

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 322 HON. CARL J. WEST, JUDGE

TRUST COMPANY OF THE WEST,)
)
PLAINTIFFS,)
)
VS.) CASE NO. BC429385
)
JEFFREY GUNDLACH, ET AL.,)
)
DEFENDANTS.)
-----)

REPORTERS' **DAILY** TRANSCRIPT OF PROCEEDINGS
TUESDAY, AUGUST 30, 2011

APPEARANCES:

FOR TCW: QUINN, EMANUEL, URQUHART,
OLIVER & HEDGES
BY: **JOHN B. QUINN**
STEVEN G. MADISON
KARA MORDEN
JOSEPH SARLES
865 SOUTH FIGUEROA STREET
10TH FLOOR
LOS ANGELES, CALIFORNIA 90017
(213) 443-3000

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I N D E X

TUESDAY, AUGUST 30, 2011

INDEX OF WITNESSES

LEGEND: M = MR. MADISON
B = MR. BRIAN
W = MR. WEINGART
Q = MR. QUINN

<u>PLAINTIFF'S</u> <u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
CAHILL, MICHAEL (RESUMED) (FURTHER)		5706-B	5727-Q 5739-Q	5735-B 5740-B
LUCIDO, LOU (RESUMED)	5742-M 5801-M	5814-W	5827-M	
CONN, MICHAEL	5830-M	5868-B	5953-M	

DEFENSE
WITNESSES: DIRECT CROSS REDIRECT RECROSS

(NONE WERE PRESENTED IN THIS VOLUME)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I N D E X

TUESDAY, AUGUST 30, 2011

EXHIBITS

<u>EXHIBITS</u>	<u>FOR I.D.</u>	<u>IN EVD</u>	<u>WITHDRAWN</u>
6173 - FORM D FILING		5711	
6174 - PRINTOUT FROM TCW WEBSITE		5714	
6179 - FORM ADV		5715	
6178 - TCW'S PROSPECTUS		5717	
2254 - PORTION OF EXHIBIT 270		5746	
264 - E-MAIL CHAIN		5761	
2211 - E-MAIL DATED 12/15/09		5764	
2213 - E-MAIL EXCHANGE 12/28/09		5770	
3007 - DAMIANI/LUCIDO E-MAIL		5802	
2290-1-CONN TYPEWRITTEN NOTES		5839	
2290-2-CONN TYPEWRITTEN NOTES		5839	
5373 - CONN/HOLM/MARSHALL E-MAIL		5924	
5427 - CONN/CHOUKROUN E-MAIL		5932	
5178 - INFO REQ. LIST FOR CITIBANK		5938	
941 - CONN HANDWRITTEN NOTES		5940	
2291 - CONN TYPED NOTES		5940	

1 CASE NUMBER: BC429385
2 CASE NAME: TRUST COMPANY OF THE WEST VS.
3 JEFFREY GUNDLACH, ET AL
4 LOS ANGELES, TUESDAY, AUGUST 30, 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:A.M.

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

15
16 THE COURT: ALL RIGHT. IN THE TCW VERSUS
17 GUNDLACH MATTER, WE'RE OUT OF THE PRESENCE OF THE JURY.

18 I UNDERSTAND THERE'S SOME MATTER YOU
19 WANT TO TAKE UP.

20 MR. QUINN: YES, YOUR HONOR.

21 YOUR HONOR, YESTERDAY, WHEN DR. CORNELL
22 WAS ON THE STAND, MR. HELM ASKED HIM A QUESTION ABOUT
23 HOW A CERTAIN ASSUMPTION WOULD AFFECT HIS CALCULATIONS.
24 AND UNLIKE SOME OF THESE HIRED GUN EXPERTS WHO, OFF THE
25 CUFF, WOULD COME UP WITH SOME ANSWER, HE CANDIDLY SAID
26 HE'D WANT TO THINK ABOUT THAT.

27 AND WELL, HE HAS THOUGHT ABOUT THAT, AND
28 HE'S PREPARED TO RESPOND TO THAT. AND WE'D LIKE TO

08:37AM

08:37AM

1 RECALL HIM TO ADDRESS THAT ISSUE ABOUT WHAT
2 CIRCUMSTANCES THAT OFFSET WOULD APPLY.

3 NOW, I KNOW THE DEFENDANTS OPPOSE OUR
4 RECALLING HIM, BUT THAT WOULD BE OUR REQUEST. AND I
5 SUPPOSE IT COULD BE DONE IN REBUTTAL, BUT HE'S
6 AVAILABLE AND HERE TODAY, AND WE COULD ADDRESS IT
7 TODAY.

08:37AM

8 THE COURT: WHAT'S THE DEFENDANT'S VIEW ON
9 THIS?

10 MR. HELM: WELL, YOUR HONOR, I DON'T KNOW
11 WHERE THIS ENDS. YOU HAD A WITNESS WHO THEY DIDN'T
12 LIKE THE WAY THAT HE ANSWERED A QUESTION ON CROSS, AND
13 THEY WANT TO RECALL HIM. I MEAN, WE COULD HAVE A LIST
14 OF PEOPLE THAT WE'D LIKE TO RECALL IF WE DIDN'T LIKE
15 THE ANSWERS THAT WERE GIVEN.

08:37AM

08:38AM

16 AND THE CONTEXT OF THIS WAS, THEY HAD
17 SAID MR. CORNELL WAS GOING TO TESTIFY ON THURSDAY. I'D
18 PREPARED AN EXAMINATION OF HIM FOR THURSDAY.

19 ON FRIDAY, THEY FLOAT IN A NEW REPORT
20 FOR ME. AND SO I NOW HAVE TO PREPARE AN ENTIRELY NEW
21 EXAMINATION OF HIM FOR MONDAY, ON NEW ASSUMPTIONS.

08:38AM

22 HE'S NEVER BEEN DEPOSED. I DON'T HAVE A
23 REPORT ON IT, AND SO --

24 THE COURT: HE'S NEVER BEEN DEPOSED?

25 MR. HELM: WELL, HE WAS NOT DEPOSED ON THIS
26 NEW APPROACH THAT HE TOOK, WHERE HE ELIMINATED THESE
27 DAMAGES.

08:38AM

28 THE COURT: I UNDERSTAND.

1 MR. HELM: SO I COULDN'T ASK HIM.

2 I WAS ASKING QUESTIONS. I DIDN'T KNOW
3 WHAT THE ANSWERS WERE GOING TO BE, BECAUSE IT WAS ALL
4 NEW.

5 AND SO TO SAY NOW THAT THEY'VE SURPRISED 08:38AM
6 US AT THE LAST MINUTE WITH SOMETHING, AND THEN TO SAY,
7 WELL, BECAUSE OF THE WAY THINGS PLAYED OUT, WE'D LIKE
8 MORE TIME TO CONSIDER IT, I JUST THINK IT'S TERRIBLY
9 UNFAIR.

10 AND WHERE DO YOU END IT? WITH THE TIME 08:39AM
11 WHERE WE ARE, WE SHOULD BE CUTTING WITNESSES. WE
12 SHOULDN'T BE RECALLING WITNESSES. THEY MAY NOT EVEN
13 REST TODAY.

14 THE COURT: IS THAT TRUE, MR. QUINN?

15 MR. QUINN: WELL, WE STILL HOPE TO REST TODAY. 08:39AM
16 OF COURSE IT DEPENDS --

17 THE COURT: WHEN DO YOU -- YOU BRING HIM IN
18 TODAY?

19 MR. QUINN: WE CAN BRING HIM IN TODAY. HE'S
20 HERE IN THE COURTHOUSE. 08:39AM

21 WHAT HE SAID YESTERDAY, NOT THAT HE
22 DIDN'T LIKE THE ANSWER. IT'S WHAT HE SAID WAS, I WOULD
23 HAVE TO THINK ABOUT THAT. HE DID NOT ANSWER.

24 THE COURT: I UNDERSTAND.

25 I THINK WE'RE STILL WITHIN THE 08:39AM
26 PLAINTIFF'S CASE. AND IF THEY WANT TO RECALL A
27 WITNESS, I WILL ALLOW THEM TO RECALL HIM.

28 BUT I EXPECT THE PLAINTIFF TO REST.

1 WE'VE DRAGGED THIS ON. YOU ARE PUSHING THE 45 HOURS,
2 WHICH IS ALL THE TIME THAT YOU WERE GIVEN FOR THE WHOLE
3 CASE. AND I JUST DON'T UNDERSTAND WHY WE CAN'T BRING
4 FINALITY TO IT. SO IT SHOULD BE VERY BRIEF. AND I
5 WOULD NOT EXPECT ANY EXTENDED DIRECT, OR, FOR THAT
6 MATTER, MR. HELM, I'LL GIVE YOU WHATEVER LEEWAY YOU
7 WANT ON CROSS-EXAMINATION; BUT IT WAS AN ISSUE. HE WAS
8 CANDID, AND I THINK IT'S APPROPRIATE.

08:39AM

9 MR. HELM: YOUR HONOR, MAY I MAKE A REQUEST?

10 IF WE'RE GOING TO DO THIS, COULD WE GET
11 A WRITTEN PROFFER OF WHAT HE'S GOING TO SAY? I ASKED
12 HIM, THEY TOLD ME LAST NIGHT THEY WANTED TO RECALL HIM,
13 AND I SAID, WHAT'S THE SUBSTANCE OF HIS TESTIMONY GOING
14 TO BE?

08:40AM

15 THE COURT: I THINK THAT'S FAIR.

08:40AM

16 WHAT'S HE GOING TO SAY, MR. QUINN?

17 MR. QUINN: WHAT HE'S GOING TO SAY IS THAT
18 UNDER A CERTAIN SCENARIO, MR. HELM IS CORRECT, THAT
19 UNDER A CERTAIN SET OF ASSUMED FACTS, THE -- WHAT I'D
20 CHARACTERIZE AS SAVINGS FROM THE -- HAVING THE NEW TEAM
21 MANAGE THE SPECIAL MORTGAGE CREDIT FUNDS DO OFFSET THE
22 BREACH OF FIDUCIARY DUTY DAMAGES, UNDER A CERTAIN SET
23 OF ASSUMED STATE OF FACTS. AND HE'LL TESTIFY AS TO
24 WHEN THAT DOESN'T APPLY; WHEN THAT'S NOT TRUE AND WHEN
25 IT IS TRUE.

08:40AM

26 THE COURT: AND WHAT DOES HE SAY IN THAT
27 REGARD?

08:40AM

28 JUST RELAX, MR. HELM.

1 MR. HELM: THANK YOU.

2 MR. QUINN: AT THIS POINT, I REALLY NEED TO
3 GET MR. SURPRENANT HERE, TOO.

4 THE COURT: WELL, IF YOU WANT THIS TO HAPPEN,
5 THEN YOU REALLY OUGHT TO GET HIM HERE.

08:41AM

6 MR. QUINN: HE'S DOWNSTAIRS. AND WE CAN GET
7 HIM.

8 THE COURT: AT THE NEXT BREAK, WE NEED TO KNOW
9 THE ANSWERS TO THAT.

08:41AM

10 WE'LL TAKE IT UP, AT THE NEXT BREAK.

11 WELL, THE JURY IS HERE, SO WE'RE READY
12 TO GO.

13

14 (AT 8:45 A.M. THE JURY ENTERED
15 THE COURTROOM, AND THE FOLLOWING
16 PROCEEDINGS WERE HELD:)

17

18 THE COURT: ALL RIGHT. IN THE TCW VERSUS
19 GUNDLACH MATTER, ALL THE MEMBERS OF THE JURY ARE
20 PRESENT, AS ARE COUNSEL.

08:44AM

21 MR. CAHILL WAS ON THE STAND.

22

23 MICHAEL CAHILL,
24 THE WITNESS ON THE STAND AT THE TIME OF THE EVENING
25 RECESS, HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND
26 AND TESTIFIED FURTHER AS FOLLOWS:

27

28

1 THE COURT: PLEASE RECALL, SIR, YOU HAVE
2 PREVIOUSLY BEEN SWORN, AND YOU ARE STILL UNDER OATH.

3 MR. BRIAN, YOU MAY CONTINUE WITH YOUR
4 CROSS-EXAMINATION.

5 MR. BRIAN: THANK YOU, YOUR HONOR.

08:44AM

6
7
8 CROSS-EXAMINATION

9
10 BY MR. BRIAN:

08:44AM

11 Q. GOOD MORNING, MR. CAHILL.

12 A. GOOD MORNING.

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

15 THE JURY: MORNING.

08:45AM

16 Q. BY MR. BRIAN: MR. CAHILL, YESTERDAY I WAS
17 ASKING YOU ABOUT THE SMCF FUNDS.

18 DO YOU RECALL THAT, GENERALLY?

19 A. YES.

20 Q. ARE YOU FAMILIAR WITH THE NAME MARK GAMSIN?

08:45AM

21 A. YES.

22 Q. HE'S A FRIEND OF MR. STERN; IS HE NOT?

23 A. YES.

24 Q. AND HE WAS AN INVESTOR IN ONE OR BOTH OF THE
25 SMCF FUNDS, WAS HE NOT?

08:45AM

26 A. I DON'T KNOW.

27 Q. TAKE A LOOK AT -- I GAVE YOU A BINDER THIS
28 MORNING CALLED ADDITIONAL EXHIBITS. AND IN THE INSIDE

1 FLAP WERE TWO DOCUMENTS, EXHIBIT 2066 AND EXHIBIT 5610.

2 DO YOU RECOGNIZE THOSE DOCUMENTS, SIR?

3 A. I DON'T RECOGNIZE THEM.

4 I THINK I KNOW WHAT THEY ARE, BUT THEY
5 ARE NOT SOMETHING I THINK I'VE SEEN BEFORE.

08:45AM

6 Q. DO THOSE APPEAR TO BE THE INVESTOR LISTS FOR
7 THE SMCF FUNDS I AND II?

8 A. THEY APPEAR TO BE INVESTOR LISTS. THEY LOOK
9 SHORT.

10 IS THERE MORE INVESTORS THAN ARE HERE?
11 MAYBE THEY ARE THE FULL LIST. THERE ARE ABOUT 350
12 INVESTORS IN THESE FUNDS.

08:45AM

13 Q. AND I'LL -- I TAKE IT THAT -- DO YOU KNOW
14 WHETHER OR NOT MR. GAMSIN WAS CHARGED FEES FOR THE
15 FUNDS?

08:46AM

16 A. I DON'T KNOW, BUT I ASSUME HE WAS.

17 Q. OKAY. THE ONLY PEOPLE WHO WERE NOT WERE
18 PEOPLE THAT WERE SOMEHOW INSIDE TCW; IS THAT RIGHT?

19 A. YEAH. BASICALLY WHAT WE CALL RELATED PARTIES,
20 OFFICERS AND DIRECTORS.

08:46AM

21 Q. AND TO BE FAIR, THAT INCLUDED MR. GUNDLACH AND
22 SOME OF THE FOLKS IN THE MBS GROUP, TOO, DID IT NOT?

23 A. YEAH, MR. GUNDLACH, MR. LUCIDO, MR. BARACH.

24 Q. YESTERDAY YOU TESTIFIED ABOUT MR. GUNDLACH'S
25 PURCHASE OF TCW STOCK, AND HIS LATER SALE OF THAT STOCK
26 TO SOCIETE GENERALE.

08:46AM

27 DO YOU RECALL THAT?

28 A. YES.

1 Q. NOW, HE WAS NOT THE ONLY TCW EXECUTIVE WHO
2 PURCHASED TCW STOCK AT A LOWER PRICE THAN IT WAS LATER
3 SOLD TO SOCIETE GENERALE, CORRECT?

4 A. NO.

5 Q. IS THAT CORRECT?

08:46AM

6 A. THAT'S CORRECT, YEAH.

7 Q. THE VALUE OF THAT STOCK WENT UP BETWEEN THE
8 1990'S OR SO, WHEN HE BOUGHT THE STOCK, AND THE TIME IT
9 WAS SOLD IN THE 2000'S, DID IT NOT?

10 A. YES.

08:46AM

11 Q. AND DURING THAT TIME PERIOD, THE TOTAL ASSETS
12 UNDER MANAGEMENT AT TCW WENT UP FROM SOMEWHERE AROUND
13 10 BILLION TO OVER A HUNDRED BILLION, RIGHT?

14 A. FROM WHAT PERIOD OF TIME?

15 Q. LET'S SAY FROM THE LATE 1980'S UP UNTIL 2007?

08:47AM

16 A. WHEN I ARRIVED IN 1991, THEY WERE ABOUT 20
17 BILLION; SO IT COULD BE.

18 Q. SO IT WENT FROM 20 BILLION TO SOMETHING OVER A
19 HUNDRED BILLION, CORRECT?

20 A. RIGHT. BUT THE INCREASE IN VALUE WASN'T
21 ATTRIBUTED -- THE SHARES WERE SOLD AT BOOK VALUE, NOT
22 AT FAIR MARKET VALUE. SO THE INCREASE IN VALUE WAS NOT
23 JUST BECAUSE THE COMPANY GREW, BUT BECAUSE THE
24 LIQUIDATION PRICE WAS BASED ON A MARKET PRICE.

08:47AM

25 Q. WOULD YOU AGREE WITH ME THAT MR. GUNDLACH
26 PLAYED AT LEAST SOME SIGNIFICANT ROLE IN THE INCREASE
27 OF VALUE OF THE COMPANY, DURING THE TIME PERIOD HE WAS
28 THERE?

08:47AM

1 A. YES.

2 Q. NOW, YOU WERE ASKED SOME QUESTIONS YESTERDAY
3 ABOUT TRIAL EXHIBIT 1899, WHICH IS IN THE BINDER I GAVE
4 YOU THIS MORNING.

5 COULD YOU PUT THAT UP, DENNIS? 08:47AM

6 DO YOU RECALL THOSE QUESTIONS,
7 GENERALLY, YESTERDAY, SIR?

8 A. YES.

9 Q. NOW, YOU UNDERSTAND THAT THIS EXHIBIT 1899 WAS
10 OFFERED IN EVIDENCE BY TCW, CORRECT? 08:48AM

11 A. I'LL TAKE YOUR WORD FOR IT.

12 Q. YOU UNDERSTAND THAT TCW AND ITS LAWYERS MADE A
13 DECISION TO MAKE THE INFORMATION IN THIS DOCUMENT PART
14 OF THE PUBLIC RECORD, RIGHT?

15 A. IF YOU SAY THEY ENTERED IT, YES. 08:48AM

16 Q. DID YOU ASK ANYBODY'S PERMISSION BEFORE YOU
17 MADE THIS ALLEGEDLY CONFIDENTIAL INFORMATION PART OF
18 THE PUBLIC RECORD, SIR?

19 A. I DIDN'T ASK ANYONE'S PERMISSION, NO.

20 Q. TAKE A LOOK AT -- IF WE COULD PUT UP 1899-10. 08:48AM

21 IF WE COULD HIGHLIGHT WHERE IT SAYS,
22 DISTRESSED FUNDS, AND ALSO THE NEXT LINE.

23 NOW, IT REFERS TO \$3 BILLION OF ASSETS
24 UNDER MANAGEMENT.

25 DO YOU SEE THAT, SIR? 08:49AM

26 A. YES.

27 Q. NOW, THE SIZE OF THE FUNDS WAS PUBLICLY KNOWN,
28 WAS IT NOT?

1 A. IT WAS DISCERNIBLE. I DON'T KNOW THAT IT WAS
2 GENERALLY IN THE PUBLIC DOMAIN, BUT IT WAS PROBABLY
3 DISCERNIBLE.

4 Q. TAKE A LOOK AT EXHIBIT 6172 IN THE BINDER, NOT
5 IN EVIDENCE.

08:49AM

6 THAT'S AN ARTICLE RELATING TO A PRESS
7 RELEASE ISSUED BY TCW AND MR. GUNDLACH WITH RESPECT TO
8 THE FUNDS THAT HAD BEEN INVESTED PURSUANT TO THESE
9 DISTRESSED FUNDS, CORRECT?

10 A. YES.

08:49AM

11 Q. YOU ARE FAMILIAR WITH WHAT'S CALLED THE FORM D
12 FILING, ARE YOU NOT?

13 A. YES.

14 Q. AND FORM D FILINGS ARE MADE BY TCW, ARE THEY
15 NOT?

08:50AM

16 A. THEY ARE.

17 Q. AND YOUR NAME IS OFTEN ON THE FORM D FILINGS,
18 ISN'T IT?

19 A. I DON'T KNOW. IT COULD BE.

20 Q. TAKE A LOOK AT EXHIBIT 6173.

08:50AM

21 THAT'S ONE OF THE FORM D FILINGS OF TCW,
22 IS IT NOT?

23 A. YES.

24 Q. AND TURN TO PAGE 7 OF 6173, SO IT'S 6173-0007.

25 DO YOU SEE THAT?

08:50AM

26 A. I DO.

27 Q. AND YOUR NAME APPEARS AT THE TOP, DOES IT NOT?

28 A. YEP.

1 MR. BRIAN: I WOULD OFFER EXHIBIT 6173.

2 MR. QUINN: NO OBJECTION.

3 THE COURT: NO OBJECTION?

4 IT WILL BE ADMITTED.

5

08:50AM

6 (EXHIBIT 6173 ADMITTED.)

7

8 MR. QUINN: COULD WE PUT IT UP PLEASE, DENNIS.

9 WE'LL PUT IT ON THE ELMO.

10 MR. BRIAN: I DON'T THINK WE HAVE THAT

11 DOCUMENT, YOUR HONOR.

12 LET'S SEE IF I CAN DO IT THE OLD

13 FASHIONED WAY.

14 TURN TO PAGE 6173-0003.

15 A. OKAY.

16 Q. DO YOU SEE IN THE MIDDLE OF THE PAGE WHERE IT
17 SAYS, TOTAL OFFERING AMOUNT?

18 A. YES.

19 Q. AND THE AMOUNT IS \$3 BILLION, IS IT NOT?

20 A. THAT'S RIGHT.

21 Q. AND THEN IT HAS TOTAL AMOUNT SOLD, ABOUT 1.38
22 BILLION, RIGHT?

23 A. YES.

24 Q. AND THEN TOTAL REMAINING TO BE SOLD, 1.6
25 BILLION, RIGHT?

26 A. YES.

27 Q. NOW, YOU TESTIFIED YESTERDAY THAT OTHER CLOSED
28 END FUNDS AT TCW HAVE A -- USE A TWO PERCENT MANAGEMENT

08:50AM

08:51AM

08:51AM

08:51AM

1 FEE, CORRECT?

2 A. I SAID I THOUGHT THEY DID.

3 AND IN CHECKING, THEY DON'T.

4 Q. OKAY.

5 WERE YOU HERE YESTERDAY, WHEN MR. BROSSY
6 TESTIFIED?

08:51AM

7 A. YES.

8 Q. AND YOU HEARD HIM SAY THAT TWO PERCENT IS A
9 COMMON AMOUNT TO CHARGE FOR A MANAGEMENT FEE ON CLOSED
10 END FUNDS, DID HE NOT?

08:52AM

11 A. I HEARD HIM SAY THAT.

12 Q. ARE YOU FAMILIAR WITH WIKIPEDIA?

13 A. YES.

14 Q. TAKE A LOOK AT EXHIBIT 6180 IN YOUR BINDER.
15 PAGE 3, UNDER FEES.

08:52AM

16 A. 6180 DASH WHAT?

17 Q. 6180-0003, UNDER FEES BEGINNING WITH THE
18 PARAGRAPH, MANAGEMENT FEES.

19 A. YES.

20 Q. DO YOU AGREE WITH THE WIKIPEDIA REPORTS --
21 MR. QUINN: WELL, I OBJECT TO THIS, YOUR
22 HONOR.

08:52AM

23 THE COURT: SUSTAINED.

24 MR. BRIAN: OKAY.

25 Q. WELL, IF MR. BROSSY IS RIGHT --

08:52AM

26 LET'S GO BACK TO EXHIBIT 1899-10 PLEASE,
27 DENNIS.

28 IF MR. BROSSY IS RIGHT IN ASSUMING THAT

1 THE COMMON MANAGEMENT FEE IS TWO PERCENT, WHAT IS TWO
2 PERCENT OF THREE BILLION?

3 A. TWO PERCENT OF THREE BILLION IS 60 MILLION.

4 Q. 60 MILLION, THE NUMBER THAT MR. BROSSY
5 TESTIFIED TO ON THIS CHART 1899-10, CORRECT, SIR?

08:53AM

6 A. THAT'S CORRECT.

7 ALTHOUGH SPECIAL MORTGAGE FUNDS IS NOT A
8 HEDGE FUND.

9 Q. DO YOU SEE THE REFERENCE TO STRATEGIC MBS ON
10 THE NEXT SQUARE?

08:53AM

11 A. YES.

12 Q. AND THAT REFERS TO AN INVESTMENT STRATEGY AND
13 MORTGAGE-BACKED SECURITIES, DOESN'T IT?

14 A. THAT'S A SPECIFIC STRATEGY CALLED STRATEGIC
15 MBS.

08:53AM

16 Q. OKAY.

17 AND TCW'S OWN WEBSITE HAS INFORMATION
18 ABOUT THE AMOUNT OF ASSETS UNDER MANAGEMENT IN ITS
19 STRATEGY, DOES IT NOT?

20 A. IN THE TOTAL MBS?

08:54AM

21 Q. YES.

22 A. POSSIBLY.

23 Q. TAKE A LOOK AT EXHIBIT 6174 IN YOUR BINDER.

24 THE COURT: 6174?

25 MR. BRIAN: 6174.

08:54AM

26 THE COURT: YEAH.

27 Q. BY MR. BRIAN: THAT APPEARS TO BE A PRINTOUT
28 FROM TCW'S OWN WEBSITE, DOES IT NOT, SIR?

1 A. YES.

2 MR. BRIAN: I WILL OFFER 6174.

3 MR. QUINN: NO OBJECTION.

4 THE COURT: IT WOULD BE ADMITTED.

5

08:54AM

6 (EXHIBIT 6174 ADMITTED.)

7

8 MR. BRIAN: IF WE COULD PUT UP THE FIRST PAGE
9 OF THAT, DENNIS.

10 Q. AND IF WE COULD HIGHLIGHT WHERE IT SAYS, SORT
11 OF THE UPPER LEFT-HAND SIDE, WHERE IT SAYS, AT A
12 GLANCE, AUM?

08:54AM

13 A. WHAT PAGE?

14 Q. ON THE FIRST PAGE?

15 THE COURT: HE'S GOING TO BLOW IT UP ON THE
16 SCREEN.

08:54AM

17 Q. BY MR. BRIAN: SEE WHERE IT SAYS AUM, OR
18 COMMITTED TO MANAGEMENT? IF WE COULD HIGHLIGHT THAT OR
19 JUST BLOW UP THAT BOX THERE. RIGHT THERE.

20 YOUR WEBSITE DISCLOSES PUBLICLY THAT THE
21 AUM OR COMMITTED MANAGEMENT IS \$7 BILLION, AS OF JUNE
22 30TH, UNDER THE TOTAL -- UNDER THE MBS TOTAL RETURN
23 STRATEGY, CORRECT?

08:55AM

24 A. THAT'S FOR THE TOTAL RETURN STRATEGY, YES.

25 Q. ARE YOU FAMILIAR WITH A FORM CALLED A FORM
26 ADV?

08:55AM

27 A. YES.

28 Q. THAT'S A FORM THAT INVESTORS AND ADVISORS LIKE

1 TCW MUST FILE WITH THE SECURITIES AND EXCHANGE
2 COMMISSION, RIGHT?

3 A. YES.

4 Q. AND WHEN IT'S FILED WITH THE SEC, THE FORM ADV
5 IS PUBLICLY AVAILABLE, IS IT NOT?

08:55AM

6 A. YES, IT IS.

7 Q. AND THE FORM ADV THAT TCW FILES DISCLOSES DATA
8 ON THE FEES CHARGED BY TCW TO ITS CLIENTS, DOESN'T IT?

9 A. IT SHOWS THE STANDARD FEE.

10 Q. TAKE A LOOK AT EXHIBIT 6179.

08:55AM

11 EXHIBIT 6179 IS A TCW FORM ADV, MARCH
12 31ST, 2011, IS IT NOT?

13 A. YES.

14 MR. BRIAN: I WOULD OFFER EXHIBIT 6179?

15 MR. QUINN: NO OBJECTION.

08:56AM

16 THE COURT: IT WILL BE ADMITTED.

17

18 (EXHIBIT 6179 ADMITTED.)

19

20 Q. BY MR. BRIAN: TURN TO PAGE 6179-0007.

08:56AM

21 AND IF WE COULD PUT THAT ON THE SCREEN,
22 DENNIS, THAT WOULD BE GREAT.

23 AND IF WE COULD, DENNIS, IF WE COULD
24 ENLARGE RIGHT UP HERE.

25 ON PAGE 7 OF EXHIBIT 6179, IT'S FORM
26 ADV, TCW DISCLOSED THAT IT CHARGED THE U.S. INVESTORS
27 ON THE FIRST 50 MILLION, ONE PERCENT, RIGHT?

08:56AM

28 A. YES.

1 Q. AND NON-US INVESTORS ON ALL ASSETS WERE
2 CHARGED TWO PERCENT, RIGHT?

3 A. RIGHT.

4 Q. AND THIS INFORMATION WAS PUBLICLY AVAILABLE,
5 WAS IT NOT, SIR?

08:57AM

6 A. YES.

7 Q. LET'S GO BACK NOW TO EXHIBIT 1899-10? LET'S
8 GO TO THE MUTUAL FUND.

9 IF WE COULD HIGHLIGHT THAT, THE FIRST
10 TWO LINES THERE, DENNIS.

08:57AM

11 A. YES.

12 Q. IT SAYS 15 MILLION IN REVENUE AND 5.2 BILLION
13 ASSETS UNDER MANAGEMENT, DO YOU SEE THAT?

14 A. CORRECT.

15 Q. YOU WOULD AGREE THAT THE TOTAL ASSETS UNDER
16 MANAGEMENT, WERE PUBLICLY AVAILABLE, RIGHT?

08:57AM

17 A. YES. THAT'S PUBLIC.

18 Q. AND YOUR TESTIMONY YESTERDAY, ACTUALLY WITH
19 RESPECT TO -- WITH RESPECT TO THE NEXT LITTLE ARROW,
20 HAVING TO DO WITH THE 25 BASIS POINTS, RIGHT? YOU WERE
21 ASKED ABOUT THAT?

08:58AM

22 A. YES.

23 Q. NOW, MUTUAL FUNDS THAT ARE OFFERED BY
24 INVESTORS LIKE TCW HAVE TO PROVIDE POTENTIAL INVESTORS
25 WITH SOMETHING CALLED A PROSPECTUS, RIGHT?

08:58AM

26 A. THAT'S RIGHT.

27 Q. AND A PROSPECTUS WAS FILED IN CONNECTION WITH
28 THE TCW TOTAL RETURN BOND FUND, WAS IT NOT?

1 A. YES.

2 Q. TAKE A LOOK AT EXHIBIT 6178. 6178.

3 AND I'M NOT GOING TO TEST YOU.

4 IT APPEARS TO BE A COPY OF TCW'S
5 PROSPECTUS, CORRECT?

08:58AM

6 A. YES.

7 MR. BRIAN: I WOULD OFFER EXHIBIT 6178, YOUR
8 HONOR.

9 MR. QUINN: NO OBJECTION.

10 THE COURT: IT WILL BE ADMITTED.

08:58AM

11

12 (EXHIBIT 6178 ADMITTED.)

13

14 Q. BY MR. BRIAN: LET'S TURN -- LET'S PUT THE
15 FIRST PAGE OF THAT UP, DENNIS.

08:59AM

16 AND THEN IF WE COULD PUT UP PAGE 59.

17 AND IF YOU COULD TURN TO 6179-0059.

18 A. YES.

19 Q. AND THERE'S A SQUARE OF NUMBERS, DENNIS. IF
20 YOU COULD ENLARGE THAT BOX OF NUMBERS RIGHT THERE.

08:59AM

21 AND DO YOU SEE -- WELL, FIRST OF ALL,
22 WOULD YOU AGREE WITH ME THAT --

23 DENNIS, MAYBE WE CAN HIGHLIGHT THE TITLE
24 OF THIS PAGE.

25 THIS PAGE PERTAINS TO THE TCW TOTAL
26 RETURN BOND FUND, DOES IT NOT?

08:59AM

27 A. THAT'S RIGHT.

28 Q. NOW LET'S GO BACK TO THAT BOX, IF WE COULD,

1 RIGHT THERE.

2 AND THAT DISCLOSED THE MANAGEMENT FEES
3 AS BEING 50 BASIS POINTS, RIGHT?

4 A. THAT'S RIGHT.

5 Q. AGAIN, THAT WAS SOMETHING THAT WAS PROVIDED TO
6 ALL THE INVESTORS, WAS IT NOT?

08:59AM

7 A. YES.

8 Q. THAT WAS PUBLICLY AVAILABLE, WASN'T IT, SIR?

9 A. YES.

10 Q. NOW, YOU UNDERSTOOD THAT UNDER MR. GUNDLACH'S
11 FEE ARRANGEMENT WITH THE COMPANY, HE AND HIS GROUP GOT
12 BASICALLY HALF OF THE MANAGEMENT FEES, RIGHT?

09:00AM

13 A. MORE OR LESS, YEAH.

14 Q. SO LET'S GO BACK TO EXHIBIT 1899, PAGE 10.

15 AND IF WE COULD ENLARGE THERE, WHERE IT
16 SAYS MUTUAL FUNDS, 25 BASIS POINTS.

09:00AM

17 WOULD YOU AGREE WITH ME THAT HALF OF 50
18 BASIS POINTS, WHICH WAS PUBLICLY AVAILABLE, IS 25 BASIS
19 POINTS?

20 A. I AGREE THAT THAT'S HALF; BUT I DON'T THINK
21 THAT THAT'S WHAT IT'S REFERRING TO.

09:00AM

22 Q. AND THE 25 BASIS POINTS IS EQUIVALENT TO
23 MR. -- THE COMPENSATION TO BE PAID BY MR. GUNDLACH AND
24 HIS GROUP, CORRECT?

25 A. THAT'S TRUE. BUT I THINK THAT'S COINCIDENTAL.

09:00AM

26 MR. BRIAN: I'LL MOVE TO STRIKE THE "BUT I
27 THINK THAT'S COINCIDENTAL," AS BEING NONRESPONSIVE AND
28 SPECULATIVE.

1 THE COURT: I'LL STRIKE THE COMMENT.

2 Q. BY MR. BRIAN: NOW, YOU TESTIFIED YESTERDAY TO
3 A CONVERSATION YOU HAD WITH MR. GUNDLACH ABOUT HIS
4 WANTING TO TELL A POTENTIAL CLIENT THAT WHAT THEY WERE
5 REQUESTING WOULD POTENTIALLY BANKRUPT THE COMPANY; IS
6 THAT RIGHT? 09:01AM

7 A. WHAT THEY WERE REQUESTING WAS UNREASONABLE.
8 AND HIS RESPONSE TO THEM WOULD BE, WELL,
9 JUST BANKRUPT THE COMPANY, AND DO WHAT YOU ASK FOR.

