

1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA SEPTEMBER 12, 2011
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR
7 TIME: A SESSION: 8:00 A.M.

8

9 (PROCEEDINGS HELD OUT OF THE PRESENCE OF THE JURY.)

10

08:03AM

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

13 IN THE TCW VERSUS GUNDLACH MATTER, WE'RE
14 OUT OF THE PRESENCE OF THE JURY.

15 WE'VE GOT A NUMBER OF ITEMS THAT WERE ON
16 YOUR AGENDA. THEY ARE NOT ALL GOING TO BE HEARD ON THE
17 7:30 CALENDAR, BUT WE WILL TAKE UP A FEW OF THEM.

08:04AM

18 THE FIRST ONE IS THE HIRSCHMANN
19 TESTIMONY. WE HAVE COUNSEL FOR MR. HIRSCHMANN PRESENT.

20 MR. SPERTUS: JAMES SPERTUS.

08:04AM

21 THE COURT: A MOTION TO QUASH WAS FILED.

22 I VAGUELY RECALL, IN THE FIRST OR SECOND
23 WEEK OF TRIAL, ADDRESSING MR. HIRSCHMANN'S TESTIMONY
24 AND TRYING TO ACCOMMODATE HIS SCHEDULE.

25 IT SEEMS TO ME THAT PUTTING A MAN OF HIS
26 POSITION IN CHARGE OF A LARGE COMPANY, SIMILAR TO TCW,
27 ON CALL, AND GIVING HIM 13 DATES ON WHICH YOU WANT HIM
28 TO APPEAR, AND THEN CANCELING THEM IS, SOMEWHAT

08:04AM

1 ABUSIVE.

2 THAT SAID, ON THE MORE SUBSTANTIVE PART
3 OF THE ISSUE, I'M NOT INCLINED TO ALLOW TCW TO CALL
4 MR. HIRSCHMANN SOLELY FOR THE PURPOSE OF HAVING HIM
5 ASSERT THE ATTORNEY/CLIENT PRIVILEGE AS TO MATTERS THAT
6 ARE NOT AT ISSUE.

08:05AM

7 WITH THAT SAID, YOU WANT TO BE HEARD ON
8 BEHALF OF MR. HIRSCHMANN FIRST?

9 MR. SPERTUS: YOUR HONOR, I THINK THE COURT
10 ACCURATELY NOTICED THE HISTORY OF THIS CASE.

08:05AM

11 WITH 12 APPEARANCES, MR. HIRSCHMANN
12 TRIED HIS BEST TO ACCOMMODATE HIS OBLIGATIONS UNDER THE
13 SUBPOENA, AND WOULD HAVE COME ON A NUMBER OF OCCASIONS,
14 BUT SIMPLY CAN'T BE CONTINUALLY AVAILABLE FOR A --

15 THE COURT: HE WON'T BE CONTINUALLY AVAILABLE.
16 WE'RE GOING TO FINISH TODAY.

08:05AM

17 MR. SPERTUS: RIGHT.

18 THE COURT: WE'RE LOOKING AT THIS AS THE LAST
19 CALL.

20 IS HE OTHERWISE AVAILABLE?

08:05AM

21 MR. SPERTUS: WELL, HE HAS COMMITMENTS ALL DAY
22 TODAY. I'VE TOLD HIM THAT, LOOK, THERE'S -- YOU KNOW
23 THERE'S A SUBPOENA IN PLACE, SO WE NEED A RULING FROM
24 THE COURT ON WHETHER OR NOT YOU CAN BE RELEASED.

25 BUT, NO, HE'S NOT AVAILABLE.

08:05AM

26 ALTHOUGH HE WILL CANCEL IMPORTANT
27 APPOINTMENTS TO BE HERE, IF NECESSARY.

28 I UNDERSTAND THERE'S REALLY ONLY ONE

1 ISSUE. THERE'S A STIPULATION THAT THE PARTIES HAVE
2 EXCHANGED THAT WOULD ADDRESS MR. HIRSCHMANN'S ISSUE.

3 AND I THINK THAT MR. MADISON JUST WANTS
4 A RULING ON SCOPE. AND IF THE COURT ISSUES A RULING ON
5 SCOPE, A STIPULATION WILL OBTVIATE THE NEED FOR
6 MR. HIRSCHMANN TO APPEAR.

08:06AM

7 THE COURT: MR. MADISON?

8 MR. MADISON: YES. I WANTED TO GET TO THAT.

9 YOUR HONOR, I WILL JUST SAY, THERE
10 HAVEN'T BEEN 12 APPEARANCES ABOUT MR. HIRSCHMANN.
11 THERE HASN'T BEEN A SINGLE APPEARANCE.

08:06AM

12 THE COURT: OKAY. LET'S NOT DWELL ON THAT.

13 LET'S GO TO SUBSTANCE.

14 MR. MADISON: I KNOW. BUT I DON'T WANT YOU TO
15 JUST HEAR HALF THE STORY.

08:06AM

16 I PROBABLY SPENT TEN HOURS COMMUNICATING
17 WITH MR. SPERTUS DURING THIS TRIAL, TO TRY NOT TO
18 INCONVENIENCE MR. HIRSCHMANN. THAT'S NOT ANYBODY'S
19 GOAL.

20 HERE IS THE STATE OF PLAY, YOUR HONOR.

08:06AM

21 MR. GUNDLACH, LAST WEEK, IN HIS
22 TESTIMONY, YOU MAY RECALL, INDICATED THAT HE HAD
23 DISCUSSED HIS ORAL CONTRACT WITH PEOPLE AT WAMCO.

24 AND I ASKED HIM WHO. AND HE COULDN'T
25 REMEMBER ANY NAMES.

08:07AM

26 THEN LATER IN HIS TESTIMONY, HE SAID
27 THAT HE HAD TALKED ABOUT IT WITH MR. HIRSCHMANN.

28 NOW HE THEN, AN ANSWER OR TWO LATER, HE

1 SAID, WELL I DON'T REMEMBER SPECIFICALLY, BUT I KNOW I
2 TALKED TO MR. HIRSCHMANN ABOUT A NEGOTIATED BUYOUT FROM
3 TCW.

4 TO US, THOSE ARE TWO DIFFERENT ISSUES.
5 AND AT THIS POINT IN TIME, WE HAVE
6 MR. HIRSCHMANN'S TESTIMONY, AS IT WERE, DOWN TO JUST
7 THAT ONE FACT. AND IT DOESN'T HAVE ANYTHING TO DO WITH
8 THE ATTORNEY/CLIENT PRIVILEGE.

9 WHEN YOU SPOKE TO MR. GUNDLACH ON ALL
10 THOSE OCCASIONS IN 2009, DID HE EVER SAY ANYTHING TO
11 YOU ABOUT ANY ORAL CONTRACT, WITH TCW?

12 MR. HIRSCHMANN'S ANSWER IS, NO.

13 SO, I JUST WANT HIM FOR THAT ONE ANSWER,
14 BECAUSE MR. GUNDLACH DID TESTIFY THAT HE HAD TOLD
15 MR. HIRSCHMANN ABOUT HIS ORAL CONTRACT. AND I WANT TO
16 MAKE SURE THE RECORDS CLEAR, HE NEVER DID.

17 THE DEFENSE'S VIEW IS, THAT IS -- THAT'S
18 NOT DISPUTED. AND MR. SPERTUS WILL CONFIRM, THAT WILL
19 BE MR. HIRSCHMANN'S TESTIMONY.

20 THE DEFENSE SAYS, YEAH, BUT THEN WE WANT
21 TO EITHER THEN EXAMINE HIM OR PUT IN PARAGRAPHS OF A
22 STIPULATION THAT TALK ABOUT NEGOTIATED BUYOUTS AND HOW
23 MR. HIRSCHMANN'S DEPO TESTIMONY WAS THAT MR. GUNDLACH
24 WOULD HAVE TO BUY HIS BUSINESS FROM TCW OR SOC-GEN, YOU
25 KNOW, BEFORE HE COULD DO CERTAIN THINGS. AND I'LL --

26 THE COURT: WHY DON'T YOU LET THE DEFENSE TELL
27 ME WHAT THEIR POSITION IS.

28 MR. MADISON: YES. OUR ISSUE IS SCOPE.

1 AS MR. SPERTUS SAID, WE JUST WANT TO ASK
2 HIM THAT ONE QUESTION, AND THAT'S IT. WE'RE HAPPY TO
3 STIPULATE TO IT.

4 THE COURT: MR. WEINGART?

5 MR. WEINGART: BRIEFLY, YOUR HONOR. 08:08AM

6 FIRST OF ALL, IT DIDN'T COME UP IN THE
7 DISCUSSIONS WITH MR. HIRSCHMANN BECAUSE THERE WERE NO
8 QUESTIONS ABOUT IT; IN OTHER WORDS, THIS ISSUE ABOUT
9 THE CONTRACT.

10 WHAT THEY WANT TO DO IS CALL 08:08AM
11 MR. HIRSCHMANN TO IMPEACH AN ANSWER THAT MR. GUNDLACH
12 GAVE.

13 AND WITH THE COURT'S PERMISSION, LET ME
14 JUST SAY WHAT THOSE QUESTIONS WERE; BECAUSE IT WASN'T A
15 QUESTION OR TWO LATER. IT'S PART OF THE SAME CONTEXT. 08:09AM

16 MR. MADISON ASKED, DID YOU GIVE US ANY
17 NAMES OF ANYONE AT WAMCO THAT YOU TALKED ABOUT YOUR
18 EMPLOYMENT CONTRACT WITH TCW?

19 I TALKED ABOUT IT WITH JIM HIRSCHMANN.

20 QUESTION: ABOUT YOUR EMPLOYMENT 08:09AM
21 CONTRACT YOU SAY YOU HAVE.

22 ANSWER: I DON'T KNOW. I DON'T
23 REMEMBER SPECIFICALLY, IF WE TALKED
24 SPECIFICALLY ABOUT MY CONTRACT WITH
25 TCW. 08:09AM

26 WE TALKED ABOUT HOW WE WOULD, IF WE
27 WERE GOING TO MAKE A DEAL, HOW WE
28 WOULD GET IT DONE. I SAID, WE WILL

1 DO IT ON A NEGOTIATED BASIS, WITH
2 THEIR BUY-IN, SO WE DON'T HAVE TO
3 WORRY ABOUT CONTRACTUAL
4 ARRANGEMENTS.

5 SO THE SCOPE ISSUE THAT MR. MADISON
6 IS TALKING ABOUT IS AN ATTEMPT TO
7 PUT ONLY HALF OF THE STORY IN FROM
8 MR. HIRSCHMANN.

9 THE COURT: ALL RIGHT. SO --

08:09AM

10 MR. WEINGART: WE DON'T THINK THAT'S
11 APPROPRIATE.

08:09AM

12 THE COURT: CAN WE HAVE A STIPULATION THAT THE
13 SCOPE OF THE DISCUSSION WAS NO, AS TO THE ORAL
14 CONTRACT, AND AS MR. GUNDLACH SAID?

15 MR. SPERTUS, WILL HE TESTIFY CONSISTENT
16 WITH THAT?

08:10AM

17 MR. SPERTUS: YES.

18 HE WILL SAY, NO, I DIDN'T HAVE
19 DISCUSSIONS ABOUT ANY ORAL CONTRACT, BUT IT WAS PART OF
20 A NEGOTIATED BUYOUT. WAMCO WAS NOT BUYING INTO ANY
21 TROUBLE --

08:10AM

22 THE COURT: CAN WE HAVE A STIPULATION, IF
23 MR. HIRSCHMANN WERE TO BE CALLED, HE'LL TESTIFY TO THAT
24 EFFECT?

25 MR. MADISON: HIS DEPO TESTIMONY IS SLIGHTLY
26 DIFFERENT FROM THAT.

08:10AM

27 HIS DEPO TESTIMONY IS THAT, I ALWAYS
28 UNDERSTOOD THAT MR. GUNDLACH WOULD HAVE TO BUY HIS

1 BUSINESS FROM TCW OR SOC-GEN.

2 AND I DON'T RECALL, IN THE DEPO, THERE
3 BEING ANY RELATIONSHIP BETWEEN THAT SUBJECT AND THE
4 EMPLOYMENT CONTRACT.

5 THE COURT: WELL --

08:10AM

6 MR. MADISON: HIS ANSWER ON THE EMPLOYMENT
7 CONTRACT WAS, IT WAS NEVER DISCUSSED.

8 AND THAT DIRECTLY CONTRADICTS WHAT
9 MR. GUNDLACH SAID.

10 THE COURT: HE'S BEING CALLED AS A REBUTTAL
11 WITNESS.

08:11AM

12 AND ALL I'M SAYING, IF WE COULD HAVE A
13 STIPULATION TO THAT EFFECT, THEN -- A COMPROMISE ON
14 BOTH SIDES, AS I SEE IT -- THEN MR. HIRSCHMANN WOULDN'T
15 HAVE TO COME IN.

08:11AM

16 OTHERWISE, HE'S GOING TO COME IN AND
17 TESTIFY VERY BRIEFLY.

18 MR. MADISON: WELL --

19 THE COURT: SO --

20 MR. WEINGART: WE'VE SENT A STIPULATION OUT
21 OVER THE WEEKEND TO MR. MADISON.

08:11AM

22 THE COURT: I HAVEN'T SEEN THAT.

23 DO WE HAVE AN AGREEMENT? YOU KNOW, WE
24 DON'T HAVE AN HOUR TO ARGUE THIS. WE HAVE THREE OTHER
25 MATTERS TO TAKE CARE OF.

08:11AM

26 MR. MADISON: MAY I JUST ASK YOUR HONOR?

27 YOUR HONOR -- DOES YOUR HONOR BELIEVE
28 THE DISCUSSIONS ABOUT BUYING THE BUSINESS FROM TCW IS

1 WITHIN THE SCOPE OF THE ONE QUESTION ABOUT THE
2 DISCUSSION ABOUT AN EMPLOYMENT CONTRACT, OR NOT?

3 THE COURT: PROBABLY BEYOND THE SCOPE. BUT
4 IT'S IN THE OVERALL SCHEME OF THINGS.

5 AND MR. HIRSCHMANN HAS BEEN ON CALL, AND 08:11AM
6 HAS BEEN TALKED ABOUT. AND SO TO GET THE COMPLETE
7 PICTURE, IT SEEMS TO ME BOTH ITEMS OUGHT TO BE
8 ADDRESSED.

9 NOW, I HAVEN'T SEEN THE STIPULATION.

10 HAVE YOU SEEN THE STIPULATION, 08:12AM

11 MR. MADISON?

12 MR. MADISON: I HAVE, YOUR HONOR. YES.

13 THE COURT: IS THERE AN ISSUE WITH THAT?

14 IT WAS NOT SERVED, SO IT WASN'T ONE OF
15 THE -- IT WASN'T ONE OF THE DOCUMENTS. 08:12AM

16 MR. MADISON: THE ISSUE IS THE ONE -- IN OUR
17 VIEW, IT GOES BEYOND THE SCOPE OF WHAT WE WANTED TO
18 CALL MR. HIRSCHMANN TO TESTIFY.

19 IF YOUR HONOR THINKS THAT THOSE
20 DISCUSSIONS ARE WITHIN THE SCOPE OF THAT ONE QUESTION 08:12AM
21 ON THE EMPLOYMENT CONTRACT --

22 THE COURT: I'M NOT CERTAIN THEY'RE WITHIN THE
23 SCOPE OF THE EMPLOYMENT CONTRACT, BUT IT GOES TO A
24 NUMBER OF ISSUES THAT HAVE BEEN PLACED ON THE TABLE BY
25 THE DEFENDANTS AND BY THE PLAINTIFF. 08:12AM

26 AND IT SEEMS TO ME THAT IF HE'S GOING TO
27 COME, HE SHOULD BE PERMITTED TO TESTIFY.

28 MR. MADISON: WELL, TO US, THAT'S A DIFFERENT

1 QUESTION. THE DEFENSE DIDN'T CALL HIM, DIDN'T SUBPOENA
2 HIM.

3 WE JUST WANT TO CALL HIM FOR THAT ONE
4 QUESTION.

5 IF THE COURT WOULD ALLOW THE OTHER
6 TESTIMONY, THEN I CAN GO BACK TO THE STIPULATE.

08:12AM

7 THE COURT: LET'S GET THE STIPULATE -- STIP.

8 MR. MADISON: WE'LL DO THAT.

9 THE COURT: LET'S GET THE STIPULATION ON THE
10 RECORD. WRITE IT OUT NOW, SO THAT WE CAN -- I KNOW
11 EXACTLY WHAT I'M GOING TO INSTRUCT THE JURY.

08:13AM

12 MR. MADISON: WE'RE TRYING TO FINISH THE CASE,
13 SO WE MAY DECIDE THE GAME ISN'T WORTH THE CANDLE, IF
14 THAT'S ALL COMING IN. IT WOULD TAKE MORE --

15 THE COURT: YOU CAN SAY NOW WE CAN RELEASE
16 MR. HIRSCHMANN FROM THE SUBPOENA.

08:13AM

17 MR. MADISON: WELL --

18 THE COURT: IT'S TIME, NOW.

19 MR. MADISON: IF THE DEFENSE IS INDICATING
20 THEY WILL STIPULATE TO THE MATTERS THAT WE'VE
21 DISCUSSED, WE CAN RELEASE MR. HIRSCHMANN RIGHT NOW.

08:13AM

22 WHAT I'M TELLING YOU IS, WE MAY CHOOSE
23 TO NOT FILE A STIP, BECAUSE IT IS JUST OVERLY -- FROM
24 OUR PERSPECTIVE, IT REALLY COMPLICATES THINGS.

25 THE COURT: MY POINT IS, YOU MAY CHOOSE THAT
26 WAY, BUT NOW IS THE TIME TO CHOOSE.

08:13AM

27 MR. MADISON: I JUST INDICATED THAT, BASED ON
28 WHAT THE REPRESENTATIONS OF WHAT THEY WOULD STIPULATE

1 TO, WE CAN RELEASE MR. HIRSCHMANN.

2 MR. WEINGART: WE SENT THEM A STIPULATION WITH
3 WHAT WE WOULD STIPULATE TO, SO ...

4 THE COURT: MR. HIRSCHMANN WILL BE RELEASED,
5 MR. SPERTUS. HE WILL NOT BE TESTIFYING.

08:13AM

6 MR. SPERTUS: THANK YOU, YOUR HONOR.

7 THE COURT: THANK YOU.

8 ON THE GUNDLACH DEPOSITION TESTIMONY, I
9 PROVIDED YOU WITH RULINGS. I'M HAPPY TO HEAR MORE.

08:14AM

10 I UNDERSTAND THE ARGUMENT ABOUT THE FACT
11 THAT TCW HAS EXCEEDED THE 45 HOURS THAT THEY WERE
12 OFFERED.

13 BUT I ALSO UNDERSTAND THAT THEY HAVE AN
14 OPPORTUNITY AND A RIGHT TO PUT ON THEIR DEFENSE TO THE
15 CONTRACT CLAIM. AND AS I WENT THROUGH IT, IT SEEMED TO
16 ME THAT THE TESTIMONY THAT WAS IDENTIFIED GOES DIRECTLY
17 TO THAT CLAIM.

08:14AM

18 MR. BRIAN: THE ONLY THING I WOULD SAY, YOUR
19 HONOR, AT THIS STAGE, IT SEEMS TO ME, SINCE HE WAS
20 SUBJECT TO CROSS-EXAMINATION, THAT THE PROPER PROCEDURE
21 WOULD HAVE BEEN TO QUESTION HIM ABOUT THOSE.

08:14AM

22 AND IF THEY THOUGHT THERE WAS ANYTHING
23 THAT WAS IMPEACHMENT, THEY SHOULD HAVE THEN PLAYED IT
24 AS IMPEACHMENT.

25 I'VE READ THE TESTIMONY. I DON'T THINK
26 IT'S INCONSISTENT. FOR EXAMPLE, THERE ARE A NUMBER OF
27 QUESTIONS ASKED ABOUT: DID YOU HAVE CONVERSATIONS
28 ABOUT SIGNING THE CONTRACT WITH MR. SONNEBORN.

08:14AM

1 MR. CAHILL.

2 HE SAID, I DON'T REMEMBER, I DON'T
3 RECALL. NEITHER OF THEM TESTIFIED -- THAT THEY HAD A
4 CONVERSATION WITH MR. GUNDLACH ABOUT SIGNING THE
5 CONTRACT, NEITHER ONE OF THEM.

08:15AM

6 THE COURT: THE ISSUE, MR. BRIAN, IS NOT
7 WHETHER IT'S SOLELY IMPEACHMENT. THE ISSUE IS THE
8 RIGHT OF A PARTY TO USE THE DEPOSITION OF AN OPPONENT
9 FOR ANY PURPOSE.

10 THEY HAVE CALLED ONE WITNESS IN RESPONSE
11 TO THE DEFENSE CONTRACT CLAIM. THAT WAS MR. SONNEBORN,
12 WHO WAS CALLED OUT OF ORDER.

08:15AM

13 MY UNDERSTANDING IS THAT THEY HAVE
14 THAT -- THEY HAVE THAT DEPOSITION TESTIMONY AND ONE
15 OTHER WITNESS.

08:15AM

16 MR. BRIAN: WE REACHED A STIPULATION AS TO
17 MR. SANCHEZ. YOU'RE CORRECT --

18 THE COURT: THEY HAVE A RIGHT TO PUT A DEFENSE
19 ONTO YOUR AFFIRMATIVE CLAIM. IT'S NOT JUST
20 IMPEACHMENT.

08:15AM

21 I -- YOU KNOW, I'M FRUSTRATED WITH THE
22 TIME WE'VE TAKEN, THE FACT THAT WE'VE GONE OVER THE
23 ESTIMATE ON THE PLAINTIFF'S SIDE.

24 BUT BALANCING THAT AGAINST THEIR RIGHT
25 TO PUT A DEFENSE ON -- AND TRUST ME, I LOOKED AT THIS
26 OVER THE WEEKEND, AND I SPENT SOME TIME WITH IT -- AND
27 I WOULD LIKE TO HAVE JUST COME IN AND SAID NO, ENOUGH'S
28 ENOUGH.

08:15AM

1 BUT THAT'S NOT -- YOU KNOW, WE'RE HERE
2 TO FIND OUT WHAT THE TRUTH IS. THEY HAVE A RIGHT TO
3 PUT ON A DEFENSE, JUST AS YOU HAVE.

4 SO I'VE RULED ON THE OBJECTION, AND IT
5 CAN BE SHOWN.

08:16AM

6 MR. BRIAN: I'LL SUBMIT. I APPRECIATE
7 YOUR HONOR'S CONSIDERATION.

8 THE COURT: IT IS WHAT IT IS. THE OBJECTIONS
9 AND THE COLLOQUY, WHICH WERE MORE PREVALENT IN THESE
10 CLIPS THAN IN OTHERS, SHOULD BE TAKEN OUT. YOU'LL HAVE
11 TO TAKE A LOOK AT THAT. AS I WENT THROUGH IT I DIDN'T
12 WANT TO HIGHLIGHT IT ON EACH RULING.

08:16AM

13 AS TO MR. CAHILL'S --

14 MR. QUINN: WE'RE NOT CALLING HIM, YOUR HONOR.

15 THE COURT: WHAT A WONDERFUL FIRST WORD FOR
16 TODAY.

08:16AM

17 MR. QUINN: I'M VERY AGREEABLE, AS DEFENSE
18 COUNSEL WILL TELL YOU. I'M IN AGREEABLE --

19 THE COURT: EVERYBODY'S SMILING, BECAUSE WE
20 CAN SEE THE END. IT MAY BE A FREIGHT TRAIN, BUT WE CAN
21 SEE IT --

08:16AM

22 MR. MADISON: YOU'RE NOT AS HAPPY AS
23 MR. CAHILL, YOUR HONOR.

24 THE COURT: THE REMAINING ITEMS, WE WILL BE
25 TAKING THEM UP AT 2 O'CLOCK, GETTING INTO THE EXHIBITS,
26 WHICH I DON'T HAVE IN FRONT OF ME, AND A NUMBER OF
27 OTHER ISSUES.

08:17AM

28 I SPENT A FAIR AMOUNT OF TIME ON THE

1 JURY INSTRUCTIONS ISSUE, ON THE SUBSTANTIAL FACTOR
2 ISSUE. I'M PREPARED TO RULE ON THAT.

3 THE BOTTOM LINE ON THAT IS, 430, WITH
4 THE ADDITIONAL LANGUAGE, WILL BE GIVEN. WE CAN TAKE IT
5 UP AND TAKE ARGUMENT ON IT LATER.

08:17AM

6 ARE THERE ANY OTHER MATTERS WE NEED TO
7 ADDRESS IN ADVANCE OF BRINGING IN THE JURY IN?

8 MR. MADISON: THERE IS ONE.

9 ONE OF OUR DEFENSE WITNESSES THIS
10 MORNING -- IN FACT, I EXPECT HE'LL BE OUR FIRST DEFENSE
11 WITNESS -- IS DEFENSE TO THE COUNTER-CLAIM, IS THE
12 YOUNG MAN THAT WAS HERE LAST WEEK FROM GOLDMAN SACHS,
13 MR. OWENS.

08:17AM

14 WHEN WE WERE AT SIDE-BAR LAST WEEK, I
15 INDICATED TO THE COURT AND COUNSEL, I WOULD BE VERY
16 BRIEF WITH MR. OWENS. AND MR. BRIAN SAID SOMETHING
17 LIKE, WELL, I'M GOING TO BE A LONG TIME, NO MATTER
18 WHAT --

08:18AM

19 THE COURT: I DON'T THINK HE SAID QUITE THAT.

20 HE SAID HE WOULD LIKE AN OPPORTUNITY TO
21 CROSS-EXAMINE HIM. AND IT MAY BE LONGER THAN THE
22 MINUTE YOU SUGGESTED WOULD BE YOUR DIRECT.

08:18AM

23 WITH THAT SAID ...

24 MR. MADISON: HERE IS MY ISSUE, YOUR HONOR.

25 WE ARE CALLING MR. OWENS HERE AGAIN,
26 JUST FOR ONE DISCRETE QUESTION. AND THAT IS, IN THE
27 NOVEMBER 9 MEETING WE'VE ALREADY HEARD ABOUT, WHEN
28 MR. GUNDLACH, MS. VANEVERY AND MR. WARD WENT TO

08:18AM

1 GOLDMAN SACHS' OFFICES IN NEW YORK, THAT IN THAT
2 MEETING, MR. GUNDLACH SAID HE DID NOT HAVE AN
3 EMPLOYMENT AGREEMENT WITH TCW.

4 HE MADE THAT REPRESENTATION TO
5 GOLDMAN SACHS. THAT IS, AFTER INTRODUCTIONS, AND BRIEF
6 FOUNDATION, JUST WHERE, WHEN, WHO, HOW. THAT'S ALL I'M
7 GOING TO ASK HIM. 08:18AM

8 NOW, THERE WAS THAT MEETING, WHERE A LOT
9 MORE WAS DISCUSSED, AND I THINK THE MEETING WAS OVER AN
10 HOUR IN LENGTH. 08:19AM

11 THERE WAS A LATER MEETING ON
12 DECEMBER 1ST, WHERE OTHER THINGS WERE TALKED ABOUT.

13 THE COURT: RIGHT.

14 MR. MADISON: HERE AGAIN, MY QUESTION IS ONE
15 OF SCOPE. I HAVE LOTS OF QUESTIONS THAT I WOULD WANT
16 TO ASK ABOUT ALL THOSE OTHER COMMUNICATIONS, BUT WE
17 DON'T BELIEVE THEY'RE NECESSARY TO OUR DEFENSE. 08:19AM

18 THE COURT: IF THAT'S ALL YOU'RE ASKING FOR, I
19 THINK THE CROSS SHOULD BE LIMITED TO THE SCOPE OF THAT
20 MEETING. 08:19AM

21 MR. MADISON: THAT'S WHAT I WANT CLEAR.

22 THE COURT: AND THAT BASIC DISCUSSION.

23 MR. BRIAN: YOUR HONOR, I DON'T KNOW EXACTLY
24 WHAT I SAID AT THE SIDE-BAR. I DON'T THINK I SAID I
25 WAS GOING A LONG TIME. 08:19AM

26 BUT I DO THINK THE CROSS, WHICH WILL BE
27 SHORT, DOES NEED TO PUT THE CONTEXT -- THAT STATEMENT
28 IN CONTEXT.

1 ALL OF THIS CAME UP IN CONNECTION WITH A
2 MEETING IN NOVEMBER, IN WHICH MR. GUNDLACH WENT TO
3 GOLDMAN SACHS SEEKING ADVICE, AND THERE WAS A
4 DISCUSSION ABOUT EITHER STAYING AT THE COMPANY OR
5 NEGOTIATING A SEPARATION.

08:20AM

6 SO WHATEVER TESTIMONY THERE IS ABOUT THE
7 EMPLOYMENT AGREEMENT, IS IN THE CONTEXT OF A DISCUSSION
8 OF A NEGOTIATED SEPARATION, BECAUSE GOLDMAN WAS
9 CONCERNED ABOUT WHETHER THEY WERE GOING TO GET CAUGHT
10 IN THE MIDDLE BETWEEN MR. GUNDLACH AND ESSENTIALLY AN
11 ENTITY WITH WHICH THEY HAD A RELATIONSHIP, TCW AND
12 SOCIÉTÉ GÉNÉRALE.

08:20AM

13 SO MY CROSS, WHICH WILL BE VERY NARROW,
14 WILL PUT THAT IN CONTEXT WITHIN THE CONFINES OF THAT
15 MEETING.

08:20AM

16 THE COURT: THAT MEETING AND NO OTHER MEETING.

17 AND YOU'LL BE GIVEN SOME LEEWAY, BUT IT
18 IS NOT TO GO INTO THE FULL SCOPE AND PANOPLY OF
19 DISCUSSIONS THAT WERE HELD AT GOLDMAN SACHS, OR THREE
20 DIFFERENT MEETINGS, OR ANYTHING ELSE. PLACING IT IN
21 CONTEXT IS A REASONABLE REQUEST.

08:20AM

22 MR. BRIAN: I THINK I'LL BE NARROW.

23 MAYBE MR. MADISON WILL BE SATISFIED,
24 MAYBE NOT.

25 THE COURT: WELL, THAT'S OKAY.

08:21AM

26 MR. MADISON: IN THAT CASE, IF THE GROUND
27 RULES ARE THE NOVEMBER 9 MEETING, THEN I, TOO, WILL
28 COVER A LITTLE BIT MORE ABOUT THAT MEETING IN MY DIRECT

1 WITH HIM.

2 THE COURT: THAT'S FINE.

3 MR. MADISON: SO THEY DON'T HEAR IT FROM THE
4 FIRST TIME FROM MR. BRIAN.

5 THE COURT: THAT'S FINE.

08:21AM

6 MS. ESTRICH: YOUR HONOR, MAY I SEEK A BRIEF
7 CLARIFICATION --

8 MR. BRIAN: EXCUSE ME.

9 I DON'T WANT -- I'M NOT -- I WANT TO
10 WAIT TILL I HEAR THE SCOPE, THEN --

08:21AM

11 THE COURT: THE SCOPE OF THE EXAMINATION WILL
12 IN LARGE PART DEFINE THE SCOPE OF THE
13 CROSS-EXAMINATION.

14 AND IF MR. MADISON TAKES IT FURTHER THEN
15 HE SUGGESTED, YOU'LL BE ABLE TO GO FURTHER.

08:21AM

16 MR. BRIAN: HE COULD OPEN UP THE SECOND
17 MEETING, IS MY POINT.

18 THE COURT: IT'S A POSSIBILITY.

19 BUT WE SHOULD TRY TO FOCUS ON THE BASIC
20 ISSUES, RATHER THAN GETTING INTO THESE KIND OF
21 TANGENTIAL DISCUSSIONS. AND AS I SEE IT, IT'S A BASIC
22 ISSUE ON TCW'S SIDE, IS ANY DISCUSSIONS REGARDING THE
23 EXISTENCE OF AN EMPLOYMENT CONTRACT.

08:21AM

24 AND ON THE DEFENSE SIDE, IT'S THE BASIC
25 CONTEXT OF THE DISCUSSION. AND THAT IS, IT WAS
26 UNDERSTOOD THERE WOULD BE A NEGOTIATED SEPARATION, AND
27 THAT WOULD BE GUNDLACH'S RESPONSIBILITY, OR SOMETHING
28 TO THAT EFFECT.

08:22AM

1 I DON'T KNOW EXACTLY. SO KEEP IT WITHIN
2 THOSE CONFINES.

3 MR. MADISON: THANK YOU FOR THE GUIDANCE
4 SOFTWARE, YOUR HONOR.

5 THE COURT: ANYTHING ELSE?

08:22AM

6 MS. ESTRICH.

7 MS. ESTRICH: I WAS BACK IN THE LAST ROW WHEN
8 YOU DESCRIBED YOUR INCLINATION ON 430 AND 431.

9 THE COURT: I SAID WE WOULD TAKE THOSE UP AT
10 2 O'CLOCK. I DON'T THINK THAT IMPACTS SIGNIFICANTLY
11 THE TESTIMONY.

08:22AM

12 MS. ESTRICH: I DIDN'T HEAR.

13 THE COURT: I SAID, I'LL RULE THAT WAY. I
14 SUPPOSE I COULD BE TALKED OUT OF IT. I'M ALWAYS
15 WILLING TO LISTEN.

08:22AM

16 MS. ESTRICH: I HAVE A 2 O'CLOCK CLASS.

17 WHICH WAY WERE YOU INCLINED TO RULE?

18 THE COURT: 430 WOULD BE GIVEN, WITH THE
19 BUT-FOR PARAGRAPH OR SENTENCE AT THE END. I THINK
20 THERE'S A SIGNIFICANT ISSUE HERE.

08:22AM

21 THE CONCEPT OF CONCURRENT INDEPENDENT
22 CLAUSES GENERALLY IS BY TORTFEASORS. AND I'M NOT SURE,
23 IN MY ANALYSIS OF IT, THAT THE CONDUCT OF TCW
24 NECESSARILY CONSTITUTES A CONCURRENT INDEPENDENT CAUSE
25 OR A CONCURRENT CAUSE, NECESSITATING THE DELETION OF
26 THAT PARAGRAPH, AND BASICALLY THE COMPARATIVE --

08:23AM

27 MS. ESTRICH: I BETTER STAY TO ADDRESS THAT.

28 OUR ARGUMENT IS, THE INVESTORS GOT

1 ADVISE, AND MAYBE MADE THEIR OWN DECISION TO LEAVE.

2 AND AT THE SAME TIME, IT WAS A --

3 THE COURT: THOSE AREN'T CONCURRENT CLAUSES BY
4 MULTIPLE TORTFEASORS. I DO NOT WANT TO ARGUE IT NOW.

5 MS. ESTRICH: I'LL DO IT THIS AFTERNOON. 08:23AM

6 THE COURT: NOW'S NOT THE TIME. I DO NOT WANT
7 TO ARGUE IT NOW.

8 SORRY TO MESS UP YOUR CLASS.

9 MS. ESTRICH: THAT'S OKAY.

10 MR. BRIAN: WE HAVE THE ONE VIDEOTAPE, AND 08:23AM
11 THEN WE WILL REST, SUBJECT TO THE DISCUSSION OF ANY
12 ADDITIONAL EXHIBITS CLEANUP THIS AFTERNOON.

13 THE COURT: WE'LL DO THAT.

14 IF WE HAPPEN TO FINISH WITH THE JURY
15 EARLIER THAN 2 O'CLOCK, WE'LL LET THEM GO. AND WE'LL 08:24AM
16 DO OUR THINGS, GETTING READY FOR TOMORROW.

17 MR. BRIAN: WE'RE CONFIDENT WE'LL FINISH WELL
18 BEFORE 2 O'CLOCK.

19 MR. QUINN: YES. WE'LL BE DONE PRETTY QUICK.

20 THE COURT: THE JURY WILL BE VERY HAPPY. 08:24AM

21 MR. BRIAN: AS WILL WE.

22 MR. EMANUEL: WE WERE OFF THE RECORD AT THE
23 LAST HEARING ON JURY INSTRUCTIONS.

24 THE COURT: RIGHT.

25 MR. EMANUEL: YOUR HONOR WAS TAKING NOTES, AND 08:24AM
26 I UNDERSTAND YOU WERE GOING TO SEND THEM TO THE
27 PARTIES, SO WE COULD MAKE SURE OUR INSTRUCTIONS TRACKED
28 THE COURT'S RULINGS.

1 THE COURT: I CAN --

2 MR. EMANUEL: IF YOU DON'T MIND.

3 THE COURT: I SENT MY NOTES TO MR. SABALBURO
4 SO HE COULD DO THE MINUTE ORDER ON ADMISSIONS OF
5 EXHIBITS AND THINGS.

08:24AM

6 BUT I WILL PRINT OUT THE PORTION OF THE
7 NOTES THAT DEAL WITH THE JURY INSTRUCTIONS AND GIVE YOU
8 A COPY.

9 YOU CAN MAKE YOUR COPIES HERE, AND SEE
10 IF WE CAN'T GET THEM ALL IN SYNC.

08:24AM

11 MR. EMANUEL: THAT WOULD BE GREET.

12 MR. QUINN: THANK YOU, YOUR HONOR.

13 THE COURT: I'LL DO IT NOW, AND GIVE THEM TO
14 YOU BEFORE WE COMMENCE, SO YOU CAN ALL LOOK AT THEM.

15 MR. EMANUEL: THAT WOULD BE GREET.

08:25AM

16 AND WE CAN BE READY BY THIS AFTERNOON.

17 MR. HELM: THANK YOU, YOUR HONOR.

18 THE COURT: OKAY.

19 (RECESS.) +

08:40AM

21 THE COURT: GOOD MORNING, LADIES AND
22 GENTLEMEN.

23 IN THE TCW VERSUS GUNDLACH MATTER, ALL
24 MEMBERS OF OUR JURY ARE PRESENT, AS ARE COUNSEL.

25 MR. BRIAN, ARE YOU READY TO CALL YOUR
26 NEXT WITNESS?

08:40AM

27 MR. BRIAN: WE WOULD CALL JOE BURSCHINGER, BY
28 DEPOSITION.

1 GOOD MORNING, LADIES AND GENTLEMEN.

2

3 (VIDEO DEPOSITION OF JOE BURSCHINGER PLAYED.) +

4

5 MR. ALLRED: MR. BURSCHINGER SUBMITTED A

08:48AM

6 WRITTEN ERRATA CHANGING ONE OF THE QUESTIONS.

7 QUESTION: WHEN DID TCW DISCOVER THE

8 COPY OF --

9 THE COURT: YOU NEED TO START FROM THE

10 BEGINNING OF YOUR COMMENT.

08:49AM

11 MR. ALLRED: MR. BURSCHINGER SUBMITTED A

12 WRITTEN ERRATA FOR ONE OF THE QUESTIONS YOU JUST HEARD,

13 CHANGING IT TO THE FOLLOWING:

14 QUESTION: WHEN DID TCW DISCOVER

15 THE COPYING OF CLIENT HOLDINGS AND

08:49AM

16 PORTFOLIO MANAGER DATA INTO THE

17 DISCOVERY -- RECOVERY DISASTER

18 RECOVERY FOLDER, AS ALLEGED IN

19 PARAGRAPH 56 OF THE COMPLAINT?

20 ANSWER: -- THIS IS AS CORRECTED --

08:49AM

21 EVEN THOUGH THE COPYING DID OCCUR

22 DURING THE LATE SEPTEMBER, EARLY

23 OCTOBER TIME FRAME, IT WAS NOT

24 DISCOVERED UNTIL SOMETIME IN THE

25 EARLY TO MID NOVEMBER TIME FRAME.

08:49AM

26 LET'S PLAY THE REST.

27

28 (VIDEO DEPOSITION RESUMED OF

1 JOE BURSCHINGER PLAYED.) +

2

3 MR. BRIAN: SUBJECT TO THE ISSUES OF TALKING
4 ABOUT EXHIBITS WE TALKED ABOUT PRIOR TO THE JURY THIS
5 MORNING, WE WOULD REST.

