

1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA AUGUST 25, 2011
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR
7 TIME: A SESSION; 8:30 A.M.

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08:23AM

11 THE COURT: GOOD MORNING. TCW VERSUS GUNDLACH
12 MATTER. WE'RE OUT OF THE PRESENCE OF THE JURY.

13 AND I UNDERSTAND YOU'VE GOT A COUPLE
14 MATTERS YOU WANT TO TAKE UP.

15 MR. BRIAN: WE DID. YOU HAD ONE ITEM YOU WERE
16 LOOKING AT OVERNIGHT. WE WENT BACK TO LOOK AT THE
17 TRANSCRIPT OF THE FIRST DAY, AND ALSO THE ROUGH
18 TRANSCRIPT OF YESTERDAY.

08:23AM

19 AND THE PIECE I WANTED TO PLAY AT THE
20 END OF THE DAY, IT'S DIRECTLY IMPEACHING OF HIS
21 TESTIMONY IN RESPONSE TO -- MS. SMOWE WENT THROUGH
22 THE TESTIMONY. SHE CAN ADDRESS IT.

08:23AM

23 I THINK WE'RE ENTITLED TO SEE IT. IT
24 DOES DIRECTLY IMPEACH HIS TESTIMONY.

25 THE COURT: DO YOU WANT TO BE HEARD ON THAT,
26 MR. QUINN?

08:23AM

27 MY INCLINATION IS TO ALLOW HIM TO SHOW
28 IT. THIS IS A CONTINUUM THAT ALLOWS IT TO GO ON. I'M

1 NOT SURE IT'S EXACTLY THAT CLEAR WHAT IS AND WHAT IS
2 NOT DIRECTLY RELATED TO YOUR CASE IN CHIEF.

3 MR. QUINN: I -- YOUR HONOR, IT'S NOT -- I
4 SLEPT ON IT. AND I DECIDED I DON'T REGARD IT AS A BIG
5 DEAL.

08:24AM

6 IN RETURN FOR THAT, I'D REQUEST
7 PERMISSION TO MAKE ONE GRATUITOUS REMARK.

8 THE COURT: SURE.

9 MR. BRIAN: OH, OH.

10 MR. QUINN: THAT IS, I WOULD LIKE TO SEE IF I
11 COULD REMIND US ALL OF THE PROCESS WE'VE GONE THROUGH
12 OF DESIGNATION OF DEPOS, EVEN OF PARTIES, AND RUN THEM
13 THROUGH THE SAUSAGE MILL IN ADVANCE.

08:24AM

14 THE COURT: RIGHT.

15 MR. QUINN: RECALL WHEN MR. MADISON, WHEN
16 MS. VANEVERY WAS ON THE STAND, WAS TRYING TO USE
17 MATERIAL THAT HADN'T GONE THROUGH THE MILL, AND
18 THE COURT HELD HIS FEET TO THE FIRE.

08:24AM

19 AND THE COURT SAID IF IT DIDN'T GO
20 THROUGH THE MILL, YOU DIDN'T GET TO USE IT, UNLESS IT'S
21 IMPEACHMENT. THOSE OUGHT TO BE THE GROUND RULES.

08:24AM

22 MR. BRIAN SAYS IT'S IMPEACHMENT. HE'S A
23 MAN OF INTEGRITY. I DON'T REGARD IT AS A BIG DEAL.

24 THE COURT: THIS DID GO THROUGH THE SAUSAGE
25 MILL.

08:25AM

26 MR. QUINN: IT WENT. OKAY.

27 THE COURT: TO THE EXTENT SOMEONE WANTS TO
28 BRING IN DEPOSITION TESTIMONY PURELY FOR PURPOSES OF

1 IMPEACHMENT, YOU WOULD NOT HAVE BEEN REQUIRED, AND
2 NEITHER SIDE WOULD BE REQUIRED TO HAVE PREVIOUSLY
3 DESIGNATED IT.

4 MR. QUINN: I AGREE WITH THAT.

5 THE COURT: IF IT IS DIRECTLY IMPEACHING OF
6 THE WITNESS'S DIRECT TESTIMONY OR CROSS-EXAMINATION.

08:25AM

7 MR. QUINN: I AGREE WITH THAT.

8 THE COURT: THIS TESTIMONY WE'RE TALKING ABOUT
9 DID GO THROUGH THE PROCESS.

10 MR. BRIAN: YES.

08:25AM

11 THE COURT: WAS DESIGNATED. AND I'LL ALLOW
12 IT.

13 MR. QUINN: OKAY.

14 MR. BRIAN: THE SECOND ISSUE WE ALSO WANTED TO
15 PLAY FOR IMPEACHMENT PURPOSES, ALTHOUGH A PORTION OF
16 THIS WAS DESIGNATED, THE FOLLOWING PAGES AND LINES.
17 118, LINES 12 THROUGH 119. LINE 3.

08:25AM

18 THEN PICKING UP WITH 119, LINE 9.
19 THROUGH 120, LINE 20.

20 PLAINTIFF HAS ASKED THAT WE ADD TO THAT.
21 118, 1 THROUGH 11.

08:26AM

22 MR. QUINN: WE'RE GOING TO WITHDRAW THAT.

23 MR. BRIAN: OKAY.

24 MR. QUINN: WE'LL WITHDRAW.

25 THE COURT: HE WAS ABOUT TO SAY, THEY WERE
26 HAPPY TO DO IT.

08:26AM

27 MR. BRIAN: NO, I WASN'T.

28 MR. QUINN: WE'LL WITHDRAW IT.

1 THE COURT: TAKE THAT OUT.

2 MR. QUINN, DO YOU HAVE OBJECTION TO THIS
3 TESTIMONY THAT'S BEEN IDENTIFIED?

4 MR. QUINN: NO. THAT'S PREVIOUSLY BEEN
5 DESIGNATED, AND WE DON'T HAVE AN ISSUE THAT.

08:26AM

6 THE COURT: THAT WILL GO AHEAD.

7 MR. BRIAN: THEN, YOUR HONOR, THEN BOTH SIDES
8 BRIEFED THE ISSUE OF THE ADMISSIBILITY OF THE
9 TAPE-RECORDING --

10 THE COURT: GOT IT RIGHT HERE.

08:26AM

11 MR. BRIAN: -- OF THE DECEMBER 7TH REMARKS BY
12 MR. DAY AND MR. STERN. I DO INTEND TO QUESTION
13 MR. STERN ABOUT THAT. I WOULD PROPOSE TO PLAY PORTIONS
14 OF THE TAPE, THAT BOTH SIDES BRIEFED IT. AND MR. HELM
15 COULD ADDRESS THAT, IF YOUR HONOR HAS QUESTIONS.

08:26AM

16 THE COURT: LET ME SAY, I WENT THROUGH THE
17 BRIEFS, AND I APPRECIATE THEY WERE FAIRLY BRIEF, WHICH
18 IS NICE, FOR A CHANGE.

19 I -- THIS IS APPLICATION OF PENAL CODE
20 SECTION 632, WHICH PRECLUDES THE RECORDING OF
21 CONFIDENTIAL COMMUNICATIONS. IT'S REALLY DIRECTED TO
22 WIRETAPPING AND TELEPHONE CONVERSATIONS, AND ALL THE
23 CASES THAT DEAL WITH IT.

08:27AM

24 PARTICULARLY THE FLANNIGAN CASE, ON
25 WHICH THE PLAINTIFFS RELY, IT WAS A WIRETAPPING CASE
26 WITH CONFIDENTIAL -- TELEPHONE CONVERSATIONS WERE BEING
27 RECORDED.

08:27AM

28 I HAD A DIFFICULT TIME ACCEPTING THAT

1 THERE WAS A REASONABLE EXPECTATION OF PRIVACY WHERE
2 THERE WAS A BROADCAST OF A STATEMENT TO LITERALLY
3 HUNDREDS, IF NOT THOUSANDS, OF TCW EMPLOYEES.

4 AND I'VE BEEN SHOWN NO EFFORT OR ATTEMPT
5 BY EITHER MR. DAY OR MR. STERN, OR TCW IN GENERAL, TO
6 IMPOSE OR TO SUGGEST TO ANY OF THOSE THOUSANDS OR
7 HUNDREDS OF EMPLOYEES THAT HEARD THOSE DISCUSSIONS,
8 THAT THEY WERE INTENDED TO BE CONFIDENTIAL.

08:27AM

9 AND WHEN ONE GOES ON A BROADCAST TO THAT
10 MANY PEOPLE IN A GENERAL SETTING, EVEN THOUGH IT'S AN
11 EMPLOYMENT SETTING, IT'S DIFFICULT FOR ME TO BELIEVE
12 THAT THEY HAVE A REASONABLE EXPECTATION OF PRIVACY.

08:28AM

13 AND PARTICULARLY IF THEY HAVEN'T TOLD
14 THE PEOPLE, WHAT I'M GOING TO TELL YOU IS CONFIDENTIAL,
15 AND NOT TO BE DISSEMINATED BEYOND THE COMPANY.

08:28AM

16 WITH THAT IN MIND, AND IN THE ABSENCE OF
17 ANY AUTHORITY INTERPRETING 632 TO HAVE THAT BROAD OF
18 REACH, IN MY VIEW, MY INCLINATION WOULD BE TO ALLOW
19 PORTIONS OF THOSE TAPE-RECORDINGS TO BE PLAYED, IF THEY
20 OFFER, OR IMPEACH THE DIRECT TESTIMONY OF THE WITNESS.

08:28AM

21 OTHERWISE, I THINK THEY'RE CUMULATIVE.
22 AND TO THE EXTENT THE TESTIMONY'S CONSISTENT WITH
23 WHAT'S ON THE TAPE, I DON'T SEE ANY REASON TO HAVE IT.

24 MR. QUINN: THEN THERE'S NO ISSUE, BECAUSE WE
25 ALWAYS UNDERSTOOD IT COULD BE USED FOR IMPEACHMENT.

08:28AM

26 THE COURT: THAT'S THE POINT.

27 AND SO YOU DON'T HAVE A BLANKET RIGHT TO
28 PLAY THE ENTIRE TAPE, OR ANY PORTION OF IT.

1 BUT TO THE EXTENT THERE'S SOME
2 INCONSISTENCY WITH THE WITNESS'S TESTIMONY, I'LL ALLOW
3 IT.

4 MR. BRIAN: I'LL ASK HIM ABOUT TWO OR THREE
5 STATEMENTS ON THE TAPE.

08:29AM

6 THE COURT: MR. STERN'S IN THE COURTROOM.

7 THE WITNESS: I'M SORRY.

8 THE COURT: YOU'RE WELCOME HERE ALL THE TIME.

9 BUT BEFORE THEY START TELLING -- BEFORE
10 THEY'RE GOING --

08:29AM

11 THE WITNESS: I'D, FRANKLY, RATHER NOT BE
12 HERE.

13 THE COURT: THANKS.

14 (PAUSE +)

08:29AM

15
16 MR. BRIAN: I INTEND TO ASK HIM ABOUT TWO OR
17 THREE EXCERPTS FROM THE TAPE.

18 IF HE ADMITS IT, I DON'T NEED TO PLAY
19 IT. IF HE DOESN'T, I'LL PLAY THOSE MINOR CLIPS.

20 THE COURT: I THINK THAT'S FAIR.

08:29AM

21 MR. QUINN: TEMPEST IN A TEAPOT.

22 THE COURT: I GUESS THE OBJECTION UNDER 632 IS
23 OVERRULED.

24 ANYTHING ELSE?

25 MR. BRIAN: NO, YOUR HONOR.

08:29AM

26 THE COURT: ALL RIGHT. WE'LL GET THE JURY IN
27 AND GET GOING.

28 (PAUSE) +

1 (JURY ENTERS THE COURTROOM) +

2

3 THE COURT: GOOD MORNING, LADIES AND
4 GENTLEMEN.

5 TCW VERSUS GUNDLACH MATTER, WE'RE SET TO
6 CONTINUE TRIAL. ALL MEMBERS OF OUR JURY ARE PRESENT.
7 MR. STERN'S ON THE STAND.

08:35AM

8 MR. BRIAN, YOU MAY CONTINUE YOUR
9 CROSS-EXAMINATION.

10 MR. BRIAN: THANK YOU, YOUR HONOR.

08:35AM

11 THE WITNESS: GOOD MORNING.

12 MR. BRIAN: GOOD MORNING, LADIES AND
13 GENTLEMEN.

14

15 CROSS-EXAMINATION (RESUMED) +

08:35AM

16

17 MR. BRIAN: BEFORE WE SHOW A MOVIE, I WANT TO
18 GO BACK TO AN EXHIBIT I SENT YOU -- I SHOWED YOU
19 YESTERDAY. COULD YOU GO BACK TO EXHIBIT -- ENLARGE THE
20 MIDDLE, THE ONE FROM MR. STERN TO MR. RIPOLL.

08:36AM

21 IF I MIGHT APPROACH THE EASEL, YOUR
22 HONOR.

23 I WANT TO CORRECT THE FACT I LEFT OUT A
24 G IN THE WORD "SAVINGS."

25 THE COURT: OKAY.

08:36AM

26 BY MR. BRIAN:

27 Q IF YOU LOOK AT THE NEXT TO THE LAST LINE OF
28 THAT E-MAIL, YOU SEE WHERE IT SAYS, TRANSLATES INTO A

1 SAVINGS OF ROUGHLY 50 MILLION AT THE 200 MILLION
2 REVENUE LEVEL.

3 DO YOU SEE THAT?

4 A I DO.

5 Q AND I PUT UP HERE, SAVINGS OF \$50 MILLION PER
6 YEAR.

08:36AM

7 IT'S ACTUALLY \$50 MILLION, PER \$200
8 MILLION OF REVENUE, RIGHT?

9 A AT THE \$200 MILLION REVENUE LEFT, IF IT STAYED
10 AT THAT, IT'S \$50 MILLION.

08:37AM

11 Q IF THE REVENUE WAS ACTUALLY HIGHER THAN 200
12 MILLION, THE SAVINGS WOULD BE A LITTLE MORE THAN 50
13 MILLION, CORRECT?

14 A I THINK THAT'S ACCURATE.

15 Q IF IT'S LESS THAN 200 MILLION, IT WOULD BE THE
16 SAME, WHICH IS A LITTLE LESS, RIGHT?

08:37AM

17 A LESS, RIGHT.

18 Q I'LL CHANGE IT TO 50 MILLION SAVINGS PER 200
19 MILLION OF REVENUE.

20 DENNIS, COULD WE PLAY WHAT WE CALL SLIP
21 9, WHICH IS DEPOSITION PAGE 419, LINE 6 THROUGH 20.

08:37AM

22 422, LINES 14 THROUGH 16.

23 AND 422, LINES 18 TO 23.

24

25 (VIDEO DEPOSITION OF MR. STERN PLAYED.) +

08:37AM

26

27 BY MR. BRIAN:

28 Q LET'S GO BACK TO EXHIBIT 5224.

1 IF YOU COULD PUT THAT IN FRONT OF THE
2 WITNESS, JOANETTE.

3 YOU CAN GO AHEAD AND PUT PAGE 2 UP
4 PLEASE.

5 EXHIBIT 5224, PAGE 2 AND PAGE 3. ARE
6 THE HANDWRITTEN NOTES YOU IDENTIFIED YESTERDAY AS
7 MR. CONN'S NOTES, CORRECT?

08:39AM

8 A YES.

9 Q NOW, I TAKE IT THAT SINCE THE TIME YOU'VE
10 HIRED MR. CONN, YOU'VE FOUND HIM TO BE RELIABLE,
11 HAVEN'T YOU, SIR?

08:39AM

12 A YES.

13 Q YOU OFTEN RELY ON MR. CONN TO PREPARE
14 DOCUMENTS IN CONNECTION WITH YOUR BUSINESS AFFAIRS,
15 DON'T YOU?

08:39AM

16 A TO PREPARE DOCUMENTS?

17 Q YES?

18 A YES.

19 Q FOR EXAMPLE, HE SENT SOME OF THE DOCUMENTS
20 HIMSELF TO SOC-GEN IN CONNECTION WITH PROJECT ANGEL,
21 DID HE NOT, SIR?

08:39AM

22 A I BELIEVE THAT'S CORRECT.

23 Q AND YOU DON'T HAVE ANY REASON TO BELIEVE HE
24 GOT IT WRONG, WHEN HE WROTE DOWN THE NOTES IN
25 EXHIBIT 5224, DO YOU, SIR?

08:40AM

26 A I HAVE NO REASON TO BELIEVE HE GOT IT WRONG,
27 NO.

28 Q YOU SEE AT THE -- ABOUT OH, I DON'T KNOW, FOUR

1 OR FIVE LINES, HE SAYS: "BIZ" SCENARIO 1.

2 IF YOU COULD HIGHLIGHT THAT, DENNIS.
3 RIGHT THERE.

4 YOU SEE THAT, SIR?

5 A I DO.

08:40AM

6 Q NOW, EVEN ON AUGUST 27TH OF 2009, YOU WERE
7 ANTICIPATING THAT A MANAGER REPLACING MR. GUNDLACH
8 WOULD GET A LOWER AMOUNT OF FEES, WEREN'T YOU?

9 A I WAS NOT, AT THAT POINT, ANTICIPATING A
10 MANAGER REPLACING MR. GUNDLACH.

08:40AM

11 Q DIDN'T YOU TALK ABOUT IT, AT THAT MEETING,
12 DOING A SO-CALLED BREAK-EVEN ANALYSIS?

13 A AT THAT POINT, I WAS TALKING ABOUT A SITUATION
14 WHERE MR. GUNDLACH WOULD EITHER LEAVE OF HIS OWN
15 VOLITION, HE WAS A FLIGHT RISK, OR THAT HE WOULD STEP
16 OVER THE LINE AND WOULD BE FORCED TO BE TERMINATED.

08:41AM

17 MR. BRIAN: MOVE TO STRIKE AS NONRESPONSIVE.

18 THE COURT: I'LL STRIKE THE RESPONSE.

19 LISTEN CAREFULLY.

20 MR. BRIAN: MY QUESTION IS A SIMPLE ONE.

08:41AM

21 ON AUGUST 27TH, DIDN'T YOU AND THE
22 GENTLEMEN, MR. GIBELLO, MR. DEVITO, MR. CAHILL, THE
23 MOST SENIOR PEOPLE AT THE COMPANY, TALK ABOUT DOING A
24 BREAK-EVEN ANALYSIS IN THE EVENT THAT MR. GUNDLACH WAS
25 NO LONGER WITH THE COMPANY?

08:41AM

26 YES OR NO?

27 A YES.

28 Q AND IN FACT, THAT'S IN THE NOTES, ISN'T IT,

1 ABOUT FOUR OR FIVE, SIX LINES DOWN. IT SAYS:

2 BREAK-EVEN ANALYSIS, IF LOSSES,

3 OFFSET BY COMPENSATION SAVINGS.

4 DO YOU SEE THAT, SIR?

5 A YES.

08:41AM

6 Q AND THEN BELOW THAT, ABOUT SIX MORE LINES

7 DOWN, IT SAYS: TALK TO LAW FIRM --

8 IF YOU COULD HIGHLIGHT.

9 -- TALK TO LAW FIRM ABOUT J.G.'S

10 BEHAVIOR, TO SEE IF IT REPRESENTS

08:41AM

11 CAUSE.

12 DO YOU SEE THAT?

13 A I DO.

14 Q AND THEN BELOW THAT IT SAYS:

15 UNFORTUNATELY WE'VE HAD TO

08:42AM

16 TERMINATE J.G. FOR CAUSE. WILL

17 TAKE THE HIGH ROAD, DON'T WANT TO

18 SULLY HIS REPUTATION, SO WON'T

19 REVEAL WHAT HAPPENED. BUT HAD NO

20 IMPACT ON CLIENTS.

08:42AM

21 YOU SEE THAT, RIGHT?

22 A I DO.

23 Q SOMEONE AT THAT MEETING SUGGESTED THAT THIS IS

24 WHAT YOU MIGHT SAY, IN THE EVENT YOU TERMINATED

25 MR. GUNDLACH, RIGHT?

08:42AM

26 A MR. BRIAN, I HAD BEEN INSTRUCTED AT THAT POINT

27 THAT IF IT WAS A DISCUSSION WITH COUNSEL, I WAS NOT TO

28 ANSWER THE QUESTION.

1 MR. BRIAN: I'LL MOVE TO STRIKE THAT AS
2 NONRESPONSIVE.

3 THE COURT: I'LL STRIKE THE RESPONSE.
4 BY MR. BRIAN:

5 Q MR. QUINN ASKED YOU YESTERDAY OR THURSDAY, DID 08:42AM
6 SOMEONE EVER SUGGEST TO YOU, WORDS THAT YOU MIGHT SAY
7 IN THE EVENT HE WAS TERMINATED, AND YOU ANSWERED "YES."

8 IN FACT, SOMEONE DID SUGGEST THESE ARE
9 WORDS YOU MIGHT USE IN THE EVENT YOU DECIDED TO
10 TERMINATE MR. GUNDLACH, RIGHT? 08:43AM

11 A YES. AND WHAT I WAS TRYING TO --

12 THE COURT: SIR, YOU'VE ANSWERED THE QUESTION.

13 THE WITNESS: OKAY.

14 BY MR. BRIAN:

15 Q AND IT INCLUDED THE PHRASE, "BUT HAD NO IMPACT 08:43AM
16 ON CLIENTS."

17 THAT'S SOMETHING, PART OF WHAT THAT
18 PERSON SUGGESTED, ISN'T IT?

19 A YES.

20 Q AND SO SOMEONE WAS AT THAT MEETING, THEY WERE 08:43AM
21 SUGGESTING THAT IF YOU TERMINATED MR. GUNDLACH, YOU
22 SHOULD TELL THE PUBLIC THAT THERE WOULD BE NO IMPACT ON
23 CLIENTS, RIGHT?

24 A NO. THAT'S NOT HOW I READ IT, SIR.

25 Q TAKE A LOOK AT 5224, PAGE 3. THE FOLLOWING, 08:43AM
26 NEXT PAGE, ABOUT EIGHT LINES DOWN. YOU SEE WHERE IT
27 SAYS: CAN WE FIND A MORTGAGE MANAGER.

28 DO YOU SEE THAT?

1 A I DO, SIR.

2 Q THAT WAS A DISCUSSION OF THE NEED TO FIND
3 SOMEONE TO REPLACE MR. GUNDLACH IN THE EVENT HE WAS NOT
4 THERE, CORRECT?

5 A YES.

08:44AM

6 Q AND THEN ABOUT 6 LINES BELOW THAT, IT SAYS,
7 GET DOCS FROM JOE AND PLAN B DOCUMENTS.

8 DO YOU SEE THAT?

9 A YES.

10 Q JOE IS A REFERENCE TO JOE BURSCHINGER, IS IT
11 NOT?

08:44AM

12 A YES.

13 Q AND THEN RIGHT BELOW THAT, IT SAYS, RECONVENE
14 NEXT WEEK.

15 DO YOU SEE THAT?

08:44AM

16 A YES.

17 Q DID THIS GROUP OF VERY SENIOR EXECUTIVES AT
18 TCW CONVENE THE FOLLOWING WEEK TO DISCUSS MR. GUNDLACH?

19 A I BELIEVE THERE WAS A MEETING THE NEXT WEEK.
20 WHICH PROBABLY INCLUDED SOME OTHER, OTHER PEOPLE AND I.
21 AND I BELIEVE THAT THAT TOOK PLACE. YES.

08:44AM

22 Q TAKE A LOOK -- I'D LIKE YOU TO LOOK AT
23 5224-0011.

24 THE COURT: PAGE 1 OF THE SAME DOCUMENT?

25 MR. BRIAN: PAGE 11 OF THE SAME DOCUMENT.

08:45AM

26 RIGHT AT THE TOP CORNER IT SAYS, PLAN B.
27 HIGHLIGHT THAT, AND BLOW IT UP.

28 Q DO YOU SEE THE REFERENCE TO PLAN B?

1 A YES, I SEE THAT.

2 MR. BRIAN: YOUR HONOR, PERMISSION TO PLAY THE
3 FOLLOWING DEPOSITION, 426, LINES 11 THROUGH 15.

4 428 LINE 4 TO 14.

5 428 LINE 15 TO 18.

08:45AM

6 AND THIS INCLUDES TCW'S COUNTER-
7 DESIGNATION.

8 THE COURT: ANY OBJECTION, MR. QUINN?

9 MR. QUINN: NO OBJECTION, YOUR HONOR.

10 THE COURT: YOU MAY PROCEED.

08:45AM

11

12 (VIDEO DEPOSITION OF MR. STERN PLAYED.) +

13

14 BY MR. BRIAN:

15 Q AT THE BOTTOM, IF WE GO BACK TO 5224 PAGE 11.

08:47AM

16 IF WE CAN ENLARGE THE LAST PARAGRAPH ON
17 THE BOTTOM OF THAT PAGE, PLEASE DENNIS.

18 YOU SEE WHERE MR. BURSCHINGER WROTE: WE
19 SHOULD ASSUME J.E.G. WILL RESPOND IN A VOLATILE AND
20 DIVISIVE MANNER?

08:47AM

21 A I DO.

22 Q WE WILL QUICKLY SEEK RETRIBUTION.

23 DO YOU SEE THAT?

24 A YES.

25 Q EXHIBIT 5224, PAGE 11 -- PAGE 13.

08:47AM

26 THE NEXT FEW PAGES OF THIS EXHIBIT LIST
27 KEY PEOPLE'S IN MR. GUNDLACH'S M.B.S. GROUP, RIGHT?

28 A THEY DO.

1 Q AND WHAT MR. BURSCHINGER DID, AND WHAT YOU
2 DISCUSSED, IS WHO WERE THE KEY PEOPLE TO TARGET TO TRY
3 TO KEEP, IN THE EVENT THAT MR. GUNDLACH WAS NO LONGER
4 AT THE COMPANY, RIGHT?

5 A THIS IS MR. BURSCHINGER'S ANALYSIS OF THE KEY
6 PEOPLE, AND HIS COMMENTS, YES. 08:48AM

7 Q LET'S GO BACK TO 5224, PAGE 2, DENNIS.

8 I'D LIKE YOU TO JUST FOCUS ON THOSE LAST
9 TWO HIGHLIGHTS OF 5224, WHERE THE FIRST ONE SAYS:

10 TALK TO LAW FIRM ABOUT J.G.'S
11 BEHAVIOR, TO SEE IF IT REPRESENTS
12 CAUSE. 08:48AM

13 DO YOU SEE THAT?

14 A YES.

15 Q AND THEN THE NEXT ONE SAYS: 08:48AM

16 UNFORTUNATELY WE'VE HAD TO
17 TERMINATE J.G. FOR CAUSE.

18 DO YOU SEE THAT?

19 A I DO.

20 Q NOW, YOU TESTIFIED LAST THURSDAY, AND 08:49AM
21 YESTERDAY, THAT YOU BELIEVED OR CONCLUDED THAT
22 MR. GUNDLACH WAS SOMETHING CALLED AN AT-WILL EMPLOYEE,
23 RIGHT?

24 A YES.

25 Q AND I THINK YOU TOLD ME YESTERDAY, YOU HAVE A 08:49AM
26 LAW DEGREE, DID YOU NOT, SIR?

27 A I DID TELL YOU THAT.

28 Q IN YOUR YEARS IN THE BUSINESS WORLD, YOU'VE

1 FORMED AN UNDERSTANDING OF WHAT AN AT-WILL EMPLOYEE IS,
2 HAVEN'T YOU, SIR?

3 A YES.

4 Q AND YOU UNDERSTAND THAT AN AT-WILL EMPLOYEE
5 CAN LEAVE AT ANY TIME, RIGHT?

08:49AM

6 A I -- I BELIEVE SO, AS A LEGAL MATTER, YES.

7 Q AND YOU UNDERSTAND THAT AN EMPLOYER CAN FIRE
8 AN AT-WILL EMPLOYEE AT ANY TIME FOR WHATEVER -- ANY
9 REASON AT ALL, RIGHT?

10 A YES.

08:49AM

11 Q AND YOU UNDERSTAND THAT AN EMPLOYER DOES NOT
12 NEED CAUSE TO TERMINATE AN AT-WILL EMPLOYEE.

13 YOU UNDERSTAND THAT, DON'T YOU SIR?

14 A YES.

15 Q AND YOU UNDERSTOOD THAT IN AUGUST OF 2009,
16 TOO, DIDN'T YOU, SIR?

08:49AM

17 A THAT'S TRUE.

18 Q AND THE INSTRUCTIONS, OR ONE OF THE
19 INSTRUCTIONS AT THE AUGUST 27TH MEETING WAS TO, QUOTE,
20 TALK TO LAW FIRM ABOUT J.G.'S BEHAVIOR, TO SEE IF IT
21 REPRESENTS CAUSE, RIGHT?

08:50AM

22 THAT WAS ONE OF THE INSTRUCTIONS THAT
23 WAS GIVEN?

24 A THAT'S WHAT THE NOTES SAY.

25 Q NOW, FOCUSING ON THIS LANGUAGE THAT SOMEBODY
26 PROPOSED IN THE EVENT MR. GUNDLACH WERE TERMINATED,
27 UNFORTUNATELY, WE'VE HAD TO TERMINATE MR. GUNDLACH FOR
28 CAUSE, NO IMPACT UPON CLIENTS, THAT SORT OF THING.

08:50AM

1 ONE OF THE FIRST THINGS YOU DID
2 FOLLOWING THIS MEETING ON AUGUST 27TH WAS TO GO OUT AND
3 HIRE A PUBLIC RELATIONS CRISIS MANAGEMENT FIRM, DIDN'T
4 YOU, SIR?

5 A WE HAD BEEN INTERVIEWING CRISIS MANAGEMENT
6 FIRMS FOR QUITE A WHILE.

08:50AM

7 AND I BELIEVE ON SEPTEMBER 1ST, WE MADE
8 OUR DECISION, YES.

9 Q YOU HIRED A PUBLIC RELATIONS CRISIS MANAGEMENT
10 FIRM ON SEPTEMBER 1ST, FOUR DAYS AFTER THIS MEETING OF
11 AUGUST 27TH, DIDN'T YOU, SIR?

08:50AM

12 A YES.

13 Q TAKE A LOOK AT EXHIBIT 6155.

14 NOT YET IN EVIDENCE.

15 ERIN FREEMAN WAS THE DIRECTOR OF
16 COMMUNICATIONS AT TCW IN OR ABOUT SEPTEMBER OF 2009,
17 WAS SHE NOT?

08:51AM

18 A I'M SORRY. I WAS LOOKING AT THE DOCUMENT.

19 Q SORRY.

20 ERIN FREEMAN WAS THE DIRECTOR OF
21 COMMUNICATIONS AT TCW IN OR ABOUT AUGUST AND SEPTEMBER
22 OF 2009?

08:51AM

23 A YES.

24 Q IS SHE STILL?

25 A NO.

08:51AM

26 Q TAKE A LOOK AT 6155. THE TOP E-MAIL ON PAGE 1
27 IS AN E-MAIL SHE SENT YOU ON SEPTEMBER 1ST AT ABOUT
28 11 O'CLOCK IN THE MORNING, FORWARDING AN E-MAIL SHE GOT

1 FROM CHARLES SIPKINS OF THE ABERNATHY MACGREGOR PUBLIC
2 RELATIONS CRISIS MANAGEMENT FIRM, CORRECT?

3 A THE -- FROM THAT FIRM, YES.

4 MR. BRIAN: I WOULD OFFER 6155.

5 MR. QUINN: OBJECTION. 08:52AM

6 THE COURT: IT WILL BE ADMITTED.

7

8 (EXHIBIT 6155 ADMITTED.) +

9

10 BY MR. BRIAN: 08:52AM

11 Q IF WE CAN PUT THAT UP.

12 ON THE VERY BOTTOM PARAGRAPH, DENNIS.

13 GO DOWN TO THE BOTTOM.

14 THAT'S THE E-MAIL FROM -- PART OF THE

15 E-MAIL FROM SIPKINS TO ERIN FREEMAN, IS IT NOT? 08:52AM

16 A ARE YOU JUST ASKING ME, IS IT PART OF IT?

17 Q YES?

18 A YES.

19 Q TO BE CLEAR, HOWEVER, THE OUTCOME OF A STORY
20 OF THIS MAGNITUDE WILL DEPEND MUCH MORE ON OUR STRATEGY
21 AND MESSAGING. 08:52AM

22 DO YOU SEE WHERE IT SAYS THAT?

23 A YES.

24 Q NOW, TAKE A LOOK AT EXHIBIT 6153.

25 THIS IS AN E-MAIL CHAIN ORIGINALLY
26 MS. FREEMAN FORWARDED TO YOU. 08:53AM

27 ACTUALLY IT'S AN E-MAIL EXCHANGE BETWEEN
28 YOU AND ERIN FREEMAN ON SEPTEMBER 1ST, IS IT NOT?

1 A ARE YOU TALKING AT THE TOP?

2 Q YES.

3 A YES.

4 MR. BRIAN: I'LL OFFER 6153.

5 MR. QUINN: NO OBJECTION.

08:53AM

6 THE COURT: ALL RIGHT. IT WILL BE ADMITTED.

7 THANK YOU.

8 (EXHIBIT 6153 ADMITTED.) +

9

10 BY MR. BRIAN:

08:53AM

11 Q PUT THAT UP, PLEASE.

12 YOU WERE FORWARDED IN THIS E-MAIL CHAIN,
13 AN E-MAIL THAT MR. SIPKINS OF THE ABERNATHY FIRM SENT
14 TO ERIN FREEMAN ABOUT A NEWS ARTICLE ON SOMETHING
15 CALLED MUTUAL FUND WIRE, RIGHT?

08:54AM

16 A YES.

17 Q IN THE ARTICLE, IF WE COULD TURN TO THE NEXT
18 PAGE OF THAT, PAGE 2 OF EXHIBIT 6153, AT THE TOP.

19 REFERENCE, VERY TOP, TO JEFFREY
20 GUNDLACH, CHIEF INVESTMENT OFFICER, TCW GROUP, WAS
21 QUOTED BY REUTERS ON TUESDAY AFTERNOON AS SAYING THAT:
22 HE HAS NOT MET WITH ANY PRIVATE EQUITY FIRM REGARDING
23 POSSIBILITY OF PURCHASING THE LOS ANGELES ASSET
24 MANAGER.

08:54AM

25 DO YOU SEE THAT?

08:54AM

26 A I DO.

27 Q IF YOU GO DOWN TWO MORE PARAGRAPHS, IT SAYS,
28 GUNDLACH'S COMMENTS.

1 GUNDLACH'S COMMENTS COMES IN THE
2 WAKE OF A REPORT IN THE NEW YORK
3 POST TUESDAY MORNING THAT A NUMBER
4 OF PRIVATE EQUITY FIRMS, INCLUDING
5 KOHLBERG, KRAVIS, ROBERTS, HAVE
6 HELD AND TALKED WITH TCW GROUP'S
7 FRENCH PARENT WITH AN EYE TOWARD A
8 BUYOUT OF THE ASSET MANAGEMENT.

08:54AM

9 DO YOU SEE THAT?

10 A I SEE THAT.

08:55AM

11 Q BILL SONNEBORN, THE FORMER PRESIDENT OF TCW,
12 WHO RESIGNED 2008, WENT TO WORK AT KOHLBERG, KRAVIS,
13 DIDN'T HE?

14 A YES.

15 Q IF YOU GO BACK TO PAGE 1 OF EXHIBIT 6153,
16 THERE'S AN E-MAIL IN THE MIDDLE FROM ERIN FREEMAN TO
17 YOU, SEPTEMBER 1ST, AT THE HOUR OF 1736. AND YOU SEE
18 THE PARAGRAPH WHERE SHE WRITES:

08:55AM

19 ABERNATHY HAS BEGUN TO MONITOR
20 COVERAGE, AND WILL BE SENDING NEW
21 STORIES TO US AS THEY APPEAR. I
22 WILL FORWARD TO A SMALL GROUP AS AN
23 FYI. MY THOUGHT WAS TO INCLUDE YOU
24 JOE, MICHAEL, DAVE, AND JEFF.

08:55AM

25 DO YOU SEE THAT?

08:56AM

26 A YES.

27 Q AND YOU UNDERSTOOD THE "YOU," REFERRED TO YOU,
28 MARC STERN, OF COURSE?

1 A YES.

2 Q YOU UNDERSTOOD THE "JOE" REFERRED TO JOE
3 BURSCHINGER, RIGHT?

4 A YES.

5 Q ONE OF THE ATTENDEES AT THE AUGUST 27TH
6 MEETING, RIGHT?

08:56AM

7 A YES.

8 Q AND THE "MICHAEL" REFERRED TO MICHAEL CAHILL,
9 ONE OF THE OTHER ATTENDEES AT THE AUGUST 27TH MEETING,
10 RIGHT?

08:56AM

11 A YES.

12 Q "DAVE" REFERRED TO DAVE DEVITO, ANOTHER OF THE
13 ATTENDEES AT THE AUGUST 27TH MEETING, RIGHT?

14 A YES.

15 Q WHO IS "JEFF"?

08:56AM

16 A I DON'T KNOW WHETHER THAT'S MR. GUNDLACH OR
17 SOMEONE ELSE.

18 Q YOU THINK SHE WAS SUGGESTING THEY'D GIVE THAT
19 TO MR. GUNDLACH?

20 A I DON'T KNOW.

08:56AM

21 Q OKAY.

22 TAKE A LOOK AT EXHIBIT 6158.

23 YOU SET UP A MEETING WITH MR. SIPKINS
24 FOR 2 O'CLOCK ON THE AFTERNOON OF SEPTEMBER 3RD, 2009,
25 DIDN'T YOU?

08:57AM

26 A YES.

27 MR. BRIAN: I'D OFFER 6158, YOUR HONOR.

28 MR. QUINN: NO OBJECTION.

1 THE COURT: IT WILL BE ADMITTED.

2

3 (EXHIBIT 6158 ADMITTED.)+

4

5 BY MR. BRIAN:

08:57AM

6 Q THAT'S THE SAME DAY YOU WERE SCHEDULED TO
7 MEET, AND DID, IN FACT, MEET WITH MR. GUNDLACH,
8 CORRECT?

9 A YES.

10 MR. GUNDLACH CONTACTED --

08:57AM

11 Q THAT'S -- THAT'S --

12 A CONTACTED ME AFTER THIS MEETING WAS SET UP,
13 YES.

14 Q SO IT'S YOUR TESTIMONY, IT WAS A COINCIDENCE
15 THOSE TWO MEETINGS TOOK PLACE THE SAME DAY, SIR?

08:57AM

16 A THE MEETING WITH MR. SIPKINS WAS SET UP BEFORE
17 MR. GUNDLACH CAME AND ASKED TO HAVE THE MEETING WITH
18 ME.

19 YES, SIR, THAT IS MY TESTIMONY.

20 Q OKAY.

08:57AM

21 NOW, YESTERDAY MR. QUINN ASKED YOU
22 WHETHER YOUR THINKING ABOUT MET WEST CHANGED AFTER THAT
23 SEPTEMBER 3RD MEETING WITH MR. GUNDLACH.

24 DO YOU REMEMBER THAT?

25 A I DO.

08:58AM

26 Q YOU TESTIFIED, YOUR THINKING DID CHANGE,
27 DIDN'T YOU?

28 A YES.

1 Q YOU TESTIFIED AFTER THAT MEETING, YOU STARTED
2 THINKING MORE ABOUT A TRANSACTION, SOME SORT OF
3 TRANSACTION WITH MET WEST, INSTEAD OF JUST LOOKING FOR
4 A SINGLE REPLACEMENT; IS THAT RIGHT?

5 A YES.

08:58AM

6 Q NOW, I TAKE IT YOU HAD GOTTEN A LIST OF
7 POSSIBLE REPLACEMENTS FOR MR. GUNDLACH AS EARLY AS
8 JUNE 9TH, OF 2009, CORRECT?

9 A I AM -- MR. BRIAN, YOUR CHARACTERIZA- --

10 Q SIR? SIR?

08:58AM

11 A OF --

12 THE COURT: WAIT A MINUTE. I'LL LET HIM
13 RESPOND.

14 THE WITNESS: MR. BRIAN, YOUR
15 CHARACTERIZATIONS OF REPLACEMENTS IS INCORRECT.

08:58AM

16 I GOT A LIST OF MANAGERS THAT I COULD
17 PARACHUTE IN TO SUPPLEMENT THE TEAM, TO SHORE UP THE
18 TEAM IF IT TURNED OUT THAT MR. GUNDLACH WERE EITHER TO
19 LEAVE OF HIS OWN VOLITION, OR WE WERE PUT IN THE
20 UNFORTUNATE POSITION OF HAVING TO TERMINATE HIM.

08:59AM

21 BY MR. BRIAN:

22 Q TAKE A LOOK AT EXHIBIT 5136.

23 I THINK THIS IS IN EVIDENCE, YOUR HONOR.

24 IF NOT, I'LL OFFER IT.

25 THE COURT: IS IT?

08:59AM

26 THE CLERK: NO.

27 THE COURT: IT HAS NOT BEEN ADMITTED.

28 MR. BRIAN: I'LL OFFER IT.

1 MR. QUINN: CAN WE GET SOME FOUNDATION?

2 MR. BRIAN: OKAY. I WILL.

3 Q PAGE 1 OF EXHIBIT 5136 IS AN E-MAIL FROM
4 MR. CONN TO YOU ON JUNE 9TH, 2009, IS IT NOT?

5 A I'M -- I'M SORRY. THERE'S SOMETHING UP ON MY
6 SCREEN. IT'S A SCHEDULE.

08:59AM

7 THE COURT: WE HAVE A DIFFERENT ONE NOW.

8 THE WITNESS: OKAY.

9 THE COURT: THEY DIDN'T HAVE THE RIGHT ONE
10 EARLIER.

08:59AM

11 THE WITNESS: I'M SORRY. IT WAS SOMETHING
12 DIFFERENT.

13 MR. BRIAN: I APOLOGIZE. WE HAD A TECHNICAL
14 ERROR. 5136, PAGE 1.

15 A I HAVE WHAT'S ON THE SCREEN.

08:59AM

16 MR. QUINN: WE HAVE NO OBJECTIONS TO THIS,
17 YOUR HONOR.

18 THE COURT: IT WILL BE ADMITTED.

19

20 (EXHIBIT 5136 ADMITTED.)+

09:00AM

21

22 BY MR. BRIAN: OKAY.

23 Q THIS IS AN E-MAIL THAT MICHAEL CONN, YOUR
24 TRUSTED ASSISTANT, SENT YOU ON JUNE 9TH OF 2009,
25 CORRECT?

09:00AM

26 A YES.

27 Q AND HE SENT YOU SOME BIOS AND DETAILS ON
28 REPUTABLE MORTGAGE SPECIFIC MANAGERS IN THE

1 MARKETPLACE, CORRECT?

2 A YES.

3 Q NOW HE DID THAT IN RESPONSE TO YOUR REQUEST
4 FOR THAT INFORMATION, DIDN'T HE?

5 A YES.

09:00AM

6 Q AND JUST IN CASE YOU DIDN'T GET IT, HE SENT
7 YOU THE SAME THING THE NEXT DAY, IN EXHIBIT 5137.

8 DO WE HAVE 5137?

9 IF NOT DON'T WORRY ABOUT IT.

10 TAKE A LOOK NOW --

09:00AM

11 A EXCUSE ME. NOW I HAVE SOMETHING UP HERE --

12 THE COURT: 5137. WAIT.

13 DID YOU WANT TO QUESTION HIM ABOUT IT?

14 MR. BRIAN: I WILL.

15 Q DO YOU HAVE AN E-MAIL -- ANOTHER E-MAIL FROM
16 MR. CONN DATED JUNE 10TH OF 2009?

09:01AM

17 I THINK I'LL WITHDRAW THAT. I THINK I
18 HAVE THE WRONG NUMBER.

19 THE COURT: ALL RIGHT.

20 MR. BRIAN: EXHIBIT 1743. LET'S PUT THAT
21 EXHIBIT UP.

09:01AM

22 Q 1743 IS AN E-MAIL AT THE TOP FROM MR. CONN TO
23 YOU, DATED AUGUST 21ST, IS IT NOT?

24 A IT IS.

25 Q AND HE FORWARDED TO YOU AN EARLIER E-MAIL
26 DATED JUNE 10TH, DOESN'T HE?

09:01AM

27 A YES. I THINK THAT WAS THE ONE YOU WERE
28 SHOWING ME BEFORE.

1 MR. BRIAN: I'LL OFFER EXHIBIT 1743, YOUR
2 HONOR.

3 MR. QUINN: I BELIEVE THIS IS IN EVIDENCE,
4 YOUR HONOR. WE HAVE NO OBJECTION, CERTAINLY.

5 THE COURT: IF IT ISN'T IN, IT WILL BE
6 ADMITTED.

09:02AM

7 (EXHIBIT 1743 ADMITTED.) +

8

9 BY MR. BRIAN:

10 Q MR. CONN WASN'T THE ONLY PERSON YOU ASKED TO
11 LOOK FOR POSSIBLE FOLKS TO REPLACE MR. GUNDLACH, IS HE?

09:02AM

12 MR. QUINN: ASSUMES FACTS NOT IN EVIDENCE.

13 THE COURT: SUSTAINED.

14 BY MR. BRIAN:

15 Q HE'S NOT THE ONLY PERSON YOU LOOKED TO TO
16 IDENTIFY POSSIBLE MORTGAGE MANAGERS, IS HE, SIR?

09:02AM

17 A HE IS NOT.

18 Q YOU ASKED HIM, AS YOUR FRIEND, MR. GAMSIN AT
19 AIG, RIGHT?

20 A I DID.

09:02AM

21 Q AND YOU ASKED MR. SHEDLIN AT CITIGROUP, DIDN'T
22 YOU?

23 A I DID.

24 Q TAKE A LOOK AT EXHIBIT 5214.

25 THIS, I BELIEVE, IS ALREADY IN EVIDENCE,
26 YOUR HONOR.

09:02AM

27 MR. QUINN: 5214?

28 THE COURT: THAT'S WHAT WE'RE LOOKING

1 AT, 5214.

2 MR. BRIAN: AN E-MAIL FROM MR. SHEDLIN TO YOU
3 ON AUGUST 19 OF 2009, IS IT NOT?

4 A I'M -- YES.

5 MR. BRIAN: I BELIEVE IT'S IN. 09:03AM

6 IF IT'S NOT, I'LL OFFER IT, YOUR HONOR.

7 MR. QUINN: NO OBJECTION, YOUR HONOR.

8 THE COURT: IT WILL BE ADMITTED.

9

10 (EXHIBIT 5214 ADMITTED.)+ 09:03AM

11

12 BY MR. BRIAN:

13 Q IF THIS E-MAIL -- IF WE CAN HIGHLIGHT THE TEXT
14 OF THE E-MAIL --

15 MR. SHEDLIN SENT YOU A LIST OF POSSIBLE
16 M.B.S. ACCOUNT MANAGERS, DID HE NOT? 09:03AM

17 A M.B.S. ACCOUNT MANAGERS?

18 Q YES?

19 A YES.

20 Q NOW, IN FACT, PRIOR TO SEPTEMBER 3RD, 2009,
21 YOU, IN FACT, WERE LOOKING AT SOME SORT OF TRANSACTION
22 WITH A FIRM, NOT JUST HIRING AN INDIVIDUAL MANAGER TO
23 SUPPLEMENT THE TEAM, ISN'T THAT TRUE? 09:03AM

24 A THAT'S NOT TRUE.

25 Q OKAY. 09:04AM

26 TAKE A LOOK AT EXHIBIT 5379 IN EVIDENCE.

27 IF YOU PUT UP 5379, PAGE 51. IF WE

28 COULD HIGHLIGHT THE VERY FIRST LINE.

1 TESTIMONY?

2 A IF I READ IT --

3 Q IS IT, SIR?

4 A IF I READ IT, IT'S INCORRECT.

5 Q IS THAT YOUR TESTIMONY, THAT YOU DIDN'T

09:06AM

6 READ --

7 A MY TESTIMONY IS.

8 Q SIR?

9 A THAT I --

10 Q FINISH -- I NEED TO FINISH THE QUESTION.

09:06AM

11 A SORRY.

12 Q IS IT YOUR TESTIMONY THAT YOU DID NOT READ THE
13 PRESENTATION THAT YOU GAVE IN SUPPORT OF A \$300 MILLION
14 ACQUISITION BY THE SOLE SHAREHOLDER OF TCW?

