1					
1	SUPERIOR COURT OF THE STATE OF CALIFORNIA				
2	FOR THE COUNTY OF LOS ANGELES				
3	DEPARTMENT 322 HON. CARL J. WEST, JUDGE				
4					
5					
6	TRUST COMPANY OF THE WEST,				
7	PLAINTIFFS,				
8	VS. , CASE NO. BC429385				
9	JEFFREY GUNDLACH, ET AL.,				
10	DEFENDANTS.)				
11	/				
12	DEDODMEDC! DATIV MDANGCDIDM OF DDOCEEDINGC				
13	REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS				
14	THURSDAY, SEPTEMBER 1, 2011				
15	APPEARANCES:				
16					
17	FOR TCW: QUINN, EMANUEL, URQUHART, OLIVER & HEDGES				
18	BY: JOHN B. QUINN STEVEN G. MADISON				
19	865 SOUTH FIGUEROA STREET 10TH FLOOR				
20	LOS ANGELES, CALIFORNIA 90017 (213) 443-3000				
21					
22	FOR DOUBLE LINE: MUNGER, TOLLES & OLSON BY: BRAD D. BRIAN				
23	MARK B. HELM ALLISON B. STEIN				
24	KEVIN S. ALLRED GREGORY J. WEINGART				
25	355 SOUTH GRAND AVENUE, 35TH FLOOR LOS ANGELES, CALIFORNIA 90071-1560				
26	(213) 683-9280				
27	WENDY OILLATAGUERRE, CSR #10978				
28	RAQUEL RODRIGUEZ, CSR #9485 OFFICIAL REPORTERS				

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1		<u>I N</u>	D E X			
2	THURSDAY, SEPTEMBER 1, 2011					
3		TNDEX	OF WIT	NESSES		
4	LEGEND: H = MR. HELM	TIVDLIX	OI WIII			
5	M = MR. MADISON B = MR. BRIAN	Ī				
6	W = MR. WEINGAR Q = MR. QUINN	RT				
7	2 2					
8	PLAINTIFF'S					
9		DIRECT	CROSS	REDIRECT	RECROSS	
)	(NONE WERE PRESENTED IN	THIS '	VOLUME.))		
1						
)						
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7	SHERMAN, DONALD	5440-W	6460-Q			
	BEYER, ROBERT 6	5502-B	6560-M			
)						
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'						
3						

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	5117 - MUSTIER/BEYER EMAIL 6556

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CASE NUMBER: BC429385
 1
 2
    CASE NAME:
                        TRUST COMPANY OF THE WEST VS.
 3
                         JEFFREY GUNDLACH, ET AL
 4
    LOS ANGELES,
                         THURSDAY, SEPTEMBER 1, 2011
 5
     CALIFORNIA
 6
    DEPARTMENT 322 HON. CARL J. WEST, JUDGE
    APPEARANCES:
 7
                        (AS HERETOFORE NOTED.)
 8
    REPORTER:
                        WENDY OILLATAGUERRE, CSR #10978
9
    TIME:
                         8:34 A.M.
10
11
                   (THE FOLLOWING PROCEEDINGS
12
                   WERE HELD IN OPEN COURT IN
13
                    THE PRESENCE OF THE JURY:)
14
15
             THE COURT: GOOD MORNING, LADIES AND
                                                              08:59AM
16
    GENTLEMEN.
17
18
    (ALL COUNSEL RESPONDED "GOOD MORNING, YOUR HONOR.")
19
20
             THE COURT: IN THE TCW VERSUS GUNDLACH MATTER,
                                                             08:36AM
21
    ALL MEMBERS OF OUR JURY ARE PRESENT, AS ARE ALL
22
    COUNSEL.
23
                   MR. SULLIVAN, HOW ARE YOU THIS MORNING?
24
             THE WITNESS: GOOD. THANK YOU.
25
             THE COURT: MR. HELM, YOU MAY CONTINUE YOUR
                                                              08:36AM
26
    DIRECT EXAMINATION.
27
            MR. HELM: THANK YOU, YOUR HONOR.
    //
28
```

1	DIRECT EXAMINATION (CONTINUED)	
2		
3	BY MR. HELM:	
4	Q. GOOD MORNING, MR. SULLIVAN.	
5	A. GOOD MORNING.	08:36AM
6	MR. HELM: GOOD MORNING, LADIES AND GENTLEMEN.	
7	THE JURY: GOOD MORNING.	
8	Q. BY MR. HELM: WE HAVE TALKED ABOUT THE	
9	NEGOTIATIONS THAT TOOK PLACE IN 2007.	
10	DO YOU RECALL THAT?	08:36AM
11	A. I RECALL WE TALKED ABOUT IT, YES.	
12	Q. AND I BELIEVE AT THE END OF OUR EXAMINATION,	
13	YOU WERE DISCUSSING THE FACT THAT MOST OF THE MEMBERS	
14	OF MR. GUNDLACH'S TEAM RECEIVED THEIR FEE SHARING	
15	PAYMENTS AT THE END OF THE YEAR; IN OTHER WORDS, IN	08:37AM
16	FEBRUARY, FOR THE FEE SHARING PAYMENT THAT CAME FOR THE	
17	FOURTH QUARTER OF THE YEAR.	
18	DO YOU RECALL THAT?	
19	A. I DON'T RECALL SAYING THAT, NO.	
20	Q. OKAY. IS THAT, IN FACT, THE CASE?	08:37AM
21	A. I WOULD NOT SAY THE MAJORITY, NO.	
22	Q. THE MAJORITY OF THE MEMBERS OF HIS TEAM	
23	RECEIVED THEM THERE WERE 40 OR SO MEMBERS OF THE	
24	TEAM, CORRECT?	
25	A. CORRECT.	08:37AM
26	Q. AND THE MAJORITY OF THEM RECEIVED THEIR FEE	
27	SHARING IN THE FOURTH QUARTER PAYMENT, DIDN'T THEY?	
28	A. I WOULD SAY, OF THE STAFF MEMBERS THAT ARE	

- 1 PAID DISCRETIONARY ALLOCATIONS, MORE THAN HALF OF THEM
- 2 RECEIVE SEMI-ANNUAL BONUSES, AND THE OTHER LESSER HALF
- 3 RECEIVED YEAR-END BONUSES.
- 4 O. I SEE. SO WITH A FEW EXCEPTIONS THAT WE'LL
- 5 TALK ABOUT IN A SECOND, MOST OF THE PEOPLE ON
- 6 MR. GUNDLACH'S TEAM EITHER RECEIVED THEIR BONUSES
- 7 | SOLELY AT THE END OF THE YEAR, OR IN THE MIDDLE OF THE
- 8 YEAR AND AT THE END OF THE YEAR; IS THAT CORRECT?
- 9 A. THAT'S CORRECT.
- 10 O. NOW, THERE WERE A FEW PEOPLE WHO ACTUALLY
- 11 RECEIVED THEIR FEE SHARING PAYMENTS QUARTERLY, IN
- 12 ADDITION TO MR. GUNDLACH; IS THAT TRUE?
- 13 A. THAT'S CORRECT.
- 14 Q. AND THAT WAS MR. BARACH, MR. LUCIDO,
- 15 MS. MANGLESDORF AND MR. HO; IS THAT RIGHT?
- 16 A. THAT'S CORRECT.
- 17 O. AND THERE WAS A SORT OF PRE SET PERCENTAGE
- 18 THAT THEY RECEIVED EVERY QUARTER FROM THE FEE SHARING
- 19 POOL; IS THAT TRUE?
- 20 A. THERE IS A DISCRETIONARY SET PERCENTAGE SET
- 21 ASIDE EACH QUARTER FOR THEM, YES.
- 22 Q. DISCRETIONARY SET, IS WHAT YOU SAID, CORRECT?
- 23 A. YES.
- 24 O. SO IT WAS SET, IN THE SENSE THAT IT WAS
- 25 HARDWIRED IN ADVANCE.
- MR. GUNDLACH HAD SPECIFIED THAT FOR
- 27 | THOSE FOUR PEOPLE, THEY SHOULD GET A PREDETERMINED
- 28 | AMOUNT OF THE FEE SHARING EACH QUARTER; IS THAT

08:38AM

08:38AM

08:38AM

08:38AM

08:39AM

CORRECT? 1 2 A. IT WAS SET AT THE DISCRETION OF MR. GUNDLACH, 3 YES. 4 RIGHT. BUT THOSE WERE COMPLETELY AT Q. 5 MR. GUNDLACH'S DISCRETION, CORRECT? 08:39AM 6 A. CORRECT. 7 NOW, LET'S -- WE WERE TALKING WITH SOME OTHER 8 WITNESSES ABOUT THINGS THAT HAPPENED ON MAY THE 29TH. 9 I'D LIKE TO FIND OUT SOME THINGS THAT 10 YOU WERE DOING ON MAY THE 29TH. 08:39AM 11 I'D LIKE YOU TO LOOK AT EXHIBIT 5142, 12 PLEASE. 13 THE COURT: MR. HELM, WE'RE TALKING 5/29/09? 14 MR. HELM: EXHIBIT 5142. THE COURT: MAY 29TH, 2009? 15 08:39AM 16 MR. HELM: YES. I'M SORRY, YOUR HONOR. YES, 17 EXACTLY. 18 THE COURT: OKAY. THANK YOU. 19 Q. BY MR. HELM: IF YOU COULD LOOK AT 5142, THIS 20 IS AN E-MAIL FROM YOU, DATED MAY 29, 2009, WHICH YOU 08:40AM 21 SENT TO MR. DEVITO, WITH A COPY TO MR. VILLA; IS THAT 22 TRUE? 23 A. I SEE THAT, YES. MR. HELM: YOUR HONOR, I'D MOVE ADMISSION OF 24 25 THIS CONDITIONALLY, SUBJECT TO ANY REDACTION ISSUES 08:40AM

28 THAT WOULD BE AGREEABLE TO HIM.

THAT WE WORK OUT LATER.

26

27

AND I BELIEVE MR. QUINN HAS INDICATED

1	MR. QUINN: THAT'S FINE, YOUR HONOR.	
2	THE COURT: ALL RIGHT. IT WILL BE ADMITTED ON	
3	THAT BASIS.	
4	Q. BY MR. HELM: NOW, IN IT, YOU ATTACH A PART OF	
5	A GUNDLACH FEE SHARING STATEMENT, DETAILING INFORMATION	08:40AM
6	ABOUT MR. GUNDLACH'S COMPENSATION; ISN'T THAT RIGHT?	
7	A. I HAVE THE MULTI-SECTOR FIXED INCOME POOL	
8	DETAILED IN GROSS.	
9	Q. WELL, LET'S NOW LOOK AT EXHIBIT 5143.	
10	THAT IS AN E-MAIL WHICH YOU SENT TO	08:41AM
11	MR. DEVITO LESS THAN AN HOUR LATER, ON MAY THE 29TH,	
12	2009?	
13	A. I'M NOT SURE IF IT'S LESS THAN AN HOUR LATER;	
14	BUT YES.	
15	Q. IT'S AT 2:06 P.M., CORRECT?	08:41AM
16	A. I DON'T RECALL THAT TIME OF THE FIRST ONE, BUT	
17	YES.	
18	MR. HELM: MOVE ADMISSION OF 5143, YOUR HONOR.	
19	MR. QUINN: NO OBJECTION.	
20	THE COURT: IT WILL BE ADMITTED.	08:41AM
21		
22	(EXHIBIT 5143 ADMITTED.)	
23		
24	Q. BY MR. HELM: SIR, NOW HERE YOU WRITE	
25	AND IF WE COULD SHOW THAT TO THE JURY,	08:42AM
26	AND BLOW UP THE THING.	
27	YOU WRITE, (READING):	
28	I ESTIMATE JEFFREY WILL MAKE	

APPROXIMATELY 41.5 TO \$42 MILLION, 1 2 OR 47 PERCENT OF POOLED COMP OF 89 3 MILLION, FOR 2009, ON AN ACCRUED 4 BASIS. 5 YOU WROTE THAT, CORRECT? 08:42AM 6 Α. I DID. AND YOU SENT THIS IN RESPONSE TO A REQUEST 7 8 YOU'D RECEIVED FROM MR. DEVITO, CORRECT? THAT'S CORRECT. 9 Α. 10 Q. BUT YOU OTHERWISE DON'T RECALL WHAT CAUSED YOU 08:42AM 11 TO SEND THIS TO MR. DEVITO AND MR. VILLA ON MAY THE 12 29TH, DO YOU, SIR? 13 NO, I DO NOT. Α. 14 Q. AND WHEN WE SAY THAT HE WOULD MAKE 15 COMPENSATION OF THOSE AMOUNTS ON AN ACCRUED BASIS, THAT 08:42AM 16 REFERS TO THE FACT THAT IF THE WORK WAS DONE IN 2009, 17 IT'S THE FEES THAT ARE ATTRIBUTABLE TO THAT WORK THAT 18 WAS DONE, RATHER THAN WHEN THE FEES WERE ACTUALLY PAID; 19 IS THAT CORRECT? 20 A. I DISAGREE. 08:43AM 21 Ο. THAT'S WHAT AN ACCRUED BASIS MEANS, ISN'T IT? 22 WELL, ACCRUED BASIS IS USED IN DIFFERENT FASHIONS, DEPENDING ON WHAT YOU ARE REFERRING TO. 23 24 Q. IN THIS CASE, ON AN ACCRUED BASIS REFERS TO 25 THE FACT THAT IF THE WORK WAS DONE IN 2009, IT'S THE 08:43AM 26 FEES THAT ARE ATTRIBUTABLE TO THE WORK THAT WAS DONE, 27 RATHER THAN THE FEES THAT WERE ACTUALLY PAID DURING

THAT PERIOD; ISN'T THAT TRUE?

1	A. I'M USING ACCRUED BASIS IN TERMS OF TIMING OF	
2	FEE SHARING PAYMENTS; IN OTHER WORDS, COMPENSATION	
3	PAYMENTS, HERE.	
4	I'M NOT USING ACCRUED BASIS IN TERMS OF	
5	REVENUES.	08:43AM
6	Q. WELL, LET ME I'D LIKE TO READ FROM THE	
7	DEPOSITION, PAGE 112, LINES 2 TO 6.	
8	THE COURT: OKAY. PAGE 12, 2 TO 6; IS THAT	
9	RIGHT?	
10	MR. HELM: YES, YOUR HONOR.	08:44AM
11	THE REPORTER: PAGE 12 OR 112?	
12	THE COURT: EXCUSE ME, IS IT 112 OR 12?	
13	MR. HELM: PAGE 112, LINES 2 THROUGH 6.	
14	THE COURT: THANK YOU, WENDY.	
15	MR. QUINN: I HAVE NO OBJECTION.	08:44AM
16	IF WE COULD START AT 111, LINE 19.	
17	AND YEAH, 111, 19.	
18	MR. HELM: THAT'S FINE.	
19	THE COURT: ALL RIGHT. IF THERE'S NO	
20	OBJECTION, LET'S START AT 111, LINE 19, TO 112, LINE 6.	08:44AM
21	YOU MAY PROCEED.	
22	MR. HELM: THANK YOU, YOUR HONOR.	
23	"Q AND WHEN YOU SAY, QUOTE,	
24	ON AN ACCRUED BASIS, CLOSED QUOTE,	
25	WHAT DID YOU MEAN BY ACCRUED BASIS?	08:44AM
26	"A WE'RE OFTEN DEFINING	
27	ACCRUAL VERSUS CASH. CASH PAYMENTS	
28	ARE THE PAYMENTS YOU RECEIVE FROM	

1	1/1 THROUGH 12/31. YOUR ACCRUAL	
2	PAYMENTS ARE THE PAYMENTS YOU	
3	RECEIVE ON A QUARTERLY BASIS, FROM	
4	MAY 31 TO 2/28. SO IT'S JUST A	
5	DESCRIPTION DEFINITION OF ACCRUED	08:45AM
6	VERSUS CASH.	
7	"Q SO ON AN ACCRUED BASIS	
8	REFERS TO THE FACT THAT IF THE WORK	
9	WAS DONE IN 2009, IT'S THE FEES	
10	THAT ARE ATTRIBUTABLE TO THE WORK	08:45AM
11	THAT WAS DONE, RATHER THAN THE FEES	
12	THAT WERE ACTUALLY PAID DURING THAT	
13	PERIOD?	
14	"A THAT'S CORRECT."	
15	Q. BY MR. HELM: WHILE WE'RE AT IT, SO THE TWO	08:45AM
16	E-MAILS THAT WE JUST WENT OVER, 5142 AND 5143, WERE	
17	SENT ON MAY THE 29TH; IS THAT TRUE?	
18	A. 5142 AND 5143?	
19	Q. YES.	
20	A. YES.	08:46AM
21	Q. ALL RIGHT.	
22	I'D LIKE YOU TO TURN, IF YOU WOULD, TO	
23	EXHIBIT 5179, PLEASE.	
24	THIS IS AN E-MAIL FROM YOU TO	
25	MR. DEVITO, DATED JULY 13, 2009; IS THAT CORRECT?	08:46AM
26	A. THAT'S CORRECT.	
27	MR. HELM: YOUR HONOR, I WOULD MOVE ADMISSION	
0.0		

OF 5179, SUBJECT TO POSSIBLE REDACTIONS AT A FUTURE

