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

DEPARTMENT 322 HON. CARL J. WEST, JUDGE

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

REPORTERS' **DAILY** TRANSCRIPT OF PROCEEDINGS
FRIDAY, SEPTEMBER 9, 2011

APPEARANCES:

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

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

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

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I N D E X

FRIDAY, SEPTEMBER 9, 2011

INDEX OF WITNESSES

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

PLAINTIFF'S WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
BILL SONNEBORN	7702-Q	7736-B	7764-Q	7772-B

DEFENSE WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
MICHAEL WALLACE (RESUMED)		7601-S	7640-H	7656-S
(FURTHER)			7661-H	

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I N D E X

FRIDAY, SEPTEMBER 9, 2011

EXHIBITS

<u>EXHIBITS</u>	<u>FOR I.D.</u>	<u>IN EVD</u>	<u>WITHDRAWN</u>
2320 -		7667	
2296 - EMAIL STRING DATED 4/30		7726	
(EXHIBITS 148, 295, 546, 1959)		7803	

1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA SEPTEMBER 9, 2011
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR
7 TIME: A SESSION: 8:30 A.M.

8

9

--0--

10

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

12

13 THE COURT: GOOD MORNING.

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

08:37AM

16 MR. WALLACE IS ON THE STAND.

17 PLEASE RECALL YOU ARE STILL UNDER OATH.

18 MR. SURPRENANT, YOU MAY CONTINUE YOUR
19 CROSS-EXAMINATION.

20 MR. SURPRENANT: THANK YOU, YOUR HONOR.

08:37AM

21 GOOD MORNING, MR. WALLACE.

22 THE WITNESS: GOOD MORNING.

23 MR. SURPRENANT: GOOD MORNING, MEMBERS OF
24 JURY.

25

08:37AM

26 CROSS-EXAMINATION (CONTINUED) +

27 BY MR. SURPRENANT:

28 Q YESTERDAY YOU MENTIONED THAT YOU ASSUMED THE

1 SPECIAL MORTGAGE CREDIT FUNDS WOULD HAVE BEEN
2 LIQUIDATED ON OR BEFORE FEBRUARY 28TH, 2012, AS PART OF
3 YOUR DAMAGE ANALYSIS; IS THAT CORRECT?

4 A I PERFORMED THE CALCULATION THAT WAY. I
5 BELIEVE I SAID THERE WERE TWO ASSUMPTIONS. IT WAS
6 BASED ON MR. GUNDLACH SUGGESTING HE WOULD LIKELY
7 LIQUIDATE THE FUNDS BY THE END OF 20 LEVEL.

08:37AM

8 AND ALSO AN ALTERNATIVE ASSUMPTION OR AN
9 ADDITIONAL ASSUMPTION THAT AT THE TERMINATION OF THE
10 CONTRACT AT THE END OF 2011, THAT HE WOULD BE ENTITLED
11 TO ANY AMOUNTS ACCRUED.

08:38AM

12 SO THE CALCULATION RELATES TO EITHER OF
13 THOSE.

14 Q AND THAT ASSUMPTION, THAT WAS NOT IN YOUR
15 APRIL REPORT, CORRECT?

08:38AM

16 A I DIDN'T NEED TO MAKE A TIMING ASSUMPTION IN
17 MY FIRST REPORT BECAUSE I DIDN'T DO ANY PRESENT VALUING
18 OF THE CASH PAYMENTS.

19 Q AND THAT ASSUMPTION WAS NOT IN YOUR MAY
20 REPORT, CORRECT?

08:38AM

21 A EXACTLY. FOR THE SAME REASONS.

22 Q AND COULD YOU FIND WHERE THAT ASSUMPTION IS
23 STATED IN YOUR JULY REPORT?

24 A I DON'T KNOW. YOU WANT ME TO TRY TO FIND
25 THAT?

08:38AM

26 Q IT'S AN ASSUMPTION YOU MADE IN YOUR DAMAGE
27 CALCULATION.

28 COULD YOU FIND IT IN YOUR REPORT?

1 A I'LL SEE IF I CAN.

2 (PAUSE) +

3

4 THE WITNESS: IN FOOTNOTE 7 ON PAGE 5, IT

5 SAYS:

08:39AM

6 I HAVE ASSUMED THAT, HAD HE NOT

7 BEEN TERMINATED, MR. --

8 I'M SORRY.

9 IT STARTS IN THE SECTION ON PRESENT

10 VALUE, WHICH IS THE ONLY PLACE IT BECOMES RELEVANT:

08:39AM

11 I HAVE ASSUMED THAT, HAD HE NOT

12 BEEN TERMINATED, MR. GUNDLACH WOULD

13 HAVE RECEIVED CASH PAYMENT IN 2012

14 FOR HIS SHARE OF THE CARRIED

15 INTEREST EARNED THROUGHOUT 2009,

08:39AM

16 2010, AND 2011 ON THE SMCF FUNDS.

17 SO THE 2012 IS THE BONUS PAYMENT RELATED

18 TO THE END OF 2011.

19 Q ARE YOU AWARE OF ANY STATEMENTS IN THE RECORD

20 BY MR. GUNDLACH THAT ARE INCONSISTENT WITH THE SPECIAL

08:40AM

21 MORTGAGE CREDIT FUNDS BEING LIQUIDATED IN 2010 AND

22 2011?

23 MR. HELM: LACKS FOUNDATION ABOUT WHAT HE

24 KNOWS IS OR ISN'T IN THE RECORD.

25 THE COURT: THE QUESTION IS, IS HE AWARE OF

08:40AM

26 IT. THAT'S A YES-OR-NO ANSWER.

27 MR. HELM: FAIR ENOUGH.

28 THE COURT: GO AHEAD, SIR. TELL US YES OR NO.

1 THERE'S ALWAYS A FOLLOW-UP.

2 THE WITNESS: I'M NOT AWARE OF ANYTHING
3 SPECIFICALLY INCONSISTENT. I KNOW OVER TIME
4 MR. GUNDLACH'S VIEWS OF THE PROSPECT FOR THOSE
5 INVESTMENTS WOULD HAVE CHANGED. SO THERE COULD BE
6 DIFFERENT OPINIONS AT DIFFERENT TIMES.

08:40AM

7 BY MR. SURPRENANT:

8 Q DO YOU KNOW WHAT HIS OPINION WAS IN DECEMBER
9 OF 2009, OR AT LEAST WHAT HIS PUBLIC STATEMENTS WERE TO
10 INVESTORS IN DECEMBER 2009 --

08:40AM

11 A I KNOW SOMETHING ABOUT THAT.

12 Q TX 2142. IT'S A WEBCAST OF A DECEMBER 29,
13 2009 WEBCAST BY MR. GUNDLACH.

14 IF YOU COULD TURN TO PAGE TX 2142-10.

15 IF YOU COULD PRESENT IT, MICHAEL. STOP
16 RIGHT THERE AT -- SO, LINE 8.

08:41AM

17 I'LL READ THIS, AND THEN I'LL ASK YOU IF
18 IT'S CONSISTENT OR INCONSISTENT, MR. WALLACE, WITH YOUR
19 ASSUMPTION. THIS IS MR. GUNDLACH TALKING TO INVESTORS:

20 SO THE EVOLVING LANDSCAPE SEEMS
21 TO US TO PROVIDE VERY HIGH
22 OPPORTUNITY RIGHT -- YOU KNOW, WITH
23 AN APPROPRIATE RISK MANAGEMENT
24 BEING ABSOLUTELY THE REQUIREMENT AS
25 WE LOOK AT THE QUARTERS AHEAD. SO,
26 WHAT WE'RE KIND OF PROPOSING, THINK
27 ABOUT THIS AS INVESTORS OURSELF, IS
28 MAKING CONSISTENT REINVESTMENT

08:41AM

08:41AM

1 PERIOD FOR FUND I AND FUND II OUT
2 TO DECEMBER 2011, BUT ALSO
3 SHORTENING THE ULTIMATE PROPOSED
4 TERMINATION DATE OF THE FUNDS.
5 BECAUSE WE THINK, AS I'VE SAID OVER
6 AND OVER AGAIN, THE ARRANGEMENT OF
7 THE PPIP FUND III AND ALSO INVEST
8 OF THE CLAUSE ON FUND I AND II, WE
9 THINK THIS OPPORTUNITY IS REALLY
10 NOT GOING TO TAIL OUT WELL INTO THE
11 SECOND HALF OF THIS DECADE.

08:42AM

08:42AM

12 RIGHT NOW FUND I HAS AN ORIGINAL
13 TERM THAT WOULD END IN SEPTEMBER OF
14 2015, WITH A POTENTIAL FOR A
15 TWO-YEAR EXTENSION OUT TO 2017.

08:42AM

16 FUND II HAS AN ORIGINAL TERM
17 WITH A TERMINATION DATE NOW OF
18 JANUARY 2017 WITH A TERMINATION --
19 EXTENSION, RATHER, OF TWO YEARS OUT
20 TO 2019. WE THINK THAT THOSE ARE
21 UNNECESSARILY LANGUAGE, AND IT
22 MAKES SENSE TO MORE BRACKET THE
23 TIME FRAME OF THE HARVESTING OF
24 THESE INVESTMENTS.

08:42AM

25 SO, WHAT WE'RE PROPOSING IS THAT
26 FUND I AND FUND II BOTH HAVE A
27 PROPOSED TERMINATION DATE THAT'S
28 ROLLED FORWARD TO DECEMBER 31,

08:42AM

1 2013, WITH A POTENTIAL FOR ONE-YEAR
2 EXTENSION.

3 SO THIS WOULD BE SOMETHING ALONG
4 THE LINES OF NEARLY A FOUR-YEAR
5 SHORTENING OF THE ULTIMATE
6 POTENTIAL TERM OF FUND I AND
7 APPROXIMATELY A SIX-YEAR OR A
8 FIVE-YEAR SHORTENING OF THE TERM --
9 PROPOSED TERM OF FUND II.

08:43AM

08:43AM

08:43AM

08:43AM

08:44AM

10 SO WE WOULD BE LOOKING AT AN
11 INVESTMENT PERIOD THAT WOULD END NO
12 LATER THAN DECEMBER 31ST OF 2011.
13 AND THEN A TWO-YEAR HARVEST PERIOD
14 FOR THE FUND.

15 NOW, IS THAT STATEMENT BY MR. GUNDLACH
16 TO INVESTORS IN THE SPECIAL MORTGAGE CREDIT FUND, IS
17 THAT INCONSISTENT WITH THE ASSUMPTION THAT YOU MAKE?

18 A NO, IT'S NOT.

19 Q IT'S NOT?

20 A NO.

21 Q WELL, YOU ASSUME THAT THE FUNDS WOULD BE
22 ENTIRELY LIQUIDATED BY FEBRUARY 28TH, 2012, CORRECT?

23 A NOT EXACTLY. I MEAN, I -- I END MY
24 CALCULATION OF EARNINGS AT THE END OF 2011, SO I DON'T
25 CONTINUE TO ACCRUE ADDITIONAL EARNINGS WHICH THE FUNDS
26 COULD EARN IF THEY REMAINED INVESTED AFTER 2011.

27 AND THEN FOR THE PURPOSE OF JUST
28 CALCULATING A PRESENT VALUE, TO REFLECT THE TIMING OF

1 WHEN MR. GUNDLACH MIGHT HAVE BEEN PAID FOR THE ACCRUED
2 EARNINGS, I ASSUMED EITHER A LIQUIDATION OF THE FUNDS
3 AT THE END OF 2011 AND A BONUS PAYMENT IN 2012.

4 OR THAT HE WAS ENTITLED TO THE AMOUNTS
5 ACCRUED AT THE TIME OF TERMINATION.

08:44AM

6 Q LET ME SEE IF I CAN DO THE MATH.

7 THIS IS TX 2314, YOUR HONOR.

8 AM I RIGHT, MR. WALLACE, THAT IF
9 MR. GUNDLACH BEGAN HARVESTING THE FUNDS JANUARY 1ST-12,
10 IT WOULD TAKE TWO YEARS; THE FUNDS WOULD NOT BE
11 LIQUIDATED UNTIL 12-31-13, CORRECT?

08:45AM

12 MR. HELM: ASSUMES FACTS NOT IN EVIDENCE.

13 THE COURT: OVERRULED. THAT'S AN ASSUMPTION
14 HE'S GIVING HIM.

15 GO AHEAD.

08:45AM

16 THE WITNESS: THAT'S NOT HOW I INTERPRET
17 MR. GUNDLACH'S STATEMENTS HERE.

18 HE'S TALKING ABOUT THE TERMS OF THE
19 CONTRACT, NOT WHAT WOULD ACTUALLY HAPPEN BASED ON HIS
20 VIEW OF MARKET CONDITIONS AT ANY POINT IN TIME.

08:45AM

21 MR. SURPRENANT: I READ IT DIFFERENTLY.

22 Q SO, ASSUME THAT MR. GUNDLACH TOLD INVESTORS HE
23 WOULD BE GETTING TWO-YEAR HARVEST ON JANUARY 1ST, 2012.

24 THE FUNDS WOULD NOT BE FULLY LIQUIDATED
25 UNTIL 12-31-13, CORRECT?

08:46AM

26 A YOU'RE ASKING ME TO ASSUME THAT?

27 Q YEAH.

28 A IF MR. GUNDLACH WAS STILL AT TCW IN 2012 AND

1 2013, AND ELECTED TO DELAY HARVESTING OR LIQUIDATING
2 THE FUNDS UNTIL THAT PERIOD OF TIME, THEN THAT'S WHEN
3 THE FUNDS WOULD HAVE BEEN SOLD --

4 Q OKAY.

5 A -- UNDER THAT ASSUMPTION.

08:46AM

6 Q COULD WE GO BACK, MICHAEL, TO TX 2142.

7 I WANT TO MAKE SURE, MR. WALLACE, THAT
8 YOU AND I ARE NOT MISSING EACH OTHER.

9 COULD WE GO TO 11. COULD YOU HIGHLIGHT
10 THE TWO-YEAR HARVEST PERIOD, LINE 16 THROUGH 18.

08:46AM

11 NOW HE SAYS THERE -- I WANT TO MAKE
12 SURE, WE'RE ON THE SAME PAGE. MR. GUNDLACH -- WELL,
13 YOU DID A LOT OF SECURITIES MATTERS, CORRECT?

14 A YES, I DID.

15 Q IT'S VERY IMPORTANT IN SECURITY CASES THAT
16 FUND MANAGERS BE ACCURATE AND TRUTHFUL WITH INVESTORS,
17 CORRECT?

08:47AM

18 A IF IN THEIR PUBLIC STATEMENTS, YES.

19 Q THIS IS A PUBLIC STATEMENT?

20 A I BELIEVE SO.

08:47AM

21 Q HE SAYS:

22 SO WE'D BE LOOKING AT AN
23 INVESTMENT PERIOD THAT WOULD END NO
24 LATER THAN DECEMBER 31ST OF-11 AND
25 THEN A TWO-YEAR HARVEST PERIOD FOR
26 THE FUND.

08:47AM

27 YOU DON'T READ THAT THAT THE FUNDS UNDER
28 MR. GUNDLACH'S STATEMENTS WOULD BE LIQUIDATED FROM

1 JANUARY 1ST, 2012 THROUGH DECEMBER 31ST, 2013; THAT'S
2 NOT HOW YOU READ THAT STATEMENT?

3 A MR. GUNDLACH WAS NO LONGER THE MANAGER OF THE
4 SMCF FUNDS. SO, WHAT HE WAS DOING AS A PRIVATE CITIZEN
5 WAS PROPOSING A CHANGE TO THE CONTRACT TERMS THAT HAD A
6 DEFINITION FOR AN INVESTMENT PERIOD DURING WHICH THE
7 MANAGER WAS NOT SUPPOSED TO SELL ANY INVESTMENTS.

08:48AM

8 SO HE WAS PROPOSING, SINCE HE WAS NO
9 LONGER THE MANAGER, THAT THAT PERIOD OF TIME BEFORE THE
10 MANAGER WAS REALLY ALLOWED TO START LIQUIDATING WOULD
11 BE BROUGHT SOONER, EARLIER IN TIME.

08:48AM

12 THAT'S WHAT I INTERPRET THOSE PHRASES TO
13 MEAN.

14 Q WHAT HE WAS PROPOSING TO THE SPECIAL MORTGAGE
15 FUND INVESTORS IS THAT THEY PRESSURE TCW AND ALLOW THE
16 FUNDS TO GO OVER TO DOUBLELINE, CORRECT?

08:48AM

17 MR. HELM: ARGUMENTATIVE.

18 THE COURT: SUSTAINED.

19 BY MR. SURPRENANT:

20 Q DO YOU KNOW WHAT HE WAS PROPOSING IN THAT
21 REGARD?

08:48AM

22 MR. HELM: BEYOND THE SCOPE. ARGUMENTATIVE.

23 THE COURT: OVERRULED.

24 THE WITNESS: ARE YOU TALKING ABOUT THIS
25 SECTION THAT YOU'RE ASKING ME QUESTIONS ABOUT? OR IN
26 REGARD TO --

08:48AM

27 BY MR. SURPRENANT:

28 Q DO YOU KNOW WHAT HE WAS PROPOSING WITH RESPECT

1 TO WHETHER OR NOT INVESTORS SHOULD REQUEST OF TCW THAT
2 THE SPECIAL MORTGAGE CREDIT FUNDS BE ALLOWED TO MOVE TO
3 DOUBLELINE?

