

1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA AUGUST 29, 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
8
9

10 THE COURT: GOOD MORNING, LADIES AND
11 GENTLEMEN. IN THE TCW VERSUS GUNDLACH MATTER, ALL
12 MEMBERS OF OUR JURY ARE PRESENT, AS ARE COUNSEL.

08:38AM

13 LADIES AND GENTLEMEN, I HAVE YOUR
14 QUESTION HERE, AND THE ANSWER, THOUGH THAT QUESTION IS,
15 THE ORIGINAL ESTIMATE INCLUDED ALL OF YOUR SERVICE.

08:38AM

16 AND WE WILL ENDEAVOR TO PROVIDE YOU WITH
17 AN UPDATED ESTIMATE WITHIN THE NEXT DAY OR SO. WE'LL
18 TALK ABOUT IT LATER TODAY, AND TRY TO GET A HANDLE ON
19 EXACTLY WHERE WE ARE.

20 YES, SIR?

08:38AM

21 MR. QUINN: THAT'S ONE ISSUE, YOUR HONOR.

22 THE COURT: LADIES AND GENTLEMEN, ON FRIDAY, I
23 MADE A COMMENT DURING THE EXAMINATION OF ONE OF THE
24 WITNESSES ABOUT THE VALUATION OF TCW BEING CONTAINED IN
25 A DRAFT CITIGROUP REPORT.

08:39AM

26 I BELIEVE THAT THAT COMMENT WAS IN
27 ERROR. THERE ARE TWO CITIGROUP REPORTS IN EVIDENCE.
28 THEY ARE EXHIBITS 2153 AND 2184.

1 THERE WAS ANOTHER EXHIBIT THAT CONTAINED
2 AN ESTIMATE OF VALUATION, WHICH WAS 5269. I JUST --
3 YOU SHOULD DISREGARD MY COMMENT. THERE MAY BE
4 ADDITIONAL EVIDENCE OFFERED.

5 YOU NEED TO MAKE YOUR DECISION BASED ON
6 THE EVIDENCE THAT YOU HEAR. AND I DIDN'T WANT TO
7 MISLEAD YOU IN MY COMMENT. AT THAT POINT IN TIME IT
8 WAS IN ERROR. ALL RIGHT?

9 YES, SIR.

10 MR. SURPRENANT: TCW CALLS ITS NEXT WITNESS,
11 BRAD CORNELL.

12
13 PROFESSOR BRAD CORNELL +
14 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND
15 TESTIFIED AS FOLLOWS:

16
17 THE CLERK: YOU DO SOLEMNLY STATE THAT THE
18 TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW
19 PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE
20 WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

21 THE WITNESS: I DO.

22 THE CLERK: THANK YOU. PLEASE BE SEATED.

23 SIR, STATE AND SPELL YOUR NAME FOR THE
24 RECORD.

25 THE WITNESS: MY NAME IS BRAD CORNELL.
26 B-R-A-D, C-O-R-N-E-L-L.

27 THE CLERK: THANK YOU.

28 THE COURT: GOOD MORNING, MR. CORNELL.

08:39AM

08:40AM

08:40AM

08:40AM

1 THE WITNESS: GOOD MORNING.

2 THE COURT: MR. SURPRENANT, YOU MAY PROCEED.

3

4 DIRECT EXAMINATION +

5 BY MR. SURPRENANT:

08:40AM

6 Q PROFESSOR CORNELL, HAVE YOU TESTIFIED AS AN
7 EXPERT IN TRIAL PREVIOUSLY?

8 A I HAVE.

9 Q ON APPROXIMATELY HOW MANY OCCASIONS?

10 A ABOUT 40.

08:41AM

11 Q WHAT TOPICS HAS YOUR EXPERT TESTIMONY
12 ADDRESSED?

13 A WELL, VALUATION OF BUSINESSES, THE CALCULATION
14 OF DAMAGES, THE OPERATION OF SECURITIES MARKETS.

15 Q WHEN YOU SAY VALUATION, WHAT DOES THAT MEAN?

08:41AM

16 A ESTIMATING WHAT A BUSINESS OR A SECURITY OR AN
17 INVESTMENT IS WORTH.

18 Q WHAT IS YOUR PROFESSION?

19 A I'M A FINANCIAL ECONOMIST.

20 Q DO YOU TEACH?

08:41AM

21 A I DO.

22 Q WHERE DO YOU TEACH?

23 A I CURRENTLY TEACH AT THE CALIFORNIA INSTITUTE
24 OF TECHNOLOGY, OR CALTECH, FOR SHORT.

25 Q WHAT DO YOU TEACH?

08:41AM

26 A I TEACH APPLIED CORPORATE FINANCE, AND
27 INVESTMENT BANKING.

28 Q WHAT IS APPLIED CORPORATE FINANCE?

1 A IT'S THE STUDY OF CORPORATE FINANCE FROM MORE
2 THE STANDPOINT OF PRACTITIONERS, RATHER THAN PURE
3 THEORISTS.

4 Q WHERE HAVE YOU TAUGHT PREVIOUSLY?

5 A PRIOR TO THAT, FOR 26 YEARS, I WAS A PROFESSOR
6 AT THE ANDERSON SCHOOL OF MANAGEMENT AT UCLA.

08:42AM

7 Q WHAT GRADUATE AND UNDERGRADUATE -- AND
8 GRADUATE DEGREES DO YOU HAVE?

9 A ALL MY DEGREES ARE FROM STANFORD UNIVERSITY.
10 I HAVEN'T -- I HAVE AN UNDERGRADUATE DEGREE WITH
11 INTERDEPARTMENTAL MAJOR IN PHYSICS, PSYCHOLOGY AND
12 PHILOSOPHY.

08:42AM

13 AND I ALSO HAVE A MASTER'S DEGREE IN
14 STATISTICS; AND FINANCIALLY, MY PH.D. IN FINANCIAL
15 ECONOMICS.

08:42AM

16 Q HAVE YOU PUBLISHED ANY BOOKS ADDRESSING
17 FINANCIAL ECONOMICS?

18 A I HAVE.

19 Q HOW MANY?

20 A TWO.

08:42AM

21 Q HAVE YOU PUBLISHED ANY SCHOLARLY ARTICLES IN
22 FINANCIAL ECONOMICS?

23 A YES. CLOSE TO 100.

24 Q HAVE YOU WON ANY AWARDS FOR YOUR SCHOLARSHIP
25 IN FINANCIAL ECONOMICS?

08:42AM

26 A I HAVE.

27 Q MIKE, COULD YOU DISPLAY FOR IDENTIFICATION,
28 TRIAL EXHIBIT 913-B.

1 I BELIEVE IT'S IN THIS BOOK IN FRONT OF
2 YOU, PROFESSOR CORNELL.

3 COULD YOU TELL US WHAT THAT IS?

4 A IT'S A RECENT COPY OF MY RESUME.

5 Q IS THE INFORMATION IT CONTAINS ACCURATE? 08:43AM

6 A YES.

7 MR. SURPRENANT: WE WOULD OFFER, YOUR HONOR,
8 TRIAL EXHIBIT 913-B INTO EVIDENCE.

9 MR. HELM: NO OBJECTION.

10 THE COURT: IT WILL BE ADMITTED. 08:43AM

11
12 (EXHIBIT 913-B ADMITTED.)+

13
14 BY MR. SURPRENANT:

15 Q IN ADDITION TO BEING A PROFESSOR AT CALTECH,
16 ARE YOU ASSOCIATED WITH ANY LITIGATION SUPPORT FIRM? 08:43AM

17 A I AM.

18 Q WHAT IS THE NAME OF THAT FIRM?

19 A CHARLES RIVER ASSOCIATES, OR CRA.

20 Q DOES CRA CHARGE A CUSTOMARY RATE FOR YOUR
21 SERVICES IN CASES LIKE THIS? 08:43AM

22 A IT DOES.

23 Q HOW MUCH IS THAT?

24 A THE CUSTOMARY RATE IS 750 PER HOUR.

25 Q IS THAT WHAT CRA IS CHARGING TCW IN THIS CASE? 08:43AM

26 A IT IS.

27 Q IS CRA'S COMPENSATION DEPENDENT ON THE CONTENT
28 OF YOUR TESTIMONY?

1 A NO.

2 Q IS IT DEPENDENT ON THE OUTCOME OF THIS CASE?

3 A NO.

4 Q HAS DEFENSE COUNSEL, MUNGER TOLLES & OLSON,
5 PREVIOUSLY RETAINED YOU TO TESTIFY AS AN EXPERT?

08:44AM

6 A YES.

7 Q ON APPROXIMATELY HOW MANY OCCASIONS?

8 A APPROXIMATELY 15.

9 Q ARE ANY OF THOSE RETENTIONS OR CASES CURRENT?

10 A YES.

08:44AM

11 Q ABOUT HOW MANY?

12 A TWO OR THREE.

13 MR. SURPRENANT: YOUR HONOR, TRUST COMPANY OF
14 THE WEST TENDERS PROFESSOR CORNELL AS AN EXPERT IN
15 FINANCIAL ECONOMICS AND CALCULATIONS OF DAMAGES.

08:44AM

16 MR. HELM: NO OBJECTION.

17 THE COURT: LADIES AND GENTLEMEN, MR. CORNELL
18 WILL BE TESTIFYING AS AN EXPERT IN THIS CASE. HE'LL BE
19 ADMITTED AS AN EXPERT.

20 MR. SURPRENANT: THANK YOU, YOUR HONOR.

08:44AM

21 Q HAVE YOU REACHED EXPERT OPINIONS IN THIS CASE?

22 A YES.

23 Q DID YOU DO ANALYSIS YOURSELF, OR SUPERVISE
24 OTHERS WHO ASSISTED YOU?

25 A I WORKED WITH A TEAM OF PEOPLE AT CRA, AND
26 WITH ASSISTANCE FROM PEOPLE AT TCW. AND BROADSTREET,
27 AS WELL.

08:44AM

28 Q TURNING TO YOUR CALCULATIONS, WHEN YOU

1 CALCULATE ECONOMIC DAMAGES, DO YOU SOMETIMES EMPLOY A
2 CONCEPT THAT'S CALLED THE BUT-FOR WORLD?

3 A I DO.

4 Q WHAT IS THE BUT-FOR WORLD?

5 A TYPICALLY, WHEN YOU'RE CALCULATING DAMAGES,
6 IT'S BECAUSE THERE'S AN ALLEGATION THAT SOMEONE HAS
7 DONE SOMETHING WRONG OR ENGAGED IN BAD CONDUCT.

08:45AM

8 SO TO COMPUTE THE DAMAGES, YOU HAVE TO
9 LOOK AT THE DIFFERENCE BETWEEN WHAT THE PLAINTIFF GOT,
10 IN LIGHT OF THE BAD CONDUCT, AND WHAT THEY WOULD HAVE
11 GOTTEN IF THERE WERE NO BAD CONDUCT.

08:45AM

12 AND THAT WHAT-THEY-WOULD-HAVE-GOTTEN
13 WORLD IS OFTEN CALLED THE BUT-FOR WORLD. AND IT
14 ASSUMES NO BAD CONDUCT.

15 Q LET'S TRY TO ILLUSTRATE THAT ON THE FLIP
16 CHART, PROFESSOR CORNELL.

08:45AM

17 A OKAY. LET'S SEE IF I COULD GET OUT OF HERE
18 WITHOUT KICKING SOMETHING.

19 Q I THINK THERE'S A BLUE MARKER UP THERE.

20 WHAT IS THE FIRST STEP IN ILLUSTRATING A
21 BUT-FOR DAMAGE CALCULATION?

08:46AM

22 A ACTUALLY, THE FIRST STEP IS THE SECOND ONE IN
23 THE LIST.

24 I'LL CALL IT ACTUAL MONEY RECEIVED.

25 IT'S THE ACTUAL MONEY THAT THE PLAINTIFF
26 OR THE PERSON COMPLAINING ABOUT THE BAD CONDUCT HAS
27 RECEIVED.

08:46AM

28 Q COULD YOU PUT UP A NUMBER?

1 A LET'S JUST PUT A HYPOTHETICAL NUMBER OF \$400.

2 Q THAT \$400 REPRESENTS, IN THIS ILLUSTRATION,
3 REPRESENTS WHAT?

4 A IT REPRESENTS WHAT THE PLAINTIFF ACTUALLY GOT
5 IN THE WORLD THAT ACTUALLY EXISTS.

08:46AM

6 Q OKAY. WHAT'S THE NEXT STEP IN THIS
7 ILLUSTRATION?

8 A IT'S THE --

9 Q COULD YOU PUSH IT A LITTLE CLOSER, SO IT MORE
10 FACES THE JURY, PROFESSOR?

08:47AM

11 A IS THAT BETTER?

12 Q YES.

13 WHAT'S THE NEXT STEP. YOU'VE WRITTEN
14 BUT-FOR WORLD.

15 WHAT DOES THAT MEAN?

08:47AM

16 A THE BUT-FOR WORLD IS WHAT THE PLAINTIFF
17 EXPECTED TO RECEIVE IF THERE WAS NO BAD CONDUCT.

18 Q PUT UP AN ILLUSTRATIVE.

19 A LET'S PUT UP \$1,000, AS AN EXAMPLE.

20 Q AGAIN, EXPLAIN WHY, IN THE SO-CALLED BUT-FOR
21 WORLD, WHAT THE \$1,000 WOULD HAVE REPRESENTED.

08:47AM

22 A WHAT THE \$1,000 REPRESENTS IS WHAT THE
23 PLAINTIFF EXPECTED TO GET IF THERE WERE PERFORMANCE ON
24 THEIR CONTRACT OR PERFORMANCE ON THEIR DEAL, WITH NO
25 BAD CONDUCT ON THE PART OF THE DEFENDANT.

08:47AM

26 Q OKAY.

27 ON THIS SIMPLE ILLUSTRATION, WHAT DO YOU
28 NEED TO CALCULATE THE DAMAGES?

1 A YOU ACTUALLY DON'T NEED ANYTHING ELSE. YOU
2 JUST NEED TO DRAW A LINE HERE, AND TAKE THE DIFFERENCE.

3 Q COULD YOU PUT THAT, THE DIFFERENCE THERE.

4 ONE MORE THING, COULD YOU PUT, IN BIG
5 NUMBERS TX 227 AT THE BOTTOM, TO IDENTIFY IT?

08:48AM

6 A 2- --

7 Q 277 --

8 THE COURT: THE CHART PREPARED BY MR. CORNELL
9 WILL BE MARKED, FOR IDENTIFICATION ONLY, EXHIBIT 2277.

08:48AM

10 (EXHIBIT 2277 MARKED FOR I.D.) +

11 MR. SURPRENANT: THANK YOU, YOUR HONOR.

12 YOU MAY RETURN TO THE WITNESS BOX,
13 PLEASE.

08:48AM

14 THE COURT: WE ARE GOING TO MOVE IT.

15 MR. SURPRENANT: THAT'S THE BEST WE CAN DO
16 RIGHT NOW.

17 THE COURT: AT THE BREAK, WE'LL MOVE THE
18 NOTEBOOKS, AND THEN WE CAN GET IT FURTHER OUT.

08:49AM

19 BY MR. SURPRENANT:

20 Q PROFESSOR CORNELL, AS A DAMAGE EXPERT, WHAT
21 CONCLUSIONS, IF ANY, DO YOU REACH ABOUT THE ALLEGED
22 MISCONDUCT?
23

24 A I REALLY DON'T REACH A CONCLUSION, PER SE.

08:49AM

25 THE ISSUE OF THE CONDUCT IS USUALLY WHAT
26 THE REST OF THE TRIAL IS ABOUT. IS BOTH SIDES ARGUE
27 ABOUT WHO DID WHAT.
28

1 WHAT I DO IS MAKE AN ASSUMPTION AS TO
2 WHAT THE BAD CONDUCT WAS.

3 Q WHAT ASSUMPTION DO YOU MAKE?

4 A OH, EXCUSE ME.

5 IN THIS CASE, YOU MEAN?

08:50AM

6 Q YES. WELL AS A GENERAL MATTER, WHEN YOU'RE
7 CALCULATING DAMAGES; AND THEN WE'LL TURN IT TO THIS
8 CASE.

9 AS A GENERAL MATTER, WHAT ASSUMPTIONS DO
10 YOU MAKE, AS A DAMAGE EXPERT, AS TO THE ALLEGED
11 MISCONDUCT?

08:50AM

12 A AS A DAMAGE EXPERT, IF I'M WORKING FOR THE
13 PLAINTIFF, AS I AM HERE, I MAKE THE ASSUMPTION THAT THE
14 ALLEGATIONS THAT THE PLAINTIFFS HAVE MADE WITH RESPECT
15 TO THE BAD CONDUCT, ARE TRUE.

08:50AM

16 Q AND WHAT ASSUMPTION HAVE YOU MADE IN THIS
17 CASE?

18 A WELL, IT DEPENDS ON THE EXACT DAMAGE
19 CALCULATION I'M DOING.

20 BUT BASICALLY, I'M ASSUMING THAT THE
21 BEHAVIOR DESCRIBED BY MR. QUINN DURING HIS OPENING
22 STATEMENT IS, IN FACT, WHAT OCCURRED.

08:50AM

23 Q AND THAT'S AN ASSUMPTION ON YOUR PART; THAT'S
24 NOT YOUR EXPERT TESTIMONY, CORRECT?

25 A THAT'S CORRECT.

08:50AM

26 Q AS A DAMAGE EXPERT, DO YOU NONETHELESS HAVE TO
27 UNDERSTAND WHAT THE ALLEGED MISCONDUCT IS?

28 A YES, I DO.

1 Q WHY IS THAT?

2 A IN ORDER TO CALCULATE HOW MUCH THE PLAINTIFF
3 WOULD HAVE GOTTEN IN THIS BUT-FOR WORLD, I HAVE TO HAVE
4 AN UNDERSTANDING OF WHAT THE BAD BEHAVIOR WAS.

5 Q IN THIS CASE, HAVE YOU PREPARED DAMAGE
6 CALCULATION?

08:51AM

7 A I HAVE.

8 Q HOW MANY?

9 A TWO.

10 Q WHAT ARE THE TWO DAMAGE CALCULATIONS YOU HAVE
11 PREPARED?

08:51AM

12 A I HAVE A BREACH OF FIDUCIARY DUTY DAMAGE
13 CALCULATION, AND I HAVE AN INTERFERENCE DAMAGE
14 CALCULATION.

15 Q WHAT IS YOUR UNDERSTANDING OF THE ALLEGED
16 MISCONDUCT WITH RESPECT TO BREACH OF FIDUCIARY DUTY?

08:51AM

17 A WELL, IN A NUTSHELL, WHAT I'M ASSUMING IS, THE
18 DEFENDANTS OWED A DUTY OF LOYALTY, AS SENIOR EMPLOYEES
19 AT TCW.

20 AND BEGINNING IN 2009, THEY BEGAN
21 FAILING TO HONOR THAT DUTY. AND THE SITUATION
22 ACCELERATED.

08:52AM

23 AND AT THE END OF 2009, TCW WAS FORCED
24 TO TERMINATE THEM BECAUSE OF THEIR BREACH OF DUTY.

25 Q DOES THAT MEAN, PROFESSOR CORNELL, THAT IT WAS
26 THE ACT -- AS AN EXPERT IN DAMAGES, THAT IT WAS THE ACT
27 OF TERMINATING THEIR EMPLOYMENT THAT CAUSED TCW'S
28 DAMAGES, OR SOMETHING ELSE?

08:52AM

1 A IT WOULD BE SOMETHING ELSE.

2 THE ACT OF TERMINATING HIM WAS NOT A
3 DECISION TAKEN APROPOS OF NOTHING. IT WAS A DECISION
4 TAKEN BECAUSE TCW FELT THEY HAD NO CHOICE, IN LIGHT OF
5 THE BREACH OF FIDUCIARY DUTY.

08:52AM

6 Q WHAT IS YOUR UNDERSTANDING OF THE ALLEGED
7 MISCONDUCT, WITH RESPECT TO INTERFERENCE WITH THE
8 SPECIAL MORTGAGE CREDIT FUNDS I, II AND SOUTH DAKOTA?

9 A THIS STARTS AT A DIFFERENT POINT IN TIME:
10 AFTER MR. GUNDLACH AND THE OTHER DEFENDANTS WERE NO
11 LONGER AT TCW; IN OTHER WORDS, FOLLOWING DECEMBER 4TH,
12 I BELIEVE, IT WAS, 2009, THEY INTERFERED WITH THE
13 MANAGEMENT OF THOSE SPECIAL MORTGAGE CREDIT FUNDS.
14 THEY MADE PUBLIC STATEMENTS DEROGATORY OF TCW,
15 CONTACTED INVESTORS AND MADE DEROGATORY STATEMENTS, AND
16 SO FORTH.

08:53AM

08:53AM

17 Q AGAIN, THE ANSWER YOU JUST GAVE, YOU'RE
18 ASSUMING THAT MISCONDUCT; YOU DON'T HAVE AN OPINION ON
19 IT, CORRECT?

20 A YES.

08:53AM

21 I HAVEN'T ANALYZED ALL THE EVIDENCE
22 RELATED TO THE MISCONDUCT.

23 THAT'S THE JOB OF OTHER PEOPLE.

24 Q IN YOUR DAMAGES CALCULATION, HAVE YOU RELIED
25 ON DATA PROVIDED BY TCW?

08:53AM

26 A YES.

27 Q IS IT CUSTOMARY FOR EXPERTS IN YOUR FIELD TO
28 RELY ON DATA PROVIDED BY THE CLIENT WHO, AFTER ALL, IS

1 A LITIGANT IN THE TRIAL?

2 A YES. I COMMONLY DO THAT.

3 Q WHY IS IT APPROPRIATE AND CUSTOMARY FOR
4 EXPERTS IN YOUR FIELD TO DO THAT?

5 A WELL, IT'S APPROPRIATE FOR EXPERTS LIKE ME TO
6 RELY, WHEREVER WE FEEL IT'S NECESSARY, ON PEOPLE WHO
7 KNOW MORE THAN WE DO ABOUT CERTAIN TOPICS.

08:54AM

8 AND WHEN IT COMES TO THE BOOKS AND
9 RECORDS OF A COMPANY, THE PERSON WHO KNOWS THE MOST
10 ABOUT THAT INFORMATION IS USUALLY A SENIOR FINANCIAL
11 OFFICER OF THE COMPANY.

08:54AM

12 AND I WILL RELY ON THEM TO GO TO THOSE
13 BOOKS AND RECORDS AND GET INFORMATION THAT I NEED.

14 Q DO YOU RELY ON THE TESTIMONY OF ANY OTHER
15 EXPERTS?

08:54AM

16 A GENERALLY, OR IN THIS CASE?

17 Q IN THIS CASE?

18 A I DO.

19 Q AND YOU RELY ON WHAT OTHER EXPERT?

20 A ANDREW SMITH OF BROADSTREET.

08:54AM

21 Q IS IT CUSTOMARY FOR EXPERTS IN YOUR FIELD TO
22 RELY ON THE TESTIMONY OF OTHER EXPERTS?

23 A ONCE AGAIN, IT IS.

24 Q WHY IS THAT?

25 A EVERYONE HAS THEIR OWN AREA OF EXPERTISE.

08:54AM

26 AND THE MOST EFFECTIVE THING YOU CAN DO
27 IS, WHERE SOMEONE ELSE IS MORE EXPERT THAN YOU, TO TURN
28 TO THEM, RATHER THAN TO TRY TO DO THEIR JOB FOR THEM.

1 Q DID YOU RELY ON A COST ALLOCATION THAT WAS
2 PREPARED BY MR. VILLA?

3 A YES, I DID.

4 Q DID YOU ALSO RELY ON A CALCULATION THAT WAS
5 PERFORMED BY MR. HAGER?

08:55AM

6 A YES, I DID.

7 Q IS IT CUSTOMARY FOR EXPERTS IN YOUR FIELD TO
8 RELY ON CALCULATIONS BY EMPLOYEES OF ONE OF THE PARTIES
9 TO THE LITIGATION?

10 A TO THE EXTENT THAT THERE ARE SPECIALIZED
11 CALCULATIONS THAT A COMPANY PERFORMS IN THE NORMAL
12 COURSE OF ITS BUSINESS, I WOULD RELY ON THOSE
13 CALCULATIONS, IF I NEED TO.

08:55AM

14 Q WHY DO YOU RELY ON THOSE CALCULATIONS, AND
15 JUST NOT DO IT YOURSELF?

08:55AM

16 A IT DEPENDS ON SPECIALIZED KNOWLEDGE AND
17 SPECIALIZED SOFTWARE THAT THE COMPANY HAS, AND THAT I
18 DON'T.

19 Q MIKE, IF YOU COULD DISPLAY FOR IDENTIFICATION,
20 TRIAL EXHIBIT 1906-B.

08:56AM

21 I BELIEVE IT'S IN YOUR WITNESS BOOK,
22 PROFESSOR.

23 YOU CAN JUST LOOK AT THE SCREEN. IT'S
24 RIGHT IN FRONT OF YOU.

25 A MAYBE I'LL DO BOTH.

08:56AM

26 GO AHEAD.

27 Q DO YOU KNOW WHAT THAT IS?

28 A THIS IS AN EXHIBIT THAT I PREPARED.

1 Q WHAT DOES IT CALCULATE?

2 A IT CALCULATES THE BREACH OF FIDUCIARY DUTY
3 DAMAGES.

4 Q DOES IT ACCURATELY SET FORTH YOUR CALCULATION
5 IN THE UNDERLYING DATA?

08:56AM

6 A YES.

7 MR. SURPRENANT: YOUR HONOR, I WOULD OFFER
8 TRIAL EXHIBIT 1906-B INTO EVIDENCE.

9 MR. HELM: NO OBJECTION.

10 THE COURT: IT WILL BE ADMITTED.

08:56AM

11

12 (EXHIBIT 1906-B ADMITTED.)+

13

14 MR. SURPRENANT: IF YOU COULD DISPLAY IT,
15 MIKE, AND MAYBE BLOW IT UP A LITTLE BIT.

08:56AM

16 Q NOW LET'S KIND OF FIRST EXPLAIN -- AND IN
17 COMPARISON TO YOUR SIMPLE ILLUSTRATION, THE YELLOW IN
18 YOUR CALCULATION, WHAT DOES THAT COMPARE TO, ON THIS
19 CHART?

20 A THAT'S THE HYPOTHETICAL BUT-FOR WORLD.

08:57AM

21 Q IN WHICH THERE'S NO ALLEGED MISCONDUCT?

22 A THAT'S CORRECT.

23 Q AND WHAT'S THE BLUE?

24 A THAT'S THE ACTUAL WORLD.

25 Q AND THEN WHAT'S THE RED LINES?

08:57AM

26 A THOSE ARE THE DIFFERENCES.

27 Q THE FIRST LINE IS TRADITIONAL ASSET MANAGEMENT
28 FEES.

1 WHAT DOES THAT MEAN?

2 A THOSE ARE THE FEES THAT TCW CALCULATED THEY
3 WOULD HAVE RECEIVED AS OF NOVEMBER 30TH, 2009, BEFORE
4 THE TERMINATION OF MR. GUNDLACH, HAD THERE BEEN NO BAD
5 BEHAVIOR.

08:57AM

6 Q WHAT IS TRADITIONAL -- WHAT ARE TRADITIONAL
7 ASSETS?

8 A THERE ARE REALLY TWO BUCKETS HERE, IN THIS
9 CASE.

08:58AM

10 ONE ARE THE SPECIAL MORTGAGE CREDIT
11 FUNDS, WHICH I'VE HEARD YOU TALKED ABOUT. AND WE'LL
12 COME TO LATER.

13 AND THE OTHER IS REALLY EVERYTHING ELSE.

14 AND EVERYTHING ELSE IS WHAT IS REFERRED
15 TO AS THE TRADITIONAL ASSETS.

08:58AM

16 Q NOW, IN TERMS OF THE YELLOW, THE WORLD WITH
17 NONE OF THE ALLEGED MISCONDUCT, DO YOU MAKE ANY
18 ASSUMPTIONS?

19 A I DO.

20 Q WHAT ASSUMPTIONS DO YOU MAKE?

08:58AM

21 A I ASSUME THAT BUT FOR THE BAD CONDUCT, TCW
22 WOULD HAVE EARNED THE AMOUNT THAT THEY WERE EARNING AS
23 OF NOVEMBER 30TH, 2009.

24 ON AN ANNUAL BASIS, THEY WOULD HAVE
25 EARNED THOSE MANAGEMENT FEES FOR THE NEXT FIVE YEARS.

08:58AM

26 Q YOU KEEP IT CONSTANT; IS THAT CORRECT?

27 A YES. I ASSUMED THOSE MANAGEMENT FEES WOULD
28 HAVE REMAINED CONSTANT AT THEIR 2009 LEVEL FOR THE NEXT

1 FIVE YEARS.

2 Q DO YOU MAKE ANY ASSUMPTIONS ABOUT THE WORLD ON
3 TOP, THE BUT-FOR WORLD, THE WORLD WITH NO ALLEGED
4 MISCONDUCT?

5 A WELL, I MAKE THE ASSUMPTION THAT MR. GUNDLACH
6 WOULD HAVE STAYED AND MANAGED THOSE FUNDS FOR THE NEXT
7 FIVE YEARS.

08:58AM

8 Q DO YOU HAVE AN OPINION WHETHER THAT'S
9 REASONABLE ASSUMPTION?

10 A IT SEEMED VERY REASONABLE TO ME.

08:59AM

11 THOUGH I RELY FOR MUCH OF THAT
12 CONCLUSION ON MR. SMITH, WHO ADDRESSED THAT QUESTION.

13 Q WHO PROVIDED THE NUMBER THERE, 148,434,817?

14 A MR. RICHARD VILLA DID.

15 Q AND THEN WHAT IS GOING ON IN LINE 2?

08:59AM

16 A IN ORDER TO COMPUTE THE AMOUNT OF MONEY THAT
17 TCW WOULD HAVE MADE IN THIS BUT-FOR WORLD, YOU HAVE TO
18 SUBTRACT FROM THE MANAGEMENT FEES, THE COST OF MANAGING
19 THE FUNDS.

20 AND IN THIS BUT-FOR WORLD, MR. GUNDLACH
21 AND HIS TEAM ARE STILL THERE, MANAGING THE FUNDS. AND
22 THEY GET 50 PERCENT OF THOSE FEES. SO YOU HAVE TO
23 DEDUCT OUT MR. GUNDLACH AND HIS TEAM'S SHARE.

08:59AM

24 Q SO WHAT IS GOING ON THEN IN THE NEXT LINE, NET
25 BUT-FOR REVENUE FROM TRADITIONAL ASSETS?

09:00AM

26 A THAT'S JUST THE TOTAL FEES MINUS THE SHARE
27 PAID TO MR. GUNDLACH AND HIS TEAM.

28 Q AND MIKE, IF YOU COULD THEN, CIRCLING THE

1 NUMBER 277 MILLION.

2 THAT NUMBER, PROFESSOR CORNELL, WHAT
3 DOES THAT CORRESPOND TO, WITH RESPECT TO YOUR FLIP
4 CHART?

5 A I CAN SEE IT.

09:00AM

6 THAT CORRESPONDS TO THE BUT-FOR MONEYS
7 OF 1,000.

8 THAT 277 MILLION IS COMPARABLE -- NOT
9 COMPARABLE, BUT IS ANALOGOUS, TO THE \$1,000.

10 Q LET'S GO TO THE BLUE.

09:00AM

11 AND THAT IS THE -- WHAT IS THE BLUE?
12 REMIND US AGAIN, WHAT THAT IS?

13 A THE BLUE IS THE ACTUAL WORLD, WHAT THE -- WHAT
14 TCW ACTUALLY EARNED AND WHAT THEY THINK THEY ARE GOING
15 TO CONTINUE TO EARN IN THE ACTUAL WORLD, WHERE
16 MR. GUNDLACH AND HIS TEAM ARE GONE.

09:01AM

17 Q YOU KNOW, I SKIPPED SOMETHING.

18 LET'S GO BACK TO THE YELLOW.

19 COLUMN F IS NVP?

20 A NVP REFERS TO NET PRESENT VALUE.

09:01AM

21 IT'S A CALCULATION THAT TAKES ACCOUNT OF
22 THE FACT THAT PEOPLE WOULD PREFER TO GET A DOLLAR NOW
23 THAN, SAY, FIVE YEARS IN THE FUTURE.

24 SO BECAUSE WE'RE LOOKING AT DOLLARS AT
25 DIFFERENT DATES, WE NEED A WAY TO COMPARE APPLES TO
26 APPLES. AND NVP DOES THAT.

09:01AM

27 Q IF YOU WERE TO ADD UP THE \$74,217,408, FIVE
28 TIMES, WOULD THAT EQUAL OR NOT EQUAL THE 276?

1 A IT WOULD ACTUALLY BE A GOOD DEAL GREATER.

2 IF I DO THE ARITHMETIC IN MY HEAD, THAT
3 COMES TO ABOUT 370,000,000, NOT 277.

4 AND THE REASON FOR THE DIFFERENCE IS THE
5 FACT THAT FUTURE DOLLARS, LIKE THOSE IN 2013 AND 2014,
6 ARE BEING SUBSTANTIALLY DISCOUNTED.

09:02AM

7 Q OKAY.

8 NOW LET'S GO TO THE ACTUAL REVENUE.

9 WHO PROVIDED LINE 4?

10 A AGAIN, THIS -- THIS WAS PROVIDED BY MR. VILLA,
11 WHO ACCESSED THE COMPANY'S BOOKS AND RECORDS.

09:02AM

12 Q MIKE, IF YOU COULD DISPLAY TRIAL EXHIBIT 2148.
13 IT'S IN EVIDENCE.

14 IS THIS THE COST ALLOCATION PREPARED BY
15 MR. VILLA, THAT YOU RELIED ON?

09:02AM

16 A YES, IT IS.

17 Q AND MIKE, IF WE COULD GO TO NO. 1, AND SHOW
18 WHERE THE NUMBERS CAME FROM?

19 SO YOUR EXHIBIT NO. 4 IS BLOWN UP ON THE
20 TOP, AND A SECTION OF MR. VILLA'S IS ON THE BOTTOM.

09:03AM

21 COULD YOU, USING YOUR POINTER OR YOUR
22 ELECTRONIC POINTER, CONNECT THEM UP?

23 A OKAY. IT'S A LITTLE HARD TO DO. I CAN'T
24 ACTUALLY READ THE SCREEN.

25 BUT JUST GIVE ME A MINUTE HERE, AND I'LL
26 LOOK AT IT HERE.

09:03AM

27 IS HE GOING TO TRY TO DO SOME ELECTRONIC
28 TRICK HERE?

1 THE COURT: HE'LL TRY TO BLOW IT UP FOR YOU.

2 THE WITNESS: OKAY. THAT'S SEMI HELPFUL.

3 BUT I CAN SEE IT HERE.

4 IF YOU LOOK RIGHT OVER MR. BRIAN'S HEAD
5 THERE, WHERE I'M POINTING -- CAREFUL. DON'T GET THIS
6 IN YOUR EYES. THIS IS ASTRONOMICAL LASER THAT MIGHT
7 BLIND YOU, AND THAT WOULD BE A BIG PROBLEM.

09:03AM

8 WHERE IT SAYS TRADITIONAL AUM, THAT'S
9 SHORTHAND FOR THE REVENUES EARNED ON TRADITIONAL AUM.
10 AND THAT NUMBER GOES RIGHT IN THERE.

09:04AM

11 Q THEN THE 33,132,735 --

12 A THAT'S THIS THING HERE.

13 Q IT GOES --

14 A YOU SEE, JUST SO I MAKE IT CLEAR WHAT
15 MR. VILLA IS DOING; FOR 2010, HE HAS ACTUAL DATA, WHAT
16 THE FIRM REALLY EARNED IN THAT YEAR. SO THAT'S ACTUAL
17 DATA.

09:04AM

18 BUT FOR 2011, '12, '13 AND '14, HE HAS
19 TO MAKE SOME ASSUMPTIONS. AND WHAT HE ASSUMES IS THAT
20 THE RATE AT WHICH THEY WERE EARNING AT THE END OF 2010
21 APPLIES IN 2011, '12 AND '13.

09:04AM

22 Q SO THAT IS WHY THE REVENUE IN THE ACTUAL WORLD
23 REMAINS CONSTANT?

24 A THAT'S RIGHT.

25 Q OKAY.

09:04AM

26 LET'S GO TO LINE 5.

27 WHAT IS THAT, LESS PAY OUT REPLACEMENT
28 FUND MANAGER?

1 A THAT IS THE COST -- IS HE DONE WITH HIS MAGIC?

2 Q HE'S AS GOOD AS THEY ARE.

3 I WISH I COULD DO THIS WITH MY GLASSES.

4 OKAY. LESS PAYMENT REPLACEMENT FUND

5 MANAGER, TELL US WHAT THAT IS?

09:05AM

6 A WELL, IN THE ACTUAL WORLD, MR. GUNDLACH AND
7 HIS TEAM ARE GONE. AND MR. STERN HAD TO GO OUT AND
8 BUILD A REPLACEMENT TEAM, PARTLY BY USING HIS INTERNAL
9 PEOPLE, BUT PRIMARILY BY BRINGING IN PEOPLE FROM
10 MET WEST.

09:05AM

11 AND SO WHAT I ASKED MR. VILLA TO DO WAS
12 TO COMPUTE, THE WAY HE NORMALLY DOES, THE FULLY
13 ALLOCATED COST OF USING HIS NEW TEAM TO MANAGE THE
14 ASSETS THAT REMAINED.

15 AND THAT'S WHAT HE DID.

09:05AM

16 Q SO WHAT YOU'RE DOING THERE IS IDENTIFYING THE
17 COST OF MANAGING THE FUNDS?

18 A YES. THAT'S THE -- THAT'S DONE DOWN HERE BY
19 MR. VILLA, FROM HIS WORKSHEET THAT HE TESTIFIED ABOUT
20 EARLIER.

09:06AM

21 AND THEN I TAKE HIS NUMBERS, AND I PLUG
22 THEM IN UP HERE.

23 Q OKAY.

24 AND LINE 6 IS WHAT?

25 A LINE 6 IS JUST THE DIFFERENCE. IT'S THE
26 AMOUNT OF MONEY THAT TCW MAKES AFTER THEY TAKE IN THE
27 MANAGEMENT FEES AND PAY OUT THE COST OF THE REPLACEMENT
28 FUND MANAGER.

09:06AM

1 Q OKAY. MIKE CAN YOU JUST GO BACK TO THE
2 EXHIBIT, 1906-B.

3 BLOW IT UP.

4 ACTUALLY, BLOW UP THE WHOLE THING.

5 SO THAT NUMBER, 277,923,222, WHAT DOES
6 THAT CORRESPOND TO, OVER HERE ON THE ILLUSTRATION?

09:06AM

7 A THAT CORRESPONDS TO THE \$400 IN THE ACTUAL
8 WORLD.

9 Q OKAY.

10 AND THEN LET'S GO TO THE RED LINE, IF
11 YOU COULD BLOW THAT UP MIKE. IT'S A LITTLE HARD TO
12 SEE.

09:07AM

13 WHAT IS THE RED LINE, THE DIFFERENCE
14 BETWEEN BUT-FOR MINUS ACTUAL?

15 A THAT IS SIMPLY THE DIFFERENCE, EXACTLY LIKE I
16 CALCULATED IT HERE.

09:07AM

17 Q IF YOU GO TO COLUMN F, HAVE YOU NET PRESENT
18 VALUED THOSE AMOUNTS?

19 A WELL, BECAUSE IT'S THE DIFFERENCE BETWEEN TWO
20 NET PRESENT VALUES, I DON'T HAVE TO REDO THAT.

09:07AM

21 Q OKAY.

22 TELL ME WHAT'S GOING ON ON LINE 8,
23 UNDERNEATH LINE 7, NVP OF DIFFERENCE AT 13.1 PERCENT?

24 A WHAT I'M DOING THERE IS COMPUTING THE
25 DIFFERENCE YEAR BY YEAR. I HAVE USED IN MY DAMAGE
26 CALCULATION, A FIVE-YEAR HORIZON. BUT IT'S POSSIBLE
27 THAT THE JURY MAY CHOOSE TO USE A DIFFERENT HORIZON.

09:08AM

28 IF THEY DO, THEY HAVE THE NUMBERS FOR

1 EACH YEAR.

2 Q AND WHAT IS GOING ON LINE 9, A PREJUDGMENT
3 INTEREST FROM JANUARY 1ST, 2010, TO AUGUST 19TH, 2011?

4 A THE NET PRESENT VALUE CALCULATION WAS DESIGNED
5 TO GET APPLES TO APPLES COMPARISONS OF DOLLARS AT
6 DIFFERENT POINTS IN TIME.

09:08AM

7 WHAT IT DID IS, IT LOOKED AT DOLLARS AS
8 OF JANUARY 1ST, 2010. SO THE NET PRESENT VALUE
9 CALCULATION GIVES YOU DOLLARS AS OF JANUARY 1ST, 2010.

10 BUT IF TCW WERE TO GET AN AWARD, THEY
11 WON'T GET IT THEN, THEY'LL GET IT SOMETIME AFTER THIS
12 TRIAL ENDS. AND SO THEY GET INTEREST OVER THAT PERIOD
13 OF DIFFERENCE, AT SOME LEGALLY DETERMINED RATE.

09:09AM

14 AND THIS CALCULATION SIMPLY APPLIES THAT
15 LEGALLY DETERMINED RATE UP THROUGH AUGUST 19TH.

09:09AM

16 Q OKAY.

17 IF WE CAN GO BACK, MIKE.

18 SO PROFESSOR CORNELL, COULD YOU PLEASE
19 IDENTIFY, ON TRIAL EXHIBIT 1906-B, THE DAMAGES YOU HAVE
20 CALCULATED FOR BREACH OF FIDUCIARY DUTY, INCLUDING
21 PREJUDGMENT INTEREST?

09:09AM

22 A IT'S THE NUMBER IN THE BOX, IN THE BOTTOM
23 RIGHT-HAND CORNER, WHICH IS 222,218,490.

24 Q THANK YOU.

25 DID YOU PREPARE AN EXHIBIT FOR YOUR
26 DAMAGES CALCULATION FOR INTERFERENCE WITH THE SPECIAL
27 MORTGAGE CREDIT FUNDS I, II AND SOUTH DAKOTA?

09:09AM

28 A I DID.

1 Q MIKE, COULD YOU DISPLAY FOR IDENTIFICATION,
2 TRIAL EXHIBIT 1909 B-1.

3 COULD YOU TELL US WHAT THIS IS,
4 PROFESSOR CORNELL?

5 A THIS IS MY CALCULATION OF THE DAMAGES RELATED
6 TO INTERFERENCE WITH A SPECIAL MORTGAGE CREDIT FUNDS.

09:10AM

7 Q DOES IT ACCURATELY SET FORTH THE DATA IT
8 CONTAINS?

9 A YES. IT DOES.

10 Q DOES IT ACCURATELY SET FORTH YOUR EXPERT
11 CALCULATIONS?

09:10AM

12 A YES, IT DOES.

13 MR. SURPRENANT: YOUR HONOR, I WOULD MOVE
14 TRIAL EXHIBIT 1909-B-1 INTO EVIDENCE.

15 MR. HELM: NO OBJECTION.

09:10AM

16 THE COURT: IT WILL BE ADMITTED.

17
18 (EXHIBIT 1909 B-1 ADMITTED.)+

19
20 MR. SURPRENANT: DISPLAY IT AND BLOW IT UP.
21 THANK YOU.

09:10AM

22 Q FIRST LINE, CALCULATED REVENUE UNDER ORIGINAL
23 TERMS, TWO PERCENT AND 20 PERCENT, WHAT DOES THAT MEAN?

24 A THIS IS A CALCULATION OF THE AMOUNT OF MONEY,
25 THE GROSS AMOUNT OF MONEY THAT TCW ENTITIES WOULD HAVE
26 RECEIVED, IF THERE WERE NO CHANGES IN THE SPECIAL
27 MORTGAGE CREDIT FUNDS TERMS FROM WHAT THEY WERE
28 INITIALLY, AND THERE WERE NO EARLY WITHDRAWALS FROM THE

09:11AM

1 SPECIAL MORTGAGE CREDIT FUNDS.

2 Q WHO PROVIDED, IF YOU COULD HIGHLIGHT THE DATA,
3 MIKE --

4 WHO PROVIDED THE DATA FOR 2010, '11 AND
5 '12?

09:11AM

6 A THAT CAME FROM WORK PERFORMED BY MR. DUKE
7 HEGER, WHO WAS, I THINK, HERE ON THURSDAY. I LISTENED
8 TO HIM.

9 Q COULD YOU DISPLAY -- IT'S IN EVIDENCE -- MIKE,
10 TRIAL EXHIBIT 2267.

09:11AM

11 IS THAT MR. HAGER'S CALCULATION YOU HAVE
12 IN MIND?

13 A YES. THIS LOOKS LIKE THE EXHIBIT HE PUT UP
14 WHEN HE WAS TESTIFYING ON THURSDAY.

15 Q IF WE COULD GO TO NO. 3, THAT KIND OF COMPARES
16 THEM.

09:12AM

17 SO IF YOU COULD LEAD US, IF YOU COULD
18 SEE THAT, IF YOU COULD TRACK THE NUMBERS FOR US, WITH
19 YOUR ELECTRONIC POINTER?

20 A SURE.

09:12AM

21 Q STARTING WITH 2010, MR. HAGER HAD MANAGEMENT
22 FEES -- I'LL ROUND OFF, SO I DON'T HAVE TO READ THE BIG
23 NUMBERS -- 56 MILLION. AND THAT GOES INTO HERE, MY
24 2010, 56 MILLION.

25 THEN HE CALCULATED MANAGEMENT FEES OF 50
26 MILLION IN 2011; AND THAT GOES INTO HERE, FOR 2011.

09:12AM

27 THEN FOR 2012, HE CALCULATED MANAGEMENT
28 FEES OF \$58 MILLION, BUT HE ALSO CALCULATED A CARRIED

1 INTEREST OR A PROFIT SHARING OF \$367 MILLION; SO TCW
2 ENTITIES WOULD GET THEM BOTH.

3 SO YOU ADD THEM UP, AND YOU GET 425?

4 AND THAT GOES IN HERE, UNDER 2012.

5 THE SECOND LINE IS LESS INCREMENTAL FEE
6 SHARING WITH MET WEST. AND IT SHOWS, IN PARENS, 42
7 MILLION, AND CHANGE FOR THE YEAR 2012.

09:13AM

8 WHAT IS THAT?

9 A WELL, IT'S -- AS PART OF HIS EFFORT TO BRING
10 IN THE NEW TEAM FOR METROPOLITAN WEST, MR. STERN
11 OFFERED THEIR KEY EMPLOYEES A FEE-SHARING ARRANGEMENT
12 WHERE THEY WOULD GET 10 PERCENT OF ANYTHING OVER \$200
13 MILLION IN FEES.

09:13AM

14 AND THOSE TWO LINES TAKE ACCOUNT OF THAT
15 FEE SHARING.

09:13AM

16 Q SO THE 42 MILLION .5 IS THE FEE SHARE.

17 AND THEN ARE YOU, IN EFFECT, SUBTRACTING
18 OUT THE 20 MILLION MINIMUM PAYMENT?

19 A YES, BUT BECAUSE IN EFFECT, THEY'VE ALREADY
20 GOTTEN THAT.

09:13AM

21 SO THE ADDED MONEYS THAT THEY GET,
22 BECAUSE OF THE VERY GOOD RESULT IN 2012, IS JUST THE
23 DIFFERENCE, 22,167,000.

24 Q HIGHLIGHT THE NEXT LINE, MIKE, 56 MILLION OVER
25 TO 391 MILLION.

09:14AM

26 WHAT DOES THAT COMPARE TO OVER HERE,
27 PROFESSOR CORNELL, WITH RESPECT TO YOUR SIMPLE
28 ILLUSTRATION?

1 A WELL, THERE ARE TWO STEPS HERE.

2 THE FIRST IS THIS NVP AGAIN. I'VE DONE
3 THAT FOR EVERYTHING. SO I'VE COMPUTED THE NVP AS OF
4 JANUARY 1ST, 2010, ONCE AGAIN.

5 THAT NUMBER IS \$391 MILLION. AND THAT'S
6 THE TOTAL PRESENT VALUE OF WHAT TCW WOULD HAVE
7 RECEIVED -- TCW ENTITIES, IN THE BUT-FOR WORLD, IT'S
8 ANALOGOUS TO THE \$1,000.

09:14AM

9 Q IF WE COULD -- THEN THE LINE, ORIGINAL TERMS
10 LESS REVISED TERMS, WHAT IS THAT?

09:15AM

11 A I DON'T SEE WHAT YOU'RE LOOKING AT.

12 Q YOU NEED TO GO BACK AT.

13 I'M SORRY, PROFESSOR.

14 YOU NEED TO GO BACK.

15 SO ORIGINAL TERMS LESS REVISED TERMS,
16 WHAT DOES THAT MEAN, PROFESSOR CORNELL?

09:15AM

17 A BEFORE WE LEAP AHEAD TO THAT, WE PROBABLY
18 OUGHT TO TALK ABOUT THE REVISED TERMS, SINCE WE HAVEN'T
19 DISCUSSED THEM YET.

20 Q THANK YOU.

09:15AM

21 WHAT IS YOUR UNDERSTANDING OF THE
22 REVISED TERMS?

23 A MY UNDERSTANDING IS THAT MR. STERN BELIEVES
24 THAT BECAUSE OF THE INTERFERENCE, HE WAS FORCED TO
25 OFFER INVESTORS A BETTER DEAL. AND SOME OF THEM WERE
26 ALLOWED TO LEAVE.

09:15AM

27 AND OTHERS, THAT STAYED, RATHER THAN
28 HAVING TO PAY TWO PERCENT MANAGEMENT FEE IN BETWEEN --

1 AND 20 PERCENT PROFIT SHARING, WOULD ONLY HAVE TO PAY
2 1 PERCENT MANAGEMENT FEE AND 5 PERCENT PROFIT SHARING.

3 SO WITH THESE REVISIONS, TCW'S CLEARLY
4 GOING TO GET A GOOD DEAL LESS MONEY.

5 Q AND WHAT DOES -- WITH THAT EXPLANATION, WHAT
6 DOES ORIGINAL TERMS LESS REVISED TERMS MEAN?

09:16AM

7 A THAT IS THE DIFFERENCE.

8 BUT AGAIN, I THINK WE NEED TO EXPLAIN
9 WHERE THESE REVISED TERMS CAME FROM.

10 Q WHO PROVIDES THE DATA?

09:16AM

11 A AS WITH THE BUT-FOR DATA, MR. HAGER PROVIDED
12 ME WITH A CALCULATION OF THE REVENUE UNDER THE REVISED
13 TERMS.

14 Q LET'S GO TO NO. 4, IF WE COULD, MIKE.

15 AGAIN, I THINK YOU CAN TRACK THE NUMBERS
16 WITH YOUR ELECTRONIC POINTER.

09:16AM

17 SHOW US, FROM MR. HAGER'S CALCULATION IN
18 2267-2, HOW THAT TRACKS TO YOUR DAMAGE CALCULATION IN
19 THERE?

20 A YES.

09:16AM

21 IT WORKS JUST LIKE IT DID IN THE BUT-FOR
22 WORLD. SAME TYPE OF THING.

23 MR. HAGER COMPUTES MANAGEMENT FEES OF
24 ABOUT 20 MILLION IN 2010. THOSE GO INTO MY 2010.

25 HE COMPUTES MANAGEMENT FEES OF 17.5 IN
26 2011; THEY GO INTO 2011.

09:17AM

27 HE COMPUTES MANAGEMENT FEES OF 16.7 AND
28 THIS PROFIT SHARING CARRIED INTEREST OF 50 MILLION.

1 YOU ADD THOSE TOGETHER TO GET THE TOTAL AMOUNT IN 2012,
2 WHICH IS ABOUT -- YOU KNOW, I THINK YOU GOT THE
3 WRONG -- EXCUSE ME.