09:08AM

6 THE COURT: ALL RIGHT.

7 LADIES AND GENTLEMEN, YOU'VE HEARD THE
8 DEFENSE CASE ON THEIR AFFIRMATIVE CLAIM, AND THEIR
9 RESPONSE.

10 MR. QUINN, MR. MADISON, ANY REBUTTAL?

09:08AM

11 MR. MADISON: WE'RE GOING TO CALL
12 MR. TODD OWENS AS OUR FIRST WITNESS OF THE DEFENSE OF
13 THE COUNTER-CLAIM.

14 THE COURT: ALL RIGHT.

15

16 P L A I N T I F F R E B U T T A L +

17

18 TODD OWENS +

19 CALLED AS A WITNESS BY THE PLAINTIFF WAS SWORN AND
20 TESTIFIED AS FOLLOWS:

21

22 THE CLERK: YOU DO SOLEMNLY STATE THAT THE
23 TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW
24 PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE
25 TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

26

27 THE WITNESS: I DO.

28 THE CLERK: THANK YOU. PLEASE BE SEATED.

1 SIR, PLEASE STATE AND SPELL YOUR NAME
2 FOR THE RECORD. IF YOU COULD PULL UP THE MICROPHONE.

3 THE WITNESS: TODD GARREGG OWENS. O-W-E-N-S.

4 THE COURT: SPELL YOUR WHOLE NAME.

5 THE WITNESS: T-O-D-D, G-A-R-R-E-G-G,
6 O-W-E-N-S.

7 THE CLERK: THANK YOU.

8 THE COURT: GOOD MORNING, MR. OWENS.

9 THE WITNESS: GOOD MORNING.

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

11 MR. MADISON: THANK YOU, YOUR HONOR.

12
13 DIRECT EXAMINATION +

14
15 BY MR. MADISON:

16 Q GOOD MORNING.

17 A GOOD MORNING.

18 Q WHERE DO YOU WORK?

19 A I WORK AT GOLDMAN SACHS.

20 Q WHAT IS GOLDMAN SACHS?

21 A IT'S AN INVESTMENT BANK.

22 Q WHAT DO YOU DO AT GOLDMAN SACHS?

23 A I AM A MANAGING DIRECTOR IN MERGERS AND
24 ACQUISITIONS.

25 Q MAYBE YOU COULD BREAK THAT DOWN FOR US, AND
26 FIRST TELL US WHAT A MANAGING DIRECTOR IS?

27 A I WORK IN THE INVESTMENT BANKING DIVISION OF
28 GOLDMAN SACHS. AND WE ADVISE CLIENTS ON MERGERS AND

1 ACQUISITIONS AND CORPORATE FINANCE.

2 Q SO, THE MERGERS AND ACQUISITION AREA, IN
3 PARTICULAR, IS WHERE YOU WORK?

4 A I DO BOTH, CORPORATE FINANCE AND MERGERS AND
5 ACQUISITIONS.

09:10AM

6 Q HOW LONG HAVE YOU BEEN WITH GOLDMAN SACHS?

7 A 21 YEARS.

8 Q WHAT KINDS OF CLIENTS DO YOU REPRESENT?

9 A PRIMARILY FOCUSED ON FINANCIAL INSTITUTIONS,
10 WHICH ENCOMPASSES BANKS, INSURANCE COMPANIES, ASSET
11 MANAGEMENT COMPANIES AND SPECIALTY FINANCE COMPANIES.

09:10AM

12 Q NOW, DID THERE COME A TIME, BACK IN NOVEMBER
13 OF 2009, WHEN YOU PARTICIPATED IN A MEETING WITH
14 JEFFREY GUNDLACH AND OTHERS?

15 A YES.

09:10AM

16 Q DO YOU RECALL WHEN THAT MEETING OCCURRED?

17 A IT WAS ON NOVEMBER 9TH.

18 Q WHERE DID THE MEETING OCCUR?

19 A THE MEETING OCCURRED IN THE NEW YORK OFFICES
20 OF GOLDMAN SACHS.

09:10AM

21 Q WHERE WERE YOU DURING THE MEETING?

22 A I WAS IN LOS ANGELES, AND I WAS DIALED IN
23 TELEPHONICALLY.

24 Q WAS THERE ANYONE ELSE, TO YOUR KNOWLEDGE,
25 PARTICIPATING TELEPHONICALLY FROM LOS ANGELES?

09:11AM

26 A NO. JUST ME FROM L.A.

27 Q WHO -- FROM WHAT YOU HEARD DURING THE MEETING,
28 WHO ATTENDED THE MEETING IN NEW YORK?

1 A FROM GOLDMAN SACHS, IT WAS TOM CORNACCHIA,
2 PETER ABERG, ERICH BLUHM AND MYSELF.

3 AND THEN MR. GUNDLACH WAS ALSO IN THE
4 ROOM, FROM TCW.

5 Q DO YOU RECALL IF MR. GUNDLACH HAD ANYONE WITH
6 HIM, AS FAR AS YOU COULD TELL FROM THE TELEPHONE?

09:11AM

7 A I DON'T REMEMBER.

8 Q DO YOU RECALL WHETHER SOMEONE NAMED GREG WARD
9 WAS INTRODUCED AT THE START OF THE MEETING?

10 A I DON'T REMEMBER, ALTHOUGH IT'S VERY POSSIBLE
11 THAT HE WAS THERE.

09:11AM

12 Q DO YOU RECALL IF A WOMAN NAMED
13 BARBARA VANEVERY WAS INTRODUCED AT THE BEGINNING OF THE
14 MEETING?

15 A I DON'T RECALL.

09:11AM

16 Q HOW DID THIS MEETING COME TO BE SCHEDULED?

17 MR. BRIAN: OBJECTION. FOUNDATION.

18 THE COURT: SUSTAINED.

19 YOU CAN LAY THE FOUNDATION.

20 BY MR. MADISON:

09:11AM

21 Q WHY DID YOU -- DID YOU CALL NEW YORK, OR DID
22 THEY CALL YOU?

23 A THERE WAS I BRIDGE LINE, AND SO I DIALED INTO
24 THE BRIDGE LINE.

25 Q HAD THIS BEEN SCHEDULED IN ADVANCE?

09:11AM

26 A IT WAS.

27 Q AND SO WHAT -- WHO SCHEDULED IT, AS FAR AS YOU
28 KNOW?

1 MR. BRIAN: OBJECTION. FOUNDATION.

2 THE COURT: IF YOU KNOW, SIR?

3 THE WITNESS: I -- THE MEETING REQUEST CAME IN
4 THROUGH TOM CORNACCHIA'S OFFICE.

5 Q WHO MADE THE MEETING REQUEST? 09:12AM

6 A I BELIEVE THAT'S RIGHT, YES.

7 Q I SAID WHO MADE THE MEETING REQUEST?

8 A TOM CORNACCHIA REQUESTED THE MEETING.

9 Q DID MR. GUNDLACH INITIATE THE REQUEST FOR THE
10 MEETING ITSELF? 09:12AM

11 MR. BRIAN: OBJECTION. FOUNDATION.

12 THE COURT: SUSTAINED.

13 BY MR. MADISON:

14 Q NOW, WHAT WAS THE PURPOSE OF THE MEETING?

15 MR. BRIAN: CALLS FOR SPECULATION. 09:12AM

16 THE COURT: YOU CAN LAY THE FOUNDATION, IF YOU
17 CAN.

18 BY MR. MADISON:

19 Q LET ME ASK IT THIS WAY: WHY DID YOU
20 PARTICIPATE IN THE MEETING? 09:12AM

21 A WHAT I WAS TOLD IS THAT JEFFREY WANTED TO MEET
22 WITH THE INVESTMENT BANKERS.

23 Q WHAT SUBJECT MATTER, IN PARTICULAR, WAS
24 GOLDMAN SACHS PREPARED TO ADDRESS IN THIS MEETING?

25 MR. BRIAN: OBJECTION. HEARSAY, YOUR HONOR. 09:12AM

26 THE COURT: OVERRULED.

27 THE WITNESS: WE CAME PREPARED TO TALK ABOUT
28 THE MORTGAGE REIT ENVIRONMENT.

1 Q WHAT IS A MORTGAGE REIT?

2 A A MORTGAGE REIT INVESTMENT VEHICLE THAT
3 INVESTS IN MORTGAGE ASSETS.

4 Q WERE ANY GOLDMAN SACHS INDIVIDUALS
5 PARTICIPATING IN THE MEETING, SPECIALISTS IN THAT AREA?

09:13AM

6 A YES.

7 Q WHO?

8 A PETER ABERG, ERICH BLUHM AND I WERE EXPERTS IN
9 THE AREA.

10 Q HAD YOU SPOKEN TO MR. GUNDLACH YOURSELF, GIVEN
11 THAT -- YOU'RE HERE IN LOS ANGELES, CORRECT?

09:13AM

12 A YES.

13 Q THIS IS WHERE YOU WORK, GENERALLY?

14 A YES.

15 Q HAD YOU, YOURSELF, SPOKEN TO MR. GUNDLACH
16 BEFORE THE NOVEMBER 9 MEETING?

09:13AM

17 A NO. NOT IN THE RECENT PAST.

18 Q AND SO, WAS THE REASON THAT THE INDIVIDUALS
19 YOU MENTIONED WERE IN THE MEETING WAS BECAUSE THEY HAD
20 THIS MORTGAGE REIT EXPERIENCE?

09:13AM

21 A WE DIDN'T KNOW WHAT THE MEETING WAS FOR. WE
22 SPECULATED ON -- THE LAST SUBSTANTIVE INVESTMENT
23 BANKING CONVERSATION WE HAD WITH TCW GOING BACK A FEW
24 YEARS WAS REGARDING MORTGAGE REIT'S.

25 THERE HAD BEEN A LOT OF ACTIVITY IN THAT
26 SECTOR.

09:14AM

27 AND SO WHEN JEFFREY ASKED FOR A MEETING,
28 WITHOUT SPECIFYING THE TOPIC, WE ASSUMED THAT THAT WAS

1 GOING TO BE THE TOPIC.

2 Q AND THE PEOPLE THAT WERE INVITED TO THAT
3 MEETING HAD THAT IN MIND?

4 A YES.

5 Q NOW, DOES GOLDMAN SACHS OR -- AT THAT TIME,
6 DID GOLDMAN SACHS DO INVESTMENT BANKING WORK, FROM TIME
7 TO TIME, FOR TCW?

09:14AM

8 A YES.

9 Q HAD GOLDMAN SACHS, AS OF THAT TIME, DONE WORK
10 FOR SOCIÉTÉ GÉNÉRALE?

09:14AM

11 A I DON'T KNOW, SPECIFICALLY.

12 Q SO, WERE YOU PRESENT DURING THE ENTIRE
13 MEETING --

14 A YES.

15 Q -- TO YOUR KNOWLEDGE?

09:14AM

16 A YES.

17 Q AND WHAT HAPPENED AT THE BEGINNING OF THE
18 MEETING?

19 A WELL, IT STARTED, AS MEETINGS CUSTOMARILY DO,
20 WITH MILK AND COFFEE AND LUNCH.

09:15AM

21 AND THEN JEFFREY, AFTER EXCHANGING
22 PLEASANTRIES, HE ANNOUNCED THEY WERE CONSIDERING A
23 DEPARTURE FROM TCW.

24 Q THEY DON'T HAVE A WAY, GOLDMAN SACHS, OF
25 GETTING FOOD FOR YOU FROM NEW YORK --

09:15AM

26 A NO. UNFORTUNATELY, I JUST GOT TO LISTEN.

27 Q WHAT DID MR. GUNDLACH SAY, AFTER THE
28 PLEASANTRIES HAD BEEN EXCHANGED, ET CETERA?

1 A I DON'T REMEMBER SPECIFICALLY WHAT HE SAID,
2 BUT IT WAS SOMETHING ALONG THE LINES OF I'M CONSIDERING
3 A DEPARTURE FROM TCW.

4 Q WAS THAT A SURPRISE TO YOU, IN TERMS OF THE
5 SUBJECT MATTER OF THE MEETING? 09:15AM

6 A IT WAS.

7 Q AND WHAT, IF ANYTHING DID MR. GUNDLACH SAY TO
8 YOU IN THAT REGARD, WHAT HE WAS CONSIDERING?

9 A IT WAS REALLY NOT MUCH MORE THAN THAT: I'M
10 CONSIDERING A DEPARTURE FROM TCW. 09:15AM

11 Q DID MR. GUNDLACH TALK ABOUT THE UNDERLYING
12 REASONS WHY HE WAS CONSIDERING DEPARTING TCW?

13 A HE DID.

14 Q DID MR. GUNDLACH MAKE A REQUEST OF
15 GOLDMAN SACHS WITH REGARD TO HIS CONSIDERATION OF
16 LEAVING TCW? 09:16AM

17 A YES.

18 Q WHAT DID HE SAY IN THAT REGARD?

19 A HE ASKED US IF WE WERE AVAILABLE TO ADVISE HIM
20 ON THAT DEPARTURE. 09:16AM

21 Q DID HE TALK ABOUT FORMING A NEW ASSET
22 MANAGEMENT COMPANY IN THAT REGARD?

23 A HE DID.

24 Q WHAT DID HE SAY ABOUT THAT?

25 A HE SAID THAT, AGAIN, HE WAS CONSIDERING A
26 DEPARTURE FROM TCW AND POTENTIALLY FORMING HIS OWN
27 ASSET MANAGEMENT BUSINESS. 09:16AM

28 Q DID MR. GUNDLACH DESCRIBE ANY ALTERNATIVES

1 ABOUT THE -- IN THIS MEETING ON NOVEMBER 9, ABOUT HOW
2 HE MIGHT LEAVE TCW?

3 A HE DID.

4 Q WHAT ALTERNATIVES DID HE SET OUT?

5 A HE TALKED ABOUT WORKING WITHIN THE FRAMEWORK,
6 STAYING AT TCW AND TRYING TO WORK OUT SOME OF THE
7 ISSUES THAT HE HAD WITH TCW AND WITH SOC-GEN.

09:16AM

8 HE TALKED ALSO ABOUT A MORE NEGOTIATED
9 DEPARTURE, WHICH WOULD BE AMICABLE BETWEEN THE TWO
10 PARTIES.

09:17AM

11 Q AND WAS THERE A THIRD ALTERNATIVE THAT WAS
12 ALSO DISCUSSED?

13 A AND THE THIRD ALTERNATIVE WAS TO LEAVE WITHOUT
14 PREVIOUS DISCUSSION WITH TCW AND START HIS OWN
15 BUSINESS.

09:17AM

16 Q WAS THAT SOMETHING THAT MR. GUNDLACH DESCRIBED
17 AS BEING AN ALTERNATIVE THAT HE WAS CONSIDERING?

18 A YES.

19 Q SO IF MR. GUNDLACH WERE TO SAY THAT THERE WAS
20 NEVER A TIME, FROM THE FALL OF 2009, WHERE HE WAS
21 THINKING OF SIMPLY ABRUPTLY DEPARTING TCW, WITHOUT A
22 NEGOTIATION, BASED ON THE STATEMENTS THAT HE MADE TO
23 YOU THAT YOU'VE JUST DESCRIBED, WOULD THAT BE TRUE?

09:17AM

24 MR. BRIAN: ARGUMENTATIVE.

25 THE COURT: SUSTAINED.

09:17AM

26 BY MR. MADISON:

27 Q NOW, HAD GOLDMAN SACHS DECIDED TO WORK WITH
28 MR. GUNDLACH IN REGARD TO THIS NEW SUBJECT MATTER THAT

1 HE HAD DESCRIBED, IN THAT MEETING?

2 A NO.

3 Q DID MR. GUNDLACH SAY WHETHER HE HAD TAKEN ANY
4 STEPS TOWARD FORMING THE NEW ASSET MANAGEMENT COMPANY
5 AS OF THAT TIME, NOVEMBER 9, 2009?

09:18AM

6 A NOT SPECIFICALLY.

7 HE -- I REMEMBER A DISCUSSION ABOUT
8 POTENTIALLY LOOKING FOR OFFICE PROPERTY, BUT IT WAS IN
9 PASSING.

10 AND IT WAS NOT CLEAR TO US, OR AT LEAST
11 NOT TO ME, WHETHER THAT WAS BEING CONSIDERED OR UNDER
12 WAY.

09:18AM

13 Q DO YOU RECALL MR. GUNDLACH SAYING HE WAS
14 ALREADY LOOKING FOR OFFICE SPACE?

15 A I DON'T REMEMBER HIM SPECIFICALLY SAYING THAT.

09:18AM

16 Q OKAY.

17 YOU HAVE ONE OF THE ITEMS IN FRONT OF
18 YOU, SIR, IT SHOULD BE YOUR DEPOSITION FROM MARCH 22,
19 2011.

20 A UH-HUH.

09:18AM

21 Q DO YOU HAVE THAT BEFORE YOU?

22 A I DO.

23 Q I WOULD ASK YOU JUST TO LOOK AT PAGE 105. AND
24 IF YOU COULD JUST READ TO YOURSELF, SIR, THE PART AT
25 105, FROM LINE 14 TO LINE 20.

09:18AM

26 THE COURT: LINE WHAT?

27 MR. MADISON: LINE 14 TO LINE 20, YOUR HONOR.
28 JUST TO REFRESH THE WITNESS'S RECOLLECTION.

1 THE COURT: THANK YOU.

2 MR. MADISON: IF YOU NEED TO READ AHEAD OR A
3 BIT PAST, FEEL FREE TO DO THAT.

4 THE WITNESS: OKAY.

5 BY MR. MADISON:

09:19AM

6 Q DOES THAT REFRESH YOUR RECOLLECTION ABOUT WHAT
7 MR. GUNDLACH SAID ABOUT LOOKING FOR OFFICE SPACE?

8 A IT DOES, ALTHOUGH IT FEELS SEMANTIC.

9 HE WAS CLEARLY TALKING ABOUT IT. I JUST
10 DON'T KNOW IF I WAS LOOKING -- I DON'T REMEMBER IF HE
11 WAS LOOKING ALREADY.

09:19AM

12 Q DO YOU RECALL -- YOUR HONOR, I'D LIKE TO READ,
13 THEN, LINES 16 THROUGH 20 OF THE WITNESS'S DEPOSITION.

14

15 (PAUSE) +

09:19AM

16

17 THE COURT: ANY OBJECTION?

18 MR. BRIAN: I THINK HE SHOULD READ FROM 16 TO
19 24, YOUR HONOR.

20 MR. MADISON: THAT'S FINE, YOUR HONOR.

09:20AM

21 THE COURT: YOU MAY PROCEED.

22 MR. MADISON:

23 QUESTION: AND WHAT DID HE SAY
24 ABOUT LOOKING FOR OFFICE SPACE?

25 ANSWER: JUST THAT -- THAT THEY
26 WERE LOOKING FOR OFFICE SPACE IN
27 THE EVENT THEY SEPARATED, TO BE
28 USED IN THE EVENT THAT THEY

09:20AM

1 SEPARATED FROM TCW.

2 QUESTION: DID MR. GUNDLACH
3 DESCRIBE ANY OTHER STEPS THAT HE
4 HAD TAKEN TO PREPARE FOR A
5 POTENTIAL SEPARATION FROM TCW?

09:20AM

6 ANSWER: I DON'T REMEMBER.

7 Q WERE THOSE TWO OF THE QUESTIONS YOU WERE ASKED
8 AND TWO OF THE ANSWERS YOU GAVE IN YOUR DEPOSITION?

9 A YES.

10 Q NOW, ULTIMATELY -- WELL, LET ME JUST STOP.

09:20AM

11 AS OF THE END OF THE NOVEMBER 9 MEETING,
12 WHAT, IF ANYTHING, DID GOLDMAN SACHS DECIDE TO DO
13 REGARDING THIS REQUEST THAT MR. GUNDLACH HAD MADE TO
14 REPRESENT HIM IN SEPARATING FROM TCW?

15 A WE TOLD MR. GUNDLACH THAT WE WOULD CONSIDER
16 HIS REQUEST AND COME BACK TO HIM.

09:20AM

17 Q HAD ANY DECISION BEEN MADE AT GOLDMAN SACHS AT
18 THAT TIME?

19 A ON NOVEMBER 9TH.

20 Q YES, SIR?

09:21AM

21 A NO.

22 Q WAS SUBSEQUENTLY A DECISION MADE --

23 A YES.

24 Q ABOUT THAT?

25 WHAT WAS THE DECISION ON THE PART OF
26 GOLDMAN SACHS?

09:21AM

27 A THAT WE COULDN'T REPRESENT JEFFREY.

28 Q WHY NOT?

1 A THERE WERE A VARIETY OF REASONS.

2 BUT WE WERE -- NO. 1, IT WASN'T OBVIOUS
3 TO US THAT WE COULD ACTUALLY ADVISE JEFFREY AND ADD
4 VALUE TO WHAT HE WAS THINKING ABOUT.

5 NO. 2, WE WERE WORRIED ABOUT, WE HAD
6 RELATIONSHIPS WITH SOC-GEN AND TCW. AND WE WERE
7 WORRIED ABOUT BALANCING THOSE RELATIONSHIPS OR THE
8 POTENTIAL CONFLICTS OF WHAT DIRECTION JEFFREY MIGHT GO.

09:21AM

9 AND WE WERE ALSO CONCERNED ABOUT THE
10 REPUTATIONAL RISKS OF A HIGH PROFILE DEPARTURE FROM
11 TCW.

09:21AM

12 Q IN THE MEETING OF NOVEMBER 9, WAS ANYTHING
13 SAID ABOUT WHETHER DEPARTURE FROM TCW BY MR. GUNDLACH
14 AND OTHERS COULD HARM TCW?

15 A I DON'T REMEMBER.

09:22AM

16 Q WAS THAT SOMETHING THAT WAS DISCUSSED
17 INTERNALLY AT GOLDMAN SACHS AFTER THE NOVEMBER 9
18 MEETING?

19 A YES.

20 Q DID THERE COME A TIME -- THIS IS JUST A YES OR
21 NO QUESTION -- DID THERE COME A TIME WHEN GOLDMAN SACHS
22 THEN MADE THAT DECISION TO NOT BE INVOLVED WITH
23 MR. GUNDLACH?

09:22AM

24 A YES.

25 Q WAS THAT TIME BEFORE DECEMBER 1, 2009?

09:22AM

26 A YES.

27 Q NOW, IN THE NOVEMBER 9 MEETING, DID THE
28 SUBJECT OF WHETHER OR NOT MR. GUNDLACH HAD AN

1 EMPLOYMENT AGREEMENT AT THAT TIME, WITH TCW, COME UP?

2 A I'M SORRY. I MISSED WHAT TIME FRAME.

3 Q NOVEMBER 9, GOING BACK TO THAT NOVEMBER 9
4 MEETING?

5 A OKAY.

09:22AM

6 Q IN THAT MEETING YOU DESCRIBED FOR US, DID THE
7 SUBJECT OF WHETHER MR. GUNDLACH HAD AN EMPLOYMENT
8 CONTRACT OR NOT WITH TCW COME UP?

9 A IT DID.

10 Q AND WHO RAISED THAT SUBJECT?

09:23AM

11 A I REMEMBER JEFFREY RAISING THAT SUBJECT.

12 Q WHAT DO YOU RECALL MR. GUNDLACH SAYING ABOUT
13 THAT, ON NOVEMBER 9, 2009?

14 A I JUST REMEMBER HIM SAYING THAT HE DID NOT
15 HAVE AN EMPLOYMENT AGREEMENT WITH TCW.

09:23AM

16 MR. MADISON: NOTHING FURTHER AT THIS TIME,
17 YOUR HONOR.

18 THE COURT: MR. BRIAN, CROSS-EXAMINATION?

19 MR. BRIAN: YES, YOUR HONOR.

09:23AM

20
21 CROSS-EXAMINATION +

22

23 BY MR. BRIAN:

24 Q GOOD MORNING MR. OWENS?

25 A GOOD MORNING.

09:23AM

26 Q GOOD MORNING, LADIES AND GENTLEMEN.

27 WE HAVEN'T MET BEFORE, HAVE WE, SIR?

28 A WE HAVE NOT.

1 Q NOW, I THINK YOU TESTIFIED THAT YOU
2 PARTICIPATED BY PHONE IN A MEETING ON NOVEMBER 9TH,
3 2009 WITH MR. GUNDLACH AND SOME OTHER INDIVIDUALS; IS
4 THAT CORRECT?

5 A YES.

09:24AM

6 Q AND I THINK YOU UNDERSTAND AT THAT MEETING,
7 THAT MR. GUNDLACH WAS SEEKING ADVICE FROM GOLDMAN SACHS
8 AS TO -- WHEN YOU GOT TO THE MEETING, AND PARTICIPATED
9 IN THE CONVERSATIONS, YOU UNDERSTOOD THAT HE WAS
10 SEEKING ADVICE FROM GOLDMAN SACHS, RIGHT?

09:24AM

11 A YES.

12 Q AND HE TOLD YOU IN THAT MEETING THAT HE'D BEEN
13 AT TCW FOR 20, ALMOST 25 YEARS, DIDN'T HE?

14 A YES.

15 Q AND HE DISCUSSED SOME OF THE FRUSTRATIONS HE
16 WAS HAVING WITH TCW, AND ALSO SOCIÉTÉ GÉNÉRALE, DID HE
17 NOT?

09:24AM

18 A HE DID.

19 Q AND HE TALKED ABOUT HOW HE AND SOME OF THE
20 OTHER PORTFOLIO MANAGERS HAD MADE SOME EFFORT TO TRY TO
21 SEPARATE TCW FROM THE FRENCH BANK, DIDN'T HE?

09:24AM

22 A HE DID. HE TALKED ABOUT -- YES, HE DID.

23 Q AND HE SAID HE FELT VERY BAD ABOUT THE
24 SITUATION, DIDN'T HE?

25 A HE DID.

09:25AM

26 Q I THINK MR. MADISON ASKED YOU ABOUT THE
27 ALTERNATIVES HE TALKED ABOUT, WHICH WERE LEAVING,
28 NEGOTIATING A SEPARATION, AND STAYING, RIGHT?

1 A YES.

2 Q AND FROM THE WORDS HE USED, AND TO THE EXTENT
3 YOU CAN PERCEIVE BODY LANGUAGE OVER THE PHONE, YOU
4 UNDERSTOOD HIS PREFERENCE WAS TO STAY, RIGHT?

5 MR. MADISON: OBJECT TO THE FORM.

09:25AM

6 THE COURT: OVERRULED.

7 THE WITNESS: YES.

8 BY MR. BRIAN:

9 Q AND YOU DON'T EVER REMEMBER HIM SAYING THAT HE
10 WOULD LEAVE WITHOUT GIVING NOTICE, DO YOU, SIR?

09:25AM

11 A NO, I DON'T REMEMBER HIM SAYING THAT
12 SPECIFICALLY.

13 Q NOW, YOU SAID THAT THERE WAS SOME DISCUSSION
14 ABOUT AN EMPLOYMENT AGREEMENT.

15 MR. MADISON: OBJECTION. THAT MISSTATES THE
16 TESTIMONY.

09:25AM

17 MR. BRIAN: I'M JUST --

18 THE COURT: IT'S A PREAMBLE.

19 JUST ASK A QUESTION.

20 MR. BRIAN: I WILL.

09:25AM

21 Q YOU DON'T REMEMBER, IN WHATEVER DISCUSSION
22 THERE WAS, MR. GUNDLACH SAID WHETHER OR NOT HE WAS
23 SUBJECT TO A NON-COMPETE PROVISION, DO YOU?

24 A I DO NOT.

25 Q I THINK YOU TESTIFIED -- WELL, IS IT YOUR
26 RECOLLECTION THAT HE RAISED THE SUBJECT OF THE
27 EMPLOYMENT AGREEMENT?

09:26AM

28 A YES.

1 Q TAKE A LOOK AT PAGE 46 OF YOUR DEPOSITION.

2 ACTUALLY I WOULD JUST ASK YOU TO READ
3 PAGE 46 LINE 11 THROUGH 17, YOUR HONOR.

4 MR. MADISON: IT SHOULD BE FROM LINE 1, YOUR
5 HONOR.

09:26AM

6 THE COURT: ALL RIGHT. IT'S PAGE 46, LINE 1,
7 TO 17, IS WHAT YOU'RE ASKING FOR?

8 MR. BRIAN: ACTUALLY, WELL THEN I'LL READ FROM
9 45, LINE 23, TO 46 LINE 17.

10 THE COURT: ANY OBJECTION?

09:27AM

11 MR. MADISON: NO, YOUR HONOR.

12 THE COURT: YOU MAY PROCEED.

13 MR. BRIAN: PAGE 45, LINE 23.

14 QUESTION: OKAY. DID MR. GUNDLACH
15 DISCUSS WHETHER HE HAD A CONTRACT
16 WITH TCW?

09:27AM

17 ANSWER: I DON'T REMEMBER.

18 QUESTION: DO YOU REMEMBER IF
19 ANYONE FROM GOLDMAN SACHS ASKED HIM
20 ABOUT THAT SUBJECT DURING THE
21 MEETING?

09:27AM

22 ANSWER: I'M SORRY. I'M SORRY. I
23 WANT TO -- I GOT TO WITHDRAW THAT
24 STATEMENT. HE DID. WHEN YOU SAY
25 CONTRACT, HE DID SAY HE HAD NO
26 EMPLOYMENT AGREEMENT.

09:27AM

27 QUESTION: MR. GUNDLACH SAID THAT
28 HE HAD NO EMPLOYMENT AGREEMENT WITH

1 TCW DURING THAT MEETING?

2 ANSWER: YES.

3 QUESTION: OKAY. HAD GOLDMAN SACHS
4 ASKED HIM A QUESTION THAT --

5 ANSWER: I DON'T REMEMBER. 09:27AM

6 QUESTION: OKAY. SO YOU DON'T
7 REMEMBER IF GUNDLACH VOLUNTEERED
8 THAT, OR IF IT WAS IN RESPONSE TO A
9 QUESTION?

10 ANSWER: I DON'T REMEMBER. 09:27AM

11 Q THAT WAS YOUR TESTIMONY AT YOUR DEPOSITION,
12 SIR.

13 A YES.

14 Q NOW, I TAKE IT, FROM THE WORDS THAT
15 MR. GUNDLACH USED AT THE MEETING, YOU UNDERSTOOD HIM TO
16 SAY THAT HE DIDN'T HAVE A SIGNED EMPLOYMENT CONTRACT,
17 RIGHT? 09:27AM

18 MR. MADISON: OBJECTION. YOUR HONOR.

19 FACTS NOT IN EVIDENCE --

20 THE COURT: SUSTAINED. 09:28AM

21 BY MR. BRIAN:

22 Q WELL, FROM THE WORDS HE USED, DID YOU
23 UNDERSTAND HIM TO BE SAYING HE DIDN'T HAVE A SIGNED
24 CONTRACT?

25 MR. MADISON: THAT'S THE EXACT SAME 09:28AM

26 QUESTION --

27 THE COURT: IT IS THE SAME QUESTION.

28 YOU CAN ASK HIM WHAT HE UNDERSTOOD.

1 BY MR. BRIAN:

2 Q WAS THERE ANY DISCUSSION, FOR EXAMPLE, AT THE
3 MEETING, ABOUT THE TERMS, CIRCUMSTANCES UNDER WHICH HE
4 COULD BE TERMINATED?

5 MR. MADISON: OBJECTION. ASSUMES FACTS NOT IN
6 EVIDENCE.

7 THE COURT: OVERRULED.

8 MR. BRIAN: YOU CAN ANSWER.

9 THE WITNESS: I'M SORRY.

09:28AM

09:28AM

10 BY MR. BRIAN:

11 Q WAS THERE ANY DISCUSSION AT ALL ABOUT THE
12 MEETING UNDER WHICH THE TERMS HE COULD BE TERMINATED
13 FROM HIS EMPLOYMENT AT TCW?

14 A NO.

15 Q WAS THERE ANY DISCUSSION ABOUT HIS AGREED-UPON
16 COMPENSATION TERMS?

17 A NO.

18 Q OKAY.

19 WAS THERE ANY DISCUSSION ABOUT WHETHER
20 HE HAD AN ACTUAL DOCUMENT THAT HE HAD SIGNED OR NOT?

21 A NOT THAT I REMEMBER.

22 Q I TAKE IT WHEN THE QUESTION WAS FIRST ASKED AT
23 YOUR DEPOSITION, ABOUT WHETHER MR. GUNDLACH DISCUSSED
24 WHETHER HE HAD A CONTRACT, YOU SAID YOU DIDN'T
25 REMEMBER, RIGHT?

26 A YES.

27 Q AND THEN YOU CORRECTED IT?

28 A YES.

09:28AM

09:29AM

09:29AM

1 MR. MADISON: OBJECTION. THAT MISSTATES THE
2 TESTIMONY.

3 THE COURT: THE ANSWER WILL STAND.
4 BY MR. BRIAN:

5 Q I TAKE IT THAT ONE OF THE THINGS YOU DISCUSSED 09:29AM
6 WITH HIM AT THAT MEETING WAS IF HE DECIDED THAT HE
7 COULDN'T WORK IT OUT AT TCW, AND HE DECIDED TO LEAVE,
8 THE VALUE -- YOU DISCUSSED THE VALUE OF NEGOTIATING AN
9 AMICABLE SEPARATION, DIDN'T YOU?

10 MR. MADISON: OBJECTION. VAGUE AS TO TIME. 09:29AM

11 MR. BRIAN: FIRST WITH THE NOVEMBER 9TH
12 MEETING.

13 Q THAT WAS ONE OF THE ALTERNATIVES YOU DISCUSSED
14 WITH MR. GUNDLACH WAS NEGOTIATING AN AMICABLE
15 SEPARATION, WAS IT NOT? 09:30AM

16 A YES.

17 Q AND AFTER YOU HAD THE MEETING, YOU CAUCUSED
18 INTERNALLY AT GOLDMAN SACHS AND DISCUSSED THINGS LIKE,
19 COULD YOU ADVISE MR. GUNDLACH, IN LIGHT OF
20 GOLDMAN SACHS' RELATIONSHIPS WITH SOCIÉTÉ GÉNÉRALE AND 09:30AM
21 TCW, RIGHT?

22 A YES.

23 Q AND THEN YOU SCHEDULED ANOTHER CALL WITH
24 MR. GUNDLACH ON DECEMBER 1ST, RIGHT?

25 A YES. 09:30AM

26 Q AND YOU PARTICIPATED IN THAT CALL BY PHONE,
27 DID YOU NOT?

28 A YES.

1 Q AND DURING THAT CALL, YOU TOLD MR. GUNDLACH
2 THAT YOU COULDN'T REPRESENT HIM, RIGHT?

3 A YES.

4 Q YOU ALSO ADVISED HIM THAT IF HE WERE TO DECIDE
5 TO LEAVE, YOUR STRONG ADVICE WOULD BE THAT HE NEGOTIATE
6 A SEPARATION, CORRECT?

09:30AM

7 A YES.

8 Q AND HE AGREED WITH THAT, DIDN'T HE, SIR?

9 A YES.

10 MR. BRIAN: NOTHING FURTHER.

09:30AM

11 THE COURT: ANYTHING ELSE, MR. MADISON?

12 MR. MADISON: YES.

13

14 REDIRECT EXAMINATION +

15

09:30AM

16 BY MR. MADISON:

17 Q SO IN THIS MEETING OF DECEMBER 1ST, YOU
18 PARTICIPATED IN THAT MEETING?

19 A I DID.

20 Q AND BY THAT TIME, GOLDMAN SACHS HAD CHOSEN
21 TO -- INTERNALLY, THEY DECIDED NOT TO BE INVOLVED?

09:31AM

22 A YES.

23 Q WAS THAT EXPRESSED TO MR. GUNDLACH AT ANY TIME
24 IN THE DECEMBER 1 MEETING?

25 A YES.

09:31AM

26 Q WHEN, IN THE MEETING?

27 A AT THE VERY OUTSET OF THE MEETING.

28 Q SO THE VERY FIRST THING THAT WAS SAID ON

1 DECEMBER 1, WAS WHAT?

2 A WAS THAT WE WERE NOT IN A POSITION TO
3 REPRESENT JEFFREY.

4 Q DID YOU SAY WHY NOT?

5 A I DON'T REMEMBER.

09:31AM

6 Q LET ME ASK YOU TO LOOK AT YOUR DEPOSITION
7 TRANSCRIPT.

8 I'D ASK YOU TO LOOK AT PAGE 82.

9 ACTUALLY START AT 81, SIR, IF YOU WOULD,
10 AND ANY PART BEFORE OR AFTER THAT MIGHT REFRESH YOUR
11 RECOLLECTION. BUT I WOULD ASK YOU TO LOOK AT 81,
12 LINE 17, OVER TO 82 LINE 18.

09:32AM

13 A OKAY.

14 Q DOES THAT REFRESH YOUR RECOLLECTION AS TO WHAT
15 WAS SAID RIGHT AT THE BEGINNING OF THAT DECEMBER 1
16 MEETING?

09:32AM

17 A NO.

18 Q DID YOU TELL MR. GUNDLACH THAT GOLDMAN SACHS
19 WAS NOT IN A POSITION TO ADVISE JEFFREY ON HIS
20 DEPARTURE?

09:32AM

21 A YES.

22 Q DID YOU TELL MR. GUNDLACH AT THAT TIME THAT
23 HIS DEPARTURE COULD HAVE A PROFOUND NEGATIVE IMPACT ON
24 TCW'S BUSINESS, IF IT WERE NOT AMICABLE?

25 A YES.

09:33AM

26 Q AND WAS THIS BEFORE YOU OR OTHERS FROM
27 GOLDMAN SACHS, IN THAT MEETING, LAID OUT THE
28 ALTERNATIVES THAT YOU THOUGHT WOULD BE APPROPRIATE FOR

1 MR. GUNDLACH TO PURSUE?

2 A THAT WAS BEFORE WE LAID OUT THOSE
3 ALTERNATIVES.

4 Q IF YOU NEED TO LOOK AT THE BOTTOM OF PAGE 82
5 TO REFRESH YOUR RECOLLECTION.

09:33AM

6 MY QUESTION IS, FIRST YOU INFORMED HIM
7 YOU WOULDN'T REPRESENT HIM, AND SOME OF THE REASONS
8 WHY.

9 AND THEN YOU LAID OUT ALTERNATIVES ABOUT
10 HOW YOU THOUGHT HE SHOULD PROCEED, ALTHOUGH IT WAS
11 GOING TO BE WITHOUT GOLDMAN SACHS, RIGHT?

09:33AM

12 A THAT'S CORRECT.

13 Q AND IT WAS AFTER THAT TIME, IN THAT DECEMBER 1
14 MEETING, THAT MR. GUNDLACH SAID THAT HE AGREED WITH THE
15 ALTERNATIVES THAT GOLDMAN SACHS WAS LAYING OUT,
16 CORRECT?

09:34AM

17 A YES.

18 Q DID YOU EVER HEAR FROM MR. GUNDLACH AFTER THAT
19 MEETING?

20 A I DID NOT.

09:34AM

21 Q WAS GOLDMAN SACHS INVOLVED IN ANY WAY, SHAPE
22 AND FORM, IN THE FINANCING OF DOUBLE LINE?

23 MR. BRIAN: OBJECTION. FOUNDATION, YOUR
24 HONOR.

25 THE COURT: SUSTAINED.

09:34AM

26 BY MR. MADISON:

27 Q TO YOUR KNOWLEDGE, BEING HERE IN THE L.A.
28 OFFICE, I TAKE IT, AS AN INVESTMENT BANKER IN THE

1 FINANCIAL INSTITUTION AREA HERE IN LOS ANGELES, YOU DO
2 HAVE GENERAL KNOWLEDGE OF WHAT DEALS FOR L.A. ASSET
3 MANAGERS GOLDMAN SACHS IS INVOLVED IN?

