR?

12:51PM

1 A. YES.

2 Q. AND YOU RECEIVED TENS OF MILLIONS OF DOLLARS
3 FROM THOSE FEES FROM THOSE INVESTORS, DIDN'T YOU?

4 A. I'D HAVE TO DO THE CALCULATION.

5 Q. A LOT OF MONEY? 12:52PM

6 A. A LOT OF MONEY, IS FAIR.

7 Q. IN FACT, IN JULY OF 2009, RIGHT WHEN YOU SAY
8 YOU HAD THESE CONCERNS, TCW WAS SELECTED, AFTER YOUR
9 APPLICATION AS ONE OF THE MANAGERS OF THE PUBLIC
10 PRIVATE INVESTMENT PARTNERSHIP FUND KNOWN AS PPIP;
11 ISN'T THAT RIGHT? 12:52PM

12 A. YES.

13 Q. AND ON SEPTEMBER 30TH, 2009, TCW ENTERED INTO
14 A PARTNERSHIP AGREEMENT WITH THE UNITED STATES TREASURY
15 DEPARTMENT WITH RESPECT TO PPIP, DIDN'T YOU? 12:52PM

16 A. YES.

17 Q. AND THAT AGREEMENT PROVIDED FOR THE UNITED
18 STATES TREASURY TO RAISE 1.1 BILLION DOLLARS TO MATCH
19 1.1 BILLION DOLLARS IN PRIVATE INVESTMENT MONEY?

20 A. I'M NOT SURE WHAT THE NUMBERS WERE, MR. BRIAN. 12:53PM

21 Q. A LOT OF MONEY, RIGHT?

22 A. I'M NOT SURE WHAT THE NUMBERS WERE.

23 Q. YOU UNDERSTOOD MR. GUNDLACH WAS THE PERSON
24 DESIGNATED BY THE FIRM TO OVERSEE HOW THAT MONEY WAS
25 INVESTED, RIGHT? 12:53PM

26 A. THEY -- THE MORTGAGE-BACKED GROUP, YES.

27 AND HE WAS THE LEADER OF THAT GROUP,
28 YES.

1 Q. HE PERSONALLY WAS DESIGNATED AS THE KEY MAN OR
2 KEY PERSON, WASN'T HE, SIR?

3 A. YES.

4 Q. NOW, YOU NEVER TOLD THE UNITED STATES
5 TREASURY, IN CONNECTION WITH YOUR APPLICATION OR YOUR
6 RECEIPT OF MONEY, THAT YOU WERE CONCERNED THAT
7 MR. GUNDLACH MIGHT DO SOMETHING ILLEGAL, DID YOU, SIR?

12:53PM

8 A. NO.

9 Q. IN FACT, YOU REPRESENTED --

10 MR. QUINN: YOUR HONOR, THERE'S A MOTION IN
11 THIS.

12:53PM

12 MR. BRIAN: DOOR'S BEEN --

13 THE COURT: I'M GOING TO OVERRULE IT, AT THIS
14 POINT.

15 MR. QUINN: WELL, YOUR HONOR, MAY WE APPROACH?

12:53PM

16 THE COURT: YES, YOU MAY.

17

18 (THE FOLLOWING PROCEEDINGS WERE

19 HELD AT SIDEBAR:)

20

12:54PM

21 THE COURT: THERE SEEMS TO BE -- SO FAR, HE'S
22 DANCED AROUND WHAT I THOUGHT THE ISSUE WAS ON PPIP.

23 MR. QUINN: BUT NOW HE WANTS TO GO AS TO WHAT
24 THE REPRESENTATION WAS, AND THAT WE LIED TO THE
25 TREASURY DEPARTMENT.

12:54PM

26 AND THE COURT RULED ON THE MOTION IN
27 LIMINE THAT THAT WASN'T FAIR GAME. THEY COULD COME IN
28 FOR MR. GUNDLACH'S STATE OF MIND, AND HE DID TESTIFY

1 THAT HE THOUGHT THAT TCW, IN HIS OPINION, DEFRAUDED THE
2 UNITED STATES TREASURY.

3 THE COURT: RIGHT.

4 MR. QUINN: THE COURT HAD RULED THAT THAT CAME
5 IN FOR HIS STATE OF MIND, AND WE WEREN'T GOING TO GO
6 INTO WHAT THE REPRESENTATIONS WERE.

12:54PM

7 ONCE WE GO DOWN THIS ROAD NOW, IT'S
8 COMPLETELY IRRELEVANT WHAT THE REPRESENTATION IS.

9 THE COURT: WELL, WHERE ARE WE GOING, BECAUSE
10 LET'S FIND OUT HOW FAR. WE'VE GOT A PROBLEM.

12:54PM

11 MR. BRIAN: THE WITNESS TESTIFIED, I THINK
12 MAYBE IN SURPRISE TO MR. QUINN, IN RESPONSE TO HIS
13 QUESTION, BUT THE WITNESS TESTIFIED THAT HE HAD
14 CONCERNS IN JUNE AND JULY --

15 THE COURT: I UNDERSTAND.

12:55PM

16 MR. BRIAN: -- ABOUT MR. GUNDLACH COMMITTING
17 ILLEGAL --

18 THE COURT: AND I UNDERSTAND.

19 MR. BRIAN: SO I'M ENTITLED TO SAY, DID YOU
20 TELL ANYBODY?

12:55PM

21 AND THAT'S WHAT I'M DOING.

22 THE ONLY OTHER THING I'M GOING TO SAY IS
23 THAT I'M GOING TO GO THROUGH THERE. I'M NOT GOING TO
24 SAY, DID YOU LIE TO THEM. I'M GOING TO SAY, DID YOU
25 TELL THEM THAT YOU WERE CONCERNED -- AND THEN I'M GOING
26 TO SAY, DID YOU TELL THE U.S. TREASURY, BEGINNING IN
27 2009, THAT YOU WERE LOOKING FOR SOMEONE TO REPLACE
28 MR. GUNDLACH?

12:55PM

1 THAT'S THE QUESTION I'M GOING TO ASK
2 HIM. I'M NOT GOING TO SAY IT WAS A LIE.

3 THE COURT: I'M NOT GOING TO LET YOU ASK THAT
4 QUESTION.

5 YOU CAN ASK HIM ABOUT WHETHER THEY
6 REPORTED IT, AND -- I THINK THE WHOLE THEME, WHETHER
7 THEY WERE UNDER ANY OBLIGATION TO REPORT, THAT THEY
8 WERE LOOKING FOR SOMEBODY ELSE, IS SOMETHING THAT GETS
9 INTO ANOTHER WHOLE --

12:55PM

10 MR. BRIAN: I'M NOT ASKING -- I'M SIMPLY
11 ASKING WHETHER HE DID IT.

12:55PM

12 THIS WITNESS HAS DANCED AROUND FOR TWO
13 DAYS, AND ALSO TWO DAYS IN THE DEPOSITION, ABOUT HIS
14 STATE OF MIND, ABOUT WHEN HE DECIDED TO TERMINATE
15 MR. GUNDLACH.

12:56PM

16 WE SAW TODAY, HE DIDN'T REALLY DECIDE
17 UNTIL DECEMBER 4TH; BUT HE CLEVERLY TESTIFIED, FOR TWO
18 DAYS NOW, IN THE FACE OF ALL THESE DOCUMENTS, THAT HE
19 WAS THINKING ABOUT TERMINATING MR. GUNDLACH. HE HAD
20 DISCUSSIONS ABOUT IT.

12:56PM

21 THE COURT: I UNDERSTAND.

22 MR. BRIAN: IN LIGHT OF THAT, THEY CAN'T TAKE
23 A BILLION DOLLARS OF TREASURY MONEY.

24 IT'S INCONSISTENT WITH HIS STATE OF
25 MIND.

12:56PM

26 THE COURT: YOU CAN ASK HIM IF HE EVER
27 REPORTED IT, IF HE EVER TOLD THEM THAT HE THOUGHT THAT
28 THERE WAS ILLEGAL ACTIVITY, OR THAT YOU KNOW, I GUESS

1 YOU CAN ASK HIM IF YOU HAD CONCERNS ABOUT
2 MR. GUNDLACH'S REMAINING WITH THE FIRM.

3 MR. BRIAN: THAT'S EXACTLY WHAT I'M DOING.

4 THE COURT: BUT I'M NOT GOING TO LET YOU ASK
5 ABOUT MET WEST.

12:56PM

6 MR. BRIAN: I'M NOT ASKING ABOUT MET WEST.

7 MR. QUINN: HE SHOULDN'T BE ABLE TO -- THE
8 TREASURY DEAL HAS A KEY MAN PROVISION, AND HE CAN BE
9 REPLACED. THERE'S NO REPRESENTATION IN THERE THAT
10 MR. GUNDLACH WAS GOING TO STAY WITH THE FIRM.

12:57PM

11 THAT'S WHERE HE WANTS TO GO.

12 THE COURT: WELL, BUT HE CAN ASK THEM IF STERN
13 EVER TOLD HIM ANYTHING ABOUT THESE CONCERNS. AND
14 THAT'S ALL HE'S ASKING THEM.

15 MR. QUINN: I THINK HE'S DONE THAT. HE'S
16 ASKED HIM ABOUT ILLEGAL ACTIVITY.

12:57PM

17 THE COURT: I DON'T WANT THIS TO GO ON. I'M
18 TIRED -- WE'RE GETTING TOO MANY OF THESE. EVERYTHING
19 COMES UP, EVERYTHING IS A LIFE AND DEATH ISSUE.

20 YOU CAN ASK HIM WHAT HE DISCLOSED TO
21 THEM ABOUT MR. GUNDLACH'S SITUATION.

12:57PM

22 MR. BRIAN: I'M GOING TO DO THAT.

23 THE COURT: AND YOU CAN'T SUGGEST IT, YOU
24 CAN'T -- JUST SEE WHAT HE SAYS.

25 MR. BRIAN: I'M NOT GOING TO ASK HIM AN OPEN
26 QUESTION.

12:57PM

27 THE COURT: HE'S NOT GOING TO BE ABLE TO ARGUE
28 THAT.

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

4
5 Q. BY MR. BRIAN: MAY I ASK, YOUR HONOR, THAT THE
6 REPORTER READ THE LAST QUESTION BACK?

12:58PM

7 THE COURT: SURE.

8

9 (RECORD READ AS REQUESTED)

10

12:58PM

11 Q. BY MR. BRIAN: AND I TAKE IT YOU NEVER TOLD
12 THE UNITED STATES TREASURY, IN JUNE, JULY, AUGUST, OR
13 SEPTEMBER OF 2009, THAT YOU WERE CONSIDERING -- THAT
14 YOU WERE LOOKING FOR POSSIBLE REPLACEMENTS FOR
15 MR. GUNDLACH, DID YOU, SIR?

12:59PM

16 A. NO.

17 Q. AND YOU NEVER TOLD THE UNITED STATES TREASURY
18 THAT YOU WERE CONCERNED ABOUT MR. GUNDLACH LEAVING, DID
19 YOU?

20 A. NO.

12:59PM

21 Q. AND YOU NEVER TOLD THE UNITED STATES TREASURY
22 THAT YOU HAD ATTENDED MEETINGS IN WHICH PEOPLE HAD
23 TALKED ABOUT THE POSSIBILITY OF TERMINATING
24 MR. GUNDLACH FOR CAUSE, DID YOU, SIR?

25 A. NO.

12:59PM

26 Q. LET ME ASK YOU ABOUT ROBERT DAY.

27 YOU TESTIFIED LAST WEEK THAT YOU
28 ACCEPTED THE JOB IN MID 2009, TO COME BACK IN IN 2009,

1 BECAUSE MR. MUSTIER AND MR. DAY PERSUADED YOU, YOU WERE
2 THE RIGHT PERSON FOR THE JOB.

3 DO YOU RECALL THAT?

4 A. YES.

5 Q. AND MR. DAY WAS ONE OF THE FOUNDERS OF TCW,
6 WAS HE NOT?

12:59PM

7 A. YES.

8 Q. AND HE WAS THE PERSON WHO FIRST HIRED YOU AS A
9 CONSULTANT TO TCW WAY BACK IN, I GUESS, THE '80S,
10 RIGHT?

01:00PM

11 A. YES.

12 Q. AND HE WAS THE ONE WHO BROUGHT YOU IN AS
13 PRESIDENT OF THE COMPANY IN 1990, RIGHT?

14 A. YES.

15 Q. AND SO FOR 15 YEARS, 1990 TO 2005, WHEN YOU
16 WERE PRESIDENT, YOU REPORTED DIRECTLY TO MR. DAY, DID
17 YOU NOT?

01:00PM

18 A. THAT'S TRUE.

19 Q. HE WAS YOUR BOSS, RIGHT?

20 A. YES.

01:00PM

21 Q. AND HE WAS A HANDS-ON BOSS DURING THAT TIME
22 PERIOD, WASN'T HE?

23 A. HE WAS MY BOSS.

24 Q. WELL, HE MADE A LOT OF DECISIONS THAT YOU THEN
25 CARRIED OUT, RIGHT?

01:00PM

26 A. I THINK WE MADE JOINT DECISIONS.

27 Q. WHEN YOU WERE ASKED TO COME BACK IN, IN MAY OF
28 2009, YOU MET WITH A NUMBER OF THE KEY PORTFOLIO

1 MANAGERS, BEFORE YOU OFFICIALLY TOOK THE POSITION, DID
2 YOU NOT?

3 A. YES.

4 Q. THAT INCLUDED MR. GUNDLACH, RIGHT?

5 A. YES.

01:00PM

6 Q. MR. ATTANASIO?

7 A. YES.

8 Q. MR. CHAPUS, RIGHT?

9 A. I DON'T REMEMBER IF I MET WITH MR. CHAPUS OR
10 NOT. BUT I -- I KNOW I TALKED TO HIM, YES.

01:01PM

11 Q. BLAIR THOMAS, RIGHT?

12 A. YES.

13 Q. DIANE JAFFEE?

14 A. YES.

15 Q. AND OTHERS.

01:01PM

16 IN MID 2009, IS IT FAIR TO SAY THAT TCW
17 WAS IN A VOLATILE SITUATION?

18 A. YES.

19 Q. AND THAT WAS BECAUSE OF, AMONG OTHER THINGS,
20 THE ECONOMY WAS ONE REASON, RIGHT?

01:01PM

21 A. YES.

22 Q. THE CHANGING, AS WE TALKED ABOUT EARLIER, OF
23 THE FOCUS ON INVESTMENTS AWAY FROM EQUITIES TOWARDS
24 FIXED INCOME. THAT WAS ANOTHER ISSUE, RIGHT?

25 A. CAN YOU GIVE ME THE LEAD IN TO -- IN OTHER

01:01PM

26 WORDS, YOU ARE LISTING THINGS. I'VE FORGOTTEN WHAT THE
27 FIRST PART OF YOUR QUESTION WAS. I'M SORRY.

28 Q. YOU AGREED WITH ME THAT WHEN YOU CAME BACK IN

1 MID 2009, THE FIRM WAS IN A VOLATILE SITUATION?

2 A. YES.

3 Q. AND ONE OF THE REASONS WAS THE ECONOMY, AND
4 ONE WAS THAT -- AS A RESULT OF THE ECONOMY OR OTHER
5 THINGS, THERE WAS A GREATER PRIORITY -- A GREATER
6 PERCENTAGE OF INVESTMENTS IN FIXED INCOME OR EQUITIES,
7 RIGHT?

01:02PM

8 A. I'M NOT SURE THAT CONTRIBUTED TO VOLATILITY,
9 NO.

10 Q. ONE OF THE THINGS THAT DID CONTRIBUTE TO
11 VOLATILITY WAS THE UNREST AMONG A NUMBER OF THE
12 PORTFOLIO MANAGERS, RIGHT?

01:02PM

13 A. YES.

14 Q. IT WAS NOT LIMITED TO MR. GUNDLACH, WAS IT,
15 SIR?

01:02PM

16 A. NO, IT WAS NOT LIMITED TO MR. GUNDLACH.

17 Q. AND ONE OF THE THINGS THEY WERE CONCERNED
18 ABOUT, THEY BEING THE PORTFOLIO MANAGERS, WAS THE FACT
19 THAT AS OF MID 2009, THEY HAD NO EQUITY IN THE FIRM AT
20 ALL, RIGHT?

01:02PM

21 A. YES.

22 Q. AND THERE HAD BEEN PROMISES, STATEMENTS
23 EARLIER, ABOUT TRYING TO GIVE THE EMPLOYEES 30 PERCENT
24 OF THE EQUITY, RIGHT?

25 MR. QUINN: IT'S COMPOUND.

01:03PM

26 THE COURT: OVERRULED.

27 DO YOU UNDERSTAND THE QUESTION?

28 THE WITNESS: COULD YOU REPEAT THE QUESTION?

1 I'M SORRY.

2 Q. BY MR. BRIAN: PRIOR TO YOUR COMING BACK, YOU
3 ARE AWARE THAT THERE HAD BEEN DISCUSSIONS WITH THE
4 PORTFOLIO MANAGERS ABOUT THE POSSIBILITY OF THERE -- OF
5 THE EMPLOYEES GETTING EQUITY IN THE FIRM, RIGHT?

01:03PM

6 MR. QUINN: LACKS FOUNDATION.

7 THE COURT: OVERRULED.

8 CAN YOU ANSWER THAT?

9 THE WITNESS: YES.

10 Q. BY MR. BRIAN: AND THAT -- THOSE DISCUSSIONS
11 WERE HAD, RIGHT?

01:03PM

12 A. THOSE DISCUSSIONS WERE HAD?

13 Q. YOU WERE AWARE THERE WERE DISCUSSIONS ABOUT
14 GIVING EMPLOYEES EQUITY, WEREN'T YOU?

15 A. YES.

01:03PM

16 MR. QUINN: TIME FRAME.

17 Q. BY MR. BRIAN: PRIOR TO YOUR COMING BACK IN
18 2009, YOU WERE AWARE OF THAT, WEREN'T YOU, SIR?

19 A. YES.

20 Q. NOW, YOU MET WITH MR. GUNDLACH IN MAY OF 2009
21 AT MR. DAY'S HOUSE, RIGHT?

01:03PM

22 A. I DID.

23 Q. BY THE WAY, MR. DAY DIDN'T GROW UP ON A FARM,
24 DID HE, SIR?

25 A. MR. DAY DID NOT GROW UP ON A FARM.

01:04PM

26 Q. NO, HE DIDN'T.

27 A. IT'S NICE THAT YOU AND I HAVE SOMETHING WE CAN
28 AGREE ON TODAY, MR. BRIAN.

1 WE HAD ONE OTHER THING, BUT WE WON'T
2 TALK ABOUT IT.

3 Q. AT THAT MEETING, ONE OF THE THINGS THAT WAS
4 DISCUSSED AT MR. DAY'S HOUSE, THAT WAS NOT ON A FARM,
5 WAS THE WHOLE ISSUE OF DILUTING THE STOCK, RIGHT?