```
TIME.
 1
 2
              MR. OUINN: NO OBJECTION.
 3
              THE COURT: IT WILL BE ADMITTED ON THAT BASIS.
 4
 5
                     (EXHIBIT 5179 ADMITTED.)
                                                                 08:47AM
 6
 7
              MR. HELM: ALL RIGHT. IF WE COULD PUT UP THE
 8
     FIRST PAGE.
 9
         Ο.
             THIS IS AN E-MAIL FROM YOU TO MR. DEVITO,
10
     JULY 13, 2009, CORRECT?
                                                                 08:47AM
11
         A. CORRECT.
12
         Q. AND YOU WRITE, (READING):
13
                     I HAVE AN INITIAL DRAFT OF THE
14
                FEE SHARING DEALS FOR YOUR REVIEW.
15
                I AM STILL POLISHING, BUT WANTED TO
                                                                 08:47AM
16
                MAKE SURE WE SET ASIDE SOME TIME
17
                TOMORROW TO GO OVER.
18
                     LET ME KNOW WHAT WORKS FOR
19
                YOU.
20
                    THAT'S WHAT YOU WROTE, CORRECT?
                                                                 08:47AM
21
         A. CORRECT.
22
             AND MR. DEVITO REQUESTED THAT YOU PROVIDE HIM
23
    WITH THIS INFORMATION, CORRECT?
24
         A. CORRECT.
25
             BUT YOU DON'T OTHERWISE RECALL WHY IT WAS THAT
                                                                 08:47AM
26
    MR. DEVITO WANTED THIS INFORMATION AT THIS TIME, DO
27
    YOU?
28
        A. NO, I DO NOT.
```

AND YOU PREPARED THE ATTACHMENT TO THIS E-MAIL 1 Q. 2 BASED ON THE BOOKS AND RECORDS THAT TCW KEEPS IN THE 3 NORMAL COURSE OF BUSINESS, DIDN'T YOU? 4 THAT'S CORRECT. Α. 5 O. LET'S TURN TO PAGE 14 OF THAT EXHIBIT. 08:48AM 6 AND FOR PRESENT TIMES, WE -- AND FOR 7 PRESENT PURPOSES, WE'VE REDACTED THE INFORMATION BELOW, 8 BECAUSE ALL I'M CONCERNED ABOUT IS IDENTIFYING WHAT THE 9 D AND E COLUMNS ARE. 10 SO IF I COULD DRAW YOUR ATTENTION TO D 08:48AM 11 AND E, THE D COLUMN LISTS WHO THE PORTFOLIO MANAGER IS, CORRECT? 12 13 A. CORRECT. 14 Q. AND THE E COLUMN REFLECTS CONTRACT EXPIRATION. 15 THAT'S THE DATE ON WHICH THE PERSON'S 08:48AM 16 CONTRACT EXPIRES, CORRECT? 17 THAT'S CORRECT. Α. 18 Q. NOW, IF WE COULD TURN TO PAGE 18 OF THE E-MAIL 19 WHICH YOU SENT TO MR. DEVITO IN JULY OF 2009. 20 IF WE LOOK AT THE TOP ONE, COULD WE BLOW 08:48AM 21 UP THE D AND E LINES -- ACTUALLY, COULD WE MAKE THE 22 WHOLE THING A LITTLE -- D AND E WILL BE BIGGER; THAT'S 23 FINE. 24 SO COLUMN D, THE PORTFOLIO MANAGER

08:49AM

Q. COULD WE HIGHLIGHT THAT, PLEASE, DENNIS.

AND IN THE E COLUMN, FOR CONTRACT

25

26

27

28

Α.

CORRECT.

ENTRY, THERE'S AN ENTRY FOR MR. GUNDLACH, CORRECT?

1	EXPIRATION, THE DATE OF THAT MR. GUNDLACH'S CONTRACT	
2	EXPIRES, IT SAYS DECEMBER 31ST, 2011, DOESN'T IT?	
3	A. IT'S THE DATE I PICKED UP FROM THE DRAFT OF	
4	HIS CONTRACT, YES.	
5	Q. AND IT WAS YOUR UNDERSTANDING, IN JULY 2009,	08:49AM
6	THAT MR. GUNDLACH'S CONTRACT EXPIRED AT THE END OF	
7	2011, WASN'T IT?	
8	A. NO, IT WAS NOT.	
9	Q. I WOULD LIKE TO READ FROM THE DEPOSITION, PAGE	
10	113, LINES 19 TO 22.	08:50AM
11	THE COURT: ANY OBJECTION?	
12	MR. QUINN: NO OBJECTION, YOUR HONOR.	
13	THE COURT: YOU MAY PROCEED.	
14	MR. HELM: IF WE COULD WE QUEUE THAT UP,	
15	PLEASE, DENNIS.	08:50AM
16		
17	(DEPOSITION PLAYED)	
18		
19	Q. BY MR. HELM: ALL RIGHT.	
20	IF WE COULD THEN LOOK AT AN E-MAIL YOU	08:51AM
21	SENT THE NEXT DAY.	
22	COULD WE LOOK AT 5180, PLEASE.	
23	THIS IS AN E-MAIL THAT YOU SENT JULY THE	
24	14TH, TO MR. DEVITO, CORRECT?	
25	A. THAT'S THE SECOND VERSION, YES.	08:51AM
26	MR. HELM: I WOULD LIKE TO ADMIT EXHIBIT 5180,	
27	SUBJECT TO THE CONFIDENTIALITY CONDITION THAT WE	
28	DISCUSSED PREVIOUSLY.	

1	MR. QUINN: NO OBJECTION, YOUR HONOR.	
2	THE COURT: IT WILL BE ADMITTED, SUBJECT TO	
3	REDACTIONS.	
4		
5	(EXHIBIT 5180 ADMITTED.)	08:52AM
6		
7	Q. BY MR. HELM: NOW, IF WE COULD SHOW THAT, IT	
8	SAYS, SEE ATTACHED FOR FEE SHARING DEAL ANALYSIS.	
9	DO YOU SEE THAT?	
10	A. I DO.	08:52AM
11	Q. AND THE ATTACHMENT TO THIS E-MAIL IS A	
12	SUBSEQUENT DRAFT OF THE SAME ANALYSIS WE WERE LOOKING	
13	AT IN THE PRIOR E-MAIL, CORRECT?	
14	A. I'D ASSUME SO.	
15	Q. LET'S LOOK AT PAGE 6 OF THAT EXHIBIT, IF WE	08:52AM
16	COULD.	
17	BLOW THAT UP. AND DO THE TOP LINES, D	
18	AND E.	
19	ONCE AGAIN, IN COLUMN D FOR PORTFOLIO	
20	MANAGER IT SAYS JEFFREY GUNDLACH, CORRECT?	08:52AM
21	A. CORRECT.	
22	Q. AND NEXT TO JEFFREY GUNDLACH, UNDER THE COLUMN	
23	E, WHICH IS CONTRACT EXPIRATION, IT SAYS DECEMBER 31ST,	
24	2011, CORRECT?	
25	A. IT SAYS IT AGAIN, YES.	08:53AM
26	Q. ALL RIGHT.	
27	NOW, MR. SULLIVAN, YOU HAVE AN	
28	UNDERSTANDING OF HOW TCW ENTITIES ACCOUNT, AT THE LEVEL	

08:54AM

OF THE INDIVIDUAL FUNDS, FOR CARRIED INTEREST AND 1 2 INCENTIVE FEES, CORRECT? 3 I HAVE A MINOR UNDERSTANDING OF THAT, YES. YOU ARE FAMILIAR WITH HOW TCW ENTITIES ACCOUNT 4 Q. 5 ON THEIR BOOKS FOR THE POSSIBILITY OF CARRIED INTEREST 08:53AM 6 OR INCENTIVE FEE PAYMENTS, DO YOU? 7 ON TCW'S BOOKS, YES. AND YOU ARE FAMILIAR WITH THE TCW FUNDS THAT 8 Ο. 9 WERE CALLED SPECIAL MORTGAGE CREDIT FUNDS, RIGHT? 10 I THINK WE ESTABLISHED THAT EARLIER, 08:53AM CORRECT? 11 12 Α. YES. AND A TCW ENTITY IS ENTITLED TO WHAT ARE 13 0. 14 CALLED MANAGEMENT FEES, FOR MANAGING THE SMCF FUNDS, 15 CORRECT? 08:54AM 16 Α. THAT IS CORRECT. 17 AND A TCW ENTITY IS A GENERAL PARTNER OF THE Q. 18 SMCF FUNDS, CORRECT? 19 Α. THAT IS CORRECT. 20 AND IN THIS CAPACITY AS GENERAL PARTNER, A TCW 0. 08:54AM 21 ENTITY IS ENTITLED TO THE CARRIED INTEREST THAT IS PAID 22 IN THE SMCF FUNDS, CORRECT? 23 A. CORRECT. 24 AND TCW REGULARLY ACCOUNTS ON ITS BOOKS,

Q. AND ICW REGULARLI ACCOUNTS ON ITS BOOKS,

25 | ALLOCATIONS OF CARRIED INTEREST FROM LIMITED

27

26 PARTNERSHIP FUNDS, SUCH AS THE SMCF FUNDS, DOESN'T IT?

A. IT IS A GAAP ACCOUNTING REQUIREMENT, YES.

28 Q. AND GENERALLY, FROM YOUR POINT OF VIEW, TCW

- 1 RECORDS ALLOCATIONS ON ITS BOOKS FROM MONTH TO MONTH;
 2 IS THAT RIGHT?
 - A. I WOULDN'T CONSIDER THEM ALLOCATIONS, BUT WE MAKE RECORDINGS OF ACCRUALS ON A MONTH-TO-MONTH BASIS.

Q. ON ACCRUED CARRIED INTEREST, FOR EXAMPLE.

AND ALTHOUGH THIS ISN'T PART OF YOUR
DIRECT RESPONSIBILITY, YOU UNDERSTAND THAT TCW TRIES,
ON A MONTHLY BASIS, TO GET FUND ACCOUNTANTS TO PERFORM
A CALCULATION OF CARRIED INTEREST WITHIN A SHORT PERIOD
OF TIME, IN ORDER TO REPORT THAT INFORMATION TO TCW'S

08:55AM

08:54AM

- 12 A. I UNDERSTAND THAT IT'S MY FUNCTION TO BE ON
 13 THE LOOKOUT FOR ACTUAL CASH RECEIPTS FROM THOSE.
- Q. BUT YOUR UNDERSTANDING IS THAT IT'S TO

 15 PERFORM -- IT'S NOT JUST ACCRUALS?

PARENT, SOCIETE GENERALE, CORRECT?

08:55AM

MR. QUINN: VAGUE AND AMBIGUOUS, YOUR HONOR.

17 THE COURT: SUSTAINED.

3

4

5

6

7

8

9

10

11

18

19

20

21

22

23

26

27

28

- Q. BY MR. HELM: SOCIETE GENERALE SEES THE

 ACCRUED CARRIED INTEREST AT MONTH TO MONTH, DOESN'T IT?
- A. OUR FINANCIALS REFLECT AN ACCRUAL INTEREST ON MONTH TO MONTH, YES.
- Q. AND IN YEAR-END ACCOUNTING, FOR EXAMPLE, TCW RECORDS EARNED CARRIED INTEREST AS INCOME, CORRECT?
- A. TCW RECORDS CARRIED INTEREST ON ITS BOOKS AS INCOME, THAT'S CORRECT.
 - Q. ACCRUED CARRIED INTEREST, CORRECT?
 - A. ACCRUED AS OF THAT DATE.
 - Q. AND IF CERTAIN PERCENTAGES OF THAT CARRIED

08:55AM

08:56AM

- 1 INTEREST WOULD BE OWED, TO BE PAID TO CERTAIN
- 2 | INDIVIDUALS, SUCH AS MR. GUNDLACH, AT SUCH TIME AS THE
- 3 PAYMENT WAS ACTUALLY MADE. TCW RECORDS THAT AS AN
- 4 EXPENSE, ON ITS BOOKS, DOESN'T IT?
- 5 A. IF WE RECORD A REVENUE ON OUR BOOKS, WE'RE
- 6 ALSO REQUIRED TO RECORD CORRESPONDING EXPENSE AGAINST
- 7 IT, YES.
- 8 Q. SO IF YOU HAVE AN ACCRUED CARRIED INTEREST,
- 9 WE'RE TALKING ABOUT A CARRIED INTEREST THAT HASN'T YET
- 10 BEEN PAID, CORRECT?
- 11 A. CORRECT.
- 12 O. AND ACCRUED CARRIED INTEREST IS RECORDED AS
- 13 INCOME ON TCW'S BOOKS, CORRECT?
- 14 A. CORRECT.
- Q. EVEN THOUGH IT HASN'T YET BEEN PAID, CORRECT?
- 16 A. CORRECT.
- 17 O. AND IT ALSO THEN RECORDS AS AN EXPENSE, THE
- 18 AMOUNT OF THAT CARRIED INTEREST THAT WOULD BE OWED TO
- 19 | FUND MANAGERS OR OTHER PEOPLE, ONCE IT'S PAID, CORRECT?
- 20 A. THE AMOUNT THAT WOULD POTENTIALLY BE -- IF IT
- 21 WAS EVER REALIZED, YES.
- 22 O. BUT THE EXPENSE IS RECORDED ALSO BEFORE THE
- 23 MONEY IS EVER PAID, RIGHT?
- A. THAT'S CORRECT.
- Q. NOW, YOU UNDERSTAND THAT MR. GUNDLACH WAS
- 26 RELIEVED OF HIS DUTIES DECEMBER THE 4TH, 2009, CORRECT?
- 27 A. THAT'S MY UNDERSTANDING, YES.
- 28 Q. AND MR. GUNDLACH RECEIVES NO QUARTERLY FEE

08:56AM

08:56AM

08:56AM

08:57AM

08:57AM

SHARING PAYMENT FROM TCW WITH RESPECT TO HIS WORK IN 1 2 THE FOURTH OUARTER OF 2009, CORRECT? WITH THE EXCEPTION OF HIS BASE SALARY, WHICH 3 EFFECTIVELY WORKED AS A DRAW AGAINST HIS FEE SHARING; 4 5 BUT YOU ARE CORRECT IN THAT. 08:57AM 6 Q. ALL RIGHT. SO I'D LIKE TO BREAK THAT APART 7 THEN. 8 LEAVING ASIDE THE SALARY, WHICH WE'LL 9 TALK ABOUT IN A SECOND, HE RECEIVED NO FEE SHARING 10 PAYMENT FOR THE WORK HE DID IN THE FOURTH QUARTER OF 08:58AM 2009, CORRECT? 11 12 MR. QUINN: IT'S ARGUMENTATIVE, ASSUMES FACTS 13 NOT IN EVIDENCE, AS PHRASED. 14 THE COURT: YOU CAN REPHRASE IT. Q. BY MR. HELM: WELL, LET'S -- WE'LL TALK --15 08:58AM 16 OTHER THAN THE SALARY, WHICH WE'RE GOING TO GET TO --17 AND I THINK YOU HAVE ACCURATELY DESCRIBED IT. 18 BUT JUST TO BREAK IT APART, OTHER THAN A 19 SALARY HE MIGHT HAVE RECEIVED AS AN ADVANCE, HE 20 RECEIVED NO FOURTH QUARTER FEE SHARING PAYMENT; THAT 08:58AM 21 IS, NO PAYMENT FOR FEE SHARING, REFLECTING WORK HE DID 22 IN THE FOURTH QUARTER OF 2009, CORRECT? 23 MR. QUINN: AGAIN, STILL ASSUMES FACTS NOT IN

08:58AM

THE FOURTH QUARTER, WHICH WE DETERMINED ON AN ACCRUAL BASIS.

THE WITNESS: HE RECEIVED NO FEE SHARING FOR

THE COURT: OVERRULED.

24

25

26

EVIDENCE.

BUT HE DID RECEIVE, IN THE FOURTH 1 2 QUARTER, HIS THIRD QUARTER FEE SHARING. 3 O. BY MR. HELM: I APPRECIATE THAT CLARIFICATION. 4 SO DURING THE FOURTH QUARTER, HE GOT A 5 CHECK FOR WORK HE'D DONE IN THE THIRD QUARTER, RIGHT? 08:59AM THAT'S CORRECT. 6 Α. 7 BUT AT NO TIME DID MR. GUNDLACH EVER -- OTHER 8 THAN THE SALARY, WHICH WE'LL TALK ABOUT IN A SECOND, 9 DID HE RECEIVE ANY FEE SHARING PAYMENT FOR THE WORK HE 10 DID IN THE FOURTH QUARTER, CORRECT? 08:59AM 11 MR. OUINN: ASSUMES FACTS NOT IN EVIDENCE. 12 THE COURT: OVERRULED. 13 THE WITNESS: I NEVER PAID HIM THE FOURTH QUARTER FEE SHARING STATEMENT. 14 Q. BY MR. HELM: NOW, WE TALKED ABOUT SALARY. 15 08:59AM 16 YOU SAID HE DID RECEIVE A SALARY DURING 17 OCTOBER AND NOVEMBER; IS THAT RIGHT? 18 AS WELL AS DECEMBER -- THROUGH DECEMBER 11TH. Α. 19 O. AND THE SALARY HE RECEIVES -- IT'S A HEFTY 20 SALARY, BUT IT'S SMALL, IN RELATION TO HIS FEE SHARING, 08:59AM 21 CORRECT? 22 I WOULD SAY SO. Α. 23 O. WHAT IS HIS ANNUAL SALARY? 24 A. \$500 THOUSAND. 25 AND AS WE SAW, WE WERE TALKING ABOUT 40 08:59AM 26 MILLION OR MORE, POSSIBLY, BEING THE FEE SHARING THAT 27 HE WOULD GET DURING THE YEAR, CORRECT?

28

A. CORRECT.

AND YOU SAID THAT THE SALARY IS SORT OF AN 1 Q. 2 ADVANCE: DID I HEAR THAT RIGHT? 3 BECAUSE IT COVERS ALL SALARIES WITHIN THE FEE 4 SHARING DEAL. IT ESSENTIALLY COVERS HIS OWN SALARY, 5 WHICH EFFECTIVELY MAKES IT A DRAW. 09:00AM O. JUST SO WE ALL UNDERSTAND THAT --6 7 SO THE SALARIES FOR THE GROUP ARE PAID 8 FROM MR. GUNDLACH'S SHARE OF THE FEE SHARING POOL, 9 CORRECT? 10 A. MR. GUNDLACH RECEIVES THE RESIDUALS OF THE 09:00AM 11 MULTI-SECTOR FIXED INCOME POOL. 12 Ο. RIGHT. BUT WHEN YOU ARE ACCOUNTING FOR IT, 13 YOU ACCOUNT FOR THIS POOL, RIGHT? 14 AND THEN ANY SALARIES THAT ARE PAID, ARE 15 DEDUCTED FROM THAT POOL, BEFORE THE RESIDUAL IS PAID TO 09:00AM 16 MR. GUNDLACH, CORRECT? 17 Α. THAT IS CORRECT. 18 AND SO THE SALARIES THAT ARE DEDUCTED INCLUDE 0. 19 HIS OWN SALARY, RIGHT? 20 Α. CORRECT. 09:01AM 21 Ο. ALL RIGHT. SO WHAT REALLY HAPPENS WHEN HE 22 GETS A SALARY PAYMENT, IT REALLY IS JUST AN ADVANCE OF 23 A SMALL PORTION OF THE RESIDUAL THAT HE WILL GET LATER. 24 IS THAT A FAIR STATEMENT? 25 I BELIEVE THAT'S A FAIR STATEMENT. Α. 09:01AM 26 NOW, MR. BARACH ALSO GOT NO QUARTERLY FEE 27 SHARING PAYMENT FOR WORK PERFORMED IN THE FOURTH

QUARTER OF 2009, RIGHT?

MR. QUINN: ASSUMES FACTS NOT IN EVIDENCE, 1 2 VAGUE AND AMBIGUOUS. 3 THE COURT: OVERRULED. 4 THE WITNESS: I DID NOT PAY MR. BARACH FOURTH 5 QUARTER FEE SHARING ON AN ACCRUAL BASIS. 09:01AM Q. BY MR. HELM: AND YOU DIDN'T PAY MR. LUCIDO 6 7 FOURTH QUARTER FEE SHARING EITHER, DID YOU? NO, I DIDN'T. 8 Α. 9 AND IN FACT, WITH THE EXCEPTION OF ONE SINGLE 10 STAFF MEMBER, NOBODY FROM MR. GUNDLACH'S GROUP WHO LEFT 09:01AM 11 TCW IN DECEMBER OF 2009 EVER RECEIVED ANY PAYMENTS FROM 12 WHAT OTHERWISE MIGHT HAVE CONSTITUTED MR. GUNDLACH'S 13 POOL FOR THE FOURTH QUARTER, CORRECT? 14 Α. CORRECT. 15 Q. BUT THERE WERE MANAGEMENT FEES THAT TCW 09:02AM 16 ACCRUED; BUT DID NOT PAY TO MR. GUNDLACH, FOR THE 17 FOURTH QUARTER OF 2009, CORRECT? 18 CORRECT. Α. 19 O. AND THERE WERE MANAGEMENT FEES THAT TCW 20 ACCRUED, BUT DID NOT PAY TO MR. BARACH, FOR THE FOURTH 09:02AM 21 QUARTER OF 2009, CORRECT? 22 THAT'S CORRECT. Α. 23 Q. AND FOR MR. LUCIDO, AS WELL; CORRECT?

09:02AM

Q. NOW, MR. DEVITO TOLD YOU NOT TO MAKE THOSE

PAYMENTS, DIDN'T HE?

A. THAT'S CORRECT.

24

26

A. WELL, FIRST OF ALL, WE'RE TALKING ABOUT
ACCRUED REVENUES.

I PAY ON CASH, SO I WOULDN'T HAVE PAID 1 2 ON ACCRUED REVENUES. 3 BUT WHEN THE REVENUE WAS ULTIMATELY PAID, YOU 4 ALSO DIDN'T PAY MR. GUNDLACH MANAGEMENT FEES FOR THE 5 FOURTH QUARTER OF 2009, DID YOU? 09:03AM THAT'S CORRECT. 6 Α. 7 O. AND YOU DIDN'T PAY -- EVEN AFTER THEY WERE 8 PAID, YOU DIDN'T PAY ANY MANAGEMENT FEES TO MR. LUCIDO 9 OR MR. BARACH, DID YOU? 10 THAT'S CORRECT. Α. 09:03AM 11 O. AND YOU DIDN'T MAKE ANY EFFORT TO CALCULATE 12 ACCRUED CARRIED INTEREST FOR THE FOUR -- UP TO THE 13 FOURTH QUARTER, AND PAY MR. GUNDLACH THAT, DID YOU? I WOULDN'T HAVE HAD A BASIS TO DO THAT, NO. 14 Α. 15 O. AND THE PERSON WHO TOLD YOU NOT TO PAY ANY 09:03AM 16 FEES FOR THE FOURTH OUARTER TO MR. GUNDLACH WAS 17 MR. DEVITO, RIGHT? 18 HE DID TELL ME THAT, YES. Α. 19 O. AND YOUR UNDERSTANDING AT THE TIME WAS THAT 20 YOU WERE BEING TOLD NOT TO PAY THEM BECAUSE THERE HAD 09:03AM 21 BEEN A TERMINATION FOR CAUSE; IS THAT RIGHT? 22 Α. THAT WAS MY ASSUMPTION AT THE TIME, YES. 23 O. AND YOU UNDERSTOOD THAT IT WAS TCW'S VIEW THAT 24 THERE HAD BEEN A TERMINATION FOR CAUSE, CORRECT? 25 I'M SORRY. COULD YOU REPEAT THAT. Α. 09:03AM 26 Ο. YOU UNDERSTOOD AT THE TIME THAT IT WAS TCW'S

VIEW THAT THERE HAD BEEN A TERMINATION FOR CAUSE,

27

2.8

CORRECT?

1	A. THAT WAS MY UNDERSTANDING.	
2	Q. AND YOU SO YOU DID NOT FAIL TO PAY	
3	MR. GUNDLACH FOURTH QUARTER FEE SHARING BECAUSE THERE	
4	WERE NO ACCRUED MANAGEMENT FEES FOR THAT PERIOD, DID	
5	YOU?	09:04AM
6	MR. QUINN: IT'S ARGUMENTATIVE.	
7	THE COURT: OVERRULED.	
8	DO YOU UNDERSTAND THE QUESTION?	
9	THE WITNESS: NOT REALLY.	
10	THE COURT: OKAY. THEN	09:04AM
11	MR. HELM: FINE.	
12	Q. WELL, WE TALKED ABOUT THE FACT THAT YOU DIDN'T	
13	PAY THEM BECAUSE MR. DEVITO TOLD YOU TO, CORRECT?	
14	A. CORRECT.	
15	Q. AND SO WHEN YOU FAILED TO PAY THEM THE	09:04AM
16	FEES, THE REASON WASN'T THAT WELL, GEE, THERE WERE NO	
17	MANAGEMENT FEES EARNED FOR THAT QUARTER.	
18	THAT WASN'T THE REASON WAS IT?	
19	A. I DON'T THINK I FAILED TO PAY IT, BUT	
20	Q. WELL, YOU DID FAIL TO PAY IT?	09:04AM
21	A. I WAS TOLD NOT TO PAY IT.	
22	Q. WELL, WE DON'T HAVE TO QUIBBLE OVER THE WORDS.	
23	THE REASON YOU DIDN'T PAY WAS NOT THAT	
24	THERE WERE NO MANAGEMENT FEES FOR THAT QUARTER, RIGHT?	
25	A. WAS NOT THAT THERE WERE NO MANAGEMENT FEES FOR	09:04AM
26	THAT QUARTER.	
27	Q. LET ME ASK IT ANOTHER WAY.	

THERE WERE MANAGEMENT FEES PAID TO TCW

1	FOR THE FOURTH QUARTER OF 2009, RIGHT?	
2	MR. QUINN: OBJECTION. TIME FRAME.	
3	THE COURT: YOU CAN I'LL SUSTAIN THAT.	
4	Q. BY MR. HELM: AT SOME POINT, TCW RECEIVED	
5	MANAGEMENT FEES FOR WORK THAT WAS DONE ON THE FUNDS IN	09:05AM
6	MR. GUNDLACH'S GROUP IN THE FOURTH QUARTER OF 2009,	
7	CORRECT?	
8	A. AT SOME POINT, TCW RECEIVED MANAGEMENT FEES,	
9	PER THE CONTRACTS OF OUR CLIENTS, FOR THE ASSETS UNDER	
10	MANAGEMENT.	09:05AM
11	Q. AND IT RECEIVED MANAGEMENT FEES FOR THE FOURTH	
12	QUARTER OF 2009, DIDN'T IT?	
13	A. IT DID.	
14	Q. SO WHEN YOU DIDN'T PAY MR. GUNDLACH, IT WASN'T	
15	BECAUSE THERE WERE NO MANAGEMENT FEES RECEIVED, WAS IT?	09:05AM
16	A. ULTIMATELY, I DIDN'T PAY MR. GUNDLACH, BECAUSE	
17	MR. DEVITO TOLD ME NOT TO PAY MR. GUNDLACH.	
18	MR. HELM: ALL RIGHT.	
19	I HAVE NOTHING FURTHER.	
20	THE COURT: ALL RIGHT.	09:06AM
21	CROSS-EXAMINATION, MR. QUINN?	
22	MR. QUINN: YES, YOUR HONOR.	
23		
24		
25	CROSS-EXAMINATION	
26		
27	BY MR. QUINN:	
28	Q. MORNING, MR. SULLIVAN.	

A. GOOD MORNING, MR. QUINN. 1 2 Q. YESTERDAY, AND ALSO THIS MORNING, MR. HELM 3 ASKED YOU A NUMBER OF QUESTIONS ABOUT INTERACTIONS THAT 4 YOU HAD WITH MR. GUNDLACH, MR. SONNEBORN, AND OTHERS, 5 IN MAY OF 2000 ABOUT WHAT WAS REFERRED TO AS A NEW DEAL 09:07AM FOR MR. GUNDLACH? 6 7 MR. BRIAN: 2007, I THINK YOU MEAN. 8 MR. OUINN: WHAT DID I SAY? 9 MR. HELM: 2000. 10 MR. QUINN: SORRY. IN 2007. 09:07AM THE WITNESS: YES, THAT'S CORRECT. 11 12 Q. BY MR. QUINN: AND I'D LIKE TO ASK YOU, IS 13 THAT THE ONLY OCCASION IN WHICH YOU HAVE BEEN ASKED TO 14 ENGAGE IN THAT TYPE OF ACTIVITY WITH RESPECT TO DEALS 15 FOR PORTFOLIO MANAGERS? 09:07AM 16 Α. NO, IT IS NOT. 17 CAN YOU TELL US WHETHER OR NOT THAT IS PART OF Q. 18 YOUR JOB, TO DO THAT TYPE OF THING THAT YOU WERE DOING, 19 THAT WE'LL TALK ABOUT FOR A MINUTE, FOR DEALS FOR ALL 20 PORTFOLIO MANAGERS WHO HAVE FEE SHARING ARRANGEMENTS? 09:07AM 21 Α. IT'S A PRIMARY PIECE OF MY JOB, YES. 22 AND IN THAT TYPE OF ACTIVITY -- YOU ARE AN --0. 23 I THINK YOU HAVE TOLD US YOU ARE A FINANCIAL ANALYST? 24 YOU ARE NOT A LAWYER? 25 Α. CORRECT. 09:08AM 26 YOU DON'T HAVE LEGAL TRAINING? Q.

O. YOU HAVE HAD A LITTLE MATH?

27

28

A. CORRECT.

1	Α.	TOO MUCH.	
2	Q.	BUT AS A FINANCIAL ANALYST, IN THIS ACTIVITY	
3	THAT YOU	DID WITH RESPECT TO MR. GUNDLACH BACK IN MAY	
4	OF 2007,	AND WHICH YOU DO, SIMILARLY WITH RESPECT TO	
5	OTHER PO	RTFOLIO MANAGERS WHO HAVE FEE SHARING	09:08AM
6	ARRANGEM:	ENTS, WHAT IS IT THAT YOU ARE DOING?	
7	Α.	JUST SIMPLY CRUNCHING NUMBERS.	
8		MODELING, YOU KNOW, WHATEVER I'M BEING	
9	ASKED BY	MANAGEMENT TO MODEL.	
10	Q.	ASKED BY MANAGEMENT?	09:08AM
11	Α.	ASKED BY MANAGEMENT, PRIMARILY.	
12	Q.	DO PORTFOLIO MANAGERS WHO ARE SEEKING TO	
13	NEGOTIAT	E A NEW DEAL, SOMETIMES ALSO ASK YOU TO MODEL	
14	NUMBERS?		
15	Α.	WITH THE KNOWLEDGE OF MANAGEMENT, YES.	09:09AM
16	Q.	AND ARE YOU EVER ACTUALLY, YOURSELF, DO YOU	
17	EVER ACTUALLY NEGOTIATE THE TERMS OF PORTFOLIO		
18	MANAGERS	' DEALS?	
19	Α.	I DO NOT.	
20	Q.	DID YOU NEGOTIATE THE TERMS OF MR. GUNDLACH'S	09:09AM
21	DEAL?		
22	Α.	I DID NOT.	
23	Q.	BACK IN MAY OF 2007, OR AT ANY OTHER TIME?	
24	Α.	CORRECT.	
25	Q.	CORRECT, MEANING?	09:09AM
26	Α.	I WOULD I DO NOT NEGOTIATE DEALS.	
0.7	_	100 00VD 00 0VD00 000 000 000 000 000 000	

Q. ARE SOME OF THESE FEE SHARING ARRANGEMENTS,

DID YOU SAY -- WOULD YOU SAY SOME OF THEM ARE KIND OF

27

COMPLEX? 1 2 A. YES. 3 AND DOES THAT REQUIRE THAT FOR PEOPLE ON BOTH Q. 4 SIDES OF THE PORTFOLIO MANAGER AND THE MANAGEMENT AT 5 TCW, THAT THEY RUN NUMBERS UNDER DIFFERENT ASSUMPTIONS, 09:09AM TO SEE WHAT THE OUTCOMES MIGHT BE? 6 7 Α. THAT'S CORRECT. 8 Q. IS THAT WHAT YOU DO? 9 THAT IS WHAT I DO. Α. 10 Q. SO WHEN MR. HELM WAS ASKING YOU ABOUT 09:09AM 11 COMMUNICATIONS THAT YOU HAD WITH MR. GUNDLACH, BACK IN 12 THE MAY 2000 TIME FRAME, WITH RESPECT TO THIS NEW DEAL, 13 WHAT WERE THE NATURE OF THOSE COMMUNICATIONS THAT YOU WERE HAVING? 14 15 A. BACK IN 2007 TIME FRAME? 09:10AM 16 0. 2007. 17 MAY OF 2007. THANK YOU. I'LL GET IT 18 RIGHT ONCE. 19 WHAT WAS THE NATURE OF THE DISCUSSIONS? A. 20 Ο. YEAH. WHAT IS THE -- YOU TOLD MR. HELM THAT 09:10AM 21 YES, YOU WERE HAVING THESE DISCUSSIONS. 22 WHAT IS THE NATURE OF THE DISCUSSIONS 23 YOU ARE HAVING, AS A FINANCIAL ANALYST? 24 MR. HELM: VAGUE AND AMBIGUOUS. 25 THE COURT: OVERRULED. 09:10AM

WE HAD AN UNDERSTANDING OF HOW IT WOULD WORK.

THE WITNESS: I WAS WORKING ON MODELING

PORTFOLIO, TO MAKE SURE WE WERE ALL IN AGREEMENT, THAT

26

27

DID YOU -- DID MR. -- CAN YOU TELL US WHETHER 1 Q. 2 OR NOT MR. GUNDLACH GAVE YOU SOME INPUT? 3 HE DID. Α. 4 AND CAN YOU DESCRIBE THOSE FOR THE JURY, WHAT Q. 5 TYPE OF INPUTS HE WOULD GIVE YOU? 09:10AM 6 Α. HE'D GIVE ME A SCHEMATIC OF PERCENTAGES 7 AGAINST DIFFERENT PRODUCTS AND FOR DIFFERENT PEOPLE, OF 8 HOW THE POOL MIGHT EVENTUALLY FLOW. 9 AND DID YOU RESPOND TO HIM BY SAYING, YOU Ο. 10 KNOW, NO, WE NEED TO DO IT THIS WAY, OR THE TERMS OUGHT 09:11AM TO BE CHANGED? 11 12 THAT WOULD NOT HAVE BEEN MY PLACE, TO DO THAT. Α. 13 YOUR PLACE WAS TO? Ο. 14 A. TAKE THOSE NUMBERS, MODEL IT, AND WORK WITH 15 MANAGEMENT. 09:11AM 16 Ο. AND WHEN YOU SAY WORK WITH MANAGEMENT, WHAT DO 17 YOU MEAN BY THAT? 18 THEY NEED TO BE AWARE OF WHAT IT IS I'M Α. 19 MODELING AND, YOU KNOW, MAKE SURE EVERYBODY IS ON THE 20 SAME PAGE. 09:11AM 21 Ο. SAME PAGE WITH RESPECT TO WHAT? 22 WHAT PERCENTAGES, WHAT THE DEAL IS THAT WE'RE 23 ULTIMATELY TRYING TO MODEL. 24 Q. SO YOU MEAN THE FEE SHARING DEAL, THE NUMBERS?

09:11AM

27 WITHDRAW THAT QUESTION.

THAT'S CORRECT.

25

26

28

Α.

Q.

WHILE THAT PROCESS IS GOING ON, ARE

DO YOU, SIR, ACTUALLY YOURSELF -- LET ME

THERE PEOPLE, ARE THERE OTHER PEOPLE THAT ARE INVOLVED 1 2 IN ACTUALLY DOING A CONTRACT? 3 Α. YES. AND WHO WOULD THOSE PEOPLE BE, WHO ARE 4 Q. 5 INVOLVED IN ACTUALLY TRYING TO CREATE A CONTRACT? 09:12AM A. THE LEGAL DEPARTMENT. 6 7 Ο. AND A PARTICULAR INDIVIDUAL? 8 MICHAEL CAHILL AND HIS STAFF. Α. LET'S TAKE A LOOK AT SOME OF THESE MODELS THAT 9 0. 10 WE REFERRED TO YESTERDAY. 09:12AM AND I'D ASK YOU, INSIDE YOUR BOOK THERE, 11 12 YOU SHOULD HAVE A STACK. AND I'M --13 TO SPEED THIS ALONG, YOUR HONOR, I'M --THIS MAY BE WISHFUL THINKING, BUT I'M GOING TO READ OUT 14 15 A SERIES OF NUMBERS, AND TRY TO ASK A QUESTION, AND TRY 09:12AM 16 TO MOVE THEM ALL IN AT ONCE? 17 SO THE NUMBERS WOULD BE, 5031 --18 ACTUALLY, THAT'S IN EVIDENCE. 5032, 5034, AND 2303. 19 20 DO YOU HAVE THOSE BEFORE YOU? 5031, 09:13AM 5032, 5034, AND 2303? 21 22 Α. YES. 23 THE COURT: YOU ARE OFFERING THOSE, MR. QUINN? 24 MR. QUINN: I WAS JUST GOING TO ASK A GENERAL

ARE THESE E-MAIL STRINGS BETWEEN YOU,

MR. GUNDLACH, MR. SONNEBORN, AND OTHERS, BACK IN THE

COPYING NOT PERMITTED PURSUANT TO GOVERNMENT CODE SECTION 69954(D)

09:13AM

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OUESTION.

Ο.

MAY OF 2007 TIME FRAME?

_		
1	A. YES.	
2	MR. QUINN: WE'D OFFER THESE, YOUR HONOR.	
3	THE COURT: ANY OBJECTION?	
4	MR. HELM: NO OBJECTION, YOUR HONOR.	
5	THE COURT: THEY'LL ALL BE ADMITTED.	09:13AM
6		
7	(EXHIBITS 5031, 5032, 5034 AND 2303 ADMITTED.)	
8		
9	Q. BY MR. QUINN: SO IF WE COULD BEGIN WITH	
10	EXHIBIT 5031, IF WE COULD	09:13AM
11	THIS IS IN EVIDENCE.	
12	THIS IS A THE TOP E-MAIL IS APRIL 25,	
13	2007.	
14	DO YOU SEE THAT?	
15	A. YES.	09:13AM
16	Q. AND THE FIRST ONE IS AN E-MAIL	
17	IF WE GO TO THE BOTTOM, MIKE.	
18	THE FIRST E-MAIL IN THE CHAIN IS AN	
19	E-MAIL FROM JEFFREY GUNDLACH TO YOU, DATED APRIL 25,	
20	2007.	09:14AM
21	IT'S FROM YOU TO MR. GUNDLACH, I'M	
22	SORRY, DATED APRIL 25, 2007, CORRECT?	
23	A. I'M WAITING. HE'S HIGHLIGHTING.	
24	Q. 5031-2 THE FIRST E-MAIL IN THE STRING?	
25	A. I SEE THAT.	09:14AM
26	Q. AND YOU WRITE, (READING):	
27	JEFFREY, SEE ATTACHED FOR	
28	ANALYSIS OF EXISTING VERSUS NEW	

1	DEAL ECONOMICS.			
2	DO YOU SEE THAT?			
3	A. YES.			
4	Q. AND THEN ATTACHED, WE HAVE CAN YOU TELL US			
5	WHAT'S ATTACHED TO THAT? IT'S ON PAGE -3, -4, -5.	09:14AM		
6	AND MAYBE WE COULD JUST GO THROUGH THOSE			
7	PAGES FOR THE JURY, MIKE.			
8	MR. HELM: I THOUGHT YOU HAD CONFIDENTIALITY			
9	ISSUES ON THIS DOCUMENT?			
10	MR. QUINN: WE DO. WE'RE JUST NOT STREAMING	09:14AM		
11	IT.			
12	THE COURT: THESE ARE THE ISSUES YOU WERE			
13	CONCERNED ABOUT.			
14	MR. QUINN: YES. WE'RE JUST NOT STREAMING IT,			
15	YOUR HONOR.			
16				
17	(SOTTO VOCE DISCUSSION BETWEEN			
18	MR. HELM AND MR. QUINN.)			
19				
20	Q. BY MR. QUINN: SO COULD YOU DESCRIBE FOR THE	09:15AM		
21	JURY WHAT IT IS THAT WE'RE LOOKING AT HERE?			
22	A. THE ATTACHMENT IS A MODEL OF THE NEW DEAL			
23	ECONOMICS, AND ALSO COMPARED TO THE EXISTING DEAL			
24	ECONOMICS.			
25	Q. AND WHO GAVE YOU THE ASSUMPTIONS THAT YOU USED	09:15AM		
26	TO DO THIS MODEL?			
27	A. IT WAS A COMBINATION OF MR. GUNDLACH AND			
28	MR. SONNEBORN.			

AND DO WE SEE ANYWHERE ON THESE PAGES, 1 Q. 2 ANYWHERE IN THIS MODEL, IS THERE LIKE A SIGNATURE LINE 3 ANYWHERE, WHERE SOMEBODY CAN SIGN AND SAY, THAT'S OUR 4 DEAL? 5 A. NO, I DO NOT. 09:15AM 6 O. AND IF WE LOOK AT -- CAN WE TELL -- IF WE LOOK 7 ON PAGE -3, ON THE RIGHT-HAND SIDE, CAN WE TELL, UNDER 8 THESE ASSUMPTIONS, HOW MR. GUNDLACH AND MR. BARACH 9 WOULD FARE UNDER THESE -- UNDER THIS FIRST ITERATION OF 10 A MODEL? 09:16AM 11 A. YES, WE CAN. 12 AND WHAT WOULD WE NEED TO -- HOW DOES IT Ο. 13 INDICATE THAT MR. GUNDLACH AND MR. BARACH WOULD FARE UNDER THESE ASSUMPTIONS? 14 15 A. WELL, MR. GUNDLACH WOULD FARE WELL, AND 09:16AM 16 RECEIVE \$12 MILLION MORE THAN UNDER THE NEW DEAL 17 ECONOMICS, VERSUS THE EXISTING ECONOMICS, BASED ON THE 18 ASSUMPTIONS THAT WERE MADE WITHIN THE MODEL. 19 AND MR. BARACH WOULD RECEIVE LESS, 5.5 20 MILLION LESS, UNDER THE ASSUMPTIONS WE MADE IN THE 09:16AM 21 MODEL. 22 ALL RIGHT. SO LET'S TURN NOW TO THE NEXT 23 EXHIBIT, 5032. 24 AND THIS IS ANOTHER E-MAIL STRING WHICH

AT THE BACK HALF, WE LOOK AT -4 -- 09:16AM

26 MIKE, DO WE HAVE ANOTHER MODEL HERE?

27 PAGE -4, -5, -6.

25

28 A. YES, I SEE IT.

AND IS THIS ANOTHER MODEL THAT YOU PREPARED, 1 Q. 2 BASED ON A DIFFERENT SET OF ASSUMPTIONS? 3 IT'S AN ADDITIONAL VERSION, YES. Α. 4 AND WHAT WAS THE GENESIS OF THIS ONE? Q. 5 THIS MODEL, IT'S -- IT LOOKS LIKE YOU 09:17AM 6 SAY YOU CREATED THIS ON APRIL 27TH, IF WE LOOK AT THE 7 TOP E-MAIL? 8 E-MAIL IS APRIL 27TH. Α. 9 THE ANALYSIS IS DATED APRIL 24TH. 10 AND CAN YOU TELL US WHAT THE GENESIS OF THIS Q. 09:17AM 11 MODEL WAS? 12 A. I WAS BEING ASKED TO EXCLUDE SOME OF 13 ASSUMPTIONS ON NEW FUNDS THAT HAVEN'T YET MATERIALIZED 14 AT TCW. 15 Q. AND THOSE NEW FUNDS WERE WHICH ONES? 09:17AM THE SPECIAL MORTGAGE CREDIT FUNDS AND JOLERO, 16 Α. 17 J-O-I-E-R-O. 18 AND DO YOU RECALL WHO IT WAS WHO ASKED YOU TO Ο. 19 RERUN THE MODEL WITH THAT CHANGE? 20 Α. MR. SONNEBORN. 09:18AM 21 Q. AND THEN IF WE TAKE A LOOK AT EXHIBIT 5034, 22 THIS SHOWS ANOTHER MODEL THAT YOU PREPARED? 23 A. IT DOES. 24 HERE THE TOP E-MAIL IS DATED APRIL 30TH, 2007? Q. 25 Α. THAT'S CORRECT. 09:18AM 26 Q. AND IF WE COULD LOOK AT PAGE -6, CAN YOU TELL

A. WE'RE LOOKING AT THE SAME MODEL, ONLY WITH

THE JURY WHAT WE'RE LOOKING AT HERE?

27

- 1 CERTAIN SCENARIOS BUILT INTO IT, TO STRESS TEST THE 2 ANALYSIS.
 - O. WHAT DO YOU MEAN BY STRESS TEST?

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A. WELL, IF WE WERE TO RUN THE MODEL JUST BASED

ON THE CURRENT BOOK OF BUSINESS, WE WOULD CALL THAT RUN

RATE REVENUES.

09:19AM

WE'D ALSO WANT TO KNOW, HOW WOULD THE

MODEL REACT IF WE WERE TO ADD ADDITIONAL REVENUES TO IT

AT VARIOUS LEVELS.

09:19AM

Q. AND DO WE SEE -- CAN YOU EXPLAIN TO THE JURY WHAT THOSE DIFFERENT COLUMNS REPRESENT HERE, ON PAGE -6?

A. THERE ARE LITTLE HEADERS UNDER EACH SECTION
THAT DESCRIBES THE LEVEL OF REVENUES.

09:19AM

AND BELOW THAT YOU WOULD SEE EXISTING ECONOMICS VERSUS NEW DEAL ECONOMICS, WITH A VARIANCE ANALYSIS UNDER EACH.

Q. ALONG THE TOP IT SAYS, BASE CASE WITH FEES AT 178; BASE CASE WITH FEES AT 222; DREAM CASE WITH FEES AT 262: AND ULTRA DREAM CASE WITH FEES AT 329?

09:19AM

- A. THAT'S CORRECT.
- Q. SO YOU ARE RUNNING -- HOW DOES THIS MODEL WORK? WHO GETS WHAT? AT DIFFERENT REVENUE LEVELS?
 - A. AND DIFFERENT ASSUMPTIONS.
 - Q. AND WHO HAD ASKED YOU TO RUN THIS ONE?

A. THE E-MAIL CHAIN ISN'T SPECIFIED. BUT I

BELIEVE IT DERIVED FROM A MEETING THAT MR. DEVITO AND I

HAD WITH MR. GUNDLACH.

09:20AM

1	Q. AND UNDER THIS MODEL, IF WE LOOK AT THE STRESS	
2	TEST AT THESE DIFFERENT LEVELS, HOW DOES	
3	IF WE CAN GO BACK TO PAGE -6, MIKE.	
4	HOW DOES MR. GUNDLACH FARE, COMPARED TO	
5	HIS EXISTING DEAL, UNDER EACH OF THESE SCENARIOS?	09:20AM
6	A. HE SEEMS TO FARE QUITE WELL.	
7	Q. AND IN EACH CASE, HE GETS A YOU'D GET A	
8	SIGNIFICANT INCREASE?	
9	A. THAT'S CORRECT.	
10	Q. AND HOW ABOUT MR. BARACH?	09:20AM
11	A. IN EACH CASE, HE WOULD RECEIVE A SIGNIFICANT	
12	DECREASE.	
13	Q. AND I DON'T THINK WE DID THAT FOR THE LAST	
14	EXHIBIT, MIKE.	
15	IF WE COULD GO BACK TO EXHIBIT 532-4,	09:20AM
16	AND ENLARGE THAT AT THE RIGHT-HAND SIDE.	
17	THAT LAST ONE WE LOOKED AT, UNDER THAT	
18	ONE, MR. GUNDLACH WOULD GET AN ADDITIONAL 6.1 MILLION	
19	OVER THE EXISTING DEAL?	
20	A. THAT'S CORRECT.	09:21AM
21	Q. AND MR. BARACH WOULD GET 5.4 MILLION LESS?	
22	A. CORRECT.	
23	Q. IF WE COULD TURN NOW TO EXHIBIT 5037.	
24	AND THE TOP E-MAIL IS FROM YOU TO	
25	MR. DEVITO.	09:21AM
26	AND YOU SAY, SEE ATTACHED FOR FORECASTED	
27	2007 GROWTH MODELS FOR 2008 TO 2011.	

DO YOU SEE THAT?

1	A. I DO.	
2	Q. WHAT IS IT THAT YOU ARE DOING HERE?	
3	A. I'M DOING SOME ADDITIONAL ANALYSIS FOR	
4	MANAGEMENT, TO SEE WHAT WOULD HAPPEN TO THE MODEL,	
5	GIVEN CERTAIN GROWTH ASSUMPTIONS, OVER A TIME LINE.	09:21AM
6	Q. AND IF WE COULD LOOK AT THE MODEL, THAT'S ON	
7	PAGE -8.	
8	AND THIS IS ANOTHER MODEL YOU PREPARED?	
9	A. YES.	
10	Q. AND THIS ONE MODELS IT OVER WHAT PERIOD OF	09:22AM
11	TIME?	
12	A. LOOKS TO MODEL IT OVER A FIVE-YEAR HORIZON.	
13	Q. RIGHT. SO IF WE CAN GO BACK TO THE FIRST	
14	PAGE, WAS THIS MODEL THAT OVER A FIVE-YEAR HORIZON,	
15	ON THIS E-MAIL CHAIN, WAS THIS SENT TO MR. GUNDLACH?	09:22AM
16	CAN YOU TELL FROM LOOKING AT THE E-MAIL CHAIN?	
17	A. IT WAS NOT SENT TO MR. GUNDLACH, THIS E-MAIL.	
18	Q. AND THEN THE LAST ONE IN THIS SERIES, EXHIBIT	
19	2303, IS THIS ANOTHER E-MAIL CHAIN, WITH ANOTHER MODEL	
20	THAT YOU DID?	09:22AM
21	A. YES.	
22	Q. AND THE MODEL APPEARS AT PAGE -10.	
23	IS THIS ALSO YOU MODELED THIS OVER A	
24	FIVE-YEAR PERIOD, IF YOU LOOK AT PAGE -10?	
25	A. YES.	09:23AM
26	Q. AND WHAT WAS THE CHANGE YOU DID IN THIS MODEL?	
27	A. I BELIEVE WE MADE SOME ASSUMPTIONS ABOUT	

28

MR. BARACH RETIRING.

AND DO YOU KNOW WHETHER -- WHERE THOSE 1 Q. 2 ASSUMPTIONS CAME FROM, OR WHO SUGGESTED ORIGINALLY, THE 3 IDEA THAT MR. BARACH MIGHT BE RETIRING? 4 I JUST TAKE MY ORDERS FROM BILL. Α. 5 Ο. SO YOU DON'T KNOW? 09:23AM 6 A. NO. 7 Ο. YOU DON'T KNOW IF THAT WAS MR. SONNEBORN'S 8 IDEA OR SOMEBODY ELSE'S IDEA? 9 Α. I WOULD HAVE NO IDEA. 10 AND DO YOU SEE ON THIS -- DID THIS E-MAIL, Ο. 09:23AM 11 THIS MODEL -- WHICH SHOWS A FIVE-YEAR PERIOD, CAN YOU 12 TELL FROM THIS E-MAIL CHAIN, WHETHER OR NOT THIS WAS 13 SENT TO MR. GUNDLACH? 14 Α. NO, IT WAS NOT. SO AS FAR AS YOU KNOW, WERE ANY OF THE MODELS 15 09:24AM Q. 16 THAT SHOWED HOW THIS WOULD PLAY OUT OVER FIVE YEARS, 17 WERE ANY OF THEM SENT TO MR. GUNDLACH? 18 NO. I DO NOT BELIEVE THEY WERE. Α. 19 O. ON ANY OF THESE MODELS, IS THERE A SIGNATURE 20 LINE, WHERE SOMEBODY COULD PICK UP A PEN AND SAY, I 09:24AM 21 AGREE TO THIS? 22 Α. NO. 23 O. SO WHILE THIS MODELING IS GOING ON, DO YOU

ENGAGED IN DRAFTING AND NEGOTIATING THE TERMS OF A 09:24AM

KNOW WHETHER OR NOT MR. CAHILL AND OTHERS WERE ACTUALLY

26 WRITTEN CONTRACT?

24

25

27

28

A. IT IS MY UNDERSTANDING THAT THEY WERE ENGAGED IN THAT, YES.

1	Q. AND HOW DO YOU KNOW THAT?	
2	A. I WAS THE RECIPIENT OF SOME DRAFTS OF THOSE	
3	CONTRACTS.	
4	Q. AND DO YOU KNOW WHETHER OR NOT MR. GUNDLACH,	
5	AS OF MAY OF 2007, HAD A WRITTEN AGREEMENT WITH TCW?	09:24AM
6	A. IT WAS NOT MY UNDERSTANDING.	
7	Q. AS OF MAY OF 2007, DO YOU KNOW WHETHER HE HAD	
8	A WRITTEN AGREEMENT?	
9	A. HE DID NOT.	
10	Q. WELL, TAKE A LOOK AT EXHIBIT 16. AND THAT'S	09:25AM
11	IN THE BLACK BOOK.	
12	DO YOU SEE THAT THIS IS A DOCUMENT DATED	
13	SEPTEMBER 1, 2003?	
14	A. I DO.	
15	Q. AND DO YOU SEE, IF YOU WOULD LOOK AT PAGE -5,	09:25AM
16	DO YOU SEE MR. SONNEBORN'S AND MR. GUNDLACH'S	
17	SIGNATURES THERE?	
18	A. I DO.	
19	MR. QUINN: WE'D OFFER THIS, YOUR HONOR.	
20	MR. HELM: WE'LL HAVE NO OBJECTION TO HAVING	09:25AM
21	IT COME IN AT THE APPROPRIATE TIME, BUT I DON'T THINK	
22	THERE IS ANY FOUNDATION TO THIS WITNESS.	
23	GO AHEAD.	
24	THE COURT: IT WILL BE ADMITTED.	
25		09:26AM
26	(EXHIBIT 16 ADMITTED.)	
27		

MR. QUINN: IF WE COULD PUT THAT UP ON THE

1	SCREEN.		
2	Q.	CAN YOU IDENTIFY THIS DOCUMENT FOR US?	
3	Α.	I CAN.	
4	Q.	WHAT IS THIS?	
5	Α.	THIS IS MR. JEFFREY GUNDLACH'S CONTRACT, DATED	09:26AM
6	2003.		
7	Q.	AND DOES IT HAVE A TERM, AN EXPIRATION DATE?	
8	Α.	IT DOES.	
9	Q.	AND WHAT IS THAT?	
10	Α.	DECEMBER 31ST, 2007.	09:26AM
11	Q.	SO LET ME GO BACK TO MY QUESTION.	
12		AS OF MAY OF 2007, DID MR. GUNDLACH HAVE	
13	A WRITTEN	N AGREEMENT WITH TCW?	
14	Α.	HE DID.	
15	Q.	AND IS THAT WHAT YOU ARE LOOKING AT THERE?	09:26AM
16	Α.	THAT IS WHAT I'M LOOKING AT THERE, YES.	
17	Q.	AND THIS AGREEMENT ACTUALLY INCORPORATES, IF	
18	YOU LOOK	IN THE FIRST PARAGRAPH, IT INCORPORATES A LOT	
19	OF TERMS	FROM IT SAYS YOUR FORMER EMPLOYMENT	
20	AGREEMENT	r, DATED AS OF JANUARY 1, 1998.	09:26AM
21		DO YOU SEE THAT?	
22	Α.	I DO.	
23	Q.	AND COULD YOU TAKE A LOOK AT EXHIBIT 12-1,	
24	WHICH SHO	OULD BE IN THE FRONT OF THE WHITE BINDER, 12-1.	
25		AND CAN YOU IDENTIFY EXHIBIT 12?	09:27AM
26	Α.	YES, I CAN.	
27	Q.	WHAT IS EXHIBIT 12?	

THAT WAS MR. GUNDLACH'S PREVIOUS CONTRACT.

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Α.

MR. QUINN: WE'D OFFER THAT, YOUR HONOR.	
MR. HELM: NO OBJECTION.	
THE COURT: IT WILL BE ADMITTED.	
(EXHIBIT 12 ADMITTED.)	09:27AM
Q. BY MR. QUINN: SO IF WE COULD SHOW THE JURY,	
THIS IS DATED AS OF JANUARY 1, 1998?	
A. CORRECT.	
Q. AND IS THIS THE CONTRACT THAT'S INCORPORATED	09:27AM
BY REFERENCE IN EXHIBIT THE CONTRACT THAT WE WERE	
JUST LOOKING AT, EXHIBIT 16?	
IF WE CAN GO BACK AND PUT EXHIBIT 16-1	
UP THERE, AT THE TOP.	
A. YES, IT IS.	09:28AM
Q. I'D LIKE YOU TO PLEASE TAKE A LOOK AT EXHIBIT	
2150. IT SHOULD BE IN ONE OF THE STACKS YOU HAVE GOT	
THERE.	
CAN YOU IDENTIFY THIS DOCUMENT?	
A. YES.	09:28AM
Q. WHAT IS IT?	
A. IT'S AN E-MAIL FROM MR. CAHILL TO	
MR. GUNDLACH, SONNEBORN AND BEYER.	
MR. QUINN: WE'D OFFER THIS, YOUR HONOR.	
THE COURT: 2150.	09:28AM
ANY OBJECTION?	
MR. HELM: NO OBJECTION.	
	Ī
	MR. HELM: NO OBJECTION. THE COURT: IT WILL BE ADMITTED. (EXHIBIT 12 ADMITTED.) Q. BY MR. QUINN: SO IF WE COULD SHOW THE JURY, THIS IS DATED AS OF JANUARY 1, 1998? A. CORRECT. Q. AND IS THIS THE CONTRACT THAT'S INCORPORATED BY REFERENCE IN EXHIBIT THE CONTRACT THAT WE WERE JUST LOOKING AT, EXHIBIT 16? IF WE CAN GO BACK AND PUT EXHIBIT 16-1 UP THERE, AT THE TOP. A. YES, IT IS. Q. I'D LIKE YOU TO PLEASE TAKE A LOOK AT EXHIBIT 2150. IT SHOULD BE IN ONE OF THE STACKS YOU HAVE GOT THERE. CAN YOU IDENTIFY THIS DOCUMENT? A. YES. Q. WHAT IS IT? A. IT'S AN E-MAIL FROM MR. CAHILL TO MR. GUNDLACH, SONNEBORN AND BEYER. MR. QUINN: WE'D OFFER THIS, YOUR HONOR. THE COURT: 2150. ANY OBJECTION?

1	Q. BY MR. QUINN: THIS IS AN E-MAIL FROM	
2	MR. CAHILL DATED MAY 3, 2007, TO MR. GUNDLACH,	
3	MR. SONNEBORN, MR. BEYER AND MR AND LAZARUS SUN	
4	(PHONETIC) ARE COPIED ON IT, CORRECT?	
5	A. THAT'S CORRECT.	09:29AM
6	Q. AND IT SAYS, (READING):	
7	JEFFREY, BILL AND BOB,	
8	ATTACHED IS A DRAFT OF THE	
9	COMPENSATION AGREEMENT DRAFT FOR	
10	YOUR REVIEW. IT REFLECTS MY	09:29AM
11	CONVERSATION WITH BILL ABOUT THE	
12	GENERAL TERMS, AND MY SITTING DOWN	
13	WITH PETE SULLIVAN ON THE DETAILS.	
14	SO LOOK AT IT AS A DRAFT, SUBJECT	
15	TO ANY COMMENTS ON WHETHER THE	09:29AM
16	PROPOSAL IS ACCURATELY CAPTURED.	
17	DO YOU SEE THAT?	
18	A. I DO.	
19	Q. AND ATTACHED TO THAT, IS THERE A DRAFT OF A	
20	NEW FORM OF CONTRACT FOR MR. GUNDLACH?	09:29AM
21	A. THERE IS.	
22	Q. AND IT BEGINS WITH THE EXHIBIT A, DOESN'T IT?	
23	A. IT DOES.	
24	Q. AND THEN IF WE GO OVER TO PAGE -6, DO WE	
25	ACTUALLY SEE THE FORM OF AGREEMENT?	09:29AM
26	A. YES.	
07	O DO VOIL DECATE CAN VOIL MEET HO MILEMINED ME	

Q. DO YOU RECALL -- CAN YOU TELL US WHETHER -- WE

LOOKED AT THE PREVIOUS CONTRACT, WHICH WAS ENTERED INTO

27

1	IN 2003, WHICH IS EXHIBIT 16.	
2	THAT WAS TO EXPIRE AT THE END OF 2007;	
3	ISN'T THAT TRUE?	
4	A. THAT'S TRUE.	
5	Q. AND DO YOU HAVE ANY KNOWLEDGE WHY TCW AND	09:30AM
6	MR. GUNDLACH DECIDED TO START NEGOTIATING A NEW	
7	CONTRACT IN MAY, SOME SIX, SEVEN MONTHS, BEFORE HIS	
8	EXISTING CONTRACT WOULD EXPIRE, DO YOU KNOW?	
9	A. I DO NOT.	
10	Q. AND THEN IF WE COULD LOOK AT EXHIBIT 58-1,	09:30AM
11	WHICH SHOULD BE NEXT IN THE STACK.	
12	CAN YOU IDENTIFY THIS?	
13	A. I CAN.	
14	Q. WHAT IS IT?	
15	A. IT IS AN E-MAIL EXCHANGE BETWEEN JEFFREY AND	09:30AM
16	MYSELF.	
17	MR. QUINN: I WOULD OFFER THIS.	
18	MR. HELM: NO OBJECTION.	
19	THE COURT: IT WILL BE ADMITTED.	
20		09:30AM
21	(EXHIBIT 58-1 ADMITTED.)	
22		
23	Q. BY MR. QUINN: SO THE FIRST E-MAIL IS FROM YOU	
24	TO MR. GUNDLACH, DATED MAY 17TH.	
25	YOU WRITE, (READING):	09:31AM
26	JEFFREY, I HAVE NOT BEEN GIVEN	
27	A GREEN LIGHT ON THE NEW CONTRACT	
28	DEAL JUST YET. NOT EVEN SURE IF	

1	THERE'S A CONTRACT IN PLACE.	
2	AND YOU GO AHEAD AND ASK HIM SOME	
3	QUESTIONS.	
4	AND HE RESPONDS, (READING):	
5	THE NEW CONTRACT DEAL HAS NOT	09:31AM
6	BEEN FINALIZED, BUT I THINK IT WILL	
7	BE, BY MAY 31.	
8	MR. GUNDLACH WROTE TO YOU THAT THE NEW	
9	CONTRACT DEAL HAS NOT BEEN FINALIZED, BUT HE THINKS	
10	THEY MAY BE BY MAY 31.	09:31AM
11	WHAT DID YOU UNDERSTAND HIM TO BE	
12	REFERRING TO?	
13	MR. HELM: LACKS FOUNDATION, YOUR HONOR.	
14	THE COURT: HIS UNDERSTANDING, I'LL ALLOW IT.	
15	THE WITNESS: I'M SORRY. CAN YOU ASK THAT	09:31AM
16	AGAIN?	
17	MR. QUINN: YEAH.	
18	Q. WHEN YOU WROTE HERE, THE NEW OR I'M SORRY.	
19	WHEN MR. GUNDLACH WROTE TO YOU, THE NEW	
20	CONTRACT DEAL HAS NOT BEEN FINALIZED, BUT I THINK IT	09:31AM
21	WILL BE BY MAY 31, WHAT WAS YOUR UNDERSTANDING AS TO	
22	WHAT MR. GUNDLACH WAS REFERRING TO?	
23	A. THAT THERE WAS NO CONTRACT IN PLACE.	
24	Q. AND WHEN HE SAYS HE THINKS IT WILL BE BY	
25	MAY 31, WHAT WAS YOUR UNDERSTANDING AS TO WHAT THE "IT"	09:32AM
26	WAS?	
27	A. THAT HE WOULD SIGN IT BY THE END OF THE MONTH.	

AND AS OF THE TIME OF THIS E-MAIL EXCHANGE,

WERE YOU AWARE THAT MR. CAHILL AND MR. GUNDLACH AND 1 2 MR. SONNEBORN WERE SEPARATELY WORKING ON THIS FORM OF 3 WRITTEN CONTRACT, TO REPLACE THE EXISTING CONTRACT THAT 4 HE HAD? 5 Α. YES. 09:32AM O. IF WE COULD TURN NOW TO EXHIBIT 60. 6 7 IS THIS ANOTHER E-MAIL EXCHANGE WITH 8 MR. GUNDLACH AND MR. CAHILL, ON WHICH YOU WERE COPIED? 9 NOT ON THE TOP E-MAIL, NO. Α. BUT ON THE MIDDLE ONE? 10 Q. 09:32AM ON THE MIDDLE ONE, I'M COPIED, YES. 11 Α. 12 MR. QUINN: WE'D OFFER THIS, YOUR HONOR. 13 MR. HELM: NO OBJECTION. THE COURT: IT WILL BE ADMITTED. 14 Q. BY MR. QUINN: AND WHAT WE HAVE HERE AT THE 15 09:33AM 16 BOTTOM HERE, THE MAY 3 E-MAIL FROM MR. CAHILL, THAT'S 17 THE E-MAIL WE WERE JUST LOOKING AT NOW -- OR WE LOOKED 18 AT EARLIER, WHERE HE SAID, ATTACHED IS A COPY OF THE 19 DRAFT OF THE COMPENSATION AGREEMENT FOR YOUR REVIEW. 20 DO YOU SEE THAT? 09:33AM 21 Α. I DO. 22 AND THEN MR. CAHILL, ON THIS E-MAIL, HE 23 RESENDS IT TO MR. GUNDLACH, CORRECT? 24 A. I SEE THAT. 25 DID YOU RECALL THAT THERE HAD BEEN A -- DO YOU 0.

09:33AM

RECALL WHETHER THERE WAS AN ISSUE ABOUT MR. CAHILL

HAVING SENT A DRAFT OF THE CONTRACT TO MR. GUNDLACH,

AND MR. GUNDLACH NOT HAVING RESPONDED TO THAT, OR GIVEN

26

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		I
1	COMMENTS?	
2	A. YES.	
3	Q. ALL RIGHT. IF YOU WOULD LOOK AT EXHIBIT 61.	
4	THIS IS IN EVIDENCE.	
5	THAT MR. HELM ASKED YOU ABOUT THIS	09:33AM
6	YESTERDAY.	
7	THE BOTTOM E-MAIL, FROM MR. CAHILL TO	
8	MR. GUNDLACH, WHERE THIS IS NOW MAY 25, 2007,	
9	MR. CAHILL WRITES, (READING):	
10	JEFFREY, I HEARD YOU SPOKE	09:34AM
11	WITH BILL TODAY, AND THE \$2 MILLION	
12	ADJUSTMENT FOR 2007 IS GOING TO BE	
13	DECREASED TO ONE MILLION.	
14	I WILL MAKE THAT CHANGE ONCE	
15	YOU SIGN OFF ON THE DOCUMENT, AND	09:34AM
16	CONFIRM YOU ARE OKAY WITH THE REST	
17	OF IT.	
18	NOW, WHAT DID YOU UNDERSTAND HE WAS	
19	REFERRING, TO WHEN HE SAYS, ONCE YOU SIGN OFF ON THE	
20	DOCUMENT?	09:34AM
21	A. THAT HE WAS TRYING TO GET HIM TO SIGN THE	
22	CONTRACT.	
23	Q. DID YOU UNDERSTAND HE WAS REFERRING TO ONE OF	
24	THE MODELS THAT YOU HAD BEEN PREPARING, THAT HE WAS	
25	TRYING TO GET HIM TO SIGN OFF ON A MODEL?	09:34AM
26	A. NO.	
27	Q. AND HE SAYS ALSO, THERE'S A FEE SHARING	

PAYMENT COMING UP SOON. AND WE WILL NEED TO KNOW IF WE

1	GO UNDER THE NEW ARRANGEMENT.	
2	DO YOU KNOW WHAT HE'S REFERRING TO BY	
3	THE FEE SHARING PAYMENT DUE COMING UP SOON?	
4	A. YES.	
5	Q. WHAT IS THAT?	09:34AM
6	A. IT'S A QUARTERLY FEE SHARING PAYMENT THAT	
7	WOULD BE DUE ON MAY 31ST, FOR THE FIRST QUARTER.	
8	Q. AND THIS IS DATED MAY 25?	
9	A. THAT'S CORRECT.	
10	Q. AND SO WAS THERE A DECISION THAT HAD TO BE	09:35AM
11	MADE?	
12	A. YES.	
13	Q. AND WHAT WAS THAT?	
14	A. WERE THEY TO PAY UNDER THE NEW ARRANGEMENT	
15	GIVEN WHETHER THERE WAS A CONTRACT OR NOT, OR GIVEN	09:35AM
16	WHETHER AND WE AGREED TO GO AHEAD AND PAY A NEW	
17	ARRANGEMENT WITHOUT A CONTRACT.	
18	Q. AND IT GOES ON MR. CAHILL GOES ON TO SAY,	
19	ON THE NEXT PAGE, MIKE. (READING):	
20	CAN YOU CONFIRM WITH ME THAT	09:35AM
21	YOU WANT IT PAID OUT ON THE NEW	
22	ARRANGEMENT, ASSUMING WE DON'T GET	
23	THIS FINALIZED TUESDAY.	
24	DO YOU SEE THAT?	
25	A. YES.	09:35AM
26	Q. AND WHEN HE SAYS, ASSUMING WE DON'T GET THIS	
27	FINALIZED, WHAT DID YOU UNDERSTAND THE "THIS" WAS?	
0.0		

DID YOU THINK HE WAS REFERRING TO A

MODEL? 1 2 A. NO. 3 WHAT DID YOU UNDERSTAND HE WAS REFERRING TO, Q. 4 WHEN HE SAID, ASSUMING WE DON'T GET THIS FINALIZED 5 TUESDAY? 09:35AM A. WE DON'T GET THE CONTRACT FINALIZED BY 6 7 TUESDAY. 8 Q. AND MR. GUNDLACH RESPONDED, YES, WE SHOULD GO 9 UNDER THE NEW ARRANGEMENT. EVERYONE HAS AGREED TO 10 EVERYTHING IN GOOD FAITH. 09:36AM WHEN HE SAID HERE, EVERYONE HAS AGREED 11 12 TO EVERYTHING IN GOOD FAITH, WHAT DID YOU UNDERSTAND HE 13 WAS REFERRING TO? 14 A. THAT JEFFREY THOUGHT EVERYONE HAD AGREED IN 15 GOOD FAITH. 09:36AM 16 O. TO WHAT? 17 Α. TO A NEW DEAL. Q. TO THE FEE SHARING DEAL? 18 19 A. YEAH. 20 Q. AND THEN HE SAYS, MR. GUNDLACH SAYS, AT THE 09:36AM 21 END, I PROMISE I WILL LOOK AT THE DOCUMENT CAREFULLY 22 OVER THE WEEKEND. 23 WHAT DID YOU UNDERSTAND THE DOCUMENT TO BE THAT MR. GUNDLACH SAYS HE WILL LOOK AT CAREFULLY 24 25 OVER THE WEEKEND? 09:36AM

I THINK YESTERDAY, IN RESPONSE TO ONE OF

Q. AND THEN MR. CAHILL'S RESPONSE IS, THANKS.

THE DRAFT OF THE CONTRACT.

26

27

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Α.

MR. HELM'S QUESTIONS, YOU INDICATED THAT YOU THOUGHT 1 2 THAT THANKS, WAS REFERRING TO SOMETHING DIFFERENT THAN 3 WE'LL GO INTO THE NEW ARRANGEMENT. 4 DO YOU RECALL THAT QUESTION AND ANSWER 5 YESTERDAY? 09:36AM 6 A. YES. 7 O. WHAT DID YOU UNDERSTAND MR. CAHILL WAS THANKING HIM FOR? 8 9 MR. HELM: LACKS FOUNDATION. 10 THE COURT: SUSTAINED. 09:37AM 11 Q. BY MR. QUINN: WELL, DID YOU UNDERSTAND THAT 12 MR. CAHILL WAS WORKING WITH MR. GUNDLACH ON THE TERMS 13 OF A WRITTEN CONTRACT? 14 Α. YES. 15 Q. AND DID YOU UNDERSTAND THAT MR. CAHILL WAS 09:37AM 16 SENDING DRAFTS TO MR. GUNDLACH, AND ASKING FOR HIS 17 TNPUT? 18 A. YES. Q. AND THEN IF WE COULD LOOK AT EXHIBIT 63. 19 20 THE BOTTOM E-MAIL HERE, FROM YOU TO 09:37AM MR. SONNEBORN, IT SAYS, BILL, PAYROLL MBS/CMG FEE 21 22 SHARING CHECKS ARE READY TO GO. GUNDLACH SAYS WE HAVE 23 A HANDSHAKE AGREEMENT FOR A NEW DEAL. 24 SONIA CHECK NEEDS TO BE SENT OVERNIGHT 25 TO NEW YORK THIS AFTERNOON. 09:38AM

WE GOOD TO GO WITH NEW DEAL?

26

THAT'S WHAT YOU WROTE TO MR. SONNEBORN?

IS THERE A CONTRACT IN PLACE? AND ARE

1 Α. CORRECT. 2 0. AND MR. SONNEBORN'S RESPONSE, AS OF MAY 30, IS 3 WHAT? 4 NO CONTRACT YET. BUT GOOD TO GO ON THE NEW Α. 5 FEE SHARING ARRANGEMENT. 09:38AM RIGHT. SO WAS IT YOUR UNDERSTANDING YOU WERE 6 Ο. BEING TOLD THAT, IN TERMS OF THE ECONOMICS, IT WAS OKAY 7 8 TO GO AHEAD AND PAY, BASED ON THAT FEE SHARING DEAL 9 WHICH HAD BEEN DISCUSSED WITH MR. GUNDLACH? 10 Α. YES. 09:38AM 11 AND THEN IF WE COULD LOOK AT EXHIBIT 66, AND Ο. 12 YOU IDENTIFY THIS AS AN E-MAIL BETWEEN MR. CAHILL, 13 MR. GUNDLACH, MR. BEYER, MR. SONNEBORN, ON WHICH YOU 14 WERE COPIED? 15 A. YES. 09:38AM MR. QUINN: I'D OFFER THIS, YOUR HONOR. 16 17 MR. HELM: NO OBJECTION. 18 THE COURT: IT WILL BE ADMITTED. 19 MR. QUINN: IF WE PUT THAT UP ON THE SCREEN. 20 0. WE'RE NOW -- THIS IS DATED JUNE 7TH, 2007? 09:39AM 21 Α. YES. 22 Q. THAT FEE SHARING CHECK FOR THE FIRST QUARTER, 23 BY NOW, HAVE YOU PAID IT? 24 Α. YES. 25 AND HAVE YOU PAID IT UNDER THE FORMULA THAT Q. 09:39AM 26 HAD BEEN DISCUSSED AND AGREED TO WITH MR. GUNDLACH? 27 THAT IS CORRECT. Α.

28

Q. AND MR. CAHILL WRITES HERE, JEFFREY, BILL AND

BOB, HERE IS A REVISED FORM OF AGREEMENT WITH THE 1 2 ATTACHMENT FOR JEFFREY'S AGREEMENT, BOTH MARKED TO SHOW 3 CHANGES FROM THE LAST DRAFT. 4 THIS REFLECTS THE LATEST DISCUSSIONS 5 I'VE HAD WITH ALL OF YOU. PLEASE LET ME KNOW IF THIS 09:39AM REFLECTS THINGS IN ACCEPTABLE FORM TO ALL. I'M 6 7 AVAILABLE TO DISCUSS TOMORROW. 8 DO YOU SEE THAT? 9 Α. YES. Q. AND ATTACHED TO THAT, IF WE COULD LOOK AT THE 10 09:39AM 11 PAGE -2, IS ANOTHER FORM OF THE AGREEMENT, WHICH HAS 12 SOME LANGUAGE UNDERLINED, AND SOME OTHER INDICATIONS? 13 Α. YES. 14 Q. AND DO YOU HAVE AN UNDERSTANDING AS TO WHAT 15 THOSE ARE, WHEN THERE'S SOME AGREEMENT LIKE THIS, WHERE 09:40AM 16 YOU HAVE STRIKEOUTS, LIKE WE HAVE DOWN THERE AT THE 17 ВОТТОМ? 18 IF YOU CAN MOVE THAT UP A LITTLE BIT, 19 MIKE. 20 STRIKE OUTS AND THINGS UNDERLINED, AND 09:40AM 21 THINGS LIKE THAT? 22 YES. LEGAL REFERS TO THAT AS RED-LINING. Α. Q. AND WHAT DOES THAT MEAN? 23 24 THAT MEANS THEY ARE STILL IN THE PROCESS OF Α. 25 WORKING OUT CERTAIN CONTRACT LANGUAGE. AND THEY ARE 09:40AM 26 SHOWING WHAT THEY'VE CROSSED OUT OR CHANGED IN, WHILE

Q. AND IS THAT SOMETIMES REFERRED TO AS A DRAFT

THEY ARE MOVING THE DOCUMENT AROUND.

27

1	THAT'S MARKED TO SHOW CHANGES FROM THE PREVIOUS DRAFT?	
2	A. YES.	
3	Q. AND DID YOU ACTUALLY HAVE A COPY OF THIS	
4	DOCUMENT IN YOUR FILE?	
5	A. YES, I DID.	09:40AM
6	Q. AND IF WE LOOK AT THE PAGE -6, WE ACTUALLY	
7	WE SEE A SIGNATURE LINE THERE FOR TRUST COMPANY OF THE	
8	WEST, RIGHT?	
9	A. YES.	
10	Q. AND THEN ON PAGE -7, THERE'S A SIGNATURE LINE	09:41AM
11	FOR MR. GUNDLACH?	
12	A. YES.	
13	Q. IF WE COULD LOOK AT PAGE 6 AND 7, MIKE6,	
14	-7. THERE WE ARE.	
15	AND IF WE GO BACK TO PAGE 66-6, THE LAST	09:41AM
16	LINE PARAGRAPH THERE SAYS, (READING):	
17	IF YOU AGREE TO AND ACCEPT THE	
18	FOREGOING, PLEASE SO INDICATE BY	
19	SIGNING THIS AGREEMENT IN THE SPACE	
20	PROVIDED BELOW, AND RETURNING A	09:41AM
21	SIGNED COPY TO US.	
22	UPON ACCEPTANCE BY YOU, THIS	
23	AGREEMENT WILL BECOME OUR AGREEMENT	
24	AS TO THE TERMS AND CONDITIONS OF	
25	YOUR EMPLOYMENT.	09:41AM
26	DO YOU SEE THAT?	
27	A. I DO.	
0.0		

Q. DID MR. GUNDLACH EVER SIGN HIS CONTRACT?

1 A. NO. 2 0. NOW, IS MR. GUNDLACH THE ONLY PORTFOLIO 3 MANAGER WHO HAD A FEE SHARING DEAL, BUT NOT A SIGNED 4 CONTRACT? 5 Α. NO, HE'S NOT. 09:42AM Q. CAN YOU NAME FOR US, OTHER PORTFOLIO MANAGERS 6 7 WHO HAD FEE SHARING DEALS, BUT NO SIGNED CONTRACTS; 8 THEIR CONTRACTS EXPIRED WITHOUT ENTERING INTO A NEW 9 ONE? 10 A. SURE. 09:42AM 11 Q. WHO? 12 TOM MCKISSICK, JOHN SCHNEIDER, DENNY FOLLY, Α. 13 DAVID ROBBINS, JEAN-MARC CHAPUS, MARK ATTANASIO, MELISSA WEILER, MICHAEL PARKS, JAMES HASSUP, JOHN 14 15 ENSIL, MATTHEW MILLER, JOHN FECHETTI, AND I'M PROBABLY 09:42AM 16 LEAVING OUT A FEW. 17 Q. DIANE JAFFEE? 18 DIANE JAFFEE. Α. O. SO IF SOMEBODY'S CONTRACT EXPIRES AND THEY 19 20 DON'T ENTER INTO A NEW ONE, THAT'S SOMETHING THAT 09:43AM 21 HAPPENS AT TCW? 22 IT'S PRETTY COMMON. Α. 23 O. AND DO YOU STILL PAY THEM? 24 A. YES, I DO. 25 YOU STILL PAY THEM FEE SHARING? Q. 09:43AM 26 Α. YES. 27 O. YOU STILL HAVE AN UNDERSTANDING WITH THEM

ABOUT A FEE SHARING FORMULA?

1	A. YES.	
2	Q. AND IN TERMS OF THEIR EMPLOYMENT STATUS, HAVE	
3	THEY COMMITTED TO STAY THERE AND WORK AT TCW FOR SOME	
4	NUMBER OF YEARS IN THE FUTURE?	
5	MR. HELM: LACKS FOUNDATION.	09:43AM
6	THE COURT: SUSTAINED.	
7	Q. BY MR. QUINN: WELL, HOW IS IT THAT YOU KNOW	
8	WHAT YOU JUST TOLD US ABOUT THESE PORTFOLIO MANAGERS	
9	WHO HAVE FEE SHARING ARRANGEMENTS, BUT THEY DON'T HAVE	
10	CONTRACTS?	09:43AM
11	HOW IS IT THAT YOU KNOW THAT?	
12	A. I HAVE THEIR CONTRACTS. I KNOW IF THEY'VE	
13	EXPIRED OR NOT.	
14	AND I WOULD KNOW IF THEY WERE AN AT-WILL	
15	EMPLOYEE OR NOT.	09:44AM
16	Q. ARE YOU THE ONE WHO ACTUALLY DOES THE FEE	
17	SHARING COMPUTATIONS FOR ALL THOSE FOLKS?	
18	A. YES.	
19	Q. AND DO YOU MAINTAIN THE FILES ON FEE SHARING	
20	FOR ALL THESE FOLKS?	09:44AM
21	A. YES.	
22	Q. AND IF THERE ARE CONTRACTS, YOU HAVE COPIES OF	
23	THEM?	
24	A. YES.	
25	Q. NOW, YOU JUST SAID, YOU KNOW IF THEY ARE AT	09:44AM
26	WILL OR NOT.	
27	WHAT DO YOU MEAN BY THAT?	
28	A. ONCE THEIR CONTRACT EXPIRES, THEY WOULD BECOME	

1	AN AT-WILL EMPLOYEE, JUST LIKE ANYONE ELSE WITHOUT A	
2	CONTRACT.	
3	MR. HELM: YOUR HONOR, MOVE TO STRIKE. LACKS	
4	FOUNDATION.	
5	THE COURT: I'LL STRIKE THE RESPONSE.	09:44AM
6	Q. BY MR. QUINN: IS IT YOUR UNDERSTANDING THAT	
7	THERE ARE PORTFOLIO MANAGERS AT TCW WHO ARE AT-WILL	
8	EMPLOYEES?	
9	MR. HELM: LACKS FOUNDATION.	
10	THE COURT: SUSTAINED.	09:44AM
11	Q. BY MR. QUINN: ARE THERE PORTFOLIO MANAGERS AT	
12	TCW WHO HAVE NOT AGREED TO STAY AT TCW FOR SOME DEFINED	
13	NUMBER OF YEARS?	
14	MR. HELM: LACKS FOUNDATION.	
15	THE COURT: SUSTAINED.	09:44AM
16	Q. BY MR. QUINN: WELL, LET'S TAKE A LOOK AT 66-2	
17	TERM, NUMBERED PARAGRAPH ONE OF MR. GUNDLACH'S UNSIGNED	
18	CONTRACT.	
19	IT SAYS (READING):	
20	THE COMPANY AGREES TO EMPLOY	09:45AM
21	YOU, AND YOU AGREE TO SERVE THE	
22	COMPANY, ON THE TERMS DESCRIBED IN	
23	THIS AGREEMENT. THIS AGREEMENT	
24	WILL BE EFFECTIVE AS OF JANUARY 1,	
25	2007, (THE COMMENCEMENT DATE).	09:45AM
26	SO THIS WAS CONTEMPLATED TO BE	
27	RETROACTIVE TO JANUARY 1?	

A. THAT'S CORRECT.

1	Q. AND WILL CONTINUE UNTIL THE CLOSE OF BUSINESS	
2	ON DECEMBER 31, 2011, OR UNTIL TERMINATED, AS PROVIDED	
3	IN SECTION SIX BELOW.	
4	DO YOU SEE THAT?	
5	A. YES.	09:45AM
6	Q. WAS IT YOUR UNDERSTANDING, IF MR. GUNDLACH	
7	SIGNED THIS, IT WAS COMMITTING TO STAY AT TCW UNTIL	
8	DECEMBER 31, 2007?	
9	A. YES.	
10	MR. HELM: LACKS FOUNDATION.	09:45AM
11	THE COURT: SUSTAINED.	
12	I'LL STRIKE THE RESPONSE.	
13	Q. BY MR. QUINN: WELL, IF HE HAD SIGNED THIS,	
14	COULD HE GO TO WAMCO AND WORK BEFORE, 2011?	
15	MR. HELM: LACKS FOUNDATION.	09:46AM
16	THE COURT: SUSTAINED.	
17	WOULD YOU APPROACH, PLEASE.	
18		
19	(THE FOLLOWING PROCEEDINGS	
20	WERE HELD AT SIDEBAR:)	09:46AM
21		
22	THE COURT: MR. QUINN, YOU SPENT A	
23	CONSIDERABLE AMOUNT OF EFFORT ESTABLISHING THE FACT	
24	THAT THIS GUY JUST CRUNCHED THE NUMBERS, AND DIDN'T	
25	HAVE ANY INVOLVEMENT IN NEGOTIATING, OR ANYTHING ELSE.	09:46AM
26	AND NOW, YOU WANT TO HAVE LEGAL OPINIONS FROM HIM ON A	
27	LOT OF POINTS. AND I'LL SAY, IT'S JUST NOT CONSISTENT.	
28	YOU CAN BRING MR. CAHILL BACK, YOU CAN	

BRING SOMEBODY BACK THAT HAS THAT KNOWLEDGE; BUT YOU 1 2 MAY NOT TESTIFY FROM THE AGREEMENTS ABOUT WHAT YOU 3 THINK ABOUT THEM. AND YOU CAN'T JUST ELICIT ANSWERS 4 FROM THIS MAN WHO YOU'VE BASICALLY ESTABLISHED DOESN'T 5 HAVE THE FOUNDATION OR THE BACKGROUND OR THE 09:46AM 6 INVOLVEMENT TO TESTIFY ON THESE LEVEL ISSUES. 7 THAT'S MY VIEW. 8 MR. OUINN: I THINK THERE'S A DISTINCTION TO 9 BE DRAWN BETWEEN HAVING NO ROLE IN THE NEGOTIATING OF 10 THE TERMS OF THE CONTRACT, WHICH IS WHAT I WAS SEEKING 09:47AM 11 TO ESTABLISH, VERSUS HAVING NO UNDERSTANDING ABOUT WHAT 12 THE CONTRACT TERMS THAT HE'S ULTIMATELY PRESENTED WITH 13 MEAN. THERE'S A DIFFERENCE THERE. 14 THE COURT: BUT YOU ARE ASKING FOR LEGAL 15 CONCLUSIONS, AND WANTING HIM TO ADOPT SOMETHING THAT 09:47AM 16 ULTIMATELY IS FOR THIS JURY TO DECIDE, WHETHER HE WAS 17 AN EMPLOYEE WITH A CONTRACT OR AN AT-WILL EMPLOYEE. 18 AND HIS OPINION ON THAT IS OF NO RELEVANCE OR NO VALUE. AND SO TO ELICIT THOSE 19 20 STATEMENTS FROM HIM IS INAPPROPRIATE, IN MY VIEW. 09:47AM 21 MR. BRIAN: IT'S ARGUMENTATIVE AND CUMULATIVE, 22 YOUR HONOR. THE EVIDENCE IS IN. MR. QUINN IS GOING TO 23 ARGUE HIS POINTS TO THE JURY. 24 THE COURT: I UNDERSTAND. 25 AND JUST AS AN ASIDE, WE MADE A BIG DEAL 09:47AM 26 YESTERDAY OUT OF THE PRIVACY RIGHTS OF THESE PEOPLE,

AND THEN IN YOUR EXAMINATION, YOU WANTED TO PUT UP JUST

WHAT YOU SAID CAN'T BE SHOWN, AND NEEDS TO BE REDACTED.

27

1	AND I FIND THAT SOMEWHAT INAPPROPRIATE,	
2	IS A NICE WAY TO PUT IT.	
3	MR. QUINN: YOUR HONOR, I THINK THERE WAS AN	
4	UNDERSTANDING BETWEEN MR. HELM AND I ABOUT THAT. I HAD	
5	UNDERSTOOD WE THERE WASN'T TIME TO DO THE	09:48AM
6	REDACTIONS, SO THAT WE WOULD JUST NOT STREAM IT. I	
7	DIDN'T HAVE A PROBLEM SHOWING IT TO THE JURY, BUT WE	
8	JUST DIDN'T HAVE TIME	
9	THE COURT: WELL, MAYBE I MISSED THE POINT. I	
10	THOUGHT THERE WAS AN ISSUE MADE YESTERDAY ABOUT THE	09:48AM
11	PRIVACY RIGHTS, AND WANTING TO HAVE THESE REDACTED, AND	
12	NOT ALLOWING MR. HELM TO USE THEM.	
13	AND THEN YOU COME OUT WITH YOUR	
14	CROSS-EXAMINATION AND IMMEDIATELY PUT THEM UP, WITHOUT	
15	ANY CONCERN. I FOUND THAT A LITTLE DISCONCERTING.	09:48AM
16	THAT'S ALL RIGHT. THIS IS AN ONGOING	
17	CONCEPT.	
18	MR. QUINN: I DON'T WANT YOU TO THINK I WAS	
19	TRYING TO PULL A FAST ONE, ALTHOUGH WE HAD	
20	THE COURT: IT'S ALL RIGHT.	09:48AM
21	AND I'M SORRY, BUT LET'S GO ABOUT OUR	
22	BUSINESS NOW. OKAY.	
23		
24	(THE FOLLOWING PROCEEDINGS	
25	WERE HELD IN OPEN COURT IN	09:48AM
26	THE PRESENCE OF THE JURY:)	
27		

Q. BY MR. QUINN: IF WE COULD GO TO 66-2, WHICH

1	IS WHERE I THINK WE ARE. IN THE UPPER LEFT.	
2	THIS DOESN'T COPY WELL, BUT THERE	
3	APPEARS TO BE SOME LANGUAGE OR SOME WORDS UP THERE.	
4	CAN YOU MAKE THAT OUT, IF WE ENLARGE	
5	THAT IN THAT BAR UP THERE, MIKE, IN THE UPPER LEFT?	09:49AM
6	A. YES.	
7	Q. CAN YOU SEE WHAT THAT SAYS?	
8	A. I CAN.	
9	Q. AND WHAT DOES THAT SAY?	
10	A. IT SAYS DRAFT, AND THEN THERE'S SOME REDACTING	09:49AM
11	GOING ON.	
12	ORIGINALLY IT SAID 5-3-07 AS A DATE.	
13	AND IT CHANGES IT TO 6-6-07 AS A DATE.	
14	Q. THANK YOU, MIKE. WE CAN TAKE THAT DOWN.	
15	YOU'VE BEEN ASKED A NUMBER OF QUESTIONS	09:50AM
16	ABOUT THIS POOL THAT'S CREATED PURSUANT TO EXHIBIT A.	
17	WE CAN GO BACK TO THAT LAST DRAFT. I'M	
18	SORRY, MIKE. 66-9?	
19	A. YES.	
20	Q. 66-9.	09:50AM
21	COULD YOU EXPLAIN TO THE JURY, JUST IN	
22	GENERAL TERMS, WHAT IS THE MONEY THAT FIRST OFF,	
23	WHAT IS THE MULTI-SECTOR FIXED INCOME PROFIT SHARING	
24	POOL?	
25	WHAT IS THE POOL?	09:50AM
26	A. IT IS A POOL THAT TCW HAS SET ASIDE TO PAY	
27	THIS PARTICULAR PORTFOLIO GROUP.	

AND WHERE DOES THAT MONEY COME FROM?

1	A. IT COMES FROM TCW.	
2	Q. AND DOES THAT COME FROM FEES THAT ARE PAID BY	
3	CLIENTS?	
4	A. THAT'S CORRECT.	
5	Q. NOW, DOES MR UNDER YOU ARE THE ONE WHO	09:50AM
6	ACTUALLY CUTS THE FEE SHARING CHECKS, AS I UNDERSTAND	
7	IT?	
8	A. YES.	
9	Q. AND YOU DO THE CALCULATIONS?	
10	A. YES.	09:50AM
11	Q. DOES MR. GUNDLACH ACTUALLY GET A PERCENTAGE OF	
12	THE REVENUE THAT GOES INTO THE POOL?	
13	A. NO, HE DID NOT.	
14	Q. AND COULD YOU EXPLAIN THAT?	
15	A. MR. GUNDLACH ACTUALLY RECEIVES THE RESIDUAL OF	09:51AM
16	THE POOL, AFTER ALL THE EXPENSES ARE COVERED.	
17	Q. SO THERE'S A PERCENTAGE EXPRESSED HERE. WE	
18	SEE THOSE ALONG THE RIGHT-HAND SIDE.	
19	ARE THOSE THE PERCENTAGES THAT HAVE BEEN	
20	USED IN CALCULATING FEE SHARING PAYMENTS?	09:51AM
21	MR. HELM: VAGUE AND AMBIGUOUS.	
22	THE COURT: SUSTAINED.	
23	I THINK JUST THE WAY YOU CHARACTERIZE	
24	IT, IN VIEW OF YOUR EARLIER QUESTION, I THINK IT NEEDS	
25	TO BE	09:51AM

Q. THAT RIGHT-HAND COLUMN THERE, FEE SHARING

RATE, ARE THOSE THE PERCENTAGES THAT WERE USED WHILE

MR. QUINN: LET ME TRY AGAIN.

26

27

MR. GUNDLACH AND HIS -- AND ALL THE OTHER MEMBERS OF 1 2 HIS TEAM WERE THERE TO CALCULATE WHAT GOES INTO THE 3 REVENUE SHARING POOL? 4 Α. YES. 5 Ο. AND THEN WHAT HAPPENS TO THE MONEY THAT GOES 09:51AM 6 INTO THAT POOL? 7 WELL, SOME EXPENSES ARE PUT AGAINST IT. 8 WHAT EXPENSES ARE -- YOU SAY PUT AGAINST IT. Q. 9 YOU MEAN THEY GET PAID OUT OF IT? 10 THERE ARE EXPENSES THAT HAVE ALREADY BEEN Α. 09:52AM 11 INCURRED, THAT NEED TO BE RECORDED AGAINST THIS POOL. 12 THERE ARE ALSO CERTAIN EXPENSES THAT ARE 13 ABOUT TO BE INCURRED THAT GO AGAINST THIS POOL, AS 14 WELL. 15 Q. AND DID THOSE EXPENSES INCLUDE THE COSTS OF 09:52AM 16 CERTAIN EMPLOYEES IN THE GROUP? 17 YES. Α. 18 AND WHO PAYS THOSE EMPLOYEES? Q. 19 A. TCW. 20 Ο. WHO DETERMINES HOW MUCH THEY ARE PAID? 09:52AM 21 Α. JEFFREY GUNDLACH. 22 Q. AND MR. GUNDLACH, I THINK YOU SAID, GETS THE 23 RESIDUAL AMOUNT?

Q. IS THAT KIND OF SELF-EVIDENT, WHAT THAT MEANS? 09:52AM

A. IT IS TO ME.

CORRECT.

Α.

24

26

Q. NOW, CAN YOU TELL US, WHEN MR. GUNDLACH -- DID

MR. GUNDLACH HAVE THE ABILITY TO DECIDE WHEN PEOPLE IN

1	HIS GROUP WOULD RECEIVE FEE SHARING, IF THERE WERE FEES	
2	TO BE SHARED?	
3	A. YES.	
4	Q. AND WHEN DID HE DECIDE TO PAY FEE SHARING TO	
5	THE FOLKS IN HIS GROUP?	09:53AM
6	A. TO HIS STAFF, HE TYPICALLY PAID AT YEAR END,	
7	IF THEY DIDN'T HAVE THE DIRECT PERCENTAGE.	
8	Q. AND YOU MENTIONED, IN RESPONSE TO MR. HELM'S	
9	QUESTIONS, THERE WERE SOME PEOPLE WHO DID HAVE A DIRECT	
10	PERCENTAGE?	09:53AM
11	A. YES.	
12	Q. IF WE COULD LOOK AT EXHIBIT 5030. 5-0-3-0.	
13	CAN YOU IDENTIFY THIS DOCUMENT?	
14	A. YES.	
15	Q. WHAT IS IT?	09:53AM
16	A. THAT IS THE FIRST FEE SHARING STATEMENT THAT	
17	WAS CREATED AND PAID FROM UNDER THE NEW ARRANGEMENT.	
18	Q. BACK IN MAY OF 2007?	
19	A. YES. IT'S THE PAYMENTS THAT WERE MADE ON	
20	MAY 31ST, 2007, REFLECTING THE MARCH 31 POOL.	09:53AM
21	MR. QUINN: AND THAT IS WE'D OFFER THAT IN	
22	EVIDENCE, YOUR HONOR.	
23	MR. HELM: NO OBJECTION.	
24	THE COURT: IT WILL BE ADMITTED.	
25		09:53AM
26	(EXHIBIT 5030 ADMITTED.)	
27		

BY MR. QUINN: AND IF WE COULD JUST SHOW THE

JURY WHAT WE'RE LOOKING AT HERE. 1 2 MR. HELM ASKED YOU A OUESTION YESTERDAY 3 ABOUT WHETHER YOU PAID OFF THE MODELS. 4 DO YOU RECALL BEING ASKED THAT QUESTION? 5 Α. YES. 09:54AM 6 O. AND YOU SAID YOU DID NOT? 7 Α. CORRECT. 8 COULD YOU EXPLAIN THAT? Q. 9 THE MODEL IS JUST A FORECASTING METHOD, MAKING Α. 10 SURE WE'RE ALL COMFORTABLE WITH WHAT WE'RE LOOKING AT 09:54AM 11 UNDER DIFFERENT SCENARIOS AND ASSUMPTIONS. 12 THE FEE SHARING STATEMENT IS THE ACTUAL 13 CALCULATION FOR ANY GIVEN POINT IN TIME. Q. AND IS THIS A STATEMENT THAT WAS USED TO MAKE 14 15 THAT FIRST FEE SHARING PAYMENT BACK IN 2007, UNDER THE 09:54AM 16 NEW FORMAT? 17 THAT IS CORRECT. Α. 18 A MOMENT AGO, YOU SAID MR. GUNDLACH HAD THE --0. 19 THAT HIS PRACTICE WAS TO PAY PEOPLE IN HIS GROUP YEAR 20 END? 09:54AM 21 Α. YES. 22 Q. AND BY YEAR END, YOU MEAN WHAT PERIOD OF TIME? 23 A. SPECIFICALLY BE ON THE -- AROUND THE END OF 24 FEBRUARY TIME FRAME. 25 AND WHY WAS IT THAT THEY WERE -- WHY THEN? Q. 09:54AM

26 WHY WERE THOSE FEE SHARING PAYMENTS MADE
27 THEN?
28 A. THAT WAS AT HIS DISCRETION TO DO.

11. IIIII WIID III IIID DIDCKEIION IO DO

1	Q. MR. HELM SHOWED YOU EXHIBIT 5179-18.	
2	IF WE COULD PUT THAT UP, AND BLOW UP	
3	THOSE COLUMNS THAT REFER TO MR. GUNDLACH.	
4	AND A CONTRACT EXPIRATION DATE OF	
5	DECEMBER 31, 2011.	09:55AM
6	DO YOU SEE THAT? MR. HELM ASKED YOU	
7	ABOUT THAT?	
8	A. YES.	
9	Q. AND DID YOU CREATE THIS DOCUMENT?	
10	A. I DID.	09:55AM
11	Q. DID MR. GUNDLACH HAVE A CONTRACT THAT EXPIRED	
12	DECEMBER 31, 2011?	
13	A. NO.	
14	MR. HELM: OBJECTION. FOUNDATION, YOUR HONOR.	
15	THE COURT: SUSTAINED. I'LL STRIKE THE	09:56AM
16	RESPONSE.	
17	Q. BY MR. QUINN: WELL, DID YOU LATER MAKE A	
18	DID YOU REGARD THIS AS AT THE TIME THAT YOU DID	
19	YOU COME TO LEARN THAT THIS WAS A MISTAKE?	
20	A. YES.	09:56AM
21	Q. AND DID YOU CORRECT THIS DOCUMENT?	
22	A. YES.	
23	Q. IF YOU WOULD TAKE A LOOK AT EXHIBIT 1741.	
24	WHAT IS THIS?	
25	A. THAT'S AN ADDITIONAL VERSION OF WHAT WE WERE	09:56AM
26	LOOKING AT PREVIOUSLY.	
27	Q. AND THIS IS DATED WHAT DAY?	

JULY 21ST, 2009.

28

Α.

1	MR. QUINN: WE'D OFFER THIS, YOUR HONOR.	
2	MR. HELM: NO OBJECTION, YOUR HONOR.	
3	THE COURT: IT WILL BE ADMITTED.	
4		
5	(EXHIBIT 1741 ADMITTED.)	09:56AM
6		
7	Q. BY MR. QUINN: SO THIS IS DATED ABOUT IT'S	
8	ONE WEEK AFTER EXHIBIT 5179, THE BOXES THAT WE WERE	
9	JUST LOOKING AT?	
10	A. CORRECT.	09:56AM
11	Q. AND IF YOU IF WE GO TO PAGE 1741-2, WE'LL	
12	SEE THOSE SAME COLUMN HEADINGS, COLUMN E, IDENTIFYING	
13	THE CURRENT PORTFOLIO MANAGER, COLUMN F IS CONTRACT	
14	EXPIRATION.	
15	DO YOU SEE THAT?	09:57AM
16	A. I DO.	
17	Q. THE COLUMNS HAVE CHANGED FROM THE FIRST	
18	VERSION, BUT IT'S THE SAME INFORMATION.	
19	THIS IS JUST TO ORIENT OURSELVES.	
20	AND NOW, IF WE LOOK AT THOSE COLUMNS ON	09:57AM
21	PAGE -6.	
22	THE SPREADSHEET THAT YOU PREPARED A WEEK	
23	LATER	
24	AND IF WE COULD ENLARGE E AND F IN THE	
25	UPPER RIGHT-HAND CORNER.	09:57AM
25 26	UPPER RIGHT-HAND CORNER. IT SAYS JEFFREY GUNDLACH, AND THEN	09:57AM
		09:57AM

1	Q.	AND IS THAT A CHANGE THAT YOU MADE A WEEK	
2	LATER?		
3	Α.	YES.	
4	Q.	WHY IS THERE A DASH THERE?	
5	Α.	I BELIEVE I WAS JUST ZEROING OUT THE CELL.	09:57AM
6	Q.	CAN YOU EXPLAIN TO THE JURY WHAT YOU MEAN BY	
7	ZEROING	OUT?	
8	Α.	IN EXCEL TERMS, IF YOU BLANKED OUT A CELL, IT	
9	WOULD LO	OK LIKE IF YOU ZEROED OUT THE CELL, IT MIGHT	
10	LOOK LIK	E A DASH.	09:58AM
11	Q.	SO IF YOU PUT IN A ZERO, IT COMES OUT LOOKING	
12	LIKE THI	S?	
13	Α.	YEAH.	
14	Q.	COULD YOU TAKE A LOOK AT EXHIBIT 11 IF WE	
15	COULD GO	BACK TO PAGE -12.	09:58AM
16		WERE THERE OTHER FOLKS WHO YOU MADE	
17	CORRECTI	ONS FOR BECAUSE YOU HAD INCORRECT INFORMATION	
18	ABOUT EX	PIRATION DATES?	
19	Α.	YES.	
20	Q.	IF YOU WOULD LOOK AT PAGE 12 HERE, YOU HAVE	09:58AM
21	СНИСК ВА	LDISWIELER THERE AS WELL?	
22	Α.	YES.	
23	Q.	AND A DASH FOR HIM, AS WELL?	
24	Α.	YES.	
25	Q.	AND THEN THERE ARE SOME OTHERS?	09:58AM
26	Α.	YES.	
27	Q.	AND BY THE WAY, IS MR. BALDISWIELER STILL	

28

HOW DO YOU SAY IT?

1	Α.	CHUCK BALDISWIELER.	
2	Q.	IS CHUCK BALDISWIELER STILL EMPLOYED AT TCW	
3	TODAY?		
4	Α.	YES, HE IS.	
5	Q.	WOULD YOU TAKE A LOOK AT EXHIBIT 114, PLEASE.	09:59AM
6		CAN YOU IDENTIFY THIS DOCUMENT?	
7	Α.	YES.	
8	Q.	WHAT IS IT?	
9	Α.	IT'S A DOCUMENT THAT COMES FROM LEGAL.	
10	Q.	IS THIS A DOCUMENT THAT YOU ARE FAMILIAR WITH?	09:59AM
11	Α.	YES.	
12	Q.	AND HOW IS IT THAT YOU ARE FAMILIAR WITH IT?	
13	Α.	BECAUSE I WORK WITH LEGAL FROM TIME TO TIME ON	
14	CONTRACT	ISSUES.	
15		MR. QUINN: WE'D OFFER THIS, YOUR HONOR.	09:59AM
16		MR. HELM: LACKS FOUNDATION, YOUR HONOR.	
17		THE COURT: YOU ARE GOING TO HAVE TO	
18		I'LL SUSTAIN THE OBJECTION.	
19		YOU MAY BE ABLE TO LAY FURTHER	
20	FOUNDATIO	ON.	09:59AM
21	Q.	BY MR. QUINN: WELL, HOW IS IT THAT YOU KNOW	
22	ABOUT TH	IS PARTICULAR DOCUMENT?	
23		WHAT EXPOSURE DO YOU HAVE TO IT?	
24	Α.	WELL, I WORK CHIEFLY WITH BOTH THE HUMAN	
25	RESOURCE	S DEPARTMENT, AS WELL AS THE LEGAL DEPARTMENT	09:59AM
26	ON SEVER	AL DIFFERENT CONTRACT ISSUES.	
27		SO IF I WAS TO PREPARE AN ANALYSIS,	

LET'S SAY THIS HAD CONTRACT DATES ON IT, I WOULD WANT

1	TO BE ABLE TO REFER TO SOMETHING OTHER THAN JUST MY OWN	
2	WORDS.	
3	Q. AND IS THIS A DOCUMENT THAT YOU WOULD GET FROM	
4	LEGAL AND REFER TO, IN ORDER TO DO THAT?	
5	A. YES.	10:00AM
6	MR. QUINN: WE'D OFFER IT, YOUR HONOR.	
7	THE COURT: IT WILL BE ADMITTED.	
8		
9	(EXHIBIT 114 ADMITTED.)	
10		10:00AM
11	Q. BY MR. QUINN: AND THIS DOCUMENT, IN THE UPPER	
12	RIGHT-HAND CORNER, IT'S GOT A DATE OF DECEMBER 10,	
13	2008?	
14	A. YES.	
15	Q. AND DO YOU SEE, MR. GUNDLACH REFERENCED	10:00AM
16	HERE	
17	IF WE COULD ENLARGE MAYBE THE LAST SIX	
18	OR SEVEN NAMES, MIKE.	
19	IT SAYS JEFFREY GUNDLACH.	
20	DO YOU SEE THAT?	10:00AM
21	A. YES.	
22	Q. AND IT SAYS CONTRACTS ON THE RIGHT-HAND SIDE,	
23	IN PROCESS.	
24	IT SAYS IN PROCESS?	
25	A. YES.	10:00AM
26	Q. SO THE LEGAL DEPARTMENT RECORDS INDICATED THAT	
27	AS OF DECEMBER 10TH, 2008, MR. GUNDLACH'S CONTRACT WAS	
28	REGARDED THE STATUS WAS STATED AS, IN PROCESS?	

1	A. CORRECT.	
2	Q. AND THEN IF WE LOOK AT EXHIBIT 322, CAN YOU	
3	IDENTIFY THIS DOCUMENT, PLEASE?	
4	A. YES.	
5	Q. AND WHAT IS THIS?	10:01AM
6	A. SIMILAR DOCUMENT THAT WE JUST LOOKED AT.	
7	MR. QUINN: WE'D OFFER IT, YOUR HONOR.	
8	MR. HELM: SAME OBJECTION AS TO FOUNDATION,	
9	YOUR HONOR.	
10	THE COURT: JUST SO THAT WE'RE CLEAR, THIS IS	10:01AM
11	AS OF SEPTEMBER 30, 2009.	
12	MR. QUINN: YES, YOUR HONOR.	
13	THE COURT: IT WILL BE ADMITTED.	
14		
15	(EXHIBIT 322 ADMITTED.)	10:01AM
16		
17	Q. BY MR. QUINN: AND IF WE COULD PUT THAT UP.	
18	THIS DOCUMENT IS DATED SEPTEMBER 30,	
19	2009?	
20	A. YES.	10:01AM
21	Q. AND IF WE LOOK AT PAGE -2, WE'LL SEE AN AND	
22	ENLARGE THE BOTTOM THIRD, MIKE	
23	WE'LL SEE MR. GUNDLACH'S NAME THERE?	
24	A. I DO.	
25	Q. AND THE STATED STATUS THERE IS WHAT?	10:01AM
26	A. CONTRACT UNDER DISCUSSION.	
27	Q. YOU'VE REFERRED TO TWO TYPES OF FEES,	
28	MANAGEMENT FEES AND PERFORMANCE; OR CARRIED INTEREST, I	

THINK IS THE TERM THAT YOU HAVE USED? 1 2 A. YES. 3 AND YOU WERE ASKED SOME QUESTIONS BY MR. HELM Q. 4 ABOUT PAYMENT OF FEES. 5 AND HE ASKED YOU SOME QUESTIONS ABOUT 10:02AM 6 THE BOOKING OF ACCRUAL AMOUNTS FOR INCENTIVE FEES. 7 DO YOU RECALL THOSE QUESTIONS? YES. 8 Α. 9 NOW, COULD YOU -- INCENTIVE FEES OR CARRIED 0. 10 INTEREST, WHAT DOES THAT REPRESENT? 10:03AM 11 INCENTIVE FEES OR CARRIED INTEREST REPRESENTS 12 GAINS FROM THE PRIVATE EQUITY FUNDS THAT WE WOULD 13 RECEIVE, AS GENERAL PARTNER. 14 Q. WELL, WITH RESPECT TO THE SPECIAL MORTGAGE 15 CREDIT FUNDS, DOES -- DO YOU, AS A MATTER IN THE 10:03AM ORDINARY COURSE, ACCRUE AMOUNTS ON THE BOOKS FOR 16 17 CARRIED INTEREST? 18 A. YES, WE DO. 19 O. AND WHAT DO THOSE AMOUNTS REFLECT AT EACH 20 MONTH? 10:03AM 21 Α. AT ANY GIVEN POINT IN TIME, UNDER GAAP 22 REGULATIONS, WE WOULD GET TO RECORD AN AMOUNT THAT 23 WOULD REFLECT THE AMOUNT SPECIFIED, IF WE WERE TO 24 LIQUIDATE THE ENTIRE PORTFOLIO AT THAT GIVEN TIME, WHAT 25 THAT AMOUNT WOULD BE, AND WHAT IT WOULD KICK OFF AS A 10:03AM

Q. RIGHT. SO WHEN YOU SAY -- IS THIS SORT OF
A -- YOU SAY IF WE LIQUIDATED IT.

CARRIED INTEREST TO TCW.

IS THIS SORT OF A HYPOTHETICAL EXERCISE? 1 2 Α. THAT'S CORRECT. 3 AND CAN YOU TELL US WHETHER OR NOT THAT Q. 4 CARRIED INTEREST THEN REFLECTS THE VALUE OF THAT ASSET, 5 YOUR BEST ESTIMATE, AS OF THAT TIME WHEN YOU BOOK IT? 10:04AM 6 A. CORRECT. 7 AND DOES THAT AMOUNT, THAT VALUATION, GO UP Ο. AND DOWN, FROM MONTH TO MONTH? 8 9 Α. IT DOES. O. DOES THAT AMOUNT REFLECT MONIES THAT HAVE 10 10:04AM 11 ACTUALLY BEEN RECEIVED BY TCW? 12 NOT IF YOU ARE BOOKING AN ACCRUAL. Α. 13 SO JUST TALKING ABOUT ACCRUALS, DOES THAT 0. 14 AMOUNT ACTUALLY REFLECT AMOUNTS RECEIVED BY TCW? 15 A. NO. 10:04AM AND UNDER THE SPECIAL MORTGAGE CREDIT FUNDS, 16 Ο. 17 WAS TCW, IN SOME CIRCUMSTANCES, ENTITLED TO RECEIVE 18 PERFORMANCE FEES OR CARRIED INTEREST? 19 A. YES. 20 UNDER WHAT CIRCUMSTANCES COULD TCW RECEIVE 0. 10:04AM 21 PERFORMANCE FEES OR CARRIED INTEREST? 22 Α. IF CERTAIN WATERFALLS HAD BEEN MET. 23 O. AND BY WATERFALL, YOU MEAN IN THIS CASE, IT'S 24 THE INVESTOR GETS ALL THEIR MONEY BACK? 25 Α. YES. 10:05AM 26 O. A HURDLE RATE, WHAT'S CALLED A HURDLE RATE? 27 A. YES.

Q. AND THAT'S WHAT?

WITHIN THE SPECIAL MORTGAGE CREDIT FUNDS? 1 Α. 2 Q. YES. 3 I BELIEVE IT WAS SIX PERCENT. Α. 4 AND AFTER THAT, BEYOND THAT, COULD TCW THEN Q. 5 PARTICIPATE IN CARRIED INTEREST OR PERFORMANCE FEES? 10:05AM 6 A. YES. 7 AS OF DECEMBER OF 2004, HAD THERE -- HAD ANY Ο. 8 OF THOSE HURDLE RATES ACTUALLY BEEN EXCEEDED? 9 I BELIEVE YOU ASKED DECEMBER 2004? Α. Q. I'M SORRY. 10 10:05AM DECEMBER OF 2009. 11 12 AS OF DECEMBER 2009 --Α. 13 Q. YEAH. 14 Α. -- HAD ANY CASH RECEIPTS COME IN ON SPECIAL 15 MORTGAGE CREDIT FUNDS? 10:05AM 16 Ο. RIGHT. 17 Α. NO. 18 AND AFTER THAT -- WERE YOU ACCRUING AMOUNTS Q. 19 FOR THIS HYPOTHETICAL CARRIED INTEREST, IF YOU WERE TO 20 LIOUIDATE? 10:06AM 21 Α. YES. 22 AFTER THAT, DID THOSE NUMBERS FOR THE SPECIAL 23 MORTGAGE CREDIT FUNDS, THE ACCRUAL AMOUNTS FOR CARRIED 24 INTEREST, DID THEY SOMETIMES GO UP AND SOMETIMES GO 25 DOWN? 10:06AM 26 A. YES, THEY DID. 27 O. HAVE PORTFOLIO MANAGERS WHO HAVE FEE SHARING

ARRANGEMENTS EVER RECEIVED FEE SHARING BASED, ON JUST

1	ACCRUALS ON THE BOOKS FOR CARRIED INTEREST?	
2	A. NO.	
3	Q. WHY ISN'T THAT DONE?	
4	A. WE ONLY PAY ON A CASH BASIS.	
5	Q. AND IN MR IN THE DRAFT CONTRACT THAT WAS	10:06AM
6	CIRCULATED WITH MR. GUNDLACH, DO YOU KNOW WHETHER OR	
7	NOT IT PROVIDED THAT PAYMENTS, FEES, WOULD ONLY BE	
8	PAID, BASED ON FEES EARNED AND RECEIVED BY TCW?	
9	MR. HELM: LACKS FOUNDATION.	
10	THE COURT: SUSTAINED.	10:06AM
11	Q. BY MR. QUINN: WELL, LET'S TAKE A LOOK AT	
12	EXHIBIT 66-11.	
13	IF WE COULD ENLARGE THE LANGUAGE THERE,	
14	FEES.	
15	I MEAN, YOU ARE FAMILIAR WITH THIS	10:07AM
16	PROVISION, AND TERMS LIKE THIS?	
17	A. YES.	
18	Q. AND IT SAYS (READING):	
19	FEES, AS DEFINED HERE, FOR	
20	PURPOSES OF THE POOL, MEANS FOR ANY	10:07AM
21	QUARTER, ANY INVESTMENT MANAGEMENT,	
22	INCENTIVE, PERFORMANCE, STRUCTURING	
23	OR OTHER MANAGEMENT-RELATED FEES,	
24	EARNED BY TCW FOR EACH QUARTER ON	
25	AN ACCRUAL BASIS WITH RESPECT TO AN	10:07AM
26	ACCOUNT, AND THAT ARE PAID TO TCW,	
27	LESS SOMETHING ELSE.	
28	RIGHT?	

1	A. YES.	
2	Q. AND IS THAT WHAT YOU ARE REFERRING TO WHEN YOU	
3	SAY PERFORMANCE OR CARRIED INTEREST FEES, IF THE	
4	PORTFOLIO MANAGER HAS A RIGHT TO SHARE IN THEM, ARE	
5	ONLY PAID WHEN ACTUALLY RECEIVED?	10:08AM
6	MR. HELM: LACKS FOUNDATION.	
7	I'M NOT SURE THIS DOCUMENT GOVERNS	
8	ANYBODY ELSE'S PAYMENTS.	
9	THE COURT: OVERRULED.	
10	YOU ARE TALKING ABOUT HOW YOU DO YOUR	10:08AM
11	JOB, SIR; SO YOU CAN ANSWER THAT QUESTION.	
12	THE WITNESS: YEAH. SPECIFICALLY, THIS GOES	
13	ON TO NOT INCLUDE	
14	THE COURT: DON'T READ THE AGREEMENT.	
15	HE'S ASKED YOU A QUESTION, AND YOU JUST	10:08AM
16	NEED TO ANSWER THE QUESTION.	
17	DO YOU WANT THE QUESTION READ BACK?	
18	THE WITNESS: SURE.	
19	MR. QUINN: I'LL WITHDRAW IT AND REFRAME IT.	
20	THE COURT: ALL RIGHT.	10:08AM
21	Q. BY MR. QUINN: WHEN YOU SAY YOU'VE TOLD US	
22	THAT CARRIED INTEREST IS NEVER PAID TO ANY PORTFOLIO	
23	MANAGERS, BASED SIMPLY ON ACCRUALS; IS THAT TRUE?	
24	A. THAT'S TRUE.	
25	Q. YOUR UNDERSTANDING, IS THIS PAID ONLY WHEN	10:08AM
26	IT'S BOTH EARNED AND RECEIVED BY TCW?	
27	A. YES.	
20	O AND TO BURE CONCLUEND WITH BUTC LANGUAGE WEDE	

Q. AND IS THAT CONSISTENT WITH THIS LANGUAGE HERE

ON PAGE 66-11? 1 2 A. YES, IT IS. 3 AND HAD ANY PERFORMANCE FEES, CARRIED Q. 4 INTEREST, INCENTIVE FEES, BEEN ACTUALLY RECEIVED BY TCW 5 AS OF DECEMBER 11TH, 2009, ON THE SPECIAL MORTGAGE 10:09AM CREDIT FUND? 6 7 A. NO. 8 I MEAN, JUST BECAUSE INCENTIVE OR CARRIED 9 INTEREST FEES ARE BOOKED AND ACCRUED, DOES THAT MEAN 10 THAT TCW WILL EVER NECESSARILY SEE ANY OF THAT MONEY? 10:09AM 11 NO, IT DOES NOT. Α. 12 ARE YOU FAMILIAR WITH THE CONCEPT OF VESTING? Ο. 13 YES, I AM. Α. 14 Q. WHAT DOES VESTING MEAN? 15 A. VESTING MEANS, THAT -- GENERALLY MEANS THAT 10:09AM 16 POST TERMINATION, YOU WOULD HAVE AN AGREEMENT IN PLACE 17 TO RECEIVE PAYMENTS ON FUTURE INCENTIVE FEES. 18 AND DOES THAT MEAN THAT IF SOMEBODY HAS A 0. VESTED INTEREST IN A FUND, THAT THEY'D CONTINUE TO GET 19 20 FEES EVEN AFTER THEY LEFT TCW? 10:10AM 21 Α. IF THEY HAD A VESTED INTEREST IN IT, YES. 22 0. DID -- HAS TCW HAD PORTFOLIO MANAGERS WHO HAD 23 AN ARRANGEMENT LIKE THAT?

10:10AM

THE COURT: TO HIS KNOWLEDGE.

A. YES.

Q.

HONOR.

24

25

26

27

DID MR. GUNDLACH HAVE SUCH AN ARRANGEMENT?

MR. HELM: OBJECTION. LACKS FOUNDATION, YOUR

Q. BY MR. QUINN: YOU ARE THE GUY THAT'S IN 1 2 CHARGE OF COMPUTING FEE SHARING FOR PORTFOLIO MANAGERS 3 AT TCW; IS THAT TRUE? 4 A. YES, I AM. 5 Ο. IS THE FEE SHARING FOR PORTFOLIO MANAGERS, IS 10:10AM THAT SOMETHING THAT'S TIED TO THE WORK DONE BY THE 6 7 PORTFOLIO MANAGER IN A PARTICULAR OUARTER? MR. HELM: VAGUE AND AMBIGUOUS. 8 9 THE COURT: SUSTAINED. 10 Q. BY MR. QUINN: WELL, MR. HELM ASKED YOU SOME 10:11AM 11 QUESTIONS ABOUT WHETHER FEES WERE PAID WITH RESPECT TO 12 WORK DONE IN THE FOURTH QUARTER OF 2009. 13 DO YOU RECALL THOSE QUESTIONS? A. YES. 14 15 Q. MY QUESTION TO YOU IS: ARE FEES PAID AS A 10:11AM 16 RESULT OF WORK DONE IN A PARTICULAR OUARTER? 17 NOT NECESSARILY. Α. 18 Q. CAN YOU EXPLAIN THAT, PLEASE. 19 A. FEES ARE PAID BASED ON CASH RECEIPTS THAT WERE 20 RECEIVED IN A PARTICULAR QUARTER. 10:11AM 21 THOSE CASH RECEIPTS MAY REFLECT 22 DIFFERENT TIME FRAMES. Q. AND THE CARRIED INTEREST, I THINK YOU'VE TOLD 23 24 US, REPRESENTS BASICALLY IF IT'S POSITIVE, AN 25 APPRECIATION IN THE ASSETS? 10:12AM 26 Α. YES.

O. AND WOULD THAT HAVE ANY RELATIONSHIP TO THE

WORK DONE BY AN INDIVIDUAL IN A QUARTER, NECESSARILY?

27

2.8

A. NOT NECESSARILY. 1 2 O. YOU SAID, IN RESPONSE TO ONE OF MR. HELM'S 3 QUESTIONS, THAT IF WE RECORD REVENUE, WE HAVE TO RECORD 4 EXPENSE. 5 IF YOU ACCRUE REVENUE, YOU HAVE TO 10:12AM RECORD AN EXPENSE. 6 7 COULD YOU EXPLAIN THAT? YEAH, UNDER GAAP ACCOUNTING, IF YOU ARE GOING 8 Α. 9 TO ACCRUE A REVENUE, AND YOU GENERALLY HAVE AN 10 AGREEMENT TO PAY SOME SORT OF EXPENSE AGAINST IT, THEN 10:12AM 11 YOU WOULD BE REQUIRED TO RECORD THAT EXPENSE, AS WELL. 12 O. DOES THAT MEAN YOU ACTUALLY WRITE A CHECK FOR 13 AN EXPENSE? 14 A. NO, IT DOES NOT. 15 Q. DID YOU HAVE REGULAR COMMUNICATIONS WITH 10:12AM 16 MR. GUNDLACH ON THE SUBJECT OF HIS FEE SHARING? 17 Α. YES. 18 THERE'S BEEN TESTIMONY IN THIS TRIAL THAT 0. 19 MR. GUNDLACH WAS VERY CONCERNED, IN 2009, THAT HE WAS 20 TO BE FIRED. 10:13AM 21 MR. HELM: OBJECT TO THE FORM, YOUR HONOR. 22 THE COURT: IF YOU JUST ASK A QUESTION. 23 MR. QUINN: ALL RIGHT. 24 Q. DID MR. GUNDLACH EVER COME TO YOU AND SAY, I 25 HAVE A CONTRACT? 10:13AM 26 NO. Α. 27 MR. HELM: YOUR HONOR, OBJECTION. BEYOND THE

28

SCOPE.

1	THE COURT: I'LL ALLOW THE ANSWER TO STAND.	
2	MR. QUINN: YOU ACTUALLY DIDN'T GET TO FINISH.	
3	THE COURT: HE ANSWERED IT. AND THAT WAS THE	
4	QUESTION. AND WE CAN MOVE ON NOW TO ANOTHER QUESTION.	
5	Q. BY MR. QUINN: AT ANY TIME, DID MR. GUNDLACH	10:14AM
6	EVER COME TO YOU AND SAY, I HAVE A CONTRACT TO BE	
7	EMPLOYED BY TCW UNTIL THE END OF 2011?	
8	A. NO, HE DID NOT.	
9	Q. AND THAT I CAN'T BE FIRED EXCEPT FOR GOOD	
10	CAUSE?	10:14AM
11	A. NO, HE DID NOT.	
12	MR. QUINN: NOTHING FURTHER.	
13	THE COURT: ALL RIGHT.	
14	WE'LL TAKE OUR MORNING RECESS, LADIES	
15	AND GENTLEMEN.	10:14AM
16	20 MINUTES.	
17		
18	(AT 10:15 A.M. THE FOLLOWING	
19	PROCEEDINGS WERE HELD IN OPEN	
20	COURT OUT OF THE PRESENCE OF	
21	THE JURY:)	
22		
23	THE COURT: ALL RIGHT. WE'RE OUT OF PRESENCE	
24	OF THE JURY.	
25	ANY MATTERS ANYBODY WANTS TO TAKE UP?	10:15AM
26	MR. QUINN: NO.	
27	THE COURT: ALL RIGHT. WE'LL SEE YOU IN 20	
28	MINUTES.	

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1
                       (RECESS TAKEN.)
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                       (THE NEXT PAGE NUMBER IS 6401.)
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CASE NUMBER:
                             BC 429385
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    CASE NAME:
                             TCW VS. GUNDLACH
 3
    LOS ANGELES, CALIFORNIA SEPTEMBER 1, 2011
    DEPARTMENT 322
                             HON. CARL J. WEST, JUDGE
 5
    APPEARANCES:
                             (AS NOTED ON TITLE PAGE.)
 6
                             RAQUEL A. RODRIGUEZ, CSR
    REPORTER:
 7
                             B SESSION: 10:35 A.M.
    TIME:
 8
                              --0--
 9
10
                                                               10:38AM
11
       (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.) +
12
1.3
             THE COURT: ALL MEMBERS OF OUR JURY ARE AGAIN
14
    PRESENT IN THE TCW MATTER.
15
                   MR. HELM, YOU MAY CONTINUE YOUR REDIRECT
                                                               10:39AM
16
    OF MR. SULLIVAN.
17
18
                     REDIRECT EXAMINATION +
    BY MR. HELM:
19
20
        Q MR. SULLIVAN, WHY DON'T WE START WITH
                                                               10:39AM
21
    EXHIBIT 5179, IF WE COULD.
22
                   CAN WE PUT THAT UP PLEASE, DENNIS.
23
                    THIS IS THE E-MAIL YOU SENT TO
24
    MR. DEVITO, DATED JULY 13TH, CORRECT?
25
        A CORRECT.
                                                               10:40AM
26
        Q IF WE GO TO PAGE 13, DENNIS.
2.7
                   WE'VE TAKEN OFF THE REDACTIONS. I THINK
28
    WE'RE NOW NOT REDACTING. THE TOP PART.
```