10 Q. LET ME BREAK THAT DOWN, SIR. 09:01AM

11 THE NEW CLIENT WANTED MR. GUNDLACH TO
12 DEVOTE A HUNDRED PERCENT OF HIS TIME TO THAT CLIENT,
13 AND IGNORE EVERY OTHER CLIENT, RIGHT?

14 A. WELL, HE WANTED EVERY OTHER CLIENT TO BE
15 HANDLED BY WHAT JEFFREY GUNDLACH CALLED THE B TEAM. 09:01AM

16 Q. NOT BY HIM, RIGHT?

17 A. RIGHT.

18 Q. AND YOU THOUGHT THAT WAS A BAD IDEA?

19 A. I DID.

20 Q. AND HE THOUGHT THAT WAS A BAD IDEA? 09:01AM

21 A. HE DID.

22 Q. AND YOU BOTH THOUGHT THAT WAS A BAD IDEA,
23 BECAUSE YOU THOUGHT THAT THE OTHER CLIENTS THAT HE
24 WOULD NOT BE SERVICING WOULD BE UNHAPPY, RIGHT?

25 A. THAT WAS ONE REASON. 09:02AM

26 Q. AND YOU THOUGHT, AND HE THOUGHT, THAT AS A
27 RESULT, SOME OF THOSE CLIENTS MIGHT BE SO UNHAPPY THAT
28 THEY WOULD GO ELSEWHERE WITH THEIR INVESTMENTS, RIGHT?

1 A. YES.

2 Q. AND YOU BOTH THOUGHT THAT WAS A BAD IDEA; BUT
3 YOU THOUGHT THE WAY HE WANTED TO EXPRESS IT WAS ALSO
4 BAD, RIGHT?

5 A. CORRECT.

09:02AM

6 Q. AND YOU TOLD HIM THAT, RIGHT?

7 A. I DID.

8 Q. AND WHEN YOU HAD THE CONVERSATION WITH -- THE
9 NEXT DAY, WITH THE CLIENTS, HE DIDN'T SAY WHAT YOU
10 OBJECTED TO, DID HE?

09:02AM

11 A. HE DID NOT.

12 Q. AND THE CALL WENT WELL, DIDN'T IT, SIR?

13 A. THE CALL WENT FINE.

14 Q. TAKE A LOOK AT EXHIBIT 2274(A). THAT ACTUALLY
15 MIGHT BE IN THAT WHITE BINDER.

09:02AM

16 I APOLOGIZE. THE ONE YOU HAD YESTERDAY.

17 THE COURT: THIS IS EXHIBIT WHAT?

18 MR. BRIAN: 2274(A), I THINK IT IS.

19 Q. THAT'S A LETTER THAT WAS SENT OUT BY TCW'S
20 LAWYERS TO THE FEDERAL RESERVE ON DECEMBER 2ND, 2009;
21 IS THAT RIGHT?

09:03AM

22 A. YES.

23 Q. NOW, ISN'T IT A FACT THAT TCW FIRST REALIZED
24 IT NEEDED TO APPLY TO THE FEDERAL RESERVE FOR APPROVAL
25 OF THE MET WEST ACQUISITION SOMETIME IN EARLY NOVEMBER?

09:03AM

26 A. I BELIEVE SO.

27 Q. AND MR. STERN WAS QUITE DISTRESSED ABOUT THAT,
28 WASN'T HE, SIR?

1 A. I DON'T KNOW IF HE WAS OR NOT.

2 Q. TAKE A LOOK IN THE BINDER I GAVE YOU THIS
3 MORNING, AT EXHIBIT 6163.

4 A. 6163?

5 Q. I DON'T THINK I HAVE IT.

09:04AM

6 LET'S USE THE SCREEN. IT'S A ONE-PAGE
7 DOCUMENT.

8 THE COURT: ALL RIGHT.

9 CAN WE BLOW IT UP? THANKS.

10 MR. BRIAN: IT'S NOT IN EVIDENCE YET.

09:04AM

11 Q. HAVE YOU EVER SEEN THIS DOCUMENT FROM
12 MR. STERN, SIR?

13 A. NO.

14 Q. PARDON?

15 A. NO.

09:04AM

16 Q. DID MR. STERN EVER TELL YOU THAT HE HAD
17 WRITTEN THE FRENCH, SAYING THERE WAS VERY, VERY BAD
18 NEWS?

19 A. NO.

20 Q. DID HE EVER TELL YOU THAT HE'D WRITTEN THE
21 FRENCH, SAYING THERE WAS VERY, VERY BAD NEWS, BECAUSE
22 WE HAD TO APPLY TO THE FED FOR APPROVAL?

09:04AM

23 A. NO.

24 Q. WHEN MR. QUINN ASKED YOU ABOUT THIS LETTER,
25 2274A, WERE YOU SUGGESTING TO THE JURY, IN YOUR
26 TESTIMONY, THAT TCW DID NOT DECIDE TO TERMINATE
27 MR. GUNDLACH UNTIL AFTER THE FED GAVE ITS APPROVAL?

09:04AM

28 MR. QUINN: ARGUMENTATIVE. OBJECT TO THE FORM

1 OF THE QUESTION.

2 THE COURT: COULD YOU REPHRASE?

3 Q. BY MR. BRIAN: I'LL REFRAME IT.

4 THE COURT: REPHRASE THE QUESTION.

5 Q. BY MR. BRIAN: YOU HAVE IN MIND THE LETTER
6 THAT THE OUTSIDE LAWYERS -- NOT MR. QUINN'S FIRM,
7 ANOTHER FIRM -- SENT ON DECEMBER 2ND TO THE FED?

09:05AM

8 DO YOU HAVE THAT LETTER IN MIND?

9 A. YES.

10 Q. IS IT YOUR TESTIMONY THAT TCW DID NOT DECIDE
11 TO TERMINATE MR. GUNDLACH UNTIL AFTER THE FED RESPONDED
12 TO THAT LETTER? IS THAT YOUR TESTIMONY?

09:05AM

13 A. NO, BECAUSE THE FED DIDN'T RESPOND TILL
14 DECEMBER -- MIDDLE OF DECEMBER.

15 Q. OKAY. IT'S A FACT, IS IT NOT, THAT YOU
16 PARTICIPATED IN MEETINGS IN AUGUST, IN WHICH --

09:05AM

17 MR. QUINN: OBJECTION. BEYOND THE SCOPE.

18 MR. BRIAN: LET ME GET THE QUESTION OUT.

19 Q. IN WHICH YOU DISCUSSED TERMINATING
20 MR. GUNDLACH?

09:05AM

21 MR. QUINN: IT'S BEYOND THE SCOPE OF THE
22 DIRECT.

23 THE COURT: I'M GOING TO OVERRULE IT.

24 I THINK IT'S AN ISSUE.

25 Q. BY MR. BRIAN: ISN'T IT A FACT THAT YOU
26 PARTICIPATED IN MEETINGS IN AUGUST OF 2007 -- 2009, I'M
27 SORRY, IN WHICH TERMINATING MR. GUNDLACH WAS DISCUSSED?

09:06AM

28 A. WELL, I'VE BEEN SHOWN SOME NOTES THAT INDICATE

1 THAT THERE WAS A MEETING AT WHICH IT WAS DISCUSSED, AND
2 I WAS PRESENT BY TELEPHONE.

3 Q. TAKE A LOOK AT EXHIBIT 6128 IN YOUR NEW
4 BINDER.

5 A. 6178?

09:06AM

6 MR. BRIAN: NO, I'M SORRY. IT'S NOT. I
7 THOUGHT IT WAS.

8 Q. WELL, YOU NOW RECALL ATTENDING A MEETING WITH
9 MR. STERN, AND MR. DEVITO, AND MR. CONN, AND
10 MR. GIBELLO AND MR. BURSCHINGER, IN WHICH YOU
11 PARTICIPATED BY PHONE ON AUGUST 27TH, 2009, DO YOU NOT?

09:06AM

12 MR. QUINN: YOUR HONOR, I DIDN'T -- THIS IS
13 BEYOND THE SCOPE OF THE DIRECT.

14 THE COURT: WE CAN RECALL THE WITNESS AT A
15 LATER TIME.

09:06AM

16 MR. BRIAN: YOU RECALL BEING IN THAT MEETING,
17 DON'T YOU, SIR?

18 THE COURT: I'LL LET HIM ANSWER THAT QUESTION,
19 BUT WE'RE NOT GOING INTO DETAILS.

20 MR. BRIAN: PARDON?

09:07AM

21 THE COURT: I'LL ALLOW HIM TO ANSWER THAT
22 QUESTION, THEN WE'RE NOT GOING INTO THE DETAILS OF IT.

23 MR. BRIAN: THEN WE'LL HAVE TO CALL HIM BACK,
24 YOUR HONOR.

25 THE COURT: THAT'S FINE.

09:07AM

26 MR. BRIAN: OKAY. I'LL MOVE ON, AND WE'LL
27 CALL HIM BACK ON THAT SUBJECT.

28 THE COURT: THAT'S FINE.

1 Q. BY MR. BRIAN: YOU WERE SHOWN YESTERDAY SOME
2 LETTERS THAT WERE SENT TO TCW CLIENTS IN LATE JANUARY
3 OF 2010, INFORMING THEM THAT CERTAIN OF THEIR
4 INFORMATION HAD BEEN DOWNLOADED BY PEOPLE THAT WENT
5 WITH DOUBLELINE.

09:07AM

6 DO YOU RECALL THAT, SIR?

7 A. YES.

8 Q. AND WHEN DID YOU FIRST LEARN, IN THE FALL OF
9 2009, THAT INFORMATION WAS BEING DOWNLOADED BY
10 MR. SANTA ANA AND OTHERS? WHEN DID YOU FIRST LEARN
11 THAT?

09:07AM

12 A. WELL, WE FIRST LEARNED THAT IT WAS BEING
13 DOWNLOADED TO AN EXTERNAL DEVICE. WE DIDN'T KNOW WHERE
14 THAT DEVICE WENT, THE DAY BEFORE THANKSGIVING, WHICH
15 WOULD HAVE BEEN NOVEMBER 25 OR NOVEMBER 26 OF 2009.

09:08AM

16 Q. AND THE LEGAL OBLIGATION TO DISCLOSE TO
17 INVESTORS, DID THAT KICK IN RIGHT THEN, SIR?

18 A. WELL, WE DIDN'T KNOW THAT IT HAD LEFT THE
19 PREMISES.

20 Q. DID YOU BELIEVE THAT YOU HAD AN OBLIGATION TO
21 DISCLOSE TO INVESTORS THAT THAT INFORMATION HAD BEEN
22 DOWNLOADED? YES OR NO?

09:08AM

23 A. NO.

24 Q. OKAY. DID YOU BELIEVE YOU HAD AN OBLIGATION
25 TO DO THAT ON DECEMBER 4TH?

09:08AM

26 A. ON DECEMBER 4TH, WE DIDN'T HAVE THE FULL
27 INFORMATION YET.

28 Q. DID YOU BELIEVE YOU HAD AN OBLIGATION TO

1 DISCLOSE, ON DECEMBER 5TH?

2 A. I CAN'T TELL YOU WHAT DAY WE DISCOVERED IT WAS
3 ALL TAKEN OFF THE PREMISES, HOW MUCH WAS DOWNLOADED,
4 BUT IT WAS SOMETIME AFTER DECEMBER 4TH, WITHIN ABOUT A
5 WEEK OR TWO.

09:08AM

6 Q. OKAY. SO WITHIN ABOUT A WEEK OR TWO, SO LET'S
7 SAY DECEMBER 15TH OR SO, DID YOU THEN DECIDE, ON
8 DECEMBER 15TH, TO WRITE A LETTER TO INVESTORS, TELLING
9 THEM THAT THIS INFORMATION HAD SOMEHOW BEEN ACQUIRED?

10 A. I CAN'T RECALL WHEN WE DECIDED, BUT WE HAD TO
11 CULL THROUGH THE INFORMATION TO FIGURE WHICH ONES HAD
12 THE BAD INFORMATION TO BE DISCLOSED.

09:09AM

13 Q. LET ME ASK YOU A QUESTION, SIR.

14 DID YOU WRITE A LETTER ON DECEMBER 15TH
15 TO THE INVESTORS, TELLING THEM THAT THIS INFORMATION
16 HAD BEEN DOWNLOADED? YES OR NO?

09:09AM

17 A. NO.

18 Q. DID YOU WRITE A LETTER ON DECEMBER 16TH,
19 TELLING THEM THIS INFORMATION HAD BEEN DOWNLOADED?

20 A. NO.

09:09AM

21 Q. OKAY.

22 NOW, WHAT HAPPENED BETWEEN DECEMBER 15TH
23 AND JANUARY 29TH, WHEN YOU ENDED UP WRITING THE LETTER,
24 IS THAT ABOUT 40 EMPLOYEES FROM THE MBS GROUP RESIGNED
25 FROM TCW AND JOINED DOUBLELINE, RIGHT?

09:09AM

26 A. FROM DECEMBER 14TH?

27 Q. LET'S PUT DECEMBER 5TH.

28 BETWEEN DECEMBER 5TH AND JANUARY 29TH,

1 ABOUT 40 PEOPLE FROM THE MBS GROUP RESIGNED AND JOINED
2 DOUBLELINE, CORRECT?

3 A. YES.

4 Q. AND DURING THAT SAME TIME PERIOD, A COMPANY
5 CALLED OAKTREE CAPITAL BEGAN ASSISTING DOUBLELINE TO
6 GET ITS BUSINESS UP AND RUNNING; ISN'T THAT CORRECT,
7 SIR?

8 MR. QUINN: BEYOND THE SCOPE.

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

10 WE REALLY NEED TO MOVE ALONG.

11 GO AHEAD.

12 Q. BY MR. BRIAN: ISN'T THAT RIGHT?

13 A. YES. OAKTREE ASSISTED.

14 Q. AND DURING THAT TIME PERIOD, YOU AND MR. STERN
15 AND OTHERS, BEGAN TO FEAR THAT DOUBLELINE WAS GOING TO
16 BECOME A COMPETITIVE THREAT TO YOU; ISN'T THAT RIGHT,
17 SIR?

18 A. WE EXPECTED IT TO BECOME A COMPETITOR; BUT WE
19 HAVE A LOT OF COMPETITORS.

20 Q. ARE YOU TELLING US, SIR, THAT DOUBLELINE --
21 THAT TCW WAS NOT CONCERNED, IN THAT DECEMBER AND
22 JANUARY TIME PERIOD, ABOUT DOUBLELINE COMPETING AGAINST
23 TCW? IS THAT YOUR TESTIMONY?

24 A. WE WERE CONCERNED ABOUT THEM COMPETING, LIKE
25 ANY OTHER COMPETITOR.

26 Q. JUST LIKE ANY OTHER COMPETITOR? THAT'S YOUR
27 TESTIMONY?

28 A. YES.

09:09AM

09:10AM

09:10AM

09:10AM

09:10AM

1 MR. BRIAN: NOTHING FURTHER, YOUR HONOR.

2 THE COURT: REDIRECT, MR. QUINN?

3

4

5

REDIRECT EXAMINATION

6

7 BY MR. QUINN:

8 Q. DID THE DECISION TO SEND THESE LETTERS TO
9 INVESTORS, ADVISING THEM THAT THERE HAD BEEN A
10 CONFIDENTIALITY BREACH REGARDING THEIR PRIVATE SOCIAL
11 SECURITY NUMBERS, TAX NUMBERS AND BANK INFORMATION,
12 HAVE ANYTHING TO DO WITH OAKTREE HELPING DOUBLELINE?

09:11AM

13 A. NO.

14 Q. DID IT HAVE ANYTHING TO DO WITH CONCERNS ABOUT
15 DOUBLELINE BECOMING A COMPETITOR?

09:11AM

16 A. NO.

17 Q. WAS IT -- CAN YOU TELL US WHETHER IT WAS YOUR
18 UNDERSTANDING, YOU HAD A LEGAL OBLIGATION, AS A
19 FINANCIAL INSTITUTION, TO TELL PEOPLE THAT THEIR
20 PRIVATE INFORMATION HAD BEEN COMPROMISED?

09:11AM

21 A. YES.

22 Q. YOU INDICATED, IN RESPONSE TO MR. BRIAN'S
23 QUESTION, THAT IT TOOK SOME TIME TO UNDERSTAND EXACTLY
24 WHAT INFORMATION HAD BEEN COMPROMISED?

25 A. YES.

09:11AM

26 Q. CAN YOU TELL US WHAT WAS DONE BEFORE AND AFTER
27 DECEMBER 4, TO TRY TO DETERMINE WHAT INFORMATION HAD
28 BEEN COMPROMISED?

1 A. WELL, THERE WERE MOUNTAINS OF INFORMATION
2 TAKEN. AND WE HAD PEOPLE LOOKING THROUGH, TO SEE IF
3 THEY COULD FIND ANYTHING THAT WOULD BE IN THE NATURE OF
4 SOCIAL SECURITY NUMBERS, TAX ID NUMBERS OR BANK
5 INFORMATION, WHICH WAS SENSITIVE INFORMATION, WHEN IT'S
6 CONJOINED WITH A CLIENT NAME. SO WE HAD SOMEBODY GOING
7 THROUGH THAT.

09:12AM

8 PLUS WE WERE STARTING TO SEE MORE
9 DEVICES COMING IN. WE LEARNED THERE WAS A LOT MORE
10 DOWNLOADING THAN WE HAD KNOWN ON DECEMBER THE 4TH.

09:12AM

11 Q. IS IT TRUE THAT AFTER DECEMBER 4, YOU LEARNED
12 INFORMATION ABOUT ACTIVITIES THE DEFENDANTS HAD ENGAGED
13 IN, THAT YOU DID NOT KNOW BEFORE DECEMBER 4?

14 A. YES. WE LEARNED A LOT MORE.

15 Q. DID TCW ENGAGE ANY OUTSIDE FIRMS TO ASSIST IT
16 IN THAT REGARD?

09:12AM

17 A. WE HAD GUIDANCE SOFTWARE, WHICH WAS A COMPANY
18 THAT SPECIALIZES IN AT LEAST COMPUTER-TYPE FORENSICS,
19 TO HELP US DISCERN WHAT HAD BEEN TAKEN.

20 Q. DO YOU KNOW HOW MUCH TCW SPENT WITH GUIDANCE,
21 IN THIS EFFORT TO TRY TO DETERMINE WHAT INFORMATION HAD
22 BEEN TAKEN AND WHAT PRIVATE CLIENT INFORMATION MIGHT
23 HAVE BEEN TAKEN?

09:12AM

24 A. I DON'T KNOW HOW MUCH WAS SPENT. IT WAS QUITE
25 A BIT.

09:13AM

26 Q. WHEN YOU LEARNED THAT INVESTORS' PRIVATE
27 INFORMATION HAD BEEN TAKEN, DID YOU HAVE ANY CONCERN
28 ABOUT TCW'S REPUTATION WITH INVESTORS?

1 A. YES.

2 Q. WHY?

3 A. THAT WOULD INDICATE THAT WE HADN'T TAKEN CARE
4 OF CLIENT INFORMATION IN A WAY, AND THAT CERTAIN
5 TRUSTED EMPLOYEES HAD TAKEN THAT INFORMATION FOR THEIR
6 OWN BUSINESS.

09:13AM

7 Q. IF WE COULD TAKE A LOOK AT EXHIBIT 1899.

8 IF WE COULD PUT UP, MIKE, PAGE -10.

9 MR. BRIAN ASKED YOU --

10 IF WE CAN ENLARGE AT THE BOTTOM, THE
11 MUTUAL FUND, WHERE IT SAYS 25 BASIS POINTS.

09:13AM

12 IN RESPONSE TO ONE OF MR. BRIAN'S
13 QUESTIONS, YOU SAID THAT YOU THOUGHT THAT WAS A
14 COINCIDENCE.

15 AND I THINK YOU WERE REFERRING TO THE
16 FACT THAT THERE'S A DISCLOSURE OF A 50 BASIS POINT FEE
17 IN ANOTHER DOCUMENT, I THINK IN THE PROSPECTUS, EXHIBIT
18 6178.

09:13AM

19 DO YOU RECALL THAT?

20 A. YES.

09:13AM

21 Q. CAN YOU EXPLAIN THAT TO US, WHAT --

22 MR. BRIAN: OBJECTION. CALLS FOR SPECULATION,
23 NO FOUNDATION.

24 THE COURT: OVERRULED.

25 THE WITNESS: THE PROSPECTUS SHOWS THE GROSS
26 FEE, WHICH IS WHAT THE MANAGER GETS.

09:14AM

27 BUT WHEN THE MANAGER DISTRIBUTES THESE
28 FUNDS THROUGH DISTRIBUTORS LIKE MERRILL LYNCH OR

1 PAINWEBBER, OR WHOEVER, THEY HAVE TO PAY OUT CERTAIN
2 FEES -- SO WHAT ULTIMATELY COMES TO TCW OR ANY MUTUAL
3 FUND COMPANY IS THE NET FEE. AND THIS IS WHAT I
4 BELIEVE IS THE NET FEE HERE, FOR -- REFLECTING THE
5 PAYMENTS TO THIRD PARTIES FOR DISTRIBUTION.

09:14AM

6 Q. IS THAT NET FEE -- THAT NET FEE DISCLOSED IN
7 THE PROSPECTUS?

8 A. NO.

9 Q. IS THAT NET FEE DISCLOSED IN THE ADV EXHIBIT
10 6179?

09:14AM

11 A. NO.

12 Q. IS THAT NET FEE DISCLOSED IN THE FORM D,
13 EXHIBIT 6173?

14 A. NO.

15 Q. IS ALL THE INFORMATION HERE THAT'S ON THIS
16 PAGE 10 --

09:14AM

17 MIKE, IF WE COULD LOOK AT THE WHOLE
18 PAGE --

19 -- INFORMATION THAT'S AVAILABLE
20 PUBLICLY, IN ANY OF THOSE DOCUMENTS?

09:15AM

21 A. OTHER THAN, I BELIEVE, FORM D, WHICH TELLS YOU
22 THE AMOUNT OF THE FUND SIZE, THE DISTRESSED FUNDS, NO.

23 Q. THE OTHER INFORMATION IS NOT PUBLICLY
24 AVAILABLE?

25 A. NO.

09:15AM

26 Q. THE 2 IN 20 FEE STRUCTURE, WERE YOU ABLE TO
27 DETERMINE WHETHER THERE ARE OTHER TCW FUNDS THAT HAVE A
28 2 IN 20 FEE STRUCTURE?

1 A. IT SO HAPPENS WE DON'T HAVE ANY.

2 Q. SO THE DISTRESSED FUNDS, TURN OUT TO BE THE
3 ONLY FUNDS THAT HAVE THIS FEE STRUCTURE?

4 A. AT 2 IN 20, YES.

5 Q. SO TCW'S OTHER FUNDS OBVIOUSLY HAVE SOME OTHER
6 STRUCTURE?

7 A. YES.

8 Q. I WON'T TAKE THE TIME TO GO THROUGH EACH OF
9 THE ITEMS THAT YOU IDENTIFIED YESTERDAY IN EXHIBIT 8899
10 AS BEING CONFIDENTIAL, BUT LET'S JUST TAKE A LOOK AT
11 EXHIBIT -7.

12 AND IF WE COULD BLOW UP DISTRESSED FUNDS
13 MANAGEMENT FEE, PERFORMANCE FEES AND THE TOTAL
14 REVENUES, THIS PART HERE AT THE TOP.

15 MR. BRIAN: BEYOND THE SCOPE AND ASKED AND
16 ANSWERED, AND CUMULATIVE, YOUR HONOR.

17 THE COURT: I'LL ALLOW IT, AS LONG AS WE'RE
18 MOVING RIGHT ALONG, MR. QUINN.

19 Q. BY MR. QUINN: THESE PERFORMANCE FEE NUMBERS
20 HERE, SIR, ARE THESE -- THIS IS THE CARRY, PROJECTIONS
21 OF CARRY FOR THE YEARS 2012, 2013, 2014, ET CETERA?

22 A. YES.

23 Q. ARE THOSE AVAILABLE PROJECTIONS? DOES TCW
24 MAKE THEM AVAILABLE ANYWHERE?

25 A. NO.

26 Q. MR. GUNDLACH WOULD HAVE KNOWN THOSE
27 PROJECTIONS, THOUGH, IS THAT TRUE?

28 A. YES.

09:15AM

09:16AM

09:16AM

09:16AM

09:16AM

1 Q. YOU WERE ASKED SOME QUESTIONS YESTERDAY ABOUT
2 INVESTOR EXPRESSIONS OF CONCERN, AND COMPLAINTS THAT
3 MR. GUNDLACH WAS LET GO. AND MR. BRIAN SHOWED YOU TWO
4 EXHIBITS, IN PARTICULAR EXHIBIT 5555 AND 5592.

5 CAN YOU TELL US WHETHER -- I TAKE IT IT 09:17AM
6 IS TRUE THAT AFTER MR. GUNDLACH WAS LET GO, SEVERAL OF
7 THESE -- OF APPROXIMATELY, YOU HAVE TOLD US, 350
8 INVESTORS CONTACTED TCW AND SAID THEY WERE VERY UNHAPPY
9 ABOUT THIS DEVELOPMENT; IS THAT --

10 MR. BRIAN: OBJECTION. MISSTATES THE 09:17AM
11 EVIDENCE, SEVERAL --

12 THE COURT: I THINK IT MISCHARACTERIZES. IT
13 SEEMS LEADING.

14 AND MAYBE WE JUST ASK QUESTIONS.

15 Q. BY MR. QUINN: CAN YOU TELL US, 09:17AM
16 APPROXIMATELY -- CAN YOU TELL US WHETHER OR NOT THERE
17 WERE INVESTORS WHO EXPRESSED UNHAPPINESS ABOUT THIS
18 DEVELOPMENT OF MR. GUNDLACH BEING LET GO, RIGHT AFTER
19 DECEMBER 4?

20 A. YES, THERE WERE. 09:18AM

21 Q. AND DO YOU KNOW HOW MANY OF THE -- WHAT YOU
22 HAVE TOLD US IS APPROXIMATELY 350 INVESTORS EXPRESSED
23 THAT CONCERN?

24 A. I DON'T KNOW HOW MANY, BECAUSE THEY WERE
25 MOSTLY TALKING TO OTHER PEOPLE. I TALKED TO HALF A
26 DOZEN OR LESS. 09:18AM

27 BUT OTHER PEOPLE WERE TALKING TO OTHER
28 UNHAPPY CLIENTS, PARTICULARLY GARRETT WALLS.

1 Q. AND WAS IT YOUR IMPRESSION, BASED UPON YOUR
2 OWN CONVERSATIONS, AND WHAT YOU HEARD FROM OTHER PEOPLE
3 AT TCW, THAT THOSE INVESTORS WHO WERE UNHAPPY WERE AT
4 ALL BASHFUL ABOUT EXPRESSING THEIR VIEWS?

5 A. NO. THEY WERE BOLD. 09:18AM

6 Q. AND IN RESPONSE TO THAT, IN DECEMBER, DID TCW
7 CAVE AND AGREE TO MAKE CHANGES TO THE CONTRACTS?

8 MR. BRIAN: OBJECTION. LEADING,
9 ARGUMENTATIVE.

10 THE COURT: SUSTAINED. 09:18AM

11 Q. BY MR. QUINN: WERE CHANGES MADE TO THE
12 CONTRACTS, IN RESPONSE TO INVESTORS' DEMANDS, IN
13 DECEMBER?

14 A. NO.

15 Q. WHY NOT? 09:18AM

16 A. WELL, WE THOUGHT THAT THIS WAS AN IMMEDIATE
17 REACTION. THEY DIDN'T KNOW THE NEW TEAM YET, MET WEST;
18 THAT THEY WERE DISTURBED BY THE SUDDENNESS OF THE
19 TRANSITION THAT HAD HAPPENED; AND THAT WITH TIME, AS
20 THEY GOT TO KNOW THE NEW TEAM AND UNDERSTAND OUR
21 CAPABILITIES, THINGS WOULD QUIET DOWN. 09:19AM

22 Q. ULTIMATELY, TCW FELT THAT IT HAD TO AMEND THE
23 CONTRACTS?

24 A. YES.

25 Q. AND WHEN WAS THAT DONE? 09:19AM

26 A. WELL, WE SENT OUT A BALLOT SOMETIME THE THIRD
27 WEEK OF JANUARY, APPROXIMATELY.

28 Q. THE BALLOT, CAN YOU EXPLAIN HOW THAT WORKS?

1 A. IT WAS A BALLOT OFFERING THE INVESTORS OPTIONS
2 THAT THEY DIDN'T HAVE UNDER THE CURRENT AGREEMENT, THAT
3 INCLUDED STAYING IN THE FUND -- STAYING IN THE FUND OR
4 EXITING THE FUND EARLY.

5 Q. AND HOW ABOUT REDUCTION OF MANAGEMENT FEES? 09:19AM

6 A. MANAGEMENT FEES WERE REDUCED FROM ONE
7 PERCENT -- FROM TWO PERCENT TO ONE PERCENT. AND THE
8 CARRIED INTEREST WAS REDUCED FROM TWO PERCENT TO ONE
9 HALF OF ONE PERCENT.

10 Q. DID YOU SAY THESE CHANGES WERE MADE IN THE 09:19AM
11 THIRD WEEK OF JANUARY?

12 A. APPROXIMATELY, YEAH.

13 Q. AND THAT WAS AFTER MR. GUNDLACH'S CAMPAIGN ON
14 HIS CONFERENCE CALLS?

15 A. YES. 09:20AM

16 MR. BRIAN: OBJECTION, LEADING.

17 THE COURT: SUSTAINED.

18 MR. BRIAN: MOVE TO STRIKE THE ANSWER.

19 Q. BY MR. QUINN: CAN YOU TELL US WHETHER OR NOT
20 THAT WAS AFTER MR. GUNDLACH HAD THE CONFERENCE CALL? 09:20AM

21 A. IT WAS.

22 Q. CAN YOU TELL US WHETHER IT WAS AFTER
23 MR. GUNDLACH SENT WRITTEN COMMUNICATIONS TO INVESTORS,
24 SAYING THEY HAD A RIGHT TO DICTATE THE TERMS?

25 A. IT WAS. 09:20AM

26 MR. QUINN: NOTHING FURTHER.

27 THE COURT: MR. BRIAN, ANYTHING?

28 MR. BRIAN: YEAH, I DO HAVE SOME.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECROSS EXAMINATION

MR. BRIAN: DENNIS, COULD YOU PUT UP EXHIBIT
5157?

09:20AM

Q. IT'S NOT IN YOUR BINDER. BUT IT'S IN
EVIDENCE.

IF WE COULD ENLARGE THAT.

I'M SORRY, THAT'S NOT THE RIGHT EXHIBIT.
I'M SORRY.

09:20AM

TAKE A LOOK AT 6038. WHICH IS IN YOUR
BINDER.

AND IF WE COULD PUT THAT ON THE SCREEN,
PLEASE, DENNIS, PAGE 1. IF WE COULD ENLARGE THE
PARAGRAPH NEXT TO THE LAST, BEGINNING WITH, THE LIMITED
PARTNERSHIP AGREEMENT.

09:21AM

THIS IS A LETTER THAT WENT OUT TO ALL
THE SPECIAL MORTGAGE CREDIT FUND INVESTORS ON
DECEMBER 9TH, 2009, FIVE DAYS AFTER MR. GUNDLACH WAS
RELIEVED OF HIS DUTIES, RIGHT, SIR?

09:21AM

A. I CAN'T SEE THE TOP ON THE SCREEN, BUT I
ASSUME IT IS.

Q. OKAY.

AND ON DECEMBER 9TH, IN THE LAST
SENTENCE OF THIS PARAGRAPH, TCW WROTE, (READING):

09:21AM

TCW UNDERSTANDS THAT SOME
INVESTORS MAY NEVERTHELESS WANT

1 ALTERNATIVE OPTIONS FOR THE
2 MANAGEMENT OR CONTROLLED
3 LIQUIDATION OF THEIR INTERESTS IN
4 THE FUND. AND TCW IS ACTIVELY
5 CONSIDERING OPTIONS AND THEIR
6 FEASIBILITY.

09:22AM

7 DO YOU SEE THAT?

8 A. YES.

9 Q. WERE YOU HERE WHEN MR. STERN TESTIFIED THAT
10 THIS LETTER WAS IN THE WORKS FOR DAYS, BEFORE IT WAS
11 SENT?

09:22AM

12 WERE YOU HERE WHEN HE SAID THAT?

13 A. I DON'T RECALL THAT.

14 Q. OKAY.

15 WERE YOU HERE WHEN GARRETT WALLS
16 TESTIFIED?

09:22AM

17 A. YES.

18 Q. AND WERE YOU HERE WHEN HE TESTIFIED THAT HE
19 DISCUSSED WITH MR. --

20 MR. QUINN: I OBJECT, UNLESS WE ACTUALLY HAVE
21 THE TRIAL TRANSCRIPTS, YOUR HONOR, CHARACTERIZE --

09:22AM

22 THE COURT: JUST ASK THE QUESTION.

23 AND LET'S NOT PARAPHRASE THE TESTIMONY,
24 UNLESS YOU WANT TO READ FROM THE TRANSCRIPT.

25 Q. BY MR. BRIAN: MR. WALLS MET WITH MR. STERN
26 DURING THE WEEK OF NOVEMBER 30TH, BEFORE MR. GUNDLACH
27 WAS RELIEVED OF HIS OBLIGATIONS, AND RECOMMENDED
28 LIQUIDATION AS AN OPTION, DID HE NOT, SIR?

09:22AM

1 A. I DON'T KNOW.

2 Q. YOU WEREN'T AT THAT MEETING, WERE YOU, SIR?

3 A. NO, I WASN'T.

4 Q. BUT YOU ARE COPIED ON EXHIBIT 6168 --

5 IF WE COULD PUT THAT UP. THAT'S IN
6 EVIDENCE. AND IF WE COULD ENLARGE THAT SECOND
7 PARAGRAPH AND HIGHLIGHT.

09:23AM

8 THIS IS AN E-MAIL THAT MR. WALLS SENT ON
9 JANUARY 7TH, 2010, TO ONE OF THE INVESTORS, COPIED TO
10 YOU, IS IT NOT?

09:23AM

11 A. IS THIS IN MY BOOK?

12 Q. YES. 6168. IT'S IN YOUR FIRST BOOK
13 YESTERDAY.

14 A. I'LL JUST READ IT ON THE SCREEN.

15 Q. MR. WALLS WROTE THAT TCW, HOWEVER --

09:23AM

16 FOURTH LINE DOWN, DENNIS.

17 -- DECIDED EARLY ON, TO MAKE AVAILABLE A
18 RANGE OF OPTIONS BEYOND WHAT THE DOCUMENTS PROVIDE.