01:04PM

6 A. YES.

7 Q. AND MR. GUNDLACH WAS UPSET THAT WHEN TCW WAS
8 SOLD TO SOC-JEN, THAT HIS FOUR PERCENT WAS REDUCED TO
9 THREE PERCENT, RIGHT?

01:04PM

10 A. HE WAS.

11 Q. NOW, WHEN PEOPLE BUY AND SELL STOCK ON A STOCK
12 EXCHANGE, THAT DOESN'T DILUTE THE OTHER OWNERS' SHARES,
13 DOES IT?

14 A. NO, BECAUSE SOMEBODY IS BUYING FROM SOMEONE
15 ELSE.

01:05PM

16 Q. BECAUSE YOU ARE BUYING EXISTING SHARES, RIGHT?

17 A. YES.

18 Q. YOU ONLY DILUTE SHARES WHEN THE COMPANY ISSUES
19 MORE SHARES THAN PREVIOUSLY EXISTED, RIGHT?

20 A. YES. WHEN IT SELLS NEW SHARES, YES.

01:05PM

21 Q. SO FOR EXAMPLE, IF THERE ARE A HUNDRED SHARES
22 IN A COMPANY, AND I OWN ONE OF THEM, I OWN ONE PERCENT,
23 RIGHT?

24 A. YES.

25 Q. BUT IF THEN THE COMPANY DECIDES TO ISSUE
26 ANOTHER HUNDRED SHARES, MY ONE PERCENT WILL GO DOWN TO
27 A HALF A PERCENT, RIGHT?

01:05PM

28 A. YES.

1 Q. AND THAT'S WHAT HAPPENED IN THE EARLY 2000, AS
2 PART OF THE SALE OF THE TCW STOCK TO SOC-JEN, RIGHT?
3 MORE SHARES WERE ISSUED?

4 A. NO.

5 Q. ALL RIGHT.

01:05PM

6 MR. DAY WAS FURIOUS AS A RESULT OF
7 MR. GUNDLACH EXPRESSING HIS VIEW ON THE DILUTION ISSUE,
8 WASN'T HE, AT HIS HOUSE, IN LATE MAY?

9 A. I DON'T REMEMBER MR. DAY BEING FURIOUS ABOUT
10 THAT, NO.

01:06PM

11 Q. HOW ABOUT YOU?

12 A. I WASN'T FURIOUS; I WAS DISAPPOINTED.

13 I THOUGHT IT WAS AN ISSUE THAT HAD COME
14 AND GONE.

15 I REMEMBER IN 2007, WE HAD A VERY
16 FRIENDLY EXCHANGE, AND I THOUGHT THIS OLD ISSUE WAS
17 SOMETHING THAT WAS NO LONGER AN ISSUE; SO I WAS KIND OF
18 SURPRISED.

01:06PM

19 Q. HE CALLED YOU A CROOK, DIDN'T HE?

20 A. HE DID.

01:06PM

21 Q. AND YOU DIDN'T LIKE THAT?

22 A. DIDN'T LIKE IT; BUT I'M A BIG BOY.

23 Q. NOW, WELL, IT WAS WITHIN A COUPLE OF DAYS OF
24 THAT YOU SENT AN E-MAIL TO MR. MUSTIER, YOUR PARIS
25 COLLEAGUE, REFERRING TO MR. GUNDLACH AS KING JEFFREY,
26 DIDN'T YOU?

01:06PM

27 A. I DID.

28 Q. NOW, TAKE A LOOK AT EXHIBIT 6016.

1 IT'S NOT YET IN EVIDENCE.

2 DO YOU HAVE IT THERE, SIR?

3 A. I DO.

4 MR. BRIAN: THAT'S YOUR E-MAIL TO MR. MUSTIER
5 ON JUNE 1ST, 2009; IS IT NOT?

01:07PM

6 THE WITNESS: YES.

7 MR. BRIAN: I'LL OFFER EXHIBIT 6016.

8 MR. QUINN: NO OBJECTION.

9 THE COURT: IT WILL BE ADMITTED.

10

01:07PM

11 (EXHIBIT 6016 ADMITTED.)

12

13 MR. BRIAN: LET'S GO AHEAD AND PUT THAT UP.

14 Q. YOU SAY, (READING):

15 JEAN-PIERRE, HIS MAJESTY, KING

01:07PM

16 JEFFREY, HAS CONSENTED TO GRANT ME

17 AN AUDIENCE TOMORROW MORNING AT

18 10:00 A.M. ALL HAIL.

19 THAT'S WHAT YOU WROTE, RIGHT?

20 A. I DID.

01:07PM

21 Q. AND YOU SAID LAST WEEK THAT THAT WAS TONGUE IN
22 CHEEK?

23 A. IT WAS TONGUE IN CHEEK, YES. MR. --

24 Q. DID YOU REFER TO --

25 THE COURT: LET HIM FINISH THE ANSWER.

01:07PM

26 Q. IT WAS A YES OR NO --

27 THE COURT: JUST SLOW DOWN.

28 DO YOU WANT TO FINISH YOUR ANSWER?

1 THE WITNESS: I'D LIKE TO, IF I MAY.

2 THE COURT: GO AHEAD.

3 THE WITNESS: MR. GUNDLACH REFERRED TO HIMSELF
4 REGULARLY AS THE POPE, AS THE GODFATHER.

5 AND THIS WAS TONGUE IN CHEEK. 01:08PM

6 I WASN'T TRYING TO BE DISRESPECTFUL TO
7 MR. GUNDLACH.

8 Q. BY MR. BRIAN: DID MR. GUNDLACH EVER REFER TO
9 HIMSELF AS THE POPE OR THE GODFATHER IN FRONT OF YOU,
10 SIR? 01:08PM

11 A. IN MY PRESENCE, YES; NOT TO ME, IN MY
12 PRESENCE.

13 Q. WHEN YOU SAID, ALL HAIL, YOU WEREN'T MOCKING
14 HIM, SIR?

15 A. I REALLY WASN'T, NO. 01:08PM

16 Q. SO DID YOU REFER TO MR. ATTANASIO AS KING
17 MARK?

18 A. I DID NOT.

19 Q. OR MR. THOMAS AS KING BLAIR?

20 A. I DID NOT. 01:08PM

21 Q. OR DIANE JAFFEE AS QUEEN DIANE?

22 A. I WOULD HAVE TO THINK ABOUT THAT; BUT I DON'T
23 THINK SO.

24 Q. TAKE A LOOK AT EXHIBIT 5146.

25 5146 IS AN E-MAIL THAT MR. ATTANASIO
26 SENT TO JEAN-PIERRE MUSTIER ON THE 1ST OF MAY 2009,
27 COPIED, AMONG OTHERS, TO YOU; IS IT NOT? 01:09PM

28 A. IT IS.

1 MR. BRIAN: I WOULD OFFER EXHIBIT 5146?

2 MR. QUINN: NO OBJECTION.

3 THE COURT: IT WILL BE ADMITTED.

4

5 (EXHIBIT 5146 ADMITTED.)

01:09PM

6

7 Q. BY MR. BRIAN: LET'S PUT UP THE FIRST PAGE OF
8 THAT, DENNIS.

9

10 SO FROM MR. ATTANASIO TO JEAN-PIERRE
11 MUSTIER, COPIED TO JEAN-MARC CHAPUS, JEFFREY GUNDLACH,
12 DIANE JAFFEE, BLAIR THOMAS AND MARC STERN; DO YOU SEE
13 THAT?

01:09PM

13

A. I DO.

14

15 Q. AND THEN IT SAYS, (READING):

16

17 ATTACHED TO THIS COVER NOTE, A

01:09PM

18

19 LETTER FROM KEY TCW PORTFOLIO, I

20

21 THINK HE MEANS MANAGERS, WHICH

22

23 OUTLINES OUR VIEW REGARDING PM

24

25 PARTICIPATION IN A MANAGEMENT

26

27 COMMITTEE WHICH WOULD GOVERN OUR

01:10PM

28

FIRM.

29

30 DO YOU SEE THAT?

31

A. I DO.

32

33 Q. (READING):

34

35 WHILE WE UNDERSTAND WE ARE

01:10PM

36

37 GOING FORWARD, NAMING MARC AS THE

38

39 INTERIM CEO, WE FEEL THE BASIC

40

41 TENETS EXPRESSED IN THE LETTER

1 SHOULD BE ADHERED TO. MARC STERN
2 IS COPIED IN DISTRIBUTION PER YOUR
3 REQUEST.

4 Q. NOW, PER YOUR REQUEST, AFTER YOU MET WITH
5 MR. GUNDLACH AT MR. DAY'S HOUSE IN MAY, YOU HAD ANOTHER
6 MEETING WITH MR. GUNDLACH AND MR. ATTANASIO A FEW DAYS
7 LATER, AT THE OFFICES OF TCW, DIDN'T YOU, SIR? 01:10PM

8 A. IT ACTUALLY MIGHT HAVE BEEN THE NEXT DAY, THAT
9 I DID HAVE SUCH A MEETING.

10 Q. AND AT THAT MEETING, MR. ATTANASIO SAID WORDS
11 TO THE EFFECT THAT YOU GUYS, MEANING YOU AND MR. DAY,
12 ARE NOT THE FUTURE OF THE FIRM. 01:10PM

13 A. HE SAID SOMETHING LIKE THAT, YES.

14 Q. AND MR. ATTANASIO SAID THAT HE OBJECTED TO YOU
15 BEING APPOINTED AS THE PERMANENT CEO, DIDN'T HE, SIR? 01:10PM

16 A. HE DID.

17 Q. AND MR. GUNDLACH AGREED WITH THAT, DIDN'T HE?

18 A. HE DID.

19 Q. AND BOTH MR. ATTANASIO AND MR. GUNDLACH
20 OBJECTED TO A PRESS RELEASE BEING SENT OUT ON BEHALF OF
21 TCW, ANNOUNCING YOU AS ANYTHING BUT THE INTERIM CEO;
22 ISN'T THAT RIGHT? 01:11PM

23 A. I DON'T THINK IT WAS THAT WAY.

24 I THINK THEY SAID THAT THEY WOULDN'T
25 SUPPORT A PRESS RELEASE UNLESS I WAS NAMED THE INTERIM
26 CEO, WHICH WAS FINE WITH ME. 01:11PM

27 Q. YOU AGREED WITH THAT, RIGHT?

28 A. I DID.

1 Q. LOOK AT EXHIBIT -- BEFORE WE --
2 IF WE COULD TAKE THAT OFF FOR A SECOND,
3 DENNIS.

4 TAKE A LOOK AT EXHIBIT 193.
5 193, AT THE TOP ON THE VERY FIRST PAGE,
6 IS AN E-MAIL FROM JOSH PEKARSKY TO YOURSELF, DATED
7 MAY 29TH?

01:12PM

8 A. SORRY. ARE WE LOOKING FROM THE TOP?

9 Q. FROM THE TOP OF THE FIRST PAGE.

10 A. SORRY. THE ONE THAT'S -- YES.

01:12PM

11 MR. BRIAN: I'LL OFFER EXHIBIT 493.

12 MR. QUINN: NO OBJECTION.

13 THE COURT: IT WILL BE ADMITTED.

14 Q. BY MR. BRIAN: NOW, THIS IS AN E-MAIL CHAIN
15 THAT GOT FORWARDED TO YOU, IS IT NOT?

01:12PM

16 A. I'M SORRY. HELP ME AGAIN.

17 WHAT DO YOU WANT ME TO --

18 Q. WELL, JUST THE WHOLE EXHIBIT IS JUST A CHAIN
19 OF E-MAILS THAT EVENTUALLY GOT FORWARDED TO YOU, RIGHT?

20 A. YES.

01:12PM

21 Q. AND IF YOU TURN TO 193, PAGE 2.

22 IF WE COULD PUT THAT UP.

23 DOWN AT THE BOTTOM, THERE'S AN E-MAIL
24 FROM MARK ATTANASIO TO J. PEKARSKY, COPY TO JEFFREY
25 GUNDLACH?

01:13PM

26 A. YES.

27 Q. NOW, PEKARSKY, MR. PEKARSKY, WAS THE PR PERSON
28 THAT TCW USED AT THAT TIME, RIGHT?

1 A. YES.

2 Q. HE WAS WORKING ON THE PRESS RELEASE, RIGHT?

3 A. YES.

4 Q. AND YOU SEE WHERE MR. ATTANASIO WROTE, BY THE
5 WAY, ON GOOGLE, THERE ARE 4,020,000 ENTRIES FOR, QUOTE,
6 INTERIM CHIEF EXECUTIVE OFFICER, UNQUOTE. PLEASE DON'T
7 TELL ME IT'S NOT A REAL TITLE, SIGNED M.

01:13PM

8 DO YOU SEE THAT?

9 A. YES.

10 Q. AND THAT E-MAIL WAS FORWARDED TO YOU, WAS IT
11 NOT?

01:13PM

12 A. IT'S ON THIS CHAIN, MR. BRIAN.

13 Q. YES.

14 A. YES.

15 THEN IT WAS FORWARDED TO ME.

01:13PM

16 Q. NOW, WITHIN -- ACTUALLY THE SAME DAY THAT YOUR
17 E-MAIL WAS ISSUED, WITHIN A DAY OR TWO OF YOUR MEETING
18 WITH MR. GUNDLACH AT MR. DAY'S HOUSE, AND THE SAME DAY
19 YOU HAD MET WITH MR. ATTANASIO AND MR. GUNDLACH AT
20 TCW'S HOUSE YOU ASKED DAVID DEVITO TO TELL YOU WHAT
21 JEFFREY GUNDLACH'S FEE SHARING ARRANGEMENT WAS; ISN'T
22 THAT RIGHT?

01:14PM

23 A. I DON'T RECALL WHEN I ASKED JEFFREY -- WHEN I
24 ASKED DEVITO TO GET INFORMATION.

25 I WAS GATHERING INFORMATION ABOUT
26 EVERYONE, WHEN I WAS COMING BACK.

01:14PM

27 CERTAINLY I WOULD GATHER INFORMATION
28 ABOUT MR. GUNDLACH. I THINK OTHERS, ALSO.

1 Q. ISN'T IT A FACT THAT WITHIN DAYS OF THOSE
2 MEETINGS, YOU ASKED MR. DEVITO SPECIFICALLY, NOT FOR
3 ATTANASIO, NOT FOR DIANE JAFFEE, NOT FOR BLAIR THOMAS,
4 BUT FOR THE FEE SHARING ARRANGEMENTS OF MR. GUNDLACH?

5 A. I BELIEVE I ASKED FOR EVERYONE'S FEE SHARING
6 ARRANGEMENTS. 01:14PM

7 Q. MAYBE LATER.

8 I'M ASKING YOU ABOUT MAY, ON MAY 29TH.

9 A. AS THE MOST IMPORTANT PORTFOLIO MANAGER, HE
10 MIGHT HAVE BEEN THE FIRST ONE THAT I ASKED FOR; BUT
11 THERE'S NO CONNECTION BETWEEN THIS AND THAT. 01:14PM

12 Q. NO CONNECTION, IN FACT, TO YOUR REACTION TO
13 MR. GUNDLACH? THAT'S YOUR TESTIMONY, SIR?

14 A. YES, THAT'S MY TESTIMONY.

15 Q. OKAY. LET'S GO BACK TO EXHIBIT 5146. 01:15PM

16 IF YOU COULD PUT UP PAGE 2, PLEASE,
17 DENNIS.

18 AND THERE'S A PARAGRAPH THAT'S DOWN AT
19 THE BOTTOM FOR WE REQUESTED.

20 IF YOU COULD MAKE THAT LARGER. RIGHT
21 THERE. (READING): 01:15PM

22 WE REQUESTED A MANAGEMENT
23 COMMITTEE BE CREATED WITH
24 RESPONSIBILITY FOR THE OVERSIGHT OF
25 THE FIRM. WE OR YOU CAN SELECT A
26 CHAIRPERSON OF THAT COMMITTEE. 01:15PM
27 THIS COMMITTEE WOULD REPORT
28 DIRECTLY TO YOU. WE WOULD FIND

1 MARC'S INVOLVEMENT MORE PRODUCTIVE
2 IF HE WERE DESIGNATED A MEMBER OF
3 THIS COMMITTEE, INCLUDING AS ITS
4 CHAIR, RATHER THAN CEO.

5 WE BELIEVE THIS IS AN OPPORTUNITY
6 TO ELIMINATE THE LAYER OF
7 MANAGEMENT THAT EXISTS BETWEEN THE
8 REVENUE PRODUCERS WHO TOUCH OUR
9 CLIENTS EVERY DAY AND OUR CONTROL
10 STAKEHOLDERS.

01:16PM

01:16PM

01:16PM

11 WE DO NOT BELIEVE GOING BACK TO THE
12 FUTURE IS THE CORRECT ANSWER,
13 MOREOVER, COMING OUT OF RETIREMENT,
14 MARC WILL BE SEEN AS JUST A
15 TEMPORARY APPOINTEE, REGARDLESS OF
16 WHAT TITLE HE IS GIVEN.

17 TAKE A LOOK AT EXHIBIT 6120.

18 ACTUALLY BEFORE YOU LOOK AT 6120 --

19 A. I'M SORRY, DID YOU ASK ME A QUESTION ABOUT
20 WHAT YOU JUST READ?

01:16PM

21 Q. NO. I JUST READ IT TO THE JURY.

22 A. OKAY. I'M SORRY.

23 Q. MR. STERN -- I'M SORRY.

24 MR. STERN, MR. QUINN SHOWED YOU A
25 DOCUMENT, EXHIBIT 209, WHICH WAS FORWARDED TO YOU BY
26 SUSAN LEADER.

01:17PM

27 DO YOU RECALL THAT?

28 A. DO I RECALL THAT? YES.

1 YES, I DO RECALL THAT.

2 Q. AND YOU SAID YOU WERE SURPRISED THAT
3 MR. GUNDLACH WOULD MAKE STATEMENTS TO INVESTORS ABOUT
4 YOU BEING AN INTERIM CEO AND THINGS LIKE THAT, RIGHT?

