

1 CASE NUMBER: BC 429385  
2 CASE NAME: TCW VS. GUNDLACH  
3 LOS ANGELES, CALIFORNIA AUGUST 9, 2011  
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE  
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)  
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR  
7 TIME: A SESSION: 8:30 A.M.

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10

08:33AM

11

THE COURT: GOOD MORNING, LADIES AND  
12 GENTLEMEN.

13

IN THE TCW VERSUS GUNDLACH MATTER. ALL  
14 JURORS ARE PRESENT, AS ARE COUNSEL.

15

MR. WALLS, YOU HAVE PREVIOUSLY BEEN  
16 SWORN AND YOU ARE STILL UNDER OATH.

08:33AM

17

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

19

MR. BRIAN: I WILL. THANK YOU, YOUR HONOR.

20

08:33AM

21

CROSS-EXAMINATION (RESUMED) +

22

23 BY MR. BRIAN:

24

Q GOOD MORNING.

25

A GOOD MORNING.

08:33AM

26

Q WE WERE TALKING ABOUT THE SMCF FUND.

27

DO YOU RECALL THOSE QUESTIONS AND  
28 ANSWERS?

1 A YES.

2 Q EACH OF THEM WERE CREATED PURSUANT TO A  
3 PARTNERSHIP AGREEMENT, WAS IT NOT?

4 A YES.

5 Q ALL THE INVESTORS WERE ESSENTIALLY PARTNERS OF  
6 EACH OTHER, CORRECT?

08:33AM

7 A YES.

8 Q ARE YOU FAMILIAR WITH THE ACTUAL PARTNERSHIP  
9 AGREEMENTS?

10 A FAMILIAR -- BUT AS I SAID YESTERDAY, I'M NOT A  
11 LAWYER.

08:33AM

12 Q LET ME ASK YOU TO -- I WON'T ASK YOU TO DO  
13 ANYTHING OTHER THAN IDENTIFY. IF YOU COULD LOOK AT  
14 EXHIBIT 5044 IN THAT BIG BINDER.

15 A YES.

08:34AM

16 Q DO YOU SEE THAT?

17 IS THAT THE PARTNERSHIP AGREEMENT FOR  
18 SMCF I?

19 A CORRECT.

20 MR. MADISON: OBJECTION. FOUNDATION.

08:34AM

21 THE COURT: OVERRULED.

22 MR. BRIAN: I'LL OFFER 5044.

23 THE COURT: DO YOU RECOGNIZE THAT?

24 THE WITNESS: YES.

25 MR. BRIAN: I'LL OFFER THE EXHIBIT.

08:34AM

26 THE COURT: ANY OBJECTION?

27 MR. MADISON: NO OBJECTION.

28 THE COURT: ADMITTED.

1 (EXHIBIT 5044 ADMITTED.) +

2

3 BY MR. BRIAN:

4 Q 5069. TAKE A LOOK AT 5069. I WON'T TEST YOUR  
5 KNOWLEDGE OF ALL THE LEGAL TERMS. TAKE A LOOK AT  
6 EXHIBIT 5069, PLEASE.

08:34AM

7 A YES.

8 Q DOES THAT APPEAR TO BE THE PARTNERSHIP  
9 AGREEMENT FOR SMCF --

10 MR. MADISON: OBJECTION. FOUNDATION.

08:34AM

11 BY MR. BRIAN:

12 Q DID YOU RECOGNIZE IT?

13 A YES.

14 Q IS THAT THE PARTNERSHIP AGREEMENT FOR 50- --  
15 I'M SORRY -- FOR SMCF II?

08:35AM

16 A YES.

17 MR. BRIAN: I'LL OFFER 5069.

18 THE COURT: ANY OBJECTION?

19 MR. MADISON: NO OBJECTION.

20

08:35AM

21 (EXHIBIT 5069 ADMITTED.) +

22

23 BY MR. BRIAN:

24 Q TCW DECIDED ALMOST IMMEDIATELY AFTER  
25 MR. GUNDLACH WAS RELIEVED OF HIS CONTRACTUAL DUTIES NOT  
26 TO STAND ON ITS CONTRACTUAL RIGHTS TO FORCE THE  
27 INVESTORS TO STAY IN THE FUNDS FOR THE ENTIRE DURATION,  
28 CORRECT?

08:35AM

1 MR. MADISON: OBJECTION. VAGUE.

2 FOUNDATION, AND ALSO CALLS FOR  
3 NARRATIVE.

4 THE COURT: SUSTAINED.

5 BY MR. BRIAN:

08:35AM

6 Q TAKE A LOOK AT EXHIBIT 5517 IN YOUR BINDER.

7 IT'S IN EVIDENCE. IF WE MAY DISPLAY  
8 THIS, DENNIS, PLEASE. 5517.

9 THIS IS THE E-MAIL YOU SENT TO MR. STERN  
10 ON DECEMBER 5TH THE DAY AFTER MR. GUNDLACH WAS RELIEVED  
11 OF HIS DUTIES, IS IT NOT?

08:35AM

12 A IT IS.

13 Q AND DO YOU SEE WHERE YOU SAY, ABOUT THE  
14 MIDDLE, THE OTHER POINT MADE BY THOSE -- THOSE IN  
15 SMCF I, AND SMCF II OR III, WAS THAT WE WOULD DO  
16 OURSELVES A HUGE DISSERVICE BY LOCKING CLIENTS INTO THE  
17 THREE FUNDS GIVEN THE SIGNIFICANCE OF THE CHANGE?

08:36AM

18 YOU WROTE THAT --

19 MR. MADISON: IT'S CONFUSING, YOUR HONOR,  
20 BECAUSE OTHER LANGUAGE IS HIGHLIGHTED. COULD WE HAVE  
21 THE LANGUAGE MR. BRIAN'S READING HIGHLIGHTED?

08:36AM

22 THE COURT: OVERRULED.

23 HE'S READING.

24 GO AHEAD.

25 BY MR. BRIAN:

08:36AM

26 Q YOU WROTE THAT, DID YOU NOT, SIR?

27 A I DID.

28 Q AND BELOW THAT YOU WROTE THE SECOND

1 HIGHLIGHTED, WHERE YOU SEE WHERE IT SAYS:

2 I HAD MENTIONED THIS IN OUR  
3 MEETINGS THIS WEEK, AND STILL FEEL  
4 FROM A LONG-TERM CREDIBILITY  
5 STANDPOINT WE HAVE TO GIVE CLIENTS  
6 A LIQUIDITY OPTION.

08:36AM

7 YOU WROTE THAT AS WELL, DID YOU NOT?

8 A I DID.

9 Q YOU REFERRED TO MEETINGS EARLIER THIS WEEK.

10 DO YOU SEE THAT? OUR MEETINGS THIS  
11 WEEK.

08:36AM

12 A YES.

13 Q THOSE ARE MEETINGS THAT YOU ATTENDED DURING  
14 THE WEEK OF NOVEMBER 30TH, 2009 WITH MR. STERN AND  
15 OTHER EXECUTIVES AT TCW, CORRECT?

08:37AM

16 A CORRECT.

17 Q IN THOSE MEETINGS YOU RECOMMENDED, AMONG OTHER  
18 THINGS, THAT TCW OFFER THE INVESTORS IN THE SMCF FUNDS  
19 THE OPTION OF LIQUIDATING THEIR INVESTMENTS, CORRECT?

20 A I DID.

08:37AM

21 Q YOU KNEW AT THE TIME TCW WAS NOT REQUIRED TO  
22 OFFER THAT, CORRECT?

23 A CORRECT.

24 Q AND YOU SENT OUT -- TCW SENT OUT TO INVESTORS  
25 A LIQUIDITY OPTION, DIDN'T YOU?

08:37AM

26 MR. MADISON: VAGUE AS TO TIME.

27 THE COURT: SUSTAINED.

28 ///

1 BY MR. BRIAN:

2 Q TAKE A LOOK AT EXHIBIT 6038 IN YOUR BINDER.

3 YOU RECOGNIZE THAT DOCUMENT AS A LETTER  
4 TCW SENT OUT ON OR ABOUT DECEMBER 9TH, 2009 TO  
5 INVESTORS IN THE SMCF FUNDS, CORRECT?

08:38AM

6 A YES.

7 MR. BRIAN: I'LL OFFER 6038, PLEASE.

8 MR. MADISON: NO OBJECTION.

9 THE COURT: IT WILL BE ADMITTED.

10

08:38AM

11 (EXHIBIT 6038 ADMITTED.)+

12

13 MR. BRIAN: 6038.

14 Q I'VE HIGHLIGHTED THE NEXT TO LAST PARAGRAPH.

15 IF WE COULD BLOW THAT UP, DENNIS.

08:38AM

16 YOU SEE THAT LETTER STATES, IN THE  
17 HIGHLIGHTED PORTION:

18 TCW UNDERSTANDS THAT SOME  
19 INVESTORS MAY NEVERTHELESS WANT  
20 ALTERNATIVE OPTIONS FOR THE  
21 MANAGEMENT OR CONTROLLED  
22 LIQUIDATION OF THEIR INTERESTS IN  
23 THE FUND, AND TCW IS ACTIVELY  
24 CONSIDERING OPTIONS AND THEIR  
25 FEASIBILITY.

08:38AM

08:38AM

26 DID I READ THAT CORRECTLY?

27 A YOU DID. YOU DID.

28 Q TAKE A LOOK AT 6039, THE NEXT EXHIBIT IN YOUR

1 BINDER.

2 YOU RECOGNIZE THAT AS THE LETTER TCW  
3 SENT OUT ON DECEMBER 9TH, THE SAME DAY, 2009, TO THE  
4 INVESTORS IN THE SMCF II, DO YOU NOT?

5 A YES.

08:39AM

6 MR. BRIAN: I'LL OFFER EXHIBIT 6039.

7 MR. MADISON: NO OBJECTION.

8 THE COURT: IT WILL BE ADMITTED.

9

10 (EXHIBIT 6039 ADMITTED.)+

08:39AM

11

12 MR. BRIAN: IF WE CAN DISPLAY PAGE 1 OF THAT  
13 EXHIBIT, ENLARGE THE SAME NEXT TO LAST PARAGRAPH,  
14 PLEASE.

15 Q DO YOU SEE WHERE THAT HAS EXACTLY THE SAME  
16 LANGUAGE I READ TO YOU BEFORE, IN THE LAST SENTENCE OF  
17 THE NEXT TO LAST PARAGRAPH, CORRECT?

08:39AM

18 A CORRECT.

19 Q (READING):

20 TCW UNDERSTANDS SOME INVESTORS  
21 MAY NEVERTHELESS WANT ALTERNATIVE  
22 OPTIONS FOR THE MANAGEMENT OR  
23 CONTROL LIQUIDATION OF THEIR  
24 INTERESTS IN THE FUND AND TCW IS  
25 ACTIVELY CONSIDERING OPTIONS AND  
26 THEIR FEASIBILITY.

08:39AM

27 DID I READ THAT CORRECTLY?

28 A YOU DID.

08:39AM

1 Q NOW TAKE A LOOK AT EXHIBIT 5603 IN YOUR  
2 BINDER.

3 YOU RECOGNIZE THIS AS A LETTER THAT TCW  
4 SENT OUT ON OR ABOUT DECEMBER 17TH TO INVESTORS IN THE  
5 SMCF FUNDS AND II, DO YOU NOT? 08:40AM

6 A YES.

7 MR. BRIAN: I'LL OFFER EXHIBIT 5603, YOUR  
8 HONOR.

9 MR. MADISON: NO OBJECTION.

10 THE COURT: IT WILL BE ADMITTED. 08:40AM

11  
12 (EXHIBIT 5603 ADMITTED.)+

13  
14 MR. BRIAN: MAY WE, DENNIS, PUT UP  
15 EXHIBIT 5603. 08:40AM

16 CAN YOU MAKE THOSE NUMBERED PARAGRAPHS A  
17 LITTLE LARGER, PLEASE.

18 Q SAYS:

19 WE ARE STILL REVIEWING THE  
20 OPTIONS FOR THE INVESTORS -- I'M  
21 SORRY -- THE INVESTORS HAVE  
22 SUGGESTED BUT WANTED TO SHARE  
23 SOME --

24 IS THAT WHAT IT SAYS -- SOME OF THOSE,  
25 DID I READ THAT CORRECTLY? 08:40AM

26 A YOU DID, YES.

27 Q IT SET FORTH THREE POSSIBLE OPTIONS, CORRECT?

28 A YES.



1 Q NOW, THE FINAL OPTIONS WERE ACTUALLY SET FORTH  
2 IN A FORMAL BALLOT THAT WAS SENT TO THE INVESTORS,  
3 RIGHT?

4 A COULD YOU REPEAT?

5 Q THE FINAL THREE OPTIONS WERE SENT OUT TO THE  
6 INVESTORS IN A BALLOT FOR THEM TO VOTE, CORRECT?

08:41AM

7 A CORRECT. YES.

8 Q BUT BEFORE IT WENT OUT, SOME OF THE INVESTORS  
9 REQUESTED AN IN-KIND DISTRIBUTION, DID THEY NOT.

10 A THEY DID.

08:41AM

11 Q TAKE A LOOK AT EXHIBIT 5979 IN YOUR BINDER.  
12 COULD YOU TAKE A LOOK AT PAGE -- IT  
13 WOULD HAVE THAT EXHIBIT, PLEASE.

14 AT THE BOTTOM OF PAGE 2 IS AN E-MAIL  
15 FROM JAY COLLIER TO YOURSELF, CORRECT?

08:41AM

16 A YES.

17 Q AS WE INDICATED YESTERDAY, OR AS YOU INDICATED  
18 YESTERDAY, MR. COLLIER WAS A MEMBER OF THE ADVISORY  
19 COMMITTEE TO THE SMCF II FUNDS, WAS HE NOT?

20 A HE WAS.

08:42AM

21 Q THE REST OF THE E-MAILS THAT MAKE UP  
22 EXHIBIT 5979 ARE PART OF THE CHAIN, EITHER FROM YOU OR  
23 TO YOU, AMONG OTHERS, CORRECT?

24 A YES.

25 MR. BRIAN: I'LL OFFER EXHIBIT 5979, YOUR  
26 HONOR.

08:42AM

27 MR. MADISON: AGAIN, SO LONG AS IT'S NOT FOR  
28 THE TRUTH.

1 THE COURT: IT WILL BE ADMITTED.

2 LADIES AND GENTLEMEN, TO THE EXTENT IT  
3 CONTAINS STATEMENTS OF OTHERS THAT ARE NOT HERE TO  
4 TESTIFY, YOU MAY NOT ACCEPT IT FOR THE TRUTH OF THE  
5 MATTER ASSERTED, BUT YOU MAY ACCEPT IT FOR THE IMPACT  
6 IT -- IT HAD OR THE EXCHANGE ON THE PARTIES TO THIS  
7 LITIGATION.

08:42AM

8

9 (EXHIBIT 5979 ADMITTED.)+

08:42AM

10

11 BY MR. BRIAN:

12 Q IF WE COULD ENLARGE THAT VERY FIRST PARAGRAPH  
13 THAT MR. -- WHAT MR. COLLIER SAID IN THIS PARAGRAPH TO  
14 YOU. YOU'RE THE GARRETT HE'S REFERRING TO, CORRECT?

15 A YES, CORRECT.

08:42AM

16 Q HE STATED:

17 WE WERE LED TO BELIEVE TCW WAS  
18 FINALLY OPEN TO THE ADVISORY  
19 COMMITTEE'S UNANIMOUS REQUEST TO  
20 ADD AN IN-KIND DISTRIBUTION OPTION  
21 TO YOUR DRAFT BALLOT AND YOU  
22 SCHEDULE AN ADVISORY COMMITTEE CALL  
23 TO SPECIFICALLY DISCUSS IT.

08:43AM

21

22

23

24

25

26

27

28

SUBSEQUENT TO THE CALL, IT  
APPEARS THAT TCW HAD NO INTENTION  
TO ADD THAT OPTION ALL ALONG AND NO  
PLAUSIBLE JUSTIFICATION FOR  
OMITTING IT.

08:43AM

1 DID I READ IT CORRECTLY?

2 A YOU DID.

3 Q WITHOUT ADOPTING WHETHER YOU DID OR DID NOT  
4 HAVE A PLAUSIBLE JUSTIFICATION, IT IS CORRECT TCW  
5 DECIDED NOT TO OFFER THE IN-KIND DISTRIBUTION AS ONE OF  
6 THE OPTIONS, CORRECT? 08:43AM

7 A CORRECT. YES.

8 Q NOW, I BELIEVE YOU -- WELL, LET ME REFRAME  
9 THAT.

10 IS IT YOUR RECOLLECTION, SIR, THAT 08:43AM  
11 APPROXIMATELY 52 PERCENT OF THE ASSETS STAYED IN THE  
12 SMCF II FUNDS?

13 A APPROXIMATELY, THAT'S MY RECOLLECTION.

14 Q AND I FRAMED IT AS ASSETS. WHEN YOU SAID  
15 THAT, YOU MEAN 52 PERCENT OF THE TOTAL MONEY AS  
16 OPPOSED? 08:44AM

17 A CORRECT.

18 Q AS OPPOSED TO THE INVESTORS, CORRECT?

19 A CORRECT. YES.

20 Q ISN'T IT A FACT THAT ONLY ABOUT 10 TO  
21 12 PERCENT OF THOSE ASSETS VOTED TO LET MET WEST  
22 CONTINUE TO MANAGE THEIR MONEY? ISN'T THAT TRUE? 08:44AM

23 A I DON'T -- I HONESTLY DON'T REMEMBER THE  
24 NUMBER.

25 Q TAKE A LOOK AT EXHIBIT 1247. 08:44AM

26 WERE YOU ABLE TO LOCATE IT, SIR?

27 A YES.

28 THE COURT: ARE WE LOOKING AT EXHIBIT 47 OR

1 1247?

2 MR. BRIAN: 1247. IT WAS ADDED THIS MORNING.  
3 I ASKED YOUR CLERK TO PUT IT --

4 THE COURT: ALL RIGHT.

5 BY MR. BRIAN:

08:45AM

6 Q DO YOU RECOGNIZE EXHIBIT 1247 AS THE ELECTION  
7 FORM THAT WAS SENT OUT TO THE INVESTORS IN THE SMCF II,  
8 FUND II?

9 A YES.

10 MR. BRIAN: I'LL OFFER EXHIBIT 1247, YOUR  
11 HONOR.

08:45AM

12 MR. MADISON: NO OBJECTION.

13 THE COURT: IT WILL BE ADMITTED.

14

15 (EXHIBIT 1247 ADMITTED.) +

08:45AM

16

17 MR. BRIAN: PAGE 1 OF 1247.

18 IF WE CAN ENLARGE THE STUFF YOU  
19 HIGHLIGHTED AT THE BOTTOM.

20 MR. MADISON: WHO'S HIGHLIGHTED, YOUR HONOR?

08:45AM

21 MR. BRIAN: THAT WE'VE HIGHLIGHTED.

22 MR. MADISON: HE SAID YOU.

23 MR. BRIAN: I MISSPOKE. WE'VE HIGHLIGHTED IT.  
24 ACTUALLY, I THINK DENNIS HIGHLIGHTED IT, TO BE MORE  
25 ACCURATE.

08:46AM

26 THE COURT: ALL RIGHT. GO AHEAD.

27 BY MR. BRIAN:

28 Q MR. WALLS, WHAT I'VE PUT ON THE SCREEN, FOR

1 THE JURY TO SEE, ARE THE THREE CHOICES THAT TCW GAVE  
2 THE INVESTORS IN SMCF II FUND II, AND ALSO IN SMCF II  
3 FUND I, CORRECT?

4 A THAT'S CORRECT, YES.

5 Q AND SERIES A, ESSENTIALLY THE FIRST OPTION,  
6 WAS THEY WOULD REMAIN IN THE FUND WITH A SHORTENED  
7 INVESTMENT PERIOD AND TERM, EARLY LIQUIDITY OPTION, AND  
8 REDUCED FEES, RIGHT?

08:46AM

9 A RIGHT.

10 Q DO YOU KNOW WHAT PERCENTAGE OF ASSETS STAYED  
11 IN THAT -- SMCF II FUND II?

08:46AM

12 A I DON'T RECALL.

13 Q LOOK AT SERIES B.

14 TERMINATE THE INVESTMENT PERIOD  
15 AND PROVIDE INVESTORS WITH A  
16 CONTINUING INTEREST IN THE EXISTING  
17 PORTFOLIO AND LIQUIDATE OVER A  
18 SHORTENED TERM WITH EARLY LIQUIDITY  
19 OPTION AND REDUCED FEES.

08:46AM

20 THAT WAS OPTION II, WASN'T IT?

08:47AM

21 A YES.

22 Q UNDER THAT OPTION, THE NEW ASSET MANAGER WAS  
23 NOT GOING TO MAKE ANY FURTHER INVESTMENT DECISIONS FOR  
24 THOSE ASSETS DURING THE LIFE OF THE FUND; ISN'T THAT  
25 RIGHT?

08:47AM

26 A NO. IT'S NOT RIGHT.

27 Q YOU THINK IT IS -- THEY WERE GOING TO CONTINUE  
28 TO MAKE INVESTMENT DECISIONS?

1 A YES.

2 Q ALL RIGHT.

3 UNDER SERIES III THEY WERE GOING TO  
4 LIQUIDATE AS EARLY AS AUGUST 31ST, 2010 BUT AS SOON AS  
5 PRACTICABLE, CORRECT? RIGHT?

08:47AM

6 A CORRECT.

7 Q AS YOU SIT HERE TODAY, YOU DON'T RECALL WHAT  
8 PERCENTAGE OF THE ASSETS CHOSE SERIES A, SERIES B, OR  
9 SERIES C.

08:47AM

10 IS THAT YOUR TESTIMONY, SIR?

11 A YEAH, THE NUMBER I REFERRED TO YESTERDAY WAS  
12 THE COMBINATION OF SERIES A AND B.

13 Q NOW, EVERY SINGLE ONE OF THOSE PEOPLE WHO  
14 CHOSE SERIES A AND B HAD THEIR FEES REDUCED BY TCW,  
15 CORRECT?

08:48AM

16 A CORRECT.

17 Q TCW WAS NOT REQUIRED UNDER THE CONTRACT TO DO  
18 THAT, TO YOUR KNOWLEDGE, WAS IT, SIR?

19 A IT WASN'T REQUIRED UNDER THE CONTRACT TO DO --  
20 I THINK I -- I THINK ANY OF THESE THINGS.

08:48AM

21 Q WASN'T REQUIRED TO OFFER LIQUIDATION, WAS IT?

22 A NO.

23 Q NOW, YESTERDAY YOU WERE ASKED ABOUT AWARDS --  
24 INNOVATION AWARDS.

08:48AM

25 DO YOU RECALL THAT?

26 A I DO.

27 MR. BRIAN: MAY I RETREAT TO MY DESK FOR A  
28 SECOND?

1 THE COURT: YES, YOU MAY.

2 BY MR. BRIAN:

3 Q I THINK YOU WERE SHOWN EXHIBIT 151, WERE YOU  
4 NOT?

5 A IS IT THE -- IN THIS WHITE BOOK?

08:48AM

6 Q I THINK IN THE SMALLER BINDER, YES.

7 THE COURT: IT'S BEEN ADMITTED. WE CAN PUT IT  
8 UP ON THE SCREEN FOR YOU, SO YOU CAN LOOK AT THE  
9 SCREEN.

10 THE WITNESS: YES. I RECALL THIS, YES.

08:48AM

11 MR. BRIAN: OKAY.

12 Q THAT WAS A DOCUMENT THAT SUMMARIZED SOME OF  
13 THE NOMINEES FOR THE INNOVATION AWARDS THAT YEAR,  
14 CORRECT?

15 A CORRECT.

08:49AM

16 Q ONE OF THEM WAS THE NOMINATION OF THE M.B.S.  
17 DATA BATCH, CORRECT?

18 A CORRECT.

19 Q THAT DID NOT WIN, DID IT?

20 A NO.

08:49AM

21 Q YOU WERE ALSO SHOWN EXHIBIT 1032.

22 DO YOU REMEMBER THAT?

23 A WHICH BOOK ARE WE ON?

24 Q SAME ONE.

25 A OH, OKAY.

08:49AM

26 YES.

27 Q IF WE COULD TURN TO PAGE 3.

28 AND DISPLAY PAGE 3, PLEASE.

1                    THAT WAS ONE OF THE NOMINEES THAT YEAR,  
2 THE GLOBAL AGGREGATE BOND PLATFORM.

3                    DO YOU SEE THAT?

4            A        I DO.

5            Q        MAYBE WE CAN HIGHLIGHT THE -- JUST THE TOP OF  
6 THAT. NO, THE NEXT -- RIGHT THERE.

08:49AM

7                    AND THE NOMINEES FOR THAT AWARD WERE  
8 JEFFREY GUNDLACH AND LOU LUCIDO, CORRECT?

9            A        YES.

10           Q        NOW, THIS PROJECT INVOLVED A PROJECT TO  
11 INTEGRATE THE PORTFOLIO MANAGEMENT CAPABILITIES OF TCW  
12 WITH THE PORTFOLIO MANAGEMENT CAPABILITIES OF SOCIÉTÉ  
13 GÉNÉRALE, CORRECT?

08:50AM

14           A        CORRECT.

15           Q        AND ONE OF THE CHALLENGES OF THIS PROJECT, AS  
16 YOU UNDERSTOOD IT ON YOUR COMMITTEE, WAS TO WORK  
17 TOGETHER, COOPERATIVELY, WAS IT NOT?

08:50AM

18           A        YES. THAT SOUNDS FAMILIAR.

19           Q        AND, FOR EXAMPLE, IF YOU TAKE A LOOK, THERE'S  
20 A PARAGRAPH ABOUT THE MIDDLE THAT SAYS: WHAT -- SAYS  
21 WHAT OBSTACLES WERE OVERCOME.

08:50AM

22                    COULD WE ENLARGE THAT PARAGRAPH.

23                    DO YOU SEE THAT?

24            A        AND ONE OF THE CHALLENGES, DOWN IN THE MIDDLE  
25 IT SAID:

08:50AM

26                    IN ADDITION TO THE REGULATORY  
27                    HURDLES THAT HAVE BEEN CLEARED THE  
28                    GABAM TEAM HAS IMPLEMENTED A



1 COMMUNICATION PROTOCOL TO DESIGN  
2 SHARE INFORMATION AS TO SECTOR  
3 ALLOCATION, RISK MONITORING,  
4 SECURITY SELECTION AND CURRENCY  
5 EXPOSURE.

08:51AM

6 DO YOU SEE THAT?

7 A I DO.

8 Q I READ IT CORRECTLY, DID I NOT?

9 A YES.

10 Q INCLUDING THE PART ABOUT SHARING INFORMATION,  
11 RIGHT?

08:51AM

12 A RIGHT.

13 Q THAT PARTICULAR NOMINEE OR NOMINEES, THAT  
14 PROJECT, WERE THE NOMINEES JEFFRET GUNDLACH AND  
15 LOU LUCIDO WHO ACTUALLY WON THE INNOVATION AWARD THAT  
16 YEAR, DID IT NOT?

08:51AM

17 A NOT FOR THE SUBMISSION.

18 Q WHICH SUBMISSION DID THEY WIN FOR, SIR?

19 A I BELIEVE THAT YEAR IT WAS THE PARTNERSHIP  
20 WITH SOUTH CAROLINA.

08:51AM

21 Q THEY WON NOT FOR THIS PROJECT BUT FOR A  
22 DIFFERENT PROJECT?

23 A I BELIEVE SO, YEAH.

24 Q THAT ALSO INVOLVED COORDINATING A PARTNERSHIP  
25 WITH ANOTHER ENTITY, DID IT NOT?

08:51AM

26 A IT DID.

27 Q MR. WALLS, YOU SAY THAT MR. GUNDLACH WAS A  
28 CULTURAL CANCER?

1                    THAT'S YOUR PHRASE, RIGHT?

2            A        YES.

3            Q        YOU -- I BELIEVE YOU OBSERVED PERSISTENT  
4 UNPROFESSIONAL CONDUCT BY MR. GUNDLACH IN 2007, 2008,  
5 AND 2009, RIGHT?

08:52AM

6            A        RIGHT.

7            Q        NOW, YOU ARE WELL AWARE OF THE SEVERE ECONOMIC  
8 RECESSION THAT THIS COUNTRY AND THE WORLD SUFFERED  
9 BEGINNING 2008, ARE YOU NOT?

10           A        SURE.

08:52AM

11           Q        AND IT IS A FACT, IS IT NOT, THAT THAT  
12 ECONOMIC RECESSION SEVERELY IMPACTED THE EQUITIES  
13 PORTION OF TCW'S BUSINESS?

14           A        YES.

15           Q        AND 2007 -- BETWEEN 2007 AND 2008 AND 2009,  
16 THE FIXED INCOME AREA, MOST OF WHICH WAS LED BY  
17 MR. GUNDLACH, CONTROLLED ABOUT 70 PERCENT OF THE ASSETS  
18 UNDER MANAGEMENT AT TCW, RIGHT?

08:52AM

19           A        I DON'T KNOW THE NUMBER, BUT IT WAS THE  
20 MAJORITY.

08:52AM

21           Q        IT WAS A HUGE AMOUNT, WASN'T IT, SIR?

22           A        YES.

23           Q        SO THAT MEANS THAT INVESTORS, DURING THIS TIME  
24 PERIOD, CONTINUED TO INVEST THEIR MONEY WITH FUNDS  
25 BEING MANAGED BY MR. GUNDLACH AT TCW, RIGHT?

08:53AM

26                    MR. MADISON: OBJECTION. MISSTATES THE  
27 TESTIMONY AND FOUNDATION AS TO THAT.

28                    THE COURT: I'LL SUSTAIN IT.

1 LET'S JUST ASK THE QUESTIONS.

2 BY MR. BRIAN:

3 Q LET ME ASK YOU A QUESTION, SIR: YOU'RE IN  
4 MARKETING, ARE YOU NOT?

5 A I AM.

08:53AM

6 Q YOU DEAL WITH INVESTORS ALL THE TIME, DON'T  
7 YOU, SIR?

8 A YES.

9 Q INVESTORS IN A FUND DON'T CARE WHETHER THE MAN  
10 OR WOMAN WHO IS MANAGING THEIR ASSETS HAS A BIG EGO, DO  
11 THEY?

08:53AM

12 A GENERALLY, NO.

13 Q THEY DON'T CARE WHETHER THE MAN OR WOMAN WHO  
14 IS MANAGING THEIR ASSETS IS CRITICAL OF THE  
15 COMMUNICATIONS DEPARTMENT FOR SCREWING UP A WEBCAST, DO  
16 THEY?

08:53AM

17 MR. MADISON: OBJECTION. ARGUMENTATIVE.

18 THE COURT: OVERRULED.

19 MR. MADISON: FOUNDATION.

20 BY MR. BRIAN:

08:53AM

21 Q DO THEY?

22 A PROBABLY NOT.

23 Q THEY DON'T CARE WHETHER THE MAN OR WOMAN WHO  
24 IS MANAGING THEIR ASSETS IS WARM AND CUDDLY, DO THEY?

25 MR. MADISON: THAT'S ARGUMENTATIVE, YOUR  
26 HONOR.

08:54AM

27 THE COURT: SUSTAINED.

28 MR. MADISON: I DON'T OBJECT IF I GET TO MAKE

1 AN ARGUMENT AS WELL --

2 MR. BRIAN: I THINK IT WAS SUSTAINED.

3 THE COURT: YES, I SUSTAINED IT.

4 MR. BRIAN: I'LL MOVE ON.

5 Q WHAT THEY DO CARE ABOUT, MR. WALLS, ARE THE  
6 RESULTS OF THEIR INVESTMENTS, CORRECT?

08:54AM

7 A CAN I ELABORATE ON THAT?

8 Q DO THE INVESTORS CARE ABOUT THE RESULTS IN  
9 THEIR INVESTMENTS?

10 A THAT'S A COMPONENT, YES.

08:54AM

11 Q AND MR. GUNDLACH IN 2007, 2008, AND 2009 GOT  
12 GOOD RESULTS FOR HIS INVESTORS, DIDN'T HE?

13 A I WOULD SAY MIXED.

14 Q HE, IN FACT, GENERATED A LOT OF FEES FOR TCW  
15 IN THE PROCESS, DIDN'T HE, SIR?

08:54AM

16 A YES.

17 MR. BRIAN: NOTHING FURTHER.

18 THE COURT: REDIRECT?

19 MR. MADISON: YES, YOUR HONOR. THANK YOU.

20 MR. BRIAN: MAY I HAVE A MOMENT TO GET MY  
21 STUFF OUT OF MR. MADISON'S WAY?

08:54AM

22 THE COURT: YES.

23

24 REDIRECT EXAMINATION +

25 BY MR. MADISON:

08:55AM

26 Q GOOD MORNING, MR. WALLS.

27 A GOOD MORNING.

28 Q DO INVESTORS CARE ABOUT INTEGRITY?

1 A YES.

2 Q DO INVESTORS CARE ABOUT HONESTY?

3 A YES.

4 Q DO INVESTORS WANT MANAGERS WHO STEAL?

5 MR. BRIAN: OBJECTION, YOUR HONOR.

08:55AM

6 THE COURT: SUSTAINED.

7 BY MR. MADISON:

8 Q MR. BRIAN WAS ASKING YOU QUESTIONS ABOUT WHAT  
9 INVESTORS CARED ABOUT.

10 MR. BRIAN: OBJECTION. PREAMBLE. FORM.

08:55AM

11 THE COURT: GO AHEAD AND ASK A QUESTION.

12 BY MR. MADISON:

13 Q DID YOU HAVE CONVERSATIONS WITH INVESTORS IN  
14 DECEMBER AND JANUARY 2009 AND 2010 ABOUT INTEGRITY?

15 A YES.

08:55AM

16 Q DID YOU HAVE CONVERSATIONS WITH INVESTORS  
17 ABOUT WHETHER TCW COULD WORK WITH AN INVESTMENT MANAGER  
18 WHO TCW BELIEVED HAD STOLEN?

19 A YES.

20 Q CAN YOU TELL US ABOUT THOSE --

08:56AM

21 MR. BRIAN: OBJECTION. HEARSAY, 352.

22 THE COURT: SUSTAINED.

23 GO AHEAD, YOU CAN INQUIRE AS TO HIS  
24 PERSONAL KNOWLEDGE AND THINGS THAT HE SAID.

25 MR. MADISON: YES.

08:56AM

26 Q LET'S DO IT THIS WAY.

27 MR. BRIAN ASKED YOU A SERIES OF  
28 QUESTIONS ABOUT COMMUNICATIONS WITH INVESTORS OF THIS

1 TIME PERIOD, DECEMBER 2009 AND JANUARY 2010?

2 A CORRECT.

3 Q LET ME ASK YOU, FIRST OF ALL, WAS IT A  
4 SURPRISE TO YOU PRIOR TO -- HAD YOU THOUGHT, BEFORE  
5 DECEMBER 4, 2009, THAT INVESTORS WOULD BE CONCERNED  
6 ABOUT TCW REPLACING MR. GUNDLACH?

08:56AM

7 A BEFORE DECEMBER 4TH?

8 Q DID YOU THINK AHEAD OF TIME THAT THAT WOULD BE  
9 A CONCERN?

10 A YES.

08:56AM

11 Q DID YOU -- HAD YOU THOUGHT ABOUT WHETHER OR  
12 NOT INVESTORS WOULD WANT TO HAVE OPTIONALITY WITH THEIR  
13 INVESTMENTS, GIVEN THAT MR. GUNDLACH MIGHT BE NOT BE AT  
14 THE FIRM ANYMORE?

15 A YES.

08:57AM

16 Q CAN YOU TELL US, FIRST OF ALL, HOW DID YOU  
17 COMMUNICATE WITH THE INVESTORS AFTER DECEMBER 4?

18 A THE COMMUNICATION FELL INTO -- INTO TWO MAJOR  
19 CATEGORIES.

20 THERE WERE PREARRANGED COMMUNICATIONS  
21 WITH THE ADVISORY COMMITTEES FOR EACH OF THE THREE  
22 FUNDS. CONFERENCE CALLS.

08:57AM

23 AND THEN THERE WERE INFORMAL, IMPROMPTU  
24 COMMUNICATIONS WOULD OCCUR WHEN CLIENTS WOULD EITHER  
25 E-MAIL OR CALL DIRECTLY THAT WERE NOT PART OF THE  
26 ADVISORY COMMITTEE, OR MAY HAVE BEEN PART OF THE  
27 ADVISORY COMMITTEES.

08:57AM

28 IT WAS IN THOSE TWO CATEGORIES. EITHER

1 PLANNED AND PREARRANGED OR INFORMAL AND SPONTANEOUS.

2 Q WHEN YOU DID THE PLANNED CALLS, HOW WOULD YOU  
3 LET THE INVESTORS KNOW THOSE CALLS WERE GOING TO OCCUR?

4 A THERE WERE E-MAILS SENT OUT TO ALL ADVISORY  
5 COMMITTEE MEMBERS COORDINATING TIMES, AGREEING ON A  
6 DATE AND A TIME, AND THEN SENDING OUT CALL-IN  
7 INFORMATION.

08:57AM

8 Q AS WE SIT HERE TODAY, DO YOU RECALL THE DATES  
9 OF THE CALLS THAT YOU CONDUCTED LIKE THAT IN  
10 DECEMBER 2009?

08:58AM

11 A I DON'T RECALL THE EXACT DATES. I KNOW THE  
12 WEEKS.

13 SO WE HAD OUR FIRST CALL WITH EACH  
14 ADVISORY COMMITTEE MEMBER THE FIRST FULL WEEK OF  
15 DECEMBER, WHICH I BELIEVE IS THE WEEK OF THE 7TH.

08:58AM

16 IS THAT RIGHT?

17 Q MONDAY, DECEMBER 7 --

18 DECEMBER 7 WAS A MONDAY, YOUR HONOR?  
19 THE COURT: YES.

20 MR. MADISON: FOR THE RECORD.

08:58AM

21 THE WITNESS: WE SPOKE WITH EACH OF THE  
22 ADVISORY COMMITTEES DURING THAT WEEK WITH INITIAL CALL  
23 WHERE WE LAID OUT MOST OF WHAT YOU'VE SEEN IN THE  
24 E-MAILS.

25 BY MR. MADISON:

08:58AM

26 Q DO YOU RECALL WHEN THE NEXT CALL WAS AFTER  
27 THAT?

28 A THE SECOND CALLS WERE THE FOLLOWING WEEK, IN

1 WHICH WE STARTED TO RESPOND TO SOME OF THE INITIAL  
2 REQUESTS FROM ADVISORY COMMITTEE MEMBERS.

3 Q WERE THERE ANY CALLS AFTER THAT?

4 A YES. THEN THERE WERE FURTHER CALLS. IT WAS,  
5 FOR THE MOST PART, ALMOST EVERY WEEK, BUT WE HAD A  
6 CALL, I BELIEVE, ON DECEMBER 29TH. AND THEN WE  
7 CONTINUED THE CALLS INTO JANUARY.

08:58AM

8 Q NOW, IN THE CALLS THAT YOU HAD WITH  
9 INVESTORS -- WELL, DID YOU COME TO LEARN THAT  
10 MR. GUNDLACH WAS ALSO CONVENING CALLS WITH TCW  
11 INVESTORS?

08:59AM

12 A YES.

13 Q WAS THERE ANY RELATIONSHIP IN TIME TO THE  
14 CALLS THAT YOU LEARNED MR. GUNDLACH WAS CONDUCTING AND  
15 THE CALLS THAT YOU WERE CONDUCTING?

08:59AM

16 A TYPICALLY COINCIDED.

17 Q WHAT DO YOU MEAN BY THAT?

18 A IN MOST CASES IF WE HAD A CALL ON  
19 DECEMBER 16TH, THE DOUBLELINE HAD A CALL ON THE SAME  
20 DAY OR THE DAY AFTER.

08:59AM

21 Q HOW DID YOU LEARN ABOUT THAT?

22 A FROM THE ADVISORY COMMITTEE MEMBERS OR THE  
23 LIMITED PARTNERS.

24 Q NOW, WE SAW -- YESTERDAY, WE SAW SOME E-MAILS  
25 WITH MR. BORDON, FOR EXAMPLE, WHERE YOU CAME TO LEARN  
26 THAT SOME OF THE MEMBERS OF THE ADVISORY COMMITTEES  
27 WERE ALSO IN COMMUNICATION WITH MR. GUNDLACH?

08:59AM

28 A YES.



1 Q AND DID YOU BELIEVE THAT THE CALLS THAT  
2 MR. GUNDLACH WAS CONVENING AROUND THE CALLS THAT YOU  
3 WERE HAVING WITH TCW'S INVESTORS HAD SOME RELATIONSHIP  
4 TO THE CALLS THAT YOU WERE --

5 MR. BRIAN: OBJECTION. VAGUE. NO FOUNDATION. 09:00AM

6 THE COURT: SUSTAINED.

7 BY MR. MADISON:

8 Q DID INVESTORS TALK TO YOU ABOUT THE CALLS THAT  
9 THEY WERE HAVING WITH MR. GUNDLACH?

10 A THEY WOULD MENTION THE CALLS, BUT NOT GO INTO 09:00AM  
11 THE CONTENT.

12 Q WERE YOU AWARE AT THE TIME THAT THOSE CALLS  
13 BETWEEN MR. GUNDLACH AND TCW'S INVESTORS WERE GOING ON?

14 A YES.

15 Q IN THE COMMUNICATIONS THAT YOU HAD WITH THE 09:00AM  
16 INVESTORS OF TCW, WERE THE COMMUNICATIONS THAT  
17 MR. GUNDLACH WAS HAVING WITH TCW'S INVESTORS THE  
18 SUBJECT OF DISCUSSION?

19 A COULD YOU NARROW THAT DOWN?

20 Q LET ME ASK A BETTER QUESTION. 09:01AM

21 I HAVEN'T HAD MY COFFEE, SO I APOLOGIZE,  
22 YOUR HONOR.

23 MY POINT IS, IN YOUR MIND, BASED ON YOUR  
24 COMMUNICATIONS YOU WERE HAVING WITH THE INVESTORS, WERE  
25 THE COMMUNICATIONS THAT MR. GUNDLACH WAS HAVING A 09:01AM  
26 FACTOR IN THE SUBJECT MATTER THAT WAS BEING DISCUSSED  
27 WITH YOU?

28 A THAT WAS MY INTERPRETATION, YES.

1 Q CAN YOU EXPLAIN THAT, PLEASE.

2 MR. BRIAN: OBJECTION. FOUNDATION, YOUR  
3 HONOR.

4 THE COURT: OVERRULED.

5 THE WITNESS: MY CONCLUSION CAME FROM THE FACT  
6 THAT IN THE FIRST CALL WE HAD WITH THE ADVISORY  
7 COMMITTEE MEMBERS -- I'LL FOCUS MY COMMENTS ON SPECIAL  
8 MORTGAGE CREDIT FUND I AND II.

09:01AM

9 THE SUBJECT OF SUB-ADVISING CAME UP.  
10 AND IN MY SECOND CALL WITH THOSE TWO ADVISORY COMMITTEE  
11 MEMBERS, I EXPLAINED THAT.

09:01AM

12 AND I RECALL SPECIFICALLY SAYING, YOU  
13 KNOW, IF YOU PUT YOURSELVES IN THE SAME POSITION WHERE  
14 YOU HAD TERMINATED AN EMPLOYEE AND THEN SOMEONE ASKED  
15 YOU TO HIRE THAT EMPLOYEE BACK TO DO A CRITICAL PROJECT  
16 FOR YOU, YOU PROBABLY WOULDN'T WANT TO DO THAT.

09:01AM

17 SO THAT DISCUSSION SEEMED TO REALLY  
18 DIMINISH THE PUSH FOR A SUB-ADVISORY RELATIONSHIP. AND  
19 A COUPLE OF THE ADVISORY COMMITTEE MEMBERS SAID, OKAY,  
20 WE UNDERSTAND, BUT AT LEAST GIVE US OTHER OPTIONS IF  
21 SUB-ADVISORY IS OFF THE TABLE.

09:02AM

22 AND THAT -- MY SENSE WAS WE HAD  
23 ELIMINATED THAT AS A REQUEST FROM THOSE CLIENTS.

24 TWO WEEKS LATER, AS YOU SAW IN THE  
25 E-MAILS EARLIER AND YESTERDAY, IT WAS A VERY HIGH  
26 PRIORITY IN THE E-MAIL FROM A JAY COLLIER. AND IT JUST  
27 DIDN'T MAKE SENSE THAT THE ISSUE SEEMED TO HAVE BEEN  
28 ELIMINATED AND THEN CAME BACK STRONGLY.

09:02AM

1                   AND SO MY -- MY INTERPRETATION OF WHY  
2 THAT CHANGED WAS THAT THERE WERE CONVERSATIONS OR A  
3 WEBCAST, OR WHATEVER, WITH MR. GUNDLACH AND  
4 DOUBLELINE --

5                   MR. BRIAN: I'LL OBJECT AND MOVE TO STRIKE.                   09:02AM

6                   THE COURT: I'LL STRIKE THE RESPONSE.

7                   YOU CAN'T SPECULATE, SIR, ON WHAT MIGHT  
8 OR MIGHT NOT HAVE HAPPENED. IT'S ALL ON YOUR PERSONAL  
9 KNOWLEDGE.

10                  THE WITNESS: OKAY. SORRY, YOUR HONOR.                   09:03AM

11                  THE COURT: I'LL STRIKE THAT PORTION OF THE  
12 RESPONSE.

13 BY MR. MADISON:

14                  Q       DO YOU REMEMBER WHEN WE SAW THE E-MAIL  
15 MR. BORDON FORWARDED ON TO MS. VANEVERY?                   09:03AM

16                  A       YES.

17                  Q       I BELIEVE YOU TOLD US YESTERDAY YOU DIDN'T  
18 KNOW AT THE TIME THAT HE WAS GOING TO DO THAT?

19                  A       CORRECT.

20                  Q       DID YOU KNOW WHAT THE FULL EXTENT OF THE  
21 COMMUNICATIONS BETWEEN MR. GUNDLACH AND DOUBLELINE, ON  
22 THE ONE HAND, AND TCW'S INVESTORS ON THE OTHER, WAS  
23 BACK IN DECEMBER OF 2009?                   09:03AM

24                  A       NO. NOT THE FULL EXTENT.

25                  Q       I MEAN, DID THERE COME A TIME WHERE YOU  
26 REALIZED OR BELIEVED THAT THERE WAS SOME IMPACT THAT  
27 WAS BEING BROUGHT TO BEAR BY MR. GUNDLACH ON TCW'S  
28 INVESTORS?                   09:03AM

1           A        THAT WAS MY CONCLUSION.

2           Q        NOW, WERE YOU AWARE, FOR EXAMPLE, AT THE TIME  
3 THAT YOU WERE HAVING THESE DISCUSSIONS WITH THE  
4 INVESTORS ABOUT THESE DIFFERENT OPTIONS, WERE YOU AWARE  
5 THAT ON THE WEEKEND OF DECEMBER 5TH AND 6TH, USING A  
6 TCW CONTACT LIST, PRINCIPALS IN DOUBLELINE WERE CALLING  
7 TCW'S CLIENTS?

09:03AM

8           A        I DID NOT KNOW THAT.

9           Q        WERE YOU AWARE THAT THE WEEK OF DECEMBER 7  
10 MR. GUNDLACH CONVENED A CONFERENCE CALL WITH TCW'S  
11 INVESTORS TO ADVISE THEM WHAT THEY SHOULD DO WITH THE  
12 MONEY THEY HAD INVESTED --

09:04AM

13                   MR. BRIAN: OBJECTION. MISSTATES THE  
14 TESTIMONY. NO FOUNDATION. AND ARGUMENTATIVE OF HIS  
15 OWN WITNESS.

09:04AM

16                   THE COURT: SUSTAINED.

17 BY MR. MADISON:

18           Q        WE HAVE IN EVIDENCE AN E-MAIL FROM  
19 BARBARA VANEVERY THAT WENT OUT TO TCW'S INVESTORS.

20                   MR. BRIAN: OBJECTION. FORM.

09:04AM

21                   THE COURT: YES. ASK A QUESTION.

22 BY MR. MADISON:

23           Q        WERE YOU AWARE THAT MS. VANEVERY SENT OUT AN  
24 E-MAIL THE WEEK OF DECEMBER 7 TO TCW INVESTORS AND  
25 OTHERS ASKING THEM TO PARTICIPATE IN A CALL WITH  
26 MR. GUNDLACH ABOUT THE TCW INVESTMENTS?

09:04AM

27           A        YES.

28           Q        AND DID THERE COME A TIME WHEN YOU LEARNED

1 ABOUT SOME OF THE STATEMENTS THAT MR. GUNDLACH WAS  
2 MAKING ABOUT TCW AND THE NEW MANAGERS AT TCW?

3 A YES.

4 Q DID YOU LEARN, FOR EXAMPLE, THAT IN A CALL ON  
5 DECEMBER 8, 2009, MR. GUNDLACH TALKED ABOUT THE SPECIAL  
6 MORTGAGE CREDIT FUNDS WITH TCW INVESTORS ON THE CALL?

09:05AM

7 A YES.

8 Q DID YOU LEARN THAT, ON DECEMBER 22ND,  
9 MR. GUNDLACH HAD ANOTHER CALL WHERE HE TALKED ABOUT THE  
10 SPECIAL MORTGAGE CREDIT FUND INVESTMENTS AT TCW?

09:05AM

11 A YES, I DID.

12 Q DID YOU KNOW THAT IN THAT CALL ON  
13 DECEMBER 22ND, MR. GUNDLACH SAID: I DON'T EVEN THINK  
14 THAT THE REPLACEMENT TEAM THAT'S BEING OFFERED UP AT  
15 TCW WOULD EVEN PRETEND TO MATCH SKILL FOR SKILL WITH  
16 DOUBLELINE?

09:05AM

17 DID YOU KNOW ABOUT THAT STATEMENT?

18 A I DON'T RECALL KNOWING ABOUT THAT, NO.

19 Q DID YOU HEAR THAT --

20 MR. BRIAN: OBJECT, YOUR HONOR.

09:05AM

21 CAN HE LAY A FOUNDATION? THIS IS HIS  
22 OWN WITNESS.

23 THE COURT: IF THIS IS SOMETHING IN EVIDENCE,  
24 THERE'S NO POINT REPEATING IT WITH THIS WITNESS, QUITE  
25 FRANKLY.

09:06AM

26 MR. MADISON: I WANT TO --

27 THE COURT: "DID YOU MAKE REFERENCE TO THE  
28 EVIDENCE WE HAVE THROUGHOUT THE COURSE" YOU CAN DO

1 THAT, BUT --

2 MR. MADISON: YES.

3 Q YOU HAVE EXHIBIT 1541 IN YOUR BINDER THERE,  
4 SIR.

5 A IN THE WHITE BINDER?

09:06AM

6 Q IT WOULD BE IN OUR BINDER, SO, YES. ACTUALLY,  
7 MR. WALLS, IT MAY BE IN THE POCKET OF THE BINDER.

8 THE COURT: I DON'T SHOW 1541 AS BEING IN  
9 EVIDENCE.

10 MR. MADISON: I DON'T BELIEVE IT IS, YET.

09:06AM

11 MR. BRIAN: I DON'T HAVE -- WE HAVE THAT ONE.

12 YES, WE DO. I'M SORRY.

13 THE WITNESS: I HAVE IT.

14 JUST --

15 MR. MADISON: THIS PURPORTS TO BE A TRANSCRIPT  
16 FROM A CALL FROM DECEMBER 2009 --

09:07AM

17 MR. BRIAN: OBJECTION, YOUR HONOR. NO  
18 FOUNDATION.

19 THE COURT: WE DON'T NEED ANY REFERENCE TO IT  
20 UNTIL IT EITHER IS OFFERED OR YOU'VE LAID THE  
21 FOUNDATION FOR IT.

09:07AM

22 MR. MADISON: YES.

23 Q I WOULD OFFER IT, YOUR HONOR. IT WAS PRODUCED  
24 BY DOUBLELINE.

25 MR. BRIAN: OBJECTION. NO FOUNDATION OF THIS  
26 WITNESS.

09:07AM

27 THE COURT: SUSTAINED.

28 ///

1 BY MR. MADISON:

2 Q I WANT TO ASK YOU IF YOU COULD LOOK AT PAGE  
3 ENDING IN 1499.

4 THE COURT: WAIT. 1541-99?

5 MR. MADISON: NO, YOUR HONOR. I WAS REFERRING  
6 TO THE BATES STAMP.

09:07AM

7 THE COURT: LET'S REFER TO THE TRIAL EXHIBIT  
8 REFERENCE.

9 MR. MADISON: YES, YOUR HONOR.

10 Q IF YOU LOOK AT 1541-2.

09:07AM

11 A YES.

12 Q IF YOU LOOK AT THE BOTTOM PARAGRAPH, DO YOU  
13 SEE THAT?

14 A I DO, YES.

15 Q WERE YOU AWARE, IN DECEMBER OF 2010, THAT  
16 MR. GUNDLACH WAS MAKING THOSE STATEMENTS TO TCW'S  
17 INVESTORS?

09:08AM

18 A NOT IN THIS LANGUAGE, BUT IN OTHER LANGUAGE,  
19 YES.

20 Q ALL RIGHT.

09:08AM

21 AND IF YOU GO OVER TO THE NEXT PAGE,  
22 1541-3, GOING OVER TO THE TOP OF FOUR, THAT PARAGRAPH.

23 MR. BRIAN: OBJECTION. NO FOUNDATION, YOUR  
24 HONOR.

25 THE COURT: YOU CAN ASK HIM IF HE RECOGNIZES  
26 IT. IF HE HEARD IT. IF HE'S SEEN IT.

09:08AM

27 MR. MADISON: I HAVEN'T EVEN ASKED A QUESTION  
28 YET.

1 THE COURT: I'M JUST SUGGESTING THAT --

2 MR. MADISON: I'LL DO WHAT I JUST DID. I CAN  
3 ASK HIM IF HE WAS AWARE OF IT OR NOT.

4 THE COURT: WELL, BUT IT ASSUMES FACTS NOT IN  
5 EVIDENCE, AND THERE'S BEEN NO FOUNDATION FOR THIS.

09:08AM

6 SO --

7 MR. MADISON: I WON'T GO INTO THE CONTENT,  
8 YOUR HONOR.

9 THE COURT: ALL RIGHT. GO AHEAD.

10 MR. MADISON: I BELIEVE THIS WILL COME IN  
11 LATER, AND WE'LL COME BACK TO IT.

09:08AM

12 THE WITNESS: CAN YOU REPEAT THE QUESTION?

13 MR. MADISON: YEAH.

14 WE DID HAVE A STIPULATION ABOUT AUTHENTICITY  
15 OF THIS, YOUR HONOR.

09:09AM

16 THE COURT: IT'S NOT BEING OFFERED AT THIS  
17 POINT. I'VE HEARD NO FOUNDATION. SO YOU MAY GO ON.

18 MR. MADISON: VERY WELL.

19 Q ALL I WANT TO DO, MR. WALLS, WITHOUT GETTING  
20 INTO THE CONTENT RIGHT NOW, IF YOU'D JUST LOOK AT THE  
21 PARAGRAPH AT THE BOTTOM OF PAGE 3, GOING OVER TO  
22 PAGE 4, AND TELL US IF YOU WERE AWARE, YES OR NO, THAT  
23 MR. GUNDLACH WAS MAKING THOSE STATEMENTS TO INVESTORS  
24 BACK IN DECEMBER OF '09.

09:09AM

25 A AGAIN, NOT IN THESE EXACT WORDS, BUT IN THE  
26 CONTEXT OF THESE STATEMENTS, YES.

09:09AM

27 Q TELL US WHAT YOU RECALL KNOWING MR. GUNDLACH  
28 WAS SAYING AT THE TIME YOU WERE TALKING TO INVESTORS.



1 MR. BRIAN: OBJECTION. FOUNDATION, YOUR  
2 HONOR.

3 THE COURT: SUSTAINED.

4 MR. MADISON: LET'S KEEP GOING THROUGH THE  
5 DOCUMENT, THEN.

09:09AM

6 1541, PAGE 9.

7 MR. BRIAN: YOUR HONOR, I'LL OBJECT TO THIS.  
8 HE CAN ASK THE WITNESS.

9 THE COURT: SUSTAINED.

10 DID YOU PARTICIPATE IN ANY OF THESE  
11 TELEPHONE CALLS?

09:09AM

12 THE WITNESS: I DID NOT.

13 THE COURT: ALL RIGHT.

14 BY MR. MADISON:

15 Q SO, AT THE TIME YOU WERE TALKING TO INVESTORS,  
16 DID YOU HAVE ANY INFORMATION ABOUT THE STATEMENTS THAT  
17 MR. GUNDLACH WAS MAKING IN THIS CASE -- THIS WAS ON  
18 DECEMBER 22ND -- TO TCW'S INVESTORS?

09:09AM

19 A NO.

20 Q ALL RIGHT.

09:10AM

21 AND THEN DID THERE COME A TIME WHEN YOU  
22 LEARNED ON -- THAT THERE WAS ANOTHER CALL THAT -- THAT  
23 MR. GUNDLACH CONVENED WITH TCW INVESTORS ON  
24 DECEMBER 29?

25 A YES.

09:10AM

26 Q AND DID YOU LEARN WHAT STATEMENTS HE WAS  
27 MAKING IN THOSE CALLS -- IN THAT CALL, RATHER?

28 A AGAIN, ONLY CONTEXTUALLY, NOT SPECIFICS.

1 Q LET ME ASK YOU THIS QUESTION: HOW DID YOU  
2 LEARN ABOUT THE STATEMENTS THAT MR. GUNDLACH WAS MAKING  
3 TO TCW INVESTORS IN DECEMBER?

4 A BACK FROM PEOPLE WHO HAD PARTICIPATED IN THE  
5 CALL, PEOPLE BEING INVESTORS IN THE FUND, EITHER TCW  
6 EMPLOYEES OR CLIENTS OF TCW.

09:10AM

7 Q AND, IN TURN, DID YOU DISCUSS WITH MR. STERN  
8 WHAT YOU WERE HEARING ABOUT THE CALLS THAT MR. GUNDLACH  
9 WAS HAVING WITH TCW'S INVESTORS AT THAT TIME?

10 A YES.

09:11AM

11 Q SO, WERE THOSE DISCUSSIONS WITH MR. STERN  
12 ABOUT THE SUBJECT OF MR. GUNDLACH'S CALLS WITH TCW'S  
13 INVESTORS, DID THOSE DISCUSSIONS HAPPEN BEFORE OR AFTER  
14 TCW MADE THE DECISIONS THAT MR. BRIAN ASKED YOU ABOUT  
15 WITH REGARD TO THE OPTIONS AND THE FEES?

09:11AM

16 A BEFORE.

17 Q WHO MADE THOSE DECISIONS AT TCW TO ADJUST AWAY  
18 FROM THE CONTRACTS, THE OPTIONS, AND THE FEES FOR THE  
19 INVESTORS?

20 A FINAL DECISIONS WERE MARC STERN.

09:11AM

21 Q IF WE WANTED TO KNOW TO WHAT EXTENT  
22 MR. GUNDLACH'S STATEMENTS TO THE INVESTORS OF TCW WERE  
23 A FACTOR IN MAKING THOSE ADJUSTMENTS, WHO WOULD WE ASK?

24 A MARC STERN.

25 Q NOW, YOU TOLD US THAT YOU ADVISED THE  
26 INVESTORS AT SOME POINT IN DECEMBER, YOU SAID SOMETHING  
27 ABOUT IF WE HAD TO TERMINATE AN EMPLOYEE FOR CAUSE, WE  
28 WOULD NOT BE IN A POSITION TO THEN SUB-ADVISE WITH THAT

09:11AM

1 CLIENT?

2 A CORRECT.

3 Q FIRST, I WANT TO MAKE SURE WE UNDERSTAND WHAT  
4 SUB-ADVISE IS.

5 CAN YOU TELL US WHAT THAT MEANS?

09:12AM

6 A IT'S A CONTRACTUAL AGREEMENT WHERE YOU USE  
7 SOMEONE, OTHER THAN YOUR FIRM, TO DO WORK FOR YOU.  
8 SUBCONTRACTING BASICALLY IS A BETTER WAY TO LOOK AT IT.

9 Q SO, IN THIS CASE, WOULD IT BE THAT  
10 MR. GUNDLACH AND DOUBLELINE WOULD BE A SUB-ADVISOR FOR  
11 TCW?

09:12AM

12 A CORRECT. SUBCONTRACTOR ON THESE FUNDS.

13 Q SO TCW WOULD HAVE TO ENTER INTO AN AGREEMENT  
14 WITH MR. GUNDLACH?

15 A YES.

09:12AM

16 Q AND WHO WOULD HANDLE THE CLIENT'S MONEY?

17 A IT WOULD BE DOUBLELINE. THEY WOULD BE THE  
18 MANAGER OF THE FUNDS AS THE SUBCONTRACTOR.

19 Q SO, WHEN YOU WERE TALKING TO THE INVESTORS  
20 ABOUT WHETHER OR NOT THAT WAS AN OPTION, AND I BELIEVE  
21 WE SAW AN E-MAIL YESTERDAY THAT SAID MANAGEMENT WAS  
22 CONSIDERING THAT.

09:12AM

23 DID YOU KNOW WHAT INFORMATION SENIOR  
24 MANAGEMENT -- THIS IS JUST YES OR NO -- DID YOU KNOW  
25 WHAT INFORMATION MR. STERN AND THE OTHER MANAGEMENT AT  
26 TCW HAD AT THAT TIME ABOUT MR. GUNDLACH?

09:13AM

27 A NOT ALL OF IT, NO.

28 Q AND THE SAME QUESTION AS BEFORE ON THE

1 SUB-ADVISORY ISSUE, WHO WOULD WE -- WHO WOULD WE ASK  
2 ABOUT WHAT THE FACTORS WERE AND WHAT THE DECISION WAS?

3 A MR. STERN.

4 Q WHO MADE THE DECISION?

5 A MR. STERN.

09:13AM

6 Q AND WHEN YOU WERE TALKING ABOUT -- WITH THE  
7 CLIENTS THIS ISSUE OF TERMINATION, AND I BELIEVE YOU  
8 SAID FOR CAUSE?

9 A YES.

10 Q WHAT SPECIFICALLY WERE YOU THINKING ABOUT AT  
11 THAT TIME?

09:13AM

12 MR. BRIAN: OBJECTION.

13 352, NO FOUNDATION. RELEVANCE AS TO HIS  
14 STATE OF MIND.

15 WE'LL HEW TO THE COURT'S ORDER IN THIS  
16 REGARD. IT'S NOTHING --

09:13AM

17 THE COURT: I'LL OVERRULE IT.

18 I ASSUME YOU DISCUSSED THIS --

19 MR. MADISON: YES.

20 THE WITNESS: CAN YOU REPEAT SORRY.

09:13AM

21 BY MR. MADISON:

22 Q YES.

23 WHEN YOU WERE TALKING ABOUT THE  
24 TERMINATION FOR CAUSE, WHAT WAS IT THAT YOU WERE  
25 THINKING ABOUT IN TALKING TO THE CLIENTS?