4 MR. HELM: BEYOND THE SCOPE.

5 THE COURT: SUSTAINED.

08:49AM

6 BY MR. SURPRENANT:

7 Q NOW, IF THE JURY -- IF IT IS DETERMINED THAT
8 THERE WAS A FIVE-YEAR CONTRACT ENDING DECEMBER 31ST,
9 2011, IT WOULD HAVE EXPIRED BY THE TIME OF THIS
10 TWO-YEAR HARVEST PERIOD, CORRECT -- ALMOST BEFORE IT
11 BEGAN, RIGHT?

08:49AM

12 MR. HELM: ASSUMES FACTS NOT IN EVIDENCE.

13 THE COURT: OVERRULED.

14 THE WITNESS: IT -- IF THE CONTRACT ENDED AT
15 DECEMBER 31ST, 2011 AND WAS NOT EXTENDED OR RENEWED,
16 THAT WOULD BE BEFORE THIS PERIOD THAT YOU WROTE ON THE
17 CHART.

08:49AM

18 BY MR. SURPRENANT:

19 Q NOW, IN YOUR SECOND SUPPLEMENTAL REPORT,
20 MR. WALLACE, YOU REFERRED TO WHERE MR. GUNDLACH WOULD
21 HAVE PAID BONUSES TO THE M.B.S. STAFF AS SCENARIO 2,
22 CORRECT?

08:50AM

23 A BOTH OF MY SCENARIOS ASSUME MR. GUNDLACH WOULD
24 HAVE PAID BONUSES TO THE M.B.S. STAFF.

25 SCENARIO 1 IS BASED ON AN ASSUMPTION
26 THAT IT WOULD NOT BE APPROPRIATE TO MAKE A DEDUCTION
27 FOR THOSE AMOUNTS IN CALCULATING DAMAGES, AND
28 SCENARIO 2 IS AN ALTERNATIVE, WHICH I TESTIFIED

08:50AM

1 YESTERDAY I THINK IS NOT AN APPROPRIATE OR PREFERRED
2 METHOD.

3 BUT IF THE JURY, OR THE COURT, DECIDED
4 THAT BONUSES SHOULD BE DEDUCTED, THEN THAT WOULD BE THE
5 CALCULATION I WOULD APPLY.

08:50AM

6 MR. HELM: COULD I REQUEST THE WITNESS PUT THE
7 MICROPHONE CLOSER.

8 MR. SURPRENANT: THANK YOU FOR YOUR PRECISION.
9 YOU'RE RIGHT.

10 Q IN SCENARIO 1 YOU ASSUME MR. GUNDLACH WOULD
11 HAVE PAID BONUSES CONSISTENT WITH PAST PRACTICE. YOU
12 JUST DON'T SUBTRACT THEM OUT OF YOUR DAMAGE
13 CALCULATION, CORRECT?

08:50AM

14 A RIGHT.

15 BECAUSE THEN THE DAMAGE AWARD WOULD NOT
16 MAKE MR. GUNDLACH WHOLE FOR THE BENEFITS THAT HE
17 OTHERWISE WOULD HAVE EARNED UNDER THE CONTRACT HAD HE
18 NOT BEEN TERMINATED.

08:51AM

19 MR. SURPRENANT: YOUR HONOR, I MOVE TO STRIKE
20 EVERYTHING AFTER RIGHT. IT'S NOT RESPONSIVE.

08:51AM

21 THE COURT: I'LL DENY THE MOTION.

22 GO AHEAD.

23 BY MR. SURPRENANT:

24 Q NOW, SCENARIO 2, THAT IS SHOWN IN YOUR
25 EXHIBIT TX 6198, CORRECT?

08:51AM

26 IF YOU COULD PUT THAT UP, MICHAEL.

27 NOW, IT IS YOUR OPINION THAT SCENARIO 2,
28 WHERE THE BONUSES ARE SUBTRACTED OUT, WOULD CERTAINLY

1 COMPENSATE MR. GUNDLACH FOR THE CASH COMPENSATION HE
2 WAS DUE, CORRECT?

3 MR. HELM: VAGUE AND AMBIGUOUS.

4 THE COURT: OVERRULED.

5 IF YOU UNDERSTAND THE QUESTION, YOU CAN
6 ANSWER IT. 08:52AM

7 IF YOU HAVE A QUESTION ABOUT IT, YOU CAN
8 CLARIFY IT.

9 THE WITNESS: I THINK I UNDERSTAND THE
10 QUESTION, YOUR HONOR. 08:52AM

11 THE COURT: ALL RIGHT.

12 THE WITNESS: THE 6198, WHERE I DEDUCT THE
13 STAFF BONUSES, CALCULATES A NET AMOUNT THAT
14 MR. GUNDLACH MIGHT HAVE RECEIVED IN HIS PAYCHECK DURING
15 THE PERIOD OF TIME ON THE CHART. 08:52AM

16 BUT WOULD NOT -- THE POINT OF THE
17 PROBLEM WITH DEDUCTING THOSE BONUSES IS THEY'RE
18 INTENDED TO MOTIVATE HIS TEAM TO HELP HIM EARN MONEY IN
19 THE FUTURE.

20 SO IT DOESN'T REFLECT THE LOSS OF
21 PERHAPS CASH, EARNINGS HE MIGHT HAVE MADE IN THE
22 FUTURE. 08:52AM

23 BY MR. SURPRENANT:

24 Q WHAT IT DOES MAKE HIM WHOLE FOR IS THE CASH HE
25 WOULD HAVE BEEN PAID AND PUT IN HIS POCKET OVER THE
26 TIME FRAME, CORRECT? 08:52AM

27 A THROUGH THE END OF 2011, THAT'S MY ESTIMATE,
28 YES.

1 Q LET'S TURN NOW TO THE MANAGEMENT FEES.
2 AND, MICHAEL, IF WE COULD PUT UP 6192.
3 NOW, THAT IS THE CALCULATION THAT
4 ASSUMES THE JURY FINDS A FIVE-YEAR ORAL CONTRACT
5 THROUGH DECEMBER 31ST, 2011 WHERE YOU DON'T DEDUCT THE 08:53AM
6 BONUSES THAT YOU BELIEVE MR. GUNDLACH WOULD HAVE
7 ACTUALLY PAID TO HIS STAFF, CORRECT?

8 A IT ASSUMES A CONTRACT THROUGH THE END OF 2011.
9 I DON'T KNOW IF IT'S ORAL OR WRITTEN.

10 BUT, YES, I DO NOT DEDUCT THE STAFF 08:53AM
11 BONUSES THAT WOULD HAVE BEEN PAID IN THIS CALCULATION.

12 Q IS IT YOUR UNDERSTANDING THERE'S A WRITTEN,
13 SIGNED CONTRACT IN THIS CASE BETWEEN MR. GUNDLACH AND
14 TCW THROUGH 12-30-11?

15 MR. HELM: OBJECTION, ARGUMENTATIVE. 08:53AM

16 THE COURT: SUSTAINED.

17 MR. SURPRENANT: MIKE, IF YOU COULD PUT A BOX
18 AROUND 37.9 MILLION IN MANAGEMENT FEES.

19 Q NOW, YOU HAVEN'T STUDIED WHEN THE MANAGEMENT
20 FEES WERE PAID TO TCW FOR THE FOURTH QUARTER OF 2009? 08:54AM

21 A I DON'T HAVE AN ACCOUNTING PRECISELY OF THOSE
22 AMOUNTS.

23 BUT I HAVE STUDIED THE PROCEDURES FOR
24 PAYMENT OF MANAGEMENT FEES FROM THE FUNDS TO TCW'S
25 ENTITIES. 08:54AM

26 Q IS IT YOUR TESTIMONY YOU'VE STUDIED WHEN THE
27 MANAGEMENT FEES WERE PAID TO TCW AS PART OF YOUR
28 ANALYSIS?

1 A I THINK YOU RECENTLY PRODUCED SOME DOCUMENTS
2 ON THAT. AND I'VE EXAMINED THOSE THAT SHOW AMOUNTS
3 THAT WERE RECEIVED BY THE COMPANY THROUGH DECEMBER 4TH.
4 AND I STUDIED THE FUND AGREEMENTS THAT DESCRIBE HOW
5 MANAGEMENT FEES ARE PAID AND WHAT THE TIMING IS,
6 WHETHER IT'S AT THE END OF EACH MONTH OR TEN DAYS
7 THEREAFTER, OR AT THE END OF A QUARTER.

08:55AM

8 Q AND HOW MUCH -- BASED ON YOUR ANALYSIS OF THE
9 DOCUMENTS THAT TCW PRODUCED, WHAT IS YOUR CALCULATION
10 OF HOW MUCH IN MANAGEMENT FEES WERE RECEIVED PRIOR TO
11 DECEMBER 4?

08:55AM

12 A I DON'T KNOW A NUMBER.

13 Q IS THERE A NUMBER SHOWN IN YOUR REPORT?

14 A NO. I'M SHOWING THE AMOUNT OF MANAGEMENT FEES
15 EARNED THROUGH DECEMBER 4TH.

08:55AM

16 AND THEN I -- THE ONLY REASON I NEED TO
17 KNOW TIMING IS FOR THE PURPOSE OF THE PRESENT VALUE
18 CALCULATION, WHICH I ASSUME FEBRUARY OF THE FOLLOWING
19 YEAR.

20 Q WHEN YOU SAY EARNED, YOU MEAN ACCRUED,
21 CORRECT?

08:55AM

22 A I MEAN EARNED. I THINK IT MEANS THE SAME AS
23 ACCRUED.

24 Q THIS WAS THE REPORT THAT WE GOT IN JULY.

25 IS THERE ANYWHERE IN THESE SCHEDULES
26 WHERE I COULD LOOK AND SEE A FIGURE FOR WHAT YOU
27 BELIEVE TCW RECEIVED IN MANAGEMENT FEES PRIOR TO
28 DECEMBER 4TH OF 20-- OF 2009?

08:55AM

1 A IN CASH?

2 Q YES.

3 A NO. I CALCULATED THE AMOUNT EARNED BY
4 DECEMBER 4TH. AND I BELIEVE IT WAS PAID IN CASH BEFORE
5 FEBRUARY OF 2010.

08:56AM

6 Q WHAT DO YOU BASE THAT BELIEF ON?

7 A THE PROCEDURES FOR PAYMENT OF MANAGEMENT FEES
8 BY THE FUNDS MANAGED BY TCW.

9 Q WHAT DOCUMENTS -- YOU SAID TCW PRODUCED
10 DOCUMENTS.

08:56AM

11 IT'S YOUR UNDERSTANDING THAT TCW HAS
12 PRODUCED DOCUMENTS IN THIS CASE KIND OF SETTING FORTH
13 WHEN THE MANAGEMENT FEES WERE RECEIVED IN THE FOURTH
14 QUARTER OF 2009 AND THE FIRST QUARTER OF 2010; IS THAT
15 CORRECT?

08:56AM

16 A I THINK IT WAS PRODUCED IN RESPONSE TO MY
17 REPORT. QUESTIONING WHETHER ALL THESE AMOUNTS HAD BEEN
18 PAID BY DECEMBER 4TH.

19 Q WHAT WERE THE DOCUMENTS THAT YOU RECEIVED AND
20 REVIEWED THAT SHOWED MANAGEMENT FEES RECEIVED FOR THE
21 FOURTH QUARTER OF 2009?

08:57AM

22 A I THINK THERE WERE SOME SPREADSHEETS PRODUCED
23 BY TCW THAT PURPORTED TO SHOW HOW MUCH WAS RECEIVED IN
24 CASH BY DECEMBER 4TH.

25 MY TEAM DID SOME CHECKING. WE DON'T
26 THINK IT'S ACCURATE. BUT IT WASN'T PARTICULARLY
27 RELEVANT TO MY OPINION.

08:57AM

28 Q MOVING ON TO -- YOU SAID, AS I UNDERSTOOD YOUR

1 LAST ANSWER, YOUR STAFF LOOKED AT THE SPREADSHEETS, AND
2 DETERMINED -- DID YOU SAY THERE WAS SOME INACCURATE
3 ABOUT IT?

4 A WE DIDN'T BELIEVE IT WAS ACCURATE. BUT WE
5 DIDN'T SPEND A LOT OF TIME TRYING TO VERIFY IT BECAUSE
6 MY CALCULATION IS BASED ON EARNINGS.

08:58AM

7 Q IT'S NOT IMPORTANT TO YOUR CALCULATION WHEN
8 THE FEES ARE ACTUALLY PAID, CORRECT?

9 A IT DOES AFFECT THE PRESENT VALUE CALCULATION,
10 AND I'M CONFIDENT THAT THEY WERE PAID BY FEBRUARY OF
11 2010.

08:58AM

12 Q MIKE, COULD YOU PUT UP TX 6611, I BELIEVE.
13 THE COURT: ARE YOU LOOKING AT 66? IS THAT
14 IT?

15 MR. SURPRENANT: YES. THE DECEMBER-JUNE '07,
16 YOUR HONOR.

08:58AM

17 BEFORE WE GO THERE -- I'M SORRY,
18 MR. WALLACE -- LET ME WITHDRAW THE REFERENCE TO TX 66.

19 Q YOU SAID YOU DIDN'T BELIEVE IT, YOUR STAFF
20 DIDN'T, YOU THOUGHT WASN'T ACCURATE, BUT YOU DIDN'T
21 SPEND A LOT OF TIME BECAUSE IT WASN'T IMPORTANT.

08:59AM

22 WHAT PRECISELY DID YOUR STAFF THINK WAS
23 INACCURATE?

24 A I DON'T THINK I SAID IT WASN'T IMPORTANT.

25 I THINK I SAID IT WASN'T RELEVANT TO MY
26 ANALYSIS AND MY CONCLUSIONS, WHICH ARE NOT BASED ON HOW
27 MUCH CASH WAS RECEIVED BY DECEMBER 4, BUT THAT THE
28 PRESENT VALUE DEPENDED ON RECEIVING THE CASH BY

08:59AM

1 FEBRUARY 2010.

2 SO THAT'S AN IMPORTANT CLARIFICATION.

3 Q IT WASN'T RELEVANT. I SAID IMPORTANT. YOU
4 SAID RELEVANT.

5 WHAT WAS -- DID YOUR STAFF THINK, IF
6 ANYTHING, WAS NOT ACCURATE? 08:59AM

7 A THE SPREADSHEET DID NOT APPEAR TO RECONCILE TO
8 OTHER ACCOUNTING DOCUMENTS THAT WE HAD. IT APPEARED TO
9 BE INCOMPLETE.

10 AND -- BUT I DIDN'T NEED TO DETERMINE 09:00AM
11 WHAT WAS MISSING BECAUSE I WASN'T BASING MY CALCULATION
12 ON CASH PAYMENTS.

13 Q WHAT CATEGORIES -- I MEAN, YOU SAID IT WASN'T
14 INCOMPLETE -- CAN YOU GIVE US ANY SPECIFICATION SO WE
15 CAN GO BACK AND LOOK AND TRY TO IDENTIFY WHAT YOUR 09:00AM
16 STAFF THOUGHT MAYBE DIDN'T RECONCILE TO OTHER
17 INFORMATION?

18 A WE DON'T THINK IT INCLUDED ALL OF THE ACCOUNTS
19 FOR WHICH MANAGEMENT FEES HAD BEEN PAID --

20 Q AND WHAT -- 09:00AM

21 A -- BUT WE DIDN'T GO BEYOND THAT.

22 Q WHAT ACCOUNTS DIDN'T YOU THINK IT INCLUDED?

23 A I DON'T KNOW.

24 Q WHAT TYPES OF ACCOUNTS DID YOU THINK IT DIDN'T
25 INCLUDE? 09:00AM

26 A THEY WERE ACCOUNTS THAT HAD BEEN MANAGED BY
27 MR. GUNDLACH'S GROUP.

28 Q IS THERE ANYTHING THAT YOU COULD LOOK AT THAT

1 WOULD IDENTIFY WHAT YOUR STAFF THOUGHT WHAT ACCOUNTS
2 WEREN'T INCLUDED -- CAN YOU GIVE ME ANY SPECIFICATION?

3 A NO. BECAUSE WE DIDN'T TRY TO FIX THE
4 SCHEDULE.

5 Q AND THE REASON -- IF WE COULD GO BACK TO 09:01AM
6 6611 -- THE REASON YOU DIDN'T REALLY DO THE KIND OF
7 RIGOROUS ANALYSIS TO IDENTIFY ANY LACK OF CONSISTENCY
8 IS IT DIDN'T MATTER TO YOU THAT THE -- WHEN THE FEES
9 WERE ACTUALLY PAID, CORRECT?

10 A NO, THAT'S NOT CORRECT. 09:01AM

11 IT DID MATTER.

12 IT JUST DIDN'T MATTER FOR THE PURPOSE OF
13 THE CALCULATION YOU WERE JUST DISPLAYING. WHETHER THE
14 AMOUNTS HAD BEEN RECEIVED BY DECEMBER 4, BECAUSE I WAS
15 CALCULATING AMOUNTS EARNED BY DECEMBER 4, AND THEN I 09:01AM
16 EXAMINED THE SPREADSHEET PRODUCED BY TCW SHOWING CASH
17 PAYMENTS.

