

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

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10

(FOLLOWING PROCEEDINGS WERE HELD

11

OUTSIDE THE PRESENCE OF THE JURY.) +

12

13

THE COURT: GOOD MORNING. WE'RE OUT OF THE
14 PRESENCE FOR THE JURY ON THE RECORD. COUNSEL ARE
15 PRESENT.

16

17

WE WERE GOING TO TAKE UP THE WALLACE
18 TESTIMONY ISSUES TODAY. AS I INDICATED YESTERDAY, MY
19 TEN -- OR MY INCLINATION IS, AND CONTINUES TO BE, TO
20 ALLOW MR. WALLACE TO TESTIFY TO ALTERNATIVE DAMAGE
21 FIGURES, WITH AND WITHOUT THE PAYMENT OF THE BONUSES
FROM THE POOL.

22

23

IT SEEMS TO ME THAT THESE PAYMENTS ARE
24 AN INTEGRAL PART AND SUBSTANTIAL PORTION OF THE
25 COMPENSATION RECEIVED BY MEMBERS OF THE GUNDLACH FIXED
26 INCOME GROUP. THERE'S CLEARLY EVIDENCE SUPPORTING THE
27 THIRD-PARTY BENEFICIARY CLAIMS OF VAN EVERY, SANTA ANA
AND MAYBERRY.

28

AND WITH THAT, I THINK IT'S APPROPRIATE

08:22AM

08:22AM

08:22AM

1 TO HAVE THE ALTERNATIVE AVAILABLE TO THE JURY.

2 SO MR. SURPRENANT, YOU WANT TO BE HEARD?

3 MR. SURPRENANT: I DO, YOUR HONOR, BECAUSE
4 THERE IS A, INITIAL DISTINCTION I WANT TO MAKE TO
5 ADDRESS YOUR HONOR'S POINT.

08:23AM

6 THE COURT: SURE.

7 MR. SURPRENANT: EVERY TIME WE'VE SPOKEN ABOUT
8 THIS, MY SENSE IS, YOUR HONOR REALLY STARTS FROM WHERE
9 YOU JUST -- YOUR HONOR JUST INDICATED, WHICH IS, AS TO
10 WORK ACTUALLY PROVIDED THROUGH DECEMBER 4TH. I WOULD
11 AGREE.

08:23AM

12 I WOULD -- YOU KNOW, NOT WAIVE MY
13 OBJECTION. BUT I WOULD CERTAINLY UNDERSTAND YOUR HONOR
14 SAYING WITH RESPECT TO THE FOURTH QUARTER OF '09, THAT
15 MR. WALLACE -- WALLACE OUGHT TO BE ABLE TO TESTIFY TO
16 WHAT I'LL CALL THE GROSS NUMBER AND THE NET NUMBER.

08:23AM

17 BECAUSE IN THAT WORLD, I CERTAINLY
18 UNDERSTAND THE LOGIC OF YOUR HONOR'S TENTATIVE RULING,
19 WHICH IS, THE WORK WAS PROVIDED, AND IT'S UP TO THE
20 JURY TO DECIDE IF THEY WERE FAITHLESS FIDUCIARIES AND
21 FORFEITED THAT WORK. BUT IF NOT, THAT NUMBER OUGHT TO
22 BE THERE. I UNDERSTAND THAT.

08:23AM

23 I THINK THINGS CHANGE DRAMATICALLY,
24 DRAMATICALLY, WHEN YOU'RE TALKING ABOUT FUTURE INCOME
25 IN 2010 AND 2011.

08:24AM

26 AND YOUR HONOR, I RESPECTFULLY SUBMIT
27 THAT IF IT IS DETERMINED THAT AS TO FUTURE INCOME, IT
28 WAS ERROR TO ALLOW THE GROSS NUMBER, THAT IS GOING TO

1 BE, I BELIEVE, BOTH REVERSIBLE AND PREJUDICIAL, BECAUSE
2 THE NUMBER, YOUR HONOR, IS \$266 MILLION.

3 THAT'S WHAT WE'RE TALKING ABOUT, THE
4 DAMAGE CLAIM, GOES UP FROM 230 MILLION TO 496 MILLION.
5 SO EVEN IF THE JURY WERE TO AWARD THE LOWER NUMBER,
6 THERE WOULD BE OBVIOUS PREJUDICE, BECAUSE THEY STARTED
7 AT A NUMBER THAT WAS SO HIGH.

08:24AM

8 NOW, LET ME THEN GO TO THE MERITS OF THE
9 ARGUMENT, RESERVING IT STRICTLY, YOUR HONOR, FOR FUTURE
10 DAMAGES, NOT FOR PAST WORK. AS I SAID, I WOULD --
11 RESERVING MY OBJECTION, I WOULD CERTAINLY UNDERSTAND
12 MR. WALLACE PUTTING IN THE FOURTH QUARTER.

08:25AM

13 NOW, MR. GUNDLACH --

14 THE COURT: WELL, BUT -- GO AHEAD.

15 MR. SURPRENANT: MR. GUNDLACH SAYS, YOU KNOW,
16 I WAS LIKE AN EMPLOYER. I WAS LIKE AN EMPLOYER. AND
17 THIS WAS COMPENSATION. THIS WAS COMPENSATION I HAD TO
18 PAY TO MY TEAM. WELL, IF THIS WERE A SITUATION WHERE
19 AN EMPLOYER WERE SEEKING LOST PROFITS -- I'LL BE AS
20 BRIEF AS I CAN. IT'S VERY IMPORTANT.

08:25AM

08:25AM

21 THE COURT: I UNDERSTAND.

22 MR. SURPRENANT: IF AN EMPLOYER WAS SEEKING
23 LOST PROFITS AND SAID, I JUST WANT THE REVENUES I WOULD
24 HAVE GOTTEN, AND I DON'T WANT TO SUBTRACT OUT THE
25 COMPENSATION I WOULD HAVE PAID, THERE WOULD BE OBVIOUS
26 ERROR.

08:25AM

27 SO I THINK THAT REALLY IS THE SCENARIO
28 WE'RE LOOKING AT.

1 ONE OTHER MATTER, ONE OTHER MATTER IS
2 THAT GUNDLACH NEVER ACTUALLY GETS THE MONEY. THE POOL
3 IS IN AN ACCOUNTING LEDGER, THE CASH IS IN A TCW BANK
4 ACCOUNT.

5 AS THE MONEY IS PAID INTO THE BANK
6 ACCOUNT, MR. GUNDLACH GIVES A DISTRIBUTION SCHEDULE TO
7 TCW.

8 THE COURT: I UNDERSTAND.

9 MR. SURPRENANT: OKAY.

10 AND I THINK, SO, SO IT'S NEVER HIS
11 MONEY. MR. WALLACE ADMITTED, MR. WALLACE ADMITTED THAT
12 THE LOWER NUMBER, THE NET NUMBER, WOULD MAKE
13 MR. GUNDLACH WHOLE, AS A CASH MATTER. TESTIMONY WE
14 CITED, IT SAID AS A CASH MATTER, IT WOULD MAKE HIM
15 WHOLE. THAT IS THE GOAL OF CONTRACTUAL DAMAGES.

16 BUT WHAT HE SAID, AND ONE MORE POINT,
17 YOUR HONOR, WHAT HE SAID WAS, HE SAID, BUT NOT AS TO
18 NON-CASH. NOT AS TO THE LOYALTY THAT MR. GUNDLACH
19 TALKED TO.

20 WELL, YOUR HONOR, THAT IS AN
21 ELABORATE -- I WOULD SUGGEST, AN ELABORATE SPECIOUS
22 ARGUMENT.

23 WHAT IT'S SAYING IS, IT'S SAYING
24 MR. GUNDLACH BENEFITED BECAUSE HE WAS ABLE TO PAY THAT
25 MONEY AS COMPENSATION TO THE POOL AND GET THEIR
26 LOYALTY.

27 PUT TO ONE SIDE, YOUR HONOR, IT WASN'T
28 GUNDLACH PAYING IT, IT WAS TCW PAYING IT, TO TCW

1 EMPLOYEES. PUT THAT TO ONE SIDE.

2 THE COURT: BUT WAIT A MINUTE. IT WAS TCW
3 PAYING IT AT GUNDLACH'S DIRECTION. AND TO THE EXTENT
4 THAT HE DIDN'T DIRECT THE PAYMENT, 100 PERCENT OF IT
5 WOULD GO TO GUNDLACH.

08:27AM

6 MR. SURPRENANT: RIGHT, YOUR HONOR. BUT IN --
7 UNDER THE CASES WE CITED, AS A MATTER OF CALCULATING
8 DAMAGES --

9 THE COURT: THIS IS A HYBRID. THIS DOESN'T
10 FIT ANY KNOWN EMPLOYER, EMPLOYEE SCENARIO, BECAUSE IT
11 IS A HYBRID THAT WAS DEVELOPED BY THE METHOD OF
12 COMPENSATION AND THE AGREEMENT AS TO ABSOLUTE
13 DISCRETION TO ALLOCATE.

08:27AM

14 AND IT WAS CLEARLY AN EXPECTED AND
15 ANTICIPATED PORTION OF THOSE PEOPLE'S COMPENSATION.

08:27AM

16 MR. SURPRENANT: RIGHT. BUT YOUR HONOR, THAT
17 MEANS IT HAS TO BE SUBTRACTED OUT, BECAUSE IT NEVER
18 WOULD HAVE GONE TO MR. GUNDLACH POCKET, IN THE BUT-FOR
19 WORLD.

20 THE COURT: DOES THAT MEAN TCW SHOULD HAVE A
21 WINDFALL FOR THOSE MONEYS, WHEN THEY WON'T HAVE TO BE
22 PAID OUT TO ANYBODY?

08:28AM

23 MR. SURPRENANT: YOUR HONOR, NOT -- NOT IN THE
24 ACTUAL WORLD. I UNDERSTAND YOUR HONOR'S POINT IN THE
25 ACTUAL WORLD.

08:28AM

26 IN THE FUTURE WORLD, YOU KNOW, IN THE
27 POST DEPARTURE WORLD, THEY'RE NOT -- IT'S NOT A
28 WINDFALL. THEY NEVER PROVIDED ANY WORK TO TCW. THEY

1 WERE PROVIDING WORK TO DOUBLE LINE. AS TO THE -- I
2 UNDERSTAND YOUR HONOR POINTS --

3 THE COURT: LET ME ASK ANOTHER QUESTION.

4 AREN'T WE REALLY TALKING ABOUT A
5 CALCULATION OF ACCRUED TO THE DATE OF TERMINATION? AND 08:28AM
6 EVEN THE FUTURE BENEFITS?

7 MAYBE I HAVE TO HEAR FROM MR. HELM ON
8 THIS.

9 GO AHEAD.

10 MR. SURPRENANT: I WAS JUST -- 08:28AM

11 MR. HELM: ARE YOU READY FOR ME NOW?

12 MR. SURPRENANT: 35 SECONDS.

13 THE COURT: I WANT MR. SURPRENANT TO FINISH.

14 MR. SURPRENANT: 35 SECONDS.

15 I WAS GOING TO SAY, THE ARGUMENT ABOUT 08:28AM
16 LOYALTY, JERRY BUSS PAYS KOBE \$30 MILLION A YEAR. I
17 THINK ALL LAKER FANS HOPE AND BELIEVE, BECAUSE OF THAT,
18 KOBE FEELS A GREAT DEAL OF LOYALTY TO DOCTOR BUSS, AND
19 HE'S GOING TO END HIS CAREER AS A LAKER PLAYER.

20 DR. BUSS DOES NOT PAY KOBE BRYANT 30 08:29AM
21 MILLION A YEAR FOR LOYALTY. HE PAYS HIM 30 MILLION A
22 YEAR TO PLAY BASKETBALL GAMES.

23 TCW PAID THE M.B.S. STAFF, NOT SO THEY
24 WOULD FEEL LOYALTY TO JEFF GUNDLACH, BUT SO THAT THEY
25 WOULD MANAGE THE TCW ASSETS. 08:29AM

26 IT WAS COMPENSATION.

27 THE COURT: BUT THEY ALLOWED THIS SCENARIO TO
28 BE SET UP WITH FULL KNOWLEDGE THAT GIVING HIM 100

1 PERCENT DISCRETION IN ALLOCATED -- REALLY ALIGNED THOSE
2 PEOPLE WITH HIM, AND NOT WITH TCW, BECAUSE THERE WAS
3 NOTHING TCW WAS DOING TO DETERMINE THEIR COMPENSATION.

4 SO THEY ACQUIESCED, THEY AGREED, THEY
5 ALLOWED IT.

08:29AM

6 I GUESS I JUST HAVE SOME RESERVATIONS
7 ABOUT YOUR SAYING REALLY, THESE ARE 100 PERCENT TCW
8 EMPLOYEES, AND IT'S LOYALTY TO TCW. I'M JUST NOT SURE.

9 THEY SET UP THIS HYBRID SITUATION, WHICH
10 IS COUNTER TO THE ARGUMENT YOU'RE MAKING.

08:30AM

11 MR. SURPRENANT: I FEEL, YOUR HONOR,
12 THEREFORE, I HAVE FAILED IN MY ADVOCACY, BECAUSE I'M
13 NOT GETTING MY POINT THROUGH.

14 YOUR HONOR, ONE LAST THING. IT GOES
15 BACK TO MY FIRST POINT, IS WE'VE HAD A LOT OF BRIEFING
16 AND ARGUMENT ON THIS.

08:30AM

17 THE COURT: IT'S LIKE THE THIRD TIME, I THINK.

18 MR. SURPRENANT: AND DEFENDANTS HAVE NOT CITED
19 A SINGLE CASE, A SINGLE CASE -- AND THERE'S A TON OF
20 CASES ON THE OTHER SIDE THAT SAYS, THE PURPOSE OF
21 CONTRACTUAL RECOVERY IS ANYTHING OTHER THAN WHAT
22 MR. WALLACE ADMITTED THE NET NUMBERS WILL PROVIDE.

08:30AM

23 ALL THE CASH MR. GUNDLACH WOULD HAVE PUT
24 IN HIS POCKET, IN A WORLD WHERE HE HAD STAYED THROUGH
25 12-31, 2011. I THINK YOUR HONOR WOULD BE MAKING NEW
26 LAW TO ALLOW THIS GROSS DAMAGE TO COME IN; BUT I
27 UNDERSTAND, YOUR HONOR.

08:30AM

28 MR. HELM: IT'S A JURY QUESTION. WE HAVE

1 PRESENTED SUFFICIENT EVIDENCE FROM WHICH A JURY CAN
2 CONCLUDE THAT PART OF HIS CONTRACTUAL BENEFITS WERE THE
3 BENEFIT OF BEING ABLE TO GET A BIG SUM OF MONEY THAT HE
4 COULD KEEP OR DISTRIBUTE TO OTHER PEOPLE IN HIS
5 DISCRETION. MR. STERN PROVIDED EVIDENCE OF THAT IN HIS
6 TESTIMONY HERE.

08:31AM

7 HE TESTIFIED THAT ONE OF THE THINGS THAT
8 THEY WERE THINKING OF DOING WAS TO TRY TO WREST CONTROL
9 OF THAT FROM MR. GUNDLACH TO HIMSELF, EXPRESSLY BECAUSE
10 THEY RECOGNIZED THAT WHOEVER CONTROLLED THE ALLOCATION
11 OF THAT MONEY TO THE MEMBERS OF THE GROUP HAD -- HAD A
12 BENEFIT.

08:31AM

13 AND SO IT'S A JURY QUESTION, AT THIS
14 POINT. THE JURY CAN DECIDE, WAS THAT A CONTRACTUAL
15 EXPECTATION BENEFIT, OR WASN'T IT?

08:31AM

16 MR. WALLACE IS GOING TO PROVIDE
17 ALTERNATIVE CALCULATIONS SO THE JURY CAN CHOOSE.
18 MR. CORNELL WILL BE ABLE TO PROVIDE THE SAME. AND SO
19 WE THINK WE'VE PROVIDED AMPLE EVIDENCE THAT UNDER THIS
20 SCENARIO, WHAT HE WAS BARGAINING FOR WAS GETTING A SUM
21 OF MONEY FOR HIMSELF AND HIS GROUP. HE'S BEEN DEPRIVED
22 OF THAT BECAUSE THE CONTRACT WAS BREACHED.

08:32AM

23 AS FOR THE ARGUMENT THAT THEY HAVEN'T
24 PROVIDED THE SERVICES IN THE FUTURE, NEITHER DID
25 MR. GUNDLACH.

08:32AM

26 THAT'S THE NATURE OF EXPECTATION DAMAGES
27 IN A CONTRACT. IF YOU BREACH IT, YOU GET AWARDED WHAT
28 YOUR EXPECTATION DAMAGES WERE. IT'S A JURY QUESTION,

1 AS TO WHAT THOSE DAMAGES ARE.

2 MR. SURPRENANT: ONE POINT. 15 SECONDS, YOUR
3 HONOR.

4 I THINK MR. HELM'S LAST POINT, PROVES MY
5 POINT. THE REASON MR. GUNDLACH CAN GET FUTURE
6 EXPECTATION DAMAGES FOR SERVICES NEVER PROVIDED, IS HE
7 HAS A BREACH OF CONTRACT. AND WHEN YOU HAVE A BREACH
8 OF CONTRACT, YOU ARE ENTITLED TO GET EXPECTATION
9 DAMAGES FOR SERVICES NEVER PROVIDED.

08:32AM

08:32AM

10 NO ONE ELSE IN THE M.B.S. STAFF HAS A
11 CONTRACT. NO ONE ELSE IN THE M.B.S. STAFF CAN POSSIBLY
12 HAVE A CLAIM FOR EXPECTATION DAMAGES AGAINST TCW.

13 I APPRECIATE MR. HELM'S LAST POINT,
14 BECAUSE IT SHOWS IT'S NOT AN EVIDENTIARY ISSUE. IT'S
15 NOT A FACT ISSUE. IT'S A LEGAL ISSUE.

08:33AM

16 THE LEGAL ISSUE IS, DOES THE M.B.S.
17 STAFF NOW AT DOUBLELINE, DO THEY HAVE A CLAIM FOR
18 FUTURE DAMAGES EXPECTANCY DAMAGES, WHEN THERE'S NO
19 BREACH OF CONTRACT?

20 THAT IS THE LEGAL ISSUE. IT WOULD BE
21 ERROR, YOUR HONOR, TO ALLOW THE HIGHER NUMBER. THAT
22 266 MILLION IS EXPECTANCY DAMAGES MR. GUNDLACH IS
23 CLAIMING IS A SURROGATE FOR PEOPLE WHO DO NOT HAVE A
24 BREACH OF CONTRACT CLAIM.

08:33AM

25 THE COURT: HOW DO YOU ANSWER THAT?

08:33AM

26 MR. HELM: OUR CLAIM, IT'S AN EXPECTATION
27 BENEFIT TO HIM IN HIS CONTRACT. HE BARGAINED FOR IT.
28 STERN HAS TESTIFIED THEY WERE TRYING TO WREST THAT AWAY

1 FROM HIM BECAUSE IT WAS SO VALUABLE TO HIM, AND THEY
2 WOULD RATHER HAVE IT.

3 BUT IT WAS EXPECTATION OF HIS
4 CONTRACTUAL BENEFITS. WE'VE CERTAINLY PROVIDED
5 SUFFICIENT EVIDENCE TO GET IT TO A JURY. WE THINK IT
6 WOULD BE REVERSIBLE ERROR TO NOT TO GIVE IT --

08:34AM

7 THE COURT: YOU CAN ALL TELL ME EVERYTHING I
8 DO IS REVERSIBLE. YOU'RE MAKING LISTS OF THINGS TO
9 CHALLENGE ME ON AT A LATER DATE. I DON'T MAKE THE
10 DECISIONS BECAUSE I THINK I'M WRONG.

08:34AM

11 RIGHT OR WRONG, I'M NOT IN DOUBT.

12 I'M GOING TO ALLOW THE TESTIMONY, AND
13 LET THE CHIPS FALL WHERE THEY MAY.

14 MR. SURPRENANT: THANK YOU, YOUR HONOR.

15 MR. HELM: THANK YOU, YOUR HONOR.

08:34AM

16 THE COURT: YES, MR. MADISON?

17 MR. MADISON: GOOD MORNING.

18 I WANTED TO QUICKLY TAKE UP EXHIBIT 552.
19 REMEMBER WE MENTIONED LAST NIGHT?

20 THE COURT: WHAT IS IT?

08:34AM

21 MR. MADISON: IT'S THE E-MAIL FROM THE
22 REPORTER AT P&I.

23 THE COURT: YES.

24 MR. MADISON: TWO THINGS. ONE IS,
25 MR. GUNDLACH DID TESTIFY THAT MONTHS WENT BY BEFORE HE
26 OPENED IT. AND OUR POSITION WOULD BE -- I'VE ALREADY
27 ADDRESSED THE OTHER FACTS ABOUT HOW HE GAVE THE
28 REPORTER HIS BRAND-NEW E-MAIL ADDRESS THAT DAY, SO HE

08:34AM

1 COULD E-MAIL HIM SOMETHING, ET CETERA.

2 AND WE THINK IT'S -- YOU KNOW, SHOULD BE
3 FOR THE JURY TO DECIDE AS A FACTUAL MATTER, WHETHER HE
4 RECEIVED IT OR NOT. WE HAVE SOME CASES THAT SUPPORT
5 THAT.

08:35AM

6 THE COURT: YOU KNOW, WE HAVE TO RESOLVE THIS
7 ISSUE RIGHT NOW. I TOLD YOU LAST TIME, IF YOU WANTED
8 TO GIVE ME SOMETHING, TO GIVE IT TO ME. I DIDN'T GET
9 ANYTHING THIS MORNING. SO WE NEED -- YOU GOT A HALF
10 HOUR TO FINISH YOUR CROSS-EXAMINATION.

08:35AM

11 NOW, I UNDERSTAND, AND I'M SURE YOU
12 UNDERSTAND, THERE ARE ALTERNATIVES TO THIS ISSUE. I
13 SEE IT, QUITE FRANKLY, AS LACKING SUFFICIENT FOUNDATION
14 TO ALLOW THE ADMISSION OF THAT E-MAIL, AT THIS
15 JUNCTURE. ON THE RECORD, THEY'VE --

08:35AM

16 MR. MADISON: THE POINT I WANTED TO MAKE, YOUR
17 HONOR, IS THIS. HE TESTIFIED YESTERDAY THAT HE DID
18 OPEN THAT E-MAIL MONTHS OR MANY MONTHS LATER.

19 IT WOULD BE OUR POSITION, YOUR HONOR,
20 THAT IN A CASE INVOLVING AN -- A CLAIM FOR ORAL
21 CONTRACT, THAT WOULD ENTITLE MR. GUNDLACH, BY HIS
22 ALLEGATIONS, TO HUNDREDS OF MILLIONS OF DOLLARS, THAT
23 AT ANY TIME THAT HE OPENED THAT E-MAIL, IT WOULD BECOME
24 AN ADOPTIVE ADMISSION, IF HE DIDN'T CORRECT IT, OR
25 RESPOND.

08:36AM

26 AND P&I, MR. GUNDLACH MADE STATEMENTS
27 ABOUT THE PUBLICATION. BUT THERE'S NO DOUBT THAT IT IS
28 A -- AN IMPORTANT PUBLICATION THAT COVERS

08:36AM

1 MR. GUNDLACH'S BUSINESS. AND HE WOULD HAVE EVERY
2 INCENTIVE, EVEN MONTHS LATER, TO LET THEM KNOW THAT
3 THAT WAS INACCURATE.

4 THE COURT: ALL RIGHT.

5 MR. MADISON: WE THINK THIS IS THE ISSUE THE
6 JURY SHOULD DECIDE. AND THAT'S ANOTHER POSITION I
7 DON'T THINK I ARTICULATED YESTERDAY.

8 THE COURT: MR. BRIAN?

9 MR. BRIAN: I'LL LOOK AT WHATEVER CASES THEY
10 SUBMIT.

11 THE COURT: I HAVEN'T SEEN ANYTHING.

12 WE'RE GOING TO HAVE WHATEVER ARGUMENT
13 WE'RE GOING TO HAVE. I'M NOT LOOKING AT THE CASES.
14 THERE'S NEW --

15 MR. BRIAN: I OBJECT TO IT. I DON'T THINK A
16 FOUNDATION'S BEEN LAID FOR ADOPTIVE ADMISSION.

17 IN 30 SECONDS, YOUR HONOR. I'VE GIVEN
18 MR. QUINN A COPY OF TWO EXHIBITS.

19 MR. MADISON: I'M SORRY, YOUR HONOR. BEFORE
20 WE LEAVE --

21 THE COURT: I'D LIKE TO RESOLVE THE ISSUE.

22 MR. MADISON: I'D LIKE TO, TOO.

23 THE COURT: WE'LL FINISH THE TESTIMONY.

24 MR. MADISON: THE OPENING OF THE E-MAIL BY THE
25 WITNESS MONTHS LATER DOESN'T REQUIRE NEW CASES. AT
26 THAT POINT, WE LAID FOUNDATION THAT HE SAW IT. AND WE
27 WOULD LIKE TO ADMIT IT, AT THAT POINT, AS AN ADOPTIVE
28 ADMISSION.

08:36AM

08:37AM

08:37AM

08:37AM

08:37AM

1 MR. BRIAN: YOUR HONOR, IF I GOT LABELED OR
2 STUCK WITH AN ADOPTIVE ADMISSION EVERY TIME SOMEBODY
3 SENT ME AN E-MAIL THAT I DIDN'T RESPOND TO, I'D BE IN A
4 BAD WAY.

5 THE COURT: YOU MIGHT BE. 08:37AM

6 MR. BRIAN: THERE ARE PEOPLE WHO GET SENT
7 E-MAILS CONSTANTLY. AND THE FACT THAT SOMEONE OPENED
8 SOMETHING MONTHS LATER, AND DIDN'T RESPOND TO IT, I
9 DON'T BELIEVE SATISFIES THE ADOPTIVE ADMISSION
10 STANDARD. HE'S NOT REQUIRED TO RESPOND TO IT. 08:38AM

11 AND I THINK THE STANDARD HE SOMEHOW
12 ADOPTED, I DON'T THINK THAT'S BEEN MET.

13 MR. MADISON: IS YOUR HONOR LOOKING AT 1221?

14 THE COURT: I'M LOOKING AT YOUR EXHIBIT 552.

15 MR. MADISON: YES, YOUR HONOR. 08:38AM

16 (PAUSE) +

17

18 THE COURT: I'M NOT GOING TO ADMIT IT, AT THIS
19 POINT.

20 YOU MAY QUESTION HIM CONCERNING PRIOR 08:39AM
21 STATEMENTS. YOU MAY NOT READ FROM THIS. I'M NOT GOING
22 BACK THERE.

23 MR. MADISON: RIGHT.

24 THE COURT: AND IF YOU HAVE EVIDENCE OF -- OR
25 THAT YOU CAN OFFER, THAT HE'S MADE A PRIOR INCONSISTENT
26 STATEMENT, YOU MAY OFFER THAT. 08:39AM

27 MR. MADISON: I'LL JUST TELL YOU, I THINK I
28 ALREADY ASKED HIM YESTERDAY, SO I WOULDN'T INTEND TO GO

1 BACK TO THAT.

2 THE COURT: YOU DON'T HAVE TO. I THINK HE
3 DENIED THE STATEMENT.

4 MR. BRIAN: WHEN WE GET TO MR. BARACH TODAY,
5 YOU'LL RECALL THERE WAS AN EXHIBIT OFFERED AND ADMITTED
6 BY THE DEFENSE, 764, MR. QUINN MENTIONED IN HIS OPENING
7 STATEMENT. IT'S A SHORT E-MAIL THAT'S BEEN HEAVILY
8 REDACTED.

08:39AM

08:39AM

08:39AM

08:40AM

08:40AM

9 MR. BARACH'S WIFE HAD PROPOSED SOME
10 EDITS TO ESSENTIALLY, A PRESS RELEASE OR LETTER, TO
11 CLIENTS, MR. GUNDLACH WAS GOING TO SEND OUT.

12 WE'LL INTRODUCE TO MR. BARACH A SLIGHTLY
13 LESS HEAVILY REDACTED DOCUMENT, TO PUT IT IN CONTEXT,
14 WHICH I DON'T THINK MR. QUINN OBJECTS TO.

15 BUT WE'RE THEN GOING TO OFFER THE LETTER
16 THAT ACTUALLY WENT OUT. IT IS HEARSAY. IT'S NOT
17 OFFERED FOR THE TRUTH. IT'S RELEVANT BECAUSE THE
18 IMPLICATION THEY WANT TO DRAW, AND THE ARGUMENT IN
19 OPENING, IS THAT MR. GUNDLACH CONCOCTED A DEFENSE THAT
20 HE DIDN'T THINK ABOUT LEAVING UNTIL AFTER HE HEARD
21 RUMORS HE'S BEING FIRED.

22 WHICH WAS THE ARGUMENT --

23 THE COURT: HAVE I SEEN THIS LETTER? TALKING
24 ABOUT THESE THINGS IN THE ABSTRACT --

25 MR. BRIAN: I'M NOT ASKING FOR A RULING. I
26 WANT TO GIVE YOU A CONTEXT. SO WHEN WE OFFER IT, YOU
27 UNDERSTAND IT. IT'S IN THE BINDER, EXHIBIT 6208.

28 I'M SURE THERE WILL BE A HEARSAY

1 OBJECTION.

2 THAT'S THE CONTEXT. IT'S TO SHOW IT
3 WASN'T, IN FACT, A SCHEME TO SOMEHOW CONCOCT SOMETHING,
4 BECAUSE THE SUGGESTION DIDN'T EVEN MAKE IT INTO THE
5 LETTER.

08:40AM

6 THE COURT: ALL RIGHT. HAVE YOU SEEN THE
7 LETTER?

8 MR. QUINN: YES, I HAVE, YOUR HONOR. I WOULD
9 ASK THE COURT TO TAKE A LOOK AT THAT EXHIBIT, 6208.
10 OUR ARGUMENT NEVER WAS, NEVER HAD ANYTHING TO DO WITH
11 WHETHER OR NOT THIS MADE IT INTO THE FINAL PRESS
12 RELEASE.

08:40AM

13 OR LETTER THAT THEY SENT TO THEIR
14 CLIENTS, THAT LETTER, IF YOU LOOK AT IT, IS REALLY
15 THEIR SPIN ON THINGS, THEIR ACCOUNT OF THE HISTORY
16 BEHIND THIS LITIGATION. AND IT'S SIMPLY NOT RELEVANT.

08:41AM

17 THE COURT: LET ME TAKE A LOOK AT IT.

18 MR. QUINN: I APPRECIATE IT.

19 THE COURT: I DON'T HAVE IT IN FRONT OF ME. I
20 DON'T HAVE THE BOOK. IT'S GOING TO BE IN YESTERDAY.

08:41AM

21 MR. QUINN: I UNDERSTAND.

22 MR. BRIAN: I DIDN'T WANT YOUR HONOR -- IT'S A
23 DIFFICULT HEARSAY ISSUE. MR. QUINN DID REFERENCE THE
24 ISSUE IN HIS OPENING STATEMENT.

25 THE COURT: THE DIFFICULT ONES ARE EASY.

08:41AM

26 MR. QUINN: JUST IN TERMS OF TIMING, SOME GOOD
27 NEWS. I UNDERSTAND FROM MR. BRIAN THAT THEY THINK
28 THERE'S A CHANCE THEY'RE NOT POSITIVE, THERE'S A

1 CHANCE, THEY MAY REST TODAY.

2 THE COURT: OKAY.

3 MR. QUINN: IN THAT EVENT, I'M HIGHLY
4 CONFIDENT, EXCEPT FOR TWO VERY SHORT WITNESSES WHO
5 CAN'T BE HERE TILL MONDAY MORNING --

08:41AM

6 THE COURT: YOU'LL FINISH UP --

7 MR. QUINN: WE'LL FINISH UP MONDAY MORNING BY,
8 YOU KNOW, BEFORE 9:30.

9 THE COURT: I AM ENCOURAGED BY THAT.

10 THANK YOU, MR. QUINN.

08:42AM

11 MR. QUINN: YOUR HONOR --

12 THE COURT: IS THAT THE PRECURSOR TO SAYING
13 YOU WANT MORE THAN A HALF HOUR WITH MR. GUNDLACH?

14 MR. QUINN: YES.

15 THE COURT: I KNOW HOW YOU DO THIS.

08:42AM

16 NO. IT'S HALF HOUR. MR. MADISON IS ALL
17 SET. WE'RE READY TO GO.

18 MR. BRIAN: THANK YOU, YOUR HONOR.

19 (PAUSE) +

08:45AM

20
21 THE COURT: GOOD MORNING. ALL MEMBERS OF OUR
22 JURY ARE PRESENT, AS ARE COUNSEL.

23 MR. GUNDLACH IS BACK WITH US ON THE
24 STAND.

25 PLEASE RECALL, SIR, YOU ARE STILL UNDER
26 OATH.

08:45AM

27 MR. MADISON, YOU MAY PROCEED WITH YOUR
28 CROSS-EXAMINATION.

1 MR. MADISON: THANK YOU.
2 AND GOOD MORNING, EVERYONE.

3
4 CROSS-EXAMINATION (RESUMED) +

5 08:45AM

6 BY MR. MADISON:

7 Q MR. GUNDLACH, I WANT US TO LOOK AT THE WRITTEN
8 CONTRACTS THAT YOU HAD WITH TCW GOING BACK TO 1989.

9 AND I'M GOING TO ASK THAT EXHIBIT 3,
10 WHICH IS IN EVIDENCE BE DISPLAYED. 08:45AM

11 AND I BELIEVE MR. HELM SHOWED YOU THESE
12 YESTERDAY, THAT THIS ONE, WE JUST LOOK UP AT THE TOP,
13 MARCH 8, 1989.

14 IT'S FOR A PERIOD OF THREE YEARS.

15 SO THAT WOULD BE THROUGH 1992, CORRECT? 08:45AM

16 A YES.

17 Q AND THEN IF WE LOOK AT PAGE 5 OF THE EXHIBIT,
18 THERE'S A PARAGRAPH THERE RIGHT AT THE END, AND IT
19 SAYS:

20 IF YOU AGREE TO AND ACCEPT THE 08:46AM
21 FOREGOING, PLEASE SO INDICATE BY SIGNING THIS
22 AGREEMENT, ET CETERA.

23 AND YOU UNDERSTOOD THAT PARAGRAPH BACK
24 IN 1989, DIDN'T YOU?

25 A YES. 08:46AM

26 Q AND YOU WANTED TO ENTER INTO THIS CONTRACT,
27 RIGHT?

28 A YES.

1 Q SO, YOU DID AS THE PARAGRAPH DIRECTED.

2 YOU SIGNED THE CONTRACT, DIDN'T YOU?

3 A YES.

4 Q NOW, IF WE GO TO EXHIBIT 6.

5 IN 1992, YOU HAD ANOTHER CONTRACT, ABOUT
6 THE TIME OF THE EXPIRATION OF EXHIBIT 3, CORRECT?

08:46AM

7 A THAT WAS BEFORE THE EXPIRATION.

8 Q JUNE 5, 1992, WAS BEFORE THE EXPIRATION OF THE
9 THREE-YEAR CONTRACT THAT BEGAN MARCH 8, 1989, SIR?

10 A I THINK SO. I THINK THE FIRST WENT -- I THINK
11 WENT THROUGH THE END OF '92.

08:47AM

12 I MIGHT BE WRONG. THAT'S WHAT I
13 REMEMBER.

14 Q HERE THE FIRST PAGE, THE TERM HERE WILL BE
15 UNTIL 1999.

08:47AM

16 SO THIS IS A SEVEN-YEAR CONTRACT.

17 AND IF WE GO TO, OVER TO PAGE 4, THIS IS
18 WHERE WE SEE THE LANGUAGE THAT I BELIEVE YOU TOLD US
19 YESTERDAY YOU ASKED TO BE INCLUDED ABOUT YOUR -- THE
20 PROVISIONS OF TERMINATION?

08:47AM

21 A THIS IS WHAT WE ENDED UP WITH, YES.

22 Q AND THIS INFORMATION, THIS LANGUAGE, WAS
23 IMPORTANT TO YOU TO HAVE IN THE CONTRACT, TO PROTECT
24 YOU FOR THE REASONS THAT YOU TOLD US ABOUT YESTERDAY,
25 CORRECT?

08:47AM

26 A YES.

27 Q AND IF WE GO OVER TO THE NEXT PAGE, WE SEE UP
28 AT THE TOP, THIS LANGUAGE ABOUT YOUR COMPENSATION, AND

1 OTHER THINGS, CC, EXCEPT, AND THEN SMALL 2, EXCEPT THE
2 COMPANY WILL PAY COMPENSATION ACCRUED TO THE DATE OF
3 TERMINATION, CORRECT?

4 A YES.

5 Q AND THE AGREEMENT ACTUALLY CALLS OUT WHAT
6 COMPENSATION IS, DOESN'T IT?

08:48AM

7 MR. HELM: VAGUE AND AMBIGUOUS.

8 THE COURT: THAT'S -- LET'S JUST HAVE A
9 QUESTION.

10 MR. MADISON: YES, YOUR HONOR.

08:48AM

11 Q PAGE 2, WE SEE SOME DEFINITIONS.

12 AND IT SAYS: FEES, MEANS ALL REVENUES
13 DERIVED FROM ACCOUNTS.

14 DOESN'T IT?

15 A YES.

08:48AM

16 Q REVENUES MEANS INCOME, DOESN'T IT?

17 A IT MEANS REVENUES.

18 Q WHICH MEANS THE INCOME OF MONEY, DOESN'T IT?

19 A YES.

20 Q THEN IF WE GO OVER TO THE NEXT PAGE, SUB-PART
21 C, UP AT THE TOP, I MEAN, THIS IS THE PART OF THE
22 AGREEMENT THAT'S TALKING ABOUT THE FEE SHARING,
23 CORRECT?

08:48AM

24 A YES. IT'S PERCENTAGES, YEAH.

25 Q UNDER THIS AGREEMENT, PART OF YOUR
26 COMPENSATION WAS FEE SHARING, RIGHT?

08:49AM

27 A YES.

28 Q AND IT SAYS: ACCOUNT FEES RECEIVED EACH

1 CALENDAR QUARTER BY THE COMPANY.

2 CAN YOU TELL US WHAT FEES RECEIVED MEANS
3 TO YOU?

4 A IT MEANS THE FEES RECEIVED.

5 Q SO, UNDER THIS AGREEMENT, FOR YOU TO RECEIVE
6 COMPENSATION IN THE FORM OF FEE SHARING UNDER THE
7 DEFINITIONS OF THE CONTRACT, THE MONEY HAD TO BE
8 RECEIVED, DIDN'T IT?

08:49AM

9 A NOT IF I WAS TERMINATED.

10 Q NOW, IF YOU GO TO PAGE 6, WE SEE THAT SAME
11 LANGUAGE, IT LOOKS TO BE. THE DOCUMENTS SPEAK FOR
12 THEMSELVES.

08:49AM

13 BUT THERE'S LANGUAGE ABOUT AGREEING TO
14 AND ACCEPTING, RIGHT?

15 A IT SAYS: IF YOU DO AND AGREE TO ACCEPT.

08:50AM

16 YES.

17 Q OVER ON THE LAST PAGE, YOU UNDERSTAND WHAT
18 THAT MEANT AND INTENDED TO ENTER INTO THIS CONTRACT.

19 YOU SIGNED, DIDN'T YOU, SIR?

20 A THIS WAS SIGNED.

08:50AM

21 Q AND IF WE LOOK AT EXHIBIT 12, NOW WE'RE IN
22 1999.

23 AND AS OF JANUARY 1, 1999, YOU'RE
24 ENTERING INTO A NEW AGREEMENT EFFECTIVE JANUARY 1,
25 1998, AND CONTINUING THROUGH 2004, CORRECT?

08:50AM

26 A RIGHT.

27 Q SO BETWEEN, THE CONTRACT WAS RENEGOTIATED
28 BEFORE IT ENDED?

1 A THE PRIOR ONE.

2 Q AND IF WE LOOK AT -- IF WE GO OVER TO PAGE 7,
3 WE CAN SEE THIS SAME LANGUAGE ABOUT -- WELL, WE SEE
4 LANGUAGE ABOUT TERMINATION. AND THEN AGAIN, LANGUAGE
5 ABOUT COMPENSATION CC'ING, UNLESS CERTAIN THINGS
6 HAPPEN.

08:51AM

7 AND IT SAYS OVER ON THE TOP OF PAGE 8:
8 THE COMPANY WILL PAY COMPENSATION
9 ACCRUED TO THE DATE OF TERMINATION.
10 DOESN'T IT?

08:51AM

11 A IT SAYS:

12 COMPANY WILL PAY COMPENSATION
13 ACCRUED TO THE DATE OF TERMINATION.

14 Q SO BEFORE SOMETHING CAN BE ACCRUED, IT HAS TO
15 BE COMPENSATION, DOESN'T IT?

08:51AM

16 MR. HELM: VAGUE AND AMBIGUOUS.

17 THE WITNESS: NO.

18 THE COURT: SUSTAINED.

19 I THINK IT GOES BEYOND.

20 BY MR. MADISON:

08:51AM

21 Q WELL, WHEN IT SAYS, COMPENSATION ACCRUED, WHAT
22 DID YOU UNDERSTAND IT WAS THAT WAS ACCRUED, IF NOT
23 COMPENSATION?

24 A I DON'T UNDERSTAND. COMPENSATION ACCRUED IS
25 COMPENSATION ACCRUED.

08:51AM

26 Q HERE AGAIN, THE AGREEMENT DEFINES WHAT YOUR
27 COMPENSATION IS, DOESN'T IT?

28 MR. HELM: VAGUE AND AMBIGUOUS.

1 THE COURT: THE AGREEMENT SPEAKS FOR ITSELF.

2 BY MR. MADISON:

3 Q WELL, MR. GUNDLACH?

4 THE COURT: ASK HIM WHAT HIS UNDERSTANDING OF
5 IT WAS. THEN WE MOVE ON. 08:52AM

6 MR. MADISON: THANK YOU, YOUR HONOR.

7 Q YESTERDAY YOU TESTIFIED ABOUT YOUR
8 UNDERSTANDING OF THESE AGREEMENTS.

9 AND YOUR UNDERSTANDING, THE AGREEMENT
10 DEFINES THE WAY YOUR COMPENSATION WILL BE CALCULATED,
11 DOESN'T IT? 08:52AM

12 MR. HELM: VAGUE AND AMBIGUOUS.

13 THE COURT: OVERRULED.

14 THE WITNESS: BUT WHAT I UNDERSTOOD WAS IF I
15 WAS TERMINATED, I WOULD BE PAID COMPENSATION THAT WAS
16 ACCRUED, EVEN IF IT WASN'T PAID BY THE CLIENTS YET. 08:52AM
17 THAT'S WHAT I UNDERSTOOD.

18 BY MR. MADISON:

19 Q IF WE GO TO THE AGREEMENT, PAGE 2.

20 YOU REMEMBER THESE WERE BACK IN THE DAYS
21 WHEN IT WAS THE B AND G POOL, FOR BARACH AND GUNDLACH,
22 CORRECT? 08:52AM

23 A IF YOU SAY SO.

24 Q WELL, IT'S NOT THAT I SAY SO, SIR. THE
25 AGREEMENT IS TALKING ABOUT THE B AND G POOL, RIGHT? 08:52AM

26 A I SEE NOW, IT SAYS B AND G POOL, YES.

27 Q THAT WAS MR. BARACH AND MR. GUNDLACH, RIGHT?

28 A THAT'S WHAT I REMEMBER.

1 Q AND IT GOES ON TO TALK ABOUT FEES, GOES ON TO
2 TALK ABOUT FEES AND HOW THEY'RE SHARED.

3 AND FOR EXAMPLE, THERE, IT SAYS:
4 DEFINED CONTRIBUTION FEES MEANS ALL REVENUES DERIVED.

5 DOESN'T IT?

08:53AM

6 A THAT'S WHAT IT SAYS. ALL REVENUES DERIVED,
7 YEAH.

8 Q YOUR UNDERSTANDING, BASED ON YOUR TENURE IN
9 THE INDUSTRY, AND JUST COMMON SENSE, IT SAYS, REVENUE
10 MEANS THE MONEY CAME IN, DOESN'T IT?

08:53AM

11 A MIGHT HAVE.

12 COULD BE ACCRUED REVENUE, TOO.

13 Q IT DOESN'T SAY THAT, DOES IT?

14 A IT ALSO DOESN'T SAY THAT IT CAME IN.

15 Q WELL, LET'S LOOK AT PAGE 3. THERE'S A
16 DEFINITION OF M.B.S. FEES.

08:53AM

17 AND AGAIN, IT USES THAT SAME TERM,
18 DOESN'T IT, ALL REVENUES DERIVED?

19 A THAT'S WHAT IT SAYS.

20 Q AND AGAIN --

08:53AM

21 A IT DOESN'T SAY COLLECTED.

22 Q WELL, IF WE LOOK DOWN AT THE DEFINITION OF TCW
23 POOL, IT SAYS IT MEANS: M.B.S. FEES AND THE DEFINED
24 CONTRIBUTION FEES.

25 THEN SUB-PART C1, WE SEE THOSE SAME
26 WORDS OVER AT THE END OF THE LINE.

08:54AM

27 MIKE, RIGHT THERE, YES.

28 UPON RECEIPT?

1 A THE FIRST THING --

2 MR. HELM: DOCUMENT SPEAKS FOR ITSELF.

3 THE COURT: SUSTAINED.

4 BY MR. MADISON:

5 Q YOUR UNDERSTANDING WAS THAT THE WAY THIS
6 AGREEMENT, LIKE EVERY OTHER WRITTEN AGREEMENT, DEFINED
7 COMPENSATION, WAS IN TERMS OF ACTUAL FEES RECEIVED BY
8 TCW?

08:54AM

9 MR. HELM: VAGUE AND AMBIGUOUS.

10 THE COURT: SUSTAINED.

08:54AM

11 BY MR. MADISON:

12 Q WHAT IS -- WHAT DO THE WORDS, UPON RECEIPT,
13 MEAN TO YOU?

14 MR. HELM: THE DOCUMENT -- WELL, OKAY. GO
15 AHEAD.

08:54AM

16 THE COURT: WE NEED TO MOVE ON.

17 BY MR. MADISON:

18 Q AND IF WE GO OVER TO PAGE 4, IT USES THE SAME
19 TERM, UPON RECEIPT, WITH REGARD TO THE FEES THAT ARE
20 SHOWN ON THAT PAGE, DOESN'T IT?

08:54AM

21 MR. HELM: DOCUMENT SPEAKS FOR ITSELF, YOUR
22 HONOR.

23 THE COURT: SUSTAINED.

24 BY MR. MADISON:

25 Q YOU READ THE AGREEMENT WHEN YOU SIGNED IT,
26 DIDN'T YOU, SIR?

08:54AM

27 A I DON'T REMEMBER WHAT HAPPENED IN 1998.

28 I'M CERTAIN THAT I REVIEWED THE

1 IMPORTANT PARTS OF THE DOCUMENT.

2 Q OKAY. NOW, IF WE GO OVER TO 12-9, WE SEE THE
3 SAME LANGUAGE THERE AT THE BOTTOM, ABOUT HOW YOU WOULD
4 INDICATE THAT YOU AGREED WITH THESE TERMS. AND HERE
5 AGAIN, YOU INDICATED YOU AGREE.

08:55AM

6 WANTED TO BE BOUND BY SIGNING THE
7 CONTRACT, DIDN'T YOU, SIR?

8 MR. HELM: DOCUMENT SPEAKS FOR ITSELF, YOUR
9 HONOR.

08:55AM

10 THE COURT: OVERRULED.

11 THE WITNESS: MY SIGNATURE'S ON THIS PAGE.

12 MR. MADISON: IS THERE -- IT'S NOT JUST YOUR
13 SIGNATURE. THAT WAS THE WAY THAT YOU WERE EXPRESSING,
14 PER THAT LAST PARAGRAPH, THAT YOU WANTED TO ENTER INTO
15 THE TERMS IN THAT CONTRACT, WASN'T IT?

08:55AM

16 A I -- I DON'T REMEMBER, THE MOMENT THAT I
17 SIGNED THE CONTRACT, WHAT WAS IN MY HAND. MY
18 SIGNATURE'S ON THE PAGE FROM 13 YEARS AGO.

19 Q CAN YOU OFFER ANY OTHER EXPLANATION TO US,
20 SIR, WHY YOU SIGNED THE CONTRACT, IF YOU DIDN'T INTEND
21 TO EXPRESS YOUR AGREEMENT WITH ALL THE TERMS.

08:55AM

22 MR. HELM: VAGUE AND AMBIGUOUS.

23 THE WITNESS: NO.

24 I SIGNED THE CONTRACT -- IT SPEAKS FOR
25 ITSELF.

08:55AM

26 BY MR. MADISON:

27 Q IF WE LOOK AT EXHIBIT 16, 2003, THERE WAS A
28 NEGOTIATION, AND IT WAS DECIDED TO INCORPORATE THE 1998

1 AGREEMENT BY REFERENCE; ISN'T THAT RIGHT?

2 A THAT'S WHAT THE -- THAT'S HOW THE DOCUMENT
3 ENDED UP, YES.

4 Q IF WE LOOK AT THE FIRST PARAGRAPH HERE, AS OF
5 SEPTEMBER 1, 2003, THERE'S A PROVISION. IT SAYS:

08:56AM

6 ALL TERMS OF YOUR FORMER EMPLOYMENT
7 AGREEMENT DATED AS OF JANUARY 1,
8 1998, THE EMPLOYMENT AGREEMENT, ARE
9 INCORPORATED HEREIN, AS SET FORTH
10 IN FULL, AND ARE A PART OF YOUR NEW
11 EMPLOYMENT AGREEMENT.

08:56AM

12 YOU UNDERSTOOD THAT THE JANUARY 1, 1998
13 AGREEMENT WAS EXHIBIT 12, CORRECT?

14 A I'M NOT KEEPING TRACK OF EXHIBIT NUMBERS.

15 Q WELL, IF WE LOOK BACK TO 12, THAT'S THE
16 AGREEMENT DATED JANUARY 1, 1998.

08:56AM

17 ARE YOU AWARE OF ANY OTHER AGREEMENT
18 THAT THIS MIGHT REFER TO?

19 A NO.

20 Q AND HERE, AGAIN, THE TERM IS PROVIDED. AND
21 IT'S THROUGH CLOSE OF BUSINESS DECEMBER 31, 2007.

08:56AM

22 THAT WAS YOUR UNDERSTANDING, THAT IT
23 WAS, IN THIS CASE, A FOUR AND THREE MONTH YEAR TERM?

24 A I'M NOT SURE IF IT'S RETROACTIVE OR NOT.

25 I'M NOT SURE OF THE TERM, BUT IT
26 EXPIRED, IT SAYS DECEMBER 31, 07, AND IT'S DATED
27 SEPTEMBER 1ST, 2003.

08:57AM

28 AGAIN, WE RENEGOTIATED THE PRIOR

1 CONTRACT BEFORE IT ENDED.

2 Q IF WE GO TO PAGE 5 OF EXHIBIT 16, THERE AGAIN
3 YOU INDICATE YOUR INTENT TO EXPRESS YOUR ACCEPTANCE OF
4 ALL THE TERMS BY SIGNING IT, DIDN'T YOU?

5 A YES.

08:57AM

6 Q NOW, IF WE GO BACK TO EXHIBIT 12, AND WE LOOK
7 ON PAGE 9, ONE OF THE PROVISIONS THAT WAS INCORPORATED
8 BY REFERENCE INTO THE 2003 AGREEMENT IS THIS PROVISION
9 ABOUT CONFIDENTIALITY; WASN'T THAT YOUR UNDERSTANDING?

10 A I SEE THE PARAGRAPHS IN THE DOCUMENT, YES.

08:58AM

11 Q AND WHAT THIS TALKS ABOUT IS, AT LEAST IN THE
12 SECOND HALF, IT SAYS:

13 DURING THE TERM OF THIS AGREEMENT,
14 AND AFTERWARDS, FOR A PERIOD OF TWO
15 YEARS, IN THE CASE OF CLAUSES TWO
16 AND THREE, AND AT ANY TIME, IN THE
17 CASE OF CLAUSE ONE, YOU WILL NOT --
18 LET ME STOP THERE.

08:58AM

19 THE "YOU" WAS YOU? THE LETTER WAS ADDRESSED
20 TO YOU, CORRECT.

08:58AM

21 A RIGHT.

22 Q IT SAYS:

23 ONE, DIVULGE TO THIRD PARTIES, OR
24 USE FOR YOUR OWN BENEFIT, ANY
25 NON-PUBLIC INFORMATION CONCERNING
26 THE COMPANY OR ITS AFFILIATES OR
27 THE CUSTOMERS CLIENTS, PRODUCTS OR
28 FINANCES OF THE COMPANY OR ITS

08:58AM

1 AFFILIATES.

2 I'M GOING TO STOP THERE.

3 YOU UNDERSTOOD, WHEN YOU SIGNED
4 EXHIBIT 12, AND THEN AGAIN, WHEN YOU SIGNED EXHIBIT 16,
5 THAT YOU WERE AGREEING THAT AT NO TIME, WOULD YOU DO
6 THE THINGS SPECIFIED THERE, CORRECT?

08:58AM

7 A YES.

8 Q AND THEN NO. 2, SAYS:

9 SOLICIT CUSTOMERS OR CLIENTS OF THE
10 COMPANY OR ITS AFFILIATES FOR ANY
11 COMPETING ENTITY.

08:59AM

12 AND YOU'RE AWARE, AREN'T YOU, SIR, PROVISIONS
13 LIKE THIS ARE OFTEN REFERRED TO AS NON-COMPETE
14 PROVISIONS?

15 A I'VE HEARD OF THESE THINGS BEING REFERRED TO
16 AS NON-COMPETE, YES.

08:59AM

17 Q WELL, DO YOU RECALL THAT WITH REGARD TO THE
18 NEGOTIATIONS IN 2007, ONE OF YOUR CONCERNS WAS ABOUT
19 WHETHER A NON-COMPETE CLAUSE WAS VALID OR NOT IN
20 CALIFORNIA?

08:59AM

21 A THAT'S RIGHT. I RECEIVED ADVICE THAT THIS
22 CLAUSE WAS ILLEGAL.

23 MR. MADISON: MOVE TO STRIKE, UNLESS I CAN
24 CROSS-EXAMINE ABOUT THE ADVICE, YOUR HONOR.

25 THE COURT: I'LL STRIKE THE RESPONSE.

08:59AM

26 MR. MADISON: THANK YOU.

27 Q THEN IT SAYS OR:

28 3, ATTEMPT TO INDUCE ANY EMPLOYEE

1 OF THE COMPANY OR ITS AFFILIATES TO
2 LEAVE THE COMPANY OR SUCH
3 AFFILIATE.

4 AND AGAIN, YOU UNDERSTOOD THAT UNDER THIS
5 PARAGRAPH, BOTH 2 AND 3, THE NON-COMPETE AND THE
6 NON-SOLICITATION OF EMPLOYEES, THAT WAS IN EFFECT FOR A
7 PERIOD OF TWO YEARS AFTER THE TERM OF THE AGREEMENT,
8 CORRECT?

09:00AM

9 A YES.

10 Q SO WHEN YOU SIGNED EXHIBIT 16, 2003, AND IT
11 INCORPORATED THIS PROVISION, THAT MEANT THAT AT THE END
12 OF THE TERM OF THE 2003 CONTRACT, FOR TWO YEARS, YOU
13 WERE AGREEING TO NOT COMPETE, IF THAT WAS A LEGALLY
14 VALID PROVISION, AND TO NOT ATTEMPT TO INDUCE ANY TCW
15 EMPLOYEE TO LEAVE TCW?

09:00AM

09:00AM

16 MR. HELM: YOUR HONOR, COMPOUND, AND ALSO
17 CALLS FOR A LEGAL CONCLUSION.

18 THE COURT: I'LL SUSTAIN IT ON THE FORMER
19 GROUND.

20 BY MR. MADISON:

09:00AM

21 Q WELL, YOU UNDERSTOOD, WHEN YOU SIGNED
22 EXHIBIT 16, 2003, I THINK WE ALREADY ESTABLISHED THIS,
23 BUT THAT THIS PROVISION WAS BEING PICKED UP AS PART OF
24 THE LANGUAGE --

25 WE CAN GO BACK TO 16-1?

09:01AM

26 THE COURT: THAT WASN'T THE PROBLEM WITH THE
27 QUESTION. IT WAS COMPOUND. SO WE DON'T NEED TO START
28 ALL OVER.

1 MR. MADISON: OKAY. THANK YOU, YOUR HONOR.

2 IT'S EARLY IN THE MORNING STILL.

3 Q SO, THE 2003 AGREEMENT WOULD PICK UP THE
4 CONFIDENTIALITY PARAGRAPH. AND THAT MEANT THAT AT THE
5 END OF THE 2003 TERM, FOR TWO YEARS, YOU WERE AGREEING
6 TO NOT COMPETE -- I'LL STOP THERE.

09:01AM

7 RIGHT?

8 A YES.

9 Q AND YOU WERE AGREEING TO NOT SOLICIT ANY TCW
10 EMPLOYEES, CORRECT?

09:01AM

11 A SURE. UNLESS SOMETHING ELSE WAS AGREED TO
12 SUBSEQUENTLY, RIGHT.

13 Q AND THE TERM OF THE 2003 AGREEMENT -- 16.1,
14 MIKE -- IT SAYS:

15 IT WILL CONTINUE UNTIL THE CLOSE OF
16 BUSINESS ON DECEMBER 31, 2007.

09:01AM

17 YOU UNDERSTOOD THAT WAS THE TERM OF
18 THE 2003 AGREEMENT.

19 RIGHT?

20 A YES.

09:02AM

21 Q SO UNDER THAT NON-COMPETE AND NON-SOLICITATION
22 LANGUAGE, FOR A PERIOD OF TWO YEARS FROM THIS DATE,
23 THAT IS DECEMBER 31, 2009, YOU HAD AGREED TO NOT
24 COMPETE AND NOT SOLICIT TCW EMPLOYEES, HADN'T YOU?

25 A UNLESS SOMETHING ELSE WAS NEGOTIATED, YEAH.

09:02AM

26 Q AND THERE CAME A TIME, IN CONNECTION WITH YOUR
27 DISCUSSIONS WITH WAMCO, THAT YOU ANALYZED IN YOUR MIND,
28 WELL, WHETHER OR NOT THESE PROVISIONS WOULD IMPACT YOUR

1 ABILITY TO GO TO WAMCO, DIDN'T YOU, SIR?

2 A I DON'T REMEMBER THAT.

3 Q WELL, YOU DO RECALL YOUR NEGOTIATIONS WITH
4 WAMCO, DON'T YOU, SIR?

5 A I DIDN'T REALLY HAVE NEGOTIATIONS WITH WAMCO.
6 WE HAD PRELIMINARY DISCUSSIONS, AND A
7 FRAMEWORK.

09:02AM

8 TO CALL IT NEGOTIATIONS IS TAKING IT
9 MUCH FURTHER THAN WHAT HAPPENED.

10 Q YOU HAD OVER 20 MEETINGS WITH WAMCO, DIDN'T
11 YOU, SIR, IN 2009?

09:02AM

12 A I THINK THAT FAR OVERSTATES THE NUMBER.

13 I THINK IT WAS SIX OR EIGHT.

14 Q AND YOU HAD MEETINGS EVEN IN THE FALL, DIDN'T
15 YOU, SIR?

09:03AM

16 A NOT ABOUT EMPLOYMENT.

17 Q THOSE MEETINGS WERE ABOUT SOME OTHER SUBJECT?

18 A THEY WERE JUST KEEPING -- KEEPING
19 COMMUNICATIONS GOING FOR SOME -- MAYBE YEARS IN THE
20 FUTURE.

09:03AM

21 Q DO YOU RECALL THAT WHEN WAMCO REACHED OUT TO
22 TALK TO YOU, THERE WAS AN ISSUE THAT HAD TO BE RESOLVED
23 FIRST, BEFORE THEY COULD TALK TO YOU?

24 A NO. I DON'T REMEMBER THAT.

25 Q DO YOU RECALL THAT WAMCO WANTED TO MAKE SURE
26 THAT YOU DIDN'T HAVE A CONTRACT WITH TCW, SO THAT WAMCO
27 COULDN'T BE VIEWED AS INTERFERING WITH ANY OF TCW'S
28 CONTRACTUAL RIGHTS IN TALKING TO YOU?

09:03AM

1 A NO. I DON'T REMEMBER THAT HAPPENING AT ALL.

2 Q DO YOU REMEMBER LEARNING THAT WAMCO HAD A
3 LAWYER WHO COMMUNICATED WITH YOUR EMPLOYMENT LAWYER IN
4 2009 ABOUT THOSE TOPICS?

5 A I DON'T REMEMBER THAT.

09:04AM

6 Q YOU NEVER LEARNED THAT, SIR?

7 A I DON'T RECALL THAT.

8 Q EVEN SITTING HERE TODAY, YOU -- YOU'RE NOT
9 AWARE OF THAT?

10 A NO.

09:04AM

11 Q NOW, WHEN YOU TALKED TO WAMCO, MR. BROSSY,
12 FROM SEMLER, BROSSY WAS HERE, AND TESTIFIED THAT YOU
13 PROVIDED THE FINANCIAL INFORMATION ABOUT THE
14 STRATEGIES, FUNDS AND REVENUES THAT YOU WERE
15 CONTEMPLATING CONVERTING TO WAMCO.

09:04AM

16 MR. HELM: OBJECT TO THE FORM, MISSTATES THE
17 TESTIMONY.

18 THE COURT: I THINK IT'S JUST THE WAY IT'S
19 CHARACTERIZED.

20 YOU CAN REFRAME IT.

09:04AM

21 BY MR. MADISON:

22 Q YOU PROVIDED WAMCO'S CONSULTANTS, SEMLER
23 BROSSY, WITH INFORMATION TO BE USED IN DEVELOPING THE
24 COMPENSATION PROPOSAL THAT THEY ULTIMATELY PROVIDED THE
25 DRAFT FOR YOU TO --

09:04AM

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

27 THE COURT: OVERRULED.

28 THE WITNESS: I -- I REMEMBER TALKING IN VERY

1 BROAD TERMS ABOUT THE NATURE OF THE BUSINESS THAT I WAS
2 RUNNING.

3 BY MR. MADISON:

4 Q IF WE COULD LOOK AT 1899.

5 AND THIS IS IN EVIDENCE, YOUR HONOR. 09:05AM

6 THIS WAS THE COMPENSATION ARRANGEMENT
7 THAT I BELIEVE YOU ALREADY TESTIFIED YOU RECEIVED FROM
8 WAMCO, OR FROM THE CONSULTANTS, SEMLER BROSSY, RIGHT?

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

10 THE COURT: I THINK WE'RE REVISITING SOME 09:05AM
11 AREAS THAT ARE NOT WITHIN THE CONTEXT OF THE
12 DEFENDANTS' CASE.

13 MR. MADISON: I WANT TO ASK HOW THIS RELATES
14 TO HIS CONTRACT THAT HE SAYS HE HAD.

15 THE COURT: ALL RIGHT. QUICKLY. 09:05AM

16 BY MR. MADISON:

17 Q FIRST OF ALL, THERE'S NO REFERENCE IN THIS
18 DOCUMENT, IS THERE, TO ANY CONTRACT THAT YOU WERE
19 SAYING AT THIS TIME YOU HAD WITH TCW?

20 MR. HELM: LACKS FOUNDATION, DOCUMENT SPEAKS 09:05AM
21 FOR ITSELF.

22 THE COURT: SUSTAINED.

23 BY MR. MADISON:

24 Q ARE YOU AWARE OF ANY WRITING BETWEEN YOU AND
25 WAMCO OR SEMLER BROSSY, THAT MAKES ANY REFERENCE TO YOU 09:05AM
26 SAYING YOU HAD AN EMPLOYMENT CONTRACT THAT WOULD RUN
27 THROUGH 2011, THE END OF THE YEAR?

28 A WRITTEN, YOU'RE SAYING?

1 Q ANY WRITING THAT WOULD REFERENCE --

2 A WRITING?

3 Q -- THAT WOULD REFERENCE ANY CONTRACT?

4 A I DON'T THINK I EVER WROTE ANYTHING TO WAMCO,
5 EVER.

09:06AM

6 Q YOU DIDN'T WRITE E-MAILS OR ANYTHING LIKE
7 THAT?

8 A NO. YOU WOULD HAVE THEM. WE'D HAVE SEEN THEM
9 ALREADY.

09:06AM

10 Q SO -- YOU NEVER TOLD WAMCO THAT YOU HAD A
11 CONTRACT THROUGH THE END OF 2011, DID YOU, SIR?

12 A WE TALKED ABOUT THAT. YES, WE DID.

13 Q WITH WHOM, SIR?

14 A TALKED ABOUT IT WITH -- I DON'T REMEMBER THEIR
15 NAMES.

09:06AM

16 Q YOU CAN'T GIVE US A NAME OF WHO YOU SPOKE TO
17 ABOUT THAT?

18 A NO. WE TALKED ABOUT IT WITH --

19 Q NO, SIR?

20 THE COURT: JUST A MINUTE. LET HIM FINISH THE
21 ANSWER.

09:06AM

22 MR. MADISON: MOVE TO STRIKE ANY HEARSAY.

23 THE COURT: LET HIM FINISH.

24 THE WITNESS: I REMEMBER TALKING TO SOME OF
25 THE SENIOR PEOPLE AT WAMCO ABOUT THAT. AND I SAID IT
26 WOULDN'T REALLY MATTER, BECAUSE WE'LL NEGOTIATE. LET
27 ME WORRY ABOUT IT, I TOLD THEM.

09:06AM

28 AND THEY SAID, FINE.

1 BY MR. MADISON:

2 Q SO IF THOSE WAMCO EXECUTIVES WERE TO SAY THAT
3 YOU NEVER MADE ANY REFERENCE TO AN EMPLOYMENT CONTRACT
4 TO TCW, THAT WOULD NOT BE TRUE?

5 MR. HELM: OBJECT TO THE FORM. 09:07AM

6 THE COURT: OVERRULED.

7 THE WITNESS: IT WOULDN'T BE TRUE.

8 I REMEMBER THEIR GENERAL COUNSEL SAYING,
9 IF YOU HIRE US, I'M SURE TCW -- TCW WILL SUE US.

10 BY MR. MADISON: 09:07AM

11 Q IF WE LOOK AT PAGE 1899-7 OF THE COMP
12 PROPOSAL.

13 REMEMBER YESTERDAY YOU WERE DESCRIBING
14 FOR MR. HELM HOW YOU WERE PROJECTING THE SPECIAL
15 MORTGAGE CREDIT FUND FEES TO LOOK -- LOOKING INTO THE
16 FUTURE. 09:07AM

17 DO YOU RECALL THAT?

18 A YES.

19 Q AND DO YOU RECALL THAT YESTERDAY, YOU TOLD US
20 THAT YOU WOULD BEGIN TO LIQUIDATE THE SPECIAL MORTGAGE
21 CREDIT FUND IN 2010 AND 2011, RIGHT? 09:07AM

22 A THAT'S ABSOLUTELY RIGHT.

23 Q AND WHEN YOU COLLECT PERFORMANCE FEES FROM
24 THOSE FUNDS, YOU WOULD FIRST HAVE TO SELL ENOUGH
25 SECURITIES TO MAKE SURE ALL THE INVESTORS GOT THEIR
26 SHARE, RIGHT? 09:08AM

27 A NOT NECESSARILY.

28 Q WELL, ISN'T IT THE NORM, WITH CLOSED FUNDS,

1 THAT WHEN YOU START TO LIQUIDATE, YOU LIQUIDATE
2 SECURITIES, AND YOU MAKE SURE THE INVESTORS RECEIVE
3 THEIR MONEY BACK, AND ANY PERFORMANCE THAT THEY'VE
4 EARNED, UP TO THAT HURDLE WE'VE HEARD ABOUT?

5 A IT COULD GO THAT WAY.

09:08AM

6 IT COULD ALSO GET BEYOND THE HURDLE,
7 WITHOUT LIQUIDATING FROM CASH FLOW.

8 Q AND HERE, IN THIS GRAPH THAT SEMLER BROSSY
9 PROVIDED TO YOU, BASED ON YOUR DISCUSSIONS WITH THEM,
10 THEY SHOW PERFORMANCE FEES FOR THE SPECIAL MORTGAGE
11 CREDIT FUNDS, ZERO IN 2010 AND ZERO IN 2011.

09:08AM

12 DO YOU RECALL THAT?

13 MR. HELM: ASSUMES FACTS NOT IN EVIDENCE, YOUR
14 HONOR.

15 THE COURT: OVERRULED.

09:09AM

16 MR. HELM: MISSTATES THE TESTIMONY.

17 THE COURT: I'D JUST LIKE A QUESTION.

18 WE GOT ABOUT FIVE MORE MINUTES OF YOUR
19 CROSS-EXAMINATION.

20 BY MR. MADISON:

09:09AM

21 Q YOU SEE WHERE IT SAYS, DISTRESSED FUNDS?

22 A YES.

23 Q THE DISTRESSED FUNDS WERE THE SPECIAL MORTGAGE
24 CREDIT FUNDS?

25 MR. HELM: LACKS FOUNDATION.

09:09AM

26 MR. MADISON: WEREN'T THEY?

27 THE COURT: OVERRULED.

28 THE WITNESS: CERTAINLY -- CERTAINLY THE --

1 SOME OF THEM, YEAH.

2 BY MR. MADISON:

3 Q AND YOU SEE WHERE IT SAYS: 2010, 2011. IT
4 SAYS, ZERO, IN PERFORMANCE FEES, RIGHT?

5 A IT SAYS THAT.

09:09AM

6 THIS IS A FALSE PREMISE. THESE WERE NOT
7 MY PROJECTIONS. THESE WERE NOT MY PROJECTIONS.

8 Q YOU KNOW, MR. BROSSY TESTIFIED THAT THE
9 FINANCIAL INFORMATION WAS PROVIDED BY --

10 A THESE ARE NOT MY PROJECTIONS.

09:09AM

11 I REMEMBER SAYING TO HIM, THESE
12 PROJECTIONS LOOK COMPLETELY WRONG. NOT ONLY ARE THEY
13 BADLY TIMED, BUT THEY'RE INCORRECT, IN TERMS OF LIKELY
14 AMOUNT.

15 Q DO YOU RECALL --

09:09AM

16 A I REMEMBER SAYING THAT TO HIM.

17 Q DO YOU RECALL, IN DECEMBER OF 2009, IN AN
18 INVESTOR CALL, YOU INDICATED THAT YOU WOULD LIQUIDATE
19 THE SPECIAL MORTGAGE CREDIT FUNDS AT THE END OF 2013?

