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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 322 HON. CARL J. WEST, JUDGE

TRUST COMPANY OF THE WEST,)
)
PLAINTIFFS,)
)
VS.) CASE NO. BC429385
)
JEFFREY GUNDLACH, ET AL.,)
)
DEFENDANTS.)
-----)

REPORTERS' **DAILY** TRANSCRIPT OF PROCEEDINGS
WEDNESDAY, SEPTEMBER 7, 2011

APPEARANCES:

FOR TCW: QUINN, EMANUEL, URQUHART,
OLIVER & HEDGES
BY: **JOHN B. QUINN**
ERIC EMANUEL
STEVEN G. MADISON
SUSAN ESTRICH
DIANE CAFFERATA HUTNYAN
JOHN PIERCE
DOMINIC SURPRENANT
DAVID SERGENIAN
865 SOUTH FIGUEROA STREET
10TH FLOOR
LOS ANGELES, CALIFORNIA 90017
(213) 443-3000

FOR DOUBLE LINE: MUNGER, TOLLES & OLSON
BY: **BRAD D. BRIAN**
MARK B. HELM
ALLISON B. STEIN
GREGORY J. WEINGART
355 SOUTH GRAND AVENUE, 35TH FLOOR
LOS ANGELES, CALIFORNIA 90071-1560
(213) 683-9280

RAQUEL RODRIGUEZ, CSR #9485
WENDY OILLATAGUERRE, CSR #10978
OFFICIAL REPORTERS

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I N D E X

THURSDAY, JULY 28, 2011

INDEX OF WITNESSES

LEGEND: M = MR. MADISON
B = MR. BRIAN
H = MR. HELM
Q = MR. QUINN
S = MR. SURPRENANT
W = MR. WEINGART

DEFENSE
WITNESSES: DIRECT CROSS REDIRECT RECROSS

CONTINO, JOHN
VINCENT
(VOIR DIRE) 6909-S
 6917-W 6940-S 6959-W 6961-S

MURPHY, KEVIN 6963-W
(RESUMED) 6988-W 6989-S

GUNDLACH,
JEFFREY 7026-H
(RESUMED) 7060-H
(VOIR DIRE) 7089-M
(RESUMED) 7090-H 7105-M

PLAINTIFF'S
WITNESSES: DIRECT CROSS REDIRECT RECROSS

(NONE WERE PRESENTED IN THIS VOLUME)

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I N D E X

THURSDAY, JULY 28, 2011

EXHIBITS

<u>EXHIBITS</u>	<u>FOR I.D.</u>	<u>IN EVD</u>	<u>WITHDRAWN</u>
6165 - GUNDLACH STREADSHEETS/NOTES		7041	
5039 - GUNDLACH/BARACH/SONNEBORN E-MAIL		7070	
5030 - FEE SHARING STATEMENT		7074	
(EXHIBITS 1456, 1457, 1460, 1463, 1465, 5030, 5042, 5053, 5059, 5079, 5071 AND 5078 ADMITTED.)		7080	
248 - GUNDLACH/CARLSON E-MAIL		7081	

1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA SEPTEMBER 7, 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

9

--0--

10 (THE FOLLOWING PROCEEDINGS WERE HELD
11 OUTSIDE THE PRESENCE OF THE JURY.) +

12

13 THE COURT: GOOD MORNING, GENTLEMAN. IN THE
14 TCW VERSUS GUNDLACH MATTER WE'RE OUT OF THE PRESENCE OF
15 THE JURY.

12:01AM

16 WE HAVE A COUPLE ISSUES ON THE TABLE.
17 LET ME GET MY NOTES HERE. FIRST, ON THE TRADE SECRETS
18 FILING BY THE DEFENDANTS AND THEN I READ THE RESPONSE
19 FILED BY THE PLAINTIFF.

20

21 MY UNDERSTANDING IS THE ONLY REAL ISSUE
22 OR MATTER AT ISSUE IS THE PARTICIPANTS' LIST. AND IT
23 LOOKS TO ME, IS THAT THE ACCURATE --

12:01AM

24 MR. SURPRENANT: THAT'S CORRECT, YOUR HONOR.

25 THE COURT: I'LL JUST GIVE YOU MY COMMENTS AND
26 I'LL LISTEN TO WHATEVER YOU HAVE TO SAY ON IT.

12:02AM

27 AS NOTED BY TCW IN THEIR BRIEF THE
28 PARTICIPANTS' LIST WAS A SELF-SELECTED GROUP OF PEOPLE
WHO WERE INTERESTED IN THE KINDS OF INVESTMENTS THAT

1 MR. GUNDLACH MANAGES.

2 THERE DOESN'T APPEAR THERE'S A CITATION
3 TO A CASE ON A BAILMENT ISSUE OF TANGIBLE PROPERTY IN
4 WHICH A TRADE SECRET WAS EMBODIED. TO THE CONTRARY, AT
5 LEAST IN MY VIEW THE LIST WAS GENERATED IN THE ORDINARY
6 COURSE OF THOMSON REUTERS BUSINESS. 12:02AM

7 AND ABSENT EVIDENCE THAT THOMSON REUTERS
8 WAS OBLIGATED TO MAINTAIN THE CONFIDENTIALITY OF THE
9 LIST, THE FACT THAT THOMSON REUTERS GAVE THE LIST TO
10 TCW DOES NOT NECESSARILY MAKE IT A TCW TRADE SECRET. 12:02AM

11 MOREOVER, IT SEEMS TO ME THE FAILURE OF
12 TCW TO DESIGNATE THE PARTICIPANT LIST IN ITS PRIOR
13 DESIGNATION OF CLAIMED TRADE SECRETS BELIES THE CURRENT
14 ARGUMENT THAT I'M HEARING ON THIS ITEM. SO WITH ALL OF
15 THAT SAID, MY INCLINATION IS NOT TO REMIT THE 12:02AM
16 PARTICIPANT LIST TO BE IDENTIFIED AS A TRADE SECRET.

17 YOU BOTH HAVE CITED TRIAL TESTIMONY BY
18 VAN EVERY AND OTHERS THAT I THINK AT THE END OF THE DAY
19 IS REALLY INCONCLUSIVE AS TO WHETHER IT'S A TRADE
20 SECRET OR NOT. 12:03AM

21 WITH THAT SAID, MR. SURPRENANT?

22 MR. SURPRENANT: YES, YOUR HONOR. MR. SMITH
23 TESTIFIED THAT MATERIALS LIKE THIS ARE CONSIDERED
24 CONFIDENTIAL IN THE INDUSTRY. AND I THINK IT MIGHT BE
25 THE BETTER DISCRETION TO ALLOW THE JURY TO DETERMINE 12:03AM
26 WHETHER IT'S A TRADE SECRET OR NOT.

27 IF THEY DON'T, THEN THE ISSUE GOES AWAY.
28 IF THEY DID, YOUR HONOR AT THAT POINT, COULD CONSIDER

1 SOME REMEDIAL ACTION. I THEY SHOULD.

2 IT'S BEEN THE SUBJECT OF A LOT OF
3 TESTIMONY. IT'S BEEN BEFORE THE JURY. CLEARLY WAS
4 USED BY DOUBLE LINE AND IN AN IMPORTANT WAY TO JUMP
5 START THEIR BUSINESS. AND THE JURY COULD CLEARLY FIND
6 IT WAS VALUABLE AND IT WAS TCW'S PROPERTY.

12:03AM

7 MS. VANEVERY TESTIFIED WE PURCHASED IT
8 FROM THOMSON REUTERS. AND --

9 THE COURT: I DON'T THINK SHE SAID THEY
10 PURCHASED IT. I THINK THEY SAID THEY GOT IT AS A
11 MATTER OF COURSE WHEN THEY ARRANGED THESE CONFERENCE
12 CALLS WHICH WERE ADMINISTERED BY THOMSON REUTERS. AND
13 THAT'S MY UNDERSTANDING.

12:04AM

14 YOU KNOW, MAYBE I MAY BE MISTAKEN ON
15 THAT.

12:04AM

16 MR. SURPRENANT:

17 AND THE VENDORS WERE PAID -- TRIAL
18 TESTIMONY 1134 -- AND THE VENDORS
19 ARE PAID BY THE FIRM HOSTING THE
20 WEBCAST, CORRECT?

12:04AM

21 ANSWER: YES.

22 THE COURT: THAT'S CONSISTENT WITH MY
23 UNDERSTANDING OF THE TESTIMONY. THE VENDORS ARE PAID
24 BY THE FIRM FOR HOSTING THE WEBCAST. THERE'S NO SENSE
25 THAT THE PARTICIPANT LIST IS A PURCHASED ITEM. IT'S
26 JUST A CONSEQUENCE OF THE WEBCAST.

12:04AM

27 THERE IS A LIST. AND THEY KEEP IT AND
28 THEY DISSEMINATE IT. I DON'T HAVE ANY INDICATION IT'S

1 DISSEMINATED BEYOND TCW, FOR THAT MATTER BY THOMSON
2 REUTERS. OR REUTERS SAYS IT'S A CONFIDENTIAL LIST.
3 YOU BOUGHT IT; WE'RE GIVING IT TO YOU. I HAVE NO SUCH
4 EVIDENCE.

5 MR. SURPRENANT: I UNDERSTAND, YOUR HONOR,
6 WE'LL SUBMIT. 12:05AM

7 THE COURT: OKAY.

8 MR. WEINGART, WHAT'S THE DEFENDANT'S
9 POINT ON THAT?

10 MR. WEINGART: WELL, WE'VE SET FORTH OUR 12:05AM
11 POSITION. GIVEN WHAT THE COURT'S TENTATIVE IS, I'M
12 HAPPY TO RESPOND IF YOUR HONOR HAS ANY QUESTIONS. BUT
13 IT WAS NOT SOMETHING THAT WAS DESIGNATED ON THE TRADE
14 SECRET LIST.

15 IT WAS NOT IDENTIFIED IN THE 12:05AM
16 INTERROGATORY RESPONSE WHICH REFERRED TO THAT LIST AS A
17 TRADE SECRET IN DISCOVERY OF MR. SMITH -- DID HAVE TO
18 TESTIFY, GENERALLY, NOT SPECIFIC TO THIS LIST ABOUT
19 CONFIDENTIALITY, BUT WHILE IDENTIFIED TRADE SECRET, DID
20 NOT IDENTIFY THIS AS ONE. 12:05AM

21 I THINK YOUR HONOR'S TENTATIVE IS
22 CORRECT.

23 THE COURT: ALL RIGHT. ON THAT I'LL STICK
24 WITH THE TENTATIVE. AND I'LL NOT PERMIT THE
25 PARTICIPANT LIST TO BE IDENTIFIED AS A TRADE SECRET 12:06AM
26 UNDER CACI 4401.

27 THE OTHER ISSUE I HAVE ON THE TABLE IS
28 THE BRIEFING REGARDING THE TESTIMONY OF DEFENDANT'S

1 EXPERT, MICHAEL WALLACE.

2 IN ORDER TO DEAL WITH THIS -- AND I ONLY
3 HAVE, AGAIN, ONE SIDE'S BRIEF -- I DON'T KNOW IF THERE
4 WAS A PLAN TO PUT ANOTHER BRIEF IN ON THAT OR NOT?

5 MR. WEINGART: WE DISCUSSED THAT YESTERDAY AT
6 THE END OF COURT, YOUR HONOR. I CAN'T REMEMBER IF WE
7 TALKED ABOUT NOON TODAY OR -- THERE WAS SOME TIME TODAY
8 WE'RE GOING TO GET A BRIEF.

12:06AM

9 THE COURT: YOU'RE WORKING ON IT, MR. ALLRED?

10 MR. ALLRED: I AM. I WAS TOLD TO GET IT IN BY
11 NOON AND THAT'S MY TARGET.

12:06AM

12 THE COURT: ALL RIGHT. THEN I WON'T TAINT THE
13 PROCESS BY MY COMMENTS.

14 MR. SURPRENANT: WE'LL ARGUE TOMORROW AT
15 8:00 A.M., YOUR HONOR.

12:07AM

16 THE COURT: THAT'S THE PLAN.

17 MR. SURPRENANT: YOUR HONOR, THE NEXT WITNESS
18 IS MR. CONTINO, AND I WOULD LIKE -- I DON'T KNOW HOW
19 YOUR HONOR APPROACHES THIS, BUT I HAVE ABOUT A THREE-
20 TO FIVE-MINUTE VOIR DIRE ON HIS EXPERT TENDER.

12:07AM

21 AND I WOULD LIKE TO DO IT OUTSIDE THE
22 PRESENCE OF THE JURY. BUT I DON'T KNOW YOUR HONOR'S
23 PRACTICE.

24 THE COURT: GENERALLY THAT WOULD -- I WOULD
25 NOT BE OPPOSED TO THAT. IS MR. CONTINO GOING TO BE
26 CALLED RIGHT AT 8:30?

12:07AM

27 MR. WEINGART: YES, YOUR HONOR.

28 THE COURT: WHY DON'T WE GET HIM IN HERE AND

1 TAKE THAT PORTION OF IT IN THE FIRST FIVE OR TEN
2 MINUTES. AND JUST TELL THE JURY WE'RE GOING TO START A
3 FEW MINUTES LATER.

4 MR. WEINGART: THAT'S FINE, HE'S HERE. I WAS
5 NOT AWARE THIS WAS AN ISSUE. IT WASN'T SUBJECT OF ANY
6 MOTION PRACTICE. BUT IF THAT'S WHAT WE'LL DO WE CAN --

12:07AM

7 THE COURT: WHAT IS MR. CONTINO'S AREA OF
8 EXPERTISE?

9 MR. WEINGART: IN MORTGAGE-BACKED SECURITIES
10 AND SYSTEMS RELATED TO MORTGAGE-BACKED SECURITIES, YOUR
11 HONOR.

12:08AM

12 THE COURT: ALL RIGHT. LET'S GET SET UP. GET
13 HIM ON, WE'LL SWEAR HIM IN AND GET HIM ON THE STAND.
14 AND, JAVIER, IF YOU LET THE JURORS KNOW WE HAVE A
15 MATTER WE'LL HAVE TO TAKE UP AND WE'LL PROBABLY START
16 ABOUT 10 OR 15 MINUTES LATER.

12:08AM

17 SO 20 MINUTES TO OR A QUARTER TO. SO
18 THEY KNOW WHY THEY'RE WAITING. ALL RIGHT. IS HE HERE
19 NOW, EVERYBODY'S READY? EVERYBODY WHO'S HERE IS GOING
20 TO BE HERE --

12:08AM

21 MR. WEINGART: MR. BRIAN MAY BE COUPLE MINUTES
22 LATE.

23 THE COURT: THAT'S ALL RIGHT. YOU DON'T MIND
24 GOING FORWARD? OKAY.

12:08AM

25
26 (PAUSE.) +

27

28

1 CASE NUMBER: BC429385
2 CASE NAME: TRUST COMPANY OF THE WEST VS.
3 JEFFREY GUNDLACH, ET AL
4 LOS ANGELES, WEDNESDAY, SEPTEMBER 7, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 8:30 A.M.

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

15
16 THE COURT: ALL RIGHT. IN THE TCW MATTER,
17 WE'RE AGAIN ON THE RECORD. ALL COUNSEL ARE PRESENT.
18 WE'RE OUT OF THE PRESENCE OF THE JURY.

19
20 JOHN VINCENT CONTINO,
21 CALLED AS A WITNESS BY THE DEFENSE,
22 WAS SWORN AND TESTIFIED AS FOLLOWS:

23
24 THE CLERK: SIR, COULD YOU PLEASE STAND TO BE
25 SWORN.

26 MR. BRIAN: GOOD MORNING, YOUR HONOR.
27 I'M SORRY I WASN'T HERE FOR THE MORNING,
28 BUT I'M SURE MR. WEINGART DID ADMIRABLY.

08:30AM

08:30AM

1 THE CLERK: PLEASE RAISE YOUR RIGHT HAND TO BE
2 SWORN.

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

7 THE WITNESS: I DO.

8 THE CLERK: THANK YOU. PLEASE BE SEATED.

9 SIR, PLEASE STATE AND SPELL YOUR NAME
10 FOR THE RECORD.

08:31AM

11 THE WITNESS: JOHN VINCENT CONTINO. J-O-H-N,
12 V-I-N-C-E-N-T, CONTINO, C-O-N-T-I-N-O.

13 THE COURT: GOOD MORNING, MR. CONTINO.

14 MR. WEINGART: GOOD MORNING.

15 THE TESTIMONY THAT WE INTEND TO ELICIT
16 FROM MR. CONTINO RELATES TO THE BWIC BROWSER AND
17 SECURITY ANALYZER; THE TRADE SECRET STATUS OF THOSE TWO
18 ITEMS, AS WELL AS A REBUTTAL THAT HE DID TO THAT SOURCE
19 CODE COMPARISON THAT MR. HICKS PERFORMED. THAT'S IT.

08:31AM

20 BUT THOSE ARE THE ONLY AREAS THAT WE
21 INTEND TO ELICIT TESTIMONY ABOUT. I DON'T KNOW IF THAT
22 WOULD HELP FOCUS THE VOIR DIRE OR NOT, BUT I WANTED TO
23 POINT THAT OUT.

08:31AM

24 MR. SURPRENANT: YOUR HONOR, MAY THE COURT
25 INQUIRE OF MR. WEINGART, I'M NOT QUITE FULLY
26 UNDERSTANDING.

08:32AM

27 IS MR. CONTINO NOT GOING TO ADDRESS THE
28 TRADE SECRET STATUS ABOUT ANYTHING BUT THE BWIC BROWSER

1 AND THE SECURITY ANALYZER?

2 THE COURT: THAT'S WHAT HE JUST TOLD ME.

3 IS THIS A FALSE ALARM?

4 MR. SURPRENANT: NO, YOUR HONOR. I'LL BE VERY
5 BRIEF.

08:32AM

6

7

8

VOIR DIRE EXAMINATION

9

10 BY MR. SURPRENANT:

11 Q. GOOD MORNING, MR. CONTINO.

12 A. GOOD MORNING, MR. SURPRENANT.

13 Q. NOW, WITH RESPECT TO THE TRADE SECRETS IN THE
14 FIXED INCOME INDUSTRY, YOU DO NOT HAVE AN OPINION ON
15 WHAT INFORMATION IS CONSIDERED CONFIDENTIAL AND
16 PROPRIETARY, CORRECT?

08:32AM

17 A. THAT'S CORRECT.

18 Q. AND THE SAME WOULD BE TRUE FOR WHAT COMPUTER
19 APPLICATIONS ARE CONSIDERED CONFIDENTIAL AND
20 PROPRIETARY?

08:32AM

21 A. THAT'S CORRECT.

22 Q. AND YOU DON'T HAVE AN OPINION ON WHAT DATA ARE
23 CONSIDERED CONFIDENTIAL AND PROPRIETARY IN THE FIXED
24 INCOME INDUSTRY?

25 A. MIGHT YOU BE MORE SPECIFIC ON THAT QUESTION?

08:33AM

26 Q. IF YOU COULD --

27 YOUR HONOR, I WOULD LIKE TO READ INTO
28 THE RECORD, PAGE 35 OF MR. CONTINO'S DEPOSITION, LINES

1 2 THROUGH 9.

2 THE DEPOSITION IS IN FRONT OF YOU,
3 MR. CONTINO.

4 DOES THE COURT HAVE A COPY?

5 THE COURT: GO AHEAD AND READ IT.

08:33AM

6 MR. SURPRENANT:

7 "Q AND YOU ARE OPINING ON
8 TRADE SECRETS, CORRECT?

9 "A I AM.

10 "Q BUT YOU ARE NOT OPINING
11 ON WHAT DATA AND INFORMATION AND
12 APPLICATIONS AND PROTOCOLS ARE
13 TYPICALLY CONSIDERED CONFIDENTIAL
14 AND PROPRIETARY IN THE INDUSTRY,
15 CORRECT?

08:33AM

08:33AM

16 "A CORRECT."

17 Q. NOW, WITH RESPECT TO YOUR UNDERSTANDING OF
18 WHETHER THE BWIC BROWSER AND THE SECURITY ANALYZER ARE
19 TRADE SECRETS, YOU ANALYZE THAT FROM THE POINT OF VIEW
20 OF WHAT YOU CALL A PRIMACY OF PERFORMANCE, CORRECT?

08:33AM

21 THE REPORTER: I'M SORRY, A WHAT?

22 Q. BY MR. SURPRENANT: WHAT YOU CALL THE PRIMACY
23 OF PERFORMANCE, CORRECT?

24 A. PRIMACY OF PERFORMANCE WAS ONE OF THE --

25 THE COURT: ARE YOU SAYING PRIMACY?

08:34AM

26 THE WITNESS: PRIMACY, YES. THAT WAS ONE OF
27 THE CRITERIA I USE, MR. SURPRENANT.

28 Q. BY MR. SURPRENANT: THAT'S CORRECT.

1 AND AS I UNDERSTAND, YOUR TESTIMONY, IS
2 YOU BELIEVE THAT IT IS UNLIKELY THAT DATA OR
3 INFORMATION WOULD, IN YOUR VIEW, RISE TO THE LEVEL OF
4 TRADE SECRETS, UNLESS IT RELATED SPECIFICALLY TO
5 INVESTMENT PERFORMANCE, CORRECT?

08:34AM

6 MR WEINGART: OBJECTION, YOUR HONOR. I'M NOT
7 CLEAR WHERE WE'RE GOING, IN TERMS OF HIS
8 QUALIFICATIONS.

9 THE COURT: I'M NOT, EITHER.

10 THIS WAS A VOIR DIRE ON A 402,
11 ESSENTIALLY, TO DETERMINE HIS QUALIFICATIONS AS AN
12 EXPERT. AND I HAVEN'T HEARD ANYTHING ON HIS
13 QUALIFICATIONS AT THIS POINT, OR CHALLENGE TO THE
14 QUALIFICATIONS.

08:34AM

15 MR. SURPRENANT: WELL, I'D ARGUE BRIEFLY ON
16 THAT.

08:34AM

17 BUT, YOUR HONOR, THE POINT OF VIEW ON
18 HIS TRADE SECRET TESTIMONY IS THAT, I BELIEVE I CAN
19 ELICIT THAT HIS VIEW OF TRADE SECRETS IS SHARPLY
20 INCONSISTENT WITH CUTSA, AND THEREFORE, WOULD NOT AID
21 THE JURY; AND THEREFORE, IT SHOULD NOT BE ADMITTED.

08:35AM

22 MR WEINGART: COULD I RESPOND BRIEFLY TO THAT,
23 YOUR HONOR?

24 THE COURT: BUT I HAVEN'T REALLY HEARD ANY
25 EVIDENCE OR THE TESTIMONY FROM THE WITNESS ON THAT
26 SUBJECT.

08:35AM

27 BUT GO AHEAD, MR. WEINGART.

28 MR WEINGART: WHAT THE REPORT SAYS, AND I

1 DON'T THINK MR. SURPRENANT WOULD DISAGREE WITH THIS, IS
2 THAT HE USED, BECAUSE IT WAS A REBUTTAL REPORT TO
3 MR. SMITH, THE SAME APPROACH THAT MR. SMITH DID, IN
4 TERMS OF DEFINITION -- MR. SMITH, YOU KNOW, TESTIFIED,
5 USING THE DEMONSTRATIVE THAT WAS PUT UP, USING THAT AS
6 A FRAME OF REFERENCE.

08:35AM

7 AND I DON'T BELIEVE MR. CONTINO IS GOING
8 TO BE DOING ANYTHING DIFFERENT IN THAT REGARD THAN WHAT
9 MR. SMITH DID.

10 MR. SURPRENANT: VERY BRIEFLY, YOUR HONOR.
11 YOU WILL RECALL THAT I WANTED TO EXAMINE MR. SMITH WITH
12 THIS BLOWUP, THIS DEMONSTRATIVE WHICH WAS PATTERNED
13 AFTER HIS TESTIMONY. AND MR. WEINGART OBJECTED. AND I
14 HAD TO USE A --

08:35AM

15 IF YOU COULD PUT IT UP, MIKE --

08:36AM

16 I HAD TO USE CUTSA. AND YOUR HONOR WAS
17 QUITE CLEAR THAT TESTIMONY ABOUT TRADE SECRETS THAT WAS
18 THE ONLY IDIOSYNCRATIC VIEW OF A FIXED INCOME
19 PRACTITIONER, WOULDN'T HELP THE JURY.

20 AND THIS WITNESS' VIEW OF WHAT A TRADE
21 SECRET IS IS DRAMATICALLY NARROW, COMPARED TO WHAT
22 CUTSA IS, AND IT WOULD CONFUSE THE JURY.

08:36AM

23 IF THE WITNESS' TESTIMONY IS -- IF IT
24 DOESN'T RELATE TO INVESTMENT PERFORMANCE, AND IN
25 PARTICULAR, PREDICTING INVESTMENT PERFORMANCE, IN HIS
26 VIEW, IT'S UNLIKELY TO BE A TRADE SECRET.

08:36AM

27 THAT TESTIMONY WILL ONLY CONFUSE THE
28 JURY, AND IT'S INCONSISTENT WITH HOW WE PROCEEDED WITH

1 MR. SMITH.

2 THE COURT: WELL, WHY WOULDN'T WE PROCEED WITH
3 MR. CONTINO ON THE SAME BASIS WE DID WITH MR. SMITH?

4 I THINK I SAID YOU COULD USE -- WHAT WE
5 HAVE UP ON THE SCREEN NOW, IS THE DEFINITION FROM THE
6 JURY INSTRUCTION THAT WE'RE GOING TO USE, IS IT NOT?

08:37AM

7 MR. SURPRENANT: IT'S A QUOTE FROM CUTSA.

8 THE WITNESS: RIGHT.

9 MR. SURPRENANT: AS LONG AS WE HAVE THAT
10 UNDERSTANDING, I HAVE ONE MORE MINUTE OF EXAMINATION.

08:37AM

11 THE COURT: ALL RIGHT.

12 Q. BY MR. SURPRENANT: MR. CONTINO, YOU HAVE A
13 BACHELOR OF SCIENCE DEGREE IN INDUSTRIAL AND LABOR
14 RELATIONS FROM CORNELL IN 1983; IS THAT CORRECT?

15 A. THAT'S CORRECT.

08:37AM

16 Q. AND YOU TOOK THREE CLASSES IN PROGRAMMING, AS
17 AN UNDERGRADUATE?

18 A. THAT'S CORRECT.

19 Q. AND THEN IN 1988, YOU FOUNDED YOUR COMPANY,
20 SPERLINGA ADVISORY, CORRECT?

08:37AM

21 A. THAT'S CORRECT.

22 Q. AND THERE'S ONE FULL-TIME EMPLOYEE THERE,
23 YOURSELF, CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND YOU OCCASIONALLY WILL DO PROGRAMMING AT
26 YOUR COMPANY, CORRECT?

08:37AM

27 A. THAT'S CORRECT.

28 Q. YOU HAVE NEVER BEEN HIRED AS A PROGRAMMER?

1 A. THAT'S INCORRECT.

2 Q. YOU ARE AWARE OF VERSION CONTROL, CORRECT?

3 A. I'M AWARE IT EXISTED.

4 Q. BUT YOU DON'T REALLY KNOW ANYTHING ABOUT IT,
5 OTHER THAN PROGRAMMERS USE IT?

08:38AM

6 A. I'M FAMILIAR WITH VERSION CONTROL, AND HOW
7 IT'S BEEN DISCUSSED IN THIS MATTER, MR. SURPRENANT.
8 BUT I HAVE NOT USED VERSION CONTROL SOFTWARE MYSELF.

9 Q. AND YOU ARE NOT A COMPUTER SCIENTIST, CORRECT?

10 A. THAT'S CORRECT.

08:38AM

11 Q. AND SINCE YOU ARE NOT A COMPUTER SCIENTIST,
12 LOGICALLY, YOU ARE NOT AN EXPERT COMPUTER SCIENTIST,
13 CORRECT?

14 A. WELL, LET'S BE CAREFUL, MR. SURPRENANT.

15 I CALL MYSELF A PRACTITIONER PROGRAMMER.
16 SO I HAVE DESIGNED AND BUILT MANY OF THE MBS ANALYTICS
17 THAT MY FIRM USES.

08:38AM

18 SO WHILE I DON'T HOLD MYSELF OUT AS A
19 COMPUTER PROGRAMMER, I DO BELIEVE THAT I CAN PROGRAM
20 WHAT I NEED TO, IN ORDER TO GET MY BUSINESS DONE IN THE
21 MORTGAGE-BACKED SECURITIES ANALYTICAL AREA.

08:38AM

22 MR. SURPRENANT: THANK YOU, YOUR HONOR.
23 THANKS FOR THE VOIR DIRE.

24 THE COURT: ANYTHING FURTHER?

25 MR WEINGART: NOT UNLESS YOUR HONOR HAS ANY
26 QUESTIONS.

08:39AM

27 THE COURT: ALL RIGHT.

28 SO WHY DON'T YOU STEP DOWN, SIR.

1 AND WE'RE GOING TO -- ACTUALLY, WHEN THE
2 JURY COMES IN, WE WILL ASK YOU TO BE SWORN ONCE AGAIN
3 SO THEY WON'T BE CONFUSED BY THE FACT THAT WE'VE HAD
4 THIS LITTLE MEETING, SO --

5 THE WITNESS: I UNDERSTAND, YOUR HONOR. THANK
6 YOU. 08:39AM

7 THE COURT: THANK YOU.

8 ALL RIGHT. ANYTHING ELSE?

9 WE CAN BRING THE JURY IN.

10 MR WEINGART: NO, YOUR HONOR. 08:39AM

11
12 (AT 8:40 A.M. THE JURY ENTERED
13 THE COURTROOM, AND THE FOLLOWING
14 PROCEEDINGS WERE HELD:)

15
16 THE COURT: GOOD MORNING, LADIES AND
17 GENTLEMEN. 08:43AM

18 THE JURY: GOOD MORNING, YOUR HONOR.

19 THE COURT: IN THE TCW VERSUS GUNDLACH MATTER,
20 ALL MEMBERS OF OUR JURY ARE PRESENT, AS ARE ALL
21 COUNSEL. 08:43AM

22 LADIES AND GENTLEMEN, YOU KNOW, WE'RE
23 MOVING TOWARD A TARGET HERE, TO FINISH UP.

24 AND WHAT WE HAVE DISCUSSED IS THE
25 POSSIBILITY OF BEING IN SESSION FRIDAY MORNING, 8:30 TO
26 NOON OR MAYBE A LITTLE PAST THAT. I THINK THAT THAT
27 WILL INSURE WE WILL FINISH UP THE FIRST PART OF NEXT
28 WEEK. IF WE DON'T DO THAT, I THINK WE WILL DRAG ON. 08:44AM

1 I'D LIKE YOU TO TALK AMONG YOURSELVES --
2 IS THERE ANYBODY THAT WOULD HAVE A SERIOUS PROBLEM WITH
3 THAT AT THIS POINT? FRIDAY MORNING, 8:30, MAYBE TILL
4 2:00, BUT PROBABLY TILL NOON?

5 JUROR NO. 2: I JUST NEED TO LET MY EMPLOYER
6 KNOW.

08:44AM

7 THE COURT: YOU ARE ALL WILLING TO DO THAT,
8 THOUGH?

9 JUROR NO. 11: IF WE WENT THE WHOLE DAY, WOULD
10 THAT --

08:44AM

11 THE COURT: WOULD YOU LIKE TO GO TO 4:30,
12 WITH -- NO.

13 WE WILL GO A GOOD PART OF FRIDAY. AND
14 MAYBE TILL NOON. IF WE GO BEYOND THAT, WE'LL HAVE OUR
15 SAME BREAK SYSTEM.

08:44AM

16 SO -- BUT PLAN ON IT, 8:30 FRIDAY
17 MORNING.

18 THANK YOU VERY MUCH.

19 MR. WEINGART, WOULD YOU LIKE TO CALL
20 YOUR NEXT WITNESS?

08:45AM

21 MR WEINGART: YES, YOUR HONOR.

22 WE CALL JOHN CONTINO.

23

24

25 JOHN VINCENT CONTINO,

26 CALLED AS A WITNESS BY THE DEFENDANT,

27 WAS SWORN AND TESTIFIED AS FOLLOWS:

28 //

1 THE CLERK: PLEASE RAISE YOUR RIGHT HAND TO BE
2 SWORN.

3 YOU DO SOLEMNLY STATE THAT THE TESTIMONY
4 YOU ARE ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE
5 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
6 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

7 THE WITNESS: I DO.

8 THE COURT CLERK: THANK YOU. PLEASE BE
9 SEATED.

10 SIR, PLEASE STATE AND SPELL YOUR NAME
11 FOR THE RECORD.

08:45AM

12 THE WITNESS: JOHN VINCENT CONTINO.

13 LAST NAME IS C-O-N-T-I-N-O.

14 THE CLERK: THANK YOU.

15 THE COURT: GOOD MORNING, MR. CONTINO.

08:45AM

16 THE WITNESS: GOOD MORNING, YOUR HONOR.

17 THE COURT: MR. WEINGART, YOU MAY PROCEED.

18 MR WEINGART: THANK YOU, YOUR HONOR.

19

20

21 DIRECT EXAMINATION

22

23 BY MR. WEINGART:

24 Q. MORNING, MR. CONTINO.

25 A. GOOD MORNING, MR. WEINGART.

08:45AM

26 MR. WEINGART: GOOD MORNING, LADIES AND
27 GENTLEMEN.

28 THE JURY: MORNING.

1 Q. BY MR. WEINGART: WHERE DO YOU WORK?

2 A. SPERLINGA ADVISORY.

3 Q. AND WHAT IS YOUR POSITION THERE?

4 A. I'M THE MANAGING MEMBER. I RUN THE COMPANY.

5 Q. THAT'S -- SPERLINGA, IS YOU? 08:46AM

6 A. CORRECT.

7 Q. WHAT TYPE OF BUSINESS IS IT?

8 A. IT'S -- SPERLINGA ADVISORY, DOES CONTRACT
9 ANALYSIS IN COMPLEX MORTGAGE-BACKED SECURITIES.

10 Q. AND WHEN YOU SAY "CONTRACT ANALYSIS", YOU MEAN 08:46AM
11 YOU ARE CONTRACTED TO DO THAT ANALYSIS.

12 NOT ANALYSIS OF CONTRACTS, CORRECT?

13 A. THAT'S CORRECT.

14 Q. AND WITH REGARD TO MORTGAGE-BACKED SECURITIES,
15 WHAT ARE THE VARIOUS TYPES OF SERVICES THAT SPERLINGA 08:46AM
16 PROVIDES?

17 A. SPERLINGA ADVISORY PROVIDES THREE SETS OF
18 SERVICES.

19 FIRST, SORT OF THE BREAD AND BUTTER
20 BUSINESS IS CONTRACT VALUATION AND ANALYSIS FOR PEOPLE 08:46AM
21 THAT HAVE PORTFOLIOS OF MORTGAGE SECURITIES.

22 SECOND --

23 Q. COULD I ASK YOU TO PULL THE MICROPHONE A
24 LITTLE CLOSER?

25 A. SURE. 08:46AM

26 THE SECOND GROUP OF CLIENTS ARE PEOPLE
27 THAT ARE INTERESTED IN ACCESSING THE MORTGAGE-BACKED
28 SECURITIES MARKET, BUT MAY NOT HAVE THE EXPERIENCE OR

1 CAPABILITIES THEMSELVES IN ORDER TO DO THAT.

2 AND THEN FINALLY, SPERLINGA ADVISORY
3 DOES LITIGATION SUPPORT, VERY MUCH LIKE WHAT I'M DOING
4 RIGHT NOW.

5 Q. HOW LONG HAVE YOU WORKED IN MORTGAGE-BACKED
6 SECURITIES-RELATED FIELDS?

08:47AM

7 A. 25 YEARS.

8 Q. WHERE DID YOU GO TO COLLEGE?

9 A. CORNELL UNIVERSITY.

10 Q. AND AFTER COLLEGE, DID YOU THEN BEGIN WORK IN
11 THE FINANCIAL SERVICES FIELD?

08:47AM

12 A. I DID.

13 Q. AND THAT'S BEEN YOUR OCCUPATION SINCE
14 GRADUATION?

15 A. IT HAS.

08:47AM

16 Q. WHAT WAS YOUR FIRST JOB FOLLOWING COLLEGE?

17 A. I WAS EMPLOYED BY PAINWEBBER TO DEVELOP
18 INVESTMENT PROGRAMS FOR MUNICIPALITIES THAT WERE
19 FINANCING LARGE PROJECTS LIKE CONVENTION CENTERS.

20 Q. WHERE DID YOU -- HOW LONG WERE YOU THERE FOR?

08:47AM

21 A. A YEAR AND A HALF.

22 Q. WHERE DID YOU GO AFTER THAT?

23 A. TO DREXEL BURNHAM LAMBERT.

24 Q. IS THAT ANOTHER -- OR WAS IT ANOTHER FINANCIAL
25 SERVICES FIRM?

08:48AM

26 A. IT WAS.

27 Q. WHAT DID YOU DO THERE?

28 A. I WAS A MUNICIPAL ASSOCIATE. I HELPED THE

1 FIRM PUT TOGETHER FINANCINGS FOR OTHER MUNICIPALITIES.

2 Q. AND AFTER DID YOU LEAVE DREXEL AT SOME POINT?

3 A. I DID.

4 Q. WHERE DID YOU GO?

5 A. BACK TO PAINWEBBER.

08:48AM

6 Q. AND WHAT DID YOU DO UPON YOUR RETURN TO
7 PAINWEBBER?

8 A. I BEGAN STRUCTURING MORTGAGE-BACKED
9 SECURITIES.

10 SO TO BE SPECIFIC, TAKING LARGE POOLS OF
11 HOME MORTGAGES, SLICING THEM UP INTO BONDS, AND SELLING
12 THOSE TO INSTITUTIONAL INVESTORS.

08:48AM

13 Q. DID THAT WORK ALSO INVOLVE ANALYZING
14 MORTGAGE-BACKED SECURITIES?

15 A. IT DID.

08:48AM

16 WE WOULD NOT ONLY SLICE THE SECURITIES;
17 BUT FOR THE MOST COMPLEX OF THESE SECURITIES, CREATE
18 MATERIALS THAT SALESPEOPLE WOULD USE TO COMMUNICATE TO
19 INVESTORS OF THOSE MORE COMPLEX SECURITIES, SORT OF
20 RISKS AND RETURNS ASSOCIATED WITH THEM.

08:49AM

21 Q. WHEN DID YOU LEAVE PAINWEBBER FOR THE SECOND
22 TIME?

23 A. AUGUST OF 1988.

24 Q. AND WAS THAT WHEN YOU FOUNDED SPERLINGA?

25 A. IT WAS.

08:49AM

26 Q. NOW, DO YOU, AT SPERLINGA, USE THIRD-PARTY
27 SOFTWARE SYSTEMS TO HELP YOU IN VALUING MORTGAGE-BACKED
28 SECURITIES?

1 A. I DO.

2 Q. AND DO YOU ALSO BUILD YOUR OWN SOFTWARE
3 SYSTEMS TO HELP YOU IN VALUING OR ANALYZING
4 MORTGAGE-BACKED SECURITIES?

5 A. I DO.

08:49AM

6 Q. DO YOU WRITE THE SOURCE CODE YOURSELF, FOR
7 THOSE SYSTEMS?

8 A. YES, I DO.

9 Q. WHILE YOU HAVE BEEN AT SPERLINGA, HAVE YOU
10 TAKEN ANY LEAVES OF ABSENCES?

08:49AM

11 A. YES. I TOOK TWO LEAVES OF ABSENCES AWAY FROM
12 THE COMPANY.

13 Q. AND BRIEFLY, WHAT DID YOU DO DURING THOSE TWO
14 LEAVES OF ABSENCES?

15 A. IN THESE TWO LEAVES OF ABSENCES, I MANAGED
16 FUNDS THAT INVESTED IN COMPLEX MORTGAGE SECURITIES.

08:49AM

17 Q. AND WHEN WAS THE FIRST LEAVE OF ABSENCE?

18 A. IN THE SUMMER OF 1991.

19 Q. AND HOW LONG WAS THAT FOR?

20 A. THAT WAS FOR 16 MONTHS.

08:50AM

21 Q. AND THE SECOND LEAVE?

22 A. WAS IN THE BEGINNING OF 2004.

23 Q. AND HOW LONG WERE YOU MANAGING A FUND ON THAT
24 LEAVE?

25 A. THREE AND THREE-QUARTER YEARS.

08:50AM

26 Q. HAVE YOU PREVIOUSLY BEEN RETAINED AS AN EXPERT
27 IN MATTERS REGARDING MORTGAGE-BACKED SECURITIES?

28 A. YES, I HAVE.

1 Q. WHO HAVE BEEN SOME OF THE PEOPLE THAT HAVE
2 RETAINED YOU?

3 A. PROBABLY THE CLIENT THAT PEOPLE WOULD BE MOST
4 FAMILIAR WITH WOULD BE THE UNITED STATES DEPARTMENT OF
5 LABOR.

08:50AM

6 BACK IN THE MIDDLE 1990S, I WAS RETAINED
7 AS AN EXPERT ON A SERIES OF CASES THAT THE DEPARTMENT
8 OF LABOR WAS BRINGING AGAINST MANAGERS THAT MAY HAVE --
9 OR WHO WERE ACCUSED OF WRONGDOING IN THE MORTGAGE
10 SECURITIES AREA.

08:50AM

11 Q. HAVE YOU ALSO BEEN RETAINED BY LARGE FINANCIAL
12 INSTITUTIONS?

13 A. MORE RECENTLY, I'VE SERVED AS A CONSULTING
14 EXPERT FOR A SERIES OF LARGE BROKER DEALERS; FOR
15 EXAMPLE, JP MORGAN CHASE, MORGAN STANLEY, CREDIT
16 SUISSE.

08:51AM

17 I'M CURRENTLY ON A CASE REPRESENTING
18 GREENWICH CAPITAL.

19 Q. HAVE YOU PREVIOUSLY TESTIFIED AS AN EXPERT
20 WITNESS?

08:51AM

21 A. I HAVE.

22 Q. IS THERE A CUSTOMARY RATE THAT YOU CHARGE FOR
23 YOUR SERVICES?

24 A. THERE IS.

25 Q. WHAT IS THAT?

08:51AM

26 A. \$575 AN HOUR.

27 Q. AND IS THAT THE RATE THAT YOU ARE CHARGING IN
28 THIS MATTER?

1 A. I AM.

2 Q. IS YOUR FEE IN ANY WAY TIED TO THE CONTENT OF
3 YOUR TESTIMONY?

4 A. IT IS NOT.

5 Q. AND IS YOUR FEE IN ANY WAY DEPENDENT ON THE
6 OUTCOME OF THE CASE?

7 A. NO.

08:51AM

8 MR. WEINGART: YOUR HONOR, WE WOULD PROFFER
9 MR. CONTINO AS AN EXPERT ON MORTGAGE-BACKED SECURITIES
10 AND MORTGAGE-BACKED SECURITY-RELATED SYSTEMS.

08:51AM

11 THE COURT: ANY OBJECTION?

12 MR. SURPRENANT: NO OBJECTION.

13 THE COURT: HE'LL BE ADMITTED AS AN EXPERT.

14 LADIES AND GENTLEMEN, MR. CONTINO WILL
15 BE TESTIFYING AS AN EXPERT IN THIS MATTER.

08:51AM

16 Q. BY MR. WEINGART: NOW, AS PART OF YOUR
17 RETENTION IN THIS CASE, WERE YOU ASKED TO OPINE AS TO
18 CERTAIN ITEMS WERE OR WERE NOT TRADE SECRETS?

19 A. I WAS.

20 Q. AND NOW THE JURY HAS HEARD A LOT OF TESTIMONY
21 ON THIS POINT, SO I WANT TO FOCUS ON TWO ITEMS, THE
22 BWIC BROWSER AND THE SECURITY ANALYZER, OKAY?

08:52AM

23 A. UNDERSTOOD.

24 Q. ARE YOU FAMILIAR WITH WHAT TCW CALLS ITS BWIC
25 BROWSER AND SECURITY ANALYZER?

08:52AM

26 A. I AM.

27 Q. DID YOU EXAMINE THOSE SYSTEMS, AS PART OF YOUR
28 WORK IN THIS CASE?

1 A. I DID.

2 Q. WHAT DID YOUR EXAMINATION INCLUDE?

3 A. THE EXAMINATION INCLUDED SEEING A
4 DEMONSTRATION OF THE TWO SYSTEMS PUT FORTH BY TCW,
5 LOOKING AT SOURCE CODE ASSOCIATED WITH THE TWO SYSTEMS,
6 AND THEN FINALLY, LOOKING AT CERTAIN SCREEN SHOTS OF
7 THE SYSTEMS.

08:52AM

8 Q. NOW, LET'S TALK FIRST ABOUT THE BWIC BROWSER.

9 WHAT DOES THE TCW BWIC BROWSER DO,
10 GENERALLY SPEAKING?

08:52AM

11 A. BRIEFLY, THE BWIC BROWSER TAKES LISTS OF
12 FUTURE OPTIONS THAT THE DEALER COMMUNITY IS PUTTING
13 FORTH WITH BONDS, THAT DOUBLELINE AND TCW ON A GIVEN
14 DAY MIGHT BUY.

15 IT SUMMARIZES THOSE BONDS, PERHAPS WITH
16 PRICES THAT THE DEALER COMMUNITY HAS ESTIMATED AT WHICH
17 THESE BONDS WOULD SELL, AS WELL AS PRESENTING
18 ASSOCIATED INFORMATION WITH THE COLLATERAL POOLS
19 BACKING THESE SECURITIES.

08:53AM

20 FINALLY, IT INDICATES WHETHER THE
21 PARTICULAR SECURITY MIGHT BE INCLUDED IN A EXISTING TCW
22 PORTFOLIO.

08:53AM

23 THE PURPOSE OF THE BWIC BROWSER IS TO
24 ALLOW THE USER TO LOOK AT A PARTICULAR SET OF BONDS
25 BEING AUCTIONED ON A DAY, AND MAKE A QUICK DECISION AS
26 TO WHETHER OR NOT THOSE SECURITIES ARE SOMETHING IN
27 WHICH THEY ARE INTERESTED.

08:53AM

28 Q. NOW, YOU ALSO SAID THAT YOU LOOKED AT THE

1 SECURITY ANALYZER?

2 A. THAT'S CORRECT.

3 Q. AGAIN, GENERALLY SPEAKING, WHAT DOES THE TCW
4 SECURITY ANALYZER DO?

5 A. IT MAY BE EASIEST TO THINK OF THE SECURITY
6 ANALYZER IS THE NEXT STEP IN THE PROCESS.

08:54AM

7 SO AFTER SOMEONE DECIDING THAT THIS IS A
8 BOND WORTH FURTHER ANALYSIS, SECURITY ANALYZER COLLECTS
9 INFORMATION ON THE COLLATERAL POOLS BACKING THAT
10 PARTICULAR SECURITY, WHERE THERE'S INTEREST, AND
11 PROVIDES INFORMATION TO A TRADER OR ANALYST, IN TERMS
12 OF THE SPECIFICS OF THAT PARTICULAR COLLATERAL POOL.

08:54AM

13 SO IT ALLOWS THE USERS TO DRILL INTO A
14 COLLATERAL, AS WELL AS PROVIDES CERTAIN INFORMATION
15 ABOUT THE BOND STRUCTURE AND OTHER DETAILS OF THE
16 SECURITIZATION.

08:54AM

17 Q. AND IS FILTERING BWIC'S A COMMON PRACTICE FOR
18 MBS PROFESSIONALS?

19 A. IT IS.

20 Q. AND IS USING THIRD PARTY DATA SOURCES TO
21 ANALYZE MORTGAGE-BACKED SECURITIES, A COMMON PRACTICE?

08:55AM

22 A. IT IS.

23 Q. AND I GUESS HOW COMMON A PRACTICE IS IT, TO
24 SHARE INFORMATION ABOUT THE INFORMATION PULLED FROM
25 THESE THIRD PARTY SYSTEMS WITH OTHERS IN THE INDUSTRY?

08:55AM

26 A. WELL, LET'S PUT THAT -- BREAK THAT UP,
27 MR. WEINGART.

28 IF WE'RE LOOKING AT A TRADER OR ANALYST,

1 LOOKING AT THE BONDS BEING SOLD IN A PARTICULAR DAY,
2 THAT'S SOMETHING THAT THEY DO IN THE NORMAL COURSE OF
3 BUSINESS.

4 THE INDUSTRY DOES TAKE A LARGER REVIEW
5 OF THIRD PARTY DATA TO IDENTIFY TRENDS IN HOUSE PRICES
6 OR PEOPLE'S ABILITY TO REFINANCE, AND SHARE THOSE WITH
7 THE INDUSTRY, IN GENERAL. AND THERE ARE A FEW FORMATS
8 OR FORUMS WHERE THIS IS DONE.

08:55AM

9 FIRST, THERE ARE INDUSTRY CONFERENCES,
10 AT WHICH TRADERS AND ANALYSTS GET UP AND LECTURE ABOUT
11 WHAT THEY FOUND IN ANALYZING THIS PARTICULAR DATA, AND
12 SHARING WHAT THOSE TRENDS ARE.

08:56AM

13 SECOND, THERE ARE RESEARCH REPORTS
14 WRITTEN BY THE DEALER COMMUNITY THAT PUT FORTH THEIR
15 VIEWS AS TO WHAT'S HAPPENING IN THE TRENDS THAT REALLY
16 INFLUENCE THE PRICE OF HOUSING BONDS.

08:56AM

17 SO THAT'S SOME OF THE WAYS THAT THE
18 INDUSTRY SHARES INFORMATION.

19 Q. AND IS THAT INFORMATION THAT COMES FROM THIRD
20 PARTY SOURCES, SUCH AS BLOOMBERG?

08:56AM

21 A. GENERALLY, YES.

22 Q. NOW, DO YOU HAVE AN OPINION AS TO WHETHER OR
23 NOT THE BWIC BROWSER IS A TRADE SECRET?

24 A. I DO.

25 Q. WHAT IS THAT OPINION?

08:56AM

26 A. THAT IT IS NOT.

27 Q. AND DO YOU HAVE AN OPINION AS TO WHETHER THE
28 SECURITY ANALYZER IS A TRADE SECRET?

1 A. I DO.

2 Q. WHAT IS THAT OPINION?

3 A. AND THAT IT IS NOT.

4 Q. NOW, ARE THE REASONS FOR THOSE OPINIONS
5 REGARDING THE BWIC BROWSER AND THE SECURITY ANALYZER,
6 LARGELY THE SAME FOR BOTH, OR ARE THEY DIFFERENT,
7 BETWEEN THE BWIC AND THE SECURITY ANALYZER?

08:57AM

8 A. AS I'VE TESTIFIED, THERE'S A RELATIONSHIP
9 BETWEEN THE BWIC BROWSER AND SECURITY ANALYZER; SO YES,
10 THERE IS SOME COMMON REASONS WHY I BELIEVE THESE
11 SYSTEMS DON'T RISE TO THE LEVEL OF BEING A TRADE
12 SECRET.

08:57AM

13 Q. WHAT ARE THOSE COMMON REASONS?

14 A. FIRST, WHAT THESE SYSTEMS DO ARE GENERALLY
15 DONE IN THE INDUSTRY.

08:57AM

16 IF WE STEP BACK FOR A MOMENT, ANYBODY
17 THAT LOOKS LIKE THE TRADERS OR ANALYSTS AT TCW AND
18 DOUBLELINE, HAVE TO PERFORM THESE SORT OF FUNCTIONS
19 EACH DAY: LOOK AT THE LISTS OF SECURITIES THAT ARE
20 BEING PUT OUT INTO THE MARKETPLACE, AND ANALYZE THEM.

08:57AM

21 SO THERE ARE THIRD PARTY SYSTEMS THAT
22 HELP TRADERS AND ANALYSTS GET TO THE SAME FUNCTIONALITY
23 THAT THE BWIC BROWSER PROVIDES.

24 THERE ARE ALSO OTHER RESOURCES THAT ARE
25 AVAILABLE TO COMPANIES LIKE TCW AND DOUBLELINE THAT
26 GIVE SIMILAR FUNCTIONALITY TO SECURITY ANALYZER.

08:58AM

27 THE LARGE INVESTMENT BANKS THAT SELL THE
28 SECURITIES WHICH TCW AND DOUBLELINE TRADE, WILL MAKE

1 AVAILABLE TO COMPANIES OR CLIENTS LIKE TCW AND
2 DOUBLELINE, THEIR OWN ANALYTICS. AND THEIR OWN
3 ANALYTICS ALLOW PEOPLE AT DOUBLELINE AND TCW TO GET THE
4 SAME SORT OF PERSPECTIVE ONE WOULD IN -- THAT THE
5 SECURITY ANALYZER WOULD PROVIDE.

08:58AM

6 Q. NOW, DO THE SECURITY ANALYZER AND THE BWIC
7 BROWSER PULL DATA FROM THIRD-PARTY SYSTEMS?

8 A. YES, THEY DO. THEY PULL IT FROM MULTIPLE
9 THIRD-PARTY SYSTEMS.

08:59AM

10 Q. WHAT ARE SOME OF THOSE THIRD-PARTY SYSTEMS?

11 A. BASICALLY THE BLOOMBERG, INTEX, WHICH IS A
12 SYSTEM THAT ALLOWS TCW OR DOUBLELINE TO GENERATE CASH
13 FLOW ANALYSIS. AND FINALLY, DATA FROM SOMETHING CALLED
14 LOAN PERFORMANCE.

08:59AM

15 AND LOAN PERFORMANCE PEOPLE HAVE
16 TESTIFIED ABOUT BEFORE, IS JUST A LARGE DATABASE OF
17 LOANS THAT BACK MOST PRIVATELY-ISSUED SECURITIES IN THE
18 COUNTRY.

19 SO THOSE ARE THE THREE SOURCES THAT
20 FIRMS LIKE TCW AND DOUBLELINE TEND TO GENERATE OR PULL
21 THAT THIRD-PARTY DATA FROM.

08:59AM

22 Q. AND DOES THE BWIC BROWSER AND THE SECURITY
23 ANALYZER THEN PRESENT THAT DATA FROM THE THIRD-PARTY
24 SYSTEMS IN ONE UNIFIED FORMAT?

25 A. IT DOES. IT PULLS THAT DATA IN FROM THESE
26 DISPARATE SOURCES, PERFORMS ANALYSIS ON IT, AND
27 PRESENTS SUMMARY DATA TO THE PARTICULAR USER.

09:00AM

28 Q. NOW, DO OTHERS IN THE MORTGAGE-BACKED SECURITY

1 INDUSTRY HAVE THAT SAME KIND OF FUNCTIONALITY THAT'S
2 PROVIDED BY THE BWIC BROWSER AND THE SECURITY ANALYZER?

3 A. SPECIFICALLY, MR. WEINGART YOU ARE SPEAKING
4 ABOUT THE ABILITY TO PULL INFORMATION FROM DISPARATE
5 SOURCES?

09:00AM

6 Q. YES.

7 A. INDEED, THEY DO.

8 Q. AND DO YOU DO SOMETHING LIKE THAT AT YOUR OWN
9 FIRM?

10 A. I DO PULL INFORMATION FROM DISPARATE SOURCES,
11 TO COME TO THE CONCLUSIONS THAT I PRESENT TO MY
12 CLIENTS.

09:00AM

13 Q. SO LET'S TALK ABOUT THE BWIC BROWSER FOR A
14 MINUTE.

15 ARE YOU FAMILIAR WITH ANY OTHER SYSTEM
16 THAT PROVIDES THE SAME KIND OF FUNCTIONALITY THAT THE
17 BWIC BROWSER PROVIDES?