18 AND THE FUND AGREEMENTS THAT INDICATED
19 THAT CASH PAYMENT WOULD BE MADE EITHER WITHIN TEN
20 BUSINESS DAYS FOLLOWING THE CLOSING OF THE ACCOUNTING 09:01AM
21 MONTH, OR THE ACCOUNTING QUARTER, WHICH MEANT THAT THE
22 CASH WOULD HAVE BEEN RECEIVED NO LATER THAN EARLY
23 JANUARY AND IN SUFFICIENT TIME FOR THE FEBRUARY BONUS
24 PAYMENT, WHICH I ASSUMED FOR THE PURPOSE OF CALCULATING
25 THE PRESENT VALUE. 09:02AM

26 Q MIKE, SORRY TO ASK YOU AGAIN, GO BACK TO 6192.

27 FOR THE PURPOSE OF THIS CALCULATION,
28 TX 6192, IT DID NOT MATTER TO YOU WHEN THE MANAGEMENT

1 FEES OR THE PERFORMANCE FEES WERE PAID; IS THAT
2 CORRECT?

3 MR. HELM: ASKED AND ANSWERED.

4 THE COURT: I'LL ALLOW HIM TO EXPLAIN IT
5 AGAIN. THE LAST TIME.

09:02AM

6 THE WITNESS: IT MATTERED.

7 I WAS VERY CONFIDENT THAT BY THE END OF
8 2011, WHICH IS THE ENDING POINT OF MY CALCULATION, THAT
9 THOSE MANAGEMENT FEES WOULD BE RECEIVED IN CASH.

10 AND FOR THE PURPOSE OF THE PRESENT VALUE
11 CALCULATION, WHICH IS THE ONLY PART OF THE ANALYSIS
12 WHERE I TRIED TO DETERMINE A TIMING OF CASH PAYMENT
13 BASED ON MY REVIEW OF THE ACCOUNTING RECORDS AND THE
14 FUND AGREEMENTS, I WAS QUITE CONFIDENT THAT THE AMOUNTS
15 WOULD HAVE BEEN RECEIVED IN CASH BY TCW LONG BEFORE MY
16 ASSUMED PAYMENT DATE TO MR. GUNDLACH.

09:02AM

09:03AM

17 Q YOU DID NOT CALCULATE THE EXTENT TO WHICH
18 PERFORMANCE FEES OR MANAGEMENT FEES WOULD HAVE BEEN
19 PAID TO TCW BY DECEMBER 4TH, 2009; IS THAT CORRECT?

20 A CORRECT. I BASE MY CALCULATION ON AMOUNTS
21 EARNED BY DECEMBER 4TH.

09:03AM

22 Q YOU SEE THE PERFORMANCE FEES, LINE 2, YOU'RE
23 REFERRING THERE TO THE SPECIAL MORTGAGE CREDIT FUND
24 CARRIED INTEREST FEES?

25 A YES.

09:03AM

26 Q YOU DON'T KNOW WHETHER, IF IT'S AN ENTIRE
27 HISTORY, TCW HAS EVER PAID INCENTIVE FEES OR CARRIED
28 INTEREST FEES BEFORE IT, IN FACT, RECEIVED A PAYMENT,

1 CORRECT?

2 A YOU MEAN PAID, PAID A SHARE OF THOSE FEES TO
3 AN EMPLOYEE BEFORE TCW RECEIVED THE MONEY FROM THE
4 FUND?

5 Q YES.

09:04AM

6 A I DON'T KNOW.

7 Q YOU HAVEN'T LOOKED INTO IT?

8 A I MEAN, I -- IT'S BEEN SOMETHING THAT I KNOW
9 HAS BEEN AN ISSUE IN THE CASE. SO I'M FAMILIAR WITH
10 THE ISSUE, BUT I HAVEN'T DONE A HISTORICAL STUDY TO SEE
11 IF THAT HAS EVER OCCURRED.

09:04AM

12 Q NOW, YOU DO KNOW, YOU DO NOW, AS A MATTER OF
13 FACT, THAT NONE OF THE PERFORMANCE FEES SHOWN ON THIS
14 EXHIBIT, 69.6 MILLION, HAD BEEN PAID TO TCW AS OF
15 DECEMBER 4TH, 2009, CORRECT?

09:05AM

16 A I BELIEVE THAT'S TRUE. NONE OF THE
17 69.6 MILLION HAD BEEN PAID TO TCW FROM THE FUNDS. IT
18 HAD BEEN RECORDED AS AN ACCRUED AMOUNT OF AN EXPENSE TO
19 BE PAID TO TCW ON THE FUNDS' FINANCIAL STATEMENTS.

20 Q NOW, DO YOU RECALL -- I WROTE IT DOWN -- DO
21 YOU RECALL SAYING YESTERDAY, THAT THE MULTI-STRATEGY
22 FIXED INCOME POOL IS, QUOTE, PAID, ALL OF IT IS PAID TO
23 MR. GUNDLACH?

09:05AM

24 A I'M SORRY. I MISSED THE QUESTION. COULD YOU
25 REPEAT IT?

09:05AM

26 Q SURE, MR. WALLACE.

27 DO YOU RECALL TESTIFYING YESTERDAY TO
28 MR. HELM THAT THE MULTI-STRATEGY FIXED INCOME POOL IS,

1 QUOTE/UNQUOTE, PAID TO MR. GUNDLACH?

2 A I RECALL STARTING TO SAY THAT. AND I THINK I
3 CHOSE TO CHANGE THAT WORD. BECAUSE IT'S THE AMOUNT OF
4 THE POOL THAT HE'S ENTITLED TO UNDER HIS CONTRACT, AND
5 THEN HE CHOOSES TO SHARE, AT HIS DISCRETION, SOME OF
6 THOSE AMOUNTS. SO I RECOGNIZED THAT PAID WAS PROBABLY
7 NOT THE BEST WORD.

09:06AM

8 I THINK I TRIED TO CLARIFY THAT IN MY
9 ANSWER.

10 Q RIGHT, BECAUSE THE WAY IT WORKS, THE POOL
11 ISN'T REALLY PAID, ALL THE POOL ISN'T REALLY PAID TO
12 MR. GUNDLACH, CORRECT?

09:06AM

13 A HE DOESN'T GET A CHECK FOR THAT AMOUNT.
14 UNLESS HE CHOOSES -- I MEAN, DEPENDS ON THE PERIOD, IN
15 CASE HE CHOOSES -- I SHOULD SAY UNLESS HE CHOOSES IN
16 ANY PERIOD NOT TO DISTRIBUTE ADDITIONAL BONUSES TO HIS
17 TEAM.

09:06AM

18 BUT, IN GENERAL, THERE WAS A PATTERN OF
19 SHARING A PORTION OF THE COMPENSATION POOL THAT HE
20 EARNED WITH HIS TEAM.

09:06AM

21 Q IT NEVER HAPPENED THAT HE DIDN'T SHARE IT; IS
22 THAT CORRECT?

23 A YOU KNOW, EVERY QUARTER WAS DIFFERENT. AND I
24 DON'T KNOW IF THERE WAS A QUARTER WHERE THERE WERE
25 NEVER BONUSES. BUT, IN GENERAL, OVER TIME,
26 MR. GUNDLACH SHARED HIS POOL WITH HIS TEAM.

09:07AM

27 Q LET'S GO THROUGH THE PROCESS.

28 THE WAY IT WORKED IS THAT -- WERE YOU

1 HERE FOR MR. HAGER'S TESTIMONY?

2 A SOME OF IT. I DON'T KNOW IF I WAS HERE FOR
3 ALL OF IT.

4 Q MR. HAGER TESTIFIED THAT THE ACCRUED, CARRIED
5 INTEREST FEES, THEY'RE BOOKED BY GAAP EVERY MONTH,
6 CORRECT?

09:07AM

7 A WELL, THEY'RE BOOKED BY THE FUNDS.

8 Q ACCORDING TO GAAP?

9 A IN ACCORDANCE WITH GENERALLY ACCEPTED
10 ACCOUNTING PRINCIPLES.

09:07AM

11 Q AND THEN WHEN THE BOND IS LIQUIDATED AND FEES
12 ARE PAID TO TCW AT THAT POINT, MR. GUNDLACH GIVES A
13 SCHEDULE -- IN THE REAL WORLD -- GAVE A SCHEDULE TO TCW
14 WITH THE BONUSES, CORRECT?

15 A I DON'T RECALL HEARING THAT TESTIMONY.

09:07AM

16 I ASSUME AT SOME POINT WHEN
17 MR. GUNDLACH'S COMPENSATION POOL IS DETERMINED, HE
18 WOULD INFORM TCW IF ANY OF THOSE AMOUNTS SHOULD BE
19 SHARED WITH HIS TEAM IN BONUSES.

20 Q AND THEN WHEN HE GAVE THE DISTRIBUTION
21 SCHEDULE TO TCW, THEY WOULD THEN PAY THE BONUSES TO THE
22 STAFF. THAT WOULD BE THE NEXT THING THAT HAPPENED,
23 CORRECT?

09:08AM

24 A THAT MAKES SENSE. I DON'T RECALL THAT
25 TESTIMONY.

09:08AM

26 Q AND THEN WHAT MR. GUNDLACH WOULD GET, HE WOULD
27 GET THE RESIDUAL IN THE POOL, CORRECT?

28 A AGAIN, I THINK HE WOULD GET WHAT HE DIDN'T

1 SHARE WITH HIS TEAM IN BONUSES.

2 Q MIKE, COULD WE PUT UP TX 6190. IT'S A
3 DEMONSTRATIVE.

4 IT'S NOT IN EVIDENCE, BUT IT WAS SHOWN
5 TO THE JURY YESTERDAY?

09:08AM

6 YOU SAY MR. GUNDLACH'S COMPENSATION
7 POOL.

8 DO YOU SEE THAT LANGUAGE?

9 A YES, I DO.

10 Q THAT'S NOT WHAT IT'S CALLED. IT'S CALLED THE
11 MULTI-STRATEGY FIXED INCOME POOL, CORRECT?

09:08AM

12 A ARE YOU ASKING IF WHAT THE CONTRACT DEFINITION
13 IS?

14 Q THE DRAFT CONTRACT, YES?

15 A I'M NOT SURE EXACTLY THE PHRASE. I WAS TRYING
16 TO USE LANGUAGE THAT IT ILLUSTRATED A CONCEPT, NOT CITE
17 A CONTRACT.

09:09AM

18 Q WELL, IN ALL OF YOUR -- YOU HAVE THREE
19 REPORTS, RIGHT?

20 A AT LEAST.

09:09AM

21 Q THREE REPORTS SETTING OUT YOUR CALCULATIONS
22 FROM MR. GUNDLACH'S DAMAGES, RIGHT?

23 A YES, I BELIEVE THAT'S RIGHT.

24 Q AND IN NONE OF THESE DO YOU USE THE TERM,
25 MR. GUNDLACH'S COMPENSATION POOL, CORRECT?

09:09AM

26 A I DON'T KNOW. THIS IS A DEMONSTRATIVE TO TRY
27 TO COMMUNICATE CLEARLY.

28 Q WELL, IF YOU COULD TURN TO SCHEDULE 2-A, 1 X

1 IN YOUR SECOND SUPPLEMENTAL REPORT.

2 ARE YOU THERE, MR. WALLACE?

3 A YES, I AM.

4 Q YOU DON'T -- IF YOU LOOK DOWN WHERE YOU
5 CALCULATE, YOU TALK ABOUT IT, YOU SAY:

09:10AM

6 THE MSFI SHARE OF CARRIED
7 INTEREST.

8 THE MULTI-STRATEGY FIXED INCOME SHARE OF
9 CARRIED INTEREST, CORRECT?

10 A YES.

09:10AM

11 Q YOU DON'T CALL IT MR. GUNDLACH'S COMPENSATION
12 POOL, CORRECT?

13 A NOT IN MY SPREADSHEETS, NO.

14 Q IN YOUR REPORT? YOU DON'T CALL IT
15 MR. GUNDLACH'S COMPENSATION POOL IN YOUR REPORTS,
16 EITHER?

09:10AM

17 A I DON'T KNOW. DO YOU WANT ME TO SEE HOW I
18 DESCRIBED IT IN MY REPORT?

19 Q NOT UNLESS YOU CAN GO THERE QUICKLY BECAUSE
20 WE'RE TRYING TO MOVE ALONG.

09:10AM

21 A YEAH, I CAN'T TELL YOU HOW I DESCRIBED IT IN
22 THE REPORT.

23 Q MR. GUNDLACH'S COMPENSATION POOL, DO YOU SEE
24 THAT?

25 A YES.

09:10AM

26 Q NOW, I'M NOT GOING TO USE UP THE TIME, BUT YOU
27 COULD LOOK THROUGH YOUR REPORTS, I DON'T THINK YOU'RE
28 GOING TO FIND IT, DO YOU THINK THIS IS AN UNBIASED

1 DESCRIPTION OF THE MULTI-STRATEGY FIXED INCOME --

2 MR. HELM: ARGUMENTATIVE, YOUR HONOR.

3 MR. SURPRENANT: -- POOL?

4 THE COURT: SUSTAINED.

5 BY MR. SURPRENANT:

09:11AM

6 Q YOU SAID IT WAS A CONCEPT, RIGHT? YOU'RE
7 TRYING TO CAPTURE A CONCEPT.

8 IS THAT A FAIR DESCRIPTION OR BIASED
9 DESCRIPTION OF THE CONCEPT?

10 MR. HELM: ARGUMENTATIVE.

09:11AM

11 THE COURT: SUSTAINED.

12 BY MR. SURPRENANT:

13 Q CAN YOU POINT TO ANYTHING THAT YOU DID IN ALL
14 THIS WORK THAT YOU -- THAT USED THE TERM,
15 MR. GUNDLACH'S COMPENSATION POOL, BEFORE YOUR TESTIMONY
16 TO THE JURY YESTERDAY?

09:11AM

17 A NOT WITHOUT TAKING THE TIME TO READ MY
18 REPORTS.

19 Q WHAT IS THE PRESENT VALUE OF THE LOST
20 COMPENSATION YOU HAVE CALCULATED FOR MR. GUNDLACH
21 THROUGH DECEMBER 4TH, 2009, ASSUMING THAT BONUSES ARE
22 NOT DEDUCTED?

09:11AM

23 A LET ME JUST DOUBLE-CHECK. I BELIEVE IT'S --
24 WELL, LET ME JUST CHECK.

25 IT DEPENDS ON WHICH CALCULATION YOU'RE
26 REFERRING TO. I HAVE A CALCULATION ASSUMING THAT HE
27 HAD A CONTRACT THROUGH 2011.

09:12AM

28 AND THEN I HAVE A CALCULATION ASSUMING

1 HE'S ENTITLED TO AMOUNTS ONLY ACCRUED THROUGH
2 DECEMBER 4TH.

3 AND THE PRESENT VALUE IS DIFFERENT IN
4 THOSE TWO BECAUSE I MAKE A DIFFERENT ASSUMPTION ABOUT
5 WHEN HE SHOULD HAVE BEEN PAID.

09:12AM

6 SO, WHICH ONE ARE YOU INTERESTED IN?

7 Q WELL, LET'S LOOK AT TX 6192.

8 MIKE, IF WE COULD PUT A BOX AROUND --
9 ACTUALLY, PUT A BOX AROUND PRESENT VALUE OF LOST
10 COMPENSATION, THE LAST LINE. TO 61.9. AND THEN PUT A
11 BOX AROUND THE TOP THROUGH DECEMBER 4TH, 2009.

09:13AM

12 NOW, IN TX 6192, YOU HAVE THE PRESENT
13 VALUE OF LOST COMPENSATION AS \$61.9 MILLION, CORRECT?

14 A YES, I DO.

15 Q THEN IF YOU GO TO TX 6196, YOU HAVE THE
16 PRESENT VALUE OF LOST COMPENSATION THROUGH DECEMBER 4,
17 2009 AT \$71.9 MILLION, RIGHT?

09:13AM

18 A YES.

19 Q SO THERE'S A \$10 MILLION DIFFERENCE, CORRECT?

20 A YES.

09:13AM

21 Q LET'S GO TO YOUR DAMAGE CALCULATIONS.

22 AND, MIKE, IF YOU COULD TURN ON THE
23 ELMO. I HAD SOME DIFFICULTY WITH IT LAST TIME.

24 THIS IS YOUR CALCULATION FOR
25 MR. GUNDLACH'S DAMAGES, ASSUMING THE JURY FINDS A
26 FIVE-YEAR CONTRACT THROUGH DECEMBER 31ST, 2011,
27 CORRECT?

09:14AM

28 A YES.

1 Q NOW LET'S MAKE SOME ASSUMPTIONS.

2 LET'S ASSUME -- WELL, FIRST OF ALL, IF
3 THE JURY DOESN'T FIND THERE'S A FIVE-YEAR CONTRACT, IF
4 THEY FIND THERE WASN'T A FIVE-YEAR CONTRACT, THEN THIS
5 CALCULATION IS IRRELEVANT, CORRECT?