4 A OFTEN. NOT ALWAYS.

5 Q TO YOUR KNOWLEDGE, WAS GOLDMAN SACHS INVOLVED
6 IN THE FINANCING OF MR. GUNDLACH'S BUSINESS, DOUBLE
7 LINE?

09:34AM

8 A NO.

9 Q WITH REGARD TO THE DISCUSSION OF THE
10 EMPLOYMENT AGREEMENT MR. BRIAN ASKED YOU ABOUT, THINGS
11 LIKE WRITTEN AGREEMENTS, OR SPECIFIC TERMS, IS YOUR
12 TESTIMONY STILL THAT MR. GUNDLACH VOLUNTEERED, I HAVE
13 NO EMPLOYMENT WITH -- I HAVE NO EMPLOYMENT AGREEMENT
14 WITH TCW?

09:34AM

15 MR. BRIAN: OBJECTION, ARGUMENTATIVE.

09:35AM

16 THE COURT: SUSTAINED.

17 BY MR. MADISON:

18 Q WHAT DO YOU RECALL WHAT MR. GUNDLACH SAID, TO
19 THE FULL EXTENT OF YOUR MEMORY, ON THAT TOPIC?

20 MR. BRIAN: OBJECTION. CUMULATIVE --

09:35AM

21 THE COURT: SUSTAINED.

22 BY MR. MADISON:

23 Q MR. BRIAN ASKED YOU ABOUT WRITTEN AGREEMENTS.

24 DO YOU RECALL ANY DISTINCTION

25 MR. GUNDLACH MADE BETWEEN WRITTEN CONTRACTS OR SOME
26 OTHER KIND OF CONTRACT, WHEN HE TOLD YOU, I DO NOT HAVE
27 EMPLOYMENT AGREEMENT WITH TCW?

09:35AM

28 MR. BRIAN: CUMULATIVE, ASKED AND ANSWERED.

1 THE COURT: OVERRULED.

2 THE WITNESS: I DON'T REMEMBER HIM MAKING A
3 DISTINCTION LIKE THAT.

4 MR. MADISON: NOTHING FURTHER YOUR HONOR.

5 THE COURT: BECAUSE YOU'RE UP, MR. BRIAN, YOU
6 GOT ANOTHER QUESTION.

09:35AM

7 MR. BRIAN: I DO, YOUR HONOR. I DIDN'T WANT
8 TO DISAPPOINT YOU.

9

10 RE CROSS EXAMINATION +

09:35AM

11 BY MR. BRIAN:

12 Q ON THE DECEMBER 1ST, WHEN YOU WENT BACK TO
13 MR. GUNDLACH AND TOLD HIM THAT HE -- THAT YOU COULDN'T
14 REPRESENT HIM, YOU ACTUALLY DID GET INTO A DISCUSSION
15 OF THE ALTERNATIVES THAT HE MIGHT THINK ABOUT, RIGHT?

09:36AM

16 A WE DID.

17 Q AND THE THREE ALTERNATIVES YOU TALKED ABOUT ON
18 DECEMBER 1ST WERE, ONE, STAYING AT TCW, AND TRYING TO
19 FIX THE PROBLEM.

20 THAT WAS ONE, CORRECT?

09:36AM

21 A YES.

22 Q WORKING WITH TCW AND OTHER MANAGERS THERE TO
23 TRY TO SEPARATE IT FROM SOCIÉTÉ GÉNÉRALE; THAT WAS THE
24 SECOND ALTERNATIVE, CORRECT?

25 A YES.

09:36AM

26 Q AND THE THIRD WAS TO NEGOTIATE AN AMICABLE
27 SEPARATION, CORRECT?

28 A I'M SORRY. I LOST THAT. I THOUGHT THAT WAS

1 NO. 2?

2 Q NO. 1 --

3 A YEAH.

4 Q IF YOU NEED TO REFRESH YOUR RECOLLECTION, I
5 CAN POINT YOU TO YOUR DEPOSITION.

09:36AM

6 A OKAY.

7 Q ON THE BOTTOM OF PAGE 144?

8 A YEP.

9 Q STARTING WITH LINE 17, OVER TO 145, TOP OF
10 PAGE 5.

09:36AM

11 (PAUSE) +

12

13 THE WITNESS: YES, OKAY.

14 MR. BRIAN: OKAY.

15 Q SO THE THREE ALTERNATIVES YOU DISCUSSED WITH
16 MR. GUNDLACH WERE, WORKING WITHIN THE CONTRACT OF TCW
17 TO TRY TO FIX THE PROBLEMS, RIGHT?

09:37AM

18 A YES.

19 Q WORKING WITH OTHERS AT TCW TO TRY TO SEPARATE
20 THE COMPANY FROM THE FRENCH BANK, RIGHT?

09:37AM

21 A YES.

22 Q AND THE THIRD WAS NEGOTIATING A SEPARATION
23 AMICABLY, CORRECT?

24 A YES.

25 Q THERE WAS NO CONSIDERATION BEING DISCUSSED AT
26 THAT MEETING ABOUT MR. GUNDLACH JUST LEAVING THE
27 COMPANY WITHOUT NEGOTIATING SEPARATION, CORRECT?

09:37AM

28 A YES.

1 MR. BRIAN: NOTHING FURTHER.

2 THE COURT: ANYTHING ELSE, MR. MADISON?

3 MR. MADISON: ONE QUESTION, YOUR HONOR.

4 THE COURT: "ONE QUESTION" OR "NO QUESTIONS"?

5 MR. MADISON: ONE QUESTION.

09:37AM

6 THE COURT: OKAY.

7

8 FURTHER RE-DIRECT EXAMINATION +

9

10 BY MR. MADISON:

09:37AM

11 Q PART A, I DO JUST HAVE ONE QUESTION.

12 ALL THIS DISCUSSION THAT MR. BRIAN JUST
13 TALKED ABOUT, THAT OCCURRED AFTER GOLDMAN SACHS TOLD
14 MR. GUNDLACH, WE CAN'T BE INVOLVED WITH YOU IN PART
15 BECAUSE OF OUR RELATIONSHIP WITH TCW --

09:38AM

16 A YES.

17 MR. MADISON: THANK YOU.

18 MR. BRIAN: TO YOUR KNOWLEDGE, DID HE LEAVE
19 THE COMPANY, OR GET FIRED?

20 THE COURT: YOU KNOW, THIS CAN ONLY GO ON SO
21 LONG.

09:38AM

22 THAT QUESTION ISN'T NECESSARY.

23 MR. BRIAN: NO FURTHER QUESTIONS, YOUR HONOR.

24 THE COURT: THANK YOU.

25 MR. OWENS, THANK YOU FOR COMING IN.

09:38AM

26 THANK YOU FOR YOUR TESTIMONY.

27 THE WITNESS: OKAY. MY PLEASURE.

28 MR. BRIAN: I THOUGHT IF I COULD GET AWAY WITH

1 IT, IF I SAT HERE.

2 MR. MADISON: YOUR HONOR, AT THIS TIME TCW
3 WOULD LIKE TO READ INTO THE RECORD A STIPULATION OF
4 CERTAIN FACTS REGARDING CERTAIN FACTS THAT HAD BEEN
5 AGREED TO AND STIPULATED BY THE PARTIES.

09:38AM

6 THE COURT: ALL RIGHT.

7 LADIES AND GENTLEMEN A STIPULATION, AS I
8 TOLD YOU EARLIER, IS AN AGREEMENT BETWEEN THE PARTIES
9 AS TO CERTAIN EVIDENCE AND FACTUAL STATEMENTS.

10 MR. MADISON IS GOING TO READ A STIPULATION.

09:38AM

11 YOU MUST ACCEPT THOSE FACTS AS HAVING
12 BEEN CONCLUSIVELY PROVED, AS THE PARTIES AGREED.

13 MR. MADISON: YOUR HONOR, THERE ARE FIVE
14 EXHIBITS WE MOVED INTO EVIDENCE. AND I'D LIKE
15 YOUR HONOR'S PERMISSION TO DISPLAY THOSE, AS WE GET TO
16 THE PART OF THE STIPULATION WHERE WE TALK ABOUT THOSE
17 JUST BRIEFLY, SO --

09:39AM

18 THE COURT: DO I HAVE A COPY OF THE
19 STIPULATION?

20 MR. MADISON: I BELIEVE WE PROVIDED ONE TO
21 MR. SABALBURO, BUT I CAN PROVIDE ANOTHER ONE.

09:39AM

22 MR. BRIAN: MAY I CONSULT WITH COUNSEL?

23 THE COURT: I WANT TO MAKE SURE I'M ON THE
24 RIGHT STIPULATION.

25 MR. MADISON: I HAVE AN EXTRA COPY, IF IT'S
26 EASIER.

09:39AM

27

28 (COUNSEL CONFER SOTTO VOCE.) +

1
2 THE COURT: IS THIS THE STIPULATION OF
3 EXHIBITS 157, 162, 164?

4 MR. MADISON: 168 AND 176, YES, YOUR HONOR.

5 THE COURT: OKAY.

09:39AM

6 (PAUSE) +
7

8 THE COURT: ACTUALLY, MR. MADISON, YOU MAY
9 READ THE STIP. I SUGGEST WE JUST MARK THE STIPULATION
10 AS AN EXHIBIT, ADMIT IT IN EVIDENCE, AND MAKE IT
11 AVAILABLE.

09:40AM

12 MR. MADISON: I WOULD HOPE WE COULD DO THAT.

13 BUT BRIEFLY, AS I'M READING THE PART OF
14 THE STIPULATION THAT'S DESCRIBING THE EXHIBITS, I'D
15 LIKE TO JUST SHOW THE EXHIBITS AGAIN, SO THE JURY HAS
16 IN MIND WHAT THE FACTUAL STIPULATION CONCERNS.

09:40AM

17 THE COURT: ALL RIGHT. GO AHEAD.

18 MR. MADISON: THANK YOU, YOUR HONOR.

19 IT'S ON THE CAPTION FOR THIS LAWSUIT,
20 AND IT READS:

09:40AM

21 PLAINTIFFS AND CROSS-DEFENDANTS
22 TRUST COMPANY OF THE WEST, TCW
23 ASSET MANAGEMENT COMPANY, TCW
24 INVESTMENT MANAGEMENT COMPANY AND
25 TCW SPECIAL MORTGAGE CREDIT FUND
26 TWO G P LLC COLLECTIVELY TCW, AND
27 DEFENDANTS AND CROSS-COMPLAINANTS
28 JEFFREY GUNDLACH, BARBARA

09:40AM

1 VAN EVERY, CRIS SANTA ANA, AND
2 JEFFREY MAYBERRY, AND DEFENDANT
3 DOUBLE LINE CAPITAL LP,
4 COLLECTIVELY DEFENDANTS BY AND
5 THROUGH THEIR RESPECTIVE COUNSEL OF
6 RECORD, HEREBY STIPULATE TO THE
7 FOLLOWING FACTS: ONE,
8 TERRY SANCHEZ IS AN ATTORNEY, AND
9 IS A PARTNER IN A LOS ANGELES LAW
10 FIRM. MR. SANCHEZ PRACTICES
11 EMPLOYMENT LAW, DEFENDING
12 CORPORATIONS FOR CLAIMS BY
13 EMPLOYEES FOR DISCRIMINATION,
14 WRONGFUL DISCHARGE AND CLAIMS
15 RELATED TO WAGES AND COMPENSATION.

09:41AM

09:41AM

09:41AM

16 TWO, PERIODICALLY, OVER THE
17 LAST FIVE TO SEVEN YEARS,
18 MR. SANCHEZ HAS PERFORMED LEGAL
19 WORK FOR WESTERN ASSET MANAGEMENT
20 CO., WAMCO. IN MARCH 2009, WAMCO
21 ASKED MR. SANCHEZ TO PROVIDE LEGAL
22 ADVICE TO WAMCO REGARDING THE
23 POSSIBLE EMPLOYMENT BY WAMCO OF
24 JEFFREY GUNDLACH. WAMCO SOUGHT TO
25 MAKE SURE THAT NEGOTIATING WITH
26 MR. GUNDLACH ABOUT HIS POTENTIAL
27 EMPLOYMENT AT WAMCO --

09:41AM

09:42AM

28 THE COURT: EXCUSE ME. "POSSIBLE."

1 MR. MADISON: PARDON ME. THE WORD IS
2 POSSIBLE.

3 THE COURT: THE WORD "POSSIBLE".

4 MR. MADISON: I APOLOGIZE. DID I SAY
5 POTENTIAL ...

09:42AM

6 WAMCO SOUGHT TO MAKE SURE
7 NEGOTIATING WITH MR. GUNDLACH ABOUT
8 HIS POSSIBLE EMPLOYMENT AT WAMCO
9 DID NOT VIOLATE ANY CONTRACTUAL
10 OBLIGATIONS OWED BY MR. GUNDLACH TO
11 TCW. MR. SANCHEZ GAVE WAMCO ADVICE
12 REGARDING LEGAL ISSUES THAT COULD
13 ARISE IN CONNECTION WITH HAVING
14 EMPLOYMENT DISCUSSIONS WITH SOMEONE
15 WHO -- IT SAYS HAS, BUT I BELIEVE
16 IT SHOULD BE WAS -- EMPLOYED AT
17 ANOTHER FIRM.

09:42AM

09:42AM

18 THREE, IN MARCH AND APRIL, 2009,
19 MR. SANCHEZ HAD COMMUNICATIONS WITH
20 JEFFREY GUNDLACH'S EMPLOYMENT
21 ATTORNEY, IRA GROSS, OF THE LAW
22 FIRM SULLIVAN & WORCESTER.

09:42AM

23 MR. SANCHEZ AND MR. GROSS HAD
24 BETWEEN THREE AND TEN TELEPHONE
25 CONVERSATIONS, AND ALSO
26 COMMUNICATED IN WRITING.

09:43AM

27 FOUR, ON MARCH 13, AND 18, 2009,
28 MR. SANCHEZ AND MR. GROSS EXCHANGED

1 DRAFTS OF A CONFIDENTIALITY
2 AGREEMENT TO PROTECT INFORMATION
3 PROVIDED BY WAMCO TO MR. GUNDLACH
4 IN CONNECTION WITH ANY DISCUSSIONS
5 BETWEEN MR. GUNDLACH AND WAMCO.
6 MR. SANCHEZ INCORPORATED
7 MR. GROSS'S EDITS TO PARAGRAPH 6 OF
8 THE AGREEMENT, AND MR. GUNDLACH
9 EXECUTED THE FINAL VERSION ON
10 MARCH 20, 2009. TRUE AND CORRECT
11 COPIES OF THE EXCHANGED DRAFTS AND
12 THE EXECUTED CONFIDENTIALITY
13 AGREEMENT, ACCOMPANIED BY THE
14 RESPECTED E-MAILS TRANSMITTING THEM
15 ARE T X 157, T X 162 AND T X 168.
16 AGAIN, WE'LL BRIEFLY SHOW THE FIRST
17 PAGE OF EACH OF THOSE.

09:43AM

09:43AM

09:43AM

18 THE COURT: WE'RE GOING TO JUST CONTINUE TO
19 READ THE STIP.

20 MR. MADISON: OF COURSE, YOUR HONOR.

09:44AM

21 (PAUSE) +

22
23 MR. MADISON:

24 FIVE, MR. SANCHEZ ASKED MR. GROSS
25 WHETHER THERE WERE ANY RESTRICTION
26 ON ANY -- ON MR. GUNDLACH'S ABILITY
27 TO DISCUSS POTENTIAL EMPLOYMENT
28 WITH WAMCO. MR. GROSS RESPONDED BY

09:44AM

1 TELLING MR. SANCHEZ THERE WAS A
2 WRITTEN AGREEMENT THAT HAD NOT BEEN
3 SIGNED; AND PRIOR TO THAT, THERE
4 WAS A WRITTEN AGREEMENT THAT HAD
5 BEEN SIGNED, BUT HAD EXPIRED BY ITS
6 OWN TERMS.

09:44AM

7 SIX, IN ONE OF THEIR CONVERSATIONS,
8 MR. GROSS TOLD MR. SANCHEZ THAT HE
9 HAD EXPERIENCE IN WHAT HE REFERRED
10 TO AS OPEN, QUOTE, LIFTOUTS, CLOSED
11 QUOTES.

09:45AM

12 SEVEN, ON MARCH 19, 2009, MR. GROSS
13 SENT TO MR. SANCHEZ AN E-MAIL
14 ATTACHING AN UNSIGNED EMPLOYMENT
15 AGREEMENT WITHOUT EXHIBIT A
16 THERETO. A TRUE AND CORRECT COPY
17 OF THAT E-MAIL AND ATTACHMENT IS T
18 X 164.

09:45AM

19 EIGHT, ON APRIL 17, 2009, MR. GROSS
20 SENT TO MR. SANCHEZ AN E-MAIL
21 ATTACHING REDACTED COPIES OF THE
22 2003 AGREEMENT BETWEEN TCW AND
23 MR. GUNDLACH, AND THE 1998
24 AGREEMENT BETWEEN TCW AND
25 MR. GUNDLACH. A TRUE AND CORRECT
26 COPY OF THAT E-MAIL AND ITS
27 ATTACHMENTS IS T X 176.

09:45AM

28 NINE, MR. SANCHEZ AND MR. GROSS

09:45AM

1 CAME TO THE CONCLUSION THAT IT WAS
2 OPEN QUOTE, OKAY, CLOSED QUOTE, FOR
3 WAMCO TO TALK TO MR. GUNDLACH ABOUT
4 POSSIBLE EMPLOYMENT WITH WAMCO.

5 AFTER MR. SANCHEZ COMMUNICATED WITH
6 MR. GROSS FOR THE LAST TIME, WAMCO
7 PROCEEDED TO ENGAGE IN DISCUSSIONS
8 WITH MR. GUNDLACH ABOUT POSSIBLE
9 EMPLOYMENT.

09:46AM

10 THEN IT SAYS IT IS SO STIPULATED, AND SIGNED
11 BY MR. BRIAN AND MYSELF, ON BEHALF OF OUR PARTIES.

09:46AM

12 THE COURT: ALL RIGHT. THANK YOU,
13 MR. MADISON.

14 MR. MADISON: THANK YOU, YOUR HONOR.

15 MR. QUINN: YOUR HONOR, TCW CALLS
16 RICHARD VILLA.

09:46AM

17 THE COURT: ALL RIGHT.

18 (PAUSE) +

19
20 MR. BRIAN: YOUR HONOR, MAY I HAVE PERMISSION
21 TO LEAVE THE COURTROOM FOR JUST A MINUTE?

09:47AM

22 THE COURT: YES, YOU MAY.

23 GOOD MORNING, MR. VILLA.

24 THE WITNESS: GOOD MORNING.

25 THE COURT: YOU HAVE BEEN PREVIOUSLY SWORN IN
26 THIS MATTER. YOU ARE STILL UNDER OATH.

09:47AM

27 MR. QUINN: THANK YOU, YOUR HONOR.

28

1 DIRECT EXAMINATION +

2

3 BY MR. QUINN:

4 Q GOOD MORNING, LADIES AND GENTLEMEN.

5 GOOD MORNING, MR. VILLA?

09:47AM

6 A GOOD MORNING MR. QUINN.

7 Q I DO NOT THINK WE HAVE A BINDER. I THINK WE
8 RAN OUT OF THEM.

9 A SOUNDS GOOD.

10 Q IF WE COULD JUST PUT UP ON THE SCREEN, JUST SO
11 WE CAN LOOK AT IT -- THIS IS NOT IN EVIDENCE YET --
12 EXHIBIT 1010-1.

09:47AM

13 AND I'D ASK YOU IF CAN IDENTIFY THIS FOR
14 US, PLEASE.

15 A YES. THIS IS PAYROLL RECORDS FROM TCW FOR
16 CRIS SANTA ANA.

09:47AM

17 MR. MADISON: WE'D OFFER 1010-1 AND DASH 2,
18 YOUR HONOR, WHICH IS THE SECOND PAGE OF THE DOCUMENT.

19 MR. HELM: NO OBJECTION.

20 THE COURT: IT WILL BE ADMITTED.

09:47AM

21

22 (EXHIBIT 1010-2 & -3 ADMITTED.)+

23

24 MR. QUINN: IF WE CAN DISPLAY THAT, MIKE.

25 Q COULD YOU TELL THE JURY WHAT THIS PAYROLL
26 RECORD IS FOR?

09:48AM

27 A THIS WOULD REPRESENT THE FINAL SALARY PAYMENT
28 TO CRIS -- MR. SANTA ANA, THROUGH DECEMBER 7TH OF 2009.

1 Q AND THE AMOUNT OF THE PAYMENT THROUGH
2 DECEMBER 7TH, NET PAY IS?

3 A \$2,039.77.

4 Q ON THE SECOND PAGE, DO WE SEE HIS GROSS PAY
5 THERE FOR THE YEAR, YEAR TO DATE?

09:48AM

6 A YES. ON THE LOWER LEFT HAND, YEAR TO DATE
7 AMOUNT THROUGH HIS FINAL PAYMENT, THIS IS THE GROSS
8 AMOUNT, \$801,700.35.

9 Q THEN IF YOU COULD LOOK PLEASE AT EXHIBIT
10 1010-3.

09:48AM

11 THIS IS NOT IN EVIDENCE YET.

12 COULD YOU IDENTIFY THIS PLEASE?

13 A THIS WOULD BE THE FINAL PAYMENT RELATED TO HIS
14 ACCRUED VACATION THROUGH THE DATE OF HIS TERMINATION.

15 MR. QUINN: WE'D OFFER 1010-3 AND DASH 4, YOUR
16 HONOR.

09:49AM

17 MR. HELM: NO OBJECTION.

18 THE COURT: IT WILL BE ADMITTED.

19

20 (EXHIBIT 1010-3 & -4 ADMITTED.)+

09:49AM

21

22 BY MR. QUINN:

23 Q SO THE NET PAY FOR MR. SANTA ANA ON
24 DECEMBER 7TH TO CASH OUT VACATION IS THE \$7,289.39?

25 A THAT'S CORRECT.

09:49AM

26 Q THEN IF YOU WOULD LOOK, PLEASE, AT EXHIBIT
27 1009-1. NOT IN EVIDENCE YET.

28 THE COURT: 1009?

1 MR. QUINN: 1009. YES. YOUR HONOR. DASH 1.

2 THE COURT: ALL RIGHT.

3 THE WITNESS: YES.

4 BY MR. QUINN:

5 Q COULD YOU IDENTIFY THIS, PLEASE?

09:49AM

6 A THIS IS THE PAYOUT OF VACATION FOR
7 MR. MAYBERRY, AGAIN, THROUGH THE DATE OF TERMINATION,
8 12-7-2009.

9 MR. QUINN: WE'D OFFER 1009-1 AND DASH 2, YOUR
10 HONOR.

09:49AM

11 MR. HELM: NO OBJECTION.

12 THE COURT: ADMITTED.

13

14 (EXHIBIT 1009-1 & -2 ADMITTED.)+

15

09:49AM

16 BY MR. QUINN:

17 Q DASH 1, DOES THAT SHOW NET PAY FOR VACATION
18 FOR MAYBERRY THROUGH DECEMBER 7TH OF \$7,724.71?

19 A CORRECT.

20 Q 1009-3, NOT YET IN EVIDENCE.

09:50AM

21 CAN YOU IDENTIFY THIS FOR US?

22 A I THINK THIS IS A DIFFERENT DOCUMENT.

23 IT WENT UP ON THE SCREEN, ANYWAY.

24 Q 1009-3.

25 A YES.

09:50AM

26 Q WHAT IS THIS?

27 A THIS IS THE FINAL SALARY PAYMENT TO
28 MR. MAYBERRY THROUGH THE DATE OF TERMINATION.

1 MR. QUINN: WE'D OFFER 1009-3 AND DASH 4.

2 MR. HELM: NO OBJECTION.

3 THE COURT: IT WILL BE ADMITTED.

4

5 (EXHIBIT 1009-3 & -4 ADMITTED.)+

09:50AM

6

7 BY MR. QUINN:

8 Q THAT SHOWS A FINAL NET PAY AMOUNT OF \$946.68
9 AS PAYMENT THROUGH DECEMBER 7TH?

10 A CORRECT.

09:50AM

11 Q AND ON THE SECOND PAGE, WE HAVE THE GROSS
12 AMOUNT, YEAR TO DATE?

13 A YES.

14 Q WHAT IS THAT?

15 A \$368,802.14.

09:51AM

16 Q THEN IF YOU LOOK PLEASE AT EXHIBIT 1008-1, NOT
17 IN EVIDENCE YET.

18 CAN YOU IDENTIFY THIS FOR US?

19 A YES. THIS IS THE VACATION PAYOUT TO
20 MS. VANEVERY THROUGH THE DATE OF TERMINATION.

09:51AM

21 Q DECEMBER 7TH?

22 A CORRECT.

23 MR. QUINN: WE'D OFFER THAT, YOUR HONOR.

24 MR. HELM: WHICH NUMBER?

25 MR. QUINN: 1008-1 AND DASH 2.

09:51AM

26 THE COURT: ANY OBJECTION?

27 MR. HELM: NO OBJECTION.

28 THE COURT: IT WILL BE ADMITTED.

1 (EXHIBIT 1008-1 & -2 ADMITTED.)+

2

3 BY MR. QUINN:

4 Q AND THAT'S -- THAT SHOWS NET VACATION PAYOUT
5 ON DECEMBER 7TH, \$5,272.51 --

09:51AM

6 A CORRECT.

7 Q TO MS. VANEVERY.

8 EXHIBIT 1008-3.

9 CAN YOU IDENTIFY THIS FOR US, PLEASE?

10 A YES. THIS IS THE FINAL SALARY PAYOUT FOR
11 MS. VANEVERY THROUGH THE DATE OF TERMINATION,
12 DECEMBER 7TH.

09:52AM

13 MR. QUINN: WE'D OFFER THAT, YOUR HONOR.

14 MR. HELM: NO OBJECTION.

15 THE COURT: IT WILL BE ADMITTED.

09:52AM

16

17 (EXHIBIT 1008-3 ADMITTED.)+

18

19 BY MR. QUINN:

20 Q DOES THAT INDICATE A NET PAY \$1,257.15,
21 THROUGH DECEMBER 7, AND GROSS PAY, YEAR TO DATE,
22 \$392,019.47?

09:52AM

23 A CORRECT.

24 Q THEN WE HAVE IN EVIDENCE FROM MR. -- PUT UP ON
25 THE SCREEN -- EXHIBIT 9449 -- 944-9.

09:52AM

26 WERE YOU WERE ON THE STAND, WEEKS AGO --

27 A SEEMS LIKE A LIFETIME AGO.

28 Q NOW, HOW DID YOU SPEND YOUR SUMMER?

1 A WITH A LOT OF PEOPLE --

2 Q NO.

3 YOU TOLD US BEFORE, THIS REPRESENTED A
4 FEE SHARING PAYMENT THAT WAS MADE TO MR. GUNDLACH OF
5 \$7,860,471.23, ON NOVEMBER 30TH, FOR 2009, REPRESENTING
6 FEE SHARING FOR THE THIRD QUARTER; IS THAT CORRECT?

09:53AM

7 A THAT'S CORRECT.

8 Q I JUST FAILED TO MOVE IN THE SECOND PAGE,
9 944-10.

09:53AM

10 AND I WOULD OFFER THAT NOW, YOUR HONOR.

11 MR. HELM: NO OBJECTION.

12 THE COURT: IT WILL BE ADMITTED.

13

14 (EXHIBIT 944-10 ADMITTED.)+

15

09:53AM

16 BY MR. QUINN:

17 Q SIMILARLY, WE HAVE IN EVIDENCE, WE CAN PUT UP
18 ON THE SCREEN, EXHIBIT 944-13.

19 AND YOU TOLD US PREVIOUSLY THAT THIS WAS
20 A PAYMENT RECORD FOR NET PAY OF \$13,049.21 FOR
21 MR. GUNDLACH THROUGH DECEMBER 11, 2009, REPRESENTING
22 PRORATED SALARY UP TO THAT POINT?

09:53AM

23 A CORRECT.

24 MR. QUINN: YOUR HONOR, I FAILED TO OFFER THE
25 SECOND PAGE OF THAT, DASH 14. I'D OFFER THAT NOW.

09:54AM

26 THE COURT: ANY OBJECTION?

27 MR. HELM: NO OBJECTION.

28 THE COURT: IT WILL BE ADMITTED.

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(EXHIBIT 944-14 ADMITTED.)+

BY MR. QUINN:

Q SO ON THE SECOND PAGE, DO WE SEE THERE,
MR. GUNDLACH'S GROSS INCOME FOR THE YEAR OF
\$40,713,560.39?

09:54AM

A CORRECT.

Q THEN IF YOU'D LOOK PLEASE AT EXHIBIT 944-15,
NOT IN EVIDENCE YET.

09:54AM

I'LL ASK YOU IF YOU CAN IDENTIFY THAT
DOCUMENT?

A THAT WOULD BE THE VACATION PAYOUT FOR
MR. GUNDLACH THROUGH THE DATE OF TERMINATION,
DECEMBER 11TH, 2009.

09:54AM

MR. QUINN: WE WOULD OFFER EXHIBIT 944-15 AND
944-16, YOUR HONOR.

MR. HELM: NO OBJECTION.

THE COURT: IT WILL BE ADMITTED.

09:54AM

(EXHIBIT 944-15 & -16 ADMITTED.)+

MR. QUINN: IF WE COULD DISPLAY 944-15 ON THE
SCREEN.

Q DOES THAT INDICATE NET PAYMENT AS OF
DECEMBER 11, 2009, FOR VACATION PAYOUT TO MR. GUNDLACH
OF \$24,093.31?

09:54AM

A THAT'S CORRECT.

1 Q NOW IF WE COULD PUT ON THE SCREEN, EXHIBIT
2 2322-1.

3 IT'S NOT IN EVIDENCE YET.

4 I'D ASK YOU IF YOU CAN IDENTIFY THAT
5 DOCUMENT.

09:55AM

6 A YES. THAT'S THE COPY OF THE CHECK THAT HAD
7 BEEN ISSUED TO MR. GUNDLACH.

8 THIS REPRESENTS THE DEPOSIT OF THE
9 CHECK, AND RETURNED TO TCW, AS BASIS FOR -- THAT IT WAS
10 PROCESSED.

09:55AM

11 Q IS THIS FOR THE THIRD QUARTER FEE SHARING
12 PAYMENT THAT WE LOOKED AT, EXHIBIT 944-9?

13 A CORRECT. THE AMOUNT IS THE SAME.

14 MR. QUINN: OFFER EXHIBIT 2332-1, YOUR HONOR.

15 MR. HELM: NO OBJECTION.

09:55AM

16 THE COURT: IT WILL BE ADMITTED.

17

18 (EXHIBIT 2332-1 ADMITTED.)+

19

20 MR. QUINN: IF WE COULD DISPLAY THAT ON THE
21 SCREEN.

09:55AM

22 Q THIS IS THAT FEE SHARING CHECK FOR THE THIRD
23 QUARTER, DATED NOVEMBER 30TH?

24 A CORRECT.

25 Q CAN YOU TELL FROM LOOKING AT THIS, THIS IS THE
26 ACTUAL CHECK THAT'S BEEN DEPOSITED, AND CANCELED OR
27 RETURNED TO TCW AFTER IT'S BEEN NEGOTIATED?

09:56AM

28 A RIGHT. JUST LIKE WHEN YOU WRITE A CHECK, AND

1 THE PERSON YOU WROTE IT TO, THEY DEPOSIT THE CHECK, AND
2 EVENTUALLY IT GETS RETURNED BACK TO YOU, EITHER IN
3 ELECTRIC FORM OR HARD COPY.

4 Q THIS IS THE COPY THAT CAME BACK TO TCW?

5 A CORRECT.

09:56AM

6 Q DOES IT INDICATE THE DATE ON IT, THE DATE ON
7 WHICH MR. GUNDLACH DEPOSITED THIS CHECK?

8 A THERE IS AN ENDORSEMENT STAMP THAT WOULD
9 INDICATE THE DATE IT WAS DEPOSITED.

10 IT'S ON THE LOWER HALF OF THE DOCUMENT.

09:56AM

11 Q AND CAN YOU SEE THERE, THE DATE ON WHICH
12 MR. GUNDLACH DEPOSITED THIS CHECK?

13 A APPEARS TO BE DECEMBER 7TH, 2009.

14 Q ABOUT SEVEN, EIGHT DAYS AFTER THE CHECK WAS
15 ISSUED?

09:57AM

16 A RIGHT.

17 Q OKAY.

18 WE HAVE HAD TESTIMONY FROM A WITNESS BY
19 THE NAME OF DON SHERMAN, WHO'S AFFILIATED WITH -- HE
20 INDICATED A COMPANY CALLED RELIANCE LIFE, AND SOME
21 OTHER INSURANCE COMPANIES, SOMETHING CALLED NAV B, LLC,
22 AND DELPHI FINANCIAL.

09:57AM

23 YOU'VE HEARD OF THOSE INVESTORS?

24 A YES.

25 Q DO YOU KNOW WHETHER OR NOT THOSE INVESTORS,
26 MR. SHERMAN'S COMPANIES, WERE INVESTORS IN ANY OF THE
27 SPECIAL MORTGAGE CREDIT FUNDS?

09:57AM

28 A YES. THEY WERE NOT.

1 Q AND SIMILARLY, WE SAW VIDEOTAPE DEPOSITION
2 FROM A MR. JIM THOMPSON OF A COMPANY CALLED ORIX.

3 DO YOU KNOW WHETHER ORIX WAS AN INVESTOR
4 IN THE SPECIAL MORTGAGE CREDIT FUNDS?

5 A YES.

09:57AM

6 Q WERE THEY IN?

7 A NO.

8 Q HAVE YOU DONE CALCULATIONS TO DETERMINE WHAT
9 MANAGEMENT FEES WERE ACTUALLY RECEIVED BY TCW IN
10 RESPECT TO FUNDS THAT MR. GUNDLACH HAD RESPONSIBILITY
11 FOR, FOR THE FOURTH QUARTER OF 2009 UP UNTIL
12 DECEMBER 11TH, 2009, WHEN HIS EMPLOYMENT WAS
13 TERMINATED?

09:58AM

14 A YES, I DO.

15 Q WHAT MANAGEMENT FEES HAD ACTUALLY BEEN
16 RECEIVED, IN RESPECT TO FUNDS HE WAS RESPONSIBLE FOR,
17 UP TO THE DATE OF HIS TERMINATION?

09:58AM

18 A IS IT ALL RIGHT IF I REFER TO SOME NOTES?

19 Q IF YOU DON'T HAVE THOSE NUMBERS MEMORIZED,
20 IT'S PERFECTLY FINE?

09:58AM

21 A UNFORTUNATELY, I SOMETIMES CAN'T REMEMBER MY
22 PHONE NUMBER, SO ...

23 THE GROSS FEES THAT TCW RECEIVED BY
24 DECEMBER 11TH, 2009, WERE \$21,390,029.67.

25 Q HAVE YOU DONE A CALCULATION AS TO WHAT
26 MR. GUNDLACH'S SHARE OF THOSE MANAGEMENT FEES WOULD BE,
27 UNDER HIS FEE SHARING ARRANGEMENT?

09:58AM

28 A YES.

1 THE RESIDUAL?

2 Q YES?

3 A YES.

4 Q WHAT DOES THAT COME OUT TO?

5 A \$2,175,610.56.

09:59AM

6 Q COULD YOU PLEASE EXPLAIN TO US HOW YOU GOT TO
7 THAT NUMBER?

8 THE GROSS IS, THE GROSS IN MANAGEMENT
9 FEES RECEIVED BY TCW, WAS THE \$23 MILLION NUMBER --

10 A 21 MILLION.

09:59AM

11 Q \$21 MILLION NUMBER.

12 HOW DO YOU GET TO THE RESIDUAL AMOUNT
13 YOU JUST GAVE US OF THE \$2 MILLION NUMBER?

14 A SURE.

15 AS WE'VE GONE OVER THE EXHIBIT A
16 CALCULATION OF THE FEE SHARING, AFTER YOU IDENTIFY THE
17 GROSS FEES, YOU DEDUCT CERTAIN EXPENSES ASSOCIATED WITH
18 THOSE FEES, SUCH AS DISTRIBUTION COSTS.

09:59AM

19 PRIMARILY, THOSE ARE MUTUAL FUND RELATED
20 COSTS. AND SO THERE WAS ABOUT \$4.2 MILLION OF THOSE
21 COSTS ASSOCIATED WITH THOSE FEES THAT WE RECEIVE
22 THROUGH DECEMBER 11TH, WHICH REDUCES THE NUMBER DOWN TO
23 \$17.2 MILLION.

09:59AM

24 THE NEXT LEVEL OF CALCULATION IS, YOU
25 HAVE TO APPLY THE ALLOCATION PERCENTAGE. SO TO
26 IDENTIFY THE FEES THAT ARE ACTUALLY -- OR THE
27 ACCOUNTS -- FEES ASSOCIATED WITH THE ACCOUNTS ACTUALLY
28 MANAGED BY MR. GUNDLACH, WHICH IS A RELATIVELY MINOR

10:00AM

1 DIFFERENCE, THE ALLOCATION IS ALMOST 100 PERCENT.

2 BUT IT'S 99.8 PERCENT OR SO, SO THAT
3 REDUCES THE NUMBER JUST ABOUT 17,147,000.

4 Q THE REDUCTION IS 147 THOUSAND?

5 A NO. THE REDUCTION IS ABOUT 40,000 -- VERY
6 MINOR REDUCTION THERE.

10:00AM

7 AND THEN FINALLY -- I SHOULDN'T SAY
8 FINALLY. BUT THE NEXT STEP IS TO APPLY THE FEE SHARING
9 RATE TO THEN THE FEES THAT ARE REPRESENTED, WHICH ON
10 AVERAGE, THAT FEE SHARING RATE IS RIGHT AT PROBABLY 49
11 PERCENT, 48.99 PERCENT, WHICH IS THEN THE AMOUNT THAT
12 GOES -- PART OF THE AMOUNT THAT GOES INTO THE POOL.

10:00AM

13 AND THAT REDUCES THAT AMOUNT TO 8.4
14 MILLION.

15 Q SO, THE 8.4 MILLION REPRESENTS THE AMOUNT THAT
16 GOES INTO THAT POOL THAT WE SAW?

10:01AM

17 A CORRECT. RIGHT.

18 Q FROM THE MANAGEMENT FEES THAT WERE ACTUALLY
19 RECEIVED BY DECEMBER 11?

20 A RIGHT.

10:01AM

21 AND THEN SUBSEQUENT TO THAT, YOU DEDUCT
22 THE EXPENSES THAT WE'VE DISCUSSED, MOSTLY COMPENSATION
23 RELATED EXPENSES THAT --

24 Q FOR PEOPLE IN MR. GUNDLACH'S GROUP?

25 A RIGHT.

10:01AM

26 Q AND WAS THAT -- DID YOU MAKE THAT ADJUSTMENT?

27 A YES, WE DID.

28 MR. HELM: OBJECTION. YOUR HONOR, LACKS

1 FOUNDATION ON THE CALCULATION OF THE COMPENSATION
2 EXPENSES TO OTHER PEOPLE IN THE GROUP.

3 THE COURT: WE CAN GO THROUGH IT. GO AHEAD.

4 YOU CAN CROSS-EXAMINE HIM.

5 BY MR. QUINN:

10:01AM

6 Q CAN YOU EXPLAIN HOW THAT COMPENSATION
7 REDUCTION IS DONE?

8 A HOW IT'S DONE?

9 Q YEAH.

10 WELL, HOW DID YOU DO THAT, IN ARRIVING
11 AT THIS NUMBER?

10:01AM

12 A SURE.

13 WE IDENTIFIED THE EMPLOYEES THAT WERE IN
14 THE GROUP, AND IDENTIFIED FROM PAYROLL RECORDS, THE
15 FEES THAT -- THE SALARY THAT THEY WERE PAID, AS ONE
16 COMPONENT.

10:01AM

17 AS YOU RECALL, THERE WERE MULTIPLE
18 PIECES TO COMPENSATION.

19 ONE COMPONENT IS SALARIES. SO WE
20 IDENTIFIED THE SALARIES THAT HAD BEEN PAID THROUGH
21 DECEMBER 11TH, FOR THE FOURTH QUARTER. AND THEN WE
22 ALSO IDENTIFIED, AS ANOTHER REDUCTION, THE AMOUNT OF
23 BONUSES THAT WERE SUBSEQUENTLY PAID, BUT RELATED TO THE
24 INDIVIDUALS THAT WERE RETAINED AT TCW.

