

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

8

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

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12

THE COURT: IN THE TCW GUNDLACH MATTER, WE'RE  
13 ON THE RECORD, OUTSIDE OF PRESENCE OF THE JURY.

14

A NUMBER OF THINGS WERE FILED OVER THE  
15 WEEKEND, SOME OF WHICH I SAW EARLIER THAN -- MOST OF  
16 WHICH I DIDN'T SEE TILL THIS MORNING.

17

BUT I HAVE GONE THROUGH ALL OF THE  
18 FILINGS, INCLUDING THE AGENDA THAT WAS SUBMITTED.

19

AND THE ONE THING THAT I THINK WE NEED  
20 TO ADDRESS NOW, AND IN FAIRLY SHORT ORDER, IS THE ISSUE  
21 CONCERNING MR. MURPHY'S TESTIMONY AND THE TESTIMONY  
22 OFFERED BY THE DEFENDANTS. MY SENSE ON THIS IS THAT  
23 NOT ONLY IS THE CALCULATION THAT IS PROPOSED TO BE USED  
24 INAPPROPRIATE FOR A QUANTUM MERUIT CLAIM, BUT THAT THE  
25 EVIDENCE ON THE QUANTUM MERUIT IS QUESTIONABLE.

26

THE VESTING ISSUE THAT WAS TALKED ABOUT  
27 EARLIER IN THE TRIAL IS REALLY A NON-ISSUE. THIS IS  
28 NOT A VESTING CASE. AND THE DEFENDANTS AREN'T TAKING

08:29AM

08:30AM

08:30AM

1 THE POSITION THAT THERE WAS ANY VESTED RIGHT UNDER THE  
2 TERMS OF THE CONTRACT THAT THEY'RE ARGUING.

3 IT'S NOT A CASE WHERE I THINK THE JURY'S  
4 FINDINGS CONCERNING THE TERMS OF THE CONTRACT BETWEEN  
5 MR. GUNDLACH AND TCW OR THE ABSENCE OF BREACH WILL LEAD  
6 TO A QUANTUM MERUIT LEVEL OF COMPENSATION. 08:31AM

7 INHERENT IN THE FINDINGS THE JURY'S  
8 GOING TO BE ASKED TO MAKE, THEY'RE GOING TO HAVE TO  
9 DETERMINE WHAT WERE OR WERE NOT THE TERMS THAT GOVERNED  
10 HIS COMPENSATION. 08:31AM

11 BY DOING THAT, I THINK THEY EXCLUDE THE  
12 CONCEPT THERE CAN BE A QUANTUM MERUIT RECOVERY.

13 IN ANY EVENT, MR. MURPHY APPEARS TO HAVE  
14 CALCULATED OR CONSIDERED THE CALCULATION OF THE  
15 QUANTUM MERUIT ON THE BENEFIT TO TCW, WHICH I THINK IS  
16 AN INAPPROPRIATE METHOD OF CALCULATION. 08:31AM

17 SO AT THE END OF THE DAY, IF THE JURY  
18 DOES NOT ACCEPT MR. GUNDLACH'S POSITION ON THE  
19 INTERPRETATION OF THE CONTRACT, IT SEEMS TO ME, THEY  
20 WILL NECESSARILY ACCEPT TCW'S INTERPRETATION OF THE  
21 TERMS OF COMPENSATION. 08:31AM

22 AND THAT WOULD EXCLUDE ANY OPPORTUNITY  
23 FOR RECOVERY ON A QUANTUM MERUIT. AND I'M RELYING  
24 PRIMARILY ON THE LANGUAGE FROM MAGLICA, AND FROM  
25 HEDGING CONCEPTS. 08:32AM

26 SO WITH THAT SAID, I HAVE LOOKED AT THE  
27 SUBSEQUENT PROFFER OF TESTIMONY BY MR. MURPHY WITH  
28 RESPECT TO CUSTOM AND PRACTICE IN THE INDUSTRY.

1 I DO THINK THAT TESTIMONY IS RELEVANT,  
2 AND I'LL ALLOW THAT.

3 BUT I WILL NOT ALLOW HIM TO GIVE THIS  
4 QUANTUM MERUIT PROJECTION OF DAMAGES, AS HE'S  
5 CALCULATED THEM. SO I THINK THAT TO A LARGE DEGREE,  
6 HIS TESTIMONY ON THE CRUEL CONCEPT AND OTHER THINGS IN  
7 THE INDUSTRY WILL ADDRESS WHAT IS OR IS NOT  
8 APPROPRIATE, ARE OR ARE NOT APPROPRIATE DAMAGES IN THE  
9 CONTRACT CLAIMS.

08:32AM

08:33AM

10 ALL OF THAT SAID, WHO WANTS TO TELL ME  
11 WHY I'M WRONG, AND FOR HOW MANY REASONS YOU CAN GIVE ME  
12 IN A COUPLE MINUTES.

13 MR. HELM: WELL, YOUR HONOR, WE APPRECIATE  
14 YOUR ADDRESSING IT. WE'RE DISAPPOINTED BY THE RULING,  
15 BUT I FEEL THAT WE HAVE PUT OUR POSITION FORWARD. I  
16 MEAN, I JUST THINK BRIEFLY THAT IN TERMS OF MEASURING  
17 IT, THE BENEFIT TO TCW, THIS IS A SITUATION WHERE THE  
18 MARKET RATE OF COMPENSATION WAS A PERCENTAGE OF FEES  
19 THAT WERE GENERATED TO TCW.

08:33AM

20 SO IT'S NOT LIKE THE MAGLIKA SITUATION,  
21 WHERE YOU WEREN'T LOOKING AT ALL WHAT WAS A MARKET  
22 RATE. YOU WERE SIMPLY LOOKING AT THE VALUE OF THE  
23 COMPANY.

08:33AM

24 IN THIS CASE, THE MARKET RATE WAS  
25 DETERMINED AS A PERCENTAGE OF FEES THAT WERE GENERATED;  
26 AND SO THEREFORE, WE DON'T THINK IT SHOULD BE PRECLUDED  
27 FROM USING THAT MEASURE, SINCE THAT WAS THE MARKET  
28 RATE.

08:34AM

1 THE COURT: WELL I GUESS, THAT PART BECOMES  
2 SOMEWHAT ACADEMIC, IN VIEW OF MY SENSE THAT THE QUANTUM  
3 MERUIT CLAIM JUST ISN'T CONSISTENT WITH THE POSITION  
4 AND THE EVIDENCE THAT'S BEEN OFFERED BY THE PARTIES  
5 THROUGHOUT THE COURSE OF THAT TRIAL. AND AS I  
6 UNDERSTAND THE DEFENDANT'S CASE, YOU ARE ARGUING THAT  
7 THERE'S AN EXPRESSED CONTRACT, AND THAT YOU HAVE A  
8 RIGHT TO THE INTERPRETATION OF THOSE TERMS AND TO THE  
9 APPLICATION OF THAT CONTRACT TO THESE CLAIMS.

08:34AM

10 THAT IS INCONSISTENT WITH, IN MY VIEW,  
11 ASKING THE JURY TO DETERMINE QUANTUM MERUIT MEASURE OF  
12 DAMAGES.

08:34AM

13 MR. HELM: IF I COULD BRIEFLY BE HEARD ON  
14 THAT.

15 THE COURT: YOU'VE BEEN HEARD ON IT BEFORE.  
16 MAYBE I DIDN'T REJECT IT AS STRONGLY. I DON'T THINK I  
17 WAS VERY RECEPTIVE THE LAST TIME EITHER.

08:34AM

18 MR. HELM: IF YOUR HONOR DOESN'T WISH TO HEAR  
19 FURTHER ARGUMENT ON THAT.

20 OUR POINT IS, QUANTUM MERUIT IS AN  
21 ALTERNATIVE, IN THE EVENT THAT THE JURY HOLDS THERE WAS  
22 A TERM ON COMPENSATION, BUT NO AGREEMENT ON WHAT  
23 HAPPENS ON THE EVENT OF TERMINATION. THE WATSON CASE  
24 GOVERNS. AND THAT'S THE CASE THAT SAID, EVEN WHEN  
25 YOU'VE AGREED ON WHAT THE COMMISSION IS THAT'S TO BE  
26 PAID, IF YOU HAVEN'T AGREED ON WHAT HAPPENS WHEN HE'S  
27 TERMINATED, AND IT'S A SITUATION WHERE YOU CREATED  
28 BUSINESS THAT'S GOING TO GENERATE VALUE IN THE FUTURE,

08:35AM

08:35AM

1 THAT THAT'S A PERFECT EXAMPLE OF WHAT QUANTUM MERUIT  
2 RECOVERY IS ALLOWED.

3 I THINK WE MADE OUR RECORD. I THINK  
4 YOUR HONOR DISAGREES, AND WE CAN MOVE ON.

5 THE COURT: ALL RIGHT.

08:35AM

6 MR. HELM: I APPRECIATE YOUR HONOR HEARING US  
7 OUT.

8 THE COURT: ANYTHING ELSE ON THIS TOPIC?

9 MR. SURPRENANT: THERE IS. WHILE WE ARE  
10 PLEASED WITH THE RULING ON QUANTUM MERUIT, WE ARE  
11 CONCERNED ABOUT THE NON QUANTUM MERUIT PROFFER. I'D  
12 LIKE TO ARGUE IT FOR FIVE MINUTES. OR PERHAPS AT THE  
13 BREAK.

08:35AM

14 MR. BRIAN: WE HAVE CONTINUATION OF MR. BEYER,  
15 AND WE'LL READ MR. CABANNES' DEPOSITION TRANSCRIPT,  
16 WHICH WILL TAKE ABOUT AN HOUR.

08:36AM

17 I DON'T KNOW HOW LONG MR. MADISON'S  
18 GOING TO BE WITH MR. BEYER. I THINK WE MIGHT GET TO  
19 THE 10:15 BREAK.

20 THE COURT: ALL RIGHT. I DON'T WANT TO TAKE  
21 THE WHOLE BREAK FOR THAT ARGUMENT. LET'S PUT IT OFF.

08:36AM

22 I THINK THE JURY IS PRESENT AND READY TO  
23 GO.

24 MR. BRIAN: I WANTED TO GIVE YOU A HEADS-UP ON  
25 MR. BEYER, IN LOOKING AT THE NOTEBOOK I WAS PROVIDED BY  
26 MR. MADISON. THERE ARE A NUMBER OF EXHIBITS THAT DEAL  
27 WITH WHAT I'LL CALL THE BAD BEHAVIOR ISSUE WE'VE HEARD  
28 A LOT ABOUT IN THIS TRIAL. THEY CHOSE NOT TO CALL

08:36AM

1 MR. BEYER IN THEIR CASE. WE CALLED HIM IN OUR CASE.  
2 WE DID NOT ELICIT ANY TESTIMONY ON THAT.

3 I WILL OBJECT TO ANY QUESTIONS AS BEING  
4 BEYOND THE SCOPE AND CUMULATIVE. I'M NOT ASKING FOR A  
5 PRE RULING, BUT I'LL GIVE YOU A HEADS-UP ON THAT.

08:36AM

6 THE COURT: ALL RIGHT. I THINK ANY APPROACH  
7 TO THAT SHOULD BE VERY LIMITED. AND I TEND TO THINK  
8 MAYBE IT WOULD BE CUMULATIVE, OR IT'S BEYOND THE SCOPE.  
9 BUT I'LL LISTEN AND RULE ON IT WHEN THE OBJECTIONS ARE  
10 MADE.

08:37AM

11 (PAUSE) +

12  
13 THE COURT: WE HAD -- A JUROR HAD MINOR  
14 TRAFFIC ACCIDENT, AND IS EXCHANGING INFORMATION. LET'S  
15 GO AHEAD WITH MR. SURPRENANT.

08:37AM

16 MR. SURPRENANT: SORRY, YOUR HONOR.

17 THE COURT: NO SENSE PUTTING OFF LATER WHAT WE  
18 CAN DO NOW. YOU'LL HAVE TO UNPACK AND GET ALL YOUR  
19 NOTES OUT AGAIN.

20 MR. SURPRENANT: YOUR HONOR, COULD I HAND UP  
21 MR., PROFESSOR MURPHY'S DEPOSITION, AND SOME EXHIBITS.

08:37AM

22 THE COURT: SURE.

23 (PAUSE) +

24  
25 MR. SURPRENANT: YOUR HONOR RULED ON JULY 5TH  
26 THAT MR. MURPHY MAY BE PERMITTED TO TESTIFY TO CUSTOM  
27 AND USAGE IN THE INDUSTRY WITH RESPECT TO VARIOUS  
28 ECONOMIC TERMS THAT MAY BE PLACED AT ISSUE, HOWEVER,

08:38AM

1 WILL NOT BE PERMITTED TO TESTIFY ON WHAT MAY OR MAY NOT  
2 CONSTITUTE AN AGREEMENT, OR OTHERWISE OPINE ON THE  
3 ULTIMATE ISSUE OF THE EXISTENCE OF AGREEMENT FOR  
4 COMPENSATION AND/OR FOR TERMS OF AGREEMENT.

5 AND REALLY, YOUR HONOR, THE PROBLEM IS, 08:38AM  
6 HE DOES NOT HAVE ANY CUSTOM AND PRACTICE TESTIMONY IN  
7 HIS REPORT. IF YOU LOOK AT HIS DEPOSITION, AT PAGE 82  
8 TO 85, I'M ASKING HIM WHERE HE GETS HIS UNDERSTANDING  
9 ABOUT ACCRUED COMPENSATION.

10 AND HE SAYS, LINE 13: 08:39AM

11 WELL, I WAS ASKED TO OPINE ON THE  
12 ECONOMIC AND ACCOUNTING  
13 INTERPRETATION OF ACCRUED  
14 COMPENSATION, WHICH I ATTEMPTED TO  
15 DO. 08:39AM

16 HE'S NOT RELYING ON CUSTOM AND PRACTICE; HE'S  
17 RELYING ON HIS INTERPRETATION.

18 AND I ASK HIM ON THE NEXT PAGE, I SAY,  
19 YOU KNOW, PROFESSOR MURPHY, I LOOKED AT YOUR REPORT,  
20 AND YOU ANNOUNCE A CONCLUSION ABOUT ACCRUED 08:39AM  
21 COMPENSATION, BUT YOU DON'T DISCUSS ANYTHING.

22 AND HE SAYS:

23 WELL, I DO. MY DISCUSSION IS PAGE  
24 26 TO 31.

25 AND HIS REPORT, YOUR HONOR, IS IN THE BINDER I 08:39AM  
26 HANDED YOU. AND IF YOU LOOK AT PAGES 26 TO 31, WHICH  
27 ACCORDING TO HIM, IS WHERE HIS DISCUSSION IS, THERE'S  
28 NOT A LINE ABOUT CUSTOM AND PRACTICE. HE GIVES A GAAP

1 INTERPRETATION AND REPEATS HIS CONCLUSION THAT THIS IS  
2 WHAT ACCRUED COMPENSATION MEANS.

3 SO THERE'S NOT A LINE, THERE'S NOT A  
4 LINE OF CUSTOM AND PRACTICE IN HIS REPORT.

5 AND THE DEFENDANTS HAVE BEEN VERY  
6 AGGRESSIVE IN OUR EXPERTS' OBJECTING TO ANYTHING THAT  
7 IS NOT EXPLICITLY COVERED IN THE REPORT, OFTEN WITH  
8 SUCCESS.

9 THE COURT: NOT ALWAYS WITH SUCCESS.

08:40AM

10 MR. SURPRENANT: OFTEN, YOUR HONOR.

08:40AM

11 SO I JUST THINK THAT THERE'S NOTHING IN  
12 THE REPORT. AND AT DEPOSITION, I ASKED HIM: WHERE DO  
13 YOU COME UP WITH THIS INTERPRETATION? HE NEVER  
14 REFERENCED CUSTOM AND PRACTICE. AND SO IT'S NOT IN THE  
15 REPORT, IT'S NOT IN THE DEPOSITION.

08:40AM

16 ON THAT BASIS, HE HAS NOTHING TO OFFER.

17 AND THE ADDITIONAL PROFFER FROM  
18 MR. HELM, HE TALKS ABOUT THE BEST PRACTICES FOR  
19 AWARDED MANAGERS, HOW TO GO ABOUT GIVING COMPENSATION  
20 FOR FUTURE VALUE. NOTHING OF THAT HAS ANYTHING TO DO  
21 WITH CUSTOM AND PRACTICE THAT WOULD HELP THE JURY  
22 UNDERSTAND ACCOUNTING TERMS.

08:41AM

23 WHICH IS THE ONLY THING YOUR HONOR HAS  
24 SAID PROFESSOR MURPHY CAN ADDRESS. IT'S NOT SIMPLY NOT  
25 CUSTOM AND PRACTICE THAT WOULD HELP THE JURY INTERPRET  
26 THIS ALLEGED CONTRACT.

08:41AM

27 AND IT'S NOT CUSTOM AND PRACTICE WITH  
28 RESPECT TO ACCOUNTING TERMS. SO THERE'S REALLY NOTHING



1 PROFESSOR MURPHY CAN OFFER THAT'S BEEN DISCLOSED IN THE  
2 REPORT AND/OR THAT'S RELEVANT.

3 THE COURT: OKAY. LET ME HEAR FROM THE  
4 DEFENDANTS ON THIS.

5 MR. HELM: YES. BRIEFLY, YOUR HONOR. THERE'S  
6 TWO AREAS THAT MR. MURPHY WILL BE TALKING ABOUT. ONE  
7 IS ON THE CONCEPT OF ACCRUAL.

08:41AM

8 AND MR. SURPRENANT'S SAYING HE'S NOT  
9 TALKING ABOUT CUSTOM AND PRACTICE, BUT HE QUOTED HIM  
10 SAYING HE'S TALKING ABOUT ACCOUNTING TERMS, HOW THE  
11 GAAP STANDARDS APPLY. THAT IS CUSTOM AND PRACTICE, HOW  
12 THINGS ARE ACCOUNTED FOR IN THE BUSINESS WORLD,  
13 PURSUANT TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES  
14 AND WHAT ACCRUAL MEANS.

08:41AM

15 THAT'S SOMETHING NOT WITHIN THE  
16 KNOWLEDGE OF A JUROR. IT'S -- IT SHOULD BE ALLOWED.  
17 THE CONNECTED AREA IS WHAT THE CUSTOM AND PRACTICE IS  
18 IN THE INDUSTRY, IN DESIGNING COMPENSATION, SEEMS TO  
19 DEAL WITH THIS ISSUE OF HOW -- IF YOU'RE DOING WORK  
20 NOW, THAT CREATES VALUE LATER.

08:42AM

21 HOW IN THE WORLD DO THEY DEAL WITH THAT.  
22 AND IT'S IN HIS REPORT. HE TALKS ABOUT THAT THERE ARE  
23 VARIOUS METHODS.

08:42AM

24 ACCRUAL TO COMPENSATION COULD BE ONE,  
25 EMPLOYMENT TERM, VESTING. THERE ARE DIFFERENT WAYS  
26 THEY'RE DONE. HOW THEY DIFFER. HOW THEY'RE THE SAME.  
27 THAT'S ALL CUSTOM AND PRACTICE. THAT WILL NOT TAKE HIM  
28 TO ADDRESSING ANY ULTIMATE ISSUES IN THE CASE. THAT

08:42AM

1 WILL NOT HAVE HIM BE INTERPRETING THE TERMS OF THE  
2 CONTRACT, BUT SIMPLY GIVING THE JURY IMPORTANT  
3 INFORMATION ABOUT THE CUSTOM AND PRACTICE IN THE  
4 COMPENSATION WORLD.

5 THIS IS A WORLD'S EXPERT ON EXECUTIVE  
6 COMPENSATION. HE'S TESTIFIED BEFORE CONGRESS. HE  
7 KNOWS HIS STUFF, AND HE'S IN A POSITION TO TESTIFY  
8 ABOUT HOW THESE ISSUES ARE HANDLED IN THE REAL WORLD.

08:43AM

9 THE COURT: ANYTHING ELSE?

10 MR. QUINN: IF HE'S ONLY GOING TO TESTIFY AS  
11 TO WHAT ACCRUAL MEANS, WE HAVE NO ISSUE. THE SECOND  
12 HALF, WHAT THE CUSTOM AND PRACTICE IS IN THE INDUSTRY  
13 FOR REWARDING EXECUTIVES FOR FUTURE CREATED VALUE, IS  
14 COMPLETELY IRRELEVANT. THAT HAS NOTHING TO DO WITH  
15 WHAT WAS AGREED TO HERE.

08:43AM

08:43AM

16 THIS IS A CONTRACT CLAIM. HE MAY SAY  
17 WHAT BEST PRACTICES ARE, ABOUT MAYBE THESE PEOPLE  
18 DIDN'T FOLLOW BEST PRACTICE. BUT IT'S UTTERLY  
19 IRRELEVANT.

20 THE COURT: I THINK THERE IS A RELEVANCE TO  
21 THE NOTION OF WHAT ACCRUED AT THE TIME OF TERMINATION  
22 MEANS. AND THAT IS A CRUCIAL CONCEPT IN BOTH SIDES'  
23 CASE.

08:43AM

24 YOU RELY ON EXHIBIT A, THEY RELY ON THE  
25 BODY OF THE DRAFT AGREEMENT. IF THE JURY WERE TO  
26 DETERMINE THAT THE TERMS OF THAT DRAFT AGREEMENT FORMED  
27 PART OF THIS CONTRACT THAT WAS ENTERED INTO BY THE  
28 PARTIES, THEN I THINK THEY MAY NEED SOME ASSISTANCE IN

08:43AM

1 UNDERSTANDING THE CONCEPT.

2 AND THE NOTION OF, I THINK THEY CALLED  
3 IT, IT WASN'T DISADVANTAGEOUS, BUT CONVENIENT  
4 TERMINATION, TO DEPRIVE ONE OF SUBSTANTIAL COMPENSATION  
5 THAT WOULD OTHERWISE BE DUE, THERE'S AN INHERENT  
6 CONFLICT IN THOSE TWO PROVISIONS, THE WAY THEY'RE READ  
7 AND THE WAY THEY'RE ARGUED BY THE PARTIES.

08:44AM

8 SO SOME TESTIMONY ON THE CONCEPT OF  
9 ACCRUAL SEEMS TO ME TO BE APPROPRIATE, AND ON THE  
10 CONCEPT OF CUSTOM AND PRACTICE IN THE INDUSTRY IN THESE  
11 AREAS.

08:44AM

12 MR. QUINN: AS I SAID, YOUR HONOR, I HAVE NO  
13 QUARREL, IF HE WANTS TO TESTIFY AS TO WHAT ACCRUAL  
14 MEANS. BUT THERE IS NO OBLIGATION TO ENTER INTO SOME  
15 TYPE OF AN AGREEMENT WHICH MAKES SURE THAT EXECUTIVES  
16 GET COMPENSATED FOR VALUE THAT'S GOING TO BE REALIZED  
17 IN THE FUTURE.

08:45AM

18 THERE MAY BE BEST PRACTICES IN THAT  
19 REGARD. AND SOME INDUSTRIES, THEY MAY DO THAT. WE  
20 ALREADY HEARD TESTIMONY IN THIS CASE, THAT ONE WAY OF  
21 PROTECTING AGAINST THAT IS HAVING A VESTING  
22 ARRANGEMENT, WHICH MIGHT BE THE RESULT OF A  
23 NEGOTIATION.

08:45AM

24 BUT WHAT WE'RE GOING TO HEAR FROM THIS  
25 WITNESS IS TESTIMONY, FREE-FLOATING TESTIMONY IN A  
26 VACUUM, THAT IN INDUSTRY GENERALLY, THERE ARE WAYS OF  
27 PROTECTING -- YOU KNOW, THERE ARE CONTRACT PROVISIONS  
28 THAT PARTIES CAN ENTER INTO THAT MAKE SURE THEY REALIZE

08:45AM

1 VALUE, THAT THEY'RE COMPENSATED FOR VALUE THAT WILL  
2 ONLY BE REALIZED IN THE FUTURE.

3 THAT'S GOT NOTHING TO DO WITH THIS  
4 CONCEPT CLAIM.

5 THE COURT: IF IT'S THAT GENERAL, IT PROBABLY  
6 SHOULDN'T COME IN. IF IT'S FOCUSED, I THINK IT IS  
7 APPROPRIATE.

08:45AM

8 THIS IS AN INHERENT AMBIGUITY IN THE  
9 TERMS OF THE DRAFT AGREEMENT, WHICH IS, IN MY  
10 VIEWPOINT, HAD OUT BY THE PARTIES, DISPARATE VIEWS OF  
11 WHAT THE TERMS MEAN. AND SOME ASSISTANCE IN LOOKING AT  
12 HOW THINGS ARE DONE AND WHAT MIGHT OR MIGHT NOT HAVE  
13 BEEN MEANT, MAY BE OF USE TO THIS JURY.

08:46AM

14 NOW, IF IT'S ON A VERY BROAD-BRUSH  
15 GENERALIZED BASE I -- YOU KNOW, I'M NOT GOING TO ALLOW  
16 IT. BUT SOME, SOMETHING DIRECTED TO WHAT THESE  
17 SPECIFIC PROVISIONS ARE INTENDED TO, AND THE CUSTOM AND  
18 PRACTICE IN THE INDUSTRY, SEEMS APPROPRIATE TO ME.

08:46AM

19 MR. QUINN: AS TO THOSE PROVISIONS, WE'LL JUST  
20 HAVE TO WAIT AND HEAR THE QUESTIONS.

08:46AM

21 THE COURT: WE'LL WAIT FOR QUESTIONS.

22 MR. SURPRENANT: COULD I ASK FOR A  
23 CLARIFICATION.

24 JULY 5TH, YOUR ORDER SAYS HE WOULDN'T BE  
25 ALLOWED TO TESTIFY AS TO THE TERMS OF THE AGREEMENT.  
26 I'M AFRAID THAT THAT'S WHAT THEY'RE GOING TO ELICIT.

08:46AM

27 THE COURT: WELL, HE CAN'T USURP THE JURY'S  
28 FUNCTION, BUT HE CAN PROVIDE SOME CUSTOM AND PRACTICE

1 TESTIMONY.

2 MR. BRIAN: YOUR HONOR, I THINK WE HAVE THE  
3 GUIDELINES IN MIND. IT SEEMS TO ME YOUR HONOR WILL  
4 RULE ON OBJECTIONS AS THEY'RE RAISED.

5 THE COURT: I GENERALLY TRY TO.

08:47AM

6 MR. SURPRENANT: OKAY. YOUR HONOR. THANK YOU  
7 VERY MUCH.

8 MR. HELM: ONE OTHER ISSUE. WE AGREED AMONG  
9 OURSELVES ON SOMETHING, BUT IT REQUIRES YOUR HONOR'S  
10 CONSENT.

08:47AM

11 IT IS OUR VIEW THAT THE ELEMENT OF THE  
12 WAGE CLAIM THAT OUR SIDE IS MAKING, WHICH INVOLVES A  
13 30-DAY PENALTY FOR WITHHELD WAGES --

14 THE COURT: RIGHT.

15 MR. HELM: -- IS AN ISSUE THAT IS ACTUALLY TO  
16 BE DETERMINED BY THE COURT. AND SO WHEN WE'VE BEEN  
17 GOING OVER JURY INSTRUCTIONS, WE HAVE COME TO THE  
18 CONCLUSION THAT SOMETHING FOR THE COURT, WE'RE GOING TO  
19 PUT ON AN EXPERT.

08:47AM

20 AND OUR VIEW WOULD BE, SINCE THE JURY  
21 WILL NOT DECIDE THAT, WE WON'T PUT 30-DAY EVIDENCE ON  
22 AT THAT POINT. IF IT'S NEEDED, WE CAN DO IT AT A LATER  
23 TIME.

08:47AM

24 BUT SINCE WE DIDN'T WANT TO SUGGEST  
25 THE COURT NEEDED TO DO SOMETHING, WITHOUT RUNNING IT BY  
26 THE COURT, TO SEE IF THAT WAS ACCEPTABLE TO THE COURT.

08:48AM

27 THE COURT: YES, MY UNDERSTANDING IS THE  
28 STATUTORY PENALTY RUNS FOR 30 DAYS, IF IT REMAINS

1 UNPAID FOR THAT PERIOD OF TIME.

2 AND IT'S BASED ON THE RATE OF  
3 COMPENSATION THAT WOULD OTHERWISE BE DUE. THAT'S  
4 MERELY A CALCULATION THAT CAN BE DONE POST VERDICT.

5 AND ANY DISAGREEMENT WITH THAT,  
6 MR. QUINN?

08:48AM

7 MR. QUINN: NO, YOUR HONOR.

8 THE COURT: I DO HAVE SOME QUESTION. AND I'VE  
9 GONE THROUGH BOTH OF YOUR VERDICT FORMS. I HAD HOPED  
10 TO SEE SOMETHING A LITTLE MORE IN SYNC, BUT THEY DO  
11 TRACK ONE ANOTHER.

08:48AM

12 THERE'S DIFFERENT LANGUAGE, BUT I'M NOT  
13 ENTIRELY CLEAR ON THE SCOPE OF THE CLAIMS BEING  
14 ASSERTED BY VAN EVERY -- THE OTHER PLAINTIFFS.

15 WE'VE SEEN VERY LITTLE EVIDENCE ON IT,  
16 AND IT ISN'T CLEAR TO ME THAT THERE IS. WELL, WE'LL  
17 HAVE TO SEE MORE EVIDENCE. BUT AS IT IS NOW, I'M  
18 QUESTIONING WHY WE'LL HAVE ALL THOSE FINDINGS.

08:48AM

19 MR. HELM: WE'LL BE HAPPY TO EXPLAIN THAT,  
20 WHEN WE GET TO JURY INSTRUCTIONS.

08:49AM

21 THE COURT: OR PUT EVIDENCE ON THAT HAS  
22 SOMETHING TO DO WITH IT.

23 MR. HELM: WE JUST STARTED OUR CASE. WE WILL  
24 BE PUTTING ON EVIDENCE.

25 THE COURT: ANYTHING ELSE?

08:49AM

26 MR. BRIAN: WHEN WE GET TO MR. CABANNES'  
27 DEPOSITION, TWO OF MY COLLEAGUES ARE GOING TO ROLE  
28 PLAY, AS WE INDICATED.

1                   SHOULD I OR YOU INDICATE TO THE JURY  
2 THAT IT WAS TAKEN THROUGH A FRENCH INTERPRETER? BUT TO  
3 SAVE TIME, WE'LL DO IT THIS WAY.

4                   I'M HAPPY TO DO THAT, OR YOU COULD  
5 WHATEVER YOU THINK IS APPROPRIATE.

08:49AM

6                   THE COURT: I'LL BE GLAD TO TELL THE JURY WE  
7 HAVE VIDEOTAPE DEPOSITION. IT'S VERY LENGTHY, BECAUSE  
8 THE USE OF AN INTERPRETER, WE THOUGHT WE'D SAVE TIME.

9                   I ALSO HAVE, SINCE WE'RE OUT OF THE  
10 PRESENCE. THERE WAS --

08:49AM

11                  MR. MADISON: YOUR HONOR, ARE YOU GOING TO  
12 LEAVE AT THAT POINT ABOUT MR. CABANNES? I HAD A  
13 COMMENT.

14                  THE COURT: WHAT'S THAT?

15                  MR. MADISON: I HAD UNDERSTOOD WE WERE GOING  
16 TO SHOW MR. CABANNES ON THE SCREEN, AND AT LEAST MAYBE  
17 SHOW ONE REQUEST. AND A, SO THE JURY GOT A SENSE OF  
18 HOW THE DEPOSITION WAS TAKEN. I THINK THAT'S  
19 IMPORTANT.

08:49AM

20                  MR. QUINN: THEY'RE GOING TO PLAY MORE THAN  
21 ONE.

08:50AM

22                  MR. BRIAN: NO, WE'RE NOT.

23                  MR. QUINN: YOU'RE NOT?

24                  MR. BRIAN: I THOUGHT YOU OBJECTED TO IT,  
25 ACTUALLY.

08:50AM

26                  THE COURT: WHEN WE LEFT ON FRIDAY, YOU HADN'T  
27 FULLY DECIDED WHAT YOU WANTED TO DO. I HAD SUGGESTED  
28 THAT MAYBE A BRIEF PORTION BE SHOWN, AND THEN WE

1 EXPLAIN TO THE JURY, BECAUSE OF THE TIME TAKEN FOR THE  
2 TRANSLATIONS, WE'RE GOING TO HAVE THE TESTIMONY READ.

3 MR. BRIAN: I ACTUALLY, MAYBE I MISHEARD. I  
4 THOUGHT MR. MADISON OBJECTED TO DOING IT THAT SPLICED  
5 WAY. WE WERE GOING TO PUT A PICTURE OF MR. CABANNES  
6 UP, TAKE IT DOWN, AND THEN READ IT.

08:50AM

7 IT DOESN'T ADD ANYTHING, TO BE HONEST.  
8 I'VE GONE THROUGH 30 MINUTES OF THE VIDEOTAPE. IT ADDS  
9 NOTHING TO PLAY IT. IT'S JUST WASTED TIME, FRANKLY.  
10 WE'RE TRYING TO MOVE THINGS ALONG.

08:50AM

11 THE COURT: ALL RIGHT. THEN IT'S YOUR CHOICE.  
12 IF YOU WANT TO DO IT THAT WAY, I'LL TELL THEM WE WON'T  
13 WATCH THE VIDEO DEPOSITION BECAUSE OF THE TRANSLATION.

14 NOW I HAD A QUESTION FROM, ANOTHER  
15 JUROR. I CAN'T READ THE NAME. HOLD ON A MINUTE.  
16 MR. SANTOS, I BELIEVE. ON SEPTEMBER 14TH, A VERY CLOSE  
17 RELATIVE, HIS MOTHER-IN-LAW, IS HAVING SURGERY IN  
18 MEXICO, AND HE MUST ACCOMPANY HIS WIFE TO MEXICO.  
19 THAT'S NEXT TUESDAY.

08:51AM

20 MR. BRIAN: I THINK IT'S WEDNESDAY, ACTUALLY.

08:51AM

21 THE COURT: YES. THE 14TH IS WEDNESDAY.  
22 THAT'S THE DAY OF THE SURGERY. HE HAS TO TRAVEL ON THE  
23 13TH.

24 MR. BRIAN: HE HAS TO TRAVEL WHICH DAY?

25 THE COURT: ON THE 13TH. TALK AMONG  
26 YOURSELVES. WE DON'T HAVE TO MAKE A DECISION ON THIS  
27 NOW, BUT IT IS AN ISSUE.

08:52AM

28 AS SOON AS OUR JURORS ARE HERE, WE'LL



1 GET STARTED.

2 (PAUSE)

3 (JURY ENTERS THE COURTROOM)

4

5 THE COURT: GOOD MORNING, LADIES AND  
6 GENTLEMEN.

08:58AM

7 IN THE TCW VERSUS GUNDLACH MATTER, ALL  
8 MEMBERS OF THE JURY ARE PRESENT, AS ARE COUNSEL.

9 HOPE YOU ALL ENJOYED YOUR LABOR DAY  
10 WEEKEND.

08:58AM

11 MR. MADISON, DO WE HAVE MR. BEYER?

12 MR. MADISON: YES YOUR HONOR.

13 MAY HE COME BACK TO THE WITNESS STAND.

14 THE COURT: YES.

15 MR. MADISON: THANK YOU.

08:58AM

16 GOOD MORNING.

17 THE COURT: GOOD MORNING, MR. BEYER.

18 THE WITNESS: GOOD MORNING, YOUR HONOR.

19 THE COURT: YOU RECALL, YOU ARE STILL UNDER  
20 OATH.

08:58AM

21 HAVE A SEAT.

22 MR. MADISON, YOU MAY CONTINUE WITH YOUR  
23 CROSS-EXAMINATION.

24 MR. MADISON: THANK YOU, YOUR HONOR; AND GOOD  
25 MORNING, EVERYONE.

08:59AM

26 ///

27

28 ///

1 CROSS-EXAMINATION (RESUMED) +

2 BY MR. MADISON:

3 Q MR. BEYER, WHEN WE BROKE FIVE DAYS AGO, I  
4 BELIEVE WE WERE TALKING ABOUT EXHIBIT 2150, WHICH IS AN  
5 E-MAIL, AND IT'S IN EVIDENCE.

08:59AM

6 SO IF WE CAN DISPLAY THAT.

7 IT'S AN E-MAIL FROM MAY 3RD, 2007,  
8 ATTACHING SOME DOCUMENTS. I BELIEVE JUST WHEN WE  
9 BROKE, WE WERE LOOKING AT THE ATTACHMENTS.

08:59AM

10 I'D LIKE TO GO OVER TO THE NEXT PAGE,  
11 WHICH IS EXHIBIT A, MULTI-SECTOR FIXED INCOME PROFIT  
12 SHARING POOL.

13 JUST ASK YOU IF YOU LOOK AT THAT PAGE,  
14 AND YOU GO THROUGH THE PAGE, ENDING IN 2150-5, IF THAT  
15 APPEARS TO YOU TO BE THE COMPENSATION ARRANGEMENT THAT  
16 YOU TOLD US ABOUT LAST WEEK?

08:59AM

17 A YES, IT DOES.

18 Q AND I WANT TO -- LET ME NOW JUST GO BACK ONE  
19 OR TWO STEPS. I BELIEVE WHEN MR. BRIAN WAS QUESTIONING  
20 YOU LAST WEEK, YOU INTRODUCED YOURSELF TO US, AS IT  
21 WERE, YOU ARE NO LONGER AT TCW?

09:00AM

22 A CORRECT.

23 Q WHEN DID YOU LEAVE TCW?

24 A I LEFT JUNE 30TH, 2009.

25 Q WE HEARD TESTIMONY FROM MR. GUNDLACH THAT HE  
26 THOUGHT YOU WERE FIRED.

09:00AM

27 WERE YOU FIRED FROM TCW, SIR?

28 A NO, I WAS NOT.

1 Q WHY DID YOU LEAVE TCW IN MID 2009?

2 A WELL, STARTING AT THE BEGINNING OF 2009, I  
3 BEGAN DISCUSSIONS ABOUT EXTENDING MY CONTRACT, WHICH  
4 ENDED AT THE END OF JUNE.

5 I HAD STAYED EIGHT YEARS PAST THE  
6 ACQUISITION OF THE COMPANY, AND WASN'T SURE WHETHER I  
7 WANTED TO EXTEND, UNLESS I COULD ACCOMPLISH CERTAIN  
8 THINGS THAT I FELT WERE APPROPRIATE FOR THE NEXT STAGE  
9 OF THE COMPANY.

09:00AM

10 AND IT WAS AT THE TIME THAT I DETERMINED  
11 IT WOULD BE VERY DIFFICULT FOR ME TO ACCOMPLISH THOSE,  
12 GIVEN THE COMPETING AGENDAS OF SOME OF MY PARTNERS  
13 THERE, THAT I DECIDED -- THAT I DECIDED I SHOULD  
14 PROBABLY TAKE EARLY RETIREMENT.

09:01AM

15 Q AT THAT TIME WHEN YOU WERE STILL THE CEO, DID  
16 YOU HAVE A WRITTEN EMPLOYMENT CONTRACT?

09:01AM

17 A YES, I DID.

18 Q WERE YOU ASKED BY ANYONE TO SIGN A NEW WRITTEN  
19 EMPLOYMENT CONTRACT THAT WOULD TAKE YOU BEYOND  
20 JUNE 2009?

09:01AM

21 A YES, I WAS.

22 Q WHO ASKED YOU TO DO THAT?

23 MR. BRIAN: OBJECTION. HEARSAY.

24 THE COURT: SUSTAINED.

25 BY MR. MADISON:

09:01AM

26 Q WELL, WERE YOU TALKING TO PERSONS AT TCW, OR  
27 PERSONS IN FRANCE, OR ANY OTHER PERSONS, ABOUT THE  
28 STATUS OF YOUR CONTRACT, IN MID 2009?

1 MR. BRIAN: OBJECTION. HEARSAY.

2 THE COURT: YOU CAN ANSWER, YES OR NO.

3 THE WITNESS: YES.

4 BY MR. MADISON:

5 Q SO, WHICH PART WAS IT? TCW? FRANCE? OR  
6 BOTH?

09:02AM

7 A IT WAS BOTH.

8 Q NOW, WHAT HAVE YOU DONE WITH YOURSELF SINCE  
9 TAKING EARLY RETIREMENT IN JUNE OF 2009?

10 A I SPEND ABOUT HALF MY TIME LOOKING AFTER MY  
11 OWN INVESTMENTS AND ABOUT HALF MY TIME ON NONPROFIT  
12 ACTIVITIES.

09:02AM

13 Q WHERE DID YOU GO TO COLLEGE?

14 A I WENT TO USC.

15 Q ARE YOU AFFILIATED WITH USC TODAY IN ANY WAY?

09:02AM

16 A YES. I'M ON THE BOARD OF THE COLLEGE OF  
17 LETTERS, ARTS AND SCIENCES AT USC.

18 Q THERE'S ANOTHER COLLEGE ACROSS TOWN.

19 ARE YOU AFFILIATED WITH THAT INSTITUTION  
20 AT ALL?

09:02AM

21 A NOT ON FOOTBALL GAME DAYS.

22 BUT OTHERWISE, YES.

23 Q WHAT'S YOUR AFFILIATION, IF ANY, WITH UCLA?

24 A I CHAIR THE BOARD OF VISITORS AT THE UCLA  
25 ANDERSON SCHOOL.

09:02AM

26 Q DO YOU SERVE ON ANY OTHER BOARDS OR  
27 COMMISSIONS THAT WE MIGHT HAVE HEARD ABOUT?

28 A I WAS RECENTLY APPOINTED BY MAYOR VILLARAIGOSA

1 TO THE LOS ANGELES AIRPORT COMMISSION, WHERE I SERVE AS  
2 AN AIRPORT COMMISSIONER. AND I SERVE ON A COUPLE OF  
3 CORPORATE BOARDS, AS WELL.

4 Q SO, WITH REGARD TO YOUR COMPANY, CHAPARRAL, WE  
5 HEARD ABOUT LAST WEEK, AND THEN THESE OTHER SERVICE  
6 OPPORTUNITIES THAT YOU HAVE, CAN YOU JUST ESTIMATE HOW  
7 YOU SPEND YOUR TIME, IN TERMS OF --

09:03AM

8 A I'D SAY A GOOD ESTIMATE IS ABOUT 50/50.

9 Q DOESN'T SOUND LIKE RETIREMENT, PARTICULARLY.

10 SO LET ME NOW BRING US BACK TO THIS  
11 DOCUMENT, 2150.

09:03AM

12 AND IF WE LOOK AT THE NEXT PAGE, 2150-6,  
13 IT IS IN THE FORM OF A LETTER ADDRESSED TO  
14 MR. GUNDLACH, AND IT SAYS:

15 AS OF JANUARY 1, 2007 -- IT BEGINS  
16 -- THIS AGREEMENT CONFIRMS OUR  
17 UNDERSTANDING WITH REGARD TO YOUR  
18 CONTINUED EMPLOYMENT.

09:03AM

19 YOU'RE FAMILIAR WITH THIS PART OF THE  
20 ATTACHMENT?

09:04AM

21 A YES, I AM.

22 Q AND LET ME GO TO THE LAST PAGE. AND THAT PAGE  
23 ENDS IN 2150-10. AND WE SEE SOME SIGNATURE BLOCKS  
24 THERE.

25 AND I'D LIKE TO JUST HIGHLIGHT THAT LAST  
26 PARAGRAPH OF TEXT. AND IT SAYS:

09:04AM

27 IF YOU AGREE TO AND ACCEPT THE  
28 FOREGOING, PLEASE SO INDICATE BY

1                   SIGNING THIS AGREEMENT IN THE SPACE  
2                   PROVIDED BELOW AND RETURNING A  
3                   SIGNED COPY TO US UPON ACCEPTANCE  
4                   BY YOU. THIS AGREEMENT WILL BECOME  
5                   OUR AGREEMENT AS TO THE TERMS AND  
6                   CONDITIONS OF YOUR EMPLOYMENT.

09:04AM

7                   THERE ARE SIGNATURE BLOCKS THERE FOR TRUST  
8                   COMPANY OF THE WEST AND FOR MR. GUNDLACH.

9                   TO YOUR KNOWLEDGE, WAS THAT, THIS  
10                  DOCUMENT, EVER SIGNED BY EITHER TRUST COMPANY OF THE  
11                  WEST OR JEFFREY GUNDLACH?

09:04AM

12                  A           NO, IT WAS NOT.

13                  Q           IF WE GO BACK TO THE PAGE THAT ENDS IN -8, AND  
14                  WE LOOK AT THE PARAGRAPH 6, UNDER TERMINATION -- AND  
15                  WE'VE HEARD SOME TESTIMONY ABOUT THIS IN THE CASE.  
16                  PERHAPS EVEN MR. BRIAN SAID THAT YOU WERE HERE FOR  
17                  PARTS OF THE TRIAL.

09:05AM

18                  HAVE YOU, IN FACT, BEEN HERE FOR SOME OF  
19                  THE TESTIMONY?

20                  A           YES.

09:05AM

21                  Q           WERE YOU HERE WHEN MR. SULLIVAN WAS  
22                  TESTIFYING?

23                  A           YES, I WAS.

24                  Q           SO IF WE LOOK AT SUBPARAGRAPH B, AND THEN  
25                  PARAGRAPH BELOW THAT, ACTUALLY, AND IT SAYS:

09:05AM

26                               YOUR COMPENSATION, INCLUDING ANY  
27                               BASE DRAW, ANY AMOUNT OF PROFIT  
28                               SHARING AND ADDITIONAL BENEFITS,

1 WILL CEASE WHEN TERMINATION OCCURS.  
2 EXCEPT, THERE'S A LITTLE 1 REGARDING AN  
3 ADDITIONAL BENEFITS. AND THERE'S THE LITTLE 2. IT  
4 SAYS:

5 THE COMPANY WILL PAY YOU BASE 09:05AM  
6 SALARY, YOUR BASE SALARY, AND ANY  
7 AMOUNT OF PROFIT SHARING, PLUS  
8 ACCRUED VACATION, ACCRUED TO THE  
9 DATE OF TERMINATION, IN ACCORDANCE  
10 WITH THE COMPANY'S POLICIES. 09:06AM

11 THE FIRST QUESTION I WANT TO ASK IS, WHEN YOU  
12 WERE PARTICIPATING TO THE EXTENT YOU ALSO DESCRIBED IN  
13 THE NEGOTIATIONS AND DISCUSSIONS ABOUT MR. GUNDLACH'S  
14 CONTRACT IN MID 2007, DID YOU HAVE AN UNDERSTANDING OF  
15 WHAT THIS LANGUAGE MEANT? 09:06AM

16 A YES, I DID --

17 MR. BRIAN: OBJECTION, YOUR HONOR. PAROL  
18 EVIDENCE, HEARSAY. MOVE TO STRIKE THE ANSWER.

19 THE COURT: SUSTAINED.

20 I'LL ALLOW THE ANSWER, YES, BUT I WON'T  
21 GO FURTHER ON IT. 09:06AM

22 MR. MADISON: I WOULD LIKE TO BE HEARD.

23 GIVEN THERE'S NO EVIDENCE, THERE'S NO  
24 PAROL EVIDENCE ISSUE.

25 MR. BRIAN: RELEVANCE, 352. UNCOMMUNICATED  
26 INTENT. 09:06AM

27 THE COURT: WE'RE NOT GOING FURTHER ON THAT.

28 ///

1 BY MR. MADISON:

2 Q MR. BEYER, YOU'RE AWARE YOU AND MR. SONNEBORN  
3 ARE TWO PERSONS MR. GUNDLACH SAYS HE HAD A HANDSHAKE  
4 AGREEMENT WITH, IN THIS CASE?

5 MR. BRIAN: OBJECTION. MISSTATES THE  
6 TESTIMONY.

09:07AM

7 THE COURT: SUSTAINED.

8 BY MR. MADISON:

9 Q WELL, I CAN READ THAT TESTIMONY, YOUR HONOR.

10 IF WE CAN APPROACH ABOUT THIS, I DO HAVE  
11 SEVERAL QUESTIONS IN THIS AREA.

09:07AM

12 THE COURT: GO AHEAD.

13 MR. MADISON: WITH THE QUESTIONS, OR  
14 APPROACHING?

15 THE COURT: WITH THE QUESTIONS, BUT NOT IN THE  
16 AREA THAT I SAID WE'RE NOT GOING TO.

09:07AM

17 MR. MADISON: YES, YOUR HONOR.

18 Q OKAY, SO IF WE LOOK AT PROFIT SHARING, AT THE  
19 TIME YOU WERE DISCUSSING WITH MR. SONNEBORN,  
20 MR. CAHILL, AND MR. GUNDLACH, THE NEW AGREEMENT, IN  
21 2007, THE NEW EMPLOYMENT AGREEMENT, DID YOU HAVE AN  
22 UNDERSTANDING OF WHAT PROFIT SHARING MEANT?

09:07AM

23 MR. BRIAN: SAME OBJECTIONS, YOUR HONOR.

24 THE COURT: SUSTAINED.

25 BY MR. MADISON:

09:07AM

26 Q DID YOU DISCUSS WITH MR. GUNDLACH HOW HIS  
27 PROFIT SHARING WOULD WORK UNDER THE NEW COMPENSATION  
28 AGREEMENT?



1           A       I BELIEVE THAT IT WAS CONSISTENT WITH ALL OF  
2 HIS PRIOR AGREEMENTS.

3           MR. BRIAN:  OBJECTION.  MOVE TO STRIKE,  
4 NONRESPONSIVE.

5           THE COURT:  I'LL STRIKE THE RESPONSE.  09:08AM

6                    SIR, YOU NEED TO ANSWER THE QUESTION  
7 DIRECTLY.

8                    THE QUESTION WAS, DID YOU DISCUSS THIS  
9 SUBJECT WITH MR. GUNDLACH?

10          MR. MADISON:  SO --  09:08AM

11          THE COURT:  LET'S HAVE AN ANSWER TO THAT  
12 QUESTION.

13          MR. MADISON:  YES.

14          Q       DO YOU RECALL DISCUSSING IT?

15          A       I DON'T REMEMBER THAT SPECIFIC DISCUSSION.  09:08AM

16          Q       AS THE CEO OF TCW AT THIS TIME, WHERE WOULD WE  
17 LOOK TO DETERMINE WHAT THE CAPITAL P, PROFIT, AND  
18 CAPITAL S, SHARING, PROFIT SHARING, WHAT THAT MEANS?

19          A       THAT SHOULD BE CONTAINED AS A DEFINITION IN  
20 THE AGREEMENT.  09:08AM

21          Q       AND IF WE LOOK OVER AT THE COMPENSATION  
22 ARRANGEMENT, IN THE FIRST PART OF THIS, WE SEE THE  
23 DIFFERENT FEES AND THE LIKE THAT ARE PROVIDED FOR IN  
24 TERMS OF THE SHARING WITH MR. GUNDLACH.

25                   DO YOU SEE, FOR EXAMPLE, IN 2150-2?  09:08AM

26          A       YES.

27          Q       AND I MEAN, THE TITLE OF EXHIBIT A IS THE  
28 PROFIT SHARING POOL, THEN IT SAYS THE MULTI-SECTOR

1 FIXED INCOME PROFIT SHARING POOL SHALL BE AN AMOUNT.

2 IS THIS THE DOCUMENT THAT YOU WOULD LOOK  
3 TO TO DETERMINE PROFIT SHARING?

4 MR. BRIAN: OBJECTION. CUMULATIVE, MR. VILLA,  
5 MR. SULLIVAN.

09:09AM

6 THE COURT: SUSTAINED.

7 BY MR. MADISON:

8 Q SO LET ME JUST ASK YOU, MR. BEYER, WHOSE IDEA  
9 WAS IT -- WE'VE HEARD TESTIMONY THAT THE 2003 AGREEMENT  
10 RAN THROUGH THE END OF 2007.

09:09AM

11 WHOSE IDEA WAS IT TO NEGOTIATE A NEW  
12 EMPLOYMENT AGREEMENT IN 2000 -- MID 2007?

13 MR. BRIAN: FOUNDATION.

14 THE COURT: OVERRULED.

15 IF YOU KNOW, SIR.

09:09AM

16 THE WITNESS: THE ORIGINAL DISCUSSION WAS  
17 STARTED BY MR. GUNDLACH.

18 Q WERE YOU A PARTY TO THAT DISCUSSION?

19 A YES, I WAS.

20 Q IS THERE -- TELL US WHAT MR. GUNDLACH SAID  
21 ABOUT WHY HE WANTED TO NEGOTIATE A NEW ARRANGEMENT?

09:09AM

22 A AS I PREVIOUSLY TESTIFIED, MR. GUNDLACH WANTED  
23 TO REDISTRIBUTE THE INCOME RECEIVED BY HIS GROUP AMONG  
24 THE PARTICIPANTS.

25 AND IN HIS PROPOSAL TO DO SO, HE BEGAN  
26 THE DISCUSSION ABOUT HAVING IT INCLUDED IN A NEW  
27 CONTRACT.

09:10AM

28 Q CAN YOU TELL US IN PARTICULAR, WHAT YOU RECALL

1 HE SAID ABOUT THE COMPENSATION FOR HIS GROUP?

2 A A SIGNIFICANT FACTOR IN THE FUTURE GROWTH OF  
3 HIS BUSINESS WAS BELIEVED TO BE THE CREDIT MORTGAGE  
4 GROUP. AND THE CREDIT MORTGAGE GROUP, RUN BY  
5 MR. LUCIDO, WAS THOUGHT BY HIM AND BY MR. LUCIDO TO BE  
6 UNDERCOMPENSATED.

09:10AM

7 AND SO HE WISHED TO TAKE COMPENSATION  
8 FROM SOME OF THOSE PARTICIPANTS THAT WERE NO LONGER  
9 GOING TO BE PART OF THE FUTURE OF GROWING THE GROUP,  
10 AND DIRECT IT TOWARDS MR. LUCIDO AND HIS GROUP.

09:10AM

11 Q NOW, WAS THERE -- WHAT WAS THE POOL OF  
12 COMPENSATION THAT WAS PROVIDED TO MR. GUNDLACH'S GROUP  
13 UNDER THE 2003 AGREEMENT REFERRED TO AS, IF YOU RECALL?

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

15 Q DO YOU RECALL THAT THIS WAS A TERM CALLED THE  
16 B AND G POOL?

09:11AM

17 A I DO.

18 Q CAN YOU TELL US WHAT THAT WAS?

19 A THAT WOULD BE THE BARACH AND GUNDLACH POOL.  
20 AND THAT WOULD BE THE FEE SHARING RELATED TO WHAT -- AT  
21 THAT TIME, WHAT WAS MOSTLY MANAGEMENT FEES IN THE  
22 MORTGAGE-BACKED SECURITIES AREA.

09:11AM

23 Q DID THAT B AND G POOL CHANGE TO SOMETHING  
24 ELSE, UNDER THE NEW COMPENSATION ARRANGEMENT THAT WAS  
25 DISCUSSED IN MID 2007?

09:11AM

26 A WELL, I DON'T REMEMBER WHAT THE NAME OF THE  
27 NEW POOL WAS; BUT BY 2007, IT WAS STILL PRINCIPALLY  
28 MANAGEMENT FEES. SO, I'M NOT REALLY SURE.

1 Q DO YOU RECALL HEARING THE TERM, THE G POOL,  
2 INSTEAD OF THE B AND G POOL, IN MID 2007?

3 A I DON'T PERSONALLY RECALL THAT TERM.

4 Q NOW, WE'VE HEARD TESTIMONY ABOUT THIS TERM  
5 ACCRUAL THAT'S USED IN THE EMPLOYMENT CONTRACT, THAT  
6 HAD THE SIGNATURE BLOCK THAT WE LOOKED AT.

09:12AM

7 AS THE CEO OF TCW, AT THE TIME YOU WERE  
8 HAVING THE DISCUSSIONS WITH MR. GUNDLACH, DID YOU HAVE  
9 AN UNDERSTANDING OF WHAT ACCRUAL MEANT?

10 MR. BRIAN: OBJECTION. YOUR HONOR.

09:12AM

11 UNCOMMUNICATED INTENT, PAROL EVIDENCE, HEARSAY.

12 THE COURT: OVERRULED.

13 THE WITNESS: YES, I DID.

14 BY MR. MADISON:

15 Q TELL US YOUR UNDERSTANDING OF THAT IS, IN THE  
16 CONTEXT OF THESE DISCUSSIONS WITH MR. GUNDLACH?

09:12AM

17 MR. BRIAN: SAME OBJECTIONS.

18 THE COURT: OVERRULED.

19 THE WITNESS: ACCRUAL, IN THIS CONTEXT, WOULD  
20 MEAN MANAGEMENT FEES THAT HAD BEEN EARNED UP TO THAT  
21 POINT -- IN THIS CONTEXT.

09:12AM

22 BY MR. BRIAN:

23 Q WERE THE MANAGEMENT FEES THAT WERE EARNED,  
24 MANAGEMENT FEES THAT WERE ON THE BOOKS SOMEWHERE, OR  
25 ACTUALLY PAID?

09:12AM

26 A IN THE CASE OF ACCRUED MANAGEMENT FEES, THEY  
27 COULD BE ON THE BOOKS, BECAUSE THEY WERE CONTRACTUALLY  
28 OBLIGATED TO BE PAID.

1 Q HOW WOULD TCW GO ABOUT COLLECTING MANAGEMENT  
2 FEES?

3 A MANAGEMENT FEES WERE COLLECTED A VARIETY OF  
4 DIFFERENT WAYS, BUT USUALLY AT THE END OF THE QUARTER  
5 OR THE END OF SOME PERIOD, REFLECTING CONTRACTUAL  
6 AGREEMENT TO THAT POINT. 09:13AM

7 Q NOW, WE'VE HEARD TESTIMONY ABOUT A DIFFERENT  
8 TYPE OF FEE CALLED PERFORMANCE FEES.

9 DID YOU HAVE AN UNDERSTANDING, IN 2007,  
10 ABOUT ACCRUAL AS IT MIGHT RELATE TO PERFORMANCE FEES? 09:13AM

11 MR. BRIAN: SAME OBJECTIONS, UNCOMMUNICATED  
12 INTENT, PAROL EVIDENCE.

13 THE COURT: OVERRULED.

14 THE WITNESS: YES, I DID.

15 BY MR. MADISON: 09:13AM

16 Q CAN YOU TELL US WHAT THAT EVIDENCE WAS?

17 A WITH REGARD TO ACCRUED PERFORMANCE FEES, THIS  
18 IS A COMPLETELY DIFFERENT CONCEPT, WHICH RELATES TO  
19 ACCOUNTING RULES WHERE, AT A SPECIFIC POINT IN TIME,  
20 YOU ARE FORCED TO VALUE AN INVESTMENT THAT HAS BEEN  
21 MADE BUT NOT REALIZED, NOT YET SOLD. 09:13AM

22 THAT'S REALLY JUST A BOOK ENTRY. THOSE  
23 ARE NOT CONTRACTUAL FEES THAT ARE GOING TO BE RECEIVED,  
24 NECESSARILY.

25 Q SO VIS-A-VIS PORTFOLIO MANAGERS, HOW DID TCW  
26 PAY PERFORMANCE FEES? 09:14AM

27 A PERFORMANCE FEES --

28 MR. BRIAN: OBJECTION. OVERBROAD, YOUR HONOR.

1 THE COURT: SUSTAINED.

2 BY MR. MADISON:

3 Q WITH REGARD TO THESE DISCUSSIONS THAT YOU WERE  
4 HAVING WITH MR. GUNDLACH, DID YOU HAVE AN UNDERSTANDING  
5 ABOUT WHAT WAS BEING DISCUSSED, IN TERMS OF HOW  
6 PERFORMANCE FEES WOULD BE PAID?