09:15AM

6 A NO, I DON'T BELIEVE IT'S IRRELEVANT.

7 I BELIEVE IT CONTAINS USEFUL INFORMATION
8 THAT THEY COULD USE TO EXAMINE HIS DAMAGES UNDER
9 ALTERNATIVE ASSUMPTIONS.

10 Q IF THERE'S NO FIVE-YEAR CONTRACT, AND HIS
11 CONTRACT, HIS EMPLOYMENT ENDED ON DECEMBER 4TH, WHAT
12 ALTERNATIVE THEORIES ARE YOU TALKING ABOUT?

09:15AM

13 A WELL, THE FIRST COLUMN REPRESENTS AMOUNTS THAT
14 HE EARNED THROUGH THE LAST DAY OF HIS EMPLOYMENT. SO
15 THAT WOULD BE RELEVANT.

09:15AM

16 I SUPPOSE THE JURY COULD DECIDE EVEN
17 WITHOUT A CONTRACT HE SHOULD HAVE BEEN ALLOWED TO WORK
18 TILL THE END OF THE YEAR. I DON'T KNOW. I COULD THINK
19 OF A LOT OF THINGS THEY MIGHT BE INTERESTED IN.

20 Q ALL RIGHT.

09:15AM

21 LET'S MAKE THE ASSUMPTION THAT IT IS
22 DETERMINED THAT IN ORDER TO RECEIVE ACCRUED, BUT
23 UNPAID, INCENTIVE FEES, THAT THE -- LET ME STRIKE THAT
24 AND START AGAIN.

25 IN ORDER TO RECEIVE INCENTIVE FEES, THEY
26 HAD TO BE BOTH ACCRUED AND PAID.

09:15AM

27 CAN WE MAKE THAT ASSUMPTION?

28 A SURE. BUT I DON'T KNOW, WHEN YOU MEAN PAID,

1 BY WHEN? BUT --

2 Q THEY HAD TO BE AND PAID PRIOR TO
3 DECEMBER 31ST, 2011.

4 AND ANOTHER ASSUMPTION, THAT THEY WOULD
5 NOT HAVE BEEN PAID BY THAT TIME.

09:16AM

6 CAN WE MAKE BOTH ASSUMPTIONS AND EXAMINE
7 WHAT IMPLICATIONS IT HAS FOR THIS DAMAGE CALCULATION?

8 A SURE.

9 Q WHAT WE'D HAVE TO DO IS TO TAKE THE
10 \$266.4 MILLION. WE'D SUBTRACT IT, AND THAT WOULD LEAVE
11 \$230.2 MILLION, CORRECT?

09:16AM

12 A IF YOU ASSUME HE'S NOT ENTITLED TO ANY OF THE
13 CARRIED INTEREST EARNED DURING THE FIVE YEARS THAT HE
14 WORKED UNDER THAT CONTRACT, THEN YOU WOULD NEED TO
15 DEDUCT THE CARRIED INTEREST OUT, YES.

09:17AM

16 Q AND THIS NUMBER HERE, THIS 5.1 WITH A
17 PARENTHESES AROUND IT, THAT MEANS IT'S A NEGATIVE
18 SUBSTRACTION ITEM, RIGHT?

19 A YES, WE'RE DEDUCTING THE -- THE ACTUAL
20 COMPENSATION FROM HIS WOULD-HAVE-BEEN COMPENSATION.

09:17AM

21 Q AND IF IT IS DETERMINED, AND THAT INCLUDES
22 \$3.2 MILLION, THAT THE APPRAISALS YOU'VE LOOKED AT AND
23 DONE THE CALCULATION, YOU'VE DONE A \$3.2 MILLION
24 MITIGATION, BASED ON THE VALUE OF MR. GUNDLACH'S
25 INTEREST IN DOUBLELINE, CORRECT?

09:17AM

26 A APPROXIMATELY THREE MILLION. I DON'T REMEMBER
27 IF IT WAS 3.2 OR NOT, BUT ROUGHLY.

28 Q YES. AND IF IT'S DETERMINED THAT THAT -- THE

1 CASH TRANSACTION THAT MR. BARACH TESTIFIED ABOUT, THIS
2 IS TX DEMONSTRATIVE 2311, IF IT'S DETERMINED THAT THAT
3 IS A MORE APPROPRIATE MEASURE, THEN WE'D HAVE TO DO
4 SOME ADDITIONAL CALCULATIONS WITH RESPECT TO MODIFYING
5 THE \$3.2 MILLION NUMBER, CORRECT?

09:18AM

6 A WELL, I DON'T AGREE THAT THAT'S RELEVANT AT
7 ALL.

8 BUT IF IT WAS DETERMINED THAT DOUBLELINE
9 WAS MORE VALUABLE THAN THE AMOUNTS DETERMINED BY THE
10 INDEPENDENT APPRAISERS, THEN YOU MIGHT NEED TO DEDUCT A
11 DIFFERENT NUMBER.

09:18AM

12 Q LET'S GO TO -- I PUT IT ON THE ELMO -- TO
13 TX 2196.

14 THIS IS WHERE YOU CALCULATE DAMAGES
15 THROUGH DECEMBER 4TH, 2009 IN THE EVENT THAT IT IS
16 DETERMINED THAT MR. GUNDLACH DID NOT HAVE A CONTRACT,
17 CORRECT?

09:19AM

18 A I DON'T THINK THAT'S ENTIRELY THE ASSUMPTION.

19 I BELIEVE IF HE DID NOT HAVE A CONTRACT
20 THROUGH THE END OF 2011, AND I THINK THERE ARE A COUPLE
21 LEGAL BASES WHERE THIS MIGHT APPLY, BUT THIS IS
22 LIMITING THE DAMAGES TO THE AMOUNT OF COMPENSATION THAT
23 HAD ACCRUED BY THE DATE OF HIS TERMINATION.

09:19AM

24 Q AND IF WE CAN MAKE THE SAME ASSUMPTION --
25 ASSUMPTION THAT IT IS DETERMINED THAT INCENTIVE FEES
26 HAD TO BE BOTH ACCRUED AND PAID BY DECEMBER 4TH AND IT
27 IS DETERMINED THEY'RE NOT, THEN WE WOULD -- THEY HAD
28 NOT BEEN -- THEN WE WOULD HAVE TO SUBTRACT OUT THE

09:19AM

1 \$41.7 MILLION NUMBER, CORRECT?

2 A WELL, I AGREE THAT IF HE'S NOT ENTITLED TO THE
3 41.7, YOU SHOULD DEDUCT IT. I THINK ACCRUED AND
4 PAID -- I MEAN, IF IT'S PAID, THEN ACCRUED IS
5 IRRELEVANT.

09:20AM

6 BUT THAT WAS THE AMOUNT ACCRUED BY
7 DECEMBER 4TH.

8 Q AND IF WE COULD GO BACK TO -- WELL, LET'S DO
9 THE CALCULATION?

10 41.7. IF WE SUBTRACT THAT OUT, WE'RE
11 LEFT WITH \$20.2 MILLION, CORRECT?

09:20AM

12 THE COURT: I THINK IT'S 30, ISN'T IT?

13 THE WITNESS: YES.

14 THE COURT: FOUR FROM SEVEN, IS THAT THREE OR
15 TWO?

09:21AM

16 MR. SURPRENANT: I MISREAD, YOUR HONOR.

17 THE COURT: I'M NOT THAT QUICK WITH THE
18 NUMBERS.

19 MR. SURPRENANT: I WAS TRYING TO PULL A FAST
20 ONE.

09:21AM

21 THE COURT: I DON'T THINK SO.

22 MR. SURPRENANT: I WOULD LIKE TO MARK THESE
23 TWO AS DEMONSTRATIVE EXHIBITS, TX 21 -- 2315, AND
24 TX 2316.

25 NOW LET'S GO TO THE SCENARIO 2
26 CALCULATIONS IF WE COULD, MR. WALLACE.

09:21AM

27 Q THIS IS TX 6198, AND THAT IS WHERE YOU DEDUCT
28 OUT BONUSES PAID TO THE STAFF?

1 A YES, LINES 5B AND C.

2 Q THIS ASSUMES A FIVE-YEAR CONTRACT ENDING
3 DECEMBER 31ST, 2011, CORRECT?

4 A THAT'S WHAT I ASSUMED IN DOING THE
5 CALCULATION.

09:22AM

6 Q LET'S ASSUME AGAIN. THE BETWEEN ASSUMPTIONS
7 WE'VE BEEN MAKING, THAT IS DETERMINED IN ORDER FOR
8 MR. GUNDLACH TO PARTICIPATE IN INCENTIVE FEES THEY HAD
9 TO BE ACCRUED AND PAID, AND THAT THEY WOULD NOT HAVE
10 BEEN THROUGH 12-31-11.

09:22AM

11 WHAT WE WOULD HAVE TO DO IN THAT CASE,
12 AND CORRECT ME IF I'M WRONG, WE WOULD HAVE TO ZERO OUT
13 LINE 4 AND ZERO OUT LINE 53, CORRECT?

14 A IF YOU DIDN'T THINK HE SHOULD BE PAID FOR THE
15 CARRIED INTEREST EARNED UNDER THE CONTRACT, HE WOULD
16 HAVE TO ADJUST FOR THOSE TWO LINES, YES.

09:23AM

17 Q IF WE DID THAT SUBSTRACTION --
18 AND, YOUR HONOR, I'M SURE YOU'LL CHECK.
19 -- IT IS 130 PAID TO TCW \$8.9 MILLION,
20 THAT IS SUBTRACTING OUT 266 MILLION, SUBTRACTING OUT
21 270 -- EXCUSE ME -- WE HAVE 271.4. WE SUBTRACT OUT
22 ZERO FOR PERFORMANCE FEES.

09:23AM

23 AND WE SUBTRACT OUT ZERO OF THE 26. AND
24 THAT LEAVES US WITH 138.9; IS THAT CORRECT?

25 MR. HELM: VAGUE AND AMBIGUOUS. I'M SORRY. I
26 DIDN'T FOLLOW THAT CALCULATION.

09:24AM

27 MR. SURPRENANT: LET ME DO IT AGAIN.

28 THE COURT: YES, LET'S -- IT WOULD HELP IF YOU

1 COULD MOVE THE SHEET OVER A LITTLE BIT SO WE CAN SEE
2 THE OTHER DIRECTION. SO WE SEE WHAT IT IS YOU'RE
3 DEALING WITH.

4 MR. SURPRENANT: THANK YOU, YOUR HONOR.

5 IS THAT BETTER?

09:24AM

6 MR. QUINN: NO.

7 THE COURT: IT'S COUNTERINTUITIVE WHEN YOU'RE
8 DEALING WITH THESE THINGS --

9 THERE YOU GO.

10 BY MR. SURPRENANT:

09:24AM

11 Q SO WE HAVE TO ZERO OUT GUNDLACH'S SHARE OF
12 PERFORMANCE FEES. SO THIS GOES TO ZERO.

13 AND THEN WE HAVE TO SUBTRACT OUT 133
14 POINT -- NOT THE STAFF BONUSES.

15 MR. VILLA: THAT'S THE STAFF BONUS FEE --

09:25AM

16 BY MR. SURPRENANT:

17 Q IF IT IS DETERMINED THAT WE HAVE TO SUBTRACT
18 OUT BONUS FEES, HOW WOULD YOU DO THAT CALCULATION TO
19 SUBTRACT THEM OUT OF THIS EXHIBIT?

20 A I WOULD TAKE THE AMOUNT ON LINE 8 IN THE TOTAL
21 COLUMN OF 266.8.

09:25AM

22 AND THEN I WOULD DEDUCT THE AMOUNTS ON
23 LINE 4 AND ADD BACK THE AMOUNTS BACK ON LINE 5C, WHICH
24 NET TO \$132 MILLION OF DEDUCTION.

25 AND THEN I WOULD HAVE TO RERUN MY
26 PRESENT VALUE CALCULATION.

09:26AM

27 Q YOU WOULD SUBTRACT OUT 132 MILLION?

28 A 133.2.

1 Q 133.2.

2 THAT WILL LEAVE 633.1.

3 THEN YOU WOULD HAVE TO RERUN YOUR
4 PRESENT VALUE CALCULATION; IS THAT CORRECT?

5 A YES, YOU WOULD, TO GET A PRECISE NUMBER.

09:26AM

6 Q THEN, AGAIN, WE WOULD HAVE TO -- IF IT IS
7 DETERMINED THAT YOUR MITIGATION, BASED ON THE
8 APPRAISALS, IS NOT THE RIGHT ONE, THEN WE'D HAVE TO DO
9 FURTHER CALCULATION WITH RESPECT TO MITIGATING OUT
10 MR. GUNDLACH'S OWNERSHIP VALUE OF DOUBLELINE, CORRECT?

09:26AM

11 A IF YOU USED A DIFFERENT VALUE FOR DOUBLELINE,
12 THEN YOU WOULD HAVE TO DEDUCT A DIFFERENT NUMBER.

13 Q WITH RESPECT TO THAT APPRAISAL THAT YOU DID,
14 DID THE APPRAISERS -- DID THEY INVEST IN DOUBLELINE?

15 A I'M PRETTY SURE THAT WOULD NOT BE ALLOWED
16 UNDER THEIR AMERICAN SOCIETY OF APPRAISERS GUIDELINES.

09:27AM

17 Q BUT OAKTREE INVESTED IN DOUBLELINE, CORRECT?

18 A YES, THEY DID.

19 Q AND OAKTREE MANAGED OVER \$80 BILLION OF
20 ASSETS, CORRECT?

09:27AM

21 A I DON'T KNOW.

22 Q THEY'RE VERY EFFECTIVE FUND ASSET MANAGERS,
23 CORRECT?

24 A WELL, THEY'RE A PRIVATE COMPANY, SO I DON'T --
25 I DON'T HAVE ANY FINANCIAL INFORMATION ON THEM. BUT I
26 BELIEVE THEY HAVE A STRONG REPUTATION.

09:27AM

27 Q OKAY. IF WE COULD MARK THIS CALCULATION AS
28 TX 2317.

1 WE HAVE ONE MORE TO GO, MR. WALLACE.
2 WE'RE ALMOST DONE.

3 THIS SAYS TX 6199, AND THAT IS WHERE
4 YOU'RE ASSUMING MR. GUNDLACH DIDN'T HAVE A CONTRACT
5 PAST DECEMBER 4TH, 2009 AND STAFF BONUSES ARE DEDUCTED
6 OUT, CORRECT? 09:28AM

7 A I THINK THAT'S A FAIR CHARACTERIZATION.

8 I'M NOT SURE, REALLY, ABOUT THE LEGAL
9 PART OF THAT. BUT THIS IS THE AMOUNTS ACCRUED THROUGH
10 THE DECEMBER -- THROUGH DECEMBER 4TH. 09:28AM

11 Q SINCE IT'S YOUR CALCULATION AND I DIDN'T DO A
12 FLUENT JOB LAST TIME, IF THE BETWEEN ASSUMPTIONS ARE
13 MADE THAT INCENTIVE FEES HAD TO BE BOTH ACCRUED AND
14 PAID, AND THEY WOULD NOT HAVE BEEN BY DECEMBER 4TH
15 2009, HOW WOULD WE TAKE THOSE OUT OF THIS CALCULATION? 09:29AM

16 A WELL, AGAIN, YOU'D TAKE THE AMOUNT ON LINE 8
17 OF 29-1/2. YOU WOULD SUBTRACT 41.7 MILLION FROM THAT.
18 OF COURSE, THAT WOULD GIVE YOU A NEGATIVE NUMBER.

19 THEN YOU'D HAVE TO ADD BACK THE AMOUNTS
20 ON 5C OF 20.9, WHICH IS REALLY 20.85 BECAUSE IT'S HALF
21 OF THE 41.7. 09:29AM

22 BUT ANOTHER WAY TO THINK OF IT IS IT'S
23 29.5 MINUS 20.85.

24 AND THEN YOU'D HAVE TO COMPUTE THE
25 PRESENT VALUE, WHICH WOULD INCREASE IT BY ABOUT -- I
26 DON'T KNOW -- 15 PERCENT. 09:29AM

27 Q BEFORE THE PRESENT VALUE, THAT IS GOING TO
28 HAVE A NUMBER OF ABOUT 8.8 MILLION, CORRECT?

1 A ROUGHLY.

2 Q SO IT WOULD BE, ACCORDING TO YOUR CALCULATIONS
3 WHICH I HAVE MORE RELIANCE ON THAN MINE, TX 2318 WOULD
4 SHOW IF MR. GUNDLACH DID NOT HAVE A CONTRACT, IF STAFF
5 BONUSES ARE DEDUCTED PRIOR TO PRESENT VALUE, THERE
6 WOULD BE A DAMAGE CALCULATION OF \$8.8 MILLION; IS THAT
7 CORRECT?

09:30AM

8 A IF HE'S NOT ENTITLED TO CARRIED INTEREST OR
9 PERFORMANCE FEES. I'M SORRY.

09:30AM

10 MR. SURPRENANT: THANK YOU, MR. WALLACE, FOR
11 ASSISTING IN THAT CALCULATION. I HAVE JUST A FEW MORE
12 QUESTIONS.

13 Q YOU SAY YOU DON'T KNOW IF OAKTREE MANAGES
14 \$80 BILLION IN ASSETS.

15 YOU KNOW THEY'RE A VERY LARGE ASSET
16 MANAGER, CORRECT?

09:31AM

17 A IT'S A GENERAL UNDERSTANDING I HAVE. MAYBE
18 JUST FROM YOUR QUESTIONS TO ME IN MY DEPOSITION, BUT
19 I'VE NEVER REALLY STUDIED THEIR FINANCIAL CONDITION.