5 MR. QUINN: MISSTATES THE DOCUMENT AND THE
6 TESTIMONY.

01:17PM

7 THE COURT: SUSTAINED.

8 Q. BY MR. BRIAN: YOU WERE SURPRISED BY HIS
9 STATEMENTS TO INVESTORS.

10 YOU SAID THAT, DIDN'T YOU, SIR?

01:17PM

11 A. THERE WERE ASPECTS OF WHAT HE SAID TO THE
12 INVESTORS IN HERE THAT I WAS SURPRISED AT, YES.

13 Q. LET ME SHOW YOU EXHIBIT 6120.

14 IT'S IN EVIDENCE.

15 YOU MAY PUT THAT UP, DENNIS.

01:17PM

16 AND IT -- THIS IS AN E-MAIL FROM JUDY
17 HIRSCH TO JEFFREY GUNDLACH, MARC STERN AND ROBERT JAMO,
18 AND A KATHY URBELIS.

19 DO YOU SEE THAT?

20 A. I DO.

01:18PM

21 Q. JUDY HIRSCH WORKED AT TCW IN JUNE OF 2009, DID
22 SHE NOT?

23 A. SHE DID.

24 Q. DOES SHE STILL WORK THERE?

25 A. YES.

01:18PM

26 Q. AND IN THE E-MAIL --

27 IF YOU CAN HIGHLIGHT THE FIRST
28 PARAGRAPH, DENNIS. IF YOU COULD MAKE THAT LARGER.

1 SHE SAYS, (READING):

2 MARC STERN AND I TODAY SPOKE
3 WITH VINCE SMITH, CIO. WE'RE IN
4 THE FINAL STAGES OF NEGOTIATING THE
5 CONTRACT FOR A 450 MILLION
6 OPPORTUNISTIC CORE PLUS FIXED
7 INCOME ACCOUNT.

01:18PM

8 DO YOU SEE THAT?

9 A. I SEE IT.

10 Q. MR. SMITH WAS A CLIENT OF THE FIRM, OR
11 PROSPECTIVE CLIENT OF THE FIRM, WAS HE NOT?

01:18PM

12 A. YEAH. THAT'S WHAT THIS APPEARS TO BE, YES.

13 Q. NOW, IF YOU GO TO THE NEXT PARAGRAPH, WHERE IT
14 SAYS, VINCE WAS INTERESTED IN TWO POINTS, ONE, HOW DOES
15 THE MANAGEMENT CHANGE IMPACT JEFFREY GUNDLACH'S
16 MANAGEMENT OF HIS PORTFOLIOS; AND TWO, WHAT IS MARC'S
17 PLAN FOR TCW'S STRATEGIC DIRECTIONS OR PLANS FOR
18 ULTIMATE OWNERSHIP CHANGE WHICH SG HAS ALREADY MADE
19 PUBLIC?

01:19PM

20 DO YOU SEE THAT?

01:19PM

21 A. I DO.

22 Q. AND LET'S --

23 IF WE CAN THEN HIGHLIGHT AND ENLARGE THE
24 NEXT PARAGRAPH, MARC LAUDED.

25 IT SAYS MARC -- AND YOU UNDERSTAND
26 THAT'S A REFERENCE TO YOU, RIGHT?

01:19PM

27 A. I DO.

28 Q. (READING):

1 MARK LAUDED JEFFREY GUNDLACH'S
2 INTELLIGENCE AND GREAT TALENT FOR
3 MANAGING HIS PORTFOLIOS. HE SAID
4 THAT HE HAS KNOWN JEFFREY FOR MANY
5 YEARS, AND HAS ALWAYS ADMIRERD AND
6 RESPECTED HIS ABILITIES.

01:19PM

7 IN POINT OF FACT, MARC
8 MENTIONED THAT HE HAS A SIGNIFICANT
9 PERCENTAGE OF HIS PERSONAL LIQUID
10 ASSETS INVESTED WITH JEFFREY.

01:20PM

11 MARC WENT ON TO SAY THAT HIS FIRST AND
12 MOST IMPORTANT JOB AS CEO IS, QUOTE, TO MAKE SURE THE
13 TRAINS RUN ON TIME, UNQUOTE. HE SEES IT AS HIS
14 RESPONSIBILITY TO SEE THAT ALL THE TOOLS AND PROCESSES
15 THAT PORTFOLIO MANAGERS NEED TO DO THEIR JOBS WELL
16 CONTINUE TO BE THERE, WHEN AND AS THEY NEED THEM.

01:20PM

17 YOU SAID THOSE THINGS TO MR. SMITH,
18 DIDN'T YOU, SIR?

19 A. I DID.

20 Q. LET'S GO TO THE NEXT PARAGRAPH, DENNIS.

01:20PM

21 IF WE COULD JUST HIGHLIGHT THE WHOLE
22 PARAGRAPH, PLEASE, AND ENLARGE IT.

23 YOU THEN SAID, AS REPORTED BY
24 MS. HIRSCH, AS TO STRATEGIC DIRECTION, MARC STATED THAT
25 HE DOES NOT HAVE A DIFFERENT STRATEGIC PLAN FOR TCW.

01:20PM

26 HOWEVER, IN REGARD TO OWNERSHIP CHANGE,
27 HE AGREED THAT, YES, SG HAS ALREADY ANNOUNCED THAT
28 THEIR PLANS FOR TCW REVOLVE AROUND AN ULTIMATE IPO OR

1 SALE.

2 MARC POINTED OUT THAT HE IS THE ONLY
3 NON-FRENCH MEMBER OF THE SOCIETE GENERALE BOARD.
4 THEREFORE, HE BELIEVES THAT HE IS UNIQUELY POSITIONED
5 TO HELP FACILITATE AN OWNERSHIP CHANGE. THUS, MARC
6 CHARACTERIZED HIS CURRENT ROLE AT TCW MORE AS, QUOTE,
7 TRANSITIONAL CEO, UNQUOTE.

01:21PM

8 YOU SAID THAT TO MR. SMITH, THAT YOUR
9 ROLE WAS MORE OF A TRANSITIONAL CEO, DIDN'T YOU, SIR?

10 A. THIS IS MS. HIRSCH, REPORTING ON WHAT I SAID.
11 AND THERE ARE STATEMENTS IN HERE THAT I WOULD DISAGREE
12 WITH --

01:21PM

13 Q. DID YOU TELL MR. SMITH?

14 A. -- ON THIS ONE?

15 Q. DID YOU TELL MR. SMITH THAT YOU VIEWED
16 YOURSELF AS A TRANSITIONAL CEO?

01:21PM

17 A. I BELIEVE I DID, YES.

18 Q. AND IT REFERS TO AN IPO.

19 WHAT'S -- AN IPO IS AN INITIAL PUBLIC
20 OFFERING, IS IT NOT?

01:22PM

21 A. IT IS.

22 Q. THAT'S A WAY FOR THE COMPANY TO ISSUE STOCK TO
23 THE PUBLIC, RIGHT?

24 A. YES.

25 Q. IT'S ONE WAY IN WHICH A COMPANY CAN HELP
26 MONETIZE ITS INVESTMENT, IS IT NOT?

01:22PM

27 A. PARTIALLY, YES.

28 CAN I TELL YOU WHAT IN THIS I DIDN'T

1 AGREE WITH, OR NOT?

2 THE COURT: I THINK -- HE ASKS THE QUESTIONS.
3 YOU GIVE THE ANSWERS.

4 THE WITNESS: SORRY.

5 THE COURT: WE'LL GET IN TROUBLE.

01:22PM

6 Q. BY MR. BRIAN: SORRY.

7 JUDY HIRSCH, IS SHE A RELIABLE
8 EMPLOYEE?

9 A. SHE'S A RELIABLE EMPLOYEE.

10 Q. WHEN YOU GOT THIS MEMO, DID YOU WRITE HER BACK
11 IN A MEMO SAYING, JUDY, YOU GOT IT WRONG?

01:22PM

12 A. I DID NOT.

13 Q. DID YOU CRITICIZE OR DISCIPLINE HER FOR THIS
14 MEMO?

15 A. I DID NOT.

01:22PM

16 Q. AND SHE'S STILL WITH THE COMPANY, RIGHT?

17 A. SHE IS.

18 BUT THAT DOESN'T MEAN THAT EVERYTHING
19 SHE REPEATED WAS WHAT I SAID.

20 Q. TAKE A LOOK AT EXHIBIT 5164.

01:23PM

21 ALREADY IN EVIDENCE.

22 NOW, THIS IS AN E-MAIL FROM JUDY MANNES
23 TO YOURSELF DATED JUNE 29TH, IS IT NOT?

24 A. IT IS.

25 Q. AND SHE WAS ONE OF YOUR ASSISTANTS AT THE
26 TIME?

01:23PM

27 A. YES.

28 Q. IS SHE STILL?

1 A. YES.

2 Q. AND LIKE JUDY HIRSCH, YOU THINK SHE'S A
3 RELIABLE EMPLOYEE, DO YOU NOT?

4 A. INDEED.

5 Q. DENNIS, CAN WE ENLARGE ROMAN NUMERAL III,
6 WHERE IT HAS ALL THOSE DASHES IN THERE.

01:24PM

7 NOW, THESE NOTES WERE -- SHE DIDN'T MAKE
8 THESE NOTES UP; THESE WERE NOTES YOU DICTATED TO HER,
9 OR SENT HER AN E-MAIL OR SOMETHING?

10 A. YES.

01:24PM

11 Q. THEY REFLECT YOUR THOUGHTS, NOT MS. MANNES'
12 THOUGHTS, RIGHT?

13 A. THEY REFLECT MY THOUGHTS, NOT MS. MANNES'
14 THOUGHTS, YES.

15 Q. NOW, LAST WEEK, AT PAGE 4146, YOU SAID, QUOTE,
16 THAT G WAS A VERY SECRET NAME FOR GUNDLACH.

01:24PM

17 YOU SAID THAT SARCASTICALLY, DIDN'T YOU,
18 SIR?

19 A. YES, I DID.

20 I'M SORRY.

01:24PM

21 Q. MEANING THAT IT REALLY WASN'T THAT SECRET.

22 THAT WAS YOUR INTENTION IN MAKING THAT
23 STATEMENT, RIGHT?

24 A. YES.

25 Q. DID YOU EVER TELL MR. GUNDLACH THAT YOU HAD A
26 PROJECT G GOING?

01:24PM

27 A. I TOLD MR. GUNDLACH QUITE OFTEN THAT WE WERE
28 TRYING TO FIGURE OUT HOW TO DO THINGS, AND -- IN ANY

1 CONVERSATION THAT WE HAD, AND THAT WAS -- THAT WAS WHAT
2 WE WERE TRYING TO DO.

3 BUT I NEVER REFERRED TO IT AS PROJECT G.

4 Q. THAT'S NOT MY QUESTION, SIR.

5 A. OKAY. SORRY.

01:25PM

6 Q. DID YOU EVER TELL HIM THAT YOU HAD A MEETING
7 WITH MR. DAY, JUST THE TWO OF YOU, IN WHICH YOU CALLED
8 IT PROJECT G?

9 A. NO, I NEVER TOLD MR. GUNDLACH THAT.

10 Q. DID YOU EVER TELL HIM THAT YOUR TRUSTED
11 ASSISTANT, MR. CONN, HAD A FOLDER THAT HE CALLED
12 PROJECT G?

01:25PM

13 A. DID I EVER TELL MR. GUNDLACH THAT?

14 Q. YEAH.

15 A. NO.

01:25PM

16 Q. NOW, MR. QUINN ASKED YOU ABOUT THESE VARIOUS
17 ENTRIES: FINANCIAL, LEGAL, MARKETING, ALTERNATIVE
18 MANAGERS.

19 DO YOU RECALL THAT LINE OF QUESTIONING
20 LAST WEEK?

01:25PM

21 A. YES.

22 Q. IT'S TRUE, IS IT NOT, THAT YOU DON'T REMEMBER
23 ANYTHING ABOUT THAT DISCUSSION WITH MR. DAY, DO YOU?

24 A. I DON'T THINK THAT -- I DON'T REMEMBER THE
25 DISCUSSION ABOUT THESE NOTES.

01:26PM

26 Q. THAT'S NOT MY QUESTION, SIR.

27 A. OKAY.

28 Q. AS YOU SIT HERE TODAY, DO YOU RECALL ANYTHING

1 AT ALL ABOUT WHAT YOU AND MR. DAY TALKED ABOUT ON
2 JUNE 29TH?

3 A. AS I SIT HERE TODAY?

4 I KNOW WE TALKED ABOUT WHAT'S IN THESE
5 NOTES, 'CAUSE I HAVE THE NOTES.

01:26PM

6 Q. NOW, WHEN YOU HAD YOUR DEPOSITION TAKEN, WE
7 ASKED YOU THAT QUESTION, AND YOU DIDN'T REMEMBER
8 ANYTHING ABOUT THE MEETING, EITHER, DID YOU?

9 MR. QUINN: YOUR HONOR, HE'S GOING TO USE THE
10 DEPOSITION.

01:26PM

11 THE COURT: IF YOU WOULD LIKE TO USE THE
12 DEPOSITION, YOU MAY USE IT TO --

13 MR. BRIAN: I'LL WITHDRAW THAT.

14 Q. UNDER OATH, RIGHT NOW, DO YOU RECALL ANYTHING
15 ABOUT THIS DISCUSSION WITH MR. DAY?

01:26PM

16 A. DO I RECALL ANYTHING?

17 I RECALL THAT I HAD A MEETING WITH HIM,
18 TELLING HIM ABOUT WHAT WAS -- WHAT THE STATUS OF THINGS
19 ARE. BUT I DON'T RECALL SPECIFICALLY WHAT THE
20 DISCUSSION WAS.

01:26PM

21 AND THESE NOTES TELL ME WHAT WENT ON AT
22 THAT MEETING.

23 Q. BY MR. BRIAN: I TAKE IT YOU DON'T RECALL WHAT
24 YOU DISCUSSED WITH MR. DAY ABOUT THE FINANCIAL ISSUES,
25 DO YOU, SIR?

01:27PM

26 A. I CAN TELL YOU WHAT -- THE FINANCIAL ISSUES AS
27 IT RELATES TO PROJECT G --

28 Q. NOT MY QUESTION.

1 A. OKAY.

2 Q. DO YOU RECALL WHAT YOU DISCUSSED WITH MR. DAY
3 ABOUT THE FINANCIAL ISSUES?

4 A. NOT SPECIFICALLY.

5 Q. DO YOU RECALL WHAT YOU DISCUSSED WITH MR. DAY
6 ABOUT THE LEGAL ISSUES?

7 A. NOT SPECIFICALLY.

8 Q. THERE'S A REFERENCE TO MARKETING. WE'LL SKIP
9 THAT.

01:27PM

01:27PM

10 ALTERNATIVE MANAGERS.

11 THAT'S A REFERENCE TO IDENTIFYING
12 POSSIBLE PEOPLE TO REPLACE MR. GUNDLACH, ISN'T IT, SIR?

13 A. NO.

14 Q. WELL, MR. GAMSEN WAS A FRIEND OF YOURS, ISN'T
15 HE?

01:28PM

16 A. YES.

17 Q. HE WAS YOUR LAWYER, AT ONE POINT, WASN'T HE?

18 A. HE WAS.

19 Q. HE WORKS AT THAT BIG INSURANCE COMPANY, AIG,
20 DOESN'T HE, SIR?

01:28PM

21 A. NO.

22 Q. HE DID, DIDN'T HE?

23 A. YES.

24 Q. HE DID AT THE TIME OF THIS, DIDN'T HE, SIR?

25 A. YES.

01:28PM

26 Q. AND YOU CALLED MR. GAMSEN, EITHER BEFORE THIS
27 MEETING OR SHORTLY AFTER, TO GET IDEAS FROM HIM AS TO
28 WHO MIGHT REPLACE MR. GUNDLACH, DIDN'T YOU, SIR?

1 A. NO.

2 Q. THERE'S A REFERENCE AT THE BOTTOM THERE --
3 WELL, IT SAYS CONTACT WITH LIEUTENANTS.

4 DO YOU SEE THAT?

5 A. YES.

01:29PM

6 Q. AND THAT'S A REFERENCE TO CONTACTING SOME OF
7 THE KEY PEOPLE THAT WORKED IN MR. GUNDLACH'S
8 ORGANIZATION, RIGHT?

9 A. YES.

01:29PM

10 Q. INCLUDING MR. BARACH?

11 A. YES.

12 Q. AND YOU MADE CONTACT WITH MR. BARACH RIGHT
13 ABOUT THIS TIME, DIDN'T YOU?

14 A. NO.

15 Q. MLA IS A REFERENCE TO MARK ATTANASIO, IS IT
16 NOT?

01:29PM

17 A. IT IS.

18 Q. AND JMC IS A REFERENCE TO HIS PARTNER,
19 JEAN-MARC CHAPUS, RIGHT?

20 A. IT IS.

01:29PM

21 Q. AND YOU PUT THEM UNDER PROJECT G; ISN'T THAT
22 RIGHT?

23 A. YES.

24 Q. AND THE REASON YOU DID THAT, SIR, WAS YOU
25 WANTED TO MAKE THEM YOUR ALLIES WITH RESPECT TO PROJECT
26 G; ISN'T THAT TRUE?

01:29PM

27 A. I PUT THEM THERE BECAUSE I THOUGHT THAT THEY
28 COULD BE HELPFUL, IF IT TURNED OUT THAT WE HAD A

1 PROBLEM WITH MR. GUNDLACH.

2 IF HE LEFT -- HE WAS A FLIGHT RISK, AND
3 HE'D INDICATED THAT HE WAS LOOKING AT OTHER PLACES, I
4 HAD THEM THERE AS POTENTIALS THAT COULD HELP US, IF WE
5 WERE LEFT IN THE LURCH.

01:30PM

6 Q. YOU LOOKED TO MR. ATTANASIO, IN PARTICULAR,
7 FOR ADVICE, BEGINNING IN JUNE OF 2009, AS TO HOW TO
8 DEAL WITH MR. GUNDLACH, DIDN'T YOU, SIR?