09:14AM

7 MR. BRIAN: OBJECTION. UNCOMMUNICATED INTENT.  
8 PAROL EVIDENCE.

9 THE COURT: OVERRULED.

10 THE WITNESS: YES, I DID. PERFORMANCE FEES,  
11 THROUGHOUT THE INDUSTRY AND AT TCW, AND IN THIS  
12 SPECIFIC CASE, ARE PAID ONLY WHEN RECEIVED.

09:14AM

13 BY MR. MADISON:

14 Q IF THE PORTFOLIO MANAGER WERE NOT PRESENT AT  
15 THE TIME THE FEES WERE RECEIVED, WOULD A PORTFOLIO  
16 MANAGER RECEIVE THOSE FEES? A SHARE OF THOSE FEES --

09:14AM

17 A IN THE CASE OF A CONTRACTUAL ARRANGEMENT THAT  
18 DOES NOT INCLUDE A DIRECT PARTNERSHIP INTEREST, NO.

19 Q SO, IN TERMS OF WHEN THE PERFORMANCE FEES ARE  
20 ACTUALLY RECEIVED, DOES SOMETHING HAVE TO HAPPEN TO THE  
21 ACTUAL INVESTMENTS, THE SECURITIES, BEFORE TCW CAN  
22 REALIZE AND RECEIVE A PERFORMANCE FEE?

09:15AM

23 A YES. THEY NEED TO BE SOLD.

24 Q AND VIS-A-VIS THE CLIENT, WHEN DOES TCW  
25 ACTUALLY RECEIVE THE PERFORMANCE FEE AFTER A SECURITY  
26 IS SOLD?

09:15AM

27 A IT VARIES, DEPENDING ON THE AGREEMENT.

28 BUT GENERALLY, THE SECURITY IS SOLD, THE

1 CLIENT GETS THE PROFIT UP TO A CERTAIN PROMISED RATE OF  
2 RETURN, AND THEN THE REST OF THE PROFITS ARE SPLIT  
3 BETWEEN, IN THIS CASE, TCW AND THE CLIENT.

4 Q ARE YOU AWARE OF A SITUATION WHERE A  
5 PERFORMANCE FEE, OR SOME PART OF A PERFORMANCE FEE, HAS  
6 EVER BEEN PAID TO A PORTFOLIO MANAGER BEFORE THE ASSET  
7 HAS ACTUALLY, THE SECURITY HAS BEEN SOLD? 09:16AM

8 A I DON'T BELIEVE THAT'S EVER HAPPENED.

9 Q ARE YOU AWARE OF A SITUATION WHERE A  
10 PERFORMANCE FEE HAS BEEN PAID TO A PORTFOLIO MANAGER,  
11 THAT IS, HIS OR HER SHARE, BEFORE THE CLIENT HAS  
12 ACTUALLY RECEIVED THE PROCEEDS OF THE INVESTMENT? 09:16AM

13 A NO.

14 Q DURING YOUR WATCH AS CEO OF TCW, DID TCW EVER  
15 AGREE WITH ANY PORTFOLIO MANAGER TO DO THAT? 09:16AM

16 A NO.

17 Q DID -- UNDER YOUR UNDERSTANDING, DID TCW OR  
18 YOU EVER AGREE TO DO THAT, WITH MR. GUNDLACH?

19 MR. BRIAN: OBJECTION. UNCOMMUNICATED INTENT,  
20 PAROL EVIDENCE. CALLS FOR A LEGAL CONCLUSION. 09:16AM

21 THE COURT: OVERRULED.

22 THE WITNESS: NO.

23 BY MR. MADISON:

24 Q NOW, IN THE -- SECURITIES HAVE TO BE SOLD  
25 BEFORE THE PERFORMANCE FEE IS ACTUALLY RECEIVED, IS IT  
26 EVEN POSSIBLE TO KNOW WHAT THE ACTUAL PERFORMANCE FEE  
27 WILL BE, UNTIL THE DATE THAT THE SECURITY IS SOLD? 09:17AM

28 A NO, IT IS NOT.

1 Q WHY NOT?

2 A WELL, BECAUSE PRICES FLUCTUATE.

3 Q IF THE PRICE OF A SECURITY ON THE BOOKS OF TCW  
4 IS, LET'S JUST SAY AT 100, ON A PARTICULAR DAY, DOES  
5 THAT MEAN THAT IF THE SECURITY IS LATER SOLD, IT WILL  
6 EARN 100 OR LESS THAN 100 OR MORE THAN 100?

09:17AM

7 A NO, I'D SAY IT'S KIND OF LIKE A BASKETBALL  
8 GAME, WHERE AT THE END OF EVERY QUARTER, THERE'S A  
9 SCORE; BUT UNTIL THE FINAL SCORE IS GIVEN, YOU DON'T  
10 REALLY KNOW WHAT HAPPENED.

09:17AM

11 Q ARE YOU AWARE, IN THE ENTIRE ASSET MANAGEMENT  
12 INDUSTRY, GIVEN YOUR SIGNIFICANT EXPERIENCE IN THE  
13 INDUSTRY, OF A SITUATION WHERE A PORTFOLIO MANAGER HAS  
14 EVER BEEN PROMISED THAT HE OR SHE WOULD RECEIVE  
15 UNEARNED PERFORMANCE FEES, YOU KNOW, AT THE END OF THE  
16 FIRST QUARTER OR SECOND QUARTER, TO USE YOUR METAPHOR,  
17 INSTEAD OF AT THE END, WHEN THE SECURITY'S ACTUALLY  
18 SOLD?

09:18AM

19 MR. BRIAN: OBJECTION. CALLS FOR EXPERT  
20 OPINION.

09:18AM

21 THE COURT: COUNSEL, WOULD YOU APPROACH FOR A  
22 MINUTE.

23

24 (SIDE-BAR CONFERENCE HELD) +

25

09:18AM

26 THE COURT: I DON'T THINK YOU CAN HAVE IT BOTH  
27 WAYS. YOU WANT TO BRING YOUR EXPERT IN, YOU WANT HIM  
28 TO TESTIFY TO INDUSTRY PRACTICE, AND WHAT'S GOING ON.



1 AND YET YOU DON'T WANT TO LET MR. BEYER TESTIFY TO ANY  
2 OF THESE ISSUES.

3 MR. BRIAN: OURS WAS DISCLOSED AS AN EXPERT.  
4 THIS GENTLEMAN TESTIFIED HE ATTENDED ONE MEETING WITH  
5 MR. GUNDLACH, IN WHICH THEY DISCUSSED THE FEE SHARING,  
6 AND THE WHOLE IDEA OF COVERING COSTS, AND THE PURPOSE  
7 OF THAT.

09:18AM

8 HE HAD NO OTHER COMMUNICATIONS WITH  
9 MR. GUNDLACH. AND NOW HE'S TESTIFYING HE'S AN EXPERT,  
10 NOT ONLY ABOUT WHAT TCW'S PRACTICES ARE, BUT ABOUT THE  
11 INDUSTRY. I DON'T THINK THAT'S APPROPRIATE.

09:19AM

12 THE COURT: I THINK HIS POSITION ENABLES HIM  
13 TO TESTIFY WHAT THEY DID AT TCW. AND I DON'T THINK  
14 THAT YOU CAN HAVE YOUR EXPERT COME IN AND SAY, THAT'S  
15 THE ONLY EVIDENCE WE HAVE OF WHAT'S DONE IN THE  
16 INDUSTRY, WHEN WHAT'S ACTUALLY DONE AT TCW IS  
17 APPROPRIATE AND RELEVANT.

09:19AM

18 THAT'S WHERE WE ARE.

19 MR. BRIAN: WELL, I HAVE -- I'LL HAVE A  
20 CONTINUING OBJECTION.

09:19AM

21 YOU'VE RULED. THAT'S YOUR JOB.

22 THE COURT: I UNDERSTAND. I RESPECT THAT.

23 I WANTED TO MAKE CLEAR, THAT'S THE WAY I  
24 SEE THIS.

25 MR. BRIAN: I WANT THE RECORD TO BE CLEAR. I  
26 OBJECT TO THIS LINE OF QUESTIONING. I WON'T INTERRUPT  
27 THE EXAMINATION, BUT I HAVE A CONTINUING LINE OF  
28 OBJECTIONS.

09:19AM

1 THE COURT: WE'LL ACCEPT THAT.

2 I DON'T EXPECT THIS TO GO ON FOR MUCH  
3 LONGER. OKAY.

4

5 (SIDE-BAR CONFERENCE CONCLUDED.) +

09:19AM

6

7 BY MR. MADISON:

8 Q YOUR HONOR, COULD I ASK RAQUEL TO READ THE  
9 LAST QUESTION BACK.

10

(RECORD READ.) +

09:20AM

11

12 BY MR. MADISON:

13 Q COULD YOU ANSWER THE QUESTION, MR. BEYER?

14 A I'M NOT AWARE OF ANY REPUTABLE INVESTMENT FIRM  
15 OF THAT BEING THE CASE, NO.

09:20AM

16 Q NOW, ARE YOU FAMILIAR WITH A CONCEPT CALLED  
17 VESTING?

18 A YES, I AM.

19 Q CAN YOU TELL US, AGAIN, IN YOUR EXPERIENCE,  
20 AND IN PARTICULAR AT TCW, YOUR UNDERSTANDING OF THE  
21 TERM, VESTING?

09:21AM

22 MR. BRIAN: SAME OBJECTIONS, AND ALSO  
23 RELEVANCE, YOUR HONOR.

24 THE COURT: I'LL SUSTAIN IT.

25 I DON'T THINK WE NEED TO GO IN THAT  
26 DIRECTION.

09:21AM

27 BY MR. MADISON:

28 Q IS THERE A WAY THAT -- WELL, WHEN YOU WERE CEO

1 OF TCW, WAS THERE A WAY TO PROVIDE, WITH REGARD TO  
2 MANAGEMENT FEES, NOW, THAT IF A PORTFOLIO MANAGER WERE  
3 TO LEAVE, HE OR SHE COULD STILL RECEIVE SOME PERCENTAGE  
4 OF MANAGEMENT FEES IN THE FUTURE, THAT WERE RECEIVED  
5 AFTER HE OR SHE LEFT?

09:21AM

6 A THAT WOULD BE VERY RARE, IF AT ALL.

7 Q DID THAT HAVE A TERM THAT YOU WERE FAMILIAR  
8 WITH AT TCW?

9 A I CAN'T RECALL A SITUATION WHERE WE HAD THE  
10 CONCEPT OF VESTING WHICH THAT WOULD BE AS IT RELATES TO  
11 MANAGEMENT FEES.

09:21AM

12 Q IN THE DISCUSSIONS THAT YOU PARTICIPATED IN OR  
13 WERE PRIVY TO AT TCW, WAS THAT CONCEPT EVER THE SUBJECT  
14 OF DISCUSSION WITH MR. GUNDLACH IN 2007, TO YOUR  
15 KNOWLEDGE?

09:22AM

16 A NO. EVEN IF WE HAD --

17 THE COURT: I THINK YOU'VE ANSWERED THE  
18 QUESTION, SIR, WHEN YOU SAY "NO."

19 THE WITNESS: NO.

20 THE COURT: GO AHEAD.

09:22AM

21 BY MR. MADISON:

22 Q NOW, LET ME ASK YOU TO LOOK AT EXHIBIT 60,  
23 WHICH IS -- SHOULD BE IN YOUR BINDER, AND IS IN  
24 EVIDENCE.

25 AND I'D LIKE TO DISPLAY THAT, YOUR  
26 HONOR.

09:22AM

27 AND 60 IS A COPY OF THE E-MAIL THAT WE  
28 JUST LOOKED AT FROM MAY 3RD, EXHIBIT 2150.

1 IF YOU LOOK AT THE BOTTOM HALF, AND THEN  
2 ON MAY 21ST, MR. CAHILL RE-SENT THIS TO MR. GUNDLACH,  
3 AND HE -- HE INDICATES RE-SENDING.

4 SO WERE YOU AWARE THAT AS OF MAY 21ST,  
5 MR. GUNDLACH HAD NOT YET RESPONDED TO THE DRAFT  
6 CONTRACT THAT HAD BEEN PROVIDED TO HIM?

09:22AM

7 A YES, I WAS.

8 Q AND THEN IF WE LOOK OVER AT 61, WHICH IS ALSO  
9 IN EVIDENCE, HERE WE SEE THE E-MAIL FROM MR. GUNDLACH,  
10 TO MR. SONNEBORN AND MR. CAHILL -- EXCUSE ME, TO  
11 MR. CAHILL, WITH COPIES TO MR. SONNEBORN AND  
12 MR. SULLIVAN. MR. BRIAN SHOWED THIS AND READ IT DURING  
13 YOUR EXAMINATION BY HIM LAST WEEK.

09:23AM

14 AND IF WE LOOK DOWN AT THE BOTTOM, IT  
15 SAYS:

09:23AM

16 I PROMISE I WILL LOOK AT THE  
17 DOCUMENT CAREFULLY OVER THE  
18 WEEKEND.

19 THEN MR. CAHILL SAYS: THANKS.

20 UP ABOVE, ON FRIDAY, MAY 25TH.

09:23AM

21 SO HERE AGAIN, AS OF THE 25TH OF MAY, IT  
22 WAS YOUR UNDERSTANDING OF THE DATE OF MAY, THAT  
23 MR. GUNDLACH WAS REVIEWING THE PROPOSED CONTRACT?

24 A YES.

25 Q IF WE LOOK AT EXHIBIT 63, WHICH IS ALSO IN  
26 EVIDENCE, WE'VE HEARD TESTIMONY ABOUT THIS E-MAIL FROM  
27 MAY 30 ABOUT PAYMENTS THAT ARE MADE.

09:23AM

28 SO LET ME JUST STOP, AT THE CEO OF TCW,

1 ON MAY 30TH, WAS SOME PAYMENT OF BONUS OR FEE SHARING  
2 DUE TO BE MADE AT THAT TIME?

3 A YES.

4 Q FOR WHAT PERIOD OF TIME WOULD THAT BE?

5 A THAT WOULD BE THE FIRST QUARTER.

09:24AM

6 Q OF 2007, IN THAT CASE?

7 A CORRECT.

8 Q SO, THERE'S A 60-DAY OR TWO-MONTH LAG TIME  
9 BETWEEN THE CLOSE OF THE QUARTER AND THEN THE ACTUAL  
10 PAYMENT OF ANY FEE SHARING OR BONUSES?

09:24AM

11 A YES.

12 Q WHAT HAPPENS IN THAT PERIOD OF TIME, IN THE  
13 LAG TIME, IF YOU WILL, AFTER THE CLOSE OF THE QUARTER,  
14 WITH REGARD TO THOSE PAYMENTS?

15 A USUALLY THAT'S THE PERIOD DURING WHICH THE  
16 PAYMENTS ARE RECEIVED BY TCW, AND THE CALCULATIONS ARE  
17 PAID FOR THE DISTRIBUTION OF THOSE PAYMENTS.

09:24AM

18 Q MR. SONNEBORN WRITES: NO CONTRACT YET.

19 SO LET ME JUST STOP THERE.

20 AS OF MAY 30, WAS IT YOUR UNDERSTANDING  
21 THAT THERE WAS NOT YET A CONTRACT, BECAUSE MR. GUNDLACH  
22 HADN'T SIGNED?

09:25AM

23 A THAT WAS MY UNDERSTANDING.

24 Q AND THEN IT GOES ON TO SAY:

25 THESE PAYMENTS TOTAL LESS THAN WHAT  
26 WE WOULD HAVE PAID UNDER THE OLD  
27 DEAL, SO THIS SHOULDN'T BE A  
28 PROBLEM.

09:25AM

1           WAS IT YOUR UNDERSTANDING, AS CEO, THAT THE  
2 NEW COMPENSATION ARRANGEMENT WAS IMPLEMENTED AT THIS  
3 TIME, WITH THIS PAYMENT.

4           A       YES.

5           Q       OF ALL THE EMPLOYEES AT TCW DURING THE TIME  
6 THAT YOU WERE THE CEO, COULD YOU ESTIMATE FOR US WHAT  
7 PERCENTAGE OF THEM HAD WRITTEN EMPLOYMENT CONTRACTS?

09:25AM

8           MR. BRIAN: OBJECTION. ASKED AND ANSWERED ON  
9 THURSDAY, I BELIEVE.

10          THE COURT: I'LL OVERRULE THE OBJECTION.

09:25AM

11                   I DON'T RECALL THE ANSWER.

12                   DO YOU HAVE AN ANSWER TO THAT?

13          THE WITNESS: VERY SMALL PERCENTAGE.

14 BY MR. MADISON:

15          Q       AND AS TO THE OTHER EMPLOYEES, LET ME ASK  
16 FIRST, WOULD THAT INCLUDE EMPLOYEES AT THE LEVEL OF  
17 PORTFOLIO MANAGER --

09:25AM

18          A       THE ONES WITH THE CONTRACT.

19          Q       -- OR NOT?

20                   IN OTHER WORDS, WOULD IT BE THE SAME  
21 PERCENTAGE OR RATIO FOR THOSE EMPLOYEES?

09:26AM

22          A       THERE WERE MORE CONTRACTS AMONG THE PORTFOLIO  
23 MANAGERS, BUT I BELIEVE THE MAJORITY OF THE PORTFOLIO  
24 MANAGERS DID NOT HAVE WRITTEN CONTRACTS.

25          Q       WERE THERE PORTFOLIO MANAGERS WHO HAD FEE  
26 SHARING ARRANGEMENTS WHO DIDN'T HAVE WRITTEN EMPLOYMENT  
27 CONTRACTS?

09:26AM

28          A       YES.

1 Q AND SO IN THOSE CASES, WAS THE FEE SHARING  
2 CONSIDERED THEIR COMPENSATION?

3 A YES.

4 Q IN PART, OR IN WHOLE?

5 A YES.

09:26AM

6 Q NOW, IS THERE A TERM THAT WAS USED AT TCW FOR  
7 EMPLOYEES THAT DIDN'T HAVE AN EMPLOYMENT CONTRACT, EVEN  
8 IF THEY HAD FEE SHARING?

9 A NOT A GENERAL TERM, THAT I RECALL.

10 Q MR. BRIAN ASKED YOU LAST WEEK IF YOU EVER TOLD  
11 MR. GUNDLACH THAT HE WAS AN AT-WILL EMPLOYEE. I  
12 BELIEVE YOU TESTIFIED THAT YOU DID NOT TELL HIM THAT.

09:26AM

13 WAS THAT A TERM THAT WAS SOMETIMES USED  
14 AT TCW TO REFER TO EMPLOYEES THAT DID NOT HAVE A  
15 WRITTEN EMPLOYMENT CONTRACT?

09:27AM

16 A IT WAS A GENERALLY USED TERM.

17 Q AND DID YOU EVER HEAR MR. GUNDLACH -- WELL,  
18 STRIKE THAT.

19 DID YOU EVER DISCUSS THAT TERM WITH  
20 MR. GUNDLACH?

09:27AM

21 A YES.

22 Q AND I'D ASK YOU TO LOOK AT EXHIBIT 38, WHICH  
23 IS IN THE BINDER BEFORE YOU.

24 DO YOU RECOGNIZE EXHIBIT 38?

25 A YES.

09:27AM

26 Q CAN YOU TELL US WHAT EXHIBIT 38 IS?

27 MR. BRIAN: OBJECTION. HEARSAY, YOUR HONOR.

28 MR. MADISON: I'M NOT ASKING YOU TO READ THE

1 CONTENTS, JUST TO TELL US WHAT THE DOCUMENT IS.

2 MR. BRIAN: HEARSAY.

3 THE COURT: IT'S AN E-MAIL.

4 MR. MADISON: THANK YOU, YOUR HONOR.

5 THE COURT: WE KNOW THAT.

09:28AM

6 MR. BRIAN: THERE'S NO FOUNDATION.

7 THE COURT: BEYOND, THAT I DON'T KNOW WHERE  
8 WE'RE GOING. AND THE QUESTION CAN ONLY INVITE A  
9 PROBLEM.

10 MR. MADISON: IT WAS FOUNDATION.

09:28AM

11 AND I WOULD MOVE THE E-MAIL IN FOR A  
12 BUSINESS RECORD.

13 MR. BRIAN: NO FOUNDATION.

14 THE COURT: THE OBJECTION WILL BE SUSTAINED.

15 MR. BRIAN: HEARSAY --

09:28AM

16 BY MR. MADISON:

17 Q WAS THIS AN E-MAIL CREATED IN THE REGULAR  
18 COURSE OF BUSINESS AT TCW?

19 A YES.

20 Q AND YOU ARE COPIED ON THE E-MAIL, SO I TAKE IT  
21 YOU RECEIVED THE E-MAIL AT THE TIME?

09:28AM

22 A YES.

23 Q AND WERE THE MATTERS IN THE E-MAIL, TO THE  
24 BEST OF YOUR KNOWLEDGE AS THE CEO OF TCW AT THAT TIME,  
25 TRUE AND CORRECT?

09:28AM

26 A YES.

27 MR. MADISON: I WOULD MOVE THE EXHIBIT AS A  
28 BUSINESS RECORD.



1 MR. BRIAN: NO FOUNDATION.

2 IT'S NOT DRAFTED BY HIM, YOUR HONOR.

3 THE COURT: OVERRULED.

4 IT WILL BE ADMITTED.

5

09:28AM

6 (EXHIBIT 38 ADMITTED.) +

7

8 BY MR. MADISON:

9 Q SO IF WE LOOK AT THIS E-MAIL FROM DECEMBER 13,  
10 2006, FROM MR. SONNEBORN TO MR. PETE SULLIVAN, WITH A  
11 COPY TO MR. DEVITO, MR. CAHILL, AND MR. BEYER,  
12 YOURSELF, AND IT'S REGARDING PHIL BARACH.

09:28AM

13 IT SAYS:

14 BOB AND I MET WITH JEFFREY TO  
15 DISCUSS PHIL BARACH, GIVEN HIS  
16 CONTRACT ENDS AT THE END OF THIS  
17 MONTH.

09:29AM

18 I'LL STOP THERE.

19 ARE YOU THE BOB THAT'S REFERRED TO  
20 THERE?

09:29AM

21 A YES.

22 Q DO YOU RECALL MEETING WITH MR. SONNEBORN AND  
23 MR. GUNDLACH TO DISCUSS MR. BARACH'S CONTRACT?

24 A YES, I DO.

25 Q DO YOU RECALL THAT MR. BARACH DID HAVE A  
26 WRITTEN EMPLOYMENT CONTRACT AS A PORTFOLIO MANAGER,  
27 HIMSELF, THAT ENDED AT THE END OF DECEMBER 2006?

09:29AM

28 A YES.

1 Q WAS THAT CONTRACT EXTENDED, OR WAS THERE A NEW  
2 WRITTEN EMPLOYMENT CONTRACT THAT TOOK ITS PLACE, IF YOU  
3 RECALL, AFTER THAT?

4 A NOT TO MY KNOWLEDGE.

5 Q THE NEXT SENTENCE:

6 JEFFREY WAS SUPPORTIVE OF THE  
7 FOLLOWING FOR PHIL, GOING FORWARD,  
8 1, NO NEW CONTRACT, AT-WILL  
9 EMPLOYEE WHERE COMPENSATION, AND  
10 STATUS COULD CHANGE AT ANY TIME.

11 DO YOU RECALL THAT TOPIC BEING DISCUSSED WITH  
12 YOU MR. SONNEBORN AND MR. GUNDLACH AT THAT MEETING?

13 A YES, I DO.

14 Q WHAT WAS SAID DURING THAT?

15 A MR. GUNDLACH NEGOTIATED WITH MR. BARACH TO  
16 CHANGE HIS COMPENSATION ARRANGEMENTS, AND HAD NOT  
17 GOTTEN AS FAR AS HE WOULD LIKE TO AND HE WANTED TO. HE  
18 TOLD US THAT HE WANTED TO KEEP HIS OPTIONS OPEN TO MAKE  
19 FURTHER ADJUSTMENTS TO MR. BARACH'S EMPLOYMENT TERMS IN  
20 THE FUTURE.

21 Q MR. GUNDLACH SAID THOSE THINGS?

22 A YES.

23 Q TO YOU --

24 AND WAS THE TERM, AT-WILL EMPLOYEE,  
25 ACTUALLY SPOKEN IN THIS MEETING WITH MR. GUNDLACH?

26 A I DON'T RECALL THE TERM.

27 I DO RECALL THE CONCEPT.

28 Q AND DO YOU RECALL WHETHER THEN, GOING FORWARD,

09:29AM

09:29AM

09:30AM

09:30AM

09:30AM

1 WHAT THE OUTCOME WAS WITH REGARD TO MR. BARACH'S  
2 WRITTEN EMPLOYMENT CONTRACT STATUS?

3 A I BELIEVE WE JUST LET IT EXPIRE.

4 Q SO AS THE CEO OF TCW, WOULD IT HAVE BEEN YOUR  
5 VIEW, AFTER THE END OF DECEMBER 2006, MR. BARACH WAS AN  
6 AT-WILL EMPLOYEE?

09:30AM

7 A CERTAINLY.

8 Q AND THAT WAS AT MR. GUNDLACH'S REQUEST?

9 A YES.

10 Q NOW, IF WE GO BACK TO 63, WE WERE LOOKING AT,  
11 THAT WAS AS OF MAY 30, 2007, WHEN MR. SONNEBORN SAID,  
12 NO CONTRACT YET.

09:31AM

13 AND LET ME THEN GO TO ANOTHER EXHIBIT  
14 YOU WERE SHOWN LAST WEEK, EXHIBIT 66, WHICH IS DATED  
15 JUNE 7.

09:31AM

16 THIS IS IN EVIDENCE, YOUR HONOR.

17 IF I MAY DISPLAY THIS.

18 IT SAYS, DATED JUNE 7TH, 2007. YOU'RE  
19 COPIED, AND THE SUBJECT IS EMPLOYMENT CONTRACT. IT  
20 SAYS:

09:31AM

21 JEFFREY, BILL AND BOB -- THIS IS  
22 FROM MR. CAHILL -- JEFFREY, BILL  
23 AND BOB, HERE IS A REVISED FORM OF  
24 AGREEMENT WITH THE ATTACHMENT FOR  
25 JEFFREY'S AGREEMENT.

09:31AM

26 LET ME STOP THERE.

27 DID YOU HAVE AN UNDERSTANDING OF WHY THE  
28 AGREEMENT HAD BEEN REVISED?

1 A YES.

2 Q WHY?

3 A THERE HAD BEEN DISCUSSIONS.

4 MR. BRIAN: OBJECTION, FOUNDATION, YOUR HONOR.

5 THE COURT: SUSTAINED.

09:32AM

6 YOU CAN LAY THE FOUNDATION FOR WHAT HIS  
7 UNDERSTANDING WAS.

8 MR. MADISON: YES.

9 Q IT MIGHT BE MORE HELPFUL IF WE ACTUALLY LOOK  
10 AT THE CHANGES. YOU TESTIFIED ABOUT THIS LAST WEEK  
11 WITH MR. BRIAN.

09:32AM

12 IF WE LOOK OVER, FOR EXAMPLE PAGE 266-2.  
13 WE'LL SEE IF WE EXPAND THE PARAGRAPH 2, FOR EXAMPLE.

14 WE SEE UNDERLINING OF CERTAIN WORDS AND  
15 CROSSING OUT OF CERTAIN OTHER WORDS.

09:32AM

16 AND ARE YOU FAMILIAR, MR. BEYER, WITH  
17 THE TERM, RED LINE?

18 A YES.

19 Q WAS THIS A RED LINE OF THE DRAFT EMPLOYMENT  
20 CONTRACT?

09:32AM

21 A YES.

22 Q DID YOU HAVE AN UNDERSTANDING OF WHY THOSE  
23 CHANGES HAD BEEN MADE?

24 A YES.

25 Q WHAT? WHY WERE THEY MADE?

09:32AM

26 MR. BRIAN: OBJECTION. NO FOUNDATION.

27 THE COURT: SUSTAINED.

28 BY MR. MADISON:

1 Q WHAT'S YOUR UNDERSTANDING IN THAT REGARD BASED  
2 UPON?

3 A MY UNDERSTANDING, THIS WAS THE RESULT OF  
4 DISCUSSIONS BETWEEN MR. CAHILL AND MR. GUNDLACH, OR  
5 MR. SONNEBORN AND MR. GUNDLACH.

09:33AM

6 Q YOU DIDN'T PARTICIPATE IN THOSE DISCUSSIONS  
7 YOURSELF, WITH MR. GUNDLACH?

8 A NOT DIRECTLY.

9 Q AT THAT POINT.

10 AND DID YOU, WHEN YOU RECEIVED A COPY,  
11 AS INDICATED BY THIS E-MAIL, DID YOU LOOK AT THE  
12 CHANGES YOURSELF, OR DISCUSS THEM WITH MR. SONNEBORN OR  
13 MR. CAHILL, DO YOU RECALL?

09:33AM

14 A I JUST DON'T REMEMBER.

15 Q DO YOU RECALL, IF WE STAY WITH THAT  
16 PARAGRAPH 2 IN THE FIRST PAGE OF THE ATTACHMENT 66-2,  
17 THE LANGUAGE THAT'S CROSSED OUT IN THE BOTTOM OF THAT  
18 PARAGRAPH, THE LAST SENTENCE, HAD SAID:

09:33AM

19 YOU WILL PERFORM SUCH DUTIES IN  
20 ACCORDANCE -- ACTUALLY NEXT  
21 SENTENCE DOWN -- YOU WILL PERFORM  
22 SUCH DUTIES IN ACCORDANCE WITH  
23 GUIDELINES PROVIDED FROM TIME TO  
24 TIME BY ROBERT BEYER AND WILLIAM  
25 SONNEBORN OR THEIR SUCCESSORS, YOUR  
26 SUPERVISORS.

09:34AM

27 THAT'S BEEN CROSSED OUT.

28 DO YOU RECALL NOTICING AT THAT TIME THAT

09:34AM

1 THAT LANGUAGE HAD BEEN CROSSED OUT?

2 A I RECALL THE CONVERSATION THAT PRECEDED MY  
3 RECEIVING THIS DOCUMENT ABOUT THAT POINT.

4 Q WERE YOU OKAY WITH THAT LANGUAGE BEING TAKEN  
5 OUT?

09:34AM

6 A YES.

7 Q TO YOUR RECOLLECTION, WERE YOU OKAY WITH THE  
8 OTHER CHANGES THAT HAD BEEN MADE TO THIS DOCUMENT, IN  
9 THE RED LINE?

10 A TO MY RECOLLECTION, YES.

09:34AM

11 Q IF WE LOOK AT PAGE 66-6, THERE'S SOME LANGUAGE  
12 ABOUT EXCLUSIVE REMEDY THAT'S BEEN TAKEN OUT.

13 AND THEN THE LAST PARAGRAPH REMAINS  
14 INTACT, ABOUT IF YOU GROW TO ACCEPT THE FOREGOING,  
15 PLEASE SO INDICATE BY SIGNING.

09:34AM

16 AND YOU UNDERSTOOD THAT THE DOCUMENT  
17 STILL HAD TO BE SIGNED, TO BE EFFECTIVE?

18 A YES.

19 Q NOW LAST WEEK --

20 MR. BRIAN: I'M SORRY. I'M A LITTLE LATE  
21 HERE.

09:35AM

22 OBJECTION, MOVE TO STRIKE, CALLS FOR  
23 LEGAL CONCLUSION.

24 THE COURT: I'LL SUSTAIN THE OBJECTION.

25 AND STRIKE THE RESPONSE.

09:35AM

26 BY MR. MADISON:

27 Q DO YOU RECALL LAST WEEK, WHEN MR. BRIAN ASKED  
28 YOU, WITH REGARD TO THIS EXHIBIT, IF MR. GUNDLACH EVER

1 INDICATED TO YOU THAT THE TERMS WERE UNACCEPTABLE?

2 DO YOU RECALL MR. BRIAN ASKING YOU THAT  
3 QUESTION?

4 A YES.

5 Q AND I BELIEVE YOU SAID NO, HE DID NOT EVER  
6 INDICATE TO YOU THAT THE TERMS WERE UNACCEPTABLE.

09:35AM

7 WAS THAT YOUR TESTIMONY?

8 A WITH AN EXPLANATION, YES.

9 Q ALL RIGHT.

10 WELL, WHAT'S THE EXPLANATION?

09:35AM

11 A THAT BY NOT SIGNING THE AGREEMENT, HE  
12 DISAPPROVED IT IN ITS ENTIRETY, AS FAR AS I WAS  
13 CONCERNED.

14 MR. BRIAN: MOVE TO STRIKE, CALLS FOR A LEGAL  
15 CONCLUSION, NONRESPONSIVE.

09:35AM

16 THE COURT: I'LL SUSTAIN THE OBJECTION.

17 AND STRIKE THE RESPONSE.

18 I DON'T THINK IT'S RESPONSIVE TO THE  
19 QUESTION, QUITE FRANKLY.

20 BY MR. MADISON:

09:36AM

21 Q LET ME ASK IT THIS WAY, MR. BEYER. WHEN YOU  
22 WERE CHIEF EXECUTIVE OFFICER OF TCW, AND EMPLOYMENT  
23 CONTRACTS WERE BEING NEGOTIATED, WAS IT THE PRACTICE  
24 THAT EVEN THOUGH THE AGREEMENT SAID IT HAS -- YOU HAVE  
25 TO SIGN FOR IT TO BE EFFECTIVE, THAT, IF THE EMPLOYEE  
26 DID NOT EXPRESS THAT THE AGREEMENT WAS UNACCEPTABLE,  
27 THAT THEN THE CONTRACT BECAME EFFECTIVE, EVEN IF THE  
28 EMPLOYEE DIDN'T SIGN?

09:36AM

1 A NO.

2 Q SO WHAT WAS YOUR UNDERSTANDING, AS OF JUNE 7,  
3 THE DATE OF THIS COMMUNICATION, AS TO WHAT MR. GUNDLACH  
4 WOULD DO IF HE FOUND THE TERMS OF THE EMPLOYMENT  
5 CONTRACT ACCEPTABLE?

09:36AM

6 A SIGN THE CONTRACT.

7 Q YOU KNOW, WE LOOKED AT SOME BOARD MINUTES LAST  
8 WEEK.

9 AND I WANT TO SHOW YOU A NEW EXHIBIT,  
10 EXHIBIT 5046, WHICH IS IN YOUR BINDER.

09:37AM

11 AND IT'S NOT IN EVIDENCE YET.

12 IT APPEARS TO BE AN E-MAIL EXCHANGE FROM  
13 JULY 13, 2007.

14 DO YOU RECOGNIZE THIS EXCHANGE, WHICH  
15 YOU'RE ON?

09:37AM

16 A YES, I DO.

17 MR. MADISON: I'D MOVE 5046.

18 MR. BRIAN: NO OBJECTION.

19 THE COURT: IT WILL BE ADMITTED.

20 (EXHIBIT 5046 ADMITTED.)+ 09:37AM

21

22

23 BY MR. MADISON:

24 Q WE SEE ON THE BOTTOM HERE, IT'S A ONE-PAGE  
25 EXHIBIT. ON THE BOTTOM, IT'S AN E-MAIL FROM  
26 JAMES UKROPINA TO YOURSELF, WITH A COPY TO  
27 MR. SONNEBORN AND MR. CAHILL.

09:37AM

28 WHO IS MR. UKROPINA?



1           A       HE WAS OUTSIDE DIRECTOR OF TCW AND CHAIR OF  
2 THE COMPENSATION COMPANY.

3           Q       HE SAYS IN THE FIRST PART:

4                   BOB, AT MONDAY'S TCW COMPENSATION  
5                   COMMITTEE MEETING, WE WILL BE  
6                   CONSIDERING THREE PROPOSED  
7                   EMPLOYMENT AGREEMENTS.

8                   LET ME STOP THERE.

9                   WAS IT YOUR UNDERSTANDING THAT AS OF  
10                  THIS POINT IN TIME, JULY 13TH, 2007, THE NEW EMPLOYMENT  
11                  CONTRACT WITH MR. GUNDLACH WAS STILL PROPOSED?

12          A       YES.

13          Q       THAT IS, IT HADN'T BEEN ENTERED INTO YET?

14          A       CORRECT.

15          Q       THEN IF WE GO TO 5048, WHICH IS A DOCUMENT IN  
16                  EVIDENCE, YOUR HONOR, MR. BRIAN ASKED YOU QUESTIONS  
17                  ABOUT THIS.

18                   THESE ARE THE MINUTES OF THE MEETING OF  
19                  THE COMPENSATION COMPANY FROM JULY 16, 2007.

20                   AND FROM THE FIRST PAGE, I THINK WE  
21                  ESTABLISHED LAST WEEK, YOU WERE NOT ON THE COMMITTEE,  
22                  BUT YOU ATTENDED THIS MEETING; IS THAT CORRECT?

23          A       CORRECT.

24          Q       IF WE GO OVER TO THE PAGE ENDING IN 5048-0005,  
25                  THERE IS LANGUAGE ABOUT RATIFICATION AND APPROVAL OF  
26                  EMPLOYMENT ARRANGEMENT OF JEFFREY GUNDLACH.

27                   DO YOU SEE THAT IN THE MIDDLE PART,  
28                  THOSE THREE BIG PARAGRAPHS IN THE MIDDLE?

09:37AM

09:37AM

09:38AM

09:38AM

09:38AM

1           A       YES.

2           Q       LAST WEEK, MR. BRIAN READ AND ASKED YOU ABOUT  
3 THE FIRST PARAGRAPH WHICH IS:

4                   RESOLVES, THAT THE COMMITTEE  
5                   CONFIRMS, RATIFIES, APPROVES THE  
6                   FIVE-YEAR EMPLOYMENT ARRANGEMENT,  
7                   WITH JEFFREY GUNDLACH COMMENCING ON  
8                   OR ABOUT JANUARY 1, 2007, ON  
9                   SUBSTANTIALLY THE TERMS PRESENTED  
10                  TO THIS COMMITTEE.

11           I WANT TO ASK YOU ABOUT THE NEXT PARAGRAPH,  
12 WHICH SAYS:

13                   RESOLVED FURTHER; THAT ANY OF THE  
14                   CHIEF EXECUTIVE OFFICER, THE  
15                   PRESIDENT, ANY EXECUTIVE VICE  
16                   PRESIDENT, THE GENERAL COUNSEL,  
17                   CHIEF FINANCIAL OFFICER, HEAD OF  
18                   HUMAN RESOURCES, DEFINED AS THE  
19                   AUTHORIZED OFFICERS, ARE, AND EACH  
20                   OF THEM INDIVIDUALLY HEREBY IS,  
21                   AUTHORIZED AND EMPOWERED TO EXECUTE  
22                   AND DELIVER ON BEHALF OF THE  
23                   COMPANY, AN EMPLOYMENT ARRANGEMENT  
24                   WITH JEFFREY GUNDLACH.

25           IT GOES ON. I WANT TO STOP THERE.

26                   WAS THIS PART OF THE RESOLUTION, THE  
27 ACTION OF THE COMPENSATION COMMITTEE?

28           A       YES.

09:39AM

09:39AM

09:39AM

09:39AM

09:39AM

1 Q AND WHEN IT SAYS THAT CERTAIN OFFICERS WERE  
2 AUTHORIZED TO EXECUTE AND DELIVER ON BEHALF OF THE  
3 COMPANY, WHAT DID YOU UNDERSTAND THAT TO REFER TO?

4 A THAT WE WERE ALLOWED TO SIGN THE CONTRACT.

5 Q WAS THERE ANY AUTHORIZATION OF ANY ORAL  
6 FIVE-YEAR EMPLOYMENT CONTRACT WITH MR. GUNDLACH, TO  
7 YOUR KNOWLEDGE, AS CEO?

09:40AM

8 MR. BRIAN: COULD I HAVE THAT QUESTION READ  
9 BACK?

10 (RECORD READ.) +

09:40AM

11  
12 THE WITNESS: NO.

13 BY MR. MADISON:

14 Q THE SENTENCE GOES ON TO SAY:

15 WITH SUCH CHANGES AS THE EXECUTING  
16 OFFICER DEEMS NECESSARY OR  
17 APPROPRIATE.

09:40AM

18 DID YOU UNDERSTAND THE COMMITTEE WAS  
19 AUTHORIZING THE OFFICERS, INCLUDING YOURSELF, INCLUDING  
20 YOURSELF AS CEO, TO MAKE ANY CHANGES AS YOU DEEM  
21 NECESSARY, GOING FORWARD, TO THE WRITTEN CONTRACT.

09:40AM

22 A YES.

23 Q IT SAYS, ALL TO BE CONCLUSIVELY EVIDENCED BY  
24 SUCH EXECUTION AND DELIVERY OF SUCH EMPLOYMENT  
25 ARRANGEMENT.

09:41AM

26 I'D ASK YOU AGAIN, WHAT DID THAT LAST  
27 CLAUSE REFER TO?

28 A THAT MEANS THAT WE WOULD -- THAT MEANT THAT WE

1 WOULD SIGN THE AGREEMENT.

2 Q YOU COULDN'T EXECUTE AND DELIVER AN ORAL  
3 AGREEMENT, COULD YOU, SIR?

4 A NO.

5 Q NOW, WE HEARD TESTIMONY THAT THE BOARD MEETING  
6 THE NEXT DAY, THERE WAS A REPORT ABOUT THE ACTION OF  
7 THE COMPENSATION COMMITTEE.

09:41AM

8 DO YOU RECALL WHETHER MR. GUNDLACH WAS  
9 PRESENT DURING THE JULY 17, 2007 BOARD MEETING?

10 A HE WAS NOT.

09:41AM

11 Q WAS IT UNUSUAL FOR MR. GUNDLACH, AS A MEMBER  
12 OF THE BOARD HIMSELF, AND AS THE CHIEF INVESTMENT  
13 OFFICER, TO NOT ATTEND MEETINGS OF THE BOARD OF  
14 DIRECTORS?

15 A IT WAS NOT PREFERRED, BUT IT HAPPENS ON  
16 OCCASION.

09:41AM

17 Q HOW MANY BOARD MEETINGS EACH YEAR DID TCW  
18 HAVE, DURING THE TIME YOU WERE THE CEO?

19 A THREE MEETINGS PER YEAR.

20 Q WAS THE CHIEF INVESTMENT OFFICER OF THE FIRM,  
21 THE ENTIRE FIRM EXPECTED TO ATTEND EACH OF THE THREE  
22 BOARD MEETINGS?

09:42AM

23 A YES.

24 Q DO YOU RECALL WHY MR. GUNDLACH DID NOT ATTEND  
25 THE JULY 2007 BOARD MEETING?

09:42AM

26 A NO, I DON'T.

27 Q IF YOU LOOK AT EXHIBIT 172, IT'S AN E-MAIL  
28 EXCHANGE BETWEEN AND YOU MR. GUNDLACH.

1 MR. MADISON: I'D MOVE 172 INTO EVIDENCE, YOUR  
2 HONOR.

3 MR. BRIAN: MAY I HAVE A MOMENT, PLEASE?

4 THE COURT: YES.

5 (PAUSE) +

09:42AM

6  
7 MR. BRIAN: BEYOND THE SCOPE, YOUR HONOR.

8 THE COURT: SUSTAINED.

9 BY MR. MADISON:

10 Q DO YOU RECALL MR. GUNDLACH MISSING OTHER BOARD  
11 MEETINGS, DURING THE TIME THAT YOU WERE CEO?

09:42AM

12 MR. BRIAN: BEYOND THE SCOPE, YOUR HONOR.

13 THE COURT: SUSTAINED.

14 BY MR. MADISON:

15 Q DO YOU RECALL DISCUSSING WITH MR. GUNDLACH,  
16 HIS ATTENDANCE AT BOARD MEETINGS?

09:42AM

17 MR. BRIAN: BEYOND THE SCOPE, YOUR HONOR.

18 THE COURT: SUSTAINED.

19 BY MR. MADISON:

20 Q NOW, YOU WERE SHOWN AN EXHIBIT, I BELIEVE LAST  
21 WEEK, WHICH IS EXHIBIT 124 -- WELL, BEFORE I GO TO  
22 THAT, LET ME JUST ASK YOU: DID THE COMPENSATION  
23 COMMITTEE EVER GET THAT WHICH THEY HAD AUTHORIZED, TO  
24 YOUR KNOWLEDGE?

09:43AM

25 DID THEY EVER GET EXECUTION AND DELIVERY  
26 OF THE WRITTEN EMPLOYMENT CONTRACT?

09:43AM

27 A NO.

28 Q TO THIS DAY, AS FAR AS YOU KNOW?

1           A       AS FAR AS I KNOW.

2           Q       NOW, LET ME GO TO 124, WHICH I BELIEVE IS IN  
3 EVIDENCE, AND YOU WERE ASKED ABOUT LAST WEEK.

4                    AND THIS IS AN E-MAIL EXCHANGE WITH YOU  
5 AND MR. GUNDLACH FROM JANUARY OF 2009.

09:43AM

6                    AND DO YOU RECALL MR. GUNDLACH HAD SAID,  
7 DOWN BELOW, WITH REGARD TO WHAT HE WANTED: CONTROL  
8 TODAY. VALUE TODAY. OWNERSHIP TODAY. INDEPENDENCE  
9 TODAY?

10                    WAS IT YOUR UNDERSTANDING, IN JANUARY OF  
11 2009, MR. GUNDLACH WANTED THOSE THINGS?

09:44AM

12           A       YES.

13           Q       HE COULD HAVE THOSE THINGS, IF HE WERE TO  
14 START HIS OWN FIRM --

15                    MR. BRIAN: OBJECTION, LEADING.

09:44AM

16                    THE COURT: SUSTAINED.

17 BY MR. MADISON:

18           Q       UP ABOVE, YOU RESPOND AND YOU TALK ABOUT:

19                    AS YOU KNOW, I HAVE TRIED THAT FOR  
20                    OVER A YEAR, AND I'VE HAD NO LUCK  
21                    WITH FOUR DIFFERENT LEADERS.

09:44AM

22                    WHO WERE YOU REFERRING TO THERE, IN THAT FIRST  
23 SENTENCE OF THE RESPONSE?

24           A       WE HAD BEEN DISCUSSING A NUMBER OF PROSPECTIVE  
25 ALTERNATIVES TO GET OWNERSHIP DOWN TO THE LEVEL OF TCW  
26 EMPLOYEES. AND IT WAS CLEAR, FROM THIS E-MAIL TO ME,  
27 THAT MR. GUNDLACH WANTED IT TO HAPPEN NOW.

09:44AM

28                    AND ONE OF THE PROBLEMS THAT WE HAD WAS

1 THAT SOCIÉTÉ GÉNÉRALE, OUR HUNDRED PERCENT SHAREHOLDER,  
2 CONTINUED TO HAVE LEADERSHIP CHANGES, AND SO THESE  
3 DISCUSSIONS HAD TO BE RESTARTED SEVERAL TIMES.

4 Q IF YOU LOOK AT EXHIBIT 5108, IT'S A LETTER  
5 FROM YOU.

09:45AM

6 THIS IS IN EVIDENCE, YOUR HONOR.

7 A LETTER FROM YOU, DATED JANUARY 26TH,  
8 2009.

9 MR. BRIAN WENT THROUGH SOME OF THIS LAST  
10 WEEK, SO I WON'T REPEAT THAT.

09:45AM

11 BUT DID THIS LETTER EXPRESS, IN TRUTH,  
12 HOW YOU FELT AT THE TIME THAT YOU WROTE THE LETTER?

13 A CERTAINLY.

14 THE COURT: WAIT, WAIT. GO AHEAD.

15 BY MR. MADISON:

09:45AM

16 Q DID YOU VIEW THE ANNOUNCEMENT BY SOC-GEN THAT  
17 THEY WERE CONSIDERING AN IPO OF TCW AS A POSITIVE SIGN,  
18 FOR THE GOALS THAT YOU HAD AT THE TIME, OR A NEGATIVE  
19 SIGN?

20 A VERY POSITIVE.

09:45AM

21 Q WHY?

22 A BECAUSE FINALLY WE HAD A COMMITMENT FROM THEM  
23 TO SPIN OUT TCW SO THAT IT WOULD BE AN INDEPENDENT  
24 COMPANY ONCE AGAIN.

25 Q DID YOU DISCUSS THAT WITH MR. GUNDLACH, AS IT  
26 MIGHT RELATE TO HIS DESIRE TO HAVE OWNERSHIP, AND  
27 CONTROL, AND THE REST?

09:45AM

28 A YES.

1 Q AND DID MR. GUNDLACH EXPRESS TO YOU THAT HE  
2 AGREED WITH YOU THAT THIS WAS A POSITIVE SIGN?

3 A NO.

4 Q WHAT DID HE EXPRESS TO YOU ABOUT THAT?

5 A AT THAT TIME, HE EXPRESSED THAT THIS WAS A  
6 STATEMENT FROM SOCIÉTÉ GÉNÉRALE, OUR SHAREHOLDER, THAT  
7 THEY NO LONGER WANTED TO OWN TCW, AND THAT THAT PUT US  
8 IN THE PRECARIOUS POSITION THAT WE MIGHT BE SOLD AT ANY  
9 TIME.

09:46AM

10 Q WHAT, IF ANYTHING, DID YOU DO, IN RESPONSE TO  
11 THOSE COMMENTS BY MR. GUNDLACH?

09:46AM

12 A I THOUGHT HE HAD A GOOD POINT. AND SO I  
13 NEGOTIATED A RIGHT OF FIRST REFUSAL ON BEHALF OF THE  
14 MANAGEMENT AND EMPLOYEES OF TCW, SO THAT THE FIRM COULD  
15 NOT BE SOLD WITHOUT FIRST OUR GETTING A CHANCE TO BUY  
16 IT.

09:46AM

17 Q SO WHAT IS A RIGHT OF FIRST REFUSAL?

18 A IT WAS AN AGREEMENT THAT IF THERE WERE EVER AN  
19 INTENTION TO SELL THE COMPANY, AND IN FACT, AN OFFER TO  
20 BUY THE COMPANY, THAT THOSE SAME TERMS WOULD BE  
21 EXTENDED TO US, TO BE IN FIRST POSITION TO BUY IT,  
22 BEFORE ANY THIRD PARTY.

09:46AM

23 Q DID YOU COMMUNICATE THAT TO MR. GUNDLACH, THAT  
24 YOU HAD NEGOTIATED THAT?

25 A YES, I DID.

09:47AM

26 Q I'D LIKE YOU TO LOOK AT EXHIBIT 133, WHICH IS  
27 AN E-MAIL EXCHANGE INVOLVING YOURSELF, MR. GUNDLACH,  
28 AND THEN AT THE END, MS. VANEVERY.



1 MR. MADISON: I'D MOVE 133, YOUR HONOR.

2 THE COURT: ANY OBJECTION?

3 MR. BRIAN: I'M JUST LOOKING AT IT, YOUR  
4 HONOR.

5 THE COURT: ALL RIGHT. 09:47AM

6 (PAUSE) +

7

8 MR. BRIAN: NO OBJECTION.

9 THE COURT: IT WILL BE ADMITTED.

10

09:47AM

11 (EXHIBIT 133 ADMITTED.)+

12

13 BY MR. MADISON:

14 Q IF WE CAN DISPLAY THAT. IT'S SEVERAL PAGES.

15 LET'S START AT THE THIRD PAGE. 09:47AM

16 AND LIKE MANY E-MAIL EXCHANGES, I  
17 BELIEVE, MR. BEYER, THIS ONE WORKS BACK FORWARD, IN  
18 TERMS OF CHRONOLOGY.

19 GO TO THE SECOND PAGE 133-2. AT THE  
20 BOTTOM, THERE'S AN E-MAIL FROM YOU TO MR. GUNDLACH. 09:47AM

21 AND IT STARTS, YOU'RE SAYING IF YOU MEAN  
22 IT'S AGGRAVATING TO YOU, THEN LET'S TALK ABOUT IT.

23 ACTUALLY, IF WE GO OVER TO THE THIRD  
24 PAGE -- I APOLOGIZE. THE FIRST E-MAIL IS ACTUALLY ON  
25 THE THIRD PAGE. 09:48AM

26 MR. GUNDLACH IS WRITING TO YOU ON  
27 JANUARY 31. HE SAYS:

28 JUST A HEADS-UP, THERE SEEMS TO BE

1 AN ERROR ON THE TCW HOME PAGE. IT  
2 SHOWS YOUR TITLE AS PRESIDENT AND  
3 CEO. ONE WOULD THINK THAT SIMPLE  
4 ERRORS LIKE THIS ERRONEOUS  
5 PRESIDENT TITLE WOULDN'T OCCUR; BUT  
6 GOD KNOWS, I'VE SEEN SIMILAR ERRORS  
7 DURING MY ROLES HERE OVER TIME. IT  
8 IS A BIT AGGRAVATING, THOUGH,  
9 RIGHT?

09:48AM

10 DO YOU RECALL MR. GUNDLACH RAISING THAT WITH  
11 YOU?

09:48AM

12 A YES, I DO.

13 Q AT THAT TIME, WERE YOU THE -- SHOWN ON THE  
14 WEBSITE OF THE FIRM AS THE PRESIDENT AND CEO?

15 A I LEARNED THAT I WAS.

09:48AM

16 Q DID YOU LEARN WHEN YOU HAD BEEN MADE PRESIDENT  
17 AS WELL AS CEO?

18 A I'M SORRY?

19 Q I DIDN'T ASK THAT VERY WELL.

20 THE QUESTION IS, WHY WERE YOU SHOWN AS  
21 THE PRESIDENT AND CEO?

09:48AM

22 A I LATER FOUND OUT THAT THE LEGAL DEPARTMENT  
23 HAD DETERMINED THAT WE NEEDED A PRESIDENT FOR CORPORATE  
24 LAW REASONS, AND AS I WAS CEO, AND WE NO LONGER HAD A  
25 PRESIDENT, DECIDED TO AWARD THAT TITLE TO ME, AS WELL.

09:49AM

26 Q WHO HAD BEEN THE PRESIDENT PRIOR TO THAT TIME,  
27 OR THE LAST PRESIDENT BEFORE YOU?

28 A MR. SONNEBORN.

1 Q SO WHEN DID MR. SONNEBORN LEAVE?

2 A HE LEFT IN THE FALL OF 2008.

3 Q SO THEN IF WE GO OVER TO THE SECOND PAGE, YOU  
4 RESPOND:

5 IF YOU MEAN IT'S AGGRAVATING TO  
6 YOU, THEN LET'S TALK ABOUT THAT. I  
7 DID NOT KNOW IT WAS ON THE HOME  
8 PAGE, AND I HAD MENTIONED IT  
9 SHOULDN'T BE ADVERTISED AS SUCH.

09:49AM

10 WHY WOULD I? BUT I DID SEE IT ON  
11 THE FINAL VERSION OF THE LETTER.

09:49AM

12 AND YOU GO ON.

13 YOU SAY: I THOUGHT IT WAS STUPID

14 AND ALL.

15 WERE THOSE YOUR FEELINGS TRUTHFULLY EXPRESSED,

09:49AM

16 AT THAT POINT?

17 A YES.

18 Q PAGE 3, AT THE END OF YOUR E-MAIL YOU SAY:

19 JEFFREY, I HAVE REACHED OUT MANY  
20 TIMES AND TOLD YOU I WANT TO BE A  
21 TEAM PLAYER, AND HAVE A SUC -- HAVE  
22 US SUCCEED TOGETHER, ALONG WITH  
23 HUNDREDS OF OTHER PEOPLE AT TCW.

09:50AM

24 ALL OF MY ACTIONS WITH REGARD TO  
25 WHAT YOU HAVE NEEDED FROM TCW HAVE  
26 BACKED THAT UP. WE SHOULD FIND A  
27 TIME TO REALLY TALK THROUGH HOW WE  
28 ARE GOING TO GET CLOSE OR EVEN

09:50AM

1 EXCEED THE POTENTIAL THAT THIS NEW  
2 STRUCTURE AND OPPORTUNITY  
3 NEGOTIATED WITH PARIS HAS AFFORDED  
4 US. LET ME KNOW IF YOU WANT TO  
5 PURSUE THAT.

09:50AM

6 AND WAS THAT TRULY HOW YOU FELT AT THAT TIME?

7 A YES.

8 Q HAD YOU TRIED TO REACH OUT TO MR. GUNDLACH  
9 DURING YOUR TIME AT CEO?

09:50AM

10 A MANY TIMES.

11 Q DID YOU FEEL THAT MR. GUNDLACH HAD MET YOU  
12 HALFWAY, TO TRY TO WORK COOPERATIVELY FOR THE BENEFIT  
13 OF ALL?

14 A ON OCCASION, YES.

15 Q AT THIS POINT IN TIME, DID HE ACTUALLY COME  
16 BACK TO YOU AND TRY TO WORK TOGETHER?

09:50AM

17 A NO.

18 HIS INTERPRETATION OF THIS SITUATION WAS  
19 VERY DIFFERENT FROM MINE.

20 Q THE SITUATION BEING WHAT?

09:50AM

21 A BEING THE OPPORTUNITY TO FINALLY HAVE OUR  
22 PARENT SHAREHOLDER SPIN US OFF INTO AN INDEPENDENT  
23 COMPANY.

24 Q AND SO MR. GUNDLACH THEN RESPONDS TO YOUR  
25 E-MAIL, IF WE LOOK AT THE SECOND PAGE THERE AT THE TOP.

09:51AM

26 HE GIVES HIS EXPLANATION OF WHY HE FELT  
27 IT WAS AGGRAVATING AND ALL.

28 DO YOU RECALL THAT?

1 A YES.

2 Q AND HE DOES SAY, IN THE START OF THE THIRD  
3 PARAGRAPH:

4 I DO NOT SHARE YOUR STATED  
5 ENTHUSIASM FOR THE NEW TCW  
6 STRUCTURE VIS-A-VIS SG AND NEWCO.

09:51AM

7 LET ME GO TO THE FIRST PAGE. THERE'S AN  
8 E-MAIL FROM YOU TO MR. GUNDLACH IN THE SAME CHAIN, FROM  
9 FEBRUARY 1ST.

10 AT THE END OF THE FIRST PARAGRAPH, YOU  
11 STATE:

09:51AM

12 LAST WEEK, AND BASED ON OUR  
13 CONVERSATION, I WAS ALSO ABLE TO  
14 NEGOTIATE A RIGHT OF FIRST REFUSAL  
15 FOR US, IN THE EVENT SG DECIDES TO  
16 SELL ITS INTEREST IN TCW BEFORE A  
17 COORDINATED EXIT.

09:52AM

18 WAS THAT WHAT YOU WERE REFERRING TO A BIT AGO,  
19 WHEN YOU TOLD US ABOUT THAT.

20 A YES.

09:52AM

21 Q WAS THAT TRUE AT THE TIME YOU MENTIONED IT TO  
22 MR. GUNDLACH?

23 A YES.

24 Q DO YOU RECALL RECEIVING -- WE SEE AT THE TOP,  
25 HE FORWARDS THIS ON TO MS. VANEVERY AND SAYS, BEYER'S  
26 RESPONSE.

