

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

08:59AM

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

13  
14 (ALL COUNSEL RESPONDED "GOOD MORNING, YOUR HONOR.")

08:30AM

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

18 I UNDERSTAND THERE'S A MATTER COUNSEL  
19 WANTS TO TAKE UP.

20 MR. QUINN: YOUR HONOR, LAST THURSDAY, WHEN I  
21 WAS EXAMINING MR. SANTA ANA, AN OBJECTION WAS SUSTAINED  
22 WHEN I ASKED HIM ABOUT STATEMENTS HE MADE AT HIS EXIT  
23 INTERVIEW, OR WHATEVER YOU WANT TO CALL IT, ON  
24 DECEMBER 4.

08:30AM

25 I KNOW THE COURT HAS -- THERE SEEMS TO  
26 HAVE BEEN AN EVOLUTION IN THE APPROACH TO THOSE  
27 INTERVIEWS. INITIALLY, IT WAS BECAUSE THE  
28 INVESTIGATORS CAN'T TESTIFY BECAUSE OF THE NOTES, THEN

08:30AM

1 EMPLOYEES PRESENT CAN'T TESTIFY ABOUT WHAT TRANSPIRED.  
2 AND IT SOUNDS LIKE -- I'M NOT SURE I UNDERSTAND THE  
3 REASON FOR MY BRINGING THIS UP. THE RULING IS THAT THE  
4 DEFENDANTS CAN'T EVEN TESTIFY.

5 NOW, THIS -- MR. SANTA ANA WAS DEPOSED 08:30AM  
6 AND ASKED ABOUT THIS, AND ADMITTED THAT HE WAS ASKED  
7 ABOUT ABLE GRAPE. HE DENIED HAVING ANY KNOWLEDGE OF  
8 ABLE GRAPE; DENIED HAVING ANY KNOWLEDGE ABOUT  
9 MS. VANEVERY SHOPPING FOR SPACE; DENIED DOWNLOADING TCW  
10 INFORMATION; ADMITTED THAT HE LIED TO TCW ON ALL THESE 08:31AM  
11 THINGS AT THAT TIME.

12 THE COURT: WAIT A MINUTE. AT HIS  
13 DEPOSITION --

14 MR. QUINN: AT HIS DEPOSITION --

15 THE COURT: -- HE ADMITTED AT THE EXIT 08:31AM  
16 INTERVIEW HE WAS NOT TRUTHFUL?

17 MR. QUINN: CORRECT.

18 THE COURT: OKAY.

19 MR. QUINN: IT SEEMS TO ME THAT I SHOULD BE  
20 ABLE TO BRING THAT OUT. I'VE ALREADY GOT THE 08:31AM  
21 TESTIMONY.

22 THE COURT: WELL, MY CONCERN WITH THIS -- AND  
23 LET ME HEAR FROM MR. BRIAN.

24 MR. BRIAN: YOUR HONOR, AS I EXPERIENCED SOME  
25 OF THE COURT'S REACTION THE OTHER DAY, I THINK THE 08:31AM  
26 PROBLEM, WHICH WE SAW THE OTHER DAY IS, AS SOON AS WE  
27 GO DOWN THAT ROAD, IT DOES GET INTO THE OVERALL  
28 ATMOSPHERE, THE OVERALL CONDUCT. AND THE COURT MADE

1 CLEAR LAST WEEK THAT YOU DIDN'T WANT TO GO THERE.

2 AND BOTH OF US HAVE HAD SLIGHTLY  
3 DIFFERENT POSITIONS, AND I THINK FRANKLY SLIGHTLY  
4 EVOLVING POSITIONS, ON BOTH SIDES OF THIS ISSUE, OVER  
5 THE LAST THREE MONTHS.

08:32AM

6 THE COURT HAS NOW RULED, IF YOUR HONOR  
7 ALLOWS IT, THEN WE'RE GOING TO HAVE TO GO INTO THE  
8 CONDUCT OF ALL THE PARTICIPANTS, BECAUSE IT DID EFFECT  
9 THE STATE OF MIND AND THE BEHAVIOR OF THE PEOPLE, BOTH  
10 AT THE DEPOSITION AND IN THE CASE OF MS. VANEVERY AND  
11 MR. GUNDLACH, AT THEIR DEPOSITIONS.

08:32AM

12 SO IT'S NOT POSSIBLE TO SLICE AND DICE  
13 IT THE WAY MR. QUINN IS SUGGESTING.

14 MR. QUINN: WELL, WE ASKED HIM, WHY DID YOU  
15 LIE. AND HE MADE NO CLAIM THAT HE WAS INTIMIDATED,  
16 MADE NO CLAIM THAT THERE WAS ANY MISTREATMENT. HE SAID  
17 HE WAS SURPRISED, HE WAS NERVOUS, HE DID NOT EXPECT THE  
18 INTERVIEW TO HAPPEN.

08:32AM

19 THE COURT: LET ME TELL YOU WHAT MY CONCERN ON  
20 THIS IS. AND I ACTUALLY THOUGHT ABOUT THIS AT RATHER  
21 ODD TIMES, WHEN THESE THINGS COME UP, BUT OVER THE  
22 WEEKEND.

08:32AM

23 PART OF THE ISSUE, AND MY CONCERN WAS,  
24 WHEN MR. BRIAN STARTED TO OPEN THE DOOR ON MS., I THINK  
25 IT WAS MS. VANEVERY.

08:33AM

26 MR. BRIAN: WE THINK THEY OPENED THE DOOR, BUT  
27 I'LL ACCEPT, YOUR HONOR'S --

28 THE COURT: WELL, IT SEEMED TO ME THAT WHEN WE

1 GO DOWN THAT SLIPPERY SLOPE, WE GET INTO A MORASS. AND  
2 WHETHER THE PRESENCE OF WITNESSES, THE PRESENCE OF THE  
3 INVESTIGATOR, THE CONDUCT OF TRIAL COUNSEL IN THOSE  
4 PROCEEDINGS IN THOSE EXIT INTERVIEWS IS GOING TO COME  
5 IN, IT SEEMS TO ME.

08:33AM

6 AND MY REAL CONCERN IS PROBABLY, FOR  
7 WANT OF A BETTER CONCERN, UNDER 352, THAT WE ARE GOING  
8 TO GET INTO AN AREA THAT IS GOING TO SIGNIFICANTLY  
9 CONFUSE THE ISSUES AND TAKE A SUBSTANTIAL AMOUNT OF  
10 TIME ON BOTH SIDES; BECAUSE IF YOU COME IN WITH  
11 EVERYTHING THAT WAS SAID BY MR. SANTA ANA AT THE EXIT  
12 INTERVIEW, THE DEFENDANTS ARE GOING TO COME IN WITH ALL  
13 THE REASONS THAT THEY FEEL JUSTIFIED, OR EXPLAIN THAT  
14 CONDUCT; AND I DON'T THINK WE OUGHT TO GO DOWN THAT  
15 ROAD.

08:33AM

08:34AM

16 WE HAVE, GENERALLY, OR BASICALLY, MY  
17 RULES WERE, WE'RE GOING TO EXCLUDE THE CONDUCT AT THOSE  
18 EXIT INTERVIEWS. AND WHILE THERE MAY BE SOME POTENTIAL  
19 RELEVANCE, AND SOMETHING THAT COULD BE DRAWN FROM IT,  
20 IN TERMS OF WITNESS' CREDIBILITY OR WITNESS'  
21 INTIMIDATION ON EITHER OR BOTH SIDES, I THINK IT'S A  
22 TANGENT THAT WE SHOULDN'T BE GOING DOWN. AND I'D LIKE  
23 TO STAY AWAY FROM IT COMPLETELY.

08:34AM

24 WE ARE MAKING GOOD PROGRESS, AND WE'RE  
25 MOVING FORWARD IN THIS CASE. THE REAL ISSUES ARE THE  
26 BREACH OF FIDUCIARY DUTY CLAIMS, THE TRADE SECRET  
27 CLAIMS, AND ULTIMATELY THE COMPENSATION CLAIMS. AND  
28 THIS SEEMS TO ME TO BE A SIDELIGHT THAT -- A SIDE OF IT

08:34AM

1 THAT IF WE GO DOWN THAT ROAD, IT'S GOING TO TAKE A  
2 SIGNIFICANT AMOUNT OF TIME THAT REALLY ISN'T THAT  
3 USEFUL.

4 NOW, MR. QUINN, DO YOU WANT TO BE HEARD  
5 ON THAT?

08:35AM

6 MR. QUINN: WELL, I UNDERSTAND WHAT THE COURT  
7 IS SAYING. WITH RESPECT TO MR. SANTA ANA, THERE IS NO  
8 CLAIM OF ANY TYPE THAT HE WAS SUBJECT TO ANY UNDUE  
9 PRESSURE, OR ANY SUGGESTION OF INTIMIDATION, COERCION,  
10 MISCONDUCT. HE SAYS IT WAS ASKED, WHY DID YOU -- HE  
11 ADMITS HE DIDN'T TELL THE TRUTH ABOUT ANY OF THESE  
12 THINGS HE WAS ASKED. AND HE SAID HE WAS SURPRISED, HE  
13 WAS NERVOUS, HE DID NOT EXPECT THE INTERVIEW TO HAPPEN.  
14 THIS IS PAGE 411 OF HIS DEPOSITION.

08:35AM

15 I DON'T THINK THIS IS A FROLICKING  
16 DETOUR, AND I THINK WE SHOULD BE PERMITTED TO BRING OUT  
17 THAT WHEN HE WAS CONFRONTED ABOUT THIS, HE WANTED TO  
18 HIDE THESE THINGS, THAT THIS WAS NOT, OH, WE WERE DOING  
19 THIS IN PREPARATION FOR NEGOTIATED SEPARATION, OR WE  
20 WERE DOING THIS TO BUY THE COMPANY. HIS REACTION, WHEN  
21 CONFRONTED WITH IT --

08:35AM

22 THE COURT: AND WHO HE WAS CONFRONTED WITH  
23 THESE THINGS BY?

24 MR. SURPRENANT: MR. TABACK.

25 MR. QUINN: ONE OF OUR PARTNERS, CHRIS TABACK,  
26 AND THERE WAS DAVE DEVITO, THE CHIEF ADMINISTRATIVE  
27 OFFICER, WHO WAS PRESENT.

08:36AM

28 MR. BRIAN: YOUR HONOR, THE PROBLEM IS THAT

1 YOU CAN'T GET INTO IT WITHOUT --

2 MR. QUINN: AND DEVITO WAS ALSO DEPOSED AND  
3 ASKED WHAT HAPPENED IN THIS INTERVIEW.

4 THE COURT: WELL, I COULD ALWAYS SAY, YOU  
5 COULD TAKE IT ON A CASE-BY-CASE BASIS, BUT THAT DOESN'T  
6 SEEM VERY EQUITABLE. AND I'M CONCERNED ABOUT THAT.

7 MR. BRIAN, YOU WANT TO BE HEARD?

8 MR. BRIAN: I DON'T WANT TO REPEAT MYSELF,  
9 WHAT I SAID.

10 ONE, WE HAVE THE ISSUE WE TALKED ABOUT  
11 BEFORE, WHICH IS THE NON PRODUCTION ORIGINALLY OF  
12 INTERVIEW NOTES.

13 BUT MORE IMPORTANTLY, YOUR HONOR, I  
14 THINK IT'S PRETTY CLEAR WHAT THE ISSUES ARE IN THIS  
15 CASE. NOBODY ON THIS SIDE OF THE COURTROOM IS DENYING  
16 THAT THERE WAS DOWNLOADING. THE ISSUE IS GOING TO BE,  
17 WAS IT USED, AND THEREFORE, WERE THEY HARMED? THERE'S  
18 GOING TO BE ISSUES OF WHETHER THE CONDUCT AROSE TO A  
19 BREACH OF FIDUCIARY DUTY OR NOT. THERE'S GOING TO BE  
20 ISSUES OF WHETHER OR NOT ALL THIS WAS A PRETEXT TO  
21 AVOID PAYING MR. GUNDLACH THE HUNDREDS OF MILLIONS OF  
22 DOLLARS THAT THEY OWED HIM. AND I THINK THOSE ISSUES  
23 ARE CRYSTALIZING FOR THE JURY.

24 AND I THINK, AS YOUR HONOR POINTED OUT,  
25 THIS WILL BE A TANGENT THAT WILL TAKE US AWAY FROM THE  
26 CORE ISSUES IN THE CASE, AND WILL REQUIRE US TO PUT ON  
27 EVIDENCE OF A TEAM OF LAWYERS AND INVESTIGATORS  
28 SWOOPING ONTO THE TRADING FLOOR AND GRABBING PEOPLE,

1 AND ESCORTING THEM INTO ESSENTIALLY HOLDING CELLS,  
2 WHERE THEY WERE INTERROGATED. WE WILL HAVE TO DO THAT,  
3 AND THE JURY WILL DRAW THEIR CONCLUSIONS.

4 AND I THINK YOUR HONOR HAS MADE CLEAR  
5 YOU DON'T WANT TO GO THERE. AND THAT IS OUR -- THAT IS  
6 WHAT WE PREFER, AS WELL. 08:38AM

7 THE COURT: YES, MR. QUINN?

8 MR. QUINN: YOUR HONOR, AMONG THE ISSUES ARE  
9 WHETHER THIS WAS DONE FOR AN INNOCENT REASON, WHETHER  
10 IT WAS DONE TO PREPARE FOR A NEGOTIATED DEPARTURE OR A 08:38AM  
11 PURCHASE. AND I THINK THE JURY IS ENTITLED TO HEAR,  
12 WHEN CONFRONTED WITH THIS, THIS MAN DID NOT MAKE ANY  
13 SUCH CLAIM --

14 THE COURT: MR. QUINN, I'M NOT GOING TO ALLOW  
15 IT. AND THERE ARE A COUPLE OF REASONS. 08:38AM

16 THE REASONS I'VE EXPLAINED UNDER 352,  
17 THE CLAIM OF PRIVILEGE WITH RESPECT TO THE INVESTIGATOR  
18 NOTES AND THE NOTES OF THOSE INTERVIEWS THAT WERE  
19 CONDUCTED, AND THE WAIVER OF THAT PRIVILEGE AT THE  
20 ELEVENTH HOUR, AFTER ALL THE DEPOSITIONS WERE TAKEN. I 08:38AM  
21 THINK THAT THAT, IN SOME RESPECTS, PRECLUDED COUNSEL  
22 FROM PREPARING THEIR WITNESSES FOR THE DEPOSITIONS.

23 FOR WHATEVER NUMBER OF REASONS, WE'RE  
24 NOT GOING DOWN THAT ROAD, SO I'M NOT GOING TO ALLOW IT.

25 MR. QUINN: I MEAN, THE TRUTH IS THE TRUTH,  
26 YOUR HONOR. 08:39AM

27 THE COURT: I UNDERSTAND.

28 MR. QUINN: THEY DIDN'T HAVE ANY RIGHT TO HAVE

1 OUR NOTES. WE NEVER HAD TO WAIVE THOSE. WE COULD HAVE  
2 SAT ON THOSE NOTES FOREVER. HIS DEPOSITION WAS TAKEN A  
3 YEAR AND A HALF BEFORE.

4 THE COURT: I'M NOT GOING TO ALLOW IT. THANK  
5 YOU.

08:39AM

6

7 (AT 8:40 A.M. THE JURY ENTERED  
8 THE COURTROOM, AND THE FOLLOWING  
9 PROCEEDINGS WERE HELD:)

08:42AM

10

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

13 PEOPLE IN COURTROOM: MORNING, YOUR HONOR.

14 THE COURT: IN THE TCW VERSUS GUNDLACH MATTER,  
15 ALL MEMBERS OF OUR JURY ARE PRESENT, AS ARE ALL  
16 COUNSEL.

08:42AM

17 I BELIEVE WE'RE GOING TO CONTINUE WITH  
18 THE EXAMINATION OF MR. SANTA ANA; IS THAT CORRECT?

19 MR. HELM: YES, YOUR HONOR.

20 THE COURT: OKAY.

08:42AM

21 GOOD MORNING, MR. SANTA ANA.

22 THE WITNESS: GOOD MORNING.

23 THE COURT: PLEASE RECALL THAT YOU HAVE BEEN  
24 SWORN IN THIS MATTER. YOU ARE STILL UNDER OATH.

25 HAVE A SEAT.

08:42AM

26 MR. HELM, YOU MAY PROCEED.

27 //

28 //



1 CRIS SANTA ANA,  
2 THE WITNESS ON THE STAND AT THE TIME OF THE EVENING  
3 RECESS, HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND  
4 AND TESTIFIED FURTHER AS FOLLOWS:  
5  
6

7 CROSS-EXAMINATION (RESUMED)

8 BY MR. HELM:

9 Q. GOOD MORNING, MR. SANTA ANA.

10 A. GOOD MORNING.

08:43AM

11 Q. NOW, DID YOUR EMPLOYMENT STATUS CHANGE ON  
12 DECEMBER THE 4TH, 2009?

13 A. YES, IT DID.

14 Q. AND HOW DID IT CHANGE?

15 A. I WAS INFORMED THAT I WAS BEING PUT ON  
16 ADMINISTRATIVE LEAVE.

08:43AM

17 Q. AND AFTER YOU WERE PUT ON ADMINISTRATIVE  
18 LEAVE, DID YOU LEAVE THE BUILDING BY YOURSELF?

19 A. I DID NOT.

20 Q. WHO WAS WITH YOU WHEN YOU WERE LEAVING?

08:43AM

21 A. I WAS ESCORTED OUT OF THE BUILDING BY DAVE  
22 DEVITO.

23 Q. AND BEFORE YOU WERE ESCORTED OUT OF THE  
24 BUILDING, DID YOU RETURN TO YOUR DESK?

25 A. I DID.

08:43AM

26 Q. AND WHY DID YOU RETURN TO YOUR DESK?

27 A. I WAS ALLOWED TO GATHER A FEW PERSONAL  
28 BELONGINGS.

1 Q. AND DID YOU GATHER ANY BELONGINGS AT THAT  
2 TIME?

3 A. I DID.

4 Q. WHAT DID YOU TAKE?

5 A. I TOOK A BAG THAT HAD MY PERSONAL LAPTOP IN  
6 IT.

08:43AM

7 Q. NOW, DID YOU LOOK FOR THE HARD DRIVE THAT YOU  
8 HAD COPIED INFORMATION ONTO AT THE TIME THAT YOU  
9 RETURNED TO YOUR DESK TO COLLECT SOME THINGS?

10 A. I DID.

08:44AM

11 Q. WHY WERE YOU LOOKING FOR THE HARD DRIVE?

12 A. THERE WAS -- WELL, THE REASON WHY I WAS BEING  
13 ESCORTED OUT OF THE BUILDING WAS BECAUSE OF THE  
14 DOWNLOADING, AND WHATNOT, AND I KNEW THE HARD DRIVE HAD  
15 THE INFORMATION.

08:44AM

16 Q. AND WHEN YOU LOOKED FOR THE HARD DRIVE, WAS IT  
17 AT YOUR DESK AT THAT TIME?

18 A. I DID NOT SEE IT.

19 Q. WHERE DID YOU USUALLY KEEP THE HARD DRIVE?

20 A. I USUALLY KEPT IT RIGHT ON TOP OF THE DESK, OR  
21 UNDERNEATH, ON THE COMPUTER.

08:44AM

22 Q. DID YOU LOOK ON TOP OF YOUR DESK AT THAT TIME?

23 A. I DID.

24 Q. DID YOU LOOK ON TOP OF YOUR COMPUTER, UNDER  
25 THE DESK, AT THAT TIME?

08:44AM

26 A. I DID.

27 Q. AND DID YOU SEE THE HARD DRIVE?

28 A. I DID NOT.

1 Q. NOW, AT THE TIME YOU TOOK YOUR BAG, DID YOU  
2 KNOW WHETHER THE HARD DRIVE WAS IN THE BAG THAT YOU  
3 WERE TAKING?

4 A. I WASN'T SURE. I KIND OF GLANCED WHEN I  
5 PICKED UP MY BAG, BUT I DIDN'T SEE ANYTHING.

08:44AM

6 Q. DID YOU LATER LOOK INTO THE BAG?

7 A. I DID.

8 Q. WHEN DID YOU LOOK IN THE BAG?

9 A. WHEN I WENT TO MY CAR, I OPENED IT UP AND  
10 LOOKED IN, AND I NOTICED IT WASN'T IN THERE.

08:45AM

11 Q. AND WHAT WAS YOUR REACTION WHEN YOU NOTICED  
12 THAT THE HARD DRIVE WAS NOT IN YOUR BAG?

13 A. I WAS A LITTLE PANICKED. I WAS A LITTLE  
14 NERVOUS. OBVIOUSLY, I ASSUMED THAT TCW HAD IT.

15 Q. WHY IT IS THAT YOU WANTED THE HARD DRIVE AT  
16 THAT TIME?

08:45AM

17 A. IT HAD THE INFORMATION I KNEW THEY WERE ASKING  
18 ABOUT AND LOOKING FOR.

19 Q. AND WHY DID YOU WANT TO HAVE IT, GIVEN THAT IT  
20 HAD THAT INFORMATION?

08:45AM

21 A. I FELT LIKE IT WOULD GIVE ME SOME CONTROL OF  
22 THE SITUATION. HAVING CONTROL OF THE HARD DRIVE WOULD  
23 BE -- I THOUGHT WOULD BRING ME SOME LEVEL OF COMFORT.

24 Q. TO HAVE THE HARD DRIVE?

25 A. TO HAVE THE HARD DRIVE IN MY POSSESSION, YES.

08:45AM

26 Q. SO WHERE DID YOU GO AFTER YOU LEFT -- YOU GOT  
27 IN YOUR CAR.

28 WHERE DID YOU DRIVE TO?

1 A. I WENT HOME.

2 Q. AND HOW LONG WERE YOU AT HOME?

3 A. MAYBE AN HOUR OR TWO, I THINK.

4 Q. DID LEAVE YOUR HOME AT SOME POINT?

5 A. YES, I DID.

08:46AM

6 Q. WHERE DID YOU GO?

7 A. I WENT BACK TO THE RESTAURANT BAR AT THE BASE  
8 OF THE BUILDING.

9 Q. WHY THE -- THE BASE OF THE TCW BUILDING?

10 A. YES.

08:46AM

11 Q. DID WHY DID YOU RETURN TO THE BAR IN MAGNOLIAS  
12 AFTER YOU WERE HOME FOR A WHILE?

13 A. I HAD RECEIVED A CALL FROM JOE GALLIGAN, WHO  
14 SUGGESTED I COME BACK. HE MENTIONED THAT THERE WERE --  
15 LOTS OF US HAD GATHERED. I THINK THE IDEA WAS THAT  
16 SOMEHOW, IT WOULD BE A VERY SUPPORTIVE SITUATION. I  
17 MIGHT FIND OUT WHAT ELSE WAS GOING ON, WHAT THE NEXT  
18 STEPS WERE GOING TO BE.

08:46AM

19 Q. AFTER YOU RETURNED TO THE BAR, DID YOU GET  
20 YOUR HARD DRIVE AT THAT POINT?

08:46AM

21 A. I DID.

22 Q. HOW DID YOU GET IT?

23 A. I RECEIVED IT FROM DOLORES TALAMANTES.

24 Q. AND WERE YOU GLAD TO GET THE DRIVE?

25 A. I WAS. I WAS -- I FELT SOME LEVEL OF COMFORT.

08:46AM

26 Q. NOW, ONCE YOU GOT THE HARD DRIVE, DID THERE  
27 COME A TIME WHEN YOU WERE NO LONGER FEELING COMFORTED  
28 TO HAVE THE HARD DRIVE?

1           A.     YEAH.   IT WAS FAIRLY SHORT-LIVED.

2                         THE NEXT MORNING, SEVERAL OF THE NOW  
3 PRINCIPALS AT DOUBLELINE, AND MAYBE A FEW OTHERS, HAD  
4 GATHERED AT JEFFREY GUNDLACH'S HOUSE TO DECIDE WHAT TO  
5 DO NEXT.   THE PEOPLE BEGAN RESIGNING.

08:47AM

6                         LATER THAT AFTERNOON, I GOT HOME, AND MY  
7 WIFE HAD MENTIONED THAT SHE HAD RECEIVED CALLS FROM  
8 SOME OF THE PEOPLE SHE HAD WORKED FOR -- WORKED WITH IN  
9 THE MARKETING DEPARTMENT, AND APPARENTLY THERE WAS A  
10 CALL OR SOMETHING -- SOME TYPE OF MEMORANDUM THAT HAD  
11 GONE OUT THAT SUGGESTED I HAD, IN FACT, BEEN FIRED.

08:47AM

12           Q.     SO YOUR WIFE DID WORK, OR AT SOME POINT,  
13 WORKED AT TCW?

14           A.     SHE WORKED IN MARKETING FOR 10 YEARS THERE.

15           Q.     AND SHE HEARD SOME INFORMATION FROM PEOPLE  
16 THAT SHE WORKED WITH THAT YOU HAD BEEN FIRED AT THAT  
17 POINT?

08:47AM

18           A.     YES.

19           Q.     DID THAT DIFFER FROM WHAT YOU THOUGHT YOUR  
20 STATUS WAS THE DAY BEFORE?

08:47AM

21           A.     YES.   BEFORE, I THOUGHT I WAS ON  
22 ADMINISTRATIVE LEAVE.

23           Q.     AND SO -- AND YOU MENTIONED THERE WAS A  
24 MEETING AT MR. GUNDLACH'S HOUSE THE SATURDAY MORNING  
25 AFTER THE FRIDAY THAT YOU WERE FIRED OR PUT ON  
26 ADMINISTRATIVE LEAVE; IS THAT CORRECT?

08:48AM

27           A.     THAT'S CORRECT.

28           Q.     AND YOU MENTIONED SOMETHING ABOUT PEOPLE

1 RESIGNING.

2 WHAT WERE THEY RESIGNING FROM?

3 A. FROM EMPLOYMENT AT TCW.

4 Q. SO AFTER THAT MEETING WHERE PEOPLE WERE  
5 RESIGNING, AND AFTER YOU HEARD FROM YOUR WIFE THAT THE  
6 WORD WAS OUT THAT YOU HAD BEEN FIRED, HOW, IF AT ALL,  
7 DID THAT CHANGE YOUR FEELINGS ABOUT HAVING POSSESSION  
8 OF THE HARD DRIVE?

08:48AM

9 A. I FELT LIKE I WAS HOLDING THE PROVERBIAL HOT  
10 POTATO, WITH INFORMATION THAT EVERYBODY WAS LOOKING  
11 FOR.

08:48AM

12 CLEARLY, IT SEEMED LIKE THERE WAS NO  
13 GOING BACK AT THAT TIME, AND IT MADE ME NERVOUS.

14 Q. NO GOING BACK BECAUSE YOU HAD BEEN FIRED, OR  
15 FOR SOME OTHER REASON?

08:48AM

16 A. FIRED, AND THE FACT THAT PEOPLE WERE  
17 RESIGNING, AND IT LOOKED LIKE IT WAS GOING TO BE A NEW  
18 FIRM.

19 Q. SO WHAT DID YOU DO WITH THE HARD DRIVE, AT  
20 THAT POINT?

08:49AM

21 A. I GAVE IT TO JOE GALLIGAN, ONE OF THE  
22 PRINCIPALS AT DOUBLELINE.

23 Q. AND WHEN DID YOU GIVE IT TO MR. GALLIGAN?

24 A. I GAVE IT TO HIM THAT EVENING.

25 Q. SATURDAY EVENING?

08:49AM

26 A. SATURDAY EVENING.

27 Q. AND DID YOU HAVE AN UNDERSTANDING OF WHAT HE  
28 DID WITH IT?

1 MR. QUINN: THIS IS HEARSAY, OR SPECULATION.

2 THE COURT: SUSTAINED.

3 Q. BY MR. HELM: WHEN YOU GAVE IT TO  
4 MR. GALLIGAN, DID YOU GIVE IT TO HIM WITH THE INTENTION  
5 THAT HE WOULD BE MAKING ANY USE OF THE INFORMATION?

08:49AM

6 A. NO. HE AND I --

7 Q. WHAT WAS YOUR INTENTION, AT THE TIME?

8 A. MY INTENTION WAS THAT IT HAD TO GO BACK TO  
9 TCW.

10 Q. NOW, BETWEEN THE TIME THAT YOU GOT THE HARD  
11 DRIVE FROM DOLORES TALAMANTES AND THE TIME YOU GAVE IT  
12 TO JOE GALLIGAN, DID YOU EVER PLUG IN THE HARD DRIVE  
13 INTO A COMPUTER?

08:49AM

14 A. I DID NOT.

15 Q. DID YOU COPY ANY INFORMATION FROM THE HARD  
16 DRIVE, BETWEEN THE TIME YOU GOT IT FROM DOLORES  
17 TALAMANTES AND THE TIME YOU GAVE IT TO JOE GALLIGAN?

08:49AM

18 A. I DID NOT.

19 Q. DID ANYBODY, TO YOUR KNOWLEDGE, COPY  
20 INFORMATION FROM THE HARD DRIVE DURING THAT TIME  
21 PERIOD?

08:50AM

22 A. NO.

23 Q. NOW, LET'S GO BACK TO WHEN YOU COPIED THE  
24 INFORMATION ON THE HARD DRIVE.

25 WHEN YOU COPIED THE INFORMATION, DID THE  
26 INFORMATION STILL RESIDE ON TCW'S COMPUTERS?

08:50AM

27 A. YES.

28 Q. WHEN YOU COPIED THE INFORMATION, DID YOU

1 DELETE THE INFORMATION THAT YOU WERE COPYING FROM TCW'S  
2 COMPUTERS?

3 A. NO.

4 Q. SO DID ANYTHING IN YOUR COPYING OF THE  
5 INFORMATION TO THE HARD DRIVE DEPRIVE TCW OF THE  
6 ABILITY TO MAKE USE OF THAT INFORMATION, THE WAY THAT  
7 IT ALWAYS DID?

08:50AM

8 A. NO.

9 Q. NOW DID YOU HEAR MR. QUINN SAY THAT IF YOU  
10 PRINTED OUT THE CONTENTS OF THAT HARD DRIVE, THE PAPER  
11 WOULD BE BIG ENOUGH TO HAVE TWO AND A HALF EMPIRE STATE  
12 BUILDINGS --

08:50AM

13 MR. QUINN: OBJECTION. MISSTATES THE  
14 TESTIMONY, YOUR HONOR.

15 THE COURT: SUSTAINED.

08:50AM

16 WELL, IT WASN'T TESTIMONY.

17 MR. QUINN: MY STATEMENT.

18 THE COURT: REMEMBER, YOU ARE NOT TESTIFYING.  
19 WE'VE BEEN THERE.

20 Q. BY MR. HELM: WELL, I WANT YOU TO IMAGINE THE  
21 PRINTING OF INFORMATION FROM -- RELATED TO THAT HARD  
22 DRIVE. BUT INSTEAD OF IMAGINING PRINTING OUT WHAT WAS  
23 COPIED ONTO THAT HARD DRIVE, I WANT YOU TO PUT IN YOUR  
24 MIND THE AMOUNT OF INFORMATION THAT, BASED ON YOUR  
25 KNOWLEDGE, THE AMOUNT OF INFORMATION CONTAINED ON THAT  
26 HARD DRIVE THAT WAS ACTUALLY USED AT DOUBLELINE.

08:51AM

08:51AM

27 DO YOU HAVE THAT IN MIND?

28 A. YES.



1 Q. IF YOU PRINTED OUT THAT INFORMATION, WOULD IT  
2 FILL A SMALL HOUSE?

3 A. NO.

4 Q. WOULD IT FILL A KITCHEN?

5 A. NO.

08:51AM

6 Q. WOULD IT FILL A DOLLHOUSE?

7 A. NO.

8 Q. TO YOUR KNOWLEDGE, WAS ANY OF THE INFORMATION  
9 THAT WAS COPIED ONTO THAT HARD DRIVE EVER USED AT  
10 DOUBLELINE?

08:51AM

11 A. NO.

12 Q. SO DID ANY OF THE INFORMATION THAT WAS TAKEN  
13 OUT OF THE BUILDING ON THAT HARD DRIVE ENABLE  
14 DOUBLELINE TO GET STARTED ANY FASTER THAN IT OTHERWISE  
15 WOULD HAVE?

08:51AM

16 A. NO.

17 Q. DID ANY OF THE INFORMATION TAKEN OUT OF THE  
18 BUILDING ON THAT HARD DRIVE CAUSE DOUBLELINE TO AVOID  
19 INCURRING SOME EXPENSES THAT IT OTHERWISE WOULD HAVE  
20 HAD TO INCUR?

08:52AM

21 A. NO.

22 Q. DID DOUBLELINE OBTAIN ANY BENEFIT, THAT YOU  
23 ARE AWARE OF, FROM THE FACT THAT THAT HARD DRIVE  
24 CONTAINING THE INFORMATION WAS TAKEN OUT OF THE  
25 BUILDING?

08:52AM

26 A. NO.

27 Q. NOW, AFTER -- YOU MENTIONED THAT YOU HAD A  
28 MEETING AT MR. GUNDLACH'S HOUSE, THE SATURDAY AFTER YOU

1 WERE FIRED ON THAT FRIDAY.

2 DO YOU RECALL THAT?

3 A. YES.

4 Q. AND SO WERE YOU PART OF THE INITIAL GROUP OF  
5 PEOPLE THAT HAD DISCUSSIONS, WHICH ULTIMATELY LED TO  
6 THE DECISION TO START A NEW BUSINESS?

08:52AM

7 A. YES, I WAS.

8 Q. AND WHERE DID YOU FIRST SET UP OFFICES?

9 A. AT THE US BANK TOWER, DOWNTOWN LOS ANGELES.

10 Q. AND FROM THE TIME YOU STARTED, DID DOUBLELINE  
11 IMPLEMENT ANY POLICIES REGARDING THE USE OR NONUSE OF  
12 ANY TCW INFORMATION?

08:52AM

13 A. YES.

14 Q. WHAT WAS THE POLICY?

15 A. ALMOST IMMEDIATELY, THERE WAS LAWYERS  
16 SUGGESTING NOT TO USE ANYTHING.

08:53AM

17 Q. WELL, LET'S NOT GO INTO WHAT LAWYERS SAID,  
18 BECAUSE ALL I WANT TO GET AT IS WHAT WAS THE POLICY?

19 A. NOT TO USE ANY TCW INFORMATION.

20 Q. WERE LAWYERS CONSULTED IN CONNECTION WITH THE  
21 ADOPTION OF THIS POLICY?

08:53AM

22 A. YES.

23 Q. AND HOW FREQUENTLY WERE YOU TALKING TO LAWYERS  
24 DURING THIS TIME?

25 A. DAILY.

08:53AM

26 Q. AND WHAT WAS THE -- WHAT WAS THE -- SO WHEN  
27 WAS THIS POLICY ABOUT USE OR NONUSE OF TCW INFORMATION  
28 ADOPTED?

1           A.     ALMOST IMMEDIATELY.  AS SOON AS WE GOT TO THE  
2 BUILDING.

3           Q.     AND THE POLICY, IF YOU COULD JUST BRIEFLY  
4 STATE WHAT THE POLICY WAS?

5           A.     IT WAS ESSENTIALLY NOT TO USE ANY INFORMATION.  08:53AM

6                     AND IF THERE WAS ANY INFORMATION, AT  
7 SOME POINT, THERE WAS GOING TO BE SOME SORT OF  
8 REMEDIATION PROGRAM.

9           Q.     AND DID YOU HAVE ANY PART IN IMPLEMENTING THE  
10 POLICY THAT YOU HAVE JUST DESCRIBED, COMMUNICATING IT  
11 TO PEOPLE AT DOUBLELINE?  08:54AM

12           A.     I DID.  I SENT OUT MY OWN E-MAIL FROM MYSELF  
13 TO ALL OF THE MEMBERS IN THE GROUP, BASICALLY  
14 REITERATING THAT -- SUGGESTING THAT WE DIDN'T NEED THIS  
15 INFORMATION.  WE DIDN'T WANT TO EXPOSE OURSELVES.  WE  
16 WANTED TO KEEP OUR SYSTEMS AND OUR DATA UNTAINTED, AND  
17 WE WANTED TO BUILD A BETTER COMPANY.  08:54AM

18           Q.     WOULD YOU LOOK IN YOUR NOTEBOOK AT EXHIBIT  
19 5590, PLEASE.

20                     DO YOU RECOGNIZE THAT DOCUMENT?  08:54AM

21           A.     YES.

22           Q.     WHAT IS IT?

23           A.     THIS IS THE MEMO THAT I HAD SENT OUT TO ALL  
24 THE EMPLOYEES.

25           Q.     AND DOES IT CONTAIN THE POLICY YOU'VE JUST  
26 DESCRIBED?  08:54AM

27           A.     IT DOES.

28                     MR. HELM:  I WOULD MOVE ADMISSION OF 5590,

1 YOUR HONOR.

2 MR. QUINN: NO OBJECTION.

3 THE COURT: IT WOULD BE ADMITTED.

4

5 (EXHIBIT 5590 ADMITTED.)

08:54AM

6

7 MR. HELM: IF WE COULD DISPLAY THAT, PLEASE.

8 Q. ALL RIGHT. IF YOU LOOK AT THE TOP, IT SAYS,  
9 FROM CRIS SANTA ANA. THIS WAS AN E-MAIL THAT YOU SENT;  
10 IS THAT CORRECT?

08:55AM

11 A. YES.

12 Q. AND WHAT WAS THE DATE UPON WHICH IT WAS SENT?

13 A. DECEMBER 14TH.

14 Q. ALL RIGHT. AND IF WE COULD LOOK AT THE FIRST  
15 PARAGRAPH OF THE TOP PART, IT SAYS (READING):

08:55AM

16 I KNOW GREG AND I HAVE SPOKE  
17 TO YOU ALL ABOUT THIS MATTER, BUT I  
18 CANNOT STRESS HOW IMPORTANT THIS  
19 MESSAGE IS.

20 LET ME STOP THERE. IT SAYS GREG.

08:55AM

21 WHO'S THE GREG THAT'S BEING REFERRED  
22 TO?

23 A. THAT IS GREG WARD.

24 Q. WAS GREG WARD INVOLVED IN THE FORMATION OF  
25 DOUBLELINE AT THIS TIME?

08:55AM

26 A. YES, HE WAS.

27 Q. AND THEN IT SAYS (READING):

28 DO NOT, ALL CAPS, DO NOT USE

1 ANY FILE THAT WAS CREATED AT TCW,  
2 INCLUDING PERSONAL FILES OR ANY  
3 FILES, PROGRAMS THAT YOU CREATED  
4 USING TCW RESOURCES OR INFORMATION.  
5 BESIDES, THE GOAL OF DOUBLELINE  
6 GOING FORWARD IS TO BUILD A BETTER  
7 BUSINESS, USING BETTER TOOLS, USING  
8 DOUBLELINE'S INTELLECTUAL PROPERTY,  
9 WHICH IS EACH AND EVERY ONE OF YOU  
10 AND YOUR TALENTS.

08:56AM

08:56AM

11 DID I READ THAT CORRECTLY?

12 A. PERFECTLY.

13 Q. IS THAT CONSISTENT WITH THE POLICY THAT YOU  
14 ADOPTED IN THE FIRST WEEK AT DOUBLELINE?

15 A. YES.

08:56AM

16 Q. NOW, IF YOU LOOK AT THE PARAGRAPH BEGINNING  
17 "LASTLY," IT SAYS, (READING):

18 LASTLY, MANY OF US ARE GOING  
19 TO BE VERY BUSY OVER THE NEXT  
20 SEVERAL WEEKS, MONTHS, ET CETERA,  
21 AND WE NOW HAVE -- AND WE HAVE NEW  
22 COLLEAGUES SHOWING UP EACH DAY, IT  
23 SEEMS; SO PLEASE HELP US KEEP THE  
24 DOUBLELINE NETWORK FREE OF  
25 CONTAGION BY PASSING WORD ALONG TO  
26 ANYONE NEW WHO SHOWS UP.

08:56AM

08:56AM

27 DID I READ AT THAT CORRECTLY?

28 A. PERFECTLY.

1 Q. AND DID YOU, IN FACT, MAKE AN EFFORT TO  
2 COMMUNICATED THIS MESSAGE TO NEW PEOPLE AS THEY STARTED  
3 JOINING DOUBLELINE?

4 A. YES. AS I WOULD WALK THROUGH THE TEMPORARY  
5 OFFICE SPACE, I WOULD TAKE PEOPLE ASIDE AND REMIND THEM  
6 OF THIS MEMO. 08:57AM

7 AND IN ADDITION TO THAT, ALLYSON  
8 PFEIFFER WAS SITTING AT THE DESK AT THE FRONT WHERE OUR  
9 OFFICE OPENED UP, AND I HAD HER MAKE HARD COPIES OF  
10 THIS MEMO AND HAND IT TO EVERY SINGLE PERSON WHO WALKED  
11 THROUGH THE DOOR. 08:57AM

12 Q. ALL RIGHT. NOW, AT THE BOTTOM OF EXHIBIT 5590  
13 IT SAYS, A FORWARDED MESSAGE FROM ANDREW WHITE.

14 DO YOU SEE THAT?

15 COULD WE BLOW THAT UP, DENNIS? 08:57AM

16 WHO WAS ANDREW WHITE?

17 A. HE IS ONE OF OUR ATTORNEYS WHO HELPED WITH  
18 THIS PROCESS.

19 Q. IF WE WERE ALSO TO LOOK AT THE NEXT PAGE, ALL  
20 THE ATTORNEY INFORMATION WAS REDACTED; BUT DID YOUR  
21 E-MAIL THAT YOU FORWARDED CONTAIN A MEMO THAT WAS  
22 WRITTEN BY COUNSEL? 08:57AM

23 A. YES, IT DID.

24 Q. NOW, YOU MENTIONED THAT YOU HANDED OUT THIS  
25 MEMO TO PEOPLE WHO CAME ON AND STARTED. 08:58AM

26 WAS THE MESSAGE ALSO CONVEYED ORALLY?

27 A. YES.

28 Q. WERE THERE ANY CONFERENCE CALLS OR MEETINGS

1 HELD WITH PEOPLE TO DISCUSS THE POLICY OF NONUSE OF TCW  
2 INFORMATION?

3 A. YES, THERE WAS. THERE WAS AT LEAST ONE ALL  
4 HANDS MEETING THAT WE HAD, TO GATHER EVERYBODY IN A  
5 ROOM AND SPEAK WITH THE ATTORNEYS ABOUT THIS.

08:58AM

6 Q. WITHOUT GETTING INTO WHAT THE ATTORNEYS SAID,  
7 DID THE ATTORNEYS HAVE COMMUNICATIONS DIRECTLY WITH  
8 PEOPLE AT DOUBLELINE ON THIS SUBJECT MATTER?

9 A. MORE THAN ONCE.

10 Q. NOW, WAS ANY MECHANISM PUT IN PLACE FOR THE  
11 RETURN OF DEVICES THAT PEOPLE MIGHT HAVE THAT CONTAINED  
12 TCW INFORMATION?

08:58AM

13 A. I'M SORRY. CAN YOU REPEAT THAT.

14 Q. YES. WAS ANY MECHANISM PUT IN PLACE FOR THE  
15 COLLECTION OF TCW INFORMATION, OR THE COLLECTION OF  
16 PERSONAL DEVICES THAT MIGHT HAVE TCW INFORMATION, THE  
17 FIRST WEEK YOU WERE IN THE U.S. BANK BUILDING?

08:58AM

18 A. YES. GREG WARD AND GREG PATTI BEGAN A  
19 REMEDIATION PROGRAM IN CONSULTATION WITH WHITE  
20 O'CONNOR.

08:59AM

21 THEY SET UP A COUPLE OF BOXES IN THE  
22 FRONT OF -- THE OFFICE IN FRONT OF ALLYSON PFEIFFER'S  
23 AREA, AND EVERYONE WAS INSTRUCTED TO BRING BACK THE  
24 PERSONAL DEVICES THEY THOUGHT THAT HAD TCW INFORMATION.

25 Q. AND THEY PUT IT WHERE?

08:59AM

26 A. RIGHT IN FRONT TO THE ENTRANCE TO OUR MAIN  
27 OFFICE WE WERE TEMPORARILY RENTING.

28 Q. NOW, YOU MENTIONED GREG WARD, BUT HERE YOU NOW

1 MENTION GREG PATTI.

2 WHO WAS GREG PATTI, AT THAT TIME?

3 A. GREG PATTI WAS OUR INTERNAL COUNSEL WHO WAS  
4 CONSULTING WITH US ON THESE SAME MATTERS.

5 Q. OKAY. AND SO ONCE THE DEVICES WERE PUT IN THE  
6 LOBBY AT THE U.S. BANK BUILDING AND COLLECTED, WHAT  
7 HAPPENED TO THEM THEN?

08:59AM

8 A. THEY WERE TURNED OVER TO STROZ FRIEDBERG, WHO  
9 WAS THE REMEDIATION FIRM THAT DOUBLELINE HAD HIRED.

10 Q. STROZ FRIEDBERG, IS THAT THE NAME OF THE  
11 COMPANY?

09:00AM

12 A. YES.

13 Q. AND THEY WERE HIRED IN CONNECTION WITH THIS  
14 EFFORT TO GET RID OF THE TCW INFORMATION?

15 A. THAT'S CORRECT.

09:00AM

16 Q. NOW, IN ADDITION TO PERSONAL DEVICES THAT WERE  
17 RETURNED, WAS ANY EFFORT MADE TO SEARCH DOUBLELINE  
18 COMPUTERS -- THAT IS, THE BUSINESS COMPUTERS AT  
19 DOUBLELINE, TO SEE IF THEY CONTAINED ANY TCW  
20 INFORMATION?

09:00AM

21 A. YES. THEY WERE GIVEN FULL ACCESS TO ALL TCW  
22 COMPUTERS.

23 Q. WHEN YOU SAY "THEY," WHO WAS IT WHO HAD ACCESS  
24 TO AND PERFORMED THAT DATA RESEARCH?

25 A. AGAIN, STROZ FRIEDBERG.

09:00AM

26 Q. NOW WHAT ABOUT PAPER DOCUMENTS? WAS ANY  
27 EFFORT MADE TO COLLECT AND RETRIEVE HARD COPIES OF  
28 DOCUMENTS THAT MIGHT HAVE BEEN TAKEN BY PEOPLE, OR



1 PEOPLE HAD THEM IN THEIR BRIEFCASES, OR FOR WHATEVER  
2 REASON THEY HAD, AFTER THEY LEFT TCW?

3 A. YES.

4 WELL, WHEN I WAS FIRED, I RETURNED A LOT  
5 OF THE INFORMATION I HAD LAYING AROUND IN MY HOME  
6 OFFICE DIRECTLY TO JEANNIE FINKLE, WHO WAS THE HR  
7 DIRECTOR AT TCW.

09:00AM

8 BUT IN ADDITION TO THAT, OTHER PEOPLE  
9 WERE BRINGING IN HARD COPIES OF DOCUMENTS, AS WELL.

10 Q. NOW, YOU HAVE MENTIONED THIS POLICY ABOUT  
11 NONUSE OF TCW INFORMATION.

09:01AM

12 HOW SERIOUS WERE YOU ABOUT ENFORCING  
13 THAT POLICY?

14 A. EXTREMELY SERIOUS.

15 Q. NOW, MR. SANTA ANA, YOU SPENT THREE MONTHS  
16 COPYING INFORMATION ONTO A HARD DRIVE.

09:01AM

17 WHY IS IT THAT AFTER THREE MONTHS OF  
18 COPYING THAT INFORMATION, SUDDENLY NOW, YOU ARE  
19 INTERESTED IN MAKING SURE THAT THE INFORMATION WAS NOT  
20 BEING USED?

09:01AM

21 A. BECAUSE THERE WAS THIS LOOMING THREAT OF A  
22 LAWSUIT. AND I HAD NOT ONLY A BUSINESS STAKE IN THIS,  
23 IN SEEING DOUBLELINE SUCCEED, BUT ALSO I HAVE A FAMILY,  
24 WITH TWO CHILDREN.

25 Q. SO YOU WANTED TO MAKE SURE THAT YOU DIDN'T DO  
26 ANYTHING THAT WOULD GET YOU INTO TROUBLE; IS THAT WHAT  
27 YOU ARE SAYING?

09:01AM

28 A. THAT'S ABSOLUTELY CORRECT.

1 Q. NOW, MR. QUINN ASKED YOU WHETHER YOU EVER SAW  
2 SOMEONE WITH A TCW DOCUMENT AT DOUBLELINE. AND YOU  
3 MENTIONED THAT A MR. DAMIANI HAD A PAPER COPY OF AN OLD  
4 EXECUTIVE SUMMARY OF ACCOUNTS.

5 DO YOU RECALL THAT TESTIMONY?

09:02AM

6 A. YES.

7 Q. WHEN DID THAT INCIDENT OCCUR?

8 A. I DON'T RECALL EXACTLY. IT WAS, I WANT TO  
9 SAY, EARLY 2010.

10 Q. AND NOW MR. QUINN DIDN'T ASK YOU WHAT, IF  
11 ANYTHING, YOU DID WHEN YOU SAW THE DOCUMENT.

09:02AM

12 DID YOU DO ANYTHING, WHEN YOU SAW  
13 MR. DAMIANI HAD IN HIS HAND A DOCUMENT THAT APPEARED TO  
14 COME FROM TCW?

15 A. I DID. I CONFRONTED HIM. I ASKED HIM -- I  
16 MENTIONED I DIDN'T THINK IT WAS PROPER FOR THAT  
17 DOCUMENT TO BE IN OUR POSSESSION.

09:02AM

18 Q. DID YOU EVER SEE THE DOCUMENT AFTER THAT TIME?

19 A. I DID NOT.

20 Q. DO YOU KNOW WHETHER MR. DAMIANI EVER USED THE  
21 DOCUMENT AFTER THAT TIME?

09:02AM

22 MR. QUINN: CALLS FOR SPECULATION.

23 THE COURT: SUSTAINED.

24 Q. BY MR. HELM: DO YOU HAVE ANY INFORMATION THAT  
25 MR. DAMIANI MADE ANY FURTHER USE OF THAT DOCUMENT?

09:02AM

26 MR. QUINN: FOUNDATION.

27 THE COURT: OVERRULED.

28 JUST YES OR NO.

1 THE WITNESS: I'M SORRY, CAN YOU REPEAT THE  
2 QUESTION?

3 Q. BY MR. HELM: DO YOU HAVE ANY INFORMATION --  
4 HAVE YOU LEARNED FACTS FROM ANY SOURCE, SUGGESTING  
5 MR. DAMIANI MADE ANY FURTHER USE OF THAT DOCUMENT AFTER  
6 YOU CONFRONTED HIM ABOUT IT? 09:03AM

7 MR. QUINN: I THINK THIS IS GOING TO BE  
8 HEARSAY, YOUR HONOR.

9 THE COURT: YOU CHANGED THE QUESTION ON US,  
10 WHEN I SAID JUST ANSWER IT YES OR NO. 09:03AM

11 MR. BRIAN: COULD WE READ BACK THE LAST  
12 QUESTION?

13  
14 (LAST QUESTION READ BACK BY THE REPORTER.)

15  
16 THE WITNESS: I DO NOT KNOW, NO. 09:03AM

17 Q. BY MR. HELM: NOW, WHEN WAS THIS LAWSUIT  
18 FILED?

19 A. I THINK EARLY JANUARY 2010.

20 Q. DID DOUBLELINE TAKE ANY EFFORTS, AFTER THE  
21 LITIGATION WAS FILED, TO INSTRUCT EMPLOYEES NOT TO  
22 DESTROY INFORMATION THAT WAS RELATED TO ALLEGATIONS IN  
23 THE LITIGATION? 09:03AM

24 A. YES. THERE WAS ANOTHER COMPANY-WIDE MEMO THAT  
25 WENT OUT. 09:04AM

26 Q. LET ME ASK YOU TO LOOK IN YOUR NOTEBOOK AT  
27 EXHIBIT 5736.

28 DO YOU HAVE THAT BEFORE YOU?

1 THE COURT: IT'S ACTUALLY ON THE SCREEN.

2 DO YOU HAVE IT ON THE SCREEN? YOU CAN  
3 SEE IT, MR. SANTA ANA.

4 THE WITNESS: IT'S IN A DIFFERENT BINDER.

5 Q. BY MR. HELM: DO YOU RECOGNIZE THAT DOCUMENT? 09:04AM

6 A. YES, I DO.

7 Q. NOW, LOOK AT THE TWO LINES TO WHOM IT WAS  
8 SENT.

9 WERE YOU AMONG THE PEOPLE WHO RECEIVED  
10 THIS AT OR ABOUT THE TIME IT WAS SENT? 09:04AM

11 A. YES.

12 MR. HELM: I'D MOVE ADMISSION OF 5736.

13 MR. QUINN: NO OBJECTION.

14 THE COURT: IT WILL BE ADMITTED.

15 09:04AM

16 (EXHIBIT 5736 ADMITTED.)

17

18 MR. HELM: WE'LL PUT THAT ON THE SCREEN.

19 Q. ALL RIGHT. SO THIS WAS AN -- IF WE LOOK AT  
20 THE TOP, IT'S FROM ALLYSON PFEIFFER TO EVERYONE. 09:04AM

21 WHO IS ALLYSON PFEIFFER?

22 A. SHE WAS AN EMPLOYEE AT DOUBLELINE.

23 Q. NOW, IT SAYS TO EVERYONE.

24 WAS EVERYONE, SOME KIND OF A MAILING  
25 LIST THAT INCLUDED EVERYONE AT DOUBLELINE? 09:05AM

26 A. THAT'S CORRECT.

27 Q. SO DID YOU RECEIVE -- WAS THIS SENT TO  
28 EVERYONE AT DOUBLELINE?

1 A. YES.

2 Q. NOW, THE DATE IS JANUARY 7TH, 2010.

3 IS THAT ABOUT WHEN YOU RECEIVED IT?

4 A. YES.

5 Q. WE LOOK DOWN AT THE SECOND PARAGRAPH OF THE 09:05AM  
6 MEMO THAT'S -- WELL, FIRST, IT SAYS, PLEASE READ THE  
7 BELOW MESSAGE FROM GREG WARD. AND I THINK IT SAYS,  
8 THIS ATTACHED MEMO.

9 IS THAT WHAT IT SAID?

10 A. YES. 09:05AM

11 Q. AND THEN THERE'S A MEMO FROM GREG WARD THAT'S  
12 CONTAINED DOWN THERE, AND IT SAYS, (READING):

13 ALLYSON, COULD YOU PLEASE  
14 DISTRIBUTE THE ATTACHED DOCUMENT TO  
15 THE ENTIRE GROUP, WITH THE 09:05AM  
16 FOLLOWING MESSAGE.

17 DID I GET THAT RIGHT?

18 A. YES.

19 Q. AND IT SAYS THEN, (READING):

20 PLEASE TAKE A MOMENT TO READ 09:05AM  
21 THE ATTACHED MEMO PREPARED BY  
22 WHITE, O'CONNOR, FINK AND BRENNER,  
23 LLP, WHICH DESCRIBES THE LEGAL  
24 OBLIGATION OF ALL DOUBLELINE  
25 PERSONNEL TO MAINTAIN DOCUMENTS 09:06AM  
26 THAT MIGHT BE RELEVANT TO THE  
27 LITIGATION WITH TCW.

28 DID I READ THAT CORRECTLY?

1 A. YES.

2 Q. AND WHITE, O'CONNOR, FINK AND BRENNER, YOU  
3 MENTIONED AN ANDREW WHITE BEFORE.

4 IS THAT MR. WHITE'S FIRM?

5 A. YES, IT IS.

09:06AM

6 Q. AND IF WE GO TO THE SECOND PAGE, YOU WILL SEE  
7 THAT THERE'S A MEMO FROM ED WEIMAN AT WHITE O'CONNOR TO  
8 GREG WARD, CORRECT?

9 A. YES.

10 Q. AND IT THEN SAYS -- THAT'S REDACTED; BUT LET'S  
11 GO BACK TO THE FIRST PAGE.

09:06AM

12 SO WAS THIS DISTRIBUTED --

13 THE COURT: WAIT A MINUTE.

14 Q. BY MR. HELM: WELL, ACTUALLY, WAS THIS AN  
15 E-MAIL THAT WAS SENT ON JANUARY THE 7TH?

09:06AM

16 A. YES, IT WAS.

17 Q. NOW, LET'S GO BACK TO THE TIME WHEN YOU WERE  
18 AT TCW.

19 DID THERE COME A TIME WHEN YOU HEARD A  
20 RUMOR CONCERNING MR. GUNDLACH'S FUTURE WITH THE  
21 COMPANY?

09:07AM

22 MR. QUINN: LACKS FOUNDATION, VAGUE,  
23 SPECULATION.

24 THE COURT: ANSWER YES OR NO.

25 THE WITNESS: CAN YOU REPEAT THE QUESTION?

09:07AM

26 SORRY.

27 Q. BY MR. HELM: DID THERE COME A TIME WHEN YOU  
28 HEARD A RUMOR CONCERNING WHETHER THERE MIGHT BE PLANS

1 AFOOT THAT WOULD RESULT IN MR. GUNDLACH NO LONGER BEING  
2 AT THE COMPANY?

3 A. YES.

4 Q. AND WHEN DID YOU HEAR THAT RUMOR?

5 A. I BELIEVE IT WAS EARLY SEPTEMBER.

09:07AM

6 Q. 2009?

7 A. 2009, YES.

8 Q. AND WHO DID YOU HEAR THE RUMOR FROM?

9 A. ALAN TOOLE.

10 MR. QUINN: I OBJECT TO THIS.

09:07AM

11 THE COURT: SUSTAINED.

12 I'LL STRIKE THE RESPONSE.

13 Q. BY MR. HELM: AFTER YOU HEARD THE RUMOR, DID  
14 YOU DISCUSS IT WITH MR. GUNDLACH AT ANY TIME?

15 A. YES, I DID.

09:07AM

16 MR. QUINN: I HAVE THE SAME OBJECTION TO THIS  
17 LINE OF TESTIMONY ABOUT RUMORS, YOUR HONOR.

18 LACKS ANY FOUNDATION.

19 MR. HELM: IT'S NOT FOR THE TRUTH, YOUR HONOR,  
20 IT'S FOR WHAT IT PROMPTED PEOPLE TO DO THEREAFTER.

09:07AM

21 THE COURT: WELL, HE HEARD THE RUMOR.

22 THAT'S AS FAR AS YOU CAN GO WITH THE  
23 RUMOR.

24 Q. BY MR. HELM: WELL, AFTER YOU HEARD THE RUMOR,  
25 DID YOU HAVE A DISCUSSION WITH MR. GUNDLACH ABOUT  
26 INFORMATION THAT HE THOUGHT MIGHT BE USEFUL TO HAVE IF  
27 HE WERE FIRED?

09:08AM

28 A. YES.

1 Q. AND DID HE EVER SUGGEST TO YOU, HAVING  
2 INFORMATION OF THAT KIND AVAILABLE, BEFORE YOU HEARD A  
3 RUMOR ABOUT MR. GUNDLACH?

4 MR. QUINN: OBJECT TO THE FORM OF THE  
5 QUESTION.

09:08AM

6 THE COURT: SUSTAINED.

7 Q. BY MR. HELM: WELL, BUT BEFORE MR. GUNDLACH  
8 MENTIONED THE INFORMATION THAT HE THOUGHT MIGHT BE  
9 USEFUL TO HAVE, WAS THAT THE FIRST TIME HE HAD EVER  
10 MADE A REQUEST LIKE THAT TO YOU?

09:08AM

11 A. EARLY SEPTEMBER, WAS THE FIRST TIME.

12 Q. AND DID YOU EVER DOWNLOAD INFORMATION TO HAVE  
13 READY FOR A POSSIBLE NEW BUSINESS, BEFORE YOU HAD THAT  
14 CONVERSATION WITH MR. GUNDLACH?

15 A. NO.

09:08AM

16 Q. SO WHAT INFORMATION DID MR. GUNDLACH SAY HE  
17 WANTED TO HAVE AVAILABLE?

18 A. JEFFREY ASKED FOR CONTACTS, CONTRACTS, BOARD  
19 OF DIRECTOR CONTACTS, COPIES OF THE RED BOOKS WHICH HAD  
20 THE TRADE ORDERS, HOLDINGS, AND I THINK HE MADE A  
21 BLANKET STATEMENT, SOMETHING TO THE EFFECT, AND  
22 ANYTHING ELSE YOU MIGHT THINK WE WOULD NEED.

09:09AM

23 Q. NOW DID HE SAY AT THAT TIME THAT YOU SHOULD  
24 HAVE AVAILABLE ANY COPIES OF THE TCW ANALYTICS SYSTEMS,  
25 AT THAT TIME?

09:09AM

26 A. NO, HE DID NOT.

27 Q. NOW, YOU MENTIONED THE RED BOOKS OF THE TRADE  
28 ORDERS.



1                   AFTER MR. GUNDLACH MADE THAT STATEMENT  
2 TO YOU, WHAT, IF ANYTHING, DID YOU DO IN RESPONSE TO  
3 MR. GUNDLACH'S REQUEST?