09:00AM

18 A. THE BLOOMBERG SYSTEM PROVIDES A SYSTEM CALLED
19 INGR, OR INVENTORY MANAGER, AND THAT PROVIDES A SYSTEM
20 THAT HAS MUCH OF THE SAME FUNCTIONALITY AS THE BWIC
21 BROWSER.

09:01AM

22 Q. NOW, WITH REGARD TO THE SECURITY ANALYZER,
23 HAVE YOU SEEN SYSTEMS THAT PERFORM THE SAME KIND OF
24 FUNCTIONALITY THAT IT PROVIDES, AT OTHER FIRMS IN THE
25 MORTGAGE-BACKED SECURITY INDUSTRY?

09:01AM

26 A. I HAVE.

27 Q. CAN YOU NAME SOME OF THOSE FIRMS?

28 A. AS I TESTIFIED EARLIER, THE DEALER COMMUNITY

1 PROVIDES ACCESS TO THEIR SOFTWARE, WHICH GIVES TO
2 CLIENTS LIKE TCW AND DOUBLELINE THEIR PERSPECTIVE ON A
3 SORT OF DEEP DIVE ON VARIOUS SECURITIES.

4 I, MYSELF, HAVE PULLED INFORMATION FROM
5 DIFFERENT SOURCES AND SUMMARIZED IT IN A SIMILAR WAY
6 FOR MY CLIENTS; SO, YES.

09:01AM

7 Q. AND IS THAT SO YOU DON'T HAVE TO GO TO
8 MULTIPLE THIRD-PARTY SYSTEMS DO PULL WHAT YOU WANT TO?
9 YOU CAN JUST ONE STOP SHOP?

10 A. INTEGRATION IS IMPORTANT, YES.

09:02AM

11 Q. DO DATA VENDORS LIKE BLOOMBERG OR INTEX
12 PROVIDE ASSISTANCE, IN TERMS OF HELPING YOU TO
13 INTEGRATE WHATEVER DATA THEY PROVIDE WITH OTHER DATA
14 PROVIDERS?

15 A. YES, THEY DO.

09:02AM

16 AND IF YOU THINK ABOUT IT, IT'S VERY
17 MUCH IN THEIR INTEREST TO PROVIDE SUCH EASE OF
18 INTEGRATION FOR PEOPLE IN THE INDUSTRY.

19 TO THE EXTENT THAT WE USE SUCH THINGS
20 LIKE BLOOMBERG OR INTEX, THE EASIER THEY MAKE THAT
21 INTEGRATION, THE MORE WE GET TIED IN TO USING THEIR
22 PRODUCT; SO THEY MAKE IT VERY EASY.

09:02AM

23 Q. NOW, DO OTHERS IN THE INDUSTRY OFTEN WRITE
24 THEIR OWN CODE TO HELP INTEGRATE THESE DISPARATE DATA
25 SOURCES?

09:03AM

26 A. THEY DO.

27 Q. AND WHY DO THEY DO THAT?

28 A. THEY DO THAT FOR SEVERAL REASONS.

1 FIRST, ANALYSTS AND TRADERS LIKE TO SEE
2 DATA PUT FORTH IN A WAY THAT'S FAMILIAR TO THEM, AND
3 MAY LIKE CERTAIN STATISTICS MORE THAN OTHERS; SO THAT'S
4 ONE OF THE REASONS.

5 OTHER REASONS ARE THAT PEOPLE COULD
6 ACTUALLY USE DIFFERENT THIRD-PARTY PROVIDERS THAN THE
7 ONES I'VE TESTIFIED ABOUT.

09:03AM

8 SO FOR EXAMPLE, I DON'T USE INTEX. I
9 USE A COMPETITOR OF INTEX, PROVIDED BY MOODY'S
10 ANALYTICS. SO -- THAT GIVES PEOPLE THE SORT OF
11 FLEXIBILITY TO USE DIFFERENT PROVIDERS FOR THAT
12 THIRD-PARTY DATA.

09:03AM

13 AND THAT'S JUST ONE OF SEVERAL REASONS.

14 Q. NOW, IS THE PRESENTATION OF THIS DATA, IN YOUR
15 VIEW, A TRADE SECRET?

09:04AM

16 A. THE PRESENTATION -- I'M SORRY, MR. WEINGART.

17 GIVE ME A CONTEXT FOR THAT.

18 Q. SURE.

19 THE SCREEN, IN TERMS OF WHAT THE VARIOUS
20 ITEMS ARE THAT ARE PRESENTED FROM THE THIRD-PARTY
21 SOURCES, DO YOU CONSIDER THAT TO BE A TRADE SECRET?

09:04AM

22 A. WITH RESPECT TO THE BWIC BROWSER AND SECURITY
23 ANALYZER, NO.

24 Q. WHY IS THAT?

25 A. WHAT'S BEING PRESENTED IS THE SORT OF DATA
26 THAT WE SEE COMMONLY PRESENTED IN THE INDUSTRY, AND
27 ACTUALLY CALCULATED IN CERTAIN CIRCUMSTANCES, IN THE
28 WAY THAT SOME OF THE THIRD-PARTY PROVIDERS PROVIDE IT.

09:04AM

1 SO THERE'S NO -- THAT'S NOT NECESSARILY
2 A COMPARATIVE ADVANTAGE THAT THAT DATA CONFERS.

3 Q. NOW, ARE YOU FAMILIAR WITH A SYSTEM, SORT OF
4 TERMINOLOGY, IN TERMS OF A FRONT END OF THE SYSTEM AND
5 A BACK END OF THE SYSTEM?

09:05AM

6 A. GENERALLY, A FRONT END OF THE SYSTEM IS A
7 SYSTEM -- THE PART OF THE SYSTEM A USER SEES, SO WHAT
8 SHOWS UP ON THEIR SCREEN.

9 FOR THE COURT'S PURPOSES, LET'S CALL THE
10 BACK END, EVERYTHING ELSE, EVERYTHING THAT PULLS THAT
11 DATA AND PROVIDES THAT -- THOSE SCREENS.

09:05AM

12 Q. ARE YOU FAMILIAR WITH A COMPANY CALLED
13 VICHARA?

14 A. I AM.

15 Q. WHAT IS VICHARA?

09:05AM

16 A. VICHARA IS A MORTGAGE-BACKED SECURITIES DATA
17 PROCESSING COMPANY.

18 Q. AND WHAT KIND OF DATA OR SERVICES DO THEY
19 PROVIDE?

20 A. ONE OF THE SERVICES THEY PROVIDE IS TO TAKE
21 THE LOAN PERFORMANCE DATA THAT I TESTIFIED EARLIER, AND
22 PRE-PROCESS THAT DATA.

09:05AM

23 SO IMAGINE ALL THE LOANS THAT ARE
24 BACKING PRIVATE LABEL MORTGAGE SECURITIES IN THE
25 COUNTRY ARE OUT OF THIS DATABASE. IT WILL TAKE THAT
26 DATA, SUMMARIZE THAT DATA WITH RESPECT TO THE
27 INDIVIDUAL BONDS THAT TCW OR DOUBLELINE MAKE -- WANT TO
28 BUY IN A PARTICULAR DAY, AND THEN PROVIDE SUMMARY

09:06AM

1 STATISTICS WITH RESPECT TO THOSE COLLATERAL POOLS, SO
2 THAT ANALYSTS AND TRADERS CAN MAKE FASTER DECISIONS.

3 Q. NOW, YOU'VE SAID A COUPLE OF TIMES, PEOPLE AT
4 DOUBLELINE OR TCW.

5 I ASSUME THERE ARE OTHERS IN THE
6 INDUSTRY THAT ARE TRADING THESE TYPES OF SECURITIES,
7 OTHER THAN DOUBLELINE AND TCW?

09:06AM

8 A. INDEED. THERE'S A LARGE UNIVERSE OF THEM; BUT
9 THE COURT'S MOST FAMILIAR WITH THOSE TWO.

10 Q. NOW, DO THE TCW BWIC BROWSER AND SECURITY
11 ANALYZER USE VICHARA?

09:06AM

12 A. NO, THEY DO NOT.

13 Q. WHAT DO THEY USE IN INSTEAD OF VICHARA?

14 A. I UNDERSTAND THAT TCW'S SYSTEMS USE THE LOAN
15 PERFORMANCE DATA, AND THEY USE A SYSTEM CALLED 10/10
16 DATA, IN ORDER TO ACCESS THAT INFORMATION.

09:07AM

17 10/10 DATA IS SOMETHING THAT -- A STEP
18 BACK FROM THE SERVICES I DESCRIBED THAT VICHARA
19 PROVIDES.

20 WHAT IT DOES IS IT GIVES USERS A WAY
21 THAT FACILITATES COMMUNICATION WITH THE LOAN
22 PERFORMANCE DATABASE. HOWEVER, IT DOESN'T PRE-PROCESS
23 THAT INFORMATION AND GIVE IT TO USERS IN BITE SIZE AND
24 USABLE PIECES, THE WAY THE VICHARA PRODUCT DOES.

09:07AM

25 Q. SO HOW DOES TCW ACCOMPLISH THAT TASK OF
26 PROCESSING IT AND RUNNING THE ALGORITHMS AGAINST IT,
27 AND THE LIKE?

09:07AM

28 A. I UNDERSTAND THAT THEY USE THE 10/10 DATA

1 SYSTEMS IN ORDER TO ACCESS THE LOAN PERFORMANCE
2 INFORMATION, AND THEN HAD THEIR OWN ALGORITHMS TO MAP
3 THAT VERY LARGE DATABASE OF LOANS TO THE BONDS IN WHICH
4 THEY ARE INTERESTED IN ANALYZING, AND PUT THAT
5 INFORMATION IN THEIR OWN DATABASES.

09:08AM

6 Q. SO THEY HAD THEIR OWN PROPRIETARY DATABASE
7 THAT THEY WOULD USE?

8 A. THAT'S MY UNDERSTANDING.

9 Q. NOW, DOES DOUBLELINE USE VICHARA, OR DOES IT
10 HAVE A PROPRIETARY DATABASE LIKE THE KIND THAT YOU HAVE
11 DESCRIBED TCW USING?

09:08AM

12 A. DOUBLELINE TAKES A DATABASE GIVEN TO THEM BY
13 VICHARA, WHERE THE INFORMATION IS PRE-PROCESSED, SO
14 THAT DOUBLELINE SUBSYSTEMS CAN ACCESS THAT
15 PRE-PROCESSED INFORMATION DIRECTLY.

09:08AM

16 Q. NOW, LET ME SWITCH TOPICS HERE A LITTLE BIT.

17 YOU TOLD US EARLIER THAT YOU DO SOME
18 PROGRAMMING, OR YOU DO PROGRAMMING FOR YOUR SYSTEMS AT
19 SPERLINGA?

20 A. I DO.

09:09AM

21 Q. AND HAVE YOU WRITTEN CODE FOR
22 MORTGAGE-BACKED-RELATED SECURITY SYSTEMS?

23 A. I HAVE.

24 Q. DOES THAT INCLUDE CODE FOR COMPLEX
25 APPLICATIONS IN YOUR FIELD?

09:09AM

26 A. IT DOES.

27 Q. NOW, DOES THAT CODE ALSO INVOLVE ASPECTS OF
28 THE COMPUTER LANGUAGE CALLED SQL?

1 A. IT DOES.

2 Q. NOW, ARE YOU FAMILIAR WITH THE EXPERT THAT TCW
3 CALLED, CHRISTIAN HICKS?

4 A. YES.

5 Q. AND DID HE HAVE THE SAME KIND OF EXPERIENCE
6 THAT YOU HAVE REGARDING PROGRAMMING RELATED TO
7 MORTGAGE-BACKED SECURITY SYSTEMS?

09:09AM

8 A. I UNDERSTAND MR. HICKS IS A FORENSIC COMPUTER
9 EXPERT, WHICH I AM NOT.

09:09AM

10 BUT I ALSO UNDERSTAND MR. HICKS IS NOT A
11 MORTGAGE-BACKED SECURITY SYSTEMS PROGRAMMER.

12 Q. NOW, ARE YOU FAMILIAR WITH MR. HICKS' OPINIONS
13 REGARDING HIS ANALYSIS OF DOUBLELINE AND TCW SOURCE
14 CODE?

15 A. I AM.

09:10AM

16 Q. DID YOU PERFORM YOUR OWN ANALYSIS OF THE THREE
17 SETS OF CODE THAT MR. HICKS DID A COMPARISON OF?

18 A. YES, I DID.

19 Q. AND HAVE YOU REACHED YOUR OWN OPINION
20 REGARDING THE IMPORTANCE, OR LACK THEREOF, OF THE
21 SIMILARITIES THAT MR. HICKS IDENTIFIED BETWEEN THE
22 THREE SETS OF CODE?

09:10AM

23 A. I HAVE.

24 Q. WHAT IS THAT OPINION?

25 A. THAT THE SIMILARITIES THAT MR. HICKS CULLED
26 OUT IN BOTH THE FILE NAMES AND THE SQL CODE THAT HE PUT
27 UP ON A SIDE-BY-SIDE COMPARISON BASIS BETWEEN TCW CODE
28 AND DOUBLELINE CODE COULD BE EXPLAINED BY OTHER

09:10AM

1 METHODS, OR OTHER EXPLANATIONS INVOLVING GOOD
2 PROGRAMMING PRACTICES. AND THE FACT THAT TCW AND
3 DOUBLELINE PROGRAMMED THEIR SYSTEMS AS A TEAM.

4 Q. NOW, COULD WE DISPLAY EXHIBIT 510A-83. I
5 THINK THIS SOMETHING THAT WAS SHOWN DURING MR. HICKS'S
6 EXAMINATION. 09:11AM

7 AND THIS WAS SOMETHING THAT MR. HICKS
8 PREPARED, WHERE HE TOOK SOME LINES OF CODE, TOOK SOME
9 OUT, AND KIND OF REARRANGED THEM, TO SHOW WHAT HE
10 CONSIDERED TO BE THE SIMILARITIES BETWEEN THE TWO? 09:11AM

11 A. THAT'S WHAT MY UNDERSTANDING IS, YES.

12 Q. NOW, WHAT DOES THIS PIECE OF CODE DO, OR THESE
13 PIECES OF CODE DO?

14 A. AND THAT'S PIECES OF CODE. THAT'S CORRECT,
15 MR. WEINGART. 09:11AM

16 EACH OF THE PIECES OF CODE GENERATE A
17 HOLDINGS VIEW, THAT IS, A VIEW OF THE HOLDINGS OF
18 PRESUMABLY WHAT'S IN A PARTICULAR PORTFOLIO.

19 Q. NOW, THERE ARE VARIOUS -- UNDER SELECT, THERE
20 ARE VARIOUS ITEMS. THE FIRST ONE IS AS OF DATE, AND
21 THEN A PORTFOLIO NAME. 09:12AM

22 WHAT ARE THOSE?

23 A. THOSE ARE PIECES OF DATA ASSOCIATED WITH THE
24 PORTFOLIO THAT, IN THE FIRST CASE, GENERATE THE DATE ON
25 WHICH, WHATEVER PORTFOLIO INFORMATION IS BEING
26 DISPLAYED. 09:12AM

27 AND A PORTFOLIO NAME WOULD BE PRESUMABLY
28 THE NAME OF A PORTFOLIO, OR SOMETHING THAT IDENTIFIED A

1 PARTICULAR PORTFOLIO FROM ANOTHER PORTFOLIO.

2 Q. SO, THERE'S VARIOUS ITEMS THAT ARE LISTED
3 HERE.

4 ARE THOSE FIELDS THAT YOU WOULD
5 TYPICALLY EXPECT TO SEE IF YOU WERE LOOKING AT A VIEW
6 OF PORTFOLIO HOLDINGS?

09:12AM

7 A. YES, THEY ARE.

8 Q. CAN YOU JUST EXPLAIN WHAT SOME OF THEM ARE?

9 A. CERTAINLY.

10 IF WE WERE TO LOOK AT -- AND IF I COULD
11 USE THE NUMBERS ON THE LEFT. LINE 28, THERE'S
12 SOMETHING CALLED CUSIP.

09:12AM

13 CUSIP IS A U.S. STANDARD OF INDIVIDUAL
14 NUMBER THAT IS ASSOCIATED WITH SECURITIES THAT TRADE IN
15 REASONABLE LIQUID MARKETPLACES. SO THAT WOULD
16 LOGICALLY COME UP IN A VIEW OF PORTFOLIO HOLDINGS.

09:13AM

17 SECURITY NAME IS DOWN TWO THERE. IF YOU
18 WOULD LOOK AT A PORTFOLIO VIEW, ONE WOULD EXPECT
19 SOMETHING THAT WOULD DESCRIBE EACH OF THE SECURITIES
20 THAT ARE IN THE PORTFOLIO, SO THAT YOU WOULD EXPECT TO
21 SHOW UP IN A PORTFOLIO VIEW.

09:13AM

22 Q. AND THEN THERE'S SOME OTHER LIKE, FOR EXAMPLE,
23 AS-OF DATE?

24 A. RIGHT. AS-OF DATE, WE WENT OVER.

25 THERE'S SOME TOWARD THE BOTTOM THAT GO
26 WITH THE BOOK PRICE, WHICH IS GENERALLY THE PRICE AT
27 WHICH EITHER THE SECURITY WAS PURCHASED OR A PRICE
28 THAT -- WHERE THE SECURITY WAS PURCHASED AND HAD BEEN

09:13AM

1 IN SOME WAY AMORTIZED UP TO THE AS-OF DATE.

2 Q. WOULD THAT BE SO YOU COULD SEE HOW IT HAS
3 APPRECIATED OR DEPRECIATED?

4 A. IT WILL PROVIDE A BENCHMARK, YES, TO THAT.

5 AND THEN A LITTLE BIT BELOW, THERE ARE
6 VARIABLES ASSOCIATED WITH MARKET VALUE; SO IF YOU ARE
7 LOOKING AT A PARTICULAR PORTFOLIO ON A SECURITY BASIS,
8 PROBABLY THE MOST IMPORTANT THING IS MARKET VALUE.

09:14AM

9 SO GENERALLY, THESE SORT OF VARIABLES
10 ARE THE SORT OF PIECES OF INFORMATION WE WOULD EXPECT
11 PEOPLE LOOKING AT A PORTFOLIO VIEW WOULD WANT TO SEE.

09:14AM

12 Q. NOW, THERE WERE SOME OTHER COMPARISONS. AND I
13 DON'T WANT TO TAKE UP YOUR TIME, BUT THERE'S ANOTHER
14 ONE THAT'S A CURRENT HOLDINGS VIEW.

15 IT HAS SIMILAR FIELDS, DOES IT NOT?

09:14AM

16 A. IT DOES.

17 Q. IN YOUR OPINION, IS THERE ANYTHING -- TRADE
18 SECRET IN THIS CODE?

19 A. NO, THERE ISN'T.

20 Q. WHY IS THAT?

09:15AM

21 A. BECAUSE THE CODE IS PULLING INFORMATION OUT OF
22 THE DATABASE, SO IT DOESN'T HAVE ANY BUSINESS LOGIC TO
23 IT. SO THAT'S REALLY ALL IT'S DOING.

24 Q. AND WHEN YOU SAY "BUSINESS LOGIC", WHAT DO YOU
25 MEAN BY THAT?

09:15AM

26 A. IT'S PULLING THESE PIECES OF INFORMATION OUT,
27 BUT IT'S NOT DOING ANYTHING WITH THEM. IT'S NOT
28 CREATING A COMPUTATION THAT ONE MIGHT USE IN TERMS OF

1 GETTING SOME SORT OF TRADING ADVANTAGE, OR GENERATING A
2 STATISTIC THAT'S NOT OTHERWISE IN THE INFORMATION THAT
3 YOU SEE.

4 Q. THAT WOULD BE BEING DONE EITHER IN THE
5 PROPRIETARY DATABASE THAT TCW HAS OR, FOR EXAMPLE,
6 VICHARA LIKE DOUBLELINE HAS?

09:15AM

7 A. GENERALLY, IT'S DONE SOMEWHERE ELSE, BUT IT'S
8 NOT HERE.

9 Q. NOW, MR. HICKS ALSO --

10 IF WE CAN TAKE THAT DOWN, DENNIS.

09:16AM

11 MR. HICKS ALSO OPINED ABOUT SOME
12 SIMILARITIES IN FILE NAMES BETWEEN THE TWO CODES.

13 IS THAT SOMETHING THAT YOU EXAMINE?

14 A. I DID.

15 Q. AND WHAT IS YOUR OPINION WITH REGARD TO THE
16 SIMILARITIES THAT HE IDENTIFIED THERE?

09:16AM

17 A. WITH RESPECT TO THE FILE NAMES, I THINK
18 MR. HICKS CULLED OUT THE FACT THAT THE HOLDINGS VIEW
19 THAT WAS, I BELIEVE, WHAT WE JUST HAD UP, THE
20 DOUBLELINE VERSION IN THE TCW VERSION OF THAT CODE, THE
21 NAME OF IT WAS SEPARATED BY JUST ONE LETTER.

09:16AM

22 AND I CAN UNDERSTAND WHY PEOPLE MIGHT
23 LOOK AT THAT AND THINK IT'S SOMEHOW NEFARIOUS.

24 BUT REMEMBER THAT TCW AND THE FOLKS AT
25 DOUBLELINE PROGRAM THEIR MORTGAGE SYSTEMS IN A TEAM.
26 SO IF I'M PROGRAMMING THE SYSTEM IN A TEAM, I HAVE TO
27 USE FILE NAMES THAT EXPLAIN TO THE USER, BEFORE THEY
28 EVEN OPEN IT UP, WHAT THAT PARTICULAR SET OF CODE DOES.

09:16AM

1 SO IN WHAT WE JUST HAD UP, THE -- BOTH
2 SETS OF CODE, WE'RE PROVIDING A HOLDINGS VIEW; SO IT'S
3 NOT SURPRISING THAT THE CODE IS CALLED HOLDINGS VIEW.
4 IT'S A WAY THAT THESE -- THE PEOPLE THAT WORK WITH THE
5 DIFFERENT PROGRAMMERS ARE ALL ON THE SAME PAGE, AND
6 UNDERSTAND WHAT'S IN A PARTICULAR SET OF CODE.

09:17AM

7 Q. SO YOU WOULD CALL IT HOLDINGS, TO KNOW THAT
8 THAT'S HOLDINGS, AS OPPOSED TO FANDANGO OR BANANA PIE,
9 OR SOMETHING LIKE THAT?

10 A. EXACTLY.

09:17AM

11 MR. WEINGART: MAY I HAVE JUST ONE MOMENT,
12 YOUR HONOR?

13 THE COURT: YES.

14 MR. WEINGART: I HAVE NO FURTHER QUESTIONS.

15 THE COURT: ALL RIGHT.

09:18AM

16 CROSS-EXAMINATION?

17 MR. SURPRENANT: THANK YOU, YOUR HONOR.

18
19
20 CROSS-EXAMINATION

09:18AM

21 BY MR. SURPRENANT:

22 Q. GOOD MORNING, MR. CONTINO.

23 A. GOOD MORNING, MR. SURPRENANT.

24 Q. FOR PRACTICAL PURPOSES, YOU ARE WORKING FOR
25 MUNGER, TOLLES AND OLSON IN THIS CASE, CORRECT?

09:18AM

26 A. THAT'S CORRECT.

27 Q. AND YOU SAID YOU TESTIFIED AS A WITNESS AS AN
28 EXPERT BEFORE, HOW MANY TIMES?

1 A. THAT WOULD BE THREE TIMES.

2 Q. AND WHEN WAS THE LAST TIME YOU TESTIFIED AS AN
3 EXPERT?

4 A. IT WOULD HAVE BEEN IN 2000.

5 Q. AND HAVE YOU EVER TESTIFIED ABOUT SYSTEMS
6 BEFORE, AS AN EXPERT?

09:18AM

7 A. I HAVE NOT.

8 Q. SPERLINGA ADVISORY IS THE NAME OF YOUR
9 COMPANY, CORRECT?

10 A. IT IS.

09:18AM

11 Q. AND THAT IS NAMED AFTER THE VILLAGE IN SICILY,
12 WHERE YOUR GRANDFATHER CAME FROM, CORRECT?

13 A. BOTH MY GRANDPARENTS -- BOTH MY SICILIAN
14 GRANDPARENTS; THAT'S CORRECT.

15 Q. AND SPERLINGA ADVISORY, YOU FOUNDED IN 1988,
16 CORRECT?

09:19AM

17 A. THAT'S CORRECT.

18 Q. AND IT HAS ONE FULL-TIME EMPLOYEE?

19 A. THAT'S ME.

20 Q. NOW, SINCE YOU WERE RETAINED AS AN EXPERT IN
21 THIS CASE, OR AT LEAST AS OF THE TIME THAT I TOOK YOUR
22 DEPOSITION IN JUNE, ABOUT ONE-THIRD OF YOUR TOTAL
23 INCOME THAT YOU HAD EARNED SINCE YOU WERE RETAINED AS
24 AN EXPERT CAME FROM THIS CASE, CORRECT?

09:19AM

25 A. THAT'S NOT WHAT I HAD TOLD YOU AT MY
26 DEPOSITION, MR. SURPRENANT.

09:19AM

27 Q. ABOUT 35 PERCENT OF SPERLINGA'S REVENUES OVER
28 THE 13 MONTHS BEFORE I EXAMINED YOU CAME FROM THIS

1 CASE, CORRECT?

2 A. THE 35 PERCENT, I BELIEVE, WAS FROM CALENDAR
3 YEAR 2010.

4 Q. SO FOR CALENDAR YEAR 2010, 35 PERCENT OF YOUR
5 INCOME CAME FROM YOUR EXPERT FEES IN THIS CASE,
6 CORRECT?

09:20AM

7 A. THAT'S CORRECT.

8 Q. YOU TOOK THREE CLASSES IN PROGRAMMING, AS AN
9 UNDERGRADUATE, CORRECT?

10 A. THAT'S CORRECT.

09:20AM

11 Q. AND YOU ARE NOT A COMPUTER SCIENTIST, CORRECT?

12 A. THAT'S CORRECT.

13 Q. AND MR. HICKS YOU KNOW, IS A COMPUTER
14 SCIENTIST?

15 A. HE IS A COMPUTER SCIENTIST.

09:20AM

16 Q. NOW, WITH RESPECT TO WHY YOU CONSIDER
17 INFORMATION TRADE SECRET, THERE'S SOMETHING THAT YOU
18 PUT IN YOUR REPORT CALLED THE PRIMACY PERFORMANCE?

19 A. I REMEMBER THAT, YES.

20 Q. AND UNDER YOUR VIEW, UNLESS IT IS UNLIKELY
21 THAT INFORMATION OR DATA OR PROGRAMS WILL BE WHAT YOU
22 VIEW AS A TRADE SECRET, UNLESS THEY RELATE SPECIFICALLY
23 TO INVESTMENT PERFORMANCE, CORRECT?

09:20AM

24 A. WHAT I SAID IN MY REPORT, MR. SURPRENANT, IS
25 THAT PERFORMANCE IS A DEFINING CHARACTERISTIC OF A
26 MORTGAGE MANAGER.

09:21AM

27 SO WHILE MR. SMITH, WHEN HE WAS HERE,
28 WENT OVER THAT MORTGAGE MANAGERS HAVE TO DO A LOT OF

1 THINGS, IT'S PERFORMANCE THAT IS THE KEY, IN TERMS OF
2 WHETHER PEOPLE DECIDE TO INVEST WITH A PARTICULAR
3 MANAGER OR, IN MANY CASES, TAKE THEIR INVESTMENTS AWAY.

4 SO I VIEW THE PRIMACY OF PERFORMANCE
5 SIMPLY AS A MEANS OF IDENTIFYING PIECES OF INTELLECTUAL
6 PROPERTY THAT COULD BENEFIT PERFORMANCE AND GIVING THEM
7 ADDITIONAL WEIGHT.

09:21AM

8 Q. MR. CONTINO, YOUR EXPERT REPORT IS IN THAT
9 BINDER.

10 IF YOU LOOK BEHIND TAB 596. COULD YOU
11 FIND THAT?

09:22AM

12 A. I DO.

13 Q. IF YOU COULD TURN TO PAGE 21, PLEASE?

14 A. I'M WITH --

15 THE COURT: IS THAT A -- I'M NOT SURE I GOT
16 ONE OF YOUR BOOKS.

09:22AM

17 IS YOURS LIKE THIS, THIS LITTLE ONE?

18 MR. SURPRENANT: IT SHOULD BE WHITE.

19 THE COURT: I DON'T HAVE -- HOLD ON A MINUTE.
20 WAIT, WAIT. I APOLOGIZE. IT'S BURIED HERE. I HAVE
21 IT.

09:22AM

22 GO AHEAD.

23 MR. SURPRENANT: THANK YOU, YOUR HONOR. SORRY
24 FOR THE CONFUSION.

25 Q. SO WHAT YOUR EXPERT OPINION WAS IN YOUR REPORT
26 IS, THOSE THINGS THAT ARE NOT RELATED TO PERFORMANCE
27 ARE MUCH LESS LIKELY TO RISE TO THE LEVEL OF A TRADE
28 SECRET, IN YOUR VIEW, CORRECT?

09:22AM

1 A. THAT'S RIGHT.

2 Q. AND BY PERFORMANCE, YOU MEAN INVESTMENT
3 PERFORMANCE, CORRECT?

4 A. THAT'S CORRECT.

5 Q. AND THEN YOU SAY, EVEN WITHIN THOSE SYSTEMS
6 AND DATA, WHICH CAN DRIVE BETTER PERFORMANCE, THERE ARE
7 GRADATIONS OF IMPORTANCE, FOR EXAMPLE, THOSE SYSTEMS
8 AND PROCESSES WHICH ARE, OR PURPORT TO BE PREDICTIVE,
9 ARE MORE IMPORTANT THAN THOSE SYSTEMS WHICH ARE
10 BACKWARD.

09:23AM

09:23AM

11 THAT WAS YOUR EXPERT OPINION, CORRECT?

12 A. THAT'S CORRECT.

13 Q. AND WHEN YOU SAY, AGAIN, CAN DRIVE BETTER
14 PERFORMANCE, YOU ARE TALKING SPECIFICALLY ABOUT
15 INVESTMENT PERFORMANCE, RIGHT?

09:23AM

16 A. THAT'S CORRECT.

17 Q. AND MIKE, IF YOU COULD PUT UP A DEMONSTRATIVE
18 THAT WAS SHOWN TO THE JURY, 2247-2.

19 NOW, THIS WAS A DEMONSTRATIVE THAT WAS
20 SHOWN WHEN MR. SMITH WAS EXPLAINING HIS VIEW ON TRADE
21 SECRETS.

09:24AM

22 DID YOU GIVE THAT TESTIMONY?

23 A. I DID.

24 Q. NOW, THIS -- IS THIS KIND OF MEASURE OF WHAT A
25 TRADE SECRET IS, IT DOESN'T MAKE ANY MENTION OF
26 INVESTMENT PERFORMANCE, DOES IT?

09:24AM

27 A. NO, IT DOESN'T.

28 Q. AND IT DOESN'T MAKE ANY MENTION OF PREDICTIVE

1 INVESTMENT PERFORMANCE, DOES IT?

2 A. I'M SORRY, MR. SURPRENANT. I DIDN'T HEAR THAT
3 LAST QUESTION.

4 Q. I'M SORRY. HE DOESN'T MAKE ANY MENTION OF
5 PREDICTIVE INVESTMENT PERFORMANCE, DOES IT?

09:24AM

6 A. NO, IT DOESN'T.

7 Q. AND IF I COULD FIND YOUR REPORT.

8 NOW, YOU SAY THE BWIC BROWSER, YOU SAY
9 THAT'S NOT A TRADE SECRET, CORRECT?

10 A. THAT'S RIGHT.

09:24AM

11 Q. AND IF YOU TURN TO PAGE 34, YOU EXPLAINED WHY
12 IT'S NOT A TRADE SECRET, IN YOUR VIEW.

13 ARE YOU WITH ME, MR. CONTINO?

14 A. I AM.

15 Q. IT'S BECAUSE IT WOULD HAVE NO ABILITY TO
16 ENHANCE PERFORMANCE, CORRECT?

09:25AM

17 A. THAT'S RIGHT.

18 Q. AND IF YOU TURN TO THE SECURITY ANALYZER,
19 THREE PAGES LATER, THE REASON YOU SAY THAT'S NOT A
20 TRADE SECRET IS THAT IT WOULD HAVE NO ABILITY TO
21 ENHANCE PERFORMANCE, CORRECT?

09:25AM

22 A. THAT'S ONE OF THE REASONS, YES.

23 Q. AND AGAIN, PERFORMANCE, WE'RE TALKING
24 SPECIFICALLY ABOUT INVESTMENT PERFORMANCE, CORRECT?

25 A. THAT'S CORRECT.

09:25AM

26 Q. NOW, WITH RESPECT TO TRADE SECRETS, YOU
27 RECOGNIZE THAT A CONCEPT CAN BE WIDELY KNOWN, BUT THAT
28 A PARTICULAR APPLICATION OF THAT CONCEPT CAN BE A TRADE

1 SECRET, CORRECT?

2 A. YES.

3 Q. AND IN FACT, TWO PRODUCTS CAN HAVE THE SAME
4 FUNCTIONALITY, BUT THEY CAN EACH INCORPORATE TRADE
5 SECRETS, RIGHT?

09:25AM

6 A. YES, THEY CAN.

7 Q. NOW, YOU DON'T HAVE A VIEW, IN THE FIXED
8 INCOME INDUSTRY, WHAT'S CONFIDENTIAL AND PROPRIETARY,
9 DO YOU?

10 A. MIGHT YOU BE MORE SPECIFIC WITH THAT?

09:26AM

11 Q. YOU DON'T HAVE A VIEW OF WHAT SOFTWARE
12 APPLICATIONS ARE CONFIDENTIAL AND PROPRIETARY, CORRECT?

13 A. AND YOU ARE SPECIFICALLY SPEAKING ABOUT THE
14 PURPOSE OF THIS REPORT? YES.

15 Q. AND YOU DON'T HAVE A VIEW WHAT DATA OR
16 INFORMATION ARE CONSIDERED CONFIDENTIAL AND PROPRIETARY
17 IN THE INDUSTRY, DO YOU?

09:26AM

18 A. THAT'S CORRECT.

19 Q. NOW, WITH RESPECT TO MR. HICKS' ANALYSIS.
20 MR. HICKS, YOU THOUGHT, WAS PRETTY CANDID IN CALLING
21 OUT THE LIMITATIONS OF HIS CONCLUSIONS, CORRECT?

09:26AM

22 A. I DID, I AGREE.

23 Q. AND YOU BOTH AGREE THAT ONE WOULD EXPECT TO
24 SEE A LOT OF SIMILARITY IN THE TCW CODE CASEY MOORE
25 WROTE FOR THE BWIC BROWSER AND THE SECURITY ANALYZER,
26 AND THE DOUBLELINE CODE HE WROTE FOR THE SECURITY X-RAY
27 AND THE SECURITY LIST MANAGER, CORRECT?

09:27AM

28 A. THAT'S RIGHT.

1 Q. AND THE REASON YOU WOULD EXPECT A LOT OF
2 SIMILARITY IS BECAUSE THEY WERE WRITTEN BY THE SAME
3 PROGRAMMER?

4 A. RIGHT.

5 Q. FOR THE SAME USERS, RIGHT?

09:27AM

6 A. CORRECT.

7 Q. AND THAT IS THE TRADERS AT DOUBLELINE -- AT
8 TCW WHO WENT OVER DOUBLELINE?

9 A. THAT'S RIGHT.

10 Q. AND YOU WOULD ALSO EXPECT SIMILARITY, BECAUSE
11 THEY HAVE THE SAME OR SOME OF THE SAME DATA FIELDS,
12 CORRECT?

09:27AM

13 A. YES. THAT THEY DREW DATA FROM THE SAME
14 SOURCES.

15 Q. AND SO THE -- WHERE THERE'S A DIFFERENCE OF
16 OPINION IS, MR. HICKS, AS A COMPUTER SCIENTIST, IS
17 SURPRISED BY THE AMOUNT OF SIMILARITY; BUT YOU ARE NOT,
18 CORRECT?

09:27AM

19 MR. WEINBERG: OBJECTION, ARGUMENTATIVE.

20 THE COURT: OVERRULED.

09:28AM

21 CAN YOU ANSWER THAT QUESTION?

22 THE WITNESS: I CAN, YOUR HONOR.

23 THE COURT: GO AHEAD.

24 THE WITNESS: BECAUSE MR. HICKS IS NOT A
25 MORTGAGE PROGRAMMER, OR NEVER PROGRAMMED MORTGAGE
26 SYSTEMS IN A TEAM, I PERHAPS THOUGHT HE DIDN'T FULLY
27 UNDERSTAND THE SOURCE OF THE SIMILARITIES THAT HE
28 CULLED OUT, IN THE TWO INSTANCES I WENT OVER WITH

09:28AM

1 MR. WEINGART.

2 Q. NOW, YOU SAID THAT THE SIMILARITIES THAT
3 MR. HICKS FOUND INDICATIVE THAT THE DOUBLELINE CODE WAS
4 DERIVED FROM THE TCW CODE, YOU SAID THAT THAT COULD BE
5 EXPLAINED BY OTHER FACTORS, CORRECT? THAT WAS YOUR
6 TESTIMONY THIS MORNING?

09:28AM

7 A. YES.

8 Q. BUT YOU CAN'T RULE IT OUT THAT MR. MOORE
9 SUBSTANTIALLY DERIVED THE DOUBLELINE CODE FROM THE TCW
10 CODE, AND THAT EXPLAINS THE SIMILARITY?

09:28AM

11 A. I'M SIMPLY OFFERING AN ALTERNATE EXPLANATION.

12 Q. NOW, LET ME GIVE YOU A HYPOTHETICAL,
13 MR. CONTINO.

14 LET'S ASSUME MR. MOORE REFERENCED TCW
15 CODE FOR THE BWIC BROWSER AND THE SECURITY ANALYZER IN
16 A MEANINGFUL WAY, WHILE HE WAS WORKING 20 HOURS A DAY
17 WRITING CODE FOR A COMPARABLE DOUBLELINE APPLICATION.

09:29AM

18 DO YOU HAVE THAT ASSUMPTION?

19 A. I DO.

20 Q. AND THEN ASSUME WITH ME THAT WHEN HE WAS
21 WRITING THE DOUBLELINE CODE, HE CONSCIOUSLY TRIED TO
22 MAKE IT LOOK DIFFERENT.

09:29AM

23 DO YOU HAVE THAT ASSUMPTION?

24 A. I DO.

25 Q. AND IF YOU MAKE THOSE TWO ASSUMPTIONS, YOU
26 WOULD EXPECT THAT MOST OF THE CODE WOULD NOT LOOK
27 SIMILAR, BUT THERE MIGHT BE OCCASIONAL SITUATIONS WHERE
28 IT WAS QUITE SIMILAR, AND MAYBE EVEN EXACTLY THE SAME,

09:29AM

1 CORRECT?

2 MR. WEINGART: OBJECTION. INCOMPLETE
3 HYPOTHETICAL.

4 THE COURT: SUSTAINED.

5 YOU CAN EXPAND ON IT.

09:29AM

6 MR. SURPRENANT: WELL, IT WOULD BE A
7 REASONABLE EXPLANATION THAT, GIVEN THOSE TWO
8 ASSUMPTIONS, THAT ONE MIGHT NOT FIND WIDESPREAD
9 SIMILARITY, BUT MIGHT FIND SOME SIMILARITY AND SOME
10 EXACT MATCHES, CORRECT?

09:30AM

11 MR. WEINGART: SAME OBJECTION, YOUR HONOR.

12 THE COURT: I'LL ALLOW HIM TO ANSWER.

13 THE WITNESS: I WOULD EXPECT THAT MR. HICKS,
14 WHO IS A COMPUTER SCIENTIST, MAY HAVE WAYS IN WHICH HE
15 CAN SEE THROUGH, WITH SOME OF THE, LET'S CALL IT
16 OBFUSCATIONS, THAT MR. MOORE, IN YOUR HYPOTHETICAL,
17 WOULD USE; SO HE WOULD PERHAPS BE ABLE TO PRESENT
18 EVIDENCE THAT THERE WAS USE. AND LET THE COURT DECIDE
19 IN TERMS OF WHETHER THAT WAS MR. MOORE, SIMPLY
20 PROGRAMMING THIS ON HIS OWN, VERSUS HIM SUBSTANTIALLY
21 USING AS YOUR HYPOTHETICAL PUT FORTH, TCW CODE, IN
22 ORDER TO PROGRAM THE SYSTEMS HE DID.

09:30AM

09:30AM

23 Q. MR. CONTINO, IF YOU COULD LOOK IN YOUR WITNESS
24 BOOK AT TRIAL EXHIBIT 1510A-94 AND 95?

25 NOW, TRIAL EXHIBIT 1510A-94 IS
26 DOUBLELINE CODE, CORRECT?

09:31AM

27 A. IT APPEARS TO BE, MR. SURPRENANT.

28 AND I'M MAKING THAT ASSESSMENT ON THE DL

1 THAT SHOWS UP IN THE CODE, AND TAKING YOUR WORD FOR IT.

2 Q. WELL, THAT'S ACTUALLY -- YOU DISCUSS AN EXACT
3 MATCH, IN YOUR REPORT, CORRECT?

4 AND THE EXACT MATCH THAT YOU DISCUSS IS
5 BETWEEN TRIAL EXHIBIT 1510A-94 AND THE NEXT EXHIBIT IN
6 YOUR BINDER, 1510-95, CORRECT?

09:32AM

7 A. YOU ARE REFERRING TO THE COMMENT FIELDS?

8 Q. YES?

9 A. I'M JUST REFRESHING MY MEMORY ON THIS, YES.

10 Q. IF YOU WOULD LOOK AT YOUR REPORT, MR. CONTINO,
11 AT PAGE 45 WHICH WERE 45 THROUGH 47, WHERE YOU
12 EXPLAINED YOUR OPINION ON THE EXACT MATCH?

09:32AM

13 A. YES.

14 Q. SO TRIAL EXHIBIT 1510A-94 IS EXHIBIT 94 FOR
15 MR. HICKS'S REPORT, CORRECT?

09:32AM

16 A. YES, THAT'S CORRECT.

17 Q. AND TRIAL EXHIBIT 1510A-95 IS MR. HICKS'S
18 REPORT 95?

19 A. THAT'S RIGHT.

20 Q. AND THOSE ARE THE EXACT MATCHES IN CODE THAT
21 YOU EXAMINED AND DISCUSSED IN YOUR REPORT?

09:33AM

22 A. THAT'S CORRECT.

23 Q. AND YOU HAVE NO EXPLANATION FOR HOW THERE IS
24 AN EXACT MATCH? YOU JUST SAY, WELL, THIS LINE OF CODE
25 DOESN'T LOOK TO ME TO BE A TRADE SECRET, CORRECT?

09:33AM

26 A. IN, YOUR REFERENCING WHAT PAGE OF MY REPORT?

27 Q. WELL, PAGE 45 THROUGH 47 IS WHERE YOU DISCUSS
28 IT.

1 AND YOU GIVE NO EXPLANATION FOR THE
2 EXACT MATCH?

3 MR. WEINGART: OBJECTION. ARGUMENTATIVE,
4 MISSTATES --

5 THE COURT: SUSTAINED.

09:33AM

6 YOU MAY ASK A QUESTION, IF YOU WOULD
7 LIKE.

8 Q. BY MR. SURPRENANT: DO YOU FIND AN
9 EXPLANATION IN 45 TO 47, OR ANYWHERE ELSE IN YOUR
10 REPORT, THAT EXPLAINED HOW IT IS THAT DOUBLELINE CODE
11 HAS AN EXACT MATCH FOR THE TCW PROGRAM?

09:33AM

12 MR. WEINGART: IT'S VAGUE, YOUR HONOR.

13 THE WITNESS: IN MY REPORT, NO,

14 MR. SURPRENANT.

15 I COULD OFFER ONE.

09:33AM

16 Q. WELL, IT'S NOT IN YOUR REPORT SO -- OKAY.

17 MR. SURPRENANT: WELL, YOUR HONOR, THEY ARE
18 NOT IN EVIDENCE, BUT COULD I DISPLAY THEM, AND DO A
19 SIDE BY SIDE?

20 MR. WEINGART: YOUR HONOR, I WOULD OBJECT.

09:34AM

21 THE COURT: DISPLAY WHAT?

22 MR. SURPRENANT: YOUR HONOR, THIS WITNESS
23 OFFERED OPINIONS ON THESE, AND HE ADDRESSED THEM IN HIS
24 REPORT.

25 THE COURT: I'M ASKING YOU -- YOU ARE TALKING
26 ABOUT THESE TWO EXHIBITS?

09:34AM

27 MR. SURPRENANT: YES.

28 THE COURT: WERE THEY PLACED IN EVIDENCE

1 DURING MR. HICKS' TESTIMONY?

2 MR. SURPRENANT: NO, THEY WERE NOT.

3 THE COURT: ARE THEY IN HIS REPORT?

4 MR. SURPRENANT: THEY ARE IN MR. HICKS'
5 REPORT.

09:34AM

6 THE COURT: NO. ARE THEY IN MR. CONTINO'S
7 REPORT?

8 MR. SURPRENANT: YES, PAGE 45 TO 47.

9 YOU WILL SEE, YOUR HONOR, IN THE MIDDLE
10 OF THE PAGE, WHERE HE BEGINS DISCUSSING THEM.

09:34AM

11 THE COURT: I'M NOT TALKING ABOUT DISCUSSION.
12 I'M TALKING ABOUT THE DOCUMENTS.

13 DID YOU INTRODUCE THEM DURING
14 MR. HICKS'S TESTIMONY? IF NOT, I'M NOT INCLINED TO PUT
15 THEM UP NOW.

09:34AM

16 MR. SURPRENANT: OKAY. THANK YOU, YOUR HONOR.

17 Q. NOW, LET'S LOOK AT EXHIBIT -- CAN I READ FROM
18 THEM, YOUR HONOR?

19 THE COURT: YOU MAY.

20 MR. SURPRENANT: LET'S LOOK AT LINE 24 OF
21 DOUBLELINE CODE. (READING):

09:35AM

22 AND IT SAYS, THE VALUE THAT
23 WILL BE USED FOR THE EXCEL
24 WORKSHEET NAMED ON AN
25 EXPORT.

09:35AM

26 Q. DO YOU SEE THAT?

27 A. I DO.

28 Q. AND THAT'S AT PAGE 1, LINE 24.

1 IF YOU WOULD LOOK AT EXHIBIT 1510A-95,
2 LINE 134 OF PAGE 3 OUT OF 6, YOU WILL FIND EXACTLY THE
3 SAME LANGUAGE, CORRECT?

4 A. THAT'S CORRECT, MR. SURPRENANT.

5 Q. AND THEN, FOLLOWING THAT, THERE IS A
6 DESCRIPTION BEGINNING AT LINE 28:

7 WHEN EXPORTING TO EXCEL, THIS VALUE WILL
8 BE USED TO NAME THE SHEET.

9 AND IF YOU LOOK AT THE CORRESPONDING
10 LINE IN THE TCW CODE, IT SAYS, THIS THE VALUE AN EXCEL
11 SHEET WILL BE NAMED IN THE GRID IS EXPORTED TO EXCEL.

12 DO YOU SEE THAT?

13 A. I DO.

14 Q. NOW, DIDN'T IT APPEAR THAT DOUBLELINE CODE WAS
15 ATTEMPTED TO BE REWRITTEN FROM THE TCW CODE, BUT MADE
16 TO LOOK A LITTLE DIFFERENT?

17 A. THAT'S ONE EXPLANATION, MR. SURPRENANT.

18 I MEAN, THERE WERE ALTERNATIVE
19 EXPLANATIONS.

20 Q. OKAY.

21 NOW, YOU SAY THAT YOU DISMISS THIS EXACT
22 MATCH BY SAYING IT'S NOT A TRADE SECRET, CORRECT?

23 A. I THINK BOTH MYSELF AND MR. SMITH OPINED THAT
24 THIS CODE IS NOT TRADE SECRET.

25 Q. RIGHT.

26 BUT DID YOU WATCH MR. HICKS' TESTIMONY
27 LIVE?

28 A. I DID NOT.

09:35AM

09:36AM

09:36AM

09:36AM

09:37AM

1 Q. DID YOU READ IT?

2 A. I DID.

3 Q. AND DID YOU SEE THAT HE ADMITTED THAT THE
4 SIMILARITIES AND MATCHES THAT HE FOUND WERE NOT, IN AND
5 OF THEMSELVES, TRADE SECRETS, CORRECT?

09:37AM

6 A. THAT'S RIGHT.

7 Q. WHAT HE SAID IS THAT THE SIMILARITIES AND
8 MATCHES WERE FINGERPRINTS, IN HIS VIEW AS A COMPUTER
9 SCIENTIST, OF MEANINGFUL REFERENCES BY MR. MOORE OF THE
10 TCW CODE, WHEN HE WAS WRITING DOUBLELINE CODE.

09:37AM

11 THAT WAS HIS OPINION, CORRECT?

12 A. THAT'S RIGHT.

13 Q. NOW MR. HICKS, ALL OF THE SIMILARITIES HE
14 FOUND WERE IN THE SQL CODE, CORRECT?

15 A. ALL OF THE SIMILARITIES WE'VE DISCUSSED HERE,
16 YES.

09:38AM

17 Q. AND MR. HICKS FOUND SIMILARITIES IN ABOUT 300
18 LINES OF SQL CODE, CORRECT?

19 A. I DON'T SPECIFICALLY RECALL THAT FROM HIS
20 REPORT, MR. SURPRENANT; BUT I'M NOT DOUBTING YOU.

09:38AM

21 Q. DO YOU KNOW HOW MANY LINES IN TOTAL OF SQL
22 CODE THERE WERE IN THE DOUBLELINE CODE WRITTEN BY
23 MR. MOORE?

24 A. NO. I DON'T HAVE AN ACCURATE NUMBER FOR THAT.

25 Q. DO YOU KNOW IF IT WAS APPROXIMATELY 8,000
26 LINES?

09:38AM

27 MR. WEINGART: OBJECTION, YOUR HONOR. NO
28 FOUNDATION.

1 THE COURT: I DON'T BELIEVE WE HAVE EVIDENCE
2 OF THAT.

3 MR. SURPRENANT: EXCUSE ME, YOUR HONOR?

4 THE COURT: DID MR. HICKS TESTIFY TO THAT?

5 MR. SURPRENANT: HE DID NOT.

09:38AM

6 THE COURT: WELL, THEN WE HAVE NO EVIDENCE ON
7 WHICH TO BASE THE QUESTION.

8 MR. SURPRENANT: OKAY.

9 Q. NOW, LET'S TURN TO THE BWIC BROWSER AND THE
10 OTHER -- AND THE SECURITY ANALYZER.

09:39AM

11 NOW, PIMCO, THEY HAVE BLOOMBERG AND THE
12 OTHER PUBLICLY AVAILABLE SYSTEMS, CORRECT?

13 A. I IMAGINE THEY HAVE, YES.

14 Q. AND WAMCO HAS THOSE SYSTEMS, CORRECT?

15 A. I WOULD IMAGINE THEY HAVE, YES.

09:39AM

16 Q. TCW, YOU KNOW HAS, CORRECT? BLOOMBERG?

17 A. THAT'S CORRECT.

18 Q. AND YOU KNOW THAT DOUBLELINE HAS BLOOMBERG,
19 CORRECT?

20 A. CORRECT.

09:39AM

21 Q. AND CREDIT SUISSE, YOU KNOW THAT THEY HAVE
22 BLOOMBERG, CORRECT?

23 A. YES, THEY DO.

24 Q. AND GOLDMAN SACHS, YOU KNOW THAT THEY HAVE
25 BLOOMBERG, CORRECT?

09:39AM

26 A. YES.

27 Q. AND A COMPANY CALLED ELLINGTON (PHONETIC), YOU
28 KNOW HAS BLOOMBERG?

1 A. YES, THEY DO.

2 Q. AND YET ALL OF THEM HAVE DEVELOPED THEIR OWN
3 PROPRIETARY TRADING SYSTEMS, CORRECT?

4 A. I HAVE -- IN SOME OF THOSE CASES,
5 MR. SURPRENANT, I HAVE SPECIFIC KNOWLEDGE THAT THEY'VE
6 ADOPTED THEIR OWN TRADING SYSTEMS; BUT I THINK WHAT YOU
7 ARE POSING IS LIKELY.

09:39AM

8 Q. THAT EACH OF THESE COMPANIES HAVE DEVELOPED
9 THEIR OWN PROPRIETARY APPLICATIONS, INCLUDING
10 APPLICATIONS THAT ARE INTEGRATED TO THEIR OWN PRIVATE
11 PROPRIETARY DATABASES.

09:40AM

12 THAT'S YOUR OPINION, CORRECT?

13 A. I DON'T KNOW THAT I MENTIONED PROPRIETARY
14 DATABASES IN MY OPINION.

15 BUT AGAIN, I WON'T QUESTION WHETHER
16 THOSE LARGE MONEY MANAGERS AND DEALERS YOU HAVE
17 MENTIONED HAVE DEVELOPED PROPRIETARY SYSTEMS USING THE
18 THIRD-PARTY DATA WE'VE DISCUSSED TODAY.

09:40AM

19 Q. INTEGRATED INTO THEIR OWN PRIVATE PROPRIETARY
20 DATABASES, CORRECT?

09:40AM

21 A. THAT MAY BE TRUE.

22 Q. NOW, THE REASON THAT YOU FOUND BWIC BROWSER
23 AND SECURITY ANALYZER NOT TO BE TRADE SECRETS IS
24 BECAUSE THEY DON'T RELATE SPECIFICALLY TO FUTURE
25 INVESTMENT PERFORMANCES; OR THAT WAS ONE OF THE
26 REASONS, CORRECT?

09:40AM

27 A. THAT WAS ONE OF THE REASONS, YES.

28 Q. NOW, IF YOU COULD LOOK AT TRIAL EXHIBIT 51 IN

1 YOUR BOOK.

2 IT'S IN EVIDENCE. 151 -- I'M SORRY?

3 A. YES, MR. SURPRENANT.

4 Q. NOW, THAT WAS A DOCUMENT THAT, AT THE TIME I
5 TOOK YOUR DEPOSITION --

09:41AM

6 IF YOU COULD GO TO PAGE 9, MIKE.

7 YOU HAD NOT SEEN IT UNTIL I SHOWED IT TO
8 YOU, CORRECT?

9 A. THAT'S CORRECT.

10 Q. AND IF WE COULD BLOW UP THE PROBLEM, MIKE.

09:41AM

11 AND SO HERE THEY SET OUT THE PROBLEM
12 THAT THE BWIC BROWSER AND THE SECURITY ANALYZER SOUGHT
13 TO SOLVE, CORRECT?

14 MR. WEINGART: OBJECTION, YOUR HONOR,
15 CUMULATIVE. WE'VE BEEN THROUGH THIS.

09:41AM

16 THE COURT: OVERRULED.

17 LET'S MOVE RIGHT THROUGH IT, THOUGH.

18 MR. SURPRENANT: YES, YOUR HONOR.

19 IF WE COULD SHORTCUT IT, YOUR HONOR. IF
20 WE COULD GO TO THE BULLET AT THE BOTTOM.

09:42AM

21 AND IF YOU COULD HIGHLIGHT THE SECOND
22 BULLET, BEGINNING WITH BWIC MANAGEMENT.

23 THE ENTIRE BULLET, MIKE.

24 IT SAYS, BWIC MANAGEMENT AND SECURITY
25 DATA COLLECTION WAS DRAMATICALLY DECREASED, FROM FOUR
26 HOURS TO SEVERAL MINUTES, AND IS REFERENCED BY ROUGHLY
27 15 INDIVIDUALS DAILY.