4 WHICH IS THE -- I WAS POINTING TO THE
5 WRONG THING -- WHICH IS THE 66 RIGHT THERE.

09:17AM

6 Q THANK YOU, PROFESSOR.

7 IF WE CAN GO BACK TO THE ORIGINAL
8 EXHIBIT 1909 B, MIKE. BLOW IT UP.

9 SO NOW I THINK WE'RE READY FOR THE
10 ORIGINAL TERMS LESS REVISED TERMS.

09:17AM

11 COULD YOU TELL US WHAT THAT IS?

12 A YES. I THINK WE'RE READY FOR THAT.

13 AND IT'S SIMPLY THE DIFFERENCE, AS IT
14 SAYS, BETWEEN THE ORIGINAL TERMS AND THE REVISED TERMS.
15 IT'S JUST A SUBTRACTION.

09:18AM

16 Q IF YOU COULD POINT TO WHAT THAT COMPARES TO,
17 ON YOUR ILLUSTRATION?

18 A THAT COMPARES TO THE \$600.

19 Q THEN YOU ADDED PREJUDGMENT INTEREST, AS YOU
20 DID WITH THE BREACH OF FIDUCIARY DUTY DAMAGE
21 CALCULATION?

09:18AM

22 A EXACTLY.

23 Q AND SO THE TOTAL DAMAGES THAT YOU HAVE
24 CALCULATED FOR TORTIOUS INTERFERENCE WOULD BE WHAT,
25 NUMBER ON THIS EXHIBIT?

09:18AM

26 A IN THE BOTTOM RIGHT-HAND CORNER ONCE AGAIN,
27 344,306,734.

28 Q NOW, DID YOU LISTEN TO MR. HAGER, WHO PROVIDED

1 YOU THESE DATA -- DID YOU LISTEN TO HIS DIRECT AND HIS
2 CROSS-EXAMINATION?

3 A YES.

4 Q AND DID YOU HEAR ANYTHING IN HIS
5 CROSS-EXAMINATION THAT HAD ANY EFFECT ON YOUR RELIANCE
6 OF MR. HAGER'S CALCULATIONS?

09:18AM

7 A NO.

8 I DIDN'T SEE WHERE HE FELT HE HAD TO
9 REVISE ANY OF THESE NUMBERS THAT HE PRESENTED TO THE
10 JURY.

09:19AM

11 Q ONE LAST TOPIC.

12 I WANT TO KIND OF GO THROUGH THE PROCESS
13 OF YOUR WORK IN THIS CASE.

14 DID YOU PREPARE AN EXPERT REPORT?

15 A I DID.

09:19AM

16 Q WAS THAT PROVIDED TO THE DEFENDANTS?

17 A YES.

18 Q WAS YOUR DEPOSITION TAKEN?

19 A YES.

20 Q BY WHOM?

09:19AM

21 A BY MR. MARK HELM OF MUNGER, TOLLES & OLSON.

22 Q AND DID THE DEFENDANTS HIRE A DAMAGE EXPERT TO
23 MAKE -- OR TO ANALYZE, TO THE EXTENT YOU FELT
24 APPROPRIATE, CRITIQUE YOUR DAMAGE CALCULATION?

25 A YES.

09:19AM

26 Q WHO WAS THAT?

27 A MR. WALLACE.

28 Q AND DID -- IN THE DEPOSITIONS AND

1 MR. WALLACE'S REPORT, DID THEY MAKE A NUMBER OF
2 CRITICISMS OF WHAT YOU DID?

3 A YES.

4 Q DID YOU THINK ALL THOSE CRITICISMS WERE RIGHT,
5 OR SOMETHING ELSE?

09:19AM

6 A SOME OF THE CRITICISMS, I DISAGREED WITH, AND
7 STILL DISAGREE WITH. OTHERS, I THOUGHT HAD MERIT.

8 AND IF SOMETHING HAD MERIT, I
9 INCORPORATED IT MY WORK.

10 I DON'T HAVE A NOT INVENTED HERE
11 PHILOSOPHY. IF SOMEONE COMES UP WITH A GOOD IDEA THAT
12 MAKES MY WORK BETTER, I WILL USE IT.

09:20AM

13 Q IS PUTTING OUT AN EXPERT REPORT, AND TAKING
14 INTO ACCOUNT CRITICISM FROM THE OTHER SIDE IN REACTING
15 TO IT, IS THAT SOMETHING YOU'VE DONE UNIQUELY, JUST IN
16 THIS CASE, OR HAVE YOU DONE IT IN YOUR OTHER 40 PLUS
17 TESTIFYING AS AN EXPERT?

09:20AM

18 A IT'S VERY COMMON. I CAN'T THINK OF AN
19 INSTANCE WHERE, AN INSTANCE, WHERE THE REPORT SORT OF
20 APPEARED IN ITS FINAL FORM AND WAS NEVER CHANGED. THE
21 WORLD'S A COMPLICATED PLACE, AND THINGS HAVE TO BE
22 UPDATED.

09:20AM

23 Q HOW ABOUT IN YOUR SCHOLARSHIP? HAVE YOU PUT
24 OUT A SCHOLARLY ARTICLE DRAFT, AND THEN MADE
25 CORRECTIONS OF THE TYPE YOU'VE DISCUSSED HERE?

09:21AM

26 A OH, SURE.

27 IT'S PART OF ACADEMIC LIFE. YOU PUT OUT
28 A PAPER, AND YOUR COLLEAGUES SAY ALL THESE HORRIBLE

1 THINGS ABOUT IT. SOME OF ARE RIGHT, AND SOME ARE
2 WRONG. AND YOU TRY TO TAKE ACCOUNT OF THE ONES THAT
3 ARE RIGHT, AND GET ANGRY ABOUT THE ONES THAT ARE WRONG.

4 Q DID YOU MAKE ANY CHANGES TO THE DAMAGE
5 CALCULATIONS YOU PRESENTED TODAY, BASED ON ANYBODY'S
6 TESTIMONY AT TRIAL? 09:21AM

7 A YES.

8 Q WHOSE? WHOSE TESTIMONY?

9 A MR. MARC STERN.

10 Q WHAT CHANGE DID YOU MAKE? 09:21AM

11 A BASED ON WHAT MARC STERN HAD TO SAY, WHILE I
12 WAS WATCHING AND LISTENING TO HIM, I CONCLUDED THAT IT
13 WAS INAPPROPRIATE TO HAVE ANY DAMAGES ASSOCIATED WITH
14 THE BREACH OF FIDUCIARY DUTY INCLUDE THE SPECIAL
15 MORTGAGE CREDIT FUNDS. 09:21AM

16 Q DID YOU MAKE, ON FRIDAY, ANY OTHER CHANGE TO
17 THE DAMAGE CALCULATIONS YOU PRESENTED TODAY?

18 A I DID.

19 Q WHY WAS THAT?

20 A YOU KNOW, IT MIGHT HELP IF WE BROUGHT UP -- I
21 CAN SHOW YOU WHAT IT WAS, RATHER THAN TALK GENERALLY.
22 IF WE BRING UP MY TORTIOUS INTERFERENCE EXHIBIT. 09:22AM

23 Q TWO -- 1909-B. NOT TWO.

24 WHAT CHANGE DID YOU MAKE?

25 A IN MY WORK PRIOR TO FRIDAY, I HAD NOT INCLUDED
26 THIS ADDED TERM FOR THE FEE SHARING WITH MET WEST. 09:22AM

27 I SHOULDN'T SAY WITH MET WEST. THERE IS
28 NO LONGER MET WEST.

1 Q LEGACY MET WEST?

2 A FROM THE EMPLOYEES WHO HAVE COME FROM
3 MET WEST.

4 AND SO, I FELT THAT WAS A -- SOMETHING I
5 SHOULD BE DEDUCTING. THOUGH IT WOULD REDUCE DAMAGES, I
6 FELT I HAD TO INCLUDE IT. AND I DID.

09:22AM

7 Q WHY DID YOU DO IT ON FRIDAY?

8 A AS I RECALL, YOU TOOK MR. WALLACE'S DEPOSITION
9 ON FRIDAY. AND AT THAT DEPOSITION, THIS TOPIC CAME UP.
10 WE DISCUSSED IT, I LOOKED AT IT, AND I SAID, YOU KNOW,
11 THAT'S A GOOD POINT. THOSE HAVE GOT TO COME OUT.

09:23AM

12 AND I TOOK THEM OUT.

13 Q WHAT HAS BEEN THE EFFECT, IF ANY, IN YOUR
14 CALCULATIONS OF YOU MODIFYING YOUR ANALYSIS, BASED ON
15 CRITIQUES THAT YOU ACCEPTED FROM THE OTHER SIDE?

09:23AM

16 A IT HAS REDUCED MY DAMAGE ESTIMATES.

17 Q WHAT HAS IT DONE IN FIGURE -- TO YOUR
18 RELIABILITY OF YOUR DAMAGES ESTIMATES, IN YOUR VIEW?

19 A I THINK IT'S IMPROVED IT.

20 THAT'S THE REASON, MY OWN TAKE ACCOUNT
21 OF CRITICISM, IF I THINK THEY HAVE MERIT, INCORPORATING
22 WILL MAKE FOR A BETTER REPORT.

09:23AM

23 Q ONE LAST TOPIC.

24 IF YOU COULD DISPLAY FOR IDENTIFICATION,
25 MIKE, TX 1909-B-2 AND TX 1909-B-3.

09:23AM

26 DO YOU KNOW WHAT THOSE ARE,
27 PROFESSOR CORNELL?

28 A YES.

1 Q WHAT ARE THOSE?

2 A I COMPUTED -- AS WE JUST WENT THROUGH MY
3 DAMAGES ON AN AGGREGATE BASIS, SORT OF I WAS TALKING
4 ABOUT TCW AS AN ENTITY THAT GOT ALL THESE DAMAGES.

5 IN FACT, THERE IS A -- THERE'S A LEGAL
6 COMPLEXITY. THE ACTUAL ENTITIES THAT WERE DAMAGED WERE
7 THESE TWO PARTNERSHIPS, NOT TCW AS A WHOLE.

09:24AM

8 Q ARE THE DATA SET FORTH IN TX 1909-B-2 AND B-3
9 CORRECT? ARE THEY ACCURATE?

10 A YES, I BELIEVE SO, BASED ON THE PARTNERSHIP
11 AGREEMENTS, TAKING THE TOTAL DAMAGE FOR TORTIOUS
12 INTERFERENCE. AND I DIVIDED THEM AMONGST THESE TWO
13 ENTITIES.

09:24AM

14 MR. SURPRENANT: YOUR HONOR, I WOULD OFFER TX
15 1909-B-2 AND TX 1909-B-3.

09:25AM

16 MR. HELM: OBJECTION, BEYOND THE SCOPE OF THE
17 PLEADINGS.

18 THE COURT: OVERRULED.

19 I'LL ADMIT THEM.

09:25AM

21 (EXHIBIT 1909 B-2 & 1909 B-3 ADMITTED.)+

22
23 MR. SURPRENANT: CAN YOU DISPLAY THEM BOTH,
24 MIKE.

25 Q SO ONE OF THE COMPANIES IS TCW ASSET
26 MANAGEMENT COMPANY, OR TAMCO; AND THE OTHER ONE IS TCW
27 SMCF II GP LLC.

09:25AM

28 COULD YOU TELL US WHAT THESE

1 CALCULATIONS DO, WITH RESPECT TO THOSE TWO ENTITIES?

2 A THEY SIMPLY TAKE THE TOTAL THAT I CALCULATED
3 EARLIER, THE 344 MILLION; AND ACCORDING TO THE
4 PARTNERSHIP AGREEMENTS, DIVIDE THAT TOTAL AMONGST THE
5 TWO PARTS.

09:25AM

6 SO TAMCO GETS APPROXIMATELY 176.8, AND
7 SMCF II GP GETS 170.5.

8 MR. SURPRENANT: THANK YOU.

9 IF I MAY HAVE A MOMENT, YOUR HONOR.

10 THE COURT: YES, YOU MAY.

09:26AM

11 (PAUSE) +

12

13 MR. SURPRENANT: NO FURTHER QUESTIONS.

14 THE COURT: THANK YOU, MR. SURPRENANT.

15 MR. HELM, CROSS-EXAMINATION?

09:26AM

16 MR. SURPRENANT: THANK YOU.

17 YOUR HONOR, IF I COULD HAVE A MOMENT.

18

19 CROSS-EXAMINATION +

20 MR. HELM: GOOD MORNING, PROFESSOR CORNELL.

09:26AM

21 THE WITNESS: GOOD MORNING.

22 BY MR. HELM:

23 Q NOW, TCW TERMINATED MR. GUNDLACH, DIDN'T IT?

24 A I'M ONLY PAUSING BECAUSE I THINK THERE'S SOME
25 FACTUAL DISPUTE ABOUT THAT.

09:27AM

26 I THINK THAT'S PRACTICALLY CORRECT, BUT
27 I'M NOT AN EXPERT IN THE FACT.

28 Q YOU'RE NOT AN EXPERT ON WHETHER HE QUIT OR HE

1 WAS FIRED?

2 A I RECALL THERE BEING A DISPUTE, BECAUSE THE
3 PROCESS WASN'T -- EXACTLY STRAIGHTFORWARD.

4 Q WELL, YOU UNDERSTAND THAT ON DECEMBER 4TH,
5 2009, TCW RELIEVED HIM OF HIS DUTIES.

09:27AM

6 ARE YOU AWARE OF THAT?

7 A THAT, I'M AWARE OF, YES.

8 Q AND WHEN, AFTER IT RELIEVED HIM OF HIS DUTIES,
9 TCW LOST CERTAIN ASSETS UNDER MANAGEMENT; IS THAT
10 RIGHT?

09:28AM

11 A ONCE MR. GUNDLACH AND HIS TEAM WERE NO LONGER
12 AT THE FIRM, ASSETS UNDER MANAGEMENT BEGAN TO DECLINE.
13 THAT'S TRUE. YES.

14 Q I JUST WANT TO MAKE SURE I'M GETTING IT
15 STRAIGHT.

09:28AM

16 TCW IS SEEKING, AS DAMAGES FROM
17 MR. GUNDLACH, THE REVENUES THAT TCW LOST AFTER IT
18 RELIEVED HIM OF HIS DUTIES; IS THAT RIGHT?

19 A THAT CHRONOLOGY IS CORRECT.

20 Q AND YOU HAVEN'T MADE ANY EFFORT TO CALCULATE
21 WHAT DAMAGES THE ALLEGED BREACH OF FIDUCIARY DUTY
22 CAUSED, OTHER THAN DAMAGES THAT RESULTED FROM TCW'S
23 DECISION TO TERMINATE HIM; ISN'T THAT TRUE?

09:28AM

24 A I THINK THAT'S CORRECT.

25 Q NOW, THE THEORY IS THAT THE CAUSE OF THE
26 TERMINATION WAS THAT MR. GUNDLACH BREACHED HIS
27 FIDUCIARY DUTIES, CORRECT?

09:28AM

28 A YES.

1 Q AND YOU ASSUMED THAT THE ONLY REASON WHY TCW
2 TERMINATED HIM WAS THAT HE BREACHED HIS FIDUCIARY
3 DUTIES; ISN'T THAT RIGHT?

4 A I THINK THAT'S A FAIR CHARACTERIZATION.

5 MR. HELM: MAY I APPROACH, YOUR HONOR? 09:29AM

6 THE COURT: YES, YOU MAY.

7 MR. HELM: WHAT'S OUR NEXT NUMBER?

8 6175.

9 Q ALL RIGHT. LET'S --

10 THE COURT: WE SAID WE WERE GOING TO MOVE 09:30AM
11 THIS.

12 CAN EVERYBODY SEE IT?

13 MR. HELM: CAN YOU SEE IT, TOO, PROFESSOR?

14 THE WITNESS: I THINK I CAN SEE IT.

15 THE COURT: GO AHEAD. 09:30AM

16 BY MR. HELM:

17 Q WE'VE DIVIDED THIS INTO BREACH AND NO BREACH.

18 DO YOU SEE THAT?

19 A I DO.

20 Q UNDER BREACH, I'M GOING TO SAY, CAUSED 09:30AM
21 TERMINATION.

22 SO IF THE BREACH OF DUTIES DID NOT CAUSE
23 THE TERMINATION, THEN IF HE WOULD HAVE BEEN TERMINATED
24 ANYWAY, FOR SOME OTHER REASON, THEN THE BREACH OF
25 FIDUCIARY DUTIES DID NOT CAUSE THE DAMAGES YOU'VE 09:31AM
26 MEASURED; ISN'T THAT TRUE?

27 A LET ME THINK FOR A SECOND.

28 I THINK THAT'S TRUE.

1 Q IF TCW WOULD HAVE TERMINATED MR. GUNDLACH FOR
2 REASONS OTHER THAN HIS BREACHES OF FIDUCIARY DUTIES,
3 THEN YOUR DAMAGE NUMBERS WOULD HAVE TO BE ALTERED,
4 WOULDN'T THEY?

5 A WELL LET ME -- MAKE SURE I UNDERSTAND YOUR
6 QUESTION.

09:31AM

7 IN YOUR QUESTION, DID HE ACTUALLY BREACH
8 THE DUTIES, BUT THEY TERMINATED HIM FOR SOME OTHER
9 REASON, AND THEY COULD HAVE TERMINATED HIM FOR THE
10 BREACH?

09:31AM

11 YOU SEE, I'M A LITTLE CONFUSED ABOUT
12 WHAT THE HYPOTHETICAL IS.

13 Q IF THEY WOULD HAVE TERMINATED HIM, WHETHER HE
14 HAD BREACHED HIS DUTIES OR NOT, THEN THE DAMAGES THAT
15 YOU HAVE MEASURED HERE WOULD HAVE TO BE ALTERED,
16 WOULDN'T THEY?

09:32AM

17 MR. SURPRENANT: OBJECTION.

18 INCOMPLETE HYPOTHETICAL.

19 THE COURT: OVERRULED.

20 DO YOU UNDERSTAND THE QUESTION?

09:32AM

21 IF YOU DON'T, JUST TELL HIM. HE CAN
22 REPHRASE IT.

23 THE WITNESS: I THINK I UNDERSTAND IT, BUT IT
24 INVOLVES A LEGAL COMPLEXITY THAT I DON'T KNOW HOW TO
25 EXAMINE.

09:32AM

26 THE COURT: THEN YOU BETTER ASK ANOTHER
27 QUESTION.

28 ///

1 BY MR. HELM:

2 Q WHAT DON'T YOU UNDERSTAND?

3 A MY PROBLEM IS, SUPPOSED HE BREACHED, AND THEY
4 COULD HAVE TERMINATED HIM FOR THAT; BUT IN FACT, THEY
5 TERMINATED HIM FOR SOMETHING ELSE.

09:32AM

6 THEN I DON'T KNOW IF MY CALCULATION
7 APPLIES OR NOT.

8 IF HE DIDN'T BREACH AT ALL, THEN I WOULD
9 SAY, MY CALCULATION DOES NOT APPLY.

10 Q IF THEY WOULD HAVE TERMINATED MR. GUNDLACH FOR
11 OTHER REASONS, EVEN IF HE BREACHED HIS FIDUCIARY
12 DUTIES, THEN YOUR DAMAGES WOULD NOT APPLY, WOULD THEY?

09:32AM

13 A I THINK THE FAIR ANSWER TO THAT IS, I DON'T
14 KNOW.

15 Q I'D LIKE TO READ FROM THE DEPOSITION 68 --
16 PAGE 68, LINES 12 TO 15.

09:33AM

17 THE COURT: PAGE 68, LINES WHAT?

18 MR. HELM: 12 TO 15, YOUR HONOR.

19 MR. SURPRENANT: OBJECTION, YOUR HONOR. NO
20 IMPEACHMENT.

09:33AM

21 THE COURT: WELL, I HAVE TO HAVE THE
22 DEPOSITION TRANSCRIPT HERE. AND I DON'T HAVE IT.

23 (PAUSE) +

24
25 THE COURT: OVERRULED.

09:34AM

26 YOU CAN READ IT.

27 MR. HELM: CAN YOU PLAY IT, PLEASE.

28 (VIDEO DEPOSITION PLAYED OF PROFESSOR CORNELL.) +

1 BY MR. HELM:

2 Q YOU HAVE MADE NO EFFORT TO PERFORM AN ANALYSIS
3 OF WHAT THE RECORDS WOULD BE IF TCW TERMINATED HIM FOR
4 REASONS OTHER THAN BREACHES OF FIDUCIARY DUTY; ISN'T
5 THAT CORRECT?

09:35AM

6 A THAT'S CORRECT.

7 Q SO LET ME PUT ANOTHER POSSIBILITY IN THIS
8 BREACH WORLD.

9 MR. SURPRENANT: OBJECTION.

10 IF WE COULD JUST HAVE QUESTIONS.

09:35AM

11 THE COURT: THAT WOULD BE FINE.

12 IF YOU HAVE QUESTIONS, GO AHEAD.

13 BY MR. HELM:

14 Q SO ONE POSSIBILITY IS THAT THE BREACH CAUSED
15 THE TERMINATION.

09:35AM

16 IF THE BREACH OF DUTY DID NOT CAUSE THE
17 TERMINATION, AND TCW WOULD HAVE TERMINATED HIM ANYWAY,
18 THEN YOUR DAMAGE ANALYSIS DOES NOT APPLY, CORRECT?

19 A WELL, JUST SO I'M -- I'M CLEAR ON THIS.

20 ARE YOU SAYING THE BREACH DID NOT CAUSE,
21 OR THEY COULD HAVE TERMINATED HIM FOR THE BREACH; BUT
22 IN FACT, TERMINATED HIM FOR SOMETHING ELSE?

09:36AM

23 Q IF HE BREACHED IT, BUT THEY WOULD HAVE
24 TERMINATED HIM ANYWAY, THE PRIOR QUESTION I JUST ASKED
25 YOU WAS: IF THEY -- YOU MADE NO EFFORT TO PERFORM AN
26 ANALYSIS OF WHAT THE APPROPRIATE NUMBERS WOULD BE IF
27 THEY WOULD HAVE TERMINATED HIM FOR REASONS OTHER THAN
28 BREACH OF FIDUCIARY DUTY, CORRECT?

09:36AM

1 YOU AGREE THAT YOU MADE NO EFFORT TO
2 PERFORM THAT, CORRECT?

3 A I AGREE WITH THAT.

4 Q AND YOU HAVE NOT CONDUCTED ANY ANALYSIS ABOUT
5 WHETHER SOMETHING OTHER THAN MR. GUNDLACH'S BREACH OF
6 FIDUCIARY DUTIES CAUSED TCW TO TERMINATE HIM, DID YOU?

09:36AM

7 A NO, I HAVEN'T DONE THAT.

8 Q AND SO YOU DIDN'T CONDUCT ANY ANALYSIS ABOUT
9 WHETHER TCW TERMINATED MR. GUNDLACH BECAUSE HE'D SIMPLY
10 GROWN TOO POWERFUL WITHIN THE FIRM, OR HE AND TCW HAD
11 DIFFERENT VISIONS FOR WHAT KIND OF A FIRM IT SHOULD BE?

09:37AM

12 YOU DIDN'T ANALYZE ANY OF THAT, DID YOU?

13 MR. SURPRENANT: OBJECTION TO THE FORM.

14 THE COURT: SUSTAINED.

15 BY MR. HELM:

09:37AM

16 Q WELL, YOU DIDN'T CONDUCT ANY ANALYSIS ABOUT
17 THE EFFECT OF THE TERMINATION, IF ANY, ON THE STATUS OF
18 MR. GUNDLACH WITHIN THE FIRM, DID YOU?

19 A NO, I DON'T THINK I DID.

20 Q AND YOU DIDN'T CONDUCT ANY ANALYSIS ABOUT
21 WHETHER MR. GUNDLACH AND TCW HAD DIFFERENT VISIONS FOR
22 WHAT KIND OF FIRM IT SHOULD BE?

09:37AM

23 YOU DIDN'T ANALYZE THAT, DID YOU?

24 A NO. THAT'S REALLY NOT MY AREA OF EXPERTISE.

25 Q SO WHY DON'T WE LOOK AT EXHIBIT 6004.

09:37AM

26 IT'S IN EVIDENCE.

27 A PROBABLY EASIER TO SEE ON THE SCREEN.

28 Q YES.

1 THE BOTTOM IS AN E-MAIL FROM MR. STERN
2 TO MR. OUDEA. THIS IS AN E-MAIL ON SEPTEMBER THE 7TH,
3 2009.

4 COULD YOU BLOW UP NO. 3.3 UNDER THERE.
5 THESE ARE TALKING POINTS THAT HE SAYS
6 THAT YOU'VE DISCUSSED WITH JACQUES RIPOLL AND FOR
7 MR. OUDEA. IT SAYS:

09:38AM

8 YOU UNDERSTAND IT IS LIKELY THAT WE
9 WILL HAVE TO PART WAYS WITH JEFFREY
10 GUNDLACH AND ARE PREPARED TO
11 SUPPORT THIS ACTION.

09:39AM

12 YOU DID NOT REVIEW EVIDENCE OF THIS KIND, DID
13 YOU, SIR?

14 A I MAY HAVE SEEN IT, IN THE SCOPE OF MY
15 ASSIGNMENT EVIDENCE LIKE THIS; BUT I DID NOT
16 SYSTEMATICALLY REVIEW OR ANALYZE IT.

09:39AM

17 Q YOU DID NOT CONDUCT ANY ANALYSIS TO DETERMINE
18 WHETHER SOCIÉTÉ GÉNÉRALE WAS AWARE OF ANY DOWNLOADING,
19 OR ANY EFFORTS TO SEEK OFFICE SPACE, OR ANY OTHER ACTS
20 CLAIMED TO BREACH FIDUCIARY DUTIES, BY THE TIME
21 MR. STERN SAID THAT A PARTING OF THE WAYS WAS LIKELY,
22 DID YOU?

09:39AM

23 MR. SURPRENANT: OBJECTION. OUTSIDE THE
24 SCOPE.

25 THE COURT: OVERRULED.

09:39AM

26 THE WITNESS: NO. THAT WASN'T SOMETHING THAT
27 WAS WITHIN MY AREA OF EXPERTISE.

28 ///

1 BY MR. HELM:

2 Q YOU SIMPLY DIDN'T ANALYZE WHETHER SUPPOSED
3 BREACHES OF FIDUCIARY DUTIES WERE THE REASON WHY, IN
4 EARLY SEPTEMBER OF 2009, SG AND TCW THOUGHT THAT A
5 PARTING OF THE WAYS WAS LIKELY, DID YOU?

09:40AM

6 A NO, I DID NOT ANALYZE THAT.

7 Q LET'S LOOK AT EXHIBIT 5339, PLEASE.

8 BLOW UP FROM THERE, ACTUALLY THE TOP
9 HALF. WHY DON'T YOU TRY THE TOP HALF.

09:40AM

10 IF YOU SEE, THIS IS AN E-MAIL FROM
11 MR. SHEDLIN TO MR. RIPOLL, THE BOTTOM ONE, ON OCTOBER
12 THE 5TH. AND IT SAYS: AS WE HAVE DISCUSSED BEFORE.

13 DO YOU SEE THAT, DENNIS?

14 I'M AN ADVOCATE OF A PROACTIVE
15 APPROACH TO THE ISSUES SURROUNDING
16 J.G. I STRONGLY BELIEVE THAT
17 TERMINATING J.G., AND HAVING A
18 CREDIBLE REPLACEMENT PLAN TO
19 EXECUTE, WILL PRESERVE
20 SIGNIFICANTLY MORE VALUE THAN
21 REACTING TO HIS DEPARTURE.

09:40AM

22 AND THEN MR. RIPOLL RESPONDS:
23 THANKS, GARY. I THINK THIS IS A
24 FAIR VISION OF WHERE WE STAND AND
25 WHERE WE SHOULD GO. JACQUES.

09:41AM

26 NOW, YOU DIDN'T ANALYZE WHAT INFORMATION
27 MR. RIPOLL HAD IN HIS POSSESSION ABOUT SUPPOSED BREACH
28 OF FIDUCIARY DUTY BY MR. GUNDLACH, WHEN HE MADE THE

1 STATEMENT APPROVING WHERE THEY SHOULD BE GOING, DID
2 YOU?

3 A NO. I FELT THAT WAS PART OF THE LIABILITY
4 PART OF THE CASE THAT I WASN'T TESTIFYING REGARDING.

5 Q AND YOU HAVE NO OPINION ON WHETHER ANY
6 SUPPOSED BREACHES OF FIDUCIARY DUTIES AFFECTED
7 SOC-GEN'S VIEWS ON THIS SUBJECT, DO YOU, SIR?

09:41AM

8 A THAT'S RIGHT. I DO NOT.

9 Q LET'S LOOK AT 5379, ALSO IN EVIDENCE.

10 MR. SURPRENANT: MAY WE APPROACH BRIEFLY?

09:42AM

11 THE COURT: YES, YOU MAY.

12

13 (SIDE-BAR CONFERENCE HELD) +

14

15 MR. SURPRENANT: THE CONCERN I HAVE, MR. HELM
16 IS JUST GOING TO READ DOCUMENTS THAT ARE MEANT FOR
17 CLOSING. THEY ARE NOT ELICITED ON DIRECT.

09:42AM

18 HE'S NOT A LIABILITY WITNESS. HE
19 DOESN'T HAVE EXPERT OPINIONS THEY CAN ELICIT FROM HIM,
20 AS MR. HELM HAS DONE, IF THE JURY WERE TO DETERMINE
21 THERE WAS NO BREACH.

09:42AM

22 THE COURT: I THINK MY VIEW OF IT IS, YOU KEEP
23 ASKING HIM WHETHER HE ANALYZED CERTAIN THINGS.

24 HE'S SAID THAT HE MADE NO DEFINITIVE
25 ANALYSIS OF THE UNDERLYING FACTUAL BASIS. HE HAD
26 CERTAIN ASSUMPTIONS.

09:43AM

27 AND YOU MAY CHALLENGE HIS ASSUMPTIONS,
28 BUT I DON'T THINK WE CAN KEEP GOING THROUGH EVERY

1 DOCUMENT WE'VE SEEN IN THIS CASE.

2 NOW, HIS ASSUMPTION WAS THAT THE BREACH
3 OF FIDUCIARY DUTY LED TO THE TERMINATION.

4 IF YOU ASK HIM, IF -- ANOTHER CAUSE,
5 WOULD THAT CHANGE HIS CALCULATION, HE'LL SAY IT
6 WOULDN'T CHANGE MY CALCULATIONS; BUT THAT'S NOT WITHIN
7 MY ASSIGNMENT OR MY PURVIEW.

09:43AM

8 SO I TEND TO THINK MR. SURPRENANT IS
9 RIGHT. AND WE SHOULDN'T BE GOING THROUGH EVERY ONE OF
10 THE THESE DOCUMENTS.

09:43AM

11 MR. HELM: I HAVE A COUPLE MORE. I WON'T GO
12 THROUGH TEN. I HAVE THREE OR FOUR. I HAVE ONE OR TWO
13 OR MORE AFTER THAT. AND WE CAN MOVE ON.

14 THE COURT: THE APPROACH SHOULD BE CHALLENGING
15 HIS ASSUMPTIONS, NOT WHETHER HE ANALYZED SOMETHING.

09:43AM

16 HE SAID HE PERFORMED NO ANALYSIS ON THE
17 ASPECT OF THE CASE.

18 MR. HELM: IT'S --

19 MR. SURPRENANT: IT'S IMPROPER, WHETHER HE'LL
20 DO THREE OR 20.

09:44AM

21 THE COURT: I'LL ALLOW HIM TO DO ONE OR TWO
22 MORE.

23 MR. HELM: THANK YOU.

24

25 (SIDE-BAR CONFERENCE CONCLUDED.) +

09:44AM

26

27 BY MR. HELM:

28 Q IF WE COULD PUT UP 53 -- EXCUSE ME, 5379.

1 THIS IS FROM MICHAEL CONN TO
2 JACQUES RIPOLL, AND MR. CHOUKROUN, ON OCTOBER 17TH,
3 2009.

4 WOULD YOU PLEASE GO TO PAGE 39 OF THAT
5 DOCUMENT, DENNIS. 09:44AM

6 UNDER THE FIRST BULLET, THE PROJECT
7 TIMELINE, IT SAYS:

8 PRE TERMINATION DATE CURRENTLY
9 TARGETED FOR FEBRUARY -- EXCUSE ME,
10 FOR FRIDAY, NOVEMBER THE 13TH. 09:45AM

11 NOW, YOU HAVE ASSUMED THAT THE TERMINATION WAS
12 CAUSED BY BREACHES OF FIDUCIARY DUTY; IS THAT CORRECT?

13 A YES.

14 Q YOU HAVE NOT CONSIDERED THE REASONABLENESS OF
15 THAT ASSUMPTION, IN LIGHT OF EVIDENCE, AS OF 09:45AM
16 OCTOBER 17TH, A NOVEMBER 13TH DATE HAS -- HAD ALREADY
17 BEEN SET, HAD YOU?

18 A NO. THERE'S A GREAT DEAL OF COMPLICATED
19 EVIDENCE IN THIS TRIAL REGARDING THOSE ISSUES, BUT I
20 HAVE NOT WEIGHED IN ON THEM. 09:45AM

21 Q LET'S LOOK AT EXHIBIT 5432, IF WE COULD.
22 ALSO IN EVIDENCE.

23 THIS IS FROM MR. RIPOLL TO MR. STERN,
24 DATED NOVEMBER THE 7TH, 2009.

25 IT SAYS, SECOND SENTENCE, AS AGREED 09:46AM
26 TOGETHER, WE ARE INVESTING \$300 MILLION IN TCW, NOT
27 ONLY TO HEDGE OUR J.G. RISKS, BUT ALSO TO CHANGE THE
28 GOVERNANCE OF THIS COMPANY; AND IN PARTICULAR, THE

1 BALANCE OF POWER BETWEEN ASSET MANAGERS AND MANAGEMENT.

2 YOU HAVE NOT ANALYZED THE DOCUMENTS TO
3 DETERMINE WHETHER SOC-GEN WOULD HAVE WANTED A
4 REPLACEMENT FIRM TO CHANGE THE BALANCE OF POWER,
5 WHETHER OR NOT MR. GUNDLACH HAD ENGAGED IN BREACHES OF
6 FIDUCIARY DUTY, DID YOU, SIR?

09:47AM

7 MR. SURPRENANT: OBJECTION. WE NEED A DATE.

8 THE COURT: SUSTAINED.

9 I THINK THIS IS NOVEMBER 7TH, IS THE
10 DATE OF THE EXHIBIT HE'S TALKING ABOUT.

09:47AM

11 BY MR. HELM:

12 Q YOU HAD NO -- YOU HAVE NOT CONDUCTED ANY
13 ANALYSIS ABOUT WHETHER SOC-GEN WOULD HAVE WANTED TO
14 BRING IN A REPLACEMENT FIRM TO CHANGE THE BALANCE OF
15 POWER BETWEEN ASSET MANAGERS AND MANAGEMENT, WHETHER OR
16 NOT MR. GUNDLACH HAD ENGAGED IN CONDUCT WHICH IS NOW
17 CLAIMED TO HAVE BREACHED FIDUCIARY DUTIES, DID YOU,
18 SIR?

09:47AM

19 A THAT'S RIGHT. I DIDN'T DO THAT.

20 Q ALL RIGHT.

09:47AM

21 SO AS BETWEEN CAUSED TERMINATION AND NOT
22 CAUSED TERMINATION, YOU'VE ASSUMED THAT THE BREACH WAS
23 CAUSED BY THE TERMINATION, CORRECT?

24 A THE BREACH WAS CAUSED BY THE --

25 Q I'M SORRY. I GOT THAT WRONG.

09:47AM

26 YOU HAVE ASSUMED THAT THE TERMINATION
27 WAS CAUSED BY THE BREACH, CORRECT?

28 A THAT I DID, YES.

1 Q BUT YOU DIDN'T CONDUCT ANY ANALYSIS ABOUT
2 WHETHER THE OTHER BULLET MIGHT HAVE BEEN THE CASE,
3 WHICH IS THAT THE BREACH DID NOT CAUSE THE TERMINATION,
4 HAVE YOU, SIR?

5 A THAT'S RIGHT. I DIDN'T DO THAT.

09:48AM

6 Q NOW, YOUR DAMAGE CALCULATION IS BASED ON THE
7 ASSUMPTION THAT HAD MR. GUNDLACH NOT BREACHED HIS
8 FIDUCIARY DUTIES, AND NOT BEEN TERMINATED WHEN HE WAS,
9 THAT HE WOULD HAVE STAYED AT TCW FOR FIVE MORE YEARS;
10 IS THAT CORRECT?

09:48AM

11 A YES.

12 Q SO WE PUT THAT IN THE CATEGORY, NO BREACH;
13 BECAUSE YOU SAY, HAD THERE BEEN NO BREACH, HE WOULD
14 HAVE STAYED FOR FIVE YEARS.

15 THAT'S YOUR ASSUMPTION, CORRECT?

09:49AM

16 A THAT'S CORRECT.

17 Q AND IT'S NOT AN OPINION, IT'S AN ASSUMPTION;
18 IS THAT TRUE?

19 A IT SEEMS LIKE A -- SEEMS LIKE A REASONABLE
20 ASSUMPTION TO ME; BUT I'M NOT THE EXPERT IN THAT AREA.

09:49AM

21 Q YOU ARE NOT OFFERING AN OPINION ABOUT WHETHER
22 HE WOULD HAVE STAYED FIVE YEARS, ARE YOU, SIR?

23 A THAT'S CORRECT.

24 Q AND IF MR. GUNDLACH WOULD NOT HAVE STAYED AT
25 TCW, FOR AT LEAST FIVE MORE YEARS, THEN YOUR DAMAGES
26 ARE OVERSTATED, AREN'T THEY?

09:49AM

27 A I BELIEVE THEY WOULD BE.

28 Q THE LESS HE WOULD HAVE STAYED, THE LOWER THE

1 DAMAGES WOULD BE, CORRECT?

2 A THAT'S RIGHT.

3 Q YOU UNDERSTAND, TCW CONTENDS, IN ITS BREACH OF
4 FIDUCIARY DUTY CLAIM, THAT MR. GUNDLACH HAD ALREADY
5 DECIDED TO LEAVE TCW IN MARCH OF 2010.

09:50AM

6 YOU UNDERSTAND THAT, DON'T YOU?

7 MR. SURPRENANT: OBJECTION. MISSTATES THE
8 EVIDENCE.

9 THE COURT: SUSTAINED.

10 I THINK YOU HAVE TO REPHRASE THAT.

09:50AM

11 BY MR. HELM:

12 Q YOU UNDERSTAND THAT PART OF THE SCHEME THAT
13 THEY SAY MR. GUNDLACH ENGAGED IN WAS COORDINATING A
14 DEPARTURE THAT WAS TO TAKE PLACE AFTER BONUSES WERE
15 PAID AT THE END OF FEBRUARY, AND WAS -- THAT HE WAS
16 DEAD SET ON LEAVING THE FIRM IN MARCH.

09:50AM

17 UNDERSTAND THAT -- YOU UNDERSTAND THAT,
18 DON'T YOU?

19 A YOU KNOW, I HAVE SOME KNOWLEDGE OF THAT.

20 BUT AGAIN, AS WITH THE BREACH, I'M NOT
21 AN EXPERT IN THE FACTUAL DISPUTES IN THIS CASE.

09:50AM

22 Q BUT NOTWITHSTANDING THAT PART OF THE CLAIM OF
23 BREACH IS PREMISED ON HIM WANTING TO LEAVE TCW, YOU
24 NONETHELESS ASSUMED HE WOULD HAVE BEEN WILLING TO STAY
25 FOR FIVE YEARS, CORRECT?

09:51AM

26 A I DID.

27 Q AND IN THE BUT-FOR WORLD THAT YOU IMAGINE, THE
28 WORLD WHERE HE DOESN'T BREACH ANY FIDUCIARY DUTIES, THE

1 ONLY CHANGE IS THAT HE DOESN'T BREACH FIDUCIARY DUTIES,
2 RIGHT?

3 THAT'S THE ONLY CHANGE YOU'RE ASSUMING,
4 CORRECT?

5 A WELL, I'M ALSO ASSUMING HE STAYS FIVE YEARS. 09:51AM

6 IF YOU SEE THAT AS AN ADDITIONAL
7 ASSUMPTION, THEN I'M ASSUMING TWO THINGS.

8 Q YOU'RE ASSUMING HE'S A FAITHFUL FIDUCIARY, I
9 THINK IS THE TERM WE'VE HEARD USED; IS THAT RIGHT?

10 A I AM MAKING THAT ASSUMPTION. 09:51AM

11 Q BUT, IF HE DOESN'T BREACH HIS FIDUCIARY
12 DUTIES, YOU'RE NOT ASSUMING HE UNDERGOES A BRAIN
13 TRANSPLANT, ARE YOU?

14 A NOT POSSIBLE YET. SO NO.

15 Q AND YOU'RE NOT ASSUMING HE UNDERGOES SOME 09:51AM
16 THOROUGH PERSONALITY CHANGE, IF HE DOESN'T BREACH HIS
17 FIDUCIARY DUTIES, ARE YOU?

18 A THAT PSYCHOLOGY IS BEYOND THE SCOPE OF MY
19 EXPERTISE.

20 Q IF MR. GUNDLACH WAS UPSET, IN THE ACTUAL 09:52AM
21 WORLD, FOR EXAMPLE, THAT SOCIÉTÉ GÉNÉRALE NEVER
22 PROVIDED EQUITY SENIOR TCW FUND MANAGERS, HE CAN STILL
23 BE UPSET ABOUT THAT IN THE BUT-FOR WORLD YOU'RE
24 ASSUMING, CORRECT?

25 A I THINK THAT WOULD BE POSSIBLE, YES. 09:52AM

26 Q SO YOU DON'T ASSUME IT WOULD VIOLATE HIS
27 FIDUCIARY DUTIES TO EXPECT THAT FUND MANAGERS WOULD GET
28 EQUITY FROM SOCIÉTÉ GÉNÉRALE, DO YOU?

1 A WELL, WHAT VIOLATES FIDUCIARY DUTY IS REALLY A
2 LEGAL QUESTION.

3 BUT JUST AS A NORMAL LAYPERSON, IT
4 DOESN'T SOUND TO ME LIKE IT WOULD.

5 Q AND IF MR. GUNDLACH WAS UPSET, IN THE ACTUAL
6 WORLD, ABOUT THE ANNOUNCEMENT REGARDING SOCIÉTÉ
7 GÉNÉRALE'S INTENTION TO LEAVE THE ASSET MANAGEMENT
8 BUSINESS, OR WHAT THEIR INTENTIONS WERE WITH RESPECT TO
9 THE ASSET MANAGEMENT BUSINESS, HE COULD STILL BE UPSET
10 ABOUT THAT IN THE BUT-FOR WORLD, CAN'T HE?

09:52AM

09:52AM

11 A I THINK SO.

12 Q BUT YOU NONETHELESS ASSUME THAT MR. GUNDLACH
13 STAYS FOR FIVE YEARS, TRUE?

14 A THAT IS THE BASIS FOR THE CALCULATION, THAT'S
15 CORRECT.

09:53AM

16 Q AND YOU DO NOT ASSUME THAT MR. GUNDLACH HAD A
17 CONTRACT THAT REQUIRED HIM TO STAY FOR FIVE YEARS, DO
18 YOU?

19 A NO, I DO NOT.

20 Q IN FACT, YOU UNDERSTAND THAT TCW'S POSITION IN
21 THIS LITIGATION IS THAT HE WAS AN AT-WILL EMPLOYEE.

09:53AM

22 YOU UNDERSTAND THAT, DON'T YOU?

23 A THAT IS MY UNDERSTANDING, YES.

24 Q AND THAT MEANS THAT TCW BELIEVES HE WAS FREE
25 TO LEAVE AT ANY TIME, CORRECT? THAT'S WHAT TCW
26 CONTENTION IS?

09:53AM

27 A I'M PROBABLY NOT THE BEST PERSON TO ASK WHAT
28 THEIR CONTENTION IS; BUT THAT'S MY UNDERSTANDING.

1 Q AND YOU UNDERSTAND, IF HE WAS AN AT-WILL
2 EMPLOYEE, THAT TCW COULD FIRE HIM AT ANY TIME, CORRECT?

3 A AS FAR AS I KNOW, THAT'S CORRECT.

4 Q SO YOU DO NOT ASSUME THAT HE WAS REQUIRED TO
5 STAY FIVE YEARS AS A RESULT OF A CONTRACT, DO YOU?

09:53AM

6 A NO, I DON'T. NO, I DON'T.

7 Q YOU DON'T ASSUME HE WAS REQUIRED TO STAY EVEN
8 ONE DAY, EVEN BY A CONTRACT, CORRECT?

9 A I THINK THAT'S CORRECT. YES.

10 Q AND YOU AGREE THAT MR. GUNDLACH'S FIDUCIARY
11 DUTIES DID NOT REQUIRE HIM TO STAY AT TCW, DON'T YOU?

09:54AM

12 A ONCE AGAIN, I BELIEVE, THAT WHAT THE FIDUCIARY
13 DUTIES ARE AS A -- IS A LEGAL QUESTION, BUT I DON'T SEE
14 WHERE THEY WOULD.

15 Q AND IN FACT, STAR FUND MANAGERS LEAVE ASSET
16 MANAGEMENT COMPANIES ALL THE TIME, BY NEGOTIATING THEIR
17 WAY OUT?

09:54AM

18 A I'VE SEEN MANY INSTANCES OF THAT.

19 Q WHEN YOU WERE PREPARING YOUR DAMAGES ANALYSIS
20 IN THIS CASE, AND HAVING DISCUSSIONS WITH PEOPLE AT
21 TCW, THEY TOLD YOU ABOUT RECENT EXAMPLES WHERE FUND
22 MANAGERS NEGOTIATED THEIR WAY OUT OF TCW, DIDN'T THEY?

09:54AM

23 A YES, THEY OFFERED EXAMPLES OF THAT.

24 Q SO IN A WORLD WHERE MR. GUNDLACH WAS A
25 FAITHFUL FIDUCIARY, WHERE HE DID NOT BREACH HIS
26 FIDUCIARY DUTIES, IT IS STILL POSSIBLE THAT HE WOULD
27 NOT STAY FOR FIVE YEARS, AND WOULD NEGOTIATE A
28 DEPARTURE EVEN IMMEDIATELY; ISN'T IT -- THAT'S

09:55AM

1 POSSIBLE?

2 MR. SURPRENANT: OBJECTION. INCOMPLETE
3 HYPOTHETICAL, OUTSIDE THE SCOPE.

4 THE COURT: SUSTAINED.

5 BY MR. HELM:

09:55AM

6 Q WELL, YOU UNDERSTAND THAT IF MR. GUNDLACH
7 NEGOTIATED A DEPARTURE SOON AFTER DECEMBER 4TH, HE
8 WOULDN'T HAVE STAYED FOR FIVE YEARS, CORRECT?

9 A I THINK THAT FOLLOWS, FROM THE TWO PARTS OF
10 YOUR QUESTION, YES.

09:55AM

11 Q PUT UP ANOTHER POSSIBILITY HERE, THEN.

12 YOU'RE NOT OFFERING ANY THEORY IN THIS
13 CASE TO SHOW WHETHER TCW WOULD HAVE BEEN BETTER OR
14 WORSE OFF, HAD MR. GUNDLACH NEGOTIATED A DEPARTURE, ARE
15 YOU?

09:56AM

16 A NO, I'M NOT.

17 Q AND YOU AGREE THAT IT WOULDN'T HAVE BEEN
18 ECONOMICAL, IN MR. GUNDLACH'S INTEREST, JUST TO WALK
19 OUT THE DOOR WITHOUT A NEGOTIATED AGREEMENT, DON'T YOU?

20 A IT CERTAINLY SEEMS UNWISE TO ME.

09:56AM

21 Q IT WOULD HAVE BEEN ECONOMIC SUICIDE, FOR
22 SOMEONE IN MR. GUNDLACH'S POSITION TO JUST WALK OUT OF
23 THE DOOR AND LEAVE A BILLION DOLLARS IN BUSINESS
24 BEHIND, WOULDN'T IT?

25 MR. SURPRENANT: OBJECTION, BEYOND OUR MOTION
26 IN LIMINE.

09:57AM

27 MAY WE APPROACH?

28 THE COURT: NO.

1 I'LL SUSTAIN THE OBJECTION.

2 GO AHEAD.

3 BY MR. HELM:

4 Q NOW WE'VE BEEN DISCUSSING WHETHER MR. GUNDLACH
5 WOULD HAVE WANTED TO STAY FOR FIVE YEARS, OR NEGOTIATED
6 A DEPARTURE.

09:57AM

7 BUT ANOTHER ISSUE IS, WHETHER TCW WOULD
8 HAVE WANTED TO KEEP HIM FOR FIVE YEARS, ISN'T IT?

9 A THAT'S FAIR.

10 Q SO YOU ASSUME, IN YOUR ANALYSIS, THAT THE ONLY
11 REASON THERE WAS A SOURING OF RELATIONS BETWEEN TCW AND
12 MR. GUNDLACH, WAS THAT MR. GUNDLACH BREACHED HIS
13 FIDUCIARY DUTIES, DON'T YOU?

09:57AM

14 A I DON'T THINK I NECESSARILY ASSUME THAT THAT'S
15 THE ONLY REASON.

09:57AM

16 THEY COULD HAVE REACHED SOME SORT OF
17 TRUCE, IF YOU LIKE, BY WHICH HE STAYED, AND THEY DIDN'T
18 MUCH LIKE EACH OTHER.

19 BUT I AM ASSUMING THE REASON THEY
20 TERMINATED HIM WAS BECAUSE HE BREACHED HIS DUTIES, AND
21 THEY FELT -- THEY FELT THEY HAD NO CHOICE.

09:58AM

22 Q YOUR ASSUMPTION IS THAT THE ONLY THING THAT
23 CAUSED A SOURING OF RELATIONS BETWEEN TCW AND
24 MR. GUNDLACH WAS HIS BREACH OF FIDUCIARY DUTIES, DON'T
25 YOU?

09:58AM

26 A I DON'T -- AS I SIT HERE, I DON'T SEE WHY
27 THAT'S NECESSARY, FOR MY ANALYSIS.

28 Q IF I COULD PLAY FROM THE DEPOSITION, PAGE 61,

1 LINE 18, TO 63, LINE 2.

2 MR. SURPRENANT: JUST A MOMENT.

3 YOU MEAN LINE 19?

4 MR. HELM: LINE 18.

5 THE COURT: STARTING ON 61, 18, TO 63, 2. 09:58AM

6 MR. HELM: I MISREAD IT. PAGE 62, LINE 18.

7 THE COURT: OKAY. TO 63, LINE 2?

8 MR. HELM: TO 63, LINE 2.

9 THE COURT: ANY OBJECTION?

10 MR. HELM: ACTUALLY, WHY DON'T I READ FROM 13. 09:59AM

11 THE COURT: ALL WE WANT TO DO IS GET IT.

12 62 LINE 13?

13 MR. HELM: YES, PLEASE.

14 MR. SURPRENANT: OBJECTION, YOUR HONOR.

15 THE COURT: LET ME LOOK AT IT. 09:59AM

16 MR. SURPRENANT: IT'S NOT IMPEACHMENT.

17 (PAUSE) +

18

19 THE COURT: WHAT'S THE OBJECTION?

20 MR. SURPRENANT: I MADE A FORM OBJECTION AT 10:00AM

21 THE DEPOSITION, YOUR HONOR, WHICH I'D REITERATE.

22 INCOMPLETE HYPOTHETICAL.

23 THE COURT: I'LL ALLOW IT.

24 MR. HELM: WHY DON'T WE PLAY IT, THEN.

25

26 (VIDEO DEPOSITION PLAYED OF PROFESSOR CORNELL.) + 10:00AM

27

28 MR. SURPRENANT: YOUR HONOR, MIGHT I HAVE A

1 MOMENT?

2 (COUNSEL CONFER OFF THE RECORD.) +

3

4 MR. SURPRENANT: THANK YOU, YOUR HONOR.

5 BY MR. HELM:

10:01AM

6 Q IF WE CAN ADD, THEN, ANOTHER POSSIBILITY.

7 IN THE NO BREACH WORLD, SO THAT'S
8 ANOTHER POSSIBLE BIT, ISN'T IT, THAT TCW TERMINATES
9 MR. GUNDLACH, OR SEEKS A NEGOTIATED DEPARTURE?