9 A. I THINK I LOOKED TO HIM FOR ADVICE AS TO HOW
10 TO DEAL WITH ALL THE ISSUES CONCERNING TCW.

01:30PM

11 Q. YOU ASKED HIM, FOR EXAMPLE, ABOUT WHAT HE
12 THOUGHT ABOUT MET WEST AS A REPLACEMENT, DIDN'T YOU,
13 SIR?

14 A. NOT AS --

15 MR. QUINN: EXCUSE ME. TIME FRAME?

01:30PM

16 THE COURT: LET'S KEEP IT IN THE TIME FRAME.

17 ARE WE TALKING JUNE, OR --

18 Q. BY MR. BRIAN: ACTUALLY, SEPTEMBER 1ST.

19 PRIOR TO THAT SEPTEMBER 3RD MEETING, YOU
20 TALKED TO MR. ATTANASIO. YOU SENT HIM AN E-MAIL ASKING
21 WHAT HIS VIEWS WERE ON MET WEST, DIDN'T YOU, SIR?

01:30PM

22 A. WHAT HIS VIEWS WERE ON MET WEST?

23 Q. YEAH.

24 A. I THINK I ASKED HIM -- HE HAD A GUY THAT HE
25 USED TO WORK WITH THAT WAS A FOUNDER OF MET WEST. AND
26 I THINK I ASKED HIM ABOUT WHETHER HE HAD ANY
27 INFORMATION FROM THAT PERSON.

01:30PM

28 BUT MAYBE, MAYBE I ASKED HIM WHAT HIS

1 VIEWS WERE.

2 Q. YOU WERE ASKED LAST THURSDAY, AND AGAIN TODAY,
3 ACTUALLY, WHETHER COST SAVINGS WERE A FACTOR AT ALL IN
4 YOUR DECISION TO FIRE MR. GUNDLACH. I'M GOING TO READ
5 FROM PAGE 4116, LINES 9 THROUGH 13, LAST THURSDAY'S
6 TRANSCRIPT.

01:31PM

7 MR. QUINN: OKAY.

8 THE COURT: NO OBJECTION.

9 GO AHEAD, MR. BRIAN.

10 Q. BY MR. BRIAN:

01:31PM

11 "Q DID SAVING COSTS OR SAVING
12 FEES OR CAPTURING FEES HAVE ANYTHING
13 TO DO WITH THE REASON THAT YOU WERE
14 IN FAVOR OF TERMINATING MR. GUNDLACH'S
15 EMPLOYMENT?

01:32PM

16 A NO."

17 NOW, AT YOUR DEPOSITION, YOU WERE ASKED
18 ABOUT THAT, TOO.

19 I WOULD LIKE TO PLAY FOR THE LADIES AND
20 GENTLEMEN OF THE JURY, A CLIP WHICH WE WOULD CALL CLIP
21 ONE, FROM PAGE 55, LINE 19 TO 21; AND THEN 55, 23 TO
22 25; 56, LINE 19 TO 57 LINE 23; PAGE 58, LINES 1 THROUGH
23 4.

01:32PM

24 ALL HAS BEEN PREVIOUSLY DESIGNATED AND
25 RULED UPON, INCLUDING THE COUNTERS, YOUR HONOR.

01:33PM

26 THE COURT: ALL RIGHT. YOU MAY PROCEED.

27

28 (VIDEOTAPE PLAYED OF MR. STERN'S DEPOSITION)

1 MR. BRIAN: YOUR HONOR, MAY I APPROACH, YOUR
2 HONOR?

3 THE COURT: YES, YOU MAY.

4 THE CHART THAT MR. BRIAN WILL BE
5 DRAWING WILL BE MARKED FOR IDENTIFICATION ONLY, AS
6 6160.

01:36PM

7
8 (MARKED FOR ID: EXHIBIT 6160.)

9
10 Q. BY MR. BRIAN: SO I'M GOING TO WRITE UP HERE.
11 WERE COST SAVINGS A FACTOR IN FIRING
12 HIM?

01:36PM

13 AND YOUR -- AT TRIAL LAST WEEK, YOU SAID
14 NO.

15 AND IN YOUR DEPO -- DEPOSITION, YOU SAID
16 IT WAS A SMALL PART.

01:37PM

17 MR. QUINN: THAT MISSTATES THE TRIAL
18 TESTIMONY, YOUR HONOR.

19 MR. BRIAN: IN TRIAL TESTIMONY, HE SAID NO.

20 MR. QUINN: BUT THE QUESTION SAID NO --

01:37PM

21 THE COURT: THE TWO OF YOU DON'T NEED TO
22 DEBATE IT, OKAY?

23 THE OBJECTION IS OVERRULED.

24 WE HAVE THE TESTIMONY. WE DID CHECK ON
25 IT. WE CAN READ IT, IF YOU WOULD LIKE TO READ IT IN
26 YOUR REDIRECT, YOU MAY READ IT.

01:37PM

27 MR. QUINN: BUT, YOUR HONOR, THIS IS ARGUMENT.
28 THERE ARE DIFFERENT QUESTIONS. THEY ARE PHRASED

1 DIFFERENTLY. IT MAKES A REFERENCE --

2 MR. BRIAN: I'LL READ THE TESTIMONY AGAIN, IF
3 MR. QUINN WOULD LIKE ME TO.

4 THE COURT: GO AHEAD.

5 MR. BRIAN: THE QUESTION WAS LAST WEEK, DID
6 SAVINGS, COSTS, OR SAVINGS FEES OR CAPTURING FEES HAVE
7 ANYTHING TO DO WITH THE REASON THAT YOU WERE IN FAVOR
8 OF TERMINATING MR. GUNDLACH'S EMPLOYMENT?

01:37PM

9 ANSWER, NO.

10 NOW, YOU SAID LAST WEEK THAT YOU ARE AN
11 ADVOCATE OF THE FEE SHARING ARRANGEMENTS BETWEEN ASSET
12 MANAGEMENT COMPANIES AND ASSET MANAGERS, RIGHT?

01:38PM

13 A. WELL, NOW, CAN YOU SHOW ME THE TESTIMONY.

14 NOW, YOU'VE GOT ME NERVOUS, BECAUSE IF
15 YOU ARE GOING TO PICK AND CHOOSE, JUST SHOW ME THE
16 TESTIMONY.

01:38PM

17 THE COURT: SIR, WE'RE NOT GOING TO KEEP DOING
18 THIS; AND SO LET'S GO ON -- JUST ASK THE QUESTION.

19 Q. BY MR. BRIAN: I'LL ASK YOU A QUESTION.

20 ARE YOU AN ADVOCATE -- IS IT YOUR
21 TESTIMONY THAT YOU ARE AN ADVOCATE OF FEE SHARING
22 ARRANGEMENTS BETWEEN ASSET MANAGEMENT COMPANIES AND
23 ASSETS MANAGERS? YES OR NO?

01:38PM

24 A. YES.

25 Q. OKAY. NOW, BUT, ONE OF THE THINGS THAT YOU
26 USED TO SELL TO THE FRENCH, THE WHOLE MET WEST DEAL,
27 WAS THE FACT THAT THEY -- THAT THIS WOULD ALLOW YOU TO,
28 QUOTE, RESTRUCTURE THE CURRENT DISPARATE FEE SHARING

01:38PM

1 COMPENSATION STRUCTURE, UNQUOTE, RIGHT?

2 A. YES.

3 Q. SO I'M GOING TO APPROACH AGAIN, YOUR HONOR.

4 IN FACT, THAT WAS IN YOUR OCTOBER 19TH
5 PRESENTATION TO THE FRENCH AT THE MEETING IN PARIS,
6 RIGHT?

01:39PM

7 A. RESTRUCTURE DOESN'T MEAN THAT I'M NOT AN
8 ADVOCATE OF IT.

9 Q. SIR, DID YOU TELL THE FRENCH, ON OCTOBER 19TH,
10 AS PART OF YOUR WRITTEN PRESENTATION, EXHIBIT 5379, IF
11 YOU WOULD LIKE TO LOOK AT IT?

01:39PM

12 A. I WOULD.

13 Q. FINE. TAKE A LOOK AT IT.

14 WHILE YOU ARE DOING THAT, I'M GOING TO
15 APPROACH AND WRITE DOWN, OCTOBER 19TH.

01:39PM

16 TURN TO PAGE 7.

17 IF YOU CAN PUT THAT ON THE BOARD,
18 DENNIS. THAT'S IN EVIDENCE. EXHIBIT 5379, PAGE 7.

19 MR. BRIAN: CAN I BORROW YOUR SCREEN FOR A
20 SECOND, MR. QUINN?

01:40PM

21 MR. QUINN: HELP YOURSELF.

22 Q. BY MR. BRIAN: SEE THE LAST BULLET THERE?

23 DENNIS, IF YOU COULD BLOW THAT UP AND
24 HIGHLIGHT WHERE IT SAYS, RESTRUCTURE RETURN DISPARATE
25 FEE SHARING.

01:40PM

26 YOU SAID THAT TO THE FRENCH THAT ONE OF
27 THE ADVANTAGES OF THIS DEAL WAS THAT IT WILL ALLOW YOU
28 TO RESTRUCTURE THE CURRENT DISPARATE FEE SHARING

1 COMPENSATION STRUCTURE, RIGHT?

2 A. I DID SAY THAT.

3 Q. AND THAT WASN'T THE FIRST TIME YOU TALKED TO
4 THE FRENCH ABOUT THAT, DID YOU, SIR, ABOUT THE ISSUE OF
5 REDUCING COSTS?

01:41PM

6 A. RESTRUCTURE DOESN'T MEAN -- DOESN'T SAY
7 ANYTHING ABOUT COSTS.

8 IT'S TALKING ABOUT THE WAY IN WHICH THEY
9 WOULD BE -- WE HAD VERY COMPLICATED FEE SHARING
10 ARRANGEMENTS. I THOUGHT THAT IF WE HAD A SIMPLE FEE
11 SHARING ARRANGEMENT, WHICH WE WERE NEGOTIATING WITH THE
12 MET WEST PEOPLE, THAT WE COULD ESTABLISH A MORE
13 RATIONAL BASIS.

01:41PM

14 IT'S NOT A NEGATIVE TO FEE SHARING.

15 Q. AND THE MORE RATIONAL BASIS THAT YOU ADVOCATED
16 TO THE FRENCH WITH MET WEST WAS THAT THEY WOULD BE PAID
17 10 PERCENT, AS OPPOSED TO MR. GUNDLACH AND HIS GROUP'S
18 35 PERCENT, RIGHT?

01:41PM

19 A. WRONG.

20 Q. TAKE A LOOK AT EXHIBIT 5565 -- I'M SORRY,
21 5365. IN EVIDENCE.

01:41PM

22 YOU CAN PUT THAT UP, DENNIS.

23 THE E-MAIL AT THE BOTTOM OF EXHIBIT 5365
24 IS AN E-MAIL FROM YOU TO JACQUES RIPOLL, RIGHT?

25 A. IT IS.

01:42PM

26 Q. AND WE CAN HIGHLIGHT THE TEXT YOU WRITE TO
27 JACQUES.

28 YOU ASKED ABOUT HOW THE EXISTING FEE

1 SHARING ARRANGEMENTS FOR THE MBS GROUP COMPARE TO THE
2 10 PERCENT WE ARE OFFERING THEM.

3 THE "THEM" MEANS MET WEST, RIGHT?

4 A. IT DOES.

5 Q. (READING):

01:42PM

6 THE FEE SHARING RATE FOR THE
7 MBS GROUP IS 48 PERCENT OF REVENUES
8 PRIOR TO THE DEDUCTION OF ANY
9 COMPENSATION EXPENSES FOR MBS
10 PERSONNEL.

01:43PM

11 YOU WROTE THAT, DID YOU NOT?

12 A. I DID.

13 Q. YOU THEN SAID, (READING):

14 THIS 48 PERCENT FEE SHARING
15 RATE EQUATES TO APPROXIMATELY, 96
16 MILLION, BASED ON RUN RATE REVENUES
17 OF 200 MILLION.

01:43PM

18 RIGHT?

19 A. THAT'S WHAT IT SAYS.

20 Q. (READING):

01:43PM

21 FROM THIS AMOUNT, ALL
22 COMPENSATION EXPENSES OF THE MBS
23 GROUP ARE THEN DEDUCTED, WHICH
24 RESULTS IN A NET FEE SHARING
25 AVAILABLE TO JEFFREY AND HIS FEE
26 SHARING TEAM OF APPROXIMATELY 70
27 MILLION, FOR AN EFFECTIVE CURRENT
28 FEE SHARING RATE OF 35 PERCENT OF

01:43PM

1 RUN RATE REVENUES OF 200 MILLION.

2 YOU WROTE THAT, CORRECT?

3 A. I DID.

4 Q. YOU THEN WROTE THAT (READING):

5 THIS 35 PERCENT FEE SHARING
6 RATE COMPARES FAVORABLY TO THE 10
7 PERCENT FEE SHARING RATE REFLECTED
8 IN THE TERM SHEET FOR ANGEL BY 25
9 PERCENT, OR ROUGHLY 50 MILLION, AT
10 THE 200 MILLION REVENUE LEVEL.

01:43PM

01:43PM

11 YOU WROTE THAT, RIGHT?

12 A. I DID.

13 Q. NOW, THE TERM SHEET BEING OFFERED TO MET WEST
14 AT THE TIME YOU WROTE THIS WAS LESS THAN -- PROVIDED
15 FOR THEM TO GET A FEE SHARE OF LESS THAN A THIRD OF
16 WHAT MR. GUNDLACH WAS GETTING, RIGHT?

01:44PM

17 A. IT ALSO PROVIDED FOR --

18 Q. IS THAT RIGHT?

19 A. IT ALSO --

20 THE COURT: SIR, THIS ISN'T A DEBATE BETWEEN
21 THE TWO OF YOU.

01:44PM

22 HE'LL ASK THE QUESTIONS, YOU WILL
23 ANSWER.

24 YOU GET A CHANCE TO EXPLAIN. YOUR
25 LAWYER IS GOING TO ASK MORE QUESTIONS.

01:44PM

26 GO AHEAD.

27 Q. BY MR. BRIAN: RIGHT?

28 A. YOU HAVE TO ASK ME THE QUESTION AGAIN.

1 Q. THE FEE SHARING RATE THAT WAS IN THE TERM
2 SHEET THAT YOU WERE OFFERING MET WEST AT THE TIME YOU
3 WROTE THIS E-MAIL, WAS LESS THAN A THIRD OF 1WHAT YOU
4 WERE OBLIGATED TO PAY JEFFREY GUNDLACH AND HIS GROUP,
5 RIGHT?

01:44PM

6 A. YES.

7 Q. AND YOU TOLD MR. RIPOLL THAT UNDER THE NEW
8 AGREEMENT WITH MET WEST, TCW WOULD SAVE \$50 MILLION A
9 YEAR ON EVERY 200 MILLION IN REVENUE, RIGHT?

10 A. BASED ON CERTAIN ASSUMPTIONS.

01:45PM

11 Q. BUT THAT'S WHAT YOU SAID, RIGHT?

12 A. YES, WHICH HE KNEW WHAT THE ASSUMPTIONS WERE.

13 Q. MAY I APPROACH AND WRITE THAT DOWN?

14 THAT WAS ON THE 13TH OF OCTOBER.

15 50 MILLION SAVINGS. ANNUALLY, RIGHT?

01:45PM

16 IT SAYS 50 MILLION PER YEAR, DOESN'T IT, SIR?

17 A. YES.

18 Q. NOW, MR. RIPOLL LIKED THAT, DIDN'T HE, SIR?

19 A. I ANSWERED MR. RIPOLL'S QUESTION.

20 Q. IS IT YOUR TESTIMONY, SIR, TO THIS JURY, UNDER
21 OATH, THAT MR. RIPOLL NEVER SAID TO YOU THAT HE LIKED
22 THE FACT THAT YOU WERE GOING TO BE SAVING \$50 MILLION A
23 YEAR IN FEES?

01:45PM

24 A. I DON'T REMEMBER WHAT HE SAID.

25 HE MAY WELL HAVE SAID THAT.

01:46PM

26 Q. TAKE A LOOK AT EXHIBIT 5432.

27 DO YOU HAVE THAT EXHIBIT IN FRONT OF
28 YOU?

1 A. I DO.

2 Q. IT'S AN E-MAIL FROM MR. RIPOLL TO YOU, DATED
3 NOVEMBER 7TH, 2009, IS IT NOT?

4 A. IT IS.

5 MR. BRIAN: I'LL OFFER EXHIBIT 5432. 01:47PM

6 MR. QUINN: NO OBJECTION.

7 THE COURT: IT WILL BE ADMITTED.

8

9 (EXHIBIT 5432 ADMITTED.)

10

01:47PM

11 MR. BRIAN: DENNIS, IF WE COULD DISPLAY THAT.

12 Q. AND IF WE COULD HIGHLIGHT THE VERY FIRST
13 PARAGRAPH BEGINNING WITH, I HAVE READ VERY QUICKLY.

14 I HAVE READ VERY QUICKLY THE GOVERNANCE
15 DOCUMENT, AND I HAVE A REAL CONCERN THERE. AS AGREED
16 TOGETHER, WE ARE INVESTING 300 MILLION IN TCW, NOT ONLY
17 TO HEDGE OUR JG RISK, BUT ALSO TO CHANGE THE GOVERNANCE
18 OF THIS COMPANY; AND IN PARTICULAR, THE BALANCE OF
19 POWER BETWEEN ASSET MANAGERS AND MANAGEMENT.

01:47PM

20 THAT'S WHAT MR. RIPOLL WROTE TO YOU ON
21 NOVEMBER 7TH, 2009, IS IT NOT?

01:47PM

22 A. YES.

23 Q. NOW, MR. QUINN ASKED YOU ABOUT THE FINANCES OF
24 YOUR ACQUISITION OF MET WEST.

25 DO YOU RECALL THOSE QUESTIONS THIS
26 MORNING?

01:47PM

27 A. YES.

28 Q. THERE WAS A \$75 MILLION RETENTION PAYMENT AND

1 A 225 MILLION ACQUISITION PAYMENT, RIGHT?

2 A. YES.

3 Q. NOW, IN EXCHANGE FOR THAT, YOU ACQUIRED A
4 COMPANY WITH \$30 BILLION OF ASSETS UNDER MANAGEMENT,
5 RIGHT?

01:48PM

6 A. YES.

7 Q. SO IT'S NOT LIKE YOU PAID 300 MILLION FOR
8 NOTHING, RIGHT?

9 A. NO.

10 Q. ACTUALLY -- I'LL --

01:48PM

11 A. WE BOTH UNDERSTAND WHAT YOU SAID.

12 Q. YOU ACTUALLY MEANT YES?

13 A. THIS IS THE SECOND TIME WE CAN AGREE ON
14 SOMETHING TODAY, MR. BRIAN.

15 Q. THAT'S TRUE. WE'RE MAKING PROGRESS.

01:48PM

16 NOW, YOU TESTIFIED THAT IN JUNE, JULY,
17 AND AUGUST, THAT ROUGH TIME PERIOD, SOME PEOPLE AT TCW
18 WERE RECOMMENDING THAT YOU TERMINATE MR. GUNDLACH; IS
19 THAT RIGHT?