15 IS THAT YOUR TESTIMONY?

09:06AM

16 A IT'S MY TESTIMONY THAT I DON'T KNOW WHETHER I
17 READ THIS PAGE, PAGE 51 OF THIS DOCUMENT.

18 Q YOU DON'T DISPUTE THAT YOU GAVE THE
19 PRESENTATION, DO YOU, SIR?

20 A I GAVE A PRESENTATION, YES.

09:06AM

21 Q NOW, YOU ASKED MR. MARK ATTANASIO ABOUT
22 MET WEST, THE FIRM, BEFORE THE AUGUST 27TH MEETING,
23 DIDN'T YOU, SIR?

24 A I BELIEVE, THAT MARK -- YES. I'M SORRY, YES.

25 Q TAKE A LOOK AT EXHIBIT 5216.

09:07AM

26 I DON'T KNOW IF THAT'S IN EVIDENCE YET.
27 THIS IS AN E-MAIL YOU SENT TO
28 MR. ATTANASIO ON AUGUST 24TH, 2009, THREE DAYS BEFORE

1 THE AUGUST 27TH MEETING, MEMORIALIZED BY MR. CONN, IS
2 IT NOT?

3 A THIS IS AN E-MAIL OF AUGUST 24TH, YES.

4 Q I'LL OFFER EXHIBIT 5216?

5 MR. QUINN: NO OBJECTION. 09:07AM

6 THE COURT: IT WILL BE ADMITTED.

7

8 (EXHIBIT 5216 ADMITTED.) +

9

10 MR. BRIAN: PUT THAT ON THE SCREEN. 09:07AM

11 Q QUOTE:

12 IT WAS GOOD TO TALK TO YOU
13 YESTERDAY. I HAVE AN UPDATE ON THE
14 SUBJECT WE DISCUSSED. I'D RATHER
15 COVER IT ON THE PHONE, SO PLEASE
16 GIVE ME A CALL WHEN YOU HAVE A
17 CHANCE.

18 I'M ALSO WONDERING WHETHER YOU HAD
19 ANY INPUT ON THE MET WEST QUESTION
20 THAT WE TALKED ABOUT AT OUR
21 BREAKFAST LAST WEEK?

22 THAT'S WHAT YOU WROTE TO MR. ATTANASIO ON
23 AUGUST 24TH, IS IT NOT?

24 A I DID.

25 Q NOW, TAKE A LOOK AT EXHIBIT 5226. 09:08AM

26 5226 CONSISTS OF TWO E-MAILS FROM
27 MR. CONN TO YOURSELF, THE FIRST ONE AT THE BOTTOM, ON
28 AUGUST 28TH, 2009, AND THE SECOND ON SEPTEMBER 2ND,

1 2009, CORRECT?

2 A YES.

3 MR. BRIAN: I'LL OFFER EXHIBIT 5226, YOUR
4 HONOR.

5 MR. QUINN: NO OBJECTION, YOUR HONOR. 09:08AM

6 THE COURT: IT WILL BE ADMITTED. THANK YOU.

7

8 (EXHIBIT 5226 ADMITTED.) +

9

10 MR. BRIAN: PUT THAT UP, DENNIS. 09:09AM

11 Q LET'S START WITH THE BOTTOM E-MAIL.

12 IF WE COULD MAYBE ENLARGE THAT ONE,
13 DENNIS. BOTH PARAGRAPHS, IF POSSIBLE.

14 NOW AUGUST 28TH IS THE DAY AFTER THE
15 AUGUST 27TH MEETING. AND HE SAYS STARTS BY SAYING:
16 REGARDING PROJECT G, DO YOU SEE THAT, AT THE BEGINNING,
17 FIRST PARAGRAPH? 09:09AM

18 A YES.

19 Q THEN HE STATES, DOES HE NOT:

20 IN CASE WE NEED TO BRING IN AN
21 EXPERIENCED MANAGER TO HELP ON THE
22 M.B.S. FIXED INCOME SIDE, THE
23 PERSON I KEEP THINKING ABOUT IS
24 TAD RIVELLE OF MET WEST, HERE IN
25 WEST L.A. 09:09AM

26 DO YOU SEE THAT?

27 A I DO.

28 Q NOW, IN THE SECOND PARAGRAPH, IN THE SECOND

1 SENTENCE, HE STATES:

2 ONE IDEA THAT I HAVE WOULD BE TO
3 PURSUE SOME SORT OF TRANSACTION
4 WITH MET WEST, EITHER THROUGH AN
5 ACQUISITION OF A MINORITY STAKE,
6 WITH A POSSIBILITY OF STEPPING UP
7 TO FULL OWNERSHIP OVER TIME, OR
8 THROUGH A CONTRIBUTION TYPE DEAL,
9 WHERE THEY EXCHANGE MET WEST SHARES
10 FOR SG TCW SHARES, UNQUOTE.

09:10AM

09:10AM

11 DO YOU SEE THAT?

12 A YES.

13 Q AND HE WROTE THAT TO YOU FIVE OR SIX DAYS
14 BEFORE YOUR SEPTEMBER 3RD MEETING WITH MR. GUNDLACH,
15 DID HE NOT, SIR?

09:10AM

16 A HE DID.

17 Q NOW, TAKE A LOOK AT EXHIBIT 5233.

18 A YES.

19 Q 5233, THE TOP 3 E-MAILS CONSIST OF AN E-MAIL
20 EXCHANGE BETWEEN YOU AND MARK ATTANASIO ON
21 SEPTEMBER 1ST, 2009, CORRECT?

09:11AM

22 A YES.

23 MR. BRIAN: I'LL ADMIT -- I'LL OFFER
24 EXHIBIT 5233, YOUR HONOR.

25 MR. QUINN: WE HAVE NO OBJECTION TO MR. BRIAN
26 ADMITTING THIS, YOUR HONOR.

09:11AM

27 THE COURT: IT WILL BE OFFERED AND ADMITTED
28 WITHOUT OBJECTION.

1 MR. BRIAN: SOMETIMES WE FORGET WHAT OUR ROLES
2 ARE.

3 (EXHIBIT 5233 ADMITTED.) +
4

5 BY MR. BRIAN:

09:11AM

6 Q DO YOU SEE WHERE, N A THIRD OF THE WAY DOWN,
7 IT SAYS: WE SPECIFICALLY DENY THE KKR RUMOR.

8 HIGHLIGHT THAT WHOLE PASSAGE.

9 AND THEN YOU SAY:

10 BY THE WAY, I FORGOT TO ASK YOU

09:11AM

11 YESTERDAY WHETHER YOU HAD ANY

12 FURTHER INPUT FOR ME ON MET WEST.

13 YOU WROTE THAT TO MR. ATTANASIO ON
14 SEPTEMBER 1ST, TWO DAYS BEFORE YOUR SEPTEMBER 3RD
15 MEETING WITH MR. GUNDLACH, RIGHT?

09:11AM

16 A YES.

17 Q NOW, THE FRENCH WERE ALSO INTERESTED IN YOU
18 FINDING REPLACEMENTS FOR MR. GUNDLACH, WERE THEY NOT?

19 A THERE WAS LOTS OF DIALOGUE WITH THE FRENCH.
20 AND ONE OF THE POSSIBILITIES WAS THAT WE WOULD NEED TO
21 REPLACE OR SHORE UP THAT AREA, YES.

09:12AM

22 Q AND AS WE TALKED YESTERDAY, MR. SHEDLIN WAS
23 REPORTING BOTH TO YOU AND ALSO TO THE FOLKS AT SOCIÉTÉ
24 GÉNÉRALE, WAS HE NOT?

25 A YES.

09:12AM

26 Q AND HE HAD CONVERSATIONS WITH THEM THAT HE
27 REPORTED TO YOU WITH THE FRENCH THAT YOU HAD -- THAT
28 YOU DID NOT PARTICIPATE IN DIRECTLY, CORRECT?

1 A I'M SORRY?

2 Q THAT WAS A BAD QUESTION. I'LL WITHDRAW IT.

3 TAKE A LOOK AT EXHIBIT 5288.

4 THIS IS AN E-MAIL YOU RECEIVED FROM

5 MR. SHEDLIN ON SEPTEMBER 24TH, 2009, IS IT NOT?

09:12AM

6 A SEPTEMBER 24TH, YES.

7 MR. BRIAN: I'LL OFFER EXHIBIT 5288.

8 MR. QUINN: NO OBJECTION.

9 THE COURT: IT WILL BE ADMITTED.

10

09:13AM

11 (EXHIBIT 5288 ADMITTED.) +

12

13 MR. BRIAN: PUT THAT ON THE SCREEN, DENNIS.

14 Q NOW, THE SUBJECT LINE IS FRABRICE. DO YOU SEE
15 THAT?

09:13AM

16 A I DO.

17 Q YOU UNDERSTOOD THAT TO REFER TO THE
18 FRABRICE CHOUKROUN WE DISCUSSED YESTERDAY, RIGHT?

19 A YES.

20 Q HE'S THE ASSISTANT OR NO. 2 TO MR. RIPOLL?

09:13AM

21 A I BELIEVE HE WAS HIS CHIEF OF STAFF, WHAT HE
22 CALLED HIM AS.

23 Q OF MR. RIPOLL AT SOCIÉTÉ GÉNÉRALE, RIGHT?

24 A YES.

25 Q MR. SHEDLIN WAS REPORTING TO YOU, AS YOU
26 UNDERSTOOD IT, THAT MR. FRABRICE, THAT FRABRICE
27 CHOUKROUN WANTED TO DISCUSS, AMONG OTHER THINGS, THE
28 ABILITY TO HIRE PEOPLE TO REPLACE J.G., RIGHT?

09:13AM

1 A YES.

2 Q NOW, YOU TESTIFIED, I THINK IT WAS YESTERDAY,
3 THAT MET WEST HAD RECEIVED THE *MORNING STAR* FIXED
4 INCOME MANAGER OF THE YEAR AWARD, RIGHT?

5 A YES.

09:14AM

6 Q AND I THINK YOU MAY HAVE SAID THAT ANOTHER --
7 ONE PERSON AT MET WEST HAD BEEN NOMINATED FOR THE FIXED
8 INCOME MANAGER OF THE YEAR IN 2009, TOO, RIGHT?

9 A YES.

10 Q NOW, THERE ARE DIFFERENT KINDS OF FIXED INCOME
11 INVESTMENTS, ARE THERE NOT?

09:14AM

12 A OF COURSE.

13 Q FIXED INCOME IS ESSENTIALLY ANOTHER TERM FOR
14 BONDS, ISN'T IT?

15 A IN -- IN ITS MOST GENERIC SENSE, YES.

09:14AM

16 Q YOU CAN HAVE INVESTMENTS IN DIFFERENT KINDS OF
17 BOND FUNDS, CAN'T YOU?

18 YOU CAN HAVE CORPORATE BOND FUNDS, FOR
19 EXAMPLE, RIGHT?

20 A YOU CAN.

09:14AM

21 Q YOU COULD HAVE A GOVERNMENT BOND FUND, I
22 SUPPOSE, CORRECT?

23 A YES.

24 Q YOU CAN HAVE A MORTGAGE-BACKED SECURITIES BOND
25 FUND, CAN'T YOU, SIR?

09:14AM

26 A YES.

27 Q AND MR. ATTANASIO, FOR EXAMPLE, MANAGED ASSETS
28 IN THE FIXED INCOME AREA, CORRECT?

1 A YES.

2 Q AND MR. GUNDLACH MANAGED FUNDS IN THE FIXED
3 INCOME AREA AS WELL, CORRECT?

4 A YES.

5 Q BUT THE TYPES OF INVESTMENTS THAT THEY MANAGED
6 WERE DIFFERENT, WEREN'T THEY?

09:15AM

7 A YES.

8 Q YOU KNEW AT THE TIME TCW ACQUIRED MET WEST
9 THAT MET WEST DID NOT HAVE ANY SIGNIFICANT EXPERIENCE
10 MANAGING MORTGAGE-BACKED SECURITIES; ISN'T THAT RIGHT?

09:15AM

11 A THAT'S NOT TRUE, MR. BRIAN.

12 Q OKAY.

13 MR. CONN INFORMED YOU IN OCTOBER OF
14 2009, DID HE NOT, THAT MET WEST DID NOT HAVE ANY
15 SIGNIFICANT MORTGAGE EXPERIENCE?

09:15AM

16 A MR. BRIAN, MET WEST HAD OVER HALF OF ITS
17 ASSETS INVESTED IN MORTGAGE-BACKED SECURITIES.

18 Q IT'S NOT MY QUESTION, SIR.

19 DID MR. CONN INFORM YOU, IN OCTOBER OF
20 2005, THAT MET WEST DID NOT HAVE ANY SIGNIFICANT
21 MORTGAGE EXPERIENCE?

09:15AM

22 A IF HE DID, IT WAS WITH RESPECT TO SEPARATE
23 ACCOUNTS.

24 MR. BRIAN: I'LL MOVE TO STRIKE THAT AS
25 NONRESPONSIVE.

09:16AM

26 THE COURT: I'LL STRIKE THE RESPONSE.

27 MR. BRIAN:

28 Q TAKE A LOOK AT EXHIBIT 5341.

1 EXHIBIT 5341 IS A TWO-PAGE MEMO YOU
2 RECEIVED FROM MICHAEL CONN ON OCTOBER 5TH, 2009, IS IT
3 NOT, SIR?

4 A IT IS.

5 MR. BRIAN: I'LL OFFER EXHIBIT 5341.

09:16AM

6 MR. QUINN: NO OBJECTION.

7 THE COURT: IT WILL BE ADMITTED.

8
9 (EXHIBIT 5341 ADMITTED.) +

09:16AM

10
11 BY MR. BRIAN:

12 Q PAGE 1.

13 FIRST OF ALL, THE SUBJECT LINE IS TO
14 WOODY'S MEMO, DO YOU SEE THAT?

15 A I DO.

09:16AM

16 Q WOODY IS A REFERENCE TO WOODY BRADFORD, RIGHT?

17 A YES. IT IS.

18 Q HE WAS A CONSULTANT THAT YOU RETAINED IN THE
19 SUMMER OR FALL OF 2009 IN CONNECTION WITH THE
20 PROJECT ANGEL TRANSACTION, RIGHT?

09:17AM

21 A IN THE FALL, YES.

22 Q AND HE HAD WRITTEN A MEMO, AND YOU'D ASKED
23 MR. CONN TO COMMENT ON HIS MEMO, RIGHT?

24 A YES.

25 Q OKAY.

09:17AM

26 NOW, LET'S GO DOWN TO -- THERE'S A
27 LITTLE -- WHAT YOU -- THE SECOND PARAGRAPH FROM THE
28 LAST ON THAT PAGE?

1 A YES.

2 Q YOU SEE THAT, I GUESS IT'S AN ARROW, WHERE
3 MR. CONN WROTE, REFERRING TO MET WEST:

4 THEY HAVE NO LARGE SCALE MORTGAGE
5 TRACK RECORD. AND WHILE THEY HAVE 09:17AM
6 PRESENTED MORTGAGES TO CONSULTANTS,
7 THEY HAVE HAD LIMITED SUCCESS IN
8 THIS AREA. THIS WOULD BE AN
9 IMPORTANT DILIGENCE ITEM.

10 MR. CONN WROTE THAT TO YOU ON OCTOBER 5TH OF 09:17AM
11 2009, DID HE NOT, SIR?

12 A HE DID.

13 Q NOW, BEFORE I MOVE TO THE SEPTEMBER 3RD
14 MEETING, I WANT TO ASK YOU ABOUT -- GO BACK TO THE
15 JUNE 29TH, 2009 MEETING YOU HAD WITH ROBERT DAY. 09:18AM

16 YOU RECALL THE NOTES? WE WENT THROUGH
17 THE ONE-PAGE NOTES YESTERDAY?

18 A YESTERDAY, YES.

19 MR. BRIAN: I'LL ASK TO PLAY A DEPOSITION
20 CLIP, YOUR HONOR, WITH RESPECT TO THAT MEETING. 09:18AM

21 THE PAGES ARE 118, LINE 12.

22 TO 119, LINE 3.

23 119, 09. TO 119, 25.

24 AND ALSO THROUGH 120, LINE 1.

25 TO 120 LINE 20. 09:18AM

26 THAT'S ONE OF THE ITEMS WE SPOKE ABOUT
27 THIS MORNING, YOUR HONOR.

28 THE COURT: ANY OBJECTION?

1 MR. QUINN: NO OBJECTION, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3

4 (VIDEO DEPOSITION PLAYED OF MR. STERN.) +

5

09:18AM

6 MR. BRIAN: I'LL GO BACK UP TO MY CHART I
7 STARTED TO DRAW YESTERDAY, 6161. 2009 MEETINGS. FOR
8 JUNE 29TH, I'LL PUT, "NO RECALL." AND I'LL PUT THE
9 DEPO, DEPOSITION, IN PARENTHESES, WHERE YOU SAID YOU
10 HAD NO RECOLLECTION OF THAT.

09:22AM

11 MR. QUINN: I OBJECT TO THE -- THIS ISN'T A
12 QUESTION.

13 THE COURT: YES.

14 WE DON'T NEED COMMENTARY.

15 MR. BRIAN: OKAY. I'M SORRY, YOUR HONOR.

09:22AM

16 THE COURT: IF YOU WANT TO WRITE DOWN
17 SOMETHING THAT'S SAID BY THE WITNESS, THAT'S FINE.

18 MR. BRIAN: I'LL ASK YOU RIGHT NOW AGAIN,
19 THEN, ABOUT THE AUGUST 1ST LUNCH MEETING WITH MR. DAY.

20 Q DO YOU HAVE ANY RECOLLECTION OF WHAT YOU
21 DISCUSSED WITH MR. DAY AT THAT MEETING, SIR?

09:22AM

22 A I AM -- I'M SORRY.

23 Q I SHOWED YOU AN E-MAIL YESTERDAY, I'LL BE
24 HAPPY TO SHOW YOU AGAIN, YOU SENT TO MR. MUSTIER ON
25 AUGUST 1ST, SAYING YOU HAD LUNCH WITH MR. DAY, AND NOW
26 IT WAS TIME FOR PLAN B.

09:22AM

27 DO YOU RECALL THAT?

28 MR. QUINN: MISSTATES WHAT THE DOCUMENT SAYS,

1 YOUR HONOR. MOVE TO STRIKE.

2 THE COURT: LET'S GO BACK.

3 MR. BRIAN: I'LL MOVE ON TO THE SEPTEMBER 3RD
4 MEETING. WE'LL COME BACK TO THAT.

5 Q YOU DO RECALL THE SEPTEMBER 3RD, 2009 MEETING,
6 DON'T YOU, SIR? 09:22AM

7 A YES.

8 Q THAT WAS A MEETING YOU HAD WITH MR. GUNDLACH
9 AND FOUR OR FIVE OF HIS LIEUTENANTS ON THE 16TH FLOOR
10 OF TCW, WAS IT NOT? 09:22AM

11 A IT WAS.

12 Q AT THAT MEETING, HE SPECIFICALLY ASKED YOU IF
13 YOU WERE INTENDING TO FIRE HIM, DIDN'T HE, SIR?

14 A AS I SAID, I THINK HE DID. AND I TOLD HIM,
15 NO. 09:23AM

16 I DON'T REMEMBER THE WAY HE SPECIFICALLY
17 PHRASED IT.

18 Q OKAY.

19 YOU DID NOT TELL HIM AT THAT MEETING
20 THAT SIX DAYS BEFORE, YOU HAD ATTENDED A MEETING WITH
21 MR. GIBELLO, MR. CAHILL, MR. DEVITO AND
22 MR. BURSCHINGER, IN WHICH YOU HAD DISCUSSED WHETHER
23 THERE WAS CAUSE TO TERMINATE MR. GUNDLACH. 09:23AM

24 YOU DID NOT TELL HIM THAT ON
25 SEPTEMBER 3RD, DID YOU, SIR? 09:23AM

26 A I DID NOT.

27 Q AND YOU DIDN'T TELL HIM, ON SEPTEMBER 3RD,
28 THAT THERE WERE PEOPLE, SENIOR PEOPLE, SENIOR PEOPLE IN

1 THE COMPANY, WHO WERE RECOMMENDING THAT HE BE
2 TERMINATED.

3 YOU DIDN'T TELL HIM THAT, EITHER, DID
4 YOU, SIR?

5 A NO.

09:23AM

6 I WAS NOT INTENDING TO TERMINATE
7 MR. GUNDLACH.

8 Q WELL, TAKE A LOOK -- WELL, FOUR DAYS AFTER THE
9 MEETING, YOU WROTE TO MR. OUDEA, THE TOP DOG AT SOCIÉTÉ
10 GÉNÉRALE, THAT IT WAS, QUOTE, HIGHLY LIKELY, UNQUOTE,
11 THAT YOU WOULD HAVE TO PART WAYS WITH MR. GUNDLACH,
12 DIDN'T YOU?

09:24AM

13 A THAT WAS IN THE WAKE OF THE SEPTEMBER 3RD
14 MEETING.

15 YES.

09:24AM

16 Q TAKE A LOOK AT 6604 -- EXHIBIT 6004.

17 FOCUS FIRST ON PAGE 1, THE BOTTOM
18 E-MAIL, STARTING, OH, LITTLE MORE THAN HALFWAY DOWN
19 PAGE 1, AN E-MAIL FROM YOU TO MR. OUDEA THAT CONTINUES
20 ONTO PAGE 2.

09:25AM

21 DO YOU SEE THAT?

22 A I SEE THAT.

23 MR. BRIAN: I WOULD OFFER EXHIBIT 6004.

24 MR. QUINN: NO OBJECTION.

25 THE COURT: IT WILL BE ADMITTED.

09:25AM

26

27 (EXHIBIT 6004 ADMITTED.) +

28 ///

1 MR. BRIAN: PUT UP THAT PAGE. AN E-MAIL FROM
2 YOU TO MR. OUDEA, SEPTEMBER 7TH, 2009.

3 Q IS IT NOT -- COPIED TO MR. RIPOLL, RIGHT?

4 A IT IS.

5 Q AND IN PARAGRAPH 3, YOU WROTE, ON
6 SEPTEMBER 7TH: YOU UNDERSTAND THAT IT IS LIKELY THAT
7 WE WILL HAVE TO PART WAYS WITH JEFFREY GUNDLACH, AND
8 ARE PREPARED TO SUPPORT THIS ACTION.

09:25AM

9 YOU WROTE THAT ON SEPTEMBER 7TH, 2009,
10 DIDN'T YOU, SIR?

09:25AM

11 A THAT'S WHAT IT SAYS.

12 Q DID YOU TELL MR. GUNDLACH ON SEPTEMBER 7TH, OR
13 SEPTEMBER 8TH, OR SEPTEMBER 9TH, THAT YOU HAD JUST
14 WRITTEN THE HEAD GUY AT SOCIÉTÉ GÉNÉRALE, SAYING IT WAS
15 LIKELY YOU'D HAVE TO PART WAYS WITH MR. GUNDLACH.

09:26AM

16 DID YOU TELL MR. GUNDLACH THAT?

17 A I DID NOT.

18 Q NOW, AT THE MEETING ON SEPTEMBER 3RD,
19 MR. GUNDLACH MADE A PROPOSAL TO POSSIBLY PURCHASE TCW,
20 DID HE NOT?

09:26AM

21 A IF YOU CALL THAT A PROPOSAL, YES.

22 Q I WAS JUST GOING TO GO THERE.

23 YOU DIDN'T REGARD THAT AS A SERIOUS
24 OFFER, DID YOU, SIR?

25 A NO, I DIDN'T.

09:26AM

26 Q 700 -- IT WAS BASED ON VALUATION OF \$700
27 MILLION, RIGHT?

28 A MR. BRIAN, IF YOU TAKE INTO ACCOUNT, ALL OF

1 THE OTHER ASPECTS OF IT, IT BROUGHT THE VALUATION OF
2 LESS THAN HALF THAT.

3 Q ARE YOU AWARE, NINE DAYS LATER, CITIBANK
4 VALUED TCW AT 700- TO 800 MILLION?

5 A I THINK IT WAS A BILLION. 09:27AM

6 Q WELL, TAKE A LOOK AT 5269 IN EVIDENCE.

7 DENNIS, IF WE COULD SHOW THOSE TWO
8 BULLETS RIGHT THERE.

9 ARE YOU AWARE THAT ON SEPTEMBER 12TH,
10 2009, CITIGROUP DID A PRELIMINARY VALUATION, AND PUT
11 THE VALUE OF TCW AT BETWEEN 700- AND 800 MILLION? 09:27AM

12 A MR. BRIAN, THE VALUATION THAT I SAW IN THE
13 DOCUMENT THAT WAS PRESENTED TO ME WAS A BILLION.

14 Q I JUST WANT TO KNOW, NINE DAYS AFTER THE
15 MEETING, YOU UNDERSTOOD THAT CITIGROUP DID A VALUATION
16 AT 700- TO 800 MILLION? 09:27AM

17 A I DON'T REMEMBER SEEING THIS DOCUMENT. I
18 DON'T SEE MYSELF ON THIS DOCUMENT.

19 Q OKAY.

20 NOW, MR. MUSTIER HIMSELF, WHO SAT ON THE
21 BOARD OF TCW, SAT ON THE EXECUTIVE COMMITTEE OF TCW,
22 AND WAS THE MAN YOU REPORTED TO, DID A BOOK VALUE OF
23 TCW, IN MAY OF 2009, AT 900 MILLION, DIDN'T HE? 09:27AM

24 A I -- IF YOU -- IF YOU HAVE SOMETHING TO THAT
25 EFFECT, I'M HAPPY TO LOOK AT IT. I JUST DON'T RECALL. 09:28AM

26 Q TAKE A LOOK AT EXHIBIT 6138.

27 6138 IS AN E-MAIL EXCHANGE BETWEEN YOU
28 AND MR. MUSTIER ON MAY 30TH, 2009, IS IT NOT?

1 A YES.

2 MR. BRIAN: OFFER EXHIBIT 6138.

3 MR. QUINN: NO OBJECTION.

4 THE COURT: IT WILL BE ADMITTED.

5

09:29AM

6 (EXHIBIT 6138 ADMITTED.)+

7

8 MR. BRIAN: PUT THAT UP, DENNIS.

9 IN THE MIDDLE E-MAIL FROM MR. MUSTIER TO

10 YOU, IN THE FOURTH PARAGRAPH DOWN.

09:29AM

11 Q DO YOU SEE WHERE HE SAYS:

12 I ASSUME MY BOOK VALUE IS 900

13 MILLION.

14 DO YOU SEE THAT?

15 A YES.

09:29AM

16 HE ASSUMES IT.

17 Q NOW -- NOW, YOU CAN GO BACK -- YOU WROTE BACK,

18 DIDN'T YOU?

19 A MR. BRIAN --

20 Q DID YOU RESPOND TO HIS E-MAIL?

09:29AM

21 A I -- AS I SIT HERE ON -- ON -- AT THIS TIME, I

22 DON'T RECALL WHETHER I DID. BUT --

23 Q YOU ACTUALLY DID. IT'S IN THE DOCUMENT?

24 A OKAY. IF I DID, THEN -- THEN I'M HAPPY TO SEE

25 IT. THAT'S ALL.

09:29AM

26 Q LET'S PUT UP YOUR RESPONSE.

27 YOUR RESPONSE WAS:

28 I'M OFF FOR A BIKE RIDE TO CLEAR MY

1 HEAD. I'LL CALL YOU IN A COUPLE OF
2 HOURS.

3 YOU'RE CORRECT ABOUT THE
4 DISADVANTAGES OF THE INTERIM LABEL.
5 WE NEED TO DECIDE WHICH IS THE
6 LESSER EVIL. TALK TO YOU LATER.

09:30AM

7 THAT WAS YOUR RESPONSE, ON MAY 30TH, 2009, TO
8 MR. MUSTIER'S E-MAIL, WAS IT NOT?

9 YES OR NO, SIR? WAS THAT YOUR RESPONSE?

10 A I'M SORRY. GIVE ME A SECOND. I'M AN OLD MAN.
11 AND I'M A LITTLE CONFUSED HERE.

09:30AM

12 WHAT DOCUMENT ARE YOU TALKING ABOUT?

13 Q THE TOP E-MAIL IN --

14 A YES.

15 Q -- IN 6138?

09:30AM

16 A YES. THIS IS MR. MUSTIER TALKING ABOUT THE
17 INTERIM THING.

18 AND THEN HE HAS IN THERE --

19 Q HOW OLD ARE YOU, SIR?

20 A I'M 67.

09:30AM

21 Q AND YOU ARE FULLY ENGAGED AT TCW AS THE CEO
22 CURRENTLY?

23 A YES.

24 Q YOU RUN THE OPERA NOW, DO YOU --

25 A NO.

09:30AM

26 Q YOU USED TO RUN IT?

27 A MR. ROUNDTREE HAS BEEN RUNNING THE OPERA, FOR
28 A NUMBER OF YEARS NOW. AND YOU KNOW THAT.

1 Q RIGHT AFTER THE SEPTEMBER 3RD MEETING, SIR,
2 YOU TALKED TO MR. RIPOLL ABOUT THE ONE OF THE
3 ADVANTAGES COMING OUT OF THE SEPTEMBER 3RD MEETING.

4 WAS IT YOU NOW HAD DIRECT ACCESS TO
5 MR. GUNDLACH'S LIEUTENANTS? THAT'S WHAT YOU TOLD
6 MR. RIPOLL, DIDN'T YOU, SIR?

09:31AM

7 A WHEN, AGAIN, MR. BRIAN?

8 Q WITHIN THE A FEW DAYS OF THE SEPTEMBER 3RD
9 MEETING?

10 A THAT I THOUGHT THERE WOULD BE A MORE OPEN
11 DIALOGUE.

09:31AM

12 Q YEAH?

13 A YES.

14 Q YOU WERE HOPING, WERE YOU NOT, THAT IN THE
15 EVENT MR. GUNDLACH WAS NO LONGER WITH THE COMPANY,
16 YOU'D BE ABLE TO KEEP SOME OF THE KEY PEOPLE THAT
17 MR. BURSCHINGER HAD IDENTIFIED BACK IN THAT DOCUMENT
18 TITLED PLAN B, THAT WAS DISCUSSED ON AUGUST 27TH,
19 RIGHT?

09:31AM

20 MR. QUINN: TIME FRAME?

09:31AM

21 THE COURT: I THINK YOU WANT TO QUALIFY IT.
22 BY MR. BRIAN:

23 Q WITHIN A COUPLE DAYS OF SEPTEMBER 3RD.

24 YOUR HOPE, COMING OUT OF THAT MEETING,
25 WAS THAT YOU'D BE ABLE TO TALK DIRECTLY TO
26 MR. GUNDLACH'S LIEUTENANTS, WITH THE HOPE OF KEEPING
27 THEM AT THE COMPANY, RIGHT?

09:31AM

28 A I ALWAYS HOPED THAT WE WOULD -- IF

1 MR. GUNDLACH LEFT, FOR ANY REASON, THAT WE'D BE ABLE TO
2 KEEP AS MANY OF HIS LIEUTENANTS AS POSSIBLE, YES.

3 Q YOU COMMUNICATED WITH MR. CONN, HAVING
4 MARK GIBELLO REACH OUT TO MR. BARACH, DIDN'T YOU, SIR?

5 A I THINK MR. CONN MADE A SUGGESTION TO ME THAT
6 IT WOULD BE A GOOD IDEA FOR MR. GIBELLO TO REACH OUT TO
7 MR. BARACH.

09:32AM

8 Q AND HE ACTUALLY, HIS SUGGESTION WAS THAT HE'D
9 DO IT UNDER A PRETEXT, RIGHT?

10 A I -- I KNOW THAT THERE WAS A SUGGESTION MADE.
11 IF YOU'D LIKE TO SHOW ME THE DOCUMENT,
12 I'D HAPPY BE HAPPY TO HELP YOU ANALYZE IT.

09:32AM

13 Q EXHIBIT 5246.

14 THIS IS AN E-MAIL EXHIBIT 5246, AN
15 E-MAIL FROM MR. CONN TO YOU ON SEPTEMBER 3RD, 2009, IS
16 IT NOT?

09:33AM

17 A IT IS.

18 MR. BRIAN: I'LL OFFER 5246, YOUR HONOR.

19 MR. QUINN: NO OBJECTION.

20 THE COURT: IT WILL BE ADMITTED.

09:33AM

21

22 (EXHIBIT 5246 ADMITTED.)+

23

24 MR. BRIAN: PUT THAT UP DENNIS, PLEASE.

25 Q MR. CONN WROTE TO YOU THIS E-MAIL AT 9:16 P.M.
26 ON THE SAME DAY YOU MET WITH MR. GUNDLACH AND HIS
27 LIEUTENANTS, RIGHT?

09:33AM

28 A YES.

1 Q AND HE WROTE:

2 MARC, THINKING ABOUT PROJECT G, I
3 THINK A GOOD MOVE COULD BE FOR
4 GIBELLO TO SET UP A MEETING WITH
5 BARACH FOR AFTER TUESDAY NEXT WEEK.

09:34AM

6 NOBODY WOULD SUSPECT ANYTHING,
7 SINCE GIBELLO HAS BEEN OUT OF THE
8 SPOTLIGHT FOR A WHILE NOW. AND
9 GIBELLO CAN ACT AS IF HE IS JUST
10 TRYING TO CLARIFY THE RUMORS THAT
11 HE'S BEEN HEARING.

09:34AM

12 THROUGH THIS MEETING, GIBELLO CAN
13 GET A FEEL FOR WHERE PHIL SITS, AND
14 WHETHER IT WOULD THEN BE WORTHWHILE
15 FOR YOU TO COME IN AND HAVE THE
16 REAL DISCUSSION. IN THIS WAY, YOU
17 MINIMIZE THE RISK OF THIS GETTING
18 BACK TO JEFFREY, AND INCREASE THE
19 LIKELIHOOD OF A SUCCESSFUL
20 CONVERSATION, WHEN AND IF YOU HAVE
21 IT.

09:34AM

09:34AM

22 MR. CONN WROTE THAT TO YOU AT 9:16 P.M. ON
23 SEPTEMBER 3RD, DIDN'T HE, SIR?

24 A THAT'S WHAT IT APPEARS TO BE, YES.

25 Q NOW, LET'S GO BACK, IF WE COULD, TO
26 EXHIBIT 5224, PAGE 2, MR. CONN'S NOTES.

09:34AM

27 AND WE'LL FOCUS ON WHERE HE SAYS: TALK
28 TO LAW FIRM ABOUT J.G.'S BEHAVIOR, TO SEE IF IT

1 REPRESENTS CAUSE.

2 DO YOU SEE THAT?

3 A YES.

4 Q I TAKE IT THAT YOU WOULD HAVE LEFT IT UP TO
5 YOUR GENERAL COUNSEL, MICHAEL CAHILL, TO FOLLOW UP ON
6 THAT, RIGHT?

09:35AM

7 A YES.

8 Q AS FAR AS YOU KNOW, HE DID, RIGHT?

9 A I -- YOU HAVE TO ASK MICHAEL CAHILL.

10 Q ABOUT A WEEK OR SO LATER, MR. CAHILL REPORTED
11 TO YOU, AS YOU TESTIFIED, THAT YOU WERE GOING TO -- THE
12 COMPANY WAS GOING TO MONITOR THE E-MAILS AND COMPUTERS
13 OF SOMEBODY IN THE M.B.S. GROUP, RIGHT?

09:35AM

14 A HE REPORTED TO ME?

15 Q YEAH. HE TOLD YOU THAT, RIGHT?

09:36AM

16 A I ASKED HIM TO DO THAT.

17 Q YOU ASKED MR. CAHILL TO DO THAT?

18 A YES.

19 Q HE CAME BACK TO YOU ABOUT A WEEK LATER AND
20 SAID THEY WERE GOING TO DO THAT, RIGHT?

09:36AM

21 A I -- I DON'T REMEMBER WHEN HE CAME BACK.

22 I ASKED HIM TO DO IT. IT WAS DONE.

23 Q IT WAS DONE.

24 AND BY THE END OF SEPTEMBER, YOU
25 TESTIFIED THAT YOU HAD LEARNED INFORMATION, FOR
26 EXAMPLE, THAT YOU SAID, THAT THERE WAS SOME COPYING OF
27 DOCUMENTS, RIGHT?

09:36AM

28 A YES.

1 Q AND THAT THERE WAS SOME SORT OF COMMUNICATION
2 GOING ON WITH A COMMERCIAL REAL ESTATE AGENT, RIGHT?

3 A AMONG OTHER THINGS, YES.

4 Q NOW, WHEN YOU LEARNED THAT, IN LATE SEPTEMBER,
5 DID YOU CONFRONT MR. GUNDLACH?

09:36AM

6 A NO.

7 Q NOW, YOU TRAVELED TO PARIS IN MID OCTOBER OF
8 2009 TO MEET WITH THE FRENCH ABOUT PROJECT ANGEL, DID
9 YOU NOT?

10 A I -- WHEN DID YOU SAY AGAIN, MR. BRIAN?

09:37AM

11 Q LET ME SHOW YOU EXHIBIT 6136.

12 A OKAY.

13 Q 6136 IS AN ITINERARY FOR YOU ON YOUR TRIP TO
14 PARIS, OCTOBER 19TH AND OCTOBER 20TH; IS IT NOT?

15 A YES, THAT'S APPARENTLY WHAT IT IS.

09:37AM

16 MR. BRIAN: I'LL OFFER 6136.

17 MR. QUINN: NO OBJECTION.

18 THE COURT: IT WILL BE ADMITTED.

19

20 (EXHIBIT 6136 ADMITTED.) +

09:37AM

21

22 MR. BRIAN: CAN WE PUT THAT UP?

23 LET'S MAKE THE FIRST HALF A LITTLE
24 LARGER, SO THE JURY CAN SEE THAT.

25 I'LL GIVE THE JURY A MOMENT TO READ IT,
26 YOUR HONOR.

09:37AM

27

(PAUSE) +

28 ///

1 MR. BRIAN: THEN MAYBE WE CAN GO TO THE SECOND
2 HALF THEN, DENNIS.

3 LET'S MOVE TO ANOTHER EXHIBIT.

4 TAKE A LOOK AT EXHIBIT 336.

5 EXHIBIT 336 IS AN E-MAIL FROM
6 MICHAEL CONN TO YOU, DATED OCTOBER 6TH, 2009, RIGHT?

09:38AM

7 A YES.

8 MR. BRIAN: I'LL OFFER EXHIBIT 336.

9 MR. QUINN: NO OBJECTION.

10 THE COURT: IT WILL BE ADMITTED.

09:39AM

11
12 (EXHIBIT 336 ADMITTED.) +
13

14 MR. BRIAN: YOU CAN PUT THAT UP.

15 Q NOW HE SAYS:

09:39AM

16 MARC, BELOW IS A SCRIPT FOR YOUR
17 CONVERSATION WITH DAVID, AS I SEE
18 IT, BASED ON JACQUES AND GARY'S
19 COMMENTS.

20 THE "DAVE" HE'S REFERRING TO IS DAVID LIPPMAN
21 OF MET WEST, RIGHT.

09:39AM

22 A YES.

23 Q THE JACQUES HE'S REFERRING TO IS
24 JACQUES RIPOLL, CORRECT?

25 A YES.

09:39AM

26 Q AND THE GARY IS GARY SHEDLIN OF CITIGROUP,
27 RIGHT?

28 A YES.

1 Q AND SO WHAT MR. CONN WAS DOING WAS ESSENTIALLY
2 DRAFTING YOU, TALKING POINTS WITH A CONVERSATION WITH
3 DAVID LIPPMAN AT MET WEST?

4 A HIS SUGGESTIONS, YES.

5 Q YOU SEE THE BOTTOM, WHERE IT SAYS, THE BOTTOM
6 LINE: IS THAT PARIS IS ON BOARD FOR A \$300 MILLION
7 PURCHASE PRICE, AND IS EAGER FOR US TO MOVE FORWARD.

09:39AM

8 DO YOU SEE THAT?

9 A YES.

10 Q SO WHEN YOU GOT TO PARIS, ON OCTOBER 19TH OF
11 2009, YOU UNDERSTOOD THAT, SUBJECT TO ALL THE THINGS
12 YOU GOT TO DO IN A DEAL, DUE DILIGENCE AND FINALIZING
13 THE TERMS, SOCIÉTÉ GÉNÉRALE WANTED TO GO FORWARD TO
14 ACQUIRE MET WEST TO REPLACE MR. GUNDLACH, RIGHT?

09:39AM

15 A ACTUALLY, I BELIEVE I NEEDED TO SELL THIS DEAL
16 TO SG.

09:40AM

17 Q OKAY.

18 A THAT IT WAS A LARGE COMMITMENT OF CAPITAL ON
19 THEIR PART.

20 AND THAT IS WHY I WENT TO PARIS, YES.

09:40AM

21 Q THAT SALES JOB WAS IN PART IN 5379. TAKE A
22 LOOK AT THAT, SIR.

23 5379 IS AN E-MAIL FROM MR. CONN ON
24 OCTOBER 17TH TO MR. RIPOLL AND MR. CHOUKROUN OF SOCIÉTÉ
25 GÉNÉRALE, COPIED TO YOU, IS IT NOT?

09:41AM

26 A YES.

27 MR. BRIAN: I'LL OFFER EXHIBIT 5379.

28 MR. QUINN: NO OBJECTION.

1 THE COURT: IT WILL BE ADMITTED.

2

3 (EXHIBIT 5379 ADMITTED.) +

4

5 MR. BRIAN: NOW, TURN TO PAGE 7, WHERE IT
6 SAYS: 5379-0007.

09:41AM

7 Q YOU SEE AT THE TOP IT SAYS, STRATEGIC
8 RATIONALE FOR M-CO TRANSACTION, RIGHT?

9 A YES.

10 Q AND UNDER -- THERE'S -- SEE WHERE IT SAYS:
11 OPPORTUNITIES, AT THE BOTTOM, OR SORT OF THE MIDDLE,
12 ACTUALLY.

09:41AM

13 IF YOU COULD HIGHLIGHT THAT, DENNIS.

14 A YES.

15 Q AND THE THIRD DASH UNDER THAT, IT SAYS:

09:41AM

16 IF SUCCESSFUL, SIGNIFICANTLY
17 ENHANCES PROSPECTS FOR FUTURE
18 MONETIZATION OF T-CO STAKE BY SG.

19 DO YOU SEE THAT?

20 A I DO.

09:42AM

21 Q THE T-CO REFERS TO TCW, RIGHT?

22 A YES.

23 Q AND THE SG REFERS TO SOCIÉTÉ GÉNÉRALE, RIGHT?

24 A YES.

25 Q IT ALSO SAYS, IN THE SAME PAGE, THE NEXT
26 BULLET: THAT THE TRANSACTION CAN SERVE AS A CATALYST
27 TO, AMONG OTHER THINGS, ON THE THIRD DASH, RESTRUCTURE
28 THE CURRENT DISPARATE FEE SHARING COMPENSATION

09:42AM

1 STRUCTURE, RIGHT?

2 RIGHT?

3 A IT SAYS THAT, YES.

4 Q AND ALSO, LET'S GO BACK TO THE -- AT THE TOP
5 OF THAT PAGE, STRATEGIC RATIONALE.

09:42AM

6 RIGHT BELOW THAT IT SAYS, THE PRO FORMA
7 ENTITY BETTER POSITION.

8 DO YOU SEE THAT?

9 A I SEE THAT.

10 Q YOU WERE ARGUING TO THE FRENCH IN THIS
11 DOCUMENT THAT THE PRO FORMA FINANCIAL CONDITION OF THE
12 COMPANY WOULD BE BETTER POSITIONED WITH MET WEST.

09:42AM

13 RIGHT?

14 A THAT'S NOT TRUE.

15 Q OKAY.

09:43AM

16 YOU TOLD THEM THAT THE MUTUAL FUND
17 ASSETS UNDER MANAGEMENT WOULD DOUBLE TO 23 --
18 \$20.3 BILLION, DIDN'T YOU?

19 A I DID SAY THAT, YES.

20 Q YOU TOLD THEM THAT THE MUTUAL FUND SCALE AND
21 BROADER MUTUAL FUND PRODUCT SUITE MAY PERMIT GREATER
22 WIRE HOUSE PENETRATION TO DISTRIBUTION, DIDN'T YOU,
23 SIR?

09:43AM

24 A YES.

25 Q AND ON -- IF WE MOVE TO PAGE 39 ON THE SAME
26 DOCUMENT, EXHIBIT 5379.

09:43AM

27 AT THE TOP, UNDER THE FIRST BULLET, MAKE
28 THAT LARGER, DENNIS.

1 YOU GAVE THEM A TIMELINE IN WHICH YOU
2 PROJECTED A PRE TERMINATION DATE CURRENTLY TARGETED FOR
3 FRIDAY, NOVEMBER 13TH, 2009, DIDN'T YOU, SIR?

4 A YES.

5 Q GO BACK TO PAGE 5 OF EXHIBIT 5379. IF WE CAN
6 PUT THAT UP, DENNIS.

7 MARC STERN WILL DISCUSS VERBALLY.

8 DO YOU SEE THAT?

9 A I DO.

10 Q SITUATION OVERVIEW STRATEGIC RATIONALE,
11 FRANCHISE PRESERVATION.

12 MARC STERN WILL DISCUSS THOSE ITEMS
13 VERBALLY?

14 A YES.

15 Q DID YOU -- WHO PREPARED THIS DOCUMENT, 5379?

16 A THIS WAS A DOCUMENT THAT WAS PREPARED, VARIOUS
17 SECTIONS OF IT, BY DIFFERENT FOLKS AT TCW WHO HAD
18 RESPONSIBILITY FOR THAT PART OF THE ANALYSIS.

19 Q INCLUDING MR. CONN?

20 A INCLUDING --

21 Q AMONG OTHERS?

22 A INCLUDING MR. CONN, AMONG OTHERS.

23 Q INCLUDING MR. VILLA?

24 A YES.

25 Q INCLUDING MR. DEVITO?

26 A YES.

27 Q MR. VILLA?

28 A YES.

09:44AM

09:44AM

09:44AM

09:45AM

09:45AM

1 Q AND THE CITIGROUP PEOPLE HAD A ROLE IN IT, AS
2 WELL?

3 A YES.

4 Q WHO MADE THE DECISION THAT YOU WERE GOING TO
5 DISCUSS THE STRATEGIC, STRATEGIC RATIONALE AND
6 SITUATION OVERVIEW VERBALLY?

09:45AM

7 A I DON'T KNOW WHO MADE THAT DECISION. IT WAS
8 PROBABLY ME.

9 PROBABLY MORE COMFORTABLE DISCUSSING IT
10 VERBALLY.

09:45AM

11 Q AT THE TIME YOU PREPARED IT, YOU KNEW, DID YOU
12 NOT, THAT IF YOU WENT AHEAD AND TERMINATED
13 MR. GUNDLACH, HE WAS LIKELY TO SUE YOU, RIGHT?

