

1 CASE NUMBER: BC429385
2 CASE NAME: TRUST COMPANY OF THE WEST VS.
3 JEFFREY GUNDLACH, ET AL
4 LOS ANGELES, TUESDAY, SEPTEMBER 13, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 8:40 A.M.

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

15
16 THE COURT: GOOD MORNING, LADIES AND
17 GENTLEMEN.

18 IN THE TCW VERSUS GUNDLACH MATTER, WE'RE
19 SET TO CONTINUE THE TRIAL TODAY AND HAVE CLOSING
20 ARGUMENTS.

21 JUROR NO. 5: JAVIER ENCOURAGED ME TO MENTION
22 THIS.

23 I DON'T KNOW WHEN WE'RE GOING TO RECESS,
24 BUT SOMEONE HAS TO DROP SOMETHING OFF TO ME, AND I
25 ASSUMED, AND TOLD THEM THEY COULD DROP IT OFF BETWEEN
26 THE 10:15 AND WHATEVER WAS THE INTERVAL.

27 IS THAT GOING TO BE OKAY?

28 THE COURT: ACTUALLY, WE WERE PROBABLY GOING

08:59AM

08:39AM

08:40AM

1 TO GO TILL 10:30; BUT IT WILL BE IN THAT RANGE.

2 DO THEY KNOW THE COURTROOM?

3 JUROR NO. 5: THEY DON'T KNOW THE COURTROOM.
4 I DIDN'T KNOW I COULD EVEN HAVE THEM COME UP AND DROP
5 IT OFF.

08:40AM

6 THE COURT: WE WILL TAKE LIKE A FIVE-MINUTE
7 STRETCH DURING THE CLOSING ARGUMENT FOR MR. QUINN, AND
8 PERHAPS THEN YOU COULD STEP OUT AND MAKE THE CALL.

9 JUROR NO. 5: SURE. THANKS.

10 THE COURT: ALL RIGHT. ALL MEMBERS OF OUR
11 JURY AND COUNSEL ARE PRESENT.

08:40AM

12 MR. QUINN, ARE YOU READY TO PROCEED?

13 MR. QUINN: I AM, YOUR HONOR.

14 THE COURT: ALL RIGHT.

15

16

17 PLAINTIFFS' OPENING ARGUMENT

18

19 BY MR. QUINN:

20 GOOD MORNING, FOLKS.

08:40AM

21 THE JURY: MORNING.

22 MR. QUINN: I WANT TO BEGIN BY THANKING YOU.
23 JURY SERVICE IN OUR COUNTRY IS A PRIVILEGE, AND IT'S A
24 RESPONSIBILITY. BUT AS YOU ALL NOW KNOW, IT'S ALSO A
25 LOT OF HARD WORK, AS WELL.

08:41AM

26 WE'VE HAD SOME INTERESTING DAYS IN THIS
27 TRIAL, BUT WE'VE ALSO HAD SOME DAYS WHERE I THINK YOU
28 MUST HAVE THOUGHT YOU WERE WATCHING PAINT DRY, AND EVEN

1 OUR FRIENDS IN THE AUDIENCE HAD A HARD TIME KEEPING
2 THEIR EYES OPEN.

3 AND I REALLY WANT TO THANK YOU FOR YOUR
4 ATTENTION, ESPECIALLY ON THOSE DAYS.

5 THERE'S A LOT OF ZEROS IN THIS CASE. 08:41AM
6 THERE ARE VERY RICH PEOPLE ON BOTH SIDES OF THE CASE.
7 AND I'M QUITE CERTAIN THAT EVERY ONE OF YOU HAVE SAID
8 TO YOURSELF AT SOME TIME, WHY CAN'T THESE RICH PEOPLE
9 WORK IT OUT AMONGST THEMSELVES? WHY DO THEY EXPECT ME
10 TO CARE? WHY DO THEY EXPECT ME TO GIVE WEEKS OF MY 08:41AM
11 TIME AND MY LIFE TO RESOLVE THIS DISPUTE, ESPECIALLY
12 SINCE IT INVOLVES PEOPLE WHO HAVE MORE MONEY THAN ANY
13 OF US CAN IMAGINE OR WILL EVER SEE?

14 AND I WANT YOU TO KNOW, I THINK THOSE
15 ARE VERY FAIR QUESTIONS TO ASK IN THIS CASE. 08:42AM

16 BUT THE ANSWER IS VERY, VERY IMPORTANT,
17 AND THE ANSWER HAS TO DO WITH OUR SYSTEM OF JUSTICE.
18 AND IN A PHRASE, THAT ANSWER IS THE RULE OF LAW;
19 BECAUSE IN OUR COUNTRY, NO ONE IS ABOVE THE LAW, NO
20 MATTER HOW MUCH MONEY YOU HAVE. 08:42AM

21 IN OUR COUNTRY, WE RESOLVE DISPUTES NOT
22 BY FORCE, NOT BY PAYING OFF JUDGES, BUT BY
23 PRESENTING -- COMING TO COURT AND PRESENTING DISPUTES
24 TO PEOPLE LIKE YOU, THE CONSCIENCE OF THE COMMUNITY,
25 AND ABIDING BY YOUR DECISIONS. 08:42AM

26 SOMETIMES THE PROCESS IS TEDIOUS.
27 SOMETIMES THE PROCESS ISN'T PRETTY. SOMETIMES IT'S
28 DOWNRIGHT CONTENTIOUS.

1 BUT WHEN YOU LOOK AROUND THE WORLD, YOU
2 REALIZE, THE REASON YOU FOLKS ARE HERE, AN AMERICAN
3 JURY, IS BECAUSE THIS IS A FREE COUNTRY UNDER LAW, AND
4 BECAUSE OF THE RULE OF LAW. WITHOUT THE RULE OF LAW,
5 ULTIMATELY, WE DON'T HAVE JUSTICE. WE DON'T HAVE
6 FREEDOM. IT'S A BIG PART OF WHAT WE STAND FOR IN THE
7 WORLD.

08:43AM

8 WHAT IT STATES IN THIS CASE ARE BASIC
9 PRINCIPLES THAT APPLY TO EVERYONE, NO MATTER WHO WE
10 ARE. NO MATTER WHAT WE DO. NO MATTER HOW GOOD WE ARE
11 AT -- NO MATTER HOW MUCH MONEY WE HAVE.

08:43AM

12 THEY ARE PRINCIPLES WE TEACH OUR
13 CHILDREN. THEY ARE PRINCIPLES THAT ALLOW US TO LIVE IN
14 PEACE WITH OUR NEIGHBORS. PRINCIPLES THAT TO QUOTE
15 FROM A WELL-KNOWN AUTHOR, WE LEARN IN KINDERGARTEN.
16 AND THAT IS, YOU DON'T LIE, YOU DON'T CHEAT, YOU DON'T
17 STEAL, YOU DON'T BETRAY THE TRUST OF PEOPLE WHO HAVE
18 TRUSTED YOU.

08:43AM

19 THE TRUST COMPANY OF THE WEST IS HERE
20 PRESENTING ITS CASE TO YOU FOR YOUR CONSIDERATION AND
21 FOR YOUR JUDGMENT, BECAUSE ONE OF ITS MOST TRUSTED
22 EMPLOYEES, A LEADER, PRESIDENT OF THE LARGEST OPERATING
23 COMPANY, A MEMBER OF THE BOARD OF DIRECTORS, THE CHIEF
24 INVESTMENT OFFICER FOR THE ENTIRE CORPORATION, JEFFREY
25 GUNDLACH, VIOLATED THOSE BASIC PRINCIPALS; AND HE
26 DIRECTED THOSE WHO WERE CLOSEST TO HIM, WHO WERE ALSO
27 OFFICERS OF THE COMPANY, TO VIOLATE THOSE PRINCIPLES,
28 AS WELL.

08:44AM

08:44AM

1 YES, THEY DID LIE, THEY DID STEAL, THEY
2 DID CHEAT, AND THEY DID BETRAY TRUST. AND THEY DID
3 THINGS THAT, IF THEY HAD BEEN ABLE TO ACCOMPLISH IT,
4 WOULD POTENTIALLY LIKELY HAVE DESTROYED TRUST COMPANY
5 OF THE WEST, AND DESTROYED THE JOBS, THE COMPANY THAT
6 SUPPLIES POSITIONS FOR THE 600 EMPLOYEES OF THAT
7 COMPANY.

08:45AM

8 BUT THEY ALL DEPENDED ON IT. THEIR
9 CLIENTS LIKE PENSION FUNDS AND UNIVERSITIES DEPENDED ON
10 IT.

08:45AM

11 NOW, MR. BRIAN IS GOING TO GET UP AND
12 ARGUE TO YOU AFTER I DO. AND OBVIOUSLY, HE'S GOING TO
13 HAVE A VERY DIFFERENT VIEW OF THE FACTS AND THE LAW IN
14 THIS CASE. THAT'S HOW OUR SYSTEM WORKS.

15 BUT THERE ARE SOME THINGS THAT MR. BRIAN
16 WILL NOT TELL YOU. MR. BRIAN WILL NOT STAND UP HERE
17 AND SAY THAT HIS CLIENTS DID NOT STEAL.

08:45AM

18 THEY DID. THEY STOLE, AS MR. SANTA ANA
19 PUT IT, EVERYTHING THAT MIGHT BE USEFUL TO THEM IN A
20 NEW BUSINESS.

08:45AM

21 YOU WILL NOT HEAR MR. BRIAN SAY THAT HIS
22 CLIENTS DID NOT OWE A SPECIAL FIDUCIARY DUTY OF TRUST.
23 THEY DID.

24 THEY WERE OFFICERS OF TCW. MR. GUNDLACH
25 WAS ONE OF THE MOST FORTUNATE PEOPLE, ONE OF THE MOST
26 BLESSED PEOPLE. DIRECTOR, PRESIDENT, THEY SIGNED
27 AGREEMENTS TO MAINTAIN THE CONFIDENCE OF INFORMATION
28 THAT THEY LEARNED AT TCW. AS FIDUCIARIES, THEY KNEW

08:45AM

1 THEY WERE REQUIRED TO PUT THEIR INTERESTS BEHIND THE
2 COMPANY'S, TO THINK OF THE COMPANY FIRST; BUT THEY
3 DIDN'T.

4 YOU WILL NOT HEAR MR. BRIAN SAY THAT HIS
5 CLIENTS DID NOT MAKE SECRET PLANS THAT COULD HAVE
6 DESTROYED THE COMPANY, BECAUSE THEY DID. THEY SECRETLY
7 STOLE, THEY SECRETLY INCORPORATED A DELAWARE
8 CORPORATION, WHICH THEY INTENDED TO SET UP, NOT AS A
9 COMPETITOR, BUT TO DESTROY TCW AS A COMPETITOR. THEY
10 SECRETLY ARRANGED FOR OFFICE SPACE THAT WOULD
11 ACCOMMODATE THEIR THEFT OF TCW'S BUSINESS.

08:46AM

08:46AM

12 DOING ALL THESE THINGS TOOK MONTHS OF
13 WORK, MONTHS OF WORK.

14 THEY ESSENTIALLY STOPPED WORKING FOR
15 TCW, AND WERE WORKING AGAINST TCW.

08:46AM

16 THEY DID ALL THESE THINGS WHILE THEY
17 WERE DRAWING THEIR VERY GENEROUS PAYCHECKS; IN THE CASE
18 OF MR. GUNDLACH, \$20,000 AN HOUR.

19 WHAT YOU WILL HEAR -- WHAT YOU WILL HEAR
20 ARE EXCUSES. YOU WILL HEAR, I WAS AFRAID I WAS GOING
21 TO BE FIRED.

08:47AM

22 WELL, THAT'S A FAMILIAR FEELING FOR A
23 LOT OF PEOPLE THESE DAYS. BUT MOST PEOPLE DON'T HAVE A
24 CONTRACT WORTH MILLIONS OF DOLLARS THAT'S BEEN OFFERED
25 TO THEM, WAITING TO BE FINALIZED AND SIGNED. THEY
26 DON'T HAVE AN OFFER -- THEY HAVEN'T RECEIVED AN OFFER
27 TO BE PRESIDENT OF A COMPANY. THEY DON'T HAVE A BOSS
28 LIKE MR. STERN, WILLING TO TURN THE CHEEK TO THE

08:47AM

1 INSULTS THAT HE'S RECEIVED, AND EVEN OFFERING TO
2 DISCUSS, IN THAT SEPTEMBER 3 MEETING, BEING CO-CEO WITH
3 MR. GUNDLACH.

4 IF MR. GUNDLACH WAS AFRAID OF BEING
5 FIRED, AT ANY POINT, ALL HE HAD TO DO WAS FINALIZE THAT
6 CONTRACT. 08:47AM

7 WHAT YOU WILL HEAR FROM MR. BRIAN IS
8 THAT THEY WERE JUST PREPARING TO COMPETE.

9 NOTHING WRONG WITH THAT. IN CALIFORNIA,
10 THE LAW OBVIOUSLY ALLOWS PEOPLE TO COMPETE. YOU CAN
11 TALK TO OTHER EMPLOYEES, YOU CAN TALK TO WOULD-BE
12 EMPLOYERS, LIKE WAMCO. THEY CAN PREPARE. 08:48AM

13 BUT WHAT YOU CAN'T DO, AND WHAT ISN'T
14 JUSTIFIED, IS STEALING. YOU CAN'T PLOT, AS A
15 FIDUCIARY, WHILE YOU ARE STILL THERE, TO DESTROY YOUR
16 EMPLOYER BY LEAVING TOGETHER, WITHOUT NOTICE, IN
17 CIRCUMSTANCES WHERE YOU WOULD RENDER YOUR EMPLOYER
18 UNABLE TO COMPETE, WHERE IT WOULD BE CRIPPLING. 08:48AM

19 WHAT THEY CAN'T DO IS LITERALLY BUILD
20 THEIR NEW BUSINESS INSIDE THE COMPANY THAT THEY OWE
21 DUTIES OF GOOD FAITH AND TRUST TO. 08:48AM

22 THESE FOLKS, I SUBMIT TO YOU, THE
23 EVIDENCE SHOWS, WERE NOT PREPARING TO NEGOTIATE. THAT
24 ISN'T WHAT THEY WERE PREPARING FOR. THEY DIDN'T ACT IN
25 GOOD FAITH. 08:48AM

26 THEY WERE PLANNING TO ELIMINATE TCW AS A
27 COMPETITOR, TO WAIT UNTIL THEY GOT THEIR BONUSES IN
28 FEBRUARY, AND THEN PUT A GUN TO MR. STERN'S HEAD AND

1 TELL THEM, WE'RE LEAVING, WITH 60 TO 70 PERCENT OF THE
2 BUSINESS; THAT NO ONE WOULD BE LEFT TO RUN IT.

3 MR. STERN WOULDN'T HAVE HAD TIME TO
4 RECRUIT SOMEONE LIKE A MET WEST. AND HE WOULD HAVE NO
5 CHOICE BUT TO GIVE THEM THE BUSINESS, OR WHATEVER
6 SCRAPS THEY SAID THEY WERE PREPARED TO LEAVE BEHIND.

08:49AM

7 WHAT YOU ARE GOING TO HEAR IS THAT TCW
8 WAS NOT REALLY HARMED. NO HARM, NO FOUL; THAT
9 DOUBLELINE DID NOT GET OFF THE GROUND AS FAST AS THEY
10 HAD PLANNED. IT TURNED OUT, THEY DIDN'T HAVE THE
11 LUXURY OF AS MUCH TIME AS THEY THOUGHT THEY WOULD HAVE,
12 AND THAT THEY DIDN'T REALLY GET TO USE ALL THE
13 INFORMATION THAT THEY STOLE. THAT'S SIMPLY NOT TRUE.

08:49AM

14 YES, THEY DIDN'T GET THEIR WAY. THEY
15 DIDN'T DESTROY THE COMPANY. THEY DIDN'T GET TO STEAL
16 THE BOND BUSINESS. THEY DIDN'T LEAVE 600 FAMILIES
17 WITHOUT A PAYCHECK.

08:49AM

18 BUT OF COURSE, THERE WAS HARM. OF
19 COURSE, THERE WAS INJURY.

20 YOU HEARD MR. STERN SAY, IT WAS
21 PRECISELY BECAUSE HE KNEW THERE WOULD BE HARM,
22 PRECISELY BECAUSE HE KNEW THERE WOULD BE LOSSES,
23 PRECISELY BECAUSE THERE WAS NO WAY THAT TCW WOULDN'T BE
24 HURT BY MR. GUNDLACH'S DEPARTURE, THAT HE WAS PREPARED
25 TO IGNORE THE ADVICE HE GOT FROM MANY PEOPLE:

08:49AM

26 MR. SHEDLIN, MR. SONNEBORN, AND OTHERS, TO TERMINATE
27 MR. GUNDLACH; THAT HE WAS, IRONICALLY, WORKING TILL THE
28 END, TILL THE ELEVENTH HOUR, TO KEEP MR. GUNDLACH INTO

08:50AM

1 THE FOLD.

2 TCW WENT THROUGH A VERY DIFFICULT TIME.
3 THEY HAD TO BRING IN COMPUTER EXPERTS, IN THE WAKE OF
4 THIS, AND LAWYERS, TO DETERMINE THE SCOPE OF THE
5 WRONGDOING. IMAGINE A FINANCIAL COMPANY HAD TO TELL
6 CLIENTS THAT THEIR PERSONAL INFORMATION HAD BEEN TAKEN,
7 IDENTITY THEFT, THAT THEY HAD LOST CONTROL OF IT.

08:50AM

8 AND AFTER THAT, MR. GUNDLACH AND HIS
9 TEAM DID EVERYTHING THEY COULD TO MAKE IT WORSE, TO
10 POUR GASOLINE ON THE FIRE.

08:50AM

11 IN CALIFORNIA, AFTER YOU LEAVE, YOU ARE
12 ENTITLED TO ADDRESS YOUR FORMER CLIENTS, PROVIDE THEM
13 WITH YOUR ADDRESS AND CONTACT INFORMATION.

14 BUT YOU ARE NOT ALLOWED TO USE
15 CONFIDENTIAL CLIENT INFORMATION. YOU ARE NOT ALLOWED
16 TO CALL PEOPLE AND CONDUCT WEBCASTS AND SAY, WE ARE
17 USING THE SAME PROPRIETARY SYSTEMS THAT WE HAD, AND
18 THAT WE USED AT TCW; THAT WE HAVE SIMPLY RECODED THE
19 SOFTWARE; THAT YOU ARE NOT ENTITLED TO TELL PEOPLE THAT
20 THE NEW PEOPLE, MORNING STAR WINNERS, WHO TCW HAS
21 BROUGHT IN, ARE INCOMPETENT, DON'T KNOW WHAT THEY ARE
22 DOING; AND THAT NO ONE AT ALL IS MANAGING YOUR MONEY.
23 IMAGINE IT.

08:51AM

08:51AM

24 AND MOST IMPORTANTLY, YOU ARE NOT
25 ENTITLED TO TELL PEOPLE TO SIMPLY BREAK THEIR CONTRACTS
26 THAT THEY HAVE ENTERED INTO, ESPECIALLY WHEN YOU,
27 MR. GUNDLACH, HAVE CREATED THOSE FUNDS AND PRESIDED
28 OVER THEIR CREATION.

08:51AM

1 YOU'VE HEARD MANY PEOPLE TELL YOU HOW
2 INTELLIGENT MR. GUNDLACH IS, WHAT A GREAT PERFORMANCE
3 RECORD HE HAS, WHAT A WONDERFUL INVESTMENT BANKER HE
4 IS, ASSET MANAGER HE IS, HOW HE WENT FROM BEING A
5 FINANCIAL ANALYST TO BEING THE KING OF BONDS.

08:52AM

6 AND YOU MIGHT BE ASKING YOURSELF, WHY
7 WOULD A PERSON THAT SMART, THAT SUCCESSFUL, WITH THAT
8 RECORD, DO ALL THESE BAD THINGS? AND WHY WOULD HE
9 DIRECT THOSE PEOPLE CLOSEST TO HIM TO DO THAT? WHY?

10 IN THE END, THAT'S A QUESTION THAT ONLY
11 MR. GUNDLACH CAN ANSWER FOR YOU. BUT THE EVIDENCE IN
12 THIS CASE HAS CERTAINLY PROVIDED MANY INSIGHTS INTO HIS
13 CHARACTER.

08:52AM

14 HE WAS PAID OVER \$40 MILLION IN 2009.
15 AND HE, HIMSELF, TOLD YOU HE SHOULD HAVE BEEN PAID
16 MORE.

08:52AM

17 ALTHOUGH HE WAS PAID OVER \$40 MILLION
18 THAT YEAR, AND ALTHOUGH HE'S A FIDUCIARY, A LEADER, ONE
19 OF THE VERY TOP PEOPLE IN THE COMPANY, HE SAID -- YOU
20 SAW IT IN WRITING -- WE'RE NOT GOING TO GROW AND
21 STABILIZE THIS COMPANY WITHOUT A REWARD.

08:52AM

22 REMEMBER THAT MOVIE, WALL STREET? THE
23 FIRST ONE, NOT THE SECOND ONE. GORDON GEKKO, GREED IS
24 GOOD. YOU MAY WONDER DOES THAT KIND OF THING EXIST IN
25 THE WORLD? YOU NOW KNOW.

08:53AM

26 ALTHOUGH HE THOUGHT THE WHOLE COMPANY
27 SHOULD BE ORGANIZED AROUND HIM, HE THOUGHT HE WAS THE
28 ONLY ONE WHO WAS CONTRIBUTING, WHO DESERVED

1 ATTENTION -- HE PUT DOWN MR. DAY AND MR. STERN. DUMB
2 AND DUMBER, HE CALLED THEM. HE PUT DOWN HIS FELLOW
3 MANAGERS. HE FELT ALL THE PEOPLE OUTSIDE FIXED INCOME
4 SHOULD BE FIRED.

5 HE EVEN PUT DOWN THE MAN WHO THOUGHT HE 08:53AM
6 WAS MR. GUNDLACH'S MOST TRUSTED LIEUTENANT, MR. BARACH;
7 WHAT HE CALLED SECOND RATE, THE B TEAM, WHO HE REFUSED
8 TO EVEN SHARE AN AWARD WITH. MR. BARACH WAS THE
9 CORPORAL WHO WOULD GILD THE LILY. HE WAS WAY OVERPAID.

10 HE WAS THE POPE, AND HE WAS THE 08:53AM
11 GODFATHER. HE WAS ABOVE IT ALL.

12 BUT HE WAS NOT ABOVE THE LAW. HE GOT
13 CAUGHT. HE SHOWED HIS HAND.

14 MR. STERN UNDERSTOOD THAT HIS BUSINESS
15 WAS BEING HELD HOSTAGE. AND AT THAT POINT HE STARTED, 08:54AM
16 HE DIRECTED THEIR E-MAILS BE REVIEWED AND IT CONFIRMS
17 HIS WORST FEARS.

18 HE'S BEEN CALLED TO ACCOUNT, BUT YOU
19 HAVEN'T HEARD HIM REPENT FOR ANYTHING. YOU HAVEN'T
20 HEARD HIM TAKE RESPONSIBILITY. 08:54AM

21 INSTEAD, YOU HAVE HEARD PEOPLE LIKE
22 MR. SANTA ANA, WHO WOULD FOLLOW ANY OF HIS DIRECTIONS,
23 SAY, I WAS PUT OUT ON A LIMB.

24 YOU CAN'T -- NONE OF US CAN BELIEVE THAT
25 ANY OF THESE PEOPLE: MR. SANTA ANA, MS. VANEVERY, 08:54AM
26 MR. MAYBERRY, DID THESE THINGS ON THEIR OWN,
27 INCORPORATED THESE COMPANIES ON THEIR OWN.

28 THERE WOULD BE FOUR DIFFERENT CLAIMS IN

1 THIS CASE THAT YOU ARE ASKED TO DESCRIBE; THREE OF THEM
2 BROUGHT BY TCW, ONE BY MR. GUNDLACH.

3 YOUR JOB IS TO APPLY THE LAW, AS GIVEN
4 BY THE JUDGE. THE JUDGE WILL GIVE IT TO YOU IN DETAIL.
5 I KNOW YOU'VE ALL BEEN SITTING HERE LISTENING FOR
6 WEEKS, PATIENTLY TAKING NOTES. YOU PROBABLY DON'T NEED
7 ME TO SUMMARIZE IT.

08:54AM

8 I ASK YOUR INDULGENCE, PLEASE, TO LET ME
9 GIVE YOU AN OVERVIEW, WHICH PERHAPS MIGHT BE HELPFUL TO
10 YOU. IT'S NOT BECAUSE I DON'T -- OR HAVE ANY DISTRUST
11 OF THE ATTENTION, OBVIOUSLY, YOU HAVE BEEN VERY, VERY
12 ATTENTIVE IN TAKING THOSE NOTES.

08:55AM

13 IF I GET A LITTLE PASSIONATE AT TIMES,
14 FORGIVE ME FOR THAT, TOO. I'VE BEEN KNOWN TO DO THAT.
15 BUT IT COMES NOT FROM A DISTRUST OR LACK OF FAITH IN
16 YOUR ABILITY TO REMEMBER AND RECALL FROM WHAT YOU
17 HEARD, BUT FROM MY COMMITMENT TO THE CORE PRINCIPLES
18 WE'VE TALKED ABOUT.

08:55AM

19 SO WHAT HAPPENED HERE? 1985,
20 MR. GUNDLACH JOINS TCW, AFTER SEEING LIFESTYLES OF THE
21 RICH AND FAMOUS, ROBIN LEACH, OF ALL PEOPLE. HE
22 ACTUALLY WANTS TO BE AN INVESTMENT BANKER, LOOKED IT UP
23 IN THE YELLOW PAGES. CLOSEST HE COMES TO IT IS ASSET
24 MANAGER. TURNS OUT HE ENDS UP AS TCW ANALYST, PAID
25 \$30,000 A YEAR. HE HAS FOUND HIS CALLING. TURNS OUT
26 HE'S VERY GOOD ABOUT IT. HE'S VERY GOOD AT THAT.

08:55AM

08:55AM

27 EVERYTHING HE KNOWS ABOUT THIS BUSINESS,
28 HE LEARNED AT TCW. AND HE ENDS UP BECOMING RICH BEYOND

1 HIS WILDEST DREAMS.

2 BY 1990, WHEN MR. STERN JOINED TCW AS
3 ITS PRESIDENT, MR. GUNDLACH HAD BEEN PROMOTED TO
4 MANAGING DIRECTOR, AND MANAGED SOME OF THE LARGEST
5 PORTFOLIOS.

08:56AM

6 MR. STERN ALSO RECOGNIZED HIS TALENT,
7 CONTINUED TO PROMOTE HIM, PRESIDENT OF TAMCO, THE JOB
8 THAT MR. STERN HAD HAD, AND CHIEF INVESTMENT OFFICER.
9 REMEMBER THE BOARD?

10 NOW, WITH THOSE HIGH RANKING POSITIONS
11 COME HIGH RESPONSIBILITIES, THE FIDUCIARY DUTIES WE
12 TALKED ABOUT.

08:56AM

13 FROM 1989 TILL THE SPRING OF 2007, 18
14 YEARS, HE ALWAYS HAS A CONTRACT. THEY ARE ALWAYS IN
15 WRITING, SIGNED BY MR. GUNDLACH, SIGNED BY TCW. YOU'VE
16 SEEN THESE. THEY ARE IN EVIDENCE, EXHIBITS 3612, AND
17 16, EACH ONE OF THEM MORE GENEROUS THAN THE LAST.

08:56AM

18 MR. GUNDLACH NEVER SIGNED ANOTHER
19 CONTRACT AFTER THE LAST ONE, IN 2003.

20 THEY STARTED NEGOTIATING IN THE SPRING
21 OF 2007. YOU HEARD WHY, FROM MR. SONNEBORN, BECAUSE
22 THE REDUCTION IN MR. BARACH'S COMPENSATION MEANT THAT
23 WHAT WAS IN THE B AND G POOL, THAT REDUCTION, THAT
24 SAVINGS, ALL WENT TO TCW; AND MR. GUNDLACH WANTED A
25 PART OF THAT.

08:57AM

26 AND I'M GOING TO CALL YOUR ATTENTION TO
27 A TERM IN THAT EXHIBIT A THAT WE DIDN'T SEE IN THE
28 TRIAL.

08:57AM

1 IF WE COULD PUT UP 404.

2 AND THIS IS A TERM IN EXHIBIT A. I HOPE
3 I'M NOT -- CAN YOU SEE IT OKAY?

4 AND WHAT IT SAYS IS THAT 60 PERCENT OF
5 ANY SAVINGS REALIZED FROM MR. BARACH'S ANNUAL
6 COMPENSATION BEING REDUCED BELOW THAT SPECIFIC AMOUNT
7 IS GOING TO GO TO MR. GUNDLACH.

08:57AM

8 HE NEGOTIATED, FOR THIS, AN INCENTIVE TO
9 LOWER MR. BARACH'S SALARY. THEY EXCHANGED DRAFTS.
10 THERE WAS A -- IN THE LANGUAGE THERE WAS LANGUAGE THAT
11 HE COULD ONLY BE FIRED FOR GROSS MISCONDUCT. THERE
12 WERE COMMENTS GIVEN; A NEGOTIATION, LIKE ANY OTHERS.

08:58AM

13 BUT WHAT HAPPENS IS, THE DEAL NEVER GETS
14 FINALIZED. IT NEVER GETS SIGNED. IT'S NEVER FINISHED.

15 WITHOUT A NEW CONTRACT, HE'S AN AT-WILL
16 EMPLOYEE. PEOPLE WHO DON'T HAVE CONTRACTS FOR A
17 SPECIFIED TERM ARE AT WILL, UNDER THE LAW. YOU KNOW
18 HOW THAT WORKS.

08:58AM

19 MR. GUNDLACH KNOWS WHAT THAT MEANS, THAT
20 YOU ARE GOING TO BE PAID SO MUCH AN HOUR, OR SO MUCH A
21 WEEK OR SO MUCH A MONTH. YOU CAN BE TERMINATED.

08:58AM

22 BUT YOU ARE ALSO FREE TO LEAVE AND GO
23 SOMEWHERE ELSE, IF YOU WANT; LIKE WAMCO, FOR EXAMPLE.

24 MR. STERN, STOOD BY MR. GUNDLACH, AND
25 PROMOTED HIM.

08:58AM

26 BEFORE HE STEPPED DOWN IN 2005 --
27 MR. STERN LEFT IN 2005, HE THOUGHT HE HAD A GOOD
28 RELATIONSHIP WITH HIM.

1 NOT EVERYBODY BATS A THOUSAND.
2 MR. GUNDLACH HAD SOME INVESTMENTS THAT DIDN'T TURN OUT
3 SO WELL.

4 BUT IF WE COULD LOOK AT SLIDE 2, YOU SAW
5 THIS, THE CONGRATULATIONS ON GETTING THE MORNING STAR
6 AWARD. MR. GUNDLACH WRITES HIM BACK, THAT THIS WAS THE
7 MOST MEANINGFUL CONGRATULATIONS HE GOT.

08:59AM

8 IN 2005 MR. DAY AND MR. STERN RESIGNED
9 AS CEO AND PRESIDENT. MR. BEYER AND MR. SONNEBORN TAKE
10 OVER THESE ROLES.

08:59AM

11 MR. SONNEBORN TOLD YOU THAT HE WAS
12 BEHIND MR. GUNDLACH, BECOMES CHIEF INVESTMENT OFFICER
13 IN 2005. THEY MADE A CONSCIOUS DECISION TO GET BEHIND
14 HIM, SPEND MONEY TO PROMOTE HIM, AS THE PUBLIC FACE OF
15 THE FIRM.

08:59AM

16 BUT PROBLEMS AFTER THAT, IN PARTICULAR,
17 STARTED TO DEVELOP. IT WORKED -- HE DOES BECOME THE
18 PUBLIC FACE. MR. GUNDLACH BECOMES RATHER FAMOUS.

19 BUT THERE'S AN UNFORTUNATE PATTERN THAT
20 DEVELOPS OF HIM UNDERMINING OTHER PEOPLE, NOT
21 COOPERATING WITH THE FIRM.

08:59AM

22 AND WE'VE SUMMARIZED SOME OF THE
23 EVIDENCE THAT YOU'VE SEEN IN AN ANIMATION. WE'LL PLAY
24 FOR YOU NOW.

08:59AM

26 (VIDEO CLIPS PLAYED.)

27
28 MR. QUINN: THAT WAS THE I.T. PERSON WHO

1 WANTED TO UPGRADE HIS COMPUTER.

2 THAT WAS ABOUT THE COMPLIANCE PROGRAM.
3 NOVARTIS, \$400 MILLION CLIENT, TOO SMALL TO GET AN
4 AUDIENCE.

5 MY B TEAM, PHIL BARACH. 09:00AM

6 THE WAR IS ON, BECAUSE MR. STERN CALLED
7 MR. BARACH AND INVITED HIM TO LUNCH.

8 HE DOESN'T HAVE TIME FOR BOARD MEETINGS,
9 BECAUSE HE WANTS TO TALK TO PUTMAN WHO WANTS TO BE
10 INVOLVED IN MAYBE ORGANIZING A PRIVATE EQUITY BUYOUT. 09:01AM

11 SEXUAL HARASSMENT TRAINING, REFUSES TO
12 PARTICIPATE. A SMALL THING, MAYBE. HE DIDN'T HAVE TO
13 COMPLY WITH HR DEPARTMENT INITIATIVES. DIFFERENT RULES
14 APPLIED TO HIM.

15 UNFORTUNATELY, THIS WAS A PATTERN THAT 09:01AM
16 CONTINUED INTO 2009, AS YOU'VE SEEN. THAT GENERATIONAL
17 CHANGE OF BEYER AND SONNEBORN COMING IN DIDN'T WORK OUT
18 SO WELL AS PEOPLE HAD HOPED. AND MR. SONNEBORN LEFT
19 FOR ANOTHER POSITION IN JULY OF 2008; MR. BEYER, IN MAY
20 OF 2009. BOTH OF THEM SAY PROBLEMS OF DEALING WITH 09:02AM
21 MR. GUNDLACH WAS PART OF WHY THEY LEFT.

22 MR. STERN COMES BACK. SOCIETE GENERALE
23 ASKS HIM TO COME BACK AS CEO.

24 MAKES SOME SENSE. HE'S STILL WORKING
25 FOR THEM ON OTHER US INVESTMENTS THEY HAD. HE HAD 09:02AM
26 NEVER LEFT HIS OFFICES. HE'S STILL IN THE OFFICE NEXT
27 TO MR. BEYER.

28 MIND YOU, THIS ISN'T WHAT HE WANTED.

1 HE'S GOT GRAND KIDS HE ADORES. HE HAS A WIFE HE MET
2 WHEN HE WAS 12, SHE WAS 13, I THINK WERE THE AGES.
3 THEY HAD AN ADOPTED CHARTER SCHOOL. THEY WORKED ON A
4 WRITING PROGRAM FOR KIDS IN JUVENILE HALL. AND THE
5 MUSIC HE LOVED. HE HAD A LIFE HE LOVED.

09:02AM

6 BUT HE FELT HE OWED IT, AS A MATTER OF
7 LOYALTY TO SOCIETE GENERALE, AND THE PEOPLE AT TCW, TO
8 COME BACK.

9 ONE OF THE FIRST PEOPLE HE REACHES OUT
10 TO, OF COURSE, IS MR. GUNDLACH, WHO WOULDN'T? HE'S THE
11 MOST IMPORTANT GUY THERE AT THE FIRM. THEY HAVE A
12 MEETING AT MR. DAY'S HOUSE. YOU HEARD.

09:03AM

13 MR. STERN OFFERS HIM THE PRESIDENCY.
14 WOULD YOU LIKE TO BE PRESIDENT? MR. GUNDLACH SAYS NO.

15 THAT'S SOMETHING THAT MR. GUNDLACH HAD
16 BEEN OFFERED BY MR. BEYER, OR AT LEAST OFFERED TO
17 DISCUSS IT, EXHIBIT 133 AND 197, 195, A COUPLE OF
18 MONTHS EARLIER.

09:03AM

19 NOW, THERE'S NO DOUBT THAT SOME OF THE
20 PORTFOLIO MANAGERS THERE WERE KIND OF MIFFED ABOUT
21 MR. STERN'S COMING BACK. THEY THOUGHT IT WAS COMING
22 BACK TO THE PAST. IT WASN'T THE WAY THEY WANTED TO SEE
23 THINGS.

09:03AM

24 MR. STERN, YOU KNOW, A LOT OF PEOPLE
25 MIGHT HAVE TAKEN OFFENSE AT THAT. HERE HE'S COME BACK.
26 IT'S NOT WHAT HE WANTS TO DO.

09:03AM

27 BUT HE DOES IT. HE TRIES TO WORK WITH
28 PEOPLE. HE TRIED TO ACCOMMODATE THEM. HE AGREES, I'LL

1 BE INTERIM CEO.

2 HE SETS UP THE MANAGEMENT COMMITTEE. HE
3 LETS THEM PICK A STRATEGIC ADVISOR AND ENDS UP WITH
4 CITIBANK. THEY KIND OF JOINTLY TALK ABOUT WHAT SHOULD
5 BE THE FUTURE OF THE COMPANY.

09:04AM

6 BUT EVEN BEFORE HE COMES BACK, HE'S BEEN
7 TOLD BY MR. BEYER AND OTHERS THAT MR. GUNDLACH IS A --
8 HE'S A REAL PROBLEM FACING THE FIRM.

9 YOU KNOW, MS. JAFFEE, HE SELECTS INPUT,
10 AS WE EXPECT A CEO WOULD. WHAT'S THE BEST WAY TO
11 APPROACH THIS? YOU SAW THE SLIDE 131. DIANE JAFFEE,
12 ON JUNE 2ND, SENDS HIM THIS E-MAIL SAYING, THIS IS HER
13 ADVICE, HOW SHE WOULD APPROACH IT. THIS IS JUST ONE
14 EXAMPLE OF THE INPUT HE GOT.

09:04AM

15 BUT HE'S DOING WHAT ANY RESPONSIBLE CEO
16 WOULD DO. HE WAS COLLECTING OPTIONS.

09:04AM

17 AND HE HAD A NAME FOR THIS PROJECT OF
18 TRYING TO DEAL WITH MR. GUNDLACH, THE MOST IMPORTANT
19 GUY IN THE FIRM. HE CALLED IT PROJECT G, HARDLY KIND
20 OF A SECRET NAME YOU WOULD USE FOR A SECRET PROJECT.

09:04AM

21 IT WASN'T A SECRET PROJECTS. I MEAN, HE
22 REALIZED THAT IF HE LOST MR. GUNDLACH THAT, YOU KNOW,
23 THAT WOULD BE LIKE LOSING YOUR RIGHT ARM, AND THIS
24 WOULD THREATEN THE FUTURE OF THE FIRM.

25 HE WAS CONCERNED THAT MR. GUNDLACH MIGHT
26 DO SOMETHING UNPREDICTABLE.

09:05AM

27 COMPLIANCE IS IMPORTANT IN A REGULATED
28 BUSINESS LIKE TCW. AND YOU SAW THAT HE BALKED AT DOING

1 COMPLIANCE CERTIFICATION; THAT'S NOT SOMETHING THAT YOU
2 CAN IGNORE.

3 FROM THE VERY BEGINNING, YOU REALIZE
4 THAT MR. GUNDLACH IS SAYING, I MIGHT LEAVE. SO HE
5 MIGHT HAVE TO PARACHUTE SOMEBODY ELSE IN. WHO ELSE IS
6 OUT THERE? WHO MIGHT COME IN TO SUPPLEMENT THE
7 MANAGEMENT TEAM? AND HE GOT A LIST FROM MR. CONN;
8 THAT'S EXHIBIT 5157, WHICH INCLUDED, AMONG OTHERS, A
9 MAN BY THE NAME OF TAD RIVELLE OF MET WEST.

09:05AM

09:05AM

10 BUT YOU DIDN'T HEAR ANY EVIDENCE THAT
11 MR. STERN MET WITH ANY OF THESE CANDIDATES THAT SUMMER.
12 HE DIDN'T.

13 AS THE SUMMER WENT ON, MR. GUNDLACH'S
14 BEHAVIOR GOT WORSE. HE HATES IT THAT MR. STERN IS
15 BACK.

09:05AM

16 AND FRANKLY, MR. GUNDLACH HATES IT, I
17 BELIEVE, THAT HE WAS NOT CEO.

18 IN FACT, EVEN BEFORE YOU SAW THAT ONE
19 QUOTATION, EVEN BEFORE MR. STERN IS BACK, MR. GUNDLACH
20 IS SAYING -- THIS IS SLIDE 4 -- THE WAR IS ON, BECAUSE
21 HE'S CONTACTED MR. BARACH.

09:06AM

22 YOU SAW THAT EPISODE REGARDING NORTHERN
23 TRUST -- THIS IS SLIDE 109. THIS IS AN EQUITY CLIENT
24 OF THE FIRM, WHO MR. GUNDLACH TELLS, WELL, WE'RE
25 GOING -- BASICALLY GOING OUT OF THE EQUITY BUSINESS,
26 WE'RE GOING TO BE. AND I'M -- I WILL BE CEO BEFORE TOO
27 LONG.

09:06AM

28 YOU REMEMBER THAT BUCHANAN STREET

1 MEETING, A LITTLE COMPANY INVOLVED IN THE REAL ESTATE
2 BUSINESS, WHERE MR. GUNDLACH BLOWS HIS TOP, GETS OUT OF
3 HIS CHAIR AND GOES OVER AND YELLS AT MR. CHAPUS. "WHAT
4 ARE YOU DOING HERE? YOU DON'T KNOW ANYTHING ABOUT REAL
5 ESTATE."

09:06AM

6 YOU HEARD ABOUT MR. SHEDLIN'S INTERVIEWS
7 ON JULY 10TH, WHERE MR. GUNDLACH SAYS SOME OTHER
8 SHOCKING THINGS FOR A PERSON IN HIS POSITION, THAT HE
9 COULD LEAVE, AND THE FIRM WOULD IMplode. HE SHOULD BE
10 CEO.

09:07AM

11 YOU HEARD OTHER EXAMPLES ABOUT HOW
12 MR. CAHILL, HE WOULD BANKRUPT THE COMPANY. AND HE
13 LIKED THE LUNCHROOM AS A FORUM. CHALLENGING DIANE
14 JAFFEE, ONE OF THE EQUITY PEOPLE, "WHEN ARE ASSETS
15 GOING TO ZERO. KIND OF HUMILIATING HER PUBLICLY.
16 MR. RILEY WROTE A MEMO ABOUT THAT; THAT'S EXHIBIT 283.

09:07AM

17 NOW, AT THIS -- MR. STERN AND
18 MR. CAHILL, MR. SULLIVAN AND MR. BEYER, EVERYBODY KNEW
19 THAT HE HAD NEVER SIGNED HIS CONTRACT. THEY HE KNEW HE
20 WAS AT WILL. THEY KNEW HE COULD LEAVE. NOTHING WRONG
21 WITH THAT.

09:07AM

22 HE TALKED OPENLY ABOUT THAT. HE TALKED
23 ABOUT GOING TO WAMCO. "WAMCO WANTS ME. I'VE GOT AN
24 OFFER FROM THEM." HE WAVED A FEDERAL EXPRESS ENVELOPE
25 ON THE TRADING ROOM FLOOR.

09:07AM

26 "PIMCO WANTS ME. PIMCO WANTS ME TO COME
27 REPLACE BILL GROSS."

28 IN AND OF ITSELF, NOTHING WRONG. BUT IF

1 YOU ARE MARC STERN, AND THE GUY MANAGING 60 TO 70
2 PERCENT OF THE ASSETS OF THE FIRM, IS SAYING THESE
3 THINGS, YOU'VE GOT 500 EMPLOYEES, YOU CAN'T IGNORE
4 THAT.

5 AND HE GETS ADVICE, YOU SHOULD BE
6 PREEMPTIVE HERE. AND THIS MAN, HE OUGHT TO BE FIRED.
7 HE'S TOLD BY MR. SONNEBORN LATE AUGUST. "HE'S A
8 CANCER." MR. BALDISWIELER, MR. DEVITO, MR. SHEDLIN,
9 HOWARD MARKS, A PRINCIPAL OF OAKTREE -- YES, THE SAME
10 OAKTREE THAT LATER INVESTED IN DOUBLELINE HAD A LUNCH
11 WITH MR. STERN AND TELLS HIM -- THIS IS SLIDE 546.

09:08AM

09:08AM

09:08AM

09:08AM

09:09AM

12 AND HE SAID, ONE, THE WORST PART
13 ABOUT -- HE USED TO BE AT TCW. HE SAID, THE WORST PART
14 OF MY TIME THERE WAS WHEN I MANAGED MR. GUNDLACH; AND
15 SAID, WE HAD A SIMILAR PROBLEM. THE ONLY WAY WE SOLVED
16 IT WAS BY FIRING THE MAN.

17 THERE IS NO QUESTION -- I SAID THIS TO
18 YOU IN MY OPENING STATEMENT. THERE'S NO QUESTION, THE
19 IDEA OF TERMINATING MR. GUNDLACH WAS ON THE TABLE, THAT
20 WHOLE SUMMER.

21 THE IRONY IS THAT MR. STERN RESISTED
22 THAT. HE'S A PRAGMATIC BUSINESS MAN. HE DIDN'T HAVE A
23 PROBLEM WITH THE FACT THAT MR. GUNDLACH MADE A LOT OF
24 MONEY. OTHER PEOPLE WOULD HAVE TO LIVE WITH THE
25 CONSEQUENCES, IF MR. GUNDLACH WAS FIRED, AND THE
26 COMPANY LOST A LOT OF BUSINESS.

27 HE HAD TO WORRY ABOUT ALL THE WHAT-IFS.
28 YOU DON'T CUT OFF YOUR RIGHT ARM UNLESS YOU ARE GOING

1 TO -- UNLESS THERE'S GANGRENE, AND THERE'S A POTENTIAL
2 THAT YOU ARE NOT GOING TO SURVIVE.

3 IT WAS A FLUID SITUATION. YOU SAW
4 DIFFERENT VIEWS EXPRESSED, DAY TO DAY.

5 SLIDE NUMBER 10, THAT -- THAT WAS RIGHT
6 AFTER THE BUCHANAN STREET BLOW-UP MEETING, AND
7 MR. GUNDLACH'S -- MR. STERN'S REPORTING, WE MIGHT HAVE
8 TO GO TO PLAN B. WE MIGHT HAVE TO RESTRUCTURE THE
9 ORGANIZATION. WE MIGHT HAVE TO ENTER INTO COMPENSATION
10 DIRECTLY WITH ARRANGEMENTS WITH EMPLOYEE.

09:09AM

09:09AM

11 LOOK AT SLIDE NUMBER 134, THE FRENCH ARE
12 TAKING DIFFERENT VIEWS ON THIS. NO DOUBT THERE ARE
13 PEOPLE IN SOCIETE GENERALE WHO THOUGHT THE FIRM WOULD
14 BE BETTER OFF WITHOUT MR. GUNDLACH. BUT AT ONE POINT
15 APPARENTLY A VIEW WAS EXPRESSED THAT PARIS CAN'T SEE A
16 WORLD WITHOUT JEFFREY. AND THAT'S WHERE THINGS STOOD.

09:10AM

17 IN LATE AUGUST, WHEN MR. CONN TOOK NOTES
18 OF ONE OF THE MANY MEETINGS THAT WERE HELD TO DISCUSS
19 THE CHALLENGES OF MR. GUNDLACH -- AND AS I'M SURE IT
20 WAS IN OTHER MEETINGS, BUT THE IDEA OF SHOULD
21 MR. GUNDLACH BE TERMINATED, WAS DISCUSSED THEN.

09:10AM

22 HE MIGHT CROSS THAT LINE. HE MIGHT BE A
23 COMPLIANCE PROGRAM.

24 AND MR. GUNDLACH ASKED PEOPLE, ASKED
25 MR. CAHILL, TO LOOK INTO THE LEGAL ISSUES. AND WHAT
26 WOULD YOU SAY TO INVESTORS? YOU WOULD HAVE TO GIVE
27 INVESTORS A REASON, YOU BUILD THIS MAN UP AS A PUBLIC
28 FACE OF THE FIRM.

09:10AM

1 AND SO AT LEAST ACCORDING TO THESE
2 NOTES, MR. CAHILL SUGGESTED SOME LANGUAGE THAT MIGHT BE
3 USED IF HE WERE TERMINATED. AND YOU'VE SEEN THAT
4 LANGUAGE.

5 BUT WE KNOW THAT HE WASN'T FIRED. NO
6 PRESS RELEASE WAS ISSUED; AND CLEARLY, NO DECISION HAD
7 BEEN MADE.

09:10AM

8 YOU SAW THAT FROM THE NOTES, IF WE LOOK
9 AT SLIDE 113. THIS IS A TYPED-UP VERSION OF IT; THAT
10 THERE'S DIRECTION GIVEN, TALK TO A LAW FIRM. FIND OUT
11 ABOUT THIS BREACH OF DUTY OF LOYALTY.

09:11AM

12 MR. STERN, ALWAYS THE PRAGMATIC
13 BUSINESSMAN, WANTS TO KNOW WHAT HIS OPTIONS ARE.

14 YOU KNOW, NOBODY REMEMBERS THIS SPECIFIC
15 AUGUST 27TH MEETING; BUT THAT'S NOT SURPRISING, BECAUSE
16 THE SUBJECT OF HOW TO DEAL WITH THE MOST IMPORTANT MAN
17 IN THE COMPANY WAS SOMETHING THAT PEOPLE WERE TALKING
18 ABOUT ALL THE TIME.

09:11AM

19 AND THAT BRINGS US TO SEPTEMBER 3.
20 MR. STERN'S IN COLORADO. HE'S ON VACATION. HE GETS A
21 CALL FROM MR. GUNDLACH. THIS HASN'T HAPPENED BEFORE.
22 WANTS TO HAVE A MEETING, MR. GUNDLACH REACHING OUT TO
23 MR. STERN. MR. STERN RETURNS RIGHT AWAY FROM COLORADO.
24 HE DOESN'T KNOW WHAT THIS MEANS.

09:11AM

25 IS MR. GUNDLACH GOING TO SAY, I'M
26 QUITTING, I'M OUT OF HERE? IS HE GOING TO SAY, I'M
27 GOING TO SIGN THE CONTRACT? HE DOESN'T KNOW.

09:11AM

28 HE GETS HERE. HE GETS A PHONE CALL FROM

1 MR. GUNDLACH, WILL YOU COME DOWN TO MY FLOOR, MY
2 CONFERENCE ROOM. AND HE COMES DOWN, AND THERE HE IS
3 CONFRONTED WITH MR. BARACH, MR. LUCIDO, MR. SANTA ANA,
4 GALLIGAN.

5 AND MR. STERN SAYS HE DIDN'T GET ANY
6 WARNING THAT THESE PEOPLE WERE ALL GOING TO BE THERE.
7 MR. GUNDLACH SAYS HE CAN'T REMEMBER IF HE TOLD THEM OR
8 NOT. YOU CAN DECIDE THAT ISSUE.

09:12AM

9 HE'S ASKED, "IS MR. OUDEA COMING OUT
10 HERE TO FIRE ME?"

09:12AM

11 MR. STERN SAYS, "NO."

12 "ARE YOU GOING TO FIRE ME?"

13 "NO."

14 THEN THERE'S THE SHOW OF HANDS,
15 SUPPOSEDLY BECAUSE THEY FEEL SAFE OR UNSURE.

09:12AM

16 MR. GUNDLACH SAYS, IF I'M FIRED, OR IF I LEAVE, WHO'S
17 WITH ME? THEY RAISE THEIR HANDS.

18 A MESSAGE WAS BEING SENT. MR. STERN GOT
19 THAT MESSAGE. HE REALIZED HE HAD A MUCH BIGGER
20 PROBLEM, THAT HE HOPED HE WOULD BE ABLE TO KEEP THE
21 TEAM IF MR. GUNDLACH LEFT; KEEP MR. BARACH, MAYBE MAKE
22 HIM HEAD OF THE GROUP.

09:12AM

23 AND HE NOW KNEW HE WAS LOOKING AT THE
24 POSSIBILITY THE WHOLE GROUP LEAVES. THEY HAD SOME
25 OTHER DEMANDS: WANT MORE REPRESENTATION ON THE
26 MANAGEMENT COMPANY. A RIDICULOUS OFFER TO BUY THE
27 COMPANY, FORGET ABOUT THE \$700 MILLION VALUATION. THEY
28 WANT 51 PERCENT; SOCIETE GENERALE TO BE A MINORITY

09:12AM

1 SHAREHOLDER, SOCIETE GENERALE TO FINANCE IT.

2 AND SO, YOU KNOW, THEY WOULD BE A
3 MINORITY PARTNER FINANCING. IT'S NONRECOURSE, SO IF
4 THEY DON'T PAY, YOU CAN'T LOOK TO MR. GUNDLACH AND HIS
5 GROUP TO PAY THEM.

09:13AM

6 AND ON TOP OF THAT, THEY HAVE A PUT, SO
7 IF THINGS DON'T WORK OUT, THEY CAN MAKE SOCIETE
8 GENERALE BUY IT BACK.

9 SUBJECT COMES UP, COULD I BE CO-CEO,
10 LIKE IT USED TO BE WITH ERNIE AND BOB DAY. AND
11 MR. STERN SAYS TO MR. GUNDLACH, "IS THAT SOMETHING YOU
12 WOULD LIKE TO DISCUSS, BEING CO-CEO?" ANSWER: "NOT
13 WITH YOU."

09:13AM

14 DUMB AND DUMBER, IS WHAT HE CALLED
15 MR. DAY AND MR. STERN. THE GODFATHER AND THE POPE, IS
16 WHAT HE CALLS HIMSELF. THAT TESTIMONY WAS NEVER
17 CONTRADICTED, THAT MR. STERN SAID, "LET'S TALK ABOUT
18 YOU BEING CEO"; AND HE SAID, "NOT WITH YOU."

09:13AM

19 BUT I ASK YOU, IS THIS SOMETHING THAT A
20 MAN WHO IS AFRAID HE'S GOING TO BE FIRED SAYS TO HIS
21 BOSS? THIS IS A MAN WHO'S COMPLETELY COMFORTABLE AND
22 BELIEVES HE'S IN CONTROL.

09:13AM

23 SO MR. STERN KNOWS, I'VE GOT A BIGGER
24 PROBLEM THAN I THOUGHT. I CAN'T SOLVE THIS JUST BY
25 PARACHUTING IN ONE PERSON. THIS COULD BE DEVASTATING,
26 IF EVERYBODY LEAVES.

09:14AM

27 SO HE PROCEEDS ON TWO TRACKS; FIRST, TO
28 SEE IF HE CAN MAKE MR. STERN HAPPY BY ADDRESSING SOME

1 OF THESE CONCERNS THAT CAME UP.

2 AND THE THING THEY CAME UP WITH, AND HE
3 SPENT THE WEEKEND TALKING TO THE FRENCH PEOPLE AND
4 COMING UP WITH PROPOSALS, BECAUSE THEY HAD SET A
5 FOLLOW-UP MEETING THE NEXT WEEK.

09:14AM

6 AND THE SECOND TRACK IS CONTINGENCY
7 PLAN. HE MIGHT HAVE TO BRING IN ANOTHER GROUP, AND HE
8 REACHES OUT TO MET WEST.

9 IT'S INITIALLY NOT CLEAR; IS THIS GOING
10 TO BE AN ACQUISITION? ARE THEY JUST GOING TO BE ON
11 STANDBY? HE'S NOT CLEAR, BUT HE THINKS HE MIGHT BE
12 WILLING TO BRING IN A WHOLE TEAM.

09:14AM

13 AS YOU KNOW, THEY ACTUALLY ENDED UP
14 ACQUIRING MET WEST FOR A VERY PRETTY PENNY, AT A
15 \$100,000,000 PREMIUM OVER THE VALUE; THAT'S SLIDE 126.
16 THAT \$300 MILLION PRICE WAS 100 MILLION MORE THAN WHAT
17 THAT BUSINESS WAS WORTH.

09:14AM

18 SO THE NEXT WEEK, THEY HAVE THE
19 FOLLOW-UP MEETING, WHERE THEY ARE SUPPOSED TO DISCUSS
20 THE ISSUES. MR. STERN HAD SAID -- MR. GUNDLACH WAS SO
21 ABUSIVE, HE SAID, I WON'T MEET WITH YOU ALONE. YOU
22 NEED TO BRING MR. LUCIDO AND MR. BARACH.

09:15AM

23 AND WHAT HAPPENS -- SLIDE 137 --
24 MR. GUNDLACH COMES IN, AND MR. GUNDLACH SAYS, WHO
25 CALLED THIS MEETING? EVERYBODY IS KIND OF
26 FLABBERGASTED. AND MR. LUCIDO SAYS, WELL, YOU DID,
27 JEFFREY.

09:15AM

28 THERE'S NO DISCUSSION, IN THE PRIOR

1 DEMANDS. THEY JUST SAY, WE WANT A PRESS MEETING SAYING
2 TCW'S NOT FOR SALE.

3 MR. STERN SAYS WELL, WHY DON'T WE ISSUE
4 THAT AFTER CITIBANK COMES BACK WITH ITS REPORT. SO
5 IT'S KIND OF IN RESPONSE TO THAT; IT'S NOT JUST IN A
6 VACUUM. THEY SAY, OKAY. THAT'S FINE. AND ANYTHING
7 ELSE? MR. STERN SAYS, HOW ABOUT ALL THESE OTHER
8 THINGS? AND THIS IS SLIDE 77, MR. STERN'S TESTIMONY.