20 A. I DID.

01:49PM

21 Q. BUT YOU WEREN'T THERE YET, RIGHT?

22 A. I WASN'T THERE.

23 I DON'T BELIEVE I SAID YET.

24 Q. AND TAKE A LOOK AT EXHIBIT 236 IN EVIDENCE.

25 THIS IS THE E-MAIL THAT MR. QUINN SHOWED
26 YOU EARLIER TODAY FROM JEAN-MARC CHAPUS ON AUGUST 1ST,
27 2009, IS IT NOT?

01:49PM

28 A. IT IS.

1 Q. I WANT TO JUST READ TO YOU THE LAST TWO
2 SENTENCES.

3 MR. CHAPUS WROTE, (READING):

4 AND WHILE VOLATILE, HE HAS
5 BEEN REMARKABLY CONSISTENT OVER THE
6 YEARS.

01:49PM

7 MY TIME FRAME ON THIS IS
8 IMMEDIATE, SO LET ME KNOW YOUR
9 DECISION.

10 DO YOU SEE THAT?

01:50PM

11 A. I DO.

12 Q. WELL, FIRST OF ALL, WHEN HE SAID THAT
13 MR. GUNDLACH HAD BEEN REMARKABLY CONSISTENT OVER THE
14 YEARS, YOU UNDERSTOOD THAT TO BE A REFERENCE TO
15 MR. GUNDLACH'S, WHAT DO I WANT TO CALL IT, BEHAVIOR
16 BOMBAST, RIGHT?

01:50PM

17 A. I THINK THAT'S WHAT MR. CHAPUS MEANT.

18 Q. AND YOU HAD LUNCH WITH MR. DAY THAT DAY,
19 AUGUST 1ST, DIDN'T YOU, SIR?

20 A. I DID.

01:50PM

21 Q. TAKE A LOOK AT EXHIBIT 234.

22 YOU CAN PUT THAT UP, DENNIS.

23 AND IF WE COULD ENLARGE THE E-MAIL AT
24 THE BOTTOM FROM MR. STERN TO MR. MUSTIER.

25 (READING):

01:51PM

26 I JUST WANTED YOU TO KNOW I
27 HAD LUNCH WITH ROBERT DAY, AND I
28 TOLD HIM THAT WHILE WE WERE TRYING

1 TO FIND A WAY TO WORK WITH AND
2 ACCOMMODATE JEFFREY, WE WERE NOT
3 OPTIMISTIC. I SAID WE HAD NOT
4 GIVEN UP HOPE, BUT THAT WE MAY HAVE
5 TO MOVE TO PLAN B.

01:51PM

6 DO YOU SEE THAT?

7 A. I DO.

8 Q. NOW, IS IT YOUR TESTIMONY, SIR, THAT PLAN B
9 WAS NOT A MOVEMENT TOWARD TERMINATING MR. GUNDLACH? IS
10 THAT YOUR TESTIMONY?

01:51PM

11 A. PLAN B WAS NOT -- WAS A SERIES OF
12 POSSIBILITIES. AND THEY INCLUDED A WHOLE NUMBER OF
13 DIFFERENT THINGS. THERE WASN'T A SPECIFIC PLAN B.

14 THAT'S MY TESTIMONY.

15 Q. THAT'S YOUR TESTIMONY.

01:52PM

16 AND YOU PUT PLAN B IN QUOTES, RIGHT?

17 A. IT'S IN QUOTES THERE, YEAH.

18 Q. AND YOU DON'T REMEMBER WHAT YOU TALKED TO
19 MR. DAY ABOUT, DO YOU, SIR?

20 A. DO I REMEMBER? I'M SORRY.

01:52PM

21 Q. DO YOU REMEMBER WHAT YOU TALKED TO MR. DAY
22 ABOUT AT LUNCH ON AUGUST 1ST, 2009?

23 A. NO, NOT SPECIFICALLY.

24 Q. I'M GOING TO --

25 MAY I APPROACH, YOUR HONOR?

01:52PM

26 I'M GOING TO DO SOME MORE ARTWORK.

27 I'M GOING TO CALL THIS ONE 2009

28 MEETINGS.

1 AND WE'LL MARK THIS AS --
2 THE COURT: 6161.

3
4 (MARKED FOR ID: EXHIBIT 6161.)

5
6 MR. BRIAN: 6161, THAT HAS A NICE RING TO IT.

01:52PM

7 Q. SO THE FIRST MEETING I ASKED YOU ABOUT WITH
8 MR. DAY, JUNE 29TH, YOU HAVE NO SPECIFIC RECALL OF
9 THAT, DID YOU, SIR?

10 A. THE NOTES THAT YOU SHOWED ME REFRESHED MY
11 RECOLLECTION.

01:53PM

12 Q. I'M ASKING YOU WHETHER -- WELL, I'LL ASK YOU
13 AGAIN.

14 AS YOU SIT HERE TODAY, DO YOU HAVE ANY
15 SPECIFIC RECOLLECTION OF WHAT YOU TALKED ABOUT WITH
16 MR. DAY? NOT WHAT THE NOTES SAY, WHAT YOU TALKED ABOUT
17 WITH MR. DAY, WHAT HE SAID, AND WHAT YOU SAID?

01:53PM

18 DO YOU REMEMBER?

19 A. GENERALLY SPEAKING, IT WAS ABOUT WHERE WE
20 STOOD THE DAY BEFORE I WAS TO TAKE OVER AS CEO, BUT I
21 DON'T SPECIFICALLY REMEMBER.

01:53PM

22 THE NOTES PRETTY MUCH INDICATE WHAT I
23 TALKED TO HIM ABOUT, YES.

24 Q. I'M GOING TO HOLD MY CHART UNTIL WE GET TO
25 YOUR DEPOSITION NOW TOMORROW ON THAT SUBJECT.

01:53PM

26 LET'S GO BACK TO AUGUST 1ST.

27 MR. QUINN: CAN I MOVE TO STRIKE THE COMMENT?

28 THE COURT: YES. THE COMMENT WILL BE

1 STRICKEN.

2 AND WE'RE GOING TO GO AN EXTRA FIVE
3 MINUTES OR 10 MINUTES TODAY, SO JUST KEEP GOING.

4 MR. QUINN: THAT'S FINE.

5 Q. BY MR. BRIAN: SO AUGUST 1ST, YOU SEND THIS
6 E-MAIL OFF ABOUT PLAN B.

01:53PM

7 AND THEN ONE OF THE NEXT THINGS YOU DO
8 IS, YOU SCHEDULE A MEETING ABOUT PROJECT G, DIDN'T YOU?

9 A. IF THERE'S A SEQUENCE THERE THAT MAY BE THE
10 CASE.

01:54PM

11 Q. TAKE A LOOK AT EXHIBIT 5199 IN EVIDENCE.

12 IF WE COULD -- THE E-MAIL AT THE BOTTOM
13 IS AN E-MAIL FROM YOU TO DAVID DEVITO ON AUGUST 5TH,
14 FOUR DAYS LATER, RIGHT?

15 A. IT IS.

01:54PM

16 Q. AND YOU WROTE -- FIRST OF ALL, WHO IS
17 MR. DEVITO?

18 A. HE WAS THE -- IS THE CHIEF ADMINISTRATIVE
19 OFFICER OF THE FIRM.

20 Q. SENIOR GUY?

01:54PM

21 A. SENIOR GUY, YES.

22 Q. REPORTS DIRECTLY TO YOU?

23 A. HE DOES.

24 Q. YOU WROTE, (READING):

25 DAVE, ON MONDAY, AUGUST 17TH,

01:55PM

26 WE MEET WITH BRENT AND HUSAAM AT

27 10:00 A.M., AND HAVE LUNCH WITH

28 CRAIG BLUM AT 12:30 P.M. THAT

1 SHOULD GIVE US PLENTY OF TIME TO
2 COORDINATE OUR POSITIONS.
3 IN ADDITION, AS YOU KNOW, WE'LL
4 MEET THAT AFTERNOON ON PROJECT G.

5 DO YOU SEE THAT?

01:55PM

6 A. YES.

7 Q. AND THAT'S WHAT YOU WROTE TO HIM, RIGHT?

8 A. I DID.

9 Q. SO YOU WOULD AGREE, WOULD YOU NOT, THAT
10 SOMETIME BETWEEN AUGUST 1ST, WHEN YOU TALKED ABOUT PLAN
11 B, AND AUGUST 5TH, WHEN YOU WROTE THIS E-MAIL, EXHIBIT
12 5199, THAT YOU SCHEDULED A MEETING ON PROJECT G, RIGHT?

01:55PM

13 A. YES.

14 Q. AND YOU SET IT FOR AUGUST 17TH, DIDN'T YOU?

15 A. THAT'S WHAT THE E-MAIL SAYS, YES.

01:55PM

16 Q. NOW, THAT MEETING HAD TO GET MOVED EVENTUALLY
17 TO ACCOMMODATE SCHEDULES TO AUGUST 27TH, DIDN'T IT?

18 A. THERE WERE A WHOLE SERIES OF MEETINGS, VERY
19 FLUID SITUATION, DURING THAT PERIOD OF TIME.

20 AND I'M NOT SURE THAT IT'S THAT MEETING.

01:56PM

21 WE WERE TALKING ABOUT PROJECT G REGULARLY. SUBGROUPS
22 OF US AND DIFFERENT PEOPLE TALKING ABOUT PROJECT G.

23 Q. TAKE A LOOK AT EXHIBIT 5224, IN EVIDENCE.

24 THIS IS MR. CONN'S FILE CALLED PROJECT
25 G; IS IT NOT?

01:56PM

26 A. IT IS.

27 Q. AND MR. CONN IS SOMEONE THAT YOU HIRED TO HELP
28 YOU IN ALL KINDS OF THINGS, RIGHT?

1 A. THAT'S TRUE.

2 Q. YOU HEARD -- MR. QUINN SAID YOUR RIGHT-HAND
3 PERSON, RIGHT?

4 A. THAT'S FAIR.

5 Q. LET'S TURN TO THE SECOND PAGE OF EXHIBIT 5224. 01:56PM

6 AND IF WE COULD JUST ENLARGE THE TOP,
7 WHO IS THERE, THE G MEETING, AND THEN THOSE NAMES.

8 IT SAYS G MEETING, MARC.

9 THAT'S PRESUMABLY A REFERENCE TO YOU, IS
10 IT NOT? 01:57PM

11 A. IT IS.

12 Q. MARK G IS A REFERENCE TO MARK GIBELLO?

13 A. IT IS.

14 Q. WHAT'S HIS POSITION AT THE COMPANY?

15 A. HE -- AT THAT POINT, HAD LEFT THE 01:57PM
16 INSTITUTIONAL MARKETING AREA, AND WAS IN CHARGE OF
17 STRATEGIC RELATIONSHIPS WITH THE FIRM, A MARKETING
18 PERSON.

19 Q. AND THE DAVE D IS A REFERENCE TO DAVID DEVITO,
20 RIGHT? 01:57PM

21 A. YES.

22 Q. AND THE JOE B IS A REFERENCE TO JOE
23 BURSCHINGER, CORRECT?

24 A. YES.

25 Q. AND M. CAHILL IS A REFERENCE TO MICHAEL 01:57PM
26 CAHILL, THE LEAD LAWYER AT THE COMPANY, RIGHT?

27 A. YES.

28 Q. ALL OF THOSE INDIVIDUALS ARE VERY SENIOR

1 PEOPLE AT THE COMPANY, RIGHT?

2 A. YES.

3 Q. NOW, IF WE CAN LOOK DOWN TOWARD THE BOTTOM,
4 THERE'S A PHRASE THAT SAYS UNFORTUNATELY.

5 IF YOU CAN HIGHLIGHT THAT, DENNIS. 01:58PM

6 (READING):

7 UNFORTUNATELY, WE'VE HAD TO
8 TERMINATE JG FOR CAUSE.

9 DO YOU SEE THAT?

10 A. I DO. 01:58PM

11 Q. NOW, ISN'T IT A FACT THAT AT THIS MEETING ON
12 AUGUST 27TH, SOMEONE IN ATTENDANCE, ONE OF THOSE VERY
13 SENIOR PEOPLE, WAS SCRIPTING OUT A PRESS RELEASE TO
14 GIVE WHEN YOU EFFECTUATED PROJECT G?

15 A. NO. 01:58PM

16 Q. OKAY.

17 YOUR HONOR, I WOULD LIKE TO PLAY THE
18 DEPOSITION CLIP AGAIN.

19 IT'S PART OF THE DESIGNATIONS, YOUR
20 HONOR. 01:59PM

21 IT'S PAGE 399, LINE 17 TO 18; 399, LINE
22 20; 399, LINE 22 TO 24; 400, LINE 10 TO LINE 24; 409,
23 LINE 11 TO 14; 410, LINE 13 TO 21; 410, LINE 22 TO LINE
24 24; AND 412, LINES 2 THROUGH 8.

25 THE COURT: YOU MAY PROCEED. 01:59PM

26

27 (VIDEO TAPE PLAYED OF MR. STERN'S DEPOSITION.)

28

1 Q. BY MR. BRIAN: MR. STERN, IS IT YOUR TESTIMONY
2 TODAY THAT YOU HAD DISCUSSIONS WITH SENIOR PEOPLE AT
3 TCW PRIOR TO SEPTEMBER 3, 2009, ABOUT THE POSSIBILITY
4 OF TERMINATING MR. GUNDLACH? IS THAT YOUR TESTIMONY?

5 A. THAT IS MY TESTIMONY.

02:04PM

6 Q. I'D LIKE TO PLAY ANOTHER CLIP, WE CALL CLIP 9.

7 IT BEGINS AT PAGE 419, LINES 6 THROUGH
8 LINE 20; AND THEN 422, LINES 14 TO 16; AND 422, LINES
9 18 TO 23.

10 MR. QUINN: YOUR HONOR, THIS IS, ONE, NOT
11 IMPEACHING.

02:04PM

12 AND TWO, IT'S CUMULATIVE.

13 IT'S MY UNDERSTANDING, YOU CAN'T ELICIT
14 LIVE TESTIMONY --

15 THE COURT: WELL, LET ME LOOK AT IT JUST
16 BEFORE WE GO THROUGH YOUR UNDERSTANDING.

02:04PM

17 WHAT WERE THE PAGE NUMBERS?

18 I DECIDED I WASN'T GOING TO TRY AND
19 WRITE THEM DOWN THIS TIME, SINCE WE WERE GOING SO
20 SMOOTHLY.

02:04PM

21 MR. BRIAN: IT'S AN ADMISSION AGAINST A PARTY.

22 THE COURT: JUST TELL ME THE DEPO PAGES,
23 PLEASE.

24 MR. BRIAN: WELL, OKAY.

25 MR. QUINN: MY ISSUE, YOUR HONOR, IS MY
26 UNDERSTANDING WAS, YOU COULDN'T ELICIT THE LIVE
27 TESTIMONY, AND THEN PLAY THE VIDEO SAYING THE SAME
28 THING.

02:04PM

1 THE COURT: WELL, I DON'T HAVE IT IN FRONT OF
2 ME.

3 WELL, WE DID IT FOR AN HOUR AND A HALF,
4 WITH MR. GUNDLACH.

5 WHAT ARE THE DEPO PAGE NUMBERS?

02:05PM

6 MR. BRIAN: PAGE 419, LINE SIX TO 419, LINE
7 20; 422 LINE 14 --

8 THE COURT: JUST A MINUTE.

9 MR. BRIAN: SORRY.

10 AND THEN 422 LINES 14 TO 16, AND 422, 18
11 TO 23.

02:05PM

12 THE COURT: ALL RIGHT. WHAT WE'RE GOING TO DO
13 IS RECESS. AND WE'LL TAKE OUR EVENING OFF.

14 YOU CAN COME BACK TOMORROW, AND I'LL
15 DETERMINE WHETHER WE'RE GOING TO LOOK AT MOVIES OR
16 MR. BRIAN IS GOING TO ASK MORE QUESTIONS.

02:05PM

17 ALL RIGHT. HAVE A NICE EVENING.

18 DON'T DISCUSS THE MATTER AMONG
19 YOURSELVES OR WITH ANYONE ELSE, OR FORM ANY CONCLUSIONS
20 OR OPINIONS CONCERNING ANY ASPECT OF THE CASE UNTIL YOU
21 HAVE HEARD ALL THE TESTIMONY AND IT'S BEEN SUBMITTED TO
22 YOU.

02:05PM

23 THANK YOU. HAVE A NICE EVENING.

24

25 (AT 2:06 P.M. THE FOLLOWING
26 PROCEEDINGS WERE HELD IN OPEN
27 COURT OUT OF THE PRESENCE OF
28 THE JURY:)

1
2 MR. BRIAN: MAY THE WITNESS BE EXCUSED, YOUR
3 HONOR?

4 THE COURT: YES.

5 MR. STERN, YOU MAY BE EXCUSED.

02:06PM

6 THE WITNESS: THANK YOU.

7
8 (WITNESS EXITS THE COURTROOM.)

9
10 THE COURT: ALL RIGHT. WE'RE OUT OF THE
11 PRESENCE OF THE JURY.

02:06PM

12 LET ME JUST SAY, MR. QUINN AND
13 MR. BRIAN, YOU ARE BOTH OUTSTANDING LAWYERS. YOU ARE
14 VERY QUICK, PROBABLY QUICKER THAN I AM. BUT YOU ARE
15 GOING TO HAVE TO GIVE ME A CHANCE TO RULE ON THESE
16 THINGS.