09:42AM

28 NOW, YOU DON'T HAVE ANY BASIS TO

1 QUESTION THAT, DO YOU?

2 A. NO, MR. SURPRENANT.

3 Q. BUT -- AND THAT'S A BIG SAVINGS.

4 BEING ABLE TO DO FOUR HOURS OF WORK IN
5 15 MINUTES IS A CONSIDERABLE ACCELERATION, CORRECT?

09:42AM

6 A. YES, IT IS.

7 Q. AND PARTICULARLY WHEN YOU ONLY HAVE A LIMITED
8 TIME TO DECIDE WHAT BWIC'S, WHAT BIDS WANTED IN
9 COMPENSATION, THAT YOU WANTED TO ANALYZE AND PUT BIDS
10 ON, CORRECT?

09:43AM

11 A. WELL, AS WE WENT OVER IN MY DEPOSITION,
12 THERE -- THE PEOPLE THAT SELL BONDS HAVE AN INCENTIVE
13 TO GIVE PEOPLE LOOKING AT THEM, SUFFICIENT TIME IN
14 ORDER TO ANALYZE THEM.

15 SO, FOR EXAMPLE, IF MR. SMITH GAVE 48 TO
16 72 HOURS FOR PEOPLE TO LOOK AT BONDS HE WAS GOING TO
17 PUT OUT TO AUCTION, TO GIVE PEOPLE THAT MAY NOT HAVE
18 THIS CAPABILITY THE TIME THEY FELT THEY NEEDED TO
19 ANALYZE IT.

09:43AM

20 Q. MR. CONTINO, THAT WAS AT THE UPPER RANGES.

09:43AM

21 HE ALSO SAID IT WAS AS LITTLE AS THREE
22 TO EIGHT HOURS, CORRECT?

23 A. I DON'T REMEMBER THAT.

24 MR. SURPRENANT: OKAY. NO FURTHER QUESTIONS,
25 YOUR HONOR.

09:43AM

26 THE COURT: REDIRECT?

27 MR. WEINGART: BRIEFLY, YOUR HONOR.

28 //

REDIRECT EXAMINATION

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BY MR. WEINGART:

Q. COULD WE PUT UP EXHIBIT 2247.

THE FIRST BULLET POINT, MR. CONTINO,
TALKS ABOUT INDEPENDENT ECONOMIC VALUE.

09:44AM

AND WHEN YOU TALK ABOUT PERFORMANCE, IN
THIS INDUSTRY, IS THAT WHAT IS OF ECONOMIC VALUE, IN
YOUR VIEW, THINGS THAT HELP IMPROVE PERFORMANCE?

A. IT'S ONE OF THE THINGS, YES.

09:44AM

Q. YOU WERE ALSO ASKED SOME QUESTIONS ABOUT
WHETHER OR NOT YOU EXAMINED WHETHER THINGS WERE
CONFIDENTIAL OR PROPRIETARY.

DO YOU RECALL THOSE QUESTIONS?

A. I REMEMBER THOSE.

09:45AM

Q. AND IS SOMETHING BEING CONFIDENTIAL OR
PROPRIETARY DIFFERENT THAN WHETHER OR NOT IT'S A TRADE
SECRET?

A. BY DEFINITION, MR. WEINGART.

Q. AND WERE YOU ASKED TO LOOK AT WHETHER OR NOT
SOMETHING WAS A TRADE SECRET, OR WERE YOU ASKED TO
EXAMINE WHETHER OR NOT SOMETHING WAS CONFIDENTIAL AND
PROPRIETARY?

09:45AM

A. THE FORMER.

Q. MEANING THE TRADE SECRET QUESTION?

09:45AM

A. YES.

Q. NOW, YOU WERE ASKED SOME QUESTIONS ABOUT THIS
COMMENT THAT IS SIMILAR BETWEEN THE TWO SETS OF CODE?

1 A. I RECALL THOSE MR. WEINGART, YES.

2 Q. AND YOU SAID YOU AGREE WITH MR. SMITH THAT
3 THAT IS NOT A TRADE SECRET?

4 A. THAT'S CORRECT. THAT'S THE CODE ITSELF IN ITS
5 FUNCTION, IS NOT A TRADE SECRET. 09:46AM

6 Q. AND YOU ALSO SAID THAT YOU HAVE SOME ALTERNATE
7 EXPLANATIONS WITH REGARD TO THE QUESTION MR. SURPRENANT
8 ASKED YOU FOR THAT?

9 A. WELL, IF WE GO TO THE REPORT --

10 MR. SURPRENANT: OBJECTION, YOUR HONOR,
11 OUTSIDE THE SCOPE OF THE REPORT. 09:46AM

12 THE COURT: THE OBJECTION IS OVERRULED.

13 I'M NOT SURE WHERE WE'RE GOING YET, BUT
14 LET'S --

15 Q. BY MR. WEINGART: YOU TESTIFIED, IN RESPONSE
16 TO MR. SURPRENANT'S QUESTIONS, THAT YOU HAD SOME
17 ALTERNATE EXPLANATIONS FOR THAT SIMILARITY. 09:46AM

18 AND I'M JUST ASKING YOU, WHAT ARE THOSE
19 ALTERNATE EXPLANATIONS?

20 A. BRIEFLY IT GOES TO THE PURPOSE OF THIS
21 PARTICULAR SET OF CODE. 09:46AM

22 WHAT THIS CODE DOES IS ALLOW THE
23 PROGRAMMER TO PUT SOMETHING IMBEDDED WITHIN A PROGRAM
24 THAT THEY ARE CREATING, SOMETHING THAT HAS THE LOOK AND
25 FEEL OF AN EXCEL SPREADSHEET. 09:46AM

26 SO ONE COULD IMAGINE THAT THIS
27 PARTICULAR SET OF THINGS IS RATHER GENERIC. THIS HAS
28 COMPLICATION, NOT ONLY TO THE MORTGAGE BASIS, BUT

1 PROBABLY TO A LOT OF BUSINESSES. SO IT'S NOT IN ANY
2 WAY SPECIFIC TO THE MORTGAGE BUSINESS.

3 IT MAY BE THAT THIS CODE COULD HAVE BEEN
4 OBTAINED THROUGH SOME SORT OF OPEN SOURCE PROGRAMMING
5 BOARD.

09:47AM

6 MR. SURPRENANT: OBJECTION, YOUR HONOR.

7 MOVE TO STRIKE LAST SENTENCE AS
8 SPECULATIVE.

9 THE COURT: I'LL STRIKE THE RESPONSE.

10 Q. BY MR. WEINGART: DO YOU KNOW WHETHER OR NOT
11 THAT TYPE OF CODE IS ON OPEN SOURCE BOARDS?

09:47AM

12 A. THIS SORT OF CODE IS ON OPEN SOURCE BOARDS.

13 MR. WEINGART: NO FURTHER QUESTIONS.

14 THE COURT: MR. SURPRENANT?

15 MR. SURPRENANT: THREE QUESTIONS, YOUR HONOR.

09:47AM

16

17

18 RECROSS-EXAMINATION

19

20 BY MR. SURPRENANT:

21 Q. YOU DON'T KNOW IF THE EXACT MATCH IS ON ANY
22 COMMERCIAL BOARD, DO YOU?

23 A. AN EXACT MATCH, MR. SURPRENANT?

24 NO.

25 MR. SURPRENANT: I BELIEVE HE'S OPENED THE
26 DOOR TO SHOW THE TWO EXHIBITS, YOUR HONOR. HE'S JUST
27 EXAMINED HIM ON THEM.

09:48AM

28 MR. WEINGART: I'M HAPPY TO ARGUE.

1 I JUST RESPONDED WHAT HIS READING WAS.
2 THE COURT: THERE'S NO REFERENCE TO THE
3 SPECIFIC EXHIBITS.

4 I MEAN, WHAT -- WHAT ARE WE TALKING
5 ABOUT HERE?

09:48AM

6 MR. SURPRENANT: THAT'S FINE, YOUR HONOR. NO
7 FURTHER QUESTIONS.

8 MR. WEINGART: NOTHING FURTHER, YOUR HONOR.

9 THE COURT: ALL RIGHT. THANK YOU VERY MUCH,
10 MR. CONTINO, FOR YOUR TESTIMONY.

09:48AM

11 YOU MAY STEP DOWN.

12 THE WITNESS: THANK YOU, YOUR HONOR.

13 MR. WEINGART: YOUR HONOR, WE CALL KEVIN
14 MURPHY.

15

16 KEVIN MURPHY,
17 CALLED AS A WITNESS BY THE DEFENDANT,
18 WAS SWORN AND TESTIFIED AS FOLLOWS:

19

20

21 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

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

09:48AM

26 THE WITNESS: I DO.

27 THE CLERK: THANK YOU.

28 PLEASE BE SEATED.

09:49AM

1 SIR, PLEASE STATE AND SPELL YOUR NAME
2 FOR THE RECORD.

3 THE WITNESS: MY NAME IS KEVIN MURPHY,
4 K-E-V-I-N, M-U-R-P-H-Y.

5 THE CLERK: THANK YOU.

6 THE COURT: GOOD MORNING, MR. MURPHY.

7 MR. WEINGART: I FEEL THAT WAY SOMETIMES, TOO.

09:49AM

8
9
10 DIRECT EXAMINATION

09:49AM

11 BY MR. WEINGART:

12 Q. YOU ARE A PROFESSOR; IS THAT RIGHT?

13 A. YES, I AM.

14 Q. WHAT IS YOUR CURRENT POSITION?

15 A. I'M CURRENTLY THE KENNETH L. TREFFTZ CHAIR IN
16 FINANCE AT THE USC MARSHALL SCHOOL OF BUSINESS. AND I
17 HOLD CURRENT APPOINTMENTS AS PROFESSOR OF BUSINESS AND
18 LAW AT THE USC LAW SCHOOL AND PROFESSOR OF ECONOMICS AT
19 THE USC DEPARTMENT OF ECONOMICS.

09:49AM

20 Q. WHAT DO YOU TEACH AT USC?

09:49AM

21 A. I TEACH, PRIMARILY TEACH, COURSES IN EXECUTIVE
22 COMPENSATION, INCENTIVES IN CORPORATE GOVERNMENTS AT
23 THE UNDERGRADUATE MBA AND PH.D. LEVEL, ALL IN THE
24 BUSINESS SCHOOL.

25 Q. DID YOU TEACH ANYWHERE BEFORE YOU JOINED THE
26 USC FACULTY?

09:50AM

27 A. YES. BEFORE JOINING USC IN 1995, I WAS ON THE
28 FACULTY OF BOTH THE HARVARD BUSINESS SCHOOL AND THE

1 UNIVERSITY OF ROCHESTER'S ASSIGNMENT SCHOOL OF
2 BUSINESS.

3 Q. WHAT DEGREES DO YOU HOLD?

4 A. I HOLD A BACHELOR'S DEGREE IN ECONOMICS FROM
5 UCLA, AND A MASTER'S DEGREE AND PHD FROM THE UNIVERSITY
6 OF CHICAGO, BOTH IN ECONOMICS.

09:50AM

7 Q. WHO DO YOU ROOT FOR, UCLA OR USC?

8 A. IT'S BEYOND THE SCOPE.

9 MR. SURPRENANT: OBJECTION.

10 Q. BY MR. WEINGART: DO YOU HAVE A PARTICULAR
11 FOCUS IN YOUR SCHOLARSHIP?

09:50AM

12 A. FOR THE LAST 30 YEARS, ALMOST MY EXCLUSIVE
13 SCHOLARSHIP, STARTING WITH MY PHD DISSERTATION, HAS
14 BEEN ON EXECUTIVE COMPENSATION AND COMPENSATION
15 INCENTIVE INNOCENT OF AN ORGANIZATIONS.

09:50AM

16 Q. AND IN CONNECTION WITH THAT SCHOLARSHIP, HAVE
17 YOU REVIEWED EXECUTIVE COMPENSATION CONTRACTS?

18 A. YES, LITERALLY THOUSANDS OF CONTRACTS.

19 PLUS I'VE DESIGNED SCORES OF CONTRACTS.

20 Q. HAVE YOU PUBLISHED ACADEMIC ARTICLES REGARDING
21 EXECUTIVE COMPENSATION?

09:51AM

22 A. I'VE WRITTEN NEARLY 50 ARTICLES OR BOOKS OR
23 CASES OR BOOK CHAPTERS RELATING TO THE STRUCTURE OF
24 COMPENSATION CONTRACTS AND INCENTIVES IN ORGANIZATIONS.

25 Q. DO YOU HAVE ANY SPECIFIC EXPERTISE ON
26 EXECUTIVE COMPENSATION IN FINANCIAL SERVICES FIRMS?

09:51AM

27 A. A LARGE FOCUS OF MY RESEARCH OVER THE PAST
28 SEVERAL YEARS, ESPECIALLY SINCE THE FINANCIAL CRISIS,

1 HAS BEEN ON EXECUTIVE COMPENSATION AND FINANCIAL
2 SERVICES.

3 Q. HAVE YOU PROVIDED ANY ASSISTANCE TO THE
4 FEDERAL GOVERNMENT WITH REGARD TO ISSUES OF EXECUTIVE
5 COMPENSATION AT FINANCIAL SERVICES FIRMS?

09:51AM

6 A. I'VE TESTIFIED TO CONGRESS ON TWO OCCASIONS ON
7 THE WALL STREET BONUS CULTURE, BROADLY, AND THE
8 COMPENSATION PRACTICES AND FINANCIAL SERVICES FIRMS.

9 I ALSO SERVED AS AN ADVISOR TO THE U.S.
10 TREASURY IN DESIGNING PAY PLANS FOR THE BANKS THAT HAD
11 BEEN RECEIVING GOVERNMENT ASSISTANCE IN THE BAILOUTS.

09:52AM

12 MR. WEINGART: YOUR HONOR, WE WOULD -- SORRY.
13 COUPLE OF MORE QUESTIONS.

14 Q. HAVE YOU PREVIOUSLY TESTIFIED AS AN EXPERT?

15 A. YES, I HAVE.

09:52AM

16 Q. ON HOW MANY OCCASIONS?

17 A. IN ADDITION TO THE TRADITIONAL TESTIMONY, I'VE
18 TESTIFIED AT TRIAL, I BELIEVE, ON SIX OCCASIONS. AND
19 TESTIFIED BY DEPOSITION ON APPROXIMATELY 20 OCCASIONS.

20 Q. DO YOU HAVE A CUSTOMARY RATE THAT YOU CHARGE
21 FOR YOUR SERVICES?

09:52AM

22 A. YES, I DO.

23 \$750 AN HOUR.

24 Q. AND IS THAT THE RATE YOU ARE CHARGING
25 MR. GUNDLACH IN THIS CASE?

09:52AM

26 A. YES, IT IS.

27 Q. IS YOUR COMPENSATION IN THIS IN ANY WAY TIED
28 TO THE CONTENT OF YOUR TESTIMONY?

1 A. NO, IT IS NOT.

2 Q. IS IT IN ANY WAY DEPENDENT ON THE OUTCOME OF
3 THE CASE?

4 A. NO, IT IS NOT.

5 MR. WEINGART: YOUR HONOR, WE WOULD TENDER
6 PROFESSOR MURPHY AS AN EXPERT IN EXECUTIVE
7 COMPENSATION -- EXECUTIVE COMPENSATION ARRANGEMENTS.

09:53AM

8 MR. SURPRENANT: NO OBJECTION, YOUR HONOR.

9 THE COURT: HE'LL BE ADMITTED AS AN EXPERT,
10 LADIES AND GENTLEMEN.

09:53AM

11 THE PROFESSOR WILL BE TESTIFYING AS AN
12 EXPERT IN THIS MATTER.

13 GO AHEAD.

14 Q. BY MR. WEINGART: LET'S START BY EXPLAINING A
15 FEW TERMS THAT WE'LL TALK ABOUT DURING YOUR TESTIMONY.

09:53AM

16 WHAT IS INCENTIVE COMPENSATION?

17 A. WELL, BROADLY SPEAKING, INCENTIVE COMPENSATION
18 IS COMPENSATION THAT VARIES WITH THE PERFORMANCE OF AN
19 INDIVIDUAL BUSINESS UNIT OR A COMPANY.

20 THE EXAMPLES WOULD INCLUDE BONUSES,
21 COMMISSIONS, FEE SHARING ARRANGEMENTS, PROFIT SHARING
22 ARRANGEMENTS, STOCK OPTION, RESTRICTED STOCK, AND A
23 PLETHORA OF OTHER DEVICES.

09:53AM

24 Q. NOW, IS INCENTIVE COMPENSATION ALWAYS REALIZED
25 AT THE TIME AN EMPLOYEE PERFORMS HIS OR HER SERVICES?

09:53AM

26 A. NO. THERE'S VERY OFTEN A LAG BETWEEN WHEN THE
27 SERVICES ARE PERFORMED AND WHEN COMPENSATION IS PAID.

28 Q. ARE YOU FAMILIAR WITH THE TERM, FRONT LOADED,

1 IN THE INCENTIVE COMPENSATION CONTEXT?

2 A. YEAH. WHEN WE USE THE WORD FRONT LOADED,
3 WE'RE DESCRIBING SITUATIONS WHERE THE SERVICES ARE
4 PROVIDED -- FOR EXAMPLE, THE WORK THAT HAS TO BE DONE
5 IS PROVIDED ALONG TIME OR A -- LONG BEFORE THE RESULTS
6 ARE ACTUALLY REALIZED THAT THE VALUE CREATED.

09:54AM

7 Q. CAN YOU GIVE AN EXAMPLE?

8 MR. SURPRENANT: OBJECTION, YOUR HONOR,
9 RELEVANCE, 352.

10 THE COURT: OVERRULED.

09:54AM

11 THE WITNESS: WELL, AS AN EXAMPLE, LET'S THINK
12 OF A FUND MANAGER WHO LAUNCHES A NEW FUND WITH -- WHERE
13 THE WORK INVOLVED INVOLVES NOT ONLY LAUNCHING THE FUND,
14 IDENTIFYING THE INVESTORS, RAISING THE CAPITAL AND
15 IDENTIFYING THE INVESTMENT OPPORTUNITIES FOR THE
16 CAPITAL. AND THAT WORK HAPPENS MAYBE YEARS BEFORE THE
17 INVESTMENTS ARE LIQUIDATED AND THE PERFORMANCE IS
18 ACTUALLY REALIZED.

09:54AM

19 Q. NOW --

20 SORRY. WERE YOU DONE? I DIDN'T MEAN TO
21 CUT YOU OFF.

09:54AM

22 A. I WAS SAYING THAT CREATING INCENTIVES FOR
23 THOSE KIND OF ACTIVITIES IS ONE OF THE CLASSIC
24 CHALLENGES IN INCENTIVE FEE DESIGN.

25 Q. UMM, NOW, GIVEN THIS TIMING ISSUE, TO WHAT
26 EXTENT IS IT CUSTOM AND PRACTICE, EMPLOYMENT PRACTICE,
27 TO INCLUDE PROVISIONS FOR WHAT HAPPENS, IN TERMS OF THE
28 ECONOMICS UPON TERMINATION?

09:55AM

1 MR. SURPRENANT: OBJECTION, YOUR HONOR,
2 RELEVANCE, 352.

3 THE COURT: I THINK WE'RE GOING BEYOND WHERE
4 WE SAID WE COULD GO IN THIS AREA.

5 MR. WEINGART: I JUST HAD THIS ONE QUESTION,
6 YOUR HONOR.

09:55AM

7 THE COURT: I'LL SUSTAIN THE OBJECTION.

8 MOVE ON.

9 MR. WEINGART: OKAY.

10 Q. ARE YOU FAMILIAR WITH THE TERM, OPPORTUNISTIC
11 TERMINATION?

09:55AM

12 A. YES, I AM.

13 Q. CAN YOU DESCRIBE FOR US WHAT THAT MEANS?

14 A. OPPORTUNISTIC TERMINATION DESCRIBES SITUATIONS
15 WHERE AN EMPLOYER MIGHT ELECT TO TERMINATE AN
16 EMPLOYEE --

09:55AM

17 MR. QUINN: YOUR HONOR, THIS IS IRRELEVANT,
18 MOVE TO STRIKE.

19 THE COURT: I'M NOT GOING TO STRIKE IT.

20 GO AHEAD.

09:55AM

21 THE WITNESS: JUST BEFORE A LARGE AMOUNT OF
22 COMPENSATION IS PAYABLE.

23 Q. BY MR. WEINGART: ARE YOU -- YOU ARE FAMILIAR
24 WITH MANAGEMENT FEE?

25 A. YES.

09:56AM

26 Q. WHAT ARE MANAGEMENT FEES, BRIEFLY?

27 A. MANAGEMENT FEES ARE FEES PAID TO COMPANIES
28 LIKE TCW FOR MANAGING ASSETS, THAT ARE USUALLY

1 EXPRESSED AS A PERCENTAGE OF THE VALUE OF ASSETS UNDER
2 MANAGEMENT.

3 Q. AND PERFORMANCE FEES, WHAT ARE THOSE?

4 A. PERFORMANCE FEES ARE FEES, ALSO PAID TO
5 INVESTMENT MANAGERS OR ASSET MANAGERS, LIKE TCW, THAT
6 ARE TYPICALLY BASED ON THE PERFORMANCE OF THE ASSETS
7 UNDER MANAGEMENT.

09:56AM

8 Q. NOW, ARE MANAGEMENT FEES AND PERFORMANCE FEES
9 REALIZED AT THE SAME TIME THE SERVICES ARE BEING
10 PERFORMED?

09:56AM

11 A. VERY OFTEN, THE SERVICES ARE PERFORMED WELL
12 BEFORE THE FEES THEMSELVES ARE REALIZED.

13 Q. DOES AN AGREEMENT TO SHARE A PERFORMANCE FEE
14 PRESENT ANY OF THE ISSUES THAT YOU HAVE DESCRIBED
15 EARLIER, WITH REGARD TO FRONT LOADING OR OPPORTUNISTIC
16 TERMINATION?

09:57AM

17 A. YES, IN PARTICULAR WITHIN THE EXTENT OF
18 PERFORMANCE FEES.

19 Q. WHY IS THAT?

20 A. WELL, OPPORTUNISTIC TERMINATION IS ESPECIALLY
21 A PROBLEM WHEN THERE'S FRONTLOADING OF SERVICES; FOR
22 EXAMPLE, WITH THE FUND MANAGER THAT I DID GIVE BEFORE,
23 WHO'S MAKING A LOT OF UP-FRONT INVESTMENTS, WHERE THE
24 PAYOFFS WON'T COME UNTIL MUCH LATER IN THE CONTRACTS,
25 IF THAT MANAGER BELIEVED THAT HE WOULD BE TERMINATED
26 AFTER THE SERVICES WERE RENDERED, BUT BEFORE THE
27 PERFORMANCE FEES WERE REALIZED, EVEN IF HE RECEIVED A
28 SHARE OF THE -- SUPPOSEDLY RECEIVED A SHARE OF THE

09:57AM

09:57AM

1 PERFORMANCE FEES, THAT WOULD SERIOUSLY ERODE THE
2 INCENTIVES HE HAS TO PROVIDE THE SERVICES UP FRONT.

3 Q. NOW, YOU MENTIONED --

4 MR. QUINN: YOUR HONOR, I MOVE TO STRIKE THE
5 ANSWER AS HAVING NOTHING TO DO WITH THE CONTRACT. IT'S
6 IRRELEVANT.

09:58AM

7 MR. SURPRENANT: YOUR HONOR, COULD WE
8 APPROACH?

9 THE COURT: YES, YOU MAY.

10

09:58AM

11 (THE FOLLOWING PROCEEDINGS WERE
12 HELD IN OPEN COURT, AT SIDEBAR:)

13

14 MR. QUINN: THIS CONCEPT OF OPPORTUNISTIC
15 TERMINATION, THIS IS AN ULTIMATE ISSUE THAT HE'S
16 OPINING ON. HE'S TELLING THE JURY THAT THERE'S A
17 DELIBERATE BREACH OF CONTRACT HERE, OR THERE'S --
18 THAT'S A POTENTIAL ISSUE.

09:58AM

19 AGAIN, THIS IS EXACTLY THE FREE-FLOATING
20 OPINING WITHOUT TIED TO ASSET MANAGEMENT AGREEMENTS.
21 THIS AGREEMENT IN PARTICULAR, ARRANGEMENTS --

09:58AM

22 THE COURT: BUT HE'S TALKING ABOUT THE
23 PRACTICE IN THE INDUSTRY AND GENERALIZED INFORMATION.
24 AND THEN YOU OBJECT TO THE CUSTOM AND PRACTICES. YOU
25 DON'T WANT THAT.

09:59AM

26 LET ME HEAR FROM --

27 MR. QUINN: I MEAN, THEY HAVEN'T EVEN TIED IT
28 TO THIS INDUSTRY.

1 THE COURT: WELL, HE'S TALKED ABOUT IN THE
2 INDUSTRY NOW.

3 YOU WANT THEM TO LAY MORE FOUNDATION IN
4 THAT REGARD.

5 MR. QUINN: HE'S AN EXPERT IN COMPENSATION IN
6 ASSET MANAGEMENT FIRMS, PORTFOLIO MANAGERS, YES.

09:59AM

7 THE COURT: WELL, THEY CAN LAY MORE FOUNDATION
8 ON THAT.

9 MR. QUINN: I HAVEN'T HEARD ANY FOUNDATION ON
10 THAT.

09:59AM

11 MR. BRIAN: CAN I RAISE A PROCEDURAL THING?

12 THE COURT: HE'S BASICALLY SAID IT'S IN THE
13 FINANCIAL INDUSTRY AND FINANCIAL MANAGEMENT INDUSTRY.
14 I THOUGHT THAT WAS THERE. YOU DIDN'T OBJECT TO
15 ENTERING HIM AS AN EXPERT.

09:59AM

16 SO IT SEEMS TO ME THAT YOU HAVE ACCEPTED
17 HIM AS AN EXPERT ON THE SUBJECT MATTER OF HIS
18 TESTIMONY.

19 MR. QUINN: WELL, YOUR HONOR, I HAVE NO DOUBT
20 HE'S AN EXPERT ON EXECUTIVE COMPENSATION WITHIN THE
21 FINANCIAL INDUSTRY BETWEEN -- ON THE ONE HAND. HEDGE
22 FUNDS, ASSET MANAGEMENT FIRMS, INVESTMENT BROKERS,
23 BROKER DEALERS. YOU HAVE A HUGE RANGE.

09:59AM

24 THE COURT: I'M SURE YOU CAN PURSUE THAT IN
25 YOUR CROSS-EXAMINATION OF THIS WITNESS.

10:00AM

26 NOW, WHAT DID YOU WANT TO SAY?

27 MR. BRIAN: WELL, I HAVE A PROCEDURAL THING I
28 ASKED IN MR. GUNDLACH'S TESTIMONY. AND I WAS GOING TO

1 SAY THAT I STRONGLY -- MR. QUINN PERSONALLY STRONGLY
2 OBJECTED. YOUR HONOR UPHELD THAT PROPERLY SO --
3 MR. SURPRENANT IS HANDLING THIS WITNESS AND OBJECTED
4 THE FIRST TWO TIMES. NOW MR. QUINN HAS SOUGHT TO
5 OBJECT.

10:00AM

6 WE CANNOT, AND THE COURT SHOULD NOT
7 TOLERATE TWO LAWYERS OBJECTING TO QUESTIONS ASKED OF
8 THIS WITNESS GENERALLY.

9 MR. QUINN: I AGREE WITH THAT.

10 THE COURT: GENERALLY IN THE -- EVERYBODY IN
11 THE HEAT OF BATTLE GETS TOO EXITED AND DOES SOMETHING
12 THEY WOULD NOT DO IF THEY THOUGHT ABOUT IT.

10:00AM

13 MR. SURPRENANT: I THINK MR. QUINN THINKS I
14 NEED A LOT OF DIRECTION.

15 YOUR HONOR, WITH RESPECT TO NOT OBJECTING, I
16 OBJECTED YESTERDAY. WE'VE ARGUED THAT THIS
17 TESTIMONY --

10:00AM

18 THE COURT: AND I SAID I WAS GOING TO ALLOW
19 IT.

20 MR. SURPRENANT: YEAH.

10:00AM

21 THE COURT: SO HERE WE GO. OKAY. LET'S
22 FINISH IT UP.

23 MR. SURPRENANT: I DON'T LIKE TO OBJECT A LOT,
24 BUT WE KINDA NEED TO FIGURE OUT AS WE GO ALONG WHAT'S
25 ACCEPTABLE AND WHAT'S NOT.

10:01AM

26 THE COURT: WELL, IT SEEMS TO ME, BUT CORRECT
27 ME IF I'M WRONG --

28 MR. WEINGART: I'M ABOUT TO GET TO THE

1 CONTRACT.

2 THE COURT: WELL, LET'S MOVE ON TO THAT.

3 MR. WEINGART: FINE.

4

5 (THE FOLLOWING PROCEEDINGS
6 WERE HELD IN OPEN COURT IN
7 THE PRESENCE OF THE JURY:)

8

9 Q. BY MR. WEINGART: I BELIEVE BEFORE WE BROKE
10 THERE, YOU WERE TALKING ABOUT ISSUES WITH REGARD TO
11 OPPORTUNISTIC TERMINATION FROM THE EMPLOYEE'S SIDE.

10:01AM

12 DOES IT ALSO PRESENT ISSUES WITH REGARD
13 TO THE EMPLOYER, THAT THE EMPLOYER USES?

14 A. YES. TO THE EXTENT THAT THE EMPLOYER WANTS
15 THE EMPLOYEE TO TAKE, RENDER THOSE SERVICES UP FRONT
16 THAT WON'T BE PAID UNTIL LATER, IT'S VERY MUCH IN THE
17 INTEREST OF THE EMPLOYER TO PROTECT THE EMPLOYEE
18 AGAINST OPPORTUNISTIC TERMINATIONS.

10:01AM

19 Q. NOW, YOU UNDERSTAND THAT IT'S UP TO THE JURY
20 TO DECIDE WHETHER OR NOT THERE WAS AN AGREEMENT
21 BREACHED IN CONNECTION WITH THE 2000 DISCUSSIONS OF
22 MR. GUNDLACH'S CONTRACT, CORRECT?

10:02AM

23 A. YES, I DO.

24 Q. SO I WANT TO ASK YOU SOME QUESTIONS ABOUT SOME
25 TERMS IN ONE OF THE DOCUMENTS THAT THE JURY IS GOING TO
26 CONSIDER IN ANSWERING THAT QUESTION.

10:02AM

27 CAN WE PUT UP TRIAL EXHIBIT 66. AND
28 COULD WE GO TO PAGE 2.

1 THE COURT: THIS IS EXHIBIT 66?

2 MR. WEINGART: 66, YOUR HONOR.

3 THE COURT: THANK YOU.

4 Q. AND THERE'S A -- NUMBER ONE, THERE'S A
5 PROVISION REGARDING TERM.

10:02AM

6 DO YOU SEE THAT?

7 A. YES, I DO.

8 Q. HOW, IF AT ALL, DOES A TERM OF YEARS PROTECT
9 AGAINST OPPORTUNISTIC TERMINATION?

10 A. WELL, IN THIS EXAMPLE, THERE'S A TERM OF YEARS
11 OF APPROXIMATELY FIVE YEARS.

10:03AM

12 AND WHAT THAT WOULD MEAN IS, DURING THAT
13 FIVE-YEAR PERIOD, THE EMPLOYEE WOULD BE PROTECTED
14 AGAINST OPPORTUNISTIC TERMINATION WITHOUT CAUSE OVER
15 THAT PERIOD; WHICH MEANS IF THERE WERE PROFITS REALIZED
16 IN THAT FIVE YEARS, THAT WOULD AT LEAST PARTIALLY
17 PROTECT AGAINST OPPORTUNISTIC TERMINATION.

10:03AM

18 Q. WHY DO YOU SAY ONLY PARTIALLY?

19 A. WELL, IN MY GIVEN EXAMPLE, THE SPECIAL
20 MORTGAGE CREDIT FUNDS THAT I KNOW WE'VE TALKED ABOUT
21 HAD POTENTIALLY AN EIGHT-YEAR LIFE, AND THIS CONTRACT
22 THAT I'M LOOKING AT HERE ON THE SCREEN HAS A FIVE-YEAR
23 TERM; SO IT'S VERY POSSIBLE THAT THE AGREEMENT WOULD
24 RUN OUT BEFORE THE PROFITS WERE REALIZED.

10:03AM

25 Q. NOW, COULD WE GO TO PAGE 4 OF THE DOCUMENT?

10:04AM

26 AND BLOW UP THE PARAGRAPH 6,
27 TERMINATION.

28 AND IF WE COULD HIGHLIGHT THE BOTTOM

1 PARAGRAPH THERE, YOUR COMPENSATION, INCLUDING ANY BASE
2 DRAW.

3 AND YOU SEE AFTER ROMAN NUMERAL II,
4 (READING:)

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

11 DO YOU SEE THAT LANGUAGE?

12 A. YES, I DO.

13 Q. ARE YOU FAMILIAR WITH THE USE OF THE TERM,
14 ACCRUED, IN THE EXECUTIVE COMPENSATION CONTEXT?

15 A. YES, I AM.

16 Q. AND ARE YOU FAMILIAR WITH THE USE OF THE TERM
17 ACCRUED UNDER GENERALLY ACCEPTED ACCOUNTING PRINCIPLES?

18 A. YES, I AM.

19 Q. IS THE DEFINITION OF ACCRUED -- EXCUSE ME --
20 UNDER ACCOUNTING PRINCIPLES AND EXECUTIVE COMPENSATION
21 PRINCIPLES, THE SAME?

22 A. VERY CONSISTENT.

23 Q. AND WHAT DOES ACCRUED MEAN?

24 A. IN ECONOMICS, ACCOUNTING, OR IN COMPENSATION
25 DESIGN, ACCRUED HAS A VERY PRECISE DEFINITION THAT
26 MEANS ACCOUNTING FOR AN AMOUNT WHEN THE ACTIVITIES
27 ASSOCIATED WITH THAT AMOUNT OCCUR, AS OPPOSED TO
28 ACCOUNTING FOR THAT AMOUNT WHEN THE ACTIVITY -- WHEN

1 THE AMOUNT IS ACTUALLY REALIZED OR PAID.

2 IN GENERAL, FOR REVENUES OR EXPENSES,
3 FOR EXAMPLE, THE POINT IN TIME IN WHICH THE REVENUES
4 AND EXPENSES ARE ACCRUED WILL TYPICALLY BE DIFFERENT,
5 AND ALMOST ALWAYS EARLIER, THAN THE POINT IN TIME WHEN
6 THE REVENUES AND EXPENSES ARE PAID.

10:05AM

7 Q. EXCUSE ME. SO FOR MANAGEMENT FEES, THAT WOULD
8 BE AN ACCRUAL PRIOR TO PAYMENT?

9 A. YES.

10 JUST AGAIN, AS AN EXAMPLE, I THINK
11 YOU'VE HEARD TESTIMONY THAT TCW'S PRACTICE WAS TO
12 ACCRUE MANAGEMENT FEES ON A MONTHLY BASIS, WHERE THEY
13 WOULD BE PAID ON A QUARTERLY BASIS.

10:06AM

14 CONCEPTUALLY, THOUGH, SINCE WE ALWAYS
15 KNOW WHAT THE ASSETS UNDER MANAGEMENT ARE,
16 CONCEPTUALLY, WE CAN COMPUTE THE ACCRUED MANAGEMENT FEE
17 AT ANY POINT IN TIME.

10:06AM

18 Q. AND IS THAT SIMILARLY TRUE WITH REGARD TO
19 PERFORMANCE FEES, ANY ACCRUAL?

20 A. WELL, PERFORMANCE FEES, I THINK THE EASIEST
21 WAY TO THINK ABOUT ACCRUALS IS THE AMOUNT THAT COULD BE
22 POTENTIALLY REALIZED IF THE INVESTMENTS IN THAT FUND,
23 FOR EXAMPLE, WERE LIQUIDATED AT A POINT IN TIME.
24 IGNORING, FOR SIMPLICITY, THE -- ANY CONTRACTUAL
25 OBLIGATIONS OR HOLDING REQUIREMENTS THAT WOULD MAKE
26 LIQUIDATION DIFFICULT. BUT THAT WOULD BE A WAY TO
27 ADDRESS WHAT THE ACCRUALS ARE.

10:06AM

10:06AM

28 MY UNDERSTANDING, AGAIN, IS IN TESTIMONY

1 WE'VE HEARD, THAT IT WAS TCW'S PRACTICE TO ACCRUE FOR
2 CARRIED INTEREST OR PERFORMANCE FEES ON A MONTHLY
3 BASIS, BASED ESSENTIALLY ON TCW'S BEST ESTIMATE OF WHAT
4 THE MARKET VALUE OF THE SECURITIES IN THE FUNDS WERE.

5 Q. TO WHAT EXTENT DOES A TERM PROVIDING FOR
6 PAYMENT OF MONEY ACCRUED TO THE DATE OF TERMINATION
7 PROTECT AGAINST OPPORTUNISTIC TERMINATION?

10:07AM

8 MR. SURPRENANT: OBJECTION. RELEVANCE, 352.

9 THE COURT: OVERRULED.

10 THE WITNESS: IT PROVIDES A GOOD DEAL OF
11 PROTECTION.

10:07AM

12 IF WE THINK ABOUT THE PROBLEM OF
13 OPPORTUNISTIC TERMINATION, OR OF THE EXAMPLE I GAVE,
14 WOULD BE TERMINATED AN EMPLOYEE JUST BEFORE A LARGE
15 BONUS IS DUE.

10:07AM

16 IF THAT EMPLOYEE HAD THE RIGHT TO
17 ACCRUED COMPENSATION AND TERMINATION, IN OTHER WORDS,
18 THE RIGHT TO THE BONUS HE HAD EARNED UP UNTIL THE DATE
19 OF TERMINATION, REGARDLESS OF WHETHER IT'S BEEN PAID,
20 THAT WOULD OBVIOUSLY PROTECT HIM AGAINST -- AT LEAST
21 PARTIALLY PROTECT HIM AGAINST OPPORTUNISTIC
22 TERMINATION.

10:08AM

23 Q. NOW, TCW HAS SUGGESTED THAT THAT COULD RESULT
24 IN A SITUATION WHERE MONEY GETS PAID, BASED ON ACCRUED
25 TERMINATION, ON INVESTMENTS THAT COULD LATER DECLINE IN
26 VALUE.

10:08AM

27 YOU UNDERSTAND THAT?

28 A. YES, I DO.

1 Q. AND WOULD PAYMENT OF WHAT WAS ACCRUED TO THE
2 DATE OF TERMINATION BE CONSISTENT OR INCONSISTENT WITH
3 CUSTOM AND PRACTICE AND INCENTIVE COMPENSATION
4 STRUCTURES, GIVEN THAT CONCERN?

5 MR. SURPRENANT: OBJECTION, YOUR HONOR.
6 OUTSIDE THE SCOPE OF THE WITNESS' EXPERT REPORT.

10:08AM

7 MR. WEINGART: IT'S COVERED IN HIS DEPOSITION,
8 YOUR HONOR.

9 THE COURT: OVERRULED.

10 THE WITNESS: IN THE CONTEXT OF THE TWO MAJOR
11 FORMS OF COMPENSATION, I KNOW WE WERE TALKING ABOUT,
12 WHICH WOULD BE MANAGEMENT FEES AND CARRIED INTEREST,
13 PAYING COMPENSATION ACCRUED TO TERMINATION IS PERFECTLY
14 CONSISTENT WITH NOT ONLY SOUND ECONOMICS AND SOUND
15 COMPENSATION INCENTIVE PRACTICE, BUT ALSO HELPS ALIGN
16 THE INTEREST WITH THE MANAGERS AND SHAREHOLDERS.

10:08AM

10:09AM

17 Q. WHY IS THAT?

18 A. LET ME TAKE MANAGEMENT FEES, FOR EXAMPLE.

19 WE KNOW THAT -- WE KNOW THAT SERVICES
20 HAVE TO BE RENDERED TO MANAGE THE ASSET PORTFOLIO ON AN
21 ONGOING BASIS, EVEN THOUGH THE MANAGEMENT FEES
22 THEMSELVES AREN'T PAID UNTIL THE END OF EACH QUARTER.

10:09AM

23 SO WE KNOW IF HE WANT TO PROVIDE --
24 REWARD MANAGERS FOR THAT SERVICE ACCRUED
25 DETERMINATION -- ACCRUED DETERMINATION IS A WAY THAT WE
26 CAN PROVIDE THEM FOR THE SERVICES THEY PROVIDED, AT
27 LEAST UP THROUGH TERMINATION.

10:09AM

28 NOW, FOR MANAGEMENT FEES, WHETHER OR NOT

1 THE AMOUNT THAT TCW ULTIMATELY REALIZES IS A LOT HIGHER
2 OR A LOT LOWER THAN THE ACCRUED MANAGEMENT FEES, ISN'T
3 REALLY MUCH OF AN ISSUE, BECAUSE FOR MANAGEMENT FEES,
4 TCW CAN REASONABLY ESTIMATE WHAT THE MANAGEMENT FEES
5 WILL BE.

10:10AM

6 AND IN FACT IT'S NOT SO MUCH THAT THOSE
7 FEES ARE PAID TO TCW, AS THAT TCW DEDUCTS THEM FROM
8 EXISTING CLIENTS' ACCOUNTS; SO THE ONLY DIFFERENCE,
9 REAL DIFFERENCE BETWEEN ACCRUED -- THE ACCRUED VALUE OF
10 MANAGEMENT FEES AND THE REALIZED VALUE, IS JUST THE
11 TIMING ISSUE, BECAUSE IT'S FOR A PARTIAL PERIOD.

10:10AM

12 MR. SURPRENANT: OBJECTION, YOUR HONOR. MOVE
13 TO STRIKE, FOUNDATION.

14 THE COURT: I'LL STRIKE THE RESPONSE.

15 IT DID SEEM TO GO A LITTLE BEYOND.

10:10AM

16 IF YOU WANT TO LAY THE FOUNDATION FOR
17 THAT.

18 AND IT'S THE LATTER PART OF THE
19 RESPONSE.

20 MR. WEINGART: THAT WAS GOING TO BE MY
21 QUESTION. THE WHOLE -- I DON'T WANT TO START OVER
22 AGAIN FROM THE BEGINNING.

10:10AM

23 THE COURT: JUST THE PART CONCERNING FOR TCW.

24 MR. WEINGART: FAIR ENOUGH, YOUR HONOR.

25 Q. LET'S FOCUS ON CARRIED INTEREST.

10:11AM

26 WHERE YOU HAVE INVESTMENTS THAT CAN GO
27 UP, INVESTMENTS THAT CAN GO DOWN, HOW WOULD PAYMENTS
28 OF -- ACCRUED TO POINT OF TERMINATION BE INCONSISTENT

1 OR CONSISTENT WITH DEALING WITH THE OPPORTUNISTIC
2 TERMINATION ISSUE?

3 A. WELL, IT'S CERTAINLY TRUE THAT ULTIMATELY, THE
4 CARRIED INTEREST -- THE REALIZED CARRIED INTEREST CAN
5 BE EITHER A LOT HIGHER OR A LOT LOWER THAN WHAT'S
6 ACCRUED TO THE DATE OF TERMINATION.

10:11AM

7 BUT THAT ACTUALLY SPRING SENDS THE
8 ARGUMENT OF WHY IT MAKES SENSE TO HAVE THE CONTRACTS
9 BASED ON ACCRUED TO TERMINATION.

10 Q. WHY IS THAT?

10:11AM

11 A. THINK ABOUT IT THIS WAY:

12 THE EXTENT THAT THE ACCRUED TO
13 TERMINATION AMOUNT OF THE CARRIED INTEREST IS THE
14 AMOUNT THAT THE COMPANY COULD REALIZE, IF IT LIQUIDATED
15 ITS INVESTMENTS UPON THE DATE OF TERMINATION.

10:11AM

16 IT'S -- IF IT CHOOSES NOT TO LIQUIDATE
17 THOSE INVESTMENTS, PRESUMABLY IT REFLECTS THE FACT THAT
18 IT THINKS THOSE INVESTMENTS ARE GOING TO KEEP GOING UP
19 IN VALUE.

20 BUT THAT'S THE COMPANY'S CHOICE, AT THIS
21 POINT OF VIEW. AND THERE'S NOT REALLY A LOT OF
22 ECONOMIC RATIONALE TO GIVE THE TERMINATED EXECUTIVE THE
23 BENEFIT OF GOOD LIQUIDATION DECISIONS BY THE COMPANY
24 AFTER TERMINATION, OR TO PENALIZE THE EXECUTIVE WHO'S
25 TERMINATED FOR BAD LIQUIDATIONS BY THE COMPANY AFTER
26 TERMINATION, BECAUSE THE COMPANY COULD HAVE LIQUIDATED
27 AND REALIZED THE AMOUNT UPON TERMINATION.

10:12AM

10:12AM

28 Q. IS THE CONCEPT OF ACCRUED TO TERMINATION THE

1 SAME OR DIFFERENT THAN VESTING?

2 THE REPORTER: I'M SORRY, "THE SAME OR
3 DIFFERENT FROM?

4 MR. WEINGART: VESTING.

5 THE WITNESS: VESTING AND ACCRUED TO
6 TERMINATION ARE TWO VERY DIFFERENT CONCEPTS.

10:13AM

7 Q. BY MR. WEINGART: AND THE LANGUAGE THAT WE SAW
8 IN EXHIBIT 66 TALKED ABOUT ACCRUAL, AND NOT VESTING,
9 CORRECT?

10 A. THAT'S CORRECT.

10:13AM

11 Q. DID YOU EXAMINE ANY OTHER CONTRACTS AT TCW
12 THAT DID INCLUDE VESTING?

13 A. IN MY DEPOSITION, I WAS SHOWN A CONTRACT FROM
14 ANOTHER SENIOR TCW FUND MANAGER THAT HAD EXPLICIT BEST
15 INTEREST PROVISIONS.

10:13AM

16 Q. AND WOULD SUCH VESTING PROTECT THAT MANAGER
17 WITH RESPECT TO THESE ISSUES OF FRONT LOADING AND
18 OPPORTUNISTIC TERMINATION?

19 A. YES. AGAIN, AT LEAST PARTIALLY.

20 Q. NOW, YOU SAID THAT MR. GUNDLACH DID NOT HAVE
21 VESTING.

10:14AM

22 ASSUMING THAT THE 2007 AGREEMENT
23 CONTAINED A TERM PROVIDING FOR PAYMENT OF FEES ACCRUED
24 AT TERMINATION, WOULD THAT CUSTOMARILY BE RECOGNIZED,
25 IN THE INCENTIVE COMPENSATION FIELD, AS AN ALTERNATIVE
26 TO VESTING, AND ADDRESSING THESE ISSUES OF
27 OPPORTUNISTIC TERMINATION --

10:14AM

28 MR. SURPRENANT: OBJECTION. EXCUSE ME. I'M

1 SORRY.

2 OBJECTION, YOUR HONOR. LEADING,
3 INCOMPLETE HYPOTHETICAL, 352.

4 THE COURT: ALL RIGHT.

5 ON THAT OBJECTION, WE'LL TAKE OUR
6 MORNING RECESS, LADIES AND GENTLEMEN.

10:14AM

7 AND YOU MAY BE EXCUSED FOR 20 MINUTES.

8

9 (AT 10:14 A.M. THE JURY WAS

10 EXCUSED, AND THE FOLLOWING

10:14AM

11 PROCEEDINGS WERE HELD:)

12

13 THE COURT: ALL RIGHT. WE'RE OUT OF THE

14 PRESENCE OF THE JURY.

15 MY SENSE IS, MR. SURPRENANT, THAT
16 PLAINTIFF TCW HAS RAISED THE DISTINCTION OF VESTING IN
17 DIRECT EXAMINATION ON THESE CONTRACTS OVER THE LAST
18 SEVERAL WEEKS, ON A NUMBER OF OCCASIONS.

10:15AM

19 MR. QUINN: COULD THE WITNESS BE EXCUSED, YOUR
20 HONOR?

10:15AM

21 THE COURT: YES, YOU MAY.

22 YOU CAN STEP OUT, SIR.

23

24 (WITNESS LEAVES THE COURTROOM)

25

10:16AM

26 THE COURT: ALL RIGHT. WE'RE OUT OF THE
27 PRESENCE OF THE JURY AND THE WITNESS.

28 AND THE OTHER THING IS, I REALLY DON'T

1 SEE THESE AS 352 ISSUES. WHEN IT'S SOMETHING THAT YOU
2 BROUGHT IN ON YOUR SIDE OF THE CASE, AND IT'S -- WE'RE
3 GOING TO TAKE ENOUGH TIME TO GET THE EVIDENCE IN THAT
4 NEEDS TO COME IN.

5 BUT WHERE IS IT THAT HE CAN'T -- YOU
6 ARE -- YOUR OBJECTION SEEMS TO BE TO HIS TESTIMONY
7 CONCERNING THE ALTERNATIVES.

10:16AM

8 MR. SURPRENANT: WELL, YOUR HONOR, THE LAST
9 ONE, I THOUGHT THE HYPOTHETICAL WAS IMPROPER.

10 THE REASON I'M OBJECTING ON 352 IS, I
11 REALLY THINK THIS HAS LIMITED RELEVANCE TO THE ISSUES
12 THE JURY IS GOING TO HAVE TO DECIDE.

10:16AM

13 THE COURT: THAT'S NOT 352; THAT'S 350, ISN'T
14 IT?

15 MR. SURPRENANT: AND, YOUR HONOR, NO, BECAUSE
16 I HAVEN'T FINISHED.

10:16AM

17 THE COURT: IT'S ONE OF THE EARLIER ONES.

18 MR. SURPRENANT: I HAVEN'T FINISHED, YOUR
19 HONOR.

20 THE COURT: ALL RIGHT.

10:16AM

21 MR. SURPRENANT: BUT TO THE EXTENT IT HAS SOME
22 KIND OF PERIPHERAL RELEVANCE, IT'S VERY PREJUDICIAL,
23 SUGGESTING TO THE JURY, BASED ON EXPERT TESTIMONY THAT
24 WAS NOT DISCLOSED IN THE REPORT.

25 THERE'S NOT A LINE OF DISCUSSIONS IN THE
26 REPORT ABOUT CUSTOM AND PRACTICE WITH RESPECT TO
27 ACCRUED TO THE DATE OF TERMINATION, NOT A LINE. AND
28 HE'S BEING ALLOWED TO OPINE ON IT IN VERY LOOSE AND

10:16AM

1 GENERAL HYPOTHETICALS, AND IT'S INVADING THE FUNCTION
2 OF THE JURY.

3 MR. WEINGART'S LAST QUESTION WAS, ASSUME
4 THERE WAS A CONTRACT. ASSUME THERE WAS A CONTRACT.
5 WOULD THAT BE A GOOD PROVISION TO HAVE?

10:17AM

6 THAT IS HIGHLY PREJUDICIAL. AND I THINK
7 IT HAS VERY REMOTE RELEVANCE. AND I ALSO THINK THAT
8 WE -- RESPECTFULLY, YOUR HONOR, WE ARE GETTING -- I
9 DON'T WANT TO USE THE WORD BUSHWHACKED, BUT I'LL USE
10 THAT, BECAUSE I CAN'T THINK OF A BETTER WORD, WITH
11 TESTIMONY THAT WAS NOT IN HIS REPORT.

10:17AM

12 THE COURT: DID YOU QUESTION HIM ABOUT THIS
13 CONCERN IN HIS DEPOSITION?

14 MR. SURPRENANT: I SAID, PROFESSOR MURPHY,
15 WHERE IS YOUR ANALYSIS FOR WHY YOU THINK ACCRUED TO
16 DATE OF TERMINATION MEANS SOMETHING?

10:17AM

17 AND HE SAID, WELL, LET'S GO TO THE
18 CONTRACT.

19 I SAID, WELL, IS THERE ANYTHING OTHER
20 THAN THE CONTRACT?

10:17AM

21 HE IS JUST OFFERING, YOUR HONOR, LEGAL
22 INTERPRETATION UNDER THE GUISE OF HIGHLY GENERAL AND
23 VAGUE EXPERT TESTIMONY. THAT'S THE BASIS OF THE 352.
24 IT EITHER HAS VERY, VERY LIMITED RELEVANCE OR NONE, BUT
25 IT'S HIGHLY PREJUDICIAL.

10:18AM

26 THE COURT: WELL, YOU HAVE MADE THE
27 DISTINCTION REPEATEDLY, EITHER YOU, GENERICALLY, AND
28 MR. QUINN AND MR. MADISON, OF ACCRUED DETERMINATION

1 VERSUS VESTING. AND WE LOOK AT THAT PROVISION IN THE
2 CONTRACT, BUT OUR INTERPRETATION IS IT'S SUBJECT TO THE
3 PROFIT SHARING DEFINITION IN EXHIBIT A.

4 THIS HAS BEEN A FOCAL POINT, AND IT'S
5 REALLY WHERE THE RUBBER MEETS THE ROAD ON THIS ISSUE. 10:18AM

6 IT SEEMS TO ME, IT'S TWO DIFFERENT
7 INTERPRETATIONS OF THAT LANGUAGE, VERSUS EXHIBIT A AND
8 YOUR INTERPRETATION.

9 MR. SURPRENANT: BUT THAT WOULD MEAN IT'S FOR
10 THE JURY TO DECIDE, NOT WITH DISGUISED LEGAL 10:18AM
11 INTERPRETATION.

12 PROFESSOR MURPHY IS ON THE FACULTY OF
13 USC LAW SCHOOL. AND IN OUR VIEW --

14 THE COURT: WENT TO HARVARD, TOO. THAT'S A
15 SIGNIFICANT POINT AMONG THIS GROUP. 10:18AM

16 MR. SURPRENANT: AND WE ALL ARE VERY
17 EMBARRASSED BY THAT, TOO, YOUR HONOR. BUT -- AND I --
18 SO I THINK, YOUR HONOR, THERE ARE, AS I SAID AT THE
19 SIDEBAR, YOUR HONOR, THIS IS, I THINK, GOING TO BE
20 ALMOST A QUESTION-BY-QUESTION ISSUE. 10:19AM

21 BUT THERE IS A PROBLEM THAT I HAVE WITH
22 THE WAY PROFESSOR MURPHY ANSWERS. YOU WILL HAVE A
23 QUESTION THAT I'M JUST ABOUT THINKING OF OBJECTING TO,
24 BUT IT'S PRETTY CLOSE TO THE LINE. AND THEN HE GIVES A
25 MINI LECTURE THAT GOES FAR BEYOND THE BOUNDS OF THE 10:19AM
26 QUESTION. THAT HAS HAPPENED CONSISTENTLY.