4           A.     I ASKED LYDIA POMPA TO MAKE COPIES FOR  
5 JEFFREY.

09:09AM

6           Q.     WERE THEY HARD COPIES?

7           A.     YES, THEY WERE HARD COPIES, PUT INTO RED  
8 BINDERS, JUST LIKE THE OTHERS.

9           Q.     SO NOT AN ELECTRONIC COPY, BUT ACTUAL PHYSICAL  
10 NOTEBOOKS; IS THAT RIGHT?

09:09AM

11          A.     THAT'S CORRECT.

12          Q.     NOW, YOU MENTIONED CONTRACTS.

13                   WHAT DID YOU UNDERSTAND MR. GUNDLACH TO  
14 BE REFERRING TO WHEN HE SAID, IT MIGHT BE HELPFUL HAVE  
15 CONTRACTS AVAILABLE?

09:10AM

16          A.     CONTRACTS ARE THE INVESTMENT MANAGEMENT  
17 AGREEMENTS BETWEEN THE CLIENT AND TCW.

18          Q.     AND SO DO THOSE SET FORTH THE TERMS OF THE  
19 RELATIONSHIP BETWEEN TCW AND THE INDIVIDUAL INVESTORS?

20          A.     THAT'S RIGHT. THEY HAVE THE TERMS, ALONG WITH  
21 TYPICALLY, THE INVESTMENT OBJECTIVE GUIDELINES, THINGS  
22 OF THAT NATURE.

09:10AM

23          Q.     NOW WHAT, IF ANYTHING, DID YOU DO IN RESPONSE  
24 TO MR. GUNDLACH'S REQUEST REGARDING CONTRACTS?

25          A.     FOR CONTRACTS, I KNEW WE HAD A FOLDER WHERE WE  
26 WERE STORING -- ON OUR G DRIVE, WHERE WE WERE STORING  
27 ALL OF OUR ACCOUNTS THAT WE WERE MANAGING.

09:10AM

28                   AS THE CONTRACTS WERE E-MAILED TO US, WE

1 WOULD STORE THEM INTO THE PERSONAL G DRIVE.

2 Q. SO WHAT, IF ANYTHING, DID YOU DO WITH THE  
3 CONTRACTS THAT WERE CONTAINED ON YOUR G DRIVE?

4 A. I CLICKED THE FOLDER AND DRAGGED IT AND COPIED  
5 IT ONTO THE HARD DRIVE THAT I HAD.

09:10AM

6 Q. NOW, YOU SAY HE MENTIONED CONTACTS.  
7 WHAT DID YOU UNDERSTAND THIS TO REFER  
8 TO?

9 A. THE DAILY -- THE -- FOR THE ACCOUNTS THAT WE  
10 MANAGE, JUST THE CONTACTS FOR THOSE ACCOUNTS.

09:11AM

11 Q. WHEN YOU SAY THE ACCOUNTS WE MANAGE, THOSE  
12 WOULD BE THE CLIENTS FOR FUNDS THAT WERE MANAGED BY THE  
13 MBS GROUP?

14 A. THAT'S CORRECT.

15 Q. DID YOU UNDERSTAND HIM TO BE ASKING FOR  
16 ANYTHING OTHER THAN CONTACTS FOR THE MBS GROUP?

09:11AM

17 A. NO.

18 Q. ALL RIGHT. WHAT, IF ANYTHING, DID YOU DO IN  
19 RESPONSE TO MR. GUNDLACH'S REQUEST FOR CONTACT  
20 INFORMATION?

09:11AM

21 A. FOR CONTACT, I WASN'T EXACTLY SURE HOW TO  
22 SATISFY THAT PARTICULAR REQUEST. I ASKED JEFF MAYBERRY  
23 TO LOOK INTO THAT, AND HE SAID HE'D TAKE CARE OF IT.

24 Q. AND DO YOU HAVE ANY INFORMATION ABOUT WHAT  
25 MR. MAYBERRY DID IN RESPONSE TO THAT?

09:11AM

26 A. MY UNDERSTANDING IS HE WENT TO THE AVENUE  
27 DATABASE AND PULLED IN ALL THE CONTACTS. AT SOME  
28 POINT, HE WOULD PARSE THEM OUT LATER.

1 Q. SO DID THIS INCLUDE INFORMATION ABOUT CLIENTS  
2 OTHER THAN THE CLIENTS WHO WERE INVOLVED WITH THE MBS  
3 GROUP?

4 A. YES.

5 Q. NOW, DID MR. GUNDLACH ASK FOR CONTACTS OF  
6 CLIENTS OTHER THAN THOSE IN THE MBS GROUP?

09:12AM

7 A. NO, HE DID NOT.

8 Q. NOW, YOU SAY HE MENTIONED THE BOARD OF  
9 DIRECTOR CONTACT INFORMATION.

10 WHAT BOARD OF DIRECTORS DID YOU  
11 UNDERSTAND HIM TO BE REFERRING TO?

09:12AM

12 A. THE TCW BOARD.

13 Q. AND DID YOU HAVE AN UNDERSTANDING OF HOW  
14 INFORMATION ABOUT HOW YOU COULD GET IN TOUCH WITH  
15 MEMBERS OF THE TCW BOARD OF DIRECTORS MIGHT BE USEFUL?

09:12AM

16 A. I -- MY ASSUMPTION WAS THAT HE MIGHT WANT TO  
17 CALL A FEW OF THEM, IF WE WERE FIRED.

18 Q. NOW, YOU SAY -- AND DID YOU PROCEED TO COLLECT  
19 INFORMATION ABOUT BOARD OF DIRECTOR CONTACTS?

20 A. I THINK I JUST WENT TO THE TCW WEBSITE ON THE  
21 INTERNET, AND PRINTED OUT THE PAGE THAT HAD ALL THE  
22 CONTACTS -- HAD THE LIST OF THE NAMES.

09:12AM

23 Q. AND DID YOU GIVE THAT TO HIM?

24 A. I BELIEVE SO, YES.

25 Q. NOW, THEN YOU ALSO SAY HE MENTIONED CLIENT  
26 HOLDINGS.

09:13AM

27 IF YOU WERE TO PRINT OUT THE CLIENT --  
28 WELL, FIRST OF ALL, THE CLIENT HOLDINGS, WHICH CLIENT

1 HOLDINGS WAS HE REFERRING TO, THOSE IN THE MBS GROUP,  
2 OR MORE BROADLY?

3 A. JUST THE MBS GROUP.

4 Q. IF YOU WERE TO PRINT OUT THE CLIENT HOLDINGS  
5 FOR THE MBS GROUP AT THAT TIME, HOW BIG A QUANTITY OF  
6 PAPER ARE WE TALKING ABOUT?

09:13AM

7 A. OVER A HUNDRED ACCOUNTS. PROBABLY A COUPLE  
8 THOUSAND PAGES?

9 Q. SO A COUPLE OF BINDERS?

10 A. COUPLE OF BINDERS, PROBABLY.

09:13AM

11 Q. SO HOW DID YOU PROCEED -- HOW, IF AT ALL, DID  
12 YOU PROCEED IN RESPONSE TO THE REQUEST THAT  
13 MR. GUNDLACH MADE FOR CLIENT HOLDINGS?

14 A. WE -- MY UNDERSTANDING WAS THAT THE HOLDINGS  
15 WERE PART OF THE MBS DATABASE, WHICH WAS ANOTHER  
16 DATABASE THAT WAS BUILT INTERNALLY; SO WE WENT -- WE  
17 DESIGNATED -- I TALKED TO JEFF MAYBERRY, AND POSSIBLY  
18 JP, AND WE TALKED ABOUT HOW TO GET HOLDINGS FROM THE  
19 DATABASE.

09:13AM

20 Q. SO WHEN YOU COPIED INFORMATION FROM THE MBS  
21 DATABASE, DID YOU ONLY COPY THE HOLDINGS OF THE MBS  
22 CLIENTS?

09:14AM

23 OR LET ME PUT IT THIS WAY: DID THE MBS  
24 DATABASE CONTAIN INFORMATION OTHER THAN THE CLIENT  
25 HOLDINGS?

09:14AM

26 A. YES, IT DID.

27 Q. AND SO DID YOU COPY THE ENTIRE MBS DATABASE,  
28 OR ONLY THE PART THAT RELATED TO HOLDINGS?

1           A.     MY UNDERSTANDING IS, WE COPIED THE ENTIRE MBS  
2 DATABASE.

3           Q.     WHY DID DO YOU THAT, IF ALL YOU NEEDED WAS THE  
4 TWO BINDERS WORTH OF INFORMATION ABOUT HOLDINGS, WHY  
5 DID YOU COPY THE WHOLE MBS DATABASE AT THAT TIME?

09:14AM

6           A.     IT WAS PROBABLY THE EASIEST THING TO DO. IT  
7 WAS PART OF -- WE HAD DONE IT IN THE PAST. IT WAS PART  
8 OF THE BCP THING WE DO ON FRIDAYS, AND WE WOULD  
9 DOWNLOAD THE WHOLE MBS DATABASE. AND IT SEEMED LIKE AN  
10 EASY THING TO DO.

09:15AM

11          Q.     YOU SAY THAT BCP THING.

12                     WHAT DOES BCP STAND FOR?

13          A.     BUSINESS CONTINUITY PLAN.

14          Q.     YOU SAY THIS THING WHERE WE COPIED THINGS ON  
15 FRIDAYS.

09:15AM

16                     DID YOU HAVE A PRACTICE, PRIOR TO THIS  
17 TIME, REGARDING A BUSINESS CONTINUITY PLAN, THAT  
18 INVOLVED COPYING INFORMATION INVOLVING THE MBS  
19 DATABASE?

20          A.     YES.

09:15AM

21          Q.     WOULD YOU EXPLAIN TO THE JURY WHAT THAT WAS?

22          A.     SO ON FRIDAYS I WOULD YELL OUT TO THE GROUP,  
23 SOMEONE NEEDS TO RUN THE BACKUP. WE WOULD COPY THE  
24 DATABASE AND/OR THREE OTHER FOLDERS. THERE WERE SOME  
25 FUND REPORTS, THINGS OF THAT NATURE. WE WOULD -- THAT  
26 WERE PUT IN FOUR SEPARATE FOLDERS.

09:15AM

27                     I WOULD SIMPLY ASK THEM TO RUN IT. THEY  
28 WOULD TELL ME WHEN IT WAS DONE, AND I COULD CLICK IT

1 AND DRAG IT ONTO MY FLASH DRIVE.

2 Q. AND FOR HOW LONG PRIOR TO THAT TIME HAD YOU  
3 BEGUN THAT PRACTICE?

4 A. WE STARTED DOING THAT SEVERAL YEARS AGO. IT  
5 WAS PROBABLY, I THINK IT WENT BACK AS FAR AS '04, '05.

09:16AM

6 Q. SO NOW WHEN YOU COPIED THE INFORMATION, AFTER  
7 MR. GUNDLACH'S REQUEST, IT WAS THEN IN CONJUNCTION WITH  
8 THIS BUSINESS CONTINUITY PLAN, YOU GRAFTED THAT ONTO  
9 THE DATABASE YOU WERE COPYING IN THIS PRIOR PRACTICE?

10 A. YES. IT FELT LIKE WE COULD KILL TWO BIRDS  
11 WITH ONE STONE. WE COULD BEEF UP OUR BCP PLAN AND  
12 SATISFY JEFFREY'S REQUEST.

09:16AM

13 Q. NOW, AFTER THIS ONE CONVERSATION WITH JEFFREY  
14 GUNDLACH, DID YOU HAVE ANY OTHER DISCUSSIONS WITH HIM  
15 ABOUT THE COPYING OF INFORMATION?

09:16AM

16 A. NO, I DON'T BELIEVE SO.

17 Q. ABOUT DOWNLOADING, OR THINGS THAT WERE  
18 HAPPENING TO THAT HARD DRIVE?

19 A. NO.

20 Q. OKAY. NOW, LET ME ASK YOU TO LOOK AT, LET'S  
21 PUT UP EXHIBIT 963, WHICH I THINK HAS BEEN ADMITTED,  
22 YOUR HONOR.

09:16AM

23 THIS IS THE ABLE GRAPE PRO FORMA.

24 YES, IT IS IN EVIDENCE.

25 WE'VE SEEN THIS BEFORE. I THINK YOU  
26 SAID IN YOUR TESTIMONY, YOU CONTEMPLATED THAT YOU MIGHT  
27 BE -- WANT TO BUY THE BUSINESS?

09:17AM

28 A. YES.

1 Q. DID MR. GUNDLACH MAKE ANY PRIOR PROPOSALS TO  
2 BUY THE BUSINESS?

3 A. HE DID. IN SEPTEMBER -- I THINK IT WAS THE  
4 SEPTEMBER 3RD MEETING WITH MR. STERN, HE MADE AN OFFER  
5 TO BUY THE BUSINESS.

09:17AM

6 Q. THE SEPTEMBER 3RD MEETING WITH MR. STERN, WHO  
7 WAS AT THAT MEETING? YOU WERE AT THAT MEETING?

8 A. YES.

9 Q. WHO ELSE WAS AT THAT MEETING?

10 A. PHIL BARACH, JOE GALLIGAN, LOU LUCIDO, JOEL  
11 DAMIANI, ERIC ARENTSEN, AND I BELIEVE, MR. STERN.

09:17AM

12 Q. SO -- AND AT THAT TIME, MR. GUNDLACH MADE A  
13 PROPOSAL TO BUY SOME OR ALL OF TCW'S BUSINESS?

14 A. HE MADE A PROPOSAL TO BUY THE ENTIRE FIRM.

15 Q. SO HOW DID THE PROPOSAL HE MADE ON  
16 SEPTEMBER 3RD COMPARE WITH THE IDEA YOU HAD IN MIND  
17 WHEN YOU DID THIS ABLE GRAPE PRO FORMA?

09:18AM

18 A. THIS WAS THE PRO FORMA DESIGNED TO MODEL WHAT  
19 IT WOULD TAKE TO BUY JUST OUR BUSINESS, OR AT LEAST  
20 PORTIONS OF OUR BUSINESS.

09:18AM

21 Q. SO THIS WASN'T TO BUY THE WHOLE OF TCW'S  
22 BUSINESS, JUST MR. GUNDLACH'S PART?

23 A. THAT'S CORRECT.

24 Q. AND YOU SAID THAT THERE WAS -- EARLIER THERE  
25 WAS DISCUSSION AT THE SEPTEMBER 3RD MEETING, ABOUT THE  
26 BUSINESS NOT BEING FOR SALE. I THINK MR. QUINN ASKED  
27 YOU ABOUT THAT.

09:18AM

28 DO YOU RECALL THAT?

1 A. YES.

2 Q. DID MR. GUNDLACH MAKE ANY REQUEST AT THAT  
3 MEETING ABOUT AN ANNOUNCEMENT, WHETHER THE BUSINESS WAS  
4 FOR SALE?

5 A. YES. HE ASKED IF THE BUSINESS WASN'T FOR  
6 SALE, HE ASKED THAT A PRESS RELEASE BE ISSUED.

09:18AM

7 Q. AND WHAT DID MR. STERN SAY AT THAT TIME, IF  
8 ANYTHING?

9 A. I SEEM TO RECALL HIM SAYING THAT HE THOUGHT IT  
10 WOULD BE A GOOD IDEA, OR THAT HE WOULD DO IT, OR SEE TO  
11 IT.

09:18AM

12 Q. WAS SOME ANNOUNCEMENT EVER MADE AFTER THAT  
13 TIME, THAT SG WAS -- THAT TCW WAS NOT FOR SALE?

14 A. NO.

15 Q. NOW, WHAT WAS MR. STERN'S RESPONSE AT THE  
16 SEPTEMBER 3RD MEETING, TO MR. GUNDLACH'S PROPOSAL TO  
17 BUY THE WHOLE OF TCW'S BUSINESS?

09:19AM

18 A. HE JOTTED DOWN SOME NUMBERS ON A PIECE OF  
19 PAPER AND STUCK IT IN HIS POCKET.

20 Q. DID HE SAY ANYTHING ABOUT WHETHER HE'D GET  
21 BACK --

09:19AM

22 A. HE DID. HE SAID HE'D GET BACK TO JEFFREY.

23 Q. AND TO YOUR KNOWLEDGE, DID MR. STERN EVER GET  
24 BACK TO YOU OR MR. GUNDLACH WITH THAT?

25 A. NO.

09:19AM

26 Q. NOW, IF WE LOOK AT EXHIBIT 963, DO YOU SEE  
27 THERE'S A -- IT SAYS TCW SHARE, 10 PERCENT.

28 DO YOU SEE THAT?



1 A. YES.

2 Q. WHAT DOES THAT REFER TO?

3 A. THAT REFLECTS THE SHARE OF REVENUES TO BE  
4 SHARED WITH TCW IN THE EVENT OF SOME SORT OF  
5 SEPARATION.

09:19AM

6 Q. WHERE DID YOU GET THE 10 PERCENT FIGURE?

7 A. I JUST KIND OF PULLED IT OUT OF WHAT I WAS  
8 THINKING AT THE TIME, WHICH WAS IT WAS SIMILAR TO --  
9 FROM WHAT I HAD HEARD, IT WAS SIMILAR TO THE SPLIT THAT  
10 THE BEST L.A. GROUP, THAT WOULD BE THE HIGH YIELD  
11 ALTERNATIVES GROUP, HAD WITH TCW AT THE TIME.

09:20AM

12 Q. NOW, WHY WERE YOU ASSUMING YOU WOULD GIVE A 10  
13 PERCENT SHARE OF REVENUES TO TCW IN CONNECTION WITH  
14 THIS NEW BUSINESS?

15 A. WELL, IN ANY SEPARATION, IF YOU WANTED TO HAVE  
16 AN AMICABLE NEGOTIATED SEPARATION, YOU WOULD HAVE TO  
17 HAVE SOME SORT OF ECONOMICS BEING EXCHANGED.

09:20AM

18 Q. DID YOU DISCUSS THE 10 PERCENT FIGURE WITH  
19 MR. GUNDLACH BEFORE YOU PUT IT ON THIS DOCUMENT?

20 A. NO, I DID NOT.

09:20AM

21 Q. ALL RIGHT.

22 NOW, I'D LOOK TO LOOK AT PAGE 3 OF THIS  
23 EXHIBIT, IF WE COULD.

24 ALL RIGHT. IF YOU BLOW UP THE TOP PART  
25 THERE. WE HAVE SOME ABBREVIATIONS THERE. TSI, TGLMX,  
26 MBS, AND SO FORTH.

09:21AM

27 WHAT ARE THOSE ABBREVIATIONS FOR?

28 A. THOSE ARE EITHER ACRONYMS FOR SPECIFIC CLOSED

1 END FUNDS, OR MUTUAL FUNDS THAT WERE, WE WERE -- THAT  
2 JEFFREY AND THE TEAM WERE MANAGING, AND/OR SOME OF  
3 THESE ARE ALSO ACRONYMS FOR STRATEGIES THAT WE MANAGED.

4 Q. SO FOR EXAMPLE, TGLMX, WHAT DOES THAT REFER  
5 TO?

09:21AM

6 A. THAT WAS TICKER FOR THE TOTAL RETURN BOND  
7 FUND.

8 Q. WHAT KIND OF FUND WAS THAT?

9 A. THAT WAS A MORTGAGE-BACKED SECURITY MUTUAL  
10 FUND.

09:21AM

11 Q. IT WAS A MUTUAL FUND.

12 OKAY. SO WHAT SMBS, WHAT DOES THAT  
13 REFER TO?

14 A. SMBS STANDS FOR STRATEGIC MORTGAGE-BACKED  
15 SECURITIES.

09:21AM

16 Q. WHAT WAS THAT?

17 A. THAT WAS THE 2.5 BILLION THERE WERE -- IT WAS  
18 PREDOMINANTLY ASSETS IN THE FORM OF LIMITED  
19 PARTNERSHIPS.

20 Q. SO IF WE LOOK AT THE -- AUM STANDS FOR ASSETS  
21 UNDER MANAGEMENT. I THINK WE ESTABLISHED THAT; IS THAT  
22 TRUE?

09:22AM

23 A. THAT'S CORRECT.

24 Q. SO IF WE LOOK AT -- NEXT TO TGLMX, THERE'S A  
25 12-BILLION-DOLLAR NUMBER THERE.

09:22AM

26 HOW DOES THAT FIGURE -- SO WERE YOU  
27 ASSUMING THAT THAT'S HOW MUCH AUM THERE WOULD BE AT  
28 ABLE GRAPE, STARTING THE FIRST DAY THAT YOU OPENED YOUR

1 DOORS?

2 A. YEAH. IT WAS ESSENTIALLY ALL OF THE ENTIRE  
3 FUND.

4 Q. SO -- AND I THINK YOU ANSWERED THIS, BUT JUST  
5 SO IT'S CLEAR, HOW DOES THE 12 BILLION ON THE ABLE  
6 GRAPE PRO FORMA COMPARE TO THE ASSETS UNDER MANAGEMENT  
7 IN THE TOTAL RETURN BOND FUND AT TCW AS OF THIS TIME?

09:22AM

8 A. THE FUND WAS ABOUT 12 BILLION.

9 Q. ALL RIGHT. AND IF WE LOOK AT SMBS, JUST TO  
10 TAKE AN EXAMPLE, THAT SAYS 2.5 BILLION, HOW DOES THAT  
11 COMPARE WITH THE ASSETS UNDER MANAGEMENT IN THE SMBS  
12 STRATEGIC MORTGAGE-BACK SECURITY STRATEGIES AT THAT  
13 TIME?

09:22AM

14 A. AGAIN, THAT WOULD HAVE BEEN THE ENTIRE ASSETS  
15 UNDER MANAGEMENT FOR THAT STRATEGY.

09:23AM

16 Q. SO WOULD IT HAVE BEEN REASONABLE FOR YOU TO  
17 ASSUME, THEN, AT THAT TIME, IN DECEMBER OF 2009, THAT  
18 ABLE GRAPE COULD SIMPLY TAKE 100 PERCENT OF THE ASSETS  
19 UNDER MANAGEMENT FOR THE TOTAL RETURN BOND FUND WITHOUT  
20 SOME KIND OF AN AGREEMENT BY TCW?

09:23AM

21 A. NO. THERE'S NO WAY WE COULD HAVE.

22 Q. WHY NOT?

23 A. THESE WERE ALL CONTRACTS CONTROLLED BY TCW.

24 Q. AND SO IF WE LOOK AT SMBS, IS THERE ANY WAY  
25 THAT YOU UNDERSTOOD YOU COULD HAVE TAKEN THE FULL  
26 AMOUNT OF THE SMBS BUSINESS TO ABLE GRAPE WITHOUT SOME  
27 KIND OF AN AGREEMENT BY TCW?

09:23AM

28 A. NO. THERE'S NO WAY.

1 Q. WHY NOT?

2 A. AGAIN, THESE WERE LIMITED PARTNERSHIPS THAT  
3 WERE CONTROLLED AND BEING MONITORED -- MAINTAINED BY  
4 TCW.

5 Q. NOW, MR. QUINN ASKED YOU ABOUT WHO HAD  
6 DIFFERENT KINDS OF LEVERAGE IN A NEGOTIATED DEPARTURE.  
7 DO YOU RECALL THAT EXCHANGE?

8 A. YES.

09:24AM

9 Q. AND I BELIEVE HE ASKED YOU, IF MR. GUNDLACH  
10 WERE TO LEAVE TCW BEFORE IT HAD A REPLACEMENT MANAGER  
11 IN PLACE, THAT THAT WOULD GIVE YOU LEVERAGE, BECAUSE  
12 THEY WOULDN'T BE IN A POSITION TO MANAGE THE FUNDS, IF  
13 YOU WERE TO LEAVE.

09:24AM

14 DO YOU RECALL THAT TESTIMONY?

15 A. YES.

09:24AM

16 Q. DID YOU VIEW THAT AS A REALISTIC POSSIBILITY,  
17 THE POSSIBILITY OF THREATENING, WE'RE GOING TO JUST GET  
18 UP AND LEAVE, BEFORE HAVE YOU ANYBODY IN PLACE TO  
19 MANAGE, AND CATCH YOU -- TO LEAVE YOU IN THE LURCH,  
20 CATCH YOU WITH YOUR PANTS DOWN? YOU ARE NOT IN A  
21 POSITION TO MANAGE THE FUNDS.

09:24AM

22 WAS THAT A REALISTIC POSSIBILITY, IN  
23 YOUR MIND, IN DECEMBER OF 2009?

24 A. NO.

25 Q. WHY NOT?

09:24AM

26 A. YOU WOULD BE SHOOTING YOURSELF IN THE FOOT.  
27 YOU WOULDN'T GET ANOTHER CLIENT. CLIENTS WOULD BE  
28 EXTREMELY UPSET. A LOT OF THESE CLIENTS HAVE TO GO

1 THROUGH NUMEROUS PROCEDURES AND DUE DILIGENCE PROCESSES  
2 IN ORDER TO SIGN ON AN INVESTMENT MANAGER.

3 IF WE JUST WALKED ACROSS THE STREET,  
4 THERE'S NO WAY THEY COULD DO THAT.

5 Q. SO THEY HAVE THEIR DUE DILIGENCE, THEY WOULD  
6 HAVE TO DO BEFORE THEY COULD APPROVE YOU AS A NEW  
7 MANAGER; IS THAT TRUE?

09:25AM

8 A. THAT'S RIGHT.

9 AND WE WOULD JUST BE A STARTUP.

10 Q. SO IF YOU WERE TO LEAVE THEM WITHOUT ANY  
11 MANAGEMENT IN PLACE, WHAT WOULD THAT DO TO THE CLIENTS  
12 AND THE ASSETS THEY'VE ENTRUSTED TO TCW TO MANAGE?

09:25AM

13 A. WELL, THE ASSETS WOULD STAY THERE. THEY'D  
14 HAVE TO STAY THERE.

15 Q. WOULD THE CLIENTS LIKE IT?

09:25AM

16 A. PROBABLY NOT.

17 Q. AND HOW IMPORTANT WAS IT TO YOU, IN STARTING A  
18 NEW BUSINESS, TO MAINTAIN GOOD RELATIONS WITH THE  
19 CLIENTS WHO ENTRUSTED MONEY TO YOU?

20 A. EXTREMELY IMPORTANT. THAT IS THE BUSINESS.

09:25AM

21 Q. DO YOU THINK IT WOULD BE A WISE WAY TO START A  
22 NEW BUSINESS, BY TAKING STEPS THAT ALIENATED CLIENTS IN  
23 THAT WAY?

24 A. ABSOLUTELY NOT.

25 Q. IS THAT A POSSIBILITY THAT YOU EVEN  
26 CONTEMPLATED IN DECEMBER OF 2009?

09:26AM

27 A. NO.

28 Q. NOW, YOU MENTIONED THAT YOU COULDN'T JUST TAKE

1 THE FUNDS OUT WITHOUT THE AGREEMENT OF TCW; IS THAT  
2 RIGHT?

3 A. YES.

4 Q. IN FACT, WHEN MR. GUNDLACH WAS FIRED, IN  
5 DECEMBER OF 2009, WAS HE ABLE TO TAKE THE \$12 BILLION  
6 TOTAL RETURN BOND FUND WITH HIM TO DOUBLELINE?

09:26AM

7 A. NO.

8 Q. HOW LONG DID IT TAKE BEFORE HE COULD OPEN A  
9 NEW MUTUAL FUND OF HIS OWN?

10 A. THE MUTUAL FUND FOR DOUBLELINE WAS NOT OPEN  
11 FOR BUSINESS UNTIL APRIL 2010.

09:26AM

12 Q. AND JUST LOOK AT SOME OTHER FUNDS. SMCF, WHAT  
13 DOES THAT REFER TO?

14 A. SPECIAL MORTGAGE CREDIT FUND.

15 Q. WAS MR. GUNDLACH ABLE TO TAKE THE SPECIAL  
16 MORTGAGE CREDIT FUND WITH HIM TO DOUBLELINE, AFTER HE  
17 LEFT IN DECEMBER OF 2009?

09:26AM

18 A. NO.

19 Q. DID THE FACT THAT MR. GUNDLACH NEEDED TCW'S  
20 CONSENT TO TAKE THE FUNDS WITH IT, GIVE TCW ANY  
21 LEVERAGE IN A NEGOTIATION?

09:26AM

22 A. ABSOLUTELY.

23 Q. NOW, YOU MENTIONED THAT BLAIR THOMAS AND HIS  
24 GROUP LEFT UNDER A NEGOTIATED SEPARATION.

25 DO YOU RECALL THAT?

09:27AM

26 A. I DO.

27 Q. AND WHICH GROUP DID BLAIR THOMAS RUN?

28 A. THE ENERGY INFRASTRUCTURE GROUP.

1 Q. AND MR. QUINN ASKED WHETHER MR. THOMAS' GROUP  
2 DOWNLOADED ANY INFORMATION BEFORE IT LEFT, OR LOOKED  
3 FOR ANY SPACE.

4 DO YOU RECALL TESTIMONY ON THAT?

5 A. YES, I DO.

09:27AM

6 Q. BEFORE BLAIR THOMAS' GROUP NEGOTIATED A  
7 SEPARATION FROM TCW, WERE THERE ANY RUMORS CIRCULATING  
8 THAT YOU HEARD THAT HE WAS ABOUT TO BE FIRED?

9 MR. QUINN: LACKS FOUNDATION.

10 THE COURT: SUSTAINED.

09:27AM

11 MR. QUINN: IRRELEVANT.

12 Q. BY MR. HELM: WERE YOU AWARE OF ANY PLANS IN  
13 PLACE TO FIRE MR. THOMAS, BEFORE HE NEGOTIATED HIS  
14 SEPARATION?

15 MR. QUINN: SAME OBJECTION.

09:27AM

16 THE COURT: SUSTAINED.

17 MR. QUINN: LACKS FOUNDATION.

18 Q. BY MR. HELM: GOING BACK TO THE PRO FORMA  
19 EXHIBIT 963, CAN YOU GO TO THE FIRST PAGE AGAIN OF  
20 THAT?

09:27AM

21 DID YOU USE ANY TCW INFORMATION WHEN YOU  
22 WERE PREPARING THE PRO FORMA?

23 A. YES.

24 Q. JUST IN GENERAL TERMS, CAN YOU SAY THE KIND OF  
25 INFORMATION YOU USED?

09:28AM

26 A. THE ASSETS -- SOMEBODY IS AROUND IT, BUT I  
27 THINK I DID, FOR SOME OF THE ASSETS UNDER MANAGEMENT,  
28 PROBABLY OFF A REPORT I HAD.

1                   SOME SALARY INFORMATION I RECEIVED FROM  
2 LOU LUCIDO, AND I THINK I HAD A SPREADSHEET THAT HAD  
3 SUBSCRIPTIONS FOR SOME OF THE TECHNOLOGY COSTS.

4           Q.     AS THE CHIEF OPERATING OFFICER OF THE  
5 MORTGAGE-BACKED SECURITIES GROUP, WAS THIS INFORMATION  
6 YOU REGULARLY CAME ACROSS AS PART OF YOUR JOB? 09:28AM

7           A.     YES.

8           Q.     NOW AFTER YOU LEFT TCW, DID YOU MAKE ANY USE  
9 OF THE INFORMATION CONTAINED IN THIS PRO FORM THAT YOU  
10 RECEIVED FROM TCW PEOPLE? 09:28AM

11          A.     NO.

12          Q.     I'D LIKE YOU TO LOOK AT -- I'D LIKE TO SHOW  
13 YOU EXHIBIT 948.

14                   WOULD YOU LOOK AT THAT IN YOUR BINDER?

15                   AND THAT'S BEEN ADMITTED, YOUR HONOR. 09:28AM

16 MAY WE PUT IT UP?

17                   THE COURT:   YES, YOU MAY.

18          Q.     BY MR. HELM:   HAVE YOU EVER SEEN THIS BEFORE?

19          A.     YES.

20          Q.     WHAT IS IT? 09:29AM

21          A.     THIS WAS THE -- IT LOOKS LIKE THE STANDARD  
22 PRESENTATION WE USED WHEN WE WERE AT TCW TO DESCRIBE  
23 THE MBS INVESTMENT PROCESS TO OUR CLIENTS.

24          Q.     WAS THIS AT A HIGH LEVEL, WAS IT A SPECIFIC  
25 GRANULAR LEVEL?   WHAT LEVEL OF GENERALITY WOULD YOU SAY  
26 THIS DISPLAYED? 09:29AM

27          A.     IT WAS VERY HIGH LEVEL GENERIC.

28          Q.     WAS THIS DESCRIPTION EVER PUT INTO A



1 PRESENTATION MADE TO A TCW CLIENT WHEN YOU WERE THERE?

2 A. YES.

3 Q. NOW --

4 A. MANY TIMES.

5 Q. LET'S -- DON'T PUT IT UP YET, DENNIS; BUT  
6 EXHIBIT 393, IF YOU WOULD.

09:29AM

7 DO YOU HAVE THAT IN FRONT OF YOU?

8 A. I DO.

9 Q. DO YOU RECOGNIZE IT?

10 A. YES.

09:30AM

11 Q. WHAT IS IT?

12 A. THIS WAS A PRESENTATION JOE GALLIGAN AND I DID  
13 TO THE CREDIT UNION GROUP AT JP MORGAN/BEAR STEARNS.

14 MR. HELM: I'D MOVE ADMISSION OF 393, YOUR  
15 HONOR?

09:30AM

16 THE COURT: ANY OBJECTION?

17 MR. QUINN: NO OBJECTION.

18 THE COURT: IT WOULD BE ADMITTED.

19

20 (EXHIBIT 393 ADMITTED.)

09:30AM

21

22 MR. HELM: WHY DON'T WE DISPLAY THAT.

23 Q. ALL RIGHT. SO WHO WAS THIS A PRESENTATION TO?

24 A. JP MORGAN/BEAR STEARNS.

25 Q. WHEN WAS THE PRESENTATION MADE?

09:30AM

26 A. IN THE END OF OCTOBER '09.

27 Q. ALL RIGHT. SO IT SAYS JOSEPH GALLIGAN AND  
28 CRIS SANTA ANA.

1 WERE YOU INVOLVED IN MAKING THIS  
2 PRESENTATION TO JP MORGAN/BEAR STEARNS?

3 A. I'M SURE I REVIEWED IT.

4 Q. BY MR. HELM: LET'S LOOK AT -- WOULD IT BE  
5 POSSIBLE TO PUT IT UP ALSO WITH 948?

09:31AM

6 AND FOR 393, COULD YOU START WITH PAGE  
7 15?

8 ALL RIGHT. I'D LIKE YOU TO COMPARE PAGE  
9 15 OF EXHIBIT 393, BEAR STEARNS PRESENTATION, WITH THE  
10 FIRST PAGE OF 948.

09:31AM

11 HOW DO THEY COMPARE?

12 A. THEY ARE VIRTUALLY IDENTICAL.

13 Q. LET'S GO TO THE NEXT PAGE OF EACH DOCUMENT.

14 IT'S A LITTLE BIT SIDEWAYS, BUT CAN YOU  
15 TELL HOW THOSE COMPARE?

09:31AM

16 A. EXACTLY THE SAME.

17 Q. LET'S GO TO THE NEXT PAGE.

18 AND HOW DO THOSE COMPARE?

19 A. THOSE ARE ALSO IDENTICAL.

20 Q. AND HOW ABOUT THE NEXT PAGE?

09:32AM

21 LET'S SEE, I THINK WE MAY HAVE A  
22 DISCREPANCY THERE.

23 IF YOU LOOK AT 393, IS THERE A PAGE THAT  
24 STARTS WITH "RESEARCH"?

25 A. YES.

09:32AM

26 Q. AND -- ALL RIGHT. IF YOU COMPARE THE PAGES,  
27 ARE THEY ROUGHLY THE SAME?

28 A. IT'S THE SAME PRESENTATION.

1 Q. ALL RIGHT. AND THE EXHIBIT 393, THE JP  
2 MORGAN/BEAR STEARNS PRESENTATION, DID YOU SHOW THIS TO  
3 THE CLIENT, BEAR STEARNS OR JP MORGAN?

4 A. YES.

5 Q. DID YOU LEAVE IT BEHIND FOR THE CLIENT TO  
6 KEEP?

09:33AM

7 A. YES. THESE WERE -- YEAH, THEY WERE ALLOWED TO  
8 TAKE THESE FREELY.

9 Q. DID YOU TELL THEM THAT IT WAS CONFIDENTIAL IN  
10 ANY WAY?

09:33AM

11 A. NO.

12 Q. NOW, LET'S GO TO THE FIRST PAGE OF EXHIBIT  
13 393.

14 ACTUALLY YOU CAN PUT THAT UP JUST BY  
15 ITSELF, DENNIS.

09:33AM

16 NOW, IF YOU LOOK AT THE -- AT THE  
17 LEFT-HAND CORNER, SOMEONE HAS WRITTEN SOMETHING THERE.  
18 IT SAYS CONFIDENTIAL.

19 DO YOU SEE THAT?

20 A. YES.

09:33AM

21 Q. WAS THAT WRITING THERE AT THE TIME THAT YOU  
22 PREPARED THIS AND GAVE IT TO BEAR STEARNS?

23 A. NO.

24 Q. ALL RIGHT. AND SO THAT AND THE BATES NUMBER  
25 BELOW THAT, SEE WHERE IT SAYS TCW 00026902, WAS THAT  
26 THERE AT THE TIME YOU PREPARED THIS?

09:34AM

27 A. NO.

28 Q. AND I TAKE IT THE TX 393, THAT WASN'T THERE,

1 EITHER?

2 A. NO, IT WAS NOT.

3 Q. SO WERE THOSE ADDED AFTER THE FACT, AS PART OF  
4 THIS LITIGATION?

5 A. YES.

09:34AM

6 Q. WAS THERE ANY DESIGNATION ON THIS DOCUMENT,  
7 EXHIBIT 393, THAT SUGGESTED THAT IT WAS SOMETHING THAT  
8 CONTAINED CONFIDENTIAL INFORMATION, AT THE TIME THAT  
9 YOU PREPARED IT AND SHOWED IT TO BEAR STEARNS JP  
10 MORGAN?

09:34AM

11 A. NO.

12 Q. NO?

13 A. NO.

14 Q. NOW, DID YOU INCLUDE THE PAGES THAT WE'VE JUST  
15 BEEN GOING OVER, IN EXHIBIT 393 AND ALSO IN EXHIBIT  
16 948, ANY OTHER PRESENTATIONS THAT YOU MADE TO CLIENTS?

09:34AM

17 A. THAT WAS THE STANDARD PRESENTATION. I'M SURE  
18 THAT WAS MADE.

19 Q. DID YOU EVER LEAVE IT BEHIND WITH OTHER  
20 CLIENTS?

09:34AM

21 A. SURELY.

22 Q. DID YOU HAVE A REGULAR PRACTICE OF INDICATING  
23 THAT CLIENTS COULDN'T KEEP IT?

24 A. NO.

25 Q. DID ANYONE AT TCW EVER TELL THAT YOU SHOULDN'T  
26 LEAVE BEHIND HANDOUTS CONTAINING THIS INFORMATION  
27 BECAUSE IT WAS SO CONFIDENTIAL?

09:34AM

28 A. NO.

1 Q. ARE YOU FAMILIAR WITH A COMMITTEE AT TCW  
2 CALLED THE FOCUS GROUP OR THE FOCUS STUDY?

3 A. YES.

4 Q. WHAT WAS THAT?

5 A. THE FOCUS GROUP WAS A COMMITTEE PUT TOGETHER  
6 BY THEN CEO BOB BEYER TO ADDRESS THE TYPES OF PRODUCTS  
7 AT THE FIRM THAT SHOULD BE FOCUSED ON FOR THE MARKETING  
8 GROUP. THAT -- THE MANDATE WAS THEN LATER EXPANDED TO  
9 INCLUDE LOOKING AT ALL THE IMPEDIMENTS TO GROWTH AND  
10 OUR ABILITY TO GROW ASSETS UNDER MANAGEMENT IN THE  
11 FIRM.

09:35AM

09:35AM

12 Q. AND YOU SAID THAT MR. BEYER CONFIRMED IT?

13 A. YEAH. THAT WAS MR. BEYER'S COMMITTEE.

14 Q. WHO WAS MR. BEYER AT THAT TIME?

15 A. HE WAS THE CEO.

09:35AM

16 Q. HE WAS THE CHIEF EXECUTIVE OFFICER OF TCW?

17 A. THAT'S CORRECT.

18 Q. WHEN DID YOU CONVENE THIS FOCUS GROUP OR FOCUS  
19 STUDY?

20 A. IT WAS THE LATE FALL OF 2008.

09:36AM

21 Q. AND LET ME -- YOU SAY THAT IT BROADENED -- IT  
22 REQUESTED THAT IT BROADEN ITS FOCUS TO TALK MORE  
23 GENERALLY ABOUT WHAT MIGHT BE IMPEDIMENTS TO ASSET  
24 GROWTH; IS THAT TRUE?

25 A. THAT'S CORRECT.

09:36AM

26 Q. DID THE FOCUS GROUP PROCEED TO EXAMINE THAT  
27 QUESTION?

28 A. YES, WE DID.

1 Q. AND LET ME ASK YOU TO LOOK AT EXHIBIT 6055 --  
2 LET'S NOT PUT THAT UP JUST YET, DENNIS.

3 HAVE YOU SEEN THIS DOCUMENT BEFORE?

4 A. YES.

5 Q. WHAT IS IT?

6 A. THIS IS THE -- IT LOOKS LIKE THE  
7 RECOMMENDATIONS THAT THE FOCUS GROUP CAME UP WITH.

8 Q. AND DID YOU PREPARE IT AT OR ABOUT THE TIME OF  
9 THE FOCUS GROUP'S RECOMMENDATIONS?

10 A. I'M SORRY?

11 Q. WAS IT PREPARED AROUND THE TIME OF THE FOCUS  
12 GROUP RECOMMENDATIONS?

13 A. YES. IT LOOKS LIKE THIS WAS THE FINAL  
14 RECOMMENDATIONS WE WANTED PUT INTO A FORMAL REPORT TO  
15 MR. BEYER.

16 MR. HELM: MOVE ADMISSION OF 6055, YOUR HONOR.

17 MR. QUINN: NO OBJECTION.

18 THE COURT: IT WILL BE ADMITTED.

19 MR. HELM: LET'S PUT IT UP, PLEASE.

20 ALL RIGHT. LET'S GO TO THE FIRST  
21 PAGE -- EXCUSE ME, THE SECOND PAGE OF THAT EXHIBIT.

22 Q. NOW, IT HAS A LISTING THERE OF PARTICIPANTS.

23 IS THAT A LISTING OF THE PEOPLE WHO WERE  
24 THE MEMBERS OF THE FOCUS GROUP OR THE FOCUS STUDY AT  
25 THAT TIME?

26 A. IT IS.

27 Q. WHY DON'T WE JUST GO THROUGH THEM.

28 ACTUALLY, PUT IT UP WITH WHAT'S NEXT TO

09:36AM

09:37AM

09:37AM

09:37AM

09:37AM

1 IT ALSO. MARK ALBERT.

2 WHO WAS MARK ALBERT?

3 A. HE WAS A MANAGING DIRECTOR THAT WORKED OUT OF  
4 THE WEST L.A. OFFICE.

5 Q. WEST L.A., WE'VE REFERRED TO THAT. 09:37AM

6 WHAT DOES THE WEST L.A. OFFICE REFER TO?

7 A. IT'S THE ALTERNATIVE MEZZ GROUP. IT ALSO RAN  
8 HIGH YIELD OUT OF THAT OFFICE. IT WAS THE GROUP HEADED  
9 UP BY MARK ATTANASIO.

10 Q. AND HE WAS NOT PART OF MR. GUNDLACH'S GROUP,  
11 CORRECT? 09:38AM

12 A. NO.

13 Q. AND DID HE EVER COME DOUBLELINE?

14 A. NO.

15 Q. JEFF ANDERSON, WHO WAS JEFF ANDERSON? 09:38AM

16 A. JEFF ANDERSON WAS A PART OF EXECUTIVE  
17 MANAGEMENT. HE HAD SOME SORT OF UTILITY ROLE IN  
18 EXECUTIVE MANAGEMENT WHERE HE WORKED. HE WORKED  
19 DIRECTLY WITH BOB BEYER.

20 Q. WAS HE PART OF JEFFREY GUNDLACH'S GROUP? 09:38AM

21 A. NO.

22 Q. DID HE EVER COME OVER TO DOUBLELINE?

23 A. NO.

24 Q. SUSAN LEADER. WHAT WAS HER POSITION?

25 A. SHE WAS A MARKETING REP OUT OF OUR NEW YORK  
26 OFFICE. 09:38AM

27 Q. AND WAS SHE PART OF MR. GUNDLACH'S GROUP?

28 A. SHE WAS NOT. SHE WORKED FOR WHO WAS HEADING

1 UP MARKETING AT THE TIME.

2 Q. DID SHE EVER COME OVER DOUBLELINE?

3 A. NO, SHE DID NOT.

4 Q. STEVE MACDONALD, WHO WAS HE?

5 A. HE WAS ALSO ANOTHER SENIOR MARKETER. HE  
6 WORKED OUT THE DOWNTOWN OFFICE.

7 Q. WAS HE PART OF MR. GUNDLACH'S GROUP?

8 A. NO.

9 Q. DID HE EVER COME OVER TO DOUBLELINE?

10 A. NO.

11 Q. RON REDELL. WHO WAS RON REDELL?

12 A. RON REDELL WAS PRESIDENT OF THE TCW FUNDS  
13 COMPLEX AT TCW.

14 Q. DID HE WORK ONLY WITH -- HE WORKED SOME WITH  
15 MR. GUNDLACH AT THAT TIME?

16 A. INsofar AS WE HAD THE LARGEST MUTUAL FUND AT  
17 THE COMPANY.

18 Q. BUT HE WASN'T IN MR. GUNDLACH'S GROUP, PER SE?

19 A. NOT AT THE TIME, NO.

20 Q. DID HE COME OVER DOUBLELINE?

21 A. HE DID.

22 Q. MICHAEL REILLY, I THINK WE'VE SEEN MR. REILLY.  
23 WHO WAS MR. REILLY?

24 A. MR. REILLY WAS THE HEAD OF EQUITY RESEARCH.

25 Q. WAS HE PART OF MR. GUNDLACH'S GROUP?

26 A. NO, HE WASN'T.

27 Q. DID HE COME OVER TO DOUBLELINE?

28 A. NO, HE DID NOT.

09:38AM

09:39AM

09:39AM

09:39AM

09:39AM



1 Q. NOW, CRIS SANTA ANA, WE KNOW WHO THAT IS.  
2 ALAN TOOLE.

3 WHO WAS MR. TOOLE?

4 A. HE WAS ANOTHER MEMBER OF THE EXECUTIVE  
5 MANAGEMENT WHO REPORTED DIRECTLY TO MR. BEYER.

09:39AM

6 Q. DID HE COME TO DOUBLELINE AT ANY TIME?

7 A. HE DID.

8 Q. ALL RIGHT.

9 NOW, LET'S LOOK AT THE NEXT PAGE, IF WE  
10 COULD. AND LET ME JUST ASK YOU, DID THE FOCUS STUDY  
11 GROUP MAKE ANY RECOMMENDATIONS CONCERNING CHANGES TO  
12 THE FIXED INCOME GROUP AT TCW?

09:40AM

13 A. YES. THE VERY FIRST BULLET POINT IS  
14 INDICATIVE OF THAT.

15 Q. IT SAYS (READING):

09:40AM

16 CONSOLIDATE FIXED INCOME  
17 PLATFORM TO EXPLOIT STRONG NEAR  
18 TERM MARKET OPPORTUNITIES AND  
19 CREDITS. PLACE ALL MARKETABLE  
20 SECURITY FIXED INCOME STRATEGIES  
21 UNDER JEG.

09:40AM

22 WHO WAS JEG?

23 A. THAT'S JEFFREY GUNDLACH.

24 Q. SO WHAT WAS THIS REFERRING TO? WHAT WAS THE  
25 ESSENCE OF THIS RECOMMENDATION?

09:40AM

26 A. ONE OF THE PROBLEMS PERCEIVED IN THE  
27 MARKETPLACE WAS THAT TCW WAS A SERIES OF WHAT THEY CALL  
28 BUCKET SHOTS. IT WAS A BUNCH OF FIRMS WITHIN A FIRM,

1 AND THERE WAS NO REAL RISK MANAGEMENT TAKING PLACE IN  
2 THE -- ACROSS ALL OF THE FIXED INCOME PRODUCTS.

3 Q. WHEN YOU SAY NO REAL RISK MANAGEMENT, WHAT DO  
4 YOU MEAN?

5 A. THAT THERE WAS -- SOMEHOW, DECISIONS FOR THE  
6 PORTFOLIOS WEREN'T SOMEHOW CONSOLIDATED UP INTO ONE  
7 CENTRALIZED CHIEF, LIKE A CHIEF INVESTMENT OFFICER.

09:41AM

8 THAT'S TYPICALLY THE WAY IT WORKS. THE  
9 CHIEF INVESTMENT OFFICER OVERSEES DECISIONS MADE BY THE  
10 VARIOUS PORTFOLIO GROUPS.

09:41AM

11 Q. WHAT WERE THE GROUPS THAT WERE NOT CURRENTLY  
12 UNDER MR. GUNDLACH'S SUPERVISION, THAT YOU WERE  
13 RECOMMENDING BE PLACED UNDER HIS SUPERVISION, AS PART  
14 OF THIS RECOMMENDATION?

15 A. SPECIFICALLY, THE WEST L.A. GROUP, THE  
16 ALTERNATIVES -- THE HIGH YIELD GROUP.

09:41AM

17 Q. MR. ATTANASIO'S GROUP?

18 A. YES.

19 Q. WHAT WAS MR. ATTANASIO'S POSITION ON WHETHER  
20 HIS GROUP SHOULD BE PLACED UNDER THE JURISDICTION OF  
21 MR. GUNDLACH?

09:41AM

22 A. I HADN'T TALKED TO HIM DIRECTLY ABOUT THAT,  
23 BUT THERE WERE RUMORS THAT HE WAS NOT HAPPY WITH THE  
24 IDEA.

25 MR. QUINN: MOVE TO STRIKE, YOUR HONOR.

09:42AM

26 THE COURT: SUSTAINED.

27 I'LL STRIKE THE RESPONSE.

28 Q. BY MR. QUINN: NOW, YOU SAID WEST L.A.

1                   WHY DO YOU REFER TO THEM AS WEST L.A.?  
2 WHERE WERE THE OFFICES OF MR. ATTANASIO'S GROUP, THE  
3 HIGH YIELD GROUP, LOCATED?

4           A.     SEPULVEDA, AND I THINK, OLYMPIC IN WEST L.A.

5           Q.     AND TCW'S OFFICES WERE IN DOWNTOWN L.A.; IS  
6 THAT CORRECT?

7           A.     THAT'S CORRECT.

8           Q.     SO THEY HAD SEPARATE OFFICES?

9           A.     THAT'S CORRECT.

10          Q.     HOW INTEGRATED WERE THEY INTO THE TCW  
11 BUSINESS?

12          A.     NOT VERY. THEY SEEMED TO BE A SOURCE OF  
13 COMPLAINT FROM MANY AREAS OF THE FIRM, FOR SEVERAL  
14 YEARS. PEOPLE THOUGHT THEY WEREN'T TEAM PLAYERS,  
15 BECAUSE THEY -- THEY REFUSED TO MOVE DOWNTOWN.

16          Q.     WAS THIS AN ISSUE THAT THE FOCUS GROUP  
17 DISCUSSED AT ALL?

18          A.     YES.

19          Q.     WHAT WAS THE DISCUSSION HAD ON THAT SIDE?

20          A.     IT WAS -- WE THOUGHT IT WAS A GOOD IDEA FOR  
21 THEM TO MOVE TO DOWNTOWN AND BE -- FINALLY BE PART OF  
22 THE FIXED INCOME GROUP.

23          Q.     NOW, LET'S TAKE A LOOK, IF I COULD, ALSO, AT  
24 EXHIBIT 6056.

25                   DO YOU HAVE THAT IN FRONT OF YOU? WHAT  
26 IS -- DO YOU RECOGNIZE THAT?

27          A.     YES.

28          Q.     WHAT IS IT?

09:42AM

09:42AM

09:42AM

09:42AM

09:43AM

1           A.     THIS APPEARS TO BE THE FINAL PRESENTATION THAT  
2 WAS GOING TO BE -- I THINK IT WAS -- FINAL PRESENTATION  
3 PREPARED BY JEFFREY ANDERSON, WITH BOB BEYER'S INPUT,  
4 THAT WE WOULD THEN DISCUSS AT A BROADER MEETING WITH, I  
5 THINK IT WAS MEMBERS OF THE EXECUTIVE MANAGEMENT  
6 COMMITTEE AT TCW.

09:43AM

7           MR. HELM:   MOVE ADMISSION OF 6056.

8           MR. QUINN:   NO OBJECTION.

9           THE COURT:   IT WILL BE ADMITTED.

09:43AM

10                           (EXHIBIT 6056 ADMITTED.)

11           MR. HELM:   SHOW THE FIRST PAGE.

12                           AND AGAIN, JUST BRIEFLY, IF WE COULD  
13 LOOK AT THE THIRD PAGE.

09:44AM

14                           THAT WAS THE PARTICIPANTS IN THE FOCUS  
15 GROUP STUDY; IS THAT TRUE?

16           A.     YES.

17           Q.     AND IF YOU GO TO THE NEXT PAGE, THE FIRST  
18 RECOMMENDATION, WHAT DOES THAT SAY?

09:44AM

19           A.     (READING):

20                           CONSOLIDATE FIXED INCOME  
21                           PLATFORM TO EXPLOIT STRONG, NEAR  
22                           TERM MARKET OPPORTUNITIES IN  
23                           CREDIT.   PLACE ALL MARKETABLE  
24                           SECURITY FIXED INCOME STRATEGIES IN  
25                           ONE GROUP.

09:44AM

26           Q.     NOW THAT PARTICULAR ONE DOESN'T MENTION JEG.  
27  
28

1                   WAS THERE AN UNDERSTANDING AS TO WHO  
2 WOULD BE SUPERVISING THIS CONSOLIDATED FIXED-INCOME  
3 GROUP WERE THIS RECOMMENDATION TO BE IMPLEMENTED?

4           A.     EVERYONE KNEW WHAT THAT MEANT.

5           Q.     WHAT DID IT MEAN?

09:44AM

6           A.     IT MEANT JEFFREY GUNDLACH.

7           Q.     NOW, YOU MENTIONED THAT THE FINDINGS WERE  
8 PRESENTED TO SOME PEOPLE.

9                   WHO WAS PRESENT WHEN THAT WAS PRESENTED?

10          A.     IT WAS EVERYONE -- IT WOULD HAVE BEEN ALL THE  
11 PARTICIPANTS, WITH THE EXCEPTION OF MR. ALBERT, I DON'T  
12 THINK WAS THERE. JEFFREY GUNDLACH WAS THERE. I  
13 BELIEVE BLAIR THOMAS WAS THERE. I THINK DIANE JAFFEE  
14 WAS THERE. BOB, AND I THINK THERE WERE SOME OTHER  
15 MEMBERS OF MANAGEMENT, JOE BURSCHINGER AND MICHAEL  
16 CAHILL.

09:44AM

17          Q.     WERE ANY SIGNIFICANT FUND MANAGERS AT TCW NOT  
18 PRESENT FOR THAT MEETING?

19          A.     MR. ATTANASIO DIDN'T SHOW UP.

20          Q.     WAS HE INVITED?

09:45AM

21          A.     THAT WAS THE MESSAGE, YES.

22          Q.     NOW, THE CONCLUSION WAS -- THE RECOMMENDATION  
23 WAS THAT MR. GUNDLACH START SUPERVISING OTHER AREAS OF  
24 THE FIRM.

25                   DID ANYONE IN THAT FOCUS GROUP, WHEN YOU  
26 WERE DISCUSSING IT, EXPRESS THE VIEW THAT MR. GUNDLACH  
27 WAS UNFIT TO MANAGE SOME OTHER GROUP?

09:45AM

28          A.     NO.

1 Q. DID MR. REILLY SAY THAT MR. GUNDLACH WAS  
2 UNQUALIFIED TO MANAGE OTHER GROUPS?

3 A. NO.

4 Q. DID HE SAY THAT MR. GUNDLACH WAS ERRATIC AND  
5 UNPROFESSIONAL?

09:45AM

6 A. NO.

7 Q. DID HE SAY THAT HE WAS ENGAGED IN CONDUCT THAT  
8 BREACHED HIS FIDUCIARY DUTIES?

9 A. NO.

10 Q. DID ANYBODY IN THE FOCUS GROUP EXPRESS THE  
11 VIEW THAT HE WAS ERRATIC, UNPROFESSIONAL, IN BREACH OF  
12 HIS FIDUCIARY DUTIES?

09:46AM

13 A. NO.

14 Q. NOW, WHAT ABOUT AT THE MEETING WHERE IT WAS  
15 PRESENTED, WHERE MR. BEYER WAS THERE, AND MS. JAFFEE,  
16 AND SOME OF THE OTHER PEOPLE THAT YOU MENTIONED?

09:46AM

17 DID ANYONE AT THAT MEETING EXPRESS THE  
18 VIEW, OH, MY GOSH, WE CAN'T HAVE JEFFREY GUNDLACH  
19 MANAGE ANOTHER GROUP. THAT GUY IS AN ERRATIC  
20 UNPROFESSIONAL FIDUCIARY DUTY BREACHER?

09:46AM

21 A. NO.

22 Q. SO DID YOU EVER HAVE A DISCUSSION -- MR. BEYER  
23 WAS PRESENT AT THE TIME THAT THIS WAS HAPPENING,  
24 CORRECT?

25 A. YES.

09:46AM

26 Q. DID YOU EVER HAVE A DISCUSSION ABOUT THE FOCUS  
27 GROUP RECOMMENDATIONS WITH MR. STERN, AFTER HE BECAME  
28 CEO?

1 A. YES.

2 Q. WHEN WAS THAT?

3 A. MY BELIEF IS, IT WAS SOMETIME AFTER JUNE; SO  
4 IT WAS EITHER LATE JUNE, JULY, AUGUST, SHORTLY AFTER HE  
5 RETURNED, OR HE, YOU KNOW, TOOK OVER THE HELM.

09:46AM

6 Q. AND WHO WAS PRESENT WHEN THE SUBJECT WAS  
7 DISCUSSED?

8 A. I BELIEVE A LOT OF THE SAME PEOPLE,  
9 PARTICIPANTS FROM THE FOCUS GROUP. I SEEM TO RECALL  
10 JOE BURSCHINGER, MICHAEL CAHILL, PEOPLE FROM EXECUTIVE  
11 MANAGEMENT.

09:47AM

12 THE PORTFOLIO MANAGERS, THE MANAGERS  
13 LIKE JEFFREY AND THEM, WERE NOT THERE.

14 Q. OKAY. AND -- BUT THESE RECOMMENDATIONS WERE  
15 PRESENTED TO MR. STERN AT THAT TIME?

09:47AM

16 A. YES. HE WANTED TO GO OVER ALL THE FINDINGS OF  
17 THE FOCUS GROUP.

18 Q. WHAT DID HE SAY TO YOU ABOUT THAT, AT THAT  
19 TIME, IF ANYTHING?

20 A. SPECIFICALLY? HE ASKED THAT I NOT TELL  
21 JEFFREY ANYTHING ABOUT WHAT WE DISCUSSED IN THAT  
22 MEETING.

09:47AM

23 Q. ALL RIGHT. NOW, MR. QUINN ASKED YOU WHETHER  
24 YOU UNDERSTOOD THAT YOU HAD A DUTY TO YOUR EMPLOYER NOT  
25 TO FAVOR YOUR OWN INTERESTS OVER THAT OF YOUR EMPLOYER.

09:47AM

26 DO YOU RECALL THAT?

27 A. I DO.

28 Q. DID YOU HAVE AN UNDERSTANDING, WHEN YOU WERE

1 AN OFFICER AT TCW, WHETHER YOU HAD THE RIGHT TO SEEK  
2 OTHER EMPLOYMENT, IF YOU WANTED TO?

3 A. YES.

4 Q. DID YOU HAVE AN UNDERSTANDING WHETHER YOU  
5 COULD LEAVE TO START A NEW BUSINESS THAT COMPETED WITH  
6 YOUR CURRENT EMPLOYER, IF YOU WANTED TO?

09:48AM

7 A. YES.

8 Q. WHAT WAS YOUR UNDERSTANDING? DID YOU BELIEVE  
9 YOU COULD DO THAT?

10 A. MY UNDERSTANDING IS THAT THIS IS A COUNTRY  
11 THAT DOESN'T BELIEVE IN INDENTURED SERVITUDE; THAT YOU  
12 COULD GO AND ACTUALLY WORK FOR YOURSELF, IF YOU WANTED  
13 TO.

09:48AM

14 Q. DID YOU HAVE AN UNDERSTANDING WHETHER YOU  
15 COULD MAKE PREPARATIONS, WHILE STILL EMPLOYED AT ONE  
16 EMPLOYER, TO START A COMPETING BUSINESS, AS LONG AS YOU  
17 DIDN'T OPERATE, ACTUALLY OPERATE A COMPETING BUSINESS?