09:15AM

9 THEY SAY, NO, YOU KNOW, WE'RE GOOD. HOW
10 ABOUT ALL THOSE OTHER DEMANDS? YOU KNOW, WE'RE GOOD.
11 THAT'S ALL.

09:16AM

12 WELL, MR. STERN THOUGHT, YOU KNOW, THIS
13 DOESN'T MAKE SENSE. NO. SOMETHING ELSE IS GOING ON.
14 AND HE HAD REASON TO BE CONCERNED.

15 YOU SAW THE E-MAILS FROM AROUND THIS
16 TIME, BETWEEN MR. BARACH AND MR. GUNDLACH. THIS IS AN
17 EASY DECISION NOW. AT LEAST NOW, WE HAVE THE LUXURY OF
18 TIME TO PLAN AND PREPARE -- HE TURNS OUT HIS INSTINCTS
19 WERE RIGHT ON. HE DIRECTED THAT THE E-MAILS START TO
20 BE MONITORED ON AN ONGOING BASIS. AND WHAT HE FOUND
21 OUT WAS SHOCKING.

09:16AM

09:16AM

22 IN SEPTEMBER ALONE, CONTACT INFORMATION
23 BEING ASSEMBLED; CLIENT CONTRACTS; TRADE TICKETS; REAL
24 ESTATE SEARCH BEGINS.

25 WITHIN WEEKS, THEY FOUND OUT ABOUT
26 REFERENCES TO ABLE GRAPE. NOBODY KNEW WHAT THAT WAS;
27 AND MUCH ELSE.

09:16AM

28 IT TURNS OUT THAT MR. GUNDLACH HAD BEEN

1 PLOTTING TO LEAVE TCW IN THE LURCH FOR A LONG TIME.

2 YOU SAW THOSE E-MAILS AND RECORDS, EVEN
3 FROM 2008, WITH A DOUBLELINE LOGO.

4 RACHEL CODY HAD HEARD, CLEAR BACK IN
5 EARLY 2009, IF WE LOOK AT SLIDE 619, THAT FOLKS WERE
6 ALL GOING TO BE LEAVING. 09:17AM

7 AND THEN SLIDE 87. EVERYBODY WOULD
8 BEING LEAVING.

9 THEN THAT PROPOSAL FROM BROSSY IN JUNE
10 2009, THE CONSULTANTS TO WAMCO. THEY TALKED ABOUT
11 USING CODE NAMES, ART WORK, ART GALLERY. ART GALLERY
12 WAS ALL THE PEOPLE HE WOULD BRING WITH HIM. 09:17AM

13 THE PLAN WAS TO LEAVE TOGETHER IN
14 JANUARY OF 2010 AT ONE POINT, THAT'S WHAT MS. CODY TOLD
15 YOU, SLIDE 55. AND THEN THE DATE WAS MOVED TO MARCH,
16 SO THEY COULD COLLECT THEIR BONUSES FROM TCW, THEN
17 LEAVE, AS A BIG F-U TO TCW; THAT'S SLIDE 106. 09:17AM

18 MR. ARENTSEN TOLD YOU THE SAME THING.
19 HE HEARD IT AS WELL. SLIDE 227.

20 MR. LUCIDO'S NOTES INDICATE A SLIGHTLY
21 DIFFERENT DATE; SLIDE 47. HE SAYS, NO BETTER TIME THAN
22 AFTER THE MORNING STAR AWARD IN JANUARY. 09:18AM

23 AND I WON'T GO INTO A LOT OF DETAIL, BUT
24 MR. GUNDLACH IS A MASTER MANIPULATOR. I THINK YOU'VE
25 SEEN THAT. HE KNOWS WHAT TO SAY TO EACH PERSON AT THE
26 RIGHT TIME. AND HE SET UP MAKING SURE ALL THESE PEOPLE
27 WERE IN THE BOAT WITH HIM. THAT TRIP TO MARFA, WHICH
28 THEY CHITTED IN AND CHARGED TO TCW; SOMETHING HE SAID 09:18AM

1 HE NEVER INITIATED A TEAM-BUILDING EXERCISE HIMSELF
2 BEFORE. BUT THIS IS A MAN WHO, YOU SAW THE E-MAIL,
3 DOESN'T LIKE TEAM BUILDING. DOESN'T DO TEAM BUILDING.

4 A DINNER, SLIDE 129, \$14,000 DINNER AT A
5 FRENCH RESTAURANT. THOUSAND DOLLAR OF PETRUS WINE,
6 SOMETHING HE HAD DONE BEFORE. MR. SANTA ANA'S
7 TESTIMONY, SLIDE 136.

09:18AM

8 MR. SANTA ANA, BEING SOMEBODY WHO'S SO
9 DEVOTED TO MR. GUNDLACH, HE'LL DO ANYTHING. SLIDE 15.
10 YOU SAW THAT E-MAIL.

09:19AM

11 AND BY THE WAY, MR. SANTA ANA'S REWARD
12 FOR THIS? A LAWSUIT, WHERE HE SAYS HE WAS LEFT OUT ON
13 A LIMB BY MR. GUNDLACH, THAT'S SLIDE 138.

14 AND THEN AFTER THIS ALL, JUST JUMPING
15 FORWARD, AFTER THE SUIT HAPPENS, HE GOES INTO
16 MANIPULATION MODE WITH JEFF MAYBERRY, SLIDE 16, WHERE
17 HE SAYS, I'M SORRY.

09:19AM

18 THIS IS NOT ANOTHER ONE OF THE GUYS
19 WHO'S DONE HIS DIRTY WORK FOR HIM. I TOLD YOU YEARS
20 AGO, I THINK YOU HAVE THE TALENT FEW HAVE. YOU CAN
21 MAKE IT IN THIS BUSINESS. WE DIDN'T EVER SEE ANY
22 INSTANCES OF MR. GUNDLACH SAYING NICE THINGS TO PEOPLE,
23 EXCEPT WHEN THERE WAS SOMETHING HE WANTED, AND HE WAS
24 TRYING TO MANIPULATE THEM.

09:19AM

25 MR. ARENTSEN, WHO GETS A JOB OFFER,
26 REMEMBER? AND THEN WHEN HE DECIDES HE'S GOING TO STAY
27 AT TCW, SLIDE 624. MR. GUNDLACH SAYS, WELL, HE'S
28 SOMEBODY WE CULLED OUT.

09:19AM

1 AND OF COURSE, IT'S NOT ENOUGH JUST TO
2 TAKE PEOPLE. HE NEEDS THE WHOLE ANALYTICAL PLATFORM,
3 EVERYTHING THAT THEY MIGHT NEED.

4 ARENTSEN ASKED GUNDLACH -- THERE'S A
5 SLIDE 89 -- WHAT ARE WE GOING TO DO? ASK JEFFREY WHAT
6 WE'RE GOING TO DO. HE SAYS, WE'LL JUST TAKE THEM OR
7 REBUILD THEM. 09:20AM

8 AND ARENTSON IS LATER TOLD, SLIDE 90,
9 DON'T WORRY. WHAT TYPE OF SYSTEMS? HE SAID, DON'T
10 WORRY. IT'S BEING TAKEN CARE OF. AND WE KNOW IT WAS
11 BEING TAKEN CARE OF. 09:20AM

12 SLIDE 6, MR. GUNDLACH INSTRUCTED --
13 ACCORDING TO MR. SANTA ANA, MR. GUNDLACH INSTRUCTED HIM
14 TO TAKE ALL THESE THINGS, AND ANYTHING ELSE YOU MIGHT
15 THINK WE WOULD NEED. AND OF COURSE, MR. GUNDLACH
16 DENIED THAT HE EVER SAID THAT. AND THAT'S EXACTLY WHAT
17 THEY DO. 09:20AM

18 AND YOU SAW THAT TESTIMONY ABOUT JP
19 GETTING THE HARD DRIVE, THE LARGER ONE, HOW THEY START
20 UNLOADING THE FILES, SLIDE 501. IT SUMMARIZES WHO
21 DOWNLOADED HOW MUCH. 09:20AM

22 THE COMPUTER FORENSICS YOU HEARD SHOW
23 THAT TCW'S FILES WERE DOWNLOADED TO MR. SANTA ANA'S
24 HARD DRIVE 36 TIMES BETWEEN SEPTEMBER 7TH, 2009, AND
25 DECEMBER 4TH, 2009. 09:21AM

26 JP DOWNLOADED TCW FILES TO A HARD DRIVE.
27 AND THEN AFTERWARDS, ON FEBRUARY 19, 2010, HE SENT THE
28 HARD DRIVE BACK TO THE MANUFACTURER, WESTERN DIGITAL,

1 SO IT COULD BE WIPED CLEAN. WE DON'T KNOW TO THIS DAY,
2 WHAT WAS ON IT.

3 MR. MAYBERRY, OF COURSE, ALSO COPIED
4 DOCUMENTS ONTO A FLASH DRIVE. HE TOOK IT HOME, COPIED
5 IT ONTO HIS PARENTS' COMPUTER; THEN MAILED IT TO HIS
6 PARENTS' CAR DEALERSHIP.

09:21AM

7 WHEN IT ARRIVED, IT TURNS OUT IT HAD A
8 HOLE IN IT, AND WAS JUST BIG ENOUGH FOR A FLASH DRIVE.
9 SO WE COULD NEVER SHOW YOU THAT FLASH DRIVE OR WHAT WAS
10 ON IT.

09:21AM

11 CASEY MOORE, THE PROGRAMMER AT TCW --
12 NOW A PROGRAMMER AT DOUBLELINE, WHO -- THEY DID NOT
13 BRING TO TESTIFY, ALTHOUGH YOU KNOW HE'S HERE. YOU SAW
14 A VIDEOTAPE TESTIMONY. THEY HAD THE ABILITY TO BRING
15 HIM IN HERE -- COPIED HIS ENTIRE "MY DOCUMENTS" FOLDER,
16 OVER 4,000 FILES, TO A FLASH DRIVE. HE TOOK THAT FLASH
17 WITH HIM TO TCW. A COMPUTER FORENSIC ANALYSIS SHOWED
18 THAT MR. MOORE DOWNLOADED SOURCE CODE FOR THE BWIC
19 BROWSER AND THE SECURITY ANALYZER, MR. MOORE ADMITTED
20 IT.

09:22AM

09:22AM

21 THIS IS -- WE CAN PLAY HIS VIDEO. WE
22 HAVE THAT HANDY. THE VIDEO AT 275.

23

24 (VIDEO CLIPS PLAYED.)

25

09:22AM

26 MR. SMITH: IF WE COULD LOOK AT SLIDE 458.

27 MR. SMITH SHOWED YOU THAT ALL -- THIS
28 BASICALLY, THE SLIDE DESCRIBES ALL THE STOLEN TRADE

1 SECRETS THAT WERE TAKEN.

2 YOU ALSO KNOW ABOUT THOSE TRADE TICKET
3 BINDERS THAT MR. GUNDLACH SAID, WHEN ASKED TO EXPLAIN,
4 WHY DO YOU TAKE ALL THOSE RED BINDERS, WHY DO YOU GO TO
5 THE TROUBLE, YOU, PERSONALLY, TWO AT A TIME, OUT OF THE
6 OFFICE, SLIDE 130.

09:23AM

7 BEST HE COULD COME UP WITH WAS, I LIKED
8 HAVING EXAMPLES OF MY WORK, AND IT GAVE ME SOME
9 EMOTIONAL SATISFACTION, AND IT WAS EMPOWERING.

10 BUT MR. SMITH TOLD YOU, SLIDE 117, THAT
11 THAT WOULD PERMIT THEM TO USE THE TCW -- THEIR TCW
12 TRACK RECORD AS THEIR TRACK RECORD AT THEIR NEW
13 BUSINESS; WHICH IS KIND OF IRONIC, BECAUSE HERE HE'S
14 STEALING TO ENSURE HE CAN COMPLY WITH REGULATIONS.

09:23AM

15 AND THIS CONTINUED UNTIL EVEN AFTER
16 MR. SANTA ANA WAS ESCORTED OUT OF THE BUILDING ON
17 DECEMBER 4TH. AND THAT'S HOW A HARD DRIVE ENDED UP IN
18 A SECRETARY'S BRA. YOU ALL REMEMBER THAT STORY.

09:24AM

19 MR. GUNDLACH DIRECTED MR. WARD TO SET UP
20 ABLE GRAPE, WHICH REALLY WAS DOUBLELINE, TOLD HIM TO
21 GET REGISTERED.

09:24AM

22 IF WE COULD PLAY MR. WARD'S VIDEO AT 97.

23

24 (VIDEO CLIPS PLAYED.)

25

09:25AM

26 MR. QUINN: SO HE DID THAT IN A ROOM WHERE HE
27 CALLED MR. WARD INTO A ROOM AND SAID, THIS IS BETWEEN
28 YOU AND ME. THEY PREPARED A LIST OF CRITICAL STAFF --

1 THAT'S SLIDE 46 -- WHERE MR. LUCIDO IS ASKING ABOUT THE
2 CRITICAL STAFF.

3 THEY PREPARED A PRO FORMA BUSINESS PLAN,
4 SLIDE 444, WHICH BASICALLY SHOWS THEM TAKING -- ALL OF
5 MODELING, TAKING ALL OF TCW'S BUSINESS.

09:25AM

6 THE MORNING, IRONICALLY, OF DECEMBER
7 4TH, WHEN THEY ARE CONFRONTED, MR. GUNDLACH REVIEWED
8 THIS, AND ACCORDING TO MR. SANTA ANA, SAID, YOU KNOW,
9 IT'S A GOOD START. LOOKS GREAT. FINE. THEY DIDN'T
10 ASK, WHAT ARE YOU DOING HERE? WHY ARE YOU ACCOUNTING
11 FOR ALL THESE TCW FUNDS AS BEING OVER IN OUR NEW
12 BUSINESS?

09:26AM

13 WE DON'T HAVE THE TIME TO SHOW YOU ALL
14 THE RECORDS OF THEIR ACTIVITY. THEY WERE WORKING --
15 YOU WILL HAVE THEM BACK IN THE JURY ROOM. THEY ARE IN
16 EVIDENCE.

09:26AM

17 THESE FOLKS WERE WORKING, BASICALLY FULL
18 TIME, ON STARTING UP THE NEW BUSINESS. YOU PROBABLY
19 HEARD ENOUGH ABOUT THE SEARCH FOR SPACE.

20 IF YOU LOOK AT SLIDE 41, THE ENGAGEMENT
21 WITH STUDLEY, MS. VANEVERY SAYS THIS IS -- THE
22 AGREEMENT SAYS, THIS IS AN UNNAMED INVESTMENT
23 MANAGEMENT FIRM.

09:26AM

24 ABLE GRAPE IS SLIDE 97, AS A TEMPORARY
25 ENTITY NAME FOR AN ASSET MANAGEMENT BUSINESS LED BY
26 WELL-KNOWN INDUSTRY VETERANS. THEY ARE LOOKING FOR --
27 IF WE COULD LOOK AT SLIDE 20 -- SPACE FOR 50 TRADERS.

09:26AM

28 WHAT DOES THIS TELL YOU? THEY ARE NOT

1 GETTING JUST EXTRA SPACE THAT THEY HOPE TO FILL SOME
2 DAY. THEY KNOW EXACTLY WHAT THEY ARE DOING. AND THEY
3 ARE LOOKING FOR A TRADING FLOOR, WHICH IS A VERY
4 SPECIFIC KIND OF SPACE. IT'S NOT A SMALL OFFICE. IT'S
5 TALKING ABOUT 28,000 FEET -- SLIDE 32. IT'S AS LARGE
6 AS ONE AND A HALF TIMES THE FLOOR IN THIS COURTHOUSE.

09:27AM

7 AND THEY ULTIMATELY SETTLE ON A SPACE
8 OUT IN CENTURY CITY, SLIDE 112.

9 THEY HAVE A DETAILED TIMELINE FOR THE
10 BUILD-OUT OF THE SPACE. THAT'S SLIDE 539.

09:27AM

11 THEY HAVE A MOVE-IN DATE, INITIALLY, OF
12 FEBRUARY 2010. THAT'S SLIDE 111.

13 AND YOU KNOW THEY TALK ABOUT, THEY EVEN
14 KNOW WHAT WALL THEY WANT TO DEMOLISH FOR THE ARTWORK,
15 THE DONALD JUDD SCULPTURE. THAT'S SLIDE 622.

09:27AM

16 AND ULTIMATELY THEY SET A DEADLINE OF
17 MARCH, THAT THEY WOULD LEAVE AFTER BONUSES WERE PAID.
18 THAT'S SLIDE 35.

19 AND THEN SLIDE 34, WITH REFERS TO THE
20 END OF MARCH MANDATE.

09:28AM

21 AND WE GET TO DECEMBER, I THINK IT WAS
22 DECEMBER 1ST, MR. -- MS. VANEVERY CONTACTS
23 MR. GUNDLACH, SLIDE 621, AND ASKS IF HE CAN COME TO
24 CLOSE THE DEAL ON THE SPACE.

25 THIS IS AN ENORMOUS AMOUNT OF TIME. IF
26 WE LOOK AT SLIDE 215, WHERE WE HAVE KIND OF INDICATED
27 WHERE THERE WAS ACTIVITY, SUCH AS I'VE DESCRIBED, ON
28 ALL THESE DATES, THEY WERE WORKING, FOR ALL INTENTS AND

09:28AM

1 PURPOSES, FOR DOUBLELINE ALREADY. THEY HAD STOPPED
2 WORKING FOR TCW.

3 WHAT WAS MR. STERN'S RESPONSE? I TOLD
4 YOU, HE STARTED TALKING WITH MET WEST. HE ENGAGED
5 SHEDLIN TO LOOK UP FOR SOMEONE TO TRY TO FIND A FIRM,
6 AND WHAT WAS HIS OPINION OF MET WEST.

09:28AM

7 MET WEST HAD A LOT TO BE SAID FOR IT.
8 YOU'VE HEARD PEOPLE DISPARAGE MET WEST. BUT IF WE LOOK
9 AT SLIDE 139, IT WAS AN ACQUISITION THAT MADE A LOT OF
10 SENSE IN A LOT OF WAYS, IF YOU HAD TO REPLACE THIS
11 GROUP.

09:29AM

12 MOST OF THEIR BUSINESS, 18 BILLION OF 30
13 BILLION, WAS IN THE MORTGAGE AREA. THEY HAD WON THAT
14 AWARD. THEY HAD BEEN NOMINATED FOR THE AWARD THE SAME
15 TIMES AS MR. GUNDLACH.

09:29AM

16 THEY -- AND BY THE WAY, THEY WON THE
17 AWARD THE NEXT YEAR. THAT'S IN EVIDENCE AS WELL, IN
18 2010 -- THEY WERE NOMINATED FOR THE MORNING STAR AWARD.

19 BUT MR. STERN STILL HAD TO SELL THIS TO
20 THE FRENCH. THE SUGGESTION HAS BEEN MADE SOMETIME THAT
21 THE FRENCH WERE BEHIND THIS.

09:29AM

22 LOOK AT THIS E-MAIL, SLIDE 538.
23 MR. CONN IS ASKED -- STERN IS ASKING MR. CONN, WILL
24 THIS HELP US SELL THIS TO THE FRENCH?

25 AND DO YOU REMEMBER THAT E-MAIL THAT
26 MR. STERN WROTE TO MR. MUSTIER SAYING, PLEASE SEND A
27 NOTE OF CONGRATULATIONS TO MR. GUNDLACH, THAT SUMMER?
28 THIS IS NOT SOMETHING THAT'S WRITTEN BY SOMEBODY WHO

09:29AM

1 HAS ALREADY MADE SOME DECISION IN THE SUMMER. BUT BY
2 THE TIME YOU START SEEING WHAT'S GOING ON.

3 AFTER THE SEPTEMBER 3 MEETING, YOU SEE
4 WHAT'S GOING ON AND YOU RECOGNIZE THE VERY SURVIVAL OF
5 THE COMPANY IS AT STAKE. HE'S GOING TO THE FRENCH AND
6 TRYING TO GET APPROVAL FOR THIS TRANSACTION. 09:30AM

7 MR. STERN -- IT WASN'T INEVITABLE THAT
8 HE WAS GOING TO FIRE MR. GUNDLACH, HE TOLD YOU. HE
9 DIDN'T KNOW IF HE COULD GET APPROVAL FOR THIS
10 TRANSACTION. AT THE LAST MINUTE THERE WAS A HITCH WITH 09:30AM
11 THE FEDERAL RESERVE. THEY WERE NEGOTIATING WITH MET
12 WEST TO THE VERY END.

13 OF COURSE, IT WAS IMPOSSIBLE FOR HIM, AT
14 ANY POINT, TO GO TO MR. GUNDLACH AND SAY, LOOK WE'RE
15 NEGOTIATING FOR THIS OTHER TEAM, TO BRING THEM IN HERE. 09:30AM
16 BECAUSE WHAT WOULD HAVE HAPPENED, MR. GUNDLACH WOULD
17 HAVE BEEN OUT IMMEDIATELY. MR. STERN COULDN'T DO
18 ANYTHING TILL HE HAD ANOTHER TEAM IN PLACE.

19 ON DECEMBER 4, THEY FINALLY -- THEY GOT
20 APPROVAL FROM FEDERAL RESERVE. THE DEAL WAS SIGNED. 09:31AM
21 AND MR. GUNDLACH WAS PUT ON ADMINISTRATIVE LEAVE THAT
22 DAY.

23 AND THEN, WITHIN DAYS THEREAFTER, THE
24 DEFENDANTS WERE MEETING TOGETHER -- THIS IS SLIDE
25 412 -- AND DISCUSSING HOW THEY WOULD CHARACTERIZE WHAT 09:31AM
26 WOULD HAPPEN, SAYING, LOOK, WE GOT TO RECONCILE THE
27 FACT THAT OUR EFFORTS TO LEAVE BEFORE NEEDS TO BE
28 RECONCILED. WE CAN'T JUST SAY THAT WE NEVER WANTED TO

1 LEAVE.

2 MAYBE SAY, MAYBE SAY THAT WE FIRST
3 STARTED TO THINK ABOUT LEAVING -- THAT'S EXHIBIT
4 764(A). MAYBE SAY THAT WE FIRST STARTED TO THINK ABOUT
5 IT WHEN WE THOUGHT WE WERE GOING TO BE FIRED.

09:31AM

6 SO THAT'S KIND OF AN OVERVIEW. THIS IS
7 NOT A CASE -- AND I'M GOING TO TURN NOW TO TALK ABOUT
8 THE INDIVIDUAL CLAIMS. BREACH OF FIDUCIARY DUTY --

9 THE COURT: MR. QUINN, WOULD THIS BE A GOOD
10 POINT FOR US TO TAKE OUR STRETCH?

09:32AM

11 MR. QUINN: I WAS HOPING TO GO MAYBE 10
12 MINUTES MORE.

13 THE COURT: THAT'S FINE.

14 MR. QUINN: THIS ISN'T A CASE ABOUT WHETHER AN
15 EMPLOYEE CAN GO LOOK FOR ANOTHER JOB. THERE'S NOTHING
16 WRONG WITH THAT, OR SIMPLY ABOUT PREPARING TO COMPETE,
17 OR PREPARING TO START A NEW BUSINESS.

09:32AM

18 IT'S NOT EVEN ABOUT AN OUTSIDE GROUP
19 COMING IN AND RAIDING A COMPANY. YOU CAN IMAGINE, IF
20 IT WERE AN OUTSIDE GROUP DOING THIS, EVERYBODY COULD
21 SEE THAT'S COMPLETELY WRONG.

09:32AM

22 THIS IS AN INSIDE GROUP, TOP PEOPLE IN
23 THE COMPANY, ALMOST THE TOP; IN THIS CASE, OF
24 MR. GUNDLACH, SEEKING TO UNDERMINE AND DESTROY TCW AS A
25 COMPETITOR.

09:32AM

26 AND YOU ARE GOING TO GET SOME
27 INSTRUCTIONS ON THE BREACH OF FIDUCIARY DUTY, SLIDE
28 453, WHAT THEIR OBLIGATIONS ARE: UTMOST GOOD FAITH.

1 TO ACT IN THE BEST INTERESTS OF THE EMPLOYER.

2 AND SLIDE 544, THERE'S ALSO A DUTY OF
3 LOYALTY. ACTUALLY, YOU ARE GOING TO HEAR THAT ABOVE
4 THAT LANGUAGE, THERE'S ACTUALLY A DUTY OF LOYALTY.

5 AND IMPORTANT TO NOTE HERE, MR. STERN
6 DIDN'T HAVE SOME FIDUCIARY DUTY TO MR. GUNDLACH.
7 MR. STERN, LIKE MR. GUNDLACH'S FIDUCIARY DUTY, WAS TO
8 TCW AND TO THE SHAREHOLDER. HE WAS TRYING TO SAVE THE
9 BUSINESS.

09:33AM

10 SO ANY SUGGESTION THAT, WELL, MR. STERN
11 OWED SOME FIDUCIARY DUTY, OR TCW OWED SOME FIDUCIARY
12 DUTY TO MR. GUNDLACH, IS SIMPLY -- YOU WON'T GET ANY
13 LEGAL INSTRUCTION THAT SUGGESTS THAT.

09:33AM

14 IT GOES THE OTHER WAY. MR. GUNDLACH
15 ADMITTED THAT AS A FIDUCIARY, HE COULDN'T LEAVE THE
16 COMPANY IN A WAY THAT WOULD BE DAMAGING TO IT. THAT'S
17 SLIDE 140.

09:33AM

18 BUT THAT'S EXACTLY WHAT HE WAS PLOTTING
19 TO DO.

20 AND MR. SANTA ANA SAID, AS WELL, HE KNEW
21 HE SHOULD -- HE COULD NOT PUT HIS PERSONAL INTEREST
22 AHEAD OF THE COMPANY. THAT'S SLIDE 542.

09:33AM

23 AND THERE WAS A DUTY TO DISCLOSE. IF
24 YOU ARE A FIDUCIARY, YOU HAVE A DUTY TO DISCLOSE. IF
25 FAILING TO DISCLOSE SOMETHING THAT YOU ARE PLANNING
26 WOULD BE INJURIOUS TO THE COMPANY. THAT'S SLIDE 190,
27 IN MR. SANTA ANA'S TESTIMONY.

09:34AM

28 AND IT'S BEEN REMARKABLY BLATANT HOW

1 BALD, HOW CANDID -- MR. GUNDLACH SAID YESTERDAY HE
2 DIDN'T KNOW WHAT CANDID MEANS. BUT HOW NAKED MR.
3 GUNDLACH'S DISAVOWED AND REPUDIATION OF HIS FIDUCIARY
4 DUTIES IS.

5 LOOK AT SLIDE 420, WHEN HE WRITES THIS, 09:34AM
6 I'M NOT GOING TO STABILIZE AND GROW THIS FIRM WITHOUT
7 REWARD. WHEN HE WRITES THIS, HE'S THE DIRECTOR -- HE'S
8 THE PRESIDENT TALKING, AT THAT POINT. AND THE YEAR IN
9 WHICH HE MAKES \$40 MILLION.

10 SLIDE 217 IS E-MAILED TO MS. VANEVERY IN 09:35AM
11 SEPTEMBER. HE'S VULNERABLE. IF TCW THINKS IT OWNS AND
12 CONTROLS ITS OWN REVENUE STREAM -- WAIT A SECOND;
13 MR. GUNDLACH, YOU SOLD YOUR STOCK. YOU USED TO BE AN
14 OWNER OF TCW. YOU PAID, WHAT? TWO, \$3 MILLION FOR IT,
15 AND YOU SOLD IT FOR 40 OR 50 MILLION? 09:35AM

16 IT IS TCW'S. HE SEEMS TO HAVE FORGOTTEN
17 THAT.

18 HIS REACTION, WHEN HE LEARNS THAT
19 MR. STERN AND MR. ATTANASIO WERE TRYING TO DEVELOP A
20 RELATIONSHIP WITH MR. BARACH IS AT SLIDE 216, HE SAYS 09:35AM
21 THEY ARE DOING THIS SO THEY'LL GIVE HIM A CHANCE TO
22 FIGHT FOR THE BUSINESS.

23 THIS IS UPSIDE DOWN. IT'S TCW'S
24 BUSINESS. THAT'S WHY YOU ARE BEING PAID, MR. GUNDLACH.

25 HE SAYS, I COULD STRANGLE HIM. THE WAR 09:35AM
26 IS ON, SLIDE 4.

27 AND THEN MS. CODY, QUOTING WHAT SHE
28 HEARD FROM MR. STERN, SLIDE 226.

1 I'M SORRY -- FOR MR. GUNDLACH. THANK
2 YOU. WE'RE GOING TO LEAVE AS A BIG F-U TO TCW.

3 YOU HEARD THE SAME THING FROM
4 MR. ARENTSEN. THEY ARE ABSOLUTELY -- THEIR PRO FORMA
5 SHOWS WHAT THEY INTEND TO DO, SLIDE 233.

09:36AM

6 ALL DOWN THE SIDE THERE, THOSE ARE ALL
7 TCW FUNDS. THEY ARE PLANNING TO TAKE THEM ALL; CONVERT
8 THEM, AS HE TOLD WAMCO THAT SUMMER, MOVE IT ALL OVER EN
9 TOTO TO HIS SIDE OF THE LEDGER.

10 WHAT WOULD THEY -- THEY BASICALLY DID
11 EVERYTHING THEY WOULD NEED TO DO TO BUILD A BUSINESS.
12 THIS IS SLIDE 209.

09:36AM

13 PEOPLE -- THEY BUILD A TEAM. YOU HEARD
14 ABOUT -- THEY TALKED ABOUT HOW HE MADE SURE EVERYBODY
15 WAS ON HIS SIDE. THEY HAD THAT LUXURY OF TIME, TO PLAN
16 AND PREPARE.

09:36AM

17 MR. GUNDLACH TESTIFIED ABOUT THIS. HE
18 WOULDN'T ACKNOWLEDGE TO US WHAT THE LUXURY OF TIME TO
19 PLAN AND PREPARE WAS.

20 THIS IS HIS DEPOSITION THAT WAS PLAYED,
21 AT 308.

09:37AM

22
23 (VIDEO CLIPS PLAYED.)
24

25 MR. QUINN: BY THE TIME OF TRIAL, THEY HAD
26 COME UP WITH AN EXPLANATION THAT THIS WAS THE LUXURY OF
27 TIME TO PLAN AND PREPARE TO NEGOTIATE.

09:38AM

28 FOLKS, THAT IS AN INSULT TO YOUR

1 INTELLIGENCE, WITH ALL THE EVIDENCE YOU HAVE HEARD.

2 THEY'VE BEEN VERY CANDID IN THEIR
3 E-MAILS TO EACH OTHER.

4 MR. BRIAN WILL NOT BE ABLE TO SHOW YOU A
5 SINGLE E-MAIL WHERE THEY ARE TALKING TO EACH OTHER AND
6 TALKING ABOUT, WE'RE GOING TO START NEGOTIATING; IN
7 JANUARY, FEBRUARY, OR MARCH, OR ANY OTHER TIME.

09:39AM

8 SO IF WE CAN GO BACK TO THAT -- THE
9 THINGS THEY DID TO BUILD THE BUSINESS, 209.

09:39AM

10 FIRST, THEY BUILD A TEAM. HE HELD THE
11 SERIES OF MINI TEAM-BUILDING EVENTS. YOU HEARD ABOUT
12 THAT: THE HUNDRED-YEAR-OLD HAVANA CIGARS, THE MILK --
13 MORNING AND NIGHT, TWO LAYERS; AND THE PRO FORMA. THEY
14 HAD ALL THE EMPLOYEES THERE THAT THEY INTENDED TO TAKE
15 WITH THEM, EXHIBIT 583.

09:39AM

16 IF YOU PLOT THAT ACTIVITY OUT, I MEAN,
17 IT'S -- JUST THE EFFORT, THE TEAM BUILDING -- JUST THE
18 ONES THAT WE COULD TRACK DOWN, THAT'S AT SLIDE 210.
19 YOU SEE ALL THOSE DAYS WHEN THEY ARE INVOLVED IN TEAM
20 BUILDING, AND DOING THAT FIRST THING THAT YOU HAVE TO
21 DO TO ORGANIZE THE BUSINESS. AND THAT MAKES SURE YOU
22 HAVE PEOPLE ON ONE SIDE, THEN THE INCORPORATION AND
23 REGISTRATION, APPLICATION FOR TAX IDENTIFICATION
24 NUMBER, RESERVING THE DOUBLELINE, LC NAME AND
25 CORPORATION. YOU KNOW, AGAIN, GETTING THE INFORMATION
26 THEY WOULD NEED.

09:40AM

09:40AM

27 YOU SAW THE E-MAIL FROM SANTA ANA --
28 MR. SANTA ANA TO MR. WARD, SAYING HERE'S WHAT YOU NEED

1 TO DO THE REGISTRATION, SLIDE 211.

2 REFLECTING THE DATES WHERE THE EVIDENCE
3 SHOWS THEY ARE WORKING ON INCORPORATION AND
4 REGISTRATION; OBTAINING FINANCING. OCTOBER 27TH
5 MR. WARD ASKS MS. VANEVERY FOR A CHECK PAYABLE TO ABLE
6 GRAPE; THAT WAS EXHIBIT 395. MR. GUNDLACH PERSONALLY
7 TOOK CARE OF THAT ACTUALLY SENT A \$75,000 CHECK.

09:40AM

8 THEY INITIALLY WENT TO GOLDMAN SACHS TO
9 DISCUSS, AMONG OTHER THINGS, WHETHER GOLDMAN SACHS
10 WANTED TO BE AN INVESTOR, AND WHETHER THEY WOULD BE A
11 SOURCE OF FINANCING.

09:41AM

12 IF WE COULD LOOK THEN AT SLIDE 2012,
13 THESE ARE DATES ON FINANCING, OR MONEY RAISING-RELATED
14 ACTIVITIES THAT ARE REFLECTED IN THE EVIDENCE.

15 THE OFFICE SPACE, THAT WAS DAY AFTER DAY
16 AFTER DAY, YOU ARE LITERALLY GOING TO SEE, WHEN YOU
17 LOOK AT THE EVIDENCE, SCORES OF DOCUMENTS RELATING TO
18 OFFICE SPACE. SLIDE 213. ALL THE DAYS IN WHICH THE
19 EVIDENCE SHOWS THEY ARE WORKING ON THE SPACE.

09:41AM

20 THEY ALSO NEED TO GET INFORMATION AND
21 ANALYTICS, AND CLIENT INFORMATION. AND YOU KNOW THAT
22 MR. GUNDLACH DIRECTED, VERY EARLY ON, THAT ALL OF THAT
23 BE COLLECTED, EVERYTHING THAT MIGHT BE USEFUL IN
24 ORGANIZING A BUSINESS.

09:41AM

25 AND WHEN YOU PLOT THAT ALL OUT ON THE
26 CALENDAR, THAT'S SLIDE 215, THAT'S ALMOST EVERY DAY,
27 THAT THERE'S ACTIVITY.

09:41AM

28 SO IF YOU TAKE THE TIME TO LOOK IT OVER,

1 THERE'S 120 DAYS DURING THIS TIME PERIOD WHEN THEY ARE
2 BEING PAID BY TCW, BUT ACTUALLY WORKING ON SETTING UP
3 THEIR NEW BUSINESS.

4 MR. QUINN: AND NOW, YOUR HONOR?

5 THE COURT: THAT'S FINE. WE'LL JUST TAKE FIVE
6 MINUTES.

09:42AM

7 AND MR. LANE, IF YOU WOULD LIKE TO STEP
8 OUT AND MAKE A CALL, WE'LL PROBABLY GO ABOUT ANOTHER
9 HOUR; SO OUR BREAK WILL BE AT ABOUT 10:45.

10

11 (RECESS TAKEN.)

12

13 (AT 9:55 A.M. THE JURY ENTERED
14 THE COURTROOM, AND THE FOLLOWING
15 PROCEEDINGS WERE HELD:)

16

17 THE COURT: ALL RIGHT.

18 ALL MEMBERS OF OUR JURY ARE ONCE AGAIN
19 PRESENT AND WE'LL PICK UP.

20 THESE LITTLE STRETCHES, I DON'T WANT TO
21 TURN INTO 10 OR 15 MINUTE BREAKS. BECAUSE WE'RE GOING
22 TO TRY TO GET THROUGH EVERYTHING TODAY.

09:47AM

23 SO MR. QUINN, YOU MAY PROCEED.

24 MR. QUINN: THANK YOU, YOUR HONOR.

25 SO DOUBLELINE IS UP AND RUNNING ALMOST
26 IMMEDIATELY. THEY HAVE THEIR SEC REGISTRATION, YOU
27 HEARD IN RECORD TIME. THEY ARE UP AND RUNNING FASTER
28 THAN IT TAKES MOST PEOPLE TO FIND AN APARTMENT. AND

09:47AM

1 THIS IS A HIGHLY REGULATED, COMPLEX BUSINESS THAT
2 REQUIRES ANALYTICS, AND COMPUTERS AND INFORMATION THAT
3 YOU JUST -- OAKTREE DIDN'T PROVIDE.

4 WE HEARD FROM THE WITNESS FROM OAKTREE
5 MR. DEITCH AND SOME OF US MAY HAVE GOTTEN THE
6 IMPRESSION ON HIS DIRECT EXAMINATION THAT OAKTREE
7 SUPPLIED ALL THOSE THINGS, ON CROSS-EXAMINATION IT
8 BECAME -- HE ADMITTED OAKTREE DIDN'T PROVIDE ANY OF
9 THAT ANALYTICAL INFORMATION THAT THEY NEEDED FOR THE
10 MORTGAGE TRAINING BUSINESS. THEY WERE ABLE TO BE UP
11 AND RUNNING SO FAST BECAUSE OF ALL THE INFORMATION THAT
12 THEY HAD TAKEN.

13 AND YOU ARE GOING TO -- ONE OF THE
14 CLAIMS THAT WE HAVE IS FOR MISAPPROPRIATION OF TRADE
15 SECRETS. THE JUDGE WILL INSTRUCT YOU ON THE LAW AND
16 WE'LL TAKE A LOOK QUICKLY AT SLIDE 807.

17 AND THEN SLIDE 806 YOU WILL HAVE COPIES
18 OF THESE INSTRUCTIONS ON WHAT THE LAW IS. BUT I MEAN,
19 WHAT IS REQUIRED FOR MISAPPROPRIATION? I BELIEVE WE'VE
20 SHOWN YOU THAT THERE IS EVIDENCE THAT THEY USED THIS
21 INFORMATION. BUT USE IS NOT REQUIRED.

22 YOU SEE FROM THE INSTRUCTIONS THAT
23 WRONGFUL ACQUISITION OF TRADE SECRET IS, IN ITSELF,
24 ACTIONABLE. THAT'S SLIDE 806.

25 AND CAN WE GO DOWN BELOW THAT?

26 IMPROPERLY ACQUIRED, USED OR DISCLOSED.
27 SO ACQUISITION ITSELF, EVEN WITHOUT PROOF OF USE, AND I
28 THINK WE HAVE AMPLE USE OF PROOF OF USE, IS NOT

1 NECESSARY.

2 MUCH OF THIS, THE DEFENDANTS DON'T DENY.
3 THEY DON'T DENY THAT THEY TOOK IT. I DON'T THINK THEY
4 ARE GOING TO DENY THIS WAS INFORMATION THAT WAS
5 ACTUALLY OWNED BY TCW. I DON'T THINK THEY ARE GOING TO 09:49AM
6 DENY THAT THIS WAS INFORMATION THAT ACTUALLY GAVE TCW A
7 COMPETITIVE ADVANTAGE. I DON'T THINK THEY ARE GOING TO
8 DENY THAT TCW ACTUALLY TOOK REASONABLE STEPS TO PROTECT
9 ITS CONFIDENTIAL INFORMATION.

10 JUST ONE THING ON THAT. SLIDE 445, YOU 09:50AM
11 SAW TCW'S POLICY MANUAL ABOUT OWNERSHIP AND
12 CONFIDENTIALITY AGREEMENT SLIDE 447. MR. KALE TOLD YOU
13 THAT PEOPLE DON'T GET HIRED AT TCW UNLESS THEY SIGNED
14 CONFIDENTIALITY AGREEMENT.

15 MR. LUCIDO ADMITTED -- THIS IS SLIDE 09:50AM
16 451 -- THAT HE KNEW, AS A TCW EMPLOYEE, HE HAD A DUTY
17 TO PROTECT CONFIDENTIAL INFORMATION. I DON'T THINK
18 THERE'S ANYTHING HERE -- MANY THINGS IN THIS CLAIM THAT
19 ARE ACTUALLY IN DISPUTE.

20 THE BWIC BROWSER AND SECURITY ANALYZER, 09:50AM
21 YOU HEARD EVIDENCE THAT THIS TOOK THE DEVELOPMENT
22 EFFORTS OF 20 TCW EMPLOYEES, INCLUDING PH.D.'S TIME TO
23 DEVELOP. MR. MOORE, THE PROGRAMMER WHO WENT OVER,
24 ADMITTED THAT THESE PLATFORMS GAVE TCW A COMPETITIVE
25 ADVANTAGE. THIS IS A, SLIDE 452, MR. MOORE'S 09:51AM
26 TESTIMONY.

27 MR. SANTA ANA THOUGHT THE ANALYTICAL
28 SYSTEMS WERE SO GOOD THAT HE TOLD MR. KALE TO PREPARE A

1 TECHNOLOGY PRESENTATION FOR CLIENTS. SLIDE 455.

2 AND THAT THEY WOULD -- IT WOULD BE
3 ACTUALLY HANDED OUT, THE DESCRIPTION, AT CLIENT
4 MEETINGS AND THEN COLLECTING IT AFTERWARDS.

5 ALL THEIR CONDUCT, WHILE THEY WERE AT
6 TCW, IS INCONSISTENT WITH THE CLAIMS THAT THEY ARE
7 MAKING NOW. WHILE THEY ARE AT TCW THESE WERE -- THIS
8 WAS NOT AN ENDED -- FOR EXAMPLE, THE BWIC BROWSER AND
9 THE SECURITY ANALYZER WERE NOMINATED FOR AN INNOVATION
10 AWARD. SLIDE 456.

09:51AM

09:52AM

11 AND YOU WILL SEE, MR. GUNDLACH AND
12 OTHERS BRAGGED ABOUT THESE PLATFORMS, THESE SPECIAL
13 UNIQUE DATABASES WE HAD AT -- THAT THERE WERE AT TCW.

14 MR. SMITH IDENTIFIED THE THREE
15 CATEGORIES, THAT'S SLIDE 458. THEY BROUGHT IN AN
16 EXPERT, MR. CONTINO, ONLY TO DISCUSS THAT RIGHT HAND,
17 THE INFRASTRUCTURE OF THE OPERATING ENVIRONMENT. AND
18 HE ONLY DISCUSSED THE BWIC BROWSER AND THE SECURITY
19 ANALYZER. THEY DIDN'T BRING ANY EXPERT IN HERE TO TELL
20 YOU THAT EVERYTHING UNDER THE FIRST 2 COLUMNS WAS NOT
21 TRADE SECRETS.

09:52AM

09:52AM

22 AND MR. CONTINO TOLD YOU THAT HE THOUGHT
23 THEY WERE NOT TRADE SECRETS BECAUSE THEY DON'T RELATE
24 SPECIFICALLY TO FUTURE INVESTMENT PERFORMANCE. WELL,
25 YOU ARE NOT GOING TO GET A JURY INSTRUCTION THAT SAYS
26 THINGS CAN ONLY BE TRADE SECRET IF THEY ONLY RELATE TO
27 FUTURE INVESTMENT PERFORMANCE.

09:52AM

28 OF COURSE TCW WAS HARMED BY THIS. YOU

1 SAW FROM MR. CAHILL THAT WE HAD TO SEND OUT LETTERS,
2 SLIDE 460, ABOUT IDENTITY THEFT. WE HAD TO TELL PEOPLE
3 THAT YOUR PRIVATE PERSONAL INFORMATION HAD BEEN
4 COMPROMISED. ANOTHER IS 461.

5 AND THERE WAS CONCERN MR. CAHILL TOLD 09:53AM
6 YOU ABOUT TCW'S REPUTATION; THAT'S SLIDE 586. SO IT
7 REALLY WON'T WASH FOR THEM TO GET UP HERE AND SAY, TCW
8 WASN'T HARMED BY ANY OF THIS.

9 AND WITHIN A MONTH OF LEAVING TCW
10 MR. GUNDLACH, JUST WITHIN WEEKS, HE WAS CLAIMING THAT 09:53AM
11 THEY WERE ALREADY RECREATING THE SAME SYSTEMS AT
12 DOUBLELINE. IF WE COULD LOOK AT SLIDE 465. THIS IS
13 FROM ONE OF HIS WEBCASTS. THEY ARE HARD AT WORK
14 REBUILDING AND ENHANCING, 478.

15 HE TALKS ABOUT IF YOU HAVE DONE IT ONCE, 09:54AM
16 YOU CAN DO IT AGAIN, WORD FOR WORD.

17 476. THIS IS ACTUALLY A FILING THAT
18 THEY MADE WITH THE SEC WHICH THEY LATER WITHDREW, WHERE
19 THEY SAID THEY WERE USING SUBSTANTIALLY THE SAME
20 ANALYTICS AT DOUBLELINE. 09:54AM

21 625. THIS IS IN EVIDENCE, SOMETHING
22 THAT MR. GUNDLACH WROTE. HE SAYS, OBVIOUSLY WE BUILT A
23 WORLD CLASS SYSTEM AT TCW. WE'RE GOING TO REPLICATE
24 THAT. AND 585.

25 HE SAYS, WE'VE HIRED THE THREE BEST 09:54AM
26 PROGRAMMERS WITHIN THE TEAM. WE THINK WE CAN BUILD THE
27 ENTIRE PLATFORM AND IMPROVEMENTS. MY GUYS ARE TELLING
28 ME THEY CAN GET IT DONE IN A WEEK.

1 SO THIS IS -- THIS IS -- IT'S CLEAR THAT
2 THEY SAID, THEY BRAGGED ABOUT HOW WE HAVE THE SYSTEM.
3 AND THAT'S WHAT THEY WANTED CLIENTS TO KNOW. AND THESE
4 REPRESENTATIONS WERE TRUE. THEY COPIED, ESSENTIALLY,
5 VERBATIM, A MARKETING PROGRAM THAT DESCRIBED -- A
6 BROCHURE THAT DESCRIBED TCW'S ANALYTICS; THAT'S SLIDE
7 30. YOU SAW THAT EARLY IN THE TRIAL. THE DESCRIPTION
8 OF THE ANALYTICS WAS WORD FOR WORD THE SAME AS AT TCW.

09:55AM

9 AND THEN MR. MOORE, HAD A 10-MINUTE
10 CONVERSATION WITH A COUPLE OF PEOPLE AND WENT OFF TO
11 WRITE THE SOURCE CODE. THIS IS IF WE CAN PLAY
12 MR. MOORE'S VIDEO DESIGNATION, DEPOSITION 190.

09:55AM

13
14 (VIDEO CLIPS PLAYED.)

09:56AM

15
16 MR. QUINN: THIS IS A DIFFERENT ISSUE. THEY
17 DIDN'T USE VERSION CONTROL SO THERE WEREN'T ANY
18 FOOTPRINTS LEFT FOR THAT FIRST MONTH OF PROGRAMMING
19 THAT MR. MOORE WAS DOING. AND YOU WILL RECALL THAT
20 ISSUE.

09:56AM

21 DO WE HAVE 190?

22 NOPE? OKAY.

23 BUT MR. HICKS, YOU RECALL, ANALYZED AND
24 COMPARED THE TCW SOURCE CODE, WHICH ARE THE BASIC
25 INSTRUCTIONS TO TELL A COMPUTER WHAT TO DO, WITH THE
26 DOUBLELINE SOURCE CODE. AND HE CONCLUDED THAT IT WAS
27 LIKELY THAT THE DOUBLELINE'S CODE WAS DERIVED FROM TCW.
28 SLIDE 468.

09:56AM

1 AND HE FOUND SIMILARITY AFTER
2 SIMILARITY. IF WE LOOK AT SLIDE 61.

3 AND SLIDE 62.

4 AND EVEN MR. CONTINO, THEIR EXPERT,
5 ADMITTED THAT AN EXPLANATION FOR THE SIMILARITIES IS
6 THAT MR. MOORE AND MR. ZHANG, THIS IS SLIDE 469, HAD
7 COPIED THE TCW SOURCE CODE. HE SAID HE WAS SIMPLY
8 OFFERING AN ALTERNATIVE EXPLANATION. HE SAID HE COULD
9 NOT RULE OUT THAT IT WAS COPIED.

09:57AM

10 SO EARLY ON IN THE TRIAL, I DON'T KNOW
11 WHETHER MANY OF YOU -- YOU MIGHT REMEMBER THIS. EARLY
12 ON WE HEARD THEY WERE TAKING THIS AS PART OF A BUSINESS
13 CONTINUITY PLAN. I DON'T KNOW IF ANY OF YOU RECALL
14 THAT, BUT WE DIDN'T HEAR MUCH ABOUT THAT.

09:58AM

15 THEY SAID, WELL, WE ALSO HEARD THAT IT'S
16 NOT REALLY TRADE SECRET. WHAT WE HAD AT TCW WASN'T
17 TRADE SECRET, BUT THAT'S DIRECTLY CONTRADICTED BY WHAT
18 THEY SAID WHEN THEY WERE AT TCW. IF WE LOOK AT SLIDE
19 475; THAT'S MR. GUNDLACH TALKING THERE. AND HE'S
20 SAYING THAT WE HAVE THIS SYSTEM THAT NEVER FAILS TO
21 IMPRESS.

09:58AM

09:58AM

22 AND THEN I WON'T TAKE THE -- I WISH I
23 HAD THE TIME TO PLAY IT, BUT I DON'T REALLY; MR.
24 GUNDLACH'S TESTIMONY ABOUT THE -- MAYBE THE RECIPE IN
25 THE DINING ROOM, WHICH I'M SURE MANY OF YOU REMEMBER,
26 WHETHER THERE WAS ANYTHING PROPRIETARY. COMPLETELY
27 DIFFERENT FROM WHAT HE WAS SAYING WHEN HE WAS BRAGGING
28 ABOUT THE WORLD CLASS PROPRIETARY SYSTEMS THAT EXISTED

09:58AM

1 AT TCW.

2 THEY SET A REMEDIATION PROGRAM. THEY
3 DIDN'T BRING IN -- THEY TOLD YOU THEY'D BRING IN --
4 THEY DIDN'T BRING IN THE FOLKS FROM STROZ FREIDBERG,
5 THE REMEDIATORS, TO EXPLAIN WHAT THEY DID AND TO
6 JUSTIFY IT. YOU HEARD THAT SYSTEM WAS BASICALLY AN
7 HONOR SYSTEM; PEOPLE WHO GET NOTICE IN ADVANCE.

09:59AM

8 AND THEN THEY WOULD SAY, IT WAS A
9 QUESTION: DO YOU HAVE ANY TCW INFORMATION? DO YOU --
10 WHAT COMPUTERS DO YOU HAVE?

09:59AM

11 AND MR. MOORE TOLD YOU THEY NEVER ASKED
12 HIM IF HE HAD A LAPTOP -- EVER ASKED HIM IF HE HAD A
13 LAPTOP AT HOME.

14 YOU WERE TOLD -- YOU HEARD EVIDENCE THAT
15 MR. DAMIANI HAD RUN A SECURE DELETE SOFTWARE BEFORE HIS
16 DEVICE WAS TURNED IN, AND HAD ERASED 5,000 FILES. YOU
17 WERE TOLD IN AN OPENING STATEMENT YOU WOULD HEAR FROM
18 MR. DAMIANI; YOU DIDN'T HEAR FROM MR. DAMIANI. JUST
19 LIKE MR. MOORE DIDN'T COME IN HERE, LIVE, TO TESTIFY.

09:59AM

20 AS MR. HICKS CONCLUDED, THIS IS SLIDE
21 482 -- THIS REMEDIATION SYSTEM JUST SIMPLY WASN'T
22 EFFECTIVE; DID NOT ACCOMPLISH WHAT THEY CLAIMED TO
23 ACCOMPLISH; AND IT -- I THINK, FRANKLY, THEY DIDN'T
24 REALLY -- THEY DIDN'T REALLY DEFEND IT IN THE TRIAL.

10:00AM

25 AS TO SPOILIATION OF EVIDENCE, I'VE
26 MENTIONED SOME OF THAT. THE VERSION CONTROL WASN'T
27 IMPLEMENTED, SO YOU DON'T KNOW HOW -- YOU CAN'T SEE
28 EXACTLY HOW THE SOFTWARE WAS CREATED UNTIL AFTER THE

10:00AM

1 LAWSUIT WAS STARTED.

2 AND THIS IS SOMETHING THAT YOU CAN
3 CONSIDER. YOU ARE GOING TO GET THIS JURY INSTRUCTION,
4 802. YOU MAY CONSIDER -- AND IN CONSIDERING LIABILITY,
5 WHETHER ONE PARTY INTENTIONALLY CONCEALED OR DESTROYED
6 EVIDENCE. AND THAT'S SOMETHING THAT YOU CAN DRAW
7 UNFAVORABLE INFERENCES FROM, IF YOU CONCLUDE THAT THAT
8 HAPPENED.

10:00AM

9 SO, IF I COULD TURN NOW TO THE
10 INTENTIONAL INTERFERENCE CLAIM. YOU KNOW, COMPETITION
11 IS THE LIFEBLOOD OF OUR ECONOMIC SYSTEM, BUT AGREEMENTS
12 AND RESPECTING CONTRACTS ARE ALSO PART OF THE LIFEBLOOD
13 OF OUR SYSTEM. AND YOU CAN'T COMPETE BY INTERFERING
14 WITH OTHER PEOPLE'S CONTRACTS; THAT IS, YOU WILL BE
15 INSTRUCTED, A TORT.

10:01AM

10:01AM

16 AND YOU KNOW THE SPECIAL MORTGAGE CREDIT
17 FUNDS WERE ALL CLOSED END FUNDS, WHICH MEANS THE
18 INVESTORS HAD ENTERED INTO CONTRACTS TO KEEP THEIR
19 MONEY THERE WITH THE TCW ENTITIES, FOR A PERIOD OF
20 TIME. THERE'S NO DISPUTE ABOUT THAT.

10:01AM

21 BUT AFTER MR. GUNDLACH LEFT, HE WORKED
22 DELIBERATELY AND CONSCIOUSLY TO TRY TO PERSUADE THOSE
23 INVESTORS TO BREAK THOSE CONTRACTS, AND TO BRING THEIR
24 INVESTMENTS OVER TO DOUBLELINE.

25 SLIDE THREE -- 230 IS THE -- ARE THE
26 ELEMENTS OF AN INTENTIONAL INTERFERENCE CLAIM. AND THE
27 IMPORTANT THINGS I WANT TO POINT OUT HERE IS THAT
28 IT'S -- WE HAVE TO PROVE THAT THE CONDUCT OF THE

10:01AM

1 CONTRACT WAS JUST MADE MORE DIFFICULT -- NOT
2 IMPOSSIBLE, MORE DIFFICULT.

3 WE DON'T HAVE TO PROVE THAT
4 MR. GUNDLACH'S CONDUCT WAS THE ONLY REASON THE
5 CONTRACTS WERE CHANGED, OR THE ONLY REASON IT BECAME
6 HARDER TO PERFORM THE CONTRACTS. THEY MERELY HAVE TO
7 BE A SUBSTANTIAL FACTOR. AND MR. GUNDLACH'S INTENTION
8 TO INTERFERE WITH THESE CONTRACTS IS ABSOLUTELY CLEAR.
9 I WON'T GO THROUGH THE TIME TO SHOW IT TO YOU, BUT I
10 SUSPECT YOU REMEMBER ANYWAY.

10:02AM

10:02AM

11 YOU REMEMBER IN THAT BROSSY REPORT, THE
12 CONSULTANT'S REPORT, WHAT -- THE PROPOSAL SHOWED THOSE
13 FUNDS ALL MOVING OVER TO -- IT WASN'T CALLED DOUBLELINE
14 THEN AT THE TIME, ABLE GRAPE; THAT PRO FORMA SHOWED ALL
15 THOSE FUNDS MOVING OVER. IT WAS ABSOLUTELY CLEAR THAT
16 THAT WAS THEIR -- THAT WAS THEIR INTENTION.

10:03AM

17 AND THEY SET ABOUT -- RIGHT AFTER THEY
18 WERE GONE FROM TCW, TO INTERFERE WITH THOSE CONTRACTS.
19 THERE'S A SERIES OF CONFERENCE CALLS. THE TRANSCRIPTS
20 OF THOSE CALLS, YOU HAVE SEEN PART OF IT. THE FULL
21 TRANSCRIPTS ARE IN EVIDENCE. AND I THINK THE IMPORTANT
22 THING TO REMEMBER IS THAT WHEN MR. GUNDLACH IS TALKING
23 ON THESE CALLS, HE'S NOT JUST ANYONE. THIS ISN'T JUST
24 SOME OUTSIDER. HE'S A MAN WHO HAS CREATED THESE FUNDS,
25 SOLD THE FUNDS, HE'S THE FACE OF THE FUNDS, NOW TALKING
26 TO THE INVESTORS THAT HE PERSONALLY BROUGHT INTO THE
27 FUNDS.

10:03AM

10:03AM

28 DO YOU THINK MAYBE THE THINGS HE TO SAY,

1 AT THAT POINT, MIGHT CARRY MORE WEIGHT? I THINK SO.
2 AND WHAT HE DID WAS VERY, VERY DAMAGING. THE FIRST
3 CALL WAS ON SEPTEMBER 8TH. THE TRANSCRIPT OF THAT IS
4 EXHIBIT 2140.

5 AND, IF WE COULD LOOK AT, I GUESS, 640,
6 MIKE? DECEMBER 8TH. I'M SORRY, DECEMBER 8TH. AND IF
7 WE COULD LOOK AT 640 HE'S GETTING QUESTIONS, HE SAYS,
8 ARE COMING IN OVER THE E-MAIL. AND HE SAYS, HOW MANY
9 PEOPLE HAVE LEFT? HE SAYS IT'S THE ENTIRE TEAM. AND
10 THEN -- 641.