09:13AM

26 A I WAS ATTEMPTING TO CREATE A BETTER SENSE FOR  
27 THEM OF HOW TO LOOK AT THIS SITUATION, SO -- THAT'S WHY  
28 I SAID, PUT YOURSELVES IN OUR SHOES. YOU JUST

1 TERMINATED SOMEONE. NOW YOU'RE BEING ASKED TO HIRE  
2 THEM BACK AS A SUBCONTRACTOR.

3 THAT JUST DIDN'T MAKE SENSE TO ME.

4 Q WERE YOU THINKING ABOUT THE DOWNLOADING THAT  
5 YOU HAD LEARNED ABOUT?

09:14AM

6 A I WAS THINKING MAINLY ABOUT THE FACT THAT IT  
7 WAS FOR CAUSE. AND IT JUST SEEMED INAPPROPRIATE TO  
8 HIRE SOMEONE BACK WHO HAD BEEN TERMINATED FOR CAUSE.

9 Q WHATEVER THOSE REASONS?

10 A WHATEVER THE REASON WERE. ANY REASONS.

09:14AM

11 Q NOW, DID THERE COME A TIME WHEN YOU LEARNED  
12 THAT MR. GUNDLACH WAS ACTIVELY ENCOURAGING TCW'S  
13 INVESTORS TO TRY TO FORCE TCW TO LET THEM OUT OF THEIR  
14 CONTRACTS?

15 MR. BRIAN: OBJECTION. FOUNDATION.

09:14AM

16 THE COURT: SUSTAINED.

17 BY MR. MADISON:

18 Q WE SAW SOME EVIDENCE ABOUT MS. MODIC  
19 YESTERDAY.

20 DO YOU REMEMBER THAT?

09:15AM

21 A YES.

22 Q TANYA MODIC?

23 A CORRECT.

24 Q WHO WAS TANYA MODIC?

25 A I NEVER SPOKE WITH HER, BUT SHE WAS AN  
26 INVESTOR IN -- I BELIEVE SPECIAL MORTGAGE CREDIT FUND I  
27 AND POSSIBLY II.

09:15AM

28 Q DO YOU KNOW WHAT THE LEVEL OF HER INVESTMENT

1 WAS?

2 A MY RECOLLECTION, IT WAS AROUND A MILLION OF  
3 THE BILLION OR BILLION TWO.

4 Q GIVE ME JUST A MOMENT, MR. WALLS.

5 MR. BRIAN ASKED YOU ABOUT THE COMMENT  
6 THAT YOU RELAYED TO US YESTERDAY ABOUT CULTURAL CANCER.

09:16AM

7 AND DID YOU BELIEVE THAT MR. GUNDLACH  
8 WAS A DESTRUCTIVE FORCE TO TCW?

9 A YES.

10 Q DID YOU BELIEVE THAT THAT COULD HAVE A  
11 NEGATIVE IMPACT ULTIMATELY ON THE CLIENTS AS WELL?

09:16AM

12 A MY COMMENT WAS SPECIFIC TO --

13 MR. BRIAN: OBJECTION. NONRESPONSIVE.

14 THE COURT: SUSTAINED.

15 JUST ANSWER THE QUESTION, SIR.

09:16AM

16 THE WITNESS: YES.

17 BY MR. MADISON:

18 Q DID YOU OBSERVE YOURSELF ON OCCASIONS WHERE  
19 MR. GUNDLACH MADE STATEMENTS TO CLIENTS ABOUT INVESTING  
20 IN OTHER TCW STRATEGIES THAT WEREN'T HIS OWN?

09:16AM

21 A NOT THAT I RECALL.

22 Q YESTERDAY MR. BRIAN ASKED YOU SEVERAL  
23 QUESTIONS ABOUT THE REASONS WHY TCW GAVE THE CLIENTS  
24 OPTIONS.

25 A YES.

09:17AM

26 Q DO YOU RECALL THAT?

27 A I DO.

28 Q HE WAS ASKING YOU ABOUT WHETHER IT WAS

1 DISCUSSED TO GET MORE FEES IN THE FUTURE?

2 A RIGHT.

3 Q YOU SAID YOU DIDN'T RECALL THAT CONVERSATION.

4 DO YOU RECALL?

5 A YES, I RECALL.

09:17AM

6 Q HE ASKED IF YOU WERE HOPING TO GET MORE FEES  
7 IN THE FUTURE?

8 A I RECALL.

9 Q AND -- DO YOU RECALL WHAT YOUR ANSWER WAS AT  
10 THAT TIME?

09:17AM

11 A I BELIEVE THE ANSWER WAS --

12 MR. BRIAN: OBJECTION. FORM.

13 THE COURT: SUSTAINED.

14 BY MR. MADISON:

15 Q CAN YOU TELL US NOW, WHEN MR. BRIAN WAS ASKING  
16 YOU ABOUT HOPING TO HAVE MORE FEES IN THE FUTURE, WAS  
17 THAT THE REASON FOR THE DISCUSSIONS ABOUT GIVING THE  
18 CLIENTS OPTIONS?

09:17AM

19 A I -- SORT OF A CYNICAL VIEW, THE REASON WAS,  
20 AS I SAID AT THE BEGINNING OF MY COMMENTS YESTERDAY,  
21 IT'S -- TCW EXISTED BECAUSE OF CLIENTS.

09:17AM

22 SO YOUR OBJECTIVE IS TO KEEP CLIENTS AND  
23 TO DO THE RIGHT THING. BY DOING THE RIGHT THING OUR  
24 INTENT WAS TO KEEP CLIENTS.

25 MR. MADISON: NOTHING FURTHER, YOUR HONOR.

09:17AM

26 THE COURT: MR. BRIAN, RECROSS?

27 MR. BRIAN: JUST A LITTLE BIT, YOUR HONOR.

28 ///

1                   REXCROSS-EXAMINATION +

2 BY MR. BRIAN:

3           Q        WHEN YOU KEEP CLIENTS, YOU GET MORE FEES,  
4 DON'T YOU, SIR?

5           A        I THINK THAT'S TRUE FOR EVERY BUSINESS, YEAH. 09:18AM

6           Q        IT'S TRUE FOR TCW'S BUSINESS, IS IT NOT?

7           A        YES, AND EVERY BUSINESSES AND TCW.

8           Q        INCLUDING TCW'S, CORRECT?

9           A        SURE. SURE.

10          Q        MR. MADISON ASKED YOU ABOUT THE TIMING OF THE 09:18AM  
11 OPTIONS THAT WERE OFFERED.

12                   DO YOU RECALL THAT?

13          A        YES.

14          Q        TAKE A LOOK AGAIN IN THE BIG BINDER. WE CAN  
15 PUT IT UP, 5517, YOUR E-MAIL OF DECEMBER 5TH, 2009. 09:18AM

16                   THIS IS THE E-MAIL IN WHICH YOU  
17 CONFIRMED THAT YOU HAD RECOMMENDED LIQUIDATION EVEN  
18 BEFORE MR. GUNDLACH WAS RELIEVED OF HIS DUTIES,  
19 CORRECT?

20          A        THE -- 09:18AM

21                   MR. MADISON: OBJECTION --

22                   MR. BRIAN: IS THAT RIGHT?

23                   THE WITNESS: NO.

24                   MR. MADISON: -- MISSTATES THE EVIDENCE.

25 BY MR. BRIAN: 09:19AM

26          Q        DIDN'T YOU HAVE A MEETING WITH MR. STERN THE  
27 WEEK OF 11-30? YOU SAID, QUOTE: WE HAVE TO GIVE  
28 CLIENTS A LIQUIDITY OPTION?



1 DIDN'T YOU?

2 A YEAH.

3 Q AND NOW TAKE A LOOK -- LOOK IN THE WHITE  
4 BINDER, MR. MADISON'S BINDER, EXHIBIT 5742. THAT'S AN  
5 E-MAIL YOU SENT TO MR. BORDON AND ANOTHER PERSON ON  
6 JANUARY 12, 2010, IS IT NOT?

09:19AM

7 A IT IS.

8 MR. BRIAN: I WOULD OFFER 5742, YOUR HONOR.

9 MR. MADISON: NO OBJECTION.

10 THE COURT: IT WILL BE ADMITTED.

09:19AM

11

12 (EXHIBIT 5742 ADMITTED.) +

13

14 MR. BRIAN: CAN YOU PUT THAT ON THE SCREEN,  
15 PAGE 1.

09:19AM

16 IF WE COULD HIGHLIGHT THE VERY FIRST TWO  
17 LINES OF THE TEXT: HI BOB, AND THE NEXT LINE. RIGHT  
18 THERE. MAY BE YOU CAN MAKE THAT BIGGER.

19 HI BOB, A QUICK UPDATE ON THE  
20 SPECIAL MORTGAGE CREDITS FUNDS I  
21 AND II.

09:20AM

22 BOB IS REFERENCE TO BOB BORDON TO WHO  
23 YOU'RE SENDING THE E-MAIL, CORRECT?

24 A CORRECT.

25 Q YOU SEE WHERE YOU SAID:

09:20AM

26 A DRAFT BALLOT WENT OUT TO THE  
27 ADVISOR COMMITTEE MEMBERS FOR EACH  
28 FUND ON DECEMBER 7TH.

1                    THAT'S WHAT YOU WROTE, CORRECT?

2            A        YEAH.

3            Q        THAT DRAFT BALLOT IS ATTACHED TO YOUR E-MAIL  
4 STARTING ON PAGE 2, ISN'T IT?

5            A        YEAH, JUST -- IT LOOKS LIKE A TYPO.                    09:20AM

6            Q        IN THE BALLOT OR IN YOUR E-MAIL?

7            A        E-MAIL SAYS DECEMBER 7TH.    THE DOCUMENT SAYS  
8 JANUARY 7TH.

9            Q        DO YOU THINK YOU SENT THE DRAFT BALLOT ON  
10 JANUARY 7TH?                    09:20AM

11           A        JANUARY 7TH, YEAH.

12           Q        TAKE A LOOK AT 5603, THEN, IN THE -- IN THE  
13 OTHER BINDER.

14           A        OH.

15                    THE COURT:    5603?                    09:21AM

16                    MR. BRIAN:   5603, YES.

17                    THE COURT:    ALL RIGHT.

18                    MR. BRIAN:   THAT'S IN EVIDENCE.

19            Q        THIS DOCUMENT WENT OUT ON DECEMBER 17TH, 2009,  
20 DID IT NOT?                    09:21AM

21            A        IT DID.

22            Q        AND IT HAD THREE OPTIONS THAT WERE NOT THE  
23 FINAL OPTIONS, BUT THEY.    EACH WAS AN OPTION THAT TCW  
24 WAS CONSIDERING THAT IT WAS NOT REQUIRED TO OFFER;  
25 ISN'T THAT RIGHT?                    09:21AM

26            A        THAT'S CORRECT.

27            Q        AND EACH -- THOSE OPTIONS WERE SET FOR BEFORE  
28 THAT LATE DECEMBER WEBCAST MR. MADISON WAS ASKING YOU

1 ABOUT, CORRECT?

2 MR. MADISON: OBJECTION. THERE WERE SEVERAL  
3 WEBCASTS.

4 THE COURT: ALL RIGHT.

5 MR. BRIAN: I'M ASKING ABOUT THE LATE  
6 DECEMBER.

09:21AM

7 THE COURT: WELL, THERE WERE TWO. WHAT IS  
8 LATE DECEMBER? LET'S BE SPECIFIC.

9 MR. BRIAN: OKAY. I'LL MOVE TO A DIFFERENT  
10 SUBJECT, MR. WALLS.

09:22AM

11 Q MR. MADISON ASKED YOU ABOUT CONVERSATIONS WITH  
12 INVESTORS.

13 YOU AGREE THAT, WHEN SOMEONE IN THE  
14 ASSET MANAGEMENT BUSINESS SPEAKS TO INVESTORS, HE OR  
15 SHE SHOULD BE HONEST ABOUT THEIR OPINIONS, CORRECT?

09:22AM

16 A YES.

17 Q SO THAT IF THE CHIEF INVESTMENT OFFICER OF AN  
18 ASSET MANAGEMENT COMPANY, WHO IS THE FACE OF THE  
19 COMPANY, IS ASKED DURING AN ECONOMIC RECESSION WHETHER  
20 HE THINKS PEOPLE SHOULD INVEST IN EQUITIES, WOULDN'T  
21 YOU EXPECT HIM TO GIVE THEM HIS TRUTHFUL OPINION?

09:22AM

22 A YES.

23 Q YOU WOULDN'T -- YOU'RE NOT SAYING TO ANYONE,  
24 ARE YOU, THAT THAT ASSET MANAGER IS SUPPOSED TO LIE TO  
25 INVESTORS JUST TO GET MORE FEES INTO THE EQUITY SIDE OF  
26 TCW, ARE YOU, SIR?

09:22AM

27 A IS THAT A CORRECT OR --

28 Q ARE YOU SAYING THAT?

1 A NO, I'M NOT.

2 Q WHERE DO YOU WORK NOW?

3 A ANGELO, GORDON & COMPANY.

4 Q WHAT'S THAT?

5 A A MONEY MANAGER.

09:23AM

6 Q DO YOU WORK -- DO BUSINESS WITH TCW?

7 A NO.

8 Q WOULD YOU LIKE TO?

9 A IN WHAT WAY?

10 Q IN ANY WAY.

09:23AM

11 A YEAH, SURE.

12 MR. BRIAN: NOTHING FURTHER.

13 MR. MADISON: VERY QUICKLY, YOUR HONOR.

14

15 FURTHER REDIRECT EXAMINATION +

09:23AM

16

17 MR. MADISON: I'LL SHOW YOU THE TWO EXHIBITS

18 THAT MR. BRIAN JUST SHOWED.

19 THE WITNESS: SURE.

20 MR. MADISON: 5742.

09:23AM

21 Q LOOK AT THE LINE MR. BRIAN SHOWED YOU. IT  
22 SAYS 12-7.

23 THEN THE VERY NEXT PAGE, IT'S TALKING  
24 ABOUT A DRAFT BALLOT, RIGHT?

25 A YES.

09:23AM

26 Q AND THEN THE NEXT PAGE THERE'S THE DRAFT  
27 BALLOT.

28 CAN YOU READ UP -- THE DATE IN THE UPPER

1 RIGHT-HAND CORNER?

2 A JANUARY 7, '10.

3 Q IT WAS A TYPO IN THE E-MAIL?

4 A CORRECT.

5 Q IF WE LOOK AT 5603 IS THE LETTER FROM  
6 DECEMBER 17, IF WE HIGHLIGHT THE DATE THERE, PLEASE.  
7 THANK YOU.

09:23AM

8 SO MR. BRIAN WAS ASKING YOU ABOUT A  
9 WEBCAST.

10 I BELIEVE YOU TOLD US THERE WAS A  
11 WEBCAST THAT MR. GUNDLACH HAD WITH TCW CLIENTS ON  
12 DECEMBER 8TH, CORRECT?

09:24AM

13 A YES.

14 Q THEN ONE ON DECEMBER 22ND?

15 A CORRECT.

09:24AM

16 Q AND ONE ON DECEMBER 19?

17 A CORRECT.

18 THE COURT: NO. DECEMBER 29.

19 MR. MADISON: PARDON ME.

20 THE WITNESS: YES, 29TH.

09:24AM

21 BY MR. MADISON:

22 Q YOU DIDN'T KNOW THE FULL EXTENT OF THE  
23 CONVERSATIONS THAT MR. GUNDLACH WAS HAVING WITH TCW  
24 INVESTORS DURING THIS TIME PERIOD, DID YOU?

25 A CORRECT.

09:24AM

26 Q NOW, WHEN YOU GO OUT AND TALK TO CLIENTS ABOUT  
27 THEIR INVESTMENTS, IS IT SOMETIMES THE CASE THAT THE  
28 CLIENTS HAVE INVESTMENTS IN EQUITIES AND FIXED INCOME?

1 A YES.

2 Q ISN'T IT SORT OF AN ARTICLE IN FAITH, IN  
3 INVESTING ONE SHOULD GENERALLY HAVE A BALANCED  
4 PORTFOLIO?

5 A YES.

09:25AM

6 Q SO THAT IF STOCKS DON'T DO WELL, YOU ALSO HAVE  
7 SOME BONDS, AND IF BONDS DON'T DO WELL, YOU ALSO HAVE  
8 SOME STOCKS?

9 A DIVERSIFICATION. YES.

10 Q DIVERSIFICATION.

09:25AM

11 IT'S ONE THING TO SAY TO A CLIENT, I  
12 DON'T BELIEVE EQUITIES IS A GOOD INVESTMENT TO BUY  
13 TODAY, RIGHT?

14 A RIGHT.

15 Q BUT -- WOULD YOU EXPECT A CHIEF INVESTMENT  
16 OFFICER AT TCW, WHO HAS OVERSIGHT OF ALL TYPES OF  
17 INVESTMENTS, TO SAY, FOR EXAMPLE, TO A CLIENT WHO HAS  
18 HUNDREDS OF MILLIONS OF DOLLARS IN EQUITY INVESTMENTS  
19 WITH TCW, ANYBODY WHO INVESTS IN EQUITIES IS AN IDIOT?

09:25AM

20 A NO.

09:25AM

21 MR. MADISON: THANK YOU.

22 MR. BRIAN: THE STOCK MARKET --

23 THE COURT: YOU GUYS JUST KEEP GETTING UP AND  
24 DOWN.

25 DOES THIS MEAN YOU HAVE MORE QUESTIONS.

09:25AM

26 MR. BRIAN: JUST TWO, YOUR HONOR.

27 THE COURT: WOULD YOU LIKE TO, YOU KNOW,  
28 CONTINUE YOUR RECROSS?

1 THE WITNESS: CAN I GO NOW?

2 THE COURT: I'LL LET YOU DO IT. I JUST LIKE A  
3 PAUSE THAT REFRESHES BETWEEN ONE STANDING AND SITTING,  
4 YOU KNOW.

5 MR. BRIAN: I WAS GOING TO STRETCH A LITTLE  
6 BIT, AND THEN I'LL ASK MR. WALLS IF HE'D LIKE TO GO  
7 HOME, YOUR HONOR.

09:26AM

8 THE WITNESS: YES, PLEASE. THANK YOU.  
9 BYE-BYE.

10 THE COURT: YOU JUST GOT UP TO SAY YOU HAVE NO  
11 QUESTIONS?

09:26AM

12 MR. BRIAN: THAT'S CORRECT. I WAS THINKING OF  
13 A QUESTION. I CAN TAKE A HINT.

14 THE COURT: LADIES AND GENTLEMEN, DON'T TAKE  
15 ANYTHING I DO AS -- I'M NOT TRYING TO EMBARRASS THESE  
16 GUYS IN ANY WAY.

09:26AM

17 MR. WALLS, THANK YOU FOR YOUR TESTIMONY.  
18 YOU MAY BE EXCUSED.

19 THE WITNESS: THANK YOU, YOUR HONOR.

20 THE COURT: YOU MAY STEP DOWN.

09:26AM

21  
22 (PAUSE) +

23  
24 THE COURT: MR. QUINN OR MR. MADISON, WHOEVER  
25 WANTS TO CALL YOUR NEXT WITNESS.

09:26AM

26 MR. MADISON: YES, WE'LL CALL GARY SHEDLIN,  
27 YOUR HONOR.

28

1 GARY SHEDLIN +  
2 CALLED AS A WITNESS BY THE PLAINTIFF WAS SWORN AND  
3 TESTIFIED AS FOLLOWS:

4

5 THE CLERK: YOU DO SOLEMNLY STATE THAT THE  
6 TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW  
7 PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE  
8 WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU  
9 GOD?

10 THE WITNESS: I DO.

09:27AM

11 THE CLERK: THANK YOU. PLEASE BE SEATED.

12 SIR, PLEASE STATE AND SPELL YOUR NAME  
13 FOR THE RECORD.

14 THE WITNESS: MY NAME IS GARY SHEDLIN,  
15 S-H-E-D-L-I-N.

09:27AM

16 THE COURT: GOOD MORNING, MR. SHEDLIN.

17 THE WITNESS: GOOD MORNING, SIR.

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

19 MR. MADISON: THANK YOU, YOUR HONOR.

20

09:27AM

21 DIRECT EXAMINATION +

22 BY MR. MADISON:

23 Q GOOD MORNING, MR. SHEDLIN.

24 A GOOD MORNING.

25 Q IT'S HELPFUL IF YOU PULL THE MICROPHONE TOWARD  
26 YOU. YOU'LL FIND WE CAN'T HEAR YOU --

09:28AM

27 A OKAY.

28 Q WHERE DO YOU WORK?



1 A I WORK AT MORGAN STANLEY.

2 Q WHAT DO YOU DO AT MORGAN STANLEY?

3 A VICE CHAIRMAN IN INVESTMENT BANKING.

4 Q WERE YOU AT MORGAN STANLEY IN 2009?

5 A NO, I WAS NOT.

09:28AM

6 Q WHERE DID YOU WORK AT THAT TIME?

7 A I WORKED AT CITIGROUP.

8 Q WHAT DID YOU DO AT CITIGROUP?

9 A I WAS THE CHAIRMAN OF THE GLOBAL FINANCIAL  
10 INSTITUTION OF BUSINESS IN THE INVESTMENT BANK.

09:28AM

11 Q CAN YOU TELL US WHAT SOMEONE IN THAT POSITION  
12 AT CITIBANK DID.

13 A SURE.

14 COVERED A VARIETY OF CLIENTS IN THE  
15 FINANCIAL SERVICES INDUSTRY.

09:28AM

16 GIVEN THEM STRATEGIC ADVICE AROUND  
17 MERGERS, ACQUISITION, AND CAPITALISM.

18 Q ANY PARTICULAR TYPES OF BUSINESSES YOU WORKED  
19 WITH AT THAT TIME?

20 A YES.

09:28AM

21 THEY WERE FINANCIAL INSTITUTIONS,  
22 INCLUDED BANKS, INSURANCE COMPANIES, AND ASSET  
23 MANAGERS, AMONGST OTHERS.

24 Q DID THERE COME A TIME IN 2009 WHEN YOU WERE  
25 ASKED TO DO SOME WORK FOR TCW HERE IN TOWN?

09:29AM

26 A YES.

27 Q CAN YOU TELL US, FIRST, HOW THAT PROJECT CAME  
28 UP, AS FAR AS YOU RECALL?

1           A        I WAS CALLED, I BELIEVE, BY MARK ATTANASIO AND  
2           JEAN-MARC CHAPUS, WHO MENTIONED THERE WAS A POTENTIAL  
3           ASSIGNMENT REGARDING STRATEGIC REVIEW OF THE FIRM.

4                        AND THEY SENT ME A, IF YOU WILL, A  
5           REQUEST FOR PROPOSAL, WHICH WE CALL THE RFP TO TAKE A  
6           LOOK AT.

09:29AM

7           Q        CAN YOU TELL US WHAT A STRATEGIC REVIEW IS, IF  
8           THAT'S A TERM YOU'RE FAMILIAR WITH?

9           A        SURE.

10                       IT'S A SITUATION WHERE WE WOULD GO IN  
11           AND WE WOULD GET VERY FAMILIAR WITH THE FIRM,  
12           UNDERSTANDING ITS STRENGTHS AND ITS WEAKNESSES AND ITS  
13           OPPORTUNITIES, THE THREATS TO THE FIRM, AND MAKE A  
14           VARIETY OF RECOMMENDATIONS DEPENDING UPON ULTIMATELY  
15           WHAT THE CLIENT WAS LOOKING TO ACCOMPLISH.

09:29AM

16           Q        HAD YOU WORKED WITH TCW PRIOR TO MID 2009?

17           A        NO.

18           Q        LET ME ASK YOU TO LOOK AT THE FIRST EXHIBIT IN  
19           YOUR BINDER THERE -- YOU SHOULD HAVE A SMALL BINDER --  
20           EXHIBIT 2151.

09:29AM

09:30AM

21                       AND TELL US IF YOU RECOGNIZE THAT,  
22           PLEASE.

23           A        YES, I RECOGNIZE THAT.

24           Q        WHAT IS 2151?

25           A        THIS WAS THE DESCRIPTION OF THE ASSIGNMENT  
26           THAT WAS SENT TO ME BY JEAN-MARC CHAPUS FROM TCW.

09:30AM

27                       MR. MADISON:   MOVE 2151.

28                       THE COURT:    ANY OBJECTION?

1 MR. BRIAN: LET ME HAVE A MOMENT, PLEASE.

2 (PAUSE) +

3

4 MR. BRIAN: NO OBJECTION.

5 THE COURT: IT WILL BE ADMITTED.

09:30AM

6

7 (EXHIBIT 2151 ADMITTED.)+

8

9 BY MR. MADISON:

10 Q WE SEE AN E-MAIL FROM MR. CHAPUS TO YOU, DATED  
11 THURSDAY JUNE 29 -- EXCUSE ME -- 25, 2009. COPY TO  
12 MR. ATTANASIO, MR. STERN, MR. RIPOLL, AND  
13 MR. BUSTAN (PH). THEN THE ATTACHMENT HAS THREE  
14 NUMBERED SECTIONS.

09:30AM

15 CAN YOU JUST TELL US WHAT YOU SEE THERE  
16 ON THE SECOND PAGE.

09:31AM

17 A SURE.

18 THERE ARE THREE ELEMENTS TO THE  
19 ASSIGNMENT THAT THEY ARE -- THEY WOULD ASK US TO  
20 ACCOMPLISH.

09:31AM

21 Q FIRST ONE TALKS ABOUT REVIEWING EVOLUTION  
22 OPPORTUNITIES FOR TCW IN TERMS OF ACQUISITION OR  
23 MERGER.

24 AND IF YOU CAN GENERALLY TELL US WHAT  
25 THAT REFERS TO?

09:31AM

26 A CORRECT.

27 MY INTERPRETATION OF THAT WAS THAT WE  
28 WERE BASICALLY TO LOOK AT OPPORTUNITIES THAT

1 POTENTIALLY COMBINE TCW WITH ANOTHER FIRM TO  
2 POTENTIALLY HELP BROADEN OUT EITHER ITS PRODUCTS OR  
3 DISTRIBUTION.

4 Q NO. 2 SAYS: CONSIDER POTENTIAL STRUCTURE FOR  
5 A DEAL KNOWING THAT TCW PARENT COMPANY HAS SG IS READY  
6 TO ACCEPT SOLUTIONS WHERE IT COULD SELL PART OF ITS  
7 STAKE TO A THIRD PARTY OR BE DILUTED PROVIDED THAT --  
8 THERE ARE POINTS THERE.

09:31AM

9 WHAT DID THAT REFER TO?

10 A CORRECT. MY UNDERSTANDING OF THAT WAS SOC-GEN  
11 AT THE TIME WAS NOT LOOKING TO SPEND CASH. THEY WERE  
12 LOOKING TO ACTUALLY USE TCW AS CURRENCY TO COMBINE IT  
13 WITH ANOTHER FIRM IN A NONCASH OR MERGER TRANSACTION.

09:32AM

14 Q NO. 3: DEVELOPS A PARALLEL PROCESS TO BE  
15 AGREED UPON OF SG IN WHICH MANAGEMENT TCW WILL MEET  
16 WITH POTENTIAL EQUITY INVESTORS TO CONSIDER  
17 RECAPITALIZATION OR BUYOUT OF TCW MANAGEMENT.  
18 PROPOSALS WILL BE CONSIDERED ON AT LEAST EQUAL FOOTING  
19 WITH IF NOT A MORE FAVORABLE BASIS TO ANY OTHER  
20 PROPOSAL.

09:32AM

09:32AM

21 WHAT WAS THAT ABOUT?

22 A THAT WAS A DESIRE OF, I BELIEVE, BY MEMBERS OF  
23 THE MANAGEMENT TEAM TO POTENTIALLY LOOK AT BUYING THE  
24 COMPANY BACK WITH A PARTNER WHO WOULD PROVIDE CAPITAL.

25 Q AT THIS TIME, IN LATE JUNE OR AT ANY TIME AS  
26 YOU BEGAN YOUR WORK FOR TCW, DID YOU HAVE AN  
27 UNDERSTANDING OF WHO AT TCW HERE IN LOS ANGELES, AS  
28 OPPOSED TO SOC-GEN, WAS INVOLVED IN THIS PROJECT THAT

09:32AM

1 THEY WERE RETAINING YOU FOR?

2 MR. BRIAN: OBJECTION. FOUNDATION.

3 THE COURT: OVERRULED.

4 EITHER YES OR NO.

5 THE WITNESS: YES.

09:33AM

6 BY MR. MADISON:

7 Q WHAT WAS YOUR UNDERSTANDING ABOUT THAT?

8 MR. BRIAN: OBJECTION. FOUNDATION.

9 THE COURT: OVERRULED.

10 THE WITNESS: MY UNDERSTANDING WAS THERE WAS  
11 GOING TO BE A COMMITTEE OF PEOPLE, FOUR OR FIVE PEOPLE  
12 AT THE -- WHO ARE GOING TO BE OVERSEEING OUR STRATEGIC  
13 REVIEW AND WOULD BE MAKING -- WE'D BE MAKING  
14 RECOMMENDATIONS TO.

09:33AM

15 Q DO YOU RECALL THOSE PEOPLE?

09:33AM

16 A YES, BROADLY.

17 Q CAN YOU DESCRIBE THAT FOR US?

18 A I BELIEVE IT WAS MARC STERN. IT WAS  
19 MARK ATTANASIO, JEAN-MARC CHAPUS, JEFFREY GUNDLACH, AND  
20 DIANE JAFFEE, I BELIEVE.

09:33AM

21 Q SO, HOW DO YOU GO ABOUT CONDUCTING A STRATEGIC  
22 REVIEW OF A COMPANY LIKE THIS?

23 A WE PROVIDED THEM WITH A -- AN INFORMATION  
24 REQUEST LIST, TO BASICALLY GET INFORMED AND INTELLIGENT  
25 ABOUT THE FIRM.

09:34AM

26 WE SCHEDULED A DAY OR SO OF FACE-TO-FACE  
27 MEETINGS ON SITE WITH MEMBERS ON THIS COMMITTEE, PLUS  
28 ADDITIONAL MEMBERS WHO WOULD HELP US UNDERSTAND THE

1 INFORMATION THAT WAS PROVIDED.

2 WE AGREED TO A WORK PLAN AND ULTIMATELY  
3 A DELIVERY DATE OF A STRATEGIC REPORT.

4 Q DID YOU ASSEMBLE A TEAM AT CITI TO WORK ON  
5 THIS WITH YOU?

09:34AM

6 A I DID.

7 Q HOW MANY PERSONS?

8 A THERE WAS PROBABLY, ALL TOLD, SIX OR SEVEN  
9 PEOPLE.

10 Q NOW, DID THE PROJECT HAVE A NAME WITHIN  
11 CITIBANK?

09:34AM

12 A AT THIS STAGE THE PROJECT DID HAVE A NAME,  
13 YES.

14 Q WHAT WAS THAT?

15 A I BELIEVE WE CALLED IT PROJECT HIGH LIFE.

09:34AM

16 Q FIRST, WHY WOULD YOU USE A NAME AT ALL, OTHER  
17 THAN THE CLIENT'S NAME OR SOMETHING?

18 A IT'S CUSTOMARY TO USE PROJECT NAMES TO PROTECT  
19 THE IDENTITY OF OUR CLIENTS.

20 Q SO HAD YOU DONE STRATEGIC REVIEWS LIKE THIS  
21 PRIOR TO JUNE 2009 WHEN YOU WERE RETAINED BY TCW?

09:34AM

22 A FOR OTHER CLIENTS?

23 Q YES, SIR.

24 A YES. I'VE BEEN IN THIS BUSINESS FOR ABOUT 25  
25 YEARS.

09:35AM

26 Q AND, BY THE WAY, DO YOU RECALL THAT THERE WAS  
27 A RETAINER LETTER THAT ULTIMATELY WAS EXECUTED?

28 A I DO RECALL THAT.

1 Q DO YOU RECALL WHEN THAT WAS?

2 A I DON'T. IN TERMS OF SEQUENCING, I ASSUME IT  
3 WAS SOMETIME AFTER WE WERE ENGAGED.

4 Q NOW, DID YOU CONDUCT ANY MEETINGS IN  
5 LOS ANGELES AS PART OF YOUR STRATEGIC REVIEW?

09:35AM

6 A WE DID.

7 Q DO YOU RECALL WHEN THOSE MEETINGS OCCURRED?

8 A I BELIEVE THEY WERE IN MID JULY, SOMEWHERE  
9 AROUND 17TH OR 19TH. I'M NOT EXACTLY SURE THE DATE IN  
10 JULY.

09:35AM

11 Q DO YOU RECALL WHO YOU MET WITH AT THAT TIME?

12 A AGAIN, BROADLY, YES.

13 Q CAN YOU TELL US.

14 A YES, WE DEFINITELY MET WITH EACH MEMBER OF THE  
15 COMMITTEE SPECIFICALLY, INDIVIDUALLY, AND THEN HAD  
16 ACCESS TO OTHER MEMBERS OF THE MANAGEMENT TEAM,  
17 INCLUDING THE CHIEF FINANCIAL OFFICER, THE CHIEF  
18 ADMINISTRATIVE OFFICER.

09:35AM

19 AND I'M NOT SURE WHAT MICHAEL CONN'S  
20 POSITION WAS, BUT WHO WORKED WITH MARC STERN.

09:36AM

21 Q DID YOU MEET WITH MR. GUNDLACH ON JULY 16 OR  
22 17?

23 A WE DID.

24 Q FOR HOW LONG?

25 A ABOUT AN HOUR.

09:36AM

26 Q WHO MET WITH HIM?

27 A MYSELF AND OTHER MEMBERS OF MY TEAM WHO WERE  
28 PRESENT AT THE TIME.

1 Q WAS ANYONE ELSE PRESENT FROM TCW IN THAT  
2 MEETING?

3 A I DON'T BELIEVE SO.

4 Q WHAT WAS THE PURPOSE OF THAT MEETING WITH  
5 MR. GUNDLACH?

09:36AM

6 A TO GET MR. GUNDLACH'S PERSPECTIVES ON THE  
7 CURRENT STATE OF THE FIRM. AND TO HAVE HIM ELABORATE  
8 ON WHAT HE THOUGHT THE GOALS AND OBJECTIVES, OUR  
9 ASSIGNMENT WERE, AND ULTIMATELY HIS OPINIONS AS TO  
10 WHERE WE THOUGHT WE SHOULD END UP.

09:36AM

11 Q AT THAT TIME, DID YOU KNOW MR. GUNDLACH WAS A  
12 MEMBER OF THE BOARD OF DIRECTORS OF TCW GROUP?

13 A YES.

14 Q DID YOU KNOW AT THAT TIME THAT MR. GUNDLACH  
15 WAS THE CHIEF INVESTMENT OFFICER OF THE ENTIRE FIRM?

09:36AM

16 A I DID.

17 Q DID YOU KNOW THAT MR. GUNDLACH WAS ALSO IN  
18 CHARGE OF M.B.S. GROUP?

19 A YES.

20 Q SO CAN YOU TELL US WHAT YOU RECALL  
21 MR. GUNDLACH SAYING IN THAT INTERVIEW OF JULY 16 OR  
22 17TH?

09:37AM

23 A MR. GUNDLACH MADE CLEAR THAT TCW WAS A FIRM  
24 THAT BASICALLY WAS INCREDIBLY RELIANT UPON HIS SKILLS  
25 AND HIS EXPERTISE. THAT THE GROUP THAT HE MANAGED  
26 CONTROLLED A VERY SIGNIFICANT PORTION OF THE ASSETS OF  
27 THE FIRM.

09:37AM

28 THAT WITHOUT HIM THE FIRM PROBABLY WOULD



1 NOT EXIST. HE WENT ON TO BASICALLY TELL US THAT HE  
2 BELIEVED HE SHOULD BE THE CHIEF EXECUTIVE OFFICER OF  
3 THE FIRM.

4 AND OVER TIME IF HE WAS NOT RECOGNIZED  
5 AS THE CHIEF EXECUTIVE OFFICER OF THE FIRM, HE WOULD  
6 LIKELY THINK ABOUT DEPARTING THE FIRM. 09:37AM

7 AND IF THE TIME CAME WHEN HE SHOULD  
8 DEPART THE FIRM, IT WAS LIKELY, IN HIS VIEW, HE WOULD  
9 TAKE MOST OF THE CLIENTS AND ALL THE ASSETS AND LEAVE  
10 THE COMPANY IN A VERY TENUOUS POSITION. 09:37AM

11 Q DID HE SAY ANYTHING MORE ABOUT WHAT WOULD  
12 HAPPEN TO THE FIRM IF HE WERE TO LEAVE?

13 A HE BASICALLY THOUGHT THAT THERE WOULD BE  
14 NOTHING LEFT TO THE FIRM BEYOND A VARIETY OF PRODUCTS  
15 THAT BASICALLY NOBODY -- NOBODY WANTED TO BUY. 09:38AM

16 Q YOU'RE BEING MEASURED IN YOUR TESTIMONY, WHICH  
17 IS APPROPRIATE HERE IN COURT --

18 MR. BRIAN: OBJECTION. PREAMBLE, YOUR HONOR.

19 THE COURT: SUSTAINED.

20 BY MR. MADISON: 09:38AM

21 Q WHAT WAS HIS Demeanor WHEN HE WAS TELLING YOU  
22 THESE THINGS?

23 A EXTREMELY CONFIDENT. VERY ARROGANT. SOMETIME  
24 I WOULD SAY EGOTISTICAL, BUT CERTAINLY INCREDIBLY BRASH  
25 AND UP-FRONT. 09:38AM

26 Q DID HE SEEM UNCERTAIN ABOUT ANY OF THE THINGS  
27 HE WAS SAYING?

28 A NOT AT ALL.

1 Q WERE YOU SURPRISED WHAT HE WAS TELLING YOU?

2 A YOU DON'T GENERALLY HEAR THAT, IN THAT  
3 BRAVADO. IT WAS CLEAR THAT HE BELIEVED IT VERY MUCH.

4 Q DID HE SAY ANYTHING ABOUT THE ROLE OF FIXED  
5 INCOME AS A PART OF TCW?

09:38AM

6 A HE SAID IT WAS THE LIFEblood OF THE FIRM.

7 Q DID HE SAY ANYTHING ABOUT WHETHER THE SUCCESS  
8 OF THE FIRM WOULD BE BETTER IF IT WAS JUST FIXED  
9 INCOME?

09:39AM

10 MR. BRIAN: OBJECTION. LEADING.

11 THE COURT: SUSTAINED.

12 BY MR. MADISON:

13 Q DO YOU RECALL ANYTHING ELSE THAT HE SAID ABOUT  
14 FIXED INCOME'S IMPORTANCE TO THE FIRM OR WHERE HE  
15 THOUGHT IT SHOULD BE?

09:39AM

16 A HE DID ABSOLUTELY BELIEVE THAT TCW SHOULD BE A  
17 PURELY FIXED INCOME FIRM. IF THEY DID MORE TO PROMOTE  
18 HIS BUSINESS AND HIS TEAM'S PERSONA, THE FIRM WOULD BE  
19 SIGNIFICANTLY MORE SUCCESSFUL.

20 Q DID HE COMMENT SPECIFICALLY ABOUT OTHER ASSET  
21 CLASSES WITHIN TCW? EQUITIES? ENERGY? ANYTHING ELSE?

09:39AM

22 A OTHER THAN TO SAY THAT THEY BASICALLY WERE  
23 IRRELEVANT AS IT RELATED TO HIS CORE PRODUCT, NO,  
24 NOTHING MORE THAN THAT.

25 Q IS IT COMMON IN THE FINANCIAL INDUSTRY FOR  
26 ASSET MANAGERS TO BE BIASED IN FAVOR OF THEIR OWN ASSET  
27 CLASS?

09:39AM

28 A ABSOLUTELY.

1 Q WOULD YOU CHARACTERIZE WHAT YOU WERE HEARING  
2 FROM MR. GUNDLACH AS BEING CONSISTENT WITH THAT, OR  
3 DIFFERENT?

4 A I THINK IT WAS CONSISTENT WITH HIS, HIS  
5 BELIEF. HIS PRODUCT WAS INCREDIBLY STRONG. THE  
6 COMPENSATION SYSTEMS OF THE FIRM ABSOLUTELY ENCOURAGED  
7 THAT. GIVEN THAT, I DON'T BELIEVE MR. GUNDLACH HAD ANY  
8 COMPENSATION TIED TO ANY OTHER PRODUCT BESIDES HIS OWN.

09:40AM

9 Q NOW, DID YOU INTERVIEW THE OTHER SENIOR  
10 MEMBERS THAT YOU IDENTIFIED EARLIER AS PART OF THIS  
11 PROJECT?

09:40AM

12 A WE DID.

13 Q AND DID YOU TALK TO THEM ABOUT MR. GUNDLACH'S  
14 ASSERTION THAT HE SHOULD BE THE CEO?

15 A NOT SPECIFICALLY, BUT EVERYONE BROUGHT IT UP  
16 ON THEIR OWN.

09:40AM

17 Q WHAT DID THEY SAY ABOUT THAT?

18 MR. BRIAN: OBJECTION. HEARSAY.

19 THE COURT: SUSTAINED.

20 BY MR. MADISON:

09:40AM

21 Q WELL, LET ME ASK YOU THIS.

22 DID YOU PREPARE A REPORT, OR AT LEAST A  
23 DRAFT REPORT AT THAT TIME, THAT INCLUDED WHAT YOU'D  
24 BEEN TOLD IN THESE INTERVIEWS?

25 A MY TEAM DID PREPARE A DRAFT OF IT, YES.

09:40AM

26 Q I'D LIKE YOU TO LOOK AT EXHIBIT 2153, PLEASE.

27 AND TELL US WHAT THAT IS.

28 A THIS IS A CITIGROUP DOCUMENT THAT WAS PREPARED

1 BY MY TEAM TO SUMMARIZE THE CONCLUSIONS OF OUR DUE  
2 DILIGENCE MEETING, OR MEETINGS, IN MID JULY.

3 Q IS THIS A REPORT THAT CITIGROUP, YOUR TEAM AT  
4 CITIGROUP, PREPARED IN THE ORDINARY COURSE OF YOUR  
5 BUSINESS AT CITIGROUP AS PART OF THIS PROJECT?

09:41AM

6 A YES.

7 Q IT WAS MAINTAINED AT CITIGROUP FOR THOSE  
8 PURPOSES?

9 A IT WAS.

10 MR. MADISON: I'D MOVE THE EXHIBIT, YOUR  
11 HONOR.

09:41AM

12 MR. BRIAN: NO OBJECTION.

13 THE COURT: IT WILL BE ADMITTED.

14

15 (EXHIBIT 2153 ADMITTED.)+

09:41AM

16

17 BY MR. MADISON:

18 Q IF WE CAN USE THE EXHIBIT TO, WHERE  
19 APPROPRIATE, MR. SHEDLIN, TO REFRESH YOUR RECOLLECTION,  
20 OR YOU CAN TELL US DIRECTLY FROM THE EXHIBIT. LET ME  
21 REFER YOU TO THE FIRST PAGE.

09:41AM

22 IT SAYS: PROJECT HIGH LIFE?

23 THAT WAS THE NAME FOR THE PROJECT THAT  
24 YOU HAD, IN REVIEW OF THE FIRM. AND THEN THE DATE IS  
25 DOWN BELOW, JULY 20, 2009.

09:42AM

26 LET ME JUST ASK YOU: DO YOU RECALL  
27 WHETHER OR NOT YOU WERE IN CONTACT WITH SENIOR  
28 MANAGEMENT AT TCW AT OR ABOUT THE TIME THAT THIS DRAFT

1 WAS PREPARED?

2 A WE WERE.

3 Q AND DO YOU RECALL, IN PARTICULAR, SPEAKING TO  
4 MR. STERN ABOUT THE MATTERS DISCUSSED IN THE REPORT  
5 SHORTLY AFTER THIS DATE?

09:42AM

6 A MR. STERN AND, I BELIEVE, HIS COLLEAGUES IN  
7 PARIS AS WELL, YES.

8 Q WHEN WAS THAT, IF YOU RECALL?

9 A IT WOULD HAVE BEEN SHORTLY AFTER JULY 20TH. I  
10 CAN'T RECALL THE DATE. NOT EXACTLY, BUT ...

09:42AM

11 Q IF YOU LOOK AT THE -- PAGE -- THE PAGE THAT IS  
12 -2 ON THE EXHIBIT. IT'S A REVIEW OF THE FIRM.

13 I WANT TO REFER YOU, IN PARTICULAR, TO  
14 THE MIDDLE SECTION AND THE THIRD BULLET POINT.  
15 ACTUALLY, THE SECOND AND THIRD BULLET POINT. EXCUSE  
16 ME.

09:43AM

17 FIRST BULLET POINT TALKED ABOUT HOW  
18 HIGH LIFE -- THAT WAS THE WORD YOU WERE USING FOR --  
19 THE WORDS YOU WERE USING FOR TCW?

20 A CORRECT.

09:43AM

21 Q AND IT SAYS.

22 ...TRIED TO REPRESENT ITSELF AS  
23 "EQUITY MANAGER THAT ALSO HAS FIXED  
24 INCOME FRANCHISE"; HOWEVER, PLUS OR  
25 MINUS 70 PERCENT OF CURRENT ASSETS  
26 OF THE FIRM ARE FIXED INCOME  
27 ASSETS.

09:43AM

28 WERE ALL OF THOSE -- THE 70 PERCENT

1 WITHIN MR. GUNDLACH'S MORTGAGE GROUP?

2 A I DON'T BELIEVE SO. NO.

3 Q AND THEN IT SAYS:

4 JEFFREY GUNDLACH, CIO, AND HEAD  
5 OF MBS, BELIEVES THAT THEY COULD  
6 HAVE BEEN MORE SUCCESSFUL OVER THE  
7 YEARS HAD THE FIRM IDENTIFIED  
8 ITSELF AS FIXED INCOME MANAGER.  
9 DID HE TELL YOU THAT?

09:43AM

10 A HE DID.

09:43AM

11 Q IT SAYS:

12 HOWEVER, THIS VIEW IS NOT SHARED  
13 BY THE MANAGEMENT (MARC STERN,  
14 DAVE DEVITO AND MICHAEL CAHILL),  
15 HEADS OF LEVERAGED FINANCE,  
16 (MARC ATTANASIO AND JEAN-MARC  
17 CHAPUS), AND HEAD OF EQUITIES  
18 (DIANE JAFFEE) - THEY BELIEVE  
19 DIVERSIFICATION IS IMPORTANT FOR  
20 THE FIRM.

09:43AM

09:43AM

21 A YES.

22 Q IS THAT WHAT YOU WERE TOLD BY YOUR TEAM?

23 A YES.

24 Q IT'S ENTITLED CREATIVE ORGANIZATIONAL CHANGES.  
25 IT SAYS, IN THE FIRST BULLET POINT, THAT:

09:44AM

26 BOB BEYER AND BILL SONNEBORN  
27 RECENTLY DEPARTED FROM THE FIRM.  
28 WAS THAT YOUR UNDERSTANDING?

1 A YES, IT WAS.

2 Q AND THEN MARC STERN HAS RECENTLY RETURNED TO  
3 THE COMPANY AS THE INTERIM CEO.

4 YOU LEARNED THAT IN THE COURSE OF YOUR  
5 REVIEW?

09:44AM

6 A CORRECT.

7 Q AND THEN IT SAYS:

8 JEFFREY GUNDLACH HAS EXPRESSED  
9 STRONG INTEREST IN ASSUMING THE  
10 ROLE OF THE CEO AND HAS BEEN VOCAL  
11 REGARDING THIS BOTH INSIDE THE FIRM  
12 AND WITH OUTSIDE CLIENTS.

09:44AM

13 WAS THAT INFORMATION YOU'D RECEIVED IN  
14 THE COURSE OF YOUR REVIEW?

15 A YES, IT WAS.

09:44AM

16 Q AND DID MR. GUNDLACH CONFIRM THAT?

17 A YES, HE DID.

18 Q IT SAYS:

19 THIS HAS CAUSED CONFUSION AND  
20 DILEMMA INSIDE THE FIRM AMONG  
21 VARIOUS HEADS OF DIVISIONS:

09:44AM

22 WITH THE "SPIRITUAL LEADERS" OF  
23 THE FIRM, BOB AND BILL, LEAVING THE  
24 FIRM, SEVERAL KEY EMPLOYEES ARE IN  
25 DILEMMA REGARDING THE STRATEGIC  
26 DIRECTION OF THE FIRM.

09:44AM

27 THOUGH GUNDLACH IS HIGHLY  
28 RESPECTED AS AN INTELLIGENT AND

1 TOP-PERFORMING PM --  
2 PORTFOLIO MANAGER?

3 A CORRECT.

4 Q (READING):

5 -- SEVERAL PM'S BELIEVE HE DOES NOT  
6 HAVE THE NECESSARY SKILL SET FOR  
7 BEING THE CEO AND KEEPING THE FIRM  
8 TOGETHER.

09:45AM

9 WERE YOU TOLD THAT YOURSELF FROM THE  
10 OTHERS?

09:45AM

11 A YES, WE WERE.

12 Q THEN IT SAYS:

13 SEVERAL PM'S SUGGESTED THAT THEY  
14 WOULD RATHER SPLIT THE FIRM IN  
15 VARIOUS DIVISIONS.

09:45AM

16 WERE YOU TOLD THAT AS WELL?

17 A WE WERE.

18 Q PARDON ME.

19 AND THEN IF WE GO OVER TO THE NEXT  
20 PAGE -- PARDON ME -- TWO PAGES DOWN. IT WOULD BE PAGE  
21 ENDING IN -4.

09:45AM

22 THERE'S A SECTION ENTITLED POTENTIAL  
23 CHALLENGES FOR CHANGE OF MANAGEMENT/OWNERSHIP. IT  
24 SAYS:

25 GUNDLACH HAS EXPLICITLY  
26 MENTIONED HE WANTS TO BE THE CEO OF  
27 THE FIRM AND THAT IS A CONDITION  
28 PRECEDENT FOR HIM ACCEPTING ANY

09:45AM



1 CHANGE OF OWNERSHIP OF THE FIRM.

2 CAN YOU EXPLAIN TO US WHAT THAT MEANS?

3 A YES.

4 AS PART OF OUR ASSIGNMENT, AS YOU  
5 MENTIONED EARLIER, THE THIRD -- THIRD PIECE IN THE  
6 PRIOR EXHIBIT YOU SHOWED ME THERE WAS A DESIRE TO  
7 BASICALLY LOOK WHETHER OR NOT MANAGEMENT BASICALLY  
8 COULD BUY THE FIRM BACK FROM SOC-GEN IN A PRIVATE  
9 EQUITY OR A PRIVATE TRANSACTION.

09:46AM

09:46AM

10 JEFFREY WAS VERY CLEAR THAT THE ONLY WAY  
11 HE WAS GOING TO DO THAT, AND INVEST IN A FIRM AND BE  
12 PART OF THE FIRM WAS IF HE WAS THE CEO.

13 Q DID YOU HAVE UNDERSTANDING AS TO WHETHER  
14 MR. GUNDLACH AT THAT TIME OWNED ANY STOCK OR EQUITY  
15 OWNERSHIP OF TCW?

09:46AM

16 A I DON'T BELIEVE THERE WAS REALLY VERY MUCH --  
17 REALLY VERY MUCH EQUITY AT ALL, IF ANY, OWNED BY ANY OF  
18 THE INDIVIDUALS AT THIS POINT IN TIME.

19 Q WHY WOULD HE HAVE TO ACCEPT A CHANGE OF  
20 OWNERSHIP OF THE FIRM UNDER ANY CIRCUMSTANCES?

09:46AM

21 A BECAUSE IF HE DETERMINED TO LEAVE, NO ONE  
22 WOULD BASICALLY BUY THE FIRM. EFFECTIVELY, HE WOULD  
23 HAVE TO GO ALONG WITH ANY TRANSACTION.

24 Q AT THAT TIME, BECAUSE OF HIS IMPORTANCE IN  
25 TERMS OF THE ASSETS THAT HE WAS OVERSEEING, YOU FELT HE  
26 DID HAVE THE POWER TO SAY -- TO APPROVE OR DISAPPROVE  
27 ANY CHANGE IN THE OWNERSHIP?

09:47AM

28 A HE ABSOLUTELY DID.

1 Q DID YOU THINK THAT WAS HEALTHY FOR TCW AS A  
2 FIRM -- THAT SITUATION?

3 A IT'S -- OBVIOUSLY, IT'S NOT A HEALTHY  
4 SITUATION FOR THE FIRM, NO.

5 Q THEN IT SAYS:

09:47AM

6 HE WOULD NOT BE INTERESTED IN A  
7 RECAPITALIZATION THROUGH A P.E.  
8 FIRM INVESTING IN THE FIRM AND  
9 INSTALLING A NEW CEO.

10 P.E. IS PRIVATE EQUITY?

09:47AM

11 A CORRECT.

12 Q HE TOLD YOU THAT?

13 A HE DID.

14 Q IT SAYS:

15 HE WOULD ALSO NOT ACCEPT A  
16 CONVERSION OF HIS COMP --  
17 THAT MEANS COMPENSATION?

09:47AM

18 A CORRECT.

19 Q (READING:

20 -- TO EQUITY UNLESS HE IS THE CEO  
21 AND IS THE KEY DECISION MAKER.

09:47AM

22 AGAIN, THOSE WERE HIS STATEMENTS?

23 A THEY WERE.

24 Q HE BELIEVES HE WOULD BE ABLE TO FULFILL HIS  
25 RESPONSIBILITY AS A P.M., PORTFOLIO MANAGER, AND THE  
26 CEO SIMULTANEOUSLY.

09:47AM

27 HE SAID THAT AS WELL?

28 A HE DID.

1 Q ALLUDED TO THE FACT THAT IF HE AND HIS KEY  
2 EMPLOYEES DEPART THE FIRM, HE WOULD BE ABLE TO SHIFT  
3 HIS CLIENTS AND ASSETS WITH HIM.

4 HE MADE THAT STATEMENT TO YOU AS WELL,  
5 SIR?

09:48AM

6 A HE DID. I THINK ASSET SHOULD ACTUALLY BE  
7 PLURAL, BUT YES, HE DID THAT.

8 Q IT'S A DRAFT, RIGHT?

9 A YES.

10 Q OKAY. THEN THE NEXT BULLET POINT SAYS:

09:48AM

11 OTHER P.M. BELIEVE THAT GUNDLACH  
12 DOES NOT HAVE THE NECESSARY SKILLS  
13 FOR BEING THE CEO AND KEEPING THE  
14 FIRM TOGETHER AND ARE NOT  
15 SUPPORTIVE OF GUNDLACH AT THIS  
16 STAGE.

09:48AM

17 WHO WERE YOU REFERRING TO THERE?

18 A THE OTHER FOUR INDIVIDUALS THAT WE MET WITH,  
19 WHO WERE PORTFOLIO MANAGERS, IT SAYS:

20 OTHER P.M. ALSO MENTIONED THEY  
21 WOULD ONLY CONSIDER TAKING EQUITY  
22 IN THE FIRM IF THEY ARE THE  
23 DECISION MAKERS, SLASH, HAVE  
24 OWNERSHIP IN THE ONGOING FIRM.

09:48AM

25 NOW, THAT LANGUAGE IS A LITTLE DIFFERENT  
26 FROM THE LANGUAGE ABOUT MR. GUNDLACH.

09:48AM

27 WERE EACH OF THOSE PEOPLE SAYING THEY  
28 HAD TO BE THE CO AND THEY HAD TO BE THE DECISION MAKER?

1           A       NO. I THINK THEY WERE SPEAKING TO BASICALLY  
2 HAVING INPUT AND BEING ABLE TO PARTICIPATE IN MAKING  
3 DECISIONS AS A COMMITTEE.

4           Q       MR. GUNDLACH WAS THE ONLY ONE WHO WAS SAYING  
5 HE HAD TO BE IN CHARGE?

09:49AM

6           A       CORRECT.

7           Q       AND THEN SAYS:

8                       SEVERAL PM'S MENTIONED THAT  
9                       INDIVIDUAL GROUP EMPLOYEES WOULD  
10                      PREFER TAKING EQUITY IN THEIR OWN  
11                      DIVISIONS RATHER THAN EQUITY OF --  
12                      OVER ALL THE COMPANY.

09:49AM

13                     DO YOU RECALL THAT AS WELL, BEING TOLD  
14 THAT AS WELL?

15          A       WE WERE.

09:49AM

16          Q       NOW, DID YOU -- DO YOU RECALL HAVING A CALL  
17 WITH MR. STERN, MR. BUSTAN (PH) AND MR. RIPOLL ON  
18 JULY 22ND, 2009?

19          A       I RECALL HAVING A DEBRIEF -- THE SPECIFIC  
20 DATE, I DON'T RECALL. I KNOW IT WAS AFTER THE  
21 JULY 20TH PRESENTATION.

09:49AM

22          Q       WOULD YOU HAVE GONE THROUGH SOME OF THE  
23 PRELIMINARY FINDINGS THAT WE JUST SAW IN THE DRAFT  
24 REPORT THAT HAD BEEN PREPARED ON JULY 20, AT THAT TIME?

25          A       ABSOLUTELY. THAT WAS THE PURPOSE OF THE CALL.

09:49AM

26          Q       DID YOU COMMUNICATE TO MR. STERN AROUND THIS  
27 TIME ANY CONCERNS THAT YOU HAD ABOUT THE HEALTH OF TCW?

28          A       WE COMMUNICATED SIMPLY -- SOME PRELIMINARY

1 CONCLUSIONS, YES.

2 Q NOW, HAD YOU, IN THE COURSE OF YOUR REVIEW OR  
3 OTHERWISE, HAD YOU HEARD, SEPARATE FROM MR. GUNDLACH  
4 HIMSELF, HAD YOU HEARD TALK ABOUT MR. GUNDLACH POSSIBLY  
5 LEAVING WITH A GROUP OF PEOPLE FROM TCW?

09:50AM

6 MR. BRIAN: OBJECTION.

7 HEARSAY.

8 THE COURT: SUSTAINED.

9 BY MR. MADISON:

10 Q IN YOUR CONVERSATIONS WITH MR. STERN, DID THAT  
11 TOPIC COME UP, THAT IS, WHETHER OR NOT THERE WERE ANY  
12 OTHER INDICATIONS, OTHER THAN FROM MR. GUNDLACH  
13 HIMSELF, THAT HE WAS THINKING ABOUT LEAVING?

09:50AM

14 A NO.

15 Q HAD YOU LEARNED WHETHER OR NOT MR. GUNDLACH  
16 HAD BEEN INTERVIEWING WITH A FIRM CALLED WAMCO IN JULY  
17 OF 2000?

09:50AM

18 A I WAS NOT AWARE OF THAT.

19 Q DID THERE COME A TIME WHEN MR. STERN ASKED YOU  
20 TO PROVIDE INFORMATION ABOUT OTHER INDIVIDUAL PERSONS  
21 WHO COULD MANAGE A MORTGAGE-BACKED SECURITY GROUP?

09:50AM

22 A YES. HE DID REQUEST THAT.

23 Q DO YOU RECALL WHEN THAT DISCUSSION OCCURRED?

24 A I BELIEVE SOMETIME IN MID TO LATE AUGUST THERE  
25 WAS A COMMUNICATION ASKING US FOR -- FOR SOME IDEAS.

09:51AM

26 Q IF YOU LOOK AT EXHIBIT 2201, IN THE BINDER,  
27 DOES THAT REFRESH YOUR RECOLLECTION ABOUT WHEN THAT  
28 CONVERSATION OCCURRED?

1           A        THAT'S THE DATE, OBVIOUSLY, THAT I REQUESTED  
2 MY TEAM TO RESPOND TO A REQUEST FROM MARC STERN.

3           Q        ABOUT WHAT?

4           A        ABOUT A SCREEN OF OTHER FIXED INCOME MANAGERS  
5 WHO MIGHT BE AVAILABLE.

09:51AM

6           Q        NOW, DID YOU, IN FACT, COMPLETE A DRAFT REVIEW  
7 THAT WE SAW THE EXHIBIT, WHICH WAS A DRAFT? DID THAT  
8 ULTIMATELY GET COMPLETED?

9           A        THAT WAS CONTAINED IN THE BROADER STRATEGIC  
10 REVIEW WE PRESENTED TO THE CLIENT AT THE END OF PROJECT  
11 HIGH LIFE.

09:51AM

12          Q        WHEN WAS THAT?

13          A        I WANT TO SAY SOMETIME IN OCTOBER.

14          Q        HAD THERE BEEN OTHER DRAFTS OF THE STRATEGIC  
15 REVIEW DOCUMENT?

09:52AM

16          A        YES, THERE WERE.

17          Q        DO YOU RECALL WHEN THOSE DRAFTS WERE PREPARED?

18          A        AGAIN, SOMETIME IN SEPTEMBER AND OCTOBER.  
19 THEY WOULD HAVE BEEN REVIEWED WITH MARK AND OTHER  
20 MEMBERS OF SOCIÉTÉ GÉNÉRALE.

09:52AM

21          Q        DID THERE COME A TIME IN EARLY SEPTEMBER WHEN  
22 YOU HAD A PHONE CALL WITH MR. STERN ABOUT MR. GUNDLACH?

23          A        YES.

24          Q        WHAT DO YOU RECALL -- FIRST, LET ME ASK YOU  
25 WHEN THAT PHONE CALL OCCURRED?

09:52AM

26          A        IT WAS EARLY SEPTEMBER. I BELIEVE IT WAS  
27 SOMETIME AROUND SEPTEMBER 3RD. OR 4TH.

28          Q        AND BY THAT TIME, YOU HAD ALREADY BEEN ASKED

1 TO HELP IDENTIFY POTENTIAL INDIVIDUALS WHO COULD  
2 REPLACE MR. GUNDLACH?

3 A WE WERE ASKED FOR A LIST OF INDIVIDUALS, WHICH  
4 WE PROVIDED. OUR UNDERSTANDING WAS IT WAS IN THE EVENT  
5 MR. GUNDLACH LEFT THE FIRM.