19 THAT'S WHAT MR. WALLS WROTE ON
20 JANUARY 7TH, THAT TCW DECIDED THAT EARLY ON, CORRECT?
21 THAT'S WHAT HE WROTE?

09:24AM

22 A. HE SAID THAT.

23 Q. NOW, YOU WERE ASKED BY MR. QUINN WHETHER THESE
24 NET FEES WERE PUBLICLY AVAILABLE.

25 DO YOU RECALL THAT?

09:24AM

26 A. YES.

27 Q. NOW, YOU WEREN'T THERE FOR ANY CONVERSATION
28 BETWEEN MR. GUNDLACH AND MR. BROSSY, WERE YOU, SIR?

1 A. NO.

2 Q. AND YOU DON'T KNOW WHETHER MR. BROSSY, FOR
3 EXAMPLE, ASSUMED THAT THE MANAGEMENT FEES WERE
4 TYPICALLY TWO PERCENT, OR WHETHER MR. GUNDLACH TOLD HIM
5 THAT, DO YOU, SIR?

09:24AM

6 MR. QUINN: LACKS FOUNDATION. SPECULATION.

7 THE COURT: I'LL OVERRULE THE OBJECTION.

8 GO AHEAD.

9 Q. BY MR. BRIAN: DO YOU KNOW WHAT MR. GUNDLACH
10 TOLD MR. BROSSY?

09:25AM

11 A. I DON'T KNOW.

12 BUT I CAN TELL FROM THE OTHER NUMBERS
13 THAT ALL OF THE OTHERS WERE NOT DISCOUNTED BY 50
14 PERCENT.

15 Q. AND SIR, THE NET FEE THAT YOU HAVE TESTIFIED
16 IS PUBLICLY AVAILABLE, IS NOW IN THE PUBLIC RECORD,
17 BECAUSE YOU GUYS DECIDED TO PUT THIS EXHIBIT IN
18 EVIDENCE; ISN'T THAT RIGHT, SIR?

09:25AM

19 A. IT IS NOW IN THE PUBLIC RECORD.

20 Q. AND SOMEBODY AT TCW DECIDED THAT SUING
21 MR. GUNDLACH WAS MORE IMPORTANT THAN PROTECTING THE
22 SUPPOSED CONFIDENTIALITY OF THAT NUMBER, RIGHT?

09:25AM

23 MR. QUINN: ARGUMENTATIVE.

24 THE COURT: SUSTAINED.

25 MR. BRIAN: NOTHING FURTHER.

09:25AM

26 THE COURT: ANYTHING ELSE, MR. QUINN?

27 MR. QUINN: YES.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FURTHER REDIRECT EXAMINATION

BY MR. QUINN:

Q. THINGS THAT ARE CONFIDENTIAL IN 2009 MIGHT NOT BE CONFIDENTIAL BY AUGUST 30TH, 2011?

09:25AM

MR. BRIAN: ARGUMENTATIVE. CALLS FOR SPECULATION.

THE COURT: SUSTAINED.

Q. BY MR. QUINN: THE CONFIDENTIALITY OF INFORMATION VARIES OVER TIME?

09:25AM

A. INFORMATION GETS STALE.

Q. IS THERE A DIFFERENCE BETWEEN CONSIDERING OPTIONS IN THEIR FEASIBILITY, AND ACTUALLY AGREEING TO AMEND A CONTRACT?

09:26AM

A. THEY ARE TOTALLY DIFFERENT.

Q. WITHIN TCW, WERE THERE DIFFERENT POINTS OF VIEW, FROM DECEMBER 4 ON, AS TO WHAT SHOULD BE DONE IN RESPONSE TO INVESTORS' COMPLAINTS?

A. THERE WERE DEFINITELY DIFFERING VIEWPOINTS.

09:26AM

Q. MR. WALLS COMES FROM WHAT AREA?

A. MR. WALLS IS MARKETING AND CLIENT RELATIONS.

Q. SO, CAN YOU TELL US WHERE HE WAS ON THE CONTINUUM OF -- IN THE POINTS OF VIEW WITHIN TCW ABOUT WHAT SHOULD BE DONE FOR INVESTORS?

09:26AM

A. HE WOULD HAVE BEEN MORE AMENABLE TOWARDS TRYING TO PLEASE THE CLIENTS, AND DOING WHAT HE THOUGHT THEY WANTED.

1 MR. QUINN: NOTHING FURTHER.

2

3

4

FURTHER RECROSS EXAMINATION

5

6 BY MR. BRIAN:

7

Q. DO YOU KNOW MR. SHEDLIN?

8

THE COURT: DOES THAT MEAN YOU HAVE ANOTHER
9 QUESTION?

10

MR. BRIAN: IT DOES, YOUR HONOR. I HAVE
11 ACTUALLY TWO QUESTIONS.

09:26AM

12

THE COURT: GO AHEAD.

13

14

Q. BY MR. BRIAN: FIRST IS, DO YOU KNOW MR. GARY
14 SHEDLIN, FROM CITIBANK?

15

A. YES.

09:27AM

16

17

Q. ARE YOU AWARE THAT MR. SHEDLIN, IN LATE
17 SEPTEMBER, TOLD MR. STERN IN AN E-MAIL THAT HE WOULD
18 HAVE TO CONSIDER OFFERING A WAY OUT TO THE INVESTORS IN
19 THE SMCF FUNDS, IF THEY TERMINATED MR. GUNDLACH?

20

MR. QUINN: MISSTATES THE E-MAIL, YOUR HONOR.

09:27AM

21

WE CAN PUT IT UP.

22

THE COURT: IF WE HAVE THE E-MAIL, LET'S PUT
23 IT UP.

24

MR. BRIAN: WE'LL PUT IT UP LATER.

25

Q. YOU ARE NOT AWARE OF WHAT HE RECOMMENDED, ARE
26 YOU, SIR -- OR ARE YOU?

09:27AM

27

A. I WASN'T AWARE OF IT THEN.

28

SINCE THIS LITIGATION, OR THE DAY AFTER

1 THIS LITIGATION, I SAW SOME E-MAIL; BUT I WASN'T AWARE
2 OF IT EVER AT THE TIME.

3 MR. BRIAN: THANK YOU.

4 MR. QUINN: NOTHING, YOUR HONOR.

5 THE COURT: ALL RIGHT, MR. CAHILL. THANK YOU
6 FOR YOUR TESTIMONY. YOU MAY STEP DOWN.

09:27AM

7 MR. QUINN: THANK YOU.

8 MR. BRIAN: WE NEED TO DO THAT AGAIN SOMETIME.

9 MR. MADISON: MAYBE I CAN PROVIDE SOME ADULT
10 SUPERVISION.

09:28AM

11 MR. BRIAN: I DOUBT THAT.

12 MR. QUINN: YOUR MIND IS ON OTHER THINGS.

13 THE COURT: DOES THAT MEAN YOU ARE READY TO
14 CALL ANOTHER WITNESS?

15 MR. MADISON: I AM INDEED, YOUR HONOR.

09:28AM

16 TCW CALLS LOU LUCIDO.

17

18 LOUIS LUCIDO,
19 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND
20 TESTIFIED AS FOLLOWS:

21

22 THE CLERK: SIR, PLEASE RAISE YOUR RIGHT HAND
23 TO BE SWORN.

24 YOU DO SOLEMNLY STATE THAT THE TESTIMONY
25 YOU ARE ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE
26 THIS COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH AND
27 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

28 THE WITNESS: I DO.

1 THE CLERK: THANK YOU. PLEASE BE SEATED.

2 SIR, PLEASE STATE AND SPELL YOUR NAME
3 FOR THE RECORD.

4 THE WITNESS: MY NAME IS LOUIS LUCIDO,
5 L-O-U-I-S, L-U-C-I-D-O.

09:28AM

6 THE COURT: MR. MADISON, YOU MAY PROCEED.

7 MR. MADISON: THANK YOU, YOUR HONOR.

8 WE'RE JUST PASSING UP SOME EXHIBITS,
9 YOUR HONOR.

10

11

12

DIRECT EXAMINATION

13

14 BY MR. MADISON:

15 Q. MORNING, MR. LUCIDO.

09:29AM

16 A. MORNING, MR. MADISON.

17 Q. MR. LUCIDO, YOU ARE A PRINCIPAL AT DOUBLELINE,
18 ARE YOU NOT?

19 A. THAT IS CORRECT.

20 Q. YOU ARE A PORTFOLIO MANAGER THERE YOURSELF?

09:29AM

21 A. NO. THAT IS NOT TRUE.

22 Q. WHAT'S YOUR CURRENT POSITION?

23 A. I'M THE CHIEF OPERATING OFFICER OF THE
24 COMPANY.

25 Q. HOW LONG HAVE YOU BEEN THE CHIEF OPERATING
26 OFFICER OF DOUBLELINE?

09:29AM

27 A. SINCE ABOUT THE END OF MAY OF 2010.

28 Q. PRIOR TO THAT, WHAT WAS YOUR POSITION WITH

1 DOUBLELINE?

2 A. EXECUTIVE VICE PRESIDENT.

3 Q. YOU ARE ALSO AN OWNER OF THAT FIRM, ARE YOU
4 NOT?

5 A. THAT IS CORRECT.

09:29AM

6 Q. CAN YOU TELL US WHAT PERCENTAGE OF DOUBLELINE
7 YOU PERSONALLY OWN?

8 A. 5 PERCENT.

9 Q. DID YOU MAKE AN INVESTMENT OF CAPITAL, OF
10 MONEY, IN CONNECTION WITH YOUR OWNERSHIP OF DOUBLELINE?

09:29AM

11 A. YES, I DID.

12 Q. HOW MUCH DID YOU PERSONALLY INVEST IN
13 DOUBLELINE?

14 A. APPROXIMATELY ONE AND A HALF MILLION DOLLARS.

15 Q. PRIOR TO GOING TO DOUBLELINE -- AND YOU JOINED
16 DOUBLELINE, RIGHT WHEN IT BEGAN OPERATIONS IN
17 MID-DECEMBER 2009, CORRECT?

09:30AM

18 A. CORRECT.

19 Q. PRIOR TO THAT, YOU HAD BEEN WITH TCW FOR A
20 NUMBER OF YEARS, HAD YOU NOT?

09:30AM

21 A. YES.

22 Q. AND YOU WERE THE PORTFOLIO MANAGER IN THE MBS
23 GROUP AT TCW?

24 A. YES.

25 Q. WORKING WITH MR. GUNDLACH AND THE OTHERS
26 THERE?

09:30AM

27 A. YES, I WAS.

28 Q. HOW LONG WERE YOU AT TCW?

1 A. STARTED IN JULY OF 2001.

2 Q. NOW, DO YOU RECALL, ON SEPTEMBER 3RD, 2009,
3 ATTENDING FIRST A MEETING WITH MR. GUNDLACH, MR. STERN,
4 AND SOME OTHERS?

5 THAT'S JUST A YES OR NO QUESTION. 09:30AM

6 DO YOU RECALL THAT?

7 A. YES.

8 Q. AND WHAT I WANT TO ASK YOU ABOUT IS A MEETING
9 THAT OCCURRED JUST AFTER THAT, AFTER MR. STERN HAD GONE
10 BACK UP TO HIS OFFICE, AND YOU AND MR. GUNDLACH AND
11 SOME OF THE OTHERS REMAINED. 09:31AM

12 DO YOU RECALL THAT?

13 A. YES.

14 Q. AND THAT WAS A MEETING FOR ABOUT 30 TO 45
15 MINUTES? 09:31AM

16 A. I THINK IT WAS SHORTER THAN THAT.

17 Q. HOW LONG WOULD YOU ESTIMATE THAT MEETING
18 LASTED?

19 A. I THINK I SAT IN THAT MEETING FOR ABOUT 15
20 MINUTES. 09:31AM

21 Q. DO YOU RECALL THAT YOU ACTUALLY TOOK NOTES
22 DURING THAT MEETING WITH MR. GUNDLACH AND THE OTHERS,
23 AFTER MR. STERN HAD GONE BACK TO HIS OFFICE?

24 A. THAT'S INCORRECT.

25 Q. LET ME SHOW YOU WHAT WE'VE MARKED AS EXHIBIT
26 2254. 09:31AM

27 IT'S NOT IN EVIDENCE.

28 YOU CAN EITHER LOOK IN YOUR BINDER ON OR

1 ON THE SCREEN. IT'S A ONE-PAGE DOCUMENT, MR. --

2 A. I SEE IT.

3 Q. AND THAT'S YOUR HANDWRITING, ISN'T IT, SIR?

4 A. YES, IT IS.

5 Q. AND THAT'S YOUR HANDWRITING FROM THE AFTERNOON
6 OF SEPTEMBER 3, 2009, ISN'T IT?

09:32AM

7 A. THIS IS ONE OF FOUR PAGES OF NOTES, I BELIEVE.

8 Q. I WANT TO ASK YOU ABOUT THIS PAGE.

9 IS THIS A PAGE OF NOTES THAT YOU TOOK
10 THE AFTERNOON OF SEPTEMBER 3RD, 2009?

09:32AM

11 A. THESE NOTES WERE TAKEN DURING THE MEETING THAT
12 I HAD WITH MR. STERN AND THE OTHERS.

13 Q. DO YOU RECALL WHEN WE TOOK YOUR DEPOSITION,
14 AND I ASKED YOU ABOUT THIS SUBJECT?

15 A. YES, I DO.

09:32AM

16 Q. AND DO YOU RECALL THAT I ASKED YOU WHETHER THE
17 ITEMS ON THIS PAGE HAD BEEN DISCUSSED WITH MR. STERN OR
18 NOT?

19 A. THESE WERE NOTES TO MYSELF, SPECIFICALLY.

20 Q. NO, SIR.

09:33AM

21 MY QUESTION WAS WHETHER THESE ITEMS HAD
22 BEEN DISCUSSED IN THE PART OF THOSE MEETINGS WHERE
23 MR. STERN WAS PRESENT, OR AFTER MR. STERN LEFT THE
24 ROOM.

25 DO YOU RECALL I'D ASKED YOU ABOUT THAT?

09:33AM

26 A. YES.

27 Q. AND THESE ITEMS WERE NOT DISCUSSED WITH
28 MR. STERN, WERE THEY?

1 A. NO. THEY WERE NOTES TO MYSELF, AS I SAID.

2 MR. MADISON: SO I WOULD MOVE 2254 INTO
3 EVIDENCE, YOUR HONOR.

4 MR. WEINGART: OBJECTION, HEARSAY. IT'S ALSO
5 AN INCOMPLETE PART OF THE DOCUMENT.

09:33AM

6 THE COURT: DO WE HAVE THE WHOLE DOCUMENT?

7 MR. MADISON: WE DO HAVE IT.

8 THE COURT: ARE THESE SEPARATELY NUMBERED, OR
9 IS THIS PAGE FOUR OF 2254?

10 MR. MADISON: THIS IS A SEPARATE PAGE.

09:33AM

11 MR. WEINGART: EXHIBIT 270 IS THE FULL SET OF
12 NOTES, YOUR HONOR.

13 THE COURT: I'LL ADMIT THE NOTES COLLECTIVELY.

14 AND DO YOU WANT TO DESIGNATE THEM AS
15 270, OR AS 2254, JUST A PORTION OF THAT?

09:33AM

16 MR. MADISON: WELL, THERE IS A DISPUTE ABOUT
17 WHAT THE NOTES ARE ABOUT.

18 I DON'T INTEND TO EXAMINE THE WITNESS
19 ABOUT THE OTHER PAGES OF THE NOTES. WE CAN -- EXHIBIT
20 270 IS ALL FOUR PAGES TOGETHER.

09:34AM

21 THE COURT: I'LL LET THEM BRING THAT UP.

22 2254 WILL BE ADMITTED.

23

24 (EXHIBIT 2254 ADMITTED.)

25

09:34AM

26 MR. MADISON: THANK YOU, YOUR HONOR.

27 Q. SO MR. LUCIDO, IF WE DISPLAY THIS PAGE OF YOUR
28 NOTES FROM THAT AFTERNOON, I ACTUALLY WANT TO START A

1 COUPLE OF LINES DOWN, WHERE IT SAYS WHAT APPEARS TO BE
2 EXIT STRATEGY.

3 DO YOU SEE THAT?

4 A. YES.

5 Q. NOW, YOU CERTAINLY DIDN'T DISCUSS WITH
6 MR. STERN, AN EXIT STRATEGY, ON SEPTEMBER 3RD, DID YOU,
7 SIR?

09:34AM

8 A. NO. WE DISCUSSED THE POTENTIAL OF BUYING THE
9 FIRM.

10 Q. SO IN THE MEETING THAT YOU HAD AMONG
11 YOURSELVES, AFTER MR. STERN LEFT, YOU DISCUSSED AN EXIT
12 STRATEGY, DIDN'T YOU?

09:34AM

13 A. I DON'T RECALL THAT, NO.

14 Q. AND WHAT YOUR NOTES INDICATE AFTER THAT, WITH
15 ARROWS, TO THE NEXT LINE, IS WHERE, WHEN, HOW.

09:35AM

16 AND WHAT YOU WERE NOTING THERE, TO
17 YOURSELF, IS THAT YOU AND THE OTHERS NEEDED TO CONSIDER
18 WHERE, WHEN AND HOW YOU WOULD IMPLEMENT YOUR EXIT
19 STRATEGY, CORRECT?

20 A. THAT'S TOTALLY INCORRECT.

09:35AM

21 Q. THE NEXT LINE SAYS, TIMING. DAY AFTER
22 MORNINGSTAR AWARD, JAN 10.

23 NOW, ON JANUARY 10, 2010, THERE WAS
24 GOING TO BE A VERY IMPORTANT ANNOUNCEMENT FROM
25 MORNINGSTAR ABOUT ONE OF THEIR AWARDS, CORRECT?

09:35AM

26 A. JEFFREY WAS TARGETED TO RECEIVE THE MANAGER OF
27 THE DECADE AWARD; THAT IS CORRECT.

28 Q. WHEN YOU SAY TARGETED TO RECEIVE, WHAT DOES

1 THAT MEAN?

2 A. WELL, HE WAS UP FOR THE NOMINATION. AND THEY
3 HAD CALLED HIM TO TAKE A -- AND ARRANGE FOR HIS
4 PHOTOGRAPH; THAT'S WHAT I WAS AWARE OF.

5 Q. HE WAS ONE OF THE NOMINEES, ALONG WITH OTHERS? 09:35AM

6 A. YES.

7 Q. FROM MORNING STAR, FIXED INCOME MANAGER OF THE
8 DECADE?

9 A. THAT IS CORRECT.

10 Q. AND EACH YEAR, MORNING STAR WOULD GIVE AN 09:36AM
11 AWARD FOR THAT YEAR.

12 BUT THIS WAS EVEN BIGGER THAN THAT,
13 BECAUSE IT WAS FOR THE WHOLE DECADE, RIGHT?

14 A. THAT IS CORRECT.

15 Q. AND SO THE TIMING THAT YOU WERE REFERRING TO 09:36AM
16 HERE IN YOUR NOTES WAS THE DAY AFTER YOU HOPED AND
17 BELIEVED MR. GUNDLACH WOULD RECEIVE THE MORNINGSTAR
18 MANAGER OF THE DECADE AWARD, YOU WOULD ANNOUNCE THAT
19 YOU AND THE OTHERS WERE LEAVING TCW?

20 A. THAT IS INCORRECT. 09:36AM

21 THE DATE WAS TARGETED TO HAVE A JOINT
22 ANNOUNCEMENT REGARDING THE SEPARATION OR THE -- EITHER
23 THE PURCHASE OR THE CONFIGURATION BETWEEN TCW AND THE
24 NEW ENTITY.

25 Q. WELL, THERE'S NOTHING IN YOUR NOTES ABOUT 09:36AM
26 THAT, IS THERE, SIR?

27 A. NO, BUT THAT WAS THE STATE OF MY MIND.

28 Q. AND EXIT STRATEGY DOESN'T EXACTLY COMMUNICATE

1 WHAT YOU JUST SAID, DOES IT?

2 MR WEINGART: OBJECTION, ARGUMENTATIVE.

3 THE COURT: OVERRULED.

4 YOU CAN ANSWER, AND EXPLAIN, IF YOU
5 LIKE.

09:37AM

6 THE WITNESS: THE EXIT STRATEGY IS WHAT
7 PARTICULAR TIME AND HOW WE WOULD ANNOUNCE A MUTUALLY
8 ACCEPTABLE SEPARATION, EITHER THROUGH PURCHASE OR
9 THROUGH A NEGOTIATED EXIT.

10 Q. SO WHAT YOU ARE TELLING US IS THAT BY EXIT
11 STRATEGY, AND BY TIMING, DAY AFTER MORNINGSTAR AWARD,
12 IS THAT THAT WOULD BE THE DAY THERE WOULD BE SOME JOINT
13 ANNOUNCEMENT BETWEEN YOUR GROUP AND MR. GUNDLACH AND
14 THE OTHERS AND TCW; IS THAT RIGHT?

09:37AM

15 A. THAT IS CORRECT.

09:37AM

16 Q. SO -- AND ONE OF THE ANNOUNCEMENTS WOULD BE
17 THAT YOUR GROUP HAD BOUGHT THE FIRM?

18 A. THAT WAS ONE OPTION.

19 Q. WELL, THAT WOULD NOT BE AN EXIT STRATEGY,
20 WOULD IT?

09:37AM

21 A. NO.

22 Q. ANOTHER OPTION WOULD BE THAT YOU AND THE
23 OTHERS HAD NEGOTIATED SOME SORT OF EXIT FROM THE FIRM?

24 A. YES. CORRECT.

25 Q. IS THAT YOUR TESTIMONY?

09:37AM

26 SO IF THAT WAS GOING TO BE ANNOUNCED ON
27 THE DAY AFTER THE MORNINGSTAR AWARDS ON JANUARY 10,
28 WHEN WOULD THE NEGOTIATIONS BEGIN?

1 A. THAT WAS TO BE DISCUSSED.

2 THAT WAS AN OPEN DISCUSSION. THAT WAS
3 SOMETHING TO BE FURTHER PURSUED.

4 Q. AND OF COURSE, YOU KNOW THAT BY DECEMBER 4, AT
5 LEAST, THERE WERE NO NEGOTIATIONS THAT HAD OCCURRED
6 ABOUT A NEGOTIATED SEPARATION, WERE THERE? 09:38AM

7 A. NO. MARC STERN REPEATEDLY STATED THAT JEFFREY
8 GUNDLACH WAS NOT GOING TO BE TERMINATED, TO BOTH
9 JEFFREY AND OTHER MEMBERS OF THE GROUP, AND
10 SPECIFICALLY MYSELF; SO THERE WAS NO FURTHER DISCUSSION
11 REQUIRED. 09:38AM

12 I ANTICIPATED RETIRING FROM TCW, UP
13 UNTIL AND INCLUDING THROUGH DECEMBER 4TH.

14 Q. SO YOU DIDN'T BELIEVE ANYBODY WAS GOING TO BE
15 LEAVING TCW; IS THAT YOUR TESTIMONY? 09:38AM

16 A. ON DECEMBER 4TH, I EXPECTED TO BE RETIRING
17 FROM TCW.

18 Q. SIR, I DON'T THINK THAT ANSWERED MY QUESTION.
19 YOU DIDN'T BELIEVE ANYBODY WAS GOING TO
20 BE LEAVING TCW AS PART OF ANY EXIT STRATEGY? 09:38AM

21 A. ONLY ON A FULLY NEGOTIATED, DISCLOSED BASIS.

22 Q. WELL, WHAT I'M TRYING TO UNDERSTAND IS, AFTER
23 THE MEETING WITH MARC STERN, YOU MADE NOTES ABOUT AN
24 EXIT STRATEGY.

25 MR. WEINGART: OBJECTION. THAT MISSTATES THE
26 TESTIMONY. 09:39AM

27 THE COURT: JUST A MINUTE.

28 WHEN THERE'S AN OBJECTION, AND EVERYBODY

1 HAS GOT TO -- NOW, WHY DON'T YOU ASK A QUESTION.

2 MR. MADISON: WELL, ME WITHDRAW THAT, AND I'LL
3 START.

4 Q. SO ON SEPTEMBER 3RD, YOU WERE THINKING AND
5 TALKING AND WRITING ABOUT AN EXIT STRATEGY THE DAY
6 AFTER THE MORNINGSTAR AWARDS?

09:39AM

7 A. DURING THE MEETING, WE HAD AN OPEN DISCUSSION.

8 THE MEETING PREFACED WITH JEFFREY ASKING
9 IF HE WAS GOING TO BE FIRED BY OUDEA -- I CAN'T
10 PRONOUNCE HIS NAME. I'M SORRY. MARC STERN SAID NO.
11 JEFFREY GUNDLACH ASKED SPECIFICALLY IF THERE WAS A
12 RANGE OF PEOPLE ON A DEAL DEEM LOOKING TO FIRE HIM.
13 MARC STERN SAID NO.

09:39AM

14 AT THE CONCLUSION OF THE MEETING,
15 EVERYONE WITHIN OUR TEAM FELT HIGHLY CONFIDENT THAT
16 THERE WAS NO PLAN AFOOT TO FIRE JEFFREY. AND YOU KNOW,
17 WE FELT FAIRLY CONFIDENT IN OUR ABILITY TO CONTINUE TO
18 DELIVER THE SERVICES, AND MANAGE THE ASSETS THAT WE HAD
19 WITHIN THE TEAM.

09:39AM

20 Q. OKAY. SO THEN AT THE END OF THE MEETINGS,
21 THERE WAS NO EXIT STRATEGY; IS THAT YOUR TESTIMONY?

09:40AM

22 MR WEINGART: OBJECTION. ARGUMENTATIVE.

23 THE WITNESS: I HAD NO EXIT STRATEGY.

24 THE COURT: OVERRULED.

25 WHAT WAS THE ANSWER?

09:40AM

26 THE WITNESS: I HAD NO EXIT STRATEGY, NO.

27 Q. BY MR. MADISON: AND AT THE END OF THE
28 MEETINGS ON SEPTEMBER 3RD, THERE WAS NO NEED TO THINK

1 ABOUT TIMING ANYTHING FOR JANUARY 10TH, 2010; IS THAT
2 YOUR TESTIMONY?

3 A. NOT FOR MYSELF, NO.

4 Q. AND SO FROM THAT POINT FORWARD, YOU BELIEVED
5 YOU AND THE ENTIRE TEAM WERE JUST GOING TO STAY AT TCW
6 UNTIL THE ENDS OF YOUR CAREERS; IS THAT YOUR TESTIMONY?

09:40AM

7 A. I SPECIFICALLY WAS WORKING IN THAT REGARD,
8 YES.

9 Q. AND YOU BELIEVE THAT, AS TO YOURSELF?

10 A. I BELIEVE THAT SPECIFICALLY AS TO MYSELF.

09:40AM

11 Q. AND THAT YOU BELIEVED THAT WITH REGARD TO
12 MR. GUNDLACH, ALSO, DIDN'T YOU?

13 A. I BELIEVED THAT MR. GUNDLACH WAS GOING TO
14 CONTINUE TO STAY WITH THE TCW.

15 Q. THAT HE WAS COMMITTED TO STAYING WITH TCW?

09:41AM

16 A. YES. I DO BELIEVE THAT.

17 Q. NOW, YOU DID NOT LEARN ABOUT THE FORMATION OF
18 ABLE GRAPE IN OCTOBER, DID YOU?

19 A. NO, I DID NOT.

20 Q. MR. GUNDLACH AND THE OTHERS DID NOT SHARE THAT
21 INFORMATION WITH YOU?

09:41AM

22 A. THAT IS CORRECT.

23 Q. AND YOU DID NOT LEARN THAT OFFICE SPACE HAD
24 BEEN LOCATED?

25 A. THAT IS CORRECT.

09:41AM

26 Q. YOU DID NOT LEARN THAT A BANK ACCOUNT HAD BEEN
27 OPENED IN THE FALL?

28 A. THAT IS CORRECT.

1 Q. YOU DID NOT LEARN THAT THE REGISTRATION
2 DOCUMENTS WITH THE SEC HAD BEEN STARTED IN THE FALL?

3 A. THAT, I DON'T BELIEVE -- THAT IS CORRECT.

4 Q. YOU DID NOT LEARN THAT --

5 A. BUT THE PREMISE THOUGH IS THAT WORD -- I DON'T
6 KNOW WHETHER SUBSEQUENT EVENTS HAVE DEMONSTRATED THAT
7 SEC FORMATION DOCUMENTS WERE FILED IN THE FALL. I
8 THINK THAT STATEMENT IS A FALSE STATEMENT, FROM WHAT
9 I'VE OBSERVED IN THE COURT.

09:41AM

10 SO I THINK YOU'VE GOT A FALSE STATEMENT
11 THAT YOU ARE JUST TRYING INTRODUCE.

09:41AM

12 Q. IF I SAID THEY WERE FILED, I MISSPOKE.

13 A. WELL, THAT'S WHAT YOU SAID.

14 Q. THE RECORD WILL REFLECT THAT.

15 AND IT'S NOT FOR YOU AND I TO JUDGE.
16 IT'S FOR THE JURY.

09:42AM

17 BUT WHAT I MEANT TO SAY WAS, THE PROCESS
18 OF PREPARING TO REGISTER WITH THE SEC WAS STARTED BY
19 MR. WARD IN OCTOBER AND NOVEMBER.

20 DID YOU KNOW ABOUT THAT?

09:42AM

21 A. NO.

22 Q. DID YOU KNOW THAT THERE WAS A CONSTRUCTION
23 MANAGER WHO WAS RETAINED TO ACTUALLY BUILD OUT THE NEW
24 SPACE FOR THE NEW BUSINESS?

25 A. NO.

09:42AM

26 Q. DID YOU KNOW THAT THERE WAS DOWNLOADING GOING
27 ON AT TCW OF CLIENT INFORMATION AND ANALYTICS THAT
28 COULD BE USED IN THE NEW BUSINESS?

1 A. NO.

2 Q. SO YOU WEREN'T AWARE OF ANY OF THAT, AFTER
3 SEPTEMBER 3RD?

4 A. THAT IS CORRECT.

5 Q. YOU BELIEVED THAT EVERYONE WAS COMMITTED TO
6 TCW, AFTER THAT POINT?

7 A. THAT IS TRUE.

8 Q. NOW, ISN'T IT TRUE, SIR, THAT ALL THOSE THINGS
9 THAT I'VE JUST DESCRIBED, WITH REGARD TO THE FALL, THE
10 ACTIVITIES IN THE FALL THAT YOU DIDN'T KNOW ABOUT,
11 WOULDN'T THOSE BE TOTALLY CONSISTENT WITH AN EXIT
12 STRATEGY?

13 MR. WEINGART: OBJECTION. ARGUMENTATIVE.

14 THE COURT: SUSTAINED.

15 Q. BY MR. MADISON: WELL, YOU WROTE THE WORDS,
16 EXIT STRATEGY.

17 AND WOULD YOU AGREE WITH ME, MR. LUCIDO,
18 THAT DOING ALL OF THOSE THINGS TO FORM A NEW BUSINESS,
19 WOULD BE CONSISTENT WITH THE WORDS THAT YOU WROTE, EXIT
20 STRATEGY?

21 MR. WEINGART: OBJECTION, ARGUMENTATIVE.

22 THE COURT: SAME QUESTION. SAME RULING.

23 SUSTAINED.

24 Q. BY MR. MADISON: WELL, LET'S LOOK UP AT THE
25 TOP OF THE PAGE WHERE IT SAYS, CEO DEAL DOCS, FULL SET
26 OF DOCUMENTS.

27 NOW, THAT WAS NOT DISCUSSED IN THE PART
28 OF THE MEETING -- YOU DIDN'T TAKE THAT NOTE DURING THE

1 PART OF THE MEETING WHERE MR. STERN WAS THERE, DID YOU,
2 SIR?

3 A. THOSE WERE NOTES TO MYSELF. THAT'S CORRECT,
4 THAT I WROTE THE NOTES TO MYSELF DURING THE MEETING
5 WITH MR. STERN.

09:43AM

6 Q. AND IT WASN'T SOMETHING THAT WAS DISCUSSED
7 WITH MR. STERN, THOUGH, WAS IT?

8 A. NO.

9 Q. AND WHAT YOU WERE SAYING THERE WAS THAT YOU
10 WANTED TO MAKE SURE THAT YOU HAD -- YOU AND YOUR GROUP
11 HAD A FULL SET OF THE CDO DEAL DOCUMENTS IN CONNECTION
12 WITH YOUR EXIT STRATEGY; ISN'T THAT RIGHT?

09:44AM

13 A. NO. THAT'S INCORRECT.

14 Q. WELL, ISN'T IT TRUE THAT WHAT YOU WERE
15 REFERRING TO THERE WAS GETTING A FULL SET OF THE CDO
16 DEAL DOCUMENTS?

09:44AM

17 A. THOSE WOULD BE PUBLICLY AVAILABLE TO ANY
18 QUALIFIED INVESTOR.

19 Q. I DON'T THINK YOU ANSWERED MY QUESTION, SIR.

20 ISN'T IT THE CASE THAT YOU WROTE THAT
21 BECAUSE YOU WANTED TO MAKE SURE TO GET A FULL SET OF
22 THE CDO DEAL DOCUMENTS?

09:44AM

23 A. NO.

24 Q. SO DO YOU HAVE ANY OTHER EXPLANATION FOR YOUR
25 NOTE HERE ABOUT WHAT YOU WROTE, CDO DEAL DOCS?

09:44AM

26 A. WELL, THE POINT IS THAT WITHIN THE MANAGEMENT
27 OF THE GROUP, IF WE WERE TO HAVE A NEGOTIATED EXIT,
28 WHICH, THE ONLY WAY THAT YOU CAN ASSUME MANAGEMENT OF

1 THE CDO, IS THROUGH A NEGOTIATED EXIT, THAT YOU HAVE TO
2 HAVE THAT.

3 Q. SO YOU WERE THINKING ABOUT HAVING A SET OF
4 DOCUMENTS IN CONNECTION WITH AN EXIT, BUT YOU ARE
5 TELLING US IT WOULD BE PART OF SOME NEGOTIATION?

09:45AM

6 A. I THINK, IF YOU LOOK IN THE CONTEXT OF THE
7 FULL SET OF THE NOTES, BECAUSE AT OUR MEETING WAS --
8 THE BOTTOM -- NEXT TO THE BOTTOM LINE, WAS TO CLARIFY
9 RUMORS. AND OUR WHOLE FOCUS WAS TO MAINTAIN STABILITY.

09:45AM

10 AND MY LAST LINE IS, NO TRUTH, AND NO
11 TRUTH TO THE RUMOR OF JEFFREY BEING TERMINATED.

12 SO THEN THIS WHOLE CONTEXT OF ALL OF
13 THESE NOTES REGARDING SEPARATION, ET CETERA, WERE
14 BASICALLY IRRELEVANT.

15 Q. SO YOU SEE WHERE IT SAYS, NOT GOING TO GET
16 MUCH BETTER, UNDER TIMING, DAY AFTER MORNINGSTAR AWARD,
17 JANUARY 10?

09:45AM

18 A. YES.

19 Q. WHAT YOU MEANT BY THAT WAS, THERE WAS NOT
20 GOING TO BE A BETTER TIME TO ANNOUNCE THE LAUNCH OF A
21 NEW BUSINESS THAN THE DAY AFTER YOU THOUGHT
22 MR. GUNDLACH WAS GOING TO GET THIS BIG AWARD, RIGHT?