10:03AM

10:04AM

11 AND THEN HE SAYS, WELL, THE KEY MAN
12 CLAUSES ARE TRIGGERED, SO THE FUNDS ARE GOING TO -- HE
13 SAYS HERE, FOLLOW THE DOCUMENTS.

14 I THINK THAT'S KIND OF INTERESTING
15 BECAUSE HERE, INITIALLY, AT THIS POINT HE'S NOT
16 REGISTERED. HE CAN'T ACCEPT ANY MONEY. AT THIS POINT
17 HE'S SAYING THEY ARE GOVERNED BY CONTRACTS. HE'S
18 ACKNOWLEDGING THEY ARE GOVERNED BY CONTRACTS, BUT LOOK
19 WHAT COMES NEXT.

10:04AM

20 642. IF YOU HAVE ANY QUESTIONS, WE'LL
21 BE -- GIVE US A CALL. WE'LL BE HAPPY TO DEAL WITH
22 THAT. AND HE'S INVITING CLIENTS TO CONTACT HIM, TO
23 ADVISE THEM ABOUT WHAT THEIR CONTRACTS WITH TCW MEAN.
24 NOW, YOU FIND THAT KIND OF INTERESTING? REMEMBER WHEN
25 HE'S ON THE STAND I ASKED HIM -- I CONFRONTED HIM WITH
26 THAT KEY MAN CLAUSE AND SAID, IT'S COMPLETELY WRONG
27 WHAT YOU WERE TELLING PEOPLE, WE'LL GET TO THAT. AND
28 HE SAID WELL, I DIDN'T HAVE A COPY OF THE CONTRACT.

10:04AM

10:05AM

1 WELL, HE'S TELLING PEOPLE GIVE, ME A CALL. WE'LL GIVE
2 YOU ADVICE ABOUT THE CONTRACTS.

3 AND HE GOES ON TO SAY, 643, THESE
4 PORTFOLIOS ARE OUR CHILDREN. THEY ARE OUT ON THE
5 STREET. WE MISS THEM.

10:05AM

6 644. WE'RE GOING TO MOVE QUICKLY, GET
7 IT ORGANIZED. WE HOPE OUR CHILDREN WILL COME BACK TO
8 US; THAT'S THE DECEMBER 8TH CALL.

9 THEN, WHAT HE DIDN'T TELL CLIENTS WAS
10 THAT FIVE DAYS LATER, ON DECEMBER 13TH, IF WE COULD
11 LOOK AT EXHIBIT 620, AND THIS IS IN EVIDENCE, BUT WE
12 DIDN'T TALK ABOUT THIS IN THE TRIAL. DOUBLELINE
13 ENTERED INTO A CONTRACT WITH OAKTREE, DIVIDING UP
14 BETWEEN THE TWO OF THEM TCW'S ASSET. THESE TWO FUNDS,
15 THIS IS SLIDE 301.

10:05AM

10:06AM

16 IT COMES FROM EXHIBIT 620-2, AGREEMENT
17 BETWEEN OAKTREE AND DOUBLELINE. AND THEY ARE DIVIDING
18 UP TCW'S MONEY ALREADY. YEAH, THIS IS THE SAME OAKTREE
19 SPUN OUT -- YOU HEARD ABOUT THEY LEFT TCW SOME YEARS
20 BEFORE. THEY KNEW THESE WERE CLOSED-END FUNDS. THEY
21 ARE ALREADY DOING IT.

10:06AM

22 THE NEXT CALL, SEPTEMBER 22ND, LESS THAN
23 NINE DAYS AFTER THE OAKTREE AGREEMENT. BY NOW THEY ARE
24 REGISTERED WITH THE SEC, THEY CAN MANAGE MONEY. AND
25 THE GLOVES ARE OFF. AND THE TONE YOU ARE GOING TO SEE
26 IS DIFFERENT.

10:06AM

27 645, IN THIS CALL HE SAYS WE'RE TRYING
28 TO REACH OUT TO ALL THE INVESTORS.

1 646, HE SAYS I'M SHOULDER TO SHOULDER
2 WITH YOU. THE DELIVERABLE. IT'S COMPLETELY CHANGED.

3 647, HE TELLS THE PEOPLE, IT'S ALL NOW
4 INTACT AT DOUBLELINE. IT'S MOVED TO TCW BECAUSE OF MY
5 SUDDEN AND UNEXPECTED TERMINATION.

10:07AM

6 648, AND HE SAYS I WAS COMPLETELY
7 UNPREPARED FOR THE SUCKER PUNCH AND THE TURMOIL, ET
8 CETERA.

9 NOW, THAT'S INTERESTING BECAUSE YOU KNOW
10 THAT'S NOT TRUE. THEY HAD BEEN PREPARING A BUSINESS,
11 TAKEN ALL THE SOFTWARE, WERE READY TO CLOSE ON SPACE,
12 WHERE ARE THEY GOING TO HANG THE DONALD JUDD ART. HE
13 WASN'T UNPREPARED. HE JUST DIDN'T THINK -- HE THOUGHT
14 HE HAD THE LUXURY OF MORE TIME THAN IT TURNED OUT HE
15 DID.

10:07AM

16 THEN 649, HE TELLS PEOPLE THE ENTIRE
17 MORTGAGE TEAM IS THERE EXCEPT FOR A COUPLE OF PEOPLE
18 WHO HAVE GREEN CARD ISSUES. AND A COUPLE OF PEOPLE
19 WE'RE TAKING THIS OPPORTUNITY TO CULL.

10:07AM

20 THIS IS LIKE A TRIPLE WHAMMY. WHAT IS
21 HE DOING HERE? ONE, HE'S TRASHING ALL THE TCW
22 EMPLOYEES WHO HAVE STAYED BEHIND. TWO, HE'S AGAIN
23 TELLING TCW EMPLOYEES THAT IF THEY HONOR THEIR
24 CONTRACT -- THE CLIENTS, THAT IF THEY HONOR THEIR
25 CONTRACTS AT TCW, THEIR INVESTMENTS WON'T BE SAFE
26 BECAUSE THEY ARE BEING MANAGED BY PEOPLE WHO AREN'T
27 COMPETENT. AND HE'S LYING WHEN HE SAYS THAT I'M ONLY
28 LEAVING BEHIND PEOPLE I WANT TO CULL AND PEOPLE WITH

10:07AM

10:08AM

1 GREEN CARD ISSUES, AS MR. SANTA ANA TOLD US.

2 IF WE COULD LOOK AT SLIDE 246, WE
3 CONFRONTED MR. SANTA ANA WITH THIS. "DID YOU SAY THAT
4 THAT'S TRUE? THERE WEREN'T ANY GOOD PEOPLE LEFT AT
5 TCW?" AND HIS ANSWER WAS NO.

10:08AM

6 AND THEN BACK TO 650. MR. GUNDLACH'S
7 CALL, HE SAYS, YOU KNOW, WE HAVE A BETTER UNDERSTANDING
8 THAN A RANDOMLY CHOSEN INVESTMENT FIRM. RANDOMLY
9 CHOSEN INVESTMENT FIRM? HE KNOWS MET WEST WON THE VERY
10 SAME AWARD THAT HE DID. HE DIDN'T LIKE TO ADMIT IT ON
11 THE STAND.

10:09AM

12 IF WE LOOK AT SLIDE 576, DO YOU REMEMBER
13 THIS TESTIMONY? HE QUIBBLED WITH ME OVER IT. AND HE
14 SAID, "WELL, I GOT IT IN A DIFFERENT YEAR," BUT
15 ULTIMATELY HE AGREED, YEAH, THEY GOT THE SAME AWARD
16 THAT HE GOT.

10:09AM

17 HE ALSO KNOWS -- SLIDE 577, THAT THAT
18 COMING YEAR, NOTWITHSTANDING EVERYTHING THEY HAD TO GO
19 THROUGH AT MET WEST, THEY WERE NOMINATED FOR THE AWARD
20 AGAIN.

10:09AM

21 HE KNOWS THAT MET WEST BROUGHT OVER \$30
22 BILLION IN ASSETS, INCLUDING 18 BILLION IN MORTGAGES.
23 NOW, IF WE GO BACK TO MR. GUNDLACH'S REMARKS, 651.
24 HE'S SAYING THIS IS A RANDOMLY CHOSEN FIRM.

25 652. WHAT CAN YOU DO? PRESSURE TCW;
26 PRESSURE SG; TAD RIVELL.

10:09AM

27 653. HE'S VERY CANDID HERE. GET THE
28 FUNDS OVER TO DOUBLELINE.

1 654. WRITE LETTERS.

2 655. TCW IS IN FIDUCIARY BREACH. THESE
3 LEGAL PREPOSITIONAL PHRASES THEY ARE TRYING TO HIDE
4 BENEATH HAVE BEEN BLOWN TO HIGH HELL.

5 656. AND THEREFORE, WE DON'T CARE WHAT
6 THE DOCUMENTS SAY IN SOME SCHEMED WAY TO SHANGHAI THE
7 FUNDS.

10:10AM

8 FOLKS, WHAT IS HE SAYING HERE? WE DON'T
9 CARE THAT THERE'S A CONTRACT. HE KNOWS THERE'S A
10 CONTRACT. HE'S TELLING THEM, WE DON'T CARE IF THERE'S
11 A CONTRACT.

10:10AM

12 AND HE KNOWS, AND THIS IS BASICALLY A
13 CONFESSION. THE LEGAL PREPOSITIONAL PHRASES THAT HE'S
14 TALKING ABOUT, THOSE ARE LEGAL PREPOSITIONAL PHRASE HE
15 CREATED WHEN HE CREATED THESE FUNDS. HE KNOWS THIS
16 BETTER THAN ANYONE. HE'S JUST SAYING WHATEVER HE
17 NEEDED TO SAY TO GET THE KIND OF CLIENTS TO BREACH
18 THEIR CONTRACTS AND COME TO TCW.

10:10AM

19 HE MAKES CLEAR WHAT HE WANTS.

20 657, 658, 659, VOTE WITH YOUR FEET.
21 VOTE WITH YOUR FEET. TAKE YOUR MONEY OUT. THIS IS
22 INTERFERING.

10:10AM

23 AND THEN 660, NOBODY'S MANAGING YOUR
24 MONEY.

25 ONE CAN IMAGINE YOU TRUST -- YOU'RE A
26 PENSION FUND. SOMEBODY PERSUADES YOU THAT WE'RE GREAT,
27 WE CAN MANAGE YOUR MONEY. THAT PERSON LEAVES, AND THE
28 PERSON WHO YOU PUT CONFIDENCE IN IS TELLING YOU NOBODY

10:11AM

1 IS MANAGING YOUR MONEY RIGHT NOW.

2 661, BECAUSE OF THE KEY MAN THE FUNDS
3 ARE IN A SUSPENDED PHASE.

4 NOW, YOU REMEMBER HE WAS ON THE STAND, I
5 CONFRONTED HIM WITH THE LANGUAGE, THAT'S A LEGAL
6 INTERPRETATION THAT IS SIMPLY FALSE. YOU SAW THE
7 LANGUAGE. WHAT IT SAYS IS THAT IF THE KEY MAN --
8 DESIGNATED KEY MAN LEAVES THERE'S 90 DAYS, TCW HAS 90
9 DAYS TO -- FOR PEOPLE TO GET ACQUAINTED WITH THE NEW
10 TEAM, FOR THE ADVISORY COMMITTEE TO GET TO KNOW THEM,
11 AND ONLY IF AFTER 90 DAYS PASSES, AND THE ADVISORY
12 COMMITTEE REJECTS THE NEW TEAM, AND 66 AND TWO THIRDS
13 OF THE INVESTORS VOTE TO STOP THE INVESTMENT PERIOD IS
14 IT FROZEN? NOW, THAT'S THE FACT.

10:11AM

10:12AM

10:12AM

10:12AM

10:12AM

15 WHAT DID HE TELL YOU? "I DIDN'T KNOW.
16 I DIDN'T HAVE A COPY OF THE CONTRACT." DO YOU BELIEVE
17 THAT? MR. LUCIDO WAS AN INVESTOR; OTHER PEOPLE WERE
18 THEIR INVESTORS. HE SAID THE PHONE WAS RINGING OFF THE
19 HOOK FROM INVESTORS. YOU REALLY COULDN'T GET A COPY OF
20 THE CONTRACT TO QUOTE IT ACCURATELY?

21 SO, IF WE LOOK AT SLIDE 257, WHEN I
22 CONFRONTED HIM WITH THIS: WOULDN'T IT BE TRUE TO SAY
23 THAT. YOU KNEW HE WAS WRONG. SO HE SAYS, I'M NOT
24 GOING TO AGREE WITH YOU. I WAS GIVING MY BEST ADVICE
25 IN AN HONEST AND SINCERE WAY. HE SAYS, WELL, MAYBE I
26 WASN'T ACCURATE BUT I WAS BEING SINCERE. I LEAVE IT TO
27 YOU TO JUDGE AS TO WHAT HIS GOALS WERE.

28 662 SAYS THE FUNDS WERE FROZEN. SO I

1 DON'T -- I'M BEING TOLD I'M RUNNING OUT OF TIME HERE.

2 THERE'S A DECEMBER 29 CALL WHERE HE
3 TURNS UP THE HEAT EVEN MORE; SAYS MET WEST ONLY HAS
4 THREE PROFESSIONALS; THAT'S 668.

5 THERE'S NOBODY AT TCW WHO HAS -- OF ANY
6 SIGNIFICANCE; THAT'S AT MET WEST, THAT'S 672.

10:13AM

7 THAT SOC-GEN HAS NO INTEREST IN THE
8 INVESTMENT MANAGEMENT BUSINESS. 675. YOU KNOW THAT'S
9 NOT TRUE. THEY JUST SPENT \$300 MILLION INCLUDING A
10 \$100 MILLION PREMIUM TO GET SOMEBODY IN WHO COULD
11 MANAGE THOSE FUNDS. AND THIS EFFORT WAS SUCCESSFUL;
12 THIS CAMPAIGN THAT HE UNDERTOOK WAS SUCCESSFUL.

10:13AM

13 HE TRASHES TCW, 679. HE SAYS MY PHONE
14 IS RINGING OFF THE HOOK WITH PEOPLE WHO SEE TCW AS A
15 SINKING SHIP.

10:14AM

16 678. TCW IS NOT INTERESTED IN
17 INVESTORS. I DON'T HAVE TIME TO SHOW YOU ANY MORE. HE
18 TELLS PEOPLE -- HE TELLS LOU LUCIDO SLIDE NUMBER 279,
19 KEEP REACHING OUT TO THE INVESTORS. IT'S A CAMPAIGN
20 AND IT WORKED.

10:14AM

21 TCW NEVER PROJECTED THAT IT WOULD LOSE,
22 IF YOU LOOK AT THE PROJECTIONS THAT WERE DONE, AND WHEN
23 THEY WERE -- AS YOU ALWAYS WOULD DO A PROJECTION OF
24 MODEL COSTS AND REVENUES AND WHAT WOULD YOU LOSE IF YOU
25 MAKE A CHANGE; NEVER PROJECTED THIS WOULD HAPPEN. THEY
26 THOUGHT THEY COULD RELY ON THOSE CONTRACTS. IF WE LOOK
27 AT 296, BACK IN AUGUST, THIS IS ONE OF THOSE SCENARIOS
28 THAT WERE RUN. AND YOU SEE HERE THEY HAD NO REASON TO

10:14AM

1 THINK THEY WOULD LOSE ANY OF THESE ASSETS.

2 BUT MR. STERN WAS GETTING CALLS FROM
3 INVESTORS WHO HAD SAID THEY HAD SPOKEN TO MR. GUNDLACH;
4 THAT'S 286.

5 NOW, NO DOUBT THEY WERE UNHAPPY
6 INVESTORS. THERE WERE PEOPLE WHO HAD CONFIDENCE IN
7 GUNDLACH; THEY DIDN'T LIKE THE CHANGE. BUT
8 MR. GUNDLACH WAS POURING GASOLINE ON THE FIRE. AND
9 REMEMBER THAT JURY INSTRUCTION I SHOWED YOU. IT
10 DOESN'T HAVE TO BE THE ONLY CAUSE. IT ONLY HAS TO BE A
11 SUBSTANTIAL CAUSE. AND THIS, NO DOUBT, WAS A
12 SUBSTANTIAL CAUSE.

13 287. MR. STERN ULTIMATELY HAD TO MAKE
14 CHANGES IN THE CONTRACT. AND HE SAID IT WAS --
15 MR. GUNDLACH'S INTERFERENCE WAS A SUBSTANTIAL FACTOR;
16 THAT'S 288. AND WHAT DID THEY DO? THEY -- AND THESE
17 WERE MAJOR CHANGES, REDUCED THE PERFORMANCE FEES FROM
18 20 PERCENT TO FIVE PERCENT; MANAGEMENT FEES IN HALF;
19 TWO PERCENT TO ONE PERCENT. AND GAVE SOME PEOPLE A
20 CHANCE TO GET OUT, A LIQUIDITY OPTION. AND IT COST
21 HUNDREDS OF MILLIONS OF DOLLARS.

22 THEY ARE GOING TO GET UP HERE AND SAY,
23 WELL, THEY ALL WOULD HAVE LEFT ANYWAY. WHAT'S THE
24 EVIDENCE OF THAT? THEY BROUGHT TWO INVESTORS TO
25 TESTIFY TO LIVE. MR. SHERMAN WITH RELIANCE, AND YOU
26 HEARD HE WAS NOT AN INVESTOR IN THE SPECIAL MORTGAGE
27 CREDIT FUND. THEY ALSO SHOWED YOU THE TESTIMONY OF
28 MR. JIM THOMPSON, WHO WAS WITH ORIX. YOU HEARD HE WAS

1 NOT AN INVESTOR IN THE SPECIAL MORTGAGE CREDIT FUND.

2 WHY WOULD THEY -- IF THIS ALL WOULD HAVE
3 HAPPENED ANYWAY, AND THE ASSETS WOULD HAVE MIGRATED
4 OVER TO DOUBLELINE WHY GO THROUGH THE EFFORT OF
5 ORGANIZING THESE CALLS AND SAYING THESE VICIOUS THINGS?

10:16AM

6 THEY LOOKED TO -- MR. GUNDLACH KNEW THAT
7 PEOPLE WOULD LOOK TO HIM FOR ADVICE. HE SAID THAT
8 KNOWING THEY WOULD LOOK TO HIM. AND HE DID IT SEEKING
9 TO DAMAGE TCW AND GET PEOPLE TO BREAK THEIR CONTRACTS,
10 AND HE DID.

10:17AM

11 I'M GOING TO TURN NOW TO WHAT THIS
12 COSTS, IN TERMS OF DAMAGES.

13 TCW SUFFERED DAMAGES. AND WE'RE NOT
14 GOING TO BE TALKING ABOUT DAMAGES RELATING TO TRADE
15 SECRETS. YOU ARE GOING TO SEE THAT THAT'S SOMETHING
16 THE JUDGE IS GOING TO DECIDE. SO I'M GOING TO DISCUSS
17 NOW THE DAMAGES RELATING TO BREACH OF FIDUCIARY DUTY
18 AND RELATING TO THE TORTIOUS INTERFERENCE WITH
19 CONTRACT.

10:17AM

20 TCW SUFFERED DAMAGES FROM THE BREACH OF
21 FIDUCIARY DUTY, AND FROM THE INTERFERENCE WITH THE
22 CONTRACT. PROFESSOR CORNELL CALCULATED THOSE DAMAGES,
23 AND PRESENTED THEM TO YOU.

10:17AM

24 NOW, THEY ALSO CALLED A DAMAGES EXPERT,
25 MR. WALLACE. AND YOU HEARD THAT MR. WALLACE -- SLIDE
26 505 -- THEIR DAMAGES EXPERT DID A CRITIQUE OF MR. -- OF
27 PROFESSOR CORNELL'S DAMAGE ANALYSIS. MR. CORNELL TOLD
28 YOU THAT; THAT HE HAD READ IT AND HE THOUGHT

10:17AM

1 MR. WALLACE HAD SOME GOOD POINTS AND HE INCORPORATED IT
2 IN HIS OPINIONS.

3 DID YOU NOTICE THEY DID NOT ASK
4 THEIR DAMAGES EXPERT, MR. WALLACE, A SINGLE QUESTION
5 ABOUT PROFESSOR CORNELL'S DAMAGES ANALYSIS, EITHER ON 10:18AM
6 BREACH OF FIDUCIARY DUTY, OR INTERFERENCE WITH
7 CONTRACT. THEY LEFT IT ALONE. THEY -- IN OTHER WORDS,
8 THEIR EXPERT CRITIQUED IT, BUT APPARENTLY THEY DIDN'T
9 HAVE ENOUGH CONFIDENCE IN ANY OF THOSE CRITIQUES TO
10 HAVE MR. WALLACE TESTIFY ABOUT -- TO HAVE MR. WALLACE 10:18AM
11 TESTIFY ABOUT PROFESSOR CORNELL'S DAMAGES NUMBERS.
12 THEY DIDN'T HAVE ANY CRITICISMS THAT THEY COULD PRESENT
13 TO YOU.

14 LET ME SPEAK FIRST ABOUT THE
15 INTERFERENCE DAMAGES. THIS IS SLIDE 506. PROFESSOR 10:19AM
16 CORNELL TESTIFIED TO THIS ON DIRECT EXAMINATION. THIS
17 IS BASICALLY A VERY SIMPLE ARITHMETICAL COMPUTATION.
18 THEY DID NOT CHALLENGE PROFESSOR CORNELL'S TESTIMONY
19 THAT TCW SUSTAINED 344.3 MILLION IN LOST PROFITS DUE TO
20 THOSE CHANGES THAT THEY WERE FORCED TO MAKE. 10:19AM

21 THE ONLY ISSUE THEY RAISED WAS WHETHER
22 MR. GUNDLACH'S ACTS WERE THE SOLE CAUSE OF TCW MAKING
23 THOSE CHANGES TO THE INVESTOR CONTRACTS. BUT AS YOU'VE
24 SEEN FROM THAT JURY INSTRUCTION, IT DOESN'T HAVE TO BE
25 THE SOLE FACTOR. IT JUST HAS TO BE A SUBSTANTIAL 10:19AM
26 FACTOR. THAT'S SLIDE 804.

27 THOSE DAMAGES ARE ON SLIDE 508. \$344.3
28 MILLION TO PROFESSOR CORNELL'S CALCULATIONS. NOT

1 CHALLENGED. NOT CHALLENGED.

2 LET'S TURN NOW TO THE FIDUCIARY DUTY
3 DAMAGES. YOU REMEMBER ANDREW SMITH TESTIFIED THAT
4 HAVING TO FIRE A HIGH PROFILE MANAGER BECAUSE OF
5 MISCONDUCT WAS ONE OF THE WORST POSSIBLE OUTCOMES;
6 THAT'S EXHIBIT 509.

10:20AM

7 I MEAN WHAT YOU HAVE TO ASK YOURSELF
8 HERE IS DID MR. STERN HAVE A CHOICE? WHAT'S THE
9 ALTERNATIVE? HE WAITS. HE DOES NOTHING. HE WAITS
10 UNTIL THE PHONE CALL COMES MARCH 1ST? AND THEY SAY
11 WE'LL GIVE YOU 10 PERCENT. WE'RE OUT OF HERE. THE ART
12 IS HUNG? THAT'S NOT A CHOICE. THAT THREATENS THE
13 SURVIVAL OF THE BUSINESS. HE HAD TO ACT, BUT THIS IS
14 ONE OF THE WORST POSSIBLE OUTCOMES.

10:20AM

15 YOU HAVE SOMEBODY YOU HAVE PROMOTED AND
16 MADE THE PUBLIC FACE OF THE FIRM. AND THEN YOU FIRE
17 HIM? YOU HAVE TO FIRE HIM. BUT YOU FIRE HIM? THAT
18 HAS FALLOUT; THAT COSTS.

10:20AM

19 CAN YOU IMAGINE A STAR PLAYER ON ANY
20 TEAM, SPORTS TEAM OR WHATEVER, GETS IN PROBLEM WITH THE
21 LAW, DOES SOMETHING THAT HAS TO BE -- HE HAS TO BE
22 FIRED. SURE, THE TEAM MAKES THE DECISION WE'RE GOING
23 TO FIRE HIM, BUT THAT HAS CONSEQUENCES THOUGH.
24 ATTENDANCE GOES DOWN. FANS ARE MAD, MAYBE. THEY CAN'T
25 SEE HIM PLAY. BUT WHOSE FAULT IS IT? WHOSE TRUE
26 DAMAGE IS IT? THERE'S TRUE DAMAGES THERE, BUT THE
27 PERSON HAD TO BE FIRED. AND THAT'S WHAT HAPPENED HERE.

10:21AM

10:21AM

28 IF WE LOOK AT SLIDE 510. THIS IS

1 EXHIBIT 1096B. PROFESSOR CORNELL'S CALCULATIONS OF THE
2 BREACH OF FIDUCIARY DUTY DAMAGES, THE \$222 THOUSAND
3 NUMBER. NOW, THIS IS ONLY THE DAMAGES RELATING TO THE
4 NON-SPECIAL MORTGAGE CREDIT ASSETS. THESE ARE THE
5 TRADITIONAL ASSETS. AND YOU REMEMBER THAT THIS
6 CALCULATION MEASURES THE DAMAGES FOR THE LOSSES AND
7 FEES THAT TCW INCURRED FOR EVERYTHING BUT THE SPECIAL
8 MORTGAGE CREDIT FUNDS.

10:21AM

9 CLIENTS WHO -- LOSSES FOR FEES FROM
10 CLIENTS WHO WITHDREW DUE TO WHAT MR. SMITH CALLED THE
11 HEADLINE LIST. AND THE CALCULATION IS BASED UPON
12 COMPARING WHAT HAPPENED TO WHAT WOULD HAVE HAPPENED IF
13 MR. GUNDLACH HAD NOT BREACHED HIS FIDUCIARY DUTIES AND
14 STAYED FOR FIVE YEARS; THAT'S THE DELTA HERE.

10:22AM

15 AND MR. SMITH TOLD YOU WHY IT WAS A
16 REASONABLE ASSUMPTION TO BELIEVE THAT A NON-FIDUCIARY
17 DUTY BREACHING MR. GUNDLACH WOULD HAVE STAYED FOR FIVE
18 YEARS. THIS IS SLIDE 511.

10:22AM

19 IF THAT'S WHAT HE LOOKED AT, 512,
20 CONSIDERED HIS AGE, WHAT HE WAS DOING. WASN'T LOOKING
21 TO RETIRE.

10:22AM

22 513. THERE AREN'T MANY JOBS LIKE THIS,
23 WHERE YOU HAVE THE OPPORTUNITY TO MAKE THIS KIND OF
24 MONEY, WHERE MR. GUNDLACH COULD GET SOMETHING BETTER.
25 AND HOW DO YOU KNOW THAT? BECAUSE MR. GUNDLACH
26 NEGOTIATED WITH WAMCO FOR MONTHS AND MONTHS, AND AT THE
27 END OF THE DAY, COULDN'T GET SOMETHING THAT HE LIKED
28 ANY BETTER.

10:23AM

1 SO AS FAR AS THE EVIDENCE GOES IN THIS
2 CASE, TCW WAS THE BEST DEAL HE WAS GOING TO GET. HE
3 HAD ALWAYS BEEN THERE. HE'S A LIFER. IT'S A
4 REASONABLE ASSUMPTION THAT HE WOULD HAVE STAYED.

5 AND IF WE COME BACK TO SLIDE 515,
6 MR. CORNELL TESTIFIED THIS NUMBER FOR THE BREACH OF
7 FIDUCIARY DUTY DAMAGES, HE TESTIFIED TO IT ON DIRECT
8 EXAMINATION, THE DIFFERENCE BETWEEN WHAT HAPPENED, THE
9 HEADLINE RISK AND FOLKS LEAVING, INVESTORS PULLING,
10 VERSUS THE FIVE YEARS.

11 THEY DID NOT CHALLENGE THE TESTIMONY
12 THAT THERE WERE 222 MILLION IN LOST PROFITS DUE TO
13 THESE LOSSES FROM TRADITIONAL ASSETS. THEY DID ONE
14 THING, AND IT WASN'T EVIDENCE.

15 MR. HELM ASKED THEM QUESTIONS. HE DID A
16 CROSS-EXAMINATION WHERE HE SOUGHT TO SUGGEST THAT THERE
17 WERE SAVINGS, NOT RELATED TO THOSE TRADITIONAL ASSETS,
18 THE NON-SPECIAL MORTGAGE CREDIT ASSETS, BUT WERE
19 RELATED -- SAVINGS RELATED TO THE SPECIAL MORTGAGE
20 CREDIT FUNDS BECAUSE THE NEW TEAM WOULD BE LESS
21 EXPENSIVE THAN MR. GUNDLACH WOULD HAVE BEEN, IF HE HAD
22 STAYED.

23 AND THEY SAID, WELL, THERE'S A -- IN HIS
24 QUESTIONS, THAT THERE WAS A DELTA THERE THAT THAT
25 REDUCED THE 222 MILLION DAMAGES TO ZERO. EVEN THOUGH
26 TCW'S DAMAGES FROM THE SPECIAL MORTGAGE CREDIT FUNDS
27 WERE NOT INCLUDED IN THE CALCULATIONS.

28 SO HE SAID, OKAY, WITH RESPECT TO THE

1 TRADITIONAL ASSETS MR. HELM'S QUESTIONS SUGGESTED THERE
2 WERE \$222 MILLION IN DAMAGES, BUT HE SAYS YOU SHOULD
3 HAVE SUBTRACTED OUT THE SAVINGS ON THE SPECIAL MORTGAGE
4 CREDIT SIDE BECAUSE THE MET WEST TEAM WASN'T AS
5 EXPENSIVE AS THE -- AS MR. GUNDLACH WOULD HAVE BEEN IF
6 HE HAD STAYED.

10:25AM

7 THE SAVINGS, IF YOU THINK ABOUT IT,
8 THOSE SAVINGS TURN OUT TO BE -- AND THIS IS A VERY
9 IMPORTANT POINT -- THE MANAGEMENT FEES AND THE CARRIED
10 INTEREST THAT TCW WOULD HAVE PAID TO MR. GUNDLACH IF HE
11 HAD STAYED, AND IF THE AGREEMENT HAD NOT BEEN AMENDED.
12 IN OTHER WORDS, IF WE'RE GETTING THE FULL 100 PERCENT,
13 TWO PERCENT MANAGEMENT FEE; 20 PERCENT PERFORMANCE FEE,
14 AND NOBODY HAD LEFT.

10:25AM

15 AND WHAT MR. HELM WAS SUGGESTING, IS IF
16 YOU APPLY MR. GUNDLACH'S HIGH PERCENTAGE TO THAT, 60
17 PERCENT, 50 PERCENT, AND THEN COMPARE THAT TO THE MET
18 WEST LOWER PERCENTAGE ON WHAT ACTUALLY HAPPENED, THE
19 REDUCED FEES; THERE'S A HUGE SAVINGS THERE. AND
20 OBVIOUSLY, THERE'S A MISMATCH.

10:25AM

21 THERE'S NO TESTIMONY THAT SUPPORTED
22 THAT. THEY DIDN'T DARE ASK MR. WALLACE ABOUT THAT.
23 THEIR WERE ONLY LAWYER'S QUESTIONS FROM MR. HELM. AND
24 THE JUDGE WILL INSTRUCT YOU THAT THE LAWYERS' QUESTIONS
25 ARE NOT EVIDENCE.

10:25AM

10:26AM

26 AND ANOTHER PROBLEM WITH IT IS IT
27 DOESN'T CONSIDER THE TWO CLAIMS AND CATEGORIES OF
28 DAMAGES SEPARATELY.

1 THE JUDGE WILL INSTRUCT YOU, JURY
2 INSTRUCTION 5012, THAT YOU MUST CONSIDER EACH QUESTION
3 SEPARATELY. YOU MUST LOOK AT THE DAMAGES ON THE
4 FIDUCIARY DUTY CLAIM, AND THE SPECIAL MORTGAGE CLAIM
5 SEPARATELY. AND THE CALCULATION THAT MR. HELM
6 SUGGESTED IS INCOMPLETE BECAUSE IT DEDUCTED THE FEES
7 THAT TCW WOULD HAVE PAID MR. GUNDLACH IF THERE HAD BEEN
8 NO AMENDMENTS. OKAY? BUT IT DIDN'T CREDIT TCW -- IN
9 THAT CASE, THEN WE WOULD HAVE GOTTEN THE FULL FEES,
10 RIGHT? AND IT DIDN'T CREDIT TCW WITH A HUNDRED
11 PERCENT, THE FULL FEES, IN THAT SCENARIO.

10:26AM

10:26AM

12 IF YOU ARE GOING TO SUBTRACT OUT THE 226
13 MILLION THAT TCW WOULD HAVE PAID TO MR. GUNDLACH IF
14 THERE HAD BEEN NO AMENDMENTS TO THE CONTRACTS, THE
15 SPECIAL MORTGAGE CONTRACTS, THEN YOU ALSO, LOGICALLY,
16 HAVE TO PUT BACK IN THE REVENUES THAT TCW WOULD HAVE
17 RECEIVED, AND THAT -- IF THERE HADN'T BEEN THOSE
18 CHANGES. OTHERWISE YOU ARE MIXING AND MATCHING.

10:27AM

19 AND HE WENT -- MR. HELM WENT THROUGH A
20 CALCULATION. I DON'T REALLY HAVE THE TIME TO DO IT,
21 EXHIBIT 516. HE SHOWED YOU THE INITIAL -- HE WALKED
22 THROUGH THIS IN 521. AND HE FINISHED BY TAKING THAT
23 PRESENT -- HE IGNORED -- THAT CALCULATION IGNORED, AS
24 IS UNDISPUTED, THAT IN FACT, THE SPECIAL MORTGAGE
25 CREDIT REVENUES DROPPED FROM 532.1 MILLION TO 104.5
26 MILLION. HE SUBTRACTED THE 226 MILLION IN SAVINGS
27 BECAUSE MET WEST CAME IN, BUT FORGOT ABOUT THE 427.6
28 MILLION IN LOST REVENUE.

10:27AM

10:27AM

1 SO HERE'S THE COMPLETED MATH. IF WE
2 COULD GO TO SLIDE 523. IF WE CAN GO TO SLIDE 523, THIS
3 IS THE COMPLETED MATH UNDER THE SCENARIO MR. HELM WAS
4 SUGGESTING, FOR THIS LOST PROFITS ON TRADITIONAL
5 ASSETS; THAT'S THE BREACH OF FIDUCIARY DUTY.

10:28AM

6 MR. BRIAN: YOUR HONOR, I'M GOING TO OBJECT TO
7 THIS, YOUR HONOR. THERE'S NO EVIDENCE OF THIS.

8 THE COURT: IT'S JUST ARGUMENT.

9 LADIES AND GENTLEMEN, YOU HAVE TO HAVE
10 EVIDENCE TO SUPPORT THE ARGUMENT.

10:28AM

11 BUT GO AHEAD, MR. QUINN.

12 MR. QUINN: THESE WERE THE CLAIMED OFFSETS
13 THAT MR. HELM WAS ASKING ABOUT IN 226, COMPARING WHAT
14 THE COSTS HAD BEEN IF THERE HAD BEEN NO AMENDMENT. HE
15 SAID, IF YOU OFFSET THOSE TWO THERE'S A -- YOU ACTUALLY
16 SAVE \$4 MILLION, BUT HE FORGOT ABOUT THE 344 MILLION.
17 IF YOU ARE GOING TO ASSUME THE SAVINGS, YOU ALSO HAVE
18 TO ADD BACK IN THE REVENUE, IF THERE HADN'T BEEN ANY
19 AMENDMENT. SO YOU GET TO THE NUMBER \$340 MILLION, AND
20 THAT'S WHAT'S SHOWN ON EXHIBIT 1906A.

10:28AM

10:29AM

21 AND IF WE CAN LOOK AT SLIDE 524, DO YOU
22 SEE THE NUMBER THAT PROFESSOR CORNELL CAME UP WITH,
23 \$340 MILLION. AND JUST AS AN EXAMPLE HERE, IF I COULD
24 SHOW YOU -- IT IS KIND OF A HOKEY EXAMPLE WE CAME UP
25 WITH, SLIDE 525. IMAGINE AN EMPLOYEE -- INSTEAD OF
26 TALKING ABOUT \$220 MILLION IN BUSINESS TORTS AND
27 INTERFERENCE, IMAGINE AN EMPLOYEE WHO JUST STEALS MONEY
28 FROM A BUSINESS AND HE GRABS \$222. EXHIBIT 576. YOU

10:29AM

1 KNOW, STEALING MONEY OUT OF THE TILL ISN'T PART OF HIS
2 JOB. SO HE -- OWNER FIRES THE EMPLOYEE. THE EMPLOYEE
3 AT THAT POINT COMMITS THE SECOND TORT, SOMEHOW GETS
4 BACK, 527, STEALS SOME MORE MONEY. AND SO HERE THE
5 TOTAL DAMAGES FROM THE TWO VIOLATIONS, 528, WOULD ADD
6 UP TO 566.

10:30AM

7 THEN 529, THE EMPLOYER HIRES SOMEONE
8 WHO'S AT A CHEAPER COST. AND I'M HIRING SOMEBODY AT AN
9 ENTRY LEVEL SALARY, WHO'S CHEAPER. THE OTHER EMPLOYEE
10 GETS APPREHENDED AND HE SAYS -- SLIDE 531, WELL, YOU
11 SAVED SOME MONEY. AND I SHOULD GET SOME CREDIT FOR
12 THAT.

10:30AM

13 AND THEN IF WE LOOK AT SLIDE 532, IT
14 DOESN'T WORK THAT WAY. YOU HAVE THE LOST PROFITS; YOU
15 HAVE THE CLAIMED OFFSETS, BASED UPON THE CONTRACTS NOT
16 BEING AMENDED. YOU HAVE TO ADD BACK IN THE PROFITS
17 FROM THE FACT THAT THEY WERE AMENDED -- IF YOU ARE
18 GOING TO GO IN THAT DIRECTION AND I'M BEING TOLD I NEED
19 TO MOVE ON.

10:30AM

20 SO THE JUDGE IS GOING TO GIVE YOU -- YOU
21 ARE GOING TO HAVE AN OPPORTUNITY TO DO SOMETHING IN
22 THIS CASE THAT NOT ALL JURIES DO. AND SO THAT IS TO
23 CONSIDER WHETHER TO AWARD PUNITIVE DAMAGES. AND THE
24 JUDGE IS GOING TO INSTRUCT YOU ON THE LAW, AND IN WHAT
25 CIRCUMSTANCES PUNITIVE DAMAGES MAY BE AWARDED.

10:31AM

10:31AM

26 AND THE INSTRUCT -- BASICALLY, YOU NEED
27 TO FIND -- IF YOU FIND THAT MR. GUNDLACH'S CONDUCT WAS
28 WILLFUL OR MALICIOUS, AND THE COURT WILL GIVE YOU

1 DEFINITIONS OF WHAT IT MEANS TO BE WILLFUL -- WHAT
2 WILLFUL OR MALICIOUS MEANS, THEN IT'S APPROPRIATE FOR
3 YOU TO CONSIDER PUNITIVE DAMAGES.

4 AND I SUBMIT THE EVIDENCE IN THIS
5 CASE -- YOU KNOW, A STATEMENT WAS MADE AT THE BEGINNING 10:31AM
6 OF THIS TRIAL. MR. STERN HATES -- HATED, MR. GUNDLACH.
7 THERE WAS NO EVIDENCE OF THAT. THERE WAS NO EVIDENCE
8 OF THAT. I SUBMIT THERE WAS EVIDENCE THAT MR. GUNDLACH
9 HATES MR. STERN, AND THAT HIS CONDUCT WAS MALICIOUS, IF
10 YOU LOOK AT EXHIBIT 515-3. THE IDEA OF LEAVING AS A 10:32AM
11 BIG F-U. MR. ARENTSEN SAID THE SAME THING. THAT'S
12 EXHIBIT 515-3.

13 AND THEN SLIDE 632, WE HAVEN'T TALKED
14 ABOUT THIS; THAT MR. GUNDLACH SAID THAT BLAIR THOMAS
15 WAS A PUSSY FOR NEGOTIATING OUT AND NOT JUST TAKING IT. 10:32AM
16 HE SHOULD JUST TAKE IT.

17 THE ASTONISHING THING TO ME IS THAT WHEN
18 MR. GUNDLACH TOOK THE STAND, AND HE TOOK THE STAND,
19 THREE, FOUR TIMES, HE DID NOT ONCE DENY MAKING ANY OF
20 THESE STATEMENTS; THAT'S A BIG F-U, OR THAT THOMAS IS A 10:32AM
21 PUSSY FOR NOT JUST TAKING IT; DIDN'T DENY IT.

22 AND YOU KNOW IF HE COULD DENY IT,
23 INCREDIBLY DENY IT, THEY WOULD HAVE ELICITED THAT.
24 THERE WAS MALICE HERE. THERE WAS HATRED. YOU HEARD
25 HOW HE BRAGGED ABOUT HOW HE COULD WALK OUT OF TCW AND 10:33AM
26 IT WOULD IMplode. HE TOLD THAT TO MR. SHEDLIN. THE
27 WAR IS ON. STICK IT TO THEM. EXHIBIT 261.

28 THIS IS REPREHENSIBLE CONDUCT. THIS IS

1 SOMETHING THAT -- THIS ISN'T JUST ORDINARY BREACH OF
2 CONTRACT, ORDINARY TORTIOUS INTERFERENCE, SOMETHING
3 THAT SHOULD BE SAID. THE LAW HAS A PARTICULAR WAY OF
4 DEALING WITH THIS. AND IT IS CALLED PUNITIVE DAMAGES.
5 AND FOLKS, THIS IS A CASE FOR PUNITIVE DAMAGES.

10:33AM

6 YOU KNOW, OTHERWISE -- IT CAN'T BE THE
7 CASE WHEN YOU DISCOVER A PLOT LIKE THIS AND THERE'S
8 MISCONDUCT LIKE THIS THAT YOU ARE CAUGHT AND YOU JUST
9 TO GIVE BACK WHAT YOU TOOK; THAT'S NOT ENOUGH. THAT
10 ISN'T THE RIGHT REMEDY. A MESSAGE HAS TO BE SENT TO
11 MR. GUNDLACH, TO MR. DOUBLELINE. HE'S A FABULOUSLY
12 WEALTHY MAN. WHILE HE WAS AT TCW HE MADE ALMOST A
13 QUARTER OF A BILLION DOLLARS. A QUARTER OF A BILLION
14 DOLLARS. HE TOLD YOU ON THE STAND THAT HIS NET WORTH
15 IS \$90 MILLION.

10:34AM

10:34AM

16 INSTRUCTIONS WILL TELL YOU THIS: THAT
17 NET WORTH IS TO BE TAKEN INTO ACCOUNT IN DECIDING
18 WHAT'S AN APPROPRIATE AMOUNT, WHAT AMOUNT WILL SEND THE
19 RIGHT -- THE RIGHT AMOUNT FOR A MESSAGE TO BE SENT.

20 THERE'S A NET WORTH STATEMENT IN
21 EVIDENCE 2147, SLIDE 630. WHERE HE ACTUALLY LISTS THE
22 NET WORTH, I THINK, OF 95 MILLION.

10:34AM

23 DOUBLELINE IS A SUCCESSFUL COMPANY. NO
24 DOUBT, WILL BE SUCCESSFUL. BUT IT'S A COMPANY THAT WAS
25 BUILT ON STOLEN PROPERTY AND INTERFERENCE WITH TCW'S
26 CONTRACTS. MR. GUNDLACH OWNS ALMOST 40 PERCENT OF
27 DOUBLELINE. 40 PERCENT.

10:34AM

28 AND YOU SAW MR. BARACH'S TESTIMONY THAT

1 5 PERCENT OF DOUBLELINE WAS EXCHANGED FOR OAKTREE
2 STOCK; THAT OAKTREE STOCK WAS BOUGHT BACK BY OAKTREE
3 FOR \$20 MILLION; THAT MEANS, YOU CAN DO THE LOGIC HERE,
4 5 PERCENT OF DOUBLELINE EQUALS \$20 MILLION. THIS IS A
5 COMPANY WHICH YOU HAVE HEARD HAS 13-, \$14 BILLION UNDER
6 MANAGEMENT ALREADY. A VALUE OF \$400 MILLION.

10:35AM

7 MR. WALLACE REFERRED TO APPRAISALS,
8 WHICH YOU NEVER SAW, WHICH WERE DONE VERY EARLY ON IN
9 THIS AS A START UP. DIDN'T COME INTO EVIDENCE, YOU
10 DON'T KNOW WHAT THEY WERE BASED ON.

10:35AM

11 THIS IS A REAL WORLD TRANSACTION DONE BY
12 OAKTREE. YOU HEARD FROM THE WITNESS MR. DEITCH. HE
13 TOLD YOU THAT OAKTREE IS A FIRM THAT HAD \$80 BILLION
14 UNDER MANAGEMENT. THIS IS A FIRM THAT KNOWS HOW TO
15 VALUE COMPANIES.

10:36AM

16 THAT TRANSACTION TELLS YOU, DOUBLELINE,
17 AT THE TIME OF THAT TRANSACTION IN 2010 WAS WORTH \$400
18 MILLION. MR. GUNDLACH OWNS 40 PERCENT OF DOUBLELINE.
19 AND ONLY A FRACTION OF THAT IS INCLUDED IN THAT NET
20 WORTH STATEMENT. SO THIS IS A VERY WEALTHY MAN.

10:36AM

21 NOW, YOU SAW THAT CHECK, THAT \$7.8
22 MILLION THAT HE GOT ON NOVEMBER 30TH, FOR THE THIRD
23 QUARTER. WHICH HE CARRIED AROUND FOR A WEEK. HE
24 DIDN'T DEPOSIT IT FOR EIGHT DAYS. THE INTEREST ON THAT
25 WOULD FEED MANY FAMILIES FOR A MONTH. THIS IS A MAN OF
26 SUBSTANTIAL MEANS. AND YOU HAVE TO ASK YOURSELF, THAT
27 CHECK IS IN 631. IF WE COULD PUT THAT UP.

10:36AM

28 HOW DO YOU GET THIS MAN'S ATTENTION?

1 HE'S GOING TO GO ON AND CONTINUE TO HAVE A SUCCESSFUL
2 CAREER. BUT I SUBMIT THIS IS A CASE WHERE YOU NEED TO
3 GET HIS ATTENTION. AND THE WAY TO GET HIS ATTENTION IS
4 MONEY. AND I WILL LEAVE IT TO YOU TO DECIDE HOW MUCH
5 TO AWARD IN PUNITIVE DAMAGES, BUT I SUBMIT THIS IS A
6 CASE IN WHICH PUNITIVE DAMAGES ARE APPROPRIATE.

10:37AM

7 SO, OF COURSE, MR. GUNDLACH -- DO WE
8 HAVE A -- IS THIS THE BOARD? MR. GUNDLACH HAS SOME
9 CLAIMS -- BREACH OF CONTRACT CLAIMS.

10 MR. GUNDLACH HAS A BREACH OF CONTRACT
11 CLAIM FOR \$500 MILLION AGAINST TCW; THAT WE WRONGFULLY
12 FIRED HIM; THAT HE HAD A FIVE-YEAR CONTRACT; THAT HE
13 CAN ONLY BE TERMINATED FOR GOOD CAUSE. YOU KNOW,
14 THERE'S A COUPLE OF PROBLEMS WITH THAT, SEVERAL
15 PROBLEMS WITH THAT. ONE PROBLEM IS YOU ARE GOING TO
16 GET A JURY INSTRUCTION THAT SAYS IF YOU ARE GOING TO
17 SUE FOR BREACH OF CONTRACT, YOU HAVE TO SHOW THAT YOU
18 PERFORMED YOUR END OF THE BARGAIN, OTHERWISE YOU ARE
19 OUT OF COURT. YOU CAN'T RECOVER ON A CLAIM FOR BREACH
20 OF CONTRACT UNLESS YOU PERFORM.

10:37AM

10:38AM

10:38AM

21 I SUBMIT TO YOU, MR. GUNDLACH DID NOT
22 PERFORM. IF HE HAD A CONTRACT, IF HE HAD A CONTRACT
23 WITH TCW, HE BREACHED IT. HE ABANDONED IT. HE STOPPED
24 WORKING FOR TCW. HE HAS NO CLAIM. EVEN IF HE HAD A
25 FIVE-YEAR WRITTEN CONTRACT SIGNED BY MR. SONNEBORN, THE
26 ARCHBISHOP OF CANTERBURY, AND YOU NAME WHO ELSE, HE
27 BREACHED THAT CONTRACT. HE BREACHED IT. THERE WAS --
28 IF THERE WAS SUCH A CONTRACT, GOOD CAUSE TO TERMINATE

10:38AM

1 HIM. THIS ISN'T ONE OF THOSE THINGS THAT, YOU KNOW,
2 THEY TALK ABOUT -- WELL, THEY DIDN'T GIVE US 30 DAYS TO
3 CURE.

4 THIS ISN'T SOMETHING THAT COULD HAVE
5 BEEN CURED BY 30 DAYS. YOU DON'T HAVE TO GET INTO ANY
6 OF THAT, LADIES AND GENTLEMEN.

10:39AM

7 WHEN MR. HELM FIRST PUT THIS UP ON THE
8 BOARD AND TRIED TO SPIN IT, WHEN MR. -- I WATCHED SOME
9 OF YOU. I APOLOGIZE. I WATCH -- I TEND TO WATCH
10 JURORS DURING THE TRIAL. AND IF I GOT A LITTLE -- I
11 WATCH, AND THE REASON I WATCH IS TO SEE IF YOU ARE
12 GETTING IT. AND I SAW, AS SOON AS HE PUT THAT UP I SAW
13 YOU GOT IT. THERE'S NO SPINNING THAT CAN BE DONE WITH
14 IT. HE'S OFFERED US THREE EXPLANATIONS. I DIDN'T WANT
15 THE CLIENT SO I LIED TO THEM SO THEY WOULDN'T COME. OR
16 I WAS ONLY TALKING ABOUT WHETHER IT WAS A WRITTEN
17 CONTRACT, OR I WAS ONLY RESPONDING TO THE SPECIFIC
18 THINGS THAT I DIDN'T HAVE A NONCOMPETE. NO. NONE OF
19 THAT WORKS.

10:39AM

10:39AM

20 HE DIDN'T HAVE A CONTRACT. HE DECIDED
21 NOT TO HAVE A CONTRACT. HE DIDN'T WANT TO HAVE A
22 CONTRACT. HE WANTED HIS WORDS, "OPTIONALITY" (SIC).
23 HE WANTED THE ABILITY TO GO SHOP SOMEPLACE ELSE.
24 BECAUSE MR. SONNEBORN LAUNCHED HIM ON A PATH WHERE HE
25 BECAME FAMOUS. AND HE THOUGHT HIS VALUE WAS GOING UP,
26 AND IT WAS.

10:40AM

10:40AM

27 AND HE WANTED THE ABILITY TO GO TALK TO
28 THE WAMCO'S OF THE WORLD. HE DIDN'T WANT TO BE TIED IN

1 TO WORKING FOR TCW UNTIL THE END OF THIS YEAR. YOU
2 KNOW HE DID NOT HAVE A CONTRACT. THAT IS AN INSULT TO
3 YOUR INTELLIGENCE, TO TRY TO COME HERE AND TELL YOU HE
4 HAD A FIVE-YEAR CONTRACT.

5 THE OTHER CLAIM THEY HAVE IS THAT -- A
6 WAGE CLAIM THAT HE WASN'T PAID EVERYTHING HE WAS OWED
7 AS OF DECEMBER 11TH.

10:40AM

8 FIRST OFF, WHAT THEY REALLY RELY ON,
9 THEY WANT TO BE PAID FOR PERFORMANCE FEES. SOMETHING
10 WHICH, SO FAR AS THE RECORD IN THIS TRIAL GOES, HAS
11 NEVER HAPPENED, EVER, IN THE HISTORY OF THE UNIVERSE.

10:41AM

12 MR. BARACH COULDN'T -- DO YOU REMEMBER
13 HE FIRST TRIED TO TELL ME -- I WASN'T QUITE GETTING IT
14 AND MR. MADISON HAD TO WHISPER TO ME HE SAID THEY
15 ALREADY GOT THE MONEY. I ASKED HIM, TRYING TO SAY --
16 YOU TOLD ME YOU HAD GOTTEN PAID -- HE GAVE IT UP, HE
17 SAID. I ONLY GOT PAID WHEN THE MONEY WAS ACTUALLY
18 RECEIVED.

10:41AM

19 HE COULDN'T IDENTIFY ANY PORTFOLIO
20 MANAGER WHO HAS EVER BEEN PAID ON SOME TYPE OF CARRIED
21 INTEREST ON AN ACCRUAL BASIS. THEIR EXPERT,
22 COMPENSATION EXPERT, MR. MURPHY, WHO SAID HE'S REVIEWED
23 THOUSANDS OF CONTRACTS. I SAID, CAN YOU NAME ONE IN
24 THE HISTORY OF -- MR. SURPRENANT, ACTUALLY, IF I'M
25 CORRECT -- IN THE HISTORY OF THE STATE OF
26 CALIFORNIA WHERE A PORTFOLIO MANAGER HAS BEEN PAID
27 ACCRUED INTEREST ON A -- FOR A CARRIED INTEREST ON AN
28 ACCRUAL BASIS? CAN'T THINK OF ONE; DOESN'T HAPPEN.

10:41AM

10:41AM

1 THERE'S REALLY GOOD REASONS FOR IT,
2 BECAUSE THAT CARRIED INTEREST, IN THE BOOKKEEPING ENTRY
3 THAT MR. VILLA TOLD YOU REQUIRED BY ACCOUNTING RULES,
4 EVERY MONTH YOU MUST VALUE THE ASSETS AND PUT IT ON THE
5 BOOKS. IT GOES UP; IT GOES DOWN; IT GOES UP; IT GOES
6 DOWN.

10:42AM

7 IF YOU PAY IT TO SOMEBODY, OR TERMINATE
8 A PORTFOLIO MANAGER, FIRST OFF, WHERE DO YOU GET THE
9 MONEY TO PAY? MR. GUNDLACH SAYS, WELL, YOU CAN SELL
10 THE ASSETS. AND WHAT HAPPENS TO THE INVESTORS? SO YOU
11 CAN PAY A PORTFOLIO MANAGER? SO YOU CAN PAY
12 MR. GUNDLACH?

10:42AM

13 THE OTHER THING IS IF IT GOES DOWN,
14 THINGS DON'T ALWAYS GO UP, WE'VE COME TO LEARN. IF IT
15 GOES DOWN, WHAT DO YOU DO? HOW DO YOU GET IT BACK? DO
16 YOU CALL THEM BACK? DO YOU CALL THE PORTFOLIO MANAGER
17 WHO'S LEFT AND SAY, I'M VERY SORRY. THE CHECK WE GAVE
18 YOU, WE NEED YOU TO GIVE IT BACK 'CAUSE THINGS DIDN'T
19 TURN OUT SO WELL. YOU DON'T PAY. HOW DID THEY GET
20 THIS? THIS IDEA THAT IT'S NOT PAID BASED ON CASH
21 RECEIVED.

10:42AM

10:43AM

22 WELL, THEY GO BACK TO THAT FORM CONTRACT
23 THAT WAS NEVER SIGNED, NEVER AGREED TO, THAT WAS STILL
24 IN THE PROCESS OF NEGOTIATION. WELL, IF YOU WORK YOUR
25 WAY THROUGH THAT, WE DID THAT WEEKS AGO AND SHOWED YOU,
26 IF YOU WORK THROUGH THE TERMINATION CLAUSE, IT USES THE
27 DEFINED TERM ABOUT PROFIT SHARING, ABOUT FEES, WHICH
28 SENDS YOU BACK TO THE DEFINITION IN EXHIBIT A THAT

10:43AM

1 ACTUALLY HAS TO BE RECEIVED.

2 BUT NOTICE THAT, NOTICE THAT THEY ARE
3 RELYING FOR THAT -- WHEN YOU GET TO BE PAID ON
4 TERMINATION, THEY ARE RELYING -- THAT'S ALL BASED ON AN
5 UNSIGNED CONTRACT THAT WAS STILL UNDER NEGOTIATION WITH
6 MR. CAHILL -- AND IN TERMS OF MR. -- MR. SONNEBORN
7 SAID, I WASN'T PREPARED TO AGREE TO CALL THIS.

10:43AM

8 SO THERE IS SIMPLY NO BASIS OF AN AWARD
9 ON AN ACCRUAL BASIS. MR. GUNDLACH WAS PAID, KNOWING --
10 TCW -- KNOWING WHAT HE DID, AND KNOWING WHAT HE WAS UP
11 TO, THAT END OF NOVEMBER, WROTE HIM A CHECK FOR OVER \$7
12 MILLION.

10:44AM

13 ALSO PAID HIM THAT PRORATED SALARY RIGHT
14 TO DECEMBER 11TH. YOU SAW THAT CHECK AS WELL. AND
15 THAT, AS MR. GUNDLACH POINTS OUT, THAT'S AN ADVANCE ON
16 PROFIT SHARING; THAT SALARY. WE NEVER ASKED FOR THAT
17 BACK. NEVER ASKED FOR IT BACK. PAID HIM THE VACATION
18 PAY, WHICH I THINK WAS \$37,000.

10:44AM

19 TCW PAID HIM EVERYTHING THAT HE WAS
20 OWED. YOU WANT TO TALK ABOUT MANAGEMENT FEES?
21 MR. VILLA TOLD YOU YESTERDAY, YES, THERE WAS A \$2
22 MILLION NUMBER IN MANAGEMENT FEES ON THE FUNDS THAT HE
23 MANAGED THAT HAD ACTUALLY BEEN RECEIVED BY DECEMBER
24 11TH.