1	DO YOU SEE AT THE TOP, D AND N, IT SAYS:	
2	JEFFREY GUNDLACH AND WE	
3	ESTABLISHED THAT THE EXPIRATION	
4	DATE SAID DECEMBER 31ST, 2011.	
5	CORRECT?	10:40AM
6	A CORRECT.	
7	Q LET ME ASK IF WE COULD PUT UP THE FOLLOWING	
8	DOCUMENT, WHICH I CAN SHOW TO YOU, BUT WE CAN ALSO PUT	
9	ONTO THE SCREEN. WE CAN GIVE IT TO THE JUDGE UNLESS HE	
10	PREFERS TO DO IT ON THE SCREEN.	10:40AM
11	MAY I APPROACH, YOUR HONOR?	
12	THE COURT: YES, YOU MAY.	
13	IS THERE AN EXHIBIT NUMBER?	
14	MR. HELM: YES. 6135. IT'S IN EVIDENCE.	
15	CAN WE SHOW THAT, DENNIS. 6135.	10:41AM
16	Q IF WE COULD BLOW UP THE BOTTOM PART OF THAT.	
17	YES, DOWN THERE.	
18	THIS IS FROM MICHAEL CONN TO	
19	GARY SHEDLIN. THIS IS DATED JULY 10TH, 2009. THAT IS	
20	A FEW DAYS BEFORE YOU SENT THE E-MAIL WE JUST LOOKED	10:41AM
21	AT.	
22	IT SAYS, IN THE SECOND PARAGRAPH:	
23	ATTACHED IS AN ANNOTATED	
24	INFORMATION REQUEST LIST WHICH	
25	SHOULD SERVE AS A COVER MEMO INDEX	10:41AM
26	FOR THE DUE DILIGENCE CD.	
27	DO YOU SEE THAT?	
28	MR. QUINN: YOUR HONOR, I OBJECT ON FOUNDATION	

1	GROUNDS. HE'S NOT ON THIS DOCUMENT. I CAN SEE	
2	THE COURT: CAN YOU LAY SOME FOUNDATION FOR	
3	THIS WITNESS'S TESTIMONY ABOUT THIS DOCUMENT.	
4	MR. HELM: I'M SIMPLY ALL I'M TRYING TO DO,	
5	IT'S LEADING UP TO THE NEXT DOCUMENT.	10:41AM
6	THE COURT: IF IT'S A DOCUMENT IN EVIDENCE,	
7	THEN HAVING YOU READ IT ISN'T NECESSARY.	
8	MR. HELM: IF I	
9	THE COURT: GO AHEAD. DO YOU HAVE A QUESTION	
10	ABOUT IT?	10:42AM
11	MR. HELM: WELL ACTUALLY, MY QUESTION	
12	THE COURT: WITH SOME FOUNDATION FOR THIS	
13	WITNESS TO TESTIFY ABOUT IT.	
14	MR. HELM: WELL, YOU KNOW	
15	Q YOU KNOW WHO MICHAEL CONN IS, CORRECT?	10:42AM
16	A I DO.	
17	Q LIKE YOU, HE HAS ACCESS TO THE BOOKS AND	
18	RECORDS OF TCW, CORRECT?	
19	A CERTAIN AMOUNT. NOT NECESSARILY CONFIDENTIAL	
20	RECORDS, BUT FROM TIME TO TIME HE WOULD BE AVAILABLE TO	10:42AM
21	IT, YES.	
22	Q EXHIBIT 5678. GO TO PAGE 7 OF THAT DOCUMENT,	
23	IF WE COULD. IT SAYS THE QUESTION IS	
24	MR. QUINN: YOUR HONOR, CAN I OBJECT ON	
25	FOUNDATION GROUNDS ASKING THIS WITNESS ABOUT THIS	10:42AM
26	DOCUMENT?	
27	THE COURT: WELL, HE MAY	
28	MR. HELM, IF YOU WANT TO LAY THE	

1	FOUNDATION, YOU MAY. ABSENT SOME FOUNDATION, THIS	
2	WITNESS ISN'T GOING TO TESTIFY ABOUT THESE EXHIBITS.	
3	MR. HELM: WELL, YOUR HONOR, I SIMPLY WANTED	
4	TO SHOW THE CONSISTENCY BETWEEN A DATE HERE AND THE	
5	DATE THAT HE WAS USING FROM THE SAME BOOKS AND RECORDS.	10:43AM
6	THE COURT: YOU MAY ARGUE THAT. IT'S IN	
7	EVIDENCE. BUT WE'VE GOT A WITNESS. JUST ASK HIM	
8	QUESTIONS.	
9	MR. HELM: ALL RIGHT. VERY WELL, YOUR HONOR.	
10	Q WE CAN TAKE THAT DOWN, DENNIS.	10:43AM
11	WE SHOWED YOU BEFORE YOU HAD AN E-MAIL	
12	ON JULY THE 13TH.	
13	DO YOU REMEMBER THAT?	
14	A (NO AUDIBLE RESPONSE.)	
15	Q ON 5179, THE E-MAIL WHICH SHOWED	10:43AM
16	MR. GUNDLACH'S CONTRACTUAL EXPIRATION DATE BEING	
17	DECEMBER 31ST, 2011, THAT WAS ON JULY THE 13TH?	
18	A YES. I'M SORRY.	
19	Q CORRECT.	
20	IF WE COULD SHOW YOU 1741.	10:43AM
21	THIS IS WHAT MR. QUINN SHOWED YOU.	
22	NOW, YOU ARE SAYING: SEE ATTACHED FOR	
23	THE UPDATED OUTLINE.	
24	CORRECT?	
25	A CORRECT.	10:44AM
26	Q SO, BETWEEN JULY THE 13TH AND JULY THE 21ST,	
27	YOU ALTERED THIS DOCUMENT, DIDN'T YOU; YOU UPDATED IT?	
28	MR. QUINN: COMPOUND. ARGUMENTATIVE.	

1	THE COURT: LET'S PUT IT LET'S GET THE	
2	YEARS RIGHT HERE.	
3	MR. HELM: ALL RIGHT.	
4	Q ON JULY 21ST, 2009, AFTER YOUR JULY 13TH	
5	E-MAIL, YOU UPDATED THIS DOCUMENT, CORRECT?	10:44AM
6	A CORRECT.	
7	Q LET'S LOOK AT PAGE 6 OF THAT DOCUMENT. YOU	
8	SEE JEFFREY GUNDLACH NOW. IT SAYS JEFFREY GUNDLACH,	
9	AND WHERE IT PREVIOUSLY HAD AN EXPIRATION DATE OF	
10	DECEMBER 31ST, 2011, YOU NOW JUST HAVE A BLANK THERE,	10:45AM
11	CORRECT?	
12	A CORRECT.	
13	Q NOW, YOU DIDN'T PUT "EXPIRED" THERE, DID YOU?	
14	A I DID NOT.	
15	Q AND FOR OTHER PEOPLE DOWN BELOW THERE,	10:45AM
16	PHIL BARACH, HIS SAYS EXPIRED, RIGHT?	
17	A IT DOES.	
18	Q SONIA MANGLESDORF, IT SAYS EXPIRED, RIGHT?	
19	A CORRECT.	
20	Q BONNIE BAHA, EXPIRED, ET CETERA?	10:45AM
21	A I DON'T BELIEVE ANY OF THEM HAD ANY PENDING	
22	CONTRACTS, THOUGH.	
23	Q BUT YOU DIDN'T PUT EXPIRED NEXT TO	
24	MR. GUNDLACH, DID YOU, SIR?	
25	A THAT'S CORRECT.	10:45AM
26	Q AND WITHIN THE PERIOD BETWEEN JULY THE 13TH	
27	AND JULY THE 21ST, YOU ALTERED THE RECORDS OF THE	

COMPANY, WHICH HAD PREVIOUSLY STATED THAT THE

1	EXPIRATION DATE WAS 12-31-2011, CORRECT?	
2	MR. QUINN: OBJECTION. ARGUMENTATIVE.	
3	THE COURT: OVERRULED.	
4	THE WITNESS: I'M NOT COMFORTABLE SAYING I	
5	ALTERED THE RECORDS OF THE COMPANY.	10:46AM
6	I CHANGED MY ANALYSIS TO A NEW VERSION,	
7	YES.	
8	BY MR. HELM:	
9	Q WELL, YOU PREVIOUSLY TESTIFIED YOU GOT THIS	
10	INFORMATION FROM THE BOOKS AND RECORDS OF THE COMPANY,	10:46AM
11	CORRECT?	
12	A I DID.	
13	AND ALSO TESTIFIED THAT THERE WERE	
14	ADDITIONAL COLUMNS ADDED TO THIS VERSION AS WELL, SO IT	
15	WAS APPARENTLY UNDER SOME REQUEST TO MAKE SIGNIFICANT	10:46AM
16	CHANGES.	
17	Q YOU ALTERED THE ENTRY UNDER EXPIRATION DATE,	
18	DIDN'T YOU, SIR?	
19	A YES.	
20	Q WHO INSTRUCTED TO YOU DO THAT?	10:46AM
21	A I BELIEVE MR. DEVITO, UPON HIS REVIEW.	
22	Q MR. DEVITO GAVE THAT TO YOU.	
23	WERE YOU AWARE OF A MEETING WHICH TOOK	
24	PLACE BETWEEN MARC STERN AND ROBERT DAY AT THE END OF	
25	JUNE, THE PRIOR MONTH, DISCUSSING PROJECT G?	10:46AM
26	A I'M NOT.	
27	Q DO YOU KNOW WHETHER MR. DEVITO WAS AWARE OF	
28	IT?	

A I DO NOT.	
Q BUT MR. DEVITO THEN INSTRUCTED YOU TO CHANGE	
WHAT HAD PREVIOUSLY BEEN THERE. SO INSTEAD OF SAYING	
HE HAD A CONTRACT THAT EXPIRED IN 2011, TO ELIMINATE	
THAT, IS THAT TRUE?	10:47AM
A CORRECT.	
Q NOW, MR. QUINN SHOWED YOU EXHIBIT 114.	
COULD WE PUT THAT UP, DENNIS. DOWN ON	
THE BOTTOM THIRD THERE	
THERE YOU GO, DENNIS. THANK YOU.	10:47AM
IN THE MIDDLE WE SEE JEFFREY	
GUNDLACH.	
DO YOU SEE THAT, DENNIS? HIGHLIGHT	
THAT. AGAIN	
ACTUALLY, COULD WE BACK UP TO THE TOP	10:47AM
BECAUSE I'M SORRY. IF YOU COULD BLOW UP THE FIRST	
LINE. THE HEADING RIGHT THERE.	
THE ONE, TWO, THREE, FOUR, FIFTH COLUMN	
OVER SAYS: EXPIRATION.	
CORRECT?	10:48AM
A CORRECT.	
Q NOW, IF WE GO DOWN TO JEFFREY GUNDLACH, BLOW	
UP THAT PART, DENNIS IF WE COULD.	
UNDER THE EXPIRATION COLUMN IT SAYS	
12-31-2011, DOESN'T IT?	10:48AM
A THAT'S WHAT IT SAYS.	
Q THAT'S WHEN THIS RECORD INDICATED THE	
EXPIRATION DATE WAS FOR MR. GUNDLACH'S CONTRACT,	
	Q BUT MR. DEVITO THEN INSTRUCTED YOU TO CHANGE WHAT HAD PREVIOUSLY BEEN THERE. SO INSTEAD OF SAYING HE HAD A CONTRACT THAT EXPIRED IN 2011, TO ELIMINATE THAT, IS THAT TRUE? A CORRECT. Q NOW, MR. QUINN SHOWED YOU EXHIBIT 114. COULD WE PUT THAT UP, DENNIS. DOWN ON THE BOTTOM THIRD THERE THERE YOU GO, DENNIS. THANK YOU IN THE MIDDLE WE SEE JEFFREY GUNDLACH. DO YOU SEE THAT, DENNIS? HIGHLIGHT THAT. AGAIN ACTUALLY, COULD WE BACK UP TO THE TOP BECAUSE I'M SORRY. IF YOU COULD BLOW UP THE FIRST LINE. THE HEADING RIGHT THERE. THE ONE, TWO, THREE, FOUR, FIFTH COLUMN OVER SAYS: EXPIRATION. CORRECT? A CORRECT. Q NOW, IF WE GO DOWN TO JEFFREY GUNDLACH, BLOW UP THAT PART, DENNIS IF WE COULD. UNDER THE EXPIRATION COLUMN IT SAYS 12-31-2011, DOESN'T IT? A THAT'S WHAT IT SAYS. Q THAT'S WHEN THIS RECORD INDICATED THE

1	CORRECT?	
2	A ALONG WITH THE DESCRIPTION OF THAT TO THE	
3	RIGHT, YES.	
4	Q NOW, THEN HE SHOWED YOU A LATER AND THE	
5	ONE IF WE GO TO THE RIGHT, YOU CAN SEE WHAT HE WAS	10:48AM
6	REFERRING TO. THAT SAYS: IN PROCESS.	
7	IS THAT RIGHT?	
8	A YES.	
9	Q NOW LET'S GO TO EXHIBIT 322. I'M SORRY.	
10	LET'S GO BACK TO 114. SORRY TO KEEP GOING BACK AND	10:49AM
11	FORTH.	
12	ON UPPER RIGHT-HAND CORNER JUST START	
13	OVER, PLEASE. UPPER RIGHT-HAND CORNER THERE'S AN AS OF	
14	DATE.	
15	IT SAYS: AS OF DECEMBER 10, 2008.	10:49AM
16	CORRECT?	
17	A YES.	
18	Q ALL RIGHT.	
19	NOW, DENNIS, SORRY TO KEEP JUMPING	
20	AROUND ON YOU, COULD WE NOW GO TO 322.	10:49AM
21	THIS WAS ANOTHER DOCUMENT WHICH	
22	MR. STERN SHOWED YOU.	
23	LET'S GO TO THE UPPER RIGHT-HAND CORNER,	
24	THAT NOW SAYS: AS OF SEPTEMBER 30, 2009.	
25	DOESN'T IT?	10:49AM
26	A YES, IT DOES.	
27	Q AND IF WE GO TO PAGE 2 OF THIS DOCUMENT, YOU	

SEE MR. GUNDLACH NEAR THE BOTTOM THERE.