09:52AM

6 Q AND THAT WAS BASED ON THE THINGS THAT YOU AND  
7 MR. STERN DISCUSSED YOU WERE BOTH HEARING?

8 A IT WAS A FUNCTION, I GATHER, AT LEAST OF OUR  
9 REVIEW AND WHATEVER ELSE MR. STERN MAY HAVE BEEN  
10 HEARING.

09:53AM

11 Q HAD YOU DISCUSSED TERMINATION OF MR. GUNDLACH  
12 WITH MR. STERN BEFORE THIS CALL IN EARLY SEPTEMBER?

13 A NO.

14 Q SO TELL US THE CALL ON SEPTEMBER 3RD OR 4TH,  
15 DID YOU CALL MR. STERN OR DID HE CALL YOU?

09:53AM

16 A HE CALLED ME.

17 Q AND TELL US WHAT WAS SAID IN THAT  
18 CONVERSATION.

19 MR. BRIAN: OBJECTION. HEARSAY.

20 MR. MADISON: IT'S NOT FOR THE TRUTH, YOUR  
21 HONOR, IT GOES TO MR. STERN'S STATE OF MIND.

09:53AM

22 THE COURT: I'LL SUSTAIN THE OBJECTION.  
23 MR. STERN'S GOING TO COME AND HE CAN TELL US WHAT HE  
24 THOUGHT.

25 MR. MADISON: OKAY.

09:53AM

26 Q I WANT YOU TO HAVE THAT CONVERSATION IN YOUR  
27 MIND AND TELL US, WITHOUT DISCUSSING THE CONTENT OF  
28 WHAT MR. STERN SAID TO YOU, DID YOU HAVE AN OPPORTUNITY

1 TO OBSERVE HIS TONE OF VOICE, TO HEAR HIS TONE OF VOICE  
2 IN THE MANNER IN WHICH HE WAS SPEAKING?

3 A ON THE TELEPHONE, YES.

4 Q CAN YOU JUST DESCRIBE WHAT HIS Demeanor WAS,  
5 IF YOU WILL, IN THAT CALL.

09:54AM

6 A HE WAS UPSET. HE WAS NERVOUS. CLEARLY  
7 AGITATED.

8 Q AS A RESULT OF THAT CALL, DID YOU ASK YOUR  
9 TEAM TO DO ANYTHING DIFFERENT FROM WHAT YOU HAD ALREADY  
10 BEEN WORKING ON IN THE COURSE OF THE STRATEGIC REVIEW?

09:54AM

11 A WE WERE SPECIFICALLY ASKED TO PROVIDE  
12 BACKGROUND ON A COMPANY CALLED MET WEST TO MR. STERN.

13 Q DO YOU RECALL WHEN THAT REQUEST CAME?

14 A IT WAS AFTER THE PHONE CALL. AND BEFORE THE  
15 WEEKEND. SO SOMETIME IN THAT PERIOD OF TIME.

09:54AM

16 Q PERIOD OF SEPTEMBER 3RD, 4TH, 5TH?

17 A CORRECT.

18 Q IN THERE.

19 WE HAVE SOME E-MAILS FROM THAT TIME  
20 PERIOD THAT I'D ASK YOU TO LOOK AT.

09:54AM

21 LOOK AT 2154 -- ACTUALLY, NO -- NO, LET  
22 ME GO BACK. I'M SORRY.

23 LET ME JUST HAVE ONE MOMENT, YOUR HONOR.

24 LOOK AT 276, RATHER.

25 DO YOU RECOGNIZE 276?

09:55AM

26 A I DO.

27 Q WHAT IS 276?

28 A THIS IS AN E-MAIL THAT I FORWARDED TO



1 MARC STERN ON SEPTEMBER 4TH.

2 MR. MADISON: I'D MOVE 276.

3 MR. BRIAN: I NEED A MOMENT.

4

5 (PAUSE) +

09:55AM

6

7 MR. BRIAN: OBJECTION. HEARSAY.

8 THE COURT: JUST A MOMENT.

9

SUSTAINED.

10 MR. MADISON: IT GOES TO MR. STERN'S STATE OF  
11 MIND, WHAT HE WAS BEING TOLD AT THAT TIME, YOUR HONOR.

09:56AM

12 THE COURT: THEN WHEN MR. STERN COMES, HE CAN  
13 TELL US HIS STATE OF MIND.

14 MR. MADISON: OKAY.

15 Q SO, DID YOU TALK TO MR. STERN ABOUT THE  
16 STATEMENTS THAT ARE IN THE E-MAIL? WITHOUT GETTING  
17 INTO THE CONTENT OF IT NOW. JUST YES OR NO.

09:56AM

18 A I'M NOT SURE IF I SPOKE TO HIM, OTHER THAN  
19 SENDING HIM AN E-MAIL.

20 Q ALL RIGHT.

09:56AM

21 WHEN YOU LEARNED THE THINGS YOU LEARNED  
22 AROUND THIS CALL THAT MR. STERN HAD HAD WITH  
23 MR. GUNDLACH, AS A BANKER ADVISING TCW, DID YOU FORM AN  
24 OPINION ABOUT WHAT TCW NEEDED TO DO?

25 YES OR NO?

09:56AM

26 A YES.

27 Q AND DID YOU COMMUNICATE THAT OPINION TO  
28 MR. STERN AT THAT TIME?

1 A I DID.

2 Q AND CAN YOU TELL US WHAT THAT OPINION WAS.

3 A MY OPINION WAS THAT THE FIRM WAS AT  
4 SIGNIFICANT RISK.

5 I ALSO COMMUNICATED THIS, BY THE WAY, TO  
6 SOC-GEN, SOCIÉTÉ GÉNÉRALE. I THOUGHT THE FIRM WAS AT  
7 EXTREME RISK, AND IF MR. GUNDLACH LEFT THE FIRM AND WAS  
8 ABLE TO BASICALLY TAKE ALL OF THE CLIENTS AND THE  
9 ASSETS, WHICH REPRESENTED A SIGNIFICANT PORTION OF THE  
10 FIRM.

11 I THOUGHT THERE WAS A SIGNIFICANT CHANCE  
12 THAT THE -- TCW ITSELF COULD IMplode AND ITS BUSINESS  
13 WOULD NO LONGER BE VIABLE.

14 AS A CONSEQUENCE OF THAT, I TOLD HIM HE  
15 HAD TO BE PROACTIVE IN TERMS OF SEEKING OTHER SOLUTIONS  
16 TO PROTECT OURSELVES IN THE EVENT THAT ACTUALITY CAME  
17 TRUE.

18 Q IF YOU LOOK AT EXHIBIT 2156, IT'S AN E-MAIL  
19 DATED OCTOBER 4. LOOK AT THAT AND TELL US IF YOU  
20 RECOGNIZE THAT.

21 MR. BRIAN: OBJECTION.

22 THE COURT: IT WILL BE ADMITTED.

23

24 (EXHIBIT 2156 ADMITTED.)+

25

26 THE WITNESS: I DO.

27 THE COURT: I ASSUME YOU'RE GOING TO OFFER IT.

28 MR. MADISON: YES, I WILL. SINCE THERE'S NO

09:57AM

09:57AM

09:57AM

09:57AM

09:57AM

1 OBJECTION.

2 THE COURT: WE'LL MOVE RIGHT ALONG. OKAY.

3 BY MR. MADISON:

4 Q THIS IS AN E-MAIL YOU SENT TO MR. STERN,  
5 FORWARDING AN E-MAIL THAT YOU HAD SENT TO MR. RIPOLL  
6 ABOUT THE SITUATION WITH MR. GUNDLACH, CORRECT?

09:58AM

7 A THE E-MAIL ITSELF WAS, I THINK, SOMEWHAT  
8 BROADER THAN THAT, BUT THAT WAS PART OF IT.

9 Q YES, SIR.

10 LET ME ASK YOU -- LET'S LOOK AT THE  
11 E-MAIL. THE VERY FIRST PART SAYS:

09:58AM

12 JACQUES - PARDON THE LENGTHY  
13 EMAIL, BUT I THOUGHT IT MIGHT BE  
14 HELPFUL TO OFFER FEW THOUGHTS AS  
15 YOU CONTINUE YOUR DELIBERATIONS  
16 THIS MORNING ON THE BEST COURSE OF  
17 ACTION AT TCW. THESE VIEWS REFLECT  
18 MY UNDERSTANDING OF THE CURRENT TCW  
19 SITUATION, A DAY WITH THE METWEST  
20 FOLKS EARLIER THIS WEEK,  
21 DISCUSSIONS WITH WOODY BRADFORD AND  
22 SPEAKING WITH MARC THIS WEEKEND.

09:58AM

09:58AM

23 HAD YOU DONE ALL THE THINGS DESCRIBED  
24 THERE?

25 A YES, I -- YES, I HAVE.

09:58AM

26 Q AND YOU THEN SAY: AS WE ALL KNOW, THE  
27 SITUATION AT TCW IS A DIFFICULT ONE. EVEN BEFORE THE  
28 ISSUES RELATED TO JG AND THE SMCF II THAT THE MORTGAGE

1 SECURITIES FIXED INCOME GROUP...

2 A I DON'T KNOW IF THERE'S MULTI SECTOR OR  
3 MORTGAGE SECURITIES, BUT JEFFREY'S GROUP.

4 Q (READING):

5 ...THE OVERALL BUSINESS IS SUB  
6 SCALE, COSTS ARE TOO HIGH, PRODUCT  
7 PERFORMANCE IS LESS THAN STELLAR  
8 AND NEAR TERM GROWTH POTENTIAL IS  
9 LIMITED.

09:59AM

10 DID YOU BELIEVE ALL THOSE THINGS?

09:59AM

11 A I DID.

12 Q THEN SAYS:

13 THE POTENTIAL LOSS OF JG'S TEAM  
14 ONLY COMPOUNDS EACH THESE ISSUES:  
15 TCW BECOMES EVEN SMALLER, STRANDED  
16 COSTS BECOME MORE DIFFICULT TO  
17 ABSORB/MANAGE AND GROWTH BECOMES  
18 MORE ILLUSORY.

09:59AM

19 THE POTENTIAL LOSS OF JG'S TEAM WAS IN  
20 RELATIONSHIP TO WHAT INFORMATION, SIR?

09:59AM

21 A THAT WAS, AT THIS POINT IN TIME IN EARLY  
22 OCTOBER, A FUNCTION OF THE DISCUSSION WE HAD WITH MARC  
23 AND THE NUMBER OF OTHER MARKET RUMORS AT THAT POINT IN  
24 TIME.

25 Q IT SAYS:

09:59AM

26 AS WE HAVE DISCUSSED BEFORE, I  
27 AM AN ADVOCATE OF A PROACTIVE  
28 APPROACH TO THE ISSUES SURROUNDING

1 JG.

2 THAT'S MR. GUNDLACH, RIGHT?

3 A YES. CORRECT.

4 Q (READING):

5 I STRONGLY BELIEVE THAT 10:00AM  
6 TERMINATING JG AND HAVING A  
7 CREDIBLE "REPLACEMENT PLAN" TO  
8 EXECUTE WILL PRESERVE SIGNIFICANTLY  
9 MORE VALUE THAN REACTING TO HIS  
10 DEPARTURE. THE NEWS THAT JG NOW 10:00AM  
11 APPEARS TO BE THINKING ABOUT A  
12 LATERAL MOVE TO A COMPETITOR  
13 (RATHER THAN A START UP OF HIS OWN  
14 BUSINESS) SUGGESTS THAT TIME IS  
15 EVEN MORE PRECIOUS, AND DEFINING 10:00AM  
16 AND EXECUTING A "REPLACEMENT PLAN"  
17 IS AN IMMEDIATE PRIORITY.

18 WHAT DID YOU MEAN BY THAT?

19 A AGAIN, THAT IF MR. GUNDLACH LEFT BEFORE THERE  
20 WAS A PLAN, TO HAVE SOME OF THE EMPLOYEES TO MANAGE THE 10:00AM  
21 FIXED INCOME AND ASSETS, THAT THE LOSS OF SIGNIFICANT  
22 MAJORITY OF THE FIRM'S ASSETS WOULD LIKELY PUT THE FIRM  
23 AT SIGNIFICANT RISK.

24 AND POTENTIALLY ITS EXISTENCE WOULD BE  
25 CALLED INTO QUESTION. 10:00AM

26 Q NOW, YOU SAY THE NEWS THAT JG NOW APPEARS TO  
27 BE THINKING ABOUT A LATERAL MOVE TO A COMPETITOR, LET  
28 ME JUST STOP THERE.

1                   WHAT DID YOU BASE THAT STATEMENT ON?

2           A        I ASSUMED THAT WAS BASED ON RUMORS AT THE  
3 TIME.

4           Q        AND IF YOU COULD GO BACK TO --

5                   LET ME HAVE ONE MOMENT, YOUR HONOR.                   10:01AM

6                   IF WE GO BACK TO 276, WHICH IS YOUR  
7 E-MAIL FROM FRIDAY, SEPTEMBER 4.

8                   YOUR HONOR, SINCE 2156 IS IN, I WOULD  
9 MOVE 20 -- 276 IN -- AS PART OF THIS?

10           THE COURT:   ANY OBJECTION?                   10:02AM

11           MR. BRIAN:   I'M LOOKING AT IT.

12           THE COURT:   276 IS THE ONE YOU JUST OFFERED,  
13 AND I SUSTAINED THE OBJECTION.

14           MR. MADISON:  YOU DID.   THERE WAS NO OBJECTION  
15 TO THE NEXT ONE WE OFFERED.                   10:02AM

16           THE COURT:   RIGHT.   I UNDERSTAND THAT.

17           MR. MADISON:  I BELIEVE COMPLETENESS WOULD  
18 DICTATE THEY BOTH COME IN, YOUR HONOR.

19           MR. BRIAN:   THE PROBLEM IS -- 276 IS STILL  
20 HEARSAY.                   10:02AM

21           THE COURT:   SUSTAINED.

22           MR. MADISON:  THIS WOULD JUST BE OFFERED FOR  
23 STATE OF MIND, YOUR HONOR.

24           THE COURT:   I'M NOT GOING TO ADMIT IT AT THIS  
25 POINT.                   10:02AM

26           MR. MADISON:  VERY WELL.

27           Q        SO, HAD YOU HEARD RUMORS, GOING BACK TO 2156,  
28 HAD YOU HEARD RUMORS WITH REGARD TO LATERAL MOVE TO A

1 COMPETITOR ABOUT ANY PARTICULAR COMPETITOR THAT  
2 MR. GUNDLACH WAS ALLEGEDLY TALKING TO?

3 MR. BRIAN: OBJECTION. HEARSAY.

4 THE COURT: HE JUST TESTIFIED TO THE RUMORS.

5 OVERRULED.

10:03AM

6 YOUR RECOMMENDATION WAS BASED ON RUMORS?

7 THE WITNESS: CORRECT.

8 THE COURT: OKAY. SO HE HEARD RUMORS.

9 MR. MADISON: I UNDERSTAND, YOUR HONOR.

10 Q YOUR RECOMMENDATION WASN'T BASED ONLY ON  
11 RUMORS, WAS IT, SIR?

10:03AM

12 A MY RECOMMENDATION WAS BASED ON RUMORS, WHICH  
13 BASICALLY AFFIRMED EVERYTHING JEFFREY TOLD US IN OUR  
14 DUE DILIGENCE REVIEW.

15 Q WHAT HAD YOU HEARD ABOUT JEFFREY MOVING TO A  
16 LATERAL COMPETITOR?

10:03AM

17 MR. BRIAN: I'LL WITHDRAW MY OBJECTION TO 276,  
18 YOUR HONOR.

19 THE COURT: OKAY.

20 MR. BRIAN: THAT WOULD BE EASIER.

10:03AM

21 THE COURT: I'LL PUT DOWN ADMITTED WITHOUT  
22 OBJECTION.

23 MR. BRIAN: WITHOUT OBJECTION. YOU CAN WRITE  
24 DOWN I CHANGED MY MIND.

25 MR. QUINN: REALLY, YOUR HONOR.

10:03AM

26 BY MR. MADISON:

27 Q LET'S LOOK AT 276. AFRAID THE JURY'S GOING TO  
28 BE VERY DISAPPOINTED AFTER ALL THAT?

1 THE COURT: PROBABLY.

2 MR. BRIAN: TOOK THE WORDS RIGHT OUT OF MY  
3 MOUTH.

4

5 (EXHIBIT 276 ADMITTED.)+

08:40AM

6

7 BY MR. MADISON:

8 Q WE SEE THE E-MAIL FROM FRIDAY, SEPTEMBER 4,  
9 THAT YOU FORWARDED, UP AT THE TOP, TO MR. STERN. AND  
10 DOWN BELOW SOMEBODY NAMED WES EDENS AT FORTRESS WAS  
11 COMMUNICATING WITH SOMEBODY ELSE AT CITIGROUP WITH  
12 CHAD LEE.

10:04AM

13

WHO IS CHAD LEE AND WES EDENS?

14

A EDENS WAS A CEO AT FORTRESS ASSET MANAGEMENT  
15 PUBLICLY TRADED ASSET MANAGEMENT COMPANY.

10:04AM

16

CHAD LEE WAS THE HEAD OF THE LEVERAGED  
17 FINANCE BUSINESS AT CITIGROUP.

18

Q WAS MR. EDENS IN THE SAME BUSINESS, FORTRESS,  
19 IN THE SAME BUSINESS AS TCW?

20

A THEY'RE BOTH ASSET MANAGEMENT FIRMS, AND  
21 FORTRESS WAS CLEARLY LOOKING TO EXPAND THEIR BUSINESS.

10:04AM

22

Q SO MR. EDENS SAY:

23

CHAD, HOPE YOU'RE HAVING GREAT

24

HOLIDAY. JUST BACK MYSELF. ONE

25

QUICK THOUGHT. HEARD THAT JEFF

10:05AM

26

GUNDLACH IS LEAVING AND GOING TO

27

WAMCO. THIS SHOULD MAKE THE WHOLE

28

PROCESS -- THIS WHOLE PROCESS MOVE



1           A        LOT MORE QUICKLY I WOULD THINK.  
2           WE HAVE A REALLY GOOD RELATIONSHIP  
3           WITH SOC-GEN AND WOULD LOVE TO TAKE  
4           A REAL WHACK AT THIS CUP. LET ME  
5           KNOW HOW BEST TO FOLLOW UP.

10:05AM

6                        SO WAS THAT ONE OF THE PLACES THAT YOU  
7 HEARD MR. GUNDLACH WAS CONSIDERING A MOVE TO A  
8 COMPETITOR?

9           A        YES.

10          Q        IN THIS CASE, WAMCO?

10:05AM

11          A        YES.

12          Q        DID YOU EVER LEARN ANY MORE INFORMATION ABOUT  
13 THAT?

14          A        ABOUT WAMCO'S SPECIFICALLY?

15          Q        YES, SIR.

10:05AM

16          A        THIS WAS JUST ONE OF THE NUMBER OF RUMORS  
17 REGARDING WAMCO THAT WAS IN THE MARKET AROUND THAT  
18 TIME.

19          Q        DO YOU KNOW -- WELL, LET'S GO UP TO THE PART  
20 WHERE YOU FORWARDED IT. MR. LEE FORWARDS IT ON TO YOU  
21 AND SAYS: LET'S FOLLOW UP ON TUESDAY IF YOU HAVE TIME.

10:05AM

22                        YOU SEND IT TO MARC STERN, AND YOU SAY:  
23 SEE BELOW. THIS IS FROM WES EDEN AT FORTRESS, "MORE  
24 NOISE."

25                        WHAT DOES THAT MEAN, MORE NOISE?

10:05AM

26          A        MORE NOISE WAS MORE RUMORS AND SPECULATION  
27 THAT JEFF WAS PLANNING TO LEAVE TCW.

28          Q        AND YOU SAY:

1 I AM CONVINCED WE NEED TO ATTACK  
2 THIS FROM A POSITION OF STRENGTH  
3 RATHER THAN REACT FROM A POSITION  
4 OF WEAKNESS.

5 WHAT DID YOU INTEND TO COMMUNICATE TO  
6 MR. STERN IN THAT STATEMENT? 10:06AM

7 A AGAIN, IT WAS CONSISTENT WITH THE  
8 CONVERSATIONS MARC AND I HAD HAD, WHICH WAS IF JEFFREY  
9 DEPARTED THE FIRM, MR. GUNDLACH DEPARTED THE FIRM  
10 WITHOUT A CREDIBLE PLAN, THE EXISTENCE OF THE FIRM WAS 10:06AM  
11 SIGNIFICANTLY AT RISK.

12 Q DID YOU THEN BEGIN WORKING AFTER THIS DATE,  
13 AFTER THAT WEEKEND OF SEPTEMBER 4TH, 5TH AND 6TH,  
14 WORKING WITH TCW ON ACQUIRING A GROUP THAT COULD  
15 REPLACE MR. GUNDLACH? 10:06AM

16 A WE BEGAN TO SPEND SIGNIFICANTLY MORE TIME  
17 FOCUSING ON TRYING TO FIND A POTENTIAL SOLUTION IN THE  
18 EVENT THAT JEFFREY WAS GOING TO LEAVE THE FIRM.

19 Q WHAT DID THAT SOLUTION ULTIMATELY TURN OUT TO  
20 BE IN TERMS OF YOUR WORK? 10:06AM

21 A THE ACQUISITION OF MET WEST.

22 Q WHAT, IF ANYTHING, DID YOU DO IN THAT REGARD?

23 A I LED THE TEAM THAT EXECUTED THE TRANSACTION  
24 ON BEHALF OF TCW.

25 Q LET ME ASK YOU TO LOOK AT EXHIBIT 345 IN YOUR  
26 BOOK. THIS IS ANOTHER E-MAIL FROM YOU TO MR. STERN. 10:07AM

27 I'D MOVE 345.

28 MR. BRIAN: WHAT'S THE EXHIBIT NUMBER?

1 THE COURT: 345.

2 (PAUSE) +

3

4 MR. BRIAN: NO OBJECTION.

5 THE COURT: IT WILL BE ADMITTED.

10:07AM

6

7 (EXHIBIT 345 ADMITTED.)+

8

9 MR. MADISON: THANK YOU, YOUR HONOR.

10 Q HERE WE SEE AN E-MAIL EXCHANGE, THEN, FROM THE  
11 14TH, AND IN THE FIRST E-MAIL, DOWN AT THE BOTTOM 3:29  
12 P.M., YOU SAY TO MR. STERN IN A SUBJECT: MARKET  
13 CHATTER; A LOT MORE CHATTER IN RECENT DAYS ON JG -- HE  
14 AND I CALLED AS WELL.

10:07AM

15 WHAT DID THAT REFER TO?

10:08AM

16 A MORE RUMORS REGARDING JEFFREY'S --  
17 MR. GUNDLACH'S DEPARTURE FROM TCW. P&I IS A REFERENCE  
18 TO A NEWS PUBLICATION CALLED *PENSIONS & INVESTMENTS*,  
19 WHICH IS DEDICATED TO THE ASSET MANAGEMENT INDUSTRY.

20 Q IT SAYS:

10:08AM

21 HE SEEMS TO BE LEAKING THE  
22 CONCEPT OF LEAVING MORE FREQUENTLY  
23 THAN BEFORE.

24 WHAT DID THAT MEAN?

25 A IT MEANT THAT MR. GUNDLACH WAS CLEARLY LETTING  
26 OTHER PEOPLE KNOW, INCLUDING MEMBERS OF THE PRESS, THAT  
27 HE WAS CONSIDERING LEAVING THE FIRM.

10:08AM

28 Q AND WAS THAT UNUSUAL IN YOUR EXPERIENCE OF 25

1 YEARS IN THIS BUSINESS?

2 MR. BRIAN: OBJECTION. RELEVANCE, 352.

3 THE COURT: SUSTAINED.

4 BY MR. MADISON:

5 Q COULD THAT BE HARMFUL TO THE STABILITY FIRM AS  
6 TCW?

10:08AM

7 MR. BRIAN: SAME OBJECTION. CALLS FOR EXPERT  
8 OPINION.

9 THE COURT: SUSTAINED.

10 BY MR. MADISON:

10:08AM

11 Q DID YOU DISCUSS WITH MR. STERN WHETHER  
12 THESE -- THIS INFORMATION COULD HAVE A DESTABILIZING  
13 EFFECT ON TCW?

14 A ABSOLUTELY.

15 Q WHAT WAS SAID IN THAT REGARD BY YOU TO  
16 MR. STERN?

10:08AM

17 A THAT THE MARKET RUMORS WERE CLEARLY  
18 DESTABILIZING TO THE FIRM.

19 INSTABILITY IS OBVIOUSLY VERY BAD IN  
20 TERMS OF FIRMS IN THIS LINE OF BUSINESS, AND THAT  
21 REAFFIRMING MY ADVICE TO HIM, WE NEED TO BE PREPARED IN  
22 THE EVENT HE CHOOSES TO DEPART.

10:09AM

23 Q THEN IT SAYS, MR. STERN WRITES:

24 DO YOU RECALL HERETO, WE'LL GIVE  
25 THEM A STATEMENT WE'RE NOT FOR  
26 SALE. ALL THE BEST, MARK.

10:09AM

27 WAS THAT YOUR UNDERSTANDING, THAT TCW  
28 WAS NOT FOR SALE?

1           A       MY UNDERSTANDING WAS TCW WAS NOT FOR SALE  
2           BASICALLY FROM THE BEGINNING OF OUR STRATEGIC REVIEW,  
3           AFTER WE GAVE OUR PRELIMINARY FINDINGS TO MANAGEMENT.

4           Q       AND THEN MR. -- YOU RESPOND TO MR. STERN:

5                    I DID THAT OFF THE RECORD.

10:09AM

6                    YOU'RE REFERRING TO YOUR COMMENTS TO  
7           P&I?

8           A       CORRECT.

9           Q       WHAT'S P&I?

10          A       IT'S A TRADE PUBLICATION CALLED *PENSIONS &*  
11          *INVESTMENTS*.

10:09AM

12          Q       DID THERE COME A TIME SHORTLY AFTER THIS DATE  
13          THAT YOU DID SEE AN ARTICLE FROM *PENSIONS & INVESTMENTS*  
14          ABOUT RUMORS ABOUT MR. GUNDLACH LEAVING?

15          A       I DON'T RECALL SPECIFICALLY THE DATE. I DO  
16          RECALL THERE BEING A VARIETY OF PRESS ARTICLES ABOUT  
17          IT.

10:10AM

18          Q       DOES INSTABILITY AFFECT CLIENTS AT ASSET  
19          MANAGEMENT FIRMS LIKE TCW?

20          A       ABSOLUTELY.

10:10AM

21          Q       IN WHAT WAY?

22          A       A --

23                   MR. BRIAN: CALLS FOR OPINION.

24                   THE COURT: OVERRULED.

25                   GO AHEAD.

10:10AM

26                   THE WITNESS: CLIENTS ARE LOOKING TO BASICALLY  
27          HAVE THEIR ASSETS MANAGED BY PEOPLE WHO ARE COMMITTED  
28          TO AN ORGANIZATION TO THE EXTENT THAT BASICALLY PEOPLE

1 THINK THERE'S INSTABILITY AMONG KEY PORTFOLIO MANAGERS  
2 CLIENTS AND CONSULTANTS GENERALLY MUCH MORE LEERY ABOUT  
3 COMMITTING ASSETS TO THE FIRM.

4 Q THAT WOULD BE -- NOT A GOOD THING FOR A FIRM  
5 SUCH AS TCW?

10:10AM

6 A THAT WOULD NOT BE A GOOD THING.

7 Q ESPECIALLY IF THE CHIEF INVESTMENT OFFICER IS  
8 CREATING INSTABILITY LIKE THAT; IS THAT A GOOD THING?

9 A THAT'S NOT A GOOD THING.

10 Q DO CIO'S KNOW THAT STABILITY IS IMPORTANT TO  
11 FIRMS LIKE TCW?

10:11AM

12 MR. BRIAN: OBJECTION. SPECULATION.

13 THE COURT: OVERRULED.

14 THE WITNESS: ABSOLUTELY.

15 BY MR. MADISON:

10:11AM

16 Q NOW, WE SAW A NAME EARLIER, WOODY BRADFORD.

17 CAN YOU TELL US WHO MR. BRADFORD IS.

18 A AT THE TIME? OR -- WHERE HE IS PRESENTLY?

19 Q YEAH. I'M SORRY. WHAT ROLE AT THE TIME?

20 A BRADFORD WAS HIRED AS CONSULTANT BY MARC STERN  
21 TO PROVIDE INSIGHT ON SPECIFIC INDIVIDUALS, SPECIFIC  
22 TEAMS, AND SPECIFIC FIRMS WHO MIGHT HAVE FIXED INCOME  
23 EXPERTISE AND WOULD BE IN A POSITION TO BE CAPABLE  
24 REPLACEMENTS IN THE EVENT MR. GUNDLACH DEPARTED AT THE  
25 TIME.

10:11AM

10:11AM

26 Q MR. BRADFORD AT THAT TIME WAS WORKING FOR TCW  
27 AND MR. STERN?

28 A HE WAS AN INDEPENDENT CONSULTANT HIRED BY TCW.

1 Q ALL RIGHT.

2 DID YOU COMMUNICATE WITH MR. BRADFORD  
3 ABOUT THE WORK THAT YOU WERE ENGAGED IN?

4 A ABSOLUTELY.

5 Q AND DO YOU RECALL, WAS THE MET WEST  
6 TRANSACTION GIVEN A NAME AT SOME POINT IN SEPTEMBER OR  
7 AFTERWARDS?

10:12AM

8 A IT WAS.

9 Q WHAT NAME WAS IT GIVEN?

10 A PROJECT ANGEL.

10:12AM

11 Q SO YOU HAD PROJECT HIGH LIFE, WHICH WAS THE  
12 STRATEGIC REVIEW?

13 A CORRECT.

14 Q AND THEN YOU HAD PROJECT ANGEL, WHICH WAS THE  
15 MET WEST TRANSACTION?

10:12AM

16 A CORRECT.

17 Q THESE WERE CONFIDENTIAL MATTERS THAT YOU WERE  
18 WORKING ON I TAKE IT?

19 A ABSOLUTELY.

20 Q WERE YOU AUTHORIZED BY TCW TO SPEAK TO THEIR  
21 CONSULTANT, MR. BRADFORD, ABOUT THE THINGS THAT YOU  
22 WERE WORKING ON?

10:12AM

23 A YES, WE WERE.

24 Q WAS IT YOUR UNDERSTANDING THAT MR. BRADFORD,  
25 IN TURN, WAS COMMUNICATING WITH MR. STERN?

10:12AM

26 A YES, HE WAS.

27 Q DID YOU KNOW THAT BASED ON COMMUNICATIONS YOU  
28 HAD WITH BOTH OF THEM?

1 A YES, I DID.

2 Q IF YOU LOOK AT EXHIBIT 440, IT'S AN EXCHANGE  
3 BETWEEN YOU AND MR. BRADFORD ON NOVEMBER 14, 2009.

4 I'D MOVE --

5 MR. BRIAN: I'M SORRY. I NEED THE NUMBER  
6 AGAIN.

10:13AM

7 MR. MADISON: 440, YOUR HONOR.

8 MR. BRIAN: OBJECTION. HEARSAY.

9 THE COURT: HOLD ON A MINUTE.

10 (PAUSE) +

10:13AM

11

12 MR. MADISON: THIS WOULD GO TO STATE OF MIND  
13 FOR TCW AND STERN, YOUR HONOR.

14 MR. BRIAN: IT DOESN'T -- IT DOESN'T GO TO  
15 MR. STERN, YOUR HONOR.

10:13AM

16 THE COURT: I THINK I'LL SUSTAIN THE  
17 OBJECTION. YOU HAVE TO CONNECT IT UP, MR. BRADFORD, TO  
18 MR. STERN -- OR MR. STERN, I MEAN.  
19 BY MR. MADISON:

20 Q SO, FOR EXAMPLE, IN THIS E-MAIL, 440, WERE YOU  
21 COMMUNICATING THIS INFORMATION WITH AN UNDERSTANDING  
22 THAT MR. BRADFORD WAS WORKING ON BEHALF OF MR. STERN  
23 AND TCW AT THAT TIME?

10:13AM

24 A YES.

25 Q AND WAS IT YOUR UNDERSTANDING THAT THE  
26 INFORMATION YOU WERE PROVIDING WOULD ALL BE SHARED WITH  
27 MR. STERN?

10:13AM

28 A YES.



1 Q DO YOU KNOW, DID YOU DISCUSS, YOURSELF, WITH  
2 MR. STERN THIS SAME INFORMATION?

3 MR. BRIAN: OBJECTION. COMPOUND.

4 THE COURT: SUSTAINED.

5 ONE QUESTION OR THE OTHER.

10:14AM

6 BY MR. MADISON:

7 Q SURE.

8 ANY OF THE INFORMATION IN THIS  
9 EXHIBIT 440 THAT YOU DISCUSSED WITH MR. STERN?

10 A MY UNDERSTANDING THAT ALL THE INFORMATION  
11 CONTAINED IN THIS E-MAIL WAS SHARED WITH MR. STERN.

10:14AM

12 MR. BRIAN: OBJECTION. MOVE TO STRIKE.  
13 NONRESPONSIVE.

14 THE COURT: I'LL STRIKE THE RESPONSE.

15 SIR, JUST ANSWER THE QUESTION.

10:14AM

16 DID YOU SHARE THIS INFORMATION WITH  
17 MR. STERN?

18 THE WITNESS: I DID NOT.

19 BY MR. MADISON:

20 Q LET ME ASK YOU. YOU EXPRESSED AN OPINION UP  
21 TOWARD THE TOP ABOUT MR. GUNDLACH.

10:14AM

22 DID YOU SHARE YOUR OPINION WITH  
23 MR. STERN THAT YOU EXPRESSED THERE?

24 A I BELIEVE MR. STERN KNEW MY OPINION  
25 CONSISTENT, YES.

10:14AM

26 Q OKAY.

27 AND DID YOU -- DID THERE COME A TIME  
28 WHERE YOU LEARNED THAT MR. GUNDLACH WAS RUMORED TO NOT

1 BE GOING TO A COMPETITOR BUT DOING SOMETHING ELSE?

2 A THERE DID COME A TIME.

3 Q DO YOU RECALL WHEN THAT WAS?

4 A IT WAS ROUGHLY SATURDAY, NOVEMBER 14TH.

5 Q OKAY.

10:15AM

6 WHAT DID YOU RECALL LEARNING AT THAT  
7 TIME, LEARNING ABOUT MR. GUNDLACH'S PLANS?

8 MR. BRIAN: OBJECTION. HEARSAY.

9 THE COURT: I'LL SUSTAIN IT FOR NOW. WE CAN  
10 REGROUP.

10:15AM

11 WE'LL TAKE OUR MORNING RECESS RIGHT NOW.  
12 WHEN WE COME BACK, WE CAN FIGURE OUT WHERE WE ARE.

13 LADIES AND GENTLEMEN, WE'LL COME BACK IN  
14 20 MINUTES.

15 (PROCEEDINGS HELD OUT OF THE PRESENCE OF THE JURY.)+

10:15AM

16

17 THE COURT: WE'RE OUT OF THE PRESENCE.

18 ANY MATTERS ANYBODY WANTS TO TAKE UP?

19 MR. BRIAN: THE ONLY MATTER I HAVE, YOUR  
20 HONOR, IS THAT -- AGAIN, I'M NOT BLAMING ANYONE, BUT WE  
21 GOT THEIR EXHIBITS THEY WERE GOING TO USE LATE LAST  
22 NIGHT. WE'RE USING SOME OF THE SAME EXHIBITS IN MY  
23 EXAMINATION, BUT THEY'RE UNDER OUR EXHIBIT NUMBER.

10:16AM

24 SO -- AND BECAUSE I'M GOING TO BE  
25 DISPLAYING THEM, THERE'S NO REAL WAY TO REJIGGER THAT.  
26 I APOLOGIZE. WE'LL HAVE DUPLICATE RECORDS IN THE  
27 RECORD.

10:16AM

28 WE CAN STIPULATE LATER TO STRIKE ONE,

1 BUT I DON'T REALLY HAVE THE CAPABILITY.

2 THE COURT: THESE WERE ALL SUPPOSED TO BE  
3 PREMARKED. I DON'T UNDERSTAND WHY YOU ALL DON'T HAVE A  
4 PREMARKING PROTOCOL IN THESE CASES SO THAT THERE'S ONE  
5 EXHIBIT, WHETHER TRIAL EXHIBIT OR IDENTIFICATION.

10:16AM

6 SO, WHATEVER YOU'VE DONE, NOW WE GO --  
7 PEOPLE SAY BATES NUMBER. THAT MEANS NOTHING. WE HAVE  
8 TRIAL EXHIBIT NUMBERS.

9 AS LONG AS WE CAN GIVE THEM A TABLE IF  
10 THERE ARE DUPLICATES.

10:17AM

11 MR. BRIAN: THAT'S ALL I'M SAYING.

12 THE COURT: OR WE CAN GET A STIPULATION.

13 MR. BRIAN: EVERYBODY IS MOVING REALLY FAST  
14 AND WORKING REALLY HARD.

15 MR. QUINN: DO YOU WANT TO USE OURS?

10:17AM

16 MR. BRIAN: I CAN'T -- I REALLY HAVE -- WE  
17 HAVE OURS ON OUR SYSTEM.

18 THE COURT: IT'S NOT A PROBLEM.

19 MR. MADISON: HERE'S MY PROBLEM. WHAT  
20 MR. BRIAN DOES, IT'S HIS CHOICE. HE PRE-HIGHLIGHTS HIS  
21 EXHIBITS, AND SO WHAT HE -- THEN WHAT HE DOES, HE  
22 DISPLAYS THEM.

10:17AM

23 AND HE'S ASKING THE WITNESS ABOUT  
24 ANOTHER PART. AND THE EXHIBIT IS HIGHLIGHTED ABOUT  
25 THINGS THAT THE WITNESSES AREN'T TESTIFYING. THAT, AT  
26 BEST, THAT'S VERY CONFUSING.

10:17AM

27 AND AT WORST IT'S ARGUMENTATIVE. AND  
28 MISLEADING.

1                   AND I WOULD OFFER THAT ON THESE  
2 EXHIBITS, ESPECIALLY WHERE WE'VE ALREADY INTRODUCED THE  
3 EXACT SAME DOCUMENT, HAVE HIM USE OUR NUMBER.

4                   THE COURT: LET ME JUST SAY --

5                   MR. BRIAN: THEN GIVE IT TO ME BEFORE  
6 2:00 A.M., THEN.

7                   THE COURT: JUST RELAX.

8                   MR. BRIAN: YOUR HONOR, I'M NOT GOING TO --

9                   THE COURT: THE HIGHLIGHTS DON'T SHOW UP ON  
10 THE EXHIBITS THAT ARE ADMITTED. THEY'RE ONLY ON THE  
11 SCREEN.

12                   AND SO WHEN THE JURY DEALS WITH THE  
13 EXHIBITS, THEY HAVE CLEAN COPIES OF THE EXHIBITS. AND  
14 IF DURING THE COURSE OF THE PRESENTATION SOMETHING'S  
15 HIGHLIGHTED THAT ISN'T THAT IMPORTANT, IT DETRACTS FROM  
16 THE EFFECTIVENESS OF WHAT THEY'RE DOING.

17                   YOU OUGHT TO BE HAPPY HE'S CONFUSING  
18 THEM. AND SO AT THE END OF THE DAY -- I'M NOT GOING TO  
19 WORRY ABOUT THAT.

20                   MR. MADISON: OKAY. ALL I WAS SAYING IS THAT  
21 WE HAVE THE SAME DOCUMENT. IT'S ALREADY IN EVIDENCE,  
22 AND HE CAN HIGHLIGHT WHICHEVER PART HE WANTS ON THE FLY  
23 IF HE'D LIKE TO USE THE ONE. YOU DON'T NEED TO HAVE  
24 DUPLICATES.

25                   THE COURT: HE FEELS HE'S GOT HIS TEAM SET UP.  
26 IF WE CAN MAKE IT WORK, FINE.

27                   MR. MADISON: MAYBE AT THE END WE CAN CALL OUT  
28 DUPLICATES IF THEY'RE NOT HIGHLIGHTED.

1 THE COURT: YES, WE'LL GIVE THEM A TABLE.  
2 MR. MADISON: YES, YOUR HONOR. THANK YOU.  
3 THE COURT: THANK YOU.

4  
5 (RECESS.)

10:18AM

6  
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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, TUESDAY, AUGUST 9, 2011  
5 CALIFORNIA  
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE  
7 APPEARANCES: (AS HERETOFORE NOTED.)  
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978  
9 TIME: 10:36 A.M.

10  
11  
12 (AT 10:36 A.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 MEMBERS OF OUR JURY ARE PRESENT AS  
18 ARE COUNSEL.

19 MR. MADISON, YOU MAY CONTINUE YOUR  
20 EXAMINATION OF MR. SHEDLIN.

21 Q. BY MR. MADISON: MR. SHEDLIN WAS CITIGROUP  
22 PAID FOR THE WORK YOU AND THE OTHER MEMBERS DID IN  
23 2009?

24 A. YES.

25 Q. DO YOU RECALL HOW MUCH CITIGROUP WAS PAID FOR  
26 PROJECT HIGH LIFE THE STRATEGIC REVIEW?

27 A. I ACTUALLY DON'T RECALL ANYTHING ABOUT THE  
28 FEES THAT WERE PAID.

10:38AM

10:38AM

10:38AM

1 Q. CAN YOU APPROXIMATE FOR US?

2 A. I'M SURE THEY ARE LAID OUT /TPHR THE ENGAGE  
3 /-PLTS LETTER I REALLY DON'T RECALL WHAT THEY WERE. MY  
4 GUESS WOULD HAVE BEEN -- I'M NOT SURE THAT WE ACTUALLY  
5 SEPARATED PROJECT HIGH LATE FROM PROJECT ANGEL BUT  
6 PROBABLY COUPLE MILLION DOLLARS MAYBE.

10:39AM

7 Q. AND THEN WITH REGARD TO EXHIBIT 2156, IF WE  
8 COULD BRING THAT BACK UMM WE HAD STARTED TALKING ABOUT  
9 THAT BEFORE THE BREAK AND THEN GOT OFF ON TO SOME OTHER  
10 THINGS. IF WE LOOK AT 2156 WHICH IS IN EVIDENCE, YOUR  
11 HONOR. AND I THINK WE TALKED ABOUT THAT PART IN THE --  
12 ABOUT A THIRD OF THE WAY DOWN WHERE IT SAYS THE NEWS  
13 THAT JG NOW APPEARS -- IT'S AT THE BOTTOM OF THAT  
14 EXPANDED SECTION. THE NEWS THAT JG NOW APPEARS TO BE  
15 THINKING ABOUT A LATERAL MOVE TO A COMPETITOR RATHER  
16 THAN A START UP OF HIS OWN BUSINESS SUGGESTS THAT TIME  
17 IS EVEN MORE PRECIOUS AND DEFINING AND EXECUTING A  
18 REPLACEMENT PLAN IS AN IMMEDIATE PRIORITY SO THAT WAS  
19 YOUR RELY TO THE PERSON AT SOC-JEN?

10:39AM

10:39AM

20 A. YES IT WAS.

10:40AM

21 Q. AND HAD YOU HAD INFORMATION THAT MR. GUNDLACH  
22 MIGHT HAVE BEEN THINKING ABOUT A START UP OF HIS OWN  
23 BUSINESS?

24 A. I HAD INFORMATION, YES.

25 Q. AND CHECKCHECK HAD YOU -- WE HAVE EVIDENCE IN  
26 THE CASE THAT DURING THIS TIME PERIOD THERE WAS  
27 INTERNALLY A REVIEW OF CERTAIN INFORMATION BY /T\*  
28 RELATED TO MR. GUNDLACH'S ACTIVITIES WERE YOU PRIVY TO

10:40AM

1 THAT INFORMATION AT ANY TIME?

2 A. NO I WAS NOT.

3 Q. SO FOR EXAMPLE, IF I ASKED WHETHER YOU WERE  
4 LOOKING AT E-MAILS THAT MR. GUNDLACH WAS SENDING THAT  
5 TCW HAD REVIEWED OR SCREEN SHOTS OR DOWNLOADING WERE  
6 YOU PRIVY TO ANY OF THAT INFORMATION AT ANY TIME?

10:40AM

7 A. NO I WAS NOT.

8 Q. UP AND THROUGH THE TIME AT THAT MR. GUNDLACH  
9 EXITED TCW AND MET WEST TRANSACTION CLOSED WERE YOU  
10 AWARE OF ANY OF THAT?

10:41AM

11 A. I WAS NOT AWARE OF ANY OF THAT, NO.

12 Q. SO DID THAT -- OBVIOUSLY THAT INFORMATION DID  
13 NOT INFLUENCE YOUR ADVICE TO TCW?

14 A. NO IT DID NOT.

15 Q. NOW, WHAT DO YOU MEAN THAT EVEN THAT TIME IS  
16 EVEN MORE PRECIOUS BECAUSE OF THE POTENTIAL FOR A  
17 LATERAL MOVE TO A COMPETITOR?

10:41AM

18 MR. BRIAN: OBJECTION DOCUMENT SPEAKS FOR  
19 ITSELF RELEVANCE 352.

20 THE COURT: OVERRULED.

10:41AM

21 THE WITNESS: THE AMOUNT FOR SOMEONE TO CHANGE  
22 EMPLOYERS OBVIOUSLY IS YOU CAN DO THAT SIGNIFICANTLY  
23 QUICKER THAN YOU CAN BY BASICALLY GOING THROUGH ALL THE  
24 MACHINATIONS AND DIFFICULTIES OF STARTING UP YOUR OWN  
25 FIRM.

10:41AM

26 Q. SO YOU FELT THAT IF THE THREAT NOW WAS MORE  
27 ABOUT GOING TO A COMPETITOR THAT IT WAS EVEN MORE  
28 CRITICAL THAT TCW MOVE QUICKLY?



1           A.     EXACTLY.

2           Q.     NOW, YOU SAY DOWN BELOW IN THE NEXT PARAGRAPH  
3 KIND OF THE LAST SENTENCE OF THAT LAST PARAGRAPH I AM  
4 CONCERNED THAT IF JG LEAVES FIRST THE PROSPECT OF  
5 TRYING TO BRING A NEW TEAM INTO TCW WILL BECOME EVEN  
6 MORE DIFFICULTY. DO YOU SEE THAT?

10:42AM

7           A.     YES I DO.

8           Q.     WHY WERE YOU CONCERNED ABOUT THAT?

9           A.     WELL, I THINK /AOZ I'VE /-TSD A COUPLE OF  
10 TIMES, I WAS VERY CONCERNED THAT MR. GUNDLACH'S  
11 DEPARTURE WOULD SIGNIFICANTLY DE STABLE LIES THE FIRM  
12 AND GIVEN THE FACT THAT HE MANAGED INDIVIDUALLY OR WITH  
13 HIS TEAM SUCH A LARGE PERCENTAGE OF THE ASSETS OF THE  
14 FIRM I FEARED THE FIRM WOULD BE IN DANGER AND IT'S  
15 VIABILITY WOULD BE CAUSED INTO QUESTION SO IT'S USUALLY  
16 FOR DIFFICULT FOR A FIRM THAT HIRE PEOPLE WHEN THERE  
17 VIABILITY AND THERE ON GOING FINANCIAL LIFE IS BEING  
18 CALLED INTO QUESTION.

10:42AM

10:42AM

19          Q.     NOW, YOU BEGIN IN LATER HERE ON THE BOTTOM  
20 PART OF THAT PAGE, TO TALK ABOUT THE POTENTIAL FOR  
21 ACQUIRING ANOTHER FIRM. AND I WANT TO ASK YOU FIRST,  
22 HOW LONG GENERALLY IN YOUR EXPERIENCE DOES IT TAKE TO  
23 ACQUIRE ANOTHER BUSINESS THE SIZE OF MET WEST?

10:42AM

24          A.     WELL, ONCE YOU ACTUALLY FIND SOMEONE WHO'S  
25 WILLING TO HAVE A DISCUSSION, IT CAN TAKE MONTHS.

10:43AM

26          Q.     AND JUST GENERALLY, THAT IS /P-RT OF WHAT YOU  
27 DO I TAKE IT GIVEN THE ROLE YOU PLAYED HERE WITH TCW  
28 AND MET WEST?

1           A.     IT IS WHAT I DO, YES.

2           Q.     AND CAN YOU JUST GENERALLY DESCRIBE TO US WHAT  
3 GOES ON DURING THE MONTHS THAT IT WOULD TAKE AFTER  
4 IDENTIFYING A SUITABLE PARTNER TO ACTUALLY MAKE THAT  
5 COME TO BE?

10:43AM

6           A.     I'M /SOR /R\*EU CAN YOU REPEAT THE QUESTION.

7           Q.     CAN YOU IDENTIFY FOR US WHAT KINDS OF THINGS  
8 HAVE TO HAPPEN IN THOSE MONTHS BETWEEN IDENTIFYING A  
9 SUITABLE PARTNER FOR A MERGER ACQUISITION AND THEN THE  
10 CONSUMMATION OF THAT?

10:43AM

11          A.     SURE.   AGAIN THIS IS INJURY GENERAL BUT  
12 OBVIOUSLY THERE WOULD BE A PARTNER IDENTIFICATION WHICH  
13 YOU WOULD BASICALLY TRY AND FIGURE OUT A RANGE OF  
14 POTENTIAL COMPANIES THAT YOU MIGHT WANT TO TALK TO.  
15 YOU WOULD /THEPBL REACH OUT TO THOSE FIRMS IN HOPES  
16 THAT THEY WOULD WANT TO SPEAK TO YOU IT'S OBVIOUSLY  
17 DIFFICULT TO BUY A FIRM IF THEY DON'T WANT TO BE SOLD  
18 SO YOU NEED TWO WILLING PARTICIPANTS TO ENGAGE IN THAT  
19 DISCUSSION.

10:44AM

20                   ONCE YOU ARE ABLE TO BASICALLY HAVE  
21 SOMEONE WHO WANTS TO HAVE A DISCUSSION WITH YOU IT'S  
22 ALL ABOUT DISCUSSING BUSINESS FIT, THE OPPORTUNITY FOR  
23 VALUE CREATION THAT COMES FROM PUTTING THOSE TWO FIRMS  
24 TOGETHER.   ULTIMATELY VALUATION COMING UP WITH A  
25 FINANCIAL PROPOSAL THAT THE OTHER SIDE WOULD BE WILLING  
26 TO DISCUSS USUAL WELL I THAT INVOLVES SOME DISCUSSION  
27 ABOUT THE FINANCIAL TERMS IN VALUE.   AND ONCE ALL OF  
28 THAT IS AGREED ULTIMATELY NEGOTIATING A TRANSACTION

10:44AM

10:44AM

1 DOCUMENT TO GET THE DEAL DONE.

2 Q. IS THERE A DUE DILIGENCE PROCESS THAT  
3 GENERALLY IS UNDER /TAE PBL?

4 A. ABSOLUTELY. I SHOULD HAVE MENTIONED THAT.  
5 THAT IS OBVIOUSLY UNDER LIES THE EVALUATION WORK THAT  
6 NEEDS TO BE DONE /STAO\*E SO THERE WILL BE. CHECK DUE  
7 DILIGENCE EVALUATION THAT NEEDS TO BE DONE.

10:44AM

8 Q. WHO GENERALLY IS INVOLVED IN DUE DILIGENCE  
9 THAT IS INVOLVED IN THAT SITUATION LIKE THAT?

10 A. LAWYERS, AUDITORS, POTENTIALLY INVESTMENT  
11 BANKERS, CONSULTANTS, ABSOLUTELY.

10:45AM

12 Q. SO LET ME ASK YOU THIS: IF THE MBS GROUP AT  
13 TCW HAD GIVEN ONE MONTHS'S NOTICE DURING THE TIME  
14 PERIOD THAT YOU'RE INVOLVED BACK AT TCW, THAT HAVE BEEN  
15 ADEQUATE IN YOUR VIEW TO IDENTIFY A TEAM TO COME IN AND  
16 BE ABLE TO MANAGE THE ASSETS?

10:45AM

17 A. ONE MONTH WOULD BEING HIGHLY UNUSUAL.

18 Q. SO WOULD THAT MAKE IT PROBABLE OR IMPROBABLE?

19 A. IN MY VIEW IN I WAS TASKED WITH THAT  
20 ASSIGNMENT I WOULD SUGGEST THAT THE PROBABLY WAS  
21 INCREDIBLY LOW THAT YOU COULD GET SOMEONE DONE IN FOUR  
22 WEEKS.

10:45AM

23 Q. AND WOULD THAT BE INFLUENCED ONE WAY OR THE  
24 OTHER IF THE ANNOUNCEMENTS OF THE DEPARTURE OF THE  
25 EXISTING GROUP WAS PUBLIC?

10:46AM

26 A. AGAIN, CONSISTENT WITH MY VIEW I THINK HAD THE  
27 DEPARTURE OCCURRED FIRST I THINK IT WOULD HAVE BEEN  
28 /EUPB /KRED /PWEU DIFFICULT TO BE NEGOTIATE A

1 TRANSACTION TO BRING SOMEBODY ELSE IN.

2 Q. WHAT DID THE NOTICE OF THE DEPARTURE WAS MADE  
3 AND IT WOULD HAPPEN IN A MATTER OF THREE OR FOUR WEEKS  
4 THE ACTUAL DE /PARTD /TUR?

5 A. AGAIN, I DON'T THINK THAT WOULD MAKE A  
6 DIFFERENCE.

10:46AM

7 Q. NOW, YOU GO ON TO DISCUSS SOME SPECIFICS OF  
8 THE MET WEST DEAL IN 2156. AND DID YOU THEN CONTINUE  
9 TO ADVISE TCW AS TO THE -- THAT DEAL WAS IT WAS  
10 NEGOTIATED?

10:46AM

11 A. I DID.

12 Q. AND ULTIMATELY DO YOU RECALL HOW LONG IT TOOK  
13 FOR THAT PARTICULAR TRANSACTION TO COME TO A POINT  
14 WHERE IT COULD BE SAID TO HAVE BEEN CONSUMMATED?

15 A. I THINK IT WAS ROUGHLY THREE MONTHS.

10:46AM

16 Q. NOW DID THERE COME A TIME WHEN, IN YOUR  
17 DISCUSSIONS WITH MR. STERN AND TCW, THE -- THERE WAS  
18 ACTUALLY A DECISION THAT YOU WERE AWARE OF TO MOVE  
19 FORWARD AND PRO ACTIVELY ROW /PHRAOEUS MR. GUNDLACH?

20 A. I THINK THAT THIS /PHOEFP MOW THAT WAS DATED  
21 OCTOBER 4TH WAS EFFECTIVELY SUGGESTING THAT WE SHOULD  
22 MOVE FORWARD AND ACTIVELY TRY AND AN COUNSEL /PHAEUT A  
23 /TRAPBS /WABGZ MET WEST. MY UNDERSTANDING IS IF WE  
24 ACTUALLY ACCOMPLISHED THAT THAT THERE WOULD PROBABLY BE  
25 NO NEED FOR MR. GUNDLACH.

10:47AM

26 Q. AND HAD THE NEGOTIATIONS WITH MET WEST NOT BE  
27 FRUITFUL OR HAD STALLED FOR ANY REASON, THEN DID YOU  
28 HAVE AN UNDERSTANDING BASED ON YOUR CONVERSATIONS WITH

10:47AM

1 MR. STERN AS TO WHAT WOULD HAPPEN THEN?

2 A. WE HAD A NUMBER OF FALL BACK PLANS ALL OF  
3 WHICH WERE DETERMINED TO BE NOT AS GOOD AS THIS ONE.

4 Q. WAS THERE EVER A TIME WHEN IN YOUR DISCUSSIONS  
5 WITH MR. STERN YOU STOPPED WORRYING ABOUT WHETHER  
6 MR. GUNDLACH WOULD JUST DEPART ABRUPT /HREU WITH A  
7 GROUP ON HIS OWN?

8 A. I'M NOT SURE I UNDERSTAND THE QUESTION.

9 Q. MY QUESTION IS: HUH INDICATED IN SOME OF THE  
10 E-MAILS IN HERE TODAY, THAT IT WOULD BE A THREAT TO THE  
11 FIRM IF MR. GUNDLACH WERE TO ABRUPT /HREU DEPART. DID  
12 THAT REMAIN THE SAME RIGHT UP UNTIL DECEMBER 4TH WHEN  
13 MR. GUNDLACH WAS CONFRONTS /-D?

14 A. ABSOLUTELY. IT WAS A RACE AGAINST TIME  
15 THROUGHOUT THIS ENTIRE PROCESS.

16 Q. WHAT DO YOU MEAN A RACE AGAINST TIME?

17 A. THE VIEW WAS JEFFREY COULD LEAVE AT ANY POINTS  
18 IN TIME AND WE WERE OBVIOUSLY TRYING TO GET THIS DEAL  
19 DONE AS QUICKLY AS POSSIBLE.

20 Q. FOR THE REASONS YOU HAVE DESCRIBED?

21 A. CORRECT.

22 Q.

23 MR. MADISON: NOTHING FURTHER AT THIS TIME,  
24 YOUR HONOR, THANK YOU.

25 THE COURT: ALL RIGHT CROSS-EXAMINATION  
26 MR. BRIAN.

27 MR. BRIAN: YES, YOUR HONOR. MORE BINDERS,  
28 YOUR HONOR. GOOD MORNING MR. SHEDLIN I'M BRAD BRIAN WE

10:47AM

10:48AM

10:48AM

10:48AM

10:48AM

1 HAVEN'T MET HAVE WE SIR.

2 THE WITNESS: NO WE HAVEN'T.

3 Q. YOU TESTIFIED IN RESPONSE TO MR. MADISON'S  
4 QUESTIONS THAT YOU HEARD SOME RUMORS ABOUT MR. GUNDLACH  
5 LEAVING TCW DO YOU RECALL THAT TESTIMONY GENERALLY?

10:49AM

6 A. YES I DO.

7 Q. YOU WERE AWARE ARE YOU NOT THAT MR. GUNDLACH  
8 IN FACT DID NOT LEAVE TCW TO JOIN WAMCO ISN'T THAT  
9 RIGHT?

10 A. I'M AWARE OF THAT.

10:49AM

11 Q. AND IN FACT HE DIDN'T LEAVE TCW TO JOIN ANY  
12 OTHER COMPANY UNTIL HE WAS FIRED ISN'T THAT TRUE?

13 A. I BELIEVE THAT TO BE TRUE. I DON'T KNOW THE  
14 CIRCUMSTANCES OF HIS DEPARTURE.

15 Q. YOU RECOMMEND THAT HE BE FIRED THOUGH DIDN'T  
16 YOU SIR?

10:49AM

17 A. NO I DID NOT.

18 Q. DO YOU HAVE EXHIBIT 2156 IN FRONT OF YOU?

19 A. I DO.

20 Q. /TPAO WE COULD MY LIGHT OR ENLARGE ABOUT A  
21 THIRD OF THE WAY DOWN IN THIS /PHERBGS. AS WE  
22 DISCUSSED BEFORE I'M AN ADVOCATE OF A PRO ACTIVE  
23 APPROACH. DO YOU SEE THAT DENNIS, WELL, NOT QUITE SO  
24 MUCH. /WAOZ WE /RA DISCUSSED BEFORE RIGHT THERE.  
25 THERE WE GO.

10:50AM

26 AND THEN THE NEXT LINE TOO.

27 AS PART OF THIS E-MAIL 2156, YOU WROTE  
28 AS WE HAVE DISCUSSED BEFORE, I'M NOT ADVOCATE OF A PRO

10:50AM

1 ACTIVE APPROACH TO THE ISSUES SURROUNDING JG YOU WROTE  
2 THAT, RIGHT?

3 A. I DID.

4 Q. AND JG ^ YOU WERE ^ UPPER REFERRING TO /TPREF  
5 /STKPWREU GUNDLACH WERE YOU NOT?

10:51AM

6 A. /EUFRS.

7 Q. AND YOU WROTE I /STRAPBG /HREU BELIEVE THAT  
8 TERMINATING JG AND HAVING A CREDIBLE EXIT /TPHRAPB  
9 WOULD PRESERVE SIGNIFICANT MORE /PRAOEUL TO CHECK  
10 /KH-BG?

10:51AM

11 A. YOU WROTE THAT DIDN'T YOU.

12 A. DID I.

13 Q. WHEN YOU SAID TERMINATED YOU MEANT FIRING  
14 DIDN'T YOU?

15 A. ULTIMATELY, YES BUT THERE'S AN AND THERE.

10:51AM

16 Q. NOW, YOU ARE AWARE ARE YOU NOT THAT  
17 MR. GUNDLACH NOW RUNS A COMPANY CALLED DOUBLELINE?

18 A. I AM.

19 Q. YOU DON'T KNOW HOW MANY?

20 A. IF ANY, OF TCW'S CLIENTS /EPBLDZ /-D UP AT  
21 DOUBLELINE DO YOU SIR.

10:51AM

22 A. I DO NOT.

23 Q. NOW, YOU TESTIFIED IN RESPONSE TO  
24 MR. MADISON'S QUESTIONS THAT YOU WERE FIRST CONTACTED  
25 BY MR. /A\*T AND MR. CHAT PUS ABOUT THIS ASSIGNMENT; IS  
26 THAT RIGHT?

10:51AM

27 A. THAT'S CORRECTS.

28 Q. HAD YOU WORKED WITH /THOEPL BEFORE?

1 A. I HAD NOT WORKED WITH THEM BEFORE.

2 Q. AT THE TIME THEY CONTACTED YOU /TK-P YOU KNOW  
3 THAT A FOCUS GROUP CREATED BY BOB BEYER AT TCW HAD  
4 RECOMMENDED THAT THE FIXED INCOME AREA BE CONSOLIDATED  
5 SUCH THAT MR. /A\*T, MR. CHAT PUS WOULD REPORT TO  
6 MR. GUNDLACH DID YOU KNOW THAT?

10:52AM

7 A. I DID NOT.

8 Q. DID THEY TELL YOU THAT?

9 A. I DON'T RECALL THEM TELLING ME THAT.

10 Q. I TAKE IT YOU LIVE AND WORK IN THE NEW YORK  
11 AREA?

10:52AM

12 A. I DO.

13 Q. AND YOU CAME OUT HERE VOLUNTARILY TO TESTIFY,  
14 DID YOU NOT?

15 A. DID I.

10:52AM

16 Q. YOU ARE AN INVESTMENT BANK /TKER THE MORE  
17 BEGAN STANLEY?

18 A. I AM.

19 Q. AND DO YOU HAVE A CURRENT BUSINESS  
20 RELATIONSHIP WITH TCW?

10:52AM

21 A. I'M NOT SURE I UNDERSTAND THAT QUESTION.

22 Q. ARE YOU DOING BUSINESS WITH TCW IN ANYWAY IS  
23 MORGAN STANLEY DOING BUSINESS WITH TCW IN ANYWAY?

24 A. I ASSUME THAT MORE /TKPWAPBLG STANLEY HAS A  
25 RELATIONSHIP WITH TCW, YES.

10:52AM

26 Q. NOW, IF YOU COULD LOOK AT THE BINDER I HANDED  
27 YOU AND LOOK AT EXHIBIT 5174, PLEASE IS HAVE YOU BEEN  
28 ABLE TO LOCATE THAT SIR?



1           A.     I HAVE.

2           Q.     THAT IS A DRAFT OF THE ENGAGEMENT LETTER FOR  
3 THE ASSIGNMENT WHICH YOU HAVE CALLED PROJECT HIGH LIFE  
4 ^ IS THE ^ IS IT NOT?