27 THE COURT: LET'S SEE IF WE CAN FOCUS THAT A
28 LITTLE MORE.

1 OR MR. WEINGART, DO YOU WANT TO BE HEARD
2 ON THIS ISSUE? AND I GUESS WHAT I'D LIKE YOU TO
3 ADDRESS IS THE FACT THAT HE DIDN'T PROVIDE THESE
4 OPINIONS OR DISCUSSION OF THIS?

5 MR. WEINGART: HE WAS SHOWN THIS CONTRACT WHEN
6 HE WAS DEPOSED BY MR. SURPRENANT, AND ASKED QUESTIONS
7 IN THIS VERY VEIN; AND SO THERE IS NOTHING THAT SHOULD
8 COME AS A SURPRISE, BECAUSE MR. SURPRENANT WENT INTO IT
9 WITH HIM AT THE DEPOSITION.

10:19AM

10 IT -- SERIOUSLY, THAT WAS MY LAST
11 QUESTION.

10:20AM

12 THE COURT: WELL, LET'S SEE WHAT IT WAS. AND
13 IF WE COULD JUST STICK BY AND GET FINISHED HERE.

14 HOLD ON A MINUTE.

15 THE QUESTION WAS WHETHER THE ACCRUED TO
16 TERMINATION PROVISION IN THE CONTRACT WILL BE VIEWED IN
17 THE FIELD AS AN ALTERNATIVE TO A VESTING RIGHT; IS THAT
18 ESSENTIALLY IT?

10:20AM

19 MR. WEINGART: THAT'S ESSENTIALLY IT, RIGHT.

20 MR. SURPRENANT: NOWHERE IN THE REPORT, AND
21 WHAT MR. WEINGART IS SAYING IS THE EXPERT CAN GIVE A
22 BARE CONCLUSION.

10:21AM

23 MY CONCLUSION IS THAT MR. GUNDLACH GOT
24 SOMETHING I'M GOING TO DEFINE AS ACCRUED COMPENSATION,
25 AND SOMETHING I'M GOING TO DEFINE AS THE 2007
26 AGREEMENT.

10:21AM

27 AND I'M NOT GOING TO TELL YOU WHY.

28 THE COURT: WELL, ULTIMATELY, THE JURY IS

1 GOING TO DETERMINE THESE PROVISIONS, BASED ON YOUR
2 ARGUMENT THAT IT'S SUBJECT TO THE DEFINITION OF PROFIT
3 SHARING POOL, AND EXHIBIT A, VERSUS THEIR ARGUMENT THAT
4 IT'S PART AND PARCEL OF THE CONTRACT, AND THAT'S WHY
5 IT'S THERE.

10:21AM

6 AND ULTIMATELY, THE JURY IS GOING TO
7 MAKE A DETERMINATION, IMPLIEDLY, IN DETERMINING WHETHER
8 THERE WAS A BREACH OR NOT, ARE THEY NOT?

9 MR. SURPRENANT: I THINK THAT'S APPROPRIATE,
10 YOUR HONOR.

10:21AM

11 BUT AGAIN, WHAT WE'RE GETTING IS LEGAL
12 INTERPRETATION THAT WASN'T DISCLOSED. AND I WAS MADE
13 TO, WITH MY EXPERTS, WITH OUR EXPERTS. I THOUGHT I WAS
14 REALLY KEPT ON A TIGHT LEASH, AND PROFESSOR --

15 THE COURT: I'M NOT SURE -- DON'T HANG YOUR
16 HEAD. I'M NOT SURE IT WAS THAT.

10:22AM

17 I'LL ALLOW HIM TO ANSWER THAT QUESTION,
18 BUT THEN WE'LL MOVE ON.

19 OKAY?

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

10:22AM

21
22 (RECESS TAKEN.)

23

24

25

26

27

28

1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA SEPTEMBER 7, 2011
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR
7 TIME: B SESSION; 10:35 A.M.

8

9

--0--

10

10:36AM

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

12

13 THE COURT: MY APOLOGIES FOR KEEPING YOU ALL
14 WAITING.

15

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

10:41AM

18 MR. WEINGART, YOU MAY CONTINUE WITH YOUR
19 DIRECT EXAMINATION.

20 MR. WEINGART: THANK YOU, YOUR HONOR.

21 I HAD ONE QUESTION, SO I WAS GOING TO DO
22 IT FROM HERE, IF THAT'S OKAY.

10:42AM

23 THE COURT: ALL RIGHT.

24

25 DIRECT EXAMINATION (CONTINUED) +

26

10:42AM

27 BY MR. WEINGART:

28 Q GOING BACK TO WHERE WE BROKE.

ASSUMING THAT THE 2007 AGREEMENT

1 CONTAINED A TERM PROVIDING FOR PAYMENT OF FEES ACCRUED
2 AT TERMINATION, WOULD THAT CUSTOMARILY BE RECOGNIZED IN
3 THE INCENTIVE COMPENSATION FIELD AS AN ALTERNATIVE TO
4 VESTING, IN ADDRESSING ISSUES OF FRONT LOADING AND
5 OPPORTUNISTIC TERMINATION?

10:42AM

6 A YES.

7 MR. WEINGART: NO FURTHER QUESTIONS, YOUR
8 HONOR.

9 THE COURT: ALL RIGHT.

10 CROSS-EXAMINATION, MR. SURPRENANT?

10:42AM

11 MR. SURPRENANT: THANK YOU, YOUR HONOR.

12
13 CROSS-EXAMINATION +

14
15 BY MR. SURPRENANT:

10:42AM

16 Q GOOD MORNING.

17 A GOOD MORNING.

18 Q YOU ARE AN EXPERT IN EXECUTIVE COMPENSATION?

19 A YES.

20 Q AND EXECUTIVE COMPENSATION INVOLVES AN
21 EMPLOYEE, PERHAPS HIGH-POSITION EMPLOYEE, AND HIS
22 EMPLOYER REACHING AN AGREEMENT, CORRECT?

10:42AM

23 A EXECUTIVE COMPENSATION IS SIMPLY THE WAY THAT
24 WE ATTRACT, RETAIN, AND MOTIVATE THE EXECUTIVES. BUT,
25 TYPICALLY, THERE ARE AGREEMENTS THAT ARE REACHED, YES.

10:43AM

26 Q AND IF THE JURY WERE TO DETERMINE THAT, IN
27 2007, MR. GUNDLACH, TCW, DID NOT REACH AN ENFORCEABLE
28 AGREEMENT, THE TESTIMONY YOU GAVE HERE TODAY WOULD BE

1 IRRELEVANT?

2 MR. WEINGART: OBJECTION. ARGUMENTATIVE.

3 THE WITNESS: IS THAT A QUESTION?

4 MR. SURPRENANT: YES.

5 THE COURT: AND I'LL SUSTAIN THE OBJECTION.

10:43AM

6 I DON'T THINK IT'S REALLY --

7 BY MR. SURPRENANT:

8 Q WHAT RELEVANCE, IF ANY, PROFESSOR MURPHY,

9 WOULD YOUR TESTIMONY HAVE IF THE JURY DETERMINES THERE

10 WAS NO CONTRACT ENTERED INTO IN 2007 BETWEEN

10:43AM

11 MR. GUNDLACH AND TCW?

12 MR. WEINGART: OBJECTION. FORM.

13 THE COURT: SUSTAINED.

14 BY MR. SURPRENANT:

15 Q THE ACCRUED TO THE DATE OF TERMINATION, THAT'S

10:44AM

16 IN THE DRAFT CONTRACT THAT YOU TESTIFIED ABOUT, DO YOU

17 RECALL WHAT I'M TALKING ABOUT?

18 A YES, I DO.

19 Q THAT IS A CONTRACTUAL UNDERTAKING, YOU

20 UNDERSTAND, CORRECT?

10:44AM

21 A I -- I'M NOT A LAWYER. I'M NOT SURE WHAT YOU

22 MEAN BY THAT. THOSE ARE WORDS THAT WERE IN THE

23 CONTRACT THAT I WAS SHOWN, YES.

24 Q IF THE JURY DETERMINES THERE IS NO BINDING

25 CONTRACT ENTERED INTO IN 2007, WHAT RELEVANCE, IF ANY,

10:44AM

26 WOULD YOUR TESTIMONY HAVE ON ACCRUED TO THE DATE OF

27 TERMINATION?

28 MR. WEINGART: OBJECTION. FORM.

1 THE COURT: SUSTAINED.

2 BY MR. SURPRENANT:

3 Q HAVE YOU EVER SEEN A SITUATION WHERE A
4 PORTFOLIO MANAGER HAD RIGHTS TO ACCRUED BUT UNPAID
5 COMPENSATION IN CIRCUMSTANCES WHERE THERE WAS NEITHER A
6 CONTRACT NOR A VESTING AGREEMENT? 10:45AM

7 A I THINK THE BEST WAY TO ANSWER THE QUESTION IS
8 WE KNOW THAT CONTRACTS AREN'T ALWAYS WRITTEN.

9 AND WE KNOW A LOT.

10 THE COURT: SIR, SIR, WE WANT YOU -- YOU'VE 10:45AM
11 GOT TO RESPOND TO THE QUESTION. AND NOT GIVE US --
12 THAT'S PRETTY MUCH A YES OR NO.

13 HAVE YOU EVER SEEN WHAT HE'S DESCRIBED?

14 THE WITNESS: HAVE I EVER SEEN AN UNWRITTEN
15 CONTRACT THAT PROVIDED FOR THIS? NO. BECAUSE IT'S 10:45AM
16 DIFFICULT TO SEE UNWRITTEN CONTRACTS.

17 MR. SURPRENANT: MOVE TO STRIKE, YOUR HONOR.

18 THE COURT: I'LL STRIKE THE RESPONSE.

19 REPHRASE THE QUESTION.

20 MR. SURPRENANT: THANK YOU, YOUR HONOR. 10:45AM

21 Q WHETHER UNWRITTEN OR ORAL, HAVE YOU EVER, IN
22 YOUR EXPERIENCE AS A COMPENSATION EXPERT, ENCOUNTERED A
23 SITUATION WHERE A PORTFOLIO MANAGER HAD NEITHER A
24 CONTRACT NOR A VESTING AGREEMENT WHERE THEY WERE PAID
25 ACCRUED, BUT UNPAID INCENTIVE FEES? 10:46AM

26 A I CAN'T THINK OF A SPECIFIC EXAMPLE.

27 Q YOU TESTIFIED TO MR. WEINGART THAT YOU HAD
28 TESTIFIED AT CONGRESS ABOUT THE, QUOTE, WALL STREET

1 BONUS CULTURE, CORRECT?

2 A THAT'S CORRECT.

3 Q AND WHAT YOU TESTIFIED IS THAT YOU THOUGHT
4 THAT THE BONUS -- WALL STREET BONUS CULTURE WAS
5 APPROPRIATE, RIGHT?

10:46AM

6 A DEPENDING ON WHAT QUESTION YOU'RE ANSWERING,
7 BUT, IN GENERAL, I'M NOT AN ENEMY OF THE WALL STREET
8 BONUS CULTURE.

9 Q YOU THOUGHT THE WALL STREET BONUS CULTURE
10 ATTRACTED THE BEST AND THE BRIGHTEST, CORRECT?

10:46AM

11 MR. WEINGART: OBJECTION, RELEVANCE, 352.

12 THE COURT: I SUPPOSE --

13 MR. SURPRENANT: OPENED THE DOOR, YOUR HONOR.

14 THE COURT: OVERRULED.

15 GO AHEAD.

10:47AM

16 THE WITNESS: YES.

17 BY MR. SURPRENANT:

18 Q AND YOU THOUGHT THAT DESPITE THE CATAclysmic
19 FINANCIAL MELTDOWN IN '07 AND '08, CORRECT?

20 MR. WEINGART: OBJECTION, ARGUMENTATIVE, 352.

10:47AM

21 THE COURT: SUSTAINED.

22 BY MR. SURPRENANT:

23 Q NOW, YOU TALKED ABOUT THE NEED TO COMPENSATE
24 MR. GUNDLACH FOR HIS SERVICES IN RAISING CAPITAL, AND
25 CREATING A STRUCTURE AND CREATING FUNDS AND IN MANAGING
26 THE ASSETS.

10:47AM

27 DO YOU RECALL THAT TESTIMONY TO
28 MR. WEINGART?

1 A YES. MAYBE NOT IN THE DIRECT CONTEXT OF
2 MR. GUNDLACH, BUT IN THE CONTEXT OF THE HYPOTHETICAL
3 FUND MANAGER, ABSOLUTELY.

4 Q OKAY. THANK YOU.

5 NOW, MR. GUNDLACH AT TCW, HE DIDN'T
6 RAISE CAPITAL, DID HE? THAT IS THE MARKETING GROUP
7 THAT RAISED CAPITAL, CORRECT?

10:47AM

8 MR. WEINGART: OBJECTION.

9 THE WITNESS: AS I JUST TESTIFIED, MY
10 TESTIMONY WAS IN RESPONSE TO A HYPOTHETICAL FUND
11 MANAGER'S LAUNCHING A NEW FUND.

10:48AM

12 MR. SURPRENANT: THANK YOU, PROFESSOR MURPHY.
13 THAT'S HELPFUL. LET ME PURSUE IT IN A DIFFERENT TACK.

14 Q IF YOU ASSUME MR. GUNDLACH DID NOT RAISE
15 CAPITAL AT TCW, BUT THE MARKETING GROUP DID, THEN
16 THAT'S A SERVICE THEY SHOULDN'T BE COMPENSATED FOR,
17 CORRECT?

10:48AM

18 MR. WEINGART: OBJECTION. MISSTATES THE
19 RECORD.

20 THE COURT: SUSTAINED.

10:48AM

21 BY MR. SURPRENANT:

22 Q YOUR HONOR, IT WAS AN ASSUMPTION. LET ME
23 PROCEED.

24 THE COURT: IT SHOULD BE BASED ON -- OKAY.

25 BY MR. SURPRENANT:

10:48AM

26 Q DO YOU KNOW AT TCW WHEN MR. GUNDLACH WAS
27 THERE, HOW THEY RAISED CAPITAL?

28 A I -- NO, I DO NOT.

1 Q DO YOU KNOW IF THE MARKETING GROUP RAISED
2 CAPITAL AND NOT MR. GUNDLACH?

3 A NO, I DO NOT.

4 Q DO YOU KNOW IF THE LEGAL DEPARTMENT CREATED A
5 STRUCTURE AND NOT MR. GUNDLACH?

10:48AM

6 A NO, I DO NOT.

7 Q DO YOU KNOW IF TCW CREATED THE FUNDS AND NOT
8 MR. GUNDLACH?

9 A NO, I DO NOT.

10 Q AND SO, IN TRYING TO APPLY YOUR HYPOTHETICAL,
11 IF MR. GUNDLACH DIDN'T DO ANY OF THOSE THINGS, THAT
12 WOULD HAVE RELEVANCE TO THE AMOUNT OF COMPENSATION,
13 CORRECT?

10:49AM

14 MR. WEINGART: OBJECTION, MISSTATES THE
15 RECORD.

10:49AM

16 THE COURT: SUSTAINED.
17 BY MR. SURPRENANT:

18 Q NOW, YOU SAID THE SPECIAL MORTGAGE CREDIT FUND
19 HAD AN EIGHT-YEAR LIFE OR POTENTIAL EIGHT-YEAR LIFE.

20 WHAT DID YOU MEAN BY THAT?

10:49AM

21 A I BELIEVE THAT WAS THE ANTICIPATED LIFE IN --
22 IN THE FUNDS WHEN THEY WERE PROMISING SOME LIQUIDATION
23 FOR THE INVESTORS.

24 MR. SURPRENANT: YOUR HONOR, MIGHT I APPROACH
25 ONCE I FIND OUT WHAT THE NEXT EXHIBIT NUMBER IS?

10:49AM

26 2228. WE'VE DONE SOME HOUSEKEEPING.

27 Q SO IT'S YOUR UNDERSTANDING THAT THE SPECIAL
28 CREDIT MORTGAGE CREDIT FUNDS HAD AN EIGHT-YEAR LIFE,

1 CORRECT?

2 A YES, WITH POTENTIALLY AN OPTION TO EXTEND IT
3 FURTHER.

4 Q EVEN EXTEND IT FURTHER.

5 WELL, THAT'S NOT A VERY FRONT-LOADED
6 ENTERPRISE, PROFESSOR MURPHY, IS IT?

10:50AM

7 A I DON'T UNDERSTAND WHAT YOU MEAN.

8 Q YOU SAID THAT WHEN A MANAGER -- WHEN A FUND IS
9 FRONT LOADED, THAT IT'S GOING TO CREATE INCENTIVE FEES
10 THAT WON'T BE REALIZED UNTIL MUCH LATER, CORRECT?

10:50AM

11 MR. WEINGART: OBJECTION. MISSTATES THE
12 TESTIMONY.

13 THE COURT: YOU CAN EXPLAIN YOUR ANSWER, SIR,
14 GO AHEAD.

15 THE WITNESS: WHEN I SAID FRONT LOADED, I WAS
16 SAYING THAT THE EFFORTS INVOLVED IN SETTING UP THE
17 FUNDS, RAISING THE CAPITAL, INVESTING THE CAPITAL, WAS
18 FRONT LOADED.

10:50AM

19 AND, LARGELY, THE STRATEGY WAS A
20 BUY-AND-HOLD STRATEGY. SO, AFTER THOSE ACTIVITIES WERE
21 DONE, THE MAJOR ACTIVITIES ARE TO FIGURE OUT WHEN TO
22 LIQUIDATE.

10:51AM

23 BY MR. SURPRENANT:

24 Q WELL, IF MR. GUNDLACH LEAVES AT YEAR TWO, TCW
25 HAS TO HIRE A REPLACEMENT MANAGER, CORRECT?

10:51AM

26 A TO DETERMINE WHEN TO LIQUIDATE THE
27 INVESTMENTS, SINCE ALL THE INVESTMENTS HAD GENERALLY
28 BEEN MADE.

1 Q THEY HAVE TO MANAGE THOSE INVESTMENTS AND MAKE
2 LIQUIDATION DECISIONS OVER THE LIFE OF THE FUND,
3 CORRECT?

4 A YES.

5 Q WHAT IS THE BASIS FOR YOUR TESTIMONY, JUST 10:51AM
6 NOW, PROFESSOR MURPHY, THAT THE EFFORTS IN SETTING UP
7 THE FUND WERE FRONT LOADED? IS THAT AN ASSUMPTION
8 YOU'RE MAKING?

9 A I -- I BELIEVE THAT WAS BASED ON THE CASE
10 RECORDS AND THE FACT THAT THE INVESTMENT PERIODS FOR 10:52AM
11 THE SMCF I AND II, I BELIEVE, WERE ALREADY COMPLETED OR
12 NEARLY COMPLETE BY 2009.

13 Q WHAT EFFORTS DID MR. GUNDLACH DO, AS OPPOSED
14 TO EVERYONE ELSE, INCLUDING THE OTHER MEMBERS OF THE
15 TEAM AND TCW? YOU DON'T HAVE ANY INFORMATION ON THAT, 10:52AM
16 DO YOU?

17 A I DON'T HAVE SPECIFIC INFORMATION ON THE
18 DIFFERENT ALLOCATIONS OF EFFORTS BY DIFFERENT PEOPLE.

19 Q WHAT IS LABOR MOBILITY?

20 A LABOR MOBILITY WOULD BE A TERM THAT DESCRIBES 10:52AM
21 THE ABILITY OF WORKERS TO MOVE FROM ONE JOB TO ANOTHER
22 JOB, EITHER WITHIN THE SAME INDUSTRY OR ACROSS INDUSTRY
23 SECTORS.

24 Q AND YOU BELIEVE THAT ALL EMPLOYEES HAVE A
25 GREAT INTEREST IN LABOR MOBILITY, THAT IS, HAVING THE 10:53AM
26 MOBILITY TO MOVE FROM ONE EMPLOYER TO ANOTHER, CORRECT?

27 A I -- I HAVE NO INTEREST IN IT MYSELF. I'M
28 HAPPY WHERE I AM. BUT I BELIEVE THAT A LOT OF

1 EMPLOYEES WOULD VALUE THE OPTION TO BE ABLE TO GO TO
2 ALTERNATIVE EMPLOYERS IF THEY COULD.

3 MR. SURPRENANT: YOUR HONOR, I WOULD ASK TO
4 PLAY MR. MURPHY'S -- PROFESSOR MURPHY'S DEPOSITION,
5 PAGE 56, LINES 1 THROUGH 10.

10:53AM

6 THE COURT: ANY OBJECTION?

7 MR. WEINGART: JUST ONE MOMENT, YOUR HONOR.

8

9 (PAUSE) +

10

10:54AM

11 MR. WEINGART: IT'S NOT IMPEACHMENT, YOUR
12 HONOR.

13 THE COURT: DID ANYBODY GIVE ME THE
14 DEPOSITION?

15 MR. SURPRENANT: I BELIEVE SO, YOUR HONOR.

10:54AM

16

17 (PAUSE) +

18

19 THE COURT: I'LL ALLOW IT. GO AHEAD.

20

10:54AM

21 (VIDEO DEPOSITION PLAYED OF MR. MURPHY.) +

22

23 BY MR. SURPRENANT:

24 Q SO, PROFESSOR MURPHY, MR. GUNDLACH, LIKE
25 ALMOST ALL EMPLOYEES, HAD A GREAT INTEREST IN HAVING
26 EMPLOYMENT MOBILITY, CORRECT?

10:55AM

27 A I -- I COULDN'T POSSIBLY SPEAK FOR
28 MR. GUNDLACH.

1 BUT I BELIEVE THAT ALMOST ALL EMPLOYEES,
2 MAYBE WITH THE ONLY EXCEPTION OF ME, HE WOULD HAVE A
3 GREAT INTEREST IN EMPLOYMENT MOBILITY.

4 Q PERHAPS, PROFESSOR, YOU HAVE A VERY NICE JOB.

5 NOW, IF MR. GUNDLACH HAD A FIVE-YEAR
6 TERM IN 2007, HE WOULDN'T HAVE BEEN ABLE TO GO TO
7 WESTERN ASSET MANAGEMENT IN 2009 UNLESS HE NEGOTIATED A
8 BRAND-NEW DEAL, CORRECT?

10:56AM

9 MR. WEINGART: OBJECTION. CALLS FOR LEGAL
10 CONCLUSION.

10:56AM

11 THE COURT: OVERRULED.

12 WELL, I'LL SUSTAIN IT. YOU'VE GOT TO GO
13 TO THE CONTRACT. I DON'T KNOW IF THAT'S WHAT WE'RE
14 DEALING WITH. HAVING HIM LOOK AT IT.

15 BY MR. SURPRENANT:

10:56AM

16 Q IT IS YOUR OPINION, AS A COMPENSATION EXPERT,
17 THAT IF MR. GUNDLACH HAD A FIVE-YEAR TERM, THAT WOULD
18 HAVE COMMITTED HIM TO TCW UNTIL THE END OF 2011; HE
19 WOULD NOT HAVE BEEN FREE TO JOIN WESTERN ASSET
20 MANAGEMENT IN FEBRUARY OF 2009, CORRECT?

10:56AM

21 A I BELIEVE HE WOULD HAVE HAD TO NEGOTIATE A
22 DEPARTURE.

23 Q WITH TCW?

24 A I BELIEVE THAT'S THE CASE, YES.

25 Q AND HAVING, IN YOUR VIEW AS AN EMPLOYMENT --
26 AS A COMPENSATION EXPERT, IF MR. GUNDLACH HAD A
27 FIVE-YEAR TERM CONTRACT IN 2007, IT WOULD HAVE CLEARLY
28 INCREASED THE COST TO MR. GUNDLACH OF MOVING TO ANOTHER

10:57AM

1 COMPANY, CORRECT?

2 A I -- I DON'T WANT TO SAY CLEARLY, BUT
3 POTENTIALLY CERTAINLY.

4 Q THAT'S WHAT YOU CALL OPPORTUNISTIC
5 RESIGNATION, CORRECT? -- WHAT DOES OPPORTUNISTIC
6 RESIGNATION MEAN?

10:57AM

7 A I SUPPOSE OPPORTUNISTIC RESIGNATION WOULD BE
8 THE FLIP SIDE. THAT WOULD BE IF I PREPAID YOU FOR A
9 LOT OF SERVICES AND THEN YOU LEAVE BEFORE YOU RENDER
10 THOSE SERVICES, THAT WOULD BE AN OPPORTUNISTIC
11 RESIGNATION.

10:57AM

12 Q AND SO, AS A CONSEQUENCE, YOUR OPINION AS AN
13 INCENTIVE COMPENSATION EXPERT IS HAVING -- IF
14 MR. GUNDLACH HAD A FIVE-YEAR TERM CONTRACT IN 2007,
15 THAT WOULD HAVE INCREASED THE COST TO HIM OF MOVING TO
16 ANOTHER COMPANY, CORRECT?

10:58AM

17 A PRESUMABLY SO, YES.

18 Q NOW, IN THE 2007 NEGOTIATIONS IT WAS YOUR
19 UNDERSTANDING AS AN INCENTIVE EXPERT THAT THE PARTIES
20 WANTED A NEW COMPREHENSIVE AGREEMENT THAT WOULD NOT BE
21 TIED BACK TO THE OLD AGREEMENT, CORRECT?

10:58AM

22 A I DON'T HAVE AN UNDERSTANDING OF WHAT THE
23 PARTIES WANTED AT THE TIME.

24 Q YOUR UNDERSTANDING OF THE DRAFT AGREEMENT WAS
25 THAT IT WAS -- IT REFLECTED A NEW COMPREHENSIVE
26 AGREEMENT THAT WOULDN'T BE TIED BACK TO THE OLD
27 AGREEMENT, CORRECT?

10:58AM

28 A TO THE EXTENT THEY WANTED EVERYTHING IN A

1 SINGLE DOCUMENT, THAT WAS -- THAT WAS MY INTERPRETATION
2 AS AN ECONOMIST OF THE CONTRACT.

3 Q NOW, IN FORMING YOUR EXPERT OPINIONS, MR. --
4 PROFESSOR MURPHY, YOU SPENT A GOOD DEAL OF TIME GOING
5 OVER THE PLEADINGS AND OPINIONS IN THE CASE?

10:59AM

6 A YES, I BELIEVE SO.

7 Q YOU READ A BUNCH OF DEPOSITIONS, RIGHT?

8 A A BUNCH, YES.

9 Q YOU READ THE DEPOSITION OF MR. BEYER?

10 A YES.

10:59AM

11 Q MR. GUNDLACH?

12 A YES.

13 Q MR. STERN?

14 A YES.

15 Q MR. CAHILL?

16 A YES.

10:59AM

17 Q AND OTHERS, RIGHT?

18 A YES.

19 Q AND YOU READ THE EXHIBITS THAT WERE MARKED FOR
20 IDENTIFICATION AT THOSE DEPOSITIONS, CORRECT?

10:59AM

21 A PERHAPS NOT ALL OF THEM. THERE'S -- THERE'S A
22 LOT OF MATERIAL IN THIS CASE.

23 BUT I -- --

24 THE COURT: THAT'S AN UNDERSTATEMENT.

25 BY MR. SURPRENANT:

10:59AM

26 Q THERE ARE 15 PEOPLE IN THIS ROOM WHO KNOW THAT
27 BETTER THAN ANYBODY.

28 AND YOU DID THAT WORK, PROFESSOR MURPHY,

1 SO THAT YOUR OPINIONS WOULD BE KIND OF GROUNDED IN THE
2 FACTUAL RECORD, RIGHT?

3 A I BELIEVE THAT'S CORRECT, YES.

4 Q IF WE COULD DISPLAY, MIKE, TRIAL EXHIBIT 66
5 WHICH MR. WEINGART PUT ON THE SCREEN.

11:00AM

6 THAT WAS ONE OF THE DOCUMENTS THAT YOU
7 LOOKED AT IN PREPARING YOUR EXPERT REPORT, CORRECT?

8 A YES, IT IS.

9 Q AND YOUR UNDERSTANDING IS EXHIBIT 66 WAS THE
10 LAST DRAFT CONTRACT THAT WAS EXCHANGED BETWEEN THE
11 PARTIES, CORRECT?

11:00AM

12 A I JUST WANT TO MAKE SURE THIS IS THE LAST
13 RED-LINED ONE THAT I'VE SEEN, THE ONE FROM THE E-MAIL
14 WAS IN JUNE? LIKE JUNE 7TH?

15 Q YES, IF YOU COULD GO TO THE E-MAIL, MICHAEL.
16 BLOW IT UP.

11:00AM

17 I SHOWED YOU THIS AT YOUR DEPOSITION.

18 A YES. MY UNDERSTANDING, THIS IS THE LAST
19 DOCUMENT THAT EXISTED.

20 Q AND IN YOUR VIEW AS A COMPENSATION EXPERT,
21 TRIAL EXHIBIT 66, THE JUNE 7TH DRAFT, REPRESENTED A
22 MIDPOINT IN THE NEGOTIATIONS, CORRECT?

11:00AM

23 A YES.

24 Q AND YOU DON'T KNOW, AS A COMPENSATION EXPERT,
25 WHY NEGOTIATIONS BROKE DOWN AT THE MIDPOINT?

11:01AM

26 MR. WEINGART: OBJECTION. MISSTATES THE
27 RECORD.

28 THE COURT: OVERRULED.

1 YOU CAN ANSWER THAT.

2 THE WITNESS: I WOULDN'T HAVE CHARACTERIZED
3 THAT THEY BROKE DOWN, AS OPPOSED TO DIED DOWN.

4 MR. SURPRENANT: YOUR HONOR, I WOULD ASK TO
5 PLAY PROFESSOR MURPHY'S DEPOSITION, 232, LINE 24 TO
6 233, LINE 2.

11:01AM

7 THE COURT: ANY OBJECTION?

8 MR. WEINGART: I'M SORRY. WHAT WAS THE FIRST
9 LINE?

10 THE COURT: 232, LINE 24 TO 233, LINE 2.

11:02AM

11

12 (PAUSE) +

13

14 MR. WEINGART: NO OBJECTION.

15 THE COURT: YOU MAY PROCEED.

11:02AM

16

17 (VIDEO DEPOSITION PLAYED OF MR. MURPHY.) +

18

19 BY MR. SURPRENANT:

20 Q NOW, IN YOUR VIEW AS A COMPENSATION EXPERT,
21 THE REASON MR. GUNDLACH DID NOT SIGN THE JUNE 7TH DRAFT
22 AGREEMENT WAS BECAUSE IT WASN'T FINISHED, CORRECT?

11:02AM

23 MR. WEINGART: OBJECTION. FORM.

24 THE COURT: OVERRULED.

25 DO YOU HAVE AN ANSWER TO THAT?

11:03AM

26 THE WITNESS: WELL, I -- I WOULD DEFINE ALMOST
27 BY DEFINITION, SINCE I WOULD HAVE DEFINED FINISHED IS
28 WHEN IT WAS SIGNED.

1 BY MR. SURPRENANT:

2 Q IT WASN'T FINISHED, CORRECT?

3 A WELL, IT WASN'T SIGNED, SO IT WASN'T.

4 Q FINISHED?

5 A YES. MY UNDERSTANDING, THE DRAFT HE SHOWED ME
6 WAS A -- YOU SHOWED ME WAS A MIDPOINT.

11:03AM

7 Q AND THERE WERE PROBABLY PROVISIONS THAT
8 MR. GUNDLACH WOULD HAVE ADDED THAT WOULD HAVE BEEN
9 SUFFICIENTLY OBJECTIONABLE TO TCW THAT THEY WOULDN'T
10 HAVE SIGNED IT.

11:03AM

11 THAT'S YOUR EXPERT OPINION AS A
12 COMPENSATION EXPERT, CORRECT?

13 A YES, IT WAS --

14 MR. WEINGART: OBJECTION. CALLS FOR
15 SPECULATION.

11:03AM

16 THE COURT: ARE WE STILL -- I'LL OVERRULE THE
17 OBJECTION. IT SOUNDS LIKE WE'VE BEEN HERE.

18 THE WITNESS: THE CONTRACT WAS NOT SIGNED BY
19 EITHER PARTY.

20 MR. SURPRENANT: YOUR HONOR, I WOULD ASK TO
21 PLAY PROFESSOR MURPHY'S DEPOSITION, PAGE 66, LINES 2
22 THROUGH 8.

11:04AM

23 THE COURT: ANY OBJECTION?

24 MR. WEINGART: NO, YOUR HONOR.

25 THE COURT: YOU MAY PROCEED.

11:04AM

26

27 (VIDEO DEPOSITION PLAYED OF MR. MURPHY.) +

28 ///

1 BY MR. SURPRENANT:

2 Q NOW, THE REASON IT WASN'T SIGNED WAS BECAUSE
3 IT WASN'T FINISHED, RIGHT, IN YOUR UNDERSTANDING AS A
4 COMPENSATION EXPERT?

5 MR. WEINGART: OBJECTION. IMPROPER OPINION.
6 BEYOND THE SCOPE.

11:05AM

7 THE COURT: I'LL SUSTAIN THE OBJECTION.

8 BY MR. SURPRENANT:

9 Q NOW, PROFESSOR MURPHY, NEGOTIATIONS ARE GIVE
10 AND TAKE, CORRECT?

11:05AM

11 A YES, BY THEIR NATURE.

12 Q AND SO SOMETIMES YOU HAVE TO GIVE UP SOMETHING
13 THAT YOU WANT, THAT YOU WANT, TO GET SOMETHING THAT YOU
14 CAN GET THAT'S ACHIEVABLE, CORRECT?

15 A THAT'S CORRECT.

11:05AM

16 Q SO, EVEN AFTER THE PARTIES REACH AGREEMENT ON
17 SOME TERMS, UNLESS THEY REACH AGREEMENT ON ALL TERMS,
18 EVEN THOSE AGREEMENTS -- EVEN THOSE TERMS THEY REACHED
19 AGREEMENT ON MAY CHANGE BEFORE THEY GET TO THE FINISH
20 LINE, CORRECT?

11:05AM

21 MR. WEINGART: OBJECTION. BEYOND THE SCOPE.
22 IMPROPER OPINION.

23 THE COURT: SUSTAINED.

24 BY MR. SURPRENANT:

25 Q YOU HONESTLY DON'T UNDERSTAND WHY MR. GUNDLACH
26 DIDN'T SIGN THE CONTRACT, CORRECT?

11:06AM

27 MR. WEINGART: OBJECTION. BEYOND THE SCOPE.

28 THE COURT: SUSTAINED.

1 BY MR. SURPRENANT:

2 Q NOW, YOU TALKED ABOUT OPPORTUNISTIC
3 TERMINATION.

4 IF MR. GUNDLACH THOUGHT THE FUNDS WOULD
5 FOLLOW HIM WHEN HE LEFT TCW, OPPORTUNISTIC TERMINATION
6 WOULDN'T HAVE BEEN A PROBLEM, WOULD IT?

11:06AM

7 MR. WEINGART: INCOMPLETE HYPOTHETICAL.

8 THE COURT: SUSTAINED.

9 BY MR. SURPRENANT:

10 Q ASSUME WITH ME THAT MR. GUNDLACH BELIEVED THAT
11 IF HE LEFT HE COULD TAKE ALL THE SPECIAL CREDIT
12 MORTGAGE FUNDS WITH HIM.

11:06AM

13 THAT WOULD OBTAIN ANY CONCERNS --
14 OBTAIN A FANCY WAY TO DO AWAY WITH -- ANY CONCERNS
15 ABOUT OPPORTUNISTIC TERMINATION, CORRECT?

11:06AM

16 MR. WEINGART: OBJECTION. ASSUMPTIONS THAT
17 THAT'S THE EVIDENCE --

18 THE COURT: SUSTAINED.

19 BY MR. SURPRENANT:

20 Q WHAT CONCERNS, IF ANY, WOULD MR. GUNDLACH HAVE
21 HAD ABOUT OPPORTUNISTIC TERMINATION IF HE THOUGHT THE
22 SPECIAL MORTGAGE CREDIT FUNDS WOULD FOLLOW HIM?

11:07AM

23 MR. WEINGART: OBJECTION. INCOMPLETE
24 HYPOTHETICAL.

25 THE COURT: SUSTAINED.

11:07AM

26 BY MR. SURPRENANT:

27 Q NOW, VESTING IS ONE WAY TO PROTECT CARRIED
28 INTEREST, CORRECT?

1 A YES.

2 Q (READING):

3 COMPANIES PROTECT EXECUTIVES
4 THROUGH VESTING OF INCENTIVE
5 AGREEMENTS, ENSURING THAT
6 EXECUTIVES WILL BE REWARDED FOR
7 THEIR CURRENT SERVICES EVEN IF THEY
8 ARE TERMINATED.

11:07AM

9 THAT'S YOUR EXPERT OPINION, CORRECT?

10 A YES, IT IS.

11:07AM

11 Q IF YOU COULD LOOK AT YOUR REPORT. IT'S IN
12 YOUR WITNESS BOOK AT PAGE 35. IT'S 6019, TX 6019 IN
13 YOUR WITNESS BOOK.

14 MR. WEINGART: YOUR HONOR, MAY I INQUIRE OF
15 COUNSEL?

11:08AM

16 THE COURT: YES.

17 MR. SURPRENANT: ALWAYS HAPPY TO TALK TO
18 MR. WEINGART.

19
20 (COUNSEL CONFER SOTTO VOCE.) +

11:08AM

21
22 MR. SURPRENANT: IT'S THE TEXT PAGE. PAGE 35
23 OF THE REPORT ON THE BOTTOM. THE PARAGRAPH YOU SHOULD
24 BE AT IS: ONE WAY.

25 Q CORRECT?

11:08AM

26 A YES.

27 Q IT'S YOUR VIEW THAT ONE WAY TO PROTECT
28 PORTFOLIO MANAGERS FROM OPPORTUNISTIC TERMINATION IS

1 THROUGH VESTING PROVISIONS THAT ENTITLE MANAGERS TO A
2 SHARE OF THE FUTURE CARRIED INTEREST EVEN IF THEY LEAVE
3 THE FIRM.

4 CORRECT?

5 A YES.

11:08AM

6 Q THEN YOU REPORT THAT THE:

7 2010 ALTERNATIVE ASSET
8 MANAGEMENT COMPENSATION SURVEY,
9 WHICH YOU DEFINED AS THE HOLT
10 SURVEY, REPORTS THAT 78 PERCENT OF
11 THE SURVEYED FIRMS PROVIDE CARRIED
12 INTEREST INCENTIVES FOR NON-PARTNER
13 INVESTMENT PROFESSIONALS, E.G.,
14 PORTFOLIO MANAGERS.

11:08AM

15 THAT'S WHAT YOU REPORT IN YOUR EXPERT
16 REPORT, CORRECT?

11:09AM

17 A THAT'S CORRECT.

18 Q THEN YOU CONTINUE:

19 VESTING SCHEDULES ARE USED
20 IN 87 PERCENT OF THE SURVEYED
21 FIRMS.

11:09AM

22 CORRECT?

23 A YES.

24 Q FINALLY, YOU REPORT:

25 THE HOLT SURVEY EMPHASIZES THAT,
26 QUOTING VESTING OF CARRIED INTEREST
27 PROTECTS AN EMPLOYEE IN THE EVENT
28 OF TERMINATION.

11:09AM

1 YOU REPORTED THAT IN YOUR EXPERT REPORT,
2 CORRECT?

3 A YES, I DID.

4 Q NOW, MR. GUNDLACH, HE DIDN'T HAVE A VESTING
5 AGREEMENT IN 1998 WITH TCW, CORRECT?

11:09AM

6 A NOT TO MY KNOWLEDGE.

7 Q HE DIDN'T HAVE A VESTING AGREEMENT IN 2003,
8 CORRECT?

9 A NOT TO MY KNOWLEDGE.

10 Q HE DIDN'T HAVE A VESTING AGREEMENT IN 2007?

11:09AM

11 A NOT -- NOT TO MY KNOWLEDGE. ALTHOUGH I
12 SUPPOSE THIS IS --

13 Q I'M SORRY?

14 A -- MAYBE THIS IS A LEGAL OPINION IN TERMS OF
15 2007, BUT NOT TO MY KNOWLEDGE.

11:10AM

16 Q NOW, MR. GUNDLACH HAD A NUMBER OF PROTECTIONS
17 AGAINST OPPORTUNISTIC TERMINATION, EVEN IF HE DIDN'T
18 HAVE A CONTRACT, CORRECT?

19 A YES, I SUPPOSE SO.

20 Q WELL, IT'S YOUR OPINION THAT ONE OF THE
21 PROTECTIONS HE HAD IS THAT TCW WOULD HAVE A CONCERN
22 ABOUT DAMAGING ITS REPUTATION IN THE INVESTMENT
23 COMMUNITY IF IT ENGAGED IN OPPORTUNISTIC TERMINATION,
24 CORRECT?

11:10AM

25 A I BELIEVE I TESTIFIED TO DAMAGING ITS
26 REPUTATION WITH ITS EXISTING EMPLOYEE BASE.

11:10AM

27 I DON'T RECALL TESTIFYING ON THE
28 INVESTMENT COMMUNITY AS A WHOLE.

1 Q IF YOU COULD TURN TO PAGE 32 OF YOUR REPORT,
2 THE SECOND FULL PARAGRAPH. SECOND SENTENCE.

3 THE COURT: ARE WE LOOKING AT THE REPORT PAGE
4 NUMBER?

5 MR. SURPRENANT: THE REPORT PAGE NUMBER, YOUR
6 HONOR.

11:11AM

7 THE COURT: 32.

8 MR. SURPRENANT: THE SECOND PARAGRAPH, FIRST
9 SENTENCE, YOU SAY -- WELL, YOU SAY:

10 COMPANIES PROTECT EXECUTIVES FROM
11 OPPORTUNISTIC TERMINATION IN
12 SEVERAL WAYS. FIRST, EXECUTIVES
13 ARE PROTECTED BY THE COMPANY'S
14 CONCERN ABOUT ITS OWN REPUTATION.

11:11AM

15 Q IS THAT YOUR EXPERT OPINION?

11:11AM

16 A YES, IT IS.

17 Q NOW, ANOTHER THING THAT COULD HAPPEN FOLLOWING
18 UP YOUR -- THE ANSWER BEFORE THE EARLIER ONE, IS IF
19 TCW -- IF ASSET MANAGEMENT COMPANY WAS TO ENGAGE IN
20 OPPORTUNISTIC TERMINATION, THAT COULD TRIGGER MASS
21 DEFECTIONS BY ITS EMPLOYEES WHO WERE UNHAPPY WITH ITS
22 OPPORTUNISTIC TERMINATION, CORRECT?

11:11AM

23 A I'M NOT SURE UNHAPPY WOULD BE THE RIGHT WORD.

24 BUT WHO, IF THOSE EMPLOYEES ALSO THEN
25 FEARED ABOUT THEIR OWN FUTURE WITH THE COMPANY THAT --
26 THAT COULD INDEED TRIGGER MASS DEFECTIONS.

11:12AM

27 Q AND KEY MAN PROVISIONS ARE ANOTHER WAY THAT AN
28 EMPLOYEE CAN PROTECT HIMSELF FROM OPPORTUNISTIC

1 TERMINATION, CORRECT?

2 A WELL, MY UNDERSTANDING OF A KEY MAN PROVISION
3 IS IT WOULD MAKE IT MORE EXPENSIVE FOR THE COMPANY TO
4 TERMINATE AN EMPLOYEE.

5 Q YES. SO, IN YOUR VIEW AS A COMPENSATION
6 EXPERT, IT IS A PROTECTION IN THE SENSE THAT THE KEY
7 MAN PROTECTION WILL INCREASE THE COST TO THE COMPANY OF
8 TERMINATING A PORTFOLIO MANAGER, CORRECT?

11:12AM

9 A THAT'S CORRECT. BUT IT'S NOT LIKE A SEVERANCE
10 PAYMENT OR SOMETHING THAT WOULD FLOW TO THE MANAGER
11 HIMSELF.

11:13AM

12 Q AND THEN ANOTHER WAY THAT A PORTFOLIO MANAGER,
13 SOMEONE IN MR. GUNDLACH'S POSITION, COULD PROTECT
14 HIMSELF WOULD BE WITH AN EXPLICIT SEVERANCE AGREEMENT,
15 CORRECT?

11:13AM

16 A YES.

17 Q AND MR. GUNDLACH DIDN'T HAVE THAT, EITHER,
18 CORRECT?

19 A NOT TO MY KNOWLEDGE.

20 MR.WEINGART: OBJECTION. ASSUMES FACTS NOT IN
21 EVIDENCE.

11:13AM

22 THE COURT: I'LL OVERRULE IT.

23 AND I'LL ALLOW THE ANSWER.

24 BY MR. SURPRENANT:

25 Q YOUR ANSWER?

11:13AM

26 A IT WAS NOT, TO MY KNOWLEDGE.

27 Q NOW, MR. GUNDLACH'S -- THE COMPENSATION TERMS
28 THAT WERE REACHED BY THE PARTIES IN MAY, JUNE OF OH,

1 SEVEN, THAT GAVE MR. GUNDLACH AN OWNERSHIP MENTALITY IN
2 YOUR VIEW, CORRECT?

3 MR. WEINGART: OBJECTION. BEYOND THE SCOPE.

4 MR. SURPRENANT: TALKING ABOUT COMPENSATION
5 TERMS, YOUR HONOR. 11:14AM

6 THE COURT: OVERRULED.

7 THE WITNESS: YES, I BELIEVE IT DID.

8 BY MR. SURPRENANT:

9 Q AND OWNERS HAVE TO PAY EMPLOYEES, CORRECT?

10 A I -- I DON'T KNOW WHAT YOU MEAN BY HAVE TO PAY
11 EMPLOYEES. 11:14AM

12 BUT AN OWNER -- PART OF BEING AN OWNER
13 WOULD HAVE -- WOULD BE THE RESPONSIBILITY FOR
14 ATTRACTING, RETAINING, AND MOTIVATING YOUR OWN WORK
15 FORCE. 11:14AM

16 Q WELL, LET ME JUST PAUSE.

17 IT'S YOUR VIEW, AS AN INCENTIVE EXPERT,
18 THAT OWNERS HAVE TO PAY THEIR EMPLOYEES FAIRLY OR THEY
19 WOULD POTENTIALLY LOSE THEIR EMPLOYEES, CORRECT?

20 A THAT'S AN IMPORTANT QUALIFICATION. THAT
21 THEY -- OWNERS ARE RESPONSIBLE FOR THE -- FOR THE
22 ENTIRE ENTERPRISE, WHICH MEANS IF THEY WANT THE
23 EMPLOYEES, THEY HAVE TO PAY THEM. AND THEY NEED TO
24 ATTRACT, RETAIN, AND MOTIVATE. 11:14AM

25 Q AND IN A WORLD WHERE MR. GUNDLACH WOULD HAVE
26 STAYED AT TCW, IF HE WOULDN'T HAVE PAID THEM THE
27 MULTI-STRATEGY FIXED INCOME PROFIT SHARING BONUSES,
28 THAT WOULD HAVE TRIGGERED MASS DEFECTIONS, IN YOUR 11:14AM

1 VIEW, CORRECT?

2 MR. WEINGART: OBJECTION. BEYOND THE SCOPE.

3 THE COURT: I DON'T KNOW WHERE WE'RE GOING
4 WITH THIS. IT DOES SEEM A LITTLE AFIELD WITH WHERE WE
5 STARTED WITH MR. MURPHY.

11:15AM

6 MR. SURPRENANT: YOUR HONOR, I'LL MOVE ON.

7 THE COURT: OKAY.

8 BY MR. SURPRENANT:

9 Q IN YOUR VIEW, WITHOUT QUESTION, MR. GUNDLACH'S
10 TEAM WAS IMPORTANT TO MR. GUNDLACH'S SUCCESS, CORRECT?

11:15AM

11 A YES, I BELIEVE THAT TO BE TRUE.

12 Q BUT -- BUT YOU CAN'T SPEAK TO THE ROLE THAT
13 TCW'S NURTURING AND SUPPORT OF MR. GUNDLACH FOR OVER 25
14 YEARS PLAYED IN HIS SUCCESS, CAN YOU?

15 MR. WEINGART: OBJECTION. BEYOND THE SCOPE.

11:15AM

16 THE COURT: SUSTAINED.

17 BY MR. SURPRENANT:

18 Q EXHIBIT A TO TX 66. COULD WE HAVE THAT ON THE
19 SCREEN.

20 NOW, IT'S YOUR VIEW AS A COMPENSATION
21 EXPERT THAT EXHIBIT A TO TRIAL EXHIBIT 66 SPECIFIES
22 WHAT CONDITIONS ARE NECESSARY FOR TCW TO HAVE TO PAY
23 MONEY INTO THE PROFIT SHARING POOL, CORRECT?

11:16AM

24 A I THINK -- EXHIBIT A IS THE BONUS FORMULA, IF
25 YOU WILL.

11:16AM

26 EXHIBIT A TELLS WHEN, ON AN ONGOING
27 BASIS, THE COMPANY WILL CONTRIBUTE MONEY TO THE POOL,
28 WHICH THEN CAN BE DISTRIBUTED TO THE PARTICIPANTS OF

1 THE POOL.

2 Q SO LET ME RESTATE MY QUESTION. I THINK WE'RE
3 CLOSE.

4 IS -- IN YOUR VIEW, EXHIBIT A SPECIFIES
5 WHAT CONDITIONS ARE NECESSARY FOR TCW TO HAVE TO PAY
6 MONEY INTO THE PROFIT SHARING POOL, CORRECT?

11:17AM

7 A ON AN ONGOING BASIS FOR THE QUARTERLY PROFIT
8 SHARING POOL, THAT WOULD BE CORRECT.

9 Q SO TCW IS UNDER NO OBLIGATION TO PAY MONEY
10 INTO THE PROFIT SHARING POOL UNTIL THE CONDITIONS SET
11 FORTH IN EXHIBIT A ARE MET, CORRECT?

11:17AM

12 A THIS IS -- THIS IS -- TO THE EXCLUSION OF THE
13 LANGUAGE ON COMPENSATION ACCRUED TO TERMINATION, I
14 BELIEVE THAT'S CORRECT.

15 Q WHAT YOU BELIEVE HAD TO BE CORRECT IS THAT TCW
16 IS UNDER NO OBLIGATION TO PAY MONEY INTO THE PROFIT
17 SHARING POOL UNTIL THE FEES ARE ACCRUED AND PAID,
18 CORRECT?

11:17AM

19 MR. WEINGART: MISSTATES THE TESTIMONY.

20 THE COURT: SUSTAINED.

11:18AM

21 MR. SURPRENANT: YOUR HONOR, I WOULD LIKE TO
22 PLAY, THEN, I'D LIKE TO PLAY MR. MURPHY'S DEPOSITION,
23 PAGE 202, LINES 6 TO 18.

24 THE COURT: ANY OBJECTION?

25 MR. WEINGART: SORRY, YOUR HONOR. GIVE ME ONE
26 MOMENT.

11:18AM

27

28

(PAUSE) +

1 MR. WEINGART: YES, YOUR HONOR.

2 MAY WE APPROACH?

3 THE COURT: NO. I'LL SUSTAIN THE OBJECTION.

4 GO AHEAD.

5 MR. SURPRENANT: YOUR HONOR SUSTAINED THE
6 OBJECTION?

11:18AM

7 THE COURT: I'M SUSTAINING THE OBJECTION IN
8 LIEU OF HAVING YOU COME UP TO TALK TO ME.

9 AND YOU CAN ASK HIM ANOTHER QUESTION.

10 MR. SURPRENANT: THOSE ENCOUNTERS ARE NOT SO
11 FUN, YOUR HONOR.

11:19AM

12 THE COURT: OKAY.

13 BY MR. SURPRENANT:

14 Q LET'S TRY TO TIE THIS UP, PROFESSOR MURPHY.

15 TCW IS OBLIGATED TO PAY FUNDS INTO THE
16 PROFIT SHARING POOL WHEN THE CONDITIONS SET FORTH IN
17 EXHIBIT A ARE MET, CORRECT?

11:19AM

18 MR. WEINGART: INCOMPLETE HYPOTHETICAL.

19 THE COURT: IT'S BEEN ASKED AND ANSWERED. HE
20 JUST ANSWERED IT. AND HE CONDITIONED HIS ANSWER. THAT
21 WAS THE SAME QUESTION.

11:19AM

22 MR. SURPRENANT: BUT, YOUR HONOR, THAT'S WHY I
23 WANT TO IMPEACH HIM.

24 MR. WEINGART: YOUR HONOR --

25 THE COURT: GO AHEAD. KEEP GOING,

11:19AM

26 MR. SURPRENANT.

27 MR. SURPRENANT: GO AHEAD AND PLAY OR --

28 THE COURT: NO. GO AHEAD AND KEEP ASKING

1 QUESTIONS.

2 MR. SURPRENANT: THANK YOU, YOUR HONOR. I PUT
3 A POSITIVE SPIN ON IT. AS MY CHILDREN DO.

4 LET'S GO TO PARAGRAPH 6 OF TX 66. IF WE
5 CAN BLOW UP THE LAST PARAGRAPH, THAT'S THE PARAGRAPH
6 MR. WEINGART SHOWED YOU. BLOW IT UP. 11:20AM

7 Q NOW, DO YOU SEE WHERE PROFIT SHARING IS
8 CAPITALIZED, CAPITAL P, CAPITAL S?

9 A YES, I DO.

10 Q AND YOU KNOW, BECAUSE YOU SPENT A LOT OF TIME
11 IN COMPENSATION AGREEMENTS, THAT MEANS IT'S A DEFINED
12 TERM? 11:20AM

13 A YES, IT IS.

14 Q AND SO THAT MEANS THAT IF WE WANT TO FIGURE
15 OUT WHAT PROFIT SHARING IS, SO WHAT LAWYERS DO IS THEY
16 CAPITALIZE IT, SO YOU KNOW I HAVE TO LOOK SOMEWHERE
17 ELSE IN THIS CONTRACT FOR A DEFINITION, CORRECT? 11:20AM

18 A YES, BUT WITH PROVISIONAL -- THIS CONDITION
19 ALSO MAKES ME HAVE TO UNDERSTAND WHAT ACCRUED PROFIT
20 SHARING IS. 11:20AM

21 MR. SURPRENANT: MOVE TO STRIKE EVERYTHING
22 AFTER YES.

23 MR. WEINGART: OBJECTION. YOUR HONOR, IT'S
24 RESPONSIVE.

25 THE COURT: I'LL ALLOW THE ANSWER TO STAND. 11:21AM

26 GO AHEAD.

27 BY MR. SURPRENANT:

28 Q IF WE COULD GO TO TX 663. TOP PARAGRAPH.

1 THAT IS WHERE WE FIND THE DEFINITION FOR
2 PROFIT SHARING, CORRECT?

3 A YES.

4 Q AND IT SAYS:

5 DURING THE TERM YOU WILL RECEIVE
6 THE RESIDUAL AMOUNTS OF THE
7 MULTI-SECTOR FIXED INCOME PROFIT
8 SHARING POOL AS DEFINED IN
9 EXHIBIT A TO THIS AGREEMENT.