09:48AM

18 A. YES.

19 Q. WHAT WAS YOUR UNDERSTANDING?

20 A. MY UNDERSTANDING WAS THAT YOU COULD LOOK AT  
21 WHAT VIABLE OPTIONS YOU WOULD HAVE TO START A BUSINESS.

09:48AM

22 Q. NOW, YOU DISCUSSED WITH MR. QUINN, A  
23 NOMINATION THAT THE MBS DATABASE RECEIVED FOR AN  
24 INNOVATION AWARD.

25 DO YOU RECALL THAT?

09:48AM

26 A. YES, UH-HUH.

27 Q. IF WE COULD LOOK AT EXHIBIT 1033, WHICH  
28 MR. QUINN WENT OVER WITH YOU.



1 PUT THAT UP, IF WE COULD.

2 IT WAS ADMITTED, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 Q. BY MR. HELM: LET'S SEE IF WE COULD LOOK AT  
5 SOME OF THE OTHER THINGS THAT RECEIVED NOMINATIONS.

09:49AM

6 I THINK IF WE LOOK AT THE TOP, THERE'S  
7 SOMETHING ABOUT CREATION OF A TCW SUSTAINABILITY TEAM,  
8 AN EFFORT TO USE SUSTAINABLE PRACTICES IN THE  
9 WORKPLACE.

10 WAS THAT ONE OF THE THINGS THAT WAS  
11 NOMINATED?

09:49AM

12 A. YES. MY WIFE WAS PART OF THAT TEAM.

13 Q. AND IF WE LOOK AT -- LET'S LOOK AT PAGE 5 OF  
14 THE EXHIBIT, JUST TO GET AN IDEA OF SOME OF THE OTHER  
15 ONES.

09:49AM

16 DO YOU HAVE THAT BEFORE YOU?

17 WAS ONE OF THE NOMINATIONS REGARDING A  
18 NEW PAYROLL AND HR PROGRAM, IF YOU -- YEAH, THAT WOULD  
19 BE NEW PAYROLL AND HR PROGRAM THAT HAD BEEN IMPLEMENTED  
20 IN THE HR DEPARTMENT?

09:49AM

21 A. YES.

22 Q. IF WE GO DOWN THERE BELOW THAT, THERE WAS A  
23 NOMINATION BECAUSE A SUMMER INTERNSHIP PROGRAM WAS  
24 CREATED; IS THAT TRUE?

25 A. YES.

09:50AM

26 Q. DID THE MBS DATABASE WIN THE INNOVATION AWARD  
27 AFTER IT WAS NOMINATED?

28 A. NO, IT DID NOT.

1 Q. NOW, YOU SAY THAT YOU PUT THE COPIES OF THE  
2 MBS DATABASE AT TCW ONTO THAT HARD DRIVE YOU'VE BEEN  
3 TALKING ABOUT; IS THAT CORRECT?

4 A. YES.

5 Q. WAS THE MBS DATABASE THAT YOU COPIED EVER USED  
6 AT DOUBLELINE? 09:50AM

7 A. ABSOLUTELY NOT.

8 Q. DID DOUBLELINE EVER DEVELOP ANY SYSTEM OF ITS  
9 OWN THAT PERFORMS THE FUNCTION THAT THE MBS DATABASE  
10 PERFORMED AT TCW? 09:50AM

11 A. WE DO NOT.

12 Q. TO THIS DAY, DOES DOUBLELINE HAVE A SYSTEM IN  
13 PLACE THAT'S LIKE THE MBS DATABASE?

14 A. NO.

15 Q. NOW, MR. QUINN ASKED YOU A LITTLE ABOUT YOUR  
16 COMPENSATION. I'D LIKE TO ASK YOU A COUPLE OF  
17 QUESTIONS ABOUT THAT. 09:50AM

18 HOW MUCH SALARY DID YOU GET IN THE YEAR  
19 2008?

20 A. 2008, MY SALARY WAS 157,000, I THINK, 500. 09:51AM

21 Q. SO NOW IN FEBRUARY OF '09, DID YOU RECEIVE A  
22 FEE SHARING DISTRIBUTION, A SHARE OF FEES THAT HAD BEEN  
23 GENERATED BY YOUR GROUP THAT YOU WERE PAID, RESPECTING  
24 THE WORK YOU DID IN 2008?

25 A. YES. 09:51AM

26 Q. SO WHAT WAS THE AMOUNT OF THE FEE SHARING  
27 PAYMENT YOU RECEIVED FOR YOUR 2008 WORK?

28 YOU RECEIVED IT IN '09, FOR YOUR '08

1 WORK?

2 A. IT CAME IN CHUNKS, BUT IT WAS ABOUT \$625,000.

3 Q. SO THE FEE SHARING PART OF YOUR COMPONENT WAS  
4 A MULTIPLE, SEVERAL TIMES OF WHAT YOUR SALARY WAS; IS  
5 THAT CORRECT?

09:51AM

6 A. THAT'S CORRECT.

7 Q. NOW, WHO DECIDED HOW MUCH OF THE FEE SHARING  
8 POOL THAT WAS GENERATED FOR THE MBS GROUP WAS PAID TO  
9 YOU PARTICULARLY?

10 A. THAT WAS JEFFREY GUNDLACH AND PHIL BARACH.

09:51AM

11 Q. AND WAS THAT THE PRACTICE THROUGHOUT THE TIME  
12 YOU WERE THERE?

13 A. THE WHOLE TIME I WAS THERE.

14 Q. AND IN 2009 -- HOW LONG IN 2009 DID YOU WORK  
15 AT TCW?

09:52AM

16 A. I WORKED THROUGH DECEMBER 4TH, 2009.

17 Q. SO YOU -- ABOUT A LITTLE MORE THAN ELEVEN  
18 MONTHS, YOU WORKED AT TCW?

19 A. YES.

20 Q. DID YOU RECEIVE YOUR SALARY FOR THE 11 MONTHS  
21 THAT YOU WORKED?

09:52AM

22 A. I DID.

23 Q. DID YOU RECEIVE ANY FEE SHARING PAYMENT FOR  
24 THE WORK YOU PERFORMED IN 2009?

25 A. I DID NOT.

09:52AM

26 Q. NOW, YOU SAID IN QUESTIONS THAT MR. QUINN  
27 ASKED, THAT YOU DID NOT NEGOTIATE AN EMPLOYMENT  
28 CONTRACT WITH MR. GUNDLACH; IS THAT TRUE?

1 A. THAT'S CORRECT.

2 Q. SO DID YOU BELIEVE THAT YOU COULD BE  
3 TERMINATED AT ANY TIME BY TCW?

4 A. YES.

5 Q. DID YOU EXPECT THAT IF YOU WERE FIRED, TCW  
6 WOULD PAY YOU FOR THE TIME THAT YOU HAD ACTUALLY WORKED  
7 BEFORE YOU WERE FIRED?

09:52AM

8 A. YES.

9 Q. WHAT WAS THAT UNDERSTANDING BASED ON?

10 A. SENSE OF FAIRNESS. THAT IT'S MY  
11 UNDERSTANDING, WHENEVER YOU WORK FOR SOMEONE, YOU GET  
12 PAID UP THROUGH THE TIME YOU GET TERMINATED.

09:53AM

13 Q. AND WAS THAT CONSISTENT WITH THE HISTORY THAT  
14 YOU HAD WITH TCW?

15 A. YES.

09:53AM

16 Q. WERE YOU PAID FOR THE FULL ELEVEN MONTHS THAT  
17 YOU WORKED WHILE YOU WERE AT TCW?

18 A. I WAS NOT.

19 Q. WHAT DID YOU NOT RECEIVE, THAT YOU THOUGHT --  
20 THAT REFLECTED WORK YOU DID?

09:53AM

21 A. I DIDN'T RECEIVE ANY OF THE 2009 FEE SHARING.

22 Q. DO YOU BELIEVE YOU EARNED ELEVEN MONTHS WORTH  
23 OF FEE SHARING FOR YOUR WORK DURING 2009?

24 A. YES.

25 Q. DID TCW RECEIVE ITS SHARE OF THE FUNDS -- OF  
26 THE FEES THAT WERE GENERATED ON FUNDS THAT YOU WORKED  
27 FOR ELEVEN MONTHS OF THAT YEAR?

09:53AM

28 MR. QUINN: LACKS FOUNDATION. VAGUE AS TO

1 TIME.

2 THE COURT: SUSTAINED.

3 Q. BY MR. HELM: NOW, MR. QUINN DISCUSSED WITH  
4 YOU AN E-MAIL WHERE MR. GUNDLACH TOLD YOU TO MAKE CLEAR  
5 THAT HE WAS THE GENERAL, AND MR. BARACH WAS NOT THE  
6 GENERAL.

09:54AM

7 DO YOU RECALL DISCUSSING THAT E-MAIL?

8 A. YES, I DO.

9 Q. HOW LONG HAD MR. BARACH WORKED WITH  
10 MR. GUNDLACH AT THAT POINT?

09:54AM

11 A. OVER 20 YEARS.

12 Q. WHEN MR. BARACH LEFT TCW, DO YOU KNOW IF TCW  
13 MADE ANY EFFORTS TO KEEP MR. BARACH?

14 A. I DO.

15 Q. DO YOU KNOW -- SO DID THEY TRY TO KEEP HIM?  
16 MR. QUINN: LACKS FOUNDATION.

09:54AM

17 THE WITNESS: SUSTAINED.

18 Q. BY MR. HELM: DO YOU KNOW -- WELL, LET ME ASK  
19 THIS.

20 WHERE DOES MR. BARACH WORK TODAY?

09:54AM

21 A. AT DOUBLELINE. HE'S THE PRESIDENT.

22 Q. WHEN DID HE DECIDE TO LEAVE TCW AND JOIN  
23 MR. GUNDLACH AT DOUBLELINE?

24 A. THE WEEKEND AFTER WE WERE FIRED.

25 Q. HOW MANY PEOPLE WHO USED TO WORK IN  
26 MR. GUNDLACH'S GROUP AT TCW ARE NOW WORKING AT  
27 DOUBLELINE?

09:54AM

28 A. OVER 40, 45.

1 Q. AND OF THOSE, HOW MANY WERE FIRED BY TCW?

2 A. FIVE.

3 Q. SO 35 OR 40 PEOPLE VOLUNTARILY LEFT TCW TO  
4 COME TO DOUBLELINE; IS THAT CORRECT?

5 A. THAT'S CORRECT.

09:55AM

6 Q. WHAT WAS THE PAY THAT DOUBLELINE OFFERED TO  
7 ITS EMPLOYEES WHEN THEY FIRST CAME OVER?

8 A. INITIALLY, ZERO.

9 Q. AND FOR HOW LONG DID PEOPLE WORK AT DOUBLELINE  
10 WITHOUT RECEIVING ANY SALARY?

09:55AM

11 A. LIKE A COUPLE OF MONTHS.

12 Q. NOW, YOU'VE WORKED WITH MR. GUNDLACH FOR A  
13 LONG TIME; IS THAT TRUE?

14 A. YES, I HAVE.

15 Q. WHAT IS IT ABOUT WORKING FOR HIM, BASED ON  
16 YOUR EXPERIENCE, THAT COULD ACCOUNT FOR THE FACT THAT  
17 35 OR 40 PEOPLE WOULD LEAVE SECURE JOBS AT TCW TO JOIN  
18 A NEW VENTURE WITH HIM, AT NO PAY TO START?

09:55AM

19 MR. QUINN: OPINION FOR CONCLUSION.

20 HE CAN TALK ABOUT HIMSELF.

09:55AM

21 THE COURT: SUSTAINED.

22 I THINK THAT WAS THE QUESTION.

23 BUT YOU CAN ONLY TELL US YOUR PERSONAL  
24 THOUGHTS, YOU CAN'T TELL US WHAT OTHER PEOPLE THINK.

25 THE WITNESS: SURE.

09:56AM

26 MY PERSONAL OPINION IS THAT JEFFREY IS  
27 SOMEONE WHO HAS A LOT OF VISION AND PASSION ABOUT WHAT  
28 WE DO. HE SEEMS CONCERNED ABOUT HIS EMPLOYEES. HE

1 SEEMS CONCERNED ABOUT THE CLIENTS.

2 AND GOING BACK TO THE WAY THINGS WERE  
3 BEING RUN AT THE OLD COMPANY, THERE WAS A FEELING THAT  
4 ONCE WE WERE SOLD TO THE FRENCH BANK, THAT WE KIND OF  
5 LOST TOUCH WITH THOSE SORTS OF THINGS. IT HAD BECOME  
6 ALL ABOUT IBITA.

09:56AM

7 AND JEFFREY WAS A STRONG PROPONENT OF  
8 GETTING BACK TO WHAT WAS IMPORTANT TO THE CLIENTS AND  
9 EMPLOYEES. HE OFTEN TALKED ABOUT HOW WE WOULD DO THAT,  
10 AND IT WAS -- HE WAS CONVINCING. HE DIDN'T HAVE TO DO  
11 THIS. HE DIDN'T HAVE TO FORM DOUBLELINE. HE COULD  
12 HAVE WENT ON HIS OWN. HE DIDN'T HAVE TO KEEP DOING --

09:56AM

13 MR. QUINN: YOUR HONOR, I THINK WE'RE IN A  
14 NARRATIVE NOW.

15 THE COURT: I THINK WE GOT THE ANSWER.

09:56AM

16 Q. BY MR. HELM: YOU MENTIONED IBITA. WHAT IS  
17 IBITA? YOU SAID IT WAS ALL IBITA.

18 A. IT WAS EARNINGS BEFORE INCOME TAXES  
19 APPRECIATION.

20 Q. NOW, DID THE FACT THAT YOU LIKED WORKING WITH  
21 MR. GUNDLACH HAVE ANYTHING TO DO WITH THE FACT THAT  
22 SOMETIMES HE GAVE YOU AN EXPENSIVE BOTTLE OF WINE OR  
23 SOME FANCY CHEESE?

09:57AM

24 A. NO.

25 Q. DID HE SOMETIMES HAVE ANGRY OUTBURSTS?

09:57AM

26 A. SOMETIMES.

27 Q. WERE YOU EVER ON THE RECEIVING END OF HARSH  
28 CRITICISM FROM MR. GUNDLACH?

1 A. OH, YES.

2 Q. DID HE SOMETIMES USE FOUL LANGUAGE?

3 A. YES.

4 Q. DID HE TOLERATE WELL PEOPLE WHO DIDN'T PERFORM  
5 THEIR JOBS WELL?

09:57AM

6 A. NO.

7 Q. DID ANY OF THAT CONDUCT EVER MAKE YOU THINK OF  
8 LEAVING TO HAVE SOME OTHER KIND OF JOB?

9 A. NO.

10 Q. IF YOU COULD TRADE RIGHT NOW, AND GO BACK TO  
11 YOUR OLD JOB AT TCW, WOULD YOU DO IT?

09:57AM

12 A. NO.

13 Q. THANK YOU.

14 MR. HELM: YOUR HONOR, I HAVE NOTHING FURTHER.

15 THE COURT: ALL RIGHT.

09:57AM

16 MR. QUINN, REDIRECT?

17 MR. QUINN: OKAY.

18

19

20 REDIRECT EXAMINATION

09:57AM

21 BY MR. QUINN:

22 Q. GOOD MORNING, MR. SANTA ANA.

23 MORNING, LADIES AND GENTLEMEN.

24 THE JURY: MORNING.

25 Q. BY MR. QUINN: YOU TOLD US THAT ON DECEMBER 4,  
26 YOU REALIZED THAT YOU DIDN'T HAVE THE HARD DRIVE, AND  
27 IT MADE YOU FEEL UNCOMFORTABLE?

09:58AM

28 A. YEAH. I WANTED TO KNOW WHERE IT WAS.



1 Q. WELL, I MEAN, YOU KNEW IT WAS UP THERE, LAST  
2 YOU KNEW, AT YOUR WORK STATION, RIGHT?

3 A. I THOUGHT IT WAS AT MY WORK STATION.

4 I DIDN'T SEE IT WHEN I LEFT.

5 Q. BUT YOU KNEW WHAT YOU HAD DONE. YOU KNEW WHAT  
6 INFORMATION WAS ON THAT HARD DRIVE?

7 A. I DID.

8 Q. AND YOU WANTED TO GET IT, SO YOU WOULD FEEL  
9 MORE COMFORTABLE; IS THAT WHAT YOU TOLD US?

10 A. I THINK I WANTED TO GET IT BECAUSE IT WOULD  
11 MAKE ME FEEL LIKE I HAD SOME CONTROL OF THE SITUATION.

12 Q. CONTROL OVER THE SITUATION?

13 A. I WAS TOLD I WAS BEING PUT ON ADMINISTRATIVE  
14 LEAVE.

15 Q. RIGHT.

16 BUT ONE OF THE THINGS YOU WERE CONCERNED  
17 ABOUT IS THAT SOMEBODY AT TCW WOULD GET THAT HARD  
18 DRIVE, AND THAT THAT -- THE CONTENTS OF THAT HARD DRIVE  
19 WOULD NECESSARILY REFLECT VERY WELL ON YOU, CORRECT?

20 A. IT MADE ME NERVOUS. THERE WAS A LOT OF --

21 Q. RIGHT. AND YOU WOULD FEEL LESS NERVOUS ABOUT  
22 THAT, AND I THINK YOU WOULD HAVE MORE CONTROL IF YOU  
23 HAD THAT IN YOUR HANDS RATHER THAN IN TCW'S HANDS,  
24 RIGHT?

25 A. THAT'S CORRECT.

26 Q. BY THE WAY, DID YOU DO THIS DOWNLOADING  
27 BECAUSE THERE MIGHT BE A BIG EARTHQUAKE, AS PART OF  
28 SOME BUSINESS CONTINUITY PLAN?

09:58AM

09:58AM

09:58AM

09:59AM

09:59AM

1 A. NO. THAT WAS NOT THE PRIMARY REASON.

2 Q. NOW, I'M NOT SURE WHETHER I UNDERSTOOD THIS.

3 ARE YOU SUGGESTING, SIR, THAT MELISSA  
4 CONN SOMEHOW PLANTED THAT HARD DRIVE AT YOUR WORK  
5 STATION?

09:59AM

6 MR. HELM: ARGUMENTATIVE, YOUR HONOR.

7 THE COURT: OVERRULED.

8 Q. BY MR. QUINN: IS THAT WHAT YOU ARE SUGGESTING  
9 TO THIS JURY, SIR?

10 A. THAT'S NOT WHAT I'M SUGGESTING.

09:59AM

11 Q. SO FAR AS YOU KNOW, DID MELISSA CONN EVER HAVE  
12 THE HARD DRIVE IN HER POSSESSION?

13 A. I HAVE NO WAY OF KNOWING THAT.

14 Q. AND I ASKED YOU LAST WEEK ABOUT HOW IT WAS  
15 THAT YOU COMMUNICATED TO SOMEBODY, OR THE FOLKS WHO  
16 WERE BACK AT THE RESTAURANT, OR AT TCW, THAT YOU WANTED  
17 TO GET YOUR HANDS ON THE HARD DRIVE.

10:00AM

18 DO YOU REMEMBER ME ASKING YOU THAT  
19 QUESTION?

20 A. YES.

10:00AM

21 Q. HAVE YOU THOUGHT ABOUT IT? HAVE YOU  
22 REMEMBERED WHO IT WAS THAT YOU TOLD THAT I WANT THAT  
23 HARD DRIVE?

24 MR. HELM: ASSUMES FACTS NOT IN EVIDENCE.

25 THE COURT: OVERRULED.

10:00AM

26 WAIT, WAIT, WAIT. YOU ASKED A QUESTION, AND  
27 YOU GET AN ANSWER. YOU ASK THE QUESTION, IT WAS MORE  
28 OR LESS THE SAME QUESTION THAT YOU ASKED HIM BEFORE.

1                   AND NOW YOU SAID, DO YOU REMEMBER  
2 ANYTHING TODAY, AND YOU TELL US --

3                   THE WITNESS: I DON'T RECALL TALKING TO  
4 ANYBODY ABOUT GETTING THE HARD DRIVE.

5           Q.     BY MR. QUINN: YOU DON'T HAVE ANY DOUBT THAT  
6 YOU DID? IT WASN'T MENTAL TELEPATHY, WAS IT? 10:00AM

7           MR. HELM: OBJECTION, CALLS FOR SPECULATION.

8           THE COURT: SUSTAINED.

9           Q.     BY MR. QUINN: WAS THERE ANY DOUBT IN YOUR  
10 MIND THAT YOU ASKED SOMEBODY TO GET THE HARD DRIVE FOR  
11 YOU? 10:00AM

12           MR. HELM: ASKED AND ANSWERED, YOUR HONOR.

13           THE COURT: SUSTAINED.

14           Q.     BY MR. QUINN: IN RESPONSE TO MR. HELM'S  
15 QUESTIONS, YOU TOLD US THAT YOU HAD -- YOU KNEW THAT  
16 THERE WAS A POTENTIAL FOR A LAWSUIT, AND YOU WERE  
17 CONCERNED AND THAT WAS PART OF THE REASON YOU WANTED TO  
18 GET YOUR HANDS ON THE HARD DRIVE, CORRECT? 10:01AM

19           A.     YES.

20           Q.     IS IT -- EVEN BEFORE YOU WERE -- YOU KNEW  
21 THERE WAS A POTENTIAL FOR A LAWSUIT, WERE YOU AT ALL  
22 CONCERNED THAT WHAT YOU HAD DONE WAS WRONG, EVEN  
23 WITHOUT A LAWSUIT? 10:01AM

24           A.     NO.

25           Q.     SO AS FAR AS YOU WERE CONCERNED, IT WAS  
26 PERFECTLY OKAY TO SECRETLY DOWNLOAD THIS INFORMATION  
27 ONTO A HARD DRIVE, DAY AFTER DAY, AND TO INSTRUCT  
28 MR. MAYBERRY AND JP TO DO IT, AS WELL; IS THAT TRUE? 10:01AM

1           A.     AGAIN, THERE WAS -- TO ME, I FELT LIKE I WAS  
2 KILLING TWO BIRDS WITH ONE STONE. I WAS TRYING TO  
3 SATISFY A REQUEST FROM MY BOSS, AND AT THE SAME TIME,  
4 THERE WAS THIS SMALLER BCP RATIONALE.

5                     AND AGAIN, TO ME, IT JUST SEEMED LIKE IT  
6 WAS PERFECTLY FINE. IT WAS INFORMATION WE HAD ACCESS  
7 TO, AND IT TOOK ONLY LIKE SECONDS EVERY DAY TO DO.

10:02AM

8           Q.     WHEN YOU SAY BCP, THAT'S THE BUSINESS  
9 CONTINUITY PLAN THAT'S LIKE IF THERE'S A BIG  
10 EARTHQUAKE, RIGHT?

10:02AM

11           A.     THAT'S ONE SCENARIO.

12           Q.     BUT BEFORE SEPTEMBER, BEFORE MR. GUNDLACH GAVE  
13 YOU THESE INSTRUCTIONS, YOU HAD NEVER ACQUIRED A LARGE  
14 CAPACITY HARD DRIVE FOR THIS PURPOSE, HAD YOU?

15           A.     NO. WE HAD SMALLER FLASH DRIVES WE WOULD USE  
16 TO DOWNLOAD INFORMATION FOR BCP AND ALSO TO ANSWER  
17 JEFFREY'S QUESTIONS THAT WAS PART OF OUR JOB WAS TRYING  
18 TO ANTICIPATE WHAT JEFFREY WOULD NEED.

10:02AM

19           Q.     SIR, MY QUESTION IS: PRIOR TO THIS, HAD YOU  
20 EVER GOTTEN A LARGE CAPACITY HARD DRIVE TO DOWNLOAD  
21 THINGS, BECAUSE THERE MIGHT BE A BIG EARTHQUAKE OR SOME  
22 OTHER DISASTER, HAD YOU?

10:02AM

23           A.     NO, WE DID NOT.

24           Q.     SO IF YOU HADN'T RECEIVED THE THREAT OF A  
25 LAWSUIT, WE NEVER WOULD HAVE KNOWN ABOUT WHAT YOU HAD  
26 DONE; IS THAT TRUE?

10:02AM

27                     MR. HELM: VAGUE, ARGUMENTATIVE, CALLS FOR  
28 SPECULATION.

1 THE COURT: SUSTAINED.

2 Q. BY MR. QUINN: WELL, YOU KNEW -- FROM THE  
3 MOMENT THAT ON DECEMBER 4, WHEN YOU WERE CONFRONTED,  
4 YOU KNEW THIS WAS AN ISSUE, TRUE? THE DOWNLOADING?

5 A. I WAS CONFRONTED WITH IT AS BEING AN ISSUE, SO  
6 I HAD TO KNOW. 10:03AM

7 Q. IN FACT, YOU WERE ACTUALLY GIVEN A DRAFT OF A  
8 COMPLAINT, CORRECT?

9 A. YES.

10 Q. SO YOU KNEW THIS WAS A SIGNIFICANT LEGAL ISSUE  
11 FROM THE BEGINNING, RIGHT? 10:03AM

12 A. WHEN SOMEONE HANDS ME A DRAFT AND A COMPLAINT  
13 OF A LAWSUIT, IT SEEMS SERIOUS TO ME.

14 Q. WHEN MR. GUNDLACH INSTRUCTED YOU TO START  
15 GETTING INFORMATION TOGETHER, IN SEPTEMBER, DID HE  
16 IMMEDIATELY, 30 SECONDS LATER, TURN AROUND AND TAKE IT  
17 BACK AND SAY, IGNORE THAT, WE DON'T NEED THAT? 10:03AM

18 A. I DON'T RECALL THAT.

19 Q. HE KNEW WHAT YOU WERE DOING. HE KNEW THAT  
20 THIS DOWNLOADING WAS GOING ON, CORRECT? 10:04AM

21 MR. HELM: VAGUE AND AMBIGUOUS, YOUR HONOR.

22 THE COURT: OVERRULED.

23 CAN YOU ANSWER THAT?

24 IF YOU DON'T KNOW, THEN YOU TELL ME.

25 THE WITNESS: HE KNEW WE WERE MAKING BACKUPS.  
26 I DON'T KNOW IF HE KNEW ABOUT THE DOWNLOADING. HIS  
27 WORDS OF CHOICE WERE "WE NEED BACKUP." 10:04AM

28 Q. BY MR. QUINN: WELL, MAKE NO MISTAKE, WHEN HE

1 SAID, WE NEED BACKUP, THAT IS WHAT CAUSED YOU TO DO  
2 WHAT YOU WERE DOING. YOU WERE BACKING UP THIS  
3 INFORMATION ONTO A PORTABLE HARD DRIVE, CORRECT?

4 A. THAT'S WHAT WE CHOSE TO DO, YES.

5 Q. NOW, YOU WERE ASKED SOME QUESTIONS ABOUT USE  
6 OF INFORMATION AT DOUBLELINE. YOU ARE AWARE OF  
7 SOMETHING -- WE WENT THROUGH THIS, I THINK, THE BWIC  
8 BROWSER, CORRECT?

9 A. YES.

10 Q. THE SECURITY ANALYZER, CORRECT?

11 A. YES.

12 Q. AND THE MBS DATABASE, CORRECT?

13 A. YES.

14 Q. AND THESE ARE PART OF THAT -- THE TECHNICAL  
15 PLATFORM THAT TCW HAD DEVELOPED OVER A PERIOD OF YEARS,  
16 CORRECT?

17 A. YES.

18 Q. DONE BY TCW EMPLOYEES AT CONSIDERABLE EXPENSE,  
19 CORRECT?

20 A. AND MORTGAGE-BACKED SECURITY EMPLOYEES.

21 Q. RIGHT. THESE MORTGAGE-BACKED SECURITY  
22 EMPLOYEES, THOSE ARE TCW EMPLOYEES, CORRECT?

23 A. YES.

24 Q. YOU WERE A TCW EMPLOYEE, RIGHT?

25 A. YES.

26 Q. SO THESE VARIOUS ANALYTICS, THESE PLATFORMS,  
27 WERE DEVELOPED AT TCW, AT TCW EXPENSE, OVER A PERIOD OF  
28 YEARS, BY TCW EMPLOYEES; ISN'T THAT RIGHT?

10:04AM

10:05AM

10:05AM

10:05AM

10:05AM

1           A.     YES.

2           Q.     AND DID YOU HEAR MR. GUNDLACH SAY, ON  
3 DECEMBER 29, 2009, IN A CALL, WITH WHOEVER WANTED TO  
4 CALL IN, OR ON A WEBCAST, THAT BY ANALOGY TO REWRITING  
5 THE SUN ALSO RISES, IT'S VERY EASY TO REBUILD A  
6 TECHNOLOGY SYSTEM, ONCE YOU KNOW WHAT ALL THE  
7 COMPONENTS ARE, WHEN YOU HAVE BUILT IT IN THE FIRST  
8 PLACE.

10:06AM

9                           DID YOU HEAR HIM SAY THAT?

10           MR. HELM:    ASKED AND ANSWERED, YOUR HONOR.

10:06AM

11           THE COURT:   I THINK WE'VE BEEN THROUGH THIS  
12 YESTERDAY.

13           MR. QUINN:   I DON'T THINK I ASKED HIM THAT  
14 SPECIFIC ONE.

15           THE COURT:   GO AHEAD.

10:06AM

16                           DID YOU HEAR THAT?

17           THE WITNESS:  I DON'T REMEMBER IF I HEARD IT,  
18 OR I LEARNED IT THROUGH THE COURSE OF LITIGATION; BUT  
19 YES, THAT PHRASE IS FAMILIAR TO ME.

20           Q.     BY MR. QUINN:  AND, IN FACT, DOUBLELINE DID  
21 HAVE ITS TECHNOLOGY PLATFORM UP AND RUNNING IN A MATTER  
22 OF WEEKS, CORRECT?

10:06AM

23           A.     I WOULD SAY THAT WE HAD SOME STUFF AVAILABLE  
24 IN A COUPLE OF WEEKS, IT WAS LARGELY SPREADSHEETS.

25                           WE ARE STILL BUILDING A LOT OF OUR  
26 SYSTEMS TODAY.  WE'VE GOT A LOT OF WORK TO DO.

10:06AM

27           Q.     BUT YOU HAD AN OPERATING TECHNOLOGY PLATFORM  
28 UP AND RUNNING, WITHIN A MATTER OF WEEKS; ISN'T THAT

1 WHAT YOU TOLD THE INVESTMENT COMMUNITY?

2 A. WE HAD WHAT WE NEEDED TO -- WE HAD WHAT WE  
3 NEEDED TO LOOK AT BONDS, TO FILTER BONDS, IN A VERY  
4 QUICKLY AND RUDIMENTARY WAY, AND ALSO TO PROCESS THE  
5 TRADE.

10:07AM

6 Q. WELL, DID YOU HEAR MR. GUNDLACH SAY, ON  
7 DECEMBER 22ND, 2009, IN A WEBCAST, THAT WE HIRED THE  
8 THREE FINEST PROGRAMMERS ON THE TCW TEAM, AND THEY ARE  
9 HARD AT WORK REBUILDING, AND BEYOND THAT, IMPROVING THE  
10 TECHNOLOGY PLATFORM THAT WE HAD IN PLACE?

10:07AM

11 IN FACT, I'M TOLD BY MY CHIEF OPERATING  
12 OFFICER, CRIS SANTA ANA, THAT WE EXPECT THAT THE  
13 TECHNOLOGY PLATFORM WILL BE COMPLETELY REBUILT AND  
14 ENHANCED BEFORE SUCH TIME AS WE RECEIVE THE  
15 REGISTRATION FROM THE SEC AS AN INVESTMENT ADVISOR,  
16 WHICH WE EXPECT TO RECEIVE IN EARLY JANUARY.

10:07AM

17 DID MR. GUNDLACH SAY THAT, ON  
18 DECEMBER 22ND, 2009?

19 A. I DON'T RECALL THAT SPECIFIC COMMENT.

20 I REMEMBER HIM SAYING SOMETHING LIKE  
21 THAT, BUT THOSE WEREN'T MY WORDS.

10:08AM

22 Q. NOT YOUR WORDS.

23 BUT YOU RECALL HIM SAYING THAT WE WILL  
24 HAVE THIS PLATFORM REBUILT BY THE TIME WE GET OUR  
25 REGISTRATION FROM THE SEC AS AN INVESTMENT ADVISOR,  
26 TRUE?

10:08AM

27 A. AGAIN, I DON'T REMEMBER THAT COMMENT  
28 SPECIFICALLY.



1 Q. WELL, WAS THAT TRUE? IF MR. GUNDLACH SAID  
2 THAT, WAS THAT TRUE?

3 A. WE DID NOT HAVE THE ENTIRE SYSTEM WE WOULD  
4 HAVE LIKED. IT WOULD HAVE BEEN A GOAL, I'M SURE. AND  
5 HE WAS PUSHING US TO GET THINGS DONE; BUT WE CAN ONLY  
6 GO AS FAST AS WE COULD. 10:08AM

7 Q. BUT THAT WAS WHAT YOU WERE TELLING THE WORLD,  
8 THAT YOU WILL HAVE THAT TECHNOLOGY PLATFORM REBUILT BY  
9 THE TIME THAT YOU GET YOUR SEC REGISTRATION, CORRECT?

10 A. THAT'S NOT WHAT I WAS TELLING PEOPLE, NO. 10:08AM

11 Q. YOU DON'T RECALL HIM SAYING THAT?

12 A. I DON'T RECALL HIM SAYING THAT SPECIFIC  
13 COMMENT.

14 Q. AND YOU GOT THE SEC REGISTRATION WHEN, EARLY  
15 JANUARY? 10:08AM

16 A. ACTUALLY, I DON'T REMEMBER, OFF THE TOP OF MY  
17 HEAD.

18 Q. ISN'T IT TRUE, MR. SANTA ANA, THAT YOU  
19 DOWNLOADED INFORMATION FROM THAT HARD DRIVE TO YOUR  
20 HOME DESKTOP COMPUTER ON DECEMBER 2ND, 2009? 10:09AM

21 MR. HELM: ASKED AND ANSWERED, YOUR HONOR.

22 THE COURT: OVERRULED.

23 GO AHEAD.

24 THE WITNESS: I'M SORRY. CAN YOU REPEAT THE  
25 QUESTION? 10:09AM

26 Q. BY MR. QUINN: ISN'T IT TRUE THAT YOU  
27 DOWNLOADED INFORMATION FROM THAT HARD DRIVE TO YOUR  
28 HOME DESKTOP ON DECEMBER 2ND, 2009?

1           A.     YEAH, I THINK THAT WAS THE INFORMATION I HAD  
2     DOWNLOADED AND SENT TO MR. WARD.

3           Q.     AND DID YOU TELL THAT TO MR. GALLIGAN ON  
4     DECEMBER 5TH, WHEN YOU GAVE HIM THE DRIVE, DID YOU TELL  
5     HIM, "I HAVE ALREADY DOWNLOADED SOME OF THIS TO MY HOME  
6     DESKTOP"?

10:09AM

7           A.     I DON'T THINK I DOWNLOADED IT. I THINK I  
8     COPIED AND PASTED IT INTO EXCEL AND SENT THAT. I DON'T  
9     KNOW IF I SAVED IT OR NOT.

10          Q.     YOU DON'T KNOW IF YOU SAVED IT ON YOUR HOME  
11     COMPUTER?

10:09AM

12          A.     SITTING HERE RIGHT NOW, I CAN'T RECALL.

13          Q.     YOU INDICATED THAT YOU SAW MR. DAMIANI WITH A  
14     TCW DOCUMENT ON THE TRADING FLOOR AT DOUBLELINE.

15                     DO YOU RECALL THAT?

10:10AM

16          A.     YES.

17          Q.     AND THAT WAS WELL AFTER THIS, WHAT YOU'VE  
18     REFERRED TO AS A REMEDIATION PROGRAM HAD BEGUN,  
19     CORRECT?

20          A.     I DON'T KNOW IF IT WAS WELL AFTER. I DON'T  
21     REMEMBER THE SPECIFIC TIMELINE.

10:10AM

22          Q.     WELL, IT WAS AFTER YOU STARTED DOING THIS WHAT  
23     YOU CALL REMEDIATION, CORRECT?

24          A.     IT HAD TO HAVE BEEN AFTER THE REMEDIATION  
25     BEGAN.

10:10AM

26          Q.     AND MR. DAMIANI, NOTWITHSTANDING THAT, HE'S A  
27     SENIOR GUY AT DOUBLELINE?

28          A.     YES, HE'S A PRINCIPAL.

1 Q. NOTWITHSTANDING WHAT YOU TOLD US ABOUT THIS  
2 PROGRAM, HE HAD A TCW DOCUMENT IN HIS POSSESSION? YOU  
3 SAW IT?

4 A. HE HAD A HARD COPY OF THE DOCUMENT.

5 Q. AND YOU JUST HAPPENED TO SEE THIS, CORRECT? 10:10AM

6 A. YES.

7 Q. AND THIS WAS A DOCUMENT THAT WAS DATED -- A  
8 TCW DOCUMENT DATED NOVEMBER 2009, CORRECT?

9 A. I DON'T, I DON'T RECALL. I DON'T THINK I SAW  
10 THE DATE. 10:11AM

11 Q. YOU HAVE GIVEN US SOME TESTIMONY ABOUT NO USE  
12 WAS EVER MADE OF ANY TCW DATA AT DOUBLELINE.

13 DO YOU KNOW WHETHER OR NOT, IN DECEMBER  
14 2009, CASEY MOORE COPIED CONTENTS OF HIS MY DOCUMENTS  
15 FOLDER ON HIS TCW COMPUTER TO A FLASH DRIVE? 10:11AM

16 A. I WAS NOT AWARE OF THAT.

17 Q. YOU DON'T KNOW WHETHER HE DID THAT, ON  
18 DECEMBER 4, AND TOOK IT WITH HIM TO DOUBLELINE?

19 A. I THINK I'M -- MY ONLY KNOWLEDGE OF THAT CAME  
20 THROUGH IN CONVERSATIONS WITH OUR ATTORNEYS. 10:11AM

21 Q. SO YOU'VE LEARNED THAT IN THE COURSE OF THIS  
22 CASE, CORRECT?

23 A. YES.

24 Q. AND AGAIN, CASEY MOORE, HE WAS A PROGRAMMER  
25 WHO HAD DONE PROGRAMMING FOR THESE ANALYTICAL PROGRAMS  
26 AT TCW, AND HE WENT ON TO DO THEM AT DOUBLELINE,  
27 CORRECT? 10:11AM

28 A. HE IS OUR MAIN PROGRAMMER AT DOUBLELINE.

1 Q. DO YOU KNOW WHETHER OR NOT THAT MY DOCUMENT  
2 FOLDER CONTAINED ALL THE SOURCE CODE HE HAD WORKED ON  
3 AT TCW?

4 MR. HELM: LACKS FOUNDATION, YOUR HONOR.

5 THE COURT: SUSTAINED.

10:12AM

6 WELL, I GUESS THE QUESTION IS, DO YOU  
7 KNOW WHAT IT CONTAINED?

8 THE WITNESS: NO, I DON'T.

9 Q. BY MR. QUINN: DO YOU KNOW WHETHER OR NOT,  
10 AFTER HE JOINED DOUBLELINE, MR. MOORE OPENED FILES  
11 CONTAINING THAT SOURCE CODE, THE TCW SOFTWARE SOURCE  
12 CODE?

10:12AM

13 A. I DO NOT.

14 Q. DO YOU KNOW WHETHER OR NOT TCW SOURCE CODE HAS  
15 BEEN FOUND VERBATIM IN THE DOUBLELINE SOURCE CODE?

10:12AM

16 MR. HELM: ARGUMENTATIVE, YOUR HONOR.

17 THE COURT: SUSTAINED.

18 Q. BY MR. QUINN: DO YOU KNOW WHETHER OR NOT  
19 TCW'S SOURCE CODE HAS BEEN FOUND IN DOUBLELINE SOURCE  
20 CODE?

10:12AM

21 A. I DO NOT.

22 Q. DO YOU KNOW WHETHER OR NOT MR. FAN ZHANG, THE  
23 OTHER PROGRAMMER WHO WENT OVER TO DOUBLELINE, COPIED  
24 THE SOFTWARE DEVELOPMENT PROGRAMS HE HAD CREATED AT TCW  
25 TO HIS PERSONAL LAPTOP?

10:13AM

26 A. I DO NOT.

27 Q. AND WHETHER HE TOOK THOSE TO DOUBLELINE, DO  
28 YOU KNOW?

1           A.     MY -- HE HAS EXPRESSLY TOLD ME HE HAS NOT USED  
2 ANYTHING AT DOUBLELINE.

3                     HE AND CASEY BOTH HAVE SAID THAT TO ME.

4           Q.     SIR, DO YOU KNOW WHETHER THEY TOOK THEM WITH  
5 THEM TO DOUBLELINE, THE INFORMATION THAT THEY TOOK FROM  
6 TCW?

10:13AM

7           A.     I HAVE NO WAY OF KNOWING THAT.

8                     THE COURT:   ALL RIGHT, MR. QUINN.

9                     LET'S TAKE OUR MORNING RECESS.

10                    MR. HELM:    OKAY.

10:13AM

11                    THE COURT:   ALL RIGHT, LADIES AND GENTLEMEN.  
12 WE'LL TAKE 20 MINUTES.

13  
14                             (AT 10:14 A.M. THE JURY WAS  
15                             EXCUSED, AND THE FOLLOWING  
16                             PROCEEDINGS WERE HELD:)

10:13AM

17  
18                    THE COURT:   YOU CAN STEP DOWN.

19  
20                    (WITNESS LEAVES THE COURTROOM.

10:14AM

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

24                    I JUST HAVE ONE THING I MEANT TO MENTION  
25 TO YOU EARLIER.   I RECEIVED A LETTER FROM THE HR PERSON  
26 AT TRANSAMERICA, INDICATING THAT MR. PALLO WOULD ONLY  
27 RECEIVE 10 DAYS JURY PAY, AND THAT IT WOULD BE A  
28 HARDSHIP FOR HIM TO CONTINUE.

10:14AM

1 I HAVE TALKED WITH THIS LADY, AND SHE IS  
2 IN THE PROCESS OF TALKING WITH HIS SUPERVISOR AND  
3 SEEING WHAT THEY CAN WORK OUT TO ACCOMMODATE MR. PALLO;  
4 BECAUSE I BASICALLY TOLD HER WE'RE IN THIS, AND WE  
5 CAN'T JUST LET HIM GO. SO HOPEFULLY, THAT WILL HELP  
6 OUT. AND I'LL KEEP YOU POSTED ON IT.

10:14AM

7 I'M GOING TO DEFER SAYING ANYTHING TO  
8 MR. PALLO UNTIL I TALK TO THIS LADY TOMORROW OR  
9 WEDNESDAY.

10 ANYTHING ELSE?

10:15AM

11 MR. MADISON: DO WE KNOW WHAT HOURS HE WORKS,  
12 YOUR HONOR?

13 THE COURT: WELL, I'VE SUGGESTED TO HER THAT  
14 WE'RE 8:30 TO 2:00, AND THAT IF HIS SUPERVISOR COULD  
15 ACCOMMODATE SOMETHING, HE WOULD PROBABLY BE AVAILABLE  
16 TO WORK SOME IN THE AFTERNOON. I'M NOT INCLINED TO LET  
17 HIM GO, WE WENT THROUGH ALL OF THE HARDSHIP PROCESS;  
18 BUT BY THE SAME TOKEN, I'M WILLING TO DO WHATEVER I CAN  
19 WITH THE EMPLOYER TO ACCOMMODATE THE JURORS AND MAKE  
20 SURE THEY DON'T SUFFER FROM SERVING HERE.

10:15AM

10:15AM

21 MR. MADISON: THANK YOU, YOUR HONOR.

22 MR. BRIAN: THANK YOU.

23 THE COURT: THANK YOU.

24  
25 (RECESS TAKEN.)

26  
27 (THE NEXT PAGE NUMBER IS 1901.)

28

1 CASE NUMBER: BC 429385  
2 CASE NAME: TCW VS. GUNDLACH  
3 LOS ANGELES, CALIFORNIA AUGUST 8, 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: OKAY. ALL MEMBERS OF OUR JURY ARE  
AGAIN PRESENT, AS IS MR. SANTA ANA AND ALL COUNSEL.

12

13

MR. QUINN, YOU MAY CONTINUE YOUR DIRECT  
EXAMINATION OF MR. SANTA ANA.

14

15

MR. QUINN: THANK YOU, YOUR HONOR.

10:39AM

16

17

DIRECT EXAMINATION (CONTINUED) +

18

BY MR. QUINN:

19

Q WE WERE TALKING ABOUT THE GENERAL SUBJECT

20

ABOUT TCW DATA AND WHETHER IT WAS USED AT DOUBLELINE.

10:39AM

21

IF I COULD ASK YOU TO PLEASE TAKE A LOOK

22

AT EXHIBIT 963. THAT'S THAT ABLE GRAPE REFERRED TO AS

23

EITHER A BUSINESS PLAN OR A PRO FORMA.

24

WE HAVE THE FIRST PAGE UP THERE ON THE

25

SCREEN, WHICH THE JURY HAS SEEN BEFORE.

10:40AM

26

COULD I ASK YOU TO PLEASE TURN TO

27

PAGE 963-18.

28

ON THIS WE HAVE A CHECKLIST OF THINGS TO

1 DO, WHICH YOU HAD PREPARED, CORRECT?

2 A YES.

3 Q AND THE THIRD THING THERE IN THIS DOCUMENT IS  
4 DECIDE ON TECHNOLOGY, COMMA, SYSTEMS, COMMA, ET CETERA,  
5 LEASE V. BUY COMMA, ET CETERA.

10:40AM

6 DO YOU SEE THAT?

7 A YES.

8 Q THAT'S CHECKED?

9 A YES.

10 Q I'D LIKE TO ASK YOU SOME QUESTIONS NOW ABOUT  
11 THE -- WHAT YOU'VE REFERRED TO AS THEIR REMEDIATION  
12 PLAN.

10:40AM

13 WE TALKED LAST WEEK ABOUT THAT HARD  
14 DRIVE, THE OTHER HARD DRIVE, THE J.P. -- THAT J.P. HAD  
15 WHICH YOU LEARNED HE HAD SENT BACK TO THE MANUFACTURER  
16 AND HAD WIPED --

10:41AM

17 A I RECALL THAT CONVERSATION, YES, UH-HUH.

18 Q ALL RIGHT.

19 THAT'S SOMETHING THAT HAPPENED IN THE  
20 FALL OF 2010, MANY MONTHS LATER, RIGHT?

10:41AM

21 A I'M NOT SURE I RECALL WHAT HAD HAPPENED.

22 Q WELL, IT DID HAPPEN MANY MONTHS AFTER THIS  
23 REMEDIATION PLAN BEGAN, CORRECT?

24 A YES.

25 Q DO YOU KNOW WHETHER OR NOT A JOEL DAMIANI, ONE  
26 OF THE SENIOR EXECUTIVES, ONE OF YOUR COLLEAGUES, RAN A  
27 SECURE DELETE PROGRAM ON HIS HOME COMPUTER PRIOR TO  
28 MAKING IT AVAILABLE FOR REMEDIATION?

10:41AM



1 MR. HELM: LACKS FOUNDATION, YOUR HONOR.

2 THE COURT: I'LL ALLOW HIM TO ANSWER.

3 BUT, YOU KNOW, THESE ARE THINGS -- DO  
4 YOU KNOW ANYTHING ABOUT THAT?

5 A I'VE LEARNED THROUGH THE COURSE OF THE  
6 LITIGATION, THAT'S WHAT I'VE JUST HEARD IN PROCEEDING  
7 AND --

10:41AM

8 THE COURT: WE'RE NOT GOING THERE, MR. QUINN.

9 MR. QUINN: THE OFFER, YOUR HONOR, HE'S  
10 TESTIFIED ABOUT THE PROGRAM.

10:42AM

11 THE COURT: YOU CAN ASK HIM A SPECIFIC  
12 QUESTION --

13 MR. QUINN: ALL RIGHT.

14 THE COURT: -- ABOUT SOMETHING YOU KNOW HE  
15 KNOWS ABOUT.

10:42AM

16 BY MR. QUINN:

17 Q DID MR. DAMIANI TELL YOU THAT HE HAD RUN A  
18 PROGRAM CALLED SECURE DELETE ON HIS HOME COMPUTER PRIOR  
19 TO MAKING IT AVAILABLE FOR REMEDIATION?

20 A HE DIDN'T.

10:42AM

21 Q I'M SORRY?

22 A JOEL DID NOT TELL ME THAT, NO.

23 Q DID YOU HEAR THAT FROM ANYONE AT DOUBLELINE,  
24 THAT HE HAD DONE THAT?

25 A NO.

10:42AM

26 Q I'M SORRY?

27 A NO.

28 Q SO FAR AS YOU KNOW, DID MR. MAYBERRY EVER TURN

1 IN THE FLASH DRIVES THAT HE CLAIMS TO HAVE LOST IN THE  
2 MAIL, SO FAR AS YOU KNOW, FOR REMEDIATION?

3 A AS FAR AS I KNOW? MY UNDERSTANDING IS THAT  
4 IT'S STILL LOST. AGAIN, THROUGH THE COURSE OF  
5 LITIGATION. I DON'T --

10:43AM

6 Q DO YOU KNOW WHETHER HIS PARENTS' HOME COMPUTER  
7 WAS TURNED IN FOR REMEDIATION?

8 MR. HELM: LACKS FOUNDATION, YOUR HONOR.

9 THE COURT: THE QUESTION IS, DOES HE KNOW.

10 THE WITNESS: I THINK I HAD LEARNED FROM  
11 GREG WARD HE HAD TURNED IN SOME STUFF, YES.

10:43AM

12 BY MR. QUINN:

13 Q I'M SORRY. TURNED IN SOME STUFF?

14 A YEAH.

15 Q ARE YOU TESTIFYING GREG WARD TOLD YOU THAT HE  
16 HAD TURNED IN HIS PARENTS' HOME COMPUTER?

10:43AM

17 IS THAT WHAT YOUR TESTIMONY IS?

18 A HE MENTIONED HE HAD TURNED IN SOME STUFF  
19 AFTER, YOU KNOW -- AT SOME POINT. I DON'T KNOW  
20 SPECIFICALLY WHAT HE TURNED IN. NO.

10:43AM

21 Q WERE YOU HERE DURING THE TESTIMONY OF  
22 MR. MAYBERRY, WHERE HE SAID HE HAD DOWNLOADED THAT  
23 FLASH DRIVE TO A COMPUTER AT HIS PARENTS' HOME?

24 DID YOU HEAR THAT?

25 A I'M NOT SURE IF I WAS IN HERE WHEN THAT  
26 HAPPENED.

10:43AM

27 Q DO YOU KNOW -- DID YOU EVER LEARN THAT FROM  
28 ANY SOURCE AT DOUBLELINE THAT HE HAD DONE THAT?

1 A NO, I DID NOT.

2 Q IF WE COULD GO BACK TO EXHIBIT 963.

3 DO I UNDERSTAND, MR. SANTA ANA, YOUR  
4 TESTIMONY TO BE THAT THIS WAS A PRO FORMA OR A BUSINESS  
5 PLAN FOR BUYING THE MORTGAGE-BACKED SECURITIES GROUP  
6 FROM TCW?

10:44AM

7 A BUYING THE BUSINESS OR NEGOTIATING SOME SORT  
8 OF, YOU KNOW, NEGOTIATED SEPARATION.

9 Q OF COURSE, IF YOU BOUGHT THE BUSINESS, THEN  
10 YOU'D ALL -- THE TECHNICAL PLATFORM, THE CONTACT LISTS,  
11 THE CLIENT DATA, YOU WOULD ASSUME ALL THAT WOULD COME  
12 WITH IT, CORRECT?

10:44AM

13 A IF IT WOULD BE PART OF THE NEGOTIATIONS.

14 Q SIR, YOU WOULD ASSUME YOU WOULD GET -- IF YOU  
15 BOUGHT THAT BUSINESS, YOU WOULD GET EVERYTHING THAT YOU  
16 WOULD NEED TO RUN THE BUSINESS; ISN'T THAT TRUE?

10:44AM

17 MR. HELM: ASKED AND ANSWERED.

18 THE COURT: I'LL OVERRULE IT.

19 THE WITNESS: AGAIN, IT WOULD -- I -- THERE  
20 WAS -- WE HADN'T GOTTEN DOWN TO THAT SORT OF DETAIL.  
21 IT WOULD HAVE TO BE PART OF SOME TYPE OF NEGOTIATION I  
22 WOULD IMAGINE.

10:44AM

23 YOU'D STILL NEED, IF YOU WERE GOING TO  
24 BE IN A DIFFERENT BUILDING, YOU WOULD STILL NEED A  
25 PLATFORM. YOU WOULD -- YOU COULDN'T TAKE THE HARDWARE  
26 FROM TCW AND PUT IT SOMEWHERE ELSE. YOU'D HAVE TO  
27 BUILD SOMETHING.

10:45AM

28 ///

1 BY MR. QUINN:

2 Q LET ME JUST ASK YOU: DID YOU HAVE AN  
3 EXPECTATION ONE WAY OR ANOTHER AS TO, IF YOU BOUGHT THE  
4 BUSINESS, WHETHER YOU WOULD GET ALL THE ENTIRE  
5 TECHNICAL PLATFORM, THE CLIENT INFORMATION, AND THESE  
6 OTHER THINGS THAT YOU DOWNLOADED? 10:45AM

7 DID YOU HAVE AN EXPECTATION ONE WAY OR  
8 ANOTHER WHETHER THAT WOULD COME WITH THE BUSINESS?

9 A I -- I THINK AT THE TIME I WAS -- I IMAGINED  
10 THERE MIGHT BE NEGOTIATION WITH RESPECT TO SYSTEMS, BUT  
11 THE HARDWARE WOULD HAVE TO BE BUILT FROM SCRATCH. 10:45AM

12 Q WITH RESPECT TO THE SYSTEMS, DID YOU HAVE AN  
13 EXPECTATION ONE WAY OR ANOTHER AS TO WHETHER THAT WOULD  
14 COME WITH THE BUSINESS?

15 A AGAIN, IT WOULD HAVE TO BE SOME SORT OF  
16 NEGOTIATION. 10:45AM

17 Q YOU'VE SAID THAT THREE TIMES NOW, SIR. I  
18 HEARD IT. I'VE HEARD IT.

19 MY QUESTION IS, YOUR EXPECTATION, DID  
20 YOU THINK, AS PART OF THE NEGOTIATIONS THAT YOU'D BUY,  
21 YOU'D GET THESE VARIOUS COMPONENTS OF THE TECHNICAL  
22 PLATFORM? 10:45AM

23 A I THINK WE WOULD WANT IT.

24 Q ALL RIGHT.

25 AND, OF COURSE, IF YOU BOUGHT IT, THERE  
26 WOULD HAVE BEEN NO REASON -- IF THAT WAS YOUR PLAN,  
27 THERE WOULD HAVE BEEN NO REASON TO START DOWNLOADING  
28 THE THINGS THAT YOU DOWNLOADED STARTING IN SEPTEMBER; 10:46AM

1 ISN'T THAT TRUE?

2 A AGAIN, THE STUFF WE DID IN SEPTEMBER WAS STUFF  
3 THAT JEFFREY HAD ASKED FOR BECAUSE HE THOUGHT HE WAS  
4 GOING TO BE FIRED. AND THEN THERE WERE OTHER THINGS WE  
5 GRAFTED ON.

10:46AM

6 WE THOUGHT WE COULD KILL TWO BIRDS WITH  
7 ONE STONE, BEEF UP THE BCP PLAN AND OVER TIME THERE  
8 WERE STUFF THAT WOULD BE USEFUL WE THOUGHT MAKE COPIES  
9 OF BACKUP.

10:46AM

10 WHEN DOING THIS BACK IN '04 OR '05,  
11 OCCASIONALLY IF WE THOUGHT THERE WAS SOMETHING, WE  
12 THOUGHT SOMETHING YOU MIGHT WANT TO STORE AS  
13 SAFEKEEPING, WE ALSO PUT THAT NBCP FOLDER AS WELL.

14 Q YOU'RE TALKING ABOUT BACK IN 2004-5?

15 A YES.

10:46AM

16 Q THAT HAS ABSOLUTELY NOTHING TO DO WITH MY  
17 QUESTION.

18 MY QUESTION TO YOU, SIR, IF YOUR  
19 EXPECTATION WAS --

20 MR. HELM: OBJECT TO THE PREAMBLE, YOUR HONOR.

10:46AM

21 THE COURT: I HAVEN'T GOT THE QUESTION YET.  
22 LET'S JUST ASK QUESTIONS.

23 MR. QUINN: ALL RIGHT.

24 Q SIR, MY QUESTION IS, IF YOUR EXPECTATION WAS  
25 YOU WERE BUYING THE BUSINESS, AND GETTING THE SYSTEMS  
26 WITH IT, THERE WOULD BE NO REASON TO START DOWNLOADING  
27 THINGS IN SEPTEMBER, OCTOBER, NOVEMBER, DECEMBER; ISN'T  
28 THAT TRUE?

10:47AM

1 MR. HELM: ASKED AND ANSWERED, YOUR HONOR.

2 THE COURT: SUSTAINED.

3 BY MR. QUINN:

4 Q SO, IF WE CAN GO BACK TO THE FIRST PAGE.

5 IF YOU HAD A PRO FORMA OR A BUSINESS  
6 PLAN FOR BUYING THE M.B.S. GROUP, AND YOU'RE PUTTING  
7 TOGETHER A DOCUMENT TO KIND OF MODEL THAT, ISN'T ONE OF  
8 THE MOST BASIC THINGS THAT YOU WOULD EXPECT TO INCLUDE  
9 IS A PURCHASE PRICE OR A RANGE OF POSSIBLE PURCHASE  
10 PRICES?

10:47AM

10:47AM

11 A AGAIN, THAT'S NOT MY UNDERSTANDING HOW THESE  
12 THINGS WORK.

13 AS FAR AS I UNDERSTAND, WHEN THERE'S A  
14 NEGOTIATED SEPARATION, YOU AGREE TO, YOU KNOW, WHAT  
15 YOU'RE GOING TO SPLIT, AND THEN YOU'D SPLIT THE FEES.  
16 YOU SPLIT THE REVENUE OF THE BUSINESS.

10:48AM

17 Q SIR, I'M TALKING ABOUT A -- PURCHASE OF THE  
18 BUSINESS. THAT'S IN RESPONSE TO MR. HELM'S QUESTIONS.  
19 I UNDERSTOOD YOU TO SAY -- CORRECT ME IF I'M WRONG --  
20 THAT WHAT YOU WERE MODELING HERE WAS A PURCHASE OF THE  
21 MORTGAGE-BACKED SECURITIES GROUP; IS THAT TRUE?

10:48AM

22 A YEAH.

23 Q ALL RIGHT.

24 A WE WERE GOING TO NEGOTIATE -- BUY THE BUSINESS  
25 OUT. WE'RE -- SEEMS LIKE WE'RE GETTING MIXED UP IN  
26 SEMANTICS HERE.

10:48AM

27 Q I DON'T WANT TO GET MIXED UP.

28 THE COURT: JUST A MINUTE. LET HIM FINISH HIS

1 ANSWER.

2 THE WITNESS: WE WANTED TO KNOW WHAT REVENUES  
3 WE'RE GENERATING SO WE CAN FIGURE OUT HOW MUCH SHARE TO  
4 TCW AND HOW MUCH SHARE WE CAN PLAN ON KEEPING, WHAT DID  
5 IT COST, WHAT WE MIGHT NEED.

10:48AM

6 THAT'S ALL THIS IS REFLECTED OFF OF.  
7 BY MR. QUINN:

8 Q SO THE PURCHASE PRICE THAT YOU WERE MODELING  
9 HERE, IN THE MORTGAGE-BACKED SECURITIES BUSINESS, WAS  
10 YOU'D PAY TCW 10 PERCENT OF THE REVENUE FOR SOME NUMBER  
11 OF YEARS; IS THAT -- WAS THAT YOUR IDEA OF WHAT THE  
12 PURCHASE PRICE WOULD BE?

10:48AM

13 A NO. THIS WAS JUST A STARTING POINT. WE HAD  
14 JUST BEGAN. THIS WAS THE FIRST DRAFT.

15 Q I UNDERSTAND THAT.

10:49AM

16 IN THIS FIRST DRAFT, ONE OF THE MOST  
17 BASIC THINGS OF ANY DEAL, IF YOU'RE BUYING SOMETHING,  
18 IS THE PRICE.

19 WOULD YOU AGREE WITH THAT? YES OR NO?

20 A YES.

10:49AM

21 Q SO, IF WHAT YOU'RE MODELING HERE IS THE  
22 PURCHASE OF THE MORTGAGE-BACKED SECURITIES BUSINESS,  
23 ONE OF THE MOST BASIC THINGS YOU'D EXPECT TO SEE IS A  
24 PROPOSED PURCHASE PRICE, RIGHT?

25 A THAT, AGAIN, THAT'S NOT MY UNDERSTANDING HOW  
26 THESE THINGS WORK.

10:49AM

27 Q OKAY.

28 A THIS IS DIFFERENT. I THINK IN OUR BUSINESS

1 IT'S A LITTLE DIFFERENT.

2 EVERYTHING IS BASED OFF THE REVENUES YOU  
3 GENERATE, AND THEN YOU SHARE IT WITH THE FIRM. THAT'S  
4 HOW YOU NEGOTIATE A SEPARATION.