5           A.     IT APPEARS TO BE, YES. 10:53AM

6           Q.     I WOULD OFFER EXHIBIT 5174, YOUR HONOR?

7           THE COURT:    ANY OBJECTION.

8           MR. MADISON:  OBJECTION TO THE DRAFT, IT  
9 DIDN'T -- UNLESS THERE'S FOUNDATION ABOUT IT GOING TO  
10 TCW. 10:53AM

11          THE COURT:    DO YOU WANT LAY THE FOUNDATION.

12          MR. BRIAN:    IT'S NOT MY --

13          MR. MADISON:  OR IF IT'S IMPEACHMENT.

14          MR. BRIAN:    I DON'T WANT TO ARGUE IF FRONT OF  
15 THE JURY. 10:53AM

16          THE COURT:    JUST HOLD ON A MINUTE.  LET ME  
17 TAKE A LOOK AT IT.

18          MR. BRIAN:    I'M GOING TO DIRECT HIS ATTENTION  
19 TO PAGE THREE, YOUR HONOR.

20          THE COURT:    5174. 10:54AM

21          MR. BRIAN:    5174 I'M GOING TO DIRECT HIS  
22 ATTENTION TO PAGE THREE.

23          THE COURT:    HOLD ON A MINUTE.

24          MR. BRIAN:    THE FINANCIAL TERMS IN THE MIDDLE.

25          THE COURT:    DO WE HAVE THE ACTUAL RETAINER  
26 AGREEMENT. 10:54AM

27          MR. BRIAN:    I'M GOING TO SHOW HIM THAT ONE  
28 NEXT THE.

1 THE COURT: WELL, HAVE HIM TAKE A LOOK AT IT  
2 AND WE'LL TAKE A LOOK AT BOTH OF THEM.

3 MR. BRIAN: LET ME JUST SAY THIS SIR, YOU GOT  
4 A DRAFT YOU DIDN'T SIGN THE FINAL ENGAGEMENT LETTER FOR  
5 THIS PROJECT PHYSICAL IN /STAOEUPPL AFTER THE MET WEST  
6 PROJECT HAD BEEN CONSUMMATED CORRECT.

10:54AM

7 THE WITNESS: THAT IS MY RECOLLECTION.

8 Q. AND /R-PBLG /HREU WHEN YOU WERE RE/TAOEUPBLD  
9 ^ YOU WERE ^ UPPER PAID A MONTH /HREU RETAINER CORRECT?

10 A. WE ACTUALLY WERE NOT PAID ANYTHING UNTIL THE  
11 ENGAGEMENT LETTER WAS SIGNED /A MY RECOLLECTION.

10:54AM

12 Q. BUT IT CALLED FOR A MONTH /HRE RETAINER PLUS  
13 SOMETHING CALLED A SUCCESS FEE, RIGHT?

14 A. ARE YOU REFERRING TO THIS DRAFT.

15 Q. YES?

10:55AM

16 A. I BELIEVE THAT'S WHAT THE DRAFT /S-GSZ.

17 Q. AND IN YOUR INVESTMENT BUSINESS A SUCCESS FEE  
18 MEANS THAT YOU ARE PAID UPON THE SUCCESSFUL  
19 CONSUMMATION OF THE TRANSACTION, RIGHT?

20 A. OF A TRANSACTION.

10:55AM

21 Q. AND IF YOU /TKO\*EBT -- /H-F IF THE  
22 TRANSACTION IS NOT SUCCESSFUL, THAT PORTION OF YOUR  
23 COPY /SEUGZ IS NOT PAID, RIGHT?

24 A. CORRECT.

25 Q. OKAY. NOW, TAKE A LOOK AT EXHIBIT 6070 IN  
26 YOUR BINDER IT'S TOWARD THE END.

10:55AM

27 A. OKAY.

28 Q. EXHIBIT 6070 THE FIRST TWO PAGES ARE SOME

1 E-MAILS AND THEY ATTACH THE FINAL AGREED UPON  
2 ENGAGEMENT LETTER, CORRECT?

3 MR. MADISON: OBJECTION. FOUNDATION TO THE  
4 DOCUMENT.

5 MR. BRIAN: WELL, TAKE A LOOK AT PAGE NINE. 10:56AM

6 THE COURT: THE OBJECTION IS OVERRULED.

7 LET HIM LOOK AT THE EXHIBIT AND THEN ASK  
8 A QUESTION ABOUT IT.

9 MR. BRIAN: SORRY, YOUR HONOR.

10 THE WITNESS: OKAY. I SEE THE LETTER. 10:56AM

11 Q. AND THAT'S THE FINAL ENGAGEMENT LETTER FOR  
12 THESE TWO ASSIGNMENTS PROJECT HIGH LIFE AND PROJECT  
13 /AEUPB GEL CORRECT?

14 A. YES IT APPEARS TO BE.

15 Q. I WOULD OFFER EXHIBIT 6070, YOUR HONOR? 10:56AM

16 THE COURT: ANY OBJECTION.

17 MR. MADISON: NO, YOUR HONOR.

18 THE COURT: IT WILL BE ADMITTED.

19 Q. BY MR. BRIAN: SO DENNIS, IF WE COULD SHOW  
20 PAGE 5 OF THAT DOCUMENT. I'VE HANDWRITTEN THE /PAEUPBL  
21 NUMBERS, YOUR HONOR, IN THE LOWER /R-PBLD  
22 ^ CORONER ^ CORNER?

23 THE COURT: ALL RIGHT.

24 MR. BRIAN: AND IF WE COULD ENLARGE THE MIDDLE  
25 TWO PARAGRAPHS, A AND B PLEASE. 10:56AM

26 THE COURT: WE NEED TO PUT THE TRIAL EXHIBIT  
27 NUMBERS ON THESE DOCUMENTS.

28 MR. BRIAN: IT'S ON THE FRONT PAGE, YOUR

1 HONOR, I WILL ADD IT TO EVERY PAGE AFTERWARDS THIS ^ IS  
2 THE ^ IS IT /OEPL ONE WE HAVEN'T DONE THAT ON BECAUSE  
3 IT GOT ADD AT THE LAST MOMENT I APOLOGIZE.

4 THE COURT: THANK YOU.

5 Q. BY MR. BRIAN: YOU SEE I'VE HIGHLIGHTED THE  
6 LANGUAGE ON PAGE LIFE OF THE ENGAGEMENT LETTER, SIR?

10:57AM

7 A. YOU ARE TALKING ABOUT THE WHAT'S BLOWN UP UP  
8 THERE.

9 Q. YES?

10 A. SURE.

10:57AM

11 Q. SO THERE WERE TWO PARTS OF THE A MONTHLY  
12 RETAINER OF 50 /THOUPBLD YOUR ROSE PER MONTH, RIGHT?

13 A. THAT'S WHAT IS SAYS.

14 Q. AND THEN A TRANSACTION FEE OF TWO.4 MILLION  
15 /AOUR ROSE PAYABLE UPON COMPLETION OF THE TRANSACTION,  
16 CORRECT?

10:57AM

17 A. CORRECT.

18 Q. NOW, WHEN I SHOWED YOU THE DRAFT IT DIDN'T SAY  
19 TRANSACTION FEE IT SAID SUCCESS FEE, RIGHT?

20 A. I DON'T HAVE THE DRAFT IN FRONT OF /STKPWHRAOE  
21 WELL.

10:57AM

22 MR. MADISON: OBJECTION, YOUR HONOR.

23 THE COURT: IT'S EXHIBIT 5174.

24 MR. BRIAN: I'LL OFFER EXHIBIT 5174, YOUR  
25 HONOR.

10:57AM

26 MR. MADISON: FOUNDATION.

27 THE COURT: WE CAN LAY THE FOUNDATION.

28 MR. BRIAN: HE'S TESTIFIED ^ IT

1 WAS^ TESTIFIES THE DRAFT.

2 MR. MADISON: I DON'T BELIEVE THAT WAS HIS  
3 TESTIMONY, YOUR HONOR, THERE WAS NO FOUNDATION.

4 THE COURT: I'LL SUSTAIN ^ IS THE ^ IS IT WE  
5 CAN SPEND ALL THE TIME WE WANT. GO AHEAD MR. BRIAN.

10:58AM

6 Q. BY MR. BRIAN: YOU UNDERSTOOD DID YOU NOT SIR,  
7 AS YOU TESTIFIED ALREADY, THAT YOU DIDN'T GET PAID THIS  
8 TRANSACTION /TPHAOE UNLESS THE TRANSACTION WAS  
9 CONSUMMATED, RIGHT?

10 A. YES.

10:58AM

11 Q. OKAY. AND YOU ALSO UNDERSTOOD, DID YOU NOT?

12 A. WELL, ACTUALLY CAN I CORRECT THAT STATEMENT.  
13 CAN YOU ACTUAL WELL REPEAT THE QUESTION SO I CAN MAKE  
14 SURE I ANSWER /T-D CORRECTLY FOR YOU.

15 Q. BY MR. BRIAN: YOU GOT PAID THE TRANSACTION  
16 FEE ^ ONES ^ ONCE THE TRANSACTION WAS COMPLETED RIGHT?

10:58AM

17 A. RIGHT, BUT WE HAD A MONTHLY RETAINER FEE IN  
18 THE EVENTS THERE WAS NO COPY /TAEUGZ TAN COMPENSATED  
19 FOR OUR TIME.

20 Q. CORRECT?

10:58AM

21 A. YES.

22 Q. BUT YOU ONLY GOT THE TONS TRACTION FEE AUTO  
23 TOP OF THAT IF THE TRANSACTION WAS COMPLETED?

24 A. CORRECT.

25 Q. AND YOU UNDERSTOOD DID YOU NOT, THAT THE  
26 TRANSACTION WE WERE TALKING ABOUT WAS THE ACQUISITION  
27 OF MET WEST BY TCW, RIGHT?

10:58AM

28 A. WELL, IF I MAY EXPLAIN.

1 Q. ISN'T -- IS THAT?

2 A. YOU ARE ASKING ME TO COMPARE TWO DRAFTS. I'M  
3 CONFUSED AS TO WHAT THE QUESTION IS.

4 THE COURT: WAIT A MINUTE. LET'S /TPEBG /KOUS  
5 ONE DRAFT IF YOU WANT TO HAVE THE DRAFT IN EVIDENCE. 10:59AM  
6 WELL, /EUFRLT I OFFERED IT.

7 THE COURT: LAY THE FOUNDATION THAT'S 5174.

8 MR. BRIAN: I'LL STAY WITH 6070.

9 THE COURT: ALL RIGHT.

10 Q. BY MR. BRIAN: I'LL STAY WITH 6070, SIR. MET 10:59AM  
11 WEST ACQUISITION, YOU UNDERSTOOD, DID YOU NOT, THAT TCW  
12 WAS ACQUIRING MET WEST TO REPLACE MR. GUNDLACH AS IT'S  
13 MANAGER OF ASSETS, CORRECT?

14 A. CORRECT.

15 Q. TAKE A LOOK AT 53 OH TWO IN YOUR BINDER? 10:59AM

16 A. SO WE'RE DONE WITH THIS ONE HERE.

17 Q. YES.

18 A. OKAY.

19 Q. TAKE A LOOK AT 53 OH TWO. DO YOU HAVE THAT IN  
20 FRONT OF YOU SIR? 11:00AM

21 A. I DO.

22 Q. THIS IS AN E-MAIL EXCHANGE BETWEEN AND YOU AN  
23 I DON'T KNOW /KRA SHOE SKI?

24 A. /KRE /SHEF SKI.

25 Q. IS THAT SOMEONE WHO /WORPBGD AT CITIGROUP WITH 11:00AM  
26 YOU?

27 A. HE WORKED IN THE PARIS /STKPWHROFS AND THIS  
28 WAS PREPARED IN THE ORDINARY COURSE OF /S-BSS PART OF

1 THIS TRANSACTION WAS IT NOT SIR.

2 A. YES IT WAS.

3 Q. I WOULD OFFER 53 OH TWO?

4 MR. MADISON: NO OBJECTION.

5 THE COURT: IT WOULD BE ADMITTED.

11:00AM

6 MR. BRIAN: IF WE COULD PUT THAT UP, PLEASE.

7 AND IF WE COULD HIGHLIGHT WHAT THE -- TOWARD THE BOTTOM

8 IS SAYS WHAT IT PROJECT ANGEL CHECKCHECK K R Y C H O K

9 /SK-RBGS K I /STKPWHRAO THIS WAS A QUESTION THAT WAS

10 PUT DO YOU FROM YOUR /KOL LEAK FROM PARIS.

11:01AM

11 THE WITNESS: CORRECT.

12 Q. TCW TRYING TO BUY A FIXED INCOME MANAGER TO  
13 REPLACE GUNDLACH YOU WROTE THAT DID YOU NOT?

14 A. I DID.

15 Q. AND YOUR SUCCESS FEE OR TRANSACTION FEE  
16 DEPENDED UPON THE REPLACEMENT OF MR. GUNDLACH BY MET  
17 WEST, RIGHT?

11:01AM

18 A. NO.

19 Q. PARDON?

20 A. NO OUR SUCCESS FEEL DEPENDED UPON OUR  
21 ABILITIES TO SECURE A FIRM AND TO BUY A FIRM FOR TCW.

11:01AM

22 Q. IF MR. /STKPW\*UPBLD WAS NOT FIRED ^ IS  
23 THE ^ IS IT YOUR TESTIMONY THAT TCW INTENDED TO GO  
24 FORWARD WITH THAT TRANSACTION IS THAT YOUR TESTIMONY?

25 A. I DON'T THINK THAT'S THE QUESTION YOU ASKED  
26 ME.

11:01AM

27 Q. THAT IS THE QUESTION I'M ASKING NOW?

28 A. 62 YOU REPEAT THE QUESTION.

1 Q. ARE YOU SAYING THAT IF MR. GUNDLACH WAS NOT  
2 FIRED TCW STILL WOULD HAVE ACQUIRED MET WEST TO REPLACE  
3 HIM?

4 A. I DON'T REALLY UNDERSTAND YOUR QUESTION. I  
5 MIGHT REVERSE THE STATEMENT.

11:02AM

6 Q. WELL, LET ME ASK YOU THIS: YOUR UNDERSTANDING  
7 IN 2009 IN THE FALL YOU DIDN'T THINK THAT TCW INTEND  
8 TODAY HAVE BOTH MR. GUNDLACH AND MET WEST MANAGING  
9 ^ IT'S ^ ITS ^ FOLLOWING THIS ACCIDENT ^ FIX THE INCOME  
10 AREA DID YOU?

11:02AM

11 A. CORRECT.

12 Q. IT WAS ONE OR THE OTHER, RIGHT?

13 A. CAN I ELABORATE OR AM I NOT.

14 THE COURT: YOU CAN EXPLAIN YOUR ANSWER.

15 THE WITNESS: WELL, THE NOW /APBS I'M TRYING TO  
16 BASICALLY GET YOU DO IS HAD WE NOT BE ABLE TO ACQUIRE  
17 MET WEST I DON'T KNOW WHAT THEY WOULD HAVE DONE WITH  
18 MR. GUNDLACH. THAT'S MY POINT.

11:02AM

19 Q. BY MR. BRIAN: OKAY, BUT WHEN YOU RECOMMENDED  
20 IF EXHIBIT 2156, THAT YOUR E-MAIL TO MR. /RA POLE THAT  
21 THEY TERMINATE MR. GUNDLACH YOU UNDERSTOOD THAT THAT  
22 WAS A STEP THAT WAS NECESSARY IF THEY WERE GOING TO  
23 ACQUIRE MET WEST DID YOU NOT?

11:02AM

24 A. CORRECT.

25 Q. AND THEREFORE AT THAT STEP THAT YOU  
26 RECOMMENDED WAS ITSELF A NECESSARY CONDITION OF THE  
27 SUCCESS FEE THAT YOU HAD NEGOTIATED, RIGHT?

11:03AM

28 A. I ACTUALLY DON'T AGREE WITH THAT STATEMENT,



1 NO, I'M SORRY.

2 Q. TAKE A LOOK AT EXHIBIT 50 ONE 84 IN THE BINDER  
3 I GAVE YOU. /TKOUFR IT IN FRONT OF YOU, SIR?

4 MR. MADISON: YOUR HONOR, THAT'S IN EVIDENCE  
5 AS 2153.

11:04AM

6 MR. BRIAN: IT IS, YOUR HONOR, IT'S AN  
7 IDENTICAL COPY OF 2153 AS WE DISCUSSED DURING THE  
8 BREAK, YOUR HONOR.

9 MR. BRIAN: I WOULD OFFER 5184 FOR THE  
10 PURPOSES OF DISPLAYING IT AND WE CAN STIPULATE TO.

11:04AM

11 THE COURT: Y YOU CAN PUT IT UP AND LADIES AND  
12 GENTLEMEN WE MAY HAVE SOME DUPLICATE EXHIBITS THAT COME  
13 UP WITH DIFFERENT NUMBERS WE'LL GIVE AWE I REFERENCE  
14 SHEET WHEN YOU DO YOUR /TKHREUB /RAEUPBGZS OR ELSE  
15 WE'LL ELIMINATE THE DUPLICATES OR WE'LL GIVE YOU A  
16 CROSS-REFERENCE SO YOUR NOTES CAN FOLLOW.

11:04AM

17 Q. BY MR. BRIAN: TAKE A LOOK AT PAGE FOUR OF  
18 EXHIBIT 50 ONE 84, PLEASE. DO YOU HAVE THAT IN FRONT  
19 OF YOU, SIR?

20 A. ARE YOU TALKING ABOUT THE NUMBERED PAGE FOUR  
21 OR THE SEQUENCE.

11:04AM

22 Q. NO, YOU HAVE GOT TO LOOK AT -- IT SAYS EXHIBIT  
23 50 ONE 84 DASH ZERO ZERO ZERO FOUR DO YOU SEE THAT?

24 A. PAGE THREE, YEP ON THE BOTTOM.

25 Q. AND IT SAYS AT THE TOP RE/SRAOUF THE FIRM  
26 CONTINUED CORRECT?

11:05AM

27 A. YES.

28 Q. AND IF WE COULD MAYBE ENLARGE THE SECOND SET

1 OF -- FROM THERE DO YOU KNOW. THAT RECTANGLE, RIGHT  
2 THERE.

3 ONE OF THE THINGS DID YOU AS PART OF  
4 THIS PROJECT WAS TO INTERVIEW THE PORTFOLIO MANAGERS  
5 WITH RESPECT TO THEIR OWN PERCEPTIONS OF SOCIETY /KWROE  
6 AT THE /SKWREPB /RAL D YOU NOT? 11:05AM

7 A. YES.

8 Q. AND YOU WROTE THAT HOWEVER, SEVERAL PPIP M'S  
9 BELIEVE THAT S G HAS NOT INVESTIGATED ENOUGH IN THE  
10 FIRM AND IS NOT COMMITTED TO VALUE CREATION YOU WROTE  
11 THAT DID YOU NOT? 11:05AM

12 MR. MADISON: OBJECTION, YOUR HONOR, AND  
13 /PHOEPGZ NO, SIR LIMINE ON THIS.

14 THE COURT: /OEFRLDZ.

15 Q. BY MR. BRIAN: YOU WROTE THAT, RIGHT? 11:05AM

16 A. MY TEAM PRODUCED THIS, YEAH. I DIDN'T  
17 SPECIFICALLY WRITE IT BUT MY TEAM IT DID /-S, YES.

18 Q. DO YOU YOU DON'T HAVE ANY REASON TO BELIEVE IT  
19 WAS INACCURATE?

20 A. ABSOLUTELY ^ IT WAS ^ TESTIFIES NOT. 11:06AM

21 Q. IN FACT IT WAS YOUR INTENTION THAT THIS  
22 DOCUMENT /ABG /REUT /HREU REFLECT THE STATEMENTS BEING  
23 MADE TO YOU AND YOUR TEAM BAY THE PORTFOLIO MANAGERS,  
24 RIGHT?

25 A. /STKPWHREBGT AND IN THE NEXT LINE, YOU SAID  
26 HOWEVER -- THE 30 PERCENT /ABG WET AT THIS WAS PROMISED  
27 TO HIGH LIFE EMPLOYEES, /OEPBLG 11 TO 14 PERCENT OF THE  
28 FIRM IS /KWUPBL /HREU OWNED BY THE EMPLOYEES IN OPTIONS 11:06AM

1 THAT ARE OUT OF THE MONEY YOU WROTE THAT, DID YOU NOT  
2 /-FRPBLT YES.

3 Q. AND THAT WAS AGAIN INFORMATION /TPHA YOU AND  
4 YOUR TEAM HAD ACQUIRED FROM THE PORTFOLIO MANAGERS,  
5 RIGHT?

11:06AM

6 A. CORRECT.

7 Q. AND THEN YOU WROTE THE NEXT LINE, S G HAS NOT  
8 INVESTIGATED ENOUGH IN /ABG /WEU /SAEUGZ /SKP-Z /EBGS  
9 /PAPBG THROUGH NEW PRODUCTS ETCETERA DO YOU SEE THAT?

10 A. I DO.

11:06AM

11 Q. AGAIN, THAT'S YOUR REFLECTING YOU AND YOUR  
12 TEAM ARE REFLECTING THE VIEWS OF THE PEOPLE YOU ARE  
13 INTERVIEWING, RIGHT?

14 A. /STKPWHREBGT AND THEN YOU SAID THAT THE NEXT  
15 TO THE LAST LINE THERE YOU SAID S G HAS ITS OWN ISSUES  
16 DO YOU SEE THAT.

11:07AM

17 A. I DO.

18 Q. AND THEY INCLUDED THE IMPACTS OF THE DOWN TURN  
19 IN THE FINANCIAL MARKETS ON SOC-JEN, RIGHT?

20 A. CORRECT.

11:07AM

21 Q. AND THAT'S WHEN YOU SAID IN THE NEXT LINE THAT  
22 S G HAS BEEN PULLING MONEY OUT OF HIGH LIFE FUNDS TO  
23 SUPPORT ^ IT'S ^ ITS CAPITAL NEEDS YOU WROTE THAT AS  
24 WELL, DID YOU NOT?

25 A. WE DID.

11:07AM

26 Q. NOW, TURN TO PAGE SIX, AGAIN THE SAME  
27 NUMBERING THAT I'M /SKWRAOUZING TRIAL EXHIBIT 50 ONE 84  
28 DASH ZERO ZERO ZERO SIX. AND DENNIS, IF WE COULD

1 ENLARGE WHERE IT SAYS WEAK /-PBLGS /-S IN THE ^ YOU  
2 WERE ^ UPPER RIGHT HAND CORNER THE VERY FIRST BULLET  
3 THERE, THANK YOU. ONE OF THE THINGS THAT YOU AND YOUR  
4 TEAM WERE TRYING TO DO WAS TO IDENTIFY THE STRENGTHS OF  
5 TCW AND THE WEAK /-PBLGS /-S, RIGHT?

11:08AM

6 A. /TWAH\*S THIS DOCUMENT DOES, YES.

7 Q. IN ORDER TO RECOMMEND TO MANAGEMENT OF BOTH  
8 TCW AND SOCIETY /KWROE /TAEU /SKWREPB /RAL YOUR VIEWS  
9 ON HOW THEY MIGHT IMPROVE THE FIRM, RIGHT?

11:08AM

10 A. CORRECT.

11 Q. AND ONE OF THE WEAK /-PBLGS /-S THAT YOU  
12 IDENTIFIED IN THE ORGANIZATIONAL STRUCTURE IS THAT THE  
13 FIRM WAS ESSENTIALLY A /KOPBL BIN NATION OF WHAT YOU  
14 AND THE TEAM REFER TO AS BUT /TAOEBGS, RIGHT?

15 Q. WITH LIMITED COORDINATION ON /#K3 RISK  
16 MANAGEMENT, RIGHT?

11:08AM

17 A. CORRECT.

18 Q. AND A NUMBER OF THE PORTFOLIO MANAGERS  
19 IDENTIFIED THAT AS A PROBLEM, RIGHT?

20 A. YES.

11:08AM

21 Q. /SKP-S WHAT YOU /PHAEPBLTS BY THAT WAS  
22 ESSENTIALLY YOU HAD A COMPANY THAT WAS IN EFFECT A CONN  
23 FED /RAEUGZ OF ALMOST INDIVIDUAL BUSINESSES, RIGHT?

24 A. CORRECT.

25 Q. MR. GUNDLACH'S BUSINESS ON THE ONE /HAPBT,  
26 RIGHT?

11:08AM

27 MR. MADISON: OBJECTION VAGUE.

28 THE COURT: OVERRULED IF YOU DON'T UNDERSTAND

1 THE QUESTION YOU CAN --

2 THE WITNESS: I UNDERSTAND THE QUESTION GO  
3 AHEAD.

4 Q. RIGHT, PEOPLE REFER TO AS MR. /TKPW\*UPBL'S MBS  
5 GROUP?

11:09AM

6 A. RIGHT.

7 Q. AND OTHERS WOULD REFER TO IT AS MR. SPECIAL  
8 /TKPWUPBL AT /A\* OR MR. CLAM PUS'S /TKWROUP, RIGHT?

9 A. CHECKCHECK.

10 Q. AND IT'S A FACT IS THE NOT THAT AT THE TIME  
11 YOU UNDER TOOK THIS TRANSACTION MR. /TAPL MONTHS WHO  
12 RAN THE ENERGY GROUP WAS NEGOTIATING A /TEP /SRAEUGZ  
13 FROM /ST-RBGS C W WAS HE NOT?

11:09AM

14 A. HE WAS.

15 Q. AND SHORTLY AFTER YOU COMPLETED THE OKAY /WEU  
16 /SEUGZ OF MET WEST MR. /A\*T AND MR. CHAPUS FORMED A  
17 /SKUFPL CALLED /KRES /EPBT CAP /TOL PURSUANT TO A  
18 NEGOTIATED TRANSACTION WITH TCW, RIGHT?

11:09AM

19 A. CORRECT.

20 Q. SO OF THE PORTFOLIO MANAGERS THAT YOU  
21 IDENTIFIED EARLIER, MR. GUNDLACH, MR. /HA\*T,  
22 MR. CHAPUS, /PWHRAEUR THOMAS AND DIANE JAFFEE, THREE OF  
23 THEM LEFT?

11:09AM

24 A. ACTUAL I /HREU NEVER IDENTIFIED MR. THOMAS I  
25 NEVER MET WITH MR. TOMORROW /PHA /-S.

11:10AM

26 Q. SORRY /TPHR THOMAS LEFT THOUGH YOU KNEW  
27 /THAFRPBLGTS I WAS AWARE AND A HALF?

28 Q. AND YOU /KPWAO MR. /A\*TS AND MR. CHAPUS LEFT

1 THAT'S /THRAO\*U THREE RIGHT?

2 A. I'M AWARE /THAF YES.

3 Q. JAFFEE WAS THE ONLY ONE WHO ENDED UP STAYING  
4 AT THE /EPBL OF 2009, ISN'T THAT RIGHT?

5 A. THE ONLY ONE OF THE GROUP /THAP WE MET. 11:10AM

6 MR. MADISON: OBJECTION VAGUE /SWR-FRPBLGTS I  
7 DON'T KNOW WHETHER SHE'S /E STILL THERE OR NOT.

8 Q. /TKPWU ITS OTHERS ARE NOT YOU ARE AWARE OF  
9 THAT, RIGHT?

10 A. I'M AWARE OF THAT. 11:10AM

11 Q. NOW, TAKE A LOOK AT PAGE EIGHT, AGAIN PURSUANT  
12 TO THAT SAME NUMBERING SYSTEM ON THE SAME EXHIBIT 50  
13 ONE 84. AND ON THIS PAGE YOU TALK ABOUT STRATEGIC  
14 ALTERNATIVES DO YOU SEE THAT?

15 A. I DO. 11:10AM

16 Q. AND THE VERY FIRST ONE DENNIS IF WE COULD  
17 HIGHLIGHT ON THE LEFT-HAND SIDE WHERE IT SAYS  
18 RECONFIGURATION OF THE FIRM, JUST RIGHT THERE. ONE OF  
19 THE ALTERNATIVES THAT YOUR TEAM IDENTIFIED EARLY WAS  
20 THE POSSIBLE RECONFIGURATION OF THE IF I WERE, RIGHT? 11:10AM

21 A. YES.

22 Q. AND THAT'S LAID OUT SOME PRELIMINARY THOUGHTS  
23 ARE LAID OUT IN THE RECTANGLE THAT WE'VE ENLARGED ON  
24 THE SCREEN, CORRECT?

25 A. CORRECT. 11:11AM

26 Q. NOW, THE NEXT -- DENNIS IF WE COULD GO TO THE  
27 NEXT STRATEGIC ALTERNATIVE.

28 THE NEXT STRATEGIC ALTERNATIVE /THAP YOU

1 IDENTIFIED WAS THE SALE OF THE FIRM, RIGHT?

2 A. YES.

3 Q. AND YOU SAY SALE OF THE FIRM YOU MEAN SALE OF  
4 TCW, RIGHT?

5 A. CORRECT.

11:11AM

6 Q. IF WE COULD AND AS PART OF THAT YOU AND YOUR  
7 TEAM ACTUALLY CONDUCTED A PRELIMINARY VALUATION OF TCW  
8 DIDN'T /SKWRU?

9 A. I'M SORRY I WAS READING AS YOU WERE SPEAKING I  
10 APOLOGIZE.

11:12AM

11 Q. YOU AND YOUR TEAM, CONDUCTED A PRELIMINARY  
12 EVALUATION OF TCW DURING THAT TIME PERIOD DIDN'T YOU?

13 A. IT WAS AFTER THIS PRESENTATION BUT IN OUR  
14 FINAL PRESENTATION, YES.

15 Q. TAKE A LOOK AT EXHIBIT 5269.

11:12AM

16 I'M GOING TO OFFER EXHIBIT -- THIS  
17 EXHIBIT 5269 /KWRAOURPBS PURSUANT TO THE BUSINESS  
18 RECORDS AFFIDAVIT THAT IS CONTAINED IN YOUR BINDER AS  
19 EXHIBIT 6026.

20 THE COURT: ANY OBJECTION.

11:12AM

21 MR. MADISON: JUST FOUNDATION WITH THIS  
22 WITNESS, YOUR HONOR.

23 THE COURT: WELL, IF I CAN ADMIT IT.

24 MR. MADISON: LET ME CHECK.

25 THE COURT: IT MAY GO TO THE SCOPE OF HIS  
26 TESTIMONY. -- AND WHAT'S THE EXHIBIT NUMBER FOR THE  
27 BUSINESS RECORDS AFFIDAVIT.

11:13AM

28 MR. BRIAN: 6026 AND I WOULD REPRESENT TO THE

1 COURT THAT THE BATES STAMP /TPAULSZ WITHIN THE BATES  
2 STAMP RANGES.

3 MR. MADISON: NO OBJECTION TO THE AUTHENTICITY  
4 UNDER THE AFFIDAVIT.

5 THE COURT: ALL RIGHT. BOTH EXHIBITS WILL BE 11:13AM  
6 ADMITTED SUBJECT TO FURTHER FOUNDATION ON EXHIBIT 5269.  
7 BUT EXHIBIT 6 OH TWO SIX WON'T BE ADMITTED WITHOUT  
8 OBJECTION AND IS EXHIBIT 5269 IN, YOUR HONOR.

9 THE COURT: YEAH, SUBJECT TO PROVE FOUNDATION.  
10 IT'S ADMITTED AS TO AUTHENTICITY. 11:14AM

11 MR. BRIAN: WELL, THE CERTIFICATE GOES TO  
12 BUSINESS RECORDS NOT JUST AWE 10 SIX AT THIS.

13 THE COURT: I UNDERSTAND, WELL, YOU CAN  
14 QUESTION THE WITNESS ABOUT IT.

15 Q. BY MR. BRIAN: WELL, TAKE A LOOK AT 5269. THE 11:14AM  
16 INDIVIDUAL, THIS IS AN E-MAIL FROM A HIGH MAN SACK /EPB  
17 /A /TPHA TO AMONG OTHERS CHAT HOME AND SOME OTHERS  
18 CORRECT?

19 A. YES.

20 Q. THESE ARE PEOPLE WORKING WITH /OU THIS PROJECT 11:14AM  
21 CORRECT?

22 A. CORRECT.

23 Q. AND YOU UNDERSTOOD THAT THEY PREPARED THE  
24 DOCUMENTS THEY PREPARED PURSUANT TO THE ORDINARY COURSE  
25 OF BUSINESS AS PART OF YOUR /PR-PBLG /SKWREBGT RIGHT? 11:14AM

26 MR. MADISON: ACTION VAGUE AS TO WHICH  
27 DOCUMENTS.

28 THE COURT: /OEFRLDZ.



1 THE WITNESS: CORRECT.

2 MR. BRIAN: I'M /SOFR 5269, YOUR HONOR.

3 THE COURT: IT WILL BE ADMITTED. I'M NOT SURE  
4 WHERE WE'RE GOING BUT GO AHEAD.

5 MR. BRIAN: CAN WE PUT UP 5269 PAGE ONE PLEASE  
6 /-FRPLT CAN WE ENLARGE RIGHT IN THE MIDDLE.

11:14AM

7 MR. MADISON: OBJECTION OBJECTION WITNESSES  
8 NAME ISN'T ON IT.

9 MR. BRIAN: I'M GOING TO ASK A QUESTION ABOUT  
10 ADMITTED DOCUMENT.

11:15AM

11 THE COURT: I'M GOING TO ALLOW HIM TO INQUIRE  
12 GO AHEAD.

13 Q. BY MR. BRIAN: DO YOU SEE WHERE IT STATES ALL  
14 VALUATION CONCLUSIONS ASSUME ADEQUATE STRUCTURE  
15 RETENTION FOR HIGH LIFE, THE PRELIMINARY VALUATION  
16 LAYING FOR HIGH LIFE IS SEVEN TO 800 NIL I DON'T KNOW  
17 DO YOU SEE THAT?

11:15AM

18 A. YOU ARE REFERRING TO THE NUMBERS IN /PROPBLG  
19 /KETS.

20 Q. YES?

11:15AM

21 A. YES.

22 Q. AND IS THAT CONSISTENT WITH YOUR RECOLLECTION  
23 OF THE PRELIMINARY EVALUATION RANGE FOR TCW THAT YOUR  
24 TEAM CAME UP WITH IN OR ABOUT SEPTEMBER OF 2009?

25 A. I ACTUALLY AM LOOKING AT THIS FOR THE FIRST  
26 TIME. I WOULD BASICALLY BE -- WHATEVER OUR FINAL  
27 PRESENTATION BASICALLY HAD WOULD SUPPORT OF OUR CONN  
28 /TKHRAOUGZ ULTIMATELY WAS SO I DON'T KNOW HOW THAT

11:15AM

1 COMPARED TO THIS NUMBER.

2 Q. YOU ALSO GOT A PRELIMINARY RANGE FROM /HAOUL  
3 /HREU HAND /HROEBG CAN I DID YOU NOT?

4 MR. MADISON: OBJECTION VAGUE /TKAOZ WHEN AND  
5 NOT.

11:16AM

6 THE COURT: L LET'S GET AN ANSWER TO THE  
7 QUESTION I'LL OVERRULE THE OBJECTION JUST A /KWR-RPB  
8 DID YOU GET A /SRAL SITUATION FROM /HAOUL LOS ANGELES  
9 HAND LOW CAN I.

10 THE WITNESS: I ACTUALLY DON'T --

11:16AM

11 THE COURT: IF YOU DON'T KNOW THEN YOU DON'T  
12 KNOW.

13 Q. BY MR. BRIAN: TAKE A LOOK AT EXHIBIT 50 FOUR  
14 47, PLEASE.

15 I'D LIKE YOU TO TURN TO PAGE 2. THERE'S  
16 AN E-MAIL FROM MR. /SKWRESZ /RAF /SREUFP TO YOU DATED  
17 NOVEMBER 4TH 2009, DO YOU SEE THAT?

11:16AM

18 A. YES I DO.

19 Q. AND /SKWRESZ /RAF /SREUFP WORKED FOR /HAOUL  
20 /HREU HAND LOW CAN I DID HE NOT /-FRPLT HE DID?

11:17AM

21 Q. AND /HAOL WELL HAND LOW KEY WERE THE  
22 INVESTMENT BANK CUSTOMERS REPRESENTING MET WEST IN THIS  
23 TRANSACTION WERE THEY NOT?

24 A. THEY WERE.

25 Q. AND READ TO YOURSELF THE VERY FIRST PARAGRAPH  
26 OF THAT E-MAIL FROM /SKWRESZ /AF /SREUPBLG TO GARY.  
27 HAVE YOU HAD A CHANCE TO LOOK AT THAT?

11:17AM

28 A. YES I HAVE.

1 Q. AND BY THE WAY I RECEIVED THIS E-MAIL FROM  
2 MR. /RA\*F IN THE OR /TPHAEUR /REU COURSE OF BUSINESS  
3 AROUND NOVEMBER /TPAUR THIS 2000 UPON /TPHAEUPBL DID  
4 YOU NOT /-FRPLT CORRECT?

5 Q. I WOULD OFFER EXHIBIT 50 FOUR 47, YOUR HONOR? 11:18AM

6 MR. MADISON: OBJECTION HEARSAY.

7 THE COURT: IT WILL BE ADMITTED.

8 Q. BY MR. BRIAN: IF WE COULD DISPLAY PAGE 2 OF  
9 EXHIBIT 50 FOUR 47. AND IF WE COULD HIGHLIGHT OR  
10 ENLARGE THAT FIRST PARAGRAPH, ^ BLOW ^ BELOW THE NAME  
11 GARY. AND IN THAT E-MAIL IN THE THIRD LINE /HAOL LOS  
12 ANGELES HAND LOW CAN I SAID OUR EVALUATION OF T /KOE  
13 WAS IN THE 700 TO \$900 RANGE DO YOU SEE THAT CHECKCHECK  
14 T DASH /KOE?

15 Q. AND YOU UNDERSTOOD THAT T /KOE REFERRED TO 11:18AM  
16 TCW?

17 A. YES.

18 Q. AND YOU UNDERSTOOD HE WASN'T TALKING ABOUT THE  
19 700 AND /TPHAEUPBL HUNDREDS YOU UNDERSTOOD ^ IT  
20 WAS ^ TESTIFIES 700 MILLION TO 900 MILLION CORRECT? 11:18AM

21 A. Y CORRECT.

22 Q. DID MR. STERN IN ANY OF YOUR CONVERSATIONS  
23 EVER, ^ SEPTEMBER ^ ACCEPT ^ EXCEPT, OCTOBER, NOVEMBER,  
24 DECEMBER, 2009, EVER TELL YOU THAT MR. GUNDLACH HAD  
25 OFFERED TO BUY TCW FOR 700 MILLION DOLLARS? 11:19AM

26 A. I MAY HAVE BEEN VAGUELY AWARE OF THAT BUT  
27 NOTHING SPECIFIC.

28 Q. TO YOUR KNOWLEDGE, DID MR. STERN OR ANYBODY AT

1 TCW EVER GIVE MR. GUNDLACH A COUNTER OFFER?

2 A. NOT THAT I'M AWARE OF.

3 Q. TAKE A LOOK AT EXHIBIT 5178 IN YOUR BINDER.  
4 IS /TKOEUF DID SIR?

5 A. I DO.

11:19AM

6 Q. YOU TESTIFIED IN RESPONSE TO MR. MADISON'S  
7 QUESTIONS THAT EARLY IN THE PROJECT YOUR TEAM REQUESTED  
8 INFORMATION DO YOU RECALL THAT TESTIMONY GENERALLY?

9 A. I DO.

10 Q. AND THIS DOCUMENT 5178 IS A PROJECT HIGH LIFE  
11 INFORMATION REQUEST THAT YOUR TEAM ASSEMBLED AS PART OF  
12 THIS PROJECT, CORRECT?

11:19AM

13 MR. MADISON: OBJECTION. FOUNDATION.

14 THE COURT: SUSTAINED.

15 Q. BY MR. BRIAN: DO YOU RECOGNIZE THIS DOCUMENT  
16 AS BEING PREPARED IN THE ORDINARY COURSE OF BUSINESS?

11:20AM

17 A. NOT BY CITIGROUP, NO.

18 Q. I'M GOING TO OFFER THIS -- WELL, LET ME ASK  
19 YOU THIS: THE DOCUMENT WAS RECEIVED BY CITIGROUP WAS  
20 IT NOT?

11:20AM

21 MR. MADISON: OBJECTION FOUNDATION.

22 THE COURT: I HAVE NO IDEA.

23 MR. BRIAN: I'LL OFFER IT PURSUANT TO 6026  
24 THEN, YOUR HONOR, AS A BUSINESS RECORD RECEIVED AND  
25 MAINTAINED BY CITIGROUP.

11:20AM

26 MR. MADISON: OBJECTION FOUNDATION.

27 THE COURT: SUSTAINED.

28 MR. BRIAN: I'M OFFERING PURSUANT TO THE

1 AFFIDAVIT, YOUR HONOR.

2 THE COURT: THAT'S 6026 YOU SAID?

3 MR. BRIAN: 6026 IS THE BUSINESS RECORDS  
4 AFFIDAVIT.

5 MR. BRIAN: AND I WOULD REPRESENT TO THE COURT  
6 THAT THE BATES STAMPS ARE WITHIN THE RANGE OF THE  
7 INDICATED ON.

11:21AM

8 MR. MADISON: IF YOU ARE GOING TO CHANGE YOUR  
9 RULING I'D LIKE AN OPPORTUNITY TO BE HEARD, YOUR HONOR,  
10 THANK YOU.

11:21AM

11 THE COURT: YOU CAN APPROACH ON THIS, COME UP.

12

13 (THE FOLLOWING PROCEEDINGS WERE  
14 HELD AT SIDEBAR:)

15

11:21AM

16 THE COURT: IS THIS DECLARATION PROVIDED IN  
17 RESPONSE TO A TRIAL SUBPOENA OR DURING THE COURSE OF  
18 DISCOVERY.

19 MR. BRIAN: I MAY NEED HELP. I THINK.

20 MR. MADISON: TRIAL. IT HAS TO BE TRIAL  
21 BECAUSE IT'S JULY.

11:22AM

22 MR. BRIAN: MAY I APPROACH -- I CAN GET.

23 THE COURT: I GUESS MY CONCERN IS YOU KNOW, I  
24 BUSINESS RECORD EXCEPTION WILL BRING CERTAIN DOCUMENTS  
25 IN BUT DID DOESN'T ALLEVIATE THE CONCEPT OF DOUBLE  
26 HEARSAY AND IF IT'S A RECORD OF A TRANSACTION OR OF  
27 SOME EVENT THAT'S ONE THING BUT WHAT YOU ARE TRYING TO  
28 DO IS BRING IN THE HEARSAY STATEMENTS OF THE PERSON

11:22AM

1 THAT WROTE THE E-MAIL AND I THINK IT'S A SECOND LEVEL  
2 OF HEARSAY.

3 MR. BRIAN: IT CAN BE, YOUR HONOR, BUT THE LAW  
4 IS CLEAR THAT YOU CAN HAVE A BUSINESS RECORD OF A  
5 DOCUMENT THAT YOU RECEIVED IN THE ORDINARY COURSE OF  
6 /SKP-BS IT COMES IN AS A BUSINESS RECORD EXCEPTION.  
7 FOR EXAMPLE, THERE'S CORRESPONDENCE BETWEEN COMPANIES  
8 ORDER FORMS THINGS LIKE THAT THAT CLEARLY COME IN.

11:22AM

9 THE COURT: THEY /KPHR IN AUTOMATICALLY  
10 BECAUSE IT'S THE FACT OF ITS MAINTAINED IN THE ORDINARY  
11 COURSE OF THE BUSINESS AS THE PRODUCT OF THE BUSINESS.  
12 THIS IS A SECOND LEVEL OF HEARSAY.

11:23AM

13 MR. BRIAN: WELL, I'LL GET IT IN THROUGH TCW  
14 THEN THAT'S FINE.

15 THE COURT: WELL, THAT'S MY POINT AND A LOT OF  
16 THIS YOU BOTH ARE BRINGING THINGS WITH THIS WITNESS  
17 THAT REALLY ISN'T THE ONE AT THAT BRING IN IT.

11:23AM

18 THE COURT: I THINK IT'S A BETTER APPROACH.  
19 THANKS.

11:23AM

20  
21 (THE FOLLOWING PROCEEDINGS  
22 WERE HELD IN OPEN COURT IN  
23 THE PRESENCE OF THE JURY:)

24  
25 Q. BY MR. BRIAN: COULD YOU LOOK AT EXHIBIT 52 OH  
26 FIVE IN THAT BIG BLACK BINDER, SIR.

11:23AM

27 THIS IS AN E-MAIL THAT YOU PREPARED TO  
28 ONE OF YOUR COLLEAGUES ON OR ABOUT AUGUST LENGTH, 2009

1 CORRECT?

2 A. CORRECT.

3 Q. AND THAT WAS PREPARED IN THE ORDINARY COURSE  
4 OF BUSINESS BY YOU AS PART OF THIS PROJECT WAS IT NOT?

5 A. IT WAS.

11:24AM

6 MR. BRIAN: I'M OFFER 5205, YOUR HONOR.

7 MR. MADISON: NO OBJECTION.

8 THE COURT: IT WILL BE ADMITTED.

9 Q. BY MR. BRIAN: COULD WE DISPLAY 5205, PLEASE.

10 AND YOU WROTE IN YOUR E-MAIL CAN WE DO A  
11 SCREEN OF THE MAJOR MBS, MF AND SEPARATE ACCOUNT  
12 MANAGERS DO YOU SEE THAT?

11:24AM

13 A. I DO.

14 Q. AND THEN YOU WROTE THAT THE GOAL IS TO FIND  
15 SOME NAMES CAPABLE OF REPLACING GUNDLACH YOU WROTE  
16 THAT, CORRECT?

11:24AM

17 A. I DID.

18 Q. AND YOU WROTE THIS E-MAIL IN RESPONSE TO A  
19 REQUEST BY MR. STERN TO BEGIN LOOKING FOR REPLACEMENTS  
20 TO MR. GUNDLACH, RIGHT?

11:24AM

21 A. I BELIEVE THAT TO BE THE CASE.

22 Q. AND THEN YOU SENT MR. STERN THE NAMES OF  
23 POTENTIAL MANAGERS ON ABOUT A WEEK LATER ON AUGUST  
24 19TH, 2009, DID YOU NOT?

25 A. I RECALL WE SENT HIM A LIST I'M NOT SURE IF  
26 THAT'S THE DATE I'M SURE YOU ARE GOING TO TELL ME.

11:25AM

27 Q. MAY I APPROACH, YOUR HONOR, AND SHOW HIM FROM  
28 PAGE 46 OF HIS DEPOSITION LINE 22 TO 47 LINE SEVEN --

1 ACTUALLY I'LL JUST PROPOSE TO READ IT IF THAT'S  
2 ACCEPTABLE DO YOU HAVE A COPY OF THE DEPOSITION OR  
3 SHOULD I APPROACH?

4 THE COURT: WE DON'T HAVE IT IF THERE'S NO  
5 OBJECTION YOU CAN READ IT IF THERE'S AN OBJECTION YOU  
6 CAN USE IT TO REFRESH HIS RECOLLECTION I DON'T HAVE A  
7 COPY OF THE TRANSCRIPT, EITHER.

11:26AM

8 MR. MADISON: IF I COULD HAVE ONE MOMENT, YOUR  
9 HONOR.

10 MR. MADISON: YOUR HONOR, I WOULD JUST ASK  
11 THAT MR. BRIAN ^ GIVEN ^ BEGIN -- JUST THAT HE  
12 ^ GIVEN ^ BEGIN AT LINE 12 OF PAGE 46 AND ALSO THERE'S  
13 AN EXHIBIT IN THE TESTIMONY THAT MR. BRIAN IS GOING TO  
14 READ THAT IS NOT THE EXHIBIT HE'S /KEUS PLAYING.

11:27AM

15 MR. BRIAN: I PROPOSE TO DO IT UPON  
16 DIFFERENTLY, YOUR HONOR, IF I MAY APPROACH MY  
17 COLLEAGUES HERE.

11:27AM

18 THE COURT: YOU CAN DO WHAT YOU WANT JUST DO  
19 IT. CHECKCHECK SPELLING M A Y A N K, S A X E N A MAYBE  
20 FOR SOMETHING?

11:27AM

21 Q. BY MR. BRIAN: WHEN YOU -- LET ME ASK YOU THIS  
22 QUESTION SIR I'LL WITHDRAW THAT /KWROURPBSZ, UNTIL WE  
23 FIND IT?

24 THE COURT: ALL RIGHT.

25 Q. BY MR. BRIAN: GO BACK TO EXHIBIT -- WELL, I  
26 ACTUALLY WANT TO SHOW YOU EXHIBIT 1833.

11:28AM

27 1833 IS ANOTHER COPY OF YOUR E-MAIL TO  
28 MR. /RA POLE ON OCTOBER 5TH WITH HIS RESPONSE TO YOU,



1 IS THE NOT?

2 A. YES IT IS.

3 Q. JUST FOR /-LT RECORD THIS IS IN EVIDENCE AS  
4 2156, YOUR HONOR?

5 MR. BRIAN: I'LL OFFER 1833, YOUR HONOR,  
6 CHECKCHECK THAT WAS MADISON.

11:28AM

7 THE COURT: IT WILL BE ADMITTED. JUST ONE  
8 MOMENT.

9 MR. MADISON: I'M SORRY, YOUR HONOR, PART OF  
10 THE -- THE MAJORITY OF IT IS BUT THERE'S AN DIFFERENT  
11 E-MAIL ON TOP.

11:28AM

12 THE COURT: 1833 WILL BE ADMITTED GO AHEAD.

13 Q. BY MR. BRIAN: LET'S DISPLAY THE FIRST PAGE OF  
14 1833, PLEASE. AND IF WE COULD HIGHLIGHT OR ENLARGE  
15 MR. /RA POLE'S RESPONSE. CHECKCHECK R I P O L L HE  
16 WROTE TO YOU THANKS /TKPWAR /REU I THINK THIS IS A FAIR  
17 VISION OF WHERE WE /STAPBLDZ AND WHERE WE SHOULD GO  
18 THAT'S WHAT HE /WRAOET DID HE NOT?

11:29AM

19 A. YES HE DID.

20 Q. AND YOU FORWARDED THE RESPONSE TO MR. STERN IN  
21 EXHIBIT 5339 WHICH IS IN YOUR BINDER, DID YOU NOT YOU  
22 CAN TAKE A LOOK AT THAT.

11:29AM

23 A. THAT'S THIS BINDS /TKER.

24 Q. NO THE SAME BINDER 5339.

25 A. YES.

11:29AM

26 Q. NOW, YOU ACTUALLY HAD A TARGET DATE FOR  
27 CONCLUDING THE TRANSACTION ORIGINALLY OF OCTOBER 19TH,  
28 DID YOU NOT?

1 A. I DON'T REMEMBER.

2 Q. TAKE A LOOK AT EXHIBIT 53 OH THREE. 53 OH  
3 THREE AT PAGE ONE IS AN E-MAIL AT THE TOP FROM YOU TO  
4 YOUR COLLEAGUE MY /KWRAPB /SABGS SON RE/SPOPLDZ TO GO  
5 AN E-MAIL THAT PERSON SENT TO YOU, CORRECT.

11:30AM

6 A. IT'S AN E-MAIL FROM MY /KWRABG TO ME AND  
7 OTHERS, YES.

8 Q. YES. AND THESE E-MAILS WERE RECEIVED AND SENT  
9 IN THE ORDINARY COURSE OF BUSINESS AS PART OF THIS  
10 WORK, CORRECT?

11:30AM

11 A. CORRECT.

12 Q. I WOULD OFFER EXHIBIT 53 OH THREE, YOUR HONOR?  
13 THE COURT: ANY OBJECTION.

14 MR. MADISON: NO, YOUR HONOR.

15 THE COURT: IT WILL BE ADMITTED.

11:31AM

16 Q. BY MR. BRIAN: LET'S DISPLAY PAGE ONE DENNIS  
17 OF 53 OH THREE. AND IF WE COULD GO DOWN TO -- IS MY  
18 /ABGS /SABGS SON A MAN OR WOMAN?

19 A. MY /KWRABG IS A MAN.

20 Q. OKAY. COULD WE GO DOWN TO MR. /SABGS /OPB'S  
21 E-MAIL. IN THE VERY FIRST BULLET IF WE COULD ENLARGE  
22 THAT. DO YOU SEE WHERE IT SAYS /HAOUL /HREU HAND ASKED  
23 REGARDING THE SIGNIFICANCE OF OCTOBER 19TH DATE AND  
24 WHAT IS THE EXPECTATION BY THAT DATE. WE MENTION THAT  
25 THAT'S THE DATE OF BOARD MEETING FOR OUR CLIENT AND  
26 WE'VE BEEN ASKED TO AIM FOR SIGNING A DEFINITIVE  
27 AGREEMENT BY THAT DATE DO YOU SEE THAT SIR?

11:31AM

11:31AM

28 A. I DO.

1 Q. AND AT THAT POINT WHEN YOU SAY SIGNING OR WHEN  
2 HE SAID SIGNING THE DEFINITIVE AGREEMENT YOU UNDERSTOOD  
3 THAT THAT WAS THE AGREEMENT FOR THE ACQUISITION OF MET  
4 WEST CORRECT?

5 A. /STKPWHREBGT AND OBVIOUSLY IT TOOK LONGER THAN 11:32AM  
6 YOU HAD ANTICIPATED THAT DATE OR SOMEONE HAD  
7 ANTICIPATED BY THAT DATE CORRECT.

8 A. WE DID NOT ANNOUNCE BY THAT DATE.

9 Q. BUT AS OF THE DATE OF EXHIBIT 53 OH THREE THE  
10 PLAN OR THE HOPE WAS TO EXECUTE THIS BY OCTOBER 19TH 11:32AM  
11 2009 CORRECT?

12 A. IT APPEARS THAT'S WHAT THE E-MAIL SAYS, YES.

13 Q. AND IT /TROEFRS A BOARD MEETING OF OCTOBER  
14 19TH WAS THAT A /PWOERT /PHAOEDING AS YOU UNDERSTOOD IT  
15 OF TCW OF SOCIETY /KWROE /TAEU /SKWREP B /RAL? 11:32AM

16 A. I ACTUALLY DO NOT RECALL.

17 Q. YOU ATTENDED A MEETING WITH THE /TKPREPB /-FP  
18 IN PARIS ON OR ABOUT OCTOBER 18TH DID YOU NOT SIR?

19 A. I DID ATTEND A MEETING IN PARIS I HAVE NO IDEA  
20 IF IT WAS OCTOBER 18TH. CHECKCHECK H O U L I H A N. 11:32AM

21  
22 Q. NOW, WHEN YOU MADE YOUR RECOMMENDATION TO TAKE  
23 A PRO ACTIVE APPROACH AND TERMINATE MR. GUNDLACH, DID  
24 YOU RECOMMEND THAT TCW CONSIDER SELLING OR SOCIETY  
25 /TKPWEPB /RAL CONSIDER SELLING TCW TO MR. GUNDLACH. 11:33AM

26 A. NO.

27 Q. DID YOU RECOMMEND THAT TCW APPROACH  
28 MR. GUNDLACH TO NEGOTIATE A SEPARATION?

1 A. NO.

2 Q. DID MR. STERN TELL YOU THAT THAT WAS AN OPTION  
3 ON THE TABLE?

4 A. NO.

5 Q. NOTHING FURTHER?

11:33AM

6 THE COURT: ANYTHING FURTHER, MR. MADISON?

7 MR. MADISON: VERY BRIEFLY, YOUR HONOR.

8

9

10 REDIRECT EXAMINATION

11:33AM

11 BY MR. MADISON:

12 Q. MR. SHEDLIN, MR. BRIAN ASKED YOU ABOUT AN  
13 E-MAIL ABOUT YOUR TEAM'S PRELIMINARY VALUATION OF TCW?

14 A. YES, I DO.

15 Q. AND I BELIEVE YOUR RESPONSE WAS THAT IN YOUR  
16 FINAL REPORT THAT VALUATION WOULD BE ADDRESSED?

11:34AM

17 A. CORRECT.

18 Q. AND IF YOU COULD JUST LOOK IN MR. BRIAN'S  
19 BINDER, THE ONE HE HANDED UP TO YOU AT 5015 AND TELL US  
20 WHAT THAT IS, PLEASE?

11:34AM

21 A. I BELIEVE THIS WAS A COPY OF OUR FINAL REPORT.

22 Q. OKAY. AND IF YOU LOOK AT PAGE 5015-28. AND  
23 IF YOU JUST LOOK AT THAT TO YOURSELF PLEASE AND THEN  
24 I'LL ASK YOU SOME QUESTIONS. JUST LET US KNOW WHETHER  
25 YOU HAVE HAD A MOMENT TO TAKE A LOOK AT THAT, PLEASE.

11:35AM

26 A. OKAY.

27 Q. DID THE FINAL WORK THAT YOU COMPLETED CONTAIN  
28 AN EVALUATION?

1 A. YES IT DID.

2 Q. WHAT WAS THE AMOUNT?

3 A. WELL, THERE'S A RANGE OF VALUES HERE BUT THE  
4 CONCLUSION WAS IT WAS SOMEWHERE BETWEEN 900 AND A  
5 BILLION TWO.

11:35AM

6 Q. AND WERE THERE SPECIFIC STATEMENTS ABOUT A  
7 BILLION DOLLARS BEING A DEFENSIBLE VALUE FOR THE TERM?

8 A. YES, THAT'S THE TITLE OF THE PAGE.

9 Q. NOW, MR. BRIAN ASKED YOU ABOUT WHETHER YOU HAD  
10 HEARD THAT MR. GUNDLACH HAD OFFERED TO BUY THE FIRM DO  
11 YOU RECALL THAT, TO BUY TCW?

11:35AM

12 A. I DO.

13 Q. AND IS THERE A DIFFERENCE BETWEEN BUYING A  
14 HUNDRED PERCENT OF THE FIRM AND BUYING SOMETHING LESS  
15 THAN THAT?

11:35AM

16 A. SURE.

17 Q. SO WHEN SOMEBODY SAYS I OFFERED TO BUY THE  
18 FIRM, WHAT DID YOU UNDERSTAND MR. BRIAN TO MEAN BY  
19 THAT?

20 A. I INTERPRETED HIS QUESTION TO BE A HUNDRED  
21 PERCENT OF THE FIRM FOR 700 MILLION DOLLARS.

11:36AM

22 Q. DID ANYONE EVER TELL YOU THAT MR. GUNDLACH HAD  
23 OFFERED TO BUY THE ENTIRE FIRM A HUNDRED PERCENT?

24 A. NO.

25 Q. DID YOU EVER HEAR THAT MR. GUNDLACH HAD  
26 ACTUALLY OFFERED TO BUY 51 PERCENT OF THE FIRM FROM THE  
27 OWNER SOC-JEN?

11:36AM

28 A. NO.

1 Q. DID YOU HEAR THAT /PHR-PB GUNDLACH AS TO  
2 ACTUALLY EVEN AS TO 51 PERCENT HE WANTED SOC-JEN TO  
3 FINANCE THE VAST MAJORITY OF THAT?

4 A. I WAS NOT AWARE OF ANY OF THE DETAILS OF THAT  
5 TRANSACTION.

11:36AM

6 Q. CERTAINLY THAT /TRAPBS /ABGS WOULD NOT BE THE  
7 /AEUP /SAZ SOMEONE COMING IN AND PAYING FOR A HUNDRED  
8 PERCENT OF THE FIRM AND ACQUIRING A HUNDRED PERCENT,  
9 WOULD IT?

10 A. CORRECT.

11:36AM

11 Q. WELL, WHAT DID MR. GUNDLACH SAY TO YOU WHEN --  
12 WELL, AND THAT KIND OF TRANSACTION WOULD HAVE INVOLVED  
13 MR. /STKPW\*UPBD /SROBG /SKWREPBE BEING PARTNERS, RIGHT?

14 A. IF THERE WAS ONLY 51 PERCENT, CORRECT.

15 Q. AND SOC-JEN WOULD GO /TPWR BEING THE OWNER OF  
16 THE FIRM TO BEING A MINORITY SHARE /HOERLD OF WHICH  
17 MR. GUNDLACH WOULD BE THE --

11:37AM

18 MR. BRIAN: OBJECTION ASSUMES FACTS NOT IN  
19 EVIDENCE.

20 THE COURT: SUSTAINED.

11:37AM

21 Q. BY MR. MADISON: WELL, TELL US WHAT  
22 MR. GUNDLACH SAID TO YOU IN YOUR JULY INTERVIEW OF HIM  
23 ABOUT NEGOTIATING SOME KIND OF SEPARATION FROM TCW?

24 A. THAT WAS NOT MENTIONED TO US.

25 Q. HE DIDN'T SAY A WORD ABOUT THAT DID HE?

11:37AM

26 MR. BRIAN: OBJECTION LEADING ARGUMENTATIVE.

27 THE COURT: SUSTAINED /-FRPLT PLEASE ANSWER  
28 YOUR QUESTION.

1 Q. BY MR. MADISON: HE DIDN'T SAY ANYTHING ABOUT  
2 THAT AT ALL?

3 MR. BRIAN: OBJECTION SAME OBJECTIONS.

4 THE COURT: SUSTAINED.

5 Q. BY MR. MADISON: WELL, WHAT IF ANYTHING DID HE  
6 SAY ABOUT HIM HAVING SOME BINDING CONTRACT WHERE HE HAD  
7 TO STAY AT TCW FOR SOME /PERT OF YEARS?

11:37AM

8 A. THERE WAS NO DISCUSSION OF HIS EMPLOYMENT  
9 ARRANGEMENTS IN OUR MEETING.

10 Q. AND IF SOMEONE WERE TO BUY A FIRM WHERE THEY  
11 BOUGHT 51 PERCENT AND THEN THE MAJORITY OF THAT /AOEFB  
12 /WAOZ FINANCED BY THE SELL /HRER, WHAT REMEDIES WOULD  
13 THE SELL /HRER HAVE IF THE BUYER WALKED AWAY FROM IT?

11:37AM

14 MR. BRIAN: OBJECTION /A /SAOUPLGZ FACTS NOT  
15 IN EVIDENCE.

11:38AM

16 THE COURT: SUSTAINED.

17 Q. BY MR. MADISON: NOW, ARE YOU FAMILIAR WITH  
18 THE TERM NONE RECOURSE IN YOUR BUSINESS?

19 A. YES.

20 Q. CAN YOU TELL /WHAUS THAT MEANS?

11:38AM

21 A. NONE RECOURSE /TPHAOEPBS THAT LIABILITY FOR  
22 WHATEVER WE'RE TALKING ABOUT DOESN'T /STKPW BACK TO THE  
23 INDIVIDUAL.

24 Q. SO THERE WOULD NOT BE ANY REMEDY ^ OTHER  
25 THAN ^ OWNER TO LOOK TO THE ASSETS OF THE FIRM?

11:38AM

26 A. CORRECT.

27 Q. IF THERE WERE A DEFAULT?

28 A. CORRECT.

1 Q. NOW, MR. BRIAN ASKED YOU A SERIES OF QUESTIONS  
2 ABOUT YOUR QUOTE UNQUOTE SUCCESS FEE OR TRANSACTION  
3 FEE. AND HE WAS ASKING YOU ABOUT A DRAFT RETENTION  
4 AGREEMENT. DID YOU EVER SEE THAT DRAFT ENGAGEMENT  
5 LETTER, TO YOUR KNOWLEDGE?