11:21AM

10 RIGHT?

11:21AM

11 A THAT'S CORRECT.

12 Q SO NOW WE HAVE TO GO TO EXHIBIT A, CORRECT?

13 A YES.

14 Q NOW, TCW MADE CONTRIBUTIONS TO THE PROFIT
15 SHARING POOL WHEN THOSE FEES WERE PAID TO TCW, CORRECT?

11:22AM

16 MR. WEINGART: OBJECTION. ASKED AND ANSWERED.
17 CUMULATIVE.

18 THE COURT: SUSTAINED.

19 MR. SURPRENANT: IF WE COULD GO TO THE TX 11,
20 SO WHEN WE GO TO THE LANGUAGE --

11:22AM

21 THE COURT: WAIT, ARE WE LOOKING AT PAGE 11 OF
22 EXHIBIT 66 OR A NEW EXHIBIT?

23 MR. SURPRENANT: YES, YOUR HONOR, TX 66-11.

24 THE COURT: OKAY.

25 BY MR. SURPRENANT:

11:22AM

26 Q SO WHEN WE FOLLOW THE DEFINED TERM BACK TO
27 EXHIBIT A AND WE BLOW UP FEES, WE SEE THAT THE
28 OBLIGATION IS TO:

1 FEES MEANS MANAGEMENT-RELATED
2 FEES EARNED BY TCW FOR SUCH A
3 QUARTER ON AN ACCRUAL BASIS WITH
4 RESPECT TO AN ACCOUNT AND THAT ARE
5 PAID TO TCW.

11:23AM

6 CORRECT?

7 MR. WEINGART: OBJECTION. CUMULATIVE.

8 THE COURT: GO AHEAD.

9 YOU CAN ANSWER THE QUESTION.

10 THE WITNESS: THIS IS -- THIS RELATES HERE TO
11 THE MANAGEMENT FEES, NOT TO THE CARRIED INTEREST OR
12 PERFORMANCE FEES.

11:23AM

13 AND IT DOES SAY IT WANTS THE FEES TO
14 BE -- THAT ARE PAID TO TCW.

15 BY MR. SURPRENANT:

11:23AM

16 Q THEN LET'S LOOK FURTHER DOWN THE PAGE.

17 YOU SEE THE FEES THAT I JUST -- I JUST
18 REMEMBERED.

19 THE COURT: THAT'S PRETTY GOOD,

20 MR. SURPRENANT. WITH AN ASSIST.

11:23AM

21 MR. BRIAN: I THINK HE GOT IMPEACHED.

22 BY MR. SURPRENANT:

23 Q FEES MEANS IT INCLUDES INCENTIVE AND
24 PERFORMANCE FEES, CORRECT, NOT JUST MANAGEMENT FEES?

25 A THAT'S TRUE. BUT IN THE CONTEXT WE'RE TALKING
26 ABOUT, WE HAVE INCENTIVE FEES AND WE HAVE CARRIED
27 INTEREST. AND THE LAST LINE, IT SAYS: FEES WILL NOT
28 INCLUDE.

11:23AM

1 IT GOES ON TO TALK ABOUT THE PERFORMANCE
2 FEES AND THE SMCF --

3 Q RIGHT.

4 THEN WE HAVE TO GO FURTHER DOWN THE PAGE
5 TO FIGURE OUT HOW THE SPECIAL MORTGAGE CREDIT,
6 INCENTIVE CREDIT INTEREST FEES ARE TREATED, CORRECT?

11:24AM

7 A THAT'S CORRECT.

8 Q THEY HAVE TO BE PAYABLE TO TCW AND PAID TO
9 TCW, CORRECT?

10 A NO. I DON'T BELIEVE IT SAYS THAT. I THINK IT
11 JUST SAYS THEY HAVE TO BE PAID TO TCW.

11:24AM

12 Q WELL, IF WE COULD GO, MIKE, TO THE SPECIAL
13 CREDIT MORTGAGE PERFORMANCE FEE BULLET. IF YOU BLOW IT
14 UP.

15 IT SAYS WHAT I JUST SAID:

11:24AM

16 IT HAS TO BE PAYABLE WITH
17 RESPECT TO A SPECIAL MORTGAGE
18 CREDIT ACCOUNT. AND, THAT ARE PAID
19 TO TCW.

20 CORRECT?

11:24AM

21 A I JUST STAND CORRECTED. I WAS FOCUSING ON THE
22 PAID TO TCW PHRASE.

23 Q I'LL GIVE YOU AN A -

24 A THANK YOU. AS LONG AS THERE'S NO MATH ON THE
25 TEST.

11:25AM

26 Q NOW, ACCRUALS REQUIRED BY GAAP, GENERALLY
27 ACCEPTED ACCOUNTING PRINCIPLES, CORRECT?

28 A YES.

1 Q AND THE CARRIED INTEREST, WHAT GAAP REQUIRES
2 ARE THOSE TO BE BOOKED AND REBOOKED EACH MONTH,
3 CORRECT?

4 A YES, TO BE BOOKED ON A CONTINUAL BASIS BASED
5 ON THE ONGOING -- WELL, THE ONGOING AMOUNTS.

11:25AM

6 Q AND BECAUSE THEY'RE BOOKED ON A MONTH-TO-MONTH
7 ACCOUNT, THEY CAN GO UP IF THE MARKET IMPROVES AND THEY
8 CAN GO DOWN IN THE MARKET CRASHES, CORRECT?

9 A YES, THAT WOULD BE TRUE.

10 Q AND CAN YOU NAME A SINGLE PERSON AT TCW THAT
11 WAS EVER PAID INCENTIVE FEES OR CARRIED FEES BEFORE TCW
12 RECEIVED THE FEES THEMSELVES IN THE ABSENCE OF A
13 VESTING AGREEMENT?

11:25AM

14 A TCW IS VERY PRIVATE ABOUT ITS COMPENSATION
15 POLICIES.

11:26AM

16 I HAVE -- THE ONLY INFORMATION I'VE
17 RECEIVED ON TCW'S COMPENSATION POLICIES IS WHAT I'VE
18 SEEN IN THE CONTEXT OF THIS CASE, WHICH ARE FROM
19 MR. GUNDLACH AND HIS TEAM AND THE ONE CONTRACT I WAS
20 SHOWN AT DEPOSITION.

11:26AM

21 Q WELL, CAN YOU NAME A SINGLE ASSET MANAGER IN
22 CALIFORNIA WHO WAS EVER PAID CARRIED INTEREST OR
23 INCENTIVE FEES BEFORE IT WAS PAID TO HIS OR HER
24 EMPLOYER IN THE ABSENCE OF A VESTING AGREEMENT?

25 A I -- I'M NOT SURE WHAT A VESTING AGREEMENT
26 WOULD HAVE TO DO WITH -- WITH YOUR QUESTION.

11:26AM

27 Q LET ME TAKE IT OUT OF THE QUESTION.

28 THE COURT: LET HIM FINISH HIS ANSWER.

1 ARE YOU GOING TO BE ABLE TO ANSWER THE
2 QUESTION, OR IS THAT QUESTION THE BEST YOU CAN DO IN
3 RESPONSE TO WHAT HE ASKED YOU --

4 WHATEVER YOU'RE GOING TO DO, WE WANT TO
5 GET IT DONE.

11:26AM

6 MR. SURPRENANT: THAT WAS MY FAULT, YOUR
7 HONOR.

8 THE WITNESS: I'VE SEEN THE DEPOSITION
9 TESTIMONY REFERENCES TO BONUS PAID ON A PRO RATA BASIS
10 UPON TERMINATION, WHICH IS A VERY CLOSE COUSIN TO
11 ACCRUED TO TERMINATION.

11:27AM

12 BUT I DIDN'T KNOW IN THAT CONTEXT, THAT
13 WAS ACTUALLY MR. BEYER'S -- I DIDN'T KNOW IN THAT
14 CONTEXT WHAT HIS BONUS CONTRACT WAS BASED UPON.
15 WHETHER IT WAS --

11:27AM

16 MR. SURPRENANT: MOVE TO STRIKE.

17 THE COURT: HE'S RESPONDING TO YOUR QUESTION.
18 HE'S JUST RESPONDING TO YOUR QUESTION.

19 I'LL STRIKE THE PART HE DIDN'T KNOW WHAT
20 HIS CONTRACT WAS BASED ON.

11:27AM

21 BY MR. SURPRENANT:

22 Q NOW, CAN YOU -- IT JUST NEVER HAPPENS THAT A
23 PORTFOLIO MANAGER OR A CHIEF INVESTMENT OFFICER IS PAID
24 ACCRUED COMPENSATION, ACCRUED INCENTIVE OR CARRIED
25 INTEREST COMPENSATION BEFORE ITS PAID TO HIS OR HER
26 EMPLOYER, CORRECT?

11:27AM

27 A NO, THAT'S NOT MY TESTIMONY.

28 Q CAN YOU NAME ONE?

1 A NOT -- NOT AS I -- NOT AS I SIT HERE.

2 Q NOW, YOU AGREE, AS AN INCENTIVE COMPENSATION
3 EXPERT, THAT WHAT MR. GUNDLACH WOULD BE PAID, HOW MUCH
4 AND WHEN HE WOULD BE PAID, IF HE TERMINATED UNDER THE
5 CONTRACT HE CLAIMS HE HAD IN 2007, DO NOT EXIST IN THE
6 AGREEMENT, CORRECT?

11:28AM

7 MR. WEINGART: OBJECTION. FORM.

8 THE COURT: SUSTAINED. I THINK YOU NEED TO
9 REPHRASE.

10 MR. SURPRENANT: IT WAS A D-MINUS QUESTION.

11:28AM

11 Q MR. GUNDLACH CLAIMS HE HAD A CONTRACT IN 2007,
12 CORRECT?

13 A I -- I ACTUALLY DON'T KNOW WHAT MR. GUNDLACH
14 CLAIMS.

15 Q UNDER YOUR VIEW OF THE DRAFT AGREEMENT, WHAT
16 MR. GUNDLACH WOULD BE PAID AT TERMINATION, AND HOW
17 MUCH, ARE NOT IN THE DRAFT AGREEMENT AND SOMEBODY WOULD
18 HAVE TO IMPLY IT, CORRECT?

11:28AM

19 MR. WEINGART: OBJECTION.

20 THE COURT: SUSTAINED.

11:29AM

21 I'M NOT -- YOU NEED TO CLARIFY THE
22 QUESTION. I THINK IT'S VAGUE.

23 MR. SURPRENANT: LET ME TRY IT AGAIN.

24 Q YOU'VE LOOKED AT TX 66, CORRECT?

25 A YES.

11:29AM

26 Q THE LAST DRAFT CONTRACT, RIGHT?

27 AND YOUR UNDERSTANDING OF THAT DRAFT
28 CONTRACT IS, IT DOES NOT HAVE A TERM FOR HOW MUCH

1 MR. GUNDLACH WOULD BE PAID AT TERMINATION, AND WHEN HE
2 WOULD BE PAID IT, CORRECT?

3 A NO, THAT'S NOT MY TESTIMONY.

4 MR. SURPRENANT: YOUR HONOR, I WOULD ASK TO
5 PLAY MR. -- PROFESSOR MURPHY'S DEPOSITION FROM 146, 24
6 TO 147, 17.

11:29AM

7 146, 24 TO 147, 17.

8 MR. WEINGART: I OBJECT.

9 THE COURT: LET ME TAKE A LOOK AT IT.

10 MR. WEINGART: I'D LIKE TO APPROACH.

11:30AM

11

12 (PAUSE) +

13

14 THE COURT: I'LL SUSTAIN THE OBJECTION.

15 MR. SURPRENANT: SUSTAIN THE OBJECTION, YOUR
16 HONOR?

11:31AM

17 THE COURT: YES.

18 MR. SURPRENANT: MAY WE APPROACH, JUST
19 BRIEFLY?

20 THE COURT: YES, YOU MAY.

11:31AM

21

22 (SIDE-BAR CONFERENCE HELD) +

23

24 THE COURT: MY VIEW IS, WHAT YOU'RE ASKING FOR
25 IN THE DEPOSITION, IT'S CALLING FOR A LEGAL CONCLUSION.
26 AND THE VAGUENESS, AND THE PROBLEM WITH YOUR QUESTION,
27 IT WASN'T CLEAR.

11:31AM

28 YOU'RE ASKING HIM IF IT PROVIDES FOR AN

1 AMOUNT THAT IS TO BE PAID ON TERMINATION OR IF IT
2 PROVIDES FOR A METHOD OF CALCULATING THE AMOUNT TO BE
3 PAID ON TERMINATION? I MEAN, IT WAS JUST KIND OF
4 OPEN-ENDED.

5 AND I'M NOT SURE -- I'VE HEARD HIS 11:31AM
6 TESTIMONY THAT, YOU KNOW, IT'S JUST AN IMPLIED TERM.
7 AND THE DEPOSITION DIDN'T REALLY IMPEACH ON THE ISSUES
8 YOU'VE BEEN PURSUING.

9 BECAUSE IT SEEMS TO ME THAT JUST SAYS
10 WHEN DOES IT GET PAID, NOT HOW MUCH. 11:32AM

11 MR. SURPRENANT: HE SAYS HOW MUCH. HOW
12 MUCH --

13 THE COURT: THAT'S THE POINT. YOU'VE GOT TO
14 FOCUS THAT QUESTION. I'LL LET YOU ASK THAT QUESTION.

15 WHEN I SAID I THOUGHT IT WAS VAGUE AND 11:32AM
16 YOU NEEDED TO CLARIFY IT, I WASN'T SAYING YOU COULDN'T
17 ASK IN THAT AREA AT ALL.

18 YOU MAY HAVE A DIFFERENT VIEW.

19 MR. WEINGART: MY CONCERN, YOUR HONOR -- MY
20 CONCERN IS THAT TCW MOVED TO EXCLUDE VARIOUS THINGS, 11:32AM
21 AND HIS OBJECTION TO VARIOUS ASPECTS OF HIS TESTIMONY
22 IS GOING TO A LEGAL CONCLUSION THE COURT SUSTAINED.

23 MR. SURPRENANT IS NOW TRYING TO -- TO GO
24 THROUGH AND DRAW A BUNCH OF LEGAL CONCLUSIONS.

25 THE COURT: I'M NOT ALLOWING IT. THAT'S WHAT 11:32AM
26 THE DEPOSITION DID. I SAID I WOULDN'T LET HIM DO THAT.

27 MR. WEINGART: THAT'S MY CONCERN AND MY
28 OBJECTION.

1 MR. SURPRENANT: MY CONCERN IS THAT HE PUT
2 BEFORE THE JURY A -- RIGHT UP TO THE EDGE OF THIS IS
3 HOW TO CONSTRUE ACCRUED TO THE DATE OF TERMINATION.

4 THE COURT: OKAY. YOU CAN CROSS-EXAMINE HIM
5 ON THAT.

11:33AM

6 BUT YOU CAN'T -- YOUR OWN TESTIMONY
7 DOESN'T WORK.

8 MOST OF THE EVIDENCE IN THIS CASE THAT'S
9 REALLY HAD THE IMPACT HAS BEEN LAWYERS ASKING
10 QUESTIONS, AND NOT WITNESSES TELLING WHAT THEY THINK.

11:33AM

11 ASK HIM ABOUT -- HIS INTERPRETATION. OR
12 ASK HIM, UNDER THE TERMS OF THE AGREEMENT, THERE'S A
13 WAY THAT CALCULATE THE AMOUNT PAYABLE UPON TERMINATION
14 MUCH.

15 DON'T JUST MAKE A GENERALIZED STATEMENT
16 AND THEN SUGGEST IN YOUR FOLLOW-UP QUESTION THAT YOU
17 HAVE TO IMPLY THE TERM OR SOMETHING ELSE BECAUSE HE
18 HASN'T SAID THAT.

11:33AM

19 MR. SURPRENANT: BUT HE ANSWERED THE QUESTION.
20 THAT IS NOT MY OPINION. AND I HAVE IMPEACHMENT
21 TESTIMONY ON --

11:33AM

22 THE COURT: I DON'T THINK THIS IS IMPEACHMENT
23 TESTIMONY ON THAT.

24 ASK HIM WHAT HIS OPINION IS. PUT IT OUT
25 THERE AND YOU CAN GO FROM THERE.

11:33AM

26 MR. BRIAN: CAN I MAKE OTHER ONE CONCERN? MY
27 BROKEN RECORD THING AGAIN. AT THE END OF THE DAY
28 YESTERDAY I RAISED THE CONCERN ABOUT TIME.

1 THE COURT: I'M WATCHING IT. THEY KEEP
2 BEATING A DEAD HORSE. SOONER OR LATER YOU CAN'T KEEP
3 DOING IT.

4 MR. BRIAN: IT'S TYPICAL --

5 THE COURT: NO, YOU HAVEN'T BEEN. WE HAVE
6 HALF HOUR DIRECT AND WE GOT AN HOUR OF EVERYTHING YOU
7 CAN THINK OF ON THE CROSS.

11:34AM

8 LET'S FINISH HIM UP.

9 MR. SURPRENANT: OKAY. OKAY.

10

11:34AM

11 (SIDE-BAR CONFERENCE CONCLUDED) +

12

13 MR. SURPRENANT: PROFESSOR MURPHY, IN THE
14 INTEREST OF GETTING EVERYONE TO THE FINISH LINE, I HAVE
15 NO MORE QUESTIONS.

11:34AM

16 THE COURT: THANK YOU, MR. SURPRENANT.

17 ANY REDIRECT?

18 MR. WEINGART: NO, YOUR HONOR.

19 THANK YOU.

20 THE COURT: MR. MURPHY, THANK YOU FOR YOUR
21 TESTIMONY. YOU MAY STEP DOWN.

11:34AM

22 THE WITNESS: THANK YOU.

23 THE COURT: MR. HELM, YOU'RE GOING TO CALL
24 YOUR NEXT WITNESS?

25 MR. HELM: YES. WE CALL JEFFREY GUNDLACH.

11:34AM

26

27 JEFFREY GUNDLACH +

28 CALLED AS A WITNESS BY THE DEFENSE, HAVING BEEN

1 PREVIOUSLY DULY SWORN TESTIFIED AS FOLLOWS:

2

3 THE COURT: GOOD MORNING MR. GUNDLACH.

4 THE WITNESS: GOOD MORNING.

5 THE COURT: PLEASE RECALL YOU HAVE BEEN
6 PREVIOUSLY SWORN IN THIS MATTER, AND YOU ARE STILL
7 UNDER OATH.

11:35AM

8 YOU MAY HAVE A SEAT.

9 THE WITNESS: THANK YOU.

10 MR. HELM: IF I COULD HAVE A MOMENT TO
11 DISTRIBUTE THE BINDERS, YOUR HONOR.

11:35AM

12 THE COURT: ALL RIGHT.

13 MR. QUINN: YOUR HONOR, I WONDER IF WE MIGHT
14 STRETCH FOR FIVE MINUTES.

15 MR. MADISON IS GOING TO BE DOING THIS
16 EXAM, AND I UNDERSTAND HE WENT DOWNSTAIRS TO GRAB A
17 DRINK -- HERE HE IS.

11:35AM

18 THE COURT: LESS THAN A FIVE-MINUTE STRETCH.

19 MR. BRIAN: HOPEFULLY IT WAS A NONALCOHOLIC
20 DRINK.

11:36AM

21 MR. HELM: MAY I?

22 THE COURT: YES, MR. HELM.

23 MR. HELM: THANK YOU, YOUR HONOR.

24

25 DIRECT EXAMINATION +

11:36AM

26

27 BY MR. HELM:

28 Q GOOD MORNING, MR. GUNDLACH.

1 A GOOD MORNING.

2 Q WHEN DID YOU FIRST ENTER INTO AN EMPLOYMENT
3 AGREEMENT WITH TCW?

4 A I BELIEVE IT WAS IN 1989.

5 Q I'D LIKE TO SHOW YOU EXHIBIT 3, WHICH IS
6 ALREADY IN EVIDENCE.

11:36AM

7 CAN YOU -- WHAT WAS THE TERM OF THIS
8 AGREEMENT? DO YOU SEE --

9 A I THINK IT WAS THREE YEARS.

10 Q ALL RIGHT.

11:36AM

11 AND CAN YOU DESCRIBE GENERALLY HOW YOU
12 WERE COMPENSATED UNDER THIS AGREEMENT?

13 A BASICALLY, I HAD A SALARY AND FEE SHARING,
14 BASED UPON THE REVENUE STREAM THAT WAS CREATED BY THE
15 BUSINESS.

11:37AM

16 Q COULD WE LOOK AT PAGE 3 OF EXHIBIT 3.

17 IF YOU LOOK AT SUBSECTION G.

18 COULD WE BLOW THAT UP, PLEASE, DENNIS.

19 IT SAYS:

20 YOUR COMPENSATION AND ADDITIONAL

11:37AM

21 BENEFITS WILL CEASE WHEN

22 TERMINATION OCCURS, EXCEPT...

23 THEN WE GO TO:

24 THE COMPANY WILL PAY

25 COMPENSATION ACCRUED TO THE DATE OF

11:37AM

26 TERMINATION.

27 SO WAS THIS CONTAINED IN THE VERY FIRST
28 EMPLOYMENT AGREEMENT THAT YOU ENTERED INTO?

1 A YES, IT WAS.

2 Q AND DID YOU HAVE AN UNDERSTANDING OF WHAT THE
3 TERM ACCRUED MEANT?

4 A YES.

5 Q WHAT DID YOU UNDERSTAND IT TO MEAN?

11:37AM

6 A ACCRUED MEANT FEES THAT WERE EARNED, BUT
7 HADN'T BEEN COLLECTED YET.

8 Q DID THIS AGREEMENT, THE 1989 AGREEMENT WE'RE
9 LOOKING AT, LIMIT THE CIRCUMSTANCES UNDER WHICH TCW
10 COULD TERMINATE YOU?

11:37AM

11 A I DON'T THINK SO.

12 Q SO IF WE COULD LOOK AT -- ACTUALLY, PUT UP FOR
13 THE COURT AND COUNSEL, 6182.

14 MAY I SHOW THIS TO THE JURY, YOUR HONOR?

15 THE COURT: ANY OBJECTION?

11:38AM

16 MR. MADISON: IT'S ARGUMENT, YOUR HONOR. I
17 DON'T THINK WE NEED IT, BUT ...

18 THE COURT: IS THAT AN OBJECTION?

19 MR. MADISON: ARGUMENTATIVE.

20 THE COURT: I THINK WE CAN DO WITHOUT IT. YOU
21 CAN USE IT.

11:38AM

22 MR. HELM: I CAN USE IT?

23 THE COURT: YOU CAN USE IT IN YOUR CLOSING
24 ARGUMENT.

25 YOU CAN'T USE IT NOW.

11:38AM

26 MR. HELM: THANK YOU, YOUR HONOR.

27 Q SO, IN 1989 THERE WAS AN ACCRUED COMPENSATION
28 PROVISION, BUT NO TERMINATION FOR CAUSE PROVISION; IS

1 THAT TRUE?

2 A THAT'S WHAT I THINK, YEAH.

3 Q COULD WE -- DID YOU ANSWER -- DID YOU ENTER
4 INTO A SUBSEQUENT EMPLOYMENT AGREEMENT AT TCW?

5 A YES.

11:38AM

6 Q LET'S LOOK AT EXHIBIT 6, PLEASE, IF WE COULD.
7 THAT'S IN EVIDENCE.

8 IS THIS AN AGREEMENT YOU ENTERED INTO IN
9 1992?

10 A YES.

11:38AM

11 Q WHAT WAS THE TERM OF THE 1992 AGREEMENT?

12 A IT WAS A LONG ONE. IT WAS SEVEN YEARS.

13 Q AND, AGAIN, CAN YOU DESCRIBE GENERALLY HOW YOU
14 WERE PAID UNDER THIS AGREEMENT?

15 A SAME. SAME ARRANGEMENT AS BEFORE, A BASE
16 SALARY AND THEN MAJORITY OF THE COMPENSATION WAS FROM
17 FEE SHARING.

11:39AM

18 Q LET'S LOOK AT PAGE 4, IF WE COULD.
19 SECTION 5-A.

20 NOW IT SAYS:

11:39AM

21 YOUR EMPLOYMENT CAN BE
22 TERMINATED PRIOR TO MARCH 31, 1999
23 AS FOLLOWS:

24 THEN IT SAYS:

25 A, FOR CAUSE. YOUR EMPLOYMENT
26 MAY BE TERMINATED IMMEDIATELY BY
27 THE COMPANY UPON THE OCCURRENCE OF:
28 ONE, GROSS MISCONDUCT BY YOU;

11:39AM

1 TWO, A MATERIAL BREACH BY YOU OF
2 YOUR MATERIAL JOB RESPONSIBILITIES;

3 THREE, YOUR CONVICTION OF A
4 FELONY;

5 OR FOUR, THE ENTRY OF AN ORDER 11:39AM
6 ISSUED BY ANY COURT OR REGULATORY
7 AGENCY REMOVING YOU FROM OFFICE OR
8 PROHIBITING YOU FROM PARTICIPATION
9 IN THE CONDUCT OF THE AFFAIRS OF
10 THE COMPANY OR ITS AFFILIATES, 11:40AM
11 PROVIDED, HOWEVER, THAT BEFORE THE
12 COMPANY TERMINATES YOU UNDER TWO,
13 THE MATERIAL BREACH CLAUSE, YOU MAY
14 FIRST HAVE TEN CALENDAR DAYS IN
15 WHICH TO CURE THE MATERIAL BREACH. 11:40AM

16 WAS THIS CONTAINED IN YOUR 1992
17 EMPLOYMENT AGREEMENT?

18 A YES, IT WAS.

19 Q THIS WAS A NEW PROVISION?

20 A YES. THIS WAS SOMETHING THAT WAS IMPORTANT TO 11:40AM
21 ME THAT I NEGOTIATED INTO THE CONTRACT.

22 Q COULD YOU -- DO YOU RECALL WHAT THE
23 CIRCUMSTANCES WERE THAT LED TO THE INCLUSION OF THIS
24 PROVISION IN YOUR 1992 AGREEMENT?

25 A YES. 11:40AM

26 WE WERE -- WE HAD BUILT THE BUSINESS
27 FROM ZERO TO ABOUT TEN BILLION OF A.U.M. BY 1992. AND
28 THE FUTURE VALUE OF THAT REVENUE WAS QUITE BIG, AND I

1 WANTED TO MAKE SURE THAT IF I WAS SIGNING ON THAT, I
2 COULDN'T BE FIRED OUT OF THE BLUE.

3 AND I WANTED -- ACTUALLY NOT TO BE ABLE
4 TO BE FIRED AT ALL. WE ENDED UP NEGOTIATING WHAT I
5 THOUGHT WAS GOOD PROTECTION WITH THIS CLAUSE.

11:41AM

6 Q AND IF WE COULD LOOK AT PAGE 5 OF THIS
7 EXHIBIT, AT THE TOP, TOP PARAGRAPH.

8 AGAIN, IT SAYS:

9 YOUR COMPENSATION AND ADDITIONAL
10 BENEFITS WILL CEASE WHEN
11 TERMINATION OCCURS, EXCEPT -- AND
12 THEN TWO, THE COMPANY WILL PAY
13 COMPENSATION ACCRUED TO THE DATE OF
14 TERMINATION.

11:41AM

15 SO THIS CARRIED OVER -- THIS WAS A
16 SIMILAR CLAUSE TO WHAT WAS IN THE 1989 AGREEMENT; IS
17 THAT TRUE?

11:41AM

18 A EVEN IDENTICAL, I THINK, YES.

19 Q DID YOU ENTER INTO A LATER AGREEMENT AT TCW?

20 A YES, I DID.

11:41AM

21 Q DO YOU RECALL WHEN THAT WAS?

22 A I THINK IT WAS 1998.

23 Q WE'LL LOOK AT EXHIBIT 12, PLEASE, WHICH IS IN
24 EVIDENCE.

25 IF WE COULD LOOK AT -- IS THIS YOUR 1998
26 AGREEMENT?

11:42AM

27 A YES.

28 Q AND WHAT WAS THE TERM OF THE AGREEMENT AS SET

1 FORTH IN PARAGRAPH 1?

2 A THROUGH DECEMBER 2004.

3 Q AND, AGAIN, IN GENERAL TERMS, HOW WERE YOU TO
4 BE PAID UNDER THIS AGREEMENT, UNDER THIS CONTRACT?

5 A SAME THING. IT WAS SALARY AND FEE SHARING.
6 IT WAS ALWAYS THE SAME.

11:42AM

7 Q AND HAD YOUR PART OF THE BUSINESS CHANGED IN
8 ANY WAY BY THE TIME OF THIS AGREEMENT?

9 A YES.

10 Q HOW?

11:42AM

11 A BY 1998 I HAD TAKEN OVER GREATER DUTIES AND
12 WAS IN CHARGE OF THE ENTIRE FIXED INCOME AREA, NOT JUST
13 THE MORTGAGE-BACKED SECURITIES AREA.

14 Q WE TALKED ABOUT A TERMINATION FOR CAUSE
15 PROVISION THAT YOU NEGOTIATED IN YOUR PRIOR AGREEMENT.

11:42AM

16 WERE THERE ANY TERMINATION FOR CAUSE
17 PROTECTIONS IN THIS AGREEMENT?

18 A SAME ONE.

19 Q COULD WE LOOK AT PAGE 7 OF THE EXHIBIT,
20 PLEASE. IF WE COULD LOOK AT PARAGRAPH 5-A. OKAY.

11:43AM

21 THAT TALKS ABOUT GROSS MISCONDUCT,
22 MATERIAL BREACH, CONVICTION OF A FELONY, ENTRY OF AN
23 ORDER.

24 IS THERE ANY CHANGE BETWEEN THIS
25 LANGUAGE AND THE LANGUAGE WE SAW IN THE PRIOR
26 AGREEMENT?

11:43AM

27 A I THINK THE CURE PERIOD GOT A LITTLE LONGER.

28 Q SO, AT THE BOTTOM WHERE IT SAYS:

1 PROVIDED, HOWEVER, THAT BEFORE
2 THE COMPANY TERMINATES YOU UNDER
3 TWO, YOU MUST FIRST HAVE 30
4 CALENDAR DAYS IN WHICH TO CURE THE
5 MATERIAL BREACH.

11:43AM

6 A YES, I THINK IT WAS TEN IN THE PRIOR VERSION.

7 Q OTHER THAN CHANGING IT FROM TEN TO 30, WERE
8 THERE ANY OTHER CHANGES IN THE LANGUAGE OF THE
9 PROVISION RESTRICTING WHEN YOU COULD BE TERMINATED?

10 A I DON'T THINK SO.

11:43AM

11 Q ALL RIGHT. LET'S LOOK AT THE BOTTOM OF
12 PAGE 7.

13 AND, AGAIN:

14 YOUR COMPENSATION AND ADDITIONAL
15 BENEFITS WILL CEASE WHEN
16 TERMINATION OCCURS, EXCEPT...

11:43AM

17 THEN WE GO TO TWO -- AND MAYBE TO THE NEXT
18 PAGE, DENNIS. BLOW THAT UP.

19 THE COMPANY WILL PAY
20 COMPENSATION ACCRUED TO THE DATE OF
21 TERMINATION.

11:44AM

22 AGAIN, THE SAME PROVISION THAT WE'D SEEN
23 IN THE PRIOR CONTRACTS DATING BACK TO 1989.

24 A RIGHT. THERE IT IS AGAIN.

25 Q DID YOU ENTER INTO A SUBSEQUENT AGREEMENT WITH
26 THE COMPANY?

11:44AM

27 A YES, I DID.

28 Q DO YOU RECALL WHAT YEAR THAT WAS?

1 A I THINK IT WAS 2003.

2 Q IF WE COULD SHOW EXHIBIT 16, WHICH IS ALREADY
3 IN EVIDENCE.

4 IS THIS THE AGREEMENT YOU ENTERED INTO
5 WITH TCW IN 2003?

11:44AM

6 A YES.

7 Q NOW, WHO DID YOU NEGOTIATE THIS AGREEMENT WITH
8 ON THE TCW SIDE?

9 A BILL SONNEBORN.

10 Q NOW, IT SAYS IN THE FIRST PARAGRAPH:

11:44AM

11 TO THE EXTENT NOT INCONSISTENT
12 WITH THE PARAGRAPHS NUMBERED ONE,
13 THREE -- ONE, TWO, THREE, FOUR, AND
14 FIVE BELOW, ALL TERMS OF YOUR
15 FORMER EMPLOYMENT AGREEMENT DATED
16 AS OF JANUARY 1, 1998, THE
17 EMPLOYMENT AGREEMENT, ARE
18 INCORPORATED HEREIN AS IF FULLY --
19 AS IS SET FORTH IN FULL AND APART
20 FROM YOUR NEW EMPLOYMENT AGREEMENT.

11:45AM

11:45AM

21 DO YOU SEE THAT?

22 A YES.

23 Q THERE ARE SOME PROVISIONS ADDRESSED IN THIS
24 2003 DOCUMENT AND OTHERS INCORPORATED FROM A PRIOR
25 AGREEMENT; IS THAT TRUE?

11:45AM

26 A YES.

27 Q IF YOU COULD TAKE OUT IN THE BINDER AND FLIP
28 THROUGH EXHIBIT 16, CAN YOU TELL US, IN GENERAL TERMS,

1 WHAT ARE THE ITEMS THAT ARE DIRECTLY ADDRESSED IN THIS
2 DOCUMENT, THE 2003 AGREEMENT THAT YOU NEGOTIATED WITH
3 MR. SONNEBORN?

4 A WELL, THERE'S THE TERM OF THE CONTRACT,
5 WHICH --

11:46AM

6 Q SHOW THAT TERM. OKAY. THAT'S NO. 1?

7 A RIGHT.

8 THERE WAS CHANGES IN TITLES.

9 Q OKAY. TITLES. THAT'S TWO.

10 A THERE WERE CHANGES IN THE COMPENSATION FORMULA
11 A LITTLE BIT.

11:46AM

12 Q OKAY. THAT'S THREE.

13 GO TO THE NEXT PAGE. AND THEN -- THERE
14 WE GO.

15 WHAT ELSE IS ADDRESSED?

11:46AM

16 A IT'S SET UP, AN OFFICE IN SANTA MONICA, THAT'S
17 ADDRESSED.

18 Q OKAY. COST ISSUES ADDRESSED WITH THAT?

19 A YES.

20 Q AND TURN TO THE NEXT PAGE.

11:46AM

21 WHAT OTHER ITEM IS ADDRESSED IN THIS
22 AGREEMENT?

23 A THE TREATMENT OF THE RESIDUAL STOCK I HAD FROM
24 THE BUYOUT FROM SG.

25 Q IF WE COULD GO BACK TO THE FIRST PAGE OF THE
26 DOCUMENT.

11:46AM

27 WHAT WAS THE TERM OF THE 2003 EMPLOYMENT
28 AGREEMENT?

1 A IT WENT TO THE END OF 2007.

2 Q DID YOU DISCUSS WITH MR. SONNEBORN IN 2003,
3 WHEN YOU WERE NEGOTIATING THIS AGREEMENT, WHAT THE TERM
4 OF THE AGREEMENT WOULD BE?

5 A YES.

11:47AM

6 Q DID YOU AGREE TO THAT TERM WITH HIM?

7 A YES.

8 Q HOW DID THE COMPEN- -- HOW, IF AT ALL, DID THE
9 COMPENSATION CHANGE IN THIS 2003 AGREEMENT?

10 A THERE WERE SOME SORT OF A LIMIT PUT ON
11 COMPENSATION DURING, FOR THE CASE OF STRONG GROWTH.
12 THIS WAS NEGOTIATED AFTER THE STOCK MARKET FELL. FROM
13 2000 TO 2002.

11:47AM

14 AND TCW WAS KIND OF HURTING FOR
15 PROFITABILITY. SO THEY CAME TO ME AND I AGREED THAT I
16 WOULD HELP OUT WITH THAT PROFITABILITY BY HAVING A
17 LIMITER ON COMPENSATION FOR BOTH CASES, IS WHAT I
18 REMEMBER. IT GOT PRETTY COMPLICATED.

11:47AM

19 Q IF WE COULD LOOK AT PAGE 2 OF THE DOCUMENT.
20 WE HAVE ALL SORTS OF CAPPED AMOUNTS AND FORMULA, THINGS
21 LIKE THAT INCLUDED IN THE DOCUMENT?

11:47AM

22 A RIGHT.

23 Q OTHER THAN THE CAPS YOU JUST DESCRIBED,
24 WHAT -- TO WHAT EXTENT WAS IT, THE SAME OR DIFFERENT
25 FROM THE SORT OF KINDS OF AGREEMENTS YOU'D HAD BEFORE
26 IN TERMS OF WHAT YOUR COMPENSATION WAS?

11:48AM

27 A IT WAS VERY SIMILAR TO THE ONES WE HAD BEFORE.
28 IT WAS GETTING MORE COMPLICATED, THOUGH. IT WAS NOW

1 CONTEMPLATING SOME OTHER BUSINESS LINES.

2 THE DIVERSIFIED FIXED INCOME WAS GROWING
3 AND THAT WAS ADDRESSED LITTLE BIT.

4 AND THERE WAS THOUGHT OF DOING
5 PERFORMANCE FEE, LIKE HEDGE FUNDS. SO WE ADDRESSED
6 THAT A LITTLE BIT, TOO.

11:48AM

7 Q NOW, THE CHANGES THAT WERE MADE TO THE
8 COMPENSATION THAT YOU RECEIVED THAT WERE DISCUSSED IN
9 THIS DOCUMENT, WERE THOSE CHANGES ALSO DISCUSSED AND
10 NEGOTIATED FACE TO FACE WITH MR. SONNEBORN IN 2003?

11:48AM

11 A YES.

12 Q NOW, DID YOU DISCUSS AT THAT TIME WHO HAD
13 AUTHORITY TO DETERMINE ALLOCATIONS OF THE POOL THAT YOU
14 HAD TO OTHER MEMBERS OF YOUR GROUP?

15 IN OTHER WORDS, WHO COULD DETERMINE THE
16 EXTENT TO WHICH OTHER MEMBERS OF YOUR GROUP SHARED IN
17 ALLOCATIONS?

11:49AM

18 A I UNDERSTAND THE QUESTION.

19 I'M NOT SURE I REMEMBER EXACTLY IN 2003.
20 I MEAN WE WERE TALKING ABOUT THAT OVER THE COURSE OF
21 MANY YEARS. IT MAY HAVE BEEN IN THIS DOCUMENT.

11:49AM

22 Q NOW, WE TALKED ABOUT SOME ITEMS YOU DISCUSS
23 WITH MR. SONNEBORN, THE TERM, AND COMPENSATION CHANGES;
24 WHAT WERE SOME OF THE ITEMS THAT WERE SIMPLY
25 INCORPORATED FROM THE PRIOR AGREEMENT?

11:49AM

26 A I THINK IT WAS THINGS LIKE THE TERMINATION
27 CLAUSE AND THE ACCRUED COMPENSATION ASPECT OF IT ON
28 TERMINATION. THOSE TYPES OF THINGS.

1 Q IN 2003 WHEN YOU HAD DISCUSSIONS WITH
2 MR. SONNEBORN, DID YOU DISCUSS WITH HIM THESE OTHER
3 TERMS, LIKE TERMINATION FOR CAUSE, PAYMENT OF ACCRUED
4 COMPENSATION?

5 A NOT REALLY. IT WAS SO EMBEDDED IN OUR WORKING 11:49AM
6 ARRANGEMENT BY THAT TIME, HAVING GONE ON FOR SO MANY
7 YEARS, IT WAS JUST UNDERSTOOD. AND IT CARRIED ON
8 WITHOUT NEEDING A DISCUSSION.

9 Q SO, WERE THE TERMINATION FOR CAUSE AND ACCRUED
10 COMPENSATION PROVISIONS EVEN SUBJECT TO NEGOTIATION IN 11:50AM
11 2003?

12 A I DON'T THINK SO.

13 Q ALL RIGHT.

14 NOW, YOUR 2003 EMPLOYMENT AGREEMENT WAS
15 SET TO EXPIRE AT THE END OF 2007; IS THAT CORRECT? 11:50AM

16 A YES.

17 Q DID YOU NEGOTIATE A NEW EMPLOYMENT AGREEMENT
18 BEFORE THE OLD ONE EXPIRED?

19 A YES.

20 Q WHEN DID YOU DO THAT? 11:50AM

21 A I THINK IT -- FIRST STARTED IN VERY LATE 2006
22 AND GOT WRAPPED UP IN LATE MAY OF 2007.

23 Q WERE THERE ANY NEW DEVELOPMENTS AHEAD ON THE
24 HORIZON, AT THE TIME YOU WERE HAVING DISCUSSIONS ABOUT
25 CHANGING YOUR EMPLOYMENT AGREEMENT? 11:51AM

26 A YES.

27 WE WERE PRETTY CERTAIN WE WANTED TO
28 EXPAND THE BUSINESS INTO A COUPLE DIFFERENT AREAS. AND

1 WE WANTED TO TALK ABOUT HOW THOSE WOULD BE TREATED.

2 Q WHAT WERE SOME OF THE AREAS YOU WERE
3 CONSIDERING MOVING INTO?

4 A WE WERE THINKING ABOUT STARTING A NEW COMPANY.
5 A MORTGAGE REIT IS WHAT THEY ARE CALLED, TRADE ON THE
6 NEW YORK STOCK EXCHANGE. WE ENDED UP NOT DOING THAT.

11:51AM

7 BUT THE OTHER PIECE OF BUSINESS WE DID A
8 LOT OF, WHICH WAS THE SPECIAL MORTGAGE CREDIT FUNDS,
9 THE DISTRESSED FUNDS.

10 Q HAD ANY OF THE DISTRESSED FUNDS BEEN CREATED
11 AS OF THE SPRING OF 2007?

11:51AM

12 A NO. THEY HADN'T BEGUN YET. I WAS DEVELOPING
13 THE INVESTMENT THESIS, THOUGH, AT THAT TIME.

14 Q JUST TO REMIND US, WHAT WAS THE INVESTMENT
15 THESIS OF THE SPECIAL MORTGAGE CREDIT FUNDS AS YOU
16 CONCEIVED IT IN OR AROUND THE SPRING OF 2007, JUST
17 BRIEFLY?

11:51AM

18 A I THOUGHT THAT A CERTAIN LARGE MARKET WAS VERY
19 BADLY OWNED.

20 AND PEOPLE WHO OWNED IT -- OWNED IT FOR
21 THE WRONG REASON, AND IT WAS VULNERABLE TO AN ECONOMIC
22 SHOCK. AND I FIGURED THAT THE ECONOMIC SHOCK HAD BEGUN
23 AND THE PRICES OF THOSE ASSETS, BASED ON MY EXPERIENCE,
24 WOULD DROP VERY, VERY SUBSTANTIALLY AND CREATE A
25 GENERATIONAL BUYING OPPORTUNITY TO MAKE A LOT OF MONEY
26 FOR CLIENTS.

11:51AM

11:52AM

27 Q SO A BUYING OPPORTUNITY OF WHAT? WHAT DID YOU
28 ANTICIPATE YOU MIGHT BE ABLE TO BUY?

1 A MORTGAGE-BACKED SECURITIES THAT HAD STARTED
2 OUT LIFE WITH HIGH RATINGS FROM THE RATING AGENCIES
3 THAT WERE THEN RECONSIDERED TO BE JUNKY INVESTMENTS.

4 THEREFORE, THE PRICES WOULD DROP A LOT.
5 AND THEY USUALLY DROP WAY TOO FAR
6 BECAUSE OF PANIC. AND WE WOULD BUY THEM AMIDST THE
7 PANIC, HAVING CAPITAL SET ASIDE TO DO THAT, AND THE
8 CLIENTS COULD MAKE A LOT OF MONEY OFF OF IT.

9 Q NOW, YOU SAY THAT YOU NEGOTIATED A NEW
10 EMPLOYMENT ARRANGEMENT IN 2007.

11 WHO DID YOU HAVE DISCUSSIONS WITH AT TCW
12 IN 2007?

13 A IT WAS PRIMARILY BILL SONNEBORN, WITH SUPPORT
14 FROM BOB BEYER AND PETE SULLIVAN.

15 Q SO HOW DID THE NEGOTIATIONS TAKE PLACE? WERE
16 THEY FACE TO FACE? BY E-MAIL? HOW DID IT WORK?

17 A IT WAS MOSTLY FACE TO FACE IN BILL SONNEBORN'S
18 OFFICE.

19 Q WERE -- WAS THERE AN EXCHANGE OF ANY
20 SPREADSHEETS THAT TOOK PLACE IN THAT REGARD?

21 A YES. THE -- THEY SAID THEY WANTED TO
22 RENEGOTIATE THE DEAL, AND THEY BASICALLY LEFT IT ON MY
23 SHOULDERS TO FIGURE OUT WHAT STRUCTURE TO DO. AND I
24 PUT TOGETHER A BUNCH OF IDEAS THAT I THOUGHT WERE
25 USEFUL.

26 AND I DID SPREADSHEETS TO FLESH OUT
27 CASES FOR THE FUTURE. SO, UNDER CERTAIN ASSUMPTIONS OF
28 BUSINESS GROWTH, THIS WOULD BE HOW THE COMPENSATION

1 ARRANGEMENT WOULD WORK. AND I DID A VARIETY OF CASES.
2 AND I GAVE THOSE SPREADSHEETS TO
3 PETE SULLIVAN AND HE TURNED THEM INTO SOMETHING PRETTY.

4 Q OKAY.

5 LET ME ASK YOU TO LOOK AT EXHIBIT 6165. 11:54AM
6 THIS HAS NOT BEEN PUT INTO EVIDENCE.

7 6165. CAN YOU IDENTIFY THIS?

8 A THIS IS SOME OF THE WORK THAT I DID TO PUT
9 THOSE IDEAS TOGETHER.

10 MR. HELM: WE'D MOVE 6165 -- 11:54AM

11 Q WAS THIS PROVIDED TO TCW AS PART OF THE
12 NEGOTIATIONS?

13 A THIS SPECIFICALLY, I DOUBT IT. THIS WOULD BE
14 AN EARLY VERSION. SOMETHING VERY SIMILAR AND MORE
15 FORMALIZED WOULD HAVE BEEN GIVEN TO PETE SULLIVAN AND 11:54AM
16 THE OTHERS.

17 MR. HELM: MOVE ADMISSION OF 6165.

18 MR. MADISON: NO OBJECTION.

19 THE COURT: IT WILL BE ADMITTED.

20 11:54AM

21 (EXHIBIT 6165 ADMITTED.) +

22
23 MR. HELM: JUST SO WE CAN GET AN IDEA WHAT IT
24 LOOKED LIKE.

25 THE WITNESS: IT'S KIND OF ROUGH, YEAH. 11:54AM

26 MR. HELM: OKAY.

27 Q NOW, AFTER YOU FIRST PROPOSED THIS, OR
28 SOMETHING LIKE THIS, WAS THERE ANY ADDITIONAL

1 BACK-AND-FORTH SPREADSHEETS OR MODELS?

2 A YES.

3 Q AND JUST DESCRIBE IN GENERAL TERMS HOW THAT
4 WORKED.

5 A WELL, THE IDEA WAS TO TAKE ALL THE EXISTING
6 BUSINESS LINES AND POTENTIAL NEW BUSINESS LINES AND
7 FIGURE OUT WHAT THE BREAKDOWN WOULD BE ON THE FEE
8 SHARING BETWEEN MY GROUP AND TCW.

11:55AM

9 AND I DID IT BY THESE VARIOUS BUSINESS
10 LINES, AND I -- THIS ONE DIDN'T DO IT, BUT LATER ON I
11 DID A PERFORMANCE FEES OR CARRIED INTEREST DIFFERENT
12 FROM MANAGEMENT FEES.

11:55AM

13 AND I -- THIS WAS REALLY SHORTHAND FOR
14 ME TO FIGURE OUT IN MY MIND WHAT -- THE SENSIBLE WAY OF
15 COMPENSATING EVERYBODY.

11:55AM

16 Q YOU MENTIONED THERE WAS A FACE-TO-FACE MEETING
17 THAT ALSO TOOK PLACE IN THIS.

18 WHAT DO YOU RECALL ABOUT THAT MEETING?

19 A WE WENT OVER THESE IDEAS OF HOW TO SET UP
20 THE -- TO SIMPLIFY. THAT WAS ONE OF MY GOALS, WAS TO
21 SIMPLIFY THE ARRANGEMENT AND MAKE IT MORE
22 UNDERSTANDABLE.

11:55AM

23 AND WE TALKED ABOUT THE CASES, HOW THAT
24 MIGHT WORK. AND MOSTLY IT WAS ABOUT THE FEE SHARING.

25 Q NOW, HOW DID THE COMPENSATION -- IN WHAT
26 WAYS -- AGAIN, GENERAL TERMS, IN WHAT WAYS DID THE
27 COMPENSATION ARRANGEMENT CHANGE AS A RESULT OF THESE
28 NEGOTIATIONS?

11:56AM

1 ONE OF THE THINGS YOU MENTIONED, YOU
2 WANTED TO SIMPLIFY IT.

3 DID THAT GET ACCOMPLISHED?

4 A LARGELY, YES. IT WAS DEFINITELY MOSTLY
5 SIMPLIFIED. AND, ALSO, I WANTED TO HAVE HIRING
6 AUTHORITY AND FULL DISCRETION OVER WHAT ALLOCATIONS I
7 WOULD MAKE TO THE STAFF FROM THE FEE SHARING POOL.

11:56AM

8 AND I WANTED TO -- TO GET RID OF THE
9 LIMITERS, SO IF THE GROWTH OF THE BUSINESS WAS STRONG,
10 WE WOULD PARTICIPATE IN THAT DIRECTLY. AND I WAS
11 WILLING TO ABSORB ALL OF THE EMPLOYEE COMPENSATION
12 COSTS IN EXCHANGE FOR THAT.

11:56AM

13 Q JUST TO BREAK THAT DOWN BRIEFLY.

14 YOU SAID ABSORB THE EMPLOYEE
15 COMPENSATION COST.

11:57AM

16 WAS THAT ONE OF THE THINGS THAT WAS
17 DISCUSSED AND AGREED TO IN 2007?

18 A YES.

19 Q EXPLAIN JUST BRIEFLY WHAT THAT MEANS.

20 A WELL, IT'S REAL SIMPLE. KIND OF THIS WHOLE
21 DEAL IS PRETTY SIMPLE. SORT OF 50/50 DEAL, BROADLY
22 SPEAKING. REVENUE COMES IN; TCW GETS 50 PERCENT OF IT,
23 AND MY GROUP GETS 50 PERCENT.

11:57AM

24 BUT, OUT OF THE 50 PERCENT THAT WE GOT,
25 ROUGHLY I HAD TO PAY ALL OF THE SALARIES AND BONUSES
26 FOR ALL THE PEOPLE THAT WORKED IN THE GROUP.

11:57AM

27 Q WAS THAT A CHANGE OVER HOW THINGS PREVIOUSLY
28 HAD BEEN?

1 A YES, I WAS TAKING RESPONSIBILITY FOR THE RISK
2 OF ALL THAT COMPENSATION SHOULD THE BUSINESS SHRINK OR
3 NOT GROW AT EXPECTATIONS.

4 Q NOW, YOU ALSO MENTIONED, I THINK, GOVERNORS OR
5 LIMITERS.

11:57AM

6 WHAT WAS DISCUSSED AND AGREED TO IN THAT
7 REGARD?

8 A IT WAS AGREED WE WOULD GET RID OF THE
9 COMPLICATED FORMULA, LIMITING COMPENSATION FOR THE
10 STRONG SUCCESS CASES, AND THERE WOULD BE NO LIMITER.
11 IT WOULD STILL BE LIKE A 50/50-TYPE DEAL.

11:57AM

12 Q AND WAS THERE ANY AGREEMENT RATE AGREED ON THE
13 FEE SHARING PERCENTAGES FOR THESE UPCOMING SMCF FUNDS?

14 A YES.

15 Q WHAT AGREEMENT WAS REACHED?

11:58AM

16 A AGAIN, IT WAS ABOUT THE 50/50 DEAL. THERE
17 WAS -- TWO FEE TYPES. THERE ARE THE MANAGEMENT FEES
18 THAT ARE BILLED ON ONGOING BASIS. AND THAT WAS
19 SOMETHING LIKE 50/50.

20 AND THEN THERE'S THE PERFORMANCE FEES
21 WHICH, IF THE FUNDS ARE SUCCESSFUL, ARE VERY BIG. IT
22 SEEMED TO ME THAT THE GROUP SHOULD HAVE AN INCENTIVE TO
23 DO PARTICULARLY WELL AND DEVELOP A LOT OF INCENTIVE
24 FEES.

11:58AM

25 SO I MADE 60 PERCENT WOULD GO TO THE
26 GROUP OF THE CARRIED INTEREST. PROFIT POTENTIAL.

11:58AM

27 Q WAS THAT AGREED TO?

28 A YES.

1 Q YOU MENTIONED THAT DURING THE 2003
2 NEGOTIATIONS THAT YOU HAD WITH MR. SONNEBORN, TWO OF
3 THE ITEMS THAT YOU SAID YOU DISCUSSED WERE THE TERM OF
4 THE DEAL AND THE CHANGES TO COMPENSATION, CORRECT?

5 A YES.

11:58AM

6 Q NOW, WE JUST DISCUSSED DISCUSSIONS YOU HAD
7 WITH MR. SONNEBORN ABOUT CHANGES TO COMPENSATION; IS
8 THAT CORRECT?

9 A RIGHT.

11:59AM

10 Q AND IN 2007, DID YOU ALSO HAVE ANY DISCUSSIONS
11 WITH MR. SONNEBORN ABOUT THE TERM OF THE DEAL, FOR HOW
12 LONG YOU WOULD BE EMPLOYED UNDER THIS NEW ARRANGEMENT?

13 A YES, I DID.

14 Q WHAT WERE YOUR DISCUSSIONS IN THAT REGARD?

15 A HE BASICALLY SAID, YOU PICK.

11:59AM

16 YOU WANT TO -- MAKE IT A THREE-YEAR
17 TERM, THAT'S FINE.

18 YOU WANT TO LOCK IN THE ECONOMICS FOR
19 LONGER, THAT'S FINE.

20 AND I SAID, LET'S DO IT FOR FIVE YEARS.
21 AND HE AGREED TO IT.

11:59AM

22 Q WHEN DID THAT DISCUSSION WITH MR. SONNEBORN
23 TAKE PLACE?

24 A IN MAY OF 2007.

25 Q WHAT ROLE, IF ANY, DID OTHER ELEMENTS IN THE
26 DEAL THAT WERE INCORPORATED BY REFERENCE IN THE 2003
27 AGREEMENT HAVE IN ANY DISCUSSIONS IN THE 2007 PERIOD?

11:59AM

28 A NONE.

1 Q SO, DID ANYBODY -- DID YOU HAVE ANY
2 DISCUSSIONS WITH MR. SONNEBORN, SAYING THAT HE INTENDED
3 TO CHANGE PROVISIONS THAT HAD BEEN IN YOUR AGREEMENT
4 SINCE 1992 ABOUT THE CIRCUMSTANCES UNDER WHICH YOU
5 COULD BE TERMINATED?

12:00PM

6 A NO.

7 Q DID YOU EVER TELL HIM THAT YOU WANTED CHANGES
8 IN THAT PROVISION?

9 A NO.

10 Q DID ANYONE FROM TCW EVER TELL YOU THAT THEY
11 INTENDED TO CHANGE THE PROVISION THAT HAD BEEN INCLUDED
12 IN YOUR CONTRACT SINCE 1989, ABOUT, THAT YOU WOULD BE
13 PAID UPON TERMINATION, YOUR ACCRUED COMPENSATION?