10:44AM

25 BUT, TCW BELIEVED, BECAUSE OF HIS
26 CONDUCT, THAT WASN'T OWED. AND I LEAVE IT TO YOU TO
27 DECIDE WHETHER THAT WASN'T THE RIGHT DECISION. WE
28 SUBMIT HE WASN'T OWED ANYTHING. HE HAD ABANDONED HIS

10:45AM

1 DUTIES. HE WAS NO LONGER WORKING FOR TCW.

2 THANK YOU FOR YOUR ATTENTION.

3 THE COURT: THANK YOU, MR. QUINN.

4 ALL RIGHT, LADIES AND GENTLEMEN. WE'RE
5 GOING TO TAKE A RECESS AND THEN WE'LL HEAR FROM
6 MR. BRIAN. WE'LL TAKE 15 MINUTES. WHAT WE'RE GOING TO
7 TRY AND DO IS I'M GOING TO ALLOW MR. BRIAN TO GO
8 THROUGH HIS CLOSING WITHOUT INTERRUPTION. SO IF YOU
9 PREFER, MAYBE WE'LL TAKE 20 MINUTES AND THEN WE'LL GO
10 TILL ABOUT 1:00 OR 1:15.

10:45AM

10:45AM

11 THEN WE WILL HAVE A LUNCH FOR AND YOU'LL
12 COME BACK FOR A REBUTTAL ARGUMENTS. PROBABLY ABOUT AN
13 HOUR FOR LUNCH.

14 SO PLAN TO BE BACK IN YOUR SEATS AT FIVE
15 MINUTES AFTER 10:00 -- I GUESS THAT'S 11:00. FIVE
16 AFTER 11:00.

10:45AM

17
18 (AT 10:46 A.M. THE JURY WAS
19 EXCUSED, AND THE FOLLOWING
20 PROCEEDINGS WERE HELD:)

10:46AM

21
22 THE COURT: ALL RIGHT. WE'RE OUT OF THE
23 PRESENCE OF THE JURY. I ASSUME THERE ARE NO ISSUES WE
24 NEED TO ADDRESS AT THIS POINT.

25 MR. BRIAN: THE ONLY ISSUE WILL BE WHETHER
26 I'LL NEED A BREAK AFTER AN HOUR, YOUR HONOR.

10:46AM

27 THE COURT: WE'LL HAVE A STRETCH, BUT WE CAN'T
28 LET IT GO TILL 10 OR 15 MINUTES AND THAT'S WHERE WE

1 LOST THEM ON THE LAST ONE.

2 MR. BRIAN: I KNOW.

3 MR. MADISON: 20 MINUTES, YOUR HONOR?

4 THE COURT: YEAH, FIVE AFTER 11:00.

5

10:46AM

6 (RECESS TAKEN.)

7

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1 CASE NUMBER: BC 429385
2 CASE NAME: CW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA SEPTEMBER 13 2011
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR
7 TIME: B SESSION

8

9

--0--

10

11 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.) +

12

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

15

16 MR. BRIAN, ARE YOU READY TO PROCEED WITH
17 YOUR CLOSING ARGUMENT?

11:05AM

17

18

D E F E N S E +

19

OPENING ARGUMENT

20

11:05AM

21

22 MR. BRIAN: GOOD MORNING, LADIES AND
23 GENTLEMEN.

23

24

25 ON AUGUST 27TH, 2009, THE MOST SENIOR
26 EXECUTIVES AT TCW HAD A SECRET MEETING. EVERY SINGLE
27 PERSON, EXCEPT FOR ROBERT DAY ON THAT CHART THAT I'VE
28 PUT UP AND IS DISPLAYED ON THAT SCREEN, ATTENDED OR
PARTICIPATED.

11:05AM

28

MARC STERN, THE CHIEF EXECUTIVE OFFICER;

1 THE CHIEF LEGAL OFFICER, MICHAEL CAHILL;
2 THE CHIEF ADMINISTRATIVE OFFICER,
3 DAVID DEVITO;

4 CHIEF RISK OFFICER, JOE BURSCHINGER;
5 SENIOR MARKETING OFFICER, MARK GIBELLO;
6 AND MR. STERN'S ASSISTANT, MICHAEL CONN.

11:06AM

7 THESE SENIOR EXECUTIVES MET IN PRIVATE
8 TO DISCUSS TERMINATING MR. GUNDLACH, THE MOST IMPORTANT
9 PORTFOLIO MANAGER AT THE COMPANY, THE PUBLIC FACE OF
10 THE COMPANY, THE WALL STREET, THE MEDIA AND THE
11 INVESTMENT COMMUNITY.

11:06AM

12 THEY MET IN PRIVATE TO DISCUSS
13 TERMINATING SOMEONE THAT MR. STERN SAID WOULD BE LIKE
14 CUTTING OFF HIS RIGHT ARM. A SECRET MEETING LIKE THAT
15 DOESN'T HAPPEN EVERY DAY. A SECRET MEETING LIKE THAT
16 YOU DON'T FORGET.

11:06AM

17 FORTUNATELY, WE HAVE MR. CONN'S NOTES,
18 SO WE KNOW THAT THEY DISCUSSED TERMINATING
19 MR. GUNDLACH.

20 UNFORTUNATELY, WE'VE HAD TO TERMINATE
21 HIM FOR CAUSE. THEY DISCUSSED HOW MUCH MONEY THEY
22 WOULD SAVE. THEY DISCUSSED A BREAK-EVEN ANALYSIS; HOW
23 MUCH MONEY THEY WOULD SAVE BY PAYING HIS REPLACEMENT
24 LESS, OFFSET BY THE LOST ASSETS THEY KNEW WOULD COME.

11:07AM

25 THEY DISCUSSED NEEDING TO CONSULT WITH A
26 LAW ENFORCEMENT FIRM BEFORE TERMINATING HIM BECAUSE
27 THEY KNEW THAT HIS EMPLOYMENT AGREEMENT SAID HE COULD
28 ONLY BE TERMINATED FOR CAUSE.

11:07AM

1 EACH OF THESE TOPICS WAS RECORDED IN
2 MR. CONN'S NOTES. THAT'S EXHIBIT 5224.

3 THERE'S NO DISPUTE ABOUT THAT. THERE'S
4 NO DISPUTE THAT MR. CONN ACCURATELY REPORTED WHAT WAS
5 SAID. HE TESTIFIED THAT IT WAS MR. CAHILL, THE CHIEF
6 LEGAL OFFICER, WHO DICTATED A PRESS RELEASE THAT THEY
7 WOULD ISSUE ANNOUNCING THE TERMINATION OF MR. GUNDLACH.

11:07AM

8 HE TESTIFIED THAT IT WAS MR. CAHILL WHO
9 WAS INSTRUCTED BY MARC STERN TO CONSULT A LAW FIRM
10 ABOUT WHETHER THERE WAS CAUSE TO FIRE MR. GUNDLACH.

11:08AM

11 YET, WHEN EACH OF THESE SENIOR
12 EXECUTIVES WAS ASKED ABOUT THIS MEETING, AMAZINGLY,
13 THEY COULDN'T REMEMBER. EACH OF THEM HAD HIS OWN
14 EXCUSES, BUT THE TOTAL AND GLOBAL FAILURE OF
15 RECOLLECTION BY ALL OF THEM IS TELLING. LET'S WATCH.

11:08AM

16
17 (VIDEO DEPOSITION CLIPS PLAYED.) +

18
19 MR. BRIAN: THAT WAS THEIR SWORN TESTIMONY AT
20 DEPOSITION THAT WAS PLAYED FOR YOU.

11:09AM

21 WHAT DOES IT TELL YOU? THIS ISN'T A
22 MEETING YOU FORGET. THEY ARE TRYING TO COVER UP
23 SOMETHING. WHAT IS IT THEY'RE TRYING TO COVER UP?

24 THEY'RE TRYING TO COVER UP THAT THEY
25 DECIDED TO FIRE MR. GUNDLACH BEFORE THIS SEPTEMBER 3RD
26 MEETING, BEFORE THERE WAS ANY COPYING OF INFORMATION,
27 BEFORE ABLE GRAPE WAS CREATED, BEFORE THEY WERE LOOKING
28 FOR OFFICE SPACE THEY HAD DECIDED TO FIRE MR. GUNDLACH.

11:09AM

1 TAKE A LOOK AT EXHIBIT 5224, PAGE 11.
2 THAT'S ALSO PART OF THE SAME EXHIBIT. THIS IS
3 MR. BURSCHINGER'S DOCUMENT.

4 REMEMBER PLAN B, UP IN THE LEFT-HAND
5 CORNER? WHAT THEY ARGUE IS, THEY ARGUE, WELL, THIS IS 11:10AM
6 REALLY A MEETING ABOUT IF MR. GUNDLACH WERE TO DEPART.
7 BUT TAKE A LOOK AT THE LAST PARAGRAPH ON THIS MEMO.
8 LOOK WHAT THEY SAY DOWN AT THE BOTTOM.

9 THEY SAID THAT: WE SHOULD ASSUME THAT
10 J.E.G. WILL RESPOND IN A VOLATILE AND DIVISIVE MANNER. 11:10AM
11 HE WILL QUICKLY SEEK RETRIBUTION.

12 YOU DON'T RESPOND IN A VOLATILE AND
13 DIVISIVE MANNER IF YOU CHOOSE, YOURSELF, TO DEPART.

14 YOU DON'T SEEK RETRIBUTION IF YOU LEAVE
15 VOLUNTARILY. 11:11AM

16 YOU RESPOND AND YOU RESPOND IN A
17 VOLATILE MANNER IF SOMEBODY DOES SOMETHING TO YOU.
18 THEIR EXPLANATION IS RIDICULOUS. AS MR. CONN'S NOTES
19 SAY, THEY WERE DISCUSSING TERMINATING MR. GUNDLACH.
20 THAT'S WHY THEY CAN'T REMEMBER. 11:11AM

21 NOW, MR. QUINN SPENT A LOT OF TIME
22 TALKING ABOUT MR. GUNDLACH AND HIS BAD BEHAVIORS,
23 WHETHER HE WAS TELLING THE TRUTH.

24 YOU KNOW, IN EVERY TRIAL THERE ARE
25 WITNESSES WHO RECALL THINGS DIFFERENTLY. THERE'S NO 11:11AM
26 DOUBT ABOUT THAT. AND THAT'S YOUR JOB TO TRY TO FIGURE
27 THAT OUT AND WHO'S TELLING THE TRUTH, AND WHETHER A
28 FAILURE OF RECOLLECTION MATTERS OR NOT.

1 BECAUSE SOMETIMES WHEN YOU DON'T
2 REMEMBER SOMETHING, IT'S JUST NOT IMPORTANT.

3 BUT MR. GUNDLACH AT LEAST TRIED TO
4 REMEMBER. LET'S LOOK AT SOME OF THE TESTIMONY WE'VE
5 HEARD FROM OTHERS.

11:11AM

6 TCW OPTED FOR WHAT I'LL CALL A
7 CONSPIRACY OF SILENCE: IF WE ALL JUST HANG TOGETHER
8 AND SAY WE DON'T REMEMBER, THEN MAYBE PEOPLE WOULDN'T
9 BE ABLE TO FIGURE OUT WHAT WE DID. THAT WAS THEIR GAME
10 PLAN UNTIL THEY GOT CAUGHT WHEN WE FOUND MR. CONN'S
11 NOTES.

11:12AM

12 ROBERT DAY, THE FOUNDER OF THE COMPANY,
13 THE CHAIRMAN OF THE BOARD, THE MAN WHO WAS ALSO BROUGHT
14 BACK TO HELP WITH DAY-TO-DAY OPERATIONS IN MID 2009, IS
15 PART OF THAT CONSPIRACY OF SILENCE.

11:12AM

16 WE PLAYED A LITTLE OVER HALF HOUR OF
17 MR. DAY'S DEPOSITION TESTIMONY. YOU'LL RECALL THAT
18 MR. DAY REPEATED, I DON'T REMEMBER, DOZENS OF TIMES IN
19 THAT TESTIMONY. NOW, A FEW TIMES HE WENT OFF SCRIPT
20 AND HE TRIED TO SAY SOMETHING, BUT WHAT HE DID -- HIS
21 TESTIMONY WAS FLATLY INCONSISTENT WITH THE DOCUMENTS.

11:12AM

22 WITH THE DOCUMENTS, LET ME SHOW YOU
23 COUPLE EXAMPLES. LET'S PUT UP EXHIBIT 5153. VERY
24 IMPORTANT EXHIBIT. 5153. IT'S ONE OF THE E-MAILS FROM
25 THE FRENCH REPRESENTATIVE, WHO WAS RESPONSIBLE FOR TCW.
26 AND HE WROTE IT ON JUNE 6TH. JUNE 6TH. A WEEK OR SO
27 AFTER THE MEETING THAT MR. GUNDLACH HAD WITH MR. DAY
28 AND MR. STERN AT MR. DAY'S HOUSE.

11:13AM

1 AND WHAT DOES HE SAY? WHAT TO DO WITH
2 J. GUNDLACH. ANYWAY, WE ARE LOOKING AT OUR OPTIONS TO
3 FORCE HIM OUT PROACTIVE OR REPLACEMENT, DEFENSIVE IF HE
4 LEAVES. R. DAY THINKS WE NEED TO FORCE HIM OUT.

5 JUNE 6TH, 2009.

11:13AM

6 HE EXPRESSED THE SAME VIEW IN JULY.

7 LET'S TAKE A LOOK AT ANOTHER KEY
8 EXHIBIT. EXHIBIT 5198. PAGE 2: R. DAY THINKS THAT
9 GUNDLACH MUST LEAVE.

10 BUT WHAT DID MR. DAY TRY TO TELL YOU IN
11 HIS SWORN DEPOSITION, A DEPOSITION THAT HE KNEW WE WERE
12 GOING TO PLAY TO YOU AT THIS TRIAL? LET'S PLAY THAT
13 DEPOSITION CLIP AT PAGE 101.

11:14AM

14
15 (VIDEO DEPOSITION CLIP PLAYED OF ROBERT DAY.) +

11:14AM

16
17 MR. BRIAN: NO DISCUSSIONS WITH THESE PEOPLE
18 WHO WROTE THE E-MAILS SAYING THAT R. DAY THEY WANT EACH
19 TO BE FORCED OUT.

20 ONE OF YOUR JOBS IS TO BE THE JUDGE OF
21 CREDIBILITY OF THE FACT WITNESSES. YOU CAN JUDGE THE
22 CREDIBILITY OF THAT TESTIMONY. THE DOCUMENTS SHOW THAT
23 MR. DAY AND MR. STERN SPOKE ABOUT MR. GUNDLACH SEVERAL
24 TIMES DURING THE SUMMER OF 2009.

11:14AM

25 THEY SPOKE ON JUNE 29TH. LET'S PUT UP
26 EXHIBIT 5164. THIS IS THE FIRST PROJECT G MEETING THAT
27 WE HAVE A RECORD OF. THIS IS THE NOTES THAT MR. STERN
28 PREPARED FOR THAT MEETING.

11:15AM

1 THEY TALK ABOUT ALTERNATIVE MANAGERS.

2 THEY TALK ABOUT BIWEEKLY MEETINGS.

3 THEY TALK ABOUT THAT FOCUS GROUP.

4 MR. DAY AND MR. STERN SPOKE AGAIN ON
5 AUGUST 1ST. TAKE A LOOK AT EXHIBIT 234. THIS IS AN
6 E-MAIL FROM MR. STERN TO THE FRENCH, SAYING HE HAD
7 LUNCH WITH ROBERT DAY AND NOW THEY HAVE TO MOVE TO
8 PLAN B.

11:15AM

9 YET MR. DAY CLAIMS THAT HE DOESN'T
10 REMEMBER A SINGLE CONVERSATION, A SINGLE CONVERSATION
11 WITH MR. STERN ABOUT MR. GUNDLACH AT ANY TIME BETWEEN
12 JULY 1ST AND SEPTEMBER 3RD.

11:15AM

13 PLAY THAT.

14

15 (VIDEO DEPOSITION CLIP PLAYED OF ROBERT DAY.) +

11:15AM

16

17 MR. BRIAN: WE ASKED MR. STERN IF HE
18 REMEMBERED HIS DISCUSSIONS AT TRIAL. HE SAID HE
19 COULDN'T REMEMBER THE SPECIFICS OF HIS JUNE 29TH
20 MEETING WITH MR. DAY.

11:16AM

21 HERE IS HIS TESTIMONY AT TRIAL:

22 UNDER OATH, RIGHT NOW, DO YOU
23 RECALL ANYTHING ABOUT THIS
24 DISCUSSION WITH MR. DAY?

25 DO I RECALL ANYTHING? I RECALL
26 I HAD A MEETING WITH HIM TELLING
27 HIM ABOUT WHAT WAS -- WHAT THE
28 STATUS OF THINGS ARE. BUT I DON'T

11:16AM

1 RECALL SPECIFICALLY WHAT THE
2 DISCUSSION WAS.

3 SAME BASIC TESTIMONY WHEN I ASKED HIM ABOUT
4 THE AUGUST 1ST MEETING -- WE DON'T NEED THAT.

5 THE REASON FOR THIS LACK OF RECOLLECTION
6 IS OBVIOUS. THEY DON'T WANT TO ADMIT THAT THEY HAD
7 DECIDED TO GET RID OF MR. GUNDLACH.

11:16AM

8 THE ONLY THING THEY SEEM TO REMEMBER,
9 AND MR. STERN SORT OF FOUND IT FUNNY, ACTUALLY, WHEN I
10 ASKED HIM: DO YOU REMEMBER THEY HAD A MEETING ON
11 DECEMBER 7TH, 2009, THE MONDAY AFTER MR. GUNDLACH WAS
12 FIRED?

11:17AM

13 THEY HAD A MEETING -- MEETING OF 500
14 EMPLOYEES. THEY PATCHED PEOPLE IN BY CONFERENCE CALLS.
15 MR. STERN SPOKE, AND THEN MR. DAY SPOKE.

11:17AM

16 WELL, MR. DAY SAID IT REMINDED HIM OF
17 THE TIME GEORGE WASHINGTON CROSSED THE DELAWARE RIVER.
18 HE SAID WHEN A SOLDIER ROCKS THE BOAT, YOU SHOOT THEM
19 AND THROW THEM OVERBOARD.

20 THAT'S WHAT THEY DID TO MR. GUNDLACH.
21 AFTER 24 YEARS OF SERVICE.

11:17AM

22 AFTER MAKING THEM ABOUT \$1.2 BILLION OF
23 REVENUE, AND MAKING HIMSELF WEALTHY AS WELL, NO DOUBT.

24 THEY SHOT HIM WITHOUT WARNING.

25 THIS WAS NOT A RANDOM ACT. IT WAS
26 PREMEDITATED.

11:17AM

27 NOW, TCW HAS A RIGHT -- I'LL GET TO THIS
28 LATER -- THEY HAVE A RIGHT TO CHANGE THEIR BUSINESS

1 PLAN. AND I'M GOING TO TALK ABOUT THE DISAGREEMENTS
2 BETWEEN MR. GUNDLACH AND MR. STERN AND OTHERS ABOUT
3 WHICH DIRECTION THE COMPANY SHOULD GO IN. THEY HAVE A
4 RIGHT TO MAKE THOSE DECISIONS.

5 BUT THEY DON'T HAVE A RIGHT TO FIRE HIM
6 WHEN HE'S UNDER CONTRACT, WITHOUT WARNING, AND WITHOUT
7 THE DECENCY TO SIT DOWN AND SAY, JEFFREY, LET'S SEE IF
8 WE CAN WORK THIS OUT.

11:18AM

9 I CAN'T TAKE YOUR ARROGANCE ANYMORE.
10 YOUR MISBEHAVIOR WE'VE TOLERATED FOR A LONG TIME WHEN
11 YOU WERE MAKING MONEY, BUT MAYBE YOU'RE GETTING A
12 LITTLE WORSE. WE SHOULD WORK IT OUT. IF IT'S NOT
13 GOING TO WORK OUT, LET'S FIGURE OUT A WAY TO SEPARATE
14 AMICABLY.

11:18AM

15 THEY -- THEY NEVER ONCE APPROACHED
16 MR. GUNDLACH ABOUT DOING THAT.

11:18AM

17 IF THEY HAD DONE THAT, AND, FRANKLY,
18 MOST COMPANIES IN THIS COUNTRY WOULD HAVE, YOU WOULDN'T
19 HAVE THE PLEASURE OF SPENDING THE LAST EIGHT WEEKS
20 TOGETHER, WE WOULDN'T HAVE HAD THE PLEASURE ... WE
21 WOULDN'T HAVE HAD THIS LAWSUIT. THEY DID THAT WITH
22 BLAIR THOMAS AND WITH MARK ATTANASIO, AND THEY DID THAT
23 WITH JEAN-MARC CHAPUS, THE OTHER PORTFOLIO MANAGERS WHO
24 WERE ALSO UNHAPPY.

11:19AM

25 BUT THEY DIDN'T DO IT WITH MR. GUNDLACH.
26 WHY? BECAUSE THEY HAD ALREADY DECIDED TO FIRE HIM.

11:19AM

27 MR. QUINN SAID, WHY CAN'T THESE RICH
28 PEOPLE WORK IT OUT?

1 THE REASON FOR THAT WAS THEY DIDN'T WANT
2 TO NEGOTIATE WITH MR. GUNDLACH.

3 THEY DECIDED AND, AGAIN, WE HAVE
4 MR. CONN WHO PREPARED THESE NOTES, EXHIBIT 5382, THAT
5 THEY WERE GOING TO USE THE ELEMENT OF SURPRISE. BE
6 PROACTIVE. ELEMENT OF SURPRISE. THEY DELIBERATELY
7 KEPT HIM IN THE DARK AND THEN SURPRISED HIM.

11:19AM

8 THEY DID THAT SO THAT HE WOULD NOT BE
9 ABLE TO COMPETE. BUT IN THIS COUNTRY, LADIES AND
10 GENTLEMEN, YOU HAVE A RIGHT TO COMPETE. THAT'S WHAT
11 OUR SYSTEM IS BASED ON, THE RIGHT TO COMPETE. THEY DID
12 NOT WANT THAT TO HAPPEN.

11:20AM

13 NOW, YOU HEARD A LOT ABOUT THE
14 SEPTEMBER 3RD MEETING. IT IS UNDISPUTED. MR. STERN
15 TESTIFIED TO THIS. MR. GUNDLACH AND OTHERS TESTIFIED
16 TO THIS. THAT MR. GUNDLACH ASKED MR. STERN AT THAT
17 MEETING, AM I BEING FIRED?

11:20AM

18 AND MR. STERN SAID, THERE ARE NO PLANS
19 TO FIRE YOU.

20 THAT, LADIES AND GENTLEMEN, IS A LIE.
21 BUT WHY THE BIG LIE? WHY?

11:20AM

22 THIS IS MY FIRST CUE OF MY TIMING.

23 WHY ALL THE DECEPTION, BECAUSE THEIR
24 CLAIMS FALL APART. HE HEARD ALL THIS STUFF BY
25 MR. QUINN, 344 MILLION HERE AND 222 MILLION HERE.
26 THEY'RE DOUBLE-COUNTING COUNTING. WE'LL TALK ABOUT
27 THAT LATER.

11:21AM

28 BUT ALL OF THAT FALLS ABOUT COMPLETELY

1 IF THEY DECIDED TO FIRE HIM BEFORE HE DID ANY OF THESE
2 THINGS THEY CLAIM ARE WRONGFUL.

3 IF THEY FIRED HIM FOR THEIR REASONS,
4 BECAUSE OF WHAT HE DID, IF THEY DECIDED IN THE SUMMER
5 TO FIRE HIM, THEY CAN'T RECOVER ANYTHING BECAUSE THEY
6 HAVE TO SHOW THAT MR. GUNDLACH'S -- MR. GUNDLACH'S
7 CONDUCT CAUSED THOSE DAMAGES.

11:21AM

8 THEIR DAMAGES IN THIS CASE, THAT THEY
9 CLAIM THEY WERE DAMAGES, ARE SELF-INFLICTED. THE
10 DOCUMENTS SHOW, WITHOUT DOUBT, THAT THEY KNEW THAT IF
11 THEY FIRED MR. GUNDLACH, THEY WERE GOING TO LOSE
12 INVESTORS, LOSE ASSETS. IT'S IN THE DOCUMENTS, IN
13 THEIR OWN DOCUMENTS. THERE'S NO DISPUTE.

11:21AM

14 NOW THEY SAY, WELL, NOW, NOW WE FIRED
15 HIM, NOW WE WANT TO GIVE 300 MILLION. ALL THE STUFF
16 ABOUT COPYING AND DOWNLOADING. NO DOUBT I WISH WE
17 DIDN'T HAVE THAT.

11:22AM

18 AND MY CLIENTS REALIZED THAT ON
19 DECEMBER 5TH. THEY WALKED OUT OF THERE, AND
20 MR. CRIS SANTA ANA GAVE BACK THAT HARD DRIVE. AND ON
21 DECEMBER 5TH OR 6TH, THERE IS NO EVIDENCE, NO EVIDENCE,
22 THAT ANYTHING WAS USED. I'LL TALK ABOUT THAT LATER.

11:22AM

23 NO EVIDENCE THAT ANYTHING THAT WAS
24 PROPRIETARY OR TRADE SECRETS WAS USED. BUT THESE
25 ALLEGATIONS ABOUT COPYING AND DOWNLOADING ARE PART OF
26 THE COVER UP. WHEN THEY CAME OUT OF THAT AUGUST 27TH
27 MEETING, THEY WENT TO TALK TO A LAW FIRM TO SEE IF THEY
28 HAD CAUSE TO FIRE HIM. WHAT DID THEY DO?

11:22AM

1 THEY DIDN'T FIRE HIM. THEY BEGAN TO
2 SECRETLY MONITOR HIS COMPUTER AND HIS E-MAILS, HOPING
3 TO FIND EVIDENCE TO JUSTIFY FIRING HIM. AND YET,
4 ALTHOUGH MR. STERN TOLD YOU, THAT HE KNEW BY THE END
5 OF.

11:23AM

6 SEPTEMBER THAT THEY WERE COPYING STUFF,
7 TRADE TICKETS AND THE LIKE, THEY DID NOTHING TO STOP
8 HIM. NOTHING.

9 THEY WERE ACTUALLY HAPPY ABOUT IT
10 BECAUSE THEY FINALLY HAD WHAT THEY THOUGHT WAS A
11 JUSTIFICATION FOR FIRING HIM. THE TRUTH IS THEY
12 DECIDED TO FIRE HIM EARLIER.

11:23AM

13 WHEN I WAS A KID, MY PARENTS USED TO
14 TAKE ME TO SOMETHING CALLED A FUN HOUSE. AND THE FUN
15 HOUSE HAD A MIRROR. IF YOU'RE TALL, YOU LOOK SHORT,
16 AND IF YOU'RE A LITTLE HEAVY, YOU LOOK THIN. IT'S ALL
17 BACKWARDS. THAT'S WHAT TCW'S CASE IS. IT'S ALL
18 BACKWARDS.

11:23AM

19 THEY CLAIM MR. GUNDLACH HAD A SECRET
20 PLAN. THEY HAD A SECRET PLAN. THEY HAD CODE NAMES FOR
21 IT.

11:23AM

22 THEY CLAIM THAT MR. GUNDLACH IS NOW
23 SAYING HE DIDN'T HAVE A CONTRACT. WELL, WE'LL TALK
24 ABOUT THAT.

25 THEY SAID THERE WAS A CONTRACT. NOW
26 THEY SAY THERE ISN'T. AND I'M GOING TO SHOW YOU THEY
27 ACTUALLY ALTERED DOCUMENTS TO TRY TO JUSTIFY THEIR
28 POSITION.

11:24AM

1 SO LET'S TALK ABOUT PROJECT G. HOW DID
2 THE PLAN OF MR. STERN, MR. DAY, AND THE FRENCH TO GET
3 RID OF MR. GUNDLACH COME ABOUT? IT REALLY STARTS WITH
4 THE FRENCH, SOCIÉTÉ GÉNÉRALE. THEY LOST A LOT OF MONEY
5 IN THE ECONOMIC CRISIS OF 2000, 2008, AND THEN THEY HAD
6 A HUGE INDEPENDENT LOSS ON TOP OF THAT, A ONE-TIME
7 LOSS.

11:24AM

8 THEY WERE AT A CROSSROADS. THEY HAD
9 INVESTED IN TCW. NOT BECAUSE THEY WANTED NECESSARILY
10 TO BE IN THE ASSET MANAGEMENT BUSINESS. THEY'RE AN
11 INVESTMENT BANK. THEY INVEST IN THINGS FOR THE PURPOSE
12 OF TURNING IT OVER. THEY WANT TO SELL IT AND MAKE A
13 PROFIT SOME DAY.

11:24AM

14 IT WAS PROVING A LOT MORE DIFFICULT THAN
15 THEY HAD ANTICIPATED, SO THEY WANTED TO GET OUT.

11:25AM

16 MR. STERN TRIED TO SUGGEST TO YOU THERE
17 WAS NO DISCUSSIONS IN THE FIRST PART OF 2009 ABOUT
18 SOCIÉTÉ GÉNÉRALE EXITING THE ASSET MANAGEMENT BUSINESS.
19 THAT'S WHAT HE SAID.

20 I DON'T THINK WE NEED THAT.

11:25AM

21 THE EVIDENCE SHOWS THAT JUST ISN'T TRUE.
22 THEY ISSUED A PRESS RELEASE,
23 EXHIBIT 5107, IN WHICH THEY SAID THAT THEIR INTENTION
24 IS TO LIST TCW ON THE STOCK EXCHANGE. IT'S PRETTY
25 SMALL.

11:25AM

26 YOU HEARD FROM MR. BEYER, HE'S SEATED IN
27 THE COURTROOM TODAY, THE FORMER CEO, HE WAS QUITE
28 HONEST ABOUT IT. HE SAID WHEN THE FRENCH USE WORDS

1 LIKE SALE AND IPO, THEY HAD A WHOLE RANGE OF THINGS,
2 FINANCIAL TRANSACTIONS IN MIND. SELLING IT. APPROVING
3 PRIVATE EQUITY. TAKING IT PUBLIC.

4 YOU'LL RECALL THAT TCW AND SOCIÉTÉ
5 GÉNÉRALE HIRED CITIBANK IN JUNE OR JULY OF 2009 TO DO A
6 STRATEGIC REVIEW. 11:25AM

7 THOSE DOCUMENTS ABOUT THAT, TAKE A LOOK
8 AT 5163. THIS IS AN E-MAIL FROM MR. CHAPUS, ONE OF THE
9 PORTFOLIO MANAGERS. THIS IS AN E-MAIL TO CITIBANK IN
10 THE FIRST PART OF JULY, IN WHICH HE TALKS ABOUT THEIR 11:26AM
11 MANDATE. THIS WAS APPROVED BY MR. STERN AND APPROVED
12 BY MR. MUSTIER, THE FRENCH PERSON IN CHARGE OF TCW,
13 WHERE HE SAID THAT:

14 SG IS READY TO ACCEPT SOLUTIONS
15 WHERE IT COULD SELL PART OF ITS 11:26AM
16 STAKE TO A THIRD PARTY.

17 CITIBANK MADE THIS CLEAR IN ANOTHER
18 EXHIBIT, EXHIBIT 5181, IN WHICH CITI- -- THAT'S NOT
19 VERY GOOD -- IN WHICH CITIBANK SAID:

20 SG IS COMMITTED TO SELLING DOWN 11:26AM
21 AND ULTIMATELY EXITING TCW.

22 YOU SAW THOSE REPORTS IN THE FALL OF
23 2009 THAT MR. CONN AND MR. STERN SENT TO THE FRENCH,
24 TALKING ABOUT MET WEST, AND ALSO GETTING RID OF
25 MR. GUNDLACH. ONE OF THE THINGS THEY TALK ABOUT FOR 11:27AM
26 ONE OF THE REASONS TO GET RID OF MR. GUNDLACH IS IT
27 WOULD ACCELERATE THE MONETIZATION, OPPORTUNITIES FOR
28 SOCIÉTÉ GÉNÉRALE.

1 MR. STERN HIMSELF, RIGHT AFTER HE CAME
2 BACK, TOLD AN INVESTOR ON JUNE 3RD, 2009, EXHIBIT 6120,
3 THAT, QUOTE:

4 SG HAS ALREADY ANNOUNCED THAT
5 THEIR PLANS FOR TCW REVOLVE AROUND
6 AN ULTIMATE IPO OR SALE.

11:27AM

7 NOW, THAT'S AN E-MAIL PREPARED BY
8 JUDY HIRSCH, IN MARKETING AT TCW. SHE'S STILL THERE.
9 MR. STERN TESTIFIED THAT SHE GOT IT WRONG. IF SHE GOT
10 IT WRONG, DON'T YOU THINK WE WOULD HAVE HEARD FROM
11 MS. HIRSCH IN THIS TRIAL? I THINK THEY CALLED 35
12 WITNESSES AND PLAYED DEPOSITIONS, BUT THEY DIDN'T PUT
13 MS. HIRSCH ON THE STAND.

11:27AM

14 SOCIÉTÉ GÉNÉRALE HAD TWO PROBLEMS TO
15 SOLVE BEFORE THEY COULD EXECUTE ON THEIR DECISION TO
16 GET OUT OF THE BUSINESS.

11:28AM

17 FIRST, THEY NEEDED TO INSTALL SOMEBODY
18 TO DO THEIR BIDDING.

19 AND THE SECOND PROBLEM WAS THE NEED TO
20 FIGURE -- THEY NEED TO FIGURE OUT THE WAY TO HANDLE THE
21 KEY PORTFOLIO MANAGERS.

11:28AM

22 ON THE FIRST POINT, MR. BEYER, WHO IS
23 THE CEO, HAD HAD ENOUGH. HE BEGAN TO TALK TO THE
24 FRENCH ABOUT LEAVING.

25 AND MR. RIPOLL, ONE OF THE FRENCH PEOPLE
26 HE WAS TALKING TO, IMMEDIATELY SAW AN OPPORTUNITY. HE
27 DIDN'T THINK MR. BEYER WAS THE RIGHT MAN.

11:28AM

28 REMEMBER, MR. BEYER IN 2008, HAD GOTTEN

1 ON A PLANE, FLOWN TO PARIS, AND TRIED TO MAKE AN OFFER
2 TO BUY TCW.

3 THEN IN 2009, THIS IS EXHIBIT 1940, HE
4 HAD WRITTEN AN E-MAIL ON BEHALF OF THE PORTFOLIO
5 MANAGERS ABOUT MAKING A PROPOSAL TO BUY THE COMPANY. 11:29AM
6 THIS KIND OF PERSON WASN'T THE PERSON THE FRENCH
7 WANTED. THEY WANTED -- TAKE A LOOK AT EXHIBIT 5117,
8 PAGE 3.

9 THEY WANTED TO SET UP IN-HOUSE SOMEONE
10 IN CHARGE AT SG THAT CAN GRADUALLY LIMIT OUR 11:29AM
11 DEPENDENCE, VIS-A-VIS THE AMERICA'S THAT TOY WITH US.

12 THAT'S THE PERSON THEY WANTED. AND THEY
13 FOUND THAT PERSON IN MARC STERN. REMEMBER WHEN
14 MARC STERN RETIRED FROM TCW? WHAT DID HE DO? HE WENT
15 TO WORK FOR THE FRENCH. 11:29AM

16 THEY PAID HIM \$2 MILLION A YEAR TO RUN
17 THEIR NORTH AMERICAN GIMS OFFICE, ON TOP OF THE MORE
18 THAN \$100 MILLION HE HAD RECEIVED FROM THE SALE OF HIS
19 TCW STOCK TO SOCIÉTÉ GÉNÉRALE.

20 HE RECEIVED A MEDAL OF HONOR FROM THE 11:30AM
21 FRENCH GOVERNMENT. HE'S NOT A FRENCH PUBLIC OFFICIAL.
22 HE'S AN AMERICAN BUSINESSMAN. HE KNEW THAT THEY WERE
23 IN DISARRAY. EXHIBIT 2153 IS THE INITIAL REPORT IN
24 JULY PREPARED BY CITIBANK.

25 HE DOES A VERY GOOD JOB OF DESCRIBING 11:30AM
26 THE TURMOIL AND THE CONDITION THAT THIS COMPANY WAS IN
27 WHEN MR. STERN CAME BACK.

28 IT WAS A COLLECTION OF BOUTIQUES. IT

1 LACKED IDENTITY IN ANY STRATEGIC DIRECTION. ALL THE
2 PORTFOLIO MANAGERS EXPRESSED UNANIMOUS DISSATISFACTION
3 WITH THE DISTRIBUTION SYSTEM, AND THE COMPENSATION
4 STRUCTURES WERE ALL OVER THE MAP.

5 THERE WAS A SERIOUS CONCERN AS TO HOW 11:30AM
6 COMMITTED THE FRENCH WERE. AND THIS PROBLEM WAS MADE
7 WORSE. REMEMBER, THE FRENCH PROMISED WHEN THEY BOUGHT
8 THE COMPANY TO GIVE A 30 PERCENT EQUITY STAKE TO THE
9 KEY EMPLOYEES. 30 PERCENT. THEY HADN'T DONE THAT.

10 MR. BEYER TOLD YOU ABOUT A MEETING IN 11:31AM
11 2008 WHERE MR. OUDEA HAD A PHONE CALL WHERE MR. BEYER
12 WAS OUTRAGED BY THIS.

13 BECAUSE THEY HADN'T DONE IT.

14 WHEN MR. STERN CAME BACK, IN MID 2009,
15 THIS WAS NOT A POPULAR MOVE. EXHIBIT 5164 -- 5164, 11:31AM
16 AGAIN, THE AGENDA FOR THE JUNE 29TH MEETING. OVERALL
17 STRATEGY, FIRST THINGS HE SAID, HE NEEDS TO CALM A
18 VOLATILE SITUATION. THE KEY PORTFOLIO MANAGERS, NOT
19 JUST MR. GUNDLACH, WERE NOT HAPPY WITH MR. STERN.

20 REMEMBER THE LETTER THAT MR. ATTANASIO, 11:31AM
21 MS. JAFFEE, JEAN-MARC CHAPUS, MR. THOMAS, AND
22 MR. GUNDLACH SENT? EXHIBIT 5146.

23 THIS IS A LETTER WENT OUT ON MAY 31ST
24 TELLING THEM THEY DID NOT WANT MR. STERN TO BE
25 APPOINTED AS CEO. 11:32AM

26 THE BIGGEST PROBLEM FOR MR. STERN WAS
27 MR. GUNDLACH. BUT NOT BECAUSE -- NOT BECAUSE OF HIS
28 COMMENTS IN THE LUNCH ROOM. THE BIGGEST PROBLEM WAS HE

1 WAS A VICTIM OF HIS OWN SUCCESS. HE CONTROLLED
2 60 PERCENT OF THE ASSETS. SOC-GEN WANTED TO SELL THE
3 COMPANY. AND THEY WERE CONCERNED THAT NO BUYER WOULD
4 BE INTERESTED IN BUYING A COMPANY WHERE ONE PERSON
5 DOMINATED THAT MUCH OF THE BUSINESS.

11:32AM

6 BECAUSE, ALTHOUGH HE HAD AN AGREEMENT TO
7 STAY THROUGH 2011, THEIR PLAN TO SELL WAS OVER THE NEXT
8 FIVE YEARS. AND THEY WERE WORRIED THAT THIS WASN'T
9 THAT FAR OFF AND NOBODY WOULD BE INTERESTED IN BUYING.

10 SO THEY HAD A CHOICE. THEY COULD EITHER
11 PONY UP AN OWNERSHIP STAKE TO MR. GUNDLACH, OR THEY
12 COULD REMOVE HIM. AND THEY CHOSE TO REMOVE HIM.

11:32AM

13 MR. GUNDLACH WAS SUMMONED TO A MEETING
14 AT MR. DAY'S HOUSE THE LAST WEEK OF MAY, 2009, WITH
15 MR. STERN. MR. GUNDLACH DID NOT THINK THAT MR. STERN
16 WAS THE RIGHT PERSON FOR THE JOB. AND HE TOLD HIM
17 THAT.

11:33AM

18 THAT MEETING WAS A TURNING POINT.
19 BECAUSE THAT SAME DAY, OR A DAY LATER, ON MAY 29TH,
20 MR. STERN, THE TOP EXECUTIVES, BEGAN TO TAKE STEPS TO
21 FIGURE OUT HOW MUCH MONEY THEY WERE GOING TO OWE
22 MR. GUNDLACH.

11:33AM

23 AND THE ANSWER? A WHOLE LOT.
24 EXHIBIT 6197. WHEN MR. GUNDLACH NEGOTIATED THAT
25 AGREEMENT WITH MR. SONNEBORN, YOU'LL REMEMBER IT.
26 MR. BEYER DESCRIBED IT AS A WIN/WIN. IT WAS A WIN/WIN
27 BECAUSE THEY PAID MR. GUNDLACH LESS IN 2007 THAN THEY
28 WOULD HAVE PAID HIM UNDER HIS PREEXISTING DEAL.

11:33AM

1 THE WHOLE IDEA WAS MR. GUNDLACH WOULD
2 ABSORB COST. HE WOULD BE PAID LESS FOR A WHILE, BUT IF
3 HE WAS RIGHT ABOUT HIS INVESTMENT STRATEGY, AND THE --
4 AND THE INVESTMENTS SKYROCKETED, SO WOULD HIS
5 COMPENSATION.

11:34AM

6 AND THAT'S WHAT MR. STERN AND THE FRENCH
7 FOUND OUT WHEN THEY CHECKED ON IT IN EARLY JUNE OF
8 2009.

9 STEP NO. 2 WAS TO FIND A REPLACEMENT FOR
10 MR. GUNDLACH. NOW, MR. QUINN TOLD YOU THEY DIDN'T
11 START REALLY LOOKING FOR A REPLACEMENT UNTIL AFTER
12 JUNE 3RD.

11:34AM

13 WELL, AGAIN, LOOK AT THE DOCUMENTS.
14 THERE ARE TWO KEY DOCUMENTS ON THIS POINT.
15 EXHIBIT 5379, PAGE 51, IS A LENGTHY PRESENTATION. THIS
16 IS A PRESENTATION TO THE FRENCH IN THE FALL.

11:34AM

17 THIS IS WHAT THEY SAID IN A PRESENTATION
18 THAT WAS DRAFTED BY CITIBANK AND MICHAEL CONN AND
19 PRESENTED BY MR. STERN HIMSELF:

20 IN JUNE 2009, MARC STERN
21 INITIATED EFFORTS TO FIND AN
22 ALTERNATIVE SOLUTION FOR T-CO'S
23 FIXED INCOME AREA AND IDENTIFIED A
24 NUMBER OF LOS ANGELES-BASED FIRMS
25 THAT SEEMED ATTRACTIVE.

11:35AM

26 THE OTHER EXHIBIT THAT'S KEY ON THIS IS
27 EXHIBIT 5373, WHICH WAS MR. CONN'S DRAFT THAT
28 EVENTUALLY BECAME THIS (INDICATING). IF WE COULD PUT

11:35AM

1 THAT UP.

2 REMEMBER MR. GAMSIN? MR. GAMSIN WAS A
3 FRIEND OF MR. STERN. HAD BEEN HIS LAWYER ACTUALLY.
4 HIS NAME APPEARS IN THOSE NOTES OF THE JUNE 29TH
5 E-MAIL. MR. GAMSIN SCOURED OVER 200 NAMES, OVER 200
6 NAMES TO FIND THE RIGHT REPLACEMENT.

11:35AM

7 CITIBANK IT SAYS SCOURED THE UNIVERSE OF
8 POTENTIAL NAMES AND ULTIMATELY ARRIVED AT MET WEST.

9 NOW, MR. STERN AND MR. DAY SAY THEY
10 DIDN'T WANT TO FIRE MR. GUNDLACH.

11:36AM

11 MR. DAY SAID HE REALLY -- THEY WANTED TO
12 WORK IT OUT.

13 WELL, THEY SAY -- MR. STERN SAYS IT
14 DIDN'T MAKE ECONOMIC SENSE BECAUSE MR. GUNDLACH WAS
15 BRINGING IN REVENUE.

11:36AM

16 WELL, IT MAKES PERFECT ECONOMIC SENSE IF
17 YOU'RE THE FRENCH. THEY'RE WILLING TO TAKE A
18 SHORT-TERM LOSS, A STEP BACKWARDS FOR TWO STEPS FORWARD
19 BECAUSE THEIR PLAN WAS TO EXIT THE BUSINESS AND SELL
20 IT. AND THEY REALIZED THEY COULDN'T SELL IT WITH ONE
21 PERSON DOMINATING THE BUSINESS SO MUCH.

11:36AM

22 TAKE A LOOK AT EXHIBIT 5198. THIS IS A
23 CITIBANK DOCUMENT WHERE THE CITIBANK BANKERS SAY: --
24 I'M SORRY. IT'S A SOC-GEN DOCUMENT. THEY SAY THAT:

25 R. DAY THINKS GUNDLACH MUST
26 LEAVE THE CITIBANKERS THAT WE
27 MANDATED ON THE TCW STRATEGIC
28 STUDY, TELL US THAT WE CANNOT SELL

11:37AM

1 OR MORTGAGE TCW IF THE GUNDLACH
2 ISSUE IS NOT HANDLED.

3 EXHIBIT 5262. JACQUES RIPOLL SAYS:
4 THEY WILL NEVER BE ABLE TO
5 CHANGE. I AGREE WITH JEAN PIERRE
6 ON THE NEED TO REMOVE J.G. AS LONG
7 AS HE IS HERE, WE WILL NEVER BE
8 ABLE TO CHANGE ANYTHING.

11:37AM

9 AGAIN, WHY DIDN'T THEY NEGOTIATE?
10 REMEMBER THE DEPOSITION VIDEO FROM
11 WOODY BRADFORD? HE CALLS HIMSELF WOODY BECAUSE IT'S
12 LYNWOOD BRADFORD. HE SAID HE ADVISED THEM TO
13 NEGOTIATE.

11:37AM

14
15 (VIDEO DEPOSITION CLIP PLAYED OF WOODY BRADFORD.) +

11:38AM

16
17 MR. BRIAN: THEY DIDN'T TAKE THAT ADVICE. THE
18 REASON THEY DIDN'T TAKE THAT ADVICE WAS SOCIÉTÉ
19 GÉNÉRALE WANTED TO GET OUT OF THE BUSINESS. THEY
20 WANTED TO REDUCE THE COMPENSATION STRUCTURE AND, IN THE
21 MEANTIME, THEY WANTED TO CHANGE THE BALANCE OF POWER
22 BETWEEN THEM AND THE PORTFOLIO MANAGERS. THAT'S
23 EXHIBIT 5432.

11:38AM

24 THEY WANTED TO CHANGE THE BALANCE OF
25 POWER. MR. STERN SAID THAT COST SAVINGS, REDUCING THE
26 AMOUNT THEY PAID TO MR. GUNDLACH AND HIS TEAM HAD
27 NOTHING TO DO WITH THE DECISION TO FIRE MR. GUNDLACH.
28 THAT'S WHAT HE SAID.

11:38AM

1 YOU CAN JUDGE THE CREDIBILITY OF THAT
2 TESTIMONY. HE CERTAINLY PITCHED THE DEAL TO THE FRENCH
3 AS BEING ONE THAT SAVED A LOT OF MONEY. REMEMBER
4 EXHIBIT 5365?

5 THAT'S AN E-MAIL THAT HE WROTE IN WHICH
6 HE SAID:

11:39AM

7 THIS FEE SHARING RATE COMPARES
8 FAVORABLY AND WILL RESULT IN A
9 SAVINGS OF ROUGHLY \$50 MILLION AT
10 THE \$200 MILLION REVENUE LEVEL.

11:39AM

11 AT LEAST A \$50 MILLION SAVINGS EACH AND
12 EVERY YEAR. WHEN HE MADE HIS PRESENTATION TO THE
13 FRENCH, HE SAID THAT GETTING RID OF MR. GUNDLACH WOULD,
14 QUOTE, RESTRUCTURE THE CURRENT DISPARATE FEE SHARING
15 COMPENSATION STRUCTURE.

11:39AM

16 MR. BARACH TESTIFIED TWICE. THE FIRST
17 TIME HE TESTIFIED ABOUT A CONVERSATION HE HAD ABOUT
18 WITH MR. DAY AFTER THEY'D FIRED MR. GUNDLACH. AND HE
19 SAID -- HE GAVE HIM THREE REASONS -- I CAN'T REMEMBER
20 THE FIRST -- THREE REASONS WHY THEY FIRED MR. GUNDLACH.

11:40AM

21 ONE, HE ACTUALLY SAID THIS: WAS
22 MR. GUNDLACH DIDN'T COME TO HIS PARTIES.

23 BUT THEN HE SAID: WE FIRED HIM BECAUSE
24 WE THOUGHT HE WAS GETTING PAID TOO MUCH MONEY.

25 THAT TESTIMONY WAS UNREBUTTED.

11:40AM

26 BUT TO DO THIS, TO DO THIS PLAN AND GET
27 RID OF MR. GUNDLACH AND TRANSFORM THE COMPANY, THEY HAD
28 TO PICK OFF THE OTHER PORTFOLIO MANAGERS. HOW DID THEY

1 DO THAT?

2 WELL, THEY GAVE DIANE JAFFEE A BIG
3 RAISE. THAT'S EXHIBIT 5222.

4 THEY GAVE HER A BIG INCREASE IN HER
5 COMPENSATION.

11:40AM

6 THEY NEGOTIATED A LUCRATIVE SETTLEMENT
7 WITH BLAIR THOMAS.

8 AND THEY NEGOTIATED A LUCRATIVE
9 SETTLEMENT WITH MR. ATTANASIO AND MR. JEAN-MARC CHAPUS.

10 THAT'S IN EXHIBIT 5440.

11:40AM

11 AND MR. STERN PUSHED THROUGH THIS
12 LUCRATIVE DEAL FOR MR. CHAPUS AND MR. ATTANASIO EVEN
13 THOUGH SOC-GEN THOUGHT HE WAS PUSHING TOO HARD AND THEY
14 WERE GETTING PAID TOO MUCH.

15 THAT'S EXHIBIT 5461.

11:41AM

16 BUT AS I TOLD YOU, MR. GUNDLACH HAD MORE
17 BUSINESS THAN THEY HAD. AND SO THEY THOUGHT.
18 MR. STERN THOUGHT, THE FRENCH THOUGHT THAT MR. GUNDLACH
19 HAD MORE BARGAINING POWER.

20 MR. QUINN SAYS, WELL, MR. GUNDLACH
21 DIDN'T WANT TO NEGOTIATE. I'LL TALK ABOUT THAT. HE
22 ACTUALLY DID. AND THE EVIDENCE IS REALLY UNDISPUTED
23 ABOUT THAT.

11:41AM

24 THE FACT IS SOC-GEN AND MR. STERN NEVER
25 ONCE CAME TO MR. GUNDLACH TO NEGOTIATE. BECAUSE HE
26 REALIZED THAT THE -- THAT THEY SURPRISED MR. GUNDLACH.
27 THEY HAD A BETTER CHANCE TO KEEP SOME OF THEIR ASSETS.

11:41AM

28 LET'S PLAY MR. STERN'S VIDEO DEPOSITION.

1 (VIDEO DEPOSITION CLIP PLAYED OF MARC STERN.) +

2
3 MR. BRIAN: THAT'S WHY THE ELEMENT OF SURPRISE
4 WAS SO IMPORTANT.

5 NOW, MR. QUINN SAYS MR. STERN DIDN'T
6 HATE MR. GUNDLACH, VICE VERSA.

7 YOU KNOW, TAKE A LOOK AT EXHIBIT 6016.
8 I'M SORRY, BUT WHEN HE SENDS AN E-MAIL WHERE HE TALKED
9 ABOUT HIS MAJESTY KING JEFFREY, ALL HAIL, THAT'S NOT
10 TONGUE IN CHEEK. THAT IS NOT WRITTEN BY A GUY WHO
11 LIKES MR. GUNDLACH.

12 LET'S JUST SAY IT THE WAY IT IS: HE
13 DIDN'T LIKE HIM, AND HE WANTED HIM GONE.

14 AND MR. DAY HATED HIM AFTER THAT LATE
15 MAY MEETING.

16 I TALKED TO YOU ABOUT THE JUNE 29TH
17 MEETING. MR. STERN DOESN'T RECALL ANYTHING ABOUT IT,
18 EITHER.

19 LET'S PLAY HIS VIDEO. VIDEO CLIP 14.

20
21 (VIDEO DEPOSITION CLIP PLAYED OF MARC STERN.) +

22
23 MR. BRIAN: WE DO HAVE THE NOTES,
24 EXHIBIT 5164, SO WE KNOW THEY TALKED ABOUT THE
25 FINANCIAL ISSUES. WHAT DOES THAT MEAN?

26 THAT MEANS HOW MUCH THEY HAD TO PAY
27 MR. GUNDLACH.

28 TALK ABOUT LEGAL ISSUES. THEY TALKED

1 ABOUT THE ALTERNATIVE MANAGERS. THAT'S WHERE
2 MR. GAMSIN'S NAME APPEARS, THE GUY THAT SCoured 200
3 NAMES.

4 THEY TALKED ABOUT THE INITIALS THERE,
5 M.A. AND J.M.C. THAT'S MARK ATTANASIO. THEY WERE
6 ALREADY TALKING ABOUT HOW TO GET THEM TO BE ALLIES.

11:43AM

7 PROJECT G HAD BEGUN ON JUNE 29TH. WE
8 KNOW, AND I ALREADY SHOWED YOU EXHIBIT 5153, WHERE
9 MR. DAY WANTS TO FORCE HIM OUT.

10 LET'S TAKE A LOOK AT 5160. THIS IS A
11 JUNE 13TH E-MAIL, WHERE MUSTIER SAYS:

11:44AM

12 WE BELIEVE THAT HE SHOULD
13 ULTIMATELY BE REMOVED.

14 THAT ON JULY 31ST, EXHIBIT 5198,
15 THE PROBABLE CONCLUSION WILL BE
16 THAT WE HAVE TO SEVER AND REMOVE
17 MR. GUNDLACH.

11:44AM

18 SEVER AND REMOVE. WE DIDN'T PLAY FOR
19 YOU THE DEPOSITION I TOOK OF MR. CABANNES BECAUSE IT
20 WAS THROUGH THE FRENCH INTERPRETER. WE HAD MY
21 COLLEAGUE, MR. KREILKAMP, SORT OF PLAY THE WITNESS.

11:44AM

22 DO YOU REMEMBER WHAT MR. CABANNES SAID,
23 THAT SWORN TESTIMONY, EVEN THOUGH CABANNES WASN'T HERE
24 HIMSELF? HE TRIED TO TELL YOU THAT SEVER AND REMOVE
25 DID NOT MEAN TERMINATE OR FIRE.

11:44AM

26 HE MUST THINK THAT GETTING GUILLOTINED
27 IS LIKE GETTING A HAIRCUT. SEVER AND REMOVE MEANS
28 FIRING SOMEBODY. HE KNEW THAT. THAT, AGAIN, WAS NOT

1 CREDIBLE TESTIMONY.

2 WHAT HAPPENED ON AUGUST 27TH? THEY HAD
3 THE MEETING.

4 AND WHAT HAPPENED RIGHT AFTER THAT
5 SECRET MEETING? TAKE A LOOK AT EXHIBIT 5226. THIS IS
6 AN E-MAIL MR. CONN SENDS THE NEXT DAY, REGARDING
7 PROJECT G.

11:45AM

8 THE PERSON I WAS THINKING ABOUT,
9 TAD RIVELLE AT MET WEST -- THEN HE
10 SAID:

11:45AM

11 WE NEED TO PURSUE SOME SORT OF
12 TRANSACTION FOR THE FIRM.

13 THIS IS BEFORE THE SEPTEMBER 3RD MEETING
14 THAT MR. STERN SAYS PROMPTED ALL OF THIS.

15 NOW, I TALKED ABOUT THE SEPTEMBER 3RD
16 MEETING. MR. STERN LIED TO MR. GUNDLACH WHEN HE SAID
17 THERE'S NO PLAN TO FIRE YOU.

11:45AM

18 WHAT'S THE OTHER KEY THING THAT COMES
19 OUT OF THAT MEETING? MR. GUNDLACH REPEATED HIS
20 PROPOSAL TO TRY TO PUT TOGETHER A PACKAGE TO BUY THE
21 FIRM FROM THE FRENCH. AND HE VALUED THE COMPANY AT
22 \$700 MILLION AND OFFERED SOMETHING LIKE \$150 MILLION,
23 CASH DOWN, AND SOME OF IT WOULD BE FINANCED.

11:46AM

24 AND MR. QUINN AND HIS COLLEAGUE,
25 MR. MADISON, SAID THAT WAS RIDICULOUS.

11:46AM

26 MR. STERN SAID THAT WAS A RIDICULOUS,
27 ABSURD OFFER.

28 LET'S PUT UP OUR CHART. IT SHOWS THERE

1 WAS TONS OF EVIDENCE ABOUT WHAT THE COMPANY WAS WORTH.

2 MR. MUSTIER, MAY 30TH, SAID THEY HAD A
3 BOOK VALUE OF 900 MILLION.

4 CITIBANK, INTERNALLY, SEPTEMBER 12TH,
5 SAID 700 TO 800.

11:46AM

6 ANOTHER CITIBANK DRAFT SAID 800 TO 900.

7 THEY THEN SAID IT COULD BE REDUCED BY
8 15 PERCENT, BRINGING IT DOWN TO 680 -- TO 765.

9 IN THEIR FINAL REPORT THEY SAID
10 \$1 BILLION VALUE WAS DEFENSIBLE.

11:47AM

11 SO MR. GUNDLACH'S VALUATION AT
12 700 MILLION IS ACTUALLY PRETTY REASONABLE. AND IT'S
13 NEGOTIATING 101 THAT YOU DON'T START WITH YOUR FINAL
14 OFFER. ANYBODY WHO'S EVER BOUGHT A CAR KNOWS THAT.
15 YOU ALWAYS GO IN AND OFFER A LITTLE LOWER THAN WHAT THE
16 RETAILER IS ASKING FOR.