5 Q THE WAY YOU WERE GOING TO NEGOTIATE THIS 10:49AM  
6 PURCHASE WAS THAT FOR SOME NUMBER OF YEARS TCW WOULD  
7 GET 10 PERCENT OF THE REVENUE, CORRECT?

8 A THAT'S -- THAT'S WHAT THIS REFLECTS.

9 Q RIGHT.

10 AND WHY ON EARTH WOULD THEY AGREE TO 10:49AM  
11 THAT?

12 A I -- I -- I DON'T KNOW IF THEY WOULD.

13 Q ALL RIGHT.

14 THE ONLY WAY THEY WOULD AGREE TO THAT IS  
15 IF -- IF WE COULD TAKE A LOOK AT PAGE 963-11, THAT LIST 10:50AM  
16 OF TCW EMPLOYEES.

17 IS IF YOU SUDDENLY SURPRISED THEM AND  
18 GAVE THEM NOTICE, THE 40-PLUS OF US ARE OUT OF HERE  
19 OVERNIGHT.

20 RIGHT? 10:50AM

21 MR. HELM: ARGUMENTATIVE, YOUR HONOR.

22 THE COURT: SUSTAINED.

23 BY MR. QUINN:

24 Q THIS IS A LIST OF TCW EMPLOYEES, HERE ON  
25 963-11, RIGHT? 10:50AM

26 A IT APPEARS SO, YES.

27 Q AND WHAT CHOICE -- IF YOU SURPRISED TCW, AFTER  
28 BONUSES ARE PAID IN FEBRUARY, WITH A MARCH TRANSITION



1 DATE AND -- A MARCH TRANSITION DATE AND AN END OF MARCH  
2 START DATE, WHAT CHOICE WOULD TCW HAVE EXCEPT TO AGREE  
3 TO WHATEVER YOU PROPOSED?

4 MR. HELM: ASSUMES FACTS NOT IN EVIDENCE.  
5 ARGUMENTATIVE.

10:50AM

6 THE COURT: SUSTAINED.

7 BY MR. QUINN:

8 Q SIR, IN RESPONSE TO MR. HELM'S QUESTIONS, YOU  
9 SAID YOU WOULD NEED SOME TYPE OF AN AGREEMENT WITH TCW,  
10 RIGHT?

10:51AM

11 DO YOU RECALL THAT?

12 A YES.

13 Q IF YOU SURPRISED TCW AT THE LAST MINUTE, WHAT  
14 CHOICE WOULD TCW HAVE BUT TO AGREE?

15 MR. HELM: ARGUMENTATIVE. ASSUMES FACTS NOT  
16 IN EVIDENCE.

10:51AM

17 THE COURT: SUSTAINED.

18 BY MR. QUINN:

19 Q CAN YOU TELL US ANY ALTERNATIVE THAT TCW WOULD  
20 HAVE IF, AT THE END OF FEBRUARY, YOU ANNOUNCED THAT THE  
21 40-PLUS EMPLOYEES WERE LEAVING?

10:51AM

22 MR. HELM: SAME OBJECTION.

23 MR. QUINN: WHAT ALTERNATIVES?

24 MR. HELM: SAME OBJECTION.

25 THE COURT: SAME RULING. SUSTAINED.

10:51AM

26 BY MR. QUINN:

27 Q COULD WE PLEASE LOOK AT EXHIBIT 1026, NOT YET  
28 IN EVIDENCE.

1                   YOU DID DO A COUPLE OF DRAFTS OF THIS  
2 BUSINESS PLAN OR PRO FORMA, DIDN'T YOU, SIR?

3           A        YEAH, I BELIEVE THERE WERE COUPLE DRAFTS.

4           Q        1026 IS THE EARLIER DRAFTS -- IS THE FIRST  
5 DRAFT YOU DID, CORRECT?

10:52AM

6           A        I HAVE NO WAY OF KNOWING THAT.

7                   THE COURT: IS THIS ONE PAGE OF THAT OR --

8                   MR. QUINN: IT'S THE FIRST PAGE, YOUR HONOR.  
9 IT'S A MULTI-PAGE DOCUMENT. 1026-1.

10:52AM

10                   THE COURT: I'M LOOKING AT WHAT'S ON THE  
11 SCREEN. IS THAT WHAT YOU WANT US TO BE LOOKING AT?

12                   MR. QUINN: YES.

13           Q        CAN YOU IDENTIFY EXHIBIT 1026-1 --

14           A        YES.

15           Q        OKAY. THAT'S A DOCUMENT YOU PREPARED,  
16 CORRECT?

10:52AM

17           A        IT LOOKS VAGUELY FAMILIAR. I COULDN'T TELL  
18 YOU FOR SURE.

19           Q        WELL, YOU SEE IN THE LOWER RIGHT-HAND CORNER  
20 IT'S GOT A BATES NUMBER.

10:52AM

21                               DO YOU SEE THAT?

22           A        YES.

23           Q        IT SAYS DBL. YOU KNOW I THAT MEANS  
24 DOUBLELINE, RIGHT?

25           A        YES.

10:53AM

26           Q        SA, SANTA ANA, RIGHT?

27           A        IF YOU SAY SO. YES.

28                   MR. QUINN: I OFFER THIS, YOUR HONOR.

1 THE COURT: ANY OBJECTION?

2 MR. HELM: NO OBJECTION.

3 THE COURT: IT WILL BE ADMITTED.

4

5 (EXHIBIT 1026 ADMITTED.) +

10:53AM

6

7 BY MR. QUINN:

8 Q PERHAPS IF WE COULD THUMB THROUGH A FEW PAGES  
9 OF THE EXHIBITS SO THE JURY CAN GET AN IDEA OF WHAT  
10 THIS IS.

10:53AM

11 YOUR HONOR, WE HAVE A STIPULATION THAT  
12 THE METADATA RELATING TO THIS DOCUMENT INDICATES THAT  
13 IT WAS CREATED ON NOVEMBER 14TH, 2009.

14 THE COURT: IS THAT CORRECT, MR. HELM?  
15 SEPTEMBER 14TH, 2009?

10:53AM

16 MR. QUINN: NOVEMBER 14TH, 2009.

17 NOVEMBER 14TH.

18 MR. HELM: WE'VE STIPULATED THAT THE METADATA,  
19 THAT THAT IS THE METADATA ON THE DOCUMENT, YOUR HONOR.

20 THE COURT: ALL RIGHT.

10:53AM

21 LADIES AND GENTLEMEN, METADATA IS THAT  
22 STUFF BEHIND A COMPUTER FILE OR RECORD. IF THEY  
23 STIPULATE IT WAS CREATED ON THAT DATE, YOU ACCEPT THAT  
24 AS A FACT HAVING BEEN PROVED.

25 GO AHEAD.

10:54AM

26 MR. QUINN: HAVE WE --

27 Q MR. SANTA ANA, AS YOU LOOK AT THIS, DOES IT  
28 APPEAR TO BE A DOCUMENT YOU CREATED IN NOVEMBER OF

1 2009, YOUR FIRST CUT AT PRO FORMA OR BUSINESS PLAN?

2 A IT LOOKS, AGAIN, FAMILIAR.

3 Q CAN YOU -- WE AGREE THIS IS A DOCUMENT YOU  
4 CREATED?

5 CAN WE AGREE?

10:54AM

6 A AGAIN, IT LOOKS FAMILIAR.

7 Q YOU'RE JUST SAYING YOU DON'T KNOW IF YOU  
8 CREATED IT OR NOT?

9 A I THINK I DID, YEAH, SURE.

10 Q IN NOVEMBER OF 2009?

10:54AM

11 A I DON'T KNOW -- I CAN'T RECALL EXACTLY WHEN I  
12 BEGAN WORKING ON THIS.

13 Q DOES THIS APPEAR TO BE THE FIRST DRAFT OF THAT  
14 PRO FORMA BUSINESS PLAN?

15 A I CAN'T -- I DON'T RECALL.

10:54AM

16 Q LET'S TAKE A LOOK AT EXHIBIT 1034.

17 IS THIS DOCUMENT AN EARLIER DRAFT OF THE  
18 PRO FORMA BUSINESS PLAN THAT'S ALREADY IN EVIDENCE?

19 A AGAIN, IT LOOKS LIKE SOMETHING I WORKED ON. I  
20 DON'T KNOW WHICH VERSION THIS IS.

10:55AM

21 MR. QUINN: WE'D OFFER THAT, YOUR HONOR.

22 MR. HELM: NO OBJECTION.

23 THE COURT: IT WILL BE ADMITTED.

24

25 (EXHIBIT 1034 ADMITTED.) +

10:55AM

26

27 MR. QUINN: WE HAVE A STIPULATION THAT THE  
28 METADATA INDICATES A CREATION DATE FOR EXHIBIT 1034-1

1 AND FOLLOWING OF DECEMBER 1, 2009.

2 MR. HELM: WE HAVE A STIPULATION THAT THAT'S  
3 WHAT THE METADATA STATES; WHAT IT INDICATES IS --

4 THE COURT: 12-1-09.

5 MR. QUINN: YES.

10:56AM

6 THE COURT: YOU MUST ACCEPT THAT FACT, LADIES  
7 AND GENTLEMEN, AS HAVING BEEN PROVED.

8 BY MR. QUINN:

9 Q DOES THIS APPEAR TO BE -- NOW, YOU LOOK AT IT,  
10 DOES IT APPEAR TO BE A PREVIOUS DRAFT OF EXHIBIT 963,  
11 PRO FORMA BUSINESS PLAN?

10:56AM

12 A A PREVIOUS DRAFT OF THAT ONE?

13 Q THE ONE YOU'RE HOLDING, RIGHT NOW.

14 A YES.

15 Q 1034, THAT COMES BEFORE 963, 963 BEING THAT  
16 FINAL DOCUMENT YOU SHOWED TO MR. GUNDLACH.

10:56AM

17 A WHICH ONE WAS 963?

18 Q THE FIRST ONE OF THESE THAT WE LOOKED AT.

19 A YES, IT LOOKS LIKE IT --

20 Q IT'S A PREVIOUS DRAFT?

10:56AM

21 A YEAH.

22 Q IF WE COULD LOOK AT EXHIBIT 2046, IS THIS A  
23 STRING OF E-MAILS ON WHICH -- IN WHICH YOU'RE INVOLVED,  
24 SIR?

25 A YES.

10:57AM

26 MR. QUINN: I'D OFFER EXHIBIT 2046.

27 THE COURT: ANY OBJECTION?

28 MR. HELM: NO OBJECTION, YOUR HONOR.

1 THE COURT: IT WILL BE ADMITTED.

2

3 (EXHIBIT 2046 ADMITTED.) +

4

5 MR. QUINN: IF WE COULD PUT THE FIRST STRING  
6 UP THERE.

10:57AM

7 AND THEN THE -- PERHAPS GO THROUGH THE  
8 FOLLOWING PAGES JUST TO GIVE THE JURY AN IDEA OF WHAT  
9 THE ATTACHMENTS ARE.

10 WHAT WE'VE GOT HERE IS A SEVEN-PAGE --  
11 IT'S AN E-MAIL STRING ON THE TOP AND THEN AFTER THAT  
12 SEVEN PAGES OF DATA.

10:57AM

13 A YES, THAT'S WHAT IT APPEARS.

14 Q IF WE COULD GO BACK TO THE FIRST PAGE AND  
15 PERHAPS BLOW UP THE TOP HALF, MIKE.

10:58AM

16 YOU HAD ASKED ONE OF YOUR COWORKERS TO  
17 GET YOU SOME DATA WITH RESPECT TO THE COSTS OF  
18 SUBSCRIPTIONS TO VARIOUS DATA FEEDS, CORRECT?

19 A I THINK I ACTUALLY ASKED HER TO UPDATE IT. IT  
20 WAS SOMETHING I HAD ALREADY HAD.

10:58AM

21 Q WELL, IS IT TRUE, SIR, THAT YOU WROTE THIS  
22 E-MAIL TO JUSCELINE DIAZ, REQUESTING UPDATED  
23 SPREADSHEETS WITH VARIOUS COSTS AND USER LISTS?

24 A YEAH.

25 Q YOU WROTE THAT?

10:58AM

26 A UPDATED SPREADSHEET, YES.

27 Q YOU ASKED FOR THIS, FOR THE USE IN PREPARING  
28 ABLE GRAPE PRO FORMA BUSINESS PLAN, CORRECT?

1           A        I DID USE IT -- I THINK I USED THE OLDER  
2       VERSION IN THE PRO FORMA.

3           Q        SIR, YOU ASKED FOR THIS TO USE IN CONNECTION  
4       WITH THE PREPARATION OF THE ABLE GRAPE PRO FORMA  
5       BUSINESS PLAN, CORRECT?

10:58AM

6           A        IT COULD HAVE BEEN, BUT IT WOULD HAVE BEEN  
7       MARGINALLY. I ALREADY HAD A SPREADSHEET. I DON'T  
8       THINK IT WOULD HAVE CHANGED MUCH. PROBABLY IT WOULD  
9       HAVE CHANGED BY \$100,000 IT WOULD HAVE BEEN THAT  
10       USEFUL --

10:59AM

11          Q        YOU ASKED FOR IT, RIGHT?

12          A        YES. I DID.

13          Q        YOU ASKED ONE OF YOUR COWORKERS TO GIVE YOU  
14       THIS DATA?

15          A        YES.

10:59AM

16          Q        IN ANTICIPATION, YOU WOULD USE IT IN THE ABLE  
17       GRAPE BUSINESS PLAN PRO FORMA, CORRECT?

18          A        AGAIN, THIS WAS ALSO PART OF MY JOB, WAS TO  
19       MAINTAIN. AND IF YOU LOOK AT THE EARLIER STRING, SHE'S  
20       ALSO ASKING ME TO MAKE A DECISION ON WHETHER OR NOT  
21       ANOTHER EMPLOYEE COULD GET ANOTHER SUBSCRIPTION.

10:59AM

22                    AGAIN, THIS IS ANOTHER SITUATION WHERE I  
23       WAS DOING MY JOB, AND YOU HAD THIS OTHER -- I COULD  
24       HAVE USED IT FOR THIS OTHER PURPOSE. IT WOULD HAVE  
25       VERY LITTLE VALUE AT THAT POINT.

10:59AM

26          Q        SIR, YOU ASKED FOR THIS --

27          A        YES.

28          Q        -- FROM HER AT THIS TIME BECAUSE YOU WERE

1 ANTICIPATING USING THE INFORMATION IN THE ABLE GRAPE  
2 BUSINESS PLAN, CORRECT?

3 A I COULD HAVE, YES.

4 Q IN FACT, YOU DID USE THIS DATA -- I MEAN, LET  
5 ME ASK YOU THIS: DID YOU TELL YOUR COWORKER, MS. DIAZ,  
6 THAT THAT WAS YOUR PURPOSE IN ASKING FOR IT?

10:59AM

7 YES OR NO?

8 A I DID NOT.

9 Q AND YOU DID, IN FACT, USE THIS DATA IN  
10 PREPPING THE PRO FORMA BUSINESS PLAN, CORRECT?

11:00AM

11 A I DON'T RECALL IF I DID OR NOT.

12 Q THERE IS INFORMATION IN THE ABLE GRAPE  
13 BUSINESS PLAN THAT WE'VE LOOKED AT COVERING THE COSTS  
14 OF DATA FEEDS, CORRECT?

15 A YES.

11:00AM

16 Q YOU GOT THAT INFORMATION FROM HER?

17 A AGAIN, I DON'T KNOW IF THE ONE IN THE  
18 PRO FORMA IS THE OLD ONE OR THE NEW ONE.

19 Q WELL, WHICHEVER ONE IT WAS --

20 A I DID USE ONE OF THEM, YES.

11:00AM

21 Q YOU GOT THE INFORMATION FROM HER IN EITHER  
22 CASE?

23 A I THINK THE ORIGINAL ONE I GOT FROM  
24 SUE VANDEWATER.

25 Q THAT'S ANOTHER ONE OF YOUR COWORKERS?

11:00AM

26 A YES. THAT -- IT WOULD HAVE BEEN SOMETHING I  
27 RECEIVED MONTHS AND MONTHS AND MONTHS EARLIER.

28 Q LET'S TAKE A LOOK AT EXHIBIT 432.



1 MONTHS AND MONTHS YOU SAY, SIR. IS THAT  
2 WHAT YOU JUST SAID?

3 A I DON'T KNOW EXACTLY WHEN SUE GAVE IT TO ME,  
4 BUT --

5 Q DIDN'T YOU TELL THE JURY IT WAS MONTHS AND 11:01AM  
6 MONTHS? ISN'T THAT WHAT YOU JUST SAID?

7 THE COURT: RELAX, MR. QUINN. IF YOU HAVE A  
8 QUESTION, ASK HIM.

9 BY MR. QUINN:

10 Q SIR, EXHIBIT -- TAKE A LOOK AT EXHIBIT 432, 11:01AM  
11 THE E-MAIL EXCHANGE BETWEEN YOU AND SUE VANDEWATER?

12 A YES.

13 Q ALL RIGHT.

14 I'D OFFER THIS, YOUR HONOR.

15 MR. HELM: NO OBJECTION. 11:01AM

16 THE COURT: ADMITTED.

17

18 (EXHIBIT 432 ADMITTED.) +

19

20 BY MR. QUINN: 11:01AM

21 Q YOU'RE E-MAILING SUE VANDEWATER IN NOVEMBER  
22 ABOUT THIS INFORMATION?

23 A YES.

24 THE COURT: WAIT A MINUTE. IT SAYS TO  
25 JACQUELINE DIAZ, WHAT I'M LOOKING AT. 11:01AM

26 MR. QUINN: AT THE TOP IT REFERS TO  
27 SUE VANDEWATER.

28 THE COURT: OKAY. IT'S ADMITTED. WE CAN PUT

1 IT UP.

2 BY MR. QUINN:

3 Q YOU WERE ASKED SOME QUESTIONS ABOUT FEE  
4 SHARING, SIR.

5 ARE YOU SAYING THAT YOU DID NOT RECEIVE  
6 ANY FEE SHARING AT ALL IN 2009?

11:02AM

7 MR. HELM: VAGUE AND AMBIGUOUS AS TO WHETHER  
8 IT MEANS ON A CASH OR ACCRUAL BASIS.

9 THE COURT: ALL RIGHT.

10 DO YOU UNDERSTAND THE QUESTION? IF YOU  
11 DON'T, ASK HIM AGAIN.

11:02AM

12 THE WITNESS: COULD YOU ASK IT AGAIN.

13 BY MR. QUINN:

14 Q DID YOU RECEIVE ANY FEE SHARING AT ALL IN  
15 2009?

11:02AM

16 A ANY FEE SHARING?

17 Q YES, SIR.

18 A I RECEIVED FEE SHARING IN 2009 FOR WORK  
19 PERFORMED IN 2008.

20 Q DID YOU RECEIVE ANY FEE SHARING IN 2009 FOR  
21 WORK DONE IN 2009?

11:02AM

22 A I -- DON'T BELIEVE SO, NO.

23 Q SO, DO YOU HAVE ANY DOUBT ABOUT THAT?

24 A NO. I DON'T BELIEVE SO, NO.

25 Q YOU DON'T THINK YOU RECEIVED -- YOU'RE PRETTY  
26 CONFIDENT YOU RECEIVED NO FEE SHARING AT ANY POINT IN  
27 2009, WHETHER INCENTIVE FEES OR MANAGEMENT FEES OR  
28 ANYTHING OF THAT NATURE; IS THAT TRUE?

11:02AM

1           A       NO, I DON'T BELIEVE I RECEIVED ANY  
2 PERFORMANCE -- FEE -- OR FEE SHARING FOR WORK PERFORMED  
3 FOR 2009 IN 2009. IT'S TYPICALLY A YEAR LAP.  
4 TYPICALLY, THE NEXT YEAR YOU GET THAT COMPENSATION.

5           Q       AND YOU -- WHEN YOU'VE BEEN PAID FEE SHARING  
6 IN THE PAST, IT'S TRUE, ISN'T IT, THAT TCW HAD ITSELF  
7 ALREADY RECEIVED THE FEES?

11:03AM

8           MR. HELM:   LACKS FOUNDATION.

9           MR. QUINN:   BUT YOU'RE SHARING; IS THAT TRUE?

10          THE COURT:   IF YOU KNOW.

11:03AM

11          THE WITNESS:  I HAVE NO WAY OF CONFIRMING  
12 THAT.

13 BY MR. QUINN:

14          Q       YOU HAVE NO WAY OF KNOWING WHETHER OR NOT THE  
15 PRACTICE WAS THAT FEES WERE ONLY PAID TO YOU AND FOLKS  
16 LIKE YOU WHO GOT FEE SHARING AFTER TCW HAD ACTUALLY  
17 RECEIVED THE CASH ITSELF, YOU JUST DON'T KNOW?

11:03AM

18          A       I DON'T KNOW HOW THE FEE SHARING MECHANICS  
19 WORK, NO.

20          Q       ALL RIGHT.

11:03AM

21                   DO YOU KNOW WHETHER OR NOT, AS OF THE  
22 TIME -- AS OF DECEMBER 11TH, WHEN YOUR EMPLOYMENT WAS  
23 TERMINATED, TCW HAD ACTUALLY RECEIVED ANY OF THE CASH  
24 FOR THE FEE SHARING IN 2009, DO YOU KNOW?

25          A       I HAVE NO WAY OF KNOWING THAT. THAT WASN'T --  
26 I WASN'T PART OF THE ACCOUNTING GROUP.

11:04AM

27          Q       ALL RIGHT.

28                   ARE YOU FAMILIAR WITH THE CONCEPT OF A

1 VESTED INTEREST?

2 A I'M -- SOMEWHAT FAMILIAR WITH IT. IT'S A TERM  
3 THAT'S USED.

4 Q RIGHT.

5 AND THAT MIGHT BE USED, FOR EXAMPLE, TO  
6 DESCRIBE A SITUATION WHERE YOU HAVE A VESTED INTEREST  
7 IN FEES WHETHER OR NOT THEY HAD ACTUALLY BEEN RECEIVED  
8 YET, RIGHT?

11:04AM

9 MR. HELM: LACKS FOUNDATION.

10 THE COURT: SUSTAINED.

11:04AM

11 BY MR. QUINN:

12 Q WELL, DID YOU HAVE AN AGREEMENT WITH  
13 MR. GUNDLACH THAT YOU HAD SOME VESTED INTEREST IN FEES  
14 THAT HAD NOT YET BEEN RECEIVED BY TCW?

15 MR. HELM: VAGUE AND AMBIGUOUS.

11:04AM

16 THE COURT: SUSTAINED. YOU'LL HAVE TO CLARIFY  
17 THE TERM AND THEN ASK HIM WHAT HE KNOWS.

18 MR. QUINN: ALL RIGHT.

19 Q WHAT DO YOU UNDERSTAND A VESTED INTEREST IN  
20 FEES TO MEAN?

11:04AM

21 A I -- I DON'T KNOW WHAT THAT MEANS ACTUALLY.

22 Q ALL RIGHT.

23 DID YOU HAVE SOME AGREEMENT WITH  
24 MR. GUNDLACH THAT YOU WOULD BE PAID FEES EVEN IF TCW  
25 HAD NOT YET RECEIVED THEM?

11:05AM

26 MR. HELM: VAGUE AND AMBIGUOUS.

27 THE COURT: OVERRULED.

28 COULD YOU ANSWER THAT QUESTION.

1 THE WITNESS: I DON'T THINK I CAN.

2 I'M NOT SURE -- MY UNDERSTANDING WITH  
3 MR. GUNDLACH WAS THAT WE PERFORMED WORK FOR THE YEAR.  
4 WITHIN THE NEXT YEAR WE GOT COMPENSATED FOR PREVIOUS  
5 YEARS. THAT'S ALL I UNDERSTOOD. I DON'T KNOW HOW THE  
6 MECHANICS WORK BEHIND IT.

11:05AM

7 BY MR. QUINN:

8 Q MY QUESTION IS, YOU HAD AN AGREEMENT WITH  
9 MR. GUNDLACH THAT YOU WOULD BE PAID FEES EVEN IF THEY  
10 HAD NOT BEEN RECEIVED BY TCW?

11:05AM

11 A THERE WAS NO SPECIFIC CONVERSATION ABOUT FEES  
12 BEING RECEIVED OR NOT.

13 Q OR NOT.

14 HOW ABOUT WITH ANYONE AT TCW, DID YOU  
15 HAVE SOME CONVERSATION OR AGREEMENT WITH ANYBODY AT TCW  
16 ABOUT WHETHER YOU'D RECEIVE FEES EVEN IF THEY HADN'T  
17 BEEN RECEIVED?

11:05AM

18 A I NEVER HAD THAT CONVERSATION WITH ANYONE.

19 MR. QUINN: IF I COULD HAVE JUST ONE MOMENT,  
20 YOUR HONOR.

11:06AM

21 THE COURT: CERTAINLY.

22 MR. QUINN: NOTHING FURTHER.

23 THE COURT: MR. HELM, RE-CROSS?

24

25 RE-CROSS-EXAMINATION +

11:06AM

26 BY MR. HELM:

27 Q FEW FOLLOW-UP QUESTIONS IF I COULD,  
28 MR. SANTA ANA.

1 MR. QUINN ASKED YOU ABOUT THE BWIC  
2 BROWSER AND THE SECURITY ANALYZER.

3 DO YOU RECALL BEING ASKED THOSE  
4 QUESTIONS?

5 A YES.

11:06AM

6 Q DID YOU COPY THE BWIC BROWSER ONTO THE HARD  
7 DRIVE?

8 A NO.

9 Q DID YOU COPY THE SECURITY ANALYZER ONTO THE  
10 HARD DRIVE?

11:07AM

11 A NO.

12 Q NOW, HE MENTIONED THAT -- OR YOU MENTIONED  
13 THAT ON DECEMBER 2ND YOU COPIED CERTAIN INFORMATION  
14 FROM THE HARD DRIVE ONTO YOUR HOME COMPUTER.

15 DO YOU RECALL THAT?

11:07AM

16 A YES.

17 Q WHAT INFORMATION DID YOU COPY ONTO YOUR HOME  
18 COMPUTER AT THAT TIME?

19 A I THINK IT WAS INFORMATION RELATING TO THE  
20 PRO FORMA, LIKE SUBSCRIPTION DATA, SUBSCRIPTION DATA  
21 SPREADSHEET, I THINK I USED TO POPULATE INTO THE  
22 PRO FORMA.

11:07AM

23 Q SO WE WERE JUST TALKING ABOUT SOME LISTS THAT  
24 HAD BEEN TALKED ABOUT, ABOUT THE COSTS OF VARIOUS --  
25 THE COSTS YOU WOULD HAVE TO PAY TO CERTAIN VENDORS TO  
26 DESCRIBE TO INFORMATION.

11:07AM

27 IS THAT WHAT YOU WERE REFERRING TO?

28 A YES, THAT'S EXACTLY IT.

1 Q A DOCUMENT OF THAT KIND IS WHAT YOU COPIED  
2 FROM THE HARD DRIVE ONTO YOUR HOME COMPUTER ON  
3 DECEMBER 2ND?

4 A THAT'S MY RECOLLECTION. THAT'S WHAT I WAS  
5 WORKING ON IN EARLY DECEMBER TIME PERIOD.

11:08AM

6 Q WHY DID YOU COPY IT ONTO YOUR HOME COMPUTER,  
7 THEN?

8 A BECAUSE I THINK THE -- THAT'S WHERE I WAS  
9 WORKING ON THE PRO FORMA, ON MY HOME COMPUTER.

11:08AM

10 Q DID YOU COPY AT THAT TIME ANY OTHER  
11 INFORMATION FROM THE HARD DRIVE ONTO YOUR HOME  
12 COMPUTER?

13 A I DON'T THINK SO, NO.

14 Q DID YOU COPY THE M.B.S. DATA BASE FROM THE  
15 HARD DRIVE TO YOUR HOME COMPUTER ON DECEMBER THE 2ND?

11:08AM

16 A NOPE.

17 Q NOW, WHAT IS YOUR BEST RECOLLECTION ABOUT WHEN  
18 YOU STARTED WORKING ON THE PRO FORMA?

19 A I SEEM TO RECALL IT WAS LATTER PART OF  
20 NOVEMBER.

11:08AM

21 Q NOW, THERE WAS A DOCUMENT SHOWN TO YOU, AN  
22 EARLY DRAFT THAT SHOWED A CREATE DATE OF NOVEMBER THE  
23 14TH.

24 ARE YOU SURE WHETHER -- FIRST OF ALL,  
25 DID YOU RECALL THAT?

11:08AM

26 A I DID NOT HAVE --

27 Q BUT YOU RECALL GOING OVER IT WITH MR. QUINN  
28 JUST NOW?

1 A YES.

2 Q SO, WAS THERE EVER A TIME WHEN YOU TOOK AN OLD  
3 DOCUMENT AND USED IT AS A SHELL TO START A NEW  
4 DOCUMENT?

5 A A -- LOTS OF TIMES. 11:09AM

6 Q DO YOU KNOW, AS YOU SIT HERE NOW, WHETHER THAT  
7 DOCUMENT ACTUALLY WAS CREATED ON NOVEMBER THE 14TH OR A  
8 LITTLE LATER IN NOVEMBER WHICH IS WHAT YOU RECALL?

9 A I -- I DON'T KNOW.

10 Q ONE MORE THING I'D LIKE TO CLEAR UP. 11:09AM

11 COULD WE PUT UP 5736, PLEASE, ON THE  
12 SCREEN.

13 THIS WAS THE LITIGATION HOLD MEMO THAT  
14 YOU PREVIOUSLY TESTIFIED SENDING ON JANUARY THE 7TH.

15 IS THAT WHEN YOU RECALL -- SORRY. 11:09AM

16 WHEN YOU RECEIVED THAT MEMO REGARDING  
17 THE LEGAL OBLIGATION TO MAINTAIN DOCUMENTS THAT MIGHT  
18 BE RELEVANT TO THE LITIGATION, DID YOU RECEIVE IT ON  
19 JANUARY THE 7TH?

20 A YES, I RECALL RECEIVING IT EARLY. 11:10AM

21 Q ALL RIGHT.

22 THERE WAS A MEMO THAT WAS ATTACHED FROM  
23 THE WHITE O'CONNOR FIRM; IS THAT RIGHT?

24 A YES.

25 Q GO TO THE NEXT PAGE. 11:10AM

26 COULD WE GET THE DATE FOR THAT.

27 THE DATE SAYS FEBRUARY 18TH, 2010. NOW,  
28 THAT'S AFTER JANUARY -- THE 7TH -- DO YOU SEE THAT?



1 A YES, I DO.

2 Q SO, ARE YOU FAMILIAR WITH THE FACT THAT  
3 SOMETIMES THERE ARE AUTO DATE FUNCTIONS PUT IN WORD  
4 DOCUMENTS?

5 A YES.

11:10AM

6 Q AND SO CAN YOU TELL WHETHER THIS WAS PRINTED  
7 ON FEBRUARY THE 18TH WITH AN AUTO DATE FUNCTION?

8 A I CANNOT TELL, BUT THAT'S SOMETHING THAT  
9 HAPPENS FROM TIME TO TIME.

10 Q IS IT YOUR RECOLLECTION THAT THERE WAS A MEMO  
11 THAT HAD ALREADY BEEN WRITTEN THAT WAS ATTACHED TO THIS  
12 E-MAIL WHEN IT WAS SENT AROUND TO EVERYONE ON JANUARY  
13 THE 7TH?

11:10AM

14 A OH, YES, I REMEMBER OPENING IT, LITERALLY  
15 SITTING ON MY LAPTOP, OPENING IT AND READING IT AND  
16 CLOSING IT.

11:10AM

17 Q THANK YOU.

18 THANK YOU, YOUR HONOR. NOTHING FURTHER.

19 THE COURT: ANYTHING FURTHER?

20 MR. QUINN: NOTHING FURTHER.

11:11AM

21 THE COURT: MR. SANTA ANA, THANK YOU FOR YOUR  
22 TESTIMONY. YOU MAY STEP DOWN.

23 MR. QUINN, YOU MAY CALL YOUR NEXT  
24 WITNESS.

25 MR. QUINN: YOUR HONOR, OUR NEXT WITNESS WILL  
26 BE MIKE WILSON. NOT THE BEACH BOY, UNFORTUNATELY.

11:11AM

27 AND MR. WILSON WILL BE EXAMINED BY MY  
28 PARTNER, DOMINIC SURPRENANT.

1 MR. BRIAN: WE NEED TO DO SOME MUSICAL CHAIRS  
2 IF WE CAN. MR. WEINGART IS GOING TO DO THE EXAMINING  
3 OF THIS WITNESS. IF HE CAN MOVE UP HERE.

4 THE COURT: SURE.

5 (PAUSE) +

11:11AM

6  
7 MR. QUINN: I SHOULD -- IF I COULD BACK UP  
8 JUST A SECOND TO MOVE IN TWO EXHIBITS BY STIPULATION.

9 TWO EXHIBITS THAT WERE SHOWN TO  
10 MR. SANTA ANA'S VIDEOTAPE DEPOSITION.

11:12AM

11 DO YOU RECALL HIS DEPOSITION?

12 THE COURT: EXHIBIT NUMBERS? ALL RIGHT.

13 MR. QUINN: EXHIBIT 544.

14 THE COURT: ANY OBJECTION? 544.

15 MR. BRIAN: NO OBJECTION, SUBJECT -- I  
16 THINK -- WE'LL TAKE IT UP LATER.

11:12AM

17 NO OBJECTION, SUBJECT TO CONFIRMING THE  
18 DOCUMENT ADMITTED.

19 THE COURT: IT WILL BE ADMITTED. WHAT WAS THE  
20 OTHER ONE.

11:12AM

21 MR. QUINN: AND SCREEN SHOTS OF CERTAIN  
22 INSTANT MESSENGER CHATS BETWEEN JEFFREY MAYBERRY AND  
23 RACHEL CODY.

24 AND ONE IS EXHIBIT 1023 --

25 MR. BRIAN: WELL --

11:12AM

26 MR. QUINN: THE MULTI-STRATEGY FIXED INCOME  
27 GRID.

28 THE COURT: ANY OBJECTION?

1 MR. BRIAN: NONE.

2 THE COURT: IT WILL BE ADMITTED.

3

4 (EXHIBITS 544 AND 1023 ADMITTED.) +

5

11:12AM

6 THE COURT: 544 AND 1023.

7

8 MICHAEL WILSON +

9 CALLED AS A WITNESS BY THE PLAINTIFF WAS SWORN AND  
10 TESTIFIED AS FOLLOWS:

11

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

17 THE WITNESS: I DO.

18 THE CLERK: THANK YOU. PLEASE BE SEATED.

19 SIR, PLEASE STATE AND SPELL YOUR NAME  
20 FOR THE RECORD.

11:13AM

21 THE WITNESS: MICHAEL WILSON, M-I-C-H-A-E-L  
22 W-I-L-S-O-N.

23 THE CLERK: THANK YOU.

24 THE COURT: GOOD MORNING, MR. WILSON.

25 THE WITNESS: GOOD MORNING.

11:13AM

26 THE COURT: YOU MAY PROCEED.

27 MR. SURPRENANT: THANK YOU, YOUR HONOR.

28 ///

1 DIRECT EXAMINATION +

2 BY MR. SURPRENANT:

3 Q MR. WILSON, WHERE WERE YOU EMPLOYED?

4 A DELOITTE & TOUCHE IN CHARLOTTE, NORTH CAROLINA  
5 OFFICE.

11:13AM

6 Q WHAT IS YOUR POSITION THERE?

7 A I'M SPECIALIST MANAGER.

8 Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

9 A ABOUT A YEAR.

10 Q AND PRIOR TO WORKING AT DELOITTE, WHERE DID  
11 YOU WORK?

11:13AM

12 A I WORKED AT GUIDANCE SOFTWARE IN THE PASADENA  
13 OFFICE.

14 Q WHILE YOU WERE WORKING AT GUIDANCE, DID YOU  
15 WORK ON A PROJECT FOR TRUST COMPANY OF THE WEST?

11:13AM

16 A YES, I DID.

17 Q WHEN DID THAT PROJECT FOR TRUST COMPANY OF THE  
18 WEST BEGIN?

19 A EARLY NOVEMBER OF 2009.

20 Q WHEN YOU WERE WORKING ON THAT PROJECT, WHAT  
21 WAS YOUR POSITION AT GUIDANCE SOFTWARE?

11:14AM

22 A I WAS SENIOR E-DISCOVERY CONSULTANT.

23 Q AS A SENIOR E-CONSULTANT -- DISCOVERY  
24 CONSULTANT, WHAT WORK DID YOU DO?

25 A I DID COMPUTER FORENSICS AND COMPUTER  
26 E-DISCOVERY.

11:14AM

27 Q WHAT ARE COMPUTER FORENSICS?

28 A COMPUTER FORENSICS IS THE SCIENCE OF

1 CAPTURING, ANALYZING, AND PRESERVING INFORMATION AND  
2 EVIDENCE FROM COMPUTERS AND COMPUTER DEVICES.

3 Q WHAT TRAINING DO YOU HAVE IN COMPUTER  
4 FORENSICS?

5 A I HAVE TRAINING FROM THE SANS INSTITUTION IN 11:14AM  
6 FORENSICS, AND FROM GUIDANCE SOFTWARE IN FORENSIC AND  
7 IN THE USE OF THEIR PRODUCTS.

8 Q HOW LONG HAVE YOU BEEN DOING COMPUTER FORENSIC  
9 WORK?

10 A SINCE AROUND 2004. 11:14AM

11 Q IN THE PROJECT THAT GUIDANCE WAS DOING FOR  
12 TRUST COMPANY OF THE WEST, BEGINNING IN NOVEMBER OF  
13 2009, WHAT SERVICE WAS GUIDANCE PROVIDED?

14 A GUIDANCE WAS INITIALLY RETAINED TO COLLECT  
15 INDIVIDUAL FILES FROM COMPUTERS AROUND THE TCW NETWORK. 11:15AM  
16 AND EVENTUALLY THEY WERE ASKED TO COLLECT FULL FORENSIC  
17 IMAGES FROM THOSE COMPUTERS.

18 Q WHEN GUIDANCE BEGAN PROVIDING THAT SERVICE IN  
19 EARLY NOVEMBER OF 2009, WERE YOU WORKING ON THE  
20 PROJECT? 11:15AM

21 A NO. NO, I WAS NOT.

22 Q DID YOU LATER LEARN WHO WAS WORKING ON THE  
23 PROJECT FROM THE BEGINNING?

24 A YES.

25 Q WHO WAS THAT? 11:15AM

26 A A CONSULTANT NAMED EARL DORR.

27 Q DID YOU EVENTUALLY REPLACE MR. DORR AS THE  
28 GUIDANCE PERSON WORKING ON THE TRUST COMPANY PROJECT?

1 A YES, I DID.

2 Q WHEN DID THAT HAPPEN? WHEN DID YOU REPLACE  
3 MR. DORR?

4 A NOVEMBER 17TH.

5 Q AND WHAT WAS THE REASON FOR MR. DORR EXITING  
6 AND YOU COMING ON?

7 MR. WEINGART: OBJECTION, RELEVANCE.

8 THE COURT: SUSTAINED.

9 BY MR. SURPRENANT:

10 Q WHY DID YOU COME ONTO THE PROJECT?

11 A THE JOB WAS LOCAL TO MY OFFICE AND REMOTE TO  
12 EARL'S. SO EARL WENT BACK TO HIS OFFICE.

13 Q AFTER YOU CAME ONTO THE PROJECT DID MR. DORR  
14 KEEP WORKING ON IT OR NOT?

15 A NO, HE DID NOT.

16 Q AND WHEN YOU TOOK OVER FOR MR. DORR, DID YOU  
17 MEET WITH HIM IN PERSON?

18 A YES, I DID.

19 Q WHY DID YOU MEET WITH HIM?

20 A TO GO OVER WHAT HE HAD DONE TO DATE, TO SEE  
21 THE STATUS OF THE PROJECT WAS.

22 Q HOW DID YOU LEARN FROM MR. DORR WHAT THE  
23 STATUS OF THE PROJECT WAS?

24 A I SPOKE WITH HIM AND I LOOKED AT HIS LAB  
25 NOTES.

26 Q WHERE DID YOU SPEAK WITH HIM?

27 A EITHER IN THE TCW OFFICE OR DOWNSTAIRS IN THE  
28 COFFEE AREA.

11:15AM

11:15AM

11:16AM

11:16AM

11:16AM

1 Q IN YOUR REVIEW OF THE STATUS OF THE PROJECT,  
2 AS OF NOVEMBER 17TH WHEN YOU STARTED, DID YOU LEARN  
3 WHETHER OR NOT MR. DORR HAD DETECTED TCW ELECTRONIC  
4 DATA BEING DOWNLOADED TO EXTERNAL DEVICES?

5 MR. WEINGART: OBJECTION, YOUR HONOR. HE'S  
6 NOT AN EXPERT. CALLS FOR EXPERT OPINION.

11:16AM

7 THE COURT: I'LL SUSTAIN IT ON THE GROUNDS --  
8 YOU CAN ASK HIM WHAT HE DID --

9 MR. SURPRENANT: THANK YOU, YOUR HONOR.

10 THE COURT: -- WHAT HIS PROCESS WAS.

11:17AM

11 MR. SURPRENANT: SURE.

12 Q WHO DID YOU WORK -- WHO DID YOU REPORT TO AT  
13 TCW?

14 A JOE BURSCHINGER.

15 Q WHAT WAS HIS POSITION?

11:17AM

16 A HE WAS THE CHIEF RISK OFFICER.

17 Q WHAT DOCUMENTS WERE YOU ORIGINALLY COLLECTING?

18 A WE WERE ASKED TO COLLECT DOCUMENTS, LIKE WORD  
19 DOCUMENTS, VISUAL BASIC SCRIPTS, EXCEL SPREADSHEETS ZIP  
20 FILES, THINGS LIKE THAT.

11:17AM

21 Q WERE YOU LATER ASKED TO COLLECT ADDITIONAL  
22 TYPES OF DATA?

23 A YES.

24 LATER WE WERE ASKED TO COLLECT FULL  
25 FORENSIC IMAGES OF THE SYSTEMS.

11:17AM

26 Q COULD YOU PLEASE TELL US WHAT A FULL FORENSIC  
27 IMAGE IS.

28 A FORENSIC IMAGE OF A COMPUTER, EFFECTIVELY IT'S

1 A BIT PER BIT COPY, AN EXACT DUPLICATE OF THE HARD  
2 DRIVE AS IT STOOD AT THAT POINT IN TIME.

3 Q AND DOES THE FULL FORENSIC IMAGE HAVE  
4 SOMETHING CALLED METADATA?

5 A YES, IT DOES. 11:18AM

6 Q PLEASE TELL US, AS A COMPUTER FORENSIC PERSON,  
7 WHAT METADATA IS.

8 A METADATA IS DATA ABOUT DATA. SO, IN THE CASE  
9 OF A WORD FILE FORENSICS, THE DATA INSIDE THE WORD  
10 FILE, THE STUFF YOU WOULD NORMALLY READ THAT WORD DATA. 11:18AM  
11 THE METADATA WOULD BE THE ACCESS, TIMES OF THE FILE  
12 ITSELF, THE CREATION TIMES, THINGS LIKE THAT.

13 Q AND DID YOU USE A SOFTWARE PROGRAM TO CAPTURE  
14 DATA FROM CERTAIN TCW COMPUTERS?

15 A YES. 11:18AM

16 Q IS THERE -- WHAT SOFTWARE PROGRAM DID YOU USE?

17 A ENCASE ENTERPRISE.

18 Q DID YOU HAVE A WORK STATION AT TCW THAT YOU  
19 WERE WORKING ON ON THIS PROJECT?

20 A YES. 11:18AM

21 Q AND WAS THE ENCASE ENTERPRISE SOFTWARE  
22 INSTALLED ON THAT?

23 A YES, IT WAS.

24 Q WAS THE ENCASE ENTERPRISE SOFTWARE INSTALLED  
25 ON THE COMPUTERS YOU WERE CAPTURING DATA FROM? 11:18AM

26 A YES. A SMALLER -- PIECE CALLED A -- A PIECE  
27 CALLED A SERVAT, S-E-R-V-A-T.

28 Q HOW MANY COMPUTERS WAS ENCASE INSTALLED ON



1       ORIGINALLY?

2           A        ORIGINALLY, IT WAS INSTALLED ON FIVE, AND  
3       EVENTUALLY WENT UP TO AROUND 11.

4           Q        WERE YOU ABLE TO DETERMINE, AS A COMPUTER  
5       FORENSIC PERSON, WHETHER THE IN CASE SOFTWARE HAD BEEN  
6       INSTALLED CORRECTLY?

11:19AM

7           A        YES.

8           Q        HOW WERE YOU ABLE TO DETERMINE THAT?

9           A        WE WERE ABLE TO CAPTURE DATA FROM THOSE  
10       SYSTEMS.

11:19AM

11          Q        WHEN ENCASE CAPTURES DATA, DOES IT PRESERVE IT  
12       WITHOUT MODIFYING?

13          A        YES.

14          Q        HOW DOES IT DO THAT?

15          A        ENCASE CAPTURES THE DATA, OVER THE NETWORK IN  
16       THIS CASE, AND THEN PRESERVES IT IN A FILE FORMAT THAT  
17       MAKES IT WRITE-PROTECTED, SO YOU CAN'T ACCIDENTALLY  
18       DAMAGE IT.

11:19AM

19                    AND ALSO ADDS SOME EXTRA LAYERS OF  
20       AUDIT, SO IF THERE IS ANY CORRUPTION TO THE FILE, IT'S  
21       EASY TO DETECT.

11:19AM

22          Q        EARLIER, YOU TESTIFIED THAT USING ENCASE, YOU  
23       TOOK FORENSIC IMAGES OF TCW COMPUTERS.

24                    HOW DID YOU DO THAT?   WHAT WAS THE  
25       PROCESS?

11:20AM

26          A        WE COLLECTED THOSE IMAGES OVER THE NETWORK.  
27       SO THE EXAMINER SYSTEM ASSISTS MY COMPUTER -- MY  
28       COMPUTER WOULD HAVE CONNECTED TO THE REMOTE SYSTEMS AND

1 MADE A FORENSIC IMAGE OF THE REMOTE SYSTEM.

2 Q WHEN WAS THE FIRST TIME YOU CAPTURED DATA, IF  
3 YOU DID, THAT INDICATED AN EXTERNAL DRIVE HAD BEEN  
4 ATTACHED TO ONE OF THE TCW COMPUTERS YOU WERE  
5 MONITORING?

11:20AM

6 MR. WEINGART: SAME OBJECTION. PERSON HAS NOT  
7 BEEN PROFFERED AS EXPERT.

8 THE COURT: OVERRULED. I'LL ALLOW HIM TO  
9 TESTIFY TO WHAT HIS WORK WAS, WHAT HE DID.

10 MR. SURPRENANT: THAT'S CORRECT, YOUR HONOR.

11:20AM

11 THE COURT: GO AHEAD, YOU CAN ANSWER THAT.

12 THE WITNESS: THE FIRST TIME THAT WE COLLECTED  
13 INFORMATION FROM AN EXTERNAL DEVICE WAS ON  
14 NOVEMBER 22ND.

15 BY MR. SURPRENANT:

11:20AM

16 Q WHEN DID YOU -- DID YOU ANALYZE THAT DATA ON  
17 NOVEMBER 22ND?

18 A NO.

19 I ANALYZED THE DATA A FEW DAYS  
20 AFTERWARDS.

11:20AM

21 Q AND COULD YOU PLEASE TURN TO TRIAL  
22 EXHIBIT 2149 IN YOUR EXHIBIT BOOK.

23 THE COURT: 2149?

24 MR. SURPRENANT: YES, YOUR HONOR.

25 THE COURT: OKAY.

11:21AM

26 BY MR. SURPRENANT:

27 Q COULD YOU TELL US, DO YOU KNOW WHAT THAT IS?

28 A YES.

1 Q HOW DO YOU KNOW WHAT THAT IS?

2 A I CREATED IT.

3 Q WHAT IS IT?

4 A IT IS A TRACKING SPREADSHEET FOR ALL OF THE  
5 EVIDENCE IN THIS PARTICULAR MATTER.

11:21AM

6 Q WHAT IS DISPLAYED ON THE FIRST THREE PAGES OF  
7 EXHIBIT 2149?

8 A THAT'S THE TRACKING SPREADSHEET THAT SHOWS THE  
9 ACTUAL -- THE EVIDENCE FILES THAT WE COLLECTED.

10 Q AND --

11:21AM

11 MR. SURPRENANT: YOUR HONOR, I WOULD MOVE  
12 TRIAL EXHIBIT 2149 INTO EVIDENCE.

13 THE COURT: ANY OBJECTION?

14 MR. WEINGART: NO, YOUR HONOR.

15 THE COURT: IT WILL BE ADMITTED.

11:21AM

16

17 (EXHIBIT 2149 ADMITTED.) +

18

19 MR. SURPRENANT: MIKE, IF YOU COULD DISPLAY  
20 THE FIRST PAGE.

11:21AM

21 Q WHAT IS THE COLOR CONVENTIONS THAT IS USED IN  
22 THIS EXHIBIT?

23 A THE COLOR CONVENTIONS WAS JUST TO SHOW ME THAT  
24 THE COLORED ONES, THE ONES IN GREEN ARE THE FIRST TIME  
25 AN INDIVIDUAL ITEM HAD EVER BEEN DISCOVERED.

11:21AM

26 MR. SURPRENANT: MIKE, COULD YOU BLOW UP THE  
27 FIRST LINE.

28 Q AND COULD YOU TAKE THIS -- TAKE US THROUGH THE

1 FIRST LINE OF THIS EXHIBIT, MR. WILSON, AND TELL US  
2 WHAT DATA IT COMMUNICATES.

3 A SURE.

4 THIS SHOWS THAT A FULL FORENSIC IMAGE  
5 WAS TAKEN OVER THE NETWORK OF AN EXTERNAL 400 GIGABYTE  
6 USB WESTERN DIGITAL HARD DRIVE ATTACHED TO A COMPUTER  
7 THAT WAS IDENTIFIED AS BEING OWNED OR OPERATED BY  
8 SANTA ANA. AND IT WAS CAPTURED ON NOVEMBER 22ND, 2009.

11:22AM

9 Q AND WAS THIS THE FIRST TIME GUIDANCE HAD  
10 CAPTURED DATA INDICATING AN EXTERNAL DRIVE HAD BEEN --  
11 THAT TCW ELECTRONIC DATA HAD BEEN DOWNLOADED TO AN  
12 EXTERNAL DRIVE?

11:22AM

13 MR. WEINGART: SAME OBJECTION, YOUR HONOR.

14 THE COURT: OVERRULED.

15 THE WITNESS: YES.

11:23AM

16 THE COURT: THE FIRST TIME YOU FOUND THIS.

17 THE WITNESS: UH-HUH.

18 BY MR. SURPRENANT:

19 Q IN YOUR REVIEW OF THE INVESTIGATION, DID YOU  
20 LEARN WHETHER OR NOT THAT WAS THE FIRST TIME ANYONE AT  
21 GUIDANCE HAD DISCOVERED SUCH INFORMATION.

11:23AM

22 A YES, IT WAS.

23 Q DID YOU REPORT TO TCW THAT YOU HAD FOUND  
24 EVIDENCE OF DOWNLOADING TCW INFORMATION TO AN EXTERNAL  
25 DRIVE?

11:23AM

26 A YES, I DID.

27 Q WHEN DID YOU REPORT THAT?

28 A IT WOULD HAVE BEEN SOMETIME AROUND

1 NOVEMBER 24TH, NOVEMBER 25TH, SOMETHING LIKE THAT.

2 Q WHO DID YOU TELL THAT TO AT TCW?

3 A TO JOE.

4 Q DID THERE COME A TIME WHEN YOU INSTALLED A  
5 PROGRAM KNOWN AS SPECTOR CNE?

11:23AM

6 A YES.

7 Q COULD YOU TELL US WHAT SPECTOR CNE IS?

8 A SPECTOR CNE IS A REALTIME MONITORING SOFTWARE.

9 IT'S DESIGNED TO RECORD EVENTS AS THEY OCCUR ON A  
10 COMPUTER AND FOR LATER RETRIEVAL OF IT.

11:23AM

11 Q AND YOU WERE AT TCW AT YOUR WORK STATION.

12 HOW DID YOU GO ABOUT INSTALLING A  
13 SPECTOR PROGRAM?

14 A THE SPECTOR PROGRAM HAS A SILENT REMOTE  
15 INSTALL, SO I COULD INSTALL IT FROM REMOTE OVER THE  
16 NETWORK.

11:24AM

17 Q WHEN DID YOU INSTALL THE SPECTOR PROGRAM?

18 A ON DECEMBER 2ND.

19 Q TURNING BACK TO TRIAL EXHIBIT 2149.

20 MIKE, IF YOU COULD DISPLAY PAGE 3. IN  
21 PARTICULAR, IF YOU COULD BLOW UP THE THIRD BOTTOM  
22 QUADRANT.

11:24AM

23 DO YOU SEE THERE, WHERE IT SAYS SPECTOR  
24 CAPTURE DATA?

25 A YES.

11:24AM

26 Q COULD YOU DESCRIBE WHAT THAT DATA  
27 COMMUNICATES.

28 A THE -- THAT SHOWS THE INFORMATION THAT WAS

1 CAPTURED BY THE SPECTOR CNE SOFTWARE. THAT -- AND  
2 WHICH USER NAMES THE DATA WAS ASSOCIATED WITH.

3 Q AND WHAT USER NAMES WAS THE DATA -- WERE THE  
4 DATA ASSOCIATED WITH?

5 A THE USER NAMES ARE LISTED IN THE COLUMN THAT  
6 STARTS WITH CODY, R., WHICH WAS LATER IDENTIFIED AS  
7 RACHEL CODY.

11:24AM

8 THE NEXT ONE IS GUNDL, J., WHICH WAS  
9 GUNDLACH.

10 NEXT ONE AFTER THAT IS MAYBE, J.,  
11 MAYBERRY.

11:25AM

12 MAZED K., WHO WAS UNKNOWN WHEN I WROTE  
13 THIS SPREADSHEET.

14 PURUS, J., ALSO UNKNOWN.

15 SANTA, C., WHICH IS SANTA ANA.

11:25AM

16 UNIBE, G., AND VANEV, B., WHICH WAS  
17 BARBARA VANEVERY.

18 Q THANK YOU.

19 YOU TOLD US HAD THERE CAME A TIME WHEN  
20 YOU BEGAN TO CREATE FULL FORENSIC IMAGES OF TCW  
21 COMPUTERS.

11:25AM

22 WHEN DID YOU BEGIN TO DO THAT?

23 A THE -- WE CREATED SOME FULL FORENSIC IMAGES  
24 OVER THE NETWORK, BUT PREDOMINANTLY WE CREATED THEM ALL  
25 AFTER DECEMBER 4TH WHEN WE HAD PHYSICAL ACCESS TO THE  
26 SYSTEMS.

11:25AM

27 Q APPROXIMATELY -- I KNOW IT WAS A LARGE  
28 NUMBER -- MILLION, HOW MANY COMPUTERS AND ELECTRONIC

1 STORAGE DEVICES DID YOU CREATE FORENSIC IMAGES FOR?

2 A THERE WERE ABOUT 100 DEVICES; 70 OR SO OF  
3 THOSE WERE COMPUTERS.

4 Q COULD YOU TURN IN YOUR EXHIBIT BOOK TO  
5 EXHIBIT 2136-A.

11:26AM

6 A OKAY.

7 Q COULD YOU -- DO YOU KNOW WHAT THAT IS?

8 A YES, I DO.

9 Q HOW DO YOU KNOW WHAT IT IS?

10 A I WROTE THEM.

11:26AM

11 Q WHAT IS IT?

12 A THEY ARE CHAIN OF CUSTODY DOCUMENTATIONS FOR  
13 THE DELIVERABLE HARD DRIVES THAT WERE SHIPPED TO  
14 ELYSIUM THAT CONTAINED ALL OF THE FORENSIC IMAGES, ALL  
15 THE DATA TAKEN.

11:26AM

16 MR. SURPRENANT: MIKE, IF YOU COULD JUST  
17 DISPLAY THE FIRST PAGE.

18 Q YOU MENTIONED ELYSIUM DIGITAL, WHO IS ELYSIUM  
19 DIGITAL?

20 A ELYSIUM DIGITAL, THE COMPANY EMPLOYED ACTUALLY  
21 TO DO THE FORENSIC ANALYSIS IN THIS CASE.

11:26AM

22 Q AND DID YOU SEND THE FORENSIC IMAGES --

23 MR. SURPRENANT: YOUR HONOR, I'M SORRY, COULD  
24 I MOVE 2136-A INTO EVIDENCE?

25 MR. WEINGART: NO OBJECTION.

11:27AM

26 THE COURT: IT WILL BE ADMITTED.

27

28 (EXHIBIT 2146-A ADMITTED.) +

1

2 BY MR. SURPRENANT:

3 Q WHAT DOES EXHIBIT 2136 -- STRIKE THAT  
4 QUESTION. I THINK YOU'VE ANSWERED.5 DID YOU SEND THE FORENSIC IMAGES YOU HAD  
6 TAKEN TO ELYSIUM DIGITAL? 11:27AM

7 A YES.

8 Q DID YOU SEND THE SPECTOR DATA YOU HAD CAPTURED  
9 TO ELYSIUM DIGITAL?

10 A YES. 11:27AM

11 MR. SURPRENANT: NO FURTHER QUESTIONS AT THIS  
12 TIME, YOUR HONOR.

13 THE COURT: ANY CROSS-EXAMINATION?

14 MR. WEINGART: YES, YOUR HONOR. THANK YOU.

15

16 CROSS-EXAMINATION + 11:27AM

17 BY MR. WEINGART:

18 Q GOOD MORNING, MR. WILSON.

19 A GOOD MORNING.

20 Q PRIOR TO THE BEGINNING OF NOVEMBER, DID  
21 GUIDANCE DO BUSINESS WITH TCW? 11:28AM

22 A I'M NOT AWARE IF IT DID.

23 Q SO, THIS IS THE FIRST TIME, AT LEAST THAT  
24 YOU'RE AWARE, THAT GUIDANCE PERFORMED SERVICES FOR TCW;  
25 IS THAT RIGHT? 11:28AM

26 A YES.

27 Q NOW, WITH REGARD TO THE ENGAGEMENT, YOU -- TCW  
28 AND GUIDANCE SIGNED AN AGREEMENT ON NOVEMBER 1ST, 2009;



1 IS THAT RIGHT?

2 A SURE.

3 Q AND THAT AGREEMENT WAS SIGNED BY MR. DEVITO,  
4 WHO WAS TCW'S CHIEF ADMINISTRATIVE OFFICER; IS THAT  
5 RIGHT?

11:28AM

6 A I DON'T REMEMBER, SO --

7 Q WOULD IT HELP YOU TO SEE A COPY OF IT?

8 A SURE.

9 MR. WEINGART: COULD WE PUT UP JUST FOR THE  
10 WITNESS, EXHIBIT 2134.

11:28AM

11 COULD I APPROACH, YOUR HONOR?

12 THE COURT: YES, YOU MAY.

13 BY MR. WEINGART:

14 Q DO YOU RECOGNIZE EXHIBIT 2134?

15 A YES.

11:29AM

16 Q THAT'S THE SERVICES AGREEMENT THAT GUIDANCE  
17 ENTERED INTO WITH TCW; IS THAT RIGHT?

18 MR. SURPRENANT: OBJECTION. FOUNDATION.

19 THE COURT: DID I MISS SOMETHING?

20 MR. SURPRENANT: MR. SURPRENANT OBJECTED.

11:29AM

21 THE COURT: I DIDN'T HEAR IT.

22 MR. WEINGART: IT WASN'T VERY INTERESTING.

23 MR. BRIAN: I'D BE HAPPY TO RULE ON IT.

24 THE COURT: I'LL SUSTAIN THE OBJECTION. YOU  
25 CAN LAY THE FOUNDATION.

11:30AM

26 BY MR. WEINGART:

27 Q YOU TESTIFIED YOU FAMILIARIZED YOURSELF WITH  
28 THE FILE WHEN YOU BECAME IN CHARGE --

1 A YES.

2 Q -- OF THE ENGAGEMENT, CORRECT?

3 A CORRECT.

4 Q THIS WAS PART OF THE FILE, WAS IT NOT?

5 A YES, IT WAS.

11:30AM

6 MR. WEINGART: I WOULD OFFER 2134.

7 THE COURT: ANY OBJECTION?

8 MR. WEINGART: NO --

9 MR. SURPRENANT: NO, YOUR HONOR.

10 THE COURT: IT WILL BE ADMITTED.

11:30AM

11

12 (EXHIBIT 2134 ADMITTED.) +

13

14 MR. WEINGART: CAN WE PUT UP THE FIRST PAGE,  
15 PROFESSIONAL SERVICES AGREEMENT.

11:30AM

16 Q CORRECT?

17 A CORRECT.

18 Q AND THEN IF WE GO TO THE LAST PAGE, YOU SEE AT  
19 THE TOP THERE WAS SIGNED BY DAVID DEVITO?

20 A YES.

11:30AM

21 Q AND IT SAYS: EVP, CHIEF ADMINISTRATIVE  
22 OFFICER, CORRECT?

23 A YES, IT DOES.

24 Q THAT'S A VERY SENIOR EXECUTIVE POSITION, IS IT  
25 NOT?

11:31AM

26 A I WOULD ASSUME SO, YES.

27 Q AND UNDERNEATH THAT --

28 IF YOU'D TAKE THAT DOWN.

1                   -- IT WAS ALSO SIGNED BY MICHAEL CAHILL,  
2 CORRECT?