11:38AM

6 A. I'M SURE I REVIEWED IT BEFORE IT WAS PUT IN  
7 FRONT OF THE CLIENT ALTHOUGH TO BE PERFECTLY HONEST I  
8 DON'T KNOW IF IT WAS EVER DELIVERED TO THE CLIENT.

9 Q. OKAY. AND THEN WITH REGARD TO THE TRANSACTION  
10 FEE, WAS THERE ANY LANGUAGE IN THE RETENTION  
11 /TKPWRAOEPLT ABOUT TERMINATING MR. GUNDLACH OR ANYONE  
12 ELSE AS BEING A CONTINUE TO RECEIVING A FEE?

11:39AM

13 A. NO.

14 Q. AND SO FOR EXAMPLE, IF MR. GUNDLACH HAD LEFT  
15 AND CITIGROUP HAD ACHIEVED A NEW GROUP FOR TCW, WOULD  
16 THE FEE HAVE BEEN PAID?

11:39AM

17 A. YES.

18 Q. AND IF MR. GUNDLACH HAD LEFT AND CITIGROUP  
19 HADN'T BEEN ABLE TO COME UP WITH THE NEW FIRM TO  
20 REPLIES, WOULD THE FEE BE PAID?

11:39AM

21 A. NO.

22 Q. WAS THE TRANSACTION FEE PAID, TO YOUR  
23 KNOWLEDGE?

24 A. I BELIEVE IT WAS.

25 Q. AND THAT WAS BECAUSE CITIGROUP FOUND MET WEST  
26 AND NEGOTIATED THE -- OR WAS ABLE TO NEGOTIATE THAT  
27 TRANSACTION?

11:39AM

28 A. CORRECT.



1 Q. IN THE NEGOTIATIONS WITH MET WEST, WE SAW OR  
2 HEARD SOME TESTIMONY ABOUT AN EVALUATION THAT  
3 APPARENTLY THERE BANK CUSTOMERS HAD ADVANCED IN THE  
4 NEGOTIATIONS, DO YOU RECALL THAT?

5 A. I DO.

11:40AM

6 Q. AND WITHOUT GETTING TOO MUCH INTO THE WEEDS  
7 ABOUT THE TERMS OF THE NEGOTIATION, /-LDZ SOMEONE IN  
8 MET WEST'S ^ POSSESSION ^ POSITION WANT TO PLACE A HIGH  
9 VALUE ON TCW OR A LOWER VALUE?

10 A. A LOWER VALUE.

11:40AM

11 Q. AND WAS THAT BECAUSE THERE CONSIDERATION WOULD  
12 GO UP OR DOWN DEPENDING ON THAT?

13 A. THEY WERE TAKING BACK EQUITY IN THE FIRM SO  
14 OBVIOUSLY THE LOWER THE VALUE THE MORE OKAY /WEUT AT  
15 THIS FOR A GIVEN DOLLAR AMOUNT THEY WOULD RECEIVE.

11:40AM

16 Q. NOW, AT THE /EBLD OF THE DAY TOE MATTER WHAT  
17 ANY CONSULTANT TELLS YOU ABOUT WHAT SOMETHING HAVE YOU  
18 IS WORTH, THE SELLER GETS TO DECIDE WHETHER OR NOT TO  
19 SELL, RIGHT?

20 A. CORRECT.

11:40AM

21 Q. AND TO YOUR KNOWLEDGE, AT ANY TIME IN 2009 DID  
22 SOC-JEN INDICATE THAT IT WANTED TO TELL TCW TO ANYONE?

23 A. /KWRAUPBDZ YOUR INITIAL ENGAGEMENT WHICH HAD  
24 IN THE H F P THAT LAID OUT AS A POSSIBILITY, WE DID NOT  
25 BELIEVE THAT IT COULD ACTUALLY BE /TPHREURB /-D SO  
26 AFTER THAT RECOMMENDATION THERE WAS NO DISCUSSION ABOUT  
27 THAT.

11:41AM

28 Q. AND TO TODAY, THREE YEARS LATER, TWO YEARS

1 LATER EXCUSE ME. DO YOU KNOW WHETHER SOC-JEN STILL  
2 OWNS A MAJORITY OF TCW?

3 A. YES, THEY DO.

4 Q. WERE YOU INVOLVED IN ANY OF THE NEGOTIATIONS  
5 WITH /PWHRAEUR THOMAS, MARK /A\*T AND JOHN MARK /KHAP  
6 PUS ABOUT YOUR BUSINESS UNITS?

11:41AM

7 A. AT THE TIME OF THERE DEPARTURE.

8 Q. YES, SIR?

9 A. NO I WAS NOT.

10 Q. AND DO YOU KNOW WHEN THOSE DEPARTURES AND  
11 THOSE NEGOTIATIONS OCCURRED?

11:41AM

12 A. BROADLY.

13 Q. WHAT TIME PERIOD WOULD THAT BE?

14 A. SO I KNOW THAT MARK AND JANUARY MARK IN IS  
15 THERE NEGOTIATIONS SOON AFTER THE CLOSING OF MET WEST  
16 OR MAYBE ABOUT THE SAME TIME AND /PWHRAEUR WOULD HAVE  
17 BEEN GOING TO RIGHT ABOUT THE TIME THAT WE WERE ENGAGED  
18 IN I GUESS IT WAS MID JULY.

11:42AM

19 Q. IN YOUR STRATEGIC REVIEW, DID YOU LEARN WHAT  
20 PERCENTAGE OF THE ASSETS UNDER MANAGEMENT WERE WITHIN  
21 THE GROUP'S THAT WERE HEADED UP BY MR. THOMAS, MR. /A\*T  
22 AND /KHAP PUS AND MR. GUNDLACH?

11:42AM

23 A. YES.

24 Q. AND CAN YOU JUST GIVE US A COMPARISON OF AT  
25 THAT PARTICULAR TIME FOR TCW WHAT PERCENTAGE ^ IT  
26 WAS ^ TESTIFIES?

11:42AM

27 A. I'M SORRY THE AGGREGATE OF THAT.

28 Q. /TPHOZ, I'M SORRY. THE RELATIVE PERCENTAGES

1 OF?

2 A. JEFFREY WOULD -- MR. GUNDLACH'S GROUP, I  
3 BELIEVE WAS I MEAN /PHAOEUF RECOLLECTION WAS A  
4 SIGNIFICANT MAJORITY /TEUF THE ASSETS OF THE FIRM.

5 Q. SO WAS IT A VIABLE OPTION FOR TCW, IN YOUR  
6 VIEW WHEN DID YOU THE /PRO /TAOEPBLG NICK REVIEW TO  
7 NEGOTIATE AWAY THAT PART OF TCW'S BUSINESS?

11:42AM

8 A. I DON'T UNDERSTAND YOUR QUESTION I'M SORRY.

9 Q. IN OTHER WORDS, WAS THAT SOMETHING YOU PROPOSE  
10 TODAY TCW YOU YOU SHOULD JUST NEGOTIATE A WAY ALL THE  
11 FIXED INCOME AND LET THAT GO SOMEPLACE ELSE?

11:43AM

12 A. NO.

13 MR. MADISON: NOTHING FURTHER, YOUR HONOR.

14 THE COURT: MR. BRIAN, DO YOU HAVE RECROSS?

15 MR. BRIAN: I'LL TRY TO BE BRIEF, YOUR HONOR.

11:43AM

16

17

18 RECROSS-EXAMINATION

19 BY MR. BRIAN:

20 Q. WHEN A BUSINESS IS SOLD THERE'S A BUYER AND A  
21 SELLER, RIGHT?

11:43AM

22 A. YES.

23 Q. AND WHEN SOMEONE MAKES AN OFFER A BUYER, OFTEN  
24 TIMES THE INITIAL OPENING OFFER IS LESS THAN THE  
25 ULTIMATE SALE PRICE, RIGHT?

11:43AM

26 A. SOMETIMES.

27 Q. THAT'S WHAT A NEGOTIATION OFTEN IS, RIGHT?

28 A. CORRECT.

1 Q. AND ALSO, IT'S NOT UNUSUAL FOR SOMEONE IN A  
2 MAJOR TRANSACTION OF BUYING OR SELLING A BUSINESS THAT  
3 THE BUYER WILL PROPOSE TO PUT UP CASH FOR A CHUNK OF IT  
4 AND FINANCE THE REST /STHA\*S NOT UNUSUAL, ^ IS THE ^ IS  
5 IT?

11:44AM

6 A. NO IT'S NOT.

7 Q. THAT'S WHAT /PWEUFRPBG CUSTOMERS DO THEY  
8 PROVIDE LOANS AND FINANCING AND TRANSACTIONS LIKE THAT,  
9 RIGHT?

10 A. YES.

11:44AM

11 Q. AND WHEN YOU MET WITH MR. STERN, STRIKE THAT.  
12 MR. MADISON ASKED YOU ABOUT CONVERSATION  
13 WITH MR. GUNDLACH IN THE SUMMER 2009. AND I THINK YOU  
14 INDICATED THAT MR. GUNDLACH DID NOT RAISE THE  
15 POSSIBILITY OF NEGOTIATING A SEPARATION DO I HAVE THAT  
16 RIGHT?

11:44AM

17 A. CORRECT.

18 Q. IN YOUR CONVERSATION WITH MR. STERN, HE DIDN'T  
19 RAISE THE POSSIBILITY OF NEGOTIATING A SEPARATION WITH  
20 MR. GUNDLACH EITHER, DID HE?

11:44AM

21 A. NO HE /TK-PBLT DIDN'T.

22 Q. INSTEAD WHAT YOU RECOMMENDED BOOZE TAKE /AEUG  
23 PRO ACTIVE APPROACH AND TERMINATING MR. GUNDLACH,  
24 CORRECT?

25 A. ON THE BASIS OF ALL THE INFORMATION I HAD AT  
26 THE TIME, YES.

11:45AM

27 Q. AND MR. STERN TOLD YOU THAT HE WANTED TO  
28 TERMINATE MR. GUNDLACH BY SURPRISE TO TRY TO PREVENT

1 MR. GUNDLACH FROM COMPETING WITH HIM; ISN'T THAT RIGHT?

2 A. NO. I DON'T BELIEVE HE USED THOSE /SWOERDZ  
3 SPECIFICALLY, NO.

4 Q. HE DID NOT WANT MR. GUNDLACH TO GO OUT AND  
5 FORM A BUSINESS THAT WOULD HURT TCW DID HE SIR /KWRAO  
6 OBJECTION ARGUMENTATIVE AND FOUNDATION AS PHRASED?

11:45AM

7 A. I'LL SUSTAIN THE OBJECTION AS PHRASED YOU CAN  
8 PURSUE THAT ONE IN A DIFFERENT WAY.

9 Q. BY MR. BRIAN: DIDN'T MR. STERN ^ IT  
10 WILL ^ TELL THAT YOU HE WANTED TO TERMINATE  
11 MR. GUNDLACH WITHOUT GIVING HIM ADVANCE NOTICE, RIGHT?

11:45AM

12 A. I NEVER HAD THAT DISCUSSION WITH MR. STERN AS  
13 TO HOW HE WAS GOING TO GO ABOUT TERMINATING  
14 MR. GUNDLACH.

15 Q. DID MR. STERN EVER TELL YOU HE INTENDED TO  
16 CALL UP MR. GUNDLACH AND SAY, JEFFREY, WE NEED TO  
17 EITHER NEGOTIATE OR WE'RE GOING TO TERMINATE YOU IN 30  
18 DAYS OR 60 DAYS MR. STERN /TPWHEFR TOLD YOU THAT DID HE  
19 SIR?

11:46AM

20 A. NO HE DIDN'T.

11:46AM

21 MR. BRIAN: NOTHING FURTHER.

22 THE COURT: ALL RIGHT. ANYTHING ELSE  
23 MR. MADISON.

24 MR. MADISON: WELL, THAT WOULD HAVE BEEN A  
25 VIABLE OPTION IF I MAY, YOUR HONOR, JUST ONE OR TWO  
26 QUESTIONS. THAT WOULD HAVE BEEN A PRUDENT THING IN  
27 YOUR MIND FOR MR. STERN TO DO GIVEN THAT YOU WERE  
28 CONCERNED ABOUT THE THREAT THAT HE WOULD DEPART ON.

11:46AM

1 MR. BRIAN: SCANNED /SKAOUPL LOS ANGELES  
2 /TEUF.

3 THE COURT: SUSTAINED.

4 Q. BY MR. MADISON: /HR-R, I JUST WANT TO GO BACK  
5 TO MR. BRIAN'S LAST QUESTION WOULD IT IN YOUR VIEW  
6 ABOUT BEEN PRE DENT KNOWING EVERYTHING YOU KNEW FOR TCW  
7 TO GIVE SOME ADVANCE NOTICE TO MR. GUNDLACH?

11:46AM

8 MR. BRIAN: SAME QUESTION SAME OBJECTIONS.

9 THE COURT: I THINK WE'VE BEEN THROUGH THIS ON  
10 YOUR DIRECT /SKPH-PL ASIAN. HE'S ANSWER /-DZ THAT  
11 QUESTION.

11:47AM

12 Q. BY MR. MADISON: AND DID YOU UNDERSTAND THAT  
13 WHEN MR. GUNDLACH WAS SPEAKING TO YOU BACK IN JULY THAT  
14 HE WAS TALKING ABOUT LEAVING AND COMPETE /W-G TCW?

15 MR. BRIAN: OBJECTION SCANNED, CUMULATIVE.

11:47AM

16 THE COURT: OVERRULED LET JUSTICE  
17 ^ FIN ^ FINISH UP WE JUST DON'T WANT TO GO THROUGH ALL  
18 THE SAME THINGS AGAIN.

19 MR. MADISON: NOR DO I.

20 THE WITNESS: COULD YOU REPEAT THE QUESTION  
21 PLEASE.

11:47AM

22 MR. MADISON: YES.

23 Q. BACK IN JULY WHEN YOU TALKED TO MR. GUNDLACH  
24 DID YOU UNDERSTAND HIM TO BE SAYING IF HE DID LEAVE  
25 ^ HE WOULD ^ HEALED BE COMPETING WITH TCW IN HIS NEW  
26 FIRM?

11:47AM

27 A. I UNDERSTOOD MR. GUNDLACH THREATEN HE COULD  
28 LEAVE AND IF HE LEFT HE WOULD INTENDED TO TAKE CLIENTS

1 AND ASSETS OF THE FIRM WITH HIM.

2 Q. AND OBVIOUSLY IF IT IS /KHR-RBGS W DIDN'T  
3 EXIST ANY LONGER /THEPBL /TH-RBGS /KHR-RBGS W COULDN'T  
4 COMPETE?

5 MR. BRIAN: OBJECTION ARGUMENTATIVE. 11:48AM

6 THE COURT: SUSTAINED.

7 MR. MADISON: THANK YOU MR. SHEDLIN.

8 THE COURT: ALL RIGHT.

9 MR. SHEDLIN, THANK YOU FOR YOUR  
10 TESTIMONY. YOU ARE EXCUSED. YOU MAY STEP DOWN. 11:48AM

11 THE WITNESS: THANKS, YOUR HONOR.

12 MR. BRIAN: MAY I APPROACH COUNSEL, YOUR  
13 HONOR.

14 THE COURT: YES, YOU MAY.

15 MR. BRIAN: YOUR HONOR, WITH THE COURT'S  
16 PERMISSION, MY COLLEAGUE MR. ALLRED WILL HANDLE THE  
17 WITNESS ON CROSS-EXAMINATION. 11:48AM

18 THE COURT: THAT'S FINE.

19 WHO'S THE NEXT WITNESS?

20 MS. OSMAN: TCW CALLS SUSAN LEADER. 11:48AM

21 THE COURT: OKAY.

22 MR. QUINN: THE WITNESS WILL BE EXAMINED BY MY  
23 PARTNER RANDA OSMAN.

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

28

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THE CLERK: THANK YOU, PLEASE BE SEATED.

SUSAN LEADER,  
CALLED AS A WITNESS BY THE PLAINTIFFS,  
WAS SWORN AND TESTIFIED AS FOLLOWS:

THE CLERK: MA'AM, PLEASE STATE AND SPELL YOUR  
NAME FOR THE RECORD.

11:49AM

THE WITNESS: SUSAN LEADER, S-U-S-A-N, LEADER,  
L-E-A-D-E-R.

THE COURT: GOOD MORNING, MS. LEADER.

THE WITNESS: GOOD MORNING.

THE COURT: ALL RIGHT.

11:49AM

MS. OSMAN, YOU MAY PROCEED.

MS. OSMAN: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

11:49AM

BY MS. OSMAN:

Q. GOOD MORNING, MS. LEADER.

A. GOOD MORNING.

Q. WHERE DO YOU WORK NOW?

A. I AM EMPLOYED AT TRUST COMPANY OF THE WEST IN  
THE NEW YORK OFFICE.

11:49AM

Q. WHAT IS YOUR POSITION?

A. I'M A MANAGING DIRECTOR IN THE INSTITUTIONAL



1 CLIENT GROUP.

2 Q. WHAT DOES THAT MEAN?

3 A. WHAT THAT MEANS IS MY RESPONSIBILITY AT TCW IS  
4 TO RAISE ASSETS FROM INSTITUTIONAL INVESTORS WHICH  
5 WOULD BE PENSION FUNDS /EPB DUE /-PLTS, FOUNDATIONS AND 11:50AM  
6 TO THEN WORK WITH THEM ONCE WE'VE RAISED /AGS ET CETERA  
7 I'M THE SORT OF POINT OF CONTACT, IF YOU WILL BETWEEN  
8 THE FIRM AND THE CLIENT SO THAT I UNDERSTOOD THERE  
9 NEEDS, THEY UNDERSTAND WHAT'S GOING ON AT TCW SO I'M  
10 THE FOCAL POINT OF COMMUNICATION WITH THEM. 11:50AM

11 Q. AND DO I UNDERSTAND YOU TO BE INTERACTING THEM  
12 BETWEEN THE PORTFOLIO MANAGER AND THE CLIENT?

13 A. ABSOLUTELY.

14 Q. DO YOU ACTUALLY DO ANY TRADING /KWROURPS?

15 A. NO I'M NOT A PORTFOLIO /PHR-PBLG ERR I'M A 11:50AM  
16 RELATIONSHIP MANAGER.

17 Q. AND THE RELATIONSHIP WOULD BE WITH THE CLIENT?

18 A. YES.

19 Q. DO YOU WORK IN A PARTICULAR ASSET CLASS?

20 A. NO AT TCW ALL MARKET BEING PEOPLE REPRESENT 11:50AM  
21 ALL THE /ABGS ET CETERA AT TCW SO I'LL BE TALK /TOBG A  
22 CLIENT ABOUT EQUITIES, ABOUT ^ FOLLOWING THIS  
23 ACCIDENT ^ FIX THE INCOME, ABOUT ENERGY, ABOUT EMERGING  
24 MARKETS ACROSS ALL /AGS ET CETERA.

25 Q. AND I TAKE IT THE PURPOSE IS TO TRY TO GET THE 11:50AM  
26 CLIENT TO INVEST IN THESE DIFFERENT ASSETS CLASSES?

27 A. ABSOLUTELY.

28 Q. AND IN 2000 /TPHAEUPBL /WHAO DID YOU REPORT

1 TO?

2 A. IN 2009 I REPORTED TO BOB /SKWRAEUP L MOW AND  
3 ULTIMATELY TO CHUCK ^ BALANCE ^ BALL DIS /WAOEUL /HRER.

4 Q. AND BEFORE THAT WHO DID YOU REPORT TO?

5 A. GARRETT WALLS.

11:51AM

6 Q. DO YOU HAVE A BATCH /HRAR OF ARTS DEGREE?

7 A. YES.

8 Q. AND DO YOU HAVE ANY FURTHER DEGREES AFTER  
9 THAT?

10 A. YES I HAVE AN MBA FROM N Y U.

11:51AM

11 Q. I'D LIKE TO ASK YOU NOW ABOUT A PHONE CALL IN  
12 JUNE OF 2009 WITH MR. GUNDLACH. DO YOU RECALL HAVING A  
13 /KOUL IN THAT TIME FRAME WITH THE CLIENT?

14 A. YES I DO.

15 Q. /WHAURP THE PURPOSE OF THAT CALL?

11:51AM

16 A. THE /KURP OF THAT CALL WAS FOLLOWING UP ON  
17 MR. BEYER'S RESIGNATION FROM TCW. THE CALL WAS WITH A  
18 MAJOR CLIENT OF THE FIRM WHO WAS ALSO A PROSPECT AT THE  
19 FIRM BASICALLY HAD AN ASSETS WITH US THEY WERE LOOKING  
20 TO GIVE US MORE ASSETS AND GIVEN THAT THERE WAS A  
21 CHANGE IN THE /PHAPBLG /-PLT OF THE FIRM, THEY WERE A  
22 CLIENT WHO DID SIGNIFICANT AMOUNT OF DUE DILIGENCE THEY  
23 WANTED TO UNDERSTAND THE CHANGE THEY WANTED TO  
24 UNDERSTAND WHAT WOULD BE THE STRUCTURE OF THE FIRM  
25 GOING FORWARD.

11:51AM

11:52AM

26 Q. LET ME BACK UP AND ASK YOU A FEW QUESTIONS  
27 ABOUT YOUR ANSWER. DO YOU RECALL THE DATE OF THAT  
28 CALL?

1           A.     THE MIDDLE OF JUNE, ABOUT JUNE 11 THIS, TENTH  
2 11 THIS, I THINK ACTUALLY IT WAS THE 11TH.

3           Q.     AND WAS ANYONE OTHER THAN AND YOU MR. GUNDLACH  
4 ON THE CALL ON BEHALF OF TCW?

5           A.     I DON'T BELIEVE SO. 11:52AM

6           Q.     DID THE CLIENT REQUEST THE CALL OR DID YOU  
7 REQUEST THE CALL?

8           A.     THE CLIENT REQUESTED THE CALL.

9           Q.     YOU MENTIONED THERE WAS ALREADY AN EXHIBITING  
10 CLIENT OF TCW'S? 11:52AM

11          A.     YES. WE MANAGED ^ MORE THAN ^ MOURN 200  
12 MILLION DOLLARS PROBABLY -- MORE THAN 20025 MILLION  
13 DOLLARS IN AN EQUITY STRATEGY SO IT WAS A MAJOR EQUITY  
14 CLIENT OF THE IF I WERE. WE MANAGED ABOUT A HUNDRED  
15 MILLION IN AN EXTRA /TEPBLG /SKWREU THAT WAS /PAOERBL 11:52AM  
16 /HREU /PHAPBLG /-D BY MR. GUNDLACH'S GROUP AND  
17 PARTIALLY /PHRAPBLG /-D BY MR. WEST L.A. GROUP MR. /A\*T  
18 AND /KHAP PUS AND AT THE SAME TIME WE WERE BEING  
19 CONSIDERED AS A MANAGER FOR A BROAD BASED FIXED INCOME  
20 STRATEGY THAT WOULD /PHR-PBLG YOU ARE BY MR. GUNDLACH'S 11:53AM  
21 /STKPWHROUP AND YOU MENTION THE THE CLIENT HAD COUNTER  
22 /HREU 200 AND 35 MILLION OF ASSETS /PHR-PBLG /-D IN  
23 EQUITIES BY TCW.

24          A.     THAT'S CORRECT.

25          Q.     DO YOU RECALL WHAT THE FIX THE INCOME? 11:53AM

26          A.     IT WAS ABOUT A HUNDRED AND 10 MILLION.

27          Q.     AND PART OF THAT WAS IN MR. GUNDLACH'S GROUP  
28 AND PART WAS /TKPH MR. AT AND MR. CAT PUS?

1 A. YES.

2 A. THAT'S CORRECT.

3 Q. DID YOU RECORD THAT CONVERSATION OR MAKE NOTES  
4 OF THAT CONVERSATION?

5 A. YES I DID.

11:53AM

6 Q. AND AFTER YOU -- THE CONVERSATION WHAT DID YOU  
7 DO WITH YOUR NOTES?

8 A. I TRANSCRIBED THEM FROM MY HANDWRITTEN NOTES  
9 INTO OUR CLIENT REPORTING SYSTEM SO THAT -- BECAUSE  
10 BASICALLY IN THE NORMAL COURSE OF BUSINESS ANY TIME YOU  
11 HAVE A CONVERSATION WITH THE CLIENT YOU WANT TO KEEP IT  
12 FOR THE INSTITUTIONAL RECORD OF CONVERSATIONS WITH  
13 CLIENTS.

11:54AM

14 Q. AND IS THERE A PARTICULAR PROGRAM THAT YOU  
15 WOULD RECORD THESE CALLS IN?

11:54AM

16 A. YEAH, WE HAD A PROGRAM CALLS AVENUE OR /SAR  
17 /SRA /TOEG /TKPWA.

18 Q. WHAT IS THAT?

19 A. IT'S BASICALLY A CONTACT RELATIONSHIP  
20 MANAGEMENT SYSTEM AND IN THAT SYSTEM THE VAST AMOUNTS  
21 OF DATA ABOUT CLIENTS. IT WOULD INCLUDE EVERY SINGLE  
22 CLIENT CONTACT AT A FIRM IT COULD BE AS MANY AS 10 OR  
23 15 CONTACTS OR EVEN MORE AT THE FIRM CONTAINED THERE  
24 E-MAIL ADDRESS, THERE PHONE NUMBERS, IT CONTAINED ALL  
25 CALL REPORTS, ANY CONVERSATIONS WE'D HAD WITH THE  
26 CLIENT WHAT /STRAPL /TEPBLG /SKWRAOEZ THEY MIGHT BE  
27 SUBPOENAED IN. IT CONTAINED THE CLIENT'S TAXI DID  
28 NUMBER IN THE /SRAEUS OF INDIVIDUALS IT CONTAINED

11:54AM

11:54AM

1 ASSOCIATE SECURITY NUMBERS AND I SHOULD ALSO ASKED THIS  
2 WASN'T ONLY FOR CLIENTS ^ IT WAS ^ TESTIFIES ANY  
3 PROSPECT OF THE IF I WERE SO IT WAS ANYBODY AT TCW  
4 MIGHT BE CALLING ON AT ANY POINT OVERTIME.

5 Q. NOW, GOING BACK TO THE JUNE 11TH CALL YOU 11:55AM  
6 MENTIONED THAT THE CLIENT WAS ONE THAT DID SIGNIFICANT  
7 DUE DILIGENCE BEFORE /EUB VESTING?

8 A. YES THEY WERE. THEY WERE PROBABLY MY MOST  
9 DILIGENT CLIENT.

10 Q. AND DID THIS CALL HAVE SOMETHING TO DO WITH 11:55AM  
11 FURTHER DUE DILIGENCE?

12 A. YES. IT HAD TO DO WITH SORT OF PAST DUE  
13 DILIGENCE IF TERMS OF WE ALREADY MANAGING MONEY FOR  
14 THEM AND THEY WANTED TO UNDERSTAND WHAT IMPACT THE  
15 CHANGE MIGHT HAVE ON THE ASSETS THAT WERE ALREADY UNDER 11:55AM  
16 MANAGEMENT BUT AT THE SAME TIME BECAUSE THEY WERE DOING  
17 DUE DILIGENCE ON ANOTHER ^ ACT ^ ACCOUNT THEY WANTED TO  
18 UNDERSTAND THE IMPACT OF THE CHANGE ON THAT AS WELL.

19 Q. YOU MENTIONED THE /EUPL /PAFBGT THE CHANGE,  
20 WHAT WAS THE CHANGE? 11:55AM

21 A. THE CHANGE WAS MR. BEYER'S RESIGNATION FROM  
22 TCW, AND THE ANNOUNCEMENTS OF MARC STERN AS THE INTERIM  
23 CEO.

24 Q. CAN YOU PLEASE LOOK AT THE BINDER IN FRONT OF  
25 YOU AND TURN TO WHAT'S BEEN MARKED FOR IDENTIFICATION 11:56AM  
26 AS EXHIBIT 2 OH NINE.

27 A. YEP.

28 Q. DO YOU RECOGNIZE THAT DOCUMENT?

1 A. YES I DO.

2 Q. WHAT IS EXHIBIT 2 OH NINE?

3 A. EXHIBIT 2 OH NINE IS MY CALL REPORT OR CALL  
4 MEMO THAT REPORTED THE CONVERSATION THAT OCCURRED  
5 BETWEEN THE CLIENT AND ME -- AND JEFFREY GUNDLACH ABOUT  
6 BOB BEYER'S RESIGNATION. 11:56AM

7 Q. AND IS THIS SOMETHING YOU WOULD PREPARE IN THE  
8 ORDINARY COURSE OF BUSINESS?

9 A. ABSOLUTELY /STKPWHREU ASK DID YOU PREPARE ON  
10 OR BEFORE JUNE 11 THIS 2009. 11:56AM

11 A. /K-S I DID.

12 MS. OSMAN: I WOULD OFFER EXHIBIT 2 OH NINE.

13 THE WITNESS: IT WOULD BE ADMITTED /O\*Z THANK  
14 YOU. IF WE COULD HIGHLIGHT THE HEADER PLEASE NOW, IT  
15 SAYS SUBJECT MATTER NOTE. 11:57AM

16 THE COURT: YES, WHEN WE WRITE A /R-PBT IN  
17 AVENUE THERE'S A SORT OF FIELD WHERE YOU CAN E-MAIL OUT  
18 OF IT. SO THAT'S JUST IS IN THE PROGRAM. I DON'T  
19 BRIGHT IT THERE IT JUST SAYS AVENUE NOTE AND YOU SAY  
20 WHO'S IF GOING TO GO TO AND IT JUST /PHROPS INTO YOUR  
21 E-MAIL. /O\*Z. 11:57AM

22 Q. AND LOOKING AT THE FIRST PARAGRAPH IT SAYS  
23 THAT THE JEFFREY GUNDLACH DID A CALL WITH LIEU /EUS  
24 DIAZ AND DARREN KIMSEY TO DISCUSS /RAOEPBL MANAGEMENT  
25 /KHRAEUPBG AT TCW. WHO ARE LIEU /EUS DIAZ AND DARREN  
26 KIN /SEU? 11:57AM

27 A. DUE /EUS SEE /RAS /AS THE PERSON AT THE CLIENT  
28 WHO WAS RESPONSIBLE FOR FIXED INCOME RESEARCH AND DUE

1 DILIGENCE AND DARREN /KEUPBL /SEU WAS THE PERSON WITH  
2 THE CLIENT WHO WAS IN /KH-RPBLG OF EQUITY SEE /RAOEFRP  
3 AND DUE DILIGENCE. LIEU /EUS WAS YOUR /PAOEUPL /PREUR  
4 MAY CONTACT ON THE FIX THE INCOME RELATIONSHIP AND  
5 DARREN ON THE EQUITY RELATIONSHIP.

11:57AM

6 Q. AND LOOKING AT THE NEXT THREE SENTENCES OF  
7 THAT PARAGRAPH IT SAYS WHEN ASKED FOR HIS THOUGHTS ON  
8 THE CHANGE JEFFREY NOTED /RAEL LIE THERE WASN'T MUCH  
9 CHANGE BOB BEYER HAD NO IMPACT ON PORTFOLIO MANAGEMENT  
10 OR INVESTMENT ACTIVITIES OF THE FIRM AND THEREFORE THE  
11 ACTUAL CHANGES IS PRETTY SMALL THE FIRM IS IN NO WORD  
12 SHAPES WITH BUYERS DEPARTURE AND IT'S CAT /TUS QUO FOR  
13 CLIENTS ARE THESE CLIENTS MR. GUNDLACH, MADE TO THE  
14 CLIENT DURING THE CALL?

11:58AM

15 A. Y THEY /STKPWHR-R AND HE WENT ONTO SAY THAT  
16 THE FIRM HAS BEEN WELL ADD MACHINE /-D AND ALL THE IF  
17 YOU THINK /-RZ IN PLACE IS /THAULS MR. GUNDLACH'S  
18 COMMENT.

11:58AM

19 A. YES THEY /STKPWHR-R GOING DOWN TO THE NEXT  
20 PARAGRAPH, TOWARDS THE BOTTOM OF THAT THERE'S A  
21 SENTENCE THAT STARTS WITH BOB BEYER LEFT VERY SUDDENLY  
22 AND MARC STERN WAS THERE TO TAKE ON THE ROLE OF OPEN  
23 QUOTES KEEPING THE TRAINS RUNNING ON TIME CLOSED  
24 QUOTES. IS THAT SOMETHING THAT MR. GUNDLACH SAID  
25 DURING THE CALL.

11:58AM

26 A. YES.

27 Q. AND THE NEXT SENTENCE IS WE DON'T WANT HIM  
28 THERE PERMANENT /HREU. IS THAT SOMETHING THAT

11:58AM

1 MR. GUNDLACH?

2 A. THAT'S WHY I PUT IT IN QUOTES, YES.

3 Q. WHY DID YOU PUT IT IN QUOTES?

4 A. BECAUSE I DIDN'T -- BECAUSE HE SAID IT AND I  
5 WANTED TO ACCURATE /HREU REFLECT EXACTLY WHAT HE SAID  
6 BECAUSE I THOUGHT IT WAS A STATEMENT THAT SOME PEOPLE  
7 MIGHT DISAGREE WITH.

11:59AM

8 Q. WELL, WHAT DO YOU MEAN BY SOME PEOPLE MIGHT  
9 DISAGREE WITH?

10 MR. ALLRED: VAGUE.

11:59AM

11 THE COURT: SUSTAINED.

12 Q. BY MS. OSMAN: WHY DID YOU THINK THAT THAT  
13 STATEMENT /PHAOED /-D TO BE PUT IN QUOTES?

14 A. BECAUSE I HAD NOT BEEN TOLD WHEN WE WERE  
15 GIVING TALKING POINTS TO TALK TO CLIENTS ABOUT THINGS  
16 LIKE THIS NO ONE HAD SAID TO ME QUOTE WE DON'T WANT  
17 MARC STERN THERE PERMANENT /HREU.

11:59AM

18 Q. DID YOU UNDERSTAND WHO THE WE WAS REFERRING  
19 TO?

20 A. HE DIDN'T SAY AND I -- I DON'T KNOW.

11:59AM

21 Q. DID YOU BELIEVE THIS WAS AN APPROPRIATE  
22 STATEMENT TO MAKE DURING A CALL WITH A CLIENT THAT  
23 WANTS TO DISCUSS A MANAGEMENT CHANGE?

24 A. NO I DID NOT.

25 Q. /KWR-PBLT?

11:59AM

26 A. BECAUSE IT WAS ONE PERSON'S OPINION AND HE  
27 DIDN'T SAY IT'S ONE PERSON'S OPINION HE SAID WE. ^ IT  
28 WAS ^ TESTIFIES NOT THE -- AS I SAID IT WASN'T WHAT



1 WE'D BE TOLD WAS THE TRUTH SO THEREFORE TO ME IT WAS  
2 INFLAMMATORY.

3 Q. WHAT DO YOU MEAN BY IT WAS INFLAMMATORY IN  
4 WHAT WAY?

5 A. DIDN'T REFLECT THE REALITY OF THE IF I WERE  
6 PERHAPS ^ IT WAS ^ TESTIFIES MEANT TO CAUSE SOME  
7 INSTABILITY IN THE CLIENT'S MIND ABOUT WHAT WAS GOING  
8 ON AT TCW.

12:00PM

9 MR. ALLRED: MOVE TO STRIKE AS SPECULATIVE,  
10 YOUR HONOR.

12:00PM

11 THE COURT: I'LL SUSTAINED AND OBJECTION AND  
12 STRIKE THE RESPONSE.

13 Q. BY MS. OSMAN: MR. GUNDLACH, AT THE TIME, WAS  
14 THE CHIEF INVESTMENT OFFICER AT TCW; IS THAT CORRECT?

15 A. YES, THAT'S CORRECT.

12:00PM

16 Q. AND WOULD IT BE APPROPRIATE IN YOUR MIND AS A  
17 /PH-RBGING /ABG /SEBG /TEUF AND HAVING CONVERSATIONS  
18 WITH CLIENTS WHO ARE CONSIDERING INVESTING ADDITIONAL  
19 /ABG ET CETERA WITH FOR THE CHIEF INVESTMENT OFFICER TO  
20 SAY THAT YOU DON'T WANT THE CURRENT CEO TO REMAIN IN  
21 THE COMPANY?

12:00PM

22 MR. ALLRED: IMPROPER OPINION TESTIMONY.

23 THE COURT: SUSTAINED I'LL /TRAOEUBG THE  
24 RESPONSE GO AHEAD CHECKCHECK IT IS NOT /O\*Z AS /PHART  
25 OF YOUR RESPONSIBILITIES AS A MANAGING REPRESENTATIVE  
26 TO RESPOND TO CLIENT QUESTIONS AND CONCERNS ABOUT THE  
27 OPERATIONS OF TCW.

12:01PM

28 THE WITNESS: YES IT IS.

1 Q. AND IN YOUR ROLE WOULD ^ IS THE ^ IS IT HAVE  
2 YOU TO TALK TO THE CLIENT AND REASSURE THE CLIENT IF  
3 THERE'S POTENTIAL INSTABILITY AT TCW?

4 A. Y ABSOLUTELY.

5 Q. AND IN YOUR EXPERIENCE HAVE YOU HAD  
6 CONVERSATIONS WITH CLIENTS WHERE THEY ARE CONCERNED  
7 ABOUT INSTABILITY?

12:01PM

8 A. CAN YOU REPEAT THE QUESTION DO YOU MEAN IN  
9 THIS PARTICULAR INSTANCE OR IN GENERAL.

10 Q. IN GENERAL?

12:01PM

11 A. YES.

12 Q. WHAT IS THE CONCERN THAT'S COMMUNICATED TO YOU  
13 BY CLIENT WHETHER THERE'S INSTABILITY OR POTENTIAL  
14 INSTABILITY AT TCW?

15 A. CLIENTS HIRE A FIRM TO -- AND THEY'VE DONE DUE  
16 DILIGENCE TO UNDERSTAND THE DYNAMIC OF THAT FIRM, WHAT  
17 THE MANAGEMENT IS, HOW STABLE PORTFOLIO THERE MANAGER  
18 WILL BE IN TERMS OF STAYING AT THE IF I WERE, THE  
19 RESOURCES THEY'VE SPENT A LOT OF TIME MAKING A DECISION  
20 BASED ON THE FACTORS THAT ARE IMPORTANT TO THEM. IF  
21 THEY ^ PROCEED ^ PROCEDURE THERE'S INSTABILITY THEN  
22 THERE DUE DILIGENCE IS CALLED IN /KWRE QUESTION AND SO  
23 THEY /TAEU WELL, GEE, I THOUGHT I GOT A BOTTLE OF WATER  
24 BUT I GOT A BOTTLE OF DIET COKE.

12:01PM

12:02PM

25 Q. IN THIS PARTICULAR CASE HOW LONG HAD THE  
26 CLIENT SPENT DO YOU THINK DUE DILIGENCE ON TCW BEFORE  
27 INVESTING?

12:02PM

28 A. WELL, IN THE CASE OF THE FIX THE INCOME

1 ^ ACCOUNTS ^ ACTS THEY WERE LOOKING AT, THAT HAD BEEN  
2 GOING ON FOR I GUESS BY WAY PROBABLY EIGHT MONTHS AND  
3 THE DUE DILIGENCE ON THE OTHER ^ FOLLOWING THIS  
4 ACCIDENT ^ FIX THE INCOME ^ ACT ^ ACCOUNT HAD GONE  
5 ON -- HAD TAKEN PLACE OVER THE COURSE OF A YEAR AS  
6 WELL.

12:02PM

7 Q. SO THIS WOULD BE DUE DILIGENCE THAT THE CLIENT  
8 IS DOING TO DETERMINE WHETHER OR NOT /THAEUPTS TO PLACE  
9 /TPHR FUNDS --

12:02PM

10 A. YES AND THAT INCLUDES BOTH CONVERSATIONS ABOUT  
11 MANAGEMENT IT /EUPB /KHRAOUPLDZ CONVERSATIONS ABOUT  
12 UNDERSTANDING THE EXTRA /TEPBLG /SKWREU IT INCLUDES  
13 CONVERSATIONS ABOUT PORTFOLIO MANAGERS AND HOW THEY  
14 ^ MANAGE ^ EMERGENCY MONEY AND THE STABILITY OF THE  
15 PORTFOLIO MANAGER AT THE FIRM AND ALSO INCLUDES AN UPON  
16 TREMENDOUS AMOUNT OF AN LOS ANGELES LIT /TEUBGS TO  
17 UNDERSTAND WHAT ARE THE DYNAMIC BEHIND THE STRATEGY.

12:03PM

18 Q. IN THIS PARTICULAR /TAEUS /KAZ THE CLIENT  
19 INVESTING OWN ASSETS OR ASSETS BEHALF OF OTHER CLIENTS?

20 A. THIS WAS A CLIENT WHO INVESTED ON /PWE /HAFRL  
21 OF OTHER /KHRAOEUPBLTSZ SO THEY WERE A MANAGER OF  
22 MANAGERS IF YOU WILL, AND THEY ACTED IN A COUPLE OF  
23 WAYS. IN SOME CASES THEY WERE THE FIDUCIARY FOR  
24 ANOTHER PENSION FUND /PWAOE THE OTHER /PUPBGZ FUNDS  
25 /-TSD WE DON'T WANT TO BE THE FIDUCIARY HERE WE'RE  
26 GOING TO HIRE YOU, THIS FIRM. AND IN SOME CASES THEY  
27 WERE PUTTING TOGETHER PROGRAMS WHERE THERE WERE SEVERAL  
28 MANAGERS IN A TEAM AND THEN THEY WOULD OFFER THAT AS A

12:03PM

12:03PM

1 SORT OF PACKAGE SOLUTION TO WHETHER IT BE INDIVIDUALS  
2 OR OTHER INSTITUTIONAL INVESTORS SO BECAUSE THEY WERE A  
3 FIDUCIARY THEY HAD TO DO EXTRAORDINARY DUE DILIGENCE.

4 Q. AND FOLLOWING UP ON THAT, BECAUSE THEY WERE A  
5 FIDUCIARY INVESTING ON BEHALF OF OTHERS WOULD THE  
6 THREAT OF INSTABILITY BE GREATER FOR THEM THAN PERHAPS  
7 A CLIENT INVESTING ^ IT'S ^ ITS OWN MONEY?

12:04PM

8 A. THEY MIGHT HAVE PERCEIVED IT TO BE SO.

9 Q. NOW, CONTINUING ON EXHIBIT 2 OH NINE, THE  
10 FOLLOWING PARAGRAPH SAYS IN TERMS OF TIMING JEFF  
11 /TKPWREU EMPHASIZED THAT MARK IS A TRANSITIONAL CEO AND  
12 IT WAS HIS OPINION THAT MARK WOULD NOT BE IN THIS  
13 POSITION BY YEAR /EPBLDZ. ON GOING MANAGEMENT IS  
14 NECESSARY AND MARK ISN'T THE /TPAOUFRP OF THE FIRM.

12:04PM

15 IS THAT SOMETHING THAT MR. GUNDLACH SAID  
16 TO THIS CLIENT DURING TELEPHONE CALL?

12:04PM

17 A. YES IT WAS.

18 Q. AND WHAT WAS YOUR RESPONSE WHEN MR. GUNDLACH  
19 MADE THAT COMMENT?

20 A. HORROR.

12:05PM

21 Q. WHY IS THAT?

22 A. I HAD SENT AN E-MAIL TO THE CLIENT THAT DAY OR  
23 THE DAY BEFORE WITH TALKING POINTS THAT WE HAD BEEN  
24 GIVEN BY SENIOR MANAGEMENT. AND IN THOSE TALKING  
25 POINTS I SAID IT IS ANTICIPATED THAT /PHAERBG /STAERP  
26 WILL BE IN THIS POSITION FOR TWO TO THREE YEARS. THAT  
27 WAS MY UNDERSTANDING OF THE SITUATION AND SO /H-F  
28 /SKPH-F SO JEFFREY IN THAT TOTALLY CONTRADICTED WHAT I

12:05PM

1 HAD BEEN TOLD ABOUT SENIOR MANAGEMENT WHAT WAS GOING TO  
2 /SKPHAP SO IT PROTECT /SKWREBGT /-D BASICALLY /KAULDZ  
3 INTO QUESTION WHAT I HAD SAID AND SORTS OF AIRED OUR  
4 DIRTY /HREUPB /EUPB IN PUBLIC AND OH JEFFREY SAYS THIS  
5 AND EVERYBODY ELSE IS SAYING THAT AND THAT IS A NO NO  
6 TO A CLIENT.

12:05PM

7 Q. WHEN YOU SAID YOUR SENIOR ARE MANAGEMENT TOLD  
8 THAT YOU MR. STERN WAS EXPECTED TO BE CEO /TKP-R TWO TO  
9 THREE YEARS WHO DO YOU MEAN BY SENIOR MANAGEMENT?

10 MR. ALLRED: ^ HEARSE ^ HEARSAY, YOUR HONOR.

12:05PM

11 THE COURT: /OEFRLDZ WHERE DID YOU GET THAT.

12 THE WITNESS: I GOT THAT WE HAD A MARKETING  
13 CALL WITH I BELIEVE IT WAS /KPHUBG ^ BALANCED ^ BALD  
14 DIS /WAOEUL /HRER AT THE TIME WHO PRESENTED THIS IS THE  
15 TALKING POINTS YOU CAN GIVE TO CLIENTS.

12:06PM

16 Q. BY MS. OSMAN: HAD ANYONE AT TCW TOLD YOU THAT  
17 MR. STERN WOULD BE GONE BY /KWRER /EPBLDZ?

18 A. NO.

19 Q. NOW, THIS CALL IS TAKING /PHRAOEUS IN JUNE OF  
20 2009?

12:06PM

21 A. YES.

22 Q. SO YEAR END /#-8D HAVE BEEN BY DECEMBER OF  
23 THAT YEAR?

24 A. RIGHT CHECKCHECK THAT'S CORRECT, YES.

25 Q. GOING TO THE SECOND PAGE OF EXHIBIT 2 ZERO  
26 NINE. IT SAYS IN ANSWER TO THERE QUESTION ABOUT THE  
27 SELECTION OF THE /TPAOUFRP CEO, JEFFREY SAID THAT I AM  
28 THE NUMBER ONE CHOICE AND THAT I WOULD DEFINE THE

12:06PM

1 ^ ROLES ^ ROLLS SAME /HROR TO ROBERT DAY IN THAT I  
2 WOULDN'T BE INVOLVED IN DAY TO DAY ISSUES BUT WOULD BE  
3 A STRATEGIC LEADER BACKED UP BY PRESIDENT AND C O O.  
4 NOW, IN THE TALKING POINTS THAT YOU WERE /TKPWEUFRP BY  
5 SENIOR MANAGEMENT DID ANYONE INDICATE AT THAT  
6 MR. GUNDLACH WAS THE NUMBER ONE CHOICE FOR CEO?

12:06PM

7 A. NO.

8 MR. ALLRED: ^ HEARSE ^ HEARSAY AGAIN.

9 THE COURT: /OEFRLDZ GO AHEAD.

10 THE WITNESS: NO.

12:07PM

11 Q. BY MS. OSMAN: HAD YOU HEARD FROM ANYONE OTHER  
12 THAN MR. /STKPW\*UPBLDZ'S STATEMENT IN THIS CALL THAT HE  
13 WAS THE NUMBER ONE CHOICE TO BE CEO OF TCW?

14 A. NO.

15 Q. DID THAT CAUSE ANY CONCERN FOR YOU IN TERMS OF  
16 YOUR DEALING WITH THE CLIENT?

12:07PM

17 A. YES.

18 Q. AND WHAT CONCERNS DID YOU HAVE?

19 A. HAD HADN'T BEEN CLEAR TO ME PERSONALLY THAT  
20 JEFFREY HAD THE INTEREST OF THE FIRM AT HEART, THE  
21 ENTIRE FIRM HE HAD THE INTEREST OF THE FIXED INCOME  
22 GROUP THE HEART SO WERE HE TO BECOME THE C O E OF THE  
23 FIRM IN MY VIEW IT MAY HAVE BEEN A VERY DIFFERENT FIRM  
24 THAN IT WAS.

12:07PM

25 Q. WHAT DO YOU MEAN BY THAT?

12:07PM

26 A. AND I WOULD ALSO GO FURTHER ON THAT IS THAT  
27 THAT WAS NOT THE KIND -- THAT WAS NOT THE FIRM THAT THE  
28 CLIENT HAD HIRED SO IT AGAIN IT WAS CONCERNING TO ME

1 BECAUSE HE'S SORT OF STIRRING UP THE POT AND THAT'S AS  
2 A MARKETING PERSON AND A RELATIONSHIP MANAGER STIRRING  
3 UP THE POT IS AGAIN, JUST NOT ACCEPTABLE.

4 Q. WHAT DID YOU MEAN WHETHER YOU SAID THAT YOU  
5 DIDN'T BELIEVE MR. GUNDLACH HAD THE INTEREST OF THE  
6 FIRM AS A WHOLE IN MIND?

12:08PM

7 MR. ALLRED: SPECULATION FOUNDATION.

8 THE COURT: SUSTAINED.

9 Q. BY MS. OSMAN: IN YOUR EXPERIENCE WITH  
10 MR. GUNDLACH IN CALLS WITH INVESTORS DID MR. GUNDLACH  
11 SHOW THE SAME SUPPORT FOR CLIENTS THAT WERE CLIENTS  
12 THAT WERE COMING IN TO INVEST IN EQUITIES AS HE DID IN  
13 FIX THE INCOME?

12:08PM

14 A. THERE WEREN'T MANY CALLS WHERE WE WERE  
15 DISCUSSING BOTH SO I WOULD HAVE TO SAY I CAN'T COMMENT  
16 ON THAT REALLY.

12:08PM

17 Q. GOING ON IN EXHIBIT 2 ZERO NINE IT SAYS THIS  
18 IS NOT AN UNLIKELY OUTCOME HE ADVISED WAS THIS TO?

19 A. YES.

20 THE COURT: WAIT WAIT WAIT ONE AT A TIME THIS  
21 LADY TAKES DOWN EVERYTHING THAT'S SAID SO HAVE YOU TO  
22 WAIT TILL THE QUESTION TO BE FINISHED.

12:08PM

23 Q. IT'S ACTUALLY GOOD /THAP YOU DID THAT BECAUSE  
24 I START TODAY /SKAEU BAD QUESTION SO I WILL START OVER?

25 THE COURT: GO AHEAD.

12:09PM

26 Q. BY MS. OSMAN: THIS WAS NOT AN UNLIKELY OUTCOME  
27 /PWAZ /A REFERRING TO MR. GUNDLACH'S EARLIER STATEMENT  
28 THAT HE WAS THE NUMBER ONE CHOICE FOR CEO AT T K C W?

1 A. YES.

2 Q. AND HAD ANYONE TOLD YOU AT THAT TIME THAT  
3 MR. GUNDLACH WAS NOT UNLIKELY THAT HE WOULD BECOME CEO  
4 OF TCW?

5 A. NO ONE HAD TOLD ME THAT AND ALL /HREU I HAD IN 12:09PM  
6 PRIOR CONN /SAEUPGZ /PHR-Z BUYER HAD A CONVERSATION  
7 WITH THIS /SAOEUPL GROUP AND THE SUBJECT CAME UP AND  
8 ACTUALLY MR. BEYER INDICATED TO THE GROUP THAT AT TCW  
9 TYPICALLY PORTFOLIO MANAGERS WERE NOT CEO'S.

10 MR. ALLRED: /TPHOEF TO STRIKE AS 12:09PM  
11 NONRESPONSIVE.

12 THE COURT: I'LL STRIKE THE RESPONSE MA'AM  
13 LISTEN CAREFULLY TO THE QUESTION AND JUST TRY AND  
14 ANSWER THE QUESTION.

15 Q. BY MS. OSMAN: DID -- WAS MR. GUNDLACH ALSO A 12:09PM  
16 PORTFOLIO MANAGER AT THE TIME OF THIS CALL?

17 A. YES HE WAS.

18 Q. AFTER THIS TELEPHONE CALL DID YOU HAVE ANOTHER  
19 CONVERSATION WITH THE CLIENT?

20 A. YES I DID. 12:10PM

21 Q. AND WHAT WAS THE PURPOSE OF THAT CALL?

22 A. THE CLIENT -- THE PURPOSE OF THE CALL AND I  
23 ACTUALLY -- I DON'T REMEMBER WHETHER I CALLED THEM OR  
24 THEY CALLED ME BUT IN ANY EVENT WE HAD A CONVERSATION  
25 FOLLOWING UP ON -- FOLLOWING UP ON THE CALL. AND JUST 12:10PM  
26 TO UNDERSTAND FOR ME TO UNDERSTAND WERE THERE ANY LAS  
27 VEGAS /H-F WHAT WAS THERE REACTION TO THE CALL HOW  
28 COMFORTABLE WERE THEY.



1 Q. DID THE CLIENT RAISE ANY FURTHER QUESTIONS  
2 ABOUT WITH YOU ABOUT THIS CALL?

3 A. YES THEY DID /SKPWR AND WHAT WAS THE QUESTION  
4 OR QUESTIONS ADMITTED /A\*L.

5 MR. ALLRED: ^ HEARSE ^ HEARSAY, YOUR HONOR,  
6 /O\*Z ^ IT'S ^ ITS FOR NONE HEARSAY PURPOSE.

12:10PM

7 THE COURT: I'LL ALLOW IT. GO AHEAD.

8 THE WITNESS: THE QUESTION THAT THE CLIENT  
9 RAISED WAS SPECIFICALLY IF JEFFREY BECOMES CEO OF THE  
10 FIRM WHAT IMPACT WOULD THAT HAVE ON HIS MANAGEMENT EVER  
11 THE -- AS HIS ROLE OF C I.O. OF ^ FOLLOWING THIS  
12 ACCIDENT ^ FIX ITS INCOMES.

12:11PM

13 Q. SO WAS THE CLIENT NOTHING UP ON COMMENTS THAT  
14 MR. GUNDLACH HAD MADE THAT HE WAS THE NUMBER ONE PERSON  
15 FOR CEO?

12:11PM

16 A. RIGHT.

17 Q. AND HOW THAT WOULD AFFECT IN THE FUTURE?

18 A. YES YES.

19 Q. THE PERSON ASKING THAT WAS THE PERSON DYING  
20 DUE /STKEUL /SKWREPBS ON ^ FOLLOWING THIS  
21 ACCIDENT ^ FIX THE /STKPWHR-BG DID YOU DO ANYTHING IN  
22 RESPONSE TO THE CLIENT'S QUESTIONS?

12:11PM

23 A. I DID. I SENT AN E-MAIL TO JEFFREY GUNDLACH.

24 Q. IF YOU CAN TURN TO WHAT'S BEEN MARKED FOR  
25 IDENTIFICATION AS EXHIBIT 2056. PAIR /PEUR HAVE YOU  
26 SEEN THIS BEFORE?

12:11PM

27 A. YES.

28 Q. AND LOOKING TOWARDS THE BOTTOM OF THE FIRST

1 PAGE OF EXHIBIT 26 IS THAT THE E-MAIL ^ YOU  
2 WERE ^ UPPER REFERRING TO THAT YOU SENT TO  
3 MR. GUNDLACH?

4 A. YES IT IS.

5 Q. AND DID YOU /SEPBL ON OR ABOUT JUNE 11 THIS OF 12:12PM  
6 2009?

7 A. YES YES.

8 Q. AND JUST ABOVE THAT IS THAT AN E-MAIL OF  
9 MR. GUNDLACH FROM TO YOU?

10 A. THAT'S AN E-MAIL FROM ME TO MR. GUNDLACH. 12:12PM

11 Q. THE ONE ABOVE IT /STHA\*S FROM MR. GUNDLACH TO  
12 YOU?

13 A. YES, WAIT A MINUTE HA ONE IS THE ONE HAVE ON  
14 THE SCREEN NOW, YES.

15 Q. AND UP AGAIN, ABOVE THAT IS THERE ANOTHER 12:12PM  
16 E-MAIL FROM YOU TO MR. STERN AND OTHERS?

17 A. YES.

18 Q. AND DID YOU SEND -- RECEIVE THESE E-MAILS ON  
19 THE DATE INDICATED?

20 A. YES I DID. 12:12PM

21 Q. I'D OFFER EXHIBIT 2056?

22 MR. ALLRED: NO OBJECTION.

23 THE COURT: IT WILL BE ADMITTED.

24 Q. BY MS. OSMAN: LOOKING FIRST AT THE VERY BOTTOM  
25 E-MAIL ON THE FIRST PAGE. 12:12PM

26 A. YOU /STKPWHRU IT /EUPB INDICATES LIEU /EUS AND  
27 DARREN APPRECIATED YOUR CANDOR AND FORTHRIGHT  
28 DISCUSSION THIS MORNING WHY DID YOU WRITE THAT TO

1 MR. GUNDLACH.

2 A. I WROTE THAT TO MR. GUNDLACH BECAUSE JEFFREY  
3 COULD BE /KRUS AT THIS AND DIFFICULT TO DEAL WITH AND  
4 IF YOU WANTED TO GET A RESPONSE YOU -- IT WAS MY  
5 EXPERIENCE ^ YOU WERE ^ UPPER BETTER OFF BEING  
6 RESPECTFUL AND A LITTLE FLATTERING THAN DE MONDAYSING.

12:13PM

7 Q. IT THEN GOES ON TO SAY LIEU /EUS CALLED ME  
8 WITH FOLLOW UP QUESTIONS THAT CLEARLY HAVE AN IMPACT ON  
9 THERE POTENTIAL SELECTION OF TCW AS A CORE PLUS FIXED  
10 INCOME MANAGER ON THERE PLATFORM WHAT DID YOU /PHRAOEPB  
11 BY IT COULD CLEARLY HAVE AN IMPACT ON THERE POTENTIAL  
12 SELECTION OF TCW?

12:13PM

13 A. WHAT I WAS TRYING TO SAY TO JEFFREY WAS THAT  
14 YOUR ANSWER IS REALLY IMPORTANT HERE. LIKE THIS IS A  
15 CRITICAL QUESTION SO READ IT AND DON'T JUST SORT OF NOT  
16 PAY ATTENTION DO IT BECAUSE.

12:13PM

17 Q. CRITICAL IN WHAT SENSE?

18 A. CHRIS CALENDAR BECAUSE THE CLIENT HAD  
19 EXPRESSED CONCERNS /TKHA TCW WAS A MULTI PRODUCT FIRM,  
20 BEING CEO IS A FULL TIME JOB, JEFFREY HAD A FULL TIME  
21 JOB MANAGING THE MORTGAGE GROUP WHAT IMPACT WOULD  
22 HAPPEN IF HE HAD TWO FULL TIME /SKPWROBS IF THEY WERE  
23 HIRING HIM AS A FIX THE INCOME MANAGER THAT COULD BE A  
24 PROBLEM FOR THEM.

12:14PM

25 Q. WHAT DID YOU MEAN BY TCW IS A /PHULTS TIE  
26 PRODUCT FIRM?

12:14PM

27 A. TCW MANAGES ASSETS EQUITY /AGSZ /EFRPBLG. HAS  
28 ^ FOLLOWING THIS ACCIDENT ^ FIX THE INCOME ASSETS. AT

1 THE TIME THAT THIS HAPPENED I THINK SLIGHTLY LESS THAN  
2 60 PERCENT OF TCW'S ASSETS WERE MANAGED BY THE MORTGAGE  
3 GROUP. BUT AT THE SAME TIME IF YOU LOOKED AT TCW IN  
4 /TPHAEUPB /TPHAEUPBLT EIGHT -- IN THE LATE '90S AND UP  
5 UNTIL EARLY 2000, MOST PEOPLE THOUGHT OF T /SKR-RBGS W  
6 AS AN /EBG QUIT AT THIS FIRM SO TCW HAD ALWAYS HAD HAD  
7 A BALANCED APPROACH TO HAVING A BROAD ASSET BASE.

12:14PM

8 Q. GOING TO THE E-MAIL ABOVE THAT, THIS IS  
9 MR. GUNDLACH'S RESPONSE TO YOUR E-MAIL?

10 A. UH-HUH.

12:15PM

11 Q. IS THAT A YES?

12 A. YES IT IS.

13 Q. AND THERE'S A C C ON THAT E-MAIL IT SAYS LIEU  
14 /EUS /TKAOSZ AND DARREN KIMSEY DO YOU SEE THAT?

15 A. YES I DO.

12:15PM

16 Q. DOES THAT IN YOUR UNDERSTANDING MEAN THEY WERE  
17 COPIED ON THIS E-MAIL BY MR. GUNDLACH?

18 A. YES IT DOES.

19 Q. AND THE E-MAIL BY MR. GUNDLACH SAYS I WILL  
20 CONTINUE AS HEAD OF ^ FOLLOWING THIS ACCIDENT ^ FIX THE  
21 INCOME IN ANY CASE. FIX THE INCOME IS VERY LIKELY TO  
22 BE 90 PERCENT OF THE FIRM'S ASSETS UNTIL A NEW  
23 QUARTERS. AS SUCH BEING ^ HEAD ^ AHEAD OF THE FIRM AND  
24 HEAD OF ^ FOLLOWING THIS ACCIDENT ^ FIX THE INCOME ARE  
25 REALLY /-PL /SAEUPLG THING?

12:15PM

26 Q. IS THAT REALLY TO FIX ITS INCOME IS /KRERL  
27 /HREU I TO BE /TPHRAOEUPBL /#23-RS OF THE FIRM AN  
28 ASSETS IN A FEW QUARTERS ^ <STICKY SPACE>'CAUSE ^ CAUSE

12:15PM

1 YOU ANY CONCERN?

2 A. SIGNIFICANT CONCERN CHECKCHECK D I E Z, K I M  
3 S E Y.

4 Q. WHY IS THAT?

5 A. FOR SEVERAL REASONS, /TPEUFRLT OF ALL  
6 /THAEURPL A BIGGER /EBG QUIT AT THIS CLIENT THAN A FIX  
7 /-GS INCOME CLIENT. THEY HAD HIRED SOME EQUITIES  
8 BECAUSE EQUITIES WAS A STRONG PART OF THE IF I WERE.  
9 THERE WERE RESOURCES PUT BEHIND THE EQUITY TEAMS, THE  
10 PORTFOLIO MANAGERS /-LDZ STAY IN PLACE, THAT'S WHAT  
11 THEY HIRED /-FRPLT SO IF FIXED INCOME IS CLICK /HREU TO  
12 BE 90 PERCENT THAT'S NOT THE CASE.

12:16PM

12:16PM

13 THE SECOND REASON WAS THIS WAS NOT  
14 SOMETHING THAT WAS -- THAT -- WELL, LET ME SAY, THE  
15 /SEBG REASON IS THAT IN TERMS OF TCW'S CULTURE AS I  
16 JUST MENTIONED WE HAD ALWAYS BEEN A MULTI PRODUCT FIRM  
17 THAT'S WHAT IT IS THAT'S WHO WE ARE THAT'S OUR BRANDS  
18 TO TO SAY TO A CLIENT OH, NO THAT'S NOT THE BRAND ANY  
19 MORE THAT'S A TOTAL TURN AROUND AND NOT THE FIRM THAT I  
20 WAS HIRED TO WORK FOR. AND I -- AND THIRD /HREU REALLY  
21 GOES TO THE INSTABILITY POINT THEY MENTIONED BEFORE IT  
22 SORT OF OPENED THE /EPL PER /ROR'S /KHROEBGS AND SHOWED  
23 THE CLIENTS THERE'S A BIG /STKEUGS AGREEMENTS WITHIN  
24 THIS FIRM AND THAT RAISES QUESTIONS IF THE CLIENT'S  
25 MIND ABOUT THE FIRM.