20 A LIQUIDATION OF THE FUNDS WOULD BE DEPENDENT
21 UPON THE MARKET CONDITIONS.

09:10AM

22 AND 2013 WAS SORT OF A BOOKEND, LAST
23 DATE OF FINISHING LIQUIDATION.

24 Q NOW, IN FACT, UNDER THE CONTRACT THAT YOU
25 DIDN'T SIGN, IF WE COULD JUST GO TO THAT QUICKLY.

09:10AM

26 EXHIBIT -- LET'S LOOK AT 66, WHICH IS IN
27 EVIDENCE.

28 AND THIS IS FROM JUNE 7.

1 DO YOU REMEMBER THAT --
2 IF WE GO TO THE COVER SHEET, MIKE
3 PLEASE. PAGE 1.

4 DO YOU REMEMBER THAT YOU WERE
5 NEGOTIATING WITH MR. CAHILL AT THIS POINT?

09:10AM

6 A I DON'T THINK I WAS NEGOTIATING WITH
7 MR. CAHILL AT ANY TIME ON THIS CONTRACT.

8 Q WELL, YOU RECALL SPEAKING TO MR. CAHILL, AND
9 ASKING THAT CERTAIN CHANGES BE MADE IN THE WRITTEN
10 CONTRACT?

09:11AM

11 A I DO REMEMBER ONE CONVERSATION LIKE THAT, YES.

12 Q THIS IS AFTER YOU SAY YOU HAD THIS HANDSHAKE
13 DEAL, RIGHT?

14 A YES. I CAN TELL BY THE DATE. THAT'S RIGHT.

15 Q BUT YOU KNEW THAT TCW WAS EXPECTING A WRITTEN
16 CONTRACT TO BE SIGNED, DIDN'T YOU?

09:11AM

17 MR. HELM: LACKS FOUNDATION.

18 THE COURT: OVERRULED.

19 THE WITNESS: I DON'T KNOW WHAT THEY EXPECTED.
20 BY MR. MADISON:

09:11AM

21 Q WELL, YOU UNDERSTOOD THE REASON THIS CONTRACT
22 WAS BEING SENT TO YOU WAS THAT TCW IS EXPECTING THAT A
23 CONTRACT, A WRITTEN CONTRACT, WOULD BE SIGNED, JUST
24 LIKE IT HAD BEEN EVERY TIME BACK TILL 1989?

25 MR. HELM: SAME OBJECTION.

09:11AM

26 THE COURT: OVERRULED.

27 THE WITNESS: IT'S A REASONABLE ASSUMPTION.

28 ///

1 BY MR. MADISON:

2 Q SO HERE, THERE ARE TERMS THAT ARE LAID OUT.

3 AND SOME OF THOSE TERMS, YOU TOLD
4 MR. CAHILL YOU WANTED CHANGED, AND HE CHANGED THEM,
5 RIGHT?

09:11AM

6 A I DON'T REMEMBER THEM ALL BEING CHANGED.

7 Q I DIDN'T SAY THEY WERE ALL CHANGED, SIR.

8 BUT YOU SUGGESTED CHANGES TO MR. CAHILL
9 THAT YOU WANTED, AND MR. CAHILL MADE CHANGES, RIGHT?

09:12AM

10 A THAT MAKES IT SOUND LIKE ALL OF THEM AGAIN.

11 I DON'T THINK ALL OF THEM.

12 Q WELL, IF YOU LOOK AT PAGE 4, THERE'S THAT
13 LANGUAGE NOW ABOUT YOUR COMPENSATION, IN THE EVENT OF
14 TERMINATION.

15 AND WHAT IT SAYS IS:

09:12AM

16 THE COMPANY WILL PAY YOU YOUR BASE
17 SALARY AND ANY AMOUNT OF PROFIT
18 SHARING ACCRUED TO THE DATE OF
19 TERMINATION.

20 AFTER THE PARENTHETICAL.

09:12AM

21 DO YOU SEE THAT?

22 MR. HELM: DOCUMENT SPEAKS FOR ITSELF, YOUR
23 HONOR.

24 THE COURT: IS THERE A QUESTION ABOUT IT?

25 MR. MADISON: YES. I WANT TO REFER THE
26 WITNESS TO THIS PROVISION.

09:12AM

27 THE COURT: HE CAN LOOK AT IT.

28 ASK A QUESTION.

1 BY MR. MADISON:

2 Q SOMETHING IS BEING ACCRUED THERE, RIGHT, IN
3 THE SECOND TO LAST LINE?

4 MR. HELM: VAGUE AND AMBIGUOUS.

5 THE COURT: DO YOU HAVE A QUESTION? 09:12AM

6 MR. MADISON: I DO.

7 THE COURT: THEN ASK IT.

8 BY MR. MADISON:

9 Q YOU NEVER SIGNED THIS AGREEMENT, RIGHT,
10 MR. GUNDLACH? 09:12AM

11 A I DID NOT.

12 Q YOU'RE TELLING US YOU BELIEVE THIS PROVISION
13 WAS AGREED TO?

14 A YES.

15 Q EVEN THOUGH YOU TOLD US YESTERDAY IT WAS NEVER
16 DISCUSSED? 09:13AM

17 A IT WAS FUNDAMENTAL AND CENTRAL TO THE BASIS OF
18 MY WORKING AT TCW FOR 20 YEARS. IT WAS SO FUNDAMENTAL
19 THAT WE NEVER TALKED ABOUT IT FOR A DECADE, IN THESE
20 AGREEMENTS. 09:13AM

21 IT WAS JUST CARRIED THROUGH.

22 Q FOR MOST OF THAT DECADE, YOU SIGNED TO
23 INDICATE YOUR ACCEPTANCE OF THOSE TERMS, AND TCW
24 SIGNED, RIGHT?

25 A IT WAS -- WELL, I -- I USE DECADE AS AN
26 ARBITRARY REFERENCE POINT FOR MANY YEARS. 09:13AM

27 BUT SURE, I WAS -- UNDERWRITTEN
28 CONTRACTS WITH TCW THAT WERE SIGNED FOR MANY YEARS --

1 Q YOU'RE NOW SAYING, YOU BELIEVE THIS PROVISION
2 WAS EFFECTIVE.

3 I JUST WANT TO ASK YOU ABOUT YOUR
4 UNDERSTANDING OF IT THEN.

5 IT WASN'T DISCUSSED, AND YOU DIDN'T
6 SIGN; BUT YOU HAD AN UNDERSTANDING IN YOUR MIND OF WHAT
7 THIS MEANT?

09:13AM

8 A I THINK THE IDEA THAT YOU WOULD BE PAID YOUR
9 ACCRUED COMPENSATION TO THE TIME UP TILL YOUR
10 TERMINATION IS FUNDAMENTAL LABOR RIGHTS IN ANY
11 INDUSTRY, IN ANY PLACE IN THE UNITED STATES OF AMERICA.

09:13AM

12 WHEN YOU WORK SOMEWHERE, AND YOU'RE NOT
13 PAID, SOMEBODY'S NOT OWNING UP TO THEIR PART OF THE
14 BARGAIN.

15 EVEN IF YOU'RE FLIPPING BURGERS AT
16 MC DONALD'S FOR A WEEK, YOU SHOULD GET YOUR PAYCHECK.

09:14AM

17 Q WHAT HAS TO BE ACCRUED, YOU UNDERSTOOD, WAS
18 PROFIT SHARING, RIGHT?

19 A ALL THE FEE SHARING, THAT'S RIGHT.

20 Q THAT'S NOT WHAT IT SAYS?

09:14AM

21 A BASE PIECE AND INCENTIVE FEES.

22 Q IT SAYS CAPITAL P, CAPITAL S, PROFIT SHARING.
23 THAT'S ACCRUED, RIGHT?

24 A THE DOCUMENT SAYS PROFIT SHARING AND BASE
25 SALARY, WHICH I DIDN'T EVEN HAVE.

09:14AM

26 Q IF YOU GO TO THE ATTACHMENT, IT ACTUALLY
27 DEFINES WHAT PROFIT SHARING IS, DOESN'T IT?

28 A I THINK SO, YEAH.

1 Q AND WHAT IT SAYS IS THAT THE FEES HAVE TO BE
2 PAID TO INCLUDE, TO BE INCLUDED IN PROFIT SHARING,
3 RIGHT?

4 MR. HELM: DOCUMENT SPEAKS FOR ITSELF.

5 THE COURT: SUSTAINED.

09:15AM

6 BY MR. MADISON:

7 Q WELL, YOU UNDERSTOOD UNDER THE ATTACHMENT, IF
8 WE GO TO PAGE 6611, YOU KNOW, IT SAYS, FEES, THERE, THE
9 SECOND PARAGRAPH.

10 AND IT SAYS THERE, IN THE SECOND LINE:

09:15AM

11 FEES EARNED BY TCW FOR SUCH QUARTER ON
12 AN ACCRUAL BASIS --

13 THE COURT: MR. MADISON, IS THERE A QUESTION
14 COMING?

15 MR. MADISON: YES.

09:15AM

16 Q AND THAT ARE PAID TO TCW.

17 SO YOU UNDERSTOOD TO BE PROFIT SHARING,
18 THAT COULD EVEN BE ACCRUED, IT HAD TO BE PAID, DIDN'T
19 YOU, SIR?

20 A THIS IS GETTING KIND OF CONVOLUTED. IF YOU'RE
21 TRYING TO SAY THAT WAS I WILLING TO WAIT UNTIL THOSE
22 ACCRUED FEES WERE PAID TO GET MY LAST, MY ACCRUED
23 COMPENSATION UP TO TERMINATION?

09:15AM

24 SURE. I'D WAIT TILL TCW COLLECTED THEM.

25 Q IF THEY WERE COLLECTED AFTER THE END OF 2011,
26 THEY WOULDN'T EVEN BE IN THE TERM OF THIS ORAL CONTRACT
27 THAT YOU SAY YOU HAVE, WOULD THEY?

09:15AM

28 A WELL, WE'RE TALKING ABOUT TWO DIFFERENT THINGS

1 HERE.

2 WE'RE TALKING ABOUT ACCRUED FEES AT THE
3 TIME OF TERMINATION. THAT'S ONE THING.

4 ANOTHER THING IS THE FUTURE FEES.

5 AND, YES, I'D WAIT UNTIL THOSE WERE
6 COLLECTED.

09:16AM

7 Q BUT THE AGREEMENT YOU SAY YOU UNDERSTOOD, HAD
8 EXPIRED ON DECEMBER 31, 2011, RIGHT?

9 A WE'RE NOT EVEN AT THE END OF 2011 YET.

10 Q YOU UNDERSTOOD THAT WAS THE TERM OF THIS
11 AGREEMENT THAT YOU SAY --

09:16AM

12 A YES.

13 Q AND SO IF THERE WERE FEES THAT WERE PAID IN
14 2012 AND 2013, LIKE ON THE SEMLER BROSSY PROJECTION,
15 THOSE WOULDN'T EVEN BE INCLUDED AT ALL, WOULD THEY,
16 SIR?

09:16AM

17 A IT WOULD DEPEND UPON IF WE HAD ANOTHER
18 AGREEMENT OR NOT, AND WHAT WOULD HAPPEN.

19 BUT AGAIN, THOSE PROJECTIONS OF HIS ARE
20 INACCURATE, AND WERE NOT MY PROJECTIONS.

09:16AM

21 Q I JUST HAVE A FEW MORE QUESTIONS THAT I'D LIKE
22 TO WRAP UP.

23 THE COURT: COUPLE OF MINUTES. WE SET A TIME
24 LIMIT, AND WE'RE PAST IT.

25 MR. MADISON: I UNDERSTAND.

09:17AM

26 THE COURT: OKAY.

27 BY MR. MADISON:

28 Q YOU OWN 40 PERCENT OF DOUBLELINE, SIR?

1 A I'M NOT SURE. I THINK IT'S LESS THAN THAT
2 NOW.

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

4 THE COURT: SUSTAINED.

5 MR. MADISON: I THINK IT GOES TO CREDIBILITY,
6 YOUR HONOR, FOR DOUBLELINE'S PART.

09:17AM

7 THE COURT: SUSTAINED.

8 GO AHEAD.

9 BY MR. MADISON:

10 Q WE HEARD TESTIMONY FROM A MAN NAMED
11 DON SHERMAN. HE'S A CLIENT OF YOURS.

09:17AM

12 MR. HELM: BEYOND THE SCOPE.

13 THE COURT: IS THIS -- YOU KNOW WE'RE ON THE
14 CONTRACT CLAIM NOW.

15 MR. MADISON: THERE WAS -- I THOUGHT I HEARD
16 TESTIMONY ABOUT THE INTERFERENCE AND BREACH OF
17 FIDUCIARY DUTY YESTERDAY, ALSO.

09:17AM

18 I JUST HAVE ONE QUESTION ABOUT THIS.

19 THE COURT: GO AHEAD.

20 BY MR. MADISON:

09:17AM

21 Q MR. SHERMAN'S A CLIENT OF YOURS, RIGHT?

22 A WELL, HIS COMPANY IS A CLIENT OF MINE, YEAH.

23 Q RELIANCE, THE COMPANY, RIGHT?

24 A RIGHT.

25 Q AND RELIANCE IS NOT -- WAS NOT AN INVESTOR IN
26 THE SPECIAL MORTGAGE CREDIT FUND --

09:17AM

27 MR. HELM: BEYOND THE SCOPE.

28 THE COURT: SUSTAINED.

1 MR. MADISON: THAT'S THE ONE QUESTION I WANTED
2 TO ASK.

3 THE COURT: WELL, IT'S BEYOND THE SCOPE.
4 BY MR. MADISON:

5 Q NOW, LET ME JUST ASK YOU TO LOOK AT 248, NOW
6 THAT WE'VE LOOKED AT YOUR AGREEMENTS.

09:17AM

7 AND BY THE WAY, ONE OR TWO MORE
8 QUESTIONS ON THE AGREEMENTS.

9 IF WE GO BACK, HAVE 66 UP, MIKE.

10 I BELIEVE YOU SAID YESTERDAY THAT A --
11 MANAGEMENT FEES ARE USUALLY COLLECTED BY TCW IN THE
12 FIRST WEEK AFTER A QUARTER CLOSES?

09:18AM

13 A THAT'S NOT WHAT I SAID.

14 Q WHEN ARE MANAGEMENT FEES USUALLY COLLECTED?

15 A IN THE FEW WEEKS AFTER A QUARTER ENDS.

09:18AM

16 THAT'S WHAT I SAID YESTERDAY, AND THAT'S
17 WHAT I BELIEVE.

18 Q THE QUARTER ENDS, AND THEN A FEW WEEKS GO BY,
19 AND THE MANAGEMENT FEES ARE COLLECTED BY TCW?

20 A I GUESS SO.

09:18AM

21 I WASN'T IN THE ACCOUNTING DEPARTMENT OR
22 THE COLLECTION DEPARTMENT; BUT IT WAS ALWAYS KIND OF
23 EXPLAINED TO ME, THE REASON WHY THE REVENUE SHARING
24 PAYMENTS WERE MADE THE LAST BUSINESS DAY, TWO MONTHS
25 AFTER QUARTER END, WAS THEY WERE RECEIVED IN THE
26 INTERIM. THAT'S WHAT I WAS TOLD.

09:18AM

27 Q THERE WAS SOME LAG TIME BETWEEN TCW RECEIVING
28 THE FEES AND THEN WHEN THE, QUOTE, UNQUOTE, BONUS OR

1 FEE SHARING CHECKS WOULD BE PAID, RIGHT?

2 A NOT ON ALL OF THEM. ON SOME OF THEM.

3 Q AND SOME OF THEM, THERE WOULD BE?

4 A PROBABLY.

5 Q SO, IT'S POSSIBLE THAT SOMEONE WITH A FEE
6 SHARING ARRANGEMENT COULD BE AT TCW WHEN FEES WERE
7 ACTUALLY COLLECTED, BUT NOT YET HAVE RECEIVED THEM,
8 BECAUSE THE END OF THE QUARTER WOULDN'T HAVE COME,
9 RIGHT?

09:19AM

10 A RIGHT. I GUESS -- LET'S -- JUST TO BE CLEAR.
11 IF THE FEES WERE COLLECTED JANUARY 15TH,
12 AND -- AND THE FEE SHARING'S PAID FEBRUARY 28TH, THEN
13 THERE'S A TIME BETWEEN THE TWO THINGS HAPPENING.

09:19AM

14 Q ASSUME, UNDER YOUR EXAMPLE, THAT FEES ARE PAID
15 JANUARY 15; AND AT THE END OF JANUARY, ON JANUARY 30,
16 THE PORTFOLIO MANAGER, WHO HAS FEE SHARING, RETIRES, OR
17 IS TERMINATED FOR CAUSE.

09:19AM

18 A I NEVER A- --
19 MR. HELM: COMPOUND.
20 THE COURT: SUSTAINED.

09:20AM

21 FINISH UP, MR. MADISON.
22 BY MR. MADISON:

23 Q THE QUESTION IS, SIR, THOSE FEES WOULD BE
24 ACCRUED, BECAUSE THEY'D ALREADY BEEN COLLECTED, BUT
25 THEY WOULDN'T HAVE BEEN PAID YET, IN YOUR EXAMPLE
26 RIGHT?

09:20AM

27 A NO. THEY'D BEEN PAID.

28 Q THEY'VE BEEN PAID?

1 A THEY'VE BEEN PAID TO TCW. THEY'D BEEN
2 COLLECTED.

3 Q THEY HADN'T BEEN PAID YET TO THE MANAGER,
4 BECAUSE YOU SAID THAT WOULD BE AT THE END OF FEBRUARY?

5 MR. HELM: VAGUE AND AMBIGUOUS, INCOMPLETE
6 HYPOTHETICAL.

09:20AM

7 THE COURT: SUSTAINED.

8 LET'S FINISH UP, MR. MADISON.

9 MR. MADISON: YES.

10 Q LET ME JUST SHOW YOU EXHIBIT 248, NOW THAT
11 WE'VE LOOKED AT THE AGREEMENTS.

09:20AM

12 AND YOU TOLD US --

13 MR. HELM: ASKED AND ANSWERED, YOUR HONOR.

14 THE COURT: WE HAVEN'T GOT A QUESTION YET.

15 AND WE GOT THE EXHIBIT UP.

09:20AM

16 I'D LIKE YOU TO FINISH UP, MR. MADISON.

17 MR. MADISON: I AM, YOUR HONOR.

18 THIS IS THE LAST AREA.

19 Q YOU TOLD US YESTERDAY, THE REASON YOU SAID
20 WHAT YOU SAID HERE WAS BECAUSE OF THE NATURE OF THE
21 QUESTION?

09:20AM

22 MR. HELM: CUMULATIVE.

23 THE COURT: SUSTAINED.

24 MR. MADISON: IT'S PREFATORY, YOUR HONOR.

25 Q IF WE GO TO THE QUESTION THAT WAS ASKED, YOU
26 SAID YOU DIDN'T HAVE ANY AGREEMENTS IN TERMS OF
27 NON-COMPETE, EQUITY, STAKE, SUCCESSION, ET CETERA.

09:21AM

28 THAT'S WHAT YOU SAID WHAT YOU SAID,

1 RIGHT?

2 MR. HELM: CUMULATIVE.

3 THE COURT: SUSTAINED.

4 WE DID THIS ALL DAY YESTERDAY. WE DON'T
5 NEED ANY COMMENTS ON IT.

09:21AM

6 IF YOU HAVE A QUESTION YOU'D LIKE TO
7 ASK, FINE. OTHERWISE, WE'RE GOING TO WRAP IT UP,
8 MR. MADISON.

9 MR. MADISON: YES.

10 Q FIRST OF ALL, YOU HAVE GIVEN DIFFERENT
11 EXPLANATIONS FOR THIS STATEMENT AT DIFFERENT TIMES,
12 HAVEN'T YOU, SIR?

09:21AM

13 MR. HELM: ARGUMENTATIVE.

14 THE COURT: SUSTAINED.

15 BY MR. MADISON:

09:21AM

16 Q DO YOU RECALL TESTIFYING IN YOUR DEPOSITION
17 THAT THE REASON YOU GAVE THIS ANSWER, ONE OF THE
18 REASONS WAS THAT YOU DIDN'T HAVE A WRITTEN CONTRACT,
19 AND YOU WERE DIFFERENTIATING IN YOUR MIND BETWEEN A
20 WRITTEN CONTRACT AND SOME OTHER KIND OF CONTRACT?

09:21AM

21 MR. HELM: OBJECT TO THE FORM.

22 THE COURT: OVERRULED.

23 THE WITNESS: THAT'S TRUE, AS WELL.

24 MR. MADISON: OKAY.

25 Q BUT THAT'S NOT A REASON YOU TOLD US ABOUT
26 YESTERDAY, IS IT, SIR?

09:21AM

27 MR. HELM: ARGUMENTATIVE.

28 THE COURT: SUSTAINED.

1 BY MR. MADISON:

2 Q NOW THAT WE'VE LOOKED AT YOUR CONTRACT, ISN'T
3 IT, IN FACT, THE CASE, THAT IN AUGUST OF 2009, UNDER
4 THAT TWO-YEAR PERIOD FOLLOWING THE END OF 2007, YOU
5 ACTUALLY WERE UNDER A NON-COMPETE AND A
6 NON-SOLICITATION, SIR?

09:22AM

7 A NOT REALLY, BECAUSE I WAS TOLD THEY WERE
8 ILLEGAL.

9 AND I DON'T THINK -- I DON'T THINK I'M
10 UNDER ILLEGAL AGREEMENTS.

09:22AM

11 Q YOU WERE TOLD THE NON-COMPETE MIGHT BE
12 ILLEGAL; IS THAT YOUR TESTIMONY?

13 A YES.

14 Q BY WHOM, SIR? WHO TOLD YOU THAT?

15 A A LOT OF PEOPLE AT TCW TALKED ABOUT IT.

09:22AM

16 AND I -- I HAD A LAWYER TELL ME ABOUT
17 IT, TOO.

18 Q BUT THE NON-SOLICITATION, YOU DIDN'T BELIEVE
19 WAS INVALID, DID YOU, SIR?

20 A YES, I DID.

09:22AM

21 THIS DOESN'T SAY NON-SOLICITATION.

22 THE COURT: ALL RIGHT.

23 MR. MADISON, I'M REALLY BEING PATIENT
24 HERE.

25 MR. MADISON: YES, YOUR HONOR.

09:22AM

26 Q FINAL QUESTION ON THIS --

27 THE COURT: FINAL QUESTION, PERIOD.

28 MR. MADISON: YES.

1 Q WHAT IS ET CETERA? WHAT TERMS DID THAT COVER?

2 MR. HELM: LACKS FOUNDATION.

3 BY MR. MADISON:

4 Q IN YOUR MIND, WHEN YOU GAVE THIS ANSWER?

5 THE COURT: WHERE ARE WE LOOKING AT? 09:23AM

6 MR. MADISON: IT'S TOWARD THE END OF THAT
7 QUESTION. TOWARD THE BOTTOM OF THE SCREEN, YOUR HONOR.

8 THE COURT: ALL RIGHT. I'LL SUSTAIN THE
9 OBJECTION.

10 THANK YOU, MR. MADISON. 09:23AM

11 ANY REDIRECT MR. HELM?

12 MR. HELM: YES, YOUR HONOR.

13 THE COURT: LET ME JUST SAY -- I'M SURE WE ALL
14 KNOW THIS. BUT THE REDIRECT WILL BE LIMITED TO THE
15 SCOPE OF THE CROSS-EXAMINATION. AND ANY RECROSS WILL
16 BE LIMITED TO THE SCOPE OF THE REDIRECT. SO LET'S --
17 SO WE'RE ALL CLEAR ON THAT. 09:23AM

18 MR. HELM: THANK YOU, YOUR HONOR. I
19 APPRECIATE THAT. AND I WILL ADHERE TO THAT.

20 09:23AM

21 REDIRECT EXAMINATION +

22

23 MR. HELM: GOOD MORNING.

24 Q MR. GUNDLACH?

25 A GOOD MORNING. 09:24AM

26 Q GOOD MORNING, LADIES AND GENTLEMEN.

27 MR. MADISON ASKED YOU YESTERDAY ABOUT
28 STATEMENTS YOU HAD MADE TO TCW AFTER YOUR FIRING AND

1 THE FILING OF YOUR CROSS-COMPLAINT.

2 IN OTHER WORDS, HE ASKED YOU WHETHER YOU
3 HAD MADE STATEMENTS TO TCW ON CERTAIN SUBJECTS, BETWEEN
4 THE TIME YOU WERE FIRED AND THE TIME YOU FILED YOUR
5 CROSS-COMPLAINT.

09:24AM

6 DO YOU RECALL THAT?

7 MR. MADISON: OBJECTION, MISSTATES THE
8 QUESTION, ACTUALLY.

9 THE COURT: OVERRULED.

10 DO YOU RECALL THE QUESTION?

09:24AM

11 THE WITNESS: NO.

12 THE COURT: THEN WE DON'T HAVE A PROBLEM.

13 LET'S MOVE ON.

14 MR. HELM: LET ME ASK YOU IT THIS WAY, THEN.

15 Q AFTER YOU WERE FIRED, WERE YOU HAVING
16 CONVERSATIONS WITH PEOPLE AT TCW?

09:24AM

17 A NO.

18 Q WERE YOU REPRESENTED BY COUNSEL, STARTING
19 SHORTLY AFTER THE TIME THAT YOU WERE FIRED?

20 A YES.

09:24AM

21 Q WITHOUT DISCLOSING IN ANY WAY, COMMUNICATIONS
22 YOU HAD WITH COUNSEL, WAS IT YOUR UNDERSTANDING THAT
23 YOUR COUNSEL WAS HAVING DISCUSSIONS WITH TCW ABOUT
24 CLAIMS YOU MIGHT HAVE, DEFENSES YOU MIGHT HAVE TO THEIR
25 CLAIMS, AND SO FORTH?

09:25AM

26 MR. MADISON: OBJECTION. ASSERTIONS OF
27 PRIVILEGE.

28 AND THE COURT'S RULING ON -- MOTION IN

1 LIMINE.

2 THE COURT: SUSTAINED.

3 BY MR. HELM:

4 Q WELL, JUST IN GENERAL TERMS, DID YOU
5 UNDERSTAND YOUR COUNSEL WAS TALKING TO THEIR COUNSEL?

09:25AM

6 MR. HELM: THAT'S THE SAME QUESTION, YOUR
7 HONOR.

8 THE COURT: I'LL ALLOW THAT ANSWER.

9 AND THEN LET'S MOVE ON TO THE OTHER
10 TOPIC.

09:25AM

11 THE WITNESS: YES, OF COURSE.

12 BY MR. HELM:

13 Q NOW MR. MADISON ALSO ASKED YOU YESTERDAY ABOUT
14 WHETHER YOU TOLD GARY SHEDLIN THAT YOU COULD LEAVE
15 WHENEVER YOU WANTED TO.

09:25AM

16 DO YOU RECALL THAT?

17 A THAT, I REMEMBER, YES.

18 Q DID YOU DISCUSS WITH MR. SHEDLIN, THE
19 POSSIBILITY THAT YOU COULD LEAVE?

20 A I DON'T REMEMBER TALKING ABOUT THAT WITH HIM.

09:25AM

21 WHAT I TALKED ABOUT WAS HOW DEPENDENT
22 THE BUSINESS WAS ON ME. AND THEREFORE, A BUYER, A
23 THIRD-PARTY BUYER OF THE FIRM, WOULD PROBABLY NOT PAY
24 MUCH FOR MY BUSINESS, BECAUSE IF I, SAY, RETIRED, THEN
25 THEY WOULD BE NOT GETTING NEAR THE VALUE THEY MIGHT
26 HAVE HOPED FOR.

09:26AM

27 AND I -- SO IF I WALKED OUT THE DOOR, A
28 BUYER WOULD UNDERSTAND THE VULNERABILITY, AND DISCOUNT

1 WHAT THEY'D PAY FOR THE BUSINESS. AND THAT WAS A
2 PROBLEM, FOR ANALYZING THE VALUE OF THE BUSINESS.

3 THAT'S THE CONTEXT THAT THOSE STATEMENTS
4 WERE MADE IN.

5 Q DID THE POINT YOU WERE MAKING ABOUT HOW
6 DEPENDENT THE BUSINESS WAS ON YOU, DEPEND, IN YOUR
7 MIND, ON WHETHER YOU COULD LEAVE IMMEDIATELY, IN 2009,
8 OR WHETHER YOU MIGHT HAVE TO WAIT TILL 2011 -- TO
9 LEAVE?

09:26AM

10 MR. MADISON: OBJECTION, LEADING,
11 ARGUMENTATIVE.

09:26AM

12 THE COURT: SUSTAINED.

13 BY MR. HELM:

14 Q WHAT EXTENT, IF AT ALL, DID THE COMMENT YOU
15 WERE MAKING, DEPEND UPON THE TIMING YOU COULD LEAVE?

09:26AM

16 A IT WASN'T TIME DEPENDENT AT ALL.

17 Q WHY NOT?

18 A I WAS JUST PUTTING MYSELF IN THE SHOES OF
19 SOMEONE ANALYZING THE BUSINESS, TO MAYBE BUY IT.

20 I WOULD LOOK AT IT AND SAY, THIS IS
21 AWFULLY DEPENDENT UPON THIS ONE PERSON.

09:27AM

22 AND I ALSO TOLD SHEDLIN THAT I WASN'T
23 LIKELY TO COOPERATE WITH A THIRD-PARTY BUYER COMING IN.
24 THAT WAS GOING TO BE PROBLEMATIC, FOR THEM TO PAY A
25 HIGH PRICE.

09:27AM

26 Q DURING YOUR DISCUSSION WITH MR. SHEDLIN, DID
27 YOU MENTION THE POSSIBILITY THAT OTHER GROUPS AT TCW
28 MIGHT LEAVE?

1 A YES. IT WAS PART OF THE SAME POINT, THAT
2 THESE OTHER BUSINESSES WERE ALSO PEOPLE-DEPENDENT.

3 BLAIR THOMAS WAS ALREADY TALKING ABOUT
4 LEAVING.

5 MARK ATTANASIO WAS TALKING ABOUT
6 LEAVING.

09:27AM

7 THE BUYER WOULD HAVE THE SAME ANALYSIS
8 OF THOSE GROUPS, AS WELL.

9 Q YOU MENTIONED BLAIR THOMAS WAS DISCUSSING THE
10 POSSIBILITY OF LEAVING.

09:27AM

11 DID YOU UNDERSTAND WHETHER HE HAD A
12 CONTRACT?

13 A HE DEFINITELY HAD A CONTRACT.

14 Q NOW, MR. MADISON SHOWED YOU A PROVISION IN
15 YOUR 1989 AGREEMENT. IT WAS AT THE END, THAT TALKED
16 ABOUT, IF YOU AGREE TO AND ACCEPT THIS, PLEASE SIGN.

09:27AM

17 DO YOU RECALL THAT QUESTION?

18 A YES.

19 Q AT THE TIME THAT YOU SIGNED THE 1989
20 AGREEMENT, DID YOU ALREADY HAVE A HANDSHAKE DEAL WITH
21 TCW ABOUT THE TERMS OF THAT AGREEMENT?

09:28AM

22 A I DON'T KNOW.

23 Q AT THE TIME OF THE 1989 AGREEMENT, HAD TCW
24 ALREADY BEGUN PERFORMING UNDER THE NEW TERMS OF THIS
25 AGREEMENT, BEFORE THE OLD ONE WAS OVER?

09:28AM

26 A NO.

27 Q BEFORE YOU SIGNED THIS AGREEMENT, HAD PEOPLE
28 AT TCW SENT YOU E-MAILS SAYING HOW HAPPY THEY WERE WITH

1 THE NEW DEAL YOU ENTERED INTO?

2 A NO.

3 Q NOW MR. MADISON LOOKED AT SOME LANGUAGE IN
4 EXHIBIT 6, WHICH WAS THE 1992 AGREEMENT. THAT TALKED
5 ABOUT, THERE WAS A DEFINITION OF FEES, TALKING ABOUT
6 REVENUES DERIVED FROM ACCOUNTS.

09:28AM

7 DO YOU RECALL THAT?

8 A YES.

9 Q AND TALKED ABOUT THAT FEES RECEIVED WOULD BE
10 ALLOCATED IN A CERTAIN WAY.

09:29AM

11 DO YOU RECALL THAT?

12 A I REMEMBER THE WORD ALLOCATED, YES.

13 Q WAS IT YOUR UNDERSTANDING, UNDER THE 1992
14 AGREEMENT, THAT THERE WAS A SET OF RULES THAT GOVERN
15 WHEN THE MONEY WOULD GO INTO THE ACCOUNT DURING THE
16 TIME THAT YOU WERE -- THAT YOU WERE STILL WORKING AT
17 TCW?

09:29AM

18 MR. MADISON: OBJECTION. LEADING.

19 THE COURT: SUSTAINED.

20 MR. MADISON: THE DOCUMENT SPEAKS FOR ITSELF.

09:29AM

21 BY MR. HELM:

22 Q WELL, TO -- WHEN DID YOU THINK -- LET ME PUT
23 IT THIS WAY: WAS THERE A PROVISION IN THE AGREEMENT
24 THAT YOU THOUGHT DEALT WITH HOW YOU WOULD BE PAID UPON
25 YOUR TERMINATION?

09:29AM

26 A YES. AND THEN TO AGREEMENT, YES.

27 Q WHAT WAS YOUR UNDERSTANDING YOU WOULD BE PAID
28 UPON TERMINATION?

1 MR. MADISON: OBJECTION THAT'S PAROL EVIDENCE
2 GIVEN --

3 THE COURT: OVERRULED.

4 THE WITNESS: ALL ACCRUED COMPENSATION.

5 BY MR. HELM:

09:30AM

6 Q WAS IT YOUR UNDERSTANDING THAT WHAT YOU WOULD
7 RECEIVE IF YOU WEREN'T TERMINATED WAS THE SAME AS, OR
8 THE -- OR DIFFERENT, FROM WHAT YOU WOULD RECEIVE UPON
9 TERMINATION?

10 MR. MADISON: OBJECTION. LEADING AND
11 ARGUMENTATIVE.

09:30AM

12 THE COURT: SUSTAINED.

13 BY MR. MADISON:

14 Q WELL, DID YOU BELIEVE YOU WERE OWED ACCRUED
15 COMPENSATION DURING THE TERM OF THE CONTRACT, WHEN YOU
16 WERE STILL EMPLOYED THERE?

09:30AM

17 A NO. I WAS PAID ON A -- A -- A FOUR TIMES A
18 YEAR BASIS. THAT WAS DATE CERTAIN.

19 Q NOW, HE ALSO THEN SHOWED YOU, AT THE END OF
20 THE 92 AGREEMENT, A PROVISION THAT SAID, IF YOU AGREE
21 TO THESE TERMS, SIGN IT.

09:30AM

22 DO YOU RECALL THAT?

23 A YES.

24 Q AS OF THE TIME THAT YOU SIGNED THE 1992
25 AGREEMENT, HAD THERE BEEN -- HAD YOU RECEIVED E-MAILS
26 FROM TCW SAYING YOU'D ALREADY ENTERED INTO A NEW DEAL,
27 AND HOW HAPPY THEY WERE WITH THAT?

09:30AM

28 A NO.

1 Q HAD THEY ALREADY BEGUN PERFORMING IN
2 ACCORDANCE WITH THE NEW DEAL, BEFORE YOU SIGNED THAT
3 AGREEMENT?

4 A NO.

5 Q WOULD YOUR ANSWERS BE THE SAME WITH RESPECT TO
6 THE 1998 AGREEMENT?

09:31AM

7 A IT WOULD.

8 Q NOW, MR. MADISON DREW YOUR ATTENTION TO A
9 PROVISION IN THE '98 AGREEMENT ABOUT WHEN YOU COULD
10 SOLICIT CUSTOMERS OR EMPLOYEES.

09:31AM

11 DO YOU RECALL THAT?

12 A YES.

13 Q DO YOU RECALL -- DO YOU UNDERSTAND THERE'S ANY
14 CLAIM IN THIS LITIGATION THAT YOU VIOLATED THAT CLAUSE?

15 A I HAVEN'T HEARD ONE.

09:31AM

16 MR. MADISON: WELL, OBJECTION. YOUR HONOR,
17 THAT'S ARGUMENTATIVE, AND VAGUE AS TO CLAIM.

18 THE COURT: I'LL ALLOW HIS ANSWER TO STAND.

19 YOU CAN ASSERT THE CLAIMS YOU HAVE.

20 MR. MADISON: THANK YOU.

09:31AM

21 BY MR. HELM:

22 Q NOW MR. MADISON ASKED YOU ABOUT DISCUSSIONS
23 THAT YOU HAD WITH WAMCO ON THE SUBJECT OF -- OF A
24 CONTRACT.

25 TO WHAT EXTENT, IF AT ALL, DID YOU
26 DISCUSS WITH WAMCO, WHETHER YOU WOULD NEED TO REACH AN
27 AGREEMENT WITH SOC-GEN OR TCW BEFORE MOVING OVER TO
28 WAMCO, AS PART OF A MOVE, IF THAT WERE TO HAPPEN?

09:31AM

1 MR. MADISON: OBJECTION. HEARSAY, BEYOND THE
2 SCOPE.

3 THE COURT: SUSTAINED.

4 WELL, EXCUSE ME. I'LL ALLOW THAT.

5 THE WITNESS: THAT WAS A MAJOR PART OF THE
6 CONVERSATION I HAD WITH THEM, WAS THAT WE WOULD, FOR
7 CERTAIN, NEED TO HAVE A DEAL AGREED TO WITH TCW AND SG,
8 WITH THEIR COOPERATION.

09:32AM

9 BY MR. HELM:

10 Q NOW YOU'VE TESTIFIED THAT IF YOU WERE
11 TERMINATED, YOU BELIEVE THAT YOU WERE OWED YOUR ACCRUED
12 COMPENSATION; IS THAT RIGHT?

09:32AM

13 MR. MADISON: OBJECTION. LEADING,
14 ARGUMENTATIVE, CUMULATIVE.

15 THE COURT: OVERRULED.

09:32AM

16 THE WITNESS: YES.

17 BY MR. HELM:

18 Q AND SO, IF AT THE END OF -- SUPPOSE -- SUPPOSE
19 THE TERM OF THE CONTRACT WERE TO EXPIRE, AND THEY WERE
20 TO TERMINATE YOU BECAUSE THE CONTRACT EXPIRED.

09:32AM

21 DID YOU BELIEVE YOU WERE ENTITLED TO
22 ACCRUED COMPENSATION AT THAT TIME?

23 A YES.

24 Q NOW MR. MADISON ASKED YOU ABOUT WHAT YOU
25 UNDERSTOOD THE REASON TO BE FOR BEING ASKED TO SIGN A
26 DOCUMENT IN MAY AND JUNE OF 2007.

09:33AM

27 DO YOU RECALL THAT?

28 A YES.

1 Q TO WHAT EXTENT DID YOU BELIEVE YOU WERE
2 SIGNING A DOCUMENT TO MEMORIALIZE AN AGREEMENT THAT HAD
3 ALREADY BEEN MADE?

4 A THAT'S -- THAT'S WHAT WAS HAPPENING. YES. TO
5 MEMORIALIZE THE AGREEMENT THAT HAD ALREADY BEEN MADE,
6 THE FINAL ARRANGEMENT.

09:33AM

7 Q ALL RIGHT.

8 MR. HELM: NOTHING FURTHER, YOUR HONOR.

9 THE COURT: RE CROSS.

10

09:34AM

11 RE CROSS-EXAMINATION +

12

13 BY MR. MADISON:

14 Q YOU SAY TO MEMORIALIZE THE AGREEMENT THAT HAD
15 ALREADY BEEN MADE, YOU UNDERSTOOD TCW WAS ASKING YOU TO
16 SIGN A WRITTEN CONTRACT WITH ALL THOSE TERMS THAT WERE
17 IN THAT WRITTEN CONTRACT, DIDN'T YOU?

09:34AM

18 A YES.

19 Q AND WHAT YOU'RE DOING NOW, BASICALLY, IS
20 PICKING SOME OF THEM AND SAYING, I UNDERSTOOD THAT
21 THOSE APPLIED, EVEN THOUGH I NEVER SIGNED?

09:34AM

22 MR. HELM: ARGUMENTATIVE.

23 THE COURT: SUSTAINED.

24 BY MR. MADISON:

25 Q WELL, YOU SAY YOU HAD THESE DISCUSSIONS WITH
26 WAMCO.

09:34AM

27 BUT IS THE ANSWER THE SAME NOW, ABOUT
28 THIS NEGOTIATION, THAT YOU CAN'T TELL US WHO YOU HAD

1 THEM WITH?

2 MR. HELM: VAGUE AND AMBIGUOUS, ARGUMENTATIVE.

3 THE COURT: SUSTAINED.

4 MR. MADISON: CAN YOU GIVE--

5 THE COURT: JUST ASK.

09:34AM

6 BY MR. MADISON:

7 Q CAN YOU GIVE US ANY NAMES OF ANYONE AT WAMCO
8 THAT YOU TALKED ABOUT YOUR EMPLOYMENT CONTRACT WITH
9 TCW?

10 MR. HELM: VAGUE AND AMBIGUOUS.

09:34AM

11 THE COURT: CAN YOU ANSWER THAT QUESTION?

12 THE WITNESS: I TALKED ABOUT IT WITH

13 JIM HIRSCHMANN.

14 BY MR. MADISON:

15 Q ABOUT YOUR EMPLOYMENT CONTRACT YOU SAY YOU
16 HAVE?

09:35AM

17 A I DON'T KNOW -- I DON'T REMEMBER SPECIFICALLY
18 IF WE TALKED SPECIFICALLY ABOUT MY CONTRACT WITH TCW.

19 WE TALKED ABOUT HOW WE WOULD, IF WE WERE
20 GOING TO MAKE A DEAL, HOW WE WOULD GET IT DONE.

09:35AM

21 I SAID, WE WILL DO IT ON A NEGOTIATED
22 BASIS, SO WITH THEIR BUY-IN, WE DON'T HAVE TO WORRY
23 ABOUT CONTRACTUAL ARRANGEMENTS.

24 BY MR. MADISON:

25 Q YOU UNDERSTAND, IF YOU COULD IDENTIFY A NAME
26 AND THE PERSON WAS WORKING AT WAMCO IN PASADENA, WE
27 COULD ASK IF THAT PERSON WOULD COME IN COURT AND
28 TESTIFY?

09:35AM

1 MR. HELM: ARGUMENTATIVE.

2 THE COURT: SUSTAINED.

3 MR. MADISON, QUESTIONS.

4 MR. MADISON: COUPLE MORE QUESTIONS.

5 Q YOU NEVER SAID ANYTHING TO MR. SHEDLIN ABOUT
6 ANY EMPLOYMENT CONTRACT, DID YOU, SIR?

09:35AM

7 A HE DIDN'T ASK.

8 Q YOU NEVER SAID ANYTHING, DID YOU?

9 A NO.

10 HE WOULDN'T BRING UP TOPICS THAT HE
11 WASN'T ASKING ABOUT.

09:35AM

12 Q WOULDN'T YOU THINK, WITH ALL THE DISCUSSION
13 ABOUT POSSIBLY LEAVING, OR YOUR IMPORTANCE TO THE
14 COMPANY, AND ALL THE DIFFERENT SCENARIOS, THAT THAT
15 WOULD BE RELEVANT INFORMATION?

09:35AM

16 MR. HELM: ARGUMENTATIVE.

17 THE WITNESS: IF HE THOUGHT SO, HE WOULD HAVE
18 ASKED.

19 BY MR. MADISON:

20 Q YOU SAID THAT YOU DID NOT HAVE A HANDSHAKE
21 AGREEMENT ON THE PRIOR WRITTEN CONTRACTS THAT YOU DID
22 SIGN; IS THAT YOUR TESTIMONY?

09:36AM

23 A I THINK SO.

24 I -- I DON'T -- I DON'T REMEMBER HAVING
25 HANDSHAKE AGREEMENTS PRIOR, NO.

09:36AM

26 Q IF WE LOOK AT EXHIBIT 6 QUICKLY. THAT'S THE
27 ONE THAT FROM 1992.

28 IF WE JUST GO TO PAGE 2.

1 AND THAT WAS THE -- THAT WAS THE FIRST
2 YEAR OF THIS B AND G POOL, WASN'T IT?

3 A I DON'T THINK SO.

4 Q SO THE B --

5 A I THINK THE B AND G POOL WENT BACK TO '89.

09:36AM

6 Q EVEN IN THE ORIGINAL AGREEMENT?

7 A I THINK SO.

8 Q WHENEVER YOU FIRST SAW IT IN A WRITTEN
9 CONTRACT, IS IT YOUR TESTIMONY THAT THAT WAS THE FIRST
10 TIME YOU LEARNED ABOUT THAT CONCEPT?

09:36AM

11 MR. HELM: VAGUE AND AMBIGUOUS.

12 THE COURT: SUSTAINED.

13 BY MR. MADISON:

14 Q YOU NEGOTIATED THE AGREEMENTS BEFORE THEY WERE
15 PUT INTO WRITING, DIDN'T YOU, SIR?

09:36AM

16 A OF COURSE.

17 Q THAT'S WHAT YOU DID WITH EVERY ONE OF THESE
18 WRITTEN CONTRACTS THAT YOU SIGNED: THERE WAS
19 NEGOTIATION, AND THEN A CONTRACT WAS PREPARED, AND THEN
20 IT WAS SIGNED, RIGHT?

09:37AM

21 A OF COURSE.

22 Q THAT'S THE EXACT SAME THING THAT HAPPENED IN
23 2007?

24 MR. HELM: ARGUMENTATIVE.

25 THE WITNESS: NO, IT ISN'T.

09:37AM

26 MR. MADISON: ISN'T IT?

27 THE WITNESS: NO, IT ISN'T.

28 THE COURT: JUST A MINUTE. IF YOU WANT TO

1 FINISH AND ASK A QUESTION.

2 HE'LL MAKE OBJECTION. I'LL RULE ON IT.
3 AND YOU CAN ANSWER.

4 EVERYBODY CALM DOWN, HERE.

5 YOU ASK A QUESTION, MR. MADISON.

09:37AM

6 BY MR. MADISON:

7 Q EXACT SAME THING HAPPENED IN 2007; THERE WAS A
8 NEGOTIATION, AND THEN THERE WAS A WRITTEN CONTRACT,
9 THAT WAS PREPARED AND PROVIDED TO YOU?

10 MR. HELM: VAGUE AND AMBIGUOUS.

09:37AM

11 THE COURT: OVERRULED.

12 THE WITNESS: THAT PART HAPPENED.

13 BUT OTHER ASPECTS WERE DIFFERENT; IN
14 PARTICULAR, THE PERFORMANCE UNDER THE TERMS.

15 BY MR. MADISON:

09:37AM

16 Q WELL, THE ONE BIG DIFFERENCE IS THAT YOU
17 DIDN'T SIGN THAT CONTRACT; ISN'T THAT RIGHT, SIR?

18 MR. HELM: ARGUMENTATIVE.

19 THE COURT: SUSTAINED.

20 BY MR. MADISON:

09:37AM

21 Q WELL, WERE YOU EVER ONCE, AT TCW, PAID \$1 OF
22 FEES BEFORE TCW COLLECTED THAT FEE?

23 A YES.

24 Q WHEN WAS THAT?

25 A MULTIPLE TIMES. THEY WOULD -- THERE WERE
26 TIMES WHEN THE CLIENTS DIDN'T SEND THE MONEY IN. AND
27 THERE WERE ACCOUNTING GLITCHES AT TCW, AND THEY PAID ME
28 ANYWAY.

09:38AM

1 Q SO IF IT HAPPENED, IT WAS A GLITCH?

2 A MAYBE NOT A GLITCH.

3 BUT THEY PAID ME, MANY TIMES, WHEN THE
4 MONEY HADN'T COME IN.

5 Q GLITCH OR NO GLITCH?

09:38AM

6 A NO GLITCH.

7 Q DIDN'T YOU JUST SAY IT WASN'T A GLITCH --

8 MR. HELM: ARGUMENTATIVE.

9 THE COURT: HE SAID TWO THINGS, MR. MADISON.

10 NOW LET'S GO.

09:38AM

11 BY MR. MADISON:

12 Q IN 2007, THE NEGOTIATION CONTINUED ON, AS WE
13 SAW IN EXHIBIT 66, WITH THE RED LINE CHANGES.

14 THE NEGOTIATIONS WERE CONTINUING ABOUT
15 THE CONTRACT, WEREN'T THEY?

09:38AM

16 MR. HELM: BEYOND THE SCOPE, CUMULATIVE.

17 THE COURT: OVERRULED.

18 THE WITNESS: NOT ON WHAT I WAS GOING TO BE
19 PAID, HOW LONG I WOULD BE PAID IT FOR, AND WHAT THEY
20 COULD DO TO STOP PAYING IT.

09:39AM

21 Q SIR, YOU NEVER EVER RECEIVED \$1 OF INCENTIVE
22 FEES BEFORE THEY WERE ACTUALLY COLLECTED BY TCW, HAVE
23 YOU?

24 MR. HELM: BEYOND THE SCOPE.

25 THE COURT: SUSTAINED.

09:39AM

26 MR. MADISON: NOTHING FURTHER, YOUR HONOR.

27 THE COURT: ALL RIGHT.

28 MR. HELM: NOTHING FURTHER.

1 THE COURT: THANK YOU FOR YOUR TESTIMONY,
2 MR. GUNDLACH.

3 YOU MAY STEP DOWN.

4 MR. BRIAN: WE CALL BY VIDEOTAPE DEPOSITION,
5 OUR NEXT WITNESS, LYNWOOD BRADFORD, OTHERWISE KNOWN AS
6 WOODY BRADFORD.

09:39AM

7 (PAUSE) +
8

9 MR. BRIAN: WHAT'S HAPPENING?

10 MR. QUINN: HE'S ASKING IF I WANTED TO STAND
11 DURING THE VIDEO.

09:39AM

12 MR. MADISON: ACTUALLY I WAS ASKING HIM, ABOUT
13 HIS SUMMER SUIT.

14 MR. BRIAN: I ACCUSED HIM OF BORROWING THAT
15 FROM MR. MADISON.

09:40AM

16 MR. QUINN: IT WAS THE LAST CHANCE TO WEAR IT.
17

18 (VIDEO DEPOSITION PLAYED OF LYNWOOD BRADFORD.) +
19

20 MR. BRIAN: YOUR HONOR, AS OUR NEXT WITNESS,
21 WE'LL CALL MR. PHIL BARACH.

09:58AM

22 THE COURT: ALL RIGHT.

23 THE CLERK: SIR, RAISE YOUR RIGHT HAND TO BE
24 SWORN.

25
26 PHILIP BARACH +
27 CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN AND
28 TESTIFIED AS FOLLOWS:

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

5
6 THE WITNESS: I DO.

7 THE CLERK: THANK YOU. PLEASE BE SEATED.

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

10 THE WITNESS: PHILIP BARACH, B-A-R-A-C-H.

11 MR. BRIAN: I'LL WAIT A MOMENT, WHILE JOANETTE
12 PASSES OUT THE BINDERS.

13 THE COURT: GOOD MORNING, MR. BARACH.

14 WELCOME BACK.

15 THE WITNESS: GOOD MORNING, YOUR HONOR.

16 THANK YOU.

17
18 DIRECT EXAMINATION +

19
20 BY MR. BRIAN:

21 Q GOOD MORNING MR. BARACH?

22 A GOOD MORNING.

23 Q GOOD MORNING, LADIES AND GENTLEMEN.

24 JUST REMIND THE JURY, WHAT'S YOUR
25 POSITION AT DOUBLELINE?

26 A I'M PRESIDENT OF DOUBLELINE.

27 Q BEFORE THAT YOU WORKED AT TCW; IS THAT RIGHT?

28 A THAT'S CORRECT.

09:58AM

09:59AM

09:59AM

09:59AM

09:59AM

1 Q HOW LONG DID YOU WORK AT TCW?

2 A I WORKED AT TCW FROM 1987 TO DECEMBER OF 2009.

3 Q DID YOU HAVE ANY EXPERIENCE IN THE FIXED
4 INCOME INVESTMENT AREA, UP TO, PRIOR TO WORKING AT
5 DOUBLELINE?

10:00AM

6 A YES. I DID.

7 Q TELL US ABOUT THAT EXPERIENCE.

8 A I STARTED MY CAREER IN 1977 AT NATIONAL CITY
9 BANK IN CLEVELAND, OHIO, AS A BOND ANALYST. AND AFTER
10 A COUPLE YEARS, I DECIDED I DIDN'T LIKE THE COLD
11 WEATHER IN CLEVELAND, AND I APPLIED FOR AND GOT A JOB
12 AT THE CITY OF SACRAMENTO.

10:00AM

13 ULTIMATELY BECAME ASSISTANT CITY
14 TREASURER OF THE CITY OF SACRAMENTO, CALIFORNIA.

15 THEN I MOVED TO THE CALIFORNIA EMPLOYEES
16 RETIREMENT SYSTEM, AND ULTIMATELY BECAME THE CHIEF
17 INVESTMENT OFFICER FOR FIXED INCOME FOR CALIFORNIA
18 PERS. WHICH AT THE TIME, WAS THE LARGEST FIXED INCOME
19 PORTFOLIO IN THE COUNTRY.

10:00AM

20 WHEN I WAS THERE, I SPECIALIZED A LOT IN
21 MORTGAGE-BACKED SECURITIES. IN FACT, I CREATED THE
22 FIRST NON-GOVERNMENTAL COLLATERALIZED MORTGAGE
23 OBLIGATION, USING CALPERS PORTFOLIO.

10:00AM

24 FROM THERE I WAS RECRUITED BY --
25 RECRUITED BY ELI BROAD, B-R-O-A-D, THE CEO OF SUN
26 AMERICA, AND BECAME THE CHIEF INVESTMENT OFFICER FOR
27 SUN AMERICA, THE INSURANCE COMPANY.

10:00AM

28 AND FROM THERE, I WENT OVER TO TRUST

1 COMPANY OF THE WEST IN 1987.

2 Q ALL TOLD, HOW MANY YEARS OF EXPERIENCE HAVE
3 YOU HAD, MANAGING MONEY IN THE FIXED INCOME AREA?

4 A ABOUT 34 YEARS.

5 Q HOW OLD ARE YOU?

10:01AM

6 A 59.

7 Q VERY GOOD AGE.

8 WHO ARE THE OTHER PRINCIPALS AND
9 FOUNDING MEMBERS OF DOUBLELINE?

10 A OF COURSE, YOU HAVE JEFFREY GUNDLACH, YOU'VE
11 MET.

10:01AM

12 THERE'S ALSO LOU LUCIDO, WHO WAS HERE
13 TODAY, JOEL DAMIANI AND JOEL GALLIGAN.

14 Q WHAT DOES IT MEAN, TO BE A FOUNDING MEMBER OF
15 DOUBLELINE? DOES THAT MEAN YOU PUT MONEY IN, OR WHAT?

10:01AM

16 A THESE ARE PEOPLE WHO PUT MONEY IN AND WERE
17 DEEMED TO BE VERY IMPORTANT TO THE STARTING A
18 FOUNDATION OF THE BUSINESS.

19 Q NOW, OTHER THAN MR. GUNDLACH, OR ANY OF THE
20 OTHER FOUNDING MEMBERS OF DOUBLELINE, FIRED BY TCW?
21 WERE THEY FIRED?

10:01AM

22 A NO, THEY WERE NOT.

23 Q DID THEY ALL COME FROM TCW?

24 A YES.

25 Q DID THEY LEAVE VOLUNTARILY?

10:01AM

26 A YES, THEY DID.

27 Q LET'S GO BACK TO DECEMBER 4TH, 2009.

28 WE'VE HEARD TESTIMONY FROM SOME FOLKS

1 THAT IN THE LATE AFTERNOON OF THAT DAY, THEY WENT DOWN
2 TO A PLACE CALLED MAGNOLIA'S, AT THE FOOT OF THE TCW
3 BUSINESS.

4 DID YOU GO DOWN THERE THAT DAY?

5 A NO, I DID NOT. 10:02AM

6 Q WHAT DID YOU DO THAT NIGHT?

7 A WELL, DURING THE COURSE OF THAT DAY, I HAD
8 SOME MEETINGS WITH VARIOUS EXECUTIVES AT TCW, AS WELL
9 AS PEOPLE AT MET WEST.

10 AND AFTERWARDS, I JUST DROVE HOME, AND I 10:02AM
11 WENT HOME AND HAD DINNER, TALKED TO MY WIFE, READ THE
12 PAPER.

13 AND THEN I STARTED GETTING SOME CALLS
14 FROM SOME CLIENTS.

15 Q TELL ME ABOUT, TELL ME ONE OF THE CLIENTS, 10:02AM
16 MAJOR CLIENT, YOU GOT A CALL FROM?

17 A ONE OF THE CLIENTS THAT CALLED WAS AT
18 9:00 P.M. ON A FRIDAY NIGHT, WAS FORD FOUNDATION. AND
19 I WAS SORT OF SURPRISED, BECAUSE THEY'RE LOCATED ON THE
20 EAST COST, SO IT'S MIDNIGHT OVER THERE. 10:02AM

21 SO OBVIOUSLY, I SURMISED THE INDIVIDUAL
22 WAS VERY CONCERNED -- IF HE'S CALLING ME.

23 MR. QUINN: OBJECTION. SURMISED.

24 THE COURT: JUST ANSWER THE QUESTIONS.

25 I'M PUSHING EVERYBODY A LITTLE BIT. WE 10:03AM
26 WANT TO MOVE RIGHT ALONG.

27 THE WITNESS: SURE.

28 ///

1 BY MR. BRIAN:

2 Q WITHOUT GETTING INTO THE CONVERSATION, THE
3 GENERAL SUBJECT MATTER, WHAT WAS THE GENERAL SUBJECT
4 MATTER THEY RAISED?

5 MR. QUINN: OBJECTION. HEARSAY. 10:03AM

6 THE COURT: SUSTAINED.

7 MR. BRIAN: OKAY.

8 Q TELL ME ABOUT THE NEXT MORNING, DECEMBER 5TH.
9 IT'S A SATURDAY.

10 WHAT DID YOU DO THAT MORNING? 10:03AM

11 A I WENT OVER TO JEFFREY GUNDLACH'S HOUSE.

12 Q HOW DID IT HAPPEN YOU ENDED UP OVER THERE?

13 A THERE WAS A MEETING THAT WAS SET UP. I HEARD
14 ABOUT IT, I BELIEVE, FROM LOU LUCIDO, CALLED ME OR
15 E-MAILED ME. 10:03AM

16 I THINK IT WAS AT 9:00 A.M. SATURDAY
17 MORNING, AT HIS HOME.

18 Q SO YOU WENT OVER THERE.

19 WAS ANYBODY ELSE THERE, BESIDES LOU AND
20 MR. GUNDLACH? 10:03AM

21 A YES. THERE WERE A NUMBER OF PEOPLE THERE.

22 Q DO YOU REMEMBER WHO WAS THERE?

23 A JOEL GALLIGAN WAS THERE. JOEL DAMIANI WAS
24 THERE. CRIS SANTA ANA WAS THERE. JEFF MAYBERRY WAS
25 THERE. GREG WARD WAS THERE. I BELIEVE THAT
26 VITALY LIBERMAN WAS THERE. 10:03AM

27 CLAUDE HERB EVENTUALLY SHOWED UP, AND
28 FEW OTHER PEOPLE I DON'T REMEMBER. BUT THERE WERE A

1 LOT OF PEOPLE THERE.

2 Q AGAIN, WHAT WAS THE GENERAL SUBJECT MATTER OF
3 DISCUSSION AT THAT MEETING?

4 MR. QUINN: OBJECTION. HEARSAY.

5 MR. BRIAN: THAT GOES TO STATE OF MIND, YOUR
6 HONOR.

10:04AM

7 THE COURT: OVERRULED.

8 THE WITNESS: WELL, IT WASN'T REALLY A SUBJECT
9 MATTER. I THINK PEOPLE WERE SORT OF IN A SORT OF
10 DISBELIEVED --

10:04AM

11 MR. QUINN: OBJECTION. NONRESPONSIVE.

12 MR. BRIAN: JUST --

13 THE COURT: THE GENERAL SUBJECT MATTER.

14 THE WITNESS: GENERAL SUBJECT, WHAT ARE WITH
15 HE GOING TO DO.

10:04AM

16 MR. BRIAN: OKAY.

17 Q WHAT WERE THE OPTIONS THAT WERE THROWN ON THE
18 TABLE?

19 MR. QUINN: OBJECTION. HEARSAY, STATE OF MIND
20 TO -- THIS IS NOT RELEVANT, YOUR HONOR.

10:04AM

21 THE COURT: SUSTAINED.

22 BY MR. BRIAN:

23 Q LET ME TELL YOU THIS:

24 FROM YOUR OBSERVATIONS AND
25 DISCUSSIONS AT THAT MEETING, WAS
26 THERE SOME GRAND PLAN IN PLACE,
27 READY TO OPEN THE DOORS TO A NEW
28 BUSINESS?

10:04AM

1 MR. QUINN: OBJECTION.

2 THE COURT: OVERRULED.

3 MR. QUINN: SPECULATION. OPINION.

4 THE COURT: OVERRULED.

5 THE WITNESS: NO.

10:04AM

6 BY MR. BRIAN:

7 Q DID ANYONE PRESENT AT THAT DECEMBER 5TH
8 MEETING, TO YOUR KNOWLEDGE, HAVE ANY EXPERIENCE
9 STARTING AN ASSET MANAGEMENT --

10 MR. QUINN: OBJECTION. THIS IS OUTSIDE THE
11 SCOPE OF THEIR CASE.

10:04AM

12 MR. BRIAN: IT'S ALSO A DEFENSE, YOUR HONOR.

13 MR. QUINN: THIS IS NOT ABOUT THE CONTRACT.

14 MR. BRIAN: IT'S OUR DEFENSE.

15 THE COURT: THEY ARE PUTTING ON THEIR DEFENSE
16 TO THEIR CASE, ARE THEY NOT?

10:05AM

17 MR. QUINN: THEY ARE. GOOD POINT.

18 THE COURT: I'M GLAD MR. BRIAN CAME UP WITH
19 IT. I MIGHT HAVE MISSED IT.

20 MR. QUINN: I'M SORRY, YOUR HONOR, IT WAS A
21 BRAIN --

10:05AM

22 MR. BRIAN: WE ARE PUTTING ON A DEFENSE.

23 THE COURT: GO AHEAD.

24 MR. BRIAN: I AM TRYING TO GO QUICKLY.

25 THE COURT: THAT'S ALL RIGHT.

10:05AM

26 MR. BRIAN: WE'RE ALL READY TO GET TO THE END,
27 I KNOW, ALL OF US.

28 Q TO YOUR KNOWLEDGE, DID ANYONE PRESENT AT THAT

1 MEETING HAVE ANY EXPERIENCE STARTING AN ASSET
2 MANAGEMENT BUSINESS?

3 A NO.

4 Q OKAY.

5 DID THAT SUBJECT COME UP AT THE MEETING?

10:05AM

6 A YES, IT DID.

7 Q AND AT SOME POINT IN THE MEETING, DID

8 MR. GUNDLACH PROPOSE, MAYBE WE SHOULD START A BUSINESS?

9 A YES, HE DID.

10 Q OKAY.

10:05AM

11 AND DID PEOPLE RESPOND TO IT AT THE
12 MEETING?

13 A YES, THEY DID.

14 Q AND HOW DID YOU RESPOND?

15 A WELL, I SAID, I HAD SOME RESERVATIONS. I
16 WASN'T SURE I WANTED TO GO FORTH WITH AN ENDEAVOR OF
17 THAT MAGNITUDE. AND I HAD SOME RESERVATIONS ABOUT IT.

10:05AM

18 BUT ULTIMATELY, I SAID I WANTED TO.

19 Q AND DID YOU NEGOTIATE WITH MR. GUNDLACH, AT
20 THAT ACTUAL MEETING, AS TO WHAT YOUR SHARE MIGHT BE,
21 AND WHAT YOU MIGHT INVEST, THAT SORT OF THING?

10:06AM

22 A YES, I DID.

23 Q DID YOU ARRIVE AT AN UNDERSTANDING?

24 A YES.

25 Q GENERALLY, WHAT WAS IT?

10:06AM

26 A MY UNDERSTANDING WAS, 25 PERCENT OF THE
27 PORTION OF THE COMPANY THAT WAS RETAINED BY EMPLOYEES.

28 Q DID YOU PUT SOME MONEY INTO IT?

1 A YES, I DID.

2 Q HOW MUCH DID YOU PUT IF?

3 A ABOUT \$5 MILLION.

4 Q NOW, AS OF THE DECEMBER 5TH MEETING AT
5 MR. GUNDLACH'S HOUSE, DID THIS NEW COMPANY THAT WAS IN
6 YOUR MIND, HAVE ANY CLIENTS?

10:06AM

7 A NO, IT DID NOT.

8 Q DID YOU DISCUSS A NAME?

9 A NO.

10 Q HAD YOU EVER HEARD, YOURSELF, OF THE NAME
11 DOUBLELINE, AS OF DECEMBER 5TH, 2009?

10:06AM

12 A NO, I DID NOT.

13 Q DID OTHERS WHO WERE PRESENT AT THAT MEETING
14 ALSO NEGOTIATE AND GET OWNERSHIP SHARES IN THE NEW
15 COMPANY?

10:07AM

16 A NO, THEY DID NOT.

17 Q DID THEY EVENTUALLY GET NEW SHARES?

18 A -- NEW SHARES, YES.

19 Q WHO DID?

20 A THE PRINCIPALS: JOEL DAMIANI, LOU LUCIDO AND
21 JOE GALLIGAN.

10:07AM

22 Q IS CRIS SANTA ANA AN OWNER OF DOUBLELINE?

23 A NO, HE'S NOT.

24 Q IS BARBARA VAN EVERY AN OWNER OF DOUBLELINE?

25 A NO.

10:07AM

26 Q IS MAYBERRY AN OWNER OF DOUBLELINE?

27 A NO.

28 Q DOES DOUBLELINE CURRENTLY OFFER EQUITY TO ITS

1 EMPLOYEES?

2 A AT THIS POINT IN TIME, NO.

3 BUT -- IT'S UNDER CONTEMPLATION.

4 Q IN YOUR -- PRIOR SHORT APPEARANCE HERE, YOU
5 DISCUSSED CONVERSATIONS WITH MR. STERN AND/OR MR. DAY
6 WHERE THEY ASKED YOU TO STAY AT TCW.

10:07AM

7 DID THEY OFFER YOU A COMPENSATION
8 PACKAGE, AS PART OF THAT OFFER?

9 A YES. BROADLY SPEAKING, YES.

10 Q WHO OFFERED THAT?

10:07AM

11 A MR. STERN.

12 Q GENERALLY, WHAT WAS THAT OFFER?

13 A WELL, THAT OFFER, WHEN HE CAME TO MY HOUSE
14 SATURDAY NIGHT, IT WAS A PERCENTAGE OF THE REVENUES OF
15 THE FIXED INCOME GROUP, INCLUDING THE ASSETS OF
16 MET WEST.

10:08AM

17 IT WAS, I BELIEVE, 10 PERCENT OF THE
18 GROSS REVENUE.

19 AND CONSIDERING THAT THE FACT THAT
20 ASSETS MIGHT LEAVE, IT HAD A MINIMUM FLOOR GUARANTEE OF
21 10 MILLION PER ANNUM.

10:08AM

22 MR. STERN, SAID, WELL, WE CAN DO A DEAL
23 FOR SIX YEARS. AND HE SAID, IF YOU WANTED TO LEAVE
24 AFTER THREE YEARS, YOU COULD LEAVE AFTER THREE YEARS,
25 AND JUST WORK PARTIALLY FOR THE -- REMAINING THREE
26 YEARS OF THAT TIME PERIOD.

10:08AM

27 Q DID HE OFFER YOU A NEW JOB TITLE?

28 A YES.

1 Q WHAT DID HE OFFER?

2 A HE OFFERED ME THE TITLE OF CO-CHIEF INVESTMENT
3 OFFICER AND VICE CHAIRMAN OF TCW.

4 Q AND I TAKE IT YOU DECIDED TO RESIGN?

5 A YES, I DID.

10:08AM

6 Q AND WHY?

7 A WELL, FOR A NUMBER OF REASONS.

8 BUT PROBABLY THE MOST IMPORTANT REASON
9 IS THAT I HAD ALREADY REACHED AN AGREEMENT WITH
10 MR. GUNDLACH THAT MORNING.

10:08AM

11 AND ONCE I REACHED AN AGREEMENT TO DO A
12 DEAL, WE SHOOK ON IT, HUGGED ON IT. THE DEAL WAS DONE.

13 Q AND HOW DID YOU DO AT DOUBLELINE, FINANCIALLY,
14 IN 2010, COMPARED TO WHAT MR. STERN OFFERED YOU?

15 A I MADE QUITE LESS THEN 1 PERCENT THAN WHAT I
16 WOULD HAVE MADE AT TCW, HAD I STAYED.

10:09AM

17 Q NOW, WAS THERE ANOTHER MEETING THE NEXT DAY,
18 DECEMBER 6TH?

19 A YES, THERE WAS.

20 Q AND SOME OF THE SAME PARTICIPANTS?

10:09AM

21 A FEW OF THEM.

22 Q SO BY THE END OF THAT WEEKEND, DECEMBER 6TH --
23 5TH AND 6TH, WAS THERE A NEW BUSINESS UP AND RUNNING?

24 A NO, THERE WAS NOT.

25 Q DID YOU HAVE ANY CAPABILITY TO SERVE CLIENTS?

10:09AM

26 A NO. NONE WHATSOEVER.

27 Q DID YOU HAVE OFFICE SPACE READY TO MOVE INTO?

28 A NO, WE DID NOT.

1 Q DID YOU EVEN KNOW, YOURSELF, WHAT SOME ENTITY
2 CALLED ABLE GRAPE EVEN WAS?

3 A NO. I HADN'T HEARD OF IT AT THAT TIME.

4 Q DID ANYONE TELL YOU THAT THERE WAS A LEASE
5 READY TO BE SIGNED IN CENTURY CITY?

10:09AM

6 A NO.

7 Q NOW EVENTUALLY, YOU MOVED IN WITH SOME OFFICE
8 SPACE, DOWNTOWN LOS ANGELES, RIGHT?

9 A THAT'S CORRECT.

10 Q HOW DID YOU GO ABOUT GETTING THAT?

10:09AM

11 A I THINK ON MONDAY OR SO, COUPLE PEOPLE,
12 LOU LUCIDO AND VINCE FIORILLO, PEOPLE COME OVER, WERE
13 SORT OF TASKED WITH THE JOB OF FINDING SOME SPACE.

14 AND THEY KNEW SOMEONE WHO WAS A BROKER,
15 AND FOUND SOME SORT OF THAT TEMPORARY RENTED SPACE AT
16 U.S. BANK TOWER, SPACE YOU COULD RENT FOR A DAY OR WEEK
17 OR MONTH, SORT OF FULLY FURNISHED OFFICES.