1	SEE IT, DENNIS? THERE WE GO.	
2	IT SAYS: GUNDLACH.	
3	IN ALPHABETICAL ORDER.	
4	IT STILL HAS THE EXPIRATION DATE LISTED	
5	AS 12-31-2011, DOESN'T IT?	10:50AM
6	A YES.	
7	Q BUT NOW THAT RECORD HAS BEEN ALTERED, INSTEAD	
8	OF TO SAY: CONTRACT UNDER DISCUSSION, INSTEAD OF	
9	SAYING IN PROCESS, IT NOW SAYS: CONTRACT UNDER	
10	DISCUSSION.	10:50AM
11	DO YOU SEE THAT?	
12	YOU'RE NOT AWARE WHY IT WAS THAT RECORD	
13	OF THE COMPANY WAS ALTERED, DO YOU?	
14	A SEEMS TO MEAN THE SAME THING.	
15	Q YOU'RE NOT AWARE WHY IT WAS ALTERED?	10:50AM
16	A IT'S NOT MY DOCUMENT.	
17	Q IF IT MEANS THE SAME THING, PRESUMABLY THERE	
18	WOULD HAVE BEEN NO REASON TO ALTER IT?	
19	MR. QUINN: LITTLE BIT OF ARGUMENT.	
20	THE COURT: SUSTAINED.	10:50AM
21	BY MR. HELM:	
22	Q YOU DON'T KNOW WHY IT WAS THEY CHANGED THAT	
23	ENTRY, DO YOU, SIR?	
24	A NO, I DO NOT.	
25	Q NOW, YOU TALKED A LITTLE BIT ABOUT ACCRUALS,	10:51AM
26	DO YOU RECALL THAT, WITH MR DISCUSSING THAT WITH	
27	MR. QUINN?	
28	A IN SEVERAL DIFFERENT FORMS, YES.	

1	Q YOU TESTIFIED, AS A GENERAL MATTER, FUND	
2	MANAGERS ARE NOT PAID CARRIED INTEREST BASED ON WHEN	
3	THE INCENTIVE FEES ACCRUE, BUT ARE PAID ON WHEN	
4	INCENTIVE FEES ARE PAID TO THE COMPANY, CORRECT?	
5	MR. QUINN: MISSTATES THE TESTIMONY.	10:51AM
6	THE COURT: OVERRULED.	
7	YOU CAN EXPLAIN IT IF THERE'S SOME	
8	INACCURACY.	
9	GO AHEAD.	
10	THE WITNESS: WE PAY INCENTIVE FEES ON CASH	10:51AM
11	BASIS, YES.	
12	BY MR. HELM:	
13	Q THAT'S IN THE NORMAL COURSE OF BUSINESS,	
14	CORRECT? THAT'S WHEN YOU PAY?	
15	A THAT'S CORRECT.	10:51AM
16	Q NOW I'D LIKE YOU TO LOOK AT EXHIBIT 12, WHICH	
17	MR. QUINN SHOWED YOU.	
18	THIS WAS MR. GUNDLACH'S 1998 CONTRACT,	
19	CORRECT?	
20	A YES.	10:52AM
21	Q I'D LIKE YOU TO GO TO PAGE 7.	
22	WOULD YOU GO THERE, DENNIS.	
23	AT THE BOTTOM, THE BOTTOM HALF, THERE'S	
24	A SECTION THAT SAYS: FIVE. TERMINATION.	
25	CORRECT?	10:52AM
26	A YES.	
27	Q IN A IT STATES VARIOUS GROUNDS ABOUT	
28	MR. GUNDLACH COULD BE TERMINATED, CORRECT?	

1	A CORRECT.	
2	Q NOW, AT THE VERY BOTTOM IT SAYS:	
3	YOUR COMPENSATION AND ADDITIONAL	
4	BENEFITS WILL CEASE WHEN	
5	TERMINATION OCCURS, EXCEPT, ONE,	10:52AM
6	ADDITIONAL BENEFITS THAT BY THEIR	
7	TERMS APPLY AFTER TERMINATION.	
8	AND, TWO	
9	COULD WE GO TO THE NEXT PAGE.	
10	THE COMPANY WILL PAY	10:53AM
11	COMPENSATION ACCRUED TO THE DATE OF	
12	TERMINATION.	
13	THAT WAS IN HIS 1998 CONTRACT, WASN'T IT, SIR?	
14	A I SEE THAT.	
15	Q ALL RIGHT.	10:53AM
16	NOW, MR. QUINN ALSO SHOWED YOU	
17	MR. GUNDLACH'S 2003 CONTRACT, WHICH WAS EXHIBIT 16.	
18	COULD WE LOOK AT THAT PLEASE, DENNIS.	
19	THAT'S IN THE BLACK BINDER.	
20	THIS WAS MR. GUNDLACH'S 2003 AGREEMENT,	10:53AM
21	CORRECT?	
22	A YES.	
23	Q COULD WE BLOW UP THE FIRST PARAGRAPH THERE,	
24	DENNIS, PLEASE, UNDER, DEAR JEFFREY.	
25	IT SAYS:	10:53AM
26	THIS LETTER SETS FORTH THE TERMS	
27	OF THE A NEW EMPLOYMENT	
28	AGREEMENT.	

1	BUT THEN IN THE SECOND SENTENCE IT SAYS:	
2	TO THE EXTENT, NOT INCONSISTENT	
3	WITH THE PARAGRAPHS NUMBERED ONE,	
4	TWO, THREE, FOUR, AND FIVE BELOW,	
5	ALL TERMS OF YOUR FORMER EMPLOYMENT	10:54AM
6	AGREEMENT DRAFTED AS OF JANUARY 1,	
7	1998 ARE INCORPORATED HEREIN AS IF	
8	SET FORTH IN FULL AND A PART OF	
9	YOUR NEW EMPLOYMENT AGREEMENT.	
10	DO YOU SEE THAT?	10:54AM
11	A I DO.	
12	Q DENNIS, IF YOU COULD GO BACK UP TO THE FIRST	
13	PAGE.	
14	ONE. DEALS WITH TERM.	
15	TWO. DEALS WITH TITLES AND DIRECTOR	10:54AM
16	SHIP.	
17	THREE. DEALS WITH COMPENSATION CHANGES.	
18	AND THE NEXT PAGE, DENNIS. THAT WHOLE	
19	PAGE, JUST BLOW UP THE TEXT THERE.	
20	THIS IS ALL ABOUT FORMULAS, ALL IN THE	10:54AM
21	CATEGORIES OF COMPENSATION. FORMULAS ABOUT	
22	COMPENSATION. LOTS ABOUT COMPENSATION.	
23	GO TO THE NEXT PAGE.	
24	PARAGRAPH 3 CONTINUES THERE. THERE'S	
25	MORE ABOUT COMPENSATION.	10:55AM
26	THEN IT SAYS FOUR, SANTA MONICA OFFICES,	
27	EXPENSES OF SANTA MONICA OFFICES, CORRECT?	
28	A CORRECT.	

1	Q LET'S GO TO THE NEXT PAGE.	
2	SO THEN THERE'S SOMETHING ABOUT STOCK.	
3	RETAINED INTEREST IN STOCK, CORRECT?	
4	A CORRECT.	
5	Q BUT THERE'S NOTHING IN THIS AGREEMENT ABOUT	10:55AM
6	TERMINATION, OR WHAT YOU'RE PAID IN THE EVENT THAT YOUR	
7	EMPLOYMENT IS TERMINATED, CORRECT?	
8	A THERE'S NOTHING ABOUT THE TERMS OF THE	
9	AGREEMENT, THAT'S CORRECT.	
10	Q SO IT INCORPORATES THE PRIOR AGREEMENT, 1998,	10:55AM
11	WHICH IS THE AGREEMENT THAT DEALT WITH THAT SUBJECT,	
12	RIGHT?	
13	A I BELIEVE SO.	
14	Q WHICH SAID UPON TERMINATION HE'S PAID	
15	COMPENSATION ACCRUED TO TERMINATION, RIGHT?	10:55AM
16	A THAT'S WHAT IT SAID.	
17	Q NOW LET'S LOOK AT HE SHOWED YOU EXHIBIT 66,	
18	WHICH WAS A DRAFT OF THE 2007 ARRANGEMENT.	
19	IF YOU COULD GO TO PAGE 4 OF THAT,	
20	PLEASE. SECOND FROM THE BOTTOM PARAGRAPH STARTING,	10:56AM
21	YOUR COMPENSATION, DENNIS.	
22	SAYS:	
23	YOUR COMPENSATION, INCLUDING ANY	
24	BASE DRAW, ANY AMOUNT OF PROFIT	
25	SHARING AND ADDITIONAL BENEFITS,	10:56AM
26	WILL CEASE WHEN TERMINATION OCCURS	
27	EXCEPT	
28	THEN LET'S GO TO TWO.	

1	THE COMPANY WILL PAY YOU YOUR	
2	BASE SALARY AND ANY AMOUNT OF	
3	PROFIT SHARING PLUS ACCRUED	
4	VACATION, ACCRUED TO THE DATE OF	
5	TERMINATION IN ACCORDANCE WITH THE	10:56AM
6	COMPANY'S POLICIES.	
7	CORRECT?	
8	A CORRECT. AND IN RELATION TO THE DEFINED TERMS	
9	THERE ARE SET UP ON PROFIT SHARING.	
10	MR. HELM: MOVE TO STRIKE THE LAST PART, YOUR	10:56AM
11	HONOR.	
12	THE COURT: I'LL ALLOW IT TO STAND.	
13	WE'RE GOING TO HEAR MORE ABOUT IT, I'M	
14	SURE.	
15	BY MR. HELM:	10:57AM
16	Q YOU TALKED ABOUT EXHIBIT A TO THIS AGREEMENT,	
17	WHICH TALKED ABOUT WHEN THE COMPENSATION IS PAID TO THE	
18	POOL IN THE NORMAL COURSE, CORRECT?	
19	A WE TALKED	
20	MR. QUINN: VAGUE AND AMBIGUOUS.	10:57AM
21	MR. HELM: AND	
22	THE COURT: NO. JUST A MINUTE. I'LL OVERRULE	
23	THE OBJECTION.	
24	THE WITNESS: I SAID WE TALKED ABOUT IT.	
25	THE COURT: PLEASE SPEAK INTO THE MICROPHONE	10:57AM
26	SO PEOPLE COULD HEAR.	
27	THE WITNESS: OKAY.	
28	BY MR. HELM:	

1	Q THAT SAID IT GETS PAID INTO THE POOL WHEN IT'S	
2	EARNED AND PAID, CORRECT?	
3	A EARNED AND RECEIVED, YES.	
4	Q BUT THIS TALKS ABOUT WHAT HE'S PAID WHEN HE'S	
5	TERMINATED, RIGHT?	10:57AM
6	A THIS IS A PROVISION THEN UPON TERMINATION.	
7	Q RIGHT.	
8	AND WHEN HE'S TERMINATED, HE WILL BE	
9	PAID BASE SALARY AND PROFIT SHARING ACCRUED TO THE DATE	
10	OF TERMINATION.	10:58AM
11	IT DOESN'T SAY PAID IN THAT SENTENCE	
12	DOES IT, SIR?	
13	A BASED ON ALL THOSE PROVISIONS, YES.	
14	Q YES, IT DOESN'T SAY THAT?	
15	A I'M SORRY. CAN YOU REPEAT THAT?	10:58AM
16	Q THE WORD "PAID" IS NOT INCLUDED IN THAT	
17	SENTENCE, IS IT, SIR; IT JUST SAYS ACCRUED?	
18	A I BELIEVE IT'S IMPLIED BY THE WORD "PROFIT	
19	SHARING."	
20	Q WELL, BY PROFIT SHARING, BECAUSE PROFIT	10:58AM
21	SHARING REFERS TO EXHIBIT A?	
22	A YES.	
23	Q SO NOW, MR. QUINN STARTED HIS EXAMINATION	
24	SAYING, ESTABLISHING THAT YOU WEREN'T A LAWYER; IS THAT	
25	RIGHT?	10:58AM
26	A THAT'S CORRECT.	
27	Q AND HAVE YOU BECOME A LAWYER SINCE THE MORNING	

28

EXAMINATION?

1	A HOPEFULLY NOT.	
2	Q OKAY. FOR YOUR SAKE, TOO, I HOPE NOT.	
3	AND SO THERE'S A DIFFERENCE BETWEEN	
4	ACCRUED, AND ACCRUED AND PAID, ISN'T THERE, SIR?	
5	A THERE IS.	10:58AM
6	Q FUNDAMENTAL DIFFERENCE?	
7	A YES.	
8	Q NOW, MR. QUINN ASKED YOU ABOUT THE CONCEPT OF	
9	VESTING.	
10	DO YOU RECALL THAT?	10:59AM
11	A I DO.	
12	Q AND SO LET'S JUST SEE HOW THAT WORKS.	
13	LET'S SAY THAT A PERSON IS A HUNDRED	
14	PERCENT VESTED	
15	MAY I APPROACH, YOUR HONOR?	10:59AM
16	A YES, YOU MAY.	
17	Q WE'RE RUNNING OUT OF PAPER HERE.	
18	LET'S ASSUME WE'VE GOT A FUND THAT	
19	APPRECIATES IN VALUE OVER A PERIOD OF TIME. OKAY.	
20	CAN YOU SEE THAT, SIR?	10:59AM
21	A YES.	
22	Q SO THIS IS YEAR ONE. AND THIS IS YEAR, YOU	
23	KNOW, LET'S JUST SAY THIS IS YEAR SEVEN. AND WE HAVE	
24	YEARS IN BETWEEN. ALL RIGHT.	
25	SO IF A PERSON IS 100 PERCENT VESTED IN	11:00AM
26	A FUND, THAT MEANS THAT IF THERE'S PROFIT SHARING PAID	
27	AT THE END OF THAT PERIOD, THEN THE PERSON GETS THE	
28	BENEFIT OF ALL THE APPRECIATION THAT'S TAKEN PLACE	

1	DURING THE LIFE OF THE FUND, CORRECT?	
2	MR. QUINN: VAGUE. INCOMPLETE HYPOTHETICAL.	
3	THE COURT: I'LL SUSTAIN THE OBJECTION.	
4	YOU CAN TRY TO CLARIFY IT OR ASK HIS	
5	OPINION OF IT. MR. QUINN, YOU BROUGHT THE ISSUE UP.	11:00AM
6	MR. QUINN: I UNDERSTAND.	
7	THE COURT: GO AHEAD.	
8	BY MR. HELM:	
9	Q YOU WERE TALKING ABOUT SOME PEOPLE HAVE	
10	VESTING AND SOME PEOPLE DIDN'T, CORRECT?	11:00AM
11	A THAT'S CORRECT.	
12	Q YOU HAVE AN UNDERSTANDING OF HOW VESTING	
13	WORKS, RIGHT?	
14	A YES.	
15	Q ALL RIGHT.	11:01AM
16	SO, SOMETIMES A PERSON UNDER A VESTING	
17	SCHEDULE CAN BE 100 PERCENT VESTED, RIGHT?	
18	A SOMETIMES, YES.	
19	Q THEY COULD HAVE DIFFERENT PERCENTAGES, BUT I	
20	WANT YOU TO ASSUME NOW, BASED ON YOUR KNOWLEDGE, THAT A	11:01AM
21	PERSON IS A HUNDRED PERCENT VESTED IN A FUND, THAT HAS	
22	CARRIED INTEREST.	
23	ARE YOU WITH ME?	
24	A I'M WITH YOU.	
25	Q ALL RIGHT.	11:01AM
26	SO, IF A PERSON'S 100 PERCENT VESTED,	
27	THEN THAT MEANS THAT PERSON GETS PAID WHATEVER SHARE HE	
0.0		

OR SHE HAS OF ALL OF THE PROFIT THAT WAS EARNED ON THE

1	FUND THROUGHOUT THE LIFE OF THE FUND, CORRECT?	
2	MR. QUINN: INCOMPLETE HYPOTHETICAL.	
3	THE COURT: SUSTAINED.	
4	BY MR. HELM:	
5	Q WELL, IF PROFIT SHARING IS EARNED, IT'S THE	11:01AM
6	PROFIT SHARING AND THE FEES THAT ARE PAID AT THE END OF	
7	THE LIFE OF THE FUND FOR A PERSON WHO'S A HUNDRED	
8	PERCENT VESTED, RIGHT?	
9	MR. QUINN: SAME OBJECTION. VAGUE AND	
10	AMBIGUOUS.	11:01AM
11	THE COURT: I'LL ALLOW THE WITNESS TO ANSWER.	
12	IF YOU DON'T UNDERSTAND THE QUESTION OR	
13	NEED TO EXPLAIN YOUR ANSWER, EXPLAIN IT. WE NEED TO	
14	MOVE OFF THIS AND ON.	
15	THE WITNESS: I BELIEVE YOU POINTED OUT IN	11:02AM
16	YOUR LAST SENTENCE IF IT WAS PAID AS WELL.	
17	AND IF THEY WERE 100 PERCENT VESTED,	
18	THEN THEY WOULD EVENTUALLY EARN THAT, YES.	
19	BY MR. HELM:	
20	Q ALL RIGHT. A PERSON WHO IS 100 PERCENT VESTED	11:02AM
21	WOULD BENEFIT FROM ANY APPRECIATION THAT TOOK PLACE	
22	DURING THE WHOLE LIFE OF THE FUND, CORRECT?	
23	A IT'S CORRECT.	
24	Q SO LET'S JUST I'LL USE A DIFFERENT COLOR.	
25	WE'RE GOING TO GET VERY FANCY.	11:02AM
26	THE PERSON WITH VESTING GETS PAID AS OF	
27	APPRECIATION AT THE END.	
0.0	NOW THE LO GIVE A PERSON WIS TO THE CONTROL OF THE	

NOW, LET'S SAY A PERSON HAS A PROVISION

1	THAT SAYS LET'S SAY THE PERSON'S FIRED HALFWAY	
2	THROUGH THAT.	
3	CAN YOU ASSUME THAT WITH ME?	
4	A OKAY.	
5	Q AND THEN NOW, INSTEAD OF HAVING VESTING, THIS	11:02AM
6	PERSON HAS A PROVISION SAYING YOU GET THE COMPENSATION	
7	ACCRUED TO THE DATE OF TERMINATION. ALL RIGHT. ASSUME	
8	WITH ME A PERSON HAS A CONTRACT LIKE THAT.	
9	DOESN'T HAVE VESTING, BUT HAS SOMETHING	
10	THAT SAYS YOU GET PAID THE INCENTIVE FEES THAT WERE	11:03AM
11	ACCRUED AS OF THE DATE OF TERMINATION.	
12	WOULD YOU ASSUME THAT FOR ME?	
13	A OKAY.	
14	Q ALL RIGHT.	
15	SO THAT PERSON WOULD GET PAID THE	11:03AM
16	BENEFIT OF APPRECIATION THAT TOOK PLACE UP TILL THEN,	
17	BUT NOT THE BENEFIT OF ANY APPRECIATION THAT TOOK PLACE	
18	AFTER, WOULD HE?	
19	A IF MANAGEMENT TOLD ME TO PAY HIM UP TILL THAT	
20	POINT, THEN YES, HE WOULD BENEFIT ON THAT AMOUNT.	11:03AM
21	AND I DON'T KNOW WHAT WOULD HAPPEN LATER	
22	ON. I'D HAVE TO LOOK TO MANAGEMENT FOR MY DIRECTION AS	
23	WELL.	
24	Q RIGHT.	
25	IF MANAGEMENT TOLD YOU TO PAY TO THE	11:03AM
26	TIME ACCRUED, AT THE TIME OF THE TERMINATION, HE'S	
27	TERMINATED HALFWAY THROUGH WHERE THAT FIRST BLUE LINE	
28	IS, THAT PERSON WOULD GET THE BENEFIT OF APPRECIATION	

1	IN THE FUND, YOU KNOW, INVESTMENT RETURNS IN THE FUND,	
2	UP TO THE TIME OF TERMINATION, BUT NOT AFTER; ISN'T	
3	THAT RIGHT?	
4	A HAD THE CASH BEEN REALIZED, YES.	
5	Q WELL IF LET'S SAY HYPOTHETICALLY SAY	11:04AM
6	THAT HE HAD A CONTRACT THAT SAID IT WAS ACCRUED UPON	
7	TERMINATION, WHETHER IT WAS PAID OR NOT.	
8	CAN YOU ASSUME THAT FOR ME?	
9	A OKAY.	
10	Q ALL RIGHT.	11:04AM
11	SO THEN HE WOULD BE PAID WHETHER IT	
12	WAS PAID OR NOT, HE WOULD GET THE ACCRUAL UP TO THAT	
13	BLUE LINE, RIGHT?	
14	A IF MANAGEMENT TOLD ME TO PAY IT, THEN YES.	
15	Q SO, AS BETWEEN WITH THIS FUND, AS BETWEEN	11:04AM
16	HAVING A DEAL THAT SAID ACCRUED TO THE DATE OF	
17	TERMINATION.	
18	AND ONE THAT SAID YOU WERE 100 PERCENT	
19	VESTED, YOU'D BE BETTER TO BE VESTED, WOULDN'T IT?	
20	A I'M SORRY. CAN YOU REPEAT THAT QUESTION.	11:04AM
21	Q YEAH.	
22	ON THIS HYPOTHETICAL, IF YOU HAD A	
23	CHOICE BETWEEN BEING 100 PERCENT VESTED OR JUST GETTING	
24	PAID ACCRUED TO THE TIME OF TERMINATION, YOU'D RATHER	
25	BE 100 PERCENT VESTED, WOULDN'T YOU?	11:04AM
26	MR. QUINN: INCOMPLETE HYPOTHETICAL.	
27	THE COURT: SUSTAINED.	

1	BY MR. HELM:	
2	Q ALL RIGHT.	
3	MR. QUINN ASKED YOU ABOUT YOUR MODELING	
4	AND THE MODELS THAT YOU PREPARED.	
5	DO YOU RECALL THAT?	11:05AM
6	A YES.	
7	Q AND YOU SAID YOUR JOB WASN'T TO NEGOTIATE; YOU	
8	JUST RAN THE MODELS.	
9	IS THAT ESSENTIALLY RIGHT?	
10	A THAT'S CORRECT.	11:05AM
11	Q BUT, YOU TRIED TO MAKE THE MODELS AS ACCURATE	
12	AS YOU COULD MAKE THEM, CORRECT?	
13	A I DID.	
14	Q AND YOU ENDEAVOR TO MAKE THEM REFLECT ANY	
15	CHANGES THAT WERE MADE DURING THE NEGOTIATIONS AS THE	11:05AM
16	FEE SHARING DEAL CHANGED, DIDN'T YOU?	
17	A UPON DIRECTION, YES.	
18	Q AND SO YOUR JOB AT TCW IS ALSO TO MAKE	
19	PAYMENTS ACCORDING TO COMPENSATION ARRANGEMENTS THAT	
20	HAVE BEEN STRUCK WITH FUND MANAGERS, CORRECT?	11:05AM
21	A CORRECT.	
22	Q AND YOU ENDEAVOR TO MAKE THEM AS ACCURATE AS	
23	YOU POSSIBLY CAN, DON'T YOU?	
24	A I DO. I'M NOT PERFECT, BUT I TRY MY BEST.	
25	Q NOW, THERE'S QUESTIONING ABOUT WHETHER, THAT	11:06AM
26	UNDER SOME ASSUMPTIONS MR. GUNDLACH'S COMPENSATION WENT	
27	UP, BUT MR. BARACH'S WENT DOWN.	
28	DO YOU RECALL THAT?	

1	A UNDER THE SCENARIOS, YES.	
2	Q IF WE COULD PUT UP 5031 FOR A SECOND, PLEASE.	
3	THIS WAS ONE OF THE E-MAILS THAT HE	
4	SHOWED YOU.	
5	COULD WE GO TO PAGE 3 OF THAT, PLEASE,	11:06AM
6	DENNIS. COULD YOU GET RID OF WELL, WE CAN KEEP THE	
7	REDACTION, BUT THE BOTTOM THAT RIGHT THERE. DO THAT.	
8	I BELIEVE HE SHOWED YOU THAT. HE	
9	POINTED OUT TO YOU THE FIRST TWO LINES THAT	
10	MR. GUNDLACH'S WENT UP, BUT MR. BARACH'S WENT DOWN.	11:07AM
11	DO YOU SEE THAT?	
12	A I DO.	
13	Q BUT MR. GUNDLACH'S WASN'T THE ONLY ONE THAT	
14	WENT UP IN THIS SCENARIO, WAS IT, SIR?	
15	A NO, IT IS NOT.	11:07AM
16	Q MR. GALLIGAN'S WENT UP?	
17	A THAT REQUIRES ADDITIONAL DEFINING, THOUGH.	
18	ONLY IN THE SENSE THAT THIS WAS JUST	
19	TARGETED COMPENSATION FOR HIM. IT'S NOT THAT GALLIGAN,	
20	DAMIANI MADE ZERO BEFORE. HE WAS TRYING TO POINT	11:07AM
21	OUT IN THE NEW DEAL WHAT HE WAS BEING SETTING ASIDE FOR	
22	HIM.	
23	Q THERE WOULD BE MORE SET ASIDE BETWEEN GALLIGAN	
24	AND DAMIANI, CORRECT?	
25	A MORE IN HIS DETERMINATION SPECIFICALLY SET	11:08AM
26	ASIDE FOR HIM, YES.	
27	Q MR. GUNDLACH GOT TO DETERMINE WHETHER THEY GOT	
28	THOSE AMOUNTS, CORRECT?	

1	A CORRECT.	
2	Q WE WERE CONTEMPLATING THIS MODEL, NOT ONLY	
3	MR. BARACH WENT DOWN, BUT MR. GALLIGAN AND DAMIANI WENT	
4	UP, CORRECT?	
5	A CORRECT.	11:08AM
6	Q AND THERE WERE OTHERS WHO ALSO WENT UP, NOT	
7	JUST MR. GUNDLACH, CORRECT?	
8	A CORRECT.	
9	Q YOU UNDERSTOOD THAT WERE YOU PRIVY TO ANY	
10	CONVERSATIONS TO DETERMINE WHO IT WAS WHO FIRST	11:08AM
11	SUGGESTED THAT MR. BARACH'S COMPENSATION GO DOWN?	
12	A NO, I WAS NOT.	
13	Q SO YOU DON'T KNOW WHETHER THAT WAS	
14	MR. GUNDLACH'S IDEA OR TCW'S IDEA, DO YOU?	
15	A I HAVE NO IDEA.	11:08AM
16	Q IF WE COULD PUT UP EXHIBIT 5035: TOP E-MAIL,	
17	PLEASE.	
18	MR. SONNEBORN HERE, THE LAST LINE OF	
19	THAT TOP E-MAIL:	
20	I THINK IT'S AWESOME. YOU AND	11:08AM
21	PETE DID THIS PERFECTLY.	
22	DID MR. SONNEBORN EVER EXPRESS, EXCEPT FOR	
23	PHIL BARACH, HIS COMPENSATION WENT DOWN, WE DON'T FEEL	
24	GOOD ABOUT THAT, MR. GUNDLACH RAMMED DOWN OUR THROATS	
25	THIS AGREEMENT, INSISTED MR. BARACH'S COMPENSATION GO	11:09AM
26	DOMN ?	
27	HE DIDN'T SAY THAT HERE, DID HE, SIR?	
28	A I DID NOT HAVE A CONVERSATION WITH	

1	MR. SONNEBORN ABOUT THAT.	
2	Q YOU DIDN'T HEAR ANY OBJECTION FROM TCW BEFORE	
3	QUESTIONS THAT WERE ASKED IN THIS TRIAL ABOUT	
4	DEDUCTIONS, REDUCTIONS TO MR. BARACH'S COMPENSATION,	
5	DID YOU, SIR?	11:09AM
6	A I WOULD NOT HAVE BEEN PRIVY TO THAT, NO.	
7	Q YOU HEARD MANAGEMENT THOUGHT IT WAS AWESOME	
8	THAT YOU, MR. DEVITO, AND PETE DID THIS PERFECTLY,	
9	RIGHT?	
10	A I THINK THEY WERE REFERRING TO THE FACT THAT	11:09AM
11	THE ECONOMICS WERE DISPLAYED WELL.	
12	Q THEY LOVED THE ECONOMICS OF THIS DEAL, DIDN'T	
13	THEY?	
14	A THEY LIKED THE WAY I DISPLAYED THEM, YES.	
15	Q WELL, IT WASN'T JUST THE DISPLAY. IT WAS THE	11:09AM
16	SUBSTANCE OF THEM, RIGHT?	
17	A THAT YOU COULD READ INTO, BUT I WAS	
18	THOUGHT I WAS BEING CONGRATULATED ON MY ANALYSIS.	
19	Q THIS ISN'T AN E-MAIL TO YOU. THIS IS TO	
20	MR. DEVITO, RIGHT?	11:10AM
21	A YEAH.	
22	BUT I'M NOT, YOU KNOW, I'M NOT SITTING	
23	HERE TRYING TO DETERMINE WHO SHOULD GET PAID WHAT.	
24	Q OKAY.	
25	A I'M JUST SIMPLY PUTTING TOGETHER NUMBERS I'M	11:10AM
26	BEING ASKED TO PUT TOGETHER.	
27	Q I WANT TO MAKE SURE WE'RE CLEAR.	
28	WHEN YOU SAY THE DISPLAY, YOU'RE NOT	

1	SAYING THAT YOU THINK THE ONLY THING TCW MANAGEMENT WAS	
2	APPROVING OF WAS HOW THE NUMBERS WERE LAID OUT ON THE	
3	PAGE, ARE YOU, SIR?	
4	A WELL, IT MAKES IT EASY FOR THEM TO WORK WITH	
5	THE PORTFOLIO MANAGER WHEN THEY'RE NEGOTIATING.	11:10AM
6	Q YOU UNDERSTOOD THEY THOUGHT THE SUBSTANCE OF	
7	THIS DEAL WAS AWESOME; THEY LOVE GOING FROM 18 PERCENT	
8	INCREMENTAL MARGINS ON CVS TO 50 PERCENT. THEY LOVED	
9	THAT, DIDN'T THEY?	
10	A SONNEBORN SEEMS TO SUGGEST THAT, YES.	11:10AM
11	Q THAT HAS NOTHING TO DO WITH HOW THE NUMBERS	
12	ARE ARRANGED ON A PAGE THAT YOU PRESENTED, IS IT, SIR?	
13	A THAT PARTICULAR SENTENCE, NO.	
14	Q ALL RIGHT.	
15	YOU WERE SHOWN A DOCUMENT WHERE I	11:11AM
16	BELIEVE IT WAS MAY 17, WHERE MR. GUNDLACH SAID	
17	CAN WE SEE EXHIBIT 58? THIS WAS ON MAY	
18	THE 17TH, CORRECT?	
19	A YES.	
20	Q AND MR. QUINN READ YOU THE FIRST PART:	11:12AM
21	THE NEW CONTRACT DEAL HAS NOT	
22	BEEN FINALIZED, BUT I THINK IT WILL	
23	BE BY MAY THE 31ST.	
24	DO YOU SEE THAT?	
25	A I DO.	11:12AM
26	Q I'D LIKE TO SHOW YOU WHAT'S BEEN MARKED AS	
27	EXHIBIT 5039.	
28	MAY I APPROACH, YOUR HONOR?	
	1	

1	THE COURT: YES, YOU MAY.	
2	MR. HELM: THANK YOU.	
3	THE COURT: THIS IS EXHIBIT 39; IS THAT	
4	CORRECT?	
5	MR. HELM: 5039.	11:12AM
6	THE COURT: 5039.	
7	MR. HELM: ACTUALLY, I THINK I MAY HAVE TO	
8	WAIT TO ADMIT THIS ONE, YOUR HONOR.	
9	Q DID YOU SUBSEQUENTLY FIND OUT THAT THE DEAL	
10	HAD BEEN FINALIZED?	11:13AM
11	MR. QUINN: VAGUE AND AMBIGUOUS.	
12	THE COURT: OVERRULED.	
13	THE WITNESS: I HAD SUBSEQUENTLY BEEN TOLD BY	
14	MR. SONNEBORN TO GO AHEAD AND PAY ON THE NEW ECONOMICS.	
15	Q AND YOU WERE A PARTY TO AN E-MAIL WHERE	11:13AM
16	MR. GUNDLACH SAID EVERYONE HAS AGREED TO EVERYTHING IN	
17	GOOD FAITH, WEREN'T YOU, SIR?	
18	A I BELIEVE I WAS.	
19	Q AND YOU PROCEEDED TO PAY ON THAT NEW	
20	ARRANGEMENT STARTING AT THE END OF MAY, 2007, CORRECT?	11:13AM
21	A JUST TO CLARIFY, I'M NOT GOING BASED ON WHAT	
22	MR. GUNDLACH IS TELLING ME. I'M GETTING FURTHER	
23	CLARIFICATION FROM MANAGEMENT AFTER THAT.	
24	Q BUT MANAGEMENT TOLD YOU TO PAY MR. GUNDLACH	
25	UNDER THE NEW DEAL THAT HAD BEEN NEGOTIATED IN THE	11:13AM
26	SPRING OF 2007, AND YOU STARTED MAKING PAYMENTS FOR THE	
27	FIRST QUARTER OF '07, CORRECT?	
28	A I DID.	

1	MR. HELM: NOTHING FURTHER, YOUR HONOR.	
2	THE COURT: MR. QUINN, ANY RECROSS?	
3		
4	RECROSS-EXAMINATION +	
5	BY MR. QUINN:	11:14AM
6	Q EXHIBIT 61-1.	
7	MR. HELM WAS CALLING YOUR ATTENTION TO	
8	THIS LANGUAGE IN THE E-MAIL IN THE MIDDLE WE'VE HEARD	
9	NOW SEVERAL TIMES:	
10	EVERYONE HAS AGREED TO	11:14AM
11	EVERYTHING IN GOOD FAITH.	
12	DO YOU SEE THAT?	
13	A YES.	
14	Q AND THAT'S DATED WHAT DATE?	
15	A MAY 25TH.	11:14AM
16	Q MAY 25TH.	
17	WILL YOU TAKE A LOOK AT EXHIBIT 63-1.	
18	IN THE MIDDLE THERE THERE'S AN E-MAIL FROM	
19	MR. SONNEBORN.	
20	WHAT'S THE DATE OF THAT?	11:14AM
21	A MAY 30TH.	
22	Q THREE DAYS LATER?	
23	A FIVE OR THREE YEAH, SOMETHING LIKE THAT.	
24	Q FIVE?	
25	A SORRY.	11:15AM
26	Q YOU'RE THE FINANCIAL ANALYST. I'M THE LAWYER.	
27	FIVE DAYS LATER MR. SONNEBORN SAYS: NO	
28	CONTRACT YET?	

1	A YES.	
2	Q MR. HELM ASKS YOU ASKED YOU QUESTIONS,	
3	SUPPOSE YOU WERE TOLD TO PAY JUST BASED ON INCENTIVE	
4	FEES, JUST BASED ON ACCRUALS OF APPRECIATION IN THE	
5	VALUE OF ASSETS.	11:15AM
6	DO YOU RECALL HIM ASKING YOU THAT?	
7	A HYPOTHETICAL, YES.	
8	Q THE HYPOTHETICAL.	
9	SUPPOSE INSTEAD OF THIS, IS IT TRUE TO	
10	SAY THAT IT DOESN'T ALWAYS HAPPEN THAT THE VALUE OF	11:15AM
11	ASSETS JUST GOES UP?	
12	A IT'S TRUE.	
13	Q AND WOULD IT BE TRUE TO SAY SOMETIMES YOU HAVE	
14	THEM GO LIKE THAT (INDICATING)?	
15	A YES, IT IS.	11:15AM
16	Q AND IF YOU PAY, IF YOUR DEAL WAS THAT YOU PAID	
17	ON ACCRUAL BASED ON A BOOK VALUATION AS OF THIS DATE,	
18	AND THEN THE VALUE OF THE ASSETS WENT WAY DOWN, WHAT	
19	WOULD YOU DO?	
20	A IT WOULDN'T MAKE ANY SENSE. WE WOULDN'T PAY	11:16AM
21	THEM.	
22	Q IS THAT WHY INCENTIVE FEES ARE PAID ON A CASH	
23	BASIS WHEN THERE'S ACTUALLY A LIQUIDATION?	
24	MR. HELM: LACKS FOUNDATION.	
25	THE COURT: SUSTAINED.	11:16AM
26	BY MR. QUINN:	
27	Q YOU'RE THE ONE WHO AUTHORIZES INCENTIVE FEE	
28	PAYMENTS AT TCW?	

1	А	I'M NOT THE ONE THAT MAKES INCENTIVE FEES.	
2	Q	YOU DON'T AUTHORIZE THEM; SOMEBODY TELLS YOU	
3	WHEN TO	DO IT?	
4	А	CORRECT.	
5	Q	YOU KNOW WHEN THEY'RE PAID?	11:16AM
6	А	YES.	
7	Q	YOU KNOW THEY'RE PAID WHEN ASSETS ARE ACTUALLY	
8	LIQUIDATI	ED AND THE MONEY IS REALIZED?	
9	А	THAT'S CORRECT.	
10	Q	IF WE COULD LOOK AT EXHIBIT 5179-18.	11:16AM
11		THAT'S YOUR JULY 23 E-MAIL WHERE YOU	
12	HAVE A DA	ATE THERE FOR DECEMBER 31, 2011 FOR	
13	MR. GUND	LACH'S CONTRACT EXPIRATION DATE.	
14	A	OKAY.	
15	Q	DO YOU KNOW WHERE YOU GOT THAT DATE?	11:17AM
16	A	I PROBABLY GOT IT OUT OF MY FOLDER THAT I KEEP	
17	ON MR. G	UNDLACH.	
18	Q	DID YOU HAVE IN YOUR FOLDER A COPY OF THAT	
19	LAST DRA	FT OF THE CONTRACT, EXHIBIT 66?	
20	A	I DID.	11:17AM
21	Q	AND DOES IT HAVE A DATE, EXPIRATION DATE, IN	
22	THAT DRA	FT OF DECEMBER 31, 2011?	
23	A	IT DOES.	
24	Q	SO, THAT WAS A MISTAKE?	
25	A	YES.	11:17AM
26	Q	I MEAN, ONE WEEK THIS DOCUMENT, WHEN YOU	
27	TRANSMIT	IT TO MR. DEVITO, IF WE COULD LOOK AT THE	
28	FIRST PAG	GE.	

1	YOU DESCRIBED THAT AS AN INITIAL DRAFT,	
2	CORRECT?	
3	A CORRECT.	
4	Q AND THEN ONE WEEK LATER, YOU SENT HIM	
5	EXHIBIT 1741, WHICH YOU DESCRIBE AS ON THE FIRST	11:18AM
6	PAGE IF YOU LOOK AT1 HAS AN UPDATED OUTLINE,	
7	CORRECT?	
8	A CORRECT.	
9	Q NOW, CHANGING THAT DATE, ZEROING OUT THAT DATE	
10	SO THERE'S A DASH THERE, THAT ISN'T THE ONLY CHANGE	11:18AM
11	THAT YOU MADE	
12	A THAT'S CORRECT.	
13	Q IN UPDATING THIS, CORRECT?	
14	A CORRECT.	
15	Q I DON'T KNOW IF YOU COULD DO THIS SIDE BY	11:18AM
16	SIDE, 1741-7 AND 5179-19.	
17	MR. HELM: YOUR HONOR, THIS IS CUMULATIVE. HE	
18	ALREADY WENT OVER THIS.	
19	THE COURT: WE'LL WRAP IT UP VERY QUICKLY.	
20	MR. QUINN: YES, I WILL.	11:18AM
21	IF WE COULD LOOK AT THOSE TWO, 1741-7	
22	AND 5179-19.	
23	Q IF WE COMPARE THESE TWO COLUMNS THERE AT THE	
24	TOP, I MEAN YOU'VE ACTUALLY ADDED SOME NEW INFORMATION	
25	HERE, JUST LOOKING AT THESE TWO PAGES?	11:19AM
26	A YES.	
27	Q AND YOU'VE ADDED SOME DIFFERENT WORDS AND	
28	LANGUAGE TO DESCRIBE THE POOLS AND THINGS OF THAT	

1	NATURE?		
2	А	THAT'S CORRECT.	
3	Q	ALL RIGHT.	
4		SO WERE YOU ALTERING SOMETHING TO TRY TO	
5	ALTER TC	W'S BOOKS AND RECORDS?	11:19AM
6	А	NO.	
7	Q	WHAT WERE YOU DOING?	
8		THE COURT: WAIT.	
9		MR. QUINN: I'M SORRY.	
10		THE COURT: GO AHEAD.	11:19AM
11	BY MR. Q	UINN:	
12	Q	YOU WEREN'T ALTERING SOMETHING. WHAT WERE YOU	
13	TRYING T	O DO?	
14	А	PROVIDING ADDITIONAL ANALYSIS.	
15	Q	MAKE IT ACCURATE?	11:19AM
16	А	CORRECT.	
17	Q	IS THERE SOME DIFFERENCE IN YOUR MIND BETWEEN	
18	A CONTRA	CT UNDER DISCUSSION, AND, QUOTE/UNQUOTE, IN	
19	PROCESS?		
20	А	NOT IN MY MIND.	11:20AM
21	Q	FINALLY, IF WE COULD TAKE A LOOK AT	
22	EXHIBIT	66, PAGE14. IF WE COULD ENLARGE THE:	
23	YOUR COM	PENSATION PARAGRAPH.	
24		THE SECOND TO THE LAST PARAGRAPH.	
25		YOU TOLD MR. HELM THAT YOU THOUGHT THE	11:20AM
26	CONCEPT	OF THAT FEES HAD TO ACTUALLY BE RECEIVED WAS	
27	IMPLIED	IN PROFIT SHARING. YOU GOT THAT, 66-14.	
28		WE CAN ENLARGE YOUR COMPENSATION, SECOND	

1	TO THE LAST PARAGRAPH.	
2	YOU SAID THAT THE NOTION THAT THE FEES	
3	WOULD ACTUALLY HAVE TO BE RECEIVED UPON TERMINATION WAS	
4	IMPLIED ON PROFIT SHARING, IN PROFIT SHARING?	
5	A CORRECT.	11:21AM
6	Q EXPLAIN THAT.	
7	A THE WORD PROFIT SHARING, BY DEFINITION,	
8	BECAUSE IT'S CAPITALIZED HERE, IS A DEFINED TERM.	
9	Q DO WE SEE THAT UP AT THE TOP OF PAGE 66-3? IN	
10	THE SAME DOCUMENT UP AT THE TOP, IF WE CAN ENLARGE THE	11:21AM
11	DEFINITION, IS THAT THE DEFINITION YOU'RE REFERRING TO?	
12	A THAT'S CORRECT.	
13	Q AND THAT SENDS YOU TO EXHIBIT A?	
14	A CORRECT.	
15	Q WHICH REFERS TO: HAS TO BE EARNED, AND	11:21AM
16	RECEIVED?	
17	MR. HELM: OBJECTION.	
18	THE WITNESS: CORRECT.	
19	MR. HELM: LACKS FOUNDATION.	
20	THE COURT: I'LL STRIKE MR. QUINN'S LAST	11:21AM
21	COMMENT, SINCE IT DIDN'T SOUND LIKE A QUESTION.	
22	MR. QUINN: ALL RIGHT.	
23	Q THIS DEFINITION CROSS-REFERENCES EXHIBIT A TO	
24	THE AGREEMENT, CORRECT?	
25	A CORRECT.	11:21AM
26	Q AND WE'VE LOOKED AT THAT BEFORE?	
27	A YES.	
28	MR. QUINN: NOTHING FURTHER.	

1	THE COURT: THANK YOU.	
2	SOMETHING FURTHER, MR. HELM?	
3	MR. HELM: YES, YOUR HONOR.	
4		
5	FURTHER REDIRECT +	11:22AM
6	MR. HELM: SORRY, I HAVE A NUMBER OF NOTEBOOKS	
7	HERE.	
8	THE COURT: I HOPE THAT DOESN'T INDICATE THE	
9	NUMBER OF QUESTIONS.	
10	MR. HELM: NO, YOUR HONOR.	11:22AM
11	MR. BRIAN: BUT IT'S A HEFTY QUESTION.	
12	BY MR. HELM:	
13	Q NOW, MR. QUINN ASKED YOU TO LOOK AT	
14	EXHIBIT 63.	
15	COULD WE PUT THAT UP, PLEASE.	11:22AM
16	NOW, HE POINTED YOU TO THE MIDDLE.	
17	BLOW UP FROM, MATT, ALL THE WAY TO THE	
18	BOTTOM IF YOU WOULD, DENNIS. THANK YOU.	
19	HE POINTED YOU TO THE PART THAT SAYS IN	
20	THE MIDDLE:	11:22AM
21	NO CONTRACT YET, BUT THESE	
22	PAYMENTS TOTAL LESS THAN WHAT WE	
23	WOULD HAVE PAID UNDER THE OLD DEAL.	
24	SO SHOULDN'T BE A PROBLEM.	
25	YOU SEE THAT?	11:22AM
26	A I DO.	
27	Q THAT WAS FROM MR. SONNEBORN TO YOU, WITH	
28	COPIES TO DEVITO, VILLA, AND CAHILL, CORRECT?	

1	A CORRECT.	
2	Q THERE WAS NO E-MAIL SENT HERE TO MR. GUNDLACH	
3	SAYING THERE WAS NO CONTRACT, WAS THERE?	
4	A I DON'T SEE THAT HERE, NO.	
5	Q AND AT THE BOTTOM, WHAT YOU SAY IS:	11:23AM
6	BILL, PAYROLL M.B.S. CMG FEE	
7	SHARING CHECKS ARE READY TO GO.	
8	GUNDLACH SAYS WE HAVE A HANDSHAKE	
9	AGREEMENT FOR A NEW DEAL.	
10	THAT'S WHAT YOU SAID, RIGHT?	11:23AM
11	A THAT'S CORRECT.	
12	Q WELL, DID YOU EVER GO BACK TO MR. GUNDLACH AND	
13	SAY, WAIT A MINUTE, MR. GUNDLACH, YOU SAY YOU'VE GOT A	
14	HANDSHAKE DEAL, BUT WE THINK THERE'S NO CONTRACT.	
15	DID YOU EVER SAY THAT?	11:23AM
16	A IT WOULD NOT HAVE BEEN MY PLACE TO DO THAT.	
17	Q YOU'RE NOT AWARE OF ANYONE WHO SENT THE	
18	SUBSTANCE OF WHAT MR. SONNEBORN SAID ABOUT THERE BEING	
19	NO CONTRACT YET TO MR. GUNDLACH SAYING, WAIT, WAIT,	
20	WAIT, WAIT A MINUTE. WE'LL PAY YOU UNDER THE NEW DEAL,	11:24AM
21	BUT THERE'S NO BINDING CONTRACT HERE? THEY DIDN'T SAY	
22	THAT, DID THEY?	
23	A THAT DID NOT COME UP IN MY PRESENCE.	
24	Q NOW, MR. QUINN TALKED TO YOU ABOUT OUR LITTLE	
25	VESTING EXAMPLE HERE.	11:24AM
26	AND IT'S TRUE THAT SOMETIMES YOU MAKE A	
27	DEAL THAT TURNS OUT BETTER AND SOMETIMES YOU MAKE A	
28	DEAL THAT TURNS OUT WORSE, RIGHT?	

MR. QUINN: OBJECTION.	
THE COURT: SUSTAINED.	
BY MR. HELM:	
Q WELL, AT THE TIME YOU START A FUND, YOU MAY	
NOT KNOW WHETHER IT'S BETTER TO BE PAID ACCRUED TO THE	11:24AM
TIME OF TERMINATION OR TO GET VESTED, MIGHT YOU?	
A YOU WOULD KNOW IT'S BETTER TO PAY ON CASH.	
Q BE BETTER TO WHAT?	
A PAY ON CASH.	
Q BETTER I'M TALKING ABOUT FROM THE POINT OF	11:24AM
VIEW OF A FUND MANAGER.	
FUND MANAGER WOULDN'T KNOW WHETHER IT	
WOULD BE BETTER OR WELL, WHAT DO YOU THINK THE POINT	
OF VIEW FROM FUND MANAGER, IT WOULD ALWAYS BE BETTER	
VESTED PAID VESTED ON CASH?	11:24AM
A I DON'T THINK THE FUND MANAGER WANTS CLIENTS	
THINKING HE WAS PAID ON FEES THAT WERE NEVER REALIZED.	
Q BUT IF HE WERE TERMINATED, THEN THAT WOULDN'T	
MATTER, WOULD IT?	
MR. QUINN: EXCUSE ME.	11:25AM
MR. HELM: HE WOULDN'T HAVE CLIENTS IF HE WAS	
TERMINATED, RIGHT?	
MR. QUINN: INCOMPLETE HYPOTHETICAL.	
ARGUMENTATIVE.	
THE COURT: OVERRULED.	11:25AM
THE WITNESS: IF HE WERE TERMINATED, IT	
WOULDN'T MATTER ANYMORE.	
BY MR. HELM:	
	THE COURT: SUSTAINED. BY MR. HELM: Q WELL, AT THE TIME YOU START A FUND, YOU MAY NOT KNOW WHETHER IT'S BETTER TO BE PAID ACCRUED TO THE TIME OF TERMINATION OR TO GET VESTED, MIGHT YOU? A YOU WOULD KNOW IT'S BETTER TO PAY ON CASH. Q BE BETTER TO WHAT? A PAY ON CASH. Q BETTER I'M TALKING ABOUT FROM THE POINT OF VIEW OF A FUND MANAGER. FUND MANAGER WOULDN'T KNOW WHETHER IT WOULD BE BETTER OR WELL, WHAT DO YOU THINK THE POINT OF VIEW FROM FUND MANAGER, IT WOULD ALWAYS BE BETTER VESTED PAID VESTED ON CASH? A I DON'T THINK THE FUND MANAGER WANTS CLIENTS THINKING HE WAS PAID ON FEES THAT WERE NEVER REALIZED. Q BUT IF HE WERE TERMINATED, THEN THAT WOULDN'T MATTER, WOULD IT? MR. QUINN: EXCUSE ME. MR. HELM: HE WOULDN'T HAVE CLIENTS IF HE WAS TERMINATED, RIGHT? MR. QUINN: INCOMPLETE HYPOTHETICAL. ARGUMENTATIVE. THE COURT: OVERRULED. THE WITNESS: IF HE WERE TERMINATED, IT WOULDN'T MATTER ANYMORE.

1	Q YEAH? HE WOULDN'T HAVE CLIENTS TO WORRY	
2	ABOUT; HE'S TERMINATED NOW?	
3	A STILL HAVE REP TCW'S REPUTATION TO UPHOLD.	
4	Q BUT THE FUND MANAGER MIGHT THINK THAT IT WAS	
5	IMPORTANT TO PROTECT HIS INTERESTS. LET'S ACTUALLY USE	11:25AM
6	A HYPOTHETICAL.	
7	SO IN YOUR THE WAY THAT TCW'S	
8	POSITION IN THIS CASE IS THAT, LET'S SAY THAT'S THE	
9	SMCF FUND, AND LET'S SAY MR. GUNDLACH WORKS TO GET IT	
10	ALL TOGETHER, RAISES ALL THE MONEY, HE MAKES THE	11:25AM
11	INVESTMENTS AT THE PEAK, YOU KNOW, THE BOTTOM OF THE	
12	MARKET, RIGHT WHEN THERE'S THESE GREAT ASSETS.	
13	AND THEY'RE PUT INTO THIS FUND AND THEY	
14	APPRECIATE, AND THEY APPRECIATE, AND THEY APPRECIATE.	
15	AND THEY FIRE HIM RIGHT BEFORE THE END OF IT, BEFORE	11:26AM
16	THE FEES ARE PAID.	
17	TCW'S POSITION IS THEY KEEP IT ALL AND	
18	GUNDLACH GETS NOTHING, RIGHT?	
19	MR. QUINN: THIS IS ARGUMENTATIVE.	
20	THE COURT: IS THERE A QUESTION THERE	11:26AM
21	SOMEWHERE, MR. HELM? I MISSED IT IF THERE WAS.	
22	WHY DON'T YOU ASK A QUESTION AND WE'LL	
23	FINISH IT UP AND MOVE ON.	
24	BY MR. HELM:	
25	Q YOU'VE BEEN TESTIFYING YOU'VE BEEN EVEN	11:26AM
26	VOLUNTEERING	
27	MR. QUINN: I OBJECT.	