09:52AM

27 DO YOU RECALL WHETHER OR NOT  
28 MR. GUNDLACH EVER RESPONDED TO THIS DISCLOSURE BY YOU

1 ABOUT THE RIGHT OF FIRST REFUSAL?

2 A I DO NOT.

3 Q NOW, WE SAW EXHIBIT 142 LAST WEEK. IT'S AN  
4 E-MAIL EXCHANGE INVOLVING, IN PARTS, YOURSELF AND  
5 MR. MUSTIER.

09:52AM

6 WE SEE YOUR NAME AT THE BOTTOM.

7 AND DO YOU RECALL THIS EXCHANGE ABOUT  
8 WHETHER OR NOT MR. MUSTIER -- MR. GUNDLACH -- WHETHER  
9 IT WOULD BE APPROPRIATE FOR MR. GUNDLACH TO MEET WITH  
10 MR. MUSTIER?

09:52AM

11 A YES, I DO.

12 Q WERE YOU OKAY WITH THAT?

13 A YES.

14 Q AND THEN, IT SAYS:

15 THIS IS -- THAT IS FINE WITH ME,  
16 ESPECIALLY SINCE HE WILL BE HERE IN  
17 A COUPLE OF WEEKS. BUT I DO NOT  
18 MIND IF YOU SPEAK TO HIM DIRECTLY.

09:53AM

19 DO YOU RECALL THAT THERE WAS A MEETING  
20 SCHEDULED IN EARLY MARCH, AT WHICH MR. MUSTIER WOULD BE  
21 PRESENT?

09:53AM

22 A YES.

23 Q WHAT WAS THAT EVENT?

24 A THAT WAS OUR OFF-SITE SENIOR OFFICERS'  
25 MEETING, WHICH WE HAD ALMOST ANNUALLY.

09:53AM

26 Q WHERE WAS THAT PARTICULAR OFF-SITE?

27 A THIS ONE, 2009, WAS HELD IN WESTLAKE VILLAGE.

28 Q DID YOU ATTEND?

1 A YES.

2 Q DID MR. GUNDLACH ATTEND?

3 A YES.

4 Q AND OTHER SENIORS AT TCW?

5 A YES.

09:53AM

6 Q GO TO EXHIBIT 1940, WHICH IS IN EVIDENCE.

7 I BELIEVE YOU MAY HAVE BEEN ASKED ABOUT  
8 THIS, AS WELL.

9 IT'S AN E-MAIL EXCHANGE WITH YOU AND  
10 MR. MUSTIER FROM FEBRUARY 27, NOW, OF 2009.

09:53AM

11 YOU SAY:

12 JEAN-PIERRE, I WANT TO SUMMARIZE MY  
13 MEETING TODAY, SO WE DON'T NEED TO  
14 WASTE TIME TOMORROW ON OUR CALL.

15 THEN YOU GO ON TO DISCUSS A DISCUSSION -- IT  
16 LOOKS LIKE YOU HAD HAD WITH MR. THOMAS, MS. JAFFEE,  
17 MR. ATTANASIO AND MR. GUNDLACH.

09:54AM

18 IS THAT THE CASE?

19 A YES.

20 Q AND WAS THIS, YOU KNOW, ALL OR PART OF THE  
21 GROUP THAT YOU WERE IN DISCUSSIONS WITH IN 2009 ABOUT  
22 THE FUTURE DIRECTION OF TCW?

09:54AM

23 A YES.

24 Q AND WHAT DID YOU UNDERSTAND THE GROUP,  
25 INCLUDING MR. GUNDLACH, TO WANT AT THAT TIME?

09:54AM

26 A THAT'S A DIFFICULT QUESTION TO ANSWER, BECAUSE  
27 THE MEMBERS OF THE GROUP DIDN'T NECESSARILY WANT THE  
28 SAME THING.

1 Q WAS THAT A CONCLUSION YOU TOOK AWAY FROM YOUR  
2 DISCUSSIONS WITH THE GROUP?

3 A YES.

4 Q IF WE LOOK AT THE FOURTH PARAGRAPH, IT SAYS:

5 THE GROUP WANTS TO HAVE A  
6 COLLECTIVE MEETING WITH YOU WHEN  
7 YOU ARE IN LOS ANGELES FOR THE  
8 LEADERSHIP CONFERENCE NEXT WEEK.

9 THEN YOU GO ON TO TALK ABOUT THAT.

10 DID THAT MEETING, THE COLLECTIVE  
11 MEETING, WITH A GROUP FROM TCW AND MR. MUSTIER,  
12 ACTUALLY OCCUR?

13 A YES, IT DID.

14 Q AND WHO ATTENDED THAT MEETING?

15 A THAT WAS THIS SAME GROUP.

16 AND AS I STATED IN MY PREVIOUS  
17 TESTIMONY, I DON'T REMEMBER IF MR. CHAPUS WAS THERE OR  
18 NOT.

19 Q AND COULD YOU TELL US WHAT WAS SAID, IN  
20 SUBSTANCE, AT THAT MEETING AT WHICH MR. GUNDLACH AND  
21 MR. MUSTIER WERE BOTH IN ATTENDANCE?

22 A WE TALKED ABOUT A VARIETY OF ISSUES AROUND  
23 THIS SPINOUT OPPORTUNITY, AROUND THE POTENTIAL AWARD OF  
24 EQUITY INTEREST, AROUND THE VALUATION OF THE COMPANY,  
25 AND AROUND EVERYBODY'S PLAN B OPTIONS.

26 Q WAS THERE ANY DISCUSSION IN THAT MEETING WITH  
27 MR. MUSTIER ABOUT A PURCHASE OF TCW BY SOME OR ALL THE  
28 GROUP?



1 A YES.

2 Q WHO DO YOU RECALL ADDRESSED THAT?

3 A I BELIEVE IT WAS ADDRESSED BY EVERYBODY THERE  
4 EXCEPT MS. JAFFEE.

5 Q WHAT DO YOU RECALL BEING SAID IN THAT REGARD? 09:56AM

6 A THERE WAS AN INTEREST IN BUYING THE COMPANY AT  
7 A SIGNIFICANTLY LOWER VALUATION THAN THE VALUATION THAT  
8 SOCIÉTÉ GÉNÉRALE WAS WILLING TO ENTERTAIN, AS IT  
9 RELATED TO THE OPTION PROGRAM.

10 Q WELL, DO YOU RECALL WHAT THE VALUATION THAT 09:56AM  
11 SOC-GEN HAD AT THAT TIME?

12 A I RECALL THAT OUR NEW OPTIONS WERE GOING TO BE  
13 ISSUED AT \$999 MILLION, STOCK PRICE.

14 YES.

15 Q SO DID THAT INFORM YOU ABOUT WHAT SOC-GEN'S 09:56AM  
16 VALUATION OF THE FIRM WAS?

17 A YES, IT DID.

18 Q WHAT WAS THAT?

19 A WELL, THEY LET US KNOW THAT THEY ACTUALLY HAD  
20 THE FIRM RECORDED ON THEIR BOOKS AT A HIGHER VALUATION, 09:56AM  
21 IN EXCESS OF A BILLION DOLLARS, BUT THAT THEY WERE  
22 WILLING TO ENTER INTO AN OPTION PROGRAM WITH US AT A  
23 SLIGHT DISCOUNT.

24 Q THAT BEING THE \$999 MILLION FIGURE?

25 A YES. 09:57AM

26 Q THERE WAS NO REQUIREMENT THAT YOU ARE AWARE  
27 OF, AS THE CEO OF TCW, FOR SOC-GEN TO SELL AT ANY  
28 PRICE, WAS THERE?

1 A NO.

2 Q SO WHAT WAS SAID IN THE MEETING?

3 DO YOU RECALL WHETHER A PRICE WAS  
4 ACTUALLY PUT OUT ON THE TABLE BY ONE OF THE ATTENDEES?

5 A I DO.

09:57AM

6 Q WHAT PRICE WAS THAT, IF YOU RECALL?

7 A I BELIEVE THAT THAT WAS AROUND \$300 MILLION.

8 Q WHAT WAS MR. MUSTIER'S RESPONSE TO THAT?

9 A HIS RESPONSE WAS SOMEWHAT INCREDULOUS.

10 Q DID MR. GUNDLACH SAY ANYTHING IN THAT MEETING  
11 WITH MR. MUSTIER ABOUT WHAT HE INTENDED TO DO,  
12 DEPENDING ON THE OUTCOME OF ALL THESE DISCUSSIONS?

09:57AM

13 A YES.

14 Q WHAT DID MR. GUNDLACH SAY?

15 A HE OFFERED THAT HE WAS VERY IMPORTANT TO TCW,  
16 AND THAT HE COULD GO SOMEWHERE ELSE, WITH HIS ENTIRE  
17 TEAM.

09:58AM

18 Q WHEN HE SAID THAT, WAS IT IN YOUR MIND THAT HE  
19 COULDN'T DO THAT, BECAUSE HE HAD A CONTRACT TO STAY  
20 WITH TCW THROUGH THE END OF 2011?

09:58AM

21 MR. BRIAN: OBJECTION. RELEVANCE.

22 THE COURT: OVERRULED.

23 THE WITNESS: NO.

24 BY MR. MADISON:

25 Q WHY NOT?

09:58AM

26 A BECAUSE HE DIDN'T HAVE A CONTRACT.

27 Q WHAT DID MR. MUSTIER SAY, IF ANYTHING, WHEN  
28 MR. GUNDLACH SAID THAT HE COULD LEAVE AND TAKE HIS

1 ENTIRE GROUP?

2 A I DON'T REMEMBER HIS EXACT WORDS.

3 BUT THEY WERE SOMETHING TO THE EFFECT  
4 THAT WE WOULD DEAL WITH THAT, IF THAT'S WHAT HE CHOSE  
5 TO DO.

09:58AM

6 Q NOW, YOU TOLD US LAST WEEK THAT MR. -- YOU AND  
7 MR. GUNDLACH HAD A DISCUSSION ABOUT WAMCO. AND I  
8 BELIEVE YOU TESTIFIED IT WAS SOMETIME IN MAY OF 2009?

9 A CORRECT.

10 Q WHEN YOU GOT BACK FROM YOUR BUSINESS TRIP TO  
11 THE MIDDLE EAST, DID MR. GUNDLACH EVER COME BACK TO YOU  
12 AND TELL YOU HE WAS, IN FACT, IN SERIOUS DISCUSSIONS  
13 WITH WAMCO?

09:59AM

14 A NO, HE DIDN'T.

15 Q DID HE EVER BRING THE TOPIC UP AGAIN TO YOU?

09:59AM

16 A NO.

17 Q AND BASED ON THE CONVERSATION THAT YOU'D HAD  
18 WITH MR. GUNDLACH, WHAT, IF ANYTHING, DID YOU  
19 UNDERSTAND MR. GUNDLACH WOULD DO, VIS-A-VIS YOU AND  
20 TCW, IF HE WERE TO HAVE A SERIOUS CONSIDERATION?

09:59AM

21 A WELL, AS I STATED, I WAS HOPEFUL HE WOULD COME  
22 TALK TO ME ABOUT THAT.

23 Q NOW, DO YOU RECALL THAT FROM TIME TO TIME, YOU  
24 AND MR. GUNDLACH WOULD DISCUSS DIFFERENT STATEMENTS  
25 THAT HE HAD MADE?

09:59AM

26 MR. BRIAN: OBJECTION. VAGUE.

27 THE COURT: SUSTAINED.

28 ///

1 BY MR. MADISON:

2 Q DIFFERENT PUBLIC STATEMENTS IN THE NATURE OF  
3 INVESTMENT CALLS, OR STATEMENTS THAT WERE MADE AT  
4 CONFERENCES AND THINGS --

5 A YES.

09:59AM

6 Q THINGS LIKE THAT?

7 IF I COULD HAVE ONE MOMENT, IF I COULD.

8 (PAUSE) +

9

10 BY MR. MADISON:

10:00AM

11 Q LET ME ASK YOU TO LOOK IN YOUR BINDER AT  
12 EXHIBIT 1269.

13 DO YOU RECALL AN OCCASION WHEN YOU  
14 COMMUNICATED WITH MR. ATTANASIO, AND THEN WITH  
15 MR. GUNDLACH, ABOUT STATEMENTS THAT MR. GUNDLACH MADE  
16 ABOUT BANK DEBT?

10:00AM

17 MR. BRIAN: BEYOND THE SCOPE, YOUR HONOR.

18 THE COURT: SUSTAINED.

19 BY MR. MADISON:

20 Q LET ME ASK YOU TO LOOK AT 180, AN E-MAIL  
21 EXCHANGE BETWEEN YOU AND MR. GUNDLACH FROM APRIL OF  
22 2009.

10:00AM

23 MR. MADISON: I'D MOVE 180. IT IS AN EXCHANGE  
24 WITH MR. GUNDLACH.

25 MR. BRIAN: BEYOND THE SCOPE, YOUR HONOR.

10:01AM

26 THE COURT: SUSTAINED.

27 BY MR. MADISON:

28 Q YES OR NO, DO YOU RECALL HAVING CONVERSATIONS

1 WITH MR. GUNDLACH ABOUT STATEMENTS THAT MR. GUNDLACH  
2 HAD MADE THAT OTHER PORTFOLIO MANAGERS FOUND  
3 IRRITATING?

4 MR. BRIAN: BEYOND THE SCOPE.

5 THE COURT: SUSTAINED.

10:01AM

6 BY MR. MADISON:

7 Q LET ME ASK YOU TO LOOK AT EXHIBIT 5117, WHICH  
8 IS IN EVIDENCE. AND MR. BRIAN ASKED YOU ABOUT THIS  
9 LAST WEEK.

10 I WANT TO FOCUS DOWN ON THE BOTTOM HALF  
11 THERE. IT'S FROM MR. MUSTIER TO YOU. I BELIEVE THAT'S  
12 FROM FEBRUARY OF 2009.

10:01AM

13 IT SAYS:

14 BOB, FOLLOWING OUR CALL, HERE'S MY  
15 STATE OF MIND. ONE, I FIRST WANT  
16 TO REITERATE THAT IT WOULD BE BEST  
17 FOR TCW, AND FOR SG, THAT YOU STAY  
18 IN YOUR FUNCTION OF CEO OF TCW.

10:02AM

19 WAS THAT WHAT YOU UNDERSTOOD MR. MUSTIER'S TO  
20 BE, RIGHT THROUGH THE TIME THAT YOU MADE THE DECISION  
21 TO STEP DOWN?

10:02AM

22 A YES.

23 Q AND THEN HE SAYS:

24 I UNDERSTAND YOUR FEELINGS, AND I  
25 UNDERSTAND YOU MIGHT WANT TO CHANGE  
26 FROM MANAGING SOME OF THE DIFFICULT  
27 GUYS OF TCW, J. GUNDLACH -- YOU  
28 MISPELLED THE NAME -- BUT GUNDLACH

10:02AM

1                   AND COMPANY.

2                   DID YOU DISCUSS THAT WITH MR. MUSTIER, THE  
3 DIFFICULTY MANAGING MR. GUNDLACH.

4           A        YES.

5           Q        WAS THAT DIFFICULTY A FACTOR IN YOUR DECISION  
6 TO STEP DOWN AS CEO OF TCW?

10:02AM

7           A        IT WAS ONE OF THE FACTORS.

8           Q        WHEN YOU DID STEP DOWN, AND MR. STERN CAME IN,  
9 DID YOU TALK TO MR. STERN ABOUT MR. GUNDLACH?

10          A        YES.

10:02AM

11          Q        WHAT DID YOU TELL MR. STERN?

12                   MR. BRIAN:  OBJECTION.  HEARSAY, BEYOND THE  
13 SCOPE.

14                   THE COURT:  SUSTAINED.

15                   BY MR. MADISON:

10:03AM

16          Q        UP UNTIL THE TIME THAT YOU STEPPED DOWN --  
17 WELL, LET ME ASK YOU:

18                               YOU'VE TOLD US MR. SONNEBORN STEPPED  
19 DOWN IN THE FALL OF 2008.  IS THAT YOUR RECOLLECTION?

20          A        YES.

10:03AM

21          Q        AND THEN YOU WERE NOW STEPPING DOWN IN, AT THE  
22 END OF JUNE 2009?

23          A        CORRECT.

24          Q        SO, I MEAN, YOU KNOW IN THIS LAWSUIT,  
25 MR. GUNDLACH HAS CLAIMED THAT HE HAD A HANDSHAKE  
26 AGREEMENT ON A FIVE-YEAR EMPLOYMENT TERM WITH YOU AND  
27 MR. SONNEBORN?

10:03AM

28          A        YES.

1 Q AT ANY TIME IN JUNE OR MAY OF 2009, AFTER IT  
2 WAS ANNOUNCED THAT YOU WOULD BE LEAVING, DID  
3 MR. GUNDLACH EVER COME TO YOU AND SAY, YOU KNOW, NOW  
4 THAT SONNEBORN'S GONE, AND YOU'RE LEAVING, YOU KNOW WE  
5 NEED TO HAVE SOME RECORD OF THIS FIVE-YEAR CONTRACT  
6 THAT WE HAVE?

10:04AM

7 A NO.

8 Q DID HE EVER BRING THAT UP AT ALL, TO YOUR  
9 KNOWLEDGE?

10:04AM

10 A NO.

11 MR. MADISON: NOTHING FURTHER.

12 THE COURT: ALL RIGHT.

13 REDIRECT, MR. BRIAN?

14 MR. BRIAN: LITTLE HOUSEKEEPING, YOUR HONOR.

10:05AM

15  
16 REDIRECT EXAMINATION +

17 BY MR. BRIAN:

18 Q I'LL HAVE YOU LOOK AT EXHIBIT 63.

19 DENNIS WOULD YOU PUT THAT UP, PLEASE.

20 I THINK MR. MADISON DREW YOUR ATTENTION  
21 TO MR. SONNEBORN'S E-MAIL.

10:05AM

22 IN THE MIDDLE IT SAYS: NO CONTRACT YET?

23 A YES.

24 Q I WANT TO DRAW YOUR ATTENTION TO THE E-MAIL  
25 BELOW THAT. DO YOU SEE THAT?

10:05AM

26 A YES.

27 Q AND MR. SULLIVAN WROTE TO MR. SONNEBORN,  
28 COPIED TO THE GENTLEMEN THERE, AND FORWARDED TO YOU:

1 GUNDLACH SAYS WE HAVE A HANDSHAKE  
2 AGREEMENT FOR NEW DEAL?

3 THAT'S WHAT HE WROTE, DID HE NOT?

4 A YES.

5 Q YOU'VE BEEN IN THE BUSINESS WORLD FOR WHAT, 30  
6 YEARS, 35 YEARS?

10:05AM

7 A CLOSE.

8 Q AND IN THE BUSINESS WORLD, YOU HAVE COME TO  
9 UNDERSTAND, HAVE YOU NOT, THAT CONTRACTS CAN BE FORMED  
10 ORALLY, RIGHT?

10:05AM

11 MR. MADISON: OBJECTION, OVERBROAD.

12 THE COURT: OVERRULED.

13 BY MR. BRIAN:

14 Q ISN'T THAT YOUR UNDERSTANDING, YOU CAN HAVE AN  
15 ORAL CONTRACT, BINDING ON BOTH PARTIES?

10:06AM

16 A I HAVE HEARD THAT.

17 Q OKAY.

18 AND YOU INDICATED AT THE OUTSET OF YOUR  
19 TESTIMONY TODAY THAT YOU'RE NO LONGER AT TCW; IS THAT  
20 RIGHT?

10:06AM

21 A CORRECT.

22 Q YOU HAD YOUR DEPOSITION TAKEN IN THIS CASE,  
23 DID YOU NOT?

24 A YES.

25 Q WHO WERE YOU REPRESENTED BY?

10:06AM

26 A I WAS REPRESENTED BY TCW COUNSEL.

27 Q AND YOU MET WITH TCW'S COUNSEL TO PREPARE FOR  
28 YOUR TESTIMONY LAST THURSDAY, AND AGAIN FOR YOUR



1 TESTIMONY TODAY, RIGHT?

2 A YES.

3 Q YOU TESTIFIED LAST WEEK, I THINK AGAIN TODAY,  
4 THAT IT'S YOUR UNDERSTANDING THAT YOU AGREED, IN 2007,  
5 TO A NEW COMPENSATION STRUCTURE WHICH SATISFIED  
6 MR. GUNDLACH'S DESIRE TO REDISTRIBUTE THE COMPENSATION  
7 WITHIN HIS GROUP; IS THAT RIGHT?

10:06AM

8 A YES.

9 Q TAKE A LOOK AT EXHIBIT 5036.

10 WE CAN PUT THAT UP, DENNIS. IT'S IN  
11 EVIDENCE.

10:07AM

12 THIS IS YOUR E-MAIL -- IF WE CAN  
13 HIGHLIGHT THE FIRST TWO LINES.

14 THIS IS YOUR E-MAIL TO MR. GUNDLACH ON  
15 MAY 1ST, 2007, AFTER YOU'VE MET WITH HIM DIRECTLY TO  
16 DISCUSS THE NEW DEAL, IS IT NOT?

10:07AM

17 A YES.

18 Q AND YOU STATED THERE:

19 I JUST WANT YOU TO KNOW HOW GOOD I  
20 FEEL ABOUT THE NEW DEAL, ESPECIALLY  
21 YOUR APPROACH TO ITS PRESENTATION,  
22 AND YOUR REALISTIC AND CONSIDERATE  
23 WAY OF TRYING TO MAKE IT A WIN/WIN.

10:07AM

24 THAT'S WHAT YOU WROTE, DID YOU NOT?

25 A YES.

10:07AM

26 Q SO WHEN YOU SAID IT WAS A WIN/WIN, YOU WERE  
27 SAYING TO MR. GUNDLACH THAT THIS NEW DEAL WAS  
28 BENEFICIAL, NOT JUST TO HIS DESIRE, TO REDISTRIBUTE,

1 BUT BENEFICIAL TO TCW, CORRECT?

2 A YES.

3 Q TAKE A LOOK AT 5048.

4 YOU CAN PUT THAT UP, DENNIS.

5 THESE ARE THE MINUTES OF THE  
6 COMPENSATION COMMITTEE MEETING IN JULY OF 2007 YOU  
7 ATTENDED, ARE THEY NOT?

10:08AM

8 A YES.

9 Q IF WE COULD TURN TO PAGE 4.

10 DENNIS, IF YOU COULD PUT THAT UP PLEASE.

10:08AM

11 NOW, FIRST OF ALL, ROMAN NUMERAL III,  
12 WHAT DOES IT SAY RIGHT AFTER ROMAN NUMERAL III?

13 A EMPLOYMENT AGREEMENTS FOR JEFFREY GUNDLACH,  
14 LOUIS LUCIDO AND ROLAND HO.

15 Q THANK YOU.

10:08AM

16 IN THE FIRST TWO PARAGRAPHS OF THESE  
17 MINUTES, THEY RECORD WHAT MR. SONNEBORN SAID TO THE  
18 COMMITTEE ABOUT HOW THIS AGREEMENT WAS BENEFICIAL TO  
19 TCW, RIGHT?

20 A I'M SORRY. COULD YOU RESTATE THE QUESTION?

10:09AM

21 Q I'LL REFRAME. IT WAS A BAD QUESTION. I  
22 APOLOGIZE.

23 LET'S TAKE A LOOK AT THE SECOND  
24 PARAGRAPH.

25 ENLARGE THAT, DENNIS.

10:09AM

26 DO YOU SEE, ABOUT EIGHT LINES DOWN,  
27 WHERE IT STATES THAT MR. SONNEBORN NOTED THAT:

28 THE EXPENSE OF INCREASED HIRING HAS

1                   NOW BEEN TRANSFERRED TO THE M.B.S.,  
2                   CMBS GROUP, BECAUSE THEY WILL BEAR  
3                   100 PERCENT OF THE COMPENSATION  
4                   EXPENSE.

5                   DO YOU SEE THAT?

10:09AM

6           A        YES.

7           Q        THAT WAS ONE OF THE WAYS IT WAS A WIN/WIN FOR  
8           TCW, CORRECT?

9           A        YES.

10          Q        NOW, I THINK YOU TESTIFIED LAST WEEK, AND  
11          AGAIN TODAY, THAT THE ONLY AGREEMENT REACHED WAS WITH  
12          RESPECT TO THE NEW FEE SHARING ARRANGEMENT; IS THAT  
13          RIGHT?

10:09AM

14          A        I DON'T KNOW THOSE WERE MY WORDS.

15          Q        IS THAT YOUR TESTIMONY?

10:10AM

16          A        YES.

17          Q        YOU DIDN'T HAVE ANY DISCUSSIONS FACE TO FACE,  
18          THAT YOU RECALL, WITH MR. GUNDLACH, OTHER THAN THAT ONE  
19          MEETING WHERE YOU TALKED ABOUT THE FEE SHARING  
20          ARRANGEMENT, RIGHT?

10:10AM

21          A        CORRECT.

22          Q        YOU LEFT THOSE DISCUSSIONS TO OTHERS, EITHER  
23          MR. SONNEBORN, OR MR. CAHILL, RIGHT?

24          A        YES.

25          Q        AND I THINK YOU INDICATED, AGAIN, TODAY, THAT  
26          AFTER YOU RECEIVED THE JUNE 7TH E-MAIL FROM MR. CAHILL,  
27          YOU WERE OKAY WITH ALL THE CHANGES SET FORTH IN THAT  
28          RED LINE, RIGHT?

10:10AM

1 A I'M NOT SURE THAT'S WHAT I SAID.

2 Q WELL, DID YOU HAVE ANY OBJECTION TO ANY OF THE  
3 TERMS THAT WERE SET FORTH IN THE DOCUMENTS THAT  
4 MR. CAHILL PUT IN FRONT OF YOU?

5 A NOW THAT I'VE READ IT, NO. 10:10AM

6 Q AND I THINK YOU SAID LAST WEEK, YOU DON'T  
7 RECALL MR. GUNDLACH TELLING YOU THAT HE HAD ANY  
8 OBJECTIONS TO ANY OF THOSE TERMS EITHER, DO YOU, SIR?

9 A CORRECT.

10 Q NOW, THE AGREEMENT THAT MR. SONNEBORN 10:10AM  
11 PRESENTED TO THE COMPENSATION COMMITTEE, HE SUMMARIZED  
12 THE ECONOMIC TERMS, DID HE NOT?

13 A I BELIEVE HE DID.

14 Q IN FACT, LET ME SHOW YOU.

15 MAY I APPROACH, YOUR HONOR? 10:11AM

16 THE COURT: YES, YOU MAY.

17 BY MR. BRIAN:

18 Q I'LL SHOW YOU A DOCUMENT THAT'S BEEN MARKED AS  
19 EXHIBIT 5047. THAT WAS PROVIDED TO THE COMPENSATION  
20 COMMITTEE IN RESPONSE TO THE UKROPINA E-MAIL THAT 10:11AM  
21 MR. MADISON SHOWED YOU, WAS IT NOT?

22 MR. MADISON: OBJECTION, FOUNDATION.

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

24 THE COURT: OVERRULED.

25 ANSWER "YES" OR "NO." 10:11AM

26 THE WITNESS: I JUST DON'T RECALL.

27 MR. BRIAN: LET'S GO TO 5048, PAGE 4 AGAIN.

28 ENLARGE THE VERY LAST PARAGRAPH ON THAT

1 PAGE.

2 Q MR. SONNEBORN, IN HIS PRESENTATION,  
3 HIGHLIGHTED TWO ASPECTS OF THE NEW AGREEMENT, DID HE  
4 NOT? FIRST THE ECONOMIC TERMS, AND SECOND THAT IT WAS  
5 A FIVE-YEAR TERM, CORRECT?

10:12AM

6 A YES.

7 Q TURN TO THE NEXT PAGE, 5048-0005.

8 IF WE COULD HIGHLIGHT THE VERY FIRST --  
9 ENLARGE THE FIRST RESOLVED PARAGRAPH.

10:12AM

10 AND THE COMPENSATION COMMITTEE  
11 CONFIRMED, RATIFIED AND APPROVED THE FIVE-YEAR  
12 EMPLOYMENT ARRANGEMENT, DID IT NOT?

13 A YES.

14 Q LET'S NOW TAKE A LOOK -- MR. MADISON SHOWED  
15 YOU THE NEXT PARAGRAPH: RESOLVED FURTHER.

10:13AM

16 I WANT YOU TO TAKE A LOOK AT THE THIRD  
17 PARAGRAPH, CALLED RESOLVED FURTHER.

18 DO YOU SEE THE VERY LAST CLAUSE,  
19 BEGINNING ON THE SECOND TO THE LAST LINE, WHERE IT  
20 SAYS:

10:13AM

21 ANY ACTIONS HERE BEFORE TAKEN IN  
22 SUCH REGARD ARE HEREBY AFFIRMED AND  
23 RATIFIED.

24 THAT IS ONE OF THE THINGS THAT THE  
25 COMPENSATION COMMITTEE RESOLVED AT THAT MEETING, DID IT  
26 NOT?

10:13AM

27 MR. MADISON: OBJECTION, YOUR HONOR. THAT'S  
28 HIGHLY MISLEADING, AND NOT READING THE ENTIRE SENTENCE.

1 THE COURT: LADIES AND GENTLEMEN, YOU'RE GOING  
2 TO HAVE THIS EXHIBIT, SO YOU PAY ATTENTION TO THE  
3 ACTUAL EXHIBIT.

4 GO AHEAD AND ANSWER THE QUESTION, SIR.

5 THE WITNESS: COULD YOU REPEAT THE QUESTION?  
6 BY MR. BRIAN:

10:13AM

7 Q DID THE COMPENSATION COMMITTEE RESOLVE THAT,  
8 QUOTE:

9 ANY ACTIONS HERE BEFORE TAKEN IN  
10 SUCH REGARD ARE HEREBY AFFIRMED AND  
11 RATIFIED?

10:13AM

12 A YES.

13 Q YOU HAD NO DISCUSSIONS IN 2007, THAT YOU  
14 RECALL, WITH MR. GUNDLACH ABOUT THE CIRCUMSTANCES UNDER  
15 WHICH HE COULD BE TERMINATED, DID YOU?

10:14AM

16 A NO.

17 Q AS YOU SIT HERE TODAY, DO YOU KNOW WHETHER OR  
18 NOT THE CIRCUMSTANCES SET FORTH IN THOSE 2007 DOCUMENTS  
19 THAT MR. CAHILL SENT YOU WERE IDENTICAL TO THE LANGUAGE  
20 SET FORTH IN HIS 1998 EMPLOYMENT AGREEMENT? DO YOU  
21 KNOW ONE WAY OR THE OTHER?

10:14AM

22 A NO.

23 Q NOW, YOU AGREE, DO YOU NOT, THAT TWO PARTIES  
24 HAVE A RIGHT TO ENTER INTO A CONTRACT, RIGHT?

25 MR. MADISON: OBJECTION. CALLS FOR LEGAL  
26 CONCLUSION, ARGUMENTATIVE.

10:14AM

27 THE COURT: LET ME ASK THIS:

28 HOW MUCH MORE TIME DO WE HAVE,

1 MR. BRIAN?

2 MR. BRIAN: PROBABLY 10 TO 15 MINUTES.

3 THE COURT: LET'S TAKE OUR RECESS.

4 20 MINUTES, LADIES AND GENTLEMEN.

5

10:15AM

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

7

8 THE COURT: WE'RE OUT OF THE PRESENCE OF THE

9 JURY. ANY MATTERS ANYBODY WANTS TO TAKE UP?

10

ALL RIGHT. SEE YOU IN 20 MINUTES.

10:15AM

11

12

(RECESS.)

13

14

15

16

17

18

19

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, MONDAY, SEPTEMBER 6, 2011  
5 CALIFORNIA  
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE  
7 APPEARANCES: (AS HERETOFORE NOTED.)  
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978  
9 TIME: 10:38 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: ALL RIGHT. ALL MEMBERS OF OUR  
17 JURY ARE PRESENT, AS ARE COUNSEL.

18 MR. BRIAN, YOU MAY CONTINUE.

19  
20  
21 REDIRECT EXAMINATION (RESUMED)

22  
23 BY MR. BRIAN:

24 Q. MR. BEYER, TAKE A LOOK AT EXHIBIT 66.  
25 IF WE CAN PUT THAT UP, PAGE FOUR,  
26 DENNIS.

27 THIS IS PART OF WHAT MR. CAHILL ATTACHED  
28 TO HIS JUNE 7TH, 2007, E-MAIL TO YOU AND OTHERS,

10:40AM

10:40AM



1 CORRECT?

2 A. YES.

3 Q. DENNIS, IF YOU CAN ENLARGE THAT PARAGRAPH AT  
4 THE BOTTOM.

5 DO YOU SEE THAT, MR. BEYER, YOUR  
6 COMPENSATION INCLUDING ANY BASE DRAW?

10:40AM

7 A. YES.

8 Q. AND WHAT IT SAYS IS (READING):

9 YOUR COMPENSATION, INCLUDING  
10 ANY BASE DRAW, ANY AMOUNT OF PROFIT  
11 SHARING, AND ADDITIONAL BENEFITS  
12 WILL CEASE WHEN TERMINATION OCCURS,  
13 EXCEPT -- AND THEN IT SAYS --  
14 ADDITIONAL BENEFITS THAT BY THEIR  
15 TERMS, APPLY AFTER TERMINATION.

10:41AM

16 AND TWO, THE COMPANY WILL PAY  
17 YOU YOUR BASE SALARY, AND ANY  
18 AMOUNT OF PROFIT SHARING, PLUS  
19 ACCRUED VACATION, ACCRUED TO THE  
20 DATE OF TERMINATION IN ACCORDANCE  
21 WITH THE COMPANY'S POLICIES.

10:41AM

22 DO YOU SEE THAT?

23 A. YES.

24 Q. NOW, YOU WOULD AGREE WITH ME THAT IT DOESN'T  
25 SAY THERE, IN THAT SENTENCE, ACCRUED AND PAID.

10:41AM

26 DOES IT, SIR?

27 A. NO. I WOULD NOT AGREE WITH THAT.

28 Q. OKAY.

1                   LET ME -- I WANT TO SHOW YOU A CHART I  
2 DREW DURING THE BREAK, EXHIBIT 6188.

3                   YOU TESTIFIED IN RESPONSE TO  
4 MR. MADISON'S QUESTIONS THAT IT WAS THE COMPANY'S  
5 PRACTICE NOT TO PAY ACCRUED FEES AFTER SOMEONE WAS NO  
6 LONGER AT THE COMPANY, RIGHT? 10:41AM

7           A.     CORRECT.

8           Q.     OKAY.

9                   SO I WANT YOU TO ASSUME THAT A PORTFOLIO  
10 MANAGER HAD A FIVE-YEAR EMPLOYMENT ARRANGEMENT -- ARE  
11 YOU WITH ME? 10:42AM

12          A.     YES.

13          Q.     I WANT YOU TO ASSUME THAT DURING THAT  
14 FIVE-YEAR PERIOD, THE COMPANY, MR. PETE SULLIVAN AND  
15 HIS CREW, ACCRUED THEIR PERFORMANCE FEES AND THEY  
16 INCREASED OVER THE LIFE OF THAT FIVE YEARS. 10:42AM

17                   ARE YOU WITH ME NOW?

18          A.     YES.

19          Q.     IS IT YOUR TESTIMONY THAT UNDER THE PRACTICE  
20 AT TCW, EVEN THOUGH THE COMPANY WAS ACCRUING HUNDREDS  
21 OF MILLION OF DOLLARS OF FEES TCW COULD TERMINATE THAT  
22 EMPLOYEE AFTER FOUR YEARS, 11 MONTHS, AND 29 DAYS AND  
23 NOT PAY THEM ANY SHARE OF THOSE ACCRUED FEES. 10:42AM

24                   IS THAT YOUR TESTIMONY?

25          A.     WE WOULD NEVER DO THAT. 10:42AM

26          Q.     IS IT YOUR TESTIMONY THAT UNDER YOUR PRACTICE  
27 YOU COULD DO THAT?

28          A.     TECHNICALLY, YES.

1 Q. AT THE END OF 2007 YOU DID NOT GO UP TO  
2 MR. GUNDLACH AND SAY TO HIM, YOUR EMPLOYMENT CONTRACT  
3 HAS TERMINATED.

4 DID YOU, SIR?

5 A. NO.

10:43AM

6 Q. TAKE A LOOK AT EXHIBIT 38.

7 CAN YOU PUT THAT UP, DENNIS? IT'S IN  
8 EVIDENCE.

9 THIS IS AN E-MAIL THAT MR. MADISON  
10 SHOWED YOU.

10:43AM

11 DO YOU RECALL THIS?

12 A. RIGHT. I DON'T HAVE THAT IN MY BOOK, BUT YES,  
13 I DO.

14 Q. OKAY.

15 AND THIS REFLECTS A DISCUSSION ABOUT  
16 MR. BARACH'S EMPLOYMENT AGREEMENT, CORRECT?

10:43AM

17 A. CORRECT.

18 Q. TAKE A LOOK AT EXHIBIT 133. AND I MAY NEED TO  
19 GET MY COPY, I'M SORRY. IT'S IN THE WHITE BINDER THAT  
20 MR. MADISON SHOWED YOU, I THINK. TOO MANY BINDERS.

10:44AM

21 A. AND WHAT NUMBER IS IT THERE?

22 THE COURT: 133, I BELIEVE.

23 MR. BRIAN: 133 IN THE BIG WHITE BINDER.

24 THE WITNESS: YES.

25 MR. BRIAN: IF WE COULD PUT UP, DENNIS, 133-2.

10:44AM

26 Q. AND THE TOP E-MAIL IS FROM MR. GUNDLACH TO YOU  
27 ON FEBRUARY 1ST, 2009, IS IT NOT?

28 A. YES.

1 Q. AND I THINK MR. MADISON SHOWED YOU THE --  
2 MAYBE THE SECOND PARAGRAPH.

3 I'D LIKE, DENNIS, IF YOU COULD ENLARGE  
4 THE THIRD PARAGRAPH.

5 NOW, MR. GUNDLACH, IN THAT PARAGRAPH  
6 STATED, (READING):

10:45AM

7 I DO NOT SHARE YOUR STATED  
8 ENTHUSIASM FOR THE NEW TCW  
9 STRUCTURE, VIS-A-VIS, SG AND NEWCO.

10 I AM CONCERNED THAT IT MIGHT  
11 POTENTIALLY PUT OUR CLIENTS IN A  
12 POSITION IN WHICH THEIR

10:45AM

13 INTERESTS/NEEDS ARE NOT PROPERLY  
14 PROTECTED/ADDRESSED. I FEEL A  
15 STRONG DUTY TO DETERMINE THAT THIS  
16 IS NOT THE CASE, OR ELSE TO MAKE  
17 THE APPROPRIATE CHANGES SO THAT  
18 THEIR INTERESTS/NEEDS ARE  
19 PROTECTED/ADDRESSED.

10:45AM

20 TO THIS END, I AM PLANNING ON  
21 SENDING A FORMAL LETTER TO  
22 MR. OUDEA TO SUGGEST THAT HE  
23 CONSIDER WORKING WITH ME DIRECTLY  
24 TO REACH AGREEMENT ON THE CURRENT  
25 STATUS AND A PLAN FOR THE FUTURE OF  
26 TCW.

10:45AM

27 I BELIEVE THAT HE AND THE REST  
28 OF SG DEEPLY DISLIKE YOU AND BILL

10:46AM

1 FOR THE TIMING AND APPROACH YOU TWO  
2 TOOK LAST YEAR ON THE FAILED  
3 BUYBACK. CERTAINLY COLLAS AND CLOT  
4 AND PAGNI ALL TOLD ME THAT  
5 REPEATEDLY. IF THAT'S THE CASE, IT  
6 JUST MIGHT BE THAT A NEW  
7 ADMINISTRATION OF DIALOGUE COULD  
8 MAKE BETTER PROGRESS. MAYBE I'M  
9 WRONG ON THAT. AND IF SO, I WILL  
10 FIND THAT OUT QUICKLY.

10:46AM

10:46AM

11 THAT'S WHAT HE WROTE IN THE THIRD  
12 PARAGRAPH OF THAT E-MAIL, DID HE NOT?

13 A. YES, HE DID.

14 Q. NOW, TAKE A LOOK AT EXHIBIT 142. IF WE COULD  
15 PUT THAT UP, DENNIS. IT'S IN EVIDENCE.

10:46AM

16 AND IF WE COULD ENLARGE THE E-MAIL IN  
17 THE MIDDLE FROM MR. BEYER AND MR. MUSTIER BEGINNING  
18 WITH, THAT IS FINE WITH ME.

19 NOW, THIS IS AN E-MAIL YOU WROTE TO  
20 MR. MUSTIER IN CONNECTION WITH, OR IN RESPONSE TO BEING  
21 INFORMED THAT MR. GUNDLACH HAD REACHED OUT TO MR. PAGNI  
22 TO MAKE A PROPOSAL TO MR. OUDEA, RIGHT?

10:47AM

23 A. YES.

24 Q. AND WHAT YOU SAID IN THE SECOND LINE IS  
25 (READING):

10:47AM

26 I DO FIND IT HUMOROUS THAT HE  
27 WANTS TO PUT TOGETHER A PROPOSAL TO  
28 BUY TCW AND HE CAN'T FIND A

1 BUSINESS ADDRESS OR E-MAIL ADDRESS  
2 FOR F. OUDEA!

3 YOU WROTE THAT, DID YOU NOT?

4 A. YES.

5 Q. NOW, DID YOU WRITE THAT IN TONGUE AND CHEEK,  
6 OR WERE YOU MOCKING HIM?

10:47AM

7 A. I THINK THE STATEMENT STANDS ON ITS OWN.

8 Q. WELL, WHICH IS IT, SIR?

9 A. I'M NOT SURE. IF YOU EXPLAIN THE DIFFERENCE  
10 I'LL EXPLAIN IT TO YOU. I WAS TRYING TO BE HUMOROUS.

10:47AM

11 Q. TRY AND BE HUMOROUS.

12 DID YOU TELL MR. GUNDLACH THAT YOU FOUND  
13 IT HUMOROUS THAT YOU COULDN'T FIND MR. OUDEA'S ADDRESS?

14 A. I MAY HAVE. I DON'T REMEMBER.

15 Q. DID YOU GIVE AN ADDRESS TO BLAIR THOMAS WHEN  
16 HE WAS PUTTING TOGETHER A PROPOSAL FOR THE PORTFOLIO  
17 MANAGERS TO BUY THE COMPANY BACK FROM SOC-GEN?

10:48AM

18 A. BLAIR THOMAS FREQUENTLY INTERACTED WITH  
19 SOC-GEN MANAGEMENT.

20 Q. IN FACT, YOU ATTENDED MEETINGS WITH THE  
21 PORTFOLIO MANAGERS IN JANUARY AND FEBRUARY OF 2009,  
22 WHERE THEY DISCUSSED A PROPOSAL TO BUY BACK THE COMPANY  
23 FROM SOC-GEN, DID THEY NOT?

10:48AM

24 A. NOT A LEGITIMATE PROPOSAL, NO.

25 Q. WELL, HAVE YOU SEEN THE VARIOUS VALUATIONS  
26 THAT HAVE BEEN PUT IN EVIDENCE IN THIS CASE OF TCW?

10:48AM

27 A. YES.

28 Q. RANGING FROM 700 MILLION TO A BILLION, RIGHT?

1 A. YES.

2 Q. DO YOU KNOW WHAT MR. GUNDLACH OFFERED TO BUY  
3 THE COMPANY IN SEPTEMBER OF 2009?

4 MR. MADISON: OBJECTION. FOUNDATION.

5 Q. BY MR. BRIAN: DO YOU KNOW?

10:48AM

6 THE COURT: OVERRULED.

7 THE WITNESS: ONLY WHAT I'VE HEARD IN THIS  
8 TRIAL.

9 Q. BY MR. BRIAN: OKAY.

10 NOW, YOU TESTIFIED THAT -- ABOUT THIS  
11 MEETING WITH MR. MUSTIER, THIS OFF-SITE MEETING, DO YOU  
12 RECALL THAT BOTH IN RESPONSE TO MY QUESTIONS AND  
13 MR. MADISON'S, DO YOU RECALL THAT?

10:49AM

14 A. YES.

15 Q. AND YOU SAID THAT MR. GUNDLACH SAID HE WAS  
16 VERY IMPORTANT AND THAT IF HE LEFT A LOT OF BUSINESS  
17 COULD GO WITH HIM. WORDS TO THAT EFFECT, RIGHT?

10:49AM

18 A. CORRECT.

19 Q. AND MR. THOMAS ALSO TALKED AT THAT MEETING  
20 ABOUT HIS ABILITY TO WALK OUT, DID HE NOT?

10:49AM

21 A. NO, NOT EXACTLY.

22 MR. BRIAN: YOUR HONOR, I'D LIKE TO READ FROM  
23 HIS DEPOSITION, PAGE 84, LINES 19 TO 21.

24 MR. MADISON: YOUR HONOR, THIS IS THE -- WE  
25 DID THIS EXACT SAME THING LAST WEEK. SO THIS IS BEYOND  
26 THE SCOPE AND IT'S BEEN ASKED AND ANSWERED.

10:50AM

27 MR. BRIAN: I DIDN'T READ IT LAST WEEK, I  
28 DON'T BELIEVE.

1 MR. MADISON: I ASKED AT THAT TIME THAT MORE  
2 BE READ.

3 THE COURT: HOLD ON JUST A MINUTE.

4 MR. BRIAN: PAGE 84 LINES 19 TO 21.

5 THE COURT: THE OBJECTION WILL BE OVERRULED. 10:50AM

6 I DO THINK WE HAD SOME PART OF THIS LAST WEEK.

7 MR. BRIAN: WE STARTED TO, AND I BELIEVE I DID  
8 NOT READ IT.

9 THE COURT: GO AHEAD.

10 MR. BRIAN: 10:50AM

11 "Q DID MR. THOMAS TALK ABOUT HIS  
12 ABILITY TO WALK OUT?

13 "A YES."

14 MR. GUNDLACH DID NOT LEAVE TCW, EITHER  
15 BEFORE OR AFTER YOUR TRIP TO ASIA IN 2009, DID HE, SIR? 10:50AM

16 A. I BELIEVE HE LEFT AFTER.

17 Q. HE LEFT BECAUSE HE GOT FIRED, RIGHT?

18 A. YES.

19 Q. HE NEVER VOLUNTARILY WALKED OUT, DID HE, SIR?

20 A. NO. 10:51AM

21 Q. NOW, AT THE TIME THAT YOU RESIGNED OR GAVE  
22 NOTICE OF YOUR RESIGNATION IN MAY OF 2009, SOC-GEN HAD  
23 PUBLICLY ANNOUNCED THE POSSIBLE IPO, RIGHT?

24 A. YES.

25 Q. SOC-GEN HAD TOLD YOU THAT THEY WOULD CONSIDER  
26 A RECAPITALIZATION, A BUYOUT, OR A THIRD PARTY EQUITY  
27 INVESTMENT, RIGHT?

28 A. YES. 10:51AM



1 Q. AND A NUMBER OF PORTFOLIO MANAGERS WERE  
2 DISCUSSING PURCHASING THE COMPANY, RIGHT?

3 A. AS I SAID, NOT LEGITIMATELY.

4 Q. WELL, IN 2008 YOU AND MR. SONNEBORN GOT ON A  
5 PLANE AND FLEW TO PARIS AND MADE A PROPOSAL FOR THE  
6 EMPLOYEES TO BUY BACK THE COMPANY, DID YOU NOT?

10:51AM

7 A. CORRECT.

8 Q. WAS THAT A LEGITIMATE PROPOSAL, SIR?

9 A. YES, BUT WE WEREN'T PORTFOLIO MANAGERS.

10 MR. BRIAN: NOTHING FURTHER.

10:52AM

11 THE COURT: ANY RECROSS.

12 MR. MADISON: IF I COULD VERY BRIEFLY, YOUR  
13 HONOR.

14

15

10:52AM

16

RECROSS-EXAMINATION

17

18 MR. MADISON: MAY I JUST APPROACH THE CHART,  
19 YOUR HONOR?

20 THE COURT: YES, YOU MAY.

10:52AM

21 MR. MADISON: I'VE TRIED TO AVOID THIS THE  
22 WHOLE TRIAL, BUT I HAVE TO DO THIS.

23 MR. BRIAN: JUST USE A DIFFERENT COLOR.

24 MR. MADISON: I'LL USE BLUE, YOUR HONOR.

25 Q. SO, THE PROBLEM WITH THIS IS IT'S HARD TO SEE,  
26 MR. BEYER, SO I'M GOING TO TRY TO SCOOT IT BACK HERE.  
27 DO YOU MIND IF I SCOOT IT RIGHT BACK BY YOU?

10:52AM

28 DO YOU MIND IF -- MAY I STAND RIGHT BACK

1       HERE, YOUR HONOR?

2                   THE COURT:   WHATEVER YOU LIKE, MR. MADISON.  
3       JUST MOVE RIGHT ALONG.

4                   MR. MADISON:   I'M TRYING, YOUR HONOR.

5           Q.       SO MR. BEYER, MR. BRIAN DREW THIS STRAIGHT  
6       LINE GRAPH SHOWING THE PERFORMANCE JUST GOING UP, UP,  
7       UP, UP, AND I ASSUME WHAT HE WAS ASKING YOU IS IF  
8       SOMEBODY WERE TO BE TERMINATED OR TO LEAVE, I'M JUST  
9       GOING TO PUT IT ON A POINT THERE.

10:53AM

10                   I MEAN, FIRST OF ALL, IS THERE AN  
11       INVESTMENT THAT'S KNOWN THAT IT'S GOING TO DO THAT AT  
12       TCW OR ANYWHERE?

10:53AM

13           A.       THEY TEND TO BE A LITTLE BIT LESS PREDICTABLE.

14           Q.       SO IT'S POSSIBLE THAT THEY GO UP AND THEN THEY  
15       GO DOWN?

10:53AM

16           A.       YES.

17           Q.       THEY GO DOWN AND THEY GO UP AND DOWN?

18           A.       IT'S POSSIBLE.

19           Q.       OKAY.

20                   SO, BUT MY FIRST QUESTION IS LET'S  
21       ASSUME, LET'S TAKE MR. BRIAN HERE AT HIS WORD, AND  
22       LET'S ASSUME IT'S JUST GOING TO KEEP GOING UP, UP, UP,  
23       BUT ON A CLOSED FUND LIKE THE SPECIAL MORTGAGE CREDIT  
24       FUNDS, IF THE EMPLOYEE LEAVES AND THE FUND HASN'T BEEN  
25       LIQUIDATED, ARE ANY PERFORMANCE FEES EARNED OR RECEIVED  
26       BY TCW?

10:53AM

27           A.       NO.

28           Q.       SO YOU UNDERSTAND THAT MR. GUNDLACH IS SAYING

10:54AM

1 HE HAS SOME ENTITLEMENT TO RECEIVE SOME FEES, EVEN  
2 THOUGH THEY HAVEN'T BEEN EARNED OR RECEIVED AT THAT  
3 POINT IN TIME IN THIS CASE?

4 A. I'VE HEARD THAT.

5 Q. SO, WHERE WOULD THE MONEY COME FROM? 10:54AM

6 A. NO INVESTMENT FUND THAT I KNOW OF WOULD BE  
7 ABLE TO PAY THAT OUT BECAUSE THE INVESTMENT HAS NOT  
8 BEEN SOLD.

9 Q. SO THE PERFORMANCE FEE IS SUPPOSED TO COME OUT  
10 OF THE PERFORMANCE OF THAT INVESTMENT? 10:54AM

11 A. CORRECT.

12 Q. AND THE INVESTMENT WOULDN'T HAVE PERFORMED AT  
13 ALL UNTIL THE TIME THAT IT'S BEEN SOLD, CORRECT?

14 A. IT HASN'T DEFINITELY PERFORMED, BECAUSE IT  
15 HAS NOT BEEN REALIZED. 10:54AM

16 Q. AND WAS TCW AUTHORIZED TO SELL INVESTMENTS  
17 THAT PAY ITSELF BEFORE THE CLIENTS GOT THEIR MONEY  
18 BACK?

19 A. NO.

20 Q. AND WERE THERE HURDLES ON THE INVESTMENTS? 10:55AM  
21 WHERE THE CLIENTS NOT ONLY HAD TO GET THE MONEY BACK  
22 BUT HAD TO GET A CERTAIN AMOUNT ON TOP OF THAT BEFORE  
23 ANY PERFORMANCE FEE COULD BE TAKEN?

24 A. YES.

25 Q. NOW, WHAT IF, INSTEAD OF WHAT MR. BRIAN SHOWED 10:55AM  
26 IT JUST KEPT GOING UP, UP, UP, IF IT WENT DOWN AFTER  
27 THAT POINT?

28 I'D LIKE YOU TO ASSUME WITH US THAT

1 THERE WAS SOME PAYMENT FROM SOME MONEY, EVEN THOUGH THE  
2 SECURITIES HAVEN'T BEEN LIQUIDATED AND THE FEES HAVEN'T  
3 BEEN EARNED OR RECEIVED, SOME PAYMENT WAS MADE. AND  
4 THEN IT WENT DOWN AND THEN THE FUND WAS ACTUALLY  
5 LIQUIDATED DOWN HERE.

10:55AM

6 WHAT WOULD HAPPEN TO THAT EXCESS  
7 PERFORMANCE THAT ACTUALLY WASN'T PERFORMANCE THAT HAD  
8 BEEN PAID TO THE PORTFOLIO MANAGER?

9 A. WELL, AS I STATED, THE ACCOUNTING RULES  
10 REQUIRE THAT PERIODICALLY WE RECORD THE APPRECIATION.  
11 THE GAINS -- IF YOU WERE TO SELL A SECURITY AT THAT  
12 TIME THAT YOU REALLY DON'T KNOW WHAT YOUR PERFORMANCE  
13 IS UNTIL YOU ACTUALLY SELL IT WHICH WOULD BE AT YOUR  
14 BLUE LINE.

10:55AM

15 Q. I'M GOING TO STEP BACK TO THE LECTERN WHILE  
16 I'M AHEAD, YOUR HONOR. EXCUSE ME.

10:56AM

17 I JUST HAVE A FEW MORE QUESTIONS, YOUR  
18 HONOR.

19 I'D LIKE TO PUT UP ON THE BOARD THE  
20 MINUTES, 5048, PAGE 5. AND I JUST WANT TO READ THE  
21 WORDS RIGHT BEFORE THE PART THAT MR. BRIAN READ TO YOU  
22 THERE AT THE VERY END. REMEMBER, HE READ (READING):

10:56AM

23 ANY ACTIONS HERE BEFORE TAKEN  
24 IN SUCH REGARD ARE HEREBY AFFIRMED  
25 RATIFIED.

10:56AM

26 RIGHT BEFORE THAT IT SAYS (READING):  
27 ALL TO BE CONCLUSIVELY  
28 EVIDENCED BY SUCH EXECUTION AND

1 DELIVERY OR THE TAKING OF SUCH  
2 ACTIONS AND --

3 AND THEN THE REST THAT YOU READ.

4 SO HERE, AGAIN, DID YOU UNDERSTAND THIS  
5 PARAGRAPH TO BE TALKING ABOUT ADDITIONAL DOCUMENTS AND  
6 EXECUTION AND DELIVERY?

10:56AM

7 MR. BRIAN: OBJECTION. CALLS FOR A LEGAL  
8 CONCLUSION.

9 THE COURT: OVERRULED.

10 THE WITNESS: YES.

10:57AM

11 Q. BY MR. MADISON: NOW, MR. BRIAN ASKED YOU  
12 WHETHER MR. GUNDLACH EVER EXPRESSED ANY OBJECTIONS TO  
13 THE DRAFT CONTRACT.

14 AND IF WE LOOK AT EXHIBIT 66, AND WE GO  
15 TO PAGE -- WELL, FIRST OF ALL, I BELIEVE YOU DESCRIBED  
16 THAT SOME OF THE RED LINE COMMENTS, YOUR UNDERSTANDING  
17 WAS THOSE HAD COME FROM MR. GUNDLACH?

10:57AM

18 A. SOME OF THEM, YES.

19 Q. SO THOSE MIGHT BE CHARACTERIZED AS OBJECTIONS  
20 TO THE DRAFT?

10:57AM

21 MR. BRIAN: OBJECTION. LEADING.

22 THE COURT: SUSTAINED.

23 Q. BY MR. MADISON: HOW WOULD YOU CONSIDER THOSE  
24 WITH REGARD TO HOW MR. BRIAN ASKED YOU?

25 MR. BRIAN: OBJECTION. NO FOUNDATION.

10:57AM

26 THE COURT: SUSTAINED.

27 Q. BY MR. MADISON: WELL, LET'S LOOK AT THE PAGE  
28 ENDING IN 366-3. AND PARAGRAPH C IT SAYS COMPENSATION

1 TO MULTI-SECTOR FIXED INCOME GROUP.

2 AND THERE'S A SENTENCE THERE KIND OF  
3 RIGHT IN THE MIDDLE. IT SAYS (READING):

4 YOU AGREE THAT NO ALLOCATIONS  
5 OF COMPENSATION TO EMPLOYEES IN THE 10:58AM  
6 MULTI-SECTOR FIXED INCOME GROUP  
7 WILL BE VESTED SO AS TO CONFER UPON  
8 ANY PERSON THE RIGHT TO RECEIVE ANY  
9 AMOUNT AFTER SUCH PERSON'S  
10 TERMINATION OF EMPLOYMENT WITH THE 10:58AM  
11 COMPANY.

12 DID MR. GUNDLACH EVER EXPRESS ANY  
13 OBJECTION TO THAT PROVISION TO YOU?

14 A. NO.

15 Q. IF YOU LOOK AT D IT SAYS, NATURE OF PROFIT 10:58AM  
16 SHARING ARRANGEMENTS. THERE'S A SENTENCE THERE. I  
17 BELIEVE IT'S THE SENTENCE THAT SAYS (READING):

18 THE MULTI-SECTOR FIXED INCOME  
19 PROFIT SHARING POOL IS SOLELY AN  
20 ACCOUNTING MECHANISM FOR 10:58AM  
21 DETERMINING COMPENSATION PAYABLE TO  
22 YOU AND OTHER PERSONS AND WILL NOT  
23 GIVE YOU OR ANY OTHER PERSON ANY  
24 RIGHT, TITLE, OR INTEREST IN ANY  
25 FUND OR ANY SPECIFIC ASSETS OF TCW 10:59AM  
26 BY REASON OF PARTICIPATING IN, OR  
27 BEING ELIGIBLE TO RECEIVE PAYMENTS  
28 COMPUTED WITH REFERENCE TO SUCH

1                   PROFIT-SHARING POOL.

2                   DID MR. GUNDLACH EVER EXPRESS ANY  
3 OBJECTION TO YOU ABOUT THAT LANGUAGE?

4           A.     NO.

5           MR. MADISON:   YOUR HONOR, I'D LIKE TO JUST  
6 READ THE PART OF THAT TESTIMONY ABOUT BLAIR THOMAS THAT  
7 I ASKED BE READ.

10:59AM

8           MR. BRIAN:    COULD I HAVE PAGE AND LINE?

9           THE COURT:    YOU WOULD LIKE TO READ FROM  
10 DEPOSITION?

10:59AM

11          MR. MADISON:   YES, YOUR HONOR.

12          THE COURT:    WHAT ARE THE PAGE AND LINE  
13 NUMBERS?

14          MR. MADISON:   YES, YOUR HONOR.   PAGE 85, LINE  
15 22, OVER TO 86 LINE SEVEN.

10:59AM

16          MR. BRIAN:    I THINK HE SHOULD READ -- IF HE  
17 WANTS TO READ THAT, HE SHOULD START AT PAGE 84 LINE 19  
18 AND CONTINUE TO -- SO IT'S IN CONTEXT OR I WILL.