14 A I CERTAINLY DID NOT KNOW THAT.

15 Q YOU DID NOT KNOW THAT THERE WAS A LITIGATION
16 RISK IF YOU --

09:45AM

17 A I KNEW -- YOU SAID IT WAS LIKELY TO SUE YOU.

18 I KNEW THERE WAS A LITIGATION RISK.
19 WE'VE ALREADY COVERED THAT.

20 Q DID THAT AFFECT IN ANY WAY, YOUR DECISION NOT
21 TO PUT THIS STUFF IN WRITING, SIR?

09:45AM

22 A I DON'T -- I DON'T THINK THAT AFFECTED IT IN
23 ANY WAY.

24 I THINK I WAS JUST WANTING TO DISCUSS IT
25 VERBALLY.

09:46AM

26 Q TAKE A LOOK AT EXHIBIT 5382.

27 YOU TRAVELED TO PARIS ON OCTOBER 18TH
28 WITH MICHAEL CONN, DIDN'T YOU, SIR?

1 A YES.

2 Q AND YOU DISCUSSED WITH MICHAEL CONN WHAT YOU
3 WOULD SAY -- YOU CAN LEAVE THAT PAGE OFF FOR NOW.

4 WHAT YOU WOULD SAY IN THAT VERBAL
5 PRESENTATION, DIDN'T YOU, SIR?

09:46AM

6 A I BELIEVE I DID.

7 Q MR. CONN PREPARED NOTES FOR YOUR PRESENTATION,
8 DIDN'T HE?

9 A HIS ASSESSMENT OF WHAT HE SUGGESTED I SHOULD
10 SAY, YES.

09:46AM

11 Q THOSE NOTES ARE EXHIBIT 53 --

12 DON'T PUT THAT UP YET. IT'S NOT IN
13 EVIDENCE.

14 THOSE NOTES ARE EXHIBIT 5382, ARE THEY
15 NOT?

09:47AM

16 A THEY ARE.

17 MR. BRIAN: I'LL OFFER 5382.

18 MR. QUINN: ONE SECOND.

19 THE COURT: SURE.

20 MR. QUINN: CAN YOU PUT UP THE NEXT PAGE?

09:47AM

21 THE COURT: NOT UP FOR PUBLICATION.

22 MR. QUINN: I FOUND IT.

23 NO OBJECTION.

24 THE COURT: IT WILL BE ADMITTED.

09:47AM

26 (EXHIBIT 5382 ADMITTED.) +

27

28 MR. QUINN: THANK YOU.

1 MR. BRIAN: PUT UP PAGE 1, DENNIS.

2 Q MR. CONN WROTE AN E-MAIL TO HIMSELF, AFTER
3 TALKING TO YOU, CALLING IT AN ATTACHING SOMETHING
4 CALLED MARK'S NOTES, RIGHT?

5 A THAT'S WHAT THAT APPEARS TO SAY, YES. 09:47AM

6 Q LET'S PUT UP PAGE 2 OF EXHIBIT 5382.

7 AND THESE NOTES WERE THE OUTLINE OF WHAT
8 YOU AND MR. CONN DISCUSSED ON THE PLANE ABOUT WHAT YOU
9 WOULD SAY TO THE FRENCH ON OCTOBER 19TH AND 20TH,
10 RIGHT? 09:48AM

11 A YES.

12 I THINK THAT'S A FAIR STATEMENT.

13 Q AND LET'S START AT THE TOP.

14 STARTED AS DEFENSIVE, NOW STRATEGIC.

15 DO YOU SEE THAT? 09:48AM

16 A I DO.

17 Q AND WHEN YOU SAY NOW STRATEGIC, THAT REFLECTS
18 THE FACT THAT YOU WERE COMING TO THE VIEW THAT
19 ACQUIRING MET WEST TO REPLACE MR. GUNDLACH MIGHT
20 ACTUALLY BE ADVANTAGEOUS TO TCW, FROM A BUSINESS
21 STRATEGIC POINT OF VIEW, RIGHT? 09:48AM

22 A WHAT I WAS -- WHAT I MEANT IS, IN ADDITION TO
23 THE DEFENSIVE ASPECTS, THAT SOME OF MARKETPLACE
24 POSITIONING, WHICH IS WHAT WE TALKED ABOUT BEFORE, NOT
25 THE FINANCIAL POSITIONING, WOULD BE USEFUL FOR TCW,
26 YES. 09:48AM

27 Q WHAT YOU MEAN BY THAT IS, YOU WERE COMING TO
28 THE VIEW THAT THE FIXED INCOME PART OF THE FIRM WAS TOO

1 DEPENDENT ON MORTGAGE-BACKED SECURITIES, IN PART,
2 RIGHT?

3 A I WAS COMING TO THE VIEW THAT THE MET WEST
4 ACQUISITION, IN ADDITION TO BEING A DEFENSIVE
5 ACQUISITION, HAD SOME POSITIVE STRATEGIC ELEMENTS TO
6 IT, YES.

09:49AM

7 Q AND ONE OF THOSE WAS TO BE LESS DEPENDENT ON
8 MORTGAGE BACKED INVESTMENTS VEHICLES, AND HAVE WHAT YOU
9 LATER REFER TO AS A MORE TRADITIONAL SUITE OF FIXED
10 INCOME INVESTMENT PORTFOLIO MANAGERS, RIGHT?

09:49AM

11 A HAVE A BROADER RANGE OF PRODUCT, YES.

12 Q YOU SEE A BULLET THAT SAYS JEFFREY.

13 AND ONE OF THE THINGS YOU RELATED TO
14 SOCIÉTÉ GÉNÉRALE WAS THAT JEFFREY GUNDLACH'S CONTINUED
15 PRESENCE IN THE COMPANY COULD BLOCK SOCIÉTÉ GÉNÉRALE'S
16 EFFORTS TO MONETIZE ITS INVESTMENT?

09:49AM

17 RIGHT?

18 A UNLESS WE WERE ABLE TO BRING JEFFREY UNDER THE
19 FOLD, AND HAVE A MOVING FORWARD RELATIONSHIP WITH HIM,
20 EDUCATED TO MR. SHEDLIN AND OTHERS, THAT HE WOULD BLOCK
21 MONETIZATION, YES.

09:50AM

22 Q BY OCTOBER 19TH, MR. SHEDLIN HAD RECOMMENDED
23 TO MR. RIPOLL, IN AN EXHIBIT I SHOWED YOU YESTERDAY,
24 THAT YOU BE PROACTIVE AND FIRE MR. GUNDLACH, RIGHT?

25 A I BELIEVE YOU CAN PUT THAT UP; BUT I BELIEVE
26 WHAT HE WAS SUGGESTING IS THAT WE FIND AN ALTERNATIVE.

09:50AM

27 Q WELL, PUT UP EXHIBIT 5339.

28 A AND BECAUSE I DON'T THINK HE WAS SUGGESTING WE

1 FIRE MR. GUNDLACH WITHOUT A BACKUP PLAN.

2 Q LET'S PUT UP 5339.

3 IF WE CAN BLOW UP THAT IN THE MIDDLE,
4 DENNIS.

5 HE WROTE ON OCTOBER 5TH:

09:50AM

6 I'M AN ADVOCATE OF A PROACTIVE
7 APPROACH TO THE ISSUES SURROUNDING
8 MR. GUNDLACH. I STRONGLY BELIEVE
9 THAT TERMINATING J.G. AND HAVING A
10 CREDIBLE REPLACEMENT PLAN TO
11 EXECUTE WILL PRESERVE SIGNIFICANTLY
12 MORE VALUE THAN REACTING TO HIS
13 DEPARTURE.

09:50AM

14 THAT'S WHAT MR. SHEDLIN WROTE TO THE FRENCH ON
15 OCTOBER 5TH, 2009, RIGHT?

09:51AM

16 A THAT IS -- THAT'S ACCURATE, YES.

17 Q AND MR. RIPOLL, ON OCTOBER 5TH, RESPONDED,
18 QUOTE:

19 I THINK THIS IS A FAIR VISION OF
20 WHERE WE STAND AND WHERE WE SHOULD
21 GO.

09:51AM

22 HE SAID THAT, RIGHT?

23 A THAT'S WHAT THAT SAYS, YES.

24 Q LET'S GO BACK TO EXHIBIT 5382, PLEASE.

25 LET'S GO TO THE ENTRY CALLED, BULLET
26 CALLED OPTIONS.

09:51AM

27 MAYBE MAKE THAT LARGER, THE WHOLE BULLET
28 THERE.

1 IT SAYS, ONE OF THE OPTIONS WAS:
2 TURN OVER BUSINESS TO JEFFREY.
3 CUT A DEAL.
4 WAIT AND REACT.
5 OR BE PROACTIVE.
6 ELEMENT OF SURPRISE.
7 ANGEL ONLY VIABLE OPTION.

09:51AM

8 THOSE ARE THE OPTIONS MR. CONN WROTE DOWN,
9 BASED ON YOUR DISCUSSION ON THAT PLANE RIDE TO PARIS ON
10 OCTOBER 18TH, RIGHT?

09:52AM

11 A THAT'S CORRECT.

12 Q NOW, YOU WEREN'T ABOUT TO TURN THE BUSINESS
13 OVER TO JEFFREY, WERE YOU, SIR?

14 A NO.

15 Q AND YOU TESTIFIED YESTERDAY THAT YOU DIDN'T
16 THINK YOU COULD NEGOTIATE; IS THAT RIGHT?

09:52AM

17 YOU TESTIFIED THAT YOU WERE NOT
18 INTERESTED IN NEGOTIATING A DEAL WITH MR. GUNDLACH,
19 RIGHT?

20 A I THINK I TESTIFIED THAT NOT ONLY WAS I NOT
21 INTERESTED, BUT I DIDN'T THINK IT WAS POSSIBLE.

09:52AM

22 Q OKAY.

23 AND NEVER ONCE, BETWEEN MAY 26TH, WHEN
24 YOU MET WITH MR. GUNDLACH AT MR. DAY'S HOUSE, AND
25 DECEMBER 3RD, 2009, THE DAY BEFORE YOU RELIEVED HIM OF
26 HIS DUTIES, DID YOU EVER APPROACH MR. GUNDLACH ABOUT
27 NEGOTIATING A SEPARATION, DID YOU, SIR?

09:52AM

28 A I OFFERED HIM.

1 Q YES OR NO?

2 A NO. I DID NOT.

3 Q WHAT YOU RECOMMENDED TO THE FRENCH ON
4 OCTOBER 19TH OF 2009, WAS THE LAST OPTION: BE
5 PROACTIVE; ELEMENT OF SURPRISE.

09:53AM

6 THAT'S WHAT YOU RECOMMENDED TO THE
7 FRENCH ON OCTOBER 19TH; ISN'T THAT RIGHT?

8 A THAT'S MY RECOMMENDATION, YES.

9 Q AND BY ELEMENT OF SURPRISE, YOU MEAN
10 CONCLUDING THE MET WEST TRANSACTION, AND SIMULTANEOUSLY
11 TERMINATING MR. GUNDLACH, RIGHT?

09:53AM

12 A WHAT I MEANT WAS THAT IF WE DID ANYTHING THAT
13 LET MR. GUNDLACH KNOW WHAT WE WERE THINKING OF, THE
14 VERY -- THE BIGGEST FEAR THAT I HAD, WHICH IS THAT HE
15 WOULD LEAVE, AND WE'D BE WITHOUT THE ABILITY TO MANAGE
16 THE ASSETS, WOULD BECOME A SELF-FULFILLING PROPHECY.

09:53AM

17 SO WE HAD TO DO THIS IN A CONFIDENTIAL
18 MANNER, TO PROTECT THE FRANCHISE AND PREVENT THE
19 COMPANY FROM BEING DESTROYED.

20 Q LET ME ASK MY QUESTION AGAIN.

09:54AM

21 A CERTAINLY.

22 Q YOU RECOMMENDED THAT YOU CONCLUDE THE MET WEST
23 TRANSACTION AND SIMULTANEOUSLY TERMINATE MR. GUNDLACH
24 WITHOUT ANY PRIOR NOTICE, RIGHT?

25 A I --

09:54AM

26 Q IS THAT RIGHT, SIR?

27 A NO.

28 Q NO?

1 OKAY. THAT'S NOT RIGHT.

2 A I CAN TELL YOU WHAT'S RIGHT.

3 Q DID YOU TELL MR. GUNDLACH, PRIOR TO 2000 --
4 DECEMBER 4, 2009, THAT HE WAS GOING TO BE RELIEVED OF
5 HIS DUTIES? YES OR NO?

09:54AM

6 A ASK AGAIN.

7 Q DID YOU TELL MR. GUNDLACH, PRIOR TO
8 DECEMBER 4TH, 2009, THAT YOU INTENDED TO RELIEVE HIM OF
9 HIS DUTIES? YES OR NO?

09:54AM

10 A NO.

11 THE COURT: THE ANSWER'S "NO."

12 YOU WERE ASKING IT A SECOND TIME.

13 THE WITNESS: THANK YOU.

14 MR. BRIAN: NEXT BULLET: BACK UP.

15 Q IF WE CAN HIGHLIGHT THAT. MLA AND JMC, THAT
16 REFERS TO MARK ATTANASIO AND JEAN-MARC CHAPUS, RIGHT?

09:55AM

17 A IT DOES.

18 Q THE FIFTH BULLET TALKS ABOUT: SPLIT TEAM.

19 DO YOU SEE THAT?

20 A I DO.

09:55AM

21 Q AND BY SPLIT TEAM, YOU'RE REFERRING TO
22 SPLITTING THE M.B.S. GROUP, AND TRYING TO KEEP AS MANY
23 PEOPLE AS POSSIBLE, RIGHT?

24 A YES.

25 Q NOW UNDER THE NEXT BULLET: BUSINESS WORTH
26 225-250 MILLION.

09:55AM

27 AND THERE'S OTHER BULLETS.

28 AND THESE ARE POINTS YOU MADE -- WELL,

1 STRIKE THAT.

2 DID YOU ARGUE TO THE FRENCH THAT ONE OF
3 THE ADVANTAGES OF THIS DEAL, GOING FORWARD WITH
4 MET WEST TO REPLACE MR. GUNDLACH, IT WOULD, QUOTE:
5 RADICALLY CHANGE COMPENSATION, 10 PERCENT VERSUS 35
6 PERCENT.

09:56AM

7 DID YOU ADVOCATE THAT, TO THE FRENCH?

8 A I BELIEVE I ADVOCATED THAT THE STRUCTURE WOULD
9 BE CHANGED INTO A MUCH MORE SIMPLIFIED STRUCTURE,
10 BECAUSE UNDER NO CIRCUMSTANCES WOULD DOING SOMETHING
11 LIKE THIS BE FINANCIALLY ADVANTAGEOUS TO TCW.

09:56AM

12 Q DID YOU TELL THE FRENCH THAT YOU'D BE ABLE TO
13 REDUCE THE PERCENTAGE OF FEES PAID TO THE ASSET
14 MANAGERS, FROM THE 35 PERCENT THAT WAS BEING PAID TO
15 MR. GUNDLACH AND HIS GROUP, TO 10 PERCENT, THAT YOU
16 WERE PROPOSING TO PAY MET WEST?

09:56AM

17 YES OR NO, SIR?

18 A I ALSO EXPLAINED.

19 Q SIR, YES OR NO?

20 A I ALSO EXPLAINED TO THEM THAT THERE WAS THE
21 COST OF THE ACQUISITION, AND THAT THERE WAS THE COST OF
22 RETENTION.

09:56AM

23 IT WOULD NOT BE FINANCIALLY ADVANTAGEOUS
24 TO THEM.

25 MR. BRIAN: MOVE TO STRIKE THAT AS
26 NONRESPONSIVE.

09:56AM

27 THE COURT: STRIKE THE RESPONSE.

28 SIR, YOU NEED TO LISTEN CAREFULLY.

1 MR. BRIAN: VERY SIMPLE QUESTION.

2 Q MR. QUINN CAN ASK YOU ABOUT EVERYTHING ELSE
3 YOU SAID IF HE WANTS TO.

4 DID YOU TELL THEM, AMONG OTHER THINGS,
5 YOU SAID THAT ONE OF THE ADVANTAGES OF THIS WAS THAT
6 YOU'D BE PAYING 10 PERCENT TO MET WEST INSTEAD OF 35
7 PERCENT TO MR. GUNDLACH'S GROUP?

09:57AM

8 A I DIDN'T TELL THEM WITHOUT SURROUNDING IT WITH
9 AN EXPLANATION.

09:57AM

10 THE COURT: DOES THAT MEAN, SIR, IT'S A
11 DIRECT -- IT'S "YES," BUT WITH AN EXPLANATION.

12 BUT YOU CAN'T GIVE A NONRESPONSIVE
13 ANSWER.

14 THE WITNESS: YES. YES, WITH AN EXPLANATION,
15 YES.

09:57AM

16 THANK YOU.

17 THE COURT: THANK YOU. THERE WE GO.

18 THE WITNESS: I APPRECIATE IT.

19 MR. BRIAN: I'D LIKE TO PLAY ANOTHER
20 DEPOSITION CLIP, YOUR HONOR. IT'S PAGES 212, LINE 23.
21 TO 213, LINE 3.

09:57AM

22 213, LINE 21 TO 22.

23 214, LINE 1 TO 4.

24 214, LINE 11 TO 14.

25 214, LINE 17 TO 18.

09:58AM

26 AND THEN 214, LINE 21.

27 TO 215, LINE 5.

28 THIS HAS BEEN PREVIOUSLY DESIGNATED, AND

1 INCLUDES THEIR COUNTERS, YOUR HONOR.

2 MR. QUINN: NO OBJECTION, YOUR HONOR.

3 THE COURT: YOU MAY PROCEED.

4

5 (VIDEO DEPOSITION PLAYED OF MR. STERN.) +

09:58AM

6

7 BY MR. BRIAN:

8 Q YOU THOUGHT USING THE ELEMENT OF SURPRISE
9 WOULD BE ADVANTAGEOUS TO TCW IN THE EVENT YOU FOUND
10 YOURSELF COMPETING AGAINST MR. GUNDLACH; ISN'T THAT
11 RIGHT?

10:00AM

12 A I THOUGHT THE ELEMENT OF SURPRISE WAS
13 ESSENTIAL TO THE PRESERVATION OF TCW, AS A COMPANY.

14 Q THAT'S NOT QUITE RESPONSIVE, SIR.

15 DID YOU BELIEVE THE ELEMENT OF SURPRISE
16 WOULD HELP YOU, IN THE EVENT YOU FOUND YOURSELF HAVING
17 TO COMPETE WITH MR. GUNDLACH IN A NEW BUSINESS VENTURE?

10:00AM

18 A REPEAT THE QUESTION AGAIN.

19 Q DID YOU BELIEVE USING THE ELEMENT OF SURPRISE
20 WOULD HELP YOU, IN THE EVENT YOU FOUND YOURSELF
21 COMPETING AGAINST MR. GUNDLACH IN A NEW BUSINESS
22 VENTURE?

10:01AM

23 A ON THE MARGIN, YES.

24 Q LET ME GO BACK FOR A MOMENT TO EXHIBIT 6120, A
25 DOCUMENT I SHOWED YOU YESTERDAY.

10:01AM

26 IT'S IN EVIDENCE.

27 YOU CAN PUT THAT UP, DENNIS.

28 IF WE COULD ENLARGE THE PARAGRAPH, IT

1 SAYS, AS TO STRATEGIC DIRECTION.

2 YOU SEE WHERE IT SAYS, AT THE END OF THE
3 FIRST LINE OF THAT PARAGRAPH:

4 HOWEVER, IN REGARD TO OWNERSHIP
5 CHANGE, HE AGREED THAT, YES, SG HAS
6 ALREADY ANNOUNCED THEIR PLANS FOR
7 TCW REVOLVE AROUND AN ULTIMATE IPO
8 OR SALE.

10:02AM

9 MARC POINTED OUT HE'S THE ONLY
10 NONFRENCH MEMBER OF THE SOCIÉTÉ
11 GÉNÉRALE BOARD; THEREFORE, HE
12 BELIEVES HE'S UNIQUELY POSITIONED
13 TO HELP FACILITATE AN OWNERSHIP
14 CHANGE.

10:02AM

15 THAT WAS MS. HIRSCH REFLECTING WHAT YOU HAD
16 SAID TO MR. SMITH, CORRECT?

10:02AM

17 A MR. BRIAN, THAT'S WHAT I WAS TRYING TO TELL
18 YOU YESTERDAY, WHEN I SAID THERE ARE CERTAIN
19 INACCURACIES IN THIS, BUT YOU WOULDN'T LET ME EXPLAIN.

20 Q OKAY. YOU SAY IT WAS INACCURATE.

10:02AM

21 YOU TOLD MR. SMITH THAT ONE OF THE WAYS
22 THAT SOC-GEN WAS INTERESTED IN MONETIZING ITS
23 INVESTMENT WAS THROUGH A SALE?

24 A I SAID THROUGH AN IPO, I DIDN'T SAY SALE.

25 Q WHICH WAS INACCURATE?

10:03AM

26 A SALE.

27 Q YOU THINK SALE IS INACCURATE?

28 A YES.

1 Q YOU RETAINED CITIGROUP SHORTLY AFTER THIS
2 E-MAIL, RIGHT?

3 A I'M SORRY. CAN YOU BRING IT BACK DOWN?
4 I'VE GOT IT HERE, THE DATE OF THE
5 E-MAIL?

10:03AM

6 I DON'T RECALL THE EXACT DATE OF
7 RETAINING CITICORP, IF YOU HAVE THAT --

8 Q I DON'T MEAN TO BE -- AROUND THE JUNE, JULY
9 TIME PERIOD, RIGHT?

10 A SOMEWHERE IN THERE, YES.

10:03AM

11 Q RIGHT. OKAY.

12 I WANT TO READ TO YOU FROM YOUR TRIAL
13 TRANSCRIPT LAST WEEK, PAGE 4134, BEGINNING LINE 19,
14 OVER TO PAGE -- LINE 1 ON 4135.

15 THE COURT: DO YOU HAVE THAT, MR. QUINN?

10:04AM

16 MR. BRIAN: I GAVE IT TO YOU YESTERDAY.

17 MR. QUINN: YOU DID GIVE IT TO ME.

18 MR. BRIAN: I MAY HAVE ANOTHER COPY.

19 JOANETTE HAS A COPY.

20 MR. QUINN: THANK YOU VERY MUCH.

10:04AM

21 MR. BRIAN: 4134, LINE 19, THROUGH 4135,
22 LINE 1.

23 THE WITNESS: IS HE GOING TO PUT IT UP?

24 OKAY.

25 THE COURT: 4134, LINE 3, THROUGH 4135,
26 LINE 1.

10:05AM

27 MR. BRIAN:

28 QUESTION: WAS THERE ANYTHING ELSE

1 THAT WAS DISCUSSED WITH THESE
2 PORTFOLIO MANAGERS, ANY OTHER TASK
3 THAT THEY HAD THAT YOU AGREED TO?
4 ANSWER: WELL, DURING -- WE STARTED
5 OUR BI-WEEKLY MEETINGS. AND ONE OF
6 THE THINGS THAT WE WORKED OUT WAS
7 THE EXACT POSITIONING OF TCW WITHIN
8 THE ASSET MANAGEMENT INDUSTRY, AND
9 HOW IT RELATED TO OTHER ASSET
10 MANAGERS WHAT ITS STRATEGY SHOULD
11 BE.
12 WE DECIDED WE SHOULD GET AN
13 OUTSIDER TO TAKE A LOOK AT THE
14 LANDSCAPE AND KIND OF HELP US
15 UNDERSTAND, AND WHERE WE SAT IN
16 THAT UNIVERSE.
17 QUESTION: WHOSE IDEA WAS THIS?
18 ANSWER: IT WAS A JOINT IDEA. I
19 THINK WE TALKED IT THROUGH. WE ALL
20 AGREED WE SHOULD DO SOMETHING LIKE
21 THAT.
22 QUESTION: AND WAS SOMEONE AGREED
23 ON TO DO THIS?
24 ANSWER: WELL, WHAT I PROPOSED WAS
25 THAT THE PORTFOLIO MANAGERS, THE
26 FIVE, PICK TWO FIRMS, AND THEN DO
27 ALL THE INTERVIEWING. I DIDN'T DO
28 ANY OF THE INTERVIEWING. PICK TWO

10:05AM

10:05AM

10:05AM

10:05AM

10:06AM

1 FIRMS, THEN I WOULD CHOOSE ONE OF
2 THE FIRMS.
3 AND THAT THEY ALSO DEVELOPED WHAT
4 THEY THOUGHT THE SCOPE OF THE
5 REVIEW SHOULD BE, AND THEN
6 MR. MUSTIER AND I WOULD REVIEW IT.
7 BUT IT WOULD BE THEIR SCOPE, SO
8 ESSENTIALLY THEY WOULD BE RUNNING
9 THE PROCESS.

10:06AM

10 Q NOW WHEN YOU SAY THEIR SCOPE, YOU'RE SAYING
11 THAT THE PORTFOLIO MANAGERS: MR. ATTANASIO,
12 MR. CHAPUS, MR. GUNDLACH, MS. JAFFEE, MR. THOMAS, WOULD
13 DECIDE THE SCOPE OF THE REVIEW TO BE DONE BY CITIGROUP,
14 RIGHT?

10:06AM

15 A THEY WOULD DESCRIBE WHAT QUESTIONS THEY WANTED
16 CITI TO RESPOND TO.

10:06AM

17 Q WHEN YOU SAID THEY WOULD DESCRIBE THE SCOPE OF
18 THE REVIEW, YOU WERE REFERRING TO THE PORTFOLIO
19 MANAGERS, RIGHT?

20 A THE PORTFOLIO MANAGERS WOULD ESTABLISH THE
21 MANDATE, WHAT IT IS THAT CITI WAS TO LOOK AT, YES.

10:06AM

22 Q THAT'S NOT TRUE, IS IT, SIR?

23 A I BELIEVE IT'S TRUE.

24 Q TAKE A LOOK AT EXHIBIT 6137.

25 THIS IS AN E-MAIL YOU SENT TO
26 MR. MUSTIER, MR. RIPOLL, ON JUNE 24TH OF 2009, IS IT
27 NOT?

10:07AM

28 A YES.

1 MR. BRIAN: I'LL OFFER EXHIBIT 6137, YOUR
2 HONOR.

3 MR. QUINN: NO OBJECTION.

4 THE COURT: IT WILL BE ADMITTED.

5
6 (EXHIBIT 6137 ADMITTED.) +
7

8 MR. BRIAN: PUT THIS UP, DENNIS.

9 Q YOU SEE IT'S COPIED TO MR. ATTANASIO,
10 MR. CHAPUS, MR. GUNDLACH AND MS. JAFFEE, RIGHT?

11 A YES.

12 Q THEN IT SAYS:

13 JEAN PIERRE, JACQUES, I JUST TALKED
14 TO JEAN-MARC CHAPUS, AND WE AGREED
15 ON THE FOLLOWING.

16 THEN IT SAYS: JEAN-MARC WILL SEND
17 JPM'S MANDATE WITH MARK ATTANASIO'S
18 REVISION TO JOE HERSCHBERGER OF
19 CSFB AND GARY SHEDLIN OF CITI.

20 DO YOU SEE THAT.

21 A I SEE IT.

22 Q THE REFERENCE TO JPM'S MANDATE, THE JPM IN
23 THAT PHRASE IS JEAN PIERRE MUSTIER, RIGHT?

24 A YES.

25 Q HIS MANDATE, RIGHT?

26 A HIS DRAFT, YES.

27 THAT'S WHAT IT APPEARS TO SAY.

28 Q OKAY.

10:07AM

10:07AM

10:08AM

10:08AM

10:08AM

1 NOW TAKE A LOOK AT EXHIBIT 5163.

2 5163 IS THE E-MAIL THAT MR. CHAPUS SENT
3 TO CITI, PURSUANT TO THE MANDATE THAT WE JUST
4 DISCUSSED, RIGHT?

5 A YES. THAT'S WHAT IT APPEARS TO BE. 10:09AM

6 MR. BRIAN: I'LL OFFER EXHIBIT 5163, YOUR
7 HONOR.

8 MR. QUINN: NO OBJECTION.

9 THE COURT: IT WILL BE ADMITTED.

10 10:09AM

11 (EXHIBIT 5163 ADMITTED.) +

12

13 MR. BRIAN: PUT UP PAGE 1 OF THAT DENNIS,
14 PLEASE.

15 Q THE E-MAIL FROM MR. CHAPUS TO MR. SHEDLIN, 10:09AM

16 COPY TO MR. ATTANASIO, MR. STERN, MR. RIPOLL, AND
17 MR. MUSTIER.

18 CORRECT? RIGHT?

19 A I'M SORRY. I WAS READING IT.

20 Q THAT'S OKAY. 10:09AM

21 LET'S GO TO PAGE 2.

22 CAN WE MAKE THAT BIGGER, DENNIS? OKAY.

23 THIS IS THE SCOPE OF THE REVIEW THAT WAS
24 SENT TO CITIGROUP BY MR. CHAPUS, PURSUANT TO
25 MR. MUSTIER'S MANDATE, RIGHT? 10:09AM

26 A IT WAS NOT MR. MUSTIER'S MANDATE.

27 AGAIN, IT WAS A MANDATE THAT MR. MUSTIER
28 DEVELOPED, WITH MR. ATTANASIO'S COMMENTS AND WITH

1 DISCUSSIONS WITH THE PORTFOLIO MANAGER.

2 I PROBABLY MISSPOKE.

3 I DIDN'T REALIZE MR. MUSTIER WAS THE
4 DRAFTSMAN OF THE MANDATE.

5 BUT IT WAS -- IT WAS A COLLECTIVE
6 EFFORT. I WASN'T DIRECTLY INVOLVED WITH IT, BETWEEN
7 MR. MUSTIER AND THE PORTFOLIO MANAGERS.

10:10AM

8 Q MR. MUSTIER BLESSED THIS MANDATE BEFORE IT
9 WENT TO CITIGROUP, DIDN'T HE, SIR?

10 A I -- I -- YES, IT WAS OKAY WITH HIM, YEAH.

10:10AM

11 Q YOU AUTHORIZED OR KNEW THAT MR. CHAPUS WAS
12 SENDING THIS OUT, DIDN'T YOU?

13 A YES.

14 Q SO LET'S TALK ABOUT THE VARIOUS STRATEGIES AND
15 TRANSACTIONS THAT MR. MUSTIER AND MR. ATTANASIO WORKED
16 OUT FOR CITIGROUP TO CONSIDER.

10:10AM

17 VERY FIRST PARAGRAPH:

18 REVIEW EVOLUTION OPPORTUNITIES FOR
19 TCW IN TERMS OF ACQUISITION OR
20 MERGER, WHICH CAN BE COMPLEMENTARY
21 FOR TCW.

10:11AM

22 THAT ONE AREA WITHIN THE SCOPE OF THE REVIEW
23 THAT CITIGROUP WAS ASKED TO CONDUCT, RIGHT?

24 A YES.

25 Q LET'S GO TO PARAGRAPH 2:

10:11AM

26 CONSIDER POTENTIAL STRUCTURE FOR A
27 DEAL, KNOWING THAT TCW PARENT
28 COMPANY, SG, IS READY TO ACCEPT

1 SOLUTIONS WHERE IT COULD SELL PART
2 OF ITS STAKE TO A THIRD-PARTY OR BE
3 DILUTED.

4 THAT'S ALSO PART OF THE MANDATE THAT WAS GIVEN
5 TO CITIGROUP, PURSUANT TO THE DISCUSSIONS AMONG OTHERS,
6 MR. MUSTIER AND MR. ATTANASIO, CORRECT?

10:11AM

7 A YES.

8 Q NO. 3:

9 DEVELOP A PARALLEL PROCESS TO BE
10 AGREED UPON BY SG, IN WHICH
11 MANAGEMENT OF TCW WILL MEET WITH
12 POTENTIAL EQUITY INVESTORS TO
13 RECONSIDER -- TO CONSIDER A
14 RECAPITALIZATION OR BUYOUT OF TCW.

10:11AM

15 ALSO WITHIN THE SCOPE OF THE REVIEW AGREED
16 UPON BY MR. MUSTIER AND MR. ATTANASIO, CORRECT?

10:12AM

17 A YES.

18 Q TAKE A LOOK AT EXHIBIT 2153, ALREADY IN
19 EVIDENCE.

20 MR. QUINN ASKED YOU ABOUT THIS DOCUMENT.

10:12AM

21 THIS WAS A DOCUMENT PREPARED BY
22 CITIGROUP IN JULY OF 2009, PURSUANT TO THIS STRATEGIC
23 REVIEW, WAS IT NOT?

24 A I'M SORRY, MR. BRIAN?

25 Q THIS DOCUMENT, EXHIBIT 2153, WAS PREPARED BY
26 CITIGROUP IN JULY OF 2009, AS PART OF ITS STRATEGIC
27 REVIEW, WAS IT NOT?

10:12AM

28 A IT WAS.

1 Q AND TAKE A LOOK AT PAGE 4, IF WE COULD PUT
2 THAT UP, DENNIS.

3 AND THE SECOND RECTANGLE, IF WE COULD
4 MAKE THAT LARGER. CAN YOU MAKE THAT, HIGHLIGHT AND
5 MAKE IT BIGGER? MAYBE NOT. BEGINNING WITH THE
6 HOWEVER, THAT'S WHAT I WANT. RIGHT THERE.

10:13AM

7 THEY WROTE, DID THEY NOT:

8 HOWEVER, SEVERAL PM'S -- MEANING
9 PORTFOLIO MANAGERS -- BELIEVE SG
10 HAS NOT INVESTED ENOUGH IN THE
11 FIRM. AND IS NOT COMMITTED TO
12 VALUE CREATION.

10:13AM

13 THAT'S WHAT CITIGROUP WROTE, CORRECT?

14 A IT IS.

15 Q YOU UNDERSTAND CITIGROUP CONDUCTED INTERVIEWS
16 OF THE SIGNIFICANT PORTFOLIO MANAGERS BEFORE THEY
17 PREPARED THIS REPORT, RIGHT?

10:13AM

18 A I UNDERSTOOD THAT, YES.

19 Q THEY THEN SAID:

20 BOTH 30 PERCENT EQUITY WAS PROMISED
21 TO HIGH LIFE EMPLOYEES, ONLY 11 TO
22 14 PERCENT OF THE FIRM IS CURRENTLY
23 OWNED BY THE EMPLOYEES, IN OPTIONS
24 THAT ARE OUT OF MONEY.

10:14AM

25 YOU SEE THAT?

10:14AM

26 A I DO.

27 Q YOU UNDERSTAND THAT OPTIONS THAT ARE OUT OF
28 MONEY, AT THE TIME THEY'RE OUT OF MONEY, THEY'RE NOT

1 WORTH ANYTHING, ARE THEY?

2 A AT THE TIME THEY'RE OUT OF ANYTHING, THEY'RE
3 NOT WORTH ANYTHING.

4 THEY STILL HAVE A VALUE, BECAUSE THE
5 MARKETS GO UP AND THE MARKETS GO DOWN.

10:14AM

6 Q AND THEN THEY WROTE, CITIGROUP WROTE:

7 SG HAS NOT INVESTED ENOUGH IN
8 ACQUISITIONS AND EXPANSION THROUGH
9 NEW PRODUCTS.

10 DO YOU SEE THAT?

10:14AM

11 A YES.

12 Q AND BELOW THAT, THEY TALK ABOUT, SG HAS ITS
13 OWN ISSUES, SUB PRIME, IMPACT OF THE DOWNTURN IN
14 FINANCIAL MARKET.

15 DO YOU SEE THAT?

10:14AM

16 A YES.

17 Q THEY WROTE:

18 SG HAS BEEN PULLING MONEY OUT OF
19 HIGH LIFE FUNDS TO SUPPORT ITS
20 CAPITAL NEEDS.

10:14AM

21 DO YOU SEE THAT?

22 A I DO.

23 Q NOW, TURN TO PAGE 8. STRATEGIC ALTERNATIVES.

24 THE COURT: MR. BRIAN, WOULD THIS BE A GOOD
25 POINT TO TAKE A BREAK?

10:15AM

26 MR. BRIAN: THAT WOULD BE FINE.

27 THE COURT: WE'LL TAKE OUR MORNING RECESS,
28 FIRST RECESS, FOR 20 MINUTES.

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

2

3 THE COURT: WE'RE OUT OF THE PRESENCE OF THE
4 JURY.

5 ANY MATTERS ANYBODY WANTS TO TAKE UP?

10:16AM

6 MR. QUINN: NONE.

7 MR. BRIAN: NOT FOR ME, YOUR HONOR.

8 THE COURT: THANK YOU.

9

10 (RECESS.)

10:16AM

11

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1 CASE NUMBER: BC429385
2 CASE NAME: TRUST COMPANY OF THE WEST VS.
3 JEFFREY GUNDLACH, ET AL
4 LOS ANGELES, THURSDAY, AUGUST 25, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 10:39 A.M.

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

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

18 MR. BRIAN, YOU MAY CONTINUE YOUR
19 CROSS-EXAMINATION.

20
21
22 CROSS-EXAMINATION (RESUMED)

23
24 BY MR. BRIAN:

25 Q. GOOD AFTERNOON, LADIES AND GENTLEMEN.

26 MR. STERN, BEFORE WE BROKE, I THINK I
27 HAD IN FRONT OF YOU, EXHIBIT 2153.

28 DO YOU STILL HAVE THAT?

10:39AM

10:39AM

1 A. YES.

2 Q. I'D LIKE YOU TO FOCUS ON PAGE 8. AT THE
3 BOTTOM IT SAYS 2153-8?

4 A. YES.

5 Q. OKAY. AND I'VE GOT IT ON THE SCREEN, TOO.
6 THIS IS THE PAGE WHERE CITIGROUP, IN
7 JULY OF 2009, WROTE DOWN SOME OF THE STRATEGIC
8 ALTERNATIVES.

10:39AM

9 I WANT YOU TO LOOK AT THE FIRST
10 RECTANGLE AT THE TOP.

10:40AM

11 ONE OF THE THINGS THAT THEY TALKED ABOUT
12 WAS RECONFIGURING THE FIRM AS A LIMITED LIABILITY
13 COMPANY STRUCTURE, RIGHT?

14 A. YES.

15 Q. AND THEY SAID IN THE FOURTH BULLET THAT THE
16 PARTNER COULD BE EITHER A STRATEGIC FIRM AND/OR A
17 PRIVATE EQUITY FIRM, RIGHT?

10:40AM

18 A. THAT'S WHAT IT SAYS, YES.

19 Q. AND ONE OF THE CHALLENGES OF DOING THAT WAS
20 THE FACT THAT MR. GUNDLACH MIGHT WANT TO BE CEO, RIGHT?

10:40AM

21 A. YES.

22 Q. OKAY. AND ONE OF THE --

23 IF YOU WOULD TAKE THAT DOWN, DENNIS.
24 LET'S GO TO THE NEXT RECTANGLE.

25 DO YOU SEE OVER TO THE LEFT, IT SAYS
26 SALE OF THE FIRM.

10:40AM

27 THAT'S ONE OF THE THINGS THAT WERE
28 LOOKING AT, RIGHT?

1 A. YES.

2 Q. AND IT SAYS, SALE TO ANOTHER ASSET MANAGER
3 WITH STRONG DISTRIBUTOR NET WORTH, CORRECT?

4 A. YES.

5 Q. AND THEY TALKED IN THE NEXT LINE ABOUT
6 POTENTIAL BUYERS, POTENTIAL CANDIDATES, RIGHT?

10:41AM

7 A. YES.

8 Q. AND THEN IT SAYS IN THE LAST LINE, OTHER PMS
9 ALSO AVERSE TO GUNDLACH'S ROLE AS THE CEO, AND MIGHT
10 PREFER TO SPLIT THE FIRM.

10:41AM

11 DO YOU SEE THAT?

12 A. I DO.

13 Q. AND AGAIN, CITIGROUP WAS SAYING THAT THERE WAS
14 A CHALLENGE IN THIS POTENTIAL TRANSACTION IF GUNDLACH
15 WANTED TO BE THE CEO, RIGHT?

10:41AM

16 A. THAT'S WHAT IT SAYS, YES.

17 Q. NOW, LET'S GO TO THE LAST RECTANGLE, DENNIS.

18 LOOK AT THE LEFT FIRST, PLEASE.

19 IT SAYS, BREAKUP OF THE FIRM INTO
20 VARIOUS GROUPS.

10:41AM

21 THAT'S ANOTHER ALTERNATIVE BEING
22 CONSIDERED BY CITIGROUP, RIGHT? OR BEING REPORTED BY
23 CITIGROUP?

24 A. YES.

25 THE IDEA WAS TO EXPLORE ALL
26 ALTERNATIVES, YES.

10:41AM

27 Q. AND HERE THE ALTERNATIVE BEING CONSIDERED WAS
28 THE BREAKUP OF THE FIRM INTO INDIVIDUAL GROUPS: FIXED

1 INCOME, EQUITY AND ALTERNATIVES, RIGHT?

2 A. YES.

3 Q. AND THIS WOULD ADDRESS MR. GUNDLACH'S
4 ASPIRATIONS TO BE THE CEO, BECAUSE PRESUMABLY, HE WOULD
5 BE THE CEO OF ONE OF THE SPLIT-OFF COMPANIES, RIGHT?

10:42AM

6 A. YES.

7 Q. AND THEN IT SAYS THAT BREAKING UP THE FIRM HAS
8 BEEN CONSIDERED BY THE EQUITIES GROUP.

9 DO YOU SEE THAT?

10 A. I SEE THAT.

10:42AM

11 Q. MR. GUNDLACH DIDN'T RUN THE EQUITIES GROUP,
12 DID HE?

13 A. NO.

14 Q. TAKE A LOOK AT EXHIBIT 6135.

15 THE TOP E-MAIL IN EXHIBIT 6135 IS AN
16 E-MAIL FROM MR. CONN TO YOU ON JULY 11TH, 2009, IS IT
17 NOT?

10:43AM

18 A. YES.

19 Q. AND HE WAS RESPONDING TO AN E-MAIL YOU HAD
20 SENT HIM EARLIER THAT DAY, RIGHT?

10:43AM

21 WELL, THE SECOND E-MAIL BELOW THAT IS AN
22 E-MAIL FROM YOU TO HIM, RIGHT?

23 A. YES.

24 Q. AND THE E-MAIL BELOW THAT IS AN E-MAIL FROM
25 MR. CONN TO MR. SHEDLIN AND OTHERS, MR. SHEDLIN BEING
26 CITIGROUP, RIGHT?

10:43AM

27 RIGHT?

28 A. I'M READING IT. YES.

1 MR. BRIAN: I WOULD OFFER EXHIBIT 6135.

2 MR. QUINN: NO OBJECTION.

3 THE COURT: IT WOULD BE ADMITTED.

4

5 (EXHIBIT 6135 ADMITTED.)

10:43AM

6

7 MR. BRIAN: PUT THAT ON THE SCREEN.

8 I WOULD LIKE YOU TO BLOW UP THE BOTTOM
9 E-MAIL, DENNIS.

10 THIS IS THE E-MAIL FROM MR. CONN TO
11 MR. SHEDLIN.

10:44AM

12 Q. DO YOU SEE IN THE SECOND PARAGRAPH WHERE HE
13 STATES, ATTACHED IS AN ANNOTATED INFORMATION REQUEST
14 LIST WHICH WOULD SERVE AS THE COVER MEMO INDEX FOR THE
15 DUE DILIGENCE CD.

10:44AM

16 DO YOU SEE THAT?

17 A. YES.

18 Q. YOU INSTRUCTED MR. CONN AND OTHERS, I TAKE IT,
19 TO COOPERATE WITH MR. SHEDLIN AND HIS COLLEAGUES IN
20 GATHERING INFORMATION FROM TCW, DID YOU NOT?

10:44AM

21 A. OF COURSE.

22 Q. IN THE FALL OF 2009, WHEN YOU WERE CONSIDERING
23 MR. GUNDLACH NO LONGER TO BE WITH THE COMPANY, YOU
24 ANTICIPATED THAT YOU WOULD LOSE BUSINESS IF
25 MR. GUNDLACH WERE NO LONGER THERE, DIDN'T YOU?

10:44AM

26 A. YES.

27 Q. TAKE A LOOK AT EXHIBIT 5334.

28 THE FIRST PAGE OF 5334 IS AN E-MAIL FROM

1 YOU TO MR. CONN DATED OCTOBER 4TH, 2009, IS IT NOT, THE
2 TOP E-MAIL?

3 A. YES.

4 MR. BRIAN: I WOULD OFFER EXHIBIT 5334.

5 MR. QUINN: NO OBJECTION.

10:45AM

6 THE COURT: IT WILL BE ADMITTED.

7

8 (EXHIBIT 5334 ADMITTED.)

9

10 MR. BRIAN: LET'S PUT UP THE FIRST PAGE,

10:45AM

11 DENNIS.

12 Q. YOU ARE FORWARDING TO MR. CONN, AN E-MAIL YOU
13 RECEIVED FROM WOODY BRADFORD ON OCTOBER 4TH, 2009,
14 RIGHT?

15 A. YES.

10:45AM

16 Q. AND HE SAYS IN HIS E-MAIL, MARC, PLEASE TAKE A
17 LOOK AT THE ATTACHED, AND LET ME KNOW IF IT ADDRESSES
18 YOUR NEEDS.

19 DO YOU SEE THAT?

20 A. HE WOULD HAVE, YES.

10:45AM

21 Q. AND AGAIN, MR. BRADFORD WAS ONE OF THE
22 CONSULTANTS THAT TCW RETAINED IN OR ABOUT THE FALL OF
23 2009 TO ADVISE YOU IN CONNECTION WITH THE PROJECT ANGEL
24 TRANSACTION, RIGHT?

25 A. YES.

10:46AM

26 Q. AND YOUR E-MAIL TO MR. CONN SAYS, DO YOU THINK
27 SENDING THIS REPORT TO PARIS HELPS US?

28 I TAKE IT THE REFERENCE TO PARIS IS A

1 REFERENCE TO THE FOLKS AT SOCIETE GENERALE?

2 A. YES, THAT'S DEFINITELY RIGHT.

3 Q. ON THE ONE HAND IT SHOWS WE'RE EXPLORING ALL
4 ALTERNATIVES, AND ANGEL IS CLEARLY THE BEST. ON THE
5 OTHER HAND, IT EXPOSES SOME OF ANGEL'S WEAKNESSES. LET
6 ME KNOW WHAT YOU THINK.

10:46AM

7 YOU WROTE THAT TO MR. CONN, DID YOU NOT?

8 A. I DID.

9 Q. YOU ENDED UP SENDING THIS E-MAIL OR MR. CONN
10 SENT -- STRIKE THAT.

10:46AM

11 YOU ENDED UP SENDING MR. BRADFORD'S MEMO
12 TO THE FRENCH, DIDN'T YOU?

13 A. AGAIN, I DON'T KNOW WHETHER IT WAS ME OR
14 MR. CONN, BUT IT WAS SENT TO THE FRENCH.

15 Q. TAKE A LOOK AT PAGE 4, IT'S TX 5334-0004 AT
16 THE BOTTOM.

10:47AM

17 AND IF WE COULD ENLARGE, DENNIS, WHERE
18 IT SAYS, INSTITUTIONAL SEPARATE ACCOUNTS.

19 MR. BRADFORD WROTE, (READING):

20 WITH RESPECT TO THE
21 INSTITUTIONAL SEPARATE ACCOUNTS,
22 THE VAST MAJORITY OF INDUSTRY
23 CONTACTS FELT THAT THE LOSS OF THE
24 MAJORITY OF INVESTMENT TEAM WOULD
25 PUT VIRTUALLY ALL OF THE
26 INSTITUTIONAL MANDATES AT RISK.

10:47AM

10:47AM

27 IN EFFECT, THE BUSINESS WOULD NEED TO BE
28 RESOLD BY ANY NEW TEAM PUT IN PLACE. (READING):

1 REPRESENTATIVE COMMENTS,
2 ASSUMING A NEW TEAM IS PUT IN PLACE
3 IN SOME FORM, WERE AS FOLLOWS:

4 QUOTE, YOU WILL LOSE 60 TO 70
5 PERCENT OVER THREE YEARS,
6 REGARDLESS OF PERFORMANCE.

10:48AM

7 QUOTE, KEEPING 40 PERCENT
8 WOULD BE A HUGE SUCCESS.

9 QUOTE, YOU SHOULD ASSUME 50
10 PERCENT WILL GO IMMEDIATELY.

10:48AM

11 QUOTE, LOSSES WILL HAPPEN OVER
12 TIME. ASSUME YOU WILL EXPERIENCE
13 50 PERCENT OF YOUR LOSSES OVER THE
14 FIRST YEAR, 30 PERCENT THE SECOND
15 YEAR, 20 PERCENT THE THIRD YEAR,
16 UNQUOTE.