THE COURT: WE'RE STILL WAITING FOR THE

1	QUESTION, MR. HELM.	
2	MR. HELM: HERE IS THE QUESTION, YOUR HONOR.	
3	Q YOU'VE TESTIFIED PREVIOUSLY THAT YOU THINK IT	
4	MAKES SENSE TO PAY TO PAY FUND MANAGERS FEES WHEN	
5	THE FEES ARE RECEIVED BY TCW, RIGHT?	11:26AM
6	A CORRECT.	
7	Q SO, IS A CONSEQUENCE OF THAT POSITION THAT	
8	SOMEONE IN MR. GUNDLACH'S POSITION COULD WORK	
9	THROUGHOUT, UP RIGHT TILL THE END OF THE FUND, CREATE	
10	ALL THE VALUE FOR TCW, BUT THEN GET FIRED AT THE LAST	11:27AM
11	MINUTE AND GET NOTHING?	
12	IS THAT A CONSEQUENCE OF THE "YOU HAVE	
13	TO GET PAID THE FEES FIRST" POSITION?	
14	MR. QUINN: ARGUMENTATIVE. INCOMPLETE	
15	HYPOTHETICAL.	11:27AM
16	THE COURT: YOU CAN ANSWER IT, MR. SULLIVAN.	
17	THE WAY YOU INTERPRET IT, IS THAT RIGHT OR WRONG?	
18	I MEAN, IS THAT CORRECT OR INCORRECT?	
19	THE WITNESS: I THINK IF THEY WERE TERMINATED	
20	FOR CAUSE, YOU WOULDN'T PAY HIM.	11:27AM
21	BY MR. HELM:	
22	Q IF EVEN THEY WERE TERMINATED WITHOUT CAUSE, IF	
23	THEY DIDN'T HAVE A CONTRACT	
24	MR. QUINN: INCOMPLETE HYPOTHETICAL.	
25	THE COURT: OVERRULED.	11:27AM
26	THE WITNESS: I'M SORRY. COULD YOU REPEAT	
27	THAT.	
28	///	

1	DV MD HEIM.	
1	BY MR. HELM:	
2	Q SUPPOSE THEY WERE AN AT-WILL EMPLOYEE, WHO YOU	
3	SAY COULD BE TERMINATED WITHOUT CAUSE. UNDER YOUR	
4	SCENARIO THEY COULD TCW COULD GET THE BENEFITS OF	
5	THIS FUND THAT MR. GUNDLACH CREATES AND INVESTS, COME	11:27AM
6	UP TO THE VERY END, FIRE HIM AT THE END AND SAY, SORRY,	
7	WE'RE GOING TO KEEP ALL THE FEES; YOU DON'T GET ANY.	
8	WE DIDN'T GET ANY CASH YET BACK FROM THE FEES.	
9	THAT'S A CONSEQUENCE OF YOUR POSITION,	
10	ISN'T IT?	11:28AM
11	MR. QUINN: ARGUMENTATIVE. ASSUMES FACTS NOT	
12	IN EVIDENCE.	
13	THE COURT: OVERRULED.	
14	IS THAT CONSISTENT WITH THE WAY YOU	
15	INTERPRET THIS, MR. SULLIVAN.	11:28AM
16	THE WITNESS: I WOULD STILL HAVE TO TAKE	
17	MANAGEMENT'S DIRECTION ON THAT, SO I WOULDN'T BE MAKING	
18	THAT CALL.	
19	THE COURT: ALL RIGHT.	
20	BY MR. HELM:	11:28AM
21	Q THAT WOULD BE A CONSEQUENCE OF WHAT WOULD	
22	HAPPEN IF MANAGEMENT DIRECTED YOU NOT TO PAY HIM THOSE	
23	FEES, CORRECT?	
24	MR. QUINN: SAME OBJECTION.	
25	THE COURT: OVERRULED.	11:28AM
26	THE WITNESS: I WOULD HAVE TO ASSUME	
27	MANAGEMENT HAD SOME REASON FOR DOING THAT.	
28	BY MR. HELM:	
	i de la companya de	1

1	Q THAT, ASSUMING THEY HAD A REASON, THAT WOULD	
2	BE THE CONSEQUENCE OF WHAT THEY TOLD YOU TO DO WOULDN'T	
3	IT, SIR?	
4	MR. QUINN: VAGUE AND AMBIGUOUS.	
5	THE COURT: ENOUGH OF THIS. LET'S MOVE ON,	11:28AM
6	MR. HELM.	11.20111
7	MR. HELM: I HAVE NOTHING FURTHER.	
8	MR. QUINN: I HAVE NOTHING.	
9	THE COURT: THANK YOU FOR YOUR TESTIMONY.	
10	YOU CAN STEP DOWN. YOU'VE BEEN VERY	11:28AM
11	PATIENT.	
12	NEXT WITNESS.	
13	MR. WEINGART: YOUR HONOR, WE CALL	
14	DON SHERMAN.	
15	THE CLERK: SIR, COULD I HAVE YOU STAND AND	11:29AM
16	RAISE YOUR RIGHT HAND TO BE SWORN.	
17		
18	DONALD SHERMAN +	
19	CALLED AS A WITNESS BY THE DEFENSE 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	
26	GOD?	
27		
28	THE WITNESS: I DO.	

1		THE CLERK: THANK YOU. PLEASE BE SEATED.	
2		SIR, PLEASE STATE AND SPELL YOUR NAME.	
3		THE WITNESS: DONALD SHERMAN S-H-E-R-M-A-N.	
4		THE COURT: IS IT D-O-N-A-L-D.	
5		THE WITNESS: IT IS.	11:29AM
6		THE COURT: GOOD MORNING.	
7		THE WITNESS: GOOD MORNING.	
8		THE COURT: YOU MAY PROCEED, MR. WEINGART.	
9		MR. WEINGART: THANK YOU, YOUR HONOR.	
10			11:29AM
11		DIRECT EXAMINATION +	
12	BY MR. W	EINGART:	
13	Q	GOOD MORNING.	
14	А	GOOD MORNING.	
15	Q	WHO ARE YOU EMPLOYED BY?	11:29AM
16	А	DELPHI FINANCIAL GROUP.	
17	Q	WHAT POSITIONS DO YOU HOLD?	
18	А	I'M THE CHIEF OPERATING OFFICER, PRESIDENT.	
19	Q	WHAT TYPE OF BUSINESS IS DELPHI?	
20	А	AN INSURANCE HOLDING COMPANY.	11:30AM
21	Q	WHAT INSURANCE COMPANIES DOES IT HOLD?	
22	А	WE OWN RELIANCE STANDARD LIFE.	
23		SAFETY NATIONAL CAUSALITY.	
24		FIRST RELIANCE STANDARD LIFE.	
25		AND SEVERAL SMALLER BUSINESSES.	11:30AM
26	Q	AND DOES THE RELIANCE SUBSIDIARY TAKE	
27	POLICYHO	LDER MONEY AND PLACE IT FOR INVESTMENT?	
28	А	IT DOES.	

Q AND WE'VE HEARD SOME TESTIMONY IN THIS CASE OF	
ABOUT THOSE ENTITIES. SO, FOR THE SAKE OF CONTINUITY,	
I'LL CALL IT RELIANCE. OKAY?	
A UNDERSTOOD.	
Q BEFORE WE TALK A LITTLE BIT MORE ABOUT	11:30AM
RELIANCE, TELL US A LITTLE ABOUT YOURSELF, YOUR	
PROFESSIONAL BACKGROUND.	
A ACCOUNTANT BY TRAINING.	
WORKED IN MERGERS AND ACQUISITIONS.	
RUN COMPANIES IN SEVERAL INDUSTRIES,	11:30AM
INCLUDING BANKING AND MORTGAGE COMPANIES PRIOR TO	
COMING TO DELPHI AND RELIANCE.	
Q WHEN'S THE FIRST TIME YOU HAD ANY KIND OF	
POSITION OR AFFILIATION WITH RELIANCE?	
A I WAS OUTSIDE DIRECTOR FOR DELPHI, THE HOLDING	11:31AM
COMPANY OF RELIANCE, WHICH IS A PUBLIC COMPANY.	
DELPHI'S A PUBLIC COMPANY, STARTED IN	
I BELIEVE IT WAS IN 2002.	
Q HAVE YOU REMAINED ON THE BOARD SINCE THAT	
TIME?	11:31AM
A I HAVE.	
Q NOW, AT A LATER POINT, I THINK YOU MENTIONED	
YOU BECAME THE PRESIDENT AND CHIEF OPERATING OFFICER.	
A YES.	
Q WHEN WAS THAT?	11:31AM
A THAT WAS 2006.	
Q AND YOU STILL HOLD THAT POSITION TODAY?	
A I DO.	
	ABOUT THOSE ENTITIES. SO, FOR THE SAKE OF CONTINUITY, I'LL CALL IT RELIANCE. OKAY? A UNDERSTOOD. Q BEFORE WE TALK A LITTLE BIT MORE ABOUT RELIANCE, TELL US A LITTLE ABOUT YOURSELF, YOUR PROFESSIONAL BACKGROUND. A ACCOUNTANT BY TRAINING. WORKED IN MERGERS AND ACQUISITIONS. RUN COMPANIES IN SEVERAL INDUSTRIES, INCLUDING BANKING AND MORTGAGE COMPANIES PRIOR TO COMING TO DELPHI AND RELIANCE. Q WHEN'S THE FIRST TIME YOU HAD ANY KIND OF POSITION OR AFFILIATION WITH RELIANCE? A I WAS OUTSIDE DIRECTOR FOR DELPHI, THE HOLDING COMPANY OF RELIANCE, WHICH IS A PUBLIC COMPANY. DELPHI'S A PUBLIC COMPANY, STARTED IN I BELIEVE IT WAS IN 2002. Q HAVE YOU REMAINED ON THE BOARD SINCE THAT TIME? A I HAVE. Q NOW, AT A LATER POINT, I THINK YOU MENTIONED YOU BECAME THE PRESIDENT AND CHIEF OPERATING OFFICER. A YES. Q WHEN WAS THAT? A THAT WAS 2006. Q AND YOU STILL HOLD THAT POSITION TODAY?

Q NOW, WHEN YOU JOINED RELIANCE AS PRESIDENT AND	
C.O.O. IN 2006, DID YOU HAVE ANY INVOLVEMENT IN ANY	
PARTICULAR ASPECT OF THE INVESTMENT SIDE OF ITS	
OPERATIONS?	
A I DID.	11:31AM
GIVEN MY BACKGROUND IN BANKING AND	
MORTGAGE, WHEN WE WERE WORKING WITH INVESTMENTS THAT	
DEALT WITH EITHER CREDIT OR RESIDENTIAL MORTGAGE-BACKED	
SECURITIES INVESTING, I WOULD BE INVOLVED IN THOSE	
DISCUSSIONS.	11:32AM
Q AND IN THE COURSE OF YOUR EXPERIENCE WITH	
REGARD TO THOSE INVESTMENTS, DID YOU COME TO KNOW	
MR. GUNDLACH?	
A I DID.	
Q WHEN DID YOU FIRST KNOW OF HIM?	11:32AM
A I FIRST KNEW OF HIM FROM THE BOARD REPORTS	
THAT, AS AN OUTSIDE DIRECTOR YOU WOULD RECEIVE IN 2	
I WOULD HAVE RECEIVED STARTING IN 2002. I THINK I	
FIRST MET HIM IN 2006.	
Q WHEN YOU ASSUMED YOUR OPERATIONAL ROLE?	11:32AM
A CORRECT.	
Q AND TO YOUR KNOWLEDGE, HAD MR. GUNDLACH HAD A	
RELATIONSHIP WITH RELIANCE THAT EXTENDED BACK BEFORE	
2002, WHEN YOU JOINED THE BOARD?	
A IT DID. I THINK IT WENT BACK TO 1994.	11:32AM
Q WERE THERE PEOPLE WHO USED TO WORK AT RELIANCE	
WHO NOW WORK IN WITH MR. GUNDLACH?	
A YES. THERE ARE SEVERAL.	
	C.O.O. IN 2006, DID YOU HAVE ANY INVOLVEMENT IN ANY PARTICULAR ASPECT OF THE INVESTMENT SIDE OF ITS OPERATIONS? A I DID. GIVEN MY BACKGROUND IN BANKING AND MORTGAGE, WHEN WE WERE WORKING WITH INVESTMENTS THAT DEALT WITH EITHER CREDIT OR RESIDENTIAL MORTGAGE-BACKED SECURITIES INVESTING, I WOULD BE INVOLVED IN THOSE DISCUSSIONS. Q AND IN THE COURSE OF YOUR EXPERIENCE WITH REGARD TO THOSE INVESTMENTS, DID YOU COME TO KNOW MR. GUNDLACH? A I DID. Q WHEN DID YOU FIRST KNOW OF HIM? A I FIRST KNEW OF HIM FROM THE BOARD REPORTS THAT, AS AN OUTSIDE DIRECTOR YOU WOULD RECEIVE IN 2 I WOULD HAVE RECEIVED STARTING IN 2002. I THINK I FIRST MET HIM IN 2006. Q WHEN YOU ASSUMED YOUR OPERATIONAL ROLE? A CORRECT. Q AND TO YOUR KNOWLEDGE, HAD MR. GUNDLACH HAD A RELATIONSHIP WITH RELIANCE THAT EXTENDED BACK BEFORE 2002, WHEN YOU JOINED THE BOARD? A IT DID. I THINK IT WENT BACK TO 1994. Q WERE THERE PEOPLE WHO USED TO WORK AT RELIANCE WHO NOW WORK IN WITH MR. GUNDLACH?

1	Q AND WE MET ONE, MR. LUCIDO, WHO TESTIFIED	
2	EARLIER IN THE CASE.	
3	ARE YOU FAMILIAR WITH A WOMAN NAMED	
4	SUSAN NICHOLS?	
5	A I AM.	11:33AM
6	Q SUSAN WHO IS SHE?	
7	A SHE WORKED AT RELIANCE IN THE PHILADELPHIA	
8	OFFICE, I BELIEVE, AND LEFT I DON'T KNOW WHEN. SHE	
9	WAS GONE BY THE TIME I ARRIVED, BUT LEFT TO GO TO WORK	
10	WITH JEFFREY.	11:33AM
11	Q NOW, ONCE YOU BECAME PRESIDENT AND C.O.O., YOU	
12	SAID YOU BEGAN TO DEAL DIRECTLY WITH MR. GUNDLACH?	
13	A I DID, YES.	
14	Q WERE THERE ANY OTHERS IN MR. GUNDLACH'S GROUP	
15	THAT YOU OR OTHERS AT RELIANCE WOULD DEAL WITH?	11:33AM
16	A YES. WE WOULD DEAL WITH PEOPLE WHO WERE	
17	WORKING FOR MR. GUNDLACH ON THE MORTGAGE-BACKED	
18	SECURITIES.	
19	WE WOULD HAVE TALKED TO JEFF MAYBERRY ON	
20	OCCASION.	11:33AM
21	THERE'S ANOTHER GENTLEMAN WHOSE NAME I'M	
22	FORGETTING, BUT	
23	Q AND IN THE 2006 TO 2009 TIME FRAME, DID	
24	RELIANCE HAVE AN ACCOUNT OR ACCOUNTS WITH TCW?	
25	A YES. WE DID.	11:34AM
26	Q WHAT TYPE OF ACCOUNTS WERE THOSE?	
27	A WE HAD SEVERAL ACCOUNTS THAT WERE DESIGNED TO	
20	DE INVECEED IN MODEOUCE DACKED CECIDIETEC AND AN	

BE INVESTED IN MORTGAGE-BACKED SECURITIES AND AN

ACCOUNT THAT WAS DESIGNED TO BE INVESTED IN EMERGING 1 2 MARKET CORPORATE DEBT. 3 NOW, ARE YOU FAMILIAR WITH WHAT ARE CALLED 4 DISCRETIONARY OR NONDISCRETIONARY ACCOUNTS? 5 Α I AM. 11:34AM 6 CAN YOU JUST EXPLAIN TO US WHAT'S A 7 DISCRETIONARY ACCOUNT VERSUS NONDISCRETIONARY ACCOUNT? A IN OUR BUSINESS THE WAY WE USE THOSE TYPES OF 8 9 ACCOUNTS IS, ON THE DISCRETIONARY SIDE YOU GO TO A 10 MANAGER THAT YOU HIRE AND GIVE THEM GENERAL GUIDELINES. 11:34AM 11 BUT IT'S UP TO THEM AT THEIR DISCRETION 12 TO DECIDE WHAT TO BUY OR SELL IN THAT ACCOUNT. 1.3 AND IN A NONDISCRETIONARY ACCOUNT THEY 14 MAY OFFER UP IDEAS, BUT ANY PARTICULAR TRADE NEEDS TO 15 BE CONFIRMED BY SOMEBODY AT OUR COMPANY BECAUSE THEY 11:35AM 16 DON'T HAVE DISCRETION TO TRADE ON THEIR OWN. 17 WHAT KIND OF ACCOUNT DID RELIANCE HAVE WITH 18 TCW IN THE 2006 TO 2009 TIME FRAME? 19 THEY WERE DISCRETIONARY ACCOUNTS. 20 NOW, ALTHOUGH THE ACCOUNTS WERE DISCRETIONARY, 11:35AM 21 WOULD YOU STILL DISCUSS POTENTIAL INVESTMENT IDEAS WITH 22 MR. GUNDLACH BEFORE THEY WERE IMPLEMENTED? 23 A WE WOULD. WE WOULD DISCUSS THEM BEFORE, IT 24 MAY BE AFTER, BUT HE KEPT US INFORMED ABOUT WHAT HIS 25 THINKING WAS AND WHAT WAS BEING CHANGED IN OUR 11:35AM 26 PORTFOLIO. 2.7 WOULD HE PROVIDE YOU INFORMATION IN

CONNECTION -- WELL, LET ME BACK UP.

1	WHAT WOULD YOU DO WITH THAT INFORMATION	
2	WHEN YOU RECEIVED IT?	
3	A WE WOULD TRY TO EVALUATE WHAT MR. GUNDLACH WAS	
4	THINKING MIGHT BE PROFITABLE INVESTMENTS TO DETERMINE	
5	DID WE AGREE WITH WHAT WE WERE WHAT WAS BEING DONE	11:35AM
6	IN THE ACCOUNT.	
7	AND PERHAPS WAS IT SOMETHING THAT WE	
8	WANTED TO INVEST ADDITIONAL MONEY IN.	
9	Q SO YOU WOULD ANALYZE THOSE IDEAS OR	
10	INFORMATION TO SEE WHETHER OR NOT YOU WERE ON THE SAME	11:36AM
11	PAGE?	
12	A WE WOULD.	
13	Q WOULD YOU BE PROVIDED INFORMATION BY	
14	MR. GUNDLACH OR PEOPLE IN HIS GROUP IN CONNECTION WITH	
15	MAKING THAT KIND OF ANALYSIS?	11:36AM
16	A WE WOULD.	
17	Q WHAT KIND OF INFORMATION WOULD YOU BE	
18	PROVIDED?	
19	A TYPICALLY, WHEN YOU'RE TALKING ABOUT A	
20	MORTGAGE-BACKED SECURITIES INVESTMENT, YOU'D BE	11:36AM
21	PROVIDED AN ANALYSIS FROM ONE OF THE ANALYTICAL	
22	SERVICES.	
23	THE MOST COMMON ONE, THE ONE WE MOST	
24	OFTEN SAW FROM MR. GUNDLACH'S GROUP AT TCW WAS FROM A	
25	SOFTWARE PROGRAM CALLED IN TEXT. WHICH ANALYZED	11:36AM
26	MORTGAGE CREDIT CASH FLOWS, IF YOU WILL.	
27	Q THAT'S AN INDEPENDENT COMPANY, IN TEXT?	

28

A IT IS.

1	Q AND WHAT WOULD YOU DO WITH THE IN TEXT	
2	INFORMATION THAT YOU WOULD RECEIVE?	
3	A WE WOULD LOOK AT WHAT THE ASSUMPTIONS WERE.	
4	LIKE ANY OTHER TOOL, IT'S A A THE VALUE COMES	
5	FROM THE QUALITY OF THE JUDGMENT THAT GOES INTO THE	11:37AM
6	ASSUMPTIONS.	
7	WE WOULD LOOK AT THE ASSUMPTIONS THAT	
8	WERE BEING MADE, AND THEN WE WOULD COMPARE THAT	
9	ANALYSIS TO OTHER TOOLS THAT WE HAD, EITHER TOOLS OF	
10	OUR OWN OR TOOLS AVAILABLE ON THE BLOOMBERG FINANCIAL	11:37AM
11	SERVICE, TO SEE DID WE THINK THAT THE ANALYSIS MADE	
12	SENSE, AND DID IT LOOK LIKE TO US TO BE A PROFITABLE	
13	INVESTMENT.	
14	Q WOULD RELIANCE PAY, ASSUME IT PAYS FEES TO	
15	TCW, IN CONNECTION WITH MR. GUNDLACH'S MANAGING OF THE	11:37AM
16	ACCOUNT?	
17	A WE DID.	
18	Q WHAT DID YOU THINK YOU WERE PAYING FOR WHEN	
19	YOU PAID THOSE FEES?	
20	MR. QUINN: OBJECTION. RELEVANCE.	11:37AM
21	THE COURT: SUSTAINED.	
22	BY MR. WEINGART:	
23	Q WELL, LET ME ASK YOU: WERE YOU PAYING FOR	
24	MR. GUNDLACH'S JUDGMENT OR SOMETHING ELSE?	
25	A WE VIEWED THE PRIMARY VALUE AS MR. GUNDLACH'S	11:37AM
26	JUDGMENT.	
27	Q NOW, AT ANY POINT AFTER 2006 WELL, LET ME	
28	STRIKE THAT.	

1	AT THE BEGINNING OF 2009, HOW MUCH DID	
2	RELIANCE HAVE INVESTED AT TCW?	
3	A I DON'T KNOW THE PRECISE FIGURE, BUT I THINK	
4	IT WAS APPROXIMATELY 1.3 BILLION IN MORTGAGE-BACKED	
5	SECURITIES AND PERHAPS SEVERAL HUNDRED MILLION IN THE	11:38AM
6	EMERGING MARKET DEBT ACCOUNT.	
7	Q AND WHO IS THE EMERGING MARKET DEBT MANAGED	
8	BY, MR. GUNDLACH OR SOMEBODY ELSE?	
9	A THE PORTFOLIO MANAGER TCW ON THAT WAS	
10	LUZ PADILLA.	11:38AM
11	Q IF I ADD THOSE TOGETHER, ROUGHLY ABOUT A	
12	BILLION AND A HALF?	
13	A YES.	
14	Q AND AT THE BEGINNING OF 2009, WERE YOU	
15	SATISFIED WITH MR. GUNDLACH'S PERFORMANCE?	11:38AM
16	A WE WERE.	
17	Q DID YOU OBSERVE MR. GUNDLACH CONDUCTING	
18	HIMSELF, IN YOUR RELATIONS WITH HIM, IN ANY WAY THAT	
19	YOU CONSIDERED IMPROPER?	
20	A NO.	11:39AM
21	MR. QUINN: VAGUE. LACKS FOUNDATION.	
22	THE COURT: OVERRULED. I'LL ALLOW IT TO	
23	STAND.	
24	BY MR. WEINGART:	
25	Q DID MR. GUNDLACH EVER FAIL TO DELIVER	11:39AM
26	INFORMATION OR REPORTS THAT YOU REQUESTED?	
27	A NO.	
28	Q WAS RELIANCE A SIGNIFICANT CLIENT OF TCW?	

A WE BELIEVED WE WERE.	
Q WELL, LET ME ASK YOU.	
WERE YOU EVER ASKED TO SERVE AS A	
REFERENCE FOR TCW IN CONNECTION WITH VARIOUS PROPOSALS	
OR THE LIKE THAT IT WAS MAKING?	11:39AM
A ON A NUMBER OF OCCASIONS, YES.	
Q AND THAT WAS BECAUSE YOU ARE A LARGE AND	
SIGNIFICANT CLIENT?	
A WE THOUGHT SO, YES.	
Q AT SOME POINT IN DECEMBER 2004, DID YOU LEARN	11:39AM
THAT MR. GUNDLACH HAD BEEN RELIEVED OF HIS DUTIES?	
A I THINK YOU MEANT 2009.	
Q I'M NOT SURE WHAT I SAID, BUT I DEFINITELY	
MEANT 2009.	
A YES, WE DID LEARN THAT.	11:40AM
Q AND HOW DID YOU LEARN IT?	
A WE READ IT IN THE FINANCIAL PRESS.	
Q AND DID ANYONE FROM TCW CONTACT YOU ABOUT THAT	
CHANGE BEFORE YOU READ IT IN THE PRESS?	
A NO.	11:40AM
Q DID ANYONE FROM TCW CONTACT YOU SOON AFTER YOU	
READ ABOUT IT IN THE PRESS?	
A IT NO, NOT SOON AFTER. IT TOOK A WHILE.	
Q DID YOU HAVE ANY INKLING THAT THAT WAS COMING?	
A NO.	11:40AM
Q WHAT WAS YOUR REACTION?	
MR. QUINN: OBJECTION. RELEVANCE.	
THE COURT: OVERRULED.	
	Q WELL, LET ME ASK YOU. WERE YOU EVER ASKED TO SERVE AS A REFERENCE FOR TCW IN CONNECTION WITH VARIOUS PROPOSALS OR THE LIKE THAT IT WAS MAKING? A ON A NUMBER OF OCCASIONS, YES. Q AND THAT WAS BECAUSE YOU ARE A LARGE AND SIGNIFICANT CLIENT? A WE THOUGHT SO, YES. Q AT SOME POINT IN DECEMBER 2004, DID YOU LEARN THAT MR. GUNDLACH HAD BEEN RELIEVED OF HIS DUTIES? A I THINK YOU MEANT 2009. Q I'M NOT SURE WHAT I SAID, BUT I DEFINITELY MEANT 2009. A YES, WE DID LEARN THAT. Q AND HOW DID YOU LEARN IT? A WE READ IT IN THE FINANCIAL PRESS. Q AND DID ANYONE FROM TCW CONTACT YOU ABOUT THAT CHANGE BEFORE YOU READ IT IN THE PRESS? A NO. Q DID ANYONE FROM TCW CONTACT YOU SOON AFTER YOU READ ABOUT IT IN THE PRESS? A IT NO, NOT SOON AFTER. IT TOOK A WHILE. Q DID YOU HAVE ANY INKLING THAT THAT WAS COMING? A NO. Q WHAT WAS YOUR REACTION? MR. QUINN: OBJECTION. RELEVANCE.

THE WITNESS: WE WERE STUNNED. 1 2 BY MR. WEINGART: 3 NOW, AT ANY TIME BEFORE MR. GUNDLACH WAS 4 RELIEVED OF HIS DUTIES ON DECEMBER 4TH, DID HE 5 SUGGEST -- WELL, I'M SORRY. 11:40AM 6 WERE YOU, IN THE 2009 TIME FRAME, THE 7 PRIMARY POINT OF CONTACT WITH MR. GUNDLACH AT RELIANCE? 8 Α FROM A STRATEGY POINT OF VIEW, YES. 9 AND AT ANY TIME BEFORE HE WAS RELIEVED OF HIS 10 DUTIES ON DECEMBER 4TH, DID HE SUGGEST TO YOU 11:41AM POSSIBILITY OF RELIANCE DOING BUSINESS WITH SOME NEW 11 12 ENTITY OR BUSINESS THAT HE MIGHT START? 1.3 A HE DID NOT. DID MR. GUNDLACH EVER HAVE ANY DISCUSSION WITH 14 15 YOU BEFORE DECEMBER 4TH ABOUT ANY POSSIBLE NEW BUSINESS 11:41 AM 16 THAT HE MIGHT START? 17 NOT TO MY RECOLLECTION. Α 18 DID MR. GUNDLACH SAY OR DO ANYTHING BEFORE 19 DECEMBER 4TH, 2009 TO TRY TO DRIVE A WEDGE BETWEEN 2.0 RELIANCE AND TCW? 11:41AM 21 Α NOTHING. 22 NOW, DID TCW -- I GUESS THEY DID NOT PROVIDE 23 YOU ANY INFORMATION ABOUT MET WEST ON DECEMBER 4TH, 24 2009? 25 Α THEY DID NOT. 11:41AM 26 WHEN YOU READ THE ARTICLE IN THE FINANCIAL 2.7 PRESS, DID YOU HAVE SOME UNDERSTANDING ABOUT WHO WAS 28

COMING IN TO REPLACE MR. GUNDLACH?

1	A WE DID NOT.	
2	Q AND AT SOME POINT DID YOU DETERMINE THAT THAT	
3	WAS A COMPANY CALLED MET WEST?	
4	A WE READ THAT IN THE PRESS, YES.	
5	Q WHAT DID YOU DO AFTER YOU READ THAT IN THE	11:42AM
6	PRESS?	
7	A WE NEEDED TO UNDERSTAND WHAT OUR ALTERNATIVES	
8	WERE, SO THE FIRST THING WE DID WAS DO SOME RESEARCH ON	
9	WHAT MET WEST'S TRACK RECORD WAS IN THEIR INVESTMENT	
10	MANAGEMENT BUSINESS.	11:42AM
11	Q AND DID YOU COME TO ANY CONCLUSIONS AS A	
12	RESULT OF YOUR RESEARCH?	
13	A WE DID.	
14	Q LET ME JUST STOP YOU.	
15	DID YOU SPEAK WITH MR. GUNDLACH AT ALL	11:42AM
16	BEFORE YOU CAME TO THESE CONCLUSIONS?	
17	A NO.	
18	Q AND WHAT CONCLUSION DID YOU REACH?	
19	MR. QUINN: YOUR HONOR, NOT FOR THE TRUTH	
20	IF IT'S HIS STATE OF MIND, THAT'S FINE, BUT NOT FOR THE	11:42AM
21	TRUTH.	
22	THE COURT: HIS CONCLUSIONS AREN'T THE FACTS	
23	THAT YOU NEED TO BE CONCERNED WITH.	
24	BUT HIS IMPRESSION MAY BE RELEVANT.	
25	GO AHEAD, SIR.	11:42AM
26	THE WITNESS: THANK YOU.	
27	OUR CONCLUSION WAS THAT MET WEST WAS A	
28	GOOD JOURNEYMAN, SORT OF ALL-PURPOSE INVESTMENT HOUSE,	

1	BUT NOT A SPECIALIST IN MORTGAGE-BACKED SECURITIES,	
2	WHICH WAS THE BASIS OF OUR RELATIONSHIP WITH TCW AND	
3	MR. GUNDLACH.	
4	BY MR. WEINGART:	
5	Q NOW, BASED ON THE COMING TO THAT	11:43AM
6	CONCLUSION, DID YOU TAKE ANY PARTICULAR STEPS?	
7	A WE DID.	
8	Q WHAT STEPS WERE THOSE?	
9	A WE REACHED OUT TO MR. GUNDLACH TO TRY TO	
10	ESTABLISH WHAT HIS STATUS WAS.	11:43AM
11	AND WE NOTIFIED TCW THAT WE WERE	
12	SUSPENDING THEIR DISCRETIONARY TRADING AUTHORITY OVER	
13	OUR MORTGAGE-BACKED SECURITY ACCOUNTS.	
14	Q LET ME TAKE THOSE IN REVERSE ORDER.	
15	COULD YOU LOOK, YOU SHOULD HAVE A	11:43AM
16	NOTEBOOK UP THERE, AT EXHIBIT 5981.	
17	A YES.	
18	Q COULD YOU IDENTIFY THAT FOR US.	
19	A THIS IS AN E-MAIL FROM OUR CORPORATE COUNSEL,	
20	CHAD COULTER, TO SEVERAL OF US AT THE COMPANY REGARDING	11:44AM
21	TCW CONFIRMING THE FREEZING OF DISCRETIONARY TRADING	
22	AUTHORITY ON OUR ACCOUNTS.	
23	Q THEN THERE ARE EARLIER E-MAILS IN THE CHAIN	
24	WITH PEOPLE AT TCW CONCERNING THAT SUBJECT?	
25	A YES.	11:44AM
26	MR. WEINGART: YOUR HONOR, I WOULD OFFER 5981.	
27	MR. QUINN: NO OBJECTION.	
	l de la companya de	

THE COURT: IT WILL BE ADMITTED.

1	(EXHIBIT 5981 ADMITTED.) +	
2		
3	MR. WEINGART: COULD WE PUT THAT UP, BRIEFLY,	
4	MAYBE JUST THE SECOND E-MAIL FROM MR. BURSCHINGER.	
5	Q WHO IS CHAD?	11:44AM
6	A THAT'S CHAD COULTER, OUR CORPORATE COUNSEL.	
7	Q IT SAYS:	
8	AS REQUESTED, WE RESTRICTED ALL	
9	BUYS AND SELLS FOR THE ACCOUNTS	
10	LISTED BELOW. DON'T HESITATE TO	11:44AM
11	CONTACT ME DIRECTLY SHOULD YOU HAVE	
12	ANY QUESTIONS.	
13	THAT WOULD BE THE MORNING OF DECEMBER 7TH,	
14	WHICH WOULD BE THE MONDAY AFTER MR. GUNDLACH WAS	
15	RELIEVED OF HIS DUTIES?	11:45AM
16	A YES, I BELIEVE THAT IS CORRECT.	
17	Q NOW, YOU SAID THAT YOU SPOKE WITH	
18	MR. GUNDLACH.	
19	DID MR. GUNDLACH PUT YOU UP TO THIS?	
20	MR. QUINN: VAGUE AND AMBIGUOUS.	11:45AM
21	THE COURT: OVERRULED.	
22	DO YOU UNDERSTAND THE QUESTION?	
23	THE WITNESS: I BELIEVE I DO, YOUR HONOR.	
24	HE DID NOT SUGGEST IT OR ENCOURAGE IT.	
25	BY MR. WEINGART:	11:45AM
26	Q AND DID YOU EVER END UP, MEANING RELIANCE,	
27	EVER END UP LIFTING THE ACCOUNT FREEZE AT TCW?	
28	A WE DID NOT.	

1	Q YOU ALSO MENTIONED THAT YOU SPOKE WITH	
2	MR. GUNDLACH; IS THAT RIGHT?	
3	A I DID, YES.	
4	Q AND WHO INITIATED THE CONTACT? DID HE CALL	
5	YOU OR DID YOU CALL HIM?	11:45AM
6	A I CALLED HIM.	
7	Q HOW DID YOU GET AHOLD OF HIM?	
8	A WELL, I TRIED TO CALL HIM AT TCW, WHICH I	
9	GUESS SHOULD HAVE BEEN OBVIOUS THAT THAT NUMBER	
10	WOULDN'T CONNECT.	11:46AM
11	SO I RESEARCHED THE INTERNET AND GOT	
12	PHONE NUMBERS AND ENDED UP LUCKY ENOUGH TO DIAL HIM AT	
13	HIS HOME PHONE NUMBER ON SATURDAY.	
14	Q WHY WERE YOU CALLING HIM?	
15	A WE WANTED TO LOOK AT WHAT OUR ALTERNATIVES	11:46AM
16	WERE TO TRY TO MAINTAIN THE ACCESS TO HIS INVESTMENT	
17	ADVICE, WHICH WAS THE BASIS OF OUR RELATIONSHIP WE'D	
18	HAD PREVIOUSLY.	
19	Q AND WHAT DID YOU SAY TO MR. GUNDLACH DURING	
20	THAT CALL FIRST OF ALL, LET ME ASK YOU, ABOUT WHEN	11:46AM
21	WAS THIS CALL?	
22	A I DON'T RECALL THE TIME OF DAY. IT WAS	
23	SATURDAY, SORT OF MIDDLE OF THE DAY.	
24	I DON'T RECALL WHETHER IT WAS LATE	
25	MORNING OR EARLY AFTERNOON. I THINK IT WAS EARLY	11:46AM
26	AFTERNOON MY TIME; MORNING HIS TIME.	
27	Q DECEMBER 5TH?	

YES. I BELIEVE THAT'S RIGHT.

28

Α

1	Q AND WHAT DID YOU SAY TO MR. GUNDLACH DURING	
2	THAT CALL?	
3	MR. QUINN: OBJECTION. HEARSAY.	
4	THE COURT: SUSTAINED.	
5	MR. WEINGART: I'M ASKING WHAT HE SAID, YOUR	11:46AM
6	HONOR.	
7	MR. QUINN: SAME OBJECTION.	
8	THE COURT: LET'S GO AHEAD.	
9	BY MR. WEINGART:	
10	Q YOU SAID THAT YOU WANTED TO MAINTAIN SOME KIND	11:47AM
11	OF RELATIONSHIP WITH MR. GUNDLACH.	
12	DID MR. GUNDLACH INDICATE TO YOU AT ALL	
13	DURING THE CALL ON DECEMBER 5TH THAT HE WAS IN A	
14	POSITION TO HELP YOU WITH THAT AS OF DECEMBER 5TH?	
15	MR. QUINN: OBJECTION. HEARSAY.	11:47AM
16	THE COURT: OVERRULED.	
17	THE WITNESS: HE EXPRESSED THE WILLINGNESS TO	
18	TRY TO DO THAT.	
19	BUT HE ACKNOWLEDGED THAT HE HAD THINGS	
20	HE NEEDED TO COMPLETE IN ORDER TO BE ABLE TO DO THAT.	11:47AM
21	BY MR. WEINGART:	
22	Q NOW, DID YOU YOU CONTINUED TO HAVE	
23	DISCUSSIONS WITH MR. GUNDLACH AFTER THAT TIME?	
24	A WE DID.	
25	Q AND DID RELIANCE COME TO SOME KIND OF A	11:47AM
26	DECISION ABOUT WHAT IT WANTED TO DO WITH THE ACCOUNT	
27	THAT IT HAD FROZEN AT TCW?	
28	A WE DID.	

1	Q WHAT DID YOU DECIDE TO DO?	
2	A WE OPTED TO CLOSE THAT ACCOUNT AND OPEN AN	
3	ACCOUNT AT DOUBLELINE.	
4	Q AND WE WERE TALKING BEFORE ABOUT DISCRETIONARY	
5	AND NONDISCRETIONARY ACCOUNTS.	11:48AM
6	WHAT KIND OF ACCOUNT WELL, I KEEP	
7	JUMPING AHEAD.	
8	ABOUT WHEN WAS THIS THAT YOU WOULD HAVE	
9	OPENED THAT ACCOUNT AT DOUBLELINE?	
10	A A WEEK OR TEN DAYS AFTER THIS CHAIN OF EVENTS	11:48AM
11	STARTED.	
12	Q SO, MIDDLE TO LATE DECEMBER?	
13	A YES. MIDDLE DECEMBER, I THINK.	
14	Q WHAT KIND OF ACCOUNT WAS IT THAT YOU OPENED?	
15	A WE OPENED A NONDISCRETIONARY ACCOUNT.	11:48AM
16	Q WHAT DID THAT MEAN IN TERMS OF THE SERVICES	
17	THAT DOUBLELINE WAS PROVIDING?	
18	A IT WOULD MEAN THAT DOUBLELINE WOULD	
19	RECOMMENDED TRADES, RECOMMEND SECURITIES TO PURCHASE OR	
20	SECURITIES TO SELL, AND WOULD PROVIDE THE INFORMATION	11:48AM
21	TO BACK UP THAT RECOMMENDATION.	
22	WE WOULD MAKE THE DECISION TO CONFIRM	
23	THE TRADE WITH THE SELLING BROKER OR IN BUYING BROKER,	
24	DEPENDING ON WHAT WE SAID, OR NOT.	
25	Q WHY DID YOU OPEN THAT KIND OF ACCOUNT?	11:48AM
26	A AT THE TIME WE WERE IN DISCUSSIONS WITH	
27	DOUBLELINE AND MR. GUNDLACH, WE WERE OF THE	
28	UNDERSTANDING HE DID NOT HAVE ALL THE NECESSARY	

1	LICENSES IN ORDER TO HAVE A DISCRETIONARY AUTHORITY.	
2	AND THAT SEEMED TO MAKE THE MOST SENSE.	
3	Q NOW, YOU MENTIONED THAT THERE WAS ALSO AN	
4	EMERGING MARKETS ACCOUNT THAT WAS MANAGED BY A WOMAN	
5	NAMED MS. PADILLA AT TCW?	11:49A
6	A YES.	
7	Q WHAT HAPPENED WITH REGARD TO THAT RELIANCE	
8	ACCOUNT?	
9	A WELL, WE WERE VERY CLEAR IN THE FREEZE ORDER	
10	THAT WE SENT ON SUNDAY THAT THAT APPLIED ONLY TO THE	11:49A
11	MORTGAGE-BACKED SECURITIES ACCOUNT.	
12	WE WERE CONFIDENT IN WHAT IN THE	
13	SERVICES MS. PADILLA HAD BEEN OFFERING US IN HER ROLE	
14	IN THE EMERGING MARKET DEBT. AND WE INTENDED TO	
15	CONTINUE WITH THAT FOR AS LONG AS SHE WAS TO BE THE	11:49A
16	PORTFOLIO MANAGER.	
17	Q NOW, DID YOU WAS THIS DECISION COMMUNICATED	
18	TO RELIANCE'S BOARD OF DIRECTORS?	
19	A IT WAS.	
20	Q COULD YOU TAKE A LOOK AT EXHIBIT 5563. COULD	11:50A
21	YOU IDENTIFY THAT FOR US.	
22	A YES, THIS IS AN E-MAIL, DECEMBER 9TH FROM	
23	CHAD COULTER, OUR CORPORATE COUNSEL, TO THE BOARD OF	
24	DIRECTORS OF RELIANCE'S HOLDING COMPANY, DELPHI	
25	FINANCIAL.	11:50A
26	Q AND YOU WERE COPIED ON THIS E-MAIL?	
27	A I AM.	

MR. WEINGART: I WOULD OFFER 5563.

1	MR. QUINN: YOUR HONOR, THIS HAS OPINIONS IN	
2	IT, EMBEDDED IT IN. CONCLUSIONS.	
3	THE COURT: HOLD ON.	
4	MR. QUINN: IT'S HEARSAY.	
5	THE COURT: HOLD ON A MINUTE.	11:50AM
6	(PAUSE) +	
7		
8	THE COURT: THE OBJECTION'S OVERRULED. IT	
9	WILL BE ADMITTED, BUT NOT FOR THE TRUTH OF THE MATTER	
10	CONTAINED IN IT.	11:51AM
11	AGAIN, LADIES AND GENTLEMEN, DON'T TAKE	
12	THE OPINIONS CONTAINED IN THIS EXHIBIT AS FACT.	
13		
14	(EXHIBIT 5563 ADMITTED.) +	
15		11:51AM
16	THE COURT: GO AHEAD.	
17	MR. WEINGART: COULD WE DISPLAY THIS EXHIBIT?	
18	IF WE COULD BLOW UP THE PARAGRAPH THAT BEGINS: WE HAVE	
19	LONG BELIEVED.	
20	Q THE BOARD DISCUSSES THE PAST RELATIONSHIP	11:51AM
21	THE FINAL SENTENCE THERE:	
22	WE BELIEVE THAT CONTINUING TO	
23	AVAIL OURSELVES OF THE EXPERTISE	
24	AND TALENTS OF JEFFREY AND HIS TEAM	
25	REPRESENTS THE BEST COURSE OF	11:52AM
26	ACTION AND WE ARE WORKING ON	
27	ESTABLISHING AN ARRANGEMENT TOWARDS	
28	THAT AND AS SOON AS POSSIBLE.	

1	THAT WAS THE DECISION THAT RELIANCE REACHED	
2	AND COMMUNICATED TO THE BOARD?	
3	A IT WAS.	
4	Q THERE'S ALSO A REFERENCE TO SOME KEY MAN	
5	PROVISIONS IN YOUR INVESTMENT MANAGEMENT AGREEMENT.	11:52AM
6	WHAT WERE THOSE PROVISIONS?	
7	A IN THE AGREEMENT THAT RELIANCE HAD WITH TCW,	
8	THERE WAS A PROVISION THAT SAID, IN EFFECT, DESPITE	
9	WHAT THE THE NORMAL TERMINATION PROVISIONS OF THE	
10	CONTRACT WOULD BE, WE'D HAVE THE RIGHT TO TERMINATE	11:52AM
11	IMMEDIATELY IF JEFFREY GUNDLACH WAS NO LONGER THE	
12	PORTFOLIO MANAGER ON OUR ACCOUNT.	
13	Q THAT'S WHAT THE REFERENCE IS THERE TO KEY MAN?	
14	A YES.	
15	Q IF WE COULD GO DOWN TO THE FINAL PARAGRAPH.	11:52AM
16	THAT'S A REFERENCE TO THE 175 MILLION IN	
17	THE EMERGING MARKET DEBT STRATEGY.	
18	AND THOSE ASSETS WOULD STAY AT TCW,	
19	SUBJECT TO ANY FUTURE CHANGES INVOLVING LUZ AND HER	
20	TEAM.	11:53AM
21	DO YOU SEE THAT?	
22	A I DO SEE THAT, YES.	
23	Q WERE THERE FUTURE CHANGES INVOLVING LUZ AND	
24	HER TEAM?	
25	A YES.	11:53AM
26	Q WHAT WERE THOSE?	
27	A LUZ AND HER TEAM OPTED TO LEAVE TCW AND GO TO	
28	DOUBLELINE.	

1	Q WHAT THEN DID YOU DO WITH REGARD TO THAT	
2	175 MILLION?	
3	A CONSISTENT WITH THE IDEA THAT THE VALUE TO US	
4	IS IN THE TALENTS OF THE PORTFOLIO MANAGER, WE MOVED	
5	THAT ACCOUNT TO DOUBLELINE.	11:53AM
6	Q DID YOU LISTEN TO ANY OF MR. GUNDLACH'S	
7	WEBCAST IN DECEMBER OF 2009?	
8	A I DID NOT.	
9	Q NOW, ARE INSURANCE COMPANIES, LIKE RELIANCE,	
10	REQUIRED TO PUBLICLY REPORT THEIR HOLDINGS?	11:54AM
11	A WE DO REPORT PUBLICLY, YES.	
12	Q WHERE DO THEY MAKE THOSE REPORTS?	
13	A THE MOST DETAILED REPORT WOULD BE IN THE	
14	FINANCIAL STATEMENTS THAT YOU FILE WITH THE STATE	
15	INSURANCE DEPARTMENT. THAT IS YOUR PRIMARY REGULATOR.	11:54AM
16	IN OUR CASE IT'S ILLINOIS, AND THERE'S A	
17	STATEMENT THAT LISTS EVERY BOND OR STOCK THAT YOU OWN	
18	IN THE INVESTMENT PORTFOLIO.	
19	Q IF I WANTED TO FIGURE OUT WHAT YOUR HOLDINGS	
20	WERE, THAT INFORMATION IS PUBLICLY AVAILABLE?	11:54AM
21	A YES, IN MIND-NUMBING DETAIL.	
22	Q DID YOU ALSO PROVIDE YOUR HOLDINGS TO	
23	DOUBLELINE IN CONNECTION WITH GIVING THEM OR SETTING UP	
24	THIS NONDISCRETIONARY ARRANGEMENT?	
25	A WE DID.	11:55AM
26	Q NOW, YOU'RE GENERALLY AWARE OF THE ALLEGATIONS	
27	IN THIS CASE THAT INFORMATION WAS IMPROPERLY TAKEN FROM	
28	TCW?	

1	A GENERALLY AWARE, YES.	
2	Q AND YOU UNDERSTAND THAT TCW ALLEGES THAT SOME	
3	RELIANCE ACCOUNT INFORMATION WAS PART OF WHAT WAS	
4	COPIED?	
5	A I DO UNDERSTAND THAT, YES.	11:55AM
6	Q SO, GIVEN THAT, WHY WERE YOU COMFORTABLE DOING	
7	BUSINESS WITH DOUBLELINE?	
8	A WE HAD DONE BUSINESS WITH JEFFREY AND HIS TEAM	
9	FOR A LONG TIME.	
10	AND HAD FELT COMFORTABLE THAT HE HAD	11:55AM
11	INVESTED OUR MONEY AS THOUGH IT WERE HIS. AND WE	
12	TRUSTED HIM TO HANDLE OUR FINANCIAL AFFAIRS IN THE BEST	
13	WAY POSSIBLE, GIVEN HIS BEST JUDGMENT AT THE TIME.	
14	MR. WEINGART: YOUR HONOR, I DON'T HAVE ANY	
15	FURTHER QUESTIONS.	11:55AM
16	THE COURT: MR. QUINN, CROSS-EXAMINATION?	
17	MR. QUINN: YES.	
18		
19	CROSS-EXAMINATION +	
20	BY MR. QUINN:	11:55AM
21	Q GOOD AFTERNOON, MR. SHERMAN.	
22	A WE ARE ALMOST AT AFTERNOON.	
23	Q MY NAME IS JOHN QUINN, AND I REPRESENT TRUST	
24	COMPANY OF THE WEST.	
25	WE'VE NEVER SPOKEN BEFORE?	11:56AM
26	A WE HAVE NOT.	
27	Q I TRIED TO REACH YOU, BUT WE COULDN'T HOOK UP,	
28	I GUESS.	

1	A	I THINK THAT'S TRUE.	
2	Q	MS. JUAREZ HERE TRIED TO GET IN TOUCH WITH	
3	YOU?		
4	A	YES.	
5	Q	YOU'VE SPOKEN WITH DOUBLELINE'S AND	11:56AM
6	MR. GUND	LACH'S COUNSEL BEFORE COMING HERE TODAY?	
7	A	I HAVE.	
8	Q	HOW MUCH TIME DID YOU SPEND WITH THEM?	
9	A	I WOULD ESTIMATE ABOUT 45 MINUTES.	
10	Q	AND YOU RESIDE AND WORK OUTSIDE OF CALIFORNIA?	11:56AM
11	А	I DO.	
12	Q	IS THAT IN NEW YORK OR	
13	А	IT IS, YES, NEW YORK.	
14	Q	SO, I MEAN, YOU CAME OUT HERE TO TESTIFY?	
15	А	I DID.	11:56AM
16	Q	AND YOU'RE NOT UNDER A SUBPOENA?	
17	А	I AM NOT.	
18	Q	YOU CAME HERE VOLUNTARILY?	
19	A	I DID.	
20	Q	NOW, YOU I THINK YOU JUST SAID THAT YOUR	11:56AM
21	COMPANY	HAS A LONGSTANDING RELATIONSHIP AND DEEP	
22	RELATION	SHIP WITH MR. GUNDLACH; IS THAT CORRECT?	
23	А	I DID SAY THAT, YES.	
24	Q	AND, IN FACT, IT'S NOT JUST MR. GUNDLACH; IT'S	
25	ALSO MR.	LUCIDO?	11:57AM
26	A	YES.	
27	Q	MR. LUCIDO WAS CHIEF INVESTMENT OFFICER; IS	
28	THAT RIG	HT, AT SOME POINT, OF ONE OF YOUR COMPANIES OR	

1	YOUR AFFILIATES?	
2	A I DON'T RECALL HIS TITLE, BUT I BELIEVE THAT'S	
3	RIGHT.	
4	Q GOING BACK TO SOMETIME IN THE EARLY '90'S?	
5	A I DON'T RECALL THE TIME.	11:57AM
6	Q SOMETIME IN THE '90'S?	
7	A YES. YEAH.	
8	Q THEN I THINK YOU INDICATED THAT ONE OF YOUR	
9	PEOPLE, A MISS NICHOLS, LEFT AND JOINED DOUBLELINE?	
10	A SHE DID NOT LEAVE US TO GO TO DOUBLELINE. I	11:57AM
11	THINK SHE HAD BEEN AT TCW AND THEN	
12	Q ALL RIGHT.	
13	A WENT TO DOUBLELINE.	
14	Q AND THEN WENT TO DOUBLELINE. OKAY.	
15	IN ANY EVENT, YOUR COMPANY'S	11:57AM
16	RELATIONSHIP WITH MR. GUNDLACH GOES BACK MANY, MANY	
17	YEARS; IN FACT, LONGER THAN YOU'VE BEEN THERE AS IN	
18	YOUR PRESENT POSITION AT LEAST.	
19	IS THAT TRUE?	
20	A THAT'S TRUE. THAT'S TRUE, YES.	11:57AM
21	Q AS A RESULT OF THAT, YOU KNOW, WE'RE PLEASED	
22	TO HEAR YOU ARE VERY, VERY SATISFIED WITH THE ADVICE	
23	AND SERVICE THAT YOU GOT FROM MR. GUNDLACH AND HIS TEAM	
24	WHILE HE WAS AT TCW, CORRECT?	
25	A WE WERE.	11:58AM
26	Q BUT YOU RECOGNIZED THAT NOT ALL INVESTORS HAVE	
27	THE SAME BACKGROUND AND HISTORY AND KNOWLEDGE OF	
28	MR. GUNDLACH AS YOU AND YOUR COMPANY DO?	