12:16PM

12:16PM

12:17PM

26 THE COURT: MS. /O\*Z COULD WE TAKE OUR BREAK  
27 NOW /O\*Z SURE THANK YOU, YOUR HONOR.

28 THE COURT: LET'S TAKE 20 MINUTES.

1 THE COURT: MA'AM YOU MAY STEP DOWN.

2 THE WITNESS: THANK YOU.

3

4 (AT 12:17 P.M. THE JURY WAS  
5 EXCUSED, AND THE FOLLOWING  
6 PROCEEDINGS WERE HELD:)

12:17PM

7

8 THE COURT: ALL RIGHT. WE'RE OUT OF THE  
9 PRESENCE OF THE JURY.

10 ARE THERE ANY MATTERS ANYBODY WANTS TO  
11 TAKE UP?

12:18PM

12 MR. BRIAN: YOUR HONOR, I DO HAVE ONE MATTER.  
13 I WOULD ASK THAT YOUR HONOR REMIND THE JURORS OF THE  
14 ADMONITION THAT YOU GAVE EARLIER WITH REGARD TO -- WITH  
15 RESPECT TO MEDIA COVERAGE OF THE CASE.

12:18PM

16 ONE OF MY CLIENT REPRESENTATIVES  
17 OBSERVED ONE OF THE JURORS, NOT DOING ANYTHING WRONG,  
18 BUT IN THE VICINITY YESTERDAY OF A REPORTER AND PEOPLE  
19 ARE MAKING CALLS AND TYPING THINGS. I JUST THINK IT  
20 WOULD BE IMPORTANT TO ADMONISH THEM TO BE CAREFUL.

12:18PM

21 THE COURT: OKAY. I WILL DO THAT.

22 MR. BRIAN: THANK YOU.

23 THE COURT: THANK YOU.

24

25 (RECESS TAKEN.)

12:18PM

26

27

28

1 CASE NUMBER: BC 429385  
2 CASE NAME: TCW VS. GUNDLACH  
3 LOS ANGELES, CALIFORNIA AUGUST 9, 2011  
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE  
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)  
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR  
7 TIME: C SESSION: 12:35 P.M.  
8  
9

10 THE COURT: SORRY TO KEEP YOU WAITING.

12:41PM

11 IN THE TCW VERSUS GUNDLACH MATTER, ALL  
12 MEMBERS OF OUR JURY ARE PRESENT.

13 MS. OSMAN, YOU MAY CONTINUE YOUR  
14 EXAMINATION OF MS. LEADER.

15

12:41PM

16 DIRECT EXAMINATION (CNT'D) +

17 BY MS. OSMAN:

18 Q I'D LIKE TO ASK YOU A FEW QUESTIONS ABOUT  
19 EXHIBIT 2056.

20 A OKAY.

12:42PM

21 Q IN THE E-MAIL FROM MR. GUNDLACH TO YOU COPYING  
22 LOUIS TEAZ AND KAREN KIMSEY, ARE LOUIS TEAZ AND  
23 KAREN KIMSEY THE CLIENT IN THIS CASE?

24 A THEY'RE THE CLIENT.

25 Q AND IN MR. GUNDLACH'S COMMENTS, THAT FIXED  
26 INCOME IS LIKELY TO BE 90 PERCENT -- COULD I HAVE  
27 THAT -- ACTUALLY.

12:42PM

28 THANK YOU.

1                   IN THE HIGHLIGHTED SECTION, IT SAYS  
2                   FIXED INCOME IS VERY LIKELY TO BE 90 PERCENT OF THE  
3                   FIRMS ASSETS IN A FEW QUARTERS.

4                   AT THE TIME OF THIS PHONE CALL WITH THE  
5                   CLIENT, WHAT PERCENTAGE WAS FIXED INCOME OF THE FIRMS  
6                   ASSETS? 12:42PM

7                   A           JEFFREY'S TEAM MANAGED LESS THAN 60 PERCENT OF  
8                   THE FIRM'S ASSETS.

9                   Q           AT THE END OF 2009, WHAT PERCENTAGE OF THE  
10                  FIRM'S ASSET -- 12:42PM

11                  A           I THINK IT'S MORE -- I'LL GIVE YOU A STATISTIC  
12                  FROM NOVEMBER 30TH, BECAUSE OF WHAT HAPPENED IN  
13                  DECEMBER, SO I THINK MAYBE THE MORE ACCURATE DATE IS  
14                  NOVEMBER 30TH. WHEN IT WAS STILL LESS THAN 60 PERCENT,  
15                  IT HAD GONE FROM MAYBE 57 TO 58, 59, BUT STILL UNDER 60  
16                  PERCENT. 12:43PM

17                  Q           DIDN'T GET ANYWHERE CLOSE TO 90 --

18                  A           NO, IT DID NOT.

19                  Q           I'D LIKE TO FOCUS YOUR ATTENTION NOW ON  
20                  ANOTHER CALL WITH MR. GUNDLACH. 12:43PM

21                               DO YOU RECALL BEING ON CALL WITH  
22                  MR. GUNDLACH IN ABOUT APRIL OF 2008?

23                  A           YES, I DO.

24                  Q           WAS THIS A CALL WITH LOCKHEED?

25                  A           YES, IT WAS. 12:43PM

26                  Q           WHAT IS LOCKHEED?

27                  A           LOCKHEED IS A MAJOR DEFENSE CONTRACTOR. THEY  
28                  HAVE PENSION ASSETS OF ABOUT \$25 BILLION.



1 Q AND WAS LOCKHEED ALREADY A CLIENT OF TCW?

2 A YES, IT WAS. WE MANAGED, IN A MERGING MARKET  
3 PORTFOLIO, ABOUT \$100 MILLION.

4 Q WAS THIS A CLIENT YOU HAD A RELATIONSHIP WITH?

5 A YES, IT WAS.

12:43PM

6 Q DID YOU DO ANYTHING? WERE YOU WORKING WITH A  
7 CLIENT -- THE CLIENT, TO TRY TO GET IT TO INVEST  
8 ADDITIONAL SUMS OF TCW?

9 A YES, I WAS. I HAD BEEN TALKING WITH THEM  
10 SINCE 2007 ABOUT OPPORTUNITIES TO INVEST WITH US IN THE  
11 MORTGAGE SPACE. WE HAD STARTED TALKING WITH THEM ABOUT  
12 THE SPECIAL MORTGAGE CREDITS FUNDS AT THE END OF 2007,  
13 AND THEN GOING FORWARD ABOUT OTHER WAYS THAT THEY COULD  
14 INVEST WITH TCW TO TAKE OPPORTUNITY -- TAKE ADVANTAGE  
15 OF DISLOCATIONS IN THE MORTGAGE SPACE.

12:44PM

12:44PM

16 Q AT THE TIME OF THIS CALL, YOU WERE TRYING TO  
17 CONVINCING THE CLIENT TO INVEST SUMS WITH MR. GUNDLACH'S  
18 GROUP?

19 A ABSOLUTELY.

20 Q DID GUNDLACH PARTICIPATE IN THAT CALL?

12:44PM

21 A YES.

22 Q DO YOU RECALL THE DATE OF THE CALL?

23 A MID APRIL.

24 Q AND WERE YOU IN YOUR OFFICE DURING THIS CALL?

25 A NO. I WENT TO THE CLIENT'S OFFICES IN  
26 BETHESDA, AND WE CONNECTED WITH JEFFREY BY PHONE. SO I  
27 WAS SITTING WITH THE CLIENT. JEFFREY WAS ON THE  
28 TELEPHONE.

12:44PM

1 Q AT SOME POINT DURING THE CALL, WAS THERE ANY  
2 KIND OF A DISPUTE BETWEEN MR. GUNDLACH AND THE CLIENT?

3 A YES.

4 ABOUT TEN MINUTES INTO THE 10 OR 15  
5 MINUTES.

12:45PM

6 MR. ALLRED: YOUR HONOR, NONRESPONSIVE.

7 THE COURT: I'LL STRIKE EVERYTHING AFTER YES.

8 BY MS. OSMAN:

9 Q WHAT'S THE DISPUTE, MS. LEADER?

10 A A DISPUTE ABOUT TEN MINUTES INTO THE CALL  
11 ABOUT A SPREAD RELATIONSHIP BETWEEN TWO BONDS.

12:45PM

12 THE PERSON I WAS MEETING WITH WAS THE  
13 HEAD OF FIXED INCOME FOR LOCKHEED, AND JEFFREY WAS  
14 TALKING ABOUT A PRICING OF SOME BOND, AND THEY -- THEY  
15 DISAGREED.

12:45PM

16 Q WHAT WAS MR. GUNDLACH'S TONE TOWARD THE CLIENT  
17 IN THAT CALL?

18 MR. ALLRED: HEARSAY, 352, RELEVANCE.

19 THE COURT: OVERRULED.

20 THE WITNESS: AFTER THAT DISAGREEMENT,

12:45PM

21 JEFFREY --

22 THE COURT: NO, ANSWER THE QUESTION, MA'AM.

23 THE WITNESS: I'M SORRY.

24 THE COURT: THAT'S NOT RESPONSIVE TO WHAT THE  
25 QUESTION WAS. LISTEN CAREFULLY TO THE QUESTION AND  
26 ANSWER. I KNOW THERE'S DISTRACTIONS.

12:45PM

27 THE WITNESS: I APOLOGIZE, YOUR HONOR.

28 ///

1 BY MS. OSMAN:

2 Q MY QUESTION IS FOCUSED ON MR. GUNDLACH'S TONE  
3 AND DEMEANOR TOWARDS THE CLIENT. CAN YOU DESCRIBE  
4 THAT?

5 A HIS DEMEANOR TOWARD THE CLIENT BECAME  
6 DISMISSIVE, IT WAS RUDE, IT WAS ARGUMENTATIVE.  
7 AND DISRESPECTFUL.

12:46PM

8 Q DURING THE CALLS YOU'VE DONE IN THE PAST WITH  
9 CLIENTS, HAD YOU EVER SEEN A PORTFOLIO MANAGER BEHAVE  
10 THAT WAY WITH A CLIENT?

12:46PM

11 A NOT TO -- NO.

12 Q DID THE CLIENT REACT IN ANY WAY TO  
13 MR. GUNDLACH?

14 A HE DID.

15 Q WHAT DID THE -- HOW -- EXCUSE ME. WHAT WAS  
16 THE CLIENT'S REACTION?

12:46PM

17 A THE CLIENT PUT HIS FINGER ON THE MUTE BUTTON  
18 ON THE PHONE AND LOOKED AT ME AND SAID, SUSAN, WAS HE  
19 MY ENEMY IN A PRIOR LIFE?

20 Q DID HE SAY ANYTHING ELSE?

12:46PM

21 A YES. HE DID.

22 HE SAID, I THINK JEFFREY WAS THE CHILD  
23 WHO EVERYBODY THREW SAND AT WHEN HE WAS IN THE SANDBOX  
24 WHEN HE WAS A LITTLE KID.

25 MR. ALLRED: OBJECTION, HEARSAY 352.

12:46PM

26 THE COURT: SUSTAINED. I'LL STRIKE IT.

27 MS. OSMAN: IT'S NOT BEING OFFERED FOR HEARSAY  
28 PURPOSE, YOUR HONOR.

1 THE COURT: GO AHEAD.

2 BY MS. OSMAN:

3 Q MS. LEADER, AT THIS POINT, DID THE CLIENT GIVE  
4 YOU ANY KIND OF AN INDICATION WHETHER IT WOULD INVEST  
5 ADDITIONAL SUMS WITH TCW?

12:47PM

6 A YES, HE DID. FOLLOWING THE CALL, HE EXPLAINED  
7 TO ME THAT HE HAD TWO CRITERIA FOR HIRING AN ASSET  
8 MANAGER FIRM. THE FIRST, HE SAID THE FIRM CLEARLY HAD  
9 TO HAVE THE EXPERTISE, THE PERSONNEL, THE DATA SYSTEMS,  
10 EVERYTHING ELSE TO MANAGE A PORTFOLIO FOR HIM, AND TO  
11 BE ABLE TO GENERATE THE RETURNS THAT THEY WERE LOOKING  
12 FOR.

12:47PM

13 AND SECONDLY, HE HAD TO BE ABLE TO WORK  
14 WITH THE MANAGEMENT TEAM.

15 HE SAID THAT ON THE 1ST COUNT, IN TERMS  
16 OF EXPERTISE, WE CLEARLY PASSED MUSTER, BUT HE CLEARLY  
17 COULD NOT WORK WITH JEFFREY GUNDLACH.

12:47PM

18 Q WHAT DID YOU DO IN RESPONSE TO THIS CALL AND  
19 THIS INTERACTION BETWEEN THE CLIENT AND MR. GUNDLACH?

20 A WHEN I CAME BACK TO THE OFFICE, I SORT OF  
21 WASN'T WILLING QUITE TO ADMIT DEFEAT YET, SO I WENT TO  
22 TALK TO MY BOSS, GARRETT WALLS, AND I TOLD HIM WHAT HAD  
23 HAPPENED, AND THE TWO OF US STRATEGIZED TOGETHER ABOUT  
24 WAS THERE ANY POSSIBLE WAY THAT WE COULD UNDO THE  
25 DAMAGE THAT HAD BEEN DONE, AND -- TO SEE IF WE COULD  
26 RIGHT THE WRONG THAT HAD BEEN DONE.

12:47PM

27 WE AGREED THAT THE BEST COURSE OF ACTION  
28 WOULD BE FOR ME TO ASK PHIL BARACH, WHO WAS JEFFREY'S

12:48PM

1 CO-HEAD OF THE MORTGAGE GROUP, OR HIS NO. 2, FOR ME TO  
2 ASK PHIL BARACH IF HE WOULD DO A CALL WITH LOCKHEED.

3 Q DID YOU DO THAT?

4 A YES, I DID. I CALLED -- OH, NO. EXCUSE ME.

5 I CALLED PHIL AND ASKED HIM IF HE WOULD  
6 DO A CALL.

12:48PM

7 Q DID HE AGREE TO DO THE CALL?

8 A YES, HE DID.

9 Q DID YOU THEN HAVE ANY COMMUNICATION WITH  
10 MR. GUNDLACH ABOUT THAT?

12:48PM

11 A I DIDN'T HAVE A VERBAL CONVERSATION, BUT HE  
12 SENT ME AN E-MAIL.

13 Q I'D LIKE TO YOU LOOK IN YOUR BINDER AT WHAT'S  
14 BEEN MARKED FOR IDENTIFICATION AS EXHIBIT 83.

15 HAVE YOU SEEN THAT DOCUMENT BEFORE?

12:49PM

16 A YES, I HAVE.

17 Q WHAT IS IT?

18 A AN E-MAIL JEFFREY SENT ME ON THE DAY OF THE  
19 MEETING, RESPONDING TO MY CONVERSATION WITH  
20 PHIL BARACH.

12:49PM

21 MS. OSMAN: YOUR HONOR, I'D OFFER EXHIBIT 83.

22 MR. ALLRED: NO OBJECTION.

23 THE COURT: IT WILL BE ADMITTED.

24 (EXHIBIT 83 ADMITTED.) +

25 MS. OSMAN: IF WE CAN HAVE THAT ON THE SCREEN,  
26 PLEASE.

12:49PM

27 Q NOW IN THE FIRST PARAGRAPH, MR. GUNDLACH  
28 WRITES: I UNDERSTAND THAT YOU HAD A CONVERSATION WITH

1 PHIL BARACH TODAY ABOUT LOCKHEED, SUGGESTING THAT MAYBE  
2 A CALL WITH HIM WOULD INCLINE THIS PROSPECT TO INVEST  
3 ON A TCW M.B.S. PRODUCT. AS THEY WERE BOTH PERSUADED  
4 AND PUT OFF BY THE CALL I CONDUCTED WITH THEM THIS  
5 MORNING.

12:49PM

6 THAT IS IN REFERENCE, AS FAR AS YOU  
7 UNDERSTAND, TO THE COMMENTS THAT MR. GUNDLACH MADE TO  
8 THE CLIENT?

9 A YES, IT WAS.

10 Q THE NEXT PARAGRAPH SAYS: I AM NOT SURPRISED  
11 THAT A PROSPECT MIGHT BE PUT OFF IN DIRECT  
12 COMMUNICATIONS WITH ME. THESE DAYS, IT WOULD BE VERY  
13 UNDERSTANDABLE FOR THEM TO COME AWAY THINKING THAT I AM  
14 NOT TERRIBLY FOCUSED ON THEIR NEEDS AND DESIRES AND  
15 ALMOST COULDN'T CARE LESS ABOUT THEM. THAT IS BECAUSE  
16 I AM, IN FACT, NOT FOCUSED ON THEIR NEEDS AND DESIRES,  
17 AND IN FACT, DO NOT CARE MUCH ABOUT THEM.

12:49PM

12:50PM

18 IS THAT THE E-MAIL YOU RECEIVED FROM  
19 MR. GUNDLACH?

20 A YES IT WAS.

12:50PM

21 Q IS THAT THE SENTIMENT THAT MR. GUNDLACH  
22 CONVEYED IN THE PHONE CALL WITH LOCKHEED THAT DAY?

23 A YES, IT WAS.

24 Q NOW, MR. GUNDLACH CONTINUES, BUT BEFORE YOU OR  
25 THEY GET ALL IN A DITHER ABOUT SUCH A STATEMENT, MAYBE  
26 YOU SHOULD REALIZE I AM JUST ABOUT NEARLY SWEATING OUT  
27 MY OWN BLOOD EVERY SINGLE DAY, WATCHING OVER MY  
28 EXISTING CLIENTS' INTERESTS INSOFAR AT LEAST MY EFFORTS

12:50PM

1 HAVE DONE MY CLIENT A GREAT DEAL OF GOOD. IN MY HEART,  
2 I KNOW PROSPECTS SHOULD BE -- UPGRADED TO AT LEAST TCW  
3 M.B.S. CLIENT STATUS. AND WITH ALL I HAVE OUT ON THE  
4 LINE, I'M NOT ABOUT TO IMPLORE THEM ON THE ISSUE. IF  
5 THEY CAN'T SEE IT, THEN WE MOVE ON.

12:50PM

6 WHAT DID YOU UNDERSTAND THAT LAST  
7 SENTENCE TO MEAN?

8 A THAT HE WAS NOT GOING TO DO A CALL WITH A  
9 PROSPECT. AND IF I HAD HIM ON A CALL WITH A PROSPECT,  
10 HE MIGHT VERY WELL BEHAVE IN THE SAME WAY, SO ...

12:51PM

11 Q MR. GUNDLACH ALSO TALKS ABOUT SWEATING BLOOD  
12 FOR HIS EXISTING CLIENTS.

13 IN YOUR EXPERIENCE WITH WORKING WITH  
14 OTHER PORTFOLIO MANAGERS, DOES THAT RELIEVE THEM OF AN  
15 OBLIGATION, AS PART OF THEIR DUTIES, TO TRY TO GENERATE  
16 NEW BUSINESS?

12:51PM

17 A NO, IT DOESN'T.

18 MR. ALLRED: FOUNDATION, IMPROPER OPINION.

19 THE COURT: OVERRULED. GO AHEAD.

20 THE WITNESS: NO, IT DOES NOT.

12:51PM

21 BY MS. OSMAN:

22 Q DID YOU HAVE AN UNDERSTANDING, IN YOUR CALLS  
23 WITH OTHER PORTFOLIO MANAGERS, THAT PART OF THE  
24 RESPONSIBILITIES WERE TO GENERATE NEW BUSINESS?

25 A YES.

12:51PM

26 Q AND WERE THESE WHAT THE CALLS WERE FOR?

27 A YES.

28 Q THAT WAS WITH THE LOCKHEED CALL WAS FOR IN

1 THIS CASE?

2 A YES.

3 Q HE THEN GOES ON TO SAY, I WOULD SUGGEST TO YOU  
4 THAT MY CALLS TO PROSPECTS GOING FORWARD ARE VERY  
5 LIKELY TO SHARE MUCH IN COMMON WITH A CALL -- WITH  
6 LOCKHEED TODAY. IF THAT IS A WORRY TO YOU, THEN YOU  
7 SHOULD NOT HAVE ME DO THE CALL. NOT ONLY IS THAT FINE  
8 WITH ME, I RECOMMEND IT.

12:51PM

9 WHAT DID YOU UNDERSTAND GUNDLACH TO SAY,  
10 THAT HE WASN'T GOING TO DO CALLS WITH PROSPECTS?

12:52PM

11 MR. ALLRED: LACKS FOUNDATION.

12 THE COURT: I THINK THE DOCUMENT SPEAKS FOR  
13 ITSELF. I'LL SUSTAIN THE OBJECTION.

14 BY MS. OSMAN:

15 Q AS A RESULT OF RECEIVING THIS E-MAIL,  
16 MS. LEADER, DID YOU HAVE FURTHER CALLS WITH  
17 MR. GUNDLACH IN THE NEXT SEVERAL MONTHS?

12:52PM

18 A NO, I DID NOT.

19 Q WHY NOT?

20 A BECAUSE I WAS AFRAID I WOULD GET THIS JEFFREY  
21 ON THE CALL.

12:52PM

22 Q WHAT DO YOU MEAN BY THIS JEFFREY?

23 A THE JEFFREY WHO WOULD BE RUDE AND  
24 DISRESPECTFUL TO A CLIENT. AND TO ACTUALLY, IN THIS  
25 CASE, TO A CLIENT OF THE FIRM, OR TO A PROSPECT.

12:52PM

26 Q IN THIS PARTICULAR CASE, DID LOCKHEED INVEST  
27 WITH TCW?

28 A NOT AT THAT TIME.



1 Q DID THEY INVEST AFTER, AT SOME LATER TIME?

2 A YES.

3 Q DID THEY INVEST WHILE MR. GUNDLACH WAS STILL  
4 THERE IN FIXED INCOME AREA?

5 A NO, THEY DID NOT.

12:52PM

6 Q I'D LIKE TO TALK TO YOU NOW ABOUT ANOTHER  
7 MEETING, OR MEETING THAT YOU HAD WITH MR. GUNDLACH IN  
8 AUGUST OF 2009. DO YOU RECALL THAT?

9 A YES, I DO.

10 Q WAS THAT -- WHICH CLIENT WAS THAT?

12:52PM

11 A THAT WAS WITH THE FORD FOUNDATION.

12 Q WHERE DID THAT MEETING TAKE PLACE?

13 A IN NEW YORK.

14 Q WHAT'S WHAT THE PURPOSE OF THAT MEETING?

15 A FORD FOUNDATION HAD BEEN A MAJOR CLIENT OF TCW  
16 AND A MAJOR CLIENT OF THE MORTGAGE GROUP.

12:53PM

17 THEY HAD RECENTLY HAD AN ENTIRE CHANGE  
18 IN STAFF, FROM THE PRESIDENT OF THE FOUNDATION ALL THE  
19 WAY DOWN THROUGH ALL THE INVESTMENT STAFF.

20 SO THE PURPOSE OF THIS MEETING WAS  
21 REALLY TO INTRODUCE JEFFREY TO THE NEW STAFF, AND TO  
22 ALMOST RESELL THIS VERY SIGNIFICANT RELATIONSHIP TO THE  
23 FORD FOUNDATION.

12:53PM

24 Q AND IN YOUR VIEW, HOW DID MR. GUNDLACH CONDUCT  
25 HIMSELF IN THAT MEETING?

12:53PM

26 A HE WAS EXCELLENT.

27 Q WHAT DO YOU MEAN BY THAT?

28 A HE COMMUNICATED EFFECTIVELY, HE WAS

1 PERSUASIVE, HE TALKED TO HIS MATERIALS -- THROUGH HIS  
2 MATERIALS. BY THE END OF THE MEETING, I THINK I TOLD  
3 PEOPLE HE HAD THEM EATING OUT OF HIS HAND.

4 Q HE WASN'T SAME JEFFREY ON THE LOCKHEED CALL.

5 A ABSOLUTELY.

12:54PM

6 Q DID HE, IN THAT MEETING, SAY ANYTHING TO THE  
7 CLIENT ABOUT THE PROSPECTIVE WHY THEY SHOULD INVEST  
8 WITH TCW?

9 A YES. WELL IT WAS REALLY MORE WHY THEY SHOULD  
10 CONTINUE INVESTING, AND HE -- THE PRESENTATION COVERED  
11 SORT OF, AS I REMEMBER IT, FOUR AREAS.

12:54PM

12 FIRST, HE TALKED ABOUT THE -- WHY THIS  
13 STRATEGY WORKED IN SOMETHING IT WAS CALLED THE YALE  
14 ENDOWMENT MODEL, A WAY THE FOUNDATION WAS NOW GOING TO  
15 BE APPROACHING THE MANAGEMENT OF THE ASSETS. AND HE  
16 PRESENTED THIS AS A STRATEGY THAT WOULD WORK WELL  
17 WITHIN THAT NEW MODEL FOR THEM.

12:54PM

18 SECONDLY, HE PRESENTED CHARTS SHOWING  
19 THE FOUNDATION'S INVESTMENTS OVER TIME, AND HOW THEY  
20 HAD -- EVERY TIME JEFFREY HAD RECOMMENDED THAT THEY  
21 ALLOCATE MORE MONEY TO THE STRATEGY, IT WOULD WORK OUT  
22 EXTREMELY WELL FOR THEM.

12:54PM

23 THIRDLY, HE TALKED ABOUT HIS OWN  
24 EXPERTISE. AND GIVEN -- WITH JEFFREY, HE WAS TALKING  
25 ABOUT HIS BRILLIANCE. AND THEN FOURTHLY, HE TALKED  
26 ABOUT THE NECESSARY -- PROPRIETARY DATA THAT WE HAD AT  
27 TCW IN THE ANALYTIC SYSTEMS THAT SUPPORTED HIS  
28 BRILLIANCE.

12:55PM

1 Q WHAT DO YOU MEAN BY THE PROPRIETARY DATA AND  
2 ANALYTIC SYSTEMS?

3 A MORTGAGE BACKED SECURITIES ARE VERY COMPLEX  
4 SECURITIES. AND AS JEFFREY WAS FREQUENTLY FOND OF  
5 SAYING, YOU CAN'T PUT TWO GUYS IN A BLOOMBERG, WHICH IS 12:55PM  
6 A -- INFORMATION SERVICE, WHICH IS BASICALLY PROVIDES  
7 INFORMATION. YOU CAN'T PUT TWO GUYS IN A BLOOMBERG  
8 TOGETHER AND MANAGE MORTGAGE-BACKED SECURITIES. YOU  
9 NEED VERY SOPHISTICATED ANALYTIC TOOLS TO PRICE THE  
10 MORTGAGES TO LOOK WHAT'S BEHIND THE LOANS THAT ARE 12:55PM  
11 BEHIND A MORTGAGE, TO COMPARE RELATIVE EVALUATIONS, SO  
12 THAT YOU CAN MAKE TIMELY AND EFFECTIVE DECISIONS.

13 Q WHAT DID MR. GUNDLACH SAY TO THE FORD  
14 FOUNDATION ABOUT TCW'S PROPRIETARY ANALYTICAL SYSTEMS?

15 A SAID THEY WERE SUPERIOR AND AT -- BEST IN 12:55PM  
16 BREED.

17 Q DID YOU UNDERSTAND THAT MR. GUNDLACH WAS  
18 SAYING THAT TO CONVINCING FORD TO CONTINUE INVESTING WITH  
19 TCW?

20 A YES, I DID. 12:56PM

21 Q AT THE CONCLUSION OF THAT MEETING, DID YOU  
22 HAVE ANY OTHER DISCUSSIONS WITH MR. GUNDLACH?

23 A YES, I DID.

24 Q AND WHAT DID YOU DISCUSS WITH MR. GUNDLACH?

25 A HE AND I WERE WALKING ALONG THE STREET OUTSIDE 12:56PM  
26 THE FORD FOUNDATION, AND WE WERE TALKING ABOUT WHAT WAS  
27 HAPPENING AT TCW.

28 Q DID MR. GUNDLACH MAKE A COMMENT ABOUT

1 MR. STERN?

2 A YES, HE DID.

3 Q WHAT DID HE SAY?

4 A HE SAID, I WILL NEVER WORK FOR MARC STERN. I  
5 DON'T TRUST HIM, AND -- I DON'T TRUST HIM.

12:56PM

6 Q WHAT WAS YOUR REACTION TO THAT COMMENT?

7 A HORROR.

8 I'M A MARKETING PERSON. MY JOB IS TO  
9 WORK WITH CLIENTS, AND TO GIVE THEM AN UNDERSTANDING  
10 THAT THERE'S STABILITY AT THE FIRM. HE'S NOW TOLD ME  
11 HE'S NOT GOING TO STAY THERE, AND THAT MEANS THE WHOLE  
12 FIRM IS UNSTABLE. AND THAT'S A VERY FRIGHTENING  
13 PROSPECT.

12:56PM

14 Q MS. LEADER, I'D LIKE TO ASK YOU ABOUT ANOTHER  
15 INTERACTION NOW WITH THE FORD FOUNDATION.

12:57PM

16 A UH-HUH.

17 Q DID YOU HAVE A CALL IN ABOUT OCTOBER OF 2009  
18 WITH THE FORD FOUNDATION?

19 A YES, WE DID.

20 Q LEADING UP TO THAT CALL, DID ANY  
21 REPRESENTATIVE FROM THE FORD FOUNDATION ASK YOU FOR  
22 ANYTHING IN PARTICULAR?

12:57PM

23 A YES. THIS WAS TO BE A QUARTERLY REVIEW CALL  
24 WITH THE NEW HEAD OF MARKETABLE SECURITIES WITHIN THE  
25 FOUNDATION. AND I RECEIVED AN E-MAIL GIVING ME AN  
26 AGENDA OF THE ITEMS THAT THEY WANTED TO BE DISCUSSED  
27 AND -- IN THE MEETING.

12:57PM

28 Q DID SHE ASK YOU TO PROVIDE ANYTHING IN ADVANCE

1 OF THE MEETING?

2 A SHE -- THEY ASKED THAT SHE -- SHE ASKED ME IF  
3 WE WOULD PROVIDE ATTRIBUTION, ATTRIBUTION WORK, SO THAT  
4 SHE WOULD UNDERSTAND WHAT WAS DRIVING THE RETURNS IN  
5 THE PORTFOLIO.

12:58PM

6 Q HOW WERE YOU GOING TO GET THE ATTRIBUTION WORK  
7 AND REPORT --

8 A I HAD TO GET IT FROM JEFFREY.

9 Q WHY IS THAT?

10 A BECAUSE THE FORD FOUNDATION WAS A VERY  
11 IMPORTANT ACCOUNT TO JEFFREY. HE WAS THE FACE OF THE  
12 ACCOUNT, AND HE WAS ONLY PERSON I EVER TALKED TO ABOUT  
13 ANYTHING TO DO WITH IT.

12:58PM

14 Q WHAT IS AN ATTRIBUTION REPORT?

15 A ATTRIBUTION REPORT TAKES THE RETURNS AT THE  
16 PORTFOLIO, AND IT LOOKS AT WHAT KIND OF DECISION THE  
17 MANAGER MADE THAT LED TO THOSE RETURNS. IT CAN BE WHAT  
18 BONDS YOU BOUGHT, IT COULD BE YOUR MARKET TIMING. IT  
19 WOULD BE WHAT SECTORS YOU'RE INVESTING. IT'S AN  
20 ANALYTICAL TOOL THAT INVESTS, THAT A CLIENT WILL USE TO  
21 UNDERSTAND WHY THE MANAGERS ARE GENERATING RETURNS THEY  
22 ARE.

12:58PM

23 Q DID YOU HAVE ACCESS TO THAT ATTRIBUTION?

24 A NO, I DID NOT.

25 Q WHO HAD ACCESS TO IT?

12:58PM

26 A JEFFREY.

27 Q DID MR. GUNDLACH PROVIDE YOU THE ATTRIBUTION  
28 REPORT?

1 A NO, HE DIDN'T. NOT BEFORE THE CALL.

2 Q AND DID YOU HAVE ANY OTHER DISCUSSIONS WITH  
3 THE CLIENT ABOUT THE ATTRIBUTION REPORT?

4 A FIVE MINUTES BEFORE THE CALL, THE CLIENT  
5 CALLED ME, OUTRAGED, AND SAID THAT SHE HAD NEVER BEEN  
6 TREATED THIS WAY, AND THEY WERE USED TO GETTING  
7 MATERIALS BEFORE A CALL, WHEN SHE'S ASKED FOR THEM.

12:59PM

8 Q AT ANY POINT IN TIME, DID MR. GUNDLACH PROVIDE  
9 THE ATTRIBUTION REPORT?

10 A FOLLOWING UP ON THE CALL, HE DID.

12:59PM

11 Q SO AFTER THE CALL?

12 A AFTER THE CALL WAS OVER.

13 Q I'D LIKE YOU TO TAKE A LOOK AT WHAT'S BEEN  
14 MARKED FOR IDENTIFICATION AS EXHIBIT 2057 IN YOUR  
15 BINDER.

12:59PM

16 HAVE YOU SEEN THAT BEFORE?

17 A YES I HAVE.

18 Q WHAT IS IT?

19 A A SERIES OF E-MAILS BETWEEN JEFFREY AND ME  
20 ABOUT THIS CALL WITH THE FORD FOUNDATION PRIOR TO THE  
21 CALL.

12:59PM

22 MS. OSMAN: I'D OFFER EXHIBIT 2057.

23 MR. ALLRED: NO OBJECTION.

24 THE COURT: IT WILL BE ADMITTED.

25 (EXHIBIT 2057 ADMITTED.) +

01:00PM

26 BY MS. OSMAN:

27 Q FOCUS JUST ON THE MIDDLE E-MAIL, MS. LEADER.  
28 I TAKE IT THE BOTTOM E-MAIL WOULD BE FORD FOUNDATION

1 REPRESENTATIVE ASKING YOU IF FOR SOME INFORMATION.

2 A YES, IT WAS.

3 Q IS THE MIDDLE E-MAIL AN E-MAIL YOU SENT TO  
4 MR. GUNDLACH AND MS. VANEVERY?

5 A YES, IT WAS.

01:00PM

6 Q AND YOU STATE: WHAT MATERIALS DO YOU WANT TO  
7 USE FOR NEXT WEEK'S PHONE REVIEW WITH FORD FOUNDATION  
8 FOR NEXT WEEK?

9 A RIGHT.

10 Q SO I TAKE IT AS OF THIS TIME, HE HADN'T GIVEN  
11 YOU ANYTHING YET?

01:00PM

12 A THAT'S CORRECT.

13 Q WHY IS IT THAT YOU ASKED HIM WHAT MATERIALS  
14 YOU WANT TO USE, RATHER THAN JUST SAYING, I NEED THAT  
15 ATTRIBUTION REPORT, WHERE IS IT?

01:00PM

16 A BECAUSE I KNOW FROM EXPERIENCE, WORKING WITH  
17 JEFFREY, IF I DEMAND SOMETHING, I WON'T GET IT. THE  
18 BEST WAY TO GET ANY INFORMATION FROM HIM WAS TO ASK IN  
19 A DIFFERENTIAL, POLITE MANNER.

20 Q REFERRING TO THE TOP E-MAIL NOW, FROM  
21 MR. GUNDLACH TO YOU, DATED OCTOBER 20, 2009 --  
22 OCTOBER 20, 2009, HIS RESPONSE IS: MAYBE NOTHING OR  
23 MAYBE SOMETHING. IF IT IS SOMETHING, I WILL LET YOU  
24 KNOW.

01:00PM

25 DID HE EVER GIVE YOU ANYTHING BEFORE THE  
26 CALL?

01:01PM

27 A NO.

28 Q I'D LIKE TO ASK YOU FEW QUESTIONS ABOUT FOCUS

1 COMMITTEE. WERE YOU ON A FOCUS COMMITTEE FOR TCW?

2 A YES, I WAS.

3 Q WAS MR. SANTA ANA ALSO ON THAT COMMITTEE?

4 A YES, HE WAS.

5 Q WHAT WAS THE PURPOSE, BRIEFLY, OF THE FOCUS  
6 COMMITTEE?

01:01PM

7 A THE PURPOSE OF THE FOCUS COMMITTEE WAS TO  
8 REVIEW THE STRATEGIES THAT WE WERE MANAGING AT TCW, TO  
9 LOOK AT THEIR COMPETITIVE PLACE IN THE MARKETPLACE AND  
10 TO RECOMMENDED POTENTIAL CHANGES IN THE STRATEGIES.

01:01PM

11 IT WAS ALSO TO LOOK AT THE MARKET IN  
12 GENERAL, AND MAKE RECOMMENDATIONS ABOUT AREAS WHERE WE  
13 MAYBE COULD BE COMPETITIVE, AND WHAT WE COULD DO GOING  
14 FORWARD.

15 AND THEN FINALLY, WE LOOKED AT THE  
16 ORGANIZATION STRUCTURE AND HOW WE COULD BE BEST  
17 ORGANIZED TO DELIVER ON THE RECOMMENDATIONS THAT WE  
18 WERE MAKING.

01:01PM

19 Q I TAKE IT THE COMMITTEE CAME UP WITH WRITTEN  
20 RECOMMENDATIONS.

01:02PM

21 A YES, WE DID.

22 Q WAS THERE MORE THAN ONE VERSION?

23 A YES, THERE WERE.

24 Q WAS THERE A FINAL PRESENTATION, IF YOU WILL,  
25 OF RECOMMENDATIONS TO THE MANAGEMENT COMMITTEE?

01:02PM

26 A YEAH. THERE WAS A PRESENTATION WE MADE TO  
27 WHAT WAS THEN CALLED BOB BEYER'S MONDAY GROUP, IN  
28 JANUARY OF 2009.



1 Q I'D LIKE TO CALL OUT EXHIBIT 6055, WHICH WAS  
2 ADMITTED YESTERDAY WITH MR. SANTA ANA.

3 THE COURT: WHAT WAS THE EXHIBIT NUMBER AGAIN?

4 MS. OSMAN: 6055.

5 THE COURT: THANK YOU.

01:02PM

6 BY MS. OSMAN:

7 Q IF WE CAN LOOK ON PAGE 3 OF 6055, DO YOU  
8 RECOGNIZE THIS AS SOME OF THE RECOMMENDATIONS OF THE  
9 FOCUS COMMITTEE?

10 A THIS WAS A -- A DRAFT COPY OF THE  
11 RECOMMENDATIONS.

01:03PM

12 Q SO IT WASN'T FINAL?

13 A NO, IT WASN'T.

14 Q YOU'LL NOTICE ON THE 1ST BULLET POINT, IT  
15 SAYS: CONSOLIDATE FIXED INCOME PLATFORM TO EXPLORE  
16 STRONG NEAR-TERM OPPORTUNITIES AND CREDIT, PLACE ALL  
17 MARKETABLE SECURITIES, FIXED INCOME STRATEGIES, UNDER  
18 JEG.

01:03PM

19 DID YOU UNDERSTAND JEG TO BE  
20 MR. GUNDLACH?

01:03PM

21 A YES, I DID.

22 Q WAS THAT RECOMMENDATION IN THE FINAL --

23 A NO.

24 Q -- REPORT?

25 A NOT WRITTEN THAT WAY.

01:03PM

26 Q WHAT WAS THE CHANGE?

27 A THE CHANGE DELETED UNDER JEG.

28 Q IF WE CAN CALL UP, PLEASE, 6056, WHICH WAS

1 ALSO ADMITTED YESTERDAY.

2 GOING TO PAGE 4 OF THAT EXHIBIT, YOU SEE  
3 THE FIRST BULLET POINT, AGAIN, IT SAYS CONSOLIDATE  
4 FIXED INCOME PLATFORM TO EXPLOIT STRONG NEAR-TERM  
5 MARKET OPPORTUNITIES IN CREDIT, PLACE ALL MARKETABLE  
6 SECURITIES, FIXED INCOME STRATEGIES IN ONE GROUP.

01:04PM

7 THIS DOES NOT MENTION MR. GUNDLACH,  
8 CORRECT?

9 A IT DOES. CORRECT.

10 Q WAS THAT AN OVERSIGHT?

01:04PM

11 A NO.

12 Q CAN YOU EXPLAIN THAT?

13 A YES.

14 WE HAD HAD A LOT OF DISCUSSIONS ABOUT  
15 THIS PARTICULAR POINT, AND HAD CONCLUDED THAT PUTTING  
16 IN OUR FINAL RECOMMENDATION UNDER JEG WAS INADVISABLE.

01:04PM

17 Q WHY IS THAT?

18 A BASICALLY TWO REASONS.

19 THE WEST L.A. GROUP, UNDER THE WEST L.A.  
20 GROUP, WHO MANAGED HIGH YIELD AT THE TIME, OBJECTED  
21 STRONGLY. AND THERE WAS A REPRESENTATIVE ON THE GROUP,  
22 MARC ALBERT, AND THEY OBJECTED STRONGLY TO ANY  
23 RECOMMENDATION THAT HIGH YIELD WOULD REPORT TO JEFFREY  
24 GUNDLACH.

01:04PM

25 SO -- THEIR RECOMMENDATION -- WELL, SO  
26 WE OMITTED IT FOR THAT REASON.

01:04PM

27 AND SECONDLY, THERE WAS DISCUSSION IN  
28 THE GROUP, AND DISAGREEMENT ABOUT WHETHER IT WAS

1 APPROPRIATE TO GIVE MORE POWER TO JEFFREY GUNDLACH.

2 Q WHAT WAS THE CONCERN ABOUT GIVING MORE POWER  
3 TO MR. GUNDLACH?

4 MR. ALLRED: SPECULATION, LACKS FOUNDATION.

5 THE COURT: SUSTAINED.

01:05PM

6 BY MS. OSMAN:

7 Q WERE YOU PARTICIPATING IN THOSE DISCUSSIONS?

8 A YES, I WAS.

9 Q WHAT WAS EXPRESSED BY THE FOCUS COMMITTEE  
10 ABOUT WHAT -- WHY MORE POWER SHOULD NOT BE GIVEN TO  
11 MR. GUNDLACH?

01:05PM

12 MR. ALLRED: SAME OBJECTION, HEARSAY.

13 THE COURT: SUSTAINED.

14 BY MS. OSMAN:

15 Q DID THE COMMITTEE -- LET ME BACK UP.

01:05PM

16 WAS THERE ANY DISCUSSION ABOUT  
17 MR. ATTANASIO OR MR. CHAPUS REPORTING TO MR. GUNDLACH?

18 A NO, THERE WAS NOT.

19 Q AND THEY WERE RESPONSIBLE FOR HIGH YIELD AND  
20 BACK LOANS?

01:05PM

21 A THEY WERE RESPONSIBLE -- JEAN-MARC CHAPUS WAS  
22 RESPONSIBLE FOR THE MEZZANINE GROUP, WHICH WAS PART OF  
23 THAT WHOLE TEAM. MARK ATTANASIO WAS HEAD OF THE GROUP.  
24 HIGH YIELD WAS ONE OF THE STRATEGIES MANAGED WITHIN  
25 THAT GROUP.

01:05PM

26 Q DID THE FOCUS COMMITTEE BELIEVE MR. GUNDLACH'S  
27 TEMPERAMENT WAS SUITED TO TAKE ON THOSE ADDITIONAL  
28 MARKET -- --

1 MR. ALLRED: OBJECTION.

2 MS. OSMAN: I THINK I'VE FORGOTTEN IT NOW.

3 THE COURT: OKAY. PERFECT.

4 BY MS. OSMAN:

5 Q DID THE COMMITTEE CONSIDER IT ADVISABLE TO  
6 GIVE MORE POWER TO MR. GUNDLACH?

01:06PM

7 MR. ALLRED: OKAY.

8 THE WITNESS: SOME MEMBERS OF THE COMMITTEE  
9 DID NOT.

10 BY MS. OSMAN:

01:06PM

11 Q WAS THERE ANY INDICATION OF WHY IT WAS NOT  
12 ADVISABLE?

13 MR. ALLRED: HEARSAY.

14 THE COURT: WELL, AS TO THE COMMITTEE ACTION.  
15 YOU'RE TESTIFYING ABOUT THAT.

01:06PM

16 THE WITNESS: YES. WE DON'T WANT  
17 STATEMENTS --

18 THE COURT: WE DON'T WANT STATEMENTS OF THE  
19 INDIVIDUALS.

20 GO AHEAD.

01:06PM

21 BY MS. OSMAN:

22 Q WHAT WAS THE COMMITTEE'S CONCLUSION AS TO WHY  
23 IT WAS NOT ADVISABLE TO GIVE MR. GUNDLACH MORE POWER?

24 A THE COMMITTEE'S CONCLUSION WAS THAT JEFFREY  
25 WAS NOT A COOPERATER OR A COLLABORATOR; AND THEREFORE,  
26 TO PUT ANOTHER GROUP WITHIN, UNDER HIS LEADERSHIP, WAS  
27 NOT ADVISABLE.

01:07PM

28 MS. OSMAN: I HAVE NO FURTHER QUESTIONS AT

1 THIS TIME.

2 THE COURT: CROSS-EXAMINATION, MR. ALLRED?

3 MR. BRIAN: MAY I APPROACH, YOUR HONOR?

4 THE COURT: YES, YOU MAY.

5

01:07PM

6

CROSS-EXAMINATION +

7

BY MR. ALLRED:

8

Q DO YOU HAVE A BINDER IN FRONT OF YOU?

9

A I DO.

10

Q GOOD AFTERNOON. MY NAME'S KEVIN ALLRED.

01:08PM

11

A HELLO, MR. ALLRED.

12

Q LET'S START, I GUESS, IN REVERSE ORDER.

13

THE FOCUS COMMITTEE, WE'VE SEEN A NUMBER  
14 OF DRAFTS, AT LEAST TWO IN EVIDENCE, OF THE  
15 RECOMMENDATIONS.

01:08PM

16

YOU DID NOT DISSENT FROM THE DRAFT  
17 RECOMMENDATION THAT EXPRESSLY CALLED OUT MR. GUNDLACH  
18 AS THE PERSON UNDER WHOM FIXED INCOME WOULD BE  
19 CONSOLIDATED, CORRECT?

20

A NO.

01:08PM

21

Q I ASKED A VAGUE QUESTION. I DON'T KNOW WHAT  
22 THE NO MEANS.

23

WASN'T IT THE CASE THAT --

24

A I DID DISSENT.

25

Q YOU DID DISSENT.

01:08PM

26

AND THERE WAS -- IT WAS ISSUED IN THAT  
27 DRAFT FORM, ANYWAY?

28

A IT WAS A DISCUSSION, IT WAS A DRAFT.

1                   THIS WAS A COMMITTEE THAT TALKED FOR  
2 FOUR MONTHS, VERY FREQUENTLY, ABOUT ALL THE MATTERS  
3 THAT WERE DISCUSSED. AND THERE WAS A DRAFT, AND WE  
4 REVIEWED IT. AND THEN CHANGES WERE MADE BY THE TIME OF  
5 THE FINAL DRAFT.

01:08PM

6           Q        THE DRAFT DIDN'T WRITE ITSELF. SOMEBODY  
7 DRAFTED THAT, RIGHT?

8           A        (NO AUDIBLE RESPONSE.)

9           Q        IS THERE -- SO IT MUST HAVE HAD AT LEAST A  
10 MAJORITY SUPPORT AT THAT TIME, CORRECT?

01:09PM

11          A        PRESUMABLY.

12          Q        AND JUST AS A PRACTICAL MATTER, PUTTING ASIDE  
13 THE DRAFT, IF THERE WAS GOING TO BE A PERSON AT THAT  
14 TIME TO WHOM ALL FIXED INCOME WOULD REPORT, EVERYBODY  
15 IN THE FIRM WOULD KNOW THAT MEANT JEFFREY GUNDLACH,  
16 RIGHT?

01:09PM

17                   MS. OSMAN: LACKS FOUNDATION.

18                   THE COURT: OVERRULED.

19                                CAN YOU ANSWER THAT?

20                   THE WITNESS: PRESUMABLY.

01:09PM

21 BY MR. ALLRED:

22          Q        THE NEXT CONVERSATION, THE NEXT SUBJECT YOU  
23 COVERED WAS COMMUNICATIONS WITH THE FORD FOUNDATION.

24                                AND YOU FELT -- YOU DESCRIBED AN  
25 INCIDENT YOU FELT MAY HAVE PUT THEM OFF BY NOT GETTING  
26 SOME INFORMATION QUICKLY ENOUGH, CORRECT?

01:09PM

27          A        YES.

28          Q        NOW THE FACT IS, THOUGH, ROLL FORWARD TWO

1 MONTHS AFTER THAT TO DECEMBER 4. ARE YOU WITH ME?

2 A YES, I AM.

3 Q SO THE DAY THAT IT WAS ANNOUNCED MR. GUNDLACH  
4 WAS BEING REMOVED, OKAY?

5 A UH-HUH.

01:10PM

6 Q YOU RECEIVED A CALL FROM THE CHIEF INVESTMENT  
7 OFFICER OF THE FORD FOUNDATION?

8 A YES, I DID.

9 Q AND HE -- I THINK YOU DESCRIBED HIM AS BEING  
10 FURIOUS, CORRECT?

01:10PM

11 A YES, I DID.

12 Q YOU DESCRIBED, IN FACT, TO MANAGEMENT, IN YOUR  
13 REPORT, THAT THEY WERE APOPLECTIC, RIGHT?

14 A YES, I DID.

15 Q CLEARLY THEIR VIEW WAS UNBALANCED. THEY WERE  
16 NOT HAPPY TO LOSE MR. GUNDLACH?

01:10PM

17 A THAT'S --

18 MS. OSMAN: LACKS FOUNDATION.

19 THE COURT: JUST A MINUTE.

20 I'LL OVERRULE THE OBJECTION.

01:10PM

21 YOU CAN ANSWER THE QUESTION.

22 THE WITNESS: THAT IS TRUE.

23 BY MR. ALLRED:

24 Q AND YOU WROTE UP THAT REPORT IN AN EXHIBIT  
25 THAT WAS MARKED IN EVIDENCE. I GUESS YOU HAVEN'T SEEN  
26 IT YET, BUT LET ME DIRECT YOU TO IT.

01:10PM

27 6049. AND I BELIEVE IT'S ON PAGE 7 OF  
28 6049.

1                   IT'S IN EVIDENCE, DENNIS, IF YOU CALL  
2 THAT UP.

3                   HIGHLIGHTED THERE, LINE 11, YOU SEE THE  
4 FORD FOUNDATION ENTRY?

5           A       UH-HUH.

01:11PM

6           Q       AND IT SHOWS YOUR NAME THERE IN THE COLUMN  
7 UNDER WHO'S TAKING THE REPORT, CORRECT?

8           A       UH-HUH, UH-HUH.

9           Q       AND THEN IF WE SHIFT OVER, DENNIS, TO THE  
10 RIGHT HALF OF THAT. I APOLOGIZE FOR THE FORMATTING  
11 HERE, IT'S HARD TO SEE.

01:11PM

12                   YOU REPORTED THAT HE WAS APOPLECTIC  
13 ABOUT THE NEWS, AND THAT HE WAS FURIOUS.

14                   THAT WAS BECAUSE YOU UNDERSTOOD HE WAS  
15 MORE THAN SATISFIED WITH MR. GUNDLACH'S INVESTMENT  
16 PERFORMANCE, RIGHT?

01:11PM

17           A       YES.

18           Q       MR. DOPSTOCK (PH) ON BEHALF OF THE FORD  
19 FOUNDATION WAS ONE OF THE HANDFUL OF PEOPLE WHO WERE ON  
20 THE SMCF II ADVISORY COMMITTEE, CORRECT?

01:11PM

21           A       YES.

22           Q       YOU MENTIONED THE INTERACTION WITH LOCKHEED, I  
23 THINK IT WAS EXHIBIT 83, IS THAT CORRECT?

24           A       YES.

25           Q       EXHIBIT 83?

01:12PM

26           A       UH-HUH.

27           Q       COULD WE CALL UP 83.

28                   THE THIRD PARAGRAPH -- MIDDLE PARAGRAPH



1 THERE, MR. GUNDLACH PROTESTS THAT, IN ESSENCE, ABOUT  
2 THE STRESS HE'S UNDER.

3 DO YOU HAVE THE TIME FRAME OF THIS IN  
4 MIND, APRIL OF 2008?

5 A I DO.

01:12PM

6 Q THE MORTGAGE MARKETS WERE COMPLETELY MELTING  
7 DOWN AT THAT TIME, WEREN'T THEY?

8 A YES THEY WERE.

9 Q THAT WAS MR. GUNDLACH'S AREA?

10 A UH-HUH.

01:12PM

11 Q UNLIKE A LOT OF OTHER PEOPLE WHO WERE HANDLING  
12 MONEY IN THAT AREA, HE MANAGED TO STAY POSITIVE, KEEP  
13 THE INVESTORS' TERMS POSITIVE?

14 MS. OSMAN: LACKS FOUNDATION FOR THE PREAMBLE.

15 THE COURT: OVERRULED.

01:12PM

16 CAN YOU ANSWER THAT?

17 THE WITNESS: CAN YOU REPEAT THE QUESTION?

18 BY MR. ALLRED:

19 Q MR. GUNDLACH ACHIEVED POSITIVE RETURNS IN 2008  
20 IN THE MORTGAGE BACKED SECURITIES PORTFOLIO DESPITE  
21 MELTDOWN?

01:12PM

22 A THAT IS TRUE.

23 Q THAT WAS UNUSUAL IN THE INDUSTRY, WASN'T IT?

24 A YES.

25 Q SO MR. GUNDLACH WAS, IN ESSENCE, PROTESTING TO  
26 YOU THAT MARKETING -- I'M JUST TOO STRESSED OUT TO DO  
27 MARKETING BECAUSE OF THE DEMANDS OF TRYING TO MEET THIS  
28 CRISIS, RIGHT?

01:12PM

1 A THAT'S WHAT HE EXPRESSED, YES.

2 Q YOU MENTIONED IT MIGHT HAVE BEEN NOT IN THE  
3 CONTEXT OF ANY OF THESE PARTICULAR DISCUSSIONS, THAT  
4 MR. GUNDLACH EXPRESSED TO YOU THAT HE DIDN'T WANT TO  
5 WORK FOR MR. STERN, RIGHT?

01:13PM

6 A YES.

7 Q HAVE YOU HEARD IT SAID, HE SAID, I COULD WORK  
8 WITH YOU, BUT NOT FOR YOU?

9 A NO, I HAVEN'T HEARD THAT.

10 Q YOU DON'T KNOW ONE WAY OR THE OTHER IF THAT'S  
11 BEEN EXPRESSED?

01:13PM

12 A NO.

13 Q NOW, DESPITE MR. GUNDLACH'S, IN YOUR VIEW,  
14 INCONSISTENT FOCUS ON MARKETING, THE FACT IS, HIS GROUP  
15 WAS BRINGING IN MORE NEW ASSETS THAN ANY OTHER GROUP AT  
16 TCW DURING 2008, 2009, RIGHT?

01:13PM

17 A I BELIEVE SO.

18 Q THE MOMENTUM WAS OVERWHELMING, IN THE M.B.S.  
19 AREA, AS OPPOSED TO, SAY, EQUITIES, RIGHT?

20 A THAT IS TRUE.

01:14PM

21 Q THE BOTTOM LINE IS, MARKETING HELPS, IF YOU'RE  
22 A GOOD MARKETER; BUT IT'S THE PRODUCT THAT YOU'RE  
23 SELLING THAT REALLY DRIVES THINGS, RIGHT?

24 A CAN I QUALIFY MY ANSWER?

25 Q YOU CAN ANSWER, THEN QUALIFY IT.

01:14PM

26 WELL, WHY DON'T I WITHDRAW THE QUESTION.

27 A OKAY.

28 Q NO MATTER HOW GOOD A MARKETER YOU ARE, YOU

1 NEED A GOOD PRODUCT TO SELL, IN ORDER TO MAKE THE SALE,  
2 RIGHT?

3 A THAT'S TRUE.

4 Q MR. GUNDLACH HAD THE PERFORMANCE AND  
5 REPUTATION THAT ALLOWED YOU TO BE SUCCESSFUL IN SELLING  
6 THAT PRODUCT, RIGHT?

01:14PM

7 A IN SELLING THAT PRODUCT, YES.

8 Q THE FIRST ITEM YOU COVERED WAS A JUNE 2009  
9 TELECONFERENCE WITH, I THINK IT WAS NORTHERN FUNDS  
10 TRUST?

01:14PM

11 A IT WAS ACTUALLY JUST A -- IT WASN'T -- YEAH,  
12 IT WAS A TELECONFERENCE YES.

13 Q LET'S GO TO 2056, DENNIS.

14 ON THE FIRST PAGE, AT THE BOTTOM SECTION  
15 THERE?

01:15PM

16 A UH-HUH.

17 Q YOUR E-MAIL TO MR. GUNDLACH, YOU COPIED THE  
18 TWO NORTHERN TRUST REPRESENTATIVES ON YOUR E-MAIL,  
19 CORRECT?

20 A YES, I DID.

01:15PM

21 Q SO WHEN MS. OSMAN'S POINTING OUT MR. GUNDLACH  
22 REPLY COPIED THEM, THE FACT WAS, HE HIT REPLY TO ALL,  
23 IN RESPONSE TO YOUR MULTI PERSONAL E-MAIL, RIGHT?

24 A I DON'T KNOW WHY HE DID IT.

25 Q YOU COPIED THEM ON YOUR INITIAL E-MAIL, RIGHT?

01:15PM

26 A YEAH.

27 Q PRESUMABLY, YOU WERE INVITING HIM TO RESPOND  
28 TO THE SAME AUDIENCE, RIGHT?

1           A        I WAS ACTUALLY INDICATING, BY MY QUESTION,  
2            THAT THESE WERE -- BY MY E-MAIL, THESE WERE QUESTIONS  
3            ASKED BY THE CLIENT. SO THAT'S WHAT I WAS TRYING TO  
4            COMMUNICATE TO HIM.

5           Q        WHY COPY THE CLIENT ON IT?

01:15PM

6           A        BECAUSE THEY'D ASKED IT, AND I WAS SHOWING  
7            THEM THAT I WAS FOLLOWING UP ON THE REQUEST. THAT WAS  
8            THEIR QUESTION. I'M SHOWING THEM, I'M ASKING YOUR  
9            QUESTION.

10          Q        THE FIRST SENTENCE OF YOUR E-MAIL TO  
11          MR. GUNDLACH -- LET'S HIGHLIGHT THAT, PLEASE -- LOUIS  
12          AND DARREN APPRECIATED YOUR CANDOR AND FORTHRIGHT  
13          DISCUSSION THIS MORNING.

01:16PM

14                    WHEN YOU SAID THAT, YOU WEREN'T JUST  
15          FLATTERING MR. GUNDLACH, AS YOU DESCRIBED IT, YOU WERE  
16          ALSO COPYING THE CLIENT ON THAT, RIGHT?

01:16PM

17          A        YEP.

18          Q        YOU WOULD NOT HAVE SAID THAT IF YOU DIDN'T  
19          THINK THE CLIENTS BELIEVED THAT, RIGHT?

20          A        PRE -- I'M NOT SURE REALLY.

01:16PM

21          Q        YOU WERE AT SOME POINT -- COMMENTING ON TAKING  
22          ISSUE WITH MR. GUNDLACH'S PROJECTION THAT FIXED INCOME  
23          WAS LIKELY TO REACH 90 PERCENT OF THE FIRM'S ASSETS,  
24          RIGHT?

25          A        YES.

01:16PM

26          Q        NOW, WE'VE ALREADY MENTIONED THE MEMORANDUM  
27          WAS STRONGLY IN FAVOR OF FIXED ASSETS. IT WAS ALREADY  
28          MORE THAN THREE TIMES THE SIZE OF EQUITY, AT THAT

1 POINT, RIGHT?

2 A I DON'T KNOW THE EXACT NUMBERS, NO.

3 Q AND IT WAS GROWING MORE RAPIDLY THAN EQUITIES?

4 A THAT'S TRUE.

5 Q AND MR. GUNDLACH'S GROUP, YOU ASCRIBED JUST  
6 UNDER 60 PERCENT TO MR. GUNDLACH GROUP ALONE.

01:17PM

7 THAT'S NOT ALL THE FIXED INCOME, IS IT?

8 A THAT'S CORRECT.

9 Q YOU WERE MEANING MR. CHAPUS AND ATTANASIO,  
10 ET CETERA, THAT'S OTHER FIXED INCOME GROUPS AT TCW  
11 RIGHT?

01:17PM

12 A THAT'S CORRECT.

13 Q SO YOU WHEN YOU ADD IT ALL UP, FIXED INCOME  
14 WAS WELL ABOVE 60, PROBABLY 70 PERCENT OF THAT?

15 A ACTUALLY, IT WAS LESS THAN 70 PERCENT.

01:17PM

16 Q IT WAS RISING TOWARD 70. AND I'LL KEEP IT AT  
17 70'S.

18 THAT WAS THE, RIGHT?

19 A IT WAS LESS THAN 70 PERCENT AT THE TIME.

20 Q AND CLEARLY RISING, RIGHT?

01:17PM

21 A I DON'T KNOW. IT WAS -- IT HAD RISEN UP TO  
22 THAT POINT.

23 Q YOU HAVE NO REASON TO BELIEVE THAT  
24 MR. GUNDLACH DID NOT BELIEVE HE WAS TELLING THE TRUTH  
25 WHEN HE MADE THAT PROJECTION, DO YOU?

01:17PM

26 A I CAN'T SPEAK FOR HIM.

27 Q LIKewise, THE OTHER STATEMENTS IN THIS  
28 EXCHANGE IN JUNE OF 2009, WITH MR. GUNDLACH ON THE

1 MANAGEMENT CHANGES, THIS AROSE BECAUSE THE CLIENT  
2 CALLED, WANTING TO RAISE QUESTIONS ABOUT INSTABILITY AT  
3 TCW, RIGHT?

4 A NO.

5 Q THE CLIENT DIDN'T CALL?

01:18PM

6 A THE CLIENT CALLED, ASKING TO GET AN  
7 EXPLANATION SO THEY COULD UNDERSTAND THE IMPLICATIONS  
8 OF THE CHANGES.

9 Q PRESUMABLY, THEY WERE THEREFORE CONCERNED, IT  
10 WAS AN ISSUE FOR THEM, RIGHT?

01:18PM

11 A CLIENTS, ESPECIALLY THIS CLIENT, DOES DUE  
12 DILIGENCE. THEY CALL ME VERY FREQUENTLY, ASKING ABOUT  
13 THINGS, BECAUSE THEY WANT TO UNDERSTAND EVERY ASPECT OF  
14 WHAT'S GOING ON AT THE FIRM. WE HAVE QUARTERLY  
15 REPORTS. WE TALK TO THEM VERY VERY FREQUENTLY.