09:45AM

23 A. CORRECT.

24 BUT THE POINT IS, IN ANNOUNCING A
25 BUSINESS, JUST LIKE WHEN SOC-JEN AND CREDIT AGRICOLE
26 ANNOUNCED THEIR BUSINESS, YOU COULD HAVE A DATE, AND IT
27 COULD BE JANUARY 10TH -- COULD BE JANUARY 11TH; BUT YOU
28 COULD HAVE A FORWARD CLOSEOUT. IT COULD HAVE BEEN IN

09:45AM

1 JUNE OR JULY, IN TERMS OF FORMALIZING AND FINALIZING
2 THE DETAILS.

3 THE KEY IS THAT YOU WOULD HAVE HAD AN
4 AGREEMENT IN PRINCIPLE AND -- IN A THREE-MONTH TIME
5 HORIZON ON A NEGOTIATED BASIS, YOU CAN NEGOTIATE THE
6 BUSINESS TERMS OF A NEGOTIATED SETTLEMENT, AND THEN
7 HAVE A FORWARD ROLLUP.

09:46AM

8 THAT'S NORMAL BUSINESS PRACTICE.

9 Q. SO NOW YOU ARE TELLING US, YOU THINK THE
10 NEGOTIATIONS WOULD BEGIN ON JANUARY 10TH?

09:46AM

11 A. NO. I DID NOT SAY THAT.

12 MR. WEINGART: OBJECTION. ARGUMENTATIVE.

13 Q. BY MR. MADISON: SO YOU WOULD SAY THREE MONTHS
14 BEFORE THAT, THE NEGOTIATIONS WOULD BEGIN?

15 A. MY POINT IS, IN TERMS OF WHAT YOU ARE IMPLYING
16 IS AN INCORRECT ASSUMPTION, RELATIVE TO THE NOTES THAT
17 I'VE PROVIDED.

09:46AM

18 Q. WELL, MY QUESTION, SIR, WAS MUCH MORE SIMPLER.

19 IF YOU AND MR. GUNDLACH AND THE OTHERS
20 WERE GOING TO ABRUPTLY ANNOUNCE THAT YOU WERE LEAVING
21 TO GO TO THIS NEW FIRM, THAT HAD ALREADY BEEN SET UP,
22 THE TIMING WOULDN'T BE MUCH BETTER FOR THE NEW BUSINESS
23 THAN THE DAY AFTER THE MORNINGSTAR AWARDS, WOULD IT,
24 SIR?

09:46AM

25 MR. WEINGART: OBJECTION. ARGUMENTATIVE.

09:47AM

26 THE COURT: SUSTAINED.

27 Q. BY MR. MADISON: WELL, DO YOU AGREE THAT THAT
28 WOULD BE A GOOD TIME TO MAKE AN ANNOUNCEMENT LIKE THAT?

1 A. YOUR PREMISE ABOUT AN ABRUPT DEPARTURE WAS
2 NEVER IN CONTEXT. THAT WAS NEVER AN ASSUMPTION ON MY
3 PART, PERIOD.

4 Q. OKAY.

5 NOW, WOULD YOU AGREE WITH ME THAT THE
6 CDO DEAL DOCUMENTS ARE THE PROPERTY OF TCW?

09:47AM

7 A. TOTALLY AGREE WITH THAT.

8 Q. SO YOU WOULD NOT BE AUTHORIZED TO TAKE A FULL
9 SET OF THOSE DOCUMENTS TO USE FOR ANOTHER BUSINESS
10 WITHOUT TCW'S PERMISSION?

09:47AM

11 YOU WOULD AGREE WITH THAT, WOULD YOU
12 NOT?

13 A. AGREED.

14 Q. SIR?

15 A. YES. I AGREED.

09:47AM

16 Q. AND YOU WOULD ALSO AGREE THAT IT'S NOT
17 APPROPRIATE TO DOWNLOAD INFORMATION TO BE USED IN A NEW
18 BUSINESS? AS A FIDUCIARY YOURSELF, YOU WOULD NEVER DO
19 THAT, WOULD YOU?

20 MR. WEINGART: OBJECTION. CUMULATIVE.

09:47AM

21 THE COURT: SUSTAINED.

22 Q. BY MR. MADISON: NOW, LET ME ASK YOU ABOUT
23 JUST THE FACT THAT ASSET MANAGEMENT FIRMS DO HAVE
24 CONFIDENTIAL AND PROPRIETARY INFORMATION THAT THEY
25 SAFEGUARD; ISN'T THAT TRUE?

09:48AM

26 A. YES.

27 Q. AND ASSET MANAGEMENT FIRMS HAVE TRADE SECRETS
28 THAT THEY SAFEGUARD, AS WELL, DON'T THEY?

1 A. YES, THEY DO.

2 Q. AND TCW HAD TRADE SECRETS THAT WERE
3 SAFEGUARDED THERE DURING THE TIME YOU WORKED IN THE
4 GROUP; ISN'T THAT RIGHT?

5 A. ON A LIMITED BASIS, YES. 09:48AM

6 Q. AND DOUBLELINE NOW, YOU BELIEVE, HAS TRADE
7 SECRETS AND CONFIDENTIAL AND PROPRIETARY INFORMATION
8 THAT DOUBLELINE TAKES SOME STEPS TO SAFEGUARD, CORRECT?

9 MR. WEINGART: OBJECTION. RELEVANCE.

10 THE COURT: OVERRULED. 09:48AM

11 THE WITNESS: YES.

12 Q. BY MR. MADISON: I MEAN, IT WOULDN'T BE TRUE
13 TO SAY, THE ONLY THING THAT WAS CONFIDENTIAL AND
14 PROPRIETARY AT TCW WOULD BE A RECIPE IN THE DINING
15 ROOM? 09:48AM

16 MR. WEINGART: OBJECTION. ARGUMENTATIVE.

17 THE COURT: SUSTAINED.

18 Q. BY MR. MADISON: YOU WOULDN'T AGREE WITH THAT
19 STATEMENT, WOULD YOU, SIR?

20 THE COURT: I SUSTAINED THE OBJECTION, SO ASK
21 SOMETHING ELSE. 09:49AM

22 Q. BY MR. MADISON: SO DO YOU RECALL THAT WHEN
23 YOU WENT OVER TO DOUBLELINE, YOU WERE CONCERNED ABOUT
24 COMPETITORS HAVING INFORMATION OF DOUBLELINE'S THAT
25 COULD BE USED TO COMPETE AGAINST DOUBLELINE? 09:49AM

26 DO YOU RECALL THAT?

27 A. AT DOUBLELINE?

28 REPEAT THE QUESTION, PLEASE.

1 Q. DO YOU RECALL, AT DOUBLELINE, YOU HAD CONCERNS
2 ABOUT SAFEGUARDING INFORMATION SO COMPETITORS WOULDN'T
3 BE ABLE TO USE THAT INFORMATION IN ANY COMPETITIVE WAY?

4 MR. WEINGART: OBJECTION. RELEVANCE, 352.

5 THE COURT: OVERRULED.

09:49AM

6 I'LL ALLOW IT.

7 THE WITNESS: ON DAY ONE, WE HAD NO TRADE
8 SECRETS, BECAUSE WE JUST HAD, I GUESS, 22 PEOPLE
9 SOMEWHERE IN THAT VICINITY WITH PUBLICLY AVAILABLE
10 TECHNOLOGY.

09:49AM

11 Q. BY MR. MADISON: NOW, DO YOU RECALL SENDING AN
12 E-MAIL TO MR. GUNDLACH RIGHT AFTER THE SEPTEMBER 3RD
13 MEETING, THAT SAME AFTERNOON OR EVENING?

14 A. I'D LIKE TO SEE IT.

15 Q. IT'S EXHIBIT 263.

09:50AM

16 AND I BELIEVE IT'S IN EVIDENCE, YOUR
17 HONOR.

18 A. YES. I DID SEND THAT.

19 Q. OKAY.

20 AND IF WE COULD EXPAND THE BOTTOM HALF
21 OF THAT FIRST PAGE.

09:50AM

22 WE'LL SEE -- WELL, YOU STARTED BY
23 SENDING HIM AN E-MAIL. LET'S GO TO THE SECOND PAGE,
24 BECAUSE WE'VE HEARD SOME TESTIMONY ABOUT THIS, I THINK,
25 ON PAGE 2.

09:50AM

26 LET'S DO THIS. CAN YOU LOOK AT 264,
27 PLEASE. I BELIEVE IT'S IN YOUR BINDER. IT'S BOTH
28 PAGES FROM THAT EXHIBIT.

1 A. YES, I HAVE IT.

2 MR. MADISON: I'D MOVE 264, YOUR HONOR.

3 MR WEINGART: NO OBJECTION.

4 THE COURT: IT WILL BE ADMITTED.

5

09:51AM

6 (EXHIBIT 264 ADMITTED.)

7

8 Q. BY MR. MADISON: SO LET'S START AT THE SECOND
9 PAGE OF THE E-MAIL CHAIN, BECAUSE IT STARTS FROM THE
10 BACK, AND THEN GOES FORWARD.

09:51AM

11 AND YOU WRITE TO MR. GUNDLACH THERE AT
12 THE TOP OF THE PAGE. THIS IS SEPTEMBER 3RD AT 5:05
13 P.M.

14 YOU SAY, JEFFREY, AS A FOLLOW-UP TO
15 TODAY'S MEETING, I WOULD LIKE TO BE THE ALTERNATE ON
16 EXECUTIVE COMMITTEE MEETINGS FOR PHIL IN THOSE
17 INSTANCES WHERE HE CANNOT ATTEND.

09:51AM

18 THAT WAS SOMETHING THAT HAD BEEN
19 DISCUSSED, ABOUT HAVING MR. BARACH SIT ON THE EXECUTIVE
20 COMMITTEE AT TCW, CORRECT?

09:51AM

21 A. WE DISCUSSED HAVING BOTH PHIL AND MYSELF
22 SITTING ON THE EXECUTIVE COMMITTEE.

23 AND MARC RESPONDED THAT IT WAS POSSIBLE
24 TO HAVE ONE, BUT NOT THE BOTH OF US.

25 Q. SO YOU WERE ASKING --

09:52AM

26 A. SO THIS WAS IN REFERENCE TO THAT.

27 Q. SO YOU WERE ASKING MR. GUNDLACH IF YOU COULD
28 BE MR. BARACH'S ALTERNATE?

1 A. CORRECT.

2 Q. AND THEN YOU SAY, I ALSO HAVE ONE OTHER POINT
3 THAT I WOULD LIKE TO DISCUSS WITH YOU TOMORROW.

4 AND MR. GUNDLACH, WRITES BACK TO YOU,
5 OVER ON THE FIRST PAGE, NOW HE SAYS, CAN YOU GIVE ME A
6 HEADS UP NOW ON THE OTHER TOPICS. I AM UP TO MY QUOTA
7 IN SURPRISES AND GUESSING.

09:52AM

8 AND YOU WRITE BACK, I JUST WANT TO BE
9 SURE THAT VINCE IS INCLUDED IN YOUR THINKING OF
10 CRITICAL STAFF.

09:52AM

11 NOW, WHAT YOU WERE REFERRING TO HERE,
12 WAS RELATED TO THAT NOTE THAT WE SAW ABOUT THE EXIT
13 STRATEGY. THAT IS, YOU WANTED TO BE SURE THAT VINCE
14 DAMIANI WAS INCLUDED IN MR. GUNDLACH'S THINKING ABOUT
15 WHO WOULD GO, IF THERE WAS GOING TO BE AN EXIT
16 STRATEGY, CORRECT?

09:52AM

17 A. THIS IS TOTALLY INCORRECT, TOTALLY FALSE.

18 Q. TELL US WHY.

19 A. THERE WERE THREE MANAGING DIRECTORS THAT WERE
20 NOT INCLUDED IN THE MEETING WITH MR. STERN. VINCE
21 FIORELLO WAS ONE, THE LATE JOHN FRIEDMAN WAS THE OTHER,
22 AND CLAUDE ERB WAS THE OTHER.

09:53AM

23 AND THE REASON FOR THAT WAS THAT NEITHER
24 OF THESE THREE PEOPLE HAD ANY WORKING OR EXPERIENCE
25 WITH MARC STERN, SO MARC WOULD NOT RECOGNIZE, OR HAVE
26 ANY WORKING KNOWLEDGE WITH THEM, PERIOD.

09:53AM

27 SO VINCE IS SOMEONE WHO HAD BEEN A
28 FRIEND OF MINE, HAD KNOWN HIM FOR OVER 40 YEARS. AND

1 WHEN HE SAW US ALL HAVING A MEETING WITH MR. STERN, HE
2 WAS A SENSITIVE FELLOW, AND WAS VERY MUCH CONCERNED
3 THAT HE WAS NOT IN THE -- DEEMED AS PART OF THE
4 CRITICAL STAFF, IN THE MEETING WITH MR. STERN.

5 Q. SO IT'S YOUR --

09:53AM

6 A. IT'S THAT SIMPLE.

7 Q. IT'S YOUR TESTIMONY THAT YOUR INQUIRY ABOUT
8 MR. FIORELLO, BEING THOUGHT BY MR. GUNDLACH TO BE
9 EITHER CRITICAL STAFF OR NOT, HAD ABSOLUTELY NOTHING TO
10 DO WITH A SEPARATION OF A GROUP LEAVING TCW?

09:54AM

11 A. ABSOLUTELY NOT.

12 MR. WEINGART: OBJECTION. ARGUMENTATIVE,
13 ASKED AND ANSWERED.

14 THE COURT: I'LL OVERRULE THE OBJECTION, AND
15 ALLOW THE ANSWER TO STAND.

09:54AM

16 Q. BY MR. MADISON: AND THE ANSWER IS, ABSOLUTELY
17 NOT; IS THAT WHAT YOU SAID? ABSOLUTELY NOT?

18 A. YOUR QUESTION REGARDING VINCE BEING DESIGNATED
19 AS PART OF THIS EXIT TEAM, THE CONTEXT OF HIS AND MY
20 E-MAIL TO JEFFREY, WAS JUST AS I PREVIOUSLY STATED,
21 NOTHING TO DO WITH EXIT.

09:54AM

22 Q. AND YOUR ONLY INTEREST WAS IN KNOWING WHETHER
23 MR. FIORELLO WAS CONSIDERED BY MR. GUNDLACH TO BE PART
24 OF THE CRITICAL STAFF AT TCW?

25 A. THAT IS CORRECT.

09:54AM

26 Q. AND WHERE DOES MR. FIORELLO WORK TODAY?

27 A. HE'S AT DOUBLELINE.

28 Q. NOW, LET ME ASK YOU TO TAKE A LOOK AT EXHIBIT

1 2211.

2 THIS IS NOT IN EVIDENCE.

3 IT'S AN E-MAIL THAT YOU SENT AT
4 DOUBLELINE.

5 IF YOU COULD LOOK AT THAT, AND TELL US
6 IF YOU RECOGNIZE IT.

09:55AM

7 A. YES.

8 Q. AND THIS IS AN E-MAIL THAT YOU SENT AT
9 DOUBLELINE ON DECEMBER 15, 2009, CORRECT?

10 A. YES, THAT'S CORRECT.

09:55AM

11 MR. MADISON: I'D MOVE 2211 INTO EVIDENCE,
12 YOUR HONOR.

13 THE COURT: ANY OBJECTION?

14 MR. WEINGART: SORRY, YOUR HONOR. JUST ONE
15 MOMENT.

09:55AM

16 NO OBJECTION.

17 THE COURT: IT WILL BE ADMITTED.

18
19 (EXHIBIT 2211 ADMITTED.)

20
21 Q. BY MR. MADISON: SO UP AT THE TOP, WE CAN SEE
22 THE TO AND FROM LINE. AND IT'S YOURSELF TO A NUMBER OF
23 INDIVIDUALS AT DOUBLELINE, DECEMBER 15, 2009.

09:55AM

24 AND YOU ARE TALKING ABOUT THE GROWTH
25 THAT DOUBLELINE HAS EXPERIENCED AND WHAT SOME OF THE
26 RESPONSIBILITIES WILL BE.

09:56AM

27 AND I WANT TO GO DOWN TO THE MIDDLE OF
28 THE PAGE, WHERE THERE'S A PARAGRAPH WITHOUT A NUMBER,

1 THAT SAYS, (READING) :

2 THESE ACTIONS ARE NECESSARY,
3 AS DURING OUR ADV FILING, WE MUST
4 BE CONSCIOUS OF ADHERING TO STRICT
5 COMPLIANCE, AS WE DO NOT WANT ANY
6 ACTION REGARDING DISCLOSURE OF OUR
7 STRATEGY TO:

09:56AM

8 AND THE FIRST ONE IS TO DELAY CLIENT
9 TRANSITION.

10 AND SO WHAT YOU WERE THINKING ABOUT
11 THERE WAS TRANSITIONING CLIENTS FROM TCW OVER TO
12 DOUBLELINE, CORRECT?

09:56AM

13 A. WE HAD A NUMBER OF CLIENTS THAT WERE CALLING
14 US ON AN ONGOING BASIS, THAT WISHED TO MOVE THEIR
15 ASSETS.

09:56AM

16 Q. SO THE ANSWER TO MY QUESTION IS YES?

17 A. YES.

18 Q. AND THEN THE SECOND BULLET POINT SAYS,
19 (READING) :

20 PROVIDE TCW, EITHER DIRECTLY
21 OR INDIRECTLY, WITH INFORMATION
22 THAT WOULD IMPACT THE ABOVE.

09:56AM

23 SO YOU WERE CONCERNED THAT TCW NOT
24 RECEIVE ANY INFORMATION ABOUT THE THINGS THAT WERE
25 MENTIONED ABOVE, RIGHT?

09:57AM

26 A. CORRECT.

27 Q. AND BY THE WAY, DO YOU RECALL, THERE DID COME
28 A TIME WHEN DOUBLELINE FILED DOCUMENTS WITH THE SEC

1 THAT CONTAINED IMPROPER INFORMATION?

2 MR. WEINGART: OBJECTION. ARGUMENTATIVE.

3 THE COURT: SUSTAINED.

4 AND STRIKE THE RESPONSE.

5 Q. BY MR. MADISON: DO YOU RECALL THAT THERE CAME
6 A TIME WHEN DOUBLELINE FILED MUTUAL FUNDS DOCUMENTS
7 WITH THE SEC, AND THEN VERY SHORTLY THEREAFTER, AMENDED
8 THOSE, TO TAKE OUT INFORMATION THAT HAD BEEN INCLUDED?

09:57AM

9 MR. WEINGART: OBJECTION. CUMULATIVE.

10 THE COURT: OVERRULED.

09:57AM

11 THE WITNESS: WE FILED DOCUMENTS WITH THE SEC.
12 FILED DOCUMENTS FOR THREE SPECIFIC FUNDS.

13 WE WENT OVER WITH OUR ATTORNEY, WHICH
14 WAS CADWALADER AT THE TIME, AND AS WE HAD THE PORTFOLIO
15 MANAGERS AND STRATEGIES INVOLVED, WE WERE ENTITLED TO
16 USE THE HISTORIC PERFORMANCE RETURN INFORMATION THAT
17 WAS COMPILED BY THE TEAM OVER THE HISTORY AT OUR
18 PREVIOUS EMPLOYMENT. THAT IS NORMAL INVESTMENT
19 PRACTICE.

09:58AM

20 I BELIEVE TAD RIVELLE AND THE OTHER
21 MEMBERS OF MET WEST DID THE SAME THING WHEN THEY LEFT
22 THEIR PREVIOUS EMPLOYER, WHEN THEY FOUNDED MET WEST, AS
23 A POINT IN FACT.

09:58AM

24 SPECIFICALLY, UPON OUR FILING, WHEN TCW
25 SAW WHAT THE FILING WAS, THEY CHALLENGED THE SEC
26 REGARDING OUR HISTORIC USE OF THE PERFORMANCE.

09:58AM

27 AND INSTEAD OF GETTING INTO A SIX-MONTH
28 IMBROGLIO, WE FIGURED THAT THE STRENGTH OF THE TEAM WAS

1 SUCH THAT WE DID NOT NEED TO GET INTO A SIX-MONTH
2 DELAY. AND WE WENT INTO AN ACTIVE FILING, WITHOUT THE
3 HISTORY PERFORMANCE.

4 THAT'S A STATEMENT AND A RECOLLECTION OF
5 THE FACTS AS I KNOW THEM.

09:58AM

6 Q. SO THE ANSWER TO MY QUESTION IS YES, THERE WAS
7 A FILING AND THEN SHORTLY THEREAFTER, THE FILING WAS
8 AMENDED TO TAKE OUT INFORMATION?

9 A. CORRECT.

10 Q. NOW, DO YOU KNOW, WITH REGARD TO THE LIST OF
11 CRITICAL EMPLOYEES, CRITICAL STAFF, WHETHER
12 MR. GUNDLACH WAS ACTUALLY KEEPING A PHYSICAL LIST OF
13 CRITICAL STAFF?

09:59AM

14 A. I DON'T KNOW THAT.

15 Q. DID YOU BELIEVE THAT ONCE MR. GUNDLACH WAS
16 FIRED, THAT CERTAIN CONFIDENTIALITY REQUIREMENTS NO
17 LONGER APPLIED?

09:59AM

18 MR. WEINGART: OBJECTION. VAGUE.

19 THE COURT: SUSTAINED.

20 Q. BY MR. MADISON: WELL, IN OTHER WORDS, YOU
21 UNDERSTOOD WHEN YOU WERE AT TCW, YOU AND THE OTHERS
22 THERE HAD THE DUTY TO PROTECT CONFIDENTIAL INFORMATION,
23 AND NOT DISCLOSE IT OR USE IT FOR ANY NON-TCW REASON,
24 RIGHT?

09:59AM

25 A. CORRECT.

09:59AM

26 Q. BUT YOU BELIEVED, THEN, THAT ONCE MR. GUNDLACH
27 WAS FIRED, THAT THAT CHANGED THE GAME, DIDN'T YOU?

28 A. THAT'S NOT TRUE.

1 Q. YOU BELIEVED THAT THEN IT WAS AN OPEN GAME,
2 AND INFORMATION THAT WAS CONFIDENTIAL TO TCW COULD BE
3 USED, NOT FOR TCW'S BENEFIT ANYMORE, BECAUSE TCW HAD
4 FIRED MR. GUNDLACH; ISN'T THAT RIGHT?

5 A. THAT'S NOT TRUE. 10:00AM

6 MR. WEINGART: OBJECTION. ARGUMENTATIVE.

7 THE COURT: I'LL ALLOW THE ANSWER TO STAND.

8 MR. MADISON: WELL, I'D LIKE TO PLAY THE
9 WITNESS' DEPOSITION VIDEO, YOUR HONOR.

10 AND WE'D LIKE TO PLAY PAGE 226, LINE 9.
11 WAIT ONE SEC -- 10:00AM

12 I'D LIKE TO PLAY 228, LINE 16 TO LINE
13 21. AND THEN PAGE 230, LINE 13 TO LINE 19.

14 THE COURT: ALL RIGHT.

15 MR. WEINGART: I'M SORRY, COULD I GET THOSE
16 AGAIN? 10:01AM

17 THE COURT: IT'S 281, 16 TO 21; 230, 13 TO 19.

18 MR. WEINGART: YOUR HONOR, I OBJECT TO --

19 THE COURT: JUST HOLD ON A MINUTE.

20 ALL RIGHT, MR. WEINGART? 10:02AM

21 MR. WEINGART: I'D OBJECT TO 228, 16 THROUGH
22 21.

23 MR. MADISON: FINE.

24 WE CAN JUST PLAY THE SECOND CLIP, YOUR
25 HONOR. 10:02AM

26 MR. WEINGART: I WOULD OBJECT TO THAT ONE AS
27 ARGUMENTATIVE; BUT I BELIEVE YOU ALREADY OVERRULED THE
28 OBJECTION.

1 THE COURT: I'LL SUSTAIN THE OBJECTION TO 228,
2 16 THROUGH 21.

3 YOU MAY PLAY 230, 13 THROUGH 19.

4
5 (DEPOSITION VIDEOTAPE PLAYED.)

10:03AM

6
7 Q. BY MR. MADISON: THAT WAS YOUR SWORN TESTIMONY
8 IN YOUR DEPOSITION, RIGHT?

9 A. YES, IT WAS.

10 Q. NOW, DO YOU RECALL, ONCE YOU WERE AT
11 DOUBLELINE, REACHING OUT FOR TCW INVESTORS TO TALK TO
12 THEM ABOUT MOVING THEIR INVESTMENTS FROM TCW OVER TO
13 DOUBLELINE?

10:03AM

14 A. I WAS THE RECIPIENT OF INCOMING PHONE CALLS.
15 SO BOB BORDEN CALLED ME. HE SPOKE TO
16 OTHER PEOPLE.

10:03AM

17 JIM POWERS, WHO WAS BOB BORDEN'S BOSS,
18 WAS SOMEONE THAT I HAD A WORKING RELATIONSHIP WITH IN
19 THE MID 1970'S, SO I THINK THAT WOULD PRECEDE ANY
20 WORKING RELATIONSHIP AT TCW.

10:04AM

21 SO FOR JIM POWERS AND OTHER PEOPLE AT
22 SOUTH CAROLINA TO CALL ME, I THINK THAT WOULD KIND
23 OF --

24 PLUS, THOSE PEOPLE WERE MY PARTNERS.
25 ANYBODY THAT WAS AN INVESTOR IN ANY OF THE SPECIAL
26 MORTGAGE CREDIT FUNDS WERE PARTNERS OF MINE, AND
27 BASICALLY, HAD ENGAGED US FOR AN EIGHT-YEAR TERM. AND
28 BASED ON CONTINUITY AND MAINTAINING OF THE TEAM,

10:04AM

1 MANAGING THAT MONEY. SO FOR THE PARTNERS TO CALL ME,
2 THEY HAD MY HOME PHONE NUMBER, SO THEY COULD CALL ME
3 ANY TIME THEY WANTED.

4 Q. WELL, THEY WEREN'T JUST CALLING YOU. YOU WERE
5 REACHING OUT FOR THEM, WEREN'T YOU, SIR?

10:04AM

6 A. I RETURNED PEOPLE'S PHONE CALLS.

7 Q. DIDN'T YOU ALSO INITIATE CALLS TO CLIENTS OF
8 TCW TO TALK TO THEM ABOUT MOVING THEIR INVESTMENTS OVER
9 TO DOUBLELINE?

10 A. I CAN'T RECALL THAT.

10:04AM

11 Q. WELL, LOOK AT EXHIBIT 2213.

12 IT'S NOT IN EVIDENCE.

13 IT'S AN E-MAIL EXCHANGE FROM
14 DECEMBER 28TH, 2009.

15 MR. MADISON: WE'D MOVE 2213, YOUR HONOR.

10:05AM

16 MR WEINGART: NO OBJECTION.

17 THE COURT: IT WILL BE ADMITTED.

18

19 (EXHIBIT 2213 ADMITTED.)

20

10:05AM

21 Q. BY MR. MADISON: SO IF WE JUST DISPLAY THE
22 FIRST PAGE, HERE AT THE BOTTOM, WE SEE THERE'S AN
23 E-MAIL FROM MR. CADWALADER, WHO WAS ONE OF THE
24 INVESTORS. AND I BELIEVE WE'VE HEARD SOME TESTIMONY
25 ABOUT THAT.

10:05AM

26 BUT LET ME ASK YOU ABOUT YOUR E-MAIL
27 THERE, WHERE YOU WRITE TO SOMEONE NAMED NEO, AND YOU
28 COPY MR. GUNDLACH AND MS. VANEVERY. AND THE SUBJECT

1 IS, TCW SPECIAL MORTGAGE CREDIT FUNDS.

2 YOU ARE SIMPLY FORWARDING THE E-MAIL
3 BELOW.

4 AND YOU SAY, (READING):

5 HELLO NEO.

10:05AM

6 I HOPE YOU ARE WELL. WE
7 WANTED TO BE SURE YOU SAW THIS
8 LETTER FROM THE ADVISORY BOARD OF
9 THE SPECIAL MORTGAGE CREDIT FUNDS.

10 ONE, PLEASE LET ME KNOW WHEN
11 IT WILL BE CONVENIENT FOR ME TO
12 CALL YOU, AND WHICH NUMBER YOU
13 WOULD LIKE ME TO CALL YOU ON.

10:05AM

14 SO YOU WERE REACHING OUT FOR AN
15 INVESTOR OF THE SPECIAL MORTGAGE CREDIT FUNDS HERE TO
16 TALK TO HIM.

10:06AM

17 IS THAT A GENTLEMAN?

18 A. IT'S A SHE. SHE'S A SENIOR INVESTMENT OFFICER
19 FOR THE GIC, WHICH IS THE GOVERNMENT INVESTMENT CORP OF
20 SINGAPORE, A FUND OF SINGAPORE WHICH I'VE BEEN TO MANY
21 TIMES.

10:06AM

22 THEY HAD CONTACTED US. THEY ARE
23 ACTUALLY COMING TO DO DUE DILIGENCE ON US ON
24 JANUARY 4TH.

25 HE'S ALSO AN INVESTOR IN THE FUND, AND A
26 PARTNER.

10:06AM

27 AND IF I'M NOT MISTAKEN. PARTNERS HAVE
28 EVERY RIGHT TO CONTACT OTHER PARTNERS OF THE FUND; SO

1 THAT'S THE WAY I UNDERSTAND IT.

2 Q. I DIDN'T ASK YOU WHETHER IT WAS A LEGAL CALL
3 OR A RIGHTFUL CALL.

4 BUT MY QUESTION WAS SIMPLY, YOU WERE
5 ACTUALLY REACHING OUT AND INITIATING CONTACT WITH TCW'S
6 INVESTORS, WEREN'T YOU? 10:06AM

7 A. I BELIEVE THEY HAD CONTACTED US, WHEN THEY
8 WERE ADVISED THAT JEFFREY WAS TERMINATED.

9 Q. WELL, LOOK UP AT THE TOP TO MR. GUNDLACH'S
10 RESPONSE TO YOUR E-MAIL. 10:07AM

11 HE SAYS, (READING):

12 EXCELLENT. PLEASE KEEP
13 CONSTANTLY REACHING OUT TO SMCF
14 INVESTORS IN BOTH I AND II.

15 A. CORRECT. 10:07AM

16 Q. THAT WAS A TRUE STATEMENT BY HIM, RIGHT?

17 A. THAT WAS A SIGNIFICANT INVESTOR IN BOTH OF
18 THESE FUNDS, SO I COULD TALK TO THEM ANY TIME I WANTED.

19 Q. WHAT MR. GUNDLACH WAS SAYING, IS PLEASE KEEP
20 CONSTANTLY REACHING OUT TO THE CLIENTS OF TCW? 10:07AM

21 A. THEY WERE MY PARTNERS.

22 Q. AND MR. GUNDLACH -- YOU UNDERSTOOD
23 MR. GUNDLACH WANTED YOU AND THE OTHERS TO BE REACHING
24 OUT TO TCW'S CLIENTS TO TALK TO THEM ABOUT MOVING --

25 A. THEY WERE MY PARTNERS. 10:07AM

26 Q. SO YOU BELIEVED THEY WERE YOUR PARTNERS, AND
27 NOT TCW'S INVESTORS?

28 A. THEY WERE MY PARTNERS.

1 Q. CAN YOU ANSWER MY QUESTION, SIR?

2 A. THEY WERE MY PARTNERS.

3 I ANSWERED YOUR QUESTION.

4 Q. WERE THE CONTRACTS WITH THE SPECIAL MORTGAGE
5 CREDIT FUND INVESTORS WITH LOU LUCIDO?

10:07AM

6 A. NO.

7 Q. WHO WERE THEY WITH, SIR?

8 A. THEY WERE WITH THE LEGAL ENTITIES WHICH WERE
9 THE GP'S OF THOSE ENTITIES.

10 Q. WHICH WERE TCW, WEREN'T THEY?

10:08AM

11 A. TCW, NO.

12 Q. WHO WERE THEY, SIR?

13 A. IT WAS NOT WITH TCW.

14 Q. WHO CREATED THOSE LEGAL PARTNERSHIP
15 INVESTMENTS?

10:08AM

16 A. THOSE PARTNERSHIPS WERE CREATED, AND THOSE
17 IDEAS WERE FORMULATED, BETWEEN JEFFREY GUNDLACH, PHIL
18 BARACH AND MYSELF.

19 Q. ALL WHILE YOU WERE AT TCW?

20 A. THAT IS CORRECT.

10:08AM

21 Q. AND IN FACT, YOU THEN ASKED PEOPLE TO TALK TO
22 THE PRESS TO TRY TO UNDERMINE TCW, DIDN'T YOU?

23 A. SPECIFICALLY, NO.

24 Q. WELL, DO YOU RECALL AN INVESTOR NAMED TANIA
25 MODIC?

10:08AM

26 A. YES.

27 Q. DO YOU RECALL ASKING TANIA MODIC IF SHE WOULD
28 CALL THE WALL STREET JOURNAL TO BASH TCW?

1 MR. WEINGART: OBJECTION, ARGUMENTATIVE.

2 THE COURT: SUSTAINED.

3 Q. BY MR. MADISON: WELL, LOOK AT EXHIBIT 2214.

4 THIS IS NOT IN EVIDENCE, YOUR HONOR.

5 A. YES.

10:09AM

6 Q. AND DOES THAT REFRESH YOUR RECOLLECTION THAT

7 YOU ASKED TANIA MODIC IF SHE WOULD BE RECEPTIVE IN

8 SPEAKING WITH THE WALL STREET JOURNAL ABOUT TCW?

9 A. THAT'S JUST -- WALL STREET JOURNAL --

10 Q. THAT'S A YES OR NO QUESTION.

10:09AM

11 A. YES.

12 Q. AND YOU DID ASK TANIA MODIC TO REACH OUT FOR

13 THE WALL STREET JOURNAL, IN THE HOPE THAT THEY WOULD

14 WRITE SOMETHING BAD ABOUT TCW?

15 MR. WEINGART: OBJECTION. ARGUMENTATIVE.

10:09AM

16 THE COURT: SUSTAINED.

17 Q. BY MR. MADISON: WELL, YOU WANTED TANIA MODIC

18 TO REACH OUT FOR THE WALL STREET JOURNAL SO THEY'D

19 WRITE SOMETHING NEGATIVE?

20 A. IT WAS THE OTHER WAY AROUND.

10:09AM

21 MR. WEINGART: SAME OBJECTION.

22 THE COURT: SO WILL YOU ANSWER THE QUESTIONS,

23 AND WHATEVER?

24 Q. BY MR. MADISON: WELL, I WANT TO KNOW WHAT WAS

25 IN YOUR MIND, MR. LUCIDO?

10:09AM

26 A. THE WALL STREET JOURNAL HAD CONTACTED US. A

27 NUMBER OF NEWS AGENCIES HAD BEEN IN CONTACT WITH EITHER

28 JEFFREY, PHIL, OR MYSELF, AMONG OTHER PEOPLE.

1 AND THERE WAS AN ONGOING DIALOGUE FROM
2 THE WALL STREET JOURNAL. AND THE WALL STREET JOURNAL
3 WAS ASKING IF WE KNEW, OR IF THEY COULD BE AND HAVE AN
4 INDEPENDENT DISCUSSION WITH PEOPLE THAT WOULD BE
5 RECEPTIVE TO TALK TO THEM.