10 A I THINK THOSE ARE POSSIBILITIES.

10:02AM

11 Q NOW, YOU LOOKED AT THE DROP IN CERTAIN
12 REVENUES THAT CERTAIN TCW ENTITIES EXPERIENCED AFTER
13 MR. GUNDLACH WAS TERMINATED, CORRECT?

14 A YES.

15 Q AND YOU COMPARED THAT TO WHAT YOU CALCULATE
16 THE REVENUES WOULD HAVE BEEN, HAD HE STAYED ANOTHER
17 FIVE YEARS, CORRECT?

10:02AM

18 A YES.

19 Q WE'RE TALKING NOW ABOUT THE BREACH OF
20 FIDUCIARY DUTY DAMAGES HERE, CORRECT?

10:02AM

21 A YES.

22 Q AND YOU AGREE THAT IT'S IMPORTANT, WHEN DOING
23 AN ANALYSIS LIKE THAT, TO SEE WHETHER TCW GOT THE
24 BENEFIT OF ANY SAVINGS AS A RESULT OF MR. GUNDLACH
25 LEAVING, DON'T YOU?

10:02AM

26 A YES.

27 Q BECAUSE IF IT PAID LESS TO THE REPLACEMENT
28 MANAGER, THEN IT WOULD HAVE EXPERIENCED SOME SAVINGS,

1 CORRECT?

2 A YES, IT WOULD HAVE.

3 Q IF THERE ARE SAVINGS, THAT WOULD REDUCE THE
4 DAMAGES THAT TCW SUFFERED, CORRECT?

5 A THAT'S RIGHT. 10:03AM

6 Q NOW, IN YOUR INITIAL REPORT, YOU RELIED UPON
7 FIGURES FROM MR. SMITH AT BROADSTREET ABOUT HOW THE
8 TRADITIONAL ASSETS AT TCW DROPPED AFTER MR. GUNDLACH
9 WAS TERMINATED, DIDN'T YOU?

10 A THOSE FIGURES ACTUALLY, I THINK, CAME FROM 10:03AM
11 MR. SPRING, WHO WAS MR. SMITH'S ASSISTANT.

12 BUT OTHER THAN THAT, THAT'S CORRECT.

13 Q WELL, MR. SPRING, AT THAT TIME, ASSUMED THAT
14 THERE WAS NOT ANY SAVINGS IN WHAT TCW HAD TO PAY IN FEE
15 SHARING, WHEN IT REPLACED MR. GUNDLACH WITH MET WEST,
16 DIDN'T HE? 10:03AM

17 A HE ASSUMED THAT THE SAME PERCENTAGE SHARING
18 RULE WOULD HAVE APPLIED. YES, HE DID.

19 Q WHEN I ASKED YOU ABOUT THAT AT YOUR
20 DEPOSITION, YOU COULDN'T EXPLAIN HOW HE CAME TO THAT
21 CONCLUSION, COULD YOU? 10:04AM

22 A YOU MEAN, HOW MR. SPRING CAME TO THAT
23 CONCLUSION?

24 Q WELL, HOW MR. SPRING CAME TO THE CONCLUSION
25 THAT YOU INCORPORATED INTO YOUR REPORT, CORRECT? 10:04AM

26 YOU COULDN'T EXPLAIN IT?

27 A WELL, I DIDN'T RECALL EXACTLY WHY MR. SPRING
28 HAD MADE THAT DECISION.

1 I THOUGHT I DID OFFER AN EXPLANATION IN
2 MY DEPOSITION THOUGH. BUT IT'S BEEN SEVERAL MONTHS
3 AND -- I CAN'T RECALL FOR SURE.

4 Q DIDN'T YOU -- WHEN I'VE ASKED YOU ABOUT THAT
5 EXPLANATION, DIDN'T YOU SAY YOU NEEDED TO GO BACK AND
6 GET IT STRAIGHT? 10:04AM

7 A YES. AS I RECALL, WHEN YOU FIRST ASKED ME, I
8 DIDN'T HAVE AN EXPLANATION.

9 THERE WAS A BREAK. I THOUGHT ABOUT IT.
10 AND THEN I OFFERED AN EXPLANATION. 10:04AM

11 Q THAT'S WHAT I'M GETTING AT.

12 SO I ASKED YOU ABOUT IT. YOU THEN TOOK
13 A LUNCH BREAK, AND YOU HAD TO CALL MR. SPRING; ISN'T
14 THAT RIGHT?

15 A I THINK I TALKED TO MR. SPRING OVER THE LUNCH
16 BREAK. THAT'S WHAT I RECALL, YES. 10:05AM

17 Q AND THEN THAT'S WHAT HE EXPLAINED TO YOU, THAT
18 THEY ASSUMED THAT THE REPLACEMENT MANAGER WOULD BE PAID
19 THE SAME THAT MR. GUNDLACH WAS PAID, CORRECT?

20 THAT'S WHAT HE EXPLAINED TO YOU? 10:05AM

21 A WOULD RECEIVE THE SAME SHARING PERCENTAGE, NOT
22 THE SAME DOLLAR AMOUNT.

23 THAT'S RIGHT. THAT'S WHAT HE EXPLAINED
24 TO ME.

25 Q THAT WAS JUST AN ASSUMPTION ON HIS PART,
26 WASN'T IT? 10:05AM

27 A YES.

28 Q THEY HAD NOT PERFORMED ANY ANALYSIS OF WHAT

1 THE ACTUAL COSTS WERE THAT TCW HAD TO PAY MET WEST WHEN
2 IT BROUGHT IT IN, HAD THEY?

3 A NOT TO MY KNOWLEDGE, NO.

4 Q AND YOU REALIZED, THE WAY THAT THEY SHOULD
5 HAVE CALCULATED, IT WAS TO ACTUALLY LOOK AT MET WEST,
6 AND WHAT WAS PAID TO IT, SO THEY CAN ANALYZE IT ON AN
7 APPLES-TO-APPLES BASIS; ISN'T THAT TRUE?

10:05AM

8 A I THOUGHT THAT WOULD BE A BETTER WAY TO DO IT.

9 Q BUT THERE WAS NO REASON, AT THE TIME YOU
10 ISSUED YOUR INITIAL REPORT, THAT YOU COULD NOT HAVE
11 PERFORMED THAT ANALYSIS, WAS THERE?

10:06AM

12 A WELL, I WOULD HAVE HAD TO GO THROUGH THE STEPS
13 THAT I SUBSEQUENTLY DID -- THAT I SUBSEQUENTLY DID; BUT
14 I COULD HAVE GONE THROUGH THOSE STEPS.

15 Q LATER, THERE WAS A COST ANALYSIS PERFORMED,
16 AND THAT WAS BY MR. VILLA, CORRECT?

10:06AM

17 A YES.

18 Q YOU MADE NO EFFORT TO VERIFY THE DATA PROVIDED
19 BY TCW AS PART OF THAT COST ALLOCATION STUDY, DID YOU?

20 A I RELIED ON MR. VILLA TO ACCESS THE BOOKS AND
21 RECORDS OF THE COMPANIES -- AND DO THAT ANALYSIS.

10:06AM

22 Q YOU MADE NO ESTIMATE TO VERIFY IT, DID YOU?

23 A NO.

24 Q YOU THOUGHT IT WAS REASONABLE TO RELY ON TCW
25 TO PERFORM THIS ANALYSIS, EVEN THOUGH TCW IS A PARTY TO
26 THE LITIGATION, CORRECT?

10:06AM

27 A I DID.

28 Q AND THE CONCLUSION WAS THAT TCW HAD TO PAY

1 MR. GUNDLACH 50 PERCENT FEE SHARING, CORRECT?

2 A WELL, THAT REALLY WASN'T PART OF MR. VILLA'S
3 ANALYSIS. THAT WAS AN ASSUMPTION THAT HAD BEEN THERE
4 THE WHOLE TIME.

5 Q WITH RESPECT TO MET WEST, IN CONTRAST TO THE
6 50 PERCENT THAT WE ALL KNEW WAS PAID TO MR. GUNDLACH,
7 HE CONCLUDED THAT WHEN YOU ADDED IT ALL UP, THE COST
8 MET WEST PAID WAS 44 PERCENT, IN 2011, CORRECT?

10:07AM

9 MR. SURPRENANT: OBJECT TO THE FORM.

10 THE COURT: SUSTAINED.

10:07AM

11 BY MR. HELM:

12 Q WELL, THE CONCLUSION -- THE CONCLUSION THAT
13 MR. VILLA REACHED WAS THAT TCW'S COSTS IN PAYING THE
14 REPLACEMENT MANAGER AMOUNTED TO ABOUT 44 PERCENT,
15 CORRECT, IN 2010?

10:07AM

16 A YOU KNOW --

17 Q 2011?

18 A I REMEMBERED 41 PERCENT.

19 BUT YOU KNOW, YOU COULD REFRESH MY
20 RECOLLECTION ON THAT.

10:07AM

21 AND I DON'T THINK MR. VILLA ACTUALLY DID
22 IT AS A PERCENTAGE. HE DID HIS ANALYSIS.

23 AND IF YOU LOOKED AT THE COST THAT HE
24 HAD, AND DIVIDED IT, YOU COULD GET A PERCENTAGE.

25 Q BUT THE PERSONAL WAS SOMEWHERE IN THE 40'S, IS
26 THAT TRUE, OR THE HIGH 30'S?

10:08AM

27 A YES. AS I SAID, I REMEMBER 41.

28 Q NOW, YOU DID NOT FAMILIARIZE YOURSELF WITH

1 DOCUMENTS CIRCULATED WITHIN TCW AT THE TIME, THAT
2 DISCUSSED WHETHER MET WEST'S SERVICES COST LESS THAN
3 MR. GUNDLACH'S, DID YOU?

4 A NO. I DON'T RECALL EVER SEEING SUCH
5 DOCUMENTS.

10:08AM

6 Q SO YOU WERE NOT AWARE OF DOCUMENTS WHICH
7 STATED THAT TCW THOUGHT IT WOULD GET SAVINGS AS A
8 RESULT OF HAVING TO PAY MET WEST LESS THAN IT WAS
9 PREVIOUSLY PAYING MR. GUNDLACH, WERE YOU?

10 MR. SURPRENANT: OBJECT TO THE FORM.

10:08AM

11 THE COURT: OVERRULED.

12 THE WITNESS: I DIDN'T SEE SUCH DOCUMENTS.

13 IT FOLLOWS FROM THE CALCULATIONS, BUT I
14 DIDN'T -- DIDN'T EXAMINE THOSE DOCUMENTS.

15 BY MR. HELM:

10:08AM

16 Q I'LL ASK YOU TO LOOK AT EXHIBIT 5365.

17 IT'S IN EVIDENCE.

18 IF YOU COULD DO THE STERN TO RIPOLL IN
19 THE MIDDLE, DENNIS.

20 LAST SENTENCE OF THIS SAYS:

10:09AM

21 THIS 35 PERCENT FEE SHARING RATE
22 COMPARES FAVORABLY TO THE 10
23 PERCENT FEE SHARING RATE REFLECTED
24 IN THE TERM SHEET FOR ANGEL, BY 25
25 PERCENT; A ROUGHLY \$5 MILLION, AT
26 THE \$200 MILLION REVENUE LEVEL.

10:09AM

27 YOU DIDN'T CONSIDER THIS DOCUMENT, AT THE TIME
28 YOU ADOPTED TCW'S COST ALLOCATION ANALYSIS, DID YOU,

1 SIR?

2 MR. SURPRENANT: OBJECTION. OUTSIDE THE SCOPE
3 WE DISCUSSED.

4 THE COURT: OVERRULED.

5 THE WITNESS: NO, I DID NOT.

10:09AM

6 BY MR. HELM:

7 Q LET'S LOOK AT EXHIBIT 493, IF WE COULD.

8 ALSO IN EVIDENCE.

9 THIS IS FROM MR. STERN TO SEVERAL PEOPLE
10 AT SOCIÉTÉ GÉNÉRALE, DATED NOVEMBER 27TH, 2009.

10:10AM

11 IF WE COULD LOOK AT PAGE 6 OF THAT
12 DOCUMENT, PLEASE, DENNIS. UNDER OPPORTUNITIES.

13 IT SAYS: REDUCED COMPENSATION LEVELS,
14 10 PERCENT FEE SHARING FOR M-CO AS OPPOSED TO 35
15 PERCENT PRE-TRANSACTION, FOR CURRENT T-CO TEAM?

10:10AM

16 YOU DIDN'T CONSIDER THAT DOCUMENT, AS OF
17 THE TIME YOU ADOPTED TCW'S COST ALLOCATION METHODOLOGY,
18 DID YOU, SIR?

19 A NO, I DID NOT.

20 Q LET'S LOOK AT EXHIBIT 6044, ALSO IN EVIDENCE.
21 6044.

10:10AM

22 THIS IS AN ANALYSIS THAT MR. VILLA
23 PERFORMED IN JANUARY OF 2010.

24 DO YOU SEE THERE'S AT THE BOTTOM, VILLA
25 TO STERN AND DEVITO, JANUARY 29, 2010.

10:11AM

26 DO YOU SEE THAT?

27 IF YOU GO TO THE NEXT PAGE, WE SEE A
28 PRO FORMA THERE.

1 AND AT THE TOP, DO THE TOP PART.

2 THANKS, DENNIS.

3 IT SAYS: FEE SHARING. IN STATUS QUO,
4 IT HAS A C THERE.

5 THEN GO TO THE BOTTOM OF THE DOCUMENT,
6 DENNIS. OR THE FOOTNOTES AT THE BOTTOM, PLEASE. VERY
7 BOTTOM.

10:11AM

8 C SAYS:

9 ASSUMES FEE SHARING AT NORMAL RATES
10 PRIOR TO THE DEPARTURE OF MSFI,
11 APPROXIMATELY 50 PERCENT MANAGEMENT
12 FEES AND 60 PERCENT CARRIED
13 INTEREST.

10:11AM

14 IF YOU THEN LOOK ABOVE HERE, ON THE BOTTOM
15 PART OF THE COMPARISON, WHERE IT SAYS, FEE SHARING F, F
16 THEN SAYS:

10:12AM

17 ASSUMES FEE SHARING AT NEW MET WEST
18 RATE OF 10 PERCENT FOR ALL REVENUE.

19 NO OTHER COSTS ARE ALLOCATED IN THIS ANALYSIS
20 THAT MR. VILLA PERFORMED INTERNALLY IN JANUARY OF 2010.

10:12AM

21 MR. CORNELL, DID YOU NOTE THAT AT ALL,
22 IN YOUR ANALYSIS?

23 A I LOOKED AT THIS DOCUMENT, BUT I DIDN'T
24 ANALYZE IT WITH RESPECT TO THAT.

25 Q ALL RIGHT.

10:12AM

26 LET'S GO TO YOUR TORTIOUS INTERFERENCE
27 DAMAGES, IF WE COULD.

28 FOR THE FIDUCIARY DUTY DAMAGES, YOU

1 ASSUMED THAT THE VAST MAJORITY OF THE ASSETS THAT LEFT,
2 LEFT BECAUSE MR. GUNDLACH WAS NO LONGER AT THE COMPANY,
3 DIDN'T YOU?

4 A THAT WAS CERTAINLY A FACTOR.

5 BUT IT'S NOT ONLY THAT HE WASN'T THERE. 10:13AM
6 IT'S THE WHOLE DUST CLOUD THAT BLEW UP WITH HIS
7 DEPARTURE, THE HEADLINE RISK, AND SO FORTH, THAT
8 MR. SMITH TALKED ABOUT.

9 Q WE'LL GET TO THAT IN A SECOND.

10 IN YOUR INITIAL REPORT IN APRIL OF 2011, 10:13AM
11 YOU ASSUMED THAT THE SMCF ASSETS WERE AMONG THE ASSETS
12 THAT DECLINED AS A RESULT OF MR. GUNDLACH'S DEPARTURE,
13 DIDN'T YOU?

14 A YES.

15 Q AND THAT WAS TRUE FROM THE TIME YOU SUBMITTED 10:14AM
16 YOUR REPORT IN APRIL UNTIL LAST THURSDAY, WASN'T IT?

17 A YES.

18 Q LAST FRIDAY, AFTER THE CLOSE OF THE LAST COURT
19 SESSION, YOU CHANGED YOUR OPINION, TO NOW NO LONGER
20 CLAIM THAT THE DROP IN SMCF ASSETS WAS A RESULT OF 10:14AM
21 MR. GUNDLACH'S BREACH OF FIDUCIARY DUTY WHICH CAUSED
22 HIS TERMINATION, DID YOU?

23 A I DID.

24 Q THROUGHOUT THAT TIME, YOU ASSUMED THE DROP IN
25 ASSETS RESULTED FROM MR. GUNDLACH'S DEPARTURE, NOT THE 10:14AM
26 DEPARTURE OF ANYONE ELSE IN THE GROUP, BECAUSE
27 MR. GUNDLACH WAS THE STAR, DIDN'T YOU?

28 A WELL, MR. GUNDLACH BEING THE STAR WAS

1 CERTAINLY THE PREDOMINANT REASON.

2 IF I SAID THAT THE DEPARTURE OF THE
3 OTHER PEOPLE WAS TOTALLY IRRELEVANT, THAT STRIKES ME AS
4 TOO STRONG.

5 THE FACT THAT THE WHOLE TEAM LEFT, ALONG
6 WITH KOBE, WOULD BE A PROBLEM. BUT MR. GUNDLACH, THE
7 KOBE, WAS THE BIG REASON. 10:15AM

8 Q YOU ASSUME THE VAST MAJORITY OF THE ASSETS
9 LEFT BECAUSE MR. GUNDLACH LEFT, CORRECT?

10 A I THINK THAT'S FAIR. 10:15AM

11 Q AND THE REASON FOR THAT WAS THAT HE WAS THE
12 STAR, HE WAS THE ONE WHO WAS ASSOCIATED WITH THE
13 SUPERIOR PERFORMANCE, HE WAS THE ONE WHO HAD BEEN
14 RECOGNIZED IN THE PRESS AND WON VARIOUS AWARDS,
15 CORRECT? 10:15AM

16 A YES. I THINK ALL THAT'S CORRECT.

17 THE COURT: MR. HELM, LET'S TAKE OUR MORNING
18 RECESS.

19 LADIES AND GENTLEMEN, WE'LL TAKE 20
20 MINUTES. 10:15AM

21
22 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.) +

23

24 THE COURT: WE'RE OUT OF THE PRESENCE OF THE
25 JURY. 10:16AM

26 MR. SURPRENANT?

27 MR. SURPRENANT: YES.

28 I HAVE A SPECIFIC POINT ABOUT THIS

1 DOCUMENT AND A MORE GENERAL POINT.

2 THEY BROUGHT A MOTION IN LIMINE THAT
3 BECAUSE WE HADN'T PRODUCED DOCUMENTS WITH RESPECT TO
4 OTHER NEGOTIATED DEPARTURES, THAT WE DON'T PRESENT OUR
5 NEGOTIATED DEPARTURE DAMAGE SCENARIO.

10:16AM

6 AND I THINK MR. HELM INCLUDED ON THAT
7 CHART, IS ATTEMPTING TO TAKE ADVANTAGE OF US, OF
8 ESSENTIALLY THE MOTION IN LIMINE RELIEF THEY OBTAINED.

9 I DIDN'T -- I WAS SURPRISED. THE
10 QUESTION --

10:17AM

11 THE COURT: WE'RE REFERRING TO 6175, A CHART
12 THAT HAD BEEN MARKED FOR IDENTIFICATION ONLY, AND
13 MR. HELM HAS BEEN WRITING ON.

14 MR. SURPRENANT: RIGHT. IF HE TERMINATES HIM
15 FOR SOME OTHER REASON, OKAY, THAT'S FAIR; OR SEEKS TO
16 NEGOTIATE A DEPARTURE.

10:17AM

17 I WAS SURPRISED WHEN MR. HELM WROTE THAT
18 ON THE BOARD. AND I WOULD HAVE OBJECTED, IF IT WAS A
19 QUESTION, BECAUSE AGAIN, I THINK THEY'RE TRYING TO TAKE
20 ADVANTAGE OF THE MOTION IN LIMINE RELIEF ON NEGOTIATED
21 DEPARTURE.

10:17AM

22 MR. HELM: MR. SURPRENANT MISREMEMBERS THE
23 SEQUENCE OF EVENTS, YOUR HONOR.

24 WE MOVED TO COMPEL PRODUCTION OF
25 DOCUMENTS; WE DIDN'T BRING A MOTION IN LIMINE. WE
26 MOVED TO COMPEL PRODUCTION OF DOCUMENTS ABOUT
27 NEGOTIATED DEPARTURE.

10:17AM

28 AND THEY SAID, RATHER THAN PRODUCE

1 DOCUMENTS THAT GOT INTO THAT, THEY WITH -- THEY
2 WITHDREW THEIR NEGOTIATED DEPARTURE ANALYSIS.

3 AND I THINK IT IS COMPLETELY FAIR GAME
4 FOR US TO POINT OUT THE FACT THAT THEY ARE NOT NOW
5 ASSERTING A CLAIM FOR DAMAGES FROM NEGOTIATED
6 DEPARTURE. IT'S BEEN WITHDRAWN. AND THEY DIDN'T GIVE
7 US --

10:18AM

8 THE COURT: I'LL GO BACK AND LOOK AT THE
9 MOTIONS IN LIMINE.

10 AND AT THIS POINT IN TIME, MR. HELM'S
11 COMMENTS COMPORT MORE WITH MY RECOLLECTION OF THE FACT
12 THAT THERE HAD BEEN AN ISSUE CONCERNING PRODUCTION OF
13 DOCUMENTS RELATING TO NEGOTIATED DEPARTURES.

10:18AM

14 THAT SAID, MR. SURPRENANT, MR. QUINN AND
15 MR. BRIAN HAVE AN ISSUE.

10:18AM

16 I WANT QUICKLY TO GET THAT ON THE RECORD
17 AND GO WITH OUR BREAK.

18 ON THIS ISSUE WITH RESPECT TO THE
19 EXHIBITS THAT WE'RE GOING TO BE OFFERING, I DON'T
20 BELIEVE IT'S FOR MR. CORNELL, BUT THE NEXT WITNESS ON
21 COMPENSATION ISSUES.

10:18AM

22 MR. QUINN: THESE EXHIBITS ARE ALREADY IN
23 EVIDENCE. THEY CAME IN LAST THURSDAY. THESE NUMBERS
24 WERE NOT SHOWN TO THE JURY, THE JURY HASN'T SEEN THESE
25 PAGES.

10:18AM

26 AND WE ARE REQUESTING THAT THE COPIES IN
27 EVIDENCE HAVE THESE PARTICULAR NUMBERS REDACTED.

28 MR. BRIAN: I'M HAPPY TO EXPLAIN THE THEORY OF

1 RELEVANCE. THERE ARE TWO DIFFERENT DOCUMENTS. ONE OF
2 THEM DEALS --

3 THE COURT: SO WE HAVE A RECORD. GIVE ME THE
4 TWO EXHIBIT NUMBERS.

5 MR. BRIAN: FIRST ONE, EXHIBIT 5222. 10:19AM

6 AND THE OTHER ONE IS EXHIBIT 5450.

7 THE FIRST ONE, 5222, HAS AN E-MAIL FROM
8 DAVID DEVITO TO MR. STERN, SUBJECT, VALUATION OF GROWTH
9 EQUITY PROPOSAL. AND THERE'S COMPENSATION AND NUMBERS
10 ATTACHED. 10:19AM

11 YOU'LL RECALL THAT I EXAMINED MR. STERN
12 TO ESTABLISH THAT HE OFFERED ECONOMIC INCENTIVES TO
13 OTHER PORTFOLIO MANAGERS TO ESSENTIALLY PURCHASE, YOU
14 KNOW, UNDER OUR THEORY, THEIR COOPERATION WITH
15 PROJECT ANGEL AND THE REPLACEMENT OF MR. GUNDLACH BY
16 MET WEST. 10:20AM

17 EXHIBIT 5222 GOES TO THAT POINT.

18 THE COURT: OKAY.

19 MR. BRIAN: WE ARE AGREEABLE TO REDACTING TWO
20 OF THE PAGES, BECAUSE THEY DO PERTAIN TO INDIVIDUALS
21 THAT ARE NOT THE BASIS OF OUR THEORY. 10:20AM

22 BUT THE THIRD PAGE, WE THINK IS
23 RELEVANT, BECAUSE IT PERTAINS DIRECTLY TO MS. JAFFEE.

24 WITH RESPECT TO THE OTHER --

25 MR. QUINN: CAN I RESPOND TO THAT ONE? 10:20AM

26 MR. BRIAN: EITHER WAY. I'M HAPPY TO GO
27 EITHER WAY.

28 THE COURT: WHO ARE THE TWO INDIVIDUALS WHO

1 YOU DON'T HAVE OBJECTION TO?

2 MR. QUINN: IT'S STALLINGS AND NAZER.

3 MR. BRIAN: NAZER, N-A-Z-E-R, AND STALLINGS.

4 THE COURT: I'VE GOT IT.

5 WE CAN WORK THIS OUT.

10:20AM

6 MR. QUINN?

7 MR. QUINN: THIS E-MAIL IS DATED AUGUST 26TH,
8 2009.

9 SO THIS IS BEFORE ANY PROJECT ANGEL
10 EXISTS.

10:20AM

11 AND I THINK MR. BRIAN IS MISREMEMBERING.

12 THERE WAS NO TESTIMONY ABOUT GETTING THE
13 EQUITY GROUPS OR MS. JAFFEE'S SUPPORT FOR THE SUPPORT
14 OF PROJECT ANGEL.

15 BUT IN ANY EVENT, THIS DOCUMENT REFERS
16 TO INCREMENTAL COMPENSATION FOR A GROUP. IT SHOWS
17 NUMBERS FOR 2009, 2010, 2011.

10:21AM

18 I MEAN, THERE HAS BEEN NO EVIDENCE THAT
19 THIS WAS PROPOSED OR CONSIDERED OR MOTIVATED BY TRYING
20 TO GET THE EQUITY GROUPS SUPPORT FOR PROJECT ANGEL.

10:21AM

21 THE COURT: THAT'S FINE.

22 LET ME -- I'VE GOT THE PICTURE. I WANT
23 TO GO BACK AND LOOK AT THE DOCUMENTS.

24 CAN YOU MAKE A COMMENT, MR. BRIAN, ABOUT
25 5450?

10:21AM

26 MR. BRIAN: YES. I DON'T ACCEPT MR. QUINN'S
27 THEORY ABOUT PROJECT ANGEL.

28 WE THINK, OF COURSE, PROJECT ANGEL'S

1 PART OF PROJECT G, WHICH BEGINS BACK IN JUNE.

2 EXHIBIT 5450. THERE ARE DOCUMENTS IN
3 EVIDENCE, YOUR HONOR, MR. ATTANASIO AND
4 JEAN-MARC CHAPUS WERE TWO KEY INDIVIDUALS, PORTFOLIO
5 MANAGERS, THAT MR. STERN CONSULTED WITH BEGINNING IN
6 JUNE.

10:22AM

7 HE SOUGHT ADVICE FROM MR. ATTANASIO WITH
8 RESPECT TO MET WEST, WITH RESPECT TO ALL KINDS OF
9 ISSUES RELEVANT TO THIS.

10 THEN THERE WAS AN EXCHANGE OF E-MAILS
11 BETWEEN MR. STERN AND MR. JACQUES RIPOLL, ONE OF THE
12 KEY LEADING PERSONS AT SOCIETE GENERALE, WHO TOOK OVER
13 FOR MR. MUSTIER AS, QUOTE, THE GUY IN CHARGE OF TCW,
14 ACCORDING TO MR. STERN.

10:22AM

15 IN WHICH MR. RIPOLL WAS CRITICAL OF THE
16 COMPENSATION ARRANGEMENTS. THERE'S AN EXHIBIT 5461, IN
17 WHICH MR. RIPOLL TALKS ABOUT ACTUALLY PUSHING OUT
18 ATTANASIO AND JEAN-MARC CHAPUS BECAUSE OF THEIR FEE
19 SHARING ARRANGEMENTS BEING TOO HIGH.

10:22AM

20 MR. STERN PUSHED BACK, BECAUSE HE WANTED
21 THEIR COOPERATION IN CONNECTION WITH THE REPLACEMENT OF
22 MR. GUNDLACH WITH MET WEST.

10:22AM

23 MR. STERN ALSO TESTIFIED, IN RESPONSE TO
24 A QUESTION BY MR. QUINN, THAT HE, MR. STERN, WAS AN
25 ADVOCATE OF THESE FEE SHARING ARRANGEMENTS.

10:23AM

26 THE EVIDENCE THAT I'VE JUST REFERRED TO
27 SUGGESTS THAT THE FRENCH WERE NOT.

28 WE BELIEVE THAT EVIDENCE IS HIGHLY

1 RELEVANT TO ONE OF THE MOTIVATIONS FOR TERMINATING
2 MR. GUNDLACH.

3 THE COURT: ALL RIGHT.

4 MR. BRIAN: IT GOES BOTH TO WHAT MR. STERN WAS
5 TRYING TO DO WITH ATTANASIO, AND ALSO TO THE MOTIVATION
6 OF THE FRENCH.

10:23AM

7 AND YOU'LL RECALL, MR. QUINN ASKED
8 MR. STERN WHETHER THE FRENCH EVER DIRECTED HIM TO
9 TERMINATE MR. GUNDLACH. AND THIS EXCHANGE IS HIGHLY
10 RELEVANT TO IMPEACH THAT.

10:23AM

11 THE COURT: ALL RIGHT.

12 MR. QUINN: WELL, IT'S -- THE COURT HAS GOT TO
13 LOOK AT THE RIPOLL E-MAIL THAT MR. BRIAN NOW BASED HIS
14 ARGUMENT FOR THE RELEVANCE, THE ENTIRE ARGUMENT FOR THE
15 RELEVANCE OF THIS ON.

10:23AM

16 IT DOESN'T SAY THAT. AND THESE NUMBERS
17 ARE --

18 THE COURT: GIVE ME THE EXHIBIT NUMBER AGAIN.

19 MR. BRIAN: 5461.

20 THE COURT: ALL RIGHT. THANK YOU.

10:23AM

21 MR. QUINN: THESE NUMBERS FOR THESE TWO
22 INDIVIDUALS ARE FOR 2007, 2008 AND AN ESTIMATE FOR
23 2009.

24 EVEN IF THERE WERE SOMETHING TO THE
25 NOTION THAT THE FRENCH WERE AGAINST FEE SHARING
26 ARRANGEMENTS, AND BECAUSE OF HOW MUCH THEY MADE,
27 MR. CHAPUS AND MR. ATTANASIO SHOULD BE FORCED OUT.

10:24AM

28 HE CAN MAKE THAT ARGUMENT WITHOUT

1 DISCLOSING THE SPECIFIC NUMBERS THAT THESE INDIVIDUALS
2 MADE, 2007, 2008, AND AN ESTIMATE FOR 2009.

3 THEY DON'T NEED TO GET THOSE NUMBERS IN.
4 THIS IS A HIGHLY SENSITIVE. IT'S NOT AN EXAGGERATION.
5 THESE ARE HIGH -- NUMBERS --

10:24AM

6 THE COURT: MR. CHAPUS AND MR. ATTANASIO ARE
7 NO LONGER -- THEY HAVE AN AFFILIATION OF SOME KIND, BUT
8 NO LONGER WITH THE COMPANY.

9 MR. QUINN: THAT IS CORRECT, YOUR HONOR.

10 THE COURT: LET ME TELL YOU, I HAVE CONCERNS
11 ABOUT THEIR INDIVIDUAL PRIVACY RIGHTS, AND ISSUES OF
12 TCW. THE FACT THEY'RE NO LONGER THERE DOESN'T
13 NECESSARILY CARRY OVER TO THE ISSUES YOU'RE ARGUING
14 TODAY. THEY'RE GONE.

10:24AM

15 AND SO, YOU KNOW, WHATEVER MAY COME OF
16 IT. BUT I THINK THEIR PRIVACY RIGHTS SHOULD BE
17 HONORED.

10:25AM

18 AND AT SOME LEVEL, WHETHER I ALLOW IT TO
19 REMAIN IN EVIDENCE, I WOULD BE INCLINED TO SEAL THOSE
20 EXHIBITS, AND PERHAPS MAKE THEM AVAILABLE FOR THE JURY
21 FOR THEIR DELIBERATIONS, BUT NOT AVAILABLE PUBLICLY.

10:25AM

22 MR. BRIAN: I HAVE NO OBJECTION TO THAT.

23 AS LONG AS WE CAN WORK OUT -- I HAVEN'T
24 CRAFTED MY CLOSING ARGUMENT, BUT I THINK THE MAGNITUDE
25 IS RELEVANT WE'RE TALKING ABOUT HERE. I DON'T NEED TO
26 REFER TO THE SPECIFIC NUMBERS.

10:25AM

27 BUT I WOULD HAVE NO OBJECTION TO SEALING
28 IT, SO LONG AS WE CAN WORK OUT SOME WAY THAT I CAN

1 REFER TO THEM THE GENERAL MAGNITUDE IN CLOSING.

2 MR. QUINN: I DON'T SEE WHY THE MAGNITUDE HAS
3 ANY RELEVANCE AT ALL. WE ALL KNOW THE MANAGEMENT
4 COMMITTEE CONSISTED OF GUNDLACH, MR. ATTANASIO,
5 MR. CHAPUS, MR. STERN, AND I BELIEVE SOMEBODY FROM THE
6 EQUITIES GROUP. THESE WERE THE TOP PEOPLE IN THE
7 COMPANY.

10:25AM

8 THE COURT: THERE IS A THEORY THAT MAY NOT BE
9 COMPATIBLE WITH THE VIEW OF THE CASE THAT MR. BRIAN IS
10 SUGGESTING. I THINK WE CAN WORK THAT OUT.

10:26AM

11 AND I DO NOT THINK THESE ACTUAL NUMBERS
12 NEED BE MADE PUBLIC. AND I THINK PEOPLE HAVE RIGHTS TO
13 PRIVACY. AND THESE PEOPLE ARE NOT LITIGANTS IN THIS
14 CASE.

15 AND I'M WILLING TO RESPECT THOSE.

10:26AM

16 MR. QUINN: THANK YOU, YOUR HONOR.

17 MR. BRIAN: THANK YOU, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 (RECESS.)

10:26AM

20

21

22

23

24

25

26

27

28

1 CASE NUMBER: BC429385
2 CASE NAME: TRUST COMPANY OF THE WEST VS.
3 JEFFREY GUNDLACH, ET AL
4 LOS ANGELES, MONDAY, AUGUST 29, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 10:40 A.M.

08:59AM

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

08:59AM

15
16 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN,
17 ALL COUNSEL ARE PRESENT, AS ARE OUR JURORS. IN THE TCW
18 VERSUS GUNDLACH MATTER WE'RE BACK ON THE RECORD.

19 YOU MAY CONTINUE WITH YOUR
20 CROSS-EXAMINATION, MR. HELM.

10:39AM

21 MR. HELM: THANK YOU, YOUR HONOR.
22
23

24 CROSS-EXAMINATION (RESUMED)
25

26 BY MR. HELM:

27 Q. MR. CORNELL, BEFORE THE BREAK WE WERE TALKING
28 ABOUT THE FACT THAT UP UNTIL THIS LAST THURSDAY, IN

1 YOUR FIDUCIARY DUTIES DAMAGES MODEL YOU HAD ASSUMED
2 THAT SMCF ASSETS DECLINED AS A RESULT OF MR. GUNDLACH'S
3 DEPARTURE BECAUSE HE WAS THE ONE WITH THE SUPERIOR
4 PERFORMANCE RECOGNIZED IN THE PRESS AND SO FORTH.

5 DO YOU RECALL THAT TESTIMONY?

10:40AM

6 A. YES.

7 Q. NOW, YOU MADE DIFFERENT ASSUMPTIONS FOR THE
8 INTERFERENCE DAMAGES, DIDN'T YOU?

9 A. I DON'T FOLLOW THE QUESTION.

10 Q. WELL, YOU MEASURED IN THE INTERFERENCE DAMAGES
11 HOW MUCH THE REVENUES DROPPED IN THE SMCF FUNDS AFTER
12 HE LEFT, JUST AS YOU DID IN THE FIDUCIARY DUTY DAMAGES,
13 CORRECT?

10:40AM

14 A. WELL, IT WAS REALLY HOW MUCH THEY DROPPED
15 AFTER HE INTERFERED, NOT AFTER HE LEFT.

10:40AM

16 Q. YOU USED THE SAME NUMBERS FOR BOTH SCENARIOS,
17 DIDN'T YOU? THE SAME REVENUE NUMBERS?

18 A. YOU ARE TALKING ABOUT EARLIER ON, NOT IN MY
19 CURRENT EXHIBITS?

20 Q. YES. IN THE STUDY OF FIDUCIARY DUTY DAMAGES
21 THAT YOU HAD CURRENT, UP TO THURSDAY OF LAST WEEK.

10:40AM

22 A. YES, SAME NUMBERS.

23 Q. AND FOR THE INTERFERENCE DAMAGES YOU ASSUMED
24 THAT THE ASSETS REMAINED THE SAME WHETHER HE STAYED OR
25 LEFT, DIDN'T YOU?

10:41AM

26 A. I DON'T FOLLOW THE QUESTION.

27 Q. WELL, YOU ASSUMED THAT HIS STAYING, OR HIS
28 LEAVING, HAD NO EFFECT ON THE ASSETS OR REVENUES IN THE

1 SMCF FUNDS; ISN'T THAT RIGHT?

2 A. I STILL DON'T -- I'M SORRY, MAYBE I'M JUST
3 BEING DENSE, BUT I STILL DON'T FOLLOW THE QUESTION.

4 Q. YOU ASSUMED THAT THERE WAS AN ASSET DROP IN
5 THE INTERFERENCE DAMAGES, CORRECT?

10:41AM

6 A. YES.

7 Q. AND A REVENUE LOSS IN THE SMCF FUNDS, CORRECT?

8 A. YES.

9 Q. BUT FOR THE INTERFERENCE DAMAGES, YOUR
10 ASSUMPTION WAS THAT THE ASSETS WERE UNAFFECTED BY HIS
11 STAYING OR LEAVING, CORRECT?

10:41AM

12 YOU ASSUMED IT ALL HAD TO DO WITH
13 STATEMENTS HE MADE; IS THAT RIGHT?

14 A. YES. THE INTERFERENCE DAMAGES REALLY BEGIN
15 AFTER HE'S GONE.

10:41AM

16 Q. YOU ASSUMED THAT NONE OF THE ASSETS IN THE
17 SMCF FUNDS WERE LOST BECAUSE MR. GUNDLACH LEFT TCW;
18 ISN'T THAT RIGHT?

19 A. IN THE INTERFERENCE DAMAGES -- I WAS GOING TO
20 SAY, IF YOU MEAN IN THE INTERFERENCE DAMAGES, YES,
21 THAT'S TRUE.

10:42AM

22 Q. YOU ASSUME THAT NOT A SINGLE DOLLAR OF ASSETS
23 WERE LOST IN THE SMCF FUND AS A RESULT OF INVESTORS
24 WANTING THEIR MONEY BACK BECAUSE MR. GUNDLACH LEFT;
25 ISN'T THAT RIGHT?

10:42AM

26 A. THAT'S RIGHT.

27 Q. YOU ASSUMED INSTEAD THAT THE SOLE REASON THAT
28 THE ASSETS DECLINED AND THE REVENUES DROPPED WERE THESE

1 STATEMENTS THAT MR. GUNDLACH HAD MADE TO INVESTORS,
2 CORRECT?

3 A. THAT'S CORRECT.

4 Q. SO THE ASSUMPTIONS ON THE INTERFERENCE
5 DAMAGES, AND THE AFFECT ON THE SMCF FUNDS WERE TOTALLY
6 DIFFERENT FROM THE ASSUMPTIONS IN THE BREACH OF
7 FIDUCIARY DUTY DAMAGES THAT RELATED TO SMCF, CORRECT?

10:42AM

8 MR. SURPRENANT: OBJECTION. TIME FRAME?

9 MR. HELM: UP TILL LAST THURSDAY.

10 THE COURT: DOES THAT HELP? DO YOU UNDERSTAND
11 THE QUESTION?

10:43AM

12 THE WITNESS: WELL, AS I SAID AT MY
13 DEPOSITION, I BELIEVE THAT'S TRUE. THERE WAS SOME
14 CONFUSION IN MY MIND ABOUT THE UNDERLYING ASSUMPTIONS
15 WHEN THE SMCF WAS IN BOTH.

10:43AM

16 Q. BY MR. HELM: NOW, THE ASSUMPTIONS THEN
17 CHANGED VERY RECENTLY. LAST FRIDAY THINGS CHANGED,
18 CORRECT?

19 A. YES.

20 Q. AND ON FRIDAY YOU SUBMITTED A NEW FIDUCIARY
21 DAMAGES MODEL, DIDN'T YOU?

10:43AM

22 A. WELL, IT'S NOT REALLY NEW. IT'S THE OLD ONE
23 WITH THE SMCF DAMAGES REMOVED.

24 Q. WELL, THAT WAS A CHANGE, CORRECT? IT REMOVED
25 SOMETHING THAT HAD PREVIOUSLY BEEN THERE, RIGHT?

10:43AM

26 A. I DID.

27 Q. AND THE NEW ANALYSIS ASSUMED THAT ONLY
28 TRADITIONAL ASSETS DROPPED AS A RESULT OF

1 MR. GUNDLACH'S TERMINATION; ISN'T THAT RIGHT?

2 A. THAT'S RIGHT.

3 Q. AND NOW YOU TESTIFIED EARLIER THAT THAT WAS
4 BECAUSE YOU HEARD MR. STERN TESTIFY THIS WEEK THAT --
5 OR LAST WEEK -- THAT HE THOUGHT HE COULD HAVE KEPT THE
6 SMCF ASSETS INTACT AFTER MR. GUNDLACH'S TERMINATION, IF
7 IT ONLY HADN'T BEEN FOR THOSE STATEMENTS HE MADE,
8 RIGHT? THAT'S WHY YOU CHANGED IT?

10:44AM

9 A. THAT'S BASICALLY CORRECT.

10 Q. BASED ON WHAT YOU HEARD MR. STERN TESTIFY IN
11 COURT, CORRECT?

10:44AM

12 A. YES.

13 Q. NOW, YOU WERE RETAINED FOR THIS PROJECT IN
14 SEPTEMBER OF 2010, ALMOST A YEAR AGO, CORRECT?

15 A. I DON'T REMEMBER THE ACTUAL DATE, BUT THAT
16 SOUNDS PRETTY CLOSE.

10:44AM

17 Q. AND YOU STARTED RAMPING UP WORK AROUND JANUARY
18 OR FEBRUARY OF THIS YEAR, DIDN'T YOU?

19 A. YES.

20 Q. AND YOU ATTENDED ABOUT FIVE MEETINGS WITH TCW
21 OR SOCIETE GENERALE REPRESENTATIVES TO DISCUSS THE
22 PROJECT WHEN YOU WERE BEGINNING YOUR ANALYSIS, DIDN'T
23 YOU?

10:44AM

24 A. YES.

25 Q. AND ONE OF THOSE MEETINGS AT THE VERY
26 BEGINNING WAS ATTENDED BY MARC STERN, WASN'T IT?

10:44AM

27 A. YES.

28 Q. HAD ABOUT 15 PEOPLE THERE, BIG MEETING AND

1 MARC STERN WAS THERE; ISN'T THAT CORRECT?

2 A. THERE WAS A MEETING OF THAT TYPE. I DON'T
3 KNOW IF IT WAS THE FIRST ONE, BUT THERE WAS A MEETING
4 LIKE THAT.

5 Q. AND YOU DISCUSSED HOW THE VARIOUS EXPERTS
6 WOULD WORK TOGETHER, DIDN'T YOU?

10:45AM

7 A. YES.

8 Q. AND YOU DISCUSSED, AMONG OTHER THINGS AT THE
9 MEETING WITH MR. STERN, THE HISTORICAL FACTS OF THE
10 CASE, DIDN'T YOU?

10:45AM

11 A. YES.

12 Q. NOW, MR. STERN NEVER TOLD YOU DURING ANY OF
13 THOSE MEETINGS, OR AT ANY TIME BEFORE LAST WEEK WHEN
14 YOU WERE WORKING ON THIS PROJECT, THAT HE THOUGHT IT
15 WAS UNREASONABLE TO HAVE A DAMAGES PROJECTION WHICH
16 ASSUMED THAT THE SMCF FUNDS DROPPED BECAUSE
17 MR. GUNDLACH WAS FIRED, AS OPPOSED TO BECAUSE OF
18 STATEMENTS HE MADE.

10:45AM

19 HE NEVER TOLD YOU THAT DID HE?

20 MR. SURPRENANT: OBJECTION, YOUR HONOR.
21 EXPERT STIPULATION.

10:45AM

22 THE COURT: I'M NOT SURE I'M FOLLOWING THAT,
23 SO YOU BETTER COME UP. I'M SORRY.

24

25 (THE FOLLOWING PROCEEDINGS WERE
26 HELD AT THE BENCH OUTSIDE THE
27 PRESENCE OF THE JURY:)

28 //

1 THE COURT: DO YOU RECALL BEGINNING WITH A
2 DRAFT REPORTS AND SUCH, I DIDN'T REALIZE THAT IT
3 COVERED ANY COMMUNICATIONS.

4 MR. SURPRENANT: THE UNDERSTANDING THAT THE
5 PARTIES HAVE, AS FAR AS I UNDERSTAND IT, IS THAT
6 WITNESSES WOULD NOT BE EXAMINED ON COMMUNICATIONS WITH
7 CLIENTS. AND THEY'VE BEEN MUCH MORE AGGRESSIVE THAN WE
8 HAVE, SO THEY HAVE RELIED ON THOSE COMMUNICATIONS.

10:46AM

9 AND WITH RESPECT TO COMMUNICATIONS
10 PROFESSOR CORNELL HAS RELIED ON, MR. HELM CAN ASK AWAY.
11 BUT THAT WAS OUTSIDE OF DISCOVERY, YOUR HONOR.

10:46AM

12 MR. HELM: ALL I'M ASKING ABOUT, HE ALREADY
13 TESTIFIED AT HIS DEPOSITION TO A MEETING HE HAD WITH
14 MR. STERN WHERE HE DID RELY ON IT. THEY HAD A WHOLE
15 MEETING. THEY DISCUSSED THE HISTORICAL FACTS, SO ALL
16 I'M SAYING --

10:47AM

17 THE COURT: WELL, IT'S CROSS-EXAMINATION. WHY
18 DON'T YOU ASK HIM DID YOU RELY ON MR. STERN'S
19 REPRESENTATION OF X AND IF HE DOES, MOVE ON.

20 MR. HELM: WELL, THAT'S WHAT I WAS TRYING TO
21 GET. HE WAS NEVER TOLD ANYTHING BY MR. STERN. HE
22 NEVER RELIED ON ANYTHING.

10:47AM

23 THE COURT: ASK HIM IF HE RELIED ON ANYTHING
24 MR. STERN TOLD HIM. IT'S PRETTY STRAIGHTFORWARD BUT --

25 MR. SURPRENANT: I DON'T THINK WHAT MR. HELM
26 CAN DO IS -- HE CAN ASK: DID YOU RELY ON ANY
27 STATEMENT, OR WAS YOUR ASSUMPTION CONTRADICTED, BUT I
28 DON'T THINK HE GETS TO ASK THE QUESTION HE JUST

10:47AM

1 ASKED -- HE HAS TO SHOW IT WAS EITHER RELIED -- HE HAS
2 TO SHOW IT WAS RELIED ON, THEN HE CAN GO INTO IT.

3 THE COURT: IF YOU'VE GOT SOMETHING YOU WANT
4 TO FOCUS ON, BUT THIS JUST GENERALIZED CROSS -- IT
5 DOESN'T HELP US. ASK HIM IF, YOU KNOW, THERE'S A
6 PARTICULAR FACT DID HE RELY ON A REPRESENTATION BY
7 MR. STERN REGARDING THE LOSS OF SMCF FUNDS?

10:47AM

8 MR. HELM: YOUR HONOR, IT'S THE DOG THAT
9 DIDN'T BARK. HE'S BEEN WORKING ON THIS PROJECT FOR A
10 YEAR. HE HAD ATTENDED A MEETING WITH MR. STERN.

10:48AM

11 THE COURT: WELL, THEN ASK HIM DID ANYONE EVER
12 TELL YOU TO ASSUME THE FOLLOWING.

13

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

10:48AM

17

18 Q. BY MR. HELM: AT ANY OF THE MEETINGS THAT YOU
19 HAD WITH MR. STERN, OR OTHER PEOPLE, OR ANY OF THE
20 DISCUSSIONS THAT YOU HAD, UP TO LAST THURSDAY, DID
21 ANYONE EVER TELL YOU THAT YOU SHOULD RELY ON THE
22 ASSUMPTIONS THAT THERE WAS NO EFFECT ON THE SMCF FUNDS
23 BY THE MERE FACT THAT MR. GUNDLACH LEFT?

10:48AM

24 A. DID ANYONE EVER TELL ME THAT? NO, I DON'T
25 THINK SO.

10:49AM

26 Q. AND, IN FACT, UP UNTIL LAST THURSDAY, YOU WERE
27 PROFFERING AN EXPERT OPINION IN THIS CASE THAT ASSUMED
28 THAT THE DECLINE IN THE SMCF FUNDS RESULTED FROM

1 MR. GUNDLACH'S DEPARTURE; ISN'T THAT RIGHT?

2 A. THAT WAS THE SCENARIO I HAD IN MY WORK UNTIL
3 THAT TIME, YES.

4 Q. ALL RIGHT. NOW, LET'S FOCUS ON THE SMCF
5 DAMAGES ASSUMPTION, THE INTERFERENCE DAMAGES
6 ASSUMPTION.

10:49AM

7 YOU HAVE ASSUMED THAT THE DECLINE WAS
8 BECAUSE OF STATEMENTS THAT HE MADE -- MR. GUNDLACH
9 MADE, RATHER THAN THE FACT THAT INVESTORS WERE JUST
10 UPSET THAT THEIR STAR FUND MANAGER WAS NO LONGER
11 MANAGING THE ASSETS, CORRECT?

10:49AM

12 A. THAT'S THE WAY I INTERPRETED MR. STERN'S
13 TESTIMONY, YES.

14 Q. AND THAT WAS AN ASSUMPTION, NOT AN OPINION,
15 CORRECT?

10:49AM

16 A. CORRECT.

17 Q. AND YOU WERE GIVEN THAT ASSUMPTION BY PEOPLE
18 AT TCW, WEREN'T YOU?

19 A. WELL, PEOPLE AT TCW, COUNSEL FOR TCW, AND
20 THAT'S THE WAY, AS I SAY, I INTERPRETED MR. STERN'S
21 TESTIMONY. SO HE'S A PERSON AT TCW. SO I'M RELYING ON
22 HIM REALLY.

10:50AM

23 Q. YOU HAVE DONE NO ANALYSIS TO DETERMINE THE
24 REASONABLENESS OF THAT ASSUMPTION, OR THE RELIABILITY
25 OF MR. STERN'S STATEMENT IN COURT, HAVE YOU?

10:50AM

26 A. NO, I HAVE NOT.

27 Q. AND YOU ASSUME THAT THE FEES WERE CHANGED
28 SOLELY BECAUSE OF STATEMENTS MR. GUNDLACH MADE,

1 CORRECT?

2 A. YES, THAT MR. STERN COULD HAVE WEATHERED THE
3 STORM, SO TO SPEAK, WITHOUT STATEMENTS.

4 Q. I'D LIKE TO SHOW WHAT IS IN EVIDENCE, EXHIBIT
5 2207.

10:50AM

6 IF WE CAN GO TO THE TOP PART OF THAT,
7 PLEASE, DENNIE.

8 THIS IS FROM GARY SHEDLIN TO MICHAEL
9 CONN DATED SEPTEMBER 20TH, 2009. THE THIRD SENTENCE AT
10 THE TOP. (READING):

10:51AM

11 SOMEHOW I THINK IF THERE ARE
12 CLIENTS IN THE CREDIT FUNDS WITH
13 OTHER PRODUCTS AT TCW, THEY MAY
14 PUSH A HARD CASE IF THE ENTIRE TEAM
15 LEFT AND YOU DIDN'T LET THEM OUT,
16 NOTWITHSTANDING THE CONTRACTUAL
17 TERMS.