3           A       CORRECT.

4           Q       HE'S THE GENERAL COUNSEL AT TCW, IT SAYS  
5 THERE?

11:31AM

6           A       AT LEAST HE WROTE THAT, YES.

7           Q       THAT MEANS HE'S THE TOP LAWYER AT TCW, RIGHT?

8           A       (NO AUDIBLE RESPONSE.)

9           Q       GUIDANCE ALSO SIGNED A STATEMENT OF WORK WITH  
10 TCW, RIGHT?

11:31AM

11          A       YES.

12          Q       AND THAT WAS ALSO SIGNED BY MR. CAHILL --

13          A       I WOULD HAVE TO --

14          Q       -- WAS IT NOT?

15          A       -- I WOULD HAVE TO SEE IT.

11:31AM

16                 MR. WEINGART: IF WE COULD PUT UP 6057 FOR THE  
17 WITNESS.

18                         MAY I APPROACH, YOUR HONOR?

19           THE COURT: YES, YOU MAY.

20 BY MR. WEINGART:

11:32AM

21          Q       I'M CORRECT THAT'S THE STATEMENT OF WORK THAT  
22 WAS SIGNED BETWEEN GUIDANCE AND TCW; IS THAT RIGHT?

23          A       YES.

24                 MR. WEINGART: I'D OFFER 6057.

25           THE COURT: ANY OBJECTION?

11:32AM

26           MR. SURPRENANT: NO, YOUR HONOR.

27           THE COURT: IT WILL BE ADMITTED.

28           ///

1 (EXHIBIT 6057 ADMITTED.) +

2

3 BY MR. WEINGART:

4 Q NOW, YOU HAD MENTIONED THAT YOU REPORTED TO  
5 MR. BURSCHINGER, RIGHT?

11:32AM

6 A YES.

7 Q AND HE'S THE CHIEF RISK OFFICER AT TCW?

8 A YES. OR -- HE WAS AT THE TIME, YES.

9 Q ALSO A VERY SENIOR POSITION, CORRECT?

10 A CORRECT.

11:32AM

11 Q AND YOU ALSO REPORTED -- OR, RATHER, I SHOULD  
12 SAY GUIDANCE REPORTED TO MR. CAHILL; ISN'T THAT RIGHT?

13 A YES.

14 Q NOW, MR. BURSCHINGER WASN'T IN THE DARK ABOUT  
15 THE MONITORING THAT YOU WERE DOING, CORRECT? HE KNEW  
16 WHAT WAS GOING ON?

11:33AM

17 A MR. BURSCHINGER WAS -- DIRECTED US, YES.

18 Q AND IN ADDITION TO MR. CAHILL -- THIS IS JUST  
19 A YES OR NO QUESTION -- YOU REPORTED TO OTHER LAWYERS  
20 ABOUT THE WORK THAT YOU WERE DOING, RIGHT? OR GUIDANCE  
21 REPORTED TO LAWYERS ABOUT THE WORK YOU WERE DOING?

11:33AM

22 MR. SURPRENANT: OBJECTION. FOUNDATION.

23 THE COURT: SUSTAINED.

24 SIR, COULD YOU PULL YOURSELF CLOSER TO  
25 THE MIC AND MAKE SURE YOU'RE TALKING INTO IT. I  
26 UNDERSTAND SOME OF THE PEOPLE AREN'T ABLE TO HEAR YOU.

11:33AM

27 THE WITNESS: SORRY.

28 THE COURT: THANK YOU.

1 MR. WEINGART: YOUR HONOR, I COULD ASK A MORE  
2 OPEN-ENDED QUESTION. I JUST -- I'M TRYING TO DO THIS  
3 IN A WAY THAT DOESN'T GET INTO AREAS WE SHOULDN'T GET  
4 INTO.

5 Q IN ADDITION TO MR. CAHILL, DID YOU MEET WITH  
6 OTHER LAWYERS IN THE COURSE OF GUIDANCE'S ENGAGEMENT?

11:33AM

7 A YES.

8 Q DID YOU SPEAK WITH OTHER LAWYERS?

9 A YES.

10 Q AND YOU KEPT THOSE LAWYERS INFORMED ABOUT WHAT  
11 IT WAS YOU WERE DOING, RIGHT?

11:34AM

12 A NOT DIRECTLY. BUT DURING STATUS UPDATES, YES.

13 Q NOW, GUIDANCE DOESN'T HAVE A REGULAR JOB  
14 MONITORING TCW'S INTERNAL COMPUTER SYSTEM; ISN'T THAT  
15 RIGHT?

11:34AM

16 A NOT THAT I'M AWARE OF, NO.

17 Q AND SO THIS IS A SPECIAL OTHER -- SPECIAL  
18 ASSIGNMENT; FAIR TO SAY?

19 A THIS WAS A NORMAL ASSIGNMENT, BUT, YES.

20 Q OUT OF THE ORDINARY, AT LEAST IN TERMS OF THE  
21 GUIDANCE TCW RELATIONSHIP, AS FAR AS YOU'RE AWARE,  
22 RIGHT?

11:34AM

23 A NO. THIS WAS A NORMAL ENGAGEMENT FOR A  
24 CLIENT. THIS ISN'T OUT OF THE ORDINARY FOR WHAT WE DO.

25 Q I UNDERSTAND THAT.

11:34AM

26 MY QUESTION IS NOT -- WASN'T ABOUT WHAT  
27 YOU DO.

28 AS FAR AS YOU'RE AWARE, GUIDANCE HADN'T

1 DONE THIS WORK FOR TCW BEFORE, RIGHT?

2 A CORRECT.

3 Q AND GIVEN THE LAWYERS THAT WERE INVOLVED, YOU  
4 WERE TOLD TO TREAT THE WORK THAT YOU WERE DOING IN  
5 NOVEMBER AND DECEMBER AS PRIVILEGED, RIGHT?

11:35AM

6 MR. SURPRENANT: OBJECTION, YOUR HONOR.

7 MR. WEINGART: YES OR NO QUESTION.

8 THE COURT: SUSTAINED.

9 YOU CAN ASK A DIFFERENT WAY.

10 BY MR. WEINGART:

11:35AM

11 Q YOU WERE TOLD TO KEEP THE INFORMATION  
12 CONFIDENTIAL, RIGHT?

13 A YES.

14 Q AND WERE YOU TOLD NOT TO DISCUSS IT WITH  
15 OTHERS?

11:35AM

16 A YES.

17 Q AND PART OF THE REASON THAT YOU WERE TOLD THAT  
18 WAS SO THAT IT WOULD REMAIN PRIVILEGED AND  
19 CONFIDENTIAL, RIGHT?

20 MR. SURPRENANT: OBJECTION, YOUR HONOR --

11:35AM

21 THE COURT: SUSTAINED.

22 YOU CAN REPHRASE IT.

23 BY MR. WEINGART:

24 Q WELL, PART OF THE REASON YOU DID IT WAS TO  
25 KEEP IT CONFIDENTIAL. LET'S JUST SAY THAT.

11:35AM

26 A YES.

27 Q NOW, THE STATEMENT OF WORK, IF WE GO TO THE  
28 THIRD PAGE OF THE EXHIBIT.

1 THE COURT: THAT'S 6057?

2 MR. WEINGART: YES, YOUR HONOR. 6057, PAGE 3.

3 COULD WE BLOW UP SCOPE OF SERVICES,  
4 PLEASE.

5 Q THESE WERE THE SERVICES THAT GUIDANCE WAS  
6 RETAINED TO PROVIDE, CORRECT?

11:36AM

7 A CORRECT.

8 Q TO SEARCH FORENSICALLY, COLLECT, AND PRESERVE  
9 ESI -- LET ME STOP.

10 ESI IS ELECTRICALLY STORED INFORMATION,  
11 RIGHT?

11:36AM

12 A CORRECT.

13 Q SO TO SEARCH FORENSICALLY, COLLECT, AND  
14 PRESERVE ESI WITHIN 60 WORK STATIONS, RIGHT?

15 A CORRECT.

11:36AM

16 Q AND 60 WORK STATIONS, THAT'S ESSENTIALLY  
17 EVERYONE IN THE M.B.S. GROUP AT TCW; ISN'T THAT RIGHT?

18 A I WOULDN'T KNOW.

19 Q STATEMENT OF WORK ALSO SAID THE KIND OF  
20 INFORMATION THAT YOU WERE LOOKING FOR, CORRECT, THERE  
21 ON NO. 3?

11:36AM

22 A YES.

23 Q SO, IN OTHER WORDS, WHEN GUIDANCE WAS  
24 RETAINED, TCW ALREADY HAD AN IDEA OF WHAT IT WANTED TO  
25 FIND, RIGHT, OR LOOK FOR?

11:37AM

26 MR. SURPRENANT: OBJECTION, FOUNDATION, YOUR  
27 HONOR.

28 THE COURT: SUSTAINED.

1 BY MR. WEINGART:

2 Q DID YOU COME UP WITH NO. 3?

3 A NO.

4 Q DOES THE CLIENT TYPICALLY PROVIDE THE  
5 INFORMATION IN A SCOPE OF WORK ABOUT WHAT IT WANTS YOU  
6 TO DO?

11:37AM

7 A YES.

8 Q NOW, YOU MENTIONED SOME LAB NOTES; IS THAT  
9 RIGHT?

10 A CORRECT.

11:37AM

11 Q AND YOU USED THOSE LAB NOTES DURING THE COURSE  
12 OF YOUR WORK; IS THAT RIGHT?

13 A YES.

14 Q YOU SAID YOU REFERRED TO THEM WHEN YOU CAME ON  
15 TO THE ENGAGEMENT, CORRECT?

11:37AM

16 A CORRECT.

17 Q AND THEN I ASSUME YOU ASKED HAD -- ADDED TO  
18 THOSE NOTES AS YOU WENT ALONG WITH THE WORK YOU DID,  
19 RIGHT?

20 A YES.

11:37AM

21 Q AND THOSE NOTES ARE PREPARED IN THE ORDINARY  
22 COURSE OF GUIDANCE'S WORK; IS THAT RIGHT?

23 A NOTES ARE PREPARED -- THE WAY THAT THEY ARE  
24 PREPARED IS -- USUALLY VARIES FROM CONSULTANT TO  
25 CONSULTANT.

11:38AM

26 Q I UNDERSTAND THAT.

27 BUT THE PROCESS OF KEEPING LAB NOTES TO  
28 TRACK WHAT IT IS THAT IS BEING DONE ON ENGAGEMENT,



1 THAT'S SOMETHING DONE IN THE NORMAL COURSE TO KEEP  
2 THOSE LAB NOTES, RIGHT?

3 A CORRECT.

4 Q LET ME ASK YOU TO LOOK AT 2138.

5 MAY I HAVE A MOMENT TO CONFER WITH  
6 COUNSEL, YOUR HONOR?

11:38AM

7 THE COURT: YES, YOU MAY.

8 MR. WEINGART: MAY I APPROACH, YOUR HONOR?

9 THE COURT: YES, YOU MAY.

10 BY MR. WEINGART:

11:39AM

11 Q DO YOU RECOGNIZE EXHIBIT 2138?

12 A YES, I DO.

13 Q AND THESE ARE THE LAB NOTES --

14 A CORRECT.

15 Q -- CORRECT?

11:39AM

16 I'D OFFER 2138.

17 THE COURT: ANY OBJECTION?

18 MR. SURPRENANT: NO, YOUR HONOR.

19 THE COURT: IT WILL BE ADMITTED.

11:39AM

20  
21 (EXHIBIT 2138 ADMITTED.) +

22

23 BY MR. WEINGART:

24 Q NOW, YOU WERE TOLD BY MR. BURSCHINGER -- OR  
25 GUIDANCE WAS TOLD, I SHOULD SAY, BY MR. BURSCHINGER,  
26 TCW WANTED CONFIDENTIALITY IN ALL ASPECTS OF THE  
27 ENGAGEMENT, RIGHT?

11:39AM

28 A CORRECT.

1 Q AND GUIDANCE WAS TOLD THAT TCW WANTED TO KEEP  
2 THE KNOWLEDGE OF THE INFORMATION TECHNOLOGY PERSONNEL  
3 AT TCW ABOUT WHAT GUIDANCE WAS DOING TO A MINIMUM,  
4 RIGHT?

5 A I'M SORRY. CAN YOU REPEAT THAT. 11:40AM

6 Q YEAH, IT WAS A BAD QUESTION. SO LET ME START  
7 OVER.

8 MR. SURPRENANT: I ALMOST OBJECTED.

9 BY MR. WEINGART:

10 Q YOU WERE TOLD -- OR GUIDANCE WAS TOLD, I 11:40AM  
11 SHOULD SAY, BY TCW THAT THEY DIDN'T WANT TCW'S I.T.  
12 PERSONNEL TO KNOW WHAT YOU WERE DOING, CORRECT?

13 A CORRECT.

14 MR. SURPRENANT: FOUNDATION.

15 BY MR. WEINGART: 11:40AM

16 Q THEY WANTED IT TO BE SORT OF ON A NEED-TO-KNOW  
17 BASIS, RIGHT?

18 A CORRECT.

19 Q NOW, AT NO POINT WAS GUIDANCE ASKED TO CUT OFF  
20 ANYBODY'S ACCESS TO THE TCW SYSTEM; IS THAT RIGHT? 11:40AM

21 A CORRECT.

22 Q AND GUIDANCE WAS NEVER TOLD TO DISABLE A  
23 COMPUTER, FOR EXAMPLE, SO YOU COULD NOT PLUG A USB  
24 DEVICE INTO IT, RIGHT?

25 A CORRECT. 11:40AM

26 Q GUIDANCE WAS NEVER ASKED TO LOCK ANYBODY OUT  
27 OF THEIR COMPUTER, RIGHT?

28 A CORRECT.

1 Q AND GUIDANCE NEVER RECOMMENDED TO TCW'S I.T.  
2 PEOPLE THAT THEY TAKE ANY STEPS LIKE THAT, EITHER,  
3 CORRECT?

4 A CORRECT.

5 Q NOW, ONE OF THE THINGS THAT YOU DID, AND IF I  
6 COULD ASK YOU TO LOOK AT WHAT WOULD BE THE BATES NUMBER  
7 OF 1394, AND THE LAB NOTES --

11:41AM

8 THE COURT: WE'RE LOOKING AT EXHIBIT 2138.

9 MR. WEINGART: 2138.

10 THE COURT: PAGE?

11:41AM

11 MR. WEINGART: I'M SORRY. COULD WE PUT UP  
12 PAGE 4 OF THE EXHIBIT.

13 THE COURT: THANK YOU.

14

15 (DISCUSSION HELD OFF THE RECORD.) +

11:42AM

16

17 MR. WEINGART: ACTUALLY, IF WE COULD JUST --  
18 THE NEXT TO THE BOTTOM PARAGRAPH: I STARTED FOLDERS.

19 Q ONE OF THE THINGS GUIDANCE DID WAS CREATE  
20 FOLDERS FOR THE INFORMATION THAT WAS BEING COLLECTED TO  
21 BE REVIEWED BY ATTORNEYS, CORRECT?

11:42AM

22 A THAT'S WHAT THAT SAID, YES.

23 Q AND INFORMATION THAT THOSE ATTORNEYS COULD USE  
24 LATER, IF NECESSARY, RIGHT?

25 A I -- I DON'T KNOW WHAT THE ATTORNEYS WOULD USE  
26 LATER.

11:42AM

27 Q WELL, BY NOVEMBER 9TH, THOSE FOLDERS WERE  
28 POPULATED, CORRECT?

1           A        SOME OF THEM WERE, I BELIEVE. I WASN'T ON THE  
2 CASE UNTIL NOVEMBER 17TH.

3           Q        IF YOU LOOK AT THE LAB NOTES, ON THE FIFTH  
4 PAGE, IF WE GO DOWN TO THE ENTRY FOR NOVEMBER 9TH, THE  
5 SECOND TO THE BOTTOM OVER THERE. THANK YOU.

11:43AM

6                        THE LAB NOTES INDICATE THAT ON  
7 NOVEMBER 9TH:

8                               NOVEMBER 9TH, THE PERSON AT  
9                               GUIDANCE WHO HAD BEEN WORKING ON IT  
10                              FINISHED POPULATING THE FOLDERS FOR  
11                              ATTORNEY REVIEW.

11:43AM

12                              CORRECT?

13           A        CORRECT.

14           Q        DO YOU KNOW ANYTHING AT ALL ABOUT WHAT  
15 GUIDANCE WAS TOLD AT THE BEGINNING OF ITS ENGAGEMENT  
16 ABOUT WHETHER TCW KNEW THAT CERTAIN MATERIAL HAD BEEN  
17 COPIED OR NOT ALREADY --

11:43AM

18           A        NO, I -- I DON'T.

19           Q        NOW, WHEN YOU BEGAN, I KEEP SAYING YOU -- WHEN  
20 GUIDANCE BEGAN WORK, BURSCHINGER TOLD GUIDANCE THAT TCW  
21 WAS NOT INTERESTED IN E-MAIL, RIGHT?

11:43AM

22                              MR. SURPRENANT: OBJECTION. FOUNDATION.

23                              THE WITNESS: YOUR REFERENCE IS LAB NOTES?

24 BY MR. WEINGART:

25           Q        YES.

11:44AM

26           A        WITH REFERENCE TO THE LAB NOTES, CORRECT.

27           Q        THAT WAS BECAUSE TCW ALREADY HAD A SEPARATE  
28 TEAM MONITORING E-MAIL, RIGHT?

1 A I DON'T KNOW.

2 Q WERE YOU TOLD WHETHER YOUR -- YOUR WORK HAD  
3 CONNECTION TO A SECRET INTERNAL PROJECT CALLED  
4 PROJECT G?

5 A NO. 11:44AM

6 Q WERE YOU TOLD ANYTHING AT ALL ABOUT PROJECT G?

7 A NO.

8 Q WAS ANYBODY AT GUIDANCE TOLD ANYTHING ABOUT  
9 PROJECT G?

10 MR. SURPRENANT: OBJECTION. FOUNDATION. 11:44AM

11 THE COURT: SUSTAINED.

12 BY MR. WEINGART:

13 Q ANYBODY, TO YOUR KNOWLEDGE?

14 A NO.

15 Q DO YOU RECALL GUIDANCE WAS TOLD THAT THERE WAS  
16 A NOVEMBER 13TH, 2009 DEADLINE TO COMPLETE ITS WORK? 11:44AM

17 A NO, I DON'T. BUT I -- THAT MIGHT BE IN THE  
18 LAB NOTES.

19 Q OKAY.

20 IF I COULD ASK YOU -- LET ME MAKE SURE I  
21 CAN FIND IT. 11:45AM

22 IF YOU COULD TURN TO --

23 I'M WORKING OFF OF TWO DIFFERENT  
24 VERSIONS HERE -- PAGE 4 OF 2138.

25 THE WITNESS: OKAY. 11:45AM

26 BY MR. WEINGART:

27 Q IN THE MIDDLE OF THAT PARAGRAPH --

28 IF YOU'D BLOW IT UP.

1                   SEE, IN THE MIDDLE THERE, THAT THERE'S  
2 DISCUSSIONS ABOUT WHETHER OR NOT THERE'S CERTAIN TIME  
3 TO DO THINGS; COUNSEL'S CONCERNED ABOUT WHETHER THERE'S  
4 TIME TO DO CERTAIN THINGS.

5                   AND THEN HE BELIEVED THERE WAS A FRIDAY  
6 DEADLINE FOR HAVING A DECISION ON THIS MATTER.

11:45AM

7                   RIGHT?

8           A        YES. THAT'S WHAT IT SAYS.

9           Q        THOSE ARE LAB NOTES FOR NOVEMBER 6TH.

10                   YOU SEE THAT UP AT THE TOP?

11:46AM

11          A        YES.

12          Q        AND SO, NOVEMBER 6TH, IT WAS A FRIDAY? AND  
13 THERE WAS A FRIDAY DEADLINE FOR GETTING THINGS DONE.

14                   THAT WOULD BE NOVEMBER 13TH, RIGHT?

15          A        YES. OR IT COULD HAVE BEEN NOVEMBER 6TH.

11:46AM

16                   THE COURT: DID YOU SAY NOVEMBER 6TH WAS A  
17 FRIDAY? I THINK THAT'S WHAT YOU SAID, WHICH WAS  
18 CONFUSING TO ME.

19                   MR. WEINGART: YES, YOUR HONOR. THERE WAS A  
20 FRIDAY DEADLINE, MEANING THE NEXT WEEK, THAT WOULD BE  
21 NOVEMBER 13TH.

11:46AM

22                   THE COURT: ALL RIGHT.

23                   THE WITNESS: OR IT COULD HAVE BEEN THAT  
24 FRIDAY.

25                   BY MR. WEINGART:

11:46AM

26          Q        EITHER THE 6TH OR THE 13TH, RIGHT?

27          A        CORRECT.

28          Q        DID ANYBODY AT TCW TELL GUIDANCE THAT THEY

1 WANTED THE WORK COMPLETED BY NOVEMBER 13TH BECAUSE THAT  
2 WAS THE TARGET DATE TO TERMINATE MR. GUNDLACH?

3 A I HAVE NO IDEA.

4 Q NOW, YOU WERE ASKED SOME QUESTIONS ABOUT THIS  
5 SPECTOR MONITORING.

11:47AM

6 AND ON DECEMBER 1ST, MR. BURSCHINGER --  
7 NOW I GUESS YOU'RE IN THE PICTURE -- I CAN SAY YOU  
8 INSTEAD OF GUIDANCE.

9 BY DECEMBER 1ST, 2009, MR. BURSCHINGER  
10 TOLD GUIDANCE HE WANTED MORE REALTIME DATA, RIGHT?

11:47AM

11 A CORRECT.

12 Q AND DID HE SAY TO YOU THAT HE WANTED THAT  
13 REALTIME DATA SO TCW COULD WATCH WHAT PEOPLE WOULD SAY  
14 WHEN JEFFREY GUNDLACH WAS TERMINATED IN A FEW DAYS?

15 A NO. HE DID NOT.

11:47AM

16 Q AND DIDN'T SAY ANYTHING ABOUT WHETHER OR NOT  
17 THEY WANTED TO HAVE MESSAGES READY -- WELL, STRIKE  
18 THAT.

19 SO, ONE OF THE THINGS THAT GUIDANCE  
20 LOOKED INTO WAS HOW TO GAIN ACCESS TO THE SYSTEMS TO DO  
21 THIS REALTIME MONITORING, AGAIN WITHOUT ANYBODY IN I.T.  
22 KNOWING WHAT WAS GOING ON, RIGHT?

11:47AM

23 A CORRECT.

24 Q AND WITHOUT THE COMPUTER USER KNOWING THAT  
25 THEY WERE BEING SPIED ON, RIGHT?

11:48AM

26 A CORRECT.

27 Q NOW, ON THE MORNING OF DECEMBER 4TH, YOU WERE  
28 ASKED TO ADD MC KISSICK AS A KEY WORD TO THE REALTIME

1 MONITORING?

2 THE COURT: DID YOU SAY DECEMBER OR  
3 NOVEMBER 4TH?

4 MR. WEINGART: DECEMBER 4TH, YOUR HONOR.

5 THE WITNESS: YES.

11:48AM

6 BY MR. WEINGART:

7 Q MC KISSICK IS THE LAST NAME OF TOM MC KISSICK,  
8 CORRECT?

9 A I WOULDN'T KNOW ACTUALLY.

10 Q WHO ASKED YOU TO ADD MC KISSICK?

11:48AM

11 A ALTHOUGH IT DOESN'T SAY HERE, IT WOULD HAVE  
12 BEEN JOE. HE WAS THE ONLY ONE I WAS TALKING TO.

13 Q THAT WASN'T A NAME YOU CAME UP WITH, CORRECT?

14 A CORRECT.

15 Q DID MR. MC KISSICK SAY ANYTHING -- I'M SORRY.

11:48AM

16 DID MR. BURSCHINGER SAY ANYTHING TO YOU  
17 ABOUT WANTING TO ADD MR. MC KISSICK BECAUSE HE WAS  
18 GOSSIPING WITH RACHEL CODY WHAT WAS -- ABOUT WHAT WAS  
19 GOING TO HAPPEN THAT DAY?

20 A NO.

11:49AM

21 Q NOW, YOU TESTIFIED ABOUT CERTAIN DEVICES THAT  
22 YOU IMAGED AT TCW, CORRECT?

23 A CORRECT.

24 Q YOU DIDN'T CONDUCT ANY ANALYSIS OF COMPUTERS  
25 AT DOUBLELINE, RIGHT?

11:49AM

26 A THERE MIGHT HAVE -- THERE WAS THE -- THE ONE  
27 SYSTEM THAT WE HAD TO -- TO REMEDIATION ON, MENTIONED  
28 IN THE BEGINNING OF THE NOTES, WAS THAT FROM



1 DOUBLELINE -- THE SCOTT D DRIVE?

2 Q SIR, DID YOU --

3 A OTHER THAN THAT, NO.

4 Q OKAY.

5 A CERTAINLY NOT TO MY KNOWLEDGE.

11:49AM

6 Q AND THEN AT SOME POINT ELYSIUM CAME IN AND  
7 SORT OF TOOK OVER THAT TASK, RIGHT?

8 A YES.

9 Q AND YOU WERE NOT INVOLVED IN THE RETURN OF  
10 INFORMATION FROM DOUBLELINE TO TCW, RIGHT, WITH THE  
11 EXCEPTION OF THAT ONE DRIVE THAT YOU JUST TALKED ABOUT?

11:49AM

12 A CORRECT.

13 Q AND SO YOU DON'T KNOW ONE WAY OR THE OTHER  
14 WHETHER INFORMATION WAS RETURNED, NOT USED, OR ANYTHING  
15 LIKE THAT, RIGHT?

11:50AM

16 A CORRECT. I DON'T.

17 MR. WEINGART: I DON'T HAVE ANYTHING FURTHER,  
18 YOUR HONOR.

19 THE COURT: REDIRECT?

20 MR. SURPRENANT: MIGHT I HAVE A MOMENT?

11:50AM

21 THE COURT: SURE.

22

23 (PAUSE) +

24 MR. SURPRENANT: NO FURTHER QUESTIONS, YOUR  
25 HONOR.

11:50AM

26 THE COURT: ALL RIGHT.

27 MR. WILSON, THANK YOU FOR YOUR  
28 TESTIMONY. YOU'RE EXCUSED. YOU MAY STEP TOWN.

1 MR. MADISON: GOOD MORNING, YOUR HONOR, TCW  
2 CALLS GARRETT WALLS.

3 THE COURT: OKAY.

4 MR. BRIAN: MAY I INTRODUCE ALLISON STEIN, MY  
5 COLLEAGUE, WHO IS GOING TO HELP ME OUT ON THIS. I'LL  
6 DO THE QUESTIONING. SHE'S GOING TO HELP ME OUT.

11:51AM

7 MR. MADISON: YOUR HONOR, THIS IS MY  
8 COLLEAGUE, JOSEPH SARLS. MAY HE APPROACH WITH A COUPLE  
9 BINDERS?

10 THE COURT: LET'S GET THE WITNESS SWORN IN.  
11 TOO MANY THINGS GOING ON AT ONCE.

11:51AM

12  
13 GARRETT WALLS +  
14 CALLED AS A WITNESS BY THE PLAINTIFF WAS SWORN AND  
15 TESTIFIED AS FOLLOWS:

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

22 THE WITNESS: I DO.

23 THE CLERK: PLEASE BE SEATED.

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

11:51AM

26 THE WITNESS: GARRETT WALLS, G-A-R-R-E-T-T  
27 W-A-L-L-S.

28 THE CLERK: THANK YOU.

1 THE COURT: GOOD MORNING, MR. WALLS.

2 THE WITNESS: GOOD MORNING, YOUR HONOR.

3 THE COURT: MR. MADISON'S ANXIOUS TO BRING YOU  
4 A NOTEBOOK. HE'S GOING TO DO THAT NOW.

5 THE WITNESS: THANK YOU, MR. MADISON. 11:51AM

6 THE COURT: I HAVE MINE.

7 ALL RIGHT, MR. MADISON, YOU MAY PROCEED.

8 MR. MADISON: THANK YOU, YOUR HONOR.

9

10 DIRECT EXAMINATION + 11:52AM

11 BY MR. MADISON:

12 Q WHAT DO YOU DO FOR A LIVING?

13 A I'M IN CHARGE OF MARKETING AT ANGELO, GORDON &  
14 COMPANY, A NEW YORK MANAGEMENT FIRM.

15 Q WHERE DO YOU LIVE? 11:52AM

16 A NEW YORK CITY.

17 Q WAS THERE A TIME BEFORE YOU WORKED AT ANGELO,  
18 GORDON & COMPANY THAT YOU WORKED AT TRUST COMPANY OF  
19 THE WEST?

20 A YES. 11:52AM

21 Q CAN YOU TELL US DURING WHAT TIME PERIOD YOU  
22 WORKED AT TRUST COMPANY OF THE WEST, PLEASE.

23 A I BEGAN WITH TCW SEPTEMBER 2005 AND WAS THERE  
24 UNTIL FEBRUARY OF 2010.

25 Q HOW LONG BEFORE JOINING TRUST COMPANY OF THE  
26 WEST IN 2005 HAD YOU BEEN IN THE FINANCIAL INDUSTRY, IF  
27 YOU WILL? 11:52AM

28 A SINCE 1992.

1 Q WHAT DID YOU DO BEFORE JOINING TRUST COMPANY  
2 OF THE WEST?

3 A BEFORE TCW MY TITLE WAS CHIEF EXECUTIVE  
4 OFFICER OF THE INSTITUTIONAL AMERICAS AT J.P. MORGAN,  
5 WHICH WAS A LONG TITLE FOR A SIMILAR JOB I HAD A TCW.  
6 AND BEFORE THAT I WAS 14 YEARS AT IBM  
7 CORPORATION, SO ...

11:52AM

8 Q YOU HAVE AN EDUCATION IN FINANCIAL MATTERS?

9 A IN MARKETING.

10 Q NOW I WANT TO FOCUS ON THE FIVE-YEAR TIME  
11 PERIOD, OR FOUR YEARS, FOUR AND A HALF YEARS YOU'VE  
12 TOLD US YOU WERE WITH TCW --

11:53AM

13 A UH-HUH.

14 Q -- FROM SEPTEMBER 2005 TO FEBRUARY OF 2010.

15 DID YOU HAVE ONE JOB AT TCW OR MORE THAN  
16 ONE JOB DURING THAT TIME?

11:53AM

17 A I HAD TWO JOBS.

18 Q CAN YOU TELL US WHAT THE JOBS WERE AND WHEN  
19 YOU OCCUPIED THEM.

20 A SURE.

11:53AM

21 WHEN I STARTED IN SEPTEMBER OF '05, MY  
22 ROLE WAS TO HEAD UP THE INSTITUTIONAL MARKETING EFFORT  
23 FOR TCW IN THE UNITED STATES AND CANADA.

24 AND I DID THAT UNTIL, IF I RECALL  
25 CORRECTLY, I THINK IT WAS AROUND OCTOBER OF 2008, AT  
26 WHICH POINT I WAS ASKED TO SHIFT MY ROLE TO FOCUS ON  
27 WHAT WE CALLED STRATEGIC ACCOUNTS.

11:53AM

28 SO, LARGE RELATIONSHIPS THAT USUALLY

1 ENTAILED DEEPER, MORE CONSULTATIVE ROLE WITH THE  
2 CLIENT. AND I DID THAT UNTIL THE -- THE END OF MY  
3 TENURE.

4 Q DURING THE TIME THAT YOU WERE WITH TCW AND  
5 BOTH -- BOTH POSITIONS, DID YOU WORK WITH THE M.B.S.  
6 GROUP THAT WAS BASED HERE IN LOS ANGELES?

11:54AM

7 A YES.

8 Q DID YOU WORK WITH THAT GROUP DURING THE ENTIRE  
9 TIME PERIOD AT TCW?

11:54AM

10 A YES.

11 Q AND LET ME GO BACK, THEN, A STEP AND JUST ASK  
12 YOU TO EXPLAIN TO US WHAT THE HEAD OF INSTITUTIONAL  
13 MARKETING, THE JOB THAT YOU HAD FOR THE FIRST THREE  
14 YEARS, WHAT YOU DID IN THAT POSITION.

15 A SURE.

11:54AM

16 THE WORD MARKETING IS -- TYPICALLY  
17 IMPLIES SALES. SO MY ROLE WAS TO ORGANIZE A GROUP THAT  
18 FOCUSED ON INCREASING ASSETS AT TCW, AND THEN THOSE  
19 ASSETS CAME FROM CLIENTS.

20 THE CLIENTS, ONCE THEY CAME INTO THE  
21 FIRM AND WORKED WITH US, THEN WE WOULD PROVIDE SERVICE  
22 THAT MADE SURE THEY WERE SATISFIED.

11:54AM

23 SO THAT WAS ALSO A COMPONENT OF THE  
24 GROUP. WE ALSO HAD A GROUP THAT RESPONDED TO REQUESTS  
25 FOR PROPOSALS. SO THEY WROTE ALL THE FORMAL PROPOSALS  
26 THAT WE SENT OUT.

11:55AM

27 SO THOSE ARE THE THREE MAJOR CATEGORIES.  
28 BUT SALES, SERVICE, AND THEN WRITING OF THE PROPOSALS.

1 Q DURING THAT PERIOD, AGAIN, THE FIRST THREE  
2 YEARS AT HEAD OF INSTITUTIONAL MARKETING, DID YOU HAVE  
3 PERSONS THAT REPORTED TO YOU?

4 A YES.

5 Q HOW MANY, APPROXIMATELY?

6 A ABOUT 40.

7 Q IN TURN, WHO DID YOU REPORT TO AT TCW DURING  
8 THAT THREE-YEAR PERIOD WHERE WERE YOU HEAD OF  
9 INSTITUTIONAL MARKETING? IF IT CHANGED, TELL US THAT  
10 ALSO, PLEASE.

11 A IT WAS BOB BEYER AND BILL SONNEBORN, JOINTLY.

12 I REPORTED TO BOTH OF THEM FOR THE YEARS  
13 THAT I WAS RESPONSIBLE FOR INSTITUTIONAL SALES AND  
14 MARKETING.

15 AND THEN ONCE MY ROLE CHANGED, I  
16 REPORTED TO CHUCK BALDISWIELER. HE WAS RUNNING  
17 INSTITUTIONAL AND RETAILS SALES AT THAT POINT IN TIME.

18 Q WHEN YOU MENTIONED THE CHANGE IN ROLE, IS THAT  
19 THE TIME IN 2008 WHEN YOU BECAME HEAD OF STRATEGIC  
20 PARTNERSHIPS?

21 A YES.

22 Q IF YOU COULD TELL US HOW YOUR POSITION AND  
23 YOUR DUTIES CHANGED AT THAT TIME, IF INDEED THEY DID.

24 A YEAH.

25 WHEN I TOOK ON THE DIFFERENT ROLE, I NO  
26 LONGER WAS MANAGING PEOPLE. I WAS RESPONSIBLE STRICTLY  
27 FOR WORKING WITH A SMALL HANDFUL OF CLIENTS. SO I  
28 MOVED OUT OF A MANAGEMENT ROLE AND INTO A FEWER SALES

1 ROLE .

2 Q WE HAVE HEARD EVIDENCE IN THE CASE ABOUT HOW  
3 TCW HAD DIFFERENT GROUPS THAT WERE FOCUSED ON DIFFERENT  
4 TYPES OF INVESTMENT ACTIVITIES .

5 IS THAT FAIR, FOR YOUR UNDERSTANDING?

11:56AM

6 A IF YOU COULD ELABORATE A LITTLE BIT. I'M NOT  
7 SURE .

8 Q FOR EXAMPLE, STOCKS AND BONDS AND THEN WITHIN  
9 THOSE TWO TYPES OF ASSETS DIFFERENT GROUPS THAT  
10 SPECIALIZED IN DIFFERENT AREAS?

11:56AM

11 A YES .

12 Q IN YOUR POSITION IN MARKETING AND IN STRATEGIC  
13 PARTNERSHIPS, WERE YOU PERSONALLY ASSIGNED TO ONE GROUP  
14 OR MORE THAN ONE GROUP? OR IF YOU COULD JUST TELL US  
15 HOW YOU WOULD INTERACT WITH THE DIFFERENT GROUPS OF  
16 PORTFOLIO MANAGERS .

11:56AM

17 A THE MARKETING OF THE SALES EFFORT AT TCW WAS A  
18 GENERALIST APPROACH. YOU WERE RESPONSIBLE FOR  
19 MARKETING ALL PRODUCTS. AND WHEN WE WOULD SET UP OUR  
20 PLAN FOR A GIVEN YEAR, LIKE ANY COMPANY, YOU HAVE A SET  
21 OF BUSINESS GOALS AND OBJECTIVES .

11:57AM

22 THOSE WOULD BE REVIEWED WITH THE  
23 PORTFOLIO TEAMS AND SENIOR MANAGEMENT, AND YOU WOULD  
24 AGREE ON THOSE .

25 AND THEN SALES TEAMS REQUIRED TO GO OUT  
26 AND RAISE ENOUGH ASSETS RELATIVE TO THOSE GOALS. SO  
27 SOME OF THE THOSE ASSETS WOULD HAVE COME FROM STOCKS .  
28 SOME WOULD HAVE COME FROM BONDS .

11:57AM

1                   AND SOME WOULD HAVE COME FROM WHAT YOU  
2 WOULD CALL ALTERNATIVE INVESTMENTS; IN OTHER WORDS,  
3 YOU'VE HEARD THE WORD MEZ, YOU'VE HEARD ENERGY, THOSE  
4 ARE ALTERNATIVE INVESTMENTS.

5                   ACROSS ALL THE PRODUCTS AT TIMES COULD  
6 BE AS MANY AS 20 DIFFERENT PRODUCTS OR AS FEW AS TEN OR  
7 12.

11:57AM

8           Q       NOW, IF YOU COULD, JUST A WORD OR TWO ABOUT  
9 SORT OF THE WEEK-BY-WEEK ACTIVITY OF YOURSELF WHEN YOU  
10 WERE IN THESE POSITIONS.

11:57AM

11                   DID THERE COME TIMES WHEN YOU WOULD  
12 ATTEND SALES PRESENTATIONS, OR WHAT ARE SOMETIMES  
13 CALLED PITCHES WITH MEMBERS OF THE DIFFERENT INVESTMENT  
14 GROUPS THEMSELVES?

15           A       YES.

11:58AM

16           Q       SO, IF YOU TELL US HOW THOSE GENERALLY WOULD  
17 BE SET UP AND HOW FREQUENTLY YOU WOULD ATTEND THOSE.

18           A       IT CHANGED OVER TIME. SO, WHEN I INITIALLY  
19 CAME IN SEPTEMBER OF '05, MY PRIMARY ROLE WAS TO HIRE  
20 NEW SALESPEOPLE. THERE WAS A DECISION TO MOVE OUT SOME  
21 OF THE PEOPLE WHO HAD NOT BEEN OUT -- WHO HAD BEEN IN  
22 THE FIRM A LONG TIME, SOME WHO ACTUALLY SAID THEY  
23 WANTED TO RETIRE, AND SOME WHO JUST WEREN'T WORKING  
24 OUT.

11:58AM

25                   THERE WAS A LOT OF FOCUS IN THE  
26 BEGINNING ON MANAGEMENT AND HIRING. THAT WAS REALLY  
27 SEPTEMBER THROUGH, SAY, MARCH OF 2006.

11:58AM

28                   SO, DURING THAT PERIOD THERE WASN'T -- I



1 WASN'T ATTENDING A LOT OF PITCHES. I WOULD SIT IN  
2 MEETINGS AND LISTEN AT TIMES JUST TO GET A BETTER  
3 UNDERSTANDING OF THE PRODUCTS.

4 ONCE THE TEAM WAS HIRED, THEN I STARTED  
5 SPENDING MORE TIME IN CLIENT MEETINGS WITH THE VARIOUS  
6 PORTFOLIO TEAMS, AND I WOULD SAY, IN A GIVEN WEEK,  
7 THERE WOULD USUALLY BE COUPLE OF MEETINGS.

11:58AM

8 BUT THROUGHOUT MY TENURE AS HEAD OF THE  
9 GROUP, MY PRIMARY RESPONSIBILITY WAS MANAGEMENT AND  
10 ENSURING EVERYONE WAS DOING THE RIGHT JOB AND FOLLOWING  
11 UP WITH THEM AND MAKING SURE THEY HAD THE RIGHT TOOLS.

11:59AM

12 WHEN I HAD TIME OR WHEN THE SITUATION  
13 BASICALLY REQUIRED IT, THEN I WOULD ATTEND.

14 Q NOW, YOU'VE TOLD US THAT YOU DID WORK WITH THE  
15 M.B.S. GROUP HERE IN LOS ANGELES.

11:59AM

16 WHERE, PHYSICALLY, WAS YOUR OFFICE  
17 LOCATED WHEN YOU WERE TCW?

18 A IN NEW YORK.

19 Q DID YOU, FROM TIME TO TIME, SPEND TIME WITH  
20 MEMBERS OF THE M.B.S. GROUP HERE IN LOS ANGELES?

11:59AM

21 A YES. SO I'D -- FOR THE FIRST THREE -- THREE  
22 YEARS, I -- I WOULD SPEND A WEEK IN NEW YORK AND A WEEK  
23 IN L.A. FOR LITTLE OVER THREE YEARS.

24 Q AND THESE MEETINGS THAT YOU'VE DESCRIBED WITH  
25 EITHER EXISTING CLIENTS OR POTENTIAL CLIENTS, WHERE  
26 GENERALLY WOULD THOSE MEETINGS TAKE PLACE, AT THE  
27 CLIENT'S PLACE OF BUSINESS, AT TCW, OR SOMEWHERE ELSE?

11:59AM

28 A THE MAJORITY WERE -- OF THE MEETINGS WERE IN

1 THE TCW OFFICES. THE CLIENTS WOULD COME. THE REASON  
2 THEY WOULD DO THAT, IT GAVE THEM A BETTER SENSE OF, YOU  
3 KNOW, THE WORK THAT WENT ON.

4 THEY COULD SEE THE INVESTORS AND TALK TO  
5 THEM DIRECTLY. THEY COULD LOOK AT THE SCREENS THEY  
6 WERE USING. THEY COULD ASK QUESTIONS. IT WAS MORE,  
7 YOU KNOW, MORE OF IMMERSION IN WHAT PEOPLE WERE DOING  
8 VERSUS IF YOU WENT TO SEE THEM.

12:00PM

9 THOSE WERE USUALLY MORE PRELIMINARY  
10 MEETINGS. THERE WAS A PRESENTATION BOOK USED EARLIER.  
11 IT WAS A GOOD OPENING CONVERSATION. IN MOST CASES THE  
12 INVESTOR WOULD COME TO TCW OFFICES BECAUSE THEY WANTED  
13 TO SEE IT, TOUCH IT, AND, YOU KNOW, REALLY SORT OF  
14 EXPERIENCE IT IN MORE DEPTH.

12:00PM

15 Q DURING THE TIME, THE ENTIRE FIVE-YEAR PERIOD,  
16 WITH TCW, FOR YOU, DID YOU EVER ATTEND CLIENT  
17 PRESENTATION MEETINGS WITH ONE OR MORE OF THE FOLLOWING  
18 PERSONS; JEFFREY GUNDLACH? CRIS SANTA ANA?  
19 JEFF MAYBERRY? AND BARBARA VAN EVERY?

12:00PM

20 A YES.

12:01PM

21 MR. BRIAN: OBJECTION, YOUR HONOR.

22 COULD WE BREAK THAT DOWN, PLEASE.

23 THE COURT: I GUESS IT'S "YES" TO ALL OF THEM;  
24 IS THAT RIGHT?

25 THE WITNESS: YES.

12:01PM

26 BY MR. MADISON:

27 Q TOOK THE WORDS RIGHT OUT OF MY MOUTH.

28 COULD YOU TELL US, FIRST OF ALL,

1 APPROXIMATELY HOW MANY MEETINGS TOTAL OVER THE FIVE  
2 YEARS YOU ATTENDED WITH ONE OR MORE FROM THE GROUP OF  
3 THE FOUR I JUST IDENTIFIED?

4 A AND THIS IS A BIT OF A GUESSTIMATE, BUT THE --  
5 MY GUESS WOULD BE IN THE 40 TO 50 RANGE OVER THAT  
6 ENTIRE PERIOD OF TIME. 12:01PM

7 AND IN TERMS OF FREQUENCY, YOU WANT ME  
8 TO GO THROUGH EACH OF THE FOUR AND GIVE A SENSE OF HOW  
9 OFTEN THEY WERE MEETINGS?

10 Q IF YOU CAN DO THAT. IF YOU RECOLLECT. 12:01PM  
11 WHETHER THERE WERE GROUPS, SUBGROUPS.

12 A PROBABLY YOU HAVE IT IN REVERSE ORDER OF  
13 FREQUENCY.

14 SO, BARBARA VAN EVERY, THE LEAST.

15 JEFF MAYBERRY, A LITTLE BIT MORE THAN 12:01PM  
16 BARBARA, BUT NOT THAT FREQUENTLY.

17 CRIS SANTA ANA, MANY MEETINGS.

18 AND JEFFREY, A FAIR AMOUNT OF MEETINGS.

19 SO DOES THAT ANSWER YOUR QUESTION?

20 Q YES, SIR. THANK YOU. 12:02PM

21 AND WHAT WAS THE PURPOSE AT THE END OF  
22 THE DAY OF THESE MEETINGS FROM TCW'S PERSPECTIVE?

23 A WELL, FROM MY PERSPECTIVE, I MEAN -- THE  
24 BUSINESS DOESN'T EXIST WITHOUT CLIENTS. SO THE  
25 SALESPERSON'S ROLE IS TO CREATE CREDIBILITY AND TO HELP 12:02PM  
26 THE CLIENT UNDERSTAND WHAT'S UNIQUE ABOUT YOUR FIRM,  
27 AND WHY THEY SHOULD ENTRUST YOU WITH THEIR ASSETS,  
28 BECAUSE IT'S NOT REALLY TCW'S MONEY; IT'S THE CLIENT'S

1 MONEY.

2 SO THE SALESPERSON'S ROLE IS TO BRIDGE  
3 THAT GAP BETWEEN THEM, NOT KNOWING YOU AND  
4 UNDERSTANDING YOU, AND GETTING TO THE POINT WHERE THEY  
5 DO KNOW AND UNDERSTAND WHAT YOU DO.

12:02PM

6 SO THOSE MEETINGS WERE INTENDED TO  
7 BRIDGE THAT GAP, TO CLOSE THE KNOWLEDGE GAP SO THAT  
8 WHEN THEY LEFT, THEY HAD A CLEAR UNDERSTANDING OF WHAT  
9 WE WOULD DO WITH THEIR MONEY, WHY THEY SHOULD FEEL  
10 CONFIDENT GIVING IT TO US, AND WHAT THEIR EXPECTATION  
11 SHOULD BE FOR THE BEHAVIOR OF THAT MONEY ONCE IT WAS  
12 ENTRUSTED TO THE TCW PORTFOLIO TEAM.

12:02PM

13 SO, DOES THAT ANSWER YOUR QUESTION?

14 Q YES, SIR. THANK YOU.

15 FOCUSED ON THE M.B.S. INVESTMENTS, THE  
16 INVESTMENTS THAT THE M.B.S. GROUP AT TCW WAS ENGAGED IN  
17 AT THAT TIME, WAS IT A COMPETITIVE SITUATION VIS-A-VIS  
18 OTHER POTENTIAL FIRMS OUT THERE, THAT WOULD WANT TO  
19 INVEST MONEY FOR THESE SAME CLIENTS?

12:03PM

20 A 100 PERCENT OF THE TIME.

12:03PM

21 Q AND DID YOU HAVE ANY PARTICULAR APPROACH IN  
22 TERMS OF HOW TCW WOULD TRY TO DISTINGUISH THE M.B.S.  
23 GROUP IN THESE PRESENTATIONS TO CLIENTS?

24 A DURING MY TENURE, IT MIGHT HAVE SHIFTED SINCE  
25 THEN, BUT DURING MY TENURE OVERSIGHTS OF THE SALES  
26 TEAM, THE PRIMARY MESSAGES THAT WERE CONVEYED BY THE  
27 SALESPEOPLE IN TRYING TO DIFFERENTIATE TCW FROM OTHER  
28 FIRMS.

12:03PM

1 I WOULD SAY FIRST WAS TO CONVINCING PEOPLE  
2 THAT TCW FOCUSED ITS INVESTMENT EFFORTS ON THE PART OF  
3 THE MARKET A LOT OF OTHER PEOPLE DIDN'T.

4 SO, SORT OF LIKE, IF YOU HAVE -- SO  
5 "DEADLIEST CATCH", RIGHT? IF YOU GO OUT FISHING, THE  
6 BOAT THAT MIGHT TAKE ON LITTLE MORE RISK GOING TO  
7 CHOPPIER WATERS AND TAKE ON MORE WEATHER, AND THE  
8 REWARD WOULD BE BIGGER FISH.

12:04PM

9 THAT WAS SORT OF THE TCW CONCEPT. WE  
10 WERE BUYING IN A PART OF THE RESIDENTIAL MORTGAGE  
11 MARKET THAT A LOT OF FIRMS IGNORE BECAUSE THE  
12 PERCEPTION WAS THEY WERE COMPLEX SECURITIES. THEY WERE  
13 ESOTERIC AND HARD TO UNDERSTAND.

12:04PM

14 AND SO OUR MESSAGE WAS THEY'RE NOT SO  
15 MUCH, IF YOU, YOU KNOW, COMMIT THE RIGHT RESOURCES TO  
16 IT, PROVIDE SUFFICIENT ANALYSIS, AND HAVE THE RIGHT  
17 PEOPLE ESSENTIALLY DOING THE FISHING.

12:04PM

18 OR, ANOTHER ANALOGY, BEAR WITH ME, SORT  
19 OF, YOU KNOW, RACE CARS. SO YOU HAVE A CAR WITH A  
20 COMPLEX ENGINE THAT PERFORMS BETTER. BUT YOU KNOW IF I  
21 DROVE IT, I WOULD NOT -- WOULDN'T KNOW HOW TO USE IT.

12:04PM

22 AND IT WOULDN'T PERFORM UP TO ITS  
23 MAXIMUM POTENTIAL. OR, IF YOU HAD A GREAT DRIVER,  
24 DRIVING, YOU KNOW, MY VOLKSWAGEN, THEN HE'S ONLY GOING  
25 TO GET SO MUCH SPEED OUT OF IT.

12:05PM

26 HAVING BOTH IN A GREAT ENGINE DESIGNED  
27 WELL AND RAN WELL WITH A GREAT DRIVER WAS SORT OF THE  
28 CONVINCING AND CLOSING OF THAT KNOWLEDGE GAP.

1 SO I DON'T KNOW IF THAT --

2 Q LET ME --

3 A -- IF IT'S CLEAR.

4 Q -- LET ME ASK YOU QUESTIONS ABOUT THE  
5 TECHNOLOGY THAT THE M.B.S. GROUP WAS USING AT THAT  
6 TIME.

12:05PM

7 DID THERE COME A TIME IN ANY CLIENT  
8 PRESENTATIONS, THAT YOU PARTICIPATED IN, WERE PRESENT  
9 FOR, THAT YOU ALSO -- ONE OR MORE OF THE FOUR  
10 INDIVIDUALS I IDENTIFIED EARLIER WERE PRESENT,  
11 GUNDLACH, SANTA ANA, MAYBERRY, VAN EVERY, WHERE TCW  
12 ANALYTIC SYSTEMS WAS A SUBJECT OF DISCUSSION IN THE  
13 MEETING?

12:05PM

14 A YES.

15 Q WAS THAT SOMETHING THAT HAPPENED FREQUENTLY IN  
16 THE APPROXIMATE 40 CLIENT MEETINGS THAT YOU HAD, OR  
17 INFREQUENT, OR SOMEWHERE IN BETWEEN?

12:05PM

18 A I CAN'T ANSWER EXACT -- BUT I WOULD SAY THERE  
19 WOULD BE NO REASON THAT IT WOULDN'T COME UP IN EVERY  
20 MEETING.

12:06PM

21 BECAUSE IF YOU'RE GOING TO TAKE THE RISK  
22 OF GIVING THEIR MONEY TO TCW OR A COMPETITOR, YOU HAVE  
23 TO UNDERSTAND THE ANALYTICS THEY'RE USING BECAUSE YOU  
24 NEED TO GET CONFIDENT THAT IF THEY -- THEY MADE A LOT  
25 OF MONEY FOR THEIR CLIENTS IN THE LAST TWO YEARS,  
26 YOU'RE GIVING YOUR MONEY THEM NOW, WHY DO YOU THINK  
27 THEY'LL MAKE IT FOR THE NEXT TWO, THREE, FOUR, FIVE  
28 YEARS?

12:06PM

1                   SO, THE ANALYTICS ARE THE BASIC  
2 COMPONENT OF CONVINCING THE CLIENT THAT WHAT SUCCESS  
3 HAS OCCURRED IN THE PAST SHOULD OCCUR IN THE FUTURE.

4                   AND THAT WAS THE REASON IT WAS PART OF  
5 EVERY PRESENTATION.

12:06PM

6           Q        WAS DOCUMENTARY EVIDENCE USED IN DISCUSSING  
7 THE ANALYTICS? WERE THERE DEMONSTRATIONS OR WERE THESE  
8 JUST PEOPLE TALKING AT THE POTENTIAL CLIENT?

9           A        IT WAS RARE IT WAS ONLY TALKING. PEOPLE  
10 WANTED TO SEE, YOU KNOW, A PAGE THAT SHOWED A SCREEN  
11 YOU WERE USING -- IF THEY WERE ON SITE, THEN TYPICALLY  
12 THEY'D WANT TO GO TO THE DESK AND SIT WITH  
13 CRIS SANTA ANA OR OTHERS AND BE SHOWN HOW THE ANALYTICS  
14 WOULD DECIPHER A BOND.

12:06PM

15                   AND SO BY SEEING THAT, YOU GOT TO SEE  
16 THE ANALYTICS WORK.

12:07PM

17                   IF THEY WERE NOT AT THE FACILITY, THEN  
18 THE PRESENTATIONS ALWAYS INCLUDED SOME PAGES THAT  
19 SHOWED EXAMPLES OF A BOND BEING ANALYZED AND THEN  
20 WHETHER OR NOT IT WAS BOUGHT OR NOT.

12:07PM

21                   SO, IT WAS IN EVERY CASE THAT WAS A BIG  
22 PART OF THE, AGAIN, THE CLOSING OF THAT KNOWLEDGE GAP.

23           Q        DID THERE EVER COME A TIME WHEN YOU HEARD ANY  
24 OF THE FOUR THAT I MENTIONED, ACTUALLY DOUBT TCW  
25 ANALYTICS SYSTEMS AS PROVIDING A COMPETITIVE ADVANTAGE  
26 FOR -- ADVANTAGE FOR TCW?

12:07PM

27           A        I DON'T RECALL BARBARA EVER BEING PART OF  
28 THAT, BUT THE OTHER THREE, YES, DEFINITELY.

1 Q MR. GUNDLACH, MR. SANTA ANA, AND MAYBERRY EACH  
2 DID THAT?

3 A CORRECT. YES.

4 Q DO YOU RECALL, AS AN EXAMPLE, ANY PARTICULAR  
5 MEETING OR MEETINGS THAT STAND OUT IN YOUR MIND WHERE  
6 THAT WAS THE CASE?

12:07PM

7 A YES.

8 NEAR-TERM MEMORIES ARE CLEARER. SO I'LL  
9 GO TOWARDS THE END OF MY TIME AT TCW.

10 THERE WAS AN EXTENSIVE DUE DILIGENCE BY  
11 A LARGE CORPORATE DIVINE BENEFIT PLAN. I REMEMBER WE  
12 WERE SITTING IN A ROOM AT SOUTH FIGUEROA STREET. AND  
13 JEFFREY WAS THERE AND MEMBERS OF HIS TEAM WERE THERE,  
14 AND A LARGE CORPORATE DIVINE BENEFIT PLAN -- SHOULD I  
15 SAY THEIR NAME OR NOT?

12:08PM

16 Q IT'S UP TO YOU, SIR.

17 A VERIZON COMMUNICATIONS WAS TAKING A PORTION OF  
18 THEIR PENSION PLAN AND WERE LOOKING FOR AN M.B.S.  
19 MANAGER, MORTGAGE MANAGER, WHO THEY FELT COULD TAKE  
20 ADVANTAGE OF WHAT WAS GOING ON IN THE MARKETS. SO THIS  
21 WAS LATE '09 WHEN A LOT OF THE, YOU KNOW, SELLING OFF  
22 HAD ALREADY OCCURRED.

12:08PM

12:08PM

23 AND THERE WAS EXTENSIVE DISCUSSION  
24 BECAUSE VERIZON USES INTERNALLY A VERY EXTENSIVE RISK  
25 MANAGEMENT SYSTEM. THERE WAS AN EXTENSIVE DISCUSSION  
26 WITH JEFFREY AND OTHERS TALKING ABOUT THE STRENGTH OF  
27 THE ANALYTICS AT TCW, HOW OUR APPROACH TO LOOKING DOWN  
28 AS -- AS LOW AS TRENDS IN FICA SCORES AND TRENDS IN

12:08PM



1 DELINQUENCIES.

2 WHO WAS NOT PAYING THEIR BILLS AND WHO  
3 WAS. AT THE INDIVIDUAL LOAN LEVEL, THAT WAS A BIG PART  
4 OF CONVINCING VERIZON TO GIVE MONEY TO TCW.

5 Q LET ME ASK YOU, WITH REGARD TO DOCUMENTS THAT 12:09PM  
6 MIGHT BE USED AT MEETINGS LIKE THIS, DO YOU EVER RECALL  
7 SEEING DOCUMENTS THAT THE M.B.S. GROUP WOULD HAND OUT  
8 OR PRESENT THAT BORE STAMPS ABOUT CONFIDENTIALITY OR  
9 PROPRIETARY NATURE OF THE DOCUMENTS?

10 A IT WAS IN THE MINORITY. BUT IN SEVERAL CASES 12:09PM  
11 THERE WERE, ESPECIALLY AFTER THE MORTGAGE CRISIS  
12 STARTED TO UNFOLD AND THERE WAS A SENSE THAT IN A -- IT  
13 WAS REALLY IMPORTANT TO BE SEEN AS ONE OF THE FEW  
14 MANAGERS THAT, A, SAW IT COMING, B, UNDERSTOOD IT, AND,  
15 C, COULD MAKE MONEY FOR CLIENTS. 12:09PM

16 SO THAT WAS A POINT IN TIME WHERE BEING  
17 A LITTLE MORE CAREFUL WITH THE TRADE EXAMPLES YOU WERE  
18 SHOWING TO CLIENTS STARTED TO INCREASE. AND THERE WAS  
19 A SENSE OF, OKAY, LET'S SHOW THIS TO THEM, BUT NOT  
20 NECESSARILY LEAVE IT BEHIND. 12:10PM

21 IT WAS PARTICULARLY ACUTE WHEN WE WOULD  
22 BE MEETING WITH, SAY, A LARGE PUBLIC FUND, LIKE A  
23 PENSION FUND LIKE A CALPERS OR CALSTRS THAT TRADED  
24 THEIR OWN BONDS. AND THE SENSE IS, WE DON'T WANT THEM  
25 JUST TAKING MISINFORMATION AND USING IT TO MAKE MONEY 12:10PM  
26 FOR THEMSELVES.

27 Q WHY WAS THAT A CONCERN -- I DON'T MEAN YOU'RE  
28 ACCUSING THOSE PARTICULAR INSTITUTIONS OF ANYTHING --

1 WHY WOULD THAT BE A PROBLEM IF ANYONE ACTUALLY TOOK THE  
2 TECHNOLOGY AND USED IT THEMSELVES?

3 A WELL, IT'S -- THEY WOULDN'T NECESSARILY BE  
4 ABLE TO USE THE TECHNOLOGY IS MY GUESS. BUT I'M NOT  
5 A -- IMPLYING THEY WERE DOING ANYTHING WRONG. THEY  
6 KNEW WHAT THEY -- THESE BIG FUNDS HAVE VERY QUALIFIED  
7 STAFFS THAT KNOW WHAT THEY'RE DOING.

12:10PM

8 ULTIMATELY, WE'RE TRYING TO CONVINC  
9 THEM TO LET US DO THE MANAGEMENT FOR THEM. SO WE HAD  
10 NO INTEREST IN TEACHING HOW TO DO IT THEMSELVES. WE  
11 WANTED THEM TO GIVE THE MONEY TO US. SO THAT WAS THE  
12 REASON?