10:10AM

18 Q HOW DID THEY PAY FOR IT?

19 A I THINK HE PUT IT ON HIS CREDIT CARD.

20 Q ABOUT HOW LONG DID YOU STAY IN THAT SPACE?

10:10AM

21 A WE WERE IN THAT SPACE ABOUT 2-1/2 WEEKS, MAYBE
22 THREE WEEKS OR SO.

23 Q AND OVER THE NEXT -- THAT TWO, 2-1/2 WEEKS,
24 DID MORE EMPLOYEES START TO COME FROM TCW?

25 A YEAH. PEOPLE WOULD JUST SORT OF SHOW UP EVERY
26 DAY.

10:10AM

27 Q LET ME SHOW YOU AN EXHIBIT IT'S ALREADY IN
28 EVIDENCE, 5224. IT SHOULD BE IN THAT BLACK BINDER.

1 IF YOU COULD TURN TO PAGE 13, DENNIS.

2 COULD YOU PUT UP PAGE 13?

3 MR. QUINN: YOUR HONOR, I OBJECT ON
4 FOUNDATION.

5 THIS WITNESS, THERE'S NO EVIDENCE THIS
6 WITNESS HAS EVER SEEN THIS DOCUMENT BEFORE.

10:11AM

7 THE COURT: I HAVE A QUESTION, WHERE WE ARE
8 GOING.

9 MR. BRIAN: MY INTENTION IS TO GO THROUGH THE
10 LIST AND HAVE HIM IDENTIFY WHICH ONES CAME TO
11 DOUBLELINE.

10:11AM

12 MR. QUINN: HE CAN DO THAT WITHOUT USING A
13 DOCUMENT THE WITNESS HAS NO CONNECTION OF.

14 THE COURT: YOU CAN PUT THAT DOCUMENT IN FRONT
15 OF YOU, AND IT MAY REFRESH HIS RECOLLECTION.

10:11AM

16 THE DOCUMENT'S IN EVIDENCE. IT'S NOT
17 REALLY AN ISSUE. BUT YOU CAN ASK HIM QUESTIONS.

18 MR. BRIAN: EITHER WAY, I'LL JUST TICK OFF THE
19 LIST, AND ASK HIM WHO WENT TO DOUBLELINE.

20 THE COURT: YOU MAY DO THAT.

10:11AM

21 MR. BRIAN: OKAY.

22 Q FIRST PERSON ON PAGE 13 IS MR. BARACH.

23 I ASSUME YOU WENT TO DOUBLELINE?

24 A YES.

25 Q JOEL DAMIANI, DID HE GO DO DOUBLELINE?

10:11AM

26 A YES.

27 Q HE IS ALSO A FOUNDER?

28 A YES.

1 Q JOE GALLIGAN?

2 A YES.

3 Q VITALY LIBERMAN?

4 A YES.

5 Q LOU LUCIDO?

10:11AM

6 A YES.

7 Q VINCE FI- -- I ALWAYS FORGET HOW TO PRONOUNCE

8 HIS NAME --

9 A FIORILLO.

10 Q VINCE FIORILLO, HE WENT TO DOUBLELINE?

10:12AM

11 A YES.

12 Q GO TO PAGE 14.

13 SAM GARZA, DID HE GO TO DOUBLELINE?

14 A YES.

15 Q KEN SHINODA?

10:12AM

16 A YES.

17 Q CRIS SANTA ANA?

18 A YES.

19 Q JEFF MAYBERRY?

20 A YES.

10:12AM

21 Q HOW ABOUT JONATHAN MARCUS?

22 A HE DID NOT.

23 Q WHAT AREA WAS HE IN?

24 A HE WAS IN THE I.T. DEPARTMENT.

25 Q TO YOUR KNOWLEDGE, DID HE STAY AT TCW?

10:12AM

26 A YES. TO MY KNOWLEDGE, HE DID.

27 Q AND DAN KALE, HE STAYED AT TCW, CORRECT?

28 A CORRECT.

1 Q HE WAS ALSO IN THE I.T. DEPARTMENT?

2 A CORRECT.

3 Q SUSAN NICHOLS, DID SHE JOIN DOUBLELINE?

4 A YES, SHE DID.

5 Q TURN TO PAGE 16. CLAUDE ERB, HE HAD AN

10:12AM

6 INTEREST.

7 DID HE COME TO DOUBLELINE FOR A WHILE?

8 A CAME TO DOUBLELINE FOR A FEW DAYS.

9 Q THEN WHAT DID HE DO?

10 A HE WENT BACK TO TCW.

10:12AM

11 Q GREG WARD WAS AT DOUBLELINE FOR A WHILE?

12 A YES.

13 Q ERIC ARENTSEN?

14 A HE NEVER CAME.

15 Q AND DAVE KENNEDY?

10:12AM

16 A HE CAME.

17 Q YOU CAN PUT THAT DOWN, DENNIS.

18 WE HEARD ABOUT A GENTLEMEN NAMED

19 BING BING YU, FROM MR. KALE.

20 DID HE COME TO DOUBLELINE?

10:13AM

21 A NO, HE DID NOT.

22 Q THE EMPLOYEES THAT JOINED DOUBLELINE FROM TCW,
23 DID YOU THE FOLKS, THE FOUNDERS, REACH OUT TO THEM, OR
24 DID THEY REACH OUT TO YOU, OR A LITTLE BIT OF BOTH?

25 A SORT OF A COMBINATION OF BOTH.

10:13AM

26 PRETTY UNSTRUCTURED PEOPLE CALL UP, AND
27 WE CONTACT SOME PEOPLE. AND THEY'D CALL AND SAY,
28 WHAT'S HAPPENING?

1 AND SORT OF ULTIMATELY, PEOPLE, IN MY
2 MIND, JUST SORT OF SHOWED UP IN THE OFFICE.

3 Q APPROXIMATELY HOW MANY EMPLOYEES DOES
4 DOUBLELINE HAVE NOW?

5 A 55.

10:13AM

6 Q AND IF YOU KNOW, APPROXIMATELY HOW MANY OF
7 THOSE CAME FROM DOUBLELINE?

8 A ABOUT 45.

9 MR. QUINN: TCW?

10 MR. BRIAN: I'M SORRY.

10:13AM

11 Q CAME FROM TCW?

12 A 45.

13 Q DID SOME OF THOSE 45 PEOPLE WHO CAME FROM TCW
14 AND JOINED DOUBLELINE, COME FROM SOMETHING OTHER THAN
15 THE M.B.S. GROUP?

10:14AM

16 A YES.

17 Q CAN YOU GIVE ME AN EXAMPLE?

18 A LUZ PADILLA.

19 Q WHO'S THAT?

20 A SHE WAS A PORTFOLIO MANAGER FOR THE MORTGAGE
21 MARKETS FIXED INCOME GROUP. SHE AND HER TEAM CAME OVER
22 TO DOUBLELINE FROM TCW.

10:14AM

23 MR. BRIAN: WOULD THIS BE A CONVENIENT
24 STOPPING POINT?

25 THE COURT: YES. WE'LL TAKE OUR MORNING
26 RECESS, LADIES AND GENTLEMEN.

10:14AM

27 20 MINUTES.

28 ///

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

2

3

THE COURT: ANY MATTER ANYBODY WANTS TO
4 DISCUSS?

5

MR. QUINN: ONE THING OFF THE RECORD AT
6 SIDE-BAR.

10:15AM

7

THE COURT: SURE.

8

9

(RECESS.)

10

10:15AM

11

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

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

14
15 THE COURT: PLEASE HAVE A SEAT, MR. BARACH.

10:39AM

16 THE WITNESS: THANK YOU, YOUR HONOR.

17 THE COURT: ALL MEMBERS OF OUR JURY ARE
18 PRESENT, AS ARE COUNSEL.

19 MR. BRIAN, YOU MAY CONTINUE YOUR DIRECT
20 EXAMINATION OF MR. BARACH.

10:39AM

21
22
23 DIRECT EXAMINATION

24
25 BY MR. BRIAN:

26 Q. MR. BARACH, ARE YOU FAMILIAR WITH A COMPANY
27 KNOWN AS OAKTREE CAPITAL?

28 A. YES, I AM.

1 Q. AND DID THERE COME A TIME --

2 WELL, LET'S GO BACK. DECEMBER 5, 6, WAS
3 A SATURDAY, SUNDAY?

4 A. THAT'S CORRECT.

5 Q. SO DECEMBER 7, 2009, WAS A MONDAY?

10:39AM

6 A. RIGHT.

7 Q. DID THERE COME A TIME THAT WEEK, THE WEEK OF
8 DECEMBER 7TH, THAT YOU HAD CONVERSATIONS WITH OAKTREE
9 CAPITAL PEOPLE?

10 A. YES, I DID.

10:40AM

11 Q. HOW DID THAT COME ABOUT?

12 A. I THINK JEFFREY GOT A CALL, AND HE ASKED ME TO
13 CONTACT THE PEOPLE AT OAKTREE, BECAUSE I HAD A VERY
14 GOOD RELATIONSHIP WITH THEM.

15 Q. AND DID IT MAKE SENSE TO YOU TO CONTACT
16 OAKTREE?

10:40AM

17 A. IT SOUNDED LIKE A FABULOUS IDEA. I WONDERED
18 WHY I HADN'T THOUGHT OF IT MYSELF.

19 Q. AND DID YOU MAKE CONTACT WITH THE PEOPLE AT
20 OAKTREE?

10:40AM

21 A. YES, I DID.

22 Q. WHO DID YOU CALL?

23 A. I CALLED BRUCE KARSH, WHO'S THE PRESIDENT OF
24 THE COMPANY.

25 AND I KNEW BRUCE KARSH BECAUSE WE WORKED
26 TOGETHER IN THE MID 1980S AT SUN AMERICA. AND ALSO AT
27 TCW, WE WERE THERE AT THE SAME TIME.

10:40AM

28 Q. AND WHEN, DURING THAT WEEK OF DECEMBER 7TH,

1 DID YOU CALL BRUCE KARSH?

2 A. IT WAS A TUESDAY.

3 Q. THAT'S DECEMBER 8TH?

4 A. CORRECT.

5 Q. AND WHAT HAPPENED AS A RESULT OF THE CALL?

10:40AM

6 A. AS A RESULT OF THAT CALL WE --

7 THE REPORTER: I'M SORRY, COULD YOU SLOW DOWN
8 A BIT, PLEASE.

9 MR. BRIAN: THE JUDGE HAS ASKED US TO MOVE
10 QUICKLY.

10:40AM

11 THE COURT: THERE'S A BALANCE. WE CAN'T MOVE
12 AT ALL IF WENDY STOPS.

13 THE WITNESS: AS A RESULT OF THAT PHONE CALL,
14 WE SET UP A MEETING THE NEXT DAY, WEDNESDAY, TO DISCUSS
15 THE ISSUE IN GREATER DETAIL.

10:41AM

16 Q. BY MR. BRIAN: OKAY. SO THAT WOULD BE
17 DECEMBER 9TH?

18 A. CORRECT.

19 Q. DID YOU ATTEND THAT MEETING?

20 A. YES, I DID.

10:41AM

21 Q. WAS IT AT OAKTREE'S OFFICES?

22 A. YES, IT WAS.

23 Q. WHO ELSE ATTENDED THAT MEETING?

24 A. WELL, FROM OAKTREE, THERE WAS PAUL DEITCH AND
25 DAVE KIRCHHEIMER, AND MAYBE ANOTHER 10 INDIVIDUALS. I
26 DON'T REMEMBER THEIR NAMES.

10:41AM

27 AND FROM DOUBLELINE, I WAS THERE, AND
28 LOU LUCIDO WAS THERE, CRIS SANTA ANA WAS THERE, JEFF

1 MAYBERRY WAS THERE. AND A FEW OTHER PEOPLE WERE THERE,
2 AS WELL.

3 Q. DID MR. GUNDLACH ATTEND THAT MEETING?

4 A. NO, HE DID NOT ATTEND THAT MEETING.

5 Q. AND DID YOU, OR PEOPLE ON BEHALF OF
6 DOUBLELINE, TALK TO THE OAKTREE PEOPLE ABOUT YOUR
7 INVESTMENT STRATEGIES IN THE BUSINESS YOU WANTED TO PUT
8 TOGETHER?

10:41AM

9 A. RIGHT.

10 THE PURPOSE OF THE MEETING, AT LEAST
11 WHAT I COULD ADD TO THE MEETING, WAS TELL THEM OUR
12 STYLE STRATEGY PHILOSOPHY, TRANSPARENCY, AND HOW WE
13 MANAGE MONEY, TO SEE IF THAT WAS IN ACCORDANCE WITH
14 HOW, ON A PHILOSOPHICAL BASIS, OAKTREE MANAGES MONEY,
15 AS WELL.

10:41AM

16 Q. AND WAS ANYTHING DECIDED AT THAT MEETING?

17 A. I THINK IT WAS DECIDED TO HAVE ANOTHER
18 MEETING.

19 Q. AND DID YOU?

20 A. YES, WE DID.

10:42AM

21 Q. WHEN WAS THAT, ABOUT?

22 A. I THINK THAT MEETING WAS PROBABLY THE NEXT
23 DAY, THOUGH I'M NOT CERTAIN.

24 Q. AND DID YOU ATTEND THAT MEETING?

25 A. YES, I ATTENDED THAT MEETING.

10:42AM

26 Q. WAS THAT A SMALLER CROWD, OR A BIGGER CROWD?

27 A. MUCH SMALLER CROWD.

28 Q. WHO WENT TO THAT MEETING?

1 A. I WENT TO THAT MEETING, AND JEFFREY GUNDLACH
2 WENT TO THAT MEETING, AS WELL AS BRUCE KARSH, WHO'S THE
3 PRESIDENT OF OAKTREE, JOHN FRANK, WHO'S THEIR MANAGING
4 PARTNER, AND I THINK ONE OTHER INDIVIDUAL WHO WORKED
5 FOR JOHN FRANK.

10:42AM

6 Q. AND AT THAT MEETING, DID YOU DISCUSS WITH THE
7 OAKTREE FOLKS, THEIR PROVIDING ASSISTANCE TO
8 DOUBLELINE?

9 A. YES, WE DID.

10 Q. AND JUST GENERALLY SPEAKING, WHAT DID YOU --
11 WHAT KIND OF ASSISTANCE DID YOU DISCUSS THEM PROVIDING?

10:42AM

12 A. WELL, WE ASKED FOR ASSISTANCE IN EVERYTHING.
13 WE REALLY HAD NO IDEA OF WHAT TYPE OF
14 CERTIFICATIONS WE NEEDED TO GET, WHAT TYPE OF
15 GOVERNMENT REGULATIONS WE NEEDED TO HAVE FILLED OUT,
16 WHAT WE NEEDED FOR BACK OFFICE, FRONT OFFICE,
17 COMPUTERS, HR, VIRTUALLY EVERYTHING THAT WAS NEEDED.

10:43AM

18 AND THAT MEETING DIDN'T GO INTO A LOT OF
19 DETAILS. WE JUST SAID, WE NEED ALL YOUR HELP.

20 AND WE FELT THAT THEY WERE ABLE TO
21 PROVIDE THAT HELP.

10:43AM

22 Q. DID THEY AGREE TO PROVIDE HELP?

23 A. YES, THEY DID.

24 Q. AND I ASSUME THEY DIDN'T DO THAT FOR FREE?

25 A. NO, THEY DID NOT.

10:43AM

26 Q. DID YOU NEGOTIATE A DEAL?

27 A. WE NEGOTIATED A DEAL FOR THAT HELP.

28 IN RETURN, THEY WOULD GET A 15 PERCENT

1 OWNERSHIP IN DOUBLELINE.

2 Q. AND AT SOME POINT LATER, DID THEY ASK FOR AND
3 GET A GREATER SHARE?

4 A. ABOUT A WEEK LATER, THEY ASKED, AND SAID, FOR
5 BALANCE SHEET CONSOLIDATION PURPOSES, THEY WANTED TO
6 HAVE A BIGGER PORTION, ROUGHLY ABOUT 20 PERCENT.

10:43AM

7 Q. AND AT SOME POINT, DID THEY OFFER EITHER
8 DOUBLELINE OR THE FOUNDERS, STOCK IN OAKTREE, AS PART
9 OF THAT DEAL?

10 A. YES. IN COMPENSATION FOR THE INCREMENTAL
11 5 PERCENT, THEY -- WE'D GIVEN THEM BASICALLY 15 PERCENT
12 FOR SERVICES RENDERED, AND THEN THEY WANTED AN
13 INCREMENTAL AMOUNT.

10:44AM

14 AND FOR THE INCREMENTAL AMOUNT, THEY
15 GAVE US SOME OAKTREE STOCK IN EXCHANGE.

10:44AM

16 Q. DO YOU STILL HAVE THAT OAKTREE STOCK?

17 A. NO, WE DON'T.

18 Q. WHY NOT?

19 A. WELL, AS TIME PROGRESSED, AND WE WEREN'T
20 MAKING ANY MONEY, OR HAVE ANY REVENUE IN, WE NEEDED
21 CASH. WE COULDN'T USE THE STOCK, SO WE EXCHANGED IT
22 FOR SOME CASH FROM THEM.

10:44AM

23 Q. SO BACK TO THE MEETING, THEN, ON DECEMBER 9TH,
24 DID YOU REACH A DEAL?

25 A. YES, WE DID.

10:44AM

26 Q. DID YOU SIGN ANY PAPERWORK WITH OAKTREE THAT
27 DAY, TO MEMORIALIZE THE DEAL?

28 A. NO. WE JUST SHOOK HANDS AND WALKED OUT.

1 Q. AND DID THEY THEN ACT UPON THAT DEAL TO
2 PROVIDE YOU WITH THE ASSISTANCE?

3 A. YES. THEY WENT FULL FORCE, IMPLEMENTING IT.

4 Q. NOW, AS OF DECEMBER 9TH, WERE YOU IN THAT
5 TEMPORARY SPACE THAT LOU LUCIDO AND VINCE FIORELLO HAD
6 PUT THE CREDIT CARD DOWN ON? 10:44AM

7 A. I THINK SO, YES.

8 Q. AT SOME POINT, DID DOUBLELINE MOVE INTO THE
9 SAME BUILDING WHERE OAKTREE IS LOCATED?

10 A. YES. IT WAS PROBABLY TOWARDS THE END OF
11 DECEMBER, BEGINNING OF JANUARY. 10:45AM

12 Q. THAT'S ALSO IN DOWNTOWN L.A.?

13 A. YES. SAME BUILDING AS OAKTREE, DOWNTOWN
14 LOS ANGELES.

15 Q. AND IS THAT WHERE YOU ARE CURRENTLY LOCATED? 10:45AM

16 A. THAT'S WHERE WE ARE RIGHT NOW.

17 Q. DID MOVING INTO OAKTREE'S BUILDING HAVE AN
18 EFFECT ON YOUR ABILITY TO GET THE COMPANY UP AND
19 RUNNING?

20 AND IF SO, WHAT WAS THAT EFFECT? 10:45AM

21 A. WELL, IT MEANT THAT COORDINATION WITH THEM WAS
22 MUCH EASIER, BECAUSE IT'S JUST GOING IN THE SAME
23 ELEVATOR AND CAN MEET WITH THEM.

24 PLUS, I THINK WE WERE ABLE TO CONNECT
25 SOME PORTS UP TO THEM, 134 SERVERS. 10:45AM

26 I THINK WE'RE ONE FLOOR AWAY FROM WHERE
27 THE SERVERS ARE LOCATED. IT'S MUCH EASIER WHEN YOU ARE
28 IN THE SAME BUILDING, RATHER THAN TO DO IT ACROSS TOWN.

1 Q. AND DID OAKTREE HELP YOU IDENTIFY ANY
2 THIRD-PARTY VENDORS TO CONTRACT WITH?

3 A. YES, THEY DID.

4 Q. WHICH ONES?

5 A. IT WAS VICHARA.

10:46AM

6 Q. WHO -- THE JURY HAS HEARD A LITTLE BIT ABOUT
7 VICHARA?

8 WHO IS VICHARA?

9 A. WELL, VICHARA IS A COMPANY NAMED AFTER
10 SOMEBODY CALLED VICHARA.

10:46AM

11 BUT WHAT VICHARA DOES, IS IT TAKES DATA
12 FROM MORTGAGE-BACKED SECURITIES, AND IT RUNS ALL KINDS
13 OF ANALYSIS AND MAPPING AND CALCULATIONS ON IT, AND
14 SELLS IT TO PEOPLE WHO ARE INTERESTED, BECAUSE IT'S A
15 VALUABLE RESOURCE.

10:46AM

16 Q. I TAKE IT OAKTREE WAS OF SUBSTANTIAL
17 ASSISTANCE TO YOU?

18 A. YES.

19 Q. AFTER THESE FIRST FEW MEETINGS, WERE YOU THE
20 PRINCIPAL INTERFACE BETWEEN DOUBLELINE AND OAKTREE?

10:46AM

21 A. NO, I WAS NOT.

22 Q. WHO WAS?

23 A. IT WAS LOU LUCIDO AND CRIS SANTA ANA, WERE THE
24 ONES WHO HEADED UP THAT EFFORT.

25 Q. WE'RE GOING TO COME BACK TO VICHARA AND THE
26 SYSTEMS A LITTLE BIT LATER.

10:46AM

27 BUT LET ME NOW TURN TO A LITTLE BIT
28 DIFFERENT SUBJECT.

1 LOOK IN YOUR BINDER, IF YOU COULD, AT A
2 DOCUMENT WE HAVE MARKED AS 764A. THERE'S A 764, AND
3 THEN THERE'S A 764A.

4 I WANT YOU TO LOOK AT 764A.

5 A. OKAY.

10:47AM

6 Q. DO YOU HAVE THAT IN FRONT OF YOU?

7 A. YES, I DO.

8 Q. DO YOU RECOGNIZE IT?

9 A. YES, I DO.

10 Q. WHAT IS IT, GENERALLY?

10:47AM

11 A. THIS IS AN E-MAIL THAT MY WIFE ACTUALLY SENT
12 TO MR. GUNDLACH, THAT RESPONDS TO A E-MAIL HE SENT ME,
13 SORT OF A LETTER WHERE HE WAS JUST EXPLAINING THE
14 SITUATION, WHAT HAPPENED.

15 AND HE ASKED ME, AS WELL AS SOME OTHER
16 PEOPLE, WHAT COMMENTS YOU HAVE ABOUT THIS.

10:47AM

17 Q. HANG ON.

18 JUST LET ME SHOW YOU -- I TAKE IT THE
19 LETTER HE SENT WAS A DRAFT?

20 A. YES.

10:47AM

21 MR. BRIAN: I WOULD OFFER 764A, YOUR HONOR.

22 MR. QUINN: NO OBJECTION.

23 THE COURT: IT WILL BE ADMITTED.

24
25 (EXHIBIT 764A ADMITTED.)

10:47AM

26
27 MR. BRIAN: AND MAY I JUST CONSULT WITH
28 MR. QUINN FOR A MOMENT, YOUR HONOR?

1 THE COURT: YEAH.

2 MR. BRIAN: YOUR HONOR, I THINK WE'VE REACHED
3 A STIPULATION THAT WE WILL SUBSTITUTE 764A FOR 764.

4 BOTH DOCUMENTS ARE REDACTED, PURSUANT TO
5 EARLIER DISCUSSIONS.

10:48AM

6 BUT THIS ONE IS LESS REDACTED, AND
7 THEREFORE, MORE INTELLIGIBLE.

8 MR. QUINN: WE AGREE, YOUR HONOR.

9 THE COURT: WE'LL TAKE 764 OUT OF EVIDENCE,
10 AND SUBSTITUTE 764A, WHICH HAS BEEN ADMITTED.

10:48AM

11

12 (EXHIBIT 764 WITHDRAWN.)

13

14 Q. BY MR. BRIAN: SO WHY DON'T WE PUT UP 764,
15 PAGE 1, DENNIS.

10:48AM

16

17 IF WE COULD HIGHLIGHT JUST THE BOTTOM.
18 IF WE CAN ENLARGE THE BOTTOM E-MAIL -- GO AHEAD --
19 ABOVE THAT. SEE WHERE IT SAYS FROM? BELOW THAT, RIGHT
20 ABOUT THERE.

21

22 START WITH FROM JEFFREY GUNDLACH, SEE?

10:48AM

23

24 RIGHT THERE.
25 OKAY. SO THAT'S AN E-MAIL FROM
26 MR. GUNDLACH TO A NUMBER OF FOLKS, INCLUDING YOURSELF,
27 CORRECT?

28

A. THAT'S CORRECT.

10:48AM

29

30 Q. AND IT'S BEEN REDACTED.
31 BUT I TAKE IT, THE TEXT OF IT WAS A
32 DRAFT THAT HE CIRCULATED FOR COMMENT?

1 A. THAT'S CORRECT.

2 Q. OKAY. SO NOW, DENNIS, LET'S GO TO THE TOP
3 PART OF EXHIBIT 764A, PAGE 1.

4 AND YOU SEE WHERE IT SAYS, I THINK IT IS
5 A GOOD START, AND THEN THERE'S SOME OTHER LANGUAGE?

10:49AM

6 A. YES.

7 Q. IS THAT WHAT YOU WERE REFERRING TO WHEN YOU
8 REFERENCED SOMETHING YOUR WIFE HAD SUGGESTED?

9 A. YES, IT IS.

10 Q. WHY DID YOU ASK YOUR WIFE TO TAKE A LOOK AT
11 MR. GUNDLACH'S DRAFT?

10:49AM

12 A. WELL, FIRST OF ALL, SHE'S A VERY GOOD WRITER
13 AND EDITOR, MUCH BETTER THAN ME.

14 AND SHE'S ALSO MUCH BETTER AT USING
15 MICROSOFT WORD TO MAKE CHANGES IN A DOCUMENT. I'M NOT
16 VERY GOOD AT THAT.

10:49AM

17 AND FINALLY, I THOUGHT IT WOULD BE
18 WORTHWHILE TO HAVE SOMEONE WHO WAS LOOKING AT THIS
19 SITUATION, AND THIS LETTER WITH FRESH EYES, WHO WASN'T
20 AWARE OF THE BACKGROUND, TO SEE IF IT MAKES SENSE AND
21 WAS CONSISTENT WITH SOMETHING WHO WASN'T INTIMATELY
22 INVOLVED ON A DAY-TO-DAY BASIS WOULD UNDERSTAND; AND
23 SHE FIT THE BILL FOR THAT.

10:49AM

24 Q. DO YOU SEE, ABOUT THE THIRD LINE DOWN, WHERE
25 IT SAYS, PERHAPS -- SAY THIS CONTEMPLATION STARTED
26 AFTER I HEARD RUMORS THAT TCW WAS GOING TO FIRE ME.

10:49AM

27 DO YOU SEE THAT?

28 A. YES.

1 Q. WAS THAT A PHRASE THAT YOUR WIFE SUGGESTED?

2 A. YES.

3 Q. TO YOUR KNOWLEDGE, DID THAT MAKE IT INTO THE
4 EVENTUAL LETTER THAT MR. GUNDLACH SENT OUT?

5 A. NO, IT DID NOT.

10:50AM

6 Q. TAKE A LOOK AT EXHIBIT 6208 IN YOUR BINDER,
7 AND SPECIFICALLY 6208-0002 AND 0003.

8 DO YOU RECOGNIZE THOSE TWO PAGES?

9 A. YES, I DO.

10 Q. AND WHAT ARE THEY?

10:50AM

11 A. THIS IS, I BELIEVE, THE FINAL LETTER THAT --
12 AFTER ALL THE CHANGES AND WHATEVER, THAT JEFFREY SENT
13 OUT, OR WROTE.

14 Q. AND DOES IT INCLUDE THAT LANGUAGE YOUR WIFE
15 PROPOSED?

10:50AM

16 A. NO, IT DOESN'T.

17 MR. BRIAN: I WOULD OFFER 6208, YOUR HONOR.

18 MR. QUINN: YOUR HONOR, THIS IS HEARSAY.

19 THIS IS THE DOCUMENT WE DISCUSSED, THAT
20 MR. BRIAN REFERRED TO EARLIER THIS MORNING.

10:51AM

21 MR. BRIAN: IT'S NOT OFFERED FOR THE TRUTH.

22 AND I DON'T NEED TO PUT IT UP, YOUR
23 HONOR. WE CAN ARGUE THAT AT THE BREAK.

24 THE COURT: WE'LL RESERVE A RULING ON IT FOR
25 NOW. WE WON'T ADMIT IT.

10:51AM

26 MR. BRIAN: THAT'S FINE. THANK YOU, YOUR
27 HONOR.

28 Q. OKAY. WE'VE HEARD TESTIMONY -- NEW SUBJECT.

1 WE'VE HEARD TESTIMONY IN THE TRIAL ABOUT
2 THE TYPES OF BUSINESS AN MBS MANAGER MIGHT PERFORM,
3 SPECIFICALLY MUTUAL FUNDS, SEPARATE ACCOUNTS AND CLOSED
4 END FUNDS.

5 I WANT YOU TO EXPLAIN TO THE JURY, WHAT
6 IS A MUTUAL FUND? 10:51AM

7 A. WELL, A MUTUAL FUND IS A COMPANY THAT'S SET UP
8 FOR THE PURPOSE OF MANAGING MONEY. IT HAS ITS OWN
9 BOARD OF DIRECTORS, ITS TRUSTEES, ITS RULES AND
10 REGULATIONS. 10:51AM

11 AND A PROSPECTUS IS CREATED. AND A
12 PROSPECTUS IS JUST SORT OF A GUIDEBOOK OF RULES AND
13 REGULATIONS THAT HAS TO BE SENT OVER TO THE SEC. THE
14 SEC HAS TO APPROVE IT.

15 AND WHAT IT IS, IT ALLOWS INDIVIDUAL
16 INVESTORS WHO DON'T HAVE ENOUGH MONEY ON THEIR OWN TO
17 HIRE A MONEY MANAGER TO POOL THEIR MONEY, AND THEN THE
18 BOARD OF DIRECTORS OF THE MUTUAL FUND HIRES A
19 PROFESSIONAL MONEY MANAGER TO MANAGE THE MONEY FOR
20 THOSE INDIVIDUALS. 10:52AM

21 Q. SO MUTUAL FUND INVESTORS, AT LEAST AS COMPARED
22 TO THE OTHER TWO TYPES OF INVESTMENTS WE'LL TALK ABOUT,
23 ARE OFTEN POPULATED BY SMALLER INVESTORS, SMALLER
24 AMOUNTS, CORRECT?

25 A. YES. 10:52AM

26 AND THEN MUTUAL FUNDS, INCLUDING OURS,
27 HAVE \$1,000 OR \$2,000 MINIMUM.

28 Q. SO WHAT'S A CLOSED END FUND?

1 A. WELL, A CLOSED END FUND COULD BE VIRTUALLY THE
2 SAME THING. COULD HAVE THE SAME PROSPECTUS. YOU COULD
3 HAVE A BOARD OF DIRECTORS OF THE COMPANY SET UP.

4 HOWEVER, A MUTUAL FUND GENERALLY HAS
5 DAILY LIQUIDITY, WHICH MEANS YOU CAN GET IN AND OUT
6 EVERY SINGLE DAY; WHILE A CLOSED END FUND COULD HAVE
7 THE SAME OBJECTIVE, EXCEPT IT WOULD BE CLOSED FOR SOME
8 PERIOD OF TIME; ONE YEAR, TWO YEARS, THREE YEARS, FIVE
9 YEARS, WHATEVER WAS AGREED UPON.

10:52AM

10 Q. SO YOU HAVE TO LEAVE YOUR MONEY IN THERE FOR A
11 WHILE?

10:53AM

12 A. CORRECT.

13 Q. AND WHAT'S A SEPARATE ACCOUNT? WHAT'S THAT?

14 A. A SEPARATE ACCOUNT IS USUALLY DONE BY VERY
15 LARGE INDIVIDUALS, WHO HAVE TENS OF MILLIONS OF
16 DOLLARS.

10:53AM

17 BUT PRIMARILY, THEY ARE PENSION PLANS
18 AND FOREIGN CENTRAL BANKS AND PRIVATE PENSION PLANS,
19 BIG INSTITUTIONS. 50 MILLION, A HUNDRED MILLION, IN
20 SOME CASES EVEN A BILLION DOLLARS, INTO A SEPARATE
21 ACCOUNT.

10:53AM

22 AND SINCE THEY ARE SO BIG, THEY DON'T
23 NEED TO COMINGLE THEIR FUNDS WITH ANYBODY ELSE.

24 Q. HOW MANY SEPARATE ACCOUNTS DID YOU HAVE IN
25 YOUR GROUP, WHEN YOU WERE AT TCW IN 2009?

10:53AM

26 A. APPROXIMATELY 100.

27 Q. AND WHEN YOU STARTED OPENING THE DOORS, FIRST
28 AT THE TEMPORARY SPACE, AND THEN AT THE OTHER SPACE, IN

1 MID-DECEMBER, DECEMBER 14TH, 15TH, DID YOU HAVE ANY
2 ACCOUNTS: MUTUAL FUNDS, CLOSED ACCOUNTS, SEPARATE
3 ACCOUNTS?

4 A. WE HAD NO ACCOUNTS.

5 Q. IS IT FAIR TO SAY, IN YOUR BUSINESS, THAT YOU
6 DEVELOPED CLOSE RELATIONSHIPS WITH YOUR CLIENTS
7 SOMETIMES?

10:54AM

8 A. YES.

9 Q. AND DID YOU AND SOME OF THE OTHER FOUNDERS AT
10 DOUBLELINE HAVE RELATIONSHIPS WITH SOME OF THOSE
11 SEPARATE ACCOUNT HOLDERS WHO HAD BEEN AT TCW?

10:54AM

12 A. YES. WE HAD SOME CLIENTS WE HAD FOR 20 YEARS.
13 I'D BEEN TO THEIR HOUSES, THEY'D BEEN TO MINE, AND WE'D
14 KNOWN EACH OTHER.

15 Q. LET ME SHOW YOU IN YOUR BINDER, JUST FOR
16 IDENTIFICATION, YOUR HONOR, AND FOR DEMONSTRATIVE
17 PURPOSES, EXHIBIT 6203.

10:54AM

18 NOW, I KNOW YOU DIDN'T PREPARE THIS; BUT
19 DID YOU REVIEW THIS AND INSURE ITS ACCURACY DURING THE
20 COURSE OF ITS PREPARATION?

10:54AM

21 A. YES, I DID.

22 MR. BRIAN: MAY I HAVE PERMISSION TO DISPLAY
23 THIS, YOUR HONOR?

24 THE COURT: ANY OBJECTION?

25 MR. QUINN: FOR DISPLAY, NO.

10:54AM

26 THE COURT: WE WON'T ADMIT IT, BUT IT WILL BE
27 FOR DISPLAY.

28 Q. BY MR. BRIAN: OKAY.

1 SO THERE ARE FIVE CLIENTS LISTED ON THE
2 LEFT-HAND SIDE COLUMN?

3 DO YOU SEE THAT?

4 A. YES, I DO.

5 Q. AND JUST GENERALLY SPEAKING, WHAT DO THOSE
6 FIVE NAMES DEPICT?

10:55AM

7 A. WELL, THOSE ARE FIVE SEPARATE ACCOUNTS.

8 Q. AND WERE THOSE THE FIRST FIVE ACCOUNTS THAT
9 DOUBLELINE GOT?

10 A. YES, THEY WERE.

10:55AM

11 Q. AND WERE THOSE THE FIRST FIVE PIECES OF
12 BUSINESS YOU GOT?

13 A. YES, THEY WERE.

14 Q. SO LET'S GO THROUGH THEM.

15 WE HEARD FROM MR. SHERMAN FROM RELIANCE
16 INSURANCE.

10:55AM

17 I TAKE IT THAT'S THE FIRST ONE?

18 A. THAT'S CORRECT, YES.

19 Q. AND WAS THAT YOUR FIRST CLIENT?

20 A. YES.

10:55AM

21 Q. AND APPROXIMATELY WHEN DID THAT BECOME
22 DOUBLELINE'S CLIENT?

23 A. AROUND THE END OF DECEMBER, BEFORE YEAR END.

24 Q. AND DUE TO YOUR KNOWLEDGE, DID SOME OF THE
25 FOLKS AT DOUBLELINE CAPITAL HAVE A CLOSE RELATIONSHIP
26 WITH THE PEOPLE AT RELIANCE?

10:55AM

27 A. YES.

28 Q. AND WHO WAS THAT?

1 A. JEFFREY GUNDLACH AND LOU LUCIDO.

2 Q. WHAT TYPE OF BUSINESS RELATIONSHIP DID
3 DOUBLELINE FORGE WITH RELIANCE WHEN YOU FIRST STARTED?

4 A. IT WAS CALLED A NONDISCRETIONARY ACCOUNT.

10:56AM

5 THAT MEANT THAT WE COULD ONLY ADVISE
6 THEM ON A TRANSACTION. WE COULDN'T EXECUTE THE
7 TRANSACTION FOR THEM. WE WOULD JUST CALL THEM UP AND
8 SAY, WE THINK IT'S A GOOD IDEA IF YOU BUY THIS FROM
9 SO-AND-SO AT SUCH-AND-SUCH A PRICE; BUT IT WAS UP TO
10 THEM TO DECIDE IF THEY WANTED TO DO IT OR NOT.

10:56AM

11 Q. AND HOW DID YOU GET PAID FOR THAT?

12 A. THEY PAID US A FLAT FEE.

13 Q. AND LATER ON, DID THAT RELATIONSHIP CHANGE
14 INTO A DISCRETIONARY RELATIONSHIP?

15 A. NOW, THERE ARE A NUMBER OF ACCOUNTS WHICH ARE
16 DISCRETIONARY, AND SOME ARE STILL NOT DISCRETIONARY.

10:56AM

17 Q. AND THEY HAVE VARIOUS PARTS OF THEIR BUSINESS
18 THAT NOW HAVE RELATIONSHIPS WITH DOUBLELINE?

19 A. RIGHT. RIGHT.

20 Q. THE SECOND ONE IS A COMPANY CALLED 2B?

10:56AM

21 A. YES.

22 Q. WHAT IS 2B?

23 A. WELL, IT'S AN -- ACTUALLY A PRIVATE COMPANY.

24 AND IT'S A COMPANY THAT SOME OF THE PRINCIPALS AT
25 TCW -- AT DOUBLELINE, WHO WERE AT TCW PRIOR TO IT, HAD
26 A VERY GOOD RELATIONSHIP. AND 2B DECIDED TO COME OVER.

10:56AM

27 Q. AND THAT WAS TOWARDS THE BEGINNING OF JANUARY?

28 A. RIGHT. I THINK THE BEGINNING OF DECEMBER OR

1 BEGINNING OF JANUARY.

2 Q. ORIX IS THE THIRD ONE?

3 A. ORIX IS THE THIRD ONE.

4 Q. WHO WERE THEY?

5 A. IT WAS A ANOTHER SEPARATE ACCOUNT.

10:57AM

6 AND ORIX HAD A VERY, VERY STRONG
7 RELATIONSHIP. HEAD OF ORIX WAS VERY GOOD PERSONAL
8 FRIENDS WITH ONE OF OUR TRADERS, SAM GARZA, G-A-R-Z-A.

9 AND THEY CAME OVER.

10 Q. AND WHO WAS THE FOURTH CLIENT?

10:57AM

11 A. ATHENA.

12 ATHENA ACTUALLY WAS A NEW CLIENT.

13 Q. I WAS GOING TO ASK YOU THIS: WERE THEY A TCW
14 CLIENT?

15 A. NO, THEY WEREN'T.

10:57AM

16 Q. SO HOW DID THEY COME TO BE A DOUBLELINE
17 CLIENT?

18 A. THE -- I HAD WORKED WITH THE CEO OF ATHENA
19 WHEN I WAS AT SUN AMERICA IN THE MID-'80S, AND WE FOUND
20 OUT WE STARTED OUR OWN SHOP, AND WE WORKED OUT A DEAL.

10:57AM

21 Q. FINALLY, THE FIFTH CLIENT, FAIRFAX COUNTY.

22 THAT'S A SHORTHAND FOR WHAT?

23 A. THAT'S THE COUNTY OF VIRGINIA, FAIRFAX COUNTY,
24 VIRGINIA.

25 IT'S ACTUALLY FAIRFAX COUNTY, VIRGINIA,
26 IT'S THE FIRE AND POLICE PENSION PLAN.

10:58AM

27 Q. AND HOW DID THEY COME TO BE A DOUBLELINE
28 CLIENT?

1 A. WELL, JEFFREY AND I HAD A LONG RELATIONSHIP
2 WITH THEM, GOING BACK PROBABLY 10 OR 15 YEARS.

3 Q. NOW, PART OF WHAT YOU DO IN SOME RELATIONSHIPS
4 IS, YOU ACTUALLY DO TRADES, ON BEHALF OF -- YOU BUY OR
5 SELL SECURITIES ON BEHALF OF CLIENTS; IS THAT CORRECT? 10:58AM

6 A. THAT'S CORRECT.

7 Q. THE FIRST MONTH OF OPERATION, IN MID-DECEMBER
8 TO MID-JANUARY OR SO RANGE, DID DOUBLELINE MAKE END
9 TRADES?

10 A. I BELIEVE DOUBLELINE DID ONE TRADE OVER THAT
11 TIME. 10:58AM

12 Q. AND WHO WAS THAT?

13 A. IT WAS OF A TRADE FOR THE ACCOUNT 2B.

14 Q. AND WERE YOU INVOLVED IN EXECUTING THAT TRADE?

15 A. YES, I WAS. 10:58AM

16 Q. DID YOU NEED ANY SYSTEMS, IN ORDER TO MAKE
17 THAT TRADE?

18 A. WELL, WE NEEDED SOME INFORMATION IN ORDER TO
19 EXECUTE THAT TRADE.

20 Q. AND IN ORDER TO GET THAT INFORMATION, WHAT DID
21 YOU USE? 10:58AM

22 A. WE ACTUALLY HAD A FREE TRIAL FOR THE BLOOMBERG
23 SYSTEM, AND WE USED THAT TO DO THE ANALYSIS ON THAT
24 PARTICULAR TRADE.

25 Q. THE JURY HAS HEARD A BIT ABOUT BLOOMBERG. 10:59AM

26 WHAT IS THE BLOOMBERG SYSTEM?

27 A. THE BLOOMBERG SYSTEM IS A SYSTEM THAT'S BEEN
28 AROUND ABOUT 25 YEARS, THAT HAS INFORMATION ON

1 VIRTUALLY EVERY STOCK, BOND, MUNICIPAL -- INFORMATION
2 ON MORTGAGE-BACKED SECURITIES, CORPORATE BONDS.

3 IT HAS THIS BIG --

4 THE COURT: SLOW DOWN JUST A MINUTE.

5 I SEE SMOKE.

10:59AM

6 THE WITNESS: AND IT ALSO HAS ALL TYPES OF
7 CALL LETTERS FOR EACH ONE OF THOSE ASSETS CLASS.

8 SO IF A MONEY MANAGER WANTS TO DO A
9 TRADE, HE CAN FIGURE OUT THE VALUE OF THE SECURITY, AND
10 DO A LOT OF WHAT-IF SCENARIOS, IF THIS HAPPENS OR THAT
11 HAPPENS.

10:59AM

12 SO IT'S A BASIC TOOL THAT VIRTUALLY
13 EVERY MONEY MANAGER IN THE WORLD PROBABLY UTILIZED.

14 Q. DOES TCW OWN BLOOMBERG?

15 A. NO.

10:59AM

16 Q. WHO DOES?

17 A. MICHAEL BLOOMBERG.

18 Q. AND THAT'S THE MAYOR OF NEW YORK?

19 A. CORRECT.

20 Q. WALK THROUGH, FOR THE LADIES AND GENTLEMEN OF
21 THE JURY, AND MY BENEFIT, HOW DO YOU GO ABOUT MAKING A
22 TRADE?

11:00AM

23 WE TALK ABOUT TRADES.

24 HOW DO YOU MAKE A TRADE?

25 A. WELL, FIRST YOU HAVE TO HAVE A PORTFOLIO, AND
26 IDENTIFY A NEED IN THE PORTFOLIO.

11:00AM

27 BUT ONCE YOU'VE --

28 Q. HANG ON. SLOW DOWN.

1 YOU HAVE MONEY.

2 A. YOU HAVE TO HAVE ASSETS OR MONEY.

3 Q. OKAY.

4 A. AND THEN THE POOL OF ASSETS OR MONEY THAT
5 NEEDS TO BE INVESTED.

11:00AM

6 AND THE PORTFOLIO MANAGERS AND ANALYSTS
7 WILL LOOK THROUGH ALL THE VARIOUS SECURITIES THAT ARE
8 OUTSTANDING. BROKERS WILL CALL THEM UP AND SHOW THEM,
9 THERE'LL BE LISTS, AND DO SOME ANALYSIS ON WHAT
10 PARTICULAR SECURITY, OF ALL THE SECURITIES, THEY LIKED.

11:00AM

11 IT COULD BE A HUNDRED OR A THOUSAND
12 SECURITIES OUT THERE, BUT THEY'VE IDENTIFIED A FEW OF
13 THEM THAT THEY PARTICULARLY LIKE.

14 THEN IN THIS CASE, USING THE BLOOMBERG
15 SYSTEM, THEY CAN RUN SOME ANALYSIS ON IT, AND FINALLY
16 COME TO A LEVEL OF A PRICE THAT THEY THINK IS A VERY
17 GOOD PRICE TO BUY THE SECURITY.

11:00AM

18 Q. AND WHAT DO YOU DO, ONCE YOU FIGURE OUT THAT?

19 A. WELL, THEN WHAT YOU HAVE TO DO IS GET ON THE
20 PHONE, CALL THE BROKER WHO IS SELLING THE SECURITIES,
21 TRY TO NEGOTIATE WITH THEM, TO GET THE LOWEST POSSIBLE
22 PRICE.

11:01AM

23 Q. AND JUST GENERALLY, HOW LONG DO THOSE
24 NEGOTIATIONS TAKE?

25 A. IT CAN TAKE AS LONG AS A FEW MINUTES, IT
26 SOMETIMES CAN TAKE -- YOU GO BACK AND FORTH AND ARGUE
27 FOR AN ENTIRE DAY OR TWO, TO GET A MEETING OF THE
28 MINDS.

11:01AM

1 Q. AND SOMETIMES IT TAKES WHAT, COUPLE MINUTES?

2 A. COUPLE MINUTES UP TO AT LEAST A DAY.

3 Q. SO DOUBLELINE HAD FIVE CLIENTS, BETWEEN
4 DECEMBER AND INTO MARCH, MADE ONE TRADE IN ITS FIRST
5 MONTH.

11:01AM

6 DID THAT HELP OR HURT DOUBLELINE, THIS
7 LACK OF BUSINESS ACTIVITY?

8 A. WELL, IT HURT, BECAUSE WE WEREN'T MAKING ANY
9 MONEY. WE NEEDED TO MAKE MONEY.

10 BUT IT ACTUALLY HELPED, BECAUSE IT GAVE
11 US A LOT OF EXCESS TIME TO GET SET UP AND RUN THE
12 BUSINESS, AND TAKE CARE OF ALL THE BACKFILLING THAT'S
13 NEEDED TO SET UP AN OPERATION.

11:01AM

14 Q. AT SOME POINT IN THE PROCESS, MR. BARACH, DID
15 DOUBLELINE APPLY FOR REGISTRATION WITH THE SECURITIES
16 AND EXCHANGE COMMISSION?

11:02AM

17 A. YES.

18 Q. TAKE A LOOK AT EXHIBIT 6126 IN YOUR BINDER.

19 ARE YOU FAMILIAR WITH THIS DOCUMENT?

20 A. YES, I AM.

11:02AM

21 Q. WHAT IS IT?

22 A. THIS IS THE APPLICATION FOR REGISTRATION WITH
23 THE SEC, TO BECOME AN INVESTMENT ADVISOR.

24 MR. BRIAN: I WOULD OFFER EXHIBIT 6126, YOUR
25 HONOR.

11:02AM

26 MR. QUINN: NO OBJECTION.

27 THE COURT: IT WILL BE ADMITTED.

28 //

1 (EXHIBIT 6126 ADMITTED.)

2

3 Q. BY MR. BRIAN: DENNIS, IF WE COULD PUT THAT
4 UP, PLEASE.

5 AND IF -- I JUST WANT TO ASK YOU JUST TO 11:02AM
6 PUBLISH AN FEW MINOR -- NOT MINOR, BUT A FEW SAMPLES OF
7 INFORMATION, YOUR HONOR.

8 IF WE COULD TURN, DENNIS, TO PAGE 3 OF
9 THIS DOCUMENT.

10 DO YOU SEE WHERE IT SAYS, IN QUESTION 1, 11:03AM
11 DO YOU HAVE ANY WORLDWIDE WEBSITE ADDRESSES?

12 DO YOU SEE THAT?

13 A. YES.

14 Q. AND WHAT WAS YOUR ANSWER?

15 A. NO. 11:03AM

16 Q. AND TURN TO PAGE 8.

17 AND DENNIS, IF YOU COULD PUT UP PAGE 8.

18 SEE WHERE IT SAYS DOWN AT THE BOTTOM, C
19 CLIENTS?

20 A. YES. 11:03AM

21 Q. (READING):

22 APPROXIMATELY HOW MANY CLIENTS
23 DID YOU PROVIDE INVESTMENT ADVISORY
24 SERVICES DURING YOUR MOST RECENTLY
25 COMPLETED FISCAL YEAR. 11:03AM

26 DO YOU SEE THAT?

27 A. YES, I DO.

28 Q. WHAT WAS CHECKED?

1 A. ZERO.

2 Q. AND TURN TO PAGE 14, PLEASE.

3 AND DENNIS, IF YOU COULD PUT UP PAGE 14.

4 IF YOU CAN HIGHLIGHT QUESTION A,

5 (READING):

11:04AM

6 DO YOU HAVE CUSTODY OF ANY

7 ADVISORY CLIENTS?

8 DO YOU SEE THAT?

9 A. YES.

10 Q. WHAT WAS THE ANSWER THERE?

11:04AM

11 A. NO.

12 Q. AND FINALLY, IF WE COULD PUT UP PAGE 19.

13 TOWARD THE BOTTOM, THERE'S A QUESTION A.

14 DENNIS, IF YOU COULD HIGHLIGHT THAT.

15 (READING):

11:04AM

16 DO YOU HAVE TOTAL ASSETS OF

17 FIVE MILLION OR MORE ON THE LAST

18 DAY OF YOUR MOST RECENT FISCAL

19 YEAR?

20 WHAT WAS THE ANSWER TO THAT?

11:04AM

21 A. THE ANSWER WAS NO.

22 Q. TAKE A LOOK AT EXHIBIT 6125.

23 DO YOU RECOGNIZE EXHIBIT 6125?

24 A. YES, I DO.

25 Q. WHAT IS THAT?

11:04AM

26 A. THIS IS THE APPROVAL BY THE SEC, GETTING

27 DOUBLELINE ITS REGISTRATION.

28 MR. BRIAN: I WOULD OFFER EXHIBIT 6125.

1 MR. QUINN: NO OBJECTION.

2 THE COURT: IT WILL BE ADMITTED.

3

4 (EXHIBIT 6125 ADMITTED.)

5

11:05AM

6 MR. BRIAN: WE COULD PUT THAT UP, DENNIS.

7 Q. JUST A QUESTION I DIDN'T ASK YOU.

8 MAYBE, YOU CAN TELL FROM THIS DOCUMENT,

9 WHEN DID YOU SUBMIT THE APPLICATION FOR THE

10 REGISTRATION?

11:05AM

11 A. I DON'T PARTICULARLY REMEMBER.

12 SOMETIME IN MID DECEMBER.

13 Q. IS IT REFLECTED ON THIS EXHIBIT 6125?

14 A. YES.

15 Q. AND IT SAYS WHAT DATE?

11:05AM

16 A. DECEMBER 17TH.

17 Q. THAT'S IN THE FIRST PARAGRAPH, RIGHT?

18 DENNIS, IF WE COULD HIGHLIGHT THAT FIRST

19 PARAGRAPH, PLEASE.

20 NOW, YOU MENTIONED -- WE'LL GO TO A NEW

11:05AM

21 SUBJECT, OR ACTUALLY, GO BACK TO A SUBJECT.

22 YOU MENTIONED BLOOMBERG.

23 I THINK YOU MENTIONED THAT YOU GOT A

24 FREE TRIAL?

25 A. YES.

11:05AM

26 Q. WHAT DO YOU MEAN BY THAT?

27 A. WELL, I THINK IF A NEW COMPANY IS FORMED, IN
28 ORDER TO HELP THAT NEW COMPANY OUT, BLOOMBERG OFFERS A

1 FREE TRIAL FOR SOME TIME PERIOD. I BELIEVE IT'S 90
2 DAYS.

3 Q. OKAY.

4 AND DO YOU NOW HAVE A SUBSCRIPTION TO
5 BLOOMBERG?

11:06AM

6 A. YES, WE DO.

7 Q. AND YOU PAY FOR THAT?

8 A. YES, OF COURSE.

9 Q. DID DOUBLELINE PURCHASE OR CONTRACT WITH ANY
10 OTHER THIRD-PARTY SYSTEMS, TO HELP YOU RUN YOUR
11 BUSINESS?

11:06AM

12 A. YES.

13 Q. WHO DID YOU CONTRACT WITH?

14 A. WELL, BLOOMBERG, VICHARA, A COMPANY CALLED
15 LOAN PERFORMANCE, ANOTHER COMPANY CALLED INTEX, ANOTHER
16 COMPANY CALLED YIELD BOOK.

11:06AM

17 Q. AND DO YOU KNOW HOW MUCH, APPROXIMATELY,
18 DOUBLELINE'S PAID ANNUALLY FOR THOSE THIRD-PARTY
19 SERVICES?

20 A. IT'S ABOUT TWO AND A HALF MILLION DOLLARS PER
21 ANNUM.

11:06AM

22 Q. NOW, WERE YOU HERE, OR DID YOU WATCH THE
23 OPENING STATEMENTS IN THIS TRIAL?

24 A. I DIDN'T WATCH THEM, BUT I HEARD THEM.

25 Q. DID YOU HEAR MR. QUINN TALK ABOUT THE SECRET
26 SAUCE THAT THE DEFENDANTS SUPPOSEDLY STOLE FROM TCW?

11:06AM

27 A. YES.

28 Q. DO YOU HAVE A SECRET SAUCE AT DOUBLELINE?

1 A. I WISH THERE WAS A SECRET SAUCE; BUT
2 UNFORTUNATELY, ONE DOESN'T EXIST.

3 Q. WHAT DO YOU THINK THE KEY TO YOUR SUCCESS IS?

4 A. I THINK THE KEY TO SUCCESS IN THIS BUSINESS,
5 AS WELL AS ANY BUSINESS, IS THE HUMAN CAPITALS, THE SUM
6 TOTALS OF THE PEOPLE, THEIR EXPERIENCE, THEIR ABILITIES
7 TO WORK TOGETHER, THEIR ABILITY TO ANALYZE, AND JUST
8 THE SUM TOTAL OF THEM, THINKING OUTSIDE THE BOX,
9 LOOKING AT FACTORS, UNDERSTANDING IT, AND MAKING
10 DECISIONS.

11:06AM

11:07AM

11 AND SOMETIMES THEY ARE RIGHT, AND
12 SOMETIMES THEY ARE WRONG.

13 AND IF YOU ARE GOOD, THEN YOU ARE MORE
14 RIGHT THAN YOU ARE WRONG.

15 Q. NOW, DON'T YOU NEED DATA TO SUPPLY THAT
16 EXPERIENCE AND JUDGMENT TO?

11:07AM

17 A. OF COURSE.

18 Q. DOES THE DATA TELL YOU WHICH SECURITY TO BUY
19 AND SELL?

20 A. THE DATA IS JUST -- IT'S JUST A TOOL.

11:07AM

21 LIKE, FOR EXAMPLE, IF YOU ARE BUILDING A
22 HOUSE, YOU HAVE -- A CONTRACTOR NEEDS TO BUILD IT.

23 BUT ALL CONTRACTORS HAVE HAMMERS AND
24 NAILS AND SAWS. JUST BECAUSE YOU HAD A HAMMER AND NAIL
25 AND A SAW DOESN'T MEAN YOU ARE NECESSARILY A GOOD
26 CONTRACTOR, BUT YOU NEED THEM TO BUILD.

11:07AM

27 Q. LET ME ASK YOU: WHEN YOU WERE WITH TCW, WE'VE
28 HEARD A LOT ABOUT THESE INTERNALLY DEVELOPED SYSTEMS AT

1 TCW.

2 WHEN YOU, PERSONALLY, WERE AT TCW, DID
3 YOU USE, YOURSELF, THE INTERNALLY DEVELOPED SYSTEMS?

4 A. I DIDN'T DIRECTLY ACCESS THEM ON MY COMPUTER;
5 BUT I DID USE THEM, BECAUSE ANALYSTS WOULD SEND ME
6 SCREEN SHOTS OF THEM, AND I WOULD LOOK AT THOSE SCREEN
7 SHOTS.

11:08AM

8 Q. WHAT'S A SCREEN SHOT?

9 A. A SCREEN SHOT IS WHEN THEY PULL IT UP ON THE
10 COMPUTER, AND THEY CAN E-MAIL ME THAT PAGE, JUST LIKE
11 YOU SAW THE INFORMATION ON THE SCREEN, I WOULD BE ABLE
12 TO SEE THE INFORMATION ON THERE.

11:08AM

13 Q. SO LET'S TAKE A LOOK AT EXHIBIT 284, WHICH IS
14 IN EVIDENCE.

15 AND I'LL JUST SPLASH UP PAGE 1 OF THAT,
16 DENNIS; THEN WE'LL TURN TO PAGE 8.

11:08AM

17 IF YOU COULD PUT UP PAGE 8.

18 WHAT IS PAGE 8 OF EXHIBIT 284?

19 A. THIS IS A SCREEN SHOT OF THE SECURITY ANALYZER
20 FROM TCW.

11:08AM

21 Q. NOW, DO YOU SEE THOSE BUBBLES WITH THOSE
22 LITTLE -- WHAT DO YOU CALL THOSE THINGS, ON THE LEFT
23 AND RIGHT-HAND SIDE?

24 A. YES.

25 Q. WERE THOSE ON THE SCREEN SHOT, OR WERE THOSE
26 USED FOR MARKETING PURPOSES?

11:09AM

27 A. THOSE WERE DESIGNED FOR MARKETING PURPOSES, TO
28 EXPLAIN TO POTENTIAL CLIENTS, WHO WAS ON THIS PAGE.

1 Q. SO I WANT YOU TO TAKE A CLOSER LOOK.

2 AND DENNIS, IF WE COULD -- YEAH. THAT
3 WOULD BE PERFECT.

4 I'D ASK DENNIS TO ENLARGE SOME OF THESE,
5 SO YOU CAN EXPLAIN TO THE LADIES AND GENTLEMEN OF THE
6 JURY, WHAT KIND OF INFORMATION IS ON THIS SCREEN SHOT
7 THAT WAS DEVELOPED BY THE -- IT WAS PROVIDED TO YOU FOR
8 YOUR USE.

11:09AM

9 DO YOU SEE, UP THERE IN THE UPPER LEFT,
10 IT SAYS LTV?

11:09AM

11 A. YES.

12 Q. WHAT DOES LTV STAND FOR?

13 A. IT STANDS FOR LOAN TO VALUE.

14 Q. WHAT IS LOAN TO VALUE, AND HOW DO YOU USE THAT
15 IN MAKING INVESTMENT DECISIONS?

11:09AM

16 A. WELL, LOAN TO VALUE IS VERY SIMPLE.

17 IMAGINE YOU BUY A HOUSE FOR \$100
18 THOUSAND, AND YOU PUT \$25,000 DOWN; SO YOU HAVE A
19 \$75,000 MORTGAGE; SO THE LOAN TO VALUE OF THAT HOUSE,
20 WOULD BE 75 PERCENT, \$75,000 MORTGAGE ON A HOUSE THAT
21 WAS -- COST OR WORTH \$100,000.

11:10AM

22 Q. SO HOW IS THAT RELEVANT -- YOU ARE MAKING
23 INVESTMENTS IN THE MORTGAGE-BACKED SECURITY.

24 WHY DO YOU LOOK AT LOAN TO VALUE?

25 A. WELL, IF YOU ARE LOOKING AT A SECURITY THAT'S
26 NOT GUARANTEED BY THE U.S. GOVERNMENT, IT'S GOOD TO
27 KNOW, IF THE HOMEOWNER HAS A LOT OF EQUITY IN THE
28 HOUSE, BECAUSE IF THE HOMEOWNER HAS A LOT OF EQUITY,

11:10AM

1 THE ODDS OF HIM DEFAULTING ARE QUITE LOW. AND IF HE
2 CAN'T MAKE THE PAYMENTS, AT LEAST YOU HAVE THE VALUE OF
3 THE HOUSE TO COMPENSATE YOU FOR YOUR INVESTMENT.

4 Q. AND THERE'S ANOTHER -- IF YOU GO TWO DOWN
5 BELOW FROM THERE, IT SAYS FICO, F-I-C-O.

11:10AM

6 A. YES.

7 Q. WHAT'S THAT?

8 A. FICO IS SORT OF A CREDIT SCORE OR CREDIT
9 RATING FOR INDIVIDUALS.

10 Q. AND WHY IS THAT RELEVANT TO YOU, AS A
11 PORTFOLIO MANAGER, IN DECIDING WHAT MORTGAGE-BACKED
12 SECURITIES TO BUY OR SELL?

11:10AM

13 A. WELL, THESE LOANS -- THESE ARE POOLS OF LOANS;
14 SO THERE COULD BE HUNDREDS OF DIFFERENT HOMEOWNERS
15 INSIDE THIS ONE POOL.

11:11AM

16 AND IT'S VERY IMPORTANT TO KNOW IF THESE
17 HOMEOWNERS HAD A VERY HIGH CREDIT SCORE OR LOW CREDIT
18 SCORE, BECAUSE PEOPLE WITH HIGH CREDIT SCORES ARE MORE
19 LIKELY TO PAY THAN PEOPLE WITH LOW CREDIT SCORES.

20 SO IF YOU ARE ANALYZING OR BUYING THE
21 SECURITY, YOU WANT TO KNOW WHAT THE CREDIT OF THE
22 UNDERLYING HOMEOWNERS WOULD BE.

11:11AM

23 Q. TO THE RIGHT, YOU WOULD SEE A LITTLE ARROW
24 GOING TO DELINQUENCY?

25 A. YES.

11:11AM

26 Q. IS THAT ANOTHER FACTOR THAT YOU, AS A
27 PORTFOLIO MANAGER, WOULD ANALYZE, IN TRYING TO FIGURE
28 OUT WHETHER TO MAKE A TRADE?

1 A. WELL, YES, OF COURSE. THIS SHOWS -- IT TAKES
2 LOANS AND IT FIGURES HOW MANY PEOPLE ARE 30 DAYS
3 DELINQUENT; HOW MANY PEOPLE ARE 60 DAYS DELINQUENT; HOW
4 MANY PEOPLE ARE 90 DAYS DELINQUENT; HOW MANY OF THOSE
5 LOANS ARE IN FORECLOSURE, HOW MANY OF THEM ARE OWNED BY
6 THE BANK.

11:11AM

7 AND OBVIOUSLY, IF YOU ARE BUYING A POOL
8 OF THESE LOANS, YOU WOULD WANT TO KNOW HOW MANY PEOPLE
9 ARE LATE OR DELINQUENT, HOW LATE THEY ARE.

10 AND THE COLUMNS NEXT TO IT, TO SHOW ON
11 THESE VERY SYSTEMS, LIKE BLOOMBERG, OR INTEX OR LOAN
12 PERFORMANCE, WHAT THOSE SYSTEMS HAVE CAPTURED IS THE
13 AMOUNT OF PEOPLE WHO ARE LATE OR DELINQUENT.

11:11AM

14 AND THE NUMBERS WILL BE DIFFERENT FROM
15 EACH ONE, IT'S NOT AN EXACT SCIENCE.

11:12AM

16 BUT THAT'S WHY WE'D WANT TO SEE WHAT ALL
17 THREE SYSTEMS MODELED -- NOT MODELED -- ALL THREE
18 PURVEYORS OF DEBT SHOWED WHAT THE AMOUNT OF
19 DELINQUENCIES ARE.

20 Q. SO THESE THINGS YOU TALKED ABOUT DON'T SOUND
21 SO COMPLICATED.

11:12AM

22 WHY IS IT SO COMPLICATED THAT YOU GUYS
23 MAKE ALL --

24 MR. QUINN: OBJECT TO THE PREAMBLE, YOUR
25 HONOR. MOVE TO STRIKE.

11:12AM

26 MR. BRIAN: I'LL MOVE TO STRIKE THAT.

27 THE COURT: JUST ASK THE QUESTION.

28 MR. QUINN: SUSTAINED.

1 Q. BY MR. BRIAN: WHAT'S COMPLEX ABOUT THE
2 DECISIONS YOU MAKE TO BUY OR SELL SECURITIES?

3 A. THE COMPLEX PART IS MAKING A DETERMINATION OF
4 WHAT THE SITUATION WILL BE IN THE FUTURE.

5 WE KNOW WHAT IT IS TODAY, BUT EVERYONE
6 KNOWS TOMORROW WILL BE DIFFERENT.

11:12AM

7 SO IN ORDER TO MAKE AN ANALYSIS OF THE
8 SECURITY, WE HAD TO HAVE A GOOD IDEA OF WHAT'S GOING TO
9 HAPPEN TO THE UNEMPLOYMENT RATE IN THE UNITED STATES;
10 WHAT'S GOING TO HAPPEN TO THE ECONOMY; WHAT'S GOING TO
11 HAPPEN TO HOME PRICES; WHAT'S GOING TO HAPPEN TO GLOBAL
12 GROWTH; THERE'S A VARIETY OF FACTORS.

11:13AM

13 AND THAT INFORMATION IS USED BY
14 PORTFOLIO MANAGERS, USING THIS AS A BASIC TOOL, BUT THE
15 REST OF THE INFORMATION WHICH THESE SYSTEMS DON'T GIVE
16 YOU IS USED TO MAKE A DETERMINATION IF YOU THINK THIS
17 IS A GOOD SECURITY, AND AT WHAT PRICE YOU SHOULD BUY
18 IT, AND MAYBE WHAT PRICES YOU SHOULD SELL IT.

11:13AM

19 Q. AND MAYBE YOU JUST ANSWERED MY NEXT QUESTION.

20 BUT DO THESE SYSTEMS THAT GENERATE THIS
21 DATA, DO THEY HELP YOU? DO THEY TELL YOU HOW TO
22 ANALYZE WHAT THE UNEMPLOYMENT RATE IS GOING TO BE, WHAT
23 THE ECONOMIC SITUATION IS GOING TO BE OVER THE NEXT
24 YEAR?

11:13AM

25 A. NO. THEY JUST RECORD HISTORICAL DATA.

11:13AM

26 Q. NOW, WHEN YOU LEFT TCW, DID YOU TAKE YOUR
27 KNOWLEDGE OR EXPERIENCE, YOUR INTELLIGENCE, WITH YOU?

28 A. YES.

1 Q. DID YOU TAKE YOUR JUDGMENT WITH YOU?

2 A. OF COURSE.

3 Q. NOW, I THINK YOU SAID THAT THE DATA IN TCW'S
4 INTERNAL SYSTEMS COMES FROM PLACES LIKE BLOOMBERG AND
5 INTEX.

11:14AM

6 DOES THAT MEAN THAT THE UNDERLYING DATA:
7 FICO, LTV, DELINQUENCY, COMES FROM THOSE PLACES?

8 A. CAN YOU REPEAT THE QUESTION?

9 Q. WELL, THE UNDERLYING DATA -- TCW DEVELOPED A
10 PROPRIETARY SYSTEM TO ASSEMBLE THE DATA.

11:14AM

11 BUT THE UNDERLYING DATA, WAS IT YOUR
12 UNDERSTANDING, THAT CAME FROM SOURCES LIKE BLOOMBERG
13 AND INTEX AND THE OTHERS?

14 A. YES.

15 Q. OKAY. IF WE COULD JUST PUT UP THE WHOLE PAGE
16 NOW, OF PAGE 8.

11:14AM

17 I THINK YOU INDICATED THAT THIS PAGE
18 WITH THE LITTLE BUBBLES WAS A MARKETING PIECE, CORRECT?

19 A. WELL, THE BUBBLES WERE A MARKETING PIECE.

20 Q. YEAH.

11:14AM

21 AND DO YOU KNOW WHY DOCUMENTS LIKE THESE
22 WERE USED IN MARKETING AT TCW?

23 A. WELL, TO EXPLAIN TO CLIENTS WHAT WE WERE
24 DOING.

25 BUT ALSO, MANY CLIENTS WERE CONCERNED
26 THAT WHEN YOU ARE INVESTING IN THE MORTGAGE-BACKED
27 SECURITIES MARKET, YOU ARE INVESTING IN THE SORT OF A
28 BLACK BOX OR A DARK POOL. THEY DIDN'T KNOW WHAT WAS

11:15AM

1 UNDERNEATH IT.

2 AND IT GAVE CLIENTS COMFORT TO KNOW THAT
3 THE INFORMATION WAS TRANSPARENT AND AVAILABLE, AND
4 ANYONE WHO HAD THE SYSTEMS COULD LOOK AT THESE POOLS IN
5 GREAT DETAIL. AND IF THEY HAD GREAT DETAIL, THEN THEY
6 COULD MAKE VERY GOOD JUDGMENTS ABOUT WHAT TO BUY AND
7 WHAT NOT TO BUY.

11:15AM

8 Q. NOW, HAD DOUBLELINE CREATED A SYSTEM TO TAKE
9 INFORMATION FROM MULTIPLE SOURCES, SO YOU CAN SEE IT IN
10 ONE PLACE?

11:15AM

11 A. DOUBLELINE, NO.

12 WELL, DOUBLELINE --

13 Q. I'M TALKING ABOUT THE PROGRAMMERS AND THE
14 LIKE.

15 A. YES.

11:15AM

16 Q. WELL, DID THEY CREATE SUCH A SYSTEM?

17 A. YES.

18 Q. WERE YOU INVOLVED IN THAT CREATING AT ALL?

19 A. NO, I WASN'T.

20 Q. DID TCW HAVE A PROPRIETARY DATABASE THAT
21 SELECTED THAT DATA FROM OTHER SOURCES AND RAN
22 CALCULATIONS ON THE DATA, TO MAKE IT MORE USABLE,
23 BEFORE IT WAS DISPLAYED?

11:16AM

24 A. YES, IT DID.

25 Q. DOES DOUBLELINE HAVE SUCH A DATABASE, OR DID
26 YOU PURCHASE IT?

11:16AM

27 A. DOUBLELINE PURCHASED THE DATABASE.

28 Q. FROM WHOM?

1 A. FROM VICHARA.

2 Q. NOW, NEW SUBJECT.

3 WE CAN TAKE THAT DOWN, DENNIS.

4 WHEN YOU DESCRIBED THE THREE TYPES OF
5 ACCOUNTS: MUTUAL FUNDS, SEPARATE ACCOUNTS, CLOSED END
6 FUNDS, I WANT TO TALK ABOUT A MUTUAL FUND.

11:16AM

7 WHEN YOU GOT UP AND RUNNING, DECEMBER
8 2009, JANUARY, DID DOUBLELINE DEVELOP AT THAT TIME, OR
9 HAVE IN PLACE, A MUTUAL FUND?

10 A. NO, IT DID NOT.

11:16AM

11 Q. AT SOME POINT, WAS A MUTUAL FUND LAUNCHED?

12 A. YES.

13 Q. ABOUT WHEN?

14 A. APPROXIMATELY APRIL 2010.

15 Q. AND GENERALLY SPEAKING, WHAT STEPS DID YOU
16 DO -- DID YOU TAKE, TO SET UP THAT MUTUAL FUND?

11:16AM

17 A. WELL, WE HAD TO GET A BOARD OF DIRECTORS. WE
18 HAD TO SET UP THE COMPANY. WE HAD TO FILE A
19 REGISTRATION DOCUMENT WITH THE SEC THAT THEY COMMENTED
20 AND IMPROVED ON.

11:17AM

21 AND WE ALSO HAD TO SET UP SETTLEMENT
22 AGREEMENTS WITH VARIOUS BROKERAGE FIRMS, SUCH AS
23 MERRILL LYNCH OR BANK OF AMERICA, UBS, TO SETTLE THE
24 FUNDS.

25 Q. DID YOU HIRE LAWYERS TO DO THAT?

11:17AM

26 A. YES.

27 Q. DID YOU INTERFACE WITH THE LAWYERS?

28 A. YES.

1 Q. ABOUT WHEN DID YOU BEGIN THAT PROCESS THAT LED
2 TO THE MUTUAL FUND?

3 A. I THINK IT WAS EARLY FEBRUARY 2010.

4 Q. WHAT DOES IT MEAN TO HAVE A TRACK RECORD, IN
5 YOUR BUSINESS?

11:17AM

6 A. WELL, A TRACK RECORD IS A MATHEMATICAL
7 DEPICTION OF HOW WELL A PORTFOLIO OR A MANAGER DID,
8 VERSUS A BENCHMARK.

9 SO IF YOU WERE COMPARING YOURSELF TO THE
10 S&P 500, YOUR STOCK MANAGER WOULD DETERMINE WHAT YOUR
11 RETURN WAS FOR A PERIOD OF TIME, VERSUS S&P 500.