10:02AM

25 AND THE ESTIMATE OF THAT AMOUNT, OR
26 BASIS OF THAT AMOUNT, WAS USING THEIR PRIOR BONUS LEVEL
27 FROM THE PRIOR YEAR, SO THE AMOUNT THAT WAS ULTIMATELY
28 DETERMINED BY MR. GUNDLACH. AND WE PRORATED THAT

10:02AM

1 AMOUNT THROUGH DECEMBER 11TH, 2009.

2 MR. HELM: I MOVE TO STRIKE THAT AS IMPROPER
3 EXPERT TESTIMONY.

4 MAY WE APPROACH?

5 THE COURT: NO, NOT AT THIS POINT. 10:02AM

6 THE OBJECTION WILL BE OVERRULED.

7 GO AHEAD.

8 BY MR. QUINN:

9 Q SO YOU DID THE ACTUAL SALARIES THROUGH
10 DECEMBER 11TH? 10:02AM

11 A CORRECT.

12 Q AND THEN YOU MADE REFERENCE TO SOME BONUSES
13 THAT YOU PRORATED.

14 COULD YOU PLEASE EXPLAIN TO THE JURY
15 WHAT YOU MEAN BY THAT? 10:02AM

16 A SURE.

17 THE BONUSES THAT WOULD BE PAID ANNUALLY,
18 NORMALLY IN THE FEBRUARY TIME FRAME, WE IDENTIFIED ALL
19 THE INDIVIDUALS THAT REMAINED AT TCW WHERE WE DID PAY
20 THEM BONUSES IN FEBRUARY. 10:03AM

21 Q THE PEOPLE THAT WERE IN WHAT WAS
22 MR. GUNDLACH'S GROUP, THERE WAS SOME WHO STAYED?

23 A CORRECT.

24 Q DID TCW PAY THEM BONUSES IN FEBRUARY, AS
25 THEY'RE USUALLY PAID? 10:03AM

26 A YES, WE DID.

27 Q THEN WHAT DID YOU DO WITH THOSE, IN TERMS OF
28 DOING THIS CALCULATION?

1 A THE BASIS OF THE BONUS THAT WE USED TO
2 CALCULATE WAS TO GO AHEAD AND USE THE PRIOR YEAR'S
3 BONUS, AS OPPOSED TO THE BONUS TCW ACTUALLY PAID.

4 THE BONUS TCW ACTUALLY PAID WAS LARGER.
5 AND SO WE USED THE BONUS FROM THE PRIOR YEAR END, WHICH
6 WOULD HAVE BEEN THE BASIS OF WHAT MR. GUNDLACH HAD
7 APPROVED TO PAY.

10:03AM

8 WE PRORATED THAT BONUS THROUGH
9 DECEMBER 11TH, 2009. AND WE DEDUCTED THAT AMOUNT FROM
10 THE POOL WHICH -- THE FINAL THING WE DEDUCTED WAS THE
11 RENT RELATED TO THE SANTA MONICA OFFICE, WHICH IS THE
12 FINAL COMPONENT OF THE DEDUCTIONS.

10:03AM

13 Q ALL RIGHT. THOSE DEDUCTIONS ARE ALL IN
14 ACCORDANCE WITH THE EXHIBIT A?

15 A CORRECT.

10:04AM

16 Q AND AGAIN, THE FINAL NUMBER, THEN, FOR AMOUNTS
17 FOR -- WITH RESPECT TO MANAGEMENT FEES THAT WERE
18 ACTUALLY RECEIVED THROUGH DECEMBER 11TH, THAT WOULD
19 HAVE BEEN MR. GUNDLACH'S SHARE, IF HE WERE ENTITLED TO
20 THEM, IS WHAT?

10:04AM

21 A \$2,175,610.56.

22 MR. QUINN: NOTHING FURTHER, YOUR HONOR.

23 THE COURT: CROSS-EXAMINATION, MR. HELM?

24 MR. HELM: THANK YOU, YOUR HONOR.

25

10:04AM

26 CROSS-EXAMINATION +

27 BY MR. HELM:

28 Q GOOD MORNING, MR. VILLA?

1 A GOOD MORNING MR. HELM.

2 Q FIRST OF ALL, WE TALKED ABOUT
3 MR. SANTA ANA'S -- THE FINAL PAYMENT THAT HE GOT.

4 AM I CORRECT, MR. SANTA ANA NEVER GOT
5 ANY ALLOCATED FEE SHARING FROM THE FOURTH QUARTER OF
6 2009? IS THAT TRUE? 10:05AM

7 A THAT IS CORRECT.

8 Q AND NOW WHEN YOU RECITED TO MR. QUINN, HIS
9 YEAR-TO-DATE COMPENSATION OF OVER \$800,000, THAT
10 INCLUDED A PAYMENT HE RECEIVED IN FEBRUARY FOR THE
11 PRIOR YEAR; IS THAT CORRECT? 10:05AM

12 A CORRECT. PAYROLL RECORDS ARE BASED ON CASH,
13 SO THAT'S CORRECT.

14 Q ALL RIGHT.

15 SO IN THE YEAR 2009, HE RECEIVED CASH
16 THAT IN PART REPRESENTED FEE SHARING FOR THE PRIOR
17 YEAR; ISN'T THAT RIGHT? 10:05AM

18 A ALLOCATION, RIGHT; THE BONUS.

19 Q WITH RESPECT TO MR. MAYBERRY, IS THE SAME
20 TRUE? 10:05AM

21 HE DID NOT RECEIVE A FOURTH QUARTER FEE
22 SHARING ALLOCATION, CORRECT?

23 A CORRECT.

24 Q AND WHEN YOU RECITED THE TOTAL YEAR-TO-DATE
25 COMPENSATION HE RECEIVED IN 2009, THAT ALSO INCLUDED
26 THE AMOUNT HE RECEIVED IN FEBRUARY OR MARCH OF '09, FOR
27 HIS WORK IN '08, CORRECT? 10:05AM

28 A THAT IS RIGHT.

1 Q AND THE SAME IS TRUE WITH MS. VANEVERY: SHE
2 DID NOT GET A FOURTH QUARTER '09 FEE SHARING PAYMENT,
3 DID SHE?

4 A RIGHT. CORRECT.

5 Q AND WHEN YOU RECITED HER YEAR-TO-DATE
6 COMPENSATION, THAT INCLUDED A FEE SHARING ALLOCATION
7 SHE RECEIVED IN '09, FOR WORK SHE'D DONE IN '08; IS
8 THAT RIGHT?

10:06AM

9 A IT WAS HER -- YES, THAT'S RIGHT, THE BONUS
10 PAYMENT IN FEBRUARY.

10:06AM

11 Q NOW, WITH RESPECT TO THE -- THIS CALCULATION
12 YOU JUST PERFORMED, I WANT TO MAKE SURE THAT I
13 UNDERSTAND ONE PART OF IT, AND THEN WE CAN GO BACK TO
14 THE REST OF IT.

15 THE BONUSES THAT YOU DEDUCTED, THOSE
16 WERE ONLY BONUSES THAT WERE PAID TO THE PEOPLE WHO
17 STAYED AT TCW, IN MR. GUNDLACH'S GROUP?

10:06AM

18 A CORRECT.

19 Q AND SO, I SEE -- SO YOU DID NOT DEDUCT ANY
20 BONUSES THAT WERE -- WOULD HAVE BEEN PAID TO PEOPLE WHO
21 LEFT FOR DOUBLE LINE?

10:07AM

22 A RIGHT.

23 Q NOW, WITH RESPECT TO -- WELL, I THINK IT
24 WAS -- WAS IT A 16.7 MILLION DOLLAR FIGURE THAT YOU
25 CALCULATED FOR THE -- LET ME SEE IF I WROTE IT DOWN
26 RIGHT -- FOR THE FEES, THE MANAGEMENT FEES THAT WERE
27 RECEIVED WITH RESPECT TO FUNDS THAT MR. GUNDLACH
28 MANAGED?

10:07AM

1 A THE NUMBER WAS 21.4 MILLION.

2 Q IT WAS 21.4 MILLION.

3 SO THOSE WERE MANAGEMENT FEES WE'RE
4 TALKING ABOUT; IS THAT TRUE?

5 A IT WOULD BE ALL FEES THAT WE COLLECTED FOR THE
6 PERIOD; BUT I BELIEVE THERE -- WELL THEY WERE ONLY
7 MANAGEMENT FEES.

10:07AM

8 Q SO THERE WERE \$21 MILLION IN MANAGEMENT FEES
9 THAT WERE RECEIVED BY TCW ON FUNDS THAT MR. GUNDLACH
10 MANAGED; IS THAT RIGHT?

10:08AM

11 A YEAH, THAT'S THE -- THE GROSS NUMBER.

12 THERE'S A SMALL ALLOCATION DIFFERENCE I
13 DISCUSSED, BUT IT'S RELATIVELY INSIGNIFICANT.

14 Q THIS FIGURE WE'RE TALKING ABOUT, THAT WAS THE
15 AMOUNT THAT WAS PAID DURING THE FOURTH QUARTER, FOR
16 FOURTH QUARTER WORK BEFORE DECEMBER THE 11TH?

10:08AM

17 A IT WAS PAID FOR THE FOURTH QUARTER, FOR
18 CLIENTS -- FOR ACCOUNTS THAT WERE BILLED FOR THE FOURTH
19 QUARTER FEES.

20 Q ALL RIGHT.

10:08AM

21 AND SO THAT IS NOT AN ACCRUAL FIGURE, IS
22 IT?

23 A NO. THESE WERE ACTUAL CASH RECEIPTS.

24 Q SO YOU HAVE NOT PERFORMED ANY CALCULATION
25 WHICH DISPUTES MR. WALLACE'S CALCULATION THAT THERE
26 WERE \$37.9 MILLION IN ACCRUED MANAGEMENT FEES FOR TCW
27 IN THE FOURTH QUARTER, DID YOU?

10:09AM

28 A IF THAT'S THE NUMBER THAT HE'S REFERRING TO, I

1 WOULD DISPUTE IT.

2 BUT I DIDN'T DO A CALCULATION FOR THAT.

3 Q AND SO THE MANAGEMENT FEES FOR THE FOURTH
4 QUARTER WORK, THOSE, IN THE NORMAL COURSE, ARE
5 GENERALLY PAID WITHIN A FEW WEEKS AFTER THE END OF THE
6 QUARTER; ISN'T THAT TRUE? 10:09AM

7 A ALL FEES? IS THAT WHAT YOU'RE ASKING?

8 Q MANAGEMENT FEES?

9 A WELL, THERE ARE DIFFERENT SORTS OF MANAGEMENT
10 FEES THAT ARE, PAID DIFFERENT TIME PERIODS. 10:09AM

11 I THINK MR. WALLACE EVEN IDENTIFIED,
12 LIKE IN THE CASE OF MUTUAL FUNDS, THEY WOULD BE PAID
13 ALMOST IMMEDIATELY FOLLOWING A MONTH END.

14 SEPARATE ACCOUNTS, I GUESS, WOULD -- I
15 WANT TO KNOW WHAT YOU DEFINE AS A FEW WEEKS, AS TO WHEN
16 THOSE FEES ARE COLLECTED. 10:09AM

17 Q BUT THE -- WELL, DID YOU IDENTIFY ANY
18 MANAGEMENT FEES THAT WERE ACCRUED FOR THE FOURTH
19 QUARTER OF 2009 ON FUNDS THAT MR. GUNDLACH WAS
20 RESPONSIBLE FOR, THAT WEREN'T EVENTUALLY PAID? 10:10AM

21 MR. QUINN: VAGUE AS TO -- AS OF WHEN? AS OF
22 TIME --

23 THE COURT: GIVE --
24 BY MR. HELM:

25 Q THAT WEREN'T PAID UP TO THE PRESENT TIME? 10:10AM

26 A I'D SAY THERE WERE DIFFERENCES, BUT NOT WHERE
27 WE WOULD -- ANY MATERIAL AMOUNT.

28 Q ALL RIGHT.

1 WHAT YOU'RE TALKING ABOUT THEN, WHEN
2 YOU -- WHEN YOU'RE GIVING A SMALLER FIGURE FOR THE
3 AMOUNT THAT WAS ACTUALLY PAID AS OF DECEMBER 11, THE
4 DIFFERENCE BETWEEN WHAT WAS ACCRUED AND WAS PAID AS OF
5 DECEMBER 11TH WAS ULTIMATELY PAID, AT TCW, CORRECT?

10:10AM

6 A RIGHT. I WAS APPLYING THE RULES UNDER
7 EXHIBIT A. CORRECT.

8 Q ALL RIGHT.

9 AND SO -- THE PAYMENTS WERE GENERALLY
10 MADE WITHIN A FEW WEEKS, BY THE END OF THE QUARTER,
11 WEREN'T THEY?

10:10AM

12 A AGAIN, I WOULD HAVE TO UNDERSTAND AS TO WHAT A
13 FEW WEEKS WERE.

14 USUALLY WOULD TAKE TWO TO THREE WEEKS TO
15 EVEN BILL THE CLIENTS FOR SEPARATE ACCOUNT AFTER
16 QUARTER END, AND THEN A FEW WEEKS AFTER THAT, FOR ALL
17 THE FEES TO COME IN. IT WOULD TAKE THAT TIME.

10:11AM

18 Q USUALLY, FOR THE FOURTH QUARTER OF A YEAR, THE
19 FEES COME IN, THEY'RE ACCOUNTED FOR IN SUFFICIENT TIME
20 SO THAT YOU CAN PAY THEM BY THE END OF FEBRUARY; ISN'T
21 THAT RIGHT?

10:11AM

22 A GENERALLY.

23 Q IT WAS TRUE IN THIS CASE, WASN'T IT? THE
24 MANAGEMENT FEES ACCRUED DURING THE FOURTH QUARTER OF
25 2009 WERE, BY AND LARGE, PAID BY THE END OF FEBRUARY
26 THE NEXT YEAR; ISN'T THAT RIGHT?

10:11AM

27 A RIGHT, WITH SMALL DIFFERENCES, JUST BASED ON
28 ACCRUAL VERSUS WHAT THE ACTUAL BILLS WERE.

1 Q I TAKE IT WHEN YOU SAY YOU APPLIED WHAT YOU
2 THOUGHT WERE THE RULES OF EXHIBIT A, SO IT'S TCW'S
3 POSITION THAT YOU'VE BEEN ARTICULATING HERE THAT IF
4 MR. GUNDLACH IS TERMINATED, HE GETS NO SHARE OF
5 MANAGEMENT FEES FOR THE FOURTH QUARTER, UNLESS THEY
6 WERE ACTUALLY PAID; IS THAT RIGHT? 10:12AM

7 MR. QUINN: OBJECTION. ARGUMENTATIVE AS
8 PHRASED.

9 THE COURT: OVERRULED.

10 IF YOU DON'T UNDERSTAND IT, HE'LL
11 REPHRASE IT. 10:12AM

12 BY MR. HELM:

13 Q YOU WERE SAYING YOU APPLIED WHAT THE -- WHAT
14 YOU THOUGHT THE RULES WERE OF EXHIBIT A.

15 WHAT YOU WERE APPLYING IS A RULE WHICH 10:12AM
16 YOU SAID -- SAY, PROVIDES THAT EVEN IF, THAT IF
17 MR. GUNDLACH IS TERMINATED, HE GETS NO SHARE OF THE
18 MANAGEMENT FEES IN THE FOURTH QUARTER, UNLESS THEY WERE
19 ACTUALLY PAID AND RECEIVED BY TCW BEFORE THE TIME HE
20 WAS FIRED; IS THAT RIGHT? 10:12AM

21 A I GUESS MY POSITION WOULD BE THAT HE WASN'T
22 DUE ANYTHING. I THINK I WAS SIMPLY APPLYING THE
23 CALCULATION ASSOCIATED WITH EXHIBIT A.

24 Q THAT'S A GOOD POINT.

25 EVEN THE \$2 MILLION FIGURE WHICH YOU 10:12AM
26 CALCULATED, HE HASN'T BEEN PAID THAT, EITHER, HAS HE?

27 A THAT'S CORRECT.

28 Q BUT WITH RESPECT TO ACCRUALS, WHAT YOU ARE --

1 ACCRUALS VERSUS PAYMENT, THE NUMBER YOU'VE BEEN --
2 GIVEN US IS TO SAY THAT THIS WOULD BE THE AMOUNT THAT
3 WAS PAID FOR THE FOURTH QUARTER, BEFORE HE WAS FIRED;
4 IS THAT RIGHT?

5 A RIGHT. IT'S APPLIED, IN EXHIBIT A, THROUGH
6 DECEMBER 11TH. THAT'S CORRECT.

10:13AM

7 Q NOW MANAGEMENT FEES ARE PAID TO COMPENSATE TCW
8 FOR ITS SERVICES IN MANAGING ASSETS; WOULD YOU AGREE
9 WITH THAT?

10 A YES.

10:13AM

11 Q AND MR. GUNDLACH WAS IN CHARGE OF MANAGING
12 ASSETS, CERTAIN ASSETS UNDER HIS CONTROL, FOR A LITTLE
13 MORE THAN TWO MONTHS OF THE FOURTH QUARTER OF 2009,
14 WASN'T HE, SIR?

15 A YES. HE WAS EMPLOYED AS A PORTFOLIO MANAGER.

10:13AM

16 Q AND TCW WAS, IN FACT, PAID FOR MANAGEMENT FEES
17 FOR THE TWO MONTHS OF WORK HE PERFORMED DURING THAT
18 PERIOD, CORRECT?

19 A TCW'S PAID -- BASED ON BILLINGS OF CLIENTS FOR
20 MANAGEMENT FEES.

10:13AM

21 Q AND MR. GUNDLACH HASN'T RECEIVED A PENNY OF
22 THE MANAGEMENT FEES THAT TCW HAS RECEIVED IN RESPECT OF
23 THOSE TWO MONTHS IN THE FOURTH QUARTER WHERE HE WORKED,
24 MANAGING THOSE ASSETS, DID HE?

25 A WE DID NOT PAY HIM ANYTHING. THAT'S CORRECT.

10:14AM

26 MR. HELM: NOTHING FURTHER.

27 THE COURT: ANYTHING ELSE, MR. QUINN?

28 ///

1 REDIRECT EXAMINATION +

2
3 BY MR. QUINN:4 Q DID TCW HAVE A FEE SHARING AGREEMENT WITH
5 CRIS SANTA ANA, JEFF MAYBERRY OR BARBARA VAN EVERY? 10:14AM

6 A NO, WE DIDN'T.

7 MR. HELM: BEYOND THE SCOPE, YOUR HONOR.

8 THE COURT: OVERRULED.

9 BY MR. QUINN:

10 Q IF THEY WERE TO GET BONUSES, WHO WAS THAT UP
11 TO? 10:14AM

12 A IT WOULD BE JEFFREY'S DISCRETION, ULTIMATELY.

13 MR. QUINN: NOTHING FURTHER.

14 THE COURT: ANYTHING ELSE, MR. HELM?

15 MR. HELM: NO, YOUR HONOR. 10:14AM

16 THE COURT: MR. VILLA, THANK YOU FOR YOUR
17 TESTIMONY.

18 THE WITNESS: THANK YOU.

19 THE COURT: LADIES AND GENTLEMEN, WE'LL TAKE
20 OUR MORNING RECESS. 20 MINUTES. 10:14AM21 JUST SO THAT YOU'RE AWARE, I'M TOLD THAT
22 WE MAY FINISH UP A LITTLE EARLY TODAY, AND IT WILL BE
23 THE CONCLUSION OF THE EVIDENCE. BUT WE'LL BELIEVE IT
24 WHEN WE SEE IT. IF YOU WANT TO MAKE PLANS, YOU MAY BE
25 OUT OF HERE A LITTLE EARLY TODAY. 10:15AM26 WE'LL SEE YOU AFTER THE BREAK, 25
27 MINUTES TO.

28 ///

1 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.) +

2
3 THE COURT: WE'RE OUT OF THE PRESENCE OF THE
4 JURY. ANY MATTERS ANYBODY WANTS TO TAKE UP.

5 MR. QUINN: NO YOUR HONOR. 10:15AM

6 THE COURT: WHAT DO WE HAVE LEFT.

7 MR. QUINN: JUST MR. GUNDLACH'S DEPOSITION.

8 MR. MADISON: IF I COULD ONE MOMENT. SINCE WE
9 MAY HAVE ALL THIS EXTRA TIME.

10 MR. QUINN: WE'D LIKE TO REOPEN, NO. 10:16AM

11 MR. WEINGART: THE ONLY OTHER THING WHILE
12 THEY'RE CONFERRING WE MAY CALL MR. GUNDLACH IN REBUTTAL
13 WITH REGARD TO WHAT MR. OWENS SAID.

14 THE COURT: THAT'S ALL RIGHT.

15 MR. WEINGART: WE'RE CONSIDERING THAT DURING
16 THE BREAK. WE'LL LET YOU KNOW. 10:16AM

17 MR. QUINN: NOTHING, YOUR HONOR.

18 THE COURT: 15 TO 20 MINUTES OR HALF HOUR OF
19 MR. GUNDLACH'S DEPOSITION TESTIMONY. POSSIBLE REBUTTAL
20 FOR MR. -- FROM MR. GUNDLACH AND THEN WE'LL BE DONE
21 WITH THE EVIDENCE IN THIS CASE. 10:16AM

22 MR. QUINN: YES.

23 THE COURT: I'D JUST LIKE SOMEBODY TO SAY YES.

24 MR. QUINN: YES YOUR HONOR WE WILL.

25 MR. HELM: CAN I HEAR AN A MEN. 10:16AM

26 THE COURT: THANK YOU VERY MUCH.

27 MR. MADISON: BOTH MR. ALLRED AND I AGREE
28 SUBJECT TO THE CLEAN UP OF SOME EXHIBITS.

1 THE COURT: WE HAVE SOME EXHIBIT ISSUES I
2 UNDERSTAND THAT. OKAY.

3 MR. MADISON: THANK YOU.

4

5 (RECESS.)

10:16AM

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1 CASE NUMBER: BC429385
2 CASE NAME: TRUST COMPANY OF THE WEST VS.
3 JEFFREY GUNDLACH, ET AL
4 LOS ANGELES, MONDAY, SEPTEMBER 12, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 10:40 A.M.

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

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

10:40AM

18 MR. QUINN, DO YOU HAVE FURTHER EVIDENCE
19 TO OFFER?

20 MR. QUINN: YES. VIDEOTAPE TESTIMONY OF
21 MR. GUNDLACH.

10:41AM

22 THE COURT: ALL RIGHT.

23
24 (VIDEOTAPE TESTIMONY OF JEFFREY
25 GUNDLACH WAS PLAYED.)

10:41AM

26
27 THE COURT: IS THAT THE CONCLUSION?

28 MR. QUINN, ANYTHING FURTHER?

1 MR. QUINN: WE'RE DONE.

2 WE REST, YOUR HONOR.

3 THE COURT: THANK YOU, MR. QUINN.

4 ANY REBUTTAL?

5 MR. QUINN: I'M NOT SURE IF THERE'S SOMETHING
6 WE NEED TO DISCUSS AT SIDEBAR.

10:56AM

7 MR. BRIAN: I DON'T KNOW IF THERE IS OR NOT,
8 WE'RE CALLING ANOTHER WITNESS.

9 MR. QUINN: WE'D LIKE TO DISCUSS THIS AT
10 SIDEBAR, YOUR HONOR.

10:56AM

11 THE COURT: COME ON UP.

12

13 (THE FOLLOWING PROCEEDINGS WERE
14 HELD AT SIDEBAR:)

15

10:56AM

16 THE COURT: ALL RIGHT.

17 MR. BRIAN: WE'RE GOING TO CALL MR. GUNDLACH.

18 THE COURT: I UNDERSTOOD THAT WAS A
19 POSSIBILITY. THAT'S FINE.

20 WHAT'S THE ISSUE?

10:56AM

21 MR. QUINN: WHAT'S THE PROFFER?

22 I THINK AT THIS POINT, WE'RE ENTITLED
23 TO --

24 MR. BRIAN: HE'S GOING TO RESPOND TO
25 MR. OWENS. HE'S GOING TO TALK ABOUT THOSE
26 CONVERSATIONS. NOTHING ELSE.

10:56AM

27 THE COURT: IT'S JUST REBUTTAL.

28 MR. BRIAN: VERY NARROW. IT SHOULD BE VERY

1 SHORT.

2 THE COURT: NO ONE CAN HAVE THE LAST WORD
3 HERE. EVERYONE WANTS ANOTHER SHOT.

4 MR. QUINN: YOU GET THE LAST WORD.

5 MR. MADISON: WE RESTED ON THE EXHIBITS.

10:57AM

6 THE COURT: WE KNOW THAT. WE KNOW THAT.

7

8 (THE FOLLOWING PROCEEDINGS
9 WERE HELD IN OPEN COURT IN
10 THE PRESENCE OF THE JURY:)

11

12 THE COURT: ALL RIGHT, MR. BRIAN. YOU MAY
13 CALL YOUR NEXT WITNESS.

14 MR. BRIAN: YES, YOUR HONOR.

15 WE CALL MR. GUNDLACH.

10:57AM

16

17 JEFFREY GUNDLACH,
18 CALLED AS A WITNESS BY THE DEFENSE,
19 WAS PREVIOUSLY SWORN AND TESTIFIED AS FOLLOWS:

20

21

22 THE COURT: GOOD MORNING, MR. GUNDLACH.
23 HAVE A SEAT.

24 YOU MUST NOT HAVE EXPECTED TO BE HERE
25 TODAY.

10:57AM

26 THE WITNESS: IT'S CASUAL MONDAY.

27 THE COURT: ALL RIGHT, SIR.

28 PLEASE RECALL, YOU HAVE PREVIOUSLY BEEN

1 SWORN, AND YOU ARE STILL UNDER OATH.

2 MR. BRIAN, YOU MAY PROCEED.

3

4

5 DIRECT EXAMINATION (REBUTTAL)

6

7 BY MR. BRIAN:

8 Q. MY FIRST QUESTION WAS GOING TO BE WHETHER YOU
9 WEAR A COAT AND TIE TO WORK EVERY DAY.

10 A. NOT EVERY DAY.

10:58AM

11 Q. I'M GOING TO ASK YOU SOME QUESTIONS ABOUT A
12 VERY NARROW SUBJECT MATTER.

13 DO YOU RECALL HAVING A MEETING IN THE
14 EARLY PART OF NOVEMBER WITH CERTAIN PEOPLE AFFILIATED
15 WITH GOLDMAN SACHS, NOVEMBER OF 2009?

10:58AM

16 A. YES, I DO.

17 Q. AND WHERE WAS THAT MEETING?

18 A. IT WAS AT GOLDMAN SACHS' OFFICES IN NEW YORK
19 CITY.

20 Q. AND TO THE BEST OF YOUR RECOLLECTION, WHO
21 ATTENDED THAT MEETING IN PERSON?

10:58AM

22 A. IT WAS MYSELF AND GREG WARD AND BARBARA
23 VANEVERY, TOM CORNACCHIA, WHO I HAD KNOWN FOR QUITE A
24 WHILE FROM GOLDMAN SACHS; AND MAYBE THREE OTHER PEOPLE
25 FROM GOLDMAN SACHS WERE THERE, TOO.

10:58AM

26 Q. AND THE JURY HEARD FROM MR. TODD OWENS.

27 DID HE PARTICIPATE BY PHONE?

28 A. I THINK HE WAS ON THE PHONE. BUT IT WASN'T

1 THERE IN PERSON.

2 Q. AND WERE YOU TALKING ON A SPEAKERPHONE IN
3 NEW YORK?

4 A. NO, IT WAS JUST -- WE WERE HAVING LUNCH. IT
5 WAS AT A TABLE WITH ABOUT FIVE, SIX PEOPLE HAVING
6 LUNCH. AND I DON'T KNOW HOW HE WAS ON THE PHONE.

10:59AM

7 Q. SO YOU DON'T -- CAN'T TELL FROM WHERE YOU
8 WERE, WHETHER HE WAS ABLE TO HEAR ALL THE CONVERSATION
9 WELL?

10 A. NO.

10:59AM

11 Q. DID YOU TELL THE PEOPLE AT GOLDMAN SACHS, AT
12 THAT MEETING, THAT YOU WERE CONSIDERING LEAVING TCW
13 WITHOUT NOTICE?

14 A. NO.

15 Q. WHAT DID YOU DISCUSS AT THAT MEETING?

10:59AM

16 A. I BASICALLY CALLED THE MEETING WITH MY --
17 WITH -- TOM CORNACCHIA SET IT UP, BECAUSE I WANTED
18 ADVICE FROM GOLDMAN SACHS ON WHAT MAYBE I COULD DO TO
19 MAKE THE SITUATION BETTER.

20 I SPENT A LOT OF TIME GRIPING ABOUT TCW
21 AND THE DISHONESTY AND BEHAVIOR OF SG, AND STUFF LIKE
22 THAT.

10:59AM

23 Q. DID YOU TELL HIM ABOUT YOUR LENGTHY TENURE AT
24 THE COMPANY?

25 A. I DID.

10:59AM

26 I WENT INTO KIND OF A LONG SPIEL ABOUT
27 HOW THINGS HAD COME TO BE THE WAY THEY WERE, AND I HAD
28 BEEN THERE FOR SO LONG.

1 AND I THINK I TOLD HIM I LOVED TCW.

2 Q. DID YOU ASK HIM FOR ADVICE?

3 A. I ASKED THEM, COULD THEY GIVE ME ADVICE -- NOT
4 REALLY AT THAT MEETING, BUT MAYBE IN THE FUTURE.

5 Q. AND THEN -- AT ANY TIME IN THAT MEETING, DID
6 YOU TELL THE PEOPLE AT GOLDMAN SACHS THAT YOU DID NOT
7 HAVE AN EMPLOYMENT AGREEMENT?

11:00AM

8 A. NO, I DIDN'T.

9 Q. DID ANY CONTRACTUAL ISSUE COME UP AT THAT
10 MEETING?

11:00AM

11 A. YES.

12 Q. WHO -- HOW DID IT COME UP, AND WHO SAID WHAT?

13 A. SOMEONE FROM GOLDMAN SACHS ASKED ME IF I HAD A
14 NON-COMPETE.

15 Q. AND DID YOU ANSWER?

11:00AM

16 A. I DID. I TOLD HIM I DIDN'T HAVE A BINDING
17 NON-COMPETE.

18 Q. AND WAS THAT YOUR UNDERSTANDING?

19 A. YES.

20 Q. NOW, SETTING ASIDE ANY CONVERSATIONS WITH
21 LAWYERS, WHAT WAS THAT UNDERSTANDING BASED ON?

11:00AM

22 MR. MADISON: OBJECTION. FOUNDATION.

23 THE COURT: ALL RIGHT.

24 MR. BRIAN: THAT'S WHAT I'M LAYING.

25 THE COURT: I'LL ALLOW THE QUESTION.

11:00AM

26 BUT LISTEN CAREFULLY TO THE QUESTION,
27 SETTING ASIDE --

28 MR. MADISON: ALSO HEARSAY, YOUR HONOR.

1 THE COURT: IT'S HIS UNDERSTANDING, IS WHAT'S
2 BEING ASKED.

3 Q. BY MR. BRIAN: EXCLUDING ANY CONVERSATION WITH
4 LAWYERS, JUST WHAT WAS YOUR UNDERSTANDING BASED ON,
5 THAT YOU DID NOT HAVE A BINDING NON-COMPETE? 11:01AM

6 A. PEOPLE WHO HAD HAD NON-COMPETE LANGUAGE IN
7 CONTRACTS WITH TCW TALKED ABOUT THAT A LOT, AS BEING
8 THE UNDERSTANDING IT WAS NOT ENFORCEABLE.

9 Q. NOW, AFTER THAT MEETING IN EARLY NOVEMBER, DID
10 YOU HAVE A LATER TELEPHONE CALL WITH TODD OWENS? 11:01AM

11 A. YES.

12 Q. WHO PARTICIPATED IN THAT TELEPHONE CALL?

13 A. I THINK THERE WAS PROBABLY SOMEONE ELSE ON THE
14 PHONE WITH TODD OWENS FROM GOLDMAN SACHS, BUT I'M NOT
15 SURE WHO. 11:01AM

16 BUT ON MY END, IT WAS JUST ME AND GREG
17 WARD.

18 Q. AND WHAT WAS DISCUSSED DURING THAT TELEPHONE
19 CALL?

20 A. WELL, THAT WAS THEM GETTING BACK TO ME WITH
21 ADVICE. 11:01AM

22 AND THEY SAID, WE HAVE THREE IDEAS FOR
23 YOU, WITH THIS PREDICAMENT YOU ARE IN.

24 ONE WAS, STAY AT TCW, WITH IMPROVED
25 CORPORATE GOVERNANCE. 11:01AM

26 THE SECOND, WAS BUY TCW BACK FROM THE
27 FRENCH, WITH THE MANAGEMENT BUYOUT.

28 AND THE THIRD WAS A NEGOTIATED

1 DEPARTURE.

2 AND WE SPENT MOST OF THE TIME TALKING
3 ABOUT THE NEGOTIATED DEPARTURE IDEA.

4 Q. AND DID YOU LEAVE THE MEETING WITH ANY
5 UNDERSTANDING OF AN ACTION PLAN, GOING FORWARD?

11:02AM

6 A. THE ONLY ACTION PLAN WE HAD GOING FORWARD, IT
7 WAS CLEAR THAT OF THE THREE OPTIONS, THE ONE THAT WAS
8 THE MOST PRACTICAL, WOULD HAVE BEEN THE NEGOTIATED
9 SEPARATION.

11:02AM

10 BUT WE DIDN'T HAVE A CONCLUSION ON
11 WHETHER EVEN -- WE WANTED TO DO THAT.

12 Q. SO WHAT DID YOU SAY TO THEM AT THE END OF THE
13 MEETING?

14 A. THEY SAID, BUT WHAT'S THE NEXT STEP?

15 AND I SAID, I DON'T KNOW. THERE MIGHT
16 BE NOTHING TO DO, EVER.

11:02AM

17 BUT MAYBE, IN A FEW MONTHS, I'LL MAKE A
18 DECISION ON A NEGOTIATED DEPARTURE. AND IF I DO, I'LL
19 GIVE YOU A CALL IN A FEW MONTHS.

20 Q. AND THIS MEETING WAS WHEN, ABOUT EARLY
21 DECEMBER 1ST?

11:02AM

22 A. IT'S DECEMBER 1ST, 2009; THREE DAYS BEFORE I
23 WAS FIRED.

24 MR. BRIAN: NOTHING FURTHER, YOUR HONOR.

25 THE COURT: ALL RIGHT.

11:03AM

26 CROSS-EXAMINATION, MR. QUINN OR
27 MR. MADISON?

28 MR. MADISON: YES, YOUR HONOR.

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CROSS-EXAMINATION

BY MR. MADISON:

Q. SO IN THE MEETING OF NOVEMBER 9, YOU TOLD GOLDMAN SACHS YOU LOVED TCW?

A. I THINK I DID, YEAH.

Q. DID YOU TELL GOLDMAN SACHS THAT AT YOUR DIRECTION, MR. WARD HAD ALREADY FORMED A NEW CORPORATION CALLED ABLE GRAPE, THAT YOU WERE THE PRESIDENT OF?

A. ABLE GRAPE WAS A TAX ID NUMBER, NOT A CORPORATION.

BUT WE DIDN'T TALK ABOUT THAT, AS I REMEMBER.

Q. YOU DON'T RECALL, SIR, THAT ABLE GRAPE HAD ACTUALLY BEEN INCORPORATED IN THE STATE OF DELAWARE IN LATE OCTOBER, AT YOUR DIRECTION?

A. IT WAS A TAX ID NUMBER, SHELL CORPORATION IN DELAWARE, YES.

Q. WHAT'S A SHELL CORPORATION?

A. THERE'S NO CONTENT TO IT.

Q. LATER, THAT SHELL CORPORATION WOULD BECOME DOUBLELINE, WOULDN'T IT, SIR?

MR. BRIAN: OBJECTION. CUMULATIVE.

THE COURT: SUSTAINED.

Q. BY MR. MADISON: WELL, DID YOU TELL THEM THAT

11:03AM

11:03AM

11:03AM

11:03AM

1 YOU HAD FORMED A QUOTE, UNQUOTE, SHELL CORPORATION THAT
2 HAD A NEW TAXPAYER I.D.?

3 A. I DON'T THINK SO.

4 Q. DID YOU TELL THEM AT YOUR DIRECTION, MR. WARD
5 HAD BEGUN TO OPEN A BANK ACCOUNT FOR THE NEW BUSINESS?

11:04AM

6 A. I DON'T THINK SO.

7 Q. DID YOU TELL THEM THAT AT YOUR DIRECTION,
8 MR. SANTA ANA, MR. MAYBERRY, JP, HAD BEEN DOWNLOADING
9 INFORMATION SINCE SEPTEMBER 3RD, TO BE USED IN THE NEW
10 BUSINESS?

11:04AM

11 A. I DON'T THINK THAT'S EVEN TRUE, THE WAY YOU
12 STATE IT.

13 Q. YOU ARE LOOKING OVER AT YOUR COUNSEL,
14 MR. GUNDLACH.

15 IS THERE SOME REASON FOR THAT?

11:04AM

16 MR. BRIAN: OBJECTION. ARGUMENTATIVE.

17 THE COURT: SUSTAINED.

18 Q. BY MR. MADISON: SO YOU DIDN'T TELL THEM ANY
19 OF THE STEPS YOU HAD ALREADY TAKEN TO BEGIN TO FORM THE
20 NEW BUSINESS, DID YOU, SIR?

11:04AM

21 A. NO. I DIDN'T TELL THEM ANYTHING ABOUT THE
22 VERY SMALL STEPS I HAD TAKEN TO DO ANYTHING.

23 Q. YOU DID TELL THEM THAT YOU HAD BEEN EXAMINING
24 OFFICE SPACE, THOUGH, FOR THE NEW BUSINESS, DIDN'T YOU?

25 A. I DON'T KNOW.

11:04AM

26 Q. SO IF MR. OWENS TESTIFIED THAT YOU DID SAY
27 THAT, WOULD YOU HAVE ANY REASON TO DENY THAT?

28 A. I DON'T REMEMBER THAT TOPIC BUT -- COMING UP

1 IN THE MEETING.

2 Q. YOU DO KNOW THAT BY NOVEMBER 9, YOU ACTUALLY
3 HAD BEEN LOOKING FOR OFFICE SPACE FOR THE NEW OFFICE,
4 HADN'T YOU?

5 MR. BRIAN: OBJECTION. CUMULATIVE. 11:05AM

6 THE COURT: SUSTAINED.

7 Q. BY MR. MADISON: WELL, THAT WOULD HAVE BEEN A
8 TRUE STATEMENT, AT THAT TIME, IF YOU MADE IT?

9 MR. BRIAN: OBJECTION. ARGUMENTATIVE.

10 THE COURT: SUSTAINED. 11:05AM

11 Q. BY MR. MADISON: NOW, YOU SAID THAT YOU SPOKE
12 TO SOMEONE ABOUT THE DRAFT WRITTEN AGREEMENT THAT TCW
13 HAD PROVIDED YOU IN 2007?