10:48AM

17 THAT'S WHAT MR. BRADFORD WROTE IN THAT
18 PARAGRAPH OF EXHIBIT 5334, CORRECT?

19 A. THAT'S WHAT IT SAYS, YES.

20 Q. YOU HAD COMMISSIONED MR. BRADFORD TO DO
21 ESSENTIALLY SOME SORT OF INDUSTRY -- I DON'T KNOW IF
22 IT'S A SURVEY, BUT YOU WANTED TO GET FEEDBACK THROUGH
23 MR. BRADFORD FROM PEOPLE IN THE INDUSTRY AS TO HOW THEY
24 WOULD REACT IN THE EVENT MR. GUNDLACH AND HIS TEAM WERE
25 NO LONGER AT THE COMPANY, CORRECT?

10:48AM

26 A. YES.

27 Q. AND WHEN HE REFERS TO INSTITUTIONAL SEPARATE
28 ACCOUNTS, THOSE ARE DIFFERENT THAN THE SPECIAL MORTGAGE

10:48AM

1 CREDIT FUNDS ACCOUNTS YOU TESTIFIED ABOUT YESTERDAY,
2 ARE THEY NOT?

3 A. COULD YOU REPEAT THE QUESTION? I'M SORRY.

4 Q. THE PARAGRAPH STARTS WITH ITALICIZED REFERENCE
5 TO INSTITUTIONAL SEPARATE ACCOUNTS.

10:49AM

6 DO YOU SEE THAT?

7 A. YES.

8 Q. THOSE ARE DIFFERENT THAN THE SMCF FUND
9 ACCOUNTS YOU WERE TALKING ABOUT YESTERDAY, RIGHT?

10 A. YES.

10:49AM

11 Q. THEY DON'T HAVE THE SAME SORT OF CONTRACTUAL
12 RESTRICTIONS THAT THE SMCF INVESTORS HAVE, RIGHT?

13 A. WELL, INSTITUTIONAL SEPARATE ACCOUNTS HAVE
14 TAILORED CONTRACTUAL PROVISIONS.

15 THEY COULD OR THEY COULDN'T, DEPENDING
16 ON THE NATURE OF THE CONTRACTUAL ARRANGEMENTS.

10:49AM

17 Q. WHEN YOU RECOMMENDED THAT SOCIETE GENERALE
18 APPROVED THE PROJECT ANGEL TRANSACTION TO BRING IN MET
19 WEST TO REPLACE MR. GUNDLACH, YOU KNEW, DID YOU NOT,
20 THAT THERE WAS A SUBSTANTIAL LIKELIHOOD OF LOSING
21 BUSINESS AS A RESULT OF THAT MANEUVER, RIGHT?

10:49AM

22 A. MANEUVER? WHAT MANEUVER?

23 Q. TRANSACTION.

24 A. OKAY.

25 Q. I'LL REFRAME IT.

10:50AM

26 A. SORRY.

27 Q. WHEN YOU RECOMMENDED TO THE FRENCH THAT THEY
28 ACQUIRE MET WEST TO REPLACE MR. GUNDLACH, YOU KNEW THAT

1 THERE WAS A SUBSTANTIAL RISK OF A LOSS OF ASSETS,
2 RIGHT?

3 A. YES, I KNEW WE'D LOSE ASSETS, YES.

4 Q. TAKE A LOOK AT EXHIBIT 5418.

5 5418 IS A MEMO FROM YOU TO MR. CABANNES
6 AND MR. RIPOLL AT SOCIETE GENERALE ON NOVEMBER 3RD,
7 2009, IS IT NOT?

10:50AM

8 A. I BELIEVE IT'S A DRAFT, YES.

9 MR. BRIAN: I'LL OFFER EXHIBIT 5418.

10 MR. QUINN: NO OBJECTION.

10:51AM

11 THE COURT: IT WOULD BE ADMITTED.

12

13 (EXHIBIT 5418 ADMITTED.)

14

15 MR. BRIAN: LET'S PUT UP THE FIRST PAGE,
16 DENNIS.

10:51AM

17 IF WE COULD JUST ENLARGE THE -- RIGHT AT
18 THE TOP, WHO IT'S FROM AND --

19 Q. I'M NOT SURE I ASKED YOU ABOUT MR. CABANNES.

20 MR. CABANNES IS ANOTHER SENIOR SOCIETE
21 GENERALE EXECUTIVE WHO JOINED THE BOARD OF TCW GROUP,
22 INC., SOMETIME IN THE MID 2009 TIME PERIOD, RIGHT?

10:51AM

23 A. I WOULD HAVE TO CHECK THE DATE.

24 AND I CAN, BUT I JUST DON'T KNOW OFF
25 HAND. THE REST OF YOUR, WHAT YOU SAID, IS CORRECT.

10:51AM

26 I'M JUST NOT SURE WHEN HE JOINED.

27 Q. HE JOINED THE BOARD AT SOME POINT AFTER YOU
28 CAME BACK TO BE CEO, RIGHT?

1 A. I DON'T KNOW WHETHER IT WAS BEFORE OR AFTER.

2 I COULD CHECK ON THAT.

3 Q. IS HE ON THE BOARD NOW?

4 A. HE IS.

5 Q. TURN TO PAGE 3 OF THIS EXHIBIT 5418.

10:51AM

6 AND IF WE COULD ENLARGE WHERE IT SAYS
7 RISKS, DENNIS.

8 YOU WROTE THAT NOTWITHSTANDING THE
9 AFOREMENTIONED RATIONALE, THIS TRANSACTION IS NOT
10 WITHOUT RISKS. TCW WILL LIKELY HAVE TO DEAL WITH THE
11 FOLLOWING ISSUES:

10:52AM

12 AND THE FIRST ONE YOU IDENTIFIED WAS THE
13 LIKELY LOSS OF SUBSTANTIAL ASSETS, RIGHT?

14 A. YES.

15 Q. AND THAT'S -- YOU THEN INDICATED, THOUGH, THAT
16 THIS WILL BE BUFFERED, IN PART, BY THE REDUCED
17 COMPENSATION LEVELS FOR THE NEW TEAM, THE 10 PERCENT
18 FEE SHARING AS OPPOSED TO THE 35 PERCENT PRE
19 TRANSACTION.

10:52AM

20 YOU WROTE THAT, DID YOU NOT?

10:52AM

21 A. I DID.

22 Q. THEN YOU INDICATED, ANOTHER RISK WAS POTENTIAL
23 LITIGATION FROM MR. GUNDLACH AND THE CLIENTS, CORRECT?

24 A. YES.

25 Q. NOW, TAKE A LOOK AT THE VERY LAST SENTENCE IN
26 THIS PARAGRAPH.

10:52AM

27 YOU WROTE, (READING):

28 ULTIMATELY, THESE CHANGES

1 SHOULD TRANSLATE INTO INCREASED
2 VALUE FOR ALL STAKEHOLDERS AND
3 ACCELERATED MONETIZATION
4 OPPORTUNITIES FOR SOCIETE GENERALE.

5 YOU WROTE THAT ON NOVEMBER 3RD, 2009,
6 DIDN'T YOU, SIR? 10:53AM

7 A. I DID WRITE THAT.

8 Q. TAKE A LOOK AT EXHIBIT 493.

9 THIS IS IN EVIDENCE, YOUR HONOR.

10 NOW, YOU WERE ASKED ABOUT THIS YESTERDAY
11 BY MR. QUINN. 10:53AM

12 DO YOU RECALL THAT, GENERALLY, SIR?

13 A. ASKED ABOUT THIS DOCUMENT?

14 Q. YEAH.

15 A. YES. 10:54AM

16 Q. THIS IS THE, SORT OF THE FINAL -- THE FINAL
17 PRESENTATION TO SOCIETE GENERALE, TO GET THEIR FORMAL
18 APPROVAL OF THE PROJECT ANGEL TRANSACTION, RIGHT?

19 A. IT IS.

20 Q. AND THIS WAS PREPARED BY A LOT OF DIFFERENT
21 PEOPLE, WASN'T IT? 10:54AM

22 A. AS WAS THE OTHER, YES.

23 Q. IT WOULD INCLUDE MR. DEVITO AND MR. VILLA?

24 A. THIS DOCUMENT?

25 Q. YES, INCLUDING ATTACHMENTS? 10:54AM

26 A. INCLUDING THE ATTACHMENTS, YES.

27 Q. DID YOU HAVE YOUR LEGAL COUNSEL PARTICIPATE IN
28 THE DRAFTING OF ANY OF THE SECTIONS OF THIS DOCUMENT?

1 A. I CERTAINLY THINK MR. CAHILL WAS INVOLVED.
2 WHETHER HE DRAFTED IT OR NOT, I'D HAVE
3 TO LOOK AT THE DOCUMENT.

4 Q. DO YOU KNOW WHETHER OR NOT ANY OUTSIDE LAW
5 FIRM REVIEWED THIS BEFORE IT WAS FINALIZED?

10:54AM

6 A. I DON'T KNOW THAT.

7 Q. OKAY. TAKE A LOOK AT PAGE 2, EXHIBIT 493-2.
8 AND AT THE TOP YOU SAY, THE RATIONALE
9 FOR THIS TRANSACTION INITIALLY STARTED OUT AS A
10 DEFENSIVE ONE.

10:55AM

11 DO YOU SEE THAT?

12 A. YES.

13 Q. AND THEN TOWARD THE BOTTOM, YOU SAY --
14 GO DOWN TO THE BOTTOM, DENNIS.

15 -- AND THUS THIS DEFENSIVE TRANSACTION
16 HAS BECOME STRATEGIC IN NATURE.

10:55AM

17 DO YOU SEE THAT?

18 A. I SEE THAT.

19 Q. AND IF WE COULD MAKE THAT A LITTLE -- YEAH.

20 AND RIGHT ABOVE THAT, YOU TOLD THE
21 FRENCH THAT ANGEL -- ANGEL IS A REFERENCE TO MET WEST,
22 RIGHT?

10:55AM

23 A. YES, IT IS.

24 Q. (READING):

25 ANGEL MANAGES A WIDE ARRAY OF
26 TRADITIONAL AND NONTRADITIONAL
27 FIXED INCOME STRATEGIES, WITH CLOSE
28 TO 30 BILLION IN ASSETS UNDER

10:55AM

1 MANAGEMENT. THE FIRM'S INVESTMENT
2 PHILOSOPHY HAS BEEN PREDICATED ON A
3 STRICT VALUE DISCIPLINE AND
4 ORIENTATION SINCE ITS FOUNDING IN
5 1996.

10:56AM

6 TCW'S ACQUISITION OF ANGEL
7 WILL ALLOW TCW CLIENTS ACCESS TO A
8 MORE TRADITIONAL SUITE OF FIXED
9 INCOME PRODUCTS, WITH A FOCUS ON
10 ABSOLUTE RETURN.

10:56AM

11 AND WHEN YOU SAY A MORE TRADITIONAL
12 SUITE, A MORE TRADITIONAL SUITE, YOU MEAN A BROADER
13 ARRAY OF MORE TRADITIONAL FIXED INCOME INVESTMENT
14 FUNDS, RIGHT?

15 A. YES.

10:56AM

16 Q. WITH LESS EMPHASIS ON THE MORTGAGE-BACKED
17 SECURITIES, RIGHT?

18 A. NOT NECESSARILY.

19 HOPEFULLY, IN ADDITION TO.

20 Q. WITH THE FOCUS ON ABSOLUTE RETURN.

10:56AM

21 DO YOU SEE THAT?

22 A. I DO SEE THAT.

23 Q. YOU HAD BEEN CRITICAL IN THE PAST OF THE
24 PROFIT MARGIN OF THE MBS INVESTMENTS, HADN'T YOU, SIR?

25 A. CRITICAL OF THE PROFIT MARGIN?

10:57AM

26 Q. YEAH, OF THE PROFIT MARGIN?

27 A. ME, PERSONALLY?

28 Q. YEAH.

1 A. I DON'T REMEMBER BEING CRITICAL OF THE PROFIT
2 MARGIN.

3 BUT MAYBE YOU HAVE SOMETHING THERE THAT
4 SAYS I WAS. I DON'T REMEMBER THAT.

5 Q. YOU ALSO SAY, BELOW THAT, (READING):

10:57AM

6 THE TRANSACTION ALLOWS TCW TO
7 BROADEN THE FIXED INCOME PRODUCT
8 PLATFORM TO INCLUDE MORE
9 TRADITIONAL FIXED INCOME OFFERINGS,
10 WITH THE FOCUS ON ABSOLUTE RETURN.

10:57AM

11 LET'S GO TO THE NEXT PAGE, 493-3, AT THE
12 TOP. IF WE COULD ENLARGE THE TOP THIRD OR SO.

13 YOU TOLD THE FRENCH THAT THE PRO FORMA
14 ENTITY IS BETTER POSITIONED.

15 YOU SAID THAT, RIGHT?

10:57AM

16 A. YES.

17 Q. AND YOU EXPLAINED THAT THE MUTUAL FUND AUM
18 WOULD DOUBLE TO 20.3 BILLION.

19 YOU SAID THAT, TOO, RIGHT?

20 A. YES.

10:58AM

21 Q. YOU TOLD THEM THAT THE TOTAL FIXED INCOME AUM
22 INCREASES BY ROUGHLY 50 PERCENT, RIGHT?

23 A. YES.

24 Q. AND AUM, BY THE WAY, IS ASSETS UNDER
25 MANAGEMENT, RIGHT?

10:58AM

26 A. THAT'S ASSUMING, I THINK, UNFORTUNATELY, THAT
27 WE RETAIN ALL OF OUR ASSETS; SO IT'S PROBABLY
28 OVERSTATED.

1 Q. WELL, LET'S TALK ABOUT THAT.

2 LET'S GO DOWN TO THE BOTTOM OF THIS
3 PAGE.

4 YOU SAY IT WAS ASSUMING --

5 LET'S GO ENLARGE THE SECTION TO RISK. 10:58AM

6 YOU SAY IT WAS ASSUMING THAT YOU
7 RETAINED IT?

8 IN FACT, YOU WERE ASSUMING THAT THERE
9 WAS A LIKELY LOSS OF SUBSTANTIAL MBS, WEREN'T YOU, SIR?
10 ON THE VERY SAME PAGE? 10:58AM

11 A. YES. WHAT I'M SAYING IS --

12 Q. SIR, WERE YOU ASSUMING, WHEN YOU WROTE THIS
13 DOCUMENT AND PRESENTED IT TO THE FRENCH, THAT THERE WAS
14 A LIKELY LOSS OF SUBSTANTIAL MBS ASSETS? YES OR NO?

15 A. YES. 10:58AM

16 Q. TAKE A LOOK AT PAGE 14 OF EXHIBIT 493.

17 YOU INCLUDED IN THE PACKET OF THE
18 PRESENTATION TO THE FRENCH ON NOVEMBER 27TH, TO
19 ADVOCATE THE ANGEL ACQUISITION PROJECTIONS OF THE
20 EBITDA, WHICH I CAN'T EVEN PRONOUNCE, EITHER WITH THE
21 ANGEL TRANSACTION OR NOT WITH IT, DIDN'T YOU? 10:59AM

22 A. YES.

23 Q. AND WHAT IS EBITDA?

24 A. EARNINGS BEFORE INTEREST, TAXES, DEPRECIATION.

25 Q. BASICALLY, IT'S A PROJECTION OF WHAT YOUR
26 EARNINGS ARE, MINUS CERTAIN SORT OF EXPENSES, RIGHT? 10:59AM

27 A. YES.

28 Q. AND IT'S COMMONLY USED BY A BUSINESS TO

1 MEASURE FINANCIAL PERFORMANCE, RIGHT?

2 A. ONE OF THE MEASURES, YES.

3 Q. AND YOU SEE THE MIDDLE, IT SAYS, ACQUISITION
4 OF ANGEL. BASED ON ANGEL'S 2008 ACTUAL INCOME?

5 A. YES.

11:00AM

6 Q. YOU WERE PROJECTING BY 2012, UNDER SCENARIO,
7 ONE, THAT EBITDA WOULD BE UP TO \$157.3 MILLION, RIGHT?

8 A. WITH CERTAIN ASSUMPTIONS, YES.

9 Q. AND BASED ON IF YOU GO TO THE THIRD ONE DOWN,
10 BASED ON ANGEL'S ACTUAL 2009 RUN RATE INCOME, YOU WERE
11 PROJECTING THE EBITDA IN SCENARIO ONE, BY 2012, WOULD
12 BE AT 161.9 MILLION, RIGHT?

11:00AM

13 A. YES, BASED ON CERTAIN ASSUMPTIONS.

14 Q. BETTER THAN TCW WAS CURRENTLY IN 2009, AS OF
15 DECEMBER 4TH, CORRECT?

11:00AM

16 A. NO.

17 Q. EBITDA WAS HIGHER?

18 A. NOT WHEN YOU TAKE INTO ACCOUNT THE RETENTION,
19 AS WELL AS THE ACQUISITION PRICE, WHICH AREN'T INCLUDED
20 IN HERE.

11:01AM

21 Q. HOW ABOUT WHEN YOU CONSIDER THE \$50 MILLION IN
22 SAVINGS A YEAR UNDER THE COMPENSATION?

23 DID YOU FACTOR THAT IN, SIR?

24 A. IT STILL DOESN'T PENCIL OUT AS A FINANCIAL
25 ADVANTAGE.

11:01AM

26 Q. BUT NEVERTHELESS, WHEN YOU SAID ON PAGE 3 THAT
27 THE PRO FORMA ENTITY IS BETTER POSITIONED, DID YOU MEAN
28 THAT?

1 A. I DIDN'T MEAN IT -- ACTUALLY, THE PRO FORMA
2 ENTITY POSITION, I MEANT IN THE MARKETPLACE, NOT
3 FINANCIALLY.

4 Q. AND WHEN YOU SAID THAT IT WOULD BE -- WOULD
5 PROVIDE BETTER VALUE FOR THE STAKEHOLDERS.

11:01AM

6 DID YOU MEAN THAT WAS IN THE
7 MARKETPLACE, TOO, OR TO MEAN THAT WAS FINANCIAL?

8 A. I'M SORRY, MR. BRIAN. WHERE ARE YOU NOW?

9 Q. LET'S GO TO PAGE FOUR.

10 A. FOUR OF THIS EXHIBIT?

11:01AM

11 Q. PAGE FOUR OF THAT EXHIBIT.

12 A. YES.

13 Q. CAN YOU HIGHLIGHT, DENNIS, THE PARAGRAPH
14 OVERALL. THE LAST SENTENCE. (READING):

15 ULTIMATELY, THESE CHANGES
16 SHOULD TRANSLATE INTO INCREASED
17 VALUE FOR ALL STAKEHOLDERS AND
18 ACCELERATED MONETIZATION
19 OPPORTUNITIES FROM SOCIETE
20 GENERALE.

11:02AM

21 YOU WROTE THAT, DIDN'T YOU, SIR?

22 A. I DID.

23 Q. YOU TOLD THAT TO THE FRENCH IN NOVEMBER -- ON
24 NOVEMBER 27TH, 2009, DIDN'T YOU, SIR?

25 A. BASED ON THE FACT THAT MR. GUNDLACH --

11:02AM

26 Q. DID YOU SAY IT, SIR?

27 A. DID I SAY IT?

28 Q. DID YOU SAY THAT TO THE FRENCH?

1 A. THAT'S WHAT THE DOCUMENT READS, YES.

2 Q. DID YOU MEAN IT? DID YOU MEAN IT?

3 A. IN A SENSE THAT I CAN EXPLAIN, I MEANT IT,
4 YES.

5 Q. THE TRANSACTION TO ACQUIRE MET WEST WAS
6 APPROVED BY THE EXECUTIVE COMMITTEE OF SOCIETE
7 GENERALE, WAS IT NOT? 11:02AM

8 A. I BELIEVE THAT WAS THE ENTITY THAT APPROVED
9 IT, YES.

10 Q. AND IT WAS ALSO APPROVED BY THE EXECUTIVE
11 COMMITTEE OF TCW GROUP, CORRECT? 11:03AM

12 A. YES. RIGHT.

13 Q. AND REPRESENTATIVES OF SOCIETE GENERALE SAT ON
14 BOTH OF THOSE EXECUTIVE COMMITTEES, DID THEY NOT?

15 A. YES. OF SG, RIGHT. 11:03AM

16 Q. WHEN YOU FIRST DISCUSSED TERMINATING
17 MR. GUNDLACH, BACK IN -- LET ME REFRAME THAT.

18 WHEN OTHERS RECOMMENDED TO YOU THAT YOU
19 CONSIDER TERMINATING MR. GUNDLACH, IN AUGUST OF 2007,
20 YOU THOUGHT THAT IN THE EVENT MR. GUNDLACH WAS
21 TERMINATED, MOST OF THE PEOPLE IN HIS GROUP WOULD STAY,
22 DIDN'T YOU? 11:03AM

23 A. IN AUGUST OF 2007?

24 Q. YEAH.

25 I'M SORRY, AUGUST OF 2009. I'M SORRY. 11:04AM

26 I'LL REFRAME THAT, SIR.

27 A. SORRY.

28 Q. WHEN OTHERS AT TCW RECOMMENDED TO YOU THAT YOU

1 CONSIDER TERMINATING MR. GUNDLACH, IN THAT AUGUST TIME
2 PERIOD OF 2009, YOU THOUGHT THAT IN THE EVENT THAT
3 MR. GUNDLACH WAS TERMINATED, MOST PEOPLE IN HIS GROUP
4 WOULD STAY?

5 A. I THOUGHT WE'D HAVE A GOOD SHOT OF KEEPING
6 MOST OF THE FOLKS IN HIS GROUP, YES.

11:04AM

7 Q. TAKE A LOOK BACK AT EXHIBIT 5224.

8 AND DENNIS, IF WE COULD PUT UP PAGE 13.

9 NOW, THIS PAGE 13, AND THE NEXT TWO
10 PAGES, ACTUALLY THREE PAGES, I GUESS -- THIS IS WHERE
11 MR. BURSCHINGER WENT THROUGH EACH OF THE KEY PEOPLE IN
12 THE MBS GROUP AND EVALUATED THEIR FLIGHT RISK, AND MADE
13 SOME COMMENTS, RIGHT?

11:05AM

14 A. YES.

15 Q. AND FOR EXAMPLE, IF YOU LOOK AT MR. BARACH, HE
16 SAID THAT THERE WAS A LOW CHANCE OF MR. BARACH LEAVING,
17 IF MR. GUNDLACH WERE NO LONGER THERE, RIGHT?

11:05AM

18 A. THAT'S WHAT MR. BURSCHINGER SAYS, YES.

19 Q. NOW, IF YOU GO THROUGH THIS -- JUST STAY WITH
20 ME, AND FLIP THROUGH THE NEXT THREE PAGES.

11:05AM

21 THE ONLY PERSON THAT MR. BURSCHINGER
22 SAID WAS A HIGH LIKELIHOOD OF LEAVING WAS MR. GALLIGAN,
23 RIGHT?

24 A. SORRY?

25 Q. JUST TAKE A FEW MOMENTS.

11:06AM

26 A. I WILL. I WILL.

27 YES.

28 Q. EVERYBODY ELSE WAS EITHER A LOW RISK OR A

1 MODERATE RISK, RIGHT?

2 A. THAT WAS MR. BURSCHINGER'S VIEW, YES.

3 Q. AND I TAKE IT IN DECEMBER OF 2009, AFTER
4 MR. GUNDLACH WAS RELIEVED OF HIS DUTIES, YOU WERE
5 SURPRISED AT HOW MANY PEOPLE LEFT, WEREN'T YOU?

11:06AM

6 A. I WAS.

7 Q. YOU TRIED VERY HARD TO CONVINCING MR. BARACH TO
8 STAY, DIDN'T YOU?

9 A. I DID.

10 Q. TAKE A LOOK AT EXHIBIT 5519.

11:06AM

11 THIS IS AN E-MAIL -- I'M SORRY. YOU
12 DON'T HAVE IT YET. I'M SORRY.

13 THIS IS AN E-MAIL EXCHANGE BETWEEN YOU
14 AND MARK GIBELLO, ON THE 5TH OF DECEMBER 2009, IS IT
15 NOT?

11:07AM

16 A. YES.

17 SHOULD I READ IT?

18 Q. YEAH, PLEASE.

19 MR. BRIAN: WHILE HE'S READING IT, I'LL OFFER
20 EXHIBIT 5519, YOUR HONOR.

11:07AM

21 MR. QUINN: NO OBJECTION.

22 MR. BRIAN: COULD YOU PUT THAT ON THE SCREEN,
23 DENNIS.

24 THE COURT: IT WILL BE ADMITTED.

25

11:07AM

26 (EXHIBIT 5519 ADMITTED.)

27

28 Q. BY MR. BRIAN: AND IF WE COULD ENLARGE THE

1 BOTTOM E-MAIL RIGHT THERE, STARTING WITH MARC.

2 THESE WERE SUGGESTIONS THAT MR. GIBELLO
3 MADE TO YOU FOR THINGS THAT YOU MIGHT OFFER TO
4 MR. BARACH TO TRY TO CONVINCE HIM TO STAY, RIGHT?

5 A. THAT'S CORRECT. 11:08AM

6 Q. AND HE RECOMMENDED, FOR EXAMPLE, IF YOU GO
7 DOWN TO THE DASHES, THAT YOU MAKE MR. BARACH THE CHIEF
8 INVESTMENT OFFICER OF FIXED INCOME, OR AT LEAST A CHIEF
9 INVESTMENT OFFICER OF MBS FIXED INCOME, RIGHT?

10 A. IF YOU ARE ASKING ME, DID MR. GIBELLO
11 RECOMMEND THAT? YES. 11:08AM

12 Q. YEAH.

13 HE ALSO RECOMMEND THAT YOU OFFER HIM A
14 POSITION ON THE TCW BOARD OF DIRECTORS, DIDN'T HE?

15 A. YES. 11:08AM

16 Q. HE RECOMMENDED THAT YOU MAYBE MAKE HIM
17 PRESIDENT OF TAMCO, RIGHT?

18 A. YES.

19 Q. AND HE RECOMMEND THAT YOU OFFER HIM MONEY,
20 ADDITIONAL COMPENSATION, DIDN'T HE? 11:08AM

21 A. YES.

22 Q. MR. BARACH DECIDED TO LEAVE AND JOIN
23 MR. GUNDLACH AT DOUBLELINE, DIDN'T HE?

24 A. HE DID.

25 Q. NOW, I THINK YOU TESTIFIED EARLIER TODAY THAT
26 AT NO TIME BETWEEN JUNE OF '09 AND DECEMBER 3RD OF '09,
27 DID YOU ATTEMPT TO NEGOTIATE ANY SEPARATION WITH
28 MR. GUNDLACH, RIGHT? 11:09AM

1 A. I HAD LOTS OF DISCUSSIONS WITH MR. GUNDLACH,
2 BUT NO NEGOTIATIONS OF SEPARATION.

3 HE NEVER APPROACHED ME.

4 Q. AND YOU NEVER RAISED IT WITH HIM --

5 A. EITHER WAY, YES.

11:09AM

6 Q. OKAY. YOU DID NEGOTIATE SEPARATIONS, THOUGH,
7 WITH THE OTHER PORTFOLIO MANAGERS: MR. ATTANASIO,
8 MR. CHAPUS, AND MR. THOMAS, DIDN'T YOU?

9 A. YES.

10 Q. NOW, THERE WAS ALSO, REMEMBER, THAT LETTER
11 THAT MR. ATTANASIO E-MAILED TO MR. MUSTIER BACK IN MAY.

11:09AM

12 THERE WAS ALSO DIANE JAFFEE, WHO
13 ELECTRONICALLY SIGNED THE LETTER, RIGHT?

14 A. CAN I SEE THE LETTER?

15 Q. IF I CAN FIND IT, BUT --

11:10AM

16 IT'S IN EVIDENCE.

17 A. LET ME PUT IT THIS WAY. IF YOU TELL ME THAT
18 SHE DID IT, IT'S OKAY.

19 Q. SHE DID.

20 SHE'S STILL WITH THE COMPANY, RIGHT?

11:10AM

21 A. SHE IS.

22 Q. AND IT'S A FACT, IS IT NOT, THAT IN -- WELL,
23 TAKE A LOOK AT EXHIBIT 5222.

24 EXHIBIT 5222 IS AN E-MAIL FROM
25 MR. DEVITO TO YOU ON AUGUST 26TH, 2009, IS IT NOT?

11:10AM

26 A. YES.

27 MR. BRIAN: I'LL OFFER EXHIBIT 5222.

28 THE COURT: IT WILL BE ADMITTED, IF THERE'S NO

1 OBJECTION.

2 MR. QUINN: THERE IS NONE.

3

4 (EXHIBIT 5222 ADMITTED.)

5

11:11AM

6 MR. BRIAN: LET'S PUT THAT UP, DENNIS.

7

8 (READING):

9

10

11:11AM

11

12

13

14

15

11:11AM

16

17

18

19

IT NOT?

20

A. YES.

11:11AM

21

22

23

24

Q. ISN'T IT TRUE THAT VERY SHORTLY AFTER
MR. ATTANASIO SENT THE LETTER TO MR. MUSTIER IN LATE
MAY, THAT YOU TRIED TO TURN MR. CHAPUS AND
MR. ATTANASIO AGAINST MR. GUNDLACH?

25

11:12AM

26

A. I TRIED TO GET MR. CHAPUS AND MR. ATTANASIO TO
WORK WITH ME IN SAVING THE FIRM.

27

28

BUT TURNING THEM AGAINST HIM, I'D SAY
THAT WAS AN OVERSTATEMENT.

1 Q. TAKE A LOOK AT EXHIBIT 2056.

2 THIS IS AN E-MAIL AT THE TOP, ON PAGE 1,
3 FROM YOU TO MR. ATTANASIO AND MR. CHAPUS ON JUNE 11TH,
4 2009, IS IT NOT?

5 A. YES.

11:12AM

6 MR. BRIAN: I'LL OFFER EXHIBIT 2056, YOUR
7 HONOR.

8 MR. QUINN: NO OBJECTION.

9 THE COURT: IT WILL BE ADMITTED.

10

11:12AM

11 (EXHIBIT 2056 ADMITTED.)

12

13 MR. BRIAN: PUT THAT UP, DENNIS.

14 Q. NOW, THE MIDDLE OF THIS IS AN E-MAIL FROM
15 MR. GUNDLACH TO MR. LEADER -- SORRY, TO SUSAN LEADER,
16 IN RESPONSE TO HER E-MAIL WHERE HE SAYS -- RESPONDS TO
17 HER QUESTION, (READING):

11:13AM

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

11:13AM

26 DO YOU SEE THAT?

27 A. I DO.

28 Q. AND YOU FORWARDED THIS E-MAIL CHAIN TO

11:13AM

1 MR. ATTANASIO AND MR. CHAPUS, EVEN THOUGH THEY WERE NOT
2 COPIED ON THE ORIGINAL E-MAIL; ISN'T THAT RIGHT?

3 A. YES.

4 Q. OKAY. YOU PROCEEDED THEN, OVER THE NEXT FEW
5 MONTHS, TO CONSULT WITH MR. ATTANASIO ABOUT POSSIBLE
6 REPLACEMENTS FOR MR. GUNDLACH, DIDN'T YOU, SIR?

11:13AM

7 A. I ASKED HIM ABOUT MET WEST AT ONE POINT, YES.

8 ALSO, I THINK THERE WAS ANOTHER
9 INDIVIDUAL THAT COULD POSSIBLY COME IN THAT I ASKED
10 MR. ATTANASIO ABOUT.

11:14AM

11 Q. TAKE A LOOK AT EXHIBIT 5149.

12 THIS IS AN E-MAIL FROM BLAIR THOMAS TO
13 YOU, DATED JUNE 1ST, 2009, IS IT NOT?

14 A. YES.

15 MAY I READ IT?

11:14AM

16 Q. YES. GO AHEAD.

17 MR. BRIAN: I'LL OFFER IT WHILE HE'S READING
18 IT, YOUR HONOR, EXHIBIT 5149.

19 MR. QUINN: NO OBJECTION, YOUR HONOR.

20 THE COURT: IT WILL BE ADMITTED.

11:14AM

21
22 (EXHIBIT 5149 ADMITTED.)

23
24 MR. BRIAN: MAYBE WE CAN ENLARGE THE TEXT SO
25 THE JURY CAN READ THAT.

11:15AM

26 Q. MR. THOMAS WROTE YOU AN E-MAIL ON JUNE 1ST.
27 I'LL START ON THE SECOND LINE. (READING):

28 AS I INDICATED ON FRIDAY, ONE

1 THING YOU CAN ALWAYS COUNT ON WITH
2 ME IS THAT I'LL BE STRAIGHT WITH
3 YOU, EVEN WHEN IT'S NOT THE NEWS
4 YOU WANT TO HEAR.

5 IN THAT VEIN, I'M NOT
6 SUPPORTIVE OF THE PROPOSED
7 TRANSITION, AND BELIEVE THAT IT
8 WILL BE VERY POORLY RECEIVED BY OUR
9 CLIENTS AND COLLEAGUES. THIS IS
10 NOT A REFLECTION OF THE HIGH ESTEEM
11 ANY OF US HAVE FOR EITHER YOU OR
12 ROBERT, BUT RATHER, RECOGNITION OF
13 THE FACT THAT CONTINUED SG
14 OWNERSHIP AND CONTROL IS A
15 NON-STARTER.

11:16AM

11:16AM

11:16AM

16 YOU UNDERSTOOD HIS REFERENCE TO ROBERT
17 WAS A REFERENCE TO ROBERT DAY, DID YOU NOT?

18 A. I UNDERSTAND THAT, YES.

19 Q. AND YOU UNDERSTOOD THE REFERENCE TO SG IS A
20 REFERENCE TO SOCIETE GENERALE, CORRECT?

11:16AM

21 A. YES.

22 Q. FOLLOWING --

23 WELL, MR. THOMAS IS NO LONGER WITH TCW,
24 IS HE, SIR?

25 A. WITH TCW?

11:17AM

26 Q. YEAH?

27 A. NO.

28 Q. OVER THE MONTHS FOLLOWING THIS E-MAIL, HE

1 CONTINUED TO NEGOTIATE A SEPARATION THROUGH A FINANCIAL
2 ARRANGEMENT WITH TCW, DID HE NOT?

3 A. HE DID.

4 Q. NOW, TAKE A LOOK AT EXHIBIT 5440.

5 I WOULD OFFER EXHIBIT 5440, YOUR HONOR,
6 WHILE HE'S READING IT.

11:17AM

7 MR. QUINN: NO OBJECTION, YOUR HONOR.

8 THE COURT: IT WOULD BE ADMITTED.

9

10 (EXHIBIT 5440 ADMITTED.)

11:18AM

11

12 THE WITNESS: OKAY.

13 MR. BRIAN: DENNIS, IF WE COULD ENLARGE THE
14 E-MAIL AT THE BOTTOM.

15 IT'S AN E-MAIL THAT SAYS, DE MARC STERN.

11:18AM

16 Q. THAT MEANS FROM, IN FRENCH, DIDN'T IT, SIR?

17 A. I DON'T SPEAK FRENCH; BUT THAT'S WHAT IT
18 MEANS. THAT MUCH FRENCH, I KNOW.

19 Q. YOU AND I ARE AGREEING ON ANOTHER THING TODAY?

20 A. MY, GOSH. WE'RE TWO FOR TWO, MY FRIEND.

11:19AM

21 Q. IN THIS E-MAIL DE MARC STERN FROM JACQUES
22 RIPOLL, YOU STATED, (READING):

23 ATTACHED IS A DRAFT OF AN
24 AGREEMENT WHICH I'D LIKE TO SIGN
25 WITH MESSRS. ATTANASIO AND CHAPUS.
26 THE AGREEMENT WAS ORIGINALLY
27 PREPARED IN 2005, BUT FOR SOME
28 REASON, WAS NEVER EXECUTED. THE

11:19AM

1 AGREEMENT PROVIDES THAT IF
2 ATTANASIO AND CHAPUS LEAVE THE
3 EMPLOYMENT OF TCW, THEY WILL
4 CONTINUE TO MANAGE, ON A
5 SUB-ADVISORY BASIS, THE CLOSED END 11:19AM
6 FUNDS THAT THEY ARE CURRENTLY
7 MANAGING, FOR THE SAME BASIC
8 ECONOMICS THAT NOW EXIST, I.E., THE
9 SAME CARRIED INTEREST PERCENTAGES,
10 WITH THE FOLLOWING CHANGE: INSTEAD 11:19AM
11 OF RECEIVING 40 PERCENT OF THE
12 MANAGEMENT FEE, THEY WILL RECEIVE
13 60 PERCENT OF THE MANAGEMENT FEE,
14 LESS THE COSTS OF THE EMPLOYEES
15 THAT STAY WITH TCW INVOLVED IN 11:20AM
16 MANAGING THESE PRODUCTS.

17 YOU WROTE THAT TO MR. RIPOLL ON OR ABOUT
18 NOVEMBER 10TH OF 2009, CORRECT?

19 A. I DID WRITE THAT TO MR. RIPOLL, YES.

20 Q. AND HE RESPONDED -- 11:20AM

21 AND DENNIS, IF WE CAN PUT UP
22 MR. RIPOLL'S RESPONSE.

23 HE RESPONDED, (READING):

24 AS YOU KNOW, I AM VERY
25 RELUCTANT TO DO THAT, AND WOULD 11:20AM
26 NEED TO BE CONVINCED. IF THEY
27 THREATEN US OF NOT HELPING IN THE
28 ANGEL TRANSACTION, THEY WILL HAVE

1 TO EXPLAIN THAT TO ME NEXT WEEK
2 FACE TO FACE.

3 THAT'S WHAT HE WROTE IN RESPONSE, RIGHT?

4 A. THAT'S WHAT THE, MAIL SAYS, YES.

5 Q. LET'S GO TO THE TOP E-MAIL, WHICH IS YOUR
6 RESPONSE TO HIM, IN WHICH YOU SAID, (READING):

11:20AM

7 I UNDERSTAND YOUR RELUCTANCE,
8 BUT I'M CONVINCED IT'S THE RIGHT
9 THING TO DO. IT'S BEST THAT WE
10 DISCUSS THIS TELEPHONICALLY, RATHER
11 THAN BY E-MAIL.

11:20AM

12 AS FAR AS THE FEE SHARING IS
13 CONCERNED, THE LEVERAGED FINANCE
14 GROUP RECEIVES 40 PERCENT OF THE
15 MANAGEMENT FEES AND BETWEEN 50 TO
16 80 PERCENT OF THE CARRIED INTEREST,
17 DEPENDING ON THE FUND.

11:21AM

18 AS YOU KNOW, THE FEE SHARING
19 ARRANGEMENTS ON MEZZANINE PRODUCTS
20 ARE VERY DIFFERENT, AND EVEN LESS
21 ADVANTAGEOUS TO TCW.

11:21AM

22 THAT'S WHAT YOU WROTE, IS IT NOT?

23 A. YES.

24 Q. TAKE A LOOK AT EXHIBIT 5450.

25 THIS IS AN E-MAIL THAT YOU WROTE ON
26 NOVEMBER 17TH, TO MR. RIPOLL, ATTACHING THE
27 COMPENSATION ARRANGEMENTS BETWEEN THE FIRM AND
28 MR. ATTANASIO AND MR. CHAPUS, CORRECT?

11:22AM

1 A. IT IS.

2 MR. BRIAN: I'D OFFER EXHIBIT 5450.

3 MR. QUINN: NO OBJECTION.

4 THE COURT: IT WILL BE ADMITTED.

5

11:22AM

6 (EXHIBIT 5450 ADMITTED.)

7

8 MR. BRIAN: I'M ACTUALLY GOING TO MOVE TO
9 ANOTHER EXHIBIT.

10 Q. TAKE A LOOK AT EXHIBIT 5461.

11:23AM

11 THIS IS AN E-MAIL MR. RIPOLL SENT TO YOU
12 AND ANOTHER INDIVIDUAL ON NOVEMBER 23RD, 2009, CORRECT?

13 A. I'M JUST GOING TO READ IT A SECOND, MR. BRIAN.

14 MR. BRIAN: WHILE HE'S READING, I WOULD OFFER
15 EXHIBIT 5461, YOUR HONOR.

11:23AM

16 MR. QUINN: NO OBJECTION.

17 THE COURT: IT WOULD BE ADMITTED.

18

19 (EXHIBIT 5461 ADMITTED.)

20

11:23AM

21 THE WITNESS: I'VE READ IT.

22 Q. BY MR. BRIAN: LET'S PUT THAT UP.

23 HE WROTE TO YOU AND MR. OLIVIER CLAYAH,
24 (READING):

25 THE MORE I THINK ABOUT IT, THE
26 MORE I THINK WE WILL HAVE TO PART
27 WAYS WITH JMC AND MA.

11:23AM

28 THEIR REACTION LAST WEEK WAS, FOR

1 ME, A CLEAR MESSAGE THAT WE WON'T
2 BE ABLE TO REPLY TO THEM.

3 WE THEN HAVE TWO CHOICES,
4 NEGOTIATE AN EXIT OPTION, IN
5 EXCHANGE OF THEIR SUPPORT OF THE 11:24AM
6 ANGEL TRANSACTION AND PUSH THEM OUT
7 AT THE SAME TIME, OR RATHER QUICKLY
8 AFTER THE ANGEL TRANSACTION IS
9 ANNOUNCED.

10 THAT'S WHAT MR. RIPOLL SAID ON 11:24AM
11 NOVEMBER 23RD, DIDN'T HE, SIR?

12 A. YES. I DIDN'T AGREE WITH IT, BUT THAT'S WHAT
13 HE SAID.

14 Q. AFTER MR. GUNDLACH WAS RELIEVED OF HIS DUTIES,
15 AND THE ANGEL TRANSACTION WAS CONCLUDED, TCW NEGOTIATED 11:24AM
16 A SEPARATION AGREEMENT OF SORTS WITH MR. ATTANASIO AND
17 MR. CHAPUS, DID YOU NOT?

18 MR. QUINN: ARGUMENTATIVE, AND VAGUE, OF
19 SORTS.

20 THE COURT: YOU CAN REPHRASE IT. 11:24AM

21 MR. BRIAN: I'LL DELETE IT.

22 Q. YOU NEGOTIATED A SEPARATION AGREEMENT WITH
23 THOSE TWO GENTLEMEN, DID YOU NOT?

24 A. ACTUALLY, THE FIRST AGREEMENT WE NEGOTIATED
25 WAS WHAT WOULD HAPPEN IF THEY LEFT. 11:25AM

26 THE SECOND AGREEMENT, WHICH WAS SOMETIME
27 LATER, WAS AN ACTUAL SEPARATION AGREEMENT. SO IT WAS
28 TESTIFIES TWO PHASES.

1 Q. AND THAT BOTH OF THOSE WERE EXECUTED, WERE
2 THEY NOT, BOTH OF THOSE AGREEMENTS?

3 A. SIGNED?

4 Q. YES.

5 A. YES.

11:25AM

6 Q. NOW, MR. QUINN ASKED YOU YESTERDAY, I THINK,
7 THAT WHETHER MR. ATTANASIO, MR. CHAPUS OR MR. THOMAS
8 HAD EVER TAKEN ANY TCW CONFIDENTIAL INFORMATION.

9 DO YOU RECALL THAT?

10 A. YES.

11:25AM

11 Q. AND YOU SAID NO.

12 THAT WAS YOUR ANSWER, RIGHT?

13 A. YES.

14 Q. DID YOU OR ANYONE AT TCW, TO YOUR KNOWLEDGE,
15 EVER MONITOR THEIR E-MAIL?

11:25AM

16 A. NO.

17 Q. OR MONITOR THEIR COMPUTERS?

18 A. WELL, I TAKE THAT BACK. I'M SORRY.

19 THERE -- UNDER I DON'T KNOW WHAT AGENCY
20 LAW, I THINK IT'S THE SEC RULES, WE'RE REQUIRED TO
21 MONITOR PEOPLE'S E-MAILS. AND THERE ARE CERTAIN THINGS
22 WE'RE SUPPOSED TO LOOK FOR AND COLLECT. WE HAVE NO
23 CHOICE.

11:26AM

24 SO WHEN I SAID, WERE THEIR E-MAILS EVER
25 MONITORED, THE ANSWER TO THAT WOULD BE YES.

11:26AM

26 Q. SETTING ASIDE THE REGULATORY MONITORING, I
27 TAKE IT THE MONITORING THAT YOU INSTITUTED IN THE FALL
28 OF 2009, WHEN MR. GUNDLACH'S MBS GROUP WENT BEYOND THIS

1 MONITORING YOU ARE TALKING ABOUT WITH RESPECT TO YOUR
2 REGULATORY OBLIGATIONS, CORRECT?

3 A. YES.

4 Q. OKAY.

5 DID YOU EVER INSTITUTE THAT SORT OF
6 ENHANCED MONITORING WITH MR. ATTANASIO, MR. THOMAS, OR
7 MR. CHAPUS?

11:26AM

8 A. NO.

9 Q. LET'S TURN TO A DIFFERENT SUBJECT.

10 THE SMCF FUNDS.

11:26AM

11 IT IS FAIR TO SAY, IS IT NOT, THAT
12 ALMOST IMMEDIATELY AFTER IT WAS PUBLICLY ANNOUNCED THAT
13 TCW HAD RELIEVED MR. GUNDLACH OF HIS OBLIGATIONS, A
14 NUMBER, I WON'T QUANTIFY IT -- A NUMBER OF INVESTORS IN
15 THE SMCF FUNDS EXPRESSED UNHAPPINESS ABOUT THAT
16 DECISION, CORRECT?

11:27AM

17 A. THAT'S TRUE.

18 Q. TAKE A LOOK AT EXHIBIT 6049, IN EVIDENCE.

19 6049, AT THE TOP, IS AN E-MAIL FROM
20 MR. CHARLES BALDISWIELER TO YOU AND A CATHY URBELIS ON
21 SUNDAY, DECEMBER 6TH, IS IT NOT?

11:28AM

22 A. YES, IT IS.

23 Q. AND HE FORWARDS AN E-MAIL THAT MS. URBELIS
24 SENT HIM THE PREVIOUS DAY, SATURDAY, DECEMBER 5TH,
25 RIGHT?

11:28AM

26 A. YES.

27 Q. AND WHERE SHE SAYS --

28 DENNIS, IF YOU CAN HIGHLIGHT THAT.

1 WE'VE TRIED TO CAPTURE AS MUCH INFO AS
2 HAS COME IN IN THE LAST 24 HOURS.

3 DO YOU SEE THAT?

4 A. YES.

5 Q. NOW, THE E-MAIL THAT WAS FORWARDED TO YOU
6 ATTACHED A SPREADSHEET AS SORT OF SUMMARIZED IN VERY
7 SMALL PRINT --

11:28AM

8 A. MR. BRIAN, IF YOU ARE GOING TO ASK ME TO READ
9 THIS, YOU ARE GOING TO HAVE TO PROVIDE A SPYGLASS OR
10 SOMETHING.

11:29AM

11 Q. IT SUMMARIZES, IN VERY SMALL PRINT, SOME OF
12 THE REACTIONS YOU GOT FROM THEIR INVESTORS?

13 A. IT DOES.

14 Q. AND THIS WAS SOMETHING YOU WERE INTERESTED IN
15 REVIEWING AT THE TIME?

11:29AM

16 A. YES.

17 Q. AND YOU DID REVIEW IT AT THE TIME, DIDN'T YOU?

18 A. YES.

19 Q. AND YOU NEEDED TO DECIDE WHAT, IN FACT, YOU
20 WERE GOING TO DO AS A COMPANY WITH RESPECT TO THESE
21 INVESTORS, RIGHT?