10:51AM

18 YOU DIDN'T ANALYZE THAT DOCUMENT TO
19 DETERMINE THE EXTENT TO WHICH TCW WAS ALREADY BEING
20 ADVISED BEFORE IT TERMINATED MR. GUNDLACH, THAT IT
21 MIGHT NEED TO ALLOW LIQUIDATION TO KEEP ITS CLIENT'S
22 HAPPY IF THE ENTIRE TEAM LEFT, DID YOU, SIR?

10:51AM

23 A. NO. I DID NOT ANALYZE THAT DOCUMENT.

24 Q. AND LET'S LOOK AT EXHIBIT 6049. ALSO IN
25 EVIDENCE.

10:52AM

26 THIS IS FROM MR. BALDISWIELER TO
27 MS. URBELIS AND MR. STERN DATED DECEMBER 6TH, 2009.

28 YOU DIDN'T CONSIDER THIS DOCUMENT, DID

1 YOU, SIR, A LISTING OF INVESTOR FEEDBACK THAT WAS SENT
2 TO MR. STERN ON DECEMBER THE 6TH, DID YOU?

3 MR. SURPRENANT: OBJECTION, YOUR HONOR.
4 CUMULATIVE, OUTSIDE THE SCOPE.

5 THE COURT: OVERRULED. JUST YES OR NO DID YOU
6 CONSIDER IT OR LOOK AT IT? 10:52AM

7 THE WITNESS: I NEVER SAW THAT DOCUMENT, YOUR
8 HONOR.

9 Q. BY MR. HELM: NOW, PART OF YOUR DAMAGES,
10 INCLUDE THE DECLINE IN ASSETS IN AN SMCF FUND CALLED
11 SMCF SOUTH DAKOTA, CORRECT? 10:52AM

12 A. IF THEY DO, THAT'S A VERY SMALL NUMBER, BUT
13 I'D HAVE TO CHECK THAT TO BE SURE.

14 Q. AND DID YOU CONSIDER, IN FORMING YOUR OPINION,
15 THAT THE DECLINE IN ASSETS FROM SOUTH DAKOTA RESULTED
16 FROM THE STATEMENTS THAT MR. GUNDLACH HAD MADE IN THOSE
17 CALLS, EVIDENCE THAT BEFORE DECEMBER THE 6TH, THERE WAS
18 A CALL THAT SAID, FYI, I SPOKE WITH SOUTH DAKOTA, AND
19 THEY WANT OUT OF SMCI, THEIR SEPARATE ACCOUNT, SMCF II,
20 AND PPIP IMMEDIATELY? 10:53AM

21 DID YOU KNOW THAT THEY MADE THAT
22 STATEMENT BEFORE ANY OF THE COMMENTS BY MR. GUNDLACH
23 THAT HAD BEEN CRITICIZED BY TCW?

24 A. NO, I DID NOT.

25 Q. AND WERE YOU AWARE OF ANY OF THE OTHER
26 INFORMATION ON THIS DOCUMENT SUCH AS THAT THE FORD
27 FOUNDATION AS APOLECTIC AT THE FACT THAT MR. GUNDLACH
28 HAD BEEN TERMINATED? 10:53AM

1 A. NO.

2 Q. LET'S LOOK AT EXHIBIT 5603, ALSO IN EVIDENCE.
3 THIS IS A DECEMBER 17TH LETTER, BEFORE THE DECEMBER
4 22ND AND 29 INVESTOR CALLS.

5 IT SAYS -- IN THE MIDDLE (READING):

10:54AM

6 WE ARE STILL REVIEWING THE
7 OPTIONS --

8 COULD YOU GO UP THE MIDDLE PART, DENNIS.
9 FROM WE ARE REVIEWING TO ONE, TWO, THREE. (READING):

10 WE ARE STILL REVIEWING THE
11 OPTIONS THAT THE INVESTORS HAVE
12 SUGGESTED. BUT WANTED TO SHARE
13 SOME OF THOSE.

10:54AM

14 NUMBER TWO, WAS CREATE
15 LIQUIDITY OPTIONS OVER SOME PERIOD
16 OF TIME, AND WITH AN ORDERLY
17 APPROACH TO SECURITY SALES, TO
18 MINIMIZE THE EFFECT OF THE SALES ON
19 INVESTOR RETURNS.

10:54AM

20 AND THREE, REVISIT THE FEE
21 STRUCTURE FOR VARIOUS APPROACHES,
22 GIVEN DIFFERENT OBJECTIVES.

10:54AM

23 NOW, DID YOU PERFORM ANY ANALYSIS TO
24 ANALYZE THIS TO DETERMINE WHETHER MR. GUNDLACH'S LATER
25 STATEMENTS HAD ANY EFFECT ON THIS?

10:55AM

26 A. NO, I DID NOT.

27 Q. AND SO YOU DIDN'T CONSIDER THE FACT THAT TCW
28 WAS ALREADY TELLING INVESTORS THAT THEY HAD BEEN

1 SUGGESTING AND IT WAS CONSIDERING OPTIONS LIKE
2 LIQUIDITY AND FEE REDUCTIONS ON DECEMBER THE 17TH, DID
3 YOU, SIR?

4 A. NO, I DID NOT.

5 Q. NOW, ON THE INTERFERENCE DAMAGES, YOU
6 TESTIFIED EARLIER THAT YOU MADE A CHANGE, RECENTLY, IN
7 THAT DAMAGE CALCULATION; THAT WAS ANOTHER CHANGE THAT
8 WAS MADE ON FRIDAY, WASN'T IT?

10:55AM

9 A. THAT'S RIGHT.

10 Q. AND LET'S PUT UP 1909B, PLEASE, DENNIS.

10:55AM

11 AND COULD WE -- I'VE GOT MY OWN POINTER
12 HERE, MR. QUINN, I WON'T HAVE TO IMPOSE ON YOU.

13 A. YEAH, BUT MINE'S BRIGHTER.

14 Q. COULD WE BLOW UP THAT PART, DENNIS, PLEASE, AT
15 THE TOP.

10:56AM

16 ALL RIGHT. SO WHAT'S NEW IS --

17 ACTUALLY, COULD YOU DO IT SO WE CAN SEE
18 WHAT'S ON THE LEFT, TOO, DENNIS, JUST THE WHOLE PART
19 THERE. THANK YOU.

20 SO WHAT'S NEW IS YOU'VE ADDED THIS \$42
21 MILLION FIGURE, RIGHT? IT SAYS, INCREMENTAL FEE
22 SHARING WITH MET WEST; THAT'S NEW, ISN'T IT?

10:56AM

23 A. WELL, THAT AND THE 20 ARE ACTUALLY BOTH NEW.
24 WHAT'S REALLY NEW IS THE NET BETWEEN THE TWO.

25 Q. RIGHT.

10:56AM

26 SO WHAT YOU WERE TRYING TO DO HERE WAS
27 SUBTRACT FROM THE REVENUES THAT WERE GENERATED UNDER
28 THE ORIGINAL DEAL TERMS, THE ADDITIONAL FEE SHARING

1 THAT WOULD HAVE HAD TO BE PAID TO THE REPLACEMENT
2 MANAGERS AT THOSE HIGHER REVENUE LEVELS, CORRECT?

3 A. YES.

4 Q. THAT'S WHY YOU CALL IT INCREMENTAL FEE
5 SHARING?

10:57AM

6 A. THAT'S RIGHT.

7 Q. NOW, YOU SAY THIS WAS BECAUSE OF STATEMENTS
8 MR. WALLACE MADE AT A DEPOSITION EARLIER LAST WEEK?

9 A. YES.

10 Q. ISN'T IT A FACT THAT MR. WALLACE, IN HIS MAY
11 31ST REBUTTAL REPORT, CRITICIZED YOU FOR NOT PROPERLY
12 CALCULATING OFFSETTING EXPENSES AND FEES?

10:57AM

13 A. NOT TO MY -- WELL, MAYBE HE MADE A GENERAL
14 COMMENT, BUT AS TO THE SPECIFICS OF THIS, NOT TO MY
15 KNOWLEDGE, NO, OR I WOULD HAVE CONSIDERED IT AND MADE A
16 CHANGE EARLIER.

10:57AM

17 Q. SO LET ME SEE IF I CAN UNDERSTAND THE
18 CALCULATIONS.

19 SO, THE \$42 MILLION FIGURE IS THE TOTAL
20 FEE SHARING THAT WOULD BE PAID ON \$425 MILLION OF
21 REVENUE, CORRECT?

10:57AM

22 A. YES.

23 Q. AND THAT'S BECAUSE MET WEST GETS 10 PERCENT
24 FEE SHARING, IF IT'S ABOVE A \$20 MILLION MINIMUM, WHICH
25 MEANS ABOVE A \$200 MILLION REVENUE LEVEL, CORRECT?

10:58AM

26 A. YES. AND JUST TO BE SPECIFIC, THERE IS NO MET
27 WEST ANYMORE. IT'S PEOPLE WITHIN TCW WHO USED TO WORK
28 FOR MET WEST.

1 Q. BUT YOU USE MET WEST --

2 A. I KNOW, AND NOW I'M SORRY THAT I DID, BECAUSE
3 IT'S A LITTLE MISLEADING.

4 Q. BUT WE'RE USING THAT AS THE REPLACEMENT
5 MANAGERS, CORRECT? THE PEOPLE FROM MET WEST WHO CAME
6 IN TO REPLACE MR. GUNDLACH AND HIS TEAM, CORRECT?

10:58AM

7 A. YES.

8 Q. AND SO THE NEXT LINE SHOWS THAT THERE WAS A
9 \$20 MILLION MINIMUM THEY WOULD BE PAID, IN ANY EVENT,
10 CORRECT?

10:58AM

11 A. YES.

12 Q. SO THE EXTRA COST WAS \$22.6 MILLION,
13 APPROXIMATELY; IS THAT RIGHT?

14 A. THAT'S RIGHT.

15 Q. WHY DON'T WE JUST WRITE THIS HERE.

10:58AM

16 ALL RIGHT. SO WE'VE GOT \$22.6 MILLION
17 OF INCREMENTAL COST; IS THAT RIGHT?

18 A. YES.

19 Q. NOW, THERE ARE NO OTHER ENTRIES ON THAT LINE
20 FOR INCREMENTAL FEE SHARING, CORRECT?

10:59AM

21 A. CORRECT.

22 Q. SO THE \$22.6 MILLION IS THE ONLY EXTRA COST
23 THAT TCW WOULD HAVE INCURRED AT THESE REVENUE LEVELS IN
24 PAYING THE REPLACEMENT MANAGERS, TRUE?

25 A. YES.

10:59AM

26 Q. NOW, IF I WANTED TO FIND, NOT JUST THE
27 ADDITIONAL COST, BUT THE TOTAL COST, I WOULD NEED TO GO
28 TO 1906A, WOULDN'T I?

1 A. YES.

2 Q. LET'S PUT UP 1906A.

3 SO NOW IF WE LOOK AT LINE 14.

4 COULD YOU HIGHLIGHT IN THE MIDDLE THERE?

5 THIS IS -- TAKE IT OFF THE SCREEN, IF YOU MAY.

11:00AM

6 I'M NOT ADMITTING THIS INTO EVIDENCE,
7 YOUR HONOR, BUT I WOULD LIKE PERMISSION TO DISPLAY TO
8 THE JURY, AS A DEMONSTRATIVE, EXHIBIT 1906A.

9 CAN YOU IDENTIFY THAT, MR. CORNELL --
10 PROFESSOR CORNELL -- THAT IS THE DAMAGE ANALYSIS THAT
11 YOU HAD PREVIOUSLY SUBMITTED UP TO LAST THURSDAY,
12 CORRECT?

11:00AM

13 A. FOR BREACH OF FIDUCIARY DUTY?

14 Q. YES.

15 A. YES, THAT'S RIGHT.

11:00AM

16 MR. HELM: I DON'T WANT TO ADMIT IT INTO
17 EVIDENCE, BUT COULD WE DISPLAY IT TO THE JURY AS A
18 DEMONSTRATIVE?

19 MR. SURPRENANT: NO OBJECTION, YOUR HONOR.

20 THE COURT: YES, YOU MAY.

11:01AM

21 MR. HELM: THANK YOU.

22 Q. BY MR. HELM: LET'S HIGHLIGHT THE BLUE PART IN
23 THE MIDDLE -- SORRY, NOT HIGHLIGHT. IF WE COULD
24 JUST -- ALL RIGHT.

25 SO WE HAVE LINE 14 THERE THAT SAYS
26 PAYOUT TO REPLACEMENT FUND MANAGER, CORRECT? SORRY.
27 LINE 15 -- PAYOUT TO REPLACEMENT FUND MANAGER.

11:01AM

28 DO YOU SEE THAT?

1 A. YES.

2 Q. SO THAT'S THE AMOUNT THAT WAS ALLOCATED TO MET
3 WEST FOR COSTS IN MANAGING THE SMCF FUNDS AT THESE
4 LOWER ACTUAL REVENUE LEVELS, CORRECT?

5 A. AND IT'S NOT JUST TO MET WEST. IT'S THE TEAM
6 MANAGING IT WHICH INCLUDES SOME LEGACY TCW EMPLOYEES.

11:01AM

7 Q. WELL, WHY DON'T WE JUST PUT UP THOSE NUMBERS
8 FOR A SECOND.

9 SO IF I HAVE THEM RIGHT, IN 2010 THAT
10 NUMBER WAS 5.3 MILLION?

11:01AM

11 DO I HAVE THAT RIGHT?

12 A. YES.

13 Q. AND THEN THE NEXT ONE IS 4.3 MILLION?

14 A. YES.

15 Q. AND THEN ANOTHER 4.3 MILLION; IS THAT RIGHT?

11:02AM

16 A. YES.

17 Q. SO IF MY ADDITION IS RIGHT, THAT'S \$13.9
18 MILLION, CORRECT?

19 A. YES.

20 Q. SO IF I ADD THAT THERE, 36.5.

11:02AM

21 ARE YOU WITH ME?

22 A. YES.

23 Q. ALL RIGHT.

24 YOU CAN TAKE THAT DOWN, DENNIS.

25 NOW, YOU PERFORMED A CALCULATION --
26 ACTUALLY, LET'S GO BACK TO 1906B, WHICH IS YOUR LATEST
27 FIDUCIARY DUTY BREACH CALCULATION.

11:02AM

28 COULD WE PUT THAT UP, PLEASE, DENNIS.

1 NOW, THIS IS THE ONE WE GOT FRIDAY
2 AFTERNOON, CORRECT?

3 A. I DON'T KNOW WHEN YOU GOT IT, BUT IT'S WHEN IT
4 WAS PREPARED.

5 Q. AND THIS IS THE 6TH VERSION OF THIS DAMAGE
6 ANALYSIS THAT HAS BEEN PROVIDED TO US IN THIS CASE; IS
7 THAT TRUE?

11:03AM

8 A. I DON'T KNOW. THERE'S BEEN SEVERAL FOR SURE.

9 Q. THERE WAS AN EXHIBIT 4(A) AND WE HAD THEN
10 4(A)(1), 4(A)(2), 4(A)(3), 4(A)(4), 4(A)(5).

11:03AM

11 DOES THAT RING A BELL?

12 A. SOUNDS ABOUT RIGHT.

13 Q. SO THIS ONE WE GOT ON FRIDAY. LET ME ASK YOU,
14 PROFESSOR CORNELL, FINAL ANSWER?

15 A. I CAN'T SAY FOR SURE. BUT I WOULD ASSUME SO,
16 YES. THAT'S BEEN PRESENTED TO THE JURY.

11:03AM

17 Q. SO YOU ARE CONFIDENT NOW THAT YOU HAVE
18 SUFFICIENTLY ANALYZED THIS; THAT YOU CAN GIVE THIS
19 ANALYSIS TO THE JURY AS A COMPLETE AND ACCURATE
20 ANALYSIS OF YOUR ESTIMATION OF THE DAMAGES IN THIS
21 MATTER, CORRECT?

11:04AM

22 A. I HAVE SO GIVEN IT TO THEM.

23 Q. NOW, YOUR CALCULATION OF BREACH OF FIDUCIARY
24 DAMAGES COMPARES TWO DIFFERENT WORLDS. WE TALKED ABOUT
25 THAT A LITTLE BIT, DIDN'T WE?

11:04AM

26 A. YES.

27 Q. WHY DON'T WE JUST TALK ABOUT THOSE WORLDS FOR
28 A SECOND.

1 WHAT'S THE NUMBER FOR THIS, JOANETTE?

2 MS. DRIVER-MOORE: 6176.

3 MR. HELM: 6176.

4 THE COURT: IT WILL BE MARKED FOR
5 IDENTIFICATION ONLY.

11:04AM

6

7 (MARKED FOR ID: PEO'S 6176.)

8

9 MR. HELM: THANK YOU, YOUR HONOR.

10 Q. ALL RIGHT. THE FIRST WORLD THAT WE'LL TALK
11 ABOUT IS BREACH TERMINATED. ALL RIGHT.

11:05AM

12

13 NOW, IN THIS WORLD, WHAT YOU ARE
14 ASSUMING FOR THE ACTUAL WORLD, YOU ARE ASSUMING THAT
15 MR. GUNDLACH BREACHES HIS FIDUCIARY DUTIES, IS
16 TERMINATED BY TCW, BUT DOES NOT TORTIOUSLY INTERFERE

11:05AM

17 A. YOU DON'T HAVE TO MAKE THAT FINAL ASSUMPTION
18 BECAUSE THAT HAPPENED SUBSEQUENTLY ANYWAY. IT COULD.
19 IT WOULDN'T AFFECT THE CALCULATION, I DON'T THINK.

20 Q. BUT YOU ARE OFFERING A SEPARATE SET OF DAMAGES
21 ON THE INTERFERENCE WITH CONTRACTUAL ADVANTAGE CLAIM,
22 AREN'T YOU?

11:05AM

23 A. I AM.

24 Q. AND THAT ASSUMPTION ASSUMES THAT IT WAS ONLY
25 THE STATEMENTS THAT MR. GUNDLACH MADE AFTER HE WAS
26 TERMINATED THAT ADVERSELY AFFECTED THE SMCF FUNDS;
27 ISN'T THAT RIGHT?

11:05AM

28 A. THAT'S RIGHT. AND THAT'S WHY IT DOESN'T

1 MATTER IN THIS CALCULATION WHETHER HE MADE THE
2 STATEMENTS OR NOT.

3 Q. ALL RIGHT. SO WHAT YOU ASSUMED DROPPED, WERE
4 WHAT YOU CALLED THE TRADITIONAL ASSETS; IS THAT RIGHT?

5 A. YES.

11:06AM

6 Q. ALL RIGHT.

7 SO WE HAVE -- SO YOU ASSUME, IN THIS
8 WORLD, THAT THE TRADITIONAL ASSETS DROPPED, AS A RESULT
9 OF HIM BREACHING HIS FIDUCIARY DUTIES AND BEING
10 TERMINATED, CORRECT?

11:06AM

11 A. AND THE HEADLINE RISK AND DUST CLOUD THAT BLEW
12 UP ALONG WITH THAT, YES.

13 Q. BUT YOU HAVE ALSO BEEN TOLD BY MR. STERN'S
14 TESTIMONY THAT THE BREACH AND THE TERMINATION DID NOT
15 RESULT IN ANY REDUCTION IN SMCF ASSETS, RIGHT?

11:07AM

16 A. THE WAY I SAY -- THE WAY I INTERPRETED HIS
17 TESTIMONY WAS THAT HE COULD HAVE WEATHERED THE STORM
18 AND MAINTAINED THE CONTRACTS; AFTER THE BREACH IN THE
19 TERMINATION.

20 Q. ALL RIGHT.

11:07AM

21 SO FOR SMCF, WE'RE ASSUMING THEY'D BE
22 THE SAME, RIGHT? NOT AFFECTED BY THE BREACH, CORRECT?

23 A. YES.

24 Q. AND IN THIS WORLD, BREACH IN TERMINATION --
25 THE PEOPLE WHO ARE MANAGING THE SMCF FUNDS -- THE MET
26 WEST PEOPLE -- THE FORMER MET WEST PEOPLE WHO ARE NOW
27 AT TCW, CORRECT?

11:07AM

28 A. PRIMARILY, YES.

1 Q. NOW, THEN YOU CALCULATE ANOTHER WORLD WHERE
2 THERE'S NO BREACH, RIGHT? THIS IS YOUR BUT/FOR WORLD?
3 THAT'S THE OTHER WORLD YOU CALCULATED,
4 RIGHT?

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

6 Q. AND IN THIS WORLD YOU SAY THAT HAD
7 MR. GUNDLACH NOT BREACHED HIS FIDUCIARY DUTIES, THE
8 TRADITIONAL ASSETS WOULDN'T HAVE DROPPED, THEY WOULD
9 HAVE STAYED THE SAME, CORRECT?

10 A. CORRECT. 11:08AM

11 Q. AND, LIKEWISE, IN THIS WORLD, WE ALSO ASSUME
12 THAT THE SMCF REVENUES WOULD BE THE SAME, RIGHT? NOT
13 AFFECTED BY THIS?

14 A. I DON'T MAKE ANY ASSUMPTION ABOUT THE SMCF IN
15 THAT WORLD, BUT PRESUMABLY THEY WOULD STAY THE SAME. 11:08AM

16 Q. AND IN THIS WORLD WHERE THERE'S NO BREACH AND
17 HE STAYS, MR. GUNDLACH IS THE MANAGER, CORRECT?

18 A. YES. I NEVER CONSIDERED THAT PARTICULAR WORLD
19 BUT HE WOULD BE, I PRESUME.

20 Q. ALL RIGHT. SO FOR THE DAMAGES THAT YOU 11:09AM
21 CALCULATED, YOU -- AND YOU WENT THROUGH THIS WITH
22 MR. SURPRENANT, IT WAS THE 277 MILLION MINUS ABOUT 78
23 MILLION, CORRECT?

24 A. YES.

25 Q. WHICH, WITH INTEREST, LED TO ABOUT A \$222 11:09AM
26 MILLION DAMAGES FIGURE, CORRECT?

27 A. YES, THAT'S RIGHT.

28 Q. ALL RIGHT. SO BECAUSE OF THIS DROP, WE'VE GOT

1 MINUS 222 MILLION, DO I HAVE THAT RIGHT?

2 A. YES.

3 Q. BUT YOU LEFT OUT A STEP IN YOUR ANALYSIS,
4 DIDN'T YOU, PROFESSOR CORNELL?

5 A. WHAT STEP IS THAT? 11:10AM

6 Q. WELL, ANOTHER DIFFERENCE BETWEEN THE TWO
7 WORLDS THAT YOU COMPARED, IS NOT SIMPLY THAT THE ASSETS
8 WERE LESS IN THE TRADITIONAL ASSETS, BUT THAT YOU HAD
9 DIFFERENT MANAGERS OF THE SMCF FUNDS IN THE TWO WORLDS;
10 ISN'T THAT TRUE? 11:10AM

11 A. IN THE BREACH I DID NOT CONSIDER THE SMCF AT
12 ALL.

13 Q. YOU DID NOT CONSIDER, IN YOUR ANALYSIS, THE
14 FACT THAT IN THE BREACH WORLD THEY ARE PAYING THE
15 FORMER MET WEST TEAM TO MANAGE THE SMCF ASSETS; BUT IN
16 THE BUT/FOR WORLD, MR. GUNDLACH IS MANAGING THEM, DID
17 YOU? 11:10AM

18 A. NO, I DID NOT DO THAT.

19 Q. BUT WE KNOW THAT MET WEST AND MR. GUNDLACH HAD
20 DIFFERENT COSTS, DIDN'T WE? 11:11AM

21 A. YES.

22 Q. WELL, LET'S SEE IF WE CAN GET AN IDEA OF WHAT
23 THAT DIFFERENCE IN COST IS.

24 IF MR. GUNDLACH HAD BEEN TERMINATED, TCW
25 WOULD HAVE PAID TO HIM AND HIS TEAM A SHARE OF 50
26 PERCENT OF THE MANAGEMENT FEES ON SMCF, AND 60 PERCENT
27 OF THE CARRIED INTEREST, CORRECT? 11:11AM

28 MR. SURPRENANT: OBJECTION, YOUR HONOR.

1 ASSUMES FACTS NOT IN EVIDENCE.

2 THE COURT: SUSTAINED -- WE'VE HAD SOME
3 TESTIMONY ABOUT THAT. BUT I'M NOT SURE WHERE YOU ARE
4 GOING WITH THIS, MR. HELM.

5 Q. BY MR. HELM: WELL, YOU HAVE PREVIOUSLY
6 CALCULATED, HAVEN'T YOU, THE COSTS THAT MR. GUNDLACH'S
7 TEAM WOULD HAVE -- THAT WOULD HAVE BEEN INCURRED IN
8 PAYING HIS TEAM AT THE HIGHER REVENUE LEVEL, DIDN'T
9 YOU, SIR?

11:11AM

10 A. YES.

11:12AM

11 Q. LET'S LOOK AT EXHIBIT 1906A.

12 AND LET'S HIGHLIGHT, IF WE COULD --

13 A. INCIDENTALLY, MR. HELM.

14 Q. THERE'S NO QUESTION PENDING, SIR.

15 A. ALL RIGHT.

11:12AM

16 Q. IF WE COULD LOOK AT LINE -- LINES FIVE AND
17 LINES EIGHT -- DO THE YELLOW, JUST THE YELLOW PART,
18 YEAH, LIKE THAT.

19 ALL RIGHT. SO, THIS WAS YOUR
20 CALCULATION UP TO LAST THURSDAY, CORRECT?

11:12AM

21 A. YES.

22 Q. AND IT CONTAINED CALCULATIONS ABOUT REVENUES
23 AND COSTS THAT, UNDER THIS BUT/FOR WORLD WHERE YOU HAVE
24 HIGH SMCF REVENUES, UNDER THE ORIGINAL TERMS, CORRECT?

25 A. YES.

11:13AM

26 Q. SO FOR THE MANAGEMENT FEES, LET'S LOOK AT LINE
27 FIVE, DO YOU SEE LINE FIVE.

28 AM I RIGHT THAT THAT'S WHAT YOUR --

1 THAT'S WHAT YOUR CALCULATION OF GUNDLACH'S FEE SHARING
2 ON THE MANAGEMENT FEES FOR THOSE DIFFERENT YEARS,
3 CORRECT?

4 A. CORRECT.

5 Q. BY THE WAY, WHAT NUMBER IS THIS, JOANETTE? 11:13AM

6 MS. DRIVER-MOORE: 6177.

7 MR. HELM: THANK YOU.

8 THE COURT: IT WILL BE MARKED FOR
9 IDENTIFICATION ONLY.

10
11 (MARKED FOR ID: PEO'S 6177.) 11:13AM

12
13 MR. HELM: THANK YOU, YOUR HONOR.

14 Q. ALL RIGHT. WE WERE TALKING ABOUT MET WEST'S
15 COSTS. LET'S TALK ABOUT MR. GUNDLACH'S COSTS. 11:13AM

16 MR. SURPRENANT: YOUR HONOR, I OBJECT TO THE
17 RUNNING COMMENTARY.

18 THE COURT: YEAH, IF YOU WOULD JUST ASK
19 QUESTIONS.

20 MR. HELM: ALL RIGHT. THANK YOU, YOUR HONOR. 11:14AM

21 Q. SO JUST IF WE'RE LOOKING AT THAT LINE, AM I
22 CORRECT THAT WE HAVE \$28 MILLION IN THE FIRST YEAR FOR
23 FEE SHARING ON THE SMCF FUNDS.

24 A. THAT'S CORRECT.

25 Q. AND 25 MILLION THE NEXT YEAR? 11:14AM

26 A. THAT'S CORRECT.

27 Q. AND 29 MILLION THE NEXT YEAR; IS THAT RIGHT?

28 A. YES.

1 Q. AND YOU CAN CHECK MY MATH, BUT THAT'S \$82
2 MILLION, ISN'T IT?

3 A. I THINK THAT'S RIGHT.

4 Q. AND YOU ALSO PERFORMED A CALCULATION ABOUT
5 CARRIED INTEREST, RIGHT? THAT WAS ABOUT WHAT
6 MR. GUNDLACH'S SHARE WOULD BE OF THE CARRIED INTEREST,
7 DIDN'T YOU? AND THAT'S AT LINE EIGHT.

11:14AM

8 A. YES, IT IS.

9 Q. SO THE CARRIED INTEREST WAS \$220 MILLION,
10 RIGHT?

11:15AM

11 A. YES.

12 Q. SO IF WE ADD 82 MILLION AND 222 MILLION THAT'S
13 300 AND \$2 MILLION, RIGHT?

14 A. CORRECT. THAT'S THE ADDITION.

15 Q. SO, IF MR. GUNDLACH HAD NOT BEEN FIRED, AND IF
16 THE SMCF FUNDS HAD PERFORMED AS YOU ESTIMATED THEY
17 WOULD HAVE, IN YOUR SCENARIO, HE WOULD HAVE BEEN PAID
18 OVER \$300 MILLION ON THE SMCF FUNDS ALONE; IS THAT
19 CORRECT?

11:16AM

20 A. IF HE STAYED AND MANAGED THE SMCF FUNDS,
21 THAT'S CORRECT.

11:16AM

22 Q. NOW, WE ALREADY LOOKED AT WHAT THE MET WEST
23 REPLACEMENT GROUP'S COSTS WERE, THAT WAS 36.5 MILLION,
24 CORRECT?

25 A. NO, THAT'S --

11:16AM

26 Q. ON THAT CHART. WE HAD THE MET WEST COSTS,
27 \$36.5 MILLION, CORRECT?

28 A. OH, I SEE --

1 MR. SURPRENANT: OBJECTION. MISSTATES THE
2 TESTIMONY.

3 THE COURT: WELL, YOU CAN EXPLAIN IT, IF IT'S
4 NOT ACCURATE.

5 THE WITNESS: I THINK THAT'S CORRECT. 11:17AM

6 Q. BY MR. HELM: SO IF WE FIND THE DIFFERENCE,
7 302 MINUS 36.5, IS 265.5, RIGHT?

8 THAT'S WHAT THAT CALCULATION REVEALS,
9 ISN'T IT?

10 A. I THINK SO. 11:17AM

11 Q. NOW, THE DAMAGES THAT YOU CALCULATED FOR
12 BREACH OF FIDUCIARY DUTIES, WITH INTEREST, WAS \$222
13 MILLION, CORRECT?

14 A. YES.

15 Q. BUT WE'VE NOW SEEN THAT BY VIRTUE OF HAVING
16 BROUGHT IN THE MET WEST GROUP, TO MANAGE THE SMCF
17 ASSETS, TCW SAVED 265 POINT \$5 MILLION, DIDN'T THEY? 11:18AM

18 MR. SURPRENANT: OBJECTION. INCOMPLETE
19 HYPOTHETICAL.

20 THE COURT: SUSTAINED. 11:18AM

21 I THINK YOU'VE GOT TO EXPAND ON THAT A
22 LITTLE BIT.

23 MR. HELM: WELL, LET'S GO BACK TO THIS EARLIER
24 CHART.

25 Q. IN THIS WORLD, WE SAY THAT THE -- IN THE WORLD
26 WHERE HE BREACHES AND IS TERMINATED, THERE'S A DROP IN
27 THE TRADITIONAL ASSETS TO THE TUNE OF \$222 MILLION,
28 CORRECT? 11:19AM

1 A. YES.

2 Q. BUT THERE'S ANOTHER DIFFERENCE BETWEEN THIS
3 WORLD AND THE BUT/FOR WORLD; ISN'T THERE, PROFESSOR
4 CORNELL?

5 MET WEST IS MANAGING IN THE BREACH
6 WORLD. BUT MR. GUNDLACH IS MANAGING IN THE BUT/FOR
7 WORLD, CORRECT?

11:19AM

8 A. NO, NOT NECESSARILY.

9 Q. HE -- NO, BREACH HE STAYS. YOUR ASSUMPTION
10 WAS, IN ORDER TO MANAGE THE ASSETS, YOUR ASSUMPTION IS
11 THE REASON THAT THE TRADITIONAL ASSETS DON'T DROP, IS
12 THAT HE STAYS, RIGHT?

11:19AM

13 A. YES.

14 Q. AND SO IF HE STAYS, THERE'S A \$265.5 MILLION
15 SAVINGS; ISN'T THERE?

11:20AM

16 A. I'M NOT SURE. I'D HAVE TO THINK ABOUT THAT
17 FURTHER.

18 Q. YOU ARE NOT SURE.

19 YOU ARE NOT SURE NOW? BEFORE I ASKED
20 YOU IF YOU WERE READY, YOUR FINAL ANSWER, YOU WERE
21 READY TO GIVE IT TO THE JURY, NOW YOU ARE NOT SURE?

11:20AM

22 MR. SURPRENANT: OBJECTION, YOUR HONOR.

23 THE COURT: SUSTAINED.

24 Q. BY MR. HELM: ALL RIGHT.

25 NOW, TO BE FAIR, THE \$265 MILLION IS
26 NOMINAL DOLLARS, CORRECT?

11:20AM

27 A. HOW ARE YOU DEFINING NOMINAL?

28 Q. WITHOUT A PRESENT VALUE CALCULATION.

1 A. OH, OKAY; THAT'S RIGHT.

2 Q. AND SO, TO REALLY SEE THE COMPARISON BETWEEN
3 YOUR 222 AND WHAT THE SAVINGS WERE, WE'D HAVE TO
4 PERFORM A PRESENT VALUE CALCULATION ON THE \$265.5
5 MILLION, WOULDN'T WE? SO WE'D BE COMPARING APPLES TO
6 APPLES?

11:21AM

7 MR. SURPRENANT: OBJECTION, YOUR HONOR.
8 INCOMPLETE HYPOTHETICAL.

9 THE COURT: I'LL ALLOW THAT. MISSTATES THE
10 TESTIMONY.

11:21AM

11 THE WITNESS: YOU WOULD NEED TO HAVE
12 EVERYTHING TO DO PRESENT VALUE, YES.

13 Q. BY MR. HELM: NOW, WE CAN'T -- CAN YOU DO A
14 PRESENT VALUE CALCULATION LIKE THAT, IN YOUR HEAD, ON
15 THE STAND? I ASSUME YOU CAN'T?

11:21AM

16 A. NO, I CAN'T.

17 Q. I CAN'T, EITHER.

18 BUT I WANT YOU TO ASSUME FOR ME THAT IF
19 YOU TOOK THAT COST NUMBER, 265 MILLION, AND YOU APPLIED
20 A PRESENT VALUE CALCULATION TO IT, USING THE DISCOUNT
21 RATES, INTEREST RATES, AND METHODOLOGY THAT YOU'VE USED
22 IN YOUR STUDY, AND YOU APPLIED IT TO THE 265, I WANT
23 YOU TO ASSUME FOR ME THAT THE AMOUNT WOULD COME OUT AT
24 \$226 MILLION.

11:21AM

25 WOULD YOU ASSUME THAT FOR ME?

11:21AM

26 A. OKAY.

27 Q. AND PV IS PRESENT VALUE, CORRECT?

28 A. YES.

1 Q. \$226 MILLION IS GREATER THAN \$222 MILLION,
2 ISN'T IT, SIR?

3 A. THAT, I CAN ANSWER. IT IS.

4 Q. SO IF YOU ASSUME THAT I HAVE DONE THE PRESENT
5 VALUE CALCULATION PROPERLY, YOU WOULD AGREE WITH ME,
6 WOULDN'T YOU, THAT UNDER YOUR FIDUCIARY DUTY DAMAGES
7 SCENARIO, TCW SUFFERED NO DAMAGES; ISN'T THAT TRUE?

11:22AM

8 A. I AGREE THAT'S WHAT YOUR CALCULATION SHOWS.

9 Q. AND THE REASON IS THAT, ALTHOUGH THE
10 TRADITIONAL ASSETS DROPPED \$222 MILLION, THEY HAD A
11 \$226 MILLION SAVINGS, AS A RESULT OF HAVING NO
12 LONGER -- MR. GUNDLACH HAVING TO PAY, AND HAVING MET
13 WEST GROUP THERE WHO THEY CAN PAY LESS TO; ISN'T THAT
14 TRUE?

11:22AM

15 MR. SURPRENANT: INCOMPLETE HYPOTHETICAL.
16 MISSTATES THE TESTIMONY.

11:23AM

17 THE COURT: I'LL ALLOW HIM TO ANSWER.

18 THE WITNESS: THAT'S THE WAY YOUR CALCULATION
19 WORKS. THAT'S RIGHT.

20 Q. BY MR. HELM: LET ME ASK YOU TO MAKE AN
21 ASSUMPTION.

11:23AM

22 ASSUME THAT ON DECEMBER 3RD, 2009, THE
23 DAY BEFORE MR. GUNDLACH WAS RELIEVED OF HIS DUTIES, TCW
24 EXPECTED THE SMCF FUNDS TO PERFORM IN ACCORDANCE WITH
25 HOW YOU SAY THEY WOULD HAVE PERFORMED.

11:23AM

26 CAN YOU ASSUME THAT FOR ME?

27 A. OKAY.

28 Q. AND IN FACT, YOU HAD DISCUSSIONS WITH THE TCW

1 PEOPLE IN CONNECTION WITH YOUR DAMAGES ANALYSIS ABOUT
2 HOW THOSE NUMBERS ACCORDED WITH THEIR EXPECTATIONS AT
3 THE TIME, DIDN'T YOU?

4 A. I DID.

5 Q. AND YOU WERE TOLD, AND IN FACT RELIED ON THE
6 FACT, THAT THEIR EXPECTATIONS FOR HOW THE SMCS WOULD
7 PERFORM WAS CONSISTENT WITH WHAT ACTUALLY OCCURRED;
8 ISN'T THAT RIGHT?

11:24AM

9 A. YES.

10 Q. SO I WANT YOU ALL TO ASSUME THAT TCW EXPECTED
11 THAT IT COULD KEEP THE GUNDLACH TEAM INTACT, AFTER
12 MR. GUNDLACH LEFT, AND THAT IT WOULD NOT SUFFER A LOSS
13 IN THE SMCF ASSETS AS A RESULT OF TERMINATING HIM.

11:24AM

14 CAN YOU ASSUME THAT FOR ME?

15 A. YES.

11:24AM

16 Q. AND IN FACT, YOU HEARD MR. STERN TESTIFY TO
17 THAT EFFECT WHEN YOU WERE IN COURT, DIDN'T YOU?

18 A. I DON'T PRECISELY REMEMBER THAT, BUT -- SO I
19 CAN'T TELL YOU FOR SURE.

20 Q. THAT WAS, IN PART, THE BASIS FOR YOUR CHANGE
21 IN YOUR ANALYSIS, WASN'T IT, THAT MR. STERN SAID JUST
22 BY FIRING HIM, HE THOUGHT HE COULD HAVE KEPT THINGS
23 TOGETHER, IF IT WEREN'T FOR THOSE STATEMENTS, RIGHT?

11:24AM

24 A. WHEN YOU SAY KEPT THINGS TOGETHER, HE KEPT THE
25 REST OF THE GUNDLACH TEAM EXCEPT FOR HIM, I DON'T
26 RECALL THAT.

11:25AM

27 Q. WELL, WHY DON'T YOU ASSUME FOR ME THAT TCW
28 EXPECTED THAT IT COULD KEEP THE SMCF FUNDS INTACT

1 WITHOUT A DROP IN ASSETS, AFTER IT FIRED HIM.

2 WOULD YOU ASSUME THAT FOR ME?

3 A. OKAY.

4 Q. SO UNDER THOSE ASSUMPTIONS, AND LOOKING ONLY
5 AT THE SMCF FUNDS, WOULD YOU AGREE WITH ME THAT SOMEONE
6 IN TCW'S POSITION AT THE TIME MR. GUNDLACH WAS FIRED,
7 COULD EXPECT THAT TCW WOULD BE ABLE TO KEEP AN
8 ADDITIONAL \$265 MILLION IN FEES? KEEP IT FOR ITSELF,
9 AS A RESULT OF FIRING MR. GUNDLACH.

11:25AM

11:25AM

10 A. I CAN'T ANSWER THAT.

11 MR. HELM: NOTHING FURTHER, YOUR HONOR.

12 THE COURT: ALL RIGHT, MR. SURPRENANT. YOUR
13 REDIRECT.

14 MR. SURPRENANT: THANK YOU, YOUR HONOR.

11:26AM

15

16
17 REDIRECT EXAMINATION

18

19 BY MR. SURPRENANT:

20 Q. I'D LIKE TO START WITH MR. HELM'S TWO
21 CALCULATIONS.

22 IS THE MATH HERE CORRECT ON WHAT'S BEEN
23 MARKED FOR IDENTIFICATION AS 6176?

24 A. I THINK SO. I WAS TRYING TO FOLLOW IT IN MY
25 HEAD, AND IT LOOKED LIKE IT WAS RIGHT.

26 Q. DOES THIS MATH CAUSE YOU TO WANT TO REVISE A
27 SINGLE DOLLAR OF ANY DAMAGES YOU CALCULATED IN THIS
28 CASE?

11:26AM

11:26AM

1 A. WELL, AS I SAID, IT'S THE FIRST TIME I'VE SEEN
2 THE MATH. I CAN'T BE SURE. I REALLY DON'T KNOW. I
3 CAN'T SAY IT DOESN'T, BUT I JUST DON'T KNOW.

4 Q. LET ME ASK THIS QUESTION: LET ME GO BACK TO
5 YOUR EXPERT EXHIBITS. NOW, IF WE COULD GO TO TX 1906A.

11:27AM

6 NOW, WHAT MR. HELM DID THERE IS HE ADDED
7 COST FOR MANAGING THE SPECIAL MORTGAGE CREDIT FUNDS,
8 CORRECT?

9 A. YES.

10 Q. BUT WHEN YOU TOOK OUT THE SPECIAL MORTGAGE
11 CREDIT FUND REVENUES, IS IT PROPER TO CONTINUE TO USE
12 THE COST?

11:27AM

13 A. I'M GOING TO NEED A LITTLE MORE DETAIL ON THAT
14 QUESTION BEFORE I CAN ANSWER.

15 Q. IF WE CAN GO TO TX 1906B.

11:28AM

16 NOW, THAT IS THE DAMAGE CALCULATION WITH
17 BREACH OF FIDUCIARY DUTY, CORRECT?

18 A. YES.

19 Q. AND DOES IT CONTAIN ANY REVENUE FOR THE
20 SPECIAL MORTGAGE CREDIT FUNDS?

11:28AM

21 A. NO.

22 Q. WOULD IT BE APPROPRIATE, THEREFORE, TO
23 SUBTRACT OUT ANY COSTS, WHETHER ACTUAL OR AVOIDED, FOR
24 MANAGING THE SPECIAL MORTGAGE CREDIT FUND?

25 A. I THINK IT DEPENDS ON EXACTLY HOW YOU DEFINE
26 THE WORLDS.

11:28AM

27 BUT YOU KNOW, I DON'T WANT TO GIVE A
28 DEFINITIVE ANSWER UNDER OATH WHEN I'M JUST NOT SURE.

1 Q. OKAY. NOW, LET'S GO TO -- LET'S COMPARE 1906A
2 AND 1906B.

3 AND MIKE, IF YOU COULD JUST BLOW UP THE
4 TWO AT THE BOTTOM, AND COMPARE THAT.

5 NOW, THE -- WHAT YOU DID WHEN YOU
6 REVISED YOUR DAMAGE CALCULATIONS, AFTER HEARING
7 MR. STERN'S TESTIMONY, IT HAD THE IMPACT OF LOWERING
8 YOUR DAMAGES ABOUT \$118 MILLION, CORRECT?

11:29AM

9 A. YES.

10 Q. AND IF WE COULD GO BACK TO 1906B.

11:29AM

11 AND WHEN YOU CHANGED IT, WHAT YOU --
12 WHAT YOU HAD DONE -- STRIKE THAT. LET ME START AGAIN.

13 WHAT YOU HAD DONE IN YOUR PREVIOUS
14 CALCULATIONS, PREVIOUS BEFORE FRIDAY, IS YOU
15 ESSENTIALLY GAVE THE JURY A CHOICE WITH RESPECT TO
16 SPECIAL MORTGAGE CREDIT FUNDS, CORRECT?

11:30AM

17 A. YES.

18 Q. AND WHAT WAS THE CHOICE YOU GAVE THEM?

19 A. THEY COULD CONSIDER IT AS HAVING BEEN CAUSED
20 BY THE BREACH, OR CAUSED BY THE LATER INTERFERENCE.

11:30AM

21 Q. AND WHAT REVISION DID YOU MAKE, BASED ON
22 MR. STERN'S TESTIMONY?

23 A. I REMOVED IT FROM THE BREACH.

24 Q. LET ME ASK A NUMBER OF QUESTIONS.

25 IS IT YOUR UNDERSTANDING THAT TCW GETS
26 NO DAMAGES, IF IT HAD MORE THAN ONE REASON FOR
27 TERMINATING MR. GUNDLACH?

11:30AM

28 MR. HELM: OBJECTION. CALLS FOR A LEGAL

1 CONCLUSION.

2 THE COURT: SUSTAINED.

3 THE QUESTION WAS, WAS IT HIS BELIEF.

4 MR. SURPRENANT: WELL, I BELIEVE MR. HELM
5 OPENED THE DOOR, YOUR HONOR. 11:31AM

6 THE COURT: WELL, BUT THAT WAS THE QUESTION,
7 RIGHT?

8 MR. HELM: IF I COULD REPHRASE THE QUESTION,
9 YOUR HONOR.

10 THE COURT: YEAH. 11:31AM

11 Q. BY MR. SURPRENANT: DOES YOUR ANALYSIS MAKE AN
12 ASSUMPTION AS TO WHETHER MR. GUNDLACH'S BREACH OF
13 FIDUCIARY DUTY WAS THE ONLY REASON FOR HIS TERMINATION?

14 A. NO.

15 Q. NOW, THERE WAS QUESTIONS ABOUT MR. VILLA'S
16 COST ALLOCATION STUDY. 11:31AM

17 DO YOU RECALL THAT? MR. HELM HAD A
18 NUMBER OF QUESTIONS.

19 A. YES.

20 Q. AND DO YOU RECALL THAT HE READ YOU A NUMBER OF
21 DOCUMENTS? 11:31AM

22 A. YES.

23 Q. AND YOU READ MR. VILLA'S CROSS-EXAMINATION BY
24 MR. ALLRED, DID YOU NOT?

25 A. YES. 11:32AM

26 Q. AND WAS MR. VILLA ASKED ANY OF THOSE QUESTIONS
27 DURING HIS CROSS-EXAMINATION?

28 A. NOT THAT I RECALL.

1 Q. NOW, HAVE YOU EVER RELIED ON A COST ALLOCATION
2 BY A CLIENT, IN YOUR PREVIOUS TESTIMONY AS AN EXPERT?

3 A. YES.

4 Q. NOW, THERE WAS A QUESTION ABOUT COST SAVINGS.

5 IF WE COULD PUT UP TRIAL EXHIBIT 2148.

11:32AM

6 THERE WAS A QUESTION ABOUT WHETHER THE
7 COST SAVINGS THAT TCW OBTAINED IN LIGHT OF BRINGING IN
8 MET WEST, WERE CAPTURED IN THE VERY FIRST CALCULATIONS
9 YOU DID, CORRECT?

10 DO YOU RECALL THAT?

11:32AM

11 A. YES.

12 Q. ARE THEY CAPTURED -- IS IT YOUR UNDERSTANDING
13 THAT MR. VILLA CAPTURED THEM, IN THIS COST ALLOCATION?

14 A. YES, I THINK HE DID.

15 Q. NOW, MR. HELM READ YOU SOME DOCUMENTS IN WHICH
16 TCW OR SOCIETE GENERALE WERE CONSIDERING THE POSSIBLE
17 TERMINATION OF MR. GUNDLACH IN NOVEMBER OF 2009.

11:33AM

18 YOU TOLD US YOU ARE NOT A LIABILITY
19 EXPERT.

20 DO YOU KNOW IF ANY OF THE ALLEGED
21 BREACHES OF FIDUCIARY DUTY HAD OCCURRED BY THAT DATE?

11:33AM

22 A. WELL, HAVING LOOKED AT MR. QUINN'S OPENING
23 STATEMENT, I BELIEVE THAT THERE ARE SOME THAT HAD, YES.

24 Q. YOU WERE SHOWN SOME EXHIBITS THAT WERE SENT TO
25 THE INVESTORS IN OCTOBER. AND THEN IN DECEMBER, AFTER
26 MR. GUNDLACH LEFT, UNTIL THE -- AFTER THE DECEMBER 22ND
27 AND DECEMBER 29TH FORECAST, HAD THERE BEEN ANY ACTUAL
28 CHANGES MADE TO THE SPECIAL MORTGAGE CREDIT FUNDS, IF

11:33AM

1 YOU KNOW?

2 A. I DON'T BELIEVE THERE HAD. I'M NOT POSITIVE,
3 SO I HAVE TO BE HONEST ABOUT THAT; BUT I DON'T RECALL
4 THERE BEING ANY.

5 Q. NOW, ARE YOU AWARE OF WHETHER SOUTH DAKOTA,
6 SPECIAL MORTGAGE CREDIT FUND, SOUTH DAKOTA LIQUIDATED
7 AT ALL?

11:34AM

8 A. WELL, THAT'S WHY I ASKED THE -- MR. HELM, WHEN
9 HE WAS QUESTIONING ME, THAT'S WHY I SAID, I DON'T
10 RECALL ANY LIQUIDATION, SO I WASN'T SURE WHAT HIS
11 QUESTION WAS.

11:34AM

12 Q. NOW, IF WE COULD GO TO THE TWO DAMAGES THAT --
13 THE DAMAGE CALCULATIONS THAT YOU HAVE PRESENTED TO THE
14 JURY.

15 IF WE COULD START WITH THE INTERFERENCE
16 DAMAGE, 1909B.

11:35AM

17 NOW, DID MR. HELM IDENTIFY ANY -- DID
18 HIS CROSS-EXAMINATION IDENTIFY ANY CHANGES YOU FEEL YOU
19 NEED TO MAKE TO THIS EXHIBIT?

20 A. NO.

11:35AM

21 Q. AND SO THE DAMAGES THAT YOU PRESENTLY BELIEVE
22 SHOULD BE AWARDED, IF LIABILITY IS FOUND FOR TORTIOUS
23 INTERFERENCE OF SPECIAL MORTGAGE CREDIT FUNDS, IS HOW
24 MUCH?

25 A. \$344 MILLION.

11:36AM

26 Q. IF WE COULD GO TO TRIAL EXHIBIT 1906B.

27 DID ANY OF THE MATHEMATICS AND QUESTIONS
28 THAT MR. HELM ASKED YOU -- DOES THAT MAKE YOU WANT TO

1 CHANGE THE DAMAGES IN THIS EXHIBIT AT ALL?

2 MR. HELM: ASKED AND ANSWERED, YOUR HONOR.

3 THE COURT: I'LL ALLOW IT.

4 THE WITNESS: I SAID I WASN'T SURE. IT
5 DEPENDED ON HOW YOU INTERPRETED THE WORLDS.

11:36AM

6 Q. BY MR. SURPRENANT: WELL, IF YOU WERE TO
7 INTERPRET THE WORLD WHERE -- AND THANKS FOR THAT
8 CLARIFICATION, PROFESSOR CORNELL.

9 IF YOU WERE TO INTERPRET THE WORLD WHERE
10 TCW COULD HAVE WEATHERED THE STORM ON THE SPECIAL
11 MORTGAGE CREDIT FUNDS, AND WOULD HAVE MADE NO CHANGES
12 WITHOUT INTERFERENCE, ON THAT ASSUMPTION, ARE THE
13 DAMAGES YOU HAVE CALCULATED HERE, \$222,000,218 IS THE
14 CORRECT CALCULATION, IN YOUR EXPERT OPINION?