12:00PM

14 MR. MADISON: OBJECTION. ASSUMES FACTS NOT IN
15 EVIDENCE. AND MISSTATES THE UNSIGNED AGREEMENT.

12:00PM

16 THE COURT: OVERRULED.

17 THE WITNESS: THAT WASN'T DISCUSSED.

18 BY MR. HELM:

19 Q DID YOU EVER SAY THAT YOU INTENDED TO CHANGE
20 THE PROVISION THAT HAD LONG BEEN IN YOUR AGREEMENTS
21 PROVIDING THAT YOU WOULD BE PAID ACCRUED COMPENSATION
22 UPON TERMINATION?

12:00PM

23 A NO.

24 Q NOW, DID YOU EVER POINT OUT DURING THE
25 NEGOTIATIONS WITH TCW THAT THIS DEAL COULD OPERATE TO
26 TCW'S BENEFIT IN CERTAIN CIRCUMSTANCES?

12:00PM

27 A YES.

28 Q LET'S LOOK BRIEFLY AT EXHIBIT 5031. THIS IS

1 IN EVIDENCE.

2 AT THE BOTTOM IT STARTS -- COULD YOU
3 BLOW THAT UP PLEASE, DENNIS.

4 THIS IS AN E-MAIL FROM YOU TO
5 MR. SULLIVAN, MR. SONNEBORN, MR. BEYER, COPIES TO
6 OTHERS.

12:01PM

7 COULD WE GO TO THE SECOND PAGE, PLEASE,
8 DENNIS. AT THE TOP THERE.

9 THE SECOND PARAGRAPH SAYS:

10 GIVEN THAT THIS ANALYSIS FIGURES
11 IN THE HOPED-FOR BUSINESS, I'M
12 IMPRESSED HOW FAVORABLE IT LOOKS
13 FROM THE TCW CORPORATE PERSPECTIVE,
14 REINFORCING MY ALREADY STRONG
15 BELIEF THAT THIS IS A GOOD, EVEN
16 GENEROUS, DEAL I AM PROPOSING FOR
17 THE FORM.

12:01PM

12:01PM

18 IS THAT WHAT YOU WROTE AT THAT POINT?

19 A YES, IT IS.

20 Q AND YOU BELIEVED THAT AT THAT TIME?

12:01PM

21 A DEEPLY.

22 Q COULD WE GO BACK TO PAGE 1.

23 IF WE GO TO THE NEXT E-MAIL ABOVE FROM
24 MR. SONNEBORN, BLOW THAT UP. THANK YOU.

25 THAT'S FROM MR. SONNEBORN TO YOU, AND
26 OTHERS ON THE CHAIN. IT SAYS:

12:02PM

27 YOU ARE RIGHT. AND WE HAVE A
28 SPECTACULAR PARTNERSHIP -- YOU ARE

1 RIGHT. WE HAVE A SPECTACULAR
2 PARTNERSHIP AND THERE ARE ELEMENTS
3 OF YOUR PROPOSAL WHICH ARE
4 BRILLIANT.

5 NOW, THE AMOUNTS THAT WE'VE BEEN
6 DISCUSSING, THE 50 PERCENT THAT WENT INTO THE POOL,
7 YOUR PART OF THE POOL, WAS THAT JUST FOR YOU TO KEEP
8 ALL FOR YOURSELF?

12:02PM

9 A NO. I HAD TO PAY EVERYONE ON THE STAFF.

10 Q DID YOU DISCUSS WITH TCW WHO GOT TO DECIDE TO
11 WHAT EXTENT FEES IN THE POOL, YOUR PART OF THE POOL
12 WERE ALLOCATED TO WHOM AND TO WHAT AMOUNTS?

12:02PM

13 A YES.

14 Q WHAT DID YOU DISCUSS IN THAT REGARD IN 2007?

15 A I WANTED TO HAVE SOLE DISCRETION OVER HOW THE
16 50 PERCENT FEE SHARING POOL THAT MY TEAM WAS TO GET,
17 HOW THAT WAS TO BE ALLOCATED AMONG THE GROUP.

12:03PM

18 Q DID YOU DISCUSS THAT WITH MR. SONNEBORN?

19 A YES.

20 Q WHAT DID HE SAY?

12:03PM

21 A HE SEEMED TO KIND OF AGREE WITH IT, BUT KIND
22 OF RELUCTANTLY.

23 Q NOW, IN THEORY, AS YOU UNDERSTOOD IT BY, AFTER
24 YOU REACHED AGREEMENT, DID YOU HAVE ABILITY TO KEEP THE
25 WHOLE POOL FOR YOURSELF AND GIVE NOTHING TO ANYBODY
26 ELSE, IN THEORY?

12:03PM

27 A IN THEORY, IT WOULD BE HIGHLY IMPRACTICAL, BUT
28 IT WOULD BE HYPOTHETICALLY DOABLE.

1 Q DID ANYBODY AT TCW EVER QUESTION YOUR RIGHT TO
2 DECIDE HOW THE POOL WAS ALLOCATED?

3 A NO.

4 Q WHEN YOU RECEIVED MONEY IN THE -- FROM THE
5 POOL AND ALLOCATED IT TO SOMEONE ELSE IN YOUR GROUP, A
6 PORTION OF IT, TO WHAT EXTENT, IF AT ALL, DID YOU
7 CONSIDER THAT TO BE A BENEFIT TO YOU, EVEN THOUGH YOU
8 WERE GIVING MONEY TO SOMEONE ELSE AND NOT KEEPING IT?

12:03PM

9 A I THOUGHT IT WAS A BENEFIT TO ME TO BE ABLE TO
10 DO THAT.

12:04PM

11 Q WHY IS THAT?

12 A I WANTED TO MAKE SURE EVERYBODY WAS
13 COMPENSATED APPROPRIATELY, WHICH WOULD BE A RETENTION
14 MECHANISM TO KEEP THEM WORKING IN THE GROUP.

15 I WANTED THEM TO BE POSITIVE IN ATTITUDE
16 AND FEEL GOOD ABOUT THE TEAM. I WANTED THEM TO ALL
17 WORK TOGETHER LOYALLY, AND NOT FEEL LIKE THERE WOULD BE
18 GREENER GRASS ON ANOTHER HILL.

12:04PM

19 Q SO, TO WHAT EXTENT DID INCENTIVIZING AND
20 REWARDING PEOPLE AND MAKING THEM FEEL HAPPY AND
21 PRODUCTIVE, TO WHAT EXTENT WAS THAT A PERSONAL BENEFIT
22 TO YOU IN YOUR BUSINESS ENDEAVORS?

12:04PM

23 A I THINK IT WAS -- I THINK IT WAS A MEANINGFUL
24 BENEFIT. MAYBE NOT THE PRIMARY BENEFIT OF THINGS. BUT
25 A MEANINGFUL BENEFIT.

12:04PM

26 Q WHY WAS IT A BENEFIT TO YOU TO HAVE HAPPY,
27 PRODUCTIVE EMPLOYEES?

28 A IT MAKES LIFE BETTER TO HAVE HAPPY EMPLOYEES

1 AND MAKES CLIENTS HAPPY WHEN THEY COME IN AND THEY CAN
2 FEEL THE VIBE OF THE EMPLOYEES ARE ENGAGED AND
3 POSITIVE.

4 Q ALL RIGHT.

5 TO WHAT EXTENT DID YOU VIEW THE RIGHT TO
6 ALLOCATE THE POOL AS YOU SAW FIT, SOMETHING THAT YOU
7 SAW AS A CONTRACTUAL BENEFIT THAT YOU'D BEEN PROMISED?
8 DID YOU THINK IT WAS A CONTRACTUAL BENEFIT TO YOU TO BE
9 ABLE TO ALLOCATE MONEY TO OTHER PEOPLE?

12:05PM

10 A YES.

12:05PM

11 Q WHY WAS IT A BENEFIT TO YOU? SIMILAR TO WHAT
12 WE JUST DISCUSSED?

13 A RIGHT.

14 IT'S -- IT'S VERY GOOD TO HAVE CONTENT
15 EMPLOYEES, AS OPPOSED TO HAVING EMPLOYEES THAT ARE
16 DISGRUNTLED. AND HAVING PEOPLE FEEL PART OF A TEAM AND
17 LOYAL MAKES EVERY DAY A BETTER QUALITY OF LIFE.

12:05PM

18 Q DID YOU EVER OBSERVE AN INSTANCE WHERE THE
19 LOYALTY OF PEOPLE IN THE TEAM THAT YOU CULTIVATED
20 HELPED YOU IN YOUR PROFESSIONAL LIFE?

12:05PM

21 A SORT OF.

22 Q HOW'S THAT?

23 A WHEN THEY FIRED ME FROM TCW, ALL THESE PEOPLE
24 QUIT. AND IF THEY HADN'T, I -- I DON'T KNOW -- I'D
25 HAVE HAD TO GO DOWN A DIFFERENT PATH, I GUESS.

12:06PM

26 Q NOW, DID THE FEE SHARING POOL ALSO BENEFIT
27 OTHERS ON YOUR TEAM?

28 A YES. ALL OF THEM.

1 Q WHEN YOU NEGOTIATED THE DEAL WITH TCW, TO WHAT
2 EXTENT AT ALL DID TCW INDICATE THAT IT UNDERSTOOD YOU
3 WOULD BE PAYING -- YOU WOULD BE PAYING PARTS OF THE
4 POOL TO OTHER PEOPLE IN YOUR GROUP?

5 A OH, THEY FULLY UNDERSTOOD. THAT WAS -- IT WAS
6 FUNDAMENTAL.

12:06PM

7 Q HOW?

8 MR. MADISON: MOVE TO STRIKE. HE DIDN'T
9 RESPOND TO THE QUESTION. IT WAS ABOUT WHAT WAS SAID.

10 THE COURT: I THINK IT WAS RESPONSIVE.

12:06PM

11 BUT YOU CAN FOLLOW UP ON IT, MR. HELM.

12 MR. HELM: I'LL LAY FURTHER FOUNDATION.

13 Q WHAT DID TCW SAY OR DO THAT GAVE YOU THE VIEW
14 THAT THEY UNDERSTOOD THAT YOU WOULD BE PAYING PARTS OF
15 THE POOL TO OTHER PEOPLE?

12:06PM

16 A WELL, IT WAS FUNDAMENTAL TO THE ARRANGEMENT
17 FOR YEARS AND YEARS AND YEARS.

18 THEY WOULD ALWAYS TALK ABOUT WE WANTED
19 TO MAKE SURE THAT YOUR TEAM IS TAKEN CARE OF, TOO. AND
20 MAKING SURE WE'RE PAYING PART OF THIS POOL TO THE
21 EMPLOYEES TO KEEP THEM HAPPY.

12:07PM

22 Q ALL RIGHT.

23 SO DID TCW, BASED ON YOUR DIRECT
24 CONVERSATIONS WITH TCW, DID TCW KNOW, DURING YOUR
25 DISCUSSIONS IN 2007, THAT PEOPLE LIKE MR. SANTA ANA,
26 MS. VANEVERY, AND MR. MAYBERRY WERE THIRD PARTIES WHO
27 WOULD BENEFIT FROM THE FEE SHARING POOL?

12:07PM

28 A OF COURSE.

1 Q AND TO WHAT EXTENT, IF AT ALL, DID TCW EXPRESS
2 TO YOU THAT IT INTENDED THE POOL TO BENEFIT PEOPLE LIKE
3 THAT?

4 A I'M SORRY?

5 Q TO WHAT EXTENT DID TCW EXPRESS TO YOU THAT IT
6 UNDERSTOOD THAT IT INTENDED THE POOL TO BENEFIT PEOPLE
7 LIKE MR. SANTA ANA, MR. MAYBERRY, MS. VANEVERY?

12:07PM

8 A FULLY.

9 Q NOW, DID MR. SANTA ANA, MS. VANEVERY, AND
10 MR. MAYBERRY RECEIVE FEE SHARING PAYMENTS 2008?

12:08PM

11 A YES.

12 Q TO WHAT EXTENT AT ALL, IF AT ALL, WAS IT
13 GENERAL KNOWLEDGE IN YOUR GROUP THAT MEMBERS OF THE
14 GROUP WERE ELIGIBLE TO RECEIVE FEE SHARING ALLOCATIONS,
15 AS PART OF THEIR BONUSES?

12:08PM

16 MR. MADISON: OBJECTION. FOUNDATION.
17 SPECULATION.

18 THE COURT: SUSTAINED.

19 YOU CAN LAY THE FOUNDATION.

20 BY MR. HELM:

12:08PM

21 Q WELL, WAS IT -- DID YOU COMMUNICATE TO OTHERS
22 IN THE GROUP THAT THEY WERE ELIGIBLE FOR BONUSES AND
23 THAT THE BONUSES WOULD COME FROM A PORTION OF THE FEE
24 SHARING POOL THAT YOU ALLOCATED TO?

25 A YES, VERY SPECIFICALLY.

12:08PM

26 Q WAS THAT CLEAR, A CLEAR UNDERSTANDING IN THE
27 GROUP, AS FAR AS YOU UNDERSTOOD?

28 A I THINK IT WAS CRYSTAL CLEAR.

1 Q NOW, DID YOU MAKE IT CLEAR TO PEOPLE IN YOUR
2 GROUP THAT YOU HAD THE SOLE AUTHORITY TO DECIDE WHETHER
3 OR TO WHAT EXTENT THEY GOT A FEE SHARING ALLOCATION?

4 A THAT'S THE MESSAGE I GAVE, YES.

5 Q DID YOU EVER INDICATE TO PEOPLE IN YOUR GROUP,
6 THAT, EVEN IF YOU THOUGHT THEY SHOULD GET A FEE SHARING
7 ALLOCATION, THAT TCW HAD DISCRETION TO DENY THEM ONE?

12:08PM

8 A NO. I TOLD THEM THEY DIDN'T HAVE THE
9 DISCRETION TO DENY THEM ONE.

10 OF COURSE, IF TCW WANTED TO GIVE THEM
11 MORE MONEY OUT OF THEIR PIECE OF THE PIE, THEY WERE
12 WELCOME TO DO THAT, BUT THAT NEVER HAPPENED.

12:09PM

13 Q BUT, DID YOU EVER INDICATE TO THEM THAT IF YOU
14 WANTED THEM TO RECEIVE A PORTION OF THE FEE SHARING
15 POOL, THAT SOMEHOW TCW COULD VETO THAT AND SAY NO, EVEN
16 THOUGH JEFFREY WANTS YOU TO GET SOMETHING FROM THE FEE
17 SHARING POOL, TCW OVERRIDES THAT? DID YOU EVER SAY
18 THAT?

12:09PM

19 A NO. I TOLD THEM THE OPPOSITE.

20 Q DID ANYONE, TO YOUR KNOWLEDGE, FROM TCW EVER
21 TELL PEOPLE IN YOUR GROUP THAT, EVEN IF YOU WANTED TO
22 ALLOCATE THEM A PORTION OF FEE SHARING, THAT SOMEHOW
23 TCW HAD THE AUTHORITY TO SAY NO?

12:09PM

24 A NO. THEY DIDN'T HAVE THE AUTHORITY TO SAY NO.

25 Q NOW, THIS NEW ARRANGEMENT THAT WE'VE BEEN
26 DISCUSSING, DID IT HAVE ANY EFFECT ON PHIL BARACH'S
27 COMPENSATION?

12:09PM

28 A YES.

1 Q WHAT WAS THE EFFECT?

2 A I THINK THE EFFECT WAS TO REDUCE IT.

3 Q WHAT WAS THE IMPEDANCE FOR DECREASING
4 MR. BARACH'S COMPENSATION?

5 A BILL SONNEBORN CAME TO ME AND HE SAID THAT,
6 JEFFREY, I WOULD NEVER GO AFTER YOUR COMPENSATION, BUT
7 PHIL SHOULDN'T BE COMPENSATED AS CLOSELY TO YOU AS HE
8 IS.

12:10PM

9 AND IT WOULD HELP OUT THE FIRM TO GET
10 MORE PROFITABILITY IF PHIL HAD COMPENSATION THAT WASN'T
11 SO SIMILAR TO YOURS.

12:10PM

12 AND I MENTIONED THAT TO PHIL. AND PHIL
13 SORT OF SAW THE LOGIC OF IT. AND THEN HE AND SONNEBORN
14 HAD SOME CONVERSATIONS ABOUT IT.

15 Q WHEN DID THIS CONVERSATION TAKE PLACE, THE
16 FIRST ONE YOU MENTIONED WITH MR. SONNEBORN?

12:10PM

17 A IT WAS VERY EARLY. IT MAY HAVE BEEN EARLY
18 '07. MAYBE EVEN LATE '06. IT WAS SORT OF THE RE- --
19 REASON -- ONE OF THE REASONS WHY HE WANTED TO START THE
20 NEGOTIATION WAS THIS WAS A PART OF IT. IT MATTERED TO
21 HIM.

12:11PM

22 Q TO HIM, WHO?

23 A BILL SONNEBORN.

24 Q LET'S LOOK AT EXHIBIT 38 ALREADY IN EVIDENCE.

25 MAY I APPROACH, YOUR HONOR?

12:11PM

26 THE COURT: YES, YOU MAY.

27 MR. HELM: ACTUALLY, I THINK IT MAY BE IN YOUR
28 BOOK.

1 DO YOU HAVE THAT, STEVE, 38 IN THE BOOK?

2 MR. MADISON: THANK YOU.

3 MR. HELM: I MAY APPROACH.

4 WE'LL IT HAVE ON THE SCREEN IF THE COURT
5 LIKES. I HAVE IT.

12:11PM

6 THE COURT: JUST PUT IT UP.

7 BY MR. HELM:

8 Q THIS IS IN EVIDENCE.

9 NOW, THIS IS AN E-MAIL FROM
10 MR. SONNEBORN, TO MR. SULLIVAN, CC-ING MR. DEVITO,
11 MR. CAHILL, MR. BEYER; SUBJECT, PHIL BARACH.

12:11PM

12 FIRST, LET ME ASK.

13 ARE YOU COPIED ON THIS E-MAIL?

14 A NO, I'M NOT.

15 Q DID YOU EVER SEE THIS E-MAIL BEFORE THIS
16 LITIGATION?

12:11PM

17 A NO.

18 Q NOW, IT SAYS:

19 BOB AND I MET WITH JEFFREY TO
20 DISCUSS PHIL BARACH, GIVEN HIS
21 CONTRACT ENDS AT THE END OF THE
22 MONTH.

12:12PM

23 IT THEN SAYS:

24 JEFFREY WAS SUPPORTIVE OF THE
25 FOLLOWING FOR PHIL GOING FORWARD.

12:12PM

26 DO YOU SEE THAT?

27 A I DO.

28 Q THEN IT SAYS:

1 ONE, NO NEW CONTRACT, AT-WILL
2 EMPLOYEE WHERE COMPENSATION AND
3 STATUS COULD CHANGE AT ANY TIME.

4 WAS THAT SOMETHING THAT MR. BEYER OR
5 MR. SONNEBORN DISCUSSED WITH YOU IN THOSE TERMS WHEN
6 THEY TALKED TO YOU? 12:12PM

7 A NO.

8 Q WHAT, IF ANYTHING, DO YOU REMEMBER DISCUSSING
9 WITH THEM ON THE SUBJECT OF WHETHER MR. BARACH WOULD
10 GET A NEW CONTRACT? 12:12PM

11 A NOTHING.

12 Q WHAT IF -- WERE YOU GENERALLY INVOLVED IN THE
13 NEGOTIATIONS BETWEEN TCW AND MR. BARACH CONCERNING THE
14 TERMS OF HIS COMPENSATION OR HIS EMPLOYMENT
15 ARRANGEMENTS? 12:12PM

16 A IT CHANGED OVER THE YEARS, BUT ANYWHERE CLOSE
17 TO THIS DATE, NO.

18 Q NOW, YOU MENTIONED THAT YOU RAISED WITH
19 MR. BARACH THE POSSIBILITY OF HIS COMPENSATION GOING
20 DOWN, AND THEN YOU SAID HE WENT AND TALKED TO
21 MR. SONNEBORN. 12:13PM

22 DID I HEAR THAT RIGHT?

23 A THAT'S WHAT I REMEMBER.

24 Q SO, AFTER THAT INITIAL OVERTURE YOU MADE TO
25 MR. BARACH, WERE YOU INVOLVED IN THE DISCUSSIONS OR
26 NEGOTIATIONS BETWEEN TCW AND MR. BARACH ABOUT WHETHER
27 HE WOULD HAVE A NEW CONTRACTOR, WHAT HIS STATUS WOULD
28 BE? 12:13PM

1 A I DON'T THINK SO.

2 Q NOW, IT THEN SAYS, AFTER IT SAYS, JEFFREY WAS
3 SUPPORTIVE OF THE FOLLOWING NO. 2, IT SAYS:

4 BRINGING HIS COMPENSATION DOWN
5 ON A RUN RATE BASIS INCLUDING THE
6 DEALS WHICH HAVE RECENTLY OR WILL
7 SHORTLY CLOSE TO SOMETHING IN THE
8 RANGE OF 7 MILLION TO \$8 MILLION
9 PER YEAR FROM ITS CURRENT LEVEL.

12:13PM

10 THEN IT GOES ON.

12:13PM

11 WHOSE IDEA WAS IT TO BRING MR. BARACH'S
12 COMPENSATION DOWN TO THAT LEVEL?

13 A THAT WAS BILL SONNEBORN'S GOAL. I REMEMBER
14 HIM USING THOSE NUMBERS WHEN HE HAD THE CONVERSATION
15 ABOUT REDUCING PHIL'S COMPENSATION. I REMEMBER -- SORT
16 OF REMEMBER HIM SAYING 6- TO \$8 MILLION.

12:14PM

17 Q WHAT WAS YOUR REACTION TO THAT WHEN HE SAID IT
18 TO YOU?

19 A I THINK I SAID, GOOD LUCK; I DON'T THINK HE'LL
20 AGREE TO IT.

12:14PM

21 Q DID YOU THINK IT WAS REALISTIC TO THINK THAT
22 WOULD BE AGREED TO?

23 A I THOUGHT IT WAS AGGRESSIVE TO BE THINKING YOU
24 WERE GOING TO GET HIM TO AGREE TO A 50 PERCENT
25 COMPENSATION CUT WHEN THE BUSINESS WAS BOOMING.

12:14PM

26 Q NOW, IT SAYS HERE -- YOU WEREN'T COPIED ON
27 THIS:

28 JEFFREY WAS SUPPORTIVE OF THE

1 FOLLOWING:

2 WERE YOU THE INITIATOR OF THIS IDEA?

3 A NO.

4 Q ALL RIGHT.

5 WE'VE BEEN TALKING ABOUT THE 2007
6 DISCUSSIONS YOU HAD EXCHANGED OF SPREADSHEETS AND SO
7 FORTH.

12:14PM

8 DID YOU ULTIMATELY REACH AN AGREEMENT ON
9 THE SUBJECT YOU WERE DISCUSSING?

10 A YES.

12:14PM

11 Q AND DID TCW EXPRESS TO YOU ANY VIEWS ON THE
12 NEW DEAL THAT YOU MADE?

13 A YES, THEY DID.

14 Q WHAT DID THEY SAY?

15 A THEY WERE EXTREMELY PLEASED WITH THE
16 COMPENSATION ARRANGEMENT.

12:15PM

17 Q LET'S LOOK AT EXHIBIT 5036 BRIEFLY. IT'S IN
18 EVIDENCE. BRIEFLY.

19 THIS IS AN E-MAIL MR. BEYER SENT YOU ON
20 MAY THE 1ST.

12:15PM

21 A YES.

22 Q IT SAYS:

23 DEAR JEFFREY:

24 I JUST WANT YOU TO KNOW HOW GOOD

25 I FEEL ABOUT THE NEW DEAL,

12:15PM

26 ESPECIALLY YOUR APPROACH TO ITS

27 PRESENTATION. AND YOUR REALISTIC

28 AND CONSIDERATE WAY OF TRYING TO

1 MAKE IT A WIN/WIN.

2 IS THAT CONSISTENT WITH OTHER COMMENTS
3 THAT YOU HEARD FROM TCW REGARDING THE NEW DEAL THAT WAS
4 MADE IN EARLY MAY?

5 A YES, IT IS. 12:15PM

6 Q NOW, WAS A DOCUMENT CIRCULATED TO MEMORIALIZE
7 THE AGREEMENT THAT YOU HAD MADE?

8 THE COURT: ALL RIGHT. LET'S TAKE OUR SECOND
9 RECESS.

10 20 MINUTES, LADIES AND GENTLEMEN. 12:15PM

11
12 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.) +

13
14 THE COURT: WE'RE OUT OF THE PRESENCE OF THE
15 JURY. 12:16PM

16 ANY MATTERS ANYBODY WISHES TO TAKE UP?

17 MR. QUINN: NO.

18 THE COURT: ALL RIGHT. THANK YOU.

19

20 (RECESS.) 12:16PM

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, WEDNESDAY, SEPTEMBER 7, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 12:39 P.M.

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

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

19 MR. GUNDLACH IS ON THE STAND.

20 AND MR. HELM, YOU MAY CONTINUE WITH YOUR
21 DIRECT EXAMINATION.

22 MR. HELM: THANK YOU, YOUR HONOR.

23
24
25 DIRECT EXAMINATION

26
27 BY MR. HELM:

28 Q. JUST TO CLARIFY SOMETHING BEFORE WE GO ON WITH

12:40PM

12:40PM

12:40PM

1 RESPECT TO THE PHIL BARACH DISCUSSIONS.

2 NOW, AFTER THE CONVERSATIONS THAT YOU
3 HAVE DESCRIBED, DID YOU HAVE ANY FURTHER DISCUSSIONS
4 WITH MR. BARACH ABOUT ALLOCATING HIM A PORTION FROM THE
5 FEE SHARING POOL GOING FORWARD AFTER 2007?

12:40PM

6 A. YES, I DID.

7 Q. NOW, WITH RESPECT TO THE ISSUE THOUGH OF
8 WHETHER HE HAD A CONTRACT WITH TCW OR WHETHER HE WAS AN
9 AT-WILL EMPLOYEE, IS THAT SOMETHING THAT YOU WERE
10 INVOLVED IN DISCUSSIONS WITH HIM ABOUT?

12:40PM

11 A. NO.

12 Q. NOW, IS THAT SOMETHING THAT YOU KNOW HE
13 DISCUSSED WITH MR. SONNEBORN OR OTHERS AT TCW, OR DO
14 YOU ASSUME THAT THERE WERE DISCUSSIONS AND THAT THEY
15 TOOK PLACE?

12:41PM

16 A. I WAS ASSUMING THAT THEY TOOK PLACE.

17 Q. SO YOU DON'T -- SINCE YOU WEREN'T PART OF THE
18 DISCUSSIONS YOU DON'T KNOW WHO, IF ANYONE, HE DISCUSSED
19 THAT TOPIC WITH AT TCW?

20 A. NO, I DON'T.

12:41PM

21 Q. NOW, IF WE COULD -- WE TALKED ABOUT
22 CIRCULATING A DOCUMENT TO MEMORIALIZE YOUR AGREEMENT.
23 IF WE COULD LOOK AT EXHIBIT 2150 WHICH
24 IS IN EVIDENCE.

25 NOW, THIS WAS A DRAFT THAT WAS
26 CIRCULATED TO YOU BY MR. CAHILL ON MAY THE 3RD; IS THAT
27 RIGHT?

12:41PM

28 A. YES.

1 Q. IF WE COULD LOOK AT -- WE'VE BEEN LOOKING AT
2 2150B.

3 DENNIS, IF YOU COULD PUT THAT UP, WHICH
4 IS A BETTER VERSION OF THE ATTACHMENT TO THAT.

5 IF YOU WOULD FIRST LOOK AT PAGE 5 OF
6 THAT EXHIBIT, IS THAT THE BEGINNING OF THE DRAFT THAT
7 WAS CIRCULATED TO YOU?

12:41PM

8 A. YES, IT IS.

9 Q. NOW, IT SAYS UNDER "TERM", (READING):

10 THE TERM WILL GO TO THE CLOSE

12:42PM

11 OF BUSINESS DECEMBER 31, 2011.

12 IS THAT CONSISTENT WITH THE AGREEMENT
13 THAT YOU HAD MADE WITH MR. SONNEBORN?

14 A. YES.

15 Q. AND IF YOU GO TO 2150B-7, PAGE SEVEN OF THIS,
16 SECTION 6A WOULD YOU LOOK AT THAT?

12:42PM

17 NOW, THAT IS -- IS THAT THE SAME
18 LANGUAGE THAT WE'VE SEEN FROM YOUR PRIOR EMPLOYMENT
19 AGREEMENTS CONCERNING WHEN YOU MAY BE TERMINATED; GROSS
20 MISCONDUCT, MATERIAL BREACH, AND SO FORTH?

12:42PM

21 A. YES, IT'S THE SAME.

22 Q. BUT THIS IS SOMETHING THAT YOU DIDN'T DISCUSS
23 WITH MR. SONNEBORN, SPECIFICALLY?

24 A. NO. AGAIN, THIS HAD BEEN THE BASIS OF WORKING
25 TOGETHER FOR TWO DECADES. WE DIDN'T NEED TO TALK ABOUT
26 IT ANYMORE.

12:43PM

27 Q. NOW, IF YOU GO TO THE BOTTOM OF SECTION SIX,
28 WE AGAIN HAVE THAT PARAGRAPH, AGAIN, IT SAYS (READING):

1 YOUR COMPENSATION INCLUDING
2 ANY BASE DRAW, ANY AMOUNT OF PROFIT
3 SHARING, AND ADDITIONAL BENEFITS
4 WILL CEASE WHEN TERMINATION OCCURS
5 EXCEPT -- AND THEN IT SAYS TWO --
6 THE COMPANY WILL PAY YOU YOUR BASE
7 SALARY AND ANY AMOUNT OF PROFIT
8 SHARING, PLUS ACCRUED VACATION,
9 ACCRUED TO THE DATE OF TERMINATION
10 IN ACCORDANCE WITH THE COMPANY'S
11 POLICIES.

12:43PM

12:43PM

12 DO YOU SEE THAT?

13 A. YES.

14 Q. NOW, IT USED TO SAY IT WILL PAY YOU ANY
15 COMPENSATION ACCRUED. NOW, IT SAYS BASE SALARY AND ANY
16 AMOUNT OF PROFIT SHARING, DO YOU SEE THAT?

12:43PM

17 A. YES.

18 Q. NOW, FIRST, JUST TO CLARIFY, DID YOU GET A
19 SALARY IN THE NORMAL SENSE AT THIS POINT?

20 A. NO, I DIDN'T.

12:44PM

21 Q. IN WHAT WAY WAS -- WHAT WOULD YOU CHARACTERIZE
22 THE THING THAT YOU GOT SORT OF MONTHLY?

23 A. WELL, I GOT A BI-WEEKLY CHECK THAT WAS WHAT WE
24 CALL A DRAW. AND IT'S JUST A LOAN, REALLY, AGAINST
25 WHAT WOULD COME MY WAY FROM THE FEE SHARING.

12:44PM

26 SO MY COMPENSATION WAS REALLY NOTHING
27 BUT FEE SHARING.

28 Q. SO WHEN IT SAYS THAT WE'LL PAY YOU YOUR BASE

1 SALARY AND ANY AMOUNT OF PROFIT SHARING, WAS THAT THE
2 SAME AS, OR DIFFERENT FROM, YOUR COMPENSATION AS YOU
3 UNDERSTOOD IT?

4 A. IT'S -- A GOOD EXPLANATION, GENERALLY
5 SPEAKING, COMPENSATION.

12:44PM

6 Q. DID YOU GET ANY COMPENSATION OTHER THAN PROFIT
7 SHARING OR BASE SALARY AT THAT POINT?

8 A. I DIDN'T GET A BASE SALARY. SO I DIDN'T GET
9 ANY COMPENSATION OTHER THAN FEE SHARING.

10 Q. OKAY.

12:44PM

11 NOW, PROFIT SHARING IS DEFINED ON PAGE
12 SIX OF THE DOCUMENT, IF WE COULD GO TO THAT. TOP IN B,
13 IT SAYS (READING):

14 DURING THE TERM, YOU ARE
15 ENTITLED TO RECEIVE THE RESIDUAL
16 AMOUNT OF THE MULTI-SECTOR FIXED
17 INCOME PROFIT SHARING POOL AS
18 DEFINED IN EXHIBIT A TO THIS
19 AGREEMENT, YOUR PROFIT SHARING. DO
20 YOU SEE THAT?

12:45PM

21 A. YES.

22 Q. AND SO THAT WAS WHERE THEY DEFINED PROFIT
23 SHARING; IS THAT RIGHT?

24 MR. MADISON: OBJECTION. VAGUE.

25 THE COURT: SUSTAINED.

12:45PM

26 Q. BY MR. HELM: WELL, LET'S GO BACK TO PAGE SIX,
27 IF WE COULD. EXCUSE ME, PAGE SEVEN, I MEANT. MY
28 MISTAKE. THE HIGHLIGHTED VERSION. RIGHT THERE. THANK

1 YOU.

2 SO WHEN IT SAYS THE COMPANY WILL PAY YOU
3 YOUR BASE SALARY AND ANY AMOUNT OF PROFIT SHARING PLUS
4 ACCRUED VACATION, ACCRUED TO THE DATE OF TERMINATION IN
5 ACCORDANCE WITH THE COMPANY'S POLICIES, WAS THERE EVER
6 ANY DISCUSSION THAT TCW INTENDED THIS TO HAVE ANY
7 DIFFERENT MEANING FROM THE PROVISION THAT HAD BEEN
8 CONTAINED IN YOUR AGREEMENTS SINCE 1989?

12:45PM

9 A. NO.

10 Q. NOW, LET'S GO TO PAGE SIX, IF WE COULD. IT
11 SAYS --

12:46PM

12 IF YOU COULD BLOW UP C, PLEASE.

13 AT THE TOP IT SAYS, (READING):

14 YOU WILL BE PRIMARILY
15 RESPONSIBLE FOR DETERMINING AND
16 ALLOCATING COMPENSATION OF
17 EMPLOYEES.

12:46PM

18 DO YOU SEE THAT?

19 A. YES.

20 Q. AND THEN DOWN BELOW IT SAYS, YOU AGREE THAT NO
21 ALLOCATIONS -- DO YOU SEE THAT?

12:46PM

22 A. YES.

23 Q. (READING):

24 YOU AGREE THAT NO ALLOCATIONS
25 OF COMPENSATION --

12:47PM

26 RIGHT THERE IN THE MIDDLE, DENNIS.

27 THERE YOU ARE.

28 THAT NO ALLOCATIONS OF

1 COMPENSATION TO EMPLOYEES IN THE
2 MULTI-SECTOR FIXED INCOME GROUP
3 WILL BE VESTED SO AS TO CONFER UPON
4 ANY PERSON THE RIGHT TO RECEIVE ANY
5 AMOUNT AFTER SUCH PERSON'S
6 TERMINATION OF EMPLOYMENT.

12:47PM

7 WELL, FIRST OF ALL, DID YOU UNDERSTAND
8 THIS TO BE REFERRING TO ALLOCATIONS THAT YOU MADE TO
9 EMPLOYEES?

10 A. YES.

12:47PM

11 Q. DID YOU UNDERSTAND THAT THIS APPLIED TO WHAT
12 YOUR RIGHTS WERE IN THE PROFIT SHARING POOL?

13 A. NO.

14 Q. NOW, IT SPEAKS OF THE RIGHT TO RECEIVE ANY
15 AMOUNT AFTER SUCH PERSON'S TERMINATION OF EMPLOYMENT
16 WITH THE COMPANY.

12:47PM

17 DID YOU HAVE AN UNDERSTANDING WHETHER
18 THIS HAD ANY APPLICATION TO AMOUNTS THAT WERE EARNED BY
19 AN EMPLOYEE BEFORE THE EMPLOYEE WAS TERMINATED?

20 A. NO.

12:48PM

21 Q. NOW, IF WE COULD LOOK AT SECTION D DOWN THERE,
22 THANK YOU.

23 IT SAYS, STARTING IN THE MIDDLE, THIRD
24 LINE DOWN AT THE END. (READING):

25 THE MULTI-SECTOR FIXED INCOME
26 PROFIT SHARING POOL IS SOLELY AN
27 ACCOUNTING MECHANISM FOR
28 DETERMINING COMPENSATION PAYABLE TO

12:48PM

1 YOU AND OTHER PERSONS, AND WILL NOT
2 GIVE YOU OR ANY OTHER PERSON ANY
3 RIGHT, TITLE, OR INTEREST IN ANY
4 FUND OR ANY SPECIFIC ASSETS OF TCW
5 BY REASON OF PARTICIPATING IN OR
6 BEING ELIGIBLE TO RECEIVE PAYMENTS
7 COMPUTED WITH REFERENCE TO SUCH
8 PROFIT SHARING POOL.

12:48PM

9 DO YOU SEE THAT?

10 A. YES.

12:48PM

11 Q. ARE YOU MAKING ANY CLAIM IN THIS LITIGATION
12 FOR ANY RIGHT, TITLE OR INTEREST IN ANY FUND OR ANY
13 SPECIFIC ASSETS OF TCW?

14 A. NO.

15 Q. WHAT ARE YOU CLAIMING?

12:49PM

16 A. I'M CLAIMING COMPENSATION THAT WAS NOT PAID TO
17 ME.

18 Q. NOW, IT SAYS THE POOL IS SOLELY AN ACCOUNTING
19 MECHANISM FOR DETERMINING COMPENSATION PAYABLE TO YOU
20 AND OTHER PERSONS.

12:49PM

21 ARE YOU CLAIMING THAT COMPENSATION IS
22 PAYABLE TO YOU AS PART OF YOUR CLAIM IN THIS MATTER?

23 A. YES.

24 Q. ALL RIGHT. IF WE COULD LOOK AT EXHIBIT 60.
25 IT'S IN EVIDENCE.

12:49PM

26 THIS IS -- AT THE TOP THIS IS WHEN
27 MR. CAHILL RESENDS THE DRAFT TO YOU ON ABOUT MAY THE
28 21ST.

1 DO YOU SEE THAT?

2 A. YES.

3 Q. HAD YOU SIGNED THE AGREEMENT IN THE INTERIM?

4 A. NO.

5 Q. NOW, YOU DISCUSSED WITH TCW, I BELIEVE YOU
6 SAID THAT THIS WOULD BE FOR A FIVE-YEAR TERM STARTING
7 JANUARY 1, 2007; IS THAT RIGHT?

12:49PM

8 A. YES.

9 Q. SO STARTING IN JANUARY, BUT BY NOW IT'S
10 ALREADY APRIL OR MAY OF 2007; IS THAT RIGHT?

12:50PM

11 A. IT'S MAY 21ST.

12 Q. SO DID YOU DISCUSS -- WELL, LET ME PUT IT THIS
13 WAY: QUARTERLY FEE SHARING PAYMENTS CAME OUT WHEN?

14 A. THEY CAME OUT --

15 Q. FOR THE FIRST QUARTER?

12:50PM

16 A. THE FIRST QUARTER FEE SHARING WAS PAID THE
17 LAST BUSINESS DAY OF MAY.

18 Q. SO AS OF THE END OF MAY YOU HAD NOT SIGNED THE
19 DOCUMENT THAT HAD BEEN CIRCULATED, HAD YOU?

20 A. NO, I HADN'T.

12:50PM

21 Q. DID YOU HAVE ANY DISCUSSIONS WITH TCW ABOUT
22 WHETHER YOU SHOULD PROCEED UNDER THE NEW AGREEMENT EVEN
23 WITHOUT A SIGNED DOCUMENT?

24 A. YES.

25 Q. LET'S LOOK AT EXHIBIT 61, WHICH IS IN
26 EVIDENCE.

12:50PM

27 AND WE'VE SEEN THIS. I WON'T DWELL ON
28 IT, THE MIDDLE E-MAIL FROM GUNDLACH.

1 THIS IS WHERE YOU SAY, YES, WE SHOULD GO
2 UNDER THE NEW ARRANGEMENT. EVERYONE HAS AGREED TO
3 EVERYTHING IN GOOD FAITH.

4 AND SO, WHAT WERE YOU EXPRESSING AT THAT
5 TIME?

12:51PM

6 A. THAT WE HAD AN ARRANGEMENT.

7 Q. AND THAT THE PAYMENTS SHOULD PROCEED UNDER THE
8 NEW ARRANGEMENT?

9 A. YES.

10 Q. NOW, MR. QUINN ASKED YOU, I JUST WANT TO NOTE
11 THE DATE OF THIS. THIS IS MAY THE 25TH AT 4:20 P.M.;
12 IS THAT RIGHT?

12:51PM

13 A. YES.

14 Q. NOW, MR. QUINN ASKED MR. SULLIVAN ABOUT AN
15 EXHIBIT WHICH IS IN EVIDENCE, IT'S EXHIBIT 58.

12:51PM

16 WOULD YOU PLEASE SHOW THAT.

17 NOW, THAT IS THE -- THE TOP ONE IS FROM
18 YOU TO PETE SULLIVAN, CORRECT?

19 A. YES.

20 Q. AND THAT'S MAY THE 17TH; IS THAT RIGHT?

12:51PM

21 A. YES.

22 Q. SO THAT'S BEFORE THE E-MAIL YOU SENT SAYING
23 EVERYONE HAS AGREED TO EVERYTHING IN GOOD FAITH; IS
24 THAT CORRECT?

25 A. YES, IT IS.

12:52PM

26 Q. NOW, MR. QUINN POINTED YOU TO THE FIRST --
27 POINTED MR. SULLIVAN TO THE FIRST SENTENCE THAT SAYS,
28 THE NEW CONTRACT DEAL HAS NOT BEEN FINALIZED, BUT I

1 THINK IT WILL BE BY MAY THE 31ST.

2 DID YOU WRITE THAT AT THAT TIME?

3 A. YES.

4 Q. WAS THE DEAL, IN FACT, FINALIZED BEFORE MAY
5 31ST AS YOU SAID YOU THOUGHT IT WOULD BE?

12:52PM

6 A. I THINK IT WAS.

7 Q. AND DID YOU COMMUNICATE THAT TO ANYONE AT TCW?

8 A. I THINK I DID.

9 Q. LET'S LOOK AT EXHIBIT 5039, WHICH IS NOT IN
10 EVIDENCE YET.

12:52PM

11 IS THIS AN E-MAIL THAT YOU SENT TO
12 MR. BARACH WITH A COPY TO MR. SONNEBORN ON MAY THE
13 25TH, AT 8:41 P.M.?

14 A. YES.

15 MR. HELM: MOVE IT INTO EVIDENCE, YOUR HONOR?

12:53PM

16 THE COURT: ANY OBJECTION?

17 MR. MADISON: HEARSAY, YOUR HONOR.

18 THE COURT: OVERRULED.

19

20 (EXHIBIT 5039 ADMITTED.)

12:53PM

21

22 Q. BY MR. HELM: SHOW IT TO THE JURY, PLEASE.

23 ALL RIGHT. THIS IS FROM YOU TO
24 MR. BARACH; COPY TO MR. SONNEBORN. MAY 25TH, AT 8:00
25 P.M. THAT'S BEEN FOUR HOURS AFTER THE E-MAIL WE SAW
26 EARLIER EVERYONE HAS AGREED TO EVERYTHING IN GOOD
27 FAITH; IS THAT RIGHT?

12:53PM

28 A. THAT'S RIGHT.

1 Q. NOW, WHAT DOES THE SUBJECT LINE SAY?

2 A. FINAL ARRANGEMENTS.

3 Q. ALL RIGHT. IT SAYS, (READING):

4 I MET WITH BILL THIS
5 AFTERNOON, AND WAS ABLE TO
6 NEGOTIATE THE \$1 MILLION INCREASE
7 IN YOUR 2007 COMPENSATION FIGURE
8 RELATIVE TO OUR EARLIER DISCUSSION
9 WHICH WE AGREED TO TODAY AS THE WAY
10 TO PROTECT YOUR INTERESTS IN LIGHT
11 OF THE BIZARRE REVENUE PROJECTION
12 ERROR.

12:53PM

12:53PM

13 WOULD YOU THEN READ THE SECOND SENTENCE
14 OF THAT E-MAIL?

15 A. IT SAYS, "SO I CAN REPORT THAT THE DEAL IS NOW
16 FINALIZED."

12:53PM

17 Q. NOW, DID THERE COME A TIME WHEN YOU SHOOK
18 HANDS WITH ANYBODY OVER A DEAL IN 2007?

19 A. YES, I DID.

20 Q. WOULD YOU DESCRIBE THE CIRCUMSTANCES ABOUT OF
21 THAT?

12:54PM

22 A. WE WERE IN BILL SONNEBORN'S OFFICE. BILL
23 SONNEBORN, BOB BEYER, AND I. I BELIEVE IT WAS THIS
24 VERY DAY, MAY 25TH, AND WE WENT OVER THE CASES AGAIN.
25 AND SOME ITEMS ON -- SMALL ITEMS ON COMPENSATION, LOOSE
26 ENDS. AND BOB BEYER STOOD UP AND I STOOD UP AND BILL
27 SONNEBORN STOOD UP, AND WE ALL SHOOK HANDS ON THE DEAL.

12:54PM

28 Q. AT THIS TIME WAS THERE ANY DISCUSSION ABOUT A

1 DREAM CASE OR AN ULTRA DREAM CASE?

2 A. THAT WAS MY LABELS -- SOME OF THE LABELED FOR
3 THE CASES I HAD MADE FOR FUTURE BUSINESS GROWTH.

4 Q. IF WE COULD LOOK AT EXHIBIT 5034.

5 I BELIEVE IT'S IN EVIDENCE. WELL,
6 ACTUALLY, LET'S TAKE IT OFF. COULD WE CHECK THAT? I
7 WOULD JUST SHOW IT.

12:55PM

8 THE CLERK: IT'S IN EVIDENCE, COUNSEL.

9 MR. HELM: IT IS? THANK YOU.

10 COULD WE SHOW IT THEN?

12:55PM

11 Q. IT SAYS, IF YOU GO TO PAGE -- THIS IS JUST AN
12 EXAMPLE OF SPREADSHEETS, BUT PAGE SIX OF THE DOCUMENT.
13 AND DO YOU SEE --

14 I DON'T KNOW IF YOU CAN BLOW UP THE TEXT
15 THERE. THERE IT IS. THANK YOU.

12:55PM

16 NOW, IT SAYS, DO YOU SEE ON THE --
17 THERE'S SOME BOXES AT THE TOP, BASE CASE WITH FEES AT
18 ONE NUMBER; BASE CASE WITH FEES AT ANOTHER NUMBER.
19 THEN IT SAYS DREAM CASE WITH FEES AT 262 MILLION; ULTRA
20 DREAM CASE NEXT TO THAT.

12:55PM

21 DO YOU SEE THAT?

22 A. YES.

23 Q. WHETHER IT WAS THIS DOCUMENT OR SOME OTHER
24 DOCUMENT, DO YOU RECALL HAVING A DISCUSSION WITH
25 MR. BEYER OR MR. SONNEBORN AT THE TIME WITH RESPECT TO
26 PROJECTED REVENUES UNDER A DREAM CASE OR ULTRA DREAM
27 CASE?

12:56PM

28 A. I DO. I BELIEVE IT WAS THIS DOCUMENT.

1 Q. AND WHAT WAS DISCUSSED IN THAT REGARD?

2 A. WELL, THIS WAS RIGHT THERE ON THE MAY 25TH
3 MEETING. AND I REMEMBER BOB BEYER POINTING TO THE
4 ULTRA DREAM CASE WITH FEES OF 329 MILLION, AND POINTING
5 TO THE FACT THAT I, UNDER THAT SCENARIO, WOULD MAKE \$64
6 MILLION IN A CALENDAR YEAR, AND BOB SAID THIS COULD BE
7 A PROBLEM WITH PARIS.

12:56PM

8 AND I SAID, BUT LOOK AT HOW MUCH MONEY
9 TCW IS MAKING. AND HE JUST KIND OF SHRUGGED HIS
10 SHOULDERS AND LAUGHED, AND SAID, "YEAH, I KNOW".

12:56PM

11 Q. NOW, WE SAW THE E-MAIL WHERE YOU SAID EVERYONE
12 HAS AGREED TO EVERYTHING IN GOOD FAITH.

13 AFTER THAT, WERE YOU, IN FACT, PAID IN
14 LATE MAY FOR THE JANUARY TO MARCH PERIOD UNDER THE NEW
15 DEAL?

12:57PM

16 A. YES, PRECISELY.

17 Q. IF YOU COULD LOOK AT -- WE HAVE ANOTHER
18 BINDER. IF YOU COULD LOOK AT EXHIBIT 1456. THIS IS
19 NOT YET IN EVIDENCE.

20 DO YOU SEE THAT?

12:57PM

21 A. YES.

22 Q. CAN YOU IDENTIFY THAT DOCUMENT?

23 A. THIS WAS THE ACCOUNTING REPORT FOR THE FEE
24 SHARING POOL FOR THE FIRST QUARTER OF 2008.

25 Q. OKAY. ALL RIGHT.

12:57PM

26 AND THERE ARE OTHER -- THIS IS THE RIGHT
27 ONE. LOOK AT 5030, WOULD YOU PLEASE.

28 CAN YOU IDENTIFY THAT? IS THAT THE SAME

1 FEE SHARING STATEMENT FOR THE FIRST QUARTER ENDED MARCH
2 31, 2007?

3 A. THAT'S RIGHT. THEY ARE ALWAYS LARGELY
4 SIMILAR, JUST DIFFERENT DATES.

5 MR. HELM: I'D MOVE IT INTO EVIDENCE, YOUR
6 HONOR.

12:58PM

7 MR. MADISON: NO OBJECTION.

8 THE COURT: IT WILL BE ADMITTED.

9

10 (EXHIBIT 5030 ADMITTED.)

12:58PM

11

12 THE COURT: WAS 1456 OFFERED?

13 MR. HELM: NOT YET, YOUR HONOR, BUT I'LL COME
14 BACK TO THAT.

15 THE COURT: ALL RIGHT.

12:58PM

16 MR. HELM: I HAD THE WRONG QUARTER. THIS IS
17 THE RIGHT ONE.

18 Q. AND SO, IF YOU COULD JUST FLIP THROUGH --

19 IF YOU COULD SHOW US SOME OTHER PAGES,
20 DENNIS, TO GIVE US AN IDEA OF WHAT IT LOOKS LIKE.

12:58PM

21 THIS IS THE STATEMENT YOU GOT EACH
22 QUARTER THAT DETAILED THE KINDS OF -- HOW THEY WERE
23 CALCULATING THE FEE SHARING FOR YOU?

24 A. YES. THIS WAS THE ONE FROM THE FIRST QUARTER
25 OF 2007.

12:59PM

26 Q. OKAY.

27 AND WAS THIS THE FIRST ONE YOU RECEIVED
28 UNDER THE NEW DEAL?

1 A. YES.

2 Q. NOW, DID ANYONE FROM TCW EVER TELL YOU, WHILE
3 THEY WERE PROCEEDING TO PAY YOU UNDER THIS NEW
4 ARRANGEMENT, THAT THEY WERE NOT AGREEING TO ANY OF THE
5 OTHER TERMS THAT HAD BEEN DISCUSSED, SUCH AS THE
6 FIVE-YEAR TERM.

12:59PM

7 A. THEY NEVER SAID THAT.

8 Q. DID ANYONE FROM TCW EVER TELL YOU AFTER THEY
9 BEGAN TO PAY YOU UNDER THIS NEW DEAL, "WE'RE SIMPLY
10 AGREEING TO THIS ONE SUBSET OF WHAT WE'VE BEEN TALKING
11 ABOUT, THE COMPENSATION PART, BUT THERE'S NO AGREEMENT
12 ON ANY OTHER ISSUES UNTIL YOU SIGN THAT DOCUMENT?"

12:59PM

13 MR. MADISON: OBJECT TO THE CHARACTERIZATION,
14 YOUR HONOR.

15 THE COURT: OVERRULED.

12:59PM

16 THE WITNESS: NO ONE EVER SAID ANYTHING LIKE
17 THAT TO ME.

18 Q. BY MR. HELM: DID ANYONE EVER SAY, UNLESS YOU
19 SIGN A FINAL VERSION OF THE DOCUMENT THAT WAS BEING
20 CIRCULATED, THAT THEY COULD FIRE YOU AFTER YOUR OLD
21 CONTRACT EXPIRED, EVEN IF YOU DID NOT ENGAGE IN GROSS
22 MISCONDUCT OR OTHER CONDUCT THAT HAD BEEN SPECIFIED
23 OVER THE YEARS IN YOUR AGREEMENT?

12:59PM

24 A. NO ONE EVER SAID ANYTHING LIKE THAT TO ME.

25 Q. ONCE YOU STARTED -- TCW STARTED PAYING YOU
26 UNDER THE NEW DEAL, DID YOU THINK A FINAL DOCUMENT
27 NEEDED TO BE SIGNED TO FORM AN AGREEMENT?

01:00PM

28 A. NO.

1 Q. WELL, THEY WERE STILL CIRCULATING AN AGREEMENT
2 DURING THAT TIME PERIOD; IS THAT TRUE?

3 A. THEY WERE -- DURING MAY, JUNE 2007, THAT'S
4 TRUE.

5 Q. WELL, WHAT PURPOSE DID YOU THINK THE DOCUMENT
6 BEING CIRCULATED HAD ONCE YOU'D ALREADY, AS YOU SAID,
7 REACHED AN AGREEMENT?

01:00PM

8 A. I THOUGHT IT WAS TO MEMORIALIZE THE DEAL, AND
9 TO TAKE CARE OF SORT OF ADMINISTRATIVE ISSUES AROUND
10 IT.

01:00PM

11 Q. WELL, WHAT DID YOU BELIEVE THE DEAL WAS THAT
12 REQUIRED NO FURTHER DOCUMENTATION?

13 A. WHAT I WAS GOING TO BE PAID; HOW LONG I WAS
14 GOING TO BE PAID IT FOR; AND UNDER WHAT CIRCUMSTANCES
15 THEY COULD STOP PAYING ME.

01:00PM

16 Q. NOW, WERE THERE ELEMENTS IN THE WRITTEN
17 DOCUMENT THAT WAS CIRCULATED THAT YOU THOUGHT HAD NOT
18 YET BEEN AGREED TO?

19 A. YES.

20 Q. CAN YOU GIVE ME AN EXAMPLE OF THAT?

01:01PM

21 A. SOMETHING OF AUTHORITY OVER HIRING DECISIONS
22 AND ALLOCATIONS OF THE POOL SEEMED UNCLEAR; ARBITRATION
23 CLAUSE, SOME REMEDY CLAUSES. WE SAW ONE OF THEM THAT
24 WE READ A MINUTE AGO, ON THE INTEREST IN THE FUND AND
25 ALL THAT.

01:01PM

26 I DIDN'T QUITE UNDERSTAND WHAT SOME OF
27 THOSE THINGS MEANT, AND I WANTED TO GET IT APPROVED BY
28 A LAWYER, AND DIDN'T HAVE ONE PERSONALLY.

1 Q. BUT FOR THE CENTRAL QUESTION OF WHAT YOU WOULD
2 BE PAID, FOR HOW LONG, AND WHEN THEY COULD STOP PAYING
3 YOU, DID YOU THINK YOU HAD A DEAL EVEN THOUGH THE
4 DOCUMENT HADN'T BEEN SIGNED?