11:29AM

22 A. YES.

23 Q. TAKE A LOOK NOW AT EXHIBIT 6048.

24 NOT IN EVIDENCE, YET, YOUR HONOR.

25 THIS WAS AN E-MAIL FROM MR. BALDISWIELER
26 DIRECTLY TO YOU ON DECEMBER 1ST OF 2009.

11:29AM

27 MR. BRIAN: I WOULD OFFER EXHIBIT 6048.

28 MR. QUINN: NO OBJECTION.

1 THE COURT: IT WOULD BE ADMITTED.

2

3 (EXHIBIT 6048 ADMITTED.)

4

5 MR. BRIAN: AS FAR AS I CAN TELL, IT HAS EVEN
6 SMALLER TYPE.

11:29AM

7

8 IN HIS E-MAIL, MR. BALDISWIELER SAID,
9 GIVES YOU A FLAVOR OF THE CONVERSATIONS WE WERE HAVING,
10 RIGHT?

11

A. YES.

11:30AM

12

13 Q. AND IT'S THE SAME SORT OF THING, HE GAVE YOU
14 INFORMATION ON SOME OF THE INVESTOR REACTIONS THAT YOU
15 WERE GETTING FROM THE ANNOUNCEMENT OF THE TERMINATION
16 OF MR. -- OF THE RELIEVING OF MR. GUNDLACH OF HIS
17 DUTIES, CORRECT?

11:30AM

18

A. YES.

19

20 Q. SOME OF WHICH WAS VERY NEGATIVE, RIGHT?

21

A. YES.

22

23 Q. TAKE A LOOK NOW AT EXHIBIT 5517. IT'S IN
24 EVIDENCE.

11:30AM

25

26 IT'S AN E-MAIL YOU GOT FROM GARRETT
27 WALLS ON SATURDAY, DECEMBER 5TH?

28

A. YES.

29

30 Q. AND ABOUT FOUR LINES DOWN, IF WE CAN HIGHLIGHT
31 WHERE IT SAYS THE PERSISTENT THEME.

11:31AM

32

33 MR. WALLS WAS REPORTING BACK TO YOU SOME
34 OF THE REACTIONS HE WAS GETTING FROM CLIENTS, RIGHT?

35

A. HE WAS.

1 Q. AND HE STATES IN PART, (READING):

2 THE PERSISTENT THEME ACROSS
3 VERIZON, CALPERS, CALSTERS, NESTLE,
4 ARIZONA, QWEST, CHURCH PENSION, AND
5 UC REGENTS, WAS THAT MET WEST
6 BRINGS A SOLID FIXED INCOME TEAM,
7 BUT NONE FELT THEIR MORTGAGE SKILLS
8 EQUATED TO TCW'S.

11:31AM

9 HE WROTE THAT TO YOU ON DECEMBER 5TH,
10 DID HE NOT?

11:31AM

11 A. THAT'S WHAT THE E-MAIL SAYS, YES.

12 Q. NOW, I THINK YOU WENT THROUGH THIS WITH
13 MR. QUINN, BUT LET ME MAKE SURE I UNDERSTAND THIS.

14 FIRST OF ALL, THE SMCF FUNDS, ARE SET UP
15 AS PARTNERSHIP AGREEMENTS, ARE THEY NOT?

11:31AM

16 A. YES.

17 AND THERE WAS A SMALL FUND IN SOUTH
18 DAKOTA, THAT WAS THE SAME MECHANISM.

19 Q. AND ESSENTIALLY, ALL OF THE INVESTORS ARE
20 PARTNERS OF EACH OTHER, PURSUANT TO THE PARTNERSHIP
21 AGREEMENT, RIGHT?

11:32AM

22 A. YES.

23 Q. IT'S NOT A -- IT'S NOT AN INVESTMENT CONTRACT
24 BETWEEN THE INVESTOR AND TCW; IT'S A PARTNERSHIP
25 AGREEMENT, RIGHT?

11:32AM

26 A. IT'S AN AGREEMENT WITH TCW, YES.

27 Q. A TCW ENTITY IS WHAT, THE GENERAL PARTNER, THE
28 MANAGER?

1 A. YES.

2 Q. OKAY. THE PARTNERSHIP AGREEMENTS, AND I
3 BELIEVE THEY ARE IN EVIDENCE, I WON'T GO THROUGH THEM
4 LINE BY LINE, BUT THEY HAVE PROVISIONS THAT APPLY IN
5 THE EVENT THE KEY MAN OR KEY PERSON IS NO LONGER
6 AROUND, RIGHT?

11:32AM

7 A. YES.

8 Q. AND THERE'S NOTHING IN THE PARTNERSHIP
9 AGREEMENT THAT ENTITLES AN INVESTOR TO HAVE HIS FEES
10 REDUCED, IN THE EVENT THE KEY PERSON IS NO LONGER
11 AROUND, IS THERE?

11:33AM

12 A. THAT'S CORRECT.

13 Q. AND THERE'S NOTHING IN THE PARTNERSHIP
14 AGREEMENT THAT ENTITLES THE INVESTOR TO HAVE -- TO BE
15 ABLE TO LIQUIDATE ITS INVESTMENT EARLY, RIGHT?

11:33AM

16 A. THAT'S CORRECT.

17 Q. NOW, EVEN BEFORE YOU RELIEVED MR. GUNDLACH OF
18 HIS DUTIES ON DECEMBER 4TH, YOU HAD DISCUSSIONS ABOUT
19 OFFERING THE INVESTORS IN THE SMCF FUNDS THE OPTION OF
20 LIQUIDATING THEIR INVESTMENT FUNDS, RIGHT?

11:33AM

21 A. WE HAD DISCUSSIONS ABOUT A LOT OF THINGS AND A
22 LOT OF SCENARIOS.

23 AND IT MAY WELL BE.

24 AND AGAIN, IF YOU HAVE SOMETHING THAT
25 INDICATES IT, I'M HAPPY TO LOOK AT IT.

11:33AM

26 Q. I THINK IT'S RIGHT IN FRONT OF YOU, EXHIBIT
27 5517.

28 A. OH, I SEE WHAT YOU MEAN.

1 Q. EVEN BEFORE HE WAS, RELIEVED OF HIS DUTIES?

2 A. I THOUGHT YOU SAID RELIEVED OF HIS DUTIES,
3 WHICH I BELIEVE WAS ON DECEMBER 4TH.

4 Q. I'M ASKING -- BEFORE DECEMBER 4TH, YOU HAD
5 DISCUSSIONS WITH MR. WALLS, AMONG OTHERS, ABOUT THE
6 POSSIBILITY OF OFFERING THE SMCF INVESTORS A LIQUIDITY
7 OPTION, DIDN'T YOU?

11:34AM

8 A. I THINK THAT WAS SOMETHING THAT MR. WALLS
9 THOUGHT WE SHOULD CONSIDER, YES.

10 Q. IN FACT, LET'S HIGHLIGHT, DENNIS, ABOUT FIVE
11 LINES BELOW. (READING):

11:34AM

12 I HAD MENTIONED THIS IN OUR
13 MEETINGS THIS WEEK, AND STILL FEEL,
14 FROM A LONG-TERM CREDIBILITY
15 STANDPOINT, WE HAVE TO GIVE CLIENTS
16 A LIQUIDITY OPTION.

11:34AM

17 MR. WALLS RECOMMENDED THAT TO YOU DURING
18 THE WEEK OF NOVEMBER 30TH, 2009, BEFORE MR. GUNDLACH
19 WAS RELIEVED OF HIS DUTIES, RIGHT?

20 A. THAT'S WHAT MR. WALLS SAYS IN THIS E-MAIL,
21 YES.

11:34AM

22 Q. AND MR. WALLS TESTIFIED IN FRONT OF THE JURY,
23 AND HE EXPLAINED WHAT HE MEANT BY CREDIBILITY
24 STANDPOINT.

25 AND DID YOU UNDERSTAND THAT MR. WALLS
26 WAS RECOMMENDING THAT WEEK, THAT FROM A LONG-TERM
27 STANDPOINT OF TRYING TO MAINTAIN RELATIONSHIPS WITH
28 THESE INVESTORS, INCLUDING IN OTHER PRODUCTS, IT WOULD

11:35AM

1 BE IN THE BEST INTEREST OF TCW TO OFFER THESE INVESTORS
2 A LIQUIDITY OPTION?

3 A. THAT WAS HIS RECOMMENDATION, YES.

4 Q. NOW, MR. SHEDLIN RECOMMENDED THAT A LIQUIDITY
5 OPTION BE CONSIDERED FOR THE SMCF INVESTORS BACK IN
6 SEPTEMBER, DIDN'T HE, SIR?

11:35AM

7 A. RECOMMENDED IT?

8 Q. RAISED IT.

9 A. RAISED IT. SORRY.

10 Q. DIDN'T HE?

11:35AM

11 A. YES.

12 THERE'S AN E-MAIL TO THAT EFFECT.

13 Q. TAKE A LOOK AT EXHIBIT 2207.

14 THIS IS AN E-MAIL FROM MR. SHEDLIN TO
15 MR. CONN AND A MR. MARSHAL, COPIED TO YOU ON
16 SEPTEMBER 20TH, IS IT NOT? THE TOP E-MAIL?

11:36AM

17 A. I'M LOOKING. YES.

18 MR. BRIAN: I WOULD OFFER EXHIBIT 2207.

19 MR. QUINN: NO OBJECTION.

20 THE COURT: IT WILL BE ADMITTED.

11:36AM

21
22 (EXHIBIT 2207 ADMITTED.)

23
24 MR. BRIAN: DENNIS, IF WE COULD PUT THE FIRST
25 PAGE OF THAT UP. FIRST PARAGRAPH AT THE TOP.

11:36AM

26 Q. MR. SHEDLIN WROTE, (READING):

27 THE MATH IS CORRECT. I CAN
28 ONLY ASSUME THAT YOUR ATTRITION

1 NUMBERS ARE ACCURATE.

2 SOMEHOW I THINK IF THERE ARE
3 CLIENTS IN THE CREDIT FUNDS WITH
4 OTHER PRODUCTS AT TCW, THEY MAY
5 PUSH A HARD CASE, IF THE ENTIRE
6 TEAM LEFT AND YOU DIDN'T LET THEM
7 OUT, NOTWITHSTANDING THE
8 CONTRACTUAL TERMS.

11:36AM

9 MR. SHEDLIN WROTE THAT AND E-MAIL COPIED
10 TO YOU ON SEPTEMBER 20TH, 2009, DID HE NOT?

11:37AM

11 A. HE DID.

12 Q. AND YOU UNDERSTOOD, WHEN HE REFERRED TO THE
13 CREDIT FUNDS, HE WAS TALKING ABOUT THE SMCF FUNDS WE'VE
14 BEEN TALKING ABOUT FOR THE LAST FEW DAYS, RIGHT?

15 A. MR. BRIAN, I RECEIVED A LOT OF E-MAILS, AND
16 FRANKLY, DIDN'T REMEMBER RECEIVING THESE UNTIL THE
17 DEPOSITION PROCESS STARTED.

11:37AM

18 BUT THAT'S WHAT IT SAYS.

19 Q. YOU WORKED DIRECTLY WITH MR. SHEDLIN IN THE
20 CITIGROUP PROJECT, DIDN'T YOU, SIR?

11:37AM

21 A. I DID.

22 Q. YOU PUSHED TO HIRE CITIGROUP OVER CSFB, DIDN'T
23 YOU?

24 A. I DON'T BELIEVE I DID.

25 IF I DID, AGAIN, SHOW ME WHERE IT IS.

11:37AM

26 I THINK I STAYED OUT OF THAT DECISION.

27 Q. TAKE A LOOK AT EXHIBIT 6038.

28 I THINK THIS IS IN EVIDENCE. I NEED TO

1 CONFIRM THAT.

2 THE COURT: IT IS IN.

3 Q. BY MR. BRIAN: THIS IS A LETTER THAT WENT OUT
4 FROM TCW ON DECEMBER 9TH, 2009, RIGHT?

5 A. YES, IT IS. 11:39AM

6 Q. AND LET'S PUT THAT UP.

7 I GUESS IT'S ALREADY UP.

8 AND 6039, IF YOU CAN JUST LOOK AT THAT,
9 AND JUST CONFIRM, THAT'S A LETTER THAT ALSO WENT OUT
10 THE SAME DAY TO THE INVESTORS IN THE OTHER SMCF FUNDS. 11:39AM

11 MAYBE YOU CAN JUST FLIP TO THE NEXT
12 DOCUMENT, MR. STERN.

13 A. YES, IT'S -- IF YOU SAY IT'S THE SAME WORDS, I
14 TRUST YOU.

15 Q. I'M GOING TO ASK YOU ABOUT 6038. 11:39AM

16 I'LL REPRESENT TO YOU THAT IT IS EITHER
17 IDENTICAL OR ESSENTIALLY IDENTICAL IN TERMS.

18 A. OKAY. THAT'S FINE.

19 Q. SO LET'S FOCUS ON 6038.

20 A. THAT'S THE FIRST ONE? 11:40AM

21 Q. YES.

22 A. YES.

23 Q. I TAKE IT THIS IS A LETTER THAT -- THIS WAS AN
24 IMPORTANT DOCUMENT THAT WENT OUT FROM TCW TO THE
25 INVESTORS IN THE SMCF FUNDS, RIGHT? 11:40AM

26 A. THE QUESTION IS: IS IT AN IMPORTANT DOCUMENT?

27 Q. YEAH.

28 A. I THINK IT'S AN IMPORTANT DOCUMENT, YES.

1 Q. SOMEONE DIDN'T JUST WHIP THIS OFF IN 20
2 MINUTES, DID THEY, SIR?

3 A. I CAN'T -- MR. BRIAN, I DON'T KNOW HOW MANY
4 MINUTES IT TOOK SOMEBODY TO DRAFT THIS DOCUMENT. I'M
5 SORRY.

11:40AM

6 Q. THE THINKING THAT WENT INTO THIS DOCUMENT WAS
7 IN THE WORKS, AT LEAST FROM DECEMBER 5TH THROUGH
8 DECEMBER 9TH, WASN'T IT, SIR?

9 A. I WOULD THINK SO, YES.

10 Q. SO LET'S LOOK AT, THEN, THAT PARAGRAPH THAT'S
11 TOWARD THE BOTTOM, THE LIMITED PARTNERSHIP AGREEMENT.

11:40AM

12 WE CAN ENLARGE THAT.

13 THE LAST SENTENCE TCW WROTE TO THE
14 INVESTORS, (READING):

15 TCW UNDERSTANDS THAT SOME
16 INVESTORS MAY NEVERTHELESS WANT
17 ALTERNATIVE OPTIONS TO THE
18 MANAGEMENT OR CONTROL LIQUIDATION
19 OF THEIR INTEREST IN THE FUND. AND
20 TCW'S ACTIVELY CONSIDERING OPTIONS
21 AND THEIR FEASIBILITY.

11:41AM

22 THAT WENT OUT TO INVESTORS ON
23 DECEMBER 9TH, 2009, RIGHT?

24 A. YES.

25 Q. NOW, TAKE A LOOK AT EXHIBIT 5602.

11:41AM

26 A. YES.

27 Q. THIS IS -- THE TOP OF THIS IS AN E-MAIL YOU
28 SENT TO A STUART LUCAS ON DECEMBER 16TH, 2009, IS IT

1 NOT?

2 A. IT IS.

3 Q. RESPONDING TO AN E-MAIL HE HAD SENT YOU ON
4 DECEMBER 11TH, 2009, RIGHT?

5 A. YES.

11:42AM

6 MR. BRIAN: I WOULD OFFER EXHIBIT 5602, YOUR
7 HONOR.

8 MR. QUINN: NO OBJECTION.

9 THE COURT: IT WILL BE ADMITTED.

10

11:42AM

11 (EXHIBIT 5602 ADMITTED.)

12

13 Q. BY MR. BRIAN: LET'S PUT THAT UP, DENNIS.

14 LET'S FOCUS ON MR. LUCAS' E-MAIL FIRST.

15 HE WRITES, (READING):

11:42AM

16 DEAR MARC, I READ YOUR LETTERS

17 AND LISTENED TO THE SMBS CALL

18 YESTERDAY.

19 I'M DEEPLY TROUBLED BY THESE

20 CHAIN OF EVENTS, AND FIND TCW'S

11:43AM

21 ACTIONS INCONSISTENT WITH FIDUCIARY

22 RESPONSIBILITY TO INVESTORS, AND

23 SPECIFICALLY TO MY FAMILY, WHO ARE

24 INVESTORS IN SMBS AND SMCF FUNDS.

25 IT GOES ON, IN THE NEXT PARAGRAPH,

11:43AM

26 TO SAY, (READING):

27 YOU HAVE DECAPITATED YOUR

28 MORTGAGE TEAM, AND EMPLOYEES ARE

1 LEAVING IN DROVES. YOU FIRED
2 ARGUABLY THE TOP FIXED INCOME
3 INVESTOR IN THE U.S., AND HE HAS A
4 SPECIAL EXPERTISE BUILT OVER TWO
5 DECADES IN SUBSECTORS OF THE MARKET
6 THAT YOUR NEW MANAGEMENT TEAM
7 FREELY ADMITTED ON YESTERDAY'S
8 RECORDED CALL, TO HAVING LITTLE OR
9 NO EXPERIENCE WITH.

11:43AM

10 WE DIDN'T HIRE THE MET WEST
11 TEAM, WE HIRED JEFF GUNDLACH. WE
12 EITHER WANT OUR CASH BACK,
13 LIQUIDATED IN A CAREFUL AND
14 PRICE-DISCIPLINED WAY, AND USING
15 BEST PRICE AND EXECUTION; OR WE
16 WANT YOU TO TRANSFER THE INVESTMENT
17 MANAGEMENT RESPONSIBILITY TO JEFF
18 GUNDLACH.

11:43AM

19 YOU RESPONDED TO THAT.

20 AND IN THE THIRD PARAGRAPH OF YOUR
21 RESPONSE, YOU STATED, (READING):

11:44AM

22 A NUMBER OF YOUR INVESTMENTS
23 ARE IN THE STRATEGIC MBS FUNDS ONE
24 AND THREE. GIVEN THE AMOUNT OF
25 REDEMPTION IN BOTH FUNDS, IN ORDER
26 TO PROTECT ALL OF OUR INVESTORS IN
27 THE FUNDS, WE WILL BE SENDING OUT
28 LIQUIDATION NOTICES TODAY, PURSUANT

11:44AM

1 TO WHICH WE WILL BE LIQUIDATING THE
2 FUNDS IN A DISCIPLINED AND ORDERLY
3 FASHION.

4 AND IN THE NEXT PARAGRAPH, YOU WROTE,
5 (READING) :

11:44AM

6 REGARDING YOUR INVESTMENT IN
7 THE TCW SPECIAL MORTGAGE CREDIT
8 FUND ONE, GIVEN THE SITUATION, WE
9 ARE ACTIVELY DISCUSSING OPTIONS
10 WITH OUR INVESTORS.

11:44AM

11 AS IS OBVIOUS, DIFFERENT
12 INVESTORS WILL HAVE DIFFERENT
13 VIEWPOINTS AND OBJECTIVES.

14 OUR INITIAL STEP WAS TO HOLD
15 AN ADVISORY COMMITTEE MEETING.
16 THIS OCCURRED ON MONDAY, AND WAS
17 PRELIMINARY IN NATURE TO INSURE ALL
18 VIEWPOINTS WERE CONSIDERED.

11:45AM

19 THERE WOULD BE A FOLLOW-UP
20 MEETING OF THE COMMITTEE NEXT WEEK,
21 AFTER THEY'VE HAD TIME TO EVALUATE
22 THE PROPOSED INVESTMENT TEAM AND
23 CONSIDER THE OPTIONS DISCUSSED.

11:45AM

24 THAT'S WHAT YOU WROTE TO MR. LUCAS ON
25 DECEMBER 16TH, CORRECT?

11:45AM

26 A. YES.

27 Q. NOW, TAKE A LOOK AT EXHIBIT 5603. I BELIEVE
28 THIS IS IN EVIDENCE.

1 I'M GOING TO PUT THIS UP, DENNIS.
2 THE NEXT DAY, DECEMBER 17TH, IN EXHIBIT
3 5603, TCW SENT OUT THIS LETTER TO ALL INVESTORS IN SMCF
4 FUNDS ONE AND TWO, RIGHT?

5 A. YES. 11:46AM

6 MR. BRIAN: DENNIS, IF WE COULD ENLARGE THE
7 PARAGRAPH WITH THE THREE NUMBERED PARAGRAPHS.

8 (READING):

9 YOU SAY YOU ARE STILL
10 REVIEWING -- YOU, BEING TCW -- WE 11:46AM
11 ARE STILL REVIEWING THE OPTIONS
12 THAT THE INVESTORS HAVE SUGGESTED,
13 BUT WANTED TO SHARE SOME OF THOSE.
14 ONE, MAINTAIN THE FUNDS, AND
15 CONTINUE MANAGING IT BY TCW WITH A 11:46AM
16 NEW TEAM.

17 NUMBER TWO, CREATE LIQUIDITY
18 OPTIONS OVER SAME PERIOD OF TIME
19 AND WITH AN ORDERLY APPROACH TO
20 SECURITY SALES, TO MINIMIZE THE 11:46AM
21 EFFECT OF THE SALES ON INVESTOR
22 RETURNS.

23 DO YOU SEE THAT, SIR?

24 A. I DO.

25 Q. NOW, YESTERDAY, MR. QUINN WAS ASKING YOU ABOUT 11:46AM
26 SOME TRANSCRIPTS OF CALLS, WEBCAST CALLS THAT
27 MR. GUNDLACH HAD IN DECEMBER OF 2009.

28 DO YOU REMEMBER THAT?

1 A. YES, I DO.

2 Q. THE DATES OF THOSE CALLS WERE DECEMBER 8TH,
3 DECEMBER 22ND, AND DECEMBER 29TH; ISN'T THAT RIGHT?

4 A. AGAIN, IF YOU SAY SO, THAT'S FINE.

5 I DON'T KNOW THE DATES.

11:47AM

6 Q. WELL, TO REFRESH YOUR RECOLLECTION, I'LL ASK
7 MS. DRIVER-MOORE TO SHOW YOU THE TRANSCRIPTS MR. QUINN
8 WAS HOLDING WHEN HE WAS ASKING YOU THE QUESTIONS.

9 2140 IS A TRANSCRIPT DATED -- OF A
10 CONVERSATION ON DECEMBER 8TH, 2009, WAS IT NOT?

11:47AM

11 A. THIS SAYS DECEMBER 8TH, YES.

12 Q. 2141 SAYS DECEMBER 22ND, RIGHT?

13 A. YES.

14 Q. AND 2142 SAYS -- IT DOESN'T SAY.

15 IT SAYS THE 29TH, RIGHT?

11:48AM

16 THE COURT: CAN WE STIPULATE TO THAT, EVEN IF
17 IT DOESN'T SAY IT, THAT'S WHAT IT IS?

18 MR. QUINN: IT SHOULD SAY THAT.

19 THE COURT: THAT'S WHAT HE EXPECTED IT TO SAY.

20 THE WITNESS: IT ACTUALLY DOES SAY THAT.

11:48AM

21 Q. BY MR. BRIAN: NOW, YOU WOULD AGREE THAT
22 DECEMBER 22ND AND 29TH ARE AFTER DECEMBER 9TH AND
23 DECEMBER 17TH OF 2009, CORRECT?

24 A. I COULD AGREE WITH YOU ON THAT.

25 Q. SO AT THE TIME THAT YOU CORRESPONDED WITH
26 MR. LUCAS, AND THE TIME THAT YOU WERE TALKING TO
27 MR. WALLS, AND THE TIME THAT YOU SENT OUT -- TCW SENT
28 OUT LETTERS ON THE DECEMBER 9TH, THERE WAS NO WAY THAT

11:48AM

1 YOU HAD KNOWLEDGE OF ANY STATEMENT BY MR. GUNDLACH ON
2 DECEMBER 22ND OR DECEMBER 29TH, RIGHT?

3 A. NO WAY THAT WE HAD KNOWLEDGE?

4 Q. OF WHAT HE SAID IN THE FUTURE --

5 A. IN THOSE TWO TRANSCRIPTS? 11:49AM

6 Q. RIGHT.

7 A. RIGHT. OKAY.

8 Q. THESE TRANSCRIPTS, BY THE WAY --

9 A. YES.

10 Q. THESE TRANSCRIPTS WERE PREPARED BY MR. QUINN'S 11:49AM
11 FIRM IN CONNECTION WITH THIS LITIGATION, RIGHT?

12 MR. QUINN: OBJECTION AS TO RELEVANCE.

13 THE COURT: WE'LL HAVE TO LAY SOME FOUNDATION.

14 THE OBJECTION WILL BE SUSTAINED, BUT YOU
15 CAN GO AHEAD. 11:49AM

16 Q. BY MR. BRIAN: YOU DIDN'T HAVE THESE
17 TRANSCRIPTS THAT I JUST SHOWED YOU IN DECEMBER OF 2009,
18 DID YOU, SIR?

19 A. IN DECEMBER 2009, WHETHER I HAD THE
20 TRANSCRIPTS OR NOT, I WAS TOLD BY MS. FREEMAN AND 11:49AM
21 MR. VILES WHAT MR. GUNDLACH WAS SAYING.

22 Q. DID ANYONE PROVIDE YOU, IN DECEMBER OF 2009,
23 WITH AN ACTUAL TRANSCRIPT OF THE CALLS?

24 A. I DON'T RECALL WHETHER IT WAS AN ACTUAL
25 TRANSCRIPT OR WHETHER I WAS BRIEFED ON WHAT WAS SAID AT 11:50AM
26 THE CALLS.

27 Q. OKAY.

28 WE TALKED YESTERDAY ABOUT YOUR SALARY

1 AND YOUR SALE OF STOCK TO TCW.

2 YOU ARE GETTING PAID BY TCW NOW, ARE YOU
3 NOT?

4 A. YES.

5 Q. DO YOU HAVE ANY DEAL WITH SOCIETE GENERALE? 11:50AM

6 A. YES.

7 Q. AND DOES THAT DEAL COMPENSATE YOU IN ANY WAY,
8 BASED ON THE SUCCESS OF THE TRANSACTION YOU NEGOTIATED
9 WITH MET WEST?

10 A. NO. 11:50AM

11 Q. DO YOU GET A BONUS?

12 A. I DID NOT GET A BONUS THIS YEAR, NO.

13 Q. I WANT TO DIRECT YOUR ATTENTION TO
14 DECEMBER 7TH OF 2007.

15 DO YOU HAVE THAT DATE IN MIND? 11:51AM

16 A. DECEMBER 7TH OF 2007?

17 Q. 2009.

18 A. 2009. I'M SORRY.

19 Q. IT'S THE MONDAY FOLLOWING THE DAY THAT
20 MR. GUNDLACH WAS RELIEVED OF HIS OBLIGATIONS, RIGHT? 11:51AM

21 A. YES.

22 Q. YOU AND MR. DAY CONVENED A MEETING OF ABOUT
23 500 TCW EMPLOYEES, DIDN'T YOU?

24 A. A MEETING OF TCW EMPLOYEES, MR. BRIAN, I DON'T
25 KNOW THE NUMBER. 11:51AM

26 IF YOU SAY 500, THAT'S FINE.

27 Q. WELL, YOU SENT OUT E-MAILS.

28 E-MAILS WERE SENT OUT INVITING PEOPLE TO

1 PARTICIPATE, BOTH IN PERSON AND BY CONFERENCE CALLS IN
2 VARIOUS LOCATIONS AROUND LOS ANGELES AND THE COUNTRY,
3 RIGHT?

4 A. YES.

5 Q. AND YOU SPOKE TO THE EMPLOYEES ABOUT WHAT HAD
6 TRANSPIRED ON DECEMBER 4TH, DIDN'T YOU, SIR? 11:51AM

7 A. YES.

8 Q. STARTED OUT BY TELLING THEM YOU GREW UP ON A
9 FARM, DIDN'T YOU, SIR?

10 A. YOU KNOW, I -- I WOULD NEED TO -- I DIDN'T
11 REVIEW THE TRANSCRIPT OF WHAT I SAID. 11:52AM

12 BUT IF YOU SAY I DID, I DID.

13 Q. AND YOU ALSO TOLD THEM WHY YOU HAD DONE THE
14 TRANSACTION, DIDN'T YOU, SIR?

15 A. AGAIN, I DON'T REMEMBER EXACTLY WHAT I SAID,
16 BUT I'M SURE I TRIED TO EXPLAIN IT, YES. 11:52AM

17 Q. YOU TOLD THEM THAT (READING):

18 THE REASON WE DID IT IS, FIRST
19 OF ALL, IT IS AN EXTRAORDINARY
20 OPPORTUNITY FOR TCW TO MOVE INTO 11:52AM
21 THE MAINSTREAM OF FIXED INCOME.
22 WE'VE ALWAYS HAD A VERY MORTGAGE
23 CENTRIC FIXED INCOME. WE WILL
24 CONTINUE TO MANAGE THOSE PORTFOLIOS
25 IN EXACTLY THE SAME WAY THAT WE 11:52AM
26 HAVE WITH THE EXACT SAME CARE.
27 BUT MET WEST IS RIGHT DOWN THE
28 MIDDLE, AND WE'LL BE ABLE TO GROW,

1 AND LEARN FROM THAT BUSINESS, AND
2 MOVE FORWARD ON THAT BASIS.

3 YOU SAID THAT TO THEM ON DECEMBER 7TH,
4 DIDN'T YOU, SIR?

5 A. YEAH.

11:53AM

6 AGAIN, IF YOU ARE READING FROM A
7 TRANSCRIPT OF THAT, IT SOUNDS RIGHT.

8 Q. DO YOU HAVE ANY REASON TO DOUBT IT?

9 A. NOT FROM YOU, MR. BRIAN.

10 Q. AND YOU ALSO TOLD THEM THAT FROM THE -- FROM
11 EARLY SEPTEMBER ON, WE, AS A FIRM, WERE VULNERABLE,
12 BECAUSE THAT COULD PUT US IN A POSITION OF NOT BEING
13 ABLE TO FULFILL OUR OBLIGATIONS TO OUR CLIENTS.

11:53AM

14 YOU SAID THAT TO THEM, THAT YOU WERE
15 VULNERABLE FROM EARLY SEPTEMBER ON, DIDN'T YOU?

11:53AM

16 A. AGAIN, I WOULD HAVE SAID SOMETHING LIKE THAT,
17 YES, 'CAUSE WE WERE.

18 Q. AFTER YOU SPOKE, MR. DAY SPOKE, DIDN'T HE?

19 A. HE DID.

20 Q. AND HE TOLD THEM THE FOLLOWING: YOU ARE
21 SMILING.

11:53AM

22 I KNOW WHY YOU ARE SMILING BECAUSE YOU
23 KNOW WHAT HE SAID.

24 A. I DO KNOW WHAT HE SAID.

25 Q. HE SAID, QUOTE, IT SORT OF REMINDS ME A BIT OF
26 GENERAL WASHINGTON CROSSING THE DELAWARE.

11:53AM

27 MR. QUINN: WE SHOULDN'T BE QUOTING, YOUR
28 HONOR.

1 MR. BRIAN: I APOLOGIZE.

2 Q. HE SAID, (READING):

3 IT SORT OF REMINDS ME A BIT OF
4 GENERAL WASHINGTON CROSSING THE
5 DELAWARE.

11:54AM

6 IF YOU REMEMBER, WHEN GENERAL
7 WASHINGTON WENT ACROSS THE
8 DELAWARE, IT WAS FULL OF ICE FLOES,
9 VERY PERILOUS TIMES. THE GENERAL
10 WAS IN THE BACK OF THE BOAT.

11:54AM

11 IT WOULD BE LIKE A SOLDIER
12 GETTING UP, STARTING TO ROCK THE
13 BOAT, AND THREATENING TO SINK THE
14 BOAT.

15 YOUR CHOICES ARE VERY SIMPLE.
16 YOU SHOOT THE SOLDIER AND THROW HIM
17 OVERBOARD.

11:54AM

18 THAT'S WHAT MR. DAY SAID TO THE EMPLOYEES
19 OF TCW ON DECEMBER 7TH, DIDN'T HE, SIR?

20 A. YES.

11:54AM

21 Q. MR. DAY -- MR. STERN, IT'S A FACT, IS IT NOT,
22 THAT YOU HAVE RECEIVED A MEDAL OF HONOR FROM THE FRENCH
23 GOVERNMENT?

24 A. A MEDAL OF HONOR? YES.

25 Q. YOU ARE A COMMANDEUR, AREN'T YOU?

11:55AM

26 A. I THINK THAT'S ACCURATE, YES.

27 Q. AS A RESULT OF YOUR DISTINGUISHED SERVICE TO
28 THE FRENCH IN YOUR BUSINESS ACTIVITIES, RIGHT?

1 A. YES.

2 MR. BRIAN: NOTHING FURTHER.

3 THE COURT: OKAY.

4 REDIRECT, MR. QUINN?

5 MR. BRIAN: I NEED A MOMENT, YOUR HONOR, TO
6 CLEAN UP A BIT.

11:55AM

7

8

9

REDIRECT EXAMINATION

10 BY MR. QUINN:

11:55AM

11 Q. YOU GOT A MEDAL OF HONOR FROM THE FRENCH
12 GOVERNMENT, AND YOU DON'T SPEAK FRENCH?

13 A. I CAN EXPLAIN.

14 Q. WHAT DID YOU GET THE MEDAL FOR?

15 DID YOU GET THE MEDAL FOR FIRING JEFFREY
16 GUNDLACH?

11:56AM

17 A. NO, I DIDN'T GET THE MEDAL FOR FIRING JEFFREY
18 GUNDLACH.

19 Q. DID YOU GET THE MEDAL FOR ACQUIRING MET WEST?

20 A. NO. I DIDN'T GET THE MEDAL FOR ACQUIRING MET
21 WEST.

11:56AM

22 Q. DID YOU GET THE MEDAL THAT HAS ANYTHING TO DO
23 WITH THIS LAWSUIT?

24 A. ABSOLUTELY NOT.

25 Q. OH.

11:56AM

26 MR. BRIAN ASKED YOU ABOUT SOME -- THESE
27 TRANSCRIPTS THAT HE INDICATED THAT OUR FIRM HAD
28 PREPARED, WHICH ARE EXHIBIT NUMBERS -- THE ONES THAT

1 OUR FIRM HAD PREPARED?

2 MR. BRIAN: 2140 THROUGH --

3 Q. BY MR. QUINN: 2140, 2141, AND 2142.

4 YOU HAVE SEEN THOSE, AND YOU ARE AWARE
5 THAT FOR THE PURPOSE OF THIS TRIAL, CERTIFIED
6 TRANSCRIPTS OF THOSE CALLS THAT MR. GUNDLACH DID WERE
7 PREPARED?

11:56AM

8 YOU ARE AWARE OF THAT?

9 A. I AM.

10 Q. AND HAVE YOU SEEN THE TRANSCRIPTS THAT EXISTED
11 THAT WERE PREPARED BEFORE THAT?

11:57AM

12 MR. BRIAN: OBJECTION. FOUNDATION AS TO TIME,
13 IN LIGHT OF HIS TESTIMONY, YOUR HONOR.

14 THE COURT: I'LL ALLOW THE QUESTION.

15 JUST YES OR NO.

11:57AM

16 Q. BY MR. QUINN: DO YOU RECALL THAT THERE WERE
17 TRANSCRIPTS THAT -- THESE ARE CERTIFIED SHORTHAND
18 REPORTER TRANSCRIPTS -- THAT WEREN'T AS GOOD, THAT
19 EXISTED BEFORE THESE WERE PREPARED FOR THIS TRIAL.

20 DO YOU RECALL THAT?

11:57AM

21 A. YES.

22 Q. MR. BRIAN WAS ALSO ASKING YOU SOME QUESTIONS
23 THERE, AT THE END OF HIS QUESTIONING, ABOUT ADVICE THAT
24 YOU GOT FROM OTHER PEOPLE, INCLUDING MR. WALLS, AND
25 OTHERS, STARTING VERY EARLY ON, OR EVEN BEFORE THE
26 TRANSACTION WAS DONE, WITH MR. GUNDLACH IN THE
27 ACQUISITION OF MET WEST, CONCERNING GIVING OPTIONS TO
28 THE INVESTORS IN THE SPECIAL MORTGAGE CREDIT FUNDS.

11:57AM

1 DO YOU RECALL THAT?

2 A. I DO.

3 Q. AND WERE THERE DIFFERENT POINTS OF VIEW WITHIN
4 TCW ABOUT WHAT THE APPROPRIATE RESPONSE OUGHT TO BE?

5 A. YES. YOU HAD HAWKS; YOU HAD DOVES. 11:58AM

6 THERE WERE DIFFERENT POINTS OF VIEW FROM
7 ALL KINDS OF DIFFERENT PEOPLE.

8 Q. AND DID YOU TAKE THAT INPUT AND KIND OF,
9 YOURSELF, REACH YOUR OWN DECISION ABOUT ULTIMATELY WHAT
10 OUGHT TO BE DONE? 11:58AM

11 A. I DID.

12 Q. YOU WERE SHOWN EXHIBIT 646, WHICH IS THE
13 DECEMBER 17TH, 2009 LETTER.

14 THIS MAY HAVE COME IN NOW UNDER A
15 DIFFERENT NUMBER. 11:58AM

16 THE COURT: I DON'T THINK WE LOOKED AT IT.

17 MR. BRIAN: I THINK I USED A DIFFERENT NUMBER;
18 BUT I HAVE NO OBJECTION TO THIS EXHIBIT, YOUR HONOR.

19 MR. QUINN: THIS IS A LETTER DATED
20 DECEMBER 17TH, 2009. 11:59AM

21 THE COURT: IT'S THE SAME AS EXHIBIT 5603.

22 MR. QUINN: THANK YOU, YOUR HONOR.

23 Q. THIS IS A LETTER THAT WAS SENT OUT TO
24 INVESTORS, WHERE BASICALLY YOU ADVISED THEM THAT YOU
25 HAVE GOTTEN A LOT OF INPUT FROM THE INVESTORS. 11:59AM

26 IN THE BEGINNING THERE YOU SAY, WE ARE
27 STILL REVIEWING THE OPTIONS THAT THE INVESTORS HAVE
28 SUGGESTED, BUT YOU WANTED TO SHARE THEM WITH SOME OF

1 THE INVESTORS?

2 A. YES.

3 Q. AND BY THEN, HAD YOU ALREADY RECEIVED A LOT OF
4 THIS ADVICE THAT MR. BRIAN REFERRED TO?

5 A. A LOT OF ADVICE, YES.

11:59AM

6 Q. YOU HAD ALSO RECEIVED SOME EXPRESSIONS OF
7 DISSATISFACTION FROM SOME INVESTORS?

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

9 THE COURT: SUSTAINED.

10 Q. BY MR. QUINN: WELL, CAN YOU TELL US WHETHER
11 OR NOT YOU HAD ALREADY RECEIVED SOME EXPRESSIONS OF
12 DISSATISFACTION FROM SOME INVESTORS, BY THE TIME THIS
13 LETTER WENT OUT?

11:59AM

14 A. YES.

15 Q. AND NOTWITHSTANDING THAT ADVICE, AND THE
16 EXPRESSION OF THE DISSATISFACTION YOU GOT FROM SOME
17 INVESTORS, HAD YOU MADE A DECISION AT THIS POINT THAT
18 YOU WERE GOING TO LET ANY OF THE INVESTORS OUT OF THE
19 CONTRACTS?

11:59AM

20 A. NO, NOT AT ALL.

12:00PM

21 Q. WHY NOT?

22 A. BECAUSE I FELT THAT THERE WAS A MECHANISM THAT
23 WAS A CONSIDERED MECHANISM, THAT THE INVESTORS HAD
24 SIGNED UP TO.

25 I FELT THAT IF WE COULD GET MET WEST IN
26 FRONT OF THEM, THE WAY THE PROCESS WORKED, WHERE
27 THERE'S 90 DAYS TO DO DUE DILIGENCE, THAT WE COULD TURN
28 THE SENTIMENT AROUND WITH THE ONES THAT WERE UNHAPPY,

12:00PM

1 AND THAT WE'D BE ABLE TO MOVE FORWARD.

2 Q. AND BY THE WAY, HOW MANY INVESTORS, IN TOTAL,
3 ARE WE TALKING ABOUT?

4 A. ABOUT 300.

5 Q. AND DID YOU ALSO RECEIVE SOME COMMUNICATIONS
6 FROM INVESTORS WHERE THEY APPLAUDED THE DECISION?

12:00PM

7 A. YES.

8 LESS THAN THE OTHER, IN FAIRNESS; BUT
9 YES.

10 Q. IF YOU TAKE A LOOK AT EXHIBIT 2264 AND 2263.

12:00PM

11 A. EXCUSE ME, YOUR HONOR. I THINK I --

12 THE COURT: IT'S BACK.

13 THE WITNESS: I THOUGHT I DID WHAT I DID
14 YESTERDAY.

15 Q. BY MR. QUINN: DO YOU HAVE THOSE BEFORE YOU,
16 EXHIBITS 2264 AND 2263?

12:01PM

17 A. YES.

18 Q. AND ARE THESE COMMUNICATIONS THAT YOU GOT FROM
19 INVESTORS, OR REPORTS OF COMMUNICATIONS?

20 A. YES.

12:01PM

21 MR. QUINN: WE'D OFFER THESE, YOUR HONOR.

22 MR. BRIAN: NO OBJECTION. NOT FOR THE TRUTH.

23 THE COURT: THEY'LL BE ADMITTED.

24

25 (EXHIBITS 2263 AND 2264 ADMITTED.)

12:01PM

26

27 MR. QUINN: SO IF WE COULD JUST QUICKLY LOOK
28 AT EXHIBIT 2264.

1 Q. THIS IS A REPORT OF INVESTORS INDICATING THAT
2 YOU MADE THE RIGHT DECISION.

3 DO YOU SEE THAT?

4 A. YES.

5 Q. AND THEN 2263, IF WE COULD TAKE A LOOK AT
6 THAT.

12:01PM

7 THIS IS A REPORT FROM MS. HIRSCH, WHERE
8 SHE ALSO SAYS SHE UNDERSTAND THE DECISION AND WHY IT
9 WAS MADE.

10 DO YOU SEE THAT?

12:01PM

11 A. YES.

12 Q. NOW, AS OF THE TIME OF -- IF WE CAN GO BACK TO
13 EXHIBIT 646, THIS LETTER TO INVESTORS WHERE YOU SHARE
14 SOME OF THE OPTIONS THAT OTHER INVESTORS HAVE
15 SUGGESTED; BY THEN, HAD MR. GUNDLACH HAD ANY OF HIS
16 CALLS, BY THEN, BY DECEMBER 17TH?

12:02PM

17 A. I BELIEVE HE HAD THE CALL ON THE -- I THINK
18 MR. BRIAN SAID ON THE 11TH.

19 Q. OR THE 8TH?

20 IF YOU COULD -- I THINK IF YOU CAN TAKE
21 A LOOK AT EXHIBIT 2140.

12:02PM

22 IF I COULD JUST APPROACH THE WITNESS,
23 YOUR HONOR?

24 THE COURT: YES, YOU MAY.

25 Q. BY MR. QUINN: SEE IF THIS REFRESHES YOUR
26 RECOLLECTION THAT THE FIRST CALL WAS ON THE 8TH?

12:02PM

27 A. YES. I'M SORRY.

28 Q. AND YOU TOLD US, IN RESPONSE TO MR. BRIAN'S

1 QUESTIONS, THAT YOU ACTUALLY HAD SOME CONTACTS WITH
2 INVESTORS YOURSELF?

3 A. YES.

4 Q. AND DID SOME OF THESE INVESTORS INDICATE THAT
5 THEY WERE ALSO GETTING PHONE CALLS FROM PEOPLE AT
6 DOUBLELINE, IN ADDITION TO THESE CONFERENCE CALLS?

12:03PM

7 A. YES.

8 Q. AND WHAT WAS -- WHEN WAS IT, ULTIMATELY, THAT
9 THE DECISION WAS MADE TO LET THE INVESTORS OUT OF THE
10 EXISTING CONTRACTS, AND TO CHANGE THE CONTRACTS?

12:03PM

11 A. JANUARY. MID-JANUARY, I BELIEVE.

12 Q. AND WHAT FINALLY LED YOU TO THAT DECISION?

13 A. I FELT THAT I HAD NO CHOICE.

14 I FELT THAT THE INTERFERENCE AND THE
15 STATEMENTS THAT MR. GUNDLACH HAD BEEN MAKING, REALLY
16 FORCED ME IN THE POSITION WHERE I HAD TO -- I HAD TO
17 ACT.

12:03PM

18 Q. NOW, YOU MADE REFERENCE TO ANOTHER FUND.

19 WE'VE HEARD SO FAR ABOUT THE SPECIAL
20 MORTGAGE CREDITS TO DISTRESSED FUNDS, FUND ONE AND TWO.

12:03PM

21 AND YOU'VE MADE REFERENCE TO ANOTHER
22 FUND, THE SOUTH DAKOTA FUND?

23 A. YES.

24 Q. AND CAN YOU JUST BRIEFLY TELL US WHAT THAT
25 WAS?

12:04PM

26 A. THAT'S JUST A PARALLEL FUND WITH A SEPARATE
27 ENTITY.

28 I'M NOT SURE WHY THEY WEREN'T IN THE

1 PARTNERSHIP, BUT IT'S BASICALLY THE SAME TERMS.

2 THE COURT: THAT'S BEEN REFERRED TO AS SMCF 3?

3 THE WITNESS: NO.

4 THE COURT: OH, IT'S DIFFERENT.

5 THE WITNESS: IT'S DIFFERENT.

12:04PM

6 Q. BY MR. QUINN: AND THE SOUTH DAKOTA FUND, DID
7 YOU SIMILARLY CHANGE THE CONTRACT TERMS TO REDUCE FEES
8 AND TO GIVE THE INVESTORS A LIQUIDITY OPTION?

9 A. WE DID, YES.

10 Q. SO LET ME BACK UP NOW. I WON'T TOUCH ON
11 EVERYTHING THAT MR. BRIAN ASKED YOU ABOUT.

12:04PM

12 ONE QUESTION MR. BRIAN ASKED YOU WAS,
13 WHEN YOU WERE NEGOTIATING WITH MET WEST, IN THE PERIOD
14 OF TIME AFTER SEPTEMBER 3, AFTER THAT STARTED, WHY
15 DIDN'T YOU GO TO MR. GUNDLACH AND TELL HIM, LOOK, WE'RE
16 NEGOTIATING WITH -- MET WEST IS GOING TO COME IN HERE
17 AND RUN THE MORTGAGE-BACKED SECURITIES MARKET, IF WE'RE
18 ABLE TO SIGN UP THIS DEAL?

12:05PM

19 A. WELL, IF I DID THAT, IT WOULD HAVE
20 PRECIPITATED THE EXACT REACTION, THE EXACT CONSEQUENCE,
21 THAT I WAS DOING EVERYTHING IN MY POWER TO AVOID, WHERE
22 WE WOULD BE IN A POSITION WHERE WE'D HAVE NO ABILITY TO
23 MANAGE THE ASSETS, BECAUSE MR. GUNDLACH WOULD HAVE
24 CLEARLY TAKEN ACTION.