11:36AM

15 A. WELL, AS I TOLD MR. HELM, IT DEPENDS ON
16 WHETHER YOU HAVE TO OFFSET HIS CALCULATED SAVINGS, IF
17 GUNDLACH STAYS AND MANAGES THE SMCF.

11:37AM

18 Q. LET ME TRY TO PARSE THAT OUT.

19 WHAT YOU ASSUME, IN 1906B, IN THE
20 BUT/FOR WORLD, IS THAT MR. GUNDLACH AND HIS TEAM
21 STAYED.

11:37AM

22 AND YOU SEE THAT, WHAT THEY WERE PAID,
23 YOU CALCULATE THAT IN LINE TWO, CORRECT?

24 A. YES.

25 Q. OKAY.

11:37AM

26 AND THEN YOU DO A -- AN ACTUAL
27 CALCULATION RELYING ON MR. VILLA'S COST ALLOCATION,
28 CORRECT?

1 A. CORRECT.

2 Q. AND WHEN YOU RUN THROUGH THE NUMBERS, YOU GET
3 THE \$222 MILLION NUMBER THAT YOU TESTIFIED TO BEFORE,
4 CORRECT?

5 A. THAT'S ALL CORRECT. 11:38AM

6 Q. OKAY.

7 NOW, WHAT RELEVANCE -- WHAT WOULD BE THE
8 SCENARIO, IF ANYWHERE, THERE WOULD BE ANY RELEVANCE TO
9 THE SUPPOSED COST SAVINGS THAT MR. HELM TOOK YOU
10 THROUGH? HOW MANY ASSUMPTIONS WOULD YOU HAVE TO PILE
11 ON EACH OTHER? 11:38AM

12 A. WELL, THE CRITICAL ASSUMPTION IS IN THE BREACH
13 VERSUS NO BREACH, AS TO WHETHER MR. GUNDLACH STAYED AND
14 MANAGES THE SMCF.

15 IF HE STAYS AND MANAGES THE SMCF, HE'S
16 VERY EXPENSIVE. 11:38AM

17 Q. BUT IN ADDITION, YOU WOULD HAVE THE HIRE
18 REVENUES ASSOCIATED WITH HIM, CORRECT?

19 MR. HELM: LEADING, YOUR HONOR.

20 THE COURT: BEG PARDON? 11:38AM

21 Q. BY MR. SURPRENANT: PROFESSOR CORNELL, DOES IT
22 MIX AND MATCH YOUR CALCULATION -- DOES IT MIX AND MATCH
23 YOUR CALCULATION TO ASSUME MR. GUNDLACH'S COMPENSATION,
24 AND AT THE SAME TIME, HOLD THE REVENUES CONSTANT?

25 MR. HELM: OBJECT TO FORM, LEADING. 11:39AM

26 THE COURT: SUSTAINED.

27 I THINK THE FOCUS --

28 GO AHEAD. ASK ANOTHER QUESTION.

1 Q. BY MR. SURPRENANT: IS IT PROPER, IN YOUR
2 ESTIMATION, PROFESSOR CORNELL, TO LOOK AT THE
3 ASSUMPTION WHERE THE REVENUES REMAIN CONSTANT, AND TRY
4 TO OFFSET AGAINST THAT SUPPOSED COST SAVINGS WHEN
5 MR. GUNDLACH STAYS, IF IT IS -- STRIKE THAT. LET ME
6 ASK IT AGAIN.

11:39AM

7 IF IT IS DETERMINED THAT IT IS NOT
8 PROPER TO HOLD THE REVENUES CONSERVATIVELY LOW, AND YET
9 SUBTRACT OUT THE REVENUES THAT WOULD HAVE BEEN -- THE
10 COSTS THAT WOULD HAVE BEEN PROJECTED, IS THAT AN
11 APPROPRIATE CALCULATION?

11:39AM

12 MR. HELM: VAGUE, AMBIGUOUS, INCOMPLETE
13 HYPOTHETICAL.

14 THE COURT: SUSTAINED.

15 I THINK YOU HAVE TO CLARIFY ABOUT
16 WHETHER YOU HAVE TRADITIONAL ASSETS; AND THE
17 GENERALIZED STATEMENT DOESN'T DO THAT.

11:39AM

18 Q. BY MR. SURPRENANT: FOCUSING NOW JUST ON
19 TRADITIONAL ASSETS.

20 I'M STILL TRYING TO PARSE OUT, PROFESSOR
21 CORNELL, WHY MR. HELM'S CALCULATIONS, WOULD HAVE ANY
22 RELEVANCE TO THIS CALCULATION?

11:40AM

23 MR. HELM: OBJECT TO THE FORM.

24 THE COURT: I'LL ALLOW IT. THE WITNESS HAS
25 TALKED ABOUT IT.

11:40AM

26 CAN YOU ANSWER THAT, SIR?

27 THE WITNESS: WELL, MR. HELM IS ENVISIONING A
28 WORLD WHERE THE FACT THAT GUNDLACH STAYS, INVOLVES

1 ADDED COSTS TO TCW, BECAUSE THEY HAVE TO SHARE THE SMCF
2 FUNDS WITH MR. GUNDLACH. SO THAT'S THE WORLD THAT HE'S
3 ENVISIONING. AND HE'S ARGUING THAT THERE ARE COST
4 SAVINGS IN THAT WORLD.

5 Q. BY MR. SURPRENANT: AND HE IS ASKING YOU TO 11:40AM
6 COMPARE THAT AGAINST A WORLD WHERE YOU HAVE SET THE
7 REVENUES CONSTANT, CORRECT?

8 MR. HELM: LEADING, YOUR HONOR.

9 THE COURT: SUSTAINED.

10 Q. BY MR. SURPRENANT: WELL, WHAT ASSUMPTION DO 11:41AM
11 YOU MAKE IN EXHIBIT 1906B ABOUT THE REVENUES?

12 A. WHEN YOU SAY THE REVENUES --

13 Q. THE REVENUES IN LINE 1, THE TRADITIONAL
14 REVENUES, THE MANAGEMENT FEES FROM TRADITIONAL
15 ASSETS -- 11:41AM

16 A. WELL, THOSE, I'M ASSUMING, ARE CONSTANT.

17 Q. AND SO WHAT ASSUMPTION WOULD YOU HAVE TO MAKE,
18 OR WHAT SERIES OF ASSUMPTIONS WOULD YOU HAVE TO MAKE,
19 FOR MR. HELM'S HYPOTHETICAL COST SAVINGS TO BE RELEVANT
20 TO THIS DOCUMENT? 11:41AM

21 A. WELL, THE HONEST ANSWER I GAVE MR. HELM, IT'S
22 THE FIRST TIME I'VE SEEN IT, AND I DON'T KNOW.

23 MR. SURPRENANT: OKAY.

24 NO FURTHER QUESTIONS, YOUR HONOR.

25 THE COURT: MR. HELM, ANY RECROSS? 11:41AM

26 MR. HELM: NOTHING FURTHER, YOUR HONOR.

27 THE COURT: ALL RIGHT.

28 DOCTOR CORNELL, OR PROFESSOR CORNELL,

1 THANK YOU VERY MUCH FOR YOUR TESTIMONY. YOU ARE
2 EXCUSED. YOU MAY STEP DOWN.

3 MR. MADISON: YOUR HONOR, TCW CALLS ROGER
4 BROSSY.

5
6 ROGER BROSSY,
7 CALLED AS A WITNESS BY THE PLAINTIFF,
8 WAS SWORN AND TESTIFIED AS FOLLOWS:

9
10
11 THE CLERK: YOU DO SOLEMNLY STATE THAT THE
12 TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW
13 PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE
14 TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

15 THE WITNESS: I DO.

11:42AM

16 THE CLERK: THANK YOU. PLEASE BE SEATED.

17 SIR, PLEASE STATE AND SPELL YOUR NAME
18 FOR THE RECORD.

19 THE WITNESS: MY NAME IS ROGER BROSSY.

20 THE CLERK: CAN YOU SPELL IT, PLEASE.

11:43AM

21 THE WITNESS: I'M SORRY. R-O-G-E-R, BROSSY IS
22 B-R-O-S-S-Y.

23 THE CLERK: THANK YOU.

24 THE COURT: GOOD MORNING, MR. BROSSY.

25 DO YOU WANT TO SCOOT UP AND SPEAK RIGHT
26 INTO THAT MICROPHONE, SO EVERYBODY CAN HEAR YOU.

11:43AM

27 THE WITNESS: ALL RIGHT.

28 THE COURT: MR. MADISON, YOU MAY PROCEED.

1 MR. MADISON: THANK YOU, YOUR HONOR.

2

3

4

DIRECT EXAMINATION

5

11:43AM

6 BY MR. MADISON:

7

8

9

Q. MR. BROSSY, WE HAVE AN EXHIBIT THAT'S IN EVIDENCE. AND I WANT TO DISPLAY THAT RIGHT NOW. IT'S EXHIBIT 1899.

10

11:43AM

11

AND WE HAVE EVIDENCE, MR. BROSSY, IN THE --

12

MR. WEINGART: OBJECT TO THE FORM, YOUR HONOR.

13

THE COURT: LET'S GET THE QUESTION OUT BEFORE

14

WE -- I CAN'T TELL IF IT'S GOOD OR BAD.

15

GO AHEAD.

11:43AM

16

MR. MADISON: THANK YOU, YOUR HONOR. JUST

17

MOVING THINGS ALONG.

18

19

20

Q. WE'VE HEARD, MR. BROSSY, THAT THIS IS A COMPENSATION ARRANGEMENT THAT WAS PROVIDED TO JEFFREY GUNDLACH ON OR ABOUT JUNE 12TH, 2009 FROM SEMLER BROSSY?

11:43AM

21

22

ARE YOU FAMILIAR WITH THE EXHIBIT?

23

A. YES.

24

Q. AND ARE YOU THE ROGER BROSSY OF SEMLER BROSSY?

25

A. I AM.

11:44AM

26

Q. YOU ARE A MANAGEMENT COMPENSATION CONSULTANT

27

AT SEMLER BROSSY?

28

A. THAT'S CORRECT.

1 Q. AND YOU ARE ONE OF THE MANAGING DIRECTORS OF
2 THAT FIRM?

3 A. YES.

4 Q. DID YOU PREPARE EXHIBIT 1899?

5 A. YES.

11:44AM

6 Q. AND SO I WANT TO ASK YOU SOME QUESTIONS ABOUT
7 THE INFORMATION THAT'S IN 1899.

8 A. OKAY.

9 Q. FIRST, WERE YOU DOING THIS ON BEHALF OF A
10 CLIENT OF SEMLER BROSSY'S?

11:44AM

11 A. YES.

12 Q. WHO WAS THAT?

13 A. WESTERN ASSET.

14 Q. HOW DID YOU COME TO BE RETAINED BY WESTERN
15 ASSET TO DO WORK IN THIS REGARD?

11:44AM

16 A. WESTERN ASSET CONTACTED ME AND MENTIONED THAT
17 THEY WERE IN DISCUSSIONS WITH GUNDLACH, AND ASKED IF I
18 WOULD JOIN THEM IN TRYING TO PUT TOGETHER AN
19 ARRANGEMENT THAT WOULD WORK.

20 I SHOULD JUST AMEND THAT TO SAY THAT
21 THEY DIDN'T INITIALLY TELL ME WHO THEY WERE ENGAGED
22 WITH BECAUSE OF THE SENSITIVITY OF THE MATTER, BUT SAID
23 THEY WERE WORKING ON SOMETHING THAT WAS SUBSTANTIAL.

11:44AM

24 Q. WE CALL WESTERN ASSET WAMCO, AT TIMES.

25 ARE YOU FAMILIAR WITH THAT?

11:45AM

26 A. I WILL DO THE SAME THEN.

27 Q. PLEASE TRY TO WAIT TILL I FINISH MY QUESTION
28 BEFORE YOU ANSWER, SIR.

1 SO, HAD YOU DONE WORK FOR WAMCO BEFORE
2 THIS TIME PERIOD OF MAY OR JUNE 2009?

3 A. NO.

4 Q. SO THIS WAS THE FIRST ENGAGEMENT THAT YOU HAD
5 FOR THEM?

11:45AM

6 A. YES.

7 Q. AND WHO AT WAMCO REACHED OUT FOR YOU AND ASKED
8 YOU TO GET INVOLVED IN THIS?

9 A. INITIAL CONTACT WAS MADE BY PAUL WHITE.

10 Q. WHO IS PAUL WHITE?

11:45AM

11 A. HE'S THE HEAD OF HUMAN RESOURCES AT WAMCO.

12 Q. DID THERE COME A TIME WHEN YOU SPOKE TO OTHER
13 EXECUTIVES AT WAMCO ABOUT THESE DISCUSSIONS?

14 A. YES.

15 Q. WHO DID YOU SPEAK TO?

11:45AM

16 A. JIM HIRSCHMANN AND BRUCE ALBERTS.

17 Q. MR. HIRSCHMAN IS THE CEO, CHIEF EXECUTIVE
18 OFFICER?

19 A. THAT'S CORRECT.

20 Q. AND MR. ALBERTS IS THE CHIEF INVESTMENT
21 OFFICER AT THAT FIRM?

11:46AM

22 A. NO.

23 Q. THE CHIEF FINANCIAL OFFICER?

24 A. CHIEF FINANCIAL OFFICER, YES.

25 Q. NOW, DO YOU RECALL THE FIRST TIME THAT YOU
26 SPOKE TO MR. HIRSCHMANN ABOUT THE DISCUSSION THAT THIS
27 RELATES TO?

11:46AM

28 A. YES.

1 Q. WHEN WAS THAT?

2 A. IT WAS A COUPLE OF WEEKS BEFORE THIS DATE.
3 AND WE MET IN PERSON.

4 Q. IF YOU LOOK AT JUST AT -- YOURSELF, AND WE CAN
5 EITHER ASK YOU TO LOOK IN THE BINDER AND/OR DISPLAY IT
6 ON THE SCREEN, EXHIBIT 2235.

11:46AM

7 A. OKAY.

8 Q. THOSE APPEAR TO BE SOME HANDWRITTEN NOTES.
9 WHOSE HANDWRITING IS IT, IF YOU KNOW?

10 A. THIS IS MINE.

11:46AM

11 THE COURT: MAY WE SEE THOSE, NOT FOR
12 PUBLICATION, BUT FOR --

13 MR. MADISON: EXCUSE ME, YOUR HONOR.

14 Q. DO YOU SEE THE DATE IN THE UPPER RIGHT-HAND
15 CORNER?

11:47AM

16 A. YES.

17 Q. DOES THIS RELATE -- THIS DOCUMENT 2235 RELATE
18 TO THE CONVERSATION YOU HAD WITH MR. HIRSCHMANN?

19 A. YES, IT DOES.

20 Q. DOES IT REFRESH YOUR RECOLLECTION ABOUT THE
21 DATE OF THE MEETING?

11:47AM

22 A. YES.

23 Q. WHAT DATE WAS THAT?

24 A. MAY 26TH, 2009.

25 Q. WAS THAT A TELEPHONE CONVERSATION, OR A
26 MEETING IN PERSON?

11:47AM

27 A. IN PERSON.

28 Q. WAS ANYONE ELSE PRESENT, OTHER THAN YOU AND

1 MR. HIRSCHMANN?

2 A. NO.

3 Q. AND DO YOU RECALL WHETHER ANY INFORMATION WAS
4 PROVIDED TO YOU AT THAT TIME ABOUT THE AMOUNT OF
5 REVENUE OR ASSETS THAT MR. GUNDLACH MIGHT BE EXPECTED
6 TO BRING WITH HIM TO WAMCO IF, IN FACT, HE WERE TO
7 JOIN?

11:47AM

8 A. IN TERMS OF ORAL COMMENT, GENERALLY, YES, THE
9 IDEA THAT --

10 MR WEINGART: OBJECTION. HEARSAY, YOUR HONOR.

11:47AM

11 THE COURT: SUSTAINED.

12 MR. MADISON: IT GOES TO THE STATE OF MIND,
13 AND TO THE LATER CONVERSATIONS WITH MR. GUNDLACH. IT'S
14 NOT FOR THE TRUTH.

15 MR WEINGART: STILL NO FOUNDATION, YOUR HONOR.

11:48AM

16 THE COURT: WE'LL HAVE TO GET A LITTLE MORE ON
17 THIS.

18 MR. MADISON: LET ME JUST MOVE ON THEN.

19 Q. SO MAY 26TH, 2009, YOU HAD THIS MEETING WITH
20 MR. HIRSCHMANN, CORRECT?

11:48AM

21 A. YES.

22 Q. AND WHAT, IF ANYTHING, DID YOU DO AFTER THAT
23 ON THIS ENGAGEMENT?

24 A. I RECALL THE NEXT THING THAT WE DID, OR THAT I
25 DID, WAS TO HAVE A MEETING WITH GUNDLACH.

11:48AM

26 Q. AND DO YOU RECALL, WAS THAT A MEETING IN
27 PERSON, OR A TELEPHONE MEETING?

28 A. IT WAS IN PERSON.

1 Q. WHERE?

2 A. AT OFFICES THAT HE KEPT, OR TCW KEPT, I'M NOT
3 SURE, IN SANTA MONICA.

4 Q. WAS THAT AT THE WATER GARDEN?

5 A. YES.

11:48AM

6 Q. WAS ANYONE ELSE PRESENT FOR THAT MEETING?

7 A. NO.

8 Q. HOW LONG DID THAT MEETING WITH MR. GUNDLACH
9 LAST?

10 A. I DON'T RECALL. PROBABLY AN HOUR TO TWO
11 HOURS.

11:48AM

12 Q. CAN YOU TELL US, WHAT DO YOU RECALL BEING
13 DISCUSSED IN THAT MEETING?

14 A. A LOT ABOUT HIS LIFE STORY. A LOT ABOUT HIS
15 ART WORK. WE LOOKED AT A LOT OF ART IN HIS OFFICE.

11:48AM

16 AND THEN WE SPOKE ABOUT THE OPPORTUNITY
17 AT WAMCO, WHAT THAT WOULD LOOK LIKE, WHAT HE WAS
18 INTERESTED IN.

19 AND THEN WE TALKED ABOUT COMPENSATION.

20 Q. AND DID I ASK YOU THE DATE OF THE MEETING, IF
21 YOU RECALL THAT, WITH MR. GUNDLACH?

11:49AM

22 A. YOU DIDN'T ASK. AND I DON'T RECALL.

23 Q. OKAY.

24 AND IF YOU LOOK AT EXHIBIT 1807, JUST
25 YOU, YOURSELF, AND US -- IT'S NOT IN EVIDENCE -- DOES
26 THAT E-MAIL REFRESH YOUR RECOLLECTION ABOUT WHEN THE
27 MEETING WITH MR. GUNDLACH OCCURRED?

11:49AM

28 A. YES. I MEAN, IT'S -- I DON'T KNOW IF THAT'S

1 THE DATE, BUT IT SAYS HERE THAT WE ARRANGED A MEETING
2 ON MAY 29TH.

3 Q. SO YOU MET WITH MR. HIRSCHMAN ON MAY 26TH, AT
4 HIS DIRECTION. I TAKE IT YOU THEN REACHED OUT AND
5 ARRANGED A MEETING WITH MR. GUNDLACH ON MAY 29TH?

11:50AM

6 A. YES. ACTUALLY HIS OFFICE, MR. HIRSCHMANN'S
7 OFFICE, CONTACTED GUNDLACH AND ARRANGED THE MEETING.

8 Q. ALL RIGHT. LET ME THEN ASK YOU TO LOOK AT
9 EXHIBIT 201, WHICH IS NOT IN EVIDENCE.

10 AND DO YOU SEE THAT THAT'S AN E-MAIL
11 DATED JUNE 2ND, 2009?

11:50AM

12 A. YES.

13 Q. AND DO YOU RECOGNIZE EXHIBIT 201?

14 A. I DO.

15 Q. AND WAS THIS SOMETHING THAT WAS PREPARED BY
16 YOU, OR BY PERSONS REPORTING TO YOU AT SEMLER BROSSY AS
17 A RESULT OF YOUR MEETING WITH MR. GUNDLACH?

11:50AM

18 A. YES. IT'S ONE OF OUR PEOPLE.

19 Q. SO MR. FERRIN IS ONE OF YOUR PEOPLE?

20 A. YES.

11:50AM

21 MR. MADISON: I'D MOVE 201, YOUR HONOR.

22 MR WEINGART: OBJECTION. HEARSAY.

23 THE COURT: SUSTAINED.

24 Q. BY MR. MADISON: IS THE INFORMATION CONTAINED
25 IN THE BODY OF EXHIBIT 201, INFORMATION THAT CAME FROM
26 MR. GUNDLACH?

11:51AM

27 THE WITNESS: SIR, JUST TO BE CLEAR --

28 MR WEINGART: OBJECTION, YOUR HONOR. THAT'S

1 OVERBROAD.

2 THE COURT: I CAN'T TELL WHAT WE'RE REFERRING
3 TO, SO THAT'S WHY I'M PULLING IT OUT.

4 MR. MADISON: WELL, LET ME JUST MOVE ON, YOUR
5 HONOR.

11:51AM

6 Q. WAS A DRAFT OF COMPENSATION PROPOSAL PREPARED?

7 A. YES.

8 Q. AND DOES EXHIBIT 201 REFRESH YOUR RECOLLECTION
9 ABOUT WHEN THAT WAS PREPARED, APPROXIMATELY?

10 A. YES.

11:51AM

11 Q. AND WHEN WAS THAT?

12 A. JUNE 3RD.

13 Q. AND THAT WAS AFTER YOUR MEETING WITH
14 MR. GUNDLACH?

15 A. I BELIEVE IT WAS, YES. IT WAS A DAY OR TWO.

11:51AM

16 Q. ALL RIGHT. LET ME PUT 1899 BACK UP THEN, IF
17 WE COULD, THIS IS IN EVIDENCE. AND ASK YOU, WAS THIS
18 THE COMPENSATION ARRANGEMENT THEN, THAT CAME OUT OF
19 THESE DISCUSSIONS THAT YOU HAVE TOLD US ABOUT?

20 A. THERE WERE. I BELIEVE, SEVERAL ITERATIONS OF
21 THIS; BUT THIS IS DEFINITELY ONE OF THEM.

11:52AM

22 Q. TO YOUR KNOWLEDGE, WAS ANY VERSION OF THE
23 COMPENSATION ARRANGEMENT PROVIDED TO MR. GUNDLACH IN
24 CONNECTION WITH THESE WAMCO DISCUSSIONS BEFORE THIS ONE
25 ON JUNE 12, 2000 --

11:52AM

26 A. I DON'T RECALL.

27 Q. AND YOU SEE THE DRAFT THAT WAS PREPARED ON OR
28 ABOUT JUNE 2ND, 2009, IN YOUR BINDER?

1 A. YES.

2 Q. AND THEN I BELIEVE WE HAVE OTHER E-MAIL
3 TRAFFIC.

4 DO YOU RECALL DISCUSSIONS INTERNALLY OF
5 SEMLER BROSSY ABOUT THE PROPOSAL, AND ALSO DISCUSSING
6 IT WITH WAMCO DURING THAT TIME PERIOD?

11:52AM

7 A. YES.

8 Q. AND I TAKE IT YOU WOULD HAVE SHARED THIS WITH
9 WAMCO BEFORE PROVIDING IT TO MR. GUNDLACH?

10 A. THAT'S CORRECT.

11:52AM

11 Q. SO DID YOU -- WERE YOU PRESENT WHEN EXHIBIT
12 1899 WAS PRESENTED TO MR. GUNDLACH?

13 A. I DON'T THINK SO.

14 Q. DO YOU RECALL A MEETING WITH HIM IN HIS WATER
15 GARDEN OFFICE WHERE THE PROPOSAL WAS PRESENTED?

11:53AM

16 A. I DO NOT.

17 I DID HAVE A SECOND MEETING WITH HIM AT
18 THAT OFFICE, BUT I DON'T RECALL THAT IT WAS TO PRESENT
19 THIS.

20 Q. DO YOU RECALL WHO WAS PRESENT, OTHER THAN YOU
21 AND MR. GUNDLACH, AT THAT SECOND MEETING, IF ANYONE?

11:53AM

22 A. YES.

23 Q. WHO WAS PRESENT?

24 A. JEFF ALBERT.

25 Q. BRUCE ALBERT?

11:53AM

26 A. BRUCE ALBERT, EXCUSE ME.

27 Q. SO LET ME ASK YOU: IF WE GO TO THE PAGE
28 ENDING IN BATES NUMBER 10, OR EXHIBIT NUMBER 10,

1 RATHER, 1899-10 ON THE COMPENSATION ARRANGEMENT, THIS
2 IS AN APPENDIX ABOUT POTENTIAL REVENUE SOURCES.

3 AND LET ME FIRST ASK YOU, WHAT WERE THE
4 REVENUE SOURCES THAT THIS WAS INTENDED TO REFLECT?

5 A. THESE ARE BROAD CATEGORIES OF ASSETS, OR ASSET
6 CLASSES, THAT WERE REPRESENTED TO ME BY JEFF GUNDLACH.

11:54AM

7 WE THEN MADE SOME ASSUMPTIONS ABOUT WHAT
8 LEVEL OF ASSETS MIGHT EITHER FOLLOW, OR BE ATTRACTED
9 NEWLY TO WAMCO AS A RESULT OF HIS ARRIVAL THERE.

10 THE FEE ARRANGEMENTS THAT WOULD BE
11 ASSOCIATED WITH THEM, AND THOSE ADD UP TO A REVENUE
12 ESTIMATE.

11:54AM

13 Q. SO WHEN WE SEE, AT THE SECOND LINE THERE,
14 OTHER THAN THE HEADING, ESTIMATE 115 MILLION WOULD
15 CONVERT, SOME OF IT ALMOST IMMEDIATELY, WHAT DOES
16 CONVERT MEAN, IN THAT CONTEXT?

11:54AM

17 A. IT MEANS THAT GUNDLACH HAD A LOT OF CONFIDENCE
18 THAT IF ANYBODY -- ONCE HIS CLIENTS WHO ARE CLIENTS
19 THAT -- WHOSE ASSETS HE WAS RESPONSIBLE FOR, WOULD KNOW
20 THAT HE HAD DECAMPED TO ANOTHER LOCATION, THAT THEY'D
21 WANT TO FOLLOW HIM.

11:55AM

22 Q. SO ARE THESE ASSETS THAT WERE, AT THE TIME YOU
23 WERE MEETING WITH MR. GUNDLACH, BEING MANAGED AT TCW?

24 A. I CAN'T SAY THAT IT IS EXCLUSIVELY ASSETS THAT
25 HE MANAGED AT TCW, BUT I THINK IT'S FAIR TO SAY THAT
26 THE BROAD ASSUMPTION THERE WAS THAT THESE ARE ASSETS
27 THAT WOULD FOLLOW HIM FROM TCW.

11:55AM

28 Q. WELL, WHEN YOU USE THE WORD CONVERT, DOES THAT

1 MEAN TO CHANGE FROM ONE PLACE TO ANOTHER?

2 A. SUBSTANTIALLY, YES.

3 Q. AND SO WHERE WOULD THE PLACE BE THAT THEY
4 WOULD COME FROM WHEN THEY WENT TO WAMCO?

5 A. TCW.

11:55AM

6 Q. NOW, THE FIRST CATEGORY SAYS -- AND THAT WAS
7 INFORMATION YOU WERE GETTING FROM MR. GUNDLACH?

8 MR WEINGART: OBJECTION. MISSTATES THE
9 TESTIMONY.

10 THE WITNESS: CORRECT.

11:55AM

11 THE COURT: OVERRULED. I'LL ALLOW THE ANSWER
12 TO STAND.

13 Q. BY MR. MADISON: SO THE FIRST CATEGORY SAYS,
14 DISTRESSED FUNDS 60 MILLION IN REVENUE.

15 WAS THAT INFORMATION YOU RECEIVED FROM
16 MR. GUNDLACH?

11:56AM

17 A. I DON'T BELIEVE SO. I THINK ELSEWHERE IN THIS
18 DOCUMENT THERE ARE SOME ASSUMPTIONS, MAYBE IT'S RIGHT
19 HERE, ACTUALLY, WHERE HE MAKES THE ASSUMPTION OF ASSETS
20 UNDER MANAGEMENT.

11:56AM

21 WE HAVE A ROUND NUMBER THERE OF 3
22 BILLION. AND THEN WE ASSUME A FEE STRUCTURE OF TWO
23 PERCENT, AND 20 PERCENT CARRIED INTEREST. AND WE BUILT
24 THAT INTO A \$60 MILLION REVENUE FIGURE.

25 Q. SO DID MR. GUNDLACH GIVE YOU ANY OF THOSE
26 NUMBERS?

11:56AM

27 A. UNDOUBTEDLY, OUT OF CONVERSATION WITH
28 GUNDLACH, I DEVELOPED THESE NUMBERS. AND I'M SURE THAT

1 THEY GENERALLY RELATE OR ARE SIMILAR TO WHAT HE SHARED
2 WITH ME.

3 Q. WELL, DID YOU CALL TCW AND TELL THEM THAT YOU
4 WERE ENGAGED IN THIS PROJECT?

5 A. NO.

11:56AM

6 Q. DID YOU CALL THEM AND ASK THEM FOR INFORMATION
7 ABOUT THE FUNDS THAT MR. GUNDLACH WAS MANAGING?

8 A. NO.

9 Q. WHY NOT?

10 MR. WEINGART: OBJECTION. RELEVANCE.

11:56AM

11 THE COURT: SUSTAINED.

12 Q. BY MR. MADISON: WELL, YOU HAD A
13 CONFIDENTIALITY AGREEMENT WAMCO, DIDN'T YOU, SIR?

14 A. YES.

15 MR. WEINGART: OBJECTION. LEADING.

11:57AM

16 THE COURT: WELL, WE GO ONE WAY OR ANOTHER.

17 IT IS LEADING.

18 I'LL ALLOW THAT AS FOUNDATIONAL, AND WE
19 CAN GO FROM THERE.

20 Q. BY MR. MADISON: DO YOU SHARE DISCUSSIONS LIKE
21 THIS WITH THE CURRENT EMPLOYER OF THE EXECUTIVE WHO'S
22 CONTEMPLATING THINGS LIKE THIS?

11:57AM

23 A. NO.

24 Q. WHY NOT?

25 MR. WEINGART: OBJECTION. RELEVANCE.

11:57AM

26 THE COURT: I AGREE, BUT I'LL ALLOW HIM TO
27 ANSWER.

28 BUT LET'S MOVE ALONG, MR. MADISON.

1 MR. MADISON: I'D LIKE TO, YOUR HONOR.

2 THE WITNESS: THESE ARE CONFIDENTIAL
3 DISCUSSIONS I'M HAVING ON BEHALF OF MY CLIENT WITH
4 SOMEBODY THEY ARE LOOKING TO ATTRACT.

5 Q. BY MR. MADISON: DID EITHER MR. GUNDLACH OR
6 MR. HIRSCHMANN EITHER, TELL YOU THERE WAS A
7 CONFIDENTIALITY AGREEMENT YOU HAD -- THAT THEY HAD
8 ENTERED INTO?

11:57AM

9 A. I DON'T RECALL.

10 Q. DID YOU HAVE A CONFIDENTIALITY AGREEMENT WITH
11 ANYONE?

11:57AM

12 A. WITH WAMCO.

13 Q. SO THEN THE NEXT COUPLE OF BULLET POINTS SAY,
14 FOR EXAMPLE, THE SECOND ONE, SAYS, SPREAD OVER TWO
15 FUNDS ABOUT EQUAL SIZE. CASH BACK FIRST TO CLIENTS,
16 PLUS EIGHT PERCENT GROSS HURDLE.

11:58AM

17 WHERE DID THAT INFORMATION COME FROM?

18 A. THAT ALSO WOULD HAVE COME FROM GUNDLACH.

19 Q. AND IT SAYS FIRST FUND CARRY NOT SIGNIFICANT,
20 SECOND FUND COULD BE VERY SIGNIFICANT. AND YOU ARE
21 USING QUOTATION MARKS THERE.

11:58AM

22 WERE YOU QUOTING MR. GUNDLACH THERE?

23 A. YES.

24 Q. THAT INFORMATION ALSO CAME FROM HIM?

25 A. YES.

11:58AM

26 Q. AND THEN THE LAST BULLET POINT SAYS, NO CARRY
27 FOR NEXT COUPLE OF YEARS, MAYBE SMALL AMOUNT IN 2010,
28 MORE LIKELY 7/2011.

1 WHERE DID THOSE SPECIFIC DATES COME
2 FROM?

3 A. THOSE WOULD HAVE COME FROM HIM, AS WELL.

4 Q. DID YOU EVER DISCUSS WITH MR. GUNDLACH WHETHER
5 HE WAS AUTHORIZED BY TCW TO SHARE THIS INFORMATION WITH
6 YOU THAT HE WAS SHARING? 11:58AM

7 A. NO, I DID NOT.

8 Q. DID HE EVER VOLUNTEER ANYTHING ABOUT THAT?

9 A. I DON'T, BUT THIS WAS PRETTY GENERAL
10 INFORMATION. 11:59AM

11 Q. AND THEN IT SAYS, THE NEXT CATEGORY, STRATEGIC
12 MBS -- ACTUALLY, BEFORE WE DO THAT, DISTRESSED FUNDS.

13 DO YOU RECALL THE NAMES OF ANY ACTUAL
14 FUNDS AT TCW COMING UP?

15 A. NO. 11:59AM

16 Q. WOULD IT REFRESH YOUR RECOLLECTION IF I TOLD
17 YOU THAT WE'VE HEARD EVIDENCE --

18 MR. WEINGART: OBJECT TO THE FORM, YOUR HONOR.

19 THE COURT: JUST ASK HIM -- JUST ASK HIM A
20 DIRECT QUESTION. 11:59AM

21 MR. MADISON: SURE.

22 Q. DID MR. GUNDLACH TELL YOU IF THE TWO FUNDS IN
23 BULLET POINT 2 WERE THE SPECIAL MORTGAGE CREDIT FUND I,
24 AND SPECIAL MORTGAGE CREDIT FUND II?

25 A. I DON'T RECALL HEARING. 11:59AM

26 Q. DO YOU RECALL HEARING THOSE TERMS IN YOUR
27 DISCUSSIONS?

28 A. I DON'T.

1 Q. THE NEXT ONE IS STRATEGIC MBS, 30 MILLION IN
2 REVENUE.

3 DO YOU RECALL DISCUSSING WITH
4 MR. GUNDLACH THAT THERE WERE STRATEGIES THAT HE WAS
5 MANAGING AT TCW IN THIS CATEGORY?

11:59AM

6 A. YES.

7 Q. AND THE INFORMATION IN THE THREE BULLET POINTS
8 BELOW THAT WOULD HAVE COME FROM HIM AS WELL?

9 A. THAT'S CORRECT.

10 Q. NEXT BULLET POINT SAYS MUTUAL FUND, 15 MILLION
11 IN REVENUE.

12:00PM

12 AND WERE ANY SPECIFIC MUTUAL FUNDS
13 DISCUSSED WITH MR. GUNDLACH?

14 A. NO.

15 Q. IT SAYS 5.2 BILLION AUM GROWING BY 50 MILLION
16 A DAY.

12:00PM

17 IS THAT SPECIFIC INFORMATION?

18 A. IT IS.

19 Q. AND WHERE DID THAT INFORMATION COME FROM?

20 A. ALSO FROM HIM.

12:00PM

21 Q. AND IT SAYS 25 BPS.

22 THAT MEANS BASIS POINTS, CORRECT?

23 A. RIGHT. THE FEE RATE.

24 Q. DISTRIBUTED THROUGH THIRD PARTY PLATFORMS SUCH
25 AS SCHWAB, FIDELITY. AND BOARD WOULD HAVE TO VOTE ON
26 SUBADVISOR.

12:00PM

27 WHAT IS THAT LAST BULLET POINT --

28 A. THAT WOULD MEAN THAT THOSE ASSETS ARE STICKY;

1 THAT THEY ARE LIKELY REMAIN WITH THE COMPANY THAT
2 SPONSORS THE FUND TODAY, AND THAT BECAUSE OF THE
3 BOARD -- THE INDEPENDENT BOARD OF THE MUTUAL FUND WOULD
4 HAVE TO VOTE TO CHANGE ITS ADVISOR OR SUBADVISOR.

5 Q. ARE YOU FAMILIAR WITH THE CONCEPT OF CLOSED
6 FUNDS? 12:01PM

7 A. YES.

8 Q. AND IN CONNECTION WITH THE DISTRESSED FUNDS UP
9 AT THE TOP, DID YOU AND MR. GUNDLACH DISCUSS THE FACT
10 THAT THOSE ARE CLOSED FUNDS? 12:01PM

11 A. WE DID.

12 Q. AND DID YOU UNDERSTAND THAT THERE WERE
13 CONTACTS BETWEEN TCW AND THE CLIENTS THAT GOVERNED
14 THOSE INVESTMENTS?

15 A. HE REPRESENTED -- 12:01PM

16 MR. WEINGART: OBJECTION. MISSTATES THE
17 EVIDENCE.

18 THE COURT: OVERRULED.

19 GO AHEAD.

20 THE WITNESS: HE REPRESENTED THAT AS CLOSED
21 FUNDS, THEY DID HAVE CONTRACTUAL OBLIGATIONS. 12:01PM

22 Q. BY MR. MADISON: YOU INCLUDED THAT REVENUE IN
23 THE REVENUE THAT WAS CONVERTING OVER TO WAMCO,
24 NOTWITHSTANDING THE CONTRACTS?

25 A. THAT'S CORRECT. 12:01PM

26 Q. AND THEN IF WE LOOK AT -- IF WE GO BACK TO THE
27 FIRST PAGE OF 1899.

28 I CAN'T RECALL IF I MENTIONED THIS OR

1 NOT, IF I ASKED YOU, BUT PROJECT ARTWORK WAS WHAT?

2 A. THAT WAS A GENERAL REFERENCE TO THE EFFORT AND
3 INVESTIGATION OF WHETHER IT COULD BE WORKED OUT THAT
4 GUNDLACH WOULD COME TO WAMCO.

5 Q. AND THEN IF WE GO TO THE SECOND PAGE OF THE
6 EXHIBIT, THERE'S SOME GUIDING PRINCIPALS FOR COMPANY
7 PROPOSAL.

12:02PM

8 I TAKE IT THE COMPANY WAS WAMCO?

9 A. CORRECT.

10 Q. AND THEN THE -- IN THE MIDDLE BULLET POINT
11 THERE, IT SAYS, (READING):

12:02PM

12 HOWEVER, BOTH PARTIES ALSO
13 UNDERSTAND THAT THE LEVEL OF
14 COMPENSATION DELIVERED SHOULD, IN
15 FACT, BE REPRESENTATIVE OF THE
16 DEGREE TO WHICH ARTWORK CONVERTED
17 ASSETS INCREASED COMPANY REVENUES.

12:02PM

18 CAN YOU SORT OF TRANSLATE THAT FOR
19 US?

20 A. SURE. GUNDLACH IS OBVIOUSLY A VERY HIGHLY
21 PAID PERSON. IF WAMCO WAS GOING TO MATCH, OR NEAR
22 MATCH THAT LEVEL OF COMPENSATION, AND ALL THEY DID WAS
23 BRING HIM IN AS A CHIEF INVESTMENT OFFICER OR CO-CHIEF
24 INVESTMENT OFFICER, OR HEAD OF SOME ASSET CLASS, IT
25 WASN'T GOING TO WORK FOR THEM. THEY WOULD NEED TO KNOW
26 THAT HE COULD ATTRACT NEW BUSINESS TO THE FIRM, IN
27 ORDER TO MATCH OR NEAR MATCH THE LEVEL OF COMPENSATION
28 THAT HE WOULD WALK AWAY FROM.

12:02PM

12:03PM

1 AND SO AGAIN, USE OF THE WORD CONVERTED
2 INDICATES ASSETS COMING FROM TCW OVER TO WAMCO AS PART
3 OF THE TRANSACTION.

4 AND AS I SAID EARLIER, SUBSTANTIALLY,
5 YES.

12:03PM

6 Q. IF YOU GO TO THE NEXT PAGE, ENDING IN PAGE 3,
7 THE TOP BOX THERE, IT SAYS (READING):

8 ARTWORK WOULD PARTICIPATE
9 DIRECTLY IN REVENUE FROM DISTRESSED
10 FUNDS FOR THE DURATION OF THESE
11 FUNDS. ARTWORK WILL ALSO MAINTAIN
12 DIRECT PARTICIPATION IN ALL OTHER
13 CONVERTED REVENUE THROUGH FISCAL
14 YEAR ENDING MARCH 2012.

12:03PM

15 WAS THAT SOMETHING YOU WERE TOLD, OR WAS
16 THAT PART OF THE PROPOSAL, OR SOMETHING ELSE?

12:03PM

17 A. THAT WAS PART OF THE PROPOSAL THAT WE WERE
18 PUTTING TOGETHER.

19 NEITHER WAMCO NOR GUNDLACH AGREED TO IT.

20 Q. AND THEN THE FIRST BULLET POINT SAYS,
21 (READING):

12:04PM

22 ARTWORK AND HIS EXTERNALLY
23 HIRED TEAM, GALLERY, RECEIVED 90
24 PERCENT OF CONVERTED REVENUE IN
25 FISCAL YEAR 2010 AND 80 PERCENT OF
26 THE CONVERTED REVENUE THEREAFTER.

12:04PM

27 FIRST, LET ME ASK YOU WHAT THE WORD
28 "GALLERY" SIGNIFIED.

1 A. THAT REFERS TO THE TEAM OF PEOPLE THAT WOULD
2 NEED TO BE ASSEMBLED TO EXECUTE GUNDLACH'S INVESTMENT
3 STRATEGIES.

4 Q. AND DID MR. GUNDLACH TALK TO YOU ABOUT PEOPLE
5 THAT HE WOULD BRING WITH HIM FROM TCW IF HE WERE TO GO
6 TO WAMCO? 12:04PM

7 A. HE DID NOT SAY THAT ANYBODY WOULD COME WITH
8 HIM, BUT HE SAID THAT HE WOULD EXPECT THAT PEOPLE, UPON
9 HIS DEPARTURE, WOULD RATHER COME WORK FOR HIM, WHEREVER
10 HE ENDED UP, IF NOT AT TCW. 12:04PM

11 Q. AND SO THEN THE 90 PERCENT AND THE 80 PERCENT,
12 THAT MEANT THAT MR. GUNDLACH, AND WHOEVER HE BROUGHT IN
13 TO WAMCO, WOULD RECEIVE THOSE PERCENTAGES OF THE FEES
14 FROM THE ASSETS THAT HAD COME FROM TCW?

15 A. 90 TO 80 PERCENT OF THE CONVERTED REVENUE. 12:05PM

16 SO YES, SUBSTANTIALLY, ASSETS THAT HE
17 WOULD ATTRACT AND BRING WITH HIM.

18 Q. DID YOU DISCUSS WITH MR. GUNDLACH WHAT SHARE,
19 IF ANY, HE AND HIS TEAM WERE EARNING AT TCW, FOR
20 MANAGING THESE SAME INVESTMENTS? 12:05PM

21 A. I HAD A GENERAL INDICATION FROM HIM THAT
22 ROUGHLY -- I'M NOT SURE IF IT WAS SPECIFICALLY OR
23 ROUGHLY, 50 PERCENT OF THE FEE REVENUE THAT HE WAS
24 RESPONSIBLE FOR WAS PAID TO HIM IN COMPENSATION.

25 Q. SO THE PROPOSAL THAT YOU WERE WORKING UP FOR
26 WAMCO WOULD HAVE INCREASED BY A GREAT AMOUNT, THE
27 AMOUNT THAT MR. GUNDLACH AND HIS PEOPLE WOULD RECEIVE? 12:05PM

28 A. BUT ONLY ON A TEMPORARY BASIS.

1 FURTHER IN THIS DOCUMENT, THE GOAL IS TO
2 TAKE HIM OFF THIS KIND OF AN ARRANGEMENT, AND INSTEAD,
3 HAVE HIM PARTICIPATE IN WAMCO'S SUCCESS OVER ALL.

4 Q. AND AT THAT POINT, WHO WOULD RECEIVE THAT
5 SHARE OF REVENUE THAT MR. GUNDLACH AND HIS TEAM WOULD
6 RECEIVE IN THE EARLIER PART?

12:06PM

7 A. IT WOULD BE PART OF A GENERAL PROFIT POOL FOR
8 WAMCO.

9 AND GUNDLACH WOULD PARTICIPATE AS AN
10 EXECUTIVE IN WAMCO, IN THE GENERAL SUCCESS OF THE
11 COMPANY.

12:06PM

12 Q. HAVE YOU HAD AN OPPORTUNITY TO REVIEW 1899
13 RECENTLY?

14 A. NO.

15 Q. SO IS THIS THE FIRST TIME YOU HAVE SEEN IT
16 THIS MORNING?

12:06PM

17 A. THIS MORNING WE LOOKED AT IT FOR A FEW
18 MINUTES.

19 Q. MY QUESTION IS, IS THERE ANYTHING IN THIS
20 DOCUMENT THAT SPEAKS ABOUT COMPENSATION FOR TCW OR
21 SOC-JEN?

12:06PM

22 A. I DOUBT IT.

23 Q. IF WE GO TO PAGE ENDING IN SEVEN, AND WE SEE
24 AGAIN, SOME INFORMATION ABOUT ARTWORK REVENUE.

25 (READING) :

12:07PM

26 AND THE FIRST SQUARE SAYS,
27 ASSUMES ANNUAL MANAGEMENT FEE OF 60
28 MILLION, TWO PERCENT OF THREE

1 BILLION IN AUM. AND ANNUAL
2 PERFORMANCE FEE OF 33 MILLION FROM
3 2012 TO 2017. ONE BILLION RETURN
4 IN EXCESS OF 8 PERCENT HURDLE
5 RESULTS IN 200 MILLION PERFORMANCE
6 FEE, SPREAD EVENLY OVER SIX YEARS.

12:07PM

7 SPEAKING NOW JUST TO THE PERFORMANCE
8 FEE PART, THAT INFORMATION WAS PROVIDED TO YOU BY WHOM?

9 A. AGAIN, THE ASSUMPTION HERE WAS THAT ASSETS
10 COULD BE ATTRACTED IN THE DISTRESSED SPACE THAT WOULD
11 BE SUBJECT TO A CARRIED INTEREST OR THIS PERFORMANCE
12 FEE.

12:07PM

13 AND IN CONVERSATION WITH GUNDLACH, WE
14 SAID, OKAY. IF WE DO A BILLION-DOLLAR RETURN IN EXCESS
15 OF AN EIGHT PERCENT HURDLE, THAT SEEMED LIKE A
16 REASONABLE PLACE TO START. SO WE BUILT THAT INTO OUR
17 MODEL.

12:08PM

18 Q. WELL, HOW DID YOU KNOW THAT THE REVENUE WOULD
19 BEGIN IN 2012?

20 A. I DON'T RECALL, BUT I THINK IT WAS PROBABLY
21 ALONG THE LINES OF, IT TAKES A WHILE TO GENERATE A
22 POSITIVE RETURN AND RETURN ORIGINAL ASSETS BACK TO
23 INVESTORS.

12:08PM

24 Q. WELL, DID YOU DISCUSS WITH MR. GUNDLACH THE
25 FACT THAT THE DISTRESSED FUNDS THAT HE WAS MANAGING AT
26 TCW WERE ALREADY UNDER INVESTMENT?

12:08PM

27 A. YES.

28 Q. AND DID YOU DISCUSS WITH MR. GUNDLACH THESE

1 DATES AS BEING THE DATES THAT HE COULD AGREE THEY WOULD
2 BEGIN TO SHOW RETURNS, IN TERMS OF THE PERFORMANCE
3 FEES?

4 A. I DON'T REMEMBER THAT THIS IS -- WAS
5 STRUCTURED ON THE IDEA THAT THOSE ASSETS WERE GOING TO
6 COME. AND THEREFORE, THAT THEY WOULD BE SUBJECT TO THE
7 SAME SORT OF TEMPO OF PERFORMANCE RETURNS.

12:08PM

8 BUT I DO RECALL THAT WE TALKED ABOUT
9 BEING ABLE TO CREATE A CLOSED END FUND WITH THIS KIND
10 OF CHARACTERISTIC.

12:09PM

11 Q. AND IF YOU LOOK IN 2010 AND 2011, IN THE TABLE
12 DOWN AT THE BOTTOM FOR THE DISTRESSED FUNDS, THERE ARE
13 NO PERFORMANCE FEES THAT ARE SHOWN AS BEING POTENTIAL
14 REVENUES?

15 A. RIGHT.

12:09PM

16 Q. SO THE IDEA WAS, THESE DISTRESSED FUNDS THAT
17 WERE GOING TO BE CONVERTED WOULD HAVE NO PERFORMANCE
18 FEES IN 2010 OR 2011, THAT THEY WOULD ONLY BEGIN TO PAY
19 IN 2012, RIGHT?

20 A. AGAIN, JUST WITH RESPECT TO CONVERTED, ON THIS
21 ONE, I DO NOT RECALL THAT WE WERE TALKING ABOUT
22 SPECIFICALLY LIFTING OUT A CLOSED END FUND FROM TCW
23 THAT WAS ALREADY UNDER CONTRACT.

12:09PM

24 Q. WELL, DO YOU SEE, SIR, WHERE YOU ARE TALKING
25 ABOUT THE 60 MILLION UP AT THE TOP, THE AMOUNT OF
26 ANNUAL MANAGEMENT FEE?

12:10PM

27 A. YES.

28 Q. AND THEN IF WE GO BACK TO THAT PAGE WE WERE

1 LOOKING AT BEFORE, PAGE 10, AND WE LOOK AT THEIR
2 DISTRESSED FUNDS, AND IT'S THAT 60 MILLION IN REVENUE
3 AGAIN?

4 A. YES.

5 Q. WOULD YOU AGREE THAT -- I THINK WE ALREADY
6 WENT THROUGH THIS, BUT THIS IS ALL CONVERTED REVENUE?

12:10PM

7 MR. WEINGART: OBJECTION. LEADING, ASKED AND
8 ANSWERED.

9 THE COURT: SUSTAINED.

10 WE HAVE BEEN THROUGH IT.

12:10PM

11 MR. MADISON: WELL, I THINK I HEARD TWO
12 DIFFERENT THINGS, MR. BROSSY.

13 Q. IS THE 60 MILLION THAT WE'RE LOOKING AT HERE,
14 CONVERTED REVENUE?

15 A. YES. AS I'VE SAID BEFORE, SUBSTANTIALLY ON
16 THAT BASIS.

12:10PM

17 Q. AND THEN YOU'VE DESCRIBED THIS INFORMATION AS
18 GENERAL INFORMATION.

19 BUT I MEAN, FOR EXAMPLE, IF WE GO BACK
20 TO THE PAGE ENDING IN SEVEN, THE NUMBERS DO APPEAR TO
21 BE FAIRLY SPECIFIC.

12:11PM

22 AND WOULD YOU AGREE WITH THAT?

23 A. THREE BILLION, TWO PERCENT, NO. THOSE ARE
24 PRETTY GENERAL.

25 Q. IN TERMS OF THE YEARS THAT THE INVESTMENTS
26 WOULD BEGIN TO PAY OUT THE PERFORMANCE FEE, AND THE
27 AMOUNTS OF THE PERFORMANCE FEES THAT MIGHT BE PROJECTED
28 TO BE PAID OUT, IN YOUR FIELD, ARE THOSE SPECIFIC

12:11PM

1 NUMBERS?

2 A. I DON'T THINK THEY ARE THAT SPECIFIC.

3 BUT JUST TO BE CLEAR, I DID GET THIS --
4 THIS CAME OUT OF CONVERSATION WITH GUNDLACH, SO I'M NOT
5 DESIGNING THE FUND, PER SE, HERE.

12:11PM

6 I'M TALKING TO HIM ABOUT WHAT HE
7 EXPECTS.

8 Q. WELL, DO YOU RECALL, AS YOU SIT THERE, GOING
9 TO ANY OTHER SOURCE OF INFORMATION FOR THE NUMBERS AND
10 THE TYPES OF FUNDS THAT YOU WERE CONSIDERING COULD BE
11 CONVERTED?