14 A. I DON'T THINK I SAID THAT.

15 Q. WELL, WE HEARD YOUR DEPOSITION TESTIMONY,
16 WHERE YOU SAID YOU SPOKE TO SOMEBODY ABOUT THE
17 AGREEMENT. 11:05AM

18 MR. BRIAN: OBJECTION. BEYOND THE SCOPE, YOUR
19 HONOR.

20 THE COURT: SUSTAINED. 11:05AM

21 Q. BY MR. MADISON: WELL, MY QUESTION, SIR, IS:
22 WITH REGARD TO THIS NON-COMPETE LANGUAGE THAT YOU
23 SAY -- I BELIEVE YOUR TESTIMONY A BIT AGO WAS, YOU HAD
24 BEEN CONCERNED FOR SOME TIME, FOR YEARS, ABOUT THE
25 ENFORCEABILITY OF THE NON-COMPETE; IS THAT YOUR BELIEF? 11:05AM

26 A. I WASN'T CONCERNED ABOUT IT.

27 I JUST THOUGHT IT WAS UNENFORCEABLE, AND
28 I WAS TOLD THAT BY A NUMBER OF SOURCES.

1 Q. AND WHEN YOU HAD GOTTEN THE DRAFT WRITTEN
2 AGREEMENT BACK IN 2007, YOU HAD SPOKEN TO SOMEBODY TO
3 GET ADVICE ABOUT THAT, HADN'T YOU?

4 A. NO.

5 Q. WELL, IF WE LOOK AT EXHIBIT 66, WHICH IS THE
6 RED LINE VERSION OF THE DRAFT WRITTEN AGREEMENT THAT
7 YOU NEVER SIGNED BACK IN 2007, DO YOU RECALL --

11:06AM

8 IF WE JUST SCROLL DOWN THROUGH THE
9 AGREEMENT, MIKE. I BELIEVE IT'S AT THE FIFTH OR SIXTH
10 PAGE.

11:06AM

11 MR. BRIAN: IF THERE'S A QUESTION PENDING,
12 YOUR HONOR, IT'S CUMULATIVE, AND BEYOND THE SCOPE.

13 THE COURT: IS THERE A QUESTION?

14 MR. MADISON: YES.

15 Q. THE NON-COMPETE YOU SAID YOU HAD CONCERNS
16 ABOUT FOR YEARS, IN THE DRAFT AGREEMENT IS THERE IN THE
17 PARAGRAPH THAT I BELIEVE IS ENTITLED "CONFIDENTIALITY",
18 RIGHT?

11:06AM

19 MR. BRIAN: OBJECTION. CUMULATIVE, BEYOND THE
20 SCOPE.

11:06AM

21 THE COURT: SUSTAINED.

22 WE'VE BEEN THROUGH THIS, MR. MADISON.

23 MR. MADISON: WELL, I'M RESPONDING TO
24 MR. BRIAN'S QUESTION, WHEN MR. --

25 THE COURT: GO AHEAD.

11:07AM

26 Q. BY MR. MADISON: WHEN MR. BRIAN WAS ASKING YOU
27 ABOUT THE CONCERNS YOU HAD IN NOVEMBER OF 2009 ABOUT
28 NON-COMPETE, IS THIS THE LANGUAGE FROM THE DRAFT

1 WRITTEN AGREEMENT THAT YOU HAD IN MIND?

2 A. I DON'T --

3 MR. BRIAN: OBJECTION. VAGUE, YOUR HONOR.

4 THE WITNESS: I DON'T UNDERSTAND HOW YOU ARE
5 FRAMING THE QUESTION.

11:07AM

6 I DIDN'T TALK ABOUT CONCERNS IN NOVEMBER
7 2009.

8 Q. BY MR. MADISON: DIDN'T YOU TELL US JUST A BIT
9 AGO ABOUT THAT YOU HAD CONCERNS FOR YEARS ABOUT
10 NON-COMPETE LANGUAGE?

11:07AM

11 MR. BRIAN: FORM, ARGUMENTATIVE.

12 THE COURT: OVERRULED.

13 THE WITNESS: YEAH, I THOUGHT IT WAS
14 UNENFORCEABLE FOR YEARS. I THOUGHT IT WAS ILLEGAL.

15 Q. BY MR. MADISON: AND DID THAT TOPIC COME UP IN
16 YOUR CONVERSATION WITH GOLDMAN SACHS?

11:07AM

17 A. NO.

18 THE TOPIC THAT CAME UP WAS, DO YOU HAVE
19 A NON-COMPETE; AND I SAID, I DO NOT HAVE A BINDING
20 NON-COMPETE; THAT'S WHAT CAME UP.

11:07AM

21 Q. WELL, ISN'T THAT THE TOPIC WE'RE TALKING
22 ABOUT, SIR?

23 MR. BRIAN: OBJECTION. FORM, ARGUMENTATIVE.

24 THE COURT: SUSTAINED.

25 Q. BY MR. MADISON: WELL, MY QUESTION FOR YOU,
26 MR. GUNDLACH, IS, YOU HAD MADE CHANGES TO THE DRAFT
27 WRITTEN AGREEMENT, AND COMMUNICATED THOSE CHANGES TO
28 MR. CAHILL, BY JUNE 7, 2007, HADN'T YOU?

11:07AM

1 MR. BRIAN: OBJECTION. CUMULATIVE. BEYOND
2 THE SCOPE, YOUR HONOR.

3 THE COURT: OVERRULED.

4 WE'RE NOT GOING OVER IT ALL AGAIN.

5 GO AHEAD AND ANSWER. 11:08AM

6 MR. MADISON: I'M ALMOST DONE, YOUR HONOR.

7 THE WITNESS: I HAD GIVEN HIM SOME CHANGES;
8 AND SOME HE INCORPORATED, AND SOME HE DIDN'T.

9 Q. BY MR. MADISON: AND THIS EXHIBIT 66 IS THE
10 ONE THAT HAS THE CHANGES THAT YOU HAD REQUESTED. 11:08AM

11 WE SAW THAT AS A RED LINE, DO YOU RECALL
12 THAT?

13 A. SOME OF THE CHANGES WERE MADE; NOT ALL OF
14 THEM.

15 Q. SO IS IT YOUR TESTIMONY THAT YOU ACTUALLY 11:08AM
16 ASKED FOR CHANGES TO THE NON-COMPETE, BUT MR. CAHILL
17 JUST REFUSED TO MAKE THEM?

18 A. YES.

19 Q. BECAUSE YOU WOULD AGREE, THERE ARE NO CHANGES
20 TO THE NON-COMPETE, IN EXHIBIT 66, RIGHT? 11:08AM

21 MR. BRIAN: OBJECTION. CUMULATIVE, YOUR
22 HONOR.

23 THE COURT: SUSTAINED.

24 Q. BY MR. MADISON: WELL, IF WE GO BACK TO THE
25 FIRST PAGE OF THE EXHIBIT, DO YOU REMEMBER GETTING THIS 11:08AM
26 FROM MR. CAHILL?

27 HE SENT OUT THE E-MAIL AND SAYS,
28 JEFFREY, BILL AND BOB, HERE'S THE REVISED FORM --

1 DID YOU EVER COMPLAIN TO MR. CAHILL THAT
2 THERE WERE CHANGES THAT YOU WANTED THAT WEREN'T
3 REFLECTED THERE?

4 MR. BRIAN: YOUR HONOR, THIS LINE OF
5 INQUIRY IS CUMULATIVE AND BEYOND THE SCOPE.

11:08AM

6 THE COURT: I AGREE. I THINK WE HAVE BEEN
7 THROUGH IT.

8 GO AHEAD.

9 Q. BY MR. MADISON: I JUST WANT TO ASK YOU ABOUT
10 THE NON-COMPETE TESTIMONY YOU GAVE JUST A COUPLE OF
11 MINUTES AGO.

11:09AM

12 DID YOU EVER COMMUNICATE TO MR. CAHILL
13 AFTER JUNE 7, 2007, THAT YOU HAD AN OBJECTION TO THAT
14 NON-COMPETE LANGUAGE?

15 MR. BRIAN: OBJECTION. THAT'S THE SAME
16 QUESTION, YOUR HONOR; CUMULATIVE, BEYOND THE SCOPE.

11:09AM

17 THE COURT: SUSTAINED.

18 Q. BY MR. MADISON: SO IS IT YOUR TESTIMONY YOU
19 HAD HAD THIS CONCERN FOR YEARS, BUT YOU DID NOT
20 COMMUNICATE THAT TO MR. CAHILL?

11:09AM

21 MR. BRIAN: SAME OBJECTIONS.

22 THE COURT: I THINK THAT MISCHARACTERIZES THE
23 TESTIMONY HE'S JUST GIVEN.

24 I'LL SUSTAIN THE OBJECTION.

25 Q. BY MR. MADISON: WE HEARD TESTIMONY FROM
26 MR. BARACH TO THE EFFECT THAT -- WELL, WERE YOU HERE
27 FOR MR. BARACH'S TESTIMONY?

11:09AM

28 MR. BRIAN: YOUR HONOR, MAY WE APPROACH?

1 THE COURT: THERE IS A LIMITATION.

2 IT'S WITHIN THE SCOPE OF MR. BRIAN'S
3 QUESTIONS.

4 MR. MADISON: YES.

5 Q. MR. BRIAN ASKED YOU ABOUT THE MEETING WITH
6 GOLDMAN SACHS.

11:09AM

7 DO YOU RECALL THAT?

8 A. YES.

9 Q. DO YOU RECALL TALKING TO MR. BARACH ABOUT
10 THOSE MEETINGS, BOTH OF THEM, THE NOVEMBER 9 AND THE
11 DECEMBER 1?

11:09AM

12 A. NOT BOTH OF THEM, NO.

13 Q. WHICH MEETING DID YOU TALK TO HIM ABOUT?

14 A. DECEMBER 1ST.

15 Q. AND YOU TOLD HIM THAT GOLDMAN SACHS HAD TOLD
16 YOU, IN NO UNCERTAIN TERMS, THAT THEY WOULD ONLY BE
17 WILLING TO WORK WITH YOU TO THE EXTENT THE DEAL WAS
18 FULLY TRANSPARENT TO TCW AND BENEFICIAL TO TCW; ISN'T
19 THAT RIGHT?

11:10AM

20 A. I DON'T REMEMBER THAT, NO.

11:10AM

21 Q. WELL, IF MR. BARACH WERE TO TESTIFY TO THAT,
22 WOULD YOU HAVE ANY REASON TO BELIEVE IT'S NOT TRUE?

23 MR. BRIAN: OBJECTION. ARGUMENTATIVE.

24 THE COURT: SUSTAINED.

25 Q. BY MR. MADISON: YOU BELIEVE MR. BARACH TO BE
26 A PERSON OF CANDOR AND INTEGRITY, DON'T YOU?

11:10AM

27 A. INTEGRITY, YES.

28 Q. BUT NOT CANDOR?

1 A. I'M NOT SURE WHAT CANDOR MEANS.

2 Q. CREDIBILITY, TRUTHFULNESS?

3 A. OH, SURE.

4 CANDOR, TOO, THEN.

5 Q. BY MR. MADISON: WELL, AT THE DECEMBER 1
6 MEETING, THE FIRST THING THAT HAPPENED WAS GOLDMAN
7 SACHS TOLD YOU THAT THEY COULD NOT REPRESENT YOU UNDER
8 ANY CIRCUMSTANCES WITH REGARD TO THIS ADVICE YOU WERE
9 SEEKING; ISN'T THAT RIGHT?

11:10AM

10 A. NO, THAT'S NOT RIGHT.

11:11AM

11 Q. SO YOU BELIEVE THEY TOLD YOU THAT SOMEWHERE
12 LATER IN THE MEETING, NOT AT THE START?

13 A. THEY NEVER TOLD ME THAT.

14 Q. TO THIS DAY, THEY'VE NEVER TOLD YOU THAT?

15 A. THAT'S CORRECT.

11:11AM

16 Q. AND THE ALTERNATIVE THAT THEY LAID OUT, THAT
17 WE SAW, FOR EXAMPLE, IN MR. WARD'S NOTES, THOSE WERE
18 ALTERNATIVES THEY WERE RECOMMENDING TO YOU, WEREN'T
19 THEY, SIR?

20 A. I THINK THIS WAS THEIR ADVICE.

11:11AM

21 I'M NOT SURE THEY RECOMMENDED IT,
22 EXACTLY; BUT THIS WAS WHAT THEY CAME BACK WITH, IN
23 TERMS OF IDEAS.

24 Q. AND YOU KNEW, BY THE TIME THAT THEY WERE
25 TALKING ABOUT THOSE ALTERNATIVES, THAT THEY HAD A
26 RELATIONSHIP WITH TCW THAT THEY TOLD YOU THEY WERE
27 CONCERNED ABOUT; ISN'T THAT RIGHT?

11:11AM

28 A. NO, IT'S NOT RIGHT.

1 Q. YOU SIGNED A NUMBER OF PRIOR CONTRACTS THAT
2 HAD NON-COMPETE LANGUAGE CONTAINED IN THOSE CONTRACTS,
3 DIDN'T YOU, SIR?

4 MR. BRIAN: OBJECTION, YOUR HONOR. CUMULATIVE
5 AND BEYOND THE SCOPE.

11:12AM

6 THE COURT: SUSTAINED.

7 Q. BY MR. MADISON: WELL, SIR, ARE YOU AWARE OF
8 ANY REASON WHY TODD OWENS FROM GOLDMAN SACHS WOULD NOT
9 GIVE TRUTHFUL TESTIMONY, HERE AND IN HIS DEPOSITION?

10 MR. BRIAN: OBJECTION, ARGUMENTATIVE.

11:12AM

11 THE COURT: SUSTAINED.

12 ANYTHING FURTHER?

13 MR. BRIAN: JUST VERY BRIEFLY, YOUR HONOR.
14
15

16 REDIRECT EXAMINATION
17

18 BY MR. BRIAN:

19 Q. MR. MADISON ASKED YOU ABOUT THE THREE OPTIONS
20 THAT WE DISCUSSED AT THE DECEMBER 1ST MEETING.

11:12AM

21 DO YOU RECALL THAT, GENERALLY?

22 A. YES.

23 Q. DID ANY OF THEM INVOLVE LEAVING WITHOUT GIVING
24 NOTICE TO TCW?

25 A. NO.

11:12AM

26 Q. AND AS OF DECEMBER 1ST, HAD YOU DECIDED TO
27 LEAVE TCW UNDER ANY CIRCUMSTANCES?

28 A. NO, I HAD NOT.

1 MR. BRIAN: NOTHING FURTHER.

2 THE COURT: ANYTHING ELSE, MR. MADISON?

3 MR. MADISON: NO, YOUR HONOR. THANK YOU.

4 THE COURT: THANK YOU, MR. GUNDLACH. THANK
5 YOU FOR YOUR TESTIMONY.

11:12AM

6 YOU MAY STEP DOWN.

7 THE WITNESS: THANK YOU.

8 MR. BRIAN: NOTHING FURTHER, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 ANYTHING FURTHER, MR. QUINN?

11:13AM

11 MR. QUINN: NOTHING FURTHER, YOUR HONOR.

12 THE COURT: LADIES AND GENTLEMEN, YOU KNOW
13 I'VE BEEN TELLING YOU EVERY NIGHT, UNTIL YOU HAVE HEARD
14 ALL THE EVIDENCE, YOU STILL CAN'T THINK ABOUT IT, YOU
15 CAN'T FORM ANY OPINIONS OR CONCLUSIONS.

11:13AM

16 UNTIL -- YOU HAVE HEARD ALL THE EVIDENCE
17 NOW. WE'RE GOING TO HAVE CLOSING ARGUMENTS TOMORROW.
18 BE A FULL DAY.

19 AS I'VE INDICATED, WE'LL START AT 8:30,
20 AND PROBABLY GO TILL 4:00. WE'LL TAKE A NOON RECESS.

11:13AM

21 DO YOU HAVE ANY PREFERENCE? PROBABLY AN
22 HOUR TO AN HOUR AND A HALF NOON RECESS, BUT IF YOU ARE
23 COMFORTABLE WITH AN HOUR, WE MAY JUST TAKE AN HOUR.

24 AND THEN I'LL READ INSTRUCTIONS TO YOU
25 WEDNESDAY MORNING, AND THE CASE WILL BE DELIVERED TO
26 YOU.

11:13AM

27 SO, AS YOU GO HOME NOW, DON'T DISCUSS
28 THE CASE AMONG YOURSELVES OR WITH ANYONE ELSE OR FORM

1 ANY OPINIONS OR CONCLUSIONS UNTIL THE CASE HAS BEEN
2 SUBMITTED TO YOU.

3 MR. BRIAN: YOUR HONOR, MAY WE APPROACH JUST
4 BRIEFLY, BEFORE THE JURY IS EXCUSED, ON A SCHEDULING
5 ISSUE?

11:13AM

6 THE COURT: YES, YOU MAY.

7 SIT TIGHT. MAYBE THERE'S SOMETHING THAT
8 I'VE SAID THAT'S WRONG.

9 MR. BRIAN: THERE'S THOSE FIVE MORE WITNESSES
10 THIS AFTERNOON.

11:13AM

11

12 (THE FOLLOWING PROCEEDINGS WERE
13 HELD AT SIDEBAR:)

14

15 THE COURT: ALL RIGHT. WHAT'S --

11:14AM

16 MR. BRIAN: WE HAD HAD A DISCUSSION ABOUT
17 WHETHER YOU WANTED -- WHETHER YOU THOUGHT WE'D START A
18 LITTLE EARLY.

19 MR. QUINN: WELL, YOU KNOW WHAT IT DEPENDS ON.

20 MR. BRIAN: I KNOW. THE ISSUE IS WHAT WE HAD
21 TALKED ABOUT AS OPENING ARGUMENTS, WE TALKED ABOUT TWO
22 HOURS. WE TALKED ABOUT --

11:14AM

23 THE COURT: THAT'S TOO MUCH.

24 MR. BRIAN: AND THEN WE TALKED ABOUT A HALF
25 HOUR.

11:14AM

26 THE COURT: WE DON'T HAVE THAT MUCH TIME. WE
27 HAVE AN HOUR TO HOUR 45 MINUTES, AND THEN 45 MINUTES TO
28 AN HOUR FOR EACH OF THE REBUTTALS, HOWEVER WE PUT IT IN

1 PERSPECTIVE.

2 MR. QUINN: YOUR HONOR, I ACTUALLY THINK THAT
3 WAS THE FIRST CONVERSATION WE HAD.

4 AND THEN THE SECOND ONE, WE'RE BOTH IN
5 AGREEMENT, ONE HALF HOUR FOR THE REBUTTALS OUGHT TO BE
6 ADEQUATE, AND WE'D BOTH REALLY LIKE THE TWO HOURS. 11:14AM

7 THE COURT: WELL, WE SAID WE'D GO 8:30 TO
8 10:30, WE TAKE A BREAK.

9 WE WOULD BREAK THE SECOND -- IF YOU TOOK
10 TWO HOURS, AND THEN YOU TOOK TWO HOURS, YOUR TWO HOURS
11 WOULD BE BROKEN UP WITH THE NOON RECESS; AND EACH OF
12 YOU WOULD BE COMFORTABLE WITH A HALF HOUR AND JUST A
13 SINGLE HALF HOUR REBUTTAL? 11:14AM

14 MR. QUINN: WE WOULD REALLY -- WHAT WE HAD
15 TALKED ABOUT IS DOING THE TWO TWO HOURS, AND TAKING A
16 LITTLE BIT LATER LUNCH, 12:30. 11:15AM

17 THE COURT: WELL, YOU HAVE GOT TO HAVE A
18 BREAK. 8:30 TO 10:30.

19 MR. BRIAN: SURE, WE COULD HAVE A 15-MINUTE
20 BREAK, AND TAKE A LITTLE BIT LATER LUNCH. 11:15AM

21 NOW, HE'S GOING TO MAKE A PITCH FOR --

22 THE COURT: WHATEVER IT IS, THEY'LL COME IN AT
23 8:30 AND STAY TILL ABOUT 4:00, 4:30. AND WE'LL WORK
24 OUT THE MECHANICS OF IT.

25 ONE QUESTION WOULD BE, WHETHER THEY'D
26 CONSIDER -- WE'RE NOT STARTING BEFORE 8:30. 11:15AM

27 MR. BRIAN: NO? 8:30.

28 THE COURT: THEN WE'LL LET THE JURY GO, AND

1 TALK ABOUT IT.

2 MR. MADISON: WE CAN DO ALL THIS TOMORROW, BUT
3 I DON'T KNOW IF YOU WANT THE PARTIES TO PROVIDE LUNCH
4 HERE, SO THEY DON'T HAVE TO GO OUT.

5 THE COURT: THAT WOULD PROBABLY BE A NICE
6 THING; AND WE'LL DO THAT.

11:15AM

7

8 (THE FOLLOWING PROCEEDINGS
9 WERE HELD IN OPEN COURT IN
10 THE PRESENCE OF THE JURY:)

11

12 THE COURT: ALL RIGHT. LOOKS LIKE WE'RE STILL
13 ON TARGET, 8:30 TOMORROW MORNING.

14 WE WILL PROBABLY GO THROUGH MAYBE 12:30
15 OR SO, WE WILL HAVE SANDWICHES AND LUNCH BROUGHT IN FOR
16 YOU FOR 45 MINUTES TO AN HOUR, AND YOU CAN GO IN THE
17 JURY ROOM.

11:16AM

18 BUT WE'LL TAKE CARE OF THAT, SO YOU
19 DON'T HAVE TO GO WANDER THE NEIGHBORHOOD, LOOKING FOR
20 SOMETHING TO EAT. AND WE'LL RECONVENE AND FINISH UP IN
21 THE AFTERNOON. ALL RIGHT?

11:16AM

22 HAVE A NICE EVENING. THANK YOU.

23

24 (AT 11:16 A.M. THE FOLLOWING
25 PROCEEDINGS WERE HELD IN OPEN
26 COURT OUT OF THE PRESENCE OF
27 THE JURY:)

28

1 THE COURT: ALL RIGHT. WE'RE OUT OF THE
2 PRESENCE OF THE JURY.

3 WE MAY AS WELL START ON SOME OF THESE
4 ISSUES, OR DO YOU WANT TO TAKE A LITTLE BREAK AND COME
5 BACK?

11:17AM

6 MR. BRIAN: I NEED A QUICK BATHROOM BREAK.

7 THE COURT: WE'LL TAKE 10 MINUTES.

8 COME BACK AT 11:30. WE'LL SEE WHAT
9 WE'VE GOT. WE'LL SOME CLEAN UP EXHIBIT ISSUES AND
10 OTHER THINGS.

11:17AM

11
12 (RECESS TAKEN.)

13
14 (THE NEXT PAGE NUMBER IS 8101.)
15
16
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1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA SEPTEMBER 12, 2011
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR
7 TIME: C SESSION
8

9 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.) +
10

11:38AM

11 THE COURT: WE'RE BACK ON THE RECORD IN THE
12 TCW MATTER, OUT OF THE PRESENCE OF THE JURY. WE'RE
13 GOING TO GO THROUGH A COUPLE OF OPEN ISSUES.

14 ON THE OUTSTANDING JURY INSTRUCTIONS
15 ISSUES, UNLESS SOMEBODY WANTS TO HAVE SOMETHING ELSE
16 TAKEN UP -- YOU'RE NOT INVOLVED IN THE JURY
17 INSTRUCTIONS.

11:39AM

18 MR. MADISON: I'M NOT. ALTHOUGH I WILL STAY
19 SO IT'S NOT THAT ISSUE. I WOULD REALLY LOVE TO GET THE
20 EXHIBITS CLOSED SO WE KNOW WHAT THE EVIDENCE IN THE
21 CASE IS.

11:39AM

22 THE COURT: THAT'S FINE.

23 MR. MADISON: WE CAN DO IT LATER.

24 THE COURT: WE CAN DO THE EXHIBITS NOW.

25 THE FIRST ITEM ON THE EXHIBIT LIST, I
26 THINK IS THE STUDLEY DECLARATION.

11:39AM

27 DO YOU WANT TO BE HEARD ON THAT?

28 MR. MADISON: THERE'S NO SUBSTANTIVE

1 OBJECTION, OTHER THAN JUST CUMULATIVE.

2 AND WE THINK THAT THESE EXHIBITS SHOW,
3 YOU KNOW, FURTHER ACTIVITY BY THE DEFENSE IN THE
4 FORMATION OF THE BUSINESS AND THE LIKE. AND, YOU KNOW,
5 THESE, THE INTENT HERE, CANDIDLY, IS SOME SUMMARIES
6 THAT WOULD BE USED IN CLOSING TO TALK ABOUT DATES THAT
7 THINGS WERE HAPPENING IN ALL THESE DOCUMENTS.

11:40AM

8 THE COURT: MR. QUINN'S TRYING TO CUT BACK.
9 GIVING HIM ANOTHER 500 DOCUMENTS TO TALK ABOUT DURING
10 HIS CLOSING SOUNDS TO ME LIKE PUTTING A BURDEN ON HIM.

11:40AM

11 IF THERE'S NO OBJECTION, I'LL ADMIT
12 THEM.

13 MR. HELM: YOUR HONOR, THIS IS WHAT MR. BRIAN
14 DISCUSSED WITH YOUR HONOR BEFORE, THAT WE HAD NO
15 SUBSTANTIVE OBJECTIONS, OTHER THAN WE THOUGHT THAT THEY
16 WERE CUMULATIVE, AND WE SUBMIT TO WHATEVER YOUR HONOR'S
17 DECISION IS.

11:40AM

18 THE COURT: I THINK TO SOME DEGREE THEY'RE
19 CUMULATIVE. THERE ARE A LOT MORE DOCUMENTS ATTACHED TO
20 THAT DECLARATION TO THE CUSTODIAN OF RECORDS THAT WERE
21 ADMITTED. YOU HAD ALL THOSE DOCUMENTS AND YOU OFFERED
22 ALL THE STUDLEY DOCUMENTS THAT YOU THOUGHT WERE
23 RELEVANT. I DO SEE IT AS OVERKILL.

11:40AM

24 BUT, IN THE ABSENCE OF OBJECTION, IF
25 THEY'RE DULY AUTHENTICATED DECLARATION OF CUSTODIAN
26 RECORDS, IF YOU WANT THEM ADMITTED, WE'LL ADMIT THEM.

11:41AM

27 MR. MADISON: THANK YOU, YOUR HONOR.

28 MR. HELM: JUST FOR THE RECORD, WE OBJECT ON

1 THE GROUNDS OF CUMULATIVE.

2 THE COURT: TO THE EXTENT THEY'RE DOCUMENTS
3 THAT WEREN'T ADMITTED.

4 MR. HELM: WE THINK THEY ADDRESS POINTS THAT
5 WERE ALREADY ADMITTED. THAT'S ONLY OUR POINT. IF
6 THAT'S THE COURT'S RULING, THAT'S FINE, WE CAN SUBMIT
7 AND MOVE ON. HE WANTED THE RECORD TO SHOW IT WAS OVER
8 OBJECTION, NOT ABSENT.

9 THE COURT: OVER THE DEFENDANTS' OBJECTION.

11:41AM

10 MR. MADISON: YOU HAVE A GOOD RECORD OF THE
11 EXHIBIT NUMBERS.

11:41AM

12 DO YOU NEED ME TO SUBMIT ANYTHING ON
13 THAT?

14 THE COURT: I HAVE NO RECORD OF THE EXHIBIT
15 NUMBERS.

11:41AM

16 MR. MADISON: OKAY.

17 THE COURT: CAN WE ADMIT THEM COLLECTIVELY?

18 MR. MADISON: WE SHOULD. I DID READ THEM INTO
19 COURT WHEN WE MOVED THEM AND WE FILED THE DECLARATION.
20 THAT WAS ON AUGUST 30.

11:41AM

21 THE COURT: THAT WAS -- ARE THEY NUMBERED
22 CONSECUTIVELY?

23 MR. MADISON: NO, YOUR HONOR. THEY'RE IN
24 CHRONOLOGICAL ORDER, I BELIEVE, SO THE NUMBERS ARE
25 SLIGHTLY OUT OF ORDER. OKAY.

11:42AM

26 THE COURT: WHAT WAS THE DATE?

27 MR. MADISON: I BELIEVE IT WAS THE SAME DAY WE
28 FILED THE STIPULATION. IT WAS AUGUST 30, 2011. I CAN

1 HAVE A LIST TYPED UP AND PROVIDE IT --

2 THE COURT: I MAY HAVE IT HERE.

3 THE CLERK: I THINK IT WAS THE 31ST.

4 THE COURT: I GOT AUGUST 31ST.

5 MR. MADISON: I READ THEM INTO THE RECORD ON
6 AUGUST 31ST.

11:42AM

7 THE CLERK: IS THAT THE ONE STARTS WITH
8 EXHIBIT 329?

9 MR. MADISON: IT DOES BEGIN WITH 329.

10 THE CLERK: I HAVE THE LIST.

11:43AM

11 THE COURT: WE HAVE THE LIST. WE'LL PUT IT IN
12 THE MINUTE ORDER.

13 MR. MADISON: THE NEXT ITEM ON THE AGENDA, TWO
14 TCW EXHIBITS, 2220, WHICH I UNDERSTAND THERE'S NO
15 OBJECTION, AND THEN 2223, WHICH I UNDERSTAND THERE IS
16 AN OBJECTION.

11:43AM

17 THE COURT: WHAT IS 2220?

18 MR. MADISON: 2220, IF WE CAN DISPLAY THEM, IT
19 WILL BE REALLY QUICK, YOUR HONOR.

20 THE COURT: THAT'S FINE.

11:44AM

21 MR. MADISON: THESE WERE DEMONSTRATIVES THAT
22 INDICATED THE AMOUNTS OF COMPENSATION.

23 AND THEN 2220, WE GOT A TYPEWRITTEN
24 VERSION AS WELL THAT WAS PREPARED.

25 IT WOULD BE THAT HANDWRITTEN CHART THAT
26 WAS USED.

11:44AM

27 THE COURT: MY GENERAL PRACTICE IS TO ALLOW
28 DEMONSTRATIVE PREPARED BY THE WITNESS TO BE OFFERED BY

1 THE -- OFFERED IN EVIDENCE. BUT IF THEY'RE PREPARED BY
2 COUNSEL, I DON'T USUALLY ADMIT THEM IN EVIDENCE.

3 DO YOU WANT TO STIPULATE TO THIS,
4 MR. HELM?

5 MR. HELM: WELL, OUR OBJECTION IS PRIMARILY TO 11:44AM
6 THE SECOND ONE. WE HAVE NO PARTICULAR --

7 THE COURT: ONE AT A TIME HERE.

8 MR. HELM: WE HAVE NO PARTICULAR OBJECTION TO
9 THIS ONE, YOUR HONOR.

10 THE COURT: YOU WANT IT ADMITTED? WHAT ABOUT 11:44AM
11 THE TYPEWRITTEN?

12 MR. HELM: THE TYPEWRITTEN IS FINE, TOO.

13 THE COURT: 2220 AND 2220-A.

14 MR. MADISON: YES, YOUR HONOR.

15 11:45AM

16 (PAUSE) +

17
18 THE COURT: 2220 AND 2220-A ADMITTED WITHOUT
19 OBJECTION.

20 11:45AM

21 (EXHIBITS 2220 AND 2220-A ADMITTED.) +

22
23 THE COURT: THE NEXT ONE, 2223, THAT'S ANOTHER
24 DEMONSTRATIVE?

25 MR. MADISON: IT IS, YOUR HONOR. BOTH OF 11:45AM
26 THESE I RECALL WERE PREPARED WHILE MR. VILLA WAS ON THE
27 STAND, BASED ON HIS TESTIMONY THE FIRST TIME.

28 THE COURT: WHAT'S THE OBJECTION?

1 MR. HELM: YOUR HONOR, THERE IS A COST
2 ALLOCATION WORKSHEET THAT MR. VILLA PREPARED HAS BEEN
3 ADMITTED INTO EVIDENCE. THIS WAS PREPARED BY COUNSEL.
4 WE THINK IT'S ARGUMENTATIVE.

5 WE GOT THIS THING ON THE BOTTOM HERE, 11:45AM
6 THE MILLION DOLLAR ACQUISITION COST -- THE ACTUAL COST
7 ALLOCATION HAS BEEN ADMITTED, AND THAT'S WHAT WE SHOULD
8 GO WITH. THE 13 MILLION COST.

9 THE COURT: IF IT'S IN EVIDENCE AND THAT'S THE
10 WORKSHEET HE USED IT SHOULD BE THE ONE HAND -- WELL, 11:46AM
11 AGAIN, I DON'T HAVE AN OBJECTION USING IT IN CLOSING
12 ARGUMENT. BUT I'M NOT INCLINED TO SUBMIT IT INTO
13 EVIDENCE.

14 MR. MADISON: SUBMITTED, YOUR HONOR.

15 THE COURT: THE OBJECTION'S SUSTAINED, 11:46AM
16 PROVIDED THE EXHIBIT MAY BE USED IN CLOSING ARGUMENT.

17 MR. MADISON: I'M FOLLOWING THE AGENDA, YOUR
18 HONOR.

19 THE NEXT ONE, NO. 9, WE ADMITTED THOSE
20 EXHIBITS TODAY. 11:46AM

21 THE COURT: 1008, -9, AND -10 HAVE BEEN
22 ADMITTED?

23 MR. MADISON: YES, YOUR HONOR, THROUGH
24 MR. VILLA TODAY.

25 THE COURT: ALL RIGHT. 11:46AM

26 NO. 10, 5440, I HAVE A NOTE HERE
27 INDICATING THAT THERE'S BEEN AN AGREEMENT ON THAT, OR
28 PERHAPS --

1 MR. ALLRED: I THINK WE HAVE AN AGREEMENT ON
2 ALL THREE, WITHDRAWING THE SECOND TWO, 5561, AND 5610.

3 AND THEY'VE AGREED TO ADMIT THE
4 CORRECTED TWO-PAGE VERSION OF 5440.

5 THE COURT: OKAY. 5440 IS -- WAS IT
6 PREVIOUSLY ADMITTED?

11:47AM

7 MR. ALLRED: IT WAS PREVIOUSLY ADMITTED, BUT
8 WE HAD A TECHNICAL GLITCH THAT LEFT OFF THE SECOND
9 PAGE.

10 THE COURT: 5561 AND 5610 ARE WITHDRAWN?

11:47AM

11 MR. ALLRED: YES.

12 THE COURT: ANY OTHER EXHIBITS, 5222 AND 5250?

13 MR. MADISON: THOSE HAVE BEEN RESOLVED. WE'RE
14 SUBMITTING REDACTED VERSIONS.

15 THE COURT: FOR OUR RECORD AND OUR MINUTE
16 ORDER, SO THE CLERK IS ON TARGET, WE NEED TO KNOW WHAT
17 YOU'RE DOING WITH THESE EXHIBITS.

11:47AM

18 MR. ALLRED: MY UNDERSTANDING, YOUR HONOR,
19 MR. QUINN AND MR. BRIAN SPOKE THIS MORNING, AND IT WAS
20 AGREED THAT THE VERSION THAT WILL GO TO THE JURY WILL
21 BE UNREDACTED. BUT THAT WE WILL NOT, THE PUBLIC
22 RECORD, DISCUSS THE PORTIONS THEY ARE CONCERNED ABOUT.

11:48AM

23 THE COURT: WELL, OKAY. I'VE TOLD YOU IN THE
24 PAST, AND NOTWITHSTANDING WHATEVER AGREEMENTS YOU MAKE,
25 DOCUMENTS MAY NOT BE FILED UNDER SEAL --

11:48AM

26 MR. ALLRED: RIGHT.

27 THE COURT: -- OR EXHIBITS PLACED UNDER SEAL
28 WITHOUT COMPLIANCE TO 2.550 ET SEQ OF THE CALIFORNIA

1 RULES OF COURT.

2 THAT DOES NOT ALLOW, OTHER THAN IN THE
3 DISCOVERY DISPUTES, THE SEALING OF DOCUMENTS UNDER
4 STIPULATION -- ON STIPULATION.

5 SO, IF YOU HAVEN'T MADE THE MOTION, AND 11:48AM
6 YOU HAVEN'T MADE THE SHOWING, I CAN'T MAKE THE ORDER
7 DIRECTING THAT DOCUMENTS BE SEALED. WE'VE BEEN THROUGH
8 THIS A LOT. AND SO WHATEVER THEIR AGREEMENT IS, I
9 DON'T REALLY CARE.

10 MR. ALLRED: YES, YOUR HONOR. 11:49AM

11 MY UNDERSTANDING WAS -- MAYBE I
12 MISSPOKE -- IT WILL BE AN UNREDACTED DOCUMENT, BUT
13 WE'RE NOT GOING TO PUT IT UP ON THE SCREEN AND TALK
14 ABOUT THE NUMBERS THEY'RE CONCERNED ABOUT.

15 THE COURT: THAT'S YOUR CHOICE? 11:49AM

16 MR. MADISON: I'LL CONFIRM THAT.

17 THE COURT: AS FAR AS IT BEING ADMITTED INTO
18 EVIDENCE, DOCUMENTS THAT ARE IN EVIDENCE ARE AVAILABLE
19 FOR INSPECTION AND ARE NOT PLACED IN EVIDENCE UNDER
20 SEAL ABSENT A SEALING ORDER. AND I HAVEN'T MADE ANY 11:49AM
21 SEALING ORDERS.

22 MR. MADISON: MY UNDERSTANDING, WE WERE
23 WITHDRAWING THOSE OR SEEKING LEAVE TO WITHDRAW THEM AND
24 SUBSTITUTE REDACTIONS. SO CAN I JUST CONSULT? IF WE
25 MOVE ON -- 11:49AM

26 THE COURT: WHAT ARE WE GOING TO SAY ABOUT
27 THEM TODAY?

28 MR. ALLRED: THEY'RE ALREADY IN EVIDENCE, I

1 BELIEVE, YOUR HONOR.

2 THE COURT: 5222 AND 5450 ARE TO BE WITHDRAWN
3 OR SUBSTITUTED EXHIBITS WITH REDACTIONS PLACED IN
4 EVIDENCE?

5 MR. ALLRED: NO, YOUR HONOR. 11:49AM

6 I THINK -- MY UNDERSTANDING IS THEY'RE
7 IN EVIDENCE ALREADY, AND THEY'RE REMAINING IN EVIDENCE.
8 WE SIMPLY HAD A PRIVATE AGREEMENT WITH COUNSEL HOW
9 CLOSINGS WILL PROCEED. AND ARGUMENT.

10 BUT I MAY BE WRONG AS WELL. I WASN'T 11:50AM
11 PART OF IT.

12 THE COURT: THEY'VE BEEN ADMITTED. WE'LL
13 LEAVE THEM IN. IF YOU MAKE SOME KIND OF A DEAL OR WANT
14 TO MAKE A MOTION, YOU'VE GOT TO GIVE IT TO ME -- GIVE
15 IT TO ME WITH APPROPRIATE SHOWING TO ALLOW THE FINDINGS 11:50AM
16 TO PUT SOMETHING UNDER SEAL.

17
18 (EXHIBITS 5222 AND 5250 ADMITTED.) +

19
20 MR. HELM: WE UNDERSTAND, YOUR HONOR. 11:50AM

21 MR. MADISON: YES, YOUR HONOR.

22 THREE OTHERS. I'M TOLD MR. BRIAN AND
23 MR. QUINN DISCUSSED -- I WANT TO MENTION ON THE RECORD
24 5031, 5032, AND 5034.

25 AND WHILE WE'RE IN THE HEARING ON JURY 11:50AM
26 INSTRUCTIONS, I'LL TRY TO GET SOME MORE INFORMATION FOR
27 THE COURT.

28 THE COURT: WHAT'S THE -- 5031, 5032, AND

1 5034, HAVE THEY PREVIOUSLY BEEN ADMITTED?