10:10AM

6 AND THEY HAD CONTACTED US. AND WE
7 REACHED OUT TO A FEW PEOPLE THAT HAD EXPRESSED
8 DISPLEASURE ABOUT WHAT HAD TRANSPIRED.

9 AND THAT'S WHAT THIS WAS IN CONTEXT.

10 Q. SO, AND THE SUBJECT MATTER WOULD BE THE
11 SPECIAL MORTGAGE CREDIT FUNDS, AND WHETHER OR NOT TCW
12 WOULD ALLOW THE INVESTORS TO MOVE ASSETS OR MONEY OVER
13 TO DOUBLELINE, CORRECT?

10:10AM

14 A. NO. IT WAS IN CONTEXT WHATEVER WALL STREET
15 JOURNAL WANTED TO ASK TANIA ABOUT.

10:11AM

16 I HAD NO IDEA. I DID NOT WRITE THE WALL
17 STREET JOURNAL ARTICLE. I DIDN'T WRITE THEIR
18 QUESTIONS.

19 SO IT WAS SPECIFIC TO WHAT THE WALL
20 STREET JOURNAL, THE INDEPENDENT QUESTIONS THAT THEY
21 WISHED TO ASK HER, WHICH I WASN'T PARTY OF.

10:11AM

22 Q. AT THE TIME YOU ASKED MS. MODIC TO -- IF SHE
23 WOULD BE RECEPTIVE TO SPEAKING TO THE WALL STREET
24 JOURNAL, AT THAT TIME, YOU WANTED THE SPECIAL MORTGAGE
25 CREDIT FUND INVESTORS TO BE ABLE TO MOVE THE ASSETS
26 OVER TO DOUBLELINE, DIDN'T YOU, SIR?

10:11AM

27 A. I WOULD HAVE LIKED TO HAVE ALL \$110 BILLION OF
28 TCW'S ASSETS WITH US; BUT THAT WAS NOT GOING TO HAPPEN.

1 Q. NOW, AND YOU KNEW THERE WERE CONTRACTS WITH
2 THE INVESTORS AND TCW AT THAT TIME?

3 A. YES, THERE WERE.

4 Q. NOW, SIR, DO YOU RECALL DEALING WITH A
5 GENTLEMAN NAMED MR. BRAINARD, MATT BRAINARD, WHO WAS A
6 BROKER THAT HAD BEEN RETAINED?

10:11AM

7 A. I HAD NO DEALINGS WITH MATT BRAINARD.

8 DEFINE WHAT TIME PERIOD YOU ARE TALKING
9 ABOUT, PLEASE.

10 Q. THANK YOU. I SHOULD DO THAT.

10:12AM

11 WE'VE ALREADY TALKED ABOUT BEFORE
12 DECEMBER 4, YOUR TESTIMONY IS, YOU DIDN'T KNOW ANYTHING
13 ABOUT THE EFFORTS THAT WERE UNDER WAY REGARDING ABLE
14 GRAPE, RIGHT?

15 A. CORRECT.

10:12AM

16 Q. NOW, WE HAVE EVIDENCE THAT MR. BRAINARD WAS A
17 REALTOR WHO WAS RETAINED TO WORK WITH ABLE GRAPE TO
18 FIND OFFICE SPACE.

19 YOU DIDN'T KNOW ANYTHING ABOUT THAT UP
20 UNTIL DECEMBER 4, AT LEAST, RIGHT?

10:12AM

21 A. NOT UNTIL WELL AFTER THAT.

22 Q. AFTER YOU JOINED DOUBLELINE, THOUGH, IN YOUR
23 CAPACITY VERSUS EXECUTIVE VICE PRESIDENT, AND NOW AS
24 COO, YOU LEARNED ABOUT MR. BRAINARD AND THE FACT THAT
25 HE HAD HAD A CONTRACT WITH ABLE GRAPE, RIGHT?

10:12AM

26 A. CORRECT.

27 Q. AND YOU KNOW, SIR, DON'T YOU, THAT ABLE GRAPE,
28 THE ENTITY THAT WAS FORMED AS ABLE GRAPE, SIMPLY BECAME

1 DOUBLELINE, WITH THE NAME CHANGE, RIGHT?

2 A. I FOUND OUT AFTER THE FACT.

3 Q. AND THEN YOU FOUND OUT THAT MR. BRAINARD HAD A
4 DISPUTE WITH DOUBLELINE, BECAUSE HE HAD AN EXCLUSIVE
5 BROKER RELATIONSHIP WITH ABLE GRAPE/DOUBLELINE, AND HE
6 HAD IDENTIFIED SPACE THAT WAS IN NEGOTIATIONS IN
7 CENTURY CITY, RIGHT?

10:13AM

8 A. HE HAD NO DEBATE OR DISAGREEMENT WITH
9 DOUBLELINE.

10 Q. WELL, DO YOU RECALL MR. BRAINARD TALKING TO
11 YOU AND MR. SULLIVAN, JOE SULLIVAN AT DOUBLELINE, ABOUT
12 RESOLVING HIS CLAIM FOR THE COMMISSION THAT HE WAS
13 SUPPOSED TO HAVE EARNED ON THE CENTURY CITY SPACE?

10:13AM

14 MR. WEINGART: OBJECTION. RELEVANCE.

15 THE WITNESS: YES.

10:13AM

16 THE COURT: I'LL LET IT GO.

17 GO AHEAD.

18 Q. BY MR. MADISON: AND I BELIEVE YOUR ANSWER WAS
19 YES, SIR?

20 A. YES.

10:13AM

21 Q. AND IN FACT, YOU, ON BEHALF OF DOUBLELINE,
22 RESOLVED THAT DISPUTE BY AGREEING WITH MR. BRAINARD, TO
23 PROVIDE HIM WITH CERTAIN CONSIDERATION WITH REGARD TO
24 THAT, RIGHT?

25 A. CORRECT.

10:13AM

26 Q. AND MR. BRAINARD'S ONLY INVOLVEMENT, TO YOUR
27 KNOWLEDGE, WAS IN FINDING ABLE GRAPE ITS OFFICE SPACE;
28 ISN'T THAT RIGHT?

1 A. I DID NOT KNOW IT, AT THE TIME.

2 Q. BUT YOU FOUND OUT LATER.

3 AND YOU RESOLVED THAT WITH HIM BY
4 AGREEING TO GIVE HIM CERTAIN CONSIDERATION GOING
5 FORWARD, CORRECT?

10:14AM

6 A. CORRECT.

7 Q. NOW, DO YOU RECALL THAT THERE WAS A CALL ON
8 DECEMBER 8 WITH CERTAIN PERSONS THAT MIGHT HAVE AN
9 INTEREST IN WHAT YOU AND MR. GUNDLACH WERE DOING POST
10 TCW?

10:14AM

11 A. WE HAD LOTS OF CONVERSATIONS BETWEEN
12 DECEMBER 5TH AND DECEMBER 8TH, SO --

13 Q. WELL, THE CALL I WANT TO ASK YOU ABOUT IS THE
14 ONE IN WHICH IT WAS A CONFERENCE CALL WITH -- INCLUDING
15 INVESTORS OF SOME OF TCW'S FUNDS, ON DECEMBER 8TH.

10:14AM

16 DO YOU RECALL THAT, SIR?

17 A. NOT SPECIFICALLY, NO.

18 Q. LET ME PLAY SOME VIDEO FROM YOUR DEPOSITION.

19 MR. MADISON: YOUR HONOR, I WOULD LIKE TO
20 START AT 165, LINE 25, AND GO OVER TO 166, LINE 16.

10:14AM

21 MR. WEINGART: NO OBJECTION.

22 THE COURT: YOU MAY PROCEED.

23

24 (VIDEOTAPE PLAYED OF MR. LUCIDO'S DEPOSITION.)

25

10:16AM

26 Q. BY MR. MADISON: I'M ABOUT TO MOVE TO ANOTHER
27 EXHIBIT.

28 THE COURT: I'M SORRY. WE MISSED OUR BREAK.

1 IT'S SO EXCITING.

2 WE'LL TAKE 20 MINUTES. AND WE'LL COME
3 BACK AT 20 MINUTES TO 11:00.

4

5 (AT 2:02 P.M. THE FOLLOWING
6 PROCEEDINGS WERE HELD IN OPEN
7 COURT OUT OF THE PRESENCE OF
8 THE JURY:)

9

10 THE COURT: ALL RIGHT. WHAT WAS -- WE'RE OUT
11 OF THE PRESENCE OF THE JURY.

10:17AM

12 MR. BRIAN: MAY THE WITNESS BE EXCUSED, YOUR
13 HONOR?

14 THE COURT: YES.

15 YOU MAY BE EXCUSED, MR. LUCIDO.

10:17AM

16 NOW, MR. SURPRENANT, THANK YOU FOR
17 COMING UP.

18 ON THE CORNELL ISSUE, YOU WERE GOING TO
19 TELL US WHAT THE PROFFER IS.

20 MR. SURPRENANT: YES, YOUR HONOR.

10:18AM

21 I THINK IT WILL BE ABOUT EIGHT MINUTES
22 IN TESTIMONY.

23 YOU WILL RECALL YESTERDAY, MR. HELM TOOK
24 MR. CORNELL THROUGH AN INTRICATE CALCULATION AND ASKED
25 HIM IF --

10:18AM

26 THE COURT: WE DISCUSSED THIS THIS MORNING.
27 AND THE ONLY QUESTION WAS WHAT THE OFFER WAS, WHAT YOU
28 WERE GOING TO OFFER TODAY.

1 MR. SURPRENANT: HE'S GOING TO TESTIFY THAT IN
2 CERTAIN CIRCUMSTANCES, UNDER CERTAIN SCENARIOS,
3 MR. HELM POINTED OUT, THE OFFSET WOULD BE CORRECT. AND
4 THE OFFSET WOULD EXTINGUISH DAMAGES FOR BREACH OF
5 FIDUCIARY DUTY.

10:18AM

6 UNDER OTHER CIRCUMSTANCES, THAT THERE
7 WOULD BE SUBSTANTIAL DAMAGES FOR BREACH OF FIDUCIARY
8 DUTY, THAT HE'S NOW CONCLUDED THE TOTAL DAMAGES FROM
9 BOTH BREACH AND INTERFERENCE ARE \$340 MILLION.

10 AND THE JURY COULD FIND THEY ARE ALL
11 INTERFERENCE, THEY ARE ALL BREACH, OR IT COULD ALLOCATE
12 THEM BETWEEN BREACH AND INTERFERENCE, DEPENDING ON WHAT
13 THEY THINK CAUSED THE DAMAGE.

10:18AM

14 MR. HELM: YOUR HONOR, I'M DUMBFUNDED.

15 THE COURT: IT IS SURPRISING.

10:19AM

16 MR. HELM: WE'RE NOW GOING TO HAVE TESTIMONY
17 ABOUT THE ADDING OF THESE TWO TOGETHER?

18 THERE WAS NO TESTIMONY IN THE DIRECT
19 ABOUT THAT.

20 MR. SURPRENANT: NOT ADDING.

10:19AM

21 THE COURT: NO, BUT HE'S NOW CHANGED HIS
22 OPINION DRAMATICALLY.

23 YESTERDAY HE OFFERED TWO OPINIONS. ONE
24 WAS, X IS THE NUMBER OF DAMAGES FOR INTERFERENCE, AND Y
25 IS THE NUMBER OF DAMAGES FOR BREACH OF FIDUCIARY DUTY,
26 AND SEGREGATED THE TWO IN HIS ANALYSIS, HIS OPINIONS,
27 HIS REASONS, EVERYTHING ELSE.

10:19AM

28 AND NOW YOU ARE SUGGESTING THAT HE'S

1 GOING TO COME IN, IN LIGHT OF THE CROSS-EXAMINATION,
2 AND SAY, REALLY, IT'S A SINGLE ELEMENT OF DAMAGE, AND
3 YOU CAN ALLOCATE IT HOWEVER YOU WANT.

4 IS THAT WHAT YOU ARE TELLING ME?

5 MR. SURPRENANT: I THINK THAT WOULD BE THE
6 SUBSTANCE OF HIS TESTIMONY.

10:20AM

7 THE COURT: I'M NOT GOING TO ALLOW IT.

8 IT'S A 180-DEGREE TURN. AND TO DO THAT
9 OVERNIGHT, DURING THE COURSE OF THE TRIAL, WITH NO
10 OPPORTUNITY FOR THE DEFENSE TO RESPOND TO IT.

10:20AM

11 HE CAN LIVE WITH HIS TESTIMONY
12 YESTERDAY. I THOUGHT HE WAS A VERY GOOD WITNESS, QUITE
13 FRANKLY.

14 MR. SURPRENANT: I'LL TELL HIM THAT, YOUR
15 HONOR.

10:20AM

16 THE COURT: HE WAS. HE WAS AN EXCELLENT
17 WITNESS.

18 MR. BRIAN: THANK YOU, YOUR HONOR.

19

20 (RECESS TAKEN.)

21

22 (THE NEXT PAGE NUMBER IS 5801.)

23

24

25

26

27

28

1 CASE NUMBER: BC 429385
 2 CASE NAME: TCW VS. GUNDLACH
 3 LOS ANGELES, CALIFORNIA AUGUST 30, 2011
 4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
 5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
 6 REPORTER: RAQUEL A. RODRIGUEZ, CSR
 7 TIME: B SESSION; 10:35 A.M.

8

9

--0--

10

10:39AM

11

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

13

AND, MR. MADISON, YOU MAY CONTINUE YOUR
 14 DIRECT OF MR. LUCIDO.

15

10:45AM

16

DIRECT EXAMINATION (CONTINUED) +
 17 BY MR. MADISON:

18

Q JUST BEFORE THE BREAK WE LISTENED TO SOME
 19 VIDEO AND WE HEARD YOU SAY: I DON'T KNOW WHERE SHE GOT
 20 THAT LIST FROM.

20

10:45AM

21

REFERRING TO THE LIST FOR THE CONFERENCE
 22 CALL ON DECEMBER 8TH.

23

CORRECT?

24

A CORRECT.

25

Q IN FACT, YOU KNOW EXACTLY WHERE MS. VANEVERY
 26 GOT THAT LIST, DON'T YOU?

26

10:45AM

27

A I'M SURE YOU'LL SHOW ME.

28

Q WELL, YOU KNOW THAT SHE GOT IT FROM TCW

1 BECAUSE YOU GOT A COPY THE NIGHT BEFORE THAT HAD COME
2 FROM TCW, DIDN'T YOU?

3 A YES.

4 Q WELL --

5 A YOU SAW THAT FROM LOOKING THROUGH MY NOTES.
6 YES.

7 Q EXHIBIT 3007. IT'S AN E-MAIL FROM MR. DAMIANI
8 TO YOU, THE EVENING BEFORE THE CALL.

9 I'D MOVE 3007, YOUR HONOR.

10 MR. WEINGART: NO OBJECTION.

11 THE COURT: IT WILL BE ADMITTED.

12

13 (EXHIBIT 3007 ADMITTED.) +

14

15 BY MR. MADISON:

16 Q SO, THE EVENING BEFORE THE CALL OF DECEMBER 8,
17 MR. DAMIANI SENT TO YOU THE PARTICIPANT LIST FOR THE
18 CONFERENCE CALL ON WEBCAST. AND IT WAS A TCW DOCUMENT
19 FROM A SEPTEMBER 9 CONFERENCE CALL THAT HAD HAPPENED
20 BACK AT TCW; ISN'T THAT RIGHT?

21 A I -- I DON'T KNOW IF THIS IS THE SPECIFIC LIST
22 THAT BARBARA USED. THIS WAS A LIST THAT WAS SENT TO
23 ME, AS YOU CAN SEE. IT'S 6:16 P.M., RELATING TO A
24 CONFERENCE CALL THAT WAS ON SEPTEMBER 9TH OF 2009.

25 WHETHER THERE WAS THE ACTUAL LIST THAT
26 BARBARA USED OR NOT, I DON'T KNOW.

27 Q WELL, IN YOUR DEPOSITION, WHEN I ASKED YOU IF
28 YOU KNEW WHERE SHE HAD GOTTEN THE LIST, AT THAT TIME

1 YOU KNEW YOU HAD GOTTEN A LIST OF CONFERENCE CALL
2 PARTICIPANTS THE VERY NIGHT BEFORE THAT WAS TCW'S,
3 DIDN'T YOU, SIR?

4 A I HAD GOTTEN THIS LIST THE NIGHT BEFORE, BUT I
5 DIDN'T KNOW WHAT LIST SHE HAD USED WHICH SHE SET UP
6 PRIOR TO THE 8TH. 10:47AM

7 Q YOU KNEW THAT IN THE -- AT THE TIME OF YOUR
8 DEPOSITION WHEN I ASKED YOU THE QUESTION, DIDN'T YOU,
9 SIR?

10 A SPECIFIC TO YOUR QUESTION, YOUR QUESTION --
11 NO. 10:47AM

12 Q YOU DIDN'T KNOW THAT YOU HAD RECEIVED THIS THE
13 NIGHT BEFORE --

14 A I RECEIVED THIS LIST.

15 Q THANK YOU. 10:47AM

16 A I DID NOT KNOW THIS WAS THE LIST OR
17 COMPOSITION OF THIS LIST OR IT WAS INCLUDED BY BARBARA.
18 OR HAD BEEN USED BY BARBARA. I DID NOT KNOW THAT. I
19 STILL DON'T KNOW THAT.

20 Q I WOULD LIKE TO GO QUICKLY BACK TO 2254, AND I
21 WANTED TO JUST COVER ONE THING THAT WE DIDN'T COVER. 10:47AM

22 WE WERE TALKING ABOUT THESE CDO
23 DOCUMENTS.

24 A CDO IS A PARTICULAR FORM OF INVESTMENT
25 SECURITY, ISN'T IT, SIR? 10:47AM

26 A YES.

27 Q IT'S A COLLATERALIZED DEBT OBLIGATION?

28 A YES.

1 Q AND CDO'S IS AN AREA IN WHICH YOU, IN
2 PARTICULAR, WORKED QUITE A BIT IN, RIGHT?

3 A YES.

4 Q IT'S AN IMPORTANT PART OF YOUR BUSINESS --

5 A IT WAS THE MAJORITY OF OUR BUSINESS.

10:47AM

6 Q AND IT IS TODAY, STILL, ISN'T IT, SIR?

7 A NOT AT DOUBLELINE, NO.

8 Q YOU'RE NOT DOING CDO'S AT DOUBLELINE?

9 A ZERO.

10 Q DOWN IN THE BOTTOM RIGHT THERE'S A BIG CIRCLE.
11 IT SAYS: MAINTAIN STABILITY. IT LOOKS LIKE IT SAYS
12 MAINTAIN STABILITY.

10:48AM

13 WOULD YOU AGREE THE GROUP WITH
14 MR. GUNDLACH WERE TO ANNOUNCE ON SHORT NOTICE THAT THEY
15 WERE ALL LEAVING THAT WOULD NOT PROMOTE STABILITY AT
16 TCW?

10:48AM

17 MR. WEINGART: OBJECTION. ARGUMENTATIVE.

18 THE COURT: OVERRULED.

19 YOU CAN EXPLAIN YOUR ANSWER, SIR.

20 THE WITNESS: MY NOTE, MAINTAIN STABILITY WAS
21 TO MAINTAIN STABILITY AND CLARIFY THE RUMORS THAT ALL
22 OUR INVESTORS OR THE PEOPLE THAT I HAD SPOKEN TO,
23 CLIENTS, SPECIFICALLY INTERNATIONALLY, HAD ALL RAISED
24 THAT THEY WERE VERY MUCH CONCERNED.

10:48AM

25 AND ONE OF THE POINTS OF OUR DISCUSSION
26 WITH MARC STERN WAS WITH THE MANAGEMENT TURMOIL IN
27 SOCIÉTÉ GÉNÉRALE, WHERE THE CHAIRMAN, THE SENIOR
28 OFFICERS OF THE ASSET MANAGEMENT COMPANY AND THE

10:48AM

1 OPERATING COMPANY HAD BEEN REPLACED.

2 AND THE FACT THAT THE SENIOR MANAGEMENT
3 HAD BEEN IN TURMOIL AT TCW, AND I HAD WRITTEN ABOUT
4 THAT TO MR. STERN. AND ACTUALLY TO MR. KALE. IT WAS A
5 SIGNIFICANT QUESTION ABOUT STABILITY WITHIN, YOU KNOW,
6 THE OPERATING ENTITY AND SPECIFIC TO THE ASSET
7 MANAGEMENT SERVICES WE WERE PROVIDING TO CLIENTS.

10:49AM

8 SO, MAINTAINING STABILITY IS CRITICAL TO
9 WHAT WE WERE TRYING TO ACHIEVE FROM OUR INVESTORS'
10 PERSPECTIVE.

10:49AM

11 Q AS THE CHIEF OPERATING OFFICER AT DOUBLELINE,
12 ARE YOU GENERALLY FAMILIAR WITH THE FINANCIAL
13 PERFORMANCE OF DOUBLELINE?

14 A YES.

15 Q NOW, WERE YOU AWARE THAT WHEN OAK TREE ENTERED
16 INTO ITS TRANSACTION WITH DOUBLELINE, THAT OAK TREE
17 ACTUALLY ACQUIRED, WE'VE HEARD TESTIMONY, 5 PERCENT OF
18 DOUBLELINE?

10:49AM

19 A EXCUSE ME?

20 MR. WEINGART: THAT MISSTATES THE RECORD.

10:49AM

21 THE COURT: THAT DOES MISSTATE THE RECORD.
22 BY MR. MADISON:

23 Q PART OF THE TRANSACTION IN WHICH OAK TREE
24 RECEIVED 5 PERCENT OF DOUBLELINE IN EXCHANGE FOR SOME
25 OAK TREE STOCK --

10:50AM

26 A YES.

27 Q -- DO YOU RECALL THAT?

28 THEN THERE WAS ANOTHER INTEREST IN

1 DOUBLELINE THAT OAK TREE RECEIVED IN EXCHANGE FOR
2 CERTAIN SERVICES THAT WERE BEING PROVIDED, CORRECT?

3 A CORRECT.

4 Q I WANT TO ASK YOU ABOUT THE 5 PERCENT OF
5 DOUBLETREE -- THAT OAK TREE ACQUIRED.

10:50AM

6 DO YOU HAVE THAT IN MIND?

7 A I THINK DOUBLETREE IS --

8 MR. WEINGART: YOU GOT TOO MANY TREES.

9 THE WITNESS: -- IT'S A HOTEL, I THINK.

10 BY MR. MADISON:

10:50AM

11 Q THE 5 PERCENT THAT OAK TREE OBTAINED OF
12 DOUBLELINE STOCK IN EXCHANGE OF OAK TREE STOCK, DO YOU
13 HAVE THAT IN MIND?

14 A YES.

15 Q DOES OAK TREE STILL OWN THAT 5 PERCENT OF
16 DOUBLELINE?

10:50AM

17 A OAK TREE HAS A 22 PERCENT INTEREST IN
18 DOUBLELINE.

19 Q ACTUALLY --

20 A CUMULATIVE.

10:50AM

21 Q -- ACTUALLY, OAK TREE, BOUGHT BACK ITS STOCK
22 FROM DOUBLELINE; ISN'T THAT RIGHT?

23 A YES.

24 Q AND SO LET ME MAKE SURE WE'RE CLEAR ON THIS.

25 OAK TREE INITIALLY GAVE DOUBLELINE SOME
26 OAK TREE STOCK IN EXCHANGE FOR 5 PERCENT OF DOUBLELINE,
27 TRUE?

10:51AM

28 A AS PART OF THE TRANSACTION, YES.

1 Q BUT THEN OAK TREE PAID DOUBLELINE AND ITS
2 PRINCIPALS TO GET THE STOCK BACK THAT IT HAD GIVEN FOR
3 5 PERCENT, RIGHT?

4 A IT -- IT WAS A -- A FULL EXCHANGE, SO ...

5 Q WHAT DO YOU MEAN, SIR? 10:51AM

6 A IT WAS AN EXCHANGE RELATIVE TO THE 20 --
7 22 PERCENT.

8 Q AT THE BEGINNING THERE WAS A 22 PERCENT
9 TRANSACTION, RIGHT?

10 A IT WAS 17 AND 5. 10:51AM

11 Q SO I'M JUST ASKING NOW ABOUT THE 5 PERCENT.

12 THERE CAME A TIME THERE, WHERE OAK TREE
13 PAID MONEY TO DOUBLELINE TO GET BACK THE STOCK THAT IT
14 HAD GIVEN FOR THAT 5 PERCENT?

15 A I'M NOT FAMILIAR WITH THE FULL RAMIFICATION OF 10:52AM
16 THAT.

17 Q I'M ASKING IF YOU'RE AWARE OF IT ONE WAY OR
18 ANOTHER.

19 A NO.

20 Q ARE YOU AWARE OAK TREE PAID \$20 MILLION FOR 10:52AM
21 THE STOCK THAT HAD ORIGINALLY GIVEN DOUBLELINE FOR THAT
22 5 PERCENT?

23 A YES.

24 Q ALL RIGHT.

25 SO AS THE COO, IF 5 PERCENT OF 10:52AM
26 DOUBLELINE WERE WORTH \$20 MILLION, THEN THE TOTAL VALUE
27 OF DOUBLELINE AT THAT SAME TIME WOULD BE \$400 MILLION,
28 CORRECT?

1 A NO.

2 Q PARDON ME?

3 A IT WAS THE FULL -- IT WAS 20 VERSUS 22.

4 Q I DON'T UNDERSTAND WHAT YOU MEAN ABOUT THAT,
5 SIR.

10:52AM

6 A IT WAS \$20 MILLION FOR THE 22 PERCENT.

7 Q SO --

8 A IT CAPITALIZED AT 22 PERCENT.

9 Q OAK TREE NO LONGER OWNS ANY INTEREST IN
10 DOUBLELINE?

10:52AM

11 A IT'S 22 PERCENT.

12 Q LET ME MOVE ON.

13 DO YOU RECALL, HAVING FINANCIAL
14 STATEMENTS PREPARED FOR DOUBLELINE?

15 A YES.

10:53AM

16 Q IF YOU LOOK AT EXHIBIT 2295, THOSE ARE SOME
17 FINANCIAL STATEMENTS THAT WERE PREPARED FOR DOUBLELINE
18 CAPITAL AS OF DECEMBER 31, 2010, CORRECT?

19 A THAT IS CORRECT.

20 Q AND IF YOU GO TO THE VERY LAST PAGE, YOU'LL
21 SEE A STATEMENT OF -- I'M SORRY -- GO THE PAGE ENDING
22 IN 10.

10:53AM

23 DO YOU SEE THE LINE THERE, IT SAYS
24 PARTNER EQUITY?

25 A YES.

10:53AM

26 Q AS OF DECEMBER 31, 2010, WOULD YOU AGREE THE
27 PARTNER EQUITY IN DOUBLELINE WAS APPROXIMATELY
28 \$39 MILLION?

1 A THAT'S BEFORE NET INCOME. AND ACTUALLY
2 OPERATING LOSSES, YES.

3 Q ALSO, WOULD YOU AGREE THAT DOUBLELINE HAS
4 CONTINUED TO INCREASE ITS REVENUE SINCE THE END OF
5 2010?

10:54AM

6 A STILL OPERATING AT A NET LOSS.

7 Q AS A GOING CONCERN, YOU BELIEVE DOUBLELINE'S
8 WORTH MORE, LESS, OR THE SAME AS IT WAS LAST YEAR,
9 TODAY?

10 A WE STILL ARE OPERATING AT AN OPERATING LOSS.
11 2000 -- IF YOU LOOK AT THE STATEMENT, WE CAN GO BACK,
12 BEING THAT YOU INTRODUCED THIS. IF YOU LOOK AT THE
13 CALENDAR YEAR 2010, WE HAD ACCUMULATIVE OPERATING
14 LOSS -- I'LL ROUND UP -- OF 15.4 MILLION.

10:54AM

15 IF YOU LOOK AT PROJECTIONS FOR THIS
16 YEAR, WE'LL HAVE OPERATING LOSS SOMEWHERE UNDER
17 5 MILLION.

10:54AM

18 Q SO IT IS YOUR TESTIMONY THAT YOUR 5 PERCENT OF
19 DOUBLELINE HAS NO VALUE?

20 A I DIDN'T SAY THAT. I SAID HAS LESS VALUE. IT
21 HAS LESS VALUE THAN I INVESTED.

10:55AM

22 Q MY QUESTION WAS WHETHER IT HAD MORE OR LESS OR
23 THE SAME. LET'S FOCUS ON YOUR 5 PERCENT.

24 DID YOU VALUE YOUR 5 PERCENT IN
25 DOUBLELINE --

10:55AM

26 A YES, IT'S LESS VALUE TODAY THAN WHEN I -- THAN
27 WHEN I PUT IT IN.

28 Q WHAT VALUE DO YOU GIVE IT TODAY?

1 A I HAVEN'T CALCULATED VALUE AS OF THIS MINUTE,
2 SO I DON'T -- I DON'T THINK LIKE THAT AT THIS POINT.

3 Q YOU BELIEVE IT WOULD BE SOMETHING LESS THAN
4 THE \$1.8 MILLION?

5 A I SAID 1.5. 10:55AM

6 Q PARDON ME.

7 SOMETHING LESS THAN THE 1.5 MILLION YOU
8 INVESTED?

9 A YES.

10 Q YOUR 5 PERCENT WAS JUST 5 PERCENT, LIKE ANY 10:55AM
11 OTHER PERCENT; THERE WASN'T ANYTHING THAT MADE IT MORE
12 OR LESS VALUABLE THAN ANY OTHER SHARE OF THE COMPANY,
13 WAS THERE?

14 A NO.

15 Q SO, I MEAN, IF AT THAT TIME WE WANTED TO 10:55AM
16 FIGURE OUT THAT -- A POTENTIAL VALUE OF DOUBLELINE, WE
17 MULTIPLY 1.5 MILLION TIMES 20?

18 A NO. TIMES 5 PERCENT.

19 Q 5 PERCENT. 20 TIMES 5 PERCENT WOULD BE
20 100 PERCENT. 10:56AM

21 A UH-HUH.

22 Q ARE YOU WITH ME SO FAR?

23 A RIGHT.

24 Q RIGHT.

25 SO I MEAN, LET ME JUST TRY TO COVER 10:56AM
26 THIS, AND THEN I HAVE ONE MORE QUESTION.

27 BUT YOU'RE AWARE THAT OAK TREE BOUGHT
28 BACK SOME STOCK OF OAK TREE FROM --

1 A THEY HAD AN EXCHANGE. I WASN'T PART OF THAT.

2 Q OKAY.

3 YOU DON'T RECALL THAT OAK TREE

4 PAID 20 --

5 A I KNOW THEY PAID 20 MILLION, AS I'VE STATED --

10:56AM

6 Q OKAY.

7 A -- BUT THE SPECIFICS ON THAT EXCHANGE, I'M NOT

8 FAMILIAR WITH.

9 Q AND DID DOUBLELINE PROVIDE ALL OF THE OAK TREE

10 STOCK THAT IT HAD RECEIVED ORIGINALLY, BACK TO

10:56AM

11 OAK TREE?

12 A I BELIEVE SO.

13 Q SO TODAY, TO YOUR KNOWLEDGE, DOUBLELINE OWNS

14 NO INTEREST IN OAK TREE ANYMORE?

15 A THAT'S CORRECT.

10:56AM

16 Q AND OAK TREE PAID \$20 MILLION FOR THAT PART OF

17 THE TRANSACTION, TO GET THAT INTEREST BACK?

18 A NO.

19 IT -- AGAIN, RELATIVE TO THE SPECIFICS

20 OF THE TRANSACTION, I BELIEVE THEY PAID \$20 MILLION IN

10:57AM

21 LIEU OF THEIR 22 PERCENT INTEREST OF THE FIRM.

22 Q DO YOU RECALL THE 17 PERCENT THAT OAK TREE

23 RECEIVED WAS FOR THE SERVICES, THE BACK OFFICE'S

24 SERVICES THAT OAK TREE WAS PROVIDING?

25 A RIGHT.

10:57AM

26 Q AND THEN DO YOU RECALL THAT 5 PERCENT OF

27 DOUBLELINE WAS IN EXCHANGE FOR SOME OAK TREE STOCK?

28 A CORRECT.

1 Q SO THEN WHEN OAK TREE BOUGHT ITS STOCK BACK,
2 IT WAS PAYING FOR THE STOCK THAT HAD GIVEN FOR
3 5 PERCENT OF DOUBLELINE.

4 ARE YOU WITH ME?

5 A YES.

10:57AM

6 Q SO, IF THAT 5 PERCENT OF DOUBLELINE WAS WORTH
7 \$20 MILLION, YOU'D AGREE THAT THAT WOULD VALUE
8 DOUBLELINE AT \$400 MILLION?

9 MR. WEINGART: OBJECTION. INCOMPLETE
10 HYPOTHETICAL.

10:57AM

11 THE COURT: SUSTAINED.

12 BY MR. MADISON:

13 Q HERE AGAIN, IF \$20 MILLION WAS WHAT 5 PERCENT
14 WAS WORTH AT THAT TIME, THEN TO FIGURE OUT THE HUNDRED
15 PERCENT VALUE, WE'D MULTIPLY THAT AMOUNT TIMES 20.

10:57AM

16 MR. WEINGART: SAME OBJECTION.

17 THE COURT: SUSTAINED. HE'S TESTIFIED TO HIS
18 UNDERSTANDING OF IT, MR. MADISON.

19 MR. MADISON: VERY WELL.

20 Q I MEAN, DO YOU KNOW WHAT DOUBLELINE ORIGINALLY
21 PROVIDED OAK TREE IN EXCHANGE FOR THE OAK TREE STOCK?

10:58AM

22 A NO.

23 Q NOW, DO YOU AGREE THAT THE ANALYTIC SYSTEMS AT
24 TCW WERE VALUABLE TO TCW?

25 MR. WEINGART: OBJECTION. VAGUE AS TO WHICH
26 SYSTEMS.

10:58AM

27 THE COURT: DO YOU UNDERSTAND THE QUESTION,
28 SIR?

1 THE WITNESS: YES.

2 THE COURT: YOU CAN ANSWER IT?

3 THE WITNESS: WERE THE SYSTEMS VALUABLE AT
4 TCW? YES.

5 BY MR. MADISON:

10:58AM

6 Q YOU AGREE ALSO THOSE SYSTEMS WERE PROPRIETARY
7 AT TCW?

8 A CERTAIN SYSTEMS WERE PROPRIETARY.

9 Q WELL, THE ANALYTICS THAT WERE USED BY THE
10 M.B.S. GROUP, YOU PERCEIVED PROVIDED THAT GROUP AT TCW
11 WITH A COMPETITIVE ADVANTAGE; ISN'T THAT RIGHT?

10:58AM

12 A RELATIVE TO, YOU HAVE TO LOOK AT DIFFERENT
13 POINTS IN TIME.

14 IN 2005, THERE WERE CERTAIN THINGS THAT
15 WE DID THAT WOULD BE TRADE SECRET SPECIFICS TO CDO'S,
16 WHICH IS TIME EVOLVED, BECAME THEN INDUSTRY STANDARD.