12:12PM

12 A. NO.

13 Q. YOU'VE ALREADY TOLD US YOU DIDN'T GO TO TCW.

14 DID YOU GO TO THE SEC AND LOOK AT
15 FILINGS ABOUT ANY OF THE FUNDS?

12:12PM

16 A. NO.

17 Q. DID YOU GO TO A BROKER AND ASK FOR A
18 PROSPECTUS ABOUT ANY OF THESE FUNDS, OR STRATEGIES TO
19 SEE WHAT THE FEES OR PERFORMANCE WAS?

20 A. NO.

12:12PM

21 Q. SO YOU WERE BASING THE INFORMATION ON WHAT
22 MR. GUNDLACH TOLD YOU?

23 A. THAT'S CORRECT.

24 Q. NOW, IF MR. GUNDLACH WERE TO SAY THAT HE DID
25 NOT KNOW HOW SEMLER BROSSY GOT THIS INFORMATION, WOULD
26 THAT BE TRUE?

12:12PM

27 MR. WEINGART: OBJECT TO THE FORM. MISSTATES
28 THE TESTIMONY.

1 THE COURT: SUSTAINED.

2 Q. BY MR. MADISON: WELL, YOU ARE NOT SAYING THAT
3 THIS INFORMATION IS PUBLICLY AVAILABLE, ARE YOU, SIR?

4 MR. WEINGART: OBJECTION, LEADING.

5 THE COURT: SUSTAINED.

12:13PM

6 Q. BY MR. MADISON: IS THIS INFORMATION PUBLICLY
7 AVAILABLE, SIR?

8 MR. WEINGART: OBJECTION. VAGUE AS TO WHAT
9 INFORMATION.

10 THE COURT: SUSTAINED.

12:13PM

11 BE A LITTLE MORE SPECIFIC. WE'VE GOT
12 SOMETHING ON HERE THAT HE'S GIVEN US VARIOUS COMMENTS
13 ABOUT.

14 Q. BY MR. MADISON: IS THE INFORMATION ABOUT THE
15 AMOUNTS BEING MANAGED AT TCW AND WHAT THE PROJECTED FEE
16 REVENUE IS FROM THOSE DIFFERENT FUNDS AND STRATEGIES?

12:13PM

17 MR WEINGART: OBJECTION. COMPOUND.

18 Q. BY MR. MADISON: TO YOUR KNOWLEDGE, IS THAT
19 PUBLIC INFORMATION?

20 THE COURT: SUSTAINED.

12:13PM

21 Q. BY MR. MADISON: LET'S TALK ABOUT THE
22 DISTRESSED FUNDS.

23 ARE YOU AWARE OF WHETHER OR NOT THERE IS
24 PUBLICLY AVAILABLE INFORMATION ABOUT THE FUTURE
25 PROJECTED REVENUES AND FEES FROM SPECIAL MORTGAGE
26 CREDIT FUND I OR II?

12:13PM

27 A. I AM NOT.

28 Q. SAME QUESTION FOR THE STRATEGIC MBS

1 INVESTMENTS AT TCW.

2 A. I AM NOT.

3 Q. SAME QUESTION ABOUT THE MUTUAL FUNDS THAT
4 MR. GUNDLACH WAS MANAGING AT TCW?

5 A. I PRESUME A LOT OF THAT COULD BE DERIVED
6 PUBLICLY.

12:14PM

7 Q. FUTURE EXPECTED FEES, OR HISTORIC, OR BOTH?

8 A. CERTAINLY HISTORIC. I WOULD EXPECT COULD BE
9 GLEANED PUBLICLY.

10 AND I DON'T THINK THERE'S THAT MUCH ROOM
11 TO MOVE WITH IT, IN TERMS OF FUTURE PROJECTIONS.

12:14PM

12 Q. AND THEN AT THE BOTTOM THERE, IT SAYS
13 (READING):

14 SEPARATE ACCOUNTS, AND ASSUMED
15 10 MILLION IN REVENUE ESTIMATED TO
16 CONVERT CONSERVATIVE.

12:14PM

17 AND THAT WOULD RELATE TO SEPARATE
18 ACCOUNTS BEING MANAGED BY TCW, WHERE THE CLIENTS WOULD
19 FOLLOW MR. GUNDLACH?

20 A. THAT'S CORRECT.

12:14PM

21 Q. NOW, DO YOU RECALL, WAS THERE A SUBSEQUENT
22 DRAFT OF THIS PROPOSAL PREPARED?

23 THE COURT: BEFORE WE GET INTO OUR NEXT DRAFT,
24 WHY DON'T WE TAKE OUR SECOND BREAK.

25 TWENTY MINUTES, LADIES AND GENTLEMEN.

12:14PM

26 //

27 //

28 //

1 (AT 12:15 P.M. THE JURY EXITS
2 THE COURTROOM, AND THE FOLLOWING
3 PROCEEDINGS WERE HELD:)

4
5 THE COURT: ALL RIGHT. WE'RE OUT OF PRESENCE
6 OF THE JURY. 12:15PM

7 ANY MATTERS ANYBODY WANTS TO TAKE UP?

8 MR. BRIAN: YOUR HONOR, IT MAY COME UP WITH
9 THE NEXT WITNESS, BUT BOTH SIDES HAVE BRIEFED THIS
10 ISSUE OF THE ADMISSIBILITY OR RELEVANCE OF THE 12:15PM
11 ASSIGNMENT.

12 I BELIEVE THAT MR. QUINN INTENDS TO
13 ELICIT THAT FROM MR. CAHILL, HE CAN SO REPRESENT OR
14 NOT, BUT I THINK BOTH PARTIES AGREE TO THAT.

15 THE COURT: AND MY INCLINATION IS I'VE READ 12:15PM
16 TWO BRIEFS, THE OPENING BRIEF AND THE REPLY -- RESPONSE
17 TO OPPOSITION BRIEF FROM TCW. I HAVEN'T GOT A REPLY
18 YET. I NEVER KNOW WHEN THAT'S COMING OR NOT.

19 BUT MY INCLINATION IS TO ALLOW THE
20 EVIDENCE OF ASSIGNMENT. IT MAY OR MAY NOT HAVE A 12:16PM
21 BEARING, AT THE END OF THE DAY, BUT WE'LL GET IT IN AND
22 MOVE ON. BECAUSE IT SEEMS TO ME IT'S A VERY TECHNICAL
23 ISSUE, WHETHER I PERMIT AMENDMENT TO CONFORM TO PROOF,
24 OR IF DON'T. BUT IT WON'T HURT TO PUT THE EVIDENCE IN.

25 MR. BRIAN: IT MAY BE ADMITTED SUBJECT TO THE 12:16PM
26 MOTION TO STRIKE, YOUR HONOR.

27 THE COURT: YES. IT WILL BE ADMITTED
28 CONDITIONALLY, BUT I JUST WANT TO MOVE ALONG.

1 WITH THAT IN MIND, MR. MADISON, DO YOU
2 HAVE MUCH MORE TIME OF THIS?

3 I HAVE TO SAY, THIS IS COMPLETELY
4 CUMULATIVE, AND IT MAY BE ICING ON THE CAKE, BUT WE
5 OUGHT TO BE GETTING THROUGH THIS STUFF PRETTY QUICK.
6 IT'S IN EVIDENCE. YOU'VE GOT THE DRAFTS. IT'S ALL
7 THERE.

12:16PM

8 MR. QUINN: MR. GUNDLACH DENIED THAT HE
9 PROVIDED THAT INFORMATION TO THEM.

10 THE COURT: SO THAT DOESN'T TAKE AN HOUR OF
11 TESTIMONY, IF THAT'S THE ESSENCE OF WHAT YOU WANT TO
12 CONVEY.

12:16PM

13 I'M JUST SAYING, IT STRIKES ME THAT A
14 LOT OF WHAT I'M LISTENING TO IS CUMULATIVE, AND WHAT IS
15 ALREADY IN THE RECORD, IN EVIDENCE. AND WE'VE GOT
16 PEOPLE ASKING US IF THE ESTIMATE INCLUDES DELIBERATION.

12:17PM

17 WE'VE GOT TO MOVE ALONG. ALL RIGHT.
18 THANK YOU.

19

20 (RECESS TAKEN.)

21

22 (THE NEXT PAGE NUMBER IS 5601.)

23

24

25

26

27

28

1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA AUGUST 29, 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

(PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

12:29PM

11

12

THE COURT: WE'RE BACK ON THE RECORD IN THE
TCW VERSUS GUNDLACH MATTER.

14

ALL MEMBERS OF OUR JURY ARE PRESENT.

15

MR. BROSSY IS ON THE STAND.

12:40PM

16

AND, MR. MADISON, YOU MAY CONTINUE YOUR
DIRECT EXAMINATION.

18

MR. MADISON: YES, YOUR HONOR.

19

20

DIRECT EXAMINATION (CONTINUED) +

12:40PM

21

22

BY MR. MADISON:

23

Q BEFORE THE BREAK, MR. BROSSY, I ASKED YOU IF
YOU WERE PRESENT AT A MEETING ON OR ABOUT JUNE 12TH TO
PRESENT THE ARRANGEMENT, 1899.

12:40PM

26

IF WE COULD SHOW THAT AGAIN, MIKE.

27

THANK YOU.

28

AND YOU TOLD US THERE WEREN'T -- OR

1 DIDN'T RECALL. AND I WANT YOU TO LOOK AT EXHIBITS 1810
2 AND 2232, WHICH ARE IN YOUR BINDER THERE.

3 AND TELL US IF THAT REFRESHES YOUR
4 RECOLLECTION ABOUT THAT.

5 A DID YOU SAY 1810?

12:41PM

6 Q YES, SIR.

7 A GOT IT.

8 THE COURT: WHAT WAS THE OTHER ONE?

9 MR. MADISON: 2232.

10 WHILE ON 1810, I'LL MOVE 1810;

12:41PM

11 MR. GUNDLACH IS ON THE E-MAIL.

12 THE COURT: ANY OBJECTION?

13 MR. WEINGART: NO, YOUR HONOR.

14 THE COURT: 1810 WILL BE ADMITTED.

15

12:41PM

16 (EXHIBIT 1810 ADMITTED.) +

17

18 BY MR. MADISON:

19 Q MR. BROSSY, LOOK AT THIS E-MAIL FROM JUNE 11,
20 2009. THE FIRST E-MAIL IS MS. HUDSON FROM
21 WESTERN ASSET, WRITING TO NATALIE MORA, WITH A COPY TO
22 MR. GUNDLACH. IT SAYS:

12:41PM

23 JIM HAS ASKED ME TO SEE IF YOU

24 ARE AVAILABLE TO MEET WITH

25 ROGER BROSSY AND BRUCE ALBERTS,

12:42PM

26 OUR, CFO IN SANTA MONICA TOMORROW.

27 IT LOOKS LIKE ROGER CAN DO 4:00,

28 4:30 P.M. PLEASE LET ME KNOW IF

1 THAT WILL WORK FOR YOU.

2 MR. GUNDLACH REPLIES:

3 THAT WILL BE FINE. I WILL
4 EXPECT, THEN, 4:30 IF THAT IS STILL
5 CONVENIENT. THANKS.

12:42PM

6 DOES THAT REFRESH YOUR MEMORY ABOUT THE
7 MEETING ON JUNE 12TH?

8 A YES.

9 Q IF YOU LOOK AT 2232, THOSE TWO APPEAR TO BE
10 SOME HANDWRITTEN NOTES, AND THE DATE OF 6-12-09.

12:42PM

11 WHOSE NOTES ARE THOSE, SIR?

12 A THESE ARE MINE.

13 Q ARE THOSE NOTES FROM THE MEETING WITH
14 MR. GUNDLACH?

15 A YES, THEY ARE.

12:42PM

16 Q IN WHICH THE PRESENTATION 1899 WAS PRESENTED
17 TO HIM?

18 A ACTUALLY, I THINK WHY I ASKED THAT EARLIER, IS
19 THAT I THINK THE PROPOSAL HAD BEEN SUBMITTED TO HIM IN
20 ADVANCE. SO HE WAS -- WE WERE MEETING AND HE WAS
21 COMMENTING ON IT.

12:42PM

22 Q FROM HIS COMMENTS, DID IT APPEAR TO YOU THAT
23 MR. GUNDLACH HAD ACTUALLY REVIEWED THE ARRANGEMENT --

24 A YES.

25 Q AND DO YOU RECALL MR. GUNDLACH TALKING ABOUT
26 ANOTHER ASSET MANAGEMENT FIRM CALLED PIMCO --

12:43PM

27 A YES.

28 Q -- IN THIS MEETING?

1 CAN YOU TELL US WHAT MR. GUNDLACH SAID
2 ABOUT PIMCO?

3 A I DON'T RECALL THE SPECIFICS AT THIS MEETING.
4 SOMEWHERE ALONG THE WAY, MAYBE AT THIS MEETING, HE
5 COMMENTED THAT HE HAD BEEN IN CONVERSATION WITH PIMCO
6 ABOUT JOINING THEM.

12:43PM

7 THE EXTENT TO WHICH I'M -- I DON'T KNOW.

8 Q IF YOU LOOK AT THE SECOND PAGE OF 2232, YOUR
9 HANDWRITTEN NOTES, JUST READ TO YOURSELF, THE SECOND
10 ENTRY FROM THE TOP.

12:43PM

11 AND THEN TELL US IF THAT REFRESHES YOUR
12 RECOLLECTION ABOUT WHAT MR. GUNDLACH SAID ON JUNE 12TH
13 ABOUT PIMCO.

14 A UH-HUH. YES.

15 Q WHAT DID HE SAY?

12:44PM

16 A PIMCO WANTS ME TO SEE PHIL GROSS.

17 Q YOU'RE AWARE OF PHIL GROSS, THE HEAD OF PIMCO?

18 A YES.

19 Q DO YOU RECALL CHECKING WITH MR. GUNDLACH ON
20 JUNE 12TH THAT TCW WOULD MAKE IT HARD FOR HIM TO TAKE
21 THE ASSETS THAT WERE UNDER MANAGEMENT AT TCW?

12:44PM

22 A NO.

23 Q IF YOU READ TO YOURSELF THAT SECOND BULLET
24 POINT THERE.

25 TELL US IF THAT REFRESHES YOUR
26 RECOLLECTION.

12:44PM

27 A I DON'T BELIEVE THAT'S WHAT THAT REFERS TO.

28 WHAT HE SAID WAS THAT THERE WAS SOME

1 EVENT OR EVENTS THAT WERE HAPPENING AT TCW THAT WERE
2 MANAGEMENT CHANGES. AND HE FELT IT WOULD BE DIFFICULT
3 TO KEEP HIS CURRENT FLEXIBILITY OR HIS THEN-FLEXIBILITY
4 TO MAKE A CHANGE.

5 AND SO THIS WAS A COMMENT RELATING TO
6 THE SPEED OF MOVING THINGS ALONG.

12:44PM

7 Q AND WHO FELT IT WAS IMPORTANT THAT THINGS MOVE
8 ALONG IN A SPEEDY FASHION?

9 A HE SAID IF WAMCO WAS GOING TO BE SUCCESSFUL IN
10 COMING UP WITH SOMETHING, IT WOULD HAVE TO MOVE FAST.

12:45PM

11 Q DID HE AMPLIFY ON WHAT THE MANAGEMENT CHANGES
12 WERE THAT WERE CREATING THIS URGENCY?

13 A I DON'T RECALL.

14 Q AND THEN DO YOU RECALL DISCUSSING WITH
15 MR. GUNDLACH HOW IMPORTANT THE DISTRESSED FUNDS WERE,
16 AND, IN PARTICULAR, THE CARRIED INTEREST ON THE TCW
17 DISTRESSED FUNDS TO A POTENTIAL TRANSACTION WITH WAMCO?

12:45PM

18 A I'M SORRY. COULD YOU -- I DON'T UNDERSTAND.

19 Q THE QUESTION IS, IN THE JUNE 12TH MEETING WITH
20 MR. GUNDLACH AND MR. ALBERTS, DO YOU RECALL DISCUSSING
21 HOW IMPORTANT THE DISTRESSED FUNDS WERE AND THE CARRIED
22 INTEREST, THE PERFORMANCE FEES THAT WOULD HAVE TO COME
23 OVER TO WAMCO AS PART OF A TRANSACTION, HOW IMPORTANT
24 THOSE WERE TO A POTENTIAL TRANSACTION WITH WAMCO?

12:45PM

25 A YES.

12:46PM

26 Q AND, IN FACT, MR. GUNDLACH SAID WORDS TO YOU
27 TO THE EFFECT THAT HE UNDERSTOOD THAT THE WAMCO DEAL
28 WAS ABOUT THE VALUE OF THE CARRIED INTEREST, AND THAT

1 IF THE DISTRESSED FUNDS DID NOT COME OVER FROM TCW TO
2 WAMCO, THERE WAS TOO MUCH RISK FOR WAMCO FOR THIS
3 LATERAL MOVE OF MR. GUNDLACH --

4 MR. WEINGART: OBJECTION. MISSTATES.

5 THE COURT: I DON'T KNOW WHERE THAT COMES
6 FROM.

12:46PM

7 CAN YOU ANSWER THAT QUESTION?

8 THE WITNESS: I DON'T BELIEVE THAT'S WHAT THAT
9 MEANS.

12:46PM

10 MR. MADISON: ALL RIGHT.

11 THE COURT: ARE YOU READING FROM HIS NOTES?

12 MR. MADISON: NO.

13 THE COURT: OKAY.

14 MR. MADISON: I'M ASKING --

15 THE COURT: GO AHEAD.

12:46PM

16 BY MR. MADISON:

17 Q DO YOU SEE THE NOTE THERE?

18 A YES.

19 Q I MEAN, YOU WROTE THE NOTE AT THE TIME YOU
20 WERE MEETING WITH HIM?

12:47PM

21 A YES.

22 Q CAN YOU READ US THE NOTE.

23 A (READING):

24 BULLET: GETS THE DEAL ABOUT THE
25 VALUE OF THE CARRY, IF DISTRESSED
26 DOESN'T COME OVER, DOT DOT DOT, TOO
27 MUCH RISK FOR A LATERAL.

12:47PM

28 Q SO, WHO WAS IT THAT GOT THAT, THE DEAL IS

1 ABOUT THE VALUE OF THE CARRY?

2 A IT MAY HAVE BEEN GUNDLACH. BUT HIS POINT
3 WOULD HAVE BEEN THAT THERE'S A LOT OF VALUE FOR ME,
4 GUNDLACH, AT TCW, ON THIS CARRY, SO YOU'RE GOING TO
5 HAVE IT ONE WAY OR ANOTHER.

12:47PM

6 I DON'T THINK HE CARED WHETHER IT WAS
7 THROUGH CARRIED INTEREST ON THE STRESS FUNDS OR NOT.

8 Q IT SAYS:

9 IF DISTRESS DOESN'T COME OVER.

10 WAS THAT A REFERENCE TO THE DISTRESSED
11 FUNDS AT TCW THAT WOULD BE CONVERTED OVER TO WAMCO?

12:47PM

12 A I SUSPECT IT WAS.

13 Q AND SO THAT WAS WHERE THE VALUE OF THIS DEAL
14 WAS, ACCORDING TO HIM, RIGHT?

15 A YES.

12:48PM

16 Q AND THOSE ARE THE SAME FIGURES THAT WE SAW IN
17 1899, THAT WOULDN'T PRODUCE REVENUE UNTIL 2012 UNDER
18 THE ARRANGEMENT?

19 MR. WEINGART: OBJECTION. ASKED AND ANSWERED.

20 THE COURT: SUSTAINED.

12:48PM

21 MR. MADISON: I WANT TO MAKE SURE WE'RE
22 TALKING APPLES AND APPLES.

23 Q MR. BROSSY, IS THAT WHAT'S BEING REFERRED TO
24 HERE?

25 A YES.

12:48PM

26 Q IF YOU LOOK AT EXHIBIT 1900, IT'S A DRAFT OF
27 PROPOSED COMPENSATION ARRANGEMENT, DATED JUNE 19, 2009.

28 I'LL ASK YOU IF RECOGNIZE THAT.

1 A I DO.

2 Q CAN YOU TELL US WHAT 1900 IS?

3 A THIS WOULD BE AN ADDITIONAL ITERATION OF OUR
4 PROPOSED ARRANGEMENT.

5 MR. MADISON: I'D MOVE 1900.

12:48PM

6 MR. WEINGART: COULD WE GET A LITTLE MORE
7 FOUNDATION?

8 THE COURT: YES.

9 MR. MADISON: PARDON ME.

10 Q MR. GUNDLACH TESTIFIED HE RECEIVED THIS FROM
11 SEMLER BROSSY.

12:49PM

12 DO YOU RECALL APPLYING IT TO HIM?

13 MR. WEINGART: OBJECT TO THE FORM.

14 THE COURT: OVERRULED. I THINK IT ASSUMES A
15 FACT. WE HAVE THAT -- WHY WASN'T IT ENTERED, THEN?

12:49PM

16 MR. MADISON: PARDON ME?

17 THE COURT: GO AHEAD.

18 MR. QUINN: I CAN ANSWER THAT, YOUR HONOR.

19 THE WITNESS: I DON'T RECALL.

20 THE COURT: OKAY.

12:49PM

21 MR. MADISON: I MOVE 1900.

22 THE COURT: ANY OBJECTION?

23 MR. WEINGART: OBJECTION, IRRELEVANT.

24 HEARSAY. DON'T KNOW IF IT WAS SHARED WITH

25 MR. GUNDLACH.

12:49PM

26 THE COURT: THAT'S THE POINT.

27 LAY THE FOUNDATION AND WE'LL GO FROM
28 THERE.

1 BY MR. MADISON:

2 Q WELL, YOU DON'T RECALL ONE WAY OR THE OTHER IF
3 THIS WAS PROVIDED TO MR. GUNDLACH?

4 A I DON'T.

5 Q I MEAN, WE HAVE -- WE HAVE, YOUR HONOR, I'LL
6 SAY TO YOUR HONOR, TESTIMONY FROM MR. GUNDLACH THAT --

12:49PM

7 MR. WEINGART: YOUR HONOR --

8 MR. MADISON: I'LL FINISH MY STATEMENT IF I
9 MAY.

10 -- HE DID RECEIVE 1900. I BELIEVE HIS
11 TESTIMONY WAS HE DIDN'T READ IT, BUT HE DID RECEIVE IT.

12:49PM

12 THE COURT: ALL RIGHT. I'LL RESERVE A RULING
13 ON THAT. WE CAN TAKE IT UP.

14 BY MR. MADISON:

15 Q ONE FINAL QUESTION ON THAT, MR. BROSSY, ON
16 THAT EXHIBIT.

12:50PM

17 WERE THERE CHANGES MADE TO THIS
18 PROPOSAL, DATED JUNE 19, FROM THE EARLIER JUNE 12
19 PROPOSAL, 1899?

20 A I SEE THAT THERE WERE.

12:50PM

21 Q DO YOU RECALL GENERALLY WHAT THOSE WERE?

22 A I DON'T.

23 Q AND WERE THOSE CHANGES BASED IN WHOLE OR IN
24 PART ON CONVERSATIONS THAT YOU HAD WITH MR. GUNDLACH?

25 A AT LEAST IN PART, YES.

12:50PM

26 Q AFTER JUNE 19, DID THIS CONTINUE TO BE AN OPEN
27 ENGAGEMENT FOR SEMLER BROSSY?

28 A I RECALL -- THIS ONE HAD SOME FITS AND STARTS.

1 BUT I RECALL WE HAD SOME ACTIVITY ON THIS SOMETIME INTO
2 THE FALL.

3 Q IF YOU LOOK AT 2218, THOSE ARE SOME E-MAILS?

4 DO YOU RECALL THOSE E-MAILS?

5 A JUST 18 -- 2218?

12:51PM

6 Q YES, SIR?

7 A YES.

8 Q IN PARTICULAR, THE BOTTOM E-MAIL ON THE FIRST
9 PAGE, IT APPEARS TO BE AN E-MAIL FROM MR. ALBERTS AT
10 WAMCO TO YOU, MR. HIRSCHMANN AND MR. PLITE (PH) AT
11 WAMCO ABOUT JEFF GUNDLACH'S CALL.

12:51PM

12 DO YOU RECALL RECEIVING THAT E-MAIL?

13 A I DON'T RECALL THIS -- SPECIFICS. BUT YES, I
14 SEE I GOT IT.

15 Q DID YOU EVER HAVE A CONVERSATION WITH
16 MR. GUNDLACH ABOUT THE -- WHAT APPEARS THERE AT THE
17 BOTTOM OF THAT, THE FIRST PAGE OF THE EXHIBIT, IN THAT
18 E-MAIL?

12:51PM

19 A IS THIS THE PART ON THE SCREEN HERE?

20 Q IT SHOULD BE.

12:51PM

21 THE COURT: IT SHOULD BE IN YOUR BOOK ALSO.
22 YOU CAN OPEN IT UP SOMETIMES.

23 THE WITNESS: I SEE \$2- TO \$4 BILLION
24 REFERENCE.

25 MR. MADISON: YES.

12:51PM

26 MR. WEINGART: YES, OBJECTION TO READING FROM
27 THE DOCUMENT.

28 THE COURT: READ IT TO YOURSELF AND LET HIM

1 ASK YOU QUESTIONS.

2 THE WITNESS: ALL RIGHT.

3 (PAUSE) +

4

5 THE WITNESS: DO YOU WANT ME TO READ THE WHOLE
6 E-MAIL?

12:52PM

7 BY MR. MADISON:

8 Q I WAS GOING TO ASK YOU ABOUT THE STATEMENT ON
9 THE BOTTOM OF THE FIRST PAGE THERE.

10 A GOT IT.

12:52PM

11 Q DO YOU RECALL DISCUSSING THAT SUBJECT WITH
12 MR. GUNDLACH?

13 A I DON'T.

14 Q DID YOU TALK TO MR. GUNDLACH ABOUT WHAT THE
15 MARKET CAP OF THE BUSINESS AND REVENUE THAT HE WOULD
16 POTENTIALLY BRING TO WAMCO WOULD BE?

12:52PM

17 A NO.

18 Q DO YOU KNOW WHAT MARKET CAP IS?

19 A YES.

20 Q COULD YOU TELL US WHAT MARKET CAP IS?

12:52PM

21 A IT SHOULD BE IN REFERENCE -- THIS WOULD BE IN
22 REFERENCE TO WAMCO'S PARENT COMPANY, WHICH IS PUBLICLY
23 TRADED, AND HOW VALUABLE IT WOULD BE IF GUNDLACH CAME
24 TO RAISING THE SHARE PRICE OR THE MARKET VALUE OF THE
25 COMPANY.

12:53PM

26 Q SO, IS THERE A DIFFERENCE BETWEEN SHARING IN
27 FEES AND A MARKET CAP FOR THE VALUE OF A BUSINESS?

28 A YES.

1 Q CAN YOU TELL US WHAT THE DIFFERENCE IS?

2 A WELL, ONE WAY TO ATTRACT AN ASSET MANAGER INTO
3 A COMPANY THAT WAS PUBLIC WOULD BE TO GIVE THEM STOCK
4 OR STOCK OPTIONS SO THAT THEY WOULD PARTICIPATE IN ANY
5 DRAFT OF THE SHARE PRICE.

12:53PM

6 THAT MIGHT ACCRUE AS A RESULT, OR AT
7 LEAST PARTLY A RESULT OF THEIR JOINING THE COMPANY.

8 Q WOULD THAT SPEAK TO MARKET CAP OR FEE SHARING?

9 A MARKET CAP.

10 Q WAS THERE EVER A TIME IN THE DISCUSSIONS WITH
11 MR. GUNDLACH ON BEHALF OF WAMCO WHERE THOSE CONCEPTS
12 WERE DISCUSSED BETWEEN YOU AND MR. GUNDLACH?

12:53PM

13 A THE IDEA OF STOCK --

14 Q OR ANY --

15 A -- OR EQUITY COMPENSATION FROM LEGG MASON,
16 YES.

12:54PM

17 Q CAN YOU TELL US WHAT YOU RECALL ABOUT THAT?

18 A I THINK THERE WERE A NUMBER OF REFERENCES TO
19 IT, AND THERE WAS AT VARIOUS TIMES HE EXPRESSED
20 INTEREST IN RECEIVING SOME FORM OF EQUITY COMPENSATION
21 IN LEGG MASON.

12:54PM

22 HE WAS CONFIDENT HIS ARRIVAL THERE, IF
23 HE CAME, WOULD IN FACT LIFT THE VALUE OF THE COMPANY,
24 AND SO THIS -- I BELIEVE IT'S PART OF OUR PROPOSALS,
25 TOO, THERE WOULD BE A SLUG OR A BLOCK OF RESTRICTED
26 STOCK OR OPTIONS THAT MIGHT BE PROVIDED TO HIM AS PART
27 OF THE ARRANGEMENT.

12:54PM

28 Q IN VALUING THAT SORT OF THING, I MEAN, DID YOU

1 DISCUSS WITH MR. GUNDLACH HOW ONE WOULD VALUE WHAT THE
2 TOTAL BENEFITS TO LEGG MASON, WAMCO'S PARENT, WOULD BE
3 FROM THIS TRANSACTION?

4 A NOT WITH GUNDLACH, NO.

5 Q DID YOU DISCUSS THAT -- JUST YES OR NO -- WITH
6 WAMCO? 12:55PM

7 A IN GENERAL TERMS, I'M SURE WE DID.

8 Q I MEAN, ARE YOU FAMILIAR WITH TRANSACTIONS A
9 MULTIPLE OF EARNING ARE EARNINGS USED TO ASSIGN A VALUE
10 TO A GOING CONCERN? 12:55PM

11 A YES.

12 Q WAS THAT DISCUSSION HELD WITH MR. GUNDLACH
13 ABOUT THE BUSINESS HE WAS CONVERTING FROM TCW?

14 A NOT THAT I RECALL.

15 Q AND THEN, IS THAT THE SAME THING AS MARKET
16 CAP, ESSENTIALLY LOOKING AT A MULTIPLE OF EARNINGS FROM
17 A PARTICULAR TRANSACTION AS CREATING MARKET CAP? 12:55PM

18 A YES.

19 Q AND THAT'S DIFFERENT FROM JUST A FUTURE STREAM
20 OF FEE SHARING THAT MIGHT BE DISCOUNTED FOR PRESENT
21 VALUE, RIGHT? 12:55PM

22 A YES.

23 Q NOW, DO YOU RECALL WHETHER YOU MET WITH
24 MR. GUNDLACH IN JULY?

25 A I DON'T RECALL. 12:56PM

26 Q OR SPOKE TO HIM, SIR?

27 A I DON'T RECALL.

28 Q IF YOU LOOK AT 225, THAT'S AN E-MAIL THAT I'D

1 ASK YOU TO JUST LOOK AT AND SEE IF IT REFRESHES YOUR
2 RECOLLECTION ABOUT THAT.

3 A OKAY.

4 Q DOES THAT REFRESH YOUR RECOLLECTION ABOUT
5 SPEAKING TO MR. GUNDLACH IN EARLY JULY?

12:56PM

6 A IT -- APPARENTLY DID.

7 Q AND DO YOU RECALL AT THAT TIME WHETHER -- I
8 TAKE IT IN YOUR BUSINESS YOU TALK TO EXECUTIVES ALL THE
9 TIME ABOUT INTEREST OF SOME DEGREE, IN POTENTIALLY
10 MOVING THEIR PLACES OF EMPLOYMENT?

12:56PM

11 A FREQUENTLY. IT'S NOT MY CORE, BUT YES.

12 Q AND DID YOU YOURSELF HAVE A SENSE OF WHETHER
13 MR. GUNDLACH WAS SERIOUS ABOUT THESE DISCUSSIONS WITH
14 WAMCO OR NOT?

15 MR. WEINGART: OBJECTION.

12:57PM

16 FOUNDATION.

17 THE COURT: SUSTAINED.

18 BY MR. MADISON:

19 Q WELL, JUST YES OR NO, DID MR. GUNDLACH SAY OR
20 DO ANYTHING TO YOU THAT CAUSED YOU TO FORM AN OPINION
21 ABOUT WHETHER THIS WAS JUST A CASUAL INQUIRY OR
22 SOMETHING DIFFERENT FROM THAT?

12:57PM

23 A THERE WERE TIMES IN MY INTERACTIONS WITH HIM
24 THAT HE SOUNDED SERIOUS, AND THERE WERE OTHER TIMES
25 WHEN IT DID NOT SEEM TO BE.

12:57PM

26 Q AS OF EARLY JULY, WHICH CATEGORY WOULD YOU SAY
27 HE WAS IN?

28 A I DON'T REMEMBER.

1 Q I'D ASK YOU TO READ THE THIRD LINE FROM THE
2 BOTTOM OF YOUR E-MAIL, JUST TO YOURSELF.

3 A SURE.

4 Q AND THEN SEE IF THAT REFRESHES YOUR
5 RECOLLECTION.

12:57PM

6 (PAUSE) +

7

8 THE WITNESS: OKAY.

9 BY MR. MADISON:

10 Q AND SO, DOES THAT REFRESH YOUR RECOLLECTION?

12:57PM

11 A YES.

12 Q AND CAN YOU ANSWER MY PRIOR QUESTION ABOUT
13 WHETHER HE WAS CASUALLY PURSUING THIS AT THIS TIME OR
14 SOMETHING MORE SERIOUS?

15 A AT THIS TIME, I APPARENTLY FELT IT WAS NOT A
16 CASUAL PURSUIT.

12:57PM

17 Q AND DO YOU RECALL, DID MR. GUNDLACH MENTION TO
18 YOU THE STRATEGIC REVIEW THAT WAS THEN UNDERWAY AT TCW?

19 A I DO.

20 Q DO YOU RECALL -- IF YOU NEED TO READ YOUR
21 E-MAIL TO REFRESH YOUR RECOLLECTION -- WHAT HE SAID TO
22 YOU ABOUT THAT?

12:58PM

23 A I DON'T RECALL.

24 Q IF YOU LOOK AT THE BULLET NO. 6, AND IN
25 PARTICULAR THE LAST SENTENCE, AND TELL US IF THAT
26 REFRESHES YOUR RECOLLECTION.

12:58PM

27 A YES.

28 Q DO YOU RECALL NOW, THAT THE STRATEGIC REVIEW

1 THAT WAS UNDERWAY, PLAYED SOME ROLE IN HIS STATEMENTS
2 TO YOU ABOUT WAMCO?

3 A YES.

4 Q WHAT DID HE TELL YOU?

5 A THAT HE THOUGHT IT GAVE HIM A LITTLE MORE
6 TIME. AND THAT IN REFERENCE TO THAT EARLIER POINT
7 ABOUT PRESSURE, HE FELT SOME OF IT WAS OFF IN TERMS OF
8 TIMING.

12:58PM

9 Q TIME TO DO WHAT?

10 A TO DEVELOP A PRO- -- PROPOSALS OR PURSUE OTHER
11 OPPORTUNITIES FOR HIM.

12:59PM

12 Q AND DO YOU RECALL WHETHER IN YOUR CALL WITH
13 HIM THERE WAS A DISCUSSION ABOUT WHETHER OR NOT
14 LEGG MASON WOULD INVEST ALONG THE LINES THAT YOU WERE
15 TALKING ABOUT A MINUTE AGO?

12:59PM

16 A THERE WAS.

17 I DON'T REMEMBER THE TIMING OF THAT, BUT
18 THERE WAS.

19 Q IF YOU LOOK AT BULLET POINT NO. 4, DOES THAT
20 REFRESH YOUR RECOLLECTION ABOUT WHETHER, AS OF THIS
21 TIME, JULY 3RD, MR. GUNDLACH WAS TALKING ABOUT
22 LEGG MASON INVESTING IN A WAY THAT WOULD RECOGNIZE THE
23 MARKET CAP ADDITIVE?

12:59PM

24 A YES.

25 Q IS IT TRUE, AS A GENERAL MATTER, VALUE DERIVED
26 FROM A MULTIPLE OF FUTURE EARNINGS IS GREATER THAN A
27 DISCOUNTED FEE SHARING?

12:59PM

28 MR. WEINGART: OBJECTION. LEADING.

1 THE COURT: SUSTAINED.

2 BY MR. MADISON:

3 Q ARE YOU FAMILIAR WITH THOSE CONCEPTS IN THE
4 WORK YOU DO?

5 A I -- I AM.

12:59PM

6 Q CAN YOU TELL US GENERALLY, IS ONE MORE
7 VALUABLE THAN THE OTHER IN TERMS OF A GOING CONCERN?

8 MR. WEINGART: OBJECTION, RELEVANCE.

9 THE WITNESS: IT REALLY DEPENDS.

10 BY MR. MADISON:

01:00PM

11 Q DEPENDS ON WHAT?

12 A DEPENDS ON MARKET CONDITION, THE VALUE OF
13 ASSETS UNDER MANAGEMENT.

14 YOU COULD RAISE AN INDEX FUND, AND A FEE
15 SHARING ARRANGEMENT MIGHT BE MORE VALUABLE THAN THE
16 MARKET WOULD GIVE YOU CREDIT OR VALUE FOR AN INDEX DONE
17 TODAY, AS AN EXAMPLE.

01:00PM

18 Q AT ANY TIME NOW, DID MR. GUNDLACH DISCUSS WITH
19 YOU COMPENSATING TCW FOR ANYTHING?

20 A I DO NOT RECALL.

01:00PM

21 Q NOW, IF YOU LOOK AT EXHIBIT 2281, THERE'S SOME
22 E-MAIL FROM AUGUST 17, 2009. IF YOU LOOK AT THAT TO
23 YOURSELF.

24 AND TELL US WHETHER, AS OF MID AUGUST,
25 AUGUST 17, WHETHER THESE DISCUSSIONS WERE STILL ONGOING
26 OR SOMETHING OTHER THAN THAT.

01:00PM

27 A YES.

28 Q I'M SORRY. THEY WERE STILL ONGOING AT THAT

1 TIME?

2 A YES. EVIDENTLY, YEAH.

3 Q DID THERE COME A TIME WHEN MR. GUNDLACH
4 BROUGHT A CONSULTANT IN ON HIS SIDE?

5 A I DON'T BELIEVE SO. 01:01PM

6 Q DO YOU RECALL HEARING ABOUT A MAN NAMED
7 DON PUTNAM?

8 A YES.

9 Q WHO WAS DON PUTNAM WITH REGARD TO THIS
10 TRANSACTION? 01:01PM

11 A DON PUTNAM, I BELIEVE, WAS BROUGHT IN BY
12 LEGG MASON OR BY WAMCO.

13 Q TO DO WHAT?

14 A TO LOOK AT ADDITIONAL ALTERNATIVE STRUCTURES
15 THAT WOULD USE THE BALANCE SHEET OR INVOLVE EQUITY AS
16 OPPOSED TO JUST FEE SHARING ARRANGEMENTS. 01:01PM

17 Q WHEN WAS THAT, IF YOU RECALL?

18 A WELL, IT LOOKS LIKE IT WAS IN AUGUST.

19 Q DO YOU RECALL WHETHER THERE WAS ACTUALLY A
20 PROPOSAL MADE BY MR. PUTNAM ABOUT A POTENTIAL
21 TRANSACTION WITH MR. GUNDLACH AND WAMCO? 01:01PM

22 A YES, I DO.

23 Q WHEN, APPROXIMATELY, WAS THAT, DO YOU RECALL?

24 A I DON'T RECALL.

25 Q WOULD IT HAVE BEEN AFTER -- ON OR ABOUT THE
26 AUGUST 17TH DATE? 01:02PM

27 A THAT SOUNDS RIGHT.

28 Q YOU MENTIONED THROUGH THE FALL, IF YOU LOOK --

1 EARLIER, WHEN I ASKED YOU HOW LONG THE DISCUSSIONS WERE
2 ONGOING, IF YOU LOOK AT 2231, THERE'S AN E-MAIL DATED
3 OCTOBER 27, 2009. AND AN E-MAIL TO YOU.

4 I WOULD JUST ASK YOU IF, AT YOUR
5 COMPANY, SEMLER BROSSY, WAS THIS MATTER STILL IN
6 DISCUSSION AS OF LATE OCTOBER 2009?

01:02PM

7 A YES, IT WAS.

8 Q WERE YOU INVOLVED IN THOSE DISCUSSIONS AT THAT
9 TIME?

10 A YES.

01:02PM

11 Q AND AT ANY TIME, DID YOU EVER COMMUNICATE WITH
12 TRUST COMPANY OF THE WEST ABOUT ANY OF THESE DIFFERENT
13 ITERATIONS OF THESE STRUCTURES?

14 A NO, I DID NOT.

15 Q DID MR. GUNDLACH TELL YOU THAT, IN THAT SAME
16 TIME FRAME IN OCTOBER AND NOVEMBER, HE WAS TAKING STEPS
17 TO SET UP HIS OWN COMPANY AT THAT SAME TIME?

01:02PM

18 A NO, HE DID NOT.

19 Q WAS THERE EVER ANY DISCUSSION YOU WERE PRIVY
20 TO ABOUT SOME TRANSACTION BETWEEN WAMCO AND
21 MR. GUNDLACH'S NEW COMPANY, ABLE GRAPE?

01:03PM

22 A I WAS NOT PART OF ANY DISCUSSION LIKE THAT.

23 Q YOU NEVER LEARNED ABOUT THAT FROM ANYBODY?

24 A NO.

25 MR. MADISON: NOTHING FURTHER AT THIS TIME,
26 YOUR HONOR.

01:03PM

27 THE COURT: CROSS?

28 MR. WEINGART: THANK YOU, YOUR HONOR.

1 CROSS-EXAMINATION +

2 BY MR. WEINGART:

3 Q GOOD AFTERNOON, MR. BROSSY.

4 A GOOD AFTERNOON.

5 Q YOU'VE BEEN DOING COMPENSATION CONSULTING FOR
6 SOME TIME; IS THAT RIGHT?

01:04PM

7 A YES.

8 Q INCLUDING FOR A NUMBER OF FINANCIAL SERVICES
9 FUNDS?

10 A YES.

01:04PM

11 Q AND THOSE PROJECTS HAVE INVOLVED WORK ON
12 ADVISING COMPANIES WHEN THEY'RE GOING TO BRING IN
13 POTENTIALLY AN EXECUTIVE FROM ANOTHER FIRM?

14 A YES.

15 Q RIGHT.

01:04PM

16 AND I TAKE IT SOMETIMES THAT PROSPECTIVE
17 EXECUTIVE IS AT A FIRM THAT'S A COMPETITOR IN THE SAME
18 LINE OF BUSINESS AS YOUR CLIENT IS, CORRECT?

19 A YES.

20 Q AND IN THOSE CIRCUMSTANCES, YOU TAKE STEPS, DO
21 YOU NOT, TO AVOID YOU OR YOUR CLIENT RECEIVING
22 CONFIDENTIAL INFORMATION ABOUT THE OTHER FIRM'S
23 OPERATIONS?

01:04PM

24 A YES.

25 Q MR. GUNDLACH NEVER PROVIDED YOU WITH ANY
26 DOCUMENTS, RIGHT?

01:05PM

27 A THAT'S CORRECT.

28 Q MR. GUNDLACH NEVER SUGGESTED TO YOU THAT HE

1 COULD BRING WITH HIM TO WAMCO ANY SECRET TRADING
2 PROGRAM OR ALGORITHM, RIGHT?

3 A HE NEVER SAID THAT TO ME, THAT'S CORRECT.

4 Q AND YOU, LIKEWISE, DIDN'T REQUEST THAT
5 MR. GUNDLACH PROVIDE YOU ANY CONFIDENTIAL INFORMATION,
6 CORRECT?

01:05PM

7 A NOTHING THAT I CONSIDERED CONFIDENTIAL, NO.

8 Q AND I ASSUME YOU TOOK STEPS TO MAKE SURE YOU
9 DID NOT RECEIVE THAT KIND OF CONFIDENTIAL INFORMATION,
10 RIGHT?

01:05PM

11 A AFFIRMATIVELY, IN THE SENSE THAT I CERTAINLY
12 DIDN'T ASK HIM FOR ANYTHING THAT I WOULD HAVE DEEMED TO
13 BE INAPPROPRIATE FOR ME TO KNOW.

14 Q NOW, MR. GUNDLACH PROVIDED YOU WITH SOME
15 FAIRLY HIGH-LEVEL INFORMATION, CORRECT?

01:05PM

16 A HE DID.

17 MR. MADISON: VAGUE. OVERBROAD. OBJECTION.

18 THE COURT: OVERRULED.

19 YOU CAN EXPLAIN IT.

20 BY MR. WEINGART:

01:05PM

21 Q I BELIEVE YOU USED -- MAYBE I HEARD YOU
22 INCORRECTLY -- I THOUGHT YOU USED THE TERM HIGH-LEVEL
23 INFORMATION WHEN YOU WERE RESPONDING TO MR. MADISON'S
24 QUESTIONS.

25 DID I MISHEAR YOU?

01:06PM

26 A NO, I THINK THAT'S FAIR.

27 Q SO, WOULD THAT -- THAT WOULD INCLUDE, FOR
28 EXAMPLE, ASSETS UNDER MANAGEMENT IN BROAD CATEGORIES?

1 A YES.

2 Q SORT OF BROAD STROKES, IF YOU WILL? IS THAT
3 RIGHT?

4 A YES.

5 Q AND YOU DIDN'T CONSIDER IT IMPROPER FOR YOU TO
6 RECEIVE THAT INFORMATION, DID YOU?

01:06PM

7 A I DID NOT.

8 Q YOU DIDN'T ASK FOR ANY INFORMATION ABOUT WHO
9 MR. GUNDLACH'S CLIENTS WERE, RIGHT?

10 A NO.

01:06PM

11 Q AND HE DIDN'T PROVIDE YOU ANY INFORMATION ON
12 WHO HIS SPECIFIC CLIENTS WERE, DID HE?

13 A NO.

14 Q THE ANSWER TO THAT IS HE DID NOT?

15 A HE DID NOT.

01:06PM

16 Q WE MAY HAVE GOT A DOUBLE NEGATIVE.

17 A HE DID NOT.

18 Q JUST WANTED TO BE CLEAR.

19 PUT UP 1899-10.

20 YOU WERE ASKED QUESTIONS ABOUT THIS.

01:07PM

21 LET ME START AT THE BOTTOM, WHERE IT SAYS:

22 SEPARATE ACCOUNTS. 10 MILLION

23 IN REVENUE ESTIMATED TO CONVERT:

24 CONSERVATIVE.

25 DO YOU SEE THAT?

01:07PM

26 A YES.

27 Q WAS THAT \$10 MILLION IN REVENUE, REVENUE THAT
28 MR. GUNDLACH WAS TELLING YOU WAS BEING EARNED AT TCW,

1 OR WAS THAT \$10 MILLION THAT WAS EXPECTED TO BE EARNED
2 BY WESTERN ASSET USING WESTERN ASSET'S FEE SCHEDULES?

3 MR. MADISON: OBJECTION. VAGUE. INCOMPLETE.

4 THE COURT: OVERRULED.

5 DO YOU UNDERSTAND THE QUESTION?

01:07PM

6 THE WITNESS: I THINK SO.

7 AND SO, 10 MILLION IN REVENUE ESTIMATED
8 TO CONVERT WOULD BE 10 MILLION AT WAMCO.

9 BY MR. WEINGART:

10 Q WITH WAMCO'S FEES, CORRECT?

01:07PM

11 A YES.

12 Q AND THEIR FEE STRUCTURE?

13 A YES.

14 Q NOW LET'S GO TO THE TOP THERE, WHERE IT TALKS
15 ABOUT DISTRESSED FUNDS.

01:08PM

16 ACTUALLY, YOU KNOW WHAT, LET'S WORK OUR
17 WAY UP. MUTUAL FUNDS, 15 MILLION IN REVENUE.

18 THE SIZE OF MUTUAL FUNDS, THEIR ASSETS
19 UNDER MANAGEMENT IS PUBLICLY REPORTED, ISN'T IT?

20 A I THINK YOU CAN GET THAT INFORMATION PUBLICLY,
21 YES.

01:08PM

22 Q AND THE FEES THAT ARE CHARGED ARE ALSO
23 PUBLICLY RECORDED, AREN'T THEY?

24 A YES.

25 Q I TAKE IT WHEN HE TOLD YOU ABOUT WHAT THE SIZE
26 OF THE FUND WAS AND WHAT THE REVENUE WAS, THAT, AGAIN,
27 YOU DIDN'T FEEL THERE WAS ANYTHING IMPROPER AS YOU WERE
28 GETTING INFORMATION THAT WAS ALREADY PUBLIC, RIGHT?

01:08PM

1 A THAT'S CORRECT.

2 Q LET'S GO TALK ABOUT STRATEGIC M.B.S.

3 THAT WOULD BE A STRATEGY THAT HE WAS
4 MENTIONING --

5 A YES.

01:08PM

6 Q -- IS THAT RIGHT?

7 NOW, FIRMS OFTEN PUBLISH WHAT ASSETS
8 THEY HAVE UNDER MANAGEMENT, DO THEY NOT?

9 A THEY DO.

10 Q THEY ALSO PUBLISH THINGS LIKE GROSS AND NET
11 RETURNS FROM WHICH YOU CAN DETERMINE FEES, RIGHT?

01:09PM

12 A THEY MAY NOT PUBLISH THEIR SPECIFIC FEE
13 SCHEDULE. BUT YOU CAN CERTAINLY -- YOU CAN EXPECT TO
14 SEE PERFORMANCE INFORMATION, YES.

15 Q AND SOME OF THAT WOULD BE GROSS AND NET FROM
16 WHICH YOU CAN AT LEAST GET SOME IDEA OF THE COST
17 ASSOCIATED, CORRECT?

01:09PM

18 MR. MADISON: OBJECTION, FOUNDATION AS TO
19 THESE FUNDS.

20 THE COURT: I THINK IT'S A GENERAL -- ARE WE
21 TALKING SPECIFICALLY ABOUT THESE FUNDS?

01:09PM

22 MR. WEINGART: I'LL MOVE FROM GENERAL TO
23 SPECIFIC. I'M ON GENERAL RIGHT NOW.

24 THE WITNESS: ON THE GENERAL, YES.

25 BY MR. WEINGART:

01:09PM

26 Q IN FACT, TCW PUBLISHES ON ITS WEBSITE FOR
27 PARTICULAR STRATEGIES HOW MANY ASSETS IT HAS UNDER
28 MANAGEMENT, DOESN'T IT?

1 MR. MADISON: OBJECTION. FOUNDATION.

2 THE COURT: SUSTAINED.

3 MR. WEINGART: WHERE ARE OUR CROSS-EXAMINATION
4 EXHIBITS?

5 I DON'T THINK I HAVE ONE. 01:10PM

6 THANK YOU VERY MUCH.

7 Q LET ME ASK YOU TO TAKE A LOOK AT EXHIBIT 6174.

8 MR. MADISON: AGAIN, THE OBJECTION'S
9 FOUNDATION, YOUR HONOR.

10 THE COURT: ALL RIGHT. I HAVEN'T GOT ANY
11 QUESTIONS YET. 01:10PM

12 BY MR. WEINGART:

13 Q THIS IS SOMETHING FROM THE TCW WEBSITE.

14 HAVE YOU SEEN THIS BEFORE?

15 MR. MADISON: OBJECT TO MR. WEINGART'S
16 TESTIMONY. OBJECT, FOUNDATION. 01:10PM

17 THE COURT: I'LL LET HIM ANSWER THAT QUESTION.

18 HAVE YOU EVER SEEN THAT?

19 THE WITNESS: NO.

20 THE COURT: SOLVES THAT. 01:10PM

21 MR. WEINGART: WE'LL COME BACK TO THAT WITH
22 SOMEONE ELSE.

23 CAN WE PUT UP 1899-10 AGAIN.

24 Q I TAKE IT YOU DON'T KNOW. JUST TO CLOSE
25 OUT -- YOU DON'T KNOW ONE WAY OR ANOTHER WHETHER TCW
26 DOES. IN FACT. DISCLOSE PUBLICLY THE ASSETS UNDER
27 MANAGEMENT IT HAS FOR A PARTICULAR STRATEGY? 01:11PM

28 A I DON'T KNOW THAT FOR TCW.

1 Q BUT. REGARDLESS, YOU DIDN'T THINK. GIVEN THE
2 HIGH-LEVEL NATURE OF THE INFORMATION YOU GOT FROM
3 MR. GUNDLACH ABOUT THAT, THAT YOU WERE GETTING ANYTHING
4 CONFIDENTIAL THAT YOU SHOULDN'T BE RECEIVING, CORRECT?