02:06PM

17 AND I DON'T EXPECT THE LITTLE OUTBREAKS
18 AMONG YOU OR BETWEEN THE TWO OF YOU IN THE PRESENCE OF
19 THE JURY.

20 YOU CAN STATE YOUR OBJECTION. I'LL RULE
21 ON IT. AND IF I NEED SOME INFORMATION, I'LL ASK YOU
22 FOR IT. BUT I DON'T WANT YOU GOING AT ONE ANOTHER, OR
23 BASICALLY MAKING SPEAKING OBJECTIONS IN THE PRESENCE OF
24 THE JURY. WE DON'T NEED IT. YOU KNOW BETTER.

02:06PM

25 AND YOU KNOW IT'S KIND OF, WE ALL PRESS
26 THE ENVELOPE. YOU GET AWAY WITH WHAT YOU CAN. IT'S
27 NOT GOING TO HAPPEN ANYMORE.

02:07PM

28 MR. QUINN: UNDERSTOOD.

1 THE COURT: THANK YOU.

2 ALL RIGHT. ANYTHING ELSE?

3 MR. BRIAN: WELL, ON THE POINT, YOUR HONOR.

4 THE COURT: YEAH.

5 MR. BRIAN: THE QUESTION FOR MR. STERN, AS IT
6 WAS WITH MR. GUNDLACH, IS NOT -- IT'S NOT A NARROWED
7 QUESTION OF DOES A PARTICULAR DEPOSITION PASSAGE
8 IMPEACH, IN THE SENSE OF BEING INCONSISTENT.

02:07PM

9 HE IS THE CEO OF A PARTY OPPONENT. AND
10 JUST LIKE MR. QUINN DID, WHERE HE PLAYED AN HOUR AND A
11 HALF OF MR. GUNDLACH'S DEPOSITION TESTIMONY, AND THEN
12 WENT THROUGH THE SAME GROUNDS; WE'RE DOING IT, IN
13 EFFECT, SORT OF THE OPPOSITE, WHERE I'M ELICITING
14 QUESTIONS ON CROSS, AND THEN I'M BRINGING OUT STUFF.

02:07PM

15 NOW, DOES IT IMPEACH HIS CREDIBILITY?
16 OF COURSE, IT IMPEACHES HIS CREDIBILITY. WE DON'T
17 THINK HE WAS TRUTHFUL AT HIS DEPOSITION, WE DON'T THINK
18 HE'S TRUTHFUL NOW.

02:07PM

19 SO EVEN THOUGH THE TESTIMONY, ON ITS
20 FACE, COULD APPEAR CONSISTENT, ALTHOUGH, IT'S ACTUALLY
21 SLIGHTLY DIFFERENT. IT DOESN'T MATTER, BECAUSE IT GOES
22 DIRECTLY TO HIS CREDIBILITY AS A WITNESS; AND I WOULD
23 SUBMIT, OF THE PERSON MOST SIGNIFICANT TO THE TRIAL,
24 OTHER THAN POSSIBLY MR. GUNDLACH.

02:08PM

25 THE COURT: MR. QUINN, DO YOU WANT TO BE
26 HEARD?

02:08PM

27 MR. QUINN: JUST, YOUR HONOR, THE POINT IS, IF
28 IT'S NOT IMPEACHING, AND IT'S THE SAME THING THAT HE'S

1 ALREADY TESTIFIED TO, MY UNDERSTANDING OF THE GROUND
2 RULES WERE, YOU DON'T GET TO ELICIT THE SAME TESTIMONY
3 TWICE, ONCE LIVE AND ONCE ON VIDEOTAPE. IT'S WHAT HE'S
4 ALREADY TESTIFIED TO.

5 THE COURT: WELL, I GUESS WHAT I'VE SEEN IS 02:08PM
6 NOT A HUNDRED PERCENT CONSISTENT, IN TERMS OF THE PRIOR
7 TESTIMONY, THE DEPOSITION TESTIMONY WAS SHOWN IN THE
8 EARLIER GROUP.

9 BUT I DID WRITE DOWN PAGE AND LINE
10 NUMBERS, AND I WAS SINCERE WITH THE JURY WHEN I TOLD 02:08PM
11 THEM I'M GOING TO GO LOOK AT IT, AND WE'LL DECIDE IN
12 THE MORNING WHETHER WE'LL ALLOW SOME OR NOT.

13 I'LL LOOK AT IT.

14 MR. QUINN: ALL RIGHT.

15 THE COURT: THE OTHER SIDE OF THAT COIN IS, I 02:09PM
16 DO VAGUELY REMEMBER YOUR ARGUMENT, OR IT MIGHT HAVE
17 BEEN MR. MADISON'S; BUT THAT THE DEPOSITION OF A PARTY
18 OPPONENT COULD BE USED FOR ANY PURPOSE AT ANY TIME.

19 AND SO, UNLESS IT'S A CUMULATIVE
20 OBJECTION, WHICH IS THE ONE THAT I THINK YOU ARE 02:09PM
21 MAKING --

22 MR. QUINN: YEAH.

23 THE COURT: AND THIS IS PRETTY IMPORTANT
24 TESTIMONY. AND HE IS A PRETTY IMPORTANT WITNESS. AND
25 I THINK I GAVE YOU CONSIDERABLE LEEWAY WITH 02:09PM
26 MR. GUNDLACH. AND I HOPE TO HAVE A BALANCED APPROACH
27 IN THIS CONTEXT, TOO; SO WE'LL SEE WHERE WE ARE.

28 MR. QUINN: I APPRECIATE THAT.

1 YOUR HONOR, COULD I JUST MENTION ONE
2 OTHER THING BRIEFLY THAT MAY COME UP TOMORROW? IT MAY
3 NOT COME UP TILL NEXT MONDAY.

4 THE COURT WILL RECALL THAT I WASN'T
5 CRAZY ABOUT THE IDEA OF DOING COMPARATIVE ANALYSES OF
6 THE PERFORMANCE OF THE DOUBLELINE FUND.

02:09PM

7 THE WITNESS: RIGHT.

8 MR. QUINN: AND THE TCW FUND.

9 THE COURT: RIGHT.

10 MR. QUINN: AND OUR OBJECTION TO THAT WAS
11 OVERRULED.

02:10PM

12 AND AS I SAID AT THE TIME, THAT I THINK
13 THAT REQUIRES THAT WE GO A LITTLE BIT INTO NOW WHAT THE
14 COMPOSITION OF THE FUNDS ARE. I ARGUED AT THE TIME, ON
15 THE MOTION IN LIMINE, THAT WE'RE COMPARING APPLES AND
16 ORANGES, AND NOT APPLES AND APPLES.

02:10PM

17 I JUST WANT TO ALERT THE COURT THAT I'M
18 GOING TO BE ADDUCING SOME EVIDENCE OF THAT MR. -- THE
19 DOUBLELINE FUND IS COMPOSED OF MANY MORE OF THESE
20 MORTGAGE DERIVATIVES, IS THEREFORE MORE VOLATILE, HAS A
21 DIFFERENT RISK PROFILE; THAT WHEN TIMES ARE GOOD, ON
22 INTEREST RATES WHICH IS IMBEDDED IN SOME OF THESE
23 MORTGAGE DERIVATIVES TURNS OUT FINE, THEN YOU ARE GOING
24 TO BENEFIT FROM THAT.

02:10PM

25 BUT THERE'S A LEVERAGED DOWNWARD EFFECT
26 IF THE INTEREST RATES GO IN THE OTHER DIRECTION. AND
27 MR. GUNDLACH HAS A HISTORY OF THAT.

02:10PM

28 MR. GUNDLACH HAS HAD FUNDS AT TCW WHICH

1 WERE HEAVILY LADEN WITH THESE MORTGAGE DERIVATIVES, AND
2 THEY HAVEN'T DONE WELL.

3 THE COURT: DOESN'T THAT GET US IN, IF WE LET
4 OURSELVES GO DOWN THIS ABYSS? AS I SEE IT, ON BOTH
5 SIDES, DOESN'T THAT REALLY CHANGE THE WHOLE CONCEPT
6 THAT THERE WAS SOMETHING -- I MEAN, YOU'VE GOT A TRADE
7 SECRETS CASE. AND YOU ARE SAYING THEY GOT UP AND
8 RUNNING, AND THEY WERE ABLE TO DO ALL THESE THINGS
9 BECAUSE THEY TOOK THESE TRADE SECRETS.

02:11PM

02:11PM

10 IF THERE'S A FUNDAMENTAL DIFFERENCE
11 BETWEEN THE INVESTMENT STRATEGY THAT'S BEING USED,
12 WHERE ARE THE APPLES AND THE APPLES AND THE ORANGES AND
13 THE ORANGES?

14 MR. QUINN: WELL, YOU CAN HAVE A COMPLETELY
15 DIFFERENT INVESTMENT STRATEGY. BUT TO USE THE SAME
16 ANALYTICS TO IDENTIFY THE SECURITIES TO MEET THAT
17 STRATEGY.

02:11PM

18 BUT MY POINT IS, IT'S NOT FAIR TO
19 LOOK -- IF YOU ARE ASSESSING -- IF YOU ARE COMPARING
20 THESE TWO, IT'S NOT FAIR TO DISREGARD THE RISK AND THE
21 VOLATILITY THAT'S INHERENT IN THAT.

02:11PM

22 OUR VIEW IS THAT THE DOUBLELINE FUND,
23 WHICH IS 20 PERCENT, WE BELIEVE, OF THESE DERIVATIVE
24 INSTRUMENTS IS A RISKIER PROPOSITION.

25 TCW'S COMPOSED THREE PERCENT, MUCH LESS
26 RISKY. AND THAT HAS CONSEQUENCES FOR --

02:12PM

27 THE COURT: I THOUGHT YOUR SUGGESTION AT THE
28 OUTSET OF THIS TRIAL, IN YOUR OPENING STATEMENT WAS

1 THAT THEY TOOK THE COLONEL SANDERS RECIPE. AND WITH
2 THAT RECIPE, THEY WERE ABLE TO DUPLICATE AND DO EXACTLY
3 THE SAME THING.

4 I'M JUST HAVING A -- I THINK WE'RE GOING
5 DOWN A PATH THAT WE SHOULDN'T GO VERY FAR ON.

02:12PM

6 AND I WOULD GIVE YOU SOME LEEWAY. WE'VE
7 ALREADY OPENED THE DOOR A LITTLE BIT, BUT WE SHOULDN'T
8 BE SPENDING A LOT OF TIME ON THE UNDERLYING INVESTMENT
9 STRATEGIES OF THESE TWO COMPANIES, POST DECEMBER 4,
10 2009.

02:12PM

11 NOW, LET ME HEAR JUST BRIEFLY FROM
12 MR. BRIAN.

13 MR. BRIAN: I THINK THIS IS MR. HELM'S ISSUE,
14 YOUR HONOR.

15 MR. HELM: IF I MAY, YOUR HONOR, I THINK IT'S
16 JUST FOLLOWING UP ON WHAT YOUR HONOR SAID.

02:12PM

17 THE RELEVANCE OF THE PERFORMANCE DATA
18 THAT WE PUT FORWARD WAS IF YOU GO TO ONE COLONEL
19 SANDERS, AND YOU GO TO THE OTHER ONE, IT'S GOING TO
20 TASTE THE SAME IF THE RECIPE IS THE SAME.

02:13PM

21 AND YOU WOULD, THEREFORE, EXPECT THAT
22 THE PERFORMANCE WOULD BE THE SAME IF THEY WERE STEALING
23 THESE TRADE SECRETS AND RELYING ON THEM. THE
24 PERFORMANCE WAS MUCH DIFFERENT.

25 AND NOW THEY COME IN AND SAY, WELL,
26 ACTUALLY IT TURNS OUT THAT THE FUNDS ARE STRUCTURED
27 DIFFERENTLY. AND IT LOOKS GOOD NOW, BUT IT ALL MAY
28 COME TO A TERRIBLE END AT SOME POINT IN THE FUTURE.

02:13PM

1 WHAT DOES THAT HAVE TO DO WITH THE POINT
2 WE'RE MAKING? I THINK IT'S A COLLATERAL ISSUE.

3 THE COURT: THE POINT IS, YOU CHOOSE OUR OWN
4 POISON. AND YOU SAW IN OPENING THAT IF IT'S THE
5 FORMULA WE'RE GOING TO SHOW ONE FUND MADE 19 PERCENT,
6 THE OTHER ONE MADE EIGHT. AND YOU'VE GOT TO ACCEPT
7 SOMETHING ON THE OTHER SIDE OF THAT, SAYING, WELL, IT
8 ISN'T ALL JUST THE FORMULA.

02:13PM

9 BUT I DO RECALL, AND I THINK THAT'S WHY
10 I LET THEM GO THERE.

02:13PM

11 I'LL LET YOU, MR. QUINN, GO INTO IT A
12 LITTLE BIT. BUT I'M NOT GOING TO SPEND A LOT OF TIME
13 ON THIS. AND I'M NOT EVEN SURE THAT MR. STERN IS THE
14 CORRECT PERSON, IN TERMS OF THAT TESTIMONY.

15 MR. QUINN: HE'S NOT.

02:14PM

16 THE COURT: SO WE'RE NOT DOING IT WITH
17 MR. STERN?

18 MR. QUINN: NO, SIR.

19 THE COURT: WE'RE DOING IT WITH SOMEONE ELSE
20 TOMORROW, IF WE FINISH WITH MR. STERN.

02:14PM

21 MR. QUINN: YES, YOUR HONOR.

22 MR. BRIAN: AND I DON'T INTEND TO OPEN THE
23 DOOR WITH MR. STERN ON THIS ISSUE, SO I DON'T THINK IT
24 WILL COME UP WITH MR. STERN.

25 THE COURT: ARE YOU GOING TO FINISH UP WITH
26 MR. STERN IN THE MORNING, MR. BRIAN?

02:14PM

27 MR. BRIAN: I THINK SO, YEAH.

28 THE COURT: OKAY. WHAT ELSE?

1 MR. MADISON: I HAVE THREE OR FOUR THINGS.

2 AND I WON'T BE HERE TOMORROW, AS YOU
3 WILL RECALL, YOUR HONOR, SO I'VE GOT TO GET MY --

4 THE COURT: AND YOU HAVE MADE A LIST.

5 MR. MADISON: IT'S NOT ONEROUS, YOUR HONOR. 02:14PM

6 MR. BRIAN: THE WORDS ARE, "I DO."

7 THE COURT: ALL RIGHT.

8 GO AHEAD.

9 MR. MADISON: SO FIRST OF ALL, I DO HAVE THE
10 TWO BRIEFS ON THE UNDERCOVER RECORDING THAT WAS MADE OF 02:14PM
11 THE REMARKS, AND I'LL HAND THOSE UP TO THE CLERK.

12 THE COURT: I HAD ONE THAT WAS DELIVERED THIS
13 MORNING.

14 THE OTHER ONE IS NOW IN. I'LL LOOK AT
15 THEM TONIGHT. 02:14PM

16 MR. MADISON: I HAVE JUST COURTESY COPIES FOR
17 YOU.

18 NUMBER TWO, WE HAVE AGREED -- REMEMBER
19 THIS MORNING WE TALKED ABOUT THE TWO GREG WARD
20 EXHIBITS -- 02:14PM

21 THE COURT: RIGHT.

22 MR. MADISON: -- THAT WERE BRIEFED?

23 THE COURT MAY ALSO RECALL, I HAD MOVED
24 IN A NUMBER OF THE EXHIBITS THAT WE DISPLAYED DURING
25 HIS DEPOSITION. THIS MAY SHOCK YOU, BUT WE ACTUALLY 02:15PM
26 HAVE AGREEMENT ON MOST OF THOSE. AND I'D LIKE TO READ
27 THOSE INTO THE RECORD NOW, IF I COULD, TO BE ADMITTED.

28 THE COURT: JUST A MINUTE.

1 AND THESE ARE IN ADDITION TO THE NOTES
2 THAT I DEALT WITH THIS MORNING?

3 MR. MADISON: YES, YOUR HONOR.

4 THE COURT: OKAY.

5 THE EXHIBITS ARE?

02:15PM

6 MR. MADISON: THE ONES THAT WE'VE AGREED ON
7 ARE 347, 411, 414, 421, 431, 452, 453, 464, 468, 483,
8 484, 491, 507, 508, 513, 514, AND 885.

9 OH, AND THERE ARE THREE MORE, YOUR
10 HONOR, 832, 886, AND 1063. AND THEN IN ADDITION TO
11 THOSE ABOUT WHICH THERE'S AN AGREEMENT ON --

02:16PM

12 THE COURT: SO THEY'LL BE ADMITTED WITHOUT
13 OBJECTION, IS THAT CORRECT, MR. HELM OR MR. WEINGART?

14 MR WEINGART: YES, YOUR HONOR, THAT'S CORRECT.

15 MR. MADISON: THEN THERE WAS ONE THAT WE HAD
16 MOVED. AND I WILL WITHDRAW THAT NOW. I DON'T KNOW IF
17 YOU NEED THE NUMBER FOR THE RECORD OR NOT.

02:16PM

18 THE COURT: WE ADMITTED IT?

19 MR. MADISON: WE DID NOT ADMIT IT.

20 WE MOVED IT; THEY OBJECTED; I'M
21 WITHDRAWING IT.

02:16PM

22 THE COURT: THEN IT'S NOT AN ISSUE.

23 MR. WEINGART: MAY I INQUIRE OF COUNSEL WHICH
24 ONE THAT IS, FOR MY LIST.

25 MR. MADISON: IT WAS 479, YOUR HONOR.

02:16PM

26 AND WE'LL MOVE THAT THROUGH ANOTHER
27 WITNESS.

28 THEN THERE WERE THREE OTHERS THAT WE

1 MOVED THAT WE WOULD STILL MOVE ON, AND THAT IS 526 AND
2 528. THOSE TWO ARE E-MAILS BY AND BETWEEN MR. WARD.

3 AND I KNOW IN AT LEAST ONE CASE, IT'S
4 MR. SANTA ANA. AND IN HIS DEPOSITION, HE DID ESTABLISH
5 THE FOUNDATION FOR THESE E-MAILS. THESE WERE PRODUCED
6 BY DOUBLELINE IN THE LITIGATION. WE DID NOT PLAY THE
7 AUTHENTICATION IN HIS DEPOSITION ON THOSE EXHIBITS.