10:59AM

17 SO THEY WERE NO LONGER TRADE SECRET
18 BECAUSE OTHER PEOPLE HAD DEVELOPED AND CREATED SIMILAR,
19 IF NOT BETTER, TECHNOLOGY.

20 SO WE HAVE TO SPECIFICALLY LOOK AT THE
21 POINT IN TIME YOU'RE REFERENCING AND BE VERY CLEAR
22 THAT, YOU KNOW, FROM THE BEST I KNOW -- BECAUSE I
23 BROUGHT THIS SUBJECT UP AS TO WHETHER OR NOT WE WOULD
24 PATENT OR COPYRIGHT ANY OF OUR TECHNOLOGY, AND THE
25 DECISION WAS NO.

10:59AM

26 SO, THEREFORE, TECHNOLOGY EVOLVED. AND,
27 YOU KNOW, THINGS WERE NO LONGER UNIQUE. THAT'S JUST
28 THE COMPETITIVE MARKET.

10:59AM

1 Q DO YOU BELIEVE THERE CAME A POINT AT WHICH
2 TCW'S M.B.S. TECHNOLOGY WAS NO LONGER UNIQUE TO TCW?

3 MR. WEINGART: OBJECTION. VAGUE.

4 THE COURT: SUSTAINED.

5 BY MR. MADISON:

11:00AM

6 Q WHAT IS IT YOU'RE DESCRIBING NO LONGER BECAME
7 UNIQUE, SIR?

8 A THE CDO TECHNOLOGY. WHAT I WAS RESPONSIBLE
9 FOR.

10 Q WAS THAT TECHNOLOGY THE PROPERTY OF TCW WHEN
11 YOU WERE THERE?

11:00AM

12 A YES.

13 MR. MADISON: NOTHING FURTHER AT THIS TIME.

14 THE COURT: ANY CROSS-EXAMINATION?

15 MR. WEINGART: BRIEFLY, YOUR HONOR.

11:00AM

16

17 CROSS-EXAMINATION +

18 BY MR. WEINGART:

19 Q GOOD MORNING, MR. LUCIDO.

20 A GOOD MORNING.

11:00AM

21 Q LET ME START JUST A LITTLE BIT WITH YOUR
22 BACKGROUND.

23 HOW LONG HAVE YOU BEEN IN THE MORTGAGE
24 SECURITIES BUSINESS?

25 A I STARTED MY INVESTMENT CAREER IN JUNE OF
26 1969.

11:00AM

27 AND MY FIRST MORTGAGE TRADE WAS IN JUNE
28 OF 1972.

1 Q AND WITHOUT GETTING INTO THE DETAILS KIND OF
2 INVOLVED IN THE POSITIONS YOU HAVE, CAN YOU TELL US
3 SOME OF THE VARIOUS FIRMS YOU WORKED FOR BEFORE YOU
4 CAME TO TCW?

5 A SURE.

11:01AM

6 1979 I WAS EXECUTIVE VICE PRESIDENT,
7 CHIEF INVESTMENT AT MERRILL LYNCH, RESPONSIBLE FOR
8 MANAGING CENTRAL BANK DOLLAR RESERVES.

9 I RUN DIFFERENT ARBITRAGE OPPORTUNITIES
10 IN GROUPS, MULTI-BILLION DOLLARS, NOT ONLY MERRILL
11 LYNCH. AT -- AT DONALDSON LUFKIN & JENRETTE -- TLG.

11:01AM

12 Q THAT'S ANOTHER INTEREST?

13 A IN 1992, INTERESTING, I WAS HIRED BY
14 LOUG RANEARY, PERCEIVED TO BE THE FATHER OF THE
15 MORTGAGE MARKET IN THE UNITED STATES, TO HEAD RESEARCH.

11:01AM

16 AT THAT TIME, I WAS ALSO A MEMBER OF THE
17 RESOLUTION TRUST ADVISORY COMMITTEE, THE RTC,
18 RESPONSIBLE FOR THE OVERSIGHT OF ALL OF THE FAIL
19 THRIFTS WITHIN THE UNITED STATES.

20 AND SPECIFICALLY MY POSITION WAS FOR
21 FORENSIC VALUATION OF ASSETS TO BE SOLD ON RESIDENTIAL
22 HOUSING.

11:02AM

23 AND I BECAME THE CHIEF OPERATING OFFICER
24 FOR LOUG'S COMPANY AND WAS A PRESIDENT OF THEIR BROKER
25 DEALER AND PRESIDENT OF A NUMBER OF THEIR MUTUAL FUNDS.

11:02AM

26 Q WAS THAT FIRM CALLED, HYPERION?

27 A THAT IS CORRECT.

28 Q WHERE DID YOU WORK AFTER HYPERION CAPITAL?

1 A AFTER HYPERION I WAS CHIEF INVESTMENT --
2 OFFICER. I LEFT HYPERION BECAUSE LOUG WAS THINKING OF
3 SELLING THE FIRM. ONE OF THE CLIENTS WE HAD WAS DELPHI
4 FINANCIAL GROUP. I GOT TO KNOW BOB ROSENCRANZ, WHO IS
5 THE CHAIRMAN, VERY WELL.

11:02AM

6 I BECAME THEIR CHIEF INVESTMENT OFFICER
7 WITH DELPHI FINANCIAL GROUP, WHICH MANAGED THREE
8 DIFFERENT INSURANCE COMPANIES, AND CHIEF RISK OFFICER
9 FOR DELPHI FOR A PERIOD OF YEARS, WHICH IS THE POSITION
10 I HAD BEFORE I WORKED WITH -- LEFT AND JOINED JEFFREY
11 AND PHIL AT TCW IN 2001.

11:02AM

12 Q SO, LET ME TALK JUST FOR A MOMENT ABOUT
13 DELPHI, WHICH YOU MENTIONED.

14 YOU SAID THAT THEY HAD THREE INSURANCE
15 COMPANIES?

11:03AM

16 A YES.

17 Q WHAT WERE THE NAMES OF THOSE INSURANCE
18 COMPANIES?

19 A RELIANCE STANDARD LIFE, WHICH WAS AN ANNUITY
20 COMPANY.

11:03AM

21 SAFETY NATIONAL, WHICH IS EXCESS
22 WORKMAN'S COMP. COMPANY.

23 AND THEN THERE WAS ANOTHER COMPANY, AN
24 INTEGRATED MATRIX MANAGEMENT, WHICH WAS INTEGRATED
25 HEALTHCARE.

11:03AM

26 SO I WAS CHIEF INVESTMENT OFFICER, ASSET
27 LIABILITY MANAGER, AND DIRECTOR ON A NUMBER OF THOSE.
28 AND WE ALSO HAVE TWO COMPANIES THAT ACTUALLY ARE

1 MEMBERS OF THE FEDERAL RESERVE, -- RATHER, FEDERAL HOME
2 LOAN BANK BOARD IN PENNSYLVANIA AND TEXAS.

3 Q WE'VE HEARD TESTIMONY IN THE CASE ABOUT AN
4 INSURANCE COMPANY CALLED RELIANCE THAT WAS A TCW CLIENT
5 AND THEN BECAME DOUBLELINE'S CLIENTS.

11:03AM

6 IS THAT THE SAME RELIANCE?

7 A SAME. I WORKED AT AND ACTUALLY MANAGED MONEY
8 FOR WHEN I WAS AT HYPERION IN '92.

9 Q YOUR RELATIONS WITH PEOPLE AT RELIANCE GOES
10 BACK TO --

11:04AM

11 A 1992, CORRECT.

12 Q LET ME ASK YOU. WHEN DID YOU LEAVE DELPHI --
13 RELIANCE AND COME TO TCW?

14 A JULY OF 2001 I STARTED AT TCW.

15 Q AND HAD YOU KNOWN MR. GUNDLACH BEFORE THAT
16 TIME?

11:04AM

17 A IN 1992, PHIL, JEFFREY, AND I WERE FRIENDLY
18 COMPETITORS. FRIENDLY COMPETITORS, IN THAT AT HYPERION
19 WE HAD A NUMBER OF THE SAME ACCOUNTS. STATE OF FLORIDA
20 AND OTHER MUNICIPALITIES.

11:04AM

21 WHERE AT HYPERION WE WERE CREDIT
22 SPECIALISTS AND MANAGED, SUBORDINATED COMMERCIAL
23 MORTGAGE-BACKED, CREDIT MORTGAGE SECURITIES, AND
24 JEFFREY AND PHIL WOULD BE MANAGING THE SENIOR TRANCHES,
25 THE GOVERNMENT-RELATED AGENCIES, FANNIE MAE AND GINNIE
26 MAE.

11:04AM

27 AND I ACTUALLY GOT TO KNOW THEM --
28 THE COURT: SLOW DOWN A LITTLE BIT. WE'VE GOT

1 A COURT REPORTER HERE.

2 THE WITNESS: SORRY.

3 THE COURT: SHE'S TRYING TO TAKE EVERYTHING
4 DOWN. WHEN I SEE THE SMOKE RISING, I KNOW THERE'S A
5 PROBLEM.

11:05AM

6 THE WITNESS: I'M TRYING TO MAXIMIZE AND
7 MINIMIZE TIME.

8 THE COURT: SIT TIGHT AND SLOW DOWN A LITTLE
9 BIT.

10 MR. WEINGART: IT'S THE NEW YORKER IN YOU.

11:05AM

11 THE WITNESS: I THINK A LITTLE BIT.

12 BY MR. WEINGART:

13 Q AND THEN DID YOU CONTINUE TO MAINTAIN THE
14 RELATIONSHIP THAT YOU HAD WITH MR. GUNDLACH AND
15 MR. BARACH WHEN YOU WERE AT RELIANCE?

11:05AM

16 A YES.

17 Q AND JUST GENERALLY, WHAT WAS THE RELATIONSHIP
18 AT THAT POINT?

19 A AT RELIANCE, THEY WERE CLIENTS. I MEAN, WE
20 HAD ALLOCATED MONEY TO THEM. ACTUALLY, WE DEVELOPED
21 AND I DEVELOPED A PROGRAM WHERE WE ALLOCATED MONEY FROM
22 SAFETY NATIONAL TO THE DISTRESSED BUYER OF DIFFERENT
23 EQUITY TRANSACTIONS WITH JEFFREY.

11:05AM

24 GOING BACK TO THAT TIME HORIZON, I THINK
25 IT WAS 1998.

11:06AM

26 Q AND DID THAT, MORE THAN A DECADE OF
27 RELATIONSHIP THAT YOU HAD WITH THE PEOPLE AT RELIANCE,
28 PLAY ANY ROLE IN THEM COMING TO DOUBLELINE?

1 A ABSOLUTELY.

2 Q NOW, YOU WERE ASKED SOME QUESTIONS ABOUT
3 SEPTEMBER 3RD OF 2009.

4 DO YOU RECALL THOSE QUESTIONS?

5 A YES.

11:06AM

6 Q IF WE COULD DISPLAY EXHIBIT 2254, WHICH IS, I
7 THINK NOW IT'S IN EVIDENCE.

8 THESE WERE NOTES YOU SAID YOU TOOK
9 YOURSELF AT THE MEETING WITH MR. STERN?

10 A YES.

11:07AM

11 Q NOW, THERE'S A MENTION THERE: EXIT STRATEGY.

12 CAN YOU JUST TELL US WHAT THAT MEANT.
13 WHY DID YOU WRITE DOWN EXIT STRATEGY?

14 A WELL, IN MY MIND, AND TO THE DISCUSSION THAT
15 WE'D HAD WHEN JEFFREY MADE AN OFFER TO BUY THE FIRM, IS
16 THAT A NEGOTIATED EXIT, WHICH WOULD INCLUDE SOCIÉTÉ
17 GÉNÉRALE, IN TERMS OF AS A PARTNER, IN TERMS OF EXIT.

11:07AM

18 Q WOULD THAT BE, I GUESS, ONE POSSIBILITY WOULD
19 BE BUYING THE FIRM AND, THEREFORE, EXITING FROM THE
20 SOC-GEN?

11:07AM

21 MR. MADISON: OBJECTION. LEADING.

22 THE COURT: SUSTAINED.

23 BY MR. WEINGART:

24 Q LET ME ASK YOU. WHEN YOU WERE TALKING
25 ABOUT -- WAS THERE MORE THAN ONE POSSIBILITY --

11:07AM

26 A YES.

27 Q -- WITH REGARD TO EXIT STRATEGY IN MIND?

28 A YES.

1 Q WHAT WERE THE POSSIBILITIES?

2 A WELL, SOCIÉTÉ GÉNÉRALE HAD PREVIOUSLY
3 ANNOUNCED THEY WERE LOOKING TO EXIT THE ASSET
4 MANAGEMENT BUSINESS.

5 SO ONE OF THE EXITS WOULD HAVE BEEN TO 11:08AM
6 CREATE A PARTNERSHIP INTEREST WITH THEM, AS JEFFREY HAD
7 SUGGESTED, WHERE THEY WOULD HAVE BEEN A MINORITY
8 HOLDER. SO THAT WAS EXIT NO. 1.

9 EXIT NO. 2 WOULD HAVE BEEN A SEPARATION
10 FROM THE GROUP RELATIVE TO A NEGOTIATED EXIT. 11:08AM

11 SO THOSE WERE THE WAYS THAT I THOUGHT
12 ABOUT IT.

13 Q AND THAT -- THEN YOU HAVE SOME ARROWS, AND
14 THAT WOULD BE -- I'M SORRY. I CAN'T READ YOUR WRITING.

15 A WHERE, WHEN, AND HOW. 11:08AM

16 Q IN TERMS OF EVALUATING THOSE OPTIONS?

17 A CORRECT.

18 Q THERE WAS ALSO A REFERENCE ON THE TOP THERE:
19 CDO DEAL DOCUMENTS, FULL SET OF DOCUMENTS?

20 A YES. 11:08AM

21 Q AT THIS POINT IN TIME, SEPTEMBER OF '09, TCW
22 WAS MANAGING CDO'S?

23 A YES. WE MANAGED ABOUT 2 PERCENT OF THE
24 OUTSTANDING \$2 TRILLION OF WHAT WAS CREATED ON THE
25 MARKETPLACE. 11:09AM

26 Q AND UNDER THOSE CDO DEALS THERE WERE CONTRACTS
27 ASSOCIATED WITH THOSE, I THINK MR. MADISON ASKED YOU.

28 A YES.

1 Q WOULD IT BE POSSIBLE FOR YOU TO TAKE THOSE
2 CDO'S AWAY FROM TCW WITHOUT SOME KIND OF NEGOTIATION?

3 A ABSOLUTELY NOT.

4 Q WHY NOT?

5 A YOU NEEDED A MAJORITY OF THE EQUITY HOLDERS -- 11:09AM
6 WELL, THE FIRST LOSS PARTICIPANTS. AND THOSE
7 INDIVIDUALS WERE -- YOU HAVE TO UNDERSTAND -- LET ME
8 BACK UP FOR A SECOND. IT'S FAIRLY COMPLEX.

9 WE WERE ASSET MANAGERS --

10 Q CAN YOU MAKE IT SIMPLE? 11:09AM

11 A I'LL MAKE IT AS SIMPLE AS POSSIBLE.

12 THE LIST OF INVESTORS ON THE FIRST LOSS
13 PIECES WERE SOLD BY INVESTMENT BANKS. WE DID NOT HAVE
14 ACCESS TO THAT. THEY NEEDED TO HAVE THE MAJORITY VOTE
15 TO MOVE IT. 11:10AM

16 AND IT WAS A TCW-RELATED CONTRACT, SO IT
17 JUST WAS -- WOULD HAVE BEEN IMPOSSIBLE TO DO.

18 Q AND I THINK YOU MENTIONED DOUBLELINE DOES NOT
19 MANAGE CDO'S?

20 A THAT IS CORRECT. 11:10AM

21 Q HAS DOUBLELINE EVER MANAGED CDO'S?

22 A NEVER.

23 Q YOU WERE ALSO ASKED A FEW QUESTIONS ABOUT
24 LEAVING TCW AND COMING TO DOUBLELINE.

25 DO YOU RECALL THOSE QUESTIONS? 11:10AM

26 A YES.

27 Q WERE YOU PLACED ON LEAVE ON DECEMBER 4TH?

28 A NO.

1 Q DID YOU HAVE A DISCUSSION WITH ANYONE ON
2 DECEMBER 4TH ABOUT YOUR FUTURE AT THE FIRM?

3 A YES.

4 Q WHO DID YOU SPEAK WITH?

5 A I RECEIVED A CALL FROM STEVE MC DONALD TO MEET
6 HIM AND JACQUES RIPOLL AT 1:15 THAT AFTERNOON ON
7 DECEMBER 4TH.

11:10AM

8 Q AND DID YOU, IN FACT, ATTEND THAT MEETING?

9 A YES, I DID.

10 Q AND WHEN YOU WENT INTO THAT MEETING, DID YOU
11 KNOW WHAT HAD HAPPENED WITH REGARD TO MR. GUNDLACH?

11:11AM

12 A NO, I DID NOT.

13 Q HOW DID THE MEETING START?

14 MR. MADISON: OBJECTION. BEYOND THE SCOPE,
15 YOUR HONOR.

11:11AM

16 THE COURT: OVERRULED.

17 THE WITNESS: I CAME IN, AND JACQUES RIPOLL
18 GREETED ME. AND HE SAID HE HAD SOMETHING IMPORTANT TO
19 TELL ME.

20 BY MR. WEINGART:

11:11AM

21 Q DID HE THEN TELL YOU WHAT THE IMPORTANT THING
22 WAS THAT HE HAD TO TELL YOU?

23 A HE REPEATED THAT THREE TIMES. THAT HE HAD
24 SOMETHING IMPORTANT TO TELL ME.

25 SO I FINALLY SAID, PLEASE TELL ME WHAT
26 IT IS. AND HE PROCEEDED.

11:11AM

27 Q COULD YOU PLEASE TELL US. WE'RE WAITING.

28 A HE PROCEEDED --

1 MR. MADISON: OBJECTION, THIS GOES TO THE
2 INTERVIEWS OF DECEMBER 4, YOUR HONOR.

3 THE COURT: OVERRULED.

4 THE WITNESS: HE PROCEEDED TO TELL ME THAT
5 JEFFREY GUNDLACH WAS FIRED.

11:12AM

6 AND THAT MET WEST WAS PURCHASED FOR
7 \$300 MILLION.

8 AND HE WAS SITTING AT A CORNER TO ME,
9 AND PUT HIS FACE VERY CLOSE TO MINE, LIKE THAT
10 (INDICATING). HE ACTUALLY LEANED OFF HIS CHAIR AND PUT
11 HIS NOSE RIGHT UP TO MINE AND SAID: AND WHAT DO YOU
12 THINK ABOUT THAT?

11:12AM

13 BY MR. WEINGART:

14 Q DID YOU HAVE A RESPONSE?

15 A I TOLD HIM -- I WAS SHOCKED, AND I WAS VERY
16 DISMAYED, AND THAT I HAD JUST SIGNED THAT MORNING AN
17 INVESTMENT MANAGEMENT AGREEMENT WITH A VERY LARGE
18 SOVEREIGN WEALTH FUND THAT WAS GOING TO FUND WITH US A
19 BILLION DOLLARS THAT WEEK, AND JEFFREY WAS A KEY MAN
20 SPECIFICALLY.

11:12AM

21 AND THIS IS A RELATIONSHIP THAT I HAD
22 FINALIZED THE FIRST WEEK IN NOVEMBER THAT THEY'D ALSO
23 PUT \$200 MILLION IN THE PPIP FUND BASED ON MAINTAINING
24 THE STABILITY OF THE TEAM.

11:12AM

25 THAT WAS THE THEME THAT I HAD --

11:12AM

26 Q I DIDN'T MEAN TO STOP, JUST TO BREAK IT DOWN.

27 WHAT DID MR. RIPOLL SAY IN RESPONSE TO
28 THE CONCERNS THAT YOU EXPRESSED?

1 A HE SAID -- I WAS SHOCKED AT HIS RESPONSE. HE
2 SAID HE WAS PREPARED TO LOSE CLIENTS, PEOPLE, AND
3 REVENUE AND WANTED TO REBUILD THE FIRM THE WAY THEY SAW
4 FIT.

5 THAT'S SPECIFICALLY WHAT HE TOLD ME. 11:13AM
6 THEN --

7 THE COURT: WAIT. SIR, THIS IS A
8 QUESTION-AND-ANSWER PROCESS.

9 THE WITNESS: SORRY. I'M SORRY.

10 THE COURT: WE REALLY WANT TO MOVE IT ALONG. 11:13AM

11 THE WITNESS: YES, SIR.

12 THE COURT: ASK QUESTIONS AND JUST ANSWER.
13 WE'LL GO FROM THERE.

14 BY MR. WEINGART:

15 Q DID YOU SAY ANYTHING IN RESPONSE TO 11:13AM
16 MR. RIPOLL?

17 A YES.

18 Q WHAT WAS THAT?

19 A I SAID I DID NOT -- IT DID NOT SEEM LIKE MUCH
20 OF A PLAN TO ME, AND I -- YES. 11:13AM

21 Q HOW DID THE MEETING END?

22 A HE PROCEEDED TO TELL ME THAT I HAD BEEN
23 STRIPPED OF ALL MY PORTFOLIO MANAGEMENT
24 RESPONSIBILITIES, THAT ALL THE PORTFOLIO THAT I MANAGED
25 REPORTED TO MET WEST. 11:13AM

26 HE PROCEEDED TO TELL ME THE 38 PEOPLE
27 THAT REPORTED TO ME NO LONGER REPORTED TO ME. AND THEY
28 REPORTED TO MET WEST.

1 HE PROCEEDED TO TELL ME ALL THE RESEARCH
2 EFFORTS AND THE TECHNOLOGY, WHICH I'D BUILT FOR EIGHT
3 YEARS AND ALL OF THESE THINGS I SPENT BETWEEN 60 AND 80
4 HOURS A WEEK IN BUILDING, NOW NO LONGER REPORTED TO ME.

5 AND I HAD NO LONGER ANY RESOURCES
6 ASSOCIATED WITH ANYTHING THAT I WAS DOING.

11:14AM

7 Q DID MR. RIPOLL ASK YOU TO REMAIN AT TCW?

8 A OH, HE TOLD ME THAT HE WANTED ME TO STAY.

9 Q TO CONTINUE TO WORK THERE?

10 A WELL, UNDER SOME PREDEFINED -- OR YET TO BE
11 DEFINED TASK.

11:14AM

12 Q DID YOU GIVE HIM A RESPONSE AT THAT MEETING AS
13 TO WHETHER OR NOT YOU WOULD CONTINUE WITH YOUR
14 EMPLOYMENT AT TCW?

15 A I TOLD HIM I WAS NOT GOING TO STAY TO BE A
16 MINION. AND I GOT UP AND I LEFT.

11:14AM

17 Q DID YOU -- THEN AT SOME POINT DID YOU SUBMIT A
18 RESIGNATION?

19 A YES.

20 Q WHEN WAS THAT?

11:14AM

21 A FOLLOWING MORNING.

22 Q LET ME ASK YOU A COUPLE QUESTIONS ABOUT THE
23 SPECIAL MORTGAGE CREDIT FUNDS.

24 WERE YOU AN INVESTOR IN SMCF I?

25 A YES.

11:15AM

26 Q WERE YOU AN INVESTOR IN SMCF II?

27 A YES.

28 Q AND WHEN MR. GUNDLACH WAS TERMINATED, DID YOU

1 HAVE CONCERNS ABOUT YOUR PERSONAL INVESTMENT IN THE
2 FUNDS?

3 A YES.

4 Q WHY?

5 A BECAUSE MET WEST BLEW UP --

11:15AM

6 MR. MADISON: OBJECTION, YOUR HONOR.
7 IRRELEVANT.

8 THE COURT: THE ANSWER IS "YES;" IS THAT
9 RIGHT?

10 THE WITNESS: YES.

11:15AM

11 THE COURT: OKAY. WE DON'T NEED TO REALLY GO
12 DOWN THAT ROAD.

13 MR. WEINGART: THAT'S FINE, YOUR HONOR.

14 Q DID YOU SPEAK WITH OTHER INVESTORS IN THE
15 FUND, YOUR FELLOW INVESTORS, ABOUT CONCERNS THAT YOU
16 HAD?

11:15AM

17 A YES.

18 Q WAS ONE OF THOSE INVESTORS MS. MODIC?

19 A YES.

20 Q COULD I ASK YOU TO LOOK AT -- WELL, LET ME --
21 I THINK MR. MADISON MADE REFERENCE TO 2214, WHICH IS
22 THE E-MAIL INVOLVING MS. MODIC.

11:16AM

23 I WOULD OFFER THAT, YOUR HONOR.

24 THE COURT: ANY OBJECTION?

25 MR. MADISON: IT'S HEARSAY, YOUR HONOR. I
26 USED IT TO REFRESH HIS RECOLLECTION ABOUT THE CONTENT.

11:16AM

27 THE COURT: I'LL SUSTAIN THE OBJECTION.

28 BY MR. WEINGART:

1 Q WHY DID YOU ASK MS. MODIC TO SPEAK TO THE WALL
2 STREET JOURNAL?

3 A THE WALL STREET JOURNAL WAS VERY MUCH
4 INTERESTED IN HEARING PERSPECTIVE OF INVESTORS AND THE
5 INVESTOR REACTION TO THE EVENTS THAT TRANSPIRED.

11:16AM

6 Q ONE FINAL QUESTION ON THAT.

7 DID YOU THINK YOU WERE DOING ANYTHING
8 WRONG BY TALKING TO YOUR FELLOW INVESTORS ABOUT THIS
9 VEHICLE IN WHICH YOU PUT ALL THIS MONEY?

10 A ABSOLUTELY NOT.

11:16AM

11 MR. WEINGART: MAY I HAVE ONE MOMENT, YOUR
12 HONOR?

13 THE COURT: SURE.

14 (PAUSE) +

15

11:17AM

16 MR. WEINGART: NO FURTHER QUESTIONS.

17 THE COURT: ANYTHING ELSE, MR. MADISON?

18

19 REDIRECT EXAMINATION +

20 BY MR. MADISON:

11:17AM

21 Q WHEN YOU WERE SPEAKING TO MS. MODIC, YOU
22 WEREN'T JUST SPEAKING AS AN INVESTOR, WERE YOU?

23 A NO, I WAS NOT.

24 Q YOU DIDN'T HAVE AN INTEREST IN DOUBLELINE
25 HAVING A ROLE IN MANAGING THOSE INVESTMENTS, ALSO?

11:17AM

26 A I HAD OVER \$600,000 INVESTED IN THESE FUNDS,
27 SO I WAS VERY MUCH CONCERNED ABOUT MY OWN FINANCIAL
28 WELL-BEING.

1 Q YOU WEREN'T ALSO THINKING ABOUT DOUBLELINE
2 HAVING SOME ROLE IN MANAGING THOSE INVESTMENTS, SIR?

3 A THAT WAS SECONDARY.

4 Q IS THAT "YES"?

5 A WELL, THAT WAS SECONDARY.

11:17AM

6 Q SO YOU WERE THINKING ABOUT IT, BUT IT WAS
7 SECONDARY TO YOUR OWN INVESTMENT INTEREST?

8 A THAT IS CORRECT.

9 Q AND WHEN YOU SUBMITTED YOUR RESIGNATION TO
10 TCW, WHERE DID YOU PHYSICALLY DO THAT FROM, DO YOU
11 RECALL?

11:18AM

12 A I WAS IN JEFFREY GUNDLACH'S HOUSE.

13 Q YOU SENT IT FROM HIS COMPUTER AT HIS HOME,
14 RIGHT?

15 A THAT'S CORRECT.

11:18AM

16 Q I MEAN, THE IDEA THAT YOU WOULD -- WITH REGARD
17 TO THE QUESTIONS ABOUT EXIT STRATEGY -- IDEA THAT YOU
18 WOULD ANNOUNCE SOME EXIT STRATEGY -- TO YOUR KNOWLEDGE,
19 THERE WERE NEVER ANY NEGOTIATIONS ABOUT THE DEPARTURE
20 THAT YOU DESCRIBED?

11:18AM

21 MR. WEINGART: OBJECTION, ASKED AND ANSWERED.

22 THE COURT: SUSTAINED.

23 BY MR. MADISON:

24 Q I WANT TO FOLLOW UP ON MR. WEINGART'S
25 QUESTIONS ABOUT THE DIFFERENT ALTERNATIVES FOR EXIT
26 STRATEGIES.

11:18AM

27 WERE THERE ANY NEGOTIATIONS ON THOSE
28 DIFFERENT ALTERNATIVES?

1 A NO.

2 Q WERE THERE EVER ANY NEGOTIATIONS?

3 A NO.

4 Q IF EVERYONE WERE TO ANNOUNCE THEY WERE LEAVING
5 AT ONCE, THAT WOULDN'T BE A FAIR NEGOTIATION, WOULD IT?

11:19AM

6 MR. WEINGART: OBJECTION. ARGUMENTATIVE.

7 THE COURT: SUSTAINED.

8 MR. MADISON: NOTHING FURTHER.

9 THE COURT: MR. LUCIDO, THANK YOU FOR YOUR
10 TESTIMONY. YOU MAY STEP DOWN.

11:19AM

11 THE WITNESS: THANK YOU.

12 THE COURT: PLAINTIFFS MAY CALL THEIR NEXT
13 WITNESS.

14 MR. MADISON: WE'LL CALL MICHAEL CONN, YOUR
15 HONOR.

11:19AM

16 THE CLERK: SIR, PLEASE RAISE YOUR RIGHT HAND
17 TO BE SWORN.

18

19 MICHAEL CONN +
20 CALLED AS A WITNESS BY THE PLAINTIFF WAS SWORN AND
21 TESTIFIED AS FOLLOWS:

22

23 THE CLERK: YOU DO SOLEMNLY STATE THAT THE
24 TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW
25 PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE
26 WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU
27 GOD?

28 THE WITNESS: I DO.

1 THE CLERK: THANK YOU. PLEASE BE SEATED.

2 SIR, PLEASE STATE AND SPELL YOUR NAME
3 FOR THE RECORD.

4 THE WITNESS: MICHAEL CONN, M-I-C-H-A-E-L,
5 LAST NAME CONN, C-O-N-N. 11:20AM

6 THE CLERK: THANK YOU.

7 THE COURT: GOOD MORNING, MR. CONN.

8 THE WITNESS: GOOD MORNING, SIR, YOUR HONOR.

9 THE COURT: MR. MADISON, YOU MAY PROCEED.

10 MR. MADISON: THANK YOU, YOUR HONOR. 11:20AM

11

12 DIRECT EXAMINATION +

13 BY MR. MADISON:

14 Q GOOD MORNING.

15 A GOOD MORNING. 11:20AM

16 Q WHERE DO YOU WORK?

17 A I WORK AT TCW.

18 Q HOW LONG HAVE YOU BEEN AT TCW?

19 A BEEN THERE NOW ALMOST SIX YEARS.

20 Q WHAT DO YOU DO THERE? 11:20AM

21 A I'M CURRENTLY HEAD OF CORPORATE STRATEGY.

22 Q WHAT DOES THAT MEAN?

23 A IT MEANS I HELP THE FIRM TO DIVERSIFY THE
24 PRODUCT RANGE AND LOOK AT ACQUISITIONS TO BRING IN NEW
25 TEAMS. LOOK INTO REALLY SUPPORT MARC STERN, AS WELL IN
26 ANY PROJECTS HE HAS. 11:20AM

27 Q HOW OLD ARE YOU?

28 A I'M 33 YEARS OLD.

1 Q HOW LONG HAVE YOU WORKED AT TCW?

2 A SINCE NOVEMBER OF 2005.

3 Q HAVE YOU BEEN IN THE POSITION THAT YOU'RE IN
4 NOW SINCE YOU STARTED AT TCW IN NOVEMBER 2005?

5 A NO, I HAVE NOT.

11:21AM

6 Q WHEN YOU STARTED, WHAT WAS YOUR POSITION?

7 A I CAME IN AS AN ASSISTANT VICE PRESIDENT AT
8 THE TIME, AS AN ANALYST.

9 Q WORKING ON ANALYZING INVESTMENTS?

10 A WELL, ON BEHALF OF SOCIÉTÉ GÉNÉRALE, LOOKING
11 AT THEIR INVESTMENT STRATEGY IN TERMS OF MERGERS AND
12 ACQUISITIONS IN THE AMERICAS, I WAS BROUGHT IN TO
13 SUPPORT MARC STERN IN HIS ROLE THERE, YES.

11:21AM

14 Q DO YOU REPORT TO MR. STERN TODAY?

15 A I DO.

11:21AM

16 Q HAVE YOU REPORTED TO MR. STERN THE ENTIRE
17 TIME YOU'VE BEEN AT TCW?

18 A YES. THE ENTIRE TIME.

19 Q WHAT IS YOUR CURRENT FORMAL TITLE AT TCW?

20 A FORMAL TITLE IS MANAGING DIRECTOR, HEAD OF
21 CORPORATE STRATEGY.

11:21AM

22 Q WHEN DID YOU BECOME A MANAGING DIRECTOR?

23 A IN FEBRUARY OF 2011.

24 Q WHERE DID YOU GO TO SCHOOL?

25 A FOR COLLEGE I WENT TO BRANDEIS UNIVERSITY IN
26 THE BOSTON AREA, MASSACHUSETTS.

11:21AM

27 AND FOR GRADUATE SCHOOL I PROCEEDED
28 THERE AT BRANDEIS, AS WELL AS IN PARIS, FRANCE, AND

1 ALSO IN LOS ANGELES AT USC.

2 Q NOW, YOU WERE WITH TCW IN DECEMBER OF 2009 AND
3 EARLY 2010. THAT'S PART OF YOUR TIME THERE?

4 A YES.

5 Q AND WE'VE HEARD ABOUT RETENTION BONUSES THAT
6 WERE PROVIDED TO SOME EMPLOYEES.

11:22AM

7 DID YOU RECEIVE A RETENTION BONUS?

8 A YES, I DID.

9 Q WHEN WAS THAT, DO YOU RECALL?

10 A I RECEIVED ONE PART OF IT IN FEBRUARY 2010,
11 AND THE SECOND HALF OF IT IN DECEMBER, AT THE END OF
12 DECEMBER OF 2010.