12:05PM

25 Q. AND WHAT DO YOU MEAN BY THAT, IT WOULD HAVE
26 PRECIPITATED ACTION?

12:05PM

27 A. HE WOULD HAVE LEFT THE FIRM, TRIED TO TAKE
28 PEOPLE WITH HIM.

1 IT WOULD HAVE MADE THE -- ACCELERATED
2 THE PLAN THAT HE HAD IN MIND.

3 Q. DIDN'T IT OCCUR TO YOU THAT, KNOWING JEFFREY
4 GUNDLACH AS YOU DID, THAT HE WOULD WELCOME THE PEOPLE
5 FROM MET WEST IN, AND SORT OF WELCOME TAD RIVELLE AND
6 THE OTHERS AS BEING CO-CHAIR OF THE MORTGAGE-BACKED
7 SECURITIES --

12:05PM

8 MR. BRIAN: OBJECTION. ARGUMENTATIVE, 352.

9 THE COURT: SUSTAINED.

10 Q. BY MR. QUINN: DID YOU THINK MR. GUNDLACH
11 WOULD REACT FAVORABLY TO THE IDEA THAT YOU WERE
12 NEGOTIATING WITH THIS OTHER GROUP?

12:06PM

13 A. NO.

14 HE WOULD NOT ACT FAVORABLY.

15 Q. AND WHILE YOU WERE NEGOTIATING WITH THEM, DID
16 YOU LEARN INFORMATION ABOUT THEIR PREPARING TO LEAVE?

12:06PM

17 A. ABOUT THE MBS GROUP, OR --

18 Q. YES.

19 A. YES.

20 Q. NOW, YOU WERE ASKED SOME QUESTIONS ABOUT THE
21 CITIBANK MANDATE, THAT STRATEGIC MANDATE.

12:06PM

22 AND BASICALLY, WHOSE CONCEPT WAS THAT?
23 WHAT WAS CITIBANK SUPPOSED TO DO, AND WHO DECIDED THAT?

24 A. WELL, THE CONCEPT WAS THAT THE FIVE PORTFOLIO
25 MANAGERS, WE DECIDED THAT WE WOULD GET AN OVERVIEW OF
26 THE ENTIRE LANDSCAPE OF WHAT WAS -- WHAT OPTIONS WERE
27 AVAILABLE, NOT -- AND WHERE WE SAT IN THE UNIVERSE OF
28 ASSET MANAGEMENT FIRMS.

12:06PM

1 NOT THAT WE WOULD NECESSARILY DO ANY OF
2 THEM, BUT WE WOULD AT LEAST LOOK AT ACQUISITION, SALE,
3 OTHER STRUCTURES, THE WHOLE GAMUT OF IT.

4 AND THAT WAS WHAT WE HAD DECIDED TO DO.

5 Q. SO MR. BRIAN SHOWED YOU SOME PAGES FROM
6 STRATEGIC OPTIONS WHICH LISTED SOME OF THOSE THINGS.

12:07PM

7 IS THAT KIND OF WHAT YOU ARE TALKING
8 ABOUT, THAT THEY SORT OF THOUGHT ABOUT THAT, WHAT ARE
9 THE UNIVERSE OF POSSIBLE OPTIONS?

10 A. YES.

12:07PM

11 Q. ALL RIGHT.

12 SOCIETE GENERALE OWNS TCW TO THIS DAY?

13 A. THEY -- YES, THEY ARE NOW -- THEY NOW OWN LESS
14 OF IT THAN THEY DID, BUT THEY OWN IT, BECAUSE EMPLOYEES
15 AND AMUNDI NOW OWN SOME OF IT, YES.

12:07PM

16 Q. HOW MANY EMPLOYEES ARE NOW SHAREHOLDERS IN
17 TCW?

18 A. ABOUT 150.

19 Q. AND IS THAT SOMETHING THAT'S BEEN IMPLEMENTED
20 SINCE -- SINCE WHEN HAS THAT BEEN IMPLEMENTED?

12:08PM

21 A. WELL, CERTAINLY SINCE I CAME BACK, YES.

22 Q. AND TODAY IS TCW FOR SALE?

23 A. NO.

24 Q. YOU WERE ASKED SOME QUESTIONS ABOUT
25 MR. GUNDLACH'S PROPOSAL ON SEPTEMBER 3 TO ACQUIRE TCW,
26 AND WHETHER THAT WAS REALLY -- WHY YOU DIDN'T REGARD
27 THAT AS A FAIR OFFER.

12:08PM

28 AND I THINK YOU SAID THAT IF YOU TAKE

1 ALL THE TERMS INTO ACCOUNT, HIS OFFER WAS WORTH LESS
2 THAN HALF OF THE \$350 MILLION THAT HE WAS PROPOSING,
3 FOR 51 PERCENT OF THE COMPANY.

4 DO YOU RECALL THAT QUESTION AND ANSWER
5 WITH MR. BRIAN?

12:08PM

6 A. YES.

7 AND HALF, MAYBE -- THAT'S MY ROUGH
8 CALCULATION.

9 Q. THAT'S YOUR BALLPARK HORSEBACK ESTIMATE,
10 FARMER'S GUESS, SITTING HERE ON THE STAND?

12:08PM

11 A. YES.

12 Q. WHY DO YOU SAY THAT? WHY DO YOU SAY IT'S
13 WORTH LESS THAN HALF, OR A STEEP DISCOUNT FROM THAT
14 NOMINAL \$350 MILLION VALUE?

15 A. WELL, FOR A NUMBER OF REASONS.

12:09PM

16 FIRST OF ALL, TO ACQUIRE CONTROL OF AN
17 ENTITY AND HAVE A MINORITY PARTNER OWNING 49 PERCENT,
18 WITH NO REAL CONTROL OVER IT, DECREASES THE VALUE.

19 SECONDLY, THE WAY IT WAS PRESENTED,
20 MR. GUNDLACH -- AND IT'S A CONSIDERABLE SUM, FOR ALL OF
21 US. BUT MR. GUNDLACH WOULD HAVE A HUNDRED MILLION OF
22 SKIN IN THE GAME, BUT HE WOULDN'T HAVE ANY
23 RESPONSIBILITY TO PAY THAT, PERSONALLY, IF EVERYTHING
24 WENT WRONG. IT WOULD BE NONRECOURSE.

12:09PM

25 Q. YOU MEAN THE 250 MILLION THAT HE WAS LOOKING
26 FOR SOC-JEN TO LOAN?

12:09PM

27 A. TO LOAN, YES.

28 AND THEN THIRDLY, THE WAY THE PUT IN

1 CALLS WORK, THE FACT THAT ONE SIDE HAS THE ABILITY TO
2 BUY OUT THE OTHER SIDE, BUT THE OTHER SIDE DOESN'T HAVE
3 THE SAME ABILITY, AGAIN, DEVALUATES THE -- WILL
4 DEPRECIATE THE VALUE OF WHAT'S ON THE TABLE.

5 Q. AT ONE POINT, IN RESPONSE TO ONE OF 12:10PM
6 MR. BRIAN'S QUESTIONS, I UNDERSTOOD YOU TO STAY THAT
7 THE VALUE THAT CITIBANK CAME UP WITH FOR TCW WAS AROUND
8 \$1 BILLION.

9 DO YOU RECALL THAT?

10 A. YES. 12:10PM

11 THAT WAS MY RECOLLECTION.

12 Q. IF WE COULD TAKE A LOOK AT EXHIBIT 5323-7.

13 AND DO WE SEE THAT THERE, IN THE --

14 THIS IS IN EVIDENCE.

15 UNDER THE FIRST BULLET, THE THIRD DASH. 12:10PM

16 IS THAT WHAT YOU ARE REFERRING TO THERE?

17 A. YES.

18 Q. THE BILLION DOLLAR VALUATION?

19 A. YES.

20 Q. AND HE SHOWED YOU SOMETHING WHERE MR. MUSTIER 12:10PM

21 HAD SAID, I THINK IT WAS EITHER IN FEBRUARY OR MARCH,

22 SOMETHING ABOUT HIS BOOK VALUE BEING 700 MILLION.

23 DO YOU RECALL THAT?

24 A. I THINK HE SAID 900 --

25 Q. 900 MILLION. 12:11PM

26 AND COULD YOU EXPLAIN TO US WHAT THAT
27 MEANS?

28 A. WELL, HE WAS TALKING ABOUT REDUCING THE BOOK

1 VALUE OF THE FIRM BY TAKING A DIVIDEND; SO HE WAS JUST
2 PLAYING WITH THE NUMBERS.

3 THE DIFFERENTIAL WOULD BE DEPENDING ON
4 HOW MUCH DIVIDEND.

5 Q. ALL RIGHT.

12:11PM

6 AND THEN YOU WERE ASKED SOME QUESTIONS
7 ABOUT EXHIBIT 5341.

8 IF WE COULD PUT THAT ON THE SCREEN.

9 NOW, MR. CONN'S MEMO DATED OCTOBER 5TH,
10 2009, TO YOU --

12:11PM

11 AND DOWN HERE AT THE BOTTOM, IF WE COULD
12 JUST DO THE LAST TWO PARAGRAPHS, MIKE.

13 SOME COMMENTS ABOUT MET WEST, MR. CONN
14 SAYING THAT MET WEST HAS NO LARGE SCALE MORTGAGE TRACK
15 RECORD, ET CETERA.

12:11PM

16 AND TAD AND LAIRD --

17 WHO ARE TAD AND LAIRD?

18 A. TAD IS TAD RIVELLE, WHO IS THE -- WAS THE
19 CHIEF INVESTMENT OFFICER OF MET WEST, AND NOW IS THE
20 CHIEF INVESTMENT OFFICER, FIXED INCOME, OF TCW.

12:12PM

21 AND LAIRD LANMAN IS THE MOST -- IN
22 ADDITION TO TAD, THE MOST SENIOR PORTFOLIO MANAGER OF
23 MET WEST.

24 Q. SO THEY WERE SAYING THAT ANGEL -- ANGEL
25 MEANING MET WEST -- DOES PERFORM MUCH OF THE SAME
26 SOPHISTICATED LOAN LEVEL MORTGAGE ANALYSIS THAT OUR
27 EXISTING TEAM AT TCW PERFORMS.

12:12PM

28 DO YOU SEE THAT?

1 A. YES.

2 Q. WHAT DID YOU UNDERSTAND THIS TO MEAN, WHEN
3 MR. CONN WAS EXPRESSING HIS OPINION THAT THEY HAD NO
4 LARGE SCALE MORTGAGE TRACK RECORD?

5 A. MEANING IN A SEPARATE ACCOUNT BASIS, THEY
6 DIDN'T HAVE SEPARATE ACCOUNTS.

12:12PM

7 THE MORTGAGES THAT THEY INVESTED IN WERE
8 EMBEDDED IN THEIR OVERALL STRATEGY.

9 AND THEN BASED ON THIS POINT, WHICH
10 ACTUALLY WAS MR. BRADFORD'S POINT, WHICH IS A GOOD
11 POINT, WE DECONSTRUCTED THE PORTFOLIOS THAT THEY
12 MANAGED, AND FOUND OUT THAT THE MORTGAGE-ONLY COMPONENT
13 OF THE PORTFOLIO HAD A VERY ATTRACTIVE TRACK RECORD.

12:12PM

14 Q. WELL, CAN YOU HELP US OUT WITH THAT?

15 YOU TALKED ABOUT SEPARATE ACCOUNTS
16 VERSUS MORTGAGE RECORD THAT'S EMBEDDED?

12:13PM

17 A. OKAY.

18 Q. CAN YOU EXPLAIN WHAT YOU MEAN BY THAT?

19 A. YES.

20 THERE ARE INSTANCES WHEN AN INVESTOR
21 ASKS FOR A MORTGAGE ACCOUNT ONLY. THEY WANT ONLY
22 MORTGAGES.

12:13PM

23 AND SO THAT WOULD BE A SEPARATE ACCOUNT,
24 OR SOME OTHER MECHANISM FOR INVESTING ONLY IN
25 MORTGAGES.

12:13PM

26 THERE ARE ALSO INSTANCES WHERE A -- AN
27 INVESTOR WANTS A MORE DIVERSIFIED FIXED INCOME, SO THEY
28 ASK FOR A CORE FIXED INCOME. AND IN THEIR CORE FIXED

1 INCOME, WHICH WAS, AS MR. BRIAN HAS POINTED OUT SEVERAL
2 TIMES, THEY ARE A VERY COMPETENT AREA FOR THEM. WELL
3 OVER HALF OF THE ASSETS IN THERE WERE MORTGAGES.

4 SO WHAT WE DID WAS WE TOOK THAT, AND IN
5 THE DUE DILIGENCE PROCESS -- REMEMBER, THIS IS VERY
6 EARLY ON IN THE DUE DILIGENCE PROCESS -- WE EXAMINED
7 THE MORTGAGES AS A SEPARATE PART OF THE LARGER
8 COMPONENT AND FOUND THAT IT WAS QUITE ATTRACTIVE.

12:14PM

9 Q. SO IS THAT SOMETHING, THEN, THAT YOU KIND OF
10 HAD TO DO SOME ANALYSIS AND, AS YOU SAY DECONSTRUCT, TO
11 FIGURE OUT WHAT THE RECORD IS ON MORTGAGES?

12:14PM

12 A. YES.

13 Q. ALL RIGHT.

14 BUT YOU DIDN'T UNDERSTAND MR. CONN TO
15 MEAN THAT THEY DIDN'T HAVE EXPERIENCE WITH MORTGAGES?

12:14PM

16 A. NOT AT ALL.

17 THE COURT: ALL RIGHT, MR. QUINN. LET'S TAKE
18 OUR SECOND RECESS.

19 I THINK WE'RE ON SCHEDULE HERE. 20
20 MINUTES, LADIES AND GENTLEMEN.

12:14PM

21
22 (AT 12:15 P.M. THE JURY WAS
23 EXCUSED, AND THE FOLLOWING
24 PROCEEDINGS WERE HELD:)

12:15PM

25
26 THE COURT: ALL RIGHT. WE'RE OUT OF THE
27 PRESENCE OF THE JURY.

28 ARE WE GOING TO FINISH UP WITH MR. STERN

1 SHORTLY AFTER WHEN WE SOME BACK OR IS THERE A LOT LEFT?

2 MR. QUINN: I THINK I MAYBE HAVE 20 MINUTES.

3 I'M GUESSING.

4 THE COURT: HOW ABOUT YOU, MR. BRIAN?

5 MR. BRIAN: I'LL BE BRIEF, YOUR HONOR. 12:15PM

6 THE COURT: WILL WE GET ANOTHER WITNESS ON
7 TODAY, THEN?

8 MR. QUINN: YES, WE WILL.

9 THE COURT: OKAY.

10 MR. SURPRENANT: YOUR HONOR, I HAVE ONE VERY 12:15PM
11 BRIEF POINT ON PROFESSOR CORNELL, WHO MAY HIT THE STAND
12 TODAY.

13 THE COURT: OKAY.

14 MR. SURPRENANT: AND IT AROSE AFTER YOUR
15 RULING YESTERDAY ON REASONS OF ROYALTY. 12:15PM

16 AND I WAS GOING TO ASK YOUR HONOR'S
17 PERMISSION TO ASK HIM ONE QUESTION ABOUT TRADE SECRETS.
18 AND I WOULD ASK HIM, HAVE YOU PREPARED A DAMAGE
19 CALCULATION? AND HE WILL SAY, YES, I PREPARED TWO.
20 AND I WILL SAY, FOR WHAT? AND HE WILL SAY, FOR BREACH 12:16PM
21 OF FIDUCIARY DUTY AND FOR INTERFERENCE WITH CONTRACTS.

22 AND THEN I'D ASK YOUR HONOR'S PERMISSION
23 TO ASK HIM ONE QUESTION, WHICH I'LL TELL YOUR HONOR
24 WHAT THE ANSWER WILL BE, WHICH IS, HAVE YOU PREPARED A
25 CALCULATION WITH RESPECT TO MISAPPROPRIATION OF TRADE 12:16PM
26 SECRETS? AND HIS ANSWER WILL BE, YES, I UNDERSTAND I
27 MAY PRESENT THAT TO HIS HONOR LATER.

28 MR. HELM: YOUR HONOR --

1 THE COURT: I'M NOT SURE THAT WE NEED TO GO
2 THERE.

3 MR. SURPRENANT: IT'S QUITE CLOSE TO CASI
4 4409.

5 THE COURT: WHAT DOES THAT SAY? 12:16PM

6 MR. SURPRENANT: WELL, THAT TELLS THEM,
7 ESSENTIALLY, THAT WITH RESPECT TO MISAPPROPRIATION OF
8 TRADE SECRETS, THE COURT WOULD DETERMINE, IF
9 APPROPRIATE, A REASONABLE REALITY.

10 THE COURT: RIGHT. 12:16PM

11 AND I WILL DETERMINE THAT, BASED ON HIS
12 TESTIMONY TO ME, OUT OF THE PRESENCE OF THE JURY, AFTER
13 THE VERDICT.

14 AND SO I DON'T SEE ANY REASON FOR YOU TO
15 INQUIRE OF HIM WHETHER HE HAS, BY IMPLICATION, SOME
16 DAMAGE OR REASONABLE WARRANTY CALCULATION THAT IS GOING
17 TO BE OF NO CONSEQUENCE TO THE JURY. 12:16PM

18 MR. SURPRENANT: MY THOUGHT WAS SIMPLY SO THEY
19 WON'T BE WONDERING WHERE THAT IS.

20 BUT I UNDERSTAND, YOUR HONOR'S -- 12:17PM

21 THE COURT: I GUESS I HAVE A DIFFERENT THOUGHT
22 PROCESS.

23 MR. SURPRENANT: AND YOUR HONOR, YOURS
24 CONTROLS, NOT MINE.

25 THANK YOU. 12:17PM

26 THE COURT: ALL RIGHT. THANK YOU.

27

28 (RECESS TAKEN.)

(THE NEXT PAGE NUMBER IS 5301.)

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1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA AUGUST 25, 2011
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR
7 TIME: C SESSION: 12:35 P.M.
8

9 --0--

10 (FOLLOWING PROCEEDINGS WERE HELD
11 OUTSIDE THE PRESENCE OF THE JURY.)

12
13 THE COURT: OKAY. IN THE TCW MATTER, ALL
14 MEMBERS OF OUR JURY ARE PRESENT, AS ARE COUNSEL.

15 MR. QUINN, YOU MAY CONTINUE WITH YOUR
16 REDIRECT.

12:40PM

17 MR. QUINN: THANK YOU, YOUR HONOR.
18

19 REDIRECT EXAMINATION (RESUMED.) +

20 BY MR. QUINN:

12:40PM

21 Q MR. STERN, WHEN THOSE CHANGES WERE MADE TO THE
22 SPECIAL MORTGAGE CREDIT FUND I AND II IN SOUTH CAROLINA
23 AGREEMENTS AS -- SOUTH DAKOTA AGREEMENTS, DID TCW SAVE
24 ANY COSTS IT HAD IN MANAGING THOSE FUNDS?

25 A NO.

12:41PM

26 Q NOW LET ME GO BACK TO KIND OF THE TOP OF THE
27 EXAMINATION, THE QUESTIONS THAT MR. BRIAN ASKED YOU?

28 DO YOU RECALL HE ASKED YOU ABOUT YOUR

1 MEETING WITH MR. DAY ON JUNE 1 AND WHAT YOU RECALLED
2 AND WHAT YOU DIDN'T RECALL?

3 A YES.

4 Q DO YOU RECALL THOSE QUESTIONS?

5 WE HAVE THE AGENDA HERE IN EVIDENCE,
6 EXHIBIT 5164, IF WE COULD PUT THAT UP ON THE SCREEN.

12:41PM

7 WE'VE SEEN THIS SEVERAL TIMES.

8 MR. BRIAN: I THINK COUNSEL MISSPOKE. I THINK
9 HE'S TALKING ABOUT JUNE 29TH.

10 THE COURT: YOU SAID JUNE 1ST.

12:41PM

11 MR. QUINN: I'M SORRY. THE JUNE 29TH MEETING.

12 THE COURT: RIGHT.

13 BY MR. QUINN:

14 Q MR. BRIAN ACTUALLY, YOU'LL RECALL, BEGAN TO
15 WRITE KIND OF A CHART UP HERE ABOUT THIS.

12:41PM

16 DO YOU RECALL?

17 A I DO.

18 Q I TAKE IT, IS IT TRUE YOU JUST SIMPLY DON'T
19 RECALL THE SUBSTANCE OF YOUR CONVERSATION WITH MR. DAY
20 ON JUNE 29TH, 2009?

12:42PM

21 A NO.

22 Q I THINK WE GOT CAUGHT IN A DOUBLE NEGATIVE.

23 DO YOU RECALL THE SUBSTANCE OF YOUR
24 CONVERSATION WITH MR. DAY ON THAT DATE IN JUNE OF 2009?

25 A IT WAS NOTES BASICALLY.

12:42PM

26 Q WAIT. MY QUESTION IS, DO YOU RECALL WHAT YOU
27 DISCUSSED THAT DAY?

28 A NOT SPECIFICALLY, NO.

1 Q OKAY.

2 WE HAVE THE AGENDA THAT'S HERE ON THE
3 SCREEN.

4 A YES.

5 Q WAS THAT PREPARED FOR THAT MEETING?

12:42PM

6 A YES.

7 Q DO YOU THINK YOU PROBABLY DISCUSSED WHAT WAS
8 ON THE AGENDA?

9 MR. BRIAN: OBJECTION. CALLS FOR SPECULATION.

10 THE COURT: SUSTAINED.

12:42PM

11 BY MR. QUINN:

12 Q IS THAT YOUR UNDERSTANDING THAT YOU DISCUSSED,
13 WHAT WAS ON THE AGENDA, EVEN THOUGH YOU DON'T HAVE ANY
14 RECOLLECTION OF THE SPECIFICS OF THE CONVERSATION?

15 A YES.

12:42PM

16 Q YOU ALSO -- YOU WERE ASKED ABOUT -- THE
17 QUESTION ABOUT WHETHER, IN YOUR COMMUNICATIONS WITH
18 MR. CONN AND MR. GAMSIN AND OTHERS THAT SUMMER, YOU
19 WERE LOOKING FOR A REPLACEMENT FOR MR. GUNDLACH.

20 DO YOU RECALL THAT?

12:43PM

21 A YES.

22 Q AND YOU SAID NO.

23 CAN YOU EXPLAIN THAT, PLEASE.

24 A YES. BECAUSE I WAS HOPEFUL THAT IF
25 MR. GUNDLACH LEFT, EITHER BECAUSE HE CHOSE TO LEAVE OR
26 BECAUSE WE WERE FORCED TO TERMINATE HIM, THAT
27 MR. BARACH WOULD BE THERE TO LEAD THE GROUP.

12:43PM

28 AND THAT WE WOULD, THAT WHAT WE'D NEED

1 TO DO WAS TO SHORE IT UP WITH SOME MORTGAGE EXPERTISE,
2 ADDITIONAL MORTGAGE EXPERTISE. SO WE'D BRING IN A
3 MORTGAGE PROFESSIONAL TO SHORE UP THE TEAM.

4 Q SO, IF MR. GUNDLACH LEFT OR HE WAS TERMINATED,
5 HIS REPLACEMENT, YOU THOUGHT, WOULD BE --

12:43PM

6 A MR. BARACH.

7 Q AND YOU THOUGHT YOU MIGHT NEED SOME OTHER HELP
8 TO DO WHAT?

9 A JUST TO ADD TO THE CREDIBILITY OF THE TEAM. I
10 THINK THE TEAM WOULD BE ADEQUATE WITHOUT MR. GUNDLACH.
11 BUT TO ADD TO THE CREDIBILITY OF THE TEAM.

12:44PM

12 Q NOW, MR. BRIAN ASKED YOU WHETHER YOU STARTED A
13 CAMPAIGN TO TURN MR. ATTANASIO AND MR. CHAPUS AGAINST
14 MR. GUNDLACH.

15 DO YOU RECALL THAT QUESTION?

12:44PM

16 A I DO.

17 Q IF WE COULD LOOK AT EXHIBIT 236.

18 THIS IS AN E-MAIL FROM MR. CHAPUS TO
19 YOU, DATED AUGUST 1ST, 2009, WHICH WE HAVE SEEN BEFORE.

20 COULD YOU TELL US -- YOU DESCRIBED AN
21 INCIDENT IN ONE OF THE MANAGEMENT COMMITTEE MEETINGS
22 WHERE MR. GUNDLACH GOT VERY ANGRY, GOT UP AND WAS
23 SHOUTING AT MR. CHAPUS.

12:44PM

24 DO YOU RECALL THAT?

25 A I DO.

12:44PM

26 Q I TAKE IT YOU DIDN'T DO ANYTHING TO PROMPT
27 THAT YOURSELF?

28 A I DID NOT DO ANYTHING OTHER THAN REPORT ABOUT

1 SOMETHING THAT I WAS THINKING ABOUT, AND THAT OBVIOUSLY
2 UPSET MR. GUNDLACH.

3 Q AND MR. CHAPUS. CAN YOU TELL US, THIS E-MAIL
4 WE'RE LOOKING AT NOW, WAS THAT -- DID MR. CHAPUS WRITE
5 THIS TO YOU IN TIME, IN CLOSE PROXIMITY TO WHEN THAT
6 MEETING WAS WHEREIN HE GOT -- MR. GUNDLACH GOT SO
7 ANGRY?

12:45PM

8 A YES. IT WAS, I BELIEVE, THE NEXT DAY.

9 Q ALL RIGHT.

10 SO I MEAN WHATEVER FEELINGS MR. CHAPUS
11 HAD ABOUT MR. GUNDLACH, ARE YOU THE ONE THAT PROMPTED
12 THAT OR CAUSED THAT?

12:45PM

13 A I CERTAINLY DON'T THINK SO.

14 Q YOU'VE HAD A LOT OF QUESTIONS ABOUT
15 COMPENSATION AND MR. GUNDLACH'S COMPENSATION.

12:45PM

16 IF YOU COULD SAVE A LOT OF MONEY BY
17 TERMINATING MR. GUNDLACH, WHY DIDN'T YOU TERMINATE ALL
18 YOUR PORTFOLIO MANAGERS?

19 A WELL, I DON'T -- I DON'T EVEN KNOW HOW TO
20 ANSWER THAT QUESTION. OF COURSE THAT WOULD BE ABSURD.

12:46PM

21 Q YOU'VE BEEN IN BUSINESS FOR HOW MANY YEARS?

22 A FOR A LONG TIME. OVER 40 YEARS.

23 Q IS TALENT IMPORTANT?

24 A TALENT IS VERY IMPORTANT.

25 Q IS PAYING FOR GOOD TALENT IMPORTANT?

12:46PM

26 MR. BRIAN: OBJECTION. LEADING.

27 THE COURT: SUSTAINED.

28 BY MR. QUINN:

1 Q COULD YOU TELL US WHETHER OR NOT PAYING FOR
2 GOOD TALENT IS IMPORTANT?

3 A IT IS IMPORTANT.

4 Q AND IF YOU HAD A REPUTATION FOR TERMINATING
5 SOMEONE ONCE THEY -- A PORTFOLIO MANAGER ONCE THEY
6 STARTED TO MAKE A LOT OF MONEY, WOULD THAT HAVE ANY
7 IMPACT ON YOUR ABILITY TO RECRUIT OTHER PORTFOLIO
8 MANAGERS IN THE FUTURE?

12:46PM

9 A I THINK IT WOULD HAVE AN EXTREMELY NEGATIVE
10 IMPACT ON THAT.

12:46PM

11 Q THAT SUMMER DID YOU COLLECT INFORMATION ON
12 OTHER PORTFOLIO MANAGERS AND OTHER TOP PEOPLE IN THE
13 COMPANY AS PART OF YOUR PROCESS OF GETTING BACK INTO
14 TCW?

15 A YES. THE SPRING AND THE SUMMER I DID.

12:46PM

16 Q IF YOU COULD TAKE A LOOK AT EXHIBIT 5207.

17 I'LL ASK YOU IF THIS IS A -- E-MAIL
18 STRING WHICH INCLUDES YOU.

19 THE COURT: DID YOU KICK OUR CORD AGAIN? I'VE
20 GONE DARK.

12:47PM

21 OKAY. THERE WE GO. THANKS.

22 THE WITNESS: IT'S THE GREMLINS.

23 THE COURT: THANKS.

24 BY MR. QUINN:

25 Q IS THIS AN E-MAIL STRING THAT YOU'RE COPIED
26 ON? IF YOU LOOK AT THE SECOND PAGE.

12:47PM

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: YES, YOU MAY.

3 (PAUSE) +

4

5 MR. BRIAN: NO OBJECTION.

12:48PM

6 THE COURT: IT WILL BE ADMITTED.

7

8 (EXHIBIT 5207 ADMITTED.) +

9

10 BY MR. QUINN:

12:48PM

11 Q ATTACHED TO THIS IS A SCHEDULE WHICH SETS
12 FORTH INFORMATION ABOUT VARIOUS FUNDS AND FUND FEES AND
13 THINGS LIKE THAT --

14 A YES.

15 Q -- WHICH YOU -- WHICH YOU COLLECTED?

12:48PM

16 A YES.

17 Q AND YOU ALSO --

18 THESE E-MAILS, IF WE COULD LOOK AT -2.

19 -- IT INDICATES THAT YOU'VE BEEN
20 COLLECTING COMPENSATION INFORMATION AND GOING THROUGH
21 IT?

12:48PM

22 A YES.

23 Q NOT JUST FOR MR. GUNDLACH?

24 A THAT'S TRUE.

25 Q THEN IF WE COULD LOOK AT EXHIBIT 2258.

12:48PM

26 IS THIS AN E-MAIL WHICH YOU SENT TO
27 MR. MUSTIER ON JULY 24TH, 2009?

28 A WHAT'S --

1 Q 2258?

2 THE COURT: 5208 IS WHAT WE'RE LOOKING AT.

3 WE WERE LOOKING AT THE WRONG ONE.

4 THE WITNESS: AND IN FRENCH, FOR THAT MATTER.

5 MR. QUINN: DOUBLE WHAMMY. 12:49PM

6 THE WITNESS: YES.

7 MR. QUINN: I'D OFFER THAT, YOUR HONOR.

8 MR. BRIAN: OBJECTION. BEYOND THE SCOPE.

9 THE COURT: OVERRULED.

10

12:49PM

11 (EXHIBIT 5208 ADMITTED.) +

12

13 BY MR. QUINN:

14 Q IS THIS AN E-MAIL WHICH YOU SENT TO

15 MR. MUSTIER ON JULY 24TH, 2009? 12:49PM

16 A YES.

17 Q AND YOU WROTE TO HIM:

18 THE TOTAL RETURN BOND FUND --

19 THAT'S A FUND THAT MR. GUNDLACH WAS

20 MANAGING? 12:49PM

21 A AND HIS TEAM, YES.

22 Q (READING):

23 -- JUST CROSSED THE \$7 BILLION

24 MARK. IT WOULD BE A VERY NICE

25 GESTURE IF YOU WROTE AN E-MAIL TO 12:49PM

26 JEFFREY CONGRATULATING HIM ON THAT

27 MILESTONE.

28 WHY DID YOU DO THAT?

1 A I DID THAT BECAUSE I THOUGHT THAT JEFFREY
2 WOULD APPRECIATE A PAT ON THE BACK FROM MR. MUSTIER,
3 AND I WANTED TO ENCOURAGE -- ENCOURAGE THAT.

4 Q WERE YOU CONTEMPLATING TERMINATING
5 MR. GUNDLACH WHEN YOU ASKED MR. MUSTIER TO SEND HIM A
6 NOTE OF CONGRATULATIONS? 12:50PM

7 A NO, I WASN'T.

8 Q EXHIBIT 5224-2. MR. CONN'S FILE.

9 AND IF WE COULD LOOK AT -2, MIKE.

10 YOU SEE THERE, IN THE MIDDLE OF THE 12:50PM
11 PAGE, THERE'S A QUESTION RAISED ABOUT MR. BRIAN ASKED
12 YOU ABOUT THIS -- ABOUT TALKING TO A LAW FIRM ABOUT
13 WHETHER THERE'S CAUSE TO TERMINATE MR. GUNDLACH?

14 YOU SEE THAT?

15 A I DO. 12:50PM

16 Q NOW, WAS IT TRUE THAT AROUND THIS TIME WERE
17 PEOPLE -- WERE THERE PEOPLE WHO THOUGHT MR. GUNDLACH
18 OUGHT TO BE TERMINATED?

19 A YES.

20 Q WAS THAT VIEW EXPRESSED IN MEETINGS? 12:51PM

21 A YES.

22 Q WAS ANY DECISION MADE TO TERMINATE
23 MR. GUNDLACH?

24 A NO.

25 Q I MEAN, DID SOMEONE COME UP WITH SOME LANGUAGE 12:51PM
26 THAT MIGHT BE USED IF SUCH A DECISION WERE MADE?

27 A YES.

28 Q AND SOMEONE ASKED -- SUGGESTED THAT A LAW FIRM

1 BE SPOKEN TO ABOUT WHETHER THERE WAS REASON TO DO IT?

2 MR. BRIAN: OBJECTION. MISSTATES THE
3 DOCUMENTS. MISSTATES THE EVIDENCE.

4 THE COURT: SUSTAINED. THE DOCUMENT WILL
5 SPEAK FOR ITSELF.

12:51PM

6 MR. QUINN: OKAY.

7 Q THE NOTES REFER TO TALKING TO A LAW FIRM ABOUT
8 WHETHER THERE IS CAUSE TO TERMINATE MR. GUNDLACH?

9 A YES.

10 Q ALL RIGHT.

12:51PM

11 WHY WOULD IT BE OF CONCERN ABOUT WHETHER
12 OR NOT THERE WERE CAUSE TO TERMINATE MR. GUNDLACH?

13 MR. BRIAN: OBJECTION. CALLS FOR SPECULATION.

14 UNLESS IT'S HIS OPINION.

15 THE COURT: OVERRULED.

12:51PM

16 YOU CAN ANSWER THE QUESTION.

17 THE WITNESS: MR. QUINN, COULD YOU ASK AGAIN.

18 MR. QUINN: YES.

19 Q WHY WOULD THAT HAVE BEEN A CONCERN WITH
20 RESPECT TO MR. GUNDLACH ABOUT HOW -- WHETHER THERE WAS
21 CAUSE TO TERMINATE HIM, IF THAT DECISION WAS MADE?

12:52PM

22 A IT WOULD BE A CONCERN BECAUSE HE WAS THE MOST
23 IMPORTANT PORTFOLIO MANAGER IN THE FIRM.

24 AND IF WE TERMINATED HIM, AND WE DIDN'T
25 HAVE ANY RATIONALE OR REASON, OUR CLIENT BASE WOULD --
26 WOULD WONDER WHY WE WERE DOING IT.

12:52PM

27 SO WE NEEDED TO HAVE A RATIONALE, AND
28 THAT WAS SORT OF A SHORTHAND, NOT IN A LEGAL SENSE, FOR

1 WHY HE NEEDED TO BE TERMINATED, IF -- IF THE
2 CIRCUMSTANCES HAD OCCURRED.

3 Q BUT IN THIS SAME FILE THERE ARE DOCUMENTS
4 REFERRING TO REACTING TO IF HE LEAVES --

5 A YES. 12:52PM

6 Q -- RIGHT?

7 A RIGHT.

8 Q WOULD YOU TAKE A LOOK AT EXHIBIT PAGE -11,
9 5224-11.

10 THIS IS MR. BURSCHINGER'S MEMO. I THINK 12:53PM
11 IT'S UP ON THE SCREEN.

12 DO YOU SEE THAT?

13 A I DO.

14 Q AND IT'S DATED AUGUST 21 IN THE UPPER
15 LEFT-HAND CORNER. 12:53PM

16 A IT IS.

17 Q AND THE SECOND TO THE LAST BULLET, UNDER
18 ANALYSIS, MR. BURSCHINGER SAYS:

19 MY ASSESSMENT AS TO WHETHER THEY
20 ARE A FLIGHT RISK IF J.E.G. -- IT 12:53PM
21 SAYS WE UNFORTUNATELY, PROBABLY
22 WERE -- TO DEPART.

23 DO YOU SEE THAT?

24 A YES.

25 Q BELOW THAT IT TALKS ABOUT MR. GUNDLACH 12:53PM
26 RESPONDING IN A VOLATILE AND DIVISIVE MANNER.

27 DO YOU SEE THAT?

28 A YES.

1 Q IT REFERS TO WHAT THIS WHOLE MEMO AFTER THAT
2 IS AN ASSESSMENT OF THE VARIOUS MEMBERS OF THE
3 MORTGAGE-BACKED SECURITIES GROUP, AND WHETHER IT BE
4 POSSIBLE TO RETAIN THEM AND HOW TO DO THAT, RIGHT?

5 A YES.

12:53PM

6 Q AND WAS IT A CONCERN THAT IF YOU -- IF
7 MR. GUNDLACH LEFT AND YOU REACHED OUT TO HIS PEOPLE AND
8 TRIED TO RETAIN HIM, THAT HE MIGHT REACT IN A VOLATILE
9 AND DIVISIVE MANNER?

10 A ABSOLUTELY.

12:54PM

11 Q YOU WERE ALSO ASKED QUESTIONS ABOUT THE
12 RETENTION OF THE CRISIS MANAGEMENT FIRM.

13 WAS THERE A NEWS ARTICLE THAT APPEARED
14 AROUND SEPTEMBER 1 THAT PLAYED INTO YOUR THINKING ABOUT
15 THE NEED TO GET A CRISIS MANAGEMENT FIRM?

12:54PM

16 A YES.

17 Q AND I BELIEVE THAT IS IN EVIDENCE,
18 EXHIBIT 5233.

19 DO YOU RECALL WHAT THAT ARTICLE WAS?

20 A IT WAS, OF ALL PLACES, IN THE *NEW YORK POST*,
21 AND IT TALKED ABOUT A POTENTIAL ACQUISITION BY KKR OF
22 TCW, OR THAT THEY WERE TALKING TO TCW.

12:54PM

23 Q WAS THERE ANYTHING --

24 MAYBE WE COULD ENLARGE THAT AT THE
25 BOTTOM. THE ARTICLE IS KIND OF EMBEDDED IN AN E-MAIL.

12:55PM

26 WAS THERE ANYTHING TO THAT RUMOR AT THE
27 TIME THERE WERE DISCUSSIONS WITH KKR ABOUT ACQUIRING
28 TCW?

1 A ABSOLUTELY NOT.

2 Q THIS WAS, SO FAR AS YOU KNEW, SOMETHING THAT
3 HAD NO BASIS AT ALL?

4 A NO BASIS AT ALL.

5 Q WAS THAT A CONCERN TO YOU ABOUT -- COULD YOU
6 TELL US WHETHER OR NOT THAT WAS A CONCERN TO YOU ABOUT
7 WHETHER YOU SHOULD GET P.R. COUNSEL?

12:55PM

8 A WE HAD BEEN IN THE PROCESS OF INTERVIEWING
9 P.R. COUNSEL FOR SOME TIME.

12:55PM

10 AND WHEN THE ARTICLE CAME, IT JUST
11 PRECIPITATED THE FACT THAT I REALIZED WE NEEDED IT.
12 AND TO GET COUNSEL ON BOARD.

13 Q BUT DID IT OCCUR TO YOU, ALSO, THAT IF
14 MR. GUNDLACH WERE TO LEAVE SUDDENLY, YOU NEED P.R.
15 COUNSEL FOR THAT AS WELL?

12:55PM

16 A ABSOLUTELY.

17 Q BECAUSE HE WAS THE PUBLIC FACE OF THE FIRM?

18 A TRUE.

19 Q JUST ONE FINAL THING.

20 MR. BRIAN ASKED YOU SOME QUESTIONS, AND
21 I THINK HE EVEN DID A DRAWING UP HERE YESTERDAY ABOUT
22 TESTIMONY YOU GAVE AT YOUR DEPOSITION ABOUT WHETHER
23 COST SAVINGS WERE A FACTOR VERSUS YOUR TESTIMONY AT
24 TRIAL, ABOUT WHETHER THE REASON FOR THE TERMINATION WAS
25 BEFORE COST SAVINGS.

12:56PM

12:56PM

26 DO YOU RECALL THAT?

27 A YES.

28 Q ALL RIGHT.

1 CAN YOU EXPLAIN THE DIFFERENCE IN YOUR
2 THINKING THERE, ABOUT WHY COST SAVINGS ON THE ONE HAND
3 WOULD BE A FACTOR IN YOUR DECISION MAKING, BUT WOULDN'T
4 BE THE REASON MR. GUNDLACH WAS LET GO?

5 A YES.

12:56PM

6 THE REASON WAS WHAT I'VE ALREADY STATED:
7 THAT WE FELT THAT WE WERE IN A VERY VULNERABLE POSITION
8 AND THE ENTIRE COMPANY COULD BE DESTROYED. THAT WAS
9 THE REASON.

10 WHEN I WAS ASKED WHETHER COST SAVINGS
11 WERE A FACTOR, I BELIEVE I SAID IT WAS A MINOR FACTOR,
12 IN THE SENSE OF BUFFERING SOME OF THE LOST BUSINESS WE
13 WERE CERTAIN TO ENTAIL.

12:56PM

14 I TOOK THOSE TWO QUESTIONS IN TWO VERY
15 DIFFERENT WAYS.

12:57PM

16 MR. QUINN: THANK YOU.

17 NOTHING FURTHER.

18 THE COURT: THANK YOU, MR. QUINN.

19 REDIRECT, MR. BRIAN?

20 MR. BRIAN: BRIEFLY, YOUR HONOR.

12:57PM

21
22 CROSS-EXAMINATION +

23 BY MR. BRIAN:

24 Q CAN YOU LOOK AT EXHIBIT 234. IT'S IN
25 EVIDENCE.

12:57PM

26 YOU CAN PUT THAT UP. ENLARGE THE BOTTOM
27 E-MAIL FROM JEAN PIERRE MUSTIER.

28 THIS IS THE E-MAIL YOU SENT TO

1 MR. MUSTIER ON THE 1ST OF AUGUST 2009, AFTER YOU HAD
2 LUNCH WITH ROBERT DAY, IS IT NOT?

3 A IT IS.

4 Q THAT'S THE SAME DAY YOU RECEIVED THAT E-MAIL
5 FROM JEAN-MARC CHAPUS THAT MR. QUINN JUST SHOWED YOU,
6 RIGHT? 12:58PM

7 A YES. AND THE DAY AFTER THE BUCHANAN STREET
8 MEETING.

9 Q DO YOU RECALL ANYTHING ABOUT THIS LUNCH
10 MEETING WITH MR. DAY? 12:58PM

11 A I -- THE ONLY THING I RECALL IS THAT I HAD THE
12 LUNCH MEETING AND WE PROBABLY TALKED ABOUT GENERAL
13 THINGS.

14 I DON'T SPECIFICALLY RECALL THAT. I
15 WOULD OFTEN HAVE LUNCH WITH MR. DAY. 12:58PM

16 Q I'LL GO TO THE CHART AND PUT NO RECALL.

17 MR. QUINN: IS THAT A QUESTION, YOUR HONOR?

18 THE COURT: I DON'T THINK THAT'S A QUESTION.

19 MR. QUINN: MOVE TO STRIKE.

20 THE COURT: I'LL STRIKE THE COMMENT. 12:58PM

21 MR. BRIAN: ACTUALLY, WHILE I'M UP HERE, I'LL
22 STAY UP HERE.

23 Q MR. QUINN ASKED YOU ABOUT THE VARIOUS
24 VALUATIONS OF TCW. I'LL PUT --

25 THE COURT: 2264? 12:59PM

26 MR. BRIAN: I THINK 6162, ISN'T IT?

27 THE COURT: 2262.

28 MR. BRIAN: 6162.

1 6164.

2 THE COURT: MARKED FOR IDENTIFICATION ONLY?

3

4 (EXHIBIT 6164 MARKED FOR I.D.) +

5

12:59PM

6 MR. BRIAN: YES.

7 Q I SHOWED YOU A DOCUMENT YESTERDAY, OR MAYBE
8 TODAY, WHERE CITI IN ITS PRELIMINARY VALUATION VALUED
9 TCW ON SEPTEMBER 12TH.

10

 MR. QUINN: THAT'S NOT IN EVIDENCE.

12:59PM

11

 MR. BRIAN: ACTUALLY, IT IS.

12

 THE COURT: THERE'S A DRAFT AND THERE'S A
13 FINAL REPORT. YOU'VE EACH USED A DIFFERENT ONE.

14

 MR. BRIAN: THEY'RE BOTH IN.

15

 MR. QUINN: OKAY. WITHDRAW.

12:59PM

16

 THE COURT: I BELIEVE THEY ARE BOTH IN.

17

BY MR. BRIAN:

18

 Q SEPTEMBER 12TH, CITIGROUP DID A PRELIMINARY
19 VALUATION AND HAD A VALUE OF 700- TO 800 MILLION,
20 RIGHT, SIR?

12:59PM

21

 A AGAIN, I DON'T BELIEVE I WAS ON THAT CHAIN.

22

 Q THAT WAS A DOCUMENT I SHOWED YOU TODAY, RIGHT?

23

 A EXCEPT THAT I WASN'T ON THAT.

24

 Q DID I SHOW YOU A DOCUMENT TODAY, DATED
25 SEPTEMBER 12TH, WHERE CITIGROUP DID A PRELIMINARY
26 VALUATION AND PUT THE VALUE AT 700- TO 800 MILLION?

01:00PM

27

 A YEAH, YOU SHOWED ME A DOCUMENT, BUT --

28

 Q YES?

1 A -- BUT I DON'T KNOW THAT DOCUMENT.

2 Q AND LATER, CITI DID A VALUATION FOR PURPOSE OF
3 PROJECT ANGEL AT A BILLION, RIGHT?

4 A THAT IS A DOCUMENT I'M FAMILIAR WITH, YES,
5 SIR.

01:00PM

6 Q AND MR. MUSTIER DID A BOOK VALUE ON -- IN MAY,
7 LATE MAY OF 2009, AND HAD IT AT 900 MILLION, RIGHT?

8 A WITH THE CONDITIONS THAT I INDICATED, YES.

9 Q ALL RIGHT.

10 AND WERE YOU AWARE THAT MET WEST, AS
11 PART OF THE TRANSACTION OF PROJECT ANGEL, VALUED TCW
12 BETWEEN 700- AND 900 MILLION?

01:00PM

13 A I BELIEVE THAT IN THE FINAL DEAL I -- I MAY BE
14 WRONG -- THAT THE VALUATION WAS A BILLION 250.

15 Q ARE YOU AWARE IN THE NEGOTIATIONS THEY TOOK
16 THE POSITION -- YES OR NO? -- THAT THE VALUE WAS 700-
17 TO 900-? ARE YOU AWARE OF THAT?

01:01PM

18 A I DON'T RECALL THAT, NO.

19 Q YOU PRIDE YOURSELF IN BEING A GOOD NEGOTIATOR,
20 DON'T YOU, SIR?

01:01PM

21 A I PRIDE MYSELF IN A LOT OF THINGS. I DON'T
22 KNOW WHETHER -- I DON'T EVEN KNOW HOW TO ANSWER THAT
23 QUESTION. SAY IT AGAIN.

24 Q DO YOU EVER NEGOTIATE BUSINESS DEALS, SIR?

25 A I DO.

01:01PM

26 Q DO YOU SOMETIMES END UP AT A DIFFERENT SPOT
27 THAN YOU START OUT?

28 A YES.

1 Q DID YOU MAKE A COUNTEROFFER TO MR. GUNDLACH IN
2 RESPONSE TO HIS OFFER ON SEPTEMBER 3RD?

3 A NO.

4 Q NOW, ONE OF THE FIRMS YOU MENTIONED, ONE OF
5 THE INVESTORS IN THE SMCF FUNDS WAS A SOUTH DAKOTA
6 PENSION FUND? IS THAT WHAT IT WAS?

01:02PM

7 A I THINK IT WAS A SEPARATE ACCOUNT, YES.

8 Q THAT WAS A --

9 A A SEPARATE PARTNERSHIP AGREEMENT, I MEAN.

10 Q THEY'RE ONE OF THE INVESTORS THAT RESPONDED
11 IMMEDIATELY IN RESPONSE TO THE LETTER THAT WENT OUT IN
12 EARLY DECEMBER ADVISING THE INVESTORS THAT MR. GUNDLACH
13 HAD BEEN RELIEVED OF HIS RESPONSIBILITIES, CORRECT?