11:17AM

12 Q. AT SOME POINT, DID DOUBLELINE SEEK PERMISSION
13 FROM THE SEC TO USE THE TRACK RECORDS THAT YOU AND
14 MR. GUNDLACH AND OTHERS HAD ESTABLISHED AT TCW?

15 A. YES, WE DID.

11:18AM

16 Q. AND WERE YOU INVOLVED IN THAT DECISION?

17 A. YES, I WAS.

18 Q. AND TAKE A LOOK AT EXHIBIT 2117.

19 THAT'S ALREADY IN EVIDENCE, DENNIS. YOU
20 CAN PUT THAT UP, PAGE 1.

11:18AM

21 WHAT IS EXHIBIT 2117?

22 A. WELL, THIS IS THE PROSPECTUS THAT WAS FILED
23 WITH THE SEC IN THE ESTABLISHMENT OF DOUBLELINE FUND
24 TRUST, WHICH WAS A MUTUAL FUND.

25 Q. DENNIS, IF WE COULD PUT UP PAGE 28, PLEASE.

11:18AM

26 AND I WOULD LIKE YOU TO ENLARGE THE
27 SECOND PARAGRAPH AT THE TOP.

28 AND THEN YOU CAN TAKE THAT DOWN.

1 DID THE -- DID THIS PAGE 28 CONTAIN
2 INFORMATION ABOUT THE TRACK RECORD OF THE TCW TOTAL
3 RETURN BOND FUND?

4 A. YES, IT DID.

5 Q. THAT'S THE MUTUAL FUND THAT YOU MANAGED AT
6 TCW, RIGHT?

11:19AM

7 A. CORRECT.

8 Q. AND WAS THIS -- THIS FILING WAS MADE AFTER THE
9 LAWSUIT WAS FILED, CORRECT?

10 A. CORRECT.

11:19AM

11 Q. AND WHY WAS THE LANGUAGE ABOUT THE TCW TRACK
12 RECORD INCLUDED IN -- ON PAGE 28?

13 A. WELL, AS FAR AS UNDERSTANDING -- AS FAR AS THE
14 ATTORNEYS EXPLAINED TO ME, IF YOU HAD THE SAME
15 MANAGEMENT TEAM MOVE OVER, INCLUDING THE NAMED
16 PORTFOLIO MANAGERS, WHO ARE JEFFREY GUNDLACH AND
17 MYSELF, THAT YOU WOULD BE ABLE TO USE THAT TRACK RECORD
18 IN MARKETING A NEW FUND.

11:19AM

19 Q. SO WHEN THIS DOCUMENT WAS PREPARED, AND YOU
20 PARTICIPATED, DID DOUBLELINE HAVE TRADE SECRETS WHEN IT
21 PREPARED THIS?

11:19AM

22 A. NO.

23 Q. SO HOW WERE YOU ABLE TO CLAIM THE TRACK
24 RECORD?

25 A. WELL, THE TRACK RECORD IS PUBLIC INFORMATION.
26 YOU CAN GET IT OFF BLOOMBERG.

11:19AM

27 AND IF YOU DIDN'T HAVE BLOOMBERG, YOU
28 CAN GET IT OFF OF YAHOO FINANCE. IT'S VERY AVAILABLE.

1 Q. NOW, AT THE TIME YOU DID IT, YOU FILED THIS
2 INFORMATION, WAS IT YOUR UNDERSTANDING THAT YOU WERE
3 ENTITLED TO CLAIM THAT TRACK RECORD?

4 A. THAT WAS MY UNDERSTANDING.

5 Q. AND -- SO LET'S GO BACK TO THAT PARAGRAPH I
6 ENLARGED, DENNIS, SECOND PARAGRAPH.

7 THE FIRST SENTENCE SAYS, (READING):

8 THE DOUBLELINE TOTAL RETURN
9 BOND FUND HAS INVESTMENT
10 OBJECTIVES, POLICIES AND STRATEGIES
11 SUBSTANTIALLY SIMILAR IN ALL
12 MATERIAL RESPECTS TO THOSE EMPLOYED
13 BY THE TCW TOTAL RETURN BONDS
14 FUNDS.

15 WHAT DID YOU MEAN BY THAT?

16 A. WELL, IN ORDER TO USE A TRACK RECORD, YOU HAVE
17 TO BE DOING SOMETHING VERY SIMILAR. SO FOR EXAMPLE,
18 THAT WAS A BOND FUND. WE COULDN'T RUN THE STOCK FUNDS
19 AND CLAIM THE TRACK RECORD.

20 AND IT WAS SAYING THAT WE WOULD BE USING
21 THE SAME METHODOLOGY, THE SAME -- IT WOULD BE DOLLAR
22 DENOMINATED. INVESTING IN THE MORTGAGE-BACKED
23 SECURITIES WOULD HAVE THE SAME AVERAGE LIFE, THE SAME
24 TYPE OF CREDIT RATING THAT WAS SIMILAR TO MANY OTHER
25 FUNDS.

26 Q. NOW, THE JURY HAS HEARD THAT AFTER THIS WAS
27 FILED, DOUBLELINE AMENDED ITS SEC FILING TO REMOVE THE
28 REFERENCE TO THE TCW TRACK RECORD.

1 ARE YOU FAMILIAR WITH THAT?

2 A. YES, I AM.

3 Q. TAKE A LOOK AT EXHIBIT 2118, WHICH IS ALREADY
4 IN EVIDENCE.

5 AND IS THAT THE AMENDED FILING? 11:21AM

6 A. YES. THIS IS THE AMENDED FILING OF THE SAME
7 EARLIER FILING.

8 Q. AND DID IT REMOVE THAT TRACK RECORD LANGUAGE?

9 A. YES, IT DID.

10 Q. AND WERE YOU INVOLVED IN THE DECISION TO
11 REMOVE THAT LANGUAGE? 11:21AM

12 A. YES, I WAS.

13 Q. WHY DID YOU REMOVE IT?

14 A. I REMOVED IT BECAUSE TCW CONTESTED US USING
15 THAT LANGUAGE. AND WE KNEW THAT WOULD BE -- DELAY THE
16 LAUNCH OF THE FUND. 11:21AM

17 IT WAS VERY IMPORTANT FOR US, BECAUSE WE
18 WERE -- NEEDED THE CASH FLOW, NEEDED THE MONEY TO GET
19 THE FUND RUNNING UP AS SOON AS POSSIBLE; SO WE MADE THE
20 DECISION, LET'S JUST LAUNCH IT WITHOUT THE TRACK
21 RECORD. 11:22AM

22 Q. AND -- SO DID YOU THINK YOU WERE ABLE TO
23 RECRUIT INVESTORS WITHOUT THE TRACK RECORD?

24 A. WE HOPED WE WOULD. WE FELT THAT ENOUGH PEOPLE
25 KNEW WHO WE WERE. 11:22AM

26 AND IF THEY WANTED TO LOOK UP THE TRACK
27 RECORD, AS I SAID EARLIER, THEY COULD PULL IT UP ON
28 YAHOO FINANCE OR BLOOMBERG OR NEW YORK TIMES, WHEREVER

1 THEY WANTED TO SEE THE TRACK RECORD; OR MAKE THE
2 DECISION THEMSELVES, IF THEY WANTED TO COME OVER AND
3 HAVE US INVEST WITH THEM.

4 Q. AND HOW MANY INVESTORS DO YOU NOW HAVE IN THAT
5 MUTUAL FUND?

11:22AM

6 A. WE HAVE ABOUT A 150,000.

7 Q. WITH RESPECT TO TRACK RECORDS, ARE THERE TRACK
8 RECORDS RELEVANT TO THE SEPARATE ACCOUNTS, OR IS THAT
9 JUST ON THE MUTUAL FUNDS?

10 A. IT'S RELEVANT TO THE SEPARATE ACCOUNTS, AS
11 WELL.

11:23AM

12 Q. HOW DO YOU USE THEM FOR SEPARATE ACCOUNTS?

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

14 Q. WELL, HOW DO YOU GET THE DATA THAT ALLOWS YOU
15 TO USE AND MARKET YOUR TRACK RECORD?

11:23AM

16 A. WELL, THERE'S TWO WAYS. EITHER YOU HAVE AN
17 ACCOUNT COME TO YOU, AND OVER TIME, AS MONTHS GO BY AND
18 QUARTERS GO BY, YOU BUILD UP A TRACK RECORD.

19 OR ONCE AGAIN, IF YOU HAVE SUBSTANTIALLY
20 THE SAME MANAGEMENT TEAM MOVE OVER TO ANOTHER FIRM, AND
21 AN ACCOUNT COMES OVER, AND THAT ACCOUNT BRINGS OVER ALL
22 ITS AUDITED STATEMENTS OF ITS TRACK RECORD, THEN YOU
23 CAN THEN USE THAT HISTORICAL TRACK RECORD.

11:23AM

24 Q. AND DID THE CLIENTS WHO CAME TO YOU, SOME OF
25 THE CLIENTS ALLOWED YOU TO USE THE TRACK RECORD?

11:23AM

26 A. THEY BROUGHT OVER THEIR TRACK RECORD, YES.

27 Q. TURN NOW TO EXHIBIT 1899, ALSO IN EVIDENCE.

28 THIS IS A DOCUMENT THAT MR. BROSSY

1 TESTIFIED ABOUT.

2 AND IF -- DENNIS, IF WE COULD TURN TO
3 PAGE 10.

4 THERE'S A LOT OF NUMBERS ON THESE PAGES.

5 I WANT TO DIRECT YOUR ATTENTION FIRST,
6 ON THE FIRST RECTANGLE, IT SAYS DISTRESSED FUNDS, 60
7 MILLION IN REVENUE.

11:24AM

8 DO YOU SEE, IN THE THIRD LINE DOWN, IT
9 REFERS TO AN EIGHT PERCENT GROSS HURDLE?

10 A. YES.

11:24AM

11 Q. DOES THAT LOOK LIKE IT CAME FROM TCW?

12 A. I DON'T BELIEVE SO.

13 Q. WHY DO YOU SAY THAT?

14 A. BECAUSE THE NUMBER IS INCORRECT.

15 Q. SO THAT THE EIGHT PERCENT, ANY REFERENCE TO AN
16 EIGHT PERCENT HURDLE USED AT TCW WAS WRONG?

11:24AM

17 A. CORRECT.

18 Q. WHAT'S THE CORRECT NUMBER, TO YOUR
19 RECOLLECTION?

20 A. IT'S SIX PERCENT.

11:24AM

21 Q. IS IT -- SO THERE'S A TWO PERCENT
22 DIFFERENTIAL.

23 IS THAT TWO PERCENT SIGNIFICANT?

24 A. COULD BE WORTH MILLIONS OF DOLLARS.

25 Q. OKAY.

11:25AM

26 NOW, THE 60 MILLION IN REVENUE, UNDER
27 THE DISTRESSED FUNDS, WOULD YOU CONSIDER THAT TO BE
28 CONFIDENTIAL INFORMATION TO TCW?

1 A. NO, I WOULDN'T.

2 Q. WHY NOT?

3 A. WELL, TCW ANNOUNCED THE SIZE OF THE FUNDS WITH
4 GREAT FANFARE. AND OBVIOUSLY, THEY ARE VERY PROUD THAT
5 THEY RAISED THOSE AMOUNT OF FUNDS.

11:25AM

6 SO ANYONE WHO WOULD BE REMOTELY
7 INTERESTED KNEW THAT TCW HAD THREE BILLION OF THESE
8 CLOSED END SPECIAL MORTGAGE CREDIT FUNDS.

9 AND ON TOP OF IT, THEY ANNOUNCED WHAT
10 THE FEES WERE.

11:25AM

11 BUT THE FEE OF 2 AND 20 WAS A VERY, VERY
12 GENERIC FEE FOR THIS TYPE OF STRUCTURE. SO IN ORDER TO
13 KNOW WHAT THE 60 MILLION OF REVENUE, ALL YOU HAD TO DO
14 WAS SAY, WELL, THREE MILLION TIMES TWO PERCENT IS 60
15 MILLION PER ANNUM.

11:25AM

16 Q. SO THERE'S A REFERENCE IN THE SECOND LINE
17 THERE, 2 AND 20 FEE STRUCTURE ON ABOUT THREE BILLION
18 AUM'S?

19 AND AUM, WE ALL KNOW, IS ASSETS UNDER
20 MANAGEMENT, CORRECT?

11:26AM

21 A. CORRECT.

22 Q. AND ARE YOU SAYING THE THREE BILLION WAS
23 PUBLICLY AVAILABLE?

24 A. TCW ANNOUNCED IT.

25 Q. AND TELL THE LADIES AND GENTLEMEN IN THE JURY
26 THEN, WHETHER THE 2 AND 20 FEE STRUCTURE IS COMMON IN
27 THE INDUSTRY?

11:26AM

28 A. VERY COMMON.

1 Q. AND IS THAT INFORMATION CONFIDENTIAL?

2 A. NO, IT'S NOT.

3 Q. NOW, THERE'S A REFERENCE A COUPLE LINES DOWN
4 TO (READING):

5 FIRST FUND CARRY NOT

11:26AM

6 SIGNIFICANT; SECOND FUND COULD BE

7 'VERY SIGNIFICANT'.

8 WHAT'S CARRIED INTEREST?

9 A. CARRIED INTEREST IS EFFECTIVELY YOUR PROFIT.

10 Q. AND DO PEOPLE IN THE INDUSTRY KNOW THERE'S
11 CARRIED INTEREST ON FUNDS?

11:26AM

12 A. YES, THEY DO.

13 Q. IS THAT FACT, THAT THERE'S CARRIED INTEREST,
14 CONFIDENTIAL SOMEHOW?

15 A. NO, IT'S NOT.

11:26AM

16 Q. LET'S TURN TO PAGE 6 OF THE SAME EXHIBIT.

17 THERE'S REFERENCES TO PROJECTED
18 REVENUES.

19 DO YOU SEE THAT?

20 A. YES.

11:27AM

21 Q. WE'VE HEARD SOME TESTIMONY THAT THESE ARE
22 CONFIDENTIAL.

23 DO YOU AGREE WITH THAT?

24 A. NO, I DON'T.

25 Q. WHY NOT?

11:27AM

26 A. WELL, PROJECTED REVENUE IS JUST AN ASSUMPTION
27 OF WHAT'S GOING TO HAPPEN IN THE FUTURE. AND,
28 REALISTICALLY, NOBODY KNOWS WHAT THE FUTURE IS GOING TO

1 BE.

2 SOMEONE CAN MAKE SOME ASSUMPTIONS ABOUT
3 IT; BUT IN ORDER FOR SOMETHING TO BE CONFIDENTIAL, IT
4 WOULD HAVE TO BE SOMETHING THAT IS KNOWN, OR HAS HIGH
5 PROBABILITY OF BEING KNOWN.

11:27AM

6 THERE'S NO WAY ANYONE KNOWS WHAT'S GOING
7 TO HAPPEN TO THE SECURITIES AND REVENUE IN 2017, '15,
8 '16; MAYBE NOT EVEN TOMORROW.

9 Q. LET'S TURN BACK TO PAGE 10, SAME EXHIBIT 1899.

10 DO YOU SEE IN THE MIDDLE, IT SAYS,
11 STRATEGIC MBS, 30 MILLION IN REVENUE?

11:27AM

12 FIRST OF ALL, WHAT IS STRATEGIC MBS?

13 A. STRATEGIC MBS WAS THE STRATEGY THAT THE MBS
14 GROUP AT TCW HAD MANAGED.

15 Q. AND IS THE 30 MILLION IN REVENUE, IN YOUR
16 VIEW, CONFIDENTIAL TO TCW?

11:28AM

17 A. NO, IT'S NOT.

18 Q. WHY NOT?

19 A. WELL, FIRST OF ALL, TCW, ON ITS WEBSITE THEN,
20 AND EVEN TODAY, STATES HOW MANY ASSETS THEY HAVE IN
21 EACH PARTICULAR ASSET CLASS.

11:28AM

22 AND SECONDLY, ON THE TCW WEBSITE, IT
23 STATES WHAT THE GROSS RETURN IS AND WHAT THE NET RETURN
24 IS.

25 SO FOR EXAMPLE, IF THE GROSS RETURN IS
26 10, AND THE NET RETURN IS NINE, THE ASSUMPTION WOULD BE
27 THAT ONE PERCENT WAS A MANAGEMENT FEE.

11:28AM

28 SO IF HAVE YOU THE MANAGEMENT FEE, AND

1 YOU HAVE THE AMOUNT OF ASSETS, TO FIGURE OUT THE
2 REVENUE IS VERY BASIC ARITHMETIC.

3 Q. BELOW THAT, IT SAYS 125 BASIS POINTS.

4 DO YOU SEE THAT?

5 A. YES.

11:28AM

6 Q. IS THAT CONFIDENTIAL?

7 A. THAT WOULD BE THE NET NUMBER VERSUS THE GROSS
8 NUMBER.

9 IT'S NOT CONFIDENTIAL.

10 Q. WHAT ABOUT THE FACT BELOW THAT, THERE ARE 12
11 MBS CLIENTS?

11:29AM

12 IS THAT CONFIDENTIAL?

13 A. I DON'T BELIEVE SO. I DON'T THINK THAT WOULD
14 BE VERY RELEVANT.

15 Q. IS THAT THE KIND OF STUFF YOU WOULD TELL A
16 POTENTIAL INVESTOR?

11:29AM

17 A. WE WOULD TELL AN INVESTOR, IF A NEWSPAPER
18 CALLED AND ASKED US, CONSULTANT ASKED US, WE WOULD TELL
19 PEOPLE HOW MANY CLIENTS THERE WERE.

20 Q. NOW, IF WE GO DOWN TO THE NEXT ONE, MUTUAL
21 FUND. THERE WAS TESTIMONY ABOUT THE 25 BASIS POINTS.

11:29AM

22 IN THE SECOND -- WELL, FIRST OF ALL, THE
23 5.2 AUM, IS THAT CONFIDENTIAL?

24 A. NO.

25 Q. AND RIGHT BELOW THAT, 25 BASIS POINTS.

11:29AM

26 IS THAT CONFIDENTIAL?

27 A. THAT, I DON'T BELIEVE THAT'S CONFIDENTIAL.

28 Q. WHAT DOES IT REPRESENT, FIRST OF ALL?

1 A. I THINK, AND I'M NOT SURE. I THINK IT
2 REPRESENTS WHAT THE MANAGEMENT FEE WOULD BE FOR THOSE
3 ASSETS.

4 Q. AND IS THAT CONFIDENTIAL INFORMATION?

5 A. NO, IT'S NOT. 11:30AM

6 Q. WHY NOT?

7 A. WELL, THAT INFORMATION, THE TOTAL FEES ARE
8 AVAILABLE ON BLOOMBERG, ON ONE OF THE DESCRIPTION
9 PAGES.

10 AND THOSE TOTAL FEES ENCOMPASS EXPENSES 11:30AM
11 AND OTHER THINGS.

12 BUT GENERALLY, PEOPLE CAN MAKE AN
13 ASSUMPTION ABOUT WHAT THE NET MANAGEMENT FEE IS.

14 AND I'D HAVE TO THINK THAT NET
15 MANAGEMENT FEE IS MORE THAN 25 BASIS POINTS, BUT IT 11:30AM
16 GIVES YOU A ROUGH IDEA OF WHAT THE MANAGEMENT FEE IS.

17 Q. NOW, I TAKE IT YOU DIDN'T PARTICIPATE IN ANY
18 CONVERSATIONS BETWEEN MR. GUNDLACH AND MR. BROSSY, DID
19 YOU?

20 A. NO. 11:30AM

21 Q. LET ME GO TO A NEW SUBJECT.

22 WERE YOU PAID BY TCW FOR ALL THE WORK
23 THAT YOU PERFORMED IN 2009?

24 A. NO, I WAS NOT.

25 Q. WHAT WERE YOU NOT PAID FOR? 11:30AM

26 A. I WASN'T PAID FOR THE PERIOD OF OCTOBER 1ST
27 THROUGH -- UPON MY RESIGNATION ON DECEMBER 5TH, 2009.

28 Q. TAKE A LOOK AT EXHIBIT -- IN YOUR BINDER,

1 5822.

2 WHAT IS THAT?

3 A. THIS IS A LETTER FROM MICHAEL CAHILL,
4 REGARDING MY REQUEST THAT I BE PAID FOR THE TIME I WAS
5 THERE.

11:31AM

6 Q. 5822 IS ACTUALLY A LETTER TO MR. CAHILL, ISN'T
7 IT?

8 A. YES. TO MR. CAHILL, YES.

9 Q. AND DID YOU GET A RESPONSE TO THAT?

10 A. YES.

11:31AM

11 Q. OR DID YOUR LAWYER GET A RESPONSE TO THAT?

12 A. MY LAWYER GOT A RESPONSE TO THAT.

13 Q. IS THAT EXHIBIT 5837?

14 A. YES.

15 Q. DID TCW ACCEPT YOUR CLAIM FOR UNPAID FEES?

11:31AM

16 A. NO, THEY DID NOT.

17 MR. BRIAN: I WOULD OFFER BOTH THESE EXHIBITS,
18 YOUR HONOR, 5822 AND 5837.

19 MR. QUINN: WE OBJECT TO BOTH, YOUR HONOR.

20 MR. BRIAN: WE CAN TAKE IT UP AT THE BREAK,
21 YOUR HONOR.

11:31AM

22 THE COURT: OKAY.

23 MR. BRIAN: I HAVE NO FURTHER QUESTIONS.

24 THE COURT: ALL RIGHT.

25 CROSS-EXAMINATION?

11:32AM

26 MR. QUINN: YES, YOUR HONOR.

27

28

1 CROSS-EXAMINATION

2

3 BY MR. QUINN:

4 Q. MORNING, MR. BARACH.

5 A. QUINN.

11:32AM

6 Q. IF YOU CAN TAKE A LOOK AT -- YOU ARE LOOKING
7 AT THAT EXHIBIT 284 THAT MR. BRIAN SHOWED YOU.

8 THIS IS THE TCW MBS INVESTMENT
9 TECHNOLOGY. THIS IS A PRESENTATION THAT WAS PREPARED
10 FOR CLIENTS AT TCW. I THINK IT'S GOING TO BE IN THE
11 BINDER MR. BRIAN GAVE YOU, NOT IN OUR BINDER.

11:32AM

12 A. WELL, IT'S NOT HERE.

13 Q. IT'S ON THE SCREEN.

14 A. OKAY.

15 Q. THIS WAS A PRESENTATION THAT WAS PREPARED FOR
16 USE BY CLIENTS; IS THAT TRUE?

11:32AM

17 A. I BELIEVE SO.

18 Q. AND IT'S DATED SEPTEMBER 11TH, 2009?

19 A. YES.

20 Q. AND IF WE TURN TO PAGE 3 OF THAT EXHIBIT, DASH
21 3.

11:32AM

22 AND ON THE RIGHT-HAND SIDE, THERE'S A
23 DESCRIPTION THERE OF PROPRIETARY SYSTEMS, ISN'T THERE?

24 A. YES. THAT'S WHAT IT SAYS.

25 Q. AND THIS IS A DOCUMENT DATED IN SEPTEMBER
26 2009.

11:33AM

27 THERE'S A DESCRIPTION HERE OF TCW
28 PROPRIETARY SYSTEMS.

1 A. THAT'S WHAT IT SAYS, YES.

2 Q. AND WOULD YOU AGREE, SIR, THAT IN DEALING WITH
3 CLIENTS AND PROSPECTIVE CLIENTS, BEING ACCURATE AND
4 HONEST IN THE THINGS THAT YOU REPRESENT ARE IMPORTANT?

5 A. YES.

11:33AM

6 Q. NOW, YOU KNOW, LET ME JUST ASK YOU, DO YOU
7 KNOW WHETHER OR NOT, AT TCW, PEOPLE LIKE MR. CAHILL,
8 AND MR. MOORE, AND MR. ZHANG, ACTUALLY DEVELOPED
9 PROPRIETARY ANALYTICAL PROGRAMS AT TCW THAT WERE USED
10 IN THE MORTGAGE-BACKED SECURITIES BUSINESS?

11:33AM

11 A. I BELIEVE THEY DID.

12 Q. AND YOU KNOW A SIGNIFICANT AMOUNT OF MONEY WAS
13 SPENT BY TCW IN DEVELOPING THOSE PROGRAMS, DON'T YOU?

14 A. YES.

15 Q. AND OF COURSE, MR. MOORE AND MR. ZHANG, THEY
16 WERE COMPUTER PROGRAMMERS WHO SUPPORTED THE
17 MORTGAGE-BACKED SECURITIES EFFORT AT TCW, AND THEY WENT
18 OVER TO WORK AT DOUBLELINE, CORRECT?

11:34AM

19 A. THAT'S CORRECT.

20 Q. AND THEN, AFTER THEY CAME TO DOUBLELINE, THEY
21 WERE INVOLVED IN DEVELOPING THIS ANALYTICAL PLATFORM AT
22 DOUBLELINE, CORRECT?

11:34AM

23 A. THAT'S CORRECT.

24 Q. AND MR. MOORE AND MR. ZHANG ACTUALLY WROTE
25 SOFTWARE CODE IN SUPPORT OF THAT PLATFORM, CORRECT?

11:34AM

26 A. YES.

27 Q. AND THEY STILL -- YOU, I TAKE IT -- YOU,
28 PERSONALLY, WERE NOT INVOLVED IN THE DEVELOPMENT OF

1 THAT ANALYTICAL PLATFORM AT DOUBLELINE; IS THAT TRUE?

2 A. THAT'S TRUE.

3 Q. SO YOU CAN'T REALLY TELL US WHAT MR. MOORE WAS
4 LOOKING AT, WHAT HE USED, IF ANYTHING, SAME FOR
5 MR. ZHANG, IN DEVELOPING THAT PLATFORM; IS THAT TRUE?

11:34AM

6 A. ONLY WHAT HE TOLD ME.

7 Q. BUT YOU, PERSONALLY, DON'T KNOW?

8 A. NO.

9 Q. NOW, ARE THOSE TWO INDIVIDUALS STILL EMPLOYED
10 BY DOUBLELINE TODAY?

11:35AM

11 A. YES.

12 Q. HERE IN LOS ANGELES?

13 A. YES.

14 Q. ARE YOU AWARE OF ANY REASON WHY THEY COULDN'T
15 COME TESTIFY IN THIS TRIAL?

11:35AM

16 MR. BRIAN: OBJECTION. ARGUMENTATIVE.

17 THE COURT: SUSTAINED.

18 Q. BY MR. QUINN: YOU TALKED SOME ABOUT OAKTREE
19 AND THE ASSISTANCE THAT OAKTREE GAVE DOUBLELINE IN
20 GETTING STARTED.

11:35AM

21 IT'S TRUE, ISN'T IT, THAT OAKTREE WAS
22 NOT INVOLVED IN DEVELOPING THE ANALYTICAL PLATFORM THAT
23 DOUBLELINE USES, CORRECT?

24 A. CORRECT.

25 Q. AND IN FACT, IN THE DEAL THAT WAS NEGOTIATED
26 WITH OAKTREE, THEY WERE VERY SPECIFIC THAT THEY WEREN'T
27 GOING TO HELP OUT IN THAT RESPECT; ISN'T THAT TRUE?

11:35AM

28 A. I DON'T SPECIFICALLY KNOW THAT, NO.

1 Q. WELL, DO YOU RECALL THAT THERE WAS A TERM IN
2 THE CONTRACT THAT THEY WEREN'T GOING TO HAVE ANY
3 RESPONSIBILITY FOR THE ANALYTICAL PLATFORM?

4 MR. BRIAN: THERE'S NO FOUNDATION. IT'S
5 CUMULATIVE, YOUR HONOR.

11:35AM

6 THE COURT: OVERRULED.

7 HOW IS IT GOING TO BE CUMULATIVE, IF
8 THERE'S NO FOUNDATION?

9 MR. BRIAN: YOU ASKED ME A QUESTION.

10 THE COURT: I'LL ALLOW IT. YOU CAN ANSWER THE
11 QUESTION, IF YOU KNOW THE ANSWER.

11:35AM

12 THE WITNESS: I DON'T KNOW.

13 Q. BY MR. QUINN: ALL RIGHT. I THINK WE ALREADY
14 HAVE SOME EVIDENCE ON THAT, SO I'LL MOVE ALONG.

15 YOU TOLD US ABOUT A TRANSACTION WITH
16 OAKTREE RELATING TO SOME OAKTREE STOCK AND SOME
17 DOUBLELINE STOCK.

11:36AM

18 AT ONE POINT DOUBLELINE HAD OAKTREE
19 STOCK, AND THEY SOLD IT BACK TO OAKTREE?

20 A. YES.

11:36AM

21 Q. ALL RIGHT. WHAT DID -- HOW DID DOUBLELINE
22 COME TO GET THAT OAKTREE STOCK?

23 A. THEY GAVE THAT IN EXCHANGE FOR AN ADDITIONAL
24 INCREMENTAL PART OF THE BUSINESS.

25 Q. AND WHAT WAS THAT ADDITIONAL INCREMENTAL PART
26 OF THE BUSINESS THAT THEY GAVE THAT OAKTREE STOCK IN
27 EXCHANGE FOR?

11:36AM

28 A. IT WAS APPROXIMATELY 5 PERCENT.

1 Q. ALL RIGHT. SO THIS OAKTREE STOCK THAT YOU
2 ENDED UP SELLING BACK TO OAKTREE, YOU GOT IN EXCHANGING
3 5 PERCENT OF DOUBLELINE TO OAKTREE; IS THAT TRUE?

4 A. WELL, IT WAS A COMBINATION PACKAGE.

5 IF IT WASN'T FOR THE ORIGINAL 15 PERCENT 11:36AM
6 THAT WE'D GIVEN THEM, THEY WOULDN'T HAVE BEEN
7 INTERESTED IN THAT 5 PERCENT.

8 SO IT WASN'T ON A STAND-ALONE BASIS; IT
9 WAS AN EXTENUATION OF THE SAME TRANSACTION.

10 Q. WELL, AS I UNDERSTAND, YOU REFERRED TO AN 11:37AM
11 INCREMENT JUST NOW.

12 AND AS I UNDERSTAND IT, YOU ARE
13 REFERRING TO A 5 PERCENT INCREMENT.

14 A. RIGHT.

15 Q. AND HOW MUCH DID YOU SELL THAT OAKTREE STOCK 11:37AM
16 BACK TO OAKTREE FOR, DO YOU RECALL?

17 MR. BRIAN: OBJECTION. CUMULATIVE.

18 THE COURT: I'LL ALLOW IT.

19 WE HAVE BEEN THROUGH THIS, AND I THOUGHT
20 WE HAD ALL THESE NUMBERS IN. 11:37AM

21 BUT GO AHEAD.

22 DO YOU REMEMBER, SIR?

23 THE WITNESS: YES.

24 Q. BY MR. QUINN: HOW MUCH WAS IT?

25 A. \$20 MILLION. 11:37AM

26 Q. NOW, MR. BRIAN ASKED YOU SOME QUESTIONS.

27 HE SAID WHEN YOU WENT OVER TO
28 MR. GUNDLACH'S HOUSE ON THE 5TH, THAT THERE WAS NO

1 GRAND PLAN IN PLACE.

2 DID YOU LATER LEARN AT SOME POINT THAT
3 THERE HAD BEEN SOME STEPS TAKEN TO ORGANIZE A BUSINESS,
4 WHICH YOU HAD NOT BEEN AWARE OF AT THE TIME THEY WERE
5 TAKEN?

11:37AM

6 A. YES.

7 Q. AND FOR EXAMPLE, IF WE COULD LOOK AT EXHIBIT
8 1734 --

9 IF WE COULD PUT THAT UP, PLEASE.

10 AND IF WE COULD -- THIS IS AN E-MAIL
11 DATED BACK IN 2008.

11:38AM

12 AND IF WE COULD LOOK AT THE SECOND PAGE.

13 MR. BRIAN: OBJECTION, YOUR HONOR. BEYOND THE
14 SCOPE, AND CUMULATIVE. AND NO FOUNDATION WITH THIS
15 WITNESS.

11:38AM

16 THE COURT: I'LL OVERRULE THE OBJECTION.

17 YOU MAY SEEK TO LAY THE FOUNDATION, AND
18 THEN MOVE FORWARD.

19 Q. BY MR. QUINN: DID YOU -- IF WE COULD LOOK AT
20 THE NEXT PAGE.

11:38AM

21 WERE YOU AWARE ABOUT THE CREATION OF
22 THIS DOUBLELINE LOGO --

23 A. NO, I WAS NOT.

24 Q. -- BACK IN 2008?

25 IF WE COULD LOOK AT EXHIBIT 366.

11:38AM

26 ACTUALLY, THIS IS NOT IN EVIDENCE, I
27 DON'T THINK.

28 MR. MADISON: 366 WAS ADMITTED ON AUGUST 15,

1 YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 MR. QUINN: I'M SORRY, YOUR HONOR. THAT IS
4 NOT THE ONE I WAS --

5 THE COURT: ARE YOU LOOKING FOR SOMETHING ELSE
6 NOW? 11:39AM

7 MR. QUINN: I'M LOOKING FOR SOMETHING ELSE.

8 Q. I TAKE IT THAT YOU WEREN'T AWARE OF ANY
9 DOWNLOADING ACTIVITY OR SOMETIMES DESCRIBED AS BACKING
10 UP OF INFORMATION; THAT'S SOMETHING THAT YOU LEARNED
11 ABOUT LATER AT WELL? 11:39AM

12 A. THAT'S CORRECT.

13 Q. AND HAVE YOU SEEN -- IT'S 596. I'M SORRY.

14 MR. BRIAN: IS THAT IN THE BINDER?

15 MR. BARACH, HAVE YOU -- IF YOU TAKE A
16 LOOK AT THIS DOCUMENT, DO YOU SEE -- AND I THINK -- 11:39AM

17 THE COURT: IF WE JUST LOOK AT IT, AND SEE IF
18 HE RECOGNIZES IT.

19 MR. QUINN: PERHAPS IF I COULD LOOK OVER
20 MR. BRIAN'S SHOULDER. 11:40AM

21 Q. IF YOU LOOKED OVER THE SECOND TO THE LAST
22 PAGE, DO YOU SEE YOUR NAME THERE IDENTIFIED AS BEING AN
23 OFFICER? IT'S PAGE -10?

24 A. YES.

25 MR. QUINN: AND I'D OFFER THIS DOCUMENT, YOUR
26 HONOR. 11:40AM

27 MR. BRIAN: NO OBJECTION.

28 THE COURT: IT WILL BE ADMITTED.

1 MR. QUINN: IF WE COULD PUT THAT UP ON THE
2 SCREEN. IF WE LOOK AT PAGE DASH --

3 MR. BRIAN: ACTUALLY, BEFORE I SAY THAT, I
4 PROBABLY SHOULD LOOK AT THE DOCUMENT.

5 MR. QUINN: SORRY?

11:40AM

6 MR. BRIAN: LET ME JUST TAKE A FEW MOMENTS.

7 NO OBJECTION.

8 THE COURT: IT WILL BE ADMITTED.

9

10 (EXHIBIT 596 ADMITTED.)

11:41AM

11

12 MR. QUINN: THANK YOU.

13 Q. IF WE COULD LOOK AT THE PAGE.

14 THE FIRST PAGE, THIS IS A -- YOU SEE
15 THIS AS A CERTIFIED COPY OF AN AMENDED -- CERTIFICATE
16 OF AMENDMENT FOR ABLE GRAPE LLC.

11:41AM

17 DO YOU SEE THAT?

18 A. YES.

19 Q. AND IF WE LOOK AT PAGE DASH 2 --

20 A. WHAT WAS THIS DATE?

11:41AM

21 8TH OF DECEMBER. OKAY.

22 Q. AND IF WE LOOK AT THE DASH 2 PAGE, IN THE
23 SECOND PARAGRAPH, IT RECITES THERE THAT THERE WAS A
24 LIMITED LIABILITY COMPANY UNDER THE NAME OF ABLE GRAPE
25 THAT WAS ORGANIZED.

11:41AM

26 DO YOU SEE THAT?

27 A. YES.

28 Q. AND THEN THE SECOND PARAGRAPH REFERS TO

1 CHANGING ITS NAME TO DOUBLELINE?

2 A. YES.

3 Q. AND THEN IF WE LOOK THEN AT PAGE DASH 10, YOU
4 ARE IDENTIFIED AS THE PRESIDENT.

5 A. CORRECT.

11:42AM

6 Q. DO YOU SEE THAT?

7 A. YES.

8 Q. SO I TAKE IT THAT -- DID YOU KNOW THAT YOU HAD
9 BEEN APPOINTED PRESIDENT ON DECEMBER 8TH, OF A COMPANY
10 THAT CHANGED ITS NAME THAT DAY FROM ABLE GRAPE TO
11 DOUBLELINE?

11:42AM

12 MR. BRIAN: OBJECTION.

13 THAT'S ACTUALLY COMPOUND.

14 THE COURT: I THINK YOU CAN SORT IT OUT.

15 CAN YOU ANSWER THAT QUESTION?

11:42AM

16 THE WITNESS: WELL, I KNOW I WAS NAMED
17 PRESIDENT. I KNEW THE COMPANY WAS NAMED DOUBLELINE.

18 I DIDN'T REALLY PAY MUCH ATTENTION TO
19 WHAT IT WAS CALLED BEFORE.

20 Q. BY MR. QUINN: AND, IN FACT, YOU HADN'T KNOWN,
21 I TAKE IT, THAT ABLE GRAPE EVEN EXISTED; IS THAT TRUE?

11:42AM

22 A. PRIOR TO THAT TIME PERIOD, I DIDN'T.

23 Q. AND I'M SORRY, YOU DIDN'T --

24 A. PRIOR TO THAT TIME PERIOD, I DID NOT KNOW.

25 Q. AND HAD YOU SEEN ANY PRO FORMAS OR BUSINESS
26 PLANS THAT HAD BEEN PREPARED FOR ABLE GRAPE PRIOR TO
27 DECEMBER 4?

11:42AM

28 A. NO, I DID NOT.

1 Q. HAD YOU -- WERE YOU AWARE ABOUT ANY SPACE --
2 SEARCH FOR REAL ESTATE THAT HAD BEEN DONE IN THE
3 LOS ANGELES AREA PRIOR TO DECEMBER 4?

4 A. YES, I WAS.

5 Q. AND AT SOME POINT, YOU LEARNED THAT THERE
6 WAS ACTUALLY -- WAS A SEARCH GOING ON FOR SPACE?

11:43AM

7 A. I KNEW THEY WERE LOOKING AT SOME SPACE, BUT I
8 DIDN'T KNOW TO WHAT EXTENT IT WAS BEING DONE.

9 Q. OKAY.

10 DID YOU LEARN THAT ANY INSTRUCTIONS HAD
11 BEEN GIVEN, FOR EXAMPLE, FOR ACTUAL DEMOLISHING OF
12 WALLS TO OCCUPY THE SPACE?

11:43AM

13 A. NO, I DID NOT.

14 Q. YOU NEVER SAW ANYTHING LIKE THAT?

15 A. NO.

11:43AM

16 Q. YOU WERE ASKED SOME QUESTIONS ABOUT THE
17 REGISTRATION PROCESS.

18 WAS MR. WARD PRIMARILY RESPONSIBLE FOR
19 THAT, THE REGISTRATION WITH THE SEC AND INTERFACING
20 WITH THE LAWYERS ON THAT?

11:43AM

21 A. HE INTERFACED WITH THE LAWYERS.

22 BUT IT WAS PRIMARILY GREG PATTI FROM
23 CADWALADER WHO WAS RESPONSIBLE FOR THAT.

24 Q. HE'S THE LAWYER.

25 BUT IN TERMS OF DOUBLELINE, THE PERSON
26 WHO INTERFACED WITH THE LAWYERS WAS PRIMARILY MR. WARD;
27 IS THAT TRUE?

11:44AM

28 A. YES.

1 Q. DO YOU KNOW WHETHER OR NOT MR. WARD COLLECTED
2 ANY INFORMATION, LISTS OF CLIENTS FOR REGISTRATION,
3 BACK IN OCTOBER OR NOVEMBER?

4 A. I DON'T KNOW.

5 Q. LET ME SHOW YOU EXHIBIT 430, IN EVIDENCE. 11:44AM

6 IF WE CAN JUST PUT THE FIRST PAGE ON.

7 MR. BRIAN: YOUR HONOR, I'M GOING TO OBJECT TO
8 THIS.

9 THERE'S NO FOUNDATION AS TO THIS
10 WITNESS, THIS WHOLE LINE OF EXAMINATION. 11:44AM

11 THE COURT: THESE ARE EXHIBITS THAT WERE ALL
12 ADMITTED DURING MR. WARD'S TESTIMONY AND MR. --

13 MR. QUINN: MR. SANTA ANA'S TESTIMONY.

14 THE COURT: -- AND MR. SANTA ANA'S TESTIMONY.

15 IF HE KNOWS NOTHING ABOUT THEM, WE
16 OUGHT TO MOVE ON. 11:44AM

17 Q. BY MR. QUINN: DO YOU KNOW ANYTHING ABOUT THIS
18 REQUEST FOR INFORMATION FROM MR. --

19 A. NO, I DO NOT.

20 Q. YOU CAN TAKE THAT DOWN, MIKE. 11:44AM

21 YOU WERE ASKED SOME QUESTIONS ABOUT
22 EXHIBIT 1899, THAT SEMLER BROSSY PROPOSAL.

23 IF WE COULD PUT THAT UP ON THE SCREEN.

24 HAVE YOU HAD A CHANCE TO READ THROUGH
25 THIS DOCUMENT? 11:45AM

26 A. NO.

27 Q. YOU HAVEN'T READ THROUGH IT?

28 A. NO.

1 Q. SO WOULD IT BE FAIR TO SAY THEN THAT YOU ARE
2 NOT REALLY IN THE POSITION TO SAY THAT THERE'S NO TCW
3 CONFIDENTIAL INFORMATION IN IT?

4 A. I WAS JUST REFERRING TO THAT ONE PAGE OF THE
5 REFERENCE TO A 150 MILLION IN ASSETS.

11:45AM

6 IN THAT, I DO FEEL CONFIDENT.

7 Q. RIGHT. BUT IN TERMS OF THE DOCUMENT AS A
8 WHOLE, WOULD IT BE TRUE TO SAY THAT YOU ARE JUST NOT IN
9 A POSITION TO SAY WHETHER OR NOT THERE'S ANY
10 CONFIDENTIAL TCW INFORMATION IN HERE?

11:45AM

11 A. I HAVEN'T LOOKED AT THE ENTIRE DOCUMENT, NO.

12 Q. YOU MADE SOME COMMENTS ABOUT PROJECTIONS,
13 REVENUE PROJECTIONS.

14 ARE YOU SAYING THAT IT'S IMPOSSIBLE FOR
15 REVENUE PROJECTIONS TO BE CONFIDENTIAL, BECAUSE THEY
16 SIMPLY RELATE TO THE FUTURE, AND NONE OF US CAN KNOW
17 WHAT THE FUTURE IS?

11:46AM

18 A. IF IT'S REVENUE PROJECTIONS OF ASSETS, THEN
19 IT'S NOT CONFIDENTIAL, IN MY MIND.

20 FOR EXAMPLE, IF I GAVE YOU A BASKET OF
21 FIVE STOCKS, AND YOU ARE GOING TO PROJECT WHAT THE
22 STOCKS ARE GOING TO DO OVER THE NEXT FIVE YEARS, THEN I
23 WOULD ASSUME IT'S CONFIDENTIAL.

11:46AM

24 MAYBE THE PROJECTION OF WHAT YOUR LAW
25 FIRM WILL DO IN REVENUES IN THE NEXT FIVE YEARS IS
26 CONFIDENTIAL. BUT IF IT'S UNDERLYING ASSETS, ALL THE
27 INFORMATION ABOUT THOSE ASSETS ARE KNOWN TO EVERYBODY,
28 BECAUSE IT'S A FREE CAPITALISTIC MARKET, THEN ANYONE

11:46AM

1 CAN HAVE ANY INFORMATION ON THAT.

2 Q. THANK YOU.

3 BUT SOMETIMES, YOU WOULD AGREE THAT
4 REVENUE PROJECTIONS CAN BE CONFIDENTIAL; WOULD YOU
5 AGREE WITH THAT?

11:46AM

6 A. SOMETIMES THEY CAN BE.

7 Q. AND, FOR EXAMPLE, IF YOU ARE TALKING ABOUT
8 SOMETHING LIKE A SPECIAL MORTGAGE CREDIT FUND, DID --
9 WHILE YOU WERE AT TCW, DID TCW PUBLISH PROJECTIONS
10 GOING OUT FIVE, SIX YEARS INTO THE FUTURE, FOR THE
11 SPECIAL MORTGAGE CREDIT FUNDS?

11:46AM

12 A. NO.

13 Q. AND IF WE LOOK AT, IN EXHIBIT 1899-7, UNDER
14 DISTRESSED FUNDS, WE SEE MANAGEMENT FEE AND PERFORMANCE
15 FEE.

11:47AM

16 DO YOU SEE THAT THERE, SIR?

17 A. YES.

18 Q. AND THERE ARE SOME PROJECTIONS THERE RUNNING
19 OUT TO 2017, FOR PERFORMANCE FEES FOR THE SPECIAL
20 MORTGAGE CREDIT FUNDS, CORRECT?

11:47AM

21 A. YES.

22 Q. AND OF ALL THE PEOPLE IN THE WORLD WHO MIGHT
23 BE IN THE BEST POSITION TO MAKE A PROJECTION ABOUT WHAT
24 THAT BUNDLE OF ASSETS THAT WERE HELD IN THE SPECIAL
25 MORTGAGE CREDIT FUNDS MIGHT YIELD IN THE FUTURE, NOBODY
26 WAS IN A BETTER POSITION THAN JEFFREY GUNDLACH.

11:47AM

27 WOULD YOU AGREE WITH THAT?

28 A. HE, HIMSELF, WOULD TELL YOU THAT HE CAN'T TELL

1 THE FUTURE. AND HE WON'T KNOW IF THAT PROJECTION IS
2 CORRECT.

3 AND ALSO I'VE HEARD HIM SAY THAT HE
4 DIDN'T GIVE THE NUMBERS. AND THESE NUMBERS -- THEY ARE
5 ALL THE SAME NUMBERS. IT DIDN'T EVEN LOOK LIKE AN --
6 IT ALL SAYS 33, 33, 33, 33, 33. THAT'S VERY STRANGE,
7 FOR A PROJECTION THAT'S EVERY SINGLE YEAR TO HAVE THE
8 SAME NUMBERS.

11:47AM

9 Q. LET ME JUST GET BACK TO MY QUESTION.

10 IS THERE ANYBODY IN THE WORLD WHO WOULD
11 BE IN A BETTER POSITION THAN MR. GUNDLACH TO MAKE
12 PROJECTIONS ABOUT WHAT THE RETURN MIGHT BE ON THOSE
13 ASSETS IN THE SPECIAL MORTGAGE CREDIT FUNDS?

11:48AM

14 A. I'M SURE HE WOULD BE ONE OF THE BEST.

15 Q. JUST AS YOU SAID, FROM MY LAW FIRM, THAT MIGHT
16 BE CONFIDENTIAL, THAT I WOULD KNOW INFORMATION THAT
17 OTHER PEOPLE WOULDN'T KNOW.

11:48AM

18 MR. GUNDLACH, WHO'S THE PORTFOLIO
19 MANAGER, WOULD KNOW INFORMATION THAT OTHER PEOPLE
20 WOULDN'T KNOW.

11:48AM

21 WOULD YOU AGREE WITH THAT?

22 A. NO, I WOULD NOT AGREE WITH THAT.

23 Q. ARE THERE PEOPLE OUTSIDE OF TCW WHO WOULD HAVE
24 A BETTER UNDERSTANDING OF WHAT THOSE ASSETS IN THE
25 SPECIAL MORTGAGE CREDIT FUNDS MIGHT YIELD AS OF THE
26 SUMMER OF 2009 THAN MR. GUNDLACH?

11:48AM

27 A. THERE ARE MANY PEOPLE WHO WOULD BE ABLE TO
28 LOOK AT THAT PORTFOLIO, ANALYZE IT, AND COME UP WITH

1 PROJECTIONS THAT COULD BE GOOD OR BETTER OR WORSE;
2 BECAUSE THESE WERE PUBLICLY TRADED SECURITIES. THERE
3 WAS NO INSIDE INFORMATION.

4 IF YOU ARE TALKING ABOUT YOUR LAW FIRM,
5 YOU HAVE INFORMATION THAT I'M NOT PRIVY TO.

11:49AM

6 BUT IF YOU HAVE A PORTFOLIO OF
7 SECURITIES, ANYBODY CAN LOOK AT THOSE SECURITIES AND
8 MAKE THOSE PROJECTIONS, AND THEY COULD BE EITHER RIGHT
9 OR WRONG.

10 AND A LOT OF PEOPLE WOULD CONTEST THAT.
11 PERHAPS BILL GROSS WOULD SAY HE'S BETTER.

11:49AM

12 Q. YOU SAY MR. GROSS MIGHT SAY HE'S BETTER AT
13 DOING A PROJECTION FOR THE SPECIAL MORTGAGE CREDIT
14 FUNDS MANAGED BY MR. GUNDLACH THAN MR. GUNDLACH IS?

15 IS THAT WHAT YOU ARE TELLING US?

11:49AM

16 A. YOU COULD SAY THAT HE COULD LOOK AT THE
17 UNDERLYING SECURITIES, AND THE ENVIRONMENTS THAT HE
18 PROJECTS, AND HE MIGHT COME UP WITH A BETTER IDEA, OR
19 BELIEVE IT'S BETTER.

20 AND THERE WOULD BE NO WAY TO PROVE WHO
21 WAS RIGHT OR WRONG UNTIL AFTER THE TIME HAD PASSED.

11:49AM

22 Q. DO YOU THINK THAT PEOPLE MIGHT REGARD THE
23 PROJECTIONS OF THE PORTFOLIO MANAGER WHO'S ACTUALLY
24 RESPONSIBLE FOR PUTTING THE PORTFOLIO TOGETHER, AND
25 MANAGING IT, DO YOU THINK THAT PEOPLE MIGHT THINK
26 THAT'S MORE VALUABLE THAN SOMEBODY WHO'S OUTSIDE OF
27 TCW?

11:49AM

28 A. WELL, SOME PEOPLE WOULD THINK THAT IT'S MORE

1 VALUABLE, SOME PEOPLE MIGHT THINK IT'S LESS VALUABLE.

2 Q. MR. BRIAN ASKED YOU SOME QUESTIONS ABOUT YOUR
3 COMPENSATION IN 2009.

4 AND LET'S JUST BACK UP A SECOND, AND
5 UNDERSTAND WHAT YOUR EMPLOYMENT SITUATION WAS.

11:50AM

6 AS OF THE END -- YOU -- YOUR LAST
7 WRITTEN CONTRACT WITH TCW EXPIRED AT THE END OF 2006?

8 MR. BRIAN: OBJECTION.

9 THAT'S BEYOND THE SCOPE, YOUR HONOR.

10 THE COURT: OVERRULED. OVERRULED.

11:50AM

11 THE WITNESS: CORRECT.

12 Q. BY MR. QUINN: AS OF DECEMBER 31, 2006, YOUR
13 LAST WRITTEN CONTRACT EXPIRED, AND YOU BECAME AN
14 AT-WILL EMPLOYEE, CORRECT?

15 A. CORRECT.

11:50AM

16 Q. AND AFTER THAT, YOU STILL HAD AN UNDERSTANDING
17 ON YOUR COMPENSATION; ISN'T THAT TRUE?

18 A. YES.

19 Q. EVEN THOUGH YOU WERE AN AT-WILL EMPLOYEE, AND
20 YOU WERE -- NO LONGER HAD A DEAL WHERE YOU WOULD BE
21 EMPLOYED FOR A CERTAIN NUMBER OF YEARS.

11:50AM

22 MR. BRIAN: OBJECTION, AS BEYOND THE SCOPE,
23 YOUR HONOR.

24 THE COURT: I THINK YOU OPENED THE DOOR ON
25 THIS.

11:51AM

26 OVERRULED.

27 BUT LET'S -- WE'LL MOVE THROUGH.

28 IT'S OVERRULED.

1 GO AHEAD.

2 THE WITNESS: FOR THE TIME I WORKED, I
3 EXPECTED TO BE PAID.

4 Q. BY MR. QUINN: RIGHT.

5 BUT SO EVEN THOUGH YOU DIDN'T HAVE A -- 11:51AM
6 EITHER AN ORAL AGREEMENT OR A WRITTEN AGREEMENT TO BE
7 EMPLOYED FOR A CERTAIN SPECIFIED PERIOD OF TIME, YOU
8 STILL HAD AN UNDERSTANDING -- YOU HAD A DEAL HOW MUCH
9 YOU WOULD BE PAID DURING THE TIME THAT YOU WORKED
10 THERE, RIGHT? 11:51AM

11 A. CORRECT. I HAD AN ORAL AGREEMENT ON
12 COMPENSATION.

13 Q. AND AFTER YOUR WRITTEN AGREEMENT EXPIRED, YOUR
14 COMPENSATION WAS DETERMINED BY MR. GUNDLACH?

15 A. YES. 11:51AM

16 Q. AND YOU WERE IN THE SAME BOAT WITH SOME OTHER
17 PEOPLE WHO GOT PAID, AT HIS DISCRETION, OUT OF THAT
18 POOL; IS THAT TRUE?

19 A. NOT TRUE.

20 Q. TELL ME WHAT'S WRONG WITH MY STATEMENT. 11:52AM

21 A. I HAD A MATHEMATICAL FORMULA, FEE SHARING,
22 THAT WAS PAID TO ME QUARTERLY.

23 I DIDN'T RECEIVE A SALARY. I JUST
24 RECEIVED THE FEE SHARING, PAYABLE 60 DAYS AT THE END OF
25 EACH QUARTER. 11:52AM

26 Q. AND THIS IS SOMETHING THAT YOU WORKED OUT WITH
27 MR. GUNDLACH?

28 A. YES.

1 Q. THAT'S NOT SOMETHING THAT YOU WORKED OUT WITH
2 BILL SONNEBORN?

3 A. I WORKED IT OUT WITH A HIGH LEVEL EXECUTIVE OF
4 THE FIRM.

5 Q. RIGHT. NO, I UNDERSTAND.

11:52AM

6 BUT THIS WAS AN AGREEMENT YOU REACHED
7 WITH MR. GUNDLACH, AND NOT MR. SONNEBORN OR MR. BEYER
8 OR ANYONE ELSE AT TCW; IS THAT TRUE?

9 A. THAT'S TRUE.

10 Q. AND AT NO POINT DID MR. GUNDLACH MENTION TO
11 YOU THAT HE HAD SOME CONTRACT THAT HE COULDN'T BE FIRED
12 UNTIL AFTER SOME PERIOD OF TIME.

11:52AM

13 HE NEVER MENTIONED THAT TO YOU, DID HE?

14 A. HE MENTIONED TO ME HE HAD A CONTRACT.

15 I KNEW HE WORKED ON A CONTRACT.

11:53AM

16 Q. AT ANY POINT BETWEEN DECEMBER 4 AND JANUARY 10
17 DID MR. GUNDLACH EVER SAY TO YOU, "TCW CAN'T FIRE ME.
18 I HAVE A CONTRACT"?

19 A. BETWEEN DECEMBER 4TH AND JANUARY 10TH?

20 MR. BRIAN: OF WHAT YEAR?

11:53AM

21 Q. BY MR. QUINN: I'M SORRY.

22 AT ANY TIME BETWEEN DECEMBER 4, 2009,
23 AFTER MR. GUNDLACH WAS RELIEVED OF HIS DUTIES, AND
24 JANUARY 10, 2010. AT ANY TIME, DID HE TELL YOU TCW
25 COULDN'T FIRE ME, I HAD A CONTRACT; THAT WOULD HAVE
26 VIOLATED MY CONTRACT?

11:53AM

27 A. YES, HE DID.

28 Q. IF WE COULD TAKE A LOOK AT YOUR DEPOSITION,

1 286 -- PAGE 286, LINES 7 TO 11.

2 THE COURT: WHAT PAGES AGAIN? I'M SORRY,
3 MR. QUINN.

4 MR. QUINN: 286, LINES 7 TO 11.

5 MR. BRIAN: CAN I --

11:54AM

6 THE WITNESS: WHICH LINES?

7 THE COURT: YOU JUST TAKE A LOOK AT IT,
8 MR. BARACH, AND WE'LL SEE IF THERE'S ANY OBJECTION.

9 MR. BRIAN: THERE'S A REFERENCE ON LINE 8 TO
10 AN E-MAIL.

11:54AM

11 I THINK I NEED TO SEE WHAT THE E-MAIL
12 IS.

13 THE COURT: WELL, I DON'T KNOW IF WE'RE
14 SHOWING --

15 MR. BRIAN: I KNOW, BUT I NEED TO KNOW THE
16 DATE.

11:54AM

17 THE COURT: ALL RIGHT.

18 MR. BRIAN: NO OBJECTION.

19 THE COURT: IT WILL BE ADMITTED.

20 WE CAN PROCEED WITH THE MOVIE.

11:54AM

21 MR. QUINN: ALL RIGHT.

22 THE COURT: I'M TRYING TO SPICE IT UP A LITTLE
23 BIT.

24

25 (DEPOSITION TESTIMONY PLAYED)

11:54AM

26

27 Q. BY MR. QUINN: AND YOUR LAST DAY OF -- YOU
28 RESIGNED ON WHAT DAY?

1 A. DECEMBER 5TH.

2 Q. ON DECEMBER 5TH, 2009?

3 A. CORRECT.

4 Q. AND THE PRACTICE WAS THAT FEE SHARING WAS
5 PAID -- THE HISTORICAL PRACTICE WAS THAT FEE SHARING
6 WAS PAID 60 DAYS AFTER THE END OF THE QUARTER?

11:55AM

7 A. CORRECT.

8 Q. SO THAT WOULD HAVE BEEN WHAT, SOMETIME IN
9 FEBRUARY?

10 FEBRUARY OF 2011; IS THAT TRUE?

11:55AM

11 A. FEBRUARY OF 2010.

12 Q. I'M SORRY.

13 FEBRUARY OF 2010, CORRECT?

14 A. CORRECT.

15 Q. AND SO THAT WOULD HAVE BEEN A COUPLE OF MONTHS
16 AFTER YOU RESIGNED, RIGHT?

11:55AM

17 A. CORRECT.

18 Q. AND ARE YOU AWARE OF ANY OCCASION WHERE ANYONE
19 WAS EVER PAID AN ACCRUED INCENTIVE FEE SHARING AT ANY
20 TIME ON THE SPECIAL MORTGAGE CREDIT FUNDS?

11:55AM

21 DID THAT EVER HAPPEN?

22 MR. BRIAN: OBJECTION. BEYOND THE SCOPE.

23 THE COURT: SUSTAINED.

24 Q. BY MR. QUINN: WELL, MR. BRIAN ASKED YOU SOME
25 QUESTIONS ABOUT WHAT YOU WERE PAID AND WEREN'T PAID.

11:56AM

26 AND I'M JUST TRYING TO ASK YOU ABOUT
27 INCENTIVE FEES OR PERFORMANCE FEES.

28 YOU KNOW WHAT THOSE ARE, OBVIOUSLY?

1 A. YES.

2 Q. AT ANY TIME, HAD ANYONE BEEN PAID ANY ACCRUED
3 INCENTIVE OR PERFORMANCE FEES ON THE SPECIAL MORTGAGE
4 CREDIT FUNDS, WHEN THE FEES THEMSELVES HADN'T ACTUALLY
5 BEEN RECEIVED YET BY TCW?

11:56AM

6 MR. BRIAN: NO FOUNDATION.

7 THE COURT: SUSTAINED.

8 IT'S SUSTAINED. YOU CAN ASK HIM --

9 Q. BY MR. QUINN: HAVE YOU EVER RECEIVED --

10 THE COURT: SUSTAINED. THANK YOU.

11:56AM

11 MR. QUINN: THANK YOU. I APPRECIATE ALL THE
12 HELP.

13 Q. HAD YOU EVER, AT ANY TIME, EVER RECEIVED ANY
14 PERFORMANCE FEES BASED UPON ACCRUAL, WHEN -- ON THE
15 SPECIAL MORTGAGE CREDIT FUNDS, WHEN THOSE FEES HAD NOT
16 YET BEEN RECEIVED BY TCW?

11:56AM

17 MR. BRIAN: OBJECTION. STILL BEYOND THE
18 SCOPE.

19 THE COURT: OVERRULED.

20 THE WITNESS: NOT ON THE SPECIAL MORTGAGE
21 FUNDS.

11:56AM

22 BUT ON OTHER ACCOUNTS, WE HAD RECEIVED
23 FEES THAT HAD BEEN ACCRUED AND NOT PAID.

24 Q. BY MR. QUINN: ALL RIGHT.

25 AND WAS THIS -- YOU ARE TELLING US,
26 PERFORMANCE FEES?

11:57AM

27 A. YES. SEPARATE ACCOUNTS.

28 Q. I'M SORRY?

1 A. FOR SEPARATE ACCOUNTS.

2 Q. BUT AS TO THE SPECIAL MORTGAGE CREDIT FUNDS,
3 YOU NEVER RECEIVED THOSE; IS THAT TRUE?

4 A. NO, I DIDN'T.

5 Q. AND COULD YOU IDENTIFY FOR US, THE SPECIAL
6 ACCOUNTS ON WHICH YOU RECEIVED PERFORMANCE FEES THAT
7 HAD BEEN ACCRUED, BUT NOT RECEIVED BY TCW?

11:57AM

8 A. THE STATE OF COLORADO, FOR A PERIOD OF TIME,
9 HAD AN INCENTIVE FEE STRUCTURE THAT EVERY YEAR, EVEN
10 THOUGH THEY HADN'T BEEN REALIZED, THE ACCOUNT PAID
11 THOSE TO TCW, AND THEN TCW PAID THEM TO MEMBERS, SUCH
12 AS JEFFREY AND MYSELF, WHO WERE SUPPOSED TO GET THEM.

11:57AM

13 Q. ANY OTHERS THAT YOU CAN THINK OF?

14 A. I THINK THERE WAS ALSO AN ACCOUNT WITH
15 WEYERHAEUSER, WHICH WAS A SEPARATE ACCOUNT.

11:57AM

16 Q. ANY -- I'M SORRY. DID I CUT YOU OFF?

17 A. THERE MIGHT HAVE BEEN A FEW OTHERS. I CAN'T
18 REMEMBER THEIR NAMES.

19 Q. WE JUST WANT TO BE ABLE TO GO CHECK THESE.

20 SO WHAT I'VE GOT SO FAR IS STATE OF
21 COLORADO AND WEYERHAEUSER?

11:57AM

22 A. YES.

23 Q. AND YOUR TESTIMONY IS THAT THERE WERE
24 INCENTIVES OR PERFORMANCE FEES, IN BOTH OF THESE -- IN
25 CASES OF BOTH OF THESE CLIENTS, WHERE YOU RECEIVED,
26 BASED ON ACCRUAL, YOU WERE PAID, EVEN THOUGH THE MONEY
27 HAD NOT BEEN RECEIVED BY TCW; IS THAT TRUE?

11:58AM

28 A. THE MONEY WAS RECEIVED BY THE CLIENT, THE

1 ACCOUNT WAS NOT LIQUIDATED.

2 Q. AND THE CLIENT WAS?

3 A. THE STATE OF COLORADO.

4 Q. OKAY.

5 AND WERE THESE CARRIED INTEREST
6 SITUATIONS?

11:58AM

7 A. IT WASN'T EXACTLY CARRIED INTEREST; IT WAS AN
8 INCENTIVE FEE.

9 Q. IN OTHER WORDS, ARE YOU TELLING US THAT THE
10 FIRM WAS PAID IN BOTH OF THESE CASES, THE STATE OF
11 COLORADO AND WEYERHAEUSER?

11:58AM

12 A. YES.

13 Q. ALL RIGHT. AND YOU GOT PAID IN ANTICIPATION
14 OF THAT, OR JUST BEFORE THE FIRM WAS PAID; IS THAT WHAT
15 YOU ARE SAYING?

11:58AM

16 A. WE GOT PAID AFTER THE FIRM WAS PAID.

17 Q. AFTER THE FIRM WAS PAID?

18 A. YES.

19 Q. OKAY.

20 SO WHAT I'M ASKING ABOUT IS CAN YOU
21 IDENTIFY ANY CIRCUMSTANCE WHERE THERE WAS AN INCENTIVE
22 FEE PAYMENT THAT YOU RECEIVED THAT WAS JUST BASED ON
23 ACCRUAL, BEFORE TCW WAS PAID?

11:58AM

24 A. I CAN'T REMEMBER ANY SPECIFIC INCIDENT.

25 Q. AND YOU WORKED HOW LONG AT TCW?

11:59AM

26 A. SINCE 1987.

27 Q. WE -- THERE'S A GENTLEMAN BY THE NAME OF
28 MR. SHERMAN WHO CAME AND TESTIFIED, I THINK LAST WEEK,

1 OR THE WEEK BEFORE. THE WEEKS BLEND TOGETHER.

2 HE'S WITH A COMPANY CALLED RELIANCE?

3 A. YES.

4 Q. YOU KNOW HIM?

5 A. YES.

11:59AM

6 Q. WAS RELIANCE, OR ANY OF HIS OTHER COMPANIES,
7 WERE THEY INVESTORS IN THE SPECIAL MORTGAGE CREDIT
8 FUNDS?

9 A. I'M NOT POSITIVE. I DON'T THINK SO.

10 Q. IF WE COULD TAKE A LOOK AT EXHIBIT 64A, THAT
11 MR. BRIAN SHOWED YOU.

11:59AM

12 MR. BRIAN: NO, I THINK IT'S 764A.

13 MR. QUINN: 764A.

14 IF WE COULD PUT THAT UP ON THE SCREEN.

15 Q. THIS LANGUAGE HERE, BEGINNING (READING):

12:00PM

16 NEED TO RECONCILE STATEMENT,
17 NEVER CONSPIRED TO LEAVE TCW WITH
18 ANY SEPARATION I MIGHT HAVE
19 CONTEMPLATED. PERHAPS SAY THIS
20 CONTEMPLATION STARTED AFTER I HEARD
21 RUMORS THAT TCW WAS GOING TO FIRE
22 ME.

12:00PM

23 NOW, IS IT TRUE THAT SOMEBODY THOUGHT
24 THAT THERE WAS A NEED TO RECONCILE THOSE TWO IDEAS,
25 THAT THERE WAS A CONFLICT, IN A PROPOSED STATEMENT?

12:00PM

26 MR. BRIAN: OBJECT -- I'LL WITHDRAW THAT
27 OBJECTION.

28 THE WITNESS: I DIDN'T WRITE IT, BUT THAT'S --

1 SOMEONE COULD HAVE HAD THAT INTERPRETATION.

2 Q. DID YOU SEE THIS AT OR ABOUT THE TIME IT WAS
3 WRITTEN?

4 A. YES.

5 Q. DID YOU -- DO YOU RECALL EXPRESSING ANY
6 DISAGREEMENT WITH THAT THOUGHT?

12:00PM

7 A. I REMEMBER BEING VERY TIRED, AND SORT OF FED
8 UP WITH THE WHOLE THING. AND I DIDN'T SPEND A LOT OF
9 TIME LOOKING AT THIS PORTION OF THIS E-MAIL.

10 Q. WELL, SO THE ANSWER WILL BE, NO, YOU DON'T --
11 AS YOU SIT HERE, YOU DON'T RECALL EXPRESSING ANY
12 DISAGREEMENT?

12:01PM

13 A. NO.

14 Q. DO YOU RECALL ANYONE EXPRESSING ANY
15 DISAGREEMENT WITH THAT THOUGHT AT THE TIME?

12:01PM

16 A. NO, I DON'T.

17 Q. MR. BARACH, IF I COULD SHOW YOU EXHIBIT 640,
18 WHICH IS, I BELIEVE, NOT IN EVIDENCE.

19 IS THIS A -- YOU REFERRED TO A
20 MR. KARSH, WHO'S WITH OAKTREE, I THINK YOU SAID YOU HAD
21 KNOWN FOR SOME PERIOD OF TIME?

12:01PM

22 A. YES.

23 Q. IS THIS AN E-MAIL EXCHANGE BETWEEN YOU AND
24 MR. KARSH?

25 A. YES.

12:01PM

26 MR. QUINN: WE'D OFFER THAT.

27 MR. BRIAN: NO OBJECTION.

28 THE COURT: IT WILL BE ADMITTED.

1 (EXHIBIT 640 ADMITTED.)

2

3 Q. BY MR. QUINN: IS IT TRUE THAT WHEN YOU
4 WERE -- THIS DOCUMENT REFLECTS YOUR THOUGHTS ON THE
5 BUSINESS THAT YOU WERE ANTICIPATING?

12:02PM

6 IS THAT WHAT YOU ARE REFERRING TO HERE?

7 A. YES.

8 Q. IS IT TRUE THAT AS OF SEPTEMBER, 2009 YOU KNEW
9 THAT MR. GUNDLACH HAD BEEN THINKING OF LEAVING TCW FOR
10 AT LEAST A FEW MONTHS?

12:02PM

11 MR. BRIAN: OBJECTION. THAT'S BEYOND THE
12 SCOPE, YOUR HONOR.

13 THE COURT: SUSTAINED.

14 MR. QUINN: NOTHING FURTHER, YOUR HONOR.

15 THE COURT: THANK YOU, MR. QUINN.

12:02PM

16 REDIRECT?

17 MR. BRIAN: YEAH, BRIEFLY.

18

19 REDIRECT EXAMINATION

20

21 MR. BRIAN: CAN I HAVE 640 PUT UP ON THE
22 SCREEN BY EITHER -- I'M ASKING YOU THAT.

12:03PM

23 IF YOU CAN ENLARGE THAT, PLEASE.

24 Q. THAT HAS A -- YOUR GUESSTIMATE ABOUT THE
25 FUTURE AS OF DECEMBER 17TH, 2009; IS THAT RIGHT?

12:03PM

26 A. YES.

27 Q. HAS DOUBLELINE DONE AS WELL?

28 A. NO, IT HASN'T.

1 MR. QUINN: OBJECTION, YOUR HONOR. MOTION IN
2 LIMINE.

3 THE COURT: OVERRULED.

4 Q. BY MR. BRIAN: WHY NOT?

5 A. WHY HASN'T IT DONE AS WELL?

12:03PM

6 Q. WHY HAVEN'T YOU DONE AS WELL AS YOU
7 GUESSTIMATED IN DECEMBER OF 2009?

8 MR. QUINN: YOUR HONOR, IT OPENS THE DOOR ON
9 ANOTHER ISSUE.

10 MR. BRIAN: IT'S GOING TO BE VERY BRIEF.

12:03PM

11 MR. QUINN: WELL, HE CAN OPEN IT A LITTLE BIT,
12 BUT NOT AS TO THE REST.

13 THE COURT: WELL, DO YOU WANT TO COME ON UP
14 AND TALK ABOUT IT?

15

12:03PM

16 (THE FOLLOWING PROCEEDINGS WERE
17 HELD AT SIDEBAR:)

18

19 THE COURT: YOU ARE THE ONE THAT OFFERED THE
20 EXHIBIT IN THE CROSS-EXAMINATION. AND WHY CAN'T HE ASK
21 ABOUT IT? I DON'T KNOW WHY YOU PUT THAT UP THERE,
22 OTHER THAN TO HAVE SOME NEFARIOUS THOUGHT YOU WOULD USE
23 IT IN CLOSING ARGUMENT, OR SOMETHING ELSE, BECAUSE
24 CAN'T ASK QUESTIONS ABOUT IT OTHER THAN THIS WAS HIS
25 E-MAIL.