5 MR. MADISON: MISSTATES THE TESTIMONY ABOUT
6 FEES. OBJECTION.

01:11PM

7 IN THIS BULLET POINT.

8 MR. WEINGART: IT'S A QUESTION, JUDGE.

9 THE COURT: WE'RE BACK ON 89 -- 1899-10.

10 THE QUESTION SPECIFICALLY REFERS TO --
11 JUST A MOMENT.

01:11PM

12 THE COURT: YES, THE OBJECTION'S OVERRULED.

13 MR. WEINGART: DO YOU REMEMBER THE QUESTION.

14 THE COURT: I'LL READ IT. IT SAYS:

15 BUT REGARDLESS, YOU DIDN'T THINK
16 THAT, GIVEN THE HIGH-LEVEL NATURE
17 OF THE INFORMATION YOU GOT FROM
18 MR. GUNDLACH ABOUT THAT, THAT YOU
19 WERE GETTING ANYTHING CONFIDENTIAL
20 THAT YOU SHOULDN'T BE RECEIVING,
21 CORRECT?

01:12PM

22 MR. MADISON: SOUNDS BETTER WHEN YOU ASK IT,
23 YOUR HONOR.

24 THE WITNESS: CORRECT. IT'S STANDARD BRAGGING
25 RIGHTS STUFF.

01:12PM

26 BY MR. WEINGART:

27 Q NOW, LET'S GO UP TO THE DISTRESSED FUNDS.

28 LET ME START ON THE SECOND BULLET POINT.

1 IT SAYS:

2 2 AND 20 FEE STRUCTURE ON ABOUT
3 THREE BILLION AUM.

4 DO YOU SEE THAT?

5 A YES.

01:12PM

6 Q WHAT IS A 2 AND 20 FEE STRUCTURE?

7 A THAT'S REFERRING TO ONGOING ASSET MANAGEMENT
8 FEE EQUAL TO 2 PERCENT OF THE ASSETS UNDER MANAGEMENT.

9 AND THE 20 IS REFERRING TO 20 PERCENT OF
10 THE PROFIT OR THE RETURN EARNED ABOVE USUALLY A HURDLE
11 RATE. SO THAT'S THE PERFORMANCE FEE OR THE CARRIED
12 INTEREST.

01:13PM

13 Q HOW COMMON IS THE 2 AND 20 FEE STRUCTURE IN A
14 CLOSED-END TYPE OF FUND?

15 A IT'S VERY COMMON.

01:13PM

16 Q IN FACT, IT'S THE PREVAILING STRUCTURE, ISN'T
17 IT?

18 A IT IS.

19 Q AND THEN YOU MENTIONED A HURDLE RATE. IT
20 TALKS ABOUT 8 PERCENT THERE.

01:13PM

21 IS IT THE CASE THAT HURDLE RATES ARE
22 TYPICALLY IN THE 6 TO 8 PERCENT RANGE FOR FUNDS?

23 A I WOULD SAY THAT'S ACCURATE, YES.

24 Q AND YOU USED 8 PERCENT HERE, CORRECT?

25 A YES.

01:13PM

26 Q AND DO YOU KNOW WHETHER OR NOT THE SMCF FUND
27 IN FACT, OR THE DISTRESSED FUND AT -- FUND AT TCW HAD A
28 6 PERCENT HURDLE RATE, NOT 8 PERCENT HURDLE RATE?

1 A I DON'T KNOW THAT.

2 Q THE SIZE OF CLOSED-END FUNDS IS ALSO OFTEN
3 PUBLICLY DISCLOSED, IS IT NOT?

4 A YES.

5 Q IN FACT, COMPANIES HAVE TO FILE WHAT ARE
6 CALLED FORM D'S WITH THE SEC THAT DISCUSSES HOW MUCH OF
7 ONE OF THOSE FUNDS HAS BEEN SUBSCRIBED TO; ISN'T THAT
8 RIGHT?

01:14PM

9 A IF IT'S REGISTERED, I BELIEVE THAT'S CORRECT.

10 AND, IN ADDITION TO THAT, THEY MIGHT
11 TAKE A TOMBSTONE AD OUT TO PROMOTE.

01:14PM

12 Q GIVEN THOSE FACTS, YOU DIDN'T THINK THAT YOU
13 WERE GETTING INFORMATION THAT YOU SHOULDN'T HAVE BEEN
14 RECEIVING FROM MR. GUNDLACH WHEN HE TOLD YOU ABOUT
15 THESE THINGS, CORRECT?

01:14PM

16 A CORRECT.

17 Q YOU WERE ASKED SOME QUESTIONS ABOUT THE
18 STATEMENT THERE, CONVERTED, WHICH IS UP AT THE TOP.

19 DO YOU SEE THAT?

20 A YES.

01:15PM

21 Q AND BY CONVERTED, THAT WOULD BE REVENUES THAT
22 MR. GUNDLACH WOULD BRING WITH HIM; IS THAT RIGHT?

23 A I BELIEVE I SAID EARLIER THAT WOULD FOLLOW
24 HIM.

25 Q THANK YOU. THAT WOULD FOLLOW HIM.

01:15PM

26 AND THAT'S BECAUSE -- LET'S JUST TAKE
27 THE DISTRESS FUND. TCW CONTROLLED THAT FUND, CORRECT?

28 A AS I UNDERSTAND IT, THEY DID.

1 Q AND MR. MADISON ASKED YOU SOME QUESTIONS WHERE
2 YOU HAD DISCUSSION ON JUNE 12TH, WHERE MR. GUNDLACH
3 EXPRESSED SOME CONCERN ABOUT WHETHER, IN FACT, THAT
4 FUND, YOU KNOW, WOULD BE ABLE TO FOLLOW HIM TO WAMCO OR
5 NOT, RIGHT?

01:15PM

6 A YES.

7 Q NOW, WITH REGARD TO ANY REVENUE THAT WOULD
8 HAVE BEEN OWED TO TCW WITH REGARD TO THE FUNDS THAT
9 WERE THERE, THE MUTUAL FUND OR THE DISTRESSED FUNDS, I
10 TAKE IT YOU CONSIDERED THAT TO BE MR. GUNDLACH'S ISSUE
11 TO WORK OUT WITH TCW, AND NOT YOUR ISSUE; IS THAT
12 RIGHT?

01:16PM

13 A THAT'S CORRECT.

14 Q AND THAT WOULD HELP EXPLAIN WHY YOU DIDN'T
15 DISCUSS THAT WITH HIM, IS THAT FAIR?

01:16PM

16 A I THINK THAT'S CORRECT.

17 Q NOW, MR. GUNDLACH DIDN'T END UP GOING TO
18 WAMCO, DID HE?

19 A I'M SORRY. I DIDN'T HEAR THAT.

20 Q MR. GUNDLACH DIDN'T END UP GOING TO WAMCO, DID
21 HE?

01:16PM

22 A THAT'S CORRECT.

23 Q YOU DIDN'T USE THESE FIGURES FOR ANYTHING
24 OTHER THAN MAKING COMPENSATION PROPOSAL TO
25 MR. GUNDLACH, RIGHT?

01:16PM

26 A THAT'S CORRECT.

27 MR. WEINGART: I HAVE NOTHING FURTHER.

28 THE COURT: MR. MADISON, REDIRECT.

1 MR. MADISON: JUST COUPLE OF QUESTIONS, YOUR
2 HONOR.

3

4

REDIRECT EXAMINATION +

5

BY MR. MADISON:

01:17PM

6

Q DO YOU KNOW HOW MANY FUNDS OR STRATEGIES TCW,
7 THE ENTIRE FIRM, HAVE THAT ARE 2 AND 20?

8

A I DO NOT.

9

Q WOULD IT SURPRISE YOU TO KNOW THE SPECIAL
10 MORTGAGE CREDIT FUNDS ARE THE ONLY TWO, OUT OF SCORES
11 OF FUNDS AND STRATEGIES THAT ARE 2 AND 20?

01:17PM

12

MR. WEINGART: OBJECTION. LEADING.

13

THE COURT: SUSTAINED.

14

BY MR. MADISON:

15

Q NOW, WHEN YOU SAID THAT CONVERTED FUNDS WOULD
16 FOLLOW MR. GUNDLACH, THEY'D FOLLOW HIM FROM ONE PLACE
17 TO ANOTHER, CORRECT?

01:17PM

18

A THAT'S CORRECT.

19

Q AND THE PLACE THEY'D END UP IS WAMCO?

20

MR. WEINGART: OBJECTION. ASKED AND ANSWERED.

01:17PM

21

THE COURT: I THINK WE'VE BEEN THROUGH THIS.

22

GO AHEAD, MR. MADISON.

23

MR. MADISON: I WANT TO MAKE CLEAR, WHEN YOU
24 WERE ANSWERING WEINGART'S QUESTIONS.

25

Q FOLLOW FROM TCW TO WAMCO?

01:17PM

26

A THAT WAS THE IDEA.

27

Q MR. WEINGART ASKED YOU IF MR. GUNDLACH SHARED
28 ANY INFORMATION THAT HAD BEEN TAKEN FROM TCW IN TERMS

1 OF COMPUTER SOFTWARE OR PROGRAMS.

2 DID MR. GUNDLACH TELL YOU THAT THERE WAS
3 DOWNLOADING OCCURRING IN THE FALL AT TCW?

4 MR. WEINGART: OBJECTION. BEYOND THE SCOPE.
5 ARGUMENTATIVE.

01:18PM

6 THE COURT: SUSTAINED.

7 BY MR. MADISON:

8 Q WHEN MR. WEINGART ASKED YOU ABOUT COMPUTER
9 INFORMATION, DID THAT SUBJECT EVER COME UP WITH
10 MR. GUNDLACH?

01:18PM

11 A NO.

12 MR. MADISON: NOTHING FURTHER.

13 THANK YOU, MR. BROSSY.

14 THE COURT: MR. BROSSY, THANK YOU FOR YOUR
15 TESTIMONY. YOU'RE EXCUSED.

01:18PM

16 MR. QUINN: YOUR HONOR, TCW CALLS
17 MICHAEL CAHILL.

18 THE COURT: ALL RIGHT.

19 THE CLERK: RAISE YOUR RIGHT HAND TO BE SWORN.

20

21 MICHAEL CAHILL +
22 CALLED AS A WITNESS BY THE PLAINTIFF WAS SWORN AND
23 TESTIFIED AS FOLLOWS:

24

25 THE CLERK: YOU DO SOLEMNLY STATE THAT THE
26 TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW
27 PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE
28 WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

1 THE WITNESS: I DO.

2 THE CLERK: THANK YOU.

3 PLEASE BE SEATED AND STATE AND SPELL
4 YOUR NAME FOR THE RECORD.

5 THE WITNESS: MICHAEL CAHILL. 01:19PM

6 THE COURT: GOOD AFTERNOON.

7 THE WITNESS: GOOD AFTERNOON.

8

9 DIRECT EXAMINATION +

10

01:19PM

11 BY MR. QUINN:

12 Q WHAT DO YOU DO, MR. CAHILL?

13 A I'M GENERAL COUNSEL AND EXECUTIVE VICE
14 PRESIDENT OF TCW.

15 Q AS GENERAL COUNSEL, CAN YOU JUST TELL THE JURY
16 GENERALLY WHAT YOUR JOB IS. 01:19PM

17 A I'M IN CHARGE OF THE LEGAL AFFAIRS OF THE
18 COMPANY, WHICH INCLUDES EVERYTHING FROM LITIGATION TO
19 REGULATORY MATTERS TO CONTRACTS, TO NEW FUNDS, TO
20 EMPLOYMENT MATTERS, JUST -- AND ANYTHING ELSE THAT
21 COMES UP. 01:19PM

22 Q HOW LONG HAVE YOU WORKED AT TCW?

23 A 20 YEARS.

24 Q HAVE YOU -- DO YOU WORK A LOT AND HAVE YOU
25 WORKED A LOT WITH THE FIXED INCOME AND MORTGAGE-BACKED
26 SECURITIES GROUP? 01:19PM

27 A YES, I HAVE.

28 Q DO YOU AND YOUR DEPARTMENT, LAWYERS WHO WORK

1 FOR YOU, HAVE RESPONSIBILITY FOR PUTTING THOSE FUNDS
2 TOGETHER?

3 A YES, WE'VE BEEN INVOLVED IN THE FORMATION OF
4 PRETTY MUCH ALL OF THE FUNDS IN THE FIXED INCOME GROUP.

5 Q WOULD THAT INCLUDE THE SPECIAL MORTGAGE CREDIT
6 FUNDS I AND II AND THE SOUTH DAKOTA FUND?

01:20PM

7 A YES.

8 Q YOU'RE INVOLVED IN ACTUALLY PREPARING THE
9 LIMITED PARTNERSHIP AGREEMENTS AND THE CONTRACTS WITH
10 INVESTORS AND THOSE SORTS OF THINGS?

01:20PM

11 A YES, AND THE OFFERING MEMORANDUM.

12 Q THE OFFERING MEMORANDUM, THAT'S WHAT GOES TO
13 INVESTORS WHO MIGHT BE INTERESTED TO DESCRIBE THE
14 OPPORTUNITY?

15 A THAT'S RIGHT.

01:20PM

16 Q AS PART OF YOUR WORK WITH THE FIXED INCOME AND
17 MORTGAGE-BACKED SECURITIES GROUP, DO YOU HAVE AN
18 UNDERSTANDING ABOUT WHAT TYPE OF INFORMATION IN THAT
19 GROUP IS REGARDED BY TCW AS COMPANY CONFIDENTIAL?

20 A WELL, I UNDERSTAND THAT PARTICULARLY.

01:20PM

21 MR. BRIAN: OBJECTION.

22 CALLS FOR YES OR NO, YOUR HONOR.

23 THE WITNESS: YES.

24 THE COURT: ASK THE NEXT QUESTION.

25 MR. QUINN: I WILL.

01:20PM

26 Q HOW IS IT THAT YOU KNOW WHAT YOU KNOW ABOUT
27 WHAT TYPES OF INFORMATION, REGARDING THOSE FUNDS, IS
28 REGARDED AS TCW AS BEING COMPANY CONFIDENTIAL

1 INFORMATION?

2 A JUST BY VIRTUE OF MY POSITION AND HOW THIS
3 INFORMATION GETS DISSEMINATED AND DOESN'T GET
4 DISSEMINATED EXTERNALLY.

5 Q HAVE YOU ALSO BEEN INVOLVED IN DOING VARIOUS
6 PUBLIC FILINGS THAT RELATE TO FUNDS?

01:21PM

7 A MY GROUP WOULD BE.

8 Q AND AS A RESULT OF THAT. CAN YOU TELL US
9 WHETHER OR NOT YOU HAVE AN UNDERSTANDING ABOUT WHAT
10 TYPES OF INFORMATION REGARDING THE FUNDS IS PUBLICLY
11 AVAILABLE AS OPPOSED TO INFORMATION WHICH IS NOT
12 PUBLICLY AVAILABLE?

01:21PM

13 A YES.

14 Q I'D ASK YOU. PLEASE. TO TAKE A LOOK AT
15 EXHIBIT 1899, WHICH WE'VE JUST BEEN DISCUSSING WITH
16 MR. BROSSY.

01:21PM

17 IF WE COULD PUT THAT UP ON THE SCREEN.
18 IT'S IN EVIDENCE, OF COURSE.

19 HAVE YOU HAD AN OPPORTUNITY TO REVIEW
20 THIS COMPENSATION PROPOSAL THAT WAS PREPARED BY
21 MR. BROSSY AND WAMCO, AND SUBMITTED TO MR. GUNDLACH?

01:21PM

22 A YES.

23 Q CAN YOU TELL US WHETHER OR NOT THERE IS
24 INFORMATION REFLECTED HERE WHICH IS REGARDED BY TCW AND
25 TREATED AS COMPANY CONFIDENTIAL INFORMATION?

01:22PM

26 MR. BRIAN: OBJECTION. CALLS FOR EXPERT
27 OPINION. UNDISCLOSED EXPERT OPINION.

28 MR. QUINN: IT'S PERCIPIENT.

1 THE COURT: OVERRULED.

2 THE WITNESS: WELL, I BELIEVE THE INFORMATION
3 THAT DISCLOSES REVENUE STREAMS FROM THE VARIOUS ASSET
4 CLASSES, I BELIEVE THAT WAS ON PAGE 8, WOULD BE
5 CONSIDERED CONFIDENTIAL.

01:22PM

6 BY MR. QUINN:

7 Q IS THIS 1899-8?

8 A I WAS LOOKING AT 1899-10, WHICH IS THE
9 SUMMARY --

10 Q LET'S TAKE THESE ONE AT A TIME.

01:22PM

11 IF WE'RE LOOKING AT PAGE 1899-10, ARE
12 YOU TELLING US THAT YOU KNOW THAT THERE IS INFORMATION
13 REFLECTED ON THIS PAGE WHICH IS REGARDED AS COMPANY
14 CONFIDENTIAL AND IS NOT PART OF ANY PUBLICLY
15 DISSEMINATED INFORMATION?

01:23PM

16 A YES, WE DO NOT PUBLICLY DISSEMINATE THIS.

17 Q WHAT IS THE INFORMATION YOU'RE REFERRING TO
18 HERE, SPECIFICALLY?

19 A ON THE DISTRESSED FUNDS, THE EARNINGS OF
20 \$60 MILLION OF REVENUE.

01:23PM

21 ON THE STRATEGIC MORTGAGE-BACKED
22 SECURITIES FUNDS, THAT THERE IS 30 MILLION OF REVENUE
23 AND 12 CLIENTS.

24 ON THE MUTUAL FUNDS, IT IS PUBLIC ASSETS
25 UNDER MANAGEMENT ARE 5.2, BUT THE 25 BASIS POINTS
26 DOESN'T REFLECT THE PUBLISHED MUTUAL FUND RATE, THAT
27 THIS IS A NET RATE AND THAT PUBLIC RATE IS A HIGHER
28 RATE.

01:23PM

1 THIS WOULD BE CONFIDENTIAL.

2 AND IN TERMS OF THE SEPARATE ACCOUNTS
3 REVENUE STREAMS, THAT WOULD NOT BE PUBLIC, EITHER.

4 Q THIS INFORMATION THAT YOU'VE IDENTIFIED IS NOT
5 PUBLICLY AVAILABLE?

01:23PM

6 A THAT'S CORRECT.

7 Q IS THERE ANY OTHER INFORMATION THAT IS IN
8 EXHIBIT 1899, WHICH YOU CAN TELL US IS TREATED AS
9 COMPANY CONFIDENTIAL INFORMATION AT TCW?

10 A WELL, ON PAGES 1899-6.

01:24PM

11 IT IS ESSENTIALLY AN EXTRAPOLATION OF
12 THE REVENUE STREAMS THAT WERE IDENTIFIED BEFORE.

13 SO, FOR EXAMPLE, THE REVENUE FOR HALF A
14 YEAR'S 30 MILLION ON A DISTRESSED FUNDS AND THEN IT
15 GOES TO 60 MILLION.

01:24PM

16 AND THEN THERE'S SOME ASSUMED GROWTH
17 FROM THERE. THAT WOULD BE -- THAT WOULD BE THE SAME
18 CONFIDENTIAL INFORMATION.

19 AND THEN THE CONVERTED REVENUE, THE NEXT
20 LINE DOWN, WHICH IS 28 MILLION, AND THEN IT'S
21 55 MILLION, THAT 55 MILLION IS THE SUM OF THE OTHER
22 THREE THAT WE SAW ON WHAT I CALL PAGE 8. OR -10.

01:24PM

23 SO THAT WOULD ALL BE CONFIDENTIAL.

24 IN ADDITION, IF THERE ARE PROJECTIONS
25 HERE THAT WERE SOURCED FROM A COMPANY OFFICIAL, SUCH AS
26 JEFFREY GUNDLACH, ON THE --

01:25PM

27 MR. BRIAN: OBJECTION. NO FOUNDATION.

28 THE COURT: SUSTAINED.

1 MR. BRIAN: MOVE TO STRIKE.

2 THE COURT: I WILL STRIKE IT.

3 BY MR. QUINN:

4 Q YOU'RE REFERRING TO PROJECTIONS ON THIS PAGE?

5 A I BELIEVE THIS PAGE --

01:25PM

6 Q -SIX?

7 A -SIX.

8 Q IS THERE A PARTICULAR PROJECTION YOU'RE
9 CALLING OUR ATTENTION TO?

10 A YES, JUST ONE MINUTE, PLEASE.

01:25PM

11 I DON'T SEE THEM ON THAT PAGE.

12 Q OKAY.

13 LET'S TURN, THEN TO, PAGE -7.

14 AT THE TOP THERE WE SEE SOME
15 INFORMATION. ASSUMES ANNUAL MANAGEMENT FEE, 2 PERCENT
16 OF THREE BILLION IN AUM.

01:26PM

17 CAN YOU TELL US WHETHER OR NOT THAT
18 INFORMATION IS PUBLICLY AVAILABLE?

19 A THE ASSUMED ANNUAL MANAGEMENT FEE OF
20 60 MILLION IS NOT PUBLICLY AVAILABLE.

01:26PM

21 AND THE CALCULATION OF THE PERFORMANCE
22 FEE, 33 MILLION PROJECTED, IS NOT PUBLICLY AVAILABLE.

23 Q DO YOU KNOW HOW MANY FUNDS THERE ARE AT TCW
24 THAT HAVE WHAT MR. BROSSY REFERRED TO AS 2 AND 20, IN
25 TERMS OF THE MANAGEMENT AND INCENTIVE FEES?

01:26PM

26 A I DON'T RECALL THE NUMBER SPECIFICALLY.

27 THERE ARE OTHERS THAT HAVE SIMILAR FEE
28 STRUCTURES.

1 Q ALL RIGHT.

2 BUT THAT'S NOT SOMETHING THAT IS COMMON
3 TO ALL OF TCW'S FUNDS THAT --

4 MR. BRIAN: OBJECTION. LEADING.

5 THE COURT: SUSTAINED.

01:27PM

6 BY MR. QUINN:

7 Q CAN YOU TELL US WHETHER OR NOT THAT IS A
8 COMMON FEE STRUCTURE, 2 AND 20 --

9 A IT'S --

10 Q -- FOR TCW FUNDS?

01:27PM

11 A IT'S USED PRIMARILY IN CLOSED-END FUNDS THAT
12 ARE PRIVATE.

13 Q AND ARE THERE OTHER PRIVATE, CLOSED-END FUNDS
14 AT TCW THAT HAVE A 2 AND 20 STRUCTURE, OTHER THAN THE
15 DISTRESSED FUNDS HERE?

01:27PM

16 A I CAN'T RECALL IF IT'S EXACTLY 2 AND 20, BUT,
17 FOR EXAMPLE, THERE WOULD BE ENERGY FUNDS THAT WOULD
18 HAVE A SIMILAR STRUCTURE OR MEZZANINE FUNDS THAT WOULD
19 HAVE A SIMILAR STRUCTURE.

20 Q IF WE LOOK AT PAGE, -20, THERE'S A REFERENCE
21 THERE TO SOME MUTUAL FUND FEES, UNDER MUTUAL FUND.

01:27PM

22 A 1899-20?

23 Q YES. -10. I'M SORRY. -10.

24 A OKAY. YES.

25 Q YOU'LL SEE REFERENCE THERE TO MUTUAL FUND
26 FEES, THERE AT THE BOTTOM.

01:28PM

27 A YES.

28 Q COULD YOU TELL US WHETHER OR NOT THOSE FEES

1 THERE ARE PUBLICLY AVAILABLE?

2 A NO, THEY'RE NOT.

3 Q ANYTHING ELSE ON THAT PAGE THAT IS NOT
4 PUBLICLY AVAILABLE THAT WE HAVEN'T ALREADY COVERED?

5 A THE FACT THAT THE CARRY MAY NOT BE EARNED FOR
6 A COUPLE OF YEARS MAY NOT BE PUBLICLY AVAILABLE.

01:28PM

7 Q OKAY.

8 I'D LIKE TO JUST KIND OF QUICKLY, IF WE
9 CAN, GO THROUGH SOME DOCUMENTS AND OFFER THEM IN
10 EVIDENCE. YOU GOT A BINDER THERE. IF YOU'D TURN TO --

01:28PM

11 THE COURT: I HAVEN'T RECEIVED A COPY OF HIS
12 BINDER.

13 MR. QUINN: ACTUALLY, I THINK THE CLERK DOES
14 IT, YOUR HONOR.

15 THE COURT: THIS SAYS BROSSY.

01:29PM

16 GOT IT NOW. THANK YOU.

17 THE CLERK: SURE.

18 THE COURT: OKAY.

19 BY MR. QUINN:

20 Q MR. CAHILL, IF I COULD ASK YOU TO TURN TO
21 EXHIBIT 1113.

01:29PM

22 I'LL ASK YOU IF YOU CAN IDENTIFY THAT
23 DOCUMENT FOR US.

24 A THAT'S THE LIMITED PARTNERSHIP FOR THE TCW SD
25 SPECIAL MORTGAGE CREDIT FUND, WHICH IS A SINGLE CLIENT
26 FUND.

01:29PM

27 MR. QUINN: WE'D OFFER THAT IN EVIDENCE.

28 MR. BRIAN: NO OBJECTION.

1 THE COURT: IT WILL BE ADMITTED.

2

3 (EXHIBIT 1113 ADMITTED.) +

4

5 MR. QUINN: PUT UP THE FIRST PAGE SO THE JURY
6 CAN GET AN IDEA WHAT WE'RE TALKING ABOUT.

01:29PM

7 Q IF YOU'D TURN, PLEASE, TO EXHIBIT 5038.

8 CAN YOU IDENTIFY THAT DOCUMENT?

9 A THAT'S THE PRIVATE PLACEMENT MEMORANDUM FOR
10 SPECIAL CREDITS MORTGAGE FUND.

01:30PM

11 Q FUND I?

12 A THAT'S KNOWN AS FUND I.

13 Q ALL RIGHT.

14 THIS IS THE DOCUMENT YOU REFERRED TO
15 THAT'S PROVIDED TO INVESTORS WHO MIGHT BE INTERESTED?

01:30PM

16 A YES. THIS IS THE PRIVATE PLACEMENT MEMORANDUM
17 FOR INVESTORS.

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

19 MR. BRIAN: NO OBJECTION.

20 THE COURT: IT WILL BE ADMITTED.

01:30PM

21

22 (EXHIBIT 5038 ADMITTED.) +

23

24 MR. QUINN: IF WE CAN SHOW THE JURY THE FIRST
25 PAGE.

01:30PM

26 Q AND THEN GO TO, MIKE, IF WE GO TO PAGE -36.

27 ENLARGE AT THE BOTTOM, THE PARAGRAPH:

28 DEPENDENCE ON KEY PERSONNEL, IT

1 SAYS.

2 THE SUCCESS OF THE FUND DEPENDS
3 IN SUBSTANTIAL PART ON THE SKILL
4 AND EXPERTISE OF THE SENIOR
5 EXECUTIVES OF TCW AND OTHER
6 EMPLOYEES AND THE MANAGER. THERE
7 CAN BE NO ASSURANCE THAT THE SENIOR
8 EXECUTIVES OF TCW OR OTHER
9 EMPLOYEES OF THE MANAGER WILL
10 CONTINUE TO BE EMPLOYED BY THE
11 MANAGER THROUGHOUT THE LIFE OF THE
12 FUND. THE LOSS OF KEY PERSONNEL
13 COULD HAVE A MATERIAL ADVERSE
14 EFFECT ON THE FUNDS.

01:30PM

01:31PM

01:31PM

15 DO YOU SEE THAT?

16 A YES, I DO.

17 Q CAN YOU EXPLAIN TO US WHAT INVESTORS ARE BEING
18 INFORMED HERE?

19 A THIS IS A RISK FACTOR BEING DISCLOSED TO THE
20 INVESTORS TO TELL THEM THAT THERE'S NO ASSURANCE THAT
21 THE PEOPLE THAT WERE THERE AT THE INCEPTION OF THE FUND
22 WILL CONTINUE TO BE THERE THROUGH THE LIFE OF THE FUND.

01:31PM

23 AND THAT FOR ANY VARIETY OF REASONS THEY
24 MAY NOT, AND THAT'S A FACTOR TO TAKE INTO ACCOUNT IN
25 MAKING THE INVESTMENT.

01:31PM

26 Q THAT WOULD INCLUDE MR. GUNDLACH?

27 A YES.

28 Q AND MR. BARACH AND OTHER PEOPLE ON HIS TEAM?

1 A YES.

2 Q WOULD YOU TURN NOW, PLEASE, TO EXHIBIT 5065.

3 AND MY QUESTION WILL BE WHETHER YOU CAN
4 IDENTIFY THIS.

5 A YES, THIS IS THE CONFIDENTIAL, PRIVATE
6 PLACEMENT MEMORANDUM FOR TCW'S SPECIAL MORTGAGE CREDIT
7 FUND II.

01:31PM

8 MR. QUINN: WE'D OFFER THIS.

9 MR. BRIAN: NO OBJECTION.

10 THE COURT: IT WILL BE ADMITTED.

01:32PM

11

12 (EXHIBIT 5065 ADMITTED.) +

13

14 BY MR. QUINN:

15 Q LOOK AT THE FIRST PAGE. AND THEN QUICKLY GO
16 TO PAGE -41 OF THE EXHIBIT, MIKE.

01:32PM

17 IS THERE A SIMILAR DISCLOSURE THERE ON
18 -41 ABOUT DEPENDENCE ON KEY PERSONNEL, I.E., THAT
19 MR. GUNDLACH AND OTHERS MAY NOT STAY WITH THE FUND?

20 A YES. THAT'S THE SAME DISCLOSURE AS IN FUND I.

01:32PM

21 Q TURN NOW, PLEASE, TO EXHIBIT 2198.

22 GOT IT?

23 A YES.

24 Q CAN YOU IDENTIFY THIS FOR US, PLEASE?

25 A THIS IS AN AMENDMENT THAT WAS DONE TO THE
26 SPECIAL MORTGAGE CREDIT FUND I. IT'S AN AMENDMENT TO
27 THE LIMITED PARTNERSHIP AGREEMENT.

01:32PM

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

1 MR. BRIAN: NO OBJECTION.

2 THE COURT: IT WILL BE ADMITTED.

3

4 (EXHIBIT 2198 ADMITTED.) +

5

01:33PM

6 MR. QUINN: IF WE CAN PUT THE FIRST PAGE ON
7 THE SCREEN, MIKE.

8 Q WE'VE HEARD ABOUT AMENDMENTS THAT WERE DONE TO
9 THE AGREEMENTS WITH INVESTORS AFTER MR. GUNDLACH LEFT
10 TCW.

01:33PM

11 A YES.

12 Q IS THIS THE AMENDMENT THAT'S REFERRED TO WHERE
13 THE MANAGEMENT FEES WERE REDUCED AND INVESTORS WERE
14 GIVEN A LIQUIDITY OPTION?

15 A THAT'S CORRECT.

01:33PM

16 Q I'D ASK YOU TO PLEASE TURN TO EXHIBIT 2199.

17 I'LL ASK YOU WHAT THAT IS.

18 A THAT'S AN AMENDMENT TO THE SPECIAL MORTGAGE
19 CREDIT FUND II LIMITED PARTNERSHIP AGREEMENT.

20 MR. QUINN: OFFER THAT.

01:33PM

21 MR. BRIAN: NO OBJECTION.

22 THE COURT: ADMITTED.

23

24 (EXHIBIT 2199 ADMITTED.) +

25

01:33PM

26 BY MR. QUINN:

27 Q THAT'S THE SIMILAR AMENDMENT THAT WAS DONE
28 WITH RESPECT TO SPECIAL MORTGAGE CREDIT FUND II?

1 A IT IS.

2 Q AND THEN 2195 -- 1295.

3 CAN YOU IDENTIFY THIS?

4 A THIS IS THE AMENDMENT THAT WAS DONE TO THE TCW
5 SD SPECIAL MORTGAGE CREDIT FUND, WHICH IS THAT SINGLE
6 CLIENT FUND.

01:34PM

7 Q THAT'S WHAT'S BEEN SOMETIMES REFERRED TO AS
8 SOUTH DAKOTA SPECIAL CREDIT MORTGAGE CREDIT FUND?

9 A YES. SOUTH DAKOTA.

10 MR. QUINN: WE'D OFFER THAT AS WELL, YOUR
11 HONOR.

01:34PM

12 MR. BRIAN: OBJECTION.

13 THE COURT: IT WILL BE ADMITTED.

14

15 (EXHIBIT 1295 ADMITTED.) +

01:34PM

16

17 BY MR. QUINN:

18 Q NOW, AFTER -- CAN YOU TELL US WHETHER, IN THE
19 FALL OF 2009, IT CAME TO YOUR ATTENTION, EVER CAME TO
20 YOUR ATTENTION AS CHIEF LEGAL OFFICER AT TCW, THAT
21 CLIENT PRIVATE INFORMATION HAD BEEN COMPROMISED?

01:34PM

22 A YES.

23 Q WHAT DID YOU -- WHAT TYPES OF CLIENT PRIVATE
24 INFORMATION HAD BEEN COMPROMISED, AS YOU LEARNED IT?

25 A WELL, WE LEARNED THAT CLIENT CONTACT
26 INFORMATION, PORTFOLIO HOLDINGS INFORMATION, AND IN
27 MANY CASES NOTES REGARDING CONVERSATIONS WITH CLIENTS,
28 ET CETERA, WERE BEING AMASSED IN A FILE SOMEWHERE THAT

01:34PM

1 WAS BEING INITIALLY ON -- RESIDING ON THE TCW SYSTEMS.

2 ULTIMATELY, WE FOUND THAT THAT DATA WAS
3 BEING DOWNLOADED TO AN EXTERNAL HARD DRIVE OFF OF TCW'S
4 SYSTEMS.

5 Q DID YOU FIND THAT THAT INFORMATION INCLUDED
6 SOCIAL SECURITY NUMBER --

01:35PM

7 A YES.

8 Q -- TAX INFORMATION?

9 MR. BRIAN: OBJECTION. RELEVANCE. 352.

10 THE COURT: WE'LL MOVE THROUGH IT.

01:35PM

11 OVERRULED.

12 THE WITNESS: IN SOME CASES IT HAD TAXPAYER
13 IDENTIFICATION INFORMATION FOR COMPANIES.

14 BY MR. QUINN:

15 Q BANK ACCOUNT INFORMATION?

01:35PM

16 A SOME CASES HAD BANK ACCOUNT INFORMATION.

17 Q ALL RIGHT.

18 AND AS -- ARE YOU AWARE OF LEGAL
19 REQUIREMENTS THAT APPLY TO COMPANIES WHEN THEY LEARN
20 THAT INFORMATION LIKE THAT HAS BEEN COMPROMISED?

01:35PM

21 A A FINANCIAL INSTITUTION IS REQUIRED TO KEEP
22 THIS INFORMATION CONFIDENTIAL. AND IF THAT KIND OF
23 INFORMATION IS DISCLOSED, THERE'S AN OBLIGATION TO
24 CONTACT THE PEOPLE WHOSE INFORMATION HAS BEEN
25 COMPROMISED AND TELL THEM ABOUT IT.

01:36PM

26 Q THAT'S A REQUIREMENT UNDER LAW, THAT IF
27 THERE'S A BREACH OF THE CONFIDENTIALITY OF THAT TYPE OF
28 INFORMATION, YOU NEED TO NOTIFY THE PEOPLE, PEOPLE

1 WHOSE INFORMATION HAS BEEN TAKEN?

2 A YES.

3 Q IS THAT SOMETHING TCW DID IN THE FALL OF 2009?
4 DID YOU NOTIFY PEOPLE THIS INFORMATION HAD BEEN
5 COMPROMISED?

01:36PM

6 A WE DID IT IN THE WINTER OF 2009.

7 Q ALL RIGHT.

8 AND IF YOU'D TAKE A LOOK AT
9 EXHIBITS 2271, 2272, AND 2273.

10 I'LL ASK YOU IF YOU CAN IDENTIFY THOSE
11 DOCUMENTS.

01:36PM

12 A YES.

13 Q WHAT ARE THEY?

14 A THOSE ARE THREE FORMS OF DOCUMENTS THAT WERE
15 SENT TO CLIENTS, DEPENDING ON THE NATURE OF THE
16 INFORMATION THAT WE DETERMINED OF THEIRS THAT WAS
17 COMPROMISED, AND DEPENDING ON THE NATURE OF THE
18 INFORMATION, WE'D SEND THEM ONE LETTER, ANOTHER LETTER,
19 OR THE THIRD LETTER.

01:36PM

20 Q THERE WAS A FORM OF LETTER -- IF SOMEONE HAD A
21 SOCIAL SECURITY NUMBER COMPROMISED, THERE'S ONE FORM.

01:37PM

22 ANOTHER FORM IF IT WAS TAX INFORMATION.
23 AND ANOTHER FORM IF IT WAS BANK ACCOUNT
24 INFORMATION?

25 A CORRECT.

01:37PM

26 Q AND ARE THESE THREE LETTERS EXEMPLARS OF THOSE
27 LETTERS THAT TCW SENT OUT?

28 A YES. THESE ARE REPRESENTATIVE LETTERS.

1 MR. QUINN: WE'D OFFER THESE THREE, YOUR
2 HONOR.

3 MR. BRIAN: NO OBJECTION.

4 THE COURT: THEY'LL BE ADMITTED.

5

01:37PM

6 (EXHIBITS 2271, 2272 AND 2273 ADMITTED.) +

7

8 MR. QUINN: IF WE CAN BRIEFLY SHOW THE JURY
9 THESE THREE EXHIBITS.

10

01:37PM

11 AND WE HAVE REDACTED OUT THE NAMES OF
12 THE CLIENTS SO THAT WE DON'T ONCE AGAIN DISCLOSE CLIENT
13 INFORMATION.

13

THE WITNESS: CORRECT.

14

BY MR. QUINN:

15

Q IF YOU'D LOOK, PLEASE, AT EXHIBIT 2274.

01:37PM

16

17 THERE HAS BEEN TESTIMONY IN THIS CASE
18 THAT THE TRANSACTION WITH MET WEST REQUIRED FEDERAL
19 RESERVE OR A -- BOARD APPROVAL.

19

ARE YOU AWARE OF SUCH APPROVAL?

20

A YES.

01:38PM

21

Q AND DID TCW MAKE AN -- AN APPLICATION TO GET
22 APPROVAL FROM THE FEDERAL RESERVE BOARD?

23

A TCW DID.

24

Q COULD YOU PLEASE IDENTIFY EXHIBIT 2274 A.

25

A YES. THAT'S THE APPLICATION THAT WAS MADE TO
26 THE FEDERAL RESERVE ON DECEMBER 2ND.

01:38PM

27

MR. QUINN: WE'D OFFER THAT.

28

MR. BRIAN: NO OBJECTION.

1 THE COURT: IT WILL BE ADMITTED.

2

3 (EXHIBIT 2274 A ADMITTED.) +

4

5 BY MR. QUINN:

01:38PM

6 Q THAT APPROVAL WAS OBTAINED?

7 A YES, IT WAS.

8 Q THE -- IF I COULD GO BACK FOR A MOMENT TO THE

9 LETTERS THAT WERE SENT TO CLIENTS TO ADVISE THEM

10 INFORMATION HAD BEEN TAKEN.

01:38PM

11 DID THIS RELATE TO THE ACTIVITIES OF THE

12 DEFENDANTS IN THIS CASE?

13 A YES. IT RELATED TO THE INFORMATION THAT HAD

14 BEEN DOWNLOADED OFF OF TCW'S SYSTEMS.

15 Q AND ARE YOU INVOLVED -- CHANGING SUBJECTS

01:39PM

16 AGAIN -- ARE YOU -- WERE YOU INVOLVED BACK IN THE

17 1990'S IN THE CONNECTION WITH THE ISSUANCE OF STOCK TO

18 TCW EMPLOYEES?

19 A YES, I WAS.

20 Q WHAT WERE YOUR RESPONSIBILITIES IN THAT

01:39PM

21 REGARD?

22 A WELL, WHENEVER THERE WAS STOCK ISSUED IN THE

23 COMPANY, MY GROUP WOULD GET INVOLVED IN ISSUING THE

24 STOCK AND HAVING THE DOCUMENTATION AND MAKING SURE

25 EVERYTHING HAPPENED THE WAY IT WAS SUPPOSED TO HAPPEN.

01:39PM

26 Q IN THAT CONNECTION, WHEN MR. GUNDLACH WOULD

27 ACQUIRE STOCK IN TCW, YOUR GROUP WOULD BE INVOLVED IN

28 DOCUMENTING THAT?

1 A YES.

2 Q IF YOU TAKE A LOOK AT EXHIBIT 2164, AND 2157.
3 WE CAN TAKE THOSE ONE AT A TIME.

4 FIRST, 2164, CAN YOU IDENTIFY THAT FOR
5 US.

01:39PM

6 A 2164 IS A LETTER THAT WAS SENT TO SHAREHOLDERS
7 OF TCW SHORTLY BEFORE THE CLOSING OF THE TRANSACTION
8 WITH SOCIÉTÉ GÉNÉRALE.

9 IT TOLD SHAREHOLDERS WHAT THEY PAID FOR
10 THEIR STOCK AND WHAT THEIR TAX BASIS WAS IN THEIR STOCK
11 IN THE COMPANY. JUST FOR INFORMATIONAL PURPOSES.

01:40PM

12 Q THEN WHAT IS 2157?

13 A 2157 IS AN AGREEMENT WHEREBY MR. GUNDLACH
14 BOUGHT SOME SHARES, NOT FROM THE COMPANY BUT FROM
15 ANOTHER SHAREHOLDER IN THE COMPANY BACK IN MAY OF 1992.

01:40PM

16 MR. QUINN: I'D OFFER THESE TWO DOCUMENTS,
17 2164 AND 2157.

18 THE COURT: ANY OBJECTION?

19 MR. BRIAN: ONE MOMENT, YOUR HONOR.

20 NO OBJECTION.

01:40PM

21 THE COURT: IT WILL BE ADMITTED.

22

23 (EXHIBITS 2164 AND 2157 ADMITTED.) +

24

25 BY MR. QUINN:

01:40PM

26 Q CAN YOU TELL FROM LOOKING AT THESE TWO
27 DOCUMENTS, HOW MUCH MR. GUNDLACH SPENT TO ACQUIRE THE
28 STOCK IN TCW THAT HE OBTAINED?

1 A YES. YOU CAN.

2 Q WHAT'S THE TOTAL?

3 A THE TOTAL IS \$2.67 MILLION.

4 Q SO \$2,697,000, ROUGHLY, THAT HE SPENT?

5 A YEAH, ABOUT 2,697,000.

01:41PM

6 Q ALL RIGHT.

7 AND THEN AFTER, SOCIÉTÉ GÉNÉRALE BOUGHT
8 THE STOCK THAT TCW EMPLOYEES HAD?

9 A YES. THEY DID.

10 Q CAN YOU TELL US HOW THAT HAPPENED?

01:41PM

11 A WELL, THEY BOUGHT 51 PERCENT OF THE STOCK IN
12 2001. AND OVER THE COURSE OF THE NEXT FEW YEARS, FOUR
13 YEARS, THEY BOUGHT SLICES OF ABOUT ALMOST 5 PERCENT.

14 AND THEN WHEN THEY GOT TO 70 PERCENT,
15 THERE WAS A REMAINING AMOUNT CALLED 30 PERCENT RETAINED
16 INTEREST. AND THAT ONE THEY BOUGHT LATER ON, IN MOST
17 CASES, 2008, BUT IN MR. GUNDLACH'S CASE, 2007, BECAUSE
18 HE HAS RIGHT TO SELL IT EARLY.

01:41PM

19 Q BY 2000 -- 2007, MR. GUNDLACH SOLD HIS LAST
20 CHUNK OF STOCK?

01:42PM

21 A YES.

22 Q AND THERE'S BEEN TESTIMONY IN THIS CASE THAT
23 HE GOT 40- TO \$50 MILLION FOR THIS STOCK.

24 YOU'RE AWARE OF THAT TESTIMONY?

25 A I'VE HEARD IT.

01:42PM

26 Q AND THE COST OF THAT STOCK TO HIM HAD BEEN,
27 YOU'VE TOLD US, \$2,697,000?

28 A YES.

1 Q COULD YOU TAKE A LOOK, PLEASE, AT
2 EXHIBIT 5602.

3 THIS IS IN EVIDENCE. IF WE COULD PUT
4 THAT UP ON THE SCREEN. WE SAW THIS. WE CAN START WITH
5 THE BOTTOM E-MAIL, MIKE.

01:43PM

6 AN E-MAIL FROM A STUART LUCAS DATED
7 DECEMBER 11TH, 2009. THIS CAME INTO EVIDENCE WITH
8 MR. STERN ON THE STAND.

9 HE SAYS THAT HE:

10 IS DEEPLY TROUBLED BY THIS CHAIN OF
11 EVENTS AND FINDS TCW'S ACTIONS
12 INCONSISTENT WITH A FIDUCIARY
13 RESPONSIBILITY TO ITS INVESTORS.

01:43PM

14 SPECIFICALLY TO MY FAMILY, WHO ARE
15 INVESTORS IN SMBS. AND SMCF FUNDS,
16 YOU HAVE DECAPITATED YOUR MORTGAGE
17 TEAM AND EMPLOYEES ARE LEAVING IN
18 DROVES. YOU FIRED ARGUABLY THE TOP
19 FIXED INCOME INVESTOR IN THE U.S.

01:43PM

20 HE HAS SPECIAL EXPERTISE,
21 ET CETERA.

01:43PM

22 DO YOU SEE THAT?

23 A YES.

24 Q DO YOU KNOW WHETHER OR NOT MR. LUCAS IS A
25 COLLEGE CLASSMATE OF MR. GUNDLACH?

01:43PM

26 MR. BRIAN: FOUNDATION. IRRELEVANT. 352.

27 THE COURT: OVERRULED.

28 THE WITNESS: HE IS --

1 THE COURT: I'LL SUSTAIN IT BASED ON
2 FOUNDATION.

3 BY MR. QUINN:

4 Q ALL RIGHT.

5 HAVE YOU -- DO YOU KNOW WHETHER THEY
6 ATTENDED DARTMOUTH COLLEGE TOGETHER? YES OR NO?

01:44PM

7 MR. BRIAN: FOUNDATION.

8 THE WITNESS: YES.

9 BY MR. QUINN:

10 Q HOW DO YOU KNOW THAT?

01:44PM

11 A FIRST OF ALL, I LOOKED AT THE DARTMOUTH
12 CONTRIBUTOR LIST FOR MEMBERS OF THE CLASS OF '81, WHICH
13 IS MR. GUNDLACH'S CLASS. AND MR. LUCAS WAS A
14 CONTRIBUTOR.

15 AND I ALSO REVIEWED A NOTE THAT WAS
16 PREPARED BY A CLIENT REPRESENTATIVE AT TCW BACK IN
17 2008. THAT INDICATED MR. GUNDLACH WAS FRIENDS WITH
18 MR. LUCAS. COLLEGE FRIENDS.

01:44PM

19 Q DO YOU KNOW WHETHER OR NOT THE TWO OF THEM
20 HAVE A -- HAD IN DECEMBER OF 2009 A CLOSE RELATIONSHIP?

01:44PM

21 MR. BRIAN: OBJECTION. FOUNDATION.

22 THE COURT: SUSTAINED.

23 BY MR. QUINN:

24 Q DID YOU WORK WITH MR. GUNDLACH YOURSELF?

25 A YES.

01:45PM

26 Q AND ROUGHLY HOW MANY YEARS DID YOU WORK WITH
27 MR. GUNDLACH?

28 A 18 YEARS.

1 Q DID YOU FEEL THAT YOU HAD A REASONABLY GOOD
2 WORKING RELATIONSHIP WITH HIM?

3 A YES, I THOUGHT I HAD A GOOD RELATIONSHIP WITH
4 HIM.

5 Q COULD YOU DESCRIBE FOR THE JURY GENERALLY THE
6 TYPES OF THINGS THAT YOU WOULD WORK WITH MR. GUNDLACH
7 ON?

01:45PM

8 A WELL, IN THE 1990'S, WORKED A LOT ON NEW
9 CONTRACTS THAT WERE COMING IN. THE MORTGAGE-BACKED
10 AREA WAS BUSY FOR A WHILE.

01:45PM

11 AND IN ADDITION, THERE WAS A VERY LARGE
12 AMOUNT OF LITIGATION IN THE 1990'S THAT EMANATED OUT OF
13 THE MORTGAGE-BACKED GROUP. BOTH IN THE U.S. AND A
14 BROAD.

15 SO I SPENT A LOT OF TIME WORKING ON THAT
16 LITIGATION.

01:45PM

17 ALSO, THERE WERE NEW FUNDS BEING CREATED
18 IN THAT PERIOD OF TIME. THAT I WAS INVOLVED IN WITH A
19 MUTUAL FUND PARTNER CALLED DEAN WITTER AND OTHER FUNDS,
20 STRATEGIC MORTGAGE-BACKED FUNDS GOT DEVELOPED OVER
21 TIME.

01:45PM

22 CDO BUSINESS WHICH DEVELOPED
23 SIGNIFICANTLY IN THE EARLY 2000'S AND MID 2000'S. BOTH
24 DIFFERENT KINDS OF CDO'S.

25 AND OTHER FUNDS. THERE WERE REGULATORY
26 AND COMPLIANCE ISSUES. SOMETIMES MARKETING ISSUES.
27 AND A NUMBER OF THINGS.

01:46PM

28 Q FAIR TO SAY YOU HAD CONTACT WITH MR. GUNDLACH

1 ON A HOST OF ISSUES OVER A PERIOD OF MANY YEARS?

2 A YES.

3 Q WE'VE HEARD TESTIMONY ABOUT REMARKS THAT
4 MR. GUNDLACH WOULD MAKE IN THE COMPANY LUNCH ROOM.

5 WERE YOU EVER IN THE LUNCH ROOM WHEN
6 THERE WAS ONE OF THOSE EPISODES?

01:46PM

7 A YES.

8 Q IS THERE ONE FROM THE 2009 TIME FRAME THAT
9 STANDS OUT IN YOUR MIND?

10 A THERE'S ONE THAT STANDS OUT IN MY MIND, YES.

01:46PM

11 Q COULD YOU PLEASE DESCRIBE THAT FOR THE JURY?

12 A WE WERE SITTING AT A TABLE HAVING LUNCH, AND
13 MR. GUNDLACH AND I ARE AT THE SAME TABLE ACROSS FROM
14 EACH OTHER. THEY ARE LONG TABLES.

15 AND THEN THERE WAS ANOTHER LONG TABLE,
16 KIND OF 90 DEGREES FROM THIS ONE AT WHICH MR. REILLY,
17 THE -- WHO AT THAT TIME WAS THE HEAD OF EQUITY RESEARCH
18 DIVISION, WAS SITTING DOWN.

01:46PM

19 AND MR. GUNDLACH SAW MR. REILLY AND
20 LEANED BACK IN HIS CHAIR, VERY PRONOUNCEDLY AND
21 BASICALLY SAID, VERY, VERY LOUDLY: "WHEN ARE DIANE'S
22 ASSETS GOING DOWN TO ZERO?"

01:47PM

23 DIANE BEING ONE OF THE EQUITY PORTFOLIO
24 MANAGERS IN THE COMPANY.

25 AND THAT WAS A TIME WHEN THERE WAS SOME
26 DIFFICULTIES IN THE MARKET, SO ASSETS WERE GOING DOWN.
27 AND THERE WAS SOME LOSS OF ASSETS, PLUS MARKET TO VALUE
28 DEPRECIATION AT THE TIME.