1	MR. WEINGART: OBJECTION. FOUNDATION.	
2	THE COURT: SUSTAINED.	
3	BY MR. QUINN:	
4	Q WELL, THERE WERE YOU UNDERSTAND THAT THE	
5	MORTGAGE-BACKED SECURITIES GROUP AT TCW HANDLE ACCOUNTS	11:58AM
6	FOR NOT JUST YOUR FIRM, BUT HUNDREDS OF OTHER	
7	INVESTORS?	
8	A WE KNEW THERE WERE OTHER ACCOUNTS, YES.	
9	Q THOUSANDS?	
10	A SORRY. I DON'T KNOW.	11:58AM
11	Q ALL RIGHT.	
12	BUT YOU WOULDN'T HAVE ANY REASON TO	
13	THINK THAT EVERY SINGLE ONE OF THOSE INVESTORS HAD THE	
14	SAME DEPTH AND BACKGROUND EXPERIENCE WITH MR. GUNDLACH	
15	AND HIS TEAM THAT YOU HAD?	11:58AM
16	MR. WEINGART: OBJECTION. FOUNDATION.	
17	THE COURT: SUSTAINED. I THINK CALLS FOR	
18	SPECULATION. MOVE ON.	
19	BY MR. QUINN:	
20	Q BUT YOU IT WAS PRETTY CLEAR TO YOU, WHEN	11:59AM
21	YOU HEARD THAT YOU INDICATED THAT YOU DIDN'T HEAR	
22	ANYTHING ABOUT WHAT WAS HAPPENING WITH MR. GUNDLACH AND	
23	MR AND MET WEST UNTIL YOU READ THE NEWSPAPER; IS	
24	THAT RIGHT?	
25	A THAT'S CORRECT.	11:59AM
26	Q IF I COULD I'D LIKE TO SHOW YOU SOMETHING	
27	TO SEE IF THIS REFRESHES YOUR RECOLLECTION.	

THE COURT: DO YOU HAVE AN EXHIBIT NUMBER FOR

1	THIS?	
2	MR. QUINN: THERE IS NOT AN EXHIBIT NUMBER.	
3	I'LL JUST SHOW HIM A DOCUMENT, BATES NO. 1091, PRODUCED	
4	BY RELIANCE.	
5	THE COURT: WHAT'S OUR NEXT EXHIBIT NUMBER?	11:59AM
6	MR. QUINN: MS. O'CONNOR, DO YOU KNOW WHAT THE	
7	NEXT EXHIBIT NUMBER WOULD BE?	
8	THE COURT: I WANT TO MARK IT FOR	
9	IDENTIFICATION.	
10	MR. QUINN: MAY I APPROACH WHILE WE'RE LOOKING	12:00PM
11	IT UP?	
12	THE COURT: WE'LL DO THIS AFTER THE FACT, BUT	
13	WE'LL GET A NUMBER ON IT.	
14	MR. MADISON: 2304.	
15	THE COURT: THANK YOU.	12:00PM
16	EXHIBIT 2304 FOR IDENTIFICATION ONLY.	
17		
18	(EXHIBIT 2304 MARKED FOR I.D.) +	
19		
20	BY MR. QUINN:	12:00PM
21	Q LET ME SHOW YOU THIS DOCUMENT AND LET ME SEE	
22	IF THIS REFRESHES YOUR RECOLLECTION AS TO WHETHER OR	
23	NOT, ON DECEMBER 4, RELIANCE WAS ADVISED BY TCW THAT	
24	MR. GUNDLACH HAD BEEN RELIEVED OF HIS DUTIES AND THAT	
25	THE MET WEST FIRM HAD JOINED TCW.	12:00PM
26	DOES THAT REFRESH YOUR RECOLLECTION?	
27	A IT DOES REFRESH MY RECOLLECTION.	
28	Q SO, IT IS TRUE, ISN'T IT, ACTUALLY ON	

1	DECEMBER 4, THAT VERY DAY, RELIANCE WAS CONTACTED AND	
2	TOLD ABOUT CHANGES AT TCW, INCLUDING MR. GUNDLACH AND	
3	THE PURCHASE OF MET WEST, CORRECT?	
4	A WHICH WE HAD READ IN THE FINANCIAL PRESS.	
5	Q WELL, THIS IS ACTUALLY DATED 6-15. THIS IS	12:01PM
6	DO YOU RECALL YOU RECEIVED THAT NOTICE, THE EVENING	
7	MR. WEINGART: OBJECTION TO READING FROM THE	
8	DOCUMENT, YOUR HONOR.	
9	THE COURT: YES, THIS IS JUST MARKED FOR	
10	IDENTIFICATION.	12:01PM
11	MR. QUINN: RIGHT.	
12	THE COURT: YOU CAN ASK HIM QUESTIONS ABOUT	
13	IT.	
14	MR. QUINN: RIGHT.	
15	Q DOES THIS REFRESH YOUR RECOLLECTION AS TO WHEN	12:01PM
16	IT WAS THAT YOU RECEIVED NOTICE FROM TCW?	
17	A WELL, I'M LOOKING AT THE TOP OF THE DOCUMENT,	
18	WHICH IS FROM OUR COUNSEL SAYING THAT HE JUST	
19	RECEIVED	
20	MR. WEINGART: OBJECTION, YOUR HONOR.	12:01PM
21	THE COURT: OKAY.	
22	I DON'T HAVE A COPY OF THIS DOCUMENT.	
23	MAYBE I SHOULD TAKE A LOOK AT IT.	
24	MR. QUINN: LET ME ASK ONE MORE QUESTION AND	
25	I'LL MOVE ON.	12:01PM
26	Q DOES SEEING THAT REFRESH YOUR RECOLLECTION	
27	THAT THAT DATE, DECEMBER 4, RELIANCE GOT NOTICE ABOUT	

28

WHAT HAD HAPPENED?

1	A THAT'S NOT CLEAR TO ME FROM THAT DOCUMENT.	
2	THE COURT: ALL RIGHT.	
3	BY MR. QUINN:	
4	Q DO YOU HAVE ANY DOUBT THAT ANYBODY AT RELIANCE	
5	RECEIVED SUCH NOTICE?	12:02PM
6	A I I HAVE NO KNOWLEDGE. THE DOCUMENT	
7	APPEARS TO HAVE COME ON A DELAYED BASIS, BASED ON THE	
8	HEADER AT THE TOP OF IT.	
9	MR. QUINN: I'M MYSTIFIED, YOUR HONOR.	
10	MR. WEINGART: OBJECT TO THE COMMENTARY.	12:02PM
11	THE COURT: JUST A MOMENT.	
12	(PAUSE) +	
13		
14	BY MR. QUINN:	
15	Q BUT IN ANY EVENT, WHENEVER YOU LEARNED AND	12:02PM
16	HOWEVER YOU LEARNED, I THINK YOU'VE TOLD US YOU'RE VERY	
17	CONCERNED ABOUT THIS CHANGE BECAUSE MR. GUNDLACH AND	
18	HIS TEAM, YOUR HISTORY WITH THEM WAS VERY, VERY	
19	IMPORTANT TO YOU?	
20	A IT WAS, YES.	12:03PM
21	Q WE LOOKED AT THAT EXHIBIT, 5981, I THINK IT	
22	IS, WHERE BASICALLY YOU GAVE NOTICE TO TCW TO STOP	
23	TRADING IN THE ACCOUNT?	
24	A YES.	
25	Q AND THAT, I THINK, IS ON DECEMBER 9TH?	12:03PM
26	A APPEARS TO BE DECEMBER 7TH.	
27	Q DECEMBER 7. SO THAT WOULD BE, IF THE FRIDAY'S	
28	A 4TH	

1	MR. WEINGART: ACTUALLY, THAT MISSTATES THE	
2	DOCUMENT.	
3	MR. QUINN: ALL RIGHT. I'M OPEN TO	
4	THE COURT: 5980 LET'S ALL LOOK AT IT.	
5	MR. QUINN: THE BOTTOM OF EXHIBIT 5981.	12:03PM
6	THE COURT: HOLD ON.	
7	MR. QUINN: IF WE COULD PUT THAT UP AT THE	
8	BOTTOM, 5981-1.	
9	Q SUNDAY, DECEMBER 6TH, 6:10 P.M.	
10	CORRECT?	12:04PM
11	A CORRECT.	
12	Q IS WHEN THE NOTICE WAS GIVEN.	
13	SO, LIKE ALMOST, THEN, 48 HOURS YOU GIVE	
14	A NOTICE TO TCW, STOP TRADING, CORRECT?	
15	A THAT'S CORRECT.	12:04PM
16	Q YOU GUYS KNEW WHAT YOU WERE GOING TO DO?	
17	A I'M NOT SURE I KNOW AT WHAT TIME YOU'RE ASKING	
18	ME THAT QUESTION.	
19	Q WELL, YOU WERE DOUBLELINE DO YOU KNOW	
20	WHETHER OR NOT YOU WERE DOUBLELINE'S FIRST CLIENT,	12:04PM
21	FIRST INVESTOR CLIENT?	
22	A I I BELIEVE WE WERE ONE OF THE FIRST. I	
23	DON'T KNOW IF WE WERE THE FIRST.	
24	Q THEY NEVER TOLD YOU THAT, THAT YOU WERE THE	
25	FIRST?	12:04PM
26	A I DON'T HAVE A SPECIFIC RECOLLECTION OF THAT,	
27	NO.	
28	Q ALL RIGHT.	

1	BUT, ANYWAY, YOU TOOK THIS ACTION I	
2	MEAN, BEFORE MR. GUNDLACH HAD DONE ANY PHONE CALLS OR	
3	ANYTHING LIKE THAT OR ANY WEBCASTS, CORRECT?	
4	A YES.	
5	Q AND YOUR EXPERIENCE WITH MR. GUNDLACH WAS SUCH	12:04PM
6	THAT, NO MATTER WHAT HE SAID ABOUT TCW, YOU HAD	
7	CONFIDENCE IN HIM AND YOU WANTED HIM TO MANAGE YOUR	
8	MONEY; IS THAT TRUE?	
9	A WE DID HAVE CONFIDENCE IN HIM, YES.	
10	Q WOULD IT TROUBLE YOU IF IT WEREN'T	12:05PM
11	MR. GUNDLACH, BUT SOMEBODY YOU DIDN'T KNOW AS WELL OR	
12	DIDN'T HAVE THE SAME EXPERIENCE WITH, AND THE PERSON	
13	WHO MANAGED THE FUND, THE PORTFOLIO MANAGER, LEFT AND	
14	WAS TELLING CLIENTS THINGS LIKE, THERE'S NO ONE	
15	MANAGING YOUR MONEY RIGHT NOW?	12:05PM
16	MR. WEINGART: OBJECTION. FOUNDATION.	
17	THE COURT: SUSTAINED. I'M NOT SURE ON	
18	FOUNDATION. BUT MAYBE RELEVANCE.	
19	MR. QUINN: ALL RIGHT.	
20	MR. WEINGART: I'LL GO WITH THAT ONE NEXT	12:05PM
21	TIME.	
22	BY MR. QUINN:	
23	Q YOU INDICATED YOU WERE STUNNED WHEN YOU	
24	LEARNED THAT MR. GUNDLACH HAD BEEN RELIEVED OF HIS	
25	DUTIES?	12:05PM
26	A YES.	
27	Q I TAKE IT YOU DIDN'T REALLY HAVE ANY KNOWLEDGE	

AT THAT TIME ABOUT WHY THE DECISION HAD BEEN MADE?

1	A NO.	
2	Q SO, FOR EXAMPLE, YOU WOULDN'T KNOW ANYTHING	
3	ABOUT COMMENTS THAT MR. GUNDLACH MADE ABOUT LEAVING	
4	AFTER BONUSES ARE PAID AS A BIG F-YOU TO MARC STERN?	
5	OR YOU WOULDN'T KNOW ANYTHING ABOUT	12:06PM
6	MR. LUCIDO WRITING NOTES SAYING GOOD TIME WOULD	
7	BE	
8	THE COURT: MR. QUINN, HE SAID HE HAD NO	
9	KNOWLEDGE.	
10	MR. QUINN: ALL RIGHT.	12:06PM
11	THE COURT: THAT'S NO KNOWLEDGE.	
12	MR. QUINN: ALL RIGHT.	
13	THE COURT: YOU COULD ASK HIM 100 THINGS, IT'S	
14	THE SAME ANSWER, ISN'T IT?	
15	MR. QUINN: ALL RIGHT.	12:06PM
16	Q IN TERMS OF YOU INDICATE YOU FOLKS ARE AN	
17	INSURANCE COMPANY WITH A HIGHLY REGULATED BUSINESS AND	
18	YOU, YOU'RE REQUIRED BY LAW TO DISCLOSE A LOT OF	
19	INFORMATION ABOUT YOUR HOLDINGS PUBLICLY; IS THAT TRUE?	
20	A YES.	12:06PM
21	Q IS THAT TRUE OF ALL MORTGAGE-BACKED SECURITY	
22	INVESTORS?	
23	MR. WEINGART: OBJECTION. FOUNDATION.	
24	THE COURT: SUSTAINED.	
25	BY MR. QUINN:	12:06PM
26	Q WELL, ARE YOU AWARE OF ANY LAW THAT SAYS THAT	
27	NONINSURANCE COMPANIES THAT INVEST IN MORTGAGE-BACKED	
28	SECURITIES ARE REQUIRED TO MAKE THOSE SAME KIND OF	

1	DISCLOSURES	
2	A I'M NOT AWARE OF ANY GENERAL LAW LIKE THAT,	
3	NO.	
4	Q YOU WOULD, IN FACT, YOU KNOW, AS SOMEBODY IN	
5	YOUR LINE OF WORK I MEAN, YOU KNOW THERE ARE	12:07PM
6	COMPANIES THAT DON'T MAKE THOSE DISCLOSURES PUBLICLY;	
7	ISN'T THAT TRUE?	
8	A IT WOULD BE A FAIR ASSUMPTION.	
9	Q RIGHT.	
10	AND YOU KNOW THERE ARE COMPANIES THAT	12:07PM
11	REGARD THEIR INFORMATION ABOUT THEIR HOLDINGS, THEIR	
12	TRADING HISTORY, THEIR THE TERMS OF THEIR AGREEMENTS	
13	AND THAT SORT OF THING, YOU KNOW THERE'S COMPANIES THAT	
14	REGARD THAT TYPE OF INFORMATION AS CONFIDENTIAL?	
15	MR. WEINGART: OBJECTION. FOUNDATION.	12:07PM
16	THE COURT: SUSTAINED.	
17	BY MR. QUINN:	
18	Q DO YOU INVEST ANY MONEY DOES RELIANCE	
19	INVEST ANY MONEY WITH A COMPANY CALLED WAMCO?	
20	A IF YOU'RE REFERRING TO WESTERN ASSET	12:07PM
21	MANAGEMENT, THAT'S HOW I KNOW THEM. WE DO INVEST WITH	
22	WESTERN, YES.	
23	Q ALL RIGHT.	
24	DID MR. GUNDLACH EVER TELL YOU THAT HE	
25	PLANNED TO CONVERT SOME OF RELIANCE'S INVESTMENTS WITH	12:08PM
26	TCW OVER TO WAMCO?	
27	MR. WEINGART: OBJECTION. ARGUMENTATIVE.	
28	THE COURT: OVERRULED.	

1	THE WITNESS: NOT TO MY KNOWLEDGE.	
2	MR. QUINN: NOTHING FURTHER.	
3	THANK YOU, SIR.	
4	THE COURT: MR. WEINGART, ANYTHING ELSE?	
5	MR. WEINGART: NO, YOUR HONOR. THANK YOU.	12:08PM
6	THE COURT: THANK YOU, SIR, FOR YOUR	
7	TESTIMONY. YOU MAY STEP DOWN.	
8	MR. BRIAN: YOUR HONOR, WE CALL ROBERT BEYER.	
9	THE COURT: ALL RIGHT.	
10	(PAUSE) +	12:09PM
11		
12	THE COURT: LADIES AND GENTLEMEN, WHY DON'T WE	
13	TAKE OUR BREAK NOW. WE'LL GET THREE MINUTES NOW.	
14	WE'LL TAKE 20 MINUTES. WE'LL COME BACK	
15	AT ABOUT HALF PAST.	12:09PM
16		
17	(PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.) +	
18		
19	THE COURT: WE'RE OUT OF THE PRESENCE.	
20	I DON'T WANT ANYONE TO THINK JUST	12:09PM
21	BECAUSE WE'VE MADE THE TURN, I'M LIKE A HORSE GOING	
22	BACK TO THE BARN.	
23	BUT I AM GOING TO YOU KNOW, ENOUGH	
24	TESTIFYING BY CLIENT OR ATTORNEYS ON BOTH SIDES, AND	
25	READING EXHIBITS THAT ARE IN EVIDENCE.	12:10PM
26	YOU KNOW, QUESTION THE WITNESSES AND	
27	WE'LL MOVE RIGHT ALONG. THANK YOU.	
28	(RECESS.)	

1	CASE NUMBER:	BC429385	
2	CASE NAME:	TRUST COMPANY OF THE WEST VS.	
3		JEFFREY GUNDLACH, ET AL	
4	LOS ANGELES,	THURSDAY, SEPTEMBER 1, 2011	
5	CALIFORNIA		
6	DEPARTMENT 322	HON. CARL J. WEST, JUDGE	
7	APPEARANCES:	(AS HERETOFORE NOTED.)	
8	REPORTER:	WENDY OILLATAGUERRE, CSR #10978	
9	TIME:	12:35 P.M.	
10			
11	(THE	FOLLOWING PROCEEDINGS	
12	WERE	HELD IN OPEN COURT IN	
13	THE	PRESENCE OF THE JURY:)	
14			
15	THE COURT:	OKAY. IN THE TCW MATTER, ALL OF 12:35	PM
16	THE JURORS ARE PRESE	NT, AS ARE COUNSEL.	
17	WE CA	N SWEAR THE WITNESS.	
18			
19		ROBERT BEYER,	
20	CALLED AS	A WITNESS BY THE DEFENSE,	
21	WAS SWORN	AND TESTIFIED AS FOLLOWS:	
22			
23	THE CLERK:	YOU DO SOLEMNLY STATE THAT THE	
24	TESTIMONY YOU ARE AB	OUT TO GIVE IN THE CAUSE NOW	
25	PENDING BEFORE THIS	COURT SHALL BE THE TRUTH, THE WHOLE	
26	TRUTH, AND NOTHING B	UT THE TRUTH, SO HELP YOU GOD.	
27	THE WITNESS	: I DO.	
28	THE CLERK:	THANK YOU.	

1	PLEASE BE SEATED.	
2	SIR, PLEASE STATE AND SPELL YOUR NAME	
3	FOR THE RECORD.	
4	THE WITNESS: ROBERT, R-O-B-E-R-T, BEYER,	
5	B-E-Y-E-R.	12:35PM
6	THE CLERK: THANK YOU.	
7		
8		
9	DIRECT EXAMINATION	
10		
11	BY MR. BRIAN:	
12	Q. GOOD AFTERNOON, MR. BEYER.	
13	A. GOOD AFTERNOON, MR. BRIAN.	
14	Q. GOOD AFTERNOON, LADIES AND GENTLEMEN.	
15	THE JURY: GOOD AFTERNOON.	12:35PM
16	Q. BY MR. BRIAN: MR. BEYER, YOU ARE CURRENTLY	
17	CHAIRMAN OF A COMPANY CALLED CHAPARRAL INVESTMENTS; IS	
18	THAT CORRECT?	
19	A. YES, CORRECT.	
20	Q. THAT'S A PRIVATE INVESTMENT FIRM?	12:36PM
21	A. YES. IT'S JUST MANAGING MY OWN INVESTMENTS.	
22	Q. YOU WERE AT TCW FROM APPROXIMATELY 1995 TO MID	
23	2009; IS THAT RIGHT?	
24	A. CORRECT.	
25	Q. LET ME ASK YOU JUST A FEW QUESTIONS ABOUT YOUR	12:36PM
26	BACKGROUND BEFORE TCW.	
27	FROM 1983 TO 1991, YOU WORKED AS AN	
28	INVESTMENT BANKER AT BEAR STEARNS AND DREXEL BURNHAM;	

IS THAT CORRECT? 1 2 A. CORRECT. 3 AND UNDER DREXEL, YOU WORKED UNDER MICHAEL Q. 4 MILKEN; IS THAT RIGHT? 5 Α. CORRECT. 12:36PM O. AND AT 1991, YOU FOUNDED A COMPANY CALLED 6 7 CRESCENT CAPITAL; IS THAT RIGHT? 8 THE REPORTER: COUNSEL, CAN YOU SLOW DOWN A 9 BIT, PLEASE. 10 MR. BRIAN: I'M SORRY. THINGS HAVE BEEN 12:36PM MOVING MORE SLOWLY, SO I WAS TRYING TO SPEED IT UP. 11 12 YOUR CO-FOUNDERS WERE MARK ATTANASIO AND 13 JEAN-MARC CHAPUS; IS THAT RIGHT? 14 A. YES. 15 O. IN 1995, TCW PURCHASED CRESCENT CAPITAL, DID 12:36PM 16 IT NOT? 17 Α. CORRECT. 18 SO STARTING IN 1995, YOU, MR. ATTANASIO AND Ο. 19 MR. CHAPUS BECAME PART OF THE TCW ORGANIZATION, RIGHT? 20 Α. YES. 12:37PM 21 Ο. NOW, TCW'S CORPORATE HEADQUARTERS ARE LOCATED 22 DOWNTOWN, IN DOWNTOWN LOS ANGELES, RIGHT? 23 A. YES. 24 Q. BUT THE CRESCENT GROUP, WHEN YOU WERE 25 REQUIRED, KEPT OFFICES OUT IN THE WESTERN PART OF L.A.? 12:37PM 26 Α. WEST LOS ANGELES. 27 O. YOU BECAME THE PRESIDENT AND CHIEF INVESTMENT

OFFICER OF TCW IN ABOUT 2000; IS THAT RIGHT?

1	A. CORRECT.	
2	Q. AND HAD YOU MOVED DOWNTOWN, OR DID YOU MOVE	
3	DOWNTOWN WITH THAT MOVE?	
4	A. YES.	
5	Q. WHAT ABOUT MR. ATTANASIO AND MR. CHAPUS? DID	12:37PM
6	THEY STAY OUT IN THE WEST SIDE?	
7	A. YES.	
8	Q. NOW, IN 2005, YOU BECAME THE CHIEF EXECUTIVE	
9	OFFICER OF TCW, RIGHT?	
10	A. CORRECT.	12:37PM
11	Q. AND YOU REPLACED ROBERT DAY IN THAT POSITION,	
12	DID YOU NOT?	
13	A. CORRECT.	
14	Q. HE HAD BEEN THE FOUNDER OF THE FIRM, RIGHT?	
15	A. YES.	12:38PM
16	Q. HE REMAINED AS CHAIRMAN OF THE BOARD, THOUGH,	
17	EVEN THOUGH YOU BECAME CEO, RIGHT?	
18	A. YES.	
19	Q. AND HE CONTINUED TO HOLD THE POSITION AS	
20	CHAIRMAN OF THE BOARD DURING THE ENTIRE TIME THAT YOU	12:38PM
21	WERE CHIEF EXECUTIVE OFFICER, BETWEEN 2005 AND 2009,	
22	RIGHT?	
23	A. YES.	
24	Q. AND MR. STERN, MARC STERN, SERVED AS VICE	
25	CHAIRMAN OF THE BOARD DURING THAT PERIOD, DID HE NOT?	12:38PM
26	A. YES.	
0.7	0 1999 909 1999 1990 1990 1990 1990 199	

Q. WHEN YOU WERE APPOINTED CEO IN 2005, A

GENTLEMAN NAMED BILL SONNEBORN WAS APPOINTED AS

27

PRESIDENT, CORRECT? 1 2 Α. YES. 3 AND THAT WAS THE SECOND MOST SENIOR OFFICER Q. 4 BELOW YOU, RIGHT? 5 Α. YES. 12:38PM Q. I TAKE IT THAT YOU AND MR. SONNEBORN WERE BOTH 6 7 YOUNGER THAN MR. DAY AND MR. STERN; IS THAT RIGHT? 8 Α. CORRECT. 9 AND WHEN YOU WERE APPOINTED TO REPLACE THEM, 0. 10 IS IT FAIR TO SAY THAT THIS WAS PART OF A GENERATIONAL 12:38PM 11 CHANGE AT THE COMPANY? 12 I BELIEVED IT WAS. Α. 13 AND YOU REPRESENTED THAT, BOTH TO FUND Ο. 14 MANAGERS WITHIN THE COMPANY, AND TO THE OUTSIDE MEDIA, 15 DID YOU NOT? 12:39PM 16 Α. YES. 17 YOU TOLD THEM THIS WAS A, SORT OF PART OF A Q. 18 SUCCESSION PLAN IN MOVING TO A YOUNGER GENERATION, 19 RIGHT? 20 Α. YES. 12:39PM 21 Q. AS PART OF THIS GENERATIONAL CHANGE IN 2005, 22 JEFFREY GUNDLACH WAS APPOINTED AS CHIEF INVESTMENT 23 OFFICER, CORRECT? 24 A. YES. 25 NOW, MR. SONNEBORN REMAINED IN HIS POSITION AS 12:39PM 26 PRESIDENT UNTIL SOMETIME IN 2008; IS THAT RIGHT?

Q. NOW, THERE'S BEEN TESTIMONY IN THE CASE ABOUT

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Α.

YES.

12:40PM

A TRANSACTION, OR MAYBE TRANSACTIONS, THAT LASTED OVER 1 2 FIVE OR SIX YEARS, WHEREBY A FRENCH COMPANY NAMED 3 SOCIETE GENERALE PURCHASED TCW'S STOCK. 4 ARE YOU FAMILIAR WITH THAT TRANSACTION? 5 Α. OF COURSE. 12:39PM 6 Ο. AND YOU WERE AT TCW WHEN THAT HAPPENED, DID IT 7 NOT? 8 YES. Α. AND DID YOU OWN SOME OF THE STOCK WHICH WAS 9 Ο. 10 PURCHASED BY SOCIETE GENERALE? 12:39PM 11 YES, I DID. Α. 12 NOW, THERE'S BEEN TESTIMONY IN THE CASE ABOUT Q. 13 A SO-CALLED DILUTION OF STOCK. DO YOU KNOW WHAT I MEAN BY DILUTION? 14 15 A. OF COURSE. 12:40PM 16 Ο. DILUTION IS WHEN SOMEONE'S -- THE PERCENTAGE 17 OF SOMEONE'S STOCK HOLDINGS ARE REDUCED BECAUSE 18 ADDITIONAL STOCK IS ISSUED, RIGHT? 19 A. YES. 20 SO FOR EXAMPLE, IF THERE'S A HUNDRED SHARES, Ο. 12:40PM 21 AND YOU -- TOTAL SHARES IN A COMPANY, AND YOU OWN 10 22 SHARES, YOU HAVE 10 PERCENT OWNERSHIP, RIGHT? 23 A. YES. 24 BUT IF THE COMPANY DECIDES TO ISSUE ANOTHER

HUNDRED SHARES, AND YOU STILL OWN ONLY 10 SHARES, YOU WILL NOW OWN 5 PERCENT, RIGHT?

A. YES.

25

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27

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Q. SO YOU HAVE BEEN DILUTED BY 5 PERCENT, RIGHT?

1	A. YES.	
2	Q. EITHER IN CONNECTION WITH OR IN ADVANCE OF	
3	SOCIETE GENERALE'S PURCHASE OF TCW'S STOCK, IS IT TRUE	
4	THAT TCW ISSUED ADDITIONAL STOCK?	
5	MR. MADISON: OBJECTION. COMPOUND.	12:40PM
6	THE COURT: OVERRULED.	
7	DO YOU UNDERSTAND THE QUESTION, SIR?	
8	THE WITNESS: YES, I DO.	
9	I BELIEVE THAT TCW ISSUED ADDITIONAL	
10	STOCK ON MULTIPLE OCCASIONS; SO, YES.	12:41PM
11	Q. BY MR. BRIAN: OKAY.	
12	AND DID SOME OF THAT ADDITIONAL STOCK GO	
13	TO PORTFOLIO MANAGERS OTHER THAN MR. GUNDLACH?	
14	A. YES.	
15	Q. AND TO WHOM WAS IT ISSUED?	12:41PM
16	A. I DON'T KNOW.	
17	Q. OKAY. WAS ANY ISSUED TO YOURSELF OR	
18	MR. SONNEBORN?	
19	A. SINCE I ARRIVED AT TCW AFTER MR. GUNDLACH, THE	
20	ANSWER TO MYSELF WOULD BE YES.	12:41PM
21	AND THE SAME WOULD GO FOR MR. SONNEBORN.	
22	Q. OKAY. SO THE ISSUANCE OF STOCK TO YOU AND	
23	MR. SONNEBORN HAD THE EFFECT OF DILUTING THE VALUE OR	
24	THE PERCENTAGE OF MR. GUNDLACH'S SHARES IN TCW,	
25	CORRECT?	12:41PM
26	A. I DON'T KNOW FOR A FACT THAT THEY WERE NEWLY	
27	ISSUED SHARES, VERSUS SHARES SOLD BY SOMEBODY WHO WAS	

DEPARTING; SO I CAN'T ANSWER THAT.

1	Q. OKAY. LET ME TURN DIRECT YOUR ATTENTION	
2	NOW TO THE YEAR 2007.	
3	DO YOU HAVE THAT IN MIND?	
4	A. YES.	
5	Q. AT SOME POINT IN APRIL, MAY OR SO OF 2007, YOU	12:41PM
6	BECAME AWARE AND I'LL ASK YOU MORE DETAILS.	
7	YOU BECAME AWARE OF DISCUSSIONS ABOUT	
8	RENEGOTIATING MR. GUNDLACH'S COMPENSATION TERMS,	
9	CORRECT?	
10	A. YES.	12:42PM
11	Q. YOU WERE NOT THE PRINCIPAL NEGOTIATOR, BUT YOU	
12	WERE BROUGHT IN FROM TIME TO TIME TO PROVIDE YOUR	
13	INPUT; IS THAT RIGHT?	
14	A. YES.	
15	Q. AND YOU HAD AT LEAST ONE MEETING, FACE-TO-FACE	12:42PM
16	MEETING, WITH MR. GUNDLACH AND MR. SONNEBORN, IN WHICH	
17	YOU DISCUSSED HIS COMPENSATION TERMS, DID YOU NOT?	
18	A. YES.	
19	Q. YOU MAY HAVE HAD OTHER MEETINGS, BUT YOU DON'T	
20	RECALL THOSE; IS THAT RIGHT?	12:42PM
21	A. SPECIFICALLY, CORRECT.	
22	Q. NOW, IN THAT TIME PERIOD, WHEN YOU WERE	
23	BROUGHT IN TO HAVE THAT MEETING, OR TO GIVE INPUT TO	
24	OTHERS, YOU ARE NOT EVEN SURE WHETHER YOU KNEW, AT THE	
25	TIME, THAT HIS EXISTING CONTRACT WAS GOING TO END AT	12:42PM
26	THE END OF THE YEAR, DID YOU?	
27	A. I KNOW THAT NOW.	

I DON'T KNOW IF I KNEW IT AT THE TIME.

1	Q. OKAY. TO YOUR KNOWLEDGE, THAT WASN'T THE	
2	IMPETUS OR THE CAUSE OF THE DISCUSSIONS ABOUT	
3	RENEGOTIATING HIS TERMS, WAS IT?	
4	A. THAT'S CORRECT.	
5	Q. IN YOUR MIND, THE REASON WHY THE TERMS WERE	12:43PM
6	BEING RENEGOTIATED WAS THAT HE FELT, AND TCW FELT, THAT	
7	HIS GROUP WAS UNDERCOMPENSATED; ISN'T THAT RIGHT?	
8	A. NO, THAT'S NOT EXACTLY HOW I REMEMBER IT.	
9	MR. BRIAN: YOUR HONOR, I'D ASK PERMISSION TO	
10	READ FROM HIS DEPOSITION, PAGE 10, LINE 18, THROUGH 11,	12:43PM
11	LINE 1.	
12	THE COURT: OKAY. IT'S 18?	
13	MR. BRIAN: PAGE 10	
14	THE COURT: ALL RIGHT.	
15	MR. BRIAN: LINE 18, TO PAGE 11, LINE 1.	12:43PM
16	MR. MADISON: NO OBJECTION, PROVIDED THE PART	
17	ON PAGE 11 THROUGH LINE 13 IS ALSO READ, YOUR HONOR.	
18	THE COURT: ANY PROBLEM WITH THAT, MR. BRIAN?	
19	MR. BRIAN: NO.	
20	THE COURT: 10, 18 TO 11, 13.	12:44PM
21	MR. BRIAN: NO PROBLEM.	
22	"Q WHAT DO YOU RECALL BEING	
23	THE REASON THAT PROMPTED A	
24	DISCUSSION OF A CHANGE IN	
25	MR. GUNDLACH'S COMPENSATION TERMS	12:44PM
26	AROUND 2007?	
27	"A A SIGNIFICANT GROWTH	
28	DRIVER OF HIS BUSINESS HAD BECOME	

1	THE CREDIT MORTGAGE OR CDO	
2	BUSINESS. AND THAT TEAM, IN HIS	
3	MIX OF HOW HE DISTRIBUTED HIS FEE	
4	SHARING WAS, IN HIS OPINION,	
5	FRANKLY, AND IN OURS,	12:44PM
6	UNDERCOMPENSATED. AND SO HE WANTED	
7	TO REDISTRIBUTE THE FEES AMONG	
8	GROUP MEMBERS.	
9	"Q WERE THERE ANY OTHER	
10	REASONS WHY YOU	12:44PM
11	LET ME START OVER.	
12	"DO YOU RECALL ANY OTHER	
13	REASONS THAT LED TO THE DISCUSSIONS	
14	ABOUT CHANGES IN MR. GUNDLACH'S	
15	COMPENSATION IN 2007.	12:45PM
16	"A NO.	
17	AND JUST AS A	
18	CLARIFICATION, I DON'T REALLY	
19	RECALL THIS BEING MOTIVATED BY A	
20	CHANGE IN MR. GUNDLACH'S	12:45PM
21	COMPENSATION, SO MUCH AS A CHANGE	
22	TO HOW THE FEES IN THE GROUP GOT WE	
23	ALLOCATED.	
24	"Q DO YOU RECALL THAT IN	
25	2007, DISTRESSED FUNDS TO BE RUN BY	12:45PM
26	MR. GUNDLACH WERE BEING	
27	CONTEMPLATED?	
28	"A YES."	

ACTUALLY, I READ ONE OF MY NEXT QUESTIONS, 1 Q. 2 WHICH WAS THAT ONE OF THE MOTIVATIONS BEHIND THE 3 RENEGOTIATION WAS THE -- NOT SO MUCH CHANGING HIS 4 COMPENSATION, BUT CHANGING HOW THE FEES WERE GETTING 5 REALLOCATED WITHIN THE GROUP, RIGHT? 12:45PM THAT'S NOW STATED IN ACCORDANCE WITH MY 6 Α. 7 RECOLLECTION. 8 AND ONE OF THE THINGS HE EXPRESSED IN THE Ο. 9 MEETING WITH YOU IS, HE WANTED TO ELIMINATE THE CAPS OR 10 THE THRESHOLDS ON THE COMPENSATION FOR HIS TEAM, RIGHT? 12:46PM 11 Α. CORRECT. 12 AND THE EFFECT OF DOING THAT WAS TO MAKE MORE Ο. 13 MONEY AVAILABLE TO BE ALLOCATED AMONG THE PEOPLE WITHIN HIS TEAM, RIGHT? 14 15 I DON'T KNOW THAT. Α. 12:46PM 16 Ο. OKAY. THERE'S BEEN SOME TESTIMONY, AND I KNOW 17 YOU WERE HERE FOR AT LEAST ONE DAY, AND YOU MAY OR MAY 18 NOT HAVE HEARD THIS; BUT THERE'S BEEN SOME TESTIMONY IN 19 THE TRIAL ABOUT MR. GUNDLACH RECOMMENDING THAT PHIL 20 BARACH'S COMPENSATION BE REDUCED. 12:46PM 21 NOW, THE EFFECT OF REDUCING MR. BARACH'S 22 COMPENSATION IN 2007 WAS TO MAKE MORE COMPENSATION 23 AVAILABLE TO OTHERS IN THE GROUP, RIGHT? 24 A. YES.

12:46PM

I DON'T REMEMBER.

25

26

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Α.

GROUP HAVING HIS COMPENSATION REDUCED, WAS HE, SIR?

O. LET ME ASK YOU A LITTLE BIT ABOUT FIXED

MR. BARACH WAS NOT THE ONLY PERSON IN THE

1 INCOME. 2 I TAKE IT THAT WITHIN TCW, DURING YOUR 3 TENURE AS CEO, AND BEFORE, THERE ARE -- THERE WERE 4 VARIOUS INVESTMENT PRODUCTS OFFERED TO INVESTORS, 5 RIGHT? 12:47PM 6 A. CORRECT. 7 Q. THERE WAS FIXED INCOME, FOR ONE, RIGHT? 8 MULTIPLE FLAVORS OF FIXED INCOME. Α. 9 Ο. AND MULTIPLE FLAVORS OF EOUITY INVESTMENTS, TOO, RIGHT? 10 12:47PM 11 Α. YES. 12 THE FIXED INCOME BUSINESS IS, GENERALLY Q. 13 SPEAKING, A LOWER FEE BUSINESS, RIGHT? LOWER FEE THAN WHAT? 14 Α. 15 O. I'M GOING TO GET TO THE NEXT ONE. IT'S --12:47PM 16 Α. LOWER FEE THAN WHAT? 17 THAN EQUITIES? Q. 18 YES. Α. 19 Q. AND IT ALSO IS MORE PERSONNEL INTENSIVE, SO 20 12:47PM THAT THE COSTS CAN BE A LITTLE HIGHER, RIGHT? 21 Α. NOT NECESSARILY. 22 WASN'T ONE OF THE REASONS -- WELL, LET ME Ο. 23 STRIKE THIS. 24 IN YOUR MEETING WITH MR. GUNDLACH, HE 25 INDICATED TO YOU THAT WANTED TO CREATE INCENTIVES AND 12:48PM 26 REWARDS FOR THE PEOPLE WHO WERE HELPING TO GROW THE 27 BUSINESS IN HIS GROUP, RIGHT? 28 A. I DON'T REMEMBER THOSE WORDS, BUT THAT SOUNDS

1	RIGHT.	
2	Q. OKAY. AND THAT MADE SENSE TO YOU, AT THE	
3	TIME, DIDN'T IT?	
4	A. IT WOULD.	
5	Q. NOW, TAKE A LOOK I LEFT A BINDER UP THERE	12:48PM
6	ON YOUR DESK AREA THERE. TAKE A LOOK IF YOU CAN, AT	
7	EXHIBIT 55. IT SHOULD SAY TX 0055.	
8	A. YES.	
9	Q. WE NEED TO GET PEOPLE TO PRINT E-MAILS IN A	
10	LITTLE BIT LARGER FONT.	12:48PM
11	THIS IS AN E-MAIL CHAIN, STARTING AT THE	
12	BOTTOM WITH AN E-MAIL FROM MR. GUNDLACH TO YOURSELF, ON	
13	APRIL 17TH, 2007, IS IT NOT?	
14	A. CORRECT.	
15	Q. AND THEN THERE'S SOME OTHER FOLLOW ON E-MAILS,	12:48PM
16	CORRECT?	
17	A. YES.	
18	MR. BRIAN: I WOULD OFFER EXHIBIT 55.	
19	MR. MADISON: NO OBJECTION, YOUR HONOR.	
20	THE COURT: IT WILL BE ADMITTED.	12:49PM
21		
22	(EXHIBIT 55 ADMITTED.)	
23		
24	MR. BRIAN: PUT THAT UP, DENNIS.	
25	Q. IF YOU COULD JUST HIGHLIGHT OR ENLARGE THE ONE	12:49PM
26	AT THE BOTTOM.	
27	NOW HE SAYS IN THE SUBJECT LINE, WE	
28	REALLY NEED TO MEET.	

1	DO YOU SEE THAT?	
2	A. YES.	
3	Q. AND DOES THAT GIVE YOU A ROUGH APPROXIMATION	
4	THAT YOU LIKELY MET WITH MR. GUNDLACH WITHIN TWO OR	
5	THREE WEEKS OF THE DATE OF THIS E-MAIL?	12:49PM
6	A. CERTAINLY.	
7	Q. YOU CAN TAKE THAT DOWN, DENNIS.	
8	NOW, THE MEETING THAT YOU HAD WITH HIM,	
9	YOU BELIEVE WAS IN MR. SONNEBORN'S OFFICE, CORRECT?	
10	A. CORRECT.	12:49PM
11	Q. AND THE THREE OF YOU ATTENDED?	
12	A. YES.	
13	Q. TAKE A LOOK NOW AT EXHIBIT 5033 IN YOUR	
14	BINDER. 5033.	
15	IT'S NOT YET IN EVIDENCE, SO DO NOT PUT	12:50PM
16	IT UP, DENNIS.	
17	IF YOU COULD LOOK AT THE SECOND PAGE,	
18	WHICH IS TX 5033-002, DO YOU SEE AN E-MAIL AT THE	
19	BOTTOM, FROM YOURSELF TO, IT SAYS EVERYONE DASH TCW?	
20	A. YES.	12:50PM
21	Q. AND THAT'S AN E-MAIL THAT YOU SENT OUT ON	
22	FRIED, APRIL 27TH, IS IT NOT?	
23	A. YES.	
24	Q. AND THE E-MAIL ABOVE, THAT IS A RESPONSE YOU	
25	RECEIVED FROM MR. GUNDLACH, CORRECT?	12:50PM
26	A. CORRECT.	
27	MR. BRIAN: I WOULD OFFER EXHIBIT 5033?	

MR. MADISON: NO OBJECTION.

1	THE COURT: IT WILL BE ADMITTED.	
2	Q. BY MR. BRIAN: DENNIS, IF YOU COULD DISPLAY	
3	PAGE 2 OF THAT.	
4	MAYBE JUST ENLARGE THE E-MAIL THERE, SO	
5	THE LADIES AND GENTLEMEN OF THE JURY HAVE SOME IDEA OF	12:50PM
6	WHAT THAT E-MAIL NO, THE ONE BELOW IT.	
7	THIS WAS AN E-MAIL THAT YOU SENT AROUND	
8	TO EVERYBODY, ANNOUNCING THAT TCW ONCE AGAIN HAD BEEN	
9	NAMED CDO MANAGER OF THE YEAR.	
10	DO YOU SEE THAT?	12:50PM
11	A. YES.	
12	Q. AND NOW, IF WE COULD GO AND IT SAYS THAT	
13	JEFFREY, JEFFREY GUNDLACH, ACCEPTED THE AWARD ON THE	
14	COMPANY'S BEHALF, CORRECT?	
15	A. YES.	12:51PM
16	Q. AND THAT WAS BECAUSE OF HIS CAPACITY AS CHIEF	
17	INVESTMENT OFFICER?	
18	A. NO, I DON'T THINK SO. I THINK HE JUST MADE	
19	THAT DECISION.	
20	Q. SO LET'S NOW, DENNIS, IF WE COULD ENLARGE THE	12:51PM
21	E-MAIL ABOVE THAT, THE ONE FROM MR. GUNDLACH TO	
22	MR. BEYER.	
23	AND YOU SEE HERE, MR. GUNDLACH WRITES	
24	YOU, COPIED TO MR. SONNEBORN, I HAVE NOT HEARD FROM	
25	EITHER OF YOU ON MY PROPOSAL TO MEET EARLY NEXT WEEK,	12:51PM
26	BUT I'M STILL HOPEFUL SUCH A MEETING WILL BE ABLE TO	
27	FIT IN YOUR SCHEDULES.	

28

NOW, TAKE A LOOK, IF YOU WILL, AT

EXHIBIT 5 --1 2 ACTUALLY, NO. LET'S LEAVE THAT UP, IF 3 WE COULD. I'M SORRY. LET'S GO TO 5033-0001. 4 5 FIRST PAGE, AT THE E-MAIL ON THE BOTTOM 12:52PM OF THE PAGE, FROM MR. GUNDLACH, TO MR. GUNDLACH AND 6 7 MR. BEYER. 8 SO IT LOOKS LIKE MR. GUNDLACH SENT 9 ANOTHER E-MAIL BEFORE AND YOU MR. SONNEBORN HAD AN 10 OPPORTUNITY TO RESPOND; IS THAT RIGHT? 12:52PM 11 I CAN'T SAY THAT FOR CERTAIN. 12 OKAY. IN ANY EVENT, DO YOU SEE IN THE FIRST Q. 13 PARAGRAPH, HE STATES, IN ADDITION, I BELIEVE PETE HAS A 14 2.9 MILLION DOLLARS ERROR IN HIS CALCULATION THAT 15 UNDERSTATES THAT TCW SHARE, UNDER THE, QUOTE, NEW DEAL, 12:52PM 16 UNQUOTE, CASE. 17 DO YOU SEE THAT? 18 YES. Α. 19 O. DID YOU UNDERSTAND PETE TO BE IN REFERENCE TO 20 MR. PETE SULLIVAN? 12:53PM 21 Α. YES. 22 AND YOU WERE HERE WHEN MR. SULLIVAN TESTIFIED Ο. 23 YESTERDAY, AND AGAIN THIS MORNING, CORRECT? 24 A. YES. 25 NOW, LET'S GO TO EXHIBIT 5035. Q. 12:53PM 26 AND THAT IS IN EVIDENCE, DENNIS. 27 WHAT I WANT TO YOU DO, IF YOU COULD, IS

28

TURN TO 5035-006.

1	AND DENNIS, IF YOU COULD DISPLAY THAT.	
2	IF YOU CAN ENLARGE THAT, PLEASE, AT THE	
3	BOTTOM THE BOTTOM E-MAIL.	
4	THAT'S THE SAME E-MAIL WE SAW THAT	
5	STARTED THE CHAIN ON EXHIBIT 5033, RIGHT?	12:53PM
6	A. CORRECT.	
7	Q. NOW, TAKE A LOOK AT 5035-002.	
8	AND IF WE COULD ENLARGE THE E-MAIL AT	
9	THE BOTTOM, FROM MR. SONNEBORN TO MR. SULLIVAN, DEVITO	
10	AND VILLA.	12:54PM
11	THIS IS AN E-MAIL FROM MR. SONNEBORN, ON	
12	APRIL 30TH, TO THOSE GENTLEMEN, COPIED TO YOU, IS IT	
13	NOT?	
14	A. CORRECT.	
15	Q. AND APRIL 30TH IS A MONDAY, IT APPEARS TO BE	12:54PM
16	BASED ON THE E-MAIL, CORRECT?	
17	A. YES.	
18	Q. NO REASON TO DOUBT THAT, DO YOU?	
19	A. NO.	
20	Q. AND MR. SONNEBORN SAYS, IN THE FIRST LINE,	12:54PM
21	(READING):	
22	JUST SAW THIS. THIS LOOKS	
23	LIKE A PRETTY ATTRACTIVE DEAL,	
24	RELATIVE TO WHERE WE WERE, CORRECT?	
25	WE HAVE GREATER DOWNSIDE PROTECTION	12:54PM
26	VERSUS THE CURRENT DEAL.	
27	THE JURY HAS ALREADY SEEN THIS, AND I	
2.0	MONIE MARE MARE MINE MINE I	

WON'T TAKE MORE TIME WITH IT.

1	JUST TO SHOW YOU NOW, 5035-001.	
2	IF WE COULD ENLARGE THE TOP E-MAIL FROM	
3	MR. SONNEBORN TO MR. DEVITO.	
4	NOW, YOU ARE NOT COPIED ON THIS	
5	PARTICULAR E-MAIL, DATED MAY 1ST, WHERE HE SAYS, I LOVE	12:55PM
6	GOING FROM 18 PERCENT INCREMENTAL MARGINS ON CMBS.	
7	AND THEN SAYS, IN THE NEXT PARAGRAPH, I	
8	THINK IT'S AWESOME.	
9	DID MR. SONNEBORN TELL YOU, IN THIS TIME	
10	FRAME, THAT HE WAS PLEASED WITH THE ECONOMICS OF THE	12:55PM
11	NEGOTIATED COMPENSATION TERMS BETWEEN THE COMPANY AND	
12	MR. GUNDLACH?	
13	A. YES.	
14	Q. TAKE A LOOK AT EXHIBIT 5036.	
15	NOT YET IN EVIDENCE.	12:55PM
16	THIS IS AN E-MAIL THAT YOU SENT TO	
17	MR. GUNDLACH ON MAY 1ST, 2007, CORRECT?	
18	A. YES.	
19	Q. AND AS YOU SIT HERE TODAY, LOOKING AT THIS	
20	E-MAIL, AND THEN LOOKING BACK AT THE ONE I JUST SENT	12:56PM
21	YOU, IS IT FAIR TO SAY THAT YOU PROBABLY SPOKE WITH	
22	MR. SONNEBORN ABOUT HIS VIEWS BEFORE YOU SENT THIS	
23	E-MAIL TO MR. GUNDLACH?	
24	A. ABSOLUTELY.	
25	MR. BRIAN: I WOULD OFFER EXHIBIT 5036.	12:56PM
26	MR. MADISON: NO OBJECTION, YOUR HONOR.	
27	THE COURT: IT WILL BE ADMITTED.	
28	//	

(EXHIBIT 5036 ADMITTED.) 1 2 3 MR. BRIAN: IF WE COULD DISPLAY THAT, DENNIS. 4 IN THE FIRST LINE OF YOUR E-MAIL TO Q. 5 MR. GUNDLACH, YOU STATE, I JUST WANT YOU TO KNOW HOW 12:56PM 6 GOOD I FEEL ABOUT THE NEW DEAL, ESPECIALLY YOUR 7 APPROACH TO ITS PRESENTATION AND YOUR REALISTIC AND 8 CONSIDERATE WAY OF TRYING TO MAKE IT A WIN/WIN. 9 DO YOU SEE THAT? 10 A. YES. 12:56PM Q. AND BY THE PHRASE, WIN/WIN, YOU INTENDED TO 11 12 CONVEY TO MR. GUNDLACH THAT YOU THOUGHT THE ECONOMICS 13 OF THE DEAL HAD THE POTENTIAL TO BE BOTH FAVORABLE TO 14 THE COMPANY AND FAVORABLE TO MR. GUNDLACH AND HIS TEAM, 15 CORRECT? 12:57PM 16 A. YES. 17 ONE OF THE WAYS THAT IT WAS FAVORABLE TO THE Q. 18 COMPANY IS, AS YOU UNDERSTOOD THE DEAL, MR. GUNDLACH 19 WAS AGREEING TO ABSORB THE ADDITIONAL PERSONNEL COSTS, 20 SHOULD THEY HAVE TO HIRE MORE PEOPLE WITHIN HIS GROUP, 12:57PM 21 AS THE BUSINESS GREW, CORRECT? 22 Α. CORRECT. 23 Q. LET ME SHOW YOU NOW, EXHIBIT 2150, WHICH IS IN 24 EVIDENCE. 25 YOU CAN GO AHEAD AND PUT THAT UP, 12:57PM 26 DENNIS. 27 THIS IS AN E-MAIL FROM MR. CAHILL TO

MR. GUNDLACH, MR. SONNEBORN AND YOURSELF, DATED

1	MAY 3RD, TWO DAYS LATER.	
2	DO YOU SEE THAT?	
3	A. YES.	
4	Q. AND IT ATTACHES SOMETHING CALLED A DRAFT	
5	COMPENSATION AGREEMENT.	12:58PM
6	DO YOU SEE THAT?	
7	A. YES.	
8	Q. NOW, YOU ARE AWARE, ARE YOU NOT, THAT	
9	MR. GUNDLACH DID NOT SIGN, IN 2007, A FINAL DOCUMENT?	
10	YOU ARE AWARE OF THAT FACT?	12:58PM
11	MR. MADISON: OBJECT TO THE CHARACTERIZATION	
12	OF FINAL OR ANY DOCUMENT, YOUR HONOR.	
13	THE WITNESS: YES.	
14	THE COURT: I THINK WE KNOW WHAT WE'RE TALKING	
15	ABOUT.	12:58PM
16	GO AHEAD.	
17	Q. BY MR. BRIAN: YOU ARE AWARE OF THAT, RIGHT?	
18	A. YES.	
19	Q. NOW, DESPITE THAT, YOU UNDERSTOOD THAT AN	
20	AGREEMENT HAD BEEN REACHED BETWEEN MR. GUNDLACH AND TCW	12:58PM
21	OVER A NEW ARRANGEMENT, CORRECT?	
22	MR. MADISON: OBJECT TO DESPITE THAT AS BEING	
23	ARGUMENTATIVE.	
24	THE COURT: OVERRULED.	
25	THE WITNESS: I HAD BEEN PARTY TO A	12:58PM
26	RENEGOTIATION OF THE COMPENSATION DISTRIBUTION, AND	
27	THAT WOULD QUALIFY AS A NEW ARRANGEMENT.	
0.0		

Q. BY MR. BRIAN: AND YOU UNDERSTOOD THAT AN

1	AGREEMENT HAD BEEN REACHED ON THE TERMS OF THE	
2	COMPENSATION AGREEMENT THAT HAD BEEN CIRCULATED IN MAY,	
3	CORRECT?	
4	A. YES.	
5	Q. TAKE A LOOK NOW AT EXHIBIT 66.	12:59PM
6	THIS IS ALSO IN EVIDENCE.	
7	THIS IS AN E-MAIL FROM MR. CAHILL TO	
8	MR. GUNDLACH, YOURSELF AND MR. SONNEBORN, COPY TO	
9	MR. SULLIVAN.	
10	DO YOU SEE THAT?	12:59PM
11	A. YES.	
12	Q. AND THIS ONE IS DATED JUNE 7TH, IS IT NOT?	
13	A. YES.	
14	Q. AND THIS ONE ATTACHES A THE ATTACHMENT	
15	SAYS, 2007 AGREEMENT COMP.	12:59PM
16	AND IT HAS SOME RED LINE, RIGHT?	
17	A. YES.	
18	Q. AND YOU WERE HERE WHEN MR. QUINN ASKED	
19	MR. SULLIVAN ABOUT THIS DOCUMENT WITH THE RED LINES,	
20	CORRECT?	12:59PM
21	A. CORRECT.	
22	Q. NOW, YOU DON'T RECALL ANYONE FROM TCW	
23	INDICATING THAT ANYTHING IN THIS MARKUP WAS	
24	UNACCEPTABLE TO TCW, DO YOU?	
25	A. I DON'T RECALL.	01:00PM
26	Q. YOU DON'T RECALL MR. GUNDLACH SAYING THERE WAS	
27	ANYTHING IN THIS RED LINE DOCUMENT THAT WAS	

UNACCEPTABLE TO HIM, DO YOU?