01:02PM

14 A I DON'T REMEMBER ALL THE INVESTORS, BUT,
15 AGAIN, IF YOU'LL SHOW IT TO ME, I'LL --

01:02PM

16 Q EXHIBIT 6049 IN EVIDENCE, PAGE 1. 6049.
17 MS. URBELIS' E-MAIL DATED DECEMBER 5TH
18 IN THE MIDDLE, CORRECT?

19 A YES.

20 Q 6049, PAGE 8.

01:03PM

21 I WANT TO ASK, DENNIS, TO ENLARGE SO
22 PEOPLE CAN SEE IT.

23 WHAT THE SOUTH DAKOTA FOLKS SAID:

24 I SPOKE WITH SOUTH DAKOTA AND
25 THEY WANT OUT OF SMC THEIR SEPARATE
26 ACCOUNT AND SMCF II AND PPIP
27 IMMEDIATELY.

01:03PM

28 MR. STERN, THERE'S BEEN TESTIMONY

1 ABOUT -- INCLUDING FROM YOU -- ABOUT HEARING THAT
2 MR. GUNDLACH HAD TALKED TO WAMCO ABOUT LEAVING TCW.

3 DO YOU RECALL THAT?

4 A YES.

5 Q AT ANY TIME PRIOR TO DECEMBER 4TH, 2009, DID
6 MR. GUNDLACH LEAVE TCW?

01:04PM

7 A DID HE LEAVE TCW?

8 Q YEAH.

9 A NO.

10 MR. BRIAN: NOTHING FURTHER.

01:04PM

11 THE COURT: ANYTHING ELSE, MR. QUINN?

12 MR. QUINN: YES.

13

14 FURTHER REDIRECT EXAMINATION +

15 BY MR. QUINN:

01:04PM

16 Q DID SOME OF THOSE INVESTORS USE THE OCCASION
17 OF MR. GUNDLACH'S LEAVING AS AN EFFORT TO TRY TO
18 NEGOTIATE?

19 A YES.

20 Q MR. BRIAN JUST ASKED YOU A QUESTION ABOUT WHAT
21 HE SAID WAS A PRELIMINARY CITIBANK VALUATION, WHICH HE
22 SAID HE HAD SHOWN YOU EARLIER TODAY.

01:04PM

23 DO YOU RECALL THAT QUESTION?

24 A YES.

25 Q LET'S TAKE A LOOK AT THAT. IT'S NOT IN
26 EVIDENCE. 5269-1.

01:04PM

27 I OFFER IT, YOUR HONOR.

28 MR. BRIAN: WHERE IS IT, JOHN?

1 MR. QUINN: 5269-1.

2 MR. BRIAN: I NEED TO SEE IT.

3 THE COURT: ALL RIGHT. 5269 WILL BE ADMITTED.

4 MR. BRIAN: IT'S ALREADY IN.

5 THE COURT: WE'RE TALKING TWO DIFFERENT

6 DOCUMENTS, I THINK.

01:05PM

7

8 (EXHIBIT 5269-1 ADMITTED.) +

9

10 THE COURT: I WAS TALKING ABOUT ANOTHER

11 DOCUMENT.

01:05PM

12 MR. BRIAN: NO OBJECTION TO 5269.

13 MR. QUINN: LET'S PUT IT UP ON THE SCREEN.

14 THE COURT: YES, IT IS. IT WILL BE ADMITTED.

15 BY MR. QUINN:

01:05PM

16 Q THIS IS THE DOCUMENT MR. BRIAN SHOWED YOU THIS
17 MORNING?

18 A YES.

19 Q AND THIS IS -- DO YOU RECOGNIZE SOME OF THESE
20 NAMES HERE UP AT THE TOP, THE PEOPLE WHO ARE ON THIS?

01:05PM

21 A YES. IT'S -- I THINK THEY'RE ALL -- I DON'T
22 RECOGNIZE ANYBODY FROM TCW. THEY ALL APPEAR TO BE
23 PEOPLE FROM CITI.

24 Q THESE ARE -- ARE THESE INTERNAL CITI PEOPLE?

25 A YES.

01:05PM

26 Q SO WE'RE LOOKING AT AN E-MAIL, WHICH IS
27 INTERNAL CITI PEOPLE, STAFF MEMBERS, TALKING TO
28 INTERNAL CITI STAFF MEMBERS, CORRECT?

1 A YES.

2 Q WHAT THESE INTERNAL -- THIS IS NOT, BY THE
3 WAY, THIS IS NOT THE PRELIMINARY HIGH LIFE REPORT AS
4 MR. BRIAN SAID, IS IT?

5 A NO.

01:06PM

6 Q WHAT THIS -- WHAT THESE STAFF MEMBERS SAY AND
7 THEY'RE TALKING TO EACH OTHER IS:

8 THE PRELIMINARY VALUATION RANGE
9 FOR HIGH LIFE IS 700- TO 800
10 MILLION, CORRECT.

01:06PM

11 A YES.

12 Q THAT'S WHAT MR. BRIAN WROTE UP HERE, WHEN THE
13 CITI STAFF PEOPLE WERE TALKING TO EACH OTHER, THE
14 PRELIMINARY VALUATION RANGE.

15 RIGHT?

01:06PM

16 A YES.

17 Q EVEN THAT, IF WE LOOK AT THE NEXT BULLET, WHAT
18 DO THEY SAY THERE, MR. STERN?

19 A THE ONE THAT STARTS WITH, NOTE:

20 NOTE: WE'VE ADJUSTED VALUATION
21 TO REFLECT FINANCIAL EFFECTS OF
22 ANTICIPATED 700 MILLION DIVIDEND TO
23 SG.

01:06PM

24 Q WHAT DOES THAT MEAN?

25 A THAT MEANS THAT THEY'VE BASICALLY TAKEN
26 THEIR -- THEIR ASSUMPTION REMOVED, I GUESS, CASH OR
27 CASH AND STOCK OUT, OFF THE BALANCE SHEET TO LOWER IT
28 TO THAT RANGE.

01:07PM

1 Q AND IN THE ACTUAL CITI REPORT, THE VALUATION
2 THAT CITIBANK ARRIVED AT \$1 MILLION?

3 A BILLION, YES.

4 Q ONE BILLION. THANK YOU.

5 MR. BRIAN: TAKE A LOOK AT EXHIBIT 1940,
6 PLEASE. IT'S IN EVIDENCE.

01:07PM

7 WE CAN PUT THAT UP AND GET IT A LITTLE
8 BIGGER.

9 SEE WHERE IT SAYS: THE MAIN ISSUE?
10 THE THIRD PARAGRAPH DOWN.

01:07PM

11 I ASKED YOU ABOUT THIS E-MAIL YESTERDAY.
12 YOU UNDERSTOOD --

13 A EXCUSE ME ONE SECOND.

14 THE COURT: WHAT IS THE EXHIBIT NUMBER?

15 THE WITNESS: CAN YOU GIVE ME IT, PLEASE.

01:08PM

16 MR. BRIAN: I'M SORRY. I COULD GIVE HIM A
17 COPY.

18 MAY I APPROACH, YOUR HONOR?

19 THE COURT: YES, YOU MAY.

20 THE WITNESS: THANK YOU.

01:08PM

21 BY MR. BRIAN:

22 Q THIS E-MAIL WAS FORWARDED TO YOU BY MUSTIER,
23 RIGHT?

24 A THAT'S WHAT IT SAYS.

25 Q YOU UNDERSTOOD, OR LEARNED AT THE TIME, THAT
26 THE PORTFOLIO MANAGERS IN FEBRUARY 2007 BELIEVED THAT
27 THE FIRM WAS WORTH SUBSTANTIALLY LESS THAN THE
28 \$1 BILLION STRIKE PRICE.

01:08PM

1 I S N ' T T H A T T R U E ?

2 A T H A T ' S -- I N T H E O P T I O N P L A N , W H I C H I S
3 S O M E T H I N G Q U I T E D I F F E R E N T , B U T Y E S .

4 Q N O W , I D O N ' T K N O W I F Y O U H A V E I T I N F R O N T O F
5 Y O U N O W -- T H E Y M A Y H A V E R E M O V E D I T -- B U T T H E
6 C I T I G R O U P S T A F F E R S T H A T M R . Q U I N N R E F E R R E D T O A R E T H E
7 S A M E F O L K S T H A T W E R E W O R K I N G I N C O N N E C T I O N W I T H T H I S
8 C I T I G R O U P R E V I E W O F T H E F I R M A S R E F L E C T E D I N
9 E X H I B I T 2 1 5 3 ; I S N ' T T H A T R I G H T , S I R ?

01:09PM

10 A D O Y O U H A V E T H E C I T I G R O U P S T A F F E R S O N T H E R E ?

01:09PM

11 Q Y O U U N D E R S T O O D M R . S H E D L I N W A S N O T W O R K I N G
12 A L O N E ; I S N ' T T H A T R I G H T , S I R ?

13 A N O , O F C O U R S E .

14 Q Y O U U N D E R S T O O D H E H A D F O L K S H E W A S R E L Y I N G O N
15 T O P R O V I D E H I M W I T H I N F O R M A T I O N A B O U T T H E V A L U E O F T H E
16 F I R M ; I S N ' T T H A T R I G H T ?

01:09PM

17 A Y E S .

18 Q T A K E A L O O K A T E X H I B I T 2 1 5 3 , P A G E 8 .

19 I F W E C O U L D P U T T H A T U P , D E N N I S .

20 D O Y O U H A V E I T ? G R E A T . T H A N K Y O U .

01:09PM

21 I S I T N O T T R U E , T H A T P A R T O F T H E M A N D A T E
22 T H A T Y O U G A V E T O C I T I G R O U P I N J U N E O R J U L Y O F 2 0 0 9 W A S
23 T O A N A L Y Z E T H E P O T E N T I A L S A L E O F T H E F I R M ?

24 A I T ' S N O T T R U E .

25 Q S O T H E Y J U S T G O T I T W R O N G ?

01:10PM

26 A N O . Y O U S A I D I G A V E T H E M A N D A T E T O T H E M .

27 T H I S W A S A M A N D A T E T H A T W A S D O N E T O
28 C O V E R A L L S C E N A R I O S . A N D T H A T W A S T H E -- T H A T W A S T H E

1 MANDATE. I DIDN'T GIVE THEM THE MANDATE.

2 Q THAT'S THE MANDATE THAT WENT OUT IN CONNECTION
3 WITH MR. ATTANASIO'S CONSULTATION WITH JEAN PIERRE
4 MUSTIER, RIGHT?

5 A YES.

01:10PM

6 Q THAT MANDATE INCLUDED CONSIDERING THE
7 POTENTIAL SALE OF THE FIRM, DIDN'T IT?

8 A THAT MANDATE DID, YES.

9 MR. BRIAN: NO FURTHER QUESTIONS.

10 THE COURT: ANYTHING ELSE?

01:10PM

11 MR. QUINN: NOTHING FURTHER.

12 THE COURT: ALL RIGHT, MR. STERN, YOU'RE A
13 LUCKY MAN. YOU'RE FINISHED AND YOU MAY STEP DOWN.

14 THE WITNESS: THANK YOU.

15 WITH GREAT PLEASURE, SIR. THANK YOU.

01:10PM

16 THE COURT: THANK YOU.

17 (PAUSE) +

18
19 THE COURT: MR. QUINN, YOU MAY CALL YOUR NEXT
20 WITNESS.

01:11PM

21 MR. QUINN: THANK YOU, YOUR HONOR.

22 TCW CALLS DUKE HAGER.

23 THE CLERK: RAISE YOUR RIGHT HAND TO BE SWORN.

24
25 DUKE HAGER +

26 CALLED AS A WITNESS BY THE PLAINTIFF WAS SWORN AND
27 TESTIFIED AS FOLLOWS:

28 ///

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

01:11PM

6 THE WITNESS: YES, I DO.

7 THE CLERK: THANK YOU. PLEASE BE SEATED.

8 SIR, PLEASE STATE AND SPELL YOUR NAME
9 FOR THE RECORD.

10 THE WITNESS: DUKE HAGER, D-U-K-E H-A-G-E-R.

01:11PM

11 THE CLERK: THANK YOU.

12 THE COURT: GOOD MORNING, MR. -- GOOD
13 AFTERNOON, MR. HAGER.

14 THE WITNESS: GOOD MORNING, SIR.

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

01:12PM

16 MR. QUINN: THANK YOU, YOUR HONOR.

17
18 DIRECT EXAMINATION +

19 BY MR. QUINN:

20 Q GOOD AFTERNOON, MR. HAGER.

01:12PM

21 BY WHOM ARE YOU EMPLOYED?

22 A TRUST COMPANY OF THE WEST.

23 Q WHAT IS YOUR POSITION THERE?

24 A I AM SENIOR VICE PRESIDENT IN A DEPARTMENT
25 CALLED CLIENT FUND REPORTING.

01:12PM

26 Q WHAT IS IT YOU DO IN THAT POSITION?

27 A I ESSENTIALLY SERVE TWO ROLES, ONE -- ONE
28 CAPACITY I OVERSEE THE FIXED INCOME OPERATIONS THAT TCW

1 OUTSOURCED TO BANK OF NEW YORK MELLON.

2 IN THAT ROLE I PARTICIPATE IN ACCOUNT
3 SET-UPS, HELPING TO RESOLVE ANY TRADE OR RECONCILIATION
4 ISSUES FOR THE ACCOUNTS.

5 AND REVIEW AND APPROVING FINANCIAL
6 STATEMENTS.

01:12PM

7 ADDITIONALLY, I'M POINT OF CONTACT FOR
8 TCW EMPLOYEES RELATING TO THOSE FIXED INCOME ACCOUNTS.
9 SO, FOR NEW OR EXISTING CLIENTS I MAY PARTICIPATE IN
10 CLIENT PRESENTATIONS.

01:12PM

11 AND I DO ANALYSIS FOR THE PORTFOLIO
12 MANAGERS AS IT RELATES TO CLIENT OR CLIENT ACCOUNTS.

13 Q DO YOU HAVE A UNIVERSITY DEGREE?

14 A YES. I GRADUATED 1990 FROM OHIO STATE
15 UNIVERSITY WITH DEGREES IN ACCOUNTING AND FINANCE.

01:13PM

16 Q HAVE YOU WORKED IN THE FINANCIAL FIELD YOUR
17 ENTIRE CAREER?

18 A YES, I HAVE.

19 Q YOU WORKED AT BANK OF NEW YORK MELLON?

20 A YES, I DID.

01:13PM

21 Q I UNDERSTAND YOU WORKED AT WAMCO?

22 A YES, I DID.

23 Q WE'VE HEARD A LOT ABOUT --

24 A FOR FIVE YEARS, YES, I DID.

25 Q ALTOGETHER, I UNDERSTAND YOU'VE BEEN AT TCW
26 FOR TWO DIFFERENT STINTS, TWO DIFFERENT PERIODS OF
27 TIME?

01:13PM

28 A THAT'S CORRECT. YES, SIR, I WAS WITH TCW FOR

1 TEN YEARS. LEFT FOR EIGHT.

2 AND THEN RETURNED. I'VE BEEN BACK FOR
3 THREE YEARS NOW.

4 Q NOW, IS PART OF YOUR JOB RESPONSIBILITY
5 OVERSEEING THE BANK OF NEW YORK MELLON'S CALCULATION OF
6 NUMBERS ON SOMETHING CALLED THE WATERFALL? IS THAT
7 PART OF WHAT -- OF WHAT YOU DO?

01:13PM

8 A YES. YES, THEY PRODUCE A MONTHLY WATERFALL
9 FOR OUR CLOSED-IN ACCOUNTS, SPECIAL MORTGAGE CREDIT
10 ACCOUNTS, SO I WILL REVIEW THOSE MONTHLY.

01:13PM

11 Q WHAT IS A WATERFALL CALCULATION?

12 A IT'S A TERM WE USE FOR -- TO CALCULATE THE
13 CARRIED INTERESTS. SO WE WILL ANALYZE THE -- WE'LL
14 ANALYZE THE ACCOUNT TO DETERMINE IF WE SHOULD BE
15 ACCRUING A CARRIED INTEREST OR PERFORMANCE FEE FOR
16 TRUST COMPANY OF THE WEST, GENERAL PARTNER EACH MONTH.

01:14PM

17 Q SO WHEN WE'RE TALKING ABOUT CARRIED INTEREST,
18 HEARING YOUR TESTIMONY WITH RESPECT TO THE SPECIAL
19 MORTGAGE CREDIT FUND, WE'D BE TALKING ABOUT AMOUNTS
20 THAT ARE ACCRUED ON THE BOOKS AS OPPOSED TO AMOUNTS
21 ACTUALLY REALIZED AND PAID?

01:14PM

22 A THAT'S RIGHT, ACCRUED.

23 Q WHY IS IT YOU DO THESE WATERFALL CALCULATIONS?

24 A WELL, IT IS A -- A GAAP REQUIREMENT THAT FOR
25 ACCRUAL ACCOUNTING THAT WE WOULD GO THROUGH THIS
26 CALCULATION. BUT, ALSO, IT'S SO THAT WE CAN ACCRUE THE
27 ALLOCATION IF IT IS NECESSARY FOR THE GENERAL PARTNER.

01:14PM

28 AND IT ALSO ENSURES THAT THE MONTHLY

1 CLIENT STATEMENTS THAT WE PRODUCE FOR OUR CLIENTS ARE
2 ACCURATE.

3 Q SO DOES THIS SHOW ACCRUALS FOR BOTH WHAT WE'VE
4 HEARD REFERRED TO AS CARRIED INTEREST OR INCENTIVE FEES
5 AND MANAGEMENT FEES AS WELL?

01:15PM

6 A YES.

7 Q AND HOW OFTEN ARE THESE CALCULATIONS DONE?

8 A MONTHLY.

9 Q DOES THE WATERFALL INCLUDE BOTH THE SPECIAL
10 MORTGAGE CREDIT FUND I, SPECIAL MORTGAGE CREDIT FUND
11 II, AND WHAT WE'VE HEARD ABOUT CALLED THE SOUTH DAKOTA
12 SPECIAL CREDIT FUND --

01:15PM

13 A THAT'S RIGHT.

14 Q ALL THREE OF THEM?

15 A YES.

01:15PM

16 Q IS CASH NOW ACTUALLY DISTRIBUTED TO TCW OR THE
17 INVESTORS, BASED ON THESE WATERFALL CALCULATIONS?

18 A NO, IT'S NOT.

19 Q WHY NOT?

20 A IT'S A LIQUIDATION ANALYSIS, SO IT'S A PROCESS
21 THAT WE GO THROUGH TO DETERMINE IF THE ACCOUNT WERE TO
22 LIQUIDATE ON THAT DAY, WHAT THE ACCRUED AMOUNT WOULD BE
23 FOR THE GENERAL PARTNER.

01:15PM

24 Q WHY BOTHER DOING THAT? SOUNDS HYPOTHETICAL.

25 A AGAIN, IT'S TO CONFORM WITH ACCOUNTING RULES,
26 AND ALSO TO ENSURE THAT CLIENT ACCOUNTS ARE ACTIVELY --
27 ARE ACCURATELY REFLECTING THEIR MONTH IN MARKET VALUE.

01:15PM

28 Q YOU REFER TO GAAP. COULD YOU EXPLAIN WHAT

1 THAT IS.

2 A GENERALLY ACCEPTED ACCOUNTING PRINCIPLES OF
3 THE UNITED STATES.

4 Q IS DOING THIS, THIS WATERFALL CALCULATION
5 SOMETHING THAT'S REQUIRED BY GAAP IN ORDER TO REFLECT
6 THE ACCRUALS APPROPRIATELY --

01:16PM

7 A IT IS.

8 Q -- ON THE BOOKS?

9 A YES, IT IS.

10 Q WHO -- WHO ARE THE ASSETS ALLOCATED TO, AS A
11 RESULT OF THIS WATERFALL CALCULATION?

01:16PM

12 A THE GENERAL PARTNER AND THE LIMITED PARTNERS.

13 Q IN THESE FUNDS THAT WE'RE TALKING ABOUT, THE
14 SPECIAL MORTGAGE CREDIT FUNDS I AND II AND THE
15 SOUTH DAKOTA FUND, WHO IS THE GENERAL PARTNER?

01:16PM

16 A TCW.

17 Q WHAT ARE THE DIFFERENT COMPONENTS OF THE
18 WATERFALL?

19 A WE TAKE IT THROUGH FOUR STEPS.

20 FIRST, WE HAVE TO ENSURE THAT THERE'S
21 SUFFICIENT VALUE -- FIRST, WE START OFF WITH A VALUE
22 THAT'S SUBJECT TO THE WATERFALL CALCULATION.

01:16PM

23 AND INITIALLY WE HAVE TO ENSURE THAT WE
24 CAN RETURN THE CONTRIBUTED CAPITAL BACK TO THE
25 INVESTORS.

01:17PM

26 AND IF THAT TEST IS MET, WE HAVE TO
27 ENSURE THAT WE CAN PROVIDE A 6 PERCENT RETURN TO THE
28 INVESTORS.

1 AND IF THAT TEST IS MET, THEN TCW WOULD
2 EARN THEIR CARRY. AND IN THIS CASE WE WOULD ACCRUE
3 THAT PORTION FOR THE GENERAL PARTNER, TCW, AND IF
4 THERE'S CASH REMAINING AFTER THAT, IT WOULD BE SPLIT
5 BETWEEN THE GENERAL PARTNER AND THE LIMITED PARTNERS.

01:17PM

6 Q ALL RIGHT.

7 IS THAT KIND OF THE TERMS OF THESE
8 INVESTMENTS THAT THE INVESTOR HAS TO GET ALL THEIR
9 MONEY BACK FIRST?

10 THEN A 6 PERCENT RETURN?

01:17PM

11 AND THEN AFTER THAT, THERE WOULD BE SOME
12 SHARING OF ANY AMOUNTS OVER THAT WITH --

13 A THAT'S RIGHT. THOSE ARE DETAILS IN THE
14 CONTRACT.

15 Q ARE YOU AWARE OF WHETHER TCW MADE ANY CHANGES
16 TO THE GOVERNING AGREEMENTS, CONTRACTS WITH INVESTORS
17 WITH RESPECT TO THE SPECIAL MORTGAGE CREDIT I, SPECIAL
18 MORTGAGE CREDIT II, AND THE SOUTH DAKOTA FUNDS AFTER
19 MR. GUNDLACH LEFT TCW?

01:17PM

20 A YES.

01:18PM

21 THERE WAS A REDUCTION OF MANAGEMENT FEE
22 FROM 2 PERCENT TO 1 PERCENT.

23 THERE WAS A 75 PERCENT REDUCTION IN
24 CARRIED INTEREST FROM 20 PERCENT AND 5 PERCENT.

25 AND, ALSO, THE TWO FUNDS, SPECIAL
26 MORTGAGE CREDIT FUND I AND II WHERE EACH SPLIT INTO
27 SERIES, THREE SERIES, A, B, AND C, WITH C AFFORDING
28 THOSE INVESTORS A LIQUIDATION.

01:18PM

1 Q SO, WHEN YOU SAY THEY WERE SPLIT INTO
2 DIFFERENT SERIES TO AFFORD SOME INVESTORS A
3 LIQUIDATION, WHAT DO YOU MEAN BY THAT?

4 A THE INVESTORS WHO CHOSE SERIES C, WE WOULD
5 LIQUIDATE THEIR INVESTMENT OVER THE NEXT SIX-MONTH
6 PERIOD.

01:18PM

7 INVESTORS WHO CHOSE OPTION A AND B WOULD
8 REMAIN IN THE FUND.

9 Q IS THAT OPTION TO GET OUT -- WAS THAT OPTION
10 TO GET OUT EARLY THAT WASN'T AVAILABLE UNDER THE
11 EXISTING DOCUMENTS?

01:18PM

12 A THAT'S RIGHT.

13 Q AFTER THOSE CHANGES WERE MADE, WERE YOU ASKED
14 TO PREPARE CALCULATIONS COMPARING THE MANAGEMENT FEES
15 AND THE CARRIED INTERESTS OR INCENTIVE FEES THAT TCW
16 WOULD HAVE ACCRUED IF NO CHANGES HAD BEEN MADE?

01:19PM

17 A YES.

18 Q AND DID YOU PREPARE THOSE CALCULATIONS,
19 COMPARING WHAT IT WOULD HAVE BEEN LIKE UNDER THE OLD
20 CONTRACT AND WHAT IT WOULD HAVE BEEN LIKE UNDER THE
21 AMENDED CONTRACT?

01:19PM

22 A YES.

23 Q WERE YOU ALSO ASKED TO PREPARE CALCULATIONS OF
24 THE ACTUAL AMOUNTS OF MANAGEMENT FEES THAT WERE
25 RECEIVED BY TCW?

01:19PM

26 A YES.

27 Q AND WHO ASKED YOU TO DO THESE VARIOUS
28 CALCULATIONS?

1 A I WAS ASKED BY COUNSEL.

2 Q AND DID YOU COMMUNICATE WITH ANYONE IN DOING
3 THIS WORK? DID YOU HAVE THE ASSISTANCE OR GET SOME
4 INPUT FROM OTHER PEOPLE?

5 A SURE. YEAH. 01:19PM

6 Q WHO WAS THAT?

7 A PRIMARILY, THROUGH -- SPOKE WITH BRYAN WHALEN.

8 Q WHO'S MR. WHALEN?

9 A PORTFOLIO MANAGER FOR TCW WHO MANAGES THE
10 SPECIAL MORTGAGE CREDIT FUNDS. 01:19PM

11 Q ANYONE ELSE?

12 A DAVID SPRING, WHO WORKS WITH ANDERS SMITH AT
13 BROADSTREET, AS WELL AS JOHN HAUT AND JOHN HIRSHLEIFER
14 FROM CRA, WHO IS WORKING WITH PROFESSOR CORNELL.

15 Q NOW, BASED ON YOUR CONVERSATIONS WITH THESE 01:20PM
16 PEOPLE, DID YOU HAVE SOME ASSUMPTIONS ABOUT WHAT
17 WATERFALL CALCULATIONS YOU SHOULD MAKE AND BASED ON
18 WHAT ASSUMED RETURNS?

19 A YEAH. INITIALLY, WE DISCUSSED 12 PERCENT
20 RETURN FOR SMCF I, AND 13 PERCENT RETURN FOR SMCF II,
21 AND 16 PERCENT FOR THE SOUTH DAKOTA FUND. 01:20PM

22 Q WHY DID YOU USE THOSE PROJECTIONS FOR THOSE
23 TWO FUNDS AND -- FOR THOSE THREE FUNDS I MEAN?

24 A THEY SEEMED REASONABLE FROM SOME ANALYSIS WE
25 DID, THAT WE HAD LOOKED AT AT THAT POINT IN TIME. 01:20PM

26 Q AND WERE YOU LATER ASKED TO RUN ANOTHER
27 WATERFALL CALCULATION --

28 A YES.

1 Q -- AFTER YOU DID THAT?

2 A YES.

3 Q AND WHY DID YOU DO THAT?

4 A THERE WAS A MISUNDERSTANDING IN THE INITIAL
5 CALCULATION. SO WE WENT TO -- I KNOW, PROFESSOR
6 CORNELL HAD SPOKEN WITH OTHERS. AND WE WANTED TO USE
7 THE ACTUALS FROM 2010 AND THEN 13 PERCENT RETURNS
8 PROJECTED FOR 2011 AND 2012.

01:20PM

9 Q NOW, PROFESSOR CORNELL IS AN EXPERT WITNESS
10 REGARDING DAMAGES WHO'S BEEN RETAINED BY TCW TO TESTIFY
11 IN THIS CASE.

01:21PM

12 A THAT'S WHAT I UNDERSTAND.

13 Q AND YOU SAY THAT YOU RE-RAN THE NUMBERS
14 BECAUSE THERE HAD BEEN A MISCOMMUNICATION?

15 A YEAH.

01:21PM

16 Q AND SO WHEN YOU RE-RAN THE NUMBERS, WHAT
17 ASSUMED INCREASES DID YOU ASSUME FOR THOSE THREE YEARS?

18 A 13 PERCENT FOR 2011.

19 AND 13 PERCENT FOR 2012.

20 Q WHAT DID YOU USE FOR 2010?

01:21PM

21 A THE ACTUAL, ACTUAL RETURN.

22 Q THAT DATA?

23 A THAT DATA HAD ALREADY BEEN ACHIEVED, YES.

24 Q WHY WOULD YOU USE 13 PERCENT? WHY WOULD THAT
25 SEEM LIKE A DEFENSIBLE OR REASONABLE NUMBER?

01:21PM

26 A WELL, BETWEEN THE PORTFOLIO MANAGER, MYSELF,
27 AND DAVID, WE HAD ANALYZED THE FINANCIAL STATEMENTS,
28 JUST LOOKING AT THE RETURN ON INCOME FOR THE

1 PORTFOLIOS.

2 AND THAT SEEMED TO BE A VERY REASONABLE,
3 IF NOT CONSERVATIVE, RETURN BECAUSE WE DID NOT CONSIDER
4 ANY PRICE APPRECIATION.

5 Q WHAT DO YOU MEAN BY THAT? 01:22PM

6 A NO INCREASES THAT WE -- ASSUMED THE PRICES
7 WILL BE FLAT; THE PRICES WOULD REMAIN FOR 2011, 2012 AS
8 THEY WERE TODAY.

9 WHICH WAS -- CERTAINLY SEEMED
10 UNREASONABLE TO US, BUT WE WANTED TO TAKE A
11 CONSERVATIVE APPROACH. 01:22PM

12 Q YOU WOULD REGARD THAT AS MORE CONSERVATIVE --

13 A EXTREMELY CONSERVATIVE.

14 Q -- IN ASSUMING NO PRICE APPRECIATION?

15 A YES. 01:22PM

16 Q SO THE 13 PERCENT THAT YOU ASSUMED FOR THOSE
17 TWO YEARS, WHAT DOES THAT CONSIST OF, AND HOW DO YOU
18 GET TO IT?

19 A AGAIN, THAT WAS VERY CLOSE TO THE NUMBERS WE
20 CAME UP WITH, JUST ANALYZING THE RETURN ON INTEREST. 01:22PM
21 AS A MATTER OF FACT, IT WAS EVEN UNDER FOR SOME OF THE
22 FUNDS, BUT WE WANTED TO GO WITH MORE CONSERVATIVE
23 RETURN.

24 Q WHEN YOU SAY IT WAS VERY CLOSE TO WHAT YOU
25 JUST CAME TO USING A RETURN ON INTEREST OR THE
26 INTEREST, WHAT DO YOU MEAN BY THAT? 01:22PM

27 A THAT WAS THE RETURN THAT MR. WHALEN AND
28 MR. SPRING AND I HAD DISCUSSED EARLIER.

1 Q AND DID YOU ALSO TAKE INTO ACCOUNT SOMETHING
2 ABOUT, YOU KNOW, YOU WOULD GET MORE THAN THE PRINCIPAL,
3 YOU'D GET 100 PERCENT OF THE PRINCIPAL BACK WHEN THAT
4 WASN'T BUILT IN THE ORIGINAL PRICE?

5 A THERE ARE REALIZED GAINS ON THE PRINCIPAL AS
6 WELL.

01:23PM

7 Q DID YOU TAKE -- THOSE ARE ALREADY EMBEDDED IN
8 THE PORTFOLIO?

9 A THAT'S ANOTHER COMPONENT WE CONSIDERED AS
10 WELL, YES.

01:23PM

11 Q WOULD YOU PLEASE TAKE A LOOK AT EXHIBIT 22667,
12 WHICH I HOPE IS BEFORE YOU THERE. AT LEAST ON THE
13 SCREEN.

14 CAN YOU IDENTIFY THIS FOR US.

15 A YES.

01:23PM

16 THIS IS THE -- THESE ARE THE RESULTS OF
17 THE ANALYSIS REGARDING THE FUNDS UNDER THE ORIGINAL
18 TERMS.

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

20 MR. HELM: OBJECT.

01:23PM

21 LACK OF LACK OF FOUNDATION. THESE ARE
22 MONEYS OWED TO TCW AS OPPOSED TO OTHER ENTITIES.

23 THE COURT: OVERRULED. I'LL ADMIT IT
24 PROVISIONALLY, SUBJECT TO TAKING THE ISSUE UP LATER.

01:24PM

25
26 (EXHIBIT 22667 ADMITTED.) +

27
28 ///

1 BY MR. QUINN:

2 Q WHAT ARE WE LOOKING AT HERE ON THIS FIRST PAGE
3 HERE, EXHIBIT 2267.

4 A THIS FIRST PAGE, SO FOR SMCF I AND II, SINCE
5 THEY HAD BEEN SPLIT INTO THREE SERIES, WE HAD TO
6 RECONSTRUCT THOSE PORTFOLIOS AS IF THEY NEVER SPLIT,
7 BASED ON THE DATA WE HAD PRIOR TO THE SPLIT.

01:24PM

8 SO, WHAT THIS LOOKS AT IS UNDER THOSE
9 TERMS AND UNDER THE ORIGINAL TERMS UNDER 2 PERCENT
10 MANAGEMENT FEE AND 20 PERCENT CARRIED INTEREST, THESE
11 ARE THE NUMBERS THAT WE PROJECTED WE WOULD HAVE EARNED
12 FOR MANAGEMENT FEES IN 2010, -11, AND -12.

01:24PM

13 AND THE PROJECTED ACCRUAL FOR TCW AT
14 2012 FOR EACH OF THE FUNDS.

15 Q RIGHT.

01:24PM

16 SO, WHAT WAS THE SOURCE OF THIS DATA
17 THAT YOU USED IN THIS CALCULATION?

18 A IT STARTED OFF WITH, AGAIN, THE FINANCIAL DATA
19 WE HAD AVAILABLE JUST PRIOR TO THE SPLIT OF THESE
20 FUNDS.

01:25PM

21 AND THEN RECONSTRUCTING THE PORTFOLIOS
22 BASED ON THAT.

23 Q WHY DID YOU PROJECT BOTH PERFORMANCE AND
24 CARRIED INTEREST TO 2012?

25 A THAT WAS THE DAY WE WERE ASKED TO, AND IT
26 SEEMED LIKE THAT SEEMED TO BE A REASONABLE DATE WHEN
27 THEY MAY LOOK TO PROBABLY LIQUIDATE THE FUND.

01:25PM

28 Q AND DO YOU KNOW WHETHER OR NOT THIS DATA

1 HAS -- WAS PROVIDED TO THE DEFENDANTS IN THIS CASE AS
2 WELL?

3 A I PRESENTED THIS DATA TO OUR COUNSEL, SO I
4 ASSUMED IT'S BEEN HANDED OVER TO THE OTHER --

5 Q ARE THESE NUMBERS ACTUAL NET TO TCW; IN OTHER 01:25PM
6 WORDS, AFTER ANY ACCRUALS FOR LIMITED PARTNERS?

7 MR. HELM: VAGUE AND AMBIGUOUS WHAT HE MEANS
8 BY TCW.

9 THE COURT: SUSTAINED.

10 BY MR. QUINN: 01:26PM

11 Q I MEAN, ARE THESE ACTUALLY NUMBERS NET TO THE
12 TCW ENTITY, WHICH IS THE PARTNER IN THESE FUNDS?

13 A YEAH, THE MANAGEMENT FEE.

14 MR. HELM: FOUNDATION OF WHO THAT PARTNER IS,
15 COULD WE GET -- 01:26PM

16 THE COURT: NO. I DON'T THINK THAT'S AN
17 OBJECTION, QUITE FRANKLY.

18 ANSWER THE QUESTION.

19 THE WITNESS: THE MANAGEMENT FEE NUMBERS ARE
20 NUMBERS THAT WE ASSUMED THEY WOULD HAVE RECEIVED OVER 01:26PM
21 THOSE PERIODS BASED ON THE ORIGINAL TERMS OF THE
22 CONTRACT.

23 Q SO ARE THESE BEFORE OR AFTER -- I MEAN, IN
24 TERMS OF THE INCENTIVE FEE NUMBERS, ARE THEY BEFORE OR
25 AFTER -- 01:26PM

26 A THE MANAGEMENT FEES ARE BEFORE THE INCENTIVE
27 FEES.

28 THE INCENTIVE FEES IS THE ACCEPTED A --

1 EXPECTED ACCRUAL FOR 2012.

2 Q 2010, WHAT DID YOU CALCULATE TCW WOULD RECEIVE
3 IN MANAGEMENT FEES FOR SMCF I?

4 MR. HELM: VAGUE AND AMBIGUOUS WHAT TCW MEANS.

5 THE COURT: OVERRULED.

01:26PM

6 YOU CAN RESERVE THAT OBJECTION.

7 THE WITNESS: \$29,234,786.

8 BY MR. QUINN:

9 Q AND FOR SMCF II?

10 A \$25,617,193.

01:27PM

11 Q AND FOR SOUTH DAKOTA?

12 A \$1,399,972.

13 Q AND THE TOTAL FOR 2010?

14 A \$56,251,951.

15 Q AND THEN THE CHART ALSO SHOWS THE TOTAL
16 MANAGEMENT FEES UNDER THE ORIGINAL UNAMENDED CONTRACTS
17 FOR 2011, 2012?

01:27PM

18 A YES.

19 Q FOR 2011, IT WOULD HAVE BEEN \$50,258,384?

20 A YES.

01:27PM

21 Q AND FOR 2012, \$58 MILLION-TOTAL-707,126?

22 A YES.

23 Q AND THEN THAT LAST LINE, COULD YOU TELL US
24 WHAT THAT REPRESENTS.

25 A THAT'S THE PROJECTED CARRIED INTEREST ACCRUAL,
26 THE ACCRUAL FOR THE PERFORMANCE FEE OR CARRIED INTEREST
27 FOR EACH OF THE FUNDS AS OF THE END OF THE YEAR, 2012.

01:27PM

28 Q AND WHY DID YOU JUST DO THAT FOR JUST 2012?

1 A WE DID IT FOR EACH YEAR. THAT WOULD BE THE
2 SUM OF WHAT WE PROJECTED THROUGH THAT DATE.

3 Q ALL RIGHT.

4 SO THAT'S AS OF THE END OF 2012?

5 A YES.

01:28PM

6 Q AND THE TOTAL, THEN, IS THAT NUMBER WE SEE AT
7 THE RIGHT-HAND CORNER, THE \$366,969,231?

8 A THAT'S CORRECT.

9 Q OKAY.

10 COULD WE TURN NOW TO PAGE 2,
11 EXHIBIT 2267-2.

01:28PM

12 WHAT ARE WE LOOKING AT HERE?

13 A THIS IS THE SAME SCENARIO AS THE LAST SLIDE
14 UNDER THE REVISED TERMS WHERE THE MANAGEMENT FEE IS
15 1 PERCENT AND THE CARRIED INTEREST AT 5 PERCENT.

01:28PM

16 Q SO, DOES THIS THEN GIVE EFFECT TO THE ACTUAL
17 AMENDED TERMS OF THE PARTNERSHIP AGREEMENTS WITH -- THE
18 AGREEMENTS WITH THE INVESTORS THAT WERE ENTERED INTO
19 AFTER MR. GUNDLACH LEFT?

20 A THAT'S RIGHT.

01:29PM

21 Q AND WHAT IS THE -- FOR 2010, THOSE ARE THE
22 ACTUAL NUMBERS?

23 A YES, SIR, THOSE ARE THE ACTUAL NUMBERS FROM
24 THE FINANCIAL STATEMENTS FOR THOSE FUNDS.

25 Q AND THE SOURCE OF THIS DATA THAT WE'RE LOOKING
26 AT HERE?

01:29PM

27 A AGAIN, ACTUAL NUMBERS FOR 2010 AND PROJECTED
28 NUMBERS FOR 2011 AND 2012.

1 Q AND THE SOURCE OF THE ACTUAL NUMBERS?

2 A THE FINANCIAL STATEMENTS.

3 Q OF THE TCW?

4 A OF THE FUNDS OF SPECIAL MORTGAGE FUND I, II,
5 AND SOUTH DAKOTA.

01:29PM

6 Q TOTAL MANAGEMENT FEES ARE THIS NUMBER OVER IN
7 THE RIGHT-HAND CORNER FOR 2010 ACTUALLY RECEIVED
8 (INDICATING)?

9 A THAT'S CORRECT.

10 Q 19,999,496?

01:29PM

11 A THAT'S RIGHT.

12 Q AND WHAT IS TCW EXPECTED TO RECEIVE IN
13 MANAGEMENT FEES IN 2011 ON THESE THREE FUNDS?

14 A \$17,576,737.

15 Q HOW MUCH WILL TCW ACTUALLY RECEIVE IN
16 MANAGEMENT FEES IN 2012 FROM THESE THREE FUNDS?

01:29PM

17 A PROJECTED, 16,739,073.

18 Q NOW, HAVE YOU ALSO CALCULATED WHAT TCW ACCRUED
19 IN 2010 AND WILL HAVE ACCRUED FOR CARRIED INTEREST FOR
20 ALL THREE OF THE FUNDS IN 2012?

01:30PM

21 A YES. OUR PROJECTION FOR THE END OF 2012
22 CARRIED INTEREST ACCRUAL FOR TCW GENERAL PARTNERS,
23 \$50,233,830.

24 Q SO, BY COMPARING -- IF WE COULD GO BACK TO THE
25 FIRST PAGE -- BY COMPARING THE FIRST PAGE, THE RESULTS
26 FROM WHAT THE, YOU KNOW, RESULTS WOULD HAVE BEEN UNDER
27 THE ORIGINAL CONTRACT WITH THE SECOND PAGE, IF WE COULD
28 THEN LOOK AT THE SECOND PAGE, THE ACTUAL, WE CAN SEE

01:30PM

1 WHAT THE CONSEQUENCES -- ECONOMIC CONSEQUENCES WERE TO
2 TCW OF AMENDING THOSE CONTRACTS AFTER MR. GUNDLACH
3 LEFT; IS THAT TRUE?

4 A THAT'S RIGHT.

5 Q OKAY.

01:30PM

6 HAVE YOU DONE AN ANALYSIS OF THE --
7 COMPOSITION OF THE TCW TOTAL RETURN FUND AND THE
8 DOUBLELINE TOTAL RETURN FUND CONCERNING THE PERCENTAGE
9 OF MORTGAGE DERIVATIVE INSTRUMENTS IN THOSE TWO FUNDS?

10 MR. HELM: OBJECTION. RELEVANCE. 352.

01:31PM

11 THE COURT: OVERRULED. I'LL ALLOW. I DON'T
12 WANT TO SPEND A LOT OF TIME ON THIS.

13 MR. QUINN: UNDERSTOOD, YOUR HONOR.

14 THE WITNESS: YES. SPECIFICALLY, THE
15 PERCENTAGE OF INTEREST ONLY, PRINCIPAL ONLY, AND THE --
16 AND INVERSE FLOATER.

01:31PM

17 Q INTEREST ONLY, THOSE ARE REFERRED TO AS IO'S?

18 A YES.

19 Q AND PO'S?

20 A YES.

01:32PM

21 Q PRINCIPAL ONLY?

22 A YES.

23 Q AND FLOATERS AND INVERSE FLOATERS?

24 A INVERSE FLOATERS.

25 Q ARE THESE SOMETIMES REFERRED TO AS MORTGAGE
26 DERIVATIVES, SECURITIES?

01:32PM

27 A YES.

28 Q CAN YOU TELL US WHAT THE PERCENTAGE OF

1 MORTGAGE DERIVATIVE SECURITIES ARE IN THE TCW TOTAL
2 RETURN FUND?

3 MR. HELM: OBJECTION. IMPROPER EXPERT
4 OPINION, UNDESIGNATED.

5 THE COURT: OVERRULED. 01:32PM

6 THE WITNESS: THE ANALYSIS I DID WAS AS OF
7 JUNE 30TH, THE TCW TOTAL RETURN BOND FUND HAD JUST
8 UNDER 3.9 PERCENT.

9 THE COURT: 3.9 PERCENT WHAT?

10 THE WITNESS: OF DERIVATIVES. 01:32PM

11 THE COURT: OKAY.

12 BY MR. QUINN:

13 Q AND DID YOU DO A SIMILAR ANALYSIS OF THE
14 DOUBLELINE TOTAL RETURN FUND?

15 A YES. JUNE 30TH IT WAS JUST OVER 20 PERCENT. 01:32PM

16 Q OF THESE MORTGAGE DERIVATIVES?

17 A OF THE MORTGAGE DERIVATIVES.

18 MR. QUINN: NOTHING FURTHER.

19 THE COURT: MR. HELM, CROSS-EXAMINATION?

20 MR. HELM: THANK YOU, YOUR HONOR. 01:33PM

21

22 CROSS-EXAMINATION +

23 BY MR. HELM:

24 Q ALL RIGHT. GOOD AFTERNOON, MR. HAGER.

25 A GOOD AFTERNOON. 01:33PM

26 Q GOOD AFTERNOON, LADIES AND GENTLEMEN.

27 LET'S FIRST TALK A LITTLE BIT ABOUT THE
28 WORK YOU DID FOR DR. CORNELL'S DAMAGES STUDY.

1 NOW, WHILE YOU WERE PREPARING YOUR
2 MODELS AND CALCULATIONS, YOU UNDERSTOOD THE PURPOSE OF
3 YOUR WORK WAS TO TRY TO GENERATE A FIGURE FOR TCW TO
4 CLAIM AS DAMAGES IN THIS CASE, CORRECT?

5 A IT WAS TO PROJECT WHAT WE WOULD HAVE RECEIVED
6 IN MANAGEMENT FEES AND ACCRUED FOR CARRIED INTEREST.

01:34PM

7 Q BUT TO DO IT FOR THE PURPOSE OF USING IN THIS
8 CASE TO SUPPORT TCW'S DAMAGES CLAIM, CORRECT?

9 A YES.

10 Q YOU UNDERSTOOD THAT?

01:34PM

11 A SURE.

12 Q IT WAS TO TCW'S BENEFIT, WHEN YOU WERE
13 PERFORMING THOSE CALCULATIONS, TO USE DATA AND
14 ASSUMPTIONS THAT MADE THE FIGURES AS LARGE AS POSSIBLE;
15 ISN'T THAT TRUE?

01:34PM

16 A WE -- I -- I'M NOT SURE I UNDERSTAND THE
17 QUESTION.

18 Q WELL, THE LARGER THE NUMBERS THAT YOU CAME UP
19 WITH, THE MORE TCW WOULD BENEFIT IN THIS LAWSUIT,
20 CORRECT?

01:34PM

21 A OH, SURE.

22 Q YOU UNDERSTOOD THAT?

23 A SURE.

24 Q AND YOU WORKED IN CONJUNCTION WITH COUNSEL FOR
25 THIS CASE, CORRECT?

01:34PM

26 A THAT'S RIGHT.

27 Q AND WITH SOME OTHER EXPERTS, I THINK YOU SAID
28 MR. SPRING AT BROADSTREET?

1 A THAT'S RIGHT.

2 Q AND SOME PEOPLE AT CHARLES RIVER ASSOCIATES,
3 ALSO CALLED CRA; ISN'T THAT TRUE?

4 A UH-HUH, THAT'S RIGHT.

5 Q YOU DESCRIBED WHAT ARE CALLED WATERFALL
6 CALCULATIONS, PERFORMING THOSE FOR THE CARRIED INTEREST
7 IN THE SMCF FUNDS; IS THAT RIGHT?

01:35PM

8 A YES.

9 Q WHEN YOU ORIGINALLY PERFORMED THOSE
10 CALCULATIONS, YOU APPLIED A 12 PERCENT RATE OF RETURN
11 FOR THE SMCF I FUNDS IN THE YEAR 2010, TRUE?

01:35PM

12 A YES. THAT WAS A MISUNDERSTANDING.

13 Q THAT'S THE NUMBER YOU FIRST USED WHEN YOU RAN
14 THE NUMBERS, CORRECT?

15 A YES.

01:35PM

16 Q AND YOU CALCULATED THAT, HAD THERE NOT BEEN
17 ASSET LOSSES, OR FEE REDUCTIONS, THAT SMCF I WOULD HAVE
18 GENERATED OVER \$66 MILLION IN CARRIED INTEREST, DIDN'T
19 YOU?