12:10PM

13 Q I'D LIKE YOU TO LOOK QUICKLY WITH US AT  
14 EXHIBITS ALREADY IN EVIDENCE.

15 IF I MAY DISPLAY THOSE, YOUR HONOR.  
16 FIRST, 260.

12:11PM

17 YOU HAVE A BINDER, MR. WALLS, AND YOU  
18 ALSO HAVE A COMPUTER SCREEN. AND WHAT I WOULD SUGGEST,  
19 I'LL JUST LEAVE THE FIRST PAGE UP.

20 A OKAY.

12:11PM

21 Q IF YOU NEED TO SLIP THROUGH THE DOCUMENT IN  
22 YOUR BINDER --

23 THIS IS IN EVIDENCE, YOUR HONOR. 260.

24 WE SEE A DOCUMENT ENTITLED TCW M.B.S.  
25 INVESTMENT TECHNOLOGY. SEPTEMBER 2, 2009.

12:11PM

26 DO YOU RECOGNIZE THIS DOCUMENT?

27 A YES.

28 Q CAN YOU TELL US WHAT THIS IS, PLEASE.

1           A           THIS WOULD BE A PRESENTATION TO A CLIENT WHO  
2 HAD ASKED TO GO IN DEEPER AND REALLY UNDERSTAND WHAT  
3 THE INVESTMENT ANALYTICS COMPRISED.

4                       SO, UNLIKE OTHER PRESENTATIONS WHICH  
5 STARTED WITH MORE OF AN INTRODUCTION TO TCW AS A FIRM,  
6 THIS PRESENTATION IN MOST CASES WOULD BE USED FURTHER  
7 INTO THE DUE DILIGENCE PROCESS. SO THEY WERE GETTING  
8 TO KNOW TCW.

12:11PM

9                       AND THIS WAS AT THE POINT WHERE THEY  
10 WERE REALLY TRYING TO GET A CLEAR UNDERSTANDING THAT WE  
11 WERE DOING SOMETHING DIFFERENT THAT ALLOWED US TO MAKE  
12 MONEY VERSUS THE OTHER FIRMS THEY WERE CONSIDERING.

12:11PM

13           Q           AND ON THE UPPER RIGHT-HAND CORNER, IT SAYS,  
14 CONFIDENTIAL MATERIAL NOT FOR DISTRIBUTION.

15                       WHAT DID THAT MEAN?

12:12PM

16           A           THAT MEANT YOU SHOULDN'T LEAVE IT BEHIND IF  
17 YOU -- UNLESS YOU DECIDED THERE WAS SOME GOOD REASON  
18 FOR IT.

19           Q           THESE ARE IN EVIDENCE, YOUR HONOR. SO I WON'T  
20 DWELL ON THEM AT THIS POINT.

12:12PM

21                       THERE'S ALSO ANOTHER VERSION, MR. WALLS,  
22 OF 284. THAT IS ALSO IN EVIDENCE. IF WE COULD DO THE  
23 SAME THING.

24                       LOOK AT YOUR HARD COPY.

25           A           YES.

12:12PM

26           Q           DISPLAY THE COVER THERE.

27                       DOES THIS APPEAR TO YOU TO BE A SIMILAR  
28 PRESENTATION OF ABOUT NINE DAYS LATER?

1 A YES.

2 Q NOW, DO YOU RECALL BEING INVOLVED IN SOMETHING  
3 AT TCW CALLED THE INNOVATION AWARDS?

4 A YES.

5 Q WE'VE HEARD SOME EVIDENCE ABOUT THIS. IF YOU  
6 COULD JUST REFRESH US QUICKLY ABOUT WHAT THE INNOVATION  
7 AWARDS ARE AT TCW WERE.

12:12PM

8 A SURE.

9 FOR BOB BEYER ONE OF THE THINGS HE  
10 WANTED TO ENCOURAGE WAS SORT OF THE EVOLUTION OF TCW  
11 INTO A BEST-IN-CLASS FIRM.

12:12PM

12 AND PART OF THAT WAS ENSURING THERE WAS  
13 A MINDSET FOCUSED ON INNOVATING AND DEVELOPING NEW  
14 IDEAS. AND SO THE ULTIMATE APPROACH TO THAT WAS TO  
15 CREATE THIS INNOVATION AWARD THAT ANY EMPLOYEE COULD  
16 SUBMIT TO COMPETE FOR.

12:13PM

17 AND I WAS ASKED TO BE PART OF THE  
18 SUBMISSION REVIEW COMMITTEE, ALONG WITH A NUMBER OF  
19 OTHER SENIOR MANAGERS. SO THAT WAS -- THERE WAS TWO  
20 SEPARATE YEARS, I THINK, ENDING IN 2009.

12:13PM

21 Q HOW MANY APPLICANTS OR NOMINEES WOULD THERE BE  
22 FOR THE INNOVATION AWARDS?

23 A I DON'T RECALL.

24 Q APPROXIMATELY?

25 A LET'S SAY 15 OR 20.

12:13PM

26 Q HOW MANY AWARDS WERE GIVEN EACH YEAR?

27 A ONE EACH YEAR.

28 Q SOUNDS LIKE SERVING ON THE COMMITTEE MIGHT

1 HAVE BEEN A BIT OF A THANKLESS TASK?

2 A YEAH.

3 Q YOU MAKE ONE PERSON HAPPY AND --

4 A 14 PEOPLE MAD, YEAH.

5 THE COURT: LET'S TAKE OUR SECOND BREAK FOR 20  
6 MINUTES.

12:13PM

7 MR. WALLS, WE'LL BE BACK IN 20 MINUTES.

8 THE WITNESS: OKAY. THANKS.

9

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

12:14PM

11

12 THE COURT: WE'RE OUT OF THE PRESENCE OF THE  
13 JURY.

14 JUST ONE THING. I THINK I MADE THIS  
15 COMMENT BEFORE, BUT, ON A GENERIC BASIS, I'M INCLINED

12:14PM

16 TO TELL THE JURY THAT ALL OF THE REFERENCES TO  
17 ATTORNEYS EYES ONLY M.P.R. OR THE BATES STAMPS SHOULD  
18 BE DISREGARDED, AND THEY SHOULD ONLY CONSIDER THE TRIAL  
19 EXHIBIT NUMBERS ON THESE THINGS.

20 IT COMES UP A LOT HERE.

12:15PM

21 MR. BRIAN: I APPRECIATE THAT. I WAS GOING TO  
22 REQUEST THAT, YOUR HONOR.

23 THE COURT: AT SOME POINT I'LL DO THAT. MAYBE  
24 NOT RIGHT NOW.

25 MR. QUINN: IT MIGHT BE RELEVANT WHERE A  
26 DOCUMENT CAME FROM IN THE BATES.

12:15PM

27 THE COURT: WELL, BUT I THINK BASICALLY YOU  
28 HAVE TO ESTABLISH THAT.

1 MR. QUINN: YEAH.

2 THE COURT: I'M NOT SURE YOU CAN USE THE BATES  
3 NUMBER. YOU'VE DONE THAT A FEW TIMES, JUST TO MAKE AN  
4 ASSUMPTION, BECAUSE IT'S A DBL DOCUMENT. UNLESS YOU  
5 HAVE A STIPULATION THAT THAT ISN'T A SUBSTITUTE FOR THE  
6 FOUNDATION AND AUTHENTICATION OF THE DOCUMENT, IS IT?

12:15PM

7 MR. QUINN: NO.

8 THE COURT: UNLESS YOU HAVE A STIP.

9 MR. QUINN: NO.

10 IT DOES MEAN WHO PRODUCED IT, WHICH  
11 ISN'T -- MAY NOT MEAN ANYTHING.

12:15PM

12 THE COURT: I'M NOT EVEN SURE THAT'S A  
13 LEGITIMATE QUESTION IN TERMS OF LAYING A FOUNDATION FOR  
14 A DOCUMENT.

15 DID YOU KNOW -- YOU LIKE THIS: DID YOU  
16 KNOW -- DIDN'T YOU KNOW THIS WAS PRODUCED BY  
17 DOUBLELINE?

12:15PM

18 YOU TELL ME YOU'VE NEVER SEEN IT."

19 I MEAN, I'M NOT SURE THAT'S A GOOD  
20 QUESTION.

12:16PM

21 MR. QUINN: WELL, I MEAN, YOUR HONOR, WHAT I  
22 THOUGHT I ASKED WAS, DO YOU HAVE AN UNDERSTANDING OF  
23 DBL MEANS THIS DOCUMENT WAS PRODUCED BY DOUBLELINE? HE  
24 DOES OR HE DOESN'T.

25 THE COURT: I HADN'T EVEN LOOKED AT THAT.

12:16PM

26 BUT I THINK YOU EITHER NEED A  
27 STIPULATION ON THAT TYPE OF THING OR ELSE YOU HAVE TO  
28 LAY AN ADEQUATE FOUNDATION TO HAVE -- AUTHENTICATE THE

1 DOCUMENT.

2 MR. QUINN: SURE. IT'S NOT A SUBSTITUTE FOR  
3 AUTHENTICATING THE DOCUMENT. I UNDERSTAND THAT.

4 THE COURT: THE POINT WASN'T TO PICK ON YOU ON  
5 THAT. JUST THAT I NOTICED IT ON THIS DOCUMENT.

12:16PM

6 MR. QUINN: RIGHT.

7 THE COURT: THANK YOU.

8 MR. BRIAN: THANK YOU, YOUR HONOR.

9

10 (RECESS.)

12:16PM

11

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28

1 CASE NUMBER: BC429385  
2 CASE NAME: TRUST COMPANY OF THE WEST VS.  
3 JEFFREY GUNDLACH, ET AL  
4 LOS ANGELES, MONDAY, AUGUST 8, 2011  
5 CALIFORNIA  
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE  
7 APPEARANCES: (AS HERETOFORE NOTED.)  
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978  
9 TIME: 12:39 P.M.

10  
11  
12 (AT 12:39 P.M. THE JURY ENTERED  
13 THE COURTROOM, AND THE FOLLOWING  
14 PROCEEDINGS WERE HELD:)

15  
16 THE COURT: ALL RIGHT. IN THE TCW VERSUS  
17 GUNDLACH MATTER, ALL OF OUR JURORS ARE PRESENT, AS ARE  
18 COUNSEL.

19 MR. MADISON, YOU MAY CONTINUE YOUR  
20 EXAMINATION OF MR. WALLS.

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

24 DIRECT EXAMINATION (RESUMED)  
25 BY MR. MADISON:

26 Q. MR. WALLS, BEFORE THE BREAK, I WAS ASKING YOU  
27 ABOUT YOUR ROLE ON THE COMMITTEE TO MAKE THE INNOVATION  
28 AWARDS.

08:59AM

12:39PM

12:39PM



1                   AND DO YOU HAVE EXHIBIT 151 IN FRONT OF  
2 YOU THERE IN THE BINDER?

3           A.     YES.

4           Q.     AND DO YOU RECOGNIZE EXHIBIT 151?

5           A.     YES.

12:40PM

6           Q.     CAN YOU TELL US WHAT IT IS, PLEASE?

7           A.     IT'S THE FIRST PAGE IN A PACKAGE OF THE  
8 INNOVATION AWARD SUBMISSIONS THAT WERE SENT OUT IN 2009  
9 TO EVERYONE ON THE COMMITTEE. SO THIS IS THE COVER  
10 PAGE, AND THEN ON THE ENSUING PAGES, THERE'S FURTHER  
11 DESCRIPTIONS OF EACH OF THE AWARDS, AND THE MERITS OF  
12 WHY THEY SHOULD BE CONSIDERED.

12:40PM

13          Q.     AND WAS THIS MATERIAL COMPILED IN THE ORDINARY  
14 COURSE OF TCW'S BUSINESS?

15          A.     I'M NOT SURE WHAT YOU -- WE DIDN'T NORMALLY DO  
16 INNOVATION AWARDS.

12:40PM

17          Q.     DO YOU RECALL THE YEAR BEFORE, THERE WAS AN  
18 INNOVATION AWARD?

19                   MR. BRIAN: NO OBJECTION, YOUR HONOR.

20                   THE COURT: IT WILL BE ADMITTED.

12:40PM

21  
22                                   (EXHIBIT 151 ADMITTED.)

23  
24                   MR. MADISON: MOVE IT IN.

25                                   YOUR HONOR, THEN 151. IF WE LOOK AT THE  
26 FIRST PAGE, WE SEE UP AT THE TOP, IT'S FROM ERIN  
27 FREEMAN.

12:40PM

28                                   DO YOU RECALL WHO SHE WAS?

1 THE WITNESS: ERIN WAS THE HEAD OF  
2 COMMUNICATIONS AT TCW.

3 Q. AND THEN THERE ARE A NUMBER OF INDIVIDUALS ON  
4 THE "TO" LINE. AND WERE THOSE THE PEOPLE SERVING ON  
5 THE COMMITTEE?

12:41PM

6 A. CORRECT.

7 Q. AND AS I LOOK AT IT, I CAN SEE MR. LUCIDO, THE  
8 SECOND INDIVIDUAL. AND THEN DOWN ON THE THIRD LINE,  
9 OVER AT THE LEFT, MR. GUNDLACH AND MR. BARACH ALSO.

10 SO THOSE WERE THE THREE REPRESENTATIVES  
11 FROM THE MBS GROUP THAT WERE ON THIS COMMITTEE?

12:41PM

12 A. CORRECT.

13 Q. AND THEN YOUR NAME, I BELIEVE, APPEARS THERE,  
14 AS WELL, AS ONE OF THE RECIPIENTS NEXT TO MR. LUCIDO,  
15 CORRECT?

12:41PM

16 A. YES.

17 Q. SO FOR THIS YEAR, IF WE GO TO THE PAGE ENDING  
18 IN 151-9, WE SEE A SUBMISSION ABOUT SOME TECHNOLOGY  
19 FROM THE MBS GROUP.

20 DO YOU SEE THAT?

12:41PM

21 A. YES.

22 Q. DOWN AT THE BOTTOM OF THAT PAGE, IT SAYS,  
23 EXECUTIVE SPONSORSHIP VINCE FIORILLO. AND OVER AT THE  
24 TOP OF THE NEXT PAGE, VINCE FIORILLO AND CRIS  
25 SANTA ANA.

12:42PM

26 A. EACH SUBMISSION REQUIRED SOMEONE AT THE SENIOR  
27 LEVEL TO REVIEW THE SUBMISSION AND THEN DETERMINE IF  
28 IT'S WORTHY OF CONSIDERATION. SO VINCE, LOU AND CRIS

1 WERE THE ONES THAT WOULD HAVE PLAYED THAT ROLE.

2 Q. AND THEN IF WE STAY ON THE SECOND PAGE THERE,  
3 THERE'S A LIST OF PEOPLE ON THE CORE DESIGN AND  
4 DEVELOPMENT TEAM. WE SEE MR. MARCUS, MR. MOORE, BING  
5 BING YU AND DAN KALE. AND THOSE WERE THE INDIVIDUALS  
6 IDENTIFIED AS ACTUALLY HAVING DONE THE WORK THAT WOULD  
7 GIVE RISE TO THE NOMINATION?

12:42PM

8 A. YES.

9 Q. AND THEN IT SAYS, OTHER KEY CONTRIBUTORS.  
10 FOR THE CORE DESIGN AND DEVELOPMENT  
11 TEAM, DID ALL OF THOSE INDIVIDUALS WORK IN THE MBS  
12 GROUP HERE IN L.A.?

12:42PM

13 A. AS FAR AS I KNOW.

14 Q. AND THEN, IF WE GO BACK, WE'LL SEE IN THE  
15 DISCUSSION OF RESULT OF INNOVATION AND EXECUTION. IT'S  
16 TALKING ABOUT THE INVESTMENT REPORTING AND ANALYTICS  
17 FRAMEWORK.

12:43PM

18 AND HAVE YOU HEARD THE TERM IRA --

19 A. YES.

20 Q. -- IN YOUR TIME THERE.

12:43PM

21 AND IS THAT WHAT THAT REFERS TO?

22 A. CORRECT.

23 Q. AND THEN IT TALKS ABOUT THINGS LIKE THE BWIC  
24 BROWSER, THE SECURITY ANALYZER, THE TRADING WIP AND THE  
25 LOSS MODEL.

12:43PM

26 WERE THOSE TECHNOLOGIES OR ANALYTIC  
27 SYSTEMS THAT YOU HEARD DISCUSSED IN THE CLIENT  
28 PRESENTATIONS FROM TIME TO TIME, BEFORE THE BREAK?

1 MR. BRIAN: OBJECTION, FOUNDATION.

2 THE COURT: OVERRULED.

3 THE WITNESS: YES.

4 Q. BY MR. MADISON: AND THEN IF YOU LOOK AT  
5 EXHIBIT 1032, IT APPEARS TO BE ANOTHER SET OF  
6 INNOVATION AWARD SUBMISSIONS. THIS IS NOT YET IN  
7 EVIDENCE, SO I JUST ASK YOU TO LOOK AT THAT, AND TELL  
8 US IF YOU RECOGNIZE IT?

12:43PM

9 THE COURT: AND THIS IS EXHIBIT WHAT?

10 MR. MADISON: 1032, YOUR HONOR.

12:43PM

11 THE COURT: OKAY.

12 THE WITNESS: YES.

13 Q. BY MR. MADISON: YOU RECOGNIZE 1032?

14 A. YES, FROM THE PRIOR YEAR, I BELIEVE.

15 Q. FROM 2008?

12:44PM

16 A. UH-HUH.

17 Q. ACTUALLY, I DO HAVE A NOTE, THIS IS IN  
18 EVIDENCE, YOUR HONOR.

19 IF I COULD, I'LL DISPLAY THAT.

20 THE COURT: 1032. IT IS IN EVIDENCE.

12:44PM

21 MR. MADISON: THANK YOU, YOUR HONOR.

22 Q. SO IF WE DISPLAY THE COVER PAGE, AND WE SEE  
23 AGAIN UP AT THE TOP, IT SAYS, INNOVATION AWARDS  
24 SUBMISSIONS, IN NO PARTICULAR ORDER, IS THAT JUST AN  
25 ATTEMPT TO EQUAL THE PLAYING FIELD?

12:44PM

26 A. YES.

27 Q. IF YOU GO TO PAGE 9, ENDING IN -9, IT SAYS MBS  
28 DATABASE UP AT THE TOP, NOMINATION, ERIC ARENTSEN.

1 NOMINEES, CRIS SANTA ANA, JEFF MAYBERRY, AND SOMEONE WE  
2 REFER TO HERE AS JP?

3 A. UH-HUH.

4 Q. AND THOSE PERSONS WERE ALL IN THE MBS GROUP,  
5 CORRECT?

12:44PM

6 A. CORRECT.

7 Q. AND HERE WE SEE STATEMENTS MADE BY THE  
8 NOMINATOR HERE IN THIS GROUP, MR. ARENTSEN?

9 A. YES.

10 Q. AND IN PARTICULAR, IN THE DESCRIPTION OF THE  
11 PROJECT, IT SAYS, (READING):

12:45PM

12 THE MBS DATABASE IS A SET OF  
13 TOOLS, APPLICATIONS AND DATABASES  
14 DEVELOPED SOLELY WITHIN THE MBS  
15 DEPARTMENT OVER THE LAST FEW YEARS  
16 TAILORED TO SPECIFIC FUNCTIONS AND  
17 TASKS INVOLVED IN MANAGING TCW'S  
18 MBS PORTFOLIOS.

12:45PM

19 AND THEN I WANT TO ASK YOU ABOUT THE  
20 IMPACT PARAGRAPH. IT SAYS, (READING):

12:45PM

21 THESE TOOLS HAVE BECOME  
22 INTEGRAL TO THE DAILY MANAGEMENT  
23 PROCESS, AND WE WOULD BE HARD  
24 PRESSED TO COMPLETE OUR WORK  
25 WITHOUT THEM.

12:45PM

26 AND THEN A COUPLE OF LINES DOWN, IT  
27 SAYS, (READING):

28 THERE ARE NO THIRD PARTY

1                   SYSTEMS OR COMBINATION OF SYSTEMS  
2                   THAT OFFER THE SAME SET OF  
3                   FUNCTIONALITY FOCUSED ON THE MBS  
4                   MARKET.

5                   TO THE BEST OF YOUR KNOWLEDGE, BASED ON  
6 THE EXPERIENCE YOU HAD AS OF 2008 WITH THE MBS GROUP,  
7 WERE THE STATEMENTS MADE ABOUT THE TECHNOLOGY IN 151  
8 AND 1032, TRUE?

12:45PM

9                   MR. BRIAN: NO FOUNDATION, CALLS FOR EXPERT  
10 OPINION.

12:46PM

11                   THE COURT: SUSTAINED.

12                   Q. BY MR. MADISON: WELL, LET ME ASK YOU THIS:  
13 DID YOU EVER HEAR FROM MR. GUNDLACH OR MR. LUCIDO OR  
14 MR. BARACH OR MR. SANTA ANA, OR ANYONE IN THE MBS GROUP  
15 WHO RECEIVED THESE MATERIALS, ANY STATEMENT TO THE  
16 EFFECT -- WAIT A MINUTE, WHAT'S SAID IN THIS AWARD  
17 SUBMISSION IS NOT TRUE?

12:46PM

18                   MR. BRIAN: OBJECTION. ARGUMENTATIVE.

19                   THE COURT: SUSTAINED.

20                   Q. BY MR. MADISON: WELL, DID ANYONE EVER  
21 INDICATE TO YOU AT ANY TIME THAT THIS INFORMATION WAS  
22 UNRELIABLE?

12:46PM

23                   A. NO.

24                   Q. AND BASED ON MEETINGS THAT YOU SAT IN, IN THE  
25 PRESENTATION WITH CLIENTS, WERE THESE STATEMENTS THAT  
26 WE'VE SEEN ABOUT THE MBS GROUP'S TECHNOLOGY CONSISTENT  
27 WITH WHAT YOU WERE HEARING IN THOSE MEETINGS?

12:46PM

28                   MR. BRIAN: OBJECTION. I MISSED IT BECAUSE OF

1 THE COUGH.

2 MAY I HAVE THE QUESTION RE-READ?

3 THE COURT: CAN WE READ BACK THE QUESTION?

4 MR. BRIAN: NO OBJECTION.

5

12:47PM

6 (RECORD READ AS REQUESTED)

7

8 THE COURT: CAN YOU ANSWER THAT, SIR?

9 THE WITNESS: YES.

10

CAN I ELABORATE ON THAT A LITTLE,

12:47PM

11

MR. MADISON?

12

MR. MADISON: PLEASE, IF YOU NEED TO.

13

MR. BRIAN: OBJECTION. CALLS FOR A NARRATIVE.

14

THE COURT: LET'S JUST MOVE ALONG.

15

Q. BY MR. MADISON: WELL, IS THERE INFORMATION

12:47PM

16

ABOUT THAT THAT YOU WANT TO CLARIFY?

17

A. JUST CONTEXT, THAT'S ALL.

18

THE COURT: WELL, GO AHEAD AND PUT IT IN

19

CONTEXT. WE'RE NOT TRYING TO HIDE ANYTHING HERE.

20

THE WITNESS: WELL, TO ME, THE CONTEXT IS,

12:47PM

21

WHEN YOU ARE TRYING TO CONVINCING CLIENTS TO ENTRUST YOU

22

WITH MONEY, YOU HAVE TO CONVINCING THEM WITH WORDS THAT

23

ARE CLEAR AND DIFFERENTIATED FROM EVERY OTHER FIRM THEY

24

MEET WITH. SO WORDS TO THIS EFFECT ARE USED TO CONVEY

25

THAT THERE ARE UNIQUE CAPABILITIES AT TCW THAT GIVES US

12:47PM

26

AN ADVANTAGE RELATIVE TO OTHER FIRMS TRYING TO DO THE

27

SAME THING.

28

Q. BY MR. MADISON: DID YOU EVER HEAR A CLIENT,

1 IN ANY OF THOSE PRESENTATIONS, SAY, "OH, WE'VE SEEN  
2 THAT EXACT SAME THING ACROSS THE STREET"?

3 MR. BRIAN: OBJECTION, HEARSAY.

4 THE COURT: OVERRULED.

5 IT'S NOT OFFERED FOR THE TRUTH OF THE  
6 MATTER, I DON'T THINK.

12:48PM

7 THE WITNESS: NO.

8 Q. BY MR. MADISON: IS IT IMPORTANT TO BE  
9 ACCURATE IN THE STATEMENTS THAT ARE MADE TO YOUR  
10 CLIENTS IN YOUR BUSINESS HERE?

12:48PM

11 A. ABSOLUTELY. AS I SAID EARLIER, CREDIBILITY IS  
12 THE FIRST REQUISITE TO GETTING MANDATE -- TO GETTING  
13 HIRED.

14 Q. AND IF WE LOOK AT 1032-10, WE SEE THAT THERE'S  
15 ANOTHER PART OF THAT SUBMISSION, MBS DATABASE TWO OF  
16 TWO. AND IN THAT CASE, THE NOMINATOR IS CRIS  
17 SANTA ANA, AND THE NOMINEES ARE JEFFREY MAYBERRY AND  
18 JP.

12:48PM

19 AND AGAIN, AS YOU LOOK AT THAT PAGE, I  
20 WOULD ASK THE SAME QUESTION. WAS THAT CONSISTENT WITH  
21 WHAT YOU HEARD WITH REGARD TO THE DESCRIPTIONS IN THE  
22 MBS DATABASE IN THE CLIENT PRESENTATIONS?

12:48PM

23 A. YES.

24 Q. NOW, YOU WERE WITH TCW IN 2009?

25 A. YES.

12:49PM

26 Q. AND DID THERE COME A TIME THAT YEAR WHERE YOU  
27 LEARNED OF SORT OF A CONTROVERSY DEVELOPING WITH REGARD  
28 TO MR. GUNDLACH?



1 A. COULD YOU BE MORE SPECIFIC?

2 Q. WELL, DID THERE COME A TIME, FOR EXAMPLE,  
3 WE'VE HEARD EVIDENCE OF RUMORS ABOUT MR. GUNDLACH'S  
4 FUTURE WITH THE FIRM DEVELOPING.

5 DID YOU HEAR SUCH RUMORS IN NEW YORK IN  
6 2009?

12:49PM

7 A. YES.

8 Q. AND SPECIFICALLY, DO YOU RECALL WHAT YOU  
9 HEARD?

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

12:49PM

11 THE COURT: SUSTAINED.

12 Q. BY MR. MADISON: WELL, LET ME ASK YOU THIS:  
13 DID THERE COME A TIME WHERE, IN YOUR OWN MIND AS A  
14 SENIOR EXECUTIVE AT TCW, YOU FORMED SOME OF YOUR OWN  
15 OPINIONS ABOUT MR. GUNDLACH'S ROLE FOR THE FUTURE OF  
16 THE FIRM?

12:49PM

17 MR. BRIAN: OBJECTION, HEARSAY, 352.

18 MR. MADISON: JUST YES OR NO, YOUR HONOR.

19 MR. BRIAN: 352.

20 THE COURT: I'M GOING TO SUSTAIN. WE'RE NOT  
21 GOING ANYWHERE THERE.

12:49PM

22 Q. BY MR. MADISON: WHAT I WANT TO ASK YOU ABOUT,  
23 MR. WALLS, DID THERE COME A TIME WHEN YOU SPOKE TO THE  
24 CEO OF THE FIRM, MR. STERN, ABOUT MR. GUNDLACH?

25 A. YES.

12:50PM

26 Q. SO AGAIN, I WANT TO PUT THAT IN CONTEXT, IF I  
27 CAN.

28 DO YOU RECALL WHEN THE CONVERSATION

1 OCCURRED?

2 A. IN SEPTEMBER.

3 Q. AND CAN YOU PUT IT IN CONTEXT FOR US? AT THAT  
4 POINT IN TIME, HAD YOU FORMED CERTAIN OPINIONS ABOUT  
5 MR. GUNDLACH'S ROLE IN THE FIRM, GOING FORWARD?

12:50PM

6 MR. BRIAN: OBJECTION, 352, RELEVANCE.

7 MR. MADISON: JUST YES OR NO.

8 THE COURT: I THINK IT'S A RELEVANCE ISSUE.

9 SUSTAINED.

10 Q. BY MR. MADISON: WELL, WHY DID YOU CALL -- WHO  
11 CALLED THE OTHER, MR. -- DID YOU CALL MR. STERN, OR DID  
12 HE REACH OUT FOR YOU?

12:50PM

13 A. I CALLED MR. STERN.

14 Q. AND DO YOU RECALL WHAT DATE IN SEPTEMBER YOU  
15 DID THAT?

12:50PM

16 A. I BELIEVE IT WAS SEPTEMBER 16TH.

17 Q. AND CAN YOU TELL US WHY YOU CHOSE TO CALL  
18 MR. STERN ABOUT MR. GUNDLACH AT THAT TIME?

19 MR. BRIAN: OBJECTION. RELEVANCE, 352.

20 THE COURT: OVERRULED.

12:50PM

21 THE WITNESS: I CALLED BECAUSE I'D HAD A  
22 CONVERSATION THE DAY BEFORE WITH THE EX-CEO, BOB BEYER.  
23 BOB HAD LEFT THE FIRM. HE AND I WERE HAVING A CATCH-UP  
24 CONVERSATION, AND HE ASKED ME THE QUESTION --

25 THE COURT: SIR, WE DON'T WANT YOU TELLING US  
26 WHAT OTHER PEOPLE TOLD YOU.

12:51PM

27 SO YOU CALLED BECAUSE YOU HAD HAD A  
28 CONVERSATION WITH MR. BEYER.

1 THE WITNESS: AND I SPOKE -- AT THE END OF  
2 THAT CONVERSATION, HE SUGGESTED THAT I RELAY THE  
3 THOUGHTS I'D SHARED WITH MR. BEYER WITH MR. STERN.

4 THE COURT: SIR, YOU DON'T WANT TO TELL US  
5 WHAT HE TOLD YOU.

12:51PM

6 THE WITNESS: OKAY.

7 THE COURT: GO AHEAD.

8 Q. BY MR. MADISON: SO WITHOUT GOING INTO THE  
9 SUBSTANCE OF YOUR CONVERSATION WITH MR. BEYER --

10 A. I CALLED MR. STERN.

12:51PM

11 Q. OKAY.

12 SO YOU DETERMINED TO CALL MR. STERN?

13 A. CORRECT.

14 Q. AND CAN YOU TELL US, AS MUCH AS YOU RECALL  
15 ABOUT THAT CONVERSATION?

12:51PM

16 MR. BRIAN: OBJECTION, HEARSAY.

17 MR. MADISON: IT'S NOT OFFERED FOR THE TRUTH.  
18 IT'S FOR MR. STERN'S STATE OF MIND, YOUR HONOR.

19 THE COURT: YOU MAY ASK HIM WHAT HE TOLD  
20 MR. STERN.

12:51PM

21 MR. MADISON: VERY WELL.

22 Q. CAN YOU TELL US, AS BEST YOU RECALL, WHAT YOU  
23 TOLD MR. STERN?

24 A. AS BEST I RECALL, I TOLD MR. STERN THAT I  
25 THOUGHT IT WAS -- THE BEST CHOICE GOING FORWARD WOULD  
26 BE TO MAKE THE DECISION TO LET JEFFREY GO, TO MAKE A  
27 BACKUP PLAN FOR THAT, TO LOOK AT A FIRM THAT MIGHT  
28 REPLACE THE ASSETS THAT I THOUGHT WOULD LEAVE WITH

12:52PM

1 JEFFREY, AND THAT WE'D REACHED A POINT AS A FIRM WHERE  
2 THAT DECISION WAS NECESSARY.

3 Q. DO YOU RECALL SPECIFICALLY ANY OF THE LANGUAGE  
4 THAT YOU USED, OR THE TERMS THAT YOU USED?

5 A. THE TERM I USED WAS THAT I THOUGHT HE WOULD  
6 BECOME OR WAS A CULTURAL CANCER; THAT AS A FIRM, IT  
7 WASN'T HEALTHY FOR US, IN THE LONG RUN, TO HAVE HIS  
8 PERSONALITY AS PART OF THE CULTURE. AND MR. STERN  
9 WANTED -- WHAT MY UNDERSTANDING WAS, THAT I THOUGHT  
10 MR. STERN WANTED A CULTURE THAT WAS MORE CLIENT-FOCUSED  
11 POSITIVE AND COLLABORATIVE. AND I DIDN'T THINK THAT  
12 MR. GUNDLACH HAS THOSE CHARACTERISTICS.

13 Q. SO THE TERMS YOU JUST DESCRIBED FOR US, YOU  
14 WERE REFERRING TO MR. GUNDLACH?

15 A. YES.

16 Q. IN THAT WAY.

17 AND THAT'S STRONG LANGUAGE. DID YOU  
18 BELIEVE WHAT YOU WERE TELLING MR. STERN?

19 A. YES.

20 MR. BRIAN: OBJECTION. RELEVANCE.

21 THE COURT: SUSTAINED.

22 MR. BRIAN: MOVE TO STRIKE THE ANSWER.

23 THE WITNESS: I'LL STRIKE THE RESPONSE.

24 Q. BY MR. MADISON: OTHER THAN THE FACT YOU HAD  
25 HAD A CALL THE DAY BEFORE WITH MR. BEYER, WAS THERE ANY  
26 REASON FOR YOU TO COMMUNICATE WHAT YOU COMMUNICATED  
27 WITH MR. STERN AT THAT TIME?

28 A. NO.

12:52PM

12:52PM

12:53PM

12:53PM

12:53PM

1 Q. AND DID YOU UNDERSTAND AT THE TIME, BASED ON  
2 YOUR POSITION, THAT IF MR. GUNDLACH WERE TO EXIT TCW  
3 UNDER ANY CIRCUMSTANCES, THAT COULD AFFECT -- IT WOULD  
4 HAVE A GREAT IMPACT ON THE REVENUE, FOR EXAMPLE, OF  
5 TCW?

12:53PM

6 A. ABSOLUTELY.

7 Q. DID YOU DISCUSS THAT AT ALL WITH MR. STERN?

8 A. NO.

9 Q. DID YOU --

10 A. I'M SORRY. COULD I MODIFY THAT?

12:53PM

11 Q. PLEASE.

12 A. MY COMMENT WAS THAT IN THE SHORT RUN, THIS  
13 WOULD BE VERY PAINFUL; BUT IN THE LONG RUN, YOU WOULD  
14 END UP WITH A HEALTHIER, MORE SUSTAINABLE FIRM, IN MY  
15 OPINION.

12:54PM

16 Q. THE SHORT TERM PAIN WAS WHAT I WAS ASKING  
17 ABOUT, IN THE QUESTION BEFORE.

18 A. YES.

19 Q. I DON'T WANT YOU TO TELL US WHAT MR. STERN  
20 SAID; BUT COULD YOU DESCRIBE AS BEST YOU CAN, WHAT  
21 Demeanor MR. STERN DISPLAYED IN THAT PHONE CALL WITH  
22 YOU?

12:54PM

23 MR. BRIAN: OBJECTION, FOUNDATION.

24 THE COURT: SUSTAINED.

25 Q. BY MR. MADISON: WELL, I MEAN, SOMETIMES WE  
26 TALK TO PEOPLE, AND WE HAVE A SENSE THAT THEY HAVE  
27 STRONG VIEWS. OTHER TIMES --

12:54PM

28 MR. BRIAN: OBJECTION TO THE FORM, PREAMBLE,

1 YOUR HONOR.

2 THE COURT: JUST ASK THE QUESTION.

3 Q. BY MR. MADISON: WELL, COULD YOU PICK UP  
4 ANYTHING FROM MR. STERN'S TONE OF VOICE, THE MANNER IN  
5 WHICH HE WAS SPEAKING, THE CASE OF HIS STATEMENTS OR  
6 WORDS, IF ANY -- AGAIN, WITHOUT GOING INTO THE  
7 CONTENT -- ABOUT HOW HE WAS TAKING THIS INFORMATION  
8 THAT YOU WERE GIVING HIM?

12:54PM

9 A. YES.

10 Q. CAN YOU TELL US -- DESCRIBE THAT FOR US,  
11 PLEASE.

12:54PM

12 A. MY OPINION WAS THAT HE WAS AMBIVALENT, AND  
13 FELT THE DECISION WAS A VERY DIFFICULT ONE, AND WAS  
14 WEIGHING HIS OPTIONS.

15 MR. BRIAN: MOVE TO STRIKE AS NONRESPONSIVE,  
16 AND CALLING FOR SPECULATION.

12:55PM

17 THE COURT: I'LL STRIKE EVERYTHING AFTER, HE  
18 SEEMED AMBIVALENT.

19 Q. BY MR. MADISON: NOW, DID THERE -- FOLLOWING  
20 THAT CONVERSATION, DID YOU COMMUNICATE WITH MR. STERN  
21 BY E-MAIL?

12:55PM

22 A. YES.

23 Q. AND I'D LIKE YOU TO LOOK AT EXHIBIT 5272,  
24 PLEASE.

25 DO YOU HAVE THAT IN FRONT OF YOU, SIR?

12:55PM

26 A. YES.

27 Q. AND DO YOU RECOGNIZE EXHIBIT 5272?

28 A. YES, SIR.

1 Q. WHAT IS IT? JUST WITHOUT GOING INTO THE  
2 CONTENT, JUST TELL US WHAT IT IS.

3 A. AN E-MAIL THAT I SENT TO MARC STERN.

4 Q. ON?

5 A. SEPTEMBER 14TH, 2009.

12:55PM

6 MR. MADISON: I'D MOVE EXHIBIT 5272, YOUR  
7 HONOR.

8 MR. BRIAN: NO OBJECTION.

9 THE COURT: IT WILL BE ADMITTED.

10 Q. BY MR. MADISON: SO IF WE DISPLAY 5272, IT  
11 ACTUALLY LOOKS LIKE UP AT THE TOP, SOMEONE IS  
12 FORWARDING IT ON TO MR. STERN.

12:55PM

13 BUT I WANT TO FOCUS ON YOUR E-MAIL THERE  
14 AT THE BOTTOM, WHERE IT SAYS, (READING):

15 SUBJECT, FORGOT. ALSO I'D BUY  
16 MET WEST TO FILL THE HOLE AND  
17 CREATE A PLATFORM FOR TRUE CORE  
18 PLUS BUSINESS. THEY COMPLEMENT US  
19 NICELY, AND CLIENTS LIKE THEM A  
20 LOT.

12:56PM

21 SO CAN YOU TELL US WHAT YOU MEANT TO  
22 COMMUNICATE TO MR. STERN WITH THAT STATEMENT?

23 A. THAT IF THE DECISION TO TERMINATE JEFFREY WERE  
24 PURSUED, AND ASSETS WERE TO LEAVE THE FIRM, AS A  
25 REPLACEMENT FOR THOSE LOST CLIENT ASSETS, YOU COULD BUY  
26 A FIRM LIKE MET WEST, AND START TO BUILD A BROADER  
27 PLATFORM FOR CLIENT NEEDS.

12:56PM

28 Q. HAD YOU, IN YOUR CONVERSATION WITH MR. STERN,

1 HAD YOU MENTIONED THAT INFORMATION?

2 A. NO.

3 Q. AND DO YOU RECALL WHAT CAUSED YOU TO THINK  
4 ABOUT IT FOLLOWING YOUR CONVERSATION, IF ANYTHING?

5 A. I JUST RECALL THAT I FORGOT TO TELL HIM THAT. 12:57PM

6 Q. WHAT WAS IT ABOUT MET WEST THAT CAUSED YOU TO  
7 MAKE THE STATEMENT HERE TO MR. STERN?

8 A. AT THE TIME, MET WEST WAS PROVIDING SERVICES  
9 THAT WERE VERY SIMILAR TO THE TCW FIXED INCOME  
10 CAPABILITIES. IT'S BOND MANAGEMENT. SO THEY WERE A 12:57PM  
11 BOND MANAGER; THEY WERE LOCAL. AND FEEDBACK FROM THE  
12 CLIENTS THAT I KNEW THAT KNEW THEM, JUST HEARING OVER  
13 THE YEARS, WAS THAT IT WAS A NICE CULTURE, NICE PEOPLE  
14 THAT WORKED VERY CLOSELY WITH CLIENTS. AND I THOUGHT  
15 THOSE WERE THE ATTRIBUTES THAT WOULD FIT WELL. 12:57PM

16 Q. HAD YOU HAD -- AND THIS IS JUST YES OR NO.

17 HAD YOU HAD CONVERSATIONS WITH CLIENTS  
18 ABOUT MET WEST PRIOR TO THIS TIME, NOT WITH REGARD TO  
19 POSSIBLY JOINING TCW, BUT JUST GENERALLY?

20 A. YES. 12:57PM

21 Q. HAD YOU HAD ANY CONVERSATIONS WITH ANYONE ELSE  
22 ABOUT MET WEST JOINING TCW, PRIOR TO THAT?

23 A. NO.

24 Q. YOU SAID EARLIER, MR. STERN SEEMED AMBIVALENT  
25 IN YOUR CALL. 12:58PM

26 CAN YOU DESCRIBE FOR US WHAT YOU MEAN BY  
27 AMBIVALENT, WITHOUT TRYING TO CHARACTERIZE HIS STATE OF  
28 MIND, JUST WHAT YOU MEANT BY THAT?



1 A. UNCERTAIN.

2 MR. BRIAN: OBJECTION, RELEVANCE, YOUR HONOR.

3 THE COURT: OVERRULED. I WOULD ALLOW IT.

4 MR. MADISON: THANK YOU.

5 Q. AND THE DATE OF YOUR E-MAIL TO MR. STERN IS  
6 SEPTEMBER 14, 2009.

12:58PM

7 DOES THAT REFRESH YOUR RECOLLECTION  
8 ABOUT WHEN THE CALL OCCURRED?

9 A. YES.

10 Q. WHEN DID THE CALL OCCUR?

12:58PM

11 A. SEPTEMBER 14TH.

12 Q. PRIOR TO THE E-MAIL?

13 A. CORRECT.

14 Q. AND THEN IF YOU LOOK AT 5275, THAT WOULD BE AN  
15 E-MAIL DATED WEDNESDAY, SEPTEMBER 16, 2009.

12:58PM

16 I'LL ASK YOU TO TELL US IF YOU RECOGNIZE  
17 THAT.

18 A. YES.

19 Q. WHAT IS 5275?

20 A. IT'S AN E-MAIL THAT I SENT ON SEPTEMBER 16TH,  
21 2009 TO MARC, UPDATING HIM ON TWO CLIENT MEETINGS THAT  
22 I HAD HAD THAT I THOUGHT HE WANTED TO HEAR ABOUT. AND  
23 ALSO JUST ELABORATING A LITTLE ON THE IDEA I HAD ABOUT  
24 MET WEST.

12:58PM

25 MR. MADISON: SO I'D MOVE 5275, YOUR HONOR.

12:58PM

26 MR. BRIAN: NO OBJECTION.

27 THE COURT: IT WILL BE ADMITTED.

28 Q. BY MR. MADISON: AND HERE, IF WE DISPLAY THAT,

1 WE CAN SEE THAT YOU SAY IN THE FIRST PARAGRAPH,  
2 (READING):

3 MARC, I FORGOT TO MENTION IN  
4 OUR MEETING THAT A FIRM THAT COULD  
5 COMPLEMENT TCW FIXED INCOME VERY  
6 NICELY IS MET WEST.

12:59PM

7 AND LET ME JUST STOP THERE.

8 WHAT MEETING ARE YOU REFERRING TO THERE?

9 A. HE HAD COME TO NEW YORK AND MET WITH ME TO  
10 JUST -- HE WAS IN NEW YORK OCCASIONALLY, AND WHEN HE  
11 WOULD BE IN NEW YORK, WE WOULD MEET AND HAVE AN UPDATE  
12 CONVERSATION; SO THIS WAS A FOLLOW-UP TO THAT UPDATE  
13 MEETING.

12:59PM

14 Q. DO YOU RECALL WHETHER OR NOT YOU HAD DISCUSSED  
15 THE SUBJECT THAT YOU HAD DISCUSSED IN THE PHONE CALL  
16 EARLIER IN THE WEEK, IN THIS MEETING, ONE WAY OR  
17 ANOTHER?

12:59PM

18 A. I DON'T RECALL.

19 Q. AND THEN THIS SEEMS REDUNDANT TO THE E-MAIL  
20 YOU HAD SENT EARLIER IN THE WEEK, 5272, WHERE YOU HAD  
21 RAISED THIS SAME TOPIC.

12:59PM

22 DO YOU REMEMBER THE E-MAIL WE JUST  
23 LOOKED AT BEFORE?

24 A. TWO DAYS PRIOR? YES.

25 Q. SO DO YOU KNOW WHY YOU WOULD SAY WHAT YOU SAID  
26 HERE IN 5275, GIVEN YOU HAD ALREADY MENTIONED MET WEST  
27 TO HIM?

01:00PM

28 A. SIMPLY TO ELABORATE A BIT.

1 Q. AND THEN IT SAYS, (READING):

2 IF WE NEEDED A CRESCENT  
3 CAPITAL TYPE OF MOVE TO COMPENSATE  
4 FOR DEPARTURES, MET WEST COULD BE A  
5 GOOD FIT. I HAVE NO IDEA IF THEY  
6 WOULD BE INTERESTED, OF COURSE.

01:00PM

7 WHAT DID YOU MEAN BY THAT?

8 A. IN THE '90S, WHEN A SENIOR PORTFOLIO MANAGER  
9 LEFT TCW TO START HIS OWN FIRM -- I WASN'T AT TCW AT  
10 THE TIME, BUT THEIR PLAN TO FILL THAT HOLE WAS TO BRING  
11 IN A TEAM FROM A FIRM THAT WAS CALLED CRESCENT CAPITAL  
12 WHICH HAS BEEN REFERRED TO AS WEST L.A. SO THAT WAS  
13 THE REPLACEMENT PLAN FOR THE LOST ASSETS AND THE LOST  
14 TALENT FROM THE DEPARTURE OF THAT INDIVIDUAL.

01:00PM

15 Q. WHY WERE YOU THINKING ABOUT COMPENSATING FOR  
16 DEPARTURES, IN THE EVENT MR. STERN TOOK YOUR ADVICE AND  
17 SEPARATED MR. GUNDLACH?

01:00PM

18 A. DEPARTURES, THERE IS -- IS REFERRING TO PEOPLE  
19 THAT WOULD LEAVE AND GO WITH JEFFREY.

20 Q. SO THAT WOULDN'T BE A SURPRISE DO YOU, THAT  
21 PEOPLE WILL GO WITH MR. GUNDLACH?

01:01PM

22 A. NO.

23 Q. WHY NOT?

24 A. HE HAD A STRONG FOLLOWING WITHIN HIS GROUP.  
25 THEY WERE VERY LOYAL.

01:01PM

26 Q. AND YOU TOOK THAT INTO ACCOUNT, BEFORE YOU  
27 RENDERED THE ADVICE YOU GAVE TO MR. STERN?

28 A. YES.

1 Q. NOW, I WANT TO JUST BRIEFLY GO BACK TO THAT  
2 CONVERSATION FROM THE 14TH.

3 DID YOU SAY ANYTHING TO MR. STERN ABOUT  
4 HAVING SPOKEN TO MR. BEYER?

5 A. YES.

01:01PM

6 Q. AND CAN YOU TELL US WHAT YOU TOLD MR. STERN  
7 ABOUT THAT?

8 A. I TOLD MR. STERN THAT WHEN I WAS SPEAKING WITH  
9 MR. BEYER, I SHARED WITH HIM SOME OF MY THOUGHTS.

10 AND I SHOULD POINT OUT THAT I WASN'T  
11 PART OF THESE CONVERSATIONS. I WASN'T PART OF THE  
12 INTERNAL DISCUSSIONS, SO I WAS CALLING UNPROMPTED.

01:01PM

13 BUT IN THE CONVERSATION WITH MR. BEYER,  
14 I SAID SOMETHING, AND I DECIDED TO REPEAT THAT TO  
15 MR. STERN, WHICH WAS, TO ME, THIS IS THE BEST PLAN.  
16 AND I THINK IT'S IMPORTANT THAT YOU HEAR FROM PEOPLE  
17 LIKE ME, WHO ARE DEALING WITH CLIENTS.

01:02PM

18 Q. CAN YOU ELABORATE ON WHY YOU WOULD USE SUCH  
19 HARSH LANGUAGE TO DESCRIBE MR. GUNDLACH, "A CULTURAL  
20 CANCER"?

01:02PM

21 MR. BRIAN: OBJECTION. RELEVANCE, YOUR HONOR,  
22 352.

23 THE COURT: SUSTAINED.

24 Q. BY MR. MADISON: WELL, HAD YOU YOURSELF MADE  
25 OBSERVATIONS OF MR. GUNDLACH AT TCW IN 2009 THAT FORMED  
26 THE BASIS FOR THAT DESCRIPTION BY YOU?

01:02PM

27 A. YES.

28 Q. SO CAN YOU TELL --

1 THE COURT: AND IN 2008 AND 2009.

2 SO TELL US WHAT YOU ARE REFERRING TO.

3 THE WITNESS: IT WAS JUST A BEHAVIOR THAT WAS  
4 PERSISTENT THROUGHOUT MY TENURE THERE, THAT WAS NOT A  
5 BEHAVIOR THAT I THOUGHT WAS IDEAL FOR A SENIOR MANAGER  
6 OF THE FIRM, IN TERMS OF OPENLY CRITICIZING COLLEAGUES,  
7 IN TERMS OF BEING ADVERSE TO CLIENT INTERACTION, IN  
8 MANY CASES.

01:02PM

9 AND THE COMBINATION OF THE TWO, I  
10 THOUGHT JUST WAS A NEGATIVE, IN TERMS OF THE CULTURE,  
11 AS I MENTIONED THAT WAS BEING -- THAT WAS HOPED TO BE  
12 DEVELOPED A MORE COLLABORATIVE, MORE COOPERATIVE, MORE  
13 CLIENT-FOCUSED CULTURE.

01:03PM

14 Q. WERE YOU AWARE THAT MR. GUNDLACH WAS  
15 PERFORMING EXTREMELY WELL IN HIS INVESTMENTS?

01:03PM

16 A. AT TIMES, HE WAS, YES.

17 Q. AND DID YOU CONSIDER THAT WHEN YOU WERE  
18 FORMING THIS ADVICE?

19 A. YES.

20 Q. AND WHAT, IF ANYTHING -- WHAT WEIGHT DID YOU  
21 GIVE TO THAT?

01:03PM

22 A. AGAIN, TO ME, THAT WAS WHAT WOULD CAUSE THE  
23 SHORT-TERM PAIN. THE FACT IS THAT CLIENTS GIVE YOU  
24 MONEY, HOPING IT WILL GROW, AND THAT YOU WILL TAKE GOOD  
25 CARE OF IT, AND THE INVESTMENTS WILL TURN OUT IN A  
26 POSITIVE WAY. BUT GIVEN THE CAPABILITIES AT THE FIRM  
27 LEVEL, I FELT THAT THAT WAS A SURVIVABLE EVENT.

01:03PM

28 Q. IN THE BEST INTEREST OF THE FIRM?

1 A. THE FIRM AND ITS CLIENTS.

2 Q. SO I WANT TO TURN NOW TO A PERIOD AFTER  
3 MR. GUNDLACH WAS PLACED ON LEAVE, DECEMBER 4.

4 LET ME JUST FIRST SET THAT UP.

5 WHERE WERE YOU THE WEEK OF DECEMBER 1ST? 01:04PM

6 A. I WAS IN NEW YORK ON THAT MONDAY,  
7 NOVEMBER 30TH, AND GOT A CALL LATE IN THE DAY, ASKING  
8 IF I COULD FLY OUT TO L.A. THAT NIGHT.

9 AND SO I DID. I FLEW TO L.A., AND I WAS  
10 IN L.A. ON TUESDAY THROUGH THURSDAY. 01:04PM

11 Q. WHEN YOU WERE HERE, THEN, DID YOU LEARN ABOUT  
12 THE PROSPECT THAT THERE WOULD BE A CONFRONTATION, OF  
13 SORTS, WITH MR. GUNDLACH?

14 A. YES.

15 Q. NOW, WAS THAT THE FIRST TIME YOU HAD LEARNED  
16 THAT MR. STERN WAS TAKING SOME ACTION WITH REGARD TO  
17 MR. GUNDLACH? 01:04PM

18 A. YES.

19 Q. AND DID YOU STAY HERE THAT ENTIRE WEEK?

20 A. TILL THURSDAY. AND THEN I FLEW BACK. 01:04PM

21 Q. SO LET ME ASK YOU, FIRST OF ALL, YOU ARE  
22 FAMILIAR WITH THE SPECIAL MORTGAGE CREDIT FUNDS?

23 A. YES.

24 Q. WE'VE HEARD SOME REFERENCE IN THE TRIAL  
25 ALREADY TO INVESTMENTS THAT ARE OPEN, AND OTHER TYPES  
26 OF INVESTMENTS THAT ARE CLOSED. 01:05PM

27 ARE YOU FAMILIAR WITH THOSE?

28 A. YES.

1 Q. AND CAN YOU EXPLAIN FOR US WHAT THAT MEANS?

2 A. TWO TYPES OF -- THERE WERE, AS I MENTIONED, A  
3 LARGE NUMBER OF INVESTMENT PRODUCTS AT TCW. AND THEY  
4 FELL INTO TWO BROAD CATEGORIES: OPEN-ENDED FUNDS,  
5 WHICH YOU COULD COMPARE TO A MUTUAL FUND, YOU COULD  
6 INVEST YOUR MONEY AT ANY POINT IN TIME, AND YOU CAN  
7 WITHDRAW YOUR MONEY AT ANY POINT IN TIME, SORT OF LIKE  
8 A CHECKING ACCOUNT OR SAVINGS ACCOUNT.

01:05PM

9 AND THEN THERE ARE CLOSED-END FUNDS,  
10 WHERE WHEN YOU GIVE YOUR MONEY TO THAT FUND, YOU GO IN  
11 KNOWING THAT YOU CAN'T GET IT OUT TYPICALLY FOR FIVE  
12 YEARS, SOMETIMES LONGER, LIKE A FIVE-YEAR CD. SO YOU  
13 GIVE YOUR MONEY, IT'S LOCKED UP FOR SOME DEFINED PERIOD  
14 OF TIME THAT YOU KNOW GOING IN.

01:05PM

15 AND SO THERE WERE A NUMBER OF FUNDS THAT  
16 WERE IN THAT CATEGORY, AS WELL. SO THINK OF IT AS SORT  
17 OF A CHECKING ACCOUNT VERSUS CD.

01:06PM

18 Q. AND WHAT CATEGORY WERE THE SPECIAL MORTGAGE  
19 CREDIT FUNDS?

20 A. CD'S. THEY WERE CLOSED-END FUNDS.

01:06PM

21 Q. AND WERE THOSE TERMS GOVERNED BY A CONTRACT  
22 THAT WAS IN PLACE FOR EACH OF THE FUNDS?

23 A. YES.

24 Q. NOW, WHAT, IF ANY, WAS YOUR ROLE, AFTER  
25 MR. GUNDLACH WAS PLACED ON LEAVE, IN TERMS OF  
26 ADDRESSING CLIENT NEEDS VIS-A-VIS THE SPECIAL MORTGAGE  
27 CREDIT FUNDS?

01:06PM

28 A. I WAS ASKED TO TAKE A ROLE IN COORDINATING

1 FEEDBACK FROM CLIENTS, AND THEN COMMUNICATING TO THEM  
2 HOW WE WERE GOING TO DEAL WITH THESE FUNDS.

3 SO THAT WAS -- ESSENTIALLY, I WAS THE  
4 CENTRAL POINT OF CONTACT FOR CLIENTS WHO WANTED TO TALK  
5 ABOUT, AFTER JEFFREY'S DEPARTURE, HOW WE WOULD TREAT  
6 THESE FUNDS, IF WE WOULD GIVE PEOPLE THE ABILITY TO GET  
7 THEIR MONEY OR NOT.

01:06PM

8 Q. DID YOU, IN FACT, COMMUNICATE WITH CLIENTS  
9 ABOUT THAT?

10 A. YES.

01:07PM

11 Q. WAS THERE ANY SORT OF BOARD OR ADVISORY  
12 COMMITTEE FROM THE SPECIAL MORTGAGE CREDIT FUNDS?

13 A. YES. TYPICALLY, ON THE CLOSED END FUND,  
14 BECAUSE THEY ARE IN PLACE FOR A LONG PERIOD OF TIME,  
15 AND BECAUSE YOU CAN'T GET YOUR MONEY OUT, ONE OF THE  
16 WAYS IT'S RUN IS TO ESTABLISH AN ADVISORY COMMITTEE.  
17 AND THAT ADVISORY COMMITTEE IS MADE UP OF TYPICALLY THE  
18 LARGER INVESTORS IN THE FUND; SO IT'S THE CLIENT'S  
19 MONEY AGAIN. THEY ARE ADVOCATES FOR ALL OF THE  
20 INVESTORS. AND THERE COULD BE ANYWHERE FROM THREE TO  
21 FIVE OR SIX CLIENTS WHO ARE ON THIS ADVISORY COMMITTEE.

01:07PM

01:07PM

22 THEIR ROLE IS TO WORK WITH TCW TO MAKE  
23 DECISIONS THAT REFLECT BOTH INTEREST OF THE FUND AND  
24 THEIR INTEREST AS AN INDIVIDUAL ENTITY.

25 Q. NOW, AS IT TURNED OUT, IN YOUR OWN MIND --  
26 WELL, DID YOU COMMUNICATE WITH CLIENTS FROM THE SPECIAL  
27 MORTGAGE CREDIT FUNDS, IN DECEMBER AND JANUARY OF 2010?

01:07PM

28 A. YES.



1 Q. AND FEBRUARY?

2 A. AND FEBRUARY OF 2010.

3 AND IN YOUR OWN MIND, DID THE CLIENT  
4 REACTIONS THAT YOU RECEIVED SORT OF BREAK DOWN INTO ANY  
5 CATEGORIES THAT WOULD BE HELPFUL TO TALK ABOUT?

01:08PM

6 MR. BRIAN: OBJECTION. FORM, YOUR HONOR.

7 THE COURT: I'LL ALLOW IT.

8 DO YOU UNDERSTAND THE QUESTION?

9 THE WITNESS: YES.

10 THE COURT: GO AHEAD.

01:08PM

11 THE WITNESS: WELL, BASED ON MY UNDERSTANDING  
12 OF THE QUESTION, I WOULD SAY THAT THEY RANGED FROM VERY  
13 UNHAPPY TO SOMEWHAT UNHAPPY TO FINE. AND THAT IS  
14 PROBABLY THE FINER WORDS TO USE AROUND THAT; BUT IT WAS  
15 A BIG EVENT IN THE FUND, AND SO THE REACTIONS VARIED.

01:08PM

16 Q. BY MR. MADISON: SO WHY WOULD ANY CLIENT BE  
17 UNHAPPY IN THAT SITUATION?

18 A. WHEN YOU HAVE A FUND WITH THE STRUCTURE,  
19 TYPICAL APPROACH, LIKE IF YOU GAVE YOUR MONEY TO A  
20 BANK, AND YOU AGREED THAT A CERTAIN PERSON WOULD MANAGE  
21 IT FOR A CERTAIN PERIOD OF TIME, YOU HIRE THAT PERSON,  
22 AND THEY ARE CALLED A KEY MAN.

01:08PM

23 SO IF A KEY MAN LEAVES, THAT CREATES THE  
24 NEED FOR ALL THE INVESTORS TO DECIDE WHETHER OR NOT  
25 THEY WANT TO CONTINUE WITH THE FUND OR -- I'M SORRY, IF  
26 THEY WANT TO REPLACE THE KEY MAN WITH SOMEONE. SO  
27 THERE WAS A REQUIREMENT TO COMMUNICATE WITH EVERY  
28 INVESTOR IN THE FUND THAT A KEY MAN EVENT HAD OCCURRED.

01:09PM

1                   CLIENTS DO A LOT OF WORK BEFORE THEY PUT  
2 THE MONEY WITH YOU. THEY DON'T WANT TO HEAR THAT A KEY  
3 MAN EVENT OCCURRED. SO BY NATURE OF THAT  
4 COMMUNICATION, THEY WERE UNHAPPY.

5           Q.       WAS JEFFREY GUNDLACH, AND I'LL BE SLIGHTLY  
6 MORE POLITICALLY CORRECT AND SAY, WAS HE A KEY PERSON  
7 FOR THE FUNDS? 01:09PM

8           A.       YES.

9           Q.       WELL, I THINK YOU ARE USING LANGUAGE THAT'S  
10 JUST USED IN BUSINESS, CORRECT? 01:09PM

11          A.       YES.

12          Q.       I DIDN'T MEAN THAT AS AN ACCUSATION?  
13                   WAS HE A KEY PERSON FOR THOSE SPECIAL  
14 MORTGAGE CREDIT FUNDS?