19          THE COURT:    JUST HOLD ON A MINUTE.   WELL, YOU  
20 HAVE ALREADY READ 8419 THROUGH 21.

11:00AM

21          MR. BRIAN:    CORRECT.

22          THE COURT:    AND ARE YOU AT 8422, 7, JUST THE  
23 NEXT PAGE IS THAT IT, MR. MADISON?

24          MR. BRIAN:    UNLESS HE READS THE WHOLE THING, I  
25 WOULD OBJECT.   IT'S NOT PROPER IMPEACHMENT, YOUR HONOR.

11:00AM

26          MR. MADISON:   I'M AT 86, YOUR HONOR, BUT I'M  
27 HAPPY TO READ --

28          THE COURT:    YOU SAID PAGE 85 LINES 22 TO

1 SEVEN?

2 MR. MADISON: YES. OVER TO 86.

3 THE COURT: OH, TO 86, LINE SEVEN?

4 MR. BRIAN: I WOULD OBJECT TO 86 LINES FOUR  
5 THROUGH 7 AS NOT PROPER IMPEACHMENT.

11:00AM

6 THE COURT: I'LL SUSTAIN THE OBJECTION AS TO  
7 86, 4 THROUGH 7.

8 YOU MAY READ 85, 22 THROUGH 86, 3.

9 MR. MADISON: YES, YOUR HONOR.

10 "Q BUT AS YOU SIT HERE

11:01AM

11 NOW, THERE'S NO REASON TO THINK

12 THAT'S INCONSISTENT, CORRECT?

13 BECAUSE MR. THOMAS WAS SAYING THE

14 SAME THING, EVEN THOUGH HE WAS

15 UNDER CONTRACT.

11:01AM

16 "A ACTUALLY, MR. THOMAS WAS

17 SAYING IT DIFFERENTLY. MR. THOMAS

18 WAS SAYING THAT THEY WOULD

19 PURPOSELY NOT RAISE ANY NEW MONEY

20 UNTIL THE END OF THEIR CONTRACT?

11:01AM

21 WAS THAT THE QUESTION THAT YOU WERE ASKED  
22 AND THE ANSWER YOU GAVE IN YOUR DEPOSITION, MR. BEYER?

23 A. CORRECT.

24 Q. NOW, MR. BRIAN ASKED ABOUT WHETHER THERE WERE  
25 ANY OBJECTIONS TO THE TESTIMONY, PARDON ME, TO THE  
26 TERMS OF THE AGREEMENT.

11:02AM

27 AND DID MR. GUNDLACH EVER TELL YOU WHY,  
28 IF, IN FACT -- YOU DON'T KNOW ONE WAY OR THE OTHER



1 WHETHER HE HAD OBJECTIONS TO IT, DO YOU?

2 A. NO.

3 Q. DID HE EVER TELL YOU WHY HE DIDN'T SIGN IT?

4 A. NO.

5 Q. AND IF SOMEONE HAS NO OBJECTIONS TO A WRITTEN  
6 CONTRACT AND THEY WANT TO ENTER INTO IT, THEY SHOULD  
7 SIGN IT, RIGHT?

11:02AM

8 MR. BRIAN: OBJECTION. LEADING.

9 THE COURT: SUSTAINED.

10 Q. BY MR. MADISON: WELL, MR. BRIAN ASKED YOU  
11 ABOUT THIS IDEA OF AN ORAL CONTRACT. AND WAS IT -- IN  
12 THE DOCUMENTS THAT WE'VE SEEN WITH THE DRAFT WRITTEN  
13 CONTRACT GOING BACK AND FORTH, WAS IT YOUR INTENT AS  
14 THE CEO OF TCW THAT THERE BE AN ORAL EMPLOYMENT  
15 CONTRACT FOR FIVE YEARS WITH MR. GUNDLACH?

11:02AM

16 MR. BRIAN: OBJECTION. PAROLE EVIDENCE.

17 THE COURT: OVERRULED.

18 THE WITNESS: WE NEVER ENTERED INTO ORAL  
19 CONTRACTS.

11:03AM

20 MR. BRIAN: MOVE TO STRIKE AS NONRESPONSIVE.

11:03AM

21 THE COURT: I'LL STRIKE THE RESPONSE AS  
22 NONRESPONSIVE.

23 YOU NEED TO LISTEN TO THE QUESTION  
24 CAREFULLY AND JUST ANSWER IT, MR. BEYER.

25 Q. BY MR. MADISON: MY QUESTION WAS: WAS IT YOUR  
26 UNDERSTANDING THAT THERE WAS A DISCUSSION ABOUT THE  
27 ORAL CONTRACT?

11:03AM

28 A. NO.

1 Q. DID TCW EVER ENTER INTO ORAL EMPLOYMENT  
2 CONTRACTS FOR A TERM OF YEARS?

3 A. NO.

4 Q. DID MR. GUNDLACH EVER COME TO YOU IN THE  
5 MIDDLE OF ALL THESE EXCHANGES ABOUT THE DRAFT WRITTEN  
6 CONTRACT AND SAY, YOU KNOW, INSTEAD OF A WRITTEN  
7 CONTRACT, LET'S HAVE AN ORAL EMPLOYMENT CONTRACT FOR  
8 FIVE YEARS?

11:03AM

9 A. NO.

10 MR. MADISON: NOTHING FURTHER, YOUR HONOR.

11:03AM

11 MR. BRIAN: BUT HE DID SAY --

12 THE COURT: DOES THAT MEAN YOU HAVE ANOTHER  
13 QUESTION, MR. BRIAN?

14 MR. BRIAN: YES, YOUR HONOR. I ALSO WANT TO  
15 GET MY WATER BOTTLE.

11:03AM

16 THE COURT: OKAY.

17

18

19 FURTHER REDIRECT EXAMINATION

20

21 BY MR. BRIAN:

22 Q. HE DID SAY THAT THE PARTIES HAD A HANDSHAKE  
23 DEAL, DIDN'T HE, SIR?

24 THAT'S IN ONE OF THE E-MAILS I SHOWED  
25 YOU?

11:04AM

26 A. I SAW IT IN THE E-MAIL.

27 Q. AND HE ALSO SAID IN AN E-MAIL THAT THE PARTIES  
28 HAD AGREED IN GOOD FAITH AND YOU COULD GO AHEAD AND PAY

1 HIM PURSUANT TO THE NEW AGREED-UPON COMPENSATION  
2 FORMULA, CORRECT?

3 A. THERE'S A LOT OF CONCEPTS. YOU JUST HAVE TO  
4 SHOW IT TO ME TO CONFIRM IT.

5 Q. LET ME ASK YOU ANOTHER QUESTION. I'M GOING TO  
6 GO BACK TO WHAT I ASKED YOU RIGHT BEFORE THE FIRST  
7 BREAK.

11:04AM

8 IN YOUR BUSINESS, YEARS IN BUSINESS, YOU  
9 UNDERSTAND, DO YOU NOT, THAT TWO PARTIES HAVE A RIGHT  
10 TO AGREE UPON THE TERMS OF A DEAL, RIGHT?

11:04AM

11 A. YES.

12 Q. AND YOU ARE FAMILIAR WITH CONTRACTS, LET'S SAY  
13 FOR PROFESSIONAL FOOTBALL COACHES, WHERE THEY SIGN A  
14 CONTRACT, AGREE TO A CONTRACT FOR FIVE YEARS, AND THEN  
15 THE GUY HAS A LOUSY YEAR AND THE COACH IS FIRED.

11:04AM

16 IT IS A FACT, IS IT NOT, THAT THE  
17 PARTIES HAVE A RIGHT TO AND, OFTEN DO IN THE BUSINESS  
18 WORLD, NEGOTIATE WHAT ONE PARTY IS PAID UPON  
19 TERMINATION, RIGHT?

20 MR. MADISON: OBJECTION, YOUR HONOR. THAT IS  
21 ARGUMENTATIVE AND HAS NO BEARING ON THE FACTS HERE.

11:05AM

22 THE COURT: OVERRULED. YOU HAVE GONE INTO IT  
23 WITH HIM.

24 Q. BY MR. BRIAN: ISN'T THAT RIGHT?

25 A. I ASSUME SO.

11:05AM

26 Q. WELL, YOU MORE THAN ASSUME SO. YOU KNOW FROM  
27 YOUR YEARS OF EXPERIENCE, THAT PARTIES OFTEN AGREE TO  
28 PAYMENT TERMS UPON A TERMINATION OR SEVERANCE OR

1 OTHERWISE, OTHER BREAK OF CONTRACT, RIGHT?

2 A. I CAN'T ANSWER THAT YES OR NO.

3 Q. WELL, YOU ARE NOT AWARE OF TERMS THAT SAY, FOR  
4 EXAMPLE, IF SO AND SO IS TERMINATED THEY'LL BE PAID X  
5 MILLION DOLLARS.

11:05AM

6 ARE YOU AWARE OF THAT?

7 A. IN THE CONTRACT, YES.

8 Q. YES. THE PARTIES HAVE A RIGHT TO SAY THAT IF  
9 ONE SIDE CHOOSES TO TERMINATE EARLY, THE OTHER PARTY  
10 WILL BEING COMPENSATED IN A CERTAIN AMOUNT, RIGHT?

11:05AM

11 A. IN THE CONTRACT, YES.

12 Q. THEY WOULD HAVE THE RIGHT, WOULD THEY NOT, TO  
13 SAY, THAT IN THE EVENT A PORTFOLIO MANAGER IS  
14 TERMINATED, HE GETS PAID THE ACCRUED FEES. THEY'D HAVE  
15 THE RIGHT TO NEGOTIATE THAT TERM, WOULDN'T THEY, SIR?

11:06AM

16 A. TECHNICALLY, YES.

17 MR. BRIAN: NOTHING FURTHER.

18 MR. MADISON: JUST ONE OR TWO QUESTIONS, IF I  
19 MAY, YOUR HONOR?

20 THE COURT: LET'S FINISH IT UP.

11:06AM

21

22

23 FURTHER RE-CROSS-EXAMINATION

24

25 BY MR. MADISON:

26 Q. WAS THAT PROVISION EVER REQUESTED BY  
27 MR. GUNDLACH IN THE WRITTEN CONTRACT HERE AS IT WENT  
28 BACK AND FORTH?

1 MR. BRIAN: OBJECTION. BEST EVIDENCE, YOUR  
2 HONOR.

3 THE COURT: SUSTAINED.

4 MR. BRIAN: MOVE TO STRIKE THE ANSWER.

5 THE COURT: THERE WASN'T AN ANSWER.

11:06AM

6 Q. BY MR. MADISON: DID MR. GUNDLACH EVER TELL  
7 YOU HE WANTED A PRO FOOTBALL COACH-TYPE AGREEMENT?

8 A. NO.

9 Q. CAN YOU AGREE ON COMPENSATION TERMS WITHOUT  
10 HAVING AN EMPLOYMENT CONTRACT FOR A TERM OF YEARS?

11:06AM

11 MR. BRIAN: OBJECTION. BEYOND THE SCOPE.

12 THE COURT: SUSTAINED.

13 Q. BY MR. MADISON: MR. BRIAN JUST ASKED YOU  
14 ABOUT THE E-MAIL THAT TALKED ABOUT THE HANDSHAKE  
15 AGREEMENT.

11:07AM

16 DO YOU RECALL THAT?

17 A. YES.

18 Q. DO YOU RECALL THAT THAT WAS ON MAY 30TH?

19 A. I DON'T RECALL.

20 Q. WELL, IF YOU LOOK AT EXHIBIT 63, AND IT'S IN  
21 EVIDENCE SO I'LL JUST QUICKLY PUT IT UP ON THE SCREEN.

11:07AM

22 MR. BRIAN: CUMULATIVE, YOUR HONOR.

23 THE COURT: SUSTAINED.

24 THIS HAS BEEN UP HALF A DOZEN TIMES.

25 MR. MADISON, JUST ASK A QUESTION.

11:07AM

26 Q. BY MR. MADISON: MY ONLY QUESTION IN FOLLOW UP  
27 TO MR. BRIAN'S QUESTION IS: AFTER THAT E-MAIL TALKING  
28 ABOUT THE HAND SHAKE AGREEMENT, THERE WAS A NEGOTIATION

1 OF THE WRITTEN TERMS OF THE EMPLOYMENT CONTRACT BACK  
2 AND FORTH?

3 MR. BRIAN: OBJECTION. NO FOUNDATION.

4 THE COURT: SUSTAINED.

5 Q. BY MR. MADISON: WELL, WE'VE SEEN E-MAILS THAT  
6 YOU ARE COPIED ON AFTER THAT DATE GOING BACK AND FORTH,  
7 INCLUDING IN JUNE MR. GUNDLACH WAS PROVIDING FEEDBACK  
8 ABOUT THE WRITTEN AGREEMENT?

11:07AM

9 MR. BRIAN: CUMULATIVE.

10 THE COURT: SUSTAINED.

11:07AM

11 MR. MADISON: NOTHING FURTHER, YOUR HONOR.

12 THE COURT: THANK YOU.

13 MR. BRIAN: NOTHING FURTHER, YOUR HONOR.

14 THE COURT: MR. BEYER, THANK YOU FOR YOUR  
15 TESTIMONY. BE THANKFUL FOR SMALL FAVORS.

11:08AM

16 MR. BRIAN: YOUR HONOR, AS OUR NEXT WITNESS  
17 WE'RE GOING TO CALL MR. SEVERIN CABANNES. IT IS A  
18 DEPOSITION THAT WAS TAKEN THROUGH A FRENCH INTERPRETER  
19 BUT INSTEAD OF PLAYING THAT, WE'RE GOING TO HAVE TWO OF  
20 MY COLLEAGUES SIMPLY ASK THE QUESTIONS IN ENGLISH AND  
21 GIVE THE ANSWERS IN ENGLISH AND DISPLAY THE EXHIBITS  
22 DURING THE PLAYING OF THE TESTIMONY. WE WOULD ASK  
23 PERMISSION TO DISPLAY AN INITIAL PHOTOGRAPH SO THAT THE  
24 JURORS HAVE A SENSE OF THE WITNESS.

11:08AM

25 THE COURT: THAT'S FINE.

11:08AM

26 LADIES AND GENTLEMEN, IN THE OLD DAYS  
27 BEFORE WE HAD ALL THIS VIDEO STUFF THAT'S THE WAY YOU  
28 ALWAYS HEARD DEPOSITION TESTIMONY. PEOPLE READ IT,

1 SOMEBODY READS THE QUESTION; SOMEBODY READS THE ANSWER.  
2 WE'VE LOOKED AT SOME OF THIS, AND BECAUSE IT'S DONE  
3 THROUGH AN INTERPRETER, IT'S VERY TEDIOUS AND IT WOULD  
4 TAKE PROBABLY ONE AND A HALF TO TWO TIMES AS LONG TO  
5 LISTEN AND WATCH THE VIDEO. AND THAT'S WHY IT'S GOING  
6 TO BE DONE THIS WAY, SO. BUT IT'S THE SAME AS ANY  
7 OTHER TESTIMONY THAT YOU HAVE HEARD IN THE TRIAL OR ANY  
8 OTHER EVIDENCE THAT COME BEFORE YOU.

11:08AM

9 MR. BRIAN: AND MAY I INTRODUCE TO THE JURY  
10 AND THE COURT MY COLLEAGUES, JACOB KREILKAMP WHO IS  
11 GOING TO PLAY THE WITNESS AND LAURA SMOLOWE WHO'S GOING  
12 TO PLAY THE EXAMINER AT THE DEPOSITION.

11:09AM

13 THE COURT: ALL RIGHT.

14

15 (DEPOSITION TESTIMONY READ AS FOLLOWS:)

11:09AM

16

17 "Q MR. CABANNES, ARE YOU  
18 REPRESENTED BY AN ATTORNEY HERE  
19 TODAY?

20 "A I BELIEVE I'M REPRESENTED BY  
21 AN ATTORNEY.

11:09AM

22 "Q AND WHO IS THAT?

23 "A STEVE WOLOWITZ.

24 "Q ARE YOU ALSO REPRESENTED BY  
25 MR. STEVE MADISON?

11:09AM

26 "A YES, I'M ALSO REPRESENTED BY  
27 STEVE MADISON.

28 "Q AND ARE YOU AWARE THAT STEVE

1 MADISON AND HIS LAW FIRM REPRESENT  
2 TCW IN THE LAWSUIT AGAINST MY  
3 CLIENTS?

4 "A YES, I AM AWARE OF THAT.

5 "Q DOES SOCIETE GENERALE HAVE THE  
6 SAME INTEREST IN THIS LAWSUIT AS  
7 DOES TRUST COMPANY OF THE WEST?

11:10AM

8 "A I DON'T BELIEVE SO.

9 "Q HOW ARE THEY DIFFERENT?

10 "A I DON'T BELIEVE THAT SOCIETE  
11 GENERALE IS A PARTY TO THE  
12 LITIGATION.

11:10AM

13 "Q DID YOU MEET WITH MR. MADISON  
14 OR ANYONE ELSE TO PREPARE FOR YOUR  
15 DEPOSITION TODAY?

11:10AM

16 "A YES.

17 "Q WHAT IS YOUR CURRENT POSITION?

18 "A DEPUTY CEO OF SOCIETE GENERALE  
19 GROUP.

20 "Q DOES THAT MEAN YOU'RE THE  
21 NUMBER TWO PERSON IN THE GROUP?

11:10AM

22 "A NO.

23 "Q WHOM DO YOU REPORT TO?

24 "A TO THE CEO.

25 "Q AND WHO IS THAT?

11:10AM

26 "A TO MR. FREDERICK OUDEA.

27 "Q IS IT -- ARE YOU IN FACT THE  
28 CO-CHIEF EXECUTIVE OFFICER OF



1 SOCIETE GENERALE?

2 "THE INTERPRETER: I WAS JUST ASKED  
3 BY THE WITNESS TO TRANSLATE THE  
4 TERM 'CO-CHIEF EXECUTIVE OFFICER'  
5 INTO FRENCH BECAUSE THAT'S THE  
6 ENGLISH TERM AND IT'S NOT THE  
7 APPROPRIATE FRENCH TERM.

11:11AM

8 "A NO, I'M ONE OF THE THREE  
9 DEPUTY CHIEF EXECUTIVE OFFICERS.

10 "Q OKAY, AND ALL THREE OF YOU  
11 REPORT TO MR. OUDEA?

11:11AM

12 "A YES.

13 "Q AND HE'S THE HIGHEST RANKING  
14 OFFICER IN THE COMPANY, IS HE NOT?

15 "A YES.

11:11AM

16 "Q AND YOU HAVE HELD YOUR  
17 POSITION AS THE DEPUTY CHIEF  
18 EXECUTIVE OFFICER SINCE MAY OF  
19 2008, IS THAT RIGHT?

20 "A YES, THAT IS CORRECT.

11:11AM

21 "Q OKAY. LET ME ASK YOU AGAIN  
22 NOW, ARE YOU A MEMBER OF THE BOARD  
23 OF DIRECTORS OF TCW GROUP, INC.?

24 "A YES.

25 "Q HOW LONG HAVE YOU BEEN A  
26 MEMBER OF THAT BOARD OF DIRECTORS?

11:12AM

27 "A A BIT MORE THAN TWO YEARS. A  
28 BIT MORE THAN TWO YEARS.

1 "Q IS ANYONE ELSE FROM SOCIETE  
2 GENERALE ALSO A MEMBER OF THE BOARD  
3 OF DIRECTORS OF TCW GROUP, INC.?

4 "A WHEN YOU SAY 'ANYONE ELSE,'  
5 CAN YOU CLARIFY WHO YOU MEAN BY  
6 ANYONE ELSE.

11:12AM

7 "Q ANYONE ELSE ASSOCIATED WITH  
8 SOCIETE GENERALE?

9 "A YES.

10 "Q WHO WAS THAT?

11:12AM

11 "A MR. JACQUES RIPOLL.

12 "Q DO YOU KNOW WHETHER OR NOT  
13 MR. MUSTIER HAD BEEN A MEMBER OF  
14 THE GROUP OF DIRECTORS OF THE TCW  
15 GROUP, INC.?

11:12AM

16 "A I DON'T RECALL.

17 "Q IS ROBERT DAY THE CHAIR OF THE  
18 BOARD OF DIRECTORS OF TCW GROUP,  
19 INC.?

20 "A YES.

11:12AM

21 "Q AND WAS HE THE CHAIR WHEN YOU  
22 JOINED THE BOARD SOMETIME IN 2009?

23 "A YES.

24 "Q IS MARC STERN A MEMBER OF THE  
25 BOARD OF DIRECTORS OF THE TCW  
26 GROUP, INC.?

11:13AM

27 "A MARC STERN IS MANAGING  
28 DIRECTOR OF TCW GROUP, INC., I

1 DON'T KNOW IF FROM A LEGAL  
2 STANDPOINT HE'S A BOARD MEMBER.

3 "Q HOW OFTEN DOES THE BOARD OF  
4 DIRECTORS OF TCW GROUP, INC. MEET,  
5 EITHER IN PERSON OR BY TELEPHONE?

11:13AM

6 "A ABOUT THREE TIMES A YEAR.

7 "Q THE BOARD MEETINGS THAT YOU  
8 ATTENDED, EITHER IN PERSON OR BY  
9 PHONE, WERE THEY CONDUCTED IN  
10 ENGLISH OR IN FRENCH?

11:13AM

11 "A YES.

12 "Q WHICH LANGUAGE?

13 "A IN ENGLISH.

14 "Q WERE YOU ABLE TO UNDERSTAND  
15 WHAT WAS BEING DISCUSSED IN ENGLISH  
16 AT THOSE BOARD MEETINGS?

11:13AM

17 "A I BELIEVE SO.

18 "Q DID YOU BRING A FRENCH  
19 INTERPRETER WITH YOU?

20 "A NO.

11:13AM

21 "Q AND I ASSUME TCW DIDN'T HAVE A  
22 FRENCH INTERPRETER FOR YOU, DID  
23 THEY?

24 "A NO.

25 "Q I'LL ASK YOU A DIFFERENT  
26 QUESTION. DO YOU SOMETIMES RECEIVE  
27 OR SEND E-MAILS IN ENGLISH?

11:14AM

28 "A YES.

1 "Q HAVE YOU BEEN TRAINED TO SPEAK  
2 AND WRITE ENGLISH?

3 "A I DON'T UNDERSTAND THAT  
4 QUESTION.

5 "Q DID YOU LEARN TO SPEAK ENGLISH  
6 WHEN YOU WERE GROWING UP? 11:14AM

7 "A I LEARNED ENGLISH AT SCHOOL  
8 HERE IN FRANCE.

9 "Q OKAY. IS IT THE PRACTICE OF  
10 TCW GROUP, INC. TO PREPARE MINUTES  
11 OF THE BOARD OF DIRECTORS'  
12 MEETINGS. 11:14AM

13 "A I BELIEVE THAT IS A PRACTICE.

14 "Q AND ARE THEY PREPARED IN  
15 ENGLISH? 11:14AM

16 "A THE MINUTES THAT I'VE READ  
17 WERE IN ENGLISH.

18 "Q AND DO YOU READ THEM?

19 "A YES, I DO.

20 "Q AND DO YOU READ THEM IN  
21 ENGLISH? 11:14AM

22 "A THAT'S CORRECT.

23 "Q LET ME SHOW WHAT YOU HAS BEEN  
24 MARKED AS EXHIBIT 3.

25 I'M SHOWING YOU A DOCUMENT 11:15AM

26 MARKED EXHIBIT 3. IT SAYS,

27 'FINANCIAL STATEMENTS 2001.' FOR

28 ALL OF OUR CONVENIENCE I DID NOT

1 INCLUDE EVERY PAGE OF THE DOCUMENT.  
2 ON THE SECOND PAGE OF THE DOCUMENT  
3 I MARKED AN ENTRY THAT STARTS WITH,  
4 'DURING THE SECOND HALF OF 2001,'  
5 DO YOU SEE THAT?

11:15AM

6 "A YES, I DO.

7 "Q AND DOES THAT REFRESH YOUR  
8 RECOLLECTION THAT IN 2001 SOCIETE  
9 GENERALE PURCHASED SLIGHTLY MORE  
10 THAN A 50 PERCENT OWNERSHIP  
11 INTEREST IN TCW?

11:15AM

12 "A YES, THIS INDICATES A FIGURE  
13 THAT I DIDN'T REMEMBER.

14 "Q AND TO THE BEST OF YOUR  
15 RECOLLECTION, IS THAT -- DOES THAT  
16 NUMBER, THAT FIGURE, APPEAR TO BE  
17 ACCURATE?

11:15AM

18 "A I DON'T KNOW.

19 "Q DOES SOCIETE GENERALE NOW OWN  
20 100 PERCENT OF THE STOCK IN TCW?

11:15AM

21 "A I'M NOT SURE ABOUT THE 100  
22 PERCENT FIGURE, BUT THE  
23 OVERWHELMING MAJORITY.

24 "Q DO YOU KNOW HOW THE  
25 REGISTRATION DOCUMENTS OF SOCIETE  
26 GENERALE ARE PREPARED?

11:16AM

27 "A YES, I DO KNOW. I DON'T KNOW  
28 IN DETAIL, BUT I HAVE A GENERAL

1 IDEA OF THE PROCESS BY WHICH OF THE  
2 DOCUMENT IS PREPARED.

3 "Q AND THAT PROCESS IS DONE  
4 PURSUANT TO THE ORDINARY COURSE OF  
5 BUSINESS WITHIN THE COMPANY, RIGHT?

11:16AM

6 "A I'M NOT SURE I UNDERSTAND YOUR  
7 QUESTION, AND SPECIFICALLY WHEN YOU  
8 REFER TO THE NORMAL COURSE OF  
9 BUSINESS.

10 "Q WELL, IS IT PREPARED AS PART  
11 OF THE BUSINESS OPERATIONS OF THE  
12 COMPANY?

11:16AM

13 "A THIS IS PREPARED AS PART OF  
14 THE BUSINESS OF THE COMPANY.

15 "Q AND IS IT THE PRACTICE OF  
16 SOCIETE GENERALE TO INCLUDE  
17 ACCURATE INFORMATION IN THEIR  
18 REGISTRATION DOCUMENTS?

11:16AM

19 "A YES, IT IS.

20 "Q OKAY. DO YOU HAVE ANY REASON  
21 TO DOUBT THE ACCURACY OF THE  
22 STATEMENT HERE THAT THE STAKE IN  
23 TCW WAS INCREASED TO 100 PERCENT?

11:16AM

24 "A NO, I DON'T.

25 "Q HAVE YOU EVER MET JEFFREY  
26 GUNDLACH?

11:17AM

27 "A YES.

28 "Q HOW MANY TIMES HAVE YOU MET

1 HIM?

2 "A ONCE.

3 "Q AND WHEN WAS THAT,  
4 APPROXIMATELY?

5 "A I BELIEVE IT WAS IN THE FALL  
6 OF 2009.

11:17AM

7 "Q AND WHAT WAS IT -- WHAT  
8 CIRCUMSTANCE WAS IT THAT CAUSED YOU  
9 TO MEET HIM?

10 "A HE ATTENDED A TCW GROUP, INC.  
11 MEETING IN LOS ANGELES AND AFTER  
12 THE BOARD MEETING THERE WAS A LUNCH  
13 THAT I ATTENDED WITH HIM. I  
14 MISSPOKE EARLIER WHEN I SAID THAT I  
15 ONLY MET HIM ONCE, I ACTUALLY MET  
16 HIM TWICE, THE EVE -- THE EVENING  
17 BEFORE THE BOARD MEETING THERE WAS  
18 A DINNER HELD AT THE HOME OF  
19 MR. ROBERT DAY AND I MET HIM THERE  
20 AS WELL.

11:17AM

11:17AM

11:17AM

21 "Q BY NOVEMBER OF 2009 TCW HAD  
22 DECIDED TO TERMINATE MR. GUNDLACH,  
23 HAD IT NOT?

24 "A CAN YOU CLARIFY WHAT TIME  
25 PERIOD YOU ARE REFERRING TO?

11:18AM

26 "Q BY THE TIME OF THOSE TWO  
27 MEETINGS IN NOVEMBER 2009, TCW HAD  
28 ALREADY DECIDED TO TERMINATE

1 MR. GUNDLACH; ISN'T THAT RIGHT?

2 "A TO THE BEST OF MY KNOWLEDGE  
3 AND UNDERSTANDING THAT WAS NOT THE  
4 CASE.

5 "Q I'LL REFRAME IT. PRIOR TO  
6 NOVEMBER 2009, DID ANYONE TELL YOU  
7 THAT TCW WANTED TO TERMINATE  
8 MR. GUNDLACH?

9 "A NO.

11:18AM

10 "Q LET ME SHOW YOU WHAT'S BEEN  
11 MARKED AS EXHIBIT 7.

11:18AM

12 I PUT IN FRONT OF YOU  
13 SOMETHING MARKED EXHIBIT 7. LET ME  
14 TELL YOU WHAT IT IS. THE FIRST  
15 THREE PAGES ARE COPIES OF A  
16 DOCUMENT WE RECEIVED FROM A  
17 PRODUCTION FROM SOCIETE GENERALE  
18 AND THEN THE NEXT THREE PAGES ARE  
19 AN OFFICIAL TRANSLATION OF THAT  
20 DOCUMENT. AT THE VERY FIRST PAGE  
21 OF EXHIBIT 7, AT THE TOP IS AN  
22 E-MAIL FROM YOURSELF, YES?

11:18AM

11:19AM

23 "A YES, THAT IS CORRECT.

24 "Q AND YOU SENT IT TO JACQUES  
25 RIPOLL AMONG OTHERS; IS THAT  
26 CORRECT?

11:19AM

27 "A YES.

28 "Q WHO ARE THE OTHER PEOPLE TO



1 WHOM YOU SENT THIS E-MAIL? IF YOU  
2 COULD PLEASE GIVE ME THEIR NAMES  
3 AND TELL ME WHAT THEIR TITLE OR JOB  
4 IS.

5 "A PATRICK SOMMELET WAS DIRECTOR  
6 OF INVESTOR RELATIONS. DIDIER  
7 VALET WAS, AND STILL IS, THE CHIEF  
8 FINANCIAL OFFICER OF SOCIETE  
9 GENERALE GROUP. FREDERICK OUDEA IS  
10 THE GROUP'S CEO?

11:19AM

11:19AM

11 "Q HE WAS THE HIGHEST RANKING  
12 OFFICER, CORRECT?

13 "A CORRECT.

14 "Q AND THEN YOU -- AND YOU COPIED  
15 SOME INDIVIDUALS. COULD YOU  
16 DESCRIBE WHO THEY ARE, TOO?

11:20AM

17 "A HUGUES LE BRET WAS THE GROUP'S  
18 CHIEF COMMUNICATIONS OFFICER. AND  
19 MATHIEU VEDRENNE WAS THE CEO'S  
20 CHIEF OF STAFF.

11:20AM

21 "Q IF YOU GO TOWARDS THE BOTTOM  
22 OF THE FIRST PAGE OF EXHIBIT 7  
23 THERE'S AN E MAILING FROM JEAN-MARC  
24 VALLAS, AND WHO IS HE?

25 "A AT THE TIME HE WAS THE  
26 COMMUNICATIONS MANAGER OF ASSET  
27 MANAGEMENT SECURITY SERVICES  
28 PRIVATE BANKING AND FUTURE

11:20AM

1 BROKERAGE SERVICES.

2 "Q AND HIS E-MAIL TO JACQUES  
3 RIPOLL WAS FORWARDED TO YOU,  
4 CORRECT?

5 "A THAT IS CORRECT. 11:20AM

6 "Q YOU UNDERSTOOD AT THE TIME YOU  
7 SENT YOUR E-MAIL, ON NOVEMBER 15TH,  
8 2009, THAT SOCIETE GENERALE  
9 INTENDED TO MAKE A PUBLIC  
10 STATEMENT, DID YOU NOT? 11:21AM

11 "A I DON'T KNOW IF THE INTENTION  
12 WAS FIRM ON THE 15TH. THIS WAS  
13 PREPARATION.

14 "Q DID SOCIETE GENERALE MAKE A  
15 PUBLIC STATEMENT IN DECEMBER 2009? 11:21AM

16 "A IT'S POSSIBLE, BUT I DON'T  
17 RECALL WITH CERTAINTY.

18 "Q IN JEAN-MARC VALLAS' E-MAIL,  
19 IN HIS NEW VERSION, ONE OF THE  
20 STATEMENTS SAYS: 11:21AM

21 'AS THE SOLE SHAREHOLDER  
22 IN TCW, WE CONFIRM THAT  
23 JEFFREY GUNDLACH NEVER  
24 MADE ANY FORMAL OR  
25 REALISTIC OFFER.' 11:21AM

26 DO YOU SEE THAT?

27 "A YES, I DO SEE THAT.

28 "Q AND YOU SAW THAT WHEN THIS

1 E-MAIL WAS FORWARDED TO YOU ON  
2 DECEMBER 15TH, 2009, DID YOU NOT?

3 "A IT'S PROBABLE. I DON'T HAVE A  
4 SPECIFIC RECOLLECTION OF THAT, BUT  
5 I DO BELIEVE, AND ASSUME, THAT I  
6 DID READ THE E-MAIL.

11:22AM

7 "Q WHEN YOU READ THE E-MAIL, DID  
8 YOU ASK ANYBODY WHAT THEY MEANT BY  
9 ANY FORMAL OR REALISTIC OFFER?

10 "A I DON'T RECALL.

11:22AM

11 "Q I'LL CHANGE -- I'LL REFRAME MY  
12 QUESTION.

13 WHEN YOU READ THE E-MAIL, DID  
14 IT MAKE YOU THINK THAT MR. GUNDLACH  
15 HAD MADE AN OFFER TO BUY TCW?

11:22AM

16 "A I DON'T RECALL WHAT, UPON  
17 READING THIS E-MAIL ON DECEMBER  
18 15TH, 2009, I THOUGHT.

19 "Q IN YOUR E-MAIL, AT THE TOP OF  
20 EXHIBIT 7, ON THE FIRST PAGE, AFTER  
21 YOUR FIRST SENTENCE, YOU SAID:

11:22AM

22 'IS IT THE RIGHT TIME  
23 TO TRANSFORM THE  
24 STERN-GUNDLACH DEBATE  
25 INTO A SG-GUNDLACH  
26 DEBATE?'

11:22AM

27 ISN'T THAT WHAT YOU WROTE?

28 "A THAT IS WHAT I WROTE. BUT I

1 DON'T BELIEVE THAT THE WORD I USED  
2 'OPPORTUN' CAN BE PROPERLY  
3 DESCRIBED AS 'THE RIGHT TIME'.

4 "Q WHAT DO YOU THINK THE RIGHT --  
5 THE PROPER TRANSLATION IS, SIR?

11:23AM

6 "A I'D RATHER THE INTERPRETER  
7 TRANSLATE THE TERM INTO ENGLISH.

8 "Q NO, I'M NOT ASKING THE  
9 INTERPRETER. I'M ASKING YOU, SIR.

10 "A YOU ARE ASKING ME TO TRANSLATE  
11 A FRENCH WORD INTO ENGLISH; IS THAT  
12 CORRECT?

11:23AM

13 "Q BECAUSE -- I AM, BECAUSE YOU  
14 SAID THE TRANSLATION WAS NOT -- YOU  
15 SAID IT COULD NOT BE TRANSLATED.  
16 SO HOW WOULD YOU SAY IT IN ENGLISH,  
17 WHAT YOU WROTE IN FRENCH?

11:23AM

18 "A I WOULD HAVE SAID WAS IT THE  
19 RIGHT THING TO DO AS OPPOSED TO  
20 USING THE PHRASEOLOGY WAS IT THE  
21 RIGHT TIME.

11:23AM

22 "Q DID YOU EVER HAVE A DISCUSSION  
23 WITH MR. GUNDLACH WHEN YOU MET HIM  
24 ON THESE TWO OCCASIONS IN NOVEMBER  
25 2009, ABOUT WHETHER HE WOULD BE  
26 INTERESTED IN PURCHASING TCW?

11:23AM

27 "A EXCUSE ME. CAN YOU REPEAT THE  
28 BEGINNING OF YOUR QUESTION?

1 "Q YOU TESTIFIED EARLIER THAT YOU  
2 HAD TWO MEETINGS WITH MR. GUNDLACH  
3 IN NOVEMBER 2009, DO YOU REMEMBER  
4 THAT?

5 "A YES, I DO. 11:24AM

6 "Q AT EITHER OF THOSE MEETINGS  
7 DID YOU DISCUSS WITH MR. GUNDLACH  
8 WHETHER HE WOULD BE INTERESTED IN  
9 BUYING TCW?

10 "A I DON'T RECALL. 11:24AM

11 "Q I THINK MY LAST QUESTION WAS  
12 DO YOU KNOW HOW MANY ASSETS WERE  
13 UNDER MANAGEMENT WHEN  
14 MR. GUNDLACH -- AT TCW, WHEN  
15 MR. GUNDLACH WAS FIRED IN DECEMBER  
16 2009? 11:24AM

17 "A THE AMOUNT WAS APPROXIMATELY  
18 \$100 BILLION.

19 "Q AND OF THAT AMOUNT, DO YOU  
20 KNOW HOW MUCH -- WHAT PERCENTAGE OF  
21 THAT WAS BEING MANAGED BY  
22 MR. GUNDLACH OR HIS TEAM? 11:24AM

23 "MR. MADISON: CAN YOU SAY WHAT HE  
24 JUST SAID, PLEASE?

25 "THE INTERPRETER: I'M TRYING. I  
26 JUST NEED TO WORK IT OUT. 11:25AM

27 "THE WITNESS: IS YOUR QUESTION  
28 WHAT PERCENTAGE WAS MANAGED OR HAD

1 BEEN MANAGED? I'M NOT SURE IF I'M  
2 UNDERSTANDING PROPERLY THE TENSE.

3 "Q IN 2009, BEFORE HE WAS  
4 TERMINATED, WHAT PERCENTAGE OF THAT  
5 \$100 BILLION WAS BEING MANAGED BY  
6 MR. GUNDLACH OR HIS TEAM?

11:25AM

7 "A TO THE BEST OF MY KNOWLEDGE  
8 AND UNDERSTANDING IT WAS ABOUT  
9 20 -- EXCUSE ME, 60 PERCENT.

10 "Q ISN'T IT A FACT THAT SOCIETE  
11 GENERALE AND TCW BEGAN CONSIDERING  
12 FIRING MR. GUNDLACH AS EARLY AS  
13 JUNE OF 2009?

11:25AM

14 "A NO, THAT'S NOT CORRECT.

15 "Q LET ME SHOW YOU EXHIBIT 12.  
16 THE FIRST PAGE OF EXHIBIT 12  
17 IS THE ORIGINAL DOCUMENT PRODUCED  
18 BY SOCIETE GENERALE, THE SECOND  
19 PAGE IS AN ENGLISH TRANSLATION, AND  
20 THE THIRD IS THE CERTIFICATE OF THE  
21 TRANSLATOR. PLEASE LOOK AT THE  
22 E-MAIL FROM MR. MUSTIER ON THE --  
23 IN FRENCH, ON THE FIRST PAGE OF  
24 EXHIBIT 12.

11:25AM

11:26AM

25 "A YES.

11:26AM

26 "Q THE WORD 'DE' SPELLED D-E IN  
27 FRENCH, MEANS 'FROM'; DOES IT NOT?

28 "A YES.

1 "Q AND THE WORD 'A' SPELLED WITH  
2 AN A, IN FRENCH MEANS 'TO', DOES IT  
3 NOT?

4 "A YES.

5 "Q THIS IS AN E-MAIL THAT WENT 11:26AM  
6 FROM MR. MUSTIER TO, AMONG OTHERS,  
7 YOU, CORRECT?

8 "A CORRECT.

9 "Q AND YOU RECEIVED THAT E-MAIL  
10 ON OR ABOUT JUNE 6TH OF 2009, DID 11:27AM  
11 YOU NOT?

12 "A PROBABLY SO. BUT I RECEIVE  
13 ANYWHERE FROM TWO TO 300 E-MAILS  
14 EVERY DAY.

15 "Q TAKE A LOOK AT THE PARAGRAPH 11:27AM  
16 OF THIS E-MAIL THAT STARTS WITH  
17 NOUS AVONS, N-O-U-S, A-V-O-N-S.

18 DO YOU SEE THAT?

19 "A YES.

20 "Q MR. MUSTIER TOLD YOU IN THIS 11:27AM  
21 E-MAIL THAT:

22 'WE ARE HAVING A SIMILAR  
23 CONVERSATION WITH ROBERT DAY.'

24 DID HE NOT?

25 "A YES. CORRECT. 11:27AM

26 "Q I'LL REPEAT MY QUESTION FOR  
27 YOU. HE TOLD YOU THAT YOU WERE  
28 HAVING DISCUSSIONS ABOUT WHAT TO DO

1 WITH JEFFREY GUNDLACH, CORRECT?

2 "A IF, WHEN YOU SAY 'HE TOLD  
3 YOU', YOU MEAN 'ME', THEN THE  
4 ANSWER TO THAT IS NO.

5 "Q HE TOLD YOU IN THIS E-MAIL,  
6 THAT YOU WERE HAVING DISCUSSIONS  
7 ABOUT WHAT TO DO WITH JEFFREY  
8 GUNDLACH, DID HE NOT?

11:28AM

9 "A I DON'T KNOW YOUR QUESTION.  
10 THIS E-MAIL SAYS THAT MR. MUSTIER  
11 AND MR. DAY HAD A DISCUSSION ABOUT  
12 THAT.

11:28AM

13 "Q AND HE TOLD -- HE TOLD THAT TO  
14 YOU IN THE E-MAIL, THAT THEY WERE  
15 HAVING THOSE DISCUSSIONS.

11:28AM

16 "A YES. HE DID SEND ME THAT  
17 INFORMATION, THAT'S CORRECT.

18 "Q THE WORD 'NOUS', N-O-U-S,  
19 MEANS 'WE', DOES IT NOT? CORRECT?

20 "A HERE, IN THIS SENTENCE, THE  
21 WORD 'US' REFERS TO ROBERT DAY AND  
22 MR. MUSTIER.

11:28AM

23 "Q COULD YOU TRANSLATE WHERE IT  
24 SAYS: 'NOUS REGARDONS DE TOUTE...'  
25 THAT PHRASE THERE, WHAT DID  
26 MR. MUSTIER SAY IN THE E-MAIL IN  
27 THAT PHRASE?

11:28AM

28 I'M SHOWING YOU THE PARAGRAPH



1                    THAT STARTS WITH 'NOUS AVONS', DO  
2                    YOU SEE THAT, SIR?

3                    "A    YES.

4                    "Q    AND BELOW THAT, WHAT DOES IT  
5                    SAY, QUOI FAIRE DE...GUNDLACH, '  
6                    RIGHT?

11:29AM

7                    "A    YES, THAT'S WHAT IT SAYS.

8                    "Q    MR. MUSTIER TOLD YOU, IN THIS  
9                    E-MAIL, THAT THEY -- THAT 'THEY' OR  
10                    'WE':

11:29AM

11                    '...ARE LOOKING AT OUR  
12                    OPTIONS TO FORCE HIM OUT  
13                    (PROACTIVE) OR REPLACE  
14                    HIM, (DEFENSIVE IF HE  
15                    LEAVES.'

11:29AM

16                    DIDN'T HE?

17                    YOU CAN ANSWER THE QUESTION.

18                    "A    YES, THAT'S WHAT IT SAYS.

19                    "Q    AND HE ALSO TOLD YOU --

20                    "A    THAT'S WHAT IS WRITTEN. IT'S  
21                    NOT WHAT IT SAYS. IT'S QUITE  
22                    DIFFERENT FROM THAT.

11:29AM

23                    "Q    HE ALSO TOLD YOU THAT MR. DAY  
24                    THINKS THAT WE NEED TO FORCE  
25                    MR. GUNDLACH OUT. HE SAID THAT AS  
26                    WELL, DIDN'T HE?

11:30AM

27                    "A    THAT'S WHAT MR. MUSTIER WROTE  
28                    IN THIS E-MAIL.

1 "A I'LL REFRAME THE QUESTION. BY  
2 JUNE 13TH, SOCIETE GENERALE, HAD  
3 CONCLUDED THAT MR. GUNDLACH SHOULD  
4 BE REMOVED; ISN'T THAT TRUE?

5 "A WHAT IS THE QUESTION? IS IT  
6 CONCLUDED OR DECIDED? 11:30AM

7 "Q I'LL REFRAME IT. BY JUNE 13TH  
8 OF 2009, SOCIETE GENERALE BELIEVED  
9 THAT MR. GUNDLACH SHOULD ULTIMATELY  
10 BE REMOVED; ISN'T THAT TRUE? 11:30AM

11 "A I DON'T KNOW WHO YOU MEAN BY,  
12 IN THAT QUESTION, WHEN YOU REFER TO  
13 SOCIETE GENERALE, SO THE ANSWER IS  
14 NO.

15 "Q LET ME SHOW YOU EXHIBIT 13.  
16 EXHIBIT 13 IS AN E-MAIL DATED JUNE  
17 13TH, 2009 FROM MR. MUSTIER; IS  
18 THAT CORRECT? 11:30AM

19 "A YES, THAT IS CORRECT.

20 "Q AND MR. MUSTIER WAS A HIGH  
21 LEVEL OFFICER OF SOCIETE GENERALE  
22 AT THE TIME, WAS HE NOT? 11:31AM

23 "A HE WAS AN OFFICER EMPLOYED BY  
24 THE COMPANY, YES.

25 "Q AND HE SENT IT TO, AMONG  
26 OTHERS, MR. OUDEA, CORRECT? 11:31AM

27 "A YES, THAT IS CORRECT.

28 "Q AND ALSO TO YOURSELF, CORRECT?

1 "A YES.

2 "Q AND ALSO TO MR. JACQUES  
3 RIPOLL, CORRECT?

4 "A YES.

5 "Q MR. OUDEA WAS THE HIGHEST  
6 RANKING OFFICER OF SOCIETE  
7 GENERALE, WAS HE NOT?

11:31AM

8 "A TO BE SPECIFIC, MR. OUDEA WAS  
9 CHAIRMAN OF THE BOARD OF DIRECTORS  
10 AND CHIEF EXECUTIVE OFFICER.

11:31AM

11 "Q IS THAT A PRETTY HIGH RANKING  
12 POSITION?

13 "A YES.

14 "Q AND DID YOU HOLD A PRETTY HIGH  
15 RANKING POSITION, SIR?

11:32AM

16 "A I WAS, AT THAT TIME, DEPUTY  
17 CHIEF EXECUTIVE OFFICER.

18 "Q DO YOU REGARD THAT AS HIGH  
19 RANKING?

20 "A YES.

11:32AM

21 "Q NOW, MR. MUSTIER TOLD YOU, IN  
22 THE FIRST LINE OF THIS E-MAIL, THAT  
23 HE BELIEVED THAT EACH OF YOU  
24 HAVE -- WOULD SEE MR. STERN THIS  
25 WEEK WHEN HE PASSES THROUGH PARIS,  
26 DID HE NOT?

11:32AM

27 "A YES, THAT IS CORRECT.

28 "Q AND HE TOLD YOU -- AND THEN HE

1 RAISED A FEW POINTS, DID HE NOT?

2 "A YES, THAT IS CORRECT.

3 "Q YOU STILL HAVE EXHIBIT 13 IN  
4 FRONT OF YOU?

5 "A YES.

11:32AM

6 "Q AFTER YOU RECEIVED THE E-MAIL  
7 THAT IS EXHIBIT 13, DID YOU MAKE  
8 ANY EFFORT TO CONTACT MR. GUNDLACH  
9 TO DISCUSS HIS EMPLOYMENT AT TCW?

10 "A NO.

11:32AM

11 "Q DID YOU INSTRUCT ANYONE AT TCW  
12 TO CONTACT MR. GUNDLACH TO DISCUSS  
13 HIS EMPLOYMENT AT TCW.

14 "A I HAVE NO RECOLLECTION OF EVER  
15 HAVING GIVEN ANY SUCH INSTRUCTIONS.

11:33AM

16 "Q HAVE YOU EVER HEARD OF THE  
17 PHRASE PROJECT G IN CONNECTION WITH  
18 MR. GUNDLACH?

19 "A PROJECT G? I'M NOT AWARE OF  
20 THAT. I DON'T REMEMBER. DON'T  
21 REMEMBER.

11:33AM

22 "Q DID MR. STERN EVER TELL YOU  
23 THAT HE REFERRED -- THAT HE USED  
24 THE PHRASE PROJECT G TO REFER TO  
25 HIS AND MR. DAY'S DISCUSSIONS ABOUT  
26 WHAT TO DO WITH MR. GUNDLACH?

11:33AM

27 "A IF YOUR QUESTION IS WHETHER  
28 IT'S POSSIBLE, THEN THE ANSWER IS

1 YES, BUT I DON'T HAVE ANY SPECIFIC  
2 RECOLLECTION OF THAT.

3 "Q DID YOU DISCUSS MR. GUNDLACH'S  
4 FUTURE DIRECTLY WITH MR. DAY IN  
5 2009?

11:33AM

6 "A I DON'T HAVE ANY SPECIFIC  
7 RECOLLECTION OF ANY SUCH  
8 DISCUSSION. BUT, IT IT'S INDEED  
9 POSSIBLE THAT WHEN I WENT TO L.A.  
10 FOR THE BOARD MEETING, THAT MAY  
11 HAVE BEEN IN JULY OR SEPTEMBER, YOU  
12 NEED TO CHECK THE DATE, BUT I HAD  
13 DISCUSSIONS WITH MR. DAY AND THEY  
14 MAY HAVE TOUCHED ON THAT ISSUE.  
15 BUT ONCE AGAIN, I DON'T HAVE ANY  
16 SPECIFIC RECOLLECTION OF THAT.

11:34AM

11:34AM

17 "Q COULD YOU GO BACK TO EXHIBIT  
18 12, PLEASE.

19 I WANT YOU TO LOOK AGAIN, AT  
20 THAT PARAGRAPH BEGINNING 'NOUS  
21 AVONS', DO YOU SEE THAT?

11:34AM

22 "A YES.

23 "Q AND YOU SEE THE NEXT LINE  
24 SAYING 'WHAT TO DO WITH JEFF -- J  
25 GUNDLACH', DO YOU SEE THAT?

11:34AM

26 "A YES, I DO.

27 "Q AND THEN WHEN HE SAYS WE'RE  
28 LOOKING AT OUR OPTIONS TO FORCE HIM

1                   OUT.

2                   DO YOU SEE THAT?

3                   DO YOU SEE THE REFERENCE TO  
4                   'FORCE HIM OUT'?

5                   "A    YES.    I DO SEE THE WORDS  
6                   'FORCE HIM OUT'.

11:35AM

7                   "Q    AND THAT, TO YOU, MEANT  
8                   TERMINATE, DIDN'T IT?

9                   "A    I DON'T KNOW.    THIS WAS  
10                  WRITTEN BY MR. MUSTIER, NOT BY ME.

11:35AM

11                  "A    IS IT STILL YOUR TESTIMONY,  
12                  SIR, THAT YOU HAD NO DISCUSSIONS  
13                  PRIOR TO DECEMBER 4TH ABOUT  
14                  TERMINATING MR. GUNDLACH; IS THAT  
15                  STILL YOUR TESTIMONY?

11:35AM

16                  "A    I WANT TO REPEAT WHAT I  
17                  TESTIFIED TO.    I TESTIFIED TO THE  
18                  FACT THAT I DON'T RECALL EACH AND  
19                  EVERY DISCUSSION I HAD.    I DID  
20                  TESTIFY, AND SAY, THAT THERE MAY  
21                  HAVE BEEN A BROADER DISCUSSION IN  
22                  WHICH THAT SUBJECT WAS MENTIONED.  
23                  BUT THE BROADER DISCUSSION FOCUSED  
24                  ON THE FUTURE OF THE COMPANY AND  
25                  WHAT NEEDED TO BE DONE TO PRESERVE  
26                  THE FUTURE OF THE COMPANY.

11:35AM

11:35AM

27                  "Q    DO YOU HAVE EXHIBIT 15 IN  
28                  FRONT OF YOU?

1 "A YES.

2 "Q THIS IS AN E-MAIL YOU RECEIVED  
3 FROM MR. MUSTIER ON OR ABOUT JULY  
4 31ST, 2009; IS IT NOT?

5 "A YES, THAT IS CORRECT. 11:36AM

6 "Q AND IN THE FOURTH PARAGRAPH OF  
7 THIS, MR. MUSTIER TOLD YOU IN PART  
8 THAT R DAY, THAT'S ROBERT DAY,  
9 THINKS THAT GUNDLACH MUST LEAVE  
10 ISN'T THAT RIGHT? 11:36AM

11 "A YES, THAT'S WHAT IT SAYS.

12 "Q AND THE NEXT PART OF THAT  
13 SENTENCE TALKS ABOUT THE  
14 'CITIBANKERS'.

15 DO YOU SEE THAT? 11:36AM

16 "A YES.

17 "Q SOCIETE GENERALE AND TCW HAD  
18 JOINTLY HIRED CITIGROUP TO MAKE  
19 RECOMMENDATIONS ABOUT TCW'S FUTURE,  
20 CORRECT? 11:36AM

21 "A I DON'T KNOW IF THE TWO  
22 COMPANIES JOINTLY HIRED CITI.

23 "Q DID YOU KNOW THAT CITI HAD  
24 BEEN HIRED?

25 "A YES. 11:37AM

26 "Q AND MR. MUSTIER TOLD YOU THAT  
27 THE CITIBANKERS HAVE SAID THAT YOU  
28 CANNOT SELL OR MORTGAGE TCW UNLESS

1 THE GUNDLACH ISSUE IS HANDLED,  
2 RIGHT?

3 "A THE QUESTION USES THE WORD  
4 'MORTGAGE' AND THE REFERENCE  
5 HERE -- AND THE WORDS OR THE WORD  
6 I-P-O-T-E-R JUST MEANS TO FLOAT IN  
7 THE STOCK MARKET OR INITIAL PUBLIC  
8 OFFERING.

11:37AM

9 "Q WAS SOCIETE GENERALE HOPING TO  
10 EITHER SELL TCW OR DO AN IPO?

11:37AM

11 "A NO DECISION HAD BEEN MADE.  
12 CITI WAS ASKED TO MAKE  
13 RECOMMENDATIONS ABOUT LONG-TERM  
14 PROSPECTS.

15 "Q AND PART OF THOSE -- SOME OF  
16 THE LONG-TERM PROSPECTS THAT  
17 SOCIETE GENERALE WAS CONSIDERING  
18 WAS EITHER SELLING OR ISSUE AN IPO,  
19 CORRECT?

11:37AM

20 "A AMONG THE SOLUTIONS THAT WERE  
21 BEING CONSIDERED WERE THESE TWO  
22 SOLUTIONS AT THE TIME.

11:38AM

23 "Q AND YOU BELIEVE THAT THAT  
24 WOULD BE DIFFICULT, EITHER OF THOSE  
25 WOULD BE DIFFICULT IF THE GUNDLACH  
26 ISSUE HAD NOT BEEN HANDLED; ISN'T  
27 THAT RIGHT?

11:38AM

28 "A YOU? WHAT IS 'YOU'? ME



1 PERSONALLY?

2 "Q YES.

3 "A WHEN YOU SAY 'YOU', YOU MEAN  
4 ME PERSONALLY?

5 "Q YES.

11:38AM

6 "A AT THAT POINT IN TIME, I  
7 DIDN'T NECESSARILY HAVE ALL THE  
8 INFORMATION IN HAND TO BE ABLE TO  
9 ANSWER THAT QUESTION.

10 "Q MR. MUSTIER TOLD YOU IN THE  
11 NEXT PARAGRAPH THAT:

11:38AM

12 '...THE PROBABLE  
13 CONCLUSION WILL BE  
14 THAT WE HAVE TO SEVER  
15 AND REMOVE MR. GUNDLACH.'

11:38AM

16 RIGHT?

17 "A I DON'T SEE WHAT PARAGRAPH YOU  
18 ARE REFERENCING.

19 "Q THE PARAGRAPH THAT BEGINS:

20 'J'AI PROPOSE...'  
21 DOESN'T IT SAY IN THE SECOND  
22 CLAUSE THAT:

11:39AM

23 '...THE PROBABLE  
24 CONCLUSION WILL BE  
25 THAT WE HAVE TO SEVER  
26 AND REMOVE MR. GUNDLACH?'

11:39AM

27 "A YES, THAT'S WHAT IT SAYS.  
28 MR. MUSTIER IS INDICATING THAT HE

1 BELIEVES THAT THE PROBABLE  
2 SOLUTION -- CONCLUSION WILL BE.  
3 "Q WELL, NO, I'LL START THE  
4 QUESTION OVER. WHEN HE SAID -- I'M  
5 RESTARTING THE QUESTION: WHEN HE  
6 SAID THAT:

11:39AM

7 '...THE PROBABLE  
8 CONCLUSION WILL BE  
9 THAT WE HAVE TO SEVER  
10 AND REMOVE GUNDLACH.'  
11 YOU UNDERSTOOD THAT MEANT  
12 TERMINATING HIM, DIDN'T YOU?

11:39AM

13 "A WHAT I UNDERSTAND IS THAT  
14 AMONG THE OPTIONS THAT MR. MUSTIER  
15 WAS CONSIDERING AT THE TIME WAS  
16 THAT OPTION AND THAT THE  
17 PROBABILITY OF -- THE LIKELIHOOD OF  
18 THAT COMING TO FRUITION WAS GREATER  
19 THAN 50 PERCENT.

11:39AM

20 "Q AND THE 'THAT' COMING TO  
21 FRUITION, WAS TERMINATION, CORRECT?

11:40AM

22 "A NO, THAT'S NOT CORRECT.

23 "Q WHAT DID YOU THINK 'SEVER AND  
24 REMOVE' MEANT?

25 "A RESOLVE THE ISSUE REGARDING  
26 THE FUTURE OF THE COMPANY, AND IT  
27 COULD HAVE BEEN SOMETHING ELSE. I  
28 DON'T KNOW WHAT MR. MUSTIER WAS

11:40AM

1 THINKING ABOUT.

2 "Q DO YOU KNOW WHETHER OR NOT

3 THOSE INDIVIDUALS I NAMED WERE

4 ASSET MANAGERS AT TCW IN MAY 2009?

5 "A I TOOK OVER RESPONSIBILITY FOR 11:40AM

6 THIS AREA OF THE BUSINESS FROM

7 MR. CITERNE AROUND OR ABOUT THIS

8 TIME. SO I CAN'T BE AFFIRMATIVE AS

9 TO WHEN I KNEW EXACTLY, BUT AT SOME

10 POINT, VERY QUICKLY THEREAFTER I 11:40AM

11 DID BECOME KNOWLEDGEABLE THAT THESE

12 INDIVIDUALS WERE ASSET MANAGERS.

13 "Q IS MR. ATTANASIO STILL AN

14 ASSET MANAGER AT TCW?

15 "A THERE'S A SPECIAL AGREEMENT, I 11:41AM

16 BELIEVE, IN PLACE TODAY WITH

17 MR. ATTANASIO.

18 "Q IS JEAN-MARC CHAPUS STILL AN

19 ASSET MANAGER AT TCW?

20 "A SAME RESPONSE. 11:41AM

21 "Q IS BLAIR THOMAS STILL AN ASSET

22 MANAGER AT TCW?

23 "A I DON'T HAVE THE ANSWER TO

24 THAT QUESTION.

25 "Q MR. ATTANASIO AND MR. CHAPUS 11:41AM

26 BOTH LEFT TCW AS PART OF A

27 NEGOTIATED AGREEMENT, DID THEY NOT?

28 "A THAT DOESN'T COMPORT WITH MY

1 UNDERSTANDING OF THE SITUATION. I  
2 CAN, HOWEVER, CONFIRM THAT THERE  
3 WAS A NEGOTIATION.

4 "Q DID YOU EVER ASK MR. STERN TO  
5 NEGOTIATE A SEPARATION WITH  
6 MR. GUNDLACH?