2 THE CLERK: YES, YOUR HONOR.

3 THE COURT: I'M TOLD THEY'VE BEEN PREVIOUSLY
4 ADMITTED.

5 WHAT IS THE ISSUE? 11:51AM

6 MR. MADISON: IT'S THE SAME THING. IT
7 CONTAINS CONFIDENTIAL INFORMATION UNRELATED TO THE
8 ISSUES IN THE CASE.

9 AND I -- I UNDERSTAND MR. QUINN AND
10 MR. BRIAN TALKED ABOUT TRYING TO RESOLVE THAT. 11:51AM

11 THE COURT: YES.

12 I DON'T WANT TO MAKE IT MORE DIFFICULT
13 THAN IT HAS TO BE. THERE ARE CERTAIN THINGS I CAN DO
14 AND CAN'T DO.

15 MR. MADISON: YOU BET. 11:51AM

16 THE COURT: I HAVE TO MAKE SPECIFIC FINDINGS,
17 AND THERE HAS TO BE A SHOWING TO SUPPORT THE FINDINGS.

18 SO, IF YOU WANT TO SUBMIT IT ON A
19 NONCONTESTED BASIS, WITH A DECLARATION, SO I CAN MAKE
20 THE FINDINGS AND THEN I CAN ISSUE THE ORDER. THE ORDER
21 ITSELF MUST HAVE THE FINDINGS IN IT. 11:51AM

22 AND I'LL ONLY MAKE THE FINDINGS IF GOOD
23 CAUSE IS SHOWN REQUIRED BY THE RULES.

24 MR. MADISON: YES, YOUR HONOR.

25 THE COURT: THAT'S THE BEST WAY TO APPROACH
26 IT. 11:51AM

27 MR. MADISON: YES, YOUR HONOR.

28 MR. HELM: MAKES SENSE, YOUR HONOR.

1 THE COURT: ANYTHING ELSE ON EXHIBITS?

2 MR. MADISON: ONE OTHER DOCUMENT THAT WE
3 INDICATED TO THE DEFENSE THIS MORNING. THAT WE
4 INTENDED TO MOVE IN. IT'S TX 2147. AND THIS IS THE
5 STATEMENT OF JEFFREY GUNDLACH'S NET WORTH.

11:52AM

6 THE COURT WILL RECALL MR. GUNDLACH DID A
7 HANDWRITTEN VERSION, AND THEN WE HAD A HEARING AND
8 THE COURT DIRECTED MR. GUNDLACH TO PROVIDE A MORE
9 FORMAL STATEMENT OF HIS NET WORTH, AND THIS IS WHAT WE
10 GOT. IT WAS MARKED AT 2147.

11:52AM

11 PRODUCED BY MR. GUNDLACH AND HIS
12 COUNSEL, PURSUANT TO THE COURT'S ORDER.

13 THE COURT: ANY OBJECTION TO THAT?

14 MR. HELM: THIS IS THE FIRST I'VE HEARD OF IT,
15 YOUR HONOR.

11:52AM

16 THE COURT: HE BASICALLY TESTIFIED TO IT,
17 ALTHOUGH HIS TESTIMONY WAS 90 OR THEREABOUTS?

18 MR. HELM: I GUESS THE ONLY THING I WONDERED,
19 IT HADN'T BEEN OFFERED PREVIOUSLY, WHAT'S THE RELEVANCE
20 OF WHAT THE CONSTITUENT PARTS OF IT ARE? I MEAN, ALL
21 THEY REALLY CARE ABOUT IS THE BOTTOM LINE, DON'T THEY?

11:52AM

22 THE COURT: WHAT WAS HIS TESTIMONY ON NET
23 WORTH? I THOUGHT IT WAS 90.

24 MR. MADISON: I BELIEVE IT WAS APPROXIMATELY
25 90 MILLION, AND THERE ARE ALSO VALUATIONS OF
26 DOUBLELINE. HIS DOUBLELINE INTERESTS HERE THAT VARY
27 WITH OTHER EVIDENCE IN THE CASE ABOUT IT. AND --

11:53AM

28 THE COURT: IT'S 13.4. I DON'T REMEMBER WHAT

1 THE TESTIMONY WAS ON THAT. IT'S BEEN ALL OVER --
2 DEPENDING ON WHO YOU LISTEN TO.

3 MR. MADISON: IT'S BEEN ALL OVER A LOT.

4 YES.

5 THE COURT: I'LL ADMIT IT.

11:53AM

6 MR. HELM: YOUR HONOR, HOW ABOUT IF WE LEFT
7 THE BOTTOM LINE AND LEFT THE, TO VALUE OF DOUBLELINE
8 HOLDING LINES AND REDACTED THE REST?

9 MR. MADISON: WELL --

10 MR. HELM: THOSE ARE THE THINGS YOU SAID YOU
11 NEEDED.

11:53AM

12 MR. MADISON: IT'S A BIT OF A SORE SUBJECT
13 WITH US. WE REQUESTED THE SWORN STATEMENT UNDER OATH.

14 THE COURT: BRINGING IT UP AT THE LAST MINUTE
15 AND NOT TALKING ABOUT IT, IT'S PROBABLY A SORE SUBJECT
16 WITH THEM. EVERYBODY'S GOT THEIR LITTLE
17 DISAPPOINTMENTS, AND SO WE'LL DEAL. I DON'T HAVE A
18 PROBLEM.

11:53AM

19 IT SEEMS TO ME IN MOST PUNITIVE DAMAGES
20 CASES WHERE THERE'S NO BIFURCATION OR AT THE PUNITIVE
21 DAMAGES PHASE, FINANCIAL STATEMENTS ARE ADMITTED.

11:53AM

22 AND SO THIS WAS PRODUCED BY THE
23 DEFENDANT. IT'S ALL HE'S EVER PRODUCED. AND SO IT
24 WILL BE ADMITTED.

25 MR. HELM: VERY WELL, YOUR HONOR.

11:54AM

26 MR. MADISON: THANK YOU, YOUR HONOR.

27 THE COURT: ANY OTHER EXHIBIT ISSUES?

28 MR. ALLRED: ONE OTHER, I THINK IS UNOPPOSED.

1 EXHIBIT 5268 THE BURSCHINGER DEPOSITION
2 EXHIBIT 10 REFERENCED IN THE DEPOSITION TODAY.

3 MR. MADISON: WE DO NOT OBJECT TO THAT
4 BURSCHINGER EXHIBIT 10. I'LL OBVIOUSLY TAKE ALLRED'S
5 WORD FOR IT THAT'S 5268.

11:54AM

6 THE COURT: IT WILL BE ADMITTED.

7

8 (EXHIBIT 5268 ADMITTED.) +

9

10 THE COURT: I HAD A LIST OF THINGS THAT WE
11 NEED TO DO, ONE OF WHICH IS YOU NEED TO PREPARE THIS
12 CROSS-REFERENCE EXHIBIT LIST THAT LIST EACH DEPONENT
13 WHOSE DEPOSITION TESTIMONY'S BEEN OFFERED, THE EXHIBIT
14 TO THE DEPOSITION, AND THE CORRESPONDING TRIAL EXHIBIT.
15 SOMEBODY'S BEEN PROBABLY KEEPING TRACK OF THAT.

11:54AM

16 MR. ALLRED: WE'VE GOT A RUNNING ONE, YES,
17 YOUR HONOR.

11:55AM

18 THE COURT: I WANT THEM PREPARED SO WHEN WE
19 GIVE THEM THE EXHIBITS, TO THE JURY, WE CAN ALSO GIVE
20 THEM THIS LIST. AND I THINK GIVING THEM A COMPLETE
21 TRIAL EXHIBIT LIST OF ADMITTED EXHIBITS IS A GOOD THING
22 IN THE FRONT OF THE NOTEBOOK.

11:55AM

23 AND I SUGGEST YOU HAVE AT LEAST TWO OR
24 THREE OF THE TRIAL EXHIBITS PREPARED TO GO INTO THE
25 JURY ROOM SINCE I -- I SUSPECT THEY COULD BE PUT IN
26 COUPLE OF NOTEBOOKS.

11:55AM

27 WHAT ARE WE LOOKING AT?

28 MR. MADISON: OH. IT'S MORE THAN A COUPLE,

1 GIVEN THAT THERE ARE SOME VERY VOLUMINOUS EXHIBITS.
2 SOME OF THEM WE JUST HAVE -- I CREATED A SET FOR MY OWN
3 USE, AND IT'S TEN VOLUMES, TEN BINDERS.

4 THE COURT: WELL, THEN, WE MAY BE ABLE -- WE
5 WANT TO HAVE A CART AND MAYBE WITH TWO RACKS, TOP TEN 11:55AM
6 AND THEN DUPLICATE SET ON THE BOTTOM. SO, IF MORE THAN
7 ONE PERSON WANTS TO LOOK AT AN EXHIBIT AT A TIME, THEY
8 CAN MOVE AROUND THE TABLE.

9 MR. MADISON: WHAT MIGHT BE HELPFUL, YOUR
10 HONOR, ALSO IS A LIST, AS YOUR HONOR INDICATED, OF ALL 11:56AM
11 THE EXHIBITS THAT ARE IN EVIDENCE; OBVIOUSLY, THAT'S
12 WHAT THEY HAVE.

13 THE NUMERICAL ORDER IS NOT THE
14 CHRONOLOGICAL ORDER. WE HAVE A WORKING LIST OF THE
15 WORKING EXHIBITS IN CHRONOLOGICAL ORDER. I'LL PROVIDE 11:56AM
16 A DRAFT OF THAT TO THE DEFENSE. THE JURY MIGHT FIND
17 THAT HELPFUL IF THEY KNOW SOMETHING HAPPENED AROUND A
18 CERTAIN TIME PERIOD.

19 THE COURT: THEY'LL HAVE -- THEY HAVE NOTES OF
20 THE NUMBERS. DON'T MAKE IT MORE COMPLICATED THAN IT 11:56AM
21 IS. THEY SHOULD BE IN NUMERICAL ORDER.

22 AND, YOU KNOW, SOMEBODY HAS TO HAVE AN
23 INTEREST IN AN EXHIBIT TO WANT TO LOOK AT IT.

24 MR. MADISON: YES, YES.

25 THE COURT: THEY NEED A NUMBER AND THEY CAN 11:56AM
26 FIND IT.

27 MR. MADISON: ALL I'M SAYING, WE CAN HAVE AN
28 EXHIBIT LIST THAT SHOWS THE NUMERICAL ORDER OF ALL

1 ADMITTED AND THEN THE CHRON ORDER WITH THE EXHIBIT
2 NUMBER ALSO.

3 THE COURT: IF YOU CAN REACH A STIPULATION ON
4 THAT, THAT'S FINE.

5 MR. MADISON: OKAY. THANK YOU, YOUR HONOR. 11:56AM

6 MR. PIERCE: ONE SECOND, YOUR HONOR, PLEASE.

7

8 (COUNSEL CONFER SOTTO VOCE.) +

9

10 THE COURT: THERE WAS A JOINT STIPULATION 11:58AM
11 REGARDING CORRECTION TO TRIAL RECORD FILED TODAY?

12 MR. MADISON: YES.

13 THE COURT: THIS IS TO CORRECT EXHIBITS; IS
14 THAT RIGHT? THE CLERK'S EXHIBIT LIST?

15 MR. ALLRED: PARTLY. THE MORE VOLUMINOUS PART 11:58AM
16 IS THE DEPOSITION CLIPS THAT WERE PLAYED, BUT NOT
17 TRANSCRIBED, AND IT'S TO PUT THOSE CLIPS IN THE RECORD,
18 THE ACTUAL TESTIMONY FROM DEPOSITION.

19 THE COURT: OKAY.

20 WHAT I PROPOSE TO DO, AND WE'LL ACCEPT 11:58AM
21 THIS JOINT STIPULATION WILL BE FILED, IT WILL BE IN THE
22 RECORD FOR WHATEVER YOU'VE GIVEN ME, AND THOSE ARE THE
23 DEPOSITION CLIPS.

24 MR. SABALBURO WILL POST TODAY HIS FINAL
25 EXHIBIT LIST BY THE END OF THE DAY. AND YOU ALL CAN 11:58AM
26 RECONCILE IT.

27 IF THERE ARE INCONSISTENCIES BETWEEN THE
28 CLERK'S FINAL EXHIBIT LIST AND WHAT YOU BELIEVE HAS

1 BEEN PLACED IN EVIDENCE, WE'LL GET THAT CLEANED UP.

2 MR. ALLRED: THANKS.

3 THE COURT: ALL RIGHT.

4 MR. MADISON: WE WANTED TO HAVE IN THE RECORD
5 DEPO TESTIMONY THAT WASN'T REPORTED AND THAT WAS
6 PLAYED.

11:59AM

7 THE COURT: THAT'S WHAT THIS STIP IS.

8 MR. MADISON: JOINTLY, WE SUBMITTED THAT.
9 THERE MAY BE SOME MORE AFTER.

10 THE COURT: IT'S REQUIRED BY THE COURT RULES
11 THAT WHENEVER DEPOSITION TESTIMONY IS PLAYED, IT HAS TO
12 BE -- THE TRANSCRIPTIONS OF IT HAVE TO BE OFFERED.

11:59AM

13 MR. MADISON: YES, WE WILL HAVE TO SUPPLEMENT
14 THAT BASED ON TODAY. WE PLAYED GUNDLACH TESTIMONY THAT
15 I DON'T THINK IS --

11:59AM

16 THE COURT: GIVE US ANOTHER STIPULATION.

17 MR. MADISON: ONE OTHER ISSUE. THIS IS NOT AN
18 EXHIBIT ISSUE -- WELL, IT IS IN A SENSE.

19 THAT IS, WE HAD BEEN DISCUSSING FOR THE
20 ENTIRE CASE A STIPULATION ABOUT THE TRADE SECRETS AND
21 HOW THEY SHOULD BE TREATED.

11:59AM

22 AND THE DISPUTES SEEM TO CENTER ON WHAT
23 WE WOULD INCLUDE AND WHAT WE WOULDN'T. IT SEEMS TO ME
24 WHEN WE COMPLETE THE INSTRUCTIONS TODAY WE'LL KNOW WHAT
25 THE JURY'S BEING TOLD ABOUT THAT NOW.

12:00PM

26 THE COURT: THAT INSTRUCTION'S BEEN FINALIZED.
27 WE KNOW THAT NOW.

28 MR. MADISON: YES, YOUR HONOR. WE'D LIKE TO

1 SUBMIT A PROPOSED ORDER TO TREAT THE TRADE SECRETS AS
2 THEY'RE PROVIDED UNDER THE CODE.

3 WE CAN PROVIDE THAT TO MUNGER FIRST FOR
4 REVIEW AND APPROVAL IF YOU'D LIKE.

5 THE COURT: THAT IS NOT A STIPULATION THAT IS 12:00PM
6 READ TO THE JURY OR OFFERED TO THE JURY. IT'S STRICTLY
7 FOR PURPOSES OF PROTECTING THE TRADE SECRET INFORMATION
8 THAT HAS BEEN PLACED IN THE RECORD --

9 MR. MADISON: YES, YOUR HONOR.

10 THE COURT: -- CORRECT? 12:00PM

11 GIVE THEM YOUR STIP AND GIVE IT TO ME,
12 AND I'LL ENTER AN APPROPRIATE ORDER. IT'S NOT
13 SOMETHING THAT IS THE SUBJECT OF ARGUMENT OR SHOWN TO
14 THE JURY.

15 MR. MADISON: THERE'S AN INSTRUCTION THAT 12:00PM
16 ALLUDES TO THE SAME PRINCIPLE, BUT WE'RE NOT GOING --

17 THE COURT: WE'VE CROSSED THOSE BRIDGES.

18 MR. MADISON: OF COURSE. THAT'S NOT THE
19 PURPOSE HERE.

20 THE COURT: ALL RIGHT. 12:01PM

21 I'LL PUT JOINT STIPULATION TO BE FILED.
22 I'VE GOT OTHER THINGS ON YOUR AGENDA LIST.

23 MR. ALLRED: ONE FINAL EXHIBIT CLEANUP.

24 WE ADMITTED INTO EVIDENCE APRIL 6TH,
25 2010 QUINN EMANUEL LETTER SUBJECT TO GETTING AN 12:01PM
26 APPROPRIATE REDACTION. WE'VE AGREED ON A REDACTION AND
27 I WOULD LIKE TO HAND THAT UP.

28 EXHIBIT 5837.

1 THE COURT: REDACTED COPY TO BE SUBSTITUTED
2 FOR THE COPY ORIGINALLY SUBMITTED.

3 MR. ALLRED: YES.

4 THE COURT: WE'LL GET THOSE COVERED IN A --
5 THE PROPOSED EXHIBIT WILL BE TENDERED ON THE ORDER
6 ENTERED ON PARTY STIPULATION, ASSUMING IT'S APPROPRIATE
7 ISSUE OF JURY INSTRUCTIONS 430.

12:02PM

8 MS. ESTRICH, YOU ARE GOING TO MAKE YOUR
9 CLASS?

10 MS. ESTRICH: AND I'LL MAKE IT BEFORE CLASS.
11 I APPRECIATE THAT GREATLY.

12:02PM

12 THE COURT: I SPENT SOME TIME OVER THE WEEKEND
13 LOOKING AT THIS. MY SENSE IS THAT THE BUT-FOR
14 INSTRUCTION IS APPROPRIATE. THAT SUBSTANTIAL FACTOR IS
15 AN APPROPRIATE STANDARD APPLICABLE TO INTENTION AS WELL
16 AS NONINTENTIONAL TORTS.

12:02PM

17 AND THEN THE FACTS OF THIS CASE AND THE
18 STATE OF THE EVIDENCE WE ARE NOT REALLY TALKING ABOUT
19 CONCURRENT INDEPENDENT CAUSES OR CONCURRENT CAUSES
20 WITHIN THE GENERALLY UNDERSTOOD CONTEXT OF THOSE TERMS
21 IN MULTIPLE CAUSES.

12:03PM

22 MS. ESTRICH: HERE WE GO. I'LL SEE IF I CAN
23 DISSUADE YOU. LET ME START AT THE END.

24 WHAT WE ARE ASSERTING IS THAT WE WERE
25 FORCED TO GIVE CONCESSIONS, LIQUIDATION OPTIONS, BIG
26 LOSSES ON WHAT WE THOUGHT WERE ENFORCEABLE CONTRACTS.
27 AND WERE ENFORCEABLE CONTRACTS BECAUSE OF
28 MR. GUNDLACH'S INTERFERENCE BECAUSE OF HIS STATEMENTS,

12:03PM

1 HIS RANTS.

2 THE DEFENSE -- OR ONE OF THE DEFENSES
3 THAT HAD BEEN OFFERED IS THAT, INDEPENDENTLY OF
4 ANYTHING MR. GUNDLACH SAID, WE WOULD HAVE BEEN FORCED
5 TO GRANT THESE CONCESSIONS BECAUSE THE INVESTORS WERE
6 GOING TO DEMAND THEM. INDEED, WERE DEMANDING THEM.

12:04PM

7 AND, THEREFORE, THAT THE INVESTOR
8 DEMANDS WERE AN INDEPENDENT CAUSE OF OUR ACTION. AND,
9 THEREFORE, EVEN IF JEFFREY GUNDLACH'S WRONGDOING WAS A
10 SUBSTANTIAL FACTOR, THEY ARGUE, WE HAVEN'T GOT
11 LIABILITY.

12:04PM

12 NOW, I DON'T OBJECT, YOUR HONOR, TO YOUR
13 GIVING 430 AS AN ADJUNCT TO SUBSTANTIAL FACTOR BECAUSE,
14 UPON MY FURTHER REFLECTION, IN 95 PERCENT OF THE CASES
15 IT DOESN'T MATTER.

12:04PM

16 A SUBSTANTIAL FACTOR WILL BE A BUT-FOR
17 CAUSE, AND A BUT-FOR CAUSE GENERALLY LOOKS LIKE A VERY
18 SUBSTANTIAL FACTOR.

19 THE ONE PLACE IT MAKES A DIFFERENCE IS
20 WHERE TWO PEOPLE SHOOT THE SAME GUY. AND HE WOULD HAVE
21 DIED FROM ME AND HE WOULD HAVE DIED FROM YOU; WE'VE GOT
22 CONCURRENT INDEPENDENT CAUSES.

12:04PM

23 AND DEFENDANT A MAY SAY, I'M NOT THE
24 BUT-FOR CAUSE. IT WOULD HAVE HAPPENED ANYWAY BECAUSE
25 OF YOUR WRONGDOING.

12:05PM

26 NOW, WHAT THE PLAINTIFFS ARGUE IS THAT
27 THAT INSTRUCTION SHOULD ONLY BE GIVEN WHERE I, THE
28 SHOOTER, NO. 1, IS ACTING NEGLIGENTLY.

1 IN OTHER WORDS, IF I'M ACTING
2 INTENTIONALLY, I'M NOT LIABLE IF SOMEBODY ELSE SHOOTS
3 HIM. I WOULD SUGGEST, YOUR HONOR, THAT'S EXACTLY
4 BACKWARDS.

5 THAT IF YOU'RE GOING TO CUT IT, IF
6 YOU'RE GOING TO OFFER 431 TO MAKE CLEAR --

12:05PM

7 THE COURT: WE'RE NOT -- I'M NOT TALKING ABOUT
8 431 AT ALL.

9 MS. ESTRICH: I WANT 431 IN IF YOU GIVE 430.

10 THE COURT: I DON'T THINK 431 IS APPROPRIATE.

12:05PM

11 MS. ESTRICH: THE REASON I THINK IT'S
12 APPROPRIATE, WE DO HAVE TWO PEOPLE SHOOTING THE SAME
13 GUY. AND TO SAY THAT SOMEHOW I'M NOT LIABLE, THE
14 WRONGDOER WHO IS BEING SUED IS NOT LIABLE THERE BECAUSE
15 HE DIDN'T -- HIS CAUSE, HIS ACTIONS WASN'T A BUT-FOR
16 CAUSE, BECAUSE THERE WAS AN INDEPENDENT ACTION. IT'S
17 SIMPLY WRONG.

12:06PM

18 IF THE OTHER GUY IS SHOOTING, OKAY, IT
19 DOESN'T MATTER IF HE'S SHOOTING INTENTIONALLY, IT
20 DOESN'T MATTER IF HE'S SHOOTING NEGLIGENTLY -- FRANKLY,
21 IT DOESN'T MATTER IF HE'S SHOOTING IN SELF-DEFENSE,
22 WHICH IS CLEARLY LAWFUL, I SHOULD STILL BE LIABLE,
23 WHETHER I'M SHOOTING INTENTIONALLY OR NEGLIGENTLY.

12:06PM

24 THEY'RE TELLING YOU THAT I'M NOT LIABLE.
25 THE CRIMINAL LAW, I PROMISE, YOU SAID THAT IF I SHOOT
26 SOMEONE INTENTIONALLY, I'M LIABLE IF I'M A SUBSTANTIAL
27 FACTOR IN THIS STEP.

12:06PM

28 THE COURT: YOU'RE NOT -- IF YOU SHOOT AND

1 MISS, YOU'RE NOT LIABLE.

2 MS. ESTRICH: BUT OUR CASE IS, YOU KNOW,
3 THAT'S RESOLVING THE FACTS.

4 OUR CASE IS THAT JEFFREY GUNDLACH SHOT
5 AND HIT. THAT, IN OTHER WORDS, HIS SHOT, HIS ARGUING
6 TO EVERYBODY, YOU DON'T -- HE FOUNDED THIS, THESE
7 FUNDS, FOUNDED THESE FUNDS.

12:06PM

8 AND HE SAYS TO ALL HIS FELLOW INVESTORS:
9 YOU DON'T HAVE A CONTRACT -- FREE TO BREACH. THEY
10 ALREADY BREACHED IT. THE GUYS IN CHARGE ARE IDIOTS.
11 YOU'RE GOING TO, IN EFFECT, LOSE YOUR MONEY.

12:07PM

12 WE'RE CLAIMING THE JURY MAY DISAGREE
13 WITH US, THAT THAT IS A SUBSTANTIAL FACTOR IN ENFORCING
14 TCW TO TAKE HUGE LOSSES FROM THE BREACH OF THESE
15 CONTRACTS.

12:07PM

16 THE COURT: ALL RIGHT. I UNDERSTAND.

17 MS. ESTRICH: THAT'S OUR ARGUMENT.

18 THE OTHER SIDE'S ARGUMENT IS, FORGET IT,
19 THEY WOULD HAVE DEMANDED IT ANYWAY BECAUSE THEY WERE
20 INFLUENCED BY THEIR OWN THINKING. BY THEIR OWN --

12:07PM

21 THE COURT: THEY MIGHT HAVE -- INVESTORS MIGHT
22 HAVE DEMANDED IT, OR TCW, THERE'S SUBSTANTIAL EVIDENCE
23 THAT TCW MIGHT HAVE OFFERED IT ON THEIR OWN FOR
24 PURPOSES UNRELATED TO ANYTHING TO DO WITH WHAT JEFFREY
25 GUNDLACH DID, OTHER THAN GETTING HIMSELF FIRED.

12:07PM

26 MS. ESTRICH: WE CONTEST THAT EVIDENCE. YOU
27 SAY YOU'VE GOT THAT EVIDENCE, AND WE'VE GOT EVIDENCE,
28 IF YOU LOOK AT STERN'S TESTIMONY AND SOME OF THE

1 DOCUMENTARY EVIDENCE AND THAT NONE OF THE MAJOR
2 CONCESSIONS WERE OFFERED UNTIL AFTER MR. GUNDLACH DID
3 HIS TELEPHONE RANTS.

4 IN FACT, MR. STERN TESTIFIED HE
5 PROJECTED NO LOSSES ON THESE FUNDS BECAUSE THEY HAD
6 BINDING CONTRACTS, AND WHILE HE BELIEVED THERE WOULD BE
7 A STORM, HE COULD WEATHER THAT STORM. 12:08PM

8 AND IT IS OUR CASE TO BE DETERMINED BY
9 THE JURY WHETHER MR. STERN IS RIGHT ABOUT THAT.

10 THE COURT: ALL RIGHT. ALL RIGHT. 12:08PM

11 MS. ESTRICH: YOU GOT IT.

12 THE COURT: LET ME HEAR FROM MR. HELM. I'M
13 SURE HE'S GOT SOMETHING TO SAY.

14 MR. HELM: YOUR HONOR, I THINK THE COURT GOT
15 IT EXACTLY RIGHT. THESE ARE NOT INDEPENDENT CAUSES. 12:08PM

16 TCW WAS REACTING TO AGITATED INVESTORS.
17 AND THERE ARE TWO THINGS THAT MIGHT HAVE CONTRIBUTED ON
18 THAT.

19 ONE WAS, THEY SAY THAT MR. GUNDLACH MADE
20 STATEMENTS THAT GOT THEM ALL RILED UP. 12:09PM

21 THE OTHER THING THAT HAPPENED ISN'T A
22 SHOOTER, IT'S THE ACTION OF TCW IN FIRING MR. GUNDLACH,
23 WHICH WE SAY ALSO GOT HIM RILED UP.

24 AND SO -- RILED UP.

25 THOSE ARE TWO FACTORS CONTRIBUTING TO A
26 SINGLE CAUSE. WHEN THAT'S THE CASE, IT HAS TO BE A
27 BUT-FOR CAUSE IN ORDER TO SATISFY SUBSTANTIAL FACTOR. 12:09PM

28 THAT IS TO BE DISTINGUISHED FROM YOU

1 PUSH HIM OFF THE TOP OF THE BUILDING AND YOU SHOOT HIM
2 ON THE WAY DOWN. THERE ARE TWO INDEPENDENT REASONS WHY
3 HE DIED. ONE IS, HE CRUSHED WHEN HE HIT THE GROUND,
4 AND THE OTHER, THE BULLET WENT THROUGH HIS HEART ON THE
5 WAY DOWN.

12:09PM

6 THOSE ARE INDEPENDENT CAUSES, EACH OF
7 WHICH ALONE WOULD HAVE BEEN SUFFICIENT TO KILL HIM.

8 AND SO, IN THAT SORT OF WEIRDO
9 SITUATION, THE COURT DOESN'T LET OFF THE FIRST
10 WRONGDOER BECAUSE THERE WAS SOME OTHER WRONGDOER WHO
11 INDEPENDENTLY WOULD HAVE KILLED HIM.

12:09PM

12 SO, WHAT WE'VE GOT IS NOT THE LAW SCHOOL
13 EXAM. WE JUST GOT THE STRAIGHTFORWARD CAUSATION ISSUE.
14 THERE WERE TWO THINGS THAT WERE CONTRIBUTING TO AN
15 EVENT. AND THEY CAN ONLY CHARGE US WITH BEING
16 RESPONSIBLE FOR THAT, IF IT WAS A BUT-FOR CAUSE, AND
17 THE 431 HAS NOTHING TO DO WITH THIS.

12:10PM

18 MS. ESTRICH: IF I MAY RESPOND BRIEFLY, YOUR
19 HONOR.

20 THAT'S EXACTLY WHAT WE'RE ALLEGING.
21 THERE WERE TWO SEPARATE FACTORS THAT CONTRIBUTED, TO
22 BORROW MR. HELM'S TERM, OR I WOULD ARGUE IN THE CASE,
23 WERE SUFFICIENT. ALL RIGHT.

12:10PM

24 AND IT'S NO DEFENSE FROM LIABILITY THAT
25 IT WOULD HAVE HAPPENED ANYWAY.

12:10PM

26 YOU GIVE 431, IT'S NECESSARY IN THOSE
27 CASES WHERE A JURY COULD FIND, AND A DEFENDANT HAS
28 ARGUED, THAT IT WOULD HAVE HAPPENED ANYWAY BECAUSE OF

1 SOMETHING ELSE.

2 AND THE LAW IS PERFECTLY CLEAR THAT YOU
3 DON'T GET OFF, IF YOU'RE A SUBSTANTIAL FACTOR, THEN THE
4 BUT-FOR TEST, ONLY IN THOSE CIRCUMSTANCES.

5 YOU'LL SEE I QUOTE THE GUN CASE AND THE
6 RESTATEMENT ONLY IN THOSE CIRCUMSTANCES WHERE YOU GET
7 TWO FACTORS.

12:10PM

8 WE HAPPEN TO ALLEGE, BY THE WAY, THAT
9 THE INVESTORS HAD NO RIGHT TO BREACH THEIR CONTRACT,
10 BUT WE HAD NO CHOICE.

12:11PM

11 BUT THERE ARE TWO INDEPENDENT FACTORS:
12 ONE IS THE -- ONE, INVESTOR ANGER, AND THE OTHER IS
13 GUNDLACH'S RANTS.

14 IF BOTH OF THEM ARE SUBSTANTIAL FACTORS,
15 THEN WE SHOULD GET LIABILITY EVEN IF THE BUT-FOR TEST
16 ISN'T MET BECAUSE IT WOULD HAVE HAPPENED ANYWAY.

12:11PM

17 AND THAT'S THE CIRCUMSTANCE WHERE IT'S
18 BEEN HELD TO BE REVERSIBLE ERROR. TO GIVE 430 AND SAY,
19 IN EFFECT, YOU HAVE TO BE THE BUT-FOR CAUSE AND ALLOW A
20 DEFENSE THAT IT WOULD HAVE HAPPENED ANYWAY.

12:11PM

21 MS. STEIN: YOUR HONOR, THE 431 --

22 THE COURT: I DON'T THINK 431 APPLIES.

23 MS. STEIN: OKAY. THANK YOU.

24 MS. ESTRICH: IT SAYS IT MAY BE MODIFIED AND
25 SHOULD BE MODIFIED IF THE DEFENDANT IS SUED ON A THEORY
26 OF PRODUCT LIABILITY OR INTENTION OF TORT -- IT'S NOT
27 LIMITED ON ITS FACE AS NEGLIGENCE --

12:11PM

28 THE COURT: AS I UNDERSTAND IT, YOU CAN CALL

1 IT BUT-FOR, THERE HAS TO BE CAUSE IN FACT, IN ESSENCE,
2 IN ORDER FOR IT TO BE A SUBSTANTIAL FACTOR.

3 AND THE ISSUE HERE IS, AND IT'S AN ISSUE
4 THAT THE JURY CAN ACCEPT OR REJECT, WHETHER JEFFREY
5 GUNDLACH'S INVESTOR CALLS ON DECEMBER 22ND AND
6 DECEMBER 29TH WERE CAUSE, IN FACT, BUT-FOR THOSE CALLS
7 THESE CHANGES WOULDN'T HAVE BEEN MADE.

12:12PM

8 BUT THEY MAY MAKE THAT DETERMINATION AND
9 THERE IS A DISPUTED EVIDENTIARY RECORD. IF THEY
10 DETERMINE THAT IT WAS NOT A CAUSE IN FACT, AND THAT
11 TORT'S A PRACTICAL MATTER, THESE CHANGES WOULD HAVE
12 BEEN MADE AND WERE CONTEMPLATED IN ADVANCE AND WOULD
13 HAVE HAPPENED NO MATTER WHAT HE SAID, THEN HE'S NOT A
14 SUBSTANTIAL FACTOR.

12:12PM

15 AND I THINK THEY NEED TO BE GIVEN THE
16 OPPORTUNITY TO MAKE THAT DETERMINATION, AND THAT IS
17 COVERED BY THE PARENTHETICAL OR BRACKETED CLAUSE IN 430
18 OF THE CALIFORNIA APPROVED INSTRUCTIONS, CACI.

12:12PM

19 AND THAT'S THE ONE I'LL GIVE.

20 I DO NOT THINK 431 APPLIES IN THE
21 CONTEXT OF THE EVIDENCE IN THIS CASE.

12:13PM

22 SO THAT WILL BE THE RULING. AND YOU CAN
23 PREPARE THE INSTRUCTIONS ACCORDINGLY.

24 WE STILL HAVE A SPECIAL VERDICT FORM TO
25 GO OVER.

12:13PM

26 THE FILING OF THE FACTUAL STIPULATION
27 REGARDING MR. SANCHEZ HAS BEEN RESOLVED.

28 THE STUDLEY ISSUES ARE RESOLVED.

1 THE EXHIBIT ISSUES HAVE BEEN RESOLVED.
2 WE HAVE A FORMAT FOR CLOSING ARGUMENT
3 TOMORROW.

4 SO WE'RE CLEAR FOR THE RECORD AND FOR
5 THOSE -- EVERYBODY ELSE HAVE LEFT. TWO HOURS, 8:30 TO
6 10:35, WITH A FIVE-MINUTE STRETCH, FOR MR. QUINN.

12:13PM

7 AND MR. BRIAN WILL HAVE TWO HOURS, WITH
8 A FIVE-MINUTE STRETCH.

9 WE'LL TAKE A 15-MINUTE RECESS BETWEEN
10 THOSE TWO ARGUMENTS.

12:14PM

11 WE'LL TAKE APPROXIMATELY 45-MINUTE TO AN
12 HOUR LUNCH BREAK.

13 AND THEN EACH SIDE WILL HAVE
14 APPROXIMATELY ONE-HALF HOUR OF REBUTTAL.

15 AND I WILL INSTRUCT TO THE EXTENT, AS
16 MANY OF THE INSTRUCTIONS AS I CAN GET THROUGH, BETWEEN
17 THE END OF THE ARGUMENTS AND ROUGHLY 4:00 TO 4:30. THE
18 MORE I CAN GET DONE, THE BETTER OFF WE ARE. WE WON'T
19 BE STARTING TILL 10 O'CLOCK ON WEDNESDAY, DUE TO
20 MR. SANTOS' ISSUES.

12:14PM

12:14PM

21 ALL RIGHT.

22 MR. HELM: YOUR HONOR, THERE WAS A --

23
24 (PAUSE) +

12:15PM

25
26 MR. HELM: WOULD THE COURT LIKE ME TO EXPLAIN
27 WHAT'S NEXT UP?

28 THE COURT: YES, WHAT'S UP?

1 MR. HELM: IN LOOKING AT THE AGENDA, WE HAD
2 SUBMITTED -- WE ACTUALLY ARE VERY CLOSE. WE NEGOTIATED
3 SOMETHING ON THIS, AND I THINK WE'RE VERY CLOSE TO
4 AGREEMENT ON THIS.

5 THE COURT: THIS IS ON THE EMPLOYMENT
6 CONTRACT. I SAW THE DRAFT.

12:15PM

7 MR. EMANUEL: 2-A.

8 THE COURT: IT WASN'T CLEAR TO ME THAT WAS
9 RESOLVED.

10 MR. EMANUEL: IT'S GOT --

12:15PM

11 MR. HELM: IT'S NUMBER 93, SO WE'RE LOOKING AT
12 THE SAME ONE. WE SUBMITTED LAST NIGHT.

13 MR. EMANUEL: OH, YOU CALLED IT 93?

14 MR. HELM: ISN'T THAT WHAT YOU SAID?

15 MS. STEIN: YES.

12:15PM

16 MR. EMANUEL: WITH THE OTHER SIDE'S
17 PERMISSION, I HAVE -- I'VE ALREADY SHOWN IT.

18 MR. HELM: YES.

19 MR. EMANUEL: CAN I SHOW IT TO YOU?

20 IF I MAY APPROACH.

12:16PM

21 I'VE COMBINED THE TWO AND MARKED THE
22 REMAINING DISPUTED CLAUSES. IT MIGHT SPEED THINGS UP.

23 THE COURT: PASS IT UP. OR JUST BRING IT UP.
24 WE DON'T NEED TO GO THROUGH A LOT OF FORMALITIES HERE.

25 MR. EMANUEL: I THINK WE'LL SPEED IT UP.

12:16PM

26 THE COURT: DEFENDANTS' SPECIAL INSTRUCTION
27 93?

28 MR. HELM: YES, YOUR HONOR.

1 MR. EMANUEL: YES, YOUR HONOR.

2 MR. HELM: WHICH HAS ALMOST COMPLETELY BEEN
3 NEGOTIATED WITH JUST THESE REMAINING ISSUES THAT
4 MR. EMANUEL'S BRINGING TO YOUR ATTENTION.

5 THE COURT: LET ME READ IT. I LOOKED AT IT
6 EARLIER, BUT I DON'T HAVE IT SQUARELY IN MY MIND. 12:16PM

7 MR. EMANUEL: WE RESOLVED ONE ALREADY. THAT'S
8 THE STRIKEOUT YOU SEE THERE.

9

10 (PAUSE) + 12:16PM

11

12 THE COURT: I HAVE IT IN FRONT OF ME.

13 I UNDERSTAND THE HIGHLIGHTED PORTIONS
14 ARE NOW PROPOSED BY TCW. AND I NEED TO HAVE THE
15 DEFENDANTS -- 12:17PM

16 MR. HELM: HERE IS WHAT IT ACTUALLY IS. THE
17 LAST LANGUAGE AND THAT: HE WAS TO BE PAID ACCRUED
18 COMPENSATION UPON TERMINATION.

19 WE HAD ADDED -- WELL, BECAUSE THERE ARE
20 THREE TERMS THAT WE THINK ARE THERE IN ADDITION TO
21 COMPENSATION, THE FIVE-YEAR LENGTH, ONLY TERMINATED
22 UNDER SPECIFIED CONDITIONS AND PAID ACCRUED
23 COMPENSATION UPON TERMINATION. 12:17PM

24 WHAT THEY HAVE SAID IS, IF WE ADD THE
25 LAST CLAUSE OF THE FINAL TERM THAT WE SAID WAS
26 INCLUDED, THEY WOULD ALSO LIKE TO ADD THE: ALL OF
27 WHICH WAS PAID LANGUAGE, SO THAT IT SAYS: 12:17PM

28 TCW CONTENDS THAT TCW AND

1 MR. GUNDLACH AGREE TO COMPENSATION,
2 ALL OF WHICH WAS PAID, BUT DID NOT
3 AGREE TO ANY SPECIFIED LENGTHS, SO
4 HE WAS AT-WILL.

5 I GUESS OUR ONLY OBJECTION TO THAT, YOUR
6 HONOR, IT'S CONFUSING BECAUSE IT'S INTRODUCING -- WHAT
7 THIS IS TRYING TO ADDRESS IS WHAT WAS AGREED TO AND
8 WHAT WAS NOT AS OPPOSED TO WHAT WAS PERFORMED AND WHAT
9 WAS NOT.

12:18PM

10 SO, BY INTRODUCING THIS CONCEPT OF --
11 THEY AGREE TO COMPENSATION, ALL OF WHICH WAS PAID.
12 IT'S JUST SORT OF BRINGING AN EXTERNAL CONCEPT OF
13 PERFORMANCE INTO WHAT REALLY IS JUST SUPPOSED TO BE A
14 PURE ISSUE OF WHAT WERE THE TERMS OF THE CONTRACT.
15 THEY SAY IT WAS JUST COMPENSATION. WE SAY -- AND THAT
16 HE WAS AT-WILL.