01:18PM

16 Q IN THAT CALL, ISN'T IT FAIR TO SAY, THE CLIENT  
17 ASKED A SERIES OF VERY POINTED QUESTIONS TO  
18 MR. GUNDLACH, WHAT WAS HAPPENING AT THE EXECUTIVE  
19 MANAGEMENT LEVEL?

20 A YES.

01:19PM

21 Q AND SO FAR AS YOU KNOW, MR. GUNDLACH BELIEVED  
22 WHAT HE SAID, IN ANSWERING THOSE QUESTIONS?

23 A I CAN'T COMMENT ON WHAT HE BELIEVED.

24 Q YOU HAVE NO REASON TO SAY HE DID NOT BELIEVE  
25 IT, DO YOU?

01:19PM

26 MS. OSMAN: SPECULATION, LACKS FOUNDATION.

27 THE COURT: SUSTAINED.

28 ///

1 BY MR. ALLRED:

2 Q LET'S GO TO 2056, WHICH WAS THE MEMO YOU DID  
3 ON THAT.

4 A OH, YES.

5 Q COULD YOU GO TO THE SECOND PAGE, DENNIS.

01:19PM

6 NOW, I BELIEVE YOU NOTED IT IN YOUR  
7 TESTIMONY THAT MR. GUNDLACH LED WITH THE PRIME  
8 ASSURANCE THAT THERE WERE STRONG ADMINISTRATIVE PEOPLE  
9 IN PLACE, AND THERE WOULD BE NO CHANGE IN THE  
10 DAY-TO-DAY OPERATIONS OF THE FIRM.

01:20PM

11 RIGHT?

12 A THAT'S CORRECT.

13 MS. OSMAN: MISCHARACTERIZES THE TESTIMONY.

14 THE COURT: OVERRULED.

15 BY MR. ALLRED:

01:20PM

16 Q THAT WAS THE THRUST OF THE MESSAGE HE OPENED  
17 WITH -- RIGHT?

18 A CAN YOU START THAT WITH ONE AGAIN.

19 Q SURE. THE OPENING THRUST OF HIS MESSAGE TO  
20 THE CLIENTS WAS, DAY-TO-DAY OPERATIONS ARE THE SAME, WE  
21 HAVE A VERY STRONG ADMINISTRATIVE TEAM HERE, THEY'RE  
22 UNCHANGED?

01:20PM

23 A THAT'S TRUE.

24 Q SO HE WAS ATTEMPTING TO REASSURE THE CLIENT  
25 THAT NOTWITHSTANDING THIS CHANGE AT THE TOP, THE CEO  
26 LEVEL, WHAT THEY'RE GOING TO SEE IN TERMS OF  
27 ON-THE-GROUND DELIVERABLES WOULD STAY THE SAME, RIGHT?

01:20PM

28 A AT THAT POINT OF THE CALL, YES.

1 Q AND YOU WEREN'T INVOLVED IN A NUMBER OF  
2 MEETINGS OVER THE YEARS WITH MR. GUNDLACH 2008, 2009,  
3 WHERE A CLIENT WOULD RAISE A QUESTION ABOUT PERCEIVED  
4 INSTABILITY AT TCW, AND HE WOULD ASSURE THE CLIENT THAT  
5 WHATEVER HAPPENS, IT MAY BE TOUGH TO PREDICT, BUT YOUR  
6 DELIVERABLES WILL STAY THE SAME, YOU WERE INVOLVED?

01:20PM

7 A NO, I NEVER PARTICIPATED IN ANY MEETING.

8 Q YOU NEVER HEARD MR. GUNDLACH ASSURE CLIENTS,  
9 DON'T WORRY, YOUR DELIVERABLES WILL STAY THE SAME?

10 A NO.

01:21PM

11 MS. OSMAN: HEARSAY.

12 BY MR. ALLRED:

13 Q YOU MENTIONED THESE CLIENTS WERE DOING DUE  
14 DILIGENCE, AND YOU HAD THE CONCERN, OR YOU PERCEIVED  
15 THEM TO HAVE A CONCERN OF, WERE THEY THINKING THEY WERE  
16 BUYING WATER, AND GET COKE; OR MAYBE I HAD THAT  
17 BACKWARDS. DO YOU RECALL THAT?

01:21PM

18 A I DO.

19 Q AND I'M NOT SURE WHETHER YOU KNOW WHICH IS  
20 WHICH IN THIS ANALOGY, BUT IN OTHER WORDS --

01:21PM

21 A THERE'S NO VALUE JUDGMENT INTENDED.

22 Q OKAY.

23 THE -- YOU MENTION IN PARTICULAR, THEY  
24 WERE LOOKING AT PUTTING A SUBSTANTIAL ADDITIONAL AMOUNT  
25 OF MONEY IN THE FIXED INCOME SIDE OF TCW, RIGHT?

01:21PM

26 A IT WAS A DIFFERENT -- THEY WERE LOOKING AT US  
27 FOR A WHAT'S CALLED A CORE FIXED INCOME MANDATE, WHICH  
28 IS AN ACCOUNT THAT INCLUDES MORTGAGES, TREASURIES,



1 CORPORATES AND HIGH YIELD.

2                   THEY DID, IN FACT, PUT MONEY INTO SUCH A  
3 STRATEGY, I GUESS YOU CALLED IT, IN THE FALL OF 2009?

4           A        YES, THEY DID.

5           Q        I GUESS THEY THOUGHT THEY WERE BUYING WATER,  
6 MR. GUNDLACH?

01:22PM

7           A        I NEVER SHOULD HAVE USED THAT ANALOGY.

8           Q        THEY WERE CERTAINLY UNDER THE IMPRESSION THAT  
9 THEY WERE GETTING MR. GUNDLACH, WHEN THEY MADE THAT  
10 CHOICE, RIGHT?

01:22PM

11          A        YES, THEY WERE.

12          Q        THEY HAD DONE A LOT OF DUE DILIGENCE OF  
13 MR. GUNDLACH AND HIS TEAM -- THAT'S WHAT THEY THOUGHT  
14 THEY WERE BUYING?

15          A        CAN I QUALIFY MY ANSWER?

01:22PM

16          Q        AFTER YOU ANSWER IT, YOU MAY, YES.

17          A        YES, THEY ALSO, IN TERMS OF THEIR DUE  
18 DILIGENCE, BECAUSE THIS WAS WHAT'S CALLED A  
19 MULTI-MANAGER STRUCTURE, WHERE THEY PUT THREE MANAGERS  
20 TOGETHER INTO A GROUP. THE REASON THAT THEY HIRED US  
21 WAS BECAUSE OF OUR MORTGAGE EXPERTISE, AND HOW THAT FIT  
22 INTO THE STRUCTURE THEY WERE PUTTING TOGETHER.

01:22PM

23          Q        SO IT'S FAIR TO SAY THAT WHAT THEY WERE --  
24 THOUGHT THEY WERE GETTING TURNED OUT ON DECEMBER 4, NOT  
25 TO BE AT ALL WHAT THEY GOT, RIGHT?

01:22PM

26          A        YES.

27          Q        ON THE SUBJECT OF CLIENTS HEARING RUMORS AND  
28 WHATNOT, IT'S NOT JUST RUMORS FLOW OUTWARDS FROM TCW.

1 YOU HEARD FROM CLIENTS, THINGS THAT THEY WERE HEARING  
2 OUT IN THE MARKETPLACE ABOUT RUMORS, RIGHT?

3 A YES.

4 Q FOR INSTANCE, IN THE SUMMER OF 2009, JULY, YOU  
5 HEARD FROM A CLIENT THAT THEY UNDERSTOOD THAT THERE WAS  
6 A 50 PERCENT LIKELIHOOD THAT MR. GUNDLACH WOULD MOVE TO  
7 WAMCO, WESTERN ASSET MANAGEMENT, RIGHT?

01:23PM

8 A YES.

9 Q AND YOU REPORTED THAT TO THE PERSON AT THE TOP  
10 OF THE MARKETING CHAIN, MR. BALDISWIELER, RIGHT?

01:23PM

11 A THAT IS TRUE.

12 Q IF YOU COULD LOOK AT 2055.

13 A YES.

14 Q IS 2055 AN E-MAIL YOU SENT TO MR. BALDISWIELER  
15 ON JULY 14, 2009?

01:23PM

16 A YES, IT IS.

17 Q HIS RESPONSE IS ON TOP OF THAT?

18 A YES.

19 MR. ALLRED: MOVE IT, YOUR HONOR.

20 THE COURT: ANY OBJECTION?

01:24PM

21 MS. OSMAN: I JUST LIKE TO KNOW THE TOP  
22 PORTION WHAT WAS REDACTED.

23 MR. ALLRED: IT WAS REDACTED BY TCW WHEN  
24 PRODUCED, YOUR HONOR. I DON'T KNOW.

25 MS. OSMAN: I'D LIKE --

01:24PM

26 THE COURT: WELL, THERE YOU GO.

27 WE'LL ADMIT IT AS REDACTED. WE DON'T  
28 KNOW. IT WILL BE ADMITTED. WE'LL EXPLORE THAT OTHER

1 ISSUE LATER.

2 (EXHIBIT 2055 ADMITTED.) +

3 BY MR. ALLRED:

4 Q MS. LEADER, WHEN YOU REPORTED THAT INPUT FROM  
5 YOUR CLIENT, MR. BALDISWIELER REPLIED BACK TO YOU AT  
6 THE TOP THERE, THE MOLES ON THE F.I. DESK SAY IT IS  
7 DEAD. CORRECT?

01:24PM

8 A YES.

9 Q F.I. MEANS FIXED INCOME?

10 A YES, IT DOES.

01:24PM

11 Q AND SO IT IS DEAD, IS REFERRING TO THE  
12 PROSPECT OF HIM GOING TO WAMCO, THAT'S HOW YOU -- HOW  
13 UNDERSTOOD IT?

14 A YES, THAT'S HOW.

15 Q YOU ALSO UNDERSTOOD THAT EXECUTIVE MANAGEMENT  
16 FELT IT HAD PEOPLE ON THE DESK IN MR. GUNDLACH'S AREA  
17 IT COULD RELY ON TO REPORT ON THE STATUS OF HIS  
18 AFFAIRS?

01:25PM

19 A I JUST TOOK IT AT FACE VALUE, WHAT I WAS TOLD.

20 Q DID YOU EVER HEAR --

01:25PM

21 A CHUCK BALDISWIELER WAS MY BOSS. THAT'S WHAT  
22 HE SAYS, I TAKE IT.

23 Q DID YOU EVER HEAR ANYTHING THAT SUGGESTED TO  
24 YOU THAT THERE WERE NOW -- IN THE FUTURE, THERE WERE  
25 ANY SERIOUS PROSPECTS OF MR. GUNDLACH GOING TO WAMCO,  
26 ANYTIME AFTER THAT?

01:25PM

27 MS. OSMAN: SPECULATION, LACKS FOUNDATION.

28 THE COURT: THE QUESTION IS, IF SHE EVER HEARD

1 ANYTHING. YES OR NO?

2 THE WITNESS: WOULD YOU REPEAT THE QUESTION?

3 BY MR. ALLRED:

4 Q AT ANY TIME AFTER THIS, DID YOU EVER HEAR  
5 ANYTHING THAT WOULD CONTRADICT WHAT MR. BALDISWIELER  
6 REPORTED BACK TO YOU, NO, OTHER PROSPECTS AREN'T  
7 SERIOUS WITH WAMCO?

01:25PM

8 A I DON'T RECALL ACCURATELY, TO BE HONEST.

9 MR. ALLRED: THANK YOU, MS. LEADER.

10 THE COURT: THANK YOU.

01:25PM

11 ANY REDIRECT, MS. OSMAN.

12 MS. OSMAN: VERY, VERY, BRIEFLY YOUR HONOR.

13

14 REDIRECT EXAMINATION +

15 BY MS. OSMAN:

01:25PM

16 Q JUST -- I WANT TO FOLLOW UP ON A SERIES OF  
17 QUESTIONS THAT MR. ALLRED ASKED YOU ABOUT THE FORD  
18 FOUNDATION CALLING, BEING FURIOUS, AND APOPLECTIC.

19 WAS THE PERSON YOU SPOKE WITH AFTER  
20 DECEMBER 4TH, THE SAME PERSON FROM THE FORD FOUNDATION  
21 THAT ASKED FOR THE DOCUMENTS, AND DID NOT GET THEM,  
22 FROM MR. GUNDLACH?

01:26PM

23 A NO, IT WAS NOT.

24 Q BASED ON YOUR COMMUNICATIONS WITH THE CLIENT,  
25 WAS THE PERSON WHO WAS INCENSED BECAUSE SHE DIDN'T GET  
26 THE DOCUMENTS, WAS SHE ONE OF THE DECISION MAKERS ON  
27 WHAT HAPPENED AFTER DECEMBER 4TH, WITH RESPECT TO --

01:26PM

28 A NO, SHE WAS NOT.

1 Q DID MS. SANCHEZ EVER INDICATE TO YOU WHAT  
2 SHE -- HOW SHE FELT ABOUT DEALING WITH MR. GUNDLACH  
3 AFTER THAT PHONE CALL?

4 MR. ALLRED: HEARSAY.

5 THE COURT: SUSTAINED.

01:26PM

6 YOU CAN ANSWER YES OR NO. YOU CAN'T  
7 TELL US WHAT SHE SAID.

8 THE WITNESS: YES.

9 MS. OSMAN: YOUR HONOR, THIS GOES TO THE  
10 OPERATIVE FACTS. PART OF THE CLAIMS IS BREACH OF  
11 FIDUCIARY DUTY, AND HIS CONDUCT WITH RESPECT TO CLIENTS  
12 IS AT ISSUE.

01:26PM

13 THE COURT: NO.

14 BY MS. OSMAN:

15 Q IS IT YOUR UNDERSTANDING, BASED ON YOUR  
16 DEALINGS AS A MARKETING REPRESENTATIVE, WITH CLIENTS,  
17 THAT CLIENTS CARED ABOUT HOW THEY WERE TREATED BY THE  
18 PORTFOLIO MANAGERS?

01:26PM

19 A YES.

20 Q REFERRING TO THE EXHIBIT THAT MR. ALLRED WAS  
21 JUST SHOWING YOU, EXHIBIT 2055, ABOUT MR. GUNDLACH  
22 INTERVIEWING WITH WAMCO, DID YOU EVER HAVE  
23 COMMUNICATIONS DIRECTLY WITH WAMCO ABOUT WHETHER OR NOT  
24 MR. GUNDLACH WAS INTERVIEWING?

01:27PM

25 A NO, NOT DIRECTLY.

01:27PM

26 Q SO DO YOU KNOW ONE WAY OR THE OTHER IF  
27 MR. GUNDLACH CONTINUED TO HAVE COMMUNICATIONS WITH  
28 WAMCO AFTER THE DATE OF THIS E-MAIL, JULY 14TH, 2009?

1 A NO, I DID NOT.

2 Q YOU ALSO WERE TALKING ABOUT NORTHERN TRUST  
3 FUNDS. MR. ALLRED ASKED YOU IF, UNDER YOUR  
4 UNDERSTANDING, WHAT THEY THOUGHT THEY WERE GETTING WAS  
5 NOT WHAT THEY GOT, ON DECEMBER 4TH.

01:27PM

6 DO YOU RECALL THAT?

7 A YES, I DO.

8 Q IS NORTHERN FUNDS THE COMPANY YOU TOLD US THAT  
9 DOES SIGNIFICANT AMOUNT OF DUE DILIGENCE BEFORE  
10 INVESTING?

01:27PM

11 A YES, THEY DO.

12 Q DID YOU HAVE AN UNDERSTANDING AS TO WHAT THEY  
13 WOULD HAVE TO DO NOW, WITH RESPECT TO MET WEST?

14 A --

15 Q WOULD THEY HAVE TO GO THROUGH FURTHER DUE  
16 DILIGENCE, ONCE MET WEST WAS BROUGHT IN?

01:28PM

17 A YES, THEY WOULD.

18 Q WAS IT YOUR UNDERSTANDING THAT THAT WAS A PART  
19 OF YOUR ANSWER, THAT THEY WERE NOT GETTING WHAT THEY  
20 THOUGHT THEY WERE GETTING?

01:28PM

21 A YES.

22 MR. ALLRED: CALLS FOR SPECULATION.

23 THE COURT: SUSTAINED.

24 MS. OSMAN: IT WAS A TERRIBLE QUESTION. I  
25 BARELY UNDERSTAND.

01:28PM

26 TELL ME WHAT YOU MEANT WHEN YOU SAID  
27 THEY WERE NOT GETTING WHAT THEY THOUGHT THEY WERE  
28 GETTING.

1           A       NORTHERN TRUST HAD DONE, AS I MENTIONED, ABOUT  
2 A YEAR'S DUE DILIGENCE TO HIRE US FOR THAT FIXED INCOME  
3 MANDATE.

4                       THEY HAD ASSETS IN PLACE. WE THEN --  
5 WHEN JEFFREY WAS TERMINATED, AND MET WEST TOOK OVER THE  
6 ACCOUNT, IT WAS OBVIOUSLY GOING TO BE A DIFFERENT TEAM.  
7 THEY DIDN'T HAVE THE TIME THEN, TO DO A YEAR'S LONG DUE  
8 DILIGENCE TO EVALUATE THE MET WEST TEAM.

9           MS. OSMAN: I HAVE NO FURTHER QUESTIONS.

01:28PM

10          MR. ALLRED: NOTHING FURTHER, YOUR HONOR.

01:29PM

11          THE COURT: MS. LEADER, THANK YOU FOR YOUR  
12 TESTIMONY. YOU MAY STEP DOWN.

13                               (PAUSE.) +

14          THE COURT: OUR NEXT WITNESS?

15          MR. MADISON: YES, YOUR HONOR.

01:29PM

16                       TCW CALLS ERIC ARENTSEN.

17  
18                               ERIC ARENTSEN,  
19 CALLED AS A WITNESS BY THE PLAINTIFF WAS SWORN AND  
20 TESTIFIED AS FOLLOWS:

21  
22           THE CLERK: YOU DO SOLEMNLY STATE THAT THE  
23 TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW  
24 PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE  
25 WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

26  
27           THE WITNESS: I DO.

28           THE CLERK: THANK YOU. PLEASE BE SEATED.

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

3                   THE WITNESS: MY NAME IS ERIC ARENTSEN,  
4 E-R-I-C, A-R-E-N-T-S-O-N.

5                   THE CLERK: THANK YOU.

01:30PM

6                   THE COURT: GOOD AFTERNOON, MR. ARENTSEN.

7                   MR. MADISON, YOU MAY PROCEED.

8  
9                   DIRECT EXAMINATION +  
10 BY MR. MADISON:

01:30PM

11                  Q       WHERE DO YOU WORK, MR. ARENTSEN?

12                  A       I WORK AT TRUST COMPANY OF THE WEST.

13                  Q       HOW LONG HAVE YOU WORKED AT TCW?

14                  A       ABOUT 20 YEARS. I STARTED IN 1991.

15                  Q       WHAT GROUP DO YOU WORK IN AT TCW TODAY?

01:30PM

16                  A       I WORK IN THE FIXED INCOME AREA.

17                  Q       HOW LONG HAVE YOU WORKED IN THE FIXED INCOME  
18 AREA?

19                  A       I'VE BEEN IN FIXED INCOME OR MORTGAGE BACKED  
20 SECURITIES FOR THAT ENTIRE TIME.

01:31PM

21                  Q       I WANT TO GO BACK TO YOUR BEGINNING OF YOUR  
22 CAREER AT TCW.

23                               WHO HIRED YOU TO GO TO WORK AT TCW?

24                  A       I WAS HIRED BY JEFFREY GUNDLACH AND  
25 PHIL BARACH.

01:31PM

26                  Q       WERE YOU WORKING, BEFORE YOU WENT TO WORK AT  
27 TCW, SOMEWHERE ELSE?

28                  A       YES I WAS.



1 Q WHERE?

2 A I WAS WORKING AT A COMPANY CALLED WSJP.

3 Q WHAT DID THEY DO?

4 A THEY WERE A FINANCIAL HOLDING COMPANY. THEY  
5 OWNED BANKS AND SAVINGS AND LOANS.

01:31PM

6 Q PRIOR TO THAT, HAD YOU WORKED AT ANY OTHER  
7 FINANCIAL FIRMS?

8 A YES, I HAVE.

9 Q WHERE?

10 A I HAD WORKED AT KIDDER PEABODY. IT WAS A WALL  
11 STREET FIRM.

01:31PM

12 Q DID YOU GET AN EDUCATION IN BUSINESS?

13 A NO, I DID NOT.

14 Q WHAT WAS YOUR EDUCATION?

15 A MY BACKGROUND IS IN MATHEMATICS. I HAVE A  
16 DEGREE IN MATHEMATICS.

01:31PM

17 Q IS IT UNCOMMON TO FIND PERSONS WITH MATH  
18 BACKGROUNDS WORKING IN THE AREA OF MORTGAGE-BACKED  
19 SECURITIES AND FIXED INCOME?

20 A NO, IT'S NOT.

01:32PM

21 Q WHY IS THAT?

22 A MORTGAGE-BACKED SECURITIES INVOLVE A LOT OF  
23 MATHEMATICS, IN TERMS OF HOW YOU ANALYZE THE BONDS. SO  
24 HAVING A BACKGROUND IN MATH OR SOME OTHER SCIENCE IS  
25 SOMETIMES VERY HELPFUL.

01:32PM

26 Q DID YOU TELL US WHERE YOU WENT TO COLLEGE?

27 A NO I DID NOT.

28 Q COULD YOU DO THAT, PLEASE?

1 A I WENT TO SCHOOL AT U.C. RIVERSIDE.

2 Q TOOK WHAT DEGREE, SIR?

3 A I HAVE A B.S., BACHELOR OF SCIENCE IN  
4 MATHEMATICS.

5 Q NOW, WE HAVE HEARD IN THIS TRIAL ABOUT A  
6 MEETING THAT OCCURRED ON SEPTEMBER 3RD, 2009, INVOLVING  
7 MR. GUNDLACH AND MR. STERN AND OTHERS.

01:32PM

8 WERE YOU PART OF THAT MEETING?

9 A YES, I WAS.

10 Q I WANT TO ASK YOU SOME QUESTIONS ABOUT THAT  
11 MEETING.

01:32PM

12 BEFORE I DO THAT, I WANT TO ALSO ASK YOU  
13 ABOUT DECEMBER 4TH 2009.

14 YOU WERE WORKING IN THE M.B.S. GROUP AT  
15 TCW ON DECEMBER 4TH, 2009?

01:33PM

16 A YES, I WAS.

17 Q AND AS YOU KNOW, PERSONS WERE PLACED ON LEAVE  
18 THAT DAY. DO YOU RECALL THAT?

19 A YES, I DO.

20 Q DID -- WELL, DID THERE COME A TIME AFTER THAT  
21 DAY WHEN YOU WERE OFFERED A POSITION AT DOUBLE LINE?

01:33PM

22 A YES, I WAS.

23 Q AND CAN YOU TELL US HOW THAT CAME ABOUT?

24 A YES.

25 SATURDAY, DECEMBER 5TH, I RECEIVED  
26 SEVERAL PHONE CALLS FROM PEOPLE AT DOUBLE LINE,  
27 OFFERING ME A POSITION WITH THAT GROUP.

01:33PM

28 Q DID THE POSITION -- DID THOSE CONVERSATIONS

1 INVOLVE TITLES AND COMPENSATION OR THOSE KINDS OF  
2 TERMS, OR WERE THEY MORE GENERAL?

3 MR. BRIAN: OBJECTION. VAGUE, FOUNDATION.

4 THE COURT: OVERRULED.

5 DO YOU UNDERSTAND THE QUESTION? JUST  
6 SAY YES OR NO.

01:33PM

7 THE WITNESS: YES. YES.

8 BY MR. MADISON:

9 Q CAN YOU TELL US WHAT LEVEL OF DETAIL THERE WAS  
10 AND WHAT WAS ACTUALLY OFFERED, IF ANYTHING?

01:34PM

11 A THE LEVEL OF DETAIL WAS NOT VERY SPECIFIC,  
12 JUST THAT I WOULD HAVE SOME EQUITY IN THE NEW FIRM THAT  
13 WAS BEING CREATED.

14 Q WHO DID YOU SPEAK TO AT DOUBLELINE ON  
15 SATURDAY, SEPTEMBER -- DECEMBER 5TH?

01:34PM

16 A I SPOKE WITH PHIL BARACH AND GALLIGAN ON  
17 SATURDAY.

18 Q DID THERE COME A TIME WHEN YOU RESPONDED TO  
19 THE OFFER OR THE OVERTURES ABOUT WORKING AT DOUBLELINE?

20 A YES.

01:34PM

21 Q WHEN WAS THAT?

22 A SUNDAY, DECEMBER 6TH. 7TH? 6TH.

23 Q CAN YOU TELL US HOW YOU RESPONDED, PLEASE.

24 A I HAD CALLED UP PHIL BARACH AND TOLD HIM I  
25 DECIDED TO STAY WITH TCW. AND THAT WAS PART OF THE --  
26 MOST OF THE -- PART CALL --

01:34PM

27 Q WHAT, IF ANYTHING, DID PHIL BARACH SAY TO YOU?

28 A PHIL SAID, OKAY, FINE. WE REALLY DON'T NEED

1 YOU ANYWAY.

2 Q WHAT WAS YOUR POSITION AT TCW IN THE M.B.S.  
3 GROUP IN THE LATTER HALF OF 2009?

4 A I WAS A PRODUCT SPECIALIST.

5 Q CAN YOU TELL US WHAT A PRODUCT SPECIALIST IS? 01:35PM

6 A PRODUCT SPECIALIST IS SOMEONE WHO SPEAKS TO  
7 CLIENTS ON A REGULAR BASIS. TOOK CARE OF A LOT OF  
8 SPECIAL PROJECTS. I WAS RESPONSIBLE FOR A WIDE VARIETY  
9 OF TASKS IN THE DAY-TO-DAY OPERATION OF THE GROUP.

10 Q WHAT WAS YOUR RANK, IF YOU WILL, WITHIN TCW 01:35PM  
11 AT THAT TIME?

12 A I WAS A MANAGING DIRECTOR.

13 Q CAN YOU TELL US WHAT A MANAGING DIRECTOR IS?

14 A MANAGING DIRECTOR WOULD BE ONE OF THE MORE  
15 SENIOR PEOPLE WITHIN OUR ORGANIZATION, TYPICALLY WHAT 01:35PM  
16 WE CALL A BUSINESS LEADER WITHIN A TEAM.

17 Q WHEN YOU DECIDED TO STAY AT TCW, AND NOT GO TO  
18 DOUBLE LINE, WERE THERE ANY TERMS THAT YOU REACHED WITH  
19 TCW ABOUT THAT?

20 A ABOUT THAT? 01:36PM

21 Q YES, SIR?

22 A I'M -- MY TITLE REMAINED THE SAME --

23 Q I DIDN'T MEAN ABOUT THE TITLE. PARDON ME.

24 I MEANT ABOUT YOUR STAYING.

25 DID YOU ENTER INTO ANY AGREEMENTS WITH 01:36PM  
26 TCW OR ANYTHING THAT WEEKEND OF DECEMBER 5TH, WHEN YOU  
27 DECIDED TO STAY?

28 A YES, I DID.

1 Q JUST DESCRIBE THOSE FOR US, PLEASE, CAN YOU?

2 A I WAS GIVEN AN INCREASE IN COMPENSATION. AND  
3 A THREE-YEAR EMPLOYMENT CONTRACT. AND I WAS ALSO TOLD  
4 I WOULD BE ELIGIBLE TO PARTICIPATE IN AN EQUITY PROGRAM  
5 THAT TCW WAS GOING TO ESTABLISH.

01:36PM

6 Q HAS THE EQUITY PROGRAM ACTUALLY COME INTO  
7 BEING?

8 A YES, IT HAS.

9 Q IS THERE -- TODAY, DO YOU OWN EQUITY IN TCW?

10 A YES, I DO OWN EQUITY IN TCW.

01:36PM

11 Q HOW MUCH?

12 A A SMALL, LESS THAN 1 PERCENT.

13 Q YOU MENTIONED AN INCREASE IN COMPENSATION.

14 CAN YOU TELL US, IN TERMS OF A  
15 PERCENTAGE, HOW MUCH MORE YOU EARNED, LET'S SAY, IN  
16 2009, OVER 2008, AT TCW?

01:37PM

17 A 2009, MY SALARY ACTUALLY WENT DOWN A BIT FROM  
18 2008.

19 Q DOESN'T SOUND LIKE YOU NEGOTIATE VERY WELL,  
20 THEN, IF YOU THINK THAT WAS AN INCREASE.

01:37PM

21 A I'M SORRY. MAYBE WE NEED TO CLARIFY.

22 BECAUSE FOR WORK DONE IN 2009, WE  
23 TYPICALLY RECEIVE A BONUS PAYMENT IN 2010; SO IT WOULD  
24 HAVE SHOWN UP IN 2010 COMPENSATION.

25 Q OKAY.

01:37PM

26 SO IF WE CAN THINK JUST ABOUT THE  
27 COMPENSATION THAT YOU EARNED FOR THE YEAR?

28 A OKAY.

1 Q IF YOU COULD TELL US WHAT THE DIFFERENCE WAS,  
2 IF ANY, IN PERCENTAGE FROM 2008 TO 2009?

3 A APPROXIMATELY 30 OR 40 PERCENT.

4 Q NOW, IN YOUR WORK IN THE M.B.S. GROUP, DID YOU  
5 ACTUALLY HAVE A DESK ON THE TRADING FLOOR, OR THE  
6 TRADING DESK, AS WE'VE HEARD IT DESCRIBED?

01:38PM

7 A YES, I DID.

8 Q I'D LIKE TO SHOW YOU AN EXHIBIT ALREADY IN  
9 EVIDENCE. EXHIBIT 373. IT'S A FLOOR PLAN OF THE 16TH  
10 FLOOR AT TCW.

01:38PM

11 A OKAY.

12 Q AGAIN, IF WE LOOK AT THIS, MR. ARENTSEN, IT'S  
13 KIND OF ORIENTED NORTH ON TOP, SOUTH ON BOTTOM, EAST TO  
14 THE RIGHT, AND WEST TO THE LEFT.

15 DO YOU RECOGNIZE THE FLOOR PLAN?

01:38PM

16 A YES, I DO.

17 Q AND DID YOU HAVE ANY ROLE IN DESIGNING THE  
18 WORK SPACE THAT WE SEE UP ON 373?

19 A YES, I DID.

20 Q WHAT WAS YOUR ROLE?

01:38PM

21 A I WAS THE PRODUCT MANAGER FOR THE GROUP WITH  
22 REGARDS TO DESIGNING THE SUB -- THIS FLOOR SPACE.

23 Q CAN YOU WALK US THROUGH THE WORK SPACE,  
24 GENERALLY, AND HOW THE DIFFERENT AREAS OF THE FLOOR  
25 WORKED TOGETHER?

01:38PM

26 A SURE. I'D BE GLAD TO.

27 THE BOTTOM PART OF THAT FLOOR IS THE  
28 TRADING ROOM OR TRADING DESK. IT HAD ABOUT 75 SPOTS.

1                   OUR INTENTION FOR THAT SPACE WAS TO HAVE  
2 AN AREA THAT WOULD FACILITATE COMMUNICATION BETWEEN  
3 PEOPLE. THE TEAM FEED HAD TO BE ABLE TO TALK AMONGST  
4 THEMSELVES. WE HAD TO BE ABLE TO HEAR AND SHARE  
5 INFORMATION VERY QUICKLY.

01:39PM

6                   WE ALSO NEEDED TO BE ABLE TO SEE A LOT  
7 OF DATA IN FRONT OF US. SO THESE TRADING SPOTS HAVE  
8 THE ABILITY TO HANDLE UP TO EIGHT COMPUTER SCREENS AT A  
9 TIME.

10                   SO THERE'S A LOT OF DATA THAT CAN BE  
11 PRESENTED.

01:39PM

12           Q       LET ME STOP YOU THERE?

13           A       UH-HUH.

14           Q       WE SEE A SERIES OF NAMES ON THE FLOOR. AND I  
15 SEE YOUR NAME, COINCIDENTALLY OR NOT, NEXT TO A WINDOW  
16 AT THE BOTTOM ONE OF THE TABLES.

01:39PM

17           A       YES I SEE THAT.

18           Q       WAS THAT YOUR PLACE ON THE TRADING DESK?

19           A       THAT WAS MY SEAT.

20           Q       YOU SAT NEXT TO MR. MAYBERRY?

01:39PM

21           A       YES, I DID.

22           Q       JUST DOWN THE ROAD FROM MR. GALLIGAN AND  
23 MR. SANTA ANA.

24           A       THAT'S CORRECT.

25           Q       AND THEN MR. GUNDLACH HAD A SPOT AT THE  
26 TRADING DESK?

01:39PM

27           A       YES, HE DID.

28           Q       ACROSS THE AISLE THERE?

1 A YES.

2 Q DID THESE PEOPLE, THE OTHER PEOPLE ON THAT  
3 ROW, DID THEY ACTUALLY OCCUPY THOSE DESKS ON A DAILY  
4 BASIS?

5 A YES.

01:40PM

6 Q OKAY.

7 COULD YOU TAKE US THROUGH THE OTHER  
8 PARTS OF THE FLOOR THAT YOU DESIGNED AS IT RELATES TO  
9 THE M.B.S. GROUP?

10 A SURE.

01:40PM

11 SO LOOKING AT THE LEFT EDGE OF THAT  
12 PAGE, WE HAD TWO. WE HAD THE LA CIENEGA CONFERENCE  
13 ROOM. THIS WAS JEFFREY GUNDLACH'S PRIVATE CONFERENCE  
14 ROOM.

15 JUST NORTH OF THAT, JEFFREY GUNDLACH HAD  
16 HIS PRIVATE OFFICE. AND PHIL BARACH JUST NORTH OF  
17 THAT.

01:40PM

18 CONTINUING AROUND THE FLOOR, WE HAD SOME  
19 PORTFOLIO MANAGERS, BONNIE BAHA, BART SEAGLE, A  
20 CONFERENCE ROOM.

01:40PM

21 AND THEN THE NORTHERN PART, THESE ARE  
22 WHAT WE CALL OFF-ICLES; NOT QUITE AN OFFICE, NOT QUITE  
23 A CUBICLE, BUT SOMETHING IN BETWEEN. THEY HAD SLIDING  
24 DOORS, AND THEY OFFERED PRIVACY.

25 THE IDEA BEING, WE WANTED TO PUT A LOT  
26 OF PEOPLE ON THE FLOOR IF WE NEEDED TO.

01:41PM

27 Q WE'RE HIGHLIGHTING THE ELEVATORS THERE, I  
28 THINK.



1 ARE THESE THE OFFICE SLASH CUBICLES YOU  
2 WERE REFERRING TO.

3 A YEAH, THE OFF-ICLES.

4 Q OFF-ICLES. OKAY.

5 WHAT WAS UP HERE?

01:41PM

6 A WE HAD MORE OFF-ICLES, AND THEN WE ALSO HAD  
7 WHAT WE CALLED OUR TECHNOLOGY BULLPEN.

8 THE TECHNOLOGY BULLPEN WAS WHERE OUR  
9 DEVELOPERS WHO WERE WORKING ON OUR SYSTEMS WOULD SPEND  
10 A LOT OF THEIR TIME.

01:41PM

11 Q IS THAT IT THERE, SIR, WHERE I'M HIGHLIGHTING?

12 A YES. THAT HIGHLIGHTED BOX AT THE TOP OF THE  
13 PAGE.

14 Q OVER ON THE UPPER RIGHT-HAND CORNER WE SEE  
15 MORE OFFICES OR CUBICLES WITH THE NAMES, SOME OF WHICH  
16 WE'LL RECOGNIZE, LIKE MS. VANEVERY. AND I BELIEVE  
17 MR. MAYBERRY HAD A SPACE OVER HERE SOMEWHERE.

01:41PM

18 DID YOU HAVE AN OFFICE?

19 A I DID HAVE AN OFF-ICLE.

20 AND IF YOU LOOK, I THINK YOU JUST  
21 TOUCHED IT WITH YOUR MOUSE. THERE IT IS.

01:42PM

22 Q OKAY.

23 SO WE HAD SOME PHOTOS, TOO, IN EVIDENCE.  
24 REAL QUICKLY IF YOU CAN LOOK AT THOSE, 2092 IS THE  
25 EXHIBIT. I'M GOING ASK YOU TO LOOK AT ONE, FIRST  
26 NO. 1. AND THIS IS KIND OF A DIMLY LIT PHOTO OF THE  
27 FLOOR.

01:42PM

28 AND DO YOU RECOGNIZE THAT TO BE THE

1 TRADING FLOOR ON THE 16TH FLOOR AT TCW? YES?

2 A I DO.

3 Q YOUR OFFICE -- LET'S GO TO 2092-4.

4 THIS HAS SOME NAMES OF THE PEOPLE THAT  
5 WE COULD MATCH UP TO THE FLOOR PLAN.

01:42PM

6 BUT I TAKE IT YOUR AREA WOULD BE HERE UP  
7 AGAINST THE WINDOW, JUST PAST MR. MAYBERRY?

8 A THAT IS CORRECT.

9 Q NOW, DID YOU, FROM TIME TO TIME, WORKING IN  
10 THIS KIND OF SPACE -- AND WE SEE SOMEBODY THAT'S NOT  
11 MR. GUNDLACH IN THIS PHOTO, SITTING AT HIS SPACE.

01:43PM

12 DID YOU HAVE OCCASION TO HEAR  
13 MR. GUNDLACH SPEAK?

14 A YES, I DID.

15 Q WE'VE HEARD TESTIMONY ABOUT MR. GUNDLACH  
16 STANDING UP AND SPEAKING, OR WALKING BACK AND FORTH AND  
17 TALKING.

01:43PM

18 WAS THAT YOUR EXPERIENCE?

19 A YES.

20 Q AND DID YOU OBSERVE MR. GUNDLACH'S DEMEANOR  
21 AND HIS TONE OF VOICE AND THE WAY HE CONDUCTED HIMSELF  
22 IN THOSE TALKS?

01:43PM

23 A YES, I DID. AND --

24 Q OVER THE 19 YEARS YOU'VE BEEN AT TCW, AND AT  
25 LEAST GOING BACK TO THE TIME ENDING IN 2009, WHEN  
26 MR. GUNDLACH WAS THERE, DID YOU PERCEIVE ANY CHANGE IN  
27 HIS STYLE, IN TERMS OF THESE TALKS THAT HE WOULD  
28 SOMETIMES GIVE?

01:43PM

1 A YES, I DID.

2 Q CAN YOU DESCRIBE THAT FOR US, PLEASE.

3 A THESE TALKS BECAME MORE FREQUENT. HIS EGO  
4 WOULD BE STRONGER, MORE ARROGANT, AT TIMES.

5 THE TERM I USED TO USE WAS PONTIFICATE. 01:44PM

6 Q WHAT DO YOU MEAN BY THAT?

7 A TO PONTIFICATE, YOU WOULD SPEAK DOWN TO  
8 EVERYONE ELSE, AND ASSUME THAT EVERYTHING YOU SAID WAS  
9 CORRECT.

10 AND ESSENTIALLY, YOU WERE THE ONLY 01:44PM  
11 PERSON WHO COULD POSSIBLY BE CORRECT. THERE COULD BE  
12 NO OTHER OPINIONS.

13 Q IN 2009, DID YOU OBSERVE MR. GUNDLACH TO HAVE  
14 THESE PONTIFICATIONS?

15 A YES, I DID. 01:44PM

16 Q DID HE, AT TIMES, TALK ABOUT THE WAY THE  
17 COMPANY WAS BEING MANAGED?

18 A YES.

19 Q CAN YOU TELL US WHAT YOU RECALL HIM SAYING  
20 ABOUT THAT IN 2009? 01:44PM

21 A HE WASN'T VERY --

22 MR. BRIAN: OBJECTION. COULD WE HAVE MORE  
23 FOUNDATION AS TO TIME?

24 THE COURT: YES. LET'S PUT IT IN PERSPECTIVE.  
25 BY MR. MADISON: 01:44PM

26 Q DO YOU RECALL ANYTIME IN PARTICULAR IN 2009,  
27 THAT MR. GUNDLACH WAS SPEAKING IN THIS WAY?

28 A --

1 THE COURT: THE ANSWER'S YES.

2 AND THEN HE'LL SAY WHEN, AND THEN HE'LL  
3 SAY WHAT.

4 THE WITNESS: YES.

5 THE COURT: IT GOES IN A SEQUENCE. 01:45PM

6 MR. BRIAN: COULD YOU JUST TAKE OVER?

7 THE COURT: GO AHEAD.

8 MR. QUINN: SAVE A LOT OF TIME.

9 BY MR. MADISON:

10 Q IS THAT "YES"?

11 A YES. 01:45PM

12 Q AND THE NEXT ONE WAS WHEN, YOUR HONOR?

13 WHEN WAS THAT?

14 A THROUGHOUT 2009.

15 Q IF YOU COULD JUST DESCRIBE ANY OF THOSE TALKS  
16 THAT COME TO MIND, AND TELL US APPROXIMATELY WHEN IT  
17 WAS, AND WHAT WAS SAID, PLEASE. 01:45PM

18 A MR. GUNDLACH TENDED TO BE VERY CRITICAL OF THE  
19 SENIOR REMEMBER MANAGEMENT OF TCW, AND WOULD REFER TO  
20 THEM AS A DUMB AND DUMBER. 01:45PM

21 Q DO YOU RECALL UNDERSTANDING, WHEN HE WAS USING  
22 THOSE WORDS, WHO HE WAS REFERRING TO?

23 A YES.

24 Q WHO WAS THAT?

25 A MARC STERN AND ROBERT DAY. 01:45PM

26 Q DID HE EVER SAY WHICH WAS WHICH?

27 A I DON'T BELIEVE SO, NO.

28 Q WHO WAS DUMB AND WHO WAS DUMBER?

1           A        I DON'T BELIEVE HE CLARIFIED THE DIFFERENCE  
2 BETWEEN THE TWO.

3           Q        DID YOU OBSERVE MR. GUNDLACH TO HAVE AN EVEN  
4 KEEL IN HIS MOOD AND MANNER, OR SOMETHING OTHER THAN  
5 THAT, IN 2009?

01:46PM

6           A        I WOULD NOT DESCRIBE IT AS AN EVEN KEEL.

7           Q        WHAT DO YOU MEAN BY THAT?

8           A        HIS PERSONALITY WAS VOLATILE, HIS MOODS WERE  
9 VERY VOLATILE, GOING FROM EXTREME HIGHS TO BEING VERY  
10 ANGRY. HE DIDN'T -- YOU DIDN'T WANT TO BE IN HIS  
11 PRESENCE AT THAT POINT.

01:46PM

12          Q        WAS THIS A SUBJECT OF DISCUSSION AMONG THE  
13 OTHERS ON THE FLOOR, PERHAPS OUT OF EARSHOT OF  
14 MR. GUNDLACH, DURING 2009?

15          A        YES, IT WAS.

01:46PM

16          Q        CAN YOU EXPLAIN WHAT YOU MEAN BY THAT?

17          A        WE WOULD OFTEN GAUGE WHETHER IT WAS GOING TO  
18 BE A GOOD DAY OR A BAD DAY, BASED ON MR. GUNDLACH'S  
19 MOODS.

20          Q        DID -- HAD MR. GUNDLACH COMPLAINED ABOUT PRIOR  
21 MANAGEMENT DURING THE TIME THAT MR. BEYER AND  
22 MR. SONNEBORN WERE IN CHARGE?

01:46PM

23          A        YES, HE HAD.

24          Q        AND DID HE USE THE SAME PHRASES, OR WERE HIS  
25 CRITICISMS DIFFERENT OF THOSE GENTLEMAN?

01:47PM

26          A        HE ALSO REFERRED TO MR. BEYER AND  
27 MR. SONNEBORN AS DUMB AND DUMBER.

28          Q        NOW, WITH REGARD TO MR. GUNDLACH'S CRITICISM

1 OF THE MANAGEMENT OF THE FIRM, DID YOU OBSERVE A CHANGE  
2 IN THE TEMPER AND TONE OF THOSE CRITICISMS BY  
3 MR. GUNDLACH?

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

5 Q WHAT I'M ASKING IS, DID THAT GET BETTER OR  
6 WORSE, OR NOT CHANGE, DURING 2009?

01:47PM

7 A IT GOT WORSE DURING 2009.

8 Q DID YOU EVER OBSERVE MR. GUNDLACH TO BERATE OR  
9 CRITICIZE CO-WORKERS AT THE FIRM?

10 A YES.

01:47PM

11 Q IN 2009?

12 A YES, IN 2009.

13 Q DO YOU RECALL ANY PARTICULAR INCIDENTS LIKE  
14 THAT?

15 A NOTHING IS JUMPING OUT AT ME RIGHT NOW.

01:47PM

16 BASICALLY, WHEN -- YOU'D WANT TO KEEP --

17 MR. BRIAN: OBJECTION. NONRESPONSIVE.

18 THE COURT: I'LL STRIKE THE LAST PART.

19 BY MR. MADISON:

20 Q LET ME ASK YOU ABOUT A MEETING IN MAY OF  
21 SOMETHING CALLED THE MSFI COMMITTEE.

01:48PM

22 DO YOU KNOW WHAT THAT COMMITTEE IS?

23 A YES.

24 Q CAN YOU EXPLAIN WHAT THAT?

25 A MSFI STANDS FOR THE MULTI STRATEGY FIXED  
26 INCOME COMMITTEE.

01:48PM

27 Q WERE YOU WERE YOU A MEMBER OF THAT COMMITTEE,  
28 SIR?

1           A       I -- I WAS NOT A MEMBER, BUT I WAS AN ATTENDEE  
2 AT THE MEETINGS.

3           Q       AND DO YOU HAVE A PARTICULAR MEETING IN MIND  
4 THAT MR. GUNDLACH SPOKE AT?

5           A       YES, I DO HAVE A PARTICULAR MEETING IN MIND. 01:48PM

6           Q       CAN YOU TELL US WHAT HAPPENED AT THAT MEETING?

7           A       THIS WAS A MEETING IN WHICH SOME OF THE  
8 MATERIALS THAT WE USED -- FOR THIS MEETING, WERE  
9 INCORRECT. AND JEFFREY LAUNCHED INTO A TIRADE ABOUT  
10 NOT HAVING THE CORRECT MATERIAL. 01:48PM

11          Q       DO YOU RECALL WHAT HE SAID, IN PARTICULAR?

12          A       HE WENT ON ABOUT HOW HE ASKS FOR SO LITTLE,  
13 AND HE NEVER GETS WHAT HE NEEDS.

14          Q       WHO ACTUALLY PREPARED THE MATERIALS FOR THE  
15 PRESENTATION? 01:49PM

16          A       THERE WERE THREE PEOPLE THAT WERE INVOLVED IN  
17 THE PREPARATION OF THOSE MATERIALS: MARIE TOMISON,  
18 GREGORY TOBIN, AND CLAUDE ERB.

19          Q       WERE THEY PRESENT FOR THIS MEETING AND THE  
20 TIRADE, AS YOU DESCRIBED IT? 01:49PM

21          A       I RECALL TWO OF THEM BEING PRESENT. THERE --  
22 MAY HAVE BEEN ALL THREE.

23          Q       WAS THIS SOMETHING THAT WAS OVER IN AN  
24 INSTANT, OR DID IT CONTINUE ON?

25          A       NO, IT CONTINUED ON. 01:49PM

26                   AND EVEN AFTER HE HAD SETTLED DOWN, HE  
27 LAUNCHED BACK INTO THE SAME TOPIC AGAIN.

28          Q       DID HE SAY ANYTHING ABOUT WHAT SHOULD HAPPEN

1 TO THE EMPLOYEES WHO HAD DROPPED THE BALL, APPARENTLY?

2 A I DON'T RECALL.

3 Q DID HE TALK ABOUT WHETHER THEY SHOULD BE  
4 FIRED?

5 A MAYBE -- I DON'T RECALL.

01:49PM

6 Q NOW, DID IT, DID MR. GUNDLACH'S BEHAVIOR,  
7 GIVEN HIS IMPORTANCE FOR THE GROUP AND THE FIRM, IN  
8 YOUR VIEW, HAVE AN IMPACT ON THE WORK ENVIRONMENT ON  
9 THE FLOOR IN 2009?

10 A YES, IT DID.

01:50PM

11 Q IN WHAT WAY?

12 MR. BRIAN: OBJECTION. CALLS FOR OPINION, NO  
13 FOUNDATION.

14 THE COURT: YOU CAN LAY A LITTLE MORE  
15 FOUNDATION ABOUT -- I MEAN, GENERALIZED STATEMENTS ARE  
16 NOT WHAT WE'RE LOOKING FOR.

01:50PM

17 MR. MADISON: SURE.

18 BY MR. MADISON:

19 Q DID YOU OBSERVE THE OTHER EMPLOYEES ON THE  
20 FLOOR, YOU KNOW, AFTER THESE OUTBURSTS BY MR. GUNDLACH?

01:50PM

21 A YES, I DID.

22 Q DID YOU TALK TO THEM ABOUT THEM, FROM TIME TO  
23 TIME?

24 A YES, I DID.

25 Q WITHOUT GETTING INTO THE SPECIFIC STATEMENTS,  
26 CAN YOU GENERALLY TELL US WHAT -- HOW IT AFFECTED THE  
27 WORK ENVIRONMENT?

01:50PM

28 A IT MADE IT VERY STRESSFUL.



1 Q WHY?

2 A YOU FELT BAD FOR THE -- YOUR COLLEAGUES THAT  
3 WERE BEING TARGETED. AND YOU ALSO HOPED THAT YOU  
4 WOULDN'T BRING JEFFREY DOWN ON YOU BY SOMETHING THAT  
5 YOU HAD DONE.

01:51PM

6 Q HAD YOU EVER BROUGHT JEFFREY DOWN ON YOU BY  
7 SOMETHING YOU DID?

8 A YES.

9 Q DO YOU RECALL WHEN THAT OCCURRED?

10 A ROUGHLY, YES.

01:51PM

11 Q ROUGHLY, WHEN WAS THAT?

12 A SEVERAL YEARS AGO.

13 Q CAN YOU TELL US WHAT HAPPENED?

14 A SEVERAL YEARS AGO, WE HAD AN EMPLOYEE WHO I  
15 HAD REPORTED TO OUR HR DEPARTMENT.

01:51PM

16 AND THAT EMPLOYEE ENDED UP RESIGNING  
17 OVER AN ISSUE. AND JEFFREY WAS VERY ANGRY WITH ME.

18 Q WITHOUT GOING INTO THE DETAILS, JUST  
19 GENERALLY, WHAT DID THE ISSUE INVOLVE?

20 A THE EMPLOYEE --

01:51PM

21 MR. BRIAN: OBJECTION. RELEVANCE.

22 THE COURT: SUSTAINED.

23 BY MR. MADISON:

24 Q WELL, WAS IT AN ISSUE ABOUT MR. GUNDLACH, OR  
25 SOMETHING ELSE?

01:51PM

26 A IT WAS SOMETHING ELSE.

27 Q ALL RIGHT.

28 YOU SAID YOU CONTACTED HR?

1 A YES.

2 Q WHY DID YOU DO THAT?

3 A I CONTACTED HR BECAUSE THE ISSUE, THE PERSON  
4 WHO HAD BEEN DOCTORING PAY STUBS, SEEMED VERY SERIOUS  
5 TO ME. AND I WANTED GUIDANCE AS TO WHETHER THAT WAS A  
6 SERIOUS ENOUGH ISSUE THAT IT SHOULD BE BROUGHT UP AND  
7 DEALT WITH.

01:52PM

8 Q SO YOU WENT TO HUMAN RESOURCES?

9 A YES.

10 Q NOW WAS MR. GUNDLACH AT WORK THE DAY THIS CAME  
11 UP?

01:52PM

12 A NO. MR. GUNDLACH WAS TRAVELING THAT DAY.

13 Q SO AFTER THE EPISODE, AFTER YOU REPORTED IT TO  
14 HR, DID YOU COMMUNICATE WITH ANYBODY ELSE, EITHER  
15 MR. GUNDLACH OR ANYBODY THAT WORKED FOR HIM, ABOUT THE  
16 EPISODE?

01:52PM

17 A NO. I MEAN -- THEY -- I HAD A MEETING. THIS  
18 HAPPENED ON A FRIDAY; AND THE FOLLOWING MONDAY, SOME  
19 PEOPLE PULLED ME INTO A CONFERENCE ROOM.

20 Q WHO WAS THAT?

01:52PM

21 A IT WAS GALLIGAN, CRIS SANTA ANA AND  
22 JEFF MAYBERRY.

23 Q WHAT HAPPENED IN THIS MEETING WITH  
24 MR. SANTA ANA AND MR. MAYBERRY AND MR. GALLIGAN?

25 A THEY WERE VERY ANGRY WITH ME FOR CALLING THE  
26 HR DEPARTMENT. THE EMPLOYEE HAD RESIGNED, AND THEY --  
27 PROCEEDED TO LECTURE ME.

01:53PM

28 Q ABOUT WHAT?

1           A       MR. GALLIGAN HAD SAID THAT, YOU KNOW, EVERYONE  
2 CHEATS, IT WASN'T THAT BIG A DEAL.

3           MR. BRIAN:   OBJECTION.   RELEVANCE.   352.

4           THE COURT:   SUSTAINED.

5           MR. MADISON:   WELL --

01:53PM

6           Q       DO YOU REMEMBER WHAT MR. SANTA ANA --

7           THE COURT:   YOU KNOW, THIS -- THIS SEEMS TO  
8 ME, UNLESS WE'RE GOING SOMEWHERE QUICKLY, TO BE AN  
9 AREA, WE OUGHT TO GET BACK ON TRACK --

10          MR. MADISON:   SURE.

01:53PM

11          Q       LET ME MOVE TO YOUR CONVERSATION WITH  
12 MR. GUNDLACH ABOUT THIS.

13                       DID YOU HAVE A CONVERSATION WITH HIM  
14 WHEN HE GOT BACK?

15          A       YES I DID.

01:53PM

16          Q       WHAT DID MR. GUNDLACH TELL YOU ABOUT YOUR  
17 HAVING REPORTED THIS WRONGDOING TO HR?

18          A       JEFFREY SAID THAT I SHOULD HAVE GONE TO HIM  
19 FIRST.   AND HE LIKENED ME TO ALEXANDER HAIG.

20                       AND THEN, HE SAID THAT HE PUT ME ON  
21 PROBATION.   AND HE SAID IF I DO SOMETHING LIKE THAT  
22 AGAIN, I'D BE FIRED.

01:54PM

23          Q       HAD ANYONE AT HR TOLD YOU YOU HAD DONE THE  
24 WRONG THING?

25          A       NO.   OUR HR DEPARTMENT TOLD ME I HAD DONE THE  
26 RIGHT THING.

01:54PM

27          Q       AND ALEXANDER HAIG, IS THAT A REFERENCE TO THE  
28 PERSON IN WASHINGTON WHO AT ONE POINT SAID HE WAS IN

1 CHARGE --

2 MR. BRIAN: OBJECTION. 352.

3 THE COURT: SUSTAINED.

4 MR. MADISON: I WANT TO UNDERSTAND WHAT YOU  
5 UNDERSTOOD MR. GUNDLACH TO BE TELLING YOU.

01:54PM

6 Q WAS WHAT --

7 MR. BRIAN: SAME OBJECTION.

8 THE COURT: SUSTAINED. IT'S SUSTAINED.

9 MR. MADISON: I'M SORRY. NOBODY KNOWS. IT'S  
10 LIKE TALKING ABOUT OLI NORTH. THEY MAY NOT KNOW WHAT  
11 HE DID. HE COULD HAVE BEEN A POTTED PLANT. THAT'S THE  
12 TESTIMONY. YOU LIVE WITH IT. GO AHEAD.

01:54PM

13 BY MR. MADISON:

14 Q WAS MR. GUNDLACH UPSET WHEN HE WAS TALKING TO  
15 YOU ABOUT THIS EPISODE?

01:54PM

16 A YES, HE WAS.

17 Q MR. SANTA ANA TESTIFIED IN THIS TRIAL.

18 AND WERE YOU HERE LAST WEEK, WHEN  
19 MR. SANTA ANA WAS TESTIFYING?

20 A YES I WAS.

01:55PM

21 Q DID YOU HEAR MR. SANTA ANA TESTIFY ABOUT AN  
22 EPISODE THAT HAPPENED BETWEEN YOU AND HIM?

23 A YES.

24 Q AND LET ME FIRST ASK YOU, THIS WAS AN EPISODE,  
25 APPARENTLY, WHERE THERE WAS SOME DISPUTE BETWEEN THE  
26 TWO OF YOU AT WORK?

01:55PM

27 A YES.

28 Q DID IT HAPPEN?

1 A YES.

2 Q WHEN?

3 A MAYBE TEN YEARS AGO, LONG TIME AGO.

4 Q WITHOUT GOING THROUGH ALL OF THAT, TELL US THE  
5 NATURE OF WHAT HAPPENED.

01:55PM

6 A I -- FROM WHAT I REMEMBER, I WAS HAVING A  
7 REALLY BAD DAY, LOST MY TEMPER. UNFORTUNATELY, I TOOK  
8 IT OUT ON SOMEONE I SHOULDN'T HAVE, AND I APOLOGIZED  
9 PROFUSELY AFTERWARDS.

10 AND I HADN'T HEARD ABOUT IT UNTIL LAST  
11 WEEK.

01:55PM

12 Q DO YOU KNOW, I MEAN, MR. SANTA ANA, IN THE TEN  
13 YEARS SINCE IT'S HAPPENED, HAS HE EVER ONCE MENTIONED  
14 THAT EPISODE TO YOU?

15 A NO.

01:55PM

16 Q DID HE ACCEPT YOUR APOLOGY, WHEN YOU  
17 APOLOGIZED?

18 A YES.

19 Q NOW, LET ME ASK YOU ABOUT THE MEETING OF  
20 SEPTEMBER 3RD.

01:56PM

21 HOW DID YOU COME TO BE IN THE MEETING  
22 WITH MR. STERN AND MR. GUNDLACH ON SEPTEMBER 3RD, 2009?

23 A BEFORE THE MEETING, MR. GUNDLACH CAME TO ME  
24 AND ASKED ME TO JOIN HIM IN HIS OFFICE. AND WHEN HE  
25 INVITED ME TO ATTEND THIS MEETING WITH MR. STERN.

01:56PM

26 Q DO YOU RECALL WHAT MR. GUNDLACH SAID, IN  
27 PARTICULAR, IN THE MEETING WITH YOU BEFOREHAND?

28 A MR. GUNDLACH TOLD ME THAT THE MEETING WAS

1 GOING TO BE TO TALK ABOUT SOME ISSUES REGARDING TCW,  
2 PRIMARILY THE STABILITY OF THE FIRM.

3 HE WANTED ALL OF THE MANAGING DIRECTORS  
4 REPORTING DIRECTLY TO HIM, THAT REPORT DIRECTLY TO HIM,  
5 TO BE PRESENT.

01:56PM

6 AND AT SOME POINT, WE WERE GOING TO BE  
7 ASKED, IF I LEAVE THE FIRM, WOULD YOU COME WITH ME?

8 Q IF I, MR. GUNDLACH?

9 A YES.

10 Q AND DID YOU AND MR. GUNDLACH DISCUSS WHAT THE  
11 ANSWER TO THAT SHOULD BE, IF THAT CAME UP IN THE  
12 MEETING WITH MR. STERN?

01:57PM

13 A YES.

14 I ACTUALLY TOLD HIM THEN THAT I WOULD GO  
15 WITH HIM.

01:57PM

16 Q YOU TOLD MR. GUNDLACH THAT YOU WOULD GO WITH  
17 HIM?

18 A THAT'S CORRECT.

19 Q WHY DID YOU SAY THAT?

20 A AT THAT POINT, HE WAS -- WAS A JOB THAT I HAD.  
21 I'M THINKING ABOUT, I WASN'T CONVINCED, I'D BE GOING  
22 WITH HIM.

01:57PM

23 BUT I WANTED TO BE ABLE TO KEEP MY  
24 OPTIONS OPEN.

25 Q SO DO YOU RECALL ANYTHING ELSE FROM THIS  
26 PRE-MEETING WITH MR. GUNDLACH ON SEPTEMBER 3RD?

01:57PM

27 A NOTHING SPECIFIC.

28 Q DO YOU -- WERE ANY OF THE OTHER MANAGING

1 DIRECTORS IN THIS MEETING WITH YOU AND MR. GUNDLACH,  
2 WHERE YOU TALKED ABOUT THE MEETING TO OCCUR WITH  
3 MR. STERN?

4 A NO. IT WAS JUST THE TWO OF US.

5 Q AT THAT POINT, WERE YOU AWARE OF ANY PLANS  
6 THAT MR. GUNDLACH EITHER HAD OR DIDN'T HAVE, TO LEAVE  
7 TCW?

01:57PM

8 A NO.

9 Q HAD YOU HEARD ANYTHING ABOUT MR. GUNDLACH  
10 WANTING TO START HIS OWN FIRM, AS OF THAT TIME?

01:58PM

11 A NO.

12 Q AND DID YOU THINK ABOUT WHAT WOULD HAPPEN IF  
13 YOU DID NOT SHOW SUPPORT FOR MR. GUNDLACH IN THE  
14 MEETING WITH MR. STERN?

15 A YES, I DID.

01:58PM

16 Q WHAT DID YOU THINK ABOUT THAT?

17 A GIVEN THAT I WAS STILL ON PROBATION, I THOUGHT  
18 IF I DIDN'T SHOW SUPPORT, THAT WOULD PROBABLY GET ME  
19 FIRED, OR SEVERELY LIMIT MY CAREER.

20 Q DID YOU ATTEND THE MEETING WITH MR. STERN?

01:58PM

21 A YES I DID.

22 Q DO YOU RECALL WHAT TIME IT WAS?

23 A I RECALL EARLY AFTERNOON.

24 Q IF WE COULD HAVE 373, DO YOU RECALL WHERE THE  
25 MEETING OCCURRED ON THE FLOOR PLAN?

01:58PM

26 A THE MEETING OCCURRED IN THE LA CIENEGA  
27 CONFERENCE ROOM, IN THE LOWER LEFT CORNER.

28 Q WHO ATTENDED THAT MEETING?

1           A       MEETING WAS ATTENDED BY MARC STERN, JEFFREY  
2 GUNDLACH, PHIL BARACH, LOU LUCIDO, JOE GALLIGAN, JOEL  
3 DAMIANI, CRIS SANTA ANA, AND MYSELF.

4           Q       CAN YOU TELL US AS MUCH AS YOU CAN RECALL  
5 ABOUT WHAT WAS SAID IN THAT MEETING?

01:59PM

6           A       YES. THE MEETING BEGAN WITH JEFFREY TALKING  
7 ABOUT HOW HE'S CONCERNED ABOUT HOW THE FIRM WAS BEING  
8 RUN.