12:04PM

12:04PM

26 MR. QUINN: I DID ASK HIM A QUESTION ABOUT IT.

27 BUT THE POINT IS, IT'S NOW BECAUSE OF
28 THIS LAWSUIT, AND NOT TO MENTION THE FACT THAT THERE

1 WAS ENORMOUS PUBLICITY ABOUT THE DRUGS AND PORNOGRAPHY
2 AND PARAPHERNALIA THAT WAS FOUND.

3 THE COURT: I THINK BOTH OF YOU SHOULD TREAD
4 VERY LIGHTLY IN THIS AREA.

5 MR. QUINN: I DON'T THINK HE SHOULD BLAME IT
6 ON THE LAWSUIT. 12:04PM

7 MR. BRIAN: THEN LET ME LEAD HIM. I THINK I'M
8 ENTITLED TO SAY, HAS THE LAWSUIT HAD AN EFFECT ON YOUR
9 ABILITY TO --

10 THE COURT: I DON'T KNOW THAT YOU CAN LAY THE
11 FOUNDATION TO LET HIM GIVE THAT OPINION, BECAUSE HE
12 REALLY DOESN'T HAVE IT. 12:05PM

13 MR. BRIAN: SURE, HE DOES.

14 THE COURT: AND THEN WE GET -- JUST WAIT A
15 MINUTE. 12:05PM

16 MR. BRIAN: CLIENTS HAVE SAID TO PEOPLE THAT
17 THOSE -- THAT THEY WANT TO WAIT UNTIL THE LAWSUIT IS
18 OVER. THAT'S WHAT THEY'VE TOLD THEM.

19 MR. QUINN: THERE'S ALSO PEOPLE WHO HAVE
20 SAID -- THEY ARE BOARDS. 12:05PM

21 PUBLIC BOARDS WON'T LET THEM INVEST WITH
22 AN ORGANIZATION WHO IS HEADED BY A GUY WHERE DRUGS WERE
23 FOUND IN HIS OFFICE.

24 THE COURT: OR AWARE THERE'S A LAWSUIT PENDING
25 AGAINST THE MUTUAL FUNDS AND EVERYBODY ELSE. 12:05PM

26 MR. QUINN: THAT, TOO.

27 THE COURT: ALL I'M SAYING IS, I'M NOT GOING
28 INTO THE DRUGS, AND THAT AREA.

1 MR. BRIAN: CAN I ASK ONE QUESTION, TO SAY,
2 HAVE YOU BEEN INFORMED THAT SOME CLIENTS WANT TO WAIT
3 UNTIL --

4 THE COURT: WHAT IS THE RELEVANCE -- WHO CARES
5 WHAT THEIR --

12:05PM

6 MR. BRIAN: WELL --

7 MR. QUINN: YOUR HONOR --

8 THE COURT: WHY DON'T -- WE CAN DRAW THE
9 EXHIBIT, AND HAVE NO COMMENT CONCERNING PROJECTIONS
10 FROM DECEMBER 17TH ON ABOUT HOW MUCH MONEY DOUBLELINE
11 MAY OR MAY NOT HAVE.

12:05PM

12 MR. QUINN: OKAY.

13 THE COURT: JUST STAY OUT OF THIS MESS.

14 MR. QUINN: OKAY.

15 THE COURT: SO THE EXHIBIT WILL BE WITHDRAWN?

12:06PM

16 MR. QUINN: IT'S WITHDRAWN.

17 THE COURT: ALL RIGHT.

18

19 (THE FOLLOWING PROCEEDINGS
20 WERE HELD IN OPEN COURT IN
21 THE PRESENCE OF THE JURY:)

22

23 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN,
24 EXHIBIT NUMBER 640 IS GOING TO BE WITHDRAWN. YOU ARE
25 NOT TO CONSIDER IT.

12:06PM

26 IT'S OFF THE SCREEN. IT'S GONE FOREVER.
27 THANK YOU.

28 //

1 (EXHIBIT 640 WITHDRAWN.)

2

3 Q. BY MR. BRIAN: YOU WERE ASKED ABOUT -- THERE'S
4 A DIFFERENCE BETWEEN THE ANALYTICAL -- THE ANALYTICS,
5 ON THE ONE HAND, AND THE PROPRIETARY DATABASE ON THE
6 OTHER, RIGHT?

12:06PM

7 A. CORRECT.

8 Q. AND DOUBLELINE PURCHASES ITS DATABASE FROM
9 VICHARA, RIGHT?

10 A. CORRECT, AMONG THE DATABASES.

12:06PM

11 Q. AMONG THE DATABASES.

12 AND I THINK YOU TESTIFIED THAT OTHERS
13 THEN DEVELOPED THE ANALYTICAL PLATFORM.

14 YOU DIDN'T DO THAT, RIGHT?

15 A. CORRECT.

12:06PM

16 Q. HAVE YOU BEEN FOLLOWING THE TRIAL?

17 A. YES.

18 Q. DID CASEY MOORE TESTIFY BY DEPOSITION THAT WAS
19 PLAYED TO THIS JURY?

20 A. YES.

12:07PM

21 Q. WERE YOU HERE WHEN MR. CAHILL TESTIFIED ABOUT
22 EXHIBIT 1899 THAT I SHOWED YOU?

23 A. THAT WAS THE EXHIBIT THAT SAID \$150 MILLION?

24 Q. YES.

25 A. YES, I WAS.

12:07PM

26 AND TO YOUR KNOWLEDGE, DID THE QUESTIONS
27 I ASKED YOU ADDRESS THE ITEMS THAT THE -- THE ONLY
28 ITEMS THAT HE TESTIFIED ABOUT?

1 MR. QUINN: IT'S COMPOUND. VAGUE. OVERBROAD.

2 Q. BY MR. BRIAN: DO YOU RECALL MR. CAHILL
3 TESTIFYING ABOUT ANY DATA, OTHER THAN THE DATA ON PAGES
4 6 AND 10, WHICH I SHOWED YOU?

5 MR. QUINN: THE RECORD IS WHAT IT IS, YOUR
6 HONOR.

12:07PM

7 THE COURT: WELL, WE CAN GO THROUGH IT.

8 MR. QUINN: ASSUMES FACTS, SOMETHING --
9 SPECULATION.

10 THE COURT: I DON'T THINK IT'S AN APPROPRIATE
11 QUESTION.

12:07PM

12 Q. BY MR. BRIAN: ONE FINAL AREA, THEN.

13 MR. QUINN ASKED YOU ABOUT YOUR
14 EMPLOYMENT STATUS, BEGINNING IN THE BEGINNING OF 2007.

15 DO YOU RECALL THAT?

12:07PM

16 A. YES.

17 Q. AND YOU HAD DISCUSSIONS WITH MR. GUNDLACH
18 ABOUT YOUR COMPENSATION FROM APPROXIMATELY 2000 --
19 SPRING OF 2007 FORWARD, DID YOU NOT?

20 A. YES.

12:08PM

21 Q. AND YOU AGREED WITH MR. GUNDLACH, DID YOU NOT,
22 THAT YOUR COMPENSATION WOULD BE RESTRUCTURED, AS A
23 RESULT OF HIS NEGOTIATIONS WITH MANAGEMENT, RIGHT?

24 A. YES.

25 Q. AND WHILE YOU DID NOT HAVE A CONTRACT, DID
26 MR. GUNDLACH TELL YOU THAT HE WAS NEGOTIATING A
27 CONTRACT --

12:08PM

28 A. YES.

1 Q. -- FOR HIM?

2 A. YES.

3 Q. DID HE TELL YOU HE HAD A CONTRACT?

4 MR. QUINN: OBJECTION. HEARSAY.

5 MR. BRIAN: HE OPENED IT.

12:08PM

6 THE COURT: OVERRULED.

7 Q. BY MR. BRIAN: DID HE TELL YOU HE HAD A
8 CONTRACT?

9 A. HE DIDN'T SAY SPECIFICALLY HE HAD A CONTRACT,
10 BUT HE LED ME TO BELIEVE THAT HE HAD A CONTRACT, BY ALL
11 HIS ACTIONS AND WORDS.

12:08PM

12 Q. AND WERE YOU AWARE, AT THE TIME YOU DISCUSSED
13 WITH HIM ABOUT YOUR COMPENSATION, THAT HE WAS IN THE
14 PROCESS OF NEGOTIATING A CONTRACT WITH THE COMPANY?

15 MR. QUINN: LACKS FOUNDATION.

12:08PM

16 THE WITNESS: YES.

17 THE COURT: I'LL ALLOW THE ANSWER TO STAND.

18 Q. BY MR. BRIAN: AND HE TOLD YOU THAT, RIGHT?

19 A. YES.

20 THE COURT: RE CROSS, MR. QUINN?

12:08PM

21 MR. QUINN: NO, YOUR HONOR.

22 THE COURT: OKAY, MR. BARACH.

23 THANK YOU VERY MUCH FOR YOUR TESTIMONY.

24 YOU MAY STEP DOWN.

25 THE WITNESS: THANK YOU, YOUR HONOR.

12:09PM

26 MR. BRIAN: OUR -- MY NEXT WITNESS, YOUR
27 HONOR, WE'RE GOING TO CALL MR. THOMPSON BY VIDEOTAPE
28 DEPOSITION. MAYBE WE SHOULD TAKE AN EARLIER BREAK, SO

1 WE DON'T BREAK THAT UP.

2 THE COURT: WELL --

3 MR. BRIAN: LET ME FIND OUT HOW LONG IT IS
4 FIRST.

5 IT'S EIGHT MINUTES.

12:09PM

6 THE COURT: LET'S GO AHEAD AND DO IT, AND THEN
7 WE'LL TAKE OUR BREAK.

8 IS THAT ALL RIGHT?

9 THE JURY: YES.

10 THE COURT: AND THIS IS MR. THOMPSON?

12:09PM

11 MR. BRIAN: MR. THOMPSON.

12 THE COURT: FIRST NAME? I SHOULD KNOW.

13 WE'LL GET THAT FOR YOU.

14 JAMES THOMPSON, BY VIDEO DEPOSITION.

15 12:09PM

16 (VIDEO DEPOSITION OF JAMES THOMPSON PLAYED)

17

18 THE COURT: ANYTHING ELSE?

19 MR. BRIAN: NO, YOUR HONOR.

20 THE COURT: WE'LL TAKE OUR RECESS, LADIES AND
21 GENTLEMEN. 20 MINUTES.

12:18PM

22

23 (AT 12:18 P.M. THE JURY WAS

24 EXCUSED, AND THE FOLLOWING

25 PROCEEDINGS WERE HELD:)

12:18PM

26

27 THE COURT: WE'RE OUT OF THE PRESENCE OF THE
28 JURY.

1 IS THERE SOMETHING YOU WANTED TO TAKE
2 UP?

3 MR. BRIAN: YEAH. THERE WERE TWO EXHIBITS
4 THAT YOU TOOK UNDER SUBMISSION. ONE WE TAKE UP AT 2
5 O'CLOCK, I THINK. 12:19PM

6 BUT ONE OF THEM, EXHIBIT 5837, MAY BE
7 REFERRED TO BY MR. WALLACE. THAT'S THE LETTER OF
8 APRIL 6TH, 2010, BY ERIC EMANUEL, TO MR. BARACH'S
9 LAWYER.

10 THE COURT: IT'S A LETTER. 12:19PM

11 WHAT'S THE DATE?

12 MR. BRIAN: IT'S DATED APRIL 6TH, 2010.

13 IT'S A JUDICIAL ADMISSION, IN EFFECT.
14 IT'S AN ADMISSION OFFERED AGAINST A PARTY OPPONENT.

15 AND THE REASON WE WANT IT IS, TCW IS 12:19PM
16 TRYING TO HAVE IT BOTH WAYS. AND IT GOES DIRECTLY TO
17 THIS ISSUE OF WHETHER OR NOT THEY ARE ENTITLED TO
18 DEDUCT THE AMOUNTS TO BE PAID TO PEOPLE IN THE GROUP.

19 AND SO THE LETTER CAN BE REDACTED, IF
20 THERE'S ITEMS IN HERE THAT ARE IN ANY WAY 12:19PM
21 OBJECTIONABLE.

22 BUT THE PARAGRAPHS THAT WE NEED ARE THE
23 VERY FIRST PARAGRAPH, THAT REJECTS THE CLAIM; THE THIRD
24 PARAGRAPH, WHICH IS THE KEY PARAGRAPH AT THE BOTTOM OF
25 PAGE 1, (READING): 12:20PM

26 YOU PROBABLY KNOW FROM

27 MR. GUNDLACH.

28 WHICH IS AN ADMISSION.

1 AND THEN THE NEXT TO THE LAST PARAGRAPH
2 ON PAGE 2, THOSE THREE PARAGRAPHS, I'M HAPPY TO REDACT
3 ANYTHING ELSE, BUT THOSE THREE PARAGRAPHS COME IN AS AN
4 ADMISSION OFFERED AGAINST A PARTY OPPONENT.

5 MR. QUINN: THIS IS A LETTER FROM A LAWYER --

12:20PM

6 THE COURT: I UNDERSTAND.

7 MR. QUINN: -- WHO KNOWS NOTHING.

8 IT'S NOT THE LAWYER'S STATEMENT --

9 THE COURT: BUT THE LAWYER'S STATEMENT IS THE
10 STATEMENT OF THE CLIENT.

12:20PM

11 YOU ARE WRITING ON THEIR BEHALF.

12 AND YOU ARE MAKING A STATEMENT IN
13 RESPONSE TO A DEMAND, ARE YOU NOT?

14 MR. QUINN: YES, WE ARE.

15 BUT IT'S -- WHAT HE IS SAYING, THAT
16 WE'RE TRYING TO HAVE IT BOTH WAYS, I DON'T UNDERSTAND
17 THAT, YOUR HONOR. I DON'T UNDERSTAND THE RELEVANCE OF
18 THE COMMENT.

12:20PM

19 IF HE'S SAYING THAT -- WE'RE SAYING THAT
20 HE HAS TO DEDUCT STAFF SALARIES AND THEIR FUTURE
21 DAMAGES PROJECTIONS, AND HERE WE'RE SAYING IT'S
22 DISCRETIONARY.

12:20PM

23 IF I CAN JUST INQUIRE, IS THAT HAVING IT
24 BOTH WAYS?

25 MR. BRIAN: I AM GOING TO NOW DEFER TO MY
26 EXPERT, MR. HELM.

12:21PM

27 MR. HELM: WELL, IT'S DISCUSSED IN THE
28 BRIEFING THAT YOUR HONOR JUST ADDRESSED. THIS IS ONE

1 OF THE CENTRAL POINTS WE MAKE.

2 THE COURT: I'VE ALLOWED YOU TO PUT THAT
3 EVIDENCE ON.

4 I GUESS MY QUESTION IS WHETHER THIS
5 LETTER IS ESSENTIAL TO THAT DETERMINATION. WHAT --
6 GIVE ME THE NUMBER OF IT AGAIN.

12:21PM

7 MR. BRIAN: IT'S EXHIBIT 5837.

8 I CAN WALK IT UP.

9 THE COURT: HOLD ON A MINUTE. I JUST HAVE TO
10 FIGURE OUT WHICH BOOK IT'S IN.

12:21PM

11 MR. BRIAN: IT'S IN MY BLACK BINDER. BLACK
12 WITH A WHITE COVER.

13 THE COURT: I'VE GOT IT.

14 WHEN YOU SAY IT'S A LAWYER'S LETTER,
15 WHEN IT STARTS OUT, AND IT SAYS, MICHAEL CAHILL AT TCW
16 HAS ASKED ME TO RESPOND.

12:21PM

17 MR. QUINN: HE'S A LAWYER, TOO, YOUR HONOR.

18 THE COURT: WELL, HE'S A GOOD LAWYER, TOO, AS
19 ARE YOU.

20 MR. BRIAN: AND HE'S TESTIFIED TWICE.

12:21PM

21 THE COURT: THAT'S NOT THE POINT.

22 ALL RIGHT. NOW, WHAT ARE THE -- DO YOU
23 WANT TO -- I WILL LET PARTS OF THIS IN.

24 DO YOU WANT TO TAKE THE REDACTIONS THAT
25 ARE OFFERED?

12:23PM

26 MR. BRIAN: THE PARTS WE --

27 MR. QUINN: CAN -- COULD I ARGUE IT FIRST,
28 YOUR HONOR?

1 THE COURT: YES.

2 MR. QUINN: THERE'S NO INCONSISTENCY BETWEEN
3 SAYING, ON THE ONE HAND, IT'S DISCRETIONARY.

4 AND WE AGREE THAT, THAT BONUSES PAID TO
5 PEOPLE IN THE POOL WAS -- IT'S DISCRETIONARY WITH
6 MR. GUNDLACH.

12:23PM

7 AND I'M ALSO SAYING, ON THE OTHER HAND,
8 AS A PRACTICAL MATTER, HE COULDN'T HAVE RUN THE
9 BUSINESS FOR THE YEARS COVERED BY HIS MODEL WITHOUT
10 MAKING THOSE PAYMENTS.

12:23PM

11 AND THAT'S WHAT I'VE HEARD SO FAR THAT
12 THEY WANT TO OFFER THIS FOR.

13 THE COURT: WELL, WHAT WE'RE PROPOSING TO DO
14 IS OFFER PARAGRAPHS, THE FIRST, THE THIRD --

15 MR. BRIAN: AND THE NEXT TO LAST, ON PAGE 2.

12:23PM

16 THE COURT: AND NEXT TO LAST PARAGRAPH; AND
17 REDACT THE REST.

18 MR. QUINN: I'LL DEFER TO THE COURT ON THAT.

19 THE COURT: I'LL ADMIT IT, WITH THOSE
20 REDACTIONS.

12:24PM

21 SO THE FIRST, THE THIRD, AND NEXT TO
22 LAST PARAGRAPHS.

23 NOW, ON THE OTHER EXHIBIT THAT WE HAD AN
24 ISSUE ON, WHICH WAS THE INVESTOR LETTER --

25 MR. QUINN: DOES THAT MEAN THE DEMAND LETTER
26 FROM HIS LAWYER IS GOING TO COME IN, AS WELL?

12:24PM

27 I'D LIKE TO ADDRESS THAT.

28 MR. BRIAN: I'D OFFERED IT.

1 SO LONG AS THERE'S NO ARGUMENT IN
2 CLOSING ARGUMENT THAT THERE WAS NO FOUNDATION FOR THE
3 RESPONSE, I DON'T NEED THAT IN EVIDENCE.

4 MR. QUINN: ALL RIGHT. I ONLY SAID THAT TO
5 LAY THE FOUNDATION. 12:24PM

6 THE COURT: AND HE TESTIFIED THAT HIS LAWYER
7 MADE A DEMAND.

8 MR. BRIAN: HE DID.

9 THE COURT: ALL RIGHT.

10 SO EXHIBIT 5837 WILL BE ADMITTED WITH 12:24PM
11 REDACTIONS, AS NOTED.

12
13 (EXHIBIT 5837 ADMITTED.)

14
15 MR. QUINN: I ASSUME THE QUINN EMANUEL NAME 12:24PM
16 COMES OUT, YOUR HONOR. I MEAN, WE HAVE KEPT BOTH
17 FIRMS' NAMES OUT OF THIS, PRETTY MUCH.

18 THE COURT: YEAH.

19 MR. BRIAN: THAT'S FINE, YOUR HONOR.

20 MR. BRIAN: I THINK IT'S DIFFERENT ONCE THE 12:24PM
21 LAWSUIT STARTS.

22 THE COURT: YES. REDACT THE HEADER.

23 WHAT WAS THE OTHER EXHIBIT? THE
24 INVESTMENT LETTER? WHAT IS THAT?

25 MR. BRIAN: IT'S 6208. 12:24PM

26 THE COURT: I DON'T THINK WE NEED A LOT OF
27 ARGUMENT ON THAT.

28 MR. QUINN, MY THOUGHT ON THAT IS, YOU

1 CAN'T HAVE IT BOTH WAYS. AND THE CROSS-EXAMINATION ON
2 THE E-MAIL CONCERNING THE RECOMMENDATIONS FOR THAT
3 LETTER, AND THEN THE ULTIMATE LETTER THAT DOESN'T HAVE
4 IT --

5 MR. QUINN: I NEVER --

12:25PM

6 THE COURT: SEEMS TO ME, IT SHOULD BE
7 ADMITTED.

8 MR. QUINN: I NEVER DID THE FIRST PART OF
9 THAT, YOUR HONOR. I NEVER DID THE FIRST PART OF WHAT
10 HE SAYS.

12:25PM

11 MR. BRIAN: THAT'S NOT TRUE.

12 MR. QUINN: LET'S LOOK AT THE RECORD.

13 MR. BRIAN: I APOLOGIZE.

14 THE COURT: THAT IS IN EVIDENCE.

15 THE ONE OF THE E-MAIL FROM MR. BARACH'S
16 WIFE, BACK TO GUNDLACH.

12:25PM

17 MR. QUINN: AND NOW IN A NEW VERSION.

18 BUT THIS, I MEAN, I ASSUME THE COURT HAS
19 READ IT NOW.

20 THE COURT: I HAVEN'T READ THE WHOLE THING.
21 BUT I'M LOOKING AT IT, AND I'M SAYING, TO THE EXTENT
22 THAT YOU WANT TO SUGGEST THAT THE RESPONSE IN THAT
23 E-MAIL CARRIES SOME VALUE, IT SEEMS TO ME THAT THE END
24 PRODUCTS THAT WENT OUT TO THE CLIENTS CARRIES EQUAL
25 VALUE.

12:25PM

12:25PM

26 MR. QUINN: WHY DOES THAT FOLLOW? THIS IS A
27 COMMENT AMONG THEMSELVES, ABOUT MAYBE THIS IS WHAT WE
28 OUGHT TO SAY. AND THEY SAY WHAT THEY SAY.

1 IT DOESN'T FOLLOW THAT THEY SAY THAT
2 AMONGST THEMSELVES, THAT WHAT THEY ULTIMATELY SAY TURNS
3 OUT TO BE DIFFERENT.

4 I DIDN'T MAKE A POINT -- AND THE
5 RELEVANCE OF THE FIRST DOCUMENT HAS NOTHING TO DO WITH
6 WHETHER THEY ARE GOING TO SEND IT TO CLIENTS OR NOT;
7 IT'S THE FACT THAT THAT'S WHAT THEY ARE SAYING AMONGST
8 THEMSELVES.

9 THIS -- I WOULD ASK THE COURT TO READ
10 IT. IT'S JUST THEIR HISTORY AND THEIR ARGUMENT ABOUT
11 THE STATE OF AFFAIRS, AND WHAT'S HAPPENED.

12 MR. BRIAN: I WAS REREADING THE OPENING
13 STATEMENTS THE OTHER DAY IN PREPARATION FOR THE CLOSING
14 ARGUMENT.

15 MR. QUINN MADE THE ARGUMENT, IN HIS
16 OPENING STATEMENT, THAT THIS CONVERSATION HAD TAKEN
17 PLACE, AND THE DEFENDANTS HAD GOTTEN TOGETHER AND
18 CONCOCTED A COVER STORY. I THINK HE ACTUALLY CALLED IT
19 A COVER-UP OR COVER STORY. AND THAT WAS HIS POINT.

20 AND THAT'S THE IMPLICATION HE WANTED TO
21 LEAVE WITH THE JURY.

22 AND THE FACT THAT A MAN'S WIFE WHO KNEW
23 NOTHING ABOUT THE CASE MADE A SUGGESTION, AND THE
24 DEFENDANTS THEN DID NOT INCORPORATE IT, AND INSTEAD
25 SAID WHAT WAS -- WHAT'S BEEN CONSISTENT WITH THE
26 TESTIMONY THAT MR. GUNDLACH WAS UPSET BY SOC-GEN'S
27 DECISION AND MADE CERTAIN DECISIONS, IS HIGHLY
28 RELEVANT.

1 THE COURT: I'LL READ THE EXHIBIT OVER THE
2 BREAK.

3 MR. QUINN: I'D JUST SAY, YOUR HONOR, YOU'D
4 NEVER KNOW, FROM READING THE E-MAIL AS REDACTED, THAT
5 IT'S FOR A PRESS RELEASE OR A STATEMENT. IT'S SO
6 CRIBBED.

12:27PM

7 THE COURT: I'LL LOOK AT IT.

8 MR. BRIAN: THE WITNESS SO TESTIFIED.

9 THE COURT: THAT WAS THE TESTIMONY, THOUGH.

10 THAT'S THE EVIDENCE; THAT IT WAS A DRAFT
11 OF THE COMMUNICATION.

12:27PM

12 MR. QUINN: YES. THEY WERE RESPONDING TO A
13 DRAFT.

14 THE COURT: YES. OKAY.

15

12:27PM

16 (RECESS TAKEN.)

17

18

19

20

21

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28

1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA SEPTEMBER 8, 2011
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR
7 TIME: C SESSION: 12:35 P.M.

8

9

--0--

10

12:49PM

11

12

13

THE COURT: ALL RIGHT. ALL MEMBERS OF OUR
JURY AND COUNSEL ARE AGAIN PRESENT IN THE TCW VERSUS
GUNDLACH MATTER.

14

15

MR. HELM, ARE YOU READY TO CALL YOUR
NEXT WITNESS?

12:49PM

16

MR. HELM: YES, YOUR HONOR.

17

WE CALL MICHAEL WALLACE.

18

19

THE CLERK: SIR, PLEASE RAISE YOUR RIGHT HAND
TO BE SWORN.

20

21

MICHAEL WALLACE, +

22

CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN AND
TESTIFIED AS FOLLOWS:

24

25

26

27

28

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

1 GOD?

2 THE WITNESS: YES, I DO.

3 THE CLERK: THANK YOU. PLEASE BE SEATED.

4 SIR, PLEASE STATE AND SPELL YOUR NAME
5 FOR THE RECORD. 12:50PM

6 THE WITNESS: MICHAEL WALLACE, M-I-C-H-A-E-L
7 W-A-L-L-A-C-E.

8 THE CLERK: THANK YOU.

9 THE COURT: GOOD AFTERNOON -- OR GOOD MORNING,
10 MR. WALLACE. GOOD AFTERNOON, I GUESS. 12:50PM

11 THE WITNESS: GOOD AFTERNOON.

12 THE COURT: MR. HELM, YOU MAY PROCEED.

13

14 DIRECT EXAMINATION +

15

12:50PM

16 BY MR. HELM:

17 Q GOOD AFTERNOON.

18 A GOOD AFTERNOON.

19 Q WHO IS YOUR CURRENT EMPLOYER?

20 A TM FINANCIAL FORENSICS, LLC. 12:50PM

21 Q AND WHAT IS YOUR POSITION AT TM FINANCIAL
22 FORENSICS?

23 A I'M CHIEF OPERATING OFFICER AND A VICE
24 PRESIDENT OF THE COMPANY.

25 Q HOW LONG HAVE YOU BEEN ASSOCIATED WITH THAT
26 BUSINESS? 12:50PM

27 A WE FOUNDED THE COMPANY IN JANUARY OF 2010,
28 LAST YEAR. SO ABOUT A YEAR AND A HALF.

1 Q WHAT ARE YOUR RESPONSIBILITIES AT
2 TM FINANCIAL?

3 A I'M RESPONSIBLE FOR MANAGEMENT AND STRATEGIC
4 PLANNING FOR MY FIRM.

5 AND I'M ALSO RESPONSIBLE FOR CONSULTING
6 TO CLIENTS AND EXPERT WITNESS TESTIMONY WHEN NECESSARY.

12:50PM

7 Q COULD YOU TELL US WHAT YOUR EDUCATION
8 BACKGROUND IS.

9 A I ATTENDED UCLA AND GRADUATED WITH A
10 BACHELOR'S DEGREE IN MECHANICAL ENGINEERING IN 1981.

12:51PM

11 AFTER WORKING AS AN ENGINEER FOR A FEW
12 YEARS, I WENT TO U.C. BERKELEY AND RECEIVED A MASTER'S
13 IN BUSINESS ADMINISTRATION FROM WHAT'S NOW CALLED THE
14 HAAS SCHOOL OF BUSINESS WITH A SPECIALIZATION IN
15 FINANCE AND ACCOUNTING.

12:51PM

16 Q CAN YOU PLEASE DESCRIBE YOUR EMPLOYMENT
17 HISTORY SINCE GRADUATING FROM BUSINESS SCHOOL.

18 A YES.

19 THAT WAS 1986. AND I STARTED AT A -- A
20 FIRM CALLED PETERSON CONSULTING.

12:51PM

21 I WORKED THERE AND BECAME A VICE
22 PRESIDENT AT THAT FIRM IN 1994. SEVERAL OF US STARTED
23 A NEW FIRM CALLED TUCKER ALAN.

24 AND WE -- I WAS A VICE PRESIDENT AND
25 FOUNDING MEMBER OF TUCKER ALAN. WE OPERATED THAT
26 COMPANY FOR TEN YEARS.

12:51PM

27 AND THEN JOINED MADDOCK CONSULTING IN
28 2004, WHERE I WAS A MANAGING DIRECTOR AND PRACTICE AREA

1 LEADER.

2 AND THEN IN JANUARY OF 2010 WE FORMED
3 TM4K FINANCIAL FORENSICS, MY CURRENT COMPANY.

4 Q WHAT HAS BEEN THE GENERAL FOCUS OF YOUR
5 PROFESSIONAL CAREER THROUGHOUT ALL THOSE JOBS?

12:52PM

6 A IT'S BEEN VERY CONSISTENT AT ALL THOSE
7 COMPANIES. I DO FORENSIC ACCOUNTING, ECONOMIC
8 ANALYSIS, AND DAMAGES ANALYSIS.

9 I DO SOME BUSINESS AND MANAGEMENT
10 CONSULTING IN TERMS OF IMPROVING OPERATIONS OF
11 COMPANIES. BUT THE PRIMARY FUNCTION HAS BEEN IN
12 LITIGATION AND DAMAGE ANALYSIS.

12:52PM

13 Q WHAT INDUSTRIES HAS YOUR WORK INVOLVED?

14 A I'VE WORKED ACROSS A WIDE VARIETY OF
15 INDUSTRIES. BUT SOME THAT I'VE SPENT EXTENSIVE TIME IN
16 HAVE INCLUDED AEROSPACE, CONSTRUCTION, FINANCIAL
17 INSTITUTIONS, REAL ESTATE, ENTERTAINMENT, CONSUMER
18 PRODUCTS, AND TECHNOLOGY COMPANIES.

12:52PM

19 Q DO YOU HAVE EXPERIENCE IN ANALYZING DAMAGES IN
20 LAWSUITS?

12:53PM

21 A YES, I DO.

22 Q HOW WOULD YOU DESCRIBE THE EXTENT OF YOUR
23 EXPERIENCE IN THAT AREA?

24 A WELL I'VE PREPARED OR ANALYZED HUNDREDS OF
25 DAMAGE CLAIMS IN CONNECTION WITH BUSINESS LAWSUITS IN
26 MY CAREER.

12:53PM

27 AND ECONOMIC DAMAGES I WOULD SAY HAS
28 BEEN THE PRIMARY FOCUS OF MY CAREER FOR THE LAST 25

1 YEARS.

2 Q AND WHAT TYPES OF DAMAGES HAVE YOU STUDIED
3 OVER YOUR CAREER?

4 A WELL, DEPENDING ON THE CIRCUMSTANCES, THERE
5 ARE A VARIETY OF MEASURES USED TO CALCULATE ECONOMIC
6 DAMAGES.

12:53PM

7 BUT SOME OF THE COMMON ONES I'VE WORKED
8 WITH EXTENSIVELY INCLUDE LOST PROFITS, LOST WAGES, LOST
9 BUSINESS VALUE, INCREASED COST CLAIMS ON LARGE
10 CONTRACTS, AND DISGORGEMENT OF PROFITS IN SOME CASES.

12:54PM

11 Q HAVE YOU HAD PRIOR EXPERIENCE IN PREPARING AND
12 ANALYZING CLAIMS FOR BREACH OF CONTRACT?

13 A YES. IT'S ONE OF THE MOST COMMON CLAIMS I'VE
14 STUDIED THAT THROUGHOUT MY CAREER.

15 Q YOU MENTIONED EARLIER, FINANCIAL INSTITUTIONS
16 WAS ONE OF THE AREAS WHERE YOU HAD EXPERIENCE.

12:54PM

17 DO YOU HAVE EXPERIENCE IN FINANCIAL
18 ISSUES RELATING TO SECURITIES, FINANCIAL SERVICES OR
19 ASSET MANAGEMENT?

20 A YES, EXTENSIVELY.

12:54PM

21 AS I MENTIONED, MY SPECIALIZATION IN THE
22 BERKELEY MBA PROGRAM WAS FINANCE AND ACCOUNTING. I
23 STUDIED PORTFOLIO THEORY, CORPORATE FINANCE, BANKING,
24 TAXATION AND REAL ESTATE.

25 AND IN MY CAREER AS A FORENSIC
26 ACCOUNTANT AND DAMAGES CONSULTANT, I PROBABLY WORKED ON
27 MORE THAN 30 CASES INVOLVING SECURITIES AND REAL ESTATE
28 ISSUES.

12:54PM

1 Q HOW, ARE YOU BEING COMPENSATED FOR YOUR WORK
2 IN THIS MATTER?

3 A MY FIRM BILLS BY THE HOUR FOR THE WORK THAT WE
4 PERFORM.

5 Q DO YOU HAVE A STANDARD HOURLY RATE AT YOUR
6 BUSINESS?

12:55PM

7 A YES, I DO.

8 Q WHAT IS THAT RATE?

9 A \$575 AN HOUR.

10 Q IS THAT THE RATE YOUR FIRM IS CHARGING HERE?

12:55PM

11 A YES, IT IS.

12 Q ARE THE FEES THAT YOU OR YOUR FIRM RECEIVE
13 DEPENDENT IN ANY WAY ON THE CONTENT OF THE TESTIMONY?

14 A OH, NO.

15 Q ARE THEY DEPENDENT IN ANY WAY ON THE OUTCOME
16 OF THE LITIGATION?

12:55PM

17 A NO.

18 Q HAVE YOU PREVIOUSLY WORKED AS AN EXPERT WITH
19 ATTORNEYS AT MY LAW FIRM, MUNGER, TOLLES & OLSON?

20 A YES, I HAVE.

12:55PM

21 Q HAVE YOU PREVIOUSLY WORKED AS AN EXPERT IN
22 CONNECTION WITH THE ATTORNEYS AT MR. QUINN'S LAW FIRM,
23 QUINN, EMANUEL?

24 A YES, I HAVE.

25 Q HAVE YOU TESTIFIED AS AN EXPERT BEFORE?

12:55PM

26 A YES. I'VE TESTIFIED IN TRIAL OR ARBITRATION
27 12 TIMES. AS AN EXPERT.

28 AND ACCOUNTING OR DAMAGES.

1 AND I'VE TESTIFIED AS AN EXPERT IN
2 DEPOSITIONS OVER 50 TIMES.

3 MR. HELM: YOUR HONOR, WE WOULD OFFER
4 MR. WALLACE AS AN EXPERT IN THIS CASE.

5 THE COURT: ANY OBJECTION? 12:56PM

6 MR. SURPRENANT: I NEED TO KNOW WHAT THE
7 SUBJECT MATTER IS.

8 BY MR. HELM:

9 Q WHAT IS THE SUBJECT MATTER OF YOUR TESTIMONY?

10 A ECONOMIC DAMAGES. 12:56PM

11 MR. SURPRENANT: NO OBJECTION, YOUR HONOR.

12 THE COURT: THANK YOU.

13 HE'LL BE ADMITTED AS AN EXPERT.

14 MR. HELM: THANK YOU, YOUR HONOR.

15 Q COULD YOU PLEASE DESCRIBE THE SCOPE OF YOUR
16 ASSIGNMENT ON THIS CASE. 12:56PM

17 A YES.

18 I HAD TWO ASSIGNMENTS.

19 THE FIRST WAS TO CALCULATE LOST
20 COMPENSATION SUFFERED BY MR. GUNDLACH UNDER TWO
21 DIFFERENT ASSUMPTIONS: 12:56PM

22 ONE ASSUMPTION BEING HE HAD A CONTRACT
23 THAT EXTENDED FROM THE BEGINNING OF 2007 TO THE END OF
24 2011, AND THAT TCW BREACHED THAT CONTRACT BY
25 TERMINATING HIM BEFORE THE END OF THE CONTRACT. 12:56PM

26 AND A SECOND ASSUMPTION, THAT TCW
27 BREACHED HIS CONTRACT BY FAILING TO PAY HIM FOR THE
28 WORK HE PERFORMED IN THE FOURTH QUARTER OF 2009.

1 AND THEN THE SECOND PIECE OF MY
2 ASSIGNMENT WAS TO CALCULATE LOST COMPENSATION SUFFERED
3 BY MS. VANEVERY, MR. MAYBERRY, AND MR. SANTA ANA.

4 Q JUST BROADLY SPEAKING, COULD YOU DESCRIBE WHAT
5 WORK YOU PERFORMED IN COMPLETING THESE TASKS. 12:57PM

6 A WELL, I'VE DONE EXTENSIVE ANALYSIS OF BUSINESS
7 RECORDS AND TESTIMONY AND THEN PERFORMED INDEPENDENT
8 FINANCIAL ANALYSIS, BUT THAT WORK HAS INCLUDED
9 REVIEWING MR. GUNDLACH'S EMPLOYMENT CONTRACT;

10 REVIEWING THE TCW QUARTERLY FEE SHARING 12:57PM
11 STATEMENTS;

12 REVIEWING THE CONTRACTUAL AGREEMENTS
13 RELATED TO THE VARIOUS FUNDS THAT TCW OPERATED;

14 STUDIED EXTENSIVE ACCOUNTING AND
15 FINANCIAL RECORDS OF BOTH TCW AND DOUBLELINE; 12:58PM

16 I'VE READ DEPOSITION AND TRIAL TESTIMONY
17 OF MANY TCW AND DOUBLELINE WITNESSES;

18 I PERFORMED EXTENSIVE FINANCIAL ANALYSIS
19 AND FACTUAL INQUIRY;

20 AND I ISSUED SEVERAL -- SEVERAL REPORTS 12:58PM
21 IN THIS MATTER ALONG WITH SUPPORTING DOCUMENTATION FOR
22 MY CONCLUSIONS.

23 Q LET'S TURN TO THE FIRST AREA OF YOUR ANALYSIS
24 THAT YOU MENTIONED.

25 THE LOST COMPENSATION SUFFERED BY 12:58PM
26 MR. GUNDLACH BASED ON THE ASSUMPTION THAT HE HAD A
27 CONTRACT WITH A FIVE-YEAR TERM.

28 DID YOU PREPARE AN EXHIBIT TO ILLUSTRATE

1 THE METHOD YOU USED TO CALCULATE HIS LOST COMPENSATION?

2 A YES, I DID.

3 Q IF WE COULD TAKE A LOOK AT EXHIBIT 6189.

4 BY PRE AGREEMENT WITH COUNSEL, WE'RE
5 ALLOWED TO SHOW THIS, YOUR HONOR.

12:58PM

6 CORRECT, MR. SURPRENANT?

7 MR. SURPRENANT: I'M SORRY.

8 YES, MR. HELM.

9 THE COURT: YOU'RE JUST DOZING ON US HERE?

10 MR. SURPRENANT: I WASN'T, YOUR HONOR.

12:59PM

11 THE COURT: I'M SORRY. I SHOULDN'T SAY THAT.

12 MR. SURPRENANT: WITH MR. QUINN HERE.

13 THE COURT: GO AHEAD.

14 MR. HELM: THANK YOU.

15 Q WOULD YOU JUST PLEASE EXPLAIN THE METHOD YOU
16 USED AS REFLECTED IN THIS CHART.

12:59PM

17 A YES.

18 THIS CHART REFLECTS BASIC MODEL FOR
19 CALCULATING LOST COMPENSATION.

20 THE FIRST BOX REPRESENTS CALCULATION OF
21 THE COMPENSATION MR. GUNDLACH WOULD HAVE EARNED IF HE
22 HAD BEEN ALLOWED TO PERFORM FOR THE REMAINDER OF THE
23 CONTRACT TERM FROM 2009 TO 2011 AT TCW.

12:59PM

24 THEN I WOULD SUBTRACT FROM THAT ANY
25 ACTUAL COMPENSATION HE EARNED AFTER HIS TERMINATION IN
26 THAT SAME PERIOD, 2009 TO 2011.

12:59PM

27 AND THE DIFFERENCE REPRESENTS THE
28 COMPENSATION HE LOST BY NOT BEING ALLOWED TO COMPLETE

1 HIS CONTRACT THROUGH 2011.

2 Q DID YOU STUDY HOW MR. GUNDLACH'S COMPENSATION
3 POOL WAS DETERMINED WHEN HE WAS AT TCW?

4 A YES, I DID.

5 Q AND HAVE YOU PREPARED ANY EXHIBITS TO
6 ILLUSTRATE HOW THE POOL WAS DETERMINED?

01:00PM

7 A YES. I HAVE TWO PAGES OF EXHIBITS THAT
8 ILLUSTRATE THAT COMPUTATION.

9 Q COULD WE PUT UP EXHIBIT 6190, PLEASE.

10 WOULD YOU EXPLAIN THE TWO TYPES OF FEES
11 THERE, AND WHAT YOUR METHOD WAS WITH RESPECT TO EACH.

01:00PM

12 A YES.

13 MR. GUNDLACH'S COMPENSATION POOL
14 CONTAINED AMOUNTS RELATED TO MANAGEMENT FEES, WHICH TCW
15 EARNS AS A PERCENTAGE OF ASSETS IN EACH PERIOD FOR
16 MANAGING ALL OF ITS FUNDS.

01:00PM

17 AND IT ALSO CONTAINS A COMPONENT -- HIS
18 COMPENSATION POOL CONTAINS A COMPONENT FOR PERFORMANCE
19 FEES WHICH TCW EARNS ON CERTAIN FUNDS, NOT ALL OF ITS
20 FUNDS, THAT RELATE TO HOW WELL THE FUND PERFORMS
21 RELATIVE TO BENCHMARKS.

01:01PM

22 Q DID YOU USE A DIFFERENT PERCENTAGE FOR EACH OF
23 THOSE TYPES OF FEES?

24 A YES.

25 MR. GUNDLACH'S COMPENSATION AGREEMENT
26 PROVIDED CERTAIN PERCENTAGES APPLICABLE TO SPECIFIC
27 FUNDS FOR MANAGEMENT FEES. THEY ACTUALLY RANGED FROM
28 30 PERCENT TO 52-1/2 PERCENT DEPENDING ON THE FUND.

01:01PM

1 BUT, IN AGGREGATE, THEY WORKED OUT TO
2 APPROXIMATELY 50 PERCENT OF THE MANAGEMENT FEES THAT
3 TCW EARNED.

4 MR. BRIAN: YOUR HONOR, I NOTICED A COUPLE OF
5 THE JURORS STRAINING TO SEE THAT.

01:01PM

6 MR. HELM: I'M SORRY. THANK YOU.

7 Q WITH RESPECT TO PERFORMANCE FEES --

8 I APOLOGIZE TO THE JURY FOR BEING IN THE
9 WAY.

10 -- COULD YOU EXPLAIN WHAT PERCENTAGE YOU
11 USED WITH RESPECT TO PERFORMANCE FEES?

01:01PM

12 A THE PERFORMANCE FEES WERE MORE
13 STRAIGHTFORWARD. MR. GUNDLACH EARNED 60 PERCENT OF THE
14 PERFORMANCE FEES EARNED BY TCW ON ALL FUNDS SUBJECT TO
15 PERFORMANCE FEES.

01:02PM

16 Q LET'S LOOK AT THE NEXT ONE, EXHIBIT 6191,
17 PLEASE.

18 CAN YOU EXPLAIN WHAT YOU THEN DID IN
19 YOUR CALCULATIONS.

20 A YES. THIS IS THE SECOND STEP OF THE
21 CALCULATION OF MR. GUNDLACH'S COMPENSATION POOL. SO
22 THAT MR. GUNDLACH'S SHARE OF THE TCW FEES FROM THE
23 PRIOR CALCULATION ARE WHAT'S SHOWN AT THE TOP OF THIS
24 STEP TWO.

01:02PM

25 AFTER THAT SHARE OF TCW FEES IS
26 DETERMINED, THE SALARIES AND OFFICE EXPENSES ASSOCIATED
27 WITH HIS STAFF, HIS TEAM OF ROUGHLY 40 PEOPLE, IS
28 SUBTRACTED FROM HIS SHARE OF THE FEES.

01:02PM

1 AND THE NET AMOUNT EQUALS THE
2 COMPENSATION POOL AVAILABLE TO HIM THROUGH THE
3 CONTRACTUAL FORMULA.

4 Q AND NOW, WHAT DO YOU MEAN BY MR. GUNDLACH'S
5 COMPENSATION POOL?

01:02PM

6 A HIS CONTRACT PROVIDED FOR A CALCULATION OF AN
7 AMOUNT OF MONEY THAT WAS TO BE PAID TO HIM SUBJECT TO
8 HIS DISCRETION TO SHARE AND REWARD HIS TEAM WITH
9 ADDITIONAL BONUS COMPENSATION IN ADDITION TO THEIR
10 SALARY.

01:03PM

11 SO THIS WAS THE POOL THAT MR. GUNDLACH
12 COULD EITHER RETAIN FOR HIMSELF OR SHARE WITH HIS
13 EMPLOYEES, AND HE MADE THOSE DECISIONS ABOUT HOW TO
14 DISTRIBUTE ANY MONEY.

15 Q IN FORMING YOUR EXPERT OPINION IN THIS MATTER
16 IN MEASURING HIS LOST COMPENSATION, DO YOU BELIEVE
17 THERE SHOULD BE A DEDUCTION FROM THE DAMAGES IN THIS
18 CASE FOR AMOUNTS THAT MR. GUNDLACH WOULD HAVE PAID TO
19 OTHER PEOPLE IN THE GROUP IN HIS DISCRETION?

01:03PM

20 MR. SURPRENANT: OBJECTION. CALLS FOR LEGAL
21 OPINION, AND I'D HAVE TO JURY VOIR DIRE THAT.

01:03PM

22 THE COURT: OVERRULED. GO AHEAD.

23 THE WITNESS: IN TERMS OF MEASURING ECONOMIC
24 DAMAGES, THOSE AMOUNTS SHOULD NOT BE DEDUCTED. I
25 BELIEVE HIS COMPENSATION POOL DEFINED IN THE CONTRACT
26 IS THE PROPER MEASURE OF ECONOMIC DAMAGES.

01:03PM

27 BY MR. HELM:

28 Q WHY DO YOU THINK THAT THE DEDUCTION SHOULD NOT

1 BE MADE FOR PAYMENTS THAT HE WOULD HAVE MADE TO OTHER
2 PEOPLE IN HIS GROUP FROM THAT POOL?

3 A WELL, THE PURPOSE OF ECONOMIC DAMAGES IS TO
4 PUT THE PLAINTIFF IN THE -- OR THE CLAIMANT IN THE SAME
5 POSITION THEY WOULD HAVE BEEN IN IF THERE HADN'T BEEN A
6 BREACH, OR WHATEVER THE CLAIM MIGHT BE.

01:04PM

7 SO, IN EXAMINING THE CONTRACT AND OTHER
8 BUSINESS RECORDS TO DETERMINE THE BENEFITS MR. GUNDLACH
9 EXPECTED TO RECEIVE BY WORKING AT TCW, ONE OF THOSE
10 BENEFITS WAS THE RIGHT TO HAVE THIS COMPENSATION POOL
11 THAT HE COULD MAKE DECISIONS ABOUT.

01:04PM

12 AND CHOOSE TO DISTRIBUTE THAT MONEY TO
13 REWARD HIS EMPLOYEES FOR PAST PERFORMANCE AND
14 SPECIFICALLY TO MOTIVATE THEM FOR FUTURE PERFORMANCE.

15 SO, IF THOSE AMOUNTS THAT HE MIGHT HAVE
16 PAID TO OTHER PEOPLE ARE DEDUCTED, THEN THAT TAKES AWAY
17 AN IMPORTANT BENEFIT TO HIM THAT HE WOULD HAVE HAD AS A
18 CONTINUING EMPLOYEE OF TCW.

01:04PM

19 Q WERE THERE ANY DOCUMENTS YOU REVIEWED THAT
20 REFLECTED POSITIONS TAKEN BY TCW THAT WERE RELEVANT TO
21 YOUR CONCLUSION ABOUT WHETHER YOU SHOULD DEDUCT FROM
22 THE DAMAGES AMOUNTS THAT WOULD HAVE BEEN PAID TO OTHERS
23 IN HIS GROUP?

01:05PM

24 A YES, THERE WERE.

25 Q WHAT WERE SOME OF THOSE DOCUMENTS?

01:05PM

26 A ONE DOCUMENT WAS AN APRIL 2010 LETTER --

27 Q LET'S JUST -- WHY DON'T YOU JUST SAY IT WAS
28 FROM A TCW REPRESENTATIVE.

1 A RIGHT. IT WAS FROM A TCW REPRESENTATIVE.

2 Q OKAY.

3 TO WHO?

4 A TO A REPRESENTATIVE OF DOUBLELINE OR ONE OF
5 THE --

01:05PM

6 Q YOU CAN SAY TO WHO IT WAS TO?

7 A IT WAS TO MR. EDWARD WEIMAN, I BELIEVE.

8 Q THAT WAS AN ATTORNEY FOR?

9 A FOR ONE OF THE PARTIES.

10 Q ONE OF THE PARTIES?

01:05PM

11 A FOR -- FOR ONE OF THE DEFENDANTS. WELL, I
12 GUESS HE WAS AN ATTORNEY FOR MR. BARACH.

13 Q OH, YES.

14 A I'M SORRY.

15 Q WHAT WAS THE CONTENT OF THAT LETTER THAT YOU
16 FOUND RELEVANT TO YOUR DECISION?

01:06PM

17 MR. SURPRENANT: OBJECTION, YOUR HONOR. JUST
18 TO PRESERVE IT.

19 THE COURT: IT WILL BE NOTED. GO AHEAD.

20 THE WITNESS: WELL, THE LETTER WAS IN RESPONSE
21 TO OR A REQUEST BY MR. BARACH THAT HE BE PAID HIS SHARE
22 OF TCW'S FEES FOR THE -- I GUESS FOR THE FOURTH QUARTER
23 OF 2009 -- WELL, FOR 2009.

01:06PM

24 AND THE LETTER WAS REJECTING THAT CLAIM,
25 AND IT EXPLAINED THAT THE FEE SHARING PROVISIONS
26 RELATED TO AMOUNTS THAT MR. GUNDLACH WAS CONTRACTUALLY
27 ENTITLED TO AND THAT MR. BARACH DIDN'T HAVE A
28 CONTRACTUAL RIGHT TO THOSE AMOUNTS.

01:06PM

1 SO THAT WAS CONSISTENT WITH MY VIEW THAT
2 THIS COMPENSATION POOL WAS MR. GUNDLACH'S COMPENSATION.
3 BY MR. HELM:

4 Q WERE THERE ANY OTHER MATERIALS FROM TCW THAT
5 YOU REVIEWED THAT SUPPORTED YOUR CONCLUSION IN THAT
6 REGARD?

01:07PM

7 A THERE WAS DEPOSITION AND TRIAL TESTIMONY OF
8 TCW EMPLOYEE PETER SULLIVAN, WHERE HE EXPLAINED THAT
9 ALL OF THE FEE SHARING AMOUNTS WERE TO BE MADE --
10 PAID -- NOT PAID TO, BUT WERE -- AT MR. GUNDLACH'S
11 DISCRETION AS TO WHETHER THEY SHOULD BE SHARED AND IN
12 WHAT AMOUNT WITH OTHER EMPLOYEES.

01:07PM

13 Q IS YOUR CONCLUSION THAT AMOUNTS THAT WOULD BE
14 PAID TO OTHER MEMBERS OF THE STAFF SHOULD NOT BE
15 DEDUCTED FROM DAMAGES HERE, BASED ON THE ASSUMPTION
16 THAT MR. GUNDLACH WOULD NOT HAVE PAID BONUSES TO OTHER
17 PEOPLE IN HIS GROUP?

01:07PM

18 A WELL, NO. IT'S EXACTLY THE OPPOSITE.

19 IT'S BECAUSE HIS ABILITY TO EARN THIS
20 COMPENSATION THROUGH HIS WORK AND THEN REWARD HIS
21 EMPLOYEES TO CREATE A LOYAL TEAM OF PEOPLE THAT WOULD
22 HELP HIM REALLY LITERALLY INTO THE YEARS INTO THE
23 FUTURE TO GENERATE FUTURE INCOME, THAT WAS A BENEFIT TO
24 HIM.

01:07PM

25 AND IF THOSE AMOUNTS ARE SUBTRACTED,
26 THEN THAT PARTICULAR BENEFIT OF HIS CONTRACT WOULD BE
27 REMOVED AND HE WOULDN'T BE MADE WHOLE ON THAT BASIS.

01:08PM

28 Q HAVE YOU PREPARED A SUMMARY OF YOUR

1 CALCULATION OF MR. GUNDLACH'S BREACH OF CONTRACT
2 DAMAGES?

3 A YES. I HAVE.

4 Q COULD WE LOOK AT EXHIBIT 6192.

5 YOUR HONOR, I'D LIKE TO MOVE IT INTO
6 EVIDENCE. I BELIEVE THERE'S NO OBJECTION.

01:08PM

7 MR. SURPRENANT: NO OBJECTION, YOUR HONOR.

8 THE COURT: IT WILL BE ADMITTED.

9

10 (EXHIBIT 6192 ADMITTED.) +

01:08PM

11

12 BY MR. HELM:

13 Q ALL RIGHT.

14 FIRST OF ALL, IT SAYS:

15 BREACH OF CONTRACT DAMAGES

01:08PM

16 THROUGH 2011.

17 WHY DOES YOUR CALCULATION OF DAMAGES
18 STOP IN 2011?

19 A BECAUSE I MADE THE ASSUMPTION THAT
20 MR. GUNDLACH HAD A CONTRACT THROUGH THE END OF 2011.

01:08PM

21 Q IS THAT AN ASSUMPTION OR A CONCLUSION?

22 A THAT WAS AN ASSUMPTION I WAS ASKED TO MAKE.

23 Q NOW, WHAT DOES THE FIRST ROW REPRESENT THERE,
24 LINE 1: TCW MANAGEMENT FEES?

25 A THAT REPRESENTS THE MANAGEMENT FEES THAT I
26 PROJECT TCW WOULD HAVE EARNED IN THOSE VARIOUS TIME
27 PERIODS HAD MR. GUNDLACH REMAINED AN EMPLOYEE OF TCW
28 THROUGH THE END OF 2011.

01:09PM

1 Q AND WHAT DOES THE THIRD LINE MEAN: GUNDLACH
2 SHARE OF MANAGEMENT FEES AROUND 50 PERCENT?

3 A THAT REPRESENTS THE -- WHAT WE TALKED ABOUT
4 BEFORE, THE FORMULA FOR DETERMINING MR. GUNDLACH'S
5 SHARE OF ANY MANAGEMENT FEES EARNED BY TCW ON THE FUNDS
6 THAT MR. GUNDLACH MANAGED.

01:09PM

7 SO IT'S ROUGHLY THE 50 PERCENT SHARE OF
8 THE MANAGEMENT FEES SHOWN ON LINE 1.

9 Q SO, FOR THE LINE 1 FIGURE, TCW MANAGEMENT
10 FEES, HOW DID YOU CALCULATE THE MANAGEMENT FEES ON THAT
11 LINE?

01:09PM

12 A WELL, WE STUDIED THE HISTORICAL PERFORMANCE OF
13 THE FUNDS THAT ARE PART OF MR. GUNDLACH'S POOL, AND WE
14 LOOKED AT HOW THE MANAGEMENT FEES HAD BEEN TRENDING
15 OVER TIME ON VARIOUS SEGMENTS OF THE FUNDS.

01:10PM

16 THERE WERE DIFFERENT TYPES OF FUNDS AND
17 THEY EXHIBITED SLIGHTLY DIFFERENT PERFORMANCE IN THE
18 PAST.

19 AND BASED ON THOSE HISTORICAL TRENDS, WE
20 PROJECTED THE AMOUNTS THAT WOULD LIKELY HAVE BEEN
21 EARNED IN THE FUTURE IF MR. GUNDLACH HAD REMAINED THERE
22 AT TCW.

01:10PM

23 Q HAS PROFESSOR CORNELL REVIEWED YOUR ANALYSIS
24 AND CALCULATION OF THESE DAMAGES AMOUNTS?

25 A YES, HE HAS.

01:10PM

26 Q HAS HE EXPRESSED ANY CRITICISM AS TO THE
27 AMOUNT OF MANAGEMENT FEES THAT YOU PROJECTED TCW WOULD
28 HAVE EARNED HAD MR. GUNDLACH NOT BEEN TERMINATED?

1 A NO, HE HAS NOT.

2 Q SO, WHAT ARE THE TOTAL FIGURES FOR MANAGEMENT
3 FEES ON LINE 1, LESS THE SUBTRACTED WITH GUNDLACH'S
4 SHARE ON LINE 3?

5 A SO, ON LINE 1 I PROJECT THAT FROM THE FOURTH
6 QUARTER OF 2009 THROUGH THE END OF 2011 TCW WOULD HAVE
7 EARNED MANAGEMENT FEES OF 560.7 MILLION.

01:11PM

8 AND THEN ON LINE 3 MR. GUNDLACH'S SHARE
9 OF THOSE FEES WOULD HAVE BEEN 271.4 MILLION.

10 Q ALL RIGHT.

01:11PM

11 LET'S TURN TO THE SECOND LINE. IT SAYS:
12 TCW PERFORMANCE FEES.

13 WHAT DOES THAT INDICATE?

14 A THAT INDICATES MY ESTIMATE OF THE PERFORMANCE
15 FEES THAT TCW WOULD HAVE EARNED ON THE SMCF FUNDS.
16 THOSE ARE THE FUNDS SUBJECT TO PERFORMANCE FEES HAD
17 MR. GUNDLACH REMAINED AN EMPLOYEE OF TCW THROUGH THE
18 END OF 2011.

01:11PM

19 Q WHAT DOES LINE 4 SIGNIFY?

20 A FOUR IS MR. GUNDLACH'S 60 PERCENT SHARE OF
21 THOSE PERFORMANCE FEES FROM LINE 2.

01:11PM

22 Q AND HOW DID YOU CALCULATE THE AMOUNT OF
23 PERFORMANCE FEES THAT TCW WOULD HAVE EARNED IN THESE
24 PERIODS?

25 A WELL, WE STARTED WITH THE STATUS OF THE SMCF
26 FUNDS AT THE TIME THAT MR. GUNDLACH WAS TERMINATED.

01:12PM

27 WE STUDIED THE PROVISIONS OF THE FUND
28 AGREEMENT AS TO HOW CARRIED INTEREST WAS CALCULATED --

1 I'M SORRY -- PERFORMANCE FEES WERE CALCULATED.

2 THEN WE HAD ACTUAL PERFORMANCE DATA THAT
3 SHOWED THE RATES OF RETURN THAT THOSE FUNDS ACTUALLY
4 EARNED IN 2009 AND 2010.

5 SO, WE ASSUMED THAT INVESTORS WOULD NOT
6 HAVE PULLED THEIR MONEY OUT OF THOSE FUNDS AND
7 CALCULATED THE GAIN ON THOSE FUNDS AND THE RELATED
8 PERFORMANCE FEES IN FUTURE YEARS.

01:12PM

9 Q SO, WHAT IS THE TOTAL AMOUNT OF PERFORMANCE
10 FEES THAT YOU CALCULATED TCW WOULD HAVE EARNED THROUGH
11 2011 ON THE SMCF FUNDS HAD MR. GUNDLACH NOT BEEN
12 TERMINATED?

01:12PM

13 A 400 -- LINE 2, THE PERFORMANCE FEES THROUGH
14 THE END OF 2011 TOTAL \$443.9 MILLION.

15 Q NOW, HAS PROFESSOR CORNELL IN HIS CALCULATION
16 OF INTERFERENCE DAMAGES ALSO PROJECTED PERFORMANCE FEES
17 THAT TCW WOULD HAVE EARNED ON THE SMCF FUNDS IF CERTAIN
18 EVENTS HAD NOT TAKEN PLACE?

01:13PM

19 A YES, HE DID.

20 Q HOW DOES YOUR ANALYSIS COMPARE TO
21 PROFESSOR CORNELL'S ANALYSIS OF THOSE PERFORMANCE FEES?

01:13PM

22 A WE USE DIFFERENT ASSUMPTIONS, SLIGHTLY
23 DIFFERENT ASSUMPTIONS, BUT THE BASIC MODEL IS THE SAME,
24 AND WE'RE FORECASTING THESE FUTURE FEES IN A VERY
25 SIMILAR WAY.

01:13PM

26 Q DID YOU PREPARE A CHART THAT COMPARES YOUR
27 ANALYSIS OF THE SMCF FEES TO PROFESSOR CORNELL'S?

28 A OF THE VALUE OF THE SMCF FUNDS, YES.

1 Q COULD WE LOOK AT EXHIBIT 6205, WHICH I BELIEVE
2 WE'VE STIPULATED MAY BE ADMITTED INTO EVIDENCE?

3 MR. SURPRENANT: NO OBJECTION, YOUR HONOR.

4 THE COURT: IT WILL BE ADMITTED.

5
6 (EXHIBIT 6205 ADMITTED.) +

7
8 MR. HELM: LET'S SHOW 6205, PLEASE.

9 Q IS THIS A COMPARISON OF YOUR PROJECTIONS TO
10 PROFESSOR CORNELL'S?

11 A YES.

12 Q AND LET'S SEE, SO YOURS IS IN THE BLUE AND THE
13 ORANGE IS PROFESSOR CORNELL'S; IS THAT CORRECT?

14 A YES.

15 Q WHAT DOES IT SHOW?

16 A I'M SORRY?

17 Q GO AHEAD. WHAT DOES IT SHOW?

18 A WE ACHIEVED LARGELY SIMILAR RESULTS, IT SHOWS.
19 I FORECAST A VALUE 4.7 BILLION BY THE END OF 2011.

20 HE FORECASTS SLIGHTLY LOWER VALUE,
21 4.6 BILLION BY THE END OF 2012.

22 Q HAS PROFESSOR CORNELL EXPRESSED CRITICISM TO
23 YOUR CALCULATION OF THE AMOUNTS OF PERFORMANCE FEES YOU
24 PROJECTED TCW WOULD HAVE EARNED ON THE SMCF FUNDS HAD
25 MR. GUNDLACH NOT BEEN TERMINATED?

26 A NO, HE HAS NOT.

27 Q LET'S GO BACK TO EXHIBIT 6192 IF WE COULD.

28 SO, WHAT ARE THE TOTAL PERFORMANCE FEES

01:14PM

01:14PM

01:14PM

01:14PM

01:14PM

1 THROUGH 2011 THAT YOU HAVE CALCULATED?

2 A AGAIN, ON LINE 2, IT'S IN THE TOTAL COLUMN AT
3 THE FAR RIGHT, \$443.9 MILLION.

4 Q WHAT IS MR. GUNDLACH'S SHARE OF THE
5 PERFORMANCE FEES THAT TCW WOULD HAVE EARNED ON THE SMCF
6 FUNDS HAD HE NOT BEEN TERMINATED? 01:15PM

7 A THAT'S SHOWN ON LINE 5 IN THE TOTAL COL- --
8 SORRY. LINE 4. I APOLOGIZE.

9 IN THE TOTAL COLUMN HIS 60 PERCENT
10 SHARES 266.4 MILLION. 01:15PM

11 Q NOW, WHEN DO YOU ASSUME THAT MR. GUNDLACH
12 WOULD HAVE BEEN PAID THE EARNED PERFORMANCE FEES IF THE
13 CONTRACT HAD BEEN PERFORMED?

14 A SHORTLY AFTER THE END OF 2011.

15 Q WHY IS THAT? 01:15PM

16 A WELL, THERE'S TWO REASONS.

17 ONE, I UNDERSTAND MR. GUNDLACH HAS
18 TESTIFIED THAT HE WOULD HAVE BEGUN THE PROCESS OF
19 LIQUIDATING THE SMCF FUNDS AND LIKELY COMPLETED THE
20 LIQUIDATION BY THE END OF 2011. 01:15PM

21 AND A SECOND REASON IS THAT I WAS ASKED
22 TO ASSUME THAT MR. GUNDLACH WOULD BE ENTITLED TO ANY
23 PERFORMANCE FEES ACCRUED AS OF THE END OF 2011, IF HIS
24 CONTRACT WAS TERMINATED AT THAT POINT.

25 Q NOW, YOU TESTIFIED EARLIER THAT, IN ORDER TO
26 CALCULATE MR. GUNDLACH'S COMPENSATION, CERTAIN EXPENSES
27 MUST BE DEDUCTED FROM HIS SHARE OF THE FEES; IS THAT
28 RIGHT? 01:16PM

1 A YES.

2 Q WHERE DID YOU DEDUCT THOSE EXPENSES, IF
3 ANYWHERE, IN EXHIBIT 6192?

4 A THAT DEDUCTION IS SHOWN ON LINE 5, WHERE IT
5 SAYS:

01:16PM

6 LESS STAFF SALARIES AND OFFICE
7 EXPENSES.

8 Q CAN YOU EXPLAIN HOW YOU CALCULATED THAT
9 AMOUNT, THE AMOUNTS FOR STAFF SALARIES AND OTHER
10 EXPENSES?

01:16PM

11 A YES. WE LOOKED AT THE STAFF SALARIES AND
12 OFFICE EXPENSES IN THE TWO- OR THREE-YEAR PERIOD PRIOR
13 TO MR. GUNDLACH'S TERMINATION.

14 AND THEN WE FORECASTED THOSE FORWARD AT
15 THE SAME RATE OF GROWTH THAT THEY HAD BEEN INCREASING
16 PREVIOUSLY.

01:17PM

17 Q WHAT IS THE TOTAL AMOUNT OF STAFF SALARIES AND
18 OFFICE EXPENSES THAT YOU CALCULATED?

19 A ON LINE 5 IN THE TOTAL COLUMN IT'S
20 \$26 MILLION.

01:17PM

21 Q ALL RIGHT.

22 SO, WHAT IS THE TOTAL COMPENSATION UNDER
23 HIS CONTRACT THAT HE WOULD HAVE RECEIVED ACCORDING TO
24 YOUR CALCULATIONS?

25 A ON LINE 6 IT'S THE SUM OF LINES 3 AND 4 AND
26 THE SUBTRACTION ON LINE 5. AND THE WOULD-HAVE-BEEN
27 COMPENSATION IN THE TOTAL COLUMN IS \$511.7 MILLION.

01:17PM

28 Q SO, WHAT'S THE NEXT STEP YOU THEN PERFORMED IN

1 CALCULATING MR. GUNDLACH'S LOST COMPENSATION?

2 A WELL, TO DETERMINE HIS LOST COMPENSATION YOU
3 HAVE TO DEDUCT ANY AMOUNTS HE DID, IN FACT, EARN AFTER
4 HE WAS TERMINATED.

5 AND THAT'S WHAT I DO ON LINE 7 IN THE
6 BLUE SECTION.

01:17PM

7 Q WHAT IS THE TOTAL AMOUNT THAT YOU'VE COME UP
8 WITH IN LINE 7?

9 A \$5.3 MILLION THROUGH THE END OF 2011.

10 Q WHAT IS INCLUDED IN THAT \$5.3 MILLION?

01:18PM

11 A THERE'S TWO ITEMS INCLUDED.

12 ONE IS ANY ACTUAL COMPENSATION HE WAS
13 PAID BY TCW OR DOUBLELINE DURING THE PERIOD THAT I
14 STUDIED.

15 AND THE SECOND IS DURING THIS PERIOD HE
16 IS A PARTIAL OWNER OF A COMPANY CALLED DOUBLELINE, AND
17 SO THE VALUE OF HIS INVESTMENT IN DOUBLELINE, I'VE
18 INCLUDED AS PART OF HIS COMPENSATION OR VALUE THAT HE'S
19 GENERATED DURING THIS SAME TIME PERIOD.

01:18PM

20 Q IS THE COMPENSATION THAT HE WOULD HAVE -- THAT
21 HE GOT FROM DOUBLELINE, OR THE VALUE FROM THE
22 DOUBLELINE INVESTMENT, SOMETHING THAT HE WOULD HAVE
23 BEEN ABLE TO DO HAD HE BEEN AN EMPLOYEE AT TCW DURING
24 THIS PERIOD?

01:18PM

25 A NO. THAT'S THE IDEA.

01:18PM

26 IF HE WAS ONLY ABLE TO START AND MANAGE
27 THE DOUBLELINE FIRM BECAUSE HE WAS NO LONGER WORKING AT
28 TCW, SO THAT'S WHY I INCLUDED IN THE ACTUAL

1 COMPENSATION AND DEDUCTED IT IN CALCULATING DAMAGES.

2 Q OF THE 5 MILLION, WHAT PORTION REPRESENTS
3 SALARY AND BONUSES THAT MR. GUNDLACH WILL RECEIVE
4 DURING THIS PERIOD FROM EITHER TCW OR DOUBLELINE?

5 A IT'S APPROXIMATELY 2 MILLION.

01:19PM

6 Q HOW MUCH IS ATTRIBUTABLE TO THE VALUE OF
7 MR. GUNDLACH'S INVESTMENT IN DOUBLELINE?

8 A IT'S ABOUT 3 MILLION.

9 Q SO FAR HAS MR. GUNDLACH RECEIVED ANY CASH FROM
10 HIS INVESTMENT IN DOUBLELINE?

01:19PM

11 A NO. IN FACT, TO THE CONTRARY. HE'S INVESTED
12 I THINK \$9,8 MILLION OF HIS OWN MONEY INTO THE COMPANY,
13 AS OPPOSED TO ACTUALLY RECEIVING MONEY OUT OF THE
14 COMPANY.

15 Q AND HOW DID YOU CALCULATE THE VALUE OF
16 MR. GUNDLACH'S INVESTMENT IN DOUBLELINE?

01:19PM

17 A I USED TWO INDEPENDENT APPRAISALS OF
18 DOUBLELINE -- WHILE THERE ARE TWO SEPARATE ENTITIES --
19 TWO SEPARATE DOUBLELINE ENTITIES THAT HE OWNS A SHARE
20 OF.

01:20PM

21 AND SO I HAVE INDEPENDENT APPRAISALS
22 PERFORMED BY A COMPANY CALLED CLARICE THOMPSON THAT
23 PROVIDE THE FAIR MARKET VALUE OF THOSE COMPANIES AS OF
24 JUNE OF THIS YEAR, TWO MONTHS AGO, I GUESS, OR THREE.

25 AND I RELIED ON THOSE INDEPENDENT
26 APPRAISALS AS A MEASURE OF THE VALUE OF MR. GUNDLACH'S
27 SHARE OF THOSE COMPANIES.