12:18PM

17 WE SAY IT WAS COMPENSATION PLUS TERM,
18 TERMINATION PROTECTION AND ACCRUED TO TERMINATION.

19 AND SO THAT REALLY THE ONLY ISSUE IS,
20 SHOULD ALL OF WHICH BE PAID WAS PAID, BE ADDED OR NOT?

12:18PM

21 AND I THINK -- THEY THINK YOU NEED TO DO
22 THAT TO BALANCE OUT WHAT WE HAD. AND I WON'T MAKE
23 THEIR ARGUMENT FOR THEM, BUT I THINK THAT'S THE
24 DISPUTE.

25 THE COURT: HOLD ON. GIVE ME A MINUTE HERE.

12:19PM

26
27
28

(PAUSE) +

1 THE COURT: I GUESS I'M LOOKING AT IT AND
2 THINKING IT'S REALLY THE POSITIONING OF THE LANGUAGE
3 THAT IS PROBABLY MORE PROBLEMATIC FOR THE DEFENSE. AND
4 IF WE WERE TO SAY IN THAT SECOND SENTENCE:

5 TCW CONTENDS THAT TCW AND
6 MR. GUNDLACH AGREED TO
7 COMPENSATION, BUT DID NOT AGREE TO
8 ANY SPECIFIED LENGTH AND THAT,
9 ACCORDINGLY, HE WAS AN AT-WILL
10 EMPLOYEE, WHO WAS PAID ALL SUMS DUE
11 UPON TERMINATION.

12 MR. EMANUEL: YES, THAT WOULD BE ACCEPTABLE.

13 THE COURT: AND I THINK THE PLACEMENT OF "ALL
14 OF WHICH WAS PAID" GOES TO THE AGREED COMPENSATION
15 WHICH THEY'RE DISPUTING.

16 MR. EMANUEL: YES, I UNDERSTAND.

17 THE COURT: HOW ABOUT THAT, MR. HELM?

18 MR. HELM: IT'S PREFERABLE. I THINK IT'S A
19 GOOD IDEA. I THINK IT'S STILL INTRODUCING --

20 THE COURT: WE'RE AT THE END NOW. YOU DON'T
21 HAVE TO TELL ME I HAVE GOOD IDEAS.

22 MR. HELM: MY POINT IS I DO. I THINK IT'S
23 BETTER THAN WHAT WAS PREVIOUSLY THERE.

24 THE COURT: WHY DON'T YOU CHANGE IT THAT WAY.

25 MR. HELM: WE CAN CHANGE IT THAT WAY.

26 THE COURT: THAT CLARIFIES THE CONCEPT.

27 AND THEN YOU HAVE AN AGREED SPECIAL
28 INSTRUCTION, 93. AND IT WILL BE GIVEN AS MODIFIED.

12:19PM

12:19PM

12:20PM

12:20PM

12:20PM

1 MR. EMANUEL: THANK YOU, YOUR HONOR.

2 FOR THE RECORD, THE WITHDRAWING THAT ONE
3 SENTENCE YOU SEE THAT'S STRICKEN?

4 THE COURT: YES.

5 MR. EMANUEL: MR. BRIAN AND MR. QUINN AGREED
6 IT WOULD GO SOMEPLACE ELSE. WE HAVEN'T RESOLVED WHERE,
7 BUT WE CAN WORK IT OUT.

12:20PM

8 MR. HELM: THERE WERE TWO PARTS TO THAT
9 AGREEMENT AS I UNDERSTAND IT. WE WILL PUT THAT
10 PRESUMPTION LANGUAGE IN ONE OF THE OTHER INSTRUCTIONS.

12:20PM

11 MR. EMANUEL: PROBABLY 2400.

12 MR. HELM: AND WE WILL ALSO -- THEY HAVE ALSO
13 AGREED THAT OUR PROPOSED CACI 350 AS MODIFIED MAY BE
14 GIVEN.

15 THE COURT: ALL RIGHT. LET ME JUST -- I'M
16 TRYING TO MAKE NOTES SO WE CAN COVER SOME OF THE THINGS
17 IN THE MINUTE ORDER AND GET THEM CLARIFIED.

12:21PM

18 SAID CACI 350.

19 MR. HELM: YES. CACI 350 WILL BE GIVEN AS
20 MODIFIED AS. WE SUBMITTED IT THE FIRST PART.

12:21PM

21 THE COURT: OUR ORDER WILL SAY CACI 350 IS TO
22 BE GIVEN AS MODIFIED WITHOUT OBJECTION.

23 MR. HELM: RIGHT. WE WILL ALSO PUT THE
24 PRESUMPTION LANGUAGE IN 2400.

25 MR. EMANUEL: CORRECT.

12:21PM

26 MR. HELM: I THINK WE CAN AGREE TO THAT.

27 THE COURT: I'LL SAY CACI -- CACI 2400 WILL BE
28 GIVEN AS MODIFIED WITHOUT OBJECTION, RIGHT?

1 MR. EMANUEL: CORRECT, YOUR HONOR.

2 THE COURT: ANY OTHER JURY INSTRUCTIONS
3 ISSUES, OPEN ISSUES? WE'VE GONE THROUGH THESE, AND I
4 THINK WE HAVE AN AGREED SET OF INSTRUCTIONS. YOU'VE
5 PRESERVED YOUR OBJECTIONS TO THE EXTENT YOU NOTED THEM.

12:22PM

6 BUT I WILL GIVE THE INSTRUCTIONS AS AN
7 AGREED SET, SUBJECT TO WHATEVER OBJECTIONS HAVE BEEN
8 LODGED.

9 MR. EMANUEL: YOUR HONOR, WE HAVE ASKED, AND I
10 APOLOGIZE, THE COURT DID LOOK AT THIS AND DID A PRETTY
11 STANDARD CACI 2201. AND WE HAVE LOOKED AT THE
12 AUTHORITIES FOR THAT. AND CACI USES THE PHRASE:

12:22PM

13 MORE EXPENSIVE OR DIFFICULT.

14 THE SUPREME COURT USED THE PHRASE:

15 RESULT IN ACTUAL BREACH OR

12:22PM

16 DISRUPTION.

17 AND WE HAVE ASKED IF THE COURT WOULD USE
18 THE SUPREME COURT LANGUAGE AND NOT THE CACI LANGUAGE.

19 MS. STEIN: YOUR HONOR, THE SUPREME COURT THAT
20 THEY'RE SPEAKING OF, PACIFIC GAS AND ELECTRIC, ALSO
21 USED THE LANGUAGE --

12:23PM

22 THE COURT: I DON'T HAVE IT IN FRONT OF ME.
23 LET ME GET IT IN MY NOTES. IT'S MORE EXPENSIVE OR
24 DIFFICULT VERSUS WHAT'S THE OTHER?

25 MR. EMANUEL: ACTUAL BREACH OR DISRUPTION OF
26 THE CONTRACT.

12:23PM

27 MS. STEIN: IN ANOTHER PORTION OF PACIFIC GAS
28 AND ELECTRIC THE COURT SAYS:

1 WE RECOGNIZE THAT INTERFERENCE
2 WITH THE PLAINTIFF'S PERFORMANCE
3 MAY GIVE RISE TO CLAIM FOR
4 INTERFERENCE WITH CONTRACTUAL
5 RELATIONS IF PLAINTIFF'S
6 PERFORMANCE IS MADE MORE COSTLY OR
7 MORE BURDENSOME.

12:23PM

8 I BELIEVE THAT'S WHERE CACI GOT THE
9 LANGUAGE FROM.

10 THE COURT: YOU'RE TELLING ME ACTUAL BREACH OF
11 THE INSTRUCTION OR THE CONTRACT; THAT'S WHAT YOU WANT?

12:24PM

12 MR. EMANUEL: YES, YOUR HONOR. YOU'RE RIGHT.
13 IT ALSO COMES FROM THAT SAME OPINION. IT'S ANOTHER
14 PHRASING OF THE FOURTH ELEMENT OF THE -- OF THIS CAUSE
15 OF ACTION.

12:24PM

16 AND GIVEN THE EVIDENCE IN THIS CASE, I
17 BELIEVE THAT ACTUAL DISRUPTION IS A MORE ACCURATE
18 DESCRIPTION OF WHAT THE JURY NEEDS TO DECIDE AS OPPOSED
19 TO MORE EXPENSIVE OR DIFFICULT.

20 MS. STEIN: YOUR HONOR, WE, OF COURSE, TAKE
21 THE OPPOSITE POSITION, WHICH IS, WHAT THEY ARE CLAIMING
22 IS THE CONTRACTS BECAME MORE EXPENSIVE FOR THEM, THAT
23 THEY HAD TO REDUCE THEIR FEES. AND IT COST THEM MORE
24 AS A CONSEQUENCE OF THE ALLEGED INTERFERENCE, SO THE
25 CACI FITS MORE PARTICULARLY TO THE FACTS HERE.

12:24PM

12:24PM

26 THE COURT: WE DON'T HAVE AN ACTUAL BREACH OF
27 THE CONTRACT?

28 MS. STEIN: NO.

1 THE COURT: THERE'S NO CONTENTION MR. GUNDLACH
2 BREACHED THE CONTRACT.

3 WE HAVE A VOLUNTARY DISCUSSION TO A
4 MODIFICATION OF THE AGREEMENT, WHICH TCW SAYS RESULTED
5 FROM MR. GUNDLACH'S COMMENTS TO INVESTORS.

12:25PM

6 ISN'T THAT RIGHT?

7 MR. EMANUEL: YES, THAT'S CORRECT, YOUR HONOR,
8 YOU GOT IT.

9 MS. STEIN: YES.

10 MR. HELM: THE CACI REVIEWERS PICKED THE
11 LANGUAGE OF --

12:25PM

12 IS IT PACIFIC GAS?

13 MS. STEIN: YES.

14 MR. HELM: -- FROM PACIFIC GAS THAT IS
15 ACTUALLY THE ARTICULATION OF WHAT THE ELEMENT IS. IT'S
16 TRUE WHEN THE COURT USES A SHORTHAND TO REFER TO
17 THAT --

12:25PM

18 THE COURT: BUT IF YOU SAID: MADE MORE
19 EXPENSIVE OR DIFFICULT BY CAUSING DISRUPTION OF THE
20 CONTRACTOR SOMETHING TO THAT EFFECT, TAKING OUT THE
21 BREACH.

12:25PM

22 MR. HELM: YOUR HONOR, THERE IS --

23 MS. STEIN: THERE IS NO BREACH.

24 THE COURT: THERE'S NO BREACH INVOLVED.

25 MR. EMANUEL: THAT'S CORRECT.

12:25PM

26 MS. STEIN: THE INSTRUCTION IS AS PRESENTED.
27 IT SAYS:

28 THERE WERE CONTRACTS, JEFFREY

1 GUNDLACH KNEW OF THE CONTRACT,
2 INTENDED TO DISRUPT THE PERFORMANCE
3 OF THAT CONTRACT --

4 THE COURT: THAT'S ALREADY IN THERE.

5 MS. STEIN: THE FOURTH ELEMENT, JEFFREY'S
6 GUNDLACH CONDUCT PREVENTED OR MADE PERFORMANCE MORE
7 DIFFICULT -- EXCUSE ME -- MORE EXPENSIVE OR DIFFICULT.
8 IT SAYS THAT --

12:26PM

9 MR. EMANUEL: IF I MAY, YOUR HONOR, THE
10 PROBLEM THERE, IT'S NOT -- FOUR DOESN'T FOLLOW
11 LOGICALLY FROM THREE. THREE SAYS THEY INTENDED TO
12 DISRUPT. FOUR WAS SIMPLY ASKING IN FACT, DID DISRUPT.
13 THAT'S WHAT THE FOURTH ELEMENT SHOULD BE. LOGICALLY
14 FOLLOWING AFTER THE THIRD ELEMENT.

12:26PM

15 MR. HELM: THAT'S NOT HOW THE SUPREME COURT
16 ARTICULATED THAT ELEMENT.

12:26PM

17 THE PROBLEM WE HAVE WITH JUST SAYING YOU
18 DISRUPTED IT IS THE JURY COULD READ THAT TO MEAN, OH,
19 SOME PARTIES TO THE CONTRACT BECAME UNHAPPY.

20 THAT'S NOT ENOUGH TO MAKE IT
21 INTERFERENCE. IT ACTUALLY HAS TO HAVE MADE PERFORMANCE
22 OF THE CONTRACT MORE EXPENSIVE OR MORE DIFFICULT. NOT
23 ENOUGH THAT PEOPLE GOT UPSET.

12:26PM

24 AND SO, THAT'S WHY WE THINK, HEWING TO
25 THE ACTUAL LANGUAGE THAT THE SUPREME COURT USES FOR
26 THIS ELEMENT, WHICH IS WHAT THE CACI INSTRUCTION
27 PROPERLY USES, WE THINK IS THE APPROPRIATE INSTRUCTION
28 TO GIVE.

12:26PM

1 THE COURT: WE'RE TALKING ABOUT THE FOURTH OR
2 FIFTH PARAGRAPH?

3 MS. STEIN: FOURTH.

4 THE COURT: THE INSTRUCTION IS TO BE GIVEN
5 WITH THE FOURTH PARAGRAPH AS PROPOSED BY CACI.

12:27PM

6 MR. EMANUEL: THANK YOU, YOUR HONOR.

7 THE COURT: THANK YOU.

8 ANY OTHER JURY INSTRUCTIONS ISSUES?

9 MR. EMANUEL: YES, ONE MORE, YOUR HONOR.

10 THE COURT: WE'RE HERE TO GET THEM DONE.

12:27PM

11 MR. EMANUEL: YES.

12 WE HAD SUBMITTED PREVIOUSLY THE
13 FAITHLESS FIDUCIARY INSTRUCTIONS, AS WHAT WE CALL IT
14 ANYWAY.

15 AND --

12:27PM

16 THE COURT: I THINK I REJECTED THAT ONCE
17 BEFORE.

18 IS THIS ANOTHER BITE AT THE APPLE?

19 MR. EMANUEL: CANDIDLY, YES, YOUR HONOR.

20 THE COURT: WHAT IS THE INSTRUCTION NUMBER?

12:27PM

21 MR. EMANUEL: 20.

22 THE COURT: I APPRECIATE YOUR CANDOR EVEN
23 THOUGH MR. GUNDLACH DIDN'T KNOW WHAT CANDOR MEANT.

24 MR. EMANUEL: OH.

25 IT'S NO. 20, YOUR HONOR.

12:28PM

26 THE COURT: YOU WANT TO BE HEARD ON IT?

27 MR. EMANUEL: YES, YOUR HONOR.

28 THE COURT: IT SEEMS TO ME WE'VE BEEN THROUGH

1 THIS. I'M NOT CLEAR THE LAW IS AS SUGGESTED BY TCW,
2 THAT WHENEVER THERE'S A BREACH OF FIDUCIARY DUTY, THERE
3 IS A BAR TO ANY RECOVERY OF STATUTORY OR OTHER
4 COMPENSATION PROVIDED UNDER THE CODE OR UNDER AN
5 INDEPENDENT CONTRACT.

12:28PM

6 YOU KNOW, ONE OF THE ARGUMENTS IN THIS
7 CASE IS THE STANDARD FOR DISCHARGE, AND YOUR ARGUMENT
8 IS HE BREACHED HIS FIDUCIARY DUTIES. THAT WOULD BE
9 GROSS MISCONDUCT.

10 AND EVEN UNDER THE DEFENDANTS'
11 INTERPRETATION OF THE CONTRACT, IF YOU PROVE THAT, HE
12 MAY HAVE BEEN TERMINATED FOR CAUSE, APPROPRIATELY UNDER
13 THE PROVISION THEY SAY GOVERNED.

12:28PM

14 BUT THAT DOES NOT, IN MY VIEW,
15 AUTOMATICALLY MEAN THAT ANY OTHER PROVISION OF THE
16 CONTRACT WOULD BE THROWN OUT.

12:29PM

17 AND THEY SIMILARLY HAVE AN ARGUMENT THAT
18 IT'S ACCRUED TO THE DATE OF TERMINATION.

19 MR. EMANUEL: YOUR HONOR'S CLEARLY THOUGHT
20 THIS THROUGH.

12:29PM

21 THE ONLY ADDITION I HAVE FOR THIS
22 MORNING IS THE CONCEPT THAT EMPLOYERS DO NOT HAVE TO
23 PAY FOR SOMEONE TO WORK AGAINST THEM.

24 AND THE WHOLE NOTION BEHIND THIS
25 INSTRUCTION, BEHIND THE PEACOCK CASE AND THE
26 AUTHORITIES, THAT A BREACH OF FIDUCIARY DUTY FORFEITS
27 COMPENSATION IS THE IDEA YOU DO NOT HAVE TO PAY
28 SOMEBODY TO WORK AGAINST YOU.

12:29PM

1 THEY ARE NOT, IN FACT, WORKING FOR YOU.
2 AND FOR THAT REASON, THEN, GIVEN THE
3 FACTS OF THIS CASE, WE THINK IT IS APPROPRIATE FOR THE
4 INSTRUCTION TO BE GIVEN.

5 AND WITH THAT, SUBMITTED. 12:30PM

6 THE COURT: I GUESS MY VIEW OF THE PEACOCK
7 CASE IS, IN THIS INSTANCE, THE EVIDENCE, EVEN FROM
8 TCW'S OWN WITNESSES, IS THAT MR. GUNDLACH WORKED FOR
9 TCW UNTIL THE DAY HE LEFT. AND, IN FACT, DOING A VERY
10 GOOD JOB AT MANAGING MONEY AND CREATING WORTH -- OR 12:30PM
11 VALUE IN WHAT HE DID.

12 SO WE DON'T HAVE THE SITUATION WHERE
13 SOMEBODY WAS NOT WORKING FOR THE COMPANY AND, IN FACT,
14 WAS WORKING FOR THEIR OWN ACCOUNT WHILE EMPLOYED IN A
15 POSITION WITH THE COMPANY. 12:30PM

16 WHICH I THINK IS WHAT YOU HAD IN
17 PEACOCK; ISN'T THAT RIGHT --

18 MR. EMANUEL: I --

19 THE COURT: -- MORE OR LESS?

20 MR. EMANUEL: MORE OR LESS. 12:30PM

21 MR. MADISON: I WOULD SAY IT'S RIGHT ABOUT THE
22 PEACOCK CASE.

23 WE DISAGREE ABOUT THIS CASE, THOUGH,
24 WHEN THE COURT SEES IN OUR CLOSING THE SUMMARIES OF THE
25 AMOUNT OF TIME, EFFORT, ENERGY, RESOURCES GOING INTO 12:30PM
26 ABLE GRAPE, WHICH BECAME DOUBLELINE IN THE FALL.

27 THE COURT: I'M SURE I'VE SEEN -- I'LL SEE
28 THINGS I NEVER EVEN IMAGINED, LISTENING ONLY TO THE

1 EVIDENCE.

2 MR. MADISON: THAT APPLIES TO BOTH SIDES.

3 THE COURT: DON'T GO THERE. I'M STICKING WITH
4 THE REJECTION OF THE FAITHLESS FIDUCIARY INSTRUCTION.
5 THAT ORDER'S PREVIOUSLY BEEN ENTERED.

12:31PM

6 MR. EMANUEL: OKAY.

7 THE COURT: ANY OTHER JURY INSTRUCTIONS
8 ISSUES?

9 MR. EMANUEL: FOR THE RECORD, WE HAVE WORKED
10 OUT -- THE PARTIES WORKED OUT THERE'S A COUPLE SMALL
11 GLITCHES IN INSTRUCTION 4400. AND 3940.

12:31PM

12 I BELIEVE THERE WILL BE AMENDMENTS
13 SUBMITTED.

14 THE COURT: 4400, AND WHAT WAS THE OTHER ONE?

15 MS. STEIN: HE DOESN'T HAVE THAT YET.

12:31PM

16 MR. EMANUEL: YOU DON'T HAVE THEM YET.

17 THE COURT: 4400, AND WHAT WAS THE OTHER ONE,
18 THOUGH?

19 MR. EMANUEL: 3940. I THOUGHT THEY WERE
20 ALREADY SENT TO YOUR HONOR.

12:31PM

21 BUT THE SET SENT ME, NOT TYPOS, BUT
22 DEFENSE HAVE CHANGED SOME OF THE PHRASING AND THE
23 PARTIES HAVE WORKED THAT OUT.

24 THE COURT: I'LL INDICATE THAT THE PARTIES
25 RESOLVED ISSUES ON CACI 4400 AND 3940, WHICH WILL BE
26 GIVEN AS MODIFIED WITHOUT OBJECTION.

12:31PM

27 MS. STEIN: YOUR HONOR, JUST FOR PRACTICAL
28 PURPOSES, WE WILL SUBMIT LATER TODAY ALL THE

1 INSTRUCTIONS ON THE PERFORATED PAPER, FOR YOUR HONOR.

2 WE'LL ALSO GIVE YOU A NOTEBOOK TABBED BY
3 DIFFERENT CLAIM.

4 WOULD THAT BE WHAT YOU WANT --

5 THE COURT: ARE YOU AGREED ON AN ORDER IN
6 WHICH THEY'RE TO BE GIVEN?

12:32PM

7 MR. EMANUEL: NO, WE HAVE NOT, YOUR HONOR.

8 MS. STEIN: WE SUBMITTED INSTRUCTIONS IN AN
9 ORDER SATURDAY AND HAVEN'T HEARD ANYTHING BACK FROM
10 TCW, SO WE ASSUMED IT WAS.

12:32PM

11 THE COURT: I THOUGHT YOU GAVE THEM TO ME. I
12 DIDN'T LOOK AT THEM OVER THE WEEKEND.

13 MS. STEIN: WE ASSUMED THEY WERE OKAY FOR THE
14 ORDER. WE HEARD NOTHING BACK. WE'D LIKE TO GET THEM
15 TO YOU TODAY.

12:32PM

16 THE COURT: I'D LIKE TO HAVE THEM. IF WE HAVE
17 AN HOUR AND A HALF, I'LL START READING THEM. I'D LIKE
18 THE INTRODUCTORY INSTRUCTIONS FROM CACI FIRST. IF YOU
19 CAN'T AGREE ON THE ORDER, PUT THEM IN IRRATIONAL ORDER.
20 I, MEAN YOU'VE GOT THEM SELECTED BY DIFFERENT CAUSES,
21 CLAIMS, DEFENSES?

12:33PM

22 THAT SEEMS REASONABLE TO ME. IF THERE'S
23 SOME DISPUTE ABOUT ONE OR TWO THAT NEEDS TO BE SHUFFLED
24 SOMEWHERE, WE'LL DEAL WITH IT.

25 MS. STEIN: MAY I SAY, FOR PURPOSES OF GETTING
26 THIS OUT THE DOOR, AND IF TCW CAN GIVE US ANY OF ITS
27 OBJECTIONS BEFORE 2 O'CLOCK TODAY SO WE CAN GET IT TO
28 YOUR HONOR?

12:33PM

1 THE COURT: THEIR OBJECTIONS ARE ONLY AS TO
2 THE ORDER, RIGHT?

3 MS. STEIN: YES, JUST THE SAME.

4 MR. EMANUEL: YES.

5 THE COURT: IF WE DON'T HEAR FROM YOU, WE'LL
6 ASSUME THERE'S NO REAL PROBLEM.

12:33PM

7 MR. EMANUEL: GENERALLY, MS. STEIN, WHAT HIS
8 HONOR SAID IS OUR PREFERENCE IS TO START ANY
9 INSTRUCTION CAUSE OF ACTION WITH THE CACI AND THEN GO
10 TO THE INSTRUCTIONS, AND NOT INTERWEAVE THEM.

12:33PM

11 THE COURT: I DIDN'T SAY THAT.

12 I'D LIKE THE INTRODUCTORY INSTRUCTIONS
13 FIRST, AND THEN BY TOPIC.

14 AND TO THE EXTENT THE TABS ARE AGREED
15 TO, IT'S PROBABLY WORTHWHILE TO GIVE THOSE NOTEBOOKS TO
16 THE JURY SO THEY CAN FIND THINGS. THERE ARE A LOT OF
17 INSTRUCTIONS.

12:33PM

18 MR. EMANUEL: OKAY. I GOT IT. I
19 MISUNDERSTOOD.

20 THE COURT: SO WE NEED SOME AGREEMENT ON IT.

12:34PM

21 MS. STEIN: THANK YOU, YOUR HONOR.

22 THE COURT: I'LL WORK OFF THE NOTEBOOK. IF
23 YOU GIVE US THE OTHER ONES --

24 MS. STEIN: 12, 13 NOTEBOOKS.

25 THE COURT: NO, NO, WE DON'T NEED THAT MANY.
26 DON'T BRING IT IN UNTIL IT'S FINALIZED. YOU'LL HAVE A
27 DAY TO MAKE COPIES.

12:34PM

28 MS. STEIN: OKAY.

1 THE COURT: BRING ME ONE AND WE'LL GO THROUGH
2 IT AND MAKE SURE WE GOT THEM IN THE ORDER WE WANT THEM.
3 IF IT'S ACCEPTABLE, I'LL GET A STIPULATION ON THE
4 RECORD AND THEN I'D SAY TWO OR THREE SETS SHOULD BE
5 AMPLE. THEY DON'T ALL NEED THEIR OWN SET.

12:34PM

6 MS. STEIN: OKAY. FINE, YOUR HONOR. WE'LL
7 GET YOU SOMETHING TODAY.

8 THE COURT: ANYTHING ELSE ON JURIES?

9 MR. EMANUEL: ONE MORE THING SO WE DON'T
10 FORGET ABOUT IT. 3931 WENT IN IF IT'S ARGUED IN
11 CLOSING.

12:34PM

12 SO IN THE PREPARATION OF NOTEBOOKS WE
13 HAVE TO KEEP IN MIND THAT PERHAPS IF THE ISSUE ISN'T
14 ARGUED IN 3931 WOULD NOT THEN BE APPROPRIATE.
15 MITIGATION OF DAMAGES.

12:34PM

16 MS. STEIN: PARDON ME?

17 THE COURT: OKAY. THERE MAY NOT BE AN -- A
18 NEED FOR INSTRUCTION ON MITIGATION.

19 MS. STEIN: IT WAS OUR INSTRUCTION, YOUR
20 HONOR. AND OUR INSTRUCTION THAT TCW, IT WAS INCUMBENT
21 ON THEM TO MITIGATE. WE BELIEVE THERE IS --

12:35PM

22 MR. EMANUEL: NO. THIS WAS THE EMPLOYMENT
23 SIDE.

24 THE COURT: WHAT?

25 MR. EMANUEL: ON THE EMPLOYMENT SIDE.

12:35PM

26 MS. STEIN: YOU'VE WITHDRAWN THAT INSTRUCTION.

27 MR. EMANUEL: WELL, MY NOTES SAID -- WELL,
28 LET'S PUT IT THIS WAY --

1 THE COURT: WE LEFT SOMETHING OPEN. IF THERE
2 WAS NO ARGUMENT ABOUT IT, I WASN'T GOING TO GIVE IT.

3 MS. STEIN: RIGHT. IN TERMS OF THE
4 INSTRUCTION WE PROPOSED, TCW IS OBLIGATED TO MITIGATE.
5 WE THINK IT SHOULD --

12:35PM

6 THE COURT: IS THAT 3931?

7 MS. STEIN: YES, YOUR HONOR.

8 THE COURT: YOU'RE SAYING I EITHER ACCEPTED IT
9 AND SAID IT WOULD BE GIVEN OR I DIDN'T?

10 MR. EMANUEL: MY NOTES SIMPLY SAID THAT IT WAS
11 TO BE GIVEN IF ARGUED. I WANTED TO MAKE SURE NO ONE
12 FORGOT THAT.

12:35PM

13 THE COURT: OKAY.

14 WHAT MS. STEIN IS TELLING ME -- YEAH --
15 WE'RE GOING TO ARGUE THAT.

12:36PM

16 I THINK THAT'S WHAT I'M HEARING.

17 MS. STEIN: YES, YOUR HONOR.

18 MR. HELM: I THINK THAT'S THE PLAN.

19 MR. EMANUEL: ALL RIGHT.

20 THE COURT: I'M SURE AS YOU SIT HERE,
21 MR. EMANUEL, IF YOU DON'T HEAR THE ARGUMENT, YOU'LL LET
22 ME KNOW.

12:36PM

23 MR. EMANUEL: THANK YOU, I WILL. I APPRECIATE
24 IT, YOUR HONOR.

25 THE COURT: ANYTHING ELSE WITH THE JURY
26 INSTRUCTIONS?

12:36PM

27 NOW THE EASY PART. WE HAVE TO TALK
28 ABOUT THE VERDICT FORMS.

1 (PAUSE) +

2

3 THE COURT: OKAY. ON THE FIRST, BREACH OF
4 FIDUCIARY DUTY INSTRUCTION --

5 MS. STEIN: WHICH FORM?

12:37PM

6 THE COURT: I'M LOOKING AT BOTH. THEY TRACK
7 THE SAME SUBJECTS.

8 MR. EMANUEL: YES.

9 THE COURT: I GUESS MY SENSE IS IT'S -- THE
10 CONSPIRACY COMPONENT IS NOT A NECESSARY ATTRIBUTE OF
11 THIS QUESTION BECAUSE OF THE WAY THE OTHER INSTRUCTIONS
12 GO.

12:37PM

13 AND SO, IF -- YOU KNOW, WE'VE GOT AN
14 INSTRUCTION THAT SAYS ALL COCONSPIRATORS ARE LIABLE.

15 AND SO I'D BE INCLINED TO GO WITH THE
16 PROPOSED LANGUAGE FROM THE DEFENDANTS, AND THAT IS HOW
17 DO YOU FIND ON TCW CLAIM FOR BREACH OF FIDUCIARY DUTY?
18 AND THEY WOULD FIND FOR OR AGAINST EACH OF THE
19 INDIVIDUAL DEFENDANTS.

12:37PM

20 AND IF THEY FIND FOR TCW AS AGAINST ANY
21 OF THE DEFENDANTS, THEY WILL HAVE TO SAY WHETHER THEY
22 WERE DAMAGED.

12:38PM

23 AND IF THEY SAY THEY WERE DAMAGED, THEY
24 WOULD ASSESS DAMAGES AGAINST EACH INDIVIDUAL BECAUSE
25 DIFFERENT PEOPLE GET DIFFERENT THINGS.

12:38PM

26 PARAGRAPH 4, AS PROPOSED BY THE
27 DEFENDANTS, I THINK NEEDS TO BE CLARIFIED TO ELIMINATE
28 ANY CHANCE OF MISUNDERSTANDING. IN SOME WAY TO SAY, IF

1 YOU HAVE ASSESSED DAMAGES AGAINST -- FOR BREACH OF
2 FIDUCIARY DUTY AGAINST ANY INDIVIDUAL DEFENDANT, PLEASE
3 INDICATE IF THE TOTAL OF ALL DAMAGES -- THE TOTAL OF
4 ALL DAMAGES ASSESSED ARE -- WELL, SOME WAY TO CLARIFY
5 IT.

12:39PM

6 I'M CONCERNED. I DON'T WANT -- I DON'T
7 WANT A QUESTION THAT COMES BACK AND GIVE ME A BAD
8 ANSWER. IF THEY WERE TO PUT 100 FOR EACH ONE OF THESE
9 AND THEN PUT 400 DOWN BELOW, WHAT DOES THAT MEAN?

10 MR. EMANUEL: EXACTLY.

12:39PM

11 MS. STEIN: RIGHT. WE'LL WORK ON SOME
12 LANGUAGE. I UNDERSTAND.

13 THE COURT: I THINK THERE'S SOME ROOM FOR
14 MISCHIEF AND CONFUSION HERE.

15 AND THE LAST THING WE WANT IS
16 SOMETHING -- IF THEY'VE GONE THIS FAR TO GIVE US
17 NUMBERS THAT AREN'T CRYSTAL CLEAR, AND SO I GUESS I
18 DON'T DISAGREE THAT WE NEED TO MAKE SURE THAT WE'RE NOT
19 GIVING \$400,000 IN DAMAGES WHEN THEY INTENDED 100 --

12:39PM

20 MS. STEIN: EXACTLY.

12:39PM

21 THE COURT: THAT'S YOUR CONCERN?

22 MY CONCERN IS THE FLIP SIDE.

23 MR. HELM: YOU'RE THINKING THEY MIGHT JUST SAY
24 PLEASE ADD UP THE PREVIOUS --

25 THE COURT: IT COULD EASILY BE READ LIKE THAT.
26 AND YOU CUT A NUMBER WHICH IS EXACTLY WHAT YOU'RE
27 WORRIED ABOUT, THEN I HAVE AN INCONSISTENT VERDICT.

12:40PM

28 MS. STEIN: WHICH IS NOT OUR GOAL.

1 THE COURT: WHAT ABOUT YOU, MR. EMANUEL, HOW
2 DO YOU LOOK AT THIS?

3 MR. EMANUEL: I HAVE A RELATED CONCERN.

4 ONE IS -- AND YOUR HONOR WOULD KNOW THIS
5 BETTER THAN I. I HAVEN'T BEEN IN THE COURTROOM, BUT IS
6 THERE A FACTUAL BASIS FOR THE JURY TO ALLOCATE DAMAGES
7 OTHER THAN ALL OR NOTHING?

12:40PM

8 IN OTHER WORDS, I BELIEVE TCW TRIED THE
9 CASE AS JOINT AND AND SEVERAL LIABILITY. I DON'T THINK
10 EITHER PARTY SAID THIS IS HOW MUCH BARBARA VANEVERY IS
11 LIABLE FOR; THIS IS HOW MUCH CRIS SANTA ANA IS FOR.

12:40PM

12 THIS FORM IS INVITING THE JURY TO SIMPLY
13 SPECULATE AS TO WHAT A PROPORTIONATE SHARE WOULD BE.

14 SO FAR AS I KNOW, THERE HASN'T BEEN ANY
15 ATTEMPT TO APPORTION LIABILITY BY EITHER PARTY.

12:41PM

16 THEREFORE, I THINK YOU SHOULD GO -- GO
17 WITH TCW'S FORM AND SIMPLY SAY, IS SOMEONE LIABLE? YEA
18 OR NAY.

19 AND WHAT IS THE TOTAL LIABILITY. AND
20 THEN THEY ARE JOINTLY AND SEVERALLY LIABLE, AND THAT IS
21 THE END OF THE ANALYSIS.

12:41PM

22 THE COURT: WELL, I'M WILLING TO CONSIDER THE
23 ALTERNATIVES.

24 ONE OF THE PROBLEMS THAT WE HAVE IS THAT
25 ON THE CONSPIRACY ARGUMENT, EACH OF THE INDIVIDUAL
26 DEFENDANTS AREN'T NECESSARILY INVOLVED IN THE SAME
27 ASPECT OF THE CONSPIRACY.

12:41PM

28 AND MR. MADISON PROBABLY HAS A BETTER

1 APPRECIATION TO THIS THAN MOST OF US, SINCE HE'S A
2 CONSPIRACY THEORISTS.

3 MR. EMANUEL: OLIVER STONE.

4 MR. HELM: U.F.O.'S, TOO, I UNDERSTAND, YOUR
5 HONOR.

12:42PM

6 THE COURT: ARGUABLY, THEY COULD -- I'M NOT
7 SURE IT'S ALL JOINT AND SEVERAL. THEY COULD HAVE
8 DIFFERENT DAMAGES FOR DIFFERENT PARTIES.

9 MR. EMANUEL: NO, YOUR HONOR. NOT WITHOUT
10 JUST LEAVING, GOING OUT INTO LEFT FIELD. THERE'S AN
11 AMOUNT OF DAMAGES. LIKE I SAID, I DON'T THINK ANY
12 EXPERT, PLAINTIFF OR DEFENDANT, SAID, HERE IS A WAY FOR
13 YOU TO ALLOCATE THAT. HERE IS THE LIABILITY OF ONE OF
14 MY CLIENTS.

12:42PM

15 AND IT'S MORE THAN ANOTHER ONE OF MY
16 CLIENTS. IN FACT, I THINK THAT WOULD BE QUITE
17 REMARKABLE IF THAT ARGUMENT IS MADE.

12:42PM

18 I THINK THE DEFENDANTS' THEORY, AS
19 MR. HELM SAID, I DON'T WANT TO PUT WORDS IN MY
20 OPPONENT'S MOUTH -- IT'S ALL OR NOTHING. THEY'RE ALL N
21 IN OR THEY'RE ALL OUT. THEY GO, YEAH, YOU'RE LIABLE;
22 NO, YOU'RE NOT.

12:42PM

23 BUT THE TOTAL DAMAGES HAS TO GO CAUSE OF
24 ACTION BY CAUSE OF ACTION. BECAUSE THERE'S NO OTHER
25 FACTUAL BASIS TO DETERMINE THAT.

12:42PM

26 THE COURT: WHY NOT TAKE NO. 3 AND JUST SAY --
27 I'M LOOKING AGAIN AT THE DEFENDANTS -- WHY DO WE HAVE
28 TO HAVE IT AS TO EACH ONE? WHAT IS THE AMOUNT OF

1 DAMAGES THAT YOU FIND TO BREACH OF FIDUCIARY DUTY?

2 MR. HELM: WELL, YOUR HONOR, I'M NOT AWARE WE
3 HAVE AN INSTRUCTION THAT SAYS IT ALL HAS TO BE JOINTLY
4 SEVERAL LIABILITY.

5 THE COURT: WHAT EVIDENCE IS THERE TO ALLOCATE
6 THE DAMAGES AS BETWEEN THE DEFENDANTS? 12:43PM

7 MR. HELM: WELL, I'M -- I THINK ON BREACH OF
8 FIDUCIARY DUTY THERE'S NO EVIDENCE OF DAMAGE. I THINK
9 WE ESTABLISHED THAT.

10 BUT THEY'RE GOING TO COME IN CLOSING AND
11 TRY TO HAVE SOME -- 12:43PM

12 THE COURT: THEY HAVE A NUMBER. AND THEN --
13 MR. CORNELL PROVIDED IT. BUT THERE IS NO ALLOCATION IN
14 THAT NUMBER TO INDIVIDUAL DEFENDANTS.

15 HE BASICALLY DETERMINED BREACH OF
16 FIDUCIARY DUTY DAMAGES, SEPARATE AND DISTINCT FROM
17 INTERFERENCE DAMAGES. 12:43PM

18 AND SO IT'S GOING TO BE A NUMBER.
19 NOW --

20 MS. STEIN: YOUR HONOR. 12:44PM

21 THE COURT: I THINK EACH INDIVIDUAL IS
22 ENTITLED TO A VERDICT IS THE OTHER SIDE OF IT. THEY
23 COULD PUT IN A NUMBER FOR MR. GUNDLACH AND SAY ZERO FOR
24 THE OTHERS.

25 AND, YOU KNOW, I DON'T KNOW THAT'S
26 INCONSISTENT WITH THE EVIDENCE. 12:44PM

27 MR. EMANUEL: WELL --

28 MS. STEIN: I THINK MR. CORNELL'S DAMAGES

1 ANALYSIS WAS BECAUSE MR. GUNDLACH'S BREACH OF FIDUCIARY
2 DUTY, TCW HAD TO TERMINATE HIM, AND THOSE WERE THE
3 DAMAGES FLOWING FROM THAT BREACH. I DIDN'T HEAR
4 DAMAGES FLOWING FROM MS. VANEVERY'S BREACH.

5 AND THE JURY MAY WELL FIND THERE WERE
6 NONE.

12:44PM

7 MR. EMANUEL: BUT, YOUR HONOR, IF I MAY,
8 THAT'S THE NATURE OF CONSPIRACY AGAIN. MR. MADISON CAN
9 SPEAK TO THAT.

10 BUT THERE IS ONE AMOUNT OF DAMAGES WE
11 ALL HAVE. NOW IT SEEMS LIKE WE ALL AGREE. THERE IS
12 ONE QUANTITY OF DAMAGES. IT'S NOT BEEN APPORTIONED AND
13 ALLOCATED. THE JURY MAY GO HIGHER OR LOWER. THAT'S
14 NOT THE POINT. BUT THEY WILL NOT HAVE EVIDENCE TO
15 SEGREGATE IT.