20 Q WELL, ARE YOU AWARE OF THE FACT THAT
21 THEY'RE -- THAT THEY'RE VERY SUCCESSFUL?

09:31AM

22 A AGAIN, ONLY BY REPUTATION.

23 Q ARE YOU AWARE OF THE FACT THAT THEY -- BY
24 THEIR PERFORMANCE, INDICATE THEY REALLY KNOW HOW TO
25 VALUE ASSETS?

09:31AM

26 A NO.

27 MR. HELM: LACKS FOUNDATION.

28 THE COURT: SUSTAINED.

1 BY MR. SURPRENANT:

2 Q COUPLE MORE TOPICS, MR. WALLACE.

3 YOU MADE MANY CHANGES OVER YOUR THREE
4 EXPERT REPORTS, CORRECT?

5 A I DON'T REALLY BELIEVE THAT'S TRUE.

09:32AM

6 Q LET'S JUST START OFF WITH THE FIRST TWO.

7 ON APRIL 11TH, BETWEEN APRIL 11TH, THE
8 APRIL REPORT AND THE MAY REPORT, THE MAY REPORT
9 INCREASED MR. GUNDLACH'S DAMAGES \$60 MILLION, CORRECT?

10 A I DON'T KNOW IF IT INCORPORATED THE NEW
11 INFORMATION THAT WE HAD RECEIVED.

09:32AM

12 Q IT WENT FROM \$439 MILLION TO 500 MILLION,
13 CORRECT?

14 A I'M NOT SURE. BUT I DON'T DOUBT THAT.

15 Q YOU MADE CHANGES IN YOUR DAMAGE CALCULATIONS
16 FOR MR. -- MS. VANEVERY, CORRECT, BETWEEN APRIL AND
17 MAY?

09:32AM

18 A WELL, IF MR. GUNDLACH'S NUMBER CHANGED,
19 MS. VANEVERY'S WAS A PERCENTAGE OF THAT, SO THAT WOULD
20 HAVE CHANGED ALSO.

09:32AM

21 Q AND THEN MR. MAYBERRY'S CHANGED BETWEEN APRIL
22 AND MAY, CORRECT?

23 A FOR THE SAME REASONS.

24 Q AND MR. SANTA ANA'S CHANGED BETWEEN APRIL AND
25 MAY, CORRECT?

09:33AM

26 A IT WOULD HAVE, YES.

27 Q AND THERE WERE OTHER CHANGES BETWEEN THESE TWO
28 EXHIBITS, AS YOU INCORPORATED YOUR NEW DATA, CORRECT?

1 A WELL, YES. I MEAN, THE SCHEDULES CHANGED
2 BECAUSE WE INCORPORATED THE NEW DATA.

3 Q AND THEN IN JULY, THE MAY CHANGES, THE CHANGES
4 THAT WERE DONE BETWEEN APRIL AND MAY, THEY CHANGED
5 AGAIN, CORRECT?

09:33AM

6 A NO. THAT -- THE PART THAT WE UPDATED IN MAY,
7 I DON'T THINK CHANGED.

8 WE ADDED A SECOND SCENARIO AND SOME
9 PRESENT VALUE CALCULATIONS IN MY JULY REPORT.

10 Q AND THE PRESENT VALUE CALCULATIONS YOU ADDED
11 IN JULY CHANGED THE DAMAGE CALCULATIONS YOU HAD IN
12 APRIL, CORRECT?

09:33AM

13 A OH, IT CHANGED THE NUMBERS, YES.

14 Q THERE WERE MANY CHANGES BETWEEN THE MAY AND
15 THE JULY REPORTS, CORRECT?

09:33AM

16 A A LOT OF NUMBERS CHANGED BECAUSE THE
17 SPREADSHEETS HAD A LOT OF NUMBERS IN THEM.

18 Q ONE LAST TOPIC.

19 YOUR FIRM IS THE TM FINANCIAL FORENSICS,
20 CORRECT?

09:34AM

21 A YES, SIR.

22 Q AND YOU'RE THE CHIEF OPERATING OFFICER?

23 A AND THE VICE PRESIDENT, YES.

24 Q AND TM FINANCIAL FORENSICS, BY MAY 18, HAD
25 BEEN PAID A LITTLE OVER \$300,000 FOR THEIR WORK ON THIS
26 CASE, CORRECT?

09:34AM

27 A I'M NOT SURE, BUT I -- THAT COULD VERY WELL BE
28 TRUE, YES.

1 Q IF YOU COULD LOOK AT PAGE 142 OF YOUR
2 DEPOSITION.

3 A 142?

4 Q 142, CONTINUING OVER TO 143. I BELIEVE I'M UP
5 TO TX 2319.

09:34AM

6 THE CLERK: 18.

7 THE COURT: I SHOW THE LAST ONE ATTACHMENT AS
8 2317, A DEMONSTRATIVE OF EXHIBIT 2315. WE MUST HAVE
9 MISSED ONE.

10 MR. SURPRENANT: YOUR HONOR, I THINK I
11 NEGLECTED TO CALL OUT A DEMONSTRATIVE, 2318, WHICH WAS
12 DEMONSTRATIVE BASED ON TX 6199.

09:35AM

13 THE COURT: ALL RIGHT.

14 MR. QUINN: I THINK 3000 IS AVAILABLE, YOUR
15 HONOR.

09:35AM

16 MR. SURPRENANT: AFTER ALL THAT, WE'RE ON
17 2319.

18 SO, DO YOU SEE THERE, AS OF MAY 18TH,
19 TM FINANCIAL FORENSICS HAD BEEN PAID SOMETHING OVER
20 \$300,000, CORRECT?

09:36AM

21 A YES.

22 Q IT HAD BILLED, PAID -- AND IT HAD BILLED AND
23 NOT BEEN PAID ANOTHER 250,000, CORRECT?

24 A LOOKS LIKE THAT'S RIGHT.

25 Q HAS THAT 250,000 BEEN PAID?

09:36AM

26 A MOST LIKELY.

27 Q OKAY.

28 SO THAT WAS AS OF MAY 18, AND SINCE THEN

1 YOU'VE DONE A LOT OF WORK, CORRECT?

2 A YES, WE HAVE.

3 Q YOU WERE DEPOSED A FULL DAY ON JUNE 14TH,
4 CORRECT?

5 A I DON'T REMEMBER THE DATE, BUT I WAS DEPOSED
6 IN JUNE.

09:36AM

7 Q AND THEN YOU PREPARED THE 280-PAGE SECOND
8 SUPPLEMENTAL REPORT ON JULY 15TH, CORRECT?

9 A I FINISHED -- THERE WAS A -- FINISHED IT ON
10 THAT DATE.

09:36AM

11 Q THERE WAS A LOT OF WORK LEADING UP TO --

12 A FAIR AMOUNT OF WORK.

13 Q I DEPOSED YOU AGAIN ON JULY 27TH, CORRECT?

14 A SOMETIME IN JULY.

15 Q THEN YOU PREPARED A SUPPLEMENTAL REBUTTAL
16 REPORT ON AUGUST 5TH, CORRECT?

09:37AM

17 A I BELIEVE THAT'S RIGHT, YEAH.

18 Q THEN WE HAD THE PLEASURE OF ONE FINAL
19 DEPOSITION ON AUGUST 26TH, CORRECT?

20 A IT WAS QUITE PLEASURABLE.

09:37AM

21 Q THERE WERE MOMENTS OF PLEASURE, MR. WALLACE.

22 SO, AS THE C.O.O. -- I'LL TRY TO STAND
23 ON THE RIGHT SIDE OF THE BOARD THIS TIME -- AS THE
24 C.O.O. OF FINANCIAL FORENSIC -- SINCE ALL THAT WORK WAS
25 DONE ON MAY 18TH, HOW MUCH HAS TM FINANCIAL FORENSICS
26 BILLED DOUBLELINE?

09:37AM

27 A I DON'T KNOW, BUT A FEW HUNDRED THOUSAND MORE
28 FOR SURE.

1 Q YOU DON'T KNOW. IT'S AT LEAST A FEW HUNDRED
2 THOUSAND?

3 A WE'VE DONE A LOT OF WORK.

4 MR. SURPRENANT: MR. WALLACE, THANK YOU. I
5 HAVE NO FURTHER QUESTIONS AT THIS TIME.

09:38AM

6 THE COURT: THANK YOU, MR. SURPRENANT.

7 REDIRECT, MR. HELM?

8 MR. HELM: THANK YOU, YOUR HONOR.

9

10 REDIRECT EXAMINATION +

09:38AM

11

12 BY MR. HELM:

13 Q WHILE WE'RE ON THIS, DO YOU KNOW HOW YOUR
14 HOURLY RATE COMPARES TO PROFESSOR CORNELL'S HOURLY
15 RATE?

09:38AM

16 A IT'S LOWER.

17 Q DO YOU KNOW HOW MUCH TM FINANCIAL WAS PAID AS
18 COMPARED TO WHAT PROFESSOR CORNELL'S FIRM WAS PAID?

19 MR. SURPRENANT: OBJECTION. FOUNDATION.

20 MR. HELM: DO YOU KNOW?

09:38AM

21 THE COURT: THE QUESTION IS WHETHER HE KNOWS.

22 DO YOU KNOW?

23 THE WITNESS: I DON'T KNOW HOW THEY COMPARE.

24 I KNOW HE HAS A STAFF HELPING HIM AND THEY'VE DONE A
25 LOT OF WORK AS WELL.

09:38AM

26 BY MR. HELM:

27 Q DO YOU RECALL MR. SURPRENANT ASKED YOU SOME
28 QUESTIONS ABOUT DOUBLELINE'S INVESTMENT -- ABOUT

1 OAKTREE'S INVESTMENT IN DOUBLELINE?

2 A YES.

3 Q AND HOW LARGE OF AN EQUITY INTEREST DOES
4 OAKTREE CURRENTLY HOLD IN DOUBLELINE?

5 A I BELIEVE IT'S 22 PERCENT.

09:39AM

6 Q AND HOW DID OAKTREE ACQUIRE ITS 22 PERCENT
7 SHARE IN DOUBLELINE?

8 A IT EXCHANGED A COMBINATION OF SERVICES AND
9 OAKTREE STOCK FOR A SHARE OF THE DOUBLELINE START-UP
10 VENTURE.

09:39AM

11 MR. HELM: MAY I APPROACH, YOUR HONOR?

12 THE COURT: YES.

13 BY MR. HELM:

14 Q WHAT IS OUR NEXT EXHIBIT?

15 MS. DRIVER-MOORE: EXHIBIT 6209.

09:40AM

16 MR. HELM: THANK YOU.

17 Q THE TRANSACTION YOU WERE DESCRIBING, WHEN DID
18 THEY ACQUIRE THE STOCK?

19 A I BELIEVE THE TRANSACTION BETWEEN OAKTREE AND
20 DOUBLELINE WAS IN DECEMBER OF 2009.

09:40AM

21 Q HOW MUCH DOUBLELINE STOCK WAS GIVEN TO
22 OAKTREE?

23 A I BELIEVE IT WAS 22 PERCENT.

24 Q 22 PERCENT, DOUBLELINE STOCK WENT OVER TO
25 OAKTREE.

09:40AM

26 WHAT DID OAKTREE GIVE DOUBLELINE IN
27 RETURN FOR THAT 22 PERCENT SHARE OF DOUBLELINE STOCK?

28 A SERVICES TO HELP DOUBLELINE SET UP ITS COMPANY

1 AND SOME OAKTREE STOCK.

2 Q DO YOU KNOW WHAT PERCENTAGE OF OAKTREE TOTAL
3 STOCK WAS PROVIDED?

4 MR. SURPRENANT: OBJECTION, YOUR HONOR.
5 FOUNDATION. OUTSIDE THE SCOPE.

09:41AM

6 THE COURT: SUSTAINED. I DON'T THINK IT'S
7 OUTSIDE THE SCOPE. I'LL ALLOW IT.

8 YOU'VE GOT TO LAY THE FOUNDATION.
9 BY MR. HELM:

10 Q DO YOU HAVE ANY INFORMATION HOW MUCH OAKTREE
11 WAS -- STOCK WAS GIVEN TO DOUBLELINE?

09:41AM

12 A YES, I DO.

13 Q HOW MUCH WAS?

14 MR. SURPRENANT: OBJECTION. FOUNDATION.
15 BY MR. HELM:

09:41AM

16 Q HOW DO YOU KNOW?

17 A I READ THE TESTIMONY OF THE PRESIDENT OF
18 OAKTREE, WHERE HE DESCRIBED THE AMOUNT OF STOCK THEY
19 GAVE IN THE TRANSACTION TO ACQUIRE DOUBLELINE STOCK.

20 Q HOW MUCH STOCK WAS GIVEN?

09:41AM

21 A 0.78 PERCENT OF OAKTREE STOCK. SO IT'S
22 SLIGHTLY LESS THAN 1 PERCENT OF THE COMPANY STOCK.

23 Q ALL RIGHT.

24 SO WE HAVE SERVICES AT OAKTREE STOCK
25 GOING IN THAT DIRECTION; IS THAT CORRECT?

09:41AM

26 A THAT'S MY UNDERSTANDING.

27 Q ALL RIGHT.

28 NOW, DO YOU THINK IT WOULD BE

1 APPROPRIATE -- FIRST OF ALL, DID OAKTREE PAY ANY CASH
2 TO DOUBLELINE IN RETURN FOR THE DOUBLELINE STOCK?

3 A NO. IT WAS A NON-CASH TRANSACTION.

4 Q WOULD IT BE APPROPRIATE, IN YOUR OPINION, TO
5 USE THAT TRANSACTION TO ESTIMATE THE VALUE OF
6 DOUBLELINE TODAY?

09:42AM

7 A TOTALLY INAPPROPRIATE.

8 Q WHY DO YOU THINK IT WOULD BE INAPPROPRIATE?

9 A THERE'S TWO REASONS.

10 ONE, THAT WAS ALMOST TWO YEARS AGO. SO
11 THE VALUE OF DOUBLELINE TODAY WOULD NOT BE EXPECTED TO
12 BARE ANY RELATIONSHIP TO THE VALUE OF DOUBLELINE AT
13 THAT TIME. THE COMPANY HAS CHANGED THE ECONOMY HAS
14 CHANGED. THE FINANCIAL MARKETS HAVE CHANGED.

09:42AM

15 AND SO ONE IMPORTANT PRINCIPLE OF
16 BUSINESS VALUATION IS YOU HAVE TO LOOK AT CONDITIONS AT
17 THE TIME, AT THE PRESENT TIME.

09:42AM

18 Q ARE THERE ANY OTHER REASONS WHY YOU THINK IT
19 WOULD BE INAPPROPRIATE?

20 A YES. THERE'S -- ANOTHER SERIOUS PROBLEM IS
21 NONE OF THE ITEMS EXCHANGED IN THAT TRANSACTION HAD A
22 READILY ASCERTAINABLE MARKET VALUE. THERE WAS NO CASH
23 EXCHANGE. AND THERE WAS NO MARKET VALUE KNOWN FOR THE
24 DOUBLELINE STOCK. THERE WAS NO MARKET VALUE KNOWN FOR
25 THE OAKTREE STOCK SINCE IT WAS A PRIVATE COMPANY.

09:43AM

26 AND THERE WAS NO WAY OF KNOWING WHAT THE
27 VALUE OF THE SERVICES THAT WERE GOING TO BE PROVIDED
28 WERE WORTH.

09:43AM

1 Q DO YOU BELIEVE THERE'S ANY RELATIONSHIP
2 BETWEEN THE VALUE OF THE OAKTREE STOCK THAT WAS
3 CONTRIBUTED TO DOUBLELINE IN DECEMBER OF 2009 AND THE
4 VALUE OF DOUBLELINE AT THAT TIME?

5 MR. SURPRENANT: OBJECTION. LEADING. 09:43AM

6 THE COURT: OVERRULED.

7 THE WITNESS: NOT IN AN IMMEASURABLE WAY.

8 Q HAVE YOU REVIEWED ANY INFORMATION THAT
9 SUPPORTS A CONCLUSION ONE WAY OR THE OTHER AS TO
10 WHETHER THE VALUE OF THE OAKTREE STOCK AT THE TIME
11 WOULD BE A FAIR REPRESENTATION OF DOUBLELINE'S VALUE? 09:43AM

12 A YES.

13 Q WHAT HAVE YOU REVIEWED?

14 A I REVIEWED THAT DEPOSITION TESTIMONY OF THE
15 PRESIDENT OF OAKTREE, AND HE TESTIFIED HE HAD NO IDEA
16 AT THE TIME WHAT THE DOUBLELINE -- WHAT DOUBLELINE WAS
17 WORTH. 09:44AM

18 Q HAVE THERE BEEN ANY INVESTMENTS INTO
19 DOUBLELINE THAT WERE MADE IN CASH, AS OPPOSED TO
20 THROUGH SOME OTHER METHODS? 09:44AM

21 A YES. THERE HAVE.

22 Q AND WHAT CASH PURCHASES ARE YOU AWARE OF?

23 A WELL, THE REMAINDER OF THE DOUBLELINE
24 OWNERSHIP, BESIDES THE 22 PERCENT OWNED BY OAKTREE, IS
25 OWNERSHIP BY DOUBLELINE EMPLOYEES. AND THEY OWN THE
26 BALANCE OF THE 78 PERCENT. 09:44AM

27 AND THEY'VE ALL PAID CASH IN CONNECTION
28 WITH THEIR STOCK OWNERSHIP.

1 MR. SURPRENANT: OBJECTION. MOVE TO STRIKE.
2 IT'S NOT ONLY BEYOND THE SCOPE OF HIS REPORT, IT'S
3 BEYOND THE SCOPE OF HIS EXPERTISE.