01:47PM

1 Q WAS HE CHIEF INVESTMENT OFFICER FOR THE ENTIRE
2 COMPANY --

3 A YES.

4 Q -- AT THE TIME OF THAT?

5 A YES.

01:47PM

6 Q AND WHAT WAS HIS TONE WHEN HE MADE THIS
7 REMARK: "WHEN ARE DIANE'S ASSETS GOING TO ZERO?"

8 A IT WAS KIND OF RIDICULE.

9 Q WAS THERE AN OCCASION IN A CONVERSATION IN
10 2009 WHERE HE MADE A THREAT REGARDING THE COMPANY THAT
11 WAS TROUBLING TO YOU?

01:47PM

12 A ON ONE OCCASION --

13 MR. BRIAN: FOUNDATION AS TO TIME.

14 THE COURT: VAGUE AS TO TIME, I THINK.

15 YOU NEED TO CLARIFY.

01:47PM

16 BY MR. QUINN:

17 Q YOU'RE OBVIOUSLY THINKING OF A PARTICULAR
18 OCCASION?

19 A YES.

20 Q COULD YOU PLEASE TELL US WHEN, APPROXIMATELY,
21 THAT WAS.

01:48PM

22 A IT WAS IN JUNE OF 2009.

23 Q AND WHAT HAPPENED?

24 A WE WERE GOING TO HAVE A PHONE CALL WITH A
25 CLIENT THE NEXT DAY, WHO WAS MAKING SOME REQUESTS THAT
26 I DIDN'T THINK WERE VERY GOOD, AND NEITHER DID
27 MR. GUNDLACH.

01:48PM

28 SO, IN GETTING READY FOR THE PHONE CALL,

1 I WANTED TO TOUCH BASE WITH HIM AND TALK ABOUT HOW WE
2 WOULD ADDRESS THAT. I CALLED HIM, AND THEN LATER ON IN
3 THE DAY HE CALLED ME ON MY CELL PHONE AND WE STARTED TO
4 DISCUSS IT.

5 AND WHAT THE CLIENT WANTED IS THEY 01:48PM
6 WANTED HIM TO MANAGE THEIR ACCOUNT AND THE REST OF HIS
7 TEAM TO MANAGE ALL THE OTHER MORTGAGE-BACKED ACCOUNTS,
8 WHICH NEITHER OF US THOUGHT WAS A GOOD IDEA.

9 AND SO I WAS GOING TO BRAINSTORM WITH
10 HIM ON HOW WE WOULD ADDRESS THIS WITH THE CLIENT. 01:48PM

11 AND HE JUST SAID, WELL, WE DON'T NEED TO
12 ADDRESS IT. I'LL JUST TELL THEM I'LL BANKRUPT TCW.

13 Q THAT HE WOULD BANKRUPT TCW?

14 A YES. THAT HE WOULD GO ALONG WITH THEIR PLAN
15 AND BANKRUPT TCW. 01:49PM

16 Q DID HE SAY THIS IN A JOKING MANNER?

17 A NO.

18 Q DID YOU TAKE IT SERIOUSLY?

19 A I TOOK IT SERIOUSLY. I TOLD HIM I DIDN'T
20 THINK THAT WAS -- A GOOD WAY TO APPROACH THIS. AND WE 01:49PM
21 SHOULDN'T DO IT THAT WAY.

22 HE SAYS, WELL, IT'S VERY SIMPLE. IF I
23 DO THAT, I'LL ACCEDE TO THEIR DEMAND. I'LL DO THAT AND
24 I'LL BANKRUPT TCW IN THE PROCESS.

25 Q WAS THERE ANY FURTHER DISCUSSION OF THAT? 01:49PM

26 A I MEAN, WE DISCUSSED IT FOR A FEW MINUTES.
27 WITH MY, YOU KNOW, OBJECTION TO THE APPROACH. AND THEN
28 IT BOTHERED ME THAT NIGHT, AND THE NEXT MORNING I SENT

1 HIM AN E-MAIL, BASICALLY SAYING, YOU KNOW, PLEASE DON'T
2 USE YOUR BANKRUPTCY APPROACH.

3 MR. QUINN: THAT'S ALL I HAVE, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 CROSS-EXAMINATION, MR. BRIAN.

01:49PM

6 MR. QUINN: ONE REMAINING DOCUMENT. WHILE
7 MR. BRIAN IS --

8 MR. BRIAN: SO LONG AS YOU GIVE ME SPACE.

9 MR. QUINN: EXHIBIT 2080. WE DISCUSSED THIS
10 ONE, YOUR HONOR.

01:50PM

11 THE COURT: I WAS WONDERING.

12 2080?

13 MR. QUINN: YES, 2080.

14 Q CAN YOU IDENTIFY EXHIBIT 2080?

15 A YES.

01:50PM

16 Q WHAT IS IT?

17 A THIS IS AN ASSIGNMENT OF CLAIMS. BY --

18 MR. QUINN: WE'D OFFER THAT.

19 MR. BRIAN: SAME OBJECTION WE MADE EARLIER.

20 THE COURT: YES.

01:50PM

21 IT WILL BE CONDITIONALLY ADMITTED,
22 SUBJECT TO THE OBJECTION, AND SUBJECT TO A FURTHER
23 MOTION ON THE SUBJECT.

24 MR. QUINN: NOW I AM DONE.

25 THE COURT: I WONDERED.

01:50PM

26 MR. QUINN: THANK YOU.

27 SORRY.

28 ///

1 BY MR. QUINN:

2 Q COULD YOU DESCRIBE THE CORPORATE STRUCTURE OF
3 TCW?

4 A YES.

5 Q WE'VE HEARD ABOUT THE TCW GROUP INC., THE TCW
6 INVESTMENT MANAGEMENT COMPANY?

01:51PM

7 A THERE'S A PARENT COMPANY CALLED TCW GROUP,
8 INC.

9 Q RIGHT.

10 A AND UNDERNEATH IT, IT HAS THREE SUBSIDIARY
11 COMPANIES, 100 PERCENT WHOLLY OWNED.

01:51PM

12 ONE OF THEM IS TRUST COMPANY OF THE
13 WEST.

14 ONE OF THEM IS TCW ASSET MANAGEMENT
15 COMPANY, WHICH WE SOMETIMES CALL TAMCO.

01:51PM

16 AND ONE OF THEM IS TCW INVESTMENT
17 MANAGEMENT COMPANY, WHICH WE SOMETIMES CALL TIMCO.

18 Q COULD YOU TELL US WHAT POSITIONS MR. GUNDLACH
19 HAD WITH EACH OF THOSE ENTITIES?

20 A MR. GUNDLACH WAS A DIRECTOR OF ALL FOUR
21 ENTITIES.

01:51PM

22 HE WAS THE CHIEF INVESTMENT OFFICER, I
23 BELIEVE, OF ALL FOUR ENTITIES.

24 HE WAS THE PRESIDENT OF TCW ASSET
25 MANAGEMENT COMPANY.

01:51PM

26 AND HE WAS A GROUP MANAGING DIRECTOR OF
27 TCW GROUP TRUST COMPANY OF THE WEST AND TIMCO.

28 Q WAS BARBARA VANEVERY AN OFFICER OF ALL THESE

1 COMPANIES?

2 A NO. SHE WAS AN OFFICER OF THREE OF THEM, NOT
3 THE PARENT COMPANY. SHE WAS SENIOR VICE PRESIDENT.

4 Q OF WHICH THREE?

5 A TAMCO, TIMCO, AND TRUST COMPANY OF THE WEST. 01:52PM

6 Q AND MR. SANTA ANA?

7 A HE WAS ALSO MANAGING DIRECTOR OF TAMCO, TIMCO,
8 AND TRUST COMPANY OF THE WEST.

9 Q AND JEFF MAYBERRY?

10 A HE WAS A SENIOR VICE PRESIDENT OF TAMCO,
11 TIMCO, AND TRUST COMPANY OF THE WEST. 01:52PM

12 Q THESE VARIOUS TCW ENTITIES YOU'VE IDENTIFIED
13 FOR US, ARE THEY ALL IN THE INVESTMENT MANAGEMENT
14 BUSINESS?

15 A YES. THEY'RE ALL IN THE INVESTMENT MANAGEMENT
16 BUSINESS. 01:52PM

17 MR. QUINN: NOW, I THINK I AM DONE, YOUR
18 HONOR.

19 THE COURT: OKAY. THANK YOU.

20 01:52PM

21 CROSS-EXAMINATION +

22 BY MR. BRIAN:

23 Q GOOD AFTERNOON, MR. CAHILL.

24 A GOOD AFTERNOON.

25 Q GOOD AFTERNOON, LADIES AND GENTLEMEN. I FEEL
26 LIKE I'M A LITTLE BIT OF A LATE ARRIVER HERE. 01:53PM

27 MR. CAHILL, MR. QUINN ASKED YOU ABOUT
28 THESE LIMITED PARTNERSHIP AGREEMENTS FOR THE

1 SMCF FUNDS.

2 DO YOU RECALL THOSE QUESTIONS GENERALLY?

3 A YES.

4 Q DID YOU OR YOUR OFFICE HELP PREPARE THOSE?

5 A YES.

01:53PM

6 Q THEY SET FORTH CERTAIN RIGHTS OF THE LIMITED
7 PARTNERS WHO ARE THE INVESTORS, DO THEY NOT?

8 A YES.

9 Q AND I THINK YOU POINTED OUT THE PROVISIONS
10 THAT SAY TO THE INVESTORS THAT THERE IS A RISK THAT THE
11 KEY PERSON MAY BE REPLACED; IS THAT RIGHT?

01:53PM

12 THAT'S ONE OF THE THINGS YOU POINTED
13 OUT?

14 A THAT'S CORRECT.

15 Q AND IN THAT EVENT, THE LIMITED PARTNERSHIP
16 AGREEMENT HAS CERTAIN PRESCRIBED PROCEDURES AS TO WHAT
17 ARE THE RIGHTS OF THE INVESTORS, RIGHT?

01:53PM

18 A YES.

19 Q AND THERE'S A PROVISION CALLING FOR A 2/3 VOTE
20 AND THAT SORT OF THING, RIGHT?

01:54PM

21 A WELL, IT DEPENDS ON, YOU KNOW, THE EVENT.

22 Q OKAY.

23 THERE'S NOTHING IN THE LIMITED
24 PARTNERSHIP AGREEMENTS THAT GIVES THE INVESTORS THE
25 RIGHT TO LIQUIDATE THEIR INVESTMENTS, IS THERE?

01:54PM

26 A YOU'RE TALKING ABOUT SPECIAL MORTGAGE CREDIT
27 FUNDS.

28 Q I AND II?

1 A NO, THERE'S NO RIGHT TO DEMAND LIQUIDATION.

2 Q AND THERE'S NO RIGHT TO DEMAND REDUCED FEES,
3 IS THERE?

4 A THERE IS NOT.

5 Q YOU TESTIFIED THAT YOU DID A LITTLE LOOKING
6 INTO OF MR. STUART LUCAS.

01:54PM

7 DO YOU RECALL THAT TESTIMONY?

8 A YES.

9 Q AND I THINK YOU SAID HE WAS A COLLEGE
10 CLASSMATE OF MR. GUNDLACH; IS THAT RIGHT?

01:54PM

11 A YES.

12 Q YOU'RE NOT TESTIFYING, ARE YOU, THAT THE ONLY
13 PERSON, THE ONLY INVESTOR IN SMCF I OR II THAT
14 COMPLAINED ABOUT MR. GUNDLACH BEING REMOVED WAS A
15 COLLEGE CLASSMATE?

01:55PM

16 YOU'RE NOT SUGGESTING THAT, ARE YOU,
17 SIR?

18 A NO.

19 Q DO YOU HAVE A -- YOU HAVE A BINDER IN FRONT OF
20 YOU. TAKE A LOOK AT EXHIBIT 5555.

01:55PM

21 A OKAY.

22 Q THAT'S A LETTER DATED DECEMBER 9TH FROM A
23 DORCHESTER CAPITAL ADVISORS TO A NUMBER OF PEOPLE,
24 INCLUDING YOURSELF?

25 A YES.

01:55PM

26 MR. BRIAN: I'LL OFFER EXHIBIT 5555.

27 MR. QUINN: NO OBJECTION.

28 THE COURT: IT WILL BE ADMITTED.

1 (EXHIBIT 5555 ADMITTED.) +

2

3 MR. BRIAN: COULD WE DISPLAY THAT, DENNIS.

4 Q FIRST OF ALL, THE DATE IS DECEMBER 9TH.

5 DO YOU SEE THAT AT THE TOP?

01:55PM

6 A YES.

7 Q AND IT SAYS -- LISTS A NUMBER OF PEOPLE AND

8 THEN IT SAYS:

9 DEAR ADVISORY COMMITTEE MEMBERS

10 AND CERTAIN TCW EXECUTIVES.

01:56PM

11 DO YOU SEE THAT.

12 A YES.

13 Q THEN YOU'RE LISTED AS ONE OF THE RECIPIENTS IN

14 THE LETTER, ARE YOU NOT?

15 A RIGHT.

01:56PM

16 Q AND IN THE VERY FIRST PARAGRAPH, LAST FOUR

17 LINES, YOU SEE WHERE IT SAYS:

18 WE HAVE SPOKEN WITH VICKI BULL,

19 SENIOR VICE PRESIDENT PRIVATE

20 CLIENT SERVICES, WITH

01:56PM

21 MICHAEL CAHILL EXECUTIVE VICE

22 PRESIDENT AND GENERAL COUNSEL.

23 DO YOU SEE THAT?

24 A YES.

25 Q DO YOU RECALL SPEAKING WITH REPRESENTATIVES OF

01:56PM

26 DORCHESTER CAPITAL ADVISORS IN OR ABOUT DECEMBER OF

27 2009?

28 A I DID SPEAK WITH SOMEONE, YES.

1 Q THEY COMPLAINED ABOUT THE DECISION TO RELIEVE
2 MR. GUNDLACH OF HIS DUTIES, DID THEY NOT?

3 A THEY WERE NOT HAPPY.

4 Q AND, DENNIS, IF WE COULD ENLARGE THE LAST
5 PARAGRAPH.

01:56PM

6 THEY STATE IN THIS LETTER:

7 IT IS OUR BELIEF THAT IN LIGHT
8 OF THE MANAGEMENT CHANGES IN RECENT
9 RUNUP IN THE MORTGAGE MARKETS,
10 SMCF I AND SMCF II SHOULD BE PUT
11 INTO A CONTROLLED AND WELL-MANAGED
12 RUNOFF. RETURNING CAPITAL TO THEIR
13 INVESTORS AS SOON AS POSSIBLE.

01:57PM

14 HOWEVER, WE HAVE CONCERNS THAT NO
15 MANAGER WILL, QUOTE/UNQUOTE, THE
16 RUNOFF AND WE BELIEVE ONE SOLUTION
17 TO THIS WOULD BE FOR TCW TO ALLOW
18 JEFFREY GUNDLACH AND HIS TEAM
19 TO SUB-ADVISE- --

01:57PM

20 MR. QUINN: YOUR HONOR, I'LL JUST POINT OUT A
21 DOOR IS BEING OPENED HERE. IF WE'RE GOING INTO
22 SUB-ADVISING. HE JUST READ SOMETHING.

01:57PM

23 THE COURT: WE'LL DEAL IT WITH IT AS WE HAVE
24 TO.

25 MR. BRIAN: (READING):

01:57PM

26 --AND THUS CONTINUE TO OWN THE
27 PERFORMANCE RESULTS MUCH IN THE
28 SAME WAY TCW DID WITH HOWARD MARKS

1 AND THEIR LOCKUP FUNDS AT THE TIME
2 WHEN HOWARD MARKS LEFT THE FIRM.
3 THEN IT SAYS:

4 AS SUCH, TCW SHOULD CONSIDER
5 REDUCING ITS MANAGEMENT FEE ON
6 THESE GOING FORWARD.

01:57PM

7 Q DO YOU SEE THAT?

8 A YES.

9 Q TAKE A LOOK NOW AT EXHIBIT 5592. THIS IS A
10 LETTER FROM A JEAN HORSTRAT (PH) THAT'S DATED
11 DECEMBER 14TH, 2009 TO MR. STERN AND YOURSELF AND TWO
12 OTHER PEOPLE, IS IT NOT?

01:58PM

13 A YES.

14 MR. BRIAN: I'LL OFFER 5592, YOUR HONOR.

15 MR. QUINN: NO OBJECTION.

01:58PM

16 THE COURT: IT WILL BE ADMITTED.

17
18 (EXHIBIT 5592 ADMITTED.) +
19

20 MR. BRIAN: COULD WE DISPLAY THAT, DENNIS.

01:58PM

21 Q IF WE COULD ENLARGE THE SECOND FULL PARAGRAPH.
22 IT STATES:

23 THE EXPERTISE AND TRACK RECORD
24 OF GUNDLACH AND HIS TEAM WERE
25 CRITICAL FACTORS IN OUR DECISION TO
26 GO FORWARD AND COMMIT 20 MILLION TO
27 TCW'S SPECIAL MORTGAGE CREDIT FUND
28 III. WE WOULD NOT HAVE CONSIDERED

01:58PM

1 MAKING THE COMMITMENT IF THE FUND
2 WAS TO BE MANAGED BY THE MET WEST
3 TEAM.

4 NEXT PARAGRAPH:

5 AS A CONSEQUENCE, WE WISH TO BE
6 RELEASED FROM OUR OBLIGATION TO
7 CONTINUE TO INVEST IN THE FUND AND
8 WOULD APPRECIATE A REPORT ON ANY
9 EXISTING HOLDINGS AS OF THE END OF
10 NOVEMBER AND DECEMBER.

01:59PM

01:59PM

11 NOW, YOU GOT REPORTS FROM OTHERS THAT OTHER
12 FOLKS BESIDES THESE TWO PEOPLE WERE COMPLAINING ABOUT
13 THE DECISION TO GET RID OF MR. GUNDLACH, DID YOU NOT,
14 SIR.

15 A YES, THERE WERE CLIENTS THAT WERE UNHAPPY.

01:59PM

16 Q AND, IN FACT, TCW CONSIDERED EARLY ON,
17 OFFERING THE INVESTORS THE RIGHT TO LIQUIDATE THEIR
18 INVESTMENTS; ISN'T THAT RIGHT?

19 A WE CONSIDERED ALL THE OPTIONS. MR. STERN WAS
20 MAKING THE DECISION AND EVERYBODY WAS CONSIDERING
21 OPTIONS.

01:59PM

22 Q TAKE A LOOK AT EXHIBIT 6168 IN YOUR BINDER.
23 YOU KNOW WHO MR. GARRETT WALLS IS, DO
24 YOU NOT?

25 A YES.

02:00PM

26 Q WERE YOU HERE WHEN HE TESTIFIED IN THE TRIAL?

27 A YES.

28 Q THIS IS AN E-MAIL FROM MR. WALLS DATED

1 JANUARY 7TH, 2010, TO A MR. COLLIER, COPIED TO, AMONG
2 OTHERS, YOURSELF, IS IT NOT?

3 A YES.

4 MR. BRIAN: I WOULD OFFER 6168.

5 MR. QUINN: NO OBJECTION. 02:00PM

6 THE COURT: IT WILL BE ADMITTED.

7

8 (EXHIBIT 6168 ADMITTED.) +

9

10 BY MR. BRIAN: 02:00PM

11 Q IF WE COULD ENLARGE THE SECOND FULL PARAGRAPH,
12 DENNIS.

13 DO YOU SEE THE SENTENCE, THE FOURTH LINE
14 DOWN, WHERE IT SAYS:

15 TCW, HOWEVER, DECIDED EARLY ON 02:00PM
16 TO MAKE AVAILABLE A RANGE OF
17 OPTIONS BEYOND WHAT THE DOCUMENTS
18 PROVIDE WITH A VIEW TO MEETING TIME
19 HORIZONS OF DIFFERENT INVESTORS AND
20 INDIVIDUAL INVESTOR DESIRES TO STAY 02:01PM
21 THE COURSE WITH TCW'S NEW AND
22 HIGHLY CAPABLE M.B.S. TEAM OR
23 ALTERNATIVELY TAKE THEIR INVESTMENT
24 FUNDS ELSEWHERE.

25 DO YOU SEE THAT? 02:01PM

26 A I DO.

27 Q THAT WAS AN ACCURATE STATEMENT, WAS IT NOT,
28 SIR?

1 A NO. TCW WAS CONSIDERING THESE OPTIONS, BUT
2 TCW HADN'T MADE ANY DECISION.

3 Q WELL, WHEN YOU GOT THIS E-MAIL FROM MR. WALLS,
4 DID YOU SHOOT HIM BACK AN E-MAIL SAYING YOU MISSTATED
5 IT, MR. WALLS?

02:01PM

6 A NO.

7 Q TAKE A LOOK AT THE NEXT PARAGRAPH. ONE OF THE
8 OPTIONS -- WELL, NEXT PARAGRAPH STATES, IN THE LAST
9 SENTENCE:

02:01PM

10 THE OPTIONS CAN BE SUMMARIZED AS
11 FOLLOWS: CONTINUE WITH THE FUND
12 AND THE NEW TCW TEAM WITH THE
13 REDUCED FEE AND REDUCED CARRIED
14 INTEREST, SHORTEN LIQUIDATION
15 PERIOD TO DECEMBER 31ST, 2013, PAY
16 OUT INCOME, OR MOVE INTO A
17 LIQUIDATION MODE WITH AN
18 ANTICIPATED TIME HORIZON.

02:01PM

19 DO YOU SEE THAT?

20 A YES.

02:02PM

21 Q SO IT'S YOUR TESTIMONY, UNDER OATH, THAT
22 MR. WALLS JUST GOT IT WRONG WHEN HE SAID THAT TCW
23 DECIDED EARLY ON TO OFFER THESE OPTIONS?

24 IS THAT YOUR TESTIMONY UNDER OATH?

25 MR. QUINN: MISSTATES THE DOCUMENT. ASSUMES
26 FACTS NOT IN EVIDENCE.

02:02PM

27 THE COURT: IT GOES TO THE WITNESS'S
28 TESTIMONY.

1 I'LL ALLOW HIM TO ANSWER.

2 YOU CAN EXPLAIN IT, MR. CAHILL, IF YOU
3 HAVE AN EXPLANATION.

4 MR. BRIAN: YES OR NO.

5 Q IS THAT YOUR TESTIMONY, SIR?

02:02PM

6 MR. QUINN: OR EXPLAINING IT.

7 THE COURT: HE'LL BE ALLOWED TO EXPLAIN.

8 MR. BRIAN: THEN I'LL REFRAME IT.

9 THE COURT: ALL RIGHT. FINE.

10 BY MR. BRIAN:

02:02PM

11 Q LET ME ASK YOU A DIFFERENT QUESTION.

12 IS IT UNUSUAL -- WAS IT UNUSUAL, IN THE
13 SMCF FUNDS I AND II, FOR WEALTHY PEOPLE, WHO WERE
14 EITHER FRIENDS OF FOLKS AT TCW OR SOMEHOW AFFILIATED
15 WITH TCW, TO BE INVESTORS IN THOSE FUNDS?

02:02PM

16 A WAS IT UNUSUAL?

17 Q YEAH.

18 A FOR THEM TO BE INVESTORS?

19 Q TO BE INVESTORS.

20 A NO.

02:03PM

21 Q NO.

22 YOU WERE AN INVESTOR YOURSELF, WERE YOU
23 NOT, IN ONE OF THE FUNDS?

24 A I WAS.

25 Q MR. STERN WAS AN INVESTOR IN ONE OF THE FUNDS?

02:03PM

26 A YES.

27 Q LAWYERS REPRESENTED IN THE COMPANIES WERE
28 INVESTORS IN THE FUND, WEREN'T THEY?

1 A YES.

2 Q WHICH OPTION DID YOU CHOOSE, SIR?

3 A I CHOSE THE OPTION TO REMAIN IN THE FUND.

4 Q DID YOU GET REDUCED FEES?

5 A I DID.

02:03PM

6 Q DID EVERYONE WHO WAS AFFILIATED WITH TCW WHO
7 DECIDED TO REMAIN IN THE FUNDS GET THEIR FEES REDUCED?

8 A I -- I HAVE TO RETHINK THAT. BECAUSE I'M NOT
9 SURE IF THIS FUND HAD A WAIVER OF THE FEES FOR
10 AFFILIATED PARTIES. IT MAY HAVE.

02:03PM

11 WE OFTEN HAVE A WAIVER OF FEES FOR
12 AFFILIATED PARTIES.

13 Q SO I'M SORRY, YOU DON'T PAY ANY FEES AT ALL?

14 A THAT'S CORRECT.

15 Q SO, YOU, MR. STERN, MR. DEVITO,
16 MR. MC KISSICK, ALL OF WHOM WERE INVESTORS, PAID NO
17 FEES AT ALL TO INVEST IN THESE FUNDS.

02:03PM

18 IS THAT YOUR TESTIMONY?

19 A I CAN'T SAY FOR SURE WITHOUT LOOKING AT THE
20 DOCUMENT.

02:04PM

21 THE COURT: MR. BRIAN, WOULD THIS BE A GOOD
22 TIME FOR US?

23 MR. BRIAN: IT WOULD, YOUR HONOR.

24 THE COURT: LADIES AND GENTLEMEN, REMEMBER THE
25 ADMONITION: DON'T DISCUSS THE CASE AMONG YOURSELVES OR
26 WITH ANYONE ELSE OR FORM ANY OPINIONS OR CONCLUSIONS
27 CONCERNING ANY ASPECT OF THE CASE UNTIL YOU'VE HEARD
28 ALL THE EVIDENCE AND IT'S BEEN SUBMITTED TO YOU.

02:04PM

1 WE'LL SEE YOU TOMORROW MORNING AT 8:30.
2 THANK YOU.

3 MR. CAHILL, YOU MAY STEP DOWN. THANK
4 YOU.

5

02:05PM

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

7

8 THE COURT: WE'RE OUT OF THE PRESENCE OF THE
9 JURY.

10

02:05PM

11 JUST TO MAKE SURE WE'RE NOT GOING
12 SOMEWHERE WE REALLY DON'T WANT TO GO, THERE HAVE BEEN
13 CASUAL REFERENCES AND VARIOUS REFERENCES THROUGHOUT THE
14 COURSE OF THE TRIAL ABOUT THE SUB-ADVISOR ARRANGEMENTS.

15

02:05PM

16 I'M NOT SURE WHAT YOUR CONCERN IS,
17 MR. QUINN, BUT I DON'T WANT TO OPEN UP A WHOLE NEW BALL
18 OF WAX HERE.

19

02:06PM

20 I THINK IT'S A, YOU KNOW, IT'S A
21 REFERENCE SIMILAR TO OTHER REFERENCES THAT HAVE BEEN
22 MADE. IF YOU THINK IT'S SOMETHING MORE IMPORTANT THAN
23 THAT, YOU OUGHT TO TELL ME.

24

02:06PM

25 MR. QUINN: I THINK -- I DON'T THINK THE
26 DOOR'S COMPLETELY OPENED. BUT I THINK THE COURT DID
27 TELL ME A COUPLE WEEKS AGO YOU'D GIVE ME A LITTLE
28 LEEWAY.

29

30 I'D PROPOSE --
31 THE COURT: I'VE GIVEN YOU ABOUT 40 HOURS OF
32 LEEWAYS ON A 45-HOUR GRANT. AND I THINK WE'VE GONE A
33 LONG WAY. I'M SORRY.

1 MR. QUINN: WHAT I WOULD PROPOSE TO DO IS ASK
2 MR. CAHILL WHETHER THERE WAS SOME INFORMATION THAT WAS
3 LEARNED REGARDING MR. GUNDLACH THAT MAY -- AS FAR AS
4 TCW IS CONCERNED SUB-ADVISORY ARRANGEMENT AN
5 IMPOSSIBILITY.

02:06PM

6 MR. BRIAN: I DON'T THINK THAT'S APPROPRIATE
7 AT ALL, YOUR HONOR. I'LL TELL YOU WHY.

8 WE HAVE NEVER ARGUED TO THE JURY THAT
9 SOMEHOW THEY SHOULD HAVE ENTERED INTO A SUB-ADVISORY
10 RELATIONSHIP, OR THAT SOMEHOW IT REFLECTS DAMAGES IN
11 THE CASE. WE HAVEN'T ARGUED THAT AT ALL TO THIS POINT.

02:06PM

12 WHAT I HAVE DONE IS, FIRST, IT CAME UP
13 BECAUSE THERE WAS A QUESTION OF WHETHER OR NOT THE
14 INVESTORS WERE ENTITLED TO GET THE LIST OF INVESTORS.

15 AND THE FIRST TIME IT CAME UP WAS IN
16 CONNECTION WITH THAT REQUEST BY MR. BOB BORDEN ON. IT
17 WAS RELEVANT TO THAT.

02:07PM

18 SECONDLY, IT'S RELEVANT TO THE FACT THAT
19 THE INVESTORS ARE COMPLAINING AT THE MINUTE -- AT THE
20 MOMENT THIS HAPPENS. THAT'S THE POINT.

02:07PM

21 SO IT DOESN'T OPEN THE DOOR TO WHAT
22 MR. QUINN IS SAYING.

23 OUR POINT IS THAT TCW DECIDED TO OFFER
24 OPTIONS, LIKE LIQUIDATION, REDUCED FEES, RIGHT AWAY,
25 INDEPENDENT OF ANYTHING MR. GUNDLACH SAID IN CALLS ON
26 DECEMBER 8TH -- THE 22ND.

02:07PM

27 THE COURT: OKAY.

28 MR. BRIAN: THAT'S OUR POINT. THAT'S ONE OF

1 THE WAYS THEY VOICE -- WE VOICE OUR CONCERN.

2 MR. QUINN: THEY'VE CHOSEN TO CALL ATTENTION
3 TO REQUESTS THAT WE ENTER INTO A SUB-ADVISORY
4 RELATIONSHIP. I THINK WE SHOULD BE ABLE TO SAY THERE
5 IS A REASON. NOT GO INTO IT.

02:07PM

6 THERE'S A REASON WHY THAT SIMPLY WASN'T
7 IN THE CARDS. IT WASN'T SOMETHING WE COULD DO. THAT'S
8 OUT THERE. THEY HAVE PUT IN LETTERS. AND WE JUST --
9 NOW, HE CHOSE TO READ IT AND EMPHASIZE IT, THAT A
10 DEMAND THAT THEY SUB-ADVISED TO MR. GUNDLACH. AND, YOU
11 KNOW, IT'S THE ELEPHANT IN THE ROOM.

02:08PM

12 I DON'T INTEND TO DISCLOSE THE FULL
13 ELEPHANT, BUT I'D LIKE TO POINT TO HIS TOENAILS.

14 MR. BRIAN: THERE'S NO WAY HE CAN DO THAT. I
15 HAVEN'T OPENED THE DOOR. IT'S IN THE LETTERS WITH
16 OTHER POINTS, YOUR HONOR. THERE'S NOTHING I CAN DO
17 ABOUT THAT.

02:08PM

18 THE COURT: OKAY.

19 MY VIEW IS YOU HAVE ALREADY HAD
20 TESTIMONY. I BELIEVE THAT THERE WAS TESTIMONY FROM
21 MR. STERN. YOU ALL CAN GO BACK AND CHECK EVERY WORD,
22 THAT IT WASN'T GOING TO WORK, AND THE RELATIONSHIP WAS
23 SUCH THAT THEY WEREN'T GOING TO DO IT.

02:08PM

24 I WON'T OPEN THE DOOR ON THE POST 12-4
25 DISCOVERIES OR REASONS.

02:08PM

26 AND I WOULD, I GUESS, TO THE EXTENT THAT
27 YOU WANT TO ASK MR. -- IS MR. CAHILL STILL HERE? HAS
28 HE STEPPED OUT?

1 MR. QUINN: HE'S HERE.

2 THE COURT: MAYBE YOU SHOULD STEP OUT, SIR.

3 (PAUSE) +

4

5 THE COURT: YOU WANT TO ASK HIM IF THERE WERE
6 DECISIONS MADE NOT TO ENTER INTO SUB-ADVISORY
7 AGREEMENTS? HE CAN SAY YES, BUT I'M NOT GOING ANY
8 FURTHER.

02:09PM

9 MR. QUINN: WELL, I -- HE OUGHT TO BE ABLE TO
10 SAY THERE'S A GOOD REASON.

02:09PM

11 THE COURT: NO.

12 MR. QUINN: WELL, THE DECISION'S MADE. I
13 MEAN, THAT DOESN'T SAY ANYTHING, YOUR HONOR. THAT
14 DOESN'T --

15 THE COURT: YOU SHOULD LEAVE IT ALONE, I
16 THINK, QUITE FRANKLY, MR. QUINN.

02:09PM

17 MR. BRIAN: WE'RE NOT ARGUING --

18 THE COURT: THAT'S NOT WHAT'S BEING OFFERED.

19 IT BASICALLY GOES TO THE FACT THAT THERE
20 WERE INVESTOR COMPLAINTS. AND UNLESS YOU MAKE A BIG
21 ISSUE OUT OF THE SUB-ADVISORY ISSUE, IT'S A NON-ISSUE
22 HERE. IT'S NOT PART OF YOUR CASE, AND IT'S NOT PART OF
23 THEIR CASE.

02:09PM

24 MR. QUINN: VERY WELL, YOUR HONOR.

25 MR. BRIAN: YOUR HONOR, WE DO HAVE TWO ISSUES
26 WE HAVE TO TAKE UP AT SOME POINT.

02:09PM

27 THE COURT: WHAT ARE THOSE?

28 MR. BRIAN: THE DOCUMENTS -- YOU ISSUED AN

1 ORDER ON MR. CABANNES' DEPOSITION, SO WE'RE REVISING
2 THE VIDEOTAPE. YOU LEFT OPEN ONE DOCUMENT, WHICH I
3 THINK YOU REFERRED TO AS EXHIBIT 1281. I THINK YOU
4 MEANT EXHIBIT 12 OF THE DEPOSITION. I THINK.

5 WHICH IS TRIAL EXHIBIT 5153. THAT'S -- 02:10PM
6 IT'S A TWO-PART E-MAIL, THE FIRST E-MAIL WHICH IS IN
7 THE BOTTOM HALF.

8 THE COURT: I ADMITTED TWO OUT OF THREE THAT
9 WERE AT ISSUE. THERE'S --

10 MR. BRIAN: THERE'S A NUMBER OF EXHIBITS. 02:10PM

11 THE COURT: NO, THESE WERE IN A PARTICULAR
12 AREA. AND THERE WAS SOME -- NO FOUNDATION.

13 MR. BRIAN: YOU INDICATED IN YOUR ORDER -- IF
14 I CAN FIND IT.

15 THE COURT: HOLD ON LET ME GET IT. 02:10PM

16 MR. BRIAN: I'M READING FROM THE --

17 THE COURT: TELL ME PAGE AND LINE.

18 MR. BRIAN: 67, LINE 68 TO LINE 8. YOU SAID
19 OVERRULED. YOU REJECT TCW ARGUMENT REGARDING THE HOBBS
20 DECLARATION. YOU SAID: 02:11PM

21 THE COURT IS SATISFIED THAT

22 THERE ARE MULTIPLE ADDITIONAL

23 GROUNDS FOR ADMISSION OF THE

24 E-MAILS PRODUCED BY SOCIÉTÉ

25 GÉNÉRALE IN RESPONSE TO THE 02:11PM

26 SUBPOENA SERVED ON SOC-GEN

27 INCLUDING, BUT NOT LIMITED TO

28 ADMISSIONS EVIDENCE CODE 1220,

1 AUTHORIZE ADMISSIONS --

2 THE COURT: YOU'RE NOT GOING TO READ THE WHOLE
3 THING.

4 MR. BRIAN: BUT THEN YOU SAID, TOWARD THE
5 BOTTOM:

02:11PM

6 THE COURT WILL ADMIT THE SOC-GEN
7 E-MAILS AS OFFERED PROVIDED
8 THE COURT WILL ENTERTAIN ARGUMENT
9 ON EXHIBIT 1281 AS THE COURT HAS
10 RESERVATIONS CONCERNING ADMISSION
11 OF THIS EXHIBIT.

02:11PM

12 THE COURT: I THINK THAT'S EXHIBIT 12.

13 MR. BRIAN: I DON'T KNOW WHAT IT IS.

14 THE COURT: LET ME GO GET IT.

15 MR. BRIAN: 12 TO THE DEPOSITION, WHICH IS
16 EXHIBIT 5153 IN THE TRIAL REFERENCE.

02:11PM

17 (PAUSE) +

18
19 MR. BRIAN: IF I MAY PASS UP TO YOUR CLERK.

20 THE COURT: I DON'T KNOW WHERE -- WHY I HAVE
21 1281.

02:12PM

22 MR. BRIAN: WE PREPARED A CHART THAT TAKES THE
23 DEPOSITION EXHIBIT AND GIVES THE CORRESPONDING TRIAL
24 EXHIBIT.

25 IF I CAN PASS THIS UP TO YOU.

02:12PM

26 I HAVE ONE FOR MR. MADISON, TOO.

27 MR. QUINN: THANK YOU.

28 THE COURT: LET ME JUST LOOK AT THIS CLIP.

1 THE REFERENCE IS TO EXHIBIT 12.

2 MR. BRIAN: THE ONLY THING I CAN FIGURE OUT IS
3 YOU WERE CONCERNED ABOUT THE TOP E-MAIL, WHICH IS A
4 REPLY BY MR. OUDEA.

5 WE'RE INTERESTED IN THE BOTTOM E-MAIL,
6 WHICH IS AN E-MAIL FROM MR. MUSTIER, WHO YOU'LL
7 REMEMBER WAS A MEMBER OF THE TCW BOARD OF DIRECTORS.

02:13PM

8 THE COURT: YES. BUT --

9 MR. BRIAN: HE SAT ON THE EXECUTIVE COMMITTEE.

10 THE COURT: MY POINT IS, THERE'S NO REFERENCE
11 IN MR. CABANNES' TESTIMONY ABOUT THIS OR ANY INDICATION
12 IT WAS SENT TO HIM, HE RECEIVED IT, OR ANYTHING ELSE.

02:13PM

13 MR. BRIAN: NO. THERE IS.

14 THE COURT: WHERE?

15 MR. BRIAN: IN THE TESTIMONY. WHAT HE SAID,
16 IF I CAN LOOK AT THE TRANSCRIPT.

02:13PM

17 THE COURT: HE'S NOT AN ADDRESSEE.

18 MR. BRIAN: YES, HE IS.

19 THE COURT: HE'S COPIED ON IT. THERE WAS SOME
20 REASON I HAD A CONCERN ABOUT IT.

02:13PM

21 MR. MADISON: THERE WAS NO TESTIMONY OF IT.
22 HE HAD NO RECOLLECTION OF IT. AND MR. BRIAN JUST READ
23 IT.

24 MR. BRIAN: HE SAID -- I SAID, ON PAGE 67:

25 THIS IS AN E-MAIL THAT WENT FROM

02:14PM

26 MR. MUSTIER TO, AMONG OTHERS, YOU,
27 CORRECT?

28 ANSWER: LINE 20, CORRECT.

1 THEN I SAID:

2 AND YOU RECEIVED THAT E-MAIL ON
3 OR ABOUT JUNE 6TH OF 2009, DID YOU
4 NOT?

5 ANSWER: PROBABLY SO. BUT I
6 RECEIVE ANYWHERE FROM 2- TO 300
7 E-MAILS EVERY DAY.

02:14PM

8 YOU COMBINE THAT WITH BUSINESS RECORDS
9 CERTIFICATE WE HAVE AND THAT'S CLEARLY ENOUGH. IT'S AN
10 ADMISSION BY MR. MUSTIER, WHO CLEARLY HAS THE AUTHORITY
11 TO SPEAK FOR TCW. HE SAT ON THE EXECUTIVE COMMITTEE OF
12 THE BOARD. MR. STERN TESTIFIED AT TRIAL.

02:14PM

13 THE COURT: ALL YOU -- ALL YOU SAID IS IN YOUR
14 QUESTION WHAT IT SAID IN THE THING, AND HE SAID, I
15 DON'T REMEMBER.

02:14PM

16 MR. BRIAN: THAT DOESN'T MATTER. I WANT THE
17 DOCUMENT IN EVIDENCE. I'M NOT TALKING ABOUT THE --
18 ABOUT THE TESTIMONY. I'M TALKING ABOUT THE
19 ADMISSIBILITY OF THE DOCUMENT.

20 THE DOCUMENT HE SAID -- HE SAID,
21 CORRECT, WHEN I SAID IDENTIFIED THE E-MAIL.

02:14PM

22 AND HE SAID HE PROBABLY RECEIVED IT, AND
23 IT'S BEEN PRODUCED PURSUANT TO THE BUSINESS RECORDS
24 CERTIFICATE OF SOCIÉTÉ GÉNÉRALE. AND IT'S BY -- THE
25 E-MAIL IS BY THE PERSON WHO IS IN CHARGE OF TCW,
26 ACCORDING TO THE TRIAL TESTIMONY OF MR. STERN.

02:15PM

27 AND IT GOES TO, AMONG OTHERS,
28 MR. CABANNES.

1 AND IT'S HIGHLY RELEVANT TO THESE
2 ISSUES. IT'S -- ON JUNE 6TH, IT'S REFLECTING
3 MR. MUSTIER'S OBSERVATION AND IMPRESSIONS. IT'S A
4 CLASSIC ADMISSION OFFERED AGAINST A PARTY OPPONENT.

5 THERE'S NO HEARSAY ISSUE. 02:15PM

6 THE COURT: ALL RIGHT.

7 MR. MADISON, YOU WANT TO BE HEARD ON
8 THIS?

9 MR. MADISON: YES, YOUR HONOR.

10 IT'S NOT A BUSINESS RECORD. THIS IS AN 02:16PM
11 E-MAIL. THE ONE PART OF IT THAT RELATES --

12 THE COURT: IT WAS PRODUCED UNDER THE
13 AFFIDAVIT OF THE SOC-GEN CUSTODIAN OF RECORDS, WAS IT
14 NOT?

15 MR. MADISON: IT CAME OUT OF THE SOC-GEN -- 02:16PM
16 THERE'S NO DOUBT ABOUT THAT.

17 IT'S OUR POSITION THAT THERE ARE MANY
18 MORE ELEMENTS THAN THAT TO --

19 THE COURT: I UNDERSTAND YOUR POSITION, BUT I
20 BASICALLY REJECTED IT FOR THE REASONS THAT I STATED. 02:16PM

21 MR. MADISON: THE PROBLEM IS, THIS WITNESS HAD
22 ZERO FOUNDATION ON THIS.

23 AND THERE'S ONE PART ABOUT IT WHERE IT
24 TALKS ABOUT THE WITNESS, MR. CABANNES, AT THE VERY
25 BOTTOM, HAVING A MANDATE TO BE VALIDATED TO WORK ON 02:16PM
26 CERTAIN THINGS. AND I DON'T BELIEVE MR. BRIAN EVEN
27 ASKED HIM A SINGLE QUESTION ABOUT THAT.

28 THE ONLY ANSWERS THE JURY WOULD HEAR IS,

1 I DON'T REALLY RECALL THIS. IF YOU SAY SO, IT SAYS
2 WHAT IT SAYS.

3 THE COURT: I DIDN'T OVERRULE. WHAT DID I DO
4 WITH RESPECT TO THE OBJECTION ON THIS?

5 MR. MADISON: YOU SUSTAINED IT, YOUR HONOR. I
6 BELIEVE. 02:16PM

7 THE COURT: NO. IT WAS OVERRULED. I WAS
8 GOING TO ALLOW THE TESTIMONY.

9 MR. BRIAN: RIGHT. WHAT WE'RE ARGUING IS THE
10 ADMISSIBILITY OF THE DOCUMENT. 02:17PM

11 THE COURT: I UNDERSTAND.

12 MR. BRIAN: THE DOCUMENT HAS BEEN PRODUCED
13 PURSUANT TO A BUSINESS RECORDS CERTIFICATE OF SOCIÉTÉ
14 GÉNÉRALE. I DON'T HAVE TO ASK HIM ANYTHING. I DON'T
15 EVEN HAVE TO SHOW THE WITNESS THE DOCUMENT. IT COMES
16 IN. 02:17PM

17 IT SO HAPPENS THAT THIS WITNESS
18 IDENTIFIED THE DOCUMENT AND SAID HE PROBABLY RECEIVED
19 IT, WHICH ADDS A LITTLE MORE OOMPH TO THE
20 ADMISSIBILITY. 02:17PM

21 AND THE FACT THAT I DIDN'T QUESTION HIM
22 ABOUT THE CONTENTS IS IRRELEVANT.

23 MR. MADISON: YOUR HONOR, I WOULD JUST SAY,
24 AGAIN, BUSINESS RECORDS HAVE TO BE -- THERE HAS TO BE A
25 SHOWING THAT THEY ARE MATTERS THAT -- 02:17PM

26 THE COURT: LET ME JUST SAY THAT I THINK THAT
27 THE AMENDMENT OF THE STATUTE AND THE BUSINESS RECORDS
28 TO CONFORM TO THE DECISION, AND I DON'T REMEMBER THE

1 NAME OF IT, IT WAS MADE TO AVOID THIS ISSUE.

2 AND I THINK, TO THE EXTENT THAT YOU
3 OFFER A DECLARATION OF CUSTODIAN OF RECORDS, AND YOU
4 INDUCE YOUR OPPONENTS TO RELY ON IT, IT IS NOT
5 APPROPRIATE FOR YOU THEN TO CLAIM THAT IT'S AN
6 INADEQUATE DECLARATION AND THAT THE DOCUMENTS ARE NOT
7 ADMISSIBLE.

02:18PM

8 AND THAT'S WHAT I SEE YOU DOING.
9 BECAUSE I BELIEVE THE DECLARATION CAME FROM YOUR SIDE
10 OF THE COIN.

02:18PM

11 MR. MADISON: WELL, IT CAME FROM SOC-GEN.

12 AND WITHOUT BEING IMPOLITIC, WE DIDN'T
13 PREPARE IT. MUNGER WAS IN TOUCH WITH SOC-GEN'S LAWYERS
14 IN NEW YORK, AND I MEAN, THEY KNOW.

15 THE COURT: I NEED TO TAKE TIME TO LOOK AT IT.

02:18PM

16 I'M GOING TO ADMIT THE EXHIBITS AS
17 BUSINESS RECORDS.

18 ON THIS ONE, LOOKING AT IT NOW, I'M NOT
19 SURE EXACTLY WHY I WAS CONCERNED ABOUT THIS, OTHER
20 THAN --

02:18PM

21 MR. BRIAN: I THOUGHT IT MIGHT BE THE REPLY --
22 I'M HAPPY TO REDACT IT -- OF MR. OUDEA. I DON'T REALLY
23 CARE ABOUT THAT.

24 THE COURT: MAYBE THAT'S WHAT I WAS LOOKING
25 AT.

02:18PM

26 MR. BRIAN: BUT THE STATEMENT BY MR. MUSTIER.
27 WHO IS CHARGED ON BEHALF OF TCW. IS CLEARLY ADMISSION
28 AS A PARTY OPPONENT. AND IT'S A BUSINESS RECORD.

1 (PAUSE) +

2 THE COURT: ALL RIGHT. I'LL ADMIT IT.

3 MR. MADISON: IF IT COMES, IN THE ENTIRE
4 DOCUMENT SHOULD COME IN.

5 MR. BRIAN: THAT'S FINE. 02:19PM

6 THE COURT: I'LL ADMIT IT OVER THE PLAINTIFFS'
7 OBJECTION. JUST LET ME MAKE A NOTE HERE.

8 MR. BRIAN: THERE'S ONE OTHER EXHIBIT.

9 MR. MADISON: YOUR HONOR, ON THE CABANNES --

10 THE COURT: JUST A MINUTE. 02:19PM

11 EXHIBIT 12 TO THE DEPOSITION, TRIAL
12 EXHIBIT 5153. WE SHOULD ALSO HAVE A LISTING OF THE
13 EXHIBITS THAT ARE BEING ADMITTED FROM THESE DEPOSITIONS
14 SO THAT WE CAN INCLUDE THEM IN THE EXHIBIT LIST.

15 MR. BRIAN: I WILL DO THAT, YOUR HONOR. 02:19PM

16 THERE'S ONE TYPOGRAPHICAL ERROR ON THE
17 CHART I PASSED OUT TO YOURSELF AND MR. MADISON.

18 THE LAST EXHIBIT, PAGE 3 SHOULD BE 5262.
19 NOT 5282.

20 THAT IS THE ONLY ONE ON THIS CHART THAT 02:20PM
21 I DID NOT SHOW TO MR. CABANNES, SO IT'S NOT DISCUSSED.
22 IT WAS PRODUCED PURSUANT TO THE HOBBS' ACT BUSINESS
23 RECORDS CERTIFICATE, AND WE OFFER IT ON THAT BASIS.

24 THE COURT: DID YOU MAKE THAT CORRECTION ON
25 THE LIST HE GAVE YOU? DO YOU HAVE THAT IN FRONT OF
26 YOU? 02:20PM

27 THE CLERK: NO.

28 THE COURT: YOU CAN HAVE THIS ONE.

1 WHAT WAS THE CORRESPONDING --

2 MR. BRIAN: E-MAIL FROM MR. MUSTIER.

3 THE COURT: THE CORRESPONDING EXHIBIT NUMBER.

4 MR. BRIAN: IT WAS NOT. THAT WAS THE ONE NOT
5 USED AT THE DEPOSITION.

02:20PM

6 THE COURT: SO I DON'T HAVE A COPY OF IT TO
7 LOOK AT IT.

8 MR. BRIAN: IT WAS IN THE BRIEFING THAT THE
9 PARTIES PUT TOGETHER. WE FILED A BRIEF.

10 THE COURT: OKAY.

02:20PM

11 MR. BRIAN: IT'S IN THAT.

12 THE COURT: I LOOKED AT THE BRIEFS. AND
13 THAT'S HOW I CAME UP WITH THIS.

14 MR. MADISON: I'M SORRY.

15 IS THE DEFENSE OFFERING A NEW EXHIBIT?

02:21PM

16 MR. BRIAN: THE LAST EXHIBIT IN YOUR DOCUMENT
17 SHOULD BE MARKED 5262, NOT 5282.

18 THE COURT: TAKE A LOOK AT IT OVER THE
19 EVENING.

20 COME IN THE MORNING, READY TO GO.

02:21PM

21 MR. MADISON: THERE IS ONE -- YOU SUSTAINED
22 OUR OBJECTION TO FOR GOOD REASON THERE WAS A MOTION IN
23 LIMINE.

24 THE COURT: NICE OF YOU TO SAY FOR GOOD
25 REASON. I TAKE THAT, YOU KNOW, IT'S NICE OF YOU.

02:21PM

26 MR. MADISON: FOR REALLY GOOD REASON.

27 MR. BRIAN: WHICH DOCUMENT?

28 THE COURT: LET ELMER KNOW.

1 MR. MADISON: 5202, YOUR HONOR. IT'S THE ONE
2 THAT TALKS ABOUT THE KERVIEL INVESTIGATIONS.

3 THE COURT: THAT WAS AN EXHIBIT IN THE
4 CABANNES' DEPOSITION.

5 MR. MADISON: YES.

02:21PM

6 THE COURT: IF I SUSTAIN THE DEPOSITION, IT'S
7 NOT COMING IN.

8 THE COURT: THAT'S 52 --

9 MR. MADISON: 5202, YOUR HONOR.

10 THE COURT: ALL RIGHT.

02:21PM

11 ANYTHING ELSE?

12 MR. BRIAN: I'M LOOKING AT IT, YOUR HONOR.

13 THE COURT: YOU CAN LOOK AT THAT OVER THE
14 EVENING, TOO. IF THERE ARE ISSUES ON IT. WE'LL TAKE
15 THEM UP FIRST THING IN THE MORNING. I'LL GO BACK AND
16 FIGURE WHAT YOU'RE TALKING ABOUT.

02:22PM

17 MR. BRIAN: I DON'T SEE IT. I'LL LOOK AT IT.

18 THE COURT: THANK YOU.

19

20 (AT 2:22 P.M., ADJOURNMENT AN WAS TAKEN

02:22PM

21 UNTIL AUGUST 30, 2011 AT 8:30 A.M.)

22

23

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