01:20PM

28 AND I DEDUCTED IT FROM THAT, THE AMOUNT

1 HE INVESTED IN ORDER TO HAVE THAT OWNERSHIP, AND THAT'S
2 SORT OF THE VALUE HE'S REALIZED.

3 Q ALL RIGHT.

4 SO, ONCE YOU COME UP WITH THE
5 \$5.3 MILLION ACTUAL COMPENSATION FIGURE, WHAT DID YOU
6 DO NEXT? 01:20PM

7 A WELL, TO CALCULATE HIS LOST COMPENSATION, I
8 DEDUCT FROM THE AMOUNTS HE WOULD HAVE EARNED ON LINE 6,
9 THE AMOUNTS HE ACTUALLY EARNED ON LINE 7, AND THE
10 DIFFERENCE IS THE LOST COMPENSATION ON LINE 8 OF
11 506.5 MILLION. 01:20PM

12 Q AND THEN THERE'S ANOTHER FIGURE ON LINE 9.

13 WHAT IS THAT?

14 A THAT'S THE PRESENT VALUE AS OF TODAY, OR LAST
15 MONTH, I THINK, OF THE LOST COMPENSATION AMOUNTS ON
16 LINE 8. 01:21PM

17 Q AND WHAT IS THE AMOUNT THAT YOU SHOW THERE?

18 A THE PRESENT VALUE AMOUNT AS OF TODAY IS
19 \$496.6 MILLION.

20 Q BRIEFLY, COULD YOU SAY WHAT PRESENT VALUE IS? 01:21PM

21 A PRESENT VALUE IS A WAY TO CREATE A CONSISTENT
22 MEASURE OF VALUE FOR MONEY RECEIVED IN THE PAST AND
23 MONEY RECEIVED IN THE FUTURE.

24 SINCE A DOLLAR RECEIVED AT DIFFERENT
25 TIMES HAS DIFFERENT VALUE, SO WE TAKE MONEY IN THE PAST
26 AND MEASURE WHAT IT'S WORTH TODAY AND MONEY IN THE
27 FUTURE AND MEASURE WHAT IT'S WORTH TODAY, AND THAT'S
28 THE PRESENT VALUE. 01:21PM

1 Q ALL RIGHT.

2 SO THIS \$496 MILLION FIGURE IS BASED ON
3 THE ASSUMPTIONS THAT MR. GUNDLACH HAD AN EMPLOYMENT
4 AGREEMENT WITH TCW THROUGH 2011 AND WAS TERMINATED IN
5 VIOLATION OF THAT AGREEMENT; IS THAT CORRECT?

01:22PM

6 A YES. THAT'S MY ASSUMPTION.

7 Q DO YOU UNDERSTAND THAT MR. GUNDLACH HAS AN
8 ALTERNATIVE CLAIM FOR LOST COMPENSATION, EVEN IF THE
9 JURY FINDS THERE WAS NO CONTRACT THAT WAS APPLICABLE
10 THROUGH 2011?

01:22PM

11 A THAT'S MY UNDERSTANDING.

12 Q AND WHAT IS THE BASIS OF THAT CLAIM AND THE
13 BASIS UPON WHICH YOU CALCULATED DAMAGES FOR THAT?

14 MR. SURPRENANT: OBJECTION. FOUNDATION.
15 OBJECTION -- OBJECTION. YOUR HONOR.

01:22PM

16 THE COURT: I'LL SUSTAIN IT. I THINK WE NEED
17 TO CLARIFY THAT A LITTLE BIT.

18 BY MR. HELM:

19 Q DID YOU CALCULATE DAMAGES UNDER AN ALTERNATIVE
20 SCENARIO?

01:22PM

21 A YES, I DID.

22 Q WHAT WAS THE ALTERNATIVE SCENARIO UNDER WHICH
23 YOU CALCULATED DAMAGES?

24 A I CALCULATED DAMAGES FOR THE AMOUNT OF
25 COMPENSATION MR. GUNDLACH SHOULD BE PAID THROUGH
26 DECEMBER 4TH, 2009, THE DATE OF HIS TERMINATION.

01:22PM

27 Q AND DID YOU PREPARE A CHART THAT FOCUSES ON
28 THE ACCRUED COMPENSATION THROUGH DECEMBER 4TH, 2009?

1 A YES.

2 Q I'D LIKE TO SHOW EXHIBIT 6196, YOUR HONOR,
3 WHICH I BELIEVE IS WITHOUT OBJECTION.

4 MR. SURPRENANT: NO OBJECTION, YOUR HONOR.

5 THE COURT: IT WILL BE ADMITTED.

01:23PM

6

7 (EXHIBIT 6196 ADMITTED.) +

8

9 BY MR. HELM:

10 Q WHY DON'T WE TAKE A LOOK AT THAT. START WITH
11 LINE 1.

01:23PM

12 WHAT DOES LINE 1 SHOW?

13 A LINE 1 SHOWS THE MANAGEMENT FEES THAT TCW
14 EARNED ON THE FUNDS MANAGED BY MR. GUNDLACH THROUGH
15 DECEMBER 4TH, 2009, OR IN THE -- FOR THE FOURTH QUARTER
16 OF 2009 THROUGH DECEMBER 4TH.

01:23PM

17 Q WHEN YOU SAY HE EARNED, IS THAT THE SAME AS OR
18 DIFFERENT FROM THE TERM ACCRUED?

19 A I USE THE -- THE WORDS EARNED AND ACCRUED
20 INTERCHANGEABLY. BECAUSE THE CONCEPT OF ACCRUAL IN
21 ACCOUNTING AND FINANCE IS SYNONYMOUS WITH AMOUNTS
22 EARNED AS OPPOSED TO WHEN CASH GETS EXCHANGED.

01:23PM

23 Q WHAT DOES LINE 3 SHOW?

24 A LINE 3, AGAIN, IS MR. GUNDLACH'S ROUGHLY
25 50 PERCENT SHARE OF THE MANAGEMENT FEES ON LINE 1.

01:24PM

26 Q NOW, ARE THESE MANAGEMENT FEES THAT TCW WAS
27 ACTUALLY PAID BY INVESTORS?

28 MR. SURPRENANT: OBJECTION. FOUNDATION.

1 THE COURT: SUSTAINED.

2 YOU'LL HAVE TO --

3 BY MR. HELM:

4 Q HAVE YOU REVIEWED RECORDS TO DETERMINE
5 PAYMENTS OF MANAGEMENT FEES TO TCW?

01:24PM

6 A YES. BOTH ACCOUNTING RECORDS, THAT REFLECT
7 PAYMENTS, AND FUND AGREEMENTS, THAT REFLECT THE
8 MECHANISMS BY WHICH MANAGEMENT FEES ARE PAID BY THE
9 FUNDS TO THE COMPANY.

10 Q SO THE MANAGEMENT FEES THAT WE'RE TALKING
11 ABOUT HERE, ARE THESE MANAGEMENT FEES THAT WERE PAID TO
12 TCW?

01:24PM

13 A YES.

14 Q AND WHEN WERE THESE MANAGEMENT FEES PAID TO
15 TCW?

01:24PM

16 A SOME OF THEM WERE PAID BY DECEMBER 4TH. SOME
17 OF THEM WERE PAID LATER IN DECEMBER OF 2009. AND THE
18 REMAINDER WOULD HAVE BEEN PAID SHORTLY AFTER THE END OF
19 THE YEAR EARLY 2010.

20 Q ALL RIGHT. SO THAT'S MANAGEMENT FEES.

01:25PM

21 LET'S TALK ABOUT PERFORMANCE FEES.

22 WHAT DOES THIS CHART SHOW WITH RESPECT
23 TO PERFORMANCE FEES? LET'S START ON LINE 2.

24 A LINE 2 REPRESENTS THE PERFORMANCE FEES THAT
25 TCW HAD EARNED ON THE SMCF FUNDS THROUGH DECEMBER 4TH,
26 2009.

01:25PM

27 Q HOW DO YOU KNOW THAT TCW HAD EARNED
28 PERFORMANCE FEES OF \$69.6 MILLION ON FUNDS MANAGED BY

1 MR. GUNDLACH AS OF DECEMBER 4, 2009?

2 A BY STUDYING TCW'S BUSINESS AND ACCOUNTING
3 RECORDS.

4 Q IS THERE A PARTICULAR DOCUMENT THAT YOU RELIED
5 UPON TO DETERMINE THIS AMOUNT?

01:25PM

6 A YES.

7 Q IF WE COULD SHOW EXHIBIT 5644, WHICH IS IN
8 EVIDENCE.

9 IS THIS THE DOCUMENT YOU'RE REFERRING
10 TO?

01:25PM

11 A THIS IS THE E-MAIL COVER OF SOME ACCOUNTING
12 DOCUMENTS THAT I'M REFERRING TO.

13 Q ALL RIGHT.

14 THIS IS AN E-MAIL FROM MR. VILLA TO
15 MR. DEVITO AND DUKE HAGER ON DECEMBER 23RD, 2009; IS
16 THAT CORRECT?

01:26PM

17 A YES.

18 Q AND WOULD YOU PLEASE EXPLAIN -- WHY DON'T WE
19 FIRST LOOK AT PAGE 2 OF THIS EXHIBIT.

20 AT THE TOP THERE IT SAYS:

01:26PM

21 TCW -- THE UPPER LEFT-HAND
22 CORNER -- TCW SMCF II CALCULATION
23 OF CARRIED INTEREST, DATE AS OF
24 NOVEMBER 30, 2009.

25 DO YOU SEE THAT?

01:26PM

26 A YES.

27 Q DENNIS, IF YOU COULD GO TO THE BOTTOM OF THAT
28 PAGE. THE BOTTOM. YES, THERE. PERFECT.

1 IT THEN SAYS, AT THE VERY BOTTOM:
2 ACCRUAL BALANCE ENDING 60
3 MILLION .9 --

4 WHAT DOES THAT REFER TO, AND WHAT'S THE
5 SIGNIFICANCE, IF ANY, OF THAT NUMBER IN YOUR
6 CALCULATION?

01:27PM

7 A THAT SHOWS THE TOTAL AMOUNT OF CARRIED
8 INTEREST OR PERFORMANCE FEE, WHICH IS THE SAME THING,
9 THAT HAD BEEN EARNED BY THE SMCF II FUND AS OF
10 NOVEMBER 30, 2009, \$60,977,000.

01:27PM

11 Q DOES THIS DOCUMENT ALSO CONTAIN A CALCULATION
12 OF CARRIED INTEREST WITH RESPECT TO THE SMCF
13 SOUTH DAKOTA FUND?

14 A YES, IT DOES.

15 Q PAGE 63 OF THIS EXHIBIT, PLEASE. IN THE UPPER
16 LEFT, HIGHLIGHT THAT, DENNIS. PERFECT.

01:27PM

17 IT SAYS:

18 TCW SD SMC CALCULATION OF
19 CARRIED INTEREST DATE AS OF
20 NOVEMBER 30, 2009.

01:27PM

21 WHAT DOES THAT SIGNIFY TO YOU?

22 A THAT THIS IS A CALCULATION OF THE PERFORMANCE
23 FEES THAT WERE EARNED THROUGH NOVEMBER 30, 2009 ON THIS
24 PARTICULAR SMCF FUND FOR SOUTH DAKOTA.

25 Q ALL RIGHT. IF WE COULD GO TO PAGE 55 OF THIS
26 EXHIBIT, PLEASE. JUST, YES, THE NUMBERS IN THERE.
27 PERFECT.

01:28PM

28 IT THEN SAYS:

1 ACCRUAL BALANCE ENDING,
2 \$7.6 MILLION.

3 WHAT DOES THAT SIGNIFY TO YOU?

4 A THAT SHOWS THAT THE AMOUNT OF CARRIED INTEREST
5 OR PERFORMANCE FEES EARNED ON THIS SOUTH DAKOTA FUND AS
6 OF NOVEMBER 3, 2009 WAS \$7,645,812.

01:28PM

7 Q COULD YOU PLEASE EXPLAIN, THEN, HOW YOU USED
8 THIS DOCUMENT TO DETERMINE THE PERFORMANCE FEES THAT
9 HAD BEEN EARNED BY TCW THROUGH DECEMBER 4TH 2009?

10 A SURE.

01:28PM

11 THESE TWO FUNDS WERE THE TWO SMCF FUNDS
12 THAT HAD EARNED CARRIED INTEREST OR PERFORMANCE FEES AS
13 OF NOVEMBER 30, 2009, FOUR DAYS BEFORE MY MEASUREMENT
14 DATE IN THE PRIOR CHART.

15 SO I TOOK THESE TWO AMOUNTS, ADDED THEM
16 TOGETHER, ROUGHLY \$68-1/2 MILLION.

01:29PM

17 THEN I EXAMINED THE END OF YEAR, THE
18 12-31-2009 FUND REPORTS FOR THESE SAME TWO SMCF FUNDS
19 TO DETERMINE THE EARNINGS THAT THE FUNDS HAD FOR THE
20 WHOLE YEAR.

01:29PM

21 AND BASED ON THAT, I PROJECTED THIS FOUR
22 ADDITIONAL DAYS OF CARRIED INTEREST FROM DECEMBER 4TH,
23 FIRST THROUGH DECEMBER 4TH, WHICH IS ROUGHLY ANOTHER
24 MILLION DOLLARS, AND THE SUM OF THOSE THREE NUMBERS IS
25 \$69.6 MILLION THAT I HAD ON MY PRIOR CHART.

01:29PM

26 Q WHEN DID TCW START ACCRUING PERFORMANCE FEES
27 ON THE SMCF FUNDS?

28 A THE FIRST TIME THEY EARNED PERFORMANCE FEES

1 WAS IN THE THIRD QUARTER OF 2009.

2 MR. HELM: I'D LIKE TO MOVE INTO EVIDENCE
3 6197. I BELIEVE WITHOUT OBJECTION.

4 MR. SURPRENANT: JUST A MOMENT.

5 NO OBJECTION, YOUR HONOR.

01:30PM

6 THE COURT: ALL RIGHT. IT WILL BE ADMITTED.

7

8 (EXHIBIT 6179 ADMITTED.) +

9

10 BY MR. HELM:

01:30PM

11 Q WHAT DOES THIS SHOW? TELL US WHAT THE BLUE
12 BAR IS THERE.

13 A THE BLUE BARS REFLECT MR. GUNDLACH'S SHARE OF
14 MANAGEMENT FEES IN EACH QUARTER FROM THE BEGINNING OF
15 2008 THROUGH DECEMBER 4TH.

01:30PM

16 AND THE YELLOW AND ORANGE BARS RELATE TO
17 PERFORMANCE FEES.

18 Q SO, WHAT DOES THIS SIGNIFY HAPPENING IN THE
19 THIRD QUARTER OF '09, WHICH I BELIEVE IS THE NEXT TO
20 THE LAST COLUMN.

01:30PM

21 A THE YELLOW BAR ON THE TOP AT THE THIRD QUARTER
22 OF '09 SIGNIFIES THAT'S THE FIRST TIME THAT TCW EARNED
23 PERFORMANCE FEES ON ITS SMCF FUNDS.

24 Q AND THE 30 MILLION FIGURE REFLECTS THE SHARE
25 TO MR. GUNDLACH'S POOL OR THE TOTAL?

01:30PM

26 A THE 30 MILLION IS MR. GUNDLACH'S 60 PERCENT
27 SHARE OF ROUGHLY \$50 MILLION OF PERFORMANCE FEES EARNED
28 BY TCW IN THE THIRD QUARTER.

1 Q THEN WHAT DOES THE FINAL COLUMN, THE FOURTH
2 QUARTER COLUMN THROUGH DECEMBER 4TH, SIGNIFY?

3 A THAT SIGNIFIES THE PERFORMANCE FEES WERE
4 CONTINUING TO GROW IN THE FOURTH QUARTER, AND THAT BY
5 DECEMBER 4TH, THAT HAD BEEN AN ADDITIONAL \$11,000,000
6 OF PERFORMANCE FEES EARNED RELATED TO MR. GUNDLACH'S
7 SHARE.

01:31PM

8 SO THAT WAS ACTUALLY OVER 20 MILLION, OR
9 ROUGHLY 20 MILLION, TO TCW.

01:31PM

10 SO, THE SUM OF THE ORANGE AND YELLOW IN
11 THE FOURTH QUARTER IS \$41.7 MILLION. THAT'S
12 MR. GUNDLACH'S 60 PERCENT SHARE OF ROUGHLY 70 MILLION
13 OR THE \$69.6 MILLION IN PERFORMANCE FEES THAT WE JUST
14 DISCUSSED HAD BEEN EARNED THROUGH DECEMBER 4.

15 Q LET'S GO BACK TO EXHIBIT 6196, IF WE COULD.

01:31PM

16 SO, WHAT DOES THAT SHOW ABOUT
17 MR. GUNDLACH'S 60 PERCENT SHARE OF THE PERFORMANCE FEES
18 ACCRUED TO THE DATE OF THIS TERMINATION, HIS
19 TERMINATION?

20 A THAT WOULD BE SHOWN ON LINE 4. THAT'S THE
21 41.7 MILLION, WHICH IS THE SUM OF THE YELLOW AND ORANGE
22 BARS THAT WE SAW IN THE PREVIOUS CHART.

01:32PM

23 SO HIS SHARE OF THE \$69.6 MILLION IN
24 PERFORMANCE FEES THAT TCW EARNED, SHOWN ON LINE 2, IS
25 60 PERCENT AND IT TOTALS 41.7 MILLION ON DECEMBER 4TH.

01:32PM

26 Q ALL RIGHT.

27 THEN YOU HAVE A LINE 6, GUNDLACH
28 WOULD-HAVE-BEEN COMPENSATION.

1 HOW DID YOU CALCULATE THAT NUMBER?

2 A SUMMING TOGETHER MR. GUNDLACH'S SHARE OF
3 MANAGEMENT FEES AND PERFORMANCE FEES FROM LINES 3 AND 4
4 AND SUBTRACTING THE STAFF SALARY AND OFFICE EXPENSES IN
5 THAT TIME PERIOD GIVES YOU 62.1 MILLION, WOULD HAVE
6 BEEN COMPENSATION FOR MR. GUNDLACH IN THAT PERIOD.

01:32PM

7 Q THEN IS THERE ONE MORE STEP THAT YOU PERFORMED
8 IN CALCULATING HIS LOST COMPENSATION ACCRUED TO
9 TERMINATION?

10 A YES.

01:33PM

11 ON LINE 7, HE WAS PAID \$142,000 OF
12 SALARY IN THAT PERIOD. SO I DEDUCT THE AMOUNT HE
13 ACTUALLY RECEIVED AND CALCULATE THE LOST COMPENSATION
14 ON LINE 8 OF \$62 MILLION.

15 Q ALL RIGHT.

01:33PM

16 SO THE NUMBER ON LINE 8 IS \$62 MILLION.
17 WHAT THEN IS THE LAST LINE, WHAT DOES
18 THAT INDICATE ON THIS DAMAGES AN ACCRUED TO
19 TERMINATION?

20 A THE AMOUNT OF LOST COMPENSATION ON LINE 8 IS
21 THE AMOUNT THAT HE'D EARNED AS OF DECEMBER 4TH 2009,
22 AND THEN TO BRING THAT FORWARD TO TODAY, IN PRESENT
23 VALUE TERMS, MONEY IN THE PAST IS WORTH MORE THAN MONEY
24 TODAY, SO THE PRESENT VALUE IS 72 MILLION.

01:33PM

25 Q ALL RIGHT.

01:33PM

26 LET'S GO BACK TO EXHIBIT 6192 IF WE
27 COULD.

28 NOW, I BELIEVE YOU SAID THESE WERE THE

1 AMOUNTS THAT REFLECT MR. GUNDLACH'S COMPENSATION THAT
2 HE COULD HAVE EITHER KEPT OR DIRECTED TCW TO SHARE WITH
3 OTHER PEOPLE IN HIS GROUP; IS THAT RIGHT?

4 A THAT'S RIGHT.

5 Q NOW, YOU PREVIOUSLY SAID THAT YOU DID NOT
6 THINK THERE SHOULD BE A DEDUCTION FOR AMOUNTS THAT WERE
7 PAID TO OTHER MEMBERS OF THE GROUP; IS THAT CORRECT?

01:34PM

8 A YES, FROM AN ECONOMIC DAMAGES POINT OF VIEW.

9 Q NOW, HAVE YOU BEEN CRITICIZED FOR TAKING THAT
10 POSITION?

01:34PM

11 A YES. TCW DISAGREES. AND PROFESSOR CORNELL
12 DISAGREES.

13 Q HAVE YOU PERFORMED A CALCULATION OF
14 MR. GUNDLACH'S COMPENSATION THAT ASSUMES THAT STAFF
15 BONUSES PAID AT MR. GUNDLACH'S DISCRETION SHOULD BE
16 DEDUCTED?

01:34PM

17 A YES. I PERFORMED THAT ALTERNATIVE
18 CALCULATION.

19 Q WHY DID YOU DO THAT?

20 A IN CASE THE JURY DECIDES THAT THE BONUSES
21 SHOULD BE DEDUCTED IN COMPUTING DAMAGES, THEY WOULD
22 HAVE THAT INFORMATION AVAILABLE.

01:34PM

23 Q NOW, DOES THE FACT THAT YOU MADE THIS
24 CALCULATION SUGGEST THAT YOU THINK THE AMOUNTS SHOULD
25 BE DEDUCTED?

01:35PM

26 A NO.

27 Q SO, DID YOU ESTIMATE HOW MUCH MR. GUNDLACH
28 MIGHT HAVE DIRECTED TCW TO PAY TO OTHERS IN HIS GROUP

1 HAD HE NOT BEEN TERMINATED?

2 A YES, I DID.

3 MR. HELM: I'D LIKE TO MOVE ADMISSION OF 6198.
4 I BELIEVE IT'S WITHOUT OBJECTION.

5 MR. SURPRENANT: WITHOUT OBJECTION. 01:35PM

6 THE COURT: IT WILL BE ADMITTED.

7

8 (EXHIBIT 6198 ADMITTED.) +

9

10 BY MR. HELM: 01:35PM

11 Q ALL RIGHT. THIS SAYS:

12 BREACH OF CONTRACT DAMAGES
13 THROUGH 2011. ASSUMING DEDUCTION
14 OF STAFF BONUSES.

15 IS THAT WHAT THIS DEPICTS? 01:35PM

16 A YES. IT'S LIKE THE CHART WE'VE BEEN STUDYING,
17 BUT IN THIS CHART I ADD TWO ADDITIONAL ROWS TO DEDUCT
18 THE STAFF BONUSES THAT WOULD HAVE BEEN PAID DURING THIS
19 PERIOD.

20 Q WHAT ARE THE TWO ADDITIONAL ROSE? 01:35PM

21 A THEY'RE ROWS 5B, AND 5C THAT SAYS:

22 LESS STAFF BONUSES AT GUNDLACH
23 DISCRETION MANAGEMENT FEES AND
24 PERFORMANCE FEES.

25 Q HOW DID YOU CALCULATE THE AMOUNTS THAT
26 MR. GUNDLACH WOULD HAVE PAID TO OTHERS IN HIS GROUP HAD
27 HE NOT BEEN TERMINATED? 01:36PM

28 A WELL, FOR MANAGEMENT FEES, THERE -- THERE WERE

1 TWO TREATMENTS, DEPENDING ON THE PEOPLE.

2 CERTAIN PEOPLE HAD HISTORICAL
3 PERCENTAGES THAT HAD BEEN USED RELATIVELY CONSISTENTLY
4 FOR THE PAST COUPLE YEARS.

5 AND SO I APPLIED THOSE SAME PERCENTAGES
6 GOING FORWARD.

01:36PM

7 FOR OTHER STAFF, I HAD DISCUSSIONS WITH
8 MR. GUNDLACH ABOUT HOW MUCH HE WOULD HAVE SHARED HAD HE
9 BEEN AT TCW AND EARNED THESE AMOUNTS.

10 Q SO, WHAT IS YOUR ESTIMATE OF THE PORTION OF
11 MR. GUNDLACH'S SHARE OF TCW'S FEES THAT HE WOULD HAVE
12 DIRECTED TCW TO PAY TO OTHER PEOPLE IN HIS GROUP?

01:36PM

13 A ON LINE 5B, THE AMOUNT THAT HE WOULD HAVE PAID
14 AS STAFF BONUSES RELATED TO MANAGEMENT FEES I'VE
15 CALCULATED AS 106.5 MILLION.

01:37PM

16 AND ON LINE 5C THE AMOUNT HE WOULD HAVE
17 PAID AS STAFF BONUSES RELATED TO PERFORMANCE FEES I'VE
18 CALCULATED AS \$133.2 MILLION.

19 Q SO, IF YOU ASSUME THAT STAFF BONUSES SHOULD BE
20 DEDUCTED, WHAT IS THE AMOUNT YOU CALCULATED FOR
21 MR. GUNDLACH WOULD HAVE BEEN COMPENSATION, THE
22 COMPENSATION HE WOULD HAVE RECEIVED HAD HE NOT BEEN
23 TERMINATED?

01:37PM

24 A THAT'S SHOWN ON LINE 6. AFTER DEDUCTING ALL
25 THE STAFF BONUSES AND OTHER EXPENSES IN THE TOTAL
26 COLUMN, HIS COMPENSATION WOULD HAVE BEEN 272.1 MILLION.

01:37PM

27 Q AND THEN WHAT DID YOU DO NEXT? IS IT THE SAME
28 AS IN THE LAST?

1 A AGAIN, I SUBTRACTED THE ACTUAL COMPENSATION
2 HE'S EARNED IN THIS PERIOD.

3 Q ALL RIGHT.

4 AND SO, WHAT ARE THE TOTALS, THEN, THAT
5 YOU GET?

01:38PM

6 A SO THE TOTAL LOST COMPENSATION UNDER THIS
7 ASSUMPTION ON LINE 8 IS \$266.8 MILLION.

8 AND THE PRESENT VALUE OF THAT AMOUNT IS
9 262.7 MILLION. THAT'S ON THE FINAL LINE, 9.

10 Q HAVE YOU PERFORMED A SIMILAR CALCULATION, THAT
11 IS, A CALCULATION THAT DEDUCTS AMOUNTS THAT WOULD HAVE
12 BEEN PAID TO OTHER PEOPLE IN THE GROUP WITH RESPECT TO
13 YOUR DAMAGES CALCULATION FOR ACCRUED TO THE TIME OF
14 TERMINATION?

01:38PM

15 A YES, I HAVE.

01:38PM

16 MR. HELM: MOVE TO ADMIT 6199. I BELIEVE,
17 AGAIN, WITHOUT OBJECTION.

18 MR. SURPRENANT: NO OBJECTION, YOUR HONOR.

19 THE COURT: IT WILL BE ADMITTED.

01:38PM

20 (EXHIBIT 6199 ADMITTED.) +

21

22

23 BY MR. HELM:

24 Q ALL RIGHT.

25 AGAIN, SIMILAR TO THE ONE WE SAW BEFORE,
26 BUT WITH A CHANGE?

01:38PM

27 A YES.

28 I 'VE ADDED --

1 Q WHAT'S THE CHANGE?

2 A -- I'VE ADDED LINES 5B AND 5C TO DEDUCT STAFF
3 BONUSES.

4 Q SO IF YOU DO THAT, WHAT IS THE TOTAL -- WHAT
5 IS THE TOTAL LOSS IN THIS SCENARIO?

01:39PM

6 A SO THE LOST COMPENSATION ON LINE 8 THROUGH
7 DECEMBER 4TH, 2009, IS 29.5 MILLION.

8 AND THE PRESENT VALUE OF THAT AMOUNT IS
9 34.2 MILLION.

10 Q ALL RIGHT.

01:39PM

11 SO, TO SUMMARIZE, WHAT IS THE TOTAL LOST
12 COMPENSATION YOU CALCULATED THROUGH 2011, WITHOUT
13 DEDUCTING STAFF BONUSES?

14 A \$496 MILLION.

15 Q WHAT IS THE TOTAL AMOUNT OF LOST COMPENSATION
16 THROUGH 2011 THAT YOU CALCULATED, ASSUMING YOU SHOULD
17 DEDUCT STAFF BONUSES?

01:39PM

18 A \$263 MILLION.

19 Q WHAT IS THE AMOUNT OF DAMAGES YOU HAVE
20 CALCULATED FOR HIS LOST COMPENSATION ACCRUED THROUGH
21 THE DATE OF TERMINATION WITHOUT DEDUCTING STAFF
22 BONUSES?

01:39PM

23 A \$72 MILLION.

24 Q AND WITH DEDUCTING STAFF BONUSES?

25 A \$34 MILLION.

01:40PM

26 Q NOW, I THINK YOU MENTIONED THAT YOU HAD ALSO
27 CALCULATED AMOUNTS RELATED TO CLAIMS BY THE OTHER
28 CROSS-COMPLAINANTS IN THIS CASE; IS THAT RIGHT,

1 MS. VANEVERY, MR. MAYBERRY, AND MR. SANTA ANA?

2 A YES, THAT'S RIGHT.

3 Q AND SO, WHAT IS THE SCENARIO UNDER WHICH YOU
4 CALCULATED DAMAGES FOR THEM?

5 A I CALCULATED DAMAGES FOR THEM IN THE EVENT
6 THAT MR. GUNDLACH IS NOT AWARDED DAMAGES, OR IN THE
7 EVENT THAT HE'S AWARDED DAMAGES THAT DEDUCT STAFF
8 BONUSES FROM HIS RECOVERY.

01:40PM

9 MR. HELM: I WOULD MOVE TO ADMIT EXHIBIT 6200.
10 AGAIN, I BELIEVE THERE'S NO OBJECTION.

01:40PM

11

12 (COUNSEL CONFER SOTTO VOCE.) +

13

14 MR. HELM: LET US DISPLAY 6200, I BELIEVE
15 WITHOUT OBJECTION. WE CAN READ IT INTO THE RECORD.

01:41PM

16 THE COURT: ALL RIGHT. EXHIBIT 6200.

17 MR. HELM: FIRST OF ALL, WHAT IS EXHIBIT 6200?

18 Q WHAT IS EXHIBIT 6200?

19 A 6200 IS A SUMMARY OF THE COMPENSATION EARNED
20 IN 2007 AND 2008 FOR THESE THREE INDIVIDUALS,
21 BARBARA VAN EVERY, JEFFREY MAYBERRY, AND
22 CRIS SANTA ANA.

01:41PM

23 IT BREAKS THEIR COMPENSATION DOWN
24 BETWEEN SALARY AND BONUS AMOUNTS.

25 Q ALL RIGHT.

01:41PM

26 SO, MS. VANEVERY IN 2007, WHAT WERE HER
27 SALARY BONUS AND TOTAL COMP?

28 A SHE RECEIVED SALARY OF \$98,333.

1 TOTAL BONUSES OF \$180,000.

2 AND HER TOTAL COMPENSATION WAS \$278,333.

3 Q AND MR. MAYBERRY IN 2007?

4 A HIS SALARY, 123,334.

5 HE RECEIVED \$140,000 IN BONUS. 01:41PM

6 AND HIS TOTAL WAS 263,334.

7 Q AND MR. SANTA ANA IN 2007?

8 A HIS SALARY WAS 148,334.

9 AND HE RECEIVED 250,000 IN BONUS.

10 HIS TOTAL COMPENSATION WAS 398,334. 01:42PM

11 Q AND THEN 2008, WHAT WAS THE SALARY AND BONUS
12 AND TOTAL FOR MS. VANEVERY?

13 A OKAY. THEY WENT UP.

14 AND HER SALARY WAS 108,333.

15 AND HER BONUSES TOTALED 290,000. 01:42PM

16 AND HER TOTAL COMPENSATION WAS -- FOR
17 2008 WAS \$398,333.

18 Q MR. MAYBERRY 2008?

19 A HIS SALARY \$133,334.

20 HIS BONUS WAS 225,000. 01:42PM

21 AND HIS TOTAL WAS 358,334.

22 Q AND MR. SANTA ANA, 2008, PLEASE.

23 A HIS SALARY WAS \$156,250.

24 HE RECEIVED BONUS OF \$550,000.

25 AND HIS TOTAL COMPENSATION WAS \$706,250. 01:43PM

26 MR. HELM: I'D LIKE TO DISPLAY AND ADMIT INTO
27 EVIDENCE THE NEXT EXHIBIT, 6206, PLEASE.

28 I, AGAIN, BELIEVE IT'S WITHOUT

1 OBJECTION.

2 MR. SURPRENANT: NO OBJECTION, YOUR HONOR.

3 THE COURT: 6206 WILL BE ADMITTED.

4

5 (EXHIBIT 6206 ADMITTED.) +

01:43PM

6

7 BY MR. HELM:

8 Q WHAT DOES THIS -- THIS SAYS:

9 OTHER CROSS-COMPLAINANTS' SHARE

10 OF GUNDLACH FEE SHARE POOL FOURTH

01:43PM

11 QUARTER 2009 THROUGH DECEMBER 4,

12 2009.

13 WHAT DOES THIS SHOW?

14 A WHAT I'M DOING HERE IS I'M STARTING WITH

15 MR. GUNDLACH'S FEE SHARE POOL THAT I PREVIOUSLY

01:43PM

16 CALCULATED FOR THE FOURTH QUARTER THROUGH DECEMBER 4TH,

17 2009. THAT'S \$64.1 MILLION.

18 AND THEN BASED ON WHAT PERSONAL OF

19 MR. GUNDLACH'S FEE SHARE POOL THOSE THREE INDIVIDUALS

20 RECEIVED IN THE PRIOR YEAR.

01:44PM

21 I'VE DISPLAYED THOSE AMOUNTS, THOSE

22 PERCENTAGES, IN THE MIDDLE COLUMN, AND THEN MULTIPLIED

23 THOSE PERCENTAGES TIMES THE \$64.1 MILLION TO CALCULATE

24 WHAT THEIR SHARE OF THE \$64.1 MILLION WOULD BE FOR THE

25 FOURTH QUARTER OF 2009.

01:44PM

26 Q AND UNDER WHAT CIRCUMSTANCES DO YOU BELIEVE IT

27 IS APPROPRIATE TO ASSESS THESE DAMAGES?

28 A THESE DAMAGES WOULD BE APPROPRIATE FOR THESE

1 INDIVIDUALS IF EITHER MR. GUNDLACH IS NOT AWARDED
2 DAMAGES, OR IF STAFF BONUSES ARE DEDUCTED FROM ANY
3 AWARD TO MR. GUNDLACH.

4 Q AND IF THE JURY WERE TO AWARD MR. GUNDLACH
5 DAMAGES WITHOUT DEDUCTING STAFF BONUSES, WOULD THESE BE
6 APPROPRIATE TO ADD ON TO THAT? 01:44PM

7 A NO. BECAUSE THIS IS A SHARE OF THAT MONEY.
8 SO THAT WOULD NOT BE APPROPRIATE.

9 MR. HELM: THANK YOU, MR. WALLACE. I HAVE
10 NOTHING FURTHER. 01:44PM

11 THE COURT: ALL RIGHT. CROSS-EXAMINATION.

12 WE'RE GOING TO HAVE TWO, OR YOU'RE JUST
13 BRINGING BOOKS?

14 MR. MADISON: I'M JUST A MESSENGER, YOUR
15 HONOR. MAY I? 01:45PM

16 THE COURT: SURE.

17

18 CROSS-EXAMINATION +

19

20 BY MR. SURPRENANT: 01:45PM

21 Q GOOD AFTERNOON, MR. WALLACE. HOW ARE YOU?

22 A I'M FINE. THANK YOU. HOW ARE YOU?

23 Q I'M FINE. THANK YOU.

24 THE HOUR IS GETTING LATE, BUT I WON'T BE
25 ABLE TO FINISH. I WANTED TO START ON ONE ASPECT OF
26 YOUR TESTIMONY, WHICH WAS THE VALUE OF DOUBLELINE. 01:45PM

27 THIS WILL BE ON TX 2311.

28 NOW, IN THE REPORT THAT WE RECEIVED ON

1 JULY 17TH -- JULY 15, YOU CALCULATED THE TOPIC,
2 MR. WALLACE, IS THE VALUE OF MR. GUNDLACH'S OWNERSHIP
3 IN DOUBLELINE; THAT'S A TOPIC YOU'VE LOOKED AT,
4 CORRECT?

5 A YES.

01:46PM

6 Q AND WHAT YOU'VE TOLD US IN YOUR REPORT IS THAT
7 MR. GUNDLACH OWNS 39.34 PERCENT OF DOUBLELINE; IS THAT
8 CORRECT?

9 A THAT'S MY UNDERSTANDING.

01:46PM

10 Q AND THEN THE APPRAISALS THAT YOU REFERRED TO
11 HAVE AN OVERALL VALUE OF \$33.3 MILLION, CORRECT?

12 A THAT SOUNDS ABOUT RIGHT.

13 Q AND THEN WHEN YOU DO THE MATH, THAT'S
14 \$13.1 MILLION FOR MR. GUNDLACH'S SHARE, CORRECT?

15 A THAT LOOKS ABOUT RIGHT ALSO.

01:46PM

16 Q AND THEN YOU SUBTRACTED OUT HIS INVESTMENT OF
17 \$9.9 MILLION, CORRECT?

18 A OR 9.8, AROUND THERE.

19 Q AND THEN YOU GET TO A VALUE FOR MR. GUNDLACH'S
20 SHARE OF \$3.22 MILLION; IS THAT CORRECT?

01:47PM

21 A YES.

22 Q AND THEN YOU SUBTRACT THAT OUT OF THE DAMAGE
23 CALCULATION?

24 A RIGHT.

25 Q OKAY.

01:47PM

26 NOW, ARE THE APPRAISALS -- YOU SAY YOU
27 RELIED ON TWO APPRAISALS; IS THAT CORRECT?

28 A FOR THIS CALCULATION I RELIED ON TWO

1 APPRAISALS AT THE SAME DATE FOR THE TWO SEPARATE
2 DOUBLELINE ENTITIES AND ADDED THEM TOGETHER.

3 Q CORRECT.

4 AND ARE THOSE APPRAISALS IN EVIDENCE?

5 A I DON'T KNOW.

01:47PM

6 Q OR DO YOU KNOW IF THE APPRAISERS TESTIFIED?

7 A I DON'T KNOW.

8 Q CAN YOU POINT TO ANY EVIDENCE IN THE RECORD
9 WITH RESPECT -- THAT WOULD SUPPORT THESE APPRAISAL
10 NUMBERS?

01:48PM

11 MR. HELM: OBJECT AS FORM, YOUR HONOR.

12 THE COURT: SUSTAINED.

13 MR. SURPRENANT: ALL RIGHT.

14 Q WELL, LET'S LOOK AND COMPARE THIS NUMBER,
15 3.2 MILLION, TO A NUMBER THAT THE JURY HEARD TODAY FROM
16 MR. BARACH.

01:48PM

17 WERE YOU HERE TODAY WHEN MR. BARACH
18 TESTIFIED THAT OAKTREE PAID \$20 MILLION FOR 5 PERCENT
19 OF DOUBLELINE?

20 A I WASN'T HERE, BUT I WAS WATCHING THE FEED.

01:48PM

21 Q AND DID YOU SEE -- DID YOU HEAR MR. BARACH SAY
22 THAT OAKTREE PAID \$20 MILLION FOR 5 PERCENT OF
23 DOUBLELINE AT A TIME DOUBLELINE REALLY NEEDED CASH?

24 A I WAS IN A ROOM WHERE THE FEED WAS GOING ON,
25 SO I DIDN'T HEAR ALL THE DETAILS, BUT I DO RECALL -- I
26 HEARD SOME OF IT, BUT NOT ALL OF IT. SO I DON'T KNOW
27 IF I RECALL THAT.

01:48PM

28 Q SO IF DOUBLELINE SOLD 5 PERCENT FOR

1 \$20 MILLION WHEN IT REALLY NEEDED MONEY, WOULD THAT BE
2 WHAT SOME PEOPLE WOULD REFER TO AS A FIRE SALE?

3 MR. HELM: ARGUMENTATIVE.

4 THE COURT: SUSTAINED.

5 THE WITNESS: I DON'T KNOW.

01:49PM

6 BY MR. SURPRENANT:

7 Q OKAY. LET'S ASSUME IF YOU WERE TO DO
8 20 MILLION EQUALS 5 PERCENT.

9 IF YOU WERE TO DO THAT ON A PRO RATA
10 SHARE FOR 100 PERCENT, THAT WOULD EQUAL HOW MUCH?

01:49PM

11 A YOU MEAN IF YOU JUST GROSSED UP THE 20 MILLION
12 BY A FACTOR OF 20?

13 Q YEAH.

14 A THAT WOULD BE 400 MILLION.

15 Q AND I COULD GIVE YOU A CALCULATOR, BUT I'VE
16 DONE THE CALCULATION.

01:49PM

17 400 MILLION BY -- TIMES 3 -- 439.4.
18 THAT EQUALS 157, \$36 MILLION?

19 WOULD YOU AGREE WITH THAT MATH OR I CAN
20 GIVE YOU A CALCULATOR?

01:50PM

21 A 40 PERCENT WOULD BE 160. IT'S ABOUT RIGHT.

22 Q THEN IF YOU WERE TO FOLLOW THIS AND SUBTRACT
23 OUT 9.9 MILLION, AS YOU DID HERE FOR MR. GUNDLACH'S
24 INVESTMENT, A COMPARABLE NUMBER TO YOURS BASED ON A
25 REAL-WORLD TRANSACTION, A REAL-WORLD TRANSACTION WOULD
26 BE \$147,460,000, CORRECT?

01:50PM

27 MR. HELM: ARGUMENTATIVE, YOUR HONOR.

28 THE COURT: OVERRULED.

1 THE WITNESS: NO, I DON'T AGREE WITH THAT.
2 BECAUSE I DON'T THINK YOU CHARACTERIZED THE \$20 MILLION
3 TRANSACTION PROPERLY. SO THAT'S NOT -- THAT DOESN'T
4 FLOW AS A REAL-WORLD TRANSACTION.

5 BY MR. SURPRENANT:

01:51PM

6 Q THIS IS NOT A REAL-WORLD TRANSACTION?

7 A I --

8 Q THE 20 MILLION MR. BARACH TESTIFIED TODAY THAT
9 OAKTREE PAID FOR 5 PERCENT, THAT'S NOT A REAL-WORLD
10 TRANSACTION?

01:51PM

11 A WELL, AS I SAID, I DIDN'T HEAR EXACTLY WHAT HE
12 SAID.

13 BUT MY UNDERSTANDING IS OAKTREE PAID
14 \$20 MILLION TO REPURCHASE OAKTREE'S STOCK THAT THEY HAD
15 PREVIOUSLY GIVEN TO DOUBLELINE.

01:51PM

16 AND SO THE 20 MILLION REFLECTS THE VALUE
17 OF THE OAKTREE STOCK, NOT THE DOUBLELINE STOCK.

18 Q OKAY.

19 SO LET'S GO THROUGH THE ANALYSIS OF THE
20 WORK YOU HAVE DONE IN THIS CASE.

01:51PM

21

22 (COUNSEL CONFER SOTTO VOCE.) +

23

24 MR. SURPRENANT: I JUST THOUGHT OF A NEW
25 THING.

01:52PM

26 MR. BRIAN: COULD WE PUT A MUZZLE ON HIM?

27 BY MR. SURPRENANT:

28 Q THEY WERE REPURCHASING DOUBLELINE STOCK,

1 RIGHT?

2 A IN OTHER WORDS, THEY WERE PURCHASING BACK WHAT
3 HAD BEEN 5 PERCENT OF DOUBLELINE, CORRECT?

4 MR. HELM: MISSTATES THE RECORD, YOUR HONOR.

5 THE COURT: YOU CAN CROSS-EXAMINE HIM ON IT.

01:52PM

6 I'LL ALLOW IT.

7 DO YOU KNOW THE ANSWER TO THAT? IF YOU
8 DON'T KNOW, TELL US YOU DON'T KNOW.

9 THE WITNESS: I DO.

10 THE COURT: ALL RIGHT. GO AHEAD AND ANSWER.

01:52PM

11 THE WITNESS: THAT'S NOT CORRECT. THEY WERE
12 REPURCHASING SHARES OF OAKTREE.

13 BY MR. SURPRENANT:

14 Q AND THE SHARES WERE SHARES THEY HAD EXCHANGED
15 FOR 5 PERCENT OF DOUBLELINE, CORRECT?

01:52PM

16 MR. HELM: VAGUE AND AMBIGUOUS.

17 THE COURT: CAN YOU EXPLAIN THAT? DO YOU
18 UNDERSTAND THE QUESTION?

19 THE WITNESS: YES, SIR.

20 THE COURT: GO AHEAD AND ANSWER.

01:52PM

21 THE WITNESS: AT THE FORMATION OF DOUBLELINE,
22 IN EXCHANGE FOR RECEIVING A SHARE, AN EQUITIES SHARE IN
23 THE NEW COMPANY, THEY CONTRIBUTED OAKTREE STOCK.

24 AT A LATER POINT IN TIME, THEY MADE A
25 DECISION THAT I DON'T -- I DON'T KNOW EXACTLY WHY, BUT
26 THEY MADE A DECISION TO REPURCHASE THEIR OAKTREE STOCK
27 FROM DOUBLELINE.

01:53PM

28 AND THE \$20 MILLION TRANSACTION REFLECTS

1 THE REPURCHASE OF OAKTREE STOCK AT A LATER POINT IN
2 TIME, WHERE THE VALUE OF THE OAKTREE STOCK COULD BE
3 DIFFERENT THAN WHEN IT WAS CONTRIBUTED TO DOUBLELINE.
4 BY MR. SURPRENANT:

5 Q AND THE OAKTREE STOCK WAS ORIGINALLY EXCHANGED
6 FOR 5 PERCENT OF DOUBLELINE, CORRECT?

01:53PM

7 A I THINK I OVERHEARD MR. BARACH SAYING THAT. I
8 WASN'T AWARE OF THAT BEFORE.

9 Q WOULD YOU AGREE, WITH ALL THE WORK YOU'VE DONE
10 AT ECONOMIC CALCULATION, THAT, AS A GENERAL RULE, THE
11 BEST WAY TO DETERMINE VALUE IS WHAT A WILLING BUYER AND
12 A WILLING SELLER WOULD AGREE TO?

01:53PM

13 MR. HELM: INCOMPLETE HYPOTHETICAL.

14 THE COURT: OVERRULED.

15 THE WITNESS: I THINK IT DEPENDS ON THE
16 CIRCUMSTANCES. I THINK WHAT YOU'RE DESCRIBING IS FAIR
17 MARKET VALUE. AND SOMETIMES THAT'S A USEFUL MEASURE OF
18 VALUE, AND IN OTHER CASES THERE ARE OTHER MEASURES THAT
19 ARE MORE APPROPRIATE.

01:54PM

20 SO THAT I THINK YOU DESCRIBED THE
21 DEFINITION OF FAIR MARKET VALUE.

01:54PM

22 BY MR. SURPRENANT:

23 Q LET ME TURN TO SOMETHING ELSE MR. HELM BROUGHT
24 UP.

25 YOU SAID THAT YOU EQUATED AS AN
26 ACCOUNTANT, I UNDERSTAND, EARNED EQUAL TO ACCRUED. AND
27 MR. HELM THEN BEGAN ASKING YOU ABOUT WHAT WAS EARNED.

01:54PM

28 DO YOU RECALL THAT?

1 A I DON'T THINK I SAID EXACTLY WHAT YOU SAID.

2 BUT I SAID THAT I USE EARN TO MEAN THE
3 SAME THING AS ACCRUED FROM AN ACCOUNTING POINT OF VIEW.

4 Q AND THAT'S FROM AN ACCOUNTING POINT OF VIEW,
5 YOU TOLD THE JURY THAT ACCRUED MEANS EARNED, CORRECT?

01:55PM

6 A IN -- FROM ACCOUNTING SENSE, YES, THEY'RE
7 SYNONYMOUS.

8 Q OKAY.

9 BUT IT DOESN'T MEAN CASH PAID TO THE
10 EMPLOYEE, DOES IT?

01:55PM

11 A NO, THAT'S EXACTLY THE POINT.

12 IN ACCOUNTING, YOU'RE TRYING TO MEASURE
13 EARNINGS MORE ACCURATELY, EVEN THOUGH PARTIES EXCHANGE
14 CASH AT DIFFERENT POINTS IN TIME.

15 SO THE CONCEPT OF ACCRUAL IS WHEN ALL
16 THE WORK AND ALL THE RESULTS HAVE TAKEN PLACE, AND YOU
17 CAN MEASURE THEM AND YOU ACCRUE IT BECAUSE IT'S EARNED.
18 THAT'S WHAT IT MEANS.

01:55PM

19 Q I THINK YOU WERE HERE IN THE COURTROOM WHEN
20 MR. HAGER TESTIFIED.

01:55PM

21 AM I CORRECT?

22 A I HEARD SOME OF HIS TESTIMONY. I DON'T KNOW
23 IF I HEARD ALL OF IT.

24 Q DID YOU HEAR MR. HAGER SAY THEY ACCRUE IT, THE
25 SPECIAL MORTGAGE CREDIT FUND FEES, ON A MONTHLY BASIS,
26 CORRECT?

01:55PM

27 A YES.

28 Q BECAUSE THAT'S REQUIRED BY GAAP?

1 A RIGHT. BECAUSE GAAP REQUIRES YOU TO RECORD
2 WHAT YOU'VE EARNED AS ACCURATELY AS POSSIBLE.

3 Q AND THAT ACCRUAL MAY GO DOWN THE NEXT MONTH,
4 AND BECAUSE IT DOESN'T REFLECT CASH THAT WAS PAID,
5 CORRECT?

01:56PM

6 A RIGHT. UNTIL YOU SELL A SECURITY, THE PRICE
7 CAN FLUCTUATE, AND THE AMOUNT THAT YOU -- THAT YOU'VE
8 EARNED AT ANY POINT IN TIME CAN GO UP OR DOWN.

9 Q RIGHT.

10 A SO GAAP REQUIRES THAT YOU MEASURE THE VALUE AT
11 THAT DATE BECAUSE THAT REFLECTS WHAT YOU'VE EARNED AT
12 THAT DATE, AND IF THAT VALUE GOES DOWN, THEN YOU
13 REFLECT THAT ADJUSTMENT. IF IT GOES UP, YOU REFLECT
14 ADDITIONAL EARNING.

01:56PM

15 Q SO, UNTIL THE BOND IS ACTUALLY LIQUIDATED,
16 THE -- WHAT YOU CALLED EARNED AMOUNTS ARE REALLY JUST
17 GAAP ACCRUALS THAT MAY CHANGE AND MAY DECREASE,
18 CORRECT?

01:56PM

19 MR. HELM: VAGUE AND AMBIGUOUS.
20 ARGUMENTATIVE.

01:56PM

21 THE COURT: OVERRULED.

22 CAN YOU EXPLAIN? CAN YOU ANSWER OR
23 EXPLAIN IT?

24 THE WITNESS: YES.

25 I THINK IT'S MUCH MORE SUBSTANTIVE THAN
26 JUST WHAT GAAP REQUIRES.

01:56PM

27 GAAP IS TRYING TO COME UP WITH A FAIR
28 MEASURE. AND THE POINT IS THAT THE AMOUNT THAT YOU

1 ACCRUE IS THE BEST ESTIMATE OF THE VALUE AT THAT POINT
2 IN TIME. SO, JUST LIKE IF YOU OWN A SHARE OF CHEVRON
3 STOCK AND IT'S WORTH A \$100, IT MIGHT GO UP OR IT MIGHT
4 GO DOWN, BUT IT'S WORTH A \$100, AND YOU WOULD RECORD IT
5 ON YOUR BOOKS AT 100.

01:57PM

6 BY MR. SURPRENANT:

7 Q IT MAY LATER BE WORTH ZERO?

8 A SORT OF FARFETCHED, BUT IT COULD BE.

9 MR. SURPRENANT: YOUR HONOR, IF WE CAN GO TO
10 205, I'LL BEGIN ANOTHER SECTION.

01:57PM

11 THE COURT: WE CAN DO THAT.

12 BY MR. SURPRENANT:

13 Q TODAY YOU TESTIFIED TO THE JURY -- THIS TIME
14 I'LL LEARN FROM MY LAST MISTAKE AND PUT THE TX NUMBER
15 FIRST.

01:58PM

16 THE COURT: WHAT NUMBER?

17 MR. SURPRENANT: 2313, YOUR HONOR.

18 Q THE DAMAGE CALCULATIONS THAT YOU DELIVERED
19 TODAY HAD NET PRESENT VALUE, CORRECT?

20 A YES.

01:58PM

21 Q HAD PREJUDGMENT INTEREST, CORRECT?

22 A I USED PROFESSOR CORNELL'S METHOD OF
23 CALCULATING PRESENT VALUE, AND HE INCLUDED PREJUDGMENT
24 INTEREST.

25 SO I THINK IT COULD BE VIEWED AS
26 PREJUDGMENT INTEREST OR JUST A SORT OF GET FOR THE TIME
27 VALUE MONEY --

01:58PM

28 Q YOU SUBTRACTED OUT, IN SCENARIO TWO, PROFIT

1 SHARING BONUSES, CORRECT?

2 A IN THE ALTERNATIVE CALCULATIONS THAT I DID IN
3 THE SECOND HALF OF MY TESTIMONY, I SUBTRACTED THE
4 PROFIT SHARING, YES.

5 Q OR WHAT --

01:59PM

6 A I'M SORRY. I SUBTRACTED STAFF BONUSES.

7 Q WHAT YOU CALL SCENARIO 2 IN YOUR SECOND
8 SUPPLEMENTAL REPORT, CORRECT?

9 A YES.

10 MR. HELM: COULD THE WITNESS MAYBE GET CLOSER
11 TO THE MIC. I WANT TO MAKE SURE THE JURY CAN HEAR.
12 BY MR. SURPRENANT:

01:59PM

13 Q FINALLY, IN THE CALCULATIONS YOU GAVE TO THE
14 JURY TODAY, YOU ASSUME LIQUIDATION BY 2-28-12.

15 THOSE ARE ASPECTS OF YOUR TESTIMONY TO
16 THE JURY TODAY, CORRECT?

01:59PM

17 A WELL, I THINK I ASSUMED -- I HAVE TWO
18 ALTERNATIVE ASSUMPTIONS.

19 ONE IS THAT I ASSUMED LIQUIDATION BY THE
20 END OF 2011.

01:59PM

21 OR I ASSUME -- OR, AS AN ALTERNATIVE, I
22 ASSUMED THAT IF MR. GUNDLACH WORKED TILL THE END OF
23 2011 AND THE CONTRACT TERMINATED, HE WOULD BE ENTITLED
24 TO THE AMOUNTS ACCRUED PERFORMANCE FEES ACCRUED, AT
25 THAT TIME.

02:00PM

26 AND THEN, PRESUMABLY, THEY WOULD BE PAID
27 SOMETIME LATER.

28 Q LET'S GO BACK TO THE BEGINNING OF YOUR EXPERT

1 TESTIMONY.

2 AND I'M HANDING YOU YOUR EXPERT REPORT
3 FROM APRIL 11TH, WHICH WAS 100 -- I THINK -- AND 72
4 PAGES.

5 AND THEN IN MAY YOU HAD ANOTHER REPORT 02:00PM
6 THAT WAS 129 PAGES FOR A COMBINATION OF 401 PAGES.

7 WHAT HAPPENED, MR. WALLACE, IS SHORTLY
8 BEFORE YOUR APRIL REPORT YOU RECEIVED SOME DATA THAT
9 YOU THOUGHT WAS MORE HELPFUL, AND THEN YOU INCORPORATED
10 THAT IN YOUR MAY REPORT, CORRECT? 02:00PM

11 MR. HELM: ARGUMENTATIVE, YOUR HONOR.

12 THE COURT: WE DON'T NEED THAT. I CAN JUST
13 RULE ON IT.

14 MR. SURPRENANT: SORRY, YOUR HONOR. I DIDN'T
15 THINK IT WAS ARGUMENTATIVE. 02:01PM

16 THE COURT: OVERRULED.

17 GO AHEAD. YOU CAN ANSWER THAT.

18 THE WITNESS: ACTUALLY, I RECEIVED INFORMATION
19 THAT WE HAD BEEN REQUESTING FROM THE PRIOR YEAR, AND I
20 DIDN'T RECEIVE IT IN TIME TO INCORPORATE IT IN MY FIRST 02:01PM
21 REPORT.

22 SO THEN I INCORPORATED IT IN A
23 SUPPLEMENTAL REPORT.

24 MR. SURPRENANT: RIGHT.

25 Q THEN ON MAY -- IN MAY -- 02:01PM

26 THE COURT: OKAY. GO AHEAD.

27 BY MR. SURPRENANT:

28 Q -- IN MAY I WAS ABLE TO DEPOSE YOU ON THESE

1 REPORTS, CORRECT?

2 A YES.

3 Q AND IT WAS A LONG DAY, I THINK, 333 PAGES,
4 CORRECT?

5 A I HAVE NO IDEA. 02:01PM

6 Q AND DO YOU REMEMBER TESTIFYING TO ME
7 REPEATEDLY THAT IN YOUR VIEW AS AN EXPERT WITNESS, YOU
8 DIDN'T HAVE TO DO A NET PRESENT VALUE, CORRECT?

9 A I THINK I SAID THAT I DIDN'T THINK IT WAS
10 NECESSARY BECAUSE I DIDN'T THINK IT WOULD CHANGE MY
11 CONCLUSION IN A MATERIAL WAY. 02:01PM

12 Q AND YOU TOLD ME REPEATEDLY YOU DIDN'T HAVE TO
13 DO PREJUDGMENT INTEREST, CORRECT?

14 A I DON'T REMEMBER -- I DON'T REMEMBER.

15 Q WE TALKED A LONG TIME, AS YOU INDICATED IN
16 YOUR TESTIMONY WITH MR. HELM, IT WAS YOUR VIEW AS AN
17 EXPERT YOU DIDN'T HAVE TO SUBTRACT OUT PROFIT SHARING
18 BONUSES, CORRECT? 02:02PM

19 A THAT MR. GUNDLACH WOULD NOT BE MADE WHOLE BY
20 AN AWARD THAT'S SUBTRACTED THOSE AMOUNTS. 02:02PM

21 Q AND THEN THE -- THAT WAS THE STATE OF PLAY
22 THROUGHOUT MAY, CORRECT? THAT WAS WHAT WE JUST WENT
23 OVER IN YOUR EXPERT TESTIMONY? THAT WAS YOUR EXPERT
24 TESTIMONY THROUGHOUT MAY, CORRECT?

25 MR. HELM: VAGUE AND AMBIGUOUS. 02:02PM

26 THE WITNESS: I GAVE ONE DEPOSITION IN MAY.

27 MR. SURPRENANT: RIGHT.

28 Q AND THEN WHAT HAPPENED ON JULY 15TH? YOU

1 ISSUED A SECOND SUPPLEMENTAL REPORT, CORRECT?

2 A YES.

3 Q AND IT WAS WITH SCHEDULES 280 PAGES LONG,
4 CORRECT?

5 A YES, ABOUT AN 11-PAGE REPORT WITH MY
6 SPREADSHEETS ATTACHED.

02:03PM

7 Q THAT WAS THE FIRST TIME THAT WE HAD A NET
8 PRESENT VALUE, CORRECT?

9 A RIGHT. I ADDED A NET PRESENT VALUE
10 CALCULATION TO MY ANALYSIS.

02:03PM

11 Q AND A PREJUDGMENT INTEREST, CORRECT?

12 A WELL, THAT'S JUST PART OF PROFESSOR CORNELL'S
13 NET PRESENT VALUE METHOD.

14 Q YOU SUBTRACTED OUT THE PROFIT SHARING BONUSES,
15 CORRECT, FOR THE FIRST TIME?

02:03PM

16 A WELL, I PRESENTED AN ALTERNATIVE CALCULATION,
17 AS I DESCRIBED HERE, SO THAT THE JURY WOULD HAVE THAT
18 INFORMATION IF THEY NEEDED IT.

19 Q SO THEN FOR THE FIRST TIME ON JULY 15TH, YOU
20 TOLD US THAT YOU WERE ASSUMING LIQUIDATION BY
21 FEBRUARY 28TH, 2012, CORRECT?

02:03PM

22 A WELL, I THINK I TOLD YOU IT WAS I ONLY NEEDED
23 TO MAKE THAT ASSUMPTION BECAUSE NOW I WAS GOING TO DO A
24 NET PRESENT VALUE CALCULATION.

25 PREVIOUSLY, I WASN'T EXAMINING THE
26 TIMING OF THE PAYMENTS, OTHER THAN TO DISPLAY THEM YEAR
27 BY YEAR.

02:03PM

28 Q RIGHT.

1 BUT WHEN YOU ADDED THE NET PRESENT
2 VALUE, YOU THEN NEEDED TO MAKE SOME ASSUMPTION ABOUT
3 LIQUIDATION OF THE SPECIAL MORTGAGE CREDIT FUNDS,
4 CORRECT?

5 A YOU HAVE TO MAKE AN ASSUMPTION AS TO WHEN
6 MR. GUNDLACH WOULD HAVE BEEN PAID. AND NOT NECESSARILY
7 AN ASSUMPTION ABOUT LIQUIDATION.

02:04PM

8 AS I SAID, IT COULD EITHER BE IF THE
9 FUNDS WERE LIQUIDATED OR HE'S ENTITLED TO THE AMOUNTS
10 EARNED AT THE END OF THE CONTRACT.

02:04PM

11 Q THEN HAVING GOTTEN YOUR REPORT ON JULY 15TH.
12 I TOOK YOUR DEPOSITION AFTER THIS TRIAL STARTED,
13 CORRECT?

14 A I THINK IT MAY HAVE BEEN DURING THE TRIAL.

15 Q YES, IT WAS ON JULY 22ND, TWO DAYS INTO TRIAL.
16 THAT WAS THE FIRST TIME I WAS ABLE TO EXAMINE YOU ON
17 THE ACTUAL DAMAGE CALCULATION TESTIMONY YOU PROVIDED
18 THE JURY TODAY, CORRECT?

02:04PM

19 MR. HELM: ARGUMENTATIVE. LACKS FOUNDATION.
20 RELEVANCE.

02:04PM

21 THE COURT: I'LL STRIKE THE QUESTION. SUSTAIN
22 THE OBJECTION.

23 YOU MAY ASK QUESTIONS OF THE WITNESS ON
24 THE SUBSTANCE OF HIS TESTIMONY AND HIS OPINIONS.

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

02:05PM

26 THE COURT: I GUESS WE'RE FINISHED NOW.

27 MR. SURPRENANT: I'M FINISHED, YOUR HONOR.
28 FOR TODAY.

1 THE COURT: FOR TODAY.

2 TOMORROW MORNING WE'LL SEE YOU BACK,
3 MR. WALLACE.

4 LADIES AND GENTLEMEN, WE'LL ADJOURN FOR
5 THE EVENING. DON'T DISCUSS THE MATTER WITH ANYONE OR
6 FORM ANY OPINIONS OR CONCLUSIONS UNTIL YOU'VE HEARD ALL
7 THE EVIDENCE AND THE CASE IS SUBMITTED TO YOU.

02:05PM

8 WE WILL BE IN SESSION TOMORROW MORNING,
9 8:30 TO NOON.

10 I'D LIKE TO ASK MR. SANTOS, IF YOU COULD
11 JUST WAIT FOR A MOMENT. I WANT TO ANSWER A QUESTION OF
12 YOURS.

02:05PM

13 AND I ALSO HAD ANOTHER QUESTION
14 REGARDING DELIBERATIONS, WHICH WILL START NEXT WEEK.

15 YOU MAY DELIBERATE FROM, YOU KNOW, 8:30
16 TO 2:00.

02:05PM

17 YOU MAY DELIBERATE FROM 8:30 TO 4:30.

18 9:00 TO 4:00.

19 I HAVE A NOTE HERE ONE JUROR HAS A
20 COMMITMENT ON 9-14 IN THE MORNING. SO WE'LL
21 ACCOMMODATE YOU. AND WE'LL WORK WITH YOU.

02:06PM

22 SO IF SOMEBODY HAS TO BE SOMEWHERE AT
23 7:45 ON WEDNESDAY, THE 14TH IS WEDNESDAY MORNING. YOU
24 MIGHT NOT START TILL 9:30. WE'LL WORK THAT OUT.

25 DURING YOUR TIME TOGETHER IN THE BREAK
26 ROOM, YOU COULD ALL CHAT ABOUT WHAT YOUR PREFERENCE IS
27 AND I'LL WORK WITH YOU. ALL RIGHT.

02:06PM

28 MR. BRIAN: MAY WE TALK AT SIDE-BAR BEFORE THE

1 JURY IS EXCUSED?

2 THE COURT: HOLD ON. NOW ALL I'VE TOLD YOU
3 WILL PROBABLY BE ALL WRONG.

4

5 (SIDE-BAR CONFERENCE HELD OFF THE RECORD.) +

02:06PM

6

7 THE COURT: ONE OTHER THING. WE'RE
8 ANTICIPATING WE WILL HAVE CLOSING ARGUMENTS ON TUESDAY
9 OF NEXT WEEK. WE'D LIKE TO DO IT ALL IN ONE DAY.

10 I KNOW THERE HAVE BEEN -- I THINK YOU,
11 MR. AVAKIAN, HAVE A CHILD CARE ISSUE EVERY AFTERNOON.

02:07PM

12 WE WOULD START AT 8:30 AND PROBABLY GO
13 TO 4:00 OR 4:30 ON TUESDAY. IT'S GOING TO BE BETTER TO
14 HAVE ALL THE ARGUMENTS IN ONE DAY. YOU SHOULD PLAN
15 ACCORDINGLY IF YOU HAVE TO MAKE OTHER ARRANGEMENTS.

02:08PM

16 IS THAT GOING TO BE A REAL ISSUE.

17 JUROR AVAKIAN: I BETTER TALK TO MY WIFE, SEE
18 WHAT SHE SAYS.

19 THE COURT: THAT'S A SCARY THOUGHT. I'M SURE
20 YOU CAN TAKE CARE OF THAT.

02:08PM

21 JUROR SAMUELS: I HAD A DOCTOR'S APPOINTMENT.
22 I WILL TRY TO RESCHEDULE.

23 THE COURT: THAT TUESDAY AFTERNOON?

24 JUROR SAMUELS: YES.

25 THE COURT: SEE THE BEST YOU CAN DO -- ALL
26 RIGHT. SEE YOU TOMORROW MORNING.

02:08PM

27

28 (PAUSE +)

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THE COURT: MR. SANTOS. I'VE HAD YOUR NOTE,
AND WE HAVE TALKED ABOUT YOUR ISSUE. I JUST WANT TO
KNOW FOR SURE IF YOU CAN STAY. YOU'VE BEEN IN THIS
TRIAL SEVEN WEEKS, AND WE DON'T WANT YOU TO HAVE TO
LEAVE. BUT I UNDERSTAND YOU'VE HAD THIS FAMILY ISSUE.

02:09PM

WILL YOU BE ABLE TO WITH US NEXT MONDAY,
TUESDAY, AND WEDNESDAY?

JUROR SANTOS: YES. IT COST ME A LITTLE BIT
MONEY BECAUSE I BOUGHT THE TICKET.

02:09PM

THE COURT: YOU BOUGHT THE TICKET.

JUROR SANTOS: MY WIFE DID IT. AND IT'S MY
WIFE --

THE COURT: I KNOW IT'S A WIFE'S RELATIVE THAT
PASSED AWAY.

02:09PM

JUROR SANTOS: YES.

THE COURT: I GUESS THE QUESTION IS, YOU HAVE
TO TELL ME, IS THIS SOMETHING YOU JUST CANNOT CONTINUE
TO DO, OR, THIS IS A HARDSHIP FOR EVERYBODY. IT'S A
LONG TRIAL, BUT YOU PUT YOUR TIME IN. AND YOU'VE BEEN
A GREAT JUROR. AND I DON'T WANT TO EXCUSE YOU IF I
DON'T ABSOLUTELY HAVE TO.

02:09PM

JUROR SANTOS: I'M GOING TO TRY TO WORK
TOMORROW THE -- ON THAT.

THE COURT: YOU TALK TO YOUR WIFE TONIGHT AND
WE NEED TO KNOW TOMORROW FOR SURE.

02:09PM

JUROR SANTOS: MONDAY.

THE COURT: CAN YOU LET ME KNOW TOMORROW?

1 JUROR SANTOS: IT'S SATURDAY.

2 THE COURT: OH, NO. TODAY'S THURSDAY.
3 REMEMBER, YOU HAVE TO COME IN TOMORROW MORNING. DON'T
4 FORGET --

5 JUROR SANTOS: I'M SORRY. YES. 02:10PM

6 THE COURT: DON'T FORGET, TOMORROW MORNING.
7 LET US KNOW TOMORROW FOR SURE.

8 JUROR SANTOS: YES.

9 THE COURT: I JUST DIDN'T WANT YOU TO THINK WE
10 WERE IGNORING YOUR NOTE. WE'VE BEEN THINKING ABOUT IT. 02:10PM
11 I WANTED TO MAKE SURE.

12 JUROR SANTOS: THANK YOU.

13 THE COURT: THANK YOU.

14

15 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.) + 02:10PM

16

17 THE COURT: ALL RIGHT. WE'RE OUT OF THE
18 PRESENCE.

19 ANY MATTER ANYBODY WANTS TO TAKE UP?

20 MR. SURPRENANT: YOUR HONOR, I HAVE ONE. VERY 02:10PM
21 BRIEFLY. I OBVIOUSLY DIDN'T WANT TO ARGUE AN OBJECTION
22 AT 2:05.

23 I THINK IT'S RELEVANT AND GOES TO THE
24 WITNESS'S CREDIBILITY WHEN HE TESTIFIES UNDER OATH, HE
25 DOESN'T NEED TO DO THIS. I ASKED HIM REPEATEDLY, ARE 02:11PM
26 YOU TELLING ME YOU DON'T NEED AN MVP, YES?

27 NOT IN THIS CIRCUMSTANCE.

28 ARE YOU TELLING ME PREJUDGMENT INTEREST?

1 YES, NOT IN THIS CIRCUMSTANCE.

2 IT'S NOT PART OF THE DAMAGE. I DON'T
3 HAVE AN ASSUMED LIQUIDATION DATE.

4 AND THEN WHAT I WANTED TO ELICIT,
5 BECAUSE I THINK IT GOES TO THE WITNESS'S CREDIBILITY,
6 IS AFTER -- MAYBE IT GOT MIXED UP WITH THE TIMING
7 ISSUE, YOUR HONOR, BUT AFTER TESTIFYING UNDER OATH HE
8 DIDN'T NEED TO DO THESE THINGS, HE DID IT IN A MATTER
9 OF TEN DAYS ONCE MR. HELM ASKED HIM TO.

02:11PM

02:11PM

10 AND I THINK THAT GOES TO HIS
11 CREDIBILITY.

12 THE COURT: WELL --

13 MR. MADISON: EXCUSE ME COULD WE ASK THE
14 WITNESS TO BE EXCUSED?

15 THE COURT: YES, WE'LL EXCUSE THE WITNESS.

02:11PM

16 MR. WALLACE -- PERHAPS MR. CORNELL
17 SHOULD STEP OUT, TOO.

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

19

20 (PAUSE) +

02:11PM

21

22 THE COURT: MR. SURPRENANT, I RECALL THAT
23 MR. CORNELL'S TESTIMONY WAS VERY SIMILAR, IN THAT HE
24 HAD MADE ADJUSTMENTS AND MADE CHANGES TO HIS SCENARIO
25 BASED ON THE CRITICISMS. AND I THINK DURING THE COURSE
26 OF THE EXAMINATION OF MR. CORNELL, EITHER YOU OR
27 MR. QUINN, OR WHOEVER WAS QUESTIONING HIM, ELICITED THE
28 NOTION THAT ISN'T THIS -- YOU KNOW, COMMON WHERE YOU'RE

02:12PM

1 IN LITIGATION AS A FORENSIC ACCOUNTANT AND YOU RECEIVED
2 CRITICISM FROM OTHERS AND YOU MAKE ADJUSTMENTS AND DO
3 THINGS; ISN'T THAT BASICALLY WHAT HAPPENED HERE?