01:01PM

OTHER THAN THE FACT THAT HE DIDN'T WANT TO 1 Α. 2 SIGN IT. 3 WELL, DO YOU RECALL MR. GUNDLACH, INDICATING Q. TO YOU VERBALLY, OR BY E-MAIL, THAT ANY OF THE TERMS 4 5 SET FORTH IN THAT RED LINE WERE UNACCEPTABLE TO HIM? 01:00PM A. MAY I ASK FOR A CLARIFICATION? 6 7 Ο. WELL, CAN YOU ANSWER MY QUESTION FIRST? 8 THE COURT: OR YOU CAN ANSWER IT WITH AN 9 EXPLANATION, SIR. GO AHEAD. 10 THE WITNESS: I DON'T REMEMBER. 01:00PM 11 I'M ASSUMING THAT YOU ARE SAYING THAT 12 THINGS THAT ARE CROSSED OUT ARE NOW ELIMINATED. 13 THE COURT: IS THAT HOW YOU INTERPRET A RED LINE DOCUMENT? 14 15 THE WITNESS: YES. 01:00PM 16 O. BY MR. BRIAN: OKAY. 17 DO YOU RECALL MR. GUNDLACH EVER SAYING 18 TO YOU THAT THE TERMS SET FORTH IN THAT MARKUP, 19 INCLUDING THE THING -- ASSUMING EVERY CHANGE WAS MADE, 20 DO YOU EVER RECALL HIM SAYING THAT IT WAS UNACCEPTABLE 01:01PM 21 TO HIM? 22 A. NOT SPECIFICALLY, NO. 23 Q. OKAY. AND IN FACT, YOU ARE AWARE, ARE YOU 24 NOT, THAT BEGINNING IN 2007, TCW PAID MR. GUNDLACH

O. AND HE WAS PAID PURSUANT TO THOSE TERMS

CONTINUOUSLY, FROM THE TIME THAT -- IN THAT MAY 2007

PURSUANT TO THE TERMS OF THAT AGREEMENT, RIGHT?

A. YES, I AM.

25

26

27

1	TIME PERIOD, CERTAINLY UNTIL YOU LEFT, IN 2009, RIGHT?	
2	MR. MADISON: OBJECTION. VAGUE AND OVERBROAD	
3	AS TO WHAT AGREEMENT.	
4	THE COURT: OVERRULED.	
5	THE WITNESS: YES.	01:01PM
6	Q. BY MR. BRIAN: OKAY. NOW, YOU SERVED, IN	
7	ADDITION TO BEING CHIEF EXECUTIVE OFFICER	
8	CONGRATULATIONS YOU ALSO SERVED ON THE BOARD OF	
9	DIRECTORS OF TCW GROUP, INC., DID YOU NOT?	
10	A. YES.	01:01PM
11	Q. AND YOU ALSO SERVED ON THE COMPENSATION	
12	COMMITTEE OF THE BOARD OF DIRECTORS, DID YOU NOT?	
13	A. NO, I I DON'T KNOW THAT I DID.	
14	Q. OKAY. TAKE A LOOK TAKE A LOOK AT EXHIBIT	
15	5048.	01:02PM
16	DID YOU ATTEND A COMPENSATION COMMITTEE	
17	MEETING OF THE BOARD, APPARENTLY NOT AS A MEMBER, BUT	
18	DID YOU ATTEND A MEETING OF THE COMPENSATION COMMITTEE	
19	ON OR ABOUT JULY 16TH, 2007, IN WHICH THE TERMS OF	
20	MR. GUNDLACH'S NEW COMPENSATION ARRANGEMENTS WERE	01:02PM
21	PRESENTED?	
22	A. YES.	
23	MR. BRIAN: I WOULD OFFER EXHIBIT 5048, YOUR	
24	HONOR.	
25	MR. MADISON: NO OBJECTION, YOUR HONOR.	01:02PM
26	THE COURT: IT WILL BE ADMITTED.	
27		

(EXHIBIT 5048 ADMITTED.)

1	MR. BRIAN: LET'S PUT UP PAGE 1 FIRST, DENNIS.	
2	Q. I TAKE IT AND I APOLOGIZE IF I MISSPOKE,	
3	THE MEMBERS OF THE COMPENSATION COMMITTEE WERE MR. DAY,	
4	MR. PAGNI AND MR. UKROPINA?	
5	A. THAT'S MY RECOLLECTION.	01:03PM
6	Q. AND MR. DAY, OBVIOUSLY, WE'VE HEARD OF HIM.	
7	HE WAS THE CHAIRMAN OF THE BOARD?	
8	A. YES.	
9	Q. AND MR. PAGNI WAS SOMEONE WHO WAS AFFILIATED	
10	WITH SOCIETE GENERALE, WAS HE NOT?	01:03PM
11	A. CORRECT.	
12	Q. AND HE WAS KIND OF A DUAL EMPLOYEE OF SOC-JEN	
13	AND TCW, RIGHT?	
14	A. I BELIEVE HE WAS AN EMPLOYEE OF TCW, BUT HIS	
15	COMPENSATION WAS SHARED BY SOC-JEN.	01:03PM
16	Q. OKAY. TAKE A LOOK AT EXHIBIT 5048-0004.	
17	DENNIS, IF WE CAN ENLARGE THAT VERY LAST	
18	PARAGRAPH AT THE BOTTOM, PUT THAT UP AND, MAYBE	
19	HIGHLIGHT THAT PARAGRAPH.	
20	DO YOU SEE WHERE IT STATES, (READING):	01:03PM
21	MR. SONNEBORN THEN REVIEWED	
22	THE TERMS OF MR. GUNDLACH'S	
23	PROPOSED FIVE-YEAR EMPLOYMENT	
24	ARRANGEMENT, OF WHICH A SUMMARY OF	
25	THE ECONOMIC TERMS WAS INCLUDED IN	01:04PM
26	THE MATERIALS PRESENTED TO THE	
27	COMMITTEE.	
2.0	THE WAS DECOMMENDED HUAD HUD	

IT WAS RECOMMENDED THAT THE

1	EMPLOYMENT ARRANGEMENT WITH	
2	MR. GUNDLACH, AS SUBMITTED TO THE	
3	COMMITTEE, BE APPROVED AND	
4	RATIFIED.	
5	NOW, IF YOU TURN TO THE NEXT PAGE	01:04PM
6	AND DENNIS, IF YOU CAN PUT THAT UP.	
7	YOU WILL SEE, WILL YOU NOT, THAT IF THE	
8	VERY FIRST, RESOLVED, (READING):	
9	THE COMMITTEE HEREBY CONFIRMS,	
10	RATIFIES AND APPROVES THE FIVE-YEAR	01:04PM
11	EMPLOYMENT ARRANGEMENT WITH JEFFREY	
12	GUNDLACH, COMMENCING ON OR ABOUT	
13	JANUARY 1, 2007, ON SUBSTANTIALLY	
14	THE TERMS PRESENTED TO THIS	
15	COMMITTEE.	01:04PM
16	AND THAT'S CONSISTENT WITH YOUR	
17	RECOLLECTION, IS IT NOT, SIR?	
18	A. YES.	
19	Q. NOW, TAKE A LOOK AT EXHIBIT 5049.	
20	EXHIBIT 59 (SIC) ARE THE MINUTES OF THE	01:04PM
21	MEETING OF THE ACTUAL BOARD OF DIRECTORS OF TCW GROUP,	
22	INC., THE FOLLOWING DAY, JULY 17TH, 2007, CORRECT?	
23	A. YES.	
24	MR. BRIAN: I WOULD OFFER EXHIBIT 5049, YOUR	
25	HONOR.	01:05PM
26	MR. MADISON: NO OBJECTION.	
27	THE COURT: IT WILL BE ADMITTED.	

1	(EXHIBIT 5049 ADMITTED.)	
2		
3	Q. BY MR. BRIAN: LET'S PUT UP THE VERY FIRST	
4	PAGE, SO WE CAN SEE WHO WAS PRESENT.	
5	I'LL JUST GIVE THE LADIES AND GENTLEMEN	01:05PM
6	OF THE JURY A MOMENT TO LOOK AT THE NAMES.	
7	MR. ATTANASIO WAS A MEMBER OF BOARD, WAS	
8	HE NOT?	
9	A. YES.	
10	Q. AND MR. GUNDLACH WAS A MEMBER OF THE BOARD BUT	01:05PM
11	WAS NOT PRESENT FOR EACH OF THESE MINUTES, RIGHT?	
12	A. CORRECT.	
13	Q. SO HE WAS NOT PRESENT WHEN THE TERMS OF HIS	
14	OWN COMPENSATION AGREEMENT WERE PRESENTED TO THE BOARD	
15	OF DIRECTORS, RIGHT?	01:05PM
16	A. CORRECT.	
17	Q. TAKE A LOOK AT 5049-007. AND IF YOU GO DOWN	
18	TO THE BOTTOM, WHERE IT SAYS, COMPENSATION COMMITTEE	
19	NOTES.	
20	YOU SEE IN THE VERY FIRST PARAGRAPH THAT	01:06PM
21	MR. CAHILL THE THIRD LINE REPORTED THE FOLLOWING	
22	ACTIONS BY THE COMPENSATION COMMITTEE.	
23	AND THE THIRD BULLET, ONE OF THE THINGS	
24	HE REPORTED WAS THE APPROVAL OF MR. GUNDLACH'S	
25	EMPLOYMENT ARRANGEMENTS BY THE COMPENSATION COMMITTEE,	01:06PM
26	CORRECT?	
27	A. YES.	

Q. NOW, ONE THING I WANT TO MAKE VERY CLEAR TO

YOU, AND THE LADIES AND GENTLEMEN OF THE JURY, DURING 1 2 THESE DISCUSSIONS THAT YOU HAD, THE ONE MEETING WITH 3 MR. GUNDLACH, AND THE DISCUSSIONS YOU HAD WITH 4 MR. SONNEBORN, MR. CAHILL AND ANYBODY ELSE, YOU WERE 5 NOT INVOLVED IN THE -- ANY OF THE BACK AND FORTH ABOUT 01:06PM 6 ANY OF THE OTHER BELLS AND WHISTLES, OR OTHER LEGAL 7 TERMS OF THE AGREEMENT WITH MR. GUNDLACH, WERE YOU, 8 SIR? 9 A. I CAN'T TESTIFY TO ANY. 10 BUT ON A DAY-TO-DAY BASIS, CORRECT. 01:06PM 11 YOUR CONCERN WAS THE NEW COMPENSATION TERMS, 0. 12 RIGHT, SIR? 13 Α. MOSTLY. 14 O. DON'T RECALL, REALLY DON'T RECALL ANY 15 DISCUSSION ABOUT THE OTHER CONTRACT TERMS, DO YOU, SIR? 01:07PM A. I RECALL A COUPLE OF CHANGES THAT WERE 16 17 REOUESTED. 18 Q. OKAY. NOW, YOU DID UNDERSTAND THAT THERE WERE 19 VERY LIMITED GROUNDS ON WHICH TCW COULD TERMINATE 20 MR. GUNDLACH, ON HIS AGREEMENT THAT EXISTED PRIOR TO 01:07PM 21 THIS -- THESE NEGOTIATIONS, CORRECT? 22 I DON'T RECALL THE SPECIFICITY OF THAT Α. 23 AGREEMENT, BUT I WOULD ASSUME YOU ARE CORRECT. 24 Ο. AND YOU HAD NO REASON TO BELIEVE, BASED ON THE 25 DISCUSSIONS YOU PARTICIPATED IN IN 2007, THAT THOSE 01:07PM

GROUNDS HAD BEEN EITHER NARROWED OR EXPANDED, DID YOU?

A. IN THE NEW CONTRACT?

Q. YEAH?

26

27

28

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1	A. NO.	
2	Q. I TAKE IT THAT IN 2007, 2008, 2009, YOU NEVER	
3	TOLD MR. GUNDLACH THAT HE WAS AN AT-WILL EMPLOYEE, DID	
4	YOU, SIR?	
5	A. NO.	01:07PM
6	Q. AND YOU NEVER HEARD ANYONE AT TCW TELL	
7	MR. GUNDLACH THAT HE WAS AN AT-WILL EMPLOYEE, DID YOU?	
8	A. DIRECTLY?	
9	Q. YES?	
10	A. NO.	01:08PM
11	Q. TAKE A LOOK AT EXHIBIT 62.	
12	THIS IS AN E-MAIL IT'S ACTUALLY TWO	
13	E-MAILINGS.	
14	THE TOP E-MAIL IS AN E-MAIL FROM	
15	MR. SONNEBORN TO YOURSELF ON MAY 25TH, 2007, IS IT NOT?	01:08PM
16	A. YES.	
17	MR. BRIAN: I WOULD OFFER EXHIBIT 62, YOUR	
18	HONOR.	
19	MR. MADISON: NO OBJECTION.	
20	THE COURT: IT WILL BE ADMITTED.	01:08PM
21		
22	(EXHIBIT 62 ADMITTED.)	
23		
24	Q. BY MR. BRIAN: DO YOU SEE WHERE IT STATES,	
25	(READING):	01:09PM
26	BASICALLY, JEFFREY CAUGHT ON	
27	THAT WE'D BE SAVING FIVE PLUS	
28	MILLION DOLLARS UNDER THE NEW DEAL	

VERSUS THE OLD DEAL, AS THE	
REVENUES SHORTFALL HITS HIM 100	
PERCENT PERSONALLY, DUE TO THE FACT	
THAT HE IS FIRST LOSS ON THE WHOLE	
EXPENSE STRUCTURE OF PEOPLE.	01:09PM
DO YOU SEE THAT?	
A. YES.	
Q. SO IT WAS YOUR UNDERSTANDING, WAS IT NOT, THAT	
IN THE SHORT RUN, AT LEAST, TCW STOOD TO DO BETTER	
UNDER MR. GUNDLACH'S NEW DEAL THAN UNDER THE TERMS OF	01:09PM
THE PREEXISTING DEAL; IS THAT RIGHT?	
A. MY UNDERSTANDING AFTER READING THIS?	
Q. YES.	
A. YES.	
Q. AND DO YOU SEE ALSO, IN THE NEXT LINE, THAT HE	01:09PM
COULDN'T ADJUST PHIL LOW ENOUGH TO FIX THE WHOLE	
PROBLEM, AS A RESULT, SO WE GAVE PHIL \$1 MILLION MORE.	
DO YOU SEE THAT?	
A. YES.	
Q. PHIL BARACH WAS ONE OF THE OLDER PEOPLE IN THE	01:09PM
MBS GROUP, WAS HE NOT?	
A. I DON'T KNOW HOW TO ANSWER THAT.	
HE WAS OLDER THAN MR. GUNDLACH.	
Q. WE'RE ALL GETTING A LITTLE OLDER THESE DAYS.	
LET'S MOVE ON TO THE TIME PERIOD OF	01:10PM
2008.	
YOU ARE WELL AWARE OF THE ECONOMIC	
CRISIS THAT HIT THIS COUNTRY AND THE WORLD IN LATE	
	REVENUES SHORTFALL HITS HIM 100 PERCENT PERSONALLY, DUE TO THE FACT THAT HE IS FIRST LOSS ON THE WHOLE EXPENSE STRUCTURE OF PEOPLE. DO YOU SEE THAT? A. YES. Q. SO IT WAS YOUR UNDERSTANDING, WAS IT NOT, THAT IN THE SHORT RUN, AT LEAST, TCW STOOD TO DO BETTER UNDER MR. GUNDLACH'S NEW DEAL THAN UNDER THE TERMS OF THE PREEXISTING DEAL; IS THAT RIGHT? A. MY UNDERSTANDING AFTER READING THIS? Q. YES. A. YES. Q. AND DO YOU SEE ALSO, IN THE NEXT LINE, THAT HE COULDN'T ADJUST PHIL LOW ENOUGH TO FIX THE WHOLE PROBLEM, AS A RESULT, SO WE GAVE PHIL \$1 MILLION MORE. DO YOU SEE THAT? A. YES. Q. PHIL BARACH WAS ONE OF THE OLDER PEOPLE IN THE MBS GROUP, WAS HE NOT? A. I DON'T KNOW HOW TO ANSWER THAT. HE WAS OLDER THAN MR. GUNDLACH. Q. WE'RE ALL GETTING A LITTLE OLDER THESE DAYS. LET'S MOVE ON TO THE TIME PERIOD OF 2008.

2007, EARLY 2008, ARE YOU NOT? 1 2 Α. CORRECT. 3 AND TCW WAS NOT IMMUNE FROM THE IMPACT OF THAT Q. 4 CRISIS, WAS IT, SIR? 5 Α. NO. 01:10PM 6 Q. NOR WAS SOCIETE GENERALE, WAS IT? 7 Α. NO. AND SOCIETE GENERALE, IN ADDITION TO THE 8 Q. 9 NORMAL IMPACTS OF THE ECONOMIC RECESSION, SUFFERED A 10 VERY SIGNIFICANT LOSS IN THE LATE 2007, 2008 TIME 01:10PM 11 PERIOD, DIDN'T IT, SIR? 12 Α. YES. 13 ONE OF THE THINGS THAT YOU SET UP IN THE FALL Ο. 14 OF 2008 WAS SOMETHING CALLED A FOCUS GROUP, OR A 15 COMMITTEE OF PEOPLE WITHIN TCW TO STUDY ISSUES AROUND 01:11PM 16 THE COMPANY, AND COME BACK WITH RECOMMENDATIONS; ISN'T 17 THAT RIGHT? 18 IT'S CORRECT THAT I SET UP THE FOCUS GROUP. Α. 19 THAT WAS NOT ITS CHARTER. 20 ALL RIGHT. TAKE A LOOK AT EXHIBIT -- WELL, 0. 01:11PM 21 WHAT WAS ITS CHARTER? 22 IT'S CHARTER WAS TO TAKE A LOOK AT THE Α. 23 CRITERIA WE WERE USING TO SELECT WHAT WE CALLED FOCUS LISTS, INVESTMENT STRATEGIES, THOSE AREAS OF THE FIRM 24

01:11PM

Q. IT MORPHED, IN PART, BECAUSE THE MEMBERS OF
THE GROUP CAME BACK AND ASKED TO EXPAND THEIR CHARTER,

AND IT MORPHED INTO SOMETHING ELSE.

THAT WE WOULD SPEND MORE TIME AND RESOURCES ON.

25

1	RIGHT?	
2	A. YES.	
3	Q. TAKE A LOOK AT EXHIBIT 6055, WHICH IS IN	
4	EVIDENCE.	
5	AND DENNIS, YOU CAN PUT THE FIRST PAGE	01:11PM
6	OF THAT UP.	
7	A. WHAT'S THE NUMBER?	
8	Q. 6055.	
9	IT'S TOWARD THE END OF THE BINDER.	
10	A. OKAY.	01:12PM
11	Q. DO YOU SEE ON THE FIRST PAGE, A DOCUMENT	
12	CALLED TCW FOCUS STUDY, A SUMMARY OF RECOMMENDATIONS?	
13	DO YOU SEE THAT?	
14	A. YES.	
15	Q. AND NOW TURN TO PAGE 2.	01:12PM
16	AND IF WE COULD JUST ENLARGE THAT.	
17	THERE'S A SOME NAMES OF PEOPLE CALLED	
18	PARTICIPANTS.	
19	ARE THOSE THE MEMBERS OF THE FOCUS	
20	GROUP?	01:12PM
21	A. YES.	
22	Q. DID YOU SELECT THOSE INDIVIDUALS TO SERVE ON	
23	THE FOCUS GROUP?	
24	A. ONLY JEFF ANDERSON.	
25	Q. HOW WERE THEY SELECTED, IF YOU DID NOT SELECT	01:12PM
26	THEM?	
27	A. WE ASKED EACH OF THE MEMBERS OF, I BELIEVE, MY	

BI-WEEKLY MEETING THAT I USED TO HAVE AMONG SOME SENIOR

1	TCW PROFESSIONALS, TO EACH RECOMMEND SOMEBODY TO	
2	REPRESENT A DIFFERENT AREA OF THE ORGANIZATION.	
3	Q. AND WERE YOU SATISFIED WITH THE MAKEUP OF THIS	
4	GROUP?	
5	A. CERTAINLY.	01:13PM
6	Q. TAKE A LOOK NOW AT PAGE 3.	
7	DENNIS, IF YOU CAN PUT THAT UP. WE'RE	
8	RIGHT THERE. THAT'S THE PAGE.	
9	NOW, THIS DOCUMENT IS ENTITLED, SUMMARY	
10	OF RECOMMENDATION.	01:13PM
11	DO YOU SEE THAT ONE OF THE INITIAL	
12	RECOMMENDATIONS WAS TO CONSOLIDATE THE FIXED INCOME	
13	PLATFORM TO EXPLOIT STRONG NEAR TERM MARKET	
14	OPPORTUNITIES AND CREDIT.	
15	DO YOU SEE THAT?	01:13PM
16	A. YES.	
17	Q. AND TO PLACE ALL MARKETABLE SECURITY FIXED	
18	INCOME STRATEGIES UNDER JEG.	
19	DO YOU SEE THAT?	
20	A. YES.	01:13PM
21	Q. AND JEG, YOU UNDERSTOOD, WAS A REFERENCE TO	
22	JEFFREY GUNDLACH, CORRECT?	
23	A. CORRECT.	
24	Q. NOW, TAKE A LOOK AT THE NEXT DOCUMENT,	
25	ENTITLED EXHIBIT 6056.	01:13PM
26	IT'S ALSO IN EVIDENCE, DENNIS.	
27	CAN YOU PUT THAT UP, PAGE 1.	

ALSO ENTITLED TCW FOCUS STUDY SUMMARY OF

RECOMMENDATIONS, DATED JANUARY 12TH, 2009. 1 2 TO YOUR RECOLLECTION, WAS THIS DOCUMENT 3 PREPARED LATER THAN THE DOCUMENT I JUST SHOWED YOU, 4 BECAUSE I DON'T THINK THERE'S A DATE ON IT? 5 A. IT LOOKS LIKE IT'S MORE DRESSED UP, SO IT'S 01:14PM 6 POSSIBLE. 7 O. OKAY. TAKE A LOOK NOW AT PAGE 4. THAT IS 6056-0004. 8 9 AND IF WE COULD, DENNIS, ENLARGE THE 10 VERY FIRST BULLET, WITH THAT FIRST DASH. 01:14PM AND YOU SEE HERE, THE RECOMMENDATION, 11 12 AGAIN, IS TO CONSOLIDATE FIXED INCOME PLATFORM TO 13 EXPLOIT STRONG, NEAR TERM MARKET OPPORTUNITIES IN 14 CREDIT. 15 DO YOU SEE THAT? 01:14PM 16 Α. YES. 17 AND THEN IT SAYS, PLACE ALL MARKETABLE Q. 18 SECURITY FIXED INCOME STRATEGIES IN ONE GROUP. 19 DO YOU SEE THAT? 20 A. YES. 01:15PM 21 AND YOU SEE THAT THE INITIALS JEG DON'T APPEAR Ο. 22 ON THIS DRAFT, IN THIS DOCUMENT, WHEREAS THEY HAD 23 APPEARED IN THE PREVIOUS DOCUMENT, CORRECT? 24 A. CORRECT. 25 DID YOU HAVE ANY DISCUSSIONS ABOUT -- EITHER Ο. 01:15PM 26 THE TEAM MEMBERS OR ANY PORTFOLIO MEMBERS ABOUT 27 REMOVING MR. GUNDLACH'S INITIALS FROM THIS, THESE

28

RECOMMENDATIONS?

- A. I DON'T HAVE SPECIFIC RECOLLECTION OF WHETHER

 I DID OR I DIDN'T.

 NOW. THE FOCUS GROUP CONTINUED TO EXIST AS A
 - Q. NOW, THE FOCUS GROUP CONTINUED TO EXIST AS A COMMITTEE OF SOME SORT, UP UNTIL THE TIME YOU LEFT THE COMPANY, RIGHT?

A. I DON'T REMEMBER.

Q. DID YOU EVER SIT DOWN -- AS YOU SIT HERE

TODAY, DID YOU EVER SIT DOWN AND SHARE WITH MR. STERN,

WHEN HE CAME IN AS CEO TO REPLACE YOU IN 2009, THE

10 RECOMMENDATIONS OF THE FOCUS GROUP?

A. I DON'T REMEMBER.

12 Q. I WANT TO TURN TO SOCIETE GENERALE.

13 WHEN SOC-JEN APPEARED ON THE SCENE, SO

14 TO SPEAK, IN THE EARLY 2000'S, YOU WERE AWARE OF

15 DISCUSSIONS, AND MAY HAVE PARTICIPATED IN THOSE

16 DISCUSSIONS, ABOUT SOME INTENT, DOWN THE ROAD, BY

17 | SOC-JEN TO ISSUE 30 PERCENT STOCK TO THE EMPLOYEES OF

18 TCW, RIGHT?

4

5

6

7

8

9

11

21

22

23

24

19 A. I'M NOT SURE IT WAS STOCK, BUT I KNOW WHAT YOU 20 ARE REFERRING TO.

Q. THERE WAS -- THERE WERE INSTRUCTIONS ABOUT ISSUING EQUITY OF ABOUT 30 PERCENT TO THE EMPLOYEES OVER TIME, RIGHT?

A. YES.

Q. TAKE A LOOK AT EXHIBIT 6124, IN YOUR BINDER.

THAT'S A COPY OF A PROXY STATEMENT

27 ISSUED BY TCW IN CONNECTION WITH SOME SHAREHOLDER

28 ACTION, IS IT NOT?

01:15PM

01:15PM

01:16PM

01:16PM

01:16PM

NO. THIS IS FOR THE TCW FUNDS. 1 Α. 2 O. OKAY. BUT IT'S A PROXY STATEMENT OF SOME 3 SORT, ISSUED BY THE COMPANY, RIGHT? 4 A. I BELIEVE IT'S ISSUED BY THE FUNDS, WHICH 5 IS --01:17PM Q. I'M NOT GOING TO TEST YOU ON IT. 6 TURN TO PAGE 11, IF YOU WOULD. 7 8 OKAY. Α. 9 MR. BRIAN: I DON'T NEED THE WHOLE DOCUMENT IN EVIDENCE, YOUR HONOR. I'M HAPPY TO OFFER IT, BUT ALL I 10 01:17PM 11 WOULD REALLY LIKE TO OFFER IS 6124-11, UNLESS COUNSEL 12 WOULD PREFER THE ENTIRE DOCUMENT. 13 MR. HELM: I THINK IT'S IN EVIDENCE. 14 MR. BRIAN: IT IS? MR. QUINN: YOU CAN USE THE WHOLE THING. 15 01:17PM 16 MR. BRIAN: I'LL USE THE WHOLE THING. 17 COULD YOU PUT UP THE 11TH PAGE, THE 18 TWO-LINE PARAGRAPH. 19 O. DO YOU SEE WHERE IT STATES THAT THE REMAINING 20 30 PERCENT OF THE SHARES OF THE TCW GROUP WILL BE 01:17PM 21 RETAINED BY CURRENT SHAREHOLDERS, AND WILL BE AVAILABLE 22 FOR RECIRCULATION TO EMPLOYEES? 23 A. YES. 24 Q. NOW, THIS ISSUE OF EQUITY BEING GIVEN TO THE 25 EMPLOYEES IS AN ISSUE THAT YOU RAISED ON MORE THAN ONE 01:18PM 26 OCCASION WITH THE FOLKS AT SOCIETE GENERALE, DURING 27 YOUR TENURE AS CEO, RIGHT?

28

A. CORRECT.

1	Q. AND IT WAS THE SOURCE OF SOME FRUSTRATION, WAS	
2	IT NOT?	
3	A. YES.	
4	Q. AND ONE OF YOUR CONCERNS LET ME WITHDRAW	
5	THAT.	01:18PM
6	GENERALLY SPEAKING, PORTFOLIO MANAGERS	
7	EXPECT TO BE COMPENSATED FOR THEIR PERFORMANCE, RIGHT?	
8	A. YES.	
9	Q. AND THEY ARE NOT GENERALLY A SHY BUNCH, ARE	
10	THEY?	01:18PM
11	A. NO.	
12	Q. AND YOU WERE YOU WANTED TO MAKE SURE THAT	
13	THE PORTFOLIO MANAGERS WHO WERE BRINGING REVENUE INTO	
14	TCW WERE ADEQUATELY REWARDED, INCLUDING THROUGH EQUITY,	
15	RIGHT?	01:19PM
16	A. YES.	
17	Q. AND YOU DISCUSSED THAT WITH A NUMBER OF THE	
18	PORTFOLIO MANAGERS, INCLUDING MR. GUNDLACH, OVER THE	
19	YEARS, DIDN'T YOU?	
20	A. YES.	01:19PM
21	Q. MR. GUNDLACH HAS TESTIFIED ABOUT A CONFERENCE	
22	CALL IN ABOUT SEPTEMBER, 2008, IN NEW YORK, THAT WAS TO	
23	BE PRESENTED BY MR. OUDEA.	
24	DO YOU RECALL THAT?	
25	A. YES, I DO.	01:19PM
26	Q. MR. OUDEA WAS, I DON'T KNOW IF HE WAS CALLED	
27	CHIEF EXECUTIVE OFFICER, BUT ESSENTIALLY, THE HEAD	

EXECUTIVE AT SOCIETE GENERALE, CORRECT?

1 A. CORRECT. 2 O. AND YOU ACTUALLY FLEW TO NEW YORK TO HELP 3 PREPARE HIM, OR URGE HIM TO DO THIS CONFERENCE CALL THE 4 RIGHT WAY, DIDN'T YOU, SIR? 5 A. I BELIEVE WE WERE IN NEW YORK AT THE SAME 01:19PM 6 TIME, BUT I WAS THERE WITH --7 Ο. AND YOU EXPECTED HIM, DURING THAT CALL, TO 8 ANNOUNCE AN EMPLOYEE STOCK OWNERSHIP PROGRAM, DIDN'T 9 YOU? A. THAT'S NOT ENTIRELY ACCURATE. 10 01:20PM 11 O. WHAT DID YOU EXPECT HIM TO ANNOUNCE? 12 I EXPECTED HIM TO REACH OUT AND CALM TCW, IN Α. 13 THE WAKE OF THE FINANCIAL CRISIS, AND IMPLY THAT HE WAS WELL INFORMED AND SUPPORTIVE OF A NUMBER OF 14 15 INITIATIVES, INCLUDING THE EQUITY PLAN. 01:20PM 16 Ο. AND YOU HAD ENCOURAGED MR. GUNDLACH AND OTHER 17 PORTFOLIO MANAGERS TO PARTICIPATE AND LISTEN TO THIS 18 CONFERENCE CALL, DIDN'T YOU? 19 A. YES. 20 YOU WERE HOPING THAT THAT WAS GOING TO CALM Ο. 01:20PM 21 SOME OF THE VOLATILE SITUATION THAT THEN EXISTED AT THE 22 COMPANY, RIGHT? A. THAT'S NOT HOW I WOULD CHARACTERIZE IT. 23 24 Q. WELL, ADDRESS THEIR CONCERNS?

01:20PM

YOU WERE VERY, VERY DISAPPOINTED IN WHAT

28 MR. OUDEA SAID, WEREN'T YOU?

25

26

Α.

Q.

YES.

OKAY.

1	A. CORRECT.	
2	Q. IN FACT, YOU DESCRIBED YOURSELF AS HAVING BEEN	
3	PERSONALLY OUTRAGED BY IT; ISN'T THAT RIGHT?	
4	A. YES.	
5	Q. ALSO, IN 2008, YOU AND MR. SONNEBORN ACTUALLY	01:21PM
6	FLEW TO PARIS TO MEET WITH THE SOCIETE GENERALE PEOPLE	
7	TO PROPOSE A BUYBACK OF TCW FROM THEM, RIGHT?	
8	A. AMONG OTHER THINGS, YES.	
9	Q. AND I ONLY WANT TO FOCUS ON THE BUYBACK.	
10	A. OKAY.	01:21PM
11	Q. BUT YOU MET WITH SOME FOLKS OVER THERE, YOU	
12	MADE THE PROPOSAL.	
13	AND THE PEOPLE YOU MET WITH, VERY SOON	
14	WERE NO LONGER THERE, RIGHT?	
15	A. CORRECT.	01:21PM
16	Q. SO THAT PROPOSAL DIDN'T GO ANYWHERE, DID IT?	
17	A. NO.	
18	Q. TAKE A LOOK AT EXHIBIT 5108.	
19	THIS IS A LETTER THAT YOU SENT ON TCW	
20	GROUP, INC. STATIONERY, ADDRESSED, DEAR VALUED CLIENT,	01:22PM
21	ON JANUARY 26TH, 2009, IS IT NOT?	
22	A. YES.	
23	MR. BRIAN: I WOULD OFFER EXHIBIT 5108.	
24	MR. MADISON: NO OBJECTION, YOUR HONOR.	
25	THE COURT: IT WILL BE ADMITTED.	01:22PM
26		
27	(EXHIBIT 5108 ADMITTED.)	
0.0	, ,	

MR. BRIAN: AND MAYBE WE CAN PUT IT UP AND 1 2 ENLARGE THE FOURTH PARAGRAPH, BEGINNING WITH, AS 3 TMPORTANTLY. 4 O. YOU SENT THIS LETTER IN THE IMMEDIATE 5 AFTERMATH OF SOCIETE GENERALE'S PUBLIC ANNOUNCEMENT OF 01:22PM 6 ITS PROPOSED JOINT VENTURE WITH ANOTHER LARGE FRENCH 7 BANK CALLED CREDIT AGRICOLE, CORRECT? 8 Α. YES. 9 AND YOU SENT IT BECAUSE YOU WERE CONCERNED Ο. 10 THAT CLIENTS MIGHT BE UNCERTAIN HOW TO TAKE THAT NEWS, 01:22PM 11 RIGHT? 12 Α. YES. 13 OKAY. AND WHEN YOU HEARD ABOUT THE DEAL, YOU Ο. 14 TOLD MR. GUNDLACH THAT IT APPEARED TO YOU THAT SOCIETE 15 GENERALE WANTED TO GET OUT OF THE ASSET MANAGEMENT 01:23PM 16 BUSINESS; ISN'T THAT RIGHT? 17 A. YES. 18 YOU TOLD MR. GUNDLACH THAT IT LOOKED LIKE 0. 19 SOCIETE GENERALE WANTED TO EITHER TAKE TCW PUBLIC, OR 20 OTHERWISE SELL TCW; ISN'T THAT RIGHT? 01:23PM 21 Α. THAT WAS THE CONCLUSION, BY THIS DATE. 22 YEAH. AND THAT WAS A LOGICAL ASSUMPTION YOU Ο. 23 MADE ON YOUR PART, WHICH YOU COMMUNICATED TO

01:23PM

25 I BELIEVE IT WAS MORE THAN AN ASSUMPTION. Α.

Ο. OKAY. YOU BELIEVE IT WAS BASED ON WHAT THEY TOLD YOU, RIGHT?

A. YES.

MR. GUNDLACH, RIGHT?

24

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27

1	Q. AND SO HERE IN THE PARAGRAPH, YOU ARE STATING	
2	TO THE CLIENTS, (READING):	
3	AS IMPORTANTLY SG HAS TAKEN	
4	STEPS TO STRENGTHEN THE INTEREST OF	
5	TCW EMPLOYEES AS WELL THROUGH A	01:24PM
6	COMBINATION OF STOCK OPTIONS AND	
7	CASH INCENTIVES UNDER NEWLY	
8	AGREED-UPON PLANS, TCW EMPLOYEES	
9	WILL BE AWARDED STOCK OPTIONS EQUAL	
10	TO 30 PERCENT OF THE OWNERSHIP OF	01:24PM
11	TCW ON A FULLY DILUTED BASIS.	
12	IN ADDITION, SG HAS COMMITTED	
13	TO PROVIDE SUPPORT FOR TCW'S	
14	CONTINUED BUSINESS DEVELOPMENT, AND	
15	TO TAKE ADVANTAGE OF INDUSTRY	01:24PM
16	CONSOLIDATION OPPORTUNITIES.	
17	IT IS EXPECTED THAT TCW WILL	
18	RETAIN ITS AUTONOMY WITH THE GOAL	
19	OF BEING SPUN OFF AS ITS OWN PUBLIC	
20	COMPANY WITHIN FIVE YEARS.	01:24PM
21	I TAKE IT THAT BEFORE YOU RESIGNED, IN	
22	THE MIDDLE OF 2009, THEY HAD NOT YET ISSUED STOCK	
23	OPTIONS EQUAL TO 30 PERCENT OF THE OWNERSHIP OF TCW ON	
24	A FULLY DILUTED BASIS, HAD THEY?	
25	A. WE HAD A DRAFT DOCUMENT, SO IT FELT IMMINENT	01:24PM
26	TO ME.	
27	Q. BUT IT DIDN'T HAPPEN BEFORE YOU LEFT, DID IT?	
28	A. NO.	

Q. NOW, BASED ON SUBSEQUENT DISCUSSIONS YOU HAD, 1 2 MAYBE AROUND THIS TIME, JANUARY OR FEBRUARY, YOU CAME 3 TO UNDERSTAND THAT WHEN SOCIETE GENERALE REFERRED TO AN 4 IPO, AN INITIAL PUBLIC OFFERING, IN THEIR PRESS 5 RELEASE, THAT MEANT SPIN-OUT TRANSACTION, A 01:25PM 6 RECAPITALIZATION, A BUYOUT, A THIRD PARTY EQUITY 7 INVESTMENT, ALL KINDS OF DIFFERENT FINANCIAL 8 TRANSACTIONS. 9 THAT'S WHAT THEY TOLD YOU IT MEANT, 10 CORRECT? 01:25PM 11 NOT EXACTLY. Α. 12 OKAY. WELL, TELL ME EXACTLY WHAT THEY TOLD Q. 13 YOU ABOUT WHAT THEY MEANT, WHEN THEY SAID IPO? THEY TOLD ME THAT THEIR MARKET WOULD ONLY 14 Α. 15 UNDERSTAND THE TERM IPO, BUT THAT THEY WERE OPEN TO THE 01:25PM 16 OTHER TYPES OF TRANSACTION AS A SOLUTION. 17 Q. SO THEY TOLD YOU, IN THE JANUARY, FEBRUARY, 18 2009 TIME PERIOD, THAT THEY WERE OPEN TO CONSIDERING 19 PRIVATE EQUITY INVESTMENTS, IPOS, RECAPITALIZATIONS, 20 BUYOUTS, THIRD PARTY SALES, ALL OF THOSE TRANSACTIONS 01:26PM 21 THEY WERE OPEN TO, RIGHT? 22 A. AT THE APPROPRIATE TIME, YES. 23 O. TAKE A LOOK AT EXHIBIT 123 IN YOUR BOOK. 24 THIS IS AN E-MAIL EXCHANGE BETWEEN YOU 25 AND MR. GUNDLACH ON JANUARY 20TH, 2009, IS IT NOT? 01:26PM

COPYING NOT PERMITTED PURSUANT TO GOVERNMENT CODE SECTION 69954(D)

MR. BRIAN: I WOULD OFFER EXHIBIT 123, YOUR

26

27

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Α.

HONOR.

YES.

1	THE COURT: ANY OBJECTION?	
2	MR. MADISON: NO OBJECTION, YOUR HONOR.	
3	THE COURT: IT WILL BE ADMITTED.	
4	Q. BY MR. BRIAN: NOW, IT STARTS AT THE BOTTOM,	
5	DENNIS.	01:26PM
6	IF WE CAN ENLARGE THAT.	
7	THIS CHAIN STARTS WITH AN E-MAIL FROM	
8	MR. GUNDLACH TO YOU, SAYING, (READING):	
9	IT SEEMS TO ME, WE SHOULD NOT	
10	ACCEPT THIS MAJOR ORGANIZATION	01:27PM
11	UPHEAVAL PASSIVELY, SINCE ALL PARTS	
12	ARE IN MOTION. WE SHOULD USE THIS	
13	OPPORTUNITY TO CREATE A CLEARER	
14	FUTURE FOR TCW AND ITS EMPLOYEES	
15	AND NEGOTIATE PROACTIVELY.	01:27PM
16	I'M HAPPY TO PERFORM THIS	
17	ROLE, IF IT'S UNCOMFORTABLE FOR	
18	YOU, FOR UNDERSTANDABLE LEGACY	
19	REASONS.	
20	DO YOU SEE THAT?	01:27PM
21	A. YES.	
22	Q. AND THEN YOU RESPONDED	
23	AND DENNIS, IF YOU CAN PUT THAT UP.	
24	YOU RESPONDED BY SAYING, (READING):	
25	NOT UNCOMFORTABLE AT ALL. LET	01:27PM
26	ME KNOW WHAT KIND OF CLARITY YOU	
27	MEAN. THEY THINK THEY ARE GIVING	
28	US A PATH TO IPO, WHICH FOR EQUITY	

1	HOLDERS, MEANS VALUE, REALIZATION	
2	AND INDEPENDENCE.	
3	IF WE CAN STRENGTHEN THAT,	
4	THEN I'M ALL FOR IT.	
5	NOW, WHEN YOU WROTE THAT TO	01:27PM
6	MR. GUNDLACH, YOU WERE INTENDING TO CONVEY TO HIM THE	
7	POSSIBILITY, AT LEAST, THAT THERE MIGHT BE A	
8	TRANSACTION IN THE FUTURE WHEREBY THE OFFICERS AND	
9	EMPLOYEES OF TCW COULD BUY THE COMPANY BACK FROM THE	
10	FRENCH, RIGHT?	01:28PM
11	A. YES.	
12	Q. AND HE RESPONDED BY SAYING, I MEAN CONTROL	
13	TODAY, VALUE TODAY, OWNERSHIP TODAY, INDEPENDENCE	
14	TODAY.	
15	TAKE A LOOK AT EXHIBIT 124.	01:28PM
16	EXHIBIT 124, THE TOP HALF OF THAT IS	
17	YOUR RESPONSE TO MR. GUNDLACH'S E-MAIL THAT I JUST READ	
18	TO YOU, IS IT NOT?	
19	A. YES.	
20	MR. BRIAN: I WOULD OFFER EXHIBIT 124.	01:28PM
21	MR. MADISON: NO OBJECTION.	
22	THE COURT: IT WILL BE ADMITTED.	
23	MR. BRIAN: IF WE COULD MAYBE HIGHLIGHT THE	
24	FIRST PARAGRAPH.	
25	YOU WROTE, (READING):	01:28PM
26	AS YOU KNOW, I HAVE TRIED THAT	
27	FOR OVER A YEAR. I HAVE HAD NO	
28	LUCK WITH FOUR DIFFERENT LEADERS.	

1	I GUESS THEY VIEW THE POSSIBILITY	
2	OF A, QUOTE, WALKOUT, UNQUOTE, AS	
3	STILL PRESERVING ENOUGH VALUE TO	
4	REBUILD AND GET OUT AT A HIGHER	
5	VALUATION IN THE FUTURE.	01:29PM
6	AS FOR INDEPENDENCE, IF THEY	
7	WERE TO SELL IT TO US FOR \$1	
8	BILLION, I THINK IT WOULD BE	
9	RELATIVELY EASY TO GET THE CAPITAL.	
10	I'M IN TOUCH WITH SEVERAL BUYABLE	01:29PM
11	SOURCES; BUT THE REALITY IS, WE	
12	WOULD PROBABLY END UP WITH THE SAME	
13	30 PERCENT STAKE AND THE SAME	
14	FIVE-YEAR HOLDING PERIOD, ET	
15	CETERA.	01:29PM
16	Q. YOU WROTE THAT RESPONSE TO MR. GUNDLACH ON THE	
17	SAME DAY YOU GOT HIS E-MAIL, JANUARY 20TH, 2009, DID	
18	YOU NOT?	
19	A. YES.	
20	Q. TAKE A LOOK AT EXHIBIT 142.	01:29PM
21	THIS IS IN EVIDENCE, I BELIEVE.	
22	MR. MADISON: IT IS IN EVIDENCE, YOUR HONOR.	
23	Q. BY MR. BRIAN: YOU CAN PUT THIS UP, DENNIS.	
24	LET'S START AT PAGE 2, 142-2.	
25	THIS E-MAIL CHAIN STARTS WITH AN E-MAIL	01:30PM
26	THAT'S FROM MR. GUNDLACH TO MR. PAGNI.	
27	YOU ARE NOT ON IT, BUT I TAKE IT IF YOU	
28	GO BACK TO PAGE 1, THIS E-MAIL CHAIN WAS FORWARDED TO	

YOU, WAS IT NOT? 1 2 A. YES. 3 IN MR. GUNDLACH'S VERY FIRST E-MAIL, HE STATES Q. 4 THAT IN THAT REGARD, IN THE SECOND LINE, (READING): 5 I'M INTERESTED IN OFFERING A 01:30PM RESPECTFUL AND CORDIAL PROPOSAL IN 6 7 THE BEST OF FAITH TO M. OUDEA, SO THAT PERHAPS A CLEAN SOLUTION CAN 8 BE ARRIVED UPON THAT MIGHT BENEFIT 9 10 ALL PARTIES -- I'M SORRY, I SHOULD 01:30PM 11 HAVE READ THE LINE BEFORE THAT, 12 WHERE HE SAYS, SPECIFICALLY, I 13 CAN'T UNDERSTAND WHY SG WANTS TO 14 HOLD ON TO TCW WHILE SELLING ALL 15 THE REST. 01:31PM 16 AND YOU UNDERSTOOD THAT WAS A REFERENCE 17 TO HOLDING ONTO THE ASSET MANAGEMENT BUSINESS OF TCW, 18 WHILE PUTTING THE REST OF IT INTO THAT JOINT VENTURE 19 WITH CREDIT AGRICOLE, RIGHT? 20 Α. YES. 01:31PM 21 Q. MR. MUSTIER, IF YOU LOOK AT PAGE 1, WRITES YOU, TOWARD THE BOTTOM, (READING): 22 23 BOB, I'M NOT FAVORABLE TO 24 SPEAK WITH JEFFREY, AS IT WOULD BE 25 UNDERMINING YOUR OWN POSITION. 01:31PM 26 THEN YOU WRITE TO HIM, IN THE NEXT 27 E-MAIL ABOVE THAT. THAT IS FINE WITH ME, ESPECIALLY

SINCE YOU WILL BE HERE IN A COUPLE OF WEEKS.

1	MR. MADISON: OBJECTION. THAT'S MISLEADING,	
2	GIVEN THAT HE DIDN'T READ THE REST.	
3	MR. BRIAN: I'M SORRY. I WAS ACTUALLY TRYING	
4	TO SPEED IT UP.	
5	I'LL READ THE WHOLE E-MAIL.	01:31PM
6	Q. MR. MUSTIER SAYS TO YOU. (READING):	
7	I'M NOT FAVORABLE TO SPEAK	
8	WITH JEFFREY, AS IT WOULD BE	
9	UNDERMINING YOUR OWN POSITION.	
10	WHAT I THINK WE SHOULD DO IS FOR	01:32PM
11	YOU TO TELL HIM THAT YOU WILL	
12	ARRANGE A MEETING BETWEEN HIM AND	
13	I, WHEN I AM NEXT IN L.A., SO THAT	
14	HE WILL UNDERSTAND THAT THE	
15	COMMUNICATION AND THE LINK IS	01:32PM
16	THROUGH YOU.	
17	DID I READ IT CORRECTLY THAT TIME?	
18	A. YES.	
19	Q. THANK YOU.	
20	AND THEN YOU WROTE BACK, (READING):	01:32PM
21	THAT IS FINE WITH ME,	
22	ESPECIALLY SINCE YOU WILL BE HERE	
23	IN A COUPLE OF WEEKS. BUT I DO NOT	
24	MIND IF YOU SPEAK TO HIM DIRECTLY.	
25	I DO FIND IT HUMOROUS THAT HE WANTS	01:32PM
26	TO PUT TOGETHER A PROPOSAL TO BUY	
27	TCW, AND HE CAN'T FIND A BUSINESS	
28	ADDRESS OR E-MAIL ADDRESS FOR	

1	M. OUDEA!	
2	TAKE A LOOK AT EXHIBIT	
3	MR. MADISON: ARE WE GOING TO HAVE QUESTIONS,	
4	YOUR HONOR?	
5	THE COURT: WE'RE MOVING RIGHT ALONG,	01:32PM
6	MR. MADISON.	
7	MR. BRIAN: I'M TRYING TO MOVE AS FAST AS I	
8	CAN, YOUR HONOR.	
9	Q. TAKE A LOOK AT 1940.	
10	BEFORE WE DO THAT, THE DATE OF THE	01:33PM
11	E-MAIL I JUST SHOWED YOU WAS FEBRUARY 17TH, 2009.	
12	DO YOU RECALL THAT?	
13	A. YES.	
14	Q. 1940, THE BOTTOM E-MAIL, IS FROM YOU TO	
15	MR. MUSTIER, 10 DAYS LATER, ON FEBRUARY 27TH, 2009, IS	01:33PM
16	IT NOT?	
17	A. CORRECT.	
18	MR. BRIAN: I WOULD OFFER EXHIBIT 1940.	
19	I THINK IT MAY ACTUALLY ALREADY BE IN.	
20	MR. MADISON: IT IS IN EVIDENCE ALREADY, YOUR	01:33PM
21	HONOR.	
22	THE COURT: ALL RIGHT.	
23	Q. BY MR. BRIAN: IN THE SECOND PARAGRAPH, YOU	
24	WERE CONVEYING TO MR. MUSTIER THAT YOU HAD A MEETING	
25	WITH BLAIR THOMAS, DIANE JAFFEE, MARK ATTANASIO, AND	01:33PM
26	JEFFREY GUNDLACH FOR ABOUT TWO HOURS AT THEIR REQUEST.	
27	DO YOU SEE THAT?	
0.0		

28

YES.

Α.

Q. AND IN THE NEXT PARAGRAPH YOU WROTE, 1 2 (READING): 3 THE MAIN ISSUE THAT EMERGED 4 WAS NOT DIRECTED AT ME PERSONALLY, 5 BUT WAS THEIR BELIEF THAT THE FIRM 01:34PM WAS WORTH SUBSTANTIALLY LESS THAN 6 7 THE \$1 BILLION STRIKE PRICE, AND THEREFORE, THEY ARE NOT INTERESTED 8 IN THE OPTION PROGRAM. 9 10 THE CONSENSUS SEEMS TO BE THAT 01:34PM 11 NOW THAT SG HAS BEGUN ITS EXIT FROM 12 ASSET MANAGEMENT, WE, LOOSE TERM, 13 SHOULD BUY THE BUSINESS MAJORITY 14 PLUS, FOR A FAR REDUCED VALUE. 15 DID YOU HAVE FOLLOW-UP DISCUSSIONS WITH 01:34PM 16 MR. MUSTIER ABOUT THE SUBSTANCE OF THAT E-MAIL? 17 Α. YES. 18 WAS MR. MUSTIER RECEPTIVE TO THE IDEA OF THE 0. 19 MANAGEMENT TEAM OF TCW PUTTING TOGETHER A PROPOSAL TO 20 PURCHASE TCW FOR SOMETHING LESS THAN A BILLION DOLLARS? 01:34PM 21 Α. NOT NECESSARILY. 22 I TAKE IT THERE WAS NO AGREEMENT REACHED IN Ο. 23 2009, BEFORE YOU LEFT, FOR YOU OR ANY GROUP OF YOU, TO 24 PURCHASE TCW FROM SOC-JEN, WAS THERE, SIR? 25 Α. WE HAD LOOSE DISCUSSIONS ALONG THAT LINE 01:35PM 26 SUBSECUENT TO THIS E-MAIL. 27 AND DID THOSE LOOSE DISCUSSIONS LAST UP UNTIL 0.

ABOUT THE TIME YOU LEFT?