4 THE COURT: IT'S WITHIN THE SCOPE OF YOUR
5 CROSS-EXAMINATION, SIR.

09:45AM

6 OVERRULED.

7 MR. SURPRENANT: I UNDERSTAND WITH THE
8 FOUNDATION ISSUE, YOUR HONOR.

9 THE COURT: GO AHEAD.

10 MR. HELM: COULD WE READ BACK THE QUESTION, OR
11 ARE YOU MOVING TO STRIKE?

09:45AM

12 MR. SURPRENANT: YES.

13 BY MR. HELM:

14 Q MR. SURPRENANT SUGGESTED THAT YOU COULD
15 ESTIMATE THE TOTAL VALUE OF DOUBLELINE BASED ON THE
16 AMOUNT PAID FOR A CERTAIN PERCENTAGE OF THE COMPANY.

09:45AM

17 DO YOU REMEMBER THAT?

18 A YES.

19 Q FIRST OF ALL, DO YOU THINK THAT'S A VALID
20 METHOD OF ASSESSING THE VALUE OF DOUBLELINE?

09:45AM

21 A NO.

22 Q WHY NOT?

23 A WELL, VALUING A PRIVATELY HELD COMPANY WITH NO
24 PUBLICLY TRADED STOCK OR MARKET VALUE AS A COMPLEX
25 ANALYSIS THAT REQUIRES UNDERSTANDING THE DETAILS OF THE
26 COMPANY, THE MARKET FOR THE COMPANY AND THINGS LIKE
27 THAT.

09:45AM

28 AND TO LOOK AT THE TRANSACTION THAT

1 OAKTREE DID I THINK OBSCURES MANY OF THE DETAILS THAT
2 WOULD BE APPROPRIATE TO EXAMINE IN VALUING THE COMPANY.

3 Q NOW, YOU MENTIONED EARLIER, THOUGH, THERE WAS
4 SOME OF THE PRINCIPALS OF DOUBLELINE PAID CASH FOR
5 STOCK IN DOUBLELINE AROUND THIS TIME; IS THAT RIGHT?

09:46AM

6 A YES.

7 Q WHAT WAS THE TOTAL PERCENTAGE SHARE OF
8 DOUBLELINE THAT WAS PURCHASED BY MR. GUNDLACH,
9 MR. BARACH, MR. LUCIDO, AND THE OTHERS?

10 A 78 PERCENT REMAINDER OF THE DOUBLELINE STOCK.

09:46AM

11 Q WHAT AMOUNT DID THEY PAY FOR THOSE SHARES AT
12 THAT TIME?

13 A THE TOTAL AMOUNT INVESTED IN CASH WAS
14 \$19 MILLION.

15 Q SO, IF YOU WERE TO USE MR. SURPRENANT'S
16 METHOD, WHICH I REALIZE YOU JUST SAID YOU DIDN'T THINK
17 WAS THE PERFECT THING TO DO, IF 78 PERCENT OF
18 DOUBLELINE WAS WORTH \$19 MILLION, THEN WHAT WOULD
19 100 PERCENT OF DOUBLELINE HAD BEEN WORTH?

09:46AM

20 A JUST A SECOND.

09:47AM

21 BETWEEN 24- AND \$25 MILLION.

22 Q NOW, WAS THAT A REAL-WORLD CASH TRANSACTION
23 THAT TOOK PLACE IN DECEMBER OF 2009?

24 A YES. THOSE ARE CASH TRANSACTIONS.

25 Q NOW, MR. SURPRENANT TOLD YOU THAT MR. BARACH
26 HAD TESTIFIED THAT OAKTREE PAID \$20 MILLION FOR
27 5 PERCENT OF DOUBLELINE.

09:47AM

28 IS IT YOUR UNDERSTANDING THAT OAKTREE

1 PAID \$25 MILLION FOR 5 PERCENT OF DOUBLELINE?

2 A I THINK YOU -- I THINK YOU MIGHT HAVE
3 MISSPOKE.

4 Q GO AHEAD.

5 A NO.

09:47AM

6 OAKTREE DID NOT PAY \$20 MILLION FOR
7 5 PERCENT OF DOUBLELINE OR 25 MILLION. THEY DIDN'T PAY
8 CASH FOR THEIR INTEREST IN DOUBLELINE.

9 Q LET'S TALK ABOUT THE CASH TRANSACTION.

10 COULD YOU DESCRIBE, FIRST OF ALL, WHEN
11 WAS THIS TRANSACTION?

09:48AM

12 A THE CASH TRANSACTION INVOLVING OAKTREE
13 OCCURRED IN APRIL 2010, FIVE MONTHS AFTER THE COMPANY
14 WAS -- DOUBLELINE WAS STARTED.

15 Q AND WHAT DID THAT TRANSACTION INVOLVE?

09:48AM

16 A THAT INVOLVED OAKTREE REPURCHASING ITS STOCK
17 FROM DOUBLELINE.

18 Q ALL RIGHT.

19 SO WE HAD .78 PERCENT OF OAKTREE STOCK,
20 WHICH THEY HAD AS A RESULT OF THE EARLIER TRANSACTION?

09:48AM

21 A YES.

22 Q ALL RIGHT.

23 AND SO .78 PERCENT OF OAKTREE STOCK WENT
24 BACK TO OAKTREE; IS THAT RIGHT?

25 A YES.

09:48AM

26 Q AND THEN WHAT DID OAKTREE GIVE DOUBLELINE FOR
27 THAT STOCK?

28 A \$20 MILLION. I BELIEVE THEY GAVE THEM

1 10 MILLION IN APRIL AND ANOTHER 10 MILLION LATER. BUT
2 THE TOTAL WAS 20 MILLION.

3 Q ALL RIGHT. SO WE HAVE THAT GOING BACK IN THAT
4 DIRECTION.

5 SO, TO WHAT EXTENT DO YOU BELIEVE THAT
6 THIS TRANSACTION IS USEFUL IN VALUING DOUBLELINE? 09:49AM

7 A NOT AT ALL. THAT TRANSACTION HAS NOTHING TO
8 DO WITH DOUBLELINE. THAT'S A TRANSACTION TO PURCHASE
9 OAKTREE STOCK.

10 Q IS THERE -- OTHER THAN THE FACT THAT IT WAS A
11 PURCHASE OF OAKTREE STOCK, AND NOT DOUBLELINE STOCK,
12 ARE THERE ANY OTHER FACTORS THAT YOU THINK BEAR, ONE
13 WAY OR THE OTHER, ON THE USEFULNESS OF THAT IN
14 EVALUATING THE VALUE OF DOUBLELINE? 09:49AM

15 A YES. I THINK MR. KARSH TESTIFIED THAT THIS
16 TIME PERIOD BETWEEN DECEMBER AND APRIL OF 2010 WAS ONE
17 OF DRAMATIC CHANGE IN BOTH THE FINANCIAL MARKETS. AND
18 THE VALUE OF OAKTREE, WHICH HE SAID HAD BEEN INCREASING
19 SIGNIFICANTLY IN THIS PERIOD, AND THAT THIS TRANSACTION
20 REPRESENTED HIS BELIEF THAT THE OAKTREE STOCK WAS
21 VALUABLE AND GETTING MORE VALUABLE, AND HE THOUGHT IT
22 WAS A GOOD DEAL TO BUY IT FOR THE \$20 MILLION. 09:50AM

23 MR. SURPRENANT: OBJECTION. MOVE TO STRIKE.
24 HEARSAY, YOUR HONOR.

25 MR. HELM: EXPERT TESTIMONY. 09:50AM

26 THE COURT: OVERRULED.

27 BY MR. HELM:

28 Q IN EVALUATING THIS AND OTHER INFORMATION YOU

1 RELIED UPON IN FORMING YOUR EXPERT OPINIONS, DO YOU
2 THINK IT'S FAIR TO ASSUME WHATEVER THE VALUE OF
3 .78 PERCENT OF OAKTREE STOCK WAS IN DECEMBER OF 2009,
4 IS THE SAME AS THE VALUE IN APRIL OF 2010?

5 A NO. MR. KARSH SAID IT HAD CHANGED
6 DRAMATICALLY.

09:51AM

7 Q NOW, AGAIN, BASED ON THE RECORDS THAT YOU
8 REVIEWED, AND GOING BACK TO THIS DECEMBER TRANSACTION,
9 WAS THE OAKTREE STOCK THAT WAS SENT OVER TO DOUBLELINE,
10 WAS IT BUYING 5 PERCENT OF DOUBLELINE STOCK, AS HAS
11 BEEN MENTIONED IN PRIOR TESTIMONY?

09:51AM

12 A I DON'T BELIEVE SO.

13 Q WHAT DOCUMENTS AND INFORMATION HAVE YOU
14 REVIEWED THAT HAVE GIVEN YOU AN UNDERSTANDING OF HOW
15 MUCH DOUBLELINE STOCK WAS ACTUALLY EXCHANGED FOR
16 OAKTREE STOCK AT THAT TIME?

09:51AM

17 A WELL, I'VE REVIEWED THE PARTNER CAPITAL
18 ACCOUNTS OF DOUBLELINE. AND THESE APPRAISER -- EXCUSE
19 ME -- APPRAISALS THAT I'M RELYING ON BOTH INDICATE THAT
20 OAKTREE OWNS A 22 PERCENT INTEREST IN DOUBLELINE.

09:52AM

21 AND AS I UNDERSTOOD MR. BARACH'S
22 TESTIMONY, THE SERVICES WERE PROVIDED FOR 15 PERCENT.

23 AND THEN THE STOCK IN OAKTREE WAS
24 PROVIDED FOR AN INCREMENTAL AMOUNT OF DOUBLELINE STOCK,
25 AND THAT INCREMENTAL AMOUNT, I BELIEVE, WAS 7 PERCENT
26 TO GET FROM 15 TO 22 PERCENT.

09:52AM

27 Q IF YOU USED A 7 PERCENT FIGURE, RATHER THAN A
28 5 PERCENT FIGURE, WHICH IS THE ONE MR. SURPRENANT USED,

1 WOULD THAT AFFECT THE NUMBER THAT RESULTED IN
2 MR. SURPRENANT'S CALCULATION?

3 A YES.

4 Q I'D LIKE TO -- I WOULD LIKE TO SHOW YOU TWO
5 DOCUMENTS. YOU MAY HAVE THOSE UP THERE. IN CASE YOU
6 DON'T -- DO YOU HAVE THE APPRAISAL UP THERE?

09:53AM

7 A I DON'T BELIEVE SO.

8 Q I'VE HANDED YOU TWO DOCUMENTS, EXHIBIT 5977
9 AND EXHIBIT 5978.

09:53AM

10 CAN YOU IDENTIFY WHAT THOSE ARE?

11 A YES. THESE ARE APPRAISALS OF DOUBLELINE
12 CAPITAL. AND DOUBLELINE GP HOLDINGS AS OF JUNE 3,
13 2011. PREPARED BY THE KLARIS, THOMSON & SCHROEDER
14 APPRAISAL FIRM.

15 MR. HELM: MOVE ADMISSION OF THOSE EXHIBITS,
16 YOUR HONOR.

09:53AM

17 MR. SURPRENANT: OBJECTION. FOUNDATION.

18 THE COURT: SUSTAINED.

19 BY MR. HELM:

20 Q WELL, WERE THESE THE APPRAISALS THAT YOU USED
21 IN FORMING YOUR OPINIONS IN THIS MATTER WITH RESPECT TO
22 THE VALUE OF THE DOUBLELINE SHARE THAT WAS THEN
23 DEDUCTED FROM CERTAIN COMPENSATION FIGURES?

09:53AM

24 A YES. I RELIED ON THESE APPRAISALS TO DO MY
25 DAMAGE CALCULATIONS.

09:54AM

26 MR. HELM: MOVE THEIR OBJECTION, YOUR HONOR.

27 MR. SURPRENANT: OBJECTION. YOUR HONOR,
28 FOUNDATION.

1 THE COURT: SUSTAINED.

2 MR. HELM: ALL RIGHT.

3 Q WELL, THE -- HOW LONG IS THE --

4 MR. BRIAN: EXCUSE ME. MY TURN.

5

09:54AM

6 (COUNSEL CONFER SOTTO VOCE.) +

7

8 BY MR. HELM:

9 Q LET ME ASK YOU TO LOOK AT EXHIBIT 5977. I'VE
10 GOT IT HERE.

09:54AM

11 HOW LONG OF A DOCUMENT IS THAT?

12 A THE TOTAL DOCUMENT IS 74 PAGES.

13 Q AND LET'S SEE, THAT'S THE APPRAISAL OF
14 DOUBLELINE CAPITAL; IS THAT RIGHT?

15 A YES.

09:54AM

16 Q THEN THERE WAS A SECOND APPRAISAL OF ANOTHER
17 DOUBLELINE ENTITY.

18 WHAT ENTITY WAS THAT?

19 A DOUBLELINE GP HOLDINGS, LP.

20 Q HOW MANY PAGES THAT WAS THAT APPRAISAL?

09:55AM

21 A 45 PAGES.

22 Q WHO PREPARED THESE APPRAISALS?

23 A THEY WERE PREPARED BY TODD HOLLINGSHEAD AND
24 JOHN THOMSON OF THE KLARIS, THOMSON & SCHROEDER FIRM.

25 Q AND ARE THESE INDIVIDUALS LICENSED APPRAISERS?

09:55AM

26 A YES. THEY'RE ACCREDITED SENIOR APPRAISERS OF
27 THE AMERICAN SOCIETY OF APPRAISERS.

28 AND MR. THOMSON ALSO HOLDS THE M.A.I.

1 DESIGNATION OF APPRAISAL INSTITUTION.

2 Q WHAT DOES THAT MEAN?

3 A IT'S A CERTIFICATION PROVIDED BY THE APPRAISAL
4 INSTITUTE TO INDICATE HIS PROFESSIONAL QUALIFICATIONS
5 FOR PREPARING AND SIGNING APPRAISALS.

09:55AM

6 Q I TAKE IT YOU REVIEWED THESE APPRAISALS AS
7 PART OF YOUR WORK?

8 A YES.

9 Q DID THE APPROACHES THAT THESE APPRAISALS TOOK
10 IN VALUING DOUBLELINE AND DOUBLELINE HOLDINGS, DID IT
11 USE THE TRADITIONAL APPROACHES THAT YOU HAVE SEEN IN
12 APPRAISALS OF THIS KIND?

09:55AM

13 MR. SURPRENANT: OBJECTION. FOUNDATION. I
14 HAVE TO TAKE VOIR DIRE, YOUR HONOR.

15 THE COURT: OVERRULED. I'LL ALLOW IT.

09:56AM

16 THE WITNESS: YES. THESE APPRAISALS DISCUSS
17 AND APPLY THE THREE WELL-ACCEPTED VALUATION, MARKET
18 APPROACH, INCOME APPROACH, AND COST APPROACH APPRAISING
19 CLOSELY HELD BUSINESSES.

20 Q WERE THESE APPRAISALS PREPARED IN CONNECTION
21 WITH THIS LITIGATION?

09:56AM

22 A NO, THEY WERE NOT. THEY WERE PREPARED FOR
23 CORPORATE PLANNING AND EMPLOYEE INCENTIVE PROGRAM
24 DEVELOPMENT.

25 Q ARE YOU AWARE OF ANY REASON THAT YOU HAVE
26 CONCLUDED THAT THESE APPRAISALS ARE NOT RELIABLE BASES
27 FOR USING IN YOUR ANALYSIS?

09:56AM

28 A NO. THEY'RE -- THEY'RE VERY RELIABLE

1 DOCUMENTS, IN MY OPINION, BASED ON THE STANDARDS AND
2 PROCEDURES FOLLOWED BY CERTIFIED APPRAISERS FROM THE
3 A.S.A. AND THE M.A.I.

4 Q BRIEFLY LOOK AT SOMETHING THAT MR. SURPRENANT
5 ASKED YOU ABOUT.

09:57AM

6 COULD YOU PUT UP 6192 PLEASE.

7 NOW, MR. SURPRENANT DREW YOUR ATTENTION
8 TO THE --

9 ACTUALLY, COULD I HAVE THAT
10 \$61.9 MILLION FIGURE THAT'S AT THE BOTTOM OF THE COLUMN
11 ON THROUGH DECEMBER 4TH.

09:57AM

12 DO YOU SEE THAT?

13 A YEAH. THE PRESENT VALUE NUMBER IN ROW 9.

14 Q YES.

15 AND SO WOULD YOU EXPLAIN, WHAT IS THIS
16 DAMAGES SCENARIO, AND WHAT IS THE PRESENT VALUE
17 CALCULATION YOU DID?

09:57AM

18 A WELL, THIS IS THE DAMAGE SCENARIO WHERE I
19 ASSUME MR. GUNDLACH HAD A CONTRACT THROUGH THE END OF
20 2011, AND HE WOULD HAVE WORKED THERE DURING THAT TIME.