15          A.       YES. 01:09PM

16          Q.       AND DID THAT -- DID YOU HAVE AN UNDERSTANDING  
17 ABOUT WHAT THAT MEANT?

18          A.       YES.

19          Q.       AND CAN YOU TELL US WHAT THAT MEANT?

20          A.       I'LL START OUT BY SAYING I'M NOT A LAWYER, SO  
21 I'M A MARKETING GUY. BUT I SPENT TIME WORKING WITH  
22 LAWYERS AT TCW AND OUTSIDE COUNSEL, TO UNDERSTAND THE  
23 RAMIFICATIONS. AND MY LAYPERSON VIEW OF IT WAS, WHEN A  
24 KEY MAN EVENT OCCURS, YOU HAVE TO FIND A REPLACEMENT  
25 TEAM, AND THEN THE ADVISOR COMMITTEE DECIDES WHETHER 01:09PM  
26 THAT REPLACEMENT TEAM YOU OFFERED UP IS CAPABLE.

27                   AND SO THAT WAS THE FIRST STEP, WAS TO  
28 DECIDE WHO WOULD BE THE REPLACEMENT TEAM, AND HOW DO WE 01:10PM

1 SHARE THAT WITH THE INVESTORS, AND HOW DO WE LET THEM  
2 VOTE.

3 BUT IMPORTANT TO POINT OUT THAT THAT'S  
4 THE TYPICAL -- THAT WAS THE LANGUAGE THAT EXISTED IN  
5 THESE FUNDS. SO WE COULD HAVE JUST FOLLOWED THAT  
6 COURSE, BUT WE DECIDED NOT TO, AND WE WENT DOWN SOME  
7 DIFFERENT PATHS.

01:10PM

8 Q. WELL, LET ME ASK YOU ABOUT THAT, BUT A COUPLE  
9 OF QUESTIONS FIRST.

10 WHO WAS THE REPLACEMENT TEAM FOR THE  
11 SPECIAL MORTGAGE CREDIT FUNDS AT TCW?

01:10PM

12 A. IT WAS MEMBERS OF THE MET WEST PORTFOLIO TEAM,  
13 THE PRIMARY PERSON BEING BRYAN WHALEN.

14 Q. AND WERE THOSE INVESTMENT PROFESSIONALS  
15 QUALIFIED, IN YOUR VIEW, TO ASSUME THAT ROLE?

01:11PM

16 MR. BRIAN: OBJECTION. FOUNDATION.

17 THE COURT: SUSTAINED. I'LL STRIKE THE  
18 RESPONSE.

19 Q. BY MR. MADISON: DID YOU MAKE STATEMENTS TO  
20 THE CLIENTS ABOUT THE QUALIFICATIONS OF THE MET WEST  
21 TEAM?

01:11PM

22 A. I WASN'T MAKING STATEMENTS.

23 WHAT WE WERE DOING WAS SHARING THEIR  
24 BIOGRAPHIES AND THEIR BACKGROUNDS, SO I WASN'T CALLING  
25 UP AND RENDERING MY OPINION. I WAS SHARING BIOGRAPHIES  
26 AND BACKGROUNDS, TRACK RECORDS.

01:11PM

27 Q. NOW, THE NEXT QUESTION I WANT TO ASK YOU IS:  
28 DID THE FACT THAT CERTAIN CLIENTS WERE UNHAPPY ABOUT

1 THIS CHANGE COME AS A SURPRISE TO YOU?

2 A. NO.

3 Q. WHY NOT?

4 A. IT'S WHAT I SAID EARLIER; THEY SPENT A LOT OF  
5 TIME AND EFFORT MAKING THE DECISION THAT THE TEAM, THE  
6 INVESTMENT PROCESS, THE CHARACTERISTICS OF THE FUND,  
7 WARRANT THEM TAKING THE RISK OF GETTING THE MONEY.

01:11PM

8 SO WHEN YOU HAVE A CRITICAL COMPONENT OF  
9 THE -- WHAT LED YOU TO DECIDE TO PUT YOUR MONEY IN THE  
10 FUND, AND CHANGE, THAT WOULD MAKE ME ANGRY.

01:11PM

11 Q. WERE YOU AWARE OF THAT PHENOMENON BACK IN  
12 SEPTEMBER, ON SEPTEMBER 14TH, WHEN YOU RENDERED THE  
13 ADVICE THAT YOU TOLD US ABOUT TO MR. STERN?

14 A. NOT ON THE SPECIAL MORTGAGE CREDIT FUNDS, I  
15 DIDN'T THINK OF THE KEY MAN EVENT, NO.

01:12PM

16 Q. DID YOU CONSIDER WHETHER, GENERALLY, WITH  
17 SOMEONE AS IMPORTANT TO TCW AS MR. GUNDLACH, THAT IT  
18 WOULD CREATE REACTIONS ON THE PARTS OF CLIENTS WHO HAD  
19 INVESTED --

20 A. YES.

01:12PM

21 Q. BACK IN SEPTEMBER?

22 A. YES.

23 Q. AND YOU HAD FACTORED THAT INTO YOUR OPINION,  
24 WHICH YOU SHARED WITH MR. STERN?

25 A. YES.

01:12PM

26 Q. NOW, DID YOU KNOW THAT MET WEST HAD ACTUALLY  
27 WON A MORNINGSTAR FIXED INCOME OF THE YEAR AWARD?

28 A. YES.

1 Q. AND DID YOU COMMUNICATE THAT TO CLIENTS?

2 A. YES.

3 Q. SO AGAIN, IN DECEMBER AND JANUARY OF 2010, AS  
4 YOU WERE DEALING WITH THE CLIENTS ABOUT THE SPECIAL  
5 MORTGAGE CREDIT FUNDS NOW, WAS A DECISION MADE BY TCW  
6 THAT THERE WOULD BE NO CHANGES, BECAUSE THAT'S WHAT THE  
7 DOCUMENTS PROVIDED?

01:12PM

8 A. THE DECISION FROM THE BEGINNING, WAS THAT WE  
9 WOULD NOT FOLLOW THE DOCUMENTS, IN TERMS OF OUR COURSE  
10 OF ACTION; THAT WE WOULD TALK TO CLIENTS, GET FEEDBACK,  
11 TAKE THAT FEEDBACK INTO CONSIDERATION, AND THEN MAKE  
12 DECISIONS BASED ON WHAT WE CONSIDERED GOOD JUDGMENT  
13 VERSUS LEGAL DOCUMENT.

01:12PM

14 Q. ULTIMATELY, WAS A DECISION MADE BY TCW ABOUT  
15 WHETHER TO ADHERE STRICTLY TO WHATEVER THE CONTRACTS  
16 SAID, OR TO DO SOMETHING ELSE?

01:13PM

17 A. YES. THE LATTER, TO DO SOMETHING ELSE.

18 Q. AND WHAT WAS THE SOMETHING ELSE?

19 A. TO GIVE CLIENTS THE ABILITY TO GET THEIR MONEY  
20 BACK.

01:13PM

21 Q. WHY?

22 A. IN THE INTEREST OF THE TCW BUSINESS FRANCHISE  
23 CREDIBILITY.

24 Q. SO THERE WERE CONTRACTS THAT SAID TCW COULD  
25 INSIST THAT THOSE INVESTMENTS REMAIN WITH THE NEW TEAM  
26 MANAGING THEM?

01:13PM

27 A. JUST TO BE CLEAR, THE WAY IT WOULD WORK IS,  
28 THIS KEY PERSON EVENT OCCURS; YOU OFFER UP A

1 REPLACEMENT TEAM; THE INVESTORS VOTE WHETHER OR NOT  
2 THAT REPLACEMENT TEAM IS CAPABLE; AND IF THEY VOTE NO,  
3 THEN THE FUND JUST, YOU KNOW, GRADUALLY, OVER THE  
4 YEARS, COULD BE MANY YEARS, LIQUIDATES.

5 WE THOUGHT THAT WAS TOO LONG A PERIOD OF 01:14PM  
6 TIME, IF THEY VOTED NO CONFIDENCE IN THE REPLACEMENT  
7 TEAM, THAT THEIR MONEY WOULD BE LOCKED UP FOR YEARS.  
8 AND THAT DIDN'T SEEM LIKE A GOOD IDEA FOR CLIENTS; SO  
9 WE DECIDED TO GIVE THEM THE ABILITY TO GET THEIR MONEY  
10 BACK IMMEDIATELY, IF THEY DIDN'T HAVE CONFIDENCE IN THE 01:14PM  
11 REPLACEMENT TEAM.

12 Q. SO HOW DID TCW GO ABOUT GIVING CLIENTS THAT  
13 OPTION?

14 A. WE ENDED UP CREATING THREE DIFFERENT OPTIONS.  
15 ONE WAS, GET MY MONEY BACK AS QUICKLY AS POSSIBLE. TWO 01:14PM  
16 WAS, LEAVE MY MONEY IN THE FUND, BUT DON'T BUY ANY NEW  
17 INVESTMENTS; AND THEN, AS YOU SELL THEM, SEND ME THE  
18 MONEY. AND THREE WAS, GO FORWARD WITH THE NEW TEAM, AS  
19 IF NOTHING HAD HAPPENED, OTHER THAN THE TEAM WAS  
20 REPLACED. 01:14PM

21 SO WE SENT OUT TO INVESTORS, THOSE THREE  
22 OPTIONS, AND THEY CHOSE.

23 Q. AND AGAIN, ARE YOU TELLING US THAT THOSE WERE  
24 RIGHTS THAT YOUR INVESTORS DIDN'T NECESSARILY HAVE,  
25 UNDER THE AGREEMENTS? 01:14PM

26 A. THEY DEFINITELY DIDN'T HAVE THEM UNDER THE  
27 AGREEMENTS.

28 Q. THESE WERE GREATER RIGHTS FOR THE INVESTORS

1 THAN THE AGREEMENTS WERE MADE?

2 A. CORRECT.

3 Q. WHY WOULD TCW OFFER A CHOICE TO INVESTORS THAT  
4 WOULD ALLOW THEM TO TAKE THEIR MONEY OUT -- STRIKE  
5 THAT.

01:15PM

6 IF THEY TOOK THEIR MONEY OUT, WOULDN'T  
7 THAT MEAN LESS REVENUE FOR TCW?

8 A. YES.

9 Q. BECAUSE THERE WOULD BE LOWER FEES?

10 A. CORRECT.

01:15PM

11 Q. SO WHY WOULD TCW OFFER A SCENARIO WHERE THERE  
12 WOULD BE LESS REVENUE FOR TCW?

13 A. THE TWO PRIMARY FACTORS, IN MY OPINION, WERE  
14 ONE, IT'S THEIR MONEY; SO IF THEY WANT IT BACK, YOU  
15 HAVE TO GIVE IT TO THEM.

01:15PM

16 TWO, THE CREDIBILITY OF THE FIRM, IN THE  
17 LONG RUN, WOULD BE BETTER WITH THOSE OPTIONS THAN  
18 WITHOUT, IF WE JUST, YOU KNOW, FOR LACK OF A BETTER  
19 PHRASE, PLAYED HARDBALL AND SAID, THE DOCUMENTS SAY  
20 THIS IS THE WAY IT WORKS. TOO BAD.

01:15PM

21 SO IT WAS MORE FOR THE LONG-TERM  
22 CREDIBILITY OF THE FIRM, THAT THE CLIENTS WOULDN'T BE  
23 SCORCHED EARTH -- THEY WOULD NEVER WANT TO TALK TO US  
24 AGAIN.

25 SO AGAIN, SHORT-TERM PAIN. LOST  
26 REVENUES IN THE NEAR TERM, BUT AT LEAST DOWN THE ROAD,  
27 YOU GO BACK TO THAT CLIENT AND CONVINCED THEM TO HIRE  
28 YOU FOR ANOTHER TCW MANDATE.

01:15PM

1 Q. WERE YOU STILL WORKING ON THIS AT THE TIME THE  
2 VOTE WAS CAST BY THE SPECIAL MORTGAGE CREDIT FUND  
3 INVESTORS?

4 A. CORRECT.

5 Q. AND AT THE END OF THE DAY, WHAT WAS THE VOTE? 01:16PM

6 A. PEOPLE CHOSE, OBVIOUSLY, ALL THREE OPTIONS.

7 THE MAJORITY OF THE ASSETS STAYED IN THE  
8 TWO FUNDS. WE DID LIQUIDATE ONE OF THE FUNDS.

9 I DON'T KNOW IF YOU WANT TO GET INTO  
10 THAT, BUT OF THE TWO FUNDS THAT WE KEPT, THE MAJORITY 01:16PM  
11 OF THE ASSETS STAYED IN EACH OF THEM; BUT THERE WERE  
12 PEOPLE WHO TOOK MONEY OUT, AS WELL.

13 Q. SO IF YOU HAD LOOKED AT JUST THE ASSETS UNDER  
14 MANAGEMENT IN THE FUNDS, DID A MAJORITY LIQUIDATE OR  
15 STAY? 01:16PM

16 MR. BRIAN: OBJECTION, FOUNDATION.

17 THE COURT: OVERRULED.

18 YOU -- DO YOU KNOW THAT?

19 THE WITNESS: STATISTICALLY, I THINK THE  
20 NUMBER WAS 52 OR THREE PERCENT STAYED, BASED ON ASSETS. 01:16PM

21 Q. BY MR. MADISON: AND THEN WITH REGARD TO --  
22 YOU MENTIONED THREE FUNDS. AND I SHOULD HAVE BEEN  
23 CLEARER AT THE OUTSET, WERE THERE THREE SPECIAL  
24 MORTGAGE CREDIT FUNDS?

25 A. YES. 01:17PM

26 SO THERE WAS ONE FROM 2007, ONE FROM  
27 2008, AND ONE FROM 2009.

28 THE 2009 FUND WAS UNDER THE GOVERNMENT



1 PROGRAM CALLED THE PUBLIC PRIVATE INVESTMENT  
2 PARTNERSHIP OR PPIP. TCW IS ONE OF THE NINE MANAGERS  
3 SELECTED TO BE A MANAGER OF THIS FUND, WHICH WAS MEANT  
4 TO GIVE THESE DISTRESSED INVESTMENTS THE ABILITY TO BE  
5 LIQUIDATED IN A MORE ORDERLY MANNER, AND POSSIBLY MAKE  
6 MONEY FOR INVESTORS.

01:17PM

7 SO THAT FUND HAD ONLY JUST STARTED, WHEN  
8 THE DECISION WAS MADE TO PUT JEFFREY ON LEAVE. SO IT  
9 WAS TOO NEW, IT WAS JUST -- IT DIDN'T MAKE SENSE TO  
10 KEEP IT. IT WAS 30 DAYS OLD. SO IT MADE MORE SENSE TO  
11 JUST SAY, HERE'S YOUR MONEY BACK.

01:17PM

12 Q. WAS IT THE PRINCIPLE, OR MORE OR LESS THAT WAS  
13 RETURNS?

14 A. IT WAS MORE PEOPLE ACTUALLY MADE MORE IN THE  
15 SHORT PERIOD OF TIME THAT THE MONEY WAS GIVEN TO US,  
16 INVESTED, AND WE RETURNED A LARGER PORTION.

01:17PM

17 Q. HAD THERE BEEN THIS KEY MAN PERSON PROVISION  
18 IN THAT SITUATION AS WELL?

19 A. YES.

20 Q. DID THOSE WORK THE WAY THEY WERE SUPPOSED TO?

01:18PM

21 A. WE DIDN'T EVEN GO TO A VOTE, IN TERMS OF THE  
22 REPLACEMENT TEAM. WE JUST DECIDED TO LIQUIDATE.

23 Q. AND THEN WERE THESE THREE SPECIAL MORTGAGE  
24 CREDIT FUNDS CALLED I, II AND III?

25 A. CORRECT.

01:18PM

26 Q. AND THAT WOULD BE --

27 A. THAT WOULD BE III.

28 Q. PARDON?

1 A. PPIP WAS III.

2 Q. AND THAT WAS FROM 2009?

3 A. CORRECT.

4 Q. 2007 WAS I?

5 A. UH-HUH, YES.

01:18PM

6 Q. AND 2008 WAS II?

7 A. CORRECT.

8 Q. AND FOR 2000 -- FOR SPECIAL MORTGAGE CREDIT  
9 FUND I AND II, DID A MAJORITY OF THE ASSETS STAY PUT?

10 A. MY STATISTIC EARLIER REFERRED TO THE  
11 COMBINATION OF I AND II.

01:18PM

12 Q. SO ABOUT 55 PERCENT --

13 A. 50 TO 55 PERCENT STAYED.

14 THE COURT: I THINK YOU SAID 52 OR THREE  
15 PERCENT STAYED --

01:18PM

16 MR. MADISON: SORRY, YOUR HONOR.

17 Q. BY MR. MADISON: PARDON ME.

18 AND SO THESE INVESTMENTS WOULD THEN BE  
19 MANAGED BY THE NEW TEAM --

20 A. CORRECT.

01:18PM

21 Q. -- AT MET WEST.

22 DO YOU RECALL A TIME WHEN YOU  
23 COMMUNICATED, IN DECEMBER AND JANUARY OF 2009 AND '10,  
24 WITH A MAN NAMED BOB BORDEN?

25 A. YES.

01:19PM

26 Q. WHO IS BOB BORDEN?

27 A. HE'S THE CHIEF INVESTMENT OFFICER AT SOUTH  
28 CAROLINA RETIREMENT SYSTEMS, THE PENSION FUNDS FOR THE

1 STATE OF SOUTH CAROLINA.

2 Q. AND DID HE HAVE INVESTMENTS THROUGH HIS STATE  
3 PENSION FUND IN THE SPECIAL MORTGAGE CREDIT FUNDS?

4 A. ALL THREE, YES.

5 Q. AND DID MR. BORDEN HAVE ANY ROLE IN THE  
6 ADVISORY COMMITTEE THAT YOU MENTIONED?

01:19PM

7 A. HE WAS ON THE ADVISORY COMMITTEE ON TWO OF  
8 THREE FUNDS.

9 Q. SO WAS HE ONE OF THE CLIENTS THAT YOU WERE  
10 COMMUNICATING WITH DURING THIS TIME PERIOD FOLLOWING  
11 MR. GUNDLACH'S SEPARATION?

01:19PM

12 A. YES.

13 Q. AND TELL US WHAT YOU RECALL ABOUT THOSE  
14 COMMUNICATIONS.

15 A. TO THE EARLIER POINT, ABOUT NOT CHARACTERIZING  
16 OTHER PEOPLE -- WHAT DO YOU MEAN -- WHAT DO YOU WANT?

01:19PM

17 Q. WELL, WAS MR. BORDEN ASKING YOU FOR  
18 INFORMATION TO HELP ADVISE --

19 A. YES.

20 Q. -- THE MEMBERS OF THE FUND?

01:19PM

21 AND LET ME JUST SHOW YOU AN EXHIBIT THAT  
22 I BELIEVE WAS ALREADY IDENTIFIED, YOUR HONOR, BUT I  
23 DON'T BELIEVE IT'S IN EVIDENCE. IT'S 2122.

24 DO YOU RECOGNIZE THAT?

25 A. YES.

01:20PM

26 Q. AND WHAT IS 2122?

27 A. THIS IS A LIST OF THE INVESTORS IN EACH OF THE  
28 FUNDS. THERE WAS A REQUEST TO SHARE IT WITH THE

1 MEMBERS OF THE ADVISORY COMMITTEE, AND I SHARED IT WITH  
2 BOB BORDEN.

3 MR. MADISON: I'D MOVE 2122, YOUR HONOR.

4 MR. BRIAN: NO OBJECTION.

5 THE COURT: IT WILL BE ADMITTED.

01:20PM

6

7 (EXHIBIT 2122 ADMITTED.)

8

9 Q. BY MR. MADISON: AND IF WE LOOK AT THIS, THE  
10 COVER PAGE, THE FIRST PAGE IS AN E-MAIL EXCHANGE. IF  
11 WE EXPAND THAT, JUST TO LOOK AT THE FIRST -- THE E-MAIL  
12 ON THE BOTTOM FROM YOURSELF.

01:20PM

13 WE NEED TO GO ALL THE WAY UP TO THE  
14 ORIGINAL MESSAGE.

15 SO IT'S FROM YOURSELF, AND THEN IT'S TO  
16 SOME INDIVIDUALS, INCLUDING, AT THE END, MR. BORDEN?

01:21PM

17 A. CORRECT.

18 Q. AND YOUR MESSAGE SAYS (READING):

19 SUBJECT LIST, INVESTOR LISTS,  
20 WITH CONTACT NAME AND ADDRESS  
21 .XLSX, ATTACHED IS THE LIST FOR  
22 INVESTORS IN SPECIAL MORTGAGE  
23 CREDIT FUND II, IN THE EVENT YOU  
24 NEED THE INFORMATION. IT IS  
25 CONFIDENTIAL, AND ONLY INTENDED FOR  
26 USE WITH MATTERS RELATING TO THE  
27 FUND. IT SHOULD NOT BE DISTRIBUTED  
28 TO ANY OUTSIDE PARTIES.

01:21PM

01:21PM

1                   AND THEN YOU SAY, THANKS, AND LET ME  
2 KNOW IF YOU HAVE ANY QUESTIONS.

3                   WHY DID YOU SEND THIS LIST TO THE  
4 INDIVIDUALS YOU SENT IT TO?

5           A.     BOB WAS ONE OF THE PRIMARY PEOPLE WHO ASKED  
6 FOR THE LIST. BUT THEN THE OTHER ONES YOU SEE ON THIS  
7 DISTRIBUTION LIST THOUGHT IT WAS A GOOD IDEA IF THEY  
8 SAW THE OTHER INVESTORS IN THE FUND.

01:21PM

9           Q.     WERE THEY ALL MEMBERS OF THIS ADVISORY  
10 COMMITTEE?

01:22PM

11          A.     CORRECT.

12          Q.     WHAT DID YOU MEAN BY THE STATEMENT IT'S  
13 CONFIDENTIAL AND ONLY INTENDED FOR USE WITH MATTERS  
14 RELATING TO THE FUND?

15               MR. BRIAN: OBJECTION, DOCUMENT SPEAKS FOR  
16 ITSELF.

01:22PM

17               THE COURT: SUSTAINED.

18          Q.     BY MR. MADISON: WELL, WAS THE INFORMATION  
19 CONFIDENTIAL?

20               MR. BRIAN: OBJECTION. FOUNDATION.

01:22PM

21               THE COURT: SUSTAINED.

22          Q.     BY MR. MADISON: THIS WAS TCW INFORMATION THAT  
23 YOU HAD ACCESS TO, SIR?

24               MR. BRIAN: FOUNDATION.

25               MR. MADISON: WHERE DID YOU GET THE LIST?

01:22PM

26               THE WITNESS: TCW.

27          Q.     BY MR. MADISON: OKAY.

28                         DID YOU KNOW WHETHER OR NOT TCW TREATED

1 IT AS CONFIDENTIAL?

2 A. YES.

3 Q. IS THAT WHY YOU SAID THAT IN THE E-MAIL?

4 A. YES.

5 Q. AND DID YOU EXPECT --

01:22PM

6 THE COURT: WAIT A MINUTE. WE HAVEN'T GOT AN  
7 ANSWER.

8 Q. BY MR. MADISON: I'M SORRY? I THOUGHT --

9 THE COURT: WE'RE ROLLING RIGHT ALONG. YOU  
10 SAID, DID HE KNOW SOMETHING? HE SAID YES. AND THEN  
11 YOU WENT ON.

01:22PM

12 SO I DON'T KNOW IF WE -- JUST SLOW IT  
13 DOWN A LITTLE BIT, MAKE SURE YOU GET WHAT YOU --

14 MR. MADISON: ALL RIGHT, YOUR HONOR.

15 Q. SO WHEN YOU SENT THIS LIST TO MR. BORDEN AND  
16 THE OTHERS, IT WAS YOUR INTENT THAT THEY ONLY USE THE  
17 INFORMATION FOR THE WORK THEY WERE DOING ON THE  
18 ADVISORY COMMITTEE?

01:22PM

19 MR. BRIAN: OBJECTION. THAT MISSTATES THE  
20 DOCUMENT.

01:23PM

21 MR. MADISON: WELL, I'M SURE MR. BRIAN WILL  
22 POINT THAT OUT.

23 THE COURT: JUST HOLD ON A MINUTE.

24 ALL RIGHT. GO AHEAD, MR. MADISON.

25 MR. MADISON: THANK YOU.

01:23PM

26 Q. THEN IT LOOKS LIKE MR. BORDEN FORWARDS IT TO  
27 HIMSELF. IF WE GO JUST TO THE NEXT PIECE BELOW THE  
28 BOXES, AND DO YOU RECOGNIZE THE ADDRESS LINE AT

1 SOUTHCAROLINA BOB AT YAHOO.COM?

2 A. NO.

3 Q. WAS THAT THE E-MAIL ADDRESS THAT YOU WERE  
4 USING WITH MR. BORDEN?

5 A. NO.

01:23PM

6 Q. WHAT E-MAIL ADDRESS DID YOU USE?

7 A. IT'S NOT -- I DON'T REMEMBER. BUT YOU CAN SEE  
8 HIS NAME HERE, BOB BORDEN; SO THAT MEANS IN MY SYSTEM  
9 IT WAS UNDER HIS CIO ADDRESS AT SOUTH CAROLINA.

10 Q. IF YOU LOOK OVER TO 2123 JUST FOR A MOMENT,  
11 AND TELL US IF THAT REFRESHES YOUR RECOLLECTION?

01:23PM

12 A. THAT'S IT, YES, BBORDEN@IC.SC.GOV.

13 Q. SO THAT WAS HIS BUSINESS OFFICIAL E-MAIL  
14 ADDRESS THAT YOU USED?

15 A. CORRECT.

01:24PM

16 Q. DO YOU KNOW WHY MR. BORDEN FORWARDED IT TO HIS  
17 YAHOO E-MAIL ADDRESS?

18 A. I DO NOT.

19 Q. AND THEN IF WE LOOK UP ABOVE, AT THE VERY TOP,  
20 IT GOES FROM MR. BORDEN'S PERSONAL E-MAIL TO  
21 BVANEVERY11@GMAIL.COM. AND WE HAVE EVIDENCE THAT'S  
22 MS. VANEVERY'S PERSONAL E-MAIL.

01:24PM

23 DID YOU KNOW THAT MR. BORDEN WAS GOING  
24 TO SEND THIS INFORMATION TO MS. VANEVERY, WHEN YOU SENT  
25 IT TO HIM?

01:24PM

26 A. DEFINITELY NOT.

27 Q. WOULD YOU HAVE PERMITTED THAT, IF YOU HAD  
28 KNOWN ABOUT IT?

1 A. NO.

2 Q. WHY NOT?

3 A. IT'S THE INVESTORS IN THE FUND WANT THIS  
4 INFORMATION TREATED CONFIDENTIALLY.

5 MR. BRIAN: OBJECTION. MOVE TO STRIKE. NO  
6 FOUNDATION.

01:24PM

7 THE COURT: SUSTAINED.

8 I'LL STRIKE THE RESPONSE.

9 Q. BY MR. MADISON: I JUST WANT TO KNOW WHAT YOUR  
10 STATE OF MIND WAS MR. WALLS, WHY YOU WOULDN'T HAVE  
11 ALLOWED IT TO GO TO ANOTHER FIRM?

01:24PM

12 A. IN MY OPINION, IT WAS ONLY THE BUSINESS OF  
13 THOSE WHO WERE INVESTED IN THE FUND.

14 Q. WERE YOU AWARE THAT MR. GUNDLACH AND OTHERS,  
15 THE SENIOR INDIVIDUALS AT DOUBLELINE HAD, THEMSELVES,  
16 PERSONAL INVESTMENTS IN THE FUND?

01:25PM

17 A. YES.

18 Q. AND WOULD YOU PERMIT THOSE INDIVIDUAL  
19 INVESTORS TO HAVE THE INFORMATION, IF THEY HAD ASKED?

20 A. IF THEY HAD ASKED, YES.

01:25PM

21 Q. IF I COULD HAVE JUST ONE MOMENT, YOUR HONOR.  
22 DID YOU, IN ANY OF YOUR CONVERSATIONS  
23 WITH CLIENTS, AFTER MR. GUNDLACH LEFT TCW, DID ANY OF  
24 THEM TALK TO YOU ABOUT THE ANALYTIC SYSTEMS THAT TCW  
25 USED TO MANAGE MBS INVESTMENTS?

01:25PM

26 A. YES.

27 Q. DO YOU RECALL ANY OF THOSE COMMUNICATIONS?

28 MR. BRIAN: OBJECTION, HEARSAY.



1 THE COURT: JUST A YES OR NO ANSWER, SIR.

2 THE WITNESS: YES.

3 Q. BY MR. MADISON: AND WAS IT A QUESTION THAT A  
4 CLIENT WAS ASKING?

5 A. YES.

01:26PM

6 Q. CAN YOU JUST TELL US WHAT THAT QUESTION WAS?

7 A. IT WAS IN THE CONTEXT OF IF DOUBLELINE WERE TO  
8 SUB-ADVISE THE FUNDS, WOULD THEY STILL HAVE ACCESS TO  
9 THE SAME ANALYTICS THEY HAD WHEN THEY WERE A PART OF  
10 TCW.

01:26PM

11 Q. DID YOU PROVIDE AN ANSWER TO THAT?

12 A. THE ANSWER WAS NO, THEY WOULD NOT.

13 Q. WHY NOT?

14 MR. BRIAN: OBJECTION. RELEVANCE. 352,  
15 OPINION.

01:26PM

16 THE COURT: SUSTAINED.

17 Q. BY MR. MADISON: YOU USED A TERM CALLED  
18 SUB-ADVISE.

19 CAN YOU EXPLAIN TO US WHAT THAT MEANS,  
20 PLEASE?

01:26PM

21 A. SURE. IT WOULD BE A LITTLE BIT LIKE HIRING A  
22 DIFFERENT GENERAL CONTRACTOR FOR A JOB. SO YOU START A  
23 JOB, THEY HIRE ONE GENERAL CONTRACTOR. SOMETHING  
24 HAPPENS TO THAT GENERAL CONTRACTOR, ANOTHER ONE STEPS  
25 IN AND TAKES OVER THE JOB.

01:26PM

26 SUB-ADVISOR IS SOMEONE WHO TAKES ON  
27 RESPONSIBILITY FOR THE PORTFOLIO AND RUNS IT. IT IS  
28 PROBABLY DIFFERENT THAN THE ORIGINAL FIRM.

1 Q. AND THAT WAS WHAT A PARTICULAR CLIENT WAS  
2 ASKING ABOUT --

3 A. CORRECT.

4 Q. -- WITH REGARD TO MR. GUNDLACH?

5 A. CORRECT.

01:27PM

6 Q. DID YOU SEE ANY SIMILARITIES IN REQUESTS THAT  
7 THE CLIENTS WERE MAKING TO YOU AFTER MR. GUNDLACH  
8 SEPARATED?

9 A. YES.

10 Q. IN THE SENSE THAT WERE THEY ASKING FOR THE  
11 SAME SORTS OF THINGS?

01:27PM

12 A. YES.

13 Q. DID YOU KNOW WHETHER OR NOT DOUBLELINE,  
14 MR. GUNDLACH, MS. VANEVERY AND OTHERS THERE WERE  
15 COMMUNICATING WITH THOSE CLIENTS?

01:27PM

16 A. NO.

17 Q. AT THAT TIME?

18 A. I DID NOT.

19 Q. DO YOU KNOW WHETHER DOUBLELINE USED THAT  
20 CONTACT INFORMATION THAT YOU HAD SENT TO MR. BORDEN TO  
21 CONTACT CLIENTS, TO SEE IF THEY WOULD MOVE MONEY TO  
22 DOUBLELINE?

01:27PM

23 A. I DIDN'T KNOW THAT AT THE TIME, NO.

24 Q. WOULD YOU PERMIT THAT, HAD YOU KNOWN THAT?

25 A. NO.

01:27PM

26 MR. MADISON: NOTHING FURTHER AT THIS TIME,  
27 YOUR HONOR.

28 THE COURT: ALL RIGHT.

1 CROSS-EXAMINATION?

2 MR. BRIAN: YES, YOUR HONOR.

3 I HAVE SOME BINDERS TO PASS OUT.

4

5

01:27PM

6

CROSS-EXAMINATION

7 BY MR. BRIAN:

8 Q. COULD I START WITH THAT DOCUMENT WE JUST HAD  
9 UP? WHAT WAS IT 2122?

10

THE COURT: THAT WAS IT, 2122.

01:29PM

11

MR. BRIAN: 2122.

12

13 Q. AND IF WE COULD HIGHLIGHT THAT FIRST PARAGRAPH  
14 BENEATH MR. WALLS' -- ENLARGE MR. WALLS' E-MAIL,  
15 PLEASE.

16

CAN YOU MAKE THAT BIGGER, PLEASE?

01:29PM

17

GOOD AFTERNOON, LADIES AND GENTLEMEN.

18

GOOD AFTERNOON, MR. WALLS.

19

A. SIR.

20

Q. WE'VE NEVER MET, HAVE WE, SIR?

21

A. NO.

01:29PM

22

Q. AND YOU LIVE IN NEW YORK?

23

A. YES.

24

Q. SO I TAKE IT YOU CAME OUT TO TESTIFY  
25 VOLUNTARILY; IS THAT RIGHT?

26

A. YES.

01:29PM

27

Q. WE'VE NEVER MET -- HAVE YOU MET MR. MADISON?

28

A. YES.

Q. DID YOU MEET WITH MR. MADISON IN PREPARATION

1 FOR YOUR TESTIMONY?

2 A. YES.

3 Q. AND YOU DIDN'T EVEN HAVE YOUR DEPOSITION TAKEN  
4 IN THIS CASE, DID YOU, SIR?

5 A. NO.

01:29PM

6 MR. MADISON: OBJECT TO THE CHARACTERIZATION.  
7 THAT MEANS MR. BRIAN CHOSE NOT TO TAKE THE DEPOSITION.

8 MR. BRIAN: I'LL REFRAME IT.

9 Q. I DIDN'T TAKE YOUR DEPOSITION, DID I, SIR?

10 A. NO.

01:30PM

11 Q. YOU AND I HAVE NEVER MET UNTIL THIS VERY  
12 MOMENT?

13 A. CORRECT.

14 Q. WE HAVE NEVER SPOKEN A WORD TO EACH OTHER  
15 BEFORE TODAY, HAVE WE, SIR?

01:30PM

16 A. CORRECT.

17 Q. TAKE A LOOK AT EXHIBIT 2122. THAT'S YOUR  
18 DECEMBER 17TH E-MAIL TO MR. BORDEN, IS IT?

19 A. YES.

20 Q. AND YOU SAY THERE, IF WE COULD UNDERLINE THAT  
21 PHRASE THAT SAYS, INTENDED FOR USE WITH MATTERS  
22 RELATING TO THE FUND.

01:30PM

23 YOU WROTE THAT, DID YOU NOT, SIR?

24 A. CORRECT.

25 Q. YOU INTENDED THAT THE RECIPIENT OF THIS LIST  
26 THAT YOU SENT COULD USE IT FOR -- WITH REGARD TO  
27 MATTERS RELATING TO THE FUND, DIDN'T YOU, SIR?

01:30PM

28 A. UH-HUH. YES.

1 Q. YES. NOW, YOU MENTIONED SOMETHING CALLED  
2 SUB-ADVISING.

3 DO YOU RECALL THAT TESTIMONY, SIR?

4 A. YES.

5 Q. NOW, SUB-ADVISING IS WHEN AN ASSET MANAGEMENT  
6 COMPANY LIKE TCW ENTERS A CONTRACT WITH SOMEBODY  
7 OUTSIDE THE FIRM TO MANAGE THAT FUND, RIGHT?

01:30PM

8 A. RIGHT.

9 Q. USUALLY IN EXCHANGE FOR SOME SORT OF FEE  
10 SHARING, RIGHT?

01:31PM

11 A. RIGHT.

12 Q. ISN'T IT A FACT THAT AFTER TCW FIRED  
13 MR. GUNDLACH, A NUMBER OF PEOPLE WHO WERE INVESTORS IN  
14 THE SMCF FUNDS ASKED IF THE COMPANY INTENDED TO ENTER  
15 INTO A SUB-ADVISORY AGREEMENT WITH MR. GUNDLACH; ISN'T  
16 THAT TRUE?

01:31PM

17 MR. MADISON: OBJECTION, YOUR HONOR. THIS  
18 OPENS THE DOOR, BASED ON THE MOTION IN LIMINE. AND WE  
19 MAY WANT TO APPROACH. I DON'T KNOW THAT MR. BRIAN  
20 INTENDS THAT.

01:31PM

21 THE COURT: CAN YOU COME UP? WHAT MOTION IN  
22 LIMINE WAS IT? COME ON UP.

23

24 (THE FOLLOWING PROCEEDINGS  
25 WERE HELD AT SIDEBAR:)

01:31PM

26

27 MR. MADISON: YEAH.

28 THE COURT: I DON'T, I COULDN'T -- I'VE GOT MY

1 LITTLE CHEAT SHEET HERE, BUT I CAN'T REMEMBER ALL THIS  
2 STUFF.

3 MR. MADISON: MR. BRIAN IS TALKING ABOUT --  
4 THE POINT IS, WHEN SUB-ADVISORY WAS DISCUSSED WITH THE  
5 CLIENTS, ONE OF THE MAJOR FACTORS IN THAT WAS  
6 PARTICULARLY THE MARIJUANA, THAT BEEN FOUND, AND THE  
7 IDEA THAT TCW COULD NOT PUT ITSELF IN A POSITION AFTER  
8 HAVING THAT KNOWLEDGE OF SUB-ADVISING.

01:32PM

9 THE COURT: WE'RE NOT GOING THERE.

10 MR. BRIAN: I'M NOT GOING THERE.

01:32PM

11 THE COURT: ALL WE'RE DOING IS TALKING ABOUT  
12 WHETHER THERE WERE INQUIRIES CONCERNING THAT, AND HE'S  
13 NOT -- GO AHEAD.

14 MR. BRIAN: I'M DOING TWO THINGS. THE FIRST  
15 CLEARLY DIDN'T RAISE A CONCERN, I THINK, FROM  
16 MR. MADISON.

01:32PM

17 I'M GOING TO ASK THIS WITNESS WHETHER  
18 THERE WERE REQUESTS TO SUB-ADVISE. AND THEREFORE,  
19 MR. BORDEN AND OTHER INVESTORS HAD A RIGHT TO  
20 DISTRIBUTE THAT LIST TO MR. GUNDLACH OR PEOPLE AT  
21 DOUBLELINE, PURSUANT TO THEIR DESIRE THAT THERE BE A  
22 NEGOTIATED SUB-ADVISORY ARRANGEMENT, THAT DIDN'T  
23 IMPLICATE ANYTHING HE'S TALKING ABOUT.

01:33PM

24 THE SECOND THING I AM GOING TO ASK HIM  
25 IS, HE THEN SENT AN E-MAIL TO THE INVESTORS, IN WHICH  
26 HE TOLD THEM THAT TCW WAS CONSIDERING A SUB-ADVISORY.  
27 AND I AM GOING TO ASK HIM, ISN'T IT A FACT THAT YOU  
28 DECIDED NOT TO DO THAT? THEY WERE CLAIMING AS DAMAGES,

01:33PM

1 THE REDUCED FEES THAT THEY HAVE EXPERIENCED HERE. THEY  
2 MADE A BUSINESS DECISION, FIRST TO ALLOW THOSE PEOPLE  
3 TO LIQUIDATE.

4 THIS WITNESS HAS ADMITTED THAT BECAUSE  
5 OF A DESIRE TO CURRY FAVOR FOR FUTURE BUSINESS THAT  
6 GOES DIRECTLY TO CAUSATION, GOES DIRECTLY TO  
7 MITIGATION, AND THEY MADE A DECISION NOT TO ENTER INTO  
8 SUB-ADVISORY. THE WAY THEY DID IT IS IRRELEVANT; BUT  
9 THE FACT IS, THEY MADE THAT DECISION.

01:33PM

10 MR. MADISON: BUT, YOUR HONOR, IT REALLY OPENS  
11 THE DOOR TO ME, DOES --

01:34PM

12 THE COURT: I'M NOT GETTING INTO THE --

13 MR. MADISON: I UNDERSTAND, BUT I DON'T  
14 BELIEVE -- HE SHOULDN'T BE ABLE TO GET INTO THE  
15 QUESTION OF SUB-ADVISORY. THERE IS A MEMO.

01:34PM

16 THE COURT: I DON'T THINK THAT YOU CAN BE ABLE  
17 TO SUGGEST THAT THIS IS GIVEN IN CONFIDENCE, AND CAN'T  
18 BE GIVEN TO ANYBODY WHEN, IN FACT, IT COULD BE.

19 AS A PRACTICAL MATTER IT SEEMS A LOT OF  
20 ADO ABOUT NOTHING, BECAUSE YOU HAVE GOT THE INVESTOR,  
21 GUNDLACH HIMSELF IS AN INVESTOR IN ALL THREE FUNDS.  
22 ALL HE HAS TO SAY IS, I WANT THE LIST OF MY  
23 CO-INVESTORS, AND HE CAN GET IT.

01:34PM

24 WHY ARE WE BATTLING OVER THIS?

25 MR. MADISON: WELL, IT'S NOT A BIG BATTLE.

01:34PM

26 BUT THE POINT IS, THAT MEMO THAT  
27 MR. BORDEN MADE DOES EXIST.

28 MR. WALLS SAYS EXECUTIVE MANAGEMENT IS

1 TO TERMINATE WHETHER OR NOT TO ENTER INTO SUB-ADVISORY  
2 WITH MR. GUNDLACH. IF HE OPENS THAT DOOR, WE HAVE TO  
3 BE ABLE TO CALL EXECUTIVE MANAGEMENT AND BE ABLE TO  
4 SAY, DID YOU AGREE TO DO THAT? NO. WHY NOT? BECAUSE  
5 HE WAS SMOKING POT WHEN HE WAS SUPPOSED TO BE OUT IN --

01:35PM

6 MR. QUINN: YOUR HONOR, THERE WAS TESTIMONY  
7 FROM STERN TO THIS EFFECT, THAT AFTER THEY FOUND WHAT  
8 THEY FOUND IN HIS OFFICE, THERE WAS NO WAY THEY COULD  
9 HAVE ANY TYPE OF SUB-ADVISORY OR OTHER CONTINUING  
10 BUSINESS RELATIONSHIP WITH HIM. AND IT'S NOT --

01:35PM

11 THE COURT: I UNDERSTAND.

12 THE BOTTOM LINE IS, YOU CAN DO WHAT YOU  
13 WANT. I'LL DEAL WITH THIS OTHER LATER, BUT I'M NOT  
14 GOING INTO -- A CRACK IN THE DOOR DOESN'T MEAN YOU  
15 DRIVE THE CAT THROUGH IT. AND SO I MAY LET YOU HAVE AN  
16 INQUIRY AS TO -- BUT I'M NOT GOING TO THE SPECIFIC.  
17 I'M NOT GOING TO GET INVOLVED IN THIS WHOLE THING OF  
18 EVERYTHING YOU FOUND IN THAT DEPARTMENT.

01:35PM

19 MR. QUINN: I UNDERSTAND THAT, BUT IT'S NOT  
20 RIGHT FOR HIM TO SUGGEST --

01:35PM

21 THE COURT: BUT HE CAN SUGGEST WHAT HE WANTS.

22 AND YOU ARE GOING TO BRING MR. STERN IN  
23 HERE, AREN'T YOU?

24 MR. QUINN: YES.

25 THE COURT: I WOULD LIKE TO HAVE THE TESTIMONY  
26 FROM THE PEOPLE WHO CAN TESTIFY TO THESE THINGS, AS  
27 OPPOSED TO FROM ALL THE OTHER PEOPLE, ABOUT WHAT YOU  
28 THOUGHT THEY THOUGHT, OR WHATEVER, THAT WE'VE BEEN

01:35PM



1 GETTING. SO YOU GOT STERN HERE, AND I'LL GIVE YOU SOME  
2 LEEWAY IN TERMS OF YOUR INQUIRY IN THAT AREA.

3 MR. BRIAN: BUT PLEASE -- I WANT COUNSEL TO  
4 LISTEN VERY CAREFULLY TO THE QUESTION I'M ASKING,  
5 BECAUSE THIS MAN WROTE AN E-MAIL ON THE VERY DAY THAT  
6 HE SENT THAT E-MAIL 12/17, IN WHICH HE SAYS THAT WE ARE  
7 CONSIDERING A SUB-ADVISORY.

01:36PM

8 AND FOR HIM TO SUGGEST, AS HE DID, THAT  
9 MR. BORDEN ACTED IMPROPERLY BY FORWARDING IT TO  
10 DOUBLELINE IS --

01:36PM

11 THE COURT: I'LL LET YOU DO THAT, AND THEN  
12 WE'LL DEAL WITH THE OTHER STUFF LATER.

13 MR. MADISON: WHILE WE'RE HERE, DOES COUNSEL  
14 KNOW HOW MUCH TIME HE HAS? MR. WALLS DOESN'T WORK FOR  
15 US; HE WORKS FOR ANOTHER FIRM IN NEW YORK. HE WAS  
16 HOPING TO GET HOME TODAY.

01:36PM

17 MR. BRIAN: HE'S NOT GOING TO GET HOME. I  
18 DIDN'T EXPECT YOU TO GO AS LONG YOU DID.

19 THE COURT: GO AHEAD.

20  
21 (THE FOLLOWING PROCEEDINGS  
22 WERE HELD IN OPEN COURT IN  
23 THE PRESENCE OF THE JURY:)

24  
25 Q. BY MR. BRIAN: WELL, I THINK I WAS ASKING YOU  
26 ABOUT 2122, THE LANGUAGE WITH MATTERS RELATING TO THE  
27 FUND.

01:37PM

28 DO YOU SEE THAT?

1 A. YES.

2 Q. YOU HAVE A BINDER IN FRONT OF YOU?

3 A. UH-HUH.

4 Q. THE BIG ONE THAT WE BROUGHT UP?

5 A. YES.

01:37PM

6 Q. IF YOU COULD TAKE A LOOK AT EXHIBIT 5608 NOT  
7 IN EVIDENCE YET, YOUR HONOR.

8 DO YOU SEE THAT DOCUMENT?

9 A. YES.

10 Q. THE TOP DOCUMENT ON PAGE 1 OF 5608 IS AN  
11 E-MAIL FROM A TANIA MODIC TO YOURSELF, ON  
12 DECEMBER 17TH, 2009, IS IT NOT?

01:37PM

13 A. CORRECT.

14 MR. BRIAN: I WOULD OFFER EXHIBIT 5608, YOUR  
15 HONOR.

01:38PM

16 MR. MADISON: OBJECTION. HEARSAY.

17 THE COURT: ANY OBJECTION?

18 MR. BRIAN: IT'S NOT OFFERED FOR THE TRUTH,  
19 YOUR HONOR.

20 MR. MADISON: HEARSAY.

01:38PM

21 AND SHE'S A WITNESS IN THE CASE, YOUR  
22 HONOR.

23 MR. BRIAN: IT'S NOT OFFERED FOR THE TRUTH.

24 THE COURT: HOLD ON. HOLD ON A MINUTE.

25 ALL RIGHT. I'LL SUSTAIN THE OBJECTION.

01:38PM

26 MS. MODIC IS A WITNESS IN THE CASE.

27 MR. BRIAN: YOUR HONOR, I DON'T WANT TO ARGUE  
28 IN FRONT OF THE JURY, BUT THE SECOND PARAGRAPH IS NOT

1 OFFERED FOR THE TRUTH. IT'S OFFERED FOR HIS STATE OF  
2 MIND, WHICH HE'S TESTIFIED TO AT LENGTH, AND CAUSATION.

3 THE COURT: YOU MAY QUESTION HIM ABOUT THIS,  
4 AND WE'LL MOVE ON.

5 Q. BY MR. BRIAN: MS. MODIC -- WELL, AFTER NOTICE  
6 WENT OUT THAT THE -- TO THE SMCF INVESTORS, YOU  
7 RECEIVED A NUMBER OF REACTIONS FROM THE INVESTORS, DID  
8 YOU NOT?

01:39PM

9 A. I DID.

10 Q. MANY OF WHICH TOLD YOU THAT THEY HAD INVESTED  
11 IN THE FUNDS BECAUSE OF MR. GUNDLACH; ISN'T THAT RIGHT,  
12 SIR?

01:39PM

13 A. I'M NOT SURE WHAT THAT MEANS, BUT YES.

14 Q. INCLUDING MS. MODIC, RIGHT?

15 A. CORRECT.

01:39PM

16 Q. AND THEY ALSO, INCLUDING MS. MODIC, URGED YOU  
17 TO FIND A WAY TO TRY TO FIGURE OUT A WAY FOR  
18 MR. GUNDLACH TO CONTINUE TO MANAGE THE FUNDS; ISN'T  
19 THAT RIGHT?

20 A. UH-HUH. YES.

01:39PM

21 Q. THAT'S A SUB-ADVISORY ARRANGEMENT, IS IT NOT?

22 A. IT IS.

23 Q. AND THAT -- THIS PARTICULAR E-MAIL  
24 COMMUNICATES THOSE REQUESTS FROM MS. MODIC, DOESN'T IT?

25 A. YES.

01:39PM

26 MR. BRIAN: I WOULD OFFER 5608.

27 MR. MADISON: SAME OBJECTION, YOUR HONOR.

28 THE COURT: MS. MODIC IS COMING IN?

1 MR. BRIAN: I DON'T KNOW WHO'S -- I'M NOT  
2 CALLING MS. MODIC.

3 THE COURT: YOU SAY SHE'S A WITNESS?

4 MR. BRIAN: I'M NOT CALLING HER.

5 I DON'T KNOW IF WE ARE OR NOT, YOUR  
6 HONOR.

01:40PM

7 THE COURT: I'LL ADMIT IT.

8

9 (EXHIBIT 5608 ADMITTED.)

10

01:40PM

11 THE COURT: GO AHEAD.

12 Q. BY MR. BRIAN: LET'S PUT THAT ON THE SCREEN,  
13 PLEASE.

14 DO YOU SEE WHERE IT SAYS, WE INVESTED --  
15 IN THE SECOND PARAGRAPH. (READING):

01:40PM

16 WE INVESTED IN FUNDS I AND II  
17 BECAUSE OF JEFF GUNDLACH AND HIS  
18 TEAM.

19 DO YOU SEE THAT?

20 A. YES.

01:40PM

21 Q. AND THEN IT STATES, (READING):

22 WE STRONGLY URGE YOU TO FIND A  
23 WAY TO HAVE THE ORIGINAL GUNDLACH  
24 TEAM CONTINUE TO MANAGE THESE  
25 FUNDS.

01:40PM

26 DO YOU SEE THAT?

27 A. YES.

28 Q. NOW, SHE WASN'T THE ONLY PERSON TO REQUEST

1 THAT TCW CONSIDER ENTERING INTO A SUB-ADVISORY  
2 ARRANGEMENT WITH DOUBLELINE AND MR. GUNDLACH, WAS SHE?

3 A. SHE WAS NOT.

4 Q. COULD YOU TAKE A LOOK AT 5628 IN THE BINDER.

5 AND I WANT YOU TO START WITH PAGE 3. AN  
6 E-MAIL FROM YOU TO A C.DOPPSTADT, A JAY KOLYER, A DE  
7 ROOIJ, DEBORAH ROOIJ, AND A BBORDEN.

01:41PM

8 DO YOU SEE THAT?

9 A. YES.

10 Q. THAT'S AN E-MAIL YOU SENT ON DECEMBER 17TH,  
11 THE SAME DAY AS THE OTHER ONES, 2009, CORRECT?

01:41PM

12 A. CORRECT.

13 Q. AND THEN THE REST OF THE E-MAILS IN THAT  
14 EXHIBIT ARE IN A CHAIN THAT COME FROM YOUR ORIGINAL  
15 E-MAIL, CORRECT?

01:41PM

16 A. YES.

17 MR. BRIAN: I WOULD OFFER 5628, YOUR HONOR.

18 THE COURT: ANY OBJECTION?

19 MR. MADISON: NO OBJECTION.

20 THE COURT: IT WILL BE ADMITTED.

01:41PM

21

22 (EXHIBIT 5628 ADMITTED.)

23

24 Q. BY MR. BRIAN: WELL, IF WE COULD PUT UP THE  
25 BOTTOM OF PAGE 3, MR. WALLS, THAT SHOWS THAT'S YOUR  
26 E-MAIL, RIGHT?

01:41PM

27 A. YES.

28 Q. AND YOU KNOW IT CONTINUES ON TO PAGE 4 OF

1 5628, DOES IT NOT?

2 A. YES.

3 Q. IF WE COULD DISPLAY THAT, AND MAYBE PAGE 4.  
4 IF WE COULD THEN ENLARGE THE PARAGRAPH, SECOND  
5 PARAGRAPH, BEGINNING WITH "I KNOW SOME."

01:42PM

6 PAGE FOUR, PLEASE. THE NEXT PAGE. JUST  
7 THE PARAGRAPH I KNOW. I'M NOT SURE I'LL READ IT.

8 YOU STATED IN THAT E-MAIL, QUOTE, I KNOW  
9 SOME OF YOU PREFER WE PURSUE A SUB-ADVISORY  
10 RELATIONSHIP WITH JEFFREY. THAT OPTION HAS BEEN TAKEN  
11 UP BY EXECUTIVE MANAGEMENT.

01:42PM

12 YOU WROTE THAT TO THOSE INDIVIDUALS ON  
13 THE SAME DAY, DECEMBER 17TH, 2009, THAT YOU SENT OUT  
14 THE INVESTOR LIST, CORRECT?

15 A. YES.

01:42PM

16 Q. MR. WALLS, DO YOU THINK THAT IT WAS A MATTER  
17 RELATING TO THE FUND, TO QUOTE YOUR E-MAIL EXHIBIT  
18 2122, FOR THESE INVESTORS TO DISCUSS WHETHER OR NOT  
19 THEY WANTED A SUB-ADVISORY AGREEMENT? IS THAT RELATING  
20 TO THE FUND?

01:43PM

21 A. YES.

22 Q. NOW, IN THAT EXHIBIT, 2122, IF WE CAN PUT THAT  
23 BACK UP AGAIN. ENLARGE THAT HIGHLIGHTED LANGUAGE.

24 WHERE YOU WROTE -- MAY I APPROACH? I  
25 CAN'T EVEN READ IT, YOUR HONOR.

01:43PM

26 ONCE -- I CERTAINLY CAN'T READ IT NOW.  
27 THANK YOU, MR. QUINN.

28 WHEN YOU SAID IT SHOULD NOT BE

1 DISTRIBUTED TO THE OUTSIDE PARTIES, DO YOU SEE THAT?

2 A. YES.

3 Q. YOU WOULD AGREE WITH ME, WOULD YOU NOT, THAT  
4 EACH INVESTOR HAD AN ABSOLUTE RIGHT TO THE INFORMATION,  
5 CORRECT?

01:44PM

6 A. CORRECT.

7 Q. MR. GUNDLACH WAS AN INVESTOR, WASN'T HE?

8 A. YES.

9 Q. MR. LOU LUCIDO WAS AN INVESTOR, AS WELL, WAS  
10 HE NOT?

01:44PM

11 A. YES.

12 Q. MR. BARACH WAS AN INVESTOR, AS WELL?

13 A. I BELIEVE SO, YES.

14 Q. THERE WERE OTHER INVESTORS AT TCW, RIGHT?

15 A. CORRECT.

01:44PM

16 Q. AND THE PARTNERSHIP AGREEMENT GAVE EACH  
17 INVESTOR AN ABSOLUTE RIGHT TO THE INFORMATION, RIGHT?

18 A. RIGHT.

19 Q. AND THAT INVESTOR HAD AN ABSOLUTE RIGHT TO USE  
20 THAT LIST IN ANY WAY RELATING TO THE FUND, RIGHT?

01:44PM

21 A. RIGHT.

22 Q. TAKE A LOOK AT EXHIBIT 56 -- BEFORE WE MOVE  
23 5628, IF WE COULD LOOK AT -- GO BACK TO 5628, PLEASE,  
24 IF WE COULD. THANK YOU, DENNIS.

25 PAGE 1, IF YOU COULD ENLARGE THAT AT THE  
26 BOTTOM, WHERE IT SAYS, MY THOUGHTS ARE: RIGHT THERE.  
27 THAT'S ON THAT SAME CHAIN OF E-MAILS, IN RESPONSE TO  
28 YOUR ORIGINAL DECEMBER 17TH, RIGHT?

01:45PM

1 A. WHAT PAGE ARE YOU ON? SORRY.

2 Q. ON PAGE 1, RIGHT AT THE BOTTOM.

3 A. OKAY. YES.

4 Q. THAT'S AN E-MAIL TO SEVERAL FOLKS, BUT  
5 INCLUDING YOU, FROM BOB BORDEN, ON DECEMBER 17TH,  
6 RIGHT?

01:45PM

7 A. CORRECT.

8 Q. AND HE SAYS, (READING):

9 MY THOUGHTS ARE:

10 QUICKLY DETERMINE WHETHER OR  
11 NOT A SUB-ADVISORY ARRANGEMENT WITH  
12 DOUBLELINE IS FEASIBLE.

01:46PM

13 THAT'S WHAT HE WROTE, CORRECT?

14 A. CORRECT.

15 Q. ON DECEMBER 17TH, 2009, RIGHT?

01:46PM

16 A. CORRECT.

17 Q. NOW, IF YOU COULD TAKE A LOOK AT EXHIBIT 5657.  
18 THAT'S -- DO YOU HAVE THAT IN FRONT OF YOU, SIR?

19 A. I DO.

20 Q. JAY KOLYER, THAT'S AN E-MAIL FROM JAY KOLYER  
21 TO A WHOLE BUNCH OF PEOPLE, IS IT NOT?

01:46PM

22 A. IT IS.

23 Q. AND ALL THE RECIPIENTS OF THIS E-MAIL FROM  
24 MR. KOLYER AS EXHIBIT 5657, HE ACTUALLY HAS THEIR  
25 E-MAIL ADDRESSES PRINTED OUT, DOESN'T HE?

01:46PM

26 A. YES.

27 Q. MR. KOLYER, LIKE MR. BORDEN, WAS A MEMBER OF  
28 THE ADVISORY COMMITTEE, WAS HE NOT?



1 A. HE WAS.

2 Q. FOR THE SMCF FUNDS, RIGHT?

3 A. CORRECT.

4 Q. AND THIS APPEARS TO BE AN E-MAIL TO, AMONG  
5 OTHERS, ALL OF THE INVESTORS IN THE FUND, ISN'T IT?

01:47PM

6 A. YES.

7 WELL, I DON'T KNOW FOR SURE.

8 Q. OKAY.

9 YOU RECOGNIZE A NUMBER OF THE NAMES AS  
10 INVESTORS IN THE FUND, DO YOU NOT?

01:47PM

11 A. I DO.

12 Q. INCLUDING MR. GUNDLACH, RIGHT?

13 A. YES.

14 Q. AND SO ANYBODY WHO RECEIVED THIS WOULD HAVE  
15 GOTTEN, JUST FROM RECEIVING THIS E-MAIL, ALL THE E-MAIL  
16 ADDRESSES OF EVERYBODY ELSE; ISN'T THAT RIGHT?

01:47PM

17 A. CORRECT.

18 MR. BRIAN: I'LL OFFER EXHIBIT 5657, YOUR  
19 HONOR.

20 THE COURT: ANY OBJECTION?

01:47PM

21 MR. MADISON: NOT FOR THE TRUTH, YOUR HONOR?

22 MR. BRIAN: IT'S NOT FOR THE TRUTH.

23 MR. MADISON: NO OBJECTION.

24 THE COURT: IT WILL BE ADMITTED.

01:47PM

25  
26 (EXHIBIT 5657 ADMITTED.)

27

28 THE COURT: LADIES AND GENTLEMEN, YOU ARE NOT

1 TO READ THE SUBSTANCE. IT'S NOT OFFERED FOR THE TRUTH  
2 OF THE STATEMENTS PERMITTED, RATHER THAN THE ACTION.

3 Q. BY MR. BRIAN: AND DENNIS, COULD WE HAVE THE  
4 PARAGRAPH IN THE BEGINNING, AS INDICATED, TO TCW, AT  
5 THAT TIME. COULD YOU ENLARGE THAT, PLEASE.

01:48PM

6 MR. KOLYER WROTE IN THIS PARAGRAPH,  
7 (READING):

8 AS INDICATED TO TCW AT THAT  
9 TIME, WE BELIEVE THE APPROPRIATE  
10 COURSE OF ACTION WOULD BE TO FIND A  
11 WAY FOR JEFFREY GUNDLACH AND HIS  
12 TEAM TO CONTINUE MANAGING THE  
13 FUND.

01:48PM

14 HE WROTE THAT ON DECEMBER 28TH, 2009, DID  
15 HE NOT?

01:48PM

16 A. YES.

17 Q. LET ME ASK YOU A FEW QUESTIONS ABOUT THESE  
18 FUNDS.

19 THESE SMCF FUNDS, FIRST OF ALL, DID YOU  
20 KNOW THAT MR. GUNDLACH ESSENTIALLY CREATED THEM?

01:49PM

21 A. YES.

22 Q. AND THEY ARE NOT PUBLIC MUTUAL FUNDS, WHERE  
23 SOMEONE JUST GOES TO THEIR BROKER AND PUTS MONEY INTO  
24 THE FUND, ARE THEY?

25 A. NO.

01:49PM

26 Q. THEY ARE ACTUAL PARTNERSHIPS, WHERE EACH  
27 INVESTOR IS REALLY A LIMITED PARTNERSHIP, AND THEN  
28 THERE'S A GENERAL PARTNER, CORRECT?