4 MR. SURPRENANT: NO.

5 THE COURT: WHAT AM I MISSING? 02:12PM

6 MR. SURPRENANT: THERE'S A CATEGORICAL
7 DIFFERENCE.

8 IT WAS THE WITNESS'S EXPERT TESTIMONY
9 THAT HE DIDN'T HAVE TO DO IT. THAT HE HAD A VALID
10 JUDGMENT, AN ECONOMIC JUDGMENT, THAT IT WASN'T
11 NECESSARY. 02:12PM

12 AND THEN -- AND I DO THINK THE TIMING,
13 THE TIMING IS RELEVANT. AND THEN THE MONTH THE TRIAL
14 STARTS -- BUT PUT THAT TO ONE SIDE -- IF I UNDERSTAND
15 THAT MIGHT CLOUD YOUR HONOR'S THINKING. 02:12PM

16 THE COURT: DOESN'T TAKE MUCH HERE.

17 GO AHEAD.

18 MR. SURPRENANT: SO THEN THIS IS NOT A
19 SITUATION WHERE THERE'S CRITICISM AND THE EXPERT SAYS,
20 AS PROFESSOR CORNELL DID, YOU KNOW, MR. WALLACE MADE
21 THAT POINT, AND I'M GOING TO THINK ABOUT IT AND I'M
22 GOING TO CHANGE IT. 02:13PM

23 THAT'S WHAT PROFESSOR CORNELL SAID. HE
24 DIDN'T SAY, I TOLD HIM OKAY, BRAD, MAKE THIS CHANGE.

25 AND SO HERE YOU HAVE SOMETHING THAT GOES
26 RIGHT TO CREDIBILITY. AND IS NOT AT ALL LIKE
27 PROFESSOR CORNELL. IT'S, I HAVE AN ECONOMIC JUDGMENT,
28 IT WOULD BE IMPROPER TO DO THIS IN THIS CIRCUMSTANCE. 02:13PM

1 I HAVE AN ECONOMIC --

2 THE COURT: I HAVE TO SEE THE DEPOSITION
3 TESTIMONY TO THE EXTENT HE HAS AN ECONOMIC JUDGMENT
4 THAT WOULD BE IMPROPER TO DO THIS. IF HE JUST SAYS, I
5 DON'T THINK IT'S NECESSARY. AND THEN HE SAYS, I'VE
6 DECIDED TO DO IT, HE TOLD THE JURY, BASICALLY I DID IT
7 BECAUSE MR. CORNELL DID IT, AND SO I THOUGHT I'D HAVE
8 APPLES TO APPLES, I GUESS.

02:13PM

9 MR. SURPRENANT: THAT'S NOT TRUE. HE DID IT
10 BECAUSE MR. HELM'S TOLD HIM TO.

02:14PM

11 THE COURT: I DON'T KNOW WHY HE DID IT.

12 MR. HELM: HE DID IT AFTER THERE WAS A
13 390-HOWEVER-MANY-PAGE THING WHERE MR. SURPRENANT WAS
14 TRYING TO BEAT HIM OVER THE HEAD.

15 AND I DON'T THINK IT'S NECESSARY, AND HE
16 INCLUDES THE PATH OF LEAST RESISTANCE, THERE'S NOTHING
17 WRONG WITH DOING IT -- WE'LL TRY IT AND DO IT THAT WAY.
18 WHAT'S THE BIG DEAL --

02:14PM

19 MR. SURPRENANT: THAT'S NOT HIS TESTIMONY.
20 HIS TESTIMONY ISN'T, AFTER SURPRENANT BEAT ME ON THE
21 HEAD. IN FACT, I DIDN'T.

02:14PM

22 THE COURT: LET ME TELL YOU, IF YOU WANT TO
23 READ FROM HIS DEPOSITION, IT'S NOT GOING TO TAKE AS
24 MUCH TIME AS WE HAVE TAKEN NOW TO LISTEN TO THIS WHOLE
25 STORY.

02:14PM

26 MR. SURPRENANT: OKAY.

27 THE COURT: I WILL ALLOW YOU TO READ FROM HIS
28 DEPOSITION. IF YOU THINK IT'S IMPEACHING, SO BE IT.

1 HE'S GIVEN HIS DEFINITION, I THINK, AS TO WHY HE
2 CALCULATED IT. IT'S BECAUSE MR. CORNELL DID IT. WE
3 NOW HAVE EGGS TO EGGS AND NOT APPLES TO APPLES, WHICH
4 IN ONE WAY OF THINKING IS A GOOD THING.

5 MR. SURPRENANT: I'LL PROCEED IN THAT FASHION. 02:15PM

6 THE COURT: DO WE HAVE THE NEXT TEAM IN? I'LL
7 TAKE A LITTLE BREAK. STARTING, SAY, AT 2:30.

8 MR. BRIAN: OTHER ISSUES TO THINK ABOUT, YOUR
9 HONOR, IN YOUR SPARE TIME.

10 MR. QUINN WAS SO KIND, AND PROBABLY 02:15PM
11 WON'T DO IT AGAIN, TO GIVE US A GENERAL SUBJECT MATTER
12 OF A REBUTTAL WITNESS, LINDA BARKER, WHO'S A LAWYER.

13 WE FILED A TWO-PAGE MOTION TO EXCLUDE
14 HER TESTIMONY. SHE'S A LAWYER IN THE LAW DEPARTMENT,
15 AND THERE'S BEEN ASSERTIONS OF PRIVILEGE THROUGHOUT. 02:15PM
16 WE GOT NO DOCUMENTS.

17 THE COURT: LAWYER IN THE LAW DEPARTMENT
18 WHERE?

19 MR. BRIAN: AT TCW.

20 THE COURT: WHAT'S THE PROFFER? 02:15PM

21 MR. QUINN: SHE IS NOT GOING TO TESTIFY TO ANY
22 COMMUNICATION AT ALL. THERE'S NO CLAIM OF PRIVILEGE
23 THAT'S RELEVANT TO HER TESTIMONY.

24 THE COURT HAS SEEN SOME CHARTS WHICH
25 THEY USED, WHICH HAVE AN EMPLOYMENT TERM EXPIRATION
26 DATE FOR MR. GUNDLACH. 02:15PM

27 AND THEN THERE'S ANOTHER COLUMN THAT
28 DOESN'T APPEAR ON SOME VERSION OF THE CHARTS, WHICH

1 SAYS PENDING. OR UNDER DISCUSSION.

2 THE COURT: RIGHT. MR. SULLIVAN TESTIFIED
3 ABOUT THOSE.

4 MR. QUINN: YEAH. SHE WOULD TESTIFY THAT
5 SHE'S THE ONE THAT TOOK A DOCUMENT AND, BEFORE PASSING
6 THAT ON TO SOMEBODY ELSE, JUST CROPPED THE DOCUMENT TO
7 DELETE THAT LAST COLUMN BECAUSE SHE DIDN'T THINK IT WAS
8 RELEVANT.

02:16PM

02:16PM

02:16PM

02:16PM

02:16PM

9 SO, I MEAN THAT'S THE SUM TOTAL OF HER
10 TESTIMONY. NO NEW DOCUMENTS. SHE'S GOING TO SAY, I
11 HAD THIS DOCUMENT ON THE COMPUTER SCREEN. I DUPED IT
12 AND I ELIMINATED A COLUMN, AND I FORWARDED IT TO
13 SULLIVAN OR CITIBANK, OR WHOEVER. THAT'S IT.

14 MR. BRIAN: THE PROBLEM --

15 MR. QUINN: SHE'S JUST DESCRIBING WHAT SHE
16 DID.

17 THE COURT: DID SHE PREPARE THE DOCUMENT.

18 MR. QUINN: SHE ISN'T --

19 THE COURT: IS SHE THE ONE RESPONSIBLE FOR
20 MAINTAINING THIS? I THINK MR. CAHILL SAID IT WAS
21 PREPARED AND MAINTAINED OUT OF HIS DEPARTMENT.

22 MR. QUINN: YES, IN THE LEGAL DEPARTMENT. I
23 DON'T THINK -- I DON'T KNOW WHO HAS CUSTODY OF WHAT'S
24 ON A COMPUTER IN THE LEGAL DEPARTMENT. I DON'T THINK
25 SHE'S -- SHE'S NOT THE ORIGINAL AUTHOR, I DON'T THINK,
26 OF THE DOCUMENT.

27 MR. MADISON: NO, SHE'S NOT.

28 MR. QUINN: ALL SHE DID WAS GO INTO THE

1 DOCUMENT. THERE WAS REQUEST FOR INFORMATION. SHE WENT
2 INTO THE DOCUMENT, AND IT WAS IN ITS COMPLETE FORM,
3 WHICH HAS THE COLUMNS THAT WE LIKE AND THEY DON'T LIKE.

4 SHE CROPPED THAT AND FORWARDED IT.
5 THAT'S HER TESTIMONY.

02:17PM

6 THE COURT: DO WE HAVE THE UNCROPPED DOCUMENT
7 IN EVIDENCE?

8 MR. QUINN: YES. YES. THERE WILL BE NO NEW
9 DOCUMENTS.

02:17PM

10 THE COURT: WHAT IS THE SIGNIFICANCE OF THIS?

11 MR. BRIAN: I'LL GET INTO HER UNDERSTANDING
12 ABOUT THESE DOCUMENTS, AND THEY'VE ASSERTED PRIVILEGE.

13 MR. QUINN: WE'RE NOT GOING TO ASK HER HER
14 UNDERSTANDING OF THE DOCUMENTS. IT COULD HAVE BEEN A
15 SECRETARY.

02:17PM

16 THE COURT: IF THE WHOLE DOCUMENT IS IN
17 EVIDENCE, WHY DO WE EVEN NEED THIS, AND THE UNCROPPED
18 VERSION OF THE DOCUMENT?

19 MR. QUINN: WE NEED TO EXPLAIN WHY THERE IS
20 THIS VERSION OF THE DOCUMENT THAT DOESN'T HAVE THAT
21 LAST COLUMN ON IT. OR -- IT'S BEEN SUGGESTED, YOUR
22 HONOR, THEY USED THE WORD ALTERATION. WE'RE
23 ALTERING --

02:17PM

24 THE COURT: IS THAT A SEPARATE EXHIBIT?

25 MR. QUINN: YES.

02:17PM

26 THE COURT: A SECOND EXHIBIT THAT'S THE
27 ALTERED DOCUMENT?

28 MR. BRIAN: THERE'S BEEN FIVE VERSIONS,

1 ACTUALLY. WE'RE GOING TO GET INTO IT WITH HER. AND I
2 DON'T WANT TO BE FACED WITH PRIVILEGE OBJECTIONS WHEN I
3 GO INTO THE DOCUMENT THAT SHE CROPPED.

4 THE COURT: WHAT YOU'RE GOING TO GET IS
5 THERE'S NO WAY, SHE HAS NO KNOWLEDGE.

02:18PM

6 MR. BRIAN: THEN WE'LL HAVE TO CALL BACK
7 MR. CAHILL. I CHOSE NOT TO GET INTO IT WITH
8 MR. CAHILL. AND WE'RE GOING TO ARGUE FROM THE FACE OF
9 DOCUMENTS NOW THEY WANT TO OPEN IT UP. I THOUGHT ABOUT
10 GETTING IT INTO WITH MR. CAHILL AND DECIDED NOT TO.

02:18PM

11 MR. QUINN: THIS IS RIDICULOUS, YOUR HONOR.
12 THEY'RE SAYING WE ALTERED A DOCUMENT. WE'RE GOING TO
13 WANT TO PUT ON THE STAND THE PERSON WHO EXPLAINED WHAT
14 THE CHANGE WAS.

15 IT'S PURELY MECHANICAL. IT DOESN'T OPEN
16 THE DOOR TO ANYTHING. I MEAN, IT GIVES THE HISTORY OF
17 A DOCUMENT WHICH THEY SAY WE ALTERED.

02:18PM

18 THE COURT: HERE IS WHAT I'LL HAVE TO HAVE.

19 WE CAN BRING HER IN AND START THIS.

20 I WANT TO SEE EACH VERSION OF THAT
21 DOCUMENT THAT'S IN EVIDENCE. SO I CAN LINE THEM UP AND
22 SEE WHAT WE'RE TALKING ABOUT HERE.

02:18PM

23 IF YOU'RE TELLING ME THERE'S FIVE
24 DIFFERENT VERSIONS OF IT --

25 MR. BRIAN: I THINK IT'S FOUR OR FIVE. I
26 THINK IT'S FIVE.

02:18PM

27 THE COURT: I RECALL THERE WERE TRANSACTIONS
28 IN CERTAIN COLUMNS WHERE IT WENT FROM A TERMINATION

1 DATE OR -- END EXPIRATION DATE TO PENDING TO A DASH, TO
2 DIFFERENT THINGS LIKE THAT.

3 MR. QUINN: YES.

4 THE COURT: I REMEMBER THOSE THREE. I DON'T
5 REMEMBER THE CROPPING OF A PARTICULAR COLUMN.

02:19PM

6 MR. BRIAN: I DON'T, EITHER.

7 THE COURT: I WANT TO SEE THE VERSIONS. IT
8 MAY HAVE SOME BEARING ON WHETHER WE EVEN GO THERE. I
9 WANT TO SEE WHAT WE'RE TALKING ABOUT.

10 WHAT ARE THE EXHIBIT NUMBERS.

02:19PM

11 MR. QUINN: I'LL DEFER TO MS. OSMAN.

12 MS. OSMAN: 114 AND 332.

13 THE COURT: 114. 322.

14 MS. OSMAN: THEN THE CROPPED EXHIBIT, YOUR
15 HONOR IS PAGE 7 OF EXHIBIT 5178.

02:19PM

16 MR. BRIAN: THERE'S ALSO 51- --

17 THE COURT: PAGE 7 OF EXHIBIT?

18 MS. OSMAN: 5178.

19 THE COURT: IS THAT THE CITIBANK DRAFT OR
20 SOMETHING?

02:19PM

21 MS. OSMAN: THIS IS THE REQUEST FOR
22 INFORMATION, DUE DILIGENCE. IT WAS ADMITTED THROUGH
23 MICHAEL CONN.

24 THE COURT: ALL RIGHT.

25 MR. BRIAN: 5179.

02:20PM

26 MR. QUINN: IS THAT IN EVIDENCE?

27 MR. BRIAN: YES, I THINK SO.

28 MS. OSMAN: I DON'T HAVE IT.

1 MR. BRIAN: THAT'S PETE SULLIVAN TO
2 MR. DEVITO, JULY 13TH --

3 MR. QUINN: YOUR HONOR.

4 MS. OSMAN: THE PETE SULLIVAN IS A DIFFERENT
5 DOCUMENT.

02:20PM

6 THE DOCUMENTS 114 AND 322 ARE THE
7 DOCUMENTS FROM WHICH MS. BARKER DERIVED THE INFORMATION
8 AND WHERE THE TWO COLUMNS WERE REMOVED. SHE PUT A NEW
9 DOCUMENT. SHE CREATED A NEW TABLE, WHICH IS PAGE 7 OF
10 EXHIBIT 5178.

02:20PM

11 WHEN SHE FORWARDED THE TABLE THAT'S
12 SHOWN IN EXHIBIT 5178 TO MR. CONN AND MR. SULLIVAN,
13 MR. SULLIVAN USED IT TO CREATE THE EXHIBITS THAT
14 MR. BRIAN IS NOW REFERENCING.

15 SHE DOESN'T HAVE PERSONAL KNOWLEDGE OF
16 THAT EXHIBIT.

02:20PM

17 THE COURT: SHE PREPARED -- SO SHE -- SHE
18 ACTUALLY PREPARED 5178 FROM DOCUMENTS THAT HAVE BEEN
19 IDENTIFIED AS EXHIBITS 114 AND 322 BY TAKING
20 INFORMATION OUT OF THOSE TWO DOCUMENTS AND PUTTING THEM
21 INTO A NEW DOCUMENT?

02:21PM

22 MS. OSMAN: CORRECT. SHE TOOK THE DOCUMENT --
23 TOOK THE INFORMATION FROM 322 AND 114, DELETED THE LAST
24 TWO COLUMNS, AND CREATED THE TABLE THAT'S REFLECTED.
25 AND IF YOU LOOK AT THE COLUMN HEADINGS, ON THE TABLE IN
26 5178 PAGE 7, IT'S THE SAME COLUMN HEADINGS AS 114 AND
27 322, MINUS THE LAST TWO COLUMNS.

02:21PM

28 SHE FORWARDED THE SHORTENED VERSION,

1 THAT'S 5178, PAGE 7, TO MR. CONN AND MR. SULLIVAN.

2 MR. SULLIVAN USED THAT INFORMATION TO
3 CREATE THE CHARTS THAT MR. BRIAN WAS REFERENCING THAT
4 HAVE THE DASHES AND THE OTHER COMMENTS.

5 MR. BRIAN: ALSO 5180 IS THE FIFTH DOCUMENT,
6 YOUR HONOR.

02:21PM

7 MS. OSMAN: THOSE TWO DOCUMENTS ARE NOT
8 DOCUMENTS MS. BARKER WILL TESTIFY ABOUT OR HAS
9 KNOWLEDGE OF.

10 MR. BRIAN: ON DIRECT. BUT I'LL GET INTO THEM
11 WITH HER.

02:21PM

12 THE COURT: IF SHE'S NEVER SEEN THEM AND HAD
13 NOTHING TO DO WITH THEM, YOU'RE NOT GOING TO GET VERY
14 FAR WITH HER.

15 MR. BRIAN: I MAY NOT GET VERY FAR.

02:22PM

16 THE COURT: THAT'S ALL RIGHT. YOU'LL HAVE
17 OPPORTUNITY, BUT YOU CAN'T GO ANYWHERE WHERE THERE'S NO
18 REASON TO GO. WE'LL DEAL WITH IT.

19 ANYTHING ELSE?

20 MR. QUINN: DOES THE COURT WANT COPIES OF
21 THESE (INDICATING)?

02:22PM

22 THE COURT: IF YOU HAVE THEM HANDY SO I DON'T
23 HAVE TO DIG THEM OUT.

24 MS. OSMAN: I WILL GET THEM. WE HAVE
25 HIGHLIGHTED COPIES AND WE HAVE A SET.

02:22PM

26 THE COURT: IF YOU HAVE A SET, IT DOESN'T HAVE
27 TO BE IMMEDIATELY, BUT WE'LL BE HERE THE REST OF THE
28 AFTERNOON.

1 MS. OSMAN: MS. BORDEN HAS THEM. SO I'LL GET
2 THEM.

3 THE COURT: ANYTHING ELSE?

4 MR. QUINN: I DON'T THINK SO.

5 THE COURT: ALL RIGHT.

02:22PM

6 THANK YOU.

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1 CASE NUMBER: BC429385
2 CASE NAME: TRUST COMPANY OF THE WEST VS.
3 JEFFREY GUNDLACH, ET AL
4 LOS ANGELES, THURSDAY, SEPTEMBER 8, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 2:45 P.M.

08:59AM

10
11
12 MR. BRIAN: YOUR HONOR, I'M -- WITH THE
13 COURT'S PERMISSION, NOT GOING TO STAY FOR THIS EVENT.

14 THE COURT: THAT'S ALL RIGHT.

15 MR. EMANUEL: WE CALL IT A PARTY.

02:43PM

16 MR. BRIAN: BUT I -- THERE'S AN ISSUE.

17 THE COURT: I'D LIKE TO LEAVE, TOO.

18 MR. BRIAN: I THINK I HAVE AT LEAST TWO OR
19 THREE CROSS-EXAMINATIONS TO PREPARE FOR, AND SOMETHING
20 CALLED A CLOSING ARGUMENT.

02:43PM

21 BUT THERE'S AN ISSUE I WANT TO RAISE,
22 WHICH I'M SURE WILL BE DEBATED. IN LOOKING AT THE
23 INSTRUCTIONS PROPOSED ON OUR BREACH OF CONTRACT CLAIM,
24 I AM VERY TROUBLED WITH WHERE WE ARE, WHAT TCW HAS
25 PROPOSED, AND HOW IT AFFECTS THE PRESENTATION OF
26 EVIDENCE.

02:44PM

27 IN OPPOSING OUR QUANTUM MERUIT CLAIM, I
28 GO BACK TO BEFORE TRIAL. YOUR HONOR WAS ON THE BENCH.

1 MR. QUINN WAS AT THAT TABLE, AGREEING THAT THERE WAS A
2 CONTRACT, AND THE DISPUTE IS OVER THE TERMS OF THAT
3 CONTRACT. IN OTHER WORDS, THEY TAKE THE POSITION --

4 THE COURT: I UNDERSTAND THAT.

5 MR. BRIAN: AND SO -- BUT NOW, I LOOK AT THEIR
6 INSTRUCTIONS, ONE OF WHICH SAYS, TCW CONTENDS THERE WAS
7 NO CONTRACT, WHICH OF COURSE, IS COMPLETELY CONTRARY TO
8 WHAT YOUR HONOR HAS RULED AND THEY AGREED TO.

02:44PM

9 THE COURT: HE STIPULATED TO IT HERE IN COURT,
10 THAT THERE WAS AN AGREEMENT FOR COMPENSATION, WHETHER
11 YOU CALL IT A CONTRACT OR AN AGREEMENT.

02:44PM

12 MR. BRIAN: HERE'S MY POINT: I THINK THIS
13 ISSUE IS VERY SIMPLE. THE JURY SHOULD BE TOLD, AND I
14 DON'T THINK IN JURY INSTRUCTIONS, I THINK TOMORROW,
15 THAT IT HAS BEEN AGREED TO, THAT THERE WAS AN
16 EMPLOYMENT CONTRACT.

02:45PM

17 THE DISPUTE BETWEEN --

18 THE COURT: I'M NOT GOING TO DO THAT.

19 MR. BRIAN: LET ME FINISH, YOUR HONOR.

20 THE DISPUTE IS WHAT THE TERMS ARE. IF
21 YOU THINK BACK AT THE CROSS-EXAMINATIONS AND
22 EXAMINATIONS WITH MR. CAHILL, MR. BEYER, NOW WE'RE
23 GOING TO HEAR IT TOMORROW FROM MR. SONNEBORN, THEY ARE
24 SUGGESTING TO THE JURY THAT THE FACT THAT THAT DOCUMENT
25 WAS NOT SIGNED MEANS THERE'S NO BINDING CONTRACT.

02:45PM

26 THAT IS COMPLETELY CONTRADICTORY TO THE
27 POSITION THAT THEY STIPULATED TO PRIOR TO TRIAL. AND
28 SO WE HAVE ALL THESE JURY INSTRUCTIONS ABOUT IMPLIED

02:45PM

1 CONDUCT AND ALL THAT.

2 IT'S A VERY SIMPLE ISSUE. THERE WAS A
3 CONTRACT. AND IT'S FOR THE JURY TO DETERMINE WHAT
4 THOSE TERMS WERE.

5 WE WILL ARGUE, THOSE TERMS WERE
6 COMPENSATION, THE DURATION, AND THE TERMINATION FOR
7 CAUSE.

8 THE COURT: RIGHT.

02:45PM

9 MR. BRIAN: AND THEY'LL ARGUE, THOSE ARE NOT
10 INCLUDED.

02:46PM

11 THE JURY -- ALL I'M SAYING IS, IT'S A
12 MUCH SIMPLER, MORE STRAIGHTFORWARD ISSUE THAN I THINK
13 IS BEING PROPOSED.

14 THE COURT: DO YOU WANT ME TO THROW THESE
15 NOTEBOOKS OUT AND START ALL OVER? OR DO YOU WANT TO
16 GIVE ME A NEW SET OF INSTRUCTIONS?

02:46PM

17 THIS HAS BEEN GOING ON FOR LITERALLY
18 MONTHS. I'VE BEEN ASKING TO GET THIS FINALIZED FOR A
19 LONG TIME. EVERY DAY, I GET SOMETHING NEW IN. AND
20 THEY ARE DISJOINTED; THEY ARE NOT ORGANIZED. I DON'T
21 KNOW.

02:46PM

22 ALL I CAN DO IS WADE THROUGH THEM.

23 MR. BRIAN: ALL I'M SPEAKING OF IS THE
24 CONTRACT CLAIM.

25 AND WITH ALL RESPECT TO MY COLLEAGUES,
26 AT THE OTHER SIDE OF THE TABLE WHO ARE VERY SMART AND
27 VERY STRATEGIC LAWYERS; THEY CAN'T HAVE IT BOTH WAYS.
28 THEY CAN'T PUT IN A JURY INSTRUCTION SAYING THEY

02:46PM

1 CONTEND THERE'S NO CONTRACT, WHEN THEY HAVE STIPULATED
2 THERE'S A CONTRACT.

3 AND I THINK THERE'S A WAY OF FRAMING
4 THIS ISSUE FOR THE JURY SO THAT THEY UNDERSTAND, THAT
5 THE -- YOU DON'T --

02:46PM

6 THE COURT: WELL, I DO HAVE THAT INSTRUCTION
7 HERE, MR. BRIAN? YOU ARE DOING A FINE JOB, BUT IF I
8 DON'T HAVE IT IN FRONT OF ME --

9 WE'RE HERE TO GO THROUGH JURY
10 INSTRUCTIONS. IF YOU ARE TALKING, GENERALLY, AND
11 GENERICALLY ABOUT WHAT YOU WOULD LIKE TO SEE IN THE
12 PERFECT WORLD, AND I DON'T HAVE IT HERE, WE'RE NOT
13 GOING TO DEAL WITH IT TODAY.

02:47PM

14 MR. BRIAN: I APPRECIATE THAT, YOUR HONOR.

15 THE COURT: SO WHAT DO YOU WANT?

02:47PM

16 MR. BRIAN: I WANTED TO TEE THAT UP FOR YOUR
17 CONSIDERATION, EVERYONE'S CONSIDERATION.

18 THE COURT: ALL RIGHT.

19 MR. BRIAN: IF WE HAVE TO SUBMIT SOMETHING
20 VERY SIMPLE, WE WILL DO THAT.

02:47PM

21 MR. HELM: YOUR HONOR, SOMEONE WHO'S CLOSER TO
22 THE PROCESS, WE'VE BEEN ENGAGING IN, NOT TO CRITICIZE
23 HIM, BUT JUST TO RELATE IT TO WHAT YOU'VE ASKED, AND
24 HOW IT RELATES TO WHAT WE'RE TALKING ABOUT.

25 WHAT'S SINKING IN FOR US IS, YESTERDAY
26 IN THE MIKE WALLACE RULING, IT BECAME CLEAR TO US --
27 AND I THINK IT WASN'T BEFORE, THAT THE COURT IS NOT
28 GOING TO ALLOW US TO SUBMIT TO THE JURY A QUANTUM

02:47PM

1 MERUIT CLAIM.

2 HAVE I MISSED --

3 THE COURT: YOU GOT THAT PART.

4 MR. HELM: SO WHAT -- NOW THAT WE WILL NOT
5 HAVE -- NOW THAT THE JURY WILL NOT EVEN HAVE AN OPTION
6 OF HAVING -- THERE IS NO CONTRACT REMEDY. IT HAS
7 BECOME INCREASINGLY IMPORTANT TO US THAT THE PARTIES
8 AGREE THERE IS A CONTRACT AND THE DISAGREEMENT IS ONLY
9 OVER TERMS. AND SO THAT -- WE WILL BE SUBMITTING AN
10 INSTRUCTION MORE DIRECTLY.

02:47PM

02:48PM

11 THE COURT: WELL, WHERE IS THAT INSTRUCTION,
12 MR. HELM?

13 MR. HELM: WE HAVE -- WE HAVE DEBATED IT IN
14 CONTEXT, YOUR HONOR, OF A PRIOR INSTRUCTION THAT THEY
15 SUBMITTED WHERE THEY SAID THERE WAS NO CONTRACT.

02:48PM

16 THE COURT: LET'S GET THROUGH THE BOOK, AND DO
17 WHAT WE SET OUT TO DO TODAY. WE'LL DEAL WITH THIS.

18 I CANNOT STAY HERE ALL AFTERNOON,
19 TOMORROW AFTERNOON. SO IF YOU THINK THAT'S WHAT YOU
20 ARE GOING TO GET OUT OF ME, YOU ARE WRONG.

02:48PM

21 I'VE -- I MAY BE ABLE TO STAY MONDAY,
22 AND CONTINUE OUR DISCUSSIONS MONDAY AFTERNOON. THAT'S
23 PRETTY TOUGH, WHEN YOU ARE TALKING ABOUT HAVING CLOSING
24 ARGUMENTS FIRST THING TUESDAY MORNING.

25 SO THAT MEANS, IT SEEMS TO ME, THAT WE
26 NEED TO FINISH THIS PROCESS. AND IF YOU ALL ARE STILL
27 DEBATING AMONG YOURSELVES, AND DRAFTING NEW DEALS THAT
28 YOU EXPECT TO SERVE TOMORROW NIGHT, NEXT WEEK, MIDNIGHT

02:48PM

1 ON MONDAY OR SUNDAY, I DON'T KNOW HOW WE DEAL WITH IT.

2 MR. BRIAN: I WAS SAYING -- BUT, YOUR HONOR,
3 AND I APPRECIATE THAT. AND I DON'T MEAN TO THROW A
4 BASEBALL INTO A BEEHIVE AND THEN LEAVE, BUT -- BUT MY
5 POINT IS THAT THE FIRST THING I WAS PROPOSING, I'M NOT
6 EVEN SURE IT'S A JURY INSTRUCTION. I THINK IT'S A
7 STIPULATED FACT, THAT THERE'S A CONTRACT.

02:49PM

8 THE COURT: WELL, THEN LET'S FINALIZE THAT
9 STIPULATION. I DO RECALL OUR DISCUSSION.

02:49PM

10 AND I RECALL MR. QUINN INDICATING THAT
11 WE ACKNOWLEDGE THERE'S AN AGREEMENT. IT'S EXHIBIT A.
12 AND WE AGREED THAT THAT WOULD BE THE BASIS FOR
13 COMPENSATION.

02:49PM

14 AND I SAID, YOU KNOW, THE IRONY IS, BOTH
15 SIDES WANT TO PICK AND CHOOSE WHATEVER THEY WANT OUT OF
16 WHATEVER THEY HAVE, AND SAY THAT'S WHAT THE DEAL IS.

17 AND I SAID, THAT'S A LITTLE BIT TOUGH.

18 MR. BRIAN: THAT DOESN'T PREVENT THEM FROM
19 ARGUING FORCEFULLY THAT THOSE TERMS WERE NOT PART OF
20 THE THINGS THAT WE WANT. I UNDERSTAND THAT.

02:50PM

21 I'M JUST AFRAID THE JURY MAY BE CONFUSED
22 ABOUT THIS. AND THAT'S WHAT BOTHERS ME.

23 THE COURT: WELL, THERE'S LOTS OF RISKS IN
24 THIS PROCESS.

25 MR. MADISON: YOUR HONOR, I DON'T WANT TO BE
26 SILENT ON THIS, YOUR HONOR. WE OBJECT TO ANY OF THIS.
27 WE NEVER STIPULATED THERE WAS AN EMPLOYMENT CONTRACT,
28 EVER.

02:50PM

1 AND THE BEST EVIDENCE OF IT, YOUR HONOR,
2 WAS ACTUALLY THIS AFTERNOON, OUT OF THE MOUTH OF THE
3 DEFENSE WITNESS, PHIL BARACH.

4 YOU REMEMBER WHEN MR. QUINN ASKED --
5 THE COURT: I DON'T NEED THE ARGUMENT,
6 MR. MADISON. I WANT YOU TO GO BACK TO THE TRANSCRIPT
7 OF THE PROCEEDING WHERE WE DISCUSSED THIS. I
8 SPECIFICALLY SAID TO MR. QUINN, ALL RIGHT.

02:50PM

9 AND I RECALL -- I DON'T KNOW THE DATE OF
10 IT. YOU ALL HAVE THE ABILITY TO SEARCH AND FIND
11 ANYTHING YOU EVER WANTED; AND SO LET'S FIND OUT WHAT
12 WAS SAID THAT DAY.

02:50PM

13 MR. MADISON: WE WILL, YOUR HONOR. BUT I JUST
14 WANT TO POINT THE COURT TO THAT STATEMENT THIS
15 AFTERNOON BY MR. BARACH.

02:51PM

16 WHEN MR. QUINN SAID, YOU HAD A CONTRACT
17 THAT EXPIRED AT THE END OF 2006, BUT AFTER THAT, YOU
18 STILL KNEW WHAT YOUR COMPENSATION WAS, DIDN'T YOU?

19 AND MR. BARACH VOLUNTEERED, YES. I HAD
20 AN ORAL AGREEMENT ABOUT MY COMPENSATION, BUT NO
21 EMPLOYMENT CONTRACT.

02:51PM

22 THAT'S BEEN OUR POSITION ABOUT THIS
23 LITIGATION FROM DAY ONE.

24 MR. BRIAN: THAT IS NONSENSE. THAT'S NOT BEEN
25 THEIR POSITION. THAT'S MY POINT. WE WILL CHECK THE
26 TRANSCRIPT AND GET TO IT YOUR HONOR.

02:51PM

27 THAT'S WHAT I'M WORRIED ABOUT. THEY'VE
28 BEEN PLAYING WITH WORDS ON THIS.

1 THE COURT: WELL, WAIT A MINUTE. THERE IS A
2 LITTLE BIT OF A MOVING TARGET.

3 IF THERE'S AN ORAL AGREEMENT FOR
4 COMPENSATION, THERE ARE TERMS ASSOCIATED WITH THAT.
5 AND THE REAL ISSUE HERE IS, WHAT ARE THE TERMS OF THE
6 AGREEMENT BETWEEN MR. GUNDLACH AND TCW. 02:51PM

7 MR. MADISON: WELL, TO US, YOUR HONOR, THAT
8 CONFLATES THE ATTACHMENT, WHICH IS THE COMPENSATION
9 FORMULA ABOUT WHICH, YOUR HONOR, THERE'S NO DISPUTE IN
10 THIS CASE. 02:52PM

11 AS LONG AS HE WORKED THERE, HE WAS PAID
12 UNDER THAT FORMULA. HE NEVER COMPLAINED. WE NEVER
13 COMPLAINED.

14 THE COURT: THAT'S WHAT THE LAWSUIT IS ALL
15 ABOUT, MR. MADISON. YOU JUST HAVE A BLINDSIDED VIEW OF
16 EVERYTHING. 02:52PM

17 MR. MADISON: NO, NO, YOUR HONOR, NOT THE
18 ATTACHMENT.

19 WHAT THE LAWSUIT IS ABOUT IS THE WRITTEN
20 EMPLOYMENT AGREEMENT THAT WAS SUPPOSED TO BE SIGNED IN
21 AS AN ADJUNCT TO THAT. 02:52PM

22 THE COURT: I DON'T UNDERSTAND.

23 MR. MADISON: SO TO CONFLATE THOSE ALL INTO
24 ONE AGREEMENT, AND I ADMIRE MR. BRIAN'S ADVOCACY, BUT
25 TO TELL THE JURY THERE WAS A CONTRACT, AND NOW WE
26 JUST -- 02:52PM

27 THE COURT: I'M NOT SAYING THAT I WOULD DO
28 THAT. BUT I WANT TO GO BACK.

1 AND YOU CAN'T HAVE IT BOTH WAYS. YOU
2 CAN'T SAY THERE IS AN AGREEMENT FOR COMPENSATION.

3 THE JURY IS HERE TO DETERMINE WHAT THE
4 TERMS OF THAT AGREEMENT ARE.

5 THEIR ARGUMENT IS, IT HAS BROADER TERMS,
6 WHETHER BY IMPLICATION, BY A HANDSHAKE, BY CARRYOVER
7 FROM PRIOR COURSE OF DEALING, I DON'T KNOW. ALL SORTS
8 OF DIFFERENT ARGUMENTS THEY MAKE.

02:52PM

9 YOU WANT TO SAY, I ONLY LOOK ON THE FOUR
10 CORNERS OF EXHIBIT A, AND THERE'S NOTHING ELSE TO LOOK
11 AT. THAT'S ALL I NEED TO HAVE A COMPENSATION
12 AGREEMENT.

02:53PM

13 AND THAT'S YOUR POSITION.

14 MR. MADISON: IT DOESN'T EVEN NEED TO BE THAT.
15 IT CAN BE WHATEVER MR. GUNDLACH SAYS THE ECONOMIC TERMS
16 WERE WHILE HE WAS THERE.

02:53PM

17 JUST LIKE MR. BARACH, HE SAID, I HAD AN
18 ORAL AGREEMENT ABOUT MY COMPENSATION. AND
19 MR. BARACH -- HIS CONTRACT HAD EXPIRED. IT'S EXACTLY
20 THE SAME.

02:53PM

21 THE COURT: WELL, I DON'T THINK WE'RE
22 CONFLATING ANYTHING. WHEN YOU SAY AND YOU THINK
23 MR. GUNDLACH'S JUST LIKE MR. BARACH, THERE'S AN ORAL
24 AGREEMENT.

25 THE QUESTION IS, WHAT ARE THE TERMS OF
26 THAT AGREEMENT? AND YOU CAN'T JUST SAY IT'S ONLY OUR
27 WAY, AND NO OTHER WAY.

02:53PM

28 MR. MADISON: BUT THAT'S OUR POSITION IN THIS

1 LITIGATION, FROM DAY ONE.

2 MR. GUNDLACH, AFTER HIS CONTRACT
3 EXPIRED, HE BECAME AN AT-WILL EMPLOYEE. AND, LIKE,
4 FRANKLY, THE VAST MAJORITY OF AT-WILL EMPLOYEES IN OUR
5 STATE, THEY DO HAVE AN ORAL OR IMPLIED, OR SOMETIMES
6 EVEN A WRITTEN AGREEMENT ABOUT THEIR COMPENSATION.

02:54PM

7 BUT THAT DOESN'T CREATE A TERM OF YEARS
8 AND TERMINATION PROVISIONS.

9 MR. BRIAN: THAT'S THE ISSUE.

10 MR. MADISON: THAT'S REALLY WHAT THIS LAWSUIT
11 IS ALL ABOUT.

02:54PM

12 THE COURT: THAT'S THE ARGUMENT.

13 MR. BRIAN: BUT WHAT HE CAN'T DO IS SUGGEST TO
14 THE JURY, AS THEY HAVE BEEN, THAT THERE'S NO CONTRACT.

15 THAT'S MY ONLY POINT. HE CAN ARGUE
16 EXACTLY WHAT HE ARGUED.

02:54PM

17 THE COURT: HE DOESN'T CALL IT CONTRACT, HE
18 CALLS IT AGREEMENT.

19 MR. BRIAN: I UNDERSTAND THAT. AND THERE'S A
20 REASON FOR THAT.

02:54PM

21 THE COURT: ORAL AGREEMENT FOR COMPENSATION.

22 MR. BRIAN: I UNDERSTAND THAT.

23 THE COURT: GET YOUR TERMS RIGHT.

24 MR. BRIAN: BUT THAT'S THE POINT.

25 MR. HELM: BUT THE JURY NEEDS TO BE TOLD THAT
26 THAT IS A CONTRACT.

02:54PM

27 AND SO THE ONLY DISPUTE IS, WHAT ARE THE
28 TERMS OF THE CONTRACT? THAT'S THE DISPUTE.

1 AND WE THINK IT'S CONFUSING TO THE JURY
2 RIGHT NOW. AND THAT'S WHY WE THINK IT'S IMPORTANT THAT
3 THEY BE TOLD SOMETHING.

4 MR. MADISON: WELL, WHY DON'T WE DO IT THIS
5 WAY, YOUR HONOR, WHY DON'T WE SAY --

02:54PM

6 THE COURT: IT'S 3 O'CLOCK. I'VE GOT A
7 NOTEBOOK FULL OF JURY INSTRUCTIONS.

8 WHAT DO YOU WANT TO DO? WE'RE NOT GOING
9 TO SOLVE THIS PROBLEM.

10 MR. BRIAN: WE'RE GOING TO LOOK AT THE
11 TRANSCRIPT --

02:54PM

12 THE COURT: I WANT TO SEE -- I THOUGHT WE
13 ADDRESSED THIS.

14 MR. BRIAN: WE DID.

15 THE COURT: AND MORE OR LESS RESOLVED THE
16 ISSUES.

02:55PM

17 MR. BRIAN: SO DID WE.

18 MR. MADISON: WELL, WE OBJECT.

19 THE COURT: WELL, YOU ALWAYS OBJECT,
20 MR. MADISON.

02:55PM

21 BUT LET'S LOOK AND SEE WHAT WAS SAID.
22 LET'S SEE WHAT IT SAYS.

23 I VAGUELY RECALL ADDRESSING THIS VERY
24 ISSUE. AND I THOUGHT WE MORE OR LESS GOT AN AGREEMENT,
25 AND WE DIDN'T HAVE A PROBLEM.

02:55PM

26 MR. MADISON: I MEAN, IF WE WERE GOING TO DO
27 ANYTHING LIKE THAT, WE COULD INSTRUCT THE JURY THAT THE
28 PARTIES AGREE THERE WAS AN ORAL AGREEMENT ON

1 COMPENSATION. THE DEFENSE CONTENDS THAT THERE WAS A
2 WRITTEN EMPLOYMENT CONTRACT THAT WAS ADOPTED.

3 THE COURT: THEY DON'T CONTEND THERE WAS A
4 WRITTEN EMPLOYMENT CONTRACT.

5 MR. MADISON: WRITTEN OR ORAL, BUT A SEPARATE
6 AGREEMENT. 02:55PM

7 MR. BRIAN: THAT'S THE PROBLEM, YOUR HONOR.
8 HE DOESN'T WANT TO USE THE WORD CONTRACT. THAT'S THE
9 PROBLEM.

10 MR. MADISON: THAT'S THE ARGUMENT BY THEM. 02:55PM
11 THAT'S THEIR ARGUMENT.

12 THE COURT: WELL, MR. MADISON, YOU PUSH THE
13 ENVELOPE. I'VE LISTENED, YOU DO A GOOD JOB.

14 BUT THE BOTTOM LINE IS, WE'RE -- IT'S A
15 MATTER OF SEMANTICS. 02:55PM

16 AND THE CASE OF THE DEFENSE IS, WE HAD A
17 HANDSHAKE DEAL. WE HAD AN AGREEMENT ON ALL THE
18 ESSENTIAL TERMS. THE DRAFTS REFLECT MOST OF THOSE
19 TERMS, BUT ONLY A FEW OF THEM ARE ESSENTIAL.

20 AND AMONG THEM ARE THE METHOD OF 02:56PM
21 COMPENSATION, WHICH IS EXHIBIT A, WHICH YOU DON'T
22 DISPUTE. BUT INCLUDED ARE THREE OTHER MAIN COMPONENTS
23 THAT HAD BEEN HISTORICALLY AND FOREVER PART OF THE
24 DEAL. AND WE THOUGHT WE HAD THAT DEAL.

25 NOW, THE JURY CAN DECIDE, THERE WAS THAT 02:56PM
26 DEAL OR THERE WASN'T. BUT YOU CAN'T SAY THAT THEY ARE
27 TOTALLY SEPARATED. BECAUSE THEY DON'T SAY WE HAD A
28 HANDSHAKE ON EXHIBIT A, AND THEN A WEEK LATER, WE HAD A

1 HANDSHAKE ON A SEPARATE ORAL AGREEMENT.

2 THEY SAY IT'S ALL PART OF THE SAME DEAL.

3 MR. MADISON: THAT'S THEIR ARGUMENT.

4 THE COURT: RIGHT.

5 MR. MADISON: WE DISAGREE. VIGOROUSLY.

02:56PM

6 WE SAY THAT MR. GUNDLACH FULLY KNEW HE
7 COULD EITHER ACCEPT THE WRITTEN CONTRACT, IN ITS
8 ENTIRETY, OR REJECT IT.

9 THE COURT: WELL, LET ME ASK YOU THIS,
10 MR. MADISON. YOU KEEP PUSHING THIS ENVELOPE.

02:57PM

11 AND I'LL COME BACK TO YOU, AND I'LL TELL
12 YOU EXACTLY WHAT I QUESTION. AND THAT IS, I HAVE BOARD
13 RESOLUTIONS. I HAVE A COMPENSATION COMMITTEE
14 RESOLUTION, SAYING YOU ARE AUTHORIZED TO EXECUTE THIS
15 AGREEMENT.

02:57PM

16 WAS THAT AGREEMENT EVER EXECUTED AND
17 SENT TO MR. GUNDLACH, SAYING, HERE'S THE AGREEMENT?

18 MR. MADISON: NO.

19 AND YOU ARE GOING TO HEAR FROM
20 MR. SONNEBORN, WHO IS, AS YOU WILL RECALL, WAS THE
21 PERSON WHO NEGOTIATED, WHOM THE DEFENDANTS NEVER
22 DEPOSED, AND THEY NEVER CALLED AS A WITNESS IN THE
23 CASE.

02:57PM

24 HE WILL TESTIFY, AMONG OTHER THINGS,
25 THAT TCW'S POLICY WAS ALWAYS TO HAVE THE EMPLOYEE SIGN
26 FIRST; SO THAT IF TCW SIGNED, AND GAVE IT TO THE
27 EMPLOYEE, SO THAT THE EMPLOYEE COULDN'T PUT IT IN A
28 SAFE DEPOSIT BOX AS AN INSURANCE POLICY SOME DAY, THE

02:57PM

1 POLICY --

2 THE COURT: I'VE NOT HEARD ANYTHING ON THAT.

3 MR. MADISON: YOU WILL. MR. SONNEBORN WILL BE
4 HERE TOMORROW.

5 MR. BRIAN: THAT DOESN'T RESOLVE THE ISSUE. 02:57PM

6 WE'LL CHECK THE TRANSCRIPT, BECAUSE THEY
7 WANT TO DO EXACTLY WHAT I TOLD THE COURT THEY WANT TO
8 DO.

9 THE COURT: ALL RIGHT. LET'S FIND OUT.

10 WHERE DID WE LEAVE OFF? 02:58PM

11 MS. STEIN: IN THE FIRST DISPUTED INSTRUCTIONS
12 IN THE NEW BOOK. AND I THINK --

13 THE COURT: WE GOT TO THE END OF THE OTHERS?

14 MR. EMANUEL: YES, YOUR HONOR.

15 THE COURT: BUT I THINK -- I KNOW WHERE WE
16 ARE, AND I'VE GONE THROUGH ABOUT HALF OF THEM, SO --

17 ALL RIGHT. 30A -- 02:58PM

18 MS. ESTRICH: WE'RE AT PAGE 63, YOUR HONOR.
19 THE FIRST 62 ARE AGREED, BELIEVE IT OR NOT.

20 THE COURT: WHAT PAGE ARE YOU ON? 02:58PM

21 MS. ESTRICH: PAGE 63.

22 MS. STEIN: PAGE 63.

23 THE COURT: OKAY. ALL RIGHT.

24 WHAT I'D PROPOSE TO DO IS ACCEPT THIS
25 DEFENDANT'S NUMBER 3. AND I'VE GOT TO GET MY RIGHT
26 NOTES UP HERE -- AND REJECT PLAINTIFF'S 31 AND 32. 02:59PM

27 AND LET ME JUST TELL YOU, IT WAS MILDLY
28 FRUSTRATING, WHERE I HAVE A ONE LINE OBJECTION THAT

1 SAYS, SEE TCW SPECIAL 31. AND I HAVE NO IDEA WHERE
2 SPECIAL 31 IS, AND GO LOOKING FOR IT. BUT ANYWAY.
3 DEFENDANTS' SPECIAL --

4 MR. HELM: WE FEEL YOUR PAIN, BECAUSE WE'RE
5 TRYING TO FIND IT RIGHT NOW.

02:59PM

6 THE COURT: OH, YOU ARE USING THE SAME BOOK I
7 DID.

8 WELL, I FOUND IT. AND I'M NOT TELLING
9 YOU HOW I DID IT.

03:00PM

10 MS. ESTRICH: OUR ONLY CONCERN, YOUR HONOR,
11 AND I HAVE NO PROBLEM WITH THAT IS, IT CONTINUES TO BE
12 THAT THERE BE SOME REFLECTION IN THE RIGHT TO ENGAGE IN
13 COMPETITION AND THE FIDUCIARY DUTY FOR THE CONCERN WE
14 RAISED YESTERDAY ABOUT THE TIME --

15 THE REPORTER: CAN WE TAKE A BREAK FOR ONE
16 SECOND?

17 THE COURT: YOU NEED TO TAKE A BREAK?

18 THE REPORTER: CAN WE MOVE THIS MONITOR? I
19 NEED TO SEE YOU WHEN --

20 MS. ESTRICH: IT'S EASIER TO SEE A PERSON
21 TALK.

22 THE COURT: SHE JUST WANTED TO PUT IT IN FRONT
23 OF YOU, MR. EMANUEL.

24 MS. ESTRICH: OUR ONLY CONCERN WITH THESE
25 INSTRUCTIONS -- AND THIS IS BROADLY APPLICABLE, AND I
26 CAN SAVE THE COURT'S TIME, JUST SAYING IT ONCE -- IS
27 THAT ALL OF THE INSTRUCTIONS RELATING TO THE RIGHT TO
28 COMPETE AND THE DUTY TO DISCLOSE, REFLECT OUR CONCERN

03:00PM

1 THAT IN A LIMITED SET OF CIRCUMSTANCES, WHERE EMPLOYEES
2 PLAN TO -- HIGH LEVEL EMPLOYEES HAVE PLOTTED TO LEAVE
3 EN MASSE, AND LEAVE THE COMPANY IN THE LURCH, THAT
4 THERE IS A DUTY; OR AT LEAST THE JURY MAY FIND --

5 THE COURT: THAT EVIDENCE IS NOT IN THIS CASE. 03:01PM

6 SO I'M GOING TO GIVE DEFENDANT'S SPECIAL
7 NUMBER 3 AND REJECT 31 AND 32 FROM THE DEFENDANTS -- OR
8 FROM THE PLAINTIFFS.

9 SPECIAL JURY INSTRUCTION NUMBER 3(A), I
10 DON'T THINK THIS IS NECESSARY, AND I'LL REJECT IT. 03:01PM

11 AND THE REASON IS, THERE'S NO
12 CONTENTION, AS I SEE IT, OR NO SUBSTANTIAL EVIDENCE, OR
13 SUFFICIENT EVIDENCE, FOR AN ARGUMENT ON SOLICITATION TO
14 BE MADE.

15 AND THERE'S NO EVIDENCE OF ANY DAMAGE OR 03:01PM
16 ANYTHING ELSE ON SOLICITATION.

17 MR. HELM: WELL, TODAY WE HAD -- MR. MADISON
18 INQUIRED OF MR. GUNDLACH ON THE STAND ABOUT THE
19 SUPPOSED CONTINUING FORCE OF THE 2003 AGREEMENT, WHICH
20 CONTAINED NON-SOLICITATION REQUIREMENTS. 03:02PM

21 THE COURT: WELL, BUT THERE'S NO SOLICITATION
22 ISSUE IN THE CASE.

23 MR. HELM: WELL, BUT HE'S RAISED IT.

24 AND WE THINK THE JURY NEEDS TO BE TOLD,
25 HE HAS THE RIGHT TO DO IT, OR THERE IS NO CLAIM FOR 03:02PM
26 VIOLATION OF THE AGREEMENT. WE CAN SAY IT DIFFERENT
27 WAYS, BUT WHAT WE'VE SAID HERE, THEY HAVE THE RIGHT TO
28 SOLICIT THEM AFTER THEIR EMPLOYMENT.

1 THE COURT: MR. MADISON, WHAT'S YOUR POSITION?
2 ARE YOU ARGUING THAT THERE'S AN IMPROPER SOLICITATION
3 AND A BREACH OF THAT AGREEMENT?

4 MR. MADISON: NO. AND THAT WAS NOT WHY WE
5 ELICITED THAT TESTIMONY.

03:02PM

6 I CAN EXPLAIN, IF YOU WOULD LIKE ME TO,
7 BUT I THINK IT WAS CLEAR, FROM THE EXAM.

8 AND BY THE WAY, I BELIEVE MR. HELM
9 ASKED, ON REDIRECT, WHETHER THERE WAS A CLAIM IN THIS
10 CASE. I THINK THE WITNESS ACTUALLY SAID NO.

03:02PM

11 AND THAT'S RIGHT, AND WE DIDN'T OBJECT;
12 THERE ISN'T.

13 MR. HELM: ACTUALLY, I THINK YOU DID OBJECT TO
14 THE QUESTION.

15 MR. MADISON: WELL, I COULD HAVE OBJECTED FOR
16 OTHER REASONS.

03:03PM

17 THE COURT: WHAT'S THE RELEVANCE OF IT?

18 MR. MADISON: THE RELEVANCE IS, YOUR HONOR, IT
19 INFORMS US OF MR. GUNDLACH'S STATE OF MIND IN 2009,
20 WHEN THAT TWO-YEAR PERIOD WAS STILL ONGOING, THAT IT
21 RELATES TO HIS PLANS TO LEAVE AFTER THE 12-31-2009
22 DATE, WHEN THAT PROVISION HAD FALLEN AWAY.

03:03PM

23 AND WE HAVE EVIDENCE, SOME OF WHICH IS
24 NOT IN THE CASE, AND I DON'T KNOW WHETHER IT WILL COME
25 INTO THE CASE OR NOT, BUT I CAN JUST TELL YOU THAT WE
26 KNOW FOR A FACT THAT WITH MR. GUNDLACH AND HIS
27 ATTORNEY, THAT PROVISION WAS THE FOCUS OF A FAIR AMOUNT
28 OF ATTENTION DURING 2009.

03:03PM

1 MR. HELM: WELL, I THINK IT'S UNCLEAR TO THE
2 JURY WHAT THE RELEVANCE OF THAT IS. AND I THINK WE
3 SHOULD HAVE AN INSTRUCTION.

4 MS. STEIN: YOUR HONOR HAD APPROVED THIS
5 INSTRUCTION ONCE BEFORE, ON JULY 12TH.

03:04PM

6 THE COURT: ALL RIGHT. WE'LL GIVE IT. IT
7 CAN'T HURT. AND IT'S NOT GOING TO REALLY GO TO ANY
8 ISSUES THAT WE HAVE TO DEAL WITH.

9 MS. ESTRICH: YOUR HONOR, I HATE TO DO THIS,
10 BUT MR. MADISON CAN SUPPORT ME; BUT I BELIEVE WE DO
11 HAVE EVIDENCE THAT MEETS THE RESTATEMENT STANDARD, THAT
12 THE ACTIONS OF INDIVIDUALS IN SOON TO BE FORMER AGENCY
13 MAY BECOME WRONGFUL, WHEN THEY CONSTITUTE CONCERTED
14 EFFORTS, DESIGNED WITH THE PURPOSE OF LEAVING THE
15 PRINCIPAL IN THE LURCH.

03:04PM

16 THE COURT: WE DON'T -- THIS INSTRUCTION GOES
17 TO THE LAWFULLY SOLICITED CLIENTS.

18 MS. ESTRICH: NO. I'M IN THE PREVIOUS -- I'M
19 ONE BEFORE YOU.

03:04PM

20 THE COURT: WELL, THAT ONE IS PAST.

03:04PM

21 WE'RE MOVING ALONG, MS. ESTRICH.

22 MS. ESTRICH: BUT THIS ONE IS GOING TO COME
23 UP.

24 THE COURT: AND WE DON'T HAVE THE -- WELL, I
25 DON'T AGREE THAT THERE'S THIS SUFFICIENT EVIDENCE OF
26 THIS EN MASSE GRAND CONSPIRACY FOR EVERYBODY TO LEAVE,
27 THAT YOU SUGGEST. AND WE'RE GOING TO HAVE VERY LIMITED
28 INSTRUCTIONS, IF ANY, IN THAT AREA.

03:04PM

1 SO 3(A) WILL BE GIVEN AS REQUESTED, OVER
2 THE OBJECTION OF DEFENDANT.

3 NUMBER 4 -- THIS IS DEFENDANT'S FOUR.

4 MS. STEIN: AGAIN, YOUR HONOR, THIS WAS
5 APPROVED AT THE JULY 12TH --

03:05PM

6 THE COURT: I KNOW. AND I CAN'T UNDERSTAND --
7 AS I WENT BACK -- I WENT BACK TO MY NOTES OF JULY 12TH,
8 MY NOTES FROM AUGUST 20TH.

9 I DON'T KNOW WHY WE'RE HAVING ALL THESE
10 PUT BACK ON THE TABLE AGAIN. WE SPENT THE BETTER PART
11 OF AN AFTERNOON GOING OVER THEM, AND IT JUST SEEMS LIKE
12 NOBODY CAN ACCEPT A DECISION AND JUST MOVE FORWARD.

03:05PM

13 MR. EMANUEL: I THINK THE CONCERN WAS THE ONE
14 I JUST RAISED ABOUT THE LIMITED EXCEPTION, WHERE THE
15 PLANS OR THE PREPARATIONS TO COMPETE AMOUNT TO AN
16 EFFORT TO DESTROY THE COMPANY.

03:05PM

17 THE COURT: YOU CAN ARGUE WHAT YOU WANT.

18 MS. ESTRICH: I'M EXPLAINING WHY WE PUT IT
19 BACK ON THE TABLE.

20 THE COURT: I'M GIVING NUMBER 4 OVER THE
21 DEFENSE OBJECTION, I GUESS.

03:06PM

22 AND THEN ALL I GET IN THE OBJECTION IS
23 INCOMPLETE STATEMENT OF LAW. SEE TCW'S 21, 22 AND 30.

24 AND MY NOTE IS, CAN'T FIND TCW'S 21 AND
25 22. SO IF YOU WANT TO TELL ME WHERE THEY ARE, I'LL BE
26 GLAD TO LOOK AT THEM.

03:06PM

27 MS. ESTRICH: I HAD THE SAME PROBLEM, YOUR
28 HONOR.

1 MR. EMANUEL: WELL, THE EXPLANATION WAS, THOSE
2 WERE DEALT WITH YESTERDAY; SO WE CAN MOVE ON.

3 THE COURT: ARE WE PAST THEM?

4 MR. EMANUEL: WE ARE PAST THEM.

5 MS. ESTRICH: WE CAN MOVE ON.

03:06PM

6 THE COURT: SO DEFENDANT'S 4 WILL BE GOOD --
7 WE ALL GET A LITTLE TESTY LATE IN THE DAY. FORGIVE ME.

8 MS. ESTRICH: NO FORGIVENESS NEEDED.

9 MR. EMANUEL: IF YOU WILL FORGIVE US.

10 MS. ESTRICH: WE EXPRESS THE SAME CONCERN OVER
11 AND OVER AGAIN, AS WELL.

03:06PM

12 THE COURT: ALL RIGHT. DEFENDANT'S SPECIAL
13 NUMBER 90.

14 MY TENTATIVE WOULD BE TO ACCEPT THAT,
15 AND REJECT PLAINTIFF'S NUMBER 5.

03:06PM

16 MR. EMANUEL: I LOST THE PAGES. HOLD ON ONE
17 SECOND.

18 THE COURT: IT'S ON PAGE 69.

19 MR. EMANUEL: NOW, THIS IS THE EN MASSE ISSUE,
20 YOUR HONOR. YOU'VE MADE YOUR VIEW CLEAR. WE'LL
21 SUBMIT.

03:07PM

22 THE COURT: ALL RIGHT. SO I'M GOING TO REJECT
23 PLAINTIFF'S NUMBER 5.

24 YOU HAVE THE DEFENDANTS IN THIS CASE
25 THAT THERE IS ANY EVIDENCE OF ANY PARTICIPATION,
26 INVOLVEMENT, WITH THE EXCEPTION OF MR. WARD, WHO IS
27 INVOLVED IN SETTING UP THE ABLE GRAPE? THEY ARE HERE.

03:07PM

28 AND I GUESS MOORE HAS TESTIFIED, AND JP.

1 AND THERE WAS ONE OTHER ONE.

2 MS. ESTRICH: MS. CODY?

3 THE COURT: NO. THE OTHER PROGRAMMER.

4 BUT I JUST DON'T SEE IT.

5 AND NONE OF THE EVIDENCE SUPPORTS THIS
6 EN MASSE THING.

03:08PM

7 MR. MADISON: I DON'T WANT TO BELABOR IT, BUT
8 I AM PREPARED TO SUMMARIZE WHAT WE THINK THE EVIDENCE
9 IS IN THAT REGARD. BECAUSE WE DO THINK THERE'S MORE
10 THAN ENOUGH TO GET TO THE JURY. WE ACTUALLY THINK IT'S
11 VERY COMPELLING.

03:08PM

12 I'M NOT GOING TO GIVE YOU NUMBER 5.

13 AND IT'S OVER YOUR OBJECTION, SO YOU
14 PRESERVE IT, AND YOU CAN TAKE IT ON.

15 MS. ESTRICH: MR. MADISON IS GOING TO JOIN US,
16 SO HE MAY ADD TO THE COLLOQUY.

03:08PM

17 HE DOESN'T HAVE A BOOK, AS USEFUL AS IT
18 MAY BE.

19 MR. MADISON: IT'S JUST THE TABLE, IT'S
20 UNLUCKY. AND IF I COME UP HERE I'LL HAVE A BETTER
21 CHANCE.

03:08PM

22 THE COURT: IT MIGHT BE A LUCKIER TABLE.

23 DEFENDANT'S SPECIAL NUMBER 6.

24 MS. STEIN: YOU HAD APPROVED IT AT THE LAST
25 HEARING. YOU WANTED THE TERM SAME NUCLEUS OF FACT; SO
26 WE CHANGED THAT.

03:08PM

27 THE COURT: THIS WAS THE LANGUAGE THAT THE
28 COURT SUGGESTED.

1 MS. STEIN: YES.

2 THE COURT: SO I'LL ACCEPT THAT, AND REJECT
3 PLAINTIFF'S 29.

4 MS. ESTRICH: YOUR HONOR, IF I COULD SIMPLY
5 MAKE ONE POINT. 03:09PM

6 THE COURT: YES.

7 MS. ESTRICH: WE HAD AGREED, I BELIEVE THE
8 COURT HAS RULED MANY TIMES, INCLUDING ON MOTION IN
9 LIMINE NUMBER 5, THAT CUTSA PREEMPTION APPLIES TO TRADE
10 SECRET, NOT TO CONFIDENTIAL AND PROPRIETARY
11 INFORMATION. 03:09PM

12 THE COURT: RIGHT.

13 MS. ESTRICH: AND IN MANY OF THE CASES, I
14 THINK ALL OF THE CASES, IN WHICH THE NUCLEUS OF FACT
15 LANGUAGE WAS USED, AND WE WERE DEALING WITH TRADE
16 SECRETS. 03:09PM

17 OUR ONE CONCERN IS, ON MANY OF THESE
18 INSTANCES, YOU HAVE PEOPLE DOWNLOADING A BUNCH OF
19 STUFF, SOME OF WHICH IS TRADE SECRETS, SOME OF WHICH
20 ISN'T. 03:09PM

21 AND THE NUCLEUS OF FACTS LANGUAGE FROM
22 THESE OTHER CASES IS INTENDED TO REFER THE NUCLEUS OF
23 FACTS RELATING TO TRADE SECRETS. THEN WE ARE CONCERNED
24 THAT THE SECOND SENTENCE, WE -- WE HAVE NO PROBLEM WITH
25 THE SECOND SENTENCE THAT SAYS, YOU MAY NOT FIND BREACH
26 OF FIDUCIARY DUTY AND LIABILITY, BASED ON ANY CONDUCT
27 THAT TCW ALSO ALLEGES CONSTITUTES MISAPPROPRIATION OF
28 TRADE SECRETS. WE'RE FINE WITH THAT. 03:09PM

1 OUR ONE CONCERN IS, ABSENT THIS LONG
2 INSTRUCTION ABOUT NUCLEUS OF FACTS DOESN'T MEAN THE
3 SAME DAY, OR THE SAME DISK, OR THE SAME PERSON. IT
4 SIMPLY MEANS TRADE SECRETS.

5 A NORMAL PERSON MIGHT THINK NUCLEUS OF
6 FACTS MEANS IF A GUY DOWNLOADS ON TUESDAY, A DISK
7 DRIVE, THAT'S NUCLEUS OF FACTS.

8 THE COURT: WELL, WE HAVE A SPECIFIC
9 INSTRUCTION THAT GIVES THE SPECIFIC TRADE SECRET
10 ISSUES.

11 AND BEYOND THAT, WE HAVE A BREACH OF
12 FIDUCIARY DUTY INSTRUCTION THAT GOES -- IS BROADER.

13 MR. EMANUEL: I HOPE SO.

14 THE COURT: AND YOU HAVE THE ARGUMENT.

15 AND IF SOMEONE ARGUES INAPPROPRIATELY,
16 WE'LL CLARIFY IT.

17 MS. ESTRICH: THANK YOU.

18 MR. HELM: WELL, YOUR HONOR, JUST TO
19 UNDERSTAND, THE NUCLEUS OF FACTS TEST THAT'S USED IN
20 THE PREEMPTION CASES, DOES MEAN THAT IF THE SAME
21 CONDUCT YOU ARE TALKING ABOUT, THEY ARE DOWNLOADING A
22 BUNCH OF STUFF --

23 THE COURT: YOU LOST ON THAT ANOTHER DAY.

24 REMEMBER I'VE BEEN SAYING, WE KEEP
25 GETTING THE SAME THING BACK. YOU LOST ON THAT ONE
26 OTHER DAY. AND I SAID THAT I'M NOT GOING TO DETERMINE
27 THAT THE BREACH OF FIDUCIARY DUTY CLAIM IS FORECLOSED.

28 SO THERE'S LOTS OF CONDUCT HERE, ALL

03:10PM

03:10PM

03:10PM

03:10PM

03:10PM

1 OVER THE BOARD, AND IT IS NOT JUST THE DOWNLOADING OF
2 DOCUMENTS AND THINGS.

3 MR. HELM: YOUR HONOR, THAT'S -- I THINK THE
4 COURT MISUNDERSTOOD. IT MAY BE THAT I'M STILL WRONG,
5 AND I'M SURE THE COURT WILL TELL ME; JUST SO THE COURT
6 UNDERSTANDS WHAT I'M SAYING.

03:11PM

7 WE'RE NOT SAYING THEY CAN'T BRING A
8 FIDUCIARY DUTY CLAIM. WE'RE SAYING THEY CAN'T BRING
9 THE FIDUCIARY DUTY CLAIM BASED ON THE DOWNLOADING AND
10 COPYING OF THE INFORMATION.

03:11PM

11 THE COURT: BUT THE DOWNLOADING AND COPYING OF
12 INFORMATION THAT IS RELATIVE TO THE TRADE SECRETS CLAIM
13 IS ONLY THE DOWNLOADING AND COPYING OF THOSE ITEMS
14 LISTED IN THE INSTRUCTION THAT ARE PART OF THE TRADE
15 SECRET CLAIM. AND THAT IS VERY FOCUSED AND LIMITED.

03:11PM

16 MR. HELM: ALL RIGHT, IF THAT'S YOUR HONOR'S
17 RULING --

18 THE COURT: THAT'S IT.

19 MR. HELM: THANK YOU, YOUR HONOR.

20 MS. ESTRICH: AND IT APPLIES TO A NUMBER OF --

03:11PM

21 THE COURT: AND THAT'S WHERE THE RUB IS ON.

22 MS. STEIN: ONE QUESTION, YOUR HONOR, ON THAT.

23 THE COURT: YEAH.

24 MS. STEIN: TCW HAS ALLEGED A NUMBER OF THINGS
25 WERE TRADE SECRETS.

03:12PM

26 THE COURT: THAT'S ALL -- BUT THE ALLEGATIONS
27 ARE NARROWED DOWN NOW TO FIVE CATEGORIES, OR FIVE
28 ITEMS.

1 MS. STEIN: RIGHT. SO THE QUESTION IS, UNDER
2 THE CASES AS WE READ THEM, THEY WOULD BE PRECLUDED FROM
3 NOW CONTENDING THE THINGS THEY HAD ALLEGED WERE TRADE
4 SECRETS, THAT THE COURT HAS NOW DETERMINED ARE NOT
5 TRADE SECRETS, TO BE PART OF THE BREACH OF FIDUCIARY
6 DUTY.

03:12PM

7 THE COURT: WELL, I HAVEN'T REALLY DETERMINED
8 THINGS AREN'T TRADE SECRETS.

9 THEY'VE WITHDRAWN THEIR CLAIM.

10 MS. STEIN: WHETHER THEY WITHDREW IT OR THE
11 COURT MADE A RULING, OR THE JURY MADE A FINDING, SO
12 LONG AS THEY HAVE ALLEGED IT IN THIS CASE, THAT IT WAS
13 A TRADE SECRET, IT'S PREEMPTED.

03:12PM

14 THAT'S WHAT THE CASES SAY, THAT THEY
15 CAN'T PLAY FAST AND LOOSE DURING THE COURSE OF THIS
16 PROCEEDING.

03:12PM

17 THE COURT: THAT GETS A LITTLE MORE
18 PROBLEMATIC.

19 MS. ESTRICH: YOUR HONOR --

20 MS. STEIN: I'M JUST REFLECTING WHAT THE CASES
21 SAY, YOUR HONOR.

03:12PM

22 MS. ESTRICH: WE CAN RE-ARGUE THIS ONE AS WE
23 READ THE CASES. YOU CANNOT SAY TO THE JURY, ALL RIGHT.
24 HERE IS SIX THINGS. MAYBE THEY ARE TRADE SECRETS,
25 MAYBE THEY AREN'T.

03:13PM

26 YOU KNOW, YOU DECIDE. AND THEN IF WE
27 LOSE ON TRADE SECRETS, GIVE US A SECOND SHOT.

28 THAT'S NOT WHAT WE'RE DOING. WE'RE

1 FORCED TO MAKE OUR DECISION. WE'VE MADE OUR
2 DISCUSSION. CUTSA PREEMPTS TRADE SECRET CLAIMS. IT
3 DOESN'T PREEMPT, ACCORDING TO THIS COURT'S RULING,
4 CONFIDENTIAL CLAIMS.

5 MR. MADISON: YOUR HONOR, IF I CAN -- AND 03:13PM
6 CLEARLY, I'M NOT AS SMART AS ANY OF THE OTHER PEOPLE AT
7 THIS TABLE, BUT I THINK LAWYERS HAVE A HARD TIME
8 UNDERSTANDING, IN THIS CUTSA PREEMPTION ARENA, WHAT THE
9 SAME NUCLEUS OF FACTS MEANS. I DON'T THINK THE JURY
10 WILL HAVE A CLUE. 03:13PM

11 AND I DON'T THINK WE SHOULD GO DOWN THIS
12 ROAD OF GIVING MORE AND MORE CASE-BASED SPECIFIC
13 INSTRUCTIONS. I KNOW -- DID I SAY THIS ONCE BEFORE. I
14 THINK LAWYERS TRY TO DO TOO MUCH WITH INSTRUCTIONS.

15 IF WE GIVE THEM THE LAW -- 03:13PM

16 THE COURT: YOU BETTER TALK TO YOUR
17 COMPATRIOTS HERE, BECAUSE EVERYBODY IS IN IT TOGETHER.

18 MR. MADISON: I DON'T HAVE LUCK PERSUADING
19 THEM ALL THE TIME, EITHER.

20 BUT I AGREE WITH MS. ESTRICH. BUT TO 03:14PM
21 AGREE THAT A CLAIM PROVIDES -- I KNOW WHAT'S GOING TO
22 HAPPEN, YOUR HONOR. YOU ARE GOING TO GET A NOTE, AND
23 CAN YOU TELL US WHAT THE SAME NUCLEUS OF FACTS MEANS.