5 A. ABSOLUTELY.

01:01PM

6 Q. ALL RIGHT. LET'S LOOK AT EXHIBIT 66, WHICH IS
7 IN EVIDENCE.

8 THIS IS THE MARKUP THAT WAS SENT ON JUNE
9 THE 7TH. WE'VE LOOKED AT THAT WITH SOME PEOPLE. DO
10 YOU SEE THAT?

01:02PM

11 A. YES.

12 Q. NOW, DID YOU DISCUSS WITH MR. CAHILL MAKING
13 SOME CHANGES IN THIS DOCUMENT?

14 A. I DID.

15 Q. DID YOU ULTIMATELY EVER SIGN A FINAL DOCUMENT
16 ALONG THESE LINES?

01:02PM

17 A. NO.

18 Q. WHY NOT?

19 A. IT WAS -- THERE WERE SOME PARTS OF IT THAT I
20 WANTED TO RUN BY A LAWYER. I DIDN'T HAVE ONE.

01:02PM

21 I WAS VERY BUSY RAISING MONEY, MANAGING
22 MONEY, AND EVERYONE STARTED TO PERFORM UNDER THE DEAL.
23 THEY WERE PAYING ME, AND I WAS PERFORMING ON MY PART OF
24 IT. AND THAT WAS ALWAYS SOMETHING THAT I WAS GOING TO
25 DO NEXT WEEK. AND THEN NOBODY TALKED ABOUT IT ANY
26 MORE.

01:02PM

27 Q. CAN YOU GIVE ME AN EXAMPLE OF SOME OF THE
28 CLAUSES THAT YOU THOUGHT YOU WANTED FURTHER DISCUSSION

1 ABOUT.

2 A. ARBITRATION, NON-COMPETE, NON-SOLICITATION.
3 AND OTHERS PARAGRAPHS I JUST, QUITE SIMPLY, NOT BEING A
4 LAWYER, I DIDN'T UNDERSTAND WHAT THEY SAID.

5 Q. SO, DID ANY OF THE CLAUSES OR ISSUES THAT YOU
6 THOUGHT NEEDED FURTHER DISCUSSION, OR YOU WANTED TO
7 CONSULT ABOUT, DEAL WITH THE TERM OF THE AGREEMENT, THE
8 AMOUNT YOU WOULD BE PAID, OR WHEN YOU COULD BE
9 TERMINATED?

01:03PM

10 A. NO.

01:03PM

11 Q. LET'S LOOK AT EXHIBIT -- ON EXHIBIT 66, IF WE
12 COULD LOOK AT PAGE 2 OF THE DOCUMENT. UNDER TERM.
13 WHEN WE LOOK AT -- WE'RE LOOKING AT WHAT THE TERM WAS.

14 WERE THERE ANY MARKUPS OR REVISIONS TO
15 THE SECTION IN THIS DOCUMENT THAT CONCERNED HOW LONG
16 THE AGREEMENT WOULD RUN FOR?

01:03PM

17 A. NO.

18 Q. IF WE COULD LOOK AT PAGE FOUR OF THE
19 AGREEMENT, AND SECTION SIX.

20 ALL OF SECTION SIX, PLEASE, DENNIS.

01:04PM

21 DURING ANY OF THE DISCUSSIONS WHERE
22 THERE WERE MARKUPS AND CHANGES IN THE DOCUMENT, WERE
23 THERE ANY MARKUPS OR CHANGES TO SUBSECTION A DEFINING
24 WHAT THE CAUSES WERE THAT WOULD JUSTIFY TERMINATION?

25 A. NO.

01:04PM

26 Q. WERE THERE ANY CHANGES MARKED UP OR DISCUSSED
27 ON THE LAST PARAGRAPH OF THAT, WHICH TALKS ABOUT PAYING
28 YOU BASE SALARY OR PROFIT SHARING ACCRUED TO THE DATE

1 OF TERMINATION?

2 A. NO.

3 Q. NOW, WE SEE WITH THIS DOCUMENT THAT A DRAFT
4 WAS EXCHANGED IN EARLY JUNE, 2007.

5 DID TCW MAKE ANY EFFORTS, AFTER THE
6 SUMMER OF 2007, TO GET YOU TO SIGN THIS DOCUMENT?

01:04PM

7 A. NO.

8 Q. WHEN THE END OF 2007 ROLLED AROUND, DECEMBER
9 31ST, 2007, DID ANYONE FROM TCW INDICATE TO YOU THAT
10 YOUR STATUS HAD CHANGED SOMEHOW?

01:05PM

11 A. NO.

12 Q. DID ANYONE SAY TO YOU AFTER DECEMBER 31ST,
13 2007, "HEY, SINCE YOU NEVER SIGNED A NEW EMPLOYMENT
14 AGREEMENT, YOU HAVE NOW SUDDENLY BECOME AN EMPLOYEE AT
15 WILL BECAUSE YOUR 2003 AGREEMENT HAD EXPIRED"?

01:05PM

16 A. NO ONE EVER SAID ANYTHING LIKE THAT TO ME.

17 Q. NOW, WE SAW THAT YOU WERE PAID IN THE FIRST
18 QUARTER -- FOR THE FIRST QUARTER OF 2007 UNDER THE NEW
19 SCHEME.

20 WERE YOU PAID FEE SHARING FOR LATER
21 QUARTERS AFTER THAT, UNDER THE NEW DEAL YOU HAD
22 NEGOTIATED IN 2007?

01:05PM

23 A. YES, ALL OF THEM.

24 Q. ALL RIGHT. IF I COULD LEAVE --

25 I'D LIKE TO DO THIS SORT OF EN MASSE,
26 YOUR HONOR. BUT IF WE COULD LOOK AT -- PUT THROUGH THE
27 BINDER, IF YOU WILL, EXHIBIT 1456, 1457, 1460, 1463,
28 1465, 5030, 5042, 5053, 5059, 5071, AND 5078.

01:05PM

1 ARE THESE COPIES OF THE FEE SHARING
2 STATEMENTS THAT YOU RECEIVED AFTER THE NEW DEAL WAS
3 NEGOTIATED, REFLECTING PAYMENTS UNDER THE NEW DEAL?

4 A. YES.

5 MR. HELM: MOVE ADMISSION OF THOSE DOCUMENTS,
6 YOUR HONOR.

01:06PM

7 THE COURT: ANY OBJECTION?

8 MR. MADISON: I JUST NEED TIME TO LOOK AT
9 THEM, YOUR HONOR, PERHAPS YOU COULD ADMIT THEM
10 PROVISIONALLY --

01:06PM

11 THE COURT: THEY'LL BE ADMITTED SUBJECT TO
12 SOME FURTHER DISCUSSION.

13 MR. MADISON: THANK YOU.

14
15 (EXHIBITS 1456, 1457, 1460, 1463, 1465,
16 5030, 5042, 5053, 5059, 5079, 5071 AND
17 5078 ADMITTED.)

01:07PM

18
19 Q. BY MR. HELM: NOW, DID YOU RECEIVE ANY FEE
20 SHARING PAYMENTS FOR THE FOURTH QUARTER OF 2009?

01:07PM

21 A. NO.

22 Q. ALL RIGHT.

23 NOW, BY 2009, WHAT WAS YOUR STATE OF
24 MIND ABOUT WHETHER YOU HAD A CONTRACT?

25 A. I THOUGHT THAT I HAD A CORE AGREEMENT ON
26 COMPENSATION TERMS THAT EVERYONE WAS PERFORMING UNDER,
27 AND I THOUGHT THAT SOME OF THE ADMINISTRATIVE CLAUSES
28 WERE NOW FINALIZED.

01:07PM

1 Q. IF WE COULD LOOK AT -- DID THERE COME A TIME
2 WHEN AN INVESTOR OR A CONSULTANT ASKED -- SOUGHT
3 INFORMATION ABOUT -- CERTAIN INFORMATION REGARDING
4 WHETHER YOU HAD NON-COMPETE, EQUITY, WHETHER THERE WERE
5 SUCCESSION PROVISIONS IN PLACE, THINGS OF THAT NATURE?

01:07PM

6 A. WE WERE ASK THOSE THINGS FROM TIME BY
7 PROSPECTIVE INVESTORS.

8 Q. I'D LIKE TO LOOK AT EXHIBIT 248, IF WE COULD.
9 IS THIS AN E-MAIL EXCHANGE THAT YOU HAD
10 WITH MARK CARLSON AT TCW AROUND AUGUST 25TH, 2009?

01:08PM

11 A. PART OF IT IS, YES.

12 MR. HELM: MOVE ADMISSION OF THIS DOCUMENT?

13 MR. QUINN: NO OBJECTION.

14 THE COURT: IT WILL BE ADMITTED.

01:08PM

15
16 (EXHIBIT 248 ADMITTED.)

17
18 Q. BY MR. HELM: ALL RIGHT.

19 IF WE LOOK AT THE BOTTOM OF THAT, TO
20 MARC CARLSON.

01:08PM

21 COULD WE BLOW THAT UP? IT SAYS -- THIS
22 IS FROM MARC CARLSON. IT SAYS, RE: ANGELES/SF EE'S.

23 WHAT DOES THAT REFER TO?

24 A. I BELIEVE ANGELES IS THE NAME OF A CONSULTING
25 FIRM. AND SF EE PROBABLY STANDS FOR THE SAN FRANCISCO
26 EMPLOYEES RETIREMENT SYSTEM.

01:08PM

27 Q. NOW, THE SECOND PARAGRAPH OF THAT SAYS,
28 (READING):

1 IMMEDIATELY BELOW YOU'LL SEE
2 ANGELES HAS NOW SENT THE FOLLOWING
3 QUESTION: 'CAN YOU SHARE THE TERMS
4 OF JEFFREY GUNDLACH'S CONTRACT WITH
5 TCW IN TERMS OF NON-COMPETE
6 AGREEMENTS, EQUITY STAKE,
7 SUCCESSION, ET CETERA, SHOULD HE
8 CHOOSE TO LEAVE THE FIRM?'

01:09PM

9 DO YOU SEE THAT?

10 A. YES.

01:09PM

11 Q. NOW, AT THAT TIME, HAD YOU ENTERED INTO ANY
12 AGREEMENT WITH TCW THAT RESTRICTED YOUR ABILITY TO
13 COMPETE, AFTER YOU LEFT THE COMPANY?

14 A. I HAD, OVER THE YEARS, YES.

15 Q. BUT HAD YOU SIGNED ANY AGREEMENT IN 2007 WITH
16 RESPECT TO THAT ISSUE?

01:09PM

17 MR. MADISON: OBJECTION. VAGUE AS TO TIME.

18 THE COURT: OKAY.

19 DO YOU WANT TO NARROW IT DOWN? IN THE
20 CALENDAR YEAR 2007?

01:09PM

21 Q. BY MR. HELM: WELL, IN THE CALENDAR YEAR 2007,
22 DID YOU SIGN ANY NEW AGREEMENTS RELATING TO
23 NON-COMPETES?

24 A. NO.

25 Q. DID YOU HAVE IN PLACE ANY CONTRACTS REGARDING
26 THE EQUITY STAKE IN THE COMPANY?

01:10PM

27 A. NO.

28 Q. WAS ANY CONTRACTUAL PROVISION IN EFFECT AT

1 THAT TIME DEALING WITH SUCCESSION?

2 A. NO.

3 Q. WHAT DOES SUCCESSION AS YOU UNDERSTOOD IT?

4 A. IF I WERE TO RETIRE OR GET HIT BY A BUS OR
5 SOMETHING, WHAT WOULD BE THE PLAN FOR THE REMAINING
6 TEAM TO GO FORWARD WITH MANAGING THE MONEY?

01:10PM

7 Q. AND WAS ANY CONTRACT IN PLACE THAT DEALT WITH
8 THAT THAT YOU WERE AWARE OF?

9 A. NO. WE DIDN'T HAVE A DISCUSSION ABOUT THAT.

10 Q. ALL RIGHT. IF WE COULD GO BACK TO THE E-MAIL
11 ABOVE.

01:10PM

12 YOU RESPOND, YOU SAY, IT IS -- HERE'S
13 THE TRUTHFUL ANSWER. JEFFREY GUNDLACH IS NOT UNDER
14 CONTRACT WITH TCW.

15 WHAT DID YOU MEAN BY THAT?

01:10PM

16 A. I MEANT THAT, RELATING TO THE ISSUES THEY WERE
17 ASKING ABOUT, THAT I DIDN'T HAVE THE THINGS THAT THEY
18 WERE TALKING ABOUT.

19 THIS IS A CONSULTING FIRM THAT IS DOING
20 DUE DILIGENCE. AND THEY ARE SAYING FOR OUR CLIENTS TO
21 INVEST WITH YOU WE WANT TO KNOW YOU HAVE EQUITY IN THE
22 FIRM; THAT YOU HAVE A SUCCESSOR PLAN AND WHAT YOUR
23 NONCOMPETE IS.

01:10PM

24 I DIDN'T HAVE THOSE THINGS. AND I
25 DIDN'T WANT TO TALK ABOUT IT, EITHER. I WAS TRYING TO
26 GET RID OF THEIR QUESTIONS, BECAUSE I DIDN'T WANT THEM
27 TO INVEST IN OUR FUNDS, ACTUALLY, THE ANGELES
28 CONSULTING FIRM. I HAD A BAD EXPERIENCE WITH THEM IN

01:11PM

1 THE PAST.

2 Q. DID YOU BELIEVE YOU HAD A BASIC AGREEMENT
3 REGARDING WHAT YOU WOULD BE PAID, FOR HOW LONG, AND
4 WHEN THEY COULD TERMINATE YOU, EVEN THOUGH YOU DIDN'T
5 HAVE A SIGNED CONTRACT THAT DEALT WITH TERMS LIKE
6 NONCOMPETES, EQUITY STAKE AND SUCCESSION?

01:11PM

7 MR. MADISON: OBJECTION, LEADING.

8 THE COURT: SUSTAINED.

9 Q. BY MR. HELM: WELL, TO WHAT EXTENT, IF AT ALL,
10 DID YOU BELIEVE YOU HAD AN AGREEMENT RELATING TO THE
11 AMOUNT THAT YOU COULD BE PAID, FOR HOW LONG AND WHEN IT
12 WOULD STOP?

01:11PM

13 A. I HAD AN AGREEMENT ON THAT.

14 Q. DID YOU BELIEVE THAT TCW COULD FIRE YOU FOR NO
15 REASON, AND STOP PAYING YOU AT THIS TIME?

01:12PM

16 A. ABSOLUTELY NOT.

17 Q. NOW, IF YOU HAD -- CAN WE TAKE THAT DOWN?

18 IF YOU HAD AN AGREEMENT THAT LASTED TILL
19 THE END OF 2011, WHY DID YOU THINK YOU MIGHT BE ABLE TO
20 MOVE TO A COMPANY LIKE WAMCO?

01:12PM

21 A. BECAUSE THE IDEA OF MOVING TO ANOTHER COMPANY,
22 TAKES ON A WHOLE DIFFERENT LAYER OF MEANING BEYOND
23 CONTRACTS.

24 FOR ME TO GO ANYWHERE AWAY FROM TCW HAD
25 TO BE ON A NEGOTIATED BASIS. CONTRACT OR NO CONTRACT,
26 IT HAD TO BE ON NEGOTIATED BASIS.

01:12PM

27 Q. WHY DO YOU SAY THAT?

28 A. BECAUSE A GREAT MAJORITY OF THE REVENUE WOULD

1 NEED TCW'S COOPERATION AND AGREEMENT TO MOVE ANYWHERE,
2 WHETHER I HAD A CONTRACT OR NOT.

3 THE SPECIALTY MORTGAGE CREDIT FUNDS,
4 WERE MORE THAN HALF OF THEIR PROSPECTIVE REVENUE.
5 THERE'S NO WAY TO MOVE THEM ANYWHERE, UNLESS TCW
6 AGREES.

01:12PM

7 THE SAME IS TRUE FOR THE SECOND MOST
8 IMPORTANT PIECE OF BUSINESS. THE TOTAL RETURN BOND
9 FUND, WHICH IS COVERED BY A BOARD OF DIRECTORS. THEY
10 WOULD HAVE TO VOTE IT TO GO SOMEWHERE. CONTRACT OR NO
11 CONTRACT. I COULDN'T TAKE IT ANYWHERE WITHOUT THE
12 COOPERATION OF TCW AND ITS AGENTS.

01:13PM

13 SAME FOR THE HIGH FEE LIMITED
14 PARTNERSHIPS.

15 THE IDEA THAT I WOULD GO AND TALK TO
16 WAMCO WAS THAT IF THERE WAS A GOOD DEAL FOR ALL PARTIES
17 INVOLVED, THEN WE WOULD HAVE ECONOMIC ARRANGEMENTS THAT
18 WOULD FACILITATE THE MOVEMENT, WHICH MEANT MAKING SURE
19 THAT TCW GOT ALL OF THE ECONOMIC BENEFIT. AND IN MY
20 VIEW, EVEN MORE, SHOULD I LEAVE AND NEGOTIATE A
21 DEPARTURE.

01:13PM

01:13PM

22 Q. WELL, LET ME ASK YOU THAT: HOW DID THE
23 ECONOMIC BENEFITS YOU WERE CONSIDERING OFFERING TO TCW,
24 IN THE EVENT YOU COULD WORK OUT A DEAL WITH WAMCO, HOW
25 DID THOSE COMPARE TO THE ECONOMIC BENEFITS THAT TCW
26 WOULD GET UNDER YOUR CONTRACT?

01:14PM

27 MR. MADISON: OBJECTION. FOUNDATION.

28 WE HAVEN'T HEARD ABOUT THE ONES THAT

1 WERE BEING CONSIDERED.

2 THE COURT: OVERRULED.

3 I THINK WE HAVE AMPLE EVIDENCE THAT'S
4 BEEN PUT ON BY BOTH SIDES.

5 BUT GO AHEAD. JUST ASK THE QUESTION,
6 AND YOU CAN CROSS-EXAMINE HIM ON IT.

01:14PM

7 THE WITNESS: THE ECONOMIC ARRANGEMENTS THAT I
8 WAS CONTEMPLATING, PRELIMINARILY WITH WAMCO, AND WHAT
9 TCW WOULD RECEIVE, THE ECONOMIC BENEFIT, THE NET
10 BENEFIT TO TCW, WOULD HAVE BEEN TREMENDOUSLY POSITIVE.
11 THEY WOULD HAVE GOTTEN A GREATER PROFIT MARGIN THAN
12 THEY CLAIM THEY WERE GETTING ON THE EXISTING BUSINESS.

01:14PM

13 AND I WAS CONTEMPLATING GIVING IT TO
14 THEM FOR FIVE YEARS, NOT JUST A COUPLE. AND, I WAS
15 GOING TO GIVE THEM A STREAM ON WHATEVER WAMCO WOULD
16 RAISE, USING THEIR MONSTROUS DISTRIBUTION OPERATION,
17 WHICH WAS VERY, VERY SUCCESSFUL.

01:14PM

18 THE IDEA WAS THAT THE LACK OF SUCCESS IN
19 DISTRIBUTING TCW WOULD SUDDENLY BE BROKEN THROUGH.
20 WESTERN ASSET HAD \$600 BILLION OF DISTRIBUTION SUCCESS
21 IN FIXED INCOME ALONE; THAT'S ALL THEY DID.

01:15PM

22 MY IDEA WAS THAT THEY COULD TAKE MY
23 STRATEGIES, WHICH RANKED VERY, VERY HIGH, IN TERMS OF
24 THE RESULTS IN THE INDUSTRY, AND THEY COULD DISTRIBUTE
25 THEM TENFOLD. AND TCW WOULD HAVE GOTTEN A SHARE OF ALL
26 OF THAT EXTRA DISTRIBUTION FOR FIVE YEARS.

01:15PM

27 THESE ARE THE THINGS I WAS THINKING
28 ABOUT. I THOUGHT TCW WOULD BE THRILLED FOR THAT TYPE

1 OF A DEAL. AND SG SHOULD BE THRILLED BECAUSE THEY WERE
2 TRYING TO MODIFY THEIR INVESTMENTS, AS YOU'VE SEEN, AND
3 THIS WOULD HELP THEM.

4 Q. IF YOU COULD OTHERWISE REACH ECONOMIC TERMS,
5 ACCEPTABLE TO TCW, AS PART OF GOING TO WAMCO, DID YOU
6 BELIEVE THERE WOULD BE ANY PROBLEM IN GETTING TCW'S
7 AGREEMENT TO RELEASE YOU FROM ANY CONTRACTUAL
8 EMPLOYMENT OBLIGATIONS YOU HAD?

01:15PM

9 A. NO, OF COURSE NOT. IT'S JUST CONSENSUAL.

10 Q. WERE THERE ANY OTHER FUND MANAGERS AT TCW WHO
11 WERE UNDER CONTRACT WHO TOLD YOU THAT THEY WERE LOOKING
12 AT POSSIBILITIES OF LEAVING TCW?

01:16PM

13 A. YES.

14 Q. WHO?

15 A. WELL, BLAIR THOMAS.

01:16PM

16 Q. WHAT DID HE TELL YOU?

17 A. HE TOLD ME THAT HE WAS NEGOTIATING OUT OF TCW.
18 HE TOLD ME IN MAY OF 2007, AND HE DID.

19 Q. AND DID YOU UNDERSTAND THAT HE WAS UNDER AN
20 EMPLOYMENT CONTRACT AT THAT TIME?

01:16PM

21 A. YES. HE TOLD ME.

22 Q. NOW, HOW LONG AFTER YOU SHOOK HANDS WITH
23 MR. SONNEBORN AND MR. BEYER, DID YOU ESTABLISH THE
24 FIRST SMCF FUND?

25 A. SIX WEEKS.

01:16PM

26 MR. HELM: IF I COULD SHOW THE COURT AND
27 COUNSEL EXHIBIT 6121.

28 Q. WHAT DOES THAT INDICATE, MR. GUNDLACH?

1 A. THIS SHOWS THE DEVELOPMENT OF THE SERIES OF
2 SPECIAL MORTGAGE CREDIT FUNDS, MOST OF THEM ANYWAY, FOR
3 THE YEARS '07 THROUGH '09.

4 MR. HELM: MOVE ADMISSION OF THE EXHIBIT.

5 MR. MADISON: OBJECTION, YOUR HONOR.

01:17PM

6 I DON'T KNOW IF WE'VE BEEN PRODUCED WITH
7 THE UNDERLYING DOCUMENTS THAT MUST SUPPORT THIS.

8 MR. HELM: IT'S LISTED THERE.

9 MR. MADISON: THIS IS THE FIRST TIME WE'VE
10 SEEN THIS, YOUR HONOR.

01:17PM

11 MR. HELM: ACTUALLY, NO. THIS WAS EXCHANGED
12 AS PART OF THE TRIAL.

13 MR. MADISON: THEN NO FOUNDATION.

14 THE COURT: GO AHEAD, MR. HELM. YOU CAN LAY
15 THE FOUNDATION.

01:17PM

16 WE'RE TRYING TO MOVE ALONG, IF WE CAN,
17 MR. MADISON, BUT THAT'S OKAY.

18 Q. BY MR. HELM: DOES THIS ACCURATELY PORTRAY
19 CAPITAL COMMITMENTS THAT WERE MADE TO THE SPECIAL
20 MORTGAGE CREDIT FUNDS THROUGHOUT THEIR LIFE HISTORY?

01:17PM

21 A. IT LOOKS BASICALLY RIGHT.

22 Q. AND DID WE GO OVER THIS AT SOME POINT BEFORE
23 YOUR TESTIMONY THE FIRST TIME?

24 A. YES.

25 MR. HELM: MOVE ADMISSION OF THE DOCUMENT,
26 YOUR HONOR.

01:18PM

27 MR. MADISON: IF I COULD TAKE THE WITNESS ON
28 VOIR DIRE, IT MIGHT BE HELPFUL.

1 THE COURT: THAT'S FINE. YOU'VE GOT ALL THE
2 TIME YOU WANT.

3 MR. MADISON: NO, I DON'T WANT TO SPEND TIME,
4 BUT THERE'S NO FOUNDATION.

5 THE COURT: GO AHEAD.

01:18PM

6

7

8

VOIR DIRE EXAMINATION

9

10 BY MR. MADISON:

11 Q. MR. GUNDLACH, DID YOU PREPARE THIS EXHIBIT?

12 A. NO.

13 Q. WHO PREPARED IT?

14 A. I DON'T KNOW. SOMEBODY THAT WORKS FOR MARK
15 HELM AND HIS GROUP, I SUPPOSE.

01:18PM

16 Q. WHAT MATERIALS WERE USED TO PREPARE THE
17 EXHIBIT?

18 A. I THINK THEIR SOURCE DOCUMENT'S SHOWN AT THE
19 BOTTOM OF THE EXHIBIT THAT THE BATES NUMBER IS ON.

20 Q. HAVE YOU LOOKED AT THOSE, SO YOU CAN TELL THE
21 JURY IF THIS IS ACCURATELY SUMMARIZED?

01:18PM

22 A. I DON'T NEED TO. I DEVELOPED THESE FUNDS AND
23 I REMEMBER VERY CLEARLY WHAT THEIR SIZES WERE AND WHAT
24 TIME FRAMES THEY WERE CREATED IN.

25 IT WILL BE -- IT WAS AN ACCURATE
26 DEPICTION.

01:18PM

27 THE COURT: ALL RIGHT. GO AHEAD.

28

1 DIRECT EXAMINATION (RESUMED)

2
3 BY MR. HELM:4 Q. ALL RIGHT. SO WHEN DID YOU GET COMMITMENTS
5 FOR THE FIRST FUND? 01:19PM6 A. WE SPENT THE SECOND QUARTER OF 2007 ARRANGING
7 THE INVESTORS' INTERESTS. AND THEN THE FIRST CLOSE, AS
8 WE CALL IT, WAS EARLY JULY. I THINK IT WAS JULY 8TH,
9 2007.10 Q. AND THEN DURING THE SUMMER OF 2008, DID YOU 01:19PM
11 GET COMMITMENTS FOR THE SECOND SMCF FUNDS?12 A. YES, ALMOST EXACTLY A YEAR AFTER THE FIRST ONE
13 STARTED.

14 Q. AND THEN IT SAYS YELLOW IS SOUTH DAKOTA.

15 WHEN DID YOU START RAISING MONEY FOR THE 01:19PM
16 SOUTH DAKOTA SMCF?17 A. PROBABLY IN SEPTEMBER, BUT THEY ENDED UP
18 AGREEING TO IT IN DECEMBER OF 2008.19 Q. AND WHEN DID YOU GET COMMITMENTS FOR THE PPIP
20 OR THE SMCF III? 01:19PM

21 A. IT WAS IN THE SUMMER OF 2009.

22 Q. NOW, DOES THE MONEY GET INVESTED AS SOON AS
23 IT'S COMMITTED?

24 A. NOT NECESSARILY.

25 Q. SO WHEN WERE THE INVESTMENTS MADE IN SMCF I? 01:20PM

26 A. NOT REALLY UNTIL 2008, BECAUSE IT WAS RAISED
27 IN ANTICIPATION OF THE MARKET COLLAPSING. IT HADN'T
28 COLLAPSED YET, BUT IT DID ABOUT SIX OR SEVEN TIMES AS

1 OF 2008.

2 Q. NOW, WHAT IS THE WORK THAT'S DONE THAT CREATES
3 VALUE IN FUNDS LIKE SMCF?

4 A. WELL, THE MOST IMPORTANT THING IS THE
5 INVESTMENT THESIS, THAT YOU SEE AN OPPORTUNITY IN
6 ADVANCE OF BEING ABLE TO ACT ON IT. BECAUSE YOU HAVE
7 TO RAISE THE MONEY OVER A MULTIPLE MONTH PERIOD, SO YOU
8 HAVE TO BE READY.

01:20PM

9 THE MARKET MOVES AROUND A LOT. WE CAN'T
10 WAIT TO RAISE THE MONEY AFTER THE CRASH. YOU HAVE TO
11 DO IT BEFORE. SO THE INVESTMENT THESIS IS REALLY
12 IMPORTANT.

01:20PM

13 Q. ANYTHING ELSE?

14 A. WELL, THEN YOU HAVE TO ARTICULATE THE
15 INVESTMENT THESIS IN A COMPELLING WAY TO ALL OF THE
16 PROSPECTIVE INVESTORS.

01:21PM

17 AND IT WAS MYSELF AND MY GROUP THAT WAS
18 CENTRAL TO THAT EFFORT AT TCW. WE SPENT COUNTLESS
19 HOURS ARTICULATING THE INVESTMENT THESIS TO PROSPECTIVE
20 INVESTORS, OVER HUNDREDS OF MEETINGS AND PHONE CALLS
21 WITH MYSELF, PERSONALLY, AND MY STAFF, WORKING ON IT.

01:21PM

22 Q. AND WHAT ELSE CREATES VALUE IN FUNDS LIKE
23 THIS?

24 A. WELL, THEN YOU HAVE TO BE RIGHT ON THE THESIS.
25 AND THE MARKET HAS TO MOVE IN THE DIRECTION.

01:21PM

26 AND THE MOST -- THE HARDEST THING BY
27 FAR, IN ONE OF THESE DISTRESSED IDEAS, IS NOT BUYING
28 TOO SOON. THE PRICES GO FROM A HUNDRED TO 20. A LOT

1 OF PEOPLE SAY IT'S CHEAP AT 80, BECAUSE IT USED TO BE
2 AT A HUNDRED. AND THEN THEY SAY IT'S CHEAP AT 60, AND
3 THEN 50.

4 BUT IT GOES TO 20. SO YOU HAVE TO MAKE
5 SURE YOU DON'T BUY IT AT 80. IT'S NOT EASY TO DO. YOU
6 GENERALLY DON'T GET IT DONE AT 20, EITHER. IT DOESN'T
7 STAY.

01:21PM

8 YOU CAN'T INVEST BILLIONS OF DOLLARS ON
9 A DAY WHEN YOU DON'T KNOW WHEN THE LOW IS GOING TO BE.
10 NOBODY RINGS A BELL, BUT YOU HAVE TO BUY IT AT THE
11 RIGHT MOMENT, AND YOU HAVE TO BUY THE RIGHT THINGS.

01:22PM

12 Q. SO THIS IS -- WHAT YOU HAVE BEEN DESCRIBING
13 IS, THOSE ARE INVESTMENT DECISIONS THAT ARE MADE EARLY
14 IN THE LIFE OF THE FUND, PICKING THE TIME TO INVEST AND
15 WHICH ASSETS TO INVEST IN?

01:22PM

16 A. RIGHT.

17 THERE'S A LOT OF EXPERIENCE THAT GOES
18 INTO THIS, KNOWING HOW DISTRESSED MARKETS WORK. AND
19 THEN YOU HAVE TO BUY THE RIGHT ONES. AND YOU HAVE TO
20 ASSUME THAT YOU ARE GOING TO BE STUCK IN THEM.

01:22PM

21 THE IDEA OF A DISTRESSED MARKET IS THAT
22 NOBODY WANTS TO BUY. IT'S CHOPPY. IT'S NOT GOING TO
23 GET BETTER TOMORROW. IT TAKES SOME TIME FOR THE MARKET
24 TO HEAL AND FOR THE INVESTMENT THESIS TO BE PROVEN OUT.
25 SO YOU BASICALLY BUY THEM -- IT'S A BUY THEM LOW, BY
26 THEM RIGHT. AND THEN YOU ARE IN GOOD SHAPE IF YOU MAKE
27 THE RIGHT DECISIONS TO BE EARNED OUT OVER A NUMBER OF
28 YEARS.

01:22PM

1 Q. TO WHAT EXTENT WERE THE SMCF FUNDS CREATED AS
2 A BUY SOMETHING AND HOLD IT FOR A LONG TIME, OR CONCEDE
3 INSTEAD AS HIGH TRADING THROUGHOUT THE LIFE OF THE
4 FUND?

5 A. NOTHING THAT I DO INVOLVES HIGH FREQUENCY
6 TRADING OR VERY ACTIVE TRADING. I'M KNOWN IN THE
7 INDUSTRY AS BEING VERY LOW TURNOVER IN PORTFOLIOS, A
8 BUY AND HOLD INVESTOR.

01:23PM

9 Q. SO WAS THAT TRUE FOR YOUR CONCEPTION OF THE
10 SMCF FUNDS, AS WELL?

01:23PM

11 A. ABSOLUTELY. IT'S CENTRAL TO THE THEME. BUY
12 THEM LOW, BUY THEM RIGHT. AND OVER A COURSE OF A FEW
13 YEARS, YOU WILL PROBABLY HAVE A DOUBLE OR TRIPLE
14 RETURN.

15 Q. AND SO YOU HAVE JUST TALKED ABOUT MAKING
16 INVESTMENT DECISIONS.

01:23PM

17 YOU WERE EARLIER TALKING ABOUT
18 ARTICULATING, IN A COMPELLING WAY, WHAT THE FUND IS
19 ABOUT.

20 TO WHAT EXTENT WERE YOU AND YOUR GROUP
21 INVOLVED IN RAISING MONEY FOR THESE FUNDS; THAT IS,
22 CONVINCING INVESTORS TO MAKE COMMITMENTS TO THE FUNDS?

01:23PM

23 A. WE DID -- THE LION'S SHARE OF THE WORK, THE
24 GREAT MAJORITY OF THE WORK IN RAISING THE MONEY
25 REQUIRED MY PERSONAL INVOLVEMENT AND THE INVOLVEMENT OF
26 GREAT -- A SIGNIFICANT FRACTION OF THE TEAM. BECAUSE
27 ALL OF THESE INVESTORS WANT ONE-ON-ONE MEETINGS. AND
28 THEY WANT TO HEAR WHAT THE THESIS IS. AND THE ONLY WAY

01:24PM

1 TO GET THAT IS TO HEAR IT FROM THE HORSE'S MOUTH.

2 Q. TO WHAT EXTENT WAS THE TCW MARKETING
3 DEPARTMENT OR THE GENERIC DISTRIBUTION SYSTEM OF TCW
4 RESPONSIBLE FOR THE RAISING OF MONEY OF THESE FUNDS?

5 A. IT PLAYED A SECONDARY ROLE.

01:24PM

6 Q. WHO WAS INVOLVED, HOWEVER?

7 A. YES, THEY KEPT UP CONTACTS AND THE LIKE.

8 BUT A GREAT MANY OF THE INQUIRIES CAME
9 IN BECAUSE OF NOTORIETY OF THE FUNDS.

10 MY FIRST FUND WAS FEATURED IN THE WALL
11 STREET JOURNAL, ON THE FRONT PAGE OF THE INVESTMENTS
12 SECTION, AS BEING THE FIRST FUND OF ITS TYPE TO ENTER
13 INTO THE MORTGAGE-BACKED SECURITIES ARENA IN 2007.

01:24PM

14 IT WAS COPIED BY A NUMBER OF FIRMS THAT
15 IMITATED, BUT WE WERE THE FIRST.

01:25PM

16 Q. SO NOW, YOU HAVE DESCRIBED DIFFERENT
17 ACTIVITIES OF DESIGNING THE FUND, ARTICULATING IT TO
18 THE INVESTORS, AND RAISING MONEY, MAKING THE INITIAL
19 INVESTMENTS THAT YOU ARE GOING TO HOLD ONTO.

20 WHEN IN THE LIFE CYCLE OF THESE FUNDS
21 DID THOSE VALUE-CREATING ACTIVITIES TAKE PLACE?

01:25PM

22 A. PROBABLY BEGAN ABOUT FOUR MONTHS BEFORE THE
23 FIRST CLOSE, AND WENT ON FOR ABOUT A YEAR AFTER THE
24 FIRST CLOSE.

25 SO IT'S REALLY ABOUT A 16 MONTH, YEAR
26 AND A HALF TIME FRAME, WHEN ALL OF THE DEALS ARE DONE,
27 AND THE PORTFOLIO IS CONCEIVED, PUT IN PLACE, AND MOST
28 OF THE WORK IS ACCOMPLISHED, IN THAT ONE-YEAR PERIOD

01:25PM

1 AFTER THE LAUNCH OF THE FUNDS.

2 Q. AND SMCF, WHEN WERE THE MANAGEMENT FEES
3 COLLECTED?

4 A. THERE WERE TWO TYPES OF FEES.

5 THE MANAGEMENT FEES WERE COLLECTED THE
6 SAME AS THEY WOULD BE ON ANY OTHER TYPE OF ACCOUNT,
7 QUARTERLY.

01:25PM

8 Q. AND WHEN DO INCENTIVE FEES ACTUALLY GET PAID
9 ON THE SMCF FUNDS?

10 A. BASICALLY, IT'S WHEN THE INVESTMENTS ARE
11 LIQUIDATED.

01:26PM

12 Q. WHEN WERE YOU PLANNING ON LIQUIDATING SMCF I?

13 A. I TOLD INVESTORS THAT I THOUGHT THE
14 INVESTMENTS, WHILE THE DOCUMENTS SAID THE LIFE COULD BE
15 EIGHT YEARS, AND EVEN IF THE MARKET STILL HADN'T
16 IMPROVED BY THEN, EXTENDED A YEAR OR TWO, I TOLD ALL OF
17 THE PROSPECTIVE INVESTORS THAT THEY WOULD PROBABLY BE
18 IN IT FOR ABOUT FOUR YEARS.

01:26PM

19 Q. SO WHEN DID YOU THINK YOU WOULD START
20 LIQUIDATING SMCF I?

01:26PM

21 A. 2010.

22 Q. WHAT ABOUT SMCF II? WHEN DID YOU EXPECT TO
23 LIQUIDATE SMCF II?

24 A. 2011.

25 Q. NOW, WOULD YOU HAVE BEEN COMFORTABLE
26 PROCEEDING TO CREATE AND INVEST THE SMCF FUNDS IF YOU
27 HADN'T BELIEVED YOU WERE PROTECTED AGAINST BEING
28 TERMINATED OTHER THAN FOR GROSS MISCONDUCT?

01:26PM

1 A. I WOULDN'T HAVE DONE IT.

2 Q. WHY NOT?

3 A. BECAUSE IT WAS SORT OF LIKE WHEN I NEGOTIATED
4 THAT LANGUAGE BACK IN 1992. YOU DON'T WANT TO CREATE A
5 LOT OF FORWARD VALUE, AND NOT BE THERE TO EARN IT.
6 IT'S -- PARTICULARLY IF SOMEONE COULD HAVE THE OPTION
7 OF DOING AN AMBUSH, FIRING YOU, AND OPPORTUNISTICALLY
8 TERMINATING YOU AND GETTING ALL THE MONEY.

01:27PM

9 Q. NOW, I TAKE IT THERE CAME A TIME WHEN YOU NO
10 LONGER WORKED AT TCW?

01:27PM

11 A. DECEMBER 4TH, 2009.

12 Q. AND IF I COULD LOOK AT -- WELL, WE'VE LOOKED
13 AT WHAT THE GROUNDS WERE, HISTORICALLY, IN YOUR
14 CONTRACT, FOR TERMINATION.

15 AS OF DECEMBER 4TH OF 2009, HAD ANY
16 ORDER BEEN ISSUED REMOVING YOU FROM OFFICE, OR
17 PROHIBITING YOU FROM PARTICIPATING IN THE CONDUCT OF
18 THE AFFAIRS OF THE COMPANY?

01:27PM

19 A. NO.

20 Q. HAD YOU BEEN CONVICTED OF A FELONY?

01:28PM

21 A. NO.

22 Q. HAD YOU COMMITTED A MATERIAL BREACH OF YOUR
23 MATERIAL JOB RESPONSIBILITIES, FOR WHICH YOU WERE GIVEN
24 30 DAYS TO CURE?

25 A. NO.

01:28PM

26 Q. DID TCW OFFER YOU ANY PERIOD TO CURE ANY
27 SUPPOSED BREACHES, BEFORE THEY RELIEVED YOU OF YOUR
28 DUTIES?

1 A. NO.

2 AND THEY NEVER ONCE SAID I WAS IN BREACH
3 OF ANYTHING, EVER, EVEN A MINOR THING.

4 Q. DO YOU BELIEVE YOU HAD DONE ANYTHING THAT
5 WOULD QUALIFY AS GROSS MISCONDUCT, AS OF DECEMBER THE
6 4TH, 2009?

01:28PM

7 A. NO.

8 Q. NOW, DID YOU GET ANY PAYMENT FOR THE FEES
9 GENERATED ON THE TOTAL RETURN BOND FUND, AFTER YOU WERE
10 FIRED?

01:28PM

11 A. NO.

12 Q. LET'S TALK ABOUT THE WORK YOU DID BEFORE YOU
13 WERE TERMINATED.

14 HOW MUCH DID YOU WORK DURING THE FOURTH
15 QUARTER?

01:28PM

16 A. WELL, I WORKED THE WHOLE TIME, UNTIL I WAS
17 FIRED.

18 Q. UP TO DECEMBER 4TH?

19 A. YES.

20 Q. HOW LONG AFTER THE END OF THAT QUARTER ARE
21 MANAGEMENT FEES PAID TO TCW, IN THE NORMAL COURSE?

01:29PM

22 A. MOST OF THEM WOULD BE PAID IN THE WEEKS AFTER
23 THE QUARTER ENDS.

24 Q. AND FOR THE MUTUAL FUNDS, DO THE CLIENTS
25 ACTUALLY HAVE TO SEND IN A CHECK TO PAY THEIR
26 MANAGEMENT FEES?

01:29PM

27 A. NO. THEY ARE DEDUCTED FROM THE FUND, SAME AS
28 WITH THE OTHER -- DISTRESSED FUNDS, SAME THING.

1 Q. SO TCW IS ACTUALLY HOLDING THE MONEY. THEY
2 SIMPLY WIRE IT FROM ONE PLACE TO ANOTHER? WITH -- A
3 CUSTODIAN IS HOLDING IT?

4 A. SOMETHING LIKE THAT.

5 BUT THEY DEDUCT IT FROM THE FUNDS. THEY
6 DON'T GET THE CLIENT TO DO ANYTHING.

01:29PM

7 Q. SO FOR THE MANAGEMENT FEES THAT WERE GENERATED
8 FOR THE FOURTH QUARTER OF 2009, WAS THIS A SITUATION
9 WHERE TCW MIGHT NEVER COLLECT THOSE FEES, OR ONLY
10 COLLECT THEM AT SOME DISTANT POINT IN THE FUTURE?

01:29PM

11 MR. MADISON: OBJECTION. SPECULATION.

12 THE COURT: OVERRULED.

13 THE WITNESS: WELL, THEY'D CERTAINLY COLLECT
14 THEM. IT WOULDN'T BE IN THE DISTANT FUTURE.

15 I KNOW SOME OF THEM WILL BE COLLECTED
16 MONTHLY. I DON'T KNOW THIS FOR SURE AT TCW.

01:30PM

17 I KNOW AT DOUBLELINE, WE BILL OUR MUTUAL
18 FUNDS MONTHLY, AS I THINK MOST FIRMS DO.

19 Q. SO DID YOU GET ANY PORTION OF FEE SHARING FOR
20 THE MANAGEMENT FEES THAT WERE GENERATED FOR WORK YOU
21 DID, MANAGING TCW FUNDS IN THE FOURTH QUARTER OF 2009
22 UP TO DECEMBER THE 4TH?

01:30PM

23 A. NO, I DIDN'T.

24 Q. DID MR. SANTA ANA?

25 A. NO.

01:30PM

26 Q. DID MS. VANEVERY?

27 A. NO.

28 Q. DID MR. MAYBERRY?

1 A. NO.

2 Q. ALL RIGHT. LET'S TALK ABOUT THE SMCF FUNDS.

3 AT THE TIME THAT YOU WERE TERMINATED,
4 HOW MUCH MONEY HAD BEEN INVESTED IN SMCF I?

5 A. ABOUT A BILLION AND THREE QUARTERS.

01:30PM

6 Q. AND HOW WAS IT PERFORMING?

7 A. IT WAS IN A PROFIT POSITION AT THAT TIME.

8 THE FUND ONE HAD STARTED EARLY, IN
9 ANTICIPATION OF THE CRISIS. THE MARKET GOT A LOT WORSE
10 THAN EVEN I THOUGHT IT WOULD.

01:30PM

11 MOST OF THE IMITATORS WENT BANKRUPT, BUT
12 WE HAD A PROFIT POSITION, COME DECEMBER 2009, IN FUND
13 ONE.

14 Q. HAD FUND ONE STARTED TO ACCRUE INCENTIVE FEES?
15 WAS IT IN THE MONEY?

01:31PM

16 A. I DON'T THINK SO. TO START ACCRUING INCENTIVE
17 FEES, YOU HAVE TO BE NOT ONLY IN A PROFIT POSITION; BUT
18 BEYOND THAT. IT WAS ALMOST THERE.

19 Q. WHAT ABOUT SMCF II? HOW WAS IT PERFORMING AS
20 OF THE TIME YOU WERE TERMINATED?

01:31PM

21 A. IT WAS DOING GREAT. IT WAS LAUNCHED, AND HAD
22 NOT BEEN AN ADVANTAGEOUS TIME. AND IT WAS SERIOUSLY IN
23 THE MONEY, AS FAR AS ACCRUING PERFORMANCE FEES.

24 Q. AND FOR HOW LONG HAD IT BEEN ACCRUING THE
25 INCENTIVE FEES?

01:31PM

26 A. ONLY A FEW MONTHS.

27 Q. AND HOW ABOUT THE MONEY IN PPIP, SMCF III?
28 COULD YOU TELL WHETHER YOU WERE MAKING GOOD INVESTMENTS

1 IN THAT FUND?

2 A. WE WERE VERY BULLISH ON PROSPECTS FOR THE
3 MARKET, FOR ALL OF THESE FUNDS, INCLUDING THE PPIP, IN
4 THE FOURTH QUARTER OF 2009.

5 IT TURNED OUT TO BE THE CORRECT
6 JUDGMENT.

01:32PM

7 Q. NOW, IN THE NORMAL COURSE OF YOUR BUSINESS,
8 DID YOU KEEP CLOSE TABS ON HOW THE FUNDS WERE
9 PERFORMING, AND MAKE INTERNAL ESTIMATES ABOUT WHAT KIND
10 OF FEES MIGHT BE GENERATED?

01:32PM

11 A. YES, I DID.

12 Q. WHAT WAS YOUR PROGNOSIS IN DECEMBER OF 2009
13 FOR HOW THE THREE SMCF FUNDS WERE GOING TO PERFORM?

14 A. I FIGURED THAT ON BALANCE, THE THREE FUNDS
15 WOULD ESSENTIALLY DOUBLE IN VALUE. SOME MORE, SOME
16 LESS; BUT ON AVERAGE, ABOUT A DOUBLE.

01:32PM

17 SO THERE WAS ABOUT \$4 BILLION. I
18 THOUGHT IT WOULD GROW TO EIGHT OR NINE BILLION.

19 Q. AND SO HOW MUCH CARRIED INTEREST WOULD BE
20 GENERATED FOR TCW, BASED ON PROJECTIONS LIKE THAT?

01:32PM

21 A. WELL, IT'S A 20 PERCENT CARRY; SO YOU WOULD
22 HAVE SOMETHING LIKE, IT'S CLOSE TO A BILLION DOLLARS OF
23 CARRIED INTEREST, PARTICULARLY WHEN YOU INCLUDE THE
24 MANAGEMENT FEES.

25 TCW WAS GOING TO GET HALF OF THE
26 MANAGEMENT FEES AND 40 PERCENT OF THE INCENTIVE FEES.
27 AND MY GROUP WAS GOING TO GET HALF OF THE MANAGEMENT
28 FEES AND 60 PERCENT OF THE INCENTIVE FEES; SO IT WAS A

01:32PM

1 LOT OF MONEY.

2 Q. IF WE COULD LOOK AT WHAT'S BEEN MARKED FOR
3 IDENTIFICATION AS EXHIBIT 2220.

4 THAT WAS -- WE'VE HAD A PICTURE -- WE
5 LOST OUR CHART, WE HAVE A PICTURE OF IT, BUT THIS WAS A
6 CHART THAT WAS DRAWN DURING MR. VILLA'S EXAMINATION.

01:33PM

7 AND IT SAYS THAT THE TOTAL GROSS
8 REVENUES THAT WERE GENERATED BY YOUR GROUPS DURING THE
9 WHOLE TIME YOU WERE AT TCW UP TO 2009, WERE \$1.2
10 BILLION.

01:33PM

11 DO YOU SEE THAT?

12 A. YES.

13 Q. SO HOW DID THE FEES THAT YOU EXPECTED TO BE
14 GENERATED BY THE SMCF FUNDS COMPARE TO THE TOTAL
15 REVENUES YOU HAD GENERATED DURING YOUR WHOLE CAREER FOR
16 TCW?

01:33PM

17 MR. MADISON: OBJECTION. SPECULATION AND
18 ARGUMENTATIVE.

19 THE COURT: OVERRULED.

20 THE WITNESS: WELL, THE FEES ON THE SPECIAL
21 MORTGAGE CREDIT FUNDS ALONE WERE VERY SIMILAR, WOULD BE
22 VERY SIMILAR TO ALL THE FEES OF EVERYTHING THAT I DID
23 OVER THE 25 YEARS PRIOR.

01:33PM

24 Q. BY MR. HELM: YOU THOUGHT ABOUT A BILLION
25 DOLLARS?

01:34PM

26 A. A LITTLE OVER A BILLION, YES.

27 Q. NOW, YOU SAID THAT SMCF II WAS STARTING TO
28 ACCRUE INCENTIVE FEES; IS THAT RIGHT?

1 A. YES.

2 Q. DID YOU RECEIVE ANY PAYMENTS FOR ACCRUED
3 CARRIED INTEREST AS OF THE TIME THAT YOU WERE
4 TERMINATED?

5 A. NO.

01:34PM

6 Q. DID MR. SANTA ANA?

7 A. NO.

8 Q. DID MS. VANEVERY?

9 A. NO.

10 Q. DID MR. MAYBERRY?

01:34PM

11 A. NO, NONE OF US GOT ANYTHING.

12 Q. NOW, WE'VE TALKED ABOUT THE FACT THAT
13 INVESTORS IN LOCKUP FUNDS LIKE SMCF CAN'T PULL THEIR
14 MONEY OUT UNTIL AFTER SOME PERIOD OF YEARS.

15 DO YOU RECALL THAT?

01:34PM

16 A. WELL, IN THESE FUNDS THAT WAS THE CASE, YES.

17 Q. WELL, WHAT ABOUT INVESTMENTS THEMSELVES?

18 DOES THE MANAGER OF AN SMCF FUND HAVE
19 THE ABILITY TO SELL INVESTMENTS BEFORE THE END OF THE
20 FUND'S LIFE?

01:34PM

21 A. YES, AT ANY TIME. THE WAY IT WORKED WAS,
22 THERE WAS A THREE-YEAR INVESTMENT PERIOD, WHICH MEANT
23 THAT YOU COULD BUY OR SELL ON AN UNLIMITED BASIS FOR
24 THREE YEARS. AFTER THAT THREE YEARS, YOU COULDN'T
25 REINVEST. SO ANYTHING YOU SOLD, THAT WAS IT.

01:35PM

26 YOU DIDN'T -- YOU COULDN'T BUY ANYTHING
27 MORE AFTER THREE YEARS.

28 Q. SO IF YOU HAD ACCRUED CARRIED INTEREST ON

1 LET'S SAY, SMCF II, AS OF THE TIME THAT YOU WERE
2 TERMINATED, BUT TCW WAS CONCERNED THAT MARKET
3 CONDITIONS MIGHT CHANGE AND IT MIGHT DROP IN VALUE,
4 COULD THE MANAGER SELL THE FUNDS IF IT WANTED TO?

5 A. YES.

01:35PM

6 Q. AND JUST TO HAVE A REALITY CHECK, WHAT WERE
7 YOUR EXPECTATIONS, AS OF THE TIME YOU WERE FIRED, ABOUT
8 WHETHER THE SMCF FUNDS WERE GOING TO GO UP OR DOWN IN
9 VALUE?

10 A. I THOUGHT THEY WERE GOING TO DOUBLE.

01:35PM

11 Q. SO DOES THE -- DID TCW EVER TELL YOU THAT IT
12 THOUGHT THE PROVISION IN YOUR CONTRACT REQUIRING
13 PAYMENT OF COMPENSATION ACCRUED TO THE DATE OF
14 TERMINATION WAS UNFAIR IN ANY WAY?

15 A. NEVER.

01:36PM

16 Q. IF A NEW MANAGER WERE TO COME IN AFTER YOU
17 WERE TERMINATED, AND HOLD ON TO THE ASSETS ALL THE WAY
18 DOWN TO WHEN THEY WENT TO ZERO, WOULD YOU ATTRIBUTE
19 THAT TO THE NEW MANAGER, OR TO SOMETHING YOU DID?

20 A. WELL, THE NEW MANAGER.

01:36PM

21 IN THE INVESTMENT BUSINESS, EVERY DAY
22 THAT YOU GO INTO THE OFFICE, YOU OWN THE PERFORMANCE OF
23 THAT COMING DAY. YOU NEVER GET A DAY OFF.

24 YOU ARE BASICALLY BUYING YOUR PORTFOLIO
25 AWAY. THE WAY PEOPLE LIKE ME THINK ABOUT IT IS YOU ARE
26 BUYING YOUR PORTFOLIO NEW EVERY DAY.

01:36PM

27 JUST BECAUSE YOU BOUGHT SOMETHING A YEAR
28 AGO, DOESN'T MEAN YOU ARE SUPPOSED TO OWN IT TOMORROW.

1 YOU HAVE TO THINK ABOUT WHETHER YOU SHOULD CONTINUE TO
2 OWN THINGS ALL THE TIME.

3 Q. SO DOES THE POSSIBILITY THAT A NEW MANAGER
4 MIGHT COME IN AND LOSE PROFITS THAT YOU HAD MADE BASED
5 ON YOUR INVESTMENTS, MAKE YOU FEEL ANY LESS ENTITLED TO
6 BE PAID YOUR SHARE OF FEES ACCRUED TO THE DATE OF
7 TERMINATION?

01:37PM

8 MR. MADISON: OBJECTION. LEADING AND
9 ARGUMENTATIVE.

10 THE COURT: SUSTAINED.

01:37PM

11 Q. BY MR. HELM: WELL, DID TCW EVER TELL YOU THEY
12 THOUGHT IT WAS UNFAIR TO PAY YOU YOUR ACCRUED FEES UP
13 TO THE TIME OF TERMINATION, BEFORE YOU WERE RELIEVED OF
14 YOUR DUTIES?

15 A. NO.

01:37PM

16 Q. NOW, YOU HAVE MADE A CLAIM FOR COMPENSATION IN
17 THIS CASE?

18 A. I HAVE.

19 Q. WHEN DID YOU FILE IT?

20 A. I THINK IT WAS IN FEBRUARY OF 2010.

01:37PM

21 Q. AND WHEN WAS THAT, IN RELATION TO THE
22 COMPLAINT THAT WAS FILED AGAINST YOU?

23 A. IT WAS AFTER.

24 Q. WHY DID YOU WAIT UNTIL THEN TO FILE YOUR
25 CLAIM?

01:37PM

26 A. I WAS HOPEFUL THAT WE COULD MOVE FORWARD
27 WITHOUT ANY LITIGATION AT ALL.

28 Q. AND ONCE TCW FILED ITS LAWSUIT, DID YOU REACH

1 ANY CONCLUSIONS ABOUT WHETHER LITIGATION COULD BE
2 AVOIDED?

3 A. IT SEEMED LIKE THE LITIGATION WAS HERE.

4 Q. SO WHAT DID YOU DO AT THAT POINT?

5 A. FILED A COUNTERCLAIM.

01:38PM

6 MR. HELM: NOTHING FURTHER, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 CROSS-EXAMINATION, MR. MADISON?

9 MR. MADISON: YES.

10 WE'RE GOING TO HAND OUT SOME BINDERS, IF
11 WE MAY.

01:38PM

12 THE COURT: ALL RIGHT.

13

14

15 CROSS-EXAMINATION

16

17 BY MR. MADISON:

18 Q. SO MR. GUNDLACH, THE FIRST CLAIM YOU EVER MADE
19 ON THIS CONTRACT THAT YOU SAY YOU HAD, WAS IN FEBRUARY
20 2010, CORRECT?