1 A. CORRECT.

2 Q. AND THE INVESTORS IN THESE FUNDS ARE GENERALLY  
3 PRETTY SOPHISTICATED, AREN'T THEY?

4 A. TEND TO BE, YES.

5 Q. THEY ARE EITHER LARGE INSTITUTIONAL CLIENTS OR  
6 INDIVIDUALS WITH PRETTY SIGNIFICANT INVESTMENT  
7 EXPERIENCE; ISN'T THAT RIGHT?

01:49PM

8 A. YES.

9 Q. I THINK YOU TESTIFIED EARLIER, BUT I WANT TO  
10 MAKE SURE I GOT THIS RIGHT, THAT WHEN YOU SPOKE TO  
11 MR. STERN IN SEPTEMBER OF 2009, AND RECOMMENDED THAT HE  
12 GO OUT AND BUY MET WEST, YOU EXPECTED THAT, AT LEAST IN  
13 THE SHORT TERM, THAT THE FIRING OF MR. GUNDLACH WOULD  
14 CAUSE AN IMMEDIATE LOSS OF BUSINESS AND REVENUE TO THE  
15 FIRM, RIGHT?

01:49PM

16 MR. MADISON: OBJECTION. MISSTATES THE PRIOR  
17 TESTIMONY.

01:50PM

18 THE COURT: OVERRULED.

19 GO AHEAD.

20 THE WITNESS: CORRECT.

01:50PM

21 Q. BY MR. BRIAN: BUT YOU DIDN'T THINK ABOUT THE  
22 SMCF FUNDS, CORRECT?

23 A. CORRECT.

24 Q. BUT WHEN YOU DID THINK ABOUT THE -- STRIKE  
25 THAT.

01:50PM

26 AFTER HE WAS TERMINATED, YOU SPOKE TO A  
27 NUMBER OF THE INVESTORS IN THE SMCF FUNDS, EITHER BY  
28 PHONE OR BY E-MAIL, DID YOU NOT?

1 A. I DID.

2 Q. AND YOU REPORTED THOSE REACTIONS TO MR. STERN,  
3 DIDN'T YOU?

4 A. YES.

5 Q. TAKE A LOOK AT EXHIBIT 5517, PLEASE.

01:50PM

6 THAT'S AN E-MAIL FROM YOU, DATED  
7 DECEMBER 5TH, TO MR. STERN, CORRECT?

8 A. CORRECT.

9 MR. BRIAN: I'LL OFFER 5517, YOUR HONOR.

10 MR. MADISON: NO OBJECTION.

01:51PM

11 THE COURT: IT WILL BE ADMITTED.

12

13 (EXHIBIT 5517 ADMITTED.)

14

15 Q. BY MR. BRIAN: NOW, LET'S PUT THAT UP.

01:51PM

16 YOU HAD TALKED TO, AMONG OTHERS,  
17 VERIZON, RIGHT?

18 A. YES.

19 Q. AND VERIZON IS ONE OF THE CLIENTS THAT YOU SAY  
20 YOU ATTENDED A PITCH TO EARLIER, CORRECT?

01:51PM

21 A. CORRECT.

22 Q. NOW, VERIZON WAS ONE OF THE NUMBER OF FIRMS  
23 WHOSE REACTION WAS THAT MET WEST BRINGS A SOLID FIXED  
24 INCOME TEAM, RIGHT?

25 A. YES.

01:51PM

26 Q. BUT NONE OF THOSE CLIENTS SAID THAT THEY FELT  
27 THAT MET WEST MORTGAGE SKILLS EQUATED TO TCW'S, RIGHT?

28 A. RIGHT.

1 Q. AND WHEN YOU SAID TCW'S, YOU MEANT THE  
2 MORTGAGE-BACKED SECURITIES GROUP HEADED BY  
3 MR. GUNDLACH, RIGHT?

4 A. YES.

5 Q. AND ALL OF THOSE: VERIZON, CALPERS, CALSTARS,  
6 NESTLE, ALL OF THOSE ARE VERY SOPHISTICATED  
7 INSTITUTIONAL INVESTORS, ARE THEY NOT?

8 A. THEY ARE.

9 Q. TAKE A LOOK AT EXHIBIT 6049, PAGE 1.

10 IT'S NOT YET IN EVIDENCE, YOUR HONOR.

11 DO YOU HAVE THAT IN FRONT OF YOU?

12 A. I DO.

13 Q. NOW, WHO'S KATHY ERBELLIS (PHONETIC)?

14 A. KATHY ERBELLIS WORKED FOR THE PERSON AT THE  
15 TOP OF THE PAGE, CHARLES BALDISWIELER.

16 Q. AND THAT'S SOMETHING YOU MENTIONED EARLIER  
17 DURING YOUR TESTIMONY, RIGHT?

18 A. YEAH. I WORKED FOR HIM, TOO.

19 Q. SHE'S SOMEBODY YOU WORKED WITH RELATIVELY  
20 FREQUENTLY WHILE YOU WERE AT TCW?

21 A. NOT THAT FREQUENTLY.

22 DO YOU WANT ME TO EXPLAIN, OR --

23 Q. IT DOESN'T MATTER. WE'LL MOVE ON.

24 A. YEAH.

25 Q. SHE'S A -- THIS IS AN E-MAIL SHE SENT TO,  
26 AMONG OTHERS, MR. BALDISWIELER, YOURSELF, AND  
27 MR. GIBELLO AND OTHERS, ON THE 5TH OF DECEMBER, THE DAY  
28 AFTER MR. GUNDLACH WAS DISCHARGED OF HIS DUTIES,

1 CORRECT?

2 A. CORRECT.

3 Q. AND SHE THEN ATTACHES A DOCUMENT THAT  
4 MEMORIALIZES REACTIONS FROM A NUMBER OF CUSTOMERS TO  
5 THE DECISION TO DISCHARGE MR. GUNDLACH OF HIS DUTIES,  
6 CORRECT?

01:53PM

7 MR. MADISON: OBJECTION. FOUNDATION.

8 THE COURT: I DON'T THINK YOU CAN CHARACTERIZE  
9 OR READ WHAT'S IN THE ATTACHMENT. YOU CAN ASK HIM  
10 ABOUT IF THERE'S AN ATTACHMENT, AND GO FROM THERE.

01:53PM

11 Q. BY MR. BRIAN: IS THERE AN ATTACHMENT TO THE  
12 DOCUMENT?

13 A. YES.

14 Q. DID YOU RECEIVE THIS DOCUMENT IN THE COURSE OF  
15 YOUR DUTIES AT THE COMPANY?

01:53PM

16 A. YES.

17 MR. BRIAN: I'LL OFFER 6049, YOUR HONOR.

18 MR. MADISON: OBJECTION TO THE NOTES, THAT HE  
19 DID NOT AUTHOR.

20 MR. BRIAN: IT'S A BUSINESS RECORD.

01:54PM

21 MR. MADISON: I CAN ARGUE IT, IF YOU WOULD  
22 LIKE, YOUR HONOR.

23 THE COURT: I'D LIKE TO FIND IT FIRST.

24 MR. BRIAN: IT'S THE NEXT-TO-THE-LAST DOCUMENT  
25 IN THE BINDER, YOUR HONOR.

01:54PM

26 THE COURT: I'LL OVERRULE THE OBJECTION AND  
27 ADMIT THE DOCUMENT.

28 //

1 (EXHIBIT 6049 ADMITTED.)

2

3 MR. BRIAN: WE'LL OFFER 6049, YOUR HONOR.

4 THE COURT: THAT'S WHAT WE WERE JUST DEALING  
5 WITH.

01:55PM

6 MR. BRIAN: I AM. I DIDN'T HEAR YOUR RULING.  
7 I'M --

8 THE COURT: I SAID, I'LL OVERRULE THE  
9 OBJECTION, AND ADMIT THE DOCUMENT.

10 MR. BRIAN: OKAY, YOUR HONOR.

01:55PM

11 IF I COULD PUT UP, JUST TAKE A LOOK  
12 AT -- IF YOU COULD PUT UP PAGE 7, PLEASE.

13 Q. AND IF WE COULD, AT THE TOP OF PAGE 7, ON THE  
14 UPPER LEFT-HAND CORNER IS A REFERENCE TO JP MORGAN.

15 DO YOU SEE THAT?

01:55PM

16 A. YES.

17 Q. A CLIENT IN THE FUNDS?

18 A. YES.

19 Q. SOPHISTICATED INVESTOR.

20 DO YOU AGREE?

01:55PM

21 A. YES.

22 Q. AND --

23 MR. MADISON: THIS IS THE FOUNDATION  
24 OBJECTION. MR. WALLS AUTHORED SOME OF THESE, BUT NOT  
25 OTHERS; SO I'D OBJECT TO AN EXAM OTHER THAN THE ONES HE  
26 AUTHORED.

01:56PM

27 MR. BRIAN: I'LL WITHDRAW THE QUESTION.

28 Q. HOW MANY OF THESE INVESTORS ON THIS LIST, DID

1 YOU TALK TO, SIR?

2 A. SIX.

3 Q. WHICH ONES?

4 A. VERIZON, NESTLE; UC REGENTS, WHICH STANDS FOR  
5 UNIVERSITY CALIFORNIA REGENTS; ARIZONA STATE RETIREMENT  
6 SYSTEM; CALIFORNIA STATE TEACHERS; AND CALIFORNIA  
7 PUBLIC EMPLOYEES.

01:56PM

8 Q. OKAY. LET'S ENLARGE THE VERIZON. IT'S VERY  
9 HARD TO READ.

10 WHY DON'T YOU JUST READ THE FIRST LINE  
11 OF WHAT -- LET ME STRIKE THAT.

01:56PM

12 DID YOU WRITE DOWN THE RESPONSE THERE,  
13 UNDER VERIZON?

14 A. YES.

15 Q. WHAT DID YOU WRITE IN THE FIRST LINE?

01:56PM

16 A. (READING):

17 UNDERSTOOD WHAT HAPPENED.

18 WILL DEBRIEF WAYNE HOFFMAN. NOT

19 UNEXPECTED, GIVEN THE RUMOR MILL.

20 KEEP GOING?

01:57PM

21 Q. OKAY. AND THEN YOU DID THE FORD FOUNDATION,  
22 YOU SAID?

23 A. NO.

24 Q. OKAY. WE ARE GOING TO HAVE TIME TO DEAL WITH  
25 THIS LATER.

01:57PM

26 MR. WALLS, YOU -- IT IS A FACT, IS IT  
27 NOT, THAT MR. GUNDLACH AND MR. LUCIDO WERE BOTH KEY  
28 PERSONS UNDER THOSE FUNDS, RIGHT?



1 A. RIGHT.

2 Q. AND YOU UNDERSTOOD THAT IF A KEY PERSON WAS  
3 REPLACED, THE INVESTORS WOULD HAVE A RIGHT TO VOTE ON  
4 WHETHER OR NOT TO ACCEPT THE REPLACEMENT MANAGER,  
5 RIGHT?

01:57PM

6 A. RIGHT.

7 Q. AND IF THEY -- AND THE REPLACEMENT MANAGER  
8 THAT TCW PUT FORWARD WAS NONE OTHER THAN MET WEST,  
9 CORRECT?

10 A. A NUMBER OF TEAM MEMBERS FROM MET WEST,  
11 CORRECT.

01:58PM

12 Q. AND IT'S FAIR TO SAY, YOU AND A NUMBER OF  
13 OTHERS WERE TRYING TO PITCH THE INVESTORS TO ACCEPT MET  
14 WEST AS A QUALIFIED REPLACEMENT, WERE YOU NOT?

15 A. WE WERE GIVING THEM A CHANCE TO DO AN  
16 EVALUATION, YES.

01:58PM

17 Q. AND YOU WOULD HAVE PREFERRED FOR THEM TO TAKE  
18 AND ACCEPT MET WEST, WOULD YOU NOT?

19 A. ABSOLUTELY.

20 Q. BUT YOU UNDERSTOOD PRETTY DARN QUICKLY THAT A  
21 LOT OF THEM WERE NOT GOING TO ACCEPT MET WEST, BECAUSE  
22 THEY TOLD YOU THAT THEY WERE NOT SATISFIED WITH MET  
23 WEST'S EXPERIENCE IN THE MORTGAGE SECURITIES AREA,  
24 CORRECT?

01:58PM

25 A. CORRECT.

01:58PM

26 Q. SO VERY QUICKLY, YOU, BEING TCW, MADE THE  
27 DECISION NOT TO GO BY THE LETTER OF THE CONTRACT,  
28 CORRECT?

1 A. ME AND OTHERS, YES.

2 Q. IN OTHER WORDS, YOU COULD HAVE MADE THE  
3 DECISION TO FORCE THE INVESTORS TO STAY IN THAT FUND,  
4 RIGHT?

5 A. RIGHT. 01:58PM

6 Q. AND YOU CHOSE NOT TO DO THAT, BECAUSE YOU  
7 WANTED TO PRESERVE, I'LL MAKE SURE I GOT THIS RIGHT,  
8 THE CREDIBILITY OF TCW GOING FORWARD, RIGHT?

9 A. CORRECT.

10 Q. WHEN YOU SAY PRESERVE THE CREDIBILITY OF TCW  
11 GOING FORWARD, YOU MEAN THAT YOU DIDN'T WANT TO GET THE  
12 INVESTORS MAD AND LOSE FUTURE REVENUE, RIGHT? 01:59PM

13 A. OKAY. YES.

14 Q. YOU WANTED -- YOU WERE HOPING THESE INVESTORS  
15 WOULD COME BACK LATER, A YEAR LATER, TWO YEARS LATER,  
16 THREE YEARS LATER, INVEST MORE OF THEIR MONEY, RIGHT? 01:59PM

17 A. RIGHT.

18 Q. SO YOU AND OTHER EXECUTIVES AT TCW WERE  
19 WILLING TO FORGO FEES IN THE SHORT TERM, WITH THE HOPE  
20 OF GETTING GREATER FEES IN THE FUTURE, RIGHT? 01:59PM

21 A. I DON'T THINK WE EVER SAID GREATER; I THINK WE  
22 SAID FEES.

23 Q. WELL, YOU WERE HOPING THAT THE FEES IN THE  
24 FUTURE WOULD BE LARGER THAN THE FEES YOU LOST, RIGHT?

25 A. I DON'T RECALL THAT CONVERSATION. 01:59PM

26 Q. WELL, I'M JUST ASKING YOU. I DON'T CARE  
27 WHETHER YOU TALKED ABOUT IT OR NOT.

28 WERE YOU HOPING THAT?

1 A. YES.

2 Q. NOW, SOME OF THESE INVESTORS, IN ADDITION TO  
3 ASKING WHETHER YOU WOULD CONSIDER ENTERING INTO A  
4 SUB-ADVISORY AGREEMENT WITH MR. GUNDLACH AND  
5 DOUBLELINE, ASKED WHETHER YOU WOULD CONSIDER MAKING  
6 WHAT'S CALLED AN IN-KIND DISTRIBUTION, RIGHT?

02:00PM

7 A. CORRECT.

8 Q. AND YOU DIDN'T AGREE TO THAT, DID YOU?

9 A. WE DID NOT.

10 Q. AND YOU UNDERSTOOD THAT AN IN-KIND  
11 DISTRIBUTION, WHICH WOULD BE SOME SORT OF WHAT, SHARE  
12 OF THE ASSETS SOMEHOW; IS THAT HOW IT WORKS?

02:00PM

13 A. I'M NOT A PORTFOLIO MANAGER. I'M NOT A  
14 HUNDRED PERCENT CLEAR, BUT ESSENTIALLY, I THINK YOU  
15 KEEP YOUR INVESTMENT, IN TACT, AND MOVE IT SOMEWHERE.

02:01PM

16 Q. YOU ARE NOT A PORTFOLIO MANAGER, ARE YOU, SIR?

17 A. I AM NOT.

18 Q. AND YOU ARE ALSO NOT AN EXPERT IN ANALYTICS,  
19 ARE YOU, SIR?

20 A. I'M NOT.

02:01PM

21 Q. ARE YOU AN EXPERT ON RACE CARS?

22 A. NO.

23 Q. AND SO WHEN YOU TESTIFY ABOUT A MEETING THAT  
24 YOU ATTENDED IN WHICH PEOPLE MADE PRESENTATIONS ABOUT  
25 THE ANALYTICS, YOU ARE NOT TELLING THE LADIES AND  
26 GENTLEMEN OF THE JURY THAT YOU ARE AN EXPERT IN  
27 ANALYTICS, YOU ARE SIMPLY REPORTING WHAT YOU RECALL  
28 BEING SAID, RIGHT?

02:01PM

1 A. CORRECT.

2 Q. AND IT'S A FACT, IS IT NOT, THAT YOU ATTENDED  
3 A NUMBER OF PRESENTATIONS IN THE MBS GROUP BEFORE YOU  
4 LEFT, IN EARLY 2010, IN WHICH THE MATERIALS WERE LEFT  
5 WITH THE POTENTIAL OR ACTUAL CLIENT, WEREN'T THEY?

02:01PM

6 MR. MADISON: OBJECTION. VAGUE AS TO TIME.

7 MR. BRIAN: ANY TIME BEFORE YOU LEFT.

8 MR. MADISON: SAME OBJECTION.

9 THE COURT: SLOW DOWN. PUT IT IN A TIME  
10 FRAME, AND WITH REFERENCE TO THE ISSUES IN THIS CASE,  
11 AND THEN WE CAN GO AHEAD.

02:02PM

12 Q. BY MR. BRIAN: ISN'T IT A FACT THAT IN 2008  
13 AND 2009, YOU ATTENDED PRESENTATIONS BY THE MBS  
14 MORTGAGE GROUP AT TCW IN WHICH THEY LEFT THE  
15 PRESENTATION MATERIALS WITH THE CLIENT, BECAUSE THE  
16 CLIENT ASKED FOR THEM, RIGHT?

02:02PM

17 A. RIGHT.

18 MR. BRIAN: NOW, I NEED A MOMENT, YOUR HONOR.

19 THE COURT: ACTUALLY, WHY DON'T -- IT'S TWO  
20 O'CLOCK. WE CAN BREAK FOR THE DAY.

02:02PM

21 MR. BRIAN: THAT'S FINE, YOUR HONOR.

22 THE COURT: WE'LL RECONVENE TOMORROW MORNING,  
23 8 O'CLOCK.

24 LADIES AND GENTLEMEN OF THE JURY, PLEASE  
25 RECALL THE ADMONITION. YOU ARE NOT TO DISCUSS THE  
26 MATTER AMONG YOURSELVES OR WITH ANYONE ELSE, OR FORM  
27 ANY OPINIONS OR CONCLUSIONS REGARDING ANY ASPECTS OF  
28 THE CASE.

02:02PM

1 MR. BRIAN: I THINK YOU SAID 8 O'CLOCK.

2 THE COURT: 8:30.

3 MR. BRIAN: I SAW A LOT OF SLEEPY EYES.

4 THE COURT: MR. PALLO, IF YOU WOULD REMAIN FOR  
5 JUST A MOMENT, I HAVE AN ANSWER TO A QUESTION THAT YOU  
6 LEFT FOR US.

02:03PM

7 THE REST OF THE JURORS ARE ALL EXCUSED.

8

9 (AT 2:03 P.M, THE JURY WAS  
10 EXCUSED, AND THE FOLLOWING  
11 PROCEEDINGS WERE HELD:)

02:03PM

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

15 THE COURT: YES, YOU MAY STEP DOWN, MR. WALLS.  
16 WE'LL SEE YOU 8:30 IN THE MORNING.

02:03PM

17

18 (WITNESS LEFT THE COURTROOM)

19

20 THE COURT: WE'RE OUT OF THE PRESENCE OF THE  
21 JURY, WITH THE EXCEPTION OF MR. PALLO.

02:04PM

22 I HAVE A LETTER HERE FROM THE HUMAN  
23 RESOURCE AT YOUR EMPLOYER, TRANSAMERICA. I HAVE TALKED  
24 WITH HER, AND SHE'S GOING TO TALK TO YOUR SUPERVISOR.  
25 AND I SAID I WOULD TALK TO HER AGAIN TOMORROW, OR AT  
26 THE LATEST, WEDNESDAY, TO SEE IF WE CAN'T WORK  
27 SOMETHING OUT, BECAUSE WE DON'T WANT YOU TO HAVE TO  
28 LEAVE US. WE NEED YOU AS A JUROR HERE. BUT I DON'T

02:04PM

1 WANT YOU TO DISCUSS -- I'M DOING WHAT I CAN TO GET YOUR  
2 MANAGER TO HELP YOU.

3 WHAT ARE YOUR HOURS NORMALLY?

4 MR. PALLO: MY HOURS ARE 7:45 TO 4:30.

5 THE COURT: DURING THE REGULAR DAYS? 02:04PM

6 MR. PALLO: DURING REGULAR DAY.

7 RIGHT NOW, WE'RE HAVING HALF DAY ON  
8 FRIDAYS, BUT WE'RE NOT IN SESSION ON FRIDAYS, SO YOU  
9 ARE WORKING ON FRIDAYS.

10 THE COURT: AND I'VE TOLD THEM THAT WE FINISH 02:04PM  
11 AT 2:00, AND THAT PERHAPS WE COULD WORK SOMETHING OUT  
12 WHERE YOU COULD DO SOMETHING IN THE AFTERNOONS TO GET  
13 PART OF YOUR TIME IN. BUT WE'RE WORKING ON IT.

14 I CAN'T LET YOU GO RIGHT NOW, WE'VE GONE  
15 THROUGH THIS PROCESS. AND WHENEVER WE LOSE A JUROR, WE 02:04PM  
16 LOSE A LOT OF -- THE RISK OF LOSING ALL THAT WE'RE  
17 DOING HERE. SO I APPRECIATE YOUR PATIENCE. I JUST  
18 WANT YOU TO KNOW WE'RE WORKING ON IT.

19 I'VE TALKED WITH HER, AND I'LL TALK WITH  
20 HER AGAIN TOMORROW MORNING. 02:05PM

21 MR. PALLO: THANK YOU VERY MUCH.

22 THE COURT: THANK YOU. HAVE A GOOD EVENING.

23 MR. PALLO: ALL RIGHT.

24

25 (JUROR NO. 9 EXITS THE COURTROOM.) 02:05PM

26

27 THE COURT: ALL RIGHT. WE'RE NOW OUT OF THE  
28 PRESENCE OF THE JURY.

1 ARE THERE ANY MATTERS ANYBODY WISHES TO  
2 TAKE UP?

3 MR. MADISON: I HAVE ONE SHORT MATTER, YOUR  
4 HONOR.

5 THE COURT: ALL RIGHT. 02:05PM

6 MR. MADISON: AND THAT IS, THE DEFENSE FILED A  
7 NOTICE OF LODGING OF DEPOSITION DESIGNATIONS, AND IT  
8 PURPORTED TO HAVE SOME DATES BY WHICH WE HAVE TO DO  
9 CERTAIN THINGS WITH REGARD TO THEIR DESIGNATIONS. I  
10 DON'T KNOW IF THOSE DATES ARE ACCURATE OR NOT, AND 02:06PM  
11 WE'LL ADDRESS THAT, BUT AN ISSUE HAS COME UP WITH --

12 THE COURT: I HAVE THIS DOCUMENT. I WASN'T  
13 SURE WHAT IT WAS.

14 MR. MADISON: I WASN'T EITHER, YOUR HONOR.

15 MR. BRIAN: ALL IT IS, YOUR HONOR, IS WHAT TCW 02:06PM  
16 DID WITH THEIRS, AND WE DECIDED NOT TO DO THIS, WHEN  
17 THEY FILED THEIR -- SERVED US WITH THEIR INITIAL  
18 DESIGNATIONS, THEY FILED A NOTICE WITH THE COURT.

19 WE DECIDED NOT TO DO THAT. INSTEAD, WE  
20 JUST WANTED TO HAVE A RECORD OF WHEN WE'VE SERVED THE 02:06PM  
21 STUFF.

22 EVERYBODY HAS BEEN DOING THEIR LEVEL  
23 BEST, AND IT'S REALLY BEEN HARD TO DO THE  
24 COUNTER-DESIGNATIONS AND OBJECTIONS.

25 I ANTICIPATE, AND THEY'LL CORRECT ME IF 02:06PM  
26 I'M WRONG, BUT I ANTICIPATE THAT TCW WILL PROBABLY REST  
27 ITS CASE NEXT MONDAY. I HAD THOUGHT THIS THURSDAY. I  
28 DON'T THINK SO NOW, I WOULD PREDICT NEXT MONDAY. IN

1 WHICH CASE WE'LL BE STARTING ON TUESDAY.

2 WE WILL BE STARTING -- WE'LL GIVE THE  
3 NOTICE THAT'S REQUIRED. BUT I'M GIVING HIM ADVANCE  
4 NOTICE THAT WE'LL BE STARTING WITH A NUMBER OF THE TCW  
5 PEOPLE, WHICH IS WHY WE GOT OURS SERVED WHEN WE DID.  
6 AND WE WANT TO MOVE THE PROCESS ALONG.

02:07PM

7 BUT THERE'S NO SIGNIFICANCE TO THAT,  
8 OTHER THAN TO TELL YOU WE'RE DOING IT, AND THEY ARE  
9 GOING TO BE RELATIVELY EARLY IN OUR CASE. SOME OF THEM  
10 WILL BE VERY EARLY.

02:07PM

11 THE COURT: ALL I ASK IS THAT THERE BE SOME  
12 ORDERLY APPROACH TO THIS. I'VE GOT ONE VERY SMALL ONE.

13 MR. BARACH, OVER THE WEEKEND, I THOUGHT  
14 I WOULD GET GUNDLACH OR SOMETHING WITH A LITTLE MORE  
15 SUBSTANCE TO IT. I DIDN'T GET IT. I'M SURE YOU ARE  
16 GOING TO BRING THAT IN AT 4 O'CLOCK TODAY AND SAY,  
17 WE'RE BRINGING IN MORE TOMORROW. SO YOU HAVE GOT TO DO  
18 IT TONIGHT. I CAN ONLY DO WHAT I CAN DO.

02:07PM

19 THIS SEEMS LIKE AN ORDERLY APPROACH.  
20 YOU GET ONE -- AND I'LL WIND UP WITH THREE OR FOUR OVER  
21 THE WEEKEND.

02:07PM

22 WHAT'S THE TIMING? WHAT'S A REASONABLE  
23 WAY TO GET THESE OBJECTIONS AND GET ME THESE NOTEBOOKS?

24 MR. BRIAN: WELL, YOUR HONOR, WHEN WE TALKED  
25 ABOUT IT, WE SAID THE OTHER SIDE SHOULD GET IT BACK  
26 WITHIN FIVE DAYS. EVERYBODY ON BOTH SIDES HAVE ACTED  
27 WITH THAT GOAL IN MIND. I THINK WE'VE MET IT MORE THAN  
28 WE'VE NOT MET IT. AND NO ONE IS GOING TO SCREAM IF

02:07PM



1 SOMEBODY IS A LITTLE LATE, BUT --

2 THE COURT: BUT WHY ARE THE COUNTER  
3 DESIGNATIONS AND OBJECTIONS BEING PUT ON THE TABLE SO  
4 LATE? I MEAN, WE'RE WELL INTO THE TRIAL, AND YOU'VE  
5 GOT THINGS HERE THAT SAY COUNTER DESIGNATIONS AND  
6 OBJECTIONS ARE DUE BY AUGUST 10TH.

02:08PM

7 SO WHEN DOES THAT MEAN THAT THE  
8 CONSOLIDATED DOCUMENT GETS TO ME?

9 MR. BRIAN: BECAUSE, YOUR HONOR, WE HAD THIS  
10 DEBATE BEFORE TRIAL, AND WE ASKED FOR IT FURTHER IN  
11 ADVANCE. YOUR HONOR RULED 10 DAYS BEFORE THE WITNESS  
12 WAS TO BE CALLED; AND THAT'S WHAT BOTH SIDES HAVE  
13 OPERATING UNDER IN GOOD FAITH.

02:08PM

14 IT'S BEEN A LOT OF WORK, BUT EVERYBODY  
15 IS OPERATING UNDER THAT SCHEDULE.

02:08PM

16 THE COURT: WELL, IF YOU ARE GIVING COUNTER  
17 DESIGNATIONS AND OBJECTIONS BY AUGUST 10TH, THEN I'M  
18 NOT GOING TO HEAR FROM THOSE WITNESSES OR HAVE TO DEAL  
19 WITH IT UNTIL AUGUST 20TH, WHICH I THINK A SATURDAY OR  
20 THE 22ND.

02:08PM

21 MR. BRIAN: NO, 10 DAYS FROM THE DAY THAT WE  
22 SERVED IT.

23 THAT'S BEEN THE PRESSURE POINT FOR BOTH  
24 SIDES. AND SO WE WILL -- WHEN WE GET THE COUNTERS AND  
25 OBJECTIONS, WE WILL -- WE HOPE TO GET YOU A BATCH OF  
26 OUR FOLKS THIS THURSDAY AND FRIDAY.

02:09PM

27 THE COURT: BUT HOW MANY? IF YOU GIVE ME  
28 EIGHT OR TEN NOTEBOOKS FULL OF TRANSCRIPTS ON FRIDAY AT

1 3 O'CLOCK, THAT MAKES IT A LITTLE UNREASONABLE, DON'T  
2 YOU THINK?

3 MR. BRIAN: I'M TRYING -- I AGREE. I AGREE,  
4 YOUR HONOR.

5 THE COURT: SO WHY CAN'T WE START BRINGING  
6 THESE THINGS IN TOMORROW, AND WEDNESDAY, AND THURSDAY,  
7 BRING ME ONE A DAY, TWO A DAY. IS THAT A PROBLEM?

02:09PM

8 MR. BRIAN: I NEED --

9 THE COURT: YOU DON'T HAVE THEIR INPUT.

10 MR. BRIAN: NO ONE HERE, EITHER SIDE, IS --  
11 THIS IS NOT A FINGER-POINTING EXERCISE.

02:09PM

12 THE COURT: I DON'T HOLD IT AGAINST ANYBODY.

13 MR. BRIAN: I WAS JUST TRYING TO PUT THE COURT  
14 ON NOTICE, BECAUSE WE ARE GOING TO CALL THE TCW PEOPLE  
15 EARLY IN OUR CASE; AND THEREFORE, WE GOT THOSE SERVED,  
16 SOME OF THEM ACTUALLY A DAY OR SO EARLY, THAN WE INTEND  
17 TO USE; SOME RIGHT AT THE 10 DAYS OR SO. AND WE'LL  
18 WORK WITH COUNSEL. IT'S NOT A QUESTION OF ANYBODY NOT  
19 WORKING HARD. PEOPLE ARE KILLING THEMSELVES.

02:09PM

20 THE COURT: BUT ARE YOU WAITING FOR -- IS  
21 THERE ANOTHER ROUND OF OBJECTIONS THAT HAVE TO BE PUT  
22 ON THE TABLE, OR IS IT JUST A MATTER OF CONSOLIDATING  
23 WHAT HAS ALREADY BEEN DESIGNATED AND COUNTER DESIGNATED  
24 AND OBJECTIONS INTO A LITTLE NOTEBOOK I CAN DEAL WITH?

02:10PM

25 MR. QUINN: AS TO THESE, YOUR HONOR, I SUSPECT  
26 WE HAVE FIVE DAYS IN WHICH TO DO COUNTERS. AND SO I  
27 DON'T KNOW IF THOSE FIVE DAYS ARE UP ON ANY OF THEIR  
28 DESIGNATIONS OR NOT.

02:10PM

1 THE COURT: SO YOUR COUNTERS ARE DUE  
2 AUGUST 10TH?

3 MR. QUINN: AND AGAIN, I JOIN IN EVERYTHING  
4 MR. BRIAN HAS SAID, YOUR HONOR.

5 THE COURT: DO THE BEST YOU CAN, AND I'LL DO  
6 THE BEST I CAN. I'M NOT GOING TO LET YOU DOWN, BUT I  
7 WOULD PREFER NOT TO HAVE 4- OR 500 DEPOSITION  
8 TRANSCRIPTS TO REVIEW NEXT WEEKEND.

9 MR. QUINN: WE KNOW THAT'S NOT FAIR.

10 THE COURT: I'LL DO WHAT I HAVE TO DO. THAT'S  
11 MY JOB.

12 MR. BRIAN: WHAT I WILL DO, YOUR HONOR, IS  
13 BEYOND THE TWO AND A HALF DAY NOTICE, THAT I WILL TALK  
14 TO MR. QUINN AND MR. MADISON ABOUT THE KEY ONES TO DO,  
15 SO THAT YOU WILL HAVE THOSE, MAYBE A COUPLE ON FRIDAY,  
16 TO LOOK AT OVER THE WEEKEND, AND THEN THE OTHER ONES --

17 THE COURT: THAT'S FINE.

18 MR. BRIAN: THERE ARE A COUPLE THAT ARE MORE  
19 MAJOR THAN THE OTHERS.

20 THE COURT: I CAN SEE -- THE SMALLER ONES,  
21 I'LL GET THROUGH. BUT YOU HAVE GOT TO GIVE THEM TO ME.  
22 I CAN'T GET THEM AT FIVE O'CLOCK. SO -- OCCASIONALLY,  
23 I HAVE SOMETHING TO DO, BUT NOT MUCH. SO, WE'LL TAKE  
24 CARE OF THAT.

25 IS IT TRUE -- WILL -- CAN WE EXPECT THAT  
26 TCW WILL BE RESTING NEXT MONDAY?

27 MR. QUINN: NO. I DON'T SEE US RESTING BEFORE  
28 WEDNESDAY.

1 THE COURT: OKAY. WELL, THEN ALL THIS CRISIS  
2 IS FOR NAUGHT. WE HAVE PLENTY OF TIME.

3 BUT YOU HAD SAID LAST WEEK, YOU THOUGHT YOU  
4 MIGHT REST THIS WEEK.

5 MR. QUINN: WELL, MR. MADISON SOMETIMES GETS  
6 CARRIED AWAY, YOUR HONOR.

7 MR. BRIAN: CERTAINLY IN HIS SUIT.

8 MR. QUINN: YOUR HONOR, COULD I -- GO AHEAD.

9 MR. MADISON: REMEMBER, I STARTED ALL THIS BY  
10 JUST MENTIONING THEIR FILING, AND AWAY WE WENT.

11 BUT MY ISSUE IS A DIFFERENT ONE, WITH  
12 THEIR FILING.

13 THE COURT: WHAT'S THAT?

14 MR. MADISON: THAT IS ONE OF THE DESIGNATIONS  
15 THAT WE HAVE AN OBLIGATION, ACCORDING TO MR. BRIAN, AND  
16 I TAKE IT AT FACE VALUE, ON THE 10TH, WE'RE SUPPOSED TO  
17 COUNTER-DESIGNATE SEVERIN CABANNES.

18 AND THE COURT WILL REMEMBER,  
19 MR. CABANNES, HE'S A VERY SENIOR BANKER AT SOC-JEN. WE  
20 ALL PACKED UP AND WENT TO FRANCE AND TOOK HIS  
21 DEPOSITION.

22 AND WE HAVE DISCOVERED, I REALLY THINK  
23 WE DETERMINED THIS LAST NIGHT, THAT THE INTERPRETER  
24 THAT THE DEFENSE USED FOR THAT DEPOSITION IS NOT COURT  
25 CERTIFIED. AND MY FIRST INKLING THAT THERE WAS A  
26 PROBLEM WAS WHEN I HEARD ABOUT A LOT OF PROBLEMS WITH  
27 THE TRANSLATION, WHEN THE TRANSCRIPT WAS PREPARED.

28 AND WHAT I WOULD LIKE IS, WE ARE LOOKING

02:11PM

02:11PM

02:12PM

02:12PM

02:12PM

1 AT THE LAW, AND TRYING TO FIGURE OUT WHY THEY WOULDN'T  
2 USE A COURT-CERTIFIED INTERPRETER, WHICH IS ACTUALLY  
3 REQUIRED BY THE CODE AND BY THE COMMISSION.

4 THE COURT: IS THIS THE ONE YOU HAD TO GO  
5 THROUGH THE -- ALL OF THE HOOPS TO GET THE AUTHORITY TO  
6 TAKE THE DEPOSITION IN FRANCE, BECAUSE --

02:13PM

7 MR. MADISON: THE HAGUE COMMISSION.

8 THE COURT: BECAUSE WE HAVEN'T HAD A LOT OF  
9 HELP ON THAT.

10 MR. BRIAN: CORRECT, YOUR HONOR.

02:13PM

11 THE COURT: YOU OUGHT TO TALK AMONG YOURSELVES  
12 ABOUT THIS, BEFORE YOU AIR IT WITH ME.

13 HAVE YOU TALKED TO MR. BRIAN ABOUT THE  
14 PROBLEM WITH HIS INTERPRETER?

15 MR. MADISON: WE EXCHANGED E-MAILS YESTERDAY,  
16 YES. AND JUST IN TERMS OF THE COOPERATION, YOUR HONOR,  
17 PLEASE UNDERSTAND THAT FRENCH LAW ACTUALLY MAKES IT A  
18 CRIME TO NOT COMPLY WITH THOSE HOOPS THAT WE HAD TO  
19 JUMP THROUGH; SO IT WASN'T A MATTER OF BEING  
20 UNCOOPERATIVE, IT'S A MATTER OF TRYING TO CROSS OUR T'S  
21 AND DOT OUR I'S.

02:13PM

02:13PM

22 BUT I WAS SURPRISED THAT THE INTERPRETER  
23 WAS NOT COURT-CERTIFIED. AND IT'S PRETTY CLEAR TO ME,  
24 LOOKING AT THE LAW, THAT THAT IS A -- WHAT WE WOULD  
25 CALL JURISDICTIONAL. THERE'S NO DISCRETION ABOUT THAT.

02:13PM

26 SO WHAT I WANT IS SOME EXTRA TIME TO  
27 RESEARCH THAT, MEET AND CONFER WITH MR. BRIAN, AND  
28 DETERMINE IF WE NEED TO BRIEF IT TO ADDRESS WITH THE

1 COURT.

2 HOPEFULLY WE'LL FIGURE OUT A SOLUTION.  
3 BUT THAT -- I DON'T WANT TO SPEND THE TIME DOING THE  
4 DESIGNATIONS IN THE NEXT 36 HOURS, WHEN I'M GOING TO BE  
5 FOCUSED ON THAT ISSUE.

02:14PM

6 MR. BRIAN: LET ME JUST SAY A COUPLE OF THINGS  
7 IN RESPONSE TO HIS REPRESENTATIONS TO THE COURT, YOUR  
8 HONOR.

9 THE NOTION THAT HE GOT AN INKLING OF  
10 THIS LAST NIGHT IS, WITH ALL DUE RESPECT TO  
11 MR. MADISON, PREPOSTEROUS. THEY INSIST WE GO THROUGH  
12 THE HAGUE CONVENTION AND NOT DO IT THE ORDINARY WAY,  
13 EVEN THOUGH THIS MAN SITS ON THE BOARD OF TCW GROUP  
14 INC.

02:14PM

15 WE WENT OVER THERE. THEY ASKED WHETHER  
16 OR NOT HE WAS CERTIFIED. WE GOT THE INFORMATION, HE IS  
17 CERTIFIED BY THE FRENCH COURT OF APPEALS. WE SENT  
18 MR. MADISON AND HIS COLLEAGUES BEFORE THE DEPOSITION  
19 WAS TAKEN, HIS RESUME THAT SO INDICATED. I FLEW TO  
20 PARIS TO TAKE THE DEPOSITION.

02:14PM

21 HE KICKED -- HIS COLLEAGUES KICKED OUT  
22 MY TWO LOCAL LAWYERS. HE SAT THERE WITH SIX OR SEVEN  
23 OTHER LAWYERS, MOST OF WHOM --

02:14PM

24 THE COURT: WHO'S HE?

25 MR. BRIAN: MR. MADISON.

02:15PM

26 THE COURT: REFER TO HIM AS MR. MADISON. THIS  
27 IS A VERY CIVIL GROUP HERE.

28 MR. BRIAN: I'M TRYING TO BE CIVIL, YOUR

1 HONOR, BUT THIS ISSUE IS TESTING ME A BIT.

2 THE COURT: I UNDERSTAND.

3 MR. BRIAN: THEY SAT THERE AT THE DEPOSITION.  
4 THERE WAS A COMMISSIONER WHO PRESIDED OVER THE  
5 DEPOSITION, A FLUENT FRENCH SPEAKER.

02:15PM

6 THERE WAS NO ISSUE RAISED OBJECTING TO  
7 THE INTERPRETER IN FRONT OF THE COMMISSIONER. THERE  
8 WAS NO OBJECTION MADE BEFORE WE ALL FLEW OVER TO TAKE  
9 THIS.

10 I THINK MR. MADISON IS READING THE CODE  
11 INCORRECTLY. HAPPY TO TALK TO HIM, HAPPY TO RESPOND TO  
12 A MOTION, BUT THIS IS A SIDESHOW AND A DISTRACTION.

02:15PM

13 THE COURT: WELL, HERE'S WHAT I WANT TO DO  
14 WITH THAT.

15 I WANT YOU EACH TO FILE WHATEVER YOU ARE  
16 GOING TO FILE BY TOMORROW MORNING AT 8:30. I'LL READ  
17 IT TOMORROW. BUT I DON'T WANT TO DELAY.

02:15PM

18 AND I WOULD SAY, YOU OUGHT TO HAVE YOUR  
19 PEOPLE GO AHEAD AND DO YOUR COUNTER-DESIGNATIONS AND  
20 GET READY, SO THAT THESE THINGS CAN BE SUBMITTED  
21 TIMELY. I DON'T KNOW IF IT'S A LENGTHY DEPOSITION OR  
22 NOT, BUT FILE YOUR RESPECTIVE BRIEFS, YOUR POCKET  
23 BRIEFS ON THIS ISSUE, AND I'LL LOOK AT IT TOMORROW. I  
24 DON'T KNOW WHAT THE RULE IS.

02:16PM

25 MR. BRIAN: I GUESS BEFORE WE DO THAT, I WOULD  
26 LIKE TO GET SOME AUTHORITY FROM MR. MADISON AS TO WHAT  
27 HE THINKS WAS VIOLATED, BECAUSE I ASKED FOR THAT LAST  
28 NIGHT, AND THE ANSWER I GOT WAS, I'M RESEARCHING IT.

02:16PM

1                   AND BEFORE I FILE A BRIEF, I WOULD LIKE  
2 TO KNOW WHAT I'M RESPONDING TO.

3                   MR. QUINN: IT'S QUITE SIMPLE, YOUR HONOR. WE  
4 DID, ONE OF US, I DON'T REMEMBER IF WE ASKED OR  
5 SOC-JEN'S COUNSEL ASKED, THEY WERE ASSIDUOUS WITH ALL  
6 OF THE RULES BEING FOLLOWED ABOUT THIS, WAS HE  
7 CERTIFIED.

02:16PM

8                   AND THE ANSWER CAME BACK, YES, HE'S  
9 CERTIFIED BY THE FRENCH IN'S (PHONETIC) OF COURT.

10                  MR. BRIAN: THE FRENCH COURT OF APPEAL.

02:16PM

11                  MR. MADISON: AND THAT WAS THE END OF IT.

12                  MR. BRIAN: UNTIL WE GOT THE TRANSCRIPT, AND  
13 IT WAS RIDDLED WITH TRANSCRIPTION PROBLEMS.

14                  AND SOMEBODY SAID, IS THIS GUY A  
15 LEGITIMATE INTERPRETER? AND WE THEN ASKED MUNGER, AND  
16 THEY -- AT FIRST, THEY WOULDN'T ANSWER OUR QUESTION.  
17 AND THEN FINALLY LAST NIGHT, I GOT AN ANSWER, HE'S NOT  
18 CERTIFIED. AND WHAT THE CODE REQUIRES --

02:16PM

19                  THE COURT: WHAT CODE ARE WE TALKING ABOUT?

20                  MR. MADISON: WE'RE TALKING ABOUT SEVERAL,  
21 ACTUALLY.

02:17PM

22                  THE COURT: GIVE ME ONE THAT I CAN READ, OR IS  
23 IT ALL IN FRENCH?

24                  MR. MADISON: I THINK I CAN GIVE THEM ALL TO  
25 YOU.

02:17PM

26                  THE CCP SAYS THAT DEPOSITIONS SHOULD BE  
27 CONDUCTED PURSUANT TO THE RULES OF EVIDENCE AT TRIAL.

28                  THE COMMISSION IN CASE REFERENCES THE



1 CODE OF CIVIL PROCEDURES, THAT THE DEPOSITION, UNDER  
2 THE RULES OF THE HAGUE COMMISSION, SHALL BE CONDUCTED  
3 PURSUANT TO THE CCP.

4 THE EVIDENCE CODE SAYS THAT YOU CAN USE  
5 AN INTERPRETER, BUT ONLY IF THE INTERPRETER IS  
6 REGISTERED OR CERTIFIED PURSUANT TO THE GOVERNMENT  
7 CODE. AND THE GOVERNMENT CODE LAYS OUT THE CRITERIA TO  
8 HAVE A CERTIFIED OR REGISTERED INTERPRETER.

02:17PM

9 ALL I WAS TRYING TO FIGURE OUT YESTERDAY  
10 WAS, IS THIS INTERPRETER REGISTERED OR CERTIFIED.

02:17PM

11 AND THE ANSWER IS, HE IS NOT.

12 THE COURT: LET'S DO IT THIS WAY: IT'S FAIR  
13 ENOUGH TO HAVE -- YOU ARE THE ONE CHALLENGING IT. AND  
14 THERE WAS NO STIPULATION ON THE RECORD AT THE BEGINNING  
15 OF THIS DEPOSITION CONCERNING THE USE OF THE  
16 INTERPRETER?

02:18PM

17 MR. BRIAN: WELL, AGAIN, THE QUESTION WAS  
18 RAISED BEFORE WE WENT. HIS RESUME WENT OVER,  
19 INDICATING HE WAS CERTIFIED BY THE FRENCH COURT OF  
20 APPEAL.

02:18PM

21 HE WAS SWORN IN, HE INTERPRETED THERE IN  
22 FRONT OF A COMMISSIONER, WHO HAD BEEN SELECTED, I  
23 BELIEVE, BY SOCIETE GENERALE'S COUNSEL.

24 ALL THE PEOPLE IN THAT ROOM, OTHER THAN  
25 MYSELF, WERE -- AND MR. MADISON, POSSIBLY, WERE DUAL  
26 ENGLISH/FRENCH SPEAKERS, INCLUDING THE WITNESS, BY THE  
27 WAY, WHO IS QUITE FLUENT IN ENGLISH, BUT CHOSE TO BE  
28 DEPOSED IN FRENCH, AS IS HIS RIGHT.

02:18PM

1                   THERE WAS NO OBJECTION TO HIS  
2                   SIMULTANEOUS TRANSLATIONS THERE.   THERE'S NO NEW  
3                   EVIDENCE THAT CAME UP.   THERE'S NO TRANSCRIPT THAT'S  
4                   RIDDLED WITH ERRORS.   IF THERE'S ERRORS IN THE  
5                   TRANSCRIPT, MAYBE THAT'S A COURT REPORTING ISSUE.   IT'S  
6                   NOT A TRANSLATOR ISSUE.

02:19PM

7                   WE HAVE A VIDEOTAPE OF THE SIMULTANEOUS  
8                   TRANSLATIONS FROM ENGLISH TO FRENCH AND FRENCH TO  
9                   ENGLISH.

10                   NOW, I WILL ADD THAT THE WITNESS, ON ONE  
11                   OR TWO OCCASIONS, QUARRELED WITH THE TRANSLATION OF A  
12                   DOCUMENT, WHICH WAS DONE PURSUANT TO A CERTIFIED  
13                   INTERPRETER BEFORE WE WENT OVER THERE.

02:19PM

14                   SO THERE'S ALL KINDS OF REASONS WHY  
15                   MR. MADISON IS WRONG; BUT I THINK HE SHOULD FILE HIS  
16                   BRIEF FIRST.

02:19PM

17                   AND WE'LL RESPOND TO IT.

18                   THE COURT:   YOU FILE YOUR BRIEF TOMORROW  
19                   MORNING, AND I'LL GIVE THE DEFENDANTS UNTIL THE END OF  
20                   THE DAY TO FILE A RESPONSE.

02:19PM

21                   MR. BRIAN:   CAN WE HAVE TILL WEDNESDAY  
22                   MORNING, YOUR HONOR?

23                   THE COURT:   8:30 WEDNESDAY MORNING, SO  
24                   EVERYBODY CAN BE INVOLVED.

25                   MR. MADISON:   WE'RE ELEVATING THAT TO A  
26                   MOTION.

02:19PM

27                   AND MY HOPE, WE COULD HAVE A MEET AND  
28                   CONFER, TO WORK SOMETHING OUT.

1 THE COURT: I'M ALL FOR THAT. DO IT TONIGHT,  
2 AND FILE YOUR BRIEF TOMORROW.

3 ALL SORTS OF ISSUES ARE COMING UP HERE.  
4 MAYBE THERE'S SOME ESTOPPEL, MAYBE THERE'S NOT.  
5 WHATEVER IT IS, I'LL HAVE TO DEAL WITH IT.

02:20PM

6 AND YOU WILL HAVE TO GIVE ME SOMETHING  
7 TO PUT IN THE RECORD, SO THAT I CAN DECIDE WHETHER YOU  
8 ARE RIGHT, OR THEY ARE RIGHT, OR NOBODY IS RIGHT.

9 MR. MADISON: I GUESS WHAT I WAS HOPING, IS IF  
10 WE ACTUALLY NOW AREN'T GOING TO REST OUR CASE MAYBE WE  
11 COULD HAVE A COUPLE OF EXTRA DAYS --

02:20PM

12 THE COURT: NO. I WANT IT DONE -- HOWEVER IT  
13 TURNS OUT, I WANT THESE NOTEBOOKS DONE. I'M NOT  
14 PUTTING OFF -- WE HAVE A SATURDAY COMING UP TO FINISH  
15 JURY INSTRUCTIONS, TOO.

02:20PM

16 WHICH SATURDAY WOULD YOU LIKE TO DO THAT  
17 ON?

18 MR. MADISON: NOT THE ONE I'M GETTING MARRIED  
19 ON.

20 THE COURT: WHEN IS THAT?

02:20PM

21 MR. MADISON: AUGUST 27TH.

22 THE COURT: WE'LL TRY AND DO IT BEFORE THEN.

23 ALL RIGHT. THANK YOU VERY MUCH.

24 MR. QUINN: YOUR HONOR, COULD I ASK THE COURT  
25 TO JUST THINK ABOUT ONE THING? I DON'T WANT TO ARGUE  
26 THIS NOW.

02:20PM

27 THE COURT: YES.

28 MR. QUINN: BUT IN THE EXAMINATION OF

1 MR. WALLS, IN HIS CONVERSATION WITH MR. STERN, MY  
2 UNDERSTANDING, SORT OF THE TENOR OF THE COURT'S RULING  
3 WAS THAT WHAT MR. WALLS TOLD MR. STERN WOULD COME IN  
4 THAT WAS FAIR FOR STATE OF MIND, MR. STERN'S STATE OF  
5 MIND.

02:21PM

6 BUT WHAT MR. STERN SAID IN RESPONSE, I'M  
7 NOT SURE WHETHER THE COURT WAS --

8 THE COURT: IT SEEMS TO ME, THAT'S COMING  
9 THROUGH MR. STERN.

10 MR. QUINN: THAT'S MY POINT. THAT'S REALLY  
11 STATE OF MIND, AS WELL. AND IF THAT --

02:21PM

12 THE COURT: I'M NOT SURE STATE OF MIND IS AN  
13 ALL-ENCOMPASSING CATCHALL THAT LETS YOU GET THINGS IN  
14 THAT OTHERWISE DON'T COME IN.

15 MR. QUINN: NO, BUT I THINK THAT WHAT SOMEBODY  
16 SAYS ALSO CAN COME IN FOR STATE OF MIND, IN ADDITION TO  
17 WHAT SOMEBODY SAID TO THEM. THAT'S MY ONLY POINT.

02:21PM

18 MR. BRIAN: TWO THINGS. I CAN OFFER ANY  
19 STATEMENT AGAINST MR. STERN, AS LONG AS IT'S RELEVANT.

20 THE COURT: I AGREE WITH THAT.

02:21PM

21 MR. BRIAN: AND I AGREE WITH BOTH, YOUR HONOR.

22 AND MR. QUINN, THERE ARE TIMES THAT  
23 SIMUL -- CONTEMPORANEOUS STATEMENTS BY MR. STERN, SOME,  
24 WOULD BE RELEVANT TO HIS STATE OF MIND.

25 I ALSO AGREE WITH YOUR HONOR, IT CAN'T  
26 BE A CATCHALL FOR EVERYTHING.

02:21PM

27 THE COURT: WELL, THE ISSUE IS, WE'RE DANCING  
28 AROUND THE EDGE OF THE COURT'S RULING IN LIMINE ON THE

1 RESULTS OF THE WEST L.A. SEARCH, AND WE'LL JUST HAVE TO  
2 DEAL WITH THAT AS WE GO.

3 MR. BRIAN: THE RESULT OF WHAT, YOUR HONOR?

4 THE COURT: OF THE WEST L.A. SEARCH.

5 MR. QUINN: I WASN'T EVEN THINKING OF THAT,  
6 YOUR HONOR. THAT COMES UP IN THE CONTEXT OF WHETHER WE  
7 COULD SUB-ADVISE, OR WHY WE DIDN'T.

02:22PM

8 BUT IT SEEMS TO ME THAT MR. WALLS OUGHT  
9 TO BE ABLE TO SAY WHAT MR. STERN SAID, AS WELL.

10 MR. MADISON: YOUR HONOR, COULD I JUST ADD-ON  
11 THAT?

02:22PM

12 THE COURT: HIS COMMENTS TO HIM?

13 MR. QUINN: YES, IN RESPONSE, AS COMING TO  
14 MR. STERN'S STATE OF MIND.

15 MR. MADISON: AND THE ONLY POINT I WOULD ADD  
16 AS MR. BRIAN JUST ALLUDED CORRECTLY, THAT HE COULD ASK  
17 MR. STERN ABOUT IT.

02:22PM

18 AND THE CONCERN I HAVE IS, GIVEN  
19 MR. WALLS IS NOT EMPLOYED BY EITHER OF THE PARTIES,  
20 HE'S HERE FROM NEW YORK. IF THAT'S MR. BRIAN'S  
21 INTENTION, TO ASK MR. STERN ABOUT HIS SIDE OF THE  
22 CONVERSATION, THERE'S NO REASON WE SHOULDN'T NOW, WHILE  
23 HE'S HERE, HAVE MR. WALLS RECITE WHAT HE RECALLS.

02:22PM

24 MR. BRIAN: FIRST OF ALL, I'LL RESPOND TO BOTH  
25 OF THEM.

02:23PM

26 IF I OPEN THE DOOR, AND I ASK QUESTIONS  
27 UNDER THE RULE OF COMPLETENESS, SO TO SPEAK, WHICH IS  
28 NORMALLY A DOCUMENT RULE, I AGREE THEY CAN ASK. AND

1 WHETHER THEY ASK CERTAIN QUESTIONS, YOUR HONOR CAN TAKE  
2 IT UP ON A QUESTION-BY-QUESTION BASIS.

3 I WOULD NOTE ALSO, ON THIS SUB-ADVISORY  
4 POINT, THAT I DID NOT ASK THE QUESTION THAT -- THE  
5 SECOND PART OF THAT. I DID NOT ASK, WHAT DECISION DID  
6 TCW MADE. I MIGHT, BUT I DIDN'T.

02:23PM

7 THE COURT: WHAT WE'RE TALKING ABOUT THOUGH,  
8 IS WHETHER MR. WALLS SHOULD BE ABLE TO TESTIFY TO  
9 STATEMENTS MADE TO HIM BY MR. STERN DURING THE COURSE  
10 OF THEIR CONVERSATION; AND WHETHER THAT, YOU KNOW,  
11 MR. STERN IS THE PRESIDENT AND CEO. WHETHER IT  
12 CONSTITUTES ADMISSION, IT'S ADMISSIBLE ON THAT BASIS.  
13 ALTHOUGH USUALLY, YOU CAN'T BRING IN AN ADMISSION OF  
14 YOUR OWN PARTY; SO THAT ISN'T THE WAY YOU GET THERE.

02:23PM

15 MR. QUINN: I WOULD SAY OUR THEORY IS THAT IT  
16 COMES IN AS A STATE OF MIND, NOT AN ADMISSION.

02:23PM

17 MR. BRIAN: I WANT TO THINK ABOUT THAT, YOUR  
18 HONOR. I'M NOT SURE WHAT POSITION I'LL TAKE.

19 THE COURT: I'LL LOOK AT IT.

20 THIS WITNESS' STATE OF MIND DOESN'T  
21 REALLY HAVE A WHOLE LOT TO DO WITH ANYTHING, EXCEPT FOR  
22 THE E-MAILS HE SENT IN THINGS.

02:24PM

23 MR. QUINN: AGREED.

24 THE COURT: MR. STERN'S STATE OF MIND MIGHT  
25 HAVE SOME REAL BEARING ON THINGS. AND I'M NOT SURE  
26 THAT YOU DON'T -- I GUESS MY INITIAL REACTION IS, YOU  
27 GET THAT THROUGH MR. STERN.

02:24PM

28 WHAT WERE YOU THINKING?

1 MR. QUINN: OR WHAT DID YOU SAY IN RESPONSE.

2 BUT I DON'T KNOW, YOUR HONOR.

3 THE COURT: WE'LL LOOK AT IT.

4 MR. QUINN: THE COURT WILL THINK ABOUT IT.

5 THE COURT: I'M THINKING ABOUT IT, AND WE'VE

6 GOT MR. BRIAN THINKING ABOUT IT.

7 EVERYBODY WILL THINK ABOUT IT.

8 MR. BRIAN: WE'LL ALL THINK ABOUT IT.

9 THE COURT: HAVE A NICE EVENING.

02:24PM

10

11 (AT 2:25 P.M., AN ADJOURNMENT

12 WAS TAKEN UNTIL TUESDAY,

13 AUGUST 8, 2011, AT 8:30 A.M.)

14

15 (THE NEXT PAGE NUMBER IS 2101.)

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I N D E X

MONDAY, AUGUST 8, 2011

EXHIBITS

<u>EXHIBITS</u>	<u>ADMITTED</u>	<u>WITHDRAWN</u>
5590 - SANTA ANA E-MAIL DATED 12/14	1820	
5737 - COMPANY-WIDE MEMO	1828	
393 - PRESENTATION	1849	
6056 - FINAL PRESENTATION	1860	
1026 - SANTA ANA DOCUMENT	1913	
1034 - PRO FORMA DRAFT	1914	
2046 - E-MAILS	1916	
432 - SANTA ANA/VANDEWATER E-MAIL	1919	
544 - I.M. CHATS	1929	
1023 - FIXED INCOME GRID	1929	
2149 - TRACKING SPREADSHEET	1937	
2136-A HARD DRIVE CUSTODY DOCUMENTS	1941	
2134 - SIGNED DEVITO AGREEMENT	1944	
6057 - STATEMENT OF WORK	1946	
2138 - LAB NOTES	1951	
151 - PACKAGE OF INNOVATION AWARD SUBMISSIONS	2002	
2122 - LIST OF INVESTORS	2037	
5606 - E-MAIL BY T. MODIC	2053	

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EXHIBITS (CONTINUED)

<u>EXHIBITS</u>	<u>ADMITTED</u>	<u>WITHDRAWN</u>
5628 - E-MAIL BY G. WALLS	2054	
5657 - E-MAIL TO ALL INVESTORS IN FUND	2058	
5517 - WALLS/STERN E-MAIL	2061	
6049 - E-MAIL WITH ATTACHMENT	2064	

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

3 DEPARTMENT 322

HON. CARL J. WEST, JUDGE

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5  
6 TRUST COMPANY OF THE WEST, )  
7 )  
8 ) PLAINTIFFS, )  
9 )  
10 ) VS. ) CASE NO. BC429385  
11 )  
12 ) JEFFREY GUNDLACH, ET AL., )  
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14 ) DEFENDANTS. )  
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REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

MONDAY, AUGUST 8, 2011

APPEARANCES:

FOR TCW:

QUINN, EMANUEL, URQUHART,  
OLIVER & HEDGES

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

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

FOR DOUBLELINE: MUNGER, TOLLES & OLSON

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

355 SOUTH GRAND AVENUE, 35TH FLOOR  
LOS ANGELES, CALIFORNIA 90071-1560  
(213) 683-9280

1 APPEARANCES (CONTINUED) :

2

FOR GUNDLACH, ET AL: KELLEY, DRYE, WHITE, O'CONNOR  
3 BY: **EDWARD E. WEIMAN**  
10100 SANTA MONICA BOULEVARD  
4 23RD FLOOR  
LOS ANGELES, CALIFORNIA 90067  
5 (310) 712-6100

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**WENDY OILLATAGUERRE**, CSR 10978  
**RAQUEL A. RODRIGUEZ**, CSR 9485  
600 SOUTH COMMONWEALTH AVENUE  
DEPARTMENT 322 - 17TH FLOOR  
LOS ANGELES, CA 90005  
(213) 351-8610

26

27

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