24 AND I JUST AGREE THAT IF YOU JUST HAVE
25 THE SECOND SENTENCE, THAT WOULD SATISFY THE PREEMPTION 03:14PM
26 ISSUE.

27 THE COURT: YOU ARE SAYING, JUST AS YOU MAY
28 NOT FIND BREACH OF FIDUCIARY DUTY LIABILITY BASED ON

1 ANY CONDUCT, THAT TCW ALSO ALLEGES CONSTITUTES
2 MISAPPROPRIATION OF TRADE SECRETS?

3 MS. ESTRICH: YES. THAT'S ALL WE'RE ASKING
4 FOR.

5 MS. STEIN: SO YOUR HONOR IS SAYING, IF
6 THEY'VE ALLEGED THAT SOMETHING WAS A TRADE SECRET IN
7 THE PAST, AND NO LONGER ARE ALLEGING --

03:14PM

8 THE COURT: "ALLEGES" SHOULD BE CHANGED TO
9 CLAIMS, BECAUSE WE'RE NOT GOING BACK TO THE
10 ALLEGATIONS. THAT'S WHERE THE PROBLEM COMES IN.

03:15PM

11 MS. ESTRICH: WE WOULD BE HAPPY WITH THAT.

12 MS. STEIN: I'LL JUST SAY FOR THE RECORD, YOUR
13 HONOR, I THINK THE CASE LAW SAYS, IF THEY EVER CLAIMED
14 IT IN THIS LITIGATION, NOT JUST BY THE TIME IT GETS TO
15 THE JURY, WITH THIS WINNOWNED DOWN INSTRUCTION AS TO
16 WHAT OTHER TRADE SECRETS.

03:15PM

17 THEY HAD A LAUNDRY LIST OF THINGS THAT
18 THEY ALLEGE WERE TRADE SECRETS AT THE BEGINNING OF THIS
19 CASE, AND IT HAS BEEN WINNOWNED DOWN, BECAUSE THEY ARE
20 NOT TRADE SECRETS.

03:15PM

21 AND NOW THEY WANT TO SHOEHORN THEM INTO
22 BREACH OF FIDUCIARY DUTY.

23 THE COURT: NO, I UNDERSTAND.

24 MS. STEIN: AND THAT'S WHAT CUTSA DOESN'T
25 PERMIT.

03:15PM

26 THE COURT: I'M GOING TO GIVE IT, WITH THE
27 LANGUAGE AS PROPOSED WITH THE COMMON NUCLEUS OF
28 OPERATIVE FACTS. WE GET A QUESTION, WE'LL DEAL WITH

1 IT. I THINK IT ACCURATELY STATES THE LAW, AND I DON'T
2 THINK 29 HELPS US.

3 MS. STEIN: BUT YOU WANT THE WORD "CLAIMS,"
4 INSTEAD OF "ALLEGES"?

5 THE COURT: I THINK "CLAIMS" IS BETTER THAN
6 "ALLEGES".

7 MS. STEIN: FINE, YOUR HONOR.

8 THE COURT: THAT WAS DEFENDANT'S NUMBER 6.

9 MS. STEIN: NOW, YOUR HONOR, THERE HAVE BEEN
10 SOME RULINGS SINCE THIS WAS DRAFTED.

11 THE COURT: RIGHT. THE REQUEST FOR PROPOSALS
12 AND SERVICE MAPPING MATRIX ARE OUT.

13 MS. ESTRICH: YES.

14 MS. STEIN: RIGHT.

15 AND I THINK FICO DEFINITIONS,
16 DELINQUENCY BUCKETS, I WAS TOLD WERE OUT, AS WELL.

17 THE COURT: THOSE MAY HAVE BEEN BY AGREEMENT.
18 I JUST KNOW THE ONES I DEALT WITH WERE SERVICE MAPPING
19 MATRIX, RESPONSES TO REQUESTS FOR PROPOSALS.

20 WHAT ELSE IS OUT?

21 MS. STEIN: FICO DEFINITIONS AND DELINQUENCY
22 BUCKETS.

23 MR. HELM: DO YOU GUYS AGREE WITH THAT?

24 MS. ESTRICH: WE'RE HAVING A LITTLE PROBLEM
25 WITH THE PAGE NUMBERS.

26 THE COURT: IT'S 82.

27 MS. ESTRICH: 82. THERE'S -- THERE'S -- THESE
28 ARE ALL -- I BELIEVE YOU ARE RIGHT, YOUR HONOR.

03:15PM

03:16PM

03:16PM

03:16PM

03:16PM

1 MR. MADISON: HE WAS ASKING IF SOME WERE OUT.

2 MS. ESTRICH: THE LIST, I BELIEVE, IS RIGHT.

3 THE COURT: WELL, NO, BUT MS. STEIN IS SAYING,
4 I KNOW I DEALT WITH SERVICE MAPPING MATRIX, RESPONSES
5 TO REQUESTS FOR PROPOSALS. THE CALL LIST ISN'T ON
6 HERE.

03:17PM

7 AND SO THE QUESTION NOW IS, WHAT OTHER
8 ONES ARE OFF?

9 AND MS. STEIN SAYS THE FICO DEFINITIONS,
10 DELINQUENCY BUCKETS.

03:17PM

11 MS. STEIN: I WAS TOLD THERE WAS NO EVIDENCE
12 AS TO THOSE AND THOSE WERE OFF.

13 THE COURT: I'VE NOT HEARD ANY.

14 MS. ESTRICH: IF WE COULD JUST CHECK, YOUR
15 HONOR.

03:17PM

16 THE COURT: WELL, WHEN ARE WE GOING TO CHECK?
17 WE'VE GOT TO FINALIZE THESE AND GET THEM --

18 MS. ESTRICH: RIGHT THIS SECOND, WE'RE GOING
19 TO CHECK.

20 THE COURT: HUH?

03:17PM

21 MS. ESTRICH: I THINK WE'RE GOING TO CHECK
22 RIGHT NOW.

23 THE COURT: WHO ARE YOU GOING TO CHECK WITH?

24 AMONG YOURSELVES, OR DO YOU HAVE TO GO
25 OUTSIDE?

03:17PM

26 MS. ESTRICH: I WOULD ASK MR. MADISON.

27 MR. MADISON: MODERN TECHNOLOGY.

28 MS. ESTRICH: I HAD TWO OTHER CONCERNS, YOUR

1 HONOR, IF I MAY, IN PARAGRAPH 4, ON UNJUST ENRICHMENT.

2 WE'RE NOT SEEKING UNJUST ENRICHMENT.

3 THE COURT: WELL, I HAD LINED THOSE OUT, IT
4 SAYS, FOUR, DEFENDANTS WERE UNJUSTLY ENRICHED. AND
5 THAT GOES OUT IN FIVE ALSO?

03:18PM

6 MS. ESTRICH: RIGHT. IT GOES OUT IN A NUMBER
7 OF PLACES.

8 THE OTHER -- AND I DON'T WANT TO TROUBLE
9 YOUR HONOR WITH A LENGTHY ARGUMENT, BUT WE HAVE
10 SUBSTANTIAL AUTHORITY THAT THE SUBSTANTIAL FACTOR TEST
11 IS INTENDED TO BE BROADER THAN THE BUT-FOR TEST.

03:18PM

12 WE'VE ARGUED THIS BEFORE.

13 THE COURT: I UNDERSTAND THAT. AND I'VE GOT
14 NOTES ON IT IN SOME OF THESE OTHER ONES.

15 MS. ESTRICH: AND I SIMPLY RAISE IT BECAUSE IT
16 APPLIES TO PARAGRAPH 5.

03:18PM

17 THE ISSUE IS WHEN YOU HAVE INDEPENDENT
18 CONCURRENT CAUSES --

19 THE COURT: I UNDERSTAND.

20 MS. ESTRICH: YOU GOT IT. FINE.

03:18PM

21 MS. STEIN: YOUR HONOR, AT THE LAST HEARING ON
22 AUGUST 22ND, THE COURT APPROVED OF THAT LAST LANGUAGE
23 IN PARAGRAPH 5.

24 THE COURT: I DON'T REMEMBER THAT.

25 BUT WHERE IS THE CASI SUBSTANTIAL
26 FACTOR?

03:18PM

27 MS. STEIN: THE CASI IS UNDER --

28 THE COURT: ARE WE GIVING THAT?

1 MS. STEIN: WE HOPE SO.

2 THE COURT: WELL, LET'S LOOK AT IT.

3 MS. STEIN: IT'S UNDER THE -- I'LL FIND IT FOR
4 YOU.

5 IT'S AT PAGE 119, YOUR HONOR. 03:19PM

6 THE COURT: SO THAT IS STILL DISPUTED, TOO?

7 MS. STEIN: YES.

8 MS. ESTRICH: YES, YOUR HONOR.

9 THE COURT: OH, I'VE GONE THROUGH THAT.

10 MY PROPOSAL WAS TO GIVE IT, BUT TO TAKE
11 OUT THE LAST SENTENCE. 03:19PM

12 MS. STEIN: WELL, YOUR HONOR, WE FEEL VERY
13 STRONGLY, THAT THAT WOULD BE A BIG MISTAKE --

14 THE COURT: NO, BECAUSE WE ARE DEALING WITH
15 CONCURRENT INDEPENDENT CAUSES HERE. 03:19PM

16 MS. STEIN: I DON'T THINK SO.

17 THE COURT: AND THAT'S WHERE YOU DON'T USE THE
18 BUT-FOR.

19 AND YOU CAN HAVE SOMETHING THAT IS A
20 SUBSTANTIAL FACTOR. IT DOESN'T HAVE TO BE MORE THAN 51
21 PERCENT. IT HAS TO BE A FACTOR IN CAUSING IT. 03:19PM

22 BUT IF YOU ADD THE LATTER, THEN IT
23 BECOMES A BUT-FOR TEST, AND THAT'S BEEN REJECTED.

24 MS. STEIN: WELL, WHAT SUBSTANTIAL INDEPENDENT
25 CAUSES IS DEFINED BY VINER VS. SWEET AS, CAUSES WHICH
26 ARE MULTIPLE FORCES OPERATING AT THE SAME TIME AND
27 INDEPENDENTLY, EACH OF WHICH WOULD HAVE BEEN SUFFICIENT
28 BY ITSELF TO BRING ABOUT THE SAME HARM. 03:20PM

1 I HAVEN'T HEARD ANY EVIDENCE THAT
2 PLAINTIFFS HAVE PUT ON THAT THERE WERE OTHER FORCES
3 THAT INDEPENDENTLY WOULD HAVE CAUSED THE SAME HARM, FOR
4 WHICH THEY ARE CHARGING OUR CLIENTS.

5 THE COURT: PLAINTIFFS DON'T HAVE TO PUT IT
6 ON. THE DEFENSE HAS BEEN PUTTING IT ON ALL ALONG, THAT
7 THE SAME HARM WOULD HAVE OCCURRED, WITH OR WITHOUT
8 ANYTHING THAT GUNDLACH DID.

03:20PM

9 MS. ESTRICH: AND THE TORTIOUS INTERFERENCE
10 CLAIMS.

03:20PM

11 THE COURT: IN THE TORTIOUS INTERFERENCE
12 CLAIMS.

13 MS. ESTRICH: THAT'S A CLEAR EXAMPLE.

14 MR. HELM: YOUR HONOR, IT JUST MEANS IT'S NOT
15 A BUT-FOR CAUSE, IS WHAT WE'RE SAYING, IS THAT SINCE IT
16 WOULD HAVE HAPPENED ANYWAY. THIS IS --

03:20PM

17 MS. ESTRICH: TWO PEOPLE --

18 THE COURT: YOU CAN HAVE A SUBSTANTIAL FACTOR
19 EVEN IN A SITUATION WHERE IT WOULD HAVE HAPPENED
20 ANYWAY.

03:20PM

21 MR. HELM: YOUR HONOR, IN THE VINER VS. SWEET
22 CASE, WHICH IS NEAR AND DEAR TO OUR HEART, I ARGUED
23 THIS CASE IN THE CALIFORNIA SUPREME COURT.

24 MS. STEIN --

25 THE COURT: IS THAT THE ATTORNEY MALPRACTICE
26 CASE?

03:21PM

27 MR. HELM: -- IT'S AN ATTORNEY MALPRACTICE
28 CASE.

1 THE COURT: BUT YOU HAVE GOT TO LOOK AT
2 ALINEAWARE (PHONETIC), AND AT THE ASBESTOS CASES, AND
3 THE ONES THAT TALK -- AND -- I CAN'T THINK OF THE NAME
4 RIGHT NOW, BUT THERE'S A WHOLE BUNCH ON THIS
5 SUBSTANTIAL FACTOR VERSUS --

03:21PM

6 MR. HELM: THE CALIFORNIA -- IF I COULD JUST
7 BE HEARD FOR A SECOND.

8 THE CALIFORNIA SUPREME COURT HAS RULED
9 THAT THE BUT-FOR TEST IS A REQUIREMENT IN THE
10 SUBSTANTIAL FACTOR TEST. IT HAS RULED THAT. THERE'S
11 ONLY -- THERE'S A RARE EXCEPTION, WHICH IS IN THIS
12 CONCURRENT INDEPENDENT CAUSE SITUATION.

03:21PM

13 SO THAT'S THE CASE LIKE THE PERSON GETS
14 PUSHED OFF THE BUILDING, AND SOMEBODY SHOOTS HIM ON THE
15 WAY DOWN. THAT'S THE KIND OF A CASE WHEN YOU SAY,
16 WELL, PUSHING HIM OFF THE BUILDING WASN'T ENOUGH,
17 BECAUSE SOMEBODY SHOT HIM ON THE WAY DOWN, AND HE WOULD
18 HAVE DIED ANYWAY.

03:21PM

19 SO THEY SAY IN THAT BIZARRE SITUATION,
20 INDEPENDENT CONCURRENT CAUSES, YOU HAVE A -- IT DOESN'T
21 HAVE TO BE BUT-FOR. BUT IN THE NORMAL COURSE OF
22 EVENTS, SOMETHING IS NOT A SUBSTANTIAL FACTOR, IF IT
23 WAS -- IF THE EVENT WOULD HAVE HAPPENED ANYWAY, THAT'S
24 WHAT VINER VS. SWEET SAYS.

03:21PM

25 THE COURT: YOU HAVE THIS BATTLE OVER AND
26 OVER.

03:22PM

27 LET ME LOOK AT VINER VS. SWEET AGAIN.
28 I'LL READ IT. IT'S THE MOST CURRENT. AND I'LL LOOK AT

1 WHATEVER HAS COME AFTER IT, AND THEN -- SO THAT ONE,
2 I'LL PUT ON HOLD.

3 MS. ESTRICH: WE WOULD ALSO SUGGEST CASI 431
4 SAYS THIS QUITE CLEARLY. IT'S MULTIPLE CAUSES.

5 MR. HELM: AND I WOULD ALSO JUST SUGGEST THE
6 COURT LOOK AT THE DIRECTIONS FOR USE UNDER CASI 430,
7 WHICH WE QUOTED.

03:22PM

8 MS. STEIN: IF MR. -- IF THERE ARE TWO
9 INDEPENDENT CONCURRENT CAUSES, EACH OF WHICH WOULD HAVE
10 HAD TO CAUSE THE SAME HARM.

03:22PM

11 IN OTHER WORDS, MR. GUNDLACH'S SO-CALLED
12 INTERFERENCE WOULD HAVE HAD TO BE THE CAUSE. MR. STERN
13 WOULD HAVE OFFERED ALL OF THOSE ACCOMMODATIONS: WOULD
14 HAVE OFFERED LIQUIDATION, WOULD HAVE REDUCED FEES,
15 SIMPLY BECAUSE OF WHAT MR. GUNDLACH SAID AS TO WEB
16 CASTS, THAT'S AN INDEPENDENT CAUSE.

03:23PM

17 BUT IF IT JUST PUSHED THEM OVER THE
18 EDGE, IT'S NOT AN INDEPENDENT CONCURRENT CAUSE.

19 MR. HELM: UNLESS IT'S A BUT-FOR CAUSE.

20 MS. STEIN: UNLESS IT'S A BUT-FOR CAUSE.

03:23PM

21 AND THEN THE LAST PARAGRAPH NEEDS TO BE
22 GIVEN TO THE JURY. AND I DON'T THINK THEY'VE MADE THAT
23 SHOWING AT ALL.

24 THE COURT: JUST HOLD ON A MINUTE.

25 IS 431 STILL IN HERE AS A DISPUTED ONE,
26 ALSO?

03:23PM

27 MS. STEIN: I DON'T THINK IT'S IN HERE. I
28 DON'T THINK ANYONE HAS PROPOSED IT.

1 MS. ESTRICH: WE SUGGESTED IT IN RESPONSE TO
2 THEIR INSTRUCTION.

3 THE COURT: BUT WE DON'T HAVE IT HERE.

4 MS. ESTRICH: I'M HAPPY TO PROVIDE IT TO YOU.

5 THE COURT: I DON'T HAVE TIME TO HAVE THINGS
6 PROVIDED ON AN ONGOING BASIS THROUGH SUNDAY NIGHT AT
7 11 O'CLOCK.

03:23PM

8 MS. ESTRICH: I UNDERSTAND.

9 THE COURT: ALL RIGHT.

10 SO I MADE A NOTE, I'M GOING TO LOOK AT
11 430.

03:23PM

12 BUT LET'S FINISH UP WITH -- AND THAT
13 WILL BE DETERMINATIVE OF THE LAST PARAGRAPH OF 5 AND
14 HOW WE COME OUT ON 430. BECAUSE THAT SHOULD BE THE
15 SAME AS WHATEVER WE GOT FOR SUBSTANTIAL FACTOR.

03:24PM

16 MS. STEIN: CORRECT, YOUR HONOR.

17 MS. ESTRICH: CORRECT, YOUR HONOR.

18 THE COURT: AND DID WE AGREE, WHATEVER OF
19 THESE ARE BEING TO BE DELETED?

20 MR. MADISON: I'M STILL WAITING TO HEAR, YOUR
21 HONOR.

03:24PM

22 COULD WE PASS THAT, AND COME BACK TO IT?

23 THE COURT: YEAH.

24 MR. EMANUEL: YOUR HONOR, WE'RE GOING TO HAVE
25 TO TYPE THIS INSTRUCTION UP TO FINALIZE IT ANYWAY. I
26 DON'T THINK THERE WILL BE ANY DIFFICULTY IN AGREEING
27 THESE ARE THE ONES LEFT.

03:24PM

28 THE COURT: IT'S TO BE GIVEN AS AGREED.

1 I'LL JUST LEAVE IT. YOU ARE GOING TO
2 GET IT FINALIZED.

3 MR. MADISON: OKAY.

4 THE COURT: YEAH, ON DEFENDANT'S SPECIAL
5 NUMBER 10, THE ONLY ISSUE IS ITS APPLICATION -- IT
6 SEEMS TO ME, THE ONLY ISSUE IS ITS POSSIBLE APPLICATION
7 OF THE PROGRAMMING EFFORT.

03:25PM

8 AND MY INCLINATION IS TO REJECT IT.
9 OTHERWISE, IT BECOMES A RATHER INNOCUOUS STATEMENT, NOT
10 TIED TO ANYTHING IN THE CASE.

03:25PM

11 AND I DON'T KNOW IF YOU WANT TO TELL ME
12 WHERE YOU THINK THIS REALLY FITS, BUT I'LL THINK ABOUT
13 IT.

14 MR. HELM: I THINK IT IS THE PROGRAMMING
15 EFFORT, YOUR HONOR, THAT -- IT'S ONE THING TO SAY --
16 AND THEY ARE MAKING THE ARGUMENT THAT IT WAS COPIED.
17 AND IF IT WAS, THAT WILL BE ARGUED BEFORE THE JURY AND
18 DECIDED.

03:25PM

19 BUT WE THINK IT IS EXTREMELY IMPORTANT
20 THAT THE JURY KNOW THAT SIMPLY BECAUSE YOU LEARNED HOW
21 TO PROGRAM THINGS WELL AT A PRIOR JOB, IF YOU COME TO
22 THE NEW JOB, THAT DOESN'T MEAN YOU ARE STEALING TRADE
23 SECRETS. THE EXPERIENCE THAT YOU LEARNED IN DOING IT
24 ONCE, WHICH ALLOWS TO YOU DO IT FASTER THE SECOND TIME,
25 BELONGS TO YOU; ESPECIALLY IN CALIFORNIA, WHICH SO
26 STRENUOUSLY PROTECTS EMPLOYEE MOBILITY RIGHTS.

03:25PM

03:26PM

27 THE COURT: I'M GOING TO GIVE IT.

28 AND THAT'S NOT A VERY STRONG ARGUMENT ON

1 THAT ISSUE. I DON'T THINK WE'VE GOT ANY EVIDENCE.

2 MR. MOORE, WE HAD HIS DEPOSITION
3 TESTIMONY, AND WE'VE HAD ONE OTHER -- WE HAD LIVE
4 TESTIMONY OF ONE PROGRAMMER, OR NOT?

5 MR. MOORE, HE WASN'T -- HE SAID, I JUST
6 DID IT ON MY OWN. AND ALL WE HAVE IS MR. HICKS LINING
7 SOME THINGS UP AND SAYING, THIS IS WHY IT'S THE SAME.
8 SO THIS -- THERE'S NO REAL EVIDENCE ON THIS ISSUE. SO,
9 ALL RIGHT. NEXT IS --

03:26PM

10 MS. STEIN: NUMBER 19, YOU HAD APPROVED AT THE
11 LAST HEARING.

03:26PM

12 THE COURT: I APPROVED IT AT THE AUGUST 22
13 HEARING, ALTHOUGH I SAID -- I HAVE THOSE NOTES HERE.
14 IF I COULD GET THEM BACK ON TRACK.

15 MS. ESTRICH: I APOLOGIZE, YOUR HONOR.

03:27PM

16 THE COURT: I SAID I WAS GOING TO OBJECT --
17 OVERRULE THE OBJECTION, SUBJECT TO DEFENDANT'S RIGHT TO
18 FURTHER CLARIFY THE INSTRUCTION.

19 MY NOTE IS, IT'S NOT NECESSARY. THERE'S
20 NO EVIDENCE ON USE OF CUSTOMER LISTS TO ANNOUNCE THE
21 NEW BUSINESS.

03:27PM

22 AND WHERE IS MR. HELM?

23 MR. HELM: YOUR HONOR, THAT'S THE WAY THAT
24 THIS LIST, THE PARTICIPANTS LIST FROM THE SEPTEMBER
25 CALL WAS USED, WAS MS. VANEVERY SENT AROUND AN
26 E-MAIL --

03:27PM

27 THE COURT: RIGHT.

28 MR. HELM: -- TO PEOPLE, BASED ON THAT USE.

1 WE THINK THAT YOU CAN FAIRLY ARGUE THAT
2 THAT E-MAIL IS NOTHING MORE THAN ANNOUNCING A NEW
3 AFFILIATION. THERE IS NO SOLICITATION CONVEYED IN THAT
4 E-MAIL.

5 THE COURT: SHE DIDN'T SEND IT.

03:28PM

6 THE TELEPHONE CONFERENCE CALL PROVIDER
7 USED THE LIST.

8 MR. HELM: NO, YOUR HONOR, THAT'S NOT THE
9 CASE.

10 THERE WAS A LIST OF E-MAILS FOR -- THE
11 PARTICIPANTS LIST.

03:28PM

12 THE EVIDENCE IS, SHE WENT TO HER GOOGLE
13 ACCOUNT, SHE PUT THEM IN 10 AT A TIME, INTO THE
14 ADDRESS, AND SHE SENT E-MAILS TO THEM.

15 AND WE HAVE THE E-MAIL IN EVIDENCE.

03:28PM

16 AND WE THINK THAT THE JURY NEEDS TO BE
17 INSTRUCTED WHAT THE LAW IS, SO THAT WE CAN ARGUE THAT
18 THAT E-MAIL DID NOTHING MORE THAN ANNOUNCE A NEW
19 AFFILIATION, IF THEY WANT TO ARGUE DIFFERENTLY, THAT'S
20 FINE, BUT THE JURY NEEDS TO KNOW WHAT THE STANDARD IS,
21 SO WE CAN MAKE THAT ARGUMENT WITH RESPECT TO THAT
22 E-MAIL.

03:28PM

23 MS. ESTRICH: YOUR HONOR, I APOLOGIZE. OUR 32
24 SHOULD HAVE HAD A PAGE NUMBER ON IT. IT'S PAGE 195.

25 AND IT SIMPLY STATES, CONSISTENT WITH
26 THE LAW, THAT YOU CAN'T USE TRADE SECRETS TO SOLICIT A
27 FORMER --

03:28PM

28 THE COURT: IT'S NOT A TRADE SECRET. IT'S NOT

1 IN THE TRADE SECRET LIST, 'CAUSE I TOOK IT OFF, AND
2 SAID IT WASN'T GOING TO HAPPEN.

3 MS. ESTRICH: THAT'S JUST WHAT I TOLD
4 MR. MADISON.

5 THE COURT: NO. SO IT'S NOT ON THE TRADE
6 SECRET LIST.

7 MS. ESTRICH: THAT'S TRUE.

8 BUT THE INSTRUCTION SAYS EVEN IF THOSE
9 CUSTOMER LISTS ARE TRADE SECRETS, I DON'T THINK WE NEED
10 THAT, BECAUSE IT WOULD SUGGEST YOU COULD USE ANY TRADE
11 SECRET.

12 THE COURT: WELL, I THINK WE'RE
13 OVER-INSTRUCTING, QUITE FRANKLY.

14 BUT I'LL TELL YOU WHAT. I'LL GIVE
15 DEFENDANT'S 19, AND I'LL GIVE PLAINTIFF'S 32.

16 MS. ESTRICH: 195.

17 MR. HELM: I THOUGHT, YOUR HONOR, JUST
18 REJECTED -- OH, 32?

19 THE COURT: WELL, I'M SAYING YOUR 19.

20 I PREVIOUSLY SAID I'D GIVE IT, BUT I'D
21 LET THEM TALK ABOUT IT.

22 MY NOTES, I DIDN'T THINK IT REALLY FELL
23 INTO THE USE.

24 I DIDN'T REALIZE THAT MS. VANEVERY HAD
25 SENT THESE E-MAILS. I THOUGHT SHE SENT THIS TO
26 MR. GUNDLACH. "HERE'S THE LIST YOU WERE LOOKING FOR,"
27 AND THAT THEY USED THAT LIST WITH THEIR VENDOR FOR THE
28 CONFERENCE CALL, WAS MY UNDERSTANDING.

03:29PM

03:29PM

03:29PM

03:29PM

03:30PM

1 MR. HELM: NO, YOUR HONOR, THAT --

2 THE COURT: DO YOU HAVE A DIFFERENT VIEW OF
3 THAT?

4 MR. MADISON: WELL, I THINK IT'S MORE
5 COMPLICATED.

03:30PM

6 THE INFORMATION ORIGINATES WITH TCW. IT
7 GOES TO THE PROVIDER. IT COMES BACK TO TCW, THEN
8 MS. VANEVERY FORWARDS IT ON.

03:30PM

9 THERE'S ANOTHER PROBLEM HERE, YOUR
10 HONOR, WHICH IS THAT FIRST WEEK THAT THEY WERE OUT,
11 THEY HAVEN'T ANY NEW AFFILIATION. THAT'S NOT WHY THEY
12 WERE USING THAT LIST.

13 INSTEAD, THEY WERE TALKING ABOUT THE
14 SPECIFIC INVESTMENTS.

15 SO I DON'T THINK IT FITS FOR THAT
16 REASON, EITHER.

03:30PM

17 THE COURT: WELL, THE CONFERENCE CALLS WERE ON
18 DECEMBER 16TH AND 29TH?

19 MS. STEIN: 22ND AND 29TH.

20 THE COURT: 22ND AND 29TH?

03:30PM

21 MR. HELM: THIS ONE, I THINK, WAS ON
22 DECEMBER 8TH.

23 MR. MADISON: THE ONE WE'RE TALKING ABOUT WAS
24 IN THE FIRST WEEK, ON DECEMBER 8TH.

25 AND THERE'S NO NEW AFFILIATION.

03:31PM

26 THE COURT: THEN HOW COULD THEY BE ANNOUNCING
27 THE AFFILIATION?

28 MR. HELM: WELL, I DON'T HAVE THE E-MAIL HERE.

1 BUT I THINK THEY AT THAT POINT, THEY HAD
2 DECIDED THAT THEY WERE GOING TO JOIN TOGETHER AND TRY
3 TO WORK TOGETHER. THEY MAY NOT HAVE FORMED --

4 THE COURT: WELL, I'VE GOT TO SEE IT.

5 IF YOU CAN'T SHOW IT TO ME --

6 WHAT DOES THE E-MAIL SAY?

7 MR. MADISON: I CAN PULL IT, YOUR HONOR. I
8 HAVE THE EXHIBITS HERE.

9 THE COURT: WELL, GET IT.

10 MR. MADISON: WE DON'T HAVE THE WITNESS
11 NOTEBOOKS HERE, BUT I KNOW THE EXHIBIT NUMBER, YOUR
12 HONOR, SO I CAN PULL IT RIGHT NOW.

13 THE COURT: WHAT'S THE EXHIBIT NUMBER?

14 DID THE E-MAIL ANNOUNCE A NEW
15 AFFILIATION?

16 MR. MADISON: IT DIDN'T, YOUR HONOR.

17 MR. HELM: WELL, LET'S TAKE A LOOK.

18 I BELIEVE THAT IT DID. I THINK YOU CAN
19 SAY -- WHAT THIS ALLOWS, AS LONG AS YOU DON'T SOLICIT A
20 CLIENT, YOU CAN SAY, I'M LEAVING, AND I'M GOING TO BE
21 OFF ON MY OWN NOW. IT'S NOT LIMITED TO SAYING --

22 THE COURT: WELL, I'M NOT GIVING AN
23 INSTRUCTION, MR. HELM, THAT SAYS PARTING EMPLOYEES MAY
24 USE CUSTOMER LISTS TO ANNOUNCE NEW AFFILIATION, IF
25 THERE IS NO ANNOUNCEMENT OF A NEW AFFILIATION.

26 MR. HELM: I UNDERSTAND, YOUR HONOR. WE'RE
27 GOING TO LOOK AT THE DOCUMENT.

28 THE COURT: EVEN IF THOSE CUSTOMER LISTS ARE

03:31PM

03:32PM

03:33PM

03:33PM

03:33PM

1 TRADE SECRETS.

2 NOW, WE HAVE NO TRADE SECRET ISSUE IN
3 THIS LIST ANYMORE; SO WE CAN TAKE THAT PART OUT, AT ANY
4 RATE.

5 I TEND TO THINK THAT THE DECEMBER 8TH CALL WAS
6 DIRECTED ONLY TO THE SMCF, WASN'T IT? 03:34PM

7 MS. STEIN: NO. NOT THAT ONE, THE OTHER TWO.

8 THE COURT: OKAY.

9 ALL RIGHT. WE'VE GOT TO MOVE ALONG NOW.
10 WHAT DOES IT SAY? 03:35PM

11 I'M LOOKING AT EXHIBIT 588.

12 ALL RIGHT. I'LL GIVE 19.

13 MS. STEIN: WITH THE LAST PART IN OR OUT, YOUR
14 HONOR?

15 THE COURT: AND THE LAST PART, "EVEN IF THOSE
16 CUSTOMER LISTS ARE TRADE SECRETS," WE'LL JUST TAKE IT
17 OUT. 03:35PM

18 MS. STEIN: OKAY. FINE, YOUR HONOR. THANK
19 YOU.

20 MR. MADISON: CAN I RETRIEVE THAT EXHIBIT? 03:36PM

21 THE COURT: YES. YOU MAY KEEP YOUR BINDER
22 FULL.

23 MR. MADISON: THANK YOU.

24 I WISH I'D NEVER FOUND IT. GEEZ.

25 MS. STEIN: NUMBER 12, YOUR HONOR, WE HAD
26 AGREED YESTERDAY ON A SUBSTITUTE. 03:36PM

27 THE COURT: I JUST WANT TO CLARIFY THAT 19 AND
28 PLAINTIFF'S 32 WILL BE GIVEN.

1 MS. STEIN: YOUR HONOR, CAN WE TALK ABOUT
2 PLAINTIFF'S 32, PLEASE? I THINK IT --

3 THE COURT: WELL, IT'S THE SAME; BASICALLY A
4 FLIP SIDE OF THIS.

5 MS. STEIN: WELL, WE'RE FINE WITH IT FOR THE
6 FIRST CLAUSE, "THE FORMER DIRECTOR, OFFICER,
7 EMPLOYER -- EMPLOYEE, HAS A RIGHT TO LAWFULLY SOLICIT
8 CLIENTS OF HIS OR HER FORMER EMPLOYER".

03:36PM

9 BUT THEN WE GO, "PROVIDED HE OR SHE DOES
10 NOT USE CORPORATION'S TRADE SECRETS, CONFIDENTIAL,
11 PROPRIETARY INFORMATION, DOES NOT UNLAWFULLY
12 INTERFERE". THAT'S ALL REDUNDANT TO A HOST OF
13 INSTRUCTIONS THAT YOU WERE GOING TO BE GIVING THE JURY,
14 AND WHAT PEOPLE CAN'T DO.

03:36PM

15 THE COURT: ARE WE -- ARE THOSE COVERED ON THE
16 OTHER INSTRUCTIONS?

03:37PM

17 MS. STEIN: YES. THAT IT'S IMPROPER TO
18 MISAPPROPRIATE TRADE SECRETS, THAT IT'S IMPROPER TO
19 INTERFERE, YES.

20 MS. ESTRICH: COULD YOU CITE ME TO THE
21 INSTRUCTION, JUST SO I CAN CHECK?

03:37PM

22 MS. STEIN: WELL, WE HAVE -- IT'S THE WHOLE
23 SECTION ON MISAPPROPRIATION OF TRADE SECRETS.

24 THE JURY IS BEING INSTRUCTED THAT IT'S
25 IMPROPER MISAPPROPRIATION OF TRADE SECRETS. THE JURY
26 IS BEING INSTRUCTED IT'S -- THIS IS UNNECESSARY, YOUR
27 HONOR.

03:37PM

28 THE COURT: SO IT IS DUPLICATIVE OF THE

1 INSTRUCTIONS WE'RE GIVING ON TRADE SECRETS, ON THE USE
2 OF CONFIDENTIAL AND PROPRIETARY INFORMATION, AND
3 UNLAWFUL INTERFERENCE?

4 MS. STEIN: YES, YOUR HONOR.

5 THE COURT: AND WE HAVE INSTRUCTIONS ON ALL
6 THESE TOPICS?

7 MS. STEIN: YES, YOUR HONOR.

03:37PM

8 MR. MADISON: BUT THIS IS THE PROBLEM WE HAVE
9 WHEN WE START GIVING VERY SPECIFIC INSTRUCTIONS TO
10 SUPPORT SPECIFIC ARGUMENTS.

03:38PM

11 IF DO YOU GIVE THAT 19, THEN OUR
12 POSITION IS, WE SHOULD BE ENTITLED TO 32, WHICH IS
13 FRANKLY, A MORE CORRECT STATEMENT.

14 THE COURT: NO. 19 IS INNOCUOUS, AND
15 BASICALLY JUST SAYS YOU CAN USE A CUSTOMER LIST TO
16 ANNOUNCE A NEW AFFILIATION. THAT'S ALL WE'RE SAYING.

03:38PM

17 SO WE'LL GET 19.

18 32, I'LL LEAVE ON THE TABLE, AND LET YOU
19 ALL THINK ABOUT IT FOR A WHILE.

20 MS. ESTRICH: THANK YOU, YOUR HONOR.

03:38PM

21 THE COURT: AND WE'LL GET TO IT.

22 WHAT'S THE MATTER WITH DEFENDANT'S 12?

23 MS. STEIN: WE REACHED AN AGREEMENT YESTERDAY,
24 YOUR HONOR, THAT COMBINED TCW'S SPECIAL INSTRUCTION 23A
25 AND DEFENDANT'S 12.

03:38PM

26 MS. ESTRICH: THAT'S ADDRESSED.

27 MS. STEIN: SO WE DON'T NEED -- WE ALREADY ALL
28 AGREED ON IT YESTERDAY.

1 THE COURT: OKAY. SO I'M GOING TO SAY
2 DEFENDANT'S 12 AND 23A COMBINED, TO BE GIVEN, AS
3 AGREED.

4 MS. STEIN: THANK YOU, YOUR HONOR.

5 THE COURT: ALL RIGHT.

03:39PM

6 DID WE DO THAT YESTERDAY, WHILE YOU WERE
7 HERE?

8 MS. STEIN: PARDON ME?

9 MS. ESTRICH: I THINK WE DID.

10 MS. STEIN: WE DID, YOUR HONOR.

03:39PM

11 MS. ESTRICH: WE WERE JUST MAKING THE POINT
12 THAT THE COMBINATIONS --

13 THE COURT: ALL RIGHT.

14 ON DEFENDANT'S 30A, I APPROVED THIS ON
15 JULY 12TH. AND MY ONLY NOTE WAS -- AND I'M INCLINED TO
16 GIVE IT.

03:39PM

17 AND MY ONLY QUESTION WAS TO CONSIDER
18 WITH 2203.

19 MS. ESTRICH: WE HAVE NO PROBLEM WITH THAT
20 ONE, YOUR HONOR. WE SUBMIT.

03:40PM

21 THE COURT: OKAY.

22 ALL RIGHT. 30A WILL BE GIVEN AS
23 REQUESTED.

24 WAIT A MINUTE.

25 MR. EMANUEL: 31A, YOUR HONOR.

03:40PM

26 THE COURT: I'M LOOKING AT 30A.

27 MS. ESTRICH: 30A.

28 THE COURT: I HAVEN'T GOT TO 31A.

1 MS. ESTRICH: 30A IS GIVEN AS REQUESTED.

2 THE COURT: 31A?

3 MS. ESTRICH: IS MY SAME PROBLEM.

4 MR. HELM: THIS IS THE SUBSTANTIAL FACTOR
5 ISSUE.

03:40PM

6 THE COURT: WELL, YEAH. AND I HAVE A QUESTION
7 WHETHER THAT LAST PARENTHETICAL, THAT IS THAT ABSENT
8 MISCONDUCT --

9 MS. ESTRICH: IT'S THE --

10 THE COURT: SO I'LL PUT THAT IN THE ALSO
11 CONSIDER --

03:40PM

12 MS. ESTRICH: AND THAT'S OUR INTENTIONAL
13 INTERFERENCE CLAIM.

14 MS. STEIN: YOUR HONOR, I JUST MIGHT DIRECT
15 YOUR ATTENTION TO SEVERAL OF THE CASES CITED THERE.

03:40PM

16 THE DRYDEN (PHONETIC) TRI-VALLEY CASE,
17 THE YOUST V LONGO CASE, WHICH WAS CITED IN SUPPORT OF
18 430. THEY ALL SPEAK OF BUT-FOR IN CONNECTION WITH
19 INTENTIONAL TORTS; IN PARTICULAR, INTERFERING TORTS.

20 MS. ESTRICH: I DON'T HAVE A PROBLEM WHERE
21 THERE IS NO CLAIM OF CONCURRENT INDEPENDENT CAUSES.

03:41PM

22 BUT WHERE THERE IS SUCH A CLAIM, THE
23 COURTS HAVE MADE CLEAR THAT A SUBSTANTIAL FACTOR TEST
24 CAN BE MET, EVEN THOUGH THERE WERE TWO CAUSES, EITHER
25 ONE --

03:41PM

26 THE COURT: WELL, IF IT'S CONCURRENT CAUSES
27 VERSUS CONCURRENT INDEPENDENT CAUSES, THERE'S A
28 DISTINCTION THERE. AND YOU CAN'T JUST --

1 MS. ESTRICH: I AGREE.

2 BUT IN THE TORTIOUS INTERFERENCE CLAIM,
3 I BELIEVE THE ARGUMENT IS THAT INDEPENDENTLY OF WHAT
4 MR. GUNDLACH WAS SAYING, THAT THESE INDIVIDUALS WOULD
5 HAVE BROKEN THEIR CONTRACT.

03:41PM

6 MS. STEIN: BUT THEN THEY HAVE TO MAKE A
7 SHOWING THAT MR. GUNDLACH'S STATEMENTS ALONE WOULD HAVE
8 BEEN SUFFICIENT TO CAUSE HIM TO MAKE A CHANGE.

9 THE COURT: I'LL LOOK AT THESE.

10 BUT MY RECOLLECTION IS, AND I GOT INTO
11 THIS IN TWO OTHER CASES, BUT THERE'S A CONCURRENT
12 INDEPENDENT CAUSE, AND THERE'S ALSO JUST CONCURRENT
13 CAUSES.

03:42PM

14 AND IN THE CONCURRENT CAUSE SITUATION,
15 IT'S A BLANDER AND A MUCH SIMPLER CONCEPT OF WHAT
16 CONSTITUTES SUBSTANTIAL FACTOR, AND YOU DON'T HAVE ANY
17 BUT-FOR ANALYSIS. I DON'T THINK, BUT I DON'T KNOW.

03:42PM

18 I'LL -- LET ME LOOK AT THEM. I'VE
19 HIGHLIGHTED IT AND I'VE MADE THE NOTES.

20 MS. ESTRICH: THE RESTATEMENT GOES INTO THIS,
21 AS WELL. AND WE HAVE SOME CASES WHICH YOU'VE PROBABLY
22 ALREADY READ.

03:42PM

23 THE COURT: WELL, I DON'T KNOW.

24 SO WE'LL HAVE TO KEEP THAT ONE IN THE
25 HIGHLIGHTED LIST. AND WE'LL JUST HAVE MAKE A DECISION
26 ON THAT, IF IT'S GOING TO GO THROUGH ALL OF THEM.

03:42PM

27 MS. ESTRICH: WE UNDERSTAND.

28 THE COURT: AND I THINK -- IN ANY EVENT, LET

1 ME JUST SAY THIS: HOWEVER I DETERMINE THAT THE
2 SUBSTANTIAL FACTOR INSTRUCTION IS GIVEN, I DON'T THINK
3 WE NEED TO REPEAT EVERYTHING EVERY TIME.

4 SO FROM THAT PERSPECTIVE, 31A, WE SHOULD
5 JUST TAKE OUT THE -- AND THEN ABSENT THE CONTRACT, TCW
6 WOULD NOT HAVE SUFFERED DAMAGES CLAIMED. BECAUSE THE
7 SUBSTANTIAL FACTOR DEFINITION IS GOING TO BE IN THE
8 SUBSTANTIAL FACTOR INSTRUCTION.

03:43PM

9 MS. ESTRICH: WE AGREE, YOUR HONOR. THESE ARE
10 GETTING ENDLESS.

03:43PM

11 THE COURT: AND IT DIDN'T HAVE TO BE REPEATED
12 EVERY TIME.

13 MR. HELM: OVER AND OVER.

14 MS. STEIN: IF YOU ARE NOT GOING TO ADD THAT
15 CLAUSE, I DON'T THINK THE INSTRUCTION ADDS MUCH,
16 BECAUSE I THINK IT'S IN THE CASI PROBABLY. BUT WE CAN
17 CHECK.

03:43PM

18 THE COURT: YEAH.

19 MS. ESTRICH: WELL, WE HAVE MANY INSTRUCTIONS.

20 THE COURT: IT'S IN THE ELEMENT OF THE FACT --
21 SO WHY DON'T WE JUST LEAVE IT OUT? WHY DO WE NEED IT?

03:43PM

22 MS. ESTRICH: WE DON'T KNOW.

23 MS. STEIN: WELL, THE REASON WE PUT IT THERE,
24 YOUR HONOR IS BECAUSE THERE'S A DEVELOPED AREA OF CASE
25 LAW IN THE INTERFERENCE ARENA WHICH STATES THAT IT IS
26 THE PLAINTIFF'S BURDEN TO SHOW THAT THE CONTRACT
27 OTHERWISE WOULD HAVE BEEN PERFORMED, OR THE HARM NOT
28 OCCURRED.

03:43PM

1 HAVE ONE INSTRUCTION HERE?

2 MS. STEIN: THEY HAD BEEN 37 AND 38 IN PRIOR
3 ITERATIONS. THE COURT SUGGESTED WE COMBINE THEM.

4 ONE SAID YOU CANNOT BE FOUND LIABLE FOR
5 INTENTIONAL INTERFERENCE, FOR MAKING SUBSTANTIALLY TRUE
6 STATEMENTS.

03:45PM

7 AND A SEPARATE ONE SAID FOR MAKING
8 STATEMENTS OF OPINION.

9 AS YOU RECALL, THE COURT THOUGHT IT BEST
10 TO PUT IT IN ONE INSTRUCTION, AND THAT'S WHAT WE DID.

03:45PM

11 THE COURT: DO YOU WANT TO BE HEARD ON THAT?

12 MR. EMANUEL: YES, YOUR HONOR.

13 I DON'T HAVE A PROBLEM IF THE DEFENDANT
14 IS GOING TO SAY I STATED TRUE FACTS TO THE CUSTOMERS.
15 I AGREE THE INSTRUCTION ON TRUTH SHOULD BE GIVEN.

03:46PM

16 BUT THE AMBIGUITY IS, IT SUGGESTS IF ANY
17 STATEMENT WAS TRUE, THEN THERE'S NO CAUSE OF ACTION.
18 IT'S GOT TO GO STATEMENT BY STATEMENT. I THINK THAT
19 PROBLEM COULD BE WORKED OUT.

20 THE MORE SERIOUS PROBLEM IS OPINION.
21 SIMPLY BECAUSE I SAY I THINK SOMEONE'S A LIAR, THAT
22 DOESN'T MAKE THAT CONSTITUTIONALLY PROTECTED OPINION.
23 THAT IMPLIES A STATEMENT OF FACT.

03:46PM

24 AT THE MOMENT -- AND OBVIOUSLY YOUR
25 HONOR HAS BEEN SITTING THERE, AND I HAVEN'T. I'M NOT
26 SURE WHAT EVIDENCE THEY HAVE THAT "OH, ALL I EVER DID
27 WAS GIVE AN OPINION, WHICH NO ONE COULD HAVE
28 MISUNDERSTOOD AS ANYTHING OTHER THAN MY OPINION."

03:46PM

1 THE COURT: THAT ISN'T THE ARGUMENT.

2 AND THERE WERE STATEMENTS OF FACT THAT
3 WERE NOT ACCURATE, WHEN LOOKING AT THE SPECIAL MORTGAGE
4 CREDIT FUND AGREEMENTS.

5 HE WAS JUST MISTAKEN. AND HE MAY HAVE
6 MADE THOSE STATEMENTS, AND THEY WEREN'T TRUTH OR
7 OPINION, SO --

03:47PM

8 MS. STEIN: I DON'T THINK THIS INSTRUCTION --
9 IT CERTAINLY WASN'T DESIGNED TO INSULATE OTHER
10 STATEMENTS FROM STATEMENTS OF OPINION. IT WAS FOR THE
11 JURY TO BE ABLE TO PARSE THROUGH THE VARIOUS THINGS
12 THAT MR. GUNDLACH IS CHARGED WITH, AND TO ELIMINATE
13 CERTAIN OF THOSE THINGS FROM ITS CONSIDERATION OF
14 TORTIOUS INTERFERENCE.

03:47PM

15 THE COURT: WHAT'S THE CASI ON INTERFERENCE
16 WITH CONTRACTUAL RELATIONS?

03:47PM

17 WE'RE GIVING THAT, AREN'T WE?

18 MR. EMANUEL: I BELIEVE SO.

19 MS. STEIN: IT DOES NOT SPEAK TO TRUTH OR
20 OPINION, YOUR HONOR, AT ALL.

03:47PM

21 MR. EMANUEL: THAT IS CORRECT. THIS CONCEPT
22 IS NOT IN CASI.

23 MS. STEIN: IT'S 2201. IT'S IN THIS BOOK.

24 THE COURT: SOMEWHERE.

25 MS. STEIN: IT'S UNDER A LITTLE TAB THAT SAYS
26 INTERFERENCE.

03:48PM

27 IT'S PAGE 31, YOUR HONOR.

28 MR. EMANUEL: BUT, YOUR HONOR, WILL SEE THAT

1 THIS IS AN ANALOGY TO THE DEFAMATION CASES, WHERE THIS
2 ISSUE COMES UP REPEATEDLY.

3 AND THE PROBLEM THERE IS, IT'S ACTUALLY
4 THE COURT'S JOB TO FIRST DECIDE WHETHER OR NOT IT'S
5 OPINION OR NOT.

03:48PM

6 AND THEN WE GO ON FROM THERE. THE COURT
7 SAYS, IT COULD BE AN OPINION, OR MIGHT NOT BE.

8 THEN THE COURT GIVES THE JURY
9 INSTRUCTIONS ON HOW TO DECIDE BETWEEN OPINION AND --

10 THE COURT: I'M GOING TO REJECT 37A AND -- 37
11 AND 38A AS COMBINED.

03:48PM

12 MR. HELM: BY JUST GETTING RID OF THE "MAKING
13 STATEMENTS OF OPINION" AND LEAVING IN "SUBSTANTIALLY
14 TRUE"?

15 THE COURT: I DON'T THINK IT HAS -- I'M
16 LOOKING AT THE 2201. THAT'S ENOUGH. THE JURY CAN
17 FIGURE IT OUT. THEY KNOW WHAT THEY HAVE TO DO.

03:48PM

18 AND THIS JUST -- THE MORE YOU ABUSE IT,
19 THE WORSE IT IS.

20 MR. HELM: WELL, I THOUGHT I HEARD THAT THEY
21 DIDN'T HAVE AN OBJECTION TO THE TRUTH REQUIREMENT,
22 WHICH IS A CONSTITUTIONAL REQUIREMENT.

03:49PM

23 MS. ESTRICH: WE JUST THINK IT'S UNNECESSARY.

24 MR. EMANUEL: I WOULDN'T, IF THEY IDENTIFIED A
25 STATEMENT THEY SAID IS TRUE.

03:49PM

26 BUT AS YOUR HONOR POINTED OUT, THE
27 EVIDENCE, AS FAR AS I HAVE HEARD IS, THEY MADE FALSE
28 STATEMENTS.

1 THE COURT: WELL, THERE WERE TRUE STATEMENTS
2 AND FALSE STATEMENTS.

3 MR. EMANUEL: AND THE JURY IS NOT GOING TO
4 HOLD THEM LIABLE FOR TRUE STATEMENTS; THEY ARE GOING TO
5 HOLD THEM LIABLE FOR THE FALSE STATEMENTS.

03:49PM

6 MS. STEIN: I DON'T THINK THAT'S NECESSARILY
7 TRUE.

8 MR. HELM: IT SAYS THEY HAVE TO BE
9 SUBSTANTIALLY TRUE. THAT'S THE IMPORTANT THING.

10 MR. MADISON: THAT'S ARGUMENT, YOUR HONOR.

03:49PM

11 WE'RE NOT GOING TO ARGUE THAT TRUE STATEMENTS --

12 THE COURT: I WON'T GIVE 37 AND 38A AS
13 COMBINED.

14 ALL RIGHT. NOW, WE'RE OVER TO
15 CONSPIRACY.

03:49PM

16 MS. STEIN: NO. WE HAVE ONE MORE, YOUR HONOR,
17 103 -- ON PAGE 103.

18 THE COURT: WAIT A MINUTE.

19 MS. STEIN: AND THIS WAS APPROVED BY THE
20 COURT.

03:50PM

21 THE COURT: I'LL GIVE -- IT'S DEFENDANT'S 33?

22 MS. STEIN: YES.

23 THE COURT: ALL RIGHT.

24 MR. EMANUEL: WOULD THE RECORD REFLECT THAT
25 IT'S OVER THE PLAINTIFF'S OBJECTION?

03:50PM

26 THE COURT: YEP.

27 MR. EMANUEL: THANK YOU, YOUR HONOR.

28 THE COURT: OKAY. IN LOOKING AT DEFENDANT'S

1 3600, PLAINTIFFS ALSO PROPOSE 3600.

2 AND I FOUND THAT -- WHAT PAGE IS THAT
3 ON?

4 MS. STEIN: THAT'S IN THE OTHER BOOK, YOUR
5 HONOR. I THINK WE DID THIS YESTERDAY.

03:50PM

6 THE COURT: I MUST HAVE GONE AND LOOKED AT IT.
7 NEED TO CONSIDER OTHER NON-PARTIES, NEED
8 TO CONSIDER INTERFERENCE.

9 IS THERE ANY EVIDENCE, ANY PARTS OF --
10 AND VANEVERY.

03:51PM

11 AND THEN I SAID I WOULD GIVE THE
12 DEFENDANT'S PROPOSED 3600, BUT IT NEEDS TO BE CLEANED
13 UP, AND THE TWO OF YOU NEED TO GO THROUGH IT.

14 BECAUSE THERE WERE SOME COMBINATIONS
15 THAT WEREN'T APPROPRIATE.

03:51PM

16 MR. EMANUEL: YES, YOUR HONOR. THAT WAS YOUR
17 INSTRUCTION YESTERDAY.

18 THE COURT: AND WHERE ARE YOU ON THAT PROCESS?

19 MS. STEIN: I'M A LITTLE CONFUSED, WHAT WE
20 WERE GOING TO BE DOING.

03:51PM

21 THE COURT: WELL, WE TALKED ABOUT IT
22 YESTERDAY, BECAUSE IT WAS IN THE BACK OF THE BOOK,
23 UNDER THESE OTHER DISPUTED ONES.

24 MR. EMANUEL: FOR EXAMPLE, ONE, I REMEMBER OFF
25 THE TOP OF MY HEAD WAS THAT THIS REFERENCE TO
26 MISAPPROPRIATION WAS PREEMPTED BUT IT'S GOT TO GO OUT.

03:51PM

27 MS. STEIN: YES. THAT WAS COMING OUT, YES,
28 BUT I WASN'T SURE WHAT ELSE WE WERE DECIDING, YOUR

1 HONOR.

2 MR. EMANUEL: WELL, IT'S IN THE TRANSCRIPT,
3 I'M SURE.

4 MS. STEIN: IN OUR OBJECTIONS, YOUR HONOR, WE
5 BELIEVE THERE WASN'T EVIDENCE AS TO CONSPIRACY, AS TO
6 SEVERAL OF THE INDIVIDUAL DEFENDANTS.

03:51PM

7 THE COURT: I DON'T THINK THERE IS.

8 AND THERE'S STILL AN OPEN ISSUE AS TO
9 WHETHER IT SHOULD BE GIVEN AS TO OTHER PARTIES. NOT
10 UNNAMED CO-CONSPIRATORS, BECAUSE THERE'S NO ALLEGATION
11 OF A CONSPIRACY WITH UNNAMED CO-CONSPIRATORS.

03:52PM

12 AND I THINK WE'RE PUSHING THE ENVELOPE,
13 AS USUAL.

14 AND MY SENSE WAS, IT SHOULD BE
15 SIMPLIFIED.

03:52PM

16 I WOULD GIVE THE DEFENDANT'S VERSION,
17 BUT -- YOU KNOW, IT SHOULD BE NARROWED DOWN TO THOSE
18 PEOPLE WHO ARE -- IT'S BEEN ALLEGED AND ENGAGED IN A
19 CONSPIRACY. AND THAT'S IT.

20 MR. EMANUEL: I THINK, YOUR HONOR, MISSPOKE.
21 YOU MEAN PLAINTIFFS' VERSION?

03:52PM

22 THE COURT: PLAINTIFFS' VERSION.

23 MR EMANUEL: THANK YOU, YOUR HONOR.

24 MS. STEIN: BUT PLAINTIFFS' VERSION HAD
25 UNNAMED CO-CONSPIRATORS.

03:52PM

26 THE COURT: WE'LL TAKE THAT OUT.

27 MS. STEIN: OKAY. FINE.

28 FINE, YOUR HONOR. THANK YOU.

1 THE COURT: AND DO WE HAVE A BATTLE OVER THE
2 CLAIMS THAT ARE SUBJECT TO THESE CONSPIRACY
3 ALLEGATIONS?

4 MR. EMANUEL: WELL, YOUR HONOR RULED ON THAT.

5 THE COURT: WHAT DID I SAY? 03:53PM

6 MR. EMANUEL: YOU THREW OUT THE
7 MISAPPROPRIATION OF TRADE SECRETS. THAT COULD NOT BE
8 SUBJECT TO CONSPIRACY.

9 THE COURT: RIGHT.

10 MR. EMANUEL: SO WE WILL SUBMIT AN ALTERNATIVE 03:53PM
11 INSTRUCTION, ALTHOUGH I HOPE THE RECORD WILL REFLECT
12 THAT IT'S OVER OUR OBJECTION.

13 THE COURT: ALL OF THESE ARE OVER EVERYBODY'S
14 OBJECTION.

15 AND IT WILL BE ON THE BREACH OF 03:53PM
16 FIDUCIARY DUTY AND INTERFERENCE CLAIMS?

17 THE INTERFERENCE CLAIM IS ONLY DIRECTED
18 TO GUNDLACH. IS THERE ANY SUGGESTION THAT THERE'S A
19 CONSPIRACY ON THE INTERFERENCE CLAIM? BECAUSE MY
20 UNDERSTANDING IS THE INTERFERENCE CLAIM IS JUST OFF 03:53PM
21 THESE PHONE CALLS.

22 MR. MADISON: WELL, REMEMBER THERE'S AN E-MAIL
23 FROM MR. GUNDLACH, DIRECTING MR. LUCIDO TO CONTINUE
24 CONSTANTLY REACHING OUT FOR THE SPECIAL MORTGAGE CREDIT
25 FUND INVESTORS. 03:53PM

26 THE COURT: BUT I'M NOT SURE THAT THAT GOES TO
27 YOUR INTERFERENCE CLAIM.

28 MR. MADISON: THAT IS OUR INTERFERENCE CLAIM,

1 THOSE COMMUNICATIONS TO THOSE INVESTORS.

2 THE COURT: WELL, BUT YOU HAVE GOT TO HAVE
3 SOME SUBSTANTIAL COMMUNICATION THAT THERE WAS AN
4 INTERFERENCE. THERE'S A RIGHT TO SOLICIT. THERE'S A
5 RIGHT TO CONTACT.

03:54PM

6 INTERFERENCE IS, AS I UNDERSTAND IT,
7 BASED ON THOSE TWO PHONE CALLS. AND ALL THAT WAS BEING
8 THOUGHT, AND ALL THAT'S ATTRIBUTED TO MR. STERN'S
9 DECISION, RESULTS FROM THOSE CALLS, AND THE STATEMENTS
10 MADE IN THE CALLS AND THE TRANSCRIPTS.

03:54PM

11 NOW, AM I MISSING SOMETHING?

12 MR. MADISON: WELL, IT DOES GET BACK TO THE
13 LAW OF CONSPIRACY.

14 THE COURT: WHERE IS THE CONSPIRACY?

15 MR. MADISON: THE CONSPIRACY HAS MULTIPLE
16 OBJECTS. ONE OF THEM IS TO MISAPPROPRIATE TRADE
17 SECRETS; ANOTHER ONE IS TO --

03:54PM

18 THE COURT: AND THAT'S OUT.

19 MR. MADISON: ANOTHER ONE IS TO BREACH
20 FIDUCIARY DUTY.

03:54PM

21 THE COURT: WELL, I'M SAYING I'LL GIVE YOU THE
22 CONSPIRACY ON THE BREACH OF FIDUCIARY DUTY AND ASK HIM
23 WHERE THE EVIDENTIARY BASIS IS FOR INSTRUCTING ON A
24 CONSPIRACY TO INTERFERE WITH CONTRACTUAL RIGHTS? AND
25 QUITE FRANKLY, I'M NOT SURE IT'S THERE.

03:55PM

26 MR. MADISON: IT'S ONE CONSPIRACY WHICH HAS
27 MULTIPLE OBJECTS.

28 AND I THINK WHAT YOUR HONOR IS OBSERVING

1 IS THAT THE EVIDENCE APPEARS TO POINT TO MR. GUNDLACH
2 AS ACTUALLY COMMITTING THE OVERT ACTS OF THE
3 INTENTIONAL INTERFERENCE. THIS WAS ALL ONE OVERARCHING
4 CONSPIRACY. I THINK STEALING THE CLIENTS IS INCLUDED
5 IN THE WHOLE PLAN TO BREACH FIDUCIARY DUTY.

03:55PM

6 THE COURT: YOU HAVEN'T EVEN PROVED ANY CLIENT
7 WAS STOLEN. THERE'S NO EVIDENCE THAT ANY CLIENT WENT
8 FROM TCW TO GUNDLACH, OTHER THAN RELIANCE AND SYNTEX OR
9 IBEX?

03:55PM

10 MS. STEIN: ORIX.

11 MR. MADISON: I DON'T THINK IT WILL EVEN BE
12 DISPUTED THAT WHAT MR. GUNDLACH WAS TALKING TO WAMCO
13 ABOUT, AND TALKING ABOUT IN THOSE PRO FORMAS, WHEN HE
14 LISTED ALL THOSE SOURCES OF REVENUE WITH THE TCW
15 CLIENTS, YOU ARE RIGHT, BECAUSE WE CAUGHT HIM. HE
16 DIDN'T SUCCESSFULLY STEAL THEM, BUT WE ENDED UP LOSING
17 A LOT OF THEM.

03:56PM

18 MS. STEIN: YOUR HONOR, THE INTERFERENCE CLAIM
19 HAS NOTHING TO DO WITH CLIENTS, OTHER THAN THE SMCF
20 FUNDS.

03:56PM

21 THE COURT: I THINK IT SHOULD BE LIMITED TO
22 THE BREACH OF FIDUCIARY DUTY. AND THAT'S THE
23 CONSPIRACY.

24 AND AS FAR AS EVIDENCE SUPPORTING THE
25 INTERFERENCE AS AN OBJECT OF CONSPIRACY, YOU ARE GOING
26 TO HAVE TO POINT IT OUT TO ME, OTHERWISE YOU SHOULD
27 PROVE IT ALL.

03:56PM

28 MR. MADISON: JUST PROCEDURALLY, IT SOUNDS

1 LIKE THE COURT WOULD ALMOST BE DIRECTING A VERDICT ON
2 THAT PART OF OUR CLAIM. BECAUSE WE ARE ALLEGING THAT
3 THAT WAS THE CONSPIRACY; THAT IT HAD MULTIPLE OBJECTS.

4 THE COURT: YOU TO HAVE SOME EVIDENTIARY BASIS
5 FOR ME TO INSTRUCT ON THE LAW. AND IF THERE'S NO
6 EVIDENCE SUPPORTING IT, I'M NOT INSTRUCTING ON IT. SO
7 ALL I'M SAYING TO YOU IS, YOU SHOW ME WHERE THAT
8 EVIDENCE IS, AND I'LL TAKE A LOOK AT IT, AND I'LL
9 CONSIDER IT.

03:56PM

03:56PM

10 BUT AT THIS POINT, BASED ON MY FEEBLE
11 RECOLLECTION OF WHAT I'VE HEARD OVER THE LAST SIX
12 WEEKS, I THINK IT'S ONLY ON THE BREACH OF FIDUCIARY
13 DUTY CLAIM. SO WE NEED FINALIZE THAT.

14 I'M ASSUMING YOU ARE GOING TO GET THIS
15 DONE AND GIVE ME A PACKET OF INSTRUCTIONS THAT'S GOING
16 TO CORRESPOND TO WHAT WE'VE DONE HERE.

03:57PM

17 MS. STEIN: WE HAVE ALL OF THE AGREED UPON
18 ONES, THUS FAR, ON THOSE PERFORATED SHEETS FOR YOUR
19 HONOR. AND WE WILL CONTINUE TO DO SO.

20 THE COURT: ALL RIGHT. DEFENDANT'S MB300F.20
21 AND MB300F.21, WAIVER OR REVISE.

03:57PM

22 I'LL REJECT THAT, AND I'LL SUSTAIN THE
23 OBJECTION.

24 WHAT IS THIS, MB300?

25 MR. HELM: MATTHEW BENDER.

03:57PM

26 MS. STEIN: IT'S THE MATTHEW BENDER FORM BOOK,
27 YOUR HONOR.

28 MS. ESTRICH: STUMPED ME ON THAT ONE, YOUR

1 HONOR.

2 THE COURT: ALL RIGHT. ON MB300F.27, THE
3 OBJECTION WILL BE SUSTAINED.

4 MS. ESTRICH: YOUR HONOR, IF I JUST MAY ASK,
5 WHICH ONE WAS THAT? 03:58PM

6 THE COURT: THAT'S THE ESTOPPEL.

7 MS. ESTRICH: THANK YOU, YOUR HONOR.

8 MS. STEIN: WE'RE GOING TO HOLD THE NEXT ONE,
9 YOUR HONOR.

10 MR. HELM: CASI 430. 03:58PM

11 THE COURT: YEAH, I'VE GOT THAT ON MY LIST; SO
12 THAT'S A HOLD.

13 MS. ESTRICH: I JUST LOVE DOING IT OVER AND
14 OVER AGAIN.

15 THE COURT: BUT I WILL GET THAT RESOLVED
16 TONIGHT OR TOMORROW. 03:58PM

17 SO YOU CAN GO THROUGH THESE OTHER ONES
18 THAT ARE --

19 MS. ESTRICH: IT APPEARS REPEATEDLY.

20 THE COURT: IS CASI 3940? 03:59PM

21 MR. MADISON: YES.

22 THE COURT: IS THERE REALLY A DISPUTE ON THIS?

23 MR. EMANUEL: I DON'T THINK SO, YOUR HONOR.

24 MR. MADISON: ONE THING THAT MAY NOT HAVE BEEN
25 CLEAR, YOUR HONOR. I WANT TO MAKE SURE IT WAS. IF I
26 MISSED SOMETHING, I APOLOGIZE. 03:59PM

27 WE DID NOT PRESENT EVIDENCE ON NET WORTH
28 AS TO MS. VANEVERY, MR. MAYBERRY, MR. SANTA ANA --

1 THE COURT: IT'S ONLY AS TO GUNDLACH.

2 MR. MADISON: WE ARE NOT SEEKING PUNITIVE
3 DAMAGES.

4 THE COURT: I UNDERSTAND THERE WAS NO EVIDENCE
5 FOR IT. HIS TESTIMONY WAS 90 MILLION. THAT'S THE SUM
6 AND SUBSTANCE OF THE EVIDENCE ON HIS WORTH.

03:59PM

7 MR. MADISON: WELL, I CAN'T REMEMBER IF --

8 THE COURT: THERE MAY BE SOME OTHERS THAT
9 YOU'VE CALCULATED.

10 MR. MADISON: DEPENDS ON WHAT DAY YOU TALK TO
11 HIM.

04:00PM

12 AND DOUBLELINE, ALSO, WE'RE SEEKING
13 PUNITIVE DAMAGES.

14 MS. STEIN: YOUR HONOR, THERE'S NO CLAIM FOR
15 WHICH THE JURY CAN DETERMINE THE PUNITIVE DAMAGES AS
16 AGAINST DOUBLELINE. THE ONLY CLAIM AGAINST DOUBLELINE
17 IS MISAPPROPRIATION OF TRADE SECRETS, AND THAT ANY
18 PUNITIVE DAMAGE AWARDS FOR THE COURT, UNDER ROBERT L.
19 CLOUD AND ASSOCIATES.

04:00PM

20 MR. EMANUEL: I THINK THAT'S RIGHT, YOUR
21 HONOR.

04:00PM

22 THE COURT: IF IT'S UNDISPUTED, WE SHOULDN'T
23 BE FIGHTING ABOUT IT.

24 MR. MADISON: THAT'S TRUE.

25 THE COURT: SO THIS INSTRUCTION, YOU KNOW, DO
26 I HAVE TO WADE THROUGH IT OR --

04:00PM

27 MS. STEIN: NO, YOUR HONOR.

28 MR. HELM: NO.

1 SO WE'LL GIVE THIS ONE?

2 DO YOU AGREE?

3 MR. EMANUEL: WE CAN CONCUR.

4 THE COURT: IT'S 3490.

5 MR. EMANUEL: IT'S GOOD.

04:00PM

6 THE COURT: AND YOU NEED TO CLARIFY IT AS TO
7 THE CLAIMS. I GUESS IF THERE'S --

8 MR. EMANUEL: I THINK IT'S PRETTY CLEAN, BUT
9 WE WILL DOUBLE-CHECK. THINGS DO KEEP MOVING.

10 THE COURT: I GUESS I JUST CAN'T HELP MYSELF.

04:00PM

11 YOU MIGHT TAKE OUT WHETHER JEFFREY
12 GUNDLACH DISREGARDED THE HEALTH AND SAFETY OF OTHERS.
13 IS THAT A SIGNIFICANT PART OF THIS CASE? OR WHETHER
14 THE CONDUCT CAUSED PHYSICAL HARM? SOMEBODY MIGHT READ
15 IT BEFORE WE SAY IT'S OKAY.

04:01PM

16 MS. ESTRICH: YOU HAVE TO READ IT WITH A
17 STRAIGHT FACE, YOUR HONOR.

18 THE COURT: WHAT ELSE IS IN HERE?

19 SOMEBODY LOOK AT IT.

20 MR. EMANUEL: VERY WELL.

04:01PM

21 MS. ESTRICH: MR. EMANUEL WILL LOOK AT IT.

22 THE COURT: ALL RIGHT.

23 CLEAR AND CONVINCING EVIDENCE, IS THAT
24 DISPUTED?

25 MS. ESTRICH: WE JUST DISPUTE THE BRACKETED
26 CHANGES FROM CASI.

04:01PM

27 MS. STEIN: YOUR HONOR, WE DISCUSSED THIS AT
28 THE JULY 22ND HEARING, AND YOUR HONOR HAD AGREED THAT

1 WE SHOULD USE BAJI, SOME FORMULATION OF BAJI, AND LET
2 THE JURY KNOW THAT CLEAR AND CONVINCING WAS SOMEWHERE
3 BETWEEN PROOF BEYOND A REASONABLE DOUBT AND
4 PREPONDERANCE OF EVIDENCE. AND THAT'S WHAT THIS
5 INSTRUCTION INTENDS TO DO.

04:01PM

6 THE COURT: DID THE OLD BAJI HAVE THIS CLEAR
7 AND CONVINCING EVIDENCE, SO CLEAR AS TO HAVE A
8 SUBSTANTIAL DOUBT?

9 MS. STEIN: NO.

10 THE COURT: THAT'S YOUR EDITION?

04:02PM

11 MS. STEIN: THAT'S OUR EDITION, TO BE IN LINE
12 WITH THE CALIFORNIA SUPREME COURT AND ANGELINA P, YOUR
13 HONOR.

14 THE COURT: I WOULD SAY I WOULD TAKE THAT OUT,
15 AND I WOULD LEAVE THE LAST ONE THAT SAYS CLEAR AND
16 CONVINCING STANDARD IS AN INTERMEDIATE STANDARD BETWEEN
17 PROOF BEYOND A REASONABLE DOUBT AND PROOF BY A
18 PREPONDERANCE OF THE EVIDENCE.

04:02PM

19 MS. ESTRICH: THAT'S FINE, YOUR HONOR.

20 THE COURT: LET'S DO IT THAT WAY.

04:02PM

21 MR. MADISON: JUST A POINT OF ORDER. IT'S
22 AFTER 4:00. I DON'T KNOW HOW LATE -- WE CAN GO AS LONG
23 AS, YOUR HONOR --

24 THE COURT: I HAVE TO LET MY STAFF GO, BUT I
25 THINK WE NEED TO GO THROUGH THIS. AND IF WE HAVE TO DO
26 IT OFF THE RECORD, I'LL KEEP MAKING MY NOTES, AND I'LL
27 GIVE IT TO ELMER, AND WE'LL PUT IT IN THE MINUTE ORDER.

04:02PM

28 MR. MADISON: WE HAVE NO PROBLEM WITH THAT,

1 YOUR HONOR.

2 THE COURT: WE JUST NEED TO GET DONE.

3 MS. ESTRICH: WE AGREE, YOUR HONOR.

4 THE COURT: SO WITH THAT SAID, WHY DON'T WE GO
5 OFF THE RECORD, AND WE'LL JUST KEEP PLUGGING THROUGH AT
6 THIS RATE.

04:03PM

7

8 (THE MATTER WAS CONTINUED TO FRIDAY,
9 SEPTEMBER 9, AT 8:30 A.M.)

10

04:03PM

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