11:22AM

13 Q DO YOU RECALL HOW MUCH YOUR RETENTION BONUS
14 WAS?

15 A IT WAS, ALL TOGETHER, \$200,000.

11:22AM

16 Q HOW DID THAT COMPARE TO YOUR OVERALL
17 COMPENSATION AT THAT TIME?

18 A IT WAS ABOUT 50 PERCENT OF MY COMPENSATION.

19 Q WHAT, IF ANYTHING, WERE YOU TOLD ABOUT WHY YOU
20 WERE RECEIVING RETENTION FUNDS?

11:23AM

21 MR. BRIAN: OBJECTION. HEARSAY.

22 THE COURT: SUSTAINED.

23 BY MR. MADISON:

24 Q DID YOU -- HAD YOU THOUGHT OF LEAVING TCW AT
25 THAT TIME?

11:23AM

26 A THE THOUGHT CAME TO MY MIND.

27 Q WHY?

28 A BECAUSE I -- IT WAS A VERY VOLATILE SITUATION.

1 I WAS WORKING 16-, 18-HOUR DAYS. I WASN'T SEEING MY
2 FAMILY VERY MUCH. IT WAS VERY STRESSFUL.

3 Q DID YOU THINK ABOUT THE FUTURE OF TCW DURING
4 THE EVENTS OF DECEMBER 2009 AND JANUARY 2009 --

5 MR. BRIAN: OBJECTION. RELEVANCE. 352. 11:23AM

6 THE COURT: SUSTAINED.

7 BY MR. MADISON:

8 Q NOW, DID YOU -- HAVE YOU RECEIVED INCREASES IN
9 YOUR COMPENSATION WITH THE PROMOTION THAT YOU TOLD US
10 ABOUT TO MANAGING DIRECTOR IN 2011? 11:23AM

11 A YES, I DID.

12 Q WOULD YOU, FROM TIME TO TIME, DINE IN THE
13 LUNCH ROOM THERE AT TCW?

14 A YES. ALMOST EVERY DAY.

15 Q AND DID YOU HEAR ABOUT -- HEAR OR WITNESS ANY
16 OUTBURSTS BY MR. GUNDLACH? 11:24AM

17 A YES, I DID.

18 Q DO YOU HAVE -- WELL, DID YOU HEAR MR. GUNDLACH
19 TALK ABOUT SENIOR MANAGEMENT OF TCW OPENLY IN THE LUNCH
20 ROOM? 11:24AM

21 MR. BRIAN: OBJECTION. CUMULATIVE. 352.

22 THE COURT: OVERRULED.

23 THE WITNESS: YES, I DID.

24 BY MR. MADISON:

25 Q WHO DID YOU HEAR HIM TALK ABOUT? 11:24AM

26 A BOB BEYER. MARC STERN. AS WELL AS FROM
27 PARIS, JEAN-PIERRE MUSTIER, AND JACQUES RIPOLL.

28 Q WHAT DO YOU RECALL HEARING MR. GUNDLACH SAY

1 ABOUT THOSE PEOPLE?

2 A DO YOU WANT VERBATIM? SOME OF THE LANGUAGE IS
3 A LITTLE DICEY, EXPLICIT.

4 Q WE'RE ALL GROWN-UPS HERE.

5 A SO ABOUT BOB BEYER, HE SAID, YOU KNOW, GOOD 11:24AM
6 RIDDANCE TO BOB BEYER. HE WAS A -- FUCKING USELESS.
7 SAID MARC STERN IS USELESS. HE SAID
8 JEAN-PIERRE MISTIER AND JACQUES RIPOLL, THEY DON'T KNOW
9 ANYTHING ABOUT RUNNING THE ASSET MANAGEMENT BUSINESS,
10 THAT JEFFREY SHOULD BE IN CHARGE OF RUNNING THAT 11:25AM
11 BUSINESS.

12 Q WAS HE SAYING THINGS LOUDLY SO EVERYONE IN THE
13 ROOM COULD HEAR?

14 A YES, HE WAS.

15 Q DID YOU OBSERVE IT TO AFFECT THE PEOPLE IN THE 11:25AM
16 LUNCH ROOM?

17 A YES.

18 MR. BRIAN: OBJECTION. COMPOUND. FOUNDATION.

19 THE COURT: SUSTAINED.

20 MR. BRIAN: MOVE TO STRIKE THE ANSWER. 11:25AM

21 THE COURT: I'LL STRIKE THE RESPONSE.

22 YOU CAN APPROACH THE AREA. BUT LET'S
23 MOVE ON. I MEAN TO THE EXTENT --

24 MR. MADISON: I'M ALREADY GONE --

25 THE COURT: GO AHEAD. 11:25AM

26 BY MR. MADISON:

27 Q DID YOU YOURSELF CONTINUE TO GO TO THE LUNCH
28 ROOM, NOTWITHSTANDING THAT THESE OUTBURSTS WOULD OCCUR?

1 A YES, I DID.

2 Q DID YOU REPORT THESE OUTBURSTS TO MR. STERN?

3 A YES, I DID.

4 Q WHAT WAS MR. STERN'S REACTION WHEN YOU WOULD
5 REPORT THEM?

11:25AM

6 A HE SAID OKAY.

7 Q OTHER THAN THAT, DID HE REACT, AS FAR AS YOU
8 KNOW?

9 A NO. HE JUST -- NODDED HIS HEAD AND SAID OKAY.
10 THAT WAS IT.

11:25AM

11 Q ARE YOU FAMILIAR WITH SOMETHING CALLED THE
12 BIFURCATED, BIWEEKLY MEETINGS?

13 A YES, I AM.

14 Q AND WHAT ARE THOSE MEETINGS?

15 A THOSE WERE MEETINGS THAT MARC CREATED.
16 THEY'RE EFFECTIVELY LIKE EXECUTIVE OR MANAGEMENT
17 COMMITTEES CREATED SOON AFTER IT WAS ANNOUNCED HE WAS
18 COMING BACK AS CEO, AND SO HE HAD THE SENIOR PORTFOLIO
19 MANAGERS THERE, JEFFREY GUNDLACH, MARK ATTANASIO,
20 JEAN-MARC CHAPUS, DIANE JAFFEE, AS WELL AS
21 JEAN-PIERRE MUSTIER.

11:26AM

11:26AM

22 AND I WAS THERE AS, WELL, KIND OF A
23 NOTETAKER AND ANALYST.

24 Q DO YOU RECALL AN INCIDENT INVOLVING BUCHANAN
25 STREET PARTNERS THAT OCCURRED INVOLVING MR. GUNDLACH?

11:26AM

26 A I DO.

27 Q WHAT OCCURRED AT THAT TIME?

28 A MARC STERN BROUGHT UP THE POINT THAT BUCHANAN

1 STREET, WHICH MANAGES A COMMERCIAL REAL ESTATE
2 BUSINESS, DIDN'T HAVE A REAL HOME AT TCW. THEY WERE
3 ACQUIRED 2008, AND HAD ALWAYS REPORTED IN TO THE CEO.

4 HE WAS TRYING TO FIND A PRODUCT
5 INVESTMENT AREA THAT KIND OF -- SOME OWNERSHIP IN TERMS
6 OF GUIDING THEM. 11:26AM

7 HE DISCUSSED THIS WITH MARK ATTANASIO
8 AND JEAN-MARC CHAPUS PRIOR TO THE MEETING AND ASKED
9 THEM IF THEY THOUGHT THEY SHOULD BE IN CHARGE OF IT.

10 THEN DURING THE MEETING HE BROUGHT UP 11:27AM
11 THE FACT THAT HE HAD THIS DISCUSSION AND SAID, JEFFREY,
12 WHAT DO YOU THINK? WHERE DO YOU THINK THIS TEAM SHOULD
13 GO?

14 THAT WAS THE INITIAL QUESTION AND
15 JEFFREY'S RESPONSE WAS KIND OF OVER THE TOP. 11:27AM

16 Q WHAT HAPPENED?

17 A HE IMMEDIATELY GOT RED IN THE FACE, STOOD UP,
18 AND STARTED POINTING AT MARC STERN, MARK ATTANASIO,
19 JEAN-MARC CHAPUS, SAYING, YOU KNOW, YOU GUYS ALWAYS
20 MAKE DECISIONS WITHOUT ME. 11:27AM

21 MARC STERN, YOU ALWAYS SIDE WITH
22 JEAN-MARC AND ATTANASIO. I'M THE ONLY ONE HERE THAT
23 KNOWS HOW TO RUN A REAL ESTATE BUSINESS. THIS GROUP
24 SHOULD REPORT TO ME.

25 Q DID MR. GUNDLACH WALK OVER TO WHERE THEY WERE
26 SEATED? 11:27AM

27 A YEAH. HE WALKED RIGHT UP TO THEM AND WAS
28 POINTING AT THEM. AND GOING ON FOR SEVERAL MINUTES.

1 Q WHAT DID MR. STERN DO?

2 A HE WAS TRYING TO DEFUSE THE SITUATION AND
3 SAID, YOU KNOW, NO DECISION HAS BEEN MADE; I'M JUST
4 TRYING TO GET YOUR OPINION HERE. AND, YOU KNOW.

5 Q BASED ON WHAT YOU'D OBSERVED IN THE MEETING,
6 WAS THAT REACTION APPROPRIATE?

11:28AM

7 A NO.

8 Q NOW, WE'VE HEARD ABOUT A MEETING ON AUGUST 27,
9 2009, REGARDING SOMETHING CALLED PROJECT G. I'M GOING
10 TO ASK YOU SOME QUESTIONS ABOUT THAT. WE HAVE SOME
11 NOTES THAT ARE IN EVIDENCE.

11:28AM

12 EXHIBIT 5224. I'LL JUST PUT THOSE UP.
13 THE FIRST QUESTION IS, ARE THESE YOUR
14 NOTES, MR. CONN?

15 A YES, THEY ARE.

11:28AM

16 Q YOU ATTENDED THE MEETING ALONG WITH THE OTHERS
17 THAT ARE LISTED UP AT THE TOP -- I WON'T GO THROUGH ALL
18 THE NAMES AGAIN -- CORRECT?

19 A THAT IS CORRECT.

20 Q AND YOU HAVE A TYPEWRITTEN VERSION OF -- WE
21 HAVE A TYPEWRITTEN VERSION OF THESE THAT WILL HELP MOVE
22 THINGS ALONG. THOSE ARE AT EXHIBIT 2290.

11:28AM

23 LOOK AT 2290, MR. CONN, TO YOURSELF. IT
24 SHOULD BE IN THE BINDER.

25 MR. BRIAN: NOT IN MINE.

11:29AM

26 THE WITNESS: YES.

27 MR. MADISON: MS. OSMAN, CAN CONFER WITH
28 MR. BRIAN.

1 MR. BRIAN: IT'S MISPLACED. GIVE ME A MOMENT
2 TO MOVE IT.

3 MR. MADISON: IT'S NOT MISPLACED, YOUR HONOR.
4 THEY SHOULD BE IN ORDER.

5 THE COURT: I'M NOT SURE I HAVE 2290, EITHER. 11:29AM

6 MR. BRIAN: IT IS MISPLACED. I'M NOT BLAMING
7 YOU, BUT IT IS MISPLACED.

8 MR. MADISON: CAN I SEND MS. OSMAN UP TO FIND
9 THE COURT'S COPY?

10 THE COURT: THAT'S ALL RIGHT. I CAN SEE IT UP 11:29AM
11 HERE.

12 MR. MADISON: I'D LIKE TO USE THE TYPEWRITTEN
13 VERSION.

14 Q HAVE YOU LOOKED AT THE TYPEWRITTEN VERSION AND
15 COMPARED IT TO THE HANDWRITTEN? 11:29AM

16 A YES.

17 Q DO THE TYPEWRITTEN NOTES ACCURATELY DEPICT
18 WHAT YOUR HANDWRITING IS?

19 A THERE'S -- THERE'S ONE AREA SPECIFICALLY I SEE
20 THAT -- THAT IT'S NOT EXACTLY CORRECT. THERE'S A -- A 11:29AM
21 WORD THAT SHOULD BE CROSSED OUT.

22 Q IT'S NOT CROSSED OUT ON THE TYPEWRITTEN?

23 A NO, IT'S NOT.

24 Q OKAY. WE CAN CROSS IT OUT.

25 A OKAY. 11:30AM

26 Q ALL RIGHT.

27 SO DO YOU HAVE A PEN?

28 A ACTUALLY, YES.

1 Q YOU CAN CROSS IT OUT.

2 THE COURT: WHAT WORD ARE WE TALKING ABOUT?

3 A IT'S THE NAME ON THE SECOND PAGE, 2290-2 WHERE
4 IT SAYS: GET MICHAEL SLASH CROSSED OUT "MY WORK" THE
5 "MICHAEL" SHOULD BE CROSSED OUT AS WELL. IN THE
6 ORIGINAL DOCUMENT IT WAS CROSSED OUT.

11:30AM

7 MR. MADISON: COULD WE DISPLAY THE TYPEWRITTEN
8 VERSION, YOUR HONOR?

9 THE COURT: ANY OBJECTION?

10 MR. BRIAN: NO. I HAVE NO OBJECTION TO IT
11 BEING ADMITTED IF HE'S OFFERING IT.

11:30AM

12 THE COURT: SHALL WE ADMIT IT?

13 MR. MADISON: SURE.

14 THE COURT: IT WILL BE ADMITTED.

15

11:30AM

16 (EXHIBIT 2290-1 & -2 ADMITTED.) +

17

18 THE COURT: WITH THE CORRECTION MADE BY
19 MR. CONN.

20 MR. MADISON: YES, THANK YOU.

11:30AM

21 MR. BRIAN: FOR THE RECORD, I THINK IT'S
22 2290-1 AND-2 ARE ACTUALLY COPIES OF 5224. PAGE 2 AND
23 3.

24 BY MR. MADISON:

25 Q IF WE DISPLAY 2290 AND EXPAND IT, IF YOU NEED
26 TO REFER TO THE HANDWRITTEN VERSION, WHICH IS 5224,
27 FEEL FREE TO DO THAT AT ANY TIME.

11:31AM

28 A THANK YOU.

1 Q AND ACTUALLY, FIRST I WANT TO ASK YOU, WERE
2 THERE SOME DOCUMENTS ATTACHED TO THE HANDWRITTEN NOTES?

3 A YES, THERE WERE.

4 Q WHAT DOCUMENTS WERE ATTACHED?

5 A THERE WAS A LOST BUSINESS SCENARIO THAT
6 DAVE DEVITO PUT TOGETHER IN CASE JEFFREY WERE TO LEAVE,
7 WHAT THAT WOULD LOOK LIKE POTENTIALLY.

11:31AM

8 Q LET'S GO TO 5224-4.

9 IS THAT THE LOST BUSINESS SCENARIO YOU
10 JUST DESCRIBED?

11:31AM

11 A YES, IT'S ONE PAGE OF IT.

12 Q ARE THOSE YOUR NOTES ON THAT COPY?

13 A YES, THEY ARE.

14 Q WHAT ELSE IS ATTACHED TO THE NOTES?

15 A AND THERE'S ALSO A PLAN B DOCUMENT THAT
16 JOE BURSCHINGER PUT TOGETHER, AND THAT WAS IF JEFFREY
17 WERE TO LEAVE, WHO WOULD --

11:31AM

18 MR. BRIAN: OBJECTION. NONRESPONSIVE.

19 THE COURT: JUST ANSWER THE QUESTION.

20 THE WITNESS: I'M SORRY, YOUR HONOR.

11:32AM

21 THERE WAS A PLAN B AS WELL, DOCUMENT AS
22 WELL.

23 MR. MADISON: PAGE 11, 5224.

24 Q THIS IS PLAN B IN THE UPPER LEFT. 8-21-2009.
25 IT SAYS:

11:32AM

26 GOAL: IDENTIFY KEY INDIVIDUALS
27 WITHIN THE M.B.S. TEAM WHO ARE
28 CRITICAL TO THE ONGOING OPERATIONS

1 OF THE GROUP.

2 THEN IF WE LOOK IN THE BULLET POINTS,
3 UNDER ANALYSIS, SIXTH BULLET POINT SAYS:

4 MY ASSESSMENT AS TO WHETHER THEY
5 ARE A FLIGHT RISK IF J.E.G. WERE TO
6 DEPART. 11:32AM

7 IT WAS YOUR UNDERSTANDING THIS WAS AN
8 ANALYSIS OF WHO ON THE TEAM MIGHT STAY IF MR. GUNDLACH
9 WERE TO, IN FACT, LEAVE?

10 MR. BRIAN: OBJECTION. NO FOUNDATION.
11 LEADING. 11:32AM

12 THE COURT: SUSTAINED.
13 BY MR. MADISON:

14 Q WELL, WAS THIS DISCUSSED IN THIS MEETING ON
15 AUGUST 27, THESE DOCUMENTS? 11:32AM

16 A I DON'T REMEMBER THIS SPECIFIC DOCUMENT BEING
17 DISCUSSED.

18 Q LET'S GO BACK TO THE FIRST PAGE, AND I WANT TO
19 START BY ASKING, WE CAN USE 290, THE TYPEWRITTEN.

20 BY AUGUST 27, 2009, HAD YOU ACTUALLY
21 BEEN WORKING ON THIS PROJECT G FOR SOME PERIOD OF TIME? 11:33AM

22 A YES.

23 Q AND WE'VE HEARD THAT MR. STERN OFFICIALLY CAME
24 BACK JULY 1, 2009, BUT SOUNDS LIKE HE STARTED IN EARLY
25 JUNE. 11:33AM

26 IS THAT YOUR RECOLLECTION?

27 A YES.

28 Q AND DID YOU WORK WITH HIM WHEN HE RETURNED

1 THEN AS INTERIM CEO?

2 A YES, I'VE ALWAYS WORKED WITH MARC.

3 Q AND REPORTED DIRECTLY TO HIM?

4 A THAT'S CORRECT.

5 Q AND SO IN JUNE AND JULY AND THEN THE EARLY
6 PART OF AUGUST, BEFORE THIS MEETING, HAD YOU BEEN
7 SPENDING TIME ON PROJECT G?

11:33AM

8 A YES. WITH AN EXPLANATION.

9 Q PLEASE.

10 A SO WHEN MARC APPROACHED ME ORIGINALLY IN JUNE
11 TO LOOK INTO THE POTENTIALITY OF NEEDING SOMEBODY TO
12 HELP OUT SOMEONE FROM OUR MORTGAGE SECURITIES GROUP, IF
13 JEFFREY LEFT, HE DIDN'T TELL ME AT THAT POINT IN TIME
14 THAT IT WAS FOR PROJECT G.

11:33AM

15 BUT LATER DURING THE SUMMER I CAME TO
16 THE UNDERSTANDING IT WAS FOR PROJECT G.

11:34AM

17 Q OKAY.

18 SO THEN AS WE LOOK AT YOUR NOTES, IT
19 SAYS:

20 (1), LOST BIZ SCENARIO M.B.S.

11:34AM

21 DOC FROM D. DEVITO.

22 THE NOTES AFTER THAT, DO THEY RELATE TO
23 THAT HEADING?

24 A YES, THEY DO.

25 Q JUST GENERALLY, IF YOU CAN TELL US FROM
26 REVIEWING YOUR NOTES, WHAT WAS THE SUBJECT OF
27 DISCUSSION?

11:34AM

28 A SURE.

1 SO WE WERE WALKING THROUGH HIS SCHEDULE
2 THAT HE HAD PUT TOGETHER OF THE LOST BUSINESS, AND
3 THESE WERE POINTS THAT DAVE NEEDED TO FOLLOW UP ON.

4 SO HE NEEDED TO KIND OF GET AND CONFIRM
5 THE UPDATED RUNAWAY COMPENSATION. HE NEEDED TO ADD
6 ASSETS UNDER MANAGEMENT. HE NEEDED TO ADD BACKUP --
7 THESE WERE KIND OF TASKS FOR DAVE.

8 Q WELL, WAS THIS A DECISION -- A MEETING,
9 RATHER, ABOUT THE TERMINATION OF JEFFREY GUNDLACH?

10 MR. BRIAN: OBJECTION. FOUNDATION.

11 THE COURT: SUSTAINED.

12 MR. BRIAN: FORM.

13 BY MR. MADISON:

14 Q DID ANYONE AT THE MEETING SAY THAT SOME
15 DECISION HAD BEEN MADE ABOUT TERMINATING
16 JEFFREY GUNDLACH?

17 A NO.

18 Q WHAT WAS SAID ABOUT WHY THESE EFFORTS WERE
19 BEING UNDERTAKEN?

20 A THE FOCUS WAS, IF JEFFREY WERE TO LEAVE, WHAT
21 WOULD LOST BUSINESS LOOK LIKE SPECIFICALLY?

22 Q SO IF SOMEONE WERE TO ASK YOU, FOR EXAMPLE,
23 WAS THIS MEETING ALL ABOUT TERMINATION OF
24 JEFFREY GUNDLACH, WHAT WOULD THE TRUE ANSWER BE?

25 MR. BRIAN: OBJECTION. FORM.

26 THE COURT: SUSTAINED.

27 BY MR. MADISON:

28 Q YOU WERE ASKED THAT IN YOUR DEPOSITION,

1 WEREN'T YOU --

2 MR. BRIAN: OBJECTION. HEARSAY.

3 JUST BECAUSE HE'S LEADING HIS OWN
4 WITNESS --

5 MR. MADISON: WHICH I'M ALLOWED TO DO UNDER
6 THE RULES.

11:35AM

7 Q YOU WERE ASKED THAT IN YOUR VERY DEPOSITION,
8 WEREN'T YOU, THIS MEETING WAS ALL ABOUT TERMINATING
9 JEFFREY GUNDLACH?

10 A YES, I WAS.

11:35AM

11 Q AND YOU SAID NO.

12 AND THAT WAS TRUE, WASN'T IT?

13 A YES.

14 Q SO IF WE GO TO THE NEXT NUMBER, WE'LL SEE THAT
15 RIGHT ABOVE NO. 2, IT SAYS, RIGHT ABOVE THAT:

11:36AM

16 MICHAEL CAHILL - ANY LEGAL
17 ISSUES?

18 NOW, MR. CAHILL, WE'VE HEARD, IS THE GENERAL
19 COUNSEL OF TCW.

20 A THAT'S CORRECT.

11:36AM

21 Q AND WAS HE PARTICIPATING IN THIS MEETING?

22 A YES, HE WAS.

23 Q PERSONALLY OR BY PHONE?

24 A BY PHONE.

25 Q AND IN YOUR EXPERIENCE IN WORKING WITH
26 MR. STERN, WOULD MR. STERN FROM TIME TO TIME ASK
27 MR. CAHILL FOR LEGAL ADVICE ABOUT ISSUES?

11:36AM

28 A ALL THE TIME. YES.

1 Q AND HERE IN THE NOTES IT SAYS:

2 MICHAEL CAHILL - ANY LEGAL

3 ISSUES? THEN IT SAYS:

4 (2) TERMINATION OF INVESTMENT

5 PERIOD ONLY REAL ISSUE.

11:36AM

6 AND HAVING REVIEWED THE NOTES, DO YOU HAVE AN
7 UNDERSTANDING WHAT THAT REFERS TO.

8 MR. BRIAN: OBJECTION. FORM. VAGUE.

9 THE COURT: OVERRULED. I'LL ALLOW IT.

10 THE WITNESS: NOT THAT SPECIFIC POINT, NO.

11:36AM

11 MR. MADISON: OKAY.

12 Q THEN THE NEXT THING, IT SAYS:

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

14 BEHAVIOR TO SEE IF -- THEN THERE'S

15 AN ARROW -- PARDON ME -- IT

11:37AM

16 REPRESENTS CAUSE. THEN THERE'S AN

17 ARROW: DUTY OF LOYALTY STATUTE

18 BREACHED BY J.G..

19 WHAT'S YOUR UNDERSTANDING OF WHAT THAT
20 REFERENCE REFERS TO?

11:37AM

21 A THIS WAS IN REFERENCE TO THE DISCUSSION THAT
22 JEFFREY WAS HAVING WITH WAMCO AND PIMCO.

23 Q DID SOMEONE ASK MR. CAHILL TO TALK TO A LAW
24 FIRM ABOUT MR. GUNDLACH'S BEHAVIOR?

25 A YES.

11:37AM

26 Q WHO ASKED?

27 A MARC STERN.

28 Q SO, WHEN MR. STERN DID THAT, DID HE SAY THAT

1 HE HAD MADE SOME DECISION ABOUT THIS QUESTION?

2 MR. BRIAN: OBJECTION. LEADING.

3 THE COURT: SUSTAINED.

4 BY MR. MADISON:

5 Q DO YOU RECALL WHAT, IF ANYTHING, MR. STERN
6 SAID AT THE TIME HE ASKED MR. CAHILL TO UNDERTAKE THIS
7 ACTIVITY?

11:37AM

8 A NO.

9 Q IF WE GO FURTHER DOWN, THERE'S A QUOTE. IT
10 SAYS:

11:37AM

11 "UNFORTUNATELY, W,E'VE HAD TO
12 TERMINATE J.G. FOR CAUSE. WE'LL
13 TAKE THE HIGH ROAD. DON'T WANT TO
14 SULLY HIS REPUTATION SO WON'T
15 REVEAL WHAT HAPPENED BUT HAD NO
16 IMPACT ON CLIENTS. WE RESERVE
17 RIGHT TO DEFEND OURSELVES,
18 ET CETERA.

11:38AM

19 THERE IS A USE OF A QUOTATION MARK.

20 WERE YOU QUOTING SOME OTHER SPEAKER IN
21 THE MEETING?

11:38AM

22 A YES.

23 Q WHO, IF YOU RECALL?

24 A MICHAEL CAHILL.

25 Q AND DO YOU KNOW WHICH MR. CAHILL SAID -- WHAT
26 HE SAID, WHAT YOU NOTED HERE?

11:38AM

27 MR. BRIAN: OBJECTION. FOUNDATION. FORM.

28 THE COURT: SUSTAINED.

1 BY MR. MADISON:

2 Q WAS ANY DECISION MADE AT THIS MEETING ABOUT
3 TERMINATION?

4 MR. BRIAN: OBJECTION.

5 THE COURT: OVERRULED. 11:38AM

6 THE WITNESS: NO.

7 BY MR. MADISON:

8 Q WERE YOU DISCUSSING WHAT MIGHT BE THE CASE
9 UNDER DIFFERENT OPTIONS?

10 MR. BRIAN: OBJECTION. LEADING. 11:38AM

11 THE COURT: SUSTAINED.

12 BY MR. MADISON:

13 Q WHAT WERE YOU DOING, MR. CONN, IN THE MEETING?

14 A PERSONALLY?

15 Q YOU AND THE OTHERS, YES. 11:38AM

16 A I WAS TAKING NOTES.

17 FOLKS WERE -- THE MAIN PURPOSE OF THE
18 MEETING WAS TALKING ABOUT IF JEFFREY WERE TO LEAVE,
19 WHAT THE LOST BUSINESS WOULD LOOK LIKE, PLAN B.

20 AND THEN THIS QUESTION CAME UP TO
21 MICHAEL, AND HE ANSWERED IT. 11:39AM

22 Q NOW, ARE YOU -- WELL, I MEAN, WERE OTHER
23 OPTIONS DISCUSSED IN THE MEETING, TO YOUR RECOLLECTION?

24 A NO.

25 Q NOW, WERE YOU AWARE DURING YOUR TIME AT TCW,
26 AS TO WHETHER OR NOT CERTAIN COMMUNICATIONS WITH THE
27 GENERAL COUNSEL COULD BE CONSIDERED TO BE PRIVILEGED
28 BECAUSE THEY WERE SEEKING LAWYERS' ADVICE? 11:39AM

1 MR. BRIAN: OBJECTION. CALLS FOR LEGAL --
2 SUBJECT OF MOTIONS --

3 THE COURT: SUSTAINED.

4 MR. MADISON: GOES TO HIS STATE OF MIND.

5 THE COURT: SUSTAINED.

11:39AM

6 MR. MADISON: VERY WELL.

7 Q LET ME ASK YOU THIS: THERE CAME A TIME IN
8 YOUR DEPOSITION WHEN MUNGER, TOLLES ASKED YOU SOME
9 QUESTIONS ABOUT THESE NOTES.

10 DO YOU RECALL THAT?

11:39AM

11 A YES, I DO.

12 Q AND LET ME FIRST ASK YOU, DID YOU -- HAD YOU
13 REVIEWED THE NOTES PRIOR TO YOUR DEPOSITION?

14 A NO, I HAD NOT.

15 Q SO, IF THE NOTES WERE ON AUGUST 27, 2009, WHEN
16 WAS YOUR DEPOSITION TAKEN?

11:39AM

17 A IN DECEMBER OF 2010.

18 Q SO LET'S CALL THAT A YEAR AND THREE MONTHS.

19 IN THAT YEAR AND THREE MONTHS, HAD YOU
20 LOOKED AT THESE NOTES, TO YOUR KNOWLEDGE, AT ALL?

11:40AM

21 A NO.

22 Q ALL RIGHT.

23 WHEN MUNGER, TOLLES ASKED YOU SOME
24 QUESTIONS ABOUT THE NOTES, OR ABOUT THE MEETING,
25 RATHER, DID THEY SHOW YOU THE NOTES FIRST AND GIVE YOU
26 AN OPPORTUNITY TO REVIEW THEM?

11:40AM

27 A NO, NOT INITIALLY.

28 Q AND WHEN THEY ASKED YOU QUESTIONS ABOUT THE

1 MEETING AND THEN THE NOTES, DID YOU HAVE IN MIND
2 WHETHER OR NOT YOU WERE AUTHORIZED BY TCW TO TALK ABOUT
3 QUESTIONS INVOLVING LEGAL ADVICE?

4 A I'M SORRY. BEFORE I WAS SHOWN THE NOTES OR
5 AFTER?

11:40AM

6 Q AFTER?

7 A AFTER.

8 I HAD BEEN INSTRUCTED PRIOR TO THE
9 DEPOSITION THAT I SHOULDN'T --

10 MR. BRIAN: OBJECTION.

11:40AM

11 YOUR HONOR, PRIVILEGED AREA.

12 THE COURT: SUSTAINED.

13 WOULD COUNSEL APPROACH, PLEASE.

14 MR. MADISON: SURE.

11:41AM

15
16 (SIDE-BAR CONFERENCE HELD) +

17
18 THE COURT: ALL RIGHT.

19 MR. MADISON, I'VE RULED ON THE
20 ADMISSIBILITY OF THESE NOTES.

11:41AM

21 THIS IS NOT THE OPPORTUNITY TO QUESTION
22 THIS WITNESS AND SUGGEST TO THE JURY THAT THEY COULD
23 RULE ON IT DIFFERENTLY.

24 MR. MADISON: NO, NO.

25 THE COURT: I DON'T KNOW WHERE WE'RE GOING.

11:41AM

26 IT MAY JUST BE I'M NOT THE BRIGHTEST BULB IN THE
27 COURTROOM, BUT TELL ME WHERE WE'RE GOING AND I'LL
28 CONSIDER IT.

1 THIS DOESN'T SEEM TO BE GOING ANYWHERE
2 GOOD.

3 MR. MADISON: MR. CONN INITIALLY SAID THAT HE
4 DID NOT RECALL THE DISCUSSION. AND THEN WHEN HE WAS
5 SHOWN THE NOTES, THERE WERE INSTRUCTIONS BASED ON THE
6 PRIVILEGE HE'S GOING TO TESTIFY WHEN I ASK HIM, OR THEY
7 DO.

11:41AM

8 THE REASONS FOR THOSE ANSWERS WAS IN
9 PART BECAUSE HE HAD BEEN INSTRUCTED. THERE'S NO
10 DISPUTE ABOUT THIS. THE RECORD HAS OBJECTIONS ON
11 ATTORNEY/CLIENT PRIVILEGE AND INSTRUCTIONS.

11:41AM

12 THE COURT: I UNDERSTAND THAT.

13 MR. MADISON: WE'RE NOT TRYING TO OBVIOUSLY
14 SUPERSEDE YOUR HONOR'S RULING. IT GOES TO HIS STATE OF
15 MIND UNLESS THEY AGREED TO NOT TO TRY TO IMPEACH HIM
16 WITH HIS DEPOSITION TESTIMONY.

11:42AM

17 THE COURT: I DON'T SEE WHY YOU WOULD. THE
18 NOTES ARE THE NOTES. HE'S A SCRIVENER, AND I DON'T
19 THINK HE OUGHT TO BE NECESSARILY TESTIFYING TO THE
20 SUBSTANTIVE DECISION MAKING PROCESS.

11:42AM

21 HE WAS THERE TAKING NOTES. YOU CAN ASK
22 HIM WHAT HE OBSERVED, WHAT HE HEARD IN TERMS OF
23 ADMISSION BY OTHER PARTIES OR STATEMENTS BY OTHER
24 PARTIES, BUT THAT'S THE EXTENT OF IT. THAT'S THE
25 EXTENT OF WHAT YOU SHOULD DO.

11:42AM

26 MR. BRIAN: I'LL PLAY THE VIDEOTAPE OF HIS
27 DEPOSITION.

28 THE COURT: WHAT IS THAT?

1 MR. BRIAN: IN WHICH HE'S ASKED ABOUT THE
2 MEETING. HE PROFESSES NOT TO RECALL IT. HE'S THEN
3 SHOWN THE NOTES. HE'S SURPRISED BY THEM. AND,
4 FRANKLY, WE THINK HE'S AN ABSOLUTE LIAR.

5 THE COURT: WELL, THAT'S YOUR VIEW OF IT. 11:42AM

6 MR. BRIAN: CORRECT, IT'S MY VIEW. AND I'M
7 GOING TO PLAY THE VIDEO AND I'LL ARGUE.

8 MR. MADISON: AS LONG AS HE PLAYS THE
9 INSTRUCTIONS AND THE OBJECTIONS, THAT'S FINE.

10 MR. BRIAN: HE'S WAIVING -- HE IS WAIVING THE 11:43AM
11 ATTORNEY/CLIENT PRIVILEGE IF HE DOES THAT NOW, YOUR
12 HONOR. HE'S NOW -- HE'S ALMOST ALREADY DONE IT. THEY
13 CAN'T DO THAT AT THE LAST MINUTE.

14 THE COURT: IT'S NOT A WAIVER. IT'S NOT
15 PRIVILEGE. 11:43AM

16 MR. BRIAN: HE'S HAVING HIM TESTIFY TO ADVICE
17 HE GOT IN CONNECTION WITH THE DEPOSITION. THAT'S WHAT
18 HE'S DOING.

19 MR. MADISON: NO, NO, NO. IT'S ON THE RECORD
20 IN THE DEPOSITION. 11:43AM

21 THE COURT: WELL, YOU WANT TO AGREE TO PLAY
22 THE DEPOSITION NOW, AND JUST GET IT OUT OF THE WAY?
23 BUT I MEAN YOU CAN'T --

24 MR. MADISON: SURE.

25 THE COURT: -- YOU CAN'T INQUIRE TO ADVICE HE 11:43AM
26 WAS GIVEN OUTSIDE OF THE SCOPE OF WHAT'S ON THE
27 TRANSCRIPT.

28 MR. QUINN: I THINK THE POINT HAS BEEN LOST

1 HERE .

2 THE POINT IS THE WAY HE TESTIFIED, THE
3 WAY HE DID WAS HE WAS -- HIS UNDERSTANDING WAS THAT HE
4 WAS NOT TO MENTION ANY LEGAL ADVICE HE HAD RECEIVED,
5 THAT ANYTHING HE LEARNED FROM AN ATTORNEY.

11:43AM

6 THE COURT: RIGHT.

7 MR. QUINN: THAT EXPLAINS WHY HE TESTIFIED THE
8 WAY HE DID.

9 SO THESE QUESTIONS GO TO THAT, WHY HE
10 TESTIFIED THE WAY HE DID, AND WHY HE DID NOT MENTION
11 WHAT ATTORNEYS TOLD HIM.