11:47AM

17 NOW, ANOTHER WAY THAT THEY'RE TRYING TO
18 COVER THIS UP IS WITH RESPECT TO GUNDLACH'S EMPLOYMENT
19 AGREEMENT. DESPITE WHAT THEY SAY, THEY KNEW, IN AUGUST
20 OF 2009, THAT HIS EMPLOYMENT AGREEMENT DIDN'T EXPIRE
21 UNTIL DECEMBER 31ST, 2011.

11:47AM

22 TAKE A LOOK AT EXHIBIT 5178.

23 THIS WAS INTRODUCED IN EVIDENCE, BUT YOU
24 DIDN'T SEE IT.

25 TAKE A LOOK AT THIS. THIS IS A
26 DOCUMENT. IT WAS SENT TO CITIBANK BY MICHAEL CONN ON
27 JULY 10. THEY HAD ASKED FOR A LIST OF EMPLOYMENT
28 CONTRACTS. AND SO HE LISTED ALL THESE.

11:47AM

1 AND HE SAID THAT MR. GUNDLACH'S CONTRACT
2 EXPIRES 2011 -- 12, THAT'S DECEMBER -- 31.

3 MR. SULLIVAN SAID THE SAME THING IN
4 EXHIBIT 5180. THAT'S A MULTI-PAGE SPREADSHEET. YOU'VE
5 GOT TO KIND OF PUT IT TOGETHER. BUT THIS IS THE
6 CONTRACT EXPIRATION DATE HE WROTE DOWN: 12-31-2011.

11:48AM

7 NOW, THEY COULDN'T GO BACK AND ALTER THE
8 BOARD MINUTES, WHICH HAD APPROVED THE FIVE-YEAR
9 AGREEMENT BACK IN 2007. YOU CAN'T ALTER BOARD MINUTES.
10 SO, WHAT THEY DID WAS THEY ALTERED SOME OF THESE
11 DOCUMENTS.

11:48AM

12 THEY RECOGNIZE THAT MR. GUNDLACH WAS
13 GOING TO GET A VERY BIG PAYDAY. THEY DIDN'T WANT THAT.
14 AND SO THEY WENT BACK AND THEY CHANGED IT.

15 TAKE A LOOK AT EXHIBIT 1741.

11:49AM

16 THIS IS ALSO PREPARED BY MR. SULLIVAN
17 ABOUT A WEEK LATER. HE TOOK OUT THE EXPIRATION DATE OF
18 DECEMBER 31ST, 2011 AND HE INSERTED A DASH. WHY?
19 BECAUSE THEY HAD DECIDED THAT THEY SUDDENLY WANTED TO
20 RAISE A QUESTION ABOUT WHETHER THERE WAS A CONTRACT.
21 WHETHER THERE WAS A CONTRACT.

11:49AM

22 I'LL TALK TO YOU ABOUT THAT MORE IN A
23 FEW MINUTES, ABOUT WHO'S TRYING TO HAVE THEIR CAKE AND
24 EAT IT, TOO, HERE. AND WHO'S TRYING TO PLAY BOTH SIDES
25 OF THE FENCE.

11:49AM

26 EXHIBIT 5224, WHERE THEY SAID MR. CONN'S
27 NOTES, UNFORTUNATELY, WE'VE HAD TO TERMINATE HIM FOR
28 CAUSE.

1 REMEMBER, I ASKED MR. STERN ON THE STAND
2 IF HE WAS A LAWYER. HE HASN'T PRACTICED LAW IN A LONG
3 TIME, BUT HE HAS THE LEGAL TRAINING.

4 MR. CAHILL IS A LAWYER. THEY KNOW WHAT
5 IT MEANS WHEN IT SAYS: UNFORTUNATELY, WE'VE HAD TO
6 TERMINATE HIM FOR CAUSE. 11:50AM

7 YOU DON'T NEED CAUSE TO TERMINATE AN
8 AT-WILL EMPLOYEE.

9 YOU NEED CAUSE TO TERMINATE SOMEONE
10 WHO'S UNDER CONTRACT. WHAT WAS MR. STERN'S EXPLANATION 11:50AM
11 OF THAT? DO YOU REMEMBER? HE SAID, WELL, HE DIDN'T
12 REALLY REMEMBER THE MEETING, OF COURSE. BUT HE MUST
13 HAVE BEEN SAYING THAT HE NEEDED CAUSE TO JUSTIFY TO THE
14 INVESTORS.

15 WELL, THAT'S NOT WHAT YOU NEED CAUSE TO 11:50AM
16 GO TALK TO A LAW FIRM ABOUT, WHICH IS IN THOSE NOTES.
17 YOU NEED CAUSE WHEN YOU GO TALK TO A LAW FIRM TO FIND
18 OUT WHETHER THERE'S CAUSE TO TERMINATE AN EMPLOYEE
19 UNDER CONTRACT.

20 ANOTHER KEY PART OF THEIR PLAN WAS 11:50AM
21 DIVIDE AND CONQUER. TAKE A LOOK AT EXHIBIT 5224 AGAIN,
22 PAGE 13.

23 THIS IS PART OF MR. BURSCHINGER. YOU
24 REMEMBER THIS. HE LISTS ALL KEY EMPLOYEES AND THEY
25 START MAKING A LIST OF WHO THEY WANT TO KEEP AND WHO 11:51AM
26 THEY DON'T WANT TO KEEP.

27 TAKE A LOOK AT EXHIBIT 5226. THIS IS AN
28 E-MAIL THAT MR. CONN SENDS. LOOK AT THE DATE.

1 SEPTEMBER 3RD, THE SAME DAY AS THAT MEETING AT 9:30 AT
2 NIGHT.

3 HE SENDS A STRATEGIC E-MAIL TO MR. STERN
4 SUGGESTING THAT MR. GIBELLO PICKED UP THERE, GO TALK TO
5 MR. BARACH BECAUSE MR. BARACH WOULDN'T SUSPECT
6 ANYTHING. 11:51AM

7 THEY THOUGHT THEY COULD SURPRISE
8 MR. GUNDLACH, GET RID OF HIM. HE WOULDN'T BE ABLE TO
9 SET UP A BUSINESS, AND THEY WOULDN'T HAVE TO COMPETE
10 WITH HIM. THAT WAS THEIR PLAN. THEY MISCALCULATED. 11:51AM

11 BECAUSE ALL THOSE PEOPLE IN THAT 5224,
12 THEY SAID WERE LOW RISK OF LEAVING, ALMOST ALL OF THEM
13 LEFT. NOT JUST THE PEOPLE FROM THE M.B.S. GROUP,
14 PEOPLE LIKE LUZ PADILLA NOW RUNS THE EMERGING MARKETS
15 DIVISION AT DOUBLELINE. SHE WASN'T EVEN IN THE M.B.S.
16 GROUP. SHE LEFT BECAUSE SHE DIDN'T THINK HE WAS
17 TREATED RIGHT. 11:52AM

18 MR. QUINN TELLS YOU THAT MR. STERN WAS
19 HAPPY PLAYING WITH HIS GRANDKIDS AND RUNNING THE OPERA,
20 AND GIVING HIS MONEY AWAY TO BUILDINGS HE PUT HIS NAME
21 ON. THAT'S WHAT HE SAYS. HE WAS THE INTERIM CEO. 11:52AM

22 YOU KNOW WHAT HE IS NOW? WITHIN A
23 COUPLE OF DAYS OF MR. GUNDLACH BEING FIRED, THEY TOOK
24 AWAY THE INTERIM TITLE. THAT'S EXHIBIT 6141. THEY
25 DROPPED IT. AND HE'S NOW FULL-TIME, PERMANENT CEO. 11:52AM

26 LET ME TALK TO YOU ABOUT OUR
27 COMPENSATION CLAIM. AND I'LL TALK TO YOU ABOUT THIS
28 CHART, THIS E-MAIL MR. QUINN FLASHES AROUND.

1 BOTH SIDES IN THIS CASE AGREE THERE WAS
2 A CONTRACT FORM IN 2007. OKAY. THERE WAS A CONTRACT.
3 THERE'S NO DOUBT ABOUT IT. THERE'S GOING TO BE
4 INSTRUCTIONS ABOUT WHAT A CONTRACT IS.

5 LET'S PUT UP THIS JURY INSTRUCTION:

11:53AM

6 EVERY EMPLOYMENT RELATIONSHIP
7 INVOLVES A CONTRACT OF SOME KIND
8 BETWEEN THE EMPLOYER AND THE
9 EMPLOYEE.

10 CONTRACT AND AGREEMENT MEAN THE SAME
11 THING. YOU MUST DETERMINE IN THIS CASE WHAT THE TERMS
12 OF THE CONTRACT BETWEEN MR. GUNDLACH AND TCW WERE.

11:53AM

13 TCW CONTENDS THAT TCW AND GUNDLACH AGREE
14 TO COMPENSATION, BUT DID NOT AGREE TO ANY SPECIFIED
15 LENGTH AND THAT, ACCORDINGLY, HE WAS AN AT-WILL
16 EMPLOYEE AND WAS PAID AT TERMINATION.

11:53AM

17 WE CONTEND THAT THE PARTIES AGREED TO
18 COMPENSATION, AS WELL AS OTHER ESSENTIAL TERMS, THE
19 FIVE-YEAR LENGTH, THAT HE COULD BE TERMINATED ONLY FOR
20 CAUSE, AND THAT HE WAS TO BE PAID ACCRUED COMPENSATION
21 IF HE WAS TERMINATED.

11:53AM

22 THE DISPUTE IS NOT WHETHER THERE WAS A
23 CONTRACT. THE DISPUTE IS WHAT THE TERMS WERE.

24 NOW, MR. QUINN TRIES TO MAKE A LOT OF
25 THE FACT THAT THE DRAFTS THAT WERE CIRCULATED, THAT
26 THEY WERE NEVER SIGNED. THAT DOESN'T MATTER. YOU'LL
27 GET JURY INSTRUCTIONS THAT ARE GOING TO TELL YOU THAT
28 ORAL CONTRACTS AND ORAL CONTRACT TERMS ARE JUST AS

11:54AM

1 VALID AS WRITTEN CONTRACTS.

2 YOU'RE GOING TO HEAR FROM THE JUDGE THAT
3 IMPLIED CONTRACTS CAN BE CREATED.

4 YOU'RE GOING TO HEAR FROM THE JUDGE THAT
5 THE ACTIONS OF THE PARTIES MAY CONCLUSIVELY SHOW THAT
6 THEY HAVE INTENDED TO ENTER INTO A BINDING AGREEMENT.

11:54AM

7 THE CONTRACT IN 2007 WAS FORMED IN THREE
8 WAYS:

9 EXCHANGE OF E-MAILS; EXHIBIT 61, WHERE
10 MR. GUNDLACH SAYS EVERYONE HAS AGREED TO EVERYTHING IN
11 GOOD FAITH.

11:54AM

12 SHAKING HANDS. MR. SONNEBORN TOLD YOU
13 THEY SHOOK HANDS ON THE DEAL ON MAY 1ST.

14 AND BY PERFORMANCE FOR TWO YEARS WHEN
15 THEY PAID MR. GUNDLACH PURSUANT TO THE TERMS OF THE NEW
16 AGREEMENT.

11:55AM

17 THEY SAY THAT THIS CONTRACT, IN 2007,
18 ONLY INCLUDED THE FEE SHARING ARRANGEMENT IN EXHIBIT A.
19 THAT'S WHAT THEY SAY.

20 WE SAY NO, THERE WAS A FIVE-YEAR DEAL.
21 HE COULD ONLY BE TERMINATED FOR CAUSE. AND IF THEY DID
22 TERMINATE HIM, IF THEY DID TERMINATE HIM, THEY'VE GOT
23 TO PAY HIM HIS ACCRUED COMPENSATION TO TERMINATION.

11:55AM

24 FIRST, IN THINKING ABOUT THIS, REMEMBER,
25 TCW LOVED THE DEAL. EXHIBIT 5035. MR. SONNEBORN'S
26 MAY 1ST E-MAIL. I THINK IT'S AWESOME.

11:55AM

27 EXHIBIT 5036. MR. BEYER:

28 I JUST WANT YOU TO KNOW HOW GOOD

1 I FEEL ABOUT THE NEW DEAL. AND
2 MAKING IT A WIN/WIN.

3 LADIES AND GENTLEMEN, THE EVIDENCE SHOWS
4 THAT BOTH SIDES AGREED TO A FIVE-YEAR TERM. WHY DO I
5 SAY THAT?

11:56AM

6 FIRST OF ALL, THAT'S WHAT MR. SONNEBORN
7 PRESENTED TO THE COMPENSATION COMMITTEE. THAT'S WHAT
8 HE TOLD THEM. EXHIBIT 5048. PAGE 4.

9 HE REVIEWED THE TERMS OF MR. GUNDLACH'S
10 PROPOSED FIVE-YEAR EMPLOYMENT ARRANGEMENT.

11:56AM

11 ON THE NEXT PAGE, PAGE 5:

12 RESOLVED, THE COMMITTEE HEREBY
13 CONFIRMS, RATIFIES, AND APPROVES
14 THE FIVE-YEAR AGREEMENT.

15 NOW, PAUSE FOR A SECOND AND ASK YOURSELF
16 WHAT MAKES SENSE.

11:56AM

17 IT DIDN'T MAKE SENSE FOR MR. GUNDLACH TO
18 AGREE TO THE NEW FEE SHARING ARRANGEMENT WITHOUT THE
19 FIVE-YEAR TERM.

20 MR. SONNEBORN TOLD YOU THAT, WHEN HE
21 APPROVED PAYING MR. GUNDLACH ON THE NEW TERMS, HE KNEW
22 THAT MR. GUNDLACH WAS GOING TO GET PAID LESS IN 2007
23 THAN UNDER THE PREEXISTING DEAL.

11:56AM

24 ONE OF THE THINGS WE CAN ALL AGREE ON
25 ABOUT MR. GUNDLACH, THAT HE IS NOT STUPID. HE WOULD
26 NOT HAVE AGREED TO TAKE LESS MONEY IN THE SHORT RUN,
27 UNLESS HE KNEW HE HAD THE UPSIDE PROTECTION OF THE
28 FIVE-YEAR DEAL.

11:57AM

1 WE HEARD A LOT ABOUT FARMS IN THIS CASE.
2 AND, YOU KNOW, IT'S A LITTLE BIT LIKE PLANTING A CROP.
3 YOU KNOW, YOU PREPARE THE SOIL. YOU PLANT THE SEES.
4 YOU WATER IT. AND IT TAKES MONTHS BEFORE YOU SEE THE
5 CORN.

11:57AM

6 AND INVESTMENTS LIKE THIS ARE LIKE THAT,
7 ONLY THEY TAKE YEARS. THE WORK PUTTING TOGETHER THOSE
8 SMCF FUNDS, GETTING THE INVESTORS TO COME IN, MAKING
9 THE INVESTMENT DECISIONS, MOST OF THAT WORK HAPPENS
10 EARLY IN THE LIFE OF A FUND.

11:58AM

11 THE REWARDS COME LATER. THAT'S WHAT
12 COMES LATER. AND THAT'S WHAT MR. GUNDLACH WAS BETTING
13 ON. AND THAT'S WHAT TCW KNEW. REMEMBER, HE AGREED TO
14 HIMSELF BEAR THE ADDITIONAL COSTS IF THEY HAD TO GO OUT
15 AND HIRE MORE PEOPLE.

11:58AM

16 TCW LOVED THIS DEAL. THEY ALSO KNEW IF
17 HE WAS RIGHT, YEAH, THEY'D MAKE A LOT OF MONEY, BUT HE
18 WOULD GET A BIG CHUNK OF IT.

19 MR. MURPHY, PROFESSOR MURPHY. HE TALKED
20 ABOUT AN OPPORTUNISTIC TERMINATION. WHAT IS THAT?

11:58AM

21 WHAT THAT IS, IS EXACTLY THIS SITUATION
22 WHERE IF YOU HAVE A FIVE-YEAR CONTRACT, AND THE MONEY'S
23 GOING TO COME IN LATE. YOU CAN'T HAVE A SITUATION THAT
24 ALLOWS THE EMPLOYER TO TERMINATE THE MR. GUNDLACH TWO
25 OR THREE OR FOUR YEARS INTO THAT CONTRACT.

11:59AM

26 THAT'S NOT FAIR. IT DOESN'T MAKE SENSE.
27 AND IT'S NOT WHAT THE PARTIES AGREED TO. DESPITE WHAT
28 THEY SAY NOW, IN 2007 TCW WANTED A FIVE-YEAR DEAL. HOW

1 DO WE KNOW THAT?

2 TAKE A LOOK AT THE MINUTES OF THE
3 COMPENSATION COMMITTEE AGAIN, EXHIBIT 5048, PAGE 4.
4 THIS IS MR. SONNEBORN. HE NOTED THAT:

5 MR. GUNDLACH'S CONTRACT
6 CURRENTLY ENDS ON SEPTEMBER 1ST,
7 2007, AND THERE IS CURRENTLY NO
8 STOCK OR OTHER RETENTION MECHANISM
9 IN PLACE OTHER THAN SIGNIFICANT
10 CASH COMPENSATION.

11:59AM

11:59AM

11 WHAT DOES HE MEAN BY THAT? HE MEANS HE
12 HAS -- HE HAS NO KNOWLEDGE OF LOCKING UP OUR MOST
13 SIGNIFICANT PORTFOLIO MANAGER BECAUSE SOC-GEN DECLINED
14 TO GIVE HIM STOCK.

15 THERE WAS NO STOCK MESS -- PEOPLE STAY
16 AT COMPANIES WHEN THEY'RE GIVEN STOCK OPTIONS AND
17 STOCK. WHY? BECAUSE YOU GET VALUE IN THOSE STOCKS,
18 AND YOU WANT TO STAY AND HELP THE COMPANY PERFORM,
19 WHICH RAISES THE VALUE OF YOUR STOCK. THAT'S ONE WAY
20 YOU KEEP YOUR KEY EMPLOYEES. THEY DIDN'T HAVE THAT IN
21 PLACE.

12:00PM

12:00PM

22 EXHIBIT 5037. THIS IS AN E-MAIL FROM
23 MR. SULLIVAN ON MAY 4TH, THREE DAYS AFTER THE HANDSHAKE
24 DEAL TO MR. DEVITO, WHEN HE SAYS:

25 BILL WANTS A FIVE-YEAR FORECAST
26 TO MATCH THE TERM OF JEFFREY'S
27 DEAL.

12:00PM

28 THREE DAYS AFTER THEY SHOOK ON THE DEAL.

1 MR. BEYER WRITES HIS WIN/WIN E-MAIL EXHIBIT -- HE KNOWS
2 WHAT THAT MEANS. HE KNOWS TCW WINS IN THE SHORT RUN
3 AND MR. GUNDLACH WINS IN THE LONG TERM.

4 THE FIVE-YEAR TERM. YOU SAW A CONTRACT
5 CIRCULATED ON MAY 3RD. THAT'S EXHIBIT 60-2. THAT'S A
6 DRAFT THAT WAS CIRCULATED. THE TERM IS FIVE YEARS.
7 THEN YOU SAW EXHIBIT 66-2, ANOTHER ONE THAT MR. CAHILL
8 CIRCULATED ON JUNE 7. THERE'S NO CHANGE. THIS WASN'T
9 AN ITEM OF NEGOTIATION.

12:01PM

12:01PM

12:01PM

12:02PM

12:02PM

10 THERE WAS NO DISPUTE ABOUT THIS. YOU
11 SAW RED LINE. BUT YOU CAN HAVE A CONTRACT WITH THESE
12 ESSENTIAL TERMS WITHOUT HAVING A SIGNED DOCUMENT WITH
13 ALL THE BELLS AND WHISTLES. THERE WAS NO DISAGREEMENT
14 ABOUT THIS FIVE YEARS AT ALL, AND THEY KNEW
15 MR. GUNDLACH WOULD NOT HAVE SIGNED UP WITHOUT IT.

16 TERMINATION PROVISIONS. THERE ARE
17 REALLY TWO THAT WE BELIEVE ARE THE ESSENTIAL TERMS;
18 ONE, 66-4, HE CAN ONLY BE TERMINATED FOR CAUSE.

19 AND SECOND, IF THEY TERMINATE HIM, THEY
20 HAVE TO PAY HIM THE COMPENSATION ACCRUED TO THE DATE OF
21 TERMINATION. THAT'S THE LAST PARAGRAPH OF THAT SAME
22 SECTION 6. ACCRUED TO THE DATE OF TERMINATION.

23 THIS LANGUAGE, THE ACCRUED AND THE
24 CAUSE -- IF WE PUT UP EXHIBIT 6182 -- WAS ESSENTIALLY
25 IN EVERY AGREEMENT THAT MR. GUNDLACH HAD HAD BACK TO
26 1989. OKAY.

27 THESE WERE NOT NEW CONCEPTS THAT HE
28 WOULD BE PAID ON -- IF HE WAS TERMINATED COMPENSATION

1 THAT ACCRUED TILL THE DATE OF TERMINATION. AND THE
2 GROUNDS FOR TERMINATION WERE THE SAME, OR WHATEVER THAT
3 IS, 20 YEARS.

4 THEY WERE NOT NEGOTIATED IN 2007.
5 THERE'S NO -- YOU'RE NOT GOING TO SEE DIFFERENT TERMS
6 BETWEEN THE MAY 3RD DRAFT AND THE JUNE 7TH DRAFT.

12:02PM

7 I SHOWED YOU ALREADY EXHIBIT 5178.
8 THAT'S THE INFORMATION REQUEST THEY SUBMITTED TO
9 CITIBANK IN 2009 THAT SHOWS THAT THEY KNEW THE
10 EXPIRATION DATE WAS IN DECEMBER 31ST.

12:03PM

11 SAME THING IN EXHIBIT 5180.

12 BUT LET'S LOOK AT THE LAW DEPARTMENT'S
13 RECORDS. SEE THE LAW DEPARTMENT IN EXHIBIT 114? THE
14 LAW DEPARTMENT KEPT A RECORD, TOO, OF THE CONTRACTS.

15 AND WHAT DO THEY SAY? THIS IS A
16 DECEMBER 2008 DOCUMENT. A YEAR AND A HALF AFTER THEY
17 NEGOTIATED, THEY SAY THAT IT EXPIRES DECEMBER 31ST,
18 2011, AND IN THE COMMENTS THEY SAY IT'S IN PROCESS.

12:03PM

19 WHAT WAS IN PROCESS IN DECEMBER 2008? I
20 THINK WHAT THAT SUGGESTS IS THAT TCW WANTED TO HAVE IT
21 BOTH WAYS. MR. QUINN TOLD YOU IN OPENING STATEMENT,
22 AND TOLD YOU AGAIN TODAY, THAT MR. GUNDLACH WANTED TO
23 BE A FREE AGENT.

12:03PM

24 THAT HE WAS PLAYING BOTH SIDES.

25 LADIES AND GENTLEMEN, IF -- THAT IS LIKE
26 THE POT CALLING THE KETTLE BLACK. BECAUSE THEY AGREED
27 TO FIVE YEARS.

12:04PM

28 IT'S IN THEIR MINUTES OF THE

1 COMPENSATION.

2 IT'S IN MR. SULLIVAN'S E-MAILS.

3 IT'S IN THE DOCUMENTS THEY SENT TO
4 CITIBANK.

5 IT'S IN THIS DOCUMENT (INDICATING).

12:04PM

6 IF YOU TAKE A LOOK CAREFULLY,
7 EXHIBIT 114 -- TAKE THAT BACK. LOOK AT THAT IN THE
8 DELIBERATIONS. BECAUSE THEY HAVE ENTRIES FOR OTHER
9 PEOPLE.

10 WHEN SOMEONE WAS AT-WILL,
11 VINCE FIORILLO, THEY WROTE DOWN AFTER TWO YEARS,
12 AT-WILL.

12:04PM

13 WHEN THEY DIDN'T THINK SOMETHING WAS
14 BINDING BECAUSE IT WASN'T SIGNED, MR. HASSET,
15 JIM HASSET, THEY WROTE DOWN, NOT SIGNED. ALL THEY'RE
16 SAYING HERE, FOR MR. GUNDLACH, HE'S GOT A CONTRACT THAT
17 EXPIRES AT THE END OF 2011, BUT THEY HAVEN'T FINALIZED
18 THE PAPERWORK.

12:04PM

19 THAT'S EXACTLY OUR POINT.

20 ANOTHER EXHIBIT THAT WAS ADMITTED, BUT I
21 DON'T THINK YOU SAW, EXHIBIT 5495. THIS IS A DOCUMENT
22 MR. VILLA DRAFTED TO GO TO THE FEDERAL RESERVE. IN
23 2009.

12:05PM

24 TAKE A LOOK AT PAGE 8. HE TALKS ABOUT
25 WHETHER THEY HAD EMPLOYMENT CONTRACTS WITH THEIR SENIOR
26 PORTFOLIO MANAGERS. AND HE SAYS:

12:05PM

27 TYPICALLY, THESE CONTRACTS ARE
28 BETWEEN ONE AND FIVE YEARS.

1 I'M GOING TO SKIP AHEAD BECAUSE I JUST
2 GOT A NOTE.

3 THE COURT: WOULD YOU LIKE TO TAKE A STRETCH?
4 I DON'T WANT IT TO SLIP TO ANOTHER TEN MINUTES IF YOU'D
5 LIKE TO TAKE A BREATHER.

12:05PM

6 MR. BRIAN: I'LL -- I'LL LEAVE IT UP TO THE
7 LADIES AND GENTLEMEN.

8 THE COURT: EVERYBODY COMFORTABLE?

9 MR. BRIAN: WE CAN GO A LITTLE BIT MORE. I
10 THINK I WOULD.

12:06PM

11 THE COURT: ALL RIGHT. JUST KEEP GOING, THEN.

12 MR. BRIAN: NOW, MR. QUINN PUT THIS DOCUMENT
13 IN FRONT OF YOU. OKAY. WHERE THE TRUTHFUL ANSWER
14 MR. GUNDLACH SAYS IN RESPONSE TO SPECIFIC QUESTIONS
15 ABOUT PROVISION SAID:

12:06PM

16 THE TRUTHFUL ANSWER, JEFFREY
17 GUNDLACH IS NOT UNDER A CONTRACT.

18 WHY DOESN'T THAT END THE STORY? LET ME
19 TELL YOU WHY IT DOESN'T.

20 FIRST OF ALL, GO BACK TO WHAT -- THE
21 INSTRUCTION I PUT UP THERE. IT'S UNDISPUTED HE HAD A
22 CONTRACT. SO, DESPITE WHAT HE SAYS IN AN E-MAIL, HE
23 HAD A CONTRACT. THE QUESTION IS, WHAT THE TERMS ARE.

12:06PM

24 HE'S REFERRING TO SPECIFIC PROVISIONS,
25 HE IS. HE'S ASKED BY AN INVESTOR WHETHER THERE'S A
26 SUCCESSION PLAN, WHETHER THERE'S A NON-COMPETE IN THAT.

12:06PM

27 AND HE RESPONDS IN TYPICAL
28 JEFFREY GUNDLACH FASHION. HE CUTS RIGHT TO THE CHASE

1 AND HE WRITES VERY BLUNT, DIRECT E-MAILS. HE DOES.
2 THAT'S WHAT HE SAID.

3 YOU HEARD MR. OWENS YESTERDAY, WHO SAID
4 HE THOUGHT HE REMEMBERED MR. GUNDLACH SAYING HE DIDN'T
5 HAVE AN EMPLOYMENT AGREEMENT. FRANKLY, HE WAS 3,000
6 MILES AWAY ON THE PHONE. WHEN HE WAS ASKED THAT
7 QUESTION AT THE DEPOSITION, HE ACTUALLY SAID, I DON'T
8 REMEMBER THE FIRST TIME. WHICH I READ YOU YESTERDAY.

12:07PM

9 HE THEN CORRECTED IT AND SAID, WELL, I
10 DO REMEMBER IT.

12:07PM

11 THEN HE SAID YESTERDAY THAT MR. GUNDLACH
12 INITIATED IT AT HIS DEPOSITION, HE COULDN'T REMEMBER.
13 MR. GUNDLACH EXPLAINED HE WAS ASKED WHETHER HE HAD A
14 BINDING NON-COMPETE. AND THAT'S WHAT HE SAID.

15 THE THIRD POINT ON THIS IS WE CAN TALK
16 ABOUT THIS ALL YOU WANT, BUT THE ISSUE IS WHAT DID THE
17 PARTIES INTEND IN 2007.

12:07PM

18 BY 2009 WE ARE HERE BECAUSE THIS
19 RELATIONSHIP WAS BROKEN. OKAY. THAT IS WHY WE'RE
20 HERE. THERE'S NO DOUBT IT WAS IN THE PROCESS OF
21 BREAKING IN SOME WAY. AND ALL THIS TALK THAT THEY TOLD
22 YOU ABOUT HIM INTERVIEWING WITH WAMCO AND TALKING TO
23 GOLDMAN SACHS, THE FACT IS THE RECORD IS UNDISPUTED
24 THAT HE INTENDED, IF HE WAS GOING TO LEAVE, HE WAS
25 GOING TO NEGOTIATE A SEPARATION.

12:07PM

26 TAKE A CAREFUL LOOK AT EXHIBIT 506.
27 THESE ARE THE NOTES OF GREG WARD. HE WAS THE
28 INDIVIDUAL, YOU SAW HIS DEPOSITION. ACTUALLY, THEY

12:08PM

1 PLAYED IT FOR ABOUT TWO YEARS. EXHIBIT 506. THESE ARE
2 THE THREE OPTIONS THAT THEY TALKED ABOUT WITH
3 GOLDMAN SACHS ON DECEMBER 1ST.

4 WORK WITHIN THE CONSTRUCT OF TCW; IN
5 OTHER WORDS, STAY THERE AND MAKE IT BETTER.

12:08PM

6 TRY TO BUY THE COMPANY FROM THE FRENCH.
7 OR NEGOTIATE A SEPARATION.

8 MR. OWENS TOLD YOU EXACTLY THE SAME
9 THING. IN THE FIRST MEETING THEY TALKED ABOUT OPTIONS,
10 AND THEY CAME BACK AND THEY THEN HAD A MEETING AND
11 THESE WERE THE OPTIONS. HE SAID MR. GUNDLACH'S
12 PREFERENCE WAS TO STAY.

12:08PM

13 THE BOTTOM LINE ON THIS CONTRACT IS TCW
14 WAS VERY HAPPY BEING ABLE TO ARGUE THAT THEY HAD A
15 FIVE-YEAR CONTRACT, BUT, FRANKLY, THEY WANTED TO KEEP
16 THEIR OPTIONS OPEN. MAYBE WHEN MR. GUNDLACH GOT
17 FRUSTRATED IN 2009, YOU KNOW, THEY ACCUSED HIM OF
18 TRYING TO KEEP HIS OPTIONS OPEN. MAYBE BOTH SIDES WERE
19 TRYING TO KEEP THEIR OPTIONS OPEN.

12:09PM

20 THE BOTTOM LINE IS, WHEN THEY NEGOTIATED
21 IN 2007, THEY HAD A CONTRACT. TCW KNOWS IT. THEY KNOW
22 IT WAS FIVE YEARS. THEY WROTE IT DOWN IN THEIR
23 DOCUMENTS.

12:09PM

24 AND WHEN THEY TRY TO GET AWAY WITH THIS,
25 IT -- WHEN THEY'RE TRYING TO GET OUT OF THAT CONTRACT,
26 THEY START CHANGING THEIR CORPORATE RECORDS.

12:09PM

27 LET ME TALK ABOUT DAMAGES THAT
28 MR. GUNDLACH HAS SUFFERED. TWO WAYS IN WHICH WE

1 COMPUTED OUR DAMAGES.

2 EXHIBIT 6192. THIS ASSUMES THAT HE HAD
3 A FIVE-YEAR CONTRACT. THE DAMAGES THERE, ACTUALLY, ARE
4 VERY STRAIGHTFORWARD. THEY'RE BIG, BUT THEY'RE
5 STRAIGHTFORWARD. IT'S \$496 MILLION. THEY DON'T
6 DISPUTE THAT. 12:10PM

7 THE ONLY DISAGREEMENT THEY HAVE IS THEY
8 SAY THAT WE NEED TO SUBTRACT -- REMEMBER, MR. GUNDLACH
9 HAD THE -- HE WOULD THEN ALLOCATE MONEY OUT OF THAT
10 POOL TO PEOPLE ON HIS TEAM. THEY SAY THAT WE SHOULD
11 SUBTRACT THAT. 12:10PM

12 WELL, DO YOU REMEMBER THE TESTIMONY
13 MR. BARACH -- OF MR. BARACH, AFTER HE LEFT, HE WROTE A
14 LETTER -- HAD A LAWYER WRITE A LETTER CLAIMING HE WAS
15 OWED MONEY. 12:10PM

16 THEY WROTE HIM BACK A LETTER,
17 EXHIBIT 5837, IN WHICH THEY REFUSED TO PAY HIM. HERE
18 IS HOW THEY JUSTIFY IT:

19 YOU PROBABLY KNOW FROM
20 MR. GUNDLACH THAT HE SUCCESSFULLY
21 NEGOTIATED WITH TCW TO MAKE BONUSES
22 DISCRETIONARY. THIS WAS
23 FINANCIALLY ADVANTAGEOUS TO
24 MR. GUNDLACH (ALTHOUGH
25 DISADVANTAGEOUS TO THOSE WHO WORKED
26 FOR HIM, INCLUDING MR. BARACH)
27 BECAUSE MR. GUNDLACH COULD BENEFIT
28 HIMSELF BY REDUCING OR ELIMINATING 12:10PM

1 BONUSES FOR OTHERS IN THE MBS
2 GROUP. TO THE EXTENT HE PAID
3 OTHERS IN THE GROUP LESS IN BONUSES
4 (OR NO BONUS AT ALL) THEN HIS OWN
5 BONUS COULD BE LARGER.

12:11PM

6 IN OTHER WORDS, WE DON'T OWE YOU,
7 MR. BARACH, ANYTHING. IF WE OWE IT TO ANYBODY, WE OWE
8 IT TO MR. GUNDLACH.

9 WHEN MR. GUNDLACH ASKED FOR THE MONEY
10 HERE, THEY SAY NO, YOU HAVE TO SUBTRACT WHAT YOU OWE
11 MR. BARACH AND OTHERS. YOU CAN'T HAVE IT BOTH WAYS.

12:11PM

12 BUT IF THEY'RE RIGHT ON THAT, IF YOU
13 LOOK AT EXHIBIT 6198, THE DAMAGES ARE ACTUALLY
14 \$267.2 MILLION.

15 THE SECOND WAY WE'VE COMPUTED DAMAGES
16 ARE, IF HE DIDN'T HAVE A FIVE-YEAR CONTRACT, AND IF,
17 INSTEAD, HE WAS TERMINATED FOR CAUSE IN DECEMBER OF
18 2009, THAT GETS TO THIS LANGUAGE: ACCRUED TO THE DATE
19 OF TERMINATION IN 66-4.

12:11PM

20 NOW, MR. QUINN WENT TO GREAT -- I WOULD
21 SAY AGONIZING LENGTHS FOR HIM -- TO TRY TO ARGUE THAT
22 ACCRUED DOESN'T MEAN ACCRUED.

12:12PM

23 ACCRUED MEANS ACCRUED. ACCRUED, BY
24 DEFINITION, MEANS IT HASN'T BEEN PAID OR RECEIVED YET.
25 YOU ACCRUE SOMETHING ON YOUR BOOKS AND RECORDS BECAUSE
26 YOU ANTICIPATE RECEIVING IT, BUT YOU HAVEN'T.

12:12PM

27 THAT PHRASE WOULD HAVE BEEN IN HIS
28 AGREEMENT FOR YEARS. IF THEY MEANT TO SAY WE WILL PAY

1 YOU WHAT'S BEEN ACCRUED AND PAID, THEY SHOULD HAVE SAID
2 THAT. THEY DIDN'T.

3 NOW, TAKE A LOOK -- MR. QUINN TRIES.
4 IT'S A PRETTY CLEVER ARGUMENT. HE SAYS, WHILE THIS
5 EXHIBIT A -- HE'S A CLEVER GUY -- HE SAYS THAT
6 EXHIBIT A REALLY CONTROLS.

12:12PM

7 WELL, TAKE A LOOK AT -- WE LOOKED AT
8 2150-7.

9 THIS IS A DIFFERENT PROVISION OF THE
10 CONTRACT. PROFIT SHARING. THIS IS WHERE THEY REFER
11 TO:

12:13PM

12 DURING THE TERM, YOU'RE ENTITLED
13 TO RECEIVE THE RESIDUAL AMOUNT OF
14 THIS PROFIT SHARING.

15 THAT EXHIBIT GOVERNS WHAT YOU GET WHILE
16 YOU'RE THERE.

12:13PM

17 BUT IT'S THE OTHER LANGUAGE, ACCRUED TO
18 TERMINATION, THAT GOVERNS WHAT YOU GET IF THEY CHOOSE
19 TO TERMINATE YOU. NOW, WHY DOES THAT MAKE SENSE?

20 IT MAKES SENSE FOR ALL THE REASONS THAT
21 PROFESSOR MURPHY TOLD YOU ON OPPORTUNISTIC
22 TERMINATIONS. HIGHLY PAID EXECUTIVES, SPORTS STARS,
23 BASKETBALL COACHES NEGOTIATE BUYOUT PROVISIONS.

12:13PM

24 IF PHIL JACKSON DECIDES TO COME OUT OF
25 RETIREMENT AND COACH THE LAKERS FOR ANOTHER FIVE YEARS,
26 AND THEN HE HAS A COUPLE OF BAD YEARS BECAUSE
27 KOBE BRYANT GETS HURT AND JERRY BUSS DECIDES TO FIRE
28 HIM, YOU BETTER BELIEVE HE'S GOING TO HAVE A PROVISION

12:13PM

1 IN HIS CONTRACT THAT SAYS THAT IF THEY CHOOSE TO FIRE
2 HIM EARLY, HE'S OWED A CERTAIN AMOUNT OF MONEY.

3 AND THAT'S WHAT THIS IS. OKAY. IT'S TO
4 PREVENT TCW FROM DOING PRECISELY WHAT THEY'RE DOING.

5 NOW, THEY TELL YOU, WELL -- I THINK 12:14PM
6 MR. VILLA MAYBE EVEN SAID THIS -- THEY NEVER PAY THIS
7 CARRIED INTEREST OR THESE PERFORMANCE FEES, THESE
8 TRAILING FEES BEFORE THEY'VE BEEN RECEIVED BY TCW.

9 LET'S TAKE A LOOK AT WHAT MR. VILLA
10 WROTE IN HIS DRAFT SUBMITTAL TO THE FEDERAL RESERVE IN 12:14PM
11 DECEMBER OF 2009. 5495, PAGE 9:

12 ANY AND ALL TRAILING FEE SHARING
13 OR COMMISSION PAYMENTS EARNED, BUT
14 NOT YET PAID IN THE CALENDAR YEAR
15 OF THE EMPLOYEE'S DEPARTURE, ARE 12:14PM
16 PAID OUT ACCORDING TO THE TERMS OF
17 THOSE RESPECTED PLANS.

18 THE POINT IS, THEY'RE NOT DEPENDENT ON
19 WHETHER THEY HAVE RECEIVED IT. AND, FRANKLY, EVEN IF
20 THAT WAS THE CASE, THEY HAVE A RIGHT TO AGREE TO PAY 12:15PM
21 MR. GUNDLACH WHAT THEY AGREED TO. WE LIVE IN A FREE
22 SOCIETY WHERE YOU AND I CAN REACH WHATEVER DEAL WE WANT
23 TO REACH, AS LONG AS IT'S LEGAL. AND THAT'S WHAT THEY
24 DID HERE, AND THAT'S WHAT THEY OWN.

25 IF THAT'S THE MEASURE OF DAMAGES, LOOK 12:15PM
26 AT EXHIBIT 6196, THEY OWE HIM \$71.9 MILLION IF YOU
27 DON'T THINK THERE'S FIVE YEARS, BUT YOU FIGURE OUT THE
28 DATE OF ACCRUED TERMINATION.

1 MR. GUNDLACH ALSO HAS A STATUTORY WAGE
2 CLAIM. TAKE A LOOK AT SOME JURY INSTRUCTIONS WHERE
3 YOU'LL SEE THIS -- THAT'S -- IT'S THE SAME CLAIM FOR
4 THE SAME 71.9 MILLION. BUT WAGES ARE DEFINED BY THE
5 LAW TO INCLUDE INCENTIVE COMPENSATION, BONUSES, PROFIT
6 SHARING, AND THE LIKE.

12:16PM

7 LET'S PUT UP THE CHART THAT SHOWS THE
8 DAMAGES -- SUMMARY OF THE DAMAGES.

9 THAT'S THE SUMMARY OF THE DAMAGE CLAIM
10 MR. GUNDLACH HAS.

12:16PM

11 LET ME TALK A MINUTE ABOUT MY OTHER
12 CLIENTS, BARBARA VANEVERY, JEFF MAYBERRY,
13 CRIS SANTA ANA. BECAUSE THEY HAVE A CLAIM, TOO, THAT
14 WE HAVEN'T HEARD MUCH ABOUT IT. THEY'RE QUITE HAPPY TO
15 HAVE YOU GIVE MR. GUNDLACH THE \$490 MILLION, AND THEN
16 HE WILL GIVE THEM THE SHARE. THEY'RE HAPPY WITH THAT.
17 BUT THEY'VE ALSO MADE A CLAIM FOR THEIR OWN CLAIM,
18 WHICH IS IF YOU DON'T THINK THAT'S RIGHT, IF YOU ACCEPT
19 MR. QUINN'S ARGUMENT, YOU HAVE TO SUBTRACT WHAT HE PAYS
20 THE OTHER PEOPLE IN THE GROUP, THEN THEY HAVE WHAT'S
21 CALLED A THIRD-PARTY BENEFICIARY CONTRACT CLAIM.

12:16PM

12:16PM

22 IN OTHER WORDS, IF TWO PARTIES, IN THIS
23 CASE TCW AND MR. GUNDLACH, FORM AN AGREEMENT TO PAY A
24 THIRD PARTY WHO GIVES SERVICES IN RETURN, THEY ARE A
25 THIRD-PARTY BENEFICIARY. OKAY.

12:17PM

26 SO TCW CAN'T HAVE IT BOTH WAYS. AND
27 THEY'RE OWED -- IF WE COULD PUT UP EXHIBIT 6206. THOSE
28 ARE THEIR CLAIMS FOR MONEY. THAT'S ONLY THROUGH 2009.

1 OKAY. LET ME TURN NOW TO A NEW SUBJECT.

2 THEY'VE SUED MR. GUNDLACH FOR BREACH OF
3 FIDUCIARY DUTY. BREACH OF FIDUCIARY DUTY.

4 FIRST OF ALL, YOU'RE GOING TO GET --
5 THERE'S ALWAYS HUMOR, AS THE JUDGE TOLD YOU EARLY ON -- 12:17PM
6 YOU'RE GOING TO GET AN INSTRUCTION CALLED PREEMPTION.
7 THERE'S A BREACH OF FIDUCIARY CLAIM.

8 THERE IS MISAPPROPRIATION OF TRADE
9 SECRETS AND THERE'S A TORTIOUS INTERFERENCE CLAIM.
10 YOU'RE NOT ALLOWED TO CONSIDER IN THAT CLAIM ANYTHING 12:18PM
11 HAVING TO DO WITH TRADE SECRETS. THAT'S ONLY IN THE
12 MISAPPROPRIATION OF TRADE SECRETS.

13 SO, WHAT YOU CAN CONSIDER ARE THINGS
14 LIKE MR. GUNDLACH'S DISCUSSIONS WITH WAMCO.

15 THE DEROGATORY COMMENTS HE MADE ABOUT 12:18PM
16 PEOPLE IN THE LUNCH ROOM AND THE LIKE.

17 THE PREPARATIONS REGARDING ABLE GRAPE.
18 AND THE COPYING OF VERY FEW
19 NON-TRADE-SECRET DOCUMENTS.

20 OKAY. NONE OF THAT CONSTITUTES A BREACH 12:18PM
21 OF FIDUCIARY DUTY. NONE OF THEM HARMED TCW.

22 LET ME TALK ABOUT WAMCO.

23 WE HEARD A LOT ABOUT WAMCO IN THIS
24 TRIAL. AND I'M SORT OF TEMPTED TO SAY -- I DON'T MEAN
25 THIS TO BE DEMEANING BECAUSE I HAVE A LOT OF RESPECT 12:18PM
26 FOR THE LAWYERS ON THE OTHER SIDE, BUT, WHAT'S THE BIG
27 DEAL? EXECUTIVES TALK TO OTHER COMPANIES ABOUT MOVING
28 JOBS IN THIS COUNTRY EVERY DAY. IT'S NOT ILLEGAL TO DO

1 THAT.

2 THE FIRST CONVERSATIONS THAT
3 MR. GUNDLACH HAD WITH WAMCO CAME IN THE FEBRUARY/MARCH
4 TIME FRAME OR SO IN 2009, AFTER SOCIÉTÉ GÉNÉRALE HAD
5 ANNOUNCED THIS DEAL WITH THE OTHER FRENCH BANK, AFTER
6 THEY HAD REBUFFED HIS OFFER AND THE OTHER PORTFOLIO
7 MANAGERS TO MAYBE BUY THE COMPANY.

12:19PM

8 AND WAMCO CALLED HIM. OKAY. LET'S
9 DISPLAY THIS INSTRUCTION WHERE IT SAYS:

12:19PM

10 AN OFFICER OR DIRECTOR OR
11 EMPLOYEE HAS THE RIGHT TO SEEK
12 OTHER EMPLOYMENT AND TO ENGAGE IN
13 NEGOTIATIONS FOR OTHER EMPLOYMENT
14 DURING HIS OR HER EMPLOYMENT.

15 THAT SIMPLY IS NOT A VIOLATION OF
16 ANYTHING.

12:19PM

17 BUT TCW ARGUES TWO THINGS:

18 THEY SAID SOMEHOW HE WAS PLANNING A
19 SURPRISE DEPARTURE THAT HE WASN'T TELLING THEM ABOUT.

20 AND HE SHARED CONFIDENTIAL INFORMATION
21 WITH WAMCO. OKAY.

12:19PM

22 FIRST OF ALL, YOU'RE GOING TO BE -- IT
23 WASN'T A SURPRISE. HE HAD NO OBLIGATION TO DISCLOSE
24 THE FACT THAT HE WAS TALKING TO THEM. THAT'S AN
25 INSTRUCTION YOU'LL GET.

12:20PM

26 YOU DON'T HAVE TO DISCLOSE IF YOU ARE
27 PREPARING TO COMPETE. YOU'RE ENTITLED TO PREPARE TO
28 COMPETE. THERE'S NOTHING HE DID THAT HURT THEM IN

1 THOSE PREPARATIONS.

2 NOW, THEY SAY IT WAS A SECRET? I DON'T
3 KNOW. MR. QUINN SAID TODAY HE WAS WAVING AROUND, YOU
4 KNOW, FEDERAL EXPRESS PACKAGES.

5 MR. BEYER -- AND HE SAT DOWN,
6 REMEMBER -- MR. BEYER SAID HE WAS GOING TO TAKE A TRIP
7 TO ASIA, AND HE CAME TO MR. GUNDLACH AND TALKED ABOUT
8 AND ASKED HIM ABOUT WAMCO.

12:20PM

9 AND MR. GUNDLACH SAID THERE WAS NOTHING
10 IMMINENT. AND HE SAYS DON'T GO WITHOUT NEGOTIATING
11 SOMETHING.

12:20PM

12 AND MR. GUNDLACH ACKNOWLEDGED AND
13 UNDERSTOOD THAT.

14 AND, BY THE WAY, HE DIDN'T GO TO WAMCO.
15 NOTHING. SO THEY SAY, WELL -- TAKE A LOOK AT
16 EXHIBIT 139, WHICH MR. QUINN DIDN'T SHOW YOU. THIS IS
17 AN E-MAIL THAT MR. QUINN WROTE WHEN HE WAS HAVING THESE
18 DISCUSSIONS --

12:20PM

19 MR. HELM: MR. GUNDLACH.

20 MR. BRIAN: WHO DID I SAY, MR. QUINN?

12:21PM

21 HE'S BEEN ON MY MIND FOR THE LAST EIGHT
22 WEEKS.

23 WHAT DID HE SAY? THIS IS AN E-MAIL HE
24 SENT TO BARBARA VANEVERY. HE'S VERY CLOSE TO -- HE'S
25 BEING VERY CANDID. AND HE SAYS, SOC-GEN, AND HE MEANS
26 SOC-GEN'S AND TCW IS GOING TO GET A 20 PERCENT STAKE IN
27 THIS. OKAY.

12:21PM

28 HE KNOWS THAT HE CAN'T JUST GET UP AND

1 LEAVE. THEY SAY HE'S GOING TO CONVERT FUNDS. THESE
2 SMCF FUNDS, THEY'RE CLOSED FUNDS. THEY'RE UNDER
3 CONTRACT. THE MUTUAL FUND, YOU CAN'T TAKE A MUTUAL
4 FUND TO CROSS THE STREET TO A NEW COMPETITOR.

5 HE KNOWS THAT.

12:21PM

6 WHAT DOES PAGE 1 OF HIS E-MAIL SAY? HE
7 SAYS:

8 I AIN'T NO FOOL, BUT I ALSO
9 SINCERELY WANT EVERYONE TO WIN AND
10 MORE THAN ANYTHING I DON'T WANT ANY
11 AGGRAVATION.

12:22PM

12 LIKE THE LAST EIGHT WEEKS, MR. GUNDLACH
13 IS A LOT OF THINGS TO A LOT OF PEOPLE. OKAY. AND, YOU
14 KNOW, I'M SURE WHEN THIS CASE IS OVER, YOU'LL ALL TALK
15 ABOUT ALL THE PERSONALITIES AND PROBABLY TALK ABOUT
16 MR. QUINN AND ME, TOO. BUT WHAT HE'S SAYING THERE IS
17 OBVIOUS.

12:22PM

18 HE DOESN'T WANT WHAT WE HAVE NOW. HE
19 WANTED TO WORK THIS OUT. NOW, HE DID NOT PROVIDE THEM
20 WITH ANY CONFIDENTIAL INFORMATION. THEY SHOWED YOU
21 THAT. REMEMBER THAT DOCUMENT THAT MR. BROSSY WAS ASKED
22 ABOUT, THAT THEY TALKED ABOUT THE -- WHETHER IT WAS
23 100 MILLION OR 60 MILLION IN REVENUE AND THE BASIS
24 POINTS? MR. BROSSY TOLD YOU THIS WAS HIGH-LEVEL
25 INFORMATION. WELL-KNOWN. MR. BARACH TOLD YOU THAT.
26 MR. GUNDLACH TOLD YOU.

12:22PM

12:22PM

27 EVEN MR. CAHILL, ON CROSS-EXAMINATION BY
28 ME, HAD TO ADMIT -- I THINK HE QUARRELED WITH ONE --

1 HAD TO ADMIT ALMOST EVERYTHING IN THERE WAS IN PUBLIC
2 DOCUMENTS THE TCW FILED, THAT TCW FILED OR WAS PUBLICLY
3 AVAILABLE.

4 AND THE LAST THING WAMCO WANTED WAS
5 GOING TO GET IN THE MIDDLE OF THIS, AND THEY ACTUALLY
6 HAD AN AGREEMENT, WHICH IS AGREEMENT EXHIBIT 160, THAT
7 THEY DIDN'T WANT TO GET ANY CONFIDENTIAL INFORMATION.

12:23PM

8 SO THEN THEY SAY, THEY PUT UP A CALENDAR
9 AND THEY SAY MR. GUNDLACH AND THESE OTHER PEOPLE WERE
10 SPENDING ALL THEIR TIME TRYING TO START A COMPANY.

12:23PM

11 WELL, YOU KNOW WHAT HAPPENED IN 2009.
12 MR. GUNDLACH AND HIS TEAM GREW THEIR MUTUAL FUND FROM
13 ABOUT 1 TO 2 BILLION TO \$10 BILLION.

14 THE MOST INCREDIBLE GROWTH PROBABLY IN
15 THE HISTORY OF TCW. THEY BID ON AND GOT THIS
16 UNBELIEVABLY IMPORTANT PPIP PROGRAM, THE COMBINATION OF
17 GOVERNMENT AND PRIVATE INVESTMENT MONEY.

12:23PM

18 NOW, HE MADE TCW A BOATLOAD OF MONEY.
19 HE WORKED HARD. EVERYBODY IN THAT GROUP WORKED HARD.
20 SOME OF THE STUFF -- MR. QUINN PUT THIS LITTLE -- I
21 DON'T KNOW -- COMPUTERIZED THING OF ALL THESE DIFFERENT
22 THINGS OF MISBEHAVIOR, COMMENTS IN THE BATHROOM, AND
23 ALL THAT. ONE OF MY FAVORITE -- MY FAVORITE,
24 MR. CAHILL TESTIFIED THAT MR. GUNDLACH WANTED TO TELL A
25 CLIENT: I'LL JUST TELL THEM I'LL BANKRUPT TCW.

12:24PM

12:24PM

26 I ASKED HIM WHAT THAT REALLY WAS. THAT
27 WAS A CLIENT WHO WANTED MR. GUNDLACH TO DEVOTE
28 100 PERCENT OF HIS TIME TO THAT CLIENT AND IGNORE

1 EVERYBODY ELSE.

2 SO MR. GUNDLACH, AGAIN, IN HIS BLUNT
3 STYLE, SAID, WELL, I'LL TELL HIM I'LL BANKRUPT THE
4 COMPANY.

5 WHAT HE WAS SAYING, OF COURSE, IS WE
6 CAN'T JEOPARDIZE ALL OUR COMMITMENTS TO OTHER CLIENTS
7 BY DEVOTING ALL MY TIME TO THE OTHER. 12:24PM

8 AND MR. CAHILL ADMITTED THAT THEY TALKED
9 ABOUT IT, AND HE DIDN'T SAY IT, AND YET THAT ACTUALLY
10 WAS ON THE SCREEN AS ONE OF THE THINGS HE PUT UP. 12:25PM

11 THEY PUT UP. THEY SAY HE TOLD THE
12 CLIENT THAT MR. STERN WAS A TRANSITIONAL CEO. AND YET,
13 IF YOU LOOK AT EXHIBIT 6120, MR. STERN TOLD THE CLIENT
14 HIMSELF HE WAS A TRANSITIONAL CEO.

15 THEY SAY HE GRIPED ABOUT BOSSES, CALLED
16 THEM DUMB AND DUMBER. YOU'RE ENTITLED TO GRIPE ABOUT
17 YOUR BOSS. WE HAVE SOMETHING CALLED THE FIRST
18 AMENDMENT. YOU DON'T LOSE YOUR FIRST AMENDMENT RIGHTS
19 BECAUSE YOU GO TO WORK AT TCW. 12:25PM

20 WAS HE FRUSTRATED IN 2009? WAS HE A
21 LITTLE MORE OUTSPOKEN IN HIS CRITICISMS? I THINK HE
22 PROBABLY WAS. THAT'S NOT A CRIME. IT'S NOT A BREACH
23 OF FIDUCIARY DUTY. AND IT WASN'T THE BASIS FOR FIRING
24 HIM. 12:25PM

25 HE WAS -- OH, HE TALKED ABOUT HIS
26 INTERVIEW WITH THE CITIBANK PEOPLE. AND THEY PUT UP
27 THAT CHART OF MR. SHEDLIN'S STATEMENTS. REMEMBER
28 MR. CONN TOOK DETAILED NOTES, WHICH ARE ACTUALLY TYPED 12:25PM

1 UP, EXHIBIT 2291. TAKE A LOOK AT THEM. THEY'RE
2 ACTUALLY VERY INTERESTING BECAUSE MR. GUNDLACH IS
3 MAKING A TON OF VERY CONSTRUCTIVE SUGGESTIONS ABOUT
4 THEY SHOULD CREATE A SUBSIDIARY OF -- TO HAVE FIXED
5 INCOME.

12:26PM

6 HE ACTUALLY SAID THE PORTFOLIO MANAGERS
7 SHOULD ALL MAKE THE SAME. THE ONLY PERSON EVER TO SAY
8 THAT.

9 BUT LET'S PLAY MR. CONN'S DEPO CLIP ON
10 THIS.

12:26PM

11
12 (VIDEO DEPOSITION CLIP PLAYED OF MR. CONN.) +
13

14 MR. BRIAN: THEY TALK ABOUT ABLE GRAPE.
15 COUPLE THINGS ABOUT ABLE GRAPE.

12:26PM

16 FIRST OF ALL, THEY CREATED AN ENTITY
17 TO -- SO THAT IF THEY WERE IN A SITUATION OF
18 NEGOTIATING A DEPARTURE, THEY WOULD HAVE AT LEAST
19 SOMETHING IN PLACE TO DO THAT.

20 YOU HEARD MR. BARACH SAY THAT WHEN THEY
21 MET ON DECEMBER 5TH, THEY HAD NO PLAN.

12:27PM

22 YOU HEARD MR. DEITCH FROM OAKTREE TELL
23 YOU THEY HAD NO PLAN.

24 THEY PUT TOGETHER AN ENTITY. THEY HAD
25 TWO CALLS WITH GOLDMAN SACHS, AND THEY LOOKED AT OFFICE
26 SPACE. AND MR. WARD TOLD YOU THAT MR. GUNDLACH WAS
27 PREPARED TO EAT THE COST OF THAT LEASE IF THEY EVER
28 SIGNED IT, WHICH THEY DIDN'T.