01:39PM

21 A. YES.

22 Q. AND I BELIEVE YOU JUST TOLD US THAT UP UNTIL
23 THE TIME THE LITIGATION WAS FILED, YOU HOPED LITIGATION
24 COULD BE AVOIDED; IS THAT RIGHT?

25 A. YES.

01:39PM

26 Q. SO CAN YOU POINT US TO ONE STATEMENT OF YOURS
27 THAT WE CAN READ IN THIS COURTROOM, BEFORE TCW SUED
28 YOU, IN WHICH YOU SAY, I HAVE A CONTRACT WITH TCW?

1 A. I KNOW OF E-MAILS THAT SAY THAT IF THEY FIRED
2 ME, I WOULD HAVE A BILLION DOLLAR LEGAL CLAIM AGAINST
3 THEM.

4 Q. I'M ASKING, SIR, ABOUT A STATEMENT BY YOU.

5 IN FACT, NOT EVEN THE DATE OF THE
6 LAWSUIT, JANUARY --

01:39PM

7 LET'S GO TO THE DATE OF THE CLAIM THAT
8 YOU FILED, IN FEBRUARY.

9 I BELIEVE IT WAS FEBRUARY 10TH, WASN'T
10 IT, 2010?

01:40PM

11 A. IF YOU SAY SO.

12 Q. UP UNTIL THAT POINT, CAN YOU POINT US TO ONE
13 STATEMENT THAT YOU MADE, THAT WE CAN READ, IN WHICH YOU
14 SAID, I HAD A FIVE-YEAR CONTRACT WITH TCW?

15 A. I CAN'T THINK OF ANY.

01:40PM

16 Q. IN FACT, THE ONLY STATEMENTS YOU ARE AWARE OF
17 ARE LIKE THE ONE WE LOOKED AT, IN WHICH YOU SAID, IN
18 WRITING, I DON'T HAVE A CONTRACT; ISN'T THAT RIGHT?

19 A. NO.

20 Q. WELL, LET'S LOOK AT 248.

01:40PM

21 I MEAN, HERE YOU HAVE, IN AUGUST OF
22 2009 --

23 AND BY THAT TIME, I BELIEVE YOU'VE TOLD
24 US YOU ALREADY ARE SUSPICIOUS OF THE FRENCH, RIGHT?

25 A. NO, I DON'T THINK SO.

01:40PM

26 Q. WELL, YOU ARE ALREADY -- YOU'VE BEEN TALKING
27 TO WAMCO BY THIS TIME ABOUT MOVING OVER THERE, RIGHT?

28 A. I WAS FINISHED TALKING WITH WAMCO ABOUT ANY

1 SERIOUS EMPLOYMENT MOVEMENT BY THIS TIME.

2 Q. AND BY THIS TIME, MARC STERN HAS COME BACK AS
3 CEO, AND YOU HAVE SAID THE WAR IS ON, RIGHT?

4 A. THAT'S MISCHARACTERIZING WHAT I SAID.

5 Q. YOU DIDN'T USE THOSE WORDS, SIR, "THE WAR IS
6 ON"?

01:41PM

7 A. MARK ATTANASIO THAT I'VE SEEN, I POINTED OUT
8 THAT TCW SEEMED TO BE ATTACKING HIM AND I.

9 Q. AND SO IN THIS E-MAIL EXCHANGE, IT ACTUALLY IS
10 TWO OR THREE PAGES, OR MORE.

01:41PM

11 BUT IF WE JUST LOOK AT THE BOTTOM OF THE
12 FIRST PAGE, THIS IS AN INQUIRY FROM A CONSULTANT WHO
13 WANTS INFORMATION FOR A CLIENT, CORRECT?

14 A. THEY WANT INFORMATION.

15 Q. WELL, AND YOU KNEW THE CONSULTANTS WORK WITH
16 CLIENTS, DIDN'T YOU?

01:41PM

17 A. OFTEN, THEY DO.

18 Q. AND YOU KNEW THAT CONSULTANTS WOULD PASS ALONG
19 INFORMATION THAT YOU WOULD SHARE TO THE CLIENTS, DIDN'T
20 YOU?

01:42PM

21 A. NOT ALWAYS. NOT NECESSARILY.

22 Q. DIDN'T YOU, SIR?

23 A. THEY COULD.

24 Q. AND YOU WOULD NOT WANT TO GIVE FALSE
25 INFORMATION TO A CLIENT, WOULD YOU?

01:42PM

26 A. I WOULDN'T WANT TO GIVE FALSE INFORMATION TO
27 CLIENTS, NO.

28 Q. AND IN FACT, THIS CLIENT WAS A PUBLIC PENSION,

1 THE SAN FRANCISCO EMPLOYEES, I BELIEVE YOU JUST TOLD
2 US; IS THAT RIGHT?

3 A. I DIDN'T FOCUS ON -- I DIDN'T KNOW THIS WAS
4 ABOUT SAN FRANCISCO EMPLOYEES UNTIL YESTERDAY.

5 Q. SO YOU NEVER NOTICED THE RE: LINE ON THE
6 E-MAIL THERE, THE SUBJECT LINE THAT YOU TOLD US ABOUT A
7 FEW MINUTES AGO, BEFORE YESTERDAY?

01:42PM

8 A. I GUESS NOT.

9 Q. AND SO THE QUESTION THAT IS ASKED IS, IN THE
10 MIDDLE OF THE PAGE THERE, BY MR. CARLSON --

01:42PM

11 AND HE'S WITH TCW, CORRECT?

12 A. MIGHT BE STILL.

13 HE WAS THEN.

14 Q. AND HE SAYS: AT THE THIRD LINE THERE OF THE
15 THIRD PARAGRAPH, (READING):

01:43PM

16 CAN YOU SHARE THE TERMS OF
17 JEFFREY GUNDLACH'S CONTRACT WITH
18 TCW IN TERMS OF NON-COMPETE
19 AGREEMENTS, EQUITY STAKE,
20 SUCCESSION, ET CETERA, SHOULD HE
21 CHOOSE TO LEAVE THE FIRM.

01:43PM

22 SO YOU UNDERSTOOD THAT WAS THE QUESTION
23 THAT THIS CONSULTANT WAS ASKING, DIDN'T YOU?

24 A. YES.

25 Q. AND YOU CHOSE TO WRITE IN YOUR REPLY:
26 (READING):

01:43PM

27 HERE IS THE TRUTHFUL ANSWER.

28 JEFFREY GUNDLACH IS NOT UNDER

1 CONTRACT WITH TCW.

2 THOSE WERE THE WORDS YOU CHOSE TO WRITE
3 AT THAT POINT IN TIME, ISN'T THAT RIGHT, SIR?

4 A. YES.

5 Q. AND YOU WOULD AGREE, SIR, WOULDN'T YOU, THAT
6 THAT STATEMENT, THOSE TWO LINES, RIGHT THERE, ARE
7 COMPLETELY INCONSISTENT WITH THE CLAIM, THE
8 COUNTERCLAIM THAT YOU HAVE BROUGHT IN THIS LITIGATION,
9 AREN'T THEY, SIR?

01:43PM

10 A. I DON'T THINK THEY ARE.

01:44PM

11 Q. SO IN THIS LITIGATION, YOU CLAIM THAT YOU HAD
12 A BINDING FIVE-YEAR EMPLOYMENT CONTRACT WITH TCW,
13 DIDN'T YOU, SIR?

14 A. I HAD AN AGREEMENT WITH TCW ON COMPENSATION
15 TERMS. YES, I DID.

01:44PM

16 Q. WELL, WE'LL TALK ABOUT THE COMPENSATION.

17 BUT YOU WERE PAID COMPENSATION UNDER
18 THAT AGREEMENT IN 2007, 2008, AND 2009, WHILE YOU WERE
19 THERE, WEREN'T YOU, SIR?

20 A. YES.

01:44PM

21 Q. BUT IN THIS LITIGATION, YOU CLAIM THAT YOU HAD
22 A FIVE-YEAR CONTRACT, AND THAT YOU COULD ONLY BE
23 TERMINATED UNDER CERTAIN CIRCUMSTANCES; AND THAT IF YOU
24 WERE TERMINATED, YOU WOULD BE OWED CERTAIN MONIES.

25 ISN'T THAT YOUR CLAIM IN THIS CASE, SIR?

01:44PM

26 A. THAT'S WHAT TCW AND I AGREED TO, YES.

27 Q. AND THE STATEMENT THAT YOU MADE, WHICH YOU
28 CHOSE TO CALL OUT AS THE TRUTHFUL ANSWER, WAS THAT YOU

1 ARE NOT UNDER CONTRACT WITH TCW IN AUGUST OF 2009;
2 ISN'T THAT RIGHT?

3 A. ON THE ITEMS THEY ARE ASKING ABOUT, THAT'S
4 RIGHT.

5 Q. SHOW US WHERE YOU SAID THAT?

01:45PM

6 A. I'M CONTEXTUALIZING IT (SIC) FOR YOU.

7 Q. THE E-MAIL CHAIN TALKS ABOUT THOSE ITEMS.

8 AND THE CONTEXT IS, YOU MAKE A BLANKET
9 STATEMENT IN RESPONSE, DON'T YOU, SIR?

10 A. I KNOW WHAT YOU ARE SAYING. YOU ARE
11 MISCHARACTERIZING THE CONTENT OF THIS E-MAIL CHAIN, IN
12 MY OPINION.

01:45PM

13 Q. TELL ME WHAT PART OF YOUR WORDS I'M
14 MISCHARACTERIZING, SIR.

15 YOUR WORDS SAY, JEFFREY GUNDLACH IS NOT
16 UNDER CONTRACT WITH TCW, AND THAT IS THE TRUTHFUL
17 ANSWER.

01:45PM

18 A. I'M PROVIDING CONTEXT IN MY TESTIMONY TODAY.

19 Q. AND YOU KNOW THAT IF THOSE WORDS WERE TRUE,
20 THAT MEANS YOUR COUNTERCLAIM IS COMPLETELY FALSE, DON'T
21 YOU, SIR?

01:45PM

22 A. I DON'T THINK THAT'S RIGHT.

23 Q. WELL, IF YOU LOOK UP ABOVE, MR. CARLSON
24 RESPONDED.

25 AND HE SAID, "THANKS. THE FACTUAL
26 SIMPLICITY OF THIS ANSWER MAY SUFFICE."

01:45PM

27 AND HE GOES ON TO SAY, "DEFUSE THEIR
28 PROBING," ET CETERA, ET CETERA.

1 YOU READ HIS REPLY, DIDN'T YOU?

2 A. I MIGHT HAVE.

3 Q. AND IT WAS A FACTUALLY SIMPLE ANSWER THAT
4 RULED OUT THAT YOU HAD ANY CONTRACT WITH TCW AT THAT
5 TIME; ISN'T THAT RIGHT?

01:46PM

6 A. THE ANSWER WAS DESIGNED TO MAKE THEM GO AWAY;
7 AND I THINK IT SERVED THE PURPOSE.

8 Q. SO YOU TOLD THEM YOU DID NOT HAVE A CONTRACT,
9 BECAUSE YOU WANTED THE CLIENT OR THE CONSULTANT TO GO
10 AWAY?

01:46PM

11 A. I WANTED THE CONSULTANT TO GO AWAY.

12 Q. SO YOU DID NOT WANT THE CONSULTANT TO INVEST
13 ITS CLIENT'S MONIES WITH TCW; IS THAT YOUR TESTIMONY,
14 SIR?

15 A. THAT'S CORRECT, BECAUSE THEY WERE AN
16 UNDESIRABLE CLIENT. I HAD EXPERIENCED THEM IN THE
17 PAST.

01:46PM

18 Q. SO IN THIS CASE, EVEN THOUGH YOU WERE TRYING
19 TO RAISE MONEY FOR THE SPECIAL MORTGAGE CREDIT FUND
20 II -- AND THAT'S WHAT THIS WAS ABOUT, WASN'T IT?

01:46PM

21 A. NO. THIS WAS ABOUT THE PPIP.

22 MR. MADISON: DOES IT SAY II OR III THERE, AT
23 THE TOP?

24 THE COURT: III.

25 Q. BY MR. MADISON: SO THAT WOULD BE THE NEW FUND
26 THAT YOU WERE TRYING TO RAISE MONEY FOR, CORRECT?

01:47PM

27 A. THE PPIP, YES.

28 Q. YOU ARE TELLING US YOU DID NOT WANT TO RAISE

1 MONEY THROUGH THIS CONSULTANT, FROM CLIENTS LIKE THE
2 SAN FRANCISCO EMPLOYEES PUBLIC PENSION, SIR?

3 A. NO. IT WAS NOTHING TO DO WITH SAN FRANCISCO
4 EMPLOYEES.

5 IT HAD TO DO WITH ANGELES CONSULTING.
6 THE PPIP -- WE KNEW AT THIS TIME THAT THE PPIP WAS
7 GOING TO SELL OUT. WE HAD PLENTY OF MOMENTUM. WE KNEW
8 THEY WERE GOING TO HIT THE CAP ON THE MAXIMUM ALLOWABLE
9 INVESTMENT SIZE. SO WE WERE TRYING TO PICK AND CHOOSE
10 THE BEST CLIENTS TO HAVE, AND THIS WASN'T ONE OF THEM.

01:47PM

01:47PM

11 Q. SO YOU ARE TELLING US THAT YOU MADE THIS
12 STATEMENT BECAUSE YOU WANTED THIS CLIENT -- THIS
13 CONSULTANT, RATHER, TO GO AWAY?

14 A. YES.

15 Q. AND YOU THOUGHT IT WOULD SERVE YOUR END TO
16 MAKE A STATEMENT TO THE CLIENT -- TO THE CONSULTANT, TO
17 GET THEM TO GO AWAY, RIGHT?

01:47PM

18 A. YES.

19 Q. AND SO THAT WAS THE REASON THAT YOU TOLD THEM,
20 HERE IS THE TRUTHFUL ANSWER, JEFFREY GUNDLACH IS NOT
21 UNDER CONTRACT WITH TCW; IS THAT RIGHT?

01:48PM

22 A. SORT OF.

23 I DIDN'T WANT TO GO INTO EQUITY
24 OWNERSHIP, WHICH I DIDN'T HAVE, AND WAS EMBARRASSED
25 ABOUT.

01:48PM

26 I DIDN'T HAVE A SUCCESSION PLAN, AND I
27 DIDN'T FEEL LIKE GOING INTO IT WITH A CONSULTANT THAT
28 DIDN'T WANT TO INVEST WITH US.

1 AND THE NON-COMPETE THING WAS NEVER
2 REALLY DETERMINED BY ME, WHETHER IT WAS EVEN LEGAL. SO
3 I WAS ANSWERING THEIR ASPECTS WITH AN ANSWER THAT WAS
4 DESIGNED TO REPEL THEM.

5 Q. WELL, IF WE COULD PUT UP EXHIBIT 238.

01:48PM

6 THIS IS ALREADY IN EVIDENCE.

7 AND IT'S AN E-MAIL EXCHANGE FROM YOU,
8 EARLIER THAT MONTH, IN AUGUST 2009.

9 AND DO YOU REMEMBER --

10 YES, IN THE MIDDLE THERE, MIKE.

01:48PM

11 THERE'S AN E-MAIL FROM YOU,
12 MR. GUNDLACH, TO MR. SANTA ANA.

13 AND SO THIS IS AUGUST 4TH, 2009, ABOUT
14 THREE WEEKS BEFORE EXHIBIT 248, THE TRUTHFUL ANSWER IS.

15 AND YOU SAY HERE, (READING):

01:49PM

16 THE GUIDING PRINCIPLE THAT WE
17 NEED TO FOLLOW IS REALLY SIMPLE.

18 THE TRUTH. WE NEED TO TELL THE
19 TRUTH ALL THE TIME, EVERY TIME,

20 INDIFFERENT TO THE DAMAGE THAT
21 MIGHT BE DONE TO EGOS OR

01:49PM

22 ORGANIZATIONAL CONSTRUCTS, WHETHER
23 THEY BE THOSE OF OUR ENEMIES OR
24 THOSE MOST DEAR TO US PERSONALLY.

25 LET'S START WITH THE REGENTS CALL.

01:49PM

26 AND THAT WAS ACTUALLY ANOTHER -- THAT WAS
27 A CLIENT CALL, WASN'T IT?

28 A. UC REGENTS WAS A CLIENT OF OURS SINCE 1989.

1 Q. SO THE REFERENCE TO THE REGENTS CALL WAS A
2 CLIENT CALL, WASN'T IT, SIR?

3 A. YES.

4 Q. AND WHAT YOU WERE SAYING HERE IS, WE HAVE TO
5 TELL THE TRUTH, NO MATTER WHETHER IT HURTS PEOPLE'S
6 FEELINGS, OR -- LET THE CHIPS FALL WHERE THEY MAY.

01:49PM

7 TELL THE TRUTH, IN CAPITAL LETTERS,
8 RIGHT?

9 A. ONE OF MY BIG ISSUES WITH TCW IS, THEY
10 WOULDN'T TELL PEOPLE THE TRUTH. AND THIS WAS ONE OF
11 THE THINGS THAT BECAME VERY IMPORTANT TO ME, YES.

01:49PM

12 Q. AND THEN THREE WEEKS AFTER WRITING THIS
13 E-MAIL, YOU TOLD THE ANGELES CONSULTANT, THE TRUTHFUL
14 ANSWER IS, JEFFREY GUNDLACH IS NOT UNDER CONTRACT WITH
15 TCW?

01:50PM

16 MR. HELM: ASKED AND ANSWERED, YOUR HONOR.

17 THE COURT: SUSTAINED.

18 THE WITNESS: RELATIVE TO --

19 THE COURT: SIR, YOU HAVE ANSWERED IT FIVE
20 TIMES.

01:50PM

21 Q. BY MR. MADISON: WELL, ANGELES CONSULTANTS WAS
22 NOT THE ONLY GROUP OR PERSON THAT YOU SAID YOU DID NOT
23 HAVE AN EMPLOYMENT CONTRACT TO, AFTER 2007, WERE THEY,
24 SIR?

25 A. I DON'T KNOW ABOUT THAT.

01:50PM

26 Q. WELL, DO YOU RECALL, FOR EXAMPLE, IN ONE OF
27 YOUR MEETINGS WITH MR. OWENS FROM GOLDMAN SACHS, THE
28 SUBJECT OF AN EMPLOYMENT CONTRACT CAME UP?

1 A. NO. I DON'T REMEMBER THAT.

2 Q. AND YOU TOLD MR. OWENS, I DO NOT HAVE AN
3 EMPLOYMENT CONTRACT WITH TCW?

4 A. NO, I DIDN'T.

5 Q. SO IF MR. OWENS GIVES TESTIMONY TO THAT
6 EFFECT, THAT -- IT WOULD NOT BE TRUE?

01:50PM

7 A. THAT'S CORRECT.

8 Q. AND DO YOU RECALL A REPORTER NAMED DOUG APEL
9 FROM PENSION AND INVESTMENTS?

10 A. YES. I TALKED TO HIM AFTER DECEMBER 4TH,
11 2009.

01:51PM

12 Q. WELL, ACTUALLY, YOU SPOKE TO HIM BEFORE
13 DECEMBER 4TH, 2009, ALSO, DIDN'T YOU, SIR?

14 A. I MIGHT HAVE.

15 Q. I MEAN, YOU WOULD SPEAK TO PENSION INVESTMENTS
16 REGULARLY, BECAUSE THEY ARE A MAJOR PERIODICAL IN THE
17 FINANCIAL AND ASSET MANAGEMENT WORLD, AREN'T THEY?

01:51PM

18 A. SORT OF.

19 I WOULD TALK TO THEM FROM TIME TO TIME
20 BECAUSE THEY ARE A TERTIARY FINANCIAL INFORMATION
21 SOURCE.

01:51PM

22 Q. WELL, THEY COVERED YOUR BUSINESS, DON'T THEY,
23 SIR?

24 A. NOT EXACTLY.

25 THEY ARE A FINANCIAL PUBLICATION FOR
26 PENSION PLANS.

01:51PM

27 Q. SO IF WE LOOK AT EXHIBIT 353 --

28 WHICH I BELIEVE IS IN EVIDENCE, YOUR

1 HONOR --

2 LET ME JUST HOLD OFF, YOUR HONOR. MY
3 NOTES SAY IT'S IN.

4 THE COURT: IT DIDN'T RING A BELL WITH ME.

5 MR. MADISON: LET ME JUST DO A QUICK
6 FOUNDATION. IT WILL BE FASTER, YOUR HONOR.

01:52PM

7 Q. YOU HAVE 353 THERE IN YOUR BINDER,
8 MR. GUNDLACH, OR CAN YOU LOOK ON THE SCREEN?

9 A. IT'S ON THE SCREEN.

10 Q. SO THAT'S AN E-MAIL THAT YOU SENT TO YOUR
11 GROUP AT TCW ON OCTOBER 19, 2009, ISN'T IT?

01:52PM

12 A. YES.

13 MR. MADISON: I WOULD MOVE 353, IF IT'S NOT
14 IN.

15 MR. HELM: IT CONTAINS HEARSAY, YOUR HONOR.

01:52PM

16 THE COURT: I'LL HAVE TO LOOK AT IT.

17 IS IT IN THIS BOOK?

18 MR. MADISON: IT SHOULD BE IN THE BINDER WE
19 HANDED UP, YOUR HONOR. 353.

20 THE COURT: I'VE GOT IT.

01:52PM

21 THE OBJECTION WILL BE SUSTAINED.

22 Q. BY MR. MADISON: WELL, LET ME ASK YOU THIS,
23 MR. GUNDLACH: DO YOU RECALL GIVING AN INTERVIEW IN
24 OCTOBER OF 2009 TO MR. APEL IN CONNECTION WITH AN
25 ARTICLE THAT HE WAS WRITING AT THAT TIME?

01:53PM

26 A. NOT PARTICULARLY.

27 I DID A LOT OF INTERVIEWS WITH PEOPLE.

28 Q. WELL, IF YOU NEED TO REFRESH YOUR RECOLLECTION

1 BY LOOKING AT EXHIBIT 353, PLEASE FEEL FREE TO DO SO,
2 PARTICULARLY TOWARD THE BOTTOM OF THE FIRST PAGE THERE.

3 THERE'S A STATEMENT IN QUOTATIONS MARKS.

4 MR. HELM: OBJECT TO FORM, YOUR HONOR.

5 THE COURT: YOU MAY READ IT. JUST TAKE A LOOK
6 AT IT.

01:53PM

7 IF IT REFRESHES YOUR RECOLLECTION, YOU
8 MAY TESTIFY ABOUT IT.

9 AND IN THE MEANTIME, MR. MADISON, YOU
10 MAY FOLLOW UP WITH APPROPRIATE QUESTIONS.

01:53PM

11 MR. MADISON: YES, YOUR HONOR.

12 IF THE WITNESS IS READING THAT, I'D LIKE
13 TO GIVE HIM THE OPPORTUNITY.

14 THE COURT: ALL RIGHT.

15 THE WITNESS: IT DOESN'T LOOK LIKE IT'S THE
16 WHOLE ARTICLE.

01:53PM

17 Q. BY MR. MADISON: WELL, DO YOU RECALL MAKING A
18 STATEMENT TO DOUG APEL OF PENSION AND INVESTMENTS ABOUT
19 THE RUMORS THAT YOU HAD BEEN TALKING TO COMPETING ASSET
20 MANAGEMENT FIRMS ABOUT GOING TO WORK FOR THEM?

01:54PM

21 A. NO.

22 Q. DO YOU RECALL TELLING MR. APEL THAT YOU HAD
23 NOT BEEN IN DISCUSSIONS WITH WAMCO, PIMCO, AND
24 BLACKROCK?

25 A. I DO REMEMBER THAT, YES.

01:54PM

26 Q. AND IN FACT, BY THAT TIME, YOU HAD CERTAINLY
27 BEEN IN DISCUSSIONS WITH WAMCO, HADN'T YOU?

28 A. YES, BUT NOT BLACKROCK, PIMCO AND WESTERN,

1 WHICH IS WHAT HE ASKED ME; SO I SAID NO.

2 Q. SO WHEN HE SAID, THERE ARE RUMORS THAT YOU
3 HAVE BEEN TALKING ABOUT --

4 MR. HELM: OBJECT TO READING FROM THE
5 DOCUMENT.

01:54PM

6 THE COURT: SUSTAINED.

7 IT'S INAPPROPRIATE, MR. MADISON.

8 Q. BY MR. MADISON: SO WHEN HE ASKED YOU THE
9 QUESTION, YOU FELT THAT BECAUSE YOU HAD ONLY BEEN
10 TALKING TO WAMCO, IT WAS APPROPRIATE TO TELL HIM THAT
11 IT WAS UNTRUE THAT YOU HAVE BEEN TALKING TO THOSE THREE
12 COMPETING FIRMS?

01:54PM

13 A. THAT'S RIGHT.

14 Q. NOW, HAD YOU BEEN TALKING TO PIMCO?

15 A. NOT DIRECTLY.

01:55PM

16 Q. HAD YOU BEEN DOING SO INDIRECTLY?

17 A. THEY SENT SOME AMBASSADORS TO ME, WALL STREET
18 GUYS.

19 Q. SO DID YOU CONSIDER THAT TO BE IN DISCUSSIONS
20 WITH PIMCO AT THAT TIME?

01:55PM

21 A. NO.

22 Q. NOW, AFTER DECEMBER 4TH, MR. APEL REACHED OUT
23 FOR YOU, OR YOU REACHED OUT FOR HIM, RIGHT?

24 A. HE CALLED ME.

25 Q. AND THAT WAS OVER THE WEEKEND OF DECEMBER 5TH
26 AND 6TH, RIGHT AFTER YOU HAD BEEN PUT ON LEAVE AT TCW,
27 CORRECT?

01:55PM

28 A. I DON'T KNOW.

1 Q. WELL, DO YOU KNOW HOW MR. APEL WAS ABLE TO
2 REACH YOU OVER THAT WEEKEND?

3 A. NO.

4 Q. CAN YOU LOOK AT EXHIBIT 552, PLEASE.

5 AND THAT'S AN E-MAIL THAT YOU RECEIVED
6 FROM MR. APEL ON DECEMBER 6TH -- SUNDAY, DECEMBER 6TH,
7 AT 8:34 P.M., ISN'T IT?

01:55PM

8 A. THAT'S WHAT IT LOOKS LIKE.

9 I DIDN'T OPEN THIS FOR MONTHS, THIS
10 E-MAIL.

01:56PM

11 Q. WELL, DO YOU RECALL SPEAKING TO MR. APEL ON
12 DECEMBER 6TH, 2009, ABOUT YOUR SITUATION?

13 A. NO.

14 Q. AND DO YOU RECALL TELLING MR. APEL THAT YOU
15 HAD NO CONTRACT WITH TCW?

01:56PM

16 A. I DIDN'T TELL HIM THAT.

17 Q. AND WHAT MR. APEL DID IN THIS E-MAIL IS, HE
18 SENT YOU HIS NOTES FROM THE INTERVIEW, CORRECT?

19 A. THAT'S WHAT IT SAYS.

20 Q. AND YOU UNDERSTOOD THAT HE WAS GIVING YOU AN
21 OPPORTUNITY TO REVIEW THE NOTES BEFORE HIS ARTICLE WAS
22 PUBLISHED, DIDN'T YOU?

01:56PM

23 A. I GUESS SO; BUT I DIDN'T OPEN THE E-MAIL FOR
24 MONTHS.

25 Q. WELL, WHEN YOU PRODUCED E-MAILS IN THIS
26 LITIGATION, YOU HAD THIS E-MAIL SAVED ON YOUR PERSONAL
27 E-MAIL, DIDN'T YOU, SIR?

01:56PM

28 A. I -- THERE WERE A LOT OF E-MAILS ON MY

1 PERSONAL E-MAIL. AND A LOT OF THEM WEREN'T OPEN, AND
2 THIS WAS ONE OF THEM.

3 Q. AND IN FACT, THIS E-MAIL FROM DECEMBER 6TH WAS
4 SENT TO YOUR NEW E-MAIL ACCOUNT, THE PERSONAL E-MAIL
5 ACCOUNT YOU HAD OPENED THAT VERY DAY; ISN'T THAT RIGHT?

01:57PM

6 A. THAT'S WHAT IT LOOKS LIKE.

7 Q. SO YOU GAVE MR. APEL YOUR NEW E-MAIL ADDRESS
8 SO HE COULD COMMUNICATE WITH YOU BY E-MAIL, DIDN'T YOU?

9 A. THAT'S PLAUSIBLE.

10 Q. AND YOU READ THE ARTICLE THAT HE PUBLISHED IN
11 PENSION AND INVESTMENTS THE NEXT DAY, DIDN'T YOU, SIR?

01:57PM

12 A. I DOUBT IT.

13 Q. YOU DON'T RECALL READING ABOUT THE INTERVIEW
14 THAT MR. APEL HAD WITH YOU ON SUNDAY THE 6TH?

15 A. NO, I DON'T.

01:57PM

16 I WAS PRETTY BUSY THAT NEXT DAY.

17 Q. SO NOBODY MENTIONED TO YOU THAT YOU WERE IN
18 PENSION AND INVESTMENTS, GIVING AN INTERVIEW ABOUT YOUR
19 SITUATION, JUST TWO DAYS AFTER YOU HAD BEEN EXITED FROM
20 TCW?

01:57PM

21 A. THAT'S RIGHT.

22 Q. NOW, THERE WERE OTHER INSTANCES IN WHICH YOU
23 WERE TALKING ABOUT YOUR SITUATION AT TCW, AND YOU
24 DIDN'T SAY ANYTHING ABOUT A FIVE-YEAR CONTRACT; ISN'T
25 THAT RIGHT?

01:58PM

26 MR. HELM: VAGUE AND AMBIGUOUS.

27 THE COURT: SUSTAINED.

28 Q. BY MR. MADISON: WELL, DO YOU RECALL, FOR

1 EXAMPLE, THAT IN JULY OF 2009, YOU HAD AN INTERVIEW
2 WITH MR. SHEDLIN, THAT MR. CONN SAT IN ON?

3 A. YES.

4 Q. AND DO YOU RECALL TELLING MR. SHEDLIN THAT YOU
5 COULD UP AND LEAVE WITH YOUR ENTIRE GROUP, AND TCW
6 WOULD FALL APART?

01:58PM

7 A. THAT'S NOT WHAT I SAID.

8 Q. DO YOU RECALL TELLING HIM THAT YOU COULD LEAVE
9 ANY TIME YOU WANTED TO?

10 A. THAT'S NOT WHAT I SAID.

01:58PM

11 Q. AND YOU DIDN'T SAY A WORD TO HIM ABOUT HAVING
12 ANY FIVE-YEAR CONTRACT OF YOURS, DID YOU, SIR?

13 A. WELL, NO. BUT THAT WAS NOT AT ALL THE TOPIC
14 OF THE MEETING.

15 THE PART THAT YOU ARE REFERRING TO, YOU
16 ARE MISCHARACTERIZING IT BY DELETING THE CONTEXT.

01:58PM

17 Q. WELL, IF MR. SHEDLIN WERE TO SAY THAT YOU SAID
18 YOU COULD UP AND LEAVE WITH YOUR ENTIRE GROUP TO THE
19 DETRIMENT OF TCW, THAT WOULD BE UNTRUE?

20 MR. HELM: OBJECTION TO THE FORM.

01:58PM

21 THE COURT: OVERRULED.

22 THE WITNESS: THE CONTEXT IS INCREDIBLY
23 IMPORTANT, AND THE WAY YOU HAVE JUST PHRASED IT, IS
24 UNTRUE. YOU ARE EMBELLISHING IT.

25 Q. BY MR. MADISON: AND IF MR. CONN, WHO SAT IN
26 ON THE INTERVIEW, WERE TO DESCRIBE THAT SAME STATEMENT,
27 THAT WOULD BE UNTRUE, TOO, SIR?

01:59PM

28 A. I THINK MR. CONN'S CREDIBILITY HAS BEEN SHOT.

1 Q. WITH ALL DUE RESPECT, THAT'S NOT FOR YOU TO
2 JUDGE, SIR.

3 THE COURT: ALL RIGHT. WE'RE GOING TO RECESS
4 ON THAT.

5 LADIES AND GENTLEMEN, WE'LL SEE YOU 01:59PM
6 TOMORROW MORNING. WE ARE GOING TO BE IN SESSION, 8:30
7 TILL NOON ON FRIDAY. THAT'S MY UNDERSTANDING, THAT ONE
8 OR MORE OF YOU HAD AFTERNOON COMMITMENTS, AND SO WE'LL
9 JUST GO TO NOON ON FRIDAY. BUT I APPRECIATE YOUR
10 WILLINGNESS TO COME IN AND DO THAT. 01:59PM

11 DON'T DISCUSS THE MATTER AMONG
12 YOURSELVES OR WITH ANYONE ELSE OR FORM ANY OPINIONS OR
13 CONCLUSIONS CONCERNING THE CASE UNTIL YOU HAVE HEARD
14 ALL OF THE EVIDENCE, AND IT'S BEEN SUBMITTED TO YOU.

15 WE'LL SEE YOU TOMORROW MORNING AT 8:30. 01:59PM

16 THANK YOU VERY MUCH.

17
18 (AT 2:00 P.M. THE JURY WAS
19 EXCUSED, AND THE FOLLOWING
20 PROCEEDINGS WERE HELD:)

21
22 THE COURT: ALL RIGHT. WE'RE OUT OF THE
23 PRESENCE OF THE JURY.

24 WE'LL RECONVENE TOMORROW MORNING AT
25 8:30. 02:00PM

26 MR. MADISON, IF A DOCUMENT DOESN'T
27 REFRESH THE RECOLLECTION OF THE WITNESS, YOU MAY NOT
28 START READING IT, AND YOU MAY NOT CONTINUE TO TESTIFY.

1 AND YOU WILL HAVE ONE HALF-HOUR TOMORROW MORNING, FROM
2 8:30 TO 9:00, TO FINISH YOUR CROSS-EXAMINATION OF
3 MR. GUNDLACH. SO WHATEVER YOU WISH TO DO, YOU GOVERN
4 YOURSELF ACCORDINGLY.

5 MR. MADISON: I WILL, YOUR HONOR.

02:00PM

6 AND FOR THE RECORD, I WASN'T READING --

7 THE COURT: WELL, YOU WERE. AND IT'S AT THE
8 END OF THE ROPE -- WITNESSES CAN TESTIFY, NOT THE
9 LAWYERS.

10 MR. MADISON: OF COURSE.

02:01PM

11 THE COURT: ARE THERE ANY OTHER MATTERS?

12 WE'RE GOING TO TAKE UP SOME JURY
13 INSTRUCTIONS THIS AFTERNOON?

14 MR. HELM: I BELIEVE SO, YOUR HONOR.

15 MR. MADISON: YOUR HONOR, COULD I JUST -- AND
16 I APOLOGIZE FOR -- ON 353, THAT IS AN ARTICLE THAT
17 MR. GUNDLACH CONTRIBUTED IN AN INTERVIEW.

02:01PM

18 IN HIS DEPOSITION, HE ADMITTED MAKING
19 THE STATEMENTS THAT ARE QUOTED IN THE INTERVIEW.

20 AND ON THE EXHIBIT ITSELF, HE CHOSE,
21 AFTER THE ARTICLE CAME OUT, TO FORWARD IT TO HIS ENTIRE
22 GROUP. SO IT'S OUR POSITION THAT THAT'S AN ADOPTED
23 ADMISSION BY HIM OF THE STATEMENTS THAT APPEAR THEREIN.

02:01PM

24 THE COURT: WHY DON'T YOU JUST READ FROM HIS
25 DEPOSITION? IF YOU SAY THAT HE HAS ADMITTED IT ALL,
26 AND YOU CAN GO THAT WAY.

02:01PM

27 HE SAID ON THE STAND, HE DIDN'T READ IT.
28 HE DOESN'T KNOW.

1 OTHERWISE, WE HAVE TO GO THROUGH, AND WE
2 HAVE WHAT IS A THREE-PAGE DOCUMENT, BASICALLY REDACT
3 THE MAJORITY OF IT AS RANK HEARSAY BY A PUBLICATION;
4 AND I DON'T THINK THAT DOES IT. SO IF YOU HAVE GOT
5 THIS IN THE DEPOSITION, TAKE PART OF YOUR HALF HOUR AND
6 READ PORTIONS OF THE DEPOSITION.

02:02PM

7 MR. MADISON: YES, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 MR. MADISON: AND THEN ON 552, I DID NOT MOVE
10 552, BUT I WOULD LIKE TO DO THAT AT THIS TIME.

02:02PM

11 THE COURT: WHAT IS THIS?

12 MR. MADISON: THIS IS AN E-MAIL MR. APEL SENDS
13 TO MR. GUNDLACH AND SAYS, "HERE ARE THE NOTES FROM OUR
14 TALK. IF THERE'S A PROBLEM, PLEASE LET ME KNOW."

15 MR. GUNDLACH NEVER TELLS THEM THERE'S A
16 PROBLEM. THE ARTICLE IS PUBLISHED AS IT IS.

02:02PM

17 THE COURT: AND HE ACTUALLY TESTIFIES THAT HE
18 NEVER OPENED THE E-MAIL.

19 DO YOU HAVE HIS DEPOSITION TESTIMONY ON
20 THIS SUBJECT?

02:02PM

21 MR. MADISON: IT WAS CONSISTENT WITH HIS
22 TESTIMONY; BUT WE THINK THAT GOES TO WEIGHT, NOT
23 ADMISSIBILITY.

24 MR. QUINN: THAT'S HIS ACCOUNT, YOUR HONOR.
25 WE DON'T HAVE TO ACCEPT THAT, THAT HE DIDN'T OPEN IT.

02:02PM

26 MR. BRIAN: BUT IT'S HEARSAY.

27 THE COURT: IT'S STILL HEARSAY.

28 HOW DO I GET AROUND THE BLANK HEARSAY?

1 IF SOMEBODY SENDS YOU AN E-MAIL AND SAYS, I WANT TO
2 CONFIRM THAT YOU TOLD ME A, B, C, D AND E; AND I NEVER
3 DO ANYTHING TO ACKNOWLEDGE IT OR REJECT IT, IS IT AN
4 ADOPTIVE ADMISSION, OR IS THERE SOME THEORY THAT BY
5 FAILURE TO RESPOND, IT CONSTITUTES AN ACCEPTANCE?

02:03PM

6 MR. QUINN: I THINK SO.

7 THE COURT: WELL, I'M NOT SURE, THOUGH.

8 MR. QUINN: YOU ALL THE TIME HAVE SITUATIONS
9 WHERE ARTICLES ARE PUBLISHED, AND A WITNESS IS
10 CONFRONTED WITH THE FACT THAT YOU NEVER WROTE TO THE
11 NEWSPAPER TO ASK FOR A RETRACTION, OR THINGS LIKE THAT.
12 THAT'S -- THAT'S A FAIRLY COMMON --

02:03PM

13 MR. BRIAN: I TOTALLY DISAGREE WITH THAT.

14 THE COURT: I'M NOT SURE.

15 AND IF YOU WANT TO ADDRESS THIS ISSUE
16 WITH A LITTLE MORE DETAIL, HAVE ME LOOK AT SOMETHING.
17 I'M MORE THAN WILLING TO GO THROUGH THE HOOPS AND TO
18 LOOK AT WHATEVER AUTHORITY YOU HAVE.

02:03PM

19 I HAVE A PROBLEM WITH A PUBLICATION THAT
20 HAS A LOT OF HEARSAY STATEMENTS IN IT, IN AN INDUSTRY
21 THAT ALL YOU HAVE TO DO IS GOOGLE THIS TRIAL AND YOU
22 WILL GET ARTICLES FROM ONE END TO THE OTHER, HALF OF
23 WHICH ARE NOT EVEN CLOSE TO WHAT'S HAPPENING IN THIS
24 COURTROOM.

02:03PM

25 MR. QUINN: TWO SEPARATE ISSUES.

02:03PM

26 THE ONE IS, HE FORWARDS A NEWSPAPER
27 ARTICLE --

28 THE COURT: AND MY APOLOGIES TO THOSE OF YOU

1 IN THE PRESS THAT ARE BACK THERE.

2 I'M SORRY. IT WASN'T DIRECTED TO ANY OF
3 THE PEOPLE THAT ARE ACTUALLY HERE.

4 MR. MADISON: NOT TO WORRY, YOUR HONOR, THEY
5 ARE ALL TERTIARY PUBLICATIONS.

02:04PM

6 MR. QUINN: YOUR HONOR, I THINK THERE'S A
7 DIFFERENCE BETWEEN THE FIRST ARTICLE, WHICH QUOTES A
8 LOT OF DIFFERENT PEOPLE AND A LOT OF DIFFERENT
9 STATEMENTS. AND THE SECOND ONE, WHICH PURPORTS TO
10 BE IN INTERVIEW WHICH GETS FORWARDED -- THE NOTES ARE
11 FORWARDED TO HIM AND SAY, DID I GET IT RIGHT?

02:04PM

12 THE COURT: I UNDERSTAND. I'M LOOKING AT THE
13 E-MAIL AS WE SPEAK.

14 MR. BRIAN: MAY I RESPOND TO THAT, YOUR HONOR?
15 BECAUSE OFTENTIMES PEOPLE WILL BE QUOTED IN THE PRESS,
16 AND THERE'S NO DOUBT THAT THAT IS A HEARSAY STATEMENT.

02:04PM

17 I THINK WHAT MR. QUINN IS NOW ARGUING
18 THE FACT THAT IT'S FORWARDED TO SOMEBODY, IT BECOMES AN
19 ADOPTIVE ADMISSION. UNLESS THERE'S A BETTER FOUNDATION
20 THAT SUGGESTS THAT THE SUPPOSED SPEAKER ADOPTS IT, IT
21 DOESN'T QUALIFY AS AN ADOPTED ADMISSION. SUPPOSE, IF
22 IT WASN'T RECEIVED OR IT WASN'T READ, WHICH IS THE
23 RECORD RIGHT NOW.

02:04PM

24 IF THEY HAVE OTHER EVIDENCE, OR HAVE
25 LEGAL AUTHORITY, IT SHOULD BE PUT FORWARD. BUT ON THE
26 RECORD PRESENTED TO THE COURT NOW, THERE'S NO EVIDENCE
27 OF AN ADOPTED ADMISSION.

02:05PM

28 MR. QUINN: WE'LL RESPOND TO IT TOMORROW

1 MORNING, YOUR HONOR.

2 WE KNOW IT WAS RECEIVED.

3 THE ONLY ISSUE IS, WAS IT READ. I
4 SUPPOSE, THAT'S WHAT MR. BRIAN --

5 THE COURT: WELL, I THINK IN ORDER TO GET --
6 TO HAVE A -- AN EXCEPTION OF THE HEARSAY RULE OR AN
7 ADOPTIVE ADMISSION OR SOME OTHER CLEVER EXCEPTION THAT
8 THERE IS, THERE HAS TO BE EVIDENCE THAT THE STATEMENT
9 WAS MADE IN THE PRESENCE OF THE PERSON WHO ACQUIESCED
10 OR ACKNOWLEDGED, AND DIDN'T DENY IT.

11 AND I THINK YOU NEED MORE THAN JUST TO
12 SAY, HERE'S AN E-MAIL THAT SOMEBODY SENT TO SOMEBODY.

13 MR. QUINN: NO, NO. SENT IT TO HIM, SAYING,
14 THIS IS OUR --

15 THE COURT: SENT IT TO HIM, BUT I THINK YOU
16 NEED MORE THAN IF YOU HAVE GOT -- I NEVER OPENED IT,
17 I'VE NEVER SEEN IT. I DON'T KNOW WHAT THAT DOES.

18 AND YOU CAN GIVE ME SOMETHING ON IT.
19 I'LL TAKE A LOOK AT IT.

20 MR. QUINN: BUT, YOUR HONOR, ON THEIR
21 MULTI-HUNDRED MILLION DOLLAR CLAIM, TO LIMIT US TO, WE
22 HAD 20 MINUTES TODAY AND A HALF HOUR TOMORROW, WITH THE
23 GUY, THE WITNESS --

24 THE COURT: AND YOU HAVE HAD -- YOU HAD TWO
25 DAYS WITH HIM EARLIER.

26 MR. QUINN: BUT WE COULDN'T TALK TO HIM ABOUT
27 THIS. YOU SHUT US DOWN ON THIS.

28 THE COURT: YOU GET A HALF HOUR TOMORROW

02:05PM

02:05PM

02:05PM

02:05PM

02:06PM

1 MORNING. MR. MADISON CAN DO IT. I KNOW YOU CAN DO IT
2 ON THE ISSUES, IF WE DON'T HAVE ALL THE TESTIMONY ABOUT
3 RE-READING EVERYTHING WE'VE HAD IN THIS TRIAL AD
4 NAUSEAM. AND SO -- DO YOUR BEST.

5 MR. QUINN: WE WILL, YOUR HONOR, OBVIOUSLY. 02:06PM

6 BUT I THINK THERE'S A DISTINCTION
7 BETWEEN READING SOMETHING TO SOMEONE WHO'S COPIED ON IT
8 AND READING SOMETHING AND ASKING FOR SOMEBODY'S
9 UNDERSTANDING WHO IS THE AUTHOR OR WHO IS THE PARTY TO
10 THE CONTRACT. 02:06PM

11 THE COURT: YOU ARE FREE TO ASK MR. GUNDLACH
12 ANY QUESTIONS YOU WANT. I'M JUST SAYING WE'RE TAKING A
13 LOT OF TIME, MORE TIME WITH THE QUESTIONS THAN WITH THE
14 ANSWERS. AND I THINK THE ANSWERS ARE WHAT WE REALLY
15 WANT TO GET THE JURY. AND THAT'S MY POINT. 02:06PM

16 MR. QUINN: I APOLOGIZE ON BEHALF OF ALL OUR
17 TEAM FOR OUR UNARTFUL QUESTIONING.

18 THE COURT: IT'S NOT INARTFUL. VERY CLEVER.
19 VERY GOOD AND WONDERFUL ADVOCATE -- I'M NOT CRITICAL OF
20 IT, BUT I'M SAYING NOW IS THE TIME TO PICK UP THE PACE. 02:07PM

21 MR. QUINN: I UNDERSTAND, BUT THIS IS THE GUY
22 ON THE MULTI-HUNDRED --

23 THE COURT: MR. MADISON KNOWS THE ISSUES. HE
24 SAYS HE CAN DO IT. HE KNOWS HE CAN DO IT, BECAUSE HE'S
25 VERY GOOD AT WHAT HE DOES. 02:07PM

26 MR. MADISON: IF YOU ORDER ME TO DO IT, I CAN
27 DO IT.

28 BUT I AGREE WITH MR. QUINN, IT'S A

1 CONSTRAINT THAT --

2 THE COURT: WELL, ASSUME YOU HAVE GOT LIMITS,
3 AND SEE HOW WELL YOU CAN DO.

4 MR. BRIAN: I DO RECALL --

5 MR. QUINN: JUST ONE OTHER THING.

02:07PM

6 YOUR HONOR, HE SAID -- HE OPENED THE
7 DOOR, MR. GUNDLACH HERE.

8 HE SAID, NO ONE EVER TOLD ME I WAS IN
9 BREACH OF ANYTHING.

10 I'M SORRY HE SAID THAT, BUT HE WENT OUT
11 OF HIS WAY TO SAY, NOBODY EVER TOLD ME I WAS IN BREACH
12 OF ANYTHING.

02:07PM

13 I CAN TELL YOU, ON DECEMBER 4, HE WAS
14 CLEARLY TOLD HE WAS IN BREACH. AND IT WAS SPELLED OUT,
15 SPECIFICALLY. AND WE'VE NOW GOT TO GO INTO THAT.

02:07PM

16 HE SHOULDN'T BE ABLE TO LEAVE THAT WITH
17 THE JURY, THAT NOBODY EVER TOLD HIM HE WAS IN BREACH OF
18 ANYTHING. HE WAS TOLD.

19 THE COURT: WELL, WE'RE GOING TO HAVE ANOTHER
20 ISSUE ON DECEMBER 4TH.

02:07PM

21 IS IT THE EXIT INTERVIEWS THAT WE'VE
22 BEEN FIGHTING OVER?

23 MR. QUINN: WELL, THIS ISN'T ONE WHERE THERE'S
24 AN INVESTIGATOR; THERE'S NO ISSUE ABOUT INVESTIGATOR'S
25 NOTES. CAHILL'S THERE. I'M THERE.

02:08PM

26 YOUR HONOR, HE JUST TOLD AN UNTRUTH TO
27 THE JURY.

28 HE WAS TOLD VERY SPECIFICALLY WHAT HE

1 HAD BREACHED, CHAPTER AND VERSE.

2 AND HE MAY BE HIDING BEHIND PREVIOUS
3 RULINGS THE COURT HAS MADE THAT WE'RE NOT GOING TO GO
4 INTO DECEMBER 4, BUT NOW HE'S PUT THAT OUT THERE. AND
5 THAT WAS ON DIRECT EXAM; THAT WASN'T IN RESPONSE TO US.

02:08PM

6 MR. BRIAN: YOUR HONOR, CAN I -- I THINK WE
7 SHOULD LOOK AT THE RECORD, BECAUSE I DON'T RECALL
8 EXACTLY THE TESTIMONY OR THE QUESTION, BUT IT WAS --

9 THE COURT: I THINK IT WAS AN OPEN-ENDED
10 QUESTION. AND THAT WAS -- IT WASN'T IN A TIME FRAME.
11 AND THAT'S WHERE IT CAUSES A POTENTIAL PROBLEM, BECAUSE
12 IT WASN'T FRAMED IN THE CONTEXT OF -- IT MIGHT HAVE
13 BEEN PRIOR TO DECEMBER 4TH.

02:08PM

14 AND IF IT WAS PRIOR TO DECEMBER 4TH,
15 THEN WE DON'T HAVE THE ISSUE --

02:08PM

16 MR. QUINN: THEN WE DON'T HAVE THE ISSUE.

17 THE COURT: BUT WE'LL HAVE TO LOOK AT IT.

18 AND I DO RECALL SOMETHING -- I CAN'T
19 REMEMBER IF IT WAS OPEN-ENDED OR IF IT WAS WITH A TIME
20 FRAME, AND WE'LL HAVE TO LOOK AT IT.

02:09PM

21 MR. BRIAN: WHEN HE SAID IT --

22 THE COURT: I'M SURE YOU ALL WILL SCOUR THE
23 RECORD --

24 MR. BRIAN: I ACTUALLY INTERPRETED WHAT HE
25 SAID UP TO THE TIME OF TERMINATION, BUT HE MAY NOT --
26 THAT MAY NOT BE WHAT HE SAID.

02:09PM

27 THE COURT: WELL, I THINK THAT MAY BE A
28 CRUCIAL ISSUE. AND IF WE HAVE TO OPEN THAT DOOR, IT'S

1 GOING TO BE A CRACK, AND IT'S GOING TO BE ON QUICK AND
2 CLEAN, AND WE'RE NOT GOING TO HAVE AN EXTENDED
3 DISCUSSION ABOUT IT.

4 MR. BRIAN: BUT, YOUR HONOR, I THINK THERE'S A
5 COUPLE OF WAYS -- IF THAT'S WHAT HE SAYS, THERE'S A
6 COUPLE OF WAYS OF HANDLING IT. ONE IS TO ESSENTIALLY
7 AMEND IT TO SAY PRIOR TO DECEMBER 4.

8 THE OTHER --

9 THE COURT: THAT MIGHT BE -- MR. QUINN MAY NOT
10 GO ALONG WITH THAT.

11 MR. BRIAN: THE OTHER IS JUST TO SAY, WERE YOU
12 GIVEN A COMPLAINT ON DECEMBER 4TH WITH THE ALLEGATIONS.
13 THAT MAY BE OKAY. WHICH IS WHAT HAPPENED. I DON'T
14 THINK WE HAVE TO GO INTO THE BACK AND FORTH.

15 THE COURT: DID THEY ACTUALLY DELIVER THE
16 DRAFT?

17 MR. QUINN: HE WOULDN'T TAKE IT.

18 WE HAD ONE, AND HE REFUSED TO TAKE IT.

19 BUT HE WAS TOLD IN VERY SPECIFIC TERMS,
20 ORALLY --

21 MR. MADISON: AND, YOUR HONOR, IF I COULD.

22 DRAFTS --

23 THE COURT: LET ME JUST TELL YOU, YOU ARE
24 GOING TO HAVE SIX WITNESSES. THEY ARE GOING TO BE
25 SHORT WITNESSES, I KNOW. BUT MR. CAHILL CAN COME IN,
26 AND HE CAN SAY WHAT HE HAS TO SAY, IF IT'S APPROPRIATE.

27 AND I'M NOT PASSING ON IT TODAY. I
28 DON'T WANT YOU TO COME BACK TOMORROW AND SAY I SAID IT

1 WAS OKAY. I WANT TO SEE WHAT HE SAID, BECAUSE THERE
2 WAS SOME QUESTION AS TO WHETHER IT WAS PRIOR TO
3 DECEMBER 4TH.

4 I'LL LOOK AT MY NOTES.

5 MR. BRIAN: I DON'T THINK THIS CASE IS GOING
6 TO BE DECIDED, ONE WAY OR THE OTHER, ON WHETHER HE WAS
7 TOLD ON DECEMBER 4TH OF CERTAIN ACCUSATIONS. I REALLY
8 DON'T.

02:10PM

9 THE COURT: THAT'S ALL RIGHT.

10 MR. BRIAN: IF THAT'S WHAT HE SAID, I SUSPECT
11 WE CAN WORK THAT OUT. I DON'T THINK THIS CASE WILL BE
12 DECIDED BY THE JURY ON THAT ISSUE.

02:10PM

13 THE COURT: LET'S TAKE A SHORT BREAK. WE'RE
14 GOING TO SWITCH REPORTERS, AND THEN WE'LL COME BACK.

15 I'LL GET MY NEW NOTEBOOK WITH JURY
16 INSTRUCTIONS, AND WE CAN TAKE A LOOK AT THOSE.

02:10PM

17 AND THE ONE I HAVE NOW IS THE ONE WE
18 SHOULD BE WORKING FROM.

19 MS. STEIN: AND THE ONE I HAVE NOW, IS ONE
20 THAT WE SHOULD BE WORKING ON. YOU ALSO RECEIVED ONE,
21 YOUR HONOR, ON THE 21ST OF AUGUST.

02:10PM

22 THE COURT: I HAVE TO GET THAT ONE.

23 MS. STEIN: OKAY. THANK YOU.

24
25 (RECESS TAKEN.)
26
27
28