02:17PM

8 THE COURT: WELL, WHAT IS THE OBJECTION ON
9 THOSE TWO?

10 MR. WEINGART: WITHOUT GETTING INTO THE GUTS
11 OF IT, MR. MADISON SAID THAT THEY WEREN'T OFFERED FOR
12 THE TRUTH.

02:17PM

13 I ASKED WHAT THEY WERE OFFERED FOR, AND
14 WE DIDN'T HAVE AN OPPORTUNITY TO FINISH THAT
15 DISCUSSION. SO --

02:17PM

16 MR. MADISON: ACTUALLY, THOSE TWO WERE
17 ADMISSIONS AND CO-CONSPIRATOR DECLARATIONS.

18 THEY ARE THE DEFENDANTS', BASICALLY, AND
19 MR. WARD.

20 MR WEINGART: YOUR HONOR, I DON'T HAVE THE
21 EXHIBITS IN FRONT OF ME NOW.

02:17PM

22 THE COURT: YOU ARE SAYING THEY ARE NOT
23 OFFERED FOR THE TRUTH, YOU ARE CALLING THEM ADMISSIONS,
24 AND YOU ARE OFFERING THEM FOR THE TRUTH.

25 MR. MADISON: I WAS DISAGREEING.

02:18PM

26 THE COURT: I'LL PULL THEM OUT AND TAKE A LOOK
27 AT THEM.

28 MR. MADISON: AND THEN THERE WAS ONE OTHER ONE

1 THAT WAS UNCLEAR WHETHER THE DEFENSE WAS OBJECTING OR
2 NOT, AND THAT WAS 714. AND THAT WAS ANOTHER DOUBLELINE
3 PRODUCED DOCUMENT THAT WE DID ESTABLISH THE FOUNDATION.

4 MR WEINGART: AND I DON'T HAVE THAT ONE IN
5 FRONT OF ME, YOUR HONOR.

02:18PM

6 THE COURT: WHY DON'T YOU TAKE A LOOK AT THEM,
7 AND WE'LL TALK ABOUT -- GET A SURROGATE WHILE YOU GO
8 AHEAD AND GET MARRIED, OR GIVE US YOUR PHONE NUMBER.

9 MR. MADISON: I'LL STILL BE ALIVE, YOUR HONOR.

10 MR WEINGART: SO TO CLOSE THE LOOP ON THAT,
11 YOUR HONOR, THERE WAS ALSO ONE DOCUMENT, 2245, THAT WAS
12 MENTIONED IN MR. WARD'S TESTIMONY THAT WE WERE
13 OFFERING, THAT I UNDERSTAND MR. MADISON OBJECTS TO.

02:18PM

14 MR. MADISON: AND THAT'S A HEARSAY E-MAIL
15 EXCHANGE BETWEEN MR. WARD AND MR. GUNDLACH THAT WE DO
16 OBJECT TO.

02:18PM

17 MR. WARD TESTIFIED ABOUT IT IN THE DEPO,
18 SO IT'S ALSO CUMULATIVE AT SOME POINT.

19 THE COURT: OKAY. WELL, I'LL TAKE A LOOK AT
20 THEM.

02:18PM

21 I MAKE NOTES OF THEM. I'VE GOT ABOUT
22 FOUR OR FIVE. WE'LL HAVE TO PICK ALL THESE UP BEFORE
23 WE'RE DONE, BUT WE KNOW THEY ARE ON THE TABLE.

24 MR. MADISON: WE GOT A LOT OF THEM OUT OF THE
25 WAY.

02:19PM

26 THE COURT: RIGHT.

27 MR. MADISON: WHILE WE'RE ON MR. WARD, YOUR
28 HONOR, THERE WAS A Q AND A THAT THE COURT MAY RECALL

1 THAT WE PLAYED DURING HIS DEPOSITION THAT WE HAD
2 ACTUALLY OBJECTED TO.

3 AND THE COURT OVERRULED -- WE OBJECTED
4 AT THE DEPOSITION, AND THEN WE OBJECTED WHEN THE
5 DESIGNATIONS WERE PREPARED.

02:19PM

6 AND IF I COULD JUST READ THIS. IT'S AT
7 PAGE 362, LINES 20 THROUGH 25. AND THEN THE ANSWER IS
8 ON 363, LINES 2 TO 3.

02:19PM

9 "Q IN THE SECOND HALF OF 2009,
10 DID IT EVER CROSS YOUR MIND AS TO
11 WHETHER YOU HAD A RIGHT TO MAKE
12 PREPARATIONS TO START A NEW BUSINESS
13 WHILE YOU WERE STILL AT TCW WITHOUT
14 VIOLATING ANY DUTIES YOU OWED TO
15 TCW? DID THAT ENTER YOUR MIND?

02:19PM

16 A IT DID. I CONSULTED. I
17 GOT ADVICE, AND I CONCLUDED IT WAS
18 NOT A PROBLEM."

19 THE COURT: YEAH, THERE ARE TWO PORTIONS OF
20 HIS DEPOSITION WHERE HE RELATED TO THAT VERY SUBJECT.

02:20PM

21 THERE'S ANOTHER ONE.

22 I THINK I ALLOWED THEM BOTH.

23 MR. MADISON: I ONLY RECALL THAT ONE.

24 THE COURT: I RECALL ANOTHER ONE WHERE A
25 REFERENCE -- MAYBE IT WAS ON THE STAND, WHEN HE
26 TESTIFIED THAT HE HAD CONSULTED COUNSEL.

02:20PM

27 MR. MADISON: WELL, MR. WARD DIDN'T TESTIFY
28 LIVE, YOUR HONOR.

1 BUT WHAT YOU MAY BE THINKING OF, IS
2 THERE WAS ANOTHER PART OF THE DEPOSITION WHERE HE
3 TALKED ABOUT ANOTHER SUBJECT MATTER THAT HE HAD
4 CONSULTED WITH LAWYERS ABOUT. AND YOU MAY RECALL THAT
5 IN THAT EXCHANGE, HE SORT OF WAS A BIT PERPLEXED, IT
6 SEEMED, ABOUT HOW TO ANSWER THE QUESTION WITHOUT GOING
7 INTO THE COMMUNICATIONS.

02:20PM

8 WE DON'T HAVE A PROBLEM WITH THAT ONE.
9 THIS ONE, WE DO, THOUGH, BECAUSE
10 ESSENTIALLY, AFTER -- FIRST OF ALL, HE ANSWERED THE
11 QUESTION.

02:20PM

12 DID IT ENTER YOUR MIND?

13 HE SAID IT DID, PERIOD.

14 THE COURT: RIGHT.

15 MR. MADISON: THEN IT GOES ON, AND VOLUNTEERS,
16 I CONSULTED, I GOT ADVICE, AND I CONCLUDED IT WAS NOT A
17 PROBLEM.

02:20PM

18 AND OF COURSE, THERE WERE OBJECTIONS TO
19 ANY ATTEMPT TO FIND OUT WHAT ATTORNEY/CLIENT
20 COMMUNICATIONS THERE WERE. SO WE WOULD ASK THAT THAT
21 SECOND SENTENCE OF THAT ANSWER BE STRICKEN, YOUR HONOR.

02:21PM

22 MR. BRIAN: MAY I RESPOND TO THIS, YOUR HONOR?

23 THE COURT: SURE. WE'VE GOT ALL DAY.

24 WE USUALLY STOP AT 2:00, BUT I'M HERE.

25 MR. BRIAN: I ACTUALLY THOUGHT MR. MADISON HAD
26 TO LEAVE FOR THE REHEARSAL OR SOMETHING.

02:21PM

27 BUT THIS IS IN THE NATURE OF A MOTION
28 FOR RECONSIDERATION. WE WENT THROUGH THIS. WE HAD

1 DEPO DESIGNATIONS, OBJECTIONS. IT WAS SUBMITTED TO
2 YOUR HONOR. IT'S NOW BEEN PLAYED TO THE JURY. AND
3 IT'S IMPROPER, PROCEDURALLY, TO RAISE IT THIS WAY.
4 THAT'S MY FIRST POINT.

5 THE SECOND POINT IS THAT HIS TESTIMONY
6 IS PERFECTLY APPROPRIATE. WE HEARD MR. STERN TWICE IN
7 THE LAST TWO DAYS, GET RIGHT UP TO THE EDGE OF
8 CONVERSATIONS WITH HIS LAWYERS ABOUT WHETHER SOMETHING
9 WAS AN AT-WILL EMPLOYEE, ABOUT WHERE HE GOT THE
10 INFORMATION ABOUT THE MONITORING OF THE TAPES. AND HE
11 WAS ALLOWED TO TESTIFY ABOUT WHAT HE CONCLUDED.

02:21PM

02:22PM

12 THAT'S THE SAME THING THAT MR. WARD DID.
13 THERE'S NO USING OF THE PRIVILEGE, AS A SWORD -- THAT
14 WAS PERFECTLY APPROPRIATE AND CONSISTENT WITH THE
15 TESTIMONY WE'VE ALREADY ELICITED.

02:22PM

16 BUT MORE IMPORTANTLY, IF MR. MADISON
17 WANTS TO MAKE A MOTION FOR RECONSIDERATION, SO BE IT.
18 BUT AT THIS POINT, IT'S BEEN RULED ON AND PLAYED TO THE
19 JURY.

20 THE COURT: AND IT'S BEEN ADMITTED.

02:22PM

21 I OVERRULED THE OBJECTION, AND IT'S A
22 DONE DEAL, AS FAR AS I SEE IT. I'M REALLY NOT GOING TO
23 PUT A LOT OF TIME INTO THIS, BUT I THINK I'M WILLING TO
24 WRITE IT DOWN AND LOOK AT IT.

25 MR. MADISON, IT'S BEHIND US. WE'RE
26 MOVING ON.

02:22PM

27 MR. MADISON: PROCEDURALLY, IT'S A MOTION TO
28 STRIKE, YOUR HONOR. THERE IS SUCH A MOTION.

1 THE COURT: OKAY.

2 MR. MADISON: AND I WOULD JUST SAY IF MR. WARD
3 WERE TO COME INTO COURT THEN, I TAKE IT THAT WHAT WE'RE
4 HEARING IS THAT SINCE THEY WANT THAT TESTIMONY, THERE'S
5 BEEN A WAIVER OF THE PRIVILEGE, AND WE COULD ASK HIM,
6 WHO HE TALKED TO, WHO HE GOT THAT ADVICE, WHAT --

02:22PM

7 THE COURT: MAYBE. MAYBE NOT.

8 I'M NOT SURE THAT THE TESTIMONY
9 NECESSARILY IMPLIES OR CONSTITUTES A WAIVER OF THE
10 PRIVILEGE.

02:23PM

11 NOW, MR. WARD IS NO LONGER EMPLOYED BY
12 DOUBLELINE. HE'S NOT A PARTY. AND I MEAN, I'D HAVE TO
13 GO INTO THAT AND LOOK AT IT. BUT I'M NOT SURE THAT
14 WHAT I'VE SEEN CONSTITUTES A WAIVER OF THE PRIVILEGE.
15 THERE WAS NO INQUIRY AS TO THE COMMUNICATION, ONLY THE
16 FACT OF THE COMMUNICATION, AND THE FACT HE OBTAINED
17 ADVICE, AND HE REACHED A CONCLUSION.

02:23PM

18 MR. BRIAN: YOUR HONOR, MY JUDGMENT --

19 THE COURT: I DON'T REALLY WANT TO SPEND A LOT
20 OF TIME ON THIS.

02:23PM

21 MR. MADISON: THE QUESTION WAS, DID IT ENTER
22 YOUR MIND. AND THEN HE BLURTS OUT THAT HE GOT ADVICE
23 AND CONCLUDED IT WAS OKAY.

24 THAT'S A LOT OF GROUND TO COVER.

25 THE COURT: WELL, BUT IT WAS IN THERE. AND IF
26 I GO BACK AND LOOK AT THE OBJECTION THAT YOU MADE TO
27 THAT PASSAGE --

02:23PM

28 MR. MADISON: YES, YOUR HONOR.

1 THE COURT: -- AND SEE WHAT IT WAS --

2 MR. MADISON: I'D WELCOME THAT.

3 THE COURT: I'LL TAKE A LOOK AT THAT.

4 MR. MADISON: THE FINAL QUESTION THAT I HAVE
5 FOR YOUR HONOR IS WE HAVE RECEIVED SOME NOTES FROM THE
6 JURY -- YOUR HONOR HAS, DURING THE TRIAL.

02:23PM

7 THE COURT: I HAVE ONE HERE THAT'S A DILLY.
8 I'M GLAD YOU BROUGHT IT UP.

9 MR. MADISON: OKAY. MOST OF THEM ARE PRETTY
10 SHORT, BUT I KNOW THERE WAS ONE THAT WAS A LITTLE
11 LENGTHIER.

02:24PM

12 AND TYPICALLY, THOSE ARE MARKED AS
13 COURT'S EXHIBITS, AND THE PARTIES ARE PROVIDED WITH
14 COPIES.

15 MAY WE HAVE COPIES OF THE NOTES?

02:24PM

16 THE COURT: ABSOLUTELY. AT THE CONCLUSION OF
17 THE TRIAL.

18 I HAVE ONE HERE, AND I'M NOT SURE IF
19 THIS IS -- IT DOESN'T REFLECT THE JUROR THAT GAVE IT TO
20 ME. BUT IT SAYS, (READING):

02:24PM

21 WILL ADMITTED EXHIBITS OF THE
22 SQL VIEW COMPARISONS CONTAIN THE
23 WHERE CLAUSES, JOIN FIELDS, OR JUST
24 SELECT FIELDS AND
25 COMMENTED/DISABLED GRANTS?

02:24PM

26 THIS IS SOMEBODY THAT KNOWS MORE ABOUT
27 AND IS RELATING, I BELIEVE --

28 MR. QUINN: YOUR HONOR, MY POINT.

1 THE COURT: MORE ABOUT THE -- THESE COMPUTER
2 THINGS THAN I DO.

3 AND I THINK IT RELATES TO THE TESTIMONY
4 OF MR. CHRISTIAN --

5 MR. QUINN: HICKS.

02:25PM

6 THE COURT: -- HICKS. AND THE FEW EXHIBITS.

7 I'M NOT SURE HOW WE ANSWER THAT. AND
8 YOU ALL CAN --

9 MR. MADISON: MAY WE KNOW WHICH JUROR?

10 THE COURT: I DON'T KNOW. IT DOESN'T HAVE ANY
11 INDICATION --

02:25PM

12 MR. MADISON: OKAY.

13 THE COURT: -- OF WHICH JUROR MADE THAT
14 QUESTION.

15 MR. QUINN: WE'RE SURE IT'S A JUROR?

02:25PM

16 MR. BRIAN: THAT'S A NOTE I COULD HAVE WRITTEN
17 TO MR. WEINGART.

18 THE COURT: WELL, WITH THAT, I THINK THAT'S A
19 GOOD NOTE TO END ON.

20 I'LL SEE YOU ALL IN THE MORNING.

02:25PM

21 MR. HELM: YOUR HONOR, I THINK THERE IS ONE
22 MORE MATTER. I HATE TO MENTION IT TO THE COURT, BUT --

23 THE COURT: OH, THE CORNELL?

24 MR. HELM: THE CORNELL ISSUE IS SOMETHING I
25 THINK WE WANT TO GO INTO.

02:25PM

26 I JUST HAPPEN TO HAVE NOTES HERE ON IT.
27 AND --

28 MR. QUINN: COULD WE COME EARLY IN THE MORNING

1 ON THAT, YOUR HONOR, SO MR. SURPRENANT --

2 OH, HE'S HERE.

3 THE COURT: LET ME JUST TELL YOU, I WENT
4 THROUGH ALL THE BRIEFS, AND LOOKED AT AS MUCH OF THE
5 EXHIBITS THAT YOU PROVIDED ME AS I COULD POSSIBLY
6 HANDLE.

02:25PM

7 AND MY SENSE IS THAT THE OBJECTIONS TO
8 MR. CORNELL'S TESTIMONY ON THE DAMAGES CALCULATIONS,
9 THE TWO-YEAR VERSUS FIVE YEAR, REALLY GOES TO WEIGHT.
10 AND YOU WILL HAVE TO DEAL WITH YOUR EXPERT.

02:26PM

11 AND IN CROSS-EXAMINATION, YOU CAN
12 CHALLENGE THE UNDERLYING ASSUMPTION AND YOU CAN
13 CHALLENGE THE UNDERLYING FOUNDATION FOR THE OPINIONS,
14 BUT I THINK THERE'S ENOUGH IN TO WHERE I WOULD ALLOW
15 HIM TO TESTIFY TO THAT.

02:26PM

16 I'M NOT -- I WON'T MAKE ANY COMMENT ON
17 IT BEYOND THAT.

18 AS TO THE UNJUST ENRICHMENT TESTIMONY
19 AND THE TESTIMONY ON THE ROYALTY VALUE, I'M NOT
20 INCLINED TO ALLOW THAT. I THINK IT'S A MATTER FOR THE
21 COURT TO DECIDE. AND DEPENDING ON THE FINDINGS THAT
22 THE JURY MAKES WITH RESPECT TO MISAPPROPRIATION, THERE
23 ARE A NUMBER OF LEGAL AND FAIRLY TECHNICAL ISSUES THAT
24 GO TO THE VIABILITY OF MR. CORNELL'S OPINIONS ON THE
25 REASONABLE ROYALTY.

02:26PM

02:27PM

26 AND I'M -- ALL IT'S GOING TO DO IS LEAD
27 TO CONFUSION, AND HAVE THE POTENTIAL TO SUGGEST TO THE
28 JURY THAT SOME LARGE NUMBER RELATED TO A ROYALTY

1 PAYMENT SHOULD BE CONSIDERED BY THEM, IN SOME WAY, IN
2 DETERMINING THE DAMAGES, IF ANY, ON THE
3 MISAPPROPRIATION CLAIM. AND I THINK THAT FOR A NUMBER
4 OF REASONS, NOT THE LEAST OF WHICH IS THE LIKELIHOOD
5 THAT IT WOULD TAKE A FAIR AMOUNT OF TIME, IT'S GOING TO
6 CONFUSE THE JURY, AND ON SIMPLY A 352 ANALYSIS WITHOUT
7 REALLY GETTING INTO THE FOUNDATIONAL FACTS NECESSARY
8 FOR THAT TESTIMONY, I'M NOT INCLINED TO ALLOW IT.

02:27PM

9 SO WITH THAT SAID, MR. SURPRENANT, ON
10 YOUR END OF IT, DO YOU WANT TO BE HEARD FIRST, OR DOES
11 MR. HELM WANT TO BE HEARD FIRST?