2.8

1	A. YES.	
2	Q. AND AS FAR AS YOU KNOW, WERE THEY ONGOING AT	
3	THE TIME YOU LEFT?	
4	A. I DON'T KNOW.	
5	Q. NOW, WE'LL MOVE TO A DIFFERENT SUBJECT.	01:35PM
6	I TAKE IT IT'S FAIR TO SAY THAT ON A	
7	NUMBER OF OCCASIONS IN 2008 AND 2009, MR. GUNDLACH	
8	EXPRESSED FRUSTRATION WITH THE FRENCH, RIGHT?	
9	A. HE EXPRESSED FRUSTRATION AT THE FRENCH.	
10	Q. OKAY. THAT'S FAIR.	01:35PM
11	AND I TAKE IT ON A NUMBER OF OCCASIONS,	
12	MR. GUNDLACH SAID THAT PERHAPS HE SHOULD LEAVE THE	
13	COMPANY; ISN'T THAT RIGHT?	
14	A. CORRECT.	
15	Q. HE WASN'T THE ONLY PORTFOLIO MANAGER TO TALK	01:36PM
16	ABOUT LEAVING THE COMPANY, WAS HE, SIR?	
17	A. NO.	
18	Q. AND YOU RECALL A SPECIFIC OFF-SITE MEETING IN	
19	WESTLAKE VILLAGE WHICH YOU ATTENDED WITH MR. ATTANASIO,	
20	MR. GUNDLACH, DIANE JAFFEE, MR. BLAIR THOMAS, AND	01:36PM
21	MR. MUSTIER, CORRECT?	
22	A. YES.	
23	Q. WAS THERE ANYONE ELSE IN ATTENDANCE AT THAT	
24	MEETING?	
25	A. I DON'T REMEMBER IF JEAN-MARC CHAPUS WAS THERE	01:36PM
26	OR NOT.	

AND BEYOND THAT, WAS THERE ANYBODY ELSE?

27

28

Q.

Α.

NO.

1	Q. WAS ONE OF THE PURPOSES OF THIS MEETING TO	
2	ALLOW THE PORTFOLIO MANAGERS TO EXPRESS SOME OF THEIR	
3	CONCERNS DIRECTLY TO MR. MUSTIER?	
4	A. YES.	
5	Q. AND DURING THAT MEETING, MR. GUNDLACH TALKED	01:36PM
6	ABOUT HIS ABILITY TO LEAVE TCW AND TAKE BUSINESS WITH	
7	HIM, DIDN'T HE?	
8	A. YES.	
9	Q. AND BLAIR THOMAS TALKED ABOUT HIS ABILITY TO	
10	WALK OUT AND TAKE HIS BUSINESS WITH HIM, AS WELL,	01:37PM
11	DIDN'T HE?	
12	A. NO.	
13	Q. WELL, DID MR. THOMAS TALK ABOUT HIS ABILITY TO	
14	WALK OUT?	
15	A. NOT UNTIL THE END OF HIS CONTRACT.	01:37PM
16	Q. DID HE TALK, AT THAT MEETING, ABOUT HIS	
17	ABILITY TO WALK OUT?	
18	A. I'M SORRY. I'M TRYING TO ANSWER THE QUESTION.	
19	YOU WILL HAVE TO DEFINE WALK OUT FOR ME.	
20	Q. WELL, LET ME JUST READ FROM YOUR DEPOSITION AT	01:37PM
21	PAGE 84, LINE 19 TO 21.	
22	THE COURT: ANY OBJECTION, MR. MADISON?	
23	MR. MADISON: ONE MOMENT, YOUR HONOR. IF I	
24	COULD JUST HAVE ONE MOMENT.	
25	MR. BRIAN: IN FACT, I'LL ACTUALLY PROPOSE TO	01:38PM
26	READ FROM TO GET THE WHOLE THING IN CONTEXT, FROM	
27	PAGE 84, LINE 19, TO 85, LINE 16.	

MR. MADISON: ACTUALLY, YOUR HONOR, IT SHOULD

GO OVER TO PAGE 86, LINE 7, TO BE COMPLETE. 1 MR. BRIAN: I'M ASKING ABOUT MR. THOMAS, YOUR 2 3 HONOR, WHICH I THINK ENDS AT LINE --4 THE COURT: ALL RIGHT. JUST A MOMENT. 5 MR. BRIAN: WHICH ENDS AT PAGE 85, LINE 16. 01:38PM THE COURT: YEAH, YOU MAY READ 84, 19 TO 85, 6 16. 7 MR. MADISON: YOUR HONOR, AT THE TOP OF PAGE 8 9 86, THERE'S AN EXPLICIT REFERENCE TO MR. 10 THE COURT: AND WHEN YOU HAVE YOUR CHANCE, YOU 01:39PM 11 MAY OFFER MORE. 12 MR. MADISON: FAIR ENOUGH, YOUR HONOR. THANK 13 YOU. MR. BRIAN: LET ME DO THIS, THEN. 14 Q. LET ME JUST ASK YOU THIS: MR. THOMAS WAS 15 01:39PM 16 UNDER CONTRACT AT TCW AT THE TIME OF THIS MEETING IN 17 WESTLAKE VILLAGE, WAS HE NOT? 18 THAT'S MY RECOLLECTION. Α. 19 O. AND YOU WERE IN DISCUSSIONS WITH MR. THOMAS AT 20 THE TIME OF THIS MEETING ABOUT NEW FEE ARRANGEMENTS FOR 01:39PM 21 HIM AND HIS GROUP, WEREN'T YOU? 22 Α. YES. 23 O. AND YOU DIDN'T HAVE ANY OBJECTION TO 24 MR. THOMAS TALKING TO MEMBERS OF HIS GROUP ABOUT

25 LEAVING TCW AS PART OF A NEGOTIATED SEPARATION, DID 01:40PM

26 YOU, SIR?

27 A. THEY WERE TALKING TO ME ABOUT BUYING THEIR
28 BUSINESS FROM TCW.

1	Q. DID YOU HAVE ANY OBJECTION TO THE FACT THAT HE	
2	HAD TALKED TO HIS OTHER CHIEF LIEUTENANTS ABOUT THE	
3	POSSIBILITY OF LEAVING?	
4	A. I'M NOT SURE THAT HE DID.	
5	Q. THAT'S NOT MY QUESTION.	01:40PM
6	MY QUESTION IS, DID YOU HAVE AN	
7	OBJECTION TO THE FACT THAT HE HAD TALKED TO HIS OTHER	
8	CHIEF LIEUTENANTS ABOUT THE POSSIBILITY OF LEAVING?	
9	MR. MADISON: OBJECTION. ASSUMES FACTS NOT IN	
10	EVIDENCE, BASED ON THE LAST ANSWER.	01:40PM
11	MR. BRIAN: THEN MAY I HAVE PERMISSION TO READ	
12	PAGE 172, LINES 15 TO 22.	
13	MR. MADISON: ONE MOMENT, YOUR HONOR.	
14	THE COURT: ALL RIGHT.	
15	ANY OBJECTION?	01:41PM
16	MR. MADISON: AGAIN FOR COMPLETENESS, YOUR	
17	HONOR, IT SHOULD GO OVER TO LINE 17 OF PAGE 173, THE	
18	NEXT PAGE.	
19	MR. BRIAN: THAT'S FINE.	
20	THE COURT: THAT'S FINE. SO IT WILL BE 172,	01:41PM
21	15 TO 173, 3.	
22	MR. BRIAN: TO 173, I THINK HE SAID LINE 17;	
23	THAT'S FINE.	
24	THE COURT: THAT'S FINE. GO AHEAD.	
25	MR. BRIAN: (READING):	01:41PM
26	"Q YOU DIDN'T HAVE ANY	
27	OBJECTION TO THE FACT THAT	
\circ	MD BUOMAC HAD BATKED BO HTG OFFED	

MR. THOMAS HAD TALKED TO HIS OTHER

1	CHIEF LIEUTENANTS ABOUT THE	
2	POSSIBILITY OF LEAVING; IS THAT	
3	RIGHT?	
4	"A NO. MY GUESS IS THAT IT	
5	WAS A REVERSE INQUIRY THAT THEY HAD	01:41PM
6	PROBABLY, AT THE TIME I THOUGHT,	
7	WAS THAT THEY HAD RAISED THE ISSUES	
8	OF WANTING ADDITIONAL COMPENSATION,	
9	AND THE ONLY WAY THAT HE SAW TO	
10	ADDRESS IT WAS TO COME BACK AND	01:42PM
11	RENEGOTIATE.	
12	"Q WELL, WHETHER IT WAS	
13	RAISED BY HIM OR HIS LIEUTENANTS,	
14	YOU DIDN'T HAVE ANY OBJECTION TO	
15	THEM AS A GROUP, DISCUSSING	01:42PM
16	APPROACHING TCW AND SAYING, QUOTE,	
17	WE'D LIKE TO EFFECT SOME KIND OF	
18	CHANGE FOR OUR GROUP; IS THAT	
19	RIGHT?	
20	"A IT'S A FACT OF LIFE, AS A	01:42PM
21	CEO OF AN ASSET MANAGEMENT COMPANY.	
22	"Q YOU DIDN'T VIEW IT AS	
23	OBJECTIONABLE OR IMPROPER IN ANY	
24	WAY?	
25	"A I WASN'T THRILLED ABOUT	01:42PM
26	IT.	
27	"Q BUT YOU NEVER TOLD THEM,	
28	YOU KNOW, QUOTE, THIS WAS AN AWFUL	

1	THING. HOW COULD YOU POSSIBLY DO	
2	THIS, UNQUOTE?	
3	"A I MAY HAVE ALLUDED TO	
4	THAT, BUT I STILL WAS WILLING TO	
5	TRY TO SEE IF WE COULD COME TO A	01:42PM
6	MUTUAL AGREEMENT.	
7	"Q YOU NEVER TOLD THEM THAT	
8	YOU THOUGHT THEY HAD BREACHED THEIR	
9	FIDUCIARY DUTIES, FOR THEM TO JOIN	
10	TOGETHER AND TRY TO NEGOTIATE SOME	01:43PM
11	SEPARATION, DID YOU?	
12	"A NO, BECAUSE THEY WEREN'T	
13	THREATENING AT THAT TIME."	
14	Q. NOW, IN YOUR CONVERSATIONS WITH MR. GUNDLACH,	
15	YOU ADVISED HIM THAT IF HE EVER THOUGHT ABOUT LEAVING	01:43PM
16	THE COMPANY, HE SHOULDN'T DO IT SUDDENLY, AND HE SHOULD	
17	NEGOTIATE SOMETHING, DIDN'T YOU?	
18	A. CORRECT.	
19	Q. YOU WERE CONCERNED ABOUT MR. GUNDLACH LET	
20	ME ASK YOU THIS, SIR.	01:43PM
21	WHEN YOU SAID THAT, HE NEVER SAID TO YOU	
22	THAT HE DISAGREED WITH THAT ADVICE, DID HE, SIR?	
23	A. NO.	
24	MR. MADISON: OBJECTION. FOUNDATION.	
25	THE COURT: OVERRULED.	01:43PM
26	THE ANSWER WILL STAND.	
27	MR. BRIAN: I'M SORRY. WHAT WAS THE ANSWER?	
28	THE WITNESS: NO.	

1	Q. BY MR. BRIAN: YOU KNEW, IN EARLY 2009, THAT	
2	HE HAD BEEN CONTACTED BY WAMCO ABOUT THE POSSIBILITY	
3	ABOUT TALKING TO THEM ABOUT THE POSSIBILITY OF	
4	EXPLORING A POSITION THERE, RIGHT?	
5	MR. MADISON: OBJECTION. FOUNDATION.	01:44PM
6	THE COURT: I THINK IT'S PRELIMINARY.	
7	YOU CAN ANSWER YES OR NO, SIR.	
8	THE WITNESS: IT WAS A RUMOR.	
9	Q. BY MR. BRIAN: AND YOU HEARD THAT RUMOR, AND	
10	YOU APPROACHED HIM ABOUT IT, DIDN'T YOU, SIR?	01:44PM
11	A. YES.	
12	Q. AND YOU ASKED HIM IF HE WAS GOING TO LEAVE AND	
13	GO TO WAMCO, DIDN'T YOU?	
14	A. YES.	
15	Q. AND HE TOLD YOU HE HAD NOT MADE A DECISION YET	01:44PM
16	WHETHER OR NOT TO DO THAT, DIDN'T HE?	
17	A. YES.	
18	Q. BEFORE YOU LEFT TCW, DID HE LEAVE TCW TO GO TO	
19	WAMCO?	
20	A. NO.	01:44PM
21	Q. DID HE EVER LEAVE TCW TO GO TO WAMCO?	
22	A. NOT WHILE I WAS THERE.	
23	Q. HE'S NOT AT WAMCO NOW, IS HE, SIR?	
24	A. NOT FROM WHAT I UNDERSTAND, NO.	
25	Q. OKAY. LET ME SHOW YOU EXHIBIT 5117.	01:44PM
26	I'M GOING TO LOOK AT PAGE 1.	
27	THE BOTTOM E-MAIL ON THE FIRST PAGE,	
28	FROM MR. MUSTIER TO YOURSELF, DO YOU SEE THAT?	

```
A. YES.
 1
 2
         O. AND HE'S RESPONDING TO AN E-MAIL YOU SENT TO
 3
     HIM, WHICH IS ON PAGE 2, DATED FEBRUARY 20TH, 2009,
 4
     CORRECT?
 5
        A. CORRECT.
                                                                01:45PM
              MR. BRIAN: I WOULD OFFER EXHIBIT 5117.
 6
 7
              MR. MADISON: NO OBJECTION.
 8
              THE COURT: IT WILL BE ADMITTED.
 9
10
                    (EXHIBIT 5117 ADMITTED.)
                                                                01:45PM
11
12
             BY MR. BRIAN: LET'S PUT UP PAGE 2 OF EXHIBIT
        Ο.
13
    5117.
             MR. MADISON: ACTUALLY, YOUR HONOR, IF I
14
15
    COULD, THE TOP PART DOESN'T INVOLVE MR. BEYER.
                                                                01:45PM
16
              MR. BRIAN: FIRST OF ALL, IT'S IN FRENCH,
17
    WHICH I DON'T SPEAK. AND I DON'T HAVE A PROBLEM WITH
18
    REDACTING THAT, YOUR HONOR.
19
              THE COURT: THAT'S FINE.
20
              MR. BRIAN: THAT WOULD BE THE TOP PART ON PAGE
                                                                01:46PM
21
    1.
22
              MR. MADISON: THERE'S A TRANSLATION THAT'S
23
    ATTACHED TO IT.
24
              MR. BRIAN: I HAVE NO PROBLEM --
25
              MR. MADISON: HIS ENGLISH ISN'T VERY GOOD,
                                                                01:46PM
26
    EITHER, BUT --
27
              THE COURT: YOU ARE SO HELPFUL, MR. MADISON.
28
                    GO AHEAD, MR. BRIAN. LET'S --
```

MR. BRIAN: YOU KNOW, I'VE SEEN SOME FRIVOLOUS 1 2 OBJECTIONS BY MR. MADISON, BUT NOW --3 LET'S START WITH THE E-MAIL FROM YOU TO 4 MR. MUSTIER ON PAGE 2? 5 DO YOU SEE THAT? 01:46PM 6 A. YES. 7 O. AND YOU LIST SOME SUBJECTS YOU HAVE TO 8 DISCUSS, SOMETHING CALLED THE SAMA FUND ACCOUNT. 9 AND THEN YOU TALK ABOUT STERN, DAY, 10 CAHILL, DEVITO CONTRACTS, EMERGING MARKET STRATEGIES 01:46PM 11 AND SUCCESSION. 12 DO YOU SEE THAT? 13 Α. YES. Q. AND WHEN YOU REFERENCE SUCCESSION, IS IT FAIR 14 15 TO SAY, BY THIS TIME, YOU WERE THINKING ABOUT MOVING ON 01:46PM 16 TO A DIFFERENT POSITION? 17 WE WERE IN DISCUSSIONS ABOUT THE UPCOMING Α. 18 EXPIRATION OF MY CONTRACT, SO IT WAS PART OF WHAT WE 19 WERE DISCUSSING. 20 O. OKAY. 01:47PM 21 AND THEN GO BACK TO PAGE 5117-001? 22 Α. UH-HUH. 23 O. AND IF WE COULD ENLARGE WHERE HE SAYS --24 EVERYTHING FROM -- ACTUALLY, EVERYTHING FROM 1 DOWN, IF 25 WE CAN. 01:47PM 26 HE WRITES BACK THAT HE UNDERSTANDS YOUR 27 FEELINGS. I UNDERSTAND YOU MIGHT WANT A CHANGE FROM MANAGING SOME OF THE DIFFICULT GUYS IN TCW, REFERENCING 28

TO MR. GUNDLACH AND COMPANY. 1 HE THEN SAYS, I CAN SEE THE FOLLOWING 2 3 ALTERNATIVES; AND HE LAYS OUT SOME ALTERNATIVES. ONE 4 IS YOU STAY IN CHARGE, CORRECT? 5 Α. YES. 01:47PM O. AND JEFFREY GOES BACK TO THE RANKS WITH NO 6 7 MAJOR CHANGES OF GOVERNANCE. THAT'S ONE OF THE 8 ALTERNATIVES, THAT COMBINATION, RIGHT? 9 Α. YES. 10 Q. NUMBER TWO, WE LOOK AT A MAJOR CHANGE OF TCW 01:48PM 11 GOVERNANCE, WHICH CAN BE A TRANSFORMATIONAL DEAL OF 12 SOME SORT, WHICH WOULD PUT YOU FIRMLY IN THE DRIVING 13 SEAT. 14 DO YOU SEE THAT? 15 A. YES. 01:48PM 16 Ο. AND THEN HE TALKS ABOUT 21, 22 AND 23. AND 21 17 IS AN LBO OF TCW; DO YOU SEE THAT? 18 WHAT'S AN LBO? 19 A LEVERAGED BUYOUT, WHERE YOU BORROW THE MONEY Α. 20 BY GETTING AN EQUITY PARTNER, AND YOU BORROW THE DEBT 01:48PM 21 TO BUY THE BUSINESS. 22 AND THEN 2.2, KIND OF A SUBALTERNATIVE TO THE 0. 23 MERGER OF TCW WITH ANOTHER FUND MANAGEMENT COMPANY, 24 WHERE SG WOULD BE DILUTED. 25 DO YOU SEE THAT? 01:48PM 26 Α. YES.

DO YOU SEE THAT?

Q. AND THEN 23 IS A LARGE ACQUISITION BY TCW.

27

1 A. YES. 2 Q. AND THEN HE SAYS, IN THESE THREE ALTERNATIVES, 3 YOUR ROLE CAN BE EITHER TEMPORARY, TO HELP CLOSE THE 4 DEAL, OR A LONGER TERM, IF AND YOU A FUTURE PARTNER 5 AGREE. 01:49PM DO YOU SEE THAT? 6 7 A. YES. 8 AND THESE FINANCIAL ALTERNATIVES, YOU 9 UNDERSTOOD THEM TO BE -- ALL OF THOSE WOULD BE WAYS FOR 10 SOCIETE GENERALE TO GET SOME CASH OR FINANCIAL BENEFIT 01:49PM 11 THROUGH A TRANSACTION INVOLVING TCW, RIGHT? 12 NOT NECESSARILY. Α. 13 WELL, SOME OF THEM WOULD, LIKE LEVERAGED 0. BUYOUT, AND OTHERS, RIGHT? 14 15 A. CORRECT. 01:49PM 16 Ο. AND YOU DECIDED, AFTER THINKING ABOUT THIS FOR 17 A COUPLE OF MONTHS, THAT YOU REALLY DIDN'T WANT TO 18 INVEST THE COMMITMENT, THE TIME IT WAS GOING TO TAKE TO 19 MOVE THIS FORWARD, AND -- WITH ALL THE DIFFERENT 20 ALTERNATIVES FACING YOU; IS THAT RIGHT? 01:49PM 21 A. THAT'S A SIMPLIFIED VERSION OF MY THOUGHT 22 PROCESS. 23 AND WHEN YOU RESIGNED, IN 2009, IS IT FAIR TO 24 SAY THAT YOU UNDERSTOOD THAT ALL OF THESE SCENARIOS, 25 THESE ALTERNATIVES, WERE STILL ON THE TABLE? 01:50PM 26 I DON'T KNOW THAT I THOUGHT ABOUT IT. Α.

THE COURT: ALL RIGHT.

MR. BRIAN: NOTHING FURTHER, YOUR HONOR.

27

1	CROSS-EXAMINATION?	
2	MR. MADISON: MAY MS. O'CONNOR APPROACH WITH A	
3	BINDER, YOUR HONOR?	
4	THE COURT: YES, OF COURSE.	
5		
6		
7	CROSS-EXAMINATION	
8		
9	BY MR. MADISON:	
10	Q. MR. BRIAN ASKED YOU ABOUT A CONVERSATION YOU	01:50PM
11	HAD WITH MR. GUNDLACH AT SOME POINT ABOUT GOING TO	
12	WAMCO?	
13	DO YOU RECALL WHEN THAT CONVERSATION	
14	WITH MR. GUNDLACH OCCURRED?	
15	A. IT OCCURRED IN THE FIRST HALF OF 2009.	01:51PM
16	Q. AND IN THE BINDER IN FRONT OF YOU, THERE'S AN	
17	EXHIBIT MARKED 5135.	
18	MR. HELM: MAY I JUST INQUIRE AS TO WHICH	
19	BINDER, COUNSEL IS REFERRING TO, HIS OR MINE?	
20	THE COURT: THE WHITE ONE, PROBABLY.	01:51PM
21	THE WITNESS: YES.	
22	Q. BY MR. MADISON: AND IF YOU LOOK AT THAT, IT'S	
23	AN E-MAIL EXCHANGE BETWEEN AND YOU MR. ATTANASIO.	
24	AND I WOULD JUST ASK YOU TO READ TO	
25	YOURSELF THE E-MAIL DOWN AT THE BOTTOM OF THE FIRST	01:51PM
26	PAGE, AND THEN OVER ON THE SECOND PAGE, WHICH IS	
27	ACTUALLY THE FIRST E-MAIL FROM MR. ATTANASIO TO YOU.	
28	A. YES.	

DOES THIS REFRESH YOUR RECOLLECTION ABOUT WHEN 1 Q. 2 THE CONVERSATION THAT YOU HAD WITH MR. GUNDLACH 3 OCCURRED ABOUT WAMCO? 4 A. IT SAYS TO ME THAT IT'S LIKELY IT WAS IN EARLY 5 MAY. 01:52PM 6 O. NOW, DO YOU RECALL WHAT OCCASIONED YOUR 7 SPEAKING TO MR. GUNDLACH ABOUT THIS WAMCO RUMOR THAT 8 YOU HAD HEARD? 9 I WAS ABOUT TO EMBARK ON A TRIP TO THE MIDDLE Α. 10 EAST TO MEET WITH SOME OF HIS CLIENTS. AND THIS WAS IN 01:52PM 11 THE MIDST, OR AS WE WERE COMING OUT OF THE DEPTHS OF 12 THE FINANCIAL CRISIS. 13 AND I WANTED TO MAKE SURE THAT IF I WAS 14 GOING TO CALM HIS CLIENTS AND GIVE THEM POSITIVE NEWS 15 ABOUT WHAT WE WERE DOING IN THE MORTGAGE-BACKED 01:52PM 16 SECURITIES AREA, THAT MR. GUNDLACH WASN'T GOING TO 17 SURPRISE ME AND ANNOUNCE HE WAS LEAVING THE FIRM, 18 EITHER WHILE I WAS GONE OR UPON MY RETURN. 19 O. SO WHAT HAPPENED? DID YOU APPROACH 20 MR. GUNDLACH? 01:52PM 21 A. SO I CALLED HIM AND WENT DOWN TO HIS AREA TO 22 HAVE A MEETING WITH HIM AND CONFRONT HIM WITH THE 23 RUMOR. 24 Q. WAS ANYONE ELSE PRESENT?

01:53PM

A. MAYBE 10 MINUTES.

NO.

Α.

Q.

RECALL?

25

26

27

HOW LONG DID THAT CONVERSATION LAST, IF YOU

WHERE DID THE CONVERSATION OCCUR? 1 Q. IN THE CONFERENCE ROOM, RIGHT OFF THE TRADING 2 Α. 3 FLOOR, ON THE 16TH FLOOR. 4 THE ONE NEAR HIS OFFICE? Q. A. YES. 5 01:53PM O. DO YOU RECALL IF IT WAS THE LA CIENEGA 6 7 CONFERENCE ROOM? 8 I DON'T KNOW, BECAUSE THEY HAD CHANGED ALL OF 9 THE NAMES WHEN THEY DID THE REMODELING. 10 SO IN ANY EVENT, COULD YOU TELL US WHAT YOU Ο. 01:53PM 11 SAID ABOUT THE RUMORS THAT YOU HAD HEARD ABOUT 12 MR. GUNDLACH GOING TO WAMCO? 13 A. I SAID, I HAVEN'T COME TO YOU ABOUT RUMORS 14 BEFORE, BUT THIS ONE'S PRETTY LOUD. AND SINCE I'M 15 ABOUT TO EMBARK ON THIS TRIP, I NEED TO KNOW, ARE YOU 01:53PM 16 GOING TO WAMCO? 17 I SAID -- I DIDN'T SAY IT THAT WAY. 18 SAID, THERE'S A RUMOR THAT YOU ARE GOING TO WAMCO. 19 WHAT, IF ANYTHING, DID MR. GUNDLACH SAY? Ο. 20 Α. HE SAID SOMETHING TO THE EFFECT OF MAYBE I 01:53PM 21 WILL. 22 WHAT WAS YOUR REACTION TO THAT? 0. A. I SAID, JEFFREY, THAT'S NOT ENOUGH. I NEED TO 23 24 HAVE A BETTER ANSWER. I'M ABOUT TO LEAVE ON THIS TRIP. 25 I'M ABOUT TO TALK ABOUT YOU AND YOUR AREA. I'M DOING 01:54PM

27 AND YOU NEED TO TELL ME IF I'M GOING TO 28 BE EMBARRASSED.

WHAT I'M SUPPOSED TO BE DOING, SUPPORTING YOU.

AND WHAT DID MR. GUNDLACH SAY TO THAT? 1 Q. 2 A. HE TOLD ME THAT NOTHING WAS IMMINENT. 3 TO WHICH I REPLIED, IF HE WAS, IN FACT, GOING TO CONSIDER SOMETHING ON THE OUTSIDE, HE NEEDED 4 5 TO COME AND TALK TO ME ABOUT IT. 01:54PM 6 AND IF HE WAS, IN FACT, GOING TO LEAVE, 7 ULTIMATELY WE NEEDED TO DO THIS THE RIGHT WAY FOR THE 8 CLIENTS AND FOR THE EMPLOYEES OF TCW. 9 WHAT DID YOU HAVE IN MIND, WHEN YOU SAID, WE Ο. 10 NEEDED TO DO IT IN THE RIGHT WAY, IF THAT WERE GOING TO 01:54PM 11 HAPPEN? 12 SIGNIFICANT AMOUNT OF NOTICE. AND HELP WITH Α. 13 STABILIZING THE AFTERMATH OF AN ANNOUNCEMENT OF THAT 14 MAGNITUDE. Q. NOW, DID YOU SAY TO MR. GUNDLACH, WHEN HE SAID 15 01:55PM 16 THAT -- WELL, LET ME STOP THERE. 17 WHAT, IF ANYTHING, DID MR. GUNDLACH SAY 18 IN RESPONSE TO YOUR COMMENTS, THEN, ABOUT DOING IT IN 19 THE RIGHT WAY? 20 A. HE ACKNOWLEDGED THAT HE UNDERSTOOD ME. 01:55PM 21 I DON'T REMEMBER THE WORDS. 22 DID YOU LEAVE THAT MEETING AND GO TO THE TRIP? Ο. 23 A. YES, I DID.

01:55PM

28 CONFIDENT THAT HE WASN'T GOING TO DO ANYTHING WHILE I

WERE GOING TO BE ANY FURTHER CONSIDERATION BY

MR. GUNDLACH OF LEAVING, HE WOULD COME TO YOU?

DID YOU HAVE AN UNDERSTANDING THAT IF THERE

I DID NOT HAVE THAT UNDERSTANDING, BUT I WAS

24

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Ο.

WAS OUT OF TOWN, WITHOUT TALKING TO ME UPON MY RETURN. 1 2 0. NOW, DID YOU SAY TO MR. GUNDLACH -- THIS WAS 3 IN MAY OF 2009? 4 Α. YES. 5 Q. DID YOU SAY TO HIM, WELL, YOU CAN'T LEAVE 01:55PM 6 UNTIL THE END OF 2011, BECAUSE THERE'S THIS CONTRACT? 7 MR. BRIAN: OBJECTION. RELEVANCE, 352, LEGAL 8 CONCLUSION. 9 THE COURT: YOU CAN REPHRASE IT. 10 BY MR. MADISON: WELL, DID YOU OR MR. GUNDLACH Ο. 01:56PM 11 SAY ANYTHING AT ALL IN THAT CONVERSATION ABOUT HIM 12 POSSIBLY LEAVING TCW TO GO TO A MAJOR COMPETITOR, 13 ANYTHING AT ALL ABOUT SOME CONTRACT THAT HAD A TERM OF 14 YEARS THROUGH THE END OF 2011? 15 A. NO. 01:56PM 16 HE WAS AWARE THAT HE HAD NOT SIGNED HIS 17 CONTRACT. 18 MR. HELM: OBJECTION. MOVE TO STRIKE 19 EVERYTHING AFTER HE WAS AWARE, YOUR HONOR. 20 THE COURT: I'LL STRIKE THE RESPONSE AFTER NO. 01:56PM 21 BY MR. MADISON: WELL, AS THE CEO OF TCW, I Ο. 22 TAKE IT YOU WERE CONCERNED ABOUT THE POSSIBILITY OF 23 YOUR CHIEF INVESTMENT OFFICER, AND SOMEONE WHO WAS SO 24 IMPORTANT IN THE FIRM, POSSIBLY WALKING OUT, RIGHT?

01:56PM

VERY MUCH.

Α.

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THE WITNESS: SORRY.

THE COURT: I'LL ALLOW THE ANSWER.

MR. HELM: OBJECTION. LEADING, YOUR HONOR.

THE COURT: IT'S NOT YOUR FAULT. HE'S NOT 1 2 OBJECTING TO YOUR ANSWERS, SIR. 3 MR. MADISON: OH, YES, HE IS. 4 THE COURT: GO AHEAD, MR. MADISON. 5 Ο. BY MR. MADISON: SO WHY DIDN'T YOU SAY IT TO 01:56PM 6 MR. GUNDLACH, WELL, AT LEAST WE HAVE UNTIL THE END OF 7 2011, BECAUSE THERE'S THIS CONTRACT? 8 Α. I DID NOT BELIEVE THAT TO BE THE CASE. 9 SO WHEN YOU WERE CEO OF TCW, IN 2007, DID Ο. 10 MR. GUNDLACH EVER SIGN THAT WRITTEN CONTRACT THAT WE'VE 01:57PM 11 SEEN? 12 Α. NO. 13 DID HE SIGN IT IN 2008? Q. 14 Α. NO. Q. DID HE SIGN IT IN 2009? 15 01:57PM 16 Α. UP TO THE TIME I LEFT, NO. 17 TO YOUR UNDERSTANDING, DID HE EVER SIGN THE Q. 18 NEW CONTRACT THAT HAD BEEN NEGOTIATED BACK AND FORTH? 19 BY THE TIME I DEPARTED, HE HAD NOT SIGNED IT. Α. 20 WELL, LET'S LOOK AT ONE OF THE EXHIBITS THAT Ο. 01:57PM 21 MR. BRIAN SHOWED YOU. IT'S EXHIBIT 5036. 22 AND IT'S IN EVIDENCE NOW, SO IF WE COULD 23 DISPLAY THAT. 24 THIS IS YOUR E-MAIL TO MR. GUNDLACH OF 25 MAY 1ST, 2007. 01:57PM 26 AND WE'VE HEARD THIS WAS THE TIME WHEN 27 THERE WERE SOME DISCUSSIONS ABOUT A NEW CONTRACT FOR

MR. GUNDLACH; IS THAT RIGHT?

1	Α.	YES.	
2	Q.	NOW, FIRST OF ALL, DID YOU ACTUALLY NEGOTIATE	
3	WITH MR.	GUNDLACH ABOUT A POSSIBLY A NEW CONTRACT?	
4	Α.	I HAD DISCUSSIONS WITH HIM, BUT I WOULDN'T	
5	CALL IT	A NEGOTIATION.	01:58PM
6	Q.	WHO, IF ANYONE, HANDLED THE NEGOTIATIONS ON	
7	BEHALF O	F TCW?	
8	Α.	BILL SONNEBORN.	
9	Q.	AND SO TO YOUR UNDERSTANDING, WAS	
10	MR. SONN	EBORN NEGOTIATING ON BEHALF OF THE FIRM WITH	01:58PM
11	MR. GUND	LACH?	
12	Α.	YES.	
13	Q.	AND WAS MR. GUNDLACH NEGOTIATING ON HIS BEHALF	
14	WITH MR.	SONNEBORN?	
15	Α.	YES.	01:58PM
16	Q.	AND WOULD YOU GET REPORTS FROM MR. SONNEBORN	
17	FROM TIM	E TO TIME, EITHER ORAL OR IN E-MAILS, ABOUT	
18	Α.	YES.	
19	Q.	ABOUT THE STATE OF PLAY OF THE NEGOTIATIONS?	
20	Α.	YES.	01:58PM
21	Q.	SO ON MAY 1, YOU WRITE TO MR. GUNDLACH THAT	
22	YOU ARE	YOU FEEL GOOD ABOUT A NEW DEAL.	
23		AND MR. BRIAN TOOK THE TIME TO READ MOST	
24	OF THIS,	SO I WON'T RE-READ THAT, BUT AT THAT TIME,	
25	THAT WAS	YOUR UNDERSTANDING OF WHAT THOSE NEGOTIATIONS	01:59PM
26	HAD PROD	UCED?	
	i e		

WHICH SATISFIED MR. GUNDLACH'S DESIRE TO REDISTRIBUTE

WE HAD AGREED TO A NEW COMPENSATION STRUCTURE

27

COMPENSATION WITHIN THE GROUPS FOR WHICH HE HAD 1 2 RESPONSIBILITY, AND INCLUDED SOME CONTRIBUTIONS AND 3 ADJUSTMENTS BY TCW. 4 AND DID MR. GUNDLACH ASSUME A GREATER Q. 5 OBLIGATION, POTENTIALLY, FOR COSTS WITHIN HIS GROUP? 01:59PM 6 A. YES. THAT'S MY RECOLLECTION. 7 AND DID MR. GUNDLACH HAVE ANY GREATER UPSIDE, 8 IN TERMS OF POTENTIAL PROFITS, IF THERE WERE GROWTH IN 9 HIS GROUP? 10 A. YES, SIGNIFICANTLY. 01:59PM Q. NOW, IF WE LOOK AT 2150 -- SO THIS DOCUMENT IS 11 12 MAY -- THIS E-MAIL IS MAY 1ST, 2007. THAT'S 5036. 13 AND THEN ON MAY 3RD, WE SEE 2150. 14 AND IT'S THE E-MAIL FROM MR. CAHILL. 15 THE COURT: THERE WE GO. 02:00PM 16 Ο. BY MR. MADISON: THIS IS THE E-MAIL FROM 17 MR. CAHILL TO YOU, MR. SONNEBORN AND MR. GUNDLACH. 18 AND IT SAYS, ATTACHED IS A DRAFT OF THE 19 COMPENSATION AGREEMENT DRAFT FOR YOUR REVIEW. 20 SO IF ON MAY 1ST, AN AGREEMENT HAD BEEN 21 REACHED, WHY WAS MR. CAHILL SENDING A DOCUMENT AROUND 22 TO YOU, MR. SONNEBORN AND MR. BEYER? MR. BRIAN: OBJECTION. CALLS FOR SPECULATION, 23 24 NO FOUNDATION, ARGUMENTATIVE.

THE COURT: OVERRULED.

26 YOU CAN ANSWER, TO THE EXTENT YOU

UNDERSTOOD WHY THIS WAS BEING CIRCULATED.

25

27

28

MR. BRIAN: I THOUGHT ONE OF THEM WAS RIGHT.

COPYING NOT PERMITTED PURSUANT TO GOVERNMENT CODE SECTION 69954(D)

02:00PM

02:00PM

1	THE WITNESS: WE HAD AGREED ON THE	
2	COMPENSATION CHANGES, BUT WE HAD NOT AGREED ON THE REST	
3	OF THE TERMS THAT WOULD BE CONTAINED IN A CONTRACT	
4	WHICH WOULD MEMORIALIZE THOSE CHANGES.	
5	AND THAT'S WHAT'S INCLUDED HERE IN THIS	02:01PM
6	E-MAIL.	
7	Q. BY MR. MADISON: AND IF WE LOOK AT THE NEXT	
8	PAGE, WE SEE IT LOOKS LIKE THE VERY NEXT PAGE IS	
9	EXHIBIT A, WHICH IS MULTI-SECTOR FIXED INCOME PROFIT	
10	SHARING POOL.	02:01PM
11	AND WOULD THAT BE WHAT YOU WOULD	
12	DESCRIBE AS THE COMPENSATION TERMS?	
13	A. I GLAZE OVER A LITTLE WHEN I SEE THIS CHART,	
14	BUT I WOULD ASSUME THAT THAT'S WHAT THIS CONTAINS.	
15	MR. MADISON: I DON'T WANT TO DELAY	02:01PM
16	THE COURT: DO YOU WANT TO BREAK?	
17	WE'LL BREAK FOR THE DAY, MR. SONNEBORN.	
18	YOU ARE LOCAL	
19	MR. BEYER. I'M SORRY.	
20	YOU ARE LOCAL?	02:01PM
21	THE WITNESS: YES, I AM.	
22	THE COURT: YOU WILL COME BACK AND SEE US	
23	AGAIN TOMORROW MORNING TUESDAY MORNING.	
24	TUESDAY. THAT'S RIGHT.	
25	LADIES AND GENTLEMEN, DON'T DISCUSS THE	02:02PM
26	EVIDENCE AMONG YOURSELVES OR WITH ANYONE ELSE, OR FORM	
27	ANY OPINIONS OR CONCLUSIONS CONCERNING THE CASE UNTIL	
28	YOU HAVE HEARD ALL THE EVIDENCE AND IT'S BEEN SUBMITTED	

1	TO YOU.	
2	HAVE A NICE LABOR DAY WEEKEND.	
3	WE'LL BE BACK TUESDAY MORNING AT 8:30.	
4	SEE YOU THEN.	
5		
6	(AT 2:02 P.M. THE FOLLOWING	
7	PROCEEDINGS WERE HELD IN OPEN	
8	COURT OUT OF THE PRESENCE OF	
9	THE JURY:)	
10		02:02PM
11	THE COURT: ALL RIGHT. WE'RE OUT OF THE	
12	PRESENCE OF THE JURY.	
13	HOW ARE WE DOING ON THE VERDICT FORM AND	
14	THE JURY INSTRUCTIONS? BECAUSE I WAS THINKING MAYBE	
15	TOMORROW AFTERNOON, WE COULD ALL GET TOGETHER AND WORK	02:03PM
16	ON THOSE.	
17	MR. HELM: WELL, THAT'S ACTUALLY ONE OF THE	
18	THINGS WE WANTED TO TALK ABOUT, YOUR HONOR.	
19	WE HAD SUBMITTED SOME. WE WERE	
20	DISCUSSING WITH THE OTHER SIDE, TRYING TO PRESENT A	02:03PM
21	BOOK TO YOUR HONOR TOMORROW.	
22	BUT WE'VE BEEN TOLD THAT THEY HAVE	
23	ADDITIONAL JURY INSTRUCTIONS THAT THEY HAVE YET TO GIVE	
24	TO US.	
25	IF WE HAVEN'T SEEN THEM BY NOW, I DON'T	02:03PM
26	SEE HOW WE'RE GOING TO BE ABLE TO PROCESS THEM IN TIME.	
27	THE COURT: WELL, WE CAN ALL LOOK AT THEM	
28	TOGETHER AND TALK ABOUT THEM.	

1	I JUST THINK WE OUGHT TO PICK IT UP.	
2	WE'RE MOVING AT A FAIRLY RAPID PACE, AND WE HAVE	
3	TOMORROW I HAVE TOMORROW AFTERNOON. I'M HAPPY TO	
4	SPEND IT WITH YOU, IF YOU WOULD LIKE.	
5	OTHERWISE, WE'RE GOING TO BE BACK	02:03PM
6	TUESDAY, WEDNESDAY, THURSDAY, WITH TESTIMONY. AND	
7	GOING TO HAVE A DOWN PERIOD.	
8	EVEN IF WE WERE TO FINISH ON THE	
9	SCHEDULE, WHICH I THINK IS PROBABLY A LITTLE OVERLY	
10	OPTIMISTIC, FOR WEDNESDAY. BUT YOU KNOW, IF WE CARRY	02:03PM
11	OVER TILL THE FOLLOWING WEEK WITH TESTIMONY, AND THEN	
12	WE COULD DO SOMETHING NEXT FRIDAY.	
13	OTHERWISE, WE'RE GOING TO HAVE TO HAVE	
14	SOME DOWN TIME, AND TELL THE JURY WE NEED A HALF A DAY	
15	OR A DAY, AND YOU CAN COME BACK AND WORK.	02:04PM
16	MR. HELM: WE'RE HAPPY TO COME TO DISCUSS IT	
17	TOMORROW AFTERNOON.	
18	THE COURT: IT'S UP TO YOU.	
19	WHAT DO YOU THINK?	
20	MR. QUINN: WELL, WE REALLY OUGHT TO	02:04PM
21	DOUBLE-CHECK WITH MR. MANUAL AND MS. ESTRICH, WHICH WE	
22	WILL DO.	
23	AND CAN WE LET THE COURT KNOW?	
24	THE COURT: JUST TALK AMONG YOURSELVES. WE	
25	COULD PROBABLY DO IT NEXT FRIDAY, OR ONE AFTERNOON	02:04PM
26	AFTER THE 2 O'CLOCK RECESS.	
27	THAT'S WE'VE GOT TUESDAY, WEDNESDAY,	

28

THURSDAY.

1	MR. BRIAN: I'M NOT THE PERSON RESPONSIBLE FOR	
2	JURY INSTRUCTIONS.	
3	I MAY BE THE ETERNAL OPTIMIST, AND WE	
4	DID TAKE AN HOUR OR SO LONGER THAN I PREDICTED TODAY.	
5	THE COURT: THAT'S ALL RIGHT.	02:04PM
6	MR. BRIAN: BUT I STILL THINK THAT, BASED ON	
7	MY CONVERSATION WITH MR. QUINN, THAT WE CAN FINISH ALL	
8	OF THE TESTIMONY BY NEXT THURSDAY.	
9	THE COURT: WHY DON'T WE DO THIS: I DON'T	
10	WANT TO STRESS EVERYBODY. YOU GET ME SOMETHING BY	02:04PM
11	TOMORROW AFTERNOON, SO I CAN LOOK AT IT OVER THE	
12	WEEKEND. I WANT THIS VERDICT FORM, BECAUSE I DON'T	
13	WANT THIS TO BE A BATTLE AT THE LAST MINUTE.	
14	I ALSO WANT TO SEE A FULL SET OF AGREED	
15	INSTRUCTIONS, AND THEN WHAT WE'RE DOWN TO. AND THE	02:05PM
16	DISPUTED ONES SHOULDN'T BE THAT GREAT.	
17	AND THEN WE'LL PLAN TO MEET EITHER	
18	TUESDAY AFTERNOON, AFTER WE DISCHARGE THE JURY, OR	
19	WEDNESDAY, TO GO OVER THEM.	
20	MS. STEIN: YOUR HONOR, DO YOU STILL WANT THEM	02:05PM
21	IN THE FORM THAT WE HAD PROVIDED THEM TO YOU BEFORE,	
22	WITH OBJECTIONS AND RESPONSES; OR THIS TIME, JUST THE	
23	INSTRUCTIONS?	
24	THE COURT: WELL, ALL OF THE AGREED JUST A	
25	BOOK WITH JUST THE INSTRUCTIONS, AND GIVE ME A SECOND	02:05PM
26	BOOK, WITH THE DISPUTED ONES, AND WE CAN THEN SLIP THEM	
27	IN.	

BUT I WANT TO GET IT TO THE POINT THAT

IT'S IN THE FORM THAT WE CAN USE TO READ THEM. 1 2 AND GET THEM IN THE RIGHT ORDER THAT I THINK 3 YOU ALL AGREED TO. 4 ANYTHING ELSE? 5 MR. BRIAN: TWO THINGS, YOUR HONOR. ONE IS 02:05PM 6 THAT YOU HAD AN EXHIBIT UNDER CONSIDERATION, ONE OF THE 7 SOCIETE GENERALE EXHIBITS YOU WERE GOING TO CONSIDER --8 THE COURT: WE PUT IT IN YESTERDAY'S MINUTE 9 ORDER, BECAUSE I WENT AND LOOKED AT IT AFTER WE 10 CONCLUDED. I FIGURED IF I PUT IT OFF, I'D FORGET IT. 02:06PM 11 AND I DID ADMIT IT. 12 MR. BRIAN: OKAY. I MISSED IT. AND I 13 APOLOGIZE. 14 THE COURT: IT SHOULD BE IN YESTERDAY'S MINUTE 15 ORDER. 02:06PM MR. BRIAN: AND THE SECOND THING IS, MR. QUINN 16 17 AND I WERE DISCUSSING YESTERDAY, AND I THINK WE AGREE 18 THAT IF IT'S POSSIBLE, I THINK WE'D LIKE TO DO THE 19 CLOSINGS IN ONE DAY. WE'VE GOT TO FIGURE OUT THE 20 TIMING, BUT I THINK IT'S OUR PREFERENCE, IF WE CAN. 02:06PM 21 IF WE DO THAT, THAT WOULD BE A LONGER 22 DAY FOR THE JURY. 23 THE COURT: WELL, WE CAN GO TO A FULL DAY, AN 24 8:30 TO NOON, MAYBE AN HOUR BREAK, HOUR AND A HALF. 25 IT'S TOO MUCH WHEN YOU'VE GOT PEOPLE PUTTING IN LONG 02:06PM 26 DAYS; AND COME BACK AT 1:00 AND GO TILL 4:00. 27 HOW LONG DO WE THINK OUR CLOSING

ARGUMENTS ARE GOING TO BE NOW?

MR. QUINN: WE'RE THINKING, ALTOGETHER, THREE 1 2 HOURS, YOUR HONOR, A SIDE. 3 THE COURT: THAT'S CONSISTENT. 4 WELL, THAT'S SIX HOURS. THAT'S PRESSING 5 A FULL DAY. 02:07PM 6 AND I MEAN, I ACTUALLY THINK MAYBE -- I 7 DON'T KNOW HOW YOU WOULD BREAK IT UP TO BE FAIR. NOBODY WANTS TO HAVE AN OVERNIGHT --8 9 MR. BRIAN: AND ALSO, TO BE FAIR, AND I AM NOT 10 ASKING THE COURT TO DECIDE THIS, BUT TO PUT EVERYBODY 02:07PM 11 ON NOTICE, WE ARE GOING TO ASK TO GIVE A SHORT REBUTTAL 12 ARGUMENT ON OUR COMPENSATION CLAIM. IT WOULD BE 13 LIMITED TO THE COMPENSATION CLAIM. 14 BUT I THINK IN THIS CASE, IT'S A -- OUR CROSS-CLAIM IS NOT AN AFTERTHOUGHT. AND SO, WE DO 15 02:07PM 16 THINK IT'S APPROPRIATE. WE HAVE THE BURDEN OF PROOF ON 17 THAT, SO WE WILL ASK FOR THAT. WE'RE NOT THINKING 18 ABOUT SOMETHING LONG, BUT WE ARE THINKING ABOUT 15 OR 19 20 MINUTES. 20 THE COURT: I'LL TELL YOU, JUST GIVING YOU MY 02:07PM 21 SENSE, IT SEEMS TO ME, AN HOUR AND A HALF FOR THE 22 CLOSING BY EACH SIDE -- THEY HAVE REBUTTAL, YOU HAVE SURREBUTTAL, OR REBUTTAL ON YOUR OTHER. 23 24 AND MAYBE 45 MINUTES OR SO, OR AN HOUR, 25 ON THAT SECOND PHASE OF YOUR ARGUMENT, WHICH WOULD BE 02:07PM 26 TWO AND A HALF EACH, IT'S FIVE HOURS. IT'S STILL A 27 LONG DAY, AND THERE'S A LOT TO ABSORB.

AND IF YOU PRESS IT TO SIX OR SEVEN

HOURS, YOU LOSE PEOPLE, IT'S JUST TOO MUCH. 1 2 I DON'T HAVE A PROBLEM GOING IN A FULL 3 DAY, SO EVERYTHING CAN BE DONE, AND THEN WE COME IN THE NEXT MORNING AND INSTRUCT. BUT I WOULD SAY THAT AN 4 5 HOUR AND A HALF, IF WE START AT 8:30, THAT GIVES IT TO 02:08PM 10:00, A BREAK, TO 10:15, 11:15, 12:00 -- WE'RE -- WE 6 7 GET BOTH OF THE INITIAL ARGUMENTS, AND WE DO BOTH OF 8 THE REBUTTALS IN THE AFTERNOON, BUT WE DO A LITTLE 9 SHORTER. 10 AND AS LONG AS YOU CAN COMMIT TO THAT 02:08PM 11 SCHEDULE, I THINK WE COULD DO IT ONE DAY. 12 AND I'LL HAVE TO CHECK WITH THE JURY, TO 13 MAKE SURE THEY DON'T HAVE COMMITMENTS. WE KNOW ONE GENTLEMAN PICKS UP HIS CHILDREN AT 3:00, SO HE'LL HAVE 14 15 TO MAKE ARRANGEMENTS. 02:08PM 16 BUT IF WE GIVE THEM ENOUGH NOTICE, THEY 17 PROBABLY WOULD APPRECIATE IT. 18 MR. BRIAN: THAT'S ONE OF THE REASONS I'VE 19 BEEN TRYING TO FIGURE OUT WHEN WE'RE GOING TO CLOSE. 20 BECAUSE IF WE ARE GOING TO GO LONGER, I DO WANT TO GIVE 02:09PM 21 THEM NOTICE -- AND I WAS CLEARLY WRONG TODAY. 22 ANTICIPATED WE WERE GOING TO BE MUCH SHORTER, ON BOTH 23 SIDES, ACTUALLY, WITH MR. SULLIVAN, AND I MISSED IT. 24 BUT I WILL KNOW BY --25 THE COURT: LIKE I SAID, I DON'T WANT TO SEEM 02:09PM 26 LIKE THE HORSE THAT'S MADE THE TURN, AND GOING BACK TO

THE BARN. BUT I THINK WE'RE MOVING RIGHT ALONG, AND I

WILL DO ANYTHING I CAN TO HELP YOU WITHIN REASON TO GET

27

1	THIS DONE.	
2	MR. MADISON: CAN I ASK YOUR HONOR, ON THE	
3	POINT ABOUT CLOSINGS. DOES YOUR HONOR PRE INSTRUCT	
4	BEFORE CLOSING, OR INSTRUCT AFTER THE ARGUMENTS, OR	
5	BOTH?	02:09PM
6	THE COURT: I WILL INSTRUCT AFTER THE	
7	ARGUMENTS.	
8	MR. MADISON: AFTER THE CLOSINGS.	
9	MR. QUINN: BUT WE WILL CERTAINLY KNOW WHAT	
10	THE INSTRUCTIONS ARE.	02:09PM
11	THE COURT: YOU WILL. AND YOU WILL HAVE AN	
12	OPPORTUNITY TO PUT THEM UP, TALK ABOUT THEM, WAVE AT	
13	THEM, AND DO WHATEVER YOU WANT WITH THEM.	
14	MR. QUINN: SALUTE THEM.	
15	MS. STEIN: YOUR HONOR, WHEN DO YOU WANT THAT	02:09PM
16	PACKET OF JURY INSTRUCTIONS?	
17	THE COURT: TOMORROW SOMETIME. EARLY	
18	AFTERNOON WOULD BE ALL RIGHT.	
19	AND IF YOU ABSOLUTELY CANNOT DO IT, I'LL	
20	GET THEM MONDAY.	02:09PM
21	BUT I HAVE A LONG WEEKEND, TOO, AND IT	
22	WILL BE A GOOD TIME TO TRY AND SORT THROUGH WHAT I HAVE	
23	TO.	
24	ANYTHING ELSE?	
25	MR. QUINN: NO.	02:10PM
26	MR. BRIAN: NO.	
27	THE COURT: HAVE A GREAT WEEKEND.	

MR. MADISON: YOU TOO, YOUR HONOR.

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                      (AT 2:11 P.M. AN ADJOURNMENT
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                      WAS TAKEN UNTIL TUESDAY,
                      SEPTEMBER 6TH, 2011, AT 8:30 A.M.)
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                      (THE NEXT PAGE NUMBER IS 6601.)
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