12:27PM

1 NOW, FOR US, WE WOULD NEVER CONSIDER
2 SIGNING A LEASE AND HAVING TO EAT ONE YEAR'S OR SIX
3 MONTHS' LEASE.

4 FOR MR. GUNDLACH, FRANKLY, HE COULD
5 AFFORD THAT. SO THEY TOOK STEPS TO BE -- INITIAL STEPS
6 TO PREPARE TO COMPETE. THERE'S NOTHING WRONG WITH
7 THAT. LET ME SHOW YOU.

12:27PM

8 PUT UP THE TIMELINE. IS IT OVER HERE?
9 LET'S JUST PUT IT UP.

10 THESE ARE DECISIONS, SOME OF THE E-MAILS
11 I ALREADY TOLD YOU ABOUT, THAT SHOW THEY HAD DECIDED TO
12 GET RID OF MR. GUNDLACH BEFORE ABLE GRAPE WAS EVER --
13 THE CERTIFICATE WAS EVER FILED AND THE ENTITY EVER
14 CREATED.

12:27PM

15 IN HIS OPENING STATEMENT, MR. QUINN TOLD
16 YOU, QUOTE:

12:28PM

17 THE DEFENDANTS SECRETLY PLOTTED
18 AMONGST THEMSELVES TO LEAVE
19 EN MASSE, TOGETHER, AT ONCE, TAKING
20 ENTIRE BUSINESS WITH THEM AND
21 LEAVING TCW AND ITS CLIENTS IN THE
22 LURCH.

12:28PM

23 THAT'S WHAT HE SAID. THAT'S NOT HIS
24 THEORY NOW. DURING THE TRIAL, IT MORPHED. HIS THEORY,
25 THEY WEREN'T -- THEY WERE GOING TO WALK OUT THE DOOR.

12:28PM

26 HIS THEORY NOW, THEY WERE GOING TO GET
27 READY TO LEAVE AND PUT A GUN TO THEIR HEAD. THAT'S
28 WHAT HE SAID. HE HAS NO EVIDENCE THAT 40 PEOPLE IN

1 THIS GROUP WERE GOING TO WALK OUT THE DOOR.

2 ABLE GRAPE WAS NOT SOME SINISTER PLOT TO
3 MOVE THAT BUSINESS AND CONVERT IT TO SOMEBODY ELSE.
4 YOU CAN'T DO IT IF YOU WANTED TO. BECAUSE THOSE
5 CONTRACTS ARE LOCKED UP.

12:29PM

6 I SHOWED YOU MR. WARD'S NOTES ABOUT THE
7 NEGOTIATION WITH GOLDMAN AND THE IDEA OF HAVING A
8 NEGOTIATED DEAL.

9 TAKE A LOOK AT EXHIBIT 963-1. THIS IS
10 THE PRO FORMA. REMEMBER MR. --

12:29PM

11 CAN WE GO TO THE PAGE WITH THE
12 10 PERCENT. YES, RIGHT THERE.

13 YOU SEE THAT? THIS IS THE PRO FORMA
14 THAT CRIS SANTA ANA GAVE TO MR. GUNDLACH. I THINK IT
15 WAS ACTUALLY ON DECEMBER 4TH.

12:29PM

16 TCW SHARE, 10 PERCENT.

17 THEY THINK THIS IS A SMOKING GUN. THIS
18 DOCUMENTS HELPS US. THIS PRELIMINARY DOCUMENT
19 MR. SANTA ANA PRESENTED TO GUNDLACH TCW GIVING A SHARE.
20 THAT'S A NEGOTIATED SEPARATION.

12:29PM

21 LET'S PLAY MR. WARD'S VIDEO IF WE COULD.

22

23 (VIDEO DEPOSITION CLIP PLAYED OF MR. WARD.) +

24

25 MR. BRIAN: CAN WE PUT UP THE JURY
26 INSTRUCTIONS THAT SAYS NOT A BREACH OF FIDUCIARY TO
27 PREPARE TO COMPETE.

12:30PM

28 IT'S ONE OF THE INSTRUCTIONS YOU'LL GET

1 FROM THE JUDGE IN THIS CASE. LET ME TALK TO YOU ABOUT
2 ONE OTHER THING, AND THEN I'LL MOVE TO A DIFFERENT
3 SUBJECT.

4 MR. QUINN PUT UP THE E-MAIL,
5 EXHIBIT 764. HE SAID IN OPENING STATEMENT, AND SAID 12:30PM
6 AGAIN TODAY, THAT OUR CLIENTS WERE GETTING TOGETHER TO
7 TRY TO CONCOCT OR RECONCILE, RECONCILE. REMEMBER?

8 THAT WAS MR. BARACH'S WIFE IN JANUARY,
9 MR. BARACH'S WIFE, WHO DIDN'T WORK FOR TCW, DOESN'T
10 WORK FOR DOUBLELINE, DIDN'T KNOW THE FACTS. 12:31PM

11 WHO'S ACTING LIKE A DISINTERESTED
12 DRAFTER. AS IF THEY WERE SOMEHOW GOING TO SEND OFF
13 THIS FALSE STATEMENT TO INVESTORS.

14 WHAT HE DIDN'T SHOW YOU IS THE LETTER
15 THAT ACTUALLY WENT OUT, WHICH IS EXHIBIT 6208. 12:31PM

16 THIS IS THE LETTER THAT ACTUALLY
17 RESULTED FROM THAT, IN WHICH MR. GUNDLACH EXPLAINED
18 THAT HE WAS A LOYAL AND EXTRAORDINARILY PRODUCTIVE
19 EMPLOYEE FOR TCW FOR OVER 24 YEARS.

20 HE TALKS ABOUT SOC-GEN AND HIS 12:31PM
21 FRUSTRATIONS. AND THEN TALKED ABOUT HOW HE WAS
22 POSSIBLY TRYING TO FIGURE OUT A WAY OF NEGOTIATING A
23 SOLUTION TO THIS PROBLEM.

24 LET ME TALK ABOUT TRADE SECRETS.
25 THEY'VE SUED US FOR MISAPPROPRIATION OF TRADE SECRETS. 12:31PM
26 I WANT TO MAKE A COUPLE OF POINTS.

27 FIRST, I TOLD YOU IN MY OPENING REMARKS
28 EIGHT WEEKS AGO THAT WE DON'T DISPUTE THAT PEOPLE

1 DOWNLOADED AND COPIED INFORMATION. WE DON'T DISPUTE
2 THAT. OKAY. IT WASN'T RIGHT THING TO DO, NO DOUBT.
3 PEOPLE WERE FRUSTRATED AND THEY DID THINGS THEY REGRET.
4 WE'LL START THERE.

5 THE FACT OF THE MATTER IS THEY CANNOT
6 RECOVER A DIME. IN FACT, THEY'RE NOT ESTABLISHED.
7 THEY CAN'T EVEN ESTABLISH LIABILITY UNLESS THEY WERE
8 HARMED. OKAY.

12:32PM

9 MR. QUINN SAYS THAT USE DOES NOT -- IS
10 NOT REQUIRED BECAUSE A MISAPPROPRIATION OF TRADE
11 SECRETS DOES INCLUDE ACQUIRING OR USING. BUT HE
12 IGNORES THE NEXT ELEMENT, WHICH IS IN THE JURY
13 INSTRUCTIONS.

12:32PM

14 THEY MUST PROVE, AS THE FOURTH ELEMENT,
15 THAT TCW WAS HARMED.

12:32PM

16 NEXT INSTRUCTION:

17 MERE POSSESSION OF TRADE SECRETS
18 IS INSUFFICIENT TO CONSTITUTE USE
19 OR DISCLOSURE TO ESTABLISH HARM.

20 THEY HAVE TO PROVE HARM, AND UNLESS THEY
21 CAN PROVE USE, THEY CAN'T PROVE HARM.

12:33PM

22 NOW, THERE'S BEEN A LOT OF TALK HERE
23 ABOUT CONFIDENTIAL AND PROPRIETARY STUFF. OKAY.
24 FORGET ABOUT THAT WHEN IT COMES TO THE TRADE SECRETS.
25 THEY HAVE TO SHOW TRADE SECRETS THAT WERE
26 MISAPPROPRIATED THAT RESULTED IN HARM TO TCW.

12:33PM

27 IN HIS OPENING REMARKS MR. QUINN LUMPED
28 THE TRADE SECRETS INTO TWO BASIC BUCKETS. THE FIRST

1 WAS CLIENT-RELATED DATA, LIKE PORTFOLIO HOLDINGS,
2 CLIENT INVESTMENT GUIDELINES, FEE SCHEDULES.

3 AND THE SECOND WERE THE ANALYTICS,
4 SOURCE CODE, AND BWIC BROWSER, AND THAT KIND OF STUFF.

5 YOU'LL SEE IN YOUR INSTRUCTION THEY LIST 12:33PM
6 NINE ITEMS THAT THEY CLAIM ARE TRADE SECRETS. MOST ARE
7 CLIENT STUFF, AND THEN TWO ARE THE BWIC BROWSER AND THE
8 SECURITY ANALYZER.

9 THEY ARE THE ONLY TRADE SECRETS IN THE
10 CASE. 12:34PM

11 THIS PARTICIPANT LIST WE HEARD ABOUT ON
12 THIS SEPTEMBER CALL, WHICH ACTUALLY WAS A CALL FOR EVEN
13 THE MEDIA, THAT'S NOT A TRADE SECRET.

14 THE LIST OF SMCF INVESTORS THAT
15 MR. GUNDLACH AND OTHERS GOT BECAUSE THEY WERE INVESTORS 12:34PM
16 IN THE PROGRAM, THEY GOT IT FROM BOB BORDEN. IT'S NOT
17 A TRADE SECRET.

18 SO LET'S TALK ABOUT THE ONE BUCKET, THE
19 CLIENTS' PORTFOLIOS.

20 THEIR OWN EXPERT ADMITTED THAT THERE IS 12:34PM
21 NO EVIDENCE THAT ANY OF THAT WAS EVER USED AT
22 DOUBLELINE. OKAY. THEY ADMITTED THAT. NO EVIDENCE
23 THAT IT WAS USED, WHICH THEY NEED TO SHOW TO PROVE
24 HARM.

25 NOW, THERE IS A SERIOUS QUESTION WHETHER 12:34PM
26 THAT STUFF REALLY IS A TRADE SECRET AND WHETHER IT
27 BELONGS TO THE CLIENT OR TCW.

28 THERE'S ALSO A SERIOUS QUESTION WHETHER

1 TCW TOOK REASONABLE STEPS TO PROTECT IT BECAUSE THEY
2 KNEW STUFF WAS BEING COPIED FOR ABOUT TWO MONTHS AND
3 THEY DID NOTHING ABOUT IT.

4 BUT YOU DON'T NEED TO GO THERE BECAUSE
5 THERE'S SIMPLY NO EVIDENCE THAT IT WAS USED.

12:35PM

6 NOW, YOU HEARD OVER AND OVER THAT THEY
7 WERE CAUGHT IN THE ACT. YOU HEARD THIS TESTIMONY,
8 MELISSA CONN CAME AND DOLORES TALAMONTES, AND THE HARD
9 DRIVE AND THE BRA, AND ALL THIS STUFF. I'M PRETTY
10 SKEPTICAL ABOUT WHAT HAPPENED THERE, ACTUALLY.

12:35PM

11 MELISSA CONN, MICHAEL CONN'S
12 SISTER-IN-LAW, HANDS OVER SOMETHING TO THE --
13 DOLORES TALAMONTES, GIVES IT TO CRIS SANTA ANA, EVEN
14 THOUGH THEY'VE ALL BEEN TAKEN OFF THE FLOOR AND NOBODY
15 FOUND THIS HARD DRIVE, AND SHE GETS PROMOTED TWO MONTHS
16 LATER. THERE'S A LOT OF QUESTIONS THERE WE CAN ASK.

12:35PM

17 THE BOTTOM LINE IS THE NEXT DAY
18 MR. SANTA ANA TURNED IT IN. OKAY. HE TURNED IT IN.
19 AND THERE'S ABSOLUTELY NO EVIDENCE THAT IT WAS USED.
20 NOBODY TESTIFIED FROM ANYWHERE THAT IT WAS USED.

12:35PM

21 EXHIBIT 5590 IS AN E-MAIL THAT WENT OUT
22 ON DECEMBER 14TH, MAYBE THE FIRST OFFICIAL DAY THEY
23 OPENED THEIR DOORS IN WHICH THEY REPEATED WHAT THEY'VE
24 BEEN TELLING PEOPLE ORALLY: YOU CANNOT USE ANY TCW
25 INFORMATION; TURN IT IN.

12:36PM

26 THEY HIRED A NATIONALLY KNOWN FIRM TO DO
27 THIS REMEDIATION PROGRAM. NOW THEY CRITICIZE IT AND
28 THEY SAY WE SHOULD HAVE CALLED SOMEBODY AS A WITNESS.

1 WE DIDN'T HAVE TO.

2 THEY CALLED MR. HICKS. OKAY. THIS
3 FORENSIC INVESTIGATOR. AND LET'S NOT MAKE ANY MISTAKE
4 ABOUT THIS. OKAY. MR. HICKS, IS NOT A NEUTRAL
5 WITNESS. OKAY. HE WAS HIRED TO FIND A PROBLEM. OKAY.
6 HE SPENT MONTHS SCOURING THE RECORDS, TRYING TO FIND
7 EVIDENCE THAT DOUBLELINE HAD ACTUALLY USED IT.

12:36PM

8 AND HE FOUND NOTHING.

9 EXHIBIT 2125 2-A; 2-A. THIS IS THE
10 CHART THEY PUT UP.

12:36PM

11 REMEMBER, MR. WEINGART WENT THROUGH
12 THIS. THIS IS HICKS' TESTIMONY, ALL THE THINGS HE
13 IDENTIFIED, WHAT THE CHECKMARKS WERE. EVERY TIME
14 MR. WEINGART ASKED HIM IF HE HAD ANY EVIDENCE THAT ANY
15 OF THIS WAS USED, HE SAID NO. SO MR. WEINGART CHECKED
16 IT OFF.

12:37PM

17 MR. MAYBERRY'S THUMB DRIVE. OKAY. A
18 THUMB DRIVE IN AN ENVELOPE ACTUALLY COULD EASILY DO A
19 WHOLE LOT. BUT THE FACT OF THE MATTER IS HE TURNED IN
20 HIS BACKUP AND, AGAIN, THERE'S NO EVIDENCE THAT ANY OF
21 THAT STUFF MADE IT ONTO THE DOUBLELINE SYSTEM.

12:37PM

22 WHAT DO THEY THINK?

23 MR. MAYBERRY, AT HIS HOUSE, WAS SOMEHOW
24 SECRETLY CONTACTING CLIENTS. COME ON. THEY WENT
25 THROUGH ALL OUR RECORDS AND FOUND NOTHING. THEY TALK
26 ABOUT -- OH, THEY TALKED ABOUT J.P., BECAUSE HE ERASED
27 SOMETHING.

12:37PM

28 AGAIN, THIS WAS NO EVIDENCE HE WAS -- IT

1 WAS USED. AND HE WAS FIRED. THEN THEY SAY, I PROMISE
2 TO CALL A CERTAIN WITNESS -- I HESITATE TO NAME HIM FOR
3 FEAR OF EMBARRASSING HIM. I DID. IN OPENING STATEMENT
4 I SAID I WAS GOING TO CALL HIM BECAUSE HE HAD WIPED
5 SOMETHING CLEAN.

12:38PM

6 MR. HICKS TESTIFIED, THEIR EXPERT
7 TESTIFIED, THAT IN ALL PROBABILITY WHAT HE ERASED WERE
8 INTERNET BROWSING SITES. OKAY.

9 SO I MADE THE DECISION THAT I WASN'T
10 GOING TO EMBARRASS THIS INDIVIDUAL. WE ALL KNOW WHAT
11 HE WAS LOOKING AT AND WHAT HE WIPED. OKAY.

12:38PM

12 SO WE DIDN'T CALL HIM.

13 THEY TALK ABOUT THE ACCOUNT -- PERSONAL
14 ACCOUNT INFORMATION. THEY SENT A LETTER OUT IN JANUARY
15 TO CUSTOMERS SAYING THAT WE HAD TAKEN THEIR PERSONAL
16 ACCOUNT INFORMATION.

12:38PM

17 WHY DO YOU THINK THEY SENT IT OUT IN
18 JANUARY? THEY KNEW THAT SOMEBODY HAD DOWNLOADED THAT
19 BACK IN OCTOBER. THEY SENT IT OUT IN JANUARY BECAUSE
20 WE HAD OPENED OUR DOORS AND WERE COMPETING.

12:38PM

21 THEY WERE TRYING TO BAR US.

22 SO LET'S TALK ABOUT THE ANALYTICS.
23 OKAY.

24 FIRST OF ALL, THERE IS -- WE NEVER USED
25 THEM. OKAY. WE NEVER USED TCW'S SYSTEM. OUR EXPERTS,
26 MR. CONTINO, MR. SMITH, DISAGREED OVER WHETHER THE BWIC
27 BROWSER IS EVEN A TRADE SECRET.

12:39PM

28 MR. SMITH, THEIR EXPERT, INITIALLY SAID

1 IN HIS EXPERT REPORT AND HIS DEPOSITION THAT IT WASN'T.
2 HE CHANGED HIS STORY AT TRIAL AND SAID IT WAS. BUT
3 MAKE SURE WE UNDERSTAND WHAT THESE ARE.

4 OKAY. THESE ARE NOT BLACK BOX SYSTEMS
5 THAT THEMSELVES ANALYZE DATA AND MAKE PREDICTIONS ABOUT 12:39PM
6 THE ECONOMIC FUTURE AND THE MARKET AND WHETHER THE
7 MORTGAGES ARE GOING TO COLLAPSE OR NOT.

8 THEY SIMPLY PROVIDED ORGANIZED DATA AND
9 ALLOW YOU TO INTERPRET.

10 MR. CONTINO, OUR EXPERT, DOESN'T BELIEVE 12:39PM
11 IT'S A TRADE SECRET BECAUSE IT DOESN'T PROVIDE ANY
12 COMPETITIVE ADVANTAGE.

13 BUT, AGAIN, THE FUNDAMENTAL POINT IS WE
14 DIDN'T USE IT. THERE IS NO EVIDENCE THAT MR. GUNDLACH
15 INSTRUCTED MR. SANTA ANA OR MR. MAYBERRY TO COPY THE 12:40PM
16 ANALYTICS. NONE. THEY DON'T CONTEND THAT. OKAY.

17 THERE'S NO EVIDENCE THAT THEY DID.

18 WHAT HAPPENED WAS, ON DECEMBER 4TH, WHEN
19 THE -- WAS GOING DOWN, MR. KALE, WHO TESTIFIED, WENT TO
20 MR. MOORE AND SAID: 12:40PM

21 THEY'RE TAKING PEOPLE'S
22 BLACKBERRYS. I'M GOING TO DOWNLOAD
23 MY STUFF.

24 SO THAT'S WHAT MR. MOORE DID. OKAY.
25 AND HE TOOK IT HOME. 12:40PM

26 MR. CAHILL DIDN'T CONTRADICT THAT
27 TESTIMONY. HE'S THEIR WITNESS. THAT IS UNREBUTTED
28 TESTIMONY.

1 MR. MOORE TOOK HIS BACKUP HOME, AND THEN
2 WHEN HE GOT TO DOUBLELINE, HE OPENED IT AND REALIZED
3 WHAT HE HAD AND HE TURNED IT IN.

4 THEY SAY THAT WE SHOULD HAVE CALLED
5 MR. MOORE. HE HAD HIS DEPOSITION TAKEN FOR THREE DAYS,
6 LADIES AND GENTLEMEN. THREE DAYS. BOTH SIDES PICKED
7 OUT THAT PORTION OF THE DEPOSITION THAT THEY WANTED TO
8 PLAY TO YOU. I SUPPOSE WE COULD HAVE CALLED MR. MOORE
9 AND HAD YOU HERE YET ANOTHER DAY, LISTENING TO ANOTHER
10 WITNESS. BY THE WAY, THEY HAVE EVERY RIGHT TO CALL
11 WITNESSES, TOO. MR. MOORE IN HIS DEPOSITION TESTIFIED
12 WHAT HAPPENED.

13 NOW, LET'S -- IF WE COULD PUT THE SLIDE
14 UP, THE FRONT END AND THE BACK END.

15 WE'RE TALKING ABOUT THESE PROGRAMS HAVE
16 A -- WHAT'S CALLED A FRONT END AND A BACK END.
17 MR. MOORE WORKED ON THE FRONT END. THE PART THE USER
18 SEES ON THE SCREEN.

19 THAT'S THE PART THAT THEIR EXPERT,
20 MR. SMITH, SAID IS NOT A TRADE SECRET.

21 THE BACK END, THAT'S THE ONE WITH THE
22 ALGORITHMS AND THE DATABASE. THAT'S THE PART THAT
23 MR. KALE SAID GIVES THEM A COMPETITIVE ADVANTAGE.
24 THAT'S THE PART THAT MR. SMITH SAID WAS A TRADE SECRET.

25 IT'S UNDISPUTED THAT MR. MOORE DID NOT
26 PROGRAM THAT PART OF TCW'S SYSTEM.

27 CAN WE PLAY MR. MOORE'S DEPOSITION.

28 (VIDEO DEPOSITION CLIP PLAYED OF MR. MOORE.) +

1
2 MR. BRIAN: BING BING YU WAS RESPONSIBLE FOR
3 THE BACK END. HE'S STILL AT TCW. THAT'S THE PART THAT
4 MR. SMITH SAYS IS A TRADE SECRET.

5 NOW, YOU NEED A BACK END TO OPERATE THIS 12:43PM
6 AND DO WHAT WE DO. WHERE DO WE GET THE BACK END?

7 THAT'S WHAT WE BOUGHT, OKAY. THERE'S NO
8 EVIDENCE AT ALL THAT ANY OF THESE ANALYTICS WERE
9 COPIED, ANY OF THESE ANALYTICS WERE USED. MR. HICKS
10 WAS NOT A PROGRAMMER. HE COMES IN HERE AND SAID, WELL, 12:43PM
11 THERE'S 340,000 LINES OF CODE. AND HE FOUND 200 THAT
12 ARE SIMILAR, .06 PERCENT OF -- THAT ARE SIMILAR CODE
13 LINES WITH THINGS LIKE, YOU KNOW, SECURITY NAME, OR
14 BOOK PRICE. I MEAN, THESE ARE OBVIOUS SIMILARITIES.

15 THERE IS SIMPLY NO EVIDENCE AT ALL THAT 12:44PM
16 ANY TRADE SECRETS WERE USED. THERE IS NO EVIDENCE OF
17 HARM.

18 LET ME GO TO THE NEXT CLAIM. THEY'VE
19 SUED -- THEY'VE SAID MR. GUNDLACH TORTIOUSLY INTERFERED
20 AND ARE SEEKING \$344 MILLION IN DAMAGES. OKAY. 12:44PM

21 LET'S PUT UP A CHART THAT SHOWS THE KEY
22 POINTS THAT I WANT TO MAKE.

23 FIRST KEY POINT. TCW KNEW WHEN THEY
24 WERE DECIDING TO FIRE MR. GUNDLACH THAT IF THEY WENT
25 FORWARD WITH THIS, INVESTORS WOULD DEMAND CONCESSIONS 12:44PM
26 IF HE WERE FIRED. THEY KNEW IT.

27 SECONDLY, THAT PREDICTION WAS TRUE. AND
28 IT HAPPENED THE VERY DAY THAT THEY RELIEVED

1 MR. GUNDLACH OF HIS DUTIES. OKAY. THEY STARTED
2 GETTING COMPLAINT LETTERS. AND YOU CAN LOOK AT THOSE.

3 THIRD POINT. THEY WERE NOT REQUIRED TO
4 REDUCE THEIR FEES. THEY WERE NOT REQUIRED TO LET
5 PEOPLE LIQUIDATE. THEY WERE NOT REQUIRED TO GIVE ANY
6 CONCESSIONS.

12:45PM

7 SO WHY DID THEY? THEY DID IT FOR
8 BUSINESS REASONS.

9 REMEMBER GARRETT WALLS? HE CAME OUT
10 HERE FROM NEW YORK. OKAY. HE TESTIFIED THAT THEY
11 NEEDED TO MAINTAIN THEIR BUSINESS RELATIONS BECAUSE
12 THEY HOPED TO GET FUTURE BUSINESS FROM THESE CLIENTS.

12:45PM

13 THEY MADE A SOUND BUSINESS DECISION.
14 THEY DID NOT MAKE THE DECISION BECAUSE MR. GUNDLACH WAS
15 DOING THINGS. THEY DID IT BECAUSE THE CUSTOMERS WERE
16 ANGRY, THEY WERE MIFFED, AND THEY WERE COMPLAINING.
17 AND THEY NEEDED TO MAKE THOSE CUSTOMERS HAPPY.

12:45PM

18 THE BEST THEY CAN DO, OKAY.

19 DID THEY CALL -- DID THEY CALL A SINGLE
20 INVESTOR, A SINGLE ONE, TO COME IN HERE AND TESTIFY
21 THAT THAT INVESTOR DEMANDED CONCESSIONS BECAUSE OF
22 ANYTHING MR. GUNDLACH SAID? NO. NOBODY, NOT A SINGLE
23 PERSON.

12:46PM

24 THE BEST THEY COULD DO, IF YOU REMEMBER
25 THIS, THE BEST THEY COULD DO IS THEY FOUND AN E-MAIL
26 THAT ONE OF THESE VERY WEALTHY INVESTORS WHO COMPLAINED
27 HAD BEEN A CLASSMATE OF MR. GUNDLACH AT COLLEGE. THAT
28 WAS IT.

12:46PM

1 THEY HAD NO EVIDENCE MR. GUNDLACH HAD
2 CAUSED HIM TO DO IT AT ALL. BUT HE HAD BEEN A
3 CLASSMATE.

4 LET'S PUT UP THE JURY INSTRUCTIONS IF WE
5 COULD, PAGE 4 OF THE OUTLINE. 12:46PM

6 THEY HAVE TO PROVE MR. GUNDLACH
7 INTENDED TO DISRUPT THE PERFORMANCE
8 OF THE CONTRACT, THAT HIS CONDUCT
9 IN FACT PREVENTED EVERYBODY'S
10 PERFORMANCE OR MADE PERFORMANCE 12:47PM
11 MORE EXPENSIVE, THAT TCW WAS
12 HARMED, AND THAT MR. GUNDLACH'S
13 COMPENSATION COMMITTEE CONDUCT WAS
14 A SUBSTANTIAL FACTOR.

15 NEXT INSTRUCTION. YOU WILL BE TOLD BY 12:47PM
16 THE JUDGE THAT:

17 CONDUCT IS NOT A SUBSTANTIAL
18 FACTOR IN CAUSING HARM IF THE SAME
19 HARM WOULD HAVE OCCURRED WITHOUT
20 THAT CONTACT. 12:47PM

21 IN OTHER WORDS, IF THE INVESTORS WERE
22 COMPLAINING, WITHOUT ANYTHING THAT MR. GUNDLACH DID, SO
23 THAT TCW WAS GOING TO MAKE THESE CONCESSIONS, THERE'S
24 NO CLAIM HERE. SO THIS -- THIS NONSENSE ABOUT THEY
25 DON'T HAVE TO PROVE THIS OR THAT, THEY HAVE TO PROVE 12:47PM
26 WHAT THAT INSTRUCTION SAYS.

27 NOW, MR. QUINN SAW -- I THINK I WROTE
28 DOWN THIS EXACTLY: THEY -- TCW -- I COULDN'T REMEMBER

1 WHETHER IT WAS PREDICTED OR PROJECTED, THEY'D LOSE
2 INVESTORS.

3 REALLY? TAKE A LOOK AT EXHIBIT 2207.
4 THIS IS AN E-MAIL FROM MR. SHEDLIN IN SEPTEMBER. HE'S
5 THE CITIBANK INVESTMENT BANKER. IN SEPTEMBER HE
6 WRITES:

12:48PM

7 SOMEHOW I THINK IF THERE ARE
8 CLIENTS IN THE CREDIT FUNDS, THESE
9 ARE THE SMCF FUNDS -- WITH OTHER
10 PRODUCTS AT TCW, THEY MAY PUSH A
11 HARD CASE IF THE ENTIRE TEAM LEFT
12 AND YOU DIDN'T LET THEM OUT.
13 NOTWITHSTANDING THE CONTRACTUAL
14 TERMS.

12:48PM

15 WOODY BRADFORD, EXHIBIT 5334. HE TOLD
16 MR. STERN IN OCTOBER:

12:48PM

17 YOU WILL LOSE 60 TO 70 PERCENT
18 OF YOUR CLIENTS.

19 THESE WERE NOT LOST ON MR. STERN,
20 EXHIBIT 5418. PAGE 3.

12:48PM

21 HE WARNED THE FRENCH THAT THERE
22 WOULD BE THE LIKELY LOSS OF
23 SUBSTANTIAL ASSETS AND POTENTIAL
24 LITIGATION FOR MR. GUNDLACH AND THE
25 CLIENTS.

12:49PM

26 MR. WALLS. HE TOLD YOU THAT HE
27 RECOMMENDED TO MR. STERN, BEFORE THEY FIRED
28 MR. GUNDLACH ON THE WEEK OF NOVEMBER 30, THAT THEY

1 WOULD HAVE TO GIVE THESE INVESTORS THE LIQUIDITY
2 OPTION. LIQUIDATION. LET HIM OUT. HE SAID IT WAS,
3 QUOTE: IN THE INTEREST OF TCW BUSINESS FRANCHISE.

4 FROM THE MOMENT IT WAS ANNOUNCED THAT
5 THEY FIRED MR. GUNDLACH, TCW WAS FLOODED WITH
6 COMPLAINTS FROM INVESTORS. I DON'T HAVE ENOUGH TIME TO
7 GO THROUGH THEM ALL.

12:49PM

8 LET ME JUST SHOW YOU SOME.

9 NOW, FIRST OF ALL, IT WASN'T A SURPRISE.
10 MR. QUINN TELLS YOU, WELL, BUT MET WEST RECEIVED THE
11 MORNING STAR AWARD; THEY WERE A REPUTABLE, QUALIFIED,
12 FIXED INCOME FIRM.

12:49PM

13 BUT, AS TCW KNOWS, EXHIBIT 5334, THIS IS
14 ONE OF THEIR DOCUMENTS THEY HAD:

15 NO LARGE-SCALE MORTGAGE TRACK
16 RECORD. AND IT HAD LIMITED SUCCESS
17 IN THIS AREA.

12:50PM

18 MR. GUNDLACH'S EXPERTISE IS IN A
19 SPECIALTY AREA WITHIN THE FIXED INCOME AREA. REMEMBER,
20 I ASKED MR. STERN ON CROSS-EXAMINATION WHETHER THERE
21 ARE ALL KINDS OF DIFFERENT FIXED INCOME STRATEGIES, AND
22 THERE ARE.

12:50PM

23 MR. GUNDLACH IS IN THE MORTGAGE-BACKED
24 SECURITIES AREA. MET WEST DID NOT HAVE THAT EXPERTISE.

25 EXHIBIT 649, PAGE 7. THESE ARE SOME OF
26 THE COMPLAINTS -- THERE ARE DOZENS, AND YOU'LL NEED A
27 MAGNIFYING GLASS FOR THIS ONE. BUT THESE ARE SOME OF
28 THE COMPLAINTS THAT CAME IN:

12:50PM

1 I'VE HAD A TERRIBLE EXPERIENCE
2 WITH A MET WEST TOTAL RETURN
3 STRATEGIC INCOME AND SHORT TERM
4 BOND FUNDS. IN PARTICULAR, BONDS
5 BLEW UP IN 2002.

12:51PM

6 THAT WAS D.C., TWO INVESTORS.

7 FORD FOUNDATION ON PAGE 7:

8 APOPLECTIC ABOUT THE NEWS AND
9 NEEDS TO BE ASSURED OVER THE
10 WEEKEND THAT HIS ASSETS ARE BEING
11 WELL-HANDLED. THEY MUST IN ALL
12 ACCOUNTS SPEAK WITH THE APPROPRIATE
13 M.B.S. PERSON.

12:51PM

14 THERE'S EXHIBIT 5555, DECEMBER 9TH
15 LETTER FROM DORCHESTER CAPITAL ADVISERS DEMANDING
16 LIQUIDITY OPTION AND REDUCED FEES. THERE WERE OTHER
17 SIMILAR COMPLAINTS.

12:51PM

18 THERE'S AN EXHIBIT. I DON'T HAVE THEM
19 TO DISPLAY, BUT I'LL TELL YOU YOU CAN WRITE DOWN THE
20 NUMBER, 5608. A LETTER FROM INVESTOR TANYA MODICK.

12:51PM

21 5657, A LETTER FROM ONE OF THE MEMBERS
22 OF THE ADVISORY COMMITTEE.

23 THEN 5517. THIS IS MR. WALLS' E-MAIL TO
24 MR. STERN ON DECEMBER 5TH, THE DAY AFTER, AND HE SAYS
25 THERE THAT HE'S GETTING CALLS FROM CUSTOMERS:

12:52PM

26 THEIR PERSISTENT THEME, WHILE
27 MET WEST BRINGS A SOLID FIXED
28 INCOME TEAM, NONE -- NONE -- FELT

1 THEIR MORTGAGE SKILLS EQUATED TO
2 TCW'S..

3 THE OTHER POINT MADE BY THOSE IN THE
4 FUNDS WAS THAT WE WOULD DO OURSELVES A HUGE DISSERVICE
5 BY LOCKING CLIENTS INTO THE THREE FUNDS. GIVEN THE
6 SIGNIFICANCE OF THE CHANGE. 12:52PM

7 HE THEN SAYS THAT HE HAD MENTIONED
8 EARLIER THAT WEEK THAT:

9 FROM A LONG-TERM CREDIBILITY
10 STANDPOINT, WE HAVE TO GIVE CLIENTS
11 A LIQUIDITY OPTION. 12:52PM

12 THIS IS DECEMBER 5TH. MR. GUNDLACH'S --
13 THE CALLS -- MOST SICK CALLS HE POINTS TO ARE
14 DECEMBER 22ND AND DECEMBER 29TH.

15 THERE'S A CALL ON DECEMBER 8TH. I'LL
16 TALK ABOUT IT. BUT THIS IS DECEMBER 5TH. TAKE A LOOK
17 AT A LETTER THAT GOES OUT, 6038. 12:52PM

18 THIS IS A LETTER THEY'VE SENT -- THAT'S
19 SENT OUT BY TCW ON DECEMBER 9TH. DECEMBER 9TH, THAT
20 WEDNESDAY THAT MR. STERN ADMITTED ON CROSS-EXAMINATION
21 THAT THIS LETTER WAS IN THE WORKS SINCE DECEMBER 5TH. 12:53PM

22 THEY DIDN'T DRAFT THIS LETTER ON THE
23 NIGHT OF DECEMBER 8TH, AFTER MR. GUNDLACH MADE A CALL.
24 OKAY. WHAT THEY SAID IS:

25 TCW UNDERSTANDS THAT SOME
26 INVESTORS MAY NEVERTHELESS WANT
27 ALTERNATIVE OPTIONS FOR THE
28 MANAGEMENT OR CONTROLLED 12:53PM

1 LIQUIDATION OF THEIR INTEREST IN
2 THE FUND AND TCW IS ACTIVELY
3 CONSIDERING OPTIONS AND THEIR
4 FEASIBILITY.

5 THE SAME LETTER WENT OUT TO THE SMCF II
6 INVESTORS. BUT, APPARENTLY, MR. STERN WANTS YOU TO
7 BELIEVE HE DIDN'T MEAN IT. THAT HE ONLY DID -- THEY
8 ONLY OFFER THESE CONCESSIONS BECAUSE TWO WEEKS LATER
9 MR. GUNDLACH MADE THESE STATEMENTS.

12:53PM

10 WELL, TAKE A LOOK AT HIS OWN E-MAIL OF
11 5602, WRITTEN ON DECEMBER 16TH, SAYING THAT:

12:53PM

12 WE ARE ACTIVELY DISCUSSING OPTIONS
13 WITH INVESTORS.

14 THE VERY NEXT DAY, DECEMBER 17. THEY
15 SENT A LETTER OUT, EXHIBIT 5603, IN WHICH THEY SAID:

12:54PM

16 WE ARE STILL REVIEWING OPTIONS,
17 BUT WE'RE CONSIDERING CREATING
18 LIQUIDITY OPTIONS AND REVISITING
19 THE FEE STRUCTURE.

20 THEY ALSO TOLD INVESTORS, AND THIS IS
21 VERY IMPORTANT IN LIGHT OF WHAT MR. QUINN TOLD YOU,
22 THEY ALSO TOLD THE INVESTORS THAT:

12:54PM

23 UNTIL THEN, NO NEW INVESTMENTS
24 WILL BE MADE IN EITHER ONE OF THE
25 FUNDS.

12:54PM

26 IN OTHER WORDS, THEY WERE FREEZING THE
27 INVESTMENT MANAGEMENT OF THE FUND.

28 WHY'S THAT IMPORTANT? BECAUSE HE SAYS

1 THAT MR. GUNDLACH LIED TO THE INVESTORS WHEN YOU SAID
2 THEY HAD FROZEN IT AND THERE WAS NO MANAGEMENT.
3 THAT'S, IN FACT, WHAT THEY HAD DONE.

4 EXHIBIT 6168. THIS IS -- THIS WENT OUT
5 ON JANUARY 7, IN WHICH THEY SENT ALL THE INVESTORS A
6 BALLOT IN WHICH THEY GAVE THEM THE OPTION TO CHOOSE TO
7 STAY IN, TO GET OUT, OR STAY IN WITH REDUCED FEES.

12:54PM

8 AND THEY SAY IN THAT LETTER THAT TCW,
9 HOWEVER:

10 HOWEVER, DECIDED EARLY ON TO

12:55PM

11 MAKE IT --

12 I GUESS IT'S AN E-MAIL, SORRY.

13 -- DECIDED EARLY ON TO MAKE

14 AVAILABLE A RANGE OF OPTIONS BEYOND

15 WHAT THE DOCUMENTS -- IN OTHER

12:55PM

16 WORDS, THE CONTRACTS -- PROVIDE.

17 THE FACT OF THE MATTER IS, TCW MADE THE
18 DECISION TO OFFER THESE CONCESSIONS INDEPENDENT OF
19 ANYTHING MR. GUNDLACH WAS SAYING. BECAUSE WOODY
20 BRADFORD AND MR. SHEDLIN AND MR. STERN HIMSELF KNEW, IN
21 THE FALL OF 2009, THAT THESE PEOPLE WERE GOING TO
22 DEMAND CHANGES IF MR. GUNDLACH WAS FIRED.

12:55PM

23 YOU CAN TAKE A LOOK AT THE WEBCAST ON
24 DECEMBER 8TH, WITH -- IT WAS VERY IMPORTANT.

25 PUT UP 2140, PAGE 9.

12:55PM

26 WHAT HE TOLD THEM WAS THAT HE TALKED
27 ABOUT -- THEY ASKED HIM IN THAT CALL WHAT HE SHOULD DO.
28 HE SAID:

1 I HAVE COMFORTING WORDS. HE
2 SAID, ONE SHOULD NOT BE TERRIBLY
3 WORRIED ABOUT THE PORTFOLIOS BEING
4 RELATIVELY UNCHANGED.

5 IN OTHER WORDS, HE WAS TELLING THEM ON
6 DECEMBER 8 TO KEEP THEIR MONEY THERE. HE TOLD THEM
7 THAT THEY KNEW THERE WAS NO REDEMPTION PERIOD AND THEY
8 SHOULD READ THE CONTRACTS.

12:56PM

9 HE THEN SAID -- HE RESPONDED TO A
10 QUESTION ON EXHIBIT 2140, PAGE 35. HE WAS ASKED WHAT
11 HE SHOULD DO.

12:56PM

12 HE SAID:

13 OH, I THINK HOLD, CERTAINLY
14 HOLD. ABSOLUTELY, POSITIVELY HOLD.

15 THAT'S WHAT HE SAID. IN FACT, IF YOU
16 COULD BUY, YOU SHOULD BUY. HE'S NOT TELLING THEM TO
17 GET OUT OF THE FUNDS.

12:56PM

18 NOW, ON DECEMBER 22ND, DECEMBER 29TH,
19 YOU'LL SEE THOSE, HE IS MARKETING DOUBLELINE. THERE'S
20 NO DOUBT ABOUT IT.

12:56PM

21 HE'S ALSO AN INVESTOR, AND HE'S
22 ENTITLED, AS AN INVESTOR, TO GET THE INFORMATION, AND
23 HE'S ENTITLED TO SAY WHAT HE THINKS ABOUT MET WEST.

24 THE TRUTH IS THAT MET WEST WAS NOT AN
25 EXPERT IN MANAGING MORTGAGE-BACKED SECURITIES, AND HE
26 WAS ENTITLED TO TELL THEM THAT THEY HAD A CHOICE ABOUT
27 WHO SHOULD MANAGE AND WHAT THEIR -- WHAT THEY SHOULD
28 DEMAND.

12:57PM

1 LET ME TALK A LITTLE BIT ABOUT THEIR
2 DAMAGE CLAIM. I'VE SHOWN YOU ABOUT OUR DAMAGE CLAIM.
3 THEY'RE SUING US FOR DAMAGES, TOO. THEY'RE SUING US
4 FOR LOST PROFITS. PROFIT THAT THEY WOULD HAVE EARNED.

5 YOU'RE GOING TO HAVE A LEGAL INSTRUCTION
6 THAT SAYS --

12:57PM

7 IF YOU CAN PUT UP THAT INSTRUCTION,
8 3903.

9 -- TO RECOVER DAMAGES FOR LOST
10 PROFITS TCW MUST PROVE IT WAS
11 REASONABLY CERTAIN IT WOULD HAVE
12 EARNED PROFIT BUT-FOR THEIR
13 CONDUCT.

12:57PM

14 TO DETERMINE AMOUNT OF PROFITS
15 THEY WOULD HAVE EARNED, YOU MUST
16 DETERMINE THE GROSS AMOUNT THEY
17 WOULD HAVE RECEIVED BUT-FOR THE
18 DEFENDANTS' WRONGFUL CONDUCT, AND
19 THEN SUBTRACT FROM THAT AMOUNT THE
20 EXPENSES INCLUDING THE VALUE OF
21 LABOR.

12:57PM

22 ON THE TORTIOUS INTERFERENCE CLAIM THEY
23 ASK FOR \$344 MILLION. OKAY. THERE ARE TWO PROBLEMS.

24 THEY CANNOT GET DAMAGES CAUSED BY THEIR
25 OWN DECISION. FLAT OUT. IF THEY WOULD HAVE BEEN
26 HARMED ANYWAY, BECAUSE THEY MADE THE DECISION TO FIRE
27 MR. GUNDLACH, KNOWING THAT PEOPLE WERE GOING TO DEMAND
28 REDUCED FEES, THEY SIMPLY CANNOT GET DAMAGES.

12:58PM

1 THAT'S WHERE -- THE INSTRUCTIONS I
2 SHOWED YOU EARLIER. AND THAT'S WHAT HAPPENED HERE.
3 THAT'S WHY I TOLD YOU IN MY OPENING REMARKS SEVEN OR
4 EIGHT WEEKS AGO THAT ANY DAMAGES HERE WERE
5 SELF-INFLICTED.

12:58PM

6 YOU CAN'T MAKE A BUSINESS DECISION
7 KNOWING YOU'RE GOING TO BE HARMED, AND THEN SUE THE
8 PERSON YOU FIRED FOR THOSE DAMAGES.

9 SECOND PROBLEM WITH THESE DAMAGES IS
10 THAT MR. CORNELL COUNTED EVERY SINGLE PENNY OF REDUCED
11 REVENUE ON THESE SMCF FUNDS AS SUPPOSEDLY BEING CAUSED
12 BY MR. GUNDLACH'S COMMENTS. OKAY. HE COMPLETELY
13 DISREGARDS ANYTHING ELSE, ANYTHING. EVERY SINGLE
14 PERSON SAYS -- HE SAYS EVERYBODY WHO DID IT DID IT
15 BECAUSE MR. GUNDLACH MADE COMMENTS.

12:58PM

12:59PM

16 AND EVERYTHING MR. STERN DID AND DECIDED
17 WAS BECAUSE OF OUR COMMENTS.

18 HE DOESN'T MAKE ANY ATTEMPT TO
19 DIFFERENTIATE AT ALL. THEY BASICALLY ROLL THE DICE.
20 OKAY. THEY DIDN'T CALL A SINGLE INVESTOR TO COME IN
21 AND TESTIFY AS TO WHY.

12:59PM

22 THEY WANT YOU TO -- BECAUSE THEY KNOW
23 THEY CAN'T CALL THESE PEOPLE TO SAY THIS, BECAUSE IT'S
24 NOT TRUE, THEY WANT YOU TO ASSUME EVERYBODY WHO DID
25 WHAT THEY DID AND DEMAND THE CONCESSION DID IT BECAUSE
26 MR. GUNDLACH MADE STATEMENTS, NOT THAT THEY WERE -- NOT
27 THAT HAD HE WERE LEGITIMATELY UNHAPPY. I MEAN, THEY
28 HAD SIGNED UP FOR MR. GUNDLACH AND HIS TEAM. OKAY.

12:59PM

1 HE WAS -- HE WAS THE ARCHITECT OF THESE
2 PROGRAMS. AND YET, TCW TOOK IT FROM THEM. OKAY.
3 THAT'S WHY, BEGINNING ON THE EVENING OF DECEMBER 4TH,
4 THEY BEGAN CALLING IT -- E-MAILING, TELLING PEOPLE THEY
5 WERE MIFFED. THE BREACH OF FIDUCIARY DUTY DAMAGES.

01:00PM

6 BREACH OF FIDUCIARY DAMAGES.
7 MR. CORNELL HAS TWO FUNDAMENTAL ASSUMPTIONS THAT ARE
8 WRONG.

9 FIRST, HE ASSUMES THAT MR. -- THAT TCW
10 WOULD NOT HAVE FIRED MR. GUNDLACH BUT-FOR HIS SUPPOSED
11 BREACH OF FIDUCIARY DUTY. THAT'S WHERE I SPENT MY
12 FIRST HALF HOUR TALKING ABOUT. OKAY.

01:00PM

13 THEY DECIDED TO FIRE HIM IN THE SUMMER
14 OF 2009.

15 THEY DECIDED TO FIRE HIM BECAUSE THEY
16 WANT SOC-GEN AND MR. STERN AND THE OTHERS WANTED TO
17 MOVE FORWARD WITH A BUSINESS PLAN THAT INVOLVED HIM
18 GETTING OUT OF THE BUSINESS. OKAY.

01:00PM

19 AND MR. GUNDLACH STOOD IN THE WAY OF
20 THAT.

01:00PM

21 THEY DIDN'T FIRE HIM BECAUSE OF -- HE
22 WAS TALKING TO WAMCO WHERE HE CALLED MR. STERN AND
23 MR. DAY DUMB AND DUMBER. OKAY.

24 THEY DIDN'T FIRE HIM BECAUSE THEY COPIED
25 INFORMATION IN THE FALL. THEY MADE THE DECISION
26 BEFOREHAND. OKAY. AGAIN, WHATEVER DAMAGES ARE
27 SELF-INFLICTED.

01:00PM

28 SECONDLY -- IF WE COULD PUT UP THE

1 CHART -- WHAT HAPPENED WAS, NOW THAT MR. HELM ON HIS
2 CROSS-EXAMINATION CONFRONTED MR. CORNELL AND SHOWED HIM
3 THAT, BY FIRING MR. GUNDLACH, YOU'RE SAVING ALL
4 THESE -- THIS MONEY, 265 MILLION, WHICH DOES NEED TO BE
5 REDUCED, BY THE WAY.

01:01PM

6 HE DIDN'T -- THERE'S A PRESENT VALUE OF
7 THAT NUMBER. IT'S SOMETHING LIKE 226, OR SOMETHING
8 LIKE THAT. EITHER WAY, IT'S BIGGER THAN THE AMOUNT OF
9 DAMAGES THAT THEY SAY. OKAY.

10 NOW, MR. CORNELL ACKNOWLEDGED ON
11 CROSS-EXAMINATION THAT THIS WAS HIS FINAL ANSWER. HE
12 ACKNOWLEDGED THAT THESE NUMBERS WERE CORRECT.

01:01PM

13 MR. SURPRENANT GOT UP ON REDIRECT AND
14 TRIED TO GO, WELL, LET'S ASSUME THAT ALL THIS -- IS THE
15 NUMBER STILL RIGHT?

01:02PM

16 HE SAID, WELL, I'M NOT SURE. I THINK
17 MR. HELM'S CALCULATIONS ARE CORRECT.

18 MR. QUINN SAYS THAT'S NOT EVIDENCE.
19 WHAT DO YOU MEAN, IT'S NOT EVIDENCE?

20 MR. CORNELL'S TESTIMONY IS EVIDENCE. HE
21 WAS ANSWERING QUESTIONS. THAT IS EVIDENCE.

01:02PM

22 THE FACT OF THE MATTER IS, YOU HAVE TO
23 DO THAT OFFSET. NOW WHAT THEY'RE DOING IS THEY'RE
24 DOUBLE-DIPPING. THEY COME IN HERE NOW AND THEY SAY
25 WE'RE ENTITLED TO 344 MILLION ON THE TORTIOUS
26 INTERFERENCE, WHICH THEY CAN'T GET BECAUSE THEY MADE
27 THE DECISION. AND THEY NOW SAY, WELL, YOU CAN'T HAVE
28 THIS OFFSET BECAUSE IF MR. GUNDLACH LEAVES, WE LOSE

01:02PM

1 REVENUE .

2 AND THAT REVENUE GOES DOWN AND THAT
3 OFFSETS IT. THEY'RE COUNTING IT TWICE. OKAY. WHAT
4 THEY'RE DOING IS THEY'RE COUNTING IT TWICE. THEY CAN'T
5 GET IT ONCE, BUT THEY CERTAINLY CAN'T GET IT TWICE.

01:02PM

6 LET ME TALK A LITTLE BIT ABOUT PUNITIVE
7 DAMAGES. THEN I'LL WRAP UP.

8 ON YOUR VERDICT FORM YOU'RE GOING TO BE
9 ASKED ABOUT PUNITIVE DAMAGES IN A COUPLE WAYS.

10 ON THE MISAPPROPRIATION OF TRADE SECRET
11 CLAIM, YOU'LL BE ASKED TO CHECK OFF WHETHER THEY MET
12 THE HEIGHTENED BURDEN OF PROOF, BUT YOU WON'T BE ASKED
13 TO PUT AN AMOUNT IN.

01:03PM

14 ON THE BREACH OF FIDUCIARY DUTY AND
15 TORTIOUS INTERFERENCE CLAIM, YOU'LL BE ASKED WHETHER
16 THEY MET HEIGHTENED BURDEN OF PROOF AND, IF SO, WHAT'S
17 THE AMOUNT OF PUNITIVE DAMAGES AGAINST MR. GUNDLACH.

01:03PM

18 LET ME TALK ABOUT HEIGHTENED BURDEN OF
19 PROOF. PUNITIVE DAMAGES ARE RARE. THIS IS NOT AN
20 ORDINARY DAMAGE CLAIM. THEY HAVE SUED US FOR TORTS
21 THAT GIVE THEM A BASIS TO ASK FOR.

01:03PM

22 BUT THEY HAVE TO PROVE IT BY WHAT'S
23 CALLED CLEAR AND CONVINCING EVIDENCE. NORMALLY, IN A
24 CIVIL CASE LIKE THIS, SOME OF YOU MAY HAVE BEEN ON A
25 CRIMINAL JURY BEFORE, WHERE IT'S PROOF BEYOND A
26 REASONABLE DOUBT. IN A CIVIL CASE IT'S PROOF BY A
27 PREPONDERANCE.

01:03PM

28 CLEAR AND CONVINCING IS SOMEWHERE

1 BETWEEN THOSE TWO, HIGHER OF PROOF BY PREPONDERANCE,
2 NOT QUITE AS HIGH AS BEYOND A REASONABLE DOUBT, BUT
3 IT'S IN BETWEEN.

4 THEY CAN'T MEET THAT STANDARD AGAINST
5 ANY OF THE DEFENDANTS ON ANYTHING. IF ONE THING IS
6 CLEAR ABOUT THIS CASE, IT'S A CORPORATE DIVORCE CASE.
7 OKAY.

01:04PM

8 MR. STERN COMES BACK IN, OUT OF
9 RETIREMENT SUPPOSEDLY, TO TRY TO TAKE TCW IN A NEW
10 DIRECTION.

01:04PM

11 MR. GUNDLACH HAS A DIFFERENT VISION
12 WHERE IT SHOULD GO.

13 THEY BUTT HEADS. AND TCW DECIDES TO DO
14 WHAT THEY DO, OKAY, TO SECRETLY GET RID OF HIM.

15 MR. GUNDLACH IS FRUSTRATED. HE MAKES
16 SOME COMMENTS. AND THEY COPY SOME INFORMATION THAT'S
17 NOT USED. AND FOR THAT HE SEEKS PUNITIVE DAMAGES.

01:04PM

18 THAT IS NOT WHAT THIS CASE IS ABOUT.

19 HE PUTS UP AN E-MAIL FROM RACHEL CODY,
20 TALKING ABOUT A RUMOR OF MR. GUNDLACH WANTING TO GIVE A
21 BIG F-YOU. OKAY. THAT'S ONE PIECE OF EVIDENCE.

01:04PM

22 AND THEN THEY TALK ABOUT THE TESTIMONY
23 OF ERIC ARENTSEN, WHO, FRANKLY, WAS NOT CREDIBLE.

24 PUT UP EXHIBIT 5224, PAGE 16. THIS IS
25 ON THE LIST.

01:05PM

26 HE WAS ONE OF THE PEOPLE THAT
27 MR. BURSCHINGER WAS INTERESTED IN BUYING ANALYZING
28 WHETHER HE WOULD BE LIKELY TO LEAVE. HE SAID:

1 WE WOULD NOT SUFFER IF ERIC WERE
2 TO DEPART.

3 BUT ON DECEMBER 4TH AND 5TH, WHAT
4 HAPPENED?

5 MARC STERN PERSONALLY WENT TO SEE
6 MR. ARENTSEN. I THINK MR. ARENTSEN SAID HE NEVER MET
7 ALONE WITH MR. STERN, CERTAINLY NOT FOR YEARS. WHAT
8 DID HE DO? HE DOUBLED HIS SALARY TO A MILLION DOLLARS
9 A YEAR. HE GAVE HIM A THREE-YEAR CONTRACT, AND THEN
10 GAVE HIM EQUITY.

01:05PM

01:05PM

11 FOR THAT, MR. ARENTSEN COMES IN AND
12 TESTIFIES THAT MR. GUNDLACH SAID HE'S GOING TO GIVE A
13 BIG F-YOU TO MARC STERN.

14 YOU CAN EVALUATE THE CREDIBILITY OF THAT
15 TESTIMONY.

01:05PM

16 LADIES AND GENTLEMEN, IT IS BEEN A LONG
17 EXPERIENCE FOR ALL OF US. I TOLD YOU WHEN I FIRST
18 STOOD BEFORE YOU THAT I REALLY BELIEVE IN THIS SYSTEM.
19 IT'S -- WE LIVE IN THE BEST COUNTRY IN THE WORLD. WE
20 REALLY DO.

01:06PM

21 AND PART OF WHAT WE ALL DO IN DEMOCRACY
22 IS WE MAKE DECISIONS AND ELECT PEOPLE TO SIT IN
23 CONGRESS, ELECT GOVERNORS AND REPRESENTATIVES AND ELECT
24 A PRESIDENT. AND THEY ALL MAKE DECISIONS.

25 PART OF WHAT WE DO IS YOU MAKE DECISIONS
26 BY AGREEING TO SIT ON A JURY AND SPEND THE TIME AND
27 ATTENTION THAT YOU GAVE TO THIS CASE.

01:06PM

28 AND, LIKE MR. QUINN, ONE OF THE REASONS

1 I SAT -- WHERE HE'S SITTING NOW -- WAS SO I CAN WATCH
2 YOU. AND I DID WATCH YOU.

3 AND YOU WERE -- I'VE DONE A LOT OF THIS,
4 AS HAS MR. QUINN, MADISON, WEINGART, AND MR. HELM, AND
5 YOU'RE MORE THAN ONE OF THE MOST ATTENTIVE, DEDICATED
6 JURIES I'VE EVER SEEN. I MEAN THAT REALLY.

01:06PM

7 THIS IS A LOT OF MONEY PASSION ON BOTH
8 SIDES. A LOT OF DOCUMENTS.

9 THANK YOU, I REALLY MEAN IT FROM THE
10 BOTTOM MY HEART, FOR DOING WHAT YOU DO. IT'S NOT -- IT
11 SOUNDS TRITE, BUT WE COULDN'T HAVE THE DEMOCRACY WE
12 HAVE IF WE DIDN'T HAVE PEOPLE LIKE YOU TO DO THIS.

01:07PM

13 WHEN WE'RE DONE AND WE HAVE LUNCH,
14 MR. QUINN'S GOING TO HAVE A TIME TO REBUT WHAT I SAY.
15 AND I'LL HAVE A SHORT PERIOD OF TIME TO RESPOND TO HIM.
16 I CAN ONLY RESPOND -- BECAUSE WE MADE A CLAIM ON OUR
17 COMPENSATION, WE HAVE A BURDEN OF PROOF ON WHAT THE LAW
18 WORKS. MR. QUINN IS ALLOWED TO REBUT, AND I CAN ONLY
19 REBUT OUR CLAIM FOR THE CONTRACT.