9                       WE TALKED ABOUT SOME OF THE SUPPORT  
10 ISSUES FROM SOC-GEN, CONCERNS ABOUT SENIOR MANAGEMENT.

01:59PM

11                      LOU LUCIDO SPOKE ABOUT NOT GETTING  
12 ENOUGH RESOURCES.

13                      AND THEN AT SOME POINT, WE WERE POLLED  
14 INDIVIDUALLY, IF JEFFREY GUNDLACH LEFT, WOULD YOU JOIN  
15 JEFFREY GUNDLACH.

01:59PM

16                      AND WE WENT AROUND THE ROOM, ONE PERSON  
17 AT A TIME; AND WE EACH ANSWERED AFFIRMATIVELY.

18           Q       WAS THAT WHAT YOU HAD DISCUSSED WITH  
19 MR. GUNDLACH, AT LEAST AS TO YOU, THAT YOU KNEW THAT  
20 MOMENT WAS GOING TO COME?

02:00PM

21           A       YES.

22           Q       AND WHAT DID YOU SAY?

23           A       I SAID YES, I WOULD GO WITH JEFFREY GUNDLACH.

24           Q       WHAT DID THE OTHERS SAY?

25           A       THEY ALL SAID YES, THAT THEY WOULD GO WITH  
26 JEFFREY GUNDLACH.

02:00PM

27           Q       WAS THIS A FRIENDLY MEETING?

28           A       NO. IT WAS NOT WHAT I'D CALL A FRIENDLY



1 MEETING.

2 Q WHY NOT?

3 A YOU HAD SEVEN PEOPLE ON ONE SIDE OF THE TABLE;  
4 AND YOU HAD ONE PERSON, MARC STERN, ON THE OTHER. AND  
5 WE WERE ALL KIND OF GANGING UP ON HIM.

02:00PM

6 Q WHAT DO YOU MEAN BY THAT?

7 A WE WERE NOT SPEAKING VERY POLITELY. WE WERE  
8 ACCUSING HIM OF NOT SUPPORTING US, OF NOT RUNNING THE  
9 COMPANY WELL.

10 WE -- JEFFREY HAD A -- SAID, ACCUSED  
11 MARC OF TRYING TO HAVE HIM FIRED.

02:00PM

12 YEAH, THOSE ARE PRETTY CONFRONTATIONAL  
13 TOPICS.

14 Q WAS THERE ANY DISCUSSION ABOUT NEGOTIATING A  
15 SEPARATION -- SEPARATION OF THE M.B.S. GROUP AWAY FROM  
16 TCW?

02:01PM

17 A NO. THERE WAS NO DISCUSSION OF SEPARATING THE  
18 GROUP.

19 Q HAD YOU DISCUSSED THAT WITH MR. GUNDLACH IN  
20 YOUR PRE-MEETING?

02:01PM

21 A NO. WE DIDN'T.

22 Q DID YOU, BEFORE, DURING OR AFTER THAT  
23 SEPTEMBER 3RD MEETING, DID YOU EVER HEAR MR. GUNDLACH  
24 TALK ABOUT THAT?

25 A SEPARATING AWAY FROM TCW?

02:01PM

26 I REMEMBER ONE INSTANCE.

27 Q WHEN WAS THAT?

28 A THAT WAS AFTER SOMETIME AFTER THE

1 SEPTEMBER 3RD MEETING.

2 Q WHAT DO YOU RECALL ABOUT THAT?

3 A IT WAS IN THE TRADING ROOM. I WAS SITTING AT  
4 MY SEAT IN THE TRADING ROOM, AND JEFFREY WAS AT HIS  
5 SEAT.

02:01PM

6 AND I REMEMBER JEFFREY SAYING, HIS VOICE  
7 ROSE UP A BIT, AND SAID, AFTER WE GET OUR BONUSES,  
8 WE'RE ALL OUT OF HERE IT'S A GIANT F YOU TO MARC STERN.

9 ONLY HE DIDN'T USE F, HE USED THAT WORD.

10 Q DO YOU RECALL WHEN THAT STATEMENT WAS MADE BY  
11 MR. GUNDLACH?

02:01PM

12 A IT WAS SOMETIME AFTER THE SEPTEMBER 3RD  
13 MEETING.

14 Q DID YOU EVER HEAR MR. GUNDLACH TALK ABOUT A  
15 NEGOTIATED DEPARTURE OF ANY GROUP FROM TCW?

02:02PM

16 A YES, I DID.

17 Q AND WHEN WAS THAT, IF YOU RECALL?

18 A IT WAS -- MY RECOLLECTION IS, IT WAS SOMETIME  
19 IN SEPTEMBER.

20 Q WHAT DO YOU RECALL ABOUT THAT CONVERSATION?

02:02PM

21 A HE WAS TALKING ABOUT MR. BLAIR THOMAS.

22 AND THAT CONVERSATION, HE CALLED  
23 BLAIR THOMAS A PUSSY, FOR NEGOTIATING.

24 Q DO YOU RECALL WHAT ELSE HE SAID ABOUT THAT?

25 A I DON'T HAVE A SPECIFIC RECOLLECTION; BUT THE  
26 GIST WAS, BLAIR THOMAS IS A PUSSY. YOU SHOULD JUST  
27 TAKE IT.

02:02PM

28 Q TAKE WHAT?

1           A       I THINK AT THAT POINT HE WAS REFERRING TO  
2 MR. THOMAS'S --

3           MR. BRIAN:   OBJECTION.   CALLS FOR SPECULATION.

4           THE COURT:   I'LL SUSTAIN IT.

5 BY MR. MADISON:

02:02PM

6           Q       SO HE SAID --

7           A       THIS IS STRONG LANGUAGE.

8                        BUT HE SAID BLAIR THOMAS IS A PUSSY.  
9 YOU SHOULD JUST TAKE IT.   THAT WAS MY UNDERSTANDING?

10          Q       DID YOU UNDERSTAND --

02:03PM

11          MR. BRIAN:   OBJECTION.   MOVE TO STRIKE.

12          THE COURT:   THAT'S WHAT HE HEARD HIM SAY.

13          MR. MADISON:  I UNDERSTAND.

14          THE COURT:   BEYOND THAT, YOU CAN ASK THE  
15 PERSON WHO SAID IT.

02:03PM

16 BY MR. MADISON:

17          Q       MY QUESTION IS, WAS THIS AROUND THE TIME THAT  
18 PEOPLE WERE TALKING ABOUT BLAIR THOMAS NEGOTIATING A  
19 DEPARTURE OF THE ENERGY GROUP FROM TCW?

20          A       YES, IT WAS.

02:03PM

21          Q       THAT WAS THE REFERENCE THAT MR. GUNDLACH WAS  
22 MAKING?

23          A       YES.

24          Q       NOW LET ME COME BACK TO THE MEETING OF  
25 SEPTEMBER 3RD.

02:03PM

26                        WAS THERE ANY DISCUSSION, THAT YOU CAN  
27 RECALL, IN THAT MEETING, OF MR. GUNDLACH, OR THE OTHERS  
28 OF YOU IN THAT ROOM TOGETHER, BUYING THE ENTIRE FIRM,

1 TCW?

2 A YES, THERE WAS.

3 Q WHAT DO YOU RECALL ABOUT THAT?

4 A IT WAS KIND OF AN OFF-THE-CUFF REMARK ABOUT  
5 OFFERING \$700 MILLION TO BUY THE FIRM.

02:03PM

6 Q AND WHO MADE THAT OFFER?

7 A THAT WAS JEFFREY GUNDLACH.

8 Q IS THERE ANYTHING ABOUT THE SEPTEMBER 3RD  
9 MEETING THAT YOU HAVEN'T ALREADY TOLD US, IN TERMS OF  
10 WHAT YOU RECALL BEING SAID?

02:04PM

11 A NOT RIGHT NOW.

12 Q WHAT WAS MR. STERN'S Demeanor DURING THE  
13 MEETING, AS YOU ALL WERE GANGING UP ON HIM -- AS YOU  
14 DESCRIBE?

15 A MR. STERN WAS VERY PATIENT. I ACTUALLY WAS  
16 VERY IMPRESSED. I HADN'T DEALT WITH HIM VERY MUCH IN  
17 THE PAST. AND HE SAT THERE, AND HE PATIENTLY LISTENED,  
18 NODDED TO THE REQUESTS, AND JUST TOOK A FEW NOTES.

02:04PM

19 Q WHERE DID IT ALL -- WHERE WAS IT ALL LEFT, AT  
20 THE END OF THE MEETING?

02:04PM

21 A AT THE END OF THE MEETING, THERE WERE A SERIES  
22 OF KIND OF VAGUE DEMANDS, THAT MARC SAID HE WAS GOING  
23 TO WORK ON.

24 Q DEMANDS BY WHOM?

25 A BY THE MORTGAGE DEPARTMENT.

02:04PM

26 AND THEN MARC LEFT THE LA CIENEGA  
27 CONFERENCE ROOM, AND THE SEVEN OTHER PEOPLE STAYED IN  
28 THE ROOM.

1 Q DID YOU STAY WITH THE OTHERS, THEN, AFTER  
2 MR. STERN DEPARTED?

3 A YES, I DID.

4 Q DID YOU ALL THEN HAVE A MEETING AT THAT TIME?

5 A YES.

02:05PM

6 Q HOW LONG DID THAT MEETING LAST?

7 A MY RECOLLECTION IS ABOUT A HALF HOUR, MAYBE 45  
8 MINUTES.

9 MR. MADISON: I'D BE PREPARED TO MOVE INTO  
10 THAT MEETING, BUT I'M MINDFUL OF THE TIME. I DON'T  
11 KNOW WHAT YOU'D LIKE ME TO DO.

02:05PM

12 THE COURT: WE CAN BREAK. I JUST ASSUME TO  
13 GO -- WE'RE AFTER 2:00. OKAY.

14 WE'LL RECESS FOR THE EVENING.

15 LADIES AND GENTLEMEN, REMEMBER THE  
16 ADMONISHMENT NOT TO DISCUSS THE MATTER WITH YOURSELVES  
17 OR FORM ANY OPINIONS OR CONCLUSIONS CONCERNING ANY  
18 ASPECT OF THE CASE UNTIL YOU'VE HEARD ALL THE EVIDENCE.

02:05PM

19 ALSO, BEFORE YOU LEAVE WE HAVE A NUMBER  
20 OF MEDIA TYPES AROUND, AND YOU SHOULD AVOID ANY CONTACT  
21 WITH THEM. YOU KNOW, I TOLD YOU AT THE BEGINNING OF  
22 THE TRIAL, YOU NEED TO AVOID ANY PUBLICITY OR THINGS  
23 ABOUT THE TRIAL. REFRAIN FROM ENGAGING IN  
24 CONVERSATIONS WITH ANY OF THE MEDIA TYPES, NETWORK  
25 PEOPLE, REPORTERS. IT'S JUST FOR YOUR OWN BENEFIT.

02:05PM

26 AND IT'S IMPORTANT THAT YOU NOT BE  
27 INFLUENCED IN ANY WAY BY ANYONE. HAVE A NICE EVENING.

02:06PM

28 MR. PELIO, IF YOU WANT TO STAY JUST A

1 MINUTE. I GOT SOME MORE TO TALK TO YOU ABOUT.

2 THE REST OF YOU, I'LL SEE YOU ALL IN THE  
3 MORNING. THANK YOU.

4 (PAUSE) +

5

02:06PM

6 THE COURT: MR. PELIO, I WANT TO LET YOU KNOW,  
7 I SPOKE AGAIN WITH THE HUMAN RESOURCES DEPARTMENT.

8 THEY HAVE TALKED TO YOUR SUPERVISORS. YOU MIGHT WANT  
9 TO CHECK IN WITH THEM, AND SEE WHAT YOU MIGHT BE ABLE  
10 TO WORK OUT IN TERMS OF A MODIFIED SCHEDULE, SO YOU CAN  
11 DO A LITTLE WORK AFTER WE BREAK AT 2 O'CLOCK, AND ON  
12 FRIDAYS. BECAUSE I THINK THEY'RE WILLING TO WORK WITH  
13 YOU ON THAT.

02:07PM

14 JUROR: ON FRIDAYS. OKAY.

15 THE COURT: YOU COME BACK AND TELL ME. THAT  
16 WAS MY IMPRESSION.

02:07PM

17 JUROR: OKAY.

18 THE COURT: AGAIN, I REALLY CAN'T LET YOU GO.  
19 BUT I DON'T WANT YOU TO BE BURDENED.

20 YOU TALK TO YOUR SUPERVISOR, AND SEE WHAT YOU CAN WORK  
21 OUT, IN TERMS OF GETTING HOURS IN, AND WORKING.

02:07PM

22 AND ARE YOU A SALARIED EMPLOYEE?

23 JUROR: I'M NOT SALARIED EMPLOYED. I'M  
24 HOURLY.

25 THE COURT: YOU'RE HOURLY.

02:07PM

26 THEY SHOULD BE WILLING TO WORK WITH YOU.

27 IF THEY DON'T, COME BACK AND LET ME  
28 KNOW. THEY SAID THEY WOULD WORK WITH YOU.

1 JUROR: IT'S A LITTLE TOUGH. FOUR OR SIX MORE  
2 WEEKS OF THE CASE WOULD REALLY PUT ME IN --

3 THE COURT: I UNDERSTAND. THAT'S WHY I TRIED  
4 TO GET YOU, SO YOU CAN DO SOMETHING AND KEEP WORKING  
5 AND MAKE MONEY HERE.

02:08PM

6 JUROR: OKAY.

7 THE COURT: HANG WITH US FOR A LITTLE LONGER,  
8 AND SEE WHAT YOUR SUPERVISOR HAS TO SAY. YOU SHOULD  
9 TALK TO THEM.

10 JUROR: I'LL GIVE THEM A CALL.

02:08PM

11 THE COURT: THANKS.

12 (PROCEEDINGS OUT OF THE PRESENCE OF THE JURY)

13

14 THE COURT: WE'RE OUT OF THE PRESENCE OF THE  
15 JURY.

02:08PM

16 I HAD ANOTHER QUESTION FROM THE JURORS,  
17 TWO QUESTIONS. ACTUALLY, THEY WANTED TO KNOW WHAT 352  
18 MEANT.

19 AND I'LL JUST TELL THEM IT'S A SECRET  
20 CODE, AND I CAN'T TELL THEM; BUT WE'LL WORK IT OUT.

02:08PM

21 MR. MADISON: IT MEANS OUCH.

22 THE COURT: THEY WANT TO KNOW WHO'S SITTING  
23 NEXT TO MR. SANTA ANA.

24 MR. BRIAN: IT'S MR. LARISCY, EARL LARISCY.

25 HE'S THE INSIDE GENERAL COUNSEL AT  
26 DOUBLE LINE.

02:08PM

27 THE COURT: RIGHT. I THINK YOU INTRODUCED HIM  
28 AT THE BEGINNING.

1                   SOMEBODY FORGOT. YOU MIGHT INTRODUCE  
2 HIM TOMORROW.

3                   MR. BRIAN: I'M HAPPY TO DO SO, YOUR HONOR.

4                   THE COURT: ANY OTHER MATTERS? DO I HAVE MORE  
5 NOTEBOOKS COMING TONIGHT, OR CAN I MAKE PLANS?

02:09PM

6                   MR. BRIAN: YOU CAN GO OUT TO DINNER.

7                   MR. QUINN: WE WANT TO ACKNOWLEDGE AND THANK  
8 THE COURT FOR GETTING THROUGH THE LENGTHY GUNDLACH  
9 DESIGNATIONS. YOU APPARENTLY WORKED ON THOSE LATE LAST  
10 NIGHT.

02:09PM

11                  THE COURT: NO, I ACTUALLY DIDN'T.

12                  MR. QUINN: YOU GOT THEM DONE WHENEVER. WE  
13 APPRECIATE THAT.

14                  THE COURT: THAT'S NOT A PROBLEM.

15                  MR. QUINN: ON THE SUBJECT OF NO GOOD DEED --

02:09PM

16                  THE COURT: SURE.

17                  MR. QUINN: -- YOU KNOW THERE'S A PASSAGE AT  
18 368, 1 TO 13, THAT WE HAD OBJECTED TO, WHERE THE COURT  
19 OVERRULED THE OBJECTION. THIS RELATES TO THE ISSUE OF  
20 THE PPIP PROGRAM TIME, 368, 1 TO 13.

02:09PM

21                  MR. QUINN: THE ANSWER IS, LINES 2 TO 13.

22                  THE COURT: I'LL TAKE A LOOK AT IT.

23                  MR. QUINN: IT REFERS TO MR. GUNDLACH SAYS,  
24 PARTICULARLY BECAUSE TCW ACCEPTED THE PPIP MONEY FROM  
25 THE TREASURY DEPARTMENT, AND IN SO DOING, I WAS TOLD  
26 THEY WERE MAKING REPRESENTATIONS THAT THE DELIVERABLE  
27 WAS NOT GOING TO BE CHANGED.

02:10PM

28                   BUT IT'S VERY CLEAR THAT THAT WAS NOT



1 TRUE. AND IT SEEMS IMPOSSIBLE TO ME THAT TCW WOULD LIE  
2 IN AN AFFIDAVIT TO THE U.S. GOVERNMENT.

3 I THINK THE COURT WILL RECALL THE ISSUES  
4 RELATING TO THIS. THIS IS NOT, IN FACT,  
5 REPRESENTATION. IN FACT, THE AGREEMENT SPECIFICALLY  
6 PROVIDES FOR WHAT HAPPENS IF THERE'S A KEY MAN CHANGE.

02:10PM

7 AND THERE IS NO AFFIDAVIT. AND THIS IS  
8 AN ISSUE THAT THE COURT AT LEAST PRELIMINARILY HAD  
9 RULED OUT --

10 THE COURT: HAD THIS BEEN ON SUMMARY  
11 JUDGMENT --

02:10PM

12 MR. QUINN: MOTION IN LIMINE.

13 THE COURT: LET ME LOOK BACK AT IT.

14 MR. BRIAN: I DON'T --

15 THE COURT: I WILL LOOK AT IT.

02:10PM

16 MR. BRIAN?

17 MR. BRIAN: THIS IS NOT ACTUALLY MY ISSUE.

18 BUT MR. ALLRED REMINDS ME, THERE IS A  
19 PROFFER WE SUBMITTED. I DON'T THINK YOUR HONOR HAS  
20 ACTUALLY RULED FINALLY ON THIS ISSUE.

02:10PM

21 MR. ALLRED: THAT'S CORRECT, YOUR HONOR.

22 THE COURT: THERE WAS A REFERENCE IN THE  
23 MARGIN TO THE FACT I HAD NOT RULED ON IT.

24 I WAS LOOKING AT IT, SO I LOOKED AT IT  
25 FRESH. I DIDN'T GO DIG UP MY NOTES ON THE MOTION IN  
26 LIMINE.

02:10PM

27 IF IN FACT, AND AGAIN, YOU KNOW, A LOT  
28 OF WHAT WE SEE HERE, IT SEEMS TO ME, IS BETTER OBTAINED

1 FROM DIRECT TESTIMONY OF A WITNESS ON THE STAND. IF  
2 THERE'S NO AFFIDAVIT, AND THERE ARE AGREEMENTS, BUT NOT  
3 REPRESENTATIONS MADE BY MR. GUNDLACH OR BY TCW, YOU  
4 KNOW, MAYBE I SHOULD RECONSIDER THAT.

5 I DON'T KNOW.

02:11PM

6 MR. ALLRED: OUR PROFFER DOES LAY OUT THE  
7 REPRESENTATIONS IN SOME DETAIL TO THE GOVERNMENT.

8 MR. BRIAN: IF YOU CAN'T FIND THAT, YOUR  
9 HONOR, PERHAPS WE CAN GET THAT.

10 THE COURT: WHY WOULDN'T YOU -- AT THE END OF  
11 THE DAY, IF YOU WANT TO OFFER AN AGREEMENT IN EVIDENCE,  
12 AND IT HAS SPECIFIC REPRESENTATIONS, YOU COULD ARGUE  
13 THEM, YOU CAN TALK ABOUT THEM. I DON'T KNOW.

02:11PM

14 OR DO WE HAVE A MOTION TO EXCLUDE ANY  
15 REFERENCE TO PPIP, PERIOD? YOU ALREADY HAD REFERENCES  
16 TO THE EVIDENCE ABOUT IT.

02:11PM

17 MR. QUINN: WHAT THE MUNGER TOLLES LAWYERS  
18 TOLD THE COURT IS CORRECT. THE COURT DID NOT FINALLY  
19 RULE ON THIS. THIS WAS ONE OF THOSE WHERE WE HAD A  
20 TENTATIVE ON THE MOTION IN LIMINE.

02:12PM

21 THE TENTATIVE WAS THAT THEY COULDN'T  
22 TALK ABOUT OUR LYING TO THE FEDERAL GOVERNMENT.

23 THE COURT: RIGHT.

24 MR. QUINN: WE NEVER WANTED TO -- WE'RE NOT  
25 TRYING TO KEEP OUT THE GENERAL NOTION THAT MR. GUNDLACH  
26 FELT MORE COMFORT, HE THOUGHT MORE RELAXED ABOUT HIS  
27 EMPLOYMENT SITUATION, AS A RESULT OF TCW HAVING ENTERED  
28 INTO THE PPIP PROGRAM. BUT WE DIDN'T THINK THEY HAD TO

02:12PM

1 GO TO THE NEXT STEP, AND SAY WE LIED TO THE FEDERAL  
2 GOVERNMENT.

3 THE COURT: WHAT WAS THE DATE OF THE PPIP  
4 PROGRAM?

5 MR. QUINN: ONE'S IN SEPTEMBER AND ONE'S IN  
6 NOVEMBER. 02:12PM

7 MR. ALLRED: SEPTEMBER 30 AND NOVEMBER 16TH, I  
8 BELIEVE.

9 THE COURT: GIVEN ALL THE TESTIMONY THAT WE'VE  
10 HAD ABOUT WHAT WAS GOING ON, THE TESTIMONY WE HAD  
11 TODAY, CONCERNING THE LOCATION OF REPLACEMENT MANAGERS,  
12 THE RECOMMENDATION TO TERMINATE, WHICH I BELIEVE CAME  
13 SOMETIME IN JULY OR AUGUST, I'M NOT SO SURE THAT IT  
14 DOESN'T ALL GO IN THE SAME SCHEME OF THINGS, MANY --  
15 YOU KNOW, IT'S ALL THE EYE OF THE BEHOLDER, SOME OF  
16 YOUR PERCEPTIONS OF THIS CASE. 02:12PM

17 MR. QUINN: NO, NO, NO. YOU ACTUALLY DO HAVE  
18 TO LOOK AT THE TERMS OF THE DEAL DOCUMENT. WE BRIEFED  
19 THIS AS -- 02:13PM

20 THE COURT: LET ME GO BACK. 02:13PM

21 DOES ANYBODY HAVE A CHANCE OF KNOWING  
22 WHAT MOTION IN LIMINE IT WAS? I CAN FIND IT.

23 MR. QUINN: WE CAN GET ALL THAT TOGETHER.

24 THE COURT: I'LL FIND IT.

25 MR. MADISON: 7-B. YOUR HONOR. 02:13PM

26 MR. QUINN: 7-B, I'M TOLD.

27 THE STATE OF THE BRIEFING IS, WE BRIEFED  
28 IT INITIALLY, THE TENTATIVE WAS, THIS STAYS OUT,

1 MOTION'S GRANTED. THEY SAID THIS IS ONE THEY WANTED TO  
2 BRIEF FURTHER. THEY WANTED TO MAKE AN OFFER.

3 THEY MADE A VERY EXTENSIVE OFFER OF  
4 PROOF. WE SUBMITTED A BRIEF IN RESPONSE TO THAT.

5 THE COURT: I DIDN'T RULE ON ANY OF THAT. 02:13PM

6 MR. QUINN: WE NEVER -- I DON'T THINK YOU  
7 DEFINITELY RULED ON IT.

8 THE COURT: LET ME GO BACK.

9 I MAY NOT HAVE -- YOU KNOW, A LOT WAS  
10 COMING IN, AT ONE POINT IN TIME. I WAS TRYING TO STACK  
11 IT UP, AND GO THROUGH THE STACK ONE AT A TIME. 02:13PM

12 MR. QUINN: I THINK THE KEY POINT HERE, YOUR  
13 HONOR, IS THE PAY DIRT FOR THEM ON THIS IS THAT  
14 MR. GUNDLACH NO LONGER THOUGHT HE WAS GOING TO BE  
15 FIRED, BECAUSE HE TOOK SOME COMFORT THAT TCW HAD  
16 ENTERED INTO THIS PPIP PROGRAM. AND THAT WAS, HE FELT,  
17 MORE SECURITY JOB SECURITY BECAUSE OF THAT. 02:14PM

18 WE HAVE NO PROBLEM WITH THEIR DOING  
19 THAT.

20 BUT TO GO TO THE NEXT STEP, SAYING WE  
21 LIED TO THE FEDERAL GOVERNMENT, IT'S INFLAMMATORY,  
22 CLEARLY 352. AND IT'S ACTUALLY FALSE. 02:14PM

23 WHEN YOU LOOK AT THE DEAL DOCUMENTS, AND  
24 WE BRIEFED THIS, THE DEAL DOCUMENTS ACTUALLY  
25 CONTEMPLATE THE GOVERNMENT NEGOTIATED FOR A CHANGE IN  
26 THE KEY MAN. AND THE REPRESENTATION THAT TCW MADE IS  
27 THAT WE'RE -- AWARE OF NO FACTS THAT WOULD ADVERSELY  
28 AFFECT OUR ABILITY TO PERFORM UNDER THE PROGRAM. 02:14PM

1                   AND AT THAT POINT, WE DIDN'T HAVE ANY  
2 REASON TO THINK THAT WE COULDN'T PERFORM UNDER THE  
3 PROGRAM. WE'D EITHER HAVE MR. GUNDLACH, OR WE WOULD  
4 HAVE MET WEST.

5                   EVEN IF WE HAD MET WEST, WE MIGHT HAVE  
6 MR. GUNDLACH INVOLVED IN --

02:14PM

7                   THE COURT: YOU DON'T HAVE TO CONVINC ME.

8                   MR. QUINN: OKAY.

9                   THE COURT: I APPRECIATE IT. IT'S A NICE  
10 ARGUMENT.

02:15PM

11                   MR. BRIAN: WELL --

12                   THE COURT: THERE ARE TWO SIDES OF THE COIN.  
13 THEIR PERCEPTION IS DIFFERENT.

14                   LET ME GO BACK AND LOOK AT IT.

15                   NOW I HAD OVERRULED THE OBJECTION --

02:15PM

16                   MR. QUINN: YES.

17                   THE COURT: -- IN THE RULINGS THAT I GAVE YOU  
18 THIS MORNING?

19                   MR. QUINN: YES.

20                   MR. BRIAN: MAY I BE HEARD, YOUR HONOR?

02:15PM

21                   THE COURT: I'M NOT GOING TO RULE ON IT.

22                   YES YOU MAY.

23                   MR. BRIAN: I THINK WHAT YOUR HONOR DID  
24 SENSIBLY AT THE TIME THAT WE BRIEFED IT. WE FIRST HAD  
25 THE JOINT STATEMENT. COUNSEL IS CORRECT. THERE WAS A  
26 TENTATIVE, WE ASKED TO BRIEF IT. YOUR HONOR DIDN'T  
27 RULE.

02:15PM

28                   AND I THINK WHERE YOUR HONOR CHOSE NOT

1 TO RULE, I THINK YOU SENSIBLY DECIDED, I WANT TO WAIT  
2 TO HEAR THE EVIDENCE.

3 AND MR. GUNDLACH'S STATE OF MIND OF WHAT  
4 HE THOUGHT ABOUT THE SITUATION THERE, IS HIGHLY  
5 RELEVANT. I THINK MR. QUINN -- MR. QUINN CONCEDES THAT  
6 POINT. 02:15PM

7 THE COURT: HE DOES.

8 MR. BRIAN: THE QUESTION, THE DISPUTE IS, HOW  
9 FAR CAN HE GO IN EXPLAINING HIS STATE OF MIND.

10 AND WE THINK HE'S ENTITLED TO EXPLAIN 02:15PM  
11 IT. AND WHEN HE EXPLAINS IT, HE WOULD SAY, THAT I  
12 DIDN'T POSSIBLY THINK THAT THEY WERE GOING TO FIRE ME  
13 BECAUSE, IN PART, OTHERWISE THEY WERE EFFECTIVELY  
14 MAKING FALSE STATEMENTS TO THE GOVERNMENT BY RECEIVING  
15 MONEY FROM THE GOVERNMENT. 02:16PM

16 THE COURT: I'M NOT SURE HE CAN SAY THEY'RE  
17 MAKING FALSE STATEMENTS. I'D HAVE TO LOOK AT THESE  
18 AGREEMENTS.

19 BUT THE FACT THEY ENTERED INTO IT, AND  
20 HE WAS THE KEY MAN, AND THE INVESTMENT COULD BE HELD OR 02:16PM  
21 WITHDRAWN, IF HE WASN'T THERE, WOULD BE -- GIVE HIM  
22 SOME SENSE OF SECURITY, I WOULD THINK.

23 MR. QUINN: WE HAVE NO PROBLEM WITH THAT.

24 WHAT HE SAID IN THIS PASSAGE IS THAT TCW  
25 SUBMITTED AN AFFIDAVIT; NOT TRUE. 02:16PM

26 AND THAT WE REPRESENTED TO THE  
27 GOVERNMENT THAT THE DELIVERABLE WAS NOT GOING TO BE  
28 CHANGED.

1 HE CALLS HIMSELF THE DELIVERABLE WHEN  
2 HE'S NOT CALLING HIMSELF THE POPE.

3 THE COURT: NO, THERE WERE OTHER REFERENCES TO  
4 DELIVERABLE BY YOUR WITNESSES TODAY.

5 IN A GENERIC SENSE, WITHOUT REFERENCE TO  
6 THE POPE OR MR. GUNDLACH.

02:16PM

7 MR. QUINN: I WAS TRYING TO --

8 THE COURT: YOU'RE TRYING TO EMBELLISH THESE  
9 THINGS ALL THE TIME. THAT'S WHY YOU'RE SO GOOD AT WHAT  
10 YOU DO.

02:17PM

11 MR. QUINN: THANK YOU, YOUR HONOR. BUT -- BUT  
12 THERE IS NO REPRESENTATION IN THE DEAL DOCUMENTS. I  
13 MEAN, WHAT HE SAYS HERE ABOUT THE DEAL IS JUST FLAT  
14 WRONG. THERE IS NO REPRESENTATION THAT THE DELIVERABLE  
15 IS NOT GOING TO BE CHANGED.

02:17PM

16 THERE IS NO AFFIDAVIT THAT WAS PROVIDED.

17 MR. ALLRED: YOUR HONOR, THERE'S A  
18 CERTIFICATION DATED NOVEMBER 16 IN CONNECTION WITH  
19 DRAWING DOWN 200 MILLION DOLLARS FROM THE UNITED STATES  
20 TREASURY. THAT'S OUR PROFFER, NOVEMBER 16 OF 2009.

02:17PM

21 THE COURT: THAT'S A REPRESENTATION OF WHAT?

22 MR. ALLRED: REPRESENTATION THAT THE REPS AND  
23 WARRANTIES MADE ON SEPTEMBER 30 REMAIN TRUE.

24 MR. QUINN: RIGHT.

25 WHAT'S THE REPS AND WARRANTY? NOTHING'S  
26 HAPPENED THAT'S GOING TO ADVERSELY AFFECT OUR ABILITY  
27 TO PERFORM. NOT THAT THERE WON'T BE ANY CHANGE IN THE  
28 DELIVERABLE.

02:17PM

1 THE COURT: ALL RIGHT. JUST HOLD ON A MINUTE.

2 (PAUSE) +

3

4 THE COURT: MY NOTES FROM 7-5 FROM THAT  
5 CONFERENCE, I SAID IT WAS GRANTED WITHOUT PREJUDICE TO  
6 A PROFFER.

02:18PM

7 AND THEN FOR SOME REASON, IT DOESN'T  
8 LOOK LIKE I PICKED IT UP, WHEN I GAVE YOU RULINGS ON  
9 THE MOTION IN LIMINE, ON THE BRIEFED MOTIONS IN LIMINE.

10 MR. ALLRED: WE SUBMITTED OUR PROFFER, I  
11 BELIEVE, ON JULY 15, WITH A SUPPORTING DECLARATION  
12 JULY 18.

02:18PM

13 MR. BRIAN: WE WILL GET YOU ANOTHER COPY OF  
14 THAT TODAY.

15 THE COURT: WE CAN FIND IT.

02:18PM

16 IS IT ALL SEALED, SO I CAN'T GO TO NEXIS  
17 AND FIND IT?

18 MR. QUINN: I'M SURE IT IS, ACTUALLY.

19 MR. ALLRED: IT SHOULDN'T BE.

20 MR. QUINN: WE RESPONDED TO THAT, AS WELL,  
21 YOUR HONOR.

02:18PM

22 THE COURT: LET ME TAKE A LOOK AT IT.

23 FOR THE TIME BEING, LET'S HOLD ON THAT.

24 ARE WE SHOWING MOVIES TOMORROW?

25 MR. QUINN: I ACTUALLY -- YOU KNOW, IT'S  
26 UNLIKELY WE'LL GET TO MR. GUNDLACH'S MOVIE TOMORROW.  
27 IT'S POSSIBLE, BUT UNLIKELY.

02:19PM

28 THE COURT: SO PROBABLY THURSDAY?



1 MR. QUINN: PROBABLY.

2 THE COURT: I'LL TRY TO DIG THIS OUT AND TAKE  
3 A LOOK AT IT.

4 MR. QUINN: THE OTHER THING, YOUR HONOR, IN  
5 THESE DESIGNATIONS, THERE ARE TWO OF THEM THAT WE'D  
6 LIKE A CHANCE TO TALK TO YOU ABOUT, NOT NECESSARILY  
7 NOW. BUT AT THE COURT'S CONVENIENCE IF WE CAN SCHEDULE  
8 TIME.

02:19PM

9 THE RULINGS ON THE DESIGNATIONS FOR  
10 FAN ZHANG AND FOR J.P., IN BOTH OF THEM, WE HAVE  
11 DESIGNATED VERY LIMITED AMOUNTS OF TESTIMONY, COUNTER-  
12 DESIGNATIONS. THOSE ARE MUCH LONGER THAN OUR  
13 DESIGNATIONS.

02:19PM

14 AND THESE ARE THEIR EMPLOYEES. IT'S  
15 HEARSAY AS TO THEM. THEY'RE GOING TO QUICKLY SAY, J.P.  
16 WAS OUR EMPLOYEE AT THE TIME HIS DEPOSITION WAS TAKEN.  
17 HE'S NOW IN NEW YORK, AND NOW HE'S UNAVAILABLE.

02:19PM

18 BUT THEY'VE GOT HIM UNDER A COOPERATION  
19 AGREEMENT. THEY CAN REQUIRE HIM TO COME HERE.

20 THE COUNTERS GO WELL BEYOND WHAT WE  
21 DESIGNATED TO PLAY.

02:20PM

22 THE COURT: WE SAID THAT WE WOULD HAVE -- YOU  
23 KNOW, PEOPLE COULD DESIGNATE WHATEVER THEY WANTED, AND  
24 THEY'D BE PLAYED ALL AT ONCE. SO THE FACT THAT THE  
25 COUNTER-DESIGNATION MAY GO BEYOND, IT'S JUST --

02:20PM

26 MR. QUINN: NO, NO. WITH RESPECT, I DON'T  
27 THINK THAT'S WHAT WE SAID, YOUR HONOR.

28 THEY CAN, AS TO THEM -- THEY CAN PLAY IN

1 THEIR CASE, IF IT'S NOT HEARSAY. I MEAN, IF IT'S -- IF  
2 IT'S THEIR OWN WITNESS, IT'S HEARSAY AS TO THEM.

3 IF IT'S THEIR EMPLOYEE. MR. GUNDLACH  
4 CAN'T DESIGNATE ANY PORTION OF HIS DEPOSITION HE WANTS.  
5 THE ONLY PORTIONS HE CAN DESIGNATE ARE THOSE PORTIONS  
6 THAT ARE NECESSARY TO PUT IN CONTEXT, TO COMPLETE HIS  
7 VIEW OR POSITION. YOU KNOW, THAT'S NECESSARY; SO OUR  
8 DESIGNATION IS TAKEN OUT OF CONTEXT.

02:20PM

9 THE COURT: RIGHT.

10 MR. QUINN: BEYOND THAT, IT'S HEARSAY AS TO  
11 THEM. THIS IS AN ISSUE THAT WE BROUGHT UP BEFORE THE  
12 TRIAL STARTED. AND THEY SHOULDN'T BE GOING WAY BEYOND  
13 OUR DESIGNATIONS.

02:20PM

14 IF THEY WANT TO CALL THESE EMPLOYEES  
15 THAT THEY CONTROL, AND HAVE THEM TESTIFY FROM THE  
16 STAND, THAT'S NOT HEARSAY. THEY CAN DO THAT. AND THEY  
17 CAN DO THAT IN THEIR CASE.

02:21PM

18 THE COURT: ZHANG IS STILL AN EMPLOYEE.

19 MR. QUINN: ZHANG IS STILL EMPLOYED BY DOUBLE  
20 LINE. THE ONLY PROPER COUNTERS --

02:21PM

21 THE COURT: J.P. WAS HERE, WASN'T HE?

22 MR. QUINN: NO. THAT WAS MAYBERRY.

23 THE COURT: OKAY.

24 MR. QUINN: ZHANG IS STILL EMPLOYED BY THEM.

25 AND THE ONLY PROPER COUNTERS ARE THOSE  
26 NECESSARY TO MAKE OUR DESIGNATIONS NOT MISLEADING AND  
27 OUT OF CONTEXT.

02:21PM

28 THEY CAN CALL HIM OR PUT HIM ON THE

1 STAND, AND HE CAN SAY WHATEVER HE WANTS; BUT HIS  
2 DEPOSITION AS TO THEM IS HEARSAY.

3 J.P., SAME THING APPLIES. THEY'RE GOING  
4 TO SAY, HE DOESN'T WORK FOR US NOW. HE'S NOW IN  
5 NEW YORK. WE CAN'T SUBPOENA HIM.

02:21PM

6 ONE, THEY HAVE A COOPERATION AGREEMENT  
7 WITH HIM. THEY CAN GET HIM HERE, THEY CONTROL HIM.

8 THEY CAN PUT HIM ON THE STAND.

9 WHY ARE YOU --

10 MR. BRIAN: YOU'VE NEVER SEEN A COOPERATION  
11 AGREEMENT WITH J.P.--

02:22PM

12 MR. QUINN: I HAVEN'T --

13 THE COURT: HE KNOWS WHAT GOOD LAWYERS YOU ALL  
14 ARE --

15 MR. QUINN: THAT'S A MOTION THE COURT HASN'T  
16 RULED ON.

02:22PM

17 THE COURT: HOLD ON.

18 MR. MADISON: WE HAVE TESTIMONY FROM THE  
19 LAWYER WHO DRAFTED IT AND ENTERED INTO HIM --

20 MR. BRIAN: I'M JUST SAYING -- IT'S A MOTION  
21 THAT'S BEEN FILED. IT COULD BE RULED UPON.

02:22PM

22 THE COURT, I DON'T THINK IT'S  
23 APPROPRIATE FOR COUNSEL TO MAKE REPRESENTATIONS ABOUT  
24 AN AGREEMENT HE HASN'T SEEN.

25 MR. QUINN: WAIT, WAIT, WAIT. WE ASKED THEM  
26 TO PRODUCE AT TRIAL THEIR AGREEMENTS, COOPERATION  
27 AGREEMENT AND OTHERWISE, WITH ANY WITNESS.

02:22PM

28 THE COURT: RIGHT.

1           MR. QUINN:  THEY OPPOSED THAT.  THAT'S NEVER  
2  BEEN RULED ON.

3           I RAISED THIS WITH MY FRIEND AND  
4  NEIGHBOR, MR. BRIAN, MANY TIMES.  AND I SAID, WILL YOU  
5  BRING THIS GUY HERE?  YOU GOT A COOPERATION AGREEMENT.  02:22PM

6           AND HE HAS NEVER DENIED THEY GOT A  
7  COOPERATION AGREEMENT.  THEY FIRED HIM IN THE MIDDLE OF  
8  THE CASE.  DOLLARS TO DONUTS, THEY CAN MAKE HIM GET  
9  HERE.

10          IN ANY EVENT, THEY SHOULD BE PRODUCING  02:23PM  
11  THAT, SO WE'RE NOT SPECULATING ON IT, AND WE CAN ALL  
12  TAKE A LOOK AT IT.

13          THE COURT:  DO YOU HAVE A COOPERATION  
14  AGREEMENT, MR. BRIAN?

15          MR. BRIAN:  I CAN TAKE A LOOK.  02:23PM

16          MY RECOLLECTION IS, HE EITHER FILED A  
17  CLAIM, OR THREATENED TO FILE A CLAIM, AND HE WAS  
18  TERMINATED.

19          THERE WAS A SETTLEMENT AGREEMENT FOR A  
20  VERY SMALL AMOUNT OF MONEY.  AND THERE IS A PROVISION,  02:23PM  
21  AND I HESITATE TO MAKE A REPRESENTATION -- I DON'T  
22  BELIEVE IT IS A COOPERATION AGREEMENT.

23          MR. QUINN:  WELL --

24          MR. BRIAN:  THERE IS --

25          THE COURT:  HE AGREED TO APPEAR AND TESTIFY AT  02:23PM  
26  TRIAL?

27          MR. ALLRED:  DEFINITELY NOT.

28          MR. QUINN:  LET'S --

1 THE COURT: I DON'T KNOW. GET IT ON THE  
2 TABLE.

3 MR. QUINN: LET'S SEE.

4 THE COURT: I'LL GO BACK, AND YOU WANT ME TO  
5 LOOK AT THE ZHANG AND J.P. ONES AGAIN?

02:23PM

6 MR. QUINN: WE WOULD LIKE YOU TO. AND WE  
7 ACTUALLY PREPARED BINDERS. I HAVEN'T --

8 THE COURT: I DON'T WANT ANY MORE ARGUMENT. I  
9 DON'T WANT ANY MORE -- ANY MORE BINDERS.

10 YOU WANT TO BE HEARD ON THIS?

02:23PM

11 MR. WEINGART: VERY BRIEFLY.

12 WHAT'S HAPPENED HERE? WE'VE ALL SPENT A  
13 LOT OF TIME AND EFFORT, THE COURT INCLUDED, GOING  
14 THROUGH THESE DESIGNATIONS.

15 THEY MADE OBJECTIONS, THINGS, TWO  
16 THINGS, TALKING ABOUT MR. ZHANG, THAT WERE BEYOND THE  
17 SCOPE. YOU KNOW, WE WON SOME, WE LOST SOME. THEY  
18 DON'T LIKE HOW IT TURNED OUT, AND SO WHAT THEY WANT TO  
19 DO NOW IS GO BACK AND CUT IT, TO TRY TO GET THE PARTS  
20 OUT THAT WERE FOR COMPLETENESS.

02:24PM

21 AND WE'VE ALREADY BEEN THROUGH THIS.

22 THE COURT: YES. I'VE BEEN THROUGH IT ONCE.

23 MR. WEINGART: AT THIS POINT --

24 THE COURT: I KNOW WHENEVER MR. QUINN STARTS  
25 OUT TELLING ME I KNOW HOW MUCH HE APPRECIATES HOW MUCH  
26 I'VE DONE, I'M IN FOR SOMETHING. IT'S COMING.

02:24PM

27 I SPENT TIME GOING THROUGH THESE, AND I  
28 TRY TO BALANCE IT.

1                   IT'S MUCH EASIER TO CALL BALLS AND  
2 STRIKES WITH THE WITNESS ON THE STAND THAN LOOKING AT  
3 TRANSCRIPTS.

4                   BUT I'M NOT GOING TO START ALL OVER.  
5 I'M NOT GOING TO TAKE NEW NOTEBOOKS AND NEW ARGUMENTS,  
6 BUT I'LL GO BACK AND LOOK. 02:24PM

7                   MR. QUINN: THIS DISCUSSION HAS SUGGESTED TO  
8 ME, YOUR HONOR, WHEN THE COURT WENT THROUGH IT, IT MAY  
9 NOT -- MAY NOT -- I SAY THIS WITH RESPECT -- MAY NOT  
10 HAVE HAD THIS PRINCIPLE IN MIND. 02:24PM

11                   THE COURT: I MADE NOTES.

12                   MR. QUINN: TO THEM, THIS IS HEARSAY, AND  
13 THINGS OUTSIDE THE SCOPE OF OUR DESIGNATION SHOULDN'T  
14 BE COMING IN.

15                   MR. MADISON: YOU KNOW QUINN. THEY CAN PUT  
16 THE GUY ON THE STAND. 02:25PM

17                   THE COURT: THERE ARE STOCK OBJECTIONS I SEE  
18 OVER AND OVER AGAIN, THAT DON'T APPLY. I SEE THIS  
19 BEFORE. IT'S THE LEVEL AT WHICH THE LEVEL OF  
20 OBJECTIONS ARE INTERPOSED AND WHO'S DOING IT. 2025.460 02:25PM  
21 IS REPEATED.

22                   MR. QUINN: WHAT IS THAT?

23                   THE COURT: GOES TO PRIVILEGED AND WORK  
24 PRODUCT, SUBPARAGRAPH B, AND INTERPOSE WITH A WHOLE  
25 BUNCH OF THINGS THAT HAVE NOTHING TO DO WITH ANYTHING  
26 LIKE THAT. 02:25PM

27                   IT HUMORS ME, AT THE HOURS I'M DOING  
28 THIS.

1 MR. BRIAN: THE --

2 THE COURT: ON BOTH SIDES. I'M NOT JUST  
3 LOOKING AT YOU BECAUSE YOU STARTED THIS.

4 MR. BRIAN: I THINK MR. QUINN WAS SO SILENT  
5 ALL DAY, THAT HE WANTS TO TALK. I JUST WANTED TO MAKE  
6 SURE THAT SINCE THIS IS MR. WEINGART'S ISSUES, THAT  
7 THE COURT HAS THE FULL BENEFIT OF OUR POSITION.

02:25PM

8 BECAUSE THIS ISSUE OF MR. ZHANG AND J.P.  
9 HAS GONE BACK AND FORTH ON THIS. AND I DON'T KNOW IF  
10 MR. WEINGART HAS MORE TO ADD. I WANT TO MAKE SURE YOU  
11 GET OUR FULL POSITION.

02:26PM

12 THE COURT: I ASSUME YOU HAD A MEANINGFUL  
13 PROCESS THAT YOU DESIGNATED, COUNTER-DESIGNATED, RAISED  
14 OBJECTIONS, A LOT OF STUFF WAS WITHDRAWN, THINGS WERE  
15 ADDED.

02:26PM

16 AND WHEN IT GOT CULLED DOWN TO THE  
17 NOTEBOOKS I GOT, WITH THE OBJECTIONS AND THE BASIS FOR  
18 THE OBJECTIONS, THAT WAS THE BEST YOU COULD DO ON YOUR  
19 OWN.

20 MR. MADISON: THE PROBLEM IS, IT'S A SOURCE OF  
21 HUMOR, I GUESS, ON THE OTHER SIDE. BUT THEY'VE CITED  
22 TO YOU, AN AGREEMENT WITH THE WITNESS, A CLAIM THAT HE  
23 MADE, AND A SETTLEMENT AGREEMENT.

02:26PM

24 AND WE'VE BEEN ASKING FOR THOSE THINGS  
25 FOR MONTHS NOW. AND PERHAPS IF THE COURT AND WE --

02:26PM

26 THE COURT: WHEN WAS YOUR MOTION MADE, YOU  
27 ASKED FOR THIS STUFF?

28 MR. QUINN: COUPLE WEEKS.

1 MR. MADISON: JUST PRIOR TO TRIAL.

2 I TOOK DEPOSITIONS WHERE I SAID, GOSH,  
3 IF YOU HAVE AN AGREEMENT WITH A MATERIAL WITNESS IN THE  
4 CASE, WE'RE ENTITLED TO HAVE THAT.

5 THE COURT: I THINK THAT'S TRUE. 02:26PM

6 MR. MADISON: COURT OFFERED THEM TO PRODUCE  
7 THE AGREEMENTS WITH J.P., AT LEAST; SO WHEN WE HAVE  
8 CONVERSATIONS ABOUT THIS, WE'RE ALL INFORMED.

9 THE COURT: IS THERE SOME REASON, LEGITIMATE  
10 REASON, THAT YOU'RE HOLDING IT BACK, OTHER THAN I DON'T  
11 WANT TO GIVE IT? 02:27PM

12 MR. BRIAN: I THINK IT'S BEEN BRIEFED.

13 THE COURT: TELL ME, REFRESH MY RECOLLECTION  
14 AS TO THE BASIC OBJECTION TO PRODUCING AN AGREEMENT  
15 THAT YOU HAVE WITH THE WITNESS. 02:27PM

16 MR. ALLRED: THERE WERE A COUPLE OBJECTIONS ON  
17 THAT. ONE, IT WAS A MUCH BROADER REQUEST. THEY HAD --  
18 THEY'RE NOW ASKING FOR A SINGLE DOCUMENT.

19 THE REQUEST WE OBJECTED TO WAS  
20 SUBSTANTIALLY BROADER, AND WE WERE POINTING OUT THAT'S  
21 NOT PROPER FOR A TRIAL NOTICE. AND YOU KNOW, THEY  
22 CAN'T JUST DO NEW DISCOVERY ON THE EVE OF TRIAL. 02:27PM

23 THE COURT: I SAW A NUMBER OF TRIAL NOTICES.  
24 I THOUGHT THEY WERE QUITE BROAD.

25 BUT THE FACT THEY HAVEN'T BEEN BROUGHT  
26 UP, I ASSUMED WAS OKAY, BECAUSE THEY JUST GO BY THE  
27 WAYSIDE. 02:27PM

28 KIND OF LIKE THE WITNESS LIST WITH 200



1 WITNESSES.

2 I MEAN, SOONER OR LATER, IF YOU'RE  
3 PATIENT, THEY GO AWAY.

4 MR. ALLRED: YES.

5 MR. MADISON: 45 HOURS, THEY GO AWAY FAST.

02:27PM

6 THE COURT: WHAT WAS THE OTHER ISSUE?

7 WE'RE GOING TO HAVE TO START COUNTING  
8 THE HOURS. PROBABLY THE END OF THIS WEEK, I'LL ASK FOR  
9 IT.

10 MR. BRIAN: WE'VE BEEN DOING IT DAILY.

02:28PM

11 THE COURT: WHAT WAS THE BASIC OBJECTION TO  
12 THE PRODUCTION OF THE AGREEMENT OF THE WITNESS?

13 MR. ALLRED: MY MEMORY IS NOT 100 PERCENT. I  
14 HAVEN'T LOOKED AT IT IN A COUPLE WEEKS.

15 BUT AS I RECALL, THERE'S A QUESTION  
16 ABOUT WHETHER IT FITS WITHIN THE DEFINITION OF A  
17 COOPERATION AGREEMENT, BECAUSE AS MR. BRIAN SAID, IT'S  
18 NOT REALLY THAT TYPE OF AGREEMENT.

02:28PM

19 AND THEN SECOND, IT INVOLVES ALSO THE  
20 REQUEST INVOLVING PRIVILEGE COMMUNICATIONS. AND I  
21 THINK WE HAD THAT OBJECTION.

02:28PM

22 I APOLOGIZE FOR MY LACK OF MEMORY ON THE  
23 DETAILS.

24 THE COURT: THIS WAS BRIEFED -- WHEN WAS THIS  
25 BRIEF FILED?

02:28PM

26 MR. PIERCE: PROBABLY TWO WEEKS AGO.

27 MR. QUINN: PROBABLY TWO WEEKS AGO, THEY FILED  
28 OPPOSITION.

1 MR. BRIAN: MAY I SAY SOMETHING?

2 I'LL TAKE A LOOK AT THE J.P. AGREEMENT  
3 TONIGHT, AND I'LL BRING IT IN TOMORROW. YOUR HONOR CAN  
4 TAKE A LOOK AT IT, AND YOUR HONOR CAN DECIDE.

5 THE COURT: OKAY.

02:28PM

6 THE RULINGS I'VE GIVEN WILL STAND --  
7 GIVEN YOU, WILL STAND. UNLESS I CHANGE THEM, AND I'LL  
8 LET YOU KNOW.

9 MR. QUINN: THE PRACTICAL MATTER OF THEIR  
10 COUNTER-DESIGNATIONS, WE DON'T FEEL LIKE, IN OUR CASE,  
11 WE CAN PLAY EITHER OF THESE WITNESSES' TAPES, EITHER  
12 ZHANG OR J.P., BECAUSE WE'RE PUTTING ON THEIR CASE.  
13 THIS IS WHAT IT COMES DOWN TO. IT'S ALL THEIR -- IT'S  
14 ALL STUFF UNRELATED TO OUR DESIGNATIONS, AND THEY'RE  
15 THEIR WITNESSES.

02:29PM

02:29PM

16 MR. WEINGART: I RESPECTFULLY DISAGREE WITH  
17 THAT. THAT'S EXACTLY THE OBJECTION THAT THEY RAISED  
18 WITH A DESIGNATIONS, WHEN THEY WERE SUBMITTED, THAT  
19 YOUR HONOR REVIEWED, AND DECIDED THESE NEEDED TO BE PUT  
20 IN CONTEXT. AND THEY'RE JUST ASKING FOR  
21 RECONSIDERATION, BASICALLY, OF WHAT WE'VE ALREADY BEEN  
22 OVER.

02:29PM

23 MR. QUINN: I AGREE WITH THAT.

24 THE COURT: I DON'T TOTALLY TAKE IT THAT WAY,  
25 BUT I UNDERSTAND THE ISSUE.

02:29PM

26 MR. MADISON: I HAVE ONE VERY SHORT ITEM. IT  
27 IS THE SUBPOENA AND THE REQUEST FOR THE -- DECLARATION  
28 OF ASSETS AND LIABILITIES TO MR. GUNDLACH. WE MAY GET

1 TO HIM THIS WEEK.

2 THE COURT: YOU HAVE THE STATEMENT. AND YOU  
3 HAVE THE STATEMENT HE GAVE YOU.

4 I HAVE CONDUCTED AN IN-CAMERA REVIEW OF  
5 THE DOCUMENTS THAT WERE, I GUESS, FILED UNDER SEAL IN  
6 THE -- OR NOT FILED, BUT SUBMITTED TO THE PARTIES IN  
7 THE DOMESTIC RELATIONS PROCEEDING.

02:30PM

8 I'M SATISFIED THEY DON'T NEED TO BE  
9 PRODUCED, AND THAT THEY ARE CONSISTENT WITH, AT LEAST  
10 ON A FAIRLY BROAD BASIS, FOR WHAT YOU HAVE.

02:30PM

11 MR. MADISON: WELL, JUST FOR THE RECORD, IF I  
12 COULD, THE TWO THAT WE HAVE ARE NOT UNDER PENALTY OF  
13 PERJURY. I UNDERSTAND. I WOULD EXPECT THE DECLARATION  
14 IS.

15 THE TWO THAT WE HAVE WERE PRODUCED, ONE  
16 WAS PRODUCED THE MORNING OF HIS DEPOSITION, THE OTHER  
17 WAS PRODUCED AFTER THAT; SO JUST IN THE LAST FEW WEEKS.

02:30PM

18 MY UNDERSTANDING IS THAT THE DECLARATION  
19 WAS PRODUCED ABOUT SIX MONTHS AGO, BEFORE THIS ISSUE  
20 HAD BEEN BROACHED.

02:30PM

21 AND I JUST -- I DON'T KNOW, I DON'T  
22 THINK THE DEFENSE HAS EVER MADE A LEGAL OBJECTION TO  
23 OUR SUBPOENA, AND OUR REQUEST TO HAVE THAT. IT'S  
24 SWORN AT THE SAME TIME OF MR. GUNDLACH, UNLIKE THE TWO  
25 SORT OF BACK IN THE ENVELOPE THINGS THAT WE WERE GIVEN.

02:31PM

26 BY THE WAY, THOSE TWO, ONES THAT WERE  
27 CREATED SPECIALLY FOR THIS, HAVE ZERO BACKUP. AND  
28 THEY, THERE'S A DELTA OF ABOUT 35 PERCENT BETWEEN THE

1 TWO.

2 THE COURT: THAT'S 70 TO 100 MILLION.

3 MR. MADISON: YES, 70 TO --

4 THE COURT: YOU CAN QUESTION HIM ABOUT HIS  
5 ASSETS ALL YOU WANT.

02:31PM

6 MR. MADISON: WE CAN ALL -- WE CAN ALWAYS DO  
7 THAT.

8 COULD WE HAVE A GROUND, FOR THE RECORD,  
9 WHY THE DEFENSE WOULD OPPOSE THAT?

10 MR. BRIAN: THIS IS MR. HELM'S ISSUE. I  
11 HESITATE TO SPEAK FOR HIM, BUT WE'VE BEEN THROUGH THIS.

02:31PM

12 AND MR. MADISON, OR QUINN, OR BOTH, MADE  
13 THIS ARGUMENT BEFORE. YOUR HONOR ASKED US TO PROVIDE  
14 YOU IN CAMERA WITH THE DOCUMENTS, AND WE DID THAT. YOU  
15 REVIEWED THEM, AND YOU'VE RULED. AND THIS IS JUST A  
16 MOTION FOR RECONSIDERATION, WITH NO BASIS.

02:31PM

17 THE COURT: NO, I HAVEN'T MADE -- I DID AN  
18 IN-CAMERA REVIEW. I'VE HAD NO RULING.

19 MR. BRIAN: I MEANT WHAT YOU SAID FROM THE  
20 BENCH, RIGHT NOW.

02:32PM

21 MR. MADISON: I DON'T KNOW THE GROUNDS FOR THE  
22 OBJECTION. I REALLY DON'T KNOW WHAT IT IS.

23 THE COURT: THE OBJECTION TO THE PRODUCTION OF  
24 THE DECLARATION FILED IN THE FAMILY LAW PROCEEDING.

25 MR. MADISON: SWORN STATEMENT ABOUT  
26 MR. GUNDLACH'S ASSETS AND LIABILITIES.

02:32PM

27 THE COURT: MY UNDERSTANDING IS, THIS GOES  
28 BACK QUITE A WAYS, BUT THERE IS A RELATIONSHIP TO SOME

1 OF THESE DISCLOSURES AND PUBLIC POLICY THAT ENCOURAGES  
2 THEM, ALONG THE LINES OF WHY YOU -- WHY YOU CAN'T  
3 COMPEL PRODUCTION OF TAX RETURNS.

4 AND IN THE FAMILY LAW CONTEXT, THERE ARE  
5 ONE OR TWO CASES THAT MAY BE A WAYS BACK, THAT TALK  
6 ABOUT IN ORDER TO FOSTER FULL DISCLOSURE, THEY MAY --  
7 MAYBE A PRIVILEGED COMMUNICATION, OR CONFIDENTIAL.

02:32PM

8 AND THAT'S A PUBLIC POLICY ARGUMENT.  
9 I'M NOT SURE IT WILL STAND UP, AND I'M SURE YOU'LL RUN  
10 BACK AND CHECK EVERY CASE YOU'VE EVER HEARD OF.

02:32PM

11 MR. MADISON: I WON'T, IF YOU TELL ME YOUR  
12 RULING.

13 THE COURT: THAT'S, IN THE BACK OF MY MIND, AN  
14 ISSUE.

15 AND THE OTHER THING IS, I'M NOT SURE, AS  
16 A PRACTICAL MATTER, THAT THAT DECLARATION IS REALLY  
17 RELEVANT, TO SHOW WHAT YOUR BURDEN IS ON PUNITIVE  
18 DAMAGE ISSUES, BECAUSE AS WE ALL KNOW, THE PROCESS OF  
19 DIVORCE HAS A DIVIDING EFFECT, SO THAT WHATEVER'S  
20 REPRESENTED AT THE BEGINNING MAY NOT BE WHAT'S THERE AT  
21 THE END.

02:33PM

02:33PM

22 AND SO IF THERE'S A RELEVANCE ISSUE AS  
23 TO WHETHER THAT DECLARATION HAS ANY RELEVANCE TO THE  
24 ISSUE THAT YOU HAVE A BURDEN OF CARRYING TODAY.

25 MR. MADISON: I UNDERSTAND THAT. I MEAN, I  
26 THINK.

02:33PM

27 THE COURT: IF YOU UNDERSTAND THAT, THAT ALONE  
28 IS PROBABLY GOOD ENOUGH REASON NOT TO GET IT OUT ON THE

1 TABLE.

2 MR. MADISON: THAT WOULD BE TO THROW THE BABY  
3 OUT WITH THE BATH WATER. IN OTHER WORDS, WE MIGHT HAVE  
4 TO DO SOME MATH.

5 BUT THE PROBLEM -- WE'VE ALL DONE 02:33PM  
6 PUNITIVE DAMAGES IN CASES. WHAT YOU GET ARE BANK  
7 STATEMENTS AND FINANCIAL STATEMENTS SOMETIMES, FROM  
8 ACCOUNTS, AND ALL THE REST.

9 TO BE GIVEN BY A MAN WHO'S A  
10 SEMI-MILLIONAIRE, TWO ONE-PAGE PAGES OF STATEMENTS, 02:34PM  
11 JUST HE CREATED ONE IN HANDWRITING THE MORNING OF THE  
12 DEPO, AND ANOTHER ONE A FEW DAYS LATER, ON A COMPUTER,  
13 WITH ZERO BACKUP -- WE GOT ZERO BACKUP THE STATEMENT OF  
14 ASSETS AND LIABILITY, HAS SOME PARTICULARIZATION ABOUT  
15 THE. 02:34PM

16 THE COURT: SO DOES THE STATEMENT HE GAVE YOU  
17 HAVE ABOUT THE SAME LEVEL OF PECULIARIZATION IN TERMS  
18 OF THE LISTING OF ASSETS?

19 MR. MADISON: IT'S ABOUT THE SAME.

20 THE COURT: HAVE YOU SEEN THE FORM THAT YOU'RE 02:34PM  
21 ASKING ABOUT?

22 MR. MADISON: I HAVE. REGRETTABLY.

23 THE COURT: IT'S A STANDARD?

24 MR. QUINN: HE'S FILLED ONE OUT.

25 THE COURT: I DIDN'T MEAN IF THAT'S A SORE 02:34PM  
26 SUBJECT. THAT WASN'T MY INTENT. MR. MADISON.

27 MR. MADISON: QUITE ALL RIGHT.

28 NOT THE ONLY ONE IN THE COURTROOM THAT'S

1 FILLED ONE OUT.

2 THE COURT: AT THIS POINT, I'M NOT GOING ANY  
3 FURTHER ON THAT ISSUE.

4 MR. MADISON: VERY WELL. I WANTED MOSTLY TO  
5 HAVE THE BENEFIT OF YOUR HONOR'S RULING.

02:34PM

6 THE COURT: WE'LL SEE YOU IN THE MORNING.

7

8 (AT 2:35 P.M., AN ADJOURNMENT WAS  
9 TAKEN UNTIL 8-10-11 AT 8:30 A.M.)

10

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