11:41AM

7 "A NO.

8 "Q DID MR. STERN EVER TELL YOU  
9 THAT HE INTENDED TO NEGOTIATE A  
10 SEPARATION WITH MR. GUNDLACH?

11:41AM

11 "A NO. NOT SPECIFICALLY.

12 "Q IN FACT, MR. STERN RECOMMENDED  
13 THAT YOU SURPRISE MR. GUNDLACH BY  
14 TERMINATING HIM; ISN'T THAT  
15 CORRECT?

11:42AM

16 "A I DON'T SPECIFICALLY RECALL  
17 THAT RECOMMENDATION OR ADVICE AND  
18 I'M NOT SURE WHAT YOU ARE REFERRING  
19 TO.

20 "Q LET ME SHOW YOU NOW, EXHIBIT  
21 21.

11:42AM

22 EXHIBIT 21 IS AN E-MAIL YOU  
23 RECEIVED FROM MR. RIPOLL ON  
24 SEPTEMBER 4TH, 2009; IS IT NOT?

25 "A YES.

11:42AM

26 "Q I'LL WITHDRAW THAT QUESTION.  
27 IN THE E-MAIL, MR. RIPOLL TOLD YOU  
28 HE'D JUST FINISHED A CALL WITH

1 MR. STERN, CORRECT?

2 "A YES, IT WAS A CALL.

3 "Q AND HE ALSO TOLD YOU THAT HE  
4 AND MR. STERN THINK THAT JEFFREY  
5 GUNDLACH WILL LEAVE, CORRECT?

11:42AM

6 "A THAT'S NOT WHAT I UNDERSTAND  
7 FROM READING THE E-MAIL.

8 "Q DID HE SAY:

9 'WE STILL THINK THAT  
10 JEFFREY GUNDLACH WILL  
11 LEAVE.'

11:43AM

12 AMONG OTHER THINGS, DID HE SAY  
13 THAT?

14 "A THAT'S WHAT HE SAYS IN FRENCH  
15 BUT THAT DOESN'T COMPORT WITH THE  
16 TRANSLATION YOU JUST READ IN  
17 ENGLISH. AND WHAT I MEAN BY THAT  
18 IS THAT IN THE FRENCH E-MAIL  
19 THERE'S THE WORD 'HYPOTHESE' THAT'S  
20 BEING USED.

11:43AM

11:43AM

21 "Q I'LL REPHRASE IT. DID  
22 MR. RIPOLL TELL YOU IN THE E-MAIL  
23 THAT HE THINKS THAT MR. GUNDLACH'S  
24 TEAM WAS STARTING TO SEE THAT  
25 MR. GUNDLACH IS NOT RELIABLE.

11:43AM

26 "A THAT'S MY UNDERSTANDING FROM A  
27 READING OF THE E-MAIL.

28 "Q AND MR. RIPOLL ALSO TOLD YOU

1            THAT THAT WAS EXCELLENT FOR US,  
2            DIDN'T HE?

3            "A    THAT'S WHAT THE E-MAIL SAYS.

4            "Q    DID YOU THINK IT WAS EXCELLENT  
5            FOR YOU?

11:43AM

6            "A    I DON'T RECALL WHAT I THOUGHT  
7            WHEN I READ THAT E-MAIL ON  
8            SEPTEMBER 4TH, 2009.

9            "Q    DID YOU -- DID SOCIETE  
10            GENERALE WANT ALL OF MR. GUNDLACH'S  
11            TEAM MEMBERS TO LEAVE?

11:44AM

12            "A    WHAT SOCIETE GENERALE WANTED  
13            AT ALL TIMES WAS WHAT WAS IN THE  
14            BEST INTERESTS OF TCW AND ITS  
15            CLIENTS AND TCW AND ITS CLIENTS'  
16            BEST INTERESTS THAT WERE  
17            MR. GUNDLACH AND HIS TEAM REMAIN AT  
18            TCW.

11:44AM

19            "Q    SO, IS IT YOUR TESTIMONY THAT  
20            SOCIETE GENERALE WANTED  
21            MR. GUNDLACH TO STAY AT TCW AT ALL  
22            TIMES?

11:44AM

23            "THE WITNESS: (TO THE INTERPRETER):  
24            YOU MISSED 'AT ALL TIMES'.

25                        SO THE ANSWER WITH AT ALL  
26            TIMES IS NO.    NO.

11:44AM

27            "Q    WHEN DID SOCIETE GENERALE  
28            DECIDE THAT MR. GUNDLACH SHOULD GO?

1           "A    SOCIETE GENERALE NEVER DECIDED  
2           THAT GUNDLACH SHOULD GO, AND THAT  
3           WAS NOT A DECISION MADE BY SOCIETE  
4           GENERALE.

5           "Q    I'LL REFRAME IT.  MR. DAY MADE  
6           CLEAR TO SOCIETE GENERALE, AS EARLY  
7           AS JUNE AND JULY OF 2009, THAT  
8           MR. GUNDLACH SHOULD BE FORCED OUT;  
9           ISN'T THAT RIGHT?

11:44AM

10          "A    WHAT I CAN SAY IS THAT  
11          MR. DAY, BASED ON CONVERSATIONS  
12          REPORTED BY MR. MUSTIER, APPARENTLY  
13          MADE THAT RECOMMENDATION.

11:45AM

14          "Q    AS THE 100 PERCENT OWNER OF  
15          TCW, DID SOCIETE GENERALE HAVE  
16          POWER TO OBJECT TO THOSE  
17          RECOMMENDATIONS?

11:45AM

18                         YOU CAN ANSWER.

19          "A    AS THE MAJORITY SHAREHOLDER WE  
20          CAN PROVIDE A RECOMMENDATION OR AN  
21          OPINION, BUT THE DECISION  
22          ULTIMATELY FALLS WITH MANAGEMENT.

11:45AM

23          "Q    EXHIBIT 21.  IN EXHIBIT 21  
24          MR. RIPOLL SAID, IN THE SECOND  
25          PARAGRAPH:

11:45AM

26                         'I WILL TELL YOU ABOUT  
27                         HIS MEETING WITH  
28                         GUNDLACH AND HIS TEAM.

1 DO YOU SEE THAT?

2 "A YES.

3 "Q DID YOU HAVE A SUBSEQUENT  
4 CONVERSATION WITH MR. RIPOLL ABOUT  
5 STERN'S MEETING WITH MR. GUNDLACH?

11:46AM

6 "A I DON'T HAVE A SPECIFIC  
7 RECOLLECTION OF THAT MEETING, BUT  
8 IT'S HIGHLY PROBABLE.

9 "Q AT ANY TIME BEFORE DECEMBER  
10 4TH, 2009, DID MR. STERN TELL YOU  
11 THAT MR. GUNDLACH SHOULD BE  
12 TERMINATED BECAUSE PEOPLE IN HIS  
13 GROUP WERE DOWNLOADING INFORMATION  
14 THAT THEY WERE NOT ENTITLED TO?

11:46AM

15 "A IF I MAY JUST INTERRUPT A BIT  
16 BEFORE. I AM, AS YOU KNOW, DEPUTY  
17 CEO OF THE SOCIETE GENERALE GROUP.  
18 AND THE TIME I SPENT ON BUSINESSES  
19 RELATED TO TCW IS NOT VERY BIG, SO  
20 I HAVE DIFFICULTIES TO REMEMBER YOU  
21 ASK, YOU ARE VERY PRECISE IN YOUR  
22 QUESTIONS, I'M VERY SORRY FOR THAT.  
23 HAVING SAID THAT, WHAT I CAN  
24 RECALL, AND I'M NOT SURE OF THAT,  
25 IS THAT JUST BEFORE, AH -- WHAT I  
26 CAN TELL YOU IS THAT BEFORE  
27 DECEMBER 4TH, AND I WOULD NEED TO  
28 REFER TO DOCUMENTS PERHAPS TO TELL

11:46AM

11:46AM

11:46AM



1                   YOU SPECIFICALLY WHEN, BUT  
2                   MR. STERN DID SEND TO SOCIETE  
3                   GENERALE'S MANAGEMENT COMMITTEE, A  
4                   MEMO WHEREIN HE MADE A NUMBER OF  
5                   RECOMMENDATIONS, ONE OF WHICH WAS  
6                   THAT THE COMPANY ACQUIRE MET WEST.

11:47AM

7                   IT WAS NOT RECOMMENDATION. IT  
8                   WAS A REQUIREMENT FOR -- TO BE  
9                   AUTHORIZED TO.

10                  A MEMO, WHEREIN, MR. STERN  
11                  ASKED FOR AUTHORIZATION FOR A  
12                  NUMBER OF THINGS. ONE OF WHICH WAS  
13                  TO ACQUIRE MET WEST AND ANOTHER  
14                  THING HE WAS ASKING FOR  
15                  AUTHORIZATION FOR WAS TO TERMINATE  
16                  MR. GUNDLACH.

11:47AM

17                  "Q AT ANY TIME BEFORE DECEMBER  
18                  4TH, DID MR. STERN, THAT YOU KNOW  
19                  OF, CONTACT SOCIETE GENERALE AND  
20                  SAY, 'OH MY GOD, WE HAVE TO  
21                  TERMINATE MR. GUNDLACH BECAUSE HIS  
22                  PEOPLE ARE DOWNLOADING OUR SECRET  
23                  INFORMATION'?

11:47AM

11:47AM

24                  YOU CAN ANSWER IT.

25                  "A I ALREADY ANSWERED IT.

11:47AM

26                  "Q I'M GOING TO ASK IT AGAIN. I  
27                  KNOW HE RECOMMENDED THE ACQUISITION  
28                  OF MET WEST. AND I KNOW HE

1 RECOMMENDED THAT MR. GUNDLACH BE  
2 TERMINATED. MY QUESTION IS, AS  
3 PART OF THOSE RECOMMENDATIONS, DID  
4 HE SAY THAT THE REASON FOR IT WAS  
5 BECAUSE MR. GUNDLACH'S -- PEOPLE IN  
6 MR. GUNDLACH'S GROUP WERE  
7 DOWNLOADING INFORMATION THAT WAS  
8 SECRET?

11:48AM

9 "A I DON'T RECALL THAT AS BEING  
10 HIS MAIN REASON.

11:48AM

11 "Q WAS SOCIETE GENERALE COMMITTED  
12 TO SELLING DOWN AND ULTIMATELY  
13 EXITING TCW?

14 "A I DON'T UNDERSTAND THAT  
15 QUESTION. THAT'S A VERY BROAD  
16 QUESTION. AND UP UNTIL THE POINT  
17 THAT AN ACTUAL DECISION IS MADE,  
18 THE DECISION ISN'T MADE. SO THERE  
19 ARE LOTS OF POTENTIAL OPTIONS THAT  
20 ARE -- WOULD BE ON THE TABLE. SO  
21 GIVEN THE BROAD SCOPE OF THAT  
22 QUESTION, I HAVE TO SAY NO.

11:48AM

23 "Q IN JULY OF 2009 WAS ONE OF THE  
24 STRATEGIES BEING CONSIDERED BY  
25 SOCIETE GENERALE WAS SELLING TCW.

11:48AM

11:49AM

26 YOU CAN ANSWER IT.

27 "A WELL, IF YOUR QUESTION IS  
28 WHETHER THAT WAS ONE OF THE

1           SHORT-TERM OPTIONS BEING CONSIDERED  
2           BY SOCIETE GENERALE, AND WHEN I SAY  
3           SHORT-TERM, I MEAN THREE MONTHS,  
4           THEN THE ANSWER IS NO.

5                         HOWEVER, WHEN YOU FORMULATE A  
6           STRATEGY FOR A COMPANY, YOU TEND TO  
7           LOOK AT A LITTLE BROADER HORIZON,  
8           MAYBE THREE TO FIVE YEARS. AND IF  
9           YOU ARE LOOKING AT THAT HORIZON, IT  
10          WAS ONE OF A POSSIBLE OPTIONS OR  
11          STRATEGIES THAT WAS BEING  
12          CONSIDERED.

11:49AM

11:49AM

13                        WHAT I RECALL IS THAT SOCIETE  
14          GENERALE ASKED CITIGROUP TO  
15          FORMULATE STRATEGIC SCENARIOS FOR  
16          THE LONG-TERM GROWTH OF THE  
17          COMPANY. AND I DON'T RECALL  
18          SPECIFICALLY WHETHER OR NOT  
19          MR. GUNDLACH WAS ABSENT FROM THOSE  
20          SCENARIOS OR FROM CERTAIN OF THOSE  
21          SCENARIOS.

11:49AM

11:49AM

22                        "Q   THE PROJECT THAT CITIGROUP  
23          UNDERTOOK WAS CODE NAMED PROJECT  
24          HIGH LIFE, WAS IT NOT?

25                        "A   I DON'T REMEMBER THE CODE  
26          NAME.

11:50AM

27                        "Q   DID YOU EVER TELL MR. STERN  
28          THAT YOU WOULD SUPPORT WHATEVER

1 DECISION HE MADE WITH RESPECT TO  
2 MR. GUNDLACH?

3 "A NO.

4 "Q DO YOU KNOW WHETHER OR NOT  
5 MR. STERN EVER, AFTER SEPTEMBER  
6 9TH, 2009, SIGNED AN EMPLOYMENT  
7 CONTRACT?

11:50AM

8 "A I BELIEVE MR. STERN SIGNED AN  
9 EMPLOYMENT CONTRACT. I NEVER  
10 VERIFIED THAT BUT I DO BELIEVE IT  
11 TO BE THE CASE.

11:50AM

12 "Q HAVE YOU HAD ANY DISCUSSIONS  
13 WITH ANYBODY AT TCW OR SOCIETE  
14 GENERALE ABOUT WHETHER THE AMOUNT  
15 OF MR. STERN'S BONUS SHOULD BE  
16 AFFECTED BY THE OUTCOME OF THIS  
17 LITIGATION?

11:50AM

18 "A I'M NOT INVOLVED IN THE DETAIL  
19 OF ANY COMPENSATION OF ANY TCW  
20 PEOPLE.

11:50AM

21 "Q IS MR. STERN STILL THE INTERIM  
22 CEO?

23 "A NO.

24 "Q I TAKE IT HE HAS THE TITLE NOW  
25 OF JUST CEO; IS THAT RIGHT?

11:51AM

26 "A NO. HE'S VICE CHAIRMAN AND  
27 CEO.

28 "Q WHEN DID HE BECOME VICE

1 CHAIRMAN AND CEO?

2 "A I BELIEVE THAT WAS IN LATE  
3 2009. BUT I'M NOT SURE.

4 "Q LET ME SHOW YOU WHAT'S BEEN  
5 MARKED AS EXHIBIT 30.

11:51AM

6 TAKE A LOOK AT THE FIRST PAGE,  
7 THE BOTTOM HALF OF THAT IS AN  
8 E-MAIL YOU RECEIVED FROM  
9 MR. MUSTIER ON SEPTEMBER 7TH, 2009;  
10 IS IT NOT?

11:51AM

11 "A NO, THAT'S NOT.

12 "THE INTERPRETER: OKAY. I'M  
13 SORRY, I GOT THE DATE WRONG.

14 "THE WITNESS: YES, IT IS.

15 "Q OKAY. AND WE SAW EARLIER AN  
16 E-MAIL FROM MR. RIPOLL, ABOUT HIS  
17 CONVERSATION WITH MR. STERN ABOUT  
18 THE SEPTEMBER 3RD MEETING.

11:51AM

19 DO YOU REMEMBER THAT?

20 "A YOU MEAN AN E-MAIL FROM  
21 MR. RIPOLL?

11:52AM

22 "Q YES.

23 "A I DON'T RECALL THAT.

24 "Q AND WHEN YOU RECEIVED THE  
25 E-MAIL THAT'S REFLECTED AT EXHIBIT  
26 30, DID YOU UNDERSTAND THAT  
27 MR. RIPOLL WAS TALKING ABOUT A  
28 SECOND CONVERSATION WITH MR. STERN?

11:52AM

1 I'M ASKING FOR YOUR  
2 UNDERSTANDING?

3 "A CAN I TAKE THE TIME TO READ  
4 THE E-MAIL?

5 "Q SURE.

11:52AM

6 "A NOW, WHAT'S THE QUESTION?

7 "Q DO YOU SEE THE PARAGRAPH IN  
8 THE E-MAIL HAS THE NUMBER ONE AT  
9 THE BEGINNING.

10 "A YES.

11:52AM

11 "Q AND YOU SEE THE SENTENCE THAT  
12 BEGINS LA BONNE NOUVELLE?

13 "A YES.

14 "Q YES. ONE OF THE THINGS THAT  
15 MR. STERN BROUGHT UP, ACCORDING TO  
16 MR. MUSTIER, WAS 'THE GOOD NEWS IS  
17 THAT AFTER THIS MEETING MARK WILL  
18 BE ABLE TO HAVE DIRECT, LEGITIMATE  
19 ACCESS TO THESE TEAM MEMBERS IN  
20 ORDER TO DISCUSS THESE MATTERS';  
21 ISN'T THAT RIGHT?

11:52AM

11:53AM

22 "A I DO AGREE WITH YOUR READING  
23 OF WHAT THE DOCUMENT SAYS.

24 "Q EXHIBIT 34 IS AN E-MAIL FROM  
25 MR. CONN TO MR. RIPOLL AND  
26 MR. CHOUKROUN. IT SAYS, 'MARK  
27 ASKED ME TO FORWARD YOU THE  
28 FINALIZED BRIEFING DOCUMENT FOR OUR

11:53AM

1 MEETINGS IN PARIS'.

2 DO YOU RECALL ATTENDING A  
3 MEETING IN PARIS IN OR ABOUT  
4 OCTOBER 18TH OR 19TH OF 2009, WITH  
5 MR. STERN WITH REGARD TO WHAT'S  
6 CALLED PROJECT ANGEL? AND IF IT  
7 WOULD BE HELPFUL JUST TO FLIP  
8 THROUGH THE ATTACHMENT, PLEASE DO  
9 SO.

11:53AM

10 "A IF YOUR QUESTION GOES TO THE  
11 DATE OF THE MEETING, THE 18TH OR  
12 THE 19TH, I DON'T HAVE ANY  
13 RECOLLECTION OF THAT.

11:53AM

14 IF YOUR QUESTION GOES TO THE  
15 CONTENT OF THE MEETING -- I'M  
16 SORRY, OF THIS DOCUMENT, AND  
17 WHETHER I RECALL HAVING SEEN THIS  
18 DOCUMENT, I CAN TELL YOU THAT I DO  
19 RECALL THE CONTENT.

11:54AM

20 "Q THANK YOU VERY MUCH.

11:54AM

21 NOW, I'M NOT -- I DON'T EXPECT  
22 YOU TO REMEMBER THE SPECIFIC DATE.

23 "A I APPRECIATE --

24 "THE WITNESS: (TO THE  
25 INTERPRETER): I WANT TO CORRECT  
26 WHAT YOU SAID. I NEED TO CORRECT  
27 SOMETHING THAT THE INTERPRETER  
28 SAID. I DIDN'T SAY THAT I'VE

11:54AM

1 RECEIVED THIS DOCUMENT. I SAID  
2 THAT THE CONTENTS OF THIS DOCUMENT  
3 HAD BEEN ADDRESSED AT A MEETING  
4 THAT I ATTENDED.

5 "Q AND PROJECT ANGEL IS A  
6 REFERENCE TO MET WEST, IS IT NOT?

11:54AM

7 "A I RECALL LOOKING AT THAT, YES.

8 "Q BUT THE PHRASE PROJECT ANGEL,  
9 IS THAT A REFERENCE TO THE

10 ACQUISITION OF MET WEST, A CODE  
11 NAME OF SORTS?

11:54AM

12 "A IT'S NOT MY COMMON PRACTICE TO  
13 REMEMBER CODE NAMES, BUT FOR SOME  
14 REASON I DO ASSOCIATE THE NAME  
15 PROJECT ANGEL WITH THE ACQUISITION  
16 OF MET WEST.

11:54AM

17 "Q IS IT ACCURATE TO SAY THAT  
18 SOCIETE GENERALE WAS EAGER FOR TCW  
19 TO MOVE FORWARD WITH THE  
20 ACQUISITION OF MET WEST?

11:55AM

21 "A THE ANSWER TO THAT QUESTION  
22 WAS NO. WE WERE CONSIDERING TWO  
23 SCENARIOS. ONE OF THE SCENARIOS  
24 WAS TO REACH AN AGREEMENT THAT  
25 WOULD RESULT IN THE SITUATION IN  
26 THE COMPANY BEING STABILIZED, WITH  
27 THE SAME TEAM IN PLACE, WHICH WOULD  
28 HAVE RESULTED IN DECREASED RISKS

11:55AM



1 AND MAINTAINING THE SAME TEAM IN  
2 PLACE WHICH WOULD HAVE PROTECTED  
3 BOTH THE BUSINESS AND OUR CLIENTS.

4 ONE THING I HADN'T TOLD YOU  
5 ABOUT THUS FAR IS THAT THERE WERE 11:55AM  
6 RUMORS CIRCULATING AT THAT TIME  
7 SUGGESTING JEFFREY GUNDLACH WANTED  
8 TO LEAVE THE COMPANY AND ASSOCIATED  
9 WITH THAT SCENARIO WE NEEDED TO  
10 HAVE A BACK UP PLAN, PART OF WHICH 11:55AM  
11 WAS THE POSSIBLE ACQUISITION OF MET  
12 WEST.

13 "Q LET ME SHOW YOU EXHIBIT 39.

14 DID YOU RECEIVE A COPY OF  
15 EXHIBIT 39? 11:55AM

16 "A YES.

17 "Q AND IT STATES IN THE FIRST  
18 SENTENCE THAT 'TCW IS FORMALLY  
19 REQUESTING APPROVAL TO ACQUIRE  
20 METROPOLITAN WEST ASSET 11:56AM  
21 MANAGEMENT.'

22 DID SOCIETE GENERALE GIVE TCW  
23 APPROVAL TO DO THAT?

24 "A WE GAVE TCW'S MANAGEMENT  
25 AUTHORIZATION TO PROCEED WITH THE 11:56AM  
26 ACQUISITION, IF THEY SO DETERMINED.

27 "Q I WANT TO SHOW YOU WHAT I  
28 MARKED AS EXHIBIT 40.

1 I THINK HAVE YOU THAT UNDER  
2 YOUR RIGHT ARM.

3 IS THAT A DOCUMENT THAT YOU  
4 RECEIVED ON OR ABOUT NOVEMBER 27TH,  
5 2009?

11:56AM

6 "A YES.

7 "Q CAN YOU TELL ME -- WELL,  
8 PIERRE-LOUIS AUZEL, STEPHANE GOMIS  
9 AND FREDERIC CHARLET, DO THEY  
10 ALL -- ARE THEY ALL ASSOCIATED WITH  
11 SOCIETE GENERALE IN SOME WAY?

11:56AM

12 "A YES.

13 "Q TURN TO THE PAGE, IT SAYS PAGE  
14 EIGHT OF 11 AND IN THE RIGHT-HAND  
15 CORNER IT ENDS WITH 747. ONE OF  
16 THE -- AT THE TOP OF THE PAGE IT  
17 SAYS, 'RISQUES D'EXECUTION'.

11:57AM

18 DO YOU SEE THAT?

19 "A YES.

20 "Q AND WHAT DOES THAT MEAN?

11:57AM

21 "A IN THE ANALYSIS OF THE AUTHORS  
22 OF THE MEMO THESE ARE THE RISKS,  
23 WHICH, IF THE TRANSACTION IS  
24 SUCCESSFUL, THEY WOULD CAUSE THE  
25 COMPANY TO INCUR. AND THAT IS,  
26 ONCE AGAIN, THE ANALYSIS OF THE  
27 AUTHORS.

11:57AM

28 "Q AND ONE OF THE RISKS THAT THEY

1 POINTED OUT, IN THE FIFTH ARROW,  
2 WAS THAT IT WOULD BE HIGHLY  
3 PROBABLE THAT AMONG OTHER THINGS,  
4 THERE WOULD BE LAWSUITS BASED ON  
5 THE TERMINATION OF MANAGERS FROM  
6 THE FIXED INCOME AREA, CORRECT?

11:57AM

7 YOU CAN ANSWER.

8 "A IT IS ONE OF THE RISKS  
9 IDENTIFIED BY ONE OF THE THREE  
10 AUTHORS OF THIS MEMO.

11:58AM

11 "Q ARE YOU ON THE EXECUTIVE  
12 COMMITTEE OF SOCIETE GENERALE SA?

13 "A NO. I'M A MEMBER OF THE  
14 EXECUTIVE COMMITTEE OF SOCIETE  
15 GENERALE GROUP.

11:58AM

16 "Q THANK YOU. AND WERE YOU A  
17 MEMBER OF THAT EXECUTIVE COMMITTEE  
18 ON NOVEMBER 9TH, 2009?

19 "A YES. AND I WAS PRESENT AT THE  
20 COMMITTEE MEETING.

11:58AM

21 "Q AND DID THAT COMMITTEE GIVE  
22 APPROVAL TO MARC STERN AND TCW TO  
23 GO FORWARD WITH THE ACQUISITION OF  
24 MET WEST?

25 "A THE COMMITTEE DID GIVE  
26 AUTHORIZATION FOR TCW MANAGEMENT TO  
27 PROCEED WITH THE ACQUISITIONS. IT  
28 WAS AUTHORIZATION.

11:58AM

1 "Q AND AS PART OF THAT  
2 AUTHORIZATION -- STRIKE THAT.

3 DID PART OF THAT AUTHORIZATION  
4 INCLUDE THE TERMINATION OF  
5 MR. GUNDLACH?

11:58AM

6 "A THAT AUTHORIZATION WASN'T  
7 NECESSARY FROM THE EXECUTIVE  
8 COMMITTEE.

9 "Q AND THAT'S BECAUSE MR. STERN  
10 HAD THE AUTHORITY TO TERMINATE  
11 MR. GUNDLACH HIMSELF, CORRECT?

11:59AM

12 I'LL RESTATE THE QUESTION.  
13 DID MR. STERN HAVE THE AUTHORITY TO  
14 TERMINATE MR. GUNDLACH?

15 "A I DON'T REALLY KNOW HOW TO  
16 ANSWER THAT QUESTION SIMPLY BECAUSE  
17 I'M NOT SURE WHAT LEGAL  
18 AUTHORIZATIONS A CALIFORNIA COMPANY  
19 HAD, BUT I BELIEVE HE DID.

11:59AM

20 "Q LET ME SHOW YOU EXHIBIT 45.  
21 I'M SKIPPING 44.

11:59AM

22 EXHIBIT 45 IS A MEMO YOU  
23 RECEIVED FROM MR. STERN ON OR ABOUT  
24 NOVEMBER 3RD, 2009, IS IT NOT?

25 "A I DON'T RECALL.

11:59AM

26 "Q YES, DID MR. STERN TELL YOU  
27 THAT IF YOU TERMINATED MR. GUNDLACH  
28 TCW WOULD LIKELY LOSE SUBSTANTIAL

1 ASSETS?

2 "A I DON'T KNOW WHETHER MR. STERN  
3 TOLD ME THAT. NEVERTHELESS THAT  
4 WAS MY BELIEF.

5 "Q DID MR. STERN TELL YOU THAT  
6 ONE OF THE RISKS OF FIRING  
7 MR. GUNDLACH WAS THE POTENTIAL  
8 LITIGATION FROM MR. GUNDLACH?

12:00PM

9 "MR. MADISON: THE RECORD SHOULD  
10 REFLECT THE WITNESS IS LOOKING AT  
11 EXHIBIT 39, WHICH IS THE MEMO HE  
12 TESTIFIED HE DIDN'T RECEIVE.

12:00PM

13 "A I DID. IT'S 40. I DON'T  
14 KNOW. 39, I DID. YES, THAT'S WHAT  
15 THE MEMO THAT IS APPENDED TO  
16 EXHIBIT 39 STATES. AND I DID READ  
17 THAT.

12:00PM

18 "Q MR. RIPOLL -- STRIKE THAT.

19 DID MR. RIPOLL TELL YOU IN  
20 DECEMBER OF 2009 THAT  
21 UNFORTUNATELY, TCW WOULD LOSE MOST  
22 OF GUNDLACH -- MR. GUNDLACH'S TEAM  
23 AND A BIG PART OF HIS ASSETS?

12:00PM

24 "A YOUR QUESTION WAS WHETHER THAT  
25 WAS A RISK?

12:00PM

26 "Q NO. MY QUESTION WAS AS TO --  
27 WELL, I'LL ASK THAT QUESTION. WAS  
28 IT A RISK THAT YOU UNDERSTOOD THAT

1 THE TERMINATION OF MR. GUNDLACH  
2 WOULD RELATE IN THE LOSS OF MOST OF  
3 HIS TEAM AND A BIG PART OF THE  
4 ASSETS UNDER MANAGEMENT?

5 "A YES.

12:01PM

6 "Q LET ME SHOW YOU WHAT'S BEEN  
7 MARKED AS EXHIBIT 47.

8 DO YOU SEE THE E-MAIL, I GUESS  
9 IT'S THE SECOND E-MAIL DOWN FROM  
10 THE TOP FROM MR. RIPOLL TO  
11 YOURSELF, MR. OUDEA, AND SOME  
12 OTHERS.

12:01PM

13 DO YOU SEE THAT?

14 "A YES.

15 "Q AND MR. RIPOLL TOLD YOU THAT  
16 'THE NUMBERS 2 AND 3 JUST RESIGNED  
17 AND THAT WITH THEM, WE WERE GOING  
18 TO LOSE IN THE NEXT HOURS MOST OF  
19 GUNDLACH'S TEAM.'

12:01PM

20 HE TOLD YOU THAT, DID HE NOT?

12:01PM

21 "A YES, THAT IS CORRECT.

22 "Q HE ALSO SAYS THAT 'IT'S NOT  
23 REALLY A SURPRISE, BUT YESTERDAY WE  
24 HOPED THAT WE WOULD KEEP A LARGE  
25 PART OF THE ASSETS OF HIS GROUP.  
26 THIS WILL CLEARLY NOT BE THE CASE'.

12:02PM

27 DO YOU SEE THAT?

28 "A YES, I DO.

1 "Q DID MR. STERN EVER TELL YOU  
2 THAT HE WAS SURPRISED AT HOW MANY  
3 PEOPLE FROM MR. GUNDLACH'S GROUP  
4 LEFT TO JOIN HIM AT DOUBLELINE?

5 "A I DON'T REMEMBER EVER HAVING  
6 A CONVERSATION WITH MR. STERN ON  
7 THAT SUBJECT.

12:02PM

8 "Q WERE YOU SURPRISED AT HOW  
9 MANY PEOPLE LEFT TCW TO GO WITH  
10 MR. GUNDLACH?

12:02PM

11 "A AT THE EXECUTIVE COMMITTEE  
12 MEETING ON NOVEMBER 30TH, WE  
13 AUTHORIZED THE MANAGEMENT TEAM AT  
14 TCW TO PROCEED, AND, THEREFORE, WE  
15 HAD IDENTIFIED THAT RISK. WE  
16 DIDN'T KNOW THE EXACT NUMBER OF  
17 PEOPLE THAT WERE LIKELY TO LEAVE,  
18 BUT WE HAD IDENTIFIED THE RISK.

12:02PM

19 "Q OKAY. LET ME SHOW YOU EXHIBIT  
20 48.

12:02PM

21 THIS IS AN E-MAIL YOU RECEIVED  
22 FROM MR. RIPOLL ON OR ABOUT  
23 NOVEMBER 9TH, 2009, RIGHT?

24 "A YES.

25 "Q AND MR. RIPOLL TOLD YOU, AMONG  
26 OTHER THINGS IN THAT MEETING, THAT  
27 YOU WILL -- THAT TCW WILL HAVE  
28 MASSIVE EXITS; ISN'T THAT RIGHT?

12:03PM

1 "THE INTERPRETER: I'M SORRY, I'M  
2 TRYING TO IDENTIFY THE RELATIVE --  
3 RELEVANT LANGUAGE.

4 "MR. BRIAN: IT STARTS WITH --  
5 THE WITNESS: WE.

12:03PM

6 "Q DID MR. RIPOLL TELL YOU THAT  
7 THE IDEAL SOLUTION WOULD BE AN  
8 AGREEMENT NOT TO SUE MR. GUNDLACH  
9 IN EXCHANGE FOR A NON-COMPETE  
10 AGREEMENT FOR ONE YEAR?

12:03PM

11 "A YES.

12 "Q LET ME SHOW YOU EXHIBIT 51.

13 EXHIBIT 51 CONSISTS OF TWO  
14 E-MAILS, DOES IT NOT, ONE FROM YOU  
15 TO MR. RIPOLL AND OTHERS, AND THE  
16 FIRST E-MAIL IS AN E-MAIL FROM  
17 MR. RIPOLL TO YOU, CORRECT? YOU  
18 AND OTHERS?

12:03PM

19 "A YES.

20 "Q AND IN THE SECOND PAGE OF  
21 MR. RIPOLL'S E-MAIL HE TELLS YOU  
22 THAT THE IDEAL SOLUTION WOULD BE AN  
23 AGREEMENT NOT TO SUE IF HE SIGNS A  
24 NON-COMPETE FOR ONE YEAR, CORRECT?

12:04PM

25 "A I JUST ALREADY SAID THAT  
26 BEFORE. THIS IS THE SAME AS ON 40  
27 AND 37.

12:04PM

28 "Q AND I WOULD ASK THE REPORTER



1 TO PLACE EXHIBIT 51 BEFORE  
2 MR. CABANNES. IF YOU GO TO THE  
3 SECOND PAGE, PLEASE.

4 AND THERE'S A SENTENCE THAT  
5 BEGINS "L'IDEAL"; DO YOU SEE THAT  
6 ABOUT IN THE MIDDLE OF THE SENTENCE  
7 AT THE TOP OF THE SECOND PAGE?

12:04PM

8 MR. MADISON: YOUR HONOR, COULD THE RECORD  
9 REFLECT THAT NOW I'M ASKING THE QUESTIONS. NOT  
10 MR. BRIAN, FROM THIS POINT FORWARD.

12:04PM

11 THE COURT: ALL RIGHT.

12 MR. MADISON: THANK YOU.

13 "Q I'M GOING TO READ THE ENGLISH  
14 TRANSLATION FROM MR. BRIAN'S  
15 TRANSLATOR: 'THE IDEA WOULD BE TO  
16 NEGOTIATE THE AGREEMENT, OR WITH  
17 THE ASSURANCE THAT WE WILL NOT  
18 PROSECUTE --

12:05PM

19 MR. MADISON: I'M SORRY. WE NEED TO HAVE THE  
20 EXHIBITS UP DURING MY PART, TOO.

12:05PM

21 DENNIS, CAN YOU PUT THE EXHIBIT BACK UP.

22 MS. SMOLOWE: NO 51, I THINK.

23 THE COURT: ALL RIGHT ARE WE READY TO GO  
24 FORWARD?

25 MR. MADISON: RIGHT. YOUR HONOR, I JUST  
26 OBJECT TO ONLY HIGHLIGHTING PART OF THE SENTENCE TO BE  
27 READ.

12:05PM

28 MR. BRIAN: WE AGREE, YOUR HONOR.

1 MS. SMOLOWE: I BELIEVE HE'S GOING TO  
2 HIGHLIGHT EVERYTHING YOU SAID. OKAY?

3 "MR. MADISON: I'M GOING TO READ  
4 THE ENGLISH TRANSLATION FROM  
5 MR. BRIAN'S TRANSLATOR. THE IDEA  
6 WOULD BE TO NEGOTIATE AN AGREEMENT  
7 OR, WITH THE ASSURANCE THAT WE  
8 WOULD NOT PROSECUTE HIM, MOST  
9 PROBABLY AN EQUALIZATION PAYMENT,  
10 HE SIGNS A NON-COMPETE VALID FOR  
11 ONE YEAR, FOR EXAMPLE.

12:06PM

12:06PM

12 DID I READ THAT SENTENCE  
13 CORRECTLY?

14 "A YES. THAT'S EXACTLY WHAT IT  
15 SAYS.

12:06PM

16 "Q NOW, THIS IS THE MEMO THAT I  
17 BELIEVE YOU TESTIFIED THAT YOU  
18 RECEIVED IN YOUR CAPACITY AS A  
19 MEMBER OF THE EXECUTIVE COMMITTEE  
20 AT SG; IS THAT CORRECT?

12:06PM

21 "A THAT IS CORRECT.

22 "Q AND YOU TESTIFIED --

23 DENNIS, COULD WE HAVE THE EXHIBIT UP FOR  
24 MR. MADISON'S REFERRING TO NOW? IT'S 5468, I BELIEVE.  
25 IS THAT RIGHT?

12:07PM

26 CONTINUING.

27 "BY MR. MADISON: NOW, THIS IS THE  
28 MEMO I BELIEVE YOU TESTIFIED THAT

1           YOU RECEIVED IN YOUR CAPACITY AS A  
2           MEMBER OF THE EXECUTIVE COMMITTEE  
3           AT SG; IS THAT CORRECT?

4           "A    THAT IS CORRECT.

5           "Q    AND YOU TESTIFIED PREVIOUSLY  
6           THAT ON NOVEMBER 30TH, THE  
7           EXECUTIVE COMMITTEE OF SOC-GEN GAVE  
8           AUTHORIZATION TO MR. STERN TO MOVE  
9           FORWARD WITH THE MET WEST  
10          TRANSACTION.

12:07PM

12:07PM

11                    WAS THAT IN REACTION TO, AMONG  
12           OTHER THINGS, THIS MEMORANDUM,  
13           EXHIBIT 39?

14          "A    YES, PRIMARILY.

15          "Q    NOW, MR. BRIAN ASKED YOU  
16           EARLIER IF YOU RECALLED WHETHER OR  
17           NOT MR. STERN EVER TOLD YOU, PRIOR  
18           TO THE DECISION TO TERMINATE  
19           MR. GUNDLACH, ABOUT THE POSSIBLE  
20           THEFT OF TRADE SECRETS.

12:07PM

12:07PM

21                    DO YOU RECALL THAT LINE OF  
22           QUESTIONING?

23          "A    YES. I DO RECALL THAT.

24          "Q    RIGHT. SO REFERRING YOU TO  
25           THE SECOND PAGE OF THE EXHIBIT, THE  
26           SECOND PARAGRAPH READS: 'OVER THE  
27           PAST SEVERAL MONTHS JEFFREY  
28           GUNDLACH, JG, ENGAGED IN A

12:08PM

1 PERSISTENT PATTERN OF DISRUPTIVE  
2 AND SELF-SERVING ACTIONS. THESE  
3 ACTIONS INCLUDING, THREATENING TO  
4 LEAVE AND TAKE KEY PERSONNEL WITH  
5 HIM. DESTROYING COOPERATIVE  
6 EFFORTS ACROSS THE FIRM, DEMEANING  
7 OTHER AREAS OF THE FIRM.  
8 ATTEMPTING TO BLOCK MONETIZATION  
9 OPPORTUNITIES FOR SOCIETE GENERALE,  
10 (I.E., LEAVING SOCIETE GENERALE  
11 WITH ONLY THEORETICAL VALUE) AND  
12 DESTROYING TCW FRANCHISE VALUE AND  
13 POSSIBLY APPROPRIATING PROPRIETARY  
14 INFORMATION OF TCW FOR IMPROPER  
15 PURPOSES.'

12:08PM

12:08PM

12:08PM

16 WHAT DID YOU UNDERSTAND THAT  
17 LAST BULLET POINT THAT I JUST READ  
18 TO REFER TO WHEN YOU RECEIVED THIS  
19 MEMO, EXHIBIT 39?

20 "A WHEN I READ 'APPROPRIATING  
21 PROPRIETARY INFORMATION OF TCW', OF  
22 THE COMPANY, I THINK BUSINESS  
23 SECRETS, INFORMATION, REGARDING THE  
24 COMPANY'S SYSTEMS AND ITS CLIENTS.

12:08PM

25 "Q SO, NOW, HAVING READ THAT  
26 BULLET POINT IN THIS MEMO, EXHIBIT  
27 39, I WANT TO ASK YOU IF MR. STERN  
28 COMMUNICATED TO YOU PRIOR TO THE

12:09PM

1 DECISION TO TERMINATE MR. GUNDLACH,  
2 ANYTHING ABOUT TRADE SECRET THEFT  
3 OR THE THEFT OF PROPRIETARY  
4 CONFIDENTIAL INFORMATION?

5 "THE INTERPRETER: CAN I HAVE THE  
6 LAST PART OF THAT QUESTION BACK?  
7 WHETHER MR. STERN INDICATED TO YOU?

12:09PM

8 "MR. MADISON: COMMUNICATED.

9 (RECORD READ):

10 COMMUNICATED TO YOU PRIOR TO  
11 THE DECISION TO TERMINATE  
12 MR. GUNDLACH ANYTHING ABOUT TRADE  
13 SECRET THEFT OR THE THEFT OF  
14 PROPRIETARY CONFIDENTIAL  
15 INFORMATION?

12:09PM

16 "A THE ANSWER TO THAT QUESTION IS  
17 REFLECTED IN THE MEMO. THE MEMO  
18 REFERENCES THAT POSSIBLY  
19 APPROPRIATING PROPRIETARY  
20 INFORMATION, SO AS I REREAD THIS  
21 MEMO THAT I READ PRIOR TO THE  
22 NOVEMBER 30TH, 2009, MEETING, THAT  
23 INFORMATION WAS PROVIDED TO US  
24 PRIOR TO THAT MEETING.

12:09PM

12:09PM

25 "Q YOU ARE REFERRING TO EXHIBIT  
26 39?

12:10PM

27 "A YES.

28 MS. SMOLOWE: YOUR HONOR, THAT COMPLETES THE

1 READING OF THE DEPOSITION. WE DID HAVE ONE ADDITIONAL  
2 EXHIBIT WHICH YOUR HONOR HAS ALREADY RULED UPON.

3 MR. BRIAN: YOUR HONOR, I THINK IT WOULD BE A  
4 GOOD IDEA TO READ TO THE JURY, THE TRIAL EXHIBIT  
5 NUMBERS OF THE DEPOSITION EXHIBITS THAT WE ARE.

12:10PM

6 THE COURT: WELL, WE'RE GOING TO GIVE THEM A  
7 CROSS-REFERENCE BY DEPOSITION DEPONENT, OR THE PERSON  
8 TESTIFYING, BECAUSE THEY REFERRED TO EXHIBIT NUMBERS IN  
9 ALL OF THESE DEPOSITIONS.

10 AND YOU WILL HAVE THE NAME OF THE PERSON  
11 WHOSE TESTIMONY YOU HEARD OR SAW, WITH A LIST OF THE  
12 DEPOSITION EXHIBITS AND THE LIST OF THE CORRESPONDING  
13 TRIAL EXHIBITS.

12:10PM

14 MR. BRIAN: THAT'S FINE, YOUR HONOR.

15 THERE WAS ONE OTHER ONE THAT YOU  
16 ADMITTED THAT WAS NOT USED AND THAT IS EXHIBIT 5262.  
17 WE WANTED PERMISSION TO PUBLISH THAT, YOUR HONOR.

12:10PM

18 THE COURT: 5262 HAS PREVIOUSLY BEEN ADMITTED?

19 MR. BRIAN: YES.

20 THE COURT: ALL RIGHT. IT WILL BE IN THE  
21 EXHIBIT BOOKS WHEN YOU GET THE EXHIBITS.

12:11PM

22 ALL RIGHT. LET'S TAKE OUR NEXT  
23 RECESS. WE'LL COME BACK IN ABOUT 20 MINUTES.

24

25 (THE FOLLOWING PROCEEDINGS WERE  
26 HELD IN OPEN COURT OUTSIDE THE  
27 PRESENCE OF THE JURY:)

12:11PM

28 MR. MADISON: MS. SMOWE IS A BIG IMPROVEMENT

1 OVER MR. BRIAN.

2 THE COURT: WE'RE OUT OF THE PRESENCE OF THE  
3 JURY. WHAT IS OUR TIMING FOR THE NEXT WITNESS AND --

4 MR. BRIAN: WE HAD PLANNED ON PLAYING THREE  
5 VERY SHORT VIDEOTAPES AND THEN GOING TO MR. CAHILL.  
6 I'M JUST GOING TO EVALUATE THAT RIGHT NOW.

12:12PM

7 THE COURT: ALL RIGHT. I RECEIVED A BRIEF  
8 REGARDING TCW'S PROPOSED LIST OF TRADE SECRETS. AND I  
9 GUESS THE EFFECT OF THAT ON CASI 4401.

10 I LOOKED AT THIS OVER THE WEEKEND WHEN  
11 IT WAS POSTED. I HAVE NOT RECEIVED ANYTHING IN  
12 RESPONSE TO IT. AND IN THE ABSENCE OF SOME RESPONSE,  
13 MY SENSE IS THAT THE ARGUMENTS THAT ARE MADE ARE PRETTY  
14 WELL TAKEN, AND THAT THOSE ITEMS PROBABLY SHOULDN'T BE  
15 DEALT WITH. SO WHERE ARE WE?

12:12PM

16 I CAN'T KEEP GETTING THESE. AS WE GET  
17 CLOSER AND CLOSER TO THE END IF YOU JUST SERVE  
18 SOMETHING AT EIGHT OR 9 O'CLOCK AT NIGHT AND NOTHING  
19 COMES IN ON THE OTHER SIDE, I DON'T KNOW HOW I CAN DEAL  
20 WITH IT.

12:12PM

21 IS THERE SOMETHING IN THE WORKS ON THE  
22 TCW GROUP IN RESPONSE TO THIS?

23 MR. MADISON: I'M AWARE OF ONE ITEM THAT WAS  
24 THE SUBJECT OF AN INQUIRY, AND WE WERE LOOKING AT THAT.  
25 I'M NOT SURE I KNOW THE BRIEF THAT, YOUR HONOR, IS  
26 REFERRING TO.

12:13PM

27 THE COURT: WELL, IT WAS SERVED AT 6:22 OR  
28 5:22 LAST NIGHT.

1 MR. QUINN: COULD WE LET THE COURT KNOW?

2 THE COURT: JUST TAKE A LOOK AT IT. AND YOU  
3 WILL PROBABLY NEED TO CHECK WITH MR. SURPRENANT OR  
4 SOMEBODY THAT'S IN THAT AREA OF THE TEAM.

5 MR. BRIAN: THERE WAS SOME BACK AND FORTH  
6 E-MAIL OVER THE WEEKEND. AND I DON'T THINK THERE WAS A  
7 RESPONSE. WE GOT IT FILED. THAT'S NOT TO SAY THERE  
8 WON'T BE A RESPONSE. THERE WAS JUST A LOT OF STUFF  
9 GOING ON OVER THE WEEKEND. SO THERE'S SOME THINGS THAT  
10 WE THOUGHT SHOULD NOT BE PART OF THE LIST.

12:13PM

12:13PM

11 THE COURT: JUST TELL ME AFTER THE BREAK, TELL  
12 ME YOU'VE GOT IT ALL RESOLVED AND I WON'T WORRY ABOUT  
13 IT.

14 MR. QUINN: YOUR HONOR, DOESN'T KNOW ABOUT ALL  
15 THE BRIEFS THAT WEREN'T FILED.

12:13PM

16 THE COURT: I'M THANKFUL FOR SMALL FAVORS.  
17 THANK YOU VERY MUCH.

18 MR. BRIAN: YOUR HONOR, WE ARE GOING TO PLAY  
19 MR. CAHILL'S BRIEF DEPOSITION DESIGNATION. AND I DON'T  
20 THINK WE GOT A RULING --

12:13PM

21 THE COURT: I POSTED IT THIS MORNING ABOUT  
22 7:30.

23 MR. BRIAN: I DON'T THINK YOU RULED ON A  
24 COUPLE OF OBJECTIONS. MY INTERPRETATION IS THEY WERE  
25 OVERRULED BASED ON THE OTHER ONES.

12:14PM

26 THE COURT: I MAY HAVE MISSED THEM.

27 WHAT WERE THE NUMBERS?

28 MR. BRIAN: PAGE 256, LINE 25 TO LINE 257,



1 LINE NINE.

2 AND THEN 258, LINE EIGHT TO 11. AND  
3 THEN AGAIN 258, 14 AND 15.

4 MR. QUINN: THESE ARE YOUR OBJECTIONS OR?

5 MR. BRIAN: I THINK THEY ARE YOURS.

12:14PM

6 THE COURT: I'LL TAKE A LOOK AT THEM REAL  
7 QUICK AND LET YOU KNOW.

8 MR. QUINN: THANK YOU, YOUR HONOR.

9 THE COURT: YOU BET.

10

11 (RECESS TAKEN.)

12

13 (THE NEXT PAGE NUMBER IS 6801.)

14

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1 CASE NUMBER: BC 429385  
2 CASE NAME: TCW VS. GUNDLACH  
3 LOS ANGELES, CALIFORNIA SEPTEMBER 9, 2011  
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE  
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)  
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR  
7 TIME: C SESSION; 12:35 P.M.  
8

9 --0--

10 THE COURT: ALL RIGHT. IN THE TCW VERSUS  
11 GUNDLACH MATTER, ALL MEMBERS OF OUR JURY ARE AGAIN  
12 PRESENT, AS ARE COUNSEL.

12:41PM

13 MR. BRIAN, YOU MAY CALL YOUR NEXT  
14 WITNESS.

15 MR. BRIAN: OUR NEXT WITNESS, YOUR HONOR, IS  
16 BY VIDEOTAPE DEPOSITION, VERY SHORT, OF MARK GIBELLO.

12:41PM

17  
18 (VIDEO DEPOSITION PLAYED OF MARK GIBELLO.) +  
19

20 MR. BRIAN: YOUR HONOR, WE'RE NOW GOING TO  
21 CALL MR. MICHAEL CAHILL, FIRST BY A SHORT DEPOSITION  
22 CLIP, AND THEN ON THE STAND.

12:47PM

23  
24 (VIDEO DEPOSITION PLAYED OF MR. MICHAEL CAHILL.) +  
25

12:52PM

26 MR. BRIAN: WE CALL MR. CAHILL.

27 THE COURT: GOOD AFTERNOON, MR. CAHILL.

28 PLEASE RECALL YOU ARE STILL UNDER OATH

1 AND YOU HAVE BEEN PREVIOUSLY SWORN.

2 THE WITNESS: YES.

3

4 DIRECT EXAMINATION (776) +

5

12:52PM

6 BY MR. BRIAN:

7 Q GOOD AFTERNOON.

8 A GOOD AFTERNOON.

9 Q I ASSUME YOUR POSITION AT TCW IS THE SAME  
10 STILL, THE EXECUTIVE VICE PRESIDENT, GENERAL COUNSEL AT  
11 TCW, CORRECT?

12:52PM

12 A CORRECT.

13 Q I PLACED A BINDER ON THE DESK IN FRONT OF YOU.

14 CAN YOU FLIP TO EXHIBIT 5224.

15 DENNIS, COULD YOU PUT THAT UP, PLEASE.

12:52PM

16 PUT UP PAGE 2.

17 DO YOU SEE ON THE SCREEN WE'VE

18 HIGHLIGHTED:

19 UNFORTUNATELY, WE'VE HAD TO

20 TERMINATE J.G. FOR CAUSE.

12:53PM

21 DO YOU SEE THAT?

22 A YES.

23 Q YOU WERE HERE WHEN MICHAEL CONN TESTIFIED,  
24 WERE YOU NOT?

25 A I BELIEVE SO.

12:53PM

26 Q YOU RECALL MR. CONN TESTIFYING WHEN HE WROTE  
27 THOSE WORDS HE WAS QUOTING YOU?

28 DO YOU RECALL THAT?

1 A I'VE HEARD THAT.

2 Q AND DO YOU NOW RECALL MAKING THAT STATEMENT?

3 A NO.

4 Q DO YOU DENY IT?

5 A NO.

12:53PM

6 Q NOW, IF WE COULD GO UP ON THE SCREEN, FIRST OF  
7 ALL, YOU WORKED WITH MR. CONN, AT LEAST AT TIMES OVER  
8 THE PAST SIX YEARS?

9 A VERY, VERY LITTLE. UP UNTIL MR. STERN CAME  
10 BACK IN JUNE OF 2009. SO JUST A COUPLE MONTHS.

12:53PM

11 Q DO YOU REGARD MR. CONN AS RELIABLE?

12 A YES.

13 Q AND YOU HAVE NO REASON TO BELIEVE THAT HE  
14 SOMEHOW INACCURATELY RECORDED THOSE NOTES, DO YOU, SIR?

15 A I DON'T HAVE ANY REASON TO KNOW IF HE DID OR  
16 DIDN'T.

12:53PM

17 Q ABOVE THAT, UNFORTUNATELY, WE'VE HAD TO  
18 TERMINATE J.G. FOR CAUSE. IT SAYS:

19 TALK TO LAW FIRM ABOUT J.G.'S  
20 BEHAVIOR TO SEE IF IT REPRESENTS  
21 CAUSE.

12:54PM

22 DO YOU SEE THAT?

23 A YES.

24 Q THAT WAS A FOLLOW-UP ACTION ITEM THAT WAS  
25 ASSIGNED TO YOU, WAS IT NOT?

12:54PM

26 A I DON'T RECALL, BUT FROM THESE NOTES IT  
27 APPEARS TO BE THAT, THAT SOMETHING ALONG THOSE LINES.

28 Q WITHOUT GETTING INTO THE SUBSTANCE OF ANY

1 COMMUNICATIONS, DID YOU, IN FACT, FOLLOW UP AND TALK TO  
2 A LAW FIRM FOLLOWING THIS MEETING?

3 A IN WHAT TIME FRAME?

4 Q LATE AUGUST, EARLY SEPTEMBER 2009.

5 A NOT TILL AFTER SEPTEMBER 3RD.

12:54PM

6 Q AND AFTER THAT, WITHIN TEN DAYS TO TWO WEEKS  
7 OF TALKING TO THE LAW FIRM, TCW BEGAN MONITORING  
8 MR. GUNDLACH'S COMPUTER AND E-MAIL, DID IT NOT?

9 A YES.

10 Q LET'S GO BACK TO EXHIBIT 5224.

12:54PM

11 DENNIS, IF WE COULD PUT UP PAGE 11.

12 AND, MR. CAHILL, IF YOU COULD EITHER  
13 LOOK AT THAT ON THE SCREEN OR YOUR BINDER, WHICHEVER IS  
14 EASIEST.

15 A 5224.

12:55PM

16 Q 5224, PAGE 11.

17 A YES.

18 Q NOW, THERE'S BEEN TESTIMONY THAT THIS DOCKET  
19 WAS PREPARED BY MR. BURSCHINGER.

20 YOU KNOW HIM, DO YOU NOT, SIR?

12:55PM

21 A I DO.

22 Q HE WAS IN THE COURTROOM THIS MORNING, WASN'T  
23 HE, WHEN MR. BEYER WAS TESTIFYING?

24 A YES.

25 Q MR. CHAPUS WAS HERE, TOO, WASN'T HE?

12:55PM

26 A YES, HE WAS.

27 Q YOU UNDERSTAND THAT THIS DOCUMENT, ENTITLED  
28 PLAN BN, UPPER LEFT-HAND CORNER, WAS PREPARED BY

1 MR. BURSCHINGER, CORRECT?

2 A FROM HEARING TESTIMONY I HEARD THAT.

3 Q THIS DOCUMENT WAS DISCUSSED AT THE AUGUST 27TH  
4 MEETING, WAS IT NOT?

5 A I WASN'T PRESENT AT THE MEETING, SO I DIDN'T  
6 GET ANY OF THESE HANDOUTS.

12:55PM

7 Q DID YOU HEAR -- IF WE COULD HIGHLIGHT, DENNIS,  
8 THE LAST PARAGRAPH AND ENLARGE THAT.

9 DID YOU HEAR MR. BURSCHINGER STATE THAT  
10 WE SHOULD ASSUME THAT J.E.G. WILL RESPOND IN A VOLATILE  
11 AND DIVISIVE MANNER?

12:55PM

12 DID YOU HEAR THAT?

13 A DID I HEAR IT WHEN?

14 Q IN AUGUST OF 2009.

15 A NO.

12:56PM

16 Q TAKE A LOOK AT EXHIBIT 12 IN YOUR BINDER.

17 DO YOU HAVE THAT, SIR? THAT'S A COPY OF  
18 MR. GUNDLACH'S 1998 EMPLOYMENT AGREEMENT, IS IT NOT?

19 A YES, IT IS.

20 Q AND IF YOU TURN TO PAGE 9, YOU'LL SEE THAT YOU  
21 SIGNED THE DOCUMENT AS ONE OF TWO PEOPLE SIGNING ON  
22 BEHALF OF THE TRUST COMPANY OF THE WEST, CORRECT?

12:56PM

23 A YES.

24 MR. BRIAN: I WOULD OFFER EXHIBIT 12.

25 MR. QUINN: NO OBJECTION.

12:56PM

26 THE COURT: IT WILL BE ADMITTED.

27

28 (EXHIBIT 12 ADMITTED.) +

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28

MR. BRIAN: LET'S JUST PUT UP THE -- THAT'S FINE.

Q NOW TURN TO EXHIBIT 16, PLEASE.

THAT'S A COPY OF MR. GUNDLACH'S 2003 EMPLOYMENT AGREEMENT, IS IT NOT?

A YES.

Q TURN TO PAGE 16-5, PLEASE.

A OKAY.

Q YOU SIGNED THAT ON BEHALF OF TCW AS WELL, DIDN'T YOU?

A YES.

MR. BRIAN: I WOULD OFFER EXHIBIT 16.

MR. QUINN: I'M PRETTY SURE THEY'RE IN EVIDENCE.

THE COURT: I THOUGHT THEY WERE.

MR. BRIAN: I DIDN'T KNOW.

THE COURT: IF THEY'RE ADMITTED TWO TIMES, WE'LL TRY TO TELL YOU WHICH EXHIBITS TO LOOK AT.

MR. QUINN: NO OBJECTION AGAIN.  
BY MR. BRIAN:

Q EXHIBIT 16 EXTENDED MR. GUNDLACH'S EMPLOYMENT TO DECEMBER 31ST, 2007, DID IT NOT?

A THAT'S CORRECT.

Q PUT UP EXHIBIT 16, 16-1, DENNIS.

YOU SEE IN PARAGRAPH 1 THAT'S WHERE IT DEALS WITH THE TERM, THAT IS THE DURATION OF THE EMPLOYMENT AGREEMENT, CORRECT?

12:57PM

12:57PM

12:57PM

12:57PM

12:57PM

1 A THAT'S CORRECT.

2 Q AND PARAGRAPH 2 DEALT WITH A CHANGE OF ITS  
3 TITLES IN DIRECTORSHIP, RIGHT?

4 A WELL, CHANGE FOR OFFICERSHIP.

5 Q CORRECT.

12:58PM

6 THEN PARAGRAPH 3 DEALT WITH COMPENSATION  
7 CHANGES, RIGHT?

8 A THAT'S RIGHT.

9 Q IF YOU'D TURN TO PAGE 2, PLEASE.

10 ACTUALLY, LET'S GO TO PAGE 3, DENNIS.

12:58PM

11 THERE WAS A TERM PROVISION IN THERE,  
12 DISAGREEMENT, EXHIBIT 16 DEALT WITH HIS SANTA MONICA  
13 OFFICE, 16-3, CORRECT?