01:07PM

20 I WON'T BE ALLOWED TO TALK TO YOU AGAIN
21 ABOUT WHAT HE'S GOING TO SAY ABOUT WHAT I SAID ABOUT
22 TRADE SECRET MISAPPROPRIATION, BREACH OF FIDUCIARY
23 DUTY, AND TORTIOUS INTERFERENCE.

01:07PM

24 WHEN I STAND UP, PLEASE DON'T HOLD IT
25 AGAINST ME BECAUSE I CAN'T. THE JUDGE WILL SHOOT ME
26 DOWN IF I TRY TO.

01:07PM

27 BUT, I'LL PROMISE YOU THIS: I WOULD
28 HAVE BEEN ABLE TO RESPOND, AND SO WHEN YOU GO BACK, AND

1 WHEN YOU GO BACK AND DO YOUR DELIBERATIONS, JUST DO ME
2 ONE FAVOR: IF HE SAYS SOMETHING THAT I DIDN'T
3 ADDRESS -- I'M NOT KIDDING ABOUT THIS -- ASK YOURSELF,
4 WHAT WOULD MR. BRIAN HAVE SAID? AND MAYBE YOU'LL AGREE
5 WITH ME, AND MAYBE YOU DON'T. BUT ASK YOURSELF THAT.

01:08PM

6 THAT'S THE KIND OF THING YOU SHOULD DO
7 AS A JUROR.

8 I'LL TALK TO YOU AGAIN AFTER LUNCH. AND
9 THANK YOU FOR YOUR SERVICE.

10 THE COURT: THANK YOU, MR. BRIAN.

01:08PM

11 THEY ALWAYS BLAME THE JUDGE. WHATEVER
12 GOES WRONG IN THESE TRIALS, IT'S MY FAULT.

13 ALL RIGHT, LADIES AND GENTLEMEN. WE'RE
14 GOING TO BREAK FOR LUNCH.

15 THERE ARE A LOT OF PEOPLE HERE AND A LOT
16 OF PARTIES PRESENT. REMEMBER THE ADMONISHMENT: YOU
17 MUST NOT DISCUSS THE MATTER AMONG YOURSELVES OR WITH
18 ANYONE ELSE OR FORM ANY OPINIONS OR CONCLUSIONS UNTIL
19 WE ACTUALLY SUBMIT THE CASE TO YOU.

01:08PM

20 IS AN HOUR ENOUGH FOR LUNCH? OKAY.
21 LET'S TAKE AN HOUR.

01:08PM

22 TEN MINUTES AFTER 2:00. WE SHOULD HAVE
23 SANDWICHES AND LUNCH IN THE ROOM YOU'VE BEEN USING.

24 ALL RIGHT.

25

01:08PM

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

27

28 THE COURT: WE'LL ADJOURN FOR THE NOON HOUR

1 AND COME BACK AT TEN MINUTES AFTER 2:00.

2 MR. MADISON: I'M SORRY TO PROLONG THIS, BUT
3 WE NEED TO MAKE AN OBJECTION TO MR. BRIAN'S ARGUMENT.
4 HE MISSTATED THE LAW. AND HE SAID IT AT LEAST THREE
5 TIMES.

01:09PM

6 AND IT RELATES TO SPECIAL JURY
7 INSTRUCTIONS 20. AND CACI INSTRUCTION 4401.

8 AND JUST QUICKLY, WHAT MR. BRIAN DID IS
9 HE MISSTATED THE LAW BY CONFLATING THE PRONG OF
10 MISAPPROPRIATION WHICH RELATES TO USE, AND HE CONFLATED
11 THAT WITH THE ELEMENT THAT APPLIES TO MISAPPROPRIATION
12 FOR ANY PRONG, OF HARM.

01:10PM

13 AND THERE IS AN INSTRUCTION. IT'S
14 SPECIAL INSTRUCTION 20. WE TALKED ABOUT THIS IN THE
15 LENGTHY INSTRUCTIONS CONFERENCES. THERE IS AN
16 INSTRUCTION THAT THEY ASKED FOR -- EXCUSE ME -- THAT
17 THEY ASKED FOR, THAT SAYS: MERE POSSESSION IS NOT
18 ENOUGH TO SHOW USE OR DISCLOSURE FOR PURPOSES OF
19 SHOWING HARM.

01:10PM

20 AND WHAT THEY DID IS THEY CONFLATED
21 THAT, AND THEY'VE NOW TOLD THE JURY THREE TIMES THAT TO
22 HAVE HARM, YOU HAVE TO SHOW USE. AND THAT IS A FLAT
23 OUT MISSTATEMENT OF THE LAW.

01:10PM

24 THE COURT: LET ME JUST SAY, MR. MADISON, I
25 APPRECIATE THAT.

01:10PM

26 IN INSTRUCTING THE JURY, I WILL ADVISE
27 THEM, AND I'M FULLY PREPARED TO ADMONISH THEM THAT,
28 NOTWITHSTANDING THE COMMENTS MADE BY LAWYERS CONCERNING

1 THE LAW THAT YOU MUST APPLY, YOU MUST FOLLOW THE
2 INSTRUCTIONS AS I GIVE THEM TO YOU, AND WHICH WILL BE
3 MADE AVAILABLE TO YOU IN THE JURY ROOM.

4 AND I SUSPECT THAT THAT ADMONISHMENT AND
5 THOSE INSTRUCTIONS TO THE JURY WILL BE SUFFICIENT.

01:11PM

6 I'LL LET THEM KNOW IF THEY'RE READING A
7 JURY INSTRUCTION AND SOMEBODY SAID SOMETHING
8 INCONSISTENT WITH THE INSTRUCTION, THAT THEY SHOULD
9 FOLLOW THE INSTRUCTION.

10 MR. MADISON: WELL, WE WOULD JUST ASK FOR A
11 CURATIVE INSTRUCTION. THAT MISSTATEMENT WAS MADE THREE
12 TIMES, AND AS WE DISCUSSED IN THE JURY INSTRUCTIONS
13 CONFERENCE, IF THE PRONG THAT THE JURY FINDS FOR
14 MISAPPROPRIATION, FOR MISAPPROPRIATION IS ACQUISITION,
15 THEY CAN FIND HARM WITHOUT FINDING USE OR DISCLOSURE.

01:11PM

01:11PM

16 AND MR. BRIAN JUST TOLD THEM THREE TIMES
17 THAT THE LAW IS TO THE CONTRARY.

18 AS AN EXAMPLE, REMEMBER IN THE
19 INSTRUCTIONS CONFERENCE WE TALKED ABOUT THE FACT THAT
20 WE HAD TO SEND LETTERS OUT TO OUR CLIENTS AS BEING
21 SUFFICIENT TO SHOW HARM. RIGHT THERE. HAVING NOTHING
22 TO DO WITH ANY USE, OR SUBSEQUENT DISCLOSURE, THE MERE
23 FACT THAT THEY'VE BEEN WRONGLY ACQUIRED.

01:11PM

24 MR. HELM: THIS IS ALL ARGUMENT. THERE'S BEEN
25 NO MISSTATEMENT OF THE LAW.

01:12PM

26 WE SAY -- THEY HAVE NOT PRODUCED ANY
27 EVIDENCE SHOWING THAT MERELY ACQUIRING THOSE TRADE
28 SECRET CAUSED THEM ANY HARM.

1 THE COURT: WELL, THE POINT THAT MR. MADISON
2 JUST MADE COULD ARGUABLY BE HARM TO TCW. AND THAT IS,
3 IF YOU ACQUIRE CONFIDENTIAL CLIENT INFORMATION, AND
4 THEY ARE REQUIRED TO SUBSEQUENTLY SEND A NOTICE TO
5 THOSE CLIENTS, THEY INCURRED SOME HARM.

01:12PM

6 NOW THEY HAVE NO DAMAGE FOR IT BECAUSE
7 THEY DIDN'T PUT ON ANY EVIDENCE OF DAMAGE, BUT IT COULD
8 BE HARM.

9 MR. HELM: MR. BRIAN ADDRESSED THAT AS WELL.
10 HE DIRECTLY ADDRESSED THE ISSUE OF THE LETTER.

01:12PM

11 THE COURT: ALL RIGHT.

12 DON'T YOU PEOPLE EAT? LET'S TAKE OUR
13 NOON RECESS. WE'LL COME BACK. WE'LL TAKE AN HOUR.
14 AND WE'LL SORT THIS OUT.

15 THANK YOU, MR. MADISON.

01:12PM

16 MR. MADISON: I APPRECIATE IT VERY MUCH, YOUR
17 HONOR. THANK YOU.

18
19 (RECESS.)
20
21
22
23
24
25
26
27
28

1 CASE NUMBER: BC429385
2 CASE NAME: TRUST COMPANY OF THE WEST VS.
3 JEFFREY GUNDLACH, ET AL
4 LOS ANGELES, TUESDAY, SEPTEMBER 13, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 2:10 P.M.

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

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

19 MR. QUINN, ARE YOU READY TO PROCEED WITH
20 YOUR REBUTTAL?

21 MR. QUINN: I AM, YOUR HONOR.

22 THE COURT: ALL RIGHT.

23 MR. QUINN: THANK YOU.

24
25 REBUTTAL ARGUMENT

26
27 BY MR. QUINN:

28 HELLO AGAIN.

02:11PM

02:11PM

02:11PM

1 THE JURY: HI.

2 MR. QUINN: FOR THE LAST TIME.

3 NOW LISTENING TO MR. BRIAN, IT KIND OF
4 OCCURS TO ME THAT YOU REALLY DO HAVE TO BELIEVE THERE
5 WAS A VAST CONSPIRACY INVOLVING A LOT OF PEOPLE GOING
6 ON HERE, WHEN YOU THINK ABOUT ALL THE PEOPLE WHO MUST
7 HAVE LIED TO YOU.

02:11PM

8 FOR THAT TO MAKE ANY SENSE, IT'S A
9 PRETTY LONG LIST.

10 MR. STERN, OBVIOUSLY, HE MUST HAVE LIED;
11 MR. CAHILL MUST HAVE LIED; MR. BEYER, HE MUST HAVE
12 LIED; MR. SONNEBORN, HE MUST HAVE LIED; EVEN
13 MR. SANTA ANA, HE APPARENTLY MUST HAVE LIED; TAKE
14 EVERYTHING THAT WE WOULD NEED; MR. SULLIVAN; MR. OWENS,
15 WE DIDN'T TALK ABOUT HIM, THE MAN FROM GOLDMAN SACHS
16 YESTERDAY; MR. BARACH, EVEN. HE MUST HAVE LIED.

02:11PM

02:12PM

17 IT'S A VERY LONG LIST. EVEN
18 MR. GUNDLACH MUST HAVE LIED WHEN HE SAID, THE TRUTHFUL
19 ANSWER IS, I DIDN'T HAVE A CONTRACT.

20 FORTUNATELY, WE COUNT ON YOU FOLKS TO
21 MAKE THOSE KINDS OF CREDIBILITY DECISIONS. YOU HAVE
22 HAD A CHANCE TO SEE THE PEOPLE TAKE THE WITNESS STAND
23 AND ANSWER QUESTIONS. AND WE'RE ENTIRELY COMFORTABLE
24 WITH YOUR JUDGMENT ON THOSE CREDIBILITY ISSUES.

02:12PM

25 I GUESS THE THEORY WE'RE HEARING IS THAT
26 THERE WAS A SECRET IMPORTANT MEETING ON AUGUST 27TH,
27 WHERE THEY DECIDED TO FIRE MR. GUNDLACH, WITHOUT
28 INTERVIEWING A SINGLE PERSON.

02:12PM

1 THEY DIDN'T INTERVIEW A SINGLE PERSON.
2 WHO IS GOING TO REPLACE HIM? WHO'S GOING TO RUN THAT
3 DEPARTMENT?

4 IT'S UNDISPUTED THAT MR. STERN ASKED
5 MR. GUNDLACH, ON SEPTEMBER 3, WOULD YOU LIKE TO TALK
6 ABOUT BEING CO-CEO. YOU WOULD DO THAT, IF YOU ALREADY
7 MADE A DECISION TO FIRE HIM?

02:13PM

8 AND I HAVE NO DOUBT THAT THE SUBJECT OF
9 MR. GUNDLACH'S TERMINATION WAS ON THE TABLE AND WAS
10 DISCUSSED.

02:13PM

11 AND I SUSPECT THE REASON WHY PEOPLE
12 CAN'T REALLY REMEMBER THE MEETING ON THE 27TH OF AUGUST
13 IS 'CAUSE IT PROBABLY BLENDS IN WITH A LOT OF OTHER
14 MEETINGS.

15 WHEN THE SUBJECT OF HOW DO WE DEAL WITH
16 THE MAN WHO RUNS 80 PERCENT OF THE ASSETS IN THIS -- 70
17 PERCENT OR 60 PERCENT, DEPENDING UPON WHAT ESTIMATE,
18 WHO'S REALLY UNHAPPY, AND ANNOUNCED HE MIGHT LEAVE, AND
19 THERE ARE 600 FOLKS DEPENDING UPON A PAYCHECK, HOW DO
20 YOU DEAL WITH THAT? DO YOU THINK THAT THAT MIGHT BE A
21 TOPIC OF CONVERSATION MORE THAN ONCE? I THINK SO.

02:13PM

02:13PM

22 WE DO KNOW NO PRESS RELEASE WAS ISSUED.
23 WE DO KNOW MR. GUNDLACH WASN'T TERMINATED UNTIL
24 DECEMBER 4.

25 THERE'S LOTS OF EVIDENCE TO INDICATE
26 THAT MR. STERN WAS NOT INCLINED TO TERMINATE HIM,
27 ALTHOUGH HE'S GETTING A LOT OF ADVICE. WE SAW THIS
28 E-MAIL, EXHIBIT 2258, TOWARDS THE END OF JULY, WHERE

02:14PM

1 MR. STERN WRITES MR. MUSTIER --

2 IF WE CAN ENLARGE THAT --

3 -- AND SAYS, IT WOULD BE A NICE GESTURE
4 IF YOU WROTE AN E-MAIL TO JEFFREY CONGRATULATING HIM ON
5 HIS MILESTONE.

02:14PM

6 IS THAT THE KIND OF THING THAT YOU
7 WRITE, IF YOU ARE IN A CONSPIRACY WITH THE FRENCH,
8 STARTING IN EARLY JUNE, TO FIRE THIS MAN? I DON'T
9 THINK SO.

10 WELL, ALSO WE FLOATED THE IDEA THAT
11 TCW -- SOCIETE GENERALE WANTED TO SELL TCW, AND THEY
12 NEEDED TO GET RID OF MR. GUNDLACH IN ORDER TO
13 ACCOMPLISH THAT.

02:14PM

14 COUPLE OF PROBLEMS WITH THAT. HE'S THE
15 MOST VALUABLE GUY. YOU NEED TO GET RID OF THE MOST
16 VALUABLE GUY, TO FACILITATE SELLING THE COMPANY? I
17 DON'T THINK THAT MAKES ANY SENSE.

02:15PM

18 FIRE HIM, AND YOU GO THROUGH EVERYTHING
19 THAT THIS COMPANY HAD TO GO THROUGH IN ORDER TO SET IT
20 UP TO BE SOLD?

02:15PM

21 AND BY THE WAY, IT HAS NOT BEEN SOLD, TO
22 THIS DAY. IT'S OWNED BY THE FRENCH, ALONG WITH SOME
23 NUMBER, I FORGOT THE NUMBER, 120 -- 150 EMPLOYEES. AN
24 EQUITY PLAN WAS ULTIMATELY IMPLEMENTED.

25 YOU DON'T TRY TO GET RID OF THE
26 COMPANY'S BIGGEST ASSET, TO SET IT UP FOR SALE; AND IT
27 HASN'T BEEN SOLD.

02:15PM

28 MR. BRIAN MAKES -- POINTS TO THAT

1 E-MAIL, AND SAID THAT TCW WANTS TO TAKE ADVANTAGE OF
2 THE ELEMENT OF SURPRISE WITH MR. GUNDLACH, THAT FALL.

3 DAMN RIGHT, WE WANTED TO TAKE THE
4 ELEMENT OF SURPRISE. IF THEY HAD TOLD MR. GUNDLACH
5 THAT, WE'RE ON TO WHAT YOU ARE DOING, AND WE KNOW YOU 02:16PM
6 ARE SETTING UP THIS COMPANY, AND WE KNOW YOU ARE
7 ASSEMBLING ALL THIS INFORMATION; SO WE JUST WANT YOU TO
8 KNOW, WE'RE NEGOTIATING WITH THIS OTHER FIRM, MET WEST,
9 WE DON'T KNOW IF WE WILL GET FEDERAL RESERVE APPROVAL;
10 WE DON'T KNOW IF WE CAN CLOSE THE DEAL, BUT WE WOULD 02:16PM
11 LIKE YOU TO STICK AROUND UNTIL WE HAVE THE ANSWERS TO
12 THOSE QUESTIONS. DON'T THINK MR. GUNDLACH WOULD HAVE
13 STUCK AROUND FOR THAT. MR. GUNDLACH WOULD HAVE BEEN
14 OUT THE DOOR. AND HE WOULD HAVE TAKEN THE BUSINESS
15 THEN. 02:16PM

16 HE WOULDN'T HAVE WAITED AROUND FOR TCW
17 TO HAVE THE ABILITY TO MANAGE THAT BUSINESS, BECAUSE
18 THAT WOULD HAVE ELIMINATED THE POSSIBILITY OF HIS DOING
19 EXACTLY WHAT HE WANTED TO DO, WHICH IS TO TAKE IT FOR
20 HIMSELF. 02:16PM

21 MR. BRIAN SAYS YOU HAVE THE RIGHT TO
22 COMPETE. YOU ABSOLUTELY HAVE THE RIGHT TO COMPETE.
23 YOU ABSOLUTELY DO. YOU HAVE THE RIGHT TO PREPARE TO
24 COMPETE, AND YOU HAVE THE RIGHT TO PLAN TO LEAVE.

25 BUT YOU DON'T HAVE THE RIGHT TO DO THAT, 02:17PM
26 STEALING OUR STUFF FIRST, AND SECRETLY TAKING IT OUT
27 THE DOOR. YOU DON'T HAVE THE RIGHT TO LIE, STEAL, AND
28 CHEAT. THAT'S NOT COMPETITION.

1 MR. BRIAN SHOWED YOU THIS JURY
2 INSTRUCTION, SJI 2A, INSTRUCTION 2A. IT SAYS
3 (READING):

4 IT'S OKAY FOR AN EMPLOYEE TO
5 MAKE PREPARATIONS TO COMPETE,
6 INCLUDING BY FORMING A POTENTIAL
7 COMPETING BUSINESS.

02:17PM

8 AND AT THAT POINT, HE STOPPED READING.
9 YOU ARE GOING TO HAVE THE FULL
10 INSTRUCTION. IT GOES ON TO SAY, (READING):

02:17PM

11 PROVIDED SUCH CONDUCT IS NOT
12 HARMFUL TO THE CORPORATION, DURING
13 SUCH TIME AS THE OFFICER OR
14 EMPLOYEE IS EMPLOYED, OR INTENDED
15 TO PREVENT THE CORPORATION FROM
16 OPERATING ITS BUSINESS AFTER THE
17 OFFICER OR EMPLOYEE IS EMPLOYED.

02:17PM

18 MR. STERN WAS ACTING TO PROTECT THE
19 COMPANY. HE HAS A FIDUCIARY DUTY. HE DIDN'T HAVE ANY
20 OBLIGATION. IT WOULD HAVE BEEN PERHAPS CONTRARY TO HIS
21 FIDUCIARY DUTIES TO TELL MR. GUNDLACH WHAT HE WAS UP
22 TO.

02:18PM

23 MR. GUNDLACH DIDN'T HAVE THE
24 OPPORTUNITY -- DIDN'T HAVE THE ABILITY, UNDER THE LAW,
25 TO DO WHAT HE DID. IT'S NOT JUST SIMPLY COMPETING OR
26 PREPARING TO COMPETE, WHEN YOU DO THE THINGS THAT HE
27 DID; WHEN YOU STEAL, WHEN YOU ARE A TOP FIDUCIARY.
28 THEY HAVE SPECIAL OBLIGATIONS.

02:18PM

1 WE HEARD ABOUT NEGOTIATED DEPARTURE.

2 BUT I THOUGHT THAT WAS KIND OF ADVANCED
3 BY MR. BRIAN, AND MY PERCEPTION, IN KIND OF A
4 HALFHEARTED WAY.

5 THERE IS -- I REPEAT, IF THERE WERE ANY 02:18PM
6 EVIDENCE OF IT, MR. BRIAN WOULD HAVE SHOWN IT TO YOU.
7 THOSE FOLKS SPOKE TO EACH OTHER VERY, VERY CANDIDLY.
8 THERE IS NO EVIDENCE AT ALL THAT WHAT THEY WERE DOING
9 WAS PART OF PREPARATIONS TO NEGOTIATE TO LEAVE.

10 UNLIKE MR. THOMAS, MR. CHAPUS, 02:18PM
11 MR. ATTANASIO, WHO PUT IT ON THE TABLE, AND YOU HEARD
12 TESTIMONY THAT ACTUALLY, THEIR NEGOTIATED DEPARTURES
13 WENT ON -- THEY NEGOTIATED FOR MONTHS, WHILE THEY
14 STAYED THERE. VERY, VERY DIFFERENT SITUATIONS.

15 YOU DON'T HAVE THE LUXURY OF TIME TO 02:19PM
16 PLAN AND PREPARE TO NEGOTIATE. I DON'T THINK THAT
17 MAKES ANY SENSE AT ALL.

18 WE ALSO HEARD, WELL, THIS WAS ALL ABOUT
19 SAVING MONEY. IF WE LOOK AT SLIDE 422, WHEN MR. VILLA
20 WAS ON THE STAND, WE WENT THROUGH THIS ANALYSIS OF THE 02:19PM
21 COMPARATIVE COSTS THERE OF THE FEE SHARING, WHICH
22 MR. GUNDLACH AND HIS GROUP HAD, AND THAT MET WEST HAD.

23 THE COST, 48 PERCENT VERSUS 41 PERCENT,
24 YEAH, THERE WAS -- THEY WERE -- THEIR DEAL WAS A LITTLE
25 BIT LESS EXPENSIVE, IN TERMS OF THE FEE SHARING. BUT 02:19PM
26 THAT DOES NOT TAKE INTO ACCOUNT THE 300 MILLION THAT
27 WAS PAID FOR THE COMPANY: 225 MILLION PAID, AND THEN
28 AN ADDITIONAL 75 MILLION FOR RETENTION BONUSES. AND

1 THAT INCLUDED A \$100 MILLION PREMIUM; THAT'S SLIDE 424.

2 MR. STERN NEEDED TO GET A DEAL DONE.

3 AND HE HAD TO PAY EXTRA TO GET THIS DEAL DONE.

4 IF YOU TAKE THAT INTO ACCOUNT, SLIDE
5 423, YOU SEE WHAT IS NOT INCLUDED THERE.

02:20PM

6 IT ALSO DOESN'T INCLUDE THE HEADLINE
7 RISK THAT MR. SMITH TALKED ABOUT, THE ASSETS THAT WOULD
8 LEAVE -- EVERYTHING THIS HAS PUT THE COMPANY THROUGH,
9 THERE WASN'T A SAVINGS.

10 MR. BRIAN SAID THAT MR. STERN TESTIFIED
11 THAT COST SAVINGS WAS IRRELEVANT.

02:20PM

12 THAT'S NOT WHAT HE SAID. WHAT MR. STERN
13 SAID, IT WAS A BUFFER, WAS THE WORD HE USED. THE FACT
14 THAT THERE WAS SOME POTENTIAL COST SAVINGS HERE WAS THE
15 BUFFER AGAINST THE VERY ENORMOUS LOSSES THAT HE KNEW
16 THAT TCW WOULD SUSTAIN BY HAVING TO DO THESE
17 TRANSACTIONS.

02:20PM

18 THERE'S A DOCUMENT THAT HAS NOT BEEN
19 CALLED OUT TO YOU, BUT IT'S IN EVIDENCE. I'D LIKE TO
20 REFER YOU TO IT, IN CASE WHEN YOU GET BACK IN THE JURY
21 ROOM, AND YOU WANT TO SEE A DOCUMENT THAT LAYS OUT WHAT
22 HAS HAPPENED HERE, BEFORE THERE EVER WAS A LAWSUIT,
23 BEFORE MR. GUNDLACH WAS TERMINATED, I'D SUGGEST THAT
24 YOU LOOK AT THE APPLICATION -- THE LETTER TO THE
25 FEDERAL RESERVE, WHICH IS EXHIBIT 2274(A).

02:21PM

26 2274(A). IT'S A DOCUMENT,
27 CONTEMPORANEOUS DOCUMENT, WRITTEN AT THE TIME, THAT
28 DESCRIBES THIS HISTORY, AND WHY TCW DID WHAT IT DID.

02:21PM

1 WITH RESPECT TO THE INTERFERENCE CLAIMS,
2 MR. BRIAN SHOWED YOU EXHIBIT 2207, FOR MR. SHEDLIN.

3 IF WE COULD PUT THAT UP, EXHIBIT 2207.

4 AND HE SAID THEY KNEW THEY WERE GOING TO
5 LOSE SOME ASSETS IF MR. GUNDLACH WAS GONE.

02:22PM

6 AND YOU NOTICE WHAT HE SAYS HERE IS THAT
7 IF THERE ARE CLIENTS IN THOSE FUNDS --

8 UP AT THE TOP, MIKE --

9 -- WITH OTHER PRODUCTS AT TCW, THEY MAY
10 PUSH A HARD CASE, OKAY? CLIENTS WHO ARE IN THE CREDIT
11 FUND, WITH OTHER PRODUCTS OF TCW, THEY MAY PUSH A HARD
12 CASE, IF THE ENTIRE TEAM LEFT.

02:22PM

13 SO WHAT HE'S TALKING ABOUT HERE IS
14 PEOPLE WHO HAVE LEVERAGE, THEY HAVE BUSINESS IN OTHER
15 TCW FUNDS, AND THEY ARE ALSO IN THE SPECIAL MORTGAGE
16 CREDIT FUNDS. THEY MAY -- YOU TRY TO USE THAT LEVERAGE
17 TO DO SOMETHING. THAT'S A VERY SPECIAL CASE.

02:22PM

18 THEY DIDN'T PRESENT EVIDENCE TO YOU, NOT
19 ONLY OF ANYONE -- THEY DIDN'T BRING HERE FROM THE
20 SPECIAL MORTGAGE CREDIT FUND TO TESTIFY. THEY DIDN'T
21 PRESENT THE EVIDENCE CONCERNING ANYONE WHO WAS IN THAT
22 SITUATION, WHO HAD BOTH THOSE TYPES OF INVESTMENTS.

02:22PM

23 THEN MR. BRIAN ALSO SHOWED YOU SOME
24 EXHIBITS, AND -- WRITTEN BY MR. BRADFORD, THAT SAYS,
25 YOU ARE LIKELY TO LOSE ASSETS.

02:23PM

26 THIS WASN'T TALKING ABOUT THE SPECIAL
27 MORTGAGE CREDIT FUNDS. THIS IS WHAT'S -- WHAT
28 MR. SMITH TALKED ABOUT, HEADLINE RISKS.

1 MR. STERN KNEW THAT PEOPLE WERE GOING TO
2 BE LEAVING FROM THE NONTRADITIONAL ASSETS, THOSE FUNDS,
3 NOT THE SPECIAL MORTGAGE CREDIT FUNDS. THAT WASN'T
4 FORESEEN OR EXPECTED AT ALL.

5 BUT YOU HAVE TO ASK: IF MR. BRIAN IS
6 RIGHT, AND ALL OF THAT WOULD HAVE HAPPENED ANYWAY, WHY
7 DID MR. GUNDLACH SPEND SO MUCH TIME --

02:23PM

8 THESE ARE THE EXHIBITS 2140, 41, 42,
9 TRANSCRIPTS OF THOSE CALLS.

10 WHY DID HE GO TO SO MUCH TROUBLE TO SAY
11 WHAT HE SAID TO THEM, WHY NOT JUST BIDE YOUR TIME AND
12 WAIT FOR THE ASSETS TO COME HOME.

02:23PM

13 OBVIOUSLY, HE WAS DOING THIS FOR A
14 PURPOSE. HE THOUGHT HE COULD ACCOMPLISH SOMETHING, BY
15 SAYING THOSE THINGS THAT HE DID, BY SENDING FEDERAL
16 EXPRESS LETTERS TO ALL THE INVESTORS.

02:23PM

17 AND THERE WERE HUNDREDS OF INVESTORS,
18 HUNDREDS OF INVESTORS IN THESE SPECIAL MORTGAGE CREDIT
19 FUNDS.

20 IF WE CAN LOOK AT SLIDE 294, THIS IS
21 EXHIBIT 2213, WHERE MR. GUNDLACH IS TELLING MR. LUCIDO,
22 PLEASE KEEP REACHING OUT.

02:24PM

23 THIS IS A DELIBERATE STRATEGY, AND A
24 PLAN.

25 AND REMEMBER, HE'S THE MAN WHO SET THESE
26 UP. HE'S THE PUBLIC FACE FOR THESE FUNDS. AND HE'S
27 TELLING INVESTORS, NOBODY IS MANAGING YOUR MONEY. THE
28 PEOPLE WHO HAVE COME IN NOW ARE INCOMPETENT. THE

02:24PM

1 CONTRACTS ARE BLOWN TO HIGH HELL.

2 THAT ISN'T COMPETITION. AND IT ISN'T
3 LAWFUL. THAT IS INTERFERENCE. THIS IS NOT JUST A
4 FELLOW INVESTOR, GIVING HIS APPEARANCE. THIS IS
5 INTERFERENCE WITH THE CONTRACT.

02:24PM

6 THEY SAID, WELL, LOOK AT THE
7 DECEMBER 8TH TRANSCRIPT, EXHIBIT 2140, WHERE HE'S
8 ACTUALLY SAYING, WELL, KEEP YOUR MONEY THERE. HE
9 INITIALLY TOLD THE INVESTORS.

02:25PM

10 WELL, FIRST OFF, WHEN YOU LOOK AT THAT
11 EXHIBIT YOU WILL SEE THAT IT'S PRIMARILY ADDRESSED TO
12 MUTUAL FUND INVESTORS, NOT SPECIAL MORTGAGE CREDIT
13 PEOPLE. AND AT THAT TIME HE'S NOT REGISTERED WITH THE
14 SEC, HE CAN'T ACCEPT MONEY YET. HE'S NOT IN A POSITION
15 WHERE HE CAN TELL PEOPLE TO LEAVE. HE WANTS THEM TO
16 STAY WHERE THEY ARE, FOR THE TIME BEING.

02:25PM

17 HE'S ENTITLED TO GIVE PEOPLE HIS
18 OPINION, BUT THAT NOT THE ISSUE. IT'S NOT A FIRST
19 AMENDMENT ISSUE.

20 WHAT HE'S NOT ENTITLED TO DO IS TELL
21 PEOPLE TO IGNORE THEIR CONTRACTS. AND THAT THE
22 CONTRACTS ARE BLOWN TO HIGH HEAVEN.

02:25PM

23 AND INTERESTINGLY, MR. BRIAN SAID THAT
24 INVESTORS LEFT, NOT BECAUSE OF THE COMMENTS THAT
25 MR. GUNDLACH MADE, BUT BECAUSE MR. GUNDLACH WAS
26 TERMINATED. I DON'T KNOW IF ANY OF YOU CAUGHT HIM
27 SAYING THAT.

02:25PM

28 WELL, IF THAT'S TRUE, HE WAS -- THEY

1 LEFT THEN FOR BREACH OF FIDUCIARY DUTY. BECAUSE HE HAD
2 TO BE TERMINATED FOR THE THINGS THAT HE HAS DONE.

3 AND THAT \$344 MILLION CAN MOVE RIGHT
4 FROM THE INTERFERENCE CLAIM OVER TO THE COLUMN WHERE
5 THE -- WITH THE BREACH OF FIDUCIARY DUTY CLAIM.

02:26PM

6 WITH RESPECT TO THE TRADE SECRETS, I
7 HEARD MR. BRIAN SAY THAT TCW WAS HAPPY TO FIND OUT THAT
8 THEY WERE DOING THESE THINGS.

9 IN THE REAL WORLD THEY DON'T THINK
10 PEOPLE ARE HAPPY ABOUT FINDING OUT ABOUT DOWNLOADING
11 AND STEALING AND THE UNFAITHFULNESS OF EMPLOYEES.

02:26PM

12 MR. BRIAN SAYS -- HE SAID THAT WE REGRET
13 THAT IT HAPPENED.

14 DID ONE DOUBLELINE EMPLOYEE AT ALL, DID
15 MR. GUNDLACH, ANY OF THESE PEOPLE SAY, WE'RE SORRY, WE
16 REGRET THAT IT HAPPENED?

02:26PM

17 IT'S WELL AND GOOD FOR MR. BRIAN TO COME
18 UP HERE AND SAY THEY ARE SORRY. THE OTHERS GAVE NO
19 INDICATION WHATSOEVER OF CONTRITION. YOU HEARD FROM
20 MR. SANTA ANA THAT THIS WAS PART OF A BUSINESS
21 CONTINUITY PLAN.

02:26PM

22 WITH RESPECT TO EVIDENCE OF USE, YOU
23 RECALL MR. HICKS' TESTIMONY THAT THE DOUBLELINE CODE
24 WAS SUBSTANTIALLY DERIVED FROM THE TCW CODE. THAT IS
25 EVIDENCE OF USE.

02:27PM

26 MR. CONTINO CAN ONLY SAY, WELL, I'VE GOT
27 AN ALTERNATIVE EXPLANATION.

28 WE HAVE EVIDENCE OF THE USE OF THE

1 SECURITY ANALYZER AND THE BWIC BROWSER.

2 MR. HICKS TESTIFIED THAT THEY WERE
3 SUBSTANTIALLY DERIVED WITH THE EQUIVALENT FUNCTIONS --
4 EQUIVALENT PROGRAMS AT DOUBLELINE WERE SUBSTANTIALLY
5 DERIVED FROM THE TCW SECURITY ANALYZER AND BWIC
6 BROWSER.

02:27PM

7 THERE'S EVIDENCE OF EXPLICIT USE BY
8 MR. SANTA ANA OF THAT 200-PAGE SPREADSHEET YOU SENT TO
9 MR. WARD, YOU WILL RECALL, IN NOVEMBER.

02:27PM

10 AND LET'S -- SOME OF THESE THINGS WE
11 JUST CAN'T PROVE. HOW CAN WE PROVE TO YOU HOW JP USED
12 THE 13,000-PLUS DOCUMENTS THAT HE DESTROYED? HOW CAN
13 WE PROVE THAT MR. DAMIANI RAN A SECURE DELETE SOFTWARE
14 PROGRAM AND ELIMINATED OVER 5,000 DOCUMENTS.

15 THERE ARE SOME THINGS THAT WE SIMPLY
16 CAN'T PROVE TO YOU, BUT IT'S BECAUSE OF ACTIONS THE
17 DEFENDANT'S TOOK.

02:28PM

18 MR. BRIAN TOLD YOU THAT THERE WERE NO
19 TRADE SECRETS ON THE FRONT END.

20 THAT'S SIMPLY NOT RIGHT. THE SECURITY
21 BROWSER IN THE -- THE SECURITY ANALYZER AND THE BWIC
22 BROWSER ARE ON THE FRONT END.

02:28PM

23 MR. SMITH TESTIFIED TO YOU THAT BOTH OF
24 THOSE WERE TRADE SECRETS. THOSE ARE THE THINGS THAT
25 WERE DEVELOPED BY PH.D.'S, DOZENS OF TCW'S EMPLOYEES,
26 AT GREAT EXPENSE, OVER A SUBSTANTIAL PERIOD OF TIME.

02:28PM

27 AND THEN, IF WE COULD LOOK AT JURY
28 INSTRUCTION -- SLIDE 806, AND IF WE COULD LOOK AT --

1 THE SECOND PAGE OF THAT, MIKE.
2 NUMBER FIVE, AND NUMBER -- THE SECOND
3 PAGE THERE.

4 I THINK MR. BRIAN MISSTATED THE LAW.
5 WE'RE ONLY REQUIRED TO SHOW ACQUISITION,
6 USE -- IMPROPER ACQUISITION, USE OR DISCLOSURE. ANY
7 ONE OF THOSE IS A VIOLATION OF TRADE SECRETS LAW.

02:29PM

8 WE ALSO HAVE TO SHOW THAT WE WERE
9 HARMED. I SUBMIT, AS I EXPLAINED TO YOU IN THE
10 BEGINNING, WE DID SHOW THAT, IN TERMS OF REPUTATION AND
11 HAVING TO TELL CLIENTS -- HAVING TO TELL CLIENTS THAT
12 THEIR PERSONAL INFORMATION HAD BEEN COMPROMISED.

02:29PM

13 WITH RESPECT TO MR. GUNDLACH'S STATUS.
14 MR. GUNDLACH, YOU KNOW, YOU HEARD THAT THERE ARE MANY
15 PORTFOLIO MANAGERS AT TCW WHO HAVE CONTRACTS, YES,
16 AT-WILL CONTRACTS, MEANING THEY KNOW WHAT THEIR FEE
17 DEAL IS; THAT THEY DON'T HAVE A CONTRACT BEYOND THAT.

02:29PM

18 IF WE COULD LOOK AT SLIDE 308, THESE ARE
19 SOME OF THE INDIVIDUALS WHO WERE IDENTIFIED TO YOU AS
20 PEOPLE WHO HAVE AT-WILL AGREEMENTS. THEY CAN LEAVE
21 WHENEVER THEY WANT. THEY CAN BE TERMINATED, BUT THEY
22 CERTAINLY HAVE A DEAL ON WHAT THEIR COMPENSATION IS.

02:30PM

23 SO THERE SHOULDN'T BE ANY CONFUSION OVER
24 THE NOTION THAT YOU CAN HAVE AN AT-WILL AGREEMENT. IF
25 IT IS LIMITED TO WHAT THE TERMS OF YOUR COMPENSATION
26 ARE.

02:30PM

27 MR. BARACH TOLD YOU, IF WE LOOK AT SLIDE
28 309, HE UNDERSTOOD THAT WAS HIS SITUATION AFTER HIS

1 CONTRACT EXPIRED IN DECEMBER 31, 2006, THAT HE WAS THEN
2 AN AT-WILL EMPLOYEE.

3 NOW, IN TERMS OF MR. GUNDLACH'S STATUS,
4 WE'VE LOOKED AT THAT E-MAIL. I WON'T TALK ABOUT IT
5 AGAIN, THE TRUTHFUL ANSWER.

02:30PM

6 BUT REMEMBER MR. OWENS FROM GOLDMAN
7 SACHS, WHO WAS HERE YESTERDAY. IF WE LOOK AT SLIDE
8 319, HE TOLD YOU -- HE TOLD YOU WHAT MR. GUNDLACH TOLD
9 HIM IN THAT MEETING, "I DON'T HAVE A CONTRACT."

02:31PM

10 AND THEY CALLED MR. GUNDLACH TO THE
11 STAND TO RESPOND TO THAT. HE TRIED TO SPIN IT, ABOUT
12 BUT DON'T HAVE A NON-COMPETE AGREEMENT AND HE ENDED UP
13 CONTRADICTING MR. OWENS ON A NUMBER OF THINGS,
14 INCLUDING ON WHETHER OR NOT GOLDMAN SACHS WOULD
15 CONTINUE TO REPRESENT THEM. AND I'M SURE YOU RECALL
16 THAT.

02:31PM

17 BUT ASK YOURSELF, WHAT MOTIVE WOULD
18 MR. OWENS HAVE TO LIE ABOUT WHAT MR. GUNDLACH TOLD HIM?
19 THERE'S NO REASON HE WOULD HAVE TO LIE.

20 YOU KNOW, SOMETHING ELSE WE HAVEN'T
21 TALKED ABOUT. IF MR. GUNDLACH HAD A CONTRACT FOR --
22 RUNNING TILL THE END OF THIS YEAR, AND HE WAS TERRIFIED
23 HE WAS GOING TO BE FIRED.

02:31PM

24 HE'S NOT A BASHFUL MAN. HE HAS THIS
25 MEETING ON DECEMBER 3. WHAT WOULD HE SAY? HE CAN'T
26 FIRE ME. I HAVE A CONTRACT THAT RUNS FOR ANOTHER
27 COUPLE YEARS. AND HE TOLD YOU -- THIS IS SLIDE NUMBER
28 321 -- ALL THE TIME HE WAS TERRIFIED OR AFRAID HE WAS

02:31PM

1 GOING TO BE FIRED, HE NEVER CLAIMED ONCE HE HAD A
2 CONTRACT, EVEN AFTER HE WAS TERMINATED.

3 SLIDE NUMBER 322. YOU NEVER TOLD
4 MR. BARACH, HIS PARTNER, GOSH, THEY COULDN'T DO THAT.
5 THEY ARE GOING TO OWE ME A LOT OF MONEY, BECAUSE I HAVE
6 A CONTRACT.

02:32PM

7 AND THAT WAS BECAUSE THE TRUTHFUL ANSWER
8 IS, HE DIDN'T HAVE A CONTRACT.

9 AND YOU HEARD FROM MR. BEYER AND
10 MR. SONNEBORN, IF WE LOOK AT SLIDE 327, THAT HANDSHAKE
11 DEAL, THAT WAS MAY 1; THAT WAS WHEN THEY SHOOK HANDS ON
12 A FEE AGREEMENT, AND THEY HAD AN AGREEMENT ON WHAT HIS
13 SPLIT WOULD BE. AND THAT WAS ON MAY 1.

02:32PM

14 MR. GUNDLACH, REMEMBER, HE WAS EMPHATIC
15 AT TRIAL. I'M SURE YOU REMEMBER THIS, THAT THAT
16 HAPPENED ON MAY 25. DO YOU REMEMBER THAT? MAY 25 WAS
17 THE DAY. HE HAD TO MAKE IT MAY 25, BECAUSE THERE WERE
18 SO MANY DOCUMENTS BEFORE THAT, AND E-MAILS SAYING NO
19 CONTRACT, YET. WE DON'T HAVE AN AGREEMENT YET.

02:32PM

20 HE HAD TO PUSH THAT TO MAY 25. THE
21 PROBLEM WITH THAT IS IF WE LOOK AT SLIDE 584, AND WE
22 PUT HIS TESTIMONY AT DEPOSITION NEXT TO HIS TESTIMONY
23 AT TRIAL, THE TESTIMONY IS, AT THE TOP, HE COULDN'T
24 EVEN SAY WHETHER THAT HANDSHAKE WAS IN THE FIRST HALF
25 OR THE SECOND HALF OF MAY. HE COULDN'T SAY.

02:33PM

26 HE HADN'T YET FIGURED OUT WHAT IT NEEDED
27 TO BE, IN ORDER FOR HIM TO COME HERE AND MAKE THIS
28 CLAIM BEFORE YOU.

02:33PM

1 BY THE TIME OF TRIAL, THAT'S THE
2 TESTIMONY ON THE BOTTOM, IF YOU COULD FIGURE THAT OUT,
3 AND HE WAS PREPARED TO SAY, WELL, IT WAS ON MAY 25TH,
4 THAT THEY SHOOK HANDS ON THAT DAY. I SUBMIT THAT THAT
5 WAS SOMETHING THAT WAS MADE UP FOR YOU.

02:33PM

6 IN YOUR E-MAIL ON MAY 25, SLIDE 332,
7 EVERYONE HAS AGREED TO EVERYTHING IN GOOD FAITH. THE
8 CONTEXT THERE IS CLEARLY -- THEY ARE TALKING ABOUT THE
9 FEE SHARING, AND ONLY THE FEE SHARING.

10 HOW DO WE KNOW THAT? BECAUSE
11 MR. CAHILL -- THERE WAS A FEE SHARING PAYMENT DATE
12 COMING UP AT THE END OF MAY. AND MR. CAHILL IS ASKING
13 WHICH FEE SHARING FORMULA SHOULD BE USED FOR THE
14 UPCOMING PAYMENT. EVERYBODY HAS AGREED TO EVERYTHING
15 IN GOOD FAITH. GO AHEAD WITH THE NEW DEAL. ONLY
16 TALKING ABOUT THE FEE SHARING PAYMENT.

02:34PM

17 THAT'S BECAUSE THE LAST LINE OF HIS
18 E-MAIL MAKES IT CLEAR, SLIDE 333, EXHIBIT 61. HE THEN
19 GOES ON TO SAY, I PROMISE TO LOOK AT THE CONTRACT OVER
20 THE WEEKEND.

02:34PM

02:34PM

21 NO EMPLOYMENT AGREEMENT WAS EVER FORMED.
22 MR. GUNDLACH UNDERSTOOD FULL WELL, IF WE LOOK AT SLIDE
23 NUMBER 337, HIS TESTIMONY. HE KNEW THAT TCW EXPECTED
24 AND INTENDED THAT THERE WOULD BE A WRITTEN CONTRACT
25 THAT WOULD BE SIGNED, JUST AS THERE HAD ALWAYS BEEN,
26 EVERY TIME BACK TO 1989.

02:34PM

27 MR. BRIAN TRIES TO MAKE MUCH OF THE
28 APPROVAL AT THE COMPENSATION COMMITTEE, BUT IF YOU LOOK

1 AT THOSE MINUTES, 5048-5, SLIDE NUMBER 348, WHAT IT
2 SAYS, THE COMMITTEE AUTHORIZES THEM TO GO AHEAD,
3 EXECUTE, DELIVER IT, AND TO MAKE SUCH CHANGES AS THE
4 EXECUTING OFFICER DEEMS NECESSARY AND APPROPRIATE;
5 I.E., YOU ARE GOING TO SIGN A WRITTEN AGREEMENT. AND
6 THAT'S WHAT IT SAYS.

02:35PM

7 SLIDE 347. ALL OF THAT IS TO BE
8 CONCLUSIVELY EVIDENCED BY SUCH EXECUTION AND DELIVERY.
9 THERE WAS NO AGREEMENT HERE.

02:35PM

10 AND I DON'T HAVE TIME TO GO BACK AND
11 FORTH, BUT YOU KNOW, YOU DON'T GET TO PICK AND -- WHEN
12 YOU ARE NEGOTIATING A CONTRACT, AND SOMEONE SAYS, I'LL
13 AGREE TO THIS IF YOU AGREE THIS; WELL, OKAY, I'LL DO
14 THIS IF YOU ACCEPT THIS TERM. AND THE OTHER PERSON
15 SAYS, I'LL ACCEPT THIS TERM. AND THEN YOU'VE GOT
16 AGREEMENT ON THOSE TWO SETS ON TWO OR THREE THINGS, YOU
17 HAVE AGREEMENT ON THOSE TWO OR THREE THINGS? NO,
18 THAT'S NOT HOW IT WORKS. YOU DON'T HAVE AN AGREEMENT
19 UNTIL IT'S OVER.

02:35PM

20 AND THIS WAS STILL IN THE PROCESS OF
21 NEGOTIATION. THERE WERE TERMS THAT WERE NOT ACCEPTABLE
22 THERE. YOU HEARD FROM MR. SONNEBORN, AND ALSO FROM
23 MR. GUNDLACH.

02:36PM

24 AND PHIL JACKSON COMES BACK AND
25 NEGOTIATES A DEAL. HE WILL NEGOTIATE A WRITTEN
26 AGREEMENT, THAT SAYS EXACTLY WHAT HAPPENED, IN THE
27 EVENT OF HIS TERMINATION.

02:36PM

28 322. OH, YEAH. REMEMBER MR. BRIAN

1 SHOWED YOU THIS PROVISION, AND POINTED OUT, THIS IS --
2 HE SHOWED YOU ACTUALLY EXHIBIT -- HE SHOWED YOU EXHIBIT
3 5178. AND HE POINTED OUT THAT THERE WERE -- THAT THIS
4 SAID THAT HE WAS -- THERE WAS A CONTRACT HERE.

5 AND IF YOU LOOK AT EXHIBIT 322-2, YOU
6 CAN SEE THIS WAS TAKEN FROM A LEGAL DEPARTMENT. THIS
7 WAS THE ONE MR. BRIAN SHOWED YOU. AND IT SHOWS A -- ON
8 THE RIGHT-HAND SIDE, THAT HE HAS A CONTRACT. WHAT
9 MR. BRIAN SHARED, IF WE CAN GO BACK TO THE -- I'M
10 SORRY.

02:37PM

02:37PM

11 MR. BRIAN SHOWED YOU THE EXHIBIT 5178.
12 AND THE RIGHT-HAND COLUMN, HAS AN EXPIRATION DATE.

13 YOU CAN SEE, IF YOU LOOK AT EXHIBIT --
14 THE LEGAL DEPARTMENT FILE OF EMPLOYMENT CONTRACTS, THIS
15 IS IN EVIDENCE. 322-2, THAT THAT DOCUMENT WAS TAKEN
16 DIRECTLY FROM THIS DOCUMENT. YOU WILL SEE
17 MR. GUNDLACH'S NAME, DOWN AT THE BOTTOM, ON THE
18 RIGHT-HAND SIDE. AND IT SAYS, CONTRACT UNDER
19 DISCUSSION.

02:37PM

20 AND IF WE CAN LOOK AT THAT TABLE NOW,
21 MIKE --

02:38PM

22 YOU CAN SEE WHAT HAPPENED. SOMEBODY
23 TOOK THE DOCUMENT FROM THE LEGAL DEPARTMENT FILE, AND
24 CLIPPED OFF THAT LAST COLUMN THAT SAYS, UNDER
25 DISCUSSION. A MISTAKE WAS MADE.

02:38PM

26 BUT IF YOU LOOK AT THE ACTUAL LEGAL
27 DEPARTMENT DOCUMENT, IT SAYS UP AT THE TOP -- THIS IS
28 322-2. NO TERM CONTRACT OR CONTRACT EXPIRED. THAT'S

1 THE LIST AT THE TOP. 322-2. AND MR. GUNDLACH'S NAME
2 IS THERE.

3 IF THERE WAS A CONTRACT, WE SUBMIT THAT
4 HE BREACHED HIS FIDUCIARY DUTIES.

5 THE WAGE CLAIM. I LISTENED TO MR. BRIAN
6 TALK ABOUT THE PROFIT SHARING ON TERMINATION.

02:38PM

7 IF WE CAN LOOK AT SLIDE -- EXHIBIT 66-3.
8 PROFIT SHARING IS A DEFINING TERM. I'M SORRY, SLIDE
9 394.

10 PROFIT SHARING IS A DEFINED TERM IN THIS
11 AGREEMENT -- IN THIS DRAFT AGREEMENT, THAT WAS NEVER
12 SIGNED.

02:39PM

13 MR. BRIAN BASICALLY WANTS TO READ THAT
14 DEFINITION OUT OF THE DRAFT ALTOGETHER. YOU HAVE A
15 DEFINED TERM THAT SENDS YOU BACK TO EXHIBIT A.

02:39PM

16 WHEN I FIRST SPOKE TO YOU THIS MORNING,
17 WE TALKED ABOUT DAMAGES. AND I EXPLAINED TO YOU HOW,
18 UNDER WHAT MR. HELM WAS QUESTIONING PROFESSOR CORNELL
19 ABOUT, HE SAID THAT TCW ACTUALLY SAVED, REMEMBER, SAVED
20 \$265 MILLION, BY USING THIS LESS EXPENSIVE TEAM.

02:39PM

21 AND I EXPLAINED TO YOU HOW THAT WAS
22 BASED ON KIND OF A MISMATCH, LOOKING AT WHAT
23 MR. GUNDLACH WOULD HAVE BEEN PAID IF THERE HAD BEEN NO
24 AMENDMENTS TO THE SPECIAL MORTGAGE FUND CONTRACT, AND
25 COMPARING THAT THEN TO WHAT WAS ACTUALLY PAID TO MET
26 WEST AFTER THERE WERE AMENDMENTS, AT LOWER FEE LEVELS.
27 MR. BRIAN NEVER RESPONDED TO THAT.

02:40PM

28 THAT WAS A MISMATCH BETWEEN -- YOU ARE

1 COMPARING APPLES AND ORANGES -- AND YOU ARE TALKING
2 ABOUT TWO DIFFERENT CLAIMS. THEY WANT TO OFFSET A
3 PHONY SAVINGS AGAINST THE DAMAGES FOR BREACH OF A
4 FIDUCIARY DUTY. AND YOU WILL GET -- YOU HAVE THAT
5 INSTRUCTION THAT SAYS, EACH CLAIM -- EACH QUESTION MUST
6 BE CONSIDERED SEPARATELY.

02:40PM

7 WE MIGHT ASK OURSELVES, SUPPOSE WE
8 HADN'T CAUGHT MR. GUNDLACH? SUPPOSE HE HAD THAT PHONE
9 CALL AND HE HAD TAKEN ALL THAT BUSINESS. AND TCW ISN'T
10 WHAT IT IS TODAY, EMPLOYING NOW 500 PEOPLE, ALL OF WHOM
11 STILL HAVE GAINFUL EMPLOYMENT.

02:40PM

12 WE'D STILL BE HERE, BUT WHAT WE WOULD BE
13 SEEKING IS A MUCH, MUCH BIGGER NUMBER FOR HIS BREACH OF
14 FIDUCIARY DUTY.

15 SO IT'S BECAUSE OF HIS BREACH OF
16 FIDUCIARY DUTY, BECAUSE OF HIS UNFAITHFULNESS, THAT
17 WE -- THAT TCW HAS COME HERE AND BROUGHT THESE CLAIMS
18 FOR YOUR CONSIDERATION.

02:41PM

19 IF MR. STERN HAD NOT DONE WHAT HE DID,
20 IN BRINGING IN MET WEST, WE'D ACTUALLY BE SEEKING MUCH
21 LARGER DAMAGES FROM MR. GUNDLACH FOR DESTROYING THE
22 COMPANY.

02:41PM

23 AM I OUT OF TIME, MR. MADISON?

24 MR. MADISON: ALL OUT OF TIME.

25 MR. QUINN: I'M ALL OUT OF TIME. SO I ALREADY
26 THANKED YOU AT THE BEGINNING, FOR ALL YOUR ATTENTION.
27 AND I MEAN THAT SINCERELY.

02:41PM

28 I, LIKE MR. BRIAN, IF YOU HAVE QUESTIONS

1 BACK IN THE JURY ROOM, I'D LIKE YOU TO THINK ABOUT --
2 WHAT MR. QUINN MIGHT SAY.

3 BUT THIS IS A REALLY, REALLY IMPORTANT
4 MATTER. YES, LOTS OF ZEROES, LOTS OF MONEY INVOLVED.

5 BUT THE PRINCIPLES ARE KIND OF BASIC
6 KINDERGARTEN PRINCIPLES. AND WE FOLK OF TCW HAVE
7 CONFIDENCE IN YOU, IN TRUSTING OUR CLAIMS TO YOU. AND
8 WE ASK YOU TO RETURN A VERDICT FOR TCW FOR FULL
9 COMPENSATION IN PUNITIVE DAMAGES. THANK YOU.

02:42PM

10 THE COURT: THANK YOU, MR. QUINN.

02:42PM

11 MR. BRIAN?

12 MR. BRIAN: YOUR HONOR, MAY I EITHER APPROACH
13 OR RESERVE AN OBJECTION AND TAKE IT UP LATER? TO A
14 COMMENT MR. --

15 THE COURT: WE'LL TAKE IT UP LATER.

02:42PM

16 MR. BRIAN: OKAY. FINE.

17

18 REBUTTAL CLOSING ARGUMENT

19

20 BY MR. BRIAN:

02:43PM

21 FIRST OF ALL, WHEN YOU GO BACK TO
22 DELIBERATE, I DON'T WANT YOU TO THINK AT ALL ABOUT WHAT
23 MR. QUINN MIGHT HAVE SAID.

24 YOU KNOW, WHEN I LISTEN TO MR. QUINN
25 TALK ABOUT -- AND AGAIN, I'M ONLY ENTITLED TO TALK
26 ABOUT OUR COMPENSATION CLAIM. AS MUCH AS I'D LIKE TO
27 RESPOND TO A COUPLE OF THINGS HE SAID, I'M ONLY
28 ENTITLED TO TALK ABOUT OUR COMPENSATION CLAIM.

02:43PM

1 SO WHEN I LISTEN TO MR. QUINN TALK, WHAT
2 I REALLY HEAR HIM SAY, HE SAID THAT THERE WAS NO
3 EMPLOYMENT AGREEMENT FORM. THAT'S WHAT HE SAID.

4 THAT'S FALSE. AND THE JUDGE WILL TELL
5 YOU, AN AGREEMENT IS A CONTRACT. THAT'S WHAT I TOLD
6 YOU AT THE OUTSET, THAT THERE IS A CONTRACT.

02:43PM

7 THE DISPUTE IS WHAT IT'S ABOUT, WHAT ARE
8 THE TERMS?

9 THE AGREEMENT TO PAY HIM THE FEE
10 SHARING, WHICH THEY AGREED TO, IS A CONTRACT. SO
11 PLEASE DON'T BE CONFUSED ABOUT WHEN HE SAYS THERE WAS
12 NO EMPLOYMENT AGREEMENT; THAT'S NOT TRUE.

02:43PM

13 WHEN I HEAR HIM TALK, THOUGH HIS
14 ARGUMENT REALLY BOILS DOWN TO THAT THE DOCUMENTS THAT
15 MR. CAHILL SENT AROUND WERE NOT SIGNED. THAT'S WHAT
16 HIS ARGUMENT REALLY BOILS DOWN TO.

02:44PM

17 AND I WANT TO START -- I WANT YOU TO
18 LOOK AT EXHIBIT 5049, PAGE 21. THESE ARE THE BOARD
19 MINUTES WHERE HIS AGREEMENT WAS PRESENTED.