09:57AM

21 AND IN THE YELLOW -- WELL, THE YELLOW
22 SECTION, I'VE CALCULATED THE AMOUNTS HE WOULD HAVE
23 EARNED UNDER HIS CONTRACT FOR MANAGEMENT FEES AND
24 PERFORMANCE FEES.

25 BUT TO CALCULATE A PRESENT VALUE, I NEED
26 TO KNOW WHEN HE WOULD HAVE BEEN PAID IN CASH. AND
27 UNDER THE ASSUMPTION HE WOULD HAVE WORKED THERE TILL
28 2011, HE WOULD RECEIVE THE MANAGEMENT FEES IN THE

09:58AM

1 PERIOD SHOWN ON THE SCHEDULE 2010 AND 2011 AND SO
2 FORTH.

3 BUT THE PERFORMANCE FEES I ASSUMED HE
4 WOULD NOT HAVE BEEN PAID IN CASH FOR UNTIL THE END OF
5 HIS CONTRACT TERM. AND SO THE TIMING OF THE CASH
6 PAYMENTS ARE A LITTLE DIFFERENT.

09:58AM

7 AND I'VE MEASURED THE PRESENT VALUE IN
8 THE FINAL ROW TO COME UP WITH A NUMBER THAT MEASURES
9 THE VALUE TODAY OF WHAT HE SHOULD HAVE BEEN PAID.

10 Q LET'S LOOK AT 6196.

09:58AM

11 NOW, A LOT OF THE NUMBERS IN THE TOP
12 PART ARE THE SAME AS IN THAT ROW OF THE PRIOR EXHIBIT;
13 IS THAT CORRECT?

14 A ALL OF THE NUMBERS ARE THE SAME, EXCEPT THE
15 LAST NUMBER FOR THE PRESENT VALUE.

09:59AM

16 Q THE 71.9.

17 WHY IS THE PRESENT VALUE NUMBER
18 DIFFERENT IN EXHIBIT 6196, WHICH CALCULATES THE ACCRUED
19 TO TERMINATION DAMAGES FROM THE FIGURE YOU HAD IN 6192,
20 WHICH WAS THE PRESENT VALUE FOR THAT PERIOD IN THE
21 2- -- THROUGH 2011 CALCULATION?

09:59AM

22 A IN THIS CALCULATION, I DO NOT ASSUME
23 MR. GUNDLACH WOULD HAVE WORKED TILL THE END OF 2011.

24 I ASSUME HE WOULD HAVE BEEN TERMINATED
25 ON DECEMBER 4TH AND SHOULD HAVE BEEN PAID THE AMOUNT OF
26 COMPENSATION HE'D EARNED UP TILL THAT DATE, AT THAT
27 TIME.

09:59AM

28 SO THE \$62 MILLION OF LOST COMPENSATION

1 ON ROW 80, ASSUME SHOULD HAVE BEEN PAID TO HIM ALMOST
2 TWO YEARS AGO.

3 AND THEN TO GET A PRESENT VALUE, I
4 INCREASED THAT AMOUNT FOR THE TIME VALUE OF MONEY UP TO
5 TODAY.

10:00AM

6 SO ALL THE DOLLARS IN THIS SCHEDULE WERE
7 ASSUMED TO HAVE BEEN PAID AND SHOULD HAVE BEEN PAID IN
8 THE PAST. AND THEN TIME VALUE MONEY INCREASES THE
9 PRESENT VALUE.

10 Q ONE FINAL AREA.

10:00AM

11 MR. SURPRENANT ASKED YOU ABOUT A CHANGE
12 IN THE DAMAGE FIGURE THAT RESULTED IN YOUR MAY REPORT
13 VERSUS YOUR APRIL REPORT.

14 DO YOU RECALL THAT?

15 A YES.

10:00AM

16 Q WHAT WERE THE CIRCUMSTANCES THAT CAUSED YOU TO
17 CHANGE THE DAMAGE ANALYSIS OR THE FIGURES THAT WERE
18 USED BETWEEN APRIL AND MAY?

19 A WE PROJECTED THE AMOUNT OF SMCF PERFORMANCE
20 FEES THAT MR. GUNDLACH WOULD HAVE EARNED IN THE FUTURE,
21 BASED ON HISTORICAL INFORMATION AND THEN ESTIMATES OF
22 FUTURE RETURNS.

10:00AM

23 AND WE HAD REQUESTED INFORMATION ABOUT
24 HOW THOSE FUNDS HAD PERFORMED IN 2009 AND 2010 FROM
25 TCW, AND I DIDN'T RECEIVE THAT INFORMATION IN TIME TO
26 INCORPORATE IT INTO MY APRIL REPORT.

10:01AM

27 SO, AFTER I RECEIVED IT AND WAS ABLE TO
28 STUDY IT, THEN I INCLUDED THAT IN MY ANALYSIS, AND I

1 PROVIDED AN UPDATED REPORT THAT REFLECTED THAT DATA.

2 MR. HELM: THANK YOU. I HAVE NOTHING FURTHER.

3 THE COURT: THANK YOU.

4 MR. SURPRENANT, RECROSS.

5

10:01AM

6 RECROSS-EXAMINATION +

7

8 BY MR. SURPRENANT:

9 Q I'D LIKE TO START REAL QUICKLY WITH THE
10 APPRAISALS MR. HELM WAS TALKING TO YOU ABOUT.

10:01AM

11 YOU SAID YOU KNEW THE PURPOSE FOR WHICH
12 THEY WERE PREPARED?

13 A I KNOW THE PURPOSE FOR WHICH THEY WERE
14 PREPARED.

15 Q YOU KNOW THE PURPOSE FOR WHICH THESE
16 APPRAISALS WERE PREPARED? THAT'S WHAT YOU'RE SAYING?

10:01AM

17 A THEY STATE THE PURPOSE IN THE APPRAISAL.

18 MR. SURPRENANT: YOUR HONOR, I'D LIKE TO READ
19 INTO THE RECORD PAGE 597 OF MR. WALLACE'S DEPOSITION,
20 LINES 15 TO 23.

10:02AM

21 THE COURT: ANY OBJECTION?

22 MR. HELM: I'M TRYING TO FIND IT. 597.

23 THE COURT: 15 TO 23.

24

25 (PAUSE) +

10:02AM

26 MR. HELM: NO OBJECTION, YOUR HONOR.

27 THE COURT: YOU MAY PROCEED.

28 MR. SURPRENANT:

1 QUESTION: WELL, DO YOU KNOW IF
2 THIS WAS PREPARED --
3 THE COURT: SLOW DOWN.

4 BY MR. SURPRENANT:

5 Q (READING):

10:02AM

6 -- DO YOU KNOW IF THIS WAS PREPARED
7 IN THE REGULAR COURSE OF BUSINESS
8 OR IF THIS WAS COMMISSIONED AS A
9 LITIGATION TOOL?

10 I -- I DON'T KNOW. THEY WEREN'T
11 PREPARED AT MY REQUEST.

10:03AM

12 Q LET'S QUICKLY GO THROUGH THE TRANSACTION.

13 THE SECOND TRANSACTION BETWEEN
14 DOUBLELINE AND OAKTREE. THERE WAS A FIRST TRANSACTION,
15 BUT THEN AT THE END OF MR. HELM'S REDIRECT, I BELIEVE
16 IT WAS ESTABLISHED THAT YOUR UNDERSTANDING IS THAT
17 7 PERCENT OF DOUBLELINE WAS PURCHASED FOR \$20 MILLION,
18 CORRECT?

10:03AM

19 A NO.

20 THE COURT: NO.

10:04AM

21 THE WITNESS: THAT'S WHAT I --

22 THE COURT: EXCUSE ME.

23 MR. SURPRENANT: YOUR HONOR --

24 THE WITNESS: NO, THAT'S NOT WHAT I SAID.

25 THE COURT: DISREGARD ANYTHING I SAY. I
26 APOLOGIZE.

10:04AM

27 THE WITNESS: I AGREE WITH YOU.

28

1 (COUNSEL CONFER SOTTO VOCE.) +

2

3 MR. SURPRENANT: LET ME START AGAIN.

4 Q 7 PERCENT OF DOUBLELINE STOCK WAS -- 7 PERCENT
5 OF OAKTREE -- OF DOUBLELINE STOCK WAS EXCHANGED FOR .78
6 OF OAKTREE STOCK; IS THAT RIGHT?

10:04AM

7 A I THINK THAT'S A FAIR CHARACTERIZATION OF WHAT
8 I UNDERSTAND TO HAVE HAPPENED IN DECEMBER 2010.

9 Q AND THEN THIS WAS PURCHASED BACK --

10 MR. HELM: 2010?

10:05AM

11 THE WITNESS: I'M SORRY. 2009. 2009.

12 BY MR. SURPRENANT:

13 Q THIS WAS PURCHASED BACK IN APRIL FOR
14 \$20 MILLION?

15 A YES.

10:05AM

16 Q SO, ASSUMING THE 7 PERCENT WAS EXCHANGED FOR
17 .78, OAKTREE, AND THAT WAS PURCHASED FOR \$20 MILLION,
18 IF YOU WERE TO DO THAT AS A VALUATION SEVEN -- HOW MUCH
19 WOULD YOU HAVE TO VALUE -- LET ME STRIKE THAT. START
20 AGAIN.

10:05AM

21 IF \$20 MILLION, ASSUME \$20 MILLION IS A
22 FAIR VALUATION FOR 7 PERCENT OF DOUBLELINE, WHAT WOULD
23 THAT IMPLY THE TOTAL VALUE OF DOUBLELINE WOULD BE?

24 A I EXPLAINED WHY THAT'S NOT A FAIR VALUATION
25 FOR THE 7 PERCENT. BUT I CAN DO MATH FOR YOU.

10:05AM

26 Q HOW MUCH WOULD THE MATH BE?

27 A IF 7 PERCENT WAS WORTH 20 MILLION --

28 Q UH-HUH.

1 A -- HOW MUCH WOULD 100 PERCENT OF DOUBLELINE BE
2 WORTH?

3 Q UH-HUH.

4 A UNDER YOUR ASSUMPTION -- WHICH I DON'T AGREE
5 WITH -- YOU WOULD MULTIPLY THE 20 BY ROUGHLY 14.

10:06AM

6 Q AND YOU WOULD GET 280 MILLION?

7 A MATHEMATICALLY YOU WOULD GET THAT.

8 Q LET'S TALK ABOUT WHY IT MAY NOT BE A GOOD IDEA
9 TO COMPARE A TRANSACTION IN APRIL, IN APRIL, WITH A
10 TRANS- -- WITH A VALUE TODAY.

10:06AM

11 NOW, IN APRIL DOUBLELINE WAS A START-UP,
12 CORRECT?

13 A I THINK IT COULD STILL BE CONSIDERED A
14 START-UP AT THAT TIME, YEAH.

15 Q IT HAD A COUPLE BILLION DOLLARS IN ASSETS,
16 CORRECT?

10:06AM

17 A I'M NOT SURE. PROBABLY.

18 Q DID YOU HEAR MR. BARACH SAY IT WAS HAVING CASH
19 FLOW PROBLEMS, AND THAT'S HOW COME THEY SOLD THE STOCK
20 BACK FOR 20 MILLION?

10:06AM

21 MR. HELM: VAGUE AND AMBIGUOUS.

22 THE COURT: SUSTAINED.

23 BY MR. SURPRENANT:

24 Q WHAT DID YOU UNDERSTAND FROM MR. BARACH'S
25 TESTIMONY WHY THEY SOLD THE OAKTREE STOCK BACK TO
26 OAKTREE FOR \$20 MILLION?

10:07AM

27 A I DIDN'T HEAR ALL OF MR. BARACH'S TESTIMONY.
28 SO I'M NOT SURE WHAT HE EXPLAINED.

1 I DO KNOW WHAT MR. KARSH, THE PRESIDENT
2 OF OAKTREE, SAID ABOUT WHY HE BOUGHT THE STOCK BACK.

3 Q AND NOW DOUBLELINE HAS ASSETS UNDER MANAGEMENT
4 OF ALMOST 15 MILLIONS -- \$15 BILLION, CORRECT?

5 A I KNOW IT'S OVER 10 BILLION. I DON'T KNOW THE
6 PRESENT NUMBER. 10:07AM

7 Q AND IT WAS LOSING MONEY IN APRIL OF 2010; NOW
8 IT'S MAKING MONEY, CORRECT?

9 A ON A CURRENT PERIOD BASIS ITS CASH FLOW IS
10 NEGATIVE LAST YEAR. AND I BELIEVE ITS CASH FLOW IS
11 POSITIVE NOW. 10:07AM

12 Q THOSE FACTORS WOULD TEND TO INDICATE THE
13 PURCHASE PRICE IN APRIL 2010 WOULD UNDERVALUE THE
14 PRESENT VALUE OF THE COMPANY, GIVEN THAT IT HAS GROWN
15 IN SIZE AND PROFITABILITY, CORRECT? 10:08AM

16 A NO. THE VALUE IN APRIL OF 2010 WOULD STILL
17 REFLECT EXPECTATIONS OF HOW THE FIRM MIGHT GROW IN THE
18 FUTURE.

19 SO THE COMPARISON IS WHETHER THE
20 EXPECTATIONS TODAY ARE HIGHER OR LOWER THAN THEY WERE A
21 YEAR AGO, NOT BASED ON WHETHER THERE'S POSITIVE OR
22 NEGATIVE CASH FLOW AT THOSE POINTS IN TIME. 10:08AM

23 Q IN APRIL OF 2010 THERE WAS A POSSIBILITY THAT
24 DOUBLELINE WOULD GO OUT OF BUSINESS AND THAT
25 POSSIBILITY IS GREATLY REDUCED TODAY, CORRECT? 10:08AM

26 A I DON'T KNOW.

27 Q SO, ONE LAST THING, AND I HAVE TWO MORE
28 MINUTES OF QUESTIONS.

1 THE COURT: LET'S MOVE ALONG.

2 MR. SURPRENANT: I WILL, YOUR HONOR.

3 ONE LAST AREA.

4 I'VE GOTTEN THE UNIVERSAL SIGN,

5 JUDGE WEST AND MR. WALLACE, AND I AM THROUGH.

10:08AM

6 MR. HELM: ONE QUESTION IF I COULD.

7 THE COURT: NOT ON THE SAME SUBJECT.

8 MR. HELM: ON ONE OF THE -- NOT ON THIS.

9 THE COURT: OKAY.

10 MR. HELM: HE READ --

10:09AM

11 THE COURT: THEN IT'S PROBABLY BEYOND THE
12 SCOPE.

13 MR. QUINN: ANYTHING SHORT IS FINE, YOUR
14 HONOR.

10:09AM

15
16 FURTHER REDIRECT EXAMINATION +

17

18 BY MR. HELM:

19 Q SINCE YOUR DEPOSITION, WHICH HE READ INTO THE
20 RECORD, HAVE YOU HAD A CHANCE TO REVIEW MORE CAREFULLY
21 THE APPRAISAL REPORT, INCLUDING PAGE 5, STATING WHAT
22 THE PURPOSE OF THE APPRAISAL WAS?

10:09AM

23 A YES. SINCE I DIDN'T KNOW THE ANSWER AT MY
24 DEPOSITION, I LOOKED BACK AT THE APPRAISALS, AND I ALSO
25 TALKED TO DOUBLELINE PERSONNEL, AND -- YES, THOSE ARE
26 THE TWO REASONS.