14 A THAT'S CORRECT.

15 Q THEN ON 16-4, THERE WAS A -- SOME PROVISIONS  
16 HAVING TO DO WITH RETAINED INTEREST IN TCW STOCK,  
17 RIGHT?

12:58PM

18 A CORRECT.

19 Q NOW, FLIP BACK TO 16-1, PLEASE.

20 IT'S TRUE THAT, IS IT NOT, THAT TO THE  
21 EXTENT THAT THE EARLIER TERMS WERE NOT INCONSISTENT  
22 WITH PARAGRAPHS 1 THROUGH 5, EXHIBIT 16 SIMPLY  
23 INCORPORATED ALL THE TERMS OF HIS PREVIOUS EMPLOYMENT  
24 AGREEMENT THAT WE SAW IN EXHIBIT 12, RIGHT?

12:58PM

25 A THAT'S RIGHT.

12:59PM

26 Q SO, FOR EXAMPLE, THERE WAS NO CHANGE BETWEEN  
27 1998 AND 2003 TO THE CIRCUMSTANCES UNDER WHICH HE COULD  
28 BE TERMINATED FOR CAUSE, RIGHT?



1 A RIGHT.

2 Q IT STAYED THE SAME?

3 A IT STAYED THE SAME.

4 Q TAKE A LOOK AT EXHIBIT 60.

5 I TAKE IT THAT IN 2007 YOU GOT INVOLVED  
6 IN SOME COMMUNICATIONS WITH MR. GUNDLACH WITH RESPECT  
7 TO THE REVISIONS OF HIS EARLIER AGREEMENT, CORRECT?

12:59PM

8 A YES.

9 Q NOW, EXHIBIT 60, IN EVIDENCE, THE BOTTOM IS AN  
10 E-MAIL YOU SENT TO MR. GUNDLACH, MR. SONNEBORN, AND  
11 MR. BEYER ON MAY 3RD, 2007, CORRECT?

12:59PM

12 A CORRECT.

13 Q AND THEN YOU RE-SENT IT AS REFLECTED IN THE  
14 TOP E-MAIL ON MAY 21ST, RIGHT?

15 A THAT'S RIGHT.

01:00PM

16 Q AND I TAKE IT YOU RE-SENT IT BECAUSE  
17 MR. GUNDLACH HAD NOT GOTTEN BACK TO YOU; IS THAT FAIR?

18 A NO.

19 WELL, HE HADN'T GOTTEN BACK TO ME.

20 I ASKED HIM WHAT WAS GOING ON.

01:00PM

21 HE LOOKED AT HIS E-MAIL AND SAID HE  
22 COULDN'T FIND IT. AND ASKED ME TO RESEND IT TO HIM.

23 Q FINE. THANKS FOR THE CLARIFICATION.

24 TURN TO PAGE 60-4.

25 IF WE COULD PUT THAT UP. SPECIFICALLY,  
26 THE TERMINATION FOR CAUSE, 6-A, DENNIS.

01:00PM

27 DID YOU PREPARE THIS DOCUMENT?

28 A YES.

1 Q THAT YOU ATTACHED TO THE E-MAIL?

2 A I DID. WITH THE ASSISTANCE OF ONE OF THE  
3 ATTORNEYS, BUT I AM RESPONSIBLE FOR IT.

4 Q THIS PARTICULAR PARAGRAPH: TERMINATION FOR  
5 CAUSE, 6-A, YOU TOOK THAT OUT OF THE EARLIER 1998  
6 CONTRACT, DID YOU NOT? EXHIBIT 12?

01:00PM

7 A I HAVEN'T CHECKED IT WORD FOR WORD, BUT IT  
8 LOOKS VERY SIMILAR.

9 Q TAKE A LOOK AT EXHIBIT 61.

10 A 61.

01:01PM

11 Q WE CAN PUT THAT UP, 61-1. AND WE CAN ENLARGE  
12 THE BOTTOM E-MAIL FIRST.

13 THE BOTTOM E-MAIL, EXHIBIT 61-1, IS AN  
14 E-MAIL FROM YOU TO MR. GUNDLACH ON MAY 25TH, 2007, IS  
15 IT NOT?

01:01PM

16 A YES.

17 Q AND YOU STATE IN THE FIRST PARAGRAPH:

18 I HEARD YOU SPOKE WITH BILL  
19 TODAY AND THE \$2 MILLION ADJUSTMENT  
20 FOR 2007, IS GOING TO BE DECREASED  
21 TO 1 MILLION.

01:01PM

22 DO YOU SEE THAT?

23 A YES.

24 Q THE REFERENCE TO BILL IS REFERENCE TO  
25 BILL SONNEBORN, CORRECT?

01:01PM

26 A CORRECT.

27 Q IN THE NEXT PARAGRAPH YOU STATE:

28 I WILL MAKE THAT CHANGE ONCE YOU

1                   SIGN OFF ON THE DOCUMENT AND  
2                   CONFIRM YOU'RE OKAY WITH THE REST  
3                   OF IT.

4                   DO YOU SEE THAT?

5           A        YES.

01:02PM

6           Q        THEN YOU SAY:

7                   SO CAN YOU LET ME KNOW IF IT'S  
8                   OKAY? QUESTION MARK.

9                   YOU WROTE THAT, DID YOU NOT?

10          A        I DID.

01:02PM

11          Q        AND HIS RESPONSE IS IN THE E-MAIL ABOVE THAT,  
12 IS IT NOT?

13                   DO YOU SEE THAT?

14          A        IT'S NOT TO RESPOND TO JUST WHAT YOU READ, BUT  
15 IT'S IN RESPONSE TO MY E-MAIL.

01:02PM

16          Q        HIS RESPONSE TO YOUR E-MAIL. HIS RESPONSIVE  
17 E-MAIL WAS SENT TO YOU ON 4:20 P.M. ON THE SAME DAY, 25  
18 MINUTES LATER, CORRECT?

19          A        YES.

20          Q        HE STATES IN THE FIRST SENTENCE:

01:02PM

21                   YES. WE SHOULD GO UNDER THE NEW  
22 ARRANGEMENT. EVERYONE HAS AGREED  
23 TO EVERYTHING IN GOOD FAITH.

24                   THAT'S WHAT HE WROTE, DID HE NOT?

25          A        HE WROTE THAT.

01:02PM

26          Q        AMONG THE REST OF THE LANGUAGE IN THE E-MAIL,  
27 RIGHT?

28          A        YES.

1 Q YOU RESPONDED A FEW MINUTES LATER WITH:  
2 THANKS. MICHAEL CAHILL.

3 DID YOU NOT?

4 A YES.

5 Q THEN YOU UNDERSTOOD THAT, FOLLOWING THIS  
6 EXCHANGE OF E-MAILS, STEPS WERE TAKEN TO PAY  
7 MR. GUNDLACH PURSUANT TO THE REVISED COMPENSATION  
8 FORMULA THAT HAD BEEN DISCUSSED AND AGREED UPON, RIGHT?

01:03PM

9 A YES.

10 Q AND YOU DON'T KNOW AS YOU SIT HERE TODAY  
11 WHETHER THE AMOUNTS HE WAS PAID UNDER THAT NEW FORMULA  
12 FOR THE NEXT FEW QUARTERS WERE HIGHER OR LOWER THAN  
13 WHAT HE WOULD HAVE GOTTEN UNDER THE EARLIER FORMULA, DO  
14 YOU?

01:03PM

15 A I DON'T KNOW THAT.

01:03PM

16 Q TAKE A LOOK AT EXHIBIT 66.

17 IF WE CAN ENLARGE THAT, 66-1.

18 THIS IS AN E-MAIL YOU SENT TO  
19 MR. GUNDLACH, MR. BEYER, AND MR. SONNEBORN ON JUNE 7TH  
20 OF 2007, CORRECT?

01:03PM

21 A YES.

22 Q AND THIS IS THE ONE THAT YOU ATTACHED WHAT'S  
23 BEEN REFERRED TO IN THIS TRIAL AS A RED-LINE VERSION.

24 DO YOU RECALL THAT?

25 A CORRECT.

01:04PM

26 Q IF YOU LOOK AT THE ATTACHMENT, YOU'LL SEE  
27 THAT, WILL YOU NOT?

28 A YES.

1 Q AND THIS ATTACHMENT TO EXHIBIT 66 REFLECTS THE  
2 LATEST DISCUSSION YOU HAD HAD WITH MR. GUNDLACH,  
3 MR. SONNEBORN, AND MR. BEYER, RIGHT?

4 A YES.

5 Q SO I TAKE IT YOU HAD HAD AT LEAST ONE  
6 CONVERSATION OR COMMUNICATION WITH MR. GUNDLACH BETWEEN  
7 THE TIME OF THE MAY 25TH E-MAIL AND THIS ONE?

01:04PM

8 A I HAD ONE OR TWO WITH HIM.

9 Q TAKE A LOOK AT 66-4.

10 IF YOU CAN PUT THAT UP, DENNIS. IF WE  
11 CAN ENLARGE PARAGRAPH 6-A AGAIN.

01:04PM

12 THE LANGUAGE CONTAINED IN 6-A:

13 TERMINATION FOR CAUSE, IN

14 EXHIBIT 66-4 IS THE SAME THAT YOU

15 PUT IN THE ATTACHMENT TO YOUR

16 EARLIER E-MAIL IN MAY, IS IT NOT?

01:05PM

17 A COULD YOU REPEAT THAT?

18 Q THE LANGUAGE OF THIS PARAGRAPH, FOR CAUSE, IT  
19 DIDN'T CHANGE BETWEEN MAY 25TH --

20 A NO. IT DIDN'T CHANGE.

01:05PM

21 Q -- AND JUNE 7TH, DID IT?

22 A NO.

23 Q NOW, IN ADDITION TO GETTING -- HAVING ONE OR  
24 TWO CONVERSATIONS WITH MR. GUNDLACH, YOU RECALL  
25 ATTENDING A MEETING WITH MR. GUNDLACH, MR. SONNEBORN,  
26 AND MR. BEYER?

01:05PM

27 A THERE WAS ONE MEETING THAT I DID ATTEND WITH  
28 THEM.

1 Q THAT WAS IN A CONFERENCE ROOM AT TCW, WASN'T  
2 IT?

3 A RIGHT.

4 Q ONE OF THE SUBJECTS DISCUSSED AT THAT MEETING  
5 WAS THE COST BEING INCURRED IN CONNECTION WITH  
6 LOU LUCIDO'S OPERATIONS, RIGHT?

01:05PM

7 A RIGHT.

8 Q AND THOSE DISCUSSIONS AND HOW TO CREATE THE  
9 RIGHT INCENTIVES WERE IN PART WHAT LED TO THE REVISED  
10 FORMULA THAT BECAME THE COMPENSATION AGREEMENT, RIGHT?

01:06PM

11 A I THINK THEY WERE PART OF THE MIX.

12 Q TAKE A LOOK AT 66-3.

13 AND PARAGRAPH C, IF YOU CAN ENLARGE  
14 THAT, COMPENSATION TO MULTI-SECTOR FIXED INCOME GROUP.

15 YOU SEE WHERE IT SAYS:

01:06PM

16 YOU WILL BE -- OR YOU WILL HAVE  
17 THE DISCRETION FOR DETERMINING AND  
18 ALLOCATING COMPENSATION OF  
19 EMPLOYEES IN THE MULTI-SECTOR FIXED  
20 INCOME GROUP AS DEFINED IN  
21 EXHIBIT A.

01:06PM

22 DO YOU SEE THAT?

23 A YES.

24 Q THAT WAS AGREEABLE TO TCW, WAS IT NOT, SIR?

25 A YES.

01:06PM

26 Q NOW, TO YOUR KNOWLEDGE, NEITHER TCW NOR  
27 MR. GUNDLACH REQUESTED ANY CHANGES TO THE TERMS AS  
28 REFLECTED IN EXHIBIT 66, DID THEY?

1 A EXHIBIT 66 MEANING THE WHOLE AGREEMENT?

2 Q YES.

3 A NO ONE REQUESTED ANY CHANGES. THE  
4 CONVERSATION WAS STILL ONGOING.

5 MR. BRIAN: I'LL MOVE TO STRIKE EVERYTHING  
6 AFTER THE CONVERSATION IS STILL ONGOING.

01:07PM

7 THE COURT: THERE WAS NOTHING AFTER THAT. IF  
8 YOU WANT ME TO STRIKE --

9 MR. BRIAN: THAT PHRASE I WOULD MOVE TO STRIKE  
10 AS NONRESPONSIVE.

01:07PM

11 THE COURT: I'LL STRIKE IT.

12 THANK YOU.

13 BY MR. BRIAN:

14 Q DO YOU RECALL HAVING MAYBE ONE OR TWO OTHER  
15 CONVERSATIONS WITH MR. GUNDLACH AFTER THIS; IS THAT  
16 RIGHT?

01:07PM

17 A YES.

18 Q AND WHAT YOU RECALL ABOUT THOSE CONVERSATIONS  
19 WAS YOU ASKING MR. GUNDLACH IF HE WAS GOING TO GET BACK  
20 TO YOU, HIS SAYING HE WAS, AND HE DIDN'T.

01:07PM

21 RIGHT?

22 A CORRECT.

23 Q AND OTHER THAN THAT, YOU DON'T RECALL ANY  
24 SUBSTANTIVE CONVERSATION WITH MR. GUNDLACH ABOUT THE  
25 SUBSTANTIVE TERMS AS SET FORTH IN EXHIBIT 66, DID YOU?

01:08PM

26 A NO. WE DIDN'T DISCUSS THE TERMS, JUST HIM  
27 GETTING BACK TO ME.

28 Q HE NEVER TOLD YOU, EVER, IN WORDS, THAT THE

1 PROVISIONS OF THE ATTACHMENT IN EXHIBIT 66 WERE  
2 UNACCEPTABLE TO HIM, DID HE?

3 A NO.

4 Q NOW, YOU ARE -- ATTENDED A MEETING OF THE  
5 COMPENSATION MEETING OF THE BOARD OF DIRECTORS OF TCW  
6 GROUP ON JULY 16TH, 2007, DID YOU NOT?

01:08PM

7 A YES.

8 Q TAKE A LOOK AT EXHIBIT 5048.

9 AND THESE ARE THE MINUTES OF THAT  
10 COMPENSATION COMMITTEE WHICH YOU PREPARED, CORRECT?

01:09PM

11 A CORRECT.

12 Q AND FAIR TO SAY THAT YOU TRIED TO PREPARE THEM  
13 AND MEMORIALIZE WHAT WAS SAID ACCURATELY, DID YOU NOT?

14 A YES.

15 Q TAKE A LOOK AT 5046, WHICH IS IN EVIDENCE.  
16 THE JURY SAW THIS THIS MORNING.

01:09PM

17 THE BOTTOM E-MAIL IS AN E-MAIL FROM  
18 MR. UKROPINA TO MR. BEYER COPIED TO MR. SONNEBORN AND  
19 YOURSELF, CORRECT?

20 A YES.

01:09PM

21 Q AND MR. UKROPINA WAS A MEMBER OF THE  
22 COMPENSATION COMMITTEE ACCIDENT, WAS HE NOT?

23 A YES, HE WAS.

24 Q HE STATES IN THE FIRST PARAGRAPH AT MONDAY'S  
25 TCW COMPENSATION COMMITTEE MEETING:

01:10PM

26 WE WILL BE CONSIDERING THREE  
27 PROPOSED EMPLOYMENT AGREEMENTS.

28 THEN HE GOES ON TO REQUEST CERTAIN



1 INFORMATION, DOES HE NOT?

2 A CORRECT.

3 Q INCLUDING WHAT WAS THE TOTAL COMPENSATION OF  
4 EACH PARTY IN 2006, CORRECT?

5 A YES.

01:10PM

6 Q THEN HE ASKED, PARAGRAPH B UNDER THE TERMS OF  
7 THE EMPLOYMENT AGREEMENTS:

8 WHAT IS THE ROUGH RANGE ESTIMATE  
9 OF THE TOTAL COMPENSATION EACH  
10 PARTY WILL MAKE THIS YEAR AND NEXT?

01:10PM

11 AND THEN HE ASKED IN PARAGRAPH THAT  
12 SAID:

13 REGARDING THE AGREEMENT FOR  
14 JEFFREY?

15 DO YOU SEE THAT PARAGRAPH?

01:10PM

16 A YES.

17 Q HE STATES:

18 REGARDING THE AGREEMENT FOR  
19 JEFFREY, SHOULD THE INFORMATION OR  
20 MISINFORMATION PUBLISHED BY  
21 BLOOMBERG, YESTERDAY HAVE ANY  
22 BEARING ON THE TERMS OF HIS  
23 AGREEMENT, I REALIZE HIS OVERALL  
24 TRACK RECORD HAS BEEN STELLAR, BUT  
25 I THINK THIS IS AN APPROPRIATE  
26 QUESTION AND WOULD LIKE YOUR INPUT  
27 ON THAT MATTER. AND THE OTHERS  
28 DESCRIBED ABOVE ON A VERBAL

01:10PM

01:10PM

1 CONFIDENTIAL BASIS, CAN WE MEET  
2 ON -- WHEN WE MEET ON MONDAY.

3 YOU READ THIS E-MAIL AT THE TIME, DID  
4 YOU NOT, SIR?

5 A YES.

01:11PM

6 Q TAKE A LOOK AT EXHIBIT 5047.

7 DO YOU RECOGNIZE EXHIBIT 5047 AS  
8 INFORMATION THAT WAS PUT TOGETHER AND PROVIDED TO THE  
9 COMPENSATION COMMITTEE IN RESPONSE TO MR. UKROPINA'S  
10 REQUEST?

01:11PM

11 A I DON'T REMEMBER IF IT WAS IN RESPONSE TO HIS  
12 REQUEST, BUT I BELIEVE IT IS PROVIDED TO THE  
13 COMPENSATION COMMITTEE.

14 MR. BRIAN: I WOULD OFFER EXHIBIT 5047, YOUR  
15 HONOR.

01:11PM

16 MR. QUINN: NO OBJECTION.

17 THE COURT: IT WILL BE ADMITTED.

18

19 (EXHIBIT 5047 ADMITTED.) +

20

01:11PM

21 MR. BRIAN: IF WE COULD PUT UP PAGE 1 OF THAT,  
22 DENNIS. MAYBE ENLARGE THE TITLE SO THE LADIES AND  
23 GENTLEMEN OF THE JURY CAN SEE THAT.

24 NOW IF YOU GO TO PAGE 2, DENNIS. IF WE  
25 CAN ENLARGE THAT FIRST HALF THERE. RIGHT THERE.

01:12PM

26 Q YOU SEE THE REFERENCE TO VARIABLE COMP IN  
27 THE -- I GUESS IT'S THE FOURTH BOX DOWN ON THE LEFT?

28 A YES.

1 Q AND YOU UNDERSTOOD COMP IS A SHORTHAND FOR  
2 COMPENSATION, CORRECT?

3 A CORRECT.

4 Q AND THEN IT READS:

5 100 PERCENT OF THE MULTI-SECTOR  
6 FIXED INCOME PROFIT SHARING POOL  
7 FEE SHARING POOL SEE BELOW, HE MAY  
8 ALLOCATE OUT OF THE POOL AT HIS  
9 DISCRETION SUBJECT TO CERTAIN  
10 OVERSIGHT.

01:12PM

01:12PM

11 DO YOU SEE THAT?

12 A YES.

13 Q THE "HE" IS A REFERENCE TO MR. GUNDLACH, IS IT  
14 NOT?

15 A IT IS.

01:12PM

16 Q THAT'S A REFERENCE TO THE AGREEMENT THAT HE  
17 WOULD, SUBJECT TO CERTAIN OVERSIGHT, DETERMINE THE  
18 ALLOCATION OF THE COMPENSATION FOR THE MEMBERS WITHIN  
19 HIS GROUP, CORRECT?

20 A YES.

01:13PM

21 Q LET'S GO BACK TO 5048 AND PUT UP PAGE 4.

22 THE JURY'S ALREADY SEEN THIS, SO I'M NOT  
23 GOING TO ASK YOU ANY QUESTIONS, OTHER THAN TO SAY THAT  
24 THESE THREE PARAGRAPHS REFLECT ACCURATELY WHAT WAS  
25 DISCUSSED ABOUT MR. GUNDLACH'S EMPLOYMENT PROPOSED  
26 EMPLOYMENT ARRANGEMENT, CORRECT?

01:13PM

27 A I BELIEVE THEY DO. I NOTICE IT SAYS  
28 MR. GUNDLACH WILL BE TAKING A RAISE, BUT I'VE HEARD THE

1 CONTRARY.

2 SO I ASSUME IT'S CORRECT. CAN'T TELL  
3 YOU FOR SURE.

4 Q DO YOU SEE AT THE BOTTOM, AT THE LAST FOUR  
5 LINES OF THE SECOND PARAGRAPH, WHERE IT STATES:

01:14PM

6 CONVERSELY, IF THE BUSINESS  
7 GROWS, TCW WILL HAVE SIGNIFICANT  
8 BENEFITS. MR. UKROPINA STATED THAT  
9 HE HAD LOOKED AT THE EMPLOYMENT  
10 CONTRACT, AND THAT THE TERMS  
11 APPEARED ACCEPTABLE TO HIM. HE  
12 NOTED THAT MR. GUNDLACH WILL BE  
13 TAKING A RAISE. ALSO, HE'S TAKING  
14 A GREATER RISK IN THE SUCCESS OF  
15 THE GROUP.

01:14PM

01:14PM

16 I TAKE IT YOU WROTE DOWN THAT DISCUSSION  
17 TO THE BEST OF YOUR RECOLLECTION ACCURATELY, DID YOU  
18 NOT.

19 A YES.

20 Q NOW, OTHER THAN THE ONE OR TWO CONVERSATIONS  
21 THAT YOU'VE TOLD US ABOUT, WHICH WAS ESSENTIALLY ASKING  
22 HIM TO GET BACK TO YOU AND HIS SAYING HE WOULD AND NOT,  
23 YOU HAD NO SUBSTANTIVE DISCUSSIONS WITH MR. GUNDLACH  
24 ABOUT HIS EMPLOYMENT AGREEMENT BETWEEN THAT TIME AND  
25 WHEN HE WAS RELIEVED OF HIS DUTIES, DID YOU?

01:14PM

01:15PM

26 MR. QUINN: THAT TIME? VAGUE.

27 THE COURT: IT'S VAGUE.

28 MR. BRIAN: I'LL REFRAME THAT.

1 Q THE ONE OR TWO CONVERSATIONS THAT YOU RECALL  
2 THAT YOU'VE TESTIFIED ABOUT OCCURRED IN THE MAY AND  
3 JUNE TIME FRAME?

4 A WELL, I HAD TWO, YOU KNOW, BETWEEN MAY AND  
5 JUNE 1. ONE OR TWO. AND THEN I HAD ONE OR TWO AFTER  
6 THAT PERIOD OF TIME.

01:15PM

7 BY MR. BRIAN:

8 Q OKAY.

9 THE FIRST ONE OR TWO WERE THE ONES THAT  
10 LED TO EXHIBIT 66, THE JUNE 7TH E-MAIL WITH THE  
11 RED-LINE ATTACHMENT, RIGHT?

01:15PM

12 A CORRECT.

13 Q AND IN THOSE THERE WAS SOME SUBSTANTIVE  
14 DISCUSSION OF THE TERMS THAT LED TO THE RED LINE,  
15 RIGHT?

01:15PM

16 A YES.

17 Q THE ONE OR TWO AFTER THAT WERE THE ONES THAT  
18 YOU CHARACTERIZED AS ASKING HIM TO GET BACK TO YOU, HIS  
19 PROMISING TO DO IT, AND THEN NOT, RIGHT?

20 A YEAH, BASICALLY RUNNING DOWN THE STATUS.

01:15PM

21 Q OKAY.

22 SO, FROM THOSE ONE OR TWO, BETWEEN THE  
23 TIME OF THOSE ONE OR TWO, WHICH TOOK PLACE IN JUNE OR  
24 JULY OF 2007 --

25 A PROBABLY IN JUNE OF 2007.

01:16PM

26 Q -- BETWEEN JUNE OF 2007 AND THE TIME THAT  
27 MR. GUNDLACH WAS RELIEVED OF HIS DUTIES, YOU -- WELL,  
28 DID YOU HAVE ANY SUBSTANTIVE CONVERSATION WITH HIM

1 ABOUT THE TERMS OF HIS EMPLOYMENT AGREEMENT?

2 A NO.

3 Q YOU NEVER WENT TO HIM, FOR EXAMPLE, AT THE END  
4 OF 2007, AND SAID, YOUR EMPLOYMENT AGREEMENT IS  
5 EXPIRING, DID YOU?

01:16PM

6 A NO.

7 Q YOU DID NOT GO TO HIM EVER AND SAY, YOU'RE NOW  
8 AN AT-WILL EMPLOYEE, DID YOU?

9 A NO. I DIDN'T TELL HIM HE WAS AN AT-WILL  
10 EMPLOYEE.

01:16PM

11 Q I'LL MOVE TO A DIFFERENT AREA, BRIEFLY.

12 TAKE A LOOK AT EXHIBIT 5069. THIS IS IN  
13 EVIDENCE. YOU CAN PUT THE FIRST PAGE UP, DENNIS.

14 YOU ARE FAMILIAR WITH THE SPECIAL  
15 MORTGAGE CREDITS FUND I AND II, CORRECT?

01:17PM

16 A RIGHT.

17 Q I'M NOT GOING TO ASK YOU A LOT OF DETAILED  
18 QUESTIONS.

19 IT WAS SET UP AS A PARTNERSHIP  
20 AGREEMENT, THOUGH, WAS IT NOT?

01:17PM

21 A THAT'S RIGHT.

22 Q TAKE A LOOK AT PAGE 11 OF 5069.

23 AND I JUST WANT YOU TO CONFIRM THAT THE  
24 GENERAL PARTNER OF THE SMCF II IS AN ENTITY CALLED TCW  
25 SPECIAL MORTGAGE CREDITS FUND II, GP, LLC, CORRECT?

01:17PM

26 A CORRECT.

27 Q AND ANOTHER COMPANY CALLED TCW ASSET  
28 MANAGEMENT COMPANY, OR TAMCO FOR SHORT, IS THE OWNER OF

1 TCW SPECIAL MORTGAGE CREDITS FUND II, GP, LLC, CORRECT?

2 A CORRECT.

3 Q AND TAMCO IS, IN TURN, OWNED BY TCW GROUP,  
4 INC., RIGHT?

5 A CORRECT.

01:18PM

6 MR. BRIAN: NOTHING FURTHER, YOUR HONOR.

7 THE COURT: MR. QUINN, CROSS-EXAMINATION.

8

9 CROSS-EXAMINATION +

10

01:18PM

11 BY MR. QUINN:

12 Q MR. CAHILL, MR. GUNDLACH HAD SIGNED WRITTEN  
13 EMPLOYMENT AGREEMENTS FROM -- CONTINUOUSLY FROM 1989 UP  
14 THROUGH 2007 --

15 MR. BRIAN: YOUR HONOR, LEADING.

01:19PM

16 THE COURT: SUSTAINED.

17 I MEAN, I ASSUME THIS WITNESS WAS CALLED  
18 UNDER 776, AND WE'RE REALLY HAVING DIRECT EXAMINATION.  
19 I'VE BEEN REMISS IN MAKING THAT CLEAR AS ANYBODY ELSE.

20 BY MR. QUINN:

01:19PM

21 Q DO YOU KNOW, AS THE GENERAL COUNSEL OF TCW, DO  
22 YOU KNOW WHETHER OR NOT MR. GUNDLACH ALWAYS HAD SIGNED  
23 WRITTEN EMPLOYMENT AGREEMENTS WITH TCW FROM 1989 RIGHT  
24 UP INTO 2007? DO YOU KNOW?

25 A YES, I DO.

01:19PM

26 Q AND DID HE ALWAYS HAVE SIGNED WRITTEN  
27 EMPLOYMENT AGREEMENTS OR NOT DURING THAT TIME FRAME?

28 A HE DID.

1 Q IF YOU'D TAKE A LOOK, PLEASE, AT EXHIBIT 3.  
2 THIS IS NOT YET IN EVIDENCE.

3 AND I'LL ASK YOU WHETHER THAT IS A  
4 WRITTEN EMPLOYMENT AGREEMENT BETWEEN MR. GUNDLACH AND  
5 TCW DATED MARCH 6TH, 1989.

01:19PM

6 A YES, IT IS.

7 MR. QUINN: I'D OFFER THAT, YOUR HONOR.

8 MR. BRIAN: NO OBJECTION.

9 THE COURT: IT WILL BE ADMITTED.

10

01:20PM

11 (EXHIBIT 3 ADMITTED.) +

12

13 MR. QUINN: PUT THE FIRST PAGE UP.

14 Q LOOK AT EXHIBIT 6.

15 IS THAT A SIGNED WRITTEN EMPLOYMENT  
16 AGREEMENT DATED JUNE 5, 1992 BETWEEN TCW AND  
17 MR. GUNDLACH?

01:20PM

18 A YES, IT IS.

19 MR. QUINN: WE'D OFFER THAT AS WELL.

20 MR. BRIAN: NO OBJECTION.

01:20PM

21 THE COURT: IT WILL BE ADMITTED.

22

23 (EXHIBIT 6 ADMITTED.) +

24

25 BY MR. QUINN:

01:20PM

26 Q THEN WE HAVE IN EVIDENCE EXHIBIT 12. IF WE  
27 COULD PUT THAT UP ON THE SCREEN.

28 THAT'S THE JANUARY 1, 1998 WRITTEN



1 EMPLOYMENT AGREEMENT, CORRECT?

2 A YES, IT IS.

3 Q AND THEN EXHIBIT 16, THAT'S THE SEPTEMBER 1,  
4 2003 WRITTEN EMPLOYMENT AGREEMENT, CORRECT?

5 A THAT'S CORRECT.

01:20PM

6 Q AND CAN YOU TELL US WHEN THAT ONE, THAT  
7 LAST -- IS THIS THE LAST WRITTEN EMPLOYMENT AGREEMENT  
8 THAT MR. GUNDLACH SIGNED?

9 A IT IS.

10 Q AND CAN YOU TELL US WHEN THAT EXPIRES?

01:20PM

11 A EXPIRES ON DECEMBER 31, 2007.

12 Q CAN YOU TELL US WHETHER OR NOT IT'S TRUE THAT  
13 FOR 18 YEARS IN A ROW, MR. GUNDLACH'S ARRANGEMENT WITH  
14 TCW WAS ALWAYS MEMORIALIZED IN A WRITTEN, SIGNED  
15 EMPLOYMENT AGREEMENT, SIGNED BY MR. GUNDLACH, AND  
16 SIGNED BY TCW?

01:21PM

17 A YES, IT WAS.

18 Q AT ANY TIME DID MR. GUNDLACH SAY TO YOU, IN  
19 2007, WHEN YOU'RE HAVING THESE DRAFTS ARE GOING BACK  
20 AND FORTH, HE SAID -- DID HE EVER SAY TO YOU, I'D LIKE  
21 TO CHANGE THE WAY THINGS WE'VE DONE IN THE PAST. I  
22 WOULD JUST LIKE TO HAVE AN ORAL EMPLOYMENT AGREEMENT?

01:21PM

23 DID HE EVER SAY THAT TO YOU?

24 A NO, HE DIDN'T.

25 Q IF WE LOOK AT -- THE JURY HAS HEARD THAT YOU  
26 WERE INVOLVED IN PREPARING THE DRAFT OF THE EMPLOYMENT  
27 AGREEMENT IN 2007, CORRECT?

01:21PM

28 A THAT'S CORRECT.

1 Q IF WE COULD TAKE A LOOK AT EXHIBIT 2150.  
2 THAT'S IN EVIDENCE. IF WE COULD PUT THAT UP ON THE  
3 SCREEN.

4 IS THIS THE FIRST -- THIS IS AN E-MAIL  
5 THAT YOU SENT TO MR. GUNDLACH, MR. SONNEBORN, AND  
6 MR. BEYER WITH COPIES TO MR. SULLIVAN AND MR. LAZARUS?

01:22PM

7 A THAT'S CORRECT.

8 Q CAN YOU TELL US WHETHER OR NOT THAT THIS WAS  
9 THE FIRST DRAFT YOU PREPARED IN 2007 OF A NEW WRITTEN  
10 EMPLOYMENT AGREEMENT FOR MR. GUNDLACH?

01:22PM

11 A YES, THAT'S THE FIRST PARAGRAPH.

12 Q DID SOMEONE TELL YOU TO PREPARE THIS DRAFT?

13 A YES.

14 Q WHO WAS IT WHO TOLD YOU TO PREPARE THE DRAFT?

15 A BILL SONNEBORN.

01:22PM

16 Q AND WERE YOU GIVEN SOME INSTRUCTIONS ABOUT  
17 WHAT THE NEW -- WHAT TERMS WOULD BE NEW?

18 MR. BRIAN: YOUR HONOR, I'LL OBJECT TO THAT,  
19 GIVEN -- I REALLY --

20 THE COURT: GIVE ME A LEGAL OBJECTION. MAYBE  
21 WE CAN MOVE FROM THERE THERE.

01:22PM

22 MR. BRIAN: PRIVILEGE AND PRIOR ASSERTIONS OF  
23 PRIVILEGE.

24 MR. QUINN: I'M NOT GOING TO GO INTO THE  
25 SUBSTANCE OF IT. I WAS JUST GOING TO ASK, WAS HE GIVEN  
26 INSTRUCTIONS?

01:23PM

27 THE COURT: ANSWER YES OR NO AND WE'LL MOVE  
28 ON.

1 THE WITNESS: YES.

2 BY MR. QUINN:

3 Q WITHOUT GOING INTO THE CONTENT OF  
4 INSTRUCTIONS, IN THE NEW ARRANGEMENT THAT WAS  
5 CONTEMPLATED OR SET FORTH IN THE DRAFT, WAS THERE A  
6 CHANGE IN THE COMPENSATION RELATIONSHIP BETWEEN  
7 MR. BARACH AND MR. GUNDLACH?

01:23PM

8 A YES.

9 Q COULD YOU DESCRIBE FOR THE JURY, PLEASE, WHAT  
10 THE CHANGE WAS IN THE COMPENSATION ARRANGEMENT,  
11 VIS-A-VIS MR. BARACH AND MR. GUNDLACH, THAT IS  
12 REFLECTED IN THE DRAFT THAT YOU PREPARED?

01:23PM

13 A IN THE PRIOR DEALS WHICH HAD BEEN DONE WITH  
14 BOTH MR. BARACH AND MR. GUNDLACH, THERE WAS A CONSTANT  
15 CALLED THE B AND G POOL. B IS BARACH. G IS GUNDLACH.  
16 SO THEY HAD THEIR OWN POOL.

01:23PM

17 BY THE TIME WE GOT TO THIS ONE, IT  
18 ESSENTIALLY BECAME WHAT WAS CALLED MULTI-STRATEGY FIXED  
19 INCOME POOL, BUT IT WAS ESSENTIALLY A POOL THAT  
20 JEFFREY GUNDLACH HAD DISCRETION OVER AND ALLOCATED OUT  
21 OF, AND MR. BARACH WAS NO LONGER IN THE FORMULAIC MIX.

01:24PM

22 Q ALL RIGHT.

23 SO, UNDER THE OLD ARRANGEMENT, CAN YOU  
24 TELL US HOW THE SO-CALLED, WHAT YOU REFERRED TO AS THE  
25 B AND G, BARACH AND GUNDLACH POOL, UNDER THE OLD  
26 ARRANGEMENT IN THE LAST CONTRACT, HOW WAS THAT DIVIDED  
27 BETWEEN THE TWO OF THEM?

01:24PM

28 A THEY SPLIT IT 50/50. THE RESIDUAL AFTER

1 CERTAIN PAYMENTS PAID OUT TO EMPLOYEES AND THE  
2 REMAINDER WAS SPLIT 50/50.

3 Q EXHIBIT 12, THE 1998 AGREEMENT WHICH WAS  
4 CARRIED FORWARD, IF YOU LOOK AT EXHIBIT 12-2, UP AT THE  
5 TOP.

01:24PM

6 DO WE SEE A DEFINITION THERE?

7 A YES. THAT'S THE B AND G POOL.

8 Q AND YOU INDICATED THAT THE RESIDUAL OF THE  
9 B AND G POOL WAS DIVIDED EQUALLY BETWEEN THE TWO OF  
10 THEM?

01:25PM

11 A YES.

12 Q IF YOU'D LOOK AT EXHIBIT 12-5, AND IF WE CAN  
13 ENLARGE THE SUBSECTION 3 THERE. WE'RE LOOKING AT  
14 MR. GUNDLACH'S HERE.

15 DOES THAT REFLECT HE'S SUPPOSED TO GET  
16 50 PERCENT OF THAT?

01:25PM

17 A YES, HE GETS 50 PERCENT OF THE RESIDUAL.

18 Q ARE YOU FAMILIAR WITH THE TERMS OF  
19 MR. BARACH'S CONTRACT WHICH WAS IN EFFECT AT THIS TIME?

20 A YES.

01:25PM

21 Q AND WHO GOT THAT OTHER 50 PERCENT OF THE POOL?

22 A HE DID.

23 Q AND SO IF WE NOW GO TO 2007 IN THE CHANGE IN  
24 THE DEAL -- THIS 50 PERCENT HERE, THAT REPRESENTS THE  
25 RESIDUAL AMOUNT IN THE B AND G POOL?

01:25PM

26 A IT'S THE RESIDUAL.

27 Q IF WE LOOK AT THE DRAFT YOU PREPARED IN 2007,  
28 IS THERE ALSO A RESIDUAL AMOUNT IN THAT MULTI-SECTOR

1 POOL?

2 A YES.

3 Q AND WHERE DO WE -- IF WE CAN GO LOOK AT THAT  
4 DRAFT, EXHIBIT 2150. LOOK AT PAGE 2150-7. SUBSECTION  
5 B AT THE TOP.

01:26PM

6 IT INDICATES PROFIT SHARING DURING THE  
7 TERM YOU'RE ENTITLED TO RECEIVE -- YOU ARE ENTITLED TO  
8 RECEIVE THE RESIDUAL AMOUNT OF THE MULTI-SECTOR FIXED  
9 INCOME PROFIT SHARING POOL AS DEFINED IN EXHIBIT A.

01:26PM

10 DO YOU SEE THAT?

11 A YES.

12 Q WHO IS THE "YOU" HERE REFERRED TO IN THIS --

13 A THAT MEANS MR. GUNDLACH.

14 Q THE CHANGE WAS THAT, INSTEAD OF SHARING THE  
15 50 -- THE RESIDUAL POOL 50/50, MR. GUNDLACH GOT  
16 100 PERCENT OF THE RESIDUAL POOL?

01:27PM

17 A YES.

18 Q AND WAS THERE ALSO A PROVISION MADE THAT  
19 AFFECTED -- THAT MR. GUNDLACH'S COMPENSATION WOULD BE  
20 EFFECTED BY HOW MUCH MR. BARACH'S COMPENSATION WAS  
21 ACTUALLY REDUCED?

01:27PM

22 A YES. THERE'S A PROVISION IN THE POOL, THE  
23 ALLOCATION EXHIBIT A, THAT COMPENSATES HIM FOR PART OF  
24 THE SAVINGS OR THE REDUCTION OF PHIL BARACH'S  
25 COMPENSATION.

01:27PM

26 Q TAKE A LOOK AT 2150-5.

27 AND IF WE COULD, MIKE, BLOW UP THE THIRD  
28 BULLET THERE.

1                   THIS SAYS:

2                   60 PERCENT -- WORKS IN THE  
3                   FORMULA THERE'S A DEDUCTION FOR  
4                   60 PERCENT OF ANY SAVINGS REALIZED  
5                   BY THE COMPANY IN ANY CALENDAR YEAR  
6                   FROM PHIL BARACH'S ANNUAL  
7                   COMPENSATION BEING REDUCED TO AN  
8                   AMOUNT BELOW THE ANNUAL  
9                   COMPENSATION PAYABLE TO HIM.

01:27PM

01:28PM

10                   THEN THERE'S A NUMBER THERE IN BRACKETS.  
11                   DO YOU SEE THAT?

12           A        YES.

13           Q        COULD YOU EXPLAIN TO THE JURY HOW THIS WORKED?  
14                   MR. BRIAN:    CUMULATIVE, YOUR HONOR.

15                   THE COURT:    I'M NOT SURE WE'VE BEEN THROUGH  
16                   THIS COMPLETELY.

01:28PM

17                   GO AHEAD, BRIEFLY TELL US WHAT THIS  
18                   MEANS.

19                   THE WITNESS:   WITHOUT GETTING INTO THE  
20                   MATHEMATICS, IT BASICALLY SAYS FOR EVERY DOLLAR OF  
21                   PHIL BARACH'S COMPENSATION THAT IS SAVED,  
22                   JEFFREY GUNDLACH GETS 60 PERCENT AND THE COMPANY GETS  
23                   40 PERCENT.

01:28PM

24                   MR. QUINN:    ALL RIGHT.

25           Q        IF WE COULD LOOK NOW AT EXHIBIT 60, WHICH IS  
26                   AN E-MAIL YOU SENT TO MR. GUNDLACH ON MAY 21, 2007.

01:28PM

27           A        OKAY.

28                   THE COURT:    WHAT IS THE NUMBER ON THIS?

1 MR. QUINN: I'M SORRY. THIS IS EXHIBIT 60.

2 THE COURT: THANK YOU.

3 BY MR. QUINN:

4 Q YOU INDICATE THERE, RESENDING, UP THERE AT THE  
5 TOP?

01:29PM

6 A CORRECT.

7 Q I THINK YOU SAID YOU RE-SENT THIS BECAUSE  
8 MR. GUNDLACH TOLD YOU -- YOU SENT IT BEFORE, AS  
9 INDICATED IN THIS STRING HERE. YOU HAD SENT IT ON  
10 MAY 3; THAT IS CORRECT?

01:29PM

11 A YES.

12 Q AND MR. GUNDLACH TOLD YOU HE COULDN'T FIND IT?

13 A WELL, I CALLED HIM UP TO ASK HIM, YOU KNOW, IF  
14 HE HAD ANY COMMENTS.

15 AND HE SAID HE COULDN'T FIND IT AND  
16 ASKED ME TO RESEND IT TO HIM.

01:29PM

17 Q IF YOU LOOK AT EXHIBIT 59, IS THIS AN E-MAIL  
18 FROM MR. GUNDLACH TO YOU, DATED MAY 20?

19 A YES.

20 MR. QUINN: I DON'T THINK THIS IS IN EVIDENCE.  
21 I'D OFFER IT, YOUR HONOR.

01:29PM

22 MR. BRIAN: NO OBJECTION.

23 THE COURT: IT WILL BE ADMITTED.

24

25 (EXHIBIT 59 ADMITTED.) +

01:29PM

26 BY MR. QUINN:

27 Q IS THIS THE E-MAIL PURSUANT TO WHICH HE ASKED  
28 YOU TO RESEND IT?

1 A THAT'S IT.

2 Q SO IS IT TRUE YOU HAD SENT IT TO HIM, THE  
3 DRAFT ON MAY 3, AND YOU JUST HADN'T HEARD ANYTHING FROM  
4 HIM?

5 A RIGHT.

01:29PM

6 Q IF WE LOOK AT EXHIBIT 61, THIS IS THE E-MAIL  
7 WE'VE SEEN COUPLE OF TIMES NOW, AT THE BOTTOM, MAY 25.

8 YOU REFER TO THAT \$2 MILLION ADJUSTMENT  
9 IN THE FIRST PARAGRAPH?

10 A YES.

01:30PM

11 Q THEN YOU SAY:

12 I WILL MAKE THAT CHANGE ONCE YOU  
13 SIGN OFF ON THE DOCUMENT AND  
14 CONFIRM YOU ARE OKAY WITH THE REST  
15 OF IT SO. CAN YOU LET ME KNOW IF  
16 IT'S OKAY.

01:30PM

17 ALSO, THERE'S A FEE SHARING  
18 PAYMENT COMING UP SOON AND WE NEED  
19 TO KNOW IF WE GO UNDER THE NEW  
20 ARRANGEMENT. CAN YOU CONFIRM WITH  
21 ME THAT YOU WANT IT PAID OUT ON THE  
22 NEW ARRANGEMENT, ASSUMING WE DON'T  
23 GET THIS FINALIZED TUESDAY.

01:30PM

24 DO YOU SEE THAT?

25 A YES, RIGHT.

01:30PM

26 Q WHEN YOU SAY WE DON'T GET THIS -- ASSUMING WE  
27 DON'T GET THIS FINALIZED TUESDAY, WHAT ARE YOU  
28 REFERRING TO?



1 A I'M REFERRING TO THE CONTRACT.

2 Q THE WRITTEN AGREEMENT?

3 A YES.

4 Q AND CAN YOU TELL US WHETHER OR NOT AT THAT  
5 TIME YOU WERE HOLDING OUT SOME HOPE YOU'D BE ABLE TO  
6 GET THIS FINALIZED AND SIGNED UP BY TUESDAY THE  
7 FOLLOWING WEEK?

01:30PM

8 A WELL, I THOUGHT IT WAS A POSSIBILITY, BUT THIS  
9 WAS, WHAT IF WE DON'T SIGN IT UP BY NEXT WEEK, WE GOT A  
10 FEE SHARING PAYMENT COMING UP, HE'S UNDER EXISTING  
11 AGREEMENT THAT'S GOT ONE FORMULA, SO WHICH FORMULA ARE  
12 WE GOING UNDER.

01:31PM

13 SO, I'M BASICALLY ASKING HERE FOR HIS  
14 CONFIRMATION TO GO UNDER THE NEW FORMULA.

15 Q YOU'RE ASKING HIM -- ASKING HIM WHICH  
16 ARRANGEMENT HE WANTS IT TO GO UNDER OR WHETHER HE'S  
17 OKAY PROCEEDING UNDER THE NEW FORMULA?

01:31PM

18 A I'M ASKING HIM IF HE'S OKAY TO GO UNDER THE  
19 NEW FORMULA, EVEN ASSUMING WE DON'T DO THE CONTRACT.

20 Q ALL RIGHT.

01:31PM

21 AND WHY WAS THAT OF CONCERN TO YOU? WHY  
22 DID YOU NEED TO GET THAT NAILED DOWN?

23 A WELL, THE FEE SHARING PAYMENT WAS PAID AT THE  
24 END OF MAY. SO SOMEBODY HAS TO WRITE A CHECK AND THEY  
25 HAVE TO KNOW HOW MUCH.

01:31PM

26 THERE WAS ALREADY A CONTRACT IN PLACE  
27 THAT WENT TO 2007. SO HE WAS UNDER A CERTAIN CONTRACT.  
28 SO, IN ORDER TO VARY THAT, WE NEEDED HIS PERMISSION, SO

1 I WAS SEEKING PERMISSION.

2 Q HE ALREADY HAD AN EXISTING CONTRACT THAT, BY  
3 ITS TERMS, WOULD GO UNTIL THE END OF 2007?

4 A YES.

5 Q AND SO THE TWO FORMULAS WOULD YIELD DIFFERENT  
6 CHECK AMOUNTS?

7 A PROBABLY. YEAH.

8 Q WE HAVE HIS RESPONSE. HE SAYS:

9 YES, WE SHOULD GO UNDER THE NEW  
10 ARRANGEMENT. EVERYONE HAS AGREED  
11 TO EVERYTHING IN GOOD FAITH.

12 WHAT DID YOU UNDERSTAND HIM TO BE  
13 REFERRING TO WHEN HE SAID: EVERYONE HAS AGREED TO  
14 EVERYTHING IN GOOD FAITH, AT THAT POINT?

15 MR. BRIAN: OBJECTION. PAROL EVIDENCE.  
16 RELEVANT.

17 THE COURT: WE'VE SEEN THIS AT LEAST THREE  
18 TIMES TODAY, MAYBE HALF A DOZEN TIMES OTHER TIMES. I  
19 THINK WE NEED TO MOVE ON AND NOT COVER THE SAME THING.

20 MR. QUINN: THIS IS THE ADDRESSEE OF THE  
21 E-MAIL. HE HASN'T BEEN ASKED THIS.

22 THE COURT: I'M SUSTAINING THE OBJECTION.  
23 GO AHEAD AND WE'LL WRAP THIS UP AND  
24 WE'LL MOVE ON.

25 BY MR. QUINN:

26 Q EVERYTHING, WHAT DID YOU UNDERSTAND HE WAS  
27 REFERRING TO?

28 A TO THE NEW FEE SHARING ARRANGEMENT.

01:32PM

01:32PM

01:32PM

01:32PM

01:32PM

1 Q THE FORMULA?

2 A THE FORMULA.

3 Q AS OF THIS POINT, HAD HE GIVEN YOU ANY  
4 COMMENTS AT ALL ON THE DRAFT CONTRACT?

5 A NO, HE HADN'T.

01:33PM

6 Q YOU RESPOND TO HIM: THANKS.

7 YOU'RE THANKING HIM FOR WHAT?

8 A AT THE BOTTOM HE SAYS, I PROMISE I'LL LOOK AT  
9 THE DOCUMENT CAREFULLY OVER THE WEEKEND.

01:33PM

10 AND I'M THANKING HIM FOR DOING THAT.

11 Q NOW, YOU INDICATE, DID THE DRAFT AGREEMENT  
12 THAT YOU SENT, DID IT INCLUDE ANY TERMS OTHER THAN THE  
13 FEE SHARING TERMS ITSELF, THE FORMULA ITSELF?

14 A YES.

15 Q AND LIKE WHAT OTHER TERMS WERE COVERED BY  
16 THAT? IF YOU CAN LOOK AT EXHIBIT 60.

01:33PM

17 A WELL, IT WOULD COVER THE TERM OF THE  
18 AGREEMENT, WHICH IS HOW LONG IT LASTS.

19 IT WOULD COVER HIS POSITIONS AND  
20 REQUIREMENTS OF REPORTING.

01:33PM

21 IT WOULD COVER, COVERS COMPENSATION.

22 COVERS TERMINATION.

23 HIS ENTITLEMENT TO EXPENSES.

24 HIS OFFICER CONDUCT BEING IN ACCORDANCE  
25 WITH COMPANY POLICIES.

01:34PM

26 ARBITRATION.

27 CONFIDENTIALITY.

28 A NUMBER OF OTHER THINGS.

1 Q IS IT TRUE THAT THERE ARE A LOT OF TERMS FOR  
2 THIS CONTRACT IN ADDITION TO MERELY THE FEE SHARING  
3 FORMULA?

4 MR. BRIAN: OBJECTION. DOCUMENT SPEAKS FOR  
5 ITSELF.

01:34PM

6 THE COURT: SUSTAINED.

7 BY MR. QUINN:

8 Q IN YOUR OWN MIND WERE YOU ANTICIPATING THAT  
9 YOU WOULD HAVE A SIGNED AGREEMENT THAT WOULD INCLUDE  
10 NOT ONLY THE FEE SHARING FORMULA, BUT THESE OTHER TERMS  
11 THAT YOU'VE JUST REFERRED TO?

01:34PM

12 A IF THERE WAS TO BE A CONTRACT, YES.

13 MR. BRIAN: MOVE TO STRIKE EVERYTHING BEFORE  
14 YES. NONRESPONSIVE.

15 THE COURT: I DON'T THINK WE EVER GOT A YES.  
16 I'LL STRIKE THE RESPONSE AS NONRESPONSIVE.

01:34PM

17 DID YOU SAY YES, FIRST?

18 THE WITNESS: I DID. NO. I SAID IT LAST.

19 THE COURT: THAT'S WHAT THREW ME OFF. I TRY  
20 TO FOLLOW THE BALL. SOMETIMES I MISS IT.

01:35PM

21 THE ANSWER'S DEEMED YES, AND I'LL STRIKE  
22 THE BALANCE.

23 GO AHEAD.

24 BY MR. QUINN:

25 Q IF WE LOOK AT EXHIBIT 60-2, AND IF YOU COULD  
26 JUST -- PAGE THROUGH, MIKE, 60-2, -3, -4, -5 AND -6.

01:35PM

27 DO SET FORTH THE OTHER -- DO THOSE SET  
28 FORTH THE OTHER TERMS YOU'RE REFERRING TO YOU WANTED TO

1 HAVE NAILED DOWN TO HAVE A CONTRACT?

2 A YES, THOSE ARE THE OTHER TERMS.

3 Q AND THIS DRAFT THAT WE'RE LOOKING AT HERE THAT  
4 YOU SENT TO MR. GUNDLACH ON MAY 3 AND RE-SENT ON  
5 MAY 21, CAN YOU TELL US WHETHER OR NOT THAT WAS EVEN  
6 THE FINAL DRAFT THAT YOU PROVIDED TO HIM?

01:35PM

7 A NO. THERE WAS ONE OTHER DRAFT BESIDES THAT  
8 ONE.

9 Q BEFORE WE GET TO THAT, WOULD YOU LOOK AT --  
10 PLEASE LOOK AT EXHIBIT 63. THIS IS IN EVIDENCE.

01:35PM

11 IF WE COULD PUT IT UP ON THE SCREEN.

12 IT'S AS AN E-MAIL CHAIN UPON -- WHICH  
13 INCLUDES YOU, CORRECT?

14 A YES.

15 Q AND THIS IS DATED A FEW -- IF YOU SEE THE  
16 E-MAIL IN THE MIDDLE, DATED A FEW DAYS LATER, MAY 30  
17 FROM WILLIAM SONNEBORN, HE SAYS:

01:36PM

18 NO CONTACT YET, BUT THESE  
19 PAYMENTS TOTAL LESS THAN WHAT WE  
20 WOULD HAVE PAID UNDER THE OLD DEAL.

01:36PM

21 SO IT SHOULDN'T BE A PROBLEM.

22 DO YOU SEE THAT?

23 A YES.

24 Q AND WAS IT YOUR UNDERSTANDING AT THIS POINT  
25 THAT THE INTENTION WAS TO MAKE THAT FIRST QUARTER FEE  
26 SHARING PAYMENT THAT WAS DUE AT THE END OF MAY, EVEN  
27 THOUGH THERE WAS NO SIGNED WRITTEN CONTRACT --

01:36PM

28 MR. BRIAN: ASKED AND ANSWERED.

1 THE COURT: SUSTAINED.

2 BY MR. QUINN:

3 Q TAKE A LOOK AT EXHIBIT 66, PLEASE. THIS IS IN  
4 EVIDENCE. IF WE COULD --

5 THIS IS NOT E-MAIL YOU SENT TO  
6 MR. GUNDLACH ON JUNE 7.

7 CORRECT?

8 A YES.

9 Q YOU'RE TRANSMITTING TO HIM A -- THE REVISED  
10 FORM OF AGREEMENT THAT WE'VE SEEN. IT ACTUALLY HAS  
11 RED-LINE CHANGES ON IT, CORRECT?

12 A CORRECT.

13 Q AND IF WE COULD LOOK AT THE -- PAGE 66-2, FOR  
14 EXAMPLE, THOSE STRIKEOUTS AND UNDERLINING REFLECT -- DO  
15 THOSE REFLECT CHANGES FROM THE LAST DRAFT?

16 A YES, THIS IS -- THESE ARE COMPUTER-GENERATED  
17 CHANGES THAT ARE INTENDED TO SHOW WHAT CHANGED FROM THE  
18 LAST DRAFT.

19 Q IF WE LOOK AT 66-8, DOES THE COMPUTER PROGRAM  
20 ACTUALLY GIVE YOU A SUMMARY OF HOW MANY CHANGES HAVE  
21 BEEN MADE FROM THE LAST DRAFT?

22 A RIGHT. THIS SHOWS YOU THAT, UNDER THE  
23 STATISTICS BOX, THERE WAS 23 INSERTIONS AND 15  
24 DELETIONS FOR A TOTAL OF 38 CHANGES.

25 Q FROM THE LAST DRAFT?

26 A FROM THE LAST DRAFT.

27 Q IN BETWEEN THAT DRAFT THAT YOU RE-SENT TO HIM  
28 AND THIS DRAFT THAT WE'RE LOOKING AT NOW, I THINK YOU

01:37PM

01:37PM

01:37PM

01:37PM

01:38PM

1 TOLD US YOU DID TALK TO MR. GUNDLACH?

2 A I DID.

3 Q AND DID HE GIVE YOU SOME COMMENTS, SOME  
4 CHANGES TO THE DRAFT THAT YOU HAD SENT TO HIM?

5 A YES. HE TOLD ME HE HAD PERUSED IT OVER THE  
6 WEEKEND AND THAT A FEW THINGS HAD JUMPED OUT AT HIM.  
7 HE WAS GOING TO GET BACK TO ME WITH MORE, BUT HE WANTED  
8 TO TALK ABOUT THOSE.

01:38PM

9 Q SO, YOU SAY, DO YOU RECALL EXACTLY -- EXACTLY  
10 THE WORDS HE USED?

01:38PM

11 A I REMEMBER HIM SAYING, I PERUSED IT.

12 Q DID HE THEN PROCEED TO GIVE YOU SOME COMMENTS  
13 ON THE DRAFT, SOME CHANGES HE WANTED MADE?

14 A YEAH. WE HAD DISCUSSIONS AND HE GAVE ME SOME  
15 RECOMMENDATIONS.

01:38PM

16 Q AND YOU SAID IN RESPONSE TO ONE OF MR. BRIAN'S  
17 QUESTIONS THAT THE CONVERSATION WAS STILL ONGOING, AS  
18 OF THE TIME YOU PREPARED THIS DRAFT.

19 CAN YOU EXPLAIN TO US WHAT YOU MEAN BY  
20 THAT?

01:39PM

21 A WELL, IT WAS CLEAR TO ME THESE WERE NOT ALL  
22 HIS COMMENTS AND --

23 MR. BRIAN: I'LL OBJECT. NARRATIVE.  
24 NONRESPONSIVE.

25 THE COURT: SUSTAINED.

01:39PM

26 I'D LIKE THE OBJECTIONS AFTER THE  
27 QUESTIONS AND BEFORE THE ANSWER.

28 GO AHEAD AND REPHRASE IT.

1 MR. BRIAN: I'M SORRY.

2 BY MR. QUINN:

3 Q WHEN YOU SPOKE TO MR. GUNDLACH AND HE TOLD  
4 YOU, I PERUSED IT OVER THE WEEKEND, AND HE GAVE YOU  
5 COMMENTS, DID HE TELL YOU WHETHER OR NOT HE WAS GOING  
6 TO HAVE THE -- WHETHER OR NOT THE COMMENTS HE WAS  
7 GIVING YOU WERE ALL THE CHANGES THAT HE WAS -- THAT HE  
8 WANTED?

01:39PM

9 A HE -- HE TOLD ME THAT THEY WEREN'T ALL THE  
10 CHANGES HE WANTED. BUT THESE ARE THE ONES HE WANTED  
11 ADDRESSED NOW.

01:39PM

12 Q DID HE TELL YOU WHETHER OR NOT HE ANTICIPATED  
13 GIVING YOU SOME MORE CHANGES AT SOME POINT IN THE  
14 FUTURE?

15 A I EXPECTED THAT. I CAN'T RECALL HIS EXACT  
16 WORDING, BUT DEFINITELY THE -- THE THRUST OF THE PHONE  
17 CALLS WAS MORE TO COME.

01:39PM

18 Q MORE TO COME?

19 A YEAH.

20 Q SO DID YOU -- CAN YOU TELL US WHETHER YOU  
21 PREPARED THIS REVISED RED-LINE DRAFT, BASED ON THOSE  
22 COMMENTS HE GAVE YOU IN THAT CALL, OR DID YOU  
23 ANTICIPATE THERE WAS -- TERRIBLE QUESTION. LET ME  
24 START OVER.