20 A YES -- BUT THAT WAS BECAUSE -- OKAY, YES.

01:35PM

21 Q THE ANSWER'S YES?

22 A OKAY.

23 Q THAT WAS YOUR FIRST CALCULATION?

24 A YES --

25 Q \$66 MILLION CARRIED INTEREST FIGURE, FOR THE
26 SMCF I FUND, TRUE?

01:35PM

27 A YES. THAT'S TRUE.

28 Q NOW, YOU ALSO TESTIFIED, THOUGH, THAT CARRIED

1 INTEREST IS ONLY PAID AFTER THE CAPITAL IS RETURNED TO
2 THE INVESTORS, CORRECT?

3 A YES.

4 Q AND AFTER THE INVESTORS RECEIVE ACCUMULATIVE
5 6 PERCENT RETURN PER YEAR, CORRECT?

01:36PM

6 A YES, AND ANNUALIZED 6 PERCENT.

7 Q WE SOMETIMES CALL THAT THE HURDLE RATE?

8 A YES.

9 Q BECAUSE THEY HAVE TO JUMP -- THE TCW ENTITY
10 HAS TO JUMP OVER A HURDLE BECAUSE IT CAN BE ENTITLED TO
11 INCENTIVE FEES, RIGHT?

01:36PM

12 A THAT'S RIGHT.

13 Q AND THE SMCF I FUND STARTED IN 2007, DIDN'T
14 IT?

15 A YES.

01:36PM

16 Q BUT THE MORTGAGE CRISIS ACCELERATED AFTER
17 2007, AND IT REALLY DIDN'T HIT BOTTOM UNTIL 2008 WHEN
18 THE SMCF II FUND STARTED, CORRECT?

19 A I BELIEVE SO. I CAN'T REALLY ATTEST TO THAT.

20 Q YOU LOOKED AT THE RETURNS FOR THE FUNDS,
21 CORRECT?

01:37PM

22 A BUT I CAN'T SAY WHEN THE MORTGAGE MARKET
23 BOTTOMED OUT IS ALL I'M SAYING.

24 Q IT IS TRUE THAT THE VALUE OF THE INVESTMENTS
25 IN THE SMCF II FUND DECLINED AFTER THE INVESTMENTS WERE
26 FIRST MADE; ISN'T THAT TRUE?

01:37PM

27 A I -- I CAN'T SAY FOR SURE. I KNOW THE HISTORY
28 OF THE RETURNS FROM 2007 TO 2008.

1 Q ALL RIGHT.

2 SO YOU DIDN'T LOOK AT THE HISTORY --

3 A I MAY HAVE LOOKED AT IT. I JUST DON'T KNOW
4 FROM MEMORY.

5 Q ALL RIGHT.

01:37PM

6 BY THE END OF 2009, THE SMCF I FUND, THE
7 VALUE WAS SORT OF BACK TO WHERE IT HAD STARTED OUT;
8 ISN'T THAT TRUE?

9 MR. QUINN: LACKS FOUNDATION.

10 THE COURT: SUSTAINED.

01:37PM

11 BY MR. HELM:

12 Q DO YOU KNOW WHAT THE VALUE OF THE SMCF I FUND
13 WAS AT THE END OF 2009, AS COMPARED WITH WHERE IT
14 STARTED IN 2007? DO YOU KNOW THAT?

15 A I DO NOT KNOW THAT.

01:37PM

16 Q YOU DON'T KNOW. OKAY.

17 WELL, BY THE END OF 2009, TO GENERATE
18 CARRIED INTERESTS TO PASS THE HURDLE RATE, THE FUND
19 WOULD HAVE HAD TO GROW BY 12 PERCENT; ISN'T THAT RIGHT,
20 BECAUSE IT'S 6 PERCENT PER YEAR?

01:38PM

21 MR. QUINN: LACKS FOUNDATION.

22 THE COURT: DO YOU UNDERSTAND THE QUESTION,
23 SIR?

24 I'LL OVERRULE IT -- TO THE EXTENT YOU
25 CAN ANSWER IT.

01:38PM

26 THE WITNESS: IT HAS TO HAVE ANNUALIZED
27 6 PERCENT RETURN. I UNDERSTAND THAT.

28 BY MR. HELM:

1 Q TWO YEARS AFTER IT STARTED, THEY WOULD HAVE
2 HAD TO GENERATE AT LEAST 12 PERCENT RETURN TO START
3 COLLECTING CARRIED INTEREST, CORRECT?

4 A OKAY. YES.

5 Q YOU AGREE?

01:38PM

6 A YEAH.

7 Q AND SO, BY THE END OF 2010, THREE YEARS INTO
8 THE SMCF I FUND, IT WOULD HAVE -- WOULD HAVE HAD TO BE
9 UP AT LEAST 18 PERCENT BEFORE TCW COULD JUMP OVER THAT
10 HURDLE AND START COLLECTING CARRIED INTEREST, CORRECT?

01:38PM

11 A SURE. THAT'S RIGHT. UH-HUH.

12 Q NOW, WHEN YOU USED -- YOU USED A 12 PERCENT
13 RETURN FOR THE YEAR 2010, CORRECT?

14 A THAT'S RIGHT.

15 Q AND DO YOU KNOW HOW MUCH THAT WAS UP FOR THE
16 LIFE OF THE FUND AT THAT POINT?

01:39PM

17 A IT WAS AROUND 25 PERCENT, SOMEWHERE IN THAT --

18 Q NO. THE FIGURE THAT YOU USED, THE FIGURE THAT
19 YOU USED IN YOUR INITIAL CALCULATION, YOU ASSUMED IT
20 WAS 12 PERCENT TOTAL INCREASE, CORRECT?

01:39PM

21 A YES. AGAIN, IT WAS A MISUNDERSTANDING THERE.
22 I MEAN, IT WAS -- OKAY.

23 Q WE'LL GET TO THE MISUNDERSTANDING.

24 A SURE.

25 Q IN THE INITIAL CALCULATIONS YOU USED 12
26 PERCENT RETURN, CORRECT?

01:39PM

27 A YES.

28 Q SO, AFTER THREE YEARS, THOUGH, IT WOULD HAVE

1 NEEDED TO GENERATE 18 PERCENT RETURN IN ORDER TO
2 GENERATE CARRIED INTEREST, CORRECT?

3 A THAT'S CORRECT.

4 Q SO WHEN YOU INITIALLY PUT IN A \$66 MILLION
5 CARRIED INTEREST FIGURE FOR SMCF I, THAT WAS AN ERROR,
6 WASN'T IT? 01:39PM

7 A IT WAS A MISUNDERSTANDING BECAUSE I DID THE
8 ANALYSIS ASSUMING THE CARRIED HAD BEEN ACHIEVED BECAUSE
9 IT ACTUALLY HAD.

10 Q LET'S -- 01:40PM

11 A IT WAS JUST A MISUNDERSTANDING FROM THE
12 ANALYSIS.

13 Q BACK UP FOR A SECOND.

14 A OKAY.

15 Q WE'LL GET TO WHY THERE WAS A MISUNDERSTANDING
16 IN A SECOND. I PROMISE I'LL ASK YOU ABOUT THAT. 01:40PM

17 A OKAY.

18 Q BUT WHEN YOU PERFORMED THE CALCULATION,
19 ASSUMING A 12 PERCENT RETURN, IN THE INITIAL DAMAGES
20 THAT WERE SUBMITTED IN THIS CASE, YOU ASSUMED THAT YOU
21 CONCLUDED THERE WOULD BE A \$66 MILLION CARRIED
22 INTEREST. 01:40PM

23 THAT WAS WRONG, WASN'T IT, BECAUSE IT
24 FAILED TO PROPERLY ACCOUNT FOR THE HURDLE RATE; ISN'T
25 THAT TRUE? 01:40PM

26 A AGAIN, I -- IT WOULD NOT -- IT WAS NOT
27 CORRECT.

28 Q ALL RIGHT.

1 SO -- NOT CORRECT, ERROR, ARE THOSE
2 DIFFERENT?

3 A IT WAS A MISUNDERSTANDING.

4 Q IT WAS AN ERRONEOUS CALCULATION, WASN'T IT,
5 SIR?

01:40PM

6 A IT WAS A MISUNDERSTANDING.

7 Q WHETHER YOU USED THE -- WHICH RATE YOU USED
8 WAS A MISUNDERSTANDING. OKAY.

9 WE'LL GET TO THAT. I'M NOT TALKING
10 ABOUT THE CALCULATION THAT YOU PERFORMED.

01:40PM

11 A NO, BECAUSE I DIDN'T GO BACK TO THE BEGINNING
12 OF TIME TO DO THE CALCULATION. THAT'S WHY I'M SAYING.
13 WE ASSUMED CARRIED INTEREST HAD BEEN ACHIEVED.

14 IT WAS SORT OF A HYBRID CALCULATION. SO
15 IT'S NOT THE CALCULATION YOU'RE ASSUMING.

01:41PM

16 Q YOU DIDN'T ACCOUNT FOR THE HURDLE RATE WHEN
17 YOU PUT IN A \$66 MILLION CARRIED INTEREST FIGURE IN THE
18 FIRST INSTANCE; ISN'T THAT TRUE?

19 A I DIDN'T RECALCULATE THE INTERNAL RATE OF
20 RETURN BACK FROM INCEPTION.

01:41PM

21 Q ALL RIGHT.

22 AND SO IF IT'S TRUE THAT, UNDER THAT
23 12 PERCENT ASSUMED RETURN, THE HURDLE RATE HAD NOT BEEN
24 SATISFIED, HADN'T BEEN JUMPED OVER, THEN THE CORRECT
25 NUMBER, RATHER THAN 66 MILLION, WOULD HAVE BEEN ZERO,
26 RIGHT?

01:41PM

27 A RIGHT.

28 Q AND SO, HAD YOU USED A ZERO FIGURE, RATHER

1 THAN A \$66 MILLION FIGURE, THAT WOULD HAVE REDUCED
2 TCW'S DAMAGES; ISN'T THAT TRUE?

3 A IT WOULD HAVE BEEN INCORRECT, AND IT WOULD
4 HAVE REDUCED THEIR DAMAGES, YES.

5 Q NOW, THE FIGURES WERE THEN REVISED IN A LATER
6 REPORT; ISN'T THAT TRUE?

01:41PM

7 A YES.

8 Q BUT THE DAMAGES IN THE SECOND REPORT DIDN'T GO
9 DOWN, DID THEY?

10 A I DON'T RECALL. I DON'T THINK THEY CAN,
11 THOUGH.

01:42PM

12 Q THEY WENT UP, DIDN'T THEY?

13 A THEY MAY HAVE.

14 Q YOU WERE THEN INSTRUCTED TO CHANGE THE
15 12 PERCENT RETURN TO THE ACTUAL PERCENT RETURN THAT WAS
16 EXPERIENCED IN 2010, CORRECT?

01:42PM

17 A SURE. YEAH, THAT WOULD MAKE SENSE.

18 Q THAT'S WHAT THEY TOLD YOU TO DO, CORRECT?

19 A YEAH, TO USE THE ACTUAL RETURN.

20 Q AND THAT CHANGE WAS MADE AFTER OUR EXPERT,
21 MR. WALLACE, SUBMITTED A REPORT WHICH EXPLAINED THAT
22 THAT \$66 MILLION FIGURE SHOULD HAVE BEEN ZERO UNDER
23 YOUR ASSUMPTIONS, BECAUSE THE HURDLE RATE WASN'T TAKEN
24 INTO ACCOUNT, CORRECT?

01:42PM

25 A THERE WAS SOME DISCUSSIONS THAT, YOU KNOW,
26 QUESTIONS COMING TO ME ABOUT THE SCENARIO. SO I DON'T
27 KNOW WHEN IT ACTUALLY CAME ABOUT. OR IF SOMEBODY ELSE
28 ON OUR SIDE HAD ALREADY NOTICED THAT, I REALLY DON'T

01:42PM

1 KNOW THE TIMING.

2 Q YOU'RE NOT AWARE THAT MR. WALLACE HAD MADE

3 A --

4 A NO. I KNOW HE MADE SOME SORT OF ANALYSIS.

5 Q AND YOU'RE AWARE THAT THE ANALYSIS THAT HE
6 MADE ABOUT WHETHER YOU'D PROPERLY CALCULATED THE
7 PREFERRED RETURN, PRECEDED, CAME BEFORE, THE CHANGE YOU
8 MADE IN THE CALCULATING THE RATE OF RETURN, RIGHT?

01:43PM

9 A WELL, WHEN I SAW THE ANALYSIS, THERE WERE NO
10 RESULTS ON THE ANALYSIS. I HAD TO DECIPHER THE
11 ANALYSIS TO FIGURE IT OUT AND RECONSTRUCT IT MYSELF.

01:43PM

12 I FOUND ERRORS ON THAT ANALYSIS, BUT I
13 DIDN'T SEE WHERE IT WAS CONCLUDING.

14 Q NOT MY QUESTION, SIR.

15 A OKAY.

01:43PM

16 Q MY QUESTION IS SIMPLY, WHEN YOU CHANGED FROM
17 USING A 12 PERCENT RETURN TO USING A HIGHER RETURN,
18 THAT WAS AFTER MR. WALLACE HAD SUBMITTED A REPORT
19 CRITICIZING YOUR FAILURE TO ASSESS THE HURDLE, TRUE?

20 MR. QUINN: LACKS FOUNDATION.

01:43PM

21 THE COURT: IF YOU KNOW. IF YOU DON'T KNOW,
22 YOU TELL US YOU DON'T KNOW.

23 THE WITNESS: I -- I USED THE 12 PERCENT TO
24 THE ACTUAL RETURN, SOMETIME -- I THINK IT WAS SOMETIME
25 AFTER THE WALLACE ANALYSIS.

01:44PM

26 BY MR. HELM:

27 Q YOU USED THE 25 PERCENT?

28 A THE ACTUAL RETURN.

1 Q ALL RIGHT. OKAY.

2 SO THE ACTUAL RETURN, I SAID IT -- MAYBE
3 I DIDN'T GET YOU TO TESTIFY TO IT.

4 THE ACTUAL RETURN THAT YOU USED WAS
5 AROUND 25 PERCENT?

01:44PM

6 A THAT WAS THE ACTUAL RETURN, THE FUND. YES.

7 Q YOU PREVIOUSLY USED A 12 PERCENT RETURN, BUT
8 THEN AFTER MR. WALLACE'S REPORT, YOU CHANGED IT TO A
9 25 PERCENT RETURN, CORRECT?

10 A CHANGED IT TO THE ACTUAL RETURN.

01:44PM

11 Q WHICH WAS 25 PERCENT?

12 A YES.

13 Q ALL RIGHT.

14 SO, WITH 25 PERCENT, THAT WAS MORE THAN
15 ENOUGH NOW TO CLEAR THE 18 PERCENT YOU NEEDED IN ORDER
16 TO GET CARRIED INTEREST, RIGHT?

01:44PM

17 A THAT'S WHAT ACTUALLY HAPPENED, YES.

18 Q AND SO THAT RESULTED IN YOU CALCULATING A
19 PROJECTED CARRIED INTEREST IN 2012 OF ABOUT
20 \$115 MILLION; IS THAT TRUE?

01:45PM

21 A I -- I'D HAVE TO SEE THE NUMBER. IF THAT'S
22 THE ACTUAL RETURN PLUS THE CONSERVATIVE PROJECTIONS FOR
23 -12 AND -13 ARE, YES, THEN THAT'S MY NUMBER.

24 Q LET'S PUT UP 2267, PAGE 1, IF WE HAVE THAT.

25 ALL RIGHT. SO WE CAN USE THE RIGHT
26 NUMBER.

01:45PM

27 THE NUMBER YOU'RE NOW USING FOR THE
28 SMCF II CARRIED INTEREST ON THE ONLY TERMS IS \$115.4

1 MILLION, CORRECT?

2 A THAT'S CORRECT.

3 Q IN YOUR INITIAL REPORT IT WAS \$66 MILLION,
4 CORRECT?

5 A I DON'T RECALL WHAT THAT NUMBER IS.

01:45PM

6 Q LET'S SEE IF I CAN REFRESH YOU ON THAT.

7 COULD WE LOOK AT -- THIS IS ISN'T IN
8 EVIDENCE. PUT IT UP ON THE SCREEN IF YOU COULD,
9 DENNIS, 913, PAGE 39.

10 THE COURT: WHAT IS THE EXHIBIT NUMBER?

01:46PM

11 THE CLERK: 913.

12 THE COURT: THANK YOU.

13 MR. HELM: EXHIBIT 7 FROM PROFESSOR CORNELL'S
14 REPORT. I DON'T INTEND TO ADMIT THIS.

15 WOULD THERE BE ANY OBJECTION TO ME
16 DISPLAYING IT FOR A DEMONSTRATIVE?

01:46PM

17 MR. QUINN: THERE WOULD BE NO OBJECTION FROM
18 HERE.

19 THE COURT: IF THERE'S NO OBJECTION, WE CAN DO
20 IT. PUT IT UP.

01:46PM

21 MR. HELM: COULD I BORROW YOUR LITTLE POINTER
22 THING.

23 THE COURT: HE DOESN'T OBJECT AND NEXT THING
24 YOU KNOW, YOU WANT --

25 MR. HELM: I KNOW.

01:46PM

26 COULD WE BLOW UP THAT PART, PLEASE.

27 THANK YOU. I WON'T IMPOSE ON YOU ANYMORE.

28 MR. QUINN: THAT'S ALL RIGHT.

1 BY MR. HELM:

2 Q IT SAYS CARRIED INTEREST SMCF I, AND THEN
3 UNDER 2012 IT SAYS, \$66.4 MILLION, CORRECT?

4 A CORRECT.

5 Q DOES THAT REFRESH YOUR RECOLLECTION THAT THE
6 NUMBER YOU FIRST PUT IN WAS \$66.4 MILLION, CORRECT?

01:47PM

7 A YEAH, IT MUST BE. IF THIS IS FROM MY
8 ANALYSIS, THEN YES.

9 BUT NO, I DON'T RECALL WHAT THE EXACT
10 NUMBER WAS --

01:47PM

11 Q ALL RIGHT.

12 IF YOU DIDN'T ACCOUNT FOR THE HURDLE
13 RATE PROPERLY, IT SHOULD HAVE BEEN ZERO, RIGHT?

14 A RIGHT. IT WOULD BE ZERO.

15 Q ALL RIGHT.

01:47PM

16 BUT THE NEXT REPORT THAT WE CAME UP
17 WITH, THEN, 2261, SORRY -- 2267, PAGE 1, IT WENT UP TO
18 \$115 MILLION; IS THAT RIGHT?

19 A THAT'S RIGHT.

20 Q ALL RIGHT.

01:47PM

21 NOW LET'S TALK ABOUT THIS MISTAKE.

22 YOU WERE UNDER THE ASSUMPTION WHEN YOU
23 FIRST DID THE ANALYSIS THAT MR. CORNELL WANTED YOU TO
24 USE AN EXPECTED RETURN IN 2010 FOR THE SMCF I FUND,
25 CORRECT?

01:48PM

26 A I DIDN'T KNOW THAT IT WAS MR. CORNELL'S
27 EXPECTATION. THAT WAS JUST INFORMATION I GOT FROM
28 COUNSEL.

1 Q SO, COUNSEL INITIALLY INSTRUCTED YOU TO USE AN
2 EXPECTED RETURN RATE OF 12 PERCENT FOR THE SMCF FUND I;
3 IS THAT TRUE?

4 A I SHOULD REPHRASE THAT.

5 IT WAS A MISUNDERSTANDING IN DISCUSSIONS
6 I HAD WITH COUNSEL AND WITH OTHERS.

01:48PM

7 Q BUT BASED ON YOUR UNDERSTANDING, WHAT YOU TOOK
8 AWAY FROM YOUR DISCUSSIONS WITH COUNSEL WHEN YOU WENT
9 TO DO THAT REPORT, WAS THAT THEY WANTED YOU TO USE A
10 12 PERCENT FIGURE, CORRECT?

01:48PM

11 A 12 PERCENT, YES.

12 Q -- FOR THE SMCF I?

13 DO YOU RECALL THAT THE CHARLES RIVER
14 ASSOCIATES PEOPLE? MR. CORNELL'S ASSISTANTS CAME TO
15 YOU BEFORE THE FIRST SUPPLEMENTAL REPORT WAS FILED BY
16 MR. CORNELL, AND DOUBLE CHECKED WITH YOU AND MADE SURE
17 ALL THE NUMBERS WERE RIGHT?

01:48PM

18 DO YOU RECALL THAT?

19 A I DON'T RECALL.

20 Q YOU RECALL THAT MR. CORNELL ACTUALLY HAD THREE
21 REPORTS IN THIS MATTER, CORRECT?

01:49PM

22 A I DON'T -- NO, I'M NOT FAMILIAR WITH THEM.

23 Q OKAY. ALL RIGHT.

24 BUT DO YOU RECALL, AT ANY TIME BEFORE
25 YOU REALIZED THAT THERE HAD BEEN A MISUNDERSTANDING,
26 HAVING THE CRA PEOPLE, MR. HAUT, OR MR. HIRSHLEIFER
27 COME TO YOU AND SAY, YOU KNOW, MR. CORNELL WAS ABOUT TO
28 CHANGE HIS REPORT, HE SAYS WE REALLY GOT TO MAKE SURE

01:49PM

1 THAT EVERYTHING IS ACCURATE.

2 WE WANT TO DOUBLE-CHECK IT, MAKE SURE WE
3 DON'T HAVE TO MAKE ANY OTHER CHANGES, AND WE WANT TO
4 MAKE SURE YOU USED EVERYTHING THE WAY THAT WE INTENDED
5 IT TO BE.

01:49PM

6 DO YOU RECALL THEM EVER HAVING A
7 COMMUNICATION WITH YOU LIKE THAT?

8 A I DON'T RECALL THAT, NO.

9 Q ALL RIGHT. LET'S TALK A LITTLE BIT MORE ABOUT
10 THE MANAGEMENT FEES.

01:50PM

11 WE'VE BEEN USING THE TERM TCW A LITTLE
12 BIT. AND I WANT TO GET A LITTLE MORE FOCUSED ON THAT.

13 THE PLAINTIFF IN THIS ACTION IS TRUST
14 COMPANY OF THE WEST.

15 DO YOU UNDERSTAND THAT?

01:50PM

16 A OKAY. YES.

17 Q YOU'RE FAMILIAR WITH A COMPANY CALLED TRUST
18 COMPANY OF THE WEST?

19 A SURE, ABSOLUTELY.

20 Q WE SOMETIMES CALL THAT TCW, RIGHT?

01:50PM

21 A THAT'S RIGHT.

22 Q NOW, IF WE GO BACK TO 2267, THE MANAGEMENT
23 FEES, WE TALK ABOUT MANAGEMENT FEES AT THE TOP ON
24 ORIGINAL TERMS.

25 THOSE ARE PAYABLE TO THE PARTY
26 IDENTIFIED IN THE PARTNERSHIP AGREEMENTS AS THE
27 INVESTMENT MANAGER; ISN'T THAT RIGHT?

01:50PM

28 A YES.

1 Q AND TCW, TRUST COMPANY OF THE WEST, WASN'T
2 MANAGER UNDER EITHER SMCF I OR SMCF II, WAS IT?

3 A THEY WERE NOT THE INVESTMENT MANAGER?

4 Q THEY WEREN'T THE INVESTMENT MANAGER FOR THOSE
5 FUNDS, WAS IT -- THE PLAINTIFF, TRUST COMPANY OF THE
6 WEST, WASN'T MANAGER OF THOSE FUNDS, WAS IT?

01:51PM

7 A I COULDN'T SAY FOR SURE WHO THE MANAGER WAS.

8 Q YOU DIDN'T LOOK AT THAT IN CALCULATING THESE
9 NUMBERS?

10 A THE MANAGEMENT FEE CALCULATION IS DONE AS PART
11 OF THE CLOSING PROCESS, IRRESPECTIVE OF WHO IT'S
12 PAYABLE TO.

01:51PM

13 Q SO YOU DIDN'T CALCULATE -- LET ME ACTUALLY GET
14 A NOTEBOOK IF I COULD. I APOLOGIZE.

15 SO, IN CALCULATING THESE FIGURES, YOU
16 DIDN'T MAKE ANY EFFORT TO DETERMINE WHICH ENTITY WAS
17 ENTITLED TO COLLECT THEM; IS THAT TRUE?

01:51PM

18 A RIGHT.

19 IT'S JUST -- YOU KNOW, THE GENERAL
20 PARTNER.

01:51PM

21 Q WELL, HOLD ON.

22 WE GOT A MANAGER AND WE GOT A GENERAL
23 PARTNER, CORRECT?

24 A WE HAVE A GENERAL PARTNER AND A MANAGER.

25 Q ALL RIGHT.

01:52PM

26 A ACTUALLY --

27 Q WE'RE TALKING ABOUT THE MANAGER?

28 A YOU'RE RIGHT.

1 Q MANAGER GETS THE MANAGEMENT FEE?

2 A RIGHT.

3 Q YOU GET THEM FOR MANAGING, RIGHT?

4 A RIGHT.

5 Q SO THE MANAGER IN SMCF I -- WHY DON'T YOU LOOK
6 AT EXHIBIT 5044. THIS IS IN EVIDENCE.

01:52PM

7 WHY DON'T WE LOOK AT PAGE 13 OF THAT.
8 BLOW UP IN THE MIDDLE OF THE DEFINITION MANAGER,
9 DENNIS.

10 MANAGER SHALL MEAN TCW ASSET MANAGEMENT
11 COMPANY.

01:52PM

12 CORRECT?

13 A CORRECT.

14 Q AND THAT'S -- THE ACRONYM FOR THAT IS TAMCO;
15 WE CALL THAT TAMCO, RIGHT?

01:52PM

16 A THAT'S RIGHT, YES.

17 Q THAT'S NOT TRUST COMPANY OF THE WEST, IS IT?

18 A IT'S NOT TRUST COMPANY OF THE WEST. IT'S A
19 DIFFERENT ENTITY.

20 Q SO THE MANAGER OF SMCF I THAT WAS ENTITLED TO
21 MANAGEMENT FEES IS TAMCO, CORRECT?

01:53PM

22 A TAMCO, THAT'S RIGHT.

23 Q ALL RIGHT.

24 AND IF YOU LOOK AT 5069, PLEASE.
25 PAGE 13. THIS IS FROM -- ACTUALLY, LOOK AT THE FIRST
26 PAGE. JUST SO WE CAN IDENTIFY IT'S SMCF II.

01:53PM

27 DO YOU SEE THAT, THAT'S FOR SPECIAL
28 MORTGAGE CREDIT FUND II, RIGHT? YOU SEE THAT?

1 A YES.

2 Q NOW, WOULD YOU LOOK AT PAGE 13 OF THAT
3 DOCUMENT. I'M USING THE EXHIBIT PAGE. HERE WE GO.

4 MANAGER SHALL MEAN TCW, ASSET MANAGEMENT
5 COMPANY, CORRECT?

01:53PM

6 A THAT'S CORRECT.

7 Q THAT'S TAMCO AGAIN, RIGHT?

8 A THAT'S RIGHT.

9 Q NOT TCW?

10 A THAT'S RIGHT. IT'S ONE OF THE TCW ENTITIES.

01:53PM

11 Q IT'S NOT TRUST COMPANY OF THE WEST --

12 A IT'S --

13 Q -- RIGHT?

14 A RIGHT, IT'S TAMCO.

15 Q NOW, THE CARRIED INTEREST ON THOSE FUNDS IS
16 OWED TO THE GENERAL PARTNER OF THOSE PARTNERSHIPS,
17 RIGHT?

01:54PM

18 A RIGHT.

19 Q AND TRUST COMPANY OF THE WEST WASN'T GENERAL
20 PARTNER OF EITHER SMCF I OR SMCF II, WAS IT?

01:54PM

21 A NO.

22 Q TAMCO WAS THE GENERAL PARTNER OF SMCF I,
23 CORRECT?

24 A I BELIEVE SO. I WOULD HAVE TO SEE IT. I
25 DON'T KNOW FROM MEMORY.

01:54PM

26 Q AND THE GENERAL PARTNER OF SMCF II IS SPECIAL
27 MORTGAGE CREDIT FUND II GP, LLC, CORRECT?

28 A SOUNDS RIGHT. YES.

1 Q SO, ANY ALLEGEDLY LOST INCOME FROM MANAGEMENT
2 FEES OR CARRIED INTEREST WERE FEES THAT WERE PAYABLE TO
3 AN ENTITY, OTHER THAN THE PLAINTIFF, TRUST COMPANY OF
4 THE WEST, CORRECT?

5 A PAYABLE TO TAMCO.

01:54PM

6 Q TAMCO OR SPECIAL MORTGAGE CREDIT FUNDS II GP
7 LLC IN THE CASE OF CARRIED INTEREST FOR SMCF II?

8 A YES.

9 Q LET'S TALK ABOUT THE MUTUAL FUNDS.

10 DID YOU MAKE ANY CALCULATIONS REGARDING
11 MANAGEMENT FEES OWED ON THE MUTUAL FUNDS TGLMX?

01:55PM

12 A NO.

13 Q YOU CALCULATED THE AMOUNT OF REDUCED FEES THAT
14 WERE PAID BY INVESTORS WHO CHOSE TO KEEP THEIR MONEY IN
15 THE SMCF II FUNDS; IS THAT CORRECT?

01:55PM

16 A YES, YES.

17 Q PEOPLE WHO PAY THOSE FEES ARE THE LIMITED
18 PARTNERS OR INVESTORS, CORRECT?

19 A YES.

20 Q AND A NUMBER OF THE LIMITED PARTNERS WHO
21 STAYED IN THE SMCF II FUNDS WERE AFFILIATED TCW
22 ENTITIES, WEREN'T THEY?

01:55PM

23 A THE RELATED PARTIES DO NOT PAY MANAGEMENT FEE.

24 Q THEY DON'T PAY A FEE AT ALL?

25 A THEY DON'T PAY MANAGEMENT FEE.

01:56PM

26 Q WHAT ABOUT CARRIED INTEREST?

27 A NO.

28 Q THEY DON'T PAY EITHER MANAGEMENT FEES OR --

1 A EXCLUDED FROM CARRIED INTEREST AS WELL; THEY
2 ARE EXCLUDED FROM.

3 Q YOU ARE NOT A PORTFOLIO MANAGER, I TAKE IT?

4 A I'M NOT.

5 Q AND WHEN YOU -- YOU'VE NEVER BEEN A BOND
6 TRADER, EITHER, I TAKE IT?

01:56PM

7 A I'VE NEVER BEEN A BOND TRADER.

8 Q DID YOU EVER HOLD ANY POSITION IN THE M.B.S.
9 GROUP?

10 A NO.

01:56PM

11 Q YOUR ROLE HAS BEEN IN OPERATIONS, NOT IN
12 TRADING OR INVESTMENTS, CORRECT?

13 A THAT'S CORRECT. THAT'S CORRECT.

14 Q AND WHEN MR. GUNDLACH WAS THERE, DID HE EVER
15 CONSULT YOU REGARDING INVESTMENT DECISIONS OR PORTFOLIO
16 RISKS?

01:56PM

17 A NO.

18 Q NOW, YOU TESTIFIED ABOUT THE DIFFERENCE IN
19 COMPOSITION, BETWEEN THE DOUBLELINE MUTUAL FUND AND
20 TGLMX, THE TCW TOTAL RETURN BOND FUND, CORRECT?

01:57PM

21 A THAT'S CORRECT.

22 Q AND YOU GOT THE INFORMATION ABOUT PORTFOLIO
23 HOLDINGS FROM SEC FILINGS?

24 A I DID FOR MARCH 31ST, YES.

25 Q THE SECURITIES THAT YOU'VE BEEN TALKING ABOUT
26 ARE IO'S, PO'S AND INVERSE FLOATERS -- INVERSE
27 FLOATERS; IS THAT RIGHT?

01:57PM

28 A THAT'S CORRECT.

1 Q THOSE INSTRUMENTS ARE GENERALLY FROM
2 GOVERNMENT AGENCY-BACKED SECURITIES, AS OPPOSED TO
3 NONAGENCY SECURITIES; ISN'T THAT TRUE?

4 A I DON'T KNOW THAT IN TOTAL, BUT IT SEEMS LIKE
5 MOST IN THOSE PORTFOLIOS WERE.

01:57PM

6 Q FOR AGENCY SECURITIES WHERE THERE IS A FEDERAL
7 GUARANTEE ON THE PAYMENTS, ONE DOES NOT NEED LOAN LEVEL
8 DATA TO ANALYZE THOSE SECURITIES, CORRECT?

9 A I'M -- I DON'T UNDERSTAND THE QUESTION.

10 Q WELL, DO YOU KNOW WHEN YOU'RE INVESTING IN AN
11 AGENCY SECURITY, A MORTGAGE-BACKED DERIVATIVE, THAT'S
12 AN AGENCY-BACKED SECURITY, DO YOU KNOW WHETHER THE
13 TRADERS HAVE TO LOOK AT LOAN LEVEL DATA BEFORE THEY
14 MAKE AN INVESTMENT DECISION?

01:58PM

15 A PROBABLY NOT. BUT I DON'T KNOW FOR SURE.

01:58PM

16 Q AND ARE YOU AWARE THAT YOU CAN INVEST IN AN
17 AGENCY, AN AGENCY DERIVATIVE JUST BY USING BLOOMBERG OR
18 THE YIELD BOOK?

19 A NO, I WASN'T AWARE OF THAT.

20 Q SO, INVESTMENTS OF THAT KIND DON'T REQUIRE
21 ANYONE TO USE ANY TOOLS LIKE TCW'S, IRA, OR
22 DOUBLELINE'S SECURITY ANALYZER; ISN'T THAT TRUE?

01:58PM

23 MR. QUINN: LACKS FOUNDATION.

24 THE COURT: DO YOU KNOW?

25 THE WITNESS: I DON'T KNOW THE ANSWER TO THAT
26 QUESTION.

01:58PM

27 BY MR. HELM:

28 Q NOW, ARE YOU MEANING TO SUGGEST THAT BECAUSE

1 THERE ARE MORE SECURITIES OF THE KIND THAT YOU HAVE
2 IDENTIFIED THAT SOMEHOW THE DOUBLELINE TOTAL RETURN
3 BOND FUND IS RISKIER? ARE YOU EXPRESSING AN OPINION ON
4 THAT?

5 A NO. I'M SIMPLY PROVIDING INFORMATION. 01:59PM

6 Q ALL RIGHT.

7 YOU'RE NOT TELLING THE JURY THAT BECAUSE
8 OF THE FACT THAT THOSE SECURITIES ARE MORE HEAVILY IN
9 ONE PORTFOLIO THAN IN ANOTHER, THAT THAT MEANS IN ANY
10 WAY THAT THAT PORTFOLIO IS RISKIER, ARE YOU? 01:59PM

11 A I'M NOT SAYING THAT. I'M SHOWING THE RELATIVE
12 DIFFERENCE. JUST -- JUST SHOWING.

13 Q YOU WOULD AGREE WITH ME, THOUGH, THE MEASURE
14 OF RISK WOULDN'T BE THE PRESENCE OF INDIVIDUAL
15 SECURITIES, BUT THE RISK OF THE OVERALL PORTFOLIO?
16 YOU'D AGREE WITH ME ON THAT? 01:59PM

17 A I COULDN'T AGREE WITH YOU ON THAT. NO.

18 Q BECAUSE YOU DON'T KNOW?

19 A I DON'T KNOW.

20 I MEAN, ANY SECURITY CAN AFFECT THE
21 PORTFOLIO, SO... 01:59PM

22 Q DID YOU CALCULATE A -- ANY RISK-ADJUSTED
23 RETURNS IF THE -- FOR THE TWO PORTFOLIOS?

24 A NO.

25 Q DID YOU CALCULATE A SHARP RATIO FOR THE TWO
26 PORTFOLIOS? 02:00PM

27 A NO.

28 Q DID YOU CALCULATE A MAXIMUM DRAWDOWN FIGURE

1 FOR THE TWO PORTFOLIOS?

2 A NO.

3 Q SO, IT DOES APPEAR THAT, TO YOU, HOWEVER, THAT
4 THE TWO PORTFOLIOS YOU LOOKED AT WERE STRUCTURED
5 THROUGH VERY DIFFERENT INVESTMENT AND PORTFOLIO
6 MANAGEMENT APPROACHES; IS THAT TRUE?

02:00PM

7 MR. QUINN: LACKS FOUNDATION AS PHRASED.

8 THE COURT: SUSTAINED.

9 MR. HELM: I HAVE NOTHING FURTHER.

10 THE COURT: ANY REDIRECT, MR. QUINN?

02:00PM

11

12 REDIRECT EXAMINATION +

13 BY MR. QUINN:

14 Q DID THE SECOND CALCULATION THAT YOU MADE
15 CORRECT FOR THE ASSUMPTION YOU MADE REGARDING PASSING
16 THE HURDLE?

02:00PM

17 A YES, IT DID.

18 Q SO THAT WAS ADJUSTED FOR AND CORRECTED
19 COMPLETELY?

20 A THAT'S CORRECT.

02:01PM

21 Q DOES IT MAKE ANY SENSE TO USE A PROJECTED
22 NUMBER FOR 2010 WHEN YOU ACTUALLY HAVE THE ACTUAL
23 NUMBERS?

24 A IT DIDN'T.

25 MR. HELM: LACKS FOUNDATION. I THINK THAT'S
26 THE SUBJECT OF EXPERT OPINION.

02:01PM

27 THE COURT: SUSTAINED.

28 BY MR. QUINN:

1 Q WELL, FOR THE PURPOSE --

2 THE COURT: I'LL STRIKE THE ANSWER TO THE
3 EXTENT THERE WAS AN ANSWER. I'M NOT SURE I HEARD IT.
4 EVERYBODY WAS JUMPING UP AND DOWN SO FAR.

5 MR. QUINN: I DIDN'T HEAR, EITHER. 02:01PM

6 THE COURT: ANYWAY, GO AHEAD.

7 BY MR. QUINN:

8 Q IN YOUR FIRST CALCULATION FOR 2010, YOU USED
9 A -- AN ASSUMED NUMBER, CORRECT?

10 A THAT'S RIGHT. 02:01PM

11 Q BUT AT THAT TIME YOU HAD THE ACTUALS?

12 A THAT'S RIGHT.

13 Q AND WHEN YOU WENT BACK AND CALCULATED IT, YOU
14 USED THE ACTUALS?

15 A THAT'S RIGHT. 02:01PM

16 MR. QUINN: NOTHING FURTHER.

17 THE COURT: ANYTHING ELSE, MR. HELM?

18 MR. HELM: YES, BRIEFLY.

19

20 RECROSS-EXAMINATION + 02:01PM

21 BY MR. HELM:

22 Q WHEN YOU CALCULATED THE RETURN FOR SMCF I
23 USING 12 PERCENT RETURN, IT MADE SENSE TO YOU AT THE
24 TIME, DIDN'T IT?

25 A THE WAY I DID IT MADE SENSE. 02:02PM

26 MR. HELM: NOTHING FURTHER.

27 THE COURT: ALL RIGHT.

28 SIR, YOU'RE FINISHED. YOU'RE A VERY

1 FORTUNATE MAN. THANK YOU VERY MUCH FOR YOUR TESTIMONY.

2 THE WITNESS: THANK YOU.

3 THE COURT: YOU MAY STEP DOWN.

4 MR. QUINN, YOU MAY CALL YOUR NEXT
5 WITNESS.

02:02PM

6 MR. QUINN: REALLY?

7 THE COURT: WE CAN GET STARTED.

8 MR. QUINN: OKAY.

9 THE COURT: I THINK -- KEEP THINKING WE'RE
10 GOING TO 2:30.

02:02PM

11 WE'LL RECESS AND COME BACK ON MONDAY
12 MORNING. FOR SOME REASON I WAS LOOKING AT THE CLOCK
13 WRONG.

14 LADIES AND GENTLEMEN, WE ARE -- I KNOW
15 IT'S LABORIOUS AND IT MAY SEEM LIKE IT'S GOING SLOWER
16 THAN IT IS. WE ARE MAKING PROGRESS.

02:03PM

17 I THINK WE'RE RIGHT ON TOP OF REAL
18 SUCCESS HERE.

19 HAVE A NICE WEEKEND.

20 DON'T DISCUSS THE CASE AMONG YOURSELVES
21 OR WITH ANYONE ELSE OR FORM ANY OPINIONS CONCERNING ANY
22 ASPECT OF THE CASE UNTIL YOU'VE HEARD ALL THE EVIDENCE
23 AND IT'S BEEN SUBMITTED TO YOU.

02:03PM

24 WE'LL SEE YOU MONDAY MORNING AT 8:30.
25 THANK YOU VERY MUCH.

02:03PM

26

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

28

1 MR. HELM: I DID WANT TO MENTION ONE THING
2 WHEN THE COURT WAS READY.

3 THE COURT: YES, WE'RE OUT OF THE PRESENCE.

4 MR. HELM: I WANTED TO ALERT THE COURT, AND I
5 ASSUME THE OTHER SIDE HAS BEEN TOLD, TOO, WE EXPECT
6 THAT AN ISSUE MAY ARISE ABOUT SOME KIND OF AN
7 ASSIGNMENT THAT WAS --

02:04PM

8 THE COURT: I'VE SEEN A BRIEF THAT JUST CAME
9 IN. I MEAN, THEY COME IN REGULARLY. I HAVEN'T REALLY
10 READ IT. BECAUSE I GOT ABOUT FIVE MINUTES BEFORE WE
11 RECONVENE.

02:04PM

12 MR. HELM: I'M NOT ASKING FOR A RULING. I
13 SIMPLY WANTED TO MAKE SURE YOUR HONOR WAS AWARE OF IT,
14 AND THAT THE OTHER SIDE WAS AWARE OF IT AS WELL.

15 MR. QUINN: I'M NOT AWARE OF ANYTHING.

02:04PM

16 THE COURT: SOMEBODY WILL BRING YOU UP TO DATE
17 ON THAT SOON ENOUGH.

18 TWO THINGS I WANTED TO CLARIFY. ONE
19 THING. I MADE A COMMENT ON THE DRAFT CITIBANK REPORT.
20 AND I HAD THOUGHT THAT THE EXHIBIT THAT YOU USED,
21 MR. BRIAN, WITH THE 7- OR 800,000 WAS IN THE DRAFT
22 REPORT, AND THEN THE LATER REPORT HAD THE 1.1 OR
23 1 BILLION.

02:05PM

24 WAS I MISTAKEN? I APOLOGIZE.

25 MR. BRIAN: I DON'T THINK I MISSTATED IT. IF
26 I DID, I APOLOGIZE.

02:05PM

27 IT WAS A NUMBER OF DOCUMENTS, BUT
28 THERE'S A DRAFT REVIEW EXHIBIT 2153 THAT DOESN'T HAVE

1 THAT ESTIMATE.

2 THE ESTIMATE'S IN AN E-MAIL DATED
3 SEPTEMBER 12TH.

4 THE COURT: IT WASN'T THE SAME E-MAIL THAT
5 MR. QUINN PUT UP BECAUSE THE E-MAIL --

02:05PM

6 MR. BRIAN: I THINK SO.

7 THE COURT: -- THAT I HAD IN MIND, OR WHATEVER
8 I WAS THINKING ABOUT THAT YOU USED WITH THE 7- OR 800,
9 WAS A --

10 WHAT'S THE FELLOW'S NAME.

02:05PM

11 MR. BRIAN: SHEDLIN.

12 THE COURT: -- SHEDLIN E-MAIL. AND NOT WITH A
13 GROUP OF PEOPLE WHO -- IT WASN'T INTERNAL. IT WAS AN
14 E-MAIL.

15 MR. BRIAN: IT WAS ACTUALLY --

02:05PM

16 THE COURT: TO STERN?

17 MR. BRIAN: NO. IT WAS INTRODUCED THROUGH
18 MR. SHEDLIN. IT WAS AN E-MAIL FROM HIS ONE OF HIS -- I
19 DON'T KNOW -- STAFFERS OR CITIGROUP.

20 THE COURT: TO HIM?

02:06PM

21 MR. BRIAN: NO. FROM ONE CITIGROUP PERSON TO
22 ANOTHER.

23 THE COURT: I APOLOGIZE. I MISSTATED IT. I
24 THOUGHT IT WAS IN THE DRAFT REPORT.

25 MR. QUINN: YOU DID MISSTATE IT.

02:06PM

26 THE COURT: I'M HAPPY TO MAKE A CORRECTION.

27 MR. QUINN: I'D APPRECIATE IF YOU WOULD.

28 THE COURT: I WANTED TO CLEAR THAT UP. GIVE

1 ME THE NUMBERS OF THE EXHIBITS AND I'LL CLARIFY IT ON
2 MONDAY MORNING.

3 MR. BRIAN: I WAS SO TIRED, I DIDN'T FOLLOW
4 UP. I'LL LOOK AT THE TRANSCRIPT.

5 THE COURT: AFTER I LISTENED TO THE
6 CROSS-EXAMINATION, I REALIZED I WAS IN ERROR, AND I
7 DIDN'T WANT TO GIVE IMPRESSION THAT I THOUGHT THERE WAS
8 SOMETHING IN AN EXHIBIT THAT WASN'T THERE.

02:06PM

9 MR. BRIAN: FINE, YOUR HONOR. WE'LL LOOK AT
10 IT.

02:06PM

11 THE COURT: GIVE ME SOMETHING ON THE EXHIBITS.
12 I'LL TAKE CARE OF IT ON MONDAY, MR. QUINN.

13 MR. QUINN: WILL DO, YOUR HONOR.

14 THE COURT: WHAT ELSE DO WE HAVE?

15 MR. QUINN: JUST TO WISH YOU A GOOD WEEKEND.

02:06PM

16 THE COURT: THANK YOU.

17 I HAVE THE CABANNES BOOK THAT I'VE BEEN
18 SAVING. I WANTED TO HAVE SOMETHING TO READ OVER THE
19 WEEKEND.

20 WILL WE FINISH UP WITH PLAINTIFF'S CASE
21 ON MONDAY OR TUESDAY?

02:07PM

22 MR. QUINN: WE KEEP SLIPPING BEHIND. WE HOPE
23 TO -- WE HOPED WE'D GET TO DR. CORNELL TODAY.

24 YES, MONDAY OR TUESDAY. YES, IS THE
25 ANSWER TO THAT QUESTION.

02:07PM

26 THE COURT: FOR SURE?

27 MR. QUINN: (NO AUDIBLE RESPONSE.)

28 THE COURT: LET'S SAY FOR SURE. WE REALLY

1 NEED TO.

2 MR. BRIAN: DO YOU WANT TO TAKE ANY BREAK
3 AFTER THEY'RE DONE, OR YOU WANT TO GO RIGHT INTO OUR
4 CASE? I ASK THAT ONLY BECAUSE OUR TIME FOR GIVING
5 NOTICE TO MR. QUINN'S PEOPLE WILL KICK IN.

02:07PM

6 THE COURT: NO, NO BREAK.

7 MR. BRIAN: WE'LL BE READY TO GO.

8 THE COURT: WE WILL KEEP GOING AND GO RIGHT
9 UP, YOU KNOW, ON SCHEDULE.

10 MR. BRIAN: WE'LL TALK THIS WEEKEND AND FIGURE
11 OUT THE BEST ESTIMATE WHEN THEY'LL BE DONE, AND WE'LL
12 BE READY TO GO.

02:07PM

13 THE COURT: MONDAY OR TUESDAY. YOU SHOULD BE
14 READY MONDAY OR TUESDAY. BY TUESDAY NOON.

15 ALL RIGHT HAVE A NICE WEEKEND.

02:07PM

16

17 (AT 2:07 P.M., AN ADJOURNMENT WAS
18 TAKEN UNTIL AUGUST 29, 2011 AT 8:30
19 A.M.)

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