12:44PM

12:45PM

16 NOW, A JURY COULD SAY, LOOKING AT
17 BARBARA VANEVERY, JUST LIKE MS. STEIN ARGUED, THAT'S
18 REALLY JEFFREY GUNDLACH. BARBARA VANEVERY DIDN'T
19 CONSPIRE; SHOULDN'T BE LIABLE. WHATEVER, JURY
20 NULLIFICATION, I DON'T CARE.

12:45PM

21 BUT IT'S LIABILITY ISSUE. SHE'S JUST
22 NOT LIABLE. SO ON WE MOVE. THEY DON'T HAVE TO DECIDE,
23 GEE, SHE IS LIABLE.

24 THE COURT: IF THEY FIND SHE'S LIABLE, THERE
25 OUGHT TO BE A LINE TO PUT A NUMBER IF THEY WANT TO
26 ASSESS DAMAGES TO HER.

12:45PM

27 AND IT'S THE SAME THEORY, WHILE HE
28 TALKED ABOUT MR. GUNDLACH, THE ARGUMENT IS THAT

1 VANEVERY, SANTA ANA, AND MAYBERRY, IN THE CONDUCT THAT
2 THEY ENGAGED IN, CONSTITUTED BREACH OF THEIR FIDUCIARY
3 DUTIES AS OFFICERS OF THE COMPANY. AND, YOU KNOW, I'M
4 NOT SURE THAT THE DAMAGE CALCULATION APPLIES AS EASILY
5 TO THEM AS TO MR. GUNDLACH.

12:45PM

6 MR. HELM: WELL, MAYBE. I DO NOT AGREE. WE
7 DO NOT CONCEDE IT'S SOME ALL OR NOTHING UNIFORM
8 DAMAGES.

9 SUPPOSE THEY CONCLUDE THAT THE -- THAT
10 SOME OF THESE PEOPLE DOWNLOADED SOME NONTRADE-SECRET
11 INFORMATION, AND THAT'S HOW THEY BREACHED THEIR
12 FIDUCIARY DUTIES, BUT THERE WERE NOMINAL DAMAGES FOR
13 THAT BECAUSE THEY HAD TO GO, YOU KNOW, SEND OUT SOME
14 LETTERS, OR THEY HAD TO DO SOMETHING ELSE THAT
15 CONSTITUTED DAMAGES, AND THEY ASSESS AN AWARD FOR THAT.

12:46PM

12:46PM

16 THAT CAN BE A DIFFERENT FORM OF DAMAGES
17 FROM IF THEY FOUND MR. GUNDLACH TO BREACH HIS FIDUCIARY
18 DUTIES, WHICH REQUIRED HIM TO BE TERMINATED AND LED TO
19 SOME OTHER CONSEQUENCES.

20 I DON'T SEE HOW YOU CAN TIE THE JURY'S
21 HANDS.

12:46PM

22 THE COURT: THEN WHY DO WE NEED NO. 4 IN YOUR
23 PROPOSED INSTRUCTION? LET THEM FILL IN A NUMBER FOR
24 EACH ONE?

25 MR. HELM: I GUESS --

12:46PM

26 THE COURT: YOU WANT BOTH WAYS HERE.

27 MR. HELM: WE -- WE WERE TRYING TO MAKE SURE
28 THAT THE -- THE JURY JUST HAS TO BE -- ARE THEY

1 ADDITIVE, OR, IN OTHER WORDS, DO THEY MEAN THE TOTAL
2 DAMAGES WERE \$100,000 AND ONE PERSON IS RESPONSIBLE FOR
3 ALL OF THEM? ONE PERSON IS RESPONSIBLE FOR PART OF
4 THEM? AND THAT THEY'RE -- THEY'RE ONE -- ONE IS A
5 SUBSET OF THE OTHER?

12:47PM

6 OR ARE THEY SAYING ONE'S A HUNDRED
7 THOUSAND, AND THERE'S ADDITIONAL 30,000, AND THEN
8 ANOTHER ADDITIONAL 30-?

9 YOU GET THE ANSWER BY FINDING OUT WHAT'S
10 THE TOTAL. IF THEY SAY HUNDRED, 30, 50, 70 AND THE
11 TOTAL'S 100, THEN YOU KNOW WHAT THEY MEANT WAS, THESE
12 ARE SUBSETS OF THE OTHERS.

12:47PM

13 IF THEY GO 100, 30, 40, 70 AND IT ADDS
14 UP TO SEVEN -- FOUR, WHATEVER IT IS, TO, YOU KNOW,
15 \$200,000, THEN YOU KNOW THEY INTENDED IT TO BE
16 ADDITIVE.

12:47PM

17 THAT'S -- MAYBE THERE'S A BETTER WAY TO
18 GET AT THAT -- THAT'S THE PURPOSE OF THE QUESTION, IS
19 FOR US TO TRY TO GET -- ARE THESE NESTING DOLLS, ARE --
20 ARE THEY ADDITIVE?

12:47PM

21 MR. EMANUEL: YOUR HONOR --

22 THE COURT: IT'S INCONSISTENT. IT SEEMS TO
23 ME, UNLESS THEY PUT THE SAME NUMBER IN EACH LINE, IF
24 THEY ASSESS THE LIABILITY OF EACH INDIVIDUAL DEFENDANT
25 INDEPENDENTLY, THEN THEY MAY ASSESS DIFFERENT DAMAGES.

12:48PM

26 I'M NOT SURE THEY HAVE EVIDENCE TO
27 SUPPORT A SEPARATE ASSESSMENT OF DAMAGES FOR MAYBERRY,
28 SANTA ANA, OR VANEVERY. BECAUSE IT IS KEY TO THE

1 CONDUCT OF MR. GUNDLACH.

2 NOW, SO I THINK YOU COULD PUT WHAT YOU
3 ASSESS AS DAMAGES FOR BREACH OF FIDUCIARY DUTY.

4 MR. HELM: THEN HOW WOULD YOU GET -- I'M
5 TRYING -- WE HAVE NO INSTRUCTION --

12:48PM

6 THE COURT: DO YOU HAVE AN INSTRUCTION ON
7 CONSPIRACY?

8 MR. EMANUEL: YES.

9 MR. HELM: YES, WE DO HAVE AN INSTRUCTION ON
10 CONSPIRACY.

12:48PM

11 MS. STEIN: YES.

12 THE COURT: I MEAN A VERDICT QUESTION.

13 MR. EMANUEL: NO.

14 MS. STEIN: NO, YOUR HONOR.

15 MR. EMANUEL: THE PLAINTIFF PUT THAT AS -- PUT
16 THAT IN AS PART OF EACH QUESTION.

12:48PM

17 THE COURT: I WOULD SAY MAYBE YOU OUGHT TO PUT
18 AN INSERTION IN -- OUGHT TO PUT AN INSERTION IN BETWEEN
19 TWO AND THREE. AND MAYBE THIS WILL FALL INTO SOME OF
20 THE OTHERS.

12:49PM

21 BUT DO YOU FIND THAT THE FOLLOWING --
22 THAT THE DEFENDANTS CONSPIRED TO BREACH THEIR FIDUCIARY
23 DUTIES AS TO, YOU KNOW, SAME THING.

24 FOR TCW, OR AS TO JEFFREY GUNDLACH, YES,
25 NO.

12:49PM

26 AS TO BARBARA VANEVERY, YES, NO.

27 AS TO CRIS, YES, NO.

28 MR. HELM: HOW WOULD SOMETHING LIKE THIS WORK?

1 THE COURT: IF YOU PUT THAT IN, IF THEY SAY
2 YES, WE ONLY NEED ONE NUMBER ON THE BREACH OF FIDUCIARY
3 DUTY AND FOR THE ONES THAT DIDN'T CONSPIRE, THERE'S NO
4 DAMAGE.

5 MR. EMANUEL: WELL, WAIT. NO, NO, NO, YOUR
6 HONOR JUST HEARD MR. HELM SAY THAT THERE'S A SITUATION.
7 I DON'T THINK THERE'S ANY EVIDENCE, BUT HE JUST
8 SUGGESTED TO YOUR HONOR, THERE'S A SITUATION THE JURY
9 COULD SAY THEY DIDN'T CONSPIRE; HOWEVER, SHE DID BREACH
10 HER DUTIES -- HER FIDUCIARY DUTIES, BUT WHAT SHE DID
11 WAS SMALL.

12 THE COURT: THEN LEAVE -- LET THEM PUT A
13 NUMBER FOR EACH PERSON. AND IF THEY WERE FOUND TO HAVE
14 CONSPIRED, THEN THEY'RE LIABLE JOINT AND SEVERAL NEXT
15 TO EACH PERSON'S NAME.

16 IF THEY WERE FOUND NOT TO HAVE
17 CONSPIRED, THEN THEY'RE ONLY LIABLE FOR THE BREACH OF
18 FIDUCIARY DAMAGES THAT THEY PUT DOWN FOR THEM.

19 MR. EMANUEL: I DON'T THINK THAT SOLVES THE
20 PROBLEM, JUST TAKING -- MAKING THE PROBLEM -- SIMPLY
21 IDENTIFYING IT.

22 LET'S SAY THEY AWARDED \$10, \$10, \$10,
23 \$10.

24 NOW, IS THAT JOINT AND SEVERAL FOR \$10,
25 OR IS THAT THEIR ALLOCATED SHARE OF A LARGER AMOUNT,
26 SOME LARGER AMOUNT?

27 THE COURT: THAT GOES TO THE QUESTION FOUR.
28 WE'RE GOING TO CLEAN THAT UP AND MAKE IT MAKE SENSE, AS

1 TO WHETHER IT'S AN AGGREGATE OR INDEPENDENT.

2 MR. EMANUEL: ALL RIGHT.

3 THE COURT: YOU COULD CLARIFY IT BY SAYING:
4 STATE THE DAMAGES, IF ANY, TCW PROVED WERE CAUSED BY
5 THE BREACH OF FIDUCIARY DUTY BY EACH OF THE FOLLOWING
6 INDIVIDUALS, ALLOCATED TO EACH INDIVIDUAL, OR SOMETHING
7 IN THAT SENTENCE.

12:51PM

8 MR. EMANUEL: I GUESS WE'LL HAVE TO SAY --

9 THE COURT: DO NOT DUPLICATE. WE'VE GOT TO
10 GET IT DONE.

12:51PM

11 MR. EMANUEL: I KNOW. IT SEEMS TO ME, WITHOUT
12 ANY EVIDENCE, INDIVIDUAL EVIDENCE OF DAMAGE, I HAVE TO
13 OBJECT THAT THERE IS NO WAY AN INSTRUCTION SHOULD BE
14 ENTERED ASKING -- A FORM SHOULD BE ENTERED GIVING THEM,
15 HOW MUCH DO YOU IMAGINE WITHOUT ANY EVIDENCE TO SUPPORT
16 IT THAT VANEVERY IS LIABLE FOR?

12:51PM

17 IF YOUR HONOR WANTS TO GO THAT ROUTE, IT
18 SEEMS TO ME THE FIRST QUESTION IS, WHAT IS THE TOTAL
19 DAMAGES CAUSED IRRESPECTIVE OF WHO CAUSED IT?

20 AND THEN A SUBSIDIARY QUESTION'S: THEN
21 DO YOU FIND THAT IN THE FOLLOWING DEFENDANTS -- THAT
22 ANY OF THE FOLLOWING DEFENDANTS ARE NOT LIABLE FOR THE
23 FULL AMOUNT? IF SO, WHAT AMOUNT DO YOU THINK THEY ARE
24 LIABLE FOR? THAT'S PRETTY EXACT LANGUAGE.

12:51PM

25 THE COURT: THAT'S SPECULATIVE.

12:52PM

26 MR. EMANUEL: EXACTLY. IT'S COMPLETELY
27 SPECULATIVE.

28 I THINK THE FORM SHOULD TRACK THE THEORY

1 THAT THE CASE WAS TRIED ON. THOUGH ONE, SO FAR AS I
2 KNOW, YOUR OPINION, I DON'T WANT TO PRESUME ON THE
3 COURT'S KNOWLEDGE OF THE TRIAL BECAUSE IT'S BETTER THAN
4 MINE. NO ONE ALLOCATED LIABILITY. NO ONE ALLOCATED
5 DAMAGES. IT HAS BEEN ALL OR NOTHING FROM DAY ONE.

12:52PM

6 THE COURT: I UNDERSTAND.

7 MR. EMANUEL: THEREFORE, THE FORM SHOULD
8 REALLY BE --

9 THE COURT: THE ISSUE IS REALLY TO THE THREE
10 INDIVIDUAL DEFENDANTS. I THINK YOU NEED TO MAKE A
11 QUESTION ON THE VERDICT FORM ASKING WHETHER EACH
12 INDIVIDUAL WAS PART OF A CONSPIRACY OR CONSPIRED TO
13 BREACH FIDUCIARY DUTIES WITH THE OTHER DEFENDANTS.

12:52PM

14 MR. HELM: WE HAVE A SUGGESTION ON THAT, YOUR
15 HONOR.

12:52PM

16 WE WERE ACTUALLY -- THINK OF IT: IF YOU
17 FIND ONE OR MORE DEFENDANT BREACHED HIS OR HER
18 FIDUCIARY DUTY, DID ANY OF THE FOLLOWING CONSPIRE WITH
19 THAT PERSON OR PERSONS TO BREACH THAT FIDUCIARY DUTY OR
20 DUTIES?

12:53PM

21 AND THEN LIST THEM AND SAY YES OR NO.

22 THE COURT: IF YOU FIND THAT ONE OR MORE
23 DEFENDANTS BREACHED THEIR FIDUCIARY DUTIES --

24 MR. HELM: WE WROTE IT UP.

25 THE COURT: JUST TELL ME AGAIN.

12:53PM

26 MR. HELM: IF YOU FIND ONE OR MORE DEFENDANTS
27 BREACHED HIS OR HER FIDUCIARY DUTY, DID ANY OF THE
28 FOLLOWING CONSPIRE WITH THAT PERSON OR PERSONS TO

1 BREACH THEIR FIDUCIARY DUTY OR DUTIES?

2 THEN GO, GUNDLACH, YES OR NO?

3 VANEVERY, YES OR NO?

4 SANTA ANA, YES OR NO?

5 THE COURT: HOW ABOUT THAT, MR. EMANUEL?

12:53PM

6 MR. EMANUEL: STEP ONE --

7 THE COURT: OKAY. WE'RE AT THE END OF THE
8 GAME HERE. I APPRECIATE IT. YOU'RE GOING TO GO BACK
9 TO YOUR DRAWING BOARD.

10 I DON'T HAVE A LOT OF TIME TO SPEND
11 HOURS WITH YOU WORDSMITHING THESE THINGS. EITHER YOU
12 CAN COME BACK WITH AN AGREED FORM, OR I'VE STILL GOT A
13 PROBLEM.

12:54PM

14 NOW, I'M NOT ACTUALLY GOING TO SUBMIT
15 THE VERDICT FORM TO THEM UNTIL WEDNESDAY, UNTIL THEY
16 BEGIN THEIR DELIBERATIONS.

12:54PM

17 BUT IT IS NOT JUST IN THE THEORETICAL
18 NOW.

19 MR. EMANUEL: OH, NO.

20 THE COURT: WE'VE GOT TO FINALIZE IT. IF I
21 CAN HAVE LANGUAGE THAT YOU SAY IS OKAY, THEN I CAN
22 ASSUME YOU'RE GOING TO GO BACK AND PUT IT IN.

12:54PM

23 MR. EMANUEL: RIGHT, YES.

24 THE COURT: I -- I DO THINK YOU NEED SOME
25 LANGUAGE ON THE CONSPIRACY THAT ALLOWS AN INDEPENDENT
26 ASSESSMENT AS TO EACH DEFENDANT.

12:54PM

27 AS FAR AS THE DAMAGES GO, I TEND TO
28 THINK THAT MAYBE MR. EMANUEL'S MORE ON TARGET BECAUSE

1 WE DON'T HAVE ANY EVIDENCE TO SUPPORT ANY ALLOCABLE
2 SHARE OF DAMAGES FOR BREACH OF FIDUCIARY DUTY.

3 IT IS AN ALL OR NOTHING PROPOSITION.
4 AND IF THEY FIND THAT THERE WAS CONSPIRACY, THESE
5 DAMAGES WOULD BE ASSESSED AGAINST ALL COCONSPIRATORS. 12:55PM

6 IF THEY FIND THERE WAS NO CONSPIRACY,
7 THEN IT'S ASSESSED ONLY AGAINST THE INDIVIDUALS.

8 MR. HELM: I GUESS -- I HEAR WHAT YOU'RE
9 SAYING. JUST TO CONTINUE THAT THOUGHT.

10 SUPPOSE THAT MAYBERRY IS FOUND LIABLE,
11 NOT FOR CONSPIRING, BUT FOR BREACHING HIS OWN FIDUCIARY
12 DUTIES. 12:55PM

13 LET'S SAY GUNDLACH IS FOUND LIABLE FOR
14 BREACHING HIS FIDUCIARY DUTIES.

15 DOES IT NECESSARILY FOLLOW THEY BOTH
16 CAUSED THE SAME DAMAGE? 12:55PM

17 THE COURT: NO. BUT WHAT EVIDENCE DO THEY
18 HAVE TO DETERMINE -- I MEAN, IT BECOMES A TOTALLY
19 SPECULATIVE FINDING BY THE JURY TO ASSESS BREACH OF
20 FIDUCIARY DUTY DAMAGES AGAINST MAYBERRY. 12:55PM

21 MR. HELM: SUPPOSE THEY WANT TO SAY NOMINAL
22 DAMAGE, \$1? WE THINK IT WAS DAMAGE, BUT IT WAS JUST
23 NOMINAL. THEY WEREN'T REALLY -- NO HARM, NO FOUL. HE
24 LOST A FLASH DRIVE, YOU KNOW, BUT NOBODY WAS REALLY
25 HURT BY IT. BUT, YEAH, THEY WERE INCONVENIENCED, BUT
26 WE CAN'T REALLY MEASURE IT. IT'S NOMINAL, \$1. 12:55PM

27 THE COURT: THEY COULD PUT IT IN. IT'S JUST
28 INVITING PROBLEMS. BUT, YOU KNOW, THE FOCUS IS NOT ON

1 VANEVERY, SANTA ANA, AND MAYBERRY.

2 SO I'M NOT SURE WHERE THAT COMES. BUT
3 THEY'RE ENTITLED TO THEIR RIGHTS. AND THEY'RE ENTITLED
4 TO A DETERMINATION.

5 AND SO, PUT IN THE LANGUAGE ON THE
6 CONSPIRACY. SO IF THEY MAKE A FINDING AS TO WHETHER
7 THEY WERE COCONSPIRATORS, AND THEN PUT A PARAGRAPH IN
8 AND ASK AS AGAINST EACH OF THE INDIVIDUAL DEFENDANTS
9 WHAT THE DAMAGES ARE FOR BREACH OF FIDUCIARY DUTY.

12:56PM

10 AND, RATHER THAN HAVING A SEPARATE
11 QUESTION, I WOULD HAVE KIND OF AN ADMONISHMENT AT THE
12 END OF A THROUGH C WITH THE NAMES.

12:56PM

13 AND SAY YOU MUST ASSESS DAMAGES
14 INDIVIDUALLY AGAINST EACH INDIVIDUAL. THE COURT WILL
15 NOT CONCLUDE THAT THEY ARE CUMULATIVE. OR USE SOME
16 LANGUAGE JUST TO SAY THAT. MUST ASSESS DAMAGES IN
17 BREACH OF FIDUCIARY DUTY INDEPENDENTLY AGAINST EACH
18 INDIVIDUAL. SOMETHING LIKE THAT?

12:56PM

19 MR. EMANUEL: SO THAT WE MOVE THE BALL ALONG,
20 COULD WE ALSO HAVE AN -- A QUESTION THAT SAYS, WHAT IS
21 THE TOTAL DAMAGE FOR BREACH OF FIDUCIARY DUTY?

12:57PM

22 THEN YOU CAN HAVE THESE FOLLOW-ON
23 QUESTIONS, DEPENDING ON OTHER ANSWERS.

24 BUT I THINK THE COURT NEEDS TO KNOW,
25 BEFORE WE GET INTO THE SUBSIDIARY ALLOCATION ISSUES,
26 WHAT IS THE TOTAL AMOUNT OF DAMAGE FOR BREACH OF
27 FIDUCIARY DUTY? AND THAT QUESTION SHOULD PRECEDE THE
28 OTHER INDIVIDUAL ASSESSMENT OF DAMAGES.

12:57PM

1 THE COURT: THAT'S FINE WITH ME.

2 WHAT DO YOU THINK OF THAT, MR. HELM? I
3 DON'T WANT TO MAKE IT MORE COMPLICATED. EVERY TIME WE
4 LOOK AT FOUR QUESTIONS, WE TURN IT INTO 16 AND WE HAVE
5 A 40-PAGE VERDICT FORM. WE DON'T WANT THAT.

12:58PM

6 MR. HELM: THE SEQUENCE MAY HELP THAT YOUR
7 HONOR FOCUSED ON A PROBLEM I HADN'T SEEN BEFORE. I
8 WANT TO MAKE SURE WE COME UP WITH SOMETHING THAT
9 ADDRESSES IT.

12:58PM

10 WE THOUGHT WE WERE SOLVING A PROBLEM,
11 AND WE MIGHT HAVE BEEN CREATING ONE. I THINK WE'VE
12 PROBABLY GONE AS FAR AS WE'RE GOING TO GO RIGHT NOW.

13 THE COURT: GO BACK TO THE DRAWING BOARD. THE
14 THREE OF YOU SHOULD SIT DOWN. IT NEEDS NOT TO JUST BE
15 SENT BACK AND FORTH AMONG YOU. GO INTO A CONFERENCE
16 ROOM, FINALIZE THE INSTRUCTION. OR, AT WORST, BE ABLE
17 TOO GIVE ME A RED-LINE THAT SHOWS WHAT WE AGREED TO OR
18 DON'T AGREE TO. SO I CAN FINALIZE IT.

12:58PM

19 IF YOU CAN PUT THAT UP TONIGHT, I'LL
20 LOOK AT IT VERY EARLY TOMORROW MORNING AND TRY TO
21 RESOLVE IT FOR YOU WITH A POSTING OR SOMETHING.

12:58PM

22 AND MY QUESTIONS ARE, THE FOLLOWING
23 NEEDS TO BE ADDRESSED:

24 WE NEED A VERDICT QUESTION ASKING
25 WHETHER EACH INDIVIDUAL WAS PART OF A CONSPIRACY OR
26 CONSPIRED BREACH OF FIDUCIARY DUTY.

12:59PM

27 WE NEED SOMETHING TO THE EFFECT, IF YOU
28 FIND ONE OR MORE DEFENDANTS BREACHED THEIR FIDUCIARY

1 DUTIES, DID ANY OF THE FOLLOWING CONSPIRE WITH THAT
2 PERSON OR PERSONS TO BREACH THEIR FIDUCIARY DUTIES.

3 THOSE ARE THE FLIP SIDE. I MEAN, THOSE
4 TWO THINGS NEED TO BE ADDRESSED.

5 AND THEN A QUESTION TO ADVISE DAMAGES
6 FOR BREACH OF FIDUCIARY DUTY MUST BE ASSESSED AS TO
7 EACH INDIVIDUAL DEFENDANT.

12:59PM

8 AND MAYBE A QUESTION AS TO THE TOTAL
9 AMOUNT OF DAMAGES ASSESSED FOR BREACH OF FIDUCIARY
10 DUTY, IN CLARIFYING THIS AMBIGUITY THAT WE ARRIVED AT.

12:59PM

11 SO THAT WOULD TAKE CARE OF THE BREACH OF
12 FIDUCIARY DUTY SECTION.

13 TURNING TO TCW'S CLAIMS FOR TRADE SECRET
14 VIOLATION.

15 MR. EMANUEL: I THINK THE COMMENTS APPLY TO
16 THESE INSTRUCTIONS AS WELL.

01:00PM

17 MR. HELM: WELL --

18 MS. STEIN: YOUR HONOR, THERE IS NO CONSPIRACY
19 FOR TRADE SECRET VIOLATION.

20 THE COURT: NO, I THINK THAT'S A
21 STRAIGHTFORWARD FINDING AGAINST EACH INDIVIDUAL
22 DEFENDANT.

01:00PM

23 MS. STEIN: RIGHT.

24 THE COURT: AGAIN, THE DEFENDANTS' LANGUAGE
25 SEEMS TO ME TO BE ADEQUATE. AND WE'RE NOT ASSESSING
26 ANY DAMAGES.

01:00PM

27 I DON'T KNOW WHY YOU HAVE:

28 IF YOU FIND FOR TCW, WERE

1 DEFENDANTS UNJUSTLY ENRICHED BY THE
2 MISAPPROPRIATION --

3 MR. HELM: I THINK THEY'VE WITHDRAWN THAT
4 ALLEGATION SINCE WE DID THIS. WE SHOULD TAKE THAT OUT.

5 THE COURT: THAT SHOULD BE TAKEN OUT. 01:00PM

6 MR. HELM: I AGREE.

7 THE COURT: THEY'RE MAKING A FINDING
8 BASICALLY. AND MY UNDERSTANDING, IF THEY FIND THERE
9 WAS A MISAPPROPRIATION, THERE WOULD BE POST VERDICT
10 PROCEEDINGS FOR THE COURT TO DETERMINE THE AMOUNT OF A 01:00PM
11 REASONABLE ROYALTY.

12 MR. EMANUEL: ABSOLUTELY. THAT'S RIGHT.
13 THERE'S NO DAMAGE ISSUE HERE.

14 THE COURT: JUST TWO QUESTIONS. FINE THE WAY
15 THE DEFENDANTS PROPOSED IT. 01:01PM

16 MR. EMANUEL: ALTHOUGH, YOUR HONOR, BASED ON
17 THE JURY INSTRUCTIONS, THEY SHOULD BE ASKED WHETHER
18 THERE WAS WILLFUL AND MALICIOUS MISAPPROPRIATION SO
19 THE COURT COULD MAKE -- IF THERE'S A FACTUAL PREDICATE
20 FOR THE COURT TO MAKE SOME PUNITIVES -- 01:01PM

21 THE COURT: I DIDN'T SEE WHERE YOU HAD THAT.

22 MR. EMANUEL: WE SUBMITTED THESE FORMS SOME
23 TIME AGO, YOUR HONOR.

24 THE COURT: LET'S WAIT BECAUSE THERE MAY BE A
25 GENERAL -- WE HAVE A GENERAL SECTION IN YOURS ON 01:01PM
26 PUNITIVE DAMAGES AS TO THE DEFENDANTS AND WHY CAN'T
27 WE --

28 MS. STEIN: YOUR HONOR, IF I MAY. PUNITIVE

1 DAMAGES, THE GENERAL PUNITIVE DAMAGES INSTRUCTION WILL
2 ONLY GO AS TO MR. GUNDLACH BECAUSE HE IS THE ONLY
3 PERSON FOR WHOM THE JURY CAN AWARD PUNITIVE DAMAGES ON
4 BREACH OF FIDUCIARY DUTY.

5 AND ON --

01:02PM

6 THE COURT: INTERFERENCE WITH CONTRACTUAL
7 RELATIONS.

8 MS. STEIN: AND INTERFERENCE.

9 THE COURT: OR THE TRADE SECRET CLAIM.

10 MS. STEIN: THE JURY CAN'T AWARD THOSE
11 DAMAGES; ONLY THE COURT.

01:02PM

12 THE COURT: WHY CAN'T THE JURY DETERMINE --

13 MR. HELM: WILLFUL MISCONDUCT.

14 THE COURT: WILLFUL MISCONDUCT AND PUNITIVE
15 DAMAGES THAT SHOULD BE ASSESSED AGAINST HIM ON TRADE
16 SECRET. I'M ONLY DOING REASONABLE ROYALTY.

01:02PM

17 MS. STEIN: I THINK THE BETTER FORM WOULD BE
18 TO ADD A QUESTION UNDER MISAPPROPRIATION OF TRADE
19 SECRETS, WAS THE CONDUCT, WILLFUL AND MALICIOUS.

20 MR. HELM: THAT'S WHAT YOU WANT.

01:02PM

21 MR. EMANUEL: RIGHT. PARTIES ARE IN AGREEMENT
22 WITH THAT.

23 MR. HELM: WE CAN DO THAT.

24 MS. STEIN: YES.

25 THE COURT: THAT WILL TAKE CARE OF THE TRADE
26 SECRET VIOLATION.

01:02PM

27 ON THE INTENTIONAL INTERFERENCE CLAIM,
28 AGAIN, IT'S PRETTY STRAIGHTFORWARD. I THINK YOU NEED

1 TO HAVE THE SAME QUESTION:

2 DO YOU FIND THAT THERE WAS
3 WILLFUL AND MALICIOUS -- IT HAS TO
4 BE: DO YOU FIND BY CLEAR AND
5 CONVINCING EVIDENCE.

01:03PM

6 MS. STEIN: YOUR HONOR, THE FOLLOWING QUESTION
7 IN OUR FORM PUNITIVE DAMAGES:

8 HAS TCW PROVEN MALICE
9 MISAPPROPRIATION FRAUD BY CLEAR AND
10 CONVINCING EVIDENCE AGAINST
11 GUNDLACH FOR BREACH OF FIDUCIARY,
12 YES OR NO?
13 FOR INTERFERENCE, YES OR NO?

01:03PM

14 THE COURT: WHY WOULDN'T YOU PUT FOR
15 MISAPPROPRIATION OF TRADE SECRETS, YES OR NO?

01:03PM

16 MS. STEIN: THE STANDARD IS SLIGHTLY
17 DIFFERENT.

18 I WOULD PUT WILLFUL AND MALICIOUS
19 STANDARD IN WITH MISAPPROPRIATION OF TRADE SECRET.

20 ALSO, WE'RE NOT ASKING THE JURY TO
21 ASSESS THE AMOUNT AS TO TRADE SECRETS, AND I THINK IT'S
22 CONFUSING IF WE PUT THAT TOGETHER WITH THE GENERAL
23 PUNITIVE DAMAGES QUESTIONS.

01:03PM

24 THE COURT: I DON'T HAVE A PROBLEM.

25 BUT I GUESS I HAVE A QUESTION OF WHY THE
26 JURY WOULDN'T ASSESS PUNITIVE DAMAGES IF THEY FIND THAT
27 HE WILLFULLY AND MALICIOUSLY MISAPPROPRIATED TRADE
28 SECRETS.

01:03PM

1 MR. HELM: THE STATUTE SAYS ONLY THE COURT MAY
2 ASSESS IT.

3 THE COURT: EVEN AS TO PUNITIVE DAMAGES?

4 MR. HELM: YES.

5 THE COURT: THAT'S A PRETTY GOOD ANSWER. EVEN
6 I'LL BUY THAT.

01:04PM

7 MR. EMANUEL: THAT PERSUADES THE JUDGE. I
8 KNOW YOU'RE TRYING TO GET OUT OF IT. YOU'RE GOING TO
9 HAVE TO BITE THE BULLET ON THAT.

10 MR. HELM: THERE ARE LIMITATIONS ON THAT.
11 IT'S A STATUTORY PROCEDURE.

01:04PM

12 THE COURT: ALL RIGHT.

13 NOW WE'RE DOWN TO -- WE SOLVED THE
14 PUNITIVE DAMAGES, AND JEFFREY GUNDLACH'S CLAIMS AGAINST
15 TCW.

01:04PM

16 I'M LOOKING AT THE DEFENDANTS' FORM.

17 MS. STEIN: WE'LL TAKE OUT THE QUANTUM MERUIT
18 QUESTIONS. THE COURT RULED ON THAT.

19 THE COURT: RIGHT. RIGHT.

20 THE REASONABLE VALUE. 17 AND 18 GO OUT.

01:04PM

21 MR. HELM: YES.

22 MR. EMANUEL: FROM TCW'S POINT OF VIEW, THERE
23 IS A POTENTIAL AMBIGUITY AS TO WHETHER OR NOT THE
24 AMOUNTS FOR BREACH OF CONTRACT WILL OVERLAP DUPLICATE
25 OR THE FAILURE TO PAY WAGES.

01:04PM

26 THE COURT: WELL, I WOULD SAY THAT, AND I
27 WOULD INVITE A STIPULATION THAT, TO THE EXTENT THAT
28 DAMAGES FOR BREACH OF CONTRACT ARE ASSESSED BY THE

1 JURY, THAT DEFENDANTS -- AS TO MR. GUNDLACH WOULD WAIVE
2 ANY LABOR CODE CLAIMS.

3 MR. HELM: WELL, YOUR HONOR --

4 THE COURT: IT'S DIFFICULT FOR ME TO IMAGINE
5 IF YOU HAVE CONTRACT DAMAGES ASSESSED THAT THE LABOR
6 CODE CLAIM IS GOING TO BE -- SIGNIFICANT.

01:05PM

7 MS. STEIN: YOUR HONOR, THERE IS -- I'M SORRY.

8 MR. HELM: WE MAY BE WILLING -- WE MAY BE ABLE
9 TO REACH AN AGREEMENT AS TO WHETHER THE AMOUNT ASSESSED
10 IS ADDITIVE TO OR SUBSUMED IN THE CONTRACT DAMAGES.

01:05PM

11 WE ARE NOT GOING TO WAIVE.

12 THE COURT: NOT WAIVE IT. THEN TO THE EXTENT
13 THAT CONTRACT DAMAGES ARE ASSESSED, YOU WOULD STIPULATE
14 THAT SUCH DAMAGES WOULD INCLUDE ANY STATUTORY LABOR
15 CODE DAMAGES?

01:06PM

16 MR. HELM: LET US THINK ABOUT THAT.

17 THE COURT: TALK ABOUT THAT. IT SEEMS TO ME
18 YOU STILL CAN HAVE TWO QUESTIONS. I MEAN, BECAUSE,
19 THEORETICALLY, THEY COULD ASSESS LABOR CODE DAMAGES BUT
20 NOT CONTRACT DAMAGES.

01:06PM

21 MR. EMANUEL: CORRECT.

22 THE COURT: IF THEY GIVE THE CONTRACT DAMAGES,
23 THEN I THINK, BY DEFINITION, IT'S GOT TO INCLUDE OR
24 OVERRIDE THE LABOR CODE --

25 MR. HELM: WE'RE NOT TRYING TO GET A DOUBLE
26 RECOVERY.

01:06PM

27 I WOULD REMIND THE COURT THERE'S 30-DAY
28 PENALTY PROVISION IN THE LABOR CODE. THESE NUMBERS

1 COMES OUT TO REAL MONEY, AND THERE'S ALSO ATTORNEYS'
2 FEES. IT IS IMPORTANT FOR US TO MAINTAIN.

3 THE COURT: LEAVE THE QUESTIONS AS THEY ARE.
4 LET THEM FILL THEM IN AND WE'LL DEAL WITH IT POST
5 VERDICT.

01:06PM

6 MS. STEIN: THANK YOU, YOUR HONOR.

7 MR. EMANUEL: WELL -- POST VERDICT, DEPENDING
8 ON WHAT THE RESULT IS, YOUR HONOR WILL BE STARING AT
9 THE, DO I ADD THEM, OR NOT?

10 THE COURT: AND I'M TELLING YOU, IF THEY GIVE
11 CONTRACT DAMAGES, AT THE VERY LEAST, THE CONTRACT
12 DAMAGES WOULD HAVE TO BE SUBTRACTED FROM THE LABOR CODE
13 DAMAGES.

01:06PM

14 NOW, IF THEY ASSESS THE PENALTIES, IT'S
15 30 DAYS, SO THE LABOR CODE NUMBER COULD BE
16 STRATOSPHERIC.

01:07PM

17 MR. HELM: THE PENALTIES -- THE PENALTIES
18 WE'VE AGREED THE COURT WILL ASSESS.

19 AND IF -- IF THERE WAS A WAGE VIOLATION
20 FOUND, WE'LL HAVE A POST TRIAL HEARING.

01:07PM

21 THE COURT: I DON'T THINK YOU NEED TO WORRY
22 ABOUT THAT. WE'LL WORK IT OUT, MR. EMANUEL.

23 MR. EMANUEL: ALL RIGHT.

24 THE COURT: MY SENSE WOULD BE ANY CONTRACT
25 DAMAGES WOULD HAVE TO BE DEDUCTED FROM STATUTORY WAGE
26 CLAIMS.

01:07PM

27 MR. EMANUEL: OR VICE VERSA.

28 THE COURT: WE'LL FIGURE IT OUT.

1 MR. EMANUEL: I ASSUME THAT WILL APPLY TO ALL
2 THE CROSS-COMPLAINTS.

3 THE COURT: FOR EACH ONE OF THEM.

4 NOW WE HAVE A VERDICT FORM WE'RE
5 AGREEMENT ON WITH A FEW OPEN ISSUES. YOU'LL GO BACK --

01:07PM

6 MR. HELM: THAT'S FINE, YOUR HONOR.

7 MR. EMANUEL: WE'LL GET TOGETHER TO WORK OUT
8 THE QUESTIONS IN THE BEGINNING.

9 THE COURT: WHAT ELSE DO WE NEED TO TALK
10 ABOUT?

01:08PM

11 MR. HELM: TO GIVE THE COURT HEADS-UP, WE'LL
12 BE FILING A DIRECTED VERDICT MOTION LATER ON SOME
13 ISSUES.

14 THE COURT: I'M SURPRISED I HAVEN'T GOT IT
15 YET. I COULDN'T GO TO SLEEP LAST NIGHT. I KEPT
16 HEARING THE COMPUTER BEEP EVERY TIME SOMETHING GOT
17 SERVED.

01:08PM

18 MR. HELM: I APOLOGIZE FOR THAT, YOUR HONOR.

19 THE COURT: IT WAS ONLY 9:30. THAT'S NOT TOO
20 BAD.

01:08PM

21 WHEN IS THE MOTION COMING IN? DO
22 DEFENDANTS HAVE A SIMILAR MOTION?

23 MS. STEIN: THIS AFTERNOON, YOUR HONOR.

24 THE COURT: I MEAN, DO PLAINTIFFS?

25 MR. EMANUEL: I DO NOT BELIEVE THERE IS --

01:08PM

26 THE COURT: THEY MUST BE DOING SOMETHING BACK
27 THERE.

28 MR. EMANUEL: PREPARING CLOSING ARGUMENT.

1 THERE'S ANY MOVEMENT FOR A DIRECTED VERDICT --

2 THE COURT: I'LL LOOK AT IT WHEN I GET IT.

3 IS IT A LENGTHY ONE?

4 MS. STEIN: NO, YOUR HONOR.

5 THE COURT: THANK YOU.

01:08PM

6 MS. STEIN: ON THAT, YOUR HONOR, ON THE
7 DIRECTED VERDICT MOTION, THERE ARE EXHIBITS WE REFERRED
8 TO, AND TRIAL TESTIMONY.

9 WOULD YOU LIKE THOSE ATTACHED TO A
10 DECLARATION IN THE TRADITIONAL FORM OR NOT?

01:09PM

11 THE COURT: HOW VOLUMINOUS IS IT?

12 MS. STEIN: PRETTY -- THE EXHIBITS ARE PRETTY
13 THICK INDIVIDUALLY. THERE ARE NOT VERY MANY OF THEM,
14 BUT THEY ARE SUBSTANTIAL. YOU MAY WANT THEM. I
15 THOUGHT YOU MIGHT WANT THEM AND MAKE IT EASIER FOR YOU
16 TO LOOK AT THEM.

01:09PM

17 THE COURT: JUST PUT THEM IN A BINDER.

18 MS. STEIN: OKAY. FINE.

19 THE COURT: AT LEAST I HAVE A POINT OF
20 REFERENCE. TO GO FIND THINGS IS PRETTY BURDENSOME.

01:09PM

21 MR. HELM: WE'D BE HAPPY TO, YOUR HONOR.

22 THE COURT: OKAY. THANKS.

23 MR. EMANUEL: JUST --

24 THE COURT: LET'S GO OFF THE RECORD.

01:09PM

25
26 (AT 1:10 P.M., AN ADJOURNMENT WAS
27 TAKEN UNTIL 9-13-11 AT 830 A.M.)
28