01:40PM

25 MR. BRIAN: OBJECTION.

01:40PM

26 MR. QUINN: SUSTAINED.

27 THE COURT: THAT'S GOOD. ALL RIGHT.

28 ///



1 BY MR. QUINN:

2 Q BEFORE PREPARING THE NEXT DRAFT, DID YOU WAIT  
3 FOR HIS ADDITIONAL COMMENTS?

4 A NO. THE JUNE 7TH COMMENTS ONLY REFLECT THE  
5 DISCUSSION I HAD WITH HIM. AT THAT POINT.

01:40PM

6 Q BY THE WAY, WHY DID YOU DECIDE TO GO AND  
7 PREPARE A REVISED DRAFT EVEN THOUGH HE TOLD YOU YOU  
8 DIDN'T HAVE ALL HIS COMMENTS?

9 MR. BRIAN: OBJECTION. RELEVANCE.

10 THE COURT: WELL, OVERRULED.

01:40PM

11 THE WITNESS: HE JUST SAID:

12 THESE ARE THINGS THAT POPPED OUT  
13 AT ME. I'D LIKE TO, YOU KNOW, THEY  
14 WERE LIKE THRESHOLD THINGS, YOU  
15 HAVE TO ADDRESS THESE THINGS RIGHT  
16 OFF THE BAT.

01:40PM

17 SO THOSE WERE THINGS WE FELT WE HAD TO  
18 ADDRESS.

19 BY MR. QUINN:

20 Q ALL RIGHT.

01:41PM

21 SO IF WE LOOK AT EXHIBIT 66-2, AND WE  
22 LOOK AT SOME OF THESE CHANGES, FOR EXAMPLE, THERE IN  
23 PARAGRAPH 2, WE SEE UNDERLINED: PRESIDENT OF TCW ASSET  
24 MANAGEMENT COMPANY.

25 DOES THE UNDERLINING MEAN THAT WAS AN  
26 INSERT, NEW LANGUAGE?

01:41PM

27 A IT WAS NEW LANGUAGE THAT HE REQUESTED. HE  
28 WANTED TO BE -- MAKE IT CLEAR HE WAS PRESIDENT.

1 Q ALL RIGHT.

2 SO THAT WAS A CHANGE HE ASKED FOR AND  
3 YOU PUT IN THE NEXT DRAFT?

4 A CORRECT.

5 Q THEN THE BOTTOM OF THAT PARAGRAPH WE HAVE  
6 STRIKEOUTS:

01:41PM

7 AS THE CHIEF INVESTMENT OFFICER OF  
8 THE COMPANY AND YOUR OBLIGATIONS  
9 WITH RESPECT TO THE PRODUCTS ON  
10 WHICH YOU SERVE AS PORTFOLIO  
11 MANAGER, YOU WILL PERFORM SUCH  
12 DUTIES IN ACCORDANCE WITH  
13 GUIDELINES PROVIDED FROM TIME TO  
14 TIME BY ROBERT BEYER AND  
15 WILLIAM SONNEBORN, OR THEIR  
16 SUCCESSORS, YOUR SUPERVISORS.

01:41PM

01:41PM

17 DO YOU SEE THOSE STRIKEOUTS THERE?

18 A YES.

19 Q SOMEBODY ASKED THAT THAT LANGUAGE BE STRICKEN  
20 OUT?

01:41PM

21 A WELL, HE SAID HE DIDN'T WANT TO SEE  
22 BOB BEYER'S NAME OR BILL SONNEBORN'S NAME IN HIS  
23 CONTRACT AND ANY NOTION OF ANYBODY SUPERVISING HIM.

24 Q HE ASKED YOU TO TAKE THAT LANGUAGE OUT?

25 A YEAH.

01:42PM

26 Q AND IF WE LOOK AT THE NEXT PAGE, 66-3, IN  
27 SUBPARAGRAPH C, COMPENSATION TO MULTI-SECTOR FIXED  
28 INCOME MANAGER GROUP, IT SAYS:

1                   YOU WILL BE -- THEN THE LANGUAGE  
2                   IS STRICKEN OUT -- BE PRIMARILY  
3                   RESPONSIBLE.

4                   AND THE LANGUAGE IS INSERTED:  
5                   HAVE THE DISCRETION.

01:42PM

6                   DO YOU SEE THAT?

7           A        YES.

8           Q        WHAT WAS THE ORIGIN OF THAT CHANGE?

9           A        HE DIDN'T WANT ANYBODY TO HAVE ANY SAY-SO ON  
10           HOW MUCH HE WOULD BE ABLE TO PAY TO HIS PEOPLE.

01:42PM

11                   IN TERMS OF COMPENSATION, HE WANTED TO  
12           HAVE DISCRETION OVER THAT. SO HE ASKED ME TO MAKE IT  
13           CLEAR THAT HE WOULD HAVE TOTAL DISCRETION.

14           Q        THEN THE LAST SENTENCE OF THAT PARAGRAPH HE  
15           SAYS, IT SAYS UNDERLINE:

01:42PM

16                   NEW HIRES TO THE MULTI-STRATEGY  
17           FIXED INCOME GROUP SHALL BE SUBJECT  
18           TO APPROVAL BY THE COMPANY, AND  
19           SHALL GO THROUGH NORMAL CHANNELS AT  
20           TCW HUMAN RESOURCES DEPARTMENT.

01:43PM

21                   WHOSE IDEA WAS THAT ADDITION?

22           A        THAT WAS A BIT OF A COMPROMISE. HE WANTED TO  
23           HAVE ALSO FULL DISCRETION ON HIRING PEOPLE.

24                   AND WE DIDN'T WANT THAT. SO WE KIND OF  
25           COMPROMISED WITH HE WOULD -- HE COULD HIRE PEOPLE, BUT  
26           SUBJECT TO APPROVAL BY THE COMPANY AND GOES THROUGH THE  
27           HR PROCESSES.

01:43PM

28           Q        SO WAS THAT NEW LANGUAGE HERE AT THE END OF

1 THIS PARAGRAPH, IS THAT SOMETHING MR. GUNDLACH AGREED  
2 TO?

3 MR. BRIAN: OBJECTION. LACKS FOUNDATION.

4 THE COURT: SUSTAINED.

5 BY MR. QUINN:

01:43PM

6 Q WELL, IS THAT SOMETHING YOU DISCUSSED WITH  
7 HIM?

8 A I DID DISCUSS IT WITH HIM.

9 Q CAN YOU TELL US WHETHER OR NOT HE AGREED TO  
10 IT?

01:43PM

11 MR. BRIAN: OBJECTION. AS FRAMED, LACKS  
12 FOUNDATION. CALLS FOR SPECULATION.

13 THE COURT: SUSTAINED.

14 BY MR. QUINN:

15 Q WHAT DID HE SAY ABOUT THIS NEW LANGUAGE?

01:44PM

16 THE COURT: YOU'VE GOT TO --

17 DID YOU TALK TO HIM AFTER YOU SENT IT?

18 THE WITNESS: NO.

19 BY MR. QUINN:

20 Q WELL, IS THIS LANGUAGE THAT YOU DISCUSSED IN  
21 THE CALL BEFORE YOU SENT HIM THE DRAFT?

01:44PM

22 A I DON'T BELIEVE WE DISCUSSED THE LANGUAGE,  
23 JUST THE CONCEPT.

24 Q IT SAYS, IN THE MIDDLE OF THIS PARAGRAPH, IT'S  
25 UN UNDERLINED, IT SAYS:

01:44PM

26 YOU AGREE THAT NO ALLOCATIONS OF  
27 COMPENSATION TO EMPLOYEES IN THE  
28 MULTI-SECTOR FIXED INCOME GROUP

1 WILL BE VESTED SO AS TO CONFER UPON  
2 ANY PERSON THE RIGHT TO RECEIVE ANY  
3 AMOUNT AFTER SUCH PERSON'S  
4 TERMINATION OF EMPLOYMENT WITH THE  
5 COMPANY.

01:44PM

6 DO YOU SEE THAT?

7 A YES.

8 Q WHAT IS YOUR UNDERSTANDING ABOUT WHAT THAT  
9 MEANS?

10 MR. BRIAN: CALLS FOR A LEGAL CONCLUSION.  
11 CALLS FOR OPINION.

01:44PM

12 THE COURT: ALSO CUMULATIVE.

13 I'LL SUSTAIN THE OBJECTION ON THAT  
14 GROUND.

15 WE'VE BEEN THROUGH IT, MR. QUINN.

01:44PM

16 MR. QUINN: ALL RIGHT.

17 Q DID HE VOICE ANY OBJECTION TO THAT LANGUAGE?

18 A IT CAME UP IN THE DISCUSSION ABOUT THE FIRST  
19 POINT, WHICH IS, HAVING DISCRETION OVER ALLOCATING  
20 COMPENSATION. THIS WAS ONE OF THE ITEMS WE DISCUSSED  
21 IN THAT CONVERSATION.

01:45PM

22 Q BUT THIS LANGUAGE, DID HE -- THAT I JUST READ,  
23 DID HE VOICE ANY OBJECTION TO THAT?

24 A HE SAID HE WOULD AGREE TO IT.

25 Q AND THEN WE HAVE THE SUBPARAGRAPH D:

01:45PM

26 THAT THE NATURE OF THE PROFIT  
27 SHARING ARRANGEMENTS THAT THE  
28 PROFIT SHARING POOL IS SOLELY AN

1           ACCOUNTING MECHANISM FOR  
2           DETERMINING COMPENSATION PAYABLE TO  
3           YOU AND OTHER PERSONS AND WILL NOT  
4           GIVE YOU OR ANY OTHER PERSON ANY  
5           RIGHT, TITLE OR INTEREST IN ANY  
6           FUNDS OR SPECIFIC ASSETS BY REASON  
7           OF PARTICIPATING IN OR BEING  
8           ELIGIBLE TO RECEIVE PAYMENTS.  
9           DO YOU SEE THAT?

01:45PM

10          A       YES.

01:45PM

11          Q       DID HE VOICE ANY OBJECTION TO THAT LANGUAGE?  
12                   MR. BRIAN:    CUMULATIVE.

13                   THE COURT:    IT IS.   MR. QUINN WE REALLY NEED  
14                   TO MOVE ON.

15                   MR. QUINN:    YES.    THAT WILL BE THE LAST ONE ON  
16                   THIS.

01:45PM

17                   THE COURT:    YOU CAN ANSWER.

18                   THE WITNESS:  HE DIDN'T VOICE AN OBJECTION.  
19                   BY MR. QUINN:

20          Q       ALL RIGHT.

01:45PM

21                                I WON'T GO INTO ANY OF THE OTHER  
22                   STRIKEOUTS OR UNDERLININGS IN THIS DRAFT.

23                                BUT CAN YOU TELL US WHETHER OR NOT THIS  
24                   DOCUMENT WAS STILL BEING NEGOTIATED BETWEEN YOU AND  
25                   MR. GUNDLACH AT THE TIME THAT YOU LAST SPOKE WITH HIM?

01:46PM

26                   MR. BRIAN:    OBJECTION.  NO FOUNDATION.  CALLS  
27                   FOR SPECULATION.

28                   THE COURT:    OVERRULED.

1 THE WITNESS: IT WAS A DRAFT. IT WAS BEING  
2 SENT TO HIM AS A DRAFT FOR FURTHER COMMENTS BY HIM.  
3 BY MR. QUINN:

4 Q YOU REVISED THE DRAFT AND SENT HIM TO HIM FOR  
5 COMMENTS, AND I TAKE IT YOU NEVER HEARD FROM HIM AGAIN  
6 ON THE SUBJECT? 01:46PM

7 A I NEVER HEARD FROM HIM, NO.

8 Q DID YOU FOLLOW UP WITH HIM AND ASK HIM, DO YOU  
9 HAVE MORE COMMENTS? ARE YOU GOING TO SIGN IT? OR  
10 ANYTHING LIKE THAT? 01:46PM

11 A YEAH.

12 MR. BRIAN: OBJECTION. COMPOUND. FORM.

13 THE COURT: SUSTAINED. IT'S BEEN ASKED AND  
14 ANSWERED TOO.

15 BY MR. QUINN: 01:46PM

16 Q DID YOU FOLLOW UP WITH HIM?

17 A I DID FOLLOW UP WITH HIM.

18 Q DID HE EVER TELL YOU WHY, WHETHER HE WAS GOING  
19 TO SIGN IT OR NOT SIGN IT?

20 A HE JUST SAID, I'LL LOOK AT IT, AND I'LL GET  
21 BACK TO YOU ON IT. 01:46PM

22 Q DID HE EVER DO THAT?

23 A NO.

24 Q ALL RIGHT. LET ME CHANGE SUBJECTS NOW.

25 WE'RE NOT GOING TO -- I WILL SPARE US  
26 ALL GOING THROUGH THE TERMINATION AND PROFIT SHARING  
27 PROVISIONS OF THAT DRAFT, THE 67 -- OR THE 2007 DRAFT  
28 AGREEMENT. 01:47PM

1                   BUT IF WE COULD LOOK AT -- WE'VE HAD  
2                   QUESTIONS ABOUT THE LAST AGREEMENT, THE 1998 AGREEMENT,  
3                   WHICH IS CARRIED FORWARD INTO 2003.

4                   IF YOU COULD TAKE A LOOK AT THAT. IT'S  
5                   EXHIBIT --

01:47PM

6                   THE COURT: 12.

7                   MR. QUINN: -- EXHIBIT 12.

8                   Q       THERE HAVE BEEN SOME QUESTIONS ABOUT, IF WE GO  
9                   TO 12-7 AND 12-8 AT THE BOTTOM.

10                   THERE'S BEEN QUESTIONS ABOUT THIS  
11                   LANGUAGE ABOUT: AT TERMINATION YOU RECEIVE  
12                   COMPENSATION ACCRUED TO THE DATE OF TERMINATION.

01:48PM

13                   DO YOU SEE THAT LANGUAGE DOWN THERE?

14                   A       YES.

15                   Q       WERE YOU, AS THE GENERAL COUNSEL, WERE YOU --  
16                   GENERAL COUNSEL AT THE TIME THIS DOCUMENT WAS PREPARED?

01:48PM

17                   A       I WAS.

18                   Q       IT WAS PREPARED BY YOU OR LAWYERS ACTING UNDER  
19                   YOUR DIRECTION?

20                   A       YES.

01:48PM

21                   Q       DO YOU HAVE AN UNDERSTANDING ABOUT WHETHER OR  
22                   NOT THIS MEANS THAT FEES WOULD BE PAID UNDER THIS OLD  
23                   AGREEMENT, EVEN IF THE FEES HAD NOT ACTUALLY BEEN  
24                   RECEIVED?

25                   MR. BRIAN: OBJECTION. BEYOND THE SCOPE  
26                   CUMULATIVE.

01:48PM

27                   THE COURT: SUSTAINED.

28                   MR. QUINN: YOUR HONOR, I THINK THERE WERE



1 QUESTIONS ABOUT THE '98 AGREEMENT.

2 MR. BRIAN: I DID NOT.

3 MR. QUINN: IF I COULD KNOW THE --

4 MR. BRIAN: I DID NOT ASK ABOUT ACCRUED.

5 THE COURT: JUST A MOMENT.

01:48PM

6 MR. QUINN: IF THAT'S TRUE, YOUR HONOR, I'D

7 REQUEST TO DO THIS BRIEFLY, SO AS NOT TO CALL

8 MR. CAHILL BACK.

9 THE COURT: GO AHEAD.

10 BY MR. QUINN:

01:49PM

11 Q DID YOU HAVE AN UNDERSTANDING THE WAY THIS  
12 WORKS -- FIRST OFF, THIS AGREEMENT HAD EXPIRED. IT WAS  
13 INCORPORATED INTO AN AGREEMENT THAT EXPIRED AT THE END  
14 OF 2007; IS THAT TRUE?

15 A CORRECT.

01:49PM

16 Q SO YOU KNOW, AS OF 2009, THIS AGREEMENT WAS  
17 ANCIENT HISTORY?

18 A IT WAS HISTORY.

19 Q BUT DO HAVE AN UNDERSTANDING WHETHER THIS  
20 LANGUAGE HERE, THAT COMPENSATION ACCRUED TO THE DATE OF  
21 TERMINATION, MEANS THAT THE FEES NOT RECEIVED WOULD BE  
22 PAID ON TERMINATION?

01:49PM

23 MR. BRIAN: OBJECTION. YOUR HONOR, PRIVILEGE.

24 THE COURT: SUSTAINED.

25 BY MR. QUINN:

01:49PM

26 Q WELL, IS THAT SET FORTH -- IS SOMETHING SET  
27 FORTH IN THE AGREEMENT THAT WE CAN ALL READ THAT  
28 ADDRESSES THIS ISSUE?

1 THE COURT: THE DOCUMENT WILL SPEAK FOR  
2 ITSELF, MR. QUINN.

3 MR. QUINN: OKAY.

4 THE COURT: YOU WANT TO APPROACH FOR A MINUTE  
5 ON THIS? I'LL BE HAPPY TO TAKE UP THE ISSUE.

01:49PM

6 MR. QUINN: I DON'T WANT TO TAKE UP FOLKS'  
7 TIME. I APOLOGIZE.

8 THE COURT: GO AHEAD.

9 BY MR. QUINN:

10 Q IF WE COULD LOOK AT PAGE 12-3 AND 12-4.

01:50PM

11 DO YOU SEE, IN SUBPARAGRAPH D, LITTLE I,  
12 THE REFERENCE TO M.B.S. FEES ACCRUED AT EACH QUARTER  
13 WILL BE ALLOCATED ON A QUARTERLY BASIS UPON RECEIPT?  
14 DO YOU SEE THAT?

15 A YES.

01:50PM

16 Q IS THAT CONCEPT CARRIED FORWARD INTO TWO  
17 LITTLE I'S AND THREE LITTLE I'S BELOW THAT AS WELL?

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

20 MR. QUINN: WE HAD A LOT OF QUESTION ABOUT THE  
21 LANGUAGE OF DOCUMENTS.

01:50PM

22 THE COURT: I UNDERSTAND. SOME OF THESE  
23 THINGS WE'VE BEEN GOING OVER REPEATEDLY.

24 GO AHEAD. THESE DOCUMENTS ARE IN  
25 EVIDENCE. YOU CAN TALK ABOUT THEM ANY WAY YOU WANT.

01:50PM

26 MR. QUINN: ALL RIGHT.

27 Q CAN YOU TELL US WHETHER OR NOT THIS PROVIDES  
28 THAT FEES HAVE TO BE RECEIVED BEFORE THEY GO INTO THE

1 POOL?

2 MR. BRIAN: OBJECTION. PRIVILEGE. CALLS FOR  
3 OPINION.

4 THE COURT: SUSTAINED.

5 BY MR. QUINN:

01:51PM

6 Q THE LANGUAGE ON RECEIPT APPEARS ON PAGE 12-3  
7 THERE?

8 A IT DOES.

9 Q HOW ABOUT THE TOP OF 12-4, DO WE SEE THAT  
10 ALLOCATED ON A QUARTERLY BASIS UPON RECEIPT?

01:51PM

11 A THEY'RE ALLOCATED UPON RECEIPT.

12 Q THEN THE COMPENSATION COMMITTEE MEETING,  
13 EXHIBIT 5048.

14 WHY WAS THIS TAKEN TO THE COMPENSATION  
15 COMMITTEE IN JULY IF IT -- IF THE AGREEMENT HAD NOT  
16 BEEN SIGNED YET?

01:51PM

17 A WELL, WE GENERALLY ALWAYS TAKE IT TO THE  
18 COMPENSATION COMMITTEE AS SOON AS WE CAN AND BEFORE THE  
19 SIGNING OF THE AGREEMENT BECAUSE WE WANT TO GET THEIR  
20 APPROVAL.

01:51PM

21 Q IF WE COULD LOOK AT 5048-5, AND ENLARGE THAT  
22 MIDDLE RESOLUTION, MIKE.

23 DID THE COMPENSATION COMMITTEE AUTHORIZE  
24 THE EXECUTION AND DELIVERY OF MR. GUNDLACH -- OF A NEW  
25 AGREEMENT WITH MR. GUNDLACH?

01:52PM

26 MR. BRIAN: OBJECTION. CUMULATIVE, YOUR  
27 HONOR.

28 THE COURT: SUSTAINED.

1 BY MR. QUINN:

2 Q WELL, IN YOUR -- HAVE YOU BEEN INVOLVED IN  
3 TAKING -- WOULD IT BE FAIR TO SAY -- SCORES OF  
4 PORTFOLIO MANAGER AGREEMENTS THROUGH THE COMPENSATION  
5 COMMITTEE PROCESS?

01:52PM

6 A YES.

7 Q DOES THE COMPENSATION COMMITTEE APPROVAL  
8 PROCESS, IN YOUR UNDERSTANDING, MEAN THAT A DRAFT  
9 CONTRACT BECOMES A BINDING AGREEMENT EVEN IF IT'S NOT  
10 SIGNED?

01:52PM

11 MR. BRIAN: CALLS FOR A LEGAL CONCLUSION.  
12 PRIVILEGED.

13 THE COURT: SUSTAINED.

14 BY MR. QUINN:

15 Q HAS IT EVER HAPPENED THAT A DRAFT AGREEMENT  
16 WAS APPROVED BY THE COMPENSATION COMMITTEE AND, AS A  
17 RESULT OF THAT, YOU'VE MADE A DECISION, WE DON'T EVEN  
18 NEED TO GET THIS SIGNED? HAD THAT EVER HAPPENED?

01:52PM

19 MR. BRIAN: SAME OBJECTION.

20 THE COURT: SUSTAINED.

01:53PM

21 BY MR. QUINN:

22 Q OKAY. MOVING RIGHT ALONG.

23 ARE YOU AWARE -- DID BARBARA VANEVERY,  
24 CRIS SANTA ANA, OR JEFF MAYBERRY HAVE CONTRACTS FOR A  
25 TERM WITH TCW?

01:53PM

26 MR. BRIAN: OBJECTION. BEYOND THE SCOPE.

27 MR. QUINN: I'D REQUEST PERMISSION.

28 THE COURT: I'LL ALLOW IT.

1 MR. QUINN: THANK YOU, YOUR HONOR.

2 THE WITNESS: NONE OF THEM HAD TERM CONTRACTS.

3 BY MR. QUINN:

4 Q DID THAT MEAN THEY WERE AT-WILL EMPLOYEES TO  
5 YOUR KNOWLEDGE?

01:53PM

6 MR. BRIAN: OBJECTION. PRIVILEGE.

7 THE COURT: SUSTAINED.

8 BY MR. QUINN:

9 Q WAS THERE ANY AGREEMENT BETWEEN ANY OF THOSE  
10 INDIVIDUALS AND TCW ABOUT THEIR RECEIVING ANY FEE  
11 SHARING AFTER THE TERMINATION OF THEIR EMPLOYMENT?

01:53PM

12 MR. BRIAN: PRIVILEGED.

13 THE COURT: I DON'T KNOW FOR SURE IF THAT'S --  
14 APPROPRIATE OR NOT.

15 MR. BRIAN: WELL, MAY WE APPROACH, THEN, YOUR  
16 HONOR?

01:53PM

17 THE COURT: YES, YOU MAY.

18

19 (SIDE-BAR CONFERENCE HELD) +

20

01:54PM

21 THE COURT: IF YOU WANTED TO COME UP, I'M NOT  
22 GOING TO WADE THROUGH HIS DEPOSITION, BUT IF A CLAIM OF  
23 PRIVILEGE WAS MADE TO ANY INQUIRY CONCERNING HIS  
24 OPINION ABOUT THESE AGREEMENTS OR ANY COMMUNICATIONS AS  
25 HIS CAPACITY AS GENERAL COUNSEL, YOU CAN'T BRING IT OUT  
26 NOW.

01:54PM

27 MR. BRIAN: HERE IS THE PROBLEM. I WAS  
28 REVIEWING THE DEPOSITION IN PREPARING FOR THIS. I'M

1 NOT CRITICAL OF THE POSITION THAT MR. QUINN TOOK. HE  
2 TOOK A CONSISTENT POSITION IN THE DEPOSITION AND  
3 ALLOWED HIM TO TESTIFY AS TO COMMUNICATIONS WITH THIRD  
4 PARTIES.

5 BUT, ANY QUESTIONS THAT EITHER WENT TO  
6 HIS UNDERSTANDING OR WHERE HE FORMED AN UNDERSTANDING  
7 BASED ON COMMUNICATION WITH HIS CLIENT, HE ASSERTED  
8 PRIVILEGE.

01:54PM

9 THE COURT: THAT WAS MY SENSE. THAT -- THAT'S  
10 WHY I'M SUSTAINING THIS, AND I'M JUST NOT GOING THERE.

01:54PM

11 MR. QUINN: IT'S FINE FOR MR. BRIAN TO SAY  
12 THAT, BUT I DON'T THINK I -- IF HE'S -- AS TO  
13 WHETHER -- THE EXISTENCE OF AN AGREEMENT IS NOT A FACT.  
14 OF THE EXISTENCE OF AGREEMENT IS NOT A PRIVILEGE  
15 COMMUNICATION.

01:55PM

16 THE COURT: THIS IS -- THE AGREEMENTS ARE IN  
17 EVIDENCE. WE'VE READ THEM TO THEM REPEATEDLY.

18 AND I JUST WANT, YOU KNOW, TO TAKE IT  
19 ONE STEP AT A TIME, BUT GET IT DONE. MY SENSE IS  
20 YOU'RE GOING OVER CLAUSES THAT YOU WANT TO HIGHLIGHT,  
21 AND I DON'T BLAME YOU, BUT I DON'T EVEN KNOW HOW MUCH  
22 TIME YOU'VE GOT LEFT. AND I'M A LITTLE NERVOUS ABOUT  
23 THAT, TOO. BUT I'M BEING MORE DIFFICULT TODAY THAN I  
24 WAS.

01:55PM

25 MR. QUINN: YOU ASKED ME TO MOVE ON AND I  
26 DROPPED IT.

01:55PM

27 THE COURT: I UNDERSTAND.

28 MR. QUINN: I DON'T THINK WE HAD ANY TESTIMONY

1 ABOUT FEE SHARING WITH THESE INDIVIDUALS. I THINK THIS  
2 IS A FIRST.

3 THE COURT: WELL, NO, I DIDN'T -- I'M NOT  
4 STOPPING YOU THERE.

5 MR. QUINN: THAT'S WHERE I'M AT NOW. 01:55PM

6 MR. BRIAN: IT'S BEYOND THE SCOPE. WE HAVEN'T  
7 ASKED. MR. GUNDLACH WILL TESTIFY ABOUT IT TOMORROW.  
8 BUT MR. QUINN REALLY DID --

9 THE COURT: WE MAY AS WELL -- RATHER THAN  
10 BRING CAHILL BACK, IF IT'S NO, I DON'T HAVE ANY  
11 AGREEMENTS WITH HIM, THEN HE'S DONE AND WE'RE OVER IT. 01:55PM

12 MR. BRIAN: LITERALLY, ANY QUESTION IN THE  
13 DEPOSITION THAT WENT TO HIS KNOWLEDGE WAS BASED ON A  
14 COMMUNICATION WITH A CLIENT. THEY ASSERT PRIVILEGE AND  
15 INSTRUCTED HIM NOT TO ANSWER. 01:56PM

16 THE COURT: ALL HE'S ASKING IS, DID YOU HAVE  
17 ANY AGREEMENTS WITH THESE PEOPLE. IF HE DOESN'T KNOW  
18 ABOUT THEM AND HE SAYS NO, IT'S AT THE END OF THE DAY.

19 ARE YOU SAYING THERE ARE AGREEMENTS? I  
20 MEAN, I'M TRYING TO FIGURE OUT WHAT'S GOING ON HERE. 01:56PM  
21 I'M NOT THAT QUICK.

22 MR. BRIAN: WHAT'S THE ANSWER GOING TO BE?

23 MR. QUINN: NO. THERE'S NO AGREEMENT.

24 THE COURT: NO.

25 MR. QUINN: IT'S A PRIVILEGE VACUUM. 01:56PM

26 THE COURT: LET'S GET IT. COME ON.

27

28 (SIDE-BAR CONFERENCE CONCLUDED.) +

1 BY MR. QUINN:

2 Q MR. CAHILL, ARE YOU AWARE OF ANY AGREEMENTS,  
3 FEE SHARING AGREEMENTS, BETWEEN TCW AND ANY OF THE  
4 FOLLOWING: CRIS SANTA ANA, BARBARA VANEVERY, OR  
5 JEFF MAYBERRY? ARE YOU AWARE OF ANY SUCH FEE SHARING  
6 AGREEMENT?

01:56PM

7 A NO.

8 Q ALL RIGHT.

9 YOU WERE ASKED SOME QUESTIONS ABOUT  
10 MR. CONN'S NOTES, EXHIBIT 5224-2.

01:57PM

11 AND WE SAW YOUR VIDEOTAPED TESTIMONY,  
12 WHERE YOU INDICATED YOU JUST SIMPLY DIDN'T RECALL THE  
13 MEETING, WHERE YOU WERE, OR ANYTHING OF THAT NATURE,  
14 RIGHT?

15 A THAT'S CORRECT.

01:57PM

16 Q AND SINCE YOUR DEPOSITION WAS TAKEN, DID YOU  
17 REVIEW ANY DOCUMENTS TO TRY TO REFRESH YOUR  
18 RECOLLECTION ABOUT WHERE YOU WERE?

19 A I DID.

20 Q AND THE CIRCUMSTANCES UNDER WHICH THAT CALL --  
21 THAT YOU PARTICIPATED IN THAT BY PHONE?

01:57PM

22 A YES.

23 Q AND WAS THAT MEETING THE MOST IMPORTANT THING  
24 ON YOUR MIND THAT DAY?

25 A IT WAS A VERY UNIMPORTANT THING.

01:57PM

26 Q WHY?

27 A WELL, FIRST OF ALL, MY AUNT HAD JUST DIED.  
28 SHE WAS VERY CLOSE TO ME. LIKE A MOTHER. I WAS ABOUT



1 TO GET ON A PLANE TO GO TO HER FUNERAL. ACTUALLY, I  
2 WAS SETTING UP THE ENTIRE FUNERAL. AND I HAD A FLIGHT  
3 TO MAKE AT 10:40 AT L.A.X., AND THIS MEETING HAD BEEN  
4 SCHEDULED IN THE AFTERNOON.

5 AND I WAS SUPPOSED TO MISS IT. AND THEN 01:58PM  
6 THEY RESCHEDULED IT SO I COULD ATTEND IT. NOW IT WAS  
7 PUTTING PRESSURE ON MY GETTING TO THE AIRPORT.

8 PLUS, I LIVE IN LA CANADA, FOUR BLOCKS  
9 FROM WHERE THE FIRES ARE COMING DOWN. MY WIFE DECIDED  
10 TO STAY THAT NIGHT TO PACK UP SOME OF THE HOUSE IN CASE 01:58PM  
11 OF HE EVACUATION. AND I WAS LATE FOR THE MEETING, AND  
12 I DON'T REALLY REMEMBER ANYTHING ABOUT IT, OTHER THAN  
13 THESE NOTES.

14 THE COURT: SOUNDS LIKE A GREAT DAY.

15 THE WITNESS: IT WASN'T THE TOP ON MY LIST. 01:58PM

16 BY MR. QUINN:

17 Q HOW FAR WAS THE FIRE FROM YOUR HOUSE?

18 A WELL, IT WAS A FEW BLOCKS AWAY FROM MY HOUSE.  
19 YOU COULD SEE IT FROM MY BALCONY.

20 Q AND MR. BRIAN READ YOU SOME LANGUAGE FROM 01:58PM  
21 THESE NOTES THAT SAYS:

22 CHECK WITH LAW FIRM TO SEE  
23 WHETHER OR NOT THERE'S CAUSE TO  
24 TERMINATE MR. GUNDLACH.

25 DO YOU RECALL THAT QUESTION? 01:59PM

26 A I REMEMBER THE QUESTION. YES.

27 Q DOES THAT -- I KNOW YOU DON'T RECALL THE  
28 MEETING, BUT DOES THAT INDICATE TO YOU THAT A DECISION

1 HAD ALREADY BEEN MADE TO TERMINATE?

2 MR. BRIAN: OBJECTION. YOUR HONOR, NO  
3 FOUNDATION.

4 THE COURT: SUSTAINED.

5 BY MR. QUINN:

01:59PM

6 Q YOU WORKED WITH MR. -- DID YOU WORK WITH  
7 MR. STERN DURING HIS PREVIOUS PERIOD OF EMPLOYMENT AT  
8 TCW?

9 A YES.

01:59PM

10 Q HE HAD BEEN BACK BEFORE -- AS OF THE END OF  
11 AUGUST, HE'D BEEN BACK TO TCW FOR A COUPLE MONTHS?

12 A CORRECT.

13 Q ARE YOU FAMILIAR WITH MR. STERN'S MANAGEMENT  
14 STYLE?

15 A I'M VERY FAMILIAR WITH IT.

01:59PM

16 Q CAN YOU TELL US WHETHER OR NOT MR. STERN IS  
17 THE KIND OF MANAGER WHO LIKES TO HAVE -- KNOW WHAT ALL  
18 HIS DIFFERENT OPTIONS ARE BEFORE HE MAKES A DECISION?

19 A YES. HE LIKES TO HAVE ALL THE WHAT-IFS, LOOK  
20 AT THE OPTIONS WHETHER THEY'RE PROBABLE OR IMPROBABLE,  
21 OR WHATEVER.

01:59PM

22 AND HAVE VARIOUS PEOPLE WITH DIFFERENT  
23 EXPERTISE LOOK AT THEM AND ADVISE HIM, AND HE MAKES HIS  
24 DECISIONS WITH THAT INPUT.

25 MR. QUINN: NOTHING FURTHER.

02:00PM

26 THE COURT: MR. BRIAN, YOU WANT TO FOLLOW UP?

27 MR. BRIAN: I THINK I'LL BE REALLY SHORT.

28 THE COURT: ALL RIGHT.

## 1 REDIRECT EXAMINATION +

2

3 BY MR. BRIAN:

4 Q CAN YOU SEE THE NAMES AT THE TOP OF THOSE  
5 NOTES?

02:00PM

6 A I'M SORRY. SEE THE WHAT?

7 Q THE NAMES AT THE TOP OF THAT. MARC, FOR  
8 MARC STERN, DO YOU SEE THAT?

9 A OH, YEAH.

10 Q MARC G, FOR MARC GIBELLO, DO YOU SEE THAT?

02:00PM

11 A YES.

12 Q MARC STERN AND MARK GIBELLO, WHEN THEY  
13 TESTIFIED AT THEIR DEPOSITIONS THEY DIDN'T REMEMBER THE  
14 MEETING EITHER --15 MR. QUINN: LACKS FOUNDATION. THIS IS  
16 ARGUMENT.

02:00PM

17 THE COURT: I DON'T WANT ARGUMENT, BUT JUST  
18 ASK QUESTIONS IF YOU WILL.

19 BY MR. BRIAN:

20 Q YOU WERE HERE WHEN I SHOWED MR. GIBELLO'S  
21 DEPOSITION RIGHT NOW, WEREN'T YOU?

02:00PM

22 A I WAS.

23 Q HE DIDN'T REMEMBER THE MEETING, EITHER, DID  
24 HE?

25 A NO.

02:00PM

26 Q DID HE HAVE A FIRE AT HIS HOUSE THAT DAY?

27 MR. QUINN: ARGUMENTATIVE.

28 THE COURT: SUSTAINED.

1 BY MR. BRIAN:

2 Q MR. QUINN ASKED YOU QUESTIONS ABOUT  
3 BARBARA VANEVERY AND CRIS SANTA ANA, AND JEFF MAYBERRY.

4 YOU UNDERSTOOD THAT MR. GUNDLACH HAD  
5 DISCRETION TO DECIDE THEIR ALLOCATED COMPENSATION, DID  
6 YOU NOT? 02:01PM

7 A HE HAD NO DISCRETION TO GIVE HIM ANY  
8 CONTRACTUAL RIGHTS. AND THAT'S WHAT I WAS ASKED,  
9 WHETHER THEY HAD ANY RIGHTS TO COMPENSATION UNDER  
10 CONTRACT. 02:01PM

11 Q HE HAD DISCRETION, DID HE NOT, UNDER THE  
12 REVISED COMPENSATION FORMULA TO DETERMINE THEIR  
13 COMPENSATION, DIDN'T HE?

14 A ONLY AMOUNT.

15 Q HE HAD THE AUTHORITY TO DETERMINE THAT AMOUNT  
16 UNDER THE REVISED COMPENSATION FORMULA THAT YOU AND TCW  
17 AGREED TO IN 2007, CORRECT? 02:01PM

18 A YES. THE AMOUNT.

19 Q NOW, YOU WERE ASKED SOME QUESTIONS ABOUT  
20 MR. BARACH'S COMPENSATION, B AND G POOL VERSUS THE G  
21 POOL. 02:01PM

22 DO YOU REMEMBER THAT?

23 A YES.

24 Q I TAKE IT BY 2007, IS IT FAIR TO SAY, THAT  
25 MR. GUNDLACH, AS COMPARED TO MR. BARACH, HAD BECOME A  
26 BIGGER DRIVER OF THE GROWTH OF THE M.B.S. GROUP; IS  
27 THAT RIGHT? 02:02PM

28 A I WOULD SAY SO.

1 Q OKAY.

2 I TAKE IT YOU WERE NOT PRESENT FOR ANY  
3 DISCUSSIONS THAT MIGHT HAVE OCCURRED BETWEEN MR. BARACH  
4 AND MR. GUNDLACH ABOUT MR. BARACH'S COMPENSATION FROM  
5 2007 ON WORD, WERE YOU?

02:02PM

6 A I WASN'T.

7 Q YOU DON'T KNOW WHETHER MR. BARACH WAS HAPPY OR  
8 UNHAPPY WITH THE CHANGES THAT HE EITHER DID OR DID NOT  
9 AUTHORIZE MR. GUNDLACH TO MAKE, DO YOU?

02:02PM

10 A I DON'T KNOW.

11 MR. BRIAN: NOTHING FURTHER.

12 THE COURT: ANYTHING FURTHER?

13 BY MR. QUINN:

14 Q UNDER THE TERMS OF MR. GUNDLACH'S ARRANGEMENTS  
15 DID HE HAVE THE ABILITY TO GIVE MS. VANEVERY,  
16 MR. MAYBERRY, OR MR. SANTA ANA RIGHTS TO FEE SHARING  
17 AFTER THE TERMINATION OF THEIR EMPLOYMENT?

02:02PM

18 A NO. THAT WAS SPECIFICALLY DISCUSSED WITH  
19 THEM.

20 MR. QUINN: NOTHING FURTHER.

02:02PM

21 MR. BRIAN: NOTHING FURTHER.

22 THE COURT: ALL RIGHT. THANK YOU, MR. CAHILL.  
23 YOU MAY BE EXCUSED AGAIN. MAYBE WE'LL SEE YOU BACK.  
24 MAYBE WE WON'T.

25 LADIES AND GENTLEMEN, WE'LL BREAK FOR  
26 THE EVENING. PLEASE DON'T DISCUSS THE CASE AMONG  
27 YOURSELVES OR WITH ANYBODY ELSE, OR FORM ANY OPINIONS  
28 OR CONCLUSIONS CONCERNING ANY ASPECT OF THE CASE UNTIL

02:03PM

1 YOU'VE HEARD ALL THE EVIDENCE AND IT'S BEEN SUBMITTED  
2 TO YOU.

3 JUST AS A TEASER, I FULLY ANTICIPATE  
4 THAT WE WILL BE ENDING UP EITHER THIS WEEK OR THE VERY  
5 FIRST PART OF NEXT WEEK. KEEP THAT IN MIND.

02:03PM

6

7 (PAUSE) +

8

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

10

02:04PM

11 THE COURT: WE'RE OUT OF THE PRESENCE OF THE  
12 JURY.

13 COUPLE OF MATTERS TO TAKE UP. AND I  
14 HAVE THIS AGENDA OF MATTERS THAT YOU WANTED TO KIND OF  
15 SCHEDULE FOR THE WEEK. I'M HAPPY TO WORK WITH YOU ON  
16 THAT.

02:04PM

17 MR. BRIAN: WOULD IT BE POSSIBLE JUST TO TAKE  
18 A FIVE-MINUTE BATHROOM BREAK?

19 THE COURT: WE'LL TAKE TEN MINUTES AND COME  
20 BACK AT 15 AFTER.

02:04PM

21 MR. BRIAN: IF YOU DON'T MIND, I APPRECIATE  
22 IT.

23 THE COURT: THAT'S FINE.

24

25 (RECESS.)

02:04PM

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

27

28 THE COURT: ALL RIGHT.

1 MR. BRIAN: THERE'S TWO SETS OF ISSUES, YOUR  
2 HONOR, WE THOUGHT WE COULD GET OUT OF THE WAY.

3 THE COURT: SURE.

4 MR. BRIAN: BOTH OF US HAD A SET OF EXHIBITS  
5 WE WANTED TO OFFER. AND THEN THERE WERE A FEW  
6 OBJECTIONS ON BOTH SIDES, SO WE CAN TAKE THOSE UP.

02:14PM

7 AND THEN THE SECOND ISSUE IS THE ISSUE  
8 OF THE BRIEF WE FILED ON THE TRADE SECRETS.

9 THE COURT: I'M AWARE OF THAT.

10 MR. BRIAN: I'LL START WITH OUR EXHIBITS.

02:15PM

11 I'LL READ ALL THE EXHIBITS -- THESE ARE  
12 EXHIBITS THAT WE WANT TO OFFER WITHOUT CALLING A  
13 WITNESS, TO SAVE TIME. AND I'LL READ THEM, AND I'LL  
14 INDICATE WHICH ONES I UNDERSTAND HAVE BEEN OBJECTED TO.

15 THE COURT: WHY DON'T YOU GIVE ME THE ONES  
16 THAT HAVEN'T BEEN OBJECTED TO, AND WE'LL TAKE THE LIST  
17 OF THE ONES WE HAVE TO DEAL WITH SEPARATELY.

02:15PM

18 MR. BRIAN: OKAY.

19 WE OFFER EXHIBIT 222.

20 290.

02:15PM

21 5171.

22 5252.

23 5268.

24 5347.

25 5356.

02:15PM

26 5442.

27 5460.

28 5476.

1 5530.

2 5617.

3 5632.

4 5663.

5 5664.

02:16PM

6 5986.

7 6007.

8 AND 6163.

9 THE COURT: MAY ALL THOSE BE ADMITTED

10 WITHOUT --

02:16PM

11 MR. MADISON: YOUR HONOR --

12 THE COURT: WAS ANYBODY PAYING ATTENTION?

13 MR. MADISON: HE WAS READING AWFULLY QUICKLY.

14 I'M TRYING TO KEEP UP WITH THAT.

15 MR. BRIAN: MAY I APPROACH MR. MADISON?

02:16PM

16 MR. MADISON: I THINK WE DO. I WANT TO MAKE

17 SURE NONE OF THE ONES WE OBJECT TO ARE ON THAT LIST.

18

19 (COUNSEL CONFER SOTTO VOCE.) +

20

02:17PM

21 MR. MADISON: YES, YOUR HONOR, NO OBJECTION.

22 THE COURT: THEY'LL BE ADMITTED WITHOUT

23 OBJECTION.

24

25 (EXHIBITS 222, 290, 5171, 5252, 5268, 5347, 5356, 5442,

02:17PM

26 5460, 5476, 5530, 5617, 5632, 5663, 5664, 5986, 6007,

27 6163 ADMITTED.) +

28 ///



1 THE COURT: WHAT ELSE? DEFENDANTS ARE ALSO  
2 OFFERING WHAT ELSE?

3 MR. BRIAN: OFFERING FOUR OTHERS.

4 MAY I APPROACH, YOUR HONOR.

5 THE COURT: YES.

02:17PM

6 MR. BRIAN: I HAD A BINDER THAT HAD ALL OF  
7 THEM IN IT. I WASN'T SURE OF THE POSITION.

8 THE COURT: I CAN FIND IT.

9 MR. BRIAN: THE ONES WE'RE OFFERING TO THAT  
10 ARE OBJECTED TO.

02:17PM

11 THE FIRST ONE, 5117, WHICH IS AN E-MAIL  
12 FROM JACQUES RIPOLL AND JEAN-PIERRE MUSTIER.

13 IT WAS PRODUCED PURSUANT TO THE BUSINESS  
14 RECORDS AFFIDAVIT FROM SOCIÉTÉ GÉNÉRALE. I USED IT  
15 WITH MR. BEYER WHO TESTIFIED TO HIS E-MAIL.

02:17PM

16 WE AGREED TO REDACT THE FIRST TWO,  
17 BECAUSE MR. BEYER, OF COURSE, COULD NOT TESTIFY TO  
18 THOSE.

19 WE'RE NOW OFFERING THE ENTIRE DOCUMENT  
20 PURSUANT TO THE PRODUCTION OF DOCUMENTS FROM SOCIÉTÉ  
21 GÉNÉRALE.

02:17PM

22 THERE'S A FRENCH DOCUMENT. IF YOU GO TO  
23 PAGE 3, 5117-003. THAT'S THE ENGLISH TRANSLATION. AND  
24 THE E-MAILS THEY OBJECT TO BELOW, THERE'S ONE THAT'S  
25 REDACTED AND NONRESPONSIVE.

02:18PM

26 THEY OBJECT TO THE NEXT TWO E-MAILS AT  
27 THE TOP, FROM MR. RIPOLL TO MR. OUDEA, AND FROM  
28 MR. MUSTIER TO MR. RIPOLL AND MR. LEADMAN.

1 THE COURT: I'M STARTING AT THE BACK. THESE  
2 ALL RUN BACKWARDS. EXHIBIT 5117-4. I HAVE AN E-MAIL  
3 FROM BEYER TO MUSTIER.

4 MR. BRIAN: THAT'S ALREADY IN EVIDENCE.

5 MR. MADISON: CORRECT.

02:18PM

6 THE COURT: 5117-4 IS IN EVIDENCE.

7 MR. MADISON: YES, YOUR HONOR.

8 MR. BRIAN: CORRECT.

9 THE COURT: 5117-3 IS AN E-MAIL FROM MUSTIER  
10 TO BEYER.

02:18PM

11 MR. MADISON: THAT'S IN EVIDENCE ALSO.

12 MR. BRIAN: THAT'S IN EVIDENCE AS WELL.

13 THE COURT: ABOVE THAT, IS AN E-MAIL FROM  
14 RIPOLL TO OUDEA, DATED FEBRUARY 24TH, 2009.

15 MR. MADISON: ACTUALLY, YOUR HONOR, THE ONE  
16 RIGHT ABOVE IT IS FROM MUSTIER TO RIPOLL, IT'S JUST ONE  
17 LINE.

02:19PM

18 THE COURT: HANDLED WITH VERY HIGH  
19 CONFIDENTIALITY.

20 MR. MADISON: YES. THERE'S NO OBJECTION TO  
21 THAT.

02:19PM

22 THE COURT: ALL RIGHT. IT'S NOT YET IN  
23 EVIDENCE.

24 MR. BRIAN: THERE'S NO OBJECTION.

25 THE COURT: ALL RIGHT.

02:19PM

26 MR. BRIAN: IT'S THE ONE RIGHT ABOVE THAT, THE  
27 ONE I THINK TCW IS OBJECTING TO. AND WE BELIEVE IT'S  
28 ADMISSIBLE FOR THE SAME REASON THAT -- I THINK IT WAS

1 5262, THAT E-MAIL WE DID NOT USE, WHEN MR. CABANNES WAS  
2 PRODUCED PURSUANT FROM THE AFFIDAVIT IT COMES IN THE  
3 FOR THE SAME REASON. IT'S A DOCUMENT SENT BY  
4 MR. RIPOLL --

5 THE COURT: GIVE ME A MINUTE HERE. 02:19PM

6 MR. BRIAN: SORRY.

7  
8 (PAUSE) +

9  
10 THE COURT: YOU'RE OFFERING IT AS A BUSINESS  
11 RECORD, AND YOU'RE OBJECTING -- 02:20PM

12 MR. BRIAN: AND AN ADMISSION AGAINST THE  
13 PARTY. MR. RIPOLL, OF COURSE, WAS THE PERSON FROM  
14 SOCIÉTÉ GÉNÉRALE DESIGNATED TO BE IN CHARGE OF TCW.

15 MR. MADISON: WELL, YOUR HONOR, I MEAN, THE 02:20PM  
16 DEFENSE HAS DIFFERING VIEWS OF WHETHER E-MAILS OR  
17 BUSINESS RECORDS, AS WE SAW AS EARLY ABOUT TWO HOURS  
18 AGO WHEN MR. BEYER WAS ON THE STAND AND THEY WERE  
19 OBJECTING TO INTERNAL TCW RECORDS, WHICH WE SAID WERE  
20 BUSINESS RECORDS. 02:20PM

21 MOVING BEYOND THAT, THE SENTENCE SHOULD  
22 NOT COME INTO EVIDENCE IN THIS E-MAIL. UNDER 352 IT  
23 SAYS: IN ADDITION, WE STILL HAVEN'T SET UP IN-HOUSE  
24 SOMEONE IN CHARGE SG, THAT CAN GRADUALLY LIMIT OUR  
25 DEPENDENCE VIS-A-VIS, THE AMERICA'S, THAT TOY WITH US. 02:20PM

26 THAT OBVIOUSLY, IS A REFERENCE TO  
27 AMERICA'S, WITH A CAPITAL A, TOYING WITH US COMING FROM  
28 THE FRENCH AND THE DEFENSE PLAYED IT VERY SUBTLE, CLEAR

1       THEME OF XENOPHOBIA HERE, AND US VERSUS THEM.

2                       WE WERE TREATED TO MR. GUNDLACH  
3       IMITATING A FRENCH ACCENT ON THE STAND. THAT'S THAT  
4       SENTENCE -- IT DEFINES SECTION 352.

5               MR. BRIAN: YOUR HONOR --

02:21PM

6               MR. MADISON: IT ADDS NOTHING TO THE CASE.

7               MR. BRIAN: IT ADDS EVERYTHING TO THE CASE,  
8       YOUR HONOR.

9                       FIRST OF ALL, WE'RE NOT -- THE  
10       ADMISSIBILITY OF THAT DOESN'T DEPEND ON WHETHER IT'S A  
11       BUSINESS RECORD. IT'S AN ADMISSION OFFERED AGAINST A  
12       PARTY ONLY. STATEMENT BY MR. RIPOLL.

02:21PM

13                      AS TO THE 352 OBJECTION, IT REMINDS ME  
14       OF THE FIRST TRIAL I EVER DID, WHICH WAS A PROSECUTION  
15       OF A NARCOTICS CASE. A SEARCH WAS DONE AND THEY FOUND  
16       NARCOTICS. AND THE DEFENSE ATTORNEY SAID, YOUR HONOR,  
17       IT'S INADMISSIBLE BECAUSE IT'S PREJUDICIAL.

02:21PM

18                      AND THE JUDGE SAID, YES, IT IS BECAUSE  
19       IT IS PROBATIVE.

20                      THIS IS HIGHLY PROBATIVE.

02:21PM

21                      WHAT THIS SAYS IS THAT THE FRENCH NEED  
22       TO BRING SOMEBODY IN-HOUSE TO DEAL WITH THE AMERICA'S.  
23       WE BELIEVE THAT THAT PERSON IS MARC STERN.

24                      THAT IS ABSOLUTELY OUR THEORY OF THE  
25       CASE. THEY WANTED TO BRING SOMEBODY BACK IN WHO COULD  
26       DEAL WITH MR. GUNDLACH AND CO.

02:22PM

27                      I DON'T THINK WHETHER AMERICA'S IS  
28       CAPITAL OR NOT. THAT'S MY POINT. MY POINT IS THAT

1 THAT HAS TO BE CONCLUDED BECAUSE IT DEFINES WHAT THE --  
2 DEFINES WHAT THE CLAUSE BEFORE THAT IS.

3 MR. MADISON: ALL I WILL SAY, OUR ORIGINAL  
4 OBJECTION WAS THERE IS ZERO TESTIMONY ABOUT THIS. THEY  
5 DEPOSED MR. RIPOLL. THEY DEPOSED MR. CABANNES. AND  
6 THEY HAVE NO TESTIMONY ABOUT THIS.

02:22PM

7 THERE'S NOTHING TO SUPPORT WHAT  
8 MR. BRIAN JUST SAID ABOUT WHAT THAT SENTENCE MEANS.

9 PRETTY CLEARLY, THEY'RE REFERRING TO  
10 SOMEONE FROM SG, AND, BY THE WAY, I DON'T BELIEVE THAT  
11 A MEMBER OF A BOARD CAN, IN ALL CIRCUMSTANCES, BIND THE  
12 COMPANY WHOSE BOARD HE SITS ON FOR PURPOSES OF THE  
13 HEARSAY RULE.

02:22PM

14 IT IS NOT IPSO FACTO. AND AN ADMISSION  
15 OF TCW BECAUSE OF THESE -- IN CERTAINLY SOC-GEN  
16 COMMUNICATIONS.

02:23PM

17 IT'S PRETTY CLEAR. IN FACT, I THINK  
18 MR. BRIAN CAN ARGUE --

19 THE COURT: WELL, IS THIS THE ONLY -- RIPOLL  
20 TO OUDEA, FEBRUARY 24TH, 2009 E-MAIL IS THE ONLY PART  
21 THAT'S OBJECTED TO?

02:23PM

22 MR. MADISON: YES, YOUR HONOR. I THINK THE  
23 ENTIRE E-MAIL SHOULD BE OUT FOR ALL THE REASONS I'VE  
24 SAID.

25 BUT IF YOUR HONOR AGREES IT'S A BUSINESS  
26 RECORD THAT SHOULD COME IN, AT LEAST THAT ONE SENTENCE  
27 ABOUT, AMERICA'S TOYING WITH US. FRENCH IN THIS CASE,  
28 IS 352, AND THAT SHOULD BE REDACTED.

02:23PM

1 MR. BRIAN: MR. MADISON KEEPS TALKING ABOUT  
2 BUSINESS RECORD.

3 MR. STERN TESTIFIED AT THIS TRIAL THAT  
4 MR. RIPOLL REPLACED MR. MUSTIER AS THE PERSON IN CHARGE  
5 OF TCW. THAT'S WHAT HE SAID. UNDER OATH.

02:23PM

6 HE SAID THAT AT HIS DEPOSITION, TOO.  
7 LET ME FINISH.

8 MR. RIPOLL WAS A MEMBER OF THE EXECUTIVE  
9 COMMITTEE OF TCW. MR. MUSTIER WAS A MEMBER OF THE  
10 EXECUTIVE COMMITTEE. WE DID NOT ASK MR. RIPOLL ABOUT  
11 THIS DOCUMENT BECAUSE, FOR WHATEVER REASON, THIS  
12 DOCUMENT WAS NOT PRODUCED UNTIL AFTER WE HAD TAKEN  
13 MR. RIPOLL'S DEPOSITION.

02:24PM

14 IT'S NOT ADDRESSED TO MR. CABANNES,  
15 WHICH IS WHY I DIDN'T ASK MR. CABANNES.

02:24PM

16 THIS IS A CLASSIC ADMISSION OFFERED  
17 AGAINST A PARTY OPPONENT. THEY DON'T LIKE IT BECAUSE  
18 IT'S PROBATIVE.

19 THE COURT: I'VE GOT A RULING WRITTEN OUT.  
20 I'M WAITING FOR YOU TO STOP.

02:24PM

21 MR. MADISON: YOUR HONOR, IF I --

22 MR. QUINN: COULD WE HAVE A CLUE, YOUR HONOR?  
23 THE COURT: I'M READY TO MOVE ON.

24 MR. MADISON: IF I COULD, I REALIZE THIS JUST  
25 NOW, MR. BRIAN IS JUST MISTAKEN.

02:24PM

26 MR. RIPOLL, AT THE TIME AT THIS E-MAIL  
27 WAS WRITTEN, WAS NOT ON THE BOARD OF TCW. THIS IS FROM  
28 FEBRUARY 2009 WHEN MR. MUSTIER WAS STILL THE BOARD

1 REPRESENTATIVE.

2 AND THE COURT WILL RECALL WE HEARD  
3 TESTIMONY THAT THE TRANSITION FROM RIPOLL -- MUSTIER TO  
4 RIPOLL OCCURRED, I BELIEVE, IN THE MAY TO JUNE TIME  
5 FRAME.

02:25PM

6 MR. BRIAN: THAT --

7 MR. MADISON: THE ADMISSION ARGUMENT DOESN'T  
8 EVEN HOLD WATER BECAUSE AT THE TIME THE E-MAIL WAS  
9 WRITTEN, IT'S TO SOC-GEN EXECUTIVES. I BELIEVE WE  
10 HEARD TESTIMONY ABOUT THIS, YOUR HONOR. I HAVEN'T  
11 MEMORIZED THE TRANSCRIPTS --

02:25PM

12 THE COURT: I'LL ADMIT IT, OVER THE  
13 DEFENDANTS' OBJECTION, AS A BUSINESS RECORD. AND I  
14 BELIEVE, EITHER AS ADMISSION OF PARTY OPPONENT OR IT  
15 GOES TO THE STATE OF MIND, WHICH I'VE HEARD QUITE A BIT  
16 FROM YOU OF THOSE WHO ULTIMATELY WERE INVOLVED AND  
17 RESPONSIBLE FOR THE TRANSACTIONS THAT TOOK PLACE.

02:25PM

18 AND SO, THAT'S MY BEST SHOT. LET'S MOVE  
19 ON TO THE NEXT ONE.

20 MR. MADISON: ON THE 352, YOUR HONOR.

02:25PM

21 MR. BRIAN: THE NEXT ONE IS EXHIBIT --

22 MR. MADISON: EXCUSE ME. EXCUSE ME. EXCUSE  
23 ME, YOUR HONOR.

24 MR. BRIAN: -- FIVE -- EXHIBIT.

25 MR. MADISON: WILL YOU RULE ON 352 AMERICA'S  
26 TOYING WITH US WITH THE XENOPHOBIC ARGUMENTS IN THIS  
27 CASE? ALL RIGHT.

02:25PM

28 THE COURT: I HAVEN'T SEEN MANY OF THOSE

1 XENOPHOBIC ARGUMENTS. WE CAN GO A LOT OF WAYS WITH  
2 INNUENDO BY BOTH SIDES THROUGHOUT THE COURSE OF THIS  
3 TRIAL. I DON'T THINK THAT'S A VERY STRONG DEFENSE,  
4 QUITE FRANKLY.

5 THIS IS A MINOR POINT. AND I DON'T SEE 02:26PM  
6 THAT AS A NECESSARILY STRONG UNDERCURRENT ON THE  
7 DEFENDANTS' CASE. BUT, YOU KNOW, LOTS HAVE BEEN HEARD.  
8 THE JURY WILL DO WHAT THEY WANT TO DO.

9 MR. MADISON: I REALLY THINK, YOUR HONOR, IF  
10 YOU LOOK AT THE SENTENCE, IT CREATES A RISK THAT THE 02:26PM  
11 JURY WILL BE INFLAMED AND PREJUDICED AS AMERICANS,  
12 INDEED, ON A WEEK WHERE WE'RE GOING TO BE RECOGNIZING  
13 THE ANNIVERSARY OF SEPTEMBER 11.

14 THAT THERE WILL BE A STRONG SENSE TO  
15 REACT NEGATIVELY TO MR. RIPOLL AND TO THE FRENCH AND TO 02:26PM  
16 SOC-GEN. AND POTENTIALLY TO OUR CLIENT BY TALKING  
17 ABOUT AMERICA'S TOYING WITH US FRENCH.