20 WHAT IS THE FIRST THING YOU NOTICE ABOUT
21 THOSE BOARD MINUTES? THEY ARE NOT SIGNED. THEY ARE
22 NOT SIGNED.

02:44PM

23 TAKE A LOOK AT EXHIBIT 5048, PAGE 6.
24 THESE ARE THE MINUTES OF THE COMPENSATION COMMITTEE
25 MEETING THE DAY BEFORE, WHERE IT WAS RATIFIED AND
26 APPROVED. THEY ARE NOT SIGNED.

02:44PM

27 THESE MINUTES OF THE BOARD AND THE
28 COMPENSATION COMMITTEE MEETINGS ARE FORMAL LEGAL

1 DOCUMENTS. THEY ARE OPERATIVE. THEY ARE NOT SIGNED.
2 SO DON'T BE SO -- YOU ARE GOING TO GET THE INSTRUCTIONS
3 FROM THE JUDGE, AND HE'S GOING TO TELL YOU ABOUT ORAL
4 CONTRACTS, IMPLIED CONTRACTS, AND THE LIKE. THE FACT
5 THAT IT WASN'T SIGNED DOESN'T END THE STORY.

02:45PM

6 THERE WAS AN AGREEMENT.

7 AND THE QUESTION YOU HAVE GOT TO ASK
8 YOURSELF IS, WHAT DID THE PARTIES INTEND THOSE TERMS TO
9 BE? THAT'S THE ISSUE.

10 NOW, YOU KNOW, WE STAND HERE, WE PUT UP
11 CHARTS AND WE TALK ABOUT JURY INSTRUCTIONS, AND WE HAVE
12 ALL THESE FANCY EXHIBITS, AND WE KIND OF THINK WE KNOW
13 WHAT WE'RE DOING, BUT AT THE END OF THE DAY, A LOT OF
14 WHAT YOU DO, AND FRANKLY, A LOT OF WHAT WE DO, IS APPLY
15 COMMON SENSE.

02:45PM

16 SO JUST THINK ABOUT, WHY IN THE WORLD
17 MR. GUNDLACH WOULD HAVE AGREED TO TAKE LESS MONEY IN
18 2007, WITH THE POTENTIAL FOR THE BIG UPSIDE, IF HE
19 DIDN'T HAVE THE PROTECTION OF THE FIVE-YEAR TERM AND
20 THE FOR-CAUSE TERMINATION, AND THE ACCRUED COMPENSATION
21 IF HE'S TERMINATED?

02:45PM

22 HE WOULDN'T. THAT WAS THE ESSENCE OF
23 THE DEAL. THOSE ARE THE ESSENTIAL TERMS. ALL THESE
24 OTHER THINGS, YOU DON'T HAVE TO HAVE AGREEMENTS ON ALL
25 OF THESE LITTLE BELLS AND WHISTLES.

02:46PM

26 THE QUESTION IS: WHAT DID THE PARTIES
27 INTEND THE ESSENTIAL TERMS TO BE?

28 LET'S GO BACK TO EXHIBIT 5048, PLEASE.

02:46PM

1 PAGE 4. PAGE 4, PLEASE.

2 THERE ARE TWO THINGS THAT JUMP OUT TO ME
3 WHEN I FIRST LOOK AT THIS. THE FIRST IS THE BOTTOM, IS
4 THAT EVERYBODY KNEW WE'RE TALKING ABOUT A FIVE-YEAR
5 AGREEMENT. OKAY?

02:46PM

6 MR. SONNEBORN PRESENTED THAT, THE
7 COMPENSATION COMMITTEE APPROVED IT, AND IT WAS APPROVED
8 BY THE BOARD THE NEXT DAY.

9 THE SECOND THING THAT JUMPS OUT IS IN
10 THAT BIG PARAGRAPH IN THE MIDDLE, IS HOW FAVORABLE THIS
11 DEAL WAS TO TCW, THAT MR. SONNEBORN IS TELLING THEM
12 THAT THE EXPENSE OF INCREASED HIRING HAS BEEN
13 TRANSFERRED TO THE MBS GROUP. THE MARGIN CONTRACTION
14 WILL BE BORNE BY THE MBS AND CMBS GROUP. IF THE
15 BUSINESS GROWS, TCW WILL HAVE SIGNIFICANT BENEFITS.

02:47PM

02:47PM

16 MR. SONNEBORN TOLD YOU THAT THERE WAS A
17 POLICY. DO YOU REMEMBER THAT? A POLICY OF GETTING THE
18 EMPLOYEE TO SIGN THE WRITTEN DOCUMENT FIRST. THAT'S
19 WHAT HE SAID.

20 TAKE A LOOK AT THE NEXT PAGE, 5048. IN
21 THAT SECOND PARAGRAPH. FIRST OF ALL, YOU DIDN'T SEE A
22 WRITTEN POLICY. NOBODY BROUGHT IN A POLICY.
23 MR. SONNEBORN DIDN'T BRING IN A POLICY, MR. QUINN AND
24 MR. MADISON NEVER SHOWED ANYBODY A POLICY.

02:47PM

25 TRUST ME, IF THERE WAS A POLICY, YOU
26 WOULD HAVE SEEN THAT POLICY. BUT WE KNOW THAT IT'S NOT
27 A POLICY, BECAUSE THEY RESOLVED TO AUTHORIZE THE CEO,
28 THE PRESIDENT, THE GENERAL COUNSEL, TO EXECUTE AND

02:48PM

1 DELIVER, ON BEHALF OF THE COMPANY, THE EMPLOYMENT
2 AGREEMENT WITH MR. GUNDLACH.

3 EXECUTE MEANS SIGN. THEY WERE
4 AUTHORIZED TO GO AHEAD.

5 NOW, THE FACT OF THE MATTER IS THAT THEY
6 WANTED TO LOCK HIM UP IN A FIVE-YEAR CONTRACT. BUT AS
7 I TOLD YOU BEFORE, THEY WANTED TO HAVE IT BOTH WAYS.

02:48PM

8 YOU HEARD MR. SONNEBORN ADMIT THAT HE
9 DID BASICALLY NOTHING TO TRY TO THEN GET MR. GUNDLACH
10 TO SIGN IT. MR. CAHILL CALLED, E-MAILED A COUPLE OF
11 TIMES. THERE WERE NO FURTHER DRAFTS SENT OUT. NO
12 E-MAILS. YOU DIDN'T SEE A SINGLE E-MAIL THAT WENT OUT
13 AFTER JUNE 7TH TO MR. GUNDLACH, NOTHING. BECAUSE THEY
14 HAD IT APPROVED BY THE COMPENSATION COMMITTEE. THEY
15 COULD TAKE THE POSITION, IF THEY WANTED TO, THAT HE WAS
16 BOUND BY THE CONTRACT; OR IF CIRCUMSTANCES CHANGED,
17 MAYBE THEY COULD TAKE THE POSITION, HE WASN'T BOUND.
18 THEY WERE IN THE BEST POSSIBLE WORLD, AND THAT'S WHAT
19 THEY DID.

02:48PM

02:49PM

20 NOBODY WENT TO MR. GUNDLACH IN DECEMBER
21 OF 2007 AND SAID, YOUR CONTRACT IS EXPIRING. YOU ARE
22 NOW AN AT-WILL EMPLOYEE. THEY ADMITTED, NOBODY DID
23 THAT.

02:49PM

24 TAKE A LOOK AT EXHIBIT 114. THIS IS THE
25 LAW DEPARTMENT RECORD. I'M GLAD MR. QUINN RAISED THIS,
26 BECAUSE THIS WAS THE ONE, IN 2008, WHERE THEY SAID
27 EXPIRATION DATE DECEMBER 31ST, 2011. THAT'S WHAT WE
28 THINK IT WAS. IN PROCESS.

02:49PM

1 ALL THAT MEANS IS, WE NEED TO FILL OUT
2 ALL THE PAPERWORK.

3 TAKE A LOOK AT PAGE 2 OF THIS DOCUMENT.
4 VINCE FIORELLO. OKAY? AFTER TWO YEARS AT WILL. THEY
5 KNOW HOW TO WRITE DOWN, AT WILL. JIM HASSET, NOT
6 SIGNED. OKAY?

02:50PM

7 THERE'S A DIFFERENCE BETWEEN WHAT THEY
8 WROTE DOWN FOR MR. GUNDLACH THAN THE PEOPLE THAT THEY
9 KNEW DID NOT HAVE BINDING CONTRACTS.

10 BUT BY THE SUMMER OF 2009, WE KNOW FROM
11 EXHIBIT 6197, THAT MR. GUNDLACH WAS GOING TO BE OWED A
12 PILE OF MONEY. THE BET HE HAD MADE BACK IN 2007, WHEN
13 HE ENTERED INTO THIS WIN/WIN CONTRACT, PROVED HIM TO BE
14 RIGHT. WHAT HE BET ON WAS RIGHT. HE WAS GOING TO BE
15 OWED A LOT OF MONEY.

02:50PM

02:50PM

16 TCW WANTS TO HAVE IT BOTH WAYS ON THIS
17 ACCRUED TO THE DATE OF TERMINATION LANGUAGE.

18 TAKE A LOOK AT EXHIBIT 66-4. IT'S
19 PRETTY EASY TO PUT IN, ACCRUED AND PAID. THEY DIDN'T
20 DO IT.

02:51PM

21 TAKE A LOOK AT 66-3. HERE'S ANOTHER WAY
22 THEY ARE TRYING TO HAVE IT BOTH WAYS. HE SAYS THERE'S
23 NO WRITTEN DOCUMENTATION. THIS IS JUST AN ORAL
24 UNDERSTANDING AND HANDSHAKE. AND YET HE WANTS THIS
25 EXHIBIT A TO GOVERN EVERYTHING.

02:51PM

26 BUT IN FACT, AS I TOLD YOU BEFORE,
27 EXHIBIT A ONLY APPLIES DURING THE TERM OF THE DEAL. IF
28 THEY TERMINATE HIM, THEY GO BACK TO THE ACCRUED -- TO

1 THE DATE OF TERMINATION. THAT'S HOW YOU PREVENT THE
2 KIND OF OPPORTUNISTIC TERMINATION.

3 CITIBANK MADE A -- TCW MADE A BIG
4 MISTAKE ABOUT THIS.

5 TAKE A LOOK AT EXHIBIT 6135. THIS IS
6 MR. CONN'S E-MAIL TO CITIBANK ON JULY 10TH, 2009.

02:51PM

7 WHEN THEY HIRED CITIBANK, THEY ASKED FOR
8 INFORMATION. MR. CONN SAID, ATTACHED IS YOUR ANNOTATED
9 INFORMATION REQUEST; AND WHAT HE SENT IN WAS EXHIBIT
10 5178, WHICH SAYS, EXPIRATION DATE DECEMBER 31ST, 2011.

02:52PM

11 AND APPARENTLY MR. QUINN -- THERE'S NO
12 EVIDENCE OF THIS, BUT MR. QUINN SAID, SOMEBODY MUST
13 HAVE CHOPPED OFF, NOT THE CONTRACT UNDER DISCUSSION,
14 WHICH I'LL GET TO THAT COMES LATER, BUT ACTUALLY, IN
15 THE PROCESS. HE MADE A MISTAKE ON THAT, I BELIEVE; BUT
16 I'LL TALK ABOUT THAT.

02:52PM

17 SO WHAT HAPPENS? WELL, SEVEN DAYS
18 LATER, EXHIBIT 5180 -- SORRY. FIRST GO TO 5180.

19 MR. SULLIVAN HAS A SIMILAR DOCUMENT. HE
20 ALSO HAS CONTRACT EXPIRATION DATE OF 12-31. THEN, A
21 FEW DAYS LATER, HE PUTS OUT EXHIBIT 1741, I THINK IT'S
22 A WEEK LATER, JULY 21ST, IN WHICH HE HAS TAKEN OUT THE
23 CONTRACT EXPIRATION DATE AND PUT A DASH IN. AND HE
24 SAID HE WAS TOLD TO UPDATE THAT, BY MR. DEVITO, THE
25 SAME GENTLEMAN THAT ATTENDED THE AUGUST 27TH MEETING.

02:52PM

26 WHAT HAPPENED BETWEEN JULY 14TH AND
27 JULY 21ST, 2009?

02:53PM

28 I'LL TELL YOU WHAT HAPPENED.

1 MR. GUNDLACH WAS INTERVIEWED BY
2 MR. SHEDLIN OF CITIBANK ON JULY 16TH OR 17TH.

3 AND YOU ARE GOING TO LOOK -- YOU CAN
4 LOOK AT MR. CONN'S NOTES, THE TYPEWRITTEN VERSION OF
5 EXHIBIT 2291. I SHOWED YOU SOME OF HIS DEPOSITION.
6 YOU SHOULD READ THOSE NOTES. MR. GUNDLACH MAKES
7 STATEMENTS ABOUT WANTING TO BE CEO. YOU READ THOSE
8 NOTES. BUT I THINK YOU WILL COME AWAY WITH WHAT I COME
9 AWAY WITH, WHICH WAS HE WAS TRYING TO HELP THE COMPANY.

02:53PM

10 BUT WHAT HAPPENED WAS MR. SHEDLIN SPUN
11 THOSE NOTES. MR. GUNDLACH HAD MADE NEGATIVE COMMENTS
12 IN THE PRESS ABOUT CITIBANK, AND MR. SHEDLIN WAS MAD.
13 AND HE WENT TO MR. STERN AND HE REPORTED ON THAT
14 MEETING, AND TOLD MR. STERN, AFTER THE MEETING ON JULY
15 16TH OR 17TH, JEFFREY GUNDLACH SAID HE WANTED TO
16 REPLACE HIM AS CEO, AND HE WAS THREATENING TO LEAVE THE
17 COMPANY.

02:53PM

18 FOUR DAYS LATER, MR. SULLIVAN ALTERS
19 THOSE RECORDS. FOUR DAYS LATER.

02:54PM

20 TAKE A LOOK AT EXHIBIT 332. NOT JUST
21 MR. SULLIVAN'S RECORDS; THESE ARE THE LAW DEPARTMENT
22 RECORDS. 332, THE ONE I SHOWED YOU BEFORE, 114 HAD AN
23 EXPIRATION DATE OF 12-31. AND IT SAID, IN PROCESS.

02:54PM

24 AND NOW THEY HAVE CONTRACT UNDER
25 DISCUSSION. WHO ARE THEY DISCUSSING IT WITH? THEY ARE
26 SURE NOT TALKING TO MR. GUNDLACH ABOUT IT. CONTRACT
27 UNDER DISCUSSION.

02:54PM

28 LET ME MAKE SOMETHING CLEAR. I DON'T

1 THINK MR. OWENS CAME IN HERE AND LIED. I DON'T AT ALL.
2 I THINK MR. OWENS WAS MISTAKEN. I THINK HE
3 PARTICIPATED IN A MEETING FROM 3,000 MILES AWAY, BY
4 PHONE, AND SLIGHTLY MISHEARD WHAT WAS SAID ABOUT
5 WHETHER THERE WAS A BINDING NON-COMPETE PROVISION.

02:55PM

6 BUT I DON'T THINK MR. OWENS IS LYING. I
7 DON'T THINK MOST OF THE WITNESSES ARE LYING. I THINK
8 THE GENTLEMEN WHO TESTIFIED FROM TCW ABOUT NOT
9 REMEMBERING THE AUGUST 27TH MEETING ARE LYING ABOUT
10 THAT.

02:55PM

11 BUT I CERTAINLY DON'T THINK MR. OWENS IS
12 LYING. I THINK HE WAS MISTAKEN. IN HIS DEPOSITION HE
13 WASN'T CLEAR ON IT. HE SAID, I DON'T REMEMBER. I
14 DON'T REMEMBER. AND HE DIDN'T KNOW WHO RAISED IT, AND
15 ALL THAT.

02:55PM

16 BUT THE REAL POINT IS THAT TCW IS DOING
17 EXACTLY WHAT THEY ARE CLAIMING MR. GUNDLACH IS DOING,
18 TRYING TO HAVE IT BOTH WAYS, CLAIMING INITIALLY HE'S
19 LOCKED UP IN A FIVE-YEAR CONTRACT, AND THEN CHANGING
20 THEIR POSITION.

02:55PM

21 MR. GUNDLACH WAS FRUSTRATED, MIFFED, A
22 LOT OF OTHER WORDS I COULD THINK OF, BY THE END OF
23 2009. AND HE WAS FRUSTRATED. AND I'M NOT QUITE SURE
24 WHAT HE SAID.

25 THE ISSUE FOR YOU IS NOT WHAT HE SAID IN
26 2009, THE ISSUE IS, WHAT WAS THE PARTIES' INTENT WHEN
27 THEY NEGOTIATED THE AGREEMENT IN 2007?

02:56PM

28 AND I DON'T CARE HOW LONG -- HE CAN TALK

1 FOR FIVE HOURS; HE CAN'T PERSUADE ANY OF YOU THAT IT
2 WOULD MAKE ANY SENSE AT ALL FOR MR. GUNDLACH TO HAVE
3 SIGNED UP FOR A NEW FEE SHARING DEAL WHERE HE GOT LESS
4 MONEY, WITHOUT THE PROTECTION OF FIVE YEARS. JUST
5 MAKES NO SENSE. THERE'S NO WAY HE WOULD DO THAT.

02:56PM

6 WHICH BRINGS ME BACK TO EXHIBIT 5224,
7 PAGE 2, THE AUGUST 27TH MEETING. UNFORTUNATELY, WE
8 HAVE TO TERMINATE JG FOR CAUSE. TALKED TO LAW FIRM
9 ABOUT JG'S BEHAVIOR TO SEE IF IT REPRESENTS CAUSE.

10 YOU DON'T NEED CAUSE TO FIRE AN AT-WILL
11 EMPLOYEE. MR. STERN IS A LAWYER; MR. CAHILL IS A
12 LAWYER. I'M SURE THE LAW FIRM THEY WENT TO TALK TO WAS
13 MADE UP OF LAWYERS. AND THEY ALL KNOW, YOU DON'T NEED
14 CAUSE TO FIRE SOMEBODY WHO HAS AN AT-WILL CONTRACT. HE
15 HAD A FIVE-YEAR CONTRACT, AND THEY KNEW IT.

02:57PM

16 YOU KNOW, INITIALLY, IN THIS CASE, I
17 WASN'T SURE WHAT TO MAKE OF MR. CONN; BUT THANK
18 GOODNESS FOR MR. CONN. MR. CONN TOOK ACCURATE NOTES OF
19 THAT MEETING. AND WITHOUT THAT, WE NEVER WOULD HAVE
20 BEEN ABLE TO PIERCE TCW'S CHARADE.

02:57PM

21 WHEN YOU DELIBERATE, YOU SHOULD FIND IN
22 FAVOR OF MR. GUNDLACH ON THE CONTRACT CLAIM. ALSO THE
23 WAGE CLAIM, WHICH IS A STATUTORY CLAIM. IT'S A
24 DIFFERENT SCHEME THAT TALKS ABOUT WAGES, FEE SHARING,
25 BONUS, INCENTIVE PAYMENTS ARE DEFINED AS WAGES; OTHER
26 CLIENTS, BARBARA VANEVERY, CRIS SANTA ANA, AND JEFFREY
27 MAYBERRY ALSO HAVE A WAGE CLAIM.

02:57PM

02:58PM

28 THERE ARE DAMAGES ON THE CHART THAT

1 MR. GUNDLACH WAS SEEKING, FIVE YEARS. IF YOU DON'T
2 SUBTRACT, IT'S 496 MILLION. IF YOU DO, IT'S 262
3 MILLION. IF YOU DON'T AGREE WITH ME ON THE FIVE YEARS,
4 THEN THEY OWE HIM THE MONEY THROUGH TERMINATION, UNDER
5 WHAT I THINK IS THE CLEAR LANGUAGE, ACCRUED TO THE DATE
6 OF TERMINATION. IT'S 71.9 MILLION, OR IF YOU
7 SUBCONTRACT THE BONUSES, IT'S 34.2 MILLION.

02:58PM

8 IT'S BEEN A LONG, LONG HAUL. I THINK
9 WE'VE ALL ENJOYED IT. IT'S BEEN A LOT OF WORK FOR ALL
10 OF US, TRUST ME.

02:59PM

11 I JUST WANT TO THANK YOU AGAIN. IT
12 WAS -- I DON'T KNOW WHETHER ANY OF OUR PATHS WILL CROSS
13 AGAIN; BUT FOR THIS MOMENT, I SPEAK FOR ALL OF US. I
14 SPEAK FOR MY CLIENTS: MR. GUNDLACH, MR. SANTA ANA,
15 MR. MAYBERRY, MS. VANEVERY AND DOUBLELINE.

02:59PM

16 AND I THINK I SPEAK FOR ALL THE LAWYERS
17 IN THE COURTROOM: MR. QUINN, MR. MADISON, MR. HELM,
18 MR. WEINGART. WE CHOSE TO DO THIS FOR A LIVING; YOU
19 DIDN'T. AND YOU GOT A LITTLE SLICE OF WHAT WE DO. AND
20 I REALLY APPRECIATE IT. AND I THANK YOU.

02:59PM

21 AND I'D JUST ASK YOU TO GO BACK AND USE
22 YOUR COMMON SENSE. AND IF YOU DO, I THINK YOU WILL
23 RULE IN FAVOR OF MY CLIENTS ON EVERYTHING.

24 THANK YOU VERY MUCH.

25 THE COURT: THANK YOU, MR. BRIAN.

02:59PM

26 LADIES AND GENTLEMEN, WHAT WE PLANNED IS
27 TO GO TILL 4:00 OR 4:30.

28 AND I WAS GOING TO LEAVE INSTRUCTIONS

1 TILL TOMORROW.

2 IF THERE'S NO SERIOUS OBJECTIONS BY ANY
3 MEMBERS OF THE JURY, I'D LIKE TO START READING YOU THE
4 INSTRUCTIONS NOW. I MAY FINISH THEM; I MAY NOT. YOU
5 CAN PICK IT UP TOMORROW MORNING.

03:00PM

6 WE'RE NOT GOING TO START TOMORROW TILL
7 10:00, BUT I THINK THE SOONER WE FINISH ALL WE HAVE TO
8 DO, AND YOU CAN START YOUR TASK, THE BETTER OFF WE ARE.

9 WE HAVE A STIPULATION THAT THE
10 INSTRUCTIONS NEED NOT BE REPORTED?

03:00PM

11 MR. QUINN: YES, YOUR HONOR.

12 MR. BRIAN: YES, YOUR HONOR.

13 THE COURT: ALL RIGHT. SO I'LL EXCUSE OUR
14 COURT REPORTER.

15

16 (INSTRUCTIONS WERE READ TO THE JURY;
17 NOT REPORTED.)

18

19

20

21

22

23

24

25

26

27

28

1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA SEPTEMBER 13, 2011
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR
7 TIME: D SESSION: 4:30 P.M.
8

9

10

--0--

11

(THE CLERK SWEARS THE COURT ATTNEEDANT.)

12

(JURY DELIBERATES.)

13

(PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

14

15

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

04:31PM

16

JURY.

17

FIRST THING WILL BE MR. BRIAN'S

18

OBJECTION.

19

MR. BRIAN: YOUR HONOR, DURING THE REBUTTAL

20

ARGUMENT, MR. QUINN MADE THE STATEMENT -- I THINK I GOT

04:31PM

21

IT DOWN EXACTLY: NO EMPLOYMENT AGREEMENT WAS EVER

22

FORMED, UNQUOTE.

23

AND HE MADE A SIMILAR COMMENT, I THINK,

24

IN REFERRING TO THERE NOT BEING A CONTRACT. THAT'S THE

25

VERY ISSUE THAT WE DISCUSSED THE OTHER DAY, THE

04:31PM

26

INTERRELATION BETWEEN WHETHER THERE'S AN AGREEMENT IN

27

THE QUANTUM MERUIT CLAIM. I THINK THAT STATEMENT IS

28

ERROR.

1 AND IT'S EXACTLY THE CONCERN WE HAD.
2 THAT IS, I THINK THERE'S BEEN AN AGREEMENT IN THIS CASE
3 THAT THERE WAS AN EMPLOYMENT AGREEMENT. AND THE ONLY
4 ISSUE IS THE TERMS. AND HE TOLD THE JURY TWICE THAT NO
5 EMPLOYMENT AGREEMENT WAS FORMED.

04:31PM

6 AND I OBJECT TO THAT. I THINK THE JURY
7 NEEDS TO BE TOLD VERY CLEARLY THERE WAS AN AGREEMENT.

8 THE COURT: I THINK ONE OF THE INSTRUCTIONS,
9 THE INSTRUCTION WE WORKED OUT LAST NIGHT SAYS THAT.
10 AND IT SAYS BASICALLY WHAT YOU'RE ARGUING. AND I'LL
11 TELL YOU WHAT IT IS. IT'S --

04:32PM

12 MR. BRIAN: I KNOW WHICH INSTRUCTION YOU'RE
13 REFERRING TO. I DO.

14 THE COURT: AND I TOLD THEM THEY'RE TO FOLLOW
15 THE INSTRUCTIONS, AND NOT WHAT YOU SAY. AND YOUR
16 RESPECTIVE -- THEY HAD A COMPLAINT ABOUT YOUR
17 CHARACTERIZATION OF THE TRADE SECRETS. I THINK CALLING
18 MORE ATTENTION TO IT ONLY EXACERBATES THE PROBLEM,
19 QUITE FRANKLY: THEY'VE BEEN PROPERLY INSTRUCTED, I
20 HOPE. AND WE'LL GO FROM THERE.

04:32PM

04:32PM

21 MR. BRIAN: THANK YOU, YOUR HONOR.

22 THE COURT: ANYTHING ELSE ON THAT?

23 MR. BRIAN: NOPE.

24 MR. QUINN: NO, YOUR HONOR.

25 THE COURT: LET ME FIGURE OUT WHAT YOU'RE
26 DOING TO ME ON THESE VERDICT FORMS.

04:32PM

27 THE OBJECTION WOULD APPEAR TO ME THAT
28 WAS FILED AT 3:42 TODAY TO ONLY CHALLENGE QUESTION

1 NO. 5 ON THE PROPOSED VERDICT FORM.

2 AND AS I UNDERSTAND IT, THE TCW FOLKS
3 ARE SAYING, IF THERE ARE DAMAGES FOR BREACH OF
4 FIDUCIARY DUTY, IT SHOULD BE A SINGLE NUMBER, AND IT
5 CANNOT BE ALLOCATED AMONG THE FOUR INDIVIDUAL
6 DEFENDANTS.

04:33PM

7 WE TALKED ABOUT THAT LAST NIGHT, AND I
8 THOUGHT YOU WERE ALL GOING TO TALK TO ONE ANOTHER AND
9 NOT JUST INDEPENDENTLY GO OFF AND DO YOUR OWN THING.

10 I THINK THAT THERE'S SOME MERIT TO THE
11 OBJECTION THAT'S BEING MADE. AND THAT IS, HOW CAN THIS
12 JURY POSSIBLY ALLOCATE BREACH OF FIDUCIARY DUTY DAMAGES
13 AS TO THESE FOUR PEOPLE WHEN THERE IS ABSOLUTELY NO
14 DEFENDANT-SPECIFIC EVIDENCE?

04:33PM

15 THE ONLY EVIDENCE THEY HAVE ON THE
16 BREACH OF FIDUCIARY DUTY DAMAGES IS THE EXPERT
17 TESTIMONY, WHICH IS A GENERALIZED COLLECTIVE.

04:33PM

18 NOW, I THINK THAT THE FIRST TWO
19 QUESTIONS WILL SOLVE THE PROBLEM AS TO THE INDIVIDUALS.
20 THEY MAY FIND THAT ONE OR MORE BREACHED THE FIDUCIARY
21 DUTY. THEY MAY FIND THAT VANEVERY, SANTA ANA, AND
22 MAYBERRY DIDN'T.

04:34PM

23 I DON'T KNOW. BUT HOW DO WE DEAL WITH
24 THAT?

25 MR. HELM, IT'S YOUR CALL AT THIS POINT.

04:34PM

26 MR. HELM: LET ME TELL YOU WHAT I'M CONCERNED
27 ABOUT.

28 LET'S SAY THEY CONCLUDE BARBARA VANEVERY

1 BREACHED HER FIDUCIARY DUTIES, BUT DIDN'T CONSPIRE.
2 OKAY. THE ONLY DAMAGES THEY PUT ON ARE THE DAMAGES
3 CAUSED BY THE NEED TO FIRE MR. GUNDLACH BECAUSE HE
4 BREACHED HIS FIDUCIARY DUTIES.

5 SO, WHAT ARE THE DAMAGES, THEN, THAT
6 MS. VANEVERY CAUSED IN THIS CASE?

04:34PM

7 THE COURT: WELL, THEN, MAYBE THE ANSWER TO
8 THIS IS TO DROP FOUR DOWN, ADD A NEW FOUR AND SAY, AS
9 TO EACH, DID THE CONDUCT OF EACH -- THE DEFENDANT CAUSE
10 HARM TO TCW? AND PUT GUNDLACH, VAN EVERY, SANTA ANA,
11 AND MAYBERRY.

04:35PM

12 MR. HELM: MAYBE THE WAY TO DO THAT, INSTEAD
13 OF DROPPING, MAYBE FOR THREE, IF YOU FIND FOR TCW, DO
14 YOU FIND THAT TCW WAS DAMAGED BY THE BREACH OF EACH --
15 WHEN YOU FIND A BREACH, AND THEN NAME THE NAMES.

04:35PM

16 THE COURT: WELL, I'M JUST SAYING, THERE IS A
17 POINT, YOU KNOW, WE GET A \$200 MILLION NUMBER ON BREACH
18 OF FIDUCIARY DUTY DAMAGES. AND SOMEBODY THAT BREACHED,
19 BUT DIDN'T CONSPIRE, AND IT JUST DOESN'T REALLY FLOW.

20 AND I THINK THEY HAVE TO HAVE AN
21 OPPORTUNITY TO CHOOSE -- I THINK IT'S REALLY A
22 CAUSATION ISSUE. AND YOU CAN HAVE THESE TWO QUESTIONS
23 AND THEN SAY, IF YOU FIND, DID THE CONDUCT OF -- YOU
24 KNOW, IF THEY FIND THEY ALL CONSPIRED, THEN EVERYBODY'S
25 IN IT TOGETHER. IT DOESN'T MAKE ANY DIFFERENCE.

04:35PM

04:36PM

26 BUT WHAT IF THEY FIND THAT ONE OR TWO
27 DIDN'T CONSPIRE, BUT BREACHED THEIR FIDUCIARY DUTY?

28 MR. HELM: MAYBE WHAT WE SHOULD DO --

1 THE COURT: I'M OPEN TO SUGGESTIONS. I DON'T
2 THINK IT'S THAT COMPLICATED. AS USUAL, FROM MY
3 PERSPECTIVE, IT'S THE SIMPLE APPROACH THAT MAKES IT
4 WORKS.

5 MR. HELM: I'M THINKING OUT LOUD, YOUR HONOR,
6 SEE IF THEY THINK THIS -- MAYBE IF WE MOVE THREE AHEAD
7 OF TWO. SO WE SAY, HOW DO YOU FIND FOR THE BREACH --
8 YOU KNOW, FOR EACH PERSON YOU FIND BREACHED, DID YOU
9 FIND THAT THEIR BREACHES DAMAGED TCW?

04:36PM

10 THE COURT: WHY DON'T YOU DO THIS. WHY DON'T
11 YOU HAVE ONE AND THEN HAVE TWO. IF YOU FIND THAT ANY
12 OF THE DEFENDANTS BREACHED THEIR FIDUCIARY DUTIES, DID
13 THE CONDUCT OF THAT OF EACH DEFENDANT -- DID THE
14 CONDUCT OF THE DEFENDANT CAUSE HARM OR DAMAGE TO TCW?

04:36PM

15 AND LIST ALL FOUR. AND THEN PUT THE
16 CONSPIRACY ONE AT THE END.

04:37PM

17 MR. HELM: I AGREE. I THINK THAT SOLVES IT.

18 MR. MADISON: THE ONLY PROBLEM WITH THAT HARM,
19 DAMAGE IS AN ELEMENT OF THE CLAIM. IF THEY FIND BREACH
20 OF FIDUCIARY DUTY, THEY HAVE FOUND THAT THAT DEFENDANT
21 CAUSED US HARM OR DAMAGE.

04:37PM

22 THE COURT: WELL, YOU HAVE NO EVIDENCE TO
23 SUPPORT A VERDICT OF GENERALIZED BREACH OF FIDUCIARY
24 DUTY DAMAGES AGAINST AN INDIVIDUAL. WELL, IT'S ALL --
25 IF YOU DON'T HAVE A CONSPIRACY -- MAYBE WE GET A
26 STIPULATION THAT, IN THE ABSENCE OF A FINDING OF
27 CONSPIRACY, YOU'LL WAIVE DAMAGES AGAINST THE INDIVIDUAL
28 DEFENDANTS: IT REALLY IS VANEVERY, SANTA ANA, AND

04:37PM

1 MAYBERRY ARE THE ONES THAT ARE AT RISK HERE THAT I
2 THINK HAVE A RIGHT NOT TO BE JUST --

3 MR. QUINN: IT SEEMS LIKE EACH OF THOSE THREE
4 INDIVIDUALS, WHOSE EVIDENCE THAT THEY TOOK
5 INFORMATION -- THERE'S EVIDENCE THEY TOOK
6 INFORMATION --

04:37PM

7 THE COURT: THEY DOWNLOADED INFORMATION.

8 MR. HELM: BREACH OF FIDUCIARY ONLY APPLIES TO
9 THE NONTRADE-SECRET INFORMATION.

10 THE COURT: I UNDERSTAND.

04:38PM

11 MR. MADISON: YOUR HONOR DID INSTRUCT THE
12 JURY, APPROPRIATELY, THAT THE ALLOCATION OF
13 RESPONSIBILITY FOR PAYMENT OF DAMAGES AMONG MULTIPLE
14 DEFENDANTS IS TO BE DONE BY THE COURT AFTER YOU REACH A
15 VERDICT.

04:38PM

16 YOU SHOULD NOT CONSIDER -- JUST BEFORE
17 THAT, DO NOT ATTEMPT TO DIVIDE THE DAMAGES AMONG
18 DEFENDANTS.

19 THE COURT: WHICH INSTRUCTION IS THAT?

20 MR. MADISON: 3933, WHICH I'M PRETTY SURE THE
21 DEFENSE --

04:38PM

22 THE COURT: WAS IT DAMAGES ON THE TORT
23 DAMAGES?

24 MR. MADISON: IT'S A CACI DAMAGE.

25 THE COURT: WHAT NUMBER?

04:38PM

26 MR. MADISON: TORT DAMAGE, 3933. THEY'RE NOT
27 PAGINATED.

28 THE COURT: I'VE GOT THEM IN ORDER HERE.

1 MR. MADISON: OKAY.

2

3 (PAUSE) +

4

5 THE COURT: SEE, IT SAYS YOU MUST DETERMINE
6 THE LIABILITY OF EACH DEFENDANT SEPARATELY.

04:38PM

7 MR. MADISON: LIABILITY, YES.

8 THE COURT: THAT'S WHAT IT SAYS. IT SAYS:
9 THE ALLOCATION OF RESPONSIBILITY FOR PAYMENT AMONG
10 DAMAGES IS TO BE DONE BY THE COURT, AFTER YOU REACH
11 YOUR VERDICT.

04:39PM

12 THIS WAS ONE THAT WASN'T DISPUTED.

13 MS. STEIN: YOUR HONOR, THE PROBLEM IS FOR
14 THESE INDIVIDUAL DEFENDANTS, IF MS. VANEVERY BREACHED
15 HER FIDUCIARY DUTY BY, WHATEVER, I -- I JUST DON'T SEE
16 HOW WE CAN CHARGE -- HOW TCW CAN -- HAS PROVED THAT SHE
17 CAUSED MR. GUNDLACH'S TERMINATION AND ALL THOSE DAMAGES
18 THEY CLAIM FLOW FROM IT.

04:39PM

19 IT WAS THEIR BURDEN TO PROVE.

20 THE COURT: YOUR DAMAGE ASSESSMENT IS ALL
21 FLOWING FROM THEIR TERMINATION.

04:39PM

22 MS. STEIN: RIGHT. IT'S THEIR BURDEN.

23 THE COURT: IT HAS NO CORRELATION OF ANY
24 CONDUCT OF THESE INDIVIDUAL DEFENDANTS.

25 MR. MADISON: WELL, REMEMBER, THE THREE OTHER
26 DEFENDANTS WERE ALSO TERMINATED.

04:40PM

27 MS. STEIN: RIGHT, BUT --

28 MR. MADISON: THEY WERE TERMINATED.

1 THE COURT: YOUR DAMAGE ASSESSMENT, THERE'S NO
2 CORRELATION BETWEEN YOUR EVIDENCE OF DAMAGES AND THEIR
3 TERMINATION. IT IS ALL BASED ON HIS TERMINATION.

4 MR. MADISON: I WOULD SAY, YOUR HONOR, THAT
5 THE DAMAGES THAT FLOW FROM HIS TERMINATION ALSO RELATE
6 TO HIS DIRECTING THEM TO BREACH THEIR FIDUCIARY DUTY
7 ALSO. THERE'S NO SECRET THEY WERE ALL REPORTING TO
8 HIM.

9 THE COURT: NO. THE EVIDENCE ONLY FLOWS FROM
10 THE CONSEQUENCES OF HIS TERMINATION.

11 NOW, THE OTHER WAY, I'M JUST THINKING
12 OUT LOUD, WHICH IS ALWAYS DANGEROUS, IS TO LET THEM
13 DETERMINE WHETHER THEY CONSPIRED.

14 IF THEY CONSPIRED, THEY'RE JOINTLY AND
15 SEVERALLY LIABLE. IF THEY DETERMINE ANY ONE OF THE
16 THREE WERE NOT COCONSPIRATORS, REGARDLESS OF WHAT THE
17 DAMAGES ARE, THEY HAVE NO LIABILITY FOR THE DAMAGES.

18 THAT SAID, THIS VERDICT FORM SATISFIES
19 WHAT WE NEED, AND WE DON'T NEED INDIVIDUALIZED FINDINGS
20 OF DAMAGES.

21 MR. HELM: I THINK -- IS WHAT THE COURT
22 SAYING --

23 THE COURT: WE TAKE ONE, TWO, THREE, AND FOUR.
24 TAKE FIVE OUT.

25 MR. HELM: BUT DO SO ON THE UNDERSTANDING THAT
26 IF AN INDIVIDUAL -- IF ONE OF THE NON-GUNDLACH
27 DEFENDANTS IS LIABLE FOR BREACH OF FIDUCIARY DUTY, BUT
28 NOT FOR CONSPIRACY --

04:40PM

04:40PM

04:41PM

04:41PM

04:41PM

1 THE COURT: THEN THE COURT WILL DETERMINE THEY
2 CANNOT BE RESPONSIBLE FOR DAMAGES.

3 WILL YOU STIPULATE TO THAT?

4 MR. MADISON: I THINK WE NEED TO SLEEP ON
5 THAT, ESPECIALLY TODAY, YOUR HONOR.

04:41PM

6 THE COURT: WE DON'T HAVE -- THAT'S WHY WE
7 STAYED TILL 5 O'CLOCK LAST NIGHT, MR. MADISON.

8 MR. EMANUEL IS NOT HERE, SO I CAN'T REALLY SHOOT THE
9 MESSENGER. YOU'RE GOING ON YOUR HONEYMOON. YOU
10 SHOULDN'T BE SLEEPING AT NIGHT. YOU KNOW, LET'S JUST
11 GET IT DONE HERE. WE'VE GOT TO MAKE DECISIONS.

04:42PM

12 MR. MADISON: I DON'T -- I DON'T THINK IT BE
13 GAINSAID THAT IF AN INDIVIDUAL DEFENDANT ONLY BREACHED
14 HIS OR HER FIDUCIARY DUTY THAT THEY DIDN'T -- THEY
15 AREN'T LIABLE FOR ANY DAMAGES.

04:42PM

16 I THINK THE JURY CAN FIND THEY WERE
17 LIABLE FOR THE FULL AMOUNT.

18 THE COURT: I DON'T THINK THERE'S EVIDENCE TO
19 SUPPORT IT, AND I HAVE TO TELL YOU, WITHOUT PREJUDGING
20 THE ISSUE THAT MAY COME BEFORE ME, IT WOULD BE
21 DIFFICULT FOR ME TO ALLOW A SUBSTANTIAL DAMAGE AWARD
22 BASED ON THE EVIDENCE THAT YOU PRESENTED AGAINST ANY OF
23 THESE INDIVIDUAL DEFENDANTS IN THE ABSENCE OF A FINDING
24 OF CONSPIRACY.

04:42PM

25 YOU KNOW, I'M NOT TIPPING MY HAND, BUT
26 I'M TELLING YOU IT WOULD BE TYPICAL. BECAUSE YOUR
27 WHOLE CASE, MR. CORNELL'S ANALYSIS, LOOKS AT NOTHING IN
28 TERMS OF CAUSE -- DAMAGES CAUSED BY THE CONDUCT OF THE

04:42PM

1 INDIVIDUALS.

2 AND THERE HAS TO BE A CAUSAL NEXUS TO
3 ESTABLISH DAMAGES.

4 SO, FINDING ONLY A BREACH OF FIDUCIARY
5 DUTY, WITH NO EVIDENCE TO SUPPORT A CAUSAL CONNECTION
6 TO THE DAMAGE CONNECTION, SEEMS TO ME TO BE FATAL.

04:43PM

7 AND I DON'T KNOW WHY -- YOU KNOW,
8 JUST -- I KNOW YOU HAVE A BASIC PREMISE THAT WE NOT
9 GIVE ON ANYTHING. TRY TO BE PRACTICAL AND SAY, WHERE
10 ARE WE GOING ON THIS?

04:43PM

11 MR. QUINN: IF IT WERE A LOW NUMBER, THE JURY
12 CAN CONCLUDE -- THERE'S INFORMATION ON THEIR
13 COMPENSATION, THE JURY CAN CONCLUDE THEY STOPPED WORK,
14 THEY'RE WORKING FOR THEMSELVES AND PRO RATE THEIR
15 COMPENSATION.

04:43PM

16 THE COURT: I DON'T THINK THEY CAN PRO RATE
17 THE COMPENSATION BECAUSE THAT'S A WAGE CLAIM. AND
18 THAT'S -- YOU DON'T HAVE A RIGHT TO WITHHOLD WAGES.

19 MR. QUINN: IT'S NOT WITHHOLDING.

20 THE COURT: THEY DON'T HAVE A BASIS ON WHICH
21 TO COMPUTE DAMAGES. YOU PUT NO EVIDENCE IN --

04:43PM

22 MR. QUINN: HOW -- WITH THEIR WAGES --

23 THE COURT: ANY DAMAGE CAUSED BY THESE PEOPLE,
24 YOU HAVE NO EVIDENCE OF ANY DAMAGE CAUSED BY VAN EVERY,
25 MAYBERRY, OR SANTA ANA.

04:44PM

26 MR. QUINN: NOW ABOUT THEIR COMPENSATION
27 DURING THE RELEVANT TIME PERIOD, WHEN THE JURY CAN
28 CONCLUDE THEY STOPPED WORKING FOR TCW?

1 THE COURT: YOU DIDN'T ARGUE IT. YOU
2 DIDN'T --

3 MR. QUINN: I DIDN'T ARGUE IT.

4 THE COURT: YOU DIDN'T ARGUE IT. THE EVIDENCE
5 DOESN'T SUPPORT IT. THERE'S NO --

04:44PM

6 MR. MADISON: I'M THINKING OUT LOUD HERE, TOO,
7 YOUR HONOR.

8 IMAGINE THIS FINDING BY THE JURY. WE
9 FIND THAT CRIS SANTA ANA DOWNLOADED AT THE DIRECTION
10 OF --

04:44PM

11 THE COURT: THEY'RE GOING TO FIND HE BREACHED
12 HIS FIDUCIARY DUTY.

13 MR. MADISON: YES. IN PARTICULAR, CONSTRUING
14 THE VERDICT IN THE LIGHT MOST FAVORABLE TO THE
15 PLAINTIFF, THAT HE DOWNLOADED AT THE DIRECTION OF
16 JEFFREY GUNDLACH.

04:44PM

17 THE COURT: RIGHT.

18 MR. MADISON: AND THEY FIND --

19 THE COURT: THERE'S NO PLACE FOR THEM TO SAY
20 AT THE DIRECTION OF. THEY EITHER FIND THEY CONSPIRED
21 WITH JEFFREY GUNDLACH OR THEY FIND THAT HE BREACHED HIS
22 FIDUCIARY DUTY.

04:44PM

23 THOSE ARE THE ONLY TWO FINDINGS WE'RE
24 ASKING FOR.

25 MR. MADISON: LET'S ASSUME THERE'S NO
26 FINDING -- I'M TAKING MR. HELM'S HYPOTHETICAL AT FACE
27 VALUE -- THERE'S A FINDING THOSE TO DEFENDANTS BREACHED
28 THEIR FIDUCIARY DUTY, BUT NO FINDING OF CONSPIRACY.

04:45PM

1 THE COURT: RIGHT.

2 MR. MADISON: THAT, IN THAT CASE, WE TERMINATE
3 MR. GUNDLACH, AND WE TERMINATE MR. SANTA ANA, AND THAT
4 EVIDENCE IS IN THE RECORD.

5 AND YES, OUR DAMAGES FLOW FROM THE 04:45PM
6 ACTIONS THAT WE HAD TO TAKE, IN PARTICULAR
7 MR. GUNDLACH, BUT ALSO, FOR EXAMPLE, WE DIDN'T JUST
8 HIRE ONE PERSON TO REPLACE MR. GUNDLACH. WE BROUGHT IN
9 THE WHOLE MET WEST TEAM. WE DIDN'T NEED 50 PEOPLE FROM
10 MET WEST TO REPLACE JUST MR. GUNDLACH. 04:45PM

11 THE COURT: WHAT DOES THAT HAVE TO DO WITH THE
12 PRICE OF TEA IN CHINA?

13 YOU HAVE NOTHING TO GO BY THE
14 SUBSTITUTE -- COST OF SUBSTITUTE EMPLOYMENT. THERE'S
15 NO DAMAGE EVIDENCE OR EVIDENCE THAT WOULD PERMIT THAT 04:45PM
16 ALLOCATION.

17 I MEAN, THERE'S GOT TO BE A NEXUS
18 BETWEEN THE BREACH AND THE DAMAGES. AND I'M SAYING
19 THAT YOU PUT NO EVIDENCE IN THAT WOULD ALLOW A FINDING
20 OF SPECIFIC DAMAGES AGAINST THESE THREE INDIVIDUALS. 04:46PM

21 MR. MADISON: WHAT I'M TRYING TO CRAFT --

22 THE COURT: MY OPINION, TAKING -- THEY WEREN'T
23 WORKING, THAT BECOMES TOTALLY SPECULATIVE BECAUSE I'M
24 NOT EVEN SURE WE HAVE THEIR -- WE HAVE THEIR
25 YEAR-TO-DATE PAYCHECKS IN EVIDENCE. AS I RECALL. 04:46PM

26 MR. QUINN: RIGHT. AND PAY PERIOD
27 INFORMATION.

28 MR. MADISON: THE ONLY POINT I WAS TRYING TO

1 MAKE, YOUR HONOR, NOT AS TO SOME SMALLER AMOUNT, WHICH
2 IS ONE ISSUE, THE POINT I WAS MAKING, THEY COULD MAKE
3 MR. SANTA ANA LIABLE FOR THE FULL AMOUNT OF DAMAGES
4 BASED ON HIS BREACHES OF FIDUCIARY DUTY, WHICH WERE A
5 SUBSTANTIAL FACTOR IN THE THINGS THAT OCCURRED AND THE
6 TERMINATION OF ALL OF THEM AND, IN PARTICULAR, YOU
7 KNOW, LOSING MR. GUNDLACH AND BRINGING IN THE GROUP.

04:46PM

8 THE COURT: SO LET ME JUST -- IF YOU INSIST ON
9 THAT AND NOT MAKING -- IF WE CAN'T REACH SOME
10 AGREEMENT, IT SEEMS TO ME THEN WE HAVE TO ALLOW THE
11 JURY TO DETERMINE DAMAGES AS TO EACH INDIVIDUAL.

04:47PM

12 MR. QUINN: I THINK THAT'S WHAT WE SHOULD DO.

13 THE COURT: AND THE ESSENCE OF THE ARGUMENT
14 YOU MADE IN THE MOST RECENT OBJECTION WAS YOU DIDN'T
15 WANT THAT. THAT WAS WHAT WE FILED TODAY FROM
16 MR. EMANUEL. TAKE QUESTION FIVE OUT. IT SHOULD JUST
17 BE A SINGLE DAMAGE CLAIM.

04:47PM

18 HAVE WE NOW GONE FULL CIRCLE, AND WE'RE
19 BACK TO WHERE WE CAN JUST LEAVE IT THE WAY IT IS?

20 MR. BRIAN: I THINK SO.

04:47PM

21 MR. MADISON: THAT WOULD BE PREFERABLE THAN --

22 THE COURT: DO YOU TALK TO ONE ANOTHER WHEN
23 YOU GO BACK TO THE OFFICE?

24 MR. QUINN: WE WERE ACTUALLY DOING SOMETHING
25 ELSE LAST NIGHT, YOUR HONOR.

04:47PM

26 THE COURT: I UNDERSTAND. EVERY TIME WE LOOK
27 AT SOMETHING, WE GET A DIFFERENT IDEA.

28 WELL, IF THAT'S THE CASE, THEN I'D SAY

1 LET'S GO WITH THE EXISTING FORM.

2 MR. MADISON: CAN WE HAVE JUST ONE MOMENT TO
3 LOOK AT THE FORM?

4 THE COURT: GIVE THEM A MINUTE HERE.

5

04:48PM

6 (COUNSEL CONFER SOTTO VOCE.) +

7

8 THE COURT: LET'S GO OFF THE RECORD.

9

10

(PAUSE) +

04:56PM

11

12 THE COURT: COURT AND COUNSEL CONFERRED OFF
13 THE RECORD REGARDING THE VERDICT FORM.

14

15 THE COURT WILL USE THE VERDICT FORM AS
16 PROPOSED BY THE DEFENDANTS IN THE REVISED FORM, WHICH

04:56PM

17

18 CONCESSIONS WERE MADE AND OBJECTIONS
19 WERE PRESERVED LAST NIGHT WHEN WE WENT OVER THIS FORM
20 IN GREAT LENGTH. AND TCW WILL BE DEEMED TO HAVE
PRESERVED ALL SUCH OBJECTIONS.

04:57PM

21

22 THE PARTIES HAVE AGREED THAT THERE'S A
23 FAILURE IN THE FORM, AS PROPOSED, TO IDENTIFY AND
24 REQUEST THE FINDING ON THE DEFENDANTS' CLAIMS FOR THE
25 BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING.
THAT WILL BE ADDED INTO SECTIONS ROMAN V THROUGH VIII.

04:57PM

26

27 AND THE REVISED FORM WILL BE BROUGHT IN
TOMORROW MORNING BY 9 O'CLOCK. WITH THE ORIGINAL TO BE
28 SUBMITTED AND THEN, SAY, 15 COPIES. WITHOUT THE COVER

1 SHEET. BUT SUBMISSION YOU CAN HAVE THEM WITH A FILING
2 AND WE'LL FILE IT.

3 MR. HELM: YOUR HONOR, ONE MINOR THING.

4 I THINK YOUR OPINION NOTED, AS YOUR
5 HONOR WAS GOING THROUGH THE JURY INSTRUCTIONS, YOUR
6 HONOR, I THINK VERY CORRECTLY, DID SOME ON-THE-FLY
7 EDITING. A FEW THINGS, LIKE WE HAD THIS THING ABOUT:
8 THEY WILL HAVE ONE LAST CHANCE TO TALK TO YOU, AND WE
9 HAD SOMETHING TO INSERT, OTHER IMPERMISSIBLE --

04:57PM

04:58PM

10 THE COURT: I WITHDRAW THE ONE ABOUT
11 THE COURT'S COMMENTS ON THE EVIDENCE. I'VE DONE ENOUGH
12 DAMAGE THROUGH THE COURSE OF THE TRIAL I DIDN'T HAVE TO
13 COMMENT ON THE EVIDENCE. SO I DIDN'T DO THAT.

14 MR. HELM: I WONDERED IF YOUR HONOR WANTED US
15 TO -- I THINK I NOTED 5016 WAS NOT READ. I THINK THAT
16 SHOULD BE TAKEN OUT.

04:58PM

17 THE COURT: 5016, THE ONE YOU JUST MENTIONED,
18 I ALREADY TOLD ELMER TO TAKE IT OUT.

19 MR. HELM: FINE.

20 THE COURT: THERE WERE A COUPLE TYPOS. ONE
21 WAS CONTACT VERSUS CONDUCT.

04:58PM

22 MR. HELM: MAYBE I DIDN'T CATCH IT. MAYBE
23 IT'S NOT WORTH --

24 THE COURT: I'LL GIVE -- I MARKED THEM IN THE
25 BOOK THAT I READ FROM.

04:58PM

26 GIVE IT TO ELMER AND WE'LL CONFIRM THE
27 ONES THAT ARE IN THE COURT FILE TO THE ONES I ACTUALLY
28 DID, AND I LINED OUT SOME THINGS.

1 MR. HELM: I WAS WONDERING ABOUT THE COPIES.
2 WILL YOU TAKE CARE OF THE FOUR COPIES FOR THE JURORS?
3 OR DID YOU WANT US TO DO SOMETHING ON IT?

4 THE COURT: YOU'VE GIVEN US THOSE COPIES.

5 MR. HELM: YES. FINE, IF YOU CAN HANDLE IT,
6 THAT'S WONDERFUL.

7 THE COURT: HAVE A NICE EVENING.

8 MR. MADISON, CONGRATULATIONS. HAVE A
9 GREAT HONEYMOON.

10 MR. MADISON: I WANT TO REPEAT WHAT I SAID THE
11 OTHER DAY.

12 THE COURT: THAT I PICKED ON YOU TOO MUCH?

13 MR. MADISON: NO, NO.

14 THE COURT: I COULDN'T REMEMBER WHAT THAT WAS.
15 I'D --

16 MR. MADISON: I'D NEVER COMPLAIN ABOUT THAT IN
17 MY LIFE. THESE GUYS ARE GENTLEMEN TO TRY A CASE WITH.

18 THE COURT: IT'S A PLEASURE. WE ALL HAVE OUR
19 PLACE IN THE COURTROOM. WE ALL TRY TO DO OUR JOBS.
20 NOBODY DOES ANYTHING BECAUSE THEY DON'T THINK IT'S THE
21 RIGHT THING TO DO. I ACCEPT THAT.

22 IN THE THROES OF THE PROCESS, SOMETIMES
23 PEOPLE GET A LITTLE MORE EXCITED. I'M NO EXCEPTION.
24 YOU ARE ALL THE SAME WAY. WE DO A GOOD JOB.

25 THIS WAS -- YOU GUYS ARE THE CONSUMMATE
26 TRIAL LAWYERS. YOUR ORGANIZATION, EVERYTHING YOU DO,
27 YOU DO WELL.

28 MR. MADISON: I'VE LEARNED A LOT.

04:59PM

04:59PM

04:59PM

04:59PM

04:59PM

1 MR. QUINN: IT WAS A PLEASURE.

2 MR. MADISON: I WANTED TO THANK YOUR STAFF.

3 THE COURT: IT AIN'T OVER YET.

4 MR. QUINN: NO, YOU CAN SAY THAT NOW --

5 MR. MADISON: IT'S OVER FOR ME, BUT I ALSO
6 WANT TO REALLY THANK YOUR STAFF. THEY'RE TREMENDOUS.
7 THEY'VE HELPED US SO MUCH.

05:00PM

8 THE COURT: THANK YOU.

9 MR. QUINN: WHAT WOULD YOU LIKE, 15 MINUTES ON
10 CALL?

05:00PM

11 MR. HELM: I HAVE ANOTHER ISSUE.

12 THE COURT: YES. YOU'RE BOTH IN TOWN.

13 MR. HELM: IT'S PROBABLY GOING TO TAKE US
14 20 -- CAN WE SAY 30? I'M SURE WE CAN GET HERE IN 20
15 MINUTES.

05:00PM

16 THE COURT: YES, JUST ON CALL. WE'LL GET
17 AHOLD OF YOU.

18 IF THERE ARE QUESTIONS, WHO DO YOU WANT
19 ME TO CONTACT? CONTACT YOU TWO?

20 MR. BRIAN: NO, PROBABLY GOING TO BE MR. HELM.
21 I'M OUT OF TOWN ON THURSDAY. I'LL BE HERE TOMORROW AND
22 FRIDAY.

05:00PM

23 MR. HELM: IT WILL BE THE OPPOSITE ON FRIDAY.

24 MR. BRIAN: WE'LL COORDINATE WITH YOUR STAFF.

25 MR. QUINN: MR. PIERCE.

05:00PM

26 MR. BRIAN: ALSO, YOUR HONOR, WE DID FILE A
27 MOTION FOR DIRECTED VERDICT. I DON'T KNOW HOW YOU WANT
28 TO HANDLE THAT. WE HAVE FILED ONE.

1 THE COURT: WE TALKED ABOUT AN OPTION TO
2 THAT -- OPPOSITION TO THAT. FILED BY NOON TODAY. I
3 DON'T THINK I SAW IT.

4 DOES THAT MEAN IT'S AN UNOPPOSED MOTION?

5 MR. SURPRENANT: NO, NO, NO. 05:01PM

6 MR. QUINN: IS THAT BASED ON APPLIED VERSUS
7 LITTON. I TRIED THAT CASE.

8 MS. STEIN: SO YOU KNOW WE WIN.

9 THE COURT: WE CAN GO OFF THE RECORD AGAIN.
10 05:01PM

11
12 (AT 5:00 P.M., AN ADJOURNMENT WAS
13 TAKEN UNTIL SEPTEMBER 14, 2011.)
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