02:27PM

12 MR. SURPRENANT: YOUR HONOR HAS BROUGHT ABOUT
13 THE RECENT ROYALTY ISSUE, I THINK IT WOULD BE A HARD
14 ARGUMENT TO MAKE. SO I WOULD SUBMIT ON THAT YOUR
15 HONOR, AND --

02:28PM

16 THE COURT: YOU WON ON THE OTHER ONES. YOU
17 PROBABLY DON'T WANT TO SAY ANYTHING THERE.

18 MR. SURPRENANT: SO YOUR HONOR WILL HEAR THE
19 TESTIMONY AFTER THE VERDICT, OR HOW DOES YOUR HONOR
20 PLAN TO PROCEED?

02:28PM

21 THE COURT: NO. IT WILL BE POST VERDICT.
22 WE'LL HAVE FURTHER PROCEEDINGS, DEPENDING ON WHAT
23 COMES --

24 NOW, I REALLY HAVE -- THERE IS ANOTHER
25 ISSUE. AND ULTIMATELY, THIS MAY BE BROUGHT UP BY THE
26 DEFENSE AT THE CONCLUSION OF THE PLAINTIFF'S CASE, OR
27 AT SOME OTHER STAGE, BUT THE ELEMENT OF HARM RESULTING
28 FROM THE ALLEGED MISAPPROPRIATION AND USE OF TRADE

02:28PM

1 SECRETS IS A COMPONENT. AND WE'VE GOT KIND OF A FINE
2 LINE, BECAUSE I'M NOW BEING TOLD, AND THE DEFENSE WAS
3 ASKING ME TO MAKE FINDINGS, WITH RESPECT TO THE
4 INABILITY TO PROVE LOST PROFITS OR UNJUST ENRICHMENT.

5 BECAUSE YOU ARE SAYING YOU CAN'T DO IT. 02:29PM
6 I'M NOT GOING TO MAKE FINDINGS AT THIS JUNCTURE ON
7 THOSE POINTS. AND WHEN YOU FINISH PUTTING ON WHATEVER
8 EVIDENCE YOU ARE GOING TO PUT ON IN YOUR CASE, YOUR
9 CASE IS WHAT IT IS; AND SO THEN WE'LL GO FROM THERE.

10 MR. SURPRENANT: IF I COULD JUST ADDRESS THAT, 02:29PM
11 JUST TO BE CLEAR.

12 THE COURT: IT WOULD BE HELPFUL.

13 MR. SURPRENANT: OUR POSITION IS NOT THAT
14 THERE HAS NOT BEEN UNJUST ENRICHMENT, OR THERE HAS NOT
15 BEEN LOST PROFITS. 02:29PM

16 THE QUESTION UNDER THE UNIFORM TRADE
17 SECRET ACT IS WHETHER IT IS PROVABLE.

18 AND WE HAVE -- WE BELIEVE THAT WE HAVE
19 DEMONSTRATED HARM IN MULTIPLE WAYS. WE HAVE
20 DEMONSTRATED USE OF THE TRADE SECRETS. AND SO I THINK 02:29PM
21 THAT WE HAVE ESTABLISHED MORE THAN WHAT THE LAW
22 REQUIRES.

23 BUT THAT IS NOT, I THINK, THE ISSUE,
24 YOUR HONOR, IS PRESENTLY REFERRING TO.

25 THE COURT: WELL, BUT I THINK UNDER THE 02:29PM
26 UNIFORM TRADE SECRET ACT AND THE CALIFORNIA TRADE
27 SECRET ACT, THERE ARE SOME NUANCED DIFFERENCES WHICH
28 HAVE BEEN POINTED OUT BY THE DEFENSE.

1 MR. SURPRENANT: AND WE AGREE WITH THAT, YOUR
2 HONOR. UNDER CUTSA WE BELIEVE WE'VE ESTABLISHED
3 EVERYTHING, AND MORE THAN WE HAVE TO ESTABLISH, TO GET
4 TO THE REASONABLE ROYALTY CALCULATIONS.

5 THE COURT: ALL RIGHT. AND THAT'S SOMETHING
6 WE CAN DEAL WITH POST VERDICT.

02:30PM

7 BUT OUR VERDICT FORM WILL HAVE SOME
8 SPECIFIC QUESTIONS CONCERNING THE CUTSA CLAIM. AND
9 WE'LL GET ANSWERS TO THEM.

10 DEPENDING ON WHAT THOSE ANSWERS ARE,
11 WE'LL EITHER HAVE A FURTHER PHASE ON THAT ISSUE, WITH
12 MR. CORNELL COMING BACK TO TELL ME WHATEVER HE WANTS TO
13 TELL ME, BUT HE'LL TELL ME.

02:30PM

14 MR. SURPRENANT: I UNDERSTAND, YOUR HONOR.

15 THE COURT: ALL RIGHT. AND SO NOW, ANYTHING
16 ELSE?

02:30PM

17 MR. BRIAN: I'LL SUBMIT ON THE OTHER, YOUR
18 HONOR, I APPRECIATE YOUR HEARING US, AND I WON'T
19 BELABOR IT.

20 THE COURT: AND I WILL SAY, ON THE OPINIONS
21 CONCERNING THE LOST PROFITS OR THE DAMAGES, THERE'S A
22 LITTLE TENSION, AS I UNDERSTAND IT, BETWEEN THE
23 ARGUMENT THAT DEFENSE WANTS TO MAKE, GOING TO 2011
24 VERSUS THEIR GOING TO 2005.

02:30PM

25 AND I SAW SOME SIMILARITY IN THAT, AND
26 IT SEEMED INAPPROPRIATE TO SAY IT'S OKAY FOR ONE AND
27 NOT FOR THE OTHER.

02:31PM

28 MR. HELM: YOUR HONOR, IF I COULD ADDRESS

1 THAT.

2 THERE ISN'T A -- OBVIOUSLY, FIRST OF
3 ALL, TCW TAKES THE POSITION THAT HE WAS AN AT-WILL
4 EMPLOYEE AND COULD HAVE BEEN FIRED AT ANY TIME. AND SO
5 CERTAINLY, IF THAT'S TRUE, THE CLAIM THAT HE WOULD HAVE
6 NECESSARILY STAYED THERE FOR FIVE YEARS, HAD HE NOT --
7 HAD HE ONLY NOT BREACHED HIS FIDUCIARY DUTIES,
8 PARTICULARLY IN LIGHT OF SOME OF THE TESTIMONY WE'VE
9 HEARD TODAY, AND WILL BE HEARING, WE THINK IS A
10 STRETCH.

02:31PM

02:31PM

11 WE GET TWO YEARS OF -- AS LONG AS
12 MR. GUNDLACH PERFORMED UNDER THE CONTRACT, IF IT WAS
13 BREACHED BY THE OTHER SIDE, HE'S ENTITLED TO
14 EXPECTATION DAMAGES. SO ARE WE -- WE DON'T HAVE TO
15 PROVE HE WOULD HAVE STAYED FOR TWO YEARS TO COLLECT
16 OTHER DAMAGES.

02:31PM

17 THE COURT: WELL, BUT THAT GOES TO YOUR
18 ARGUMENT THAT THE DRAFT AGREEMENT CONSTITUTED THE TERMS
19 OF HIS EMPLOYMENT FOR THE FIVE-YEAR TERM AFTER THE 2003
20 AGREEMENT EXPIRED IN 2007.

02:32PM

21 I MEAN, I MAY BE OFF ON THE NUMBERS.
22 THEN YOU HAD AN ARGUMENT THE OTHER DAY THAT, WELL, IT
23 WAS REALLY A CARRYOVER, OR A HOLDOVER PROVISION.

24 DOES THAT HOLDOVER PROVISION CONTROL
25 INDEFINITELY, WHICH WOULD GIVE CREDIBILITY TO THE
26 FIVE-YEAR PERIOD MR. CORNELL IS TALKING ABOUT, IF
27 THERE'S SOME BASIS FOR IT.

02:32PM

28 YOU CAN CROSS-EXAMINE; YOU CAN ARGUE,

1 BUT PEOPLE ARE TRYING TO -- YOU KNOW, EACH SIDE SEEMS
2 TO BE TAKING POSITIONS THAT TO SOME DEGREE CREATE OTHER
3 PROBLEMS FOR YOU. AND I'VE SAID THIS BEFORE, BUT AT
4 ANY RATE. IS IT -- OKAY.

5 ANYTHING ELSE?

02:32PM

6 MR. HELM: NO, YOUR HONOR.

7 I THINK THIS IS -- WE WILL CONTINUE TO
8 HAVE THIS DISCUSSION. I WON'T BELABOR IT.

9 AT THIS POINT, I THINK WE'LL ACCEPT THE
10 RULING THE COURT HAS MADE. WE'LL CROSS-EXAMINE HIM ON
11 THE FIVE-YEAR STAYS -- FIVE YEARS ASSUMPTION.

02:33PM

12 THE REASONABLE ROYALTY IS NOW NOT COMING
13 IN TOMORROW; SO WE'VE SETTLED THAT. AND I THINK WE CAN
14 DEAL WITH THE OTHER ISSUES.

15 MR. SURPRENANT: YOUR HONOR, THERE IS ONE MORE
16 THING RELATING TO PROFESSOR CORNELL.

02:33PM

17 AS I UNDERSTAND MR. HELM'S POSITION, HE
18 IS OBJECTING TO ALL OF THE CORNELL EXHIBITS. IT'S A
19 POSSIBILITY THAT PROFESSOR CORNELL WILL BE ON THE STAND
20 TOMORROW. WE CAN DEAL WITH THAT IN THE MORNING,
21 PROBABLY.

02:33PM

22 MR. HELM: MAYBE I SHOULD JUST RAISE THE
23 ISSUE. IT'S NOT TO THE FORM OF THE EXHIBITS. IT GOES
24 TO THIS ISSUE THAT WE KNEW WAS COMING, BUT HADN'T
25 ADDRESSED YET, WHICH IS THIS QUESTION OF WHO IS THE
26 PARTY WHO GETS THE DAMAGES?

02:33PM

27 AS I UNDERSTAND IT NOW, MR. CORNELL --
28 THEY'VE DONE NOTHING NOW -- SO FAR, WE'VE BEEN WAITING

1 IN THIS TRIAL FOR THEM TO COME UP WITH SOME RATIONALE
2 FOR WHY PLAINTIFF, TRUST COMPANY OF THE WEST, WOULD BE
3 ENTITLED TO SEEK DAMAGES THAT WERE SUFFERED BY SISTER
4 OR PARENT ORGANIZATIONS. WE'VE SEEN NONE.

5 MR. CORNELL'S ANALYSIS IS GOING TO BE
6 SETTING FORTH DAMAGES THAT WERE SUFFERED BY OTHER
7 PEOPLE IN THE FAMILY. AND WE DON'T THINK THAT'S
8 APPROPRIATE.

02:34PM

9 WE THINK THAT ANY DAMAGE CALCULATION,
10 THE FOUNDATION SHOULD BE LAID THAT IT WAS DAMAGES THAT
11 THE PLAINTIFF SUFFERED. THAT'S THE BASIS.

02:34PM

12 THE COURT: AND WE HAD AN ISSUE ON THIS. THIS
13 WAS ON THE MOTION TO AMEND OR THE SUBSTITUTION OF
14 PARTIES EARLY ON.

15 I THINK WE SHOULD ALLOW MR. CORNELL TO
16 TESTIFY. HE SHOULD TESTIFY WITH SOME SPECIFICITY.

02:34PM

17 MR. QUINN: WELL, YOUR HONOR, WITH RESPECT,
18 THAT SHIP HAS SAILED.

19 ALL THIS EVIDENCE HAS COME IN ABOUT TCW,
20 QUOTE, UNQUOTE, WITH NO OBJECTION. THAT THESE WERE
21 TCW'S TRADE SECRETS. THAT IT WAS VALUABLE AND
22 CONFIDENTIAL TO TCW. THEY TOOK IT FROM TCW. THEY
23 WORKED FOR TCW. ALL THAT HAS COME IN BEFORE THE JURY,
24 UP TO THIS POINT, WITH NO OBJECTION FOR DEFENDANTS.

02:34PM

25 AND IT'S TOO LATE FOR THEM NOW TO SAY
26 WELL, NOW THAT DR. CORNELL IS GETTING ON THE STAND,
27 WE'VE GOT TO PARSE IT. THIS CASE HAS BEEN PRESENTED TO
28 THE JURY WITH THEIR ACQUIESCENCE NOW AS A TCW SINGLE

02:35PM

1 ENTITY CLAIM CASE WITH SINGLE INJURY TO TCW.

2 WE CAN'T, IN THE MIDDLE, WITH TWO WEEKS
3 OR WHATEVER IT IS TO GO NOW, SUDDENLY TRY TO PRETEND
4 OTHERWISE, THAT IF WE'RE GOING TO PARSE THESE CLAIMS --
5 I MEAN, IF THEY HAD THAT OBJECTION, THEY SHOULD HAVE
6 MADE THAT OBJECTION LONG AGO.

02:35PM

7 MR. HELM: YOUR HONOR, FIRST OF ALL, I
8 DISAGREE.

9 MR. QUINN: OTHERWISE WE HAVE TO RECALL ALL
10 THESE WITNESS AND SAY, WHICH ENTITY OWNED THIS?

02:35PM

11 THE COURT: WE'RE NOT DOING THIS.

12 MR. HELM: YOUR HONOR, WHAT HE'S TALKING ABOUT
13 IS TRADE SECRET DAMAGES.

14 BASED ON YOUR HONOR'S RULING,
15 MR. CORNELL IS NOT GOING TO BE TALKING ABOUT REASONABLE
16 ROYALTY OR TRADE SECRETS. WHAT HE'S TALKING ABOUT ARE
17 BREACH OF FIDUCIARY DUTY DAMAGES, AND TORTIOUS
18 INTERFERENCE DAMAGES. AND THAT'S FINE. HE CAN TESTIFY
19 ABOUT THOSE.

02:35PM

20 BUT HE HAS TO TESTIFY ABOUT DAMAGES
21 SUFFERED BY THE PLAINTIFF. I DON'T SEE ANY BASIS UPON
22 WHICH HE COULD TESTIFY ABOUT DAMAGES SUFFERED BY SOME
23 ENTITY OTHER THAN THE PLAINTIFF.

02:35PM

24 MR. QUINN: WELL --

25 THE COURT: JUST HOLD ON, MR. QUINN. JUST
26 GIVE ME A MINUTE. I TRY AND WRITE DOWN NOTES, AND GIVE
27 ME A CHANCE HERE.

02:36PM

28 MR. QUINN: ALL RIGHT.

1 THE COURT: I THINK I MENTIONED THIS WHEN I
2 DENIED YOUR MOTION TO AMEND EARLIER ON. YOU CAN ALWAYS
3 MAKE A MOTION TO CONFORM TO PROOF.

4 I'M SAYING THAT IT SEEMS TO ME THAT
5 THERE OUGHT TO BE SOME SPECIFICITY IN MR. CORNELL'S
6 TESTIMONY, AND I IMAGINE THERE WILL BE AS TO THE SMCF'S
7 AND THE BREACH OF FIDUCIARY DUTY, BUT -- AND WE'LL TAKE
8 IT UP.

02:36PM

9 I'M GOING TO ALLOW HIM TO TESTIFY. AND
10 LET'S LISTEN TO IT, SEE WHERE IT COMES OUT. I'M NOT
11 TELLING YOU YOU CAN'T OFFER IT, BUT IF THERE IS A
12 DISTINCT PROBLEM WITH AN ENTITY, YOU MAY HAVE TO MOVE
13 TO CONFORM TO PROOF. I DON'T KNOW.

02:36PM

14 WE HAD THAT ISSUE. I DENIED THE MOTION
15 TO AMEND. I THINK WHEN I DENIED THAT, BECAUSE IT WAS A
16 LATE DATE, AND THERE WERE A LOT OF OTHER PROBLEMS, I
17 JUST DIDN'T WANT TO HAVE TO DEAL WITH. I WANTED TO GET
18 THE SHOW ON THE ROAD.

02:37PM

19 I TOLD YOU YOU COULD AMEND TO CONFORM TO
20 PROOF, OR THAT THIS WAS AN OPTION, OR MENTIONED IT.

02:37PM

21 SO LET'S JUST GET IT OUT. EVERYBODY
22 DOESN'T NEED TO GET SO UPSET AND EXCITED ABOUT IT.

23 MR. QUINN: WELL, WE DID INTEND TO FILE, TODAY
24 OR TOMORROW, A MOTION TO CONFORM TO PROOF WITH RESPECT
25 TO THE TORTIOUS INTERFERENCE CLAIMS. BECAUSE THE
26 CONTRACTS WILL COME IN, AND IT WILL BE APPARENT THAT
27 THE ENTITIES THAT ARE PARTIES TO THOSE CONTRACTS, OR AT
28 LEAST SOME CASES, NOT THE ENTITY THAT'S A PLAINTIFF.

02:37PM

1 SO WE DID CONTEMPLATE BRINGING THAT MOTION, WHEN THOSE
2 COME IN.

3 AS TO THE BREACH OF FIDUCIARY DUTY,
4 THOUGH --

5 THE COURT: THAT'S A MUCH BROADER CLAIM. 02:37PM

6 AND I'M NOT SURE THAT -- AGAIN, PART A
7 COULD BE SUBSTITUTED AT A LATER DATE.

8 TCW UMBRELLA HAS OVERRIDDEN EVERYTHING
9 HERE.

10 MR. QUINN: THAT WAS MY POINT. 02:38PM

11 THE COURT: SO LET'S SEE WHAT THE EVIDENCE IS,
12 AND WHAT CREATIVE ARGUMENTS YOU ALL COME UP WITH LATER.

13 MR. SURPRENANT: THANK YOU, YOUR HONOR.

14 MR. QUINN: THANK YOU, YOUR HONOR.

15 THE COURT: THANK YOU VERY MUCH. 02:38PM

16 SEE YOU IN THE MORNING.

17 MR. BRIAN: THANK YOU, YOUR HONOR.

18

19 (AT 2:38 P.M. AN ADJOURNMENT
20 WAS TAKEN UNTIL THURSDAY,
21 AUGUST 25, 2011, AT 8:30 A.M.)

22

23 (THE NEXT PAGE NUMBER IS 5101.)

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