18 AND I JUST DON'T THINK THE RELEVANT  
19 PROBATIVE VALUE, I BELIEVE IT'S SUBSTANTIALLY  
20 OUTWEIGHED BY THE POTENTIAL FOR PREJUDICE, YOUR HONOR. 02:27PM

21 MR. BRIAN: YOUR HONOR RULED AND I'M PREPARED  
22 TO MOVE ON.

23 THE COURT: I WANT TO MOVE ON.

24 MR. BRIAN: EXHIBIT --

25 THE COURT: HOLD ON A MINUTE. 02:27PM

26 WHAT'S THE NEXT EXHIBIT?

27 MR. BRIAN: EXHIBIT 5155, WHICH IS A -- E-MAIL  
28 CHAIN BETWEEN BLAIR THOMAS AND MARC STERN.



1 I THINK THE OBJECTION WAS THERE WAS A  
2 RULING ON A MOTION IN LIMINE THAT SPECIFIC TERMS OF THE  
3 SEPARATIONS, BETWEEN MR. ATTANASIO AND MR. THOMAS,  
4 WOULD BE EXCLUDED. I THINK THAT IS WHAT YOUR HONOR  
5 RULED.

02:27PM

6 SO I HAVE NO OBJECTION TO REDACTING. I  
7 JUST DON'T KNOW EXACTLY WHAT TCW'S PROPOSING TO REDACT.

8 MR. MADISON: THE ENTIRE E-MAIL IS ABOUT THE  
9 TERMS OF THE NEGOTIATION WITH MR. THOMAS, YOUR HONOR.

10 MR. BRIAN: THEN IT SEEMS TO ME THE FIRST --  
11 MAYBE WE SHOULD JUST HAVE PAGE 1. I DON'T THINK THAT  
12 RAISES ANY OF THE PROBLEMS THAT MR. MADISON'S CONCERNED  
13 ABOUT.

02:27PM

14 THE COURT: I DON'T KNOW. LET ME LOOK AT  
15 THEM. I THOUGHT YOU SAID YOU HAD GONE THROUGH THESE  
16 WITH THEM AND KNEW WHERE YOU WERE.

02:28PM

17 IF IT GOES DIRECTLY TO THE TERMS OF THE  
18 BLAIR THOMAS SEPARATION, NEGOTIATED SEPARATION, I DON'T  
19 THINK THAT'S RELEVANT. I MEAN --

20 MR. BRIAN: WHAT WAS RELEVANT IS THE GENERAL  
21 NATURE THAT THERE WERE NEGOTIATED SEPARATIONS.  
22 THAT'S --

02:28PM

23 THE COURT: THAT'S IN EVIDENCE. YOU CAN ARGUE  
24 THAT ALL YOU WANT. THE ATTANASIO, CHAPUS, THOMAS, AND  
25 I THINK SOMEBODY ELSE ALL HAD NEGOTIATED SEPARATIONS,  
26 ONE BEFORE GUNDLACH WAS FIRED AND TWO AFTER.

02:28PM

27 SO --

28 MR. BRIAN: IF YOU LOOK AT PAGE 1, YOUR HONOR,

1 IT DOESN'T RAISE ANY OF THE CONCERNS THAT TCW  
2 EXPRESSED, WHICH I UNDERSTAND. THEY DON'T WANT TO MAKE  
3 PUBLIC THE SPECIFIC TERMS.

4 AND PAGE 1 DOESN'T DO THAT. PERHAPS THE  
5 ATTACHMENTS DO.

02:28PM

6 AND WE'RE VERY WELL WILLING TO ELIMINATE  
7 THOSE AND OFFER EXHIBIT 5155, PAGE 1.

8 MR. MADISON: I'D LIKE TO RESPOND. IF I NEED  
9 TO, YOUR HONOR.

10 THE COURT: LET ME TAKE A LOOK AT THESE.

02:29PM

11  
12 (PAUSE) +

13  
14 THE COURT: MR. MADISON, WHAT DO YOU HAVE TO  
15 SAY?

02:30PM

16 MR. MADISON: WELL, YOUR HONOR, THE COURT  
17 EXCLUDED EVIDENCE OF THE TERMS OF THE NEGOTIATED  
18 SEPARATIONS WITH THE OTHER GROUPS.

19 THIS ENTIRE E-MAIL IS PART OF THE  
20 NEGOTIATION OF THOSE TERMS BETWEEN MR. STERN AND  
21 MR. THOMAS.

02:30PM

22 NOW, IF WE LOOK AT THE FIRST E-MAIL AT  
23 THE BOTTOM, MR. THOMAS WRITES TO MR. STERN AND ATTACHES  
24 A JOINT VENTURE PROPOSAL. HE SAYS:

25 MARC, PER OUR DISCUSSION --

02:30PM

26 THE COURT: I'VE READ IT. I'VE READ IT.  
27 DON'T NEED TO HAVE IT READ TO ME AGAIN.

28 MR. MADISON: I'M SORRY, YOUR HONOR.

1 WE'LL ADMIT THE E-MAIL WHICH TALKS ABOUT  
2 THE TERMS.

3 THE COURT: I DON'T SEE IT AS TALKING ABOUT  
4 THE TERMS.

5 QUITE FRANKLY, THE ONLY REASON I SEE  
6 THEY REALLY WANT THIS IS THE SENSE OF WHAT THE PROCESS  
7 OF A NEGOTIATED SEPARATION COULD BE.

02:30PM

8 AND YOU MIGHT EVEN HEAR MR. BRIAN REFER  
9 TO THE REFERENCE TO A HANDSHAKE, A DEAL AT SOME POINT  
10 IF I LET THIS COME IN.

02:31PM

11 MR. MADISON: WELL, AGAIN, IT SEEPS INTO THE  
12 COURT'S MOTION IN LIMINE RULING. IT'S NOT PROBATIVE ON  
13 ANY OF THE ISSUES IN THIS CASE.

14 AND IT WILL LEAVE THE JURY WONDERING WHY  
15 DON'T WE GET TO SEE THE ATTACHMENT, WHICH IS THE TERMS.

02:31PM

16 AND I MEAN, THERE'S NOTHING ABOUT IT, AS  
17 YOUR HONOR SAID, THEY'VE ALREADY HEARD THERE WERE  
18 NEGOTIATIONS. NO DOUBT THOSE NEGOTIATIONS HAD TO  
19 INVOLVE E-MAILS BACK AND FORTH AND MEETINGS AND  
20 COMMUNICATIONS.

02:31PM

21 BUT TO ADMIT PART OF THE NEGOTIATIONS  
22 SERVES NO PURPOSE IN THIS CASE.

23 THE COURT: ANYTHING ELSE, MR. BRIAN?

24 MR. BRIAN: JUST TO REPEAT THE POINTS, YOUR  
25 HONOR, THE TERMS ARE SET FORTH IN THE ATTACHMENT.  
26 THAT'S WHAT YOUR HONOR EXCLUDED.

02:31PM

27 THE COURT: ALL RIGHT.

28 WHAT IS THE RELEVANCE, IF YOU MIGHT?

1 MR. BRIAN: TWO POINTS. ACTUALLY, THREE.

2 BUT, ONE, THE FACT THAT THERE'S BEEN  
3 EVIDENCE IN THE RECORD THAT'S CONSISTENT WITH THE FACT  
4 THAT THE PARTIES KNEW HOW TO NEGOTIATE A SEPARATION.  
5 MR. STERN DID THAT. HE KNEW HOW TO DO IT.

02:32PM

6 WE'LL ARGUE THAT HE COULD HAVE --  
7 APPROACHED MR. GUNDLACH, AS HE DID MR. THOMAS.

8 WE'RE GOING TO ARGUE THINGS LIKE THE  
9 HANDSHAKE DEAL THAT REFLECTS THERE, AND THE TIMING OF  
10 THIS IS VERY RELEVANT. IT'S RIGHT IN THE MIDDLE OF THE  
11 KEY TIME PERIOD.

02:32PM

12 WE'RE NOT GOING TO GET INTO THE  
13 SPECIFICS AS SET FORTH IN THE ATTACHMENT AT ALL.  
14 THAT'S WHY WE'RE WILLING TO REDACT THAT.

15 MR. MADISON: IF I COULD ON THAT POINT, YOUR  
16 HONOR, THE HANDSHAKE DEAL REFERENCE IS MR. THOMAS.

02:32PM

17 THE COURT: I UNDERSTAND. I'VE READ IT.

18 MR. MADISON: I UNDERSTAND.

19 IT'S NOT LIKE THE HANDSHAKE DEAL  
20 MR. GUNDLACH'S ARGUING IS A FINAL --

02:32PM

21 THE COURT: I'M NOT SUGGESTING HE'S GOING TO  
22 BE ABLE TO DO IT. I'M SAYING THAT'S WHAT YOU'LL HEAR,  
23 AND THAT'S WHAT THEY LIKE IN THIS.

24 MR. MADISON: I UNDERSTAND.

25 WE'LL HAVE TO ASK THE COURT TO PUT ON  
26 EVIDENCE SHOWING MR. THOMAS'S DEAL WAS ACTUALLY A  
27 WRITTEN AGREEMENT, WHICH WAS SIGNED OFF ON AND --

02:32PM

28 THE COURT: THE OBJECTIONS WILL BE SUSTAINED.

1 JUST, NO.

2 WHAT'S THE NEXT ONE?

3 MR. BRIAN: EXHIBIT 5987. THE OBJECTION IS  
4 HEARSAY. IT'S NOT OFFERED FOR THE TRUTH. IT'S OFFERED  
5 FOR STATE OF MIND THIS IS CONSISTENT WITH OTHER  
6 EVIDENCE ADMITTED BY THE COURT.

02:33PM

7 THE COURT: 5987?

8 MR. BRIAN: 5987.

9 THE COURT: THIS IS DECEMBER 5TH, 2009 E-MAIL.

10 MR. BRIAN: IT'S ONE OF THE COMPLAINTS AFTER  
11 THE TERMINATION OF MR. GUNDLACH.

02:33PM

12 THE COURT: BALDISWIELER TO --

13 MR. BRIAN: BALDISWIELER IS IN-HOUSE AT TCW.  
14 I THINK HEAD OF -- IN MARKETING, OR HEAD OF MARKETING,  
15 SOMETHING LIKE THAT.

02:33PM

16 THE COURT: AND WHO IS KATHY URBELIS?

17 MR. BRIAN: ANOTHER TCW PERSON. IN MARKETING,  
18 I BELIEVE.

19 THERE'S OTHER -- YOU'LL RECALL THERE ARE  
20 E-MAILS FROM BALDISWIELER TO STERN THAT REPORT --

02:34PM

21 THE COURT: I DO RECALL THOSE. HE WAS THE ONE  
22 THAT ALSO PUT TOGETHER THE MATRIX OF COMPLAINTS, IS MY  
23 UNDERSTANDING.

24 MR. BRIAN: THAT'S CORRECT.

25 THE COURT: WHO'S IN CHARGE OF THIS ONE?

02:34PM

26 YOU WANT TO ARGUE THIS ONE, TOO,  
27 MR. MADISON?

28 MR. MADISON: YES, YOUR HONOR. I GET ALL THE

1 TOUGH ONES, IT SEEMS.

2 I MEAN, HERE WE HAVE AN E-MAIL FROM  
3 MR. -- FROM SOMEONE NAMED CHRISTINE MARTIN TO  
4 MR. BALDISWIELER. THEY APPEAR TO BE TALKING ABOUT A  
5 PARTICULAR CLIENT.

02:34PM

6 THE COURT: I DON'T -- OKAY.

7 MR. MADISON: CALLED PARTNERS. I DON'T KNOW  
8 WHO THAT CLIENT IS. THERE'S NO FOUNDATION. NONE OF  
9 THESE PEOPLE HAS EVER BEEN DEPOSED OR TESTIFIED, I  
10 DON'T BELIEVE.

02:35PM

11 SO, SHE'S REPORTING SOMETHING ABOUT THIS  
12 CLIENT PARTNERS, ABOUT THE WAY THAT THEY FEEL ABOUT  
13 MR. GUNDLACH. I DON'T KNOW WHAT ISSUE THIS COULD GO  
14 TO, OTHER THAN THE INTERFERENCE CLAIM, AND IT DOESN'T  
15 APPEAR THEY'RE A SPECIAL MORTGAGE CREDIT FUND INVESTOR.  
16 THEY'RE TALKING ABOUT STRATEGIC MORTGAGE-BACKED  
17 SECURITIES. I BELIEVE THAT'S A DIFFERENT STRATEGY.

02:35PM

18 THERE'S JUST NOT ENOUGH FOUNDATION HERE  
19 TO MAKE THIS MEANINGFUL TO THE JURY. AND IT IS  
20 HEARSAY. IT'S HEARSAY WITHIN HEARSAY. AND THERE'S NOT  
21 EVEN THE MOST BASIC FOUNDATION FOR A BUSINESS RECORD OR  
22 WHO THE CLIENT IS, OR, YOU KNOW, WHAT -- WHAT THE REAL  
23 RELEVANCE IS TO THIS LAWSUIT.

02:35PM

24 MR. BRIAN: IT'S A TCW DOCUMENT PRODUCED BY  
25 TCW THAT GOES TO STATE OF MIND.

02:35PM

26 THE COURT: SO WHAT? IF IT GOES TO -- IF IT'S  
27 A STRATEGIC MORTGAGE-BACKED SECURITIES, WHAT'S THE  
28 RELEVANCE OF A COMPLAINING PARTNER IN THOSE TO ANY

1 CLAIM IN THIS LITIGATION?

2 MR. BRIAN: I THINK THEY'RE ARGUING, YOUR  
3 HONOR. MAYBE THEY'RE NOT. I HEAR THEM ARGUING THAT  
4 MR. GUNDLACH DID MORE THAN JUST INTERFERE WITH THE  
5 SMCF. THEY'RE SAYING IT GOES --

02:36PM

6 THE COURT: THEY HAVE NO DAMAGE MODEL THAT  
7 GOES TO SOMETHING EXCEPT THE SMCF, BUT IT DOES  
8 CORROBORATE WHAT --

9 MR. QUINN: ACTUALLY, THAT'S NOT RIGHT.

10 MR. BRIAN: PARDON ME?

02:36PM

11 MR. QUINN: THAT'S NOT RIGHT.

12 THE COURT: I MEAN, THERE'S AN INTERFERENCE  
13 DAMAGE MODEL ASIDE FROM THE SMCF'S. OR NOT  
14 INTERFERENCE, A BREACH OF FIDUCIARY DUTY.

15 MR. QUINN: EXACTLY. EXACTLY.

02:36PM

16 THE COURT: I'M TALKING ABOUT THE INTERFERENCE  
17 CLAIM.

18 MR. MADISON: RIGHT.

19 THE COURT: IT ONLY GOES TO THE SPECIAL  
20 MORTGAGE CREDIT FUNDS, AND THAT'S THE SUM TOTAL OF THE  
21 DAMAGES ANALYSIS.

02:36PM

22 IF THIS IS A TOTALLY DIFFERENT STRATEGY,  
23 A DIFFERENT INVESTOR, I DON'T THINK THEY'RE RIGHT.  
24 THERE'S NO RELEVANCE.

25 MR. BRIAN: I CAN TRADE THIS ONE FOR THE LAST  
26 ONE, WHICH I THINK HE JUST -- MR. MADISON JUST ARGUED  
27 LONG ENOUGH, HE FINALLY WORE US DOWN, YOUR HONOR.

02:36PM

28 THE COURT: I HAVE THAT FEELING SOMETIMES,

1 BUT -- THAT I'M GETTING WORN DOWN, BUT I'LL STAY WITH  
2 YOU.

3 OBJECTION SUSTAINED.

4 WHAT'S YOUR LAST ONE?

5 MR. BRIAN: 6141.

02:37PM

6 THE COURT: YOU SHOULD DO PRETTY WELL ON THIS  
7 ON THE 50/50 THEORY.

8 MR. MADISON: THAT'S NOT A 50/50 SHOOTER.

9 MR. QUINN: YOUR HONOR'S A VERY CANDID  
10 JUDICIAL OFFICER.

02:37PM

11 THE COURT: WHAT IS THIS ONE?

12 MR. BRIAN: THIS GOES TO THE TAKING AWAY THE  
13 INTERIM CEO TITLE THREE DAYS BEFORE MR. GUNDLACH IS  
14 TERMINATED.

15 WE INTEND TO ARGUE THAT MR. STERN WAS  
16 REWARDED. AND THIS IS RELEVANT TO THAT. WE HEARD  
17 TESTIMONY ABOUT IT TODAY, ABOUT REMOVING THE INTERIM  
18 CEO TITLE THAT CAME IN THROUGH THE CABANNES DEPOSITION  
19 VIDEOTAPE. YOUR HONOR RULED ON THE RELEVANCE ON THAT.  
20 THIS SIMPLY CONFIRMS THAT.

02:37PM

21 MR. MADISON: I THINK I CAN FOCUS THE ISSUE  
22 PERHAPS, YOUR HONOR, ON ALL OF THAT.

23 THE COURT: LET ME TAKE A QUICK LOOK AT IT.  
24 IT'S ALWAYS EASIER FOR ME TO LISTEN TO THE ARGUMENT IF  
25 I TAKE A LOOK AT IT.

02:38PM

26 MR. MADISON: YES, YOUR HONOR.

27 (PAUSE) +

02:38PM

28 ///



1 THE COURT: ALL RIGHT. YOUR COMMENT ON IT.

2 MR. MADISON: PARDON ME, YOUR HONOR?

3 THE COURT: YOUR COMMENT ON IT.

4 MR. MADISON: YES, YOUR HONOR.

5 EVERYTHING MR. BRIAN WANTS TO DO WITH  
6 THIS, HE CAN DO.

02:38PM

7 MY OBJECTION IS TO THE SENTENCE IN THE  
8 BOTTOM E-MAIL. IT'S THE SECOND TO THE LAST OR THE --  
9 THE SECOND AND THIRD FROM THE LAST, WHERE IT SAYS:

10 ALSO BASED ON MY DISCUSSIONS

02:39PM

11 WITH ROBERT.

12 THAT SENTENCE AND THE NEXT SENTENCE.

13 I RECOGNIZE WE'RE AT THE END OF THE  
14 CASE, BUT NO WITNESSES HAVE BEEN ASKED ABOUT THIS.  
15 THEY DIDN'T ASK MR. DAY. THEY DIDN'T ASK MR. STERN.  
16 THEY DIDN'T ASK MR. RIPOLL ABOUT THIS DOCUMENT IN  
17 PARTICULAR.

02:39PM

18 THIS STATEMENT, WHICH SEEMS TO RAISE  
19 THIS ENTIRELY NEW NOTION THAT THERE WAS SOME POINT IN  
20 TIME, AND I'M ASSUMING IT'S ROBERT DAY, BUT I DON'T  
21 EVEN KNOW THAT, THAT ROBERT HAD DISCUSSED BEING CO-CEO,  
22 AND FOR SORT OF STICKING INTO EVIDENCE AT THE END OF A  
23 CASE, A DOCUMENT LIKE THIS WITHOUT A WITNESS TO RESPOND  
24 TO IT OR TALK ABOUT IT, I HAVE A CONCERN THAT'S 352.

02:39PM

25 THE COURT: OKAY.

02:39PM

26 SO YOUR OBJECTION GOES TO THE REFERENCE  
27 TO THE CO, AND THE CO-CHAIRMAN.

28 THE FIRST SENTENCE, THE FIRST TWO

1 SENTENCES, DEALING WITH THE REMOVAL OF INTERIM FROM  
2 MR. STERN'S TITLE, DO YOU HAVE ANY SUBSTANTIVE ARGUMENT  
3 AGAINST THAT.

4 MR. MADISON: NO, YOUR HONOR.

5 MR. BRIAN: LET ME ADDRESS THE SENTENCES HE  
6 WANTS TO STRIKE, THEN.

7 I'M HAPPY TO CALL MR. STERN BACK. I'M  
8 TRYING NOT TO DO THAT.

9 BUT WE'RE GOING TO TALK ABOUT MR. DAY.  
10 AND WE BELIEVE THAT THE EVIDENCE SHOWS THAT MR. DAY IS,  
11 IN FACT, A DRIVER OF SOME OF THE DECISIONS HERE. HE  
12 DOESN'T RECALL ANYTHING, WHICH WE'RE GOING TO ARGUE  
13 VIGOROUSLY TO THE JURY.

14 AND THIS IS AN ADMISSION BY MR. STERN,  
15 THE MOST IMPORTANT REPRESENTATIVE OF TCW, AND HE IS  
16 SAYING HERE, HE CONFIRMS OUR THEORY THAT MR. DAY, IN  
17 FACT, WAS ASSERTING HIMSELF. AND THAT'S WHAT WE WANT  
18 TO ARGUE.

19 THIS IS A CLASSIC ADMISSION OFFERED  
20 AGAINST A PARTY OPPONENT. FRANKLY, I DON'T UNDERSTAND  
21 THE OBJECTION.

22 THE COURT: WELL, THE PART THAT -- THE  
23 SENTENCE THAT I -- I UNDERSTAND THE OBJECTION GOING TO  
24 READS AS FOLLOWS:

25 ALSO, BASED ON MY DISCUSSIONS  
26 WITH ROBERT -- AND THIS IS  
27 MR. STERN TALKING TO MR. RIPOLL --  
28 I'M CONCERNED THAT AT SOME POINT HE

02:40PM

02:40PM

02:40PM

02:40PM

02:41PM

1 WILL TRY TO MAKE ANOTHER ATTEMPT TO  
2 MAKE US CO-CEO. THIS WAS SOMETHING  
3 THAT JEAN-PIERRE AND FREDERICK HAD  
4 TO BEAT BACK THE LAST TIME. I LOOK  
5 FORWARD TO TALKING WITH YOU LATER  
6 TODAY.

02:41PM

7 NOW.

8 MR. BRIAN: IS THE OBJECTION RELEVANCE? IT'S  
9 CLEARLY RELEVANT IF IT'S 352 --

02:41PM

10 THE COURT: WELL --

11 MR. BRIAN: -- JUST BECAUSE IT'S PREJUDICIAL.

12 THE COURT: WHAT IS THE FACT THAT DAY MAY OR  
13 MAY NOT WANT TO REVIVE A REQUEST TO BE A CO-CEO, HAVE  
14 TO DO WITH EITHER YOUR CONTRACT CLAIM OR THEIR  
15 INTERFERENCE CLAIM, OR THEIR BREACH OF FIDUCIARY DUTY  
16 CLAIM, OR THE --

02:41PM

17 MR. BRIAN: IT HAS A LOT TO DO WITH PROJECT G.  
18 BECAUSE IT IS -- AS WE SAW IN THE E-MAILS TODAY, THAT  
19 ROBERT DAY WAS -- WAS TELLING THE FRENCH, AS EARLY AS  
20 JUNE 6TH, THAT THEY HAD TO REMOVE MR. GUNDLACH.

02:42PM

21 AND THERE'S A MEETING TESTIFIED TO BY  
22 MR. STERN AND MR. GUNDLACH IN LATE MAY AT ROBERT DAY'S  
23 HOUSE, WE WANT TO BE ABLE TO ARGUE THAT HE IS BOTH THE  
24 CHAIRMAN AND IS SOMEBODY WHO FLEXES HIS MUSCLE.

25 THE COURT: THIS IS ACTUALLY --

02:42PM

26 MR. BRIAN: MR. DAY RAN THIS COMPANY FOR 35  
27 YEARS AND DIDN'T WANT TO GO LIGHTLY BY THE SIDE.

28 THE COURT: THIS WOULD APPEAR TO GO CONTRARY

1 TO THAT APPROACH. AND THAT IS THAT STERN IS  
2 DISCOUNTING OR MAKING SURE THAT DAY'S ISSUES AND THE  
3 FRENCH WITH STERN KEEP HIM FROM DOING WHAT HE WANTS TO  
4 DO.

5 MR. BRIAN: IF THAT WERE THE CASE, I THINK  
6 MR. MADISON WOULD WANT IT IN. I DON'T BELIEVE HE  
7 BELIEVES IT READS THAT WAY. I DON'T THINK HE BELIEVES  
8 IT READS THAT WAY. NOR DO I.

02:42PM

9 MR. MADISON: 352 DOESN'T JUST ADDRESS  
10 PREJUDICE. IT ADDRESSES ALSO UNDUE CONSUMPTION OF  
11 TIME.

02:43PM

12 THE COURT: THAT'S NOT IN THE -- IN THE REALM  
13 OF SPEAKING, THAT'S NOT A VALID ISSUE. IT TAKES TWO  
14 MINUTES. IT'S IN THE POT AND PEOPLE CAN ARGUE IT.

15 MR. MADISON: WELL, YEAH, NOBODY'S TALKED  
16 ABOUT IT. THERE'S NO CONTEXT AT ALL FOR IT. AND THE  
17 PARTY WAS GOING TO MENTION ALSO ABOUT 352 IS CONFUSION  
18 AND MISLEADING THE JURY.

02:43PM

19 THESE ARE -- I JUST LOOKED AT THE BATES  
20 NUMBERS. THIS IS ONE OF THE FIRST DOCUMENTS PRODUCED  
21 AND THE FIRST FEW PRODUCTIONS BY TCW. THEY NEVER ASKED  
22 MR. DAY ABOUT IT, MR. STERN, OR MR. RIPOLL.

02:43PM

23 AND THEY HAD IT, I BELIEVE, YOUR HONOR,  
24 AT THE TIME THEY DID ALL THOSE DEPOSITIONS. TO NOW  
25 INTRODUCE THIS NEW TOPIC, YOU KNOW, IT'S GOING TO BE  
26 TERRIBLY MISLEADING AND CONFUSING TO THE JURY.

02:43PM

27 MR. BRIAN: IT'S NOT CONFUSING. IT'S AN  
28 ADMISSION BY MR. STERN, YOUR HONOR.

1 MR. MADISON: WHAT I'VE HEARD FROM MR. BRIAN,  
2 HE WOULD TRY TO ARGUE INFERENCES. FRANKLY, HE  
3 SHOULDN'T BE ALLOWED TO ARGUE WITHOUT SOME TESTIMONY --

4 THE COURT: I CAN'T WAIT TO HEAR ARGUMENT FROM  
5 BOTH SIDES. I SUSPECT THERE WILL BE INFERENCES  
6 ARGUED --

02:44PM

7 MR. MADISON: I'M ASKING FOR CAUTION HERE.  
8 THAT'S WHY I THINK AT THIS POINT IN THE CASE THINGS  
9 LIKE THIS SHOULDN'T JUST FLY INTO EVIDENCE WITHOUT ANY  
10 WITNESS TESTIMONY.

02:44PM

11 THE COURT: YES. YOU KNOW, AT THIS POINT,  
12 I'LL ADMIT IT SUBJECT TO THE OBJECTION.

13 I'LL SUSTAIN THE OBJECTION AS TO THE  
14 LAST SENTENCE BEGINNING: ALSO, BASED ON MY DISCUSSION  
15 WITH ROBERT... AND CONTINUING TO THE END.

02:44PM

16 NOW, IF THERE'S SOME EVIDENCE OFFERED  
17 THAT MAKES IT WORTHY OF -- YOU KNOW, YOU WANT TO MAKE A  
18 PROFFER OR AN OFFER OF PROOF OR SOME EVIDENCE COMES IN  
19 THAT SAYS I SHOULD RECONSIDER THAT, I'LL RECONSIDER IT.

20 BUT AT THIS POINT, I DON'T HAVE ANYTHING  
21 IN THE RECORD.

02:44PM

22 I THINK IT'S REALLY SURPLUSAGE. I DON'T  
23 SEE IT ADDING ANYTHING AT THIS POINT OR BEING  
24 PARTICULARLY RELEVANT TO ANY THEME OR CONCEPT THAT I'VE  
25 FULLY GRASPED.

02:45PM

26 THAT WON'T BE THE FIRST ONE I'VE MISSED,  
27 I GUESS.

28 ALL RIGHT. SO THAT'S THAT.

1                   WHAT ABOUT, DO WE HAVE AN ANSWER ON THE  
2 TRADE SECRET OBJECTIONS? THE FOUR POINTS. ACTUALLY,  
3 THERE ARE THREE OF THEM. AND I'M PREPARED TO GIVE YOU  
4 SOME COMMENTS ON THEM, BUT I HAVEN'T HAD ANYTHING FILED  
5 BY THE DEFENDANTS.

02:45PM

6                   MR. QUINN: YES, YOUR HONOR. THE ONLY ONE OF  
7 THESE THAT WE THINK SHOULD GO TO THE JURY ON WHETHER  
8 IT'S A TRADE SECRET, AND THAT'S THE --

9                   THE COURT: PARTICIPANTS.

10                  MR. QUINN: -- PARTICIPANTS LIST.

02:45PM

11                  THE COURT: HOW'D I GUESS.

12                  MR. QUINN: THERE'S TWO OTHERS THAT WE'RE  
13 PREPARED TO DISCLAIM ANY CLAIM.

14                  THE COURT: I DON'T NEED TO ADDRESS THE  
15 RESPONSE TO THE REQUEST FOR PROPOSALS, WILL BE DELETED  
16 AND TAKEN OFF THE LIST.

02:45PM

17                                THE SERVICE MAPPING MATRIX WILL BE TAKEN  
18 OFF THE LIST.

19                  MR. QUINN: YES.

20                  THE COURT: AND AS TO THE PARTICIPANT LIST, MY  
21 SENSE IS THAT THERE REALLY IS VERY THIN, IF ANY,  
22 EVIDENCE SUPPORTING A TRADE SECRET STATUS FOR THIS.

02:46PM

23                                IT APPEARS TO ME THIS WAS A LIST  
24 GENERATED BY BLOOMBERG, OR SOME OTHER THIRD PARTY  
25 ENTITY THAT MANAGED OR PERFORMED THE SEPTEMBER 2009 --  
26 I THINK SEPTEMBER 2009 CALL THAT MR. GUNDLACH  
27 PARTICIPATED IN.

02:46PM

28                                I DID LOOK AT SMITH'S REPORT. IT DIDN'T

1 APPEAR THAT HE HAD IDENTIFIED IT EITHER IN HIS REPORT  
2 OR IN HIS TESTIMONY AS TRADE SECRET.

3 AND IT WAS NOT PREVIOUSLY IDENTIFIED IN  
4 THE STATUTORY DESIGNATION OF TRADE SECRETS DURING THE  
5 DISCOVERY PHASE AND AS WE WENT ON.

02:46PM

6 FOR ALL THOSE REASONS IT SEEMED TO ME IT  
7 WAS REALLY OUT ON THE EDGE AND PRETTY WEAK.

8 NOW, SO I'D BE INCLINED TO SUSTAIN THE  
9 OBJECTION TO THAT TOO. I KNOW YOU DON'T HAVE YOUR  
10 WHOLE TEAM HERE. I DON'T HAVE A WRITTEN RESPONSE.  
11 I'LL TAKE UP IT IN THE MORNING.

02:47PM

12 UNLESS, MR. QUINN, YOU WANT TO MAKE YOUR  
13 ARGUMENT NOW.

14 MR. QUINN: I THINK I'LL WAIT TILL TOMORROW  
15 MORNING.

02:47PM

16 MR. BRIAN: IT DOES AFFECT WHAT WE DO WITH THE  
17 WITNESS, YOUR HONOR, INCLUDING WHETHER WE CALL A  
18 WITNESS.

19 THE COURT: WHO?

20 MR. BRIAN: MR. CONTINO.

02:47PM

21 THE COURT: WHAT IS THE TIMING FOR HIM?

22 MR. BRIAN: TOMORROW. WE HAVE COUPLE OF SHORT  
23 VIDEOTAPES --

24 THE COURT: LET'S TAKE IT UP AT 8:15 TOMORROW  
25 MORNING. YOU HAVE YOUR BEST SHOT HERE, WHOEVER'S IN  
26 CHARGE OF THAT.

02:47PM

27 MR. BRIAN: THAT'S FINE.

28 THE COURT: YOU KNOW, YOU'RE ON THE UPPER END

1 OF THIS ONE. YOU GOT TO CLIMB UP THE HILL AND WE'LL  
2 SEE WHERE WE GO.

3 MR. QUINN: OKAY.

4 THE COURT: IT'S ONLY FAIR. I DON'T REALLY  
5 HAVE A RESPONSE FROM THEM. SO, BUT I'M NOT TOO  
6 SYMPATHETIC.

02:47PM

7 MR. QUINN: ONE THING ABOUT SCHEDULING.

8 MR. BRIAN, WHO'S A -- I'VE COME TO KNOW IS A VERY  
9 OPTIMISTIC PERSON, SOMETHING -- A QUALITY WHICH I  
10 ADMIRE VERY MUCH IN HIM, CONTINUES TO TELL ME HE THINKS  
11 HE CAN REST BY NOON THURSDAY.

02:48PM

12 NOW, I THINK WE FELL A LITTLE BIT BEHIND  
13 TODAY FROM THE SCHEDULE HE'S ANTICIPATING. I'M  
14 WONDERING WHETHER THERE'S ANY POSSIBILITY OF DOING A  
15 FRIDAY SESSION THIS WEEK THAT WOULD PUT US IN A  
16 POSITION. I THINK WE'D BOTH LIKE TO DO, IF AT ALL  
17 POSSIBLE, PLAN ON CLOSING NEXT TUESDAY.

02:48PM

18 THE COURT: WHY NOT MONDAY? WHY DON'T WE DO  
19 IT MONDAY?

20 MR. QUINN: WELL, I THINK -- I DON'T THINK  
21 THAT'S IN THE CARDS, GIVEN OUR DEFENSE CASE. WE DO  
22 HAVE WITNESSES WE'LL WANT TO CALL TO RESPOND TO THE --

02:48PM

23 THE COURT: I CAN INQUIRE OF THE JURY. I  
24 ACTUALLY HAVE -- I'M CLEAR. I HAVE A 1:30 ON MONDAY,  
25 BUT I CAN MOVE THAT TO 2:30 OR 3:00.

02:48PM

26 MR. BRIAN: YOU MEAN, FOR EXAMPLE, YOUR  
27 HONOR --

28 THE COURT: LET'S INQUIRE OF THE JURY AND SEE.



1 I DON'T WANT -- IF THEY HAVE PLANS OR SOMETHING THAT'S  
2 REALLY A BURDEN ON THEM.

3 MR. QUINN: RIGHT.

4 THE COURT: WHAT ABOUT OUR CONCERN ABOUT  
5 MR. --

02:49PM

6 MR. BRIAN: SANTOS.

7 THE COURT: -- SANTOS?

8 MR. BRIAN: BEFORE WE GET TO THAT, ON THE  
9 SCHEDULE, I THINK I WAS A LITTLE OPTIMISTIC, AND I  
10 DON'T THINK WE'LL CLOSE AT NOON ON THURSDAY.

02:49PM

11 I'M GOING TO SOUND LIKE A BROKEN RECORD  
12 WHEN I SAY WHAT I'M GOING TO SAY. I DON'T MEAN TO  
13 TRADE SPARKS. I REALLY TRIED TO GO THROUGH BOTH  
14 MR. BEYER AND MR. CAHILL QUICKLY.

15 THE COURT: THAT'S ALL RIGHT.

02:49PM

16 MR. BRIAN: AND I UNDERSTAND YOUR HONOR'S  
17 GIVEN FLEXIBILITY TO TCW AS TO TIME. THEY'RE WELL OVER  
18 45 HOURS. BOTH OF THEIR EXAMINATION SUBSTANTIALLY  
19 EXCEEDED MINE. I'LL CONTINUE TO OBJECT ON CUMULATIVE  
20 GROUNDS.

02:49PM

21 THE COURT: WE GOT MORE INTO THAT TOWARD THE  
22 END. I GAVE MR. MADISON A FAIR LEEWAY. BUT TO GO OVER  
23 DOCUMENTS THAT HAVE BEEN IN EVIDENCE, YOU MAY ARGUE AND  
24 TO KEEP PUTTING THEM UP ON THE SCREEN AND ASKING EVERY  
25 WITNESS ABOUT THEM. WE'VE ASKED OTHER WITNESSES, AND  
26 I'M GOING TO TIGHTEN IT UP.

02:50PM

27 AND YOU KNOW YOU ARE. I DON'T KNOW IF  
28 YOU'RE WELL OVER YOUR 45 HOURS. MY GUESS IS YOU'RE

1 RIGHT ON THE EDGE, IF NOT OVER IT.

2 MR. QUINN: WE'RE OVER IT.

3 MR. BRIAN: THEY'RE OVER IT.

4 MR. QUINN: WE ARE OVER IT, YOUR HONOR.

5 THE COURT: IF THEY CAN PUT A WITNESS ON IN  
6 DIRECT IN HALF HOUR, YOU CAN CROSS THEM IN A HALF HOUR  
7 OR LESS.

02:50PM

8 IF THEY CAN PUT THEM ON IN AN HOUR --  
9 QUITE FRANKLY, THE DEFENDANTS SHOULDN'T BE PENALIZED.  
10 YOU HAD FREE REIN, AND IT WENT ON FOREVER IN THE FIRST  
11 PHASE.

02:50PM

12 WE'RE MAKING PROGRESS AND WE'LL DEAL  
13 WITH IT.

14 MR. BRIAN: I THINK IT ALL DEPENDS ON  
15 MR. GUNDLACH AND MR. WALLACE'S TESTIMONY.

02:50PM

16 THE COURT: YOUR CROSS OF THE VIDEO  
17 DEPOSITIONS IS PRETTY GOOD.

18 MR. BRIAN: IT WAS SHORT.

19 MR. MADISON DIDN'T HAVE A CHANCE TO ASK  
20 THE SAME QUESTION AFTER YOU SUSTAINED THE OBJECTION.

02:50PM

21 THE COURT: ALL RIGHT.

22 MR. BRIAN: BUT I ANTICIPATE NOW THAT WE WILL  
23 NOT FINISH AT NOON ON THURSDAY. WE WOULD FINISH AT THE  
24 END OF THE DAY THURSDAY.

25 I JOIN MR. QUINN'S REQUEST, IF WE GET  
26 EVEN A FEW HOURS ON FRIDAY, I THINK THAT WOULD ALLOW US  
27 CLEARLY TO FINISH OUR CASE AND GET INTO ONE OR TWO  
28 DEFENSE WITNESSES.

02:51PM

1 I KNOW HE HAS ONE WITNESS AVAILABILITY  
2 PROBLEM, AT LEAST ONE, MAYBE TWO.

3 MR. QUINN: WELL --

4 THE COURT: HOW MANY WITNESSES TO THE CONTRACT  
5 CLAIM DO YOU EXPECT TO HAVE?

02:51PM

6 MR. QUINN: I THINK THERE'S LIKE SIX. THEY'RE  
7 NOT GOING TO BE VERY LONG, OBVIOUSLY.

8 THE COURT: OKAY.

9 MR. QUINN: I MEAN -- MR. PIERCE IS THE KEEPER  
10 OF THAT LIST. BUT THE WITNESS HE REFERS TO IS  
11 MR. SONNEBORN.

02:51PM

12 THE COURT: YES.

13 MR. QUINN: SPEND TWO DAYS DOWN HERE.

14 THE COURT: I -- RIGHT, I TOLD HIM HE MIGHT  
15 HAVE TO COME BACK.

02:51PM

16 MR. QUINN: HE CAN BE HERE THURSDAY OR FRIDAY.  
17 HE CANNOT BE HERE NEXT WEEK.

18 THE COURT: FIRST THING IN THE MORNING I'LL  
19 INQUIRE OF THE JURORS TO GIVE THEM A CHANCE AT THE  
20 BREAK, IF THEY HAVE TO MAKE CALLS OR THINGS. I'LL SAY  
21 WE'D REALLY LIKE TO BE IN SESSION FROM 8:30 TO NOON ON  
22 FRIDAY.

02:51PM

23 RATHER THAN MAKING THEM GO TILL 2:30 OR  
24 2 O'CLOCK. 8:30 TO NOON GIVES US THREE AND A HALF  
25 HOURS. THAT SHOULD GIVE US A LEG UP AND SOLVE THESE  
26 ISSUES.

02:52PM

27 MR. BRIAN: THAT WOULD WORK FOR US, YOUR  
28 HONOR, AND I THINK IT WOULD ASSURE WE CAN CLOSE ON

1 MONDAY OR TUESDAY.

2 MR. HELM: JUST TO SPOT ANOTHER ISSUE, YOUR  
3 HONOR, WE MAY ALSO NEED TIME ON FRIDAY TO TALK ABOUT  
4 JURY INSTRUCTIONS.

5 THE COURT: RIGHT. 02:52PM

6 MR. HELM: IF WE'RE CLOSING, WE HAVE A LOT  
7 GROUND TO COVER STILL. I HOPE THE COURT --

8 THE COURT: WE HAVE SOME AFTERNOONS THIS WEEK,  
9 WE'LL TRY TO TAKE.

10 HAVE YOU FINISHED ALL YOU SAID, YOU WERE 02:52PM  
11 GOING TO DO OVER THE WEEKEND THAT YOU COULDN'T GIVE ME  
12 ON FRIDAY, THAT YOU BEGGED TO GIVE ME MONDAY?

13 MR. HELM: MS. STEIN WAS WAITING FOR  
14 RESPONSES, BUT SHE IS READY, WILLING, AND ABLE TO FILE  
15 THEM TODAY. I DON'T KNOW THE STATUS. WE HAVE WHAT WE 02:52PM  
16 NEED TO FILE, AND ONCE WE GET THE OTHER SIDE'S, WE CAN  
17 FILE IT TODAY.

18 THE COURT: ALL RIGHT. I KEEP -- THE OTHER  
19 THING, YOU KNOW, EVEN THESE SMALL BRIEFS, EVERYTHING  
20 COMES IN ONE AT A TIME. YOU HAVE TO UNDERSTAND THE WAY 02:53PM  
21 PAPER FLOWS THROUGH HERE. YOU KNOW, I GET ONE THING  
22 THROWN ON MY DESK OR IN A BOX, UNRELATED TO ANYTHING  
23 ELSE. AND, YOU KNOW, THEN GETTING THEM ALL TOGETHER TO  
24 DEAL WITH THEM IS PROBLEMATIC.

25 PARTICULARLY WHEN THEY -- I'M READING 02:53PM  
26 THEM AT 8 O'CLOCK ON SUNDAY NIGHT OR MONDAY NIGHT, AND  
27 THEY'RE FLOWING IN HERE AT 9 OR 10 O'CLOCK MONDAY  
28 MORNING.

1 MR. HELM: WE UNDERSTAND.

2 WE'RE TRYING TO PUT TOGETHER A JOINT  
3 STATEMENT LIKE THE OTHER JOINT STATEMENTS. WE'VE GIVEN  
4 THE COURT WHERE YOU HAVE AN INSTRUCTION, AN OBJECTION,  
5 AND A REPLY.

02:53PM

6 THE COURT: ALL RIGHT.

7 MR. MADISON: COULD I --

8 THE COURT: WE'LL FINISH UP HERE.

9 MR. MADISON: I WAS GOING TO ASK, IF WE'LL BE  
10 IN SESSION FRIDAY MORNING, WE WERE PREPARED TO HAVE OUR  
11 DEFENSE WITNESSES, EARL -- OR AT LEAST SOME OF THEM  
12 THURSDAY.

02:53PM

13 DO WE NEED -- NOT NEED TO HAVE REBUTTAL  
14 WITNESSES HERE THURSDAY?

15 THE COURT: I WANT TO GO TILL 2 O'CLOCK ON  
16 THURSDAY. IF THESE GUYS FINISH AT NOON, YOU HAVE TWO  
17 HOURS.

02:53PM

18 MR. BRIAN: WE'LL KNOW BY THE CLOSE OF  
19 BUSINESS TOMORROW. WE LOST AN HOUR ON SULLIVAN AND WE  
20 LOST ANOTHER HOUR.

02:54PM

21 SO, REALISTICALLY, IF I HAD TO BET RIGHT  
22 NOW, I THINK WE'LL PROBABLY USE THE WHOLE DAY ON  
23 THURSDAY. WE'LL CERTAINLY KNOW BY THE CLOSE OF  
24 BUSINESS TOMORROW.

25 MR. MADISON: CAN I INQUIRE WHO THE WITNESSES  
26 ARE TOMORROW SO WE'RE ON THE SAME PAGE?

02:54PM

27 MR. BRIAN: I THINK WE'VE TOLD YOU THAT. I'M  
28 HAPPY TO TELL YOU THAT AGAIN.

1 THE COURT: DO THIS ON YOUR OWN TIME.

2 ON YOUR AGENDA THAT YOU KINDLY GAVE ME  
3 FOR THINGS LEFT TO DO, WE ADDRESSED QUANTUM MERUIT AND  
4 MURPHY.

5 AND ADDITIONAL EXHIBITS, WE JUST DEALT  
6 WITH THAT. 02:54PM

7 AND I JUST GOT THE DEFENDANT'S EXHIBITS.

8 DID YOU HAVE A GROUP OF EXHIBITS,  
9 MR. MADISON, THAT YOU ALSO WERE OFFERING WITHOUT  
10 OBJECTION? OR IS THAT A COMBINED SET? 02:54PM

11 MR. BRIAN: SOME WERE WITHOUT OBJECTION AND WE  
12 HAVE OBJECTIONS TO SOME.

13 MR. WEINGART: WE'RE PREPARED TO DISCUSS.

14 THE COURT: WE'RE KEEPING THE COURT REPORTER  
15 HERE. SHE HAS TO GET YOUR TRANSCRIPTS DONE. WE'LL DO  
16 THAT SOMETIME TOMORROW. 02:54PM

17 MR. MADISON: I DO KNOW, YOUR HONOR. I THINK  
18 YOU STILL HAVE THE STUDLEY DECLARATION WITH ALL OF  
19 THIS.

20 THE COURT: I DO. IT'S ON MY DESK. 02:55PM

21 MR. MADISON: WITH ALL THE EXHIBITS UNDER  
22 SUBMISSION.

23 WE'VE GOT TO DO PLAINTIFF'S EXHIBITS --

24 MR. BRIAN: AND --

25 THE COURT: I DIDN'T PUT A RULING OUT ON ONE  
26 OF THE MINUTE ORDERS ON THE STUDLEY EXHIBITS. 02:55PM

27 MR. BRIAN: I DON'T REMEMBER. MY ONLY  
28 OBJECTION WAS CUMULATIVE. WE DIDN'T OBJECT ON ANY

1 OTHER GROUNDS.

2 THE COURT: ALL RIGHT.

3 LIST OF TRADE SECRETS TO THE JURY. WE  
4 HAVE ONE OPEN ITEM. WE'LL DO THAT FIRST THING IN THE  
5 MORNING. SO THAT WILL BE 9-7 AT 8:15.

02:55PM

6 AND THE JURY INSTRUCTIONS, I CAN TAKE  
7 TIME TOMORROW AFTERNOON AND WORK WITH YOU ON THAT. IF  
8 YOU GET ME THE MATERIALS, WE'LL SIT DOWN AND SEE HOW  
9 MUCH WE CAN GET DONE.

02:55PM

10 OPINIONS OF MICHAEL WALLACE.

11 MR. HELM: I HAVEN'T SEEN A MOTION. IS THERE  
12 A MOTION COMING? I THINK IT WAS BRIEFED ONCE AND  
13 THEY'RE REBRIEFING IT.

14 MR. QUINN: YES.

15 THE COURT: WHEN DO I EXPECT TO GET THAT?

02:56PM

16 MR. QUINN: BY CLOSE OF BUSINESS TODAY.

17 THE COURT: YOU WANT TO HAVE IT ON THE  
18 CALENDAR TOMORROW AT 8 O'CLOCK?

19 MR. QUINN: I UNDERSTAND HE'S NOT GOING TO  
20 TESTIFY TILL THURSDAY. IT COULD BE TOMORROW MORNING OR  
21 END OF THE DAY TOMORROW.

02:56PM

22 THE COURT: I'LL TRY TO TAKE A LOOK AT IT.

23 MR. BRIAN: WE'RE GOING TO WANT TO RESPOND TO  
24 THAT, OBVIOUSLY.

25 THE COURT: WHEN DO YOU EXPECT TO --

02:56PM

26 MR. HELM: DEPENDS WHEN WE GET THE ISSUE  
27 BRIEFED.

28 THE COURT: WHAT IS THE ISSUE? I'M NOT SURE I

1 WANT TO SEE IT AGAIN IF I'VE SEEN IT THREE TIMES.

2 MR. QUINN: YOUR HONOR, IT'S NO LONGER QUANTUM  
3 MERUIT THAT'S OUT.

4 THE ISSUE RELATES TO WHETHER OR NOT HE  
5 SHOULD SUBTRACT FROM HIS DAMAGES ANALYSIS AMOUNTS THAT  
6 MR. GUNDLACH WOULD PAY FOR HIS STAFF. THAT'S THE  
7 ISSUE.

02:56PM

8 MR. HELM: WHICH WAS SUBJECT TO A PRIOR MOTION  
9 IN LIMINE.

02:56PM

10 MR. MADISON: I THINK --

11 THE COURT: I SAID THAT I THOUGHT THERE WAS  
12 SOME -- THERE MAY BE SOME VARIATION -- I'M TRYING TO  
13 RECALL -- SOME VARIATION FOR THE PERIOD THROUGH  
14 12-31-2004 AND WHATEVER MAY HAVE BEEN DUE THROUGH THE  
15 TERMINATION PERIOD ON DECEMBER 4TH OR -- I DON'T KNOW  
16 IF YOU'RE STILL ARGUING THE 11TH OR IF THAT'S PAST.

02:57PM

17 BUT, THAT THE CHARACTERIZATION MIGHT BE  
18 DIFFERENT FOR THAT PERIOD THAN FOR THE PROSPECTIVE  
19 PERIOD FOR WHICH THERE ARE CLAIMS BEING MADE UNDER THE  
20 BALANCE OF THE TWO YEARS OF THE CONTRACT.

02:57PM

21 DOES HE DISTINGUISH THAT?

22 MR. HELM: WELL, HE WILL PROVIDE A BREAKDOWN  
23 THAT WILL ALLOW THE JURY TO WITHHOLD FOR WHAT WOULD  
24 HAVE BEEN GIVEN TO THE OTHER STAFF REGARDLESS OF WHAT  
25 PERIOD IS CHOSEN. HIS OPINION IS THE FULL AMOUNT  
26 SHOULD BE GIVEN FOR THE FULL PERIOD.

02:57PM

27 AND HE WILL PROVIDE DATA THAT SUPPORTS  
28 THAT CLAIM.



1 HE WILL ALSO THEN PROVIDE, IN THE EVENT  
2 THAT SOMEONE WERE TO HOLD THAT IT SHOULD BE LESS, HE'LL  
3 PROVIDE THE --

4 THE COURT: WHAT'S THE PLAINTIFF'S TCW'S,  
5 EXPERT, DAMAGE EXPERT ON THE CONTRACT CLAIM?

02:58PM

6 MR. QUINN: DR. CORNELL.

7 THE COURT: WHAT DOES DR. CORNELL SAY ON THIS  
8 SUBJECT?

9 MR. QUINN: YOU KNOW, ACTUALLY, I THINK IT'S  
10 SMITH. DON'T HOLD ME TO THIS, YOUR HONOR.

02:58PM

11 I THINK SMITH SAYS HE WOULD HAVE TO PAY  
12 IT. IT'S A COST OF DOING BUSINESS.

13 AND HE WOULD HAVE TO PAY THESE AMOUNTS.  
14 I THINK THIS MOTION --

15 THE COURT: THESE AMOUNTS TO SOMEONE ELSE OR  
16 TO GUNDLACH?

02:58PM

17 MR. QUINN: TO THE STAFF.

18 THE COURT: SO THAT IT SHOULD BE AN ADJUSTMENT  
19 TO WHATEVER HIS DAMAGE CALCULATION IS --

20 MR. MADISON: RIGHT.

02:58PM

21 THE COURT: -- FROM YOUR PERSPECTIVE.

22 MR. QUINN: YES.

23 I THINK WHAT OCCASIONED THIS IS THAT I  
24 BELIEVE MR. WALLACE DID A SUPPLEMENTAL DAMAGES REPORT  
25 AFTER WE WENT THROUGH THE WHOLE RIGAMAROLE ON THE  
26 IN LIMINE MOTIONS.

02:58PM

27 MR. MADISON: WE JUST TOOK HIS DEPOSITION, I  
28 THINK, IN THE LAST FEW DAYS.

1 MR. QUINN: WE DEPOSED HIM ON THE SUPPLEMENTAL  
2 REPORT.

3 MR. MADISON: THAT'S SUPPLEMENTAL BRIEFING  
4 YOUR HONOR'S SEEN.

5 THE COURT: THIS THING WILL BE IN HERE BY  
6 5 O'CLOCK. 02:58PM

7 MR. QUINN: YES, IT WILL.

8 THE COURT: I'LL TAKE A LOOK AT IT. PLAN TO  
9 HAVE YOUR RESPONSE TO WHATEVER THEY FILE BY NOON  
10 TOMORROW. 02:59PM

11 MR. HELM: WE'LL --

12 THE COURT: WE'RE ALL ON A SHORT TAIL.  
13 IF YOU HAVE LESS TIME, YOU WON'T WRITE  
14 AS MANY PAGES, IT WILL BE EASIER FOR ME TO READ.

15 MR. HELM: I THINK WE'VE WRITTEN IT BEFORE.  
16 WE'LL WRITE IT AGAIN. 02:59PM

17 THE COURT: ANYTHING ELSE?

18 MR. BRIAN: IN TERMS OF JUROR MR. SANTOS, YOUR  
19 HONOR. AS I LOOK AT THE SCHEDULE, I THINK THAT WE'RE  
20 LIKELY TO CLOSE ON TUESDAY. 02:59PM

21 MY BET IS THAT MR. -- TCW'S DEFENSE  
22 WITNESSES WILL PROBABLY SPILL INTO MONDAY IF HE HAS  
23 SIX.

24 THE COURT: I'M SURE THEY WILL.

25 MR. BRIAN: WE'LL CLOSE ON TUESDAY. HE SAID  
26 HE WAS TRAVELING. 02:59PM

27 THE COURT: WHO IS TRAVELING?

28 MR. BRIAN: MR. SANTOS SAID HE'S LEAVING ON

1 THE 13TH.

2 THE COURT: YOU WANT TO CROSS-EXAMINE, THEN  
3 HAVE THEM BE DOWN WITHOUT COMMENCING FOR AN EXTENDED  
4 PERIOD OF TIME?

5 MR. BRIAN: I DON'T THINK WE WANT TO DO THAT. 02:59PM

6 THE COURT: I DON'T THINK SO, EITHER.

7 MR. BRIAN: I'LL CONFER WITH MR. QUINN  
8 TONIGHT.

9 THE COURT: TALK ABOUT IT.

10 WE'RE LOOKING AT HE'S TRAVELING ON THE 03:00PM  
11 13TH. IT'S NOT LIKELY THAT HE'S GOING TO, YOU KNOW --  
12 MY GUESS, OPTIMISTICALLY, YOU WON'T CLOSE UNTIL THE  
13 14TH OR 15TH, WHICH IS -- I EXPECT THAT TO HAPPEN. BUT  
14 THEN WE'D LIKE THEM TO START DELIBERATIONS RIGHT AWAY.

15 IF HE'S IN -- OUT OF THE COUNTRY, THEN 03:00PM  
16 IT'S -- SOME OF THESE PEOPLE, IF YOU PUSH OVER THE  
17 DELIBERATIONS TO THE 19TH, THAT CAUSES POTENTIAL  
18 PROBLEM WITH THOSE WHO HAVE THINGS SCHEDULED TOWARD THE  
19 END OF SEPTEMBER.

20 MR. BRIAN: WE WILL DISCUSS IT. I THINK IT'S 03:00PM  
21 OUR MUTUAL DESIRE TO CLOSE ON THE 13TH OR 14TH.

22 THE COURT: ALL RIGHT. FINE WITH ME.

23 MR. BRIAN: IF IT WORKS FOR THE COURT'S  
24 CALENDAR AND THE JURORS TO DO IT ON -- ONE DAY --

25 THE COURT: WE HAVE TO WORK ON THE VERDICT 03:00PM  
26 FORM. WE CAN DO THAT TOMORROW AFTERNOON OR THURSDAY  
27 AFTERNOON.

28 YOU'VE EACH GIVEN ME A VERDICT FORM, AND

1 THEY TRACK FAIRLY CLOSELY. AND I THINK BOTH OF THEM  
2 ARE GOING -- ARE OF THE TYPE I LIKE TO SEE, SIMPLE AND  
3 STRAIGHTFORWARD. I WON'T BOG THEM DOWN.

4 I HAVE RESERVATIONS AND QUESTIONS  
5 EXACTLY WHAT WE'RE SEEKING FOR VANEVERY, MAYBERRY, AND  
6 SANTA ANA, AND WE NEED TO CLARIFY THAT. 03:01PM

7 MR. HELM: WE'D BE HAPPY TO ADDRESS THAT, YOUR  
8 HONOR.

9 THE COURT: ALL RIGHT.

10 THEN THE MOTION TO CONFORM TO PROOF. 03:01PM  
11 I'VE GOT THAT. I HAVEN'T RECEIVED ANYTHING IN RESPONSE  
12 TO THAT.

13 IS THERE NOTHING BEING FILED?

14 MR. HELM: I THINK OUR PLAN WAS DISCUSS IT IN  
15 CONNECTION WITH THE VERDICT FORM, YOUR HONOR. 03:01PM

16 THE COURT: OKAY. SO YOU'RE NOT GOING TO FILE  
17 ANY OPPOSITION TO IT? I MEAN, I'VE GONE THROUGH IT.

18 I THINK IT'S -- IN MANY WAYS WELL-TAKEN,  
19 QUITE FRANKLY. AND I'M INCLINED TO LOOK THAT OUT -- WE  
20 MAY HAVE AN INSTRUCTION, QUITE FRANKLY, THAT WOULD 03:01PM  
21 CLARIFY. REFERENCES THROUGHOUT THIS TRIAL HAVE BEEN TO  
22 TCW IN ALL RESPECTS WITH THE EXCEPTION OF MAYBE A FEW  
23 CLARIFICATIONS THAT YOU TRIED TO MAKE, MR. HELM, AT ONE  
24 OR TWO POINTS IN TIME.

25 BUT, ANYWAY, WE'LL DEAL WITH THAT. 03:01PM

26 MR. BRIAN: I THINK I WILL -- AS A LAST POINT,  
27 I THINK I WILL ASK TO INSTRUCT THE JURY TOMORROW THAT  
28 THE TRANSLATIONS OF THE FRENCH DOCUMENTS ARE ACCURATE.

1 BECAUSE THERE WAS SOME QUARRELING BY THE WITNESS. AND  
2 ALL THOSE TRANSLATIONS ARE CERTIFIED TRANSLATIONS. AND  
3 THERE SHOULDN'T BE A DOUBT ABOUT THE TRANSLATIONS.

4 THE COURT: ALL RIGHT.

5 MR. MADISON: WELL, WE'D WANT TO BE HEARD  
6 ABOUT THAT.

7 THE COURT: DID YOU HAVE SOMETHING ELSE?

8 MR. MADISON: NO. NO, WE'D WANT TO BE HEARD  
9 ON THAT.

10 THE COURT: TALK WITH MR. BRIAN ABOUT THAT AND  
11 SEE IF YOU CAN'T REACH SOME KIND OF A COMPROMISE.

12 MR. MADISON: YES.

13 THE COURT: THANK YOU.

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03:02PM

03:02PM