11:44AM

12 MR. BRIAN: MAYBE HE SHOULD HAVE SAID THAT AT
13 HIS DEPOSITION.

14 THE COURT: I'LL ALLOW SOME OF IT. BUT I'M
15 NOT GOING INTO THIS. THIS ISN'T FOR THE JURY TO
16 DETERMINE IF THERE'S PRIVILEGED DOCUMENT OR IF THERE'S
17 A WAIVER OF THE PRIVILEGE.

11:44AM

18 YOU CAN ASK HIM, BUT ASK HIM DIRECTLY.
19 AND I JUST WANT TO GET THROUGH AND GET IT OVER WITH.

20 YOU'LL BE ABLE TO CROSS-EXAMINE.

11:44AM

21 MR. BRIAN: OKAY.

22

23 (SIDE-BAR CONFERENCE CONCLUDED.) +

24

25 BY MR. MADISON:

11:44AM

26 Q DO YOU RECALL, MR. CONN, AT YOUR DEPOSITION,
27 WHEN YOU WERE ASKED ABOUT THIS, THESE NOTES, THAT THERE
28 WAS AN INSTRUCTION FROM COUNSEL THAT COMMUNICATIONS

1 WITH AN ATTORNEY INCLUDING MR. CAHILL COULD BE
2 PRIVILEGED AND YOU OUGHT NOT TO TALK ABOUT THIS?

3 A YES, THAT'S CORRECT.

4 Q WAS THAT IN YOUR MIND AT THE TIME YOU WERE
5 GIVING YOUR DEPOSITION TESTIMONY ABOUT THE NOTES?

11:45AM

6 A YES, IT WAS.

7 Q NOW, LET ME JUST TURN TO WHAT -- WELL,
8 ACTUALLY, LET ME ASK YOU ONE OTHER QUESTION.

9 DO YOU RECALL ANOTHER MEETING THAT
10 HAPPENED AROUND THE SAME TIME PERIOD WITH MR. BARACH
11 WHERE YOU -- I BELIEVE MAY HAVE SPOKEN TO MR. BARACH?

11:45AM

12 A ME PERSONALLY WITH COUNSEL?

13

14 (COUNSEL CONFER SOTO VOCE.) +

15

11:45AM

16 BY MR. MADISON:

17 Q DO YOU RECALL IN YOUR DEPOSITION BEING ASKED
18 ABOUT THIS MEETING BEFORE YOU SAW THE NOTES?

19 A YES, I DO.

20 Q DO YOU RECALL DESCRIBING A MEETING THAT YOU
21 RECALL AT THAT TIME?

11:45AM

22 A YES, I DO.

23 Q WAS IT THIS MEETING?

24 A NO, IT WASN'T.

25 Q WHAT MEETING WAS IT?

11:46AM

26 A IT WAS A MEETING THAT MARK GIBELLO HAD WITH
27 PHIL BARACH.

28 Q AND AT THE TIME, YOU HADN'T SEEN THE NOTES

1 WHEN YOU HEARD THAT TESTIMONY?

2 A THAT'S CORRECT -- WHEN YOU GAVE THAT
3 TESTIMONY.

4 A THAT'S CORRECT.

5 Q WERE YOU CONFUSED ABOUT WHAT MEETING YOU WERE
6 BEING ASKED ABOUT?

11:46AM

7 A YES, I WAS.

8 Q I WANT TO TURN TO WHAT HAD HAPPENED BEFORE THE
9 AUGUST 27 MEETING.

10 IN TERMS OF MR. GUNDLACH'S BEHAVIOR, HAD
11 YOU PARTICIPATED IN AN INTERVIEW IN JULY WITH
12 MR. GUNDLACH AND MR. SHEDLIN?

11:46AM

13 A YES. EITHER JULY OR EARLY AUGUST, YES.

14 Q AND DO YOU RECALL WHETHER YOU TOOK NOTES
15 DURING THAT INTERVIEW AS WELL?

11:46AM

16 A YES, I DID.

17 Q AND WE HAVE SOME HANDWRITTEN NOTES IN THE BOOK
18 THERE. IT'S EXHIBIT 941. I'LL ASK YOU TO LOOK AT
19 THOSE.

20 DO YOU HAVE THOSE IN FRONT OF YOU?

11:47AM

21 A YES, I DO.

22 Q ARE THOSE THE NOTES YOU TOOK DURING THE
23 INTERVIEW IN JULY WITH MR. SHEDLIN AND MR. GUNDLACH?

24 A YES, THEY ARE.

25 Q TELL US, IF YOU NEED TO USE THE NOTES TO
26 REFRESH YOUR RECOLLECTION, LET US KNOW. BUT I'D LIKE
27 YOU TO TELL US AS BEST YOU CAN RECALL WHAT OCCURRED IN
28 THAT INTERVIEW WITH MR. GUNDLACH.

11:47AM

1 MR. BRIAN: CALLS FOR A NARRATIVE, YOUR HONOR.

2 THE COURT: SUSTAINED.

3 BY MR. MADISON:

4 Q AS WE SIT HERE, DO YOU RECALL ANY STATEMENTS
5 THAT MR. GUNDLACH MADE IN THAT INTERVIEW?

11:47AM

6 A YES, I DO.

7 Q WHAT DO YOU RECALL MR. GUNDLACH SAYING?

8 A I RECALL HIM SAYING THAT TCW WAS AN EQUITY
9 FIRM AT ITS HEART.

11:47AM

10 I RECALL HIM SAYING IN HIS WORDS THAT
11 PORTFOLIO MANAGERS MAKE TOO MUCH MONEY.

12 I RECALL HIM SAYING HE WAS ALREADY, IN
13 PART, ALREADY CEO OF TCW TO A DEGREE.

14 I REMEMBER HIM SAYING THAT HE DIDN'T
15 WANT -- I SAID MARC GOT THE INTERIM CEO TITLE, BUT HE
16 DIDN'T THINK MARC WAS PART OF THE FUTURE.

11:48AM

17 HE DIDN'T THINK THAT TCW NEEDED CEO'S
18 LIKE MARC AND BOB BEYER, WHO SAT AROUND AND DIDN'T DO
19 SHIT.

20 HE SAID THAT HE COULD PICK UP AND LEAVE
21 AT ANY POINT AND TIME, AND HIS WHOLE BUSINESS WOULD GO
22 WITH HIM.

11:48AM

23 AND, IN RELATION TO THAT, HE SAID HE'S
24 CONSTANTLY BEING APPROACHED PIMCO AND WAMCO AND THAT
25 PIMCO WOULD LOVE TO HAVE HIM AS A REPLACEMENT FOR
26 BILL GROSS.

11:48AM

27 HE ALSO SAID THAT HE WOULDN'T COOPERATE
28 WITH A PRIVATE EQUITY FIRM IN CASE THEY WERE LOOKING TO

1 HELP DO A MANAGEMENT BUYOUT, RE-EQUITIZE THE FIRM
2 UNLESS HE WAS CEO.

3 BASICALLY, ALL DISCUSSIONS HAD TO START
4 WITH HIM AS CEO.

5 Q DO YOU RECALL WHEN HE WAS TALKING ABOUT THE
6 ROLE OF CEO, WHETHER HE USED SOME PERCENTAGE TO
7 DESCRIBE HIS ROLE AS CEO?

11:48AM

8 A I DO.

9 Q WHAT DID HE SAY?

10 A HE SAID HE WAS ALREADY EFFECTIVELY 85 PERCENT
11 CEO OF TCW. 70 PERCENT BECAUSE OF THE ASSETS HE
12 MANAGED, AND, IN HIS WORDS, AN ADDITIONAL 15 PERCENT
13 BECAUSE OF THE -- ALL THE BULLSHIT HE HAS TO TAKE FROM
14 SENIOR MANAGEMENT.

11:49AM

15 Q DO YOU RECALL WHETHER HE'D SAID HE WOULD
16 CONSIDER ANY KIND OF EQUITY INVESTMENT FROM THIRD
17 PARTIES INTO TCW AS A WAY OF GOING FORWARD?

11:49AM

18 A YES.

19 HE SAID THAT DISCUSSION WOULD ONLY START
20 IF HE WAS CEO, AND HE REALLY DIDN'T WANT TO COOPERATE
21 WITH A PRIVATE EQUITY FIRM IN THAT REGARD.

11:49AM

22 Q WHAT IN PARTICULAR DID HE SAY, IF ANYTHING,
23 ABOUT PRIVATE EQUITY FIRMS AND WHAT THEY WOULD DO TO
24 HIM?

25 A HE SAID SOMETHING TO THE EFFECT OF HE DIDN'T
26 WANT SOME ASSHOLE SQUEEZING HIS BUSINESS.

11:49AM

27 Q DID YOU FIND MR. GUNDLACH'S TONE AND DEMEANOR
28 AND CONTENT TO BE PROFESSIONAL IN THIS INTERVIEW?

1 A HIS TONE AND DEMEANOR WERE PROFESSIONAL, BUT
2 WHAT HE WAS SAYING WAS QUITE SHOCKING TO ME. YEAH.

3 Q DID YOU SHARE WHAT WAS SAID IN THAT MEETING,
4 THAT INTERVIEW, WITH MR. STERN?

5 A YES, I DID. 11:50AM

6 Q WERE YOU SURPRISED AT WHAT YOU WERE HEARING IN
7 THAT JULY INTERVIEW WITH MR. SHEDLIN?

8 A YES, VERY SURPRISED.

9 Q DID YOU TELL MR. STERN ABOUT THAT INTERVIEW
10 PRIOR TO THE AUGUST 27 MEETING DAY, JUST IN BETWEEN THE 11:50AM
11 TWO?

12 A YES, I -- RIGHT AFTER THIS MEETING WITH
13 JEFFREY AND GARY SHEDLIN I TOLD MARC.

14 Q WHAT WAS MARC'S -- MR. STERN'S REACTION, IF
15 YOU RECALL? 11:50AM

16 A HE --

17 MR. BRIAN: OBJECTION. HEARSAY.

18 THE COURT: OVERRULED.

19 THE WITNESS: -- HE LISTENED. NODDED HIS
20 HEAD, SAID OKAY. AND THAT WAS IT. 11:50AM

21 BY MR. MADISON:

22 Q GIVEN YOUR ROLE IN REPORTING TO MR. STERN,
23 WOULD YOU KNOW WHEN A FINAL DECISION HAD BEEN MADE
24 ABOUT HOW TO PROCEED WITH MR. GUNDLACH?

25 A NO. 11:51AM

26 Q WHO WOULD KNOW THAT?

27 A MARC. WHOEVER HE DECIDES TO SHARE IT WITH.

28 Q OKAY.

1 AND DO YOU RECALL A MEETING, HEARING
2 ABOUT A MEETING ON SEPTEMBER 3RD?

3 A YES, I DO.

4 Q AND DO YOU RECALL SEEING MR. STERN AFTER THAT
5 MEETING, AFTER YOU UNDERSTOOD HE HAD ATTENDED THE
6 MEETING THAT AFTERNOON WITH MR. GUNDLACH AND THE
7 OTHERS?

11:51AM

8 A YES, I DO.

9 Q WHAT WAS MR. STERN'S DEMEANOR AFTER THE
10 MEETING?

11:51AM

11 A HE LOOKED BEATEN DOWN. LIKE REALLY DEPRESSED.

12 Q WHAT, IF ANYTHING, DID MR. STERN ASK YOU TO DO
13 AFTER THE MEETING ON SEPTEMBER 3RD?

14 A I DON'T REMEMBER.

15 Q DO YOU RECALL, PRIOR TO THE MEETING OF
16 SEPTEMBER 3RD, HAD YOU BEEN ASKED BY MR. STERN TO LOOK
17 FOR M.B.S. FIXED INCOME MANAGERS?

11:51AM

18 A YES. IN JUNE?

19 Q WHAT HAPPENED IN JUNE?

20 A IN JUNE HE CAME TO ME AND SAID, PLEASE FIND
21 MORTGAGE-SPECIFIC MANAGERS THAT CAN COME IN AS A
22 REPLACEMENT IF SOMEBODY FROM OUR MORTGAGE TEAM WERE TO
23 LEAVE.

11:52AM

24 Q DID YOU DO THAT?

25 A YES, I DID.

11:52AM

26 Q WHAT DID YOU DO?

27 A I DID ANALYSIS ON THE MARKETPLACE. AND THAT
28 DAY KIND OF GAVE HIM A VERY QUICK ANALYSIS. SHARED IT

1 WITH HIM. AND THEN HE SAID, WELL, KEEP LOOKING.

2 AND THEN I DID A DEEPER DIVE, AND I
3 FOUND ADDITIONAL MANAGERS THE NEXT DAY.

4 Q WERE YOU LOOKING FOR FIRMS OR INDIVIDUAL
5 MANAGERS?

11:52AM

6 A THESE WERE INDIVIDUAL MANAGERS.

7 Q DID THERE COME A TIME WHEN YOU WERE ASKED TO
8 ASSIST IN LOOKING FOR FIRMS THAT COULD REPLACE A GROUP
9 OF PEOPLE?

10 A YES.

11:52AM

11 Q WHEN WAS THAT RELATIVE TO THE SEPTEMBER 3RD
12 MEETING?

13 A IT WAS AFTER THAT.

14 Q NOW, WAS MR. RIVELLE, TAD RIVELLE OF MET WEST,
15 ONE OF THE INDIVIDUAL MANAGERS YOU HAD IDENTIFIED IN
16 JUNE?

11:52AM

17 A YES, HE WAS.

18 Q TO YOUR KNOWLEDGE, HAD YOU OR ANYONE AT TCW
19 REACHED OUT FOR HIM IN JUNE OR JULY OR EARLY AUGUST?

20 A NO.

11:53AM

21 Q AND DID MR. RIVELLE OWN SOME SHARE OF HIS
22 THEN-CURRENT FIRM, MET WEST?

23 A YES. HE OWNED ABOUT 25 PERCENT.

24 Q DID THERE COME A TIME WHEN YOU TALKED TO
25 MR. STERN ABOUT TCW ACTUALLY ACQUIRING MET WEST?

11:53AM

26 A YES.

27 Q AND DO YOU RECALL HOW THAT CAME UP?

28 A I SENT HIM AN E-MAIL IN LATE AUGUST, AND

1 SAYING, YOU KNOW, I'M STILL THINKING ABOUT TAD RIVELLE
2 AS AN INDIVIDUAL MANAGER. I RECOGNIZE HE OWNS A
3 SIGNIFICANT PART OF MET WEST.

4 SO IT'S NOT -- IF WE WANTED TO BRING HIM
5 IN, IT WOULDN'T BE A SIMPLE HIRING DECISION. I WAS
6 TRYING TO COME UP WITH A CREATIVE WAY TO BRING HIM
7 OVER.

11:53AM

8 ONE OF THE SUGGESTIONS I HAD WAS, YOU
9 KNOW, ACQUIRE A MINORITY STAKE OR SOMETHING LIKE THAT.

10 THE FOCUS WAS ON TAD RIVELLE AND
11 BRINGING HIM IN.

11:53AM

12 Q NOW, ULTIMATELY, DID YOU ASSIST MR. STERN IN
13 PREPARING THE MEMORANDA FOR THE EXECUTIVE COMMITTEE AND
14 THE PEOPLE AT SOC-GEN ABOUT THE MET WEST TRANSACTION?

15 A YES, I DID.

11:54AM

16 Q WERE YOU THE PRINCIPAL DRAFTSMAN OF THOSE
17 MEMOS, OR THE MEMO, AS IT TURNED OUT?

18 A YES, I WAS.

19 Q WAS SAVING MONEY OR SAVING COSTS A -- THE
20 REASON THAT TCW WAS CONSIDERING THE MET WEST
21 TRANSACTION?

11:54AM

22 MR. BRIAN: FOUNDATION. YOUR HONOR.

23 THE COURT: SUSTAINED.

24 BY MR. MADISON:

25 Q WELL, IN THE WORK YOU DID ON THE MEMO, DID YOU
26 HAVE TO REACH AN UNDERSTANDING TO PREPARE FOR THE MEMO
27 OF WHAT THE RATIONALE FOR THIS MET WEST TRANSACTION
28 WAS?

11:54AM

1 A YES.

2 Q WHAT WAS YOUR UNDERSTANDING AS TO WHETHER IT
3 HAD ANY RELATION TO SOME DESIRE TO SAVE MONEY?

4 MR. BRIAN: OBJECTION. FOUNDATION.

5 THE COURT: SUSTAINED.

11:55AM

6 BY MR. MADISON:

7 Q WELL, IN THE MEMO THERE IS A -- THE MEMOS THAT
8 WENT TO PARIS, THERE ARE SOME REFERENCES TO THE
9 MET WEST TRANSACTION BECOMING STRATEGIC.

10 DO YOU RECALL THAT?

11:55AM

11 MR. BRIAN: OBJECTION. FOUNDATION.

12 CAN WE HAVE AN EXHIBIT, YOUR HONOR?

13 THE COURT: SUSTAINED. THE DOCUMENT'S IN
14 EVIDENCE. IF YOU'RE GOING TO ASK HIM SPECIFIC SOURCES
15 OF INFORMATION, YOU MAY DO SO.

11:55AM

16 MR. MADISON: VERY WELL. I WANT TO TRY TO
17 MOVE ALONG HERE.

18 I BELIEVE IT'S 493, YOUR HONOR, WHICH IS
19 IN EVIDENCE.

20 THE COURT: YOU CAN PROBABLY SEE IT ON THE
21 SCREEN EASIER. IT SAVES TIME.

11:55AM

22 THE WITNESS: THANK YOU, YOUR HONOR.

23 BY MR. MADISON:

24 Q OKAY. IF WE CAN JUST EXPAND THIS QUICKLY.

25 THIS IS DATED NOVEMBER 27, 2009 TO THE
26 FIVE INDIVIDUALS IN FRANCE.

11:56AM

27 AND IF WE GO TO THE SECOND PAGE, YOU'LL
28 SEE A DISCUSSION OF SOME OF EVENTS. AND THEN THERE'S A

1 SENTENCE, A LONG SENTENCE TOWARD THE BOTTOM:

2 AND THIS DEFENSIVE TRANSACTION
3 HAS BECOME STRATEGIC IN NATURE.

4 WHAT DID THE DEFENSIVE TRANSACTION REFER TO?

5 A THE DEFENSIVE WAS AFTER SEPTEMBER 3RD. WE
6 KNEW THERE WAS A RISK THE WHOLE TEAM CAN LEAVE AND AT
7 ANY TIME COME TO US AND SAY, HAND OVER THE BUSINESS.

11:56AM

8 THE DEFENSIVE, WE WANTED TO MAKE SURE WE
9 HAD A CONTINGENCY PLAN IN PLACE THAT COULD STEP IN AND
10 RUN THE BUSINESS IF JEFFREY WERE TO LEAVE.

11:56AM

11 Q AND -- WELL, THEN IT HAD BECOME STRATEGIC IN
12 NATURE.

13 DID THAT MEAN IT WAS NO LONGER
14 DEFENSIVE?

15 A NO, IT'S STILL WHAT MAINTAINED DEFENSIVE
16 CHARACTERISTICS, BUT DUE DILIGENCE WE LEARNED THIS TEAM
17 COULD BE STRATEGIC AS WELL.

11:57AM

18 Q DO YOU RECALL WHEN THIS MEMO WAS PREPARED? I
19 BELIEVE WE'VE SEEN PRIOR DRAFTS. BUT WAS THIS DECISION
20 BEING IMPOSED UPON TCW BY PARIS, BY SOC-GEN?

11:57AM

21 MR. BRIAN: OBJECTION. FOUNDATION.

22 THE COURT: SUSTAINED.

23 BY MR. MADISON:

24 Q WELL, IT WAS YOUR UNDERSTANDING THAT WHEN YOU
25 WERE PREPARING THIS MEMO WAS THAT SOC-GEN HAD SAID WE
26 WANT TO DO THIS, AND NOW YOU WERE SUPPORTING THAT WITH
27 A MEMO OR SOMETHING OTHER THAN THAT?

11:57AM

28 MR. BRIAN: OBJECTION. FOUNDATION.

1 THE COURT: SUSTAINED.

2 BY MR. MADISON:

3 Q WHAT WERE YOU TOLD ABOUT THE -- WHERE THIS
4 TRANSACTION ORIGINATED?

5 A WELL, AS FAR AS I UNDERSTOOD, IT WAS FROM
6 TCW --

11:57AM

7 MR. BRIAN: MOVE TO STRIKE. NONRESPONSIVE.

8 THE COURT: SUSTAINED. I'LL STRIKE THE
9 RESPONSE.

10 BY MR. MADISON:

11:58AM

11 Q WHAT WERE YOU TOLD ABOUT WHERE THIS
12 TRANSACTION ORIGINATED?

13 MR. BRIAN: OBJECTION. HEARSAY.

14 THE COURT: YOU CAN APPROACH IT IN A DIFFERENT
15 MANNER.

11:58AM

16 BY MR. MADISON:

17 Q IN OTHER WORDS, WHEN YOU'RE WORKING ON THIS
18 TRANSACTION, AS FAR AS YOU KNOW, DID IT START IN L.A.
19 AT TCW, OR DID IT START IN PARIS?

20 MR. BRIAN: OBJECTION. FOUNDATION, YOUR
21 HONOR.

11:58AM

22 THE COURT: WELL, I'LL SUSTAIN IT.

23 YOU CAN ASK HIM WHO -- DID YOU PREPARE
24 THIS MEMO?

25 THE WITNESS: YES, I DID.

11:58AM

26 THE COURT: OKAY. THEN GO FROM THERE.

27 MR. MADISON: LIST THAT, BARBARA.

28 Q WHEN YOU PREPARED THE MEMO, WHAT WAS YOUR

1 UNDERSTANDING ABOUT WHERE THE TRANSACTION HAD
2 ORIGINATED?

3 MR. BRIAN: OBJECTION. FORM. VAGUE.

4 THE COURT: I'LL ALLOW HIM.

5 HE'S GOT TO HAVE DIRECTION.

11:58AM

6 MR. MADISON: OKAY.

7 THE COURT: YOU MIGHT ASK WHERE HE GOT IT.

8 BY MR. MADISON:

9 Q WHERE DID YOUR DIRECTION COME FROM?

10 MR. STERN?

11:58AM

11 THE COURT: ASK HIM THE QUESTION; DON'T GIVE
12 HIM THE ANSWER.

13 LADIES AND GENTLEMEN, THERE MAY BE LIGHT
14 MOMENTS. THIS IS SERIOUS STUFF. DON'T MISINTERPRET
15 ANY LIGHT MOMENTS.

11:59AM

16 GO AHEAD, MR. MADISON.

17 BY MR. MADISON:

18 Q TO YOUR KNOWLEDGE, HAD SOC-GEN REQUESTED THAT
19 TCW PURSUE SOME TRANSACTION? DO YOU HAVE ANY KNOWLEDGE
20 ABOUT THAT?

11:59AM

21 A NO.

22 Q ALL RIGHT.

23 WHAT WAS YOUR UNDERSTANDING WHEN YOU
24 WERE ASKED TO PREPARE THIS MEMO ASKING SOC-GEN FOR
25 APPROVAL FOR A TRANSACTION WHOSE IDEA IT WAS?

11:59AM

26 A MARC STERN.

27 Q IT WAS COMING FROM TCW?

28 A YES.

1 Q IT WAS BASED ON WHAT?

2 MR. BRIAN: OBJECTION. NO FOUNDATION.

3 THE COURT: OVERRULED.

4 WELL -- NOT THE TRANSACTION.

5 BUT WHAT YOU BASE YOUR COMMENTS ON. CAN
6 YOU ANSWER THAT?

11:59AM

7 THE WITNESS: I DON'T UNDERSTAND THE QUESTION.

8 THE COURT: OKAY. LET MR. MADISON ASK YOU
9 ANOTHER QUESTION.

10 BY MR. MADISON:

11:59AM

11 Q WELL, DID YOU UNDERSTAND THERE TO BE AN ASPECT
12 OF THIS THAT THE HEADQUARTERS AT SOC-GEN NEEDED TO
13 APPROVE THE TRANSACTION?

14 A YES, THEY HAVE TO APPROVE THE TRANSACTION,
15 YES.

12:00PM

16 Q SO WHEN YOU WERE PREPARING THE MEMORANDUM,
17 WORKING WITH MR. STERN, DID YOU UNDERSTAND THAT THIS
18 WAS A DOCUMENT THAT WAS ADVOCATING APPROVAL FOR THE
19 TRANSACTION?

20 A THAT'S CORRECT.

12:00PM

21 Q IN FACT, DO YOU RECALL MR. STERN ACTUALLY
22 TALKING ABOUT THAT WITH YOU AND WITH MR. BRADFORD
23 DURING THE TIME?

24 A I -- I DON'T REMEMBER.

25 Q LET'S LOOK AT EXHIBIT 5344, WHICH I'M TOLD IS
26 IN EVIDENCE.

12:00PM

27 THIS IS FROM MR. STERN TO YOU IN EARLY
28 OCTOBER.

1 HE SAYS:

2 MICHAEL, DO YOU THINK SENDING
3 THIS REQUEST TO PARIS, THIS REPORT,
4 RATHER, TO PARIS, HELPS US? ON THE
5 ONE HAND, IT SHOWS WE'RE EXPLORING
6 ALL ALTERNATIVES AND ANGEL IS
7 CLEARLY THE BEST. ON THE OTHER
8 HAND, IT EXPOSES SOME OF ANGEL'S
9 WEAKNESSES. LET ME KNOW WHAT YOU
10 THINK.

12:01PM

12:01PM

11 DO YOU RECALL RECEIVING THIS ANALYSIS FROM
12 MR. BRADFORD FROM MR. STERN --

13 A YES, BUT THIS WASN'T THAT MEMO --

14 Q I UNDERSTAND.

15 MY QUESTION NOW, SIR --

12:01PM

16 A OH.

17 Q -- WHAT WAS MR. STERN TALKING ABOUT, BY YOUR
18 UNDERSTANDING, WHEN HE SAID: DOES THIS HELP US?

19 MR. BRIAN: OBJECTION. FORM. VAGUE.

20 THE COURT: OVERRULED.

12:01PM

21 YOUR UNDERSTANDING.

22 THE WITNESS: SURE.

23 SO I UNDERSTOOD THAT WOULD HE HAVE
24 PREPARED AN ANALYSIS OF MET WEST AND WITH POSITIVES AND
25 NEGATIVES ABOUT IT.

12:01PM

26 MARC WAS ASKING ME IF I THOUGHT IT WAS A
27 GOOD IDEA TO SEND THAT ANALYSIS ON TO PARIS.

28 ///

1 BY MR. MADISON:

2 Q AND HELPING WHAT? HELPING TO DO WHAT IN
3 PARIS?

4 A HELPING TO LET THEM GET A BETTER UNDERSTANDING
5 OF MET WEST AS WE WERE MOVING THIS TRANSACTION ALONG.

12:01PM

6 MR. MADISON: MAY I JUST HAVE ONE MOMENT, YOUR
7 HONOR?

8 (PAUSE) +

9

10 BY MR. MADISON:

12:02PM

11 Q DO YOU RECALL, IN OCTOBER, DISCUSSING THE FEE
12 SHARING WITH MR. GUNDLACH, WITH MR. VILLA, THE CFO?

13 A YES.

14 Q IF YOU'D LOOK AT EXHIBIT 6009. IT'S JUST AN
15 E-MAIL THAT MAY REFRESH YOUR RECOLLECTION ABOUT THAT.

12:02PM

16 A I SEE THAT.

17 Q WHAT WERE YOU ASKING MR. VILLA?

18 A I WAS ASKING HIM TO KNOW WHEN THE NEXT
19 QUARTERLY FEE SHARING FOR THE THIRD QUARTER WAS BEING
20 PAID TO JEFFREY.

12:03PM

21 Q WHY DID YOU WANT TO KNOW THAT?

22 A BECAUSE MARC HAD ASKED ME TO FIND OUT.

23 Q DID YOU GET AN ANSWER?

24 A YES, I DID.

25 Q WHEN WAS IT?

12:03PM

26 A IT WAS NOVEMBER 30TH.

27 Q WAS THAT QUARTERLY FEE SHARING FOR THE THIRD
28 QUARTER PAID TO MR. GUNDLACH?

1 A TO THE BEST OF MY UNDERSTANDING, YES.

2 Q YOU WERE NEVER TOLD IT SHOULDN'T BE?

3 A NO.

4 MR. MADISON: NOTHING FURTHER.

5 THE COURT: ALL RIGHT. CROSS-EXAMINATION. 12:03PM

6 MR. BRIAN: WE NEED A FEW MINUTES TO PASS OUT
7 THE BINDERS, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 (PAUSE) +

10

12:04PM

11

CROSS-EXAMINATION +

12

BY MR. BRIAN:

13

Q I THINK IT'S GOOD AFTERNOON, MR. CONN.

14

A YES. GOOD AFTERNOON, MR. BRIAN.

15

Q WE'VE NEVER MET BEFORE, HAVE WE, SIR? 12:04PM

16

A NO, WE HAVE NOT.

17

Q I DID NOT TAKE YOUR DEPOSITION, DID I, SIR?

18

A NO, YOU DID NOT.

19

Q BUT YOU DID HAVE YOUR DEPOSITION TAKEN UNDER

20

OATH IN THIS MATTER, DID YOU NOT, SIR? 12:04PM

21

A YES, I DID.

22

MR. BRIAN: YOUR HONOR, I'D LIKE PERMISSION TO

23

PLAY THE DEPOSITION DESIGNATIONS IN THIS CASE.

24

THE COURT: ANY OBJECTION?

25

WE'VE GONE THROUGH THIS. 12:04PM

26

MR. MADISON: WE DO OBJECT. IF HE HAS

27

QUESTIONS OR IMPEACHMENT. BUT NOW'S NOT THE TIME TO

28

PLAY WHOLESALE LOTS OF TESTIMONY.

1 MR. BRIAN: I'M HAPPY TO APPROACH.

2 THE COURT: THIS IS THE SAME PROCESS WE'VE
3 APPROACHED IN THE PAST.

4 MR. BRIAN: THIS HAS BEEN RUN THROUGH THE
5 PROCESS.

12:05PM

6 THE COURT: YOU MAY PROCEED.

7 MR. BRIAN: MAY I BE SEATED, YOUR HONOR, IT'S
8 ABOUT 20 MINUTES.

9 THE COURT: YES.

12:05PM

10

11 (VIDEO DEPOSITION PLAYED OF MICHAEL CONN.) +

12

13 MR. BRIAN: DID YOU WANT TO TAKE A BREAK NOW?

14 THE COURT: I'M SORRY. WE'RE RUNNING BY THE
15 BREAKS ON THESE. I'M WATCHING AND NOT PAYING
16 ATTENTION.

12:17PM

17 WE'LL TAKE 20 MINUTES, LADIES AND
18 GENTLEMEN, AND WE'LL COME BACK.

19 YOU MAY STEP DOWN, MR. CONN.

20 THE WITNESS: THANK YOU, YOUR HONOR.

12:18PM

21 (PAUSE) +

22

23 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

24

25 THE COURT: WE'RE OUT OF THE PRESENCE OF THE
26 JURY.

12:18PM

27 ANY MATTERS ANYBODY WANTS TO TAKE UP?

28 MR. MADISON: ONE OR TWO, YOUR HONOR.

1 ON THIS VIDEO, WE'RE NOT THERE YET, BUT
2 LOOKING AT MR. BRIAN'S CLIP, IT LOOKS LIKE THEY'RE NOT
3 GOING TO PLAY THE ENTIRE ANSWER THAT THE WITNESS GAVE.

4 MR. BRIAN: WHAT ARE YOU TALKING ABOUT?

5 THE COURT: WAS IT DESIGNATED? 12:18PM

6 MR. BRIAN: WE'RE PLAYING EVERYTHING
7 DESIGNATED, EXCEPT FOR THE TWO SUBJECT MATTERS
8 UNRELATED TO, WHICH WE TOOK OUT ON SUNDAY, PER YOUR
9 AGREEMENT.

10 MR. MADISON: THE DESIGNATION SAYS THERE'S AN
11 ANSWER THAT SAYS AT 55, 19 IT'S NOT EVEN A COMPLETE
12 SENTENCE. THAT SHOULD BE PLAYED THROUGH 56, 1 -- THE
13 ANSWER GOES FROM 55, 19, OVER TO 56, LINE 1. 12:18PM

14 THE COURT: I'LL GO LOOK AT MY BOOK.

15 WAS THIS A COUNTERDESIGNATION BY TCW TO
16 A DESIGNATION BY DEFENDANT? 12:19PM

17 MR. MADISON: I DON'T KNOW, YOUR HONOR.

18 MR. BRIAN: THERE WAS AN OBJECTION WHICH WAS
19 SUSTAINED, SO WE TOOK IT OUT. THAT'S WHAT YOU DO WHEN
20 AN OBJECTION IS SUSTAINED. 12:19PM

21 THE COURT: I DON'T KNOW. I'LL GO BACK AND
22 LOOK AT MY NOTES. YOU'RE SAYING 56, 1 SHOULD CONTINUE
23 OR -- 55, 19 SHOULD CONTINUE TO 56, 1?

24 MR. MADISON: YES.

25 THE COURT: ALL I CAN GO BY IS WHAT YOU GIVE
26 ME AND WHAT I RECALL OTHER THAN -- 12:19PM

27 MR. MADISON: ALL I'M SAYING --

28 THE COURT: I'LL LOOK AT IT. I WON'T CHANGE

1 MY RULING. IF IT WASN'T DESIGNATED. I WON'T WORRY
2 ABOUT IT.

3 AND IF IT WAS DESIGNATED AND I DIDN'T
4 RULE ON IT AND THEY INADVERTENTLY, FOR SOME REASON,
5 LEFT IT OUT, I'LL HAVE THEM PLAY IT.

12:19PM

6 MR. BRIAN: I'LL LOOK AT IT.

7 THE COURT: I'LL GO LOOK.

8 WHAT ELSE?

9 MR. MADISON: WE WOULD ASK THAT THE ENTIRE
10 ANSWER BE READ.

12:20PM

11 MR. BRIAN: WELL, I --

12 THE COURT: IF IT WAS DESIGNATED AND THERE
13 WASN'T AN OBJECTION AND I DIDN'T RULE ON IT, IT SHOULD
14 BE READ.

15 IF IT WASN'T DESIGNATED, I WON'T BOTHER
16 WITH IT NOW.

12:20PM

17 I'VE GOT YOUR NOTEBOOK. THANKS.

18 MR. MADISON: OKAY.

19

20 (RECESS.)

12:20PM

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 322 HON. CARL J. WEST, JUDGE

TRUST COMPANY OF THE WEST,)
)
PLAINTIFFS,)
)
VS.) CASE NO. BC429385
)
JEFFREY GUNDLACH, ET AL.,)
)
DEFENDANTS.)
-----)

REPORTERS' **DAILY** TRANSCRIPT OF PROCEEDINGS
TUESDAY, AUGUST 30, 2011

APPEARANCES:

FOR TCW: QUINN, EMANUEL, URQUHART,
OLIVER & HEDGES
BY: **JOHN B. QUINN**
STEVEN G. MADISON
KARA MORDEN
JOSEPH SARLES
865 SOUTH FIGUEROA STREET
10TH FLOOR
LOS ANGELES, CALIFORNIA 90017
(213) 443-3000

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

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