10:09AM

27 Q WOULD YOU LOOK, FOR EXAMPLE, ON EXHIBIT 5977,
28 PAGE 5, AT THE TOP.

1 YOU SEE THE PARAGRAPH, PURPOSE OF THE
2 APPRAISAL?

3 A YES.

4 Q WOULD YOU JUST READ THAT PARAGRAPH, PLEASE.

5 MR. SURPRENANT: OBJECTION. HEARSAY. 10:10AM

6 THE COURT: SUSTAINED.

7 BY MR. HELM:

8 Q WELL, DO YOU KNOW --

9 THE COURT: HE'S TOLD US.

10 BY MR. HELM:

11 Q BASED ON REVIEWING THIS DOCUMENT AND TALKING

12 TO PEOPLE AT DOUBLELINE SINCE YOUR DEPOSITION, HAVE YOU
13 DETERMINED WHAT THE PURPOSE OF THE APPRAISAL WAS?

14 MR. SURPRENANT: OBJECTION. CUMULATIVE.

15 THE COURT: SUSTAINED. HE JUST TOLD US FIVE
16 MINUTES AGO. 10:10AM

17 MR. HELM: ALL RIGHT.

18 THANK YOU, YOUR HONOR.

19 THE COURT: YOU'RE REALLY NOT THANKING ME, BUT
20 THAT'S JUST THE WAY IT IS. 10:10AM

21 MR. QUINN: I'M THANKING YOU, YOUR HONOR.

22 MR. SURPRENANT: I WOULDN'T DARE, YOUR HONOR.

23 THE COURT: MR. BRIAN.

24 MR. BRIAN: MAY WE APPROACH BRIEFLY?

25 THE COURT: YES, COME ON UP. 10:10AM

26
27 (SIDE-BAR CONFERENCE HELD) +
28

1 MR. BRIAN: WE HAVE ONE MORE WITNESS TO CALL
2 BY VIDEOTAPE, AND MR. SONNEBORN IS UNAVAILABLE. WE
3 THOUGHT ABOUT CALLING HIM OUT OF ORDER --

4 WHAT DO YOU WANT TO DO?

5 THE COURT: DO YOU WANT TO TAKE SONNEBORN OUT
6 OF ORDER?

10:11AM

7 MR. QUINN: YES.

8 MR. BRIAN: IT SAYS WE HAVE EQUAL TIME. I
9 DON'T A --

10 THE COURT: EQUAL TIME ON WHAT?

10:11AM

11 MR. BRIAN: DIRECT AND CROSS. HE'S NOT
12 AVAILABLE MONDAY.

13 THE COURT: YOU GUYS DANGLE THE BAIT. THE
14 OTHER SIDE TAKES IT. YOU GO BACK AND FORTH. IT AMAZES
15 ME.

10:11AM

16 MR. QUINN: I WANT TO THANK MR. BRIAN FOR
17 DOING THIS.

18 THE COURT: THAT'S FINE.

19 MR. QUINN: HE'S RIGHT. HE'S ENTITLED.

20 MR. BRIAN: MAYBE WE SHOULD BREAK NOW, AND I
21 DON'T WANT TO RUN YOUR COURTROOM.

10:11AM

22 THE COURT: I DON'T CARE.

23 MR. BRIAN: MAYBE BREAK FOR 15 MINUTES NOW,
24 AND WE CAN JUST DIVIDE IT UP. SAY FIVE MINUTES FOR --

25 THE COURT THEN WE WON'T BE WATCHING THE FILM
26 TODAY.

10:11AM

27 MR. BRIAN: WE HAVE TO DO THAT ON MONDAY.

28 THE COURT: DO WE HAVE A LOT OF TESTIMONY OF

1 SONNEBORN COMING IN?

2 MR. QUINN: NO, I THINK THE DIRECT, PLUS OR
3 MINUS 45 MINUTES.

4 THE COURT: WELL, THEN WE'RE PUSHING THE
5 ENVELOPE.

10:12AM

6 MR. BRIAN: THAT'S WHY WE'RE DOING THIS.

7 MR. QUINN: CAN WE SHORTEN THE BREAK?

8 THE COURT: 15 MINUTES.

9 MR. MADISON: WE HAVE A GUY NAMED TODD OWENS
10 HERE FROM GOLDMAN SACHS. I DON'T NEED TO TELL YOU.

10:12AM

11 THE COURT: HE'S FROM NEW YORK?

12 MR. QUINN: FROM HERE.

13 MR. MADISON: HE'S LOCAL, BUT HE'S A MASTER OF
14 THE UNIVERSE.

15 THE COURT: THEY'RE HARD TO DEAL WITH
16 SOMETIMES. WHAT ARE YOU GOING TO DO? TAKE ALL MORNING
17 FOOLING AROUND WITH MR. WALLACE ON THINGS THAT HAVE
18 NOTHING TO DO WITH ANYTHING?

10:12AM

19 MR. MADISON: I WANT TO BRING HIM IN AS SOON
20 AS WE BREAK AND HAVE HIM -- ORDER HIM BACK FOR MONDAY.
21 HE'S UNDER SUBPOENA.

10:12AM

22 THE COURT: ARE WE GOING TO FINISH MONDAY AND
23 ARGUE ON TUESDAY?

24 MR. QUINN: YES.

25 THE COURT: WE'RE NOT GOING TO HAVE ANY OF
26 THIS?

10:12AM

27 MR. QUINN: NO, WE'RE NOT. WE ALL, YES, YOUR
28 HONOR --

1 MR. MADISON: I'M LEAVING ON MY HONEYMOON
2 WEDNESDAY.

3 THE COURT: HE CAN WAIT. MAYBE WE CAN GO TO
4 HIM TODAY -- I'LL TELL HIM IT DOESN'T APPEAR WE'RE
5 GOING TO. I'LL ORDER HIM BACK ON MONDAY MORNING AT
6 8:30.

10:13AM

7 MR. QUINN: THE DIRECT IS FIVE MINUTES?

8 MR. BRIAN: YEAH, THE DIRECT IS --

9 THE COURT: ALL RIGHT. ALL RIGHT.

10:13AM

10

11 (SIDE-BAR CONFERENCE CONCLUDED.) +

12

13 THE COURT: WE'LL TAKE OUR MORNING RECESS.
14 WE'RE ONLY GOING UNTIL NOON. WE'LL TAKE A 15-MINUTE
15 RECESS AND COME BACK AT 10:30.

10:13AM

16 SEE YOU THEN.

17

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

19

20 THE COURT: WE'RE OUT OF THE PRESENCE OF THE
21 JURY.

10:14AM

22 I UNDERSTAND WE HAVE A WITNESS HERE.

23 MR. MADISON: WE DO, YOUR HONOR. I ASK HE
24 COME IN. I'M WAITING FOR HIM TO COME IN.

10:14AM

25

26 (PAUSE) +

27

28 MR. MADISON: YOUR HONOR, I HAVE NOT MET THIS

1 GENTLEMAN.

2 BUT I BELIEVE YOU ARE TODD OWENS?

3 THE COURT: MR. OWENS, YOU'RE A WITNESS THAT
4 HAS BEEN SUBPOENAED FOR THIS TRIAL.

5 I WANTED TO TELL YOU THAT IT APPEARS WE
6 HAVE ANOTHER WITNESS. WE'RE GOING TO GO TILL NOON
7 TODAY. WE MAY GET TO YOU, BUT IT'S VERY LIKELY WE
8 WON'T.

10:14AM

9 AND SO WHAT I'D LIKE TO DO IS ORDER YOU
10 TO COME BACK AT 8:30 MONDAY MORNING AND LET YOU GO NOW.

10:15AM

11 IF YOU'D PREFER TO STAY HERE ON THE
12 CHANCE WE'D GET YOU COVERED TODAY, YOU'RE WELCOME TO
13 STAY. BUT I DIDN'T WANT YOU SITTING AROUND ALL MORNING
14 WHEN, QUITE FRANKLY, IT DOESN'T LOOK LIKE WE'LL GET TO
15 YOUR TESTIMONY.

10:15AM

16 MR. OWENS: THANK YOU, YOUR HONOR.

17 THE COURT: HOW LATE ARE YOU GOING TODAY?

18 MR. MADISION: I MAY JUST STAY TILL NOON. I
19 HAVE A MEETING DOWNTOWN.

20 THE COURT: I'M ORDERING YOU IF WE DON'T GET
21 TO YOU, YOU'LL BE ORDERED TO COME BACK AT 8:30 MONDAY
22 MORNING.

10:15AM

23 DO YOU UNDERSTAND THAT?

24 MR. OWENS: YOUR HONOR, I UNDERSTAND THAT.

25 THE COURT: I APPRECIATE YOUR COOPERATION.
26 IT'S LIKE TURNING A BIG SHIP IN A SMALL CANAL.

10:15AM

27 MR. MADISON: IT'S VERY UNLIKELY FROM THE
28 SCHEDULE THAT MR. OWENS WOULD BE CALLED TODAY.

1 THE COURT: I THINK IT'S VERY UNLIKELY.
2 THAT'S WHY I'M TELLING YOU THAT. I CAN ALMOST SAY WE
3 WON'T CALL YOU. WE'LL TRY, BUT I CAN'T PROMISE
4 ANYTHING.

5 MR. OVWENS: I'LL COME BACK AT 8:30 ON MONDAY. 10:16AM

6 THE COURT: YES. COME BACK AT 8:30 ON MONDAY.

7 MR. SURPRENANT: COULD I MARK MY LAST, 2320?

8 THE COURT: ALL RIGHT.

9

10 (EXHIBIT 2320 MARKED FOR I.D.) + 10:16AM

11

12 THE COURT: ANY OTHER MATTERS WE NEED TO TAKE
13 UP OUTSIDE THE PRESENCE?

14 MR. QUINN: NO.

15 THE COURT: THANK YOU. 10:16AM

16

17 (RECESS.)

18

19

20

21

22

23

24

25

26

27

28

1 CASE NUMBER: BC429385
2 CASE NAME: TRUST COMPANY OF THE WEST VS.
3 JEFFREY GUNDLACH, ET AL
4 LOS ANGELES, FRIDAY, SEPTEMBER 9, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 10:30 A.M.

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

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

19 LADIES AND GENTLEMEN, THE DEFENDANTS
20 HAVE ONE MORE WITNESS, WHICH I BELIEVE IS GOING TO BE
21 VIA VIDEO DEPOSITION TESTIMONY.

22 WE ALSO HAVE A WITNESS THAT THE
23 PLAINTIFFS WISH TO CALL IN REBUTTAL, THAT IS HERE FROM
24 OUT OF TOWN. SO WHAT WE'RE GOING TO DO IS TAKE THAT
25 WITNESS OUT OF ORDER, AND YOU ARE GOING TO BE HEARING A
26 PLAINTIFF'S WITNESS NOW, BEFORE THE DEFENSE HAS
27 FINISHED THEIR CASE, BUT WE'LL TAKE CARE OF IT BECAUSE
28 HE'S IN TOWN.

10:31AM

10:31AM

1 SO MR. QUINN, YOU MAY CALL YOUR WITNESS.

2 MR. QUINN: THANKS, YOUR HONOR.

3 TCW CALLS BILL SONNEBORN.

4

5

6 BILL SONNEBORN,

7 CALLED AS A WITNESS BY THE PLAINTIFFS,

8 WAS PREVIOUSLY SWORN AND TESTIFIED AS FOLLOWS:

9

10

10:31AM

11 THE COURT: GOOD MORNING, MR. SONNEBORN. YOU

12 CAN HAVE A SEAT. YOU HAVE BEEN PREVIOUSLY SWORN AND

13 ARE UNDER OATH.

14 THANK YOU VERY MUCH FOR COMING BACK AND

15 JOINING US FOR ANOTHER DAY.

10:31AM

16 MR. QUINN, YOU MAY PROCEED.

17 MR. QUINN: THANK YOU, YOUR HONOR.

18

19

20 DIRECT EXAMINATION

10:31AM

21

22 BY MR. QUINN:

23 Q. MORNING, MR. SONNEBORN.

24 A. MORNING, MR. QUINN.

25 Q. WHEN YOU WERE HERE BEFORE, I THINK WE

10:32AM

26 ESTABLISHED THAT BACK IN -- SINCE 2005, YOU HAD BEEN

27 CHIEF OPERATING OFFICER, AND THEN YOU BECAME PRESIDENT

28 OF TCW?

1 A. PRESIDENT AND CHIEF OPERATING OFFICER AS OF
2 2005, YES.

3 Q. AND THOSE ARE THE POSITIONS YOU HELD UP UNTIL
4 JULY OF 2008, WHEN YOU LEFT TCW?

5 A. YES.

10:32AM

6 Q. AND IN THAT POSITION, DID YOU HAVE
7 RESPONSIBILITY, YOURSELF, FOR NEGOTIATING FEE DEALS
8 WITH PORTFOLIO MANAGERS AT TCW?

9 A. EVEN PRIOR TO THAT, GOING BACK TO 1998, TRULY
10 AFTER I STARTED, I HAD PRINCIPAL RESPONSIBILITY FOR
11 NEGOTIATING EITHER COMPENSATION ARRANGEMENTS OR
12 EMPLOYMENT AGREEMENTS WITH PORTFOLIO MANAGERS AT THE
13 FIRM.

10:32AM

14 Q. AND DID THAT INCLUDE MR. GUNDLACH?

15 A. YES.

10:32AM

16 Q. NOW, IN THE SPRING OF 2007, DID YOU HAVE
17 DISCUSSIONS WITH MR. GUNDLACH ABOUT THE TERMS OF A NEW
18 COMPENSATION ARRANGEMENT WITH HIM?

19 A. YES, I DID.

20 Q. AND CAN YOU TELL US, PLEASE, WHEN THOSE
21 NEGOTIATIONS BEGAN?

10:32AM

22 A. THOSE NEGOTIATIONS BEGAN IN THE FEBRUARY,
23 MARCH TIME PERIOD, WITH HIM SPECIFICALLY ASKING
24 REPEATEDLY TO MEET TO TALK ABOUT HIS COMPENSATION.

25 Q. AND AT THAT TIME, WHEN HE CAME TO TALK TO YOU,
26 HE HAD AN EXISTING EMPLOYMENT AGREEMENT?

10:33AM

27 A. HIS EXISTING EMPLOYMENT AGREEMENT DID NOT
28 EXPIRE UNTIL DECEMBER 31ST, 2007, SO NOT UNTIL THE END

1 OF THAT YEAR.

2 Q. ALL RIGHT.

3 DID THE FACT THAT HE HAD AN EMPLOYMENT
4 AGREEMENT THAT WOULD EXPIRE AT THE END OF 2007 HAVE
5 ANYTHING TO DO WITH THE FACT THAT YOU STARTED TALKING
6 TO HIM MUCH EARLIER IN THE YEAR ABOUT A NEW
7 COMPENSATION ARRANGEMENT?

10:33AM

8 A. GENERALLY, WE WOULD NOT HAVE ADDRESSED WITH
9 JEFFREY, COMPENSATION OR EMPLOYMENT AGREEMENT-RELATED
10 MATTERS UNTIL SOMETIME IN THE SEPTEMBER TIME PERIOD OF
11 '07, BUT JEFFREY WAS INSISTENT ON STARTING THAT PROCESS
12 MUCH EARLIER.

10:33AM

13 Q. CAN YOU TELL US WHETHER OR NOT THIS WAS A
14 SUBJECT THAT MR. GUNDLACH BROUGHT UP?

15 A. MR. GUNDLACH BROUGHT THIS UP. IT WAS DRIVEN
16 BY HIM.

10:33AM

17 Q. AND WHAT WERE -- AS DESCRIBED TO YOU BY HIM,
18 WHAT WERE THE CIRCUMSTANCES THAT CAUSED HIM TO WANT TO
19 NEGOTIATE A NEW FEE ARRANGEMENT?

20 A. THERE WERE SEVERAL.

10:34AM

21 THE FIRST STARTED IN '06, WHERE JEFFREY
22 AND I HAD A CONVERSATION ON PHIL BARACH WHICH RESULTED
23 IN AN AGREEMENT FOR PHIL BARACH'S COMPENSATION TO COME
24 DOWN.

25 THE SECOND WAS JEFFREY'S DESIRE TO GET
26 AHEAD MORE, PERSONALLY, AS OPPOSED TO WHAT THE OVERALL
27 ARRANGEMENTS WERE.

10:34AM

28 Q. LET'S GO THROUGH THOSE ONE AT A TIME.

1 YOU MADE REFERENCE TO THE FACT THAT
2 MR. BARACH'S COMPENSATION AND EMPLOYMENT ARRANGEMENT
3 HAD SOMETHING TO DO WITH MR. GUNDLACH WANTING TO
4 NEGOTIATE A NEW FEE DEAL; IS THAT CORRECT?

5 A. THAT'S CORRECT. 10:34AM

6 Q. CAN YOU EXPLAIN TO US WHY THAT WAS A CONCERN
7 TO HIM, WHAT HAD HAPPENED WITH MR. BARACH, AGAIN, AS
8 RELATED TO YOU BY MR. GUNDLACH?

9 A. IN SIMPLE TERMS, THE '07 CONTRACT HAD PHIL
10 BARACH AND JEFFREY GUNDLACH ALONGSIDE EACH OTHER. THEY 10:34AM
11 WERE LINKED, BUT THEY WERE SEPARATE POOLS, IN THE
12 CONTEXT --

13 Q. WHEN YOU SAY THE '07 CONTRACT, WHICH ONE --
14 ARE YOU REFERRING TO THE ONE --

15 A. THE ONE THAT WAS STILL IN EFFECT. 10:35AM

16 Q. OKAY.

17 A. IT WOULD EXPIRE IN 2007. THE ONE HE WAS BEING
18 COMPENSATED ON IN '05 AND '06, AND WOULD HAVE BEEN IN
19 '07, PURSUANT TO THOSE TERMS.

20 Q. RIGHT. 10:35AM

21 A. AND SO THE ADJUSTMENTS TO PHIL BARACH'S
22 COMPENSATION RESULTED IN THE DOLLARS THAT WOULD HAVE
23 GONE TO PHIL, COMING BACK TO TCW, FOR PURPOSES OF
24 INVESTING IN MARKETING AND SALES AND OTHER THINGS.

25 AND JEFFREY WANTED THOSE DOLLARS TO COME 10:35AM
26 TO HIM PERSONALLY.

27 Q. YOU SAY THE EXISTING DEAL HAD JEFFREY AND
28 MR. BARACH -- I SHOULD SAY, MR. GUNDLACH AND

1 MR. BARACH, SIDE BY SIDE.

2 COULD YOU EXPLAIN WHAT YOU MEAN BY THAT?

3 A. SURE. THERE WAS AN AGGREGATE POOL THAT THEN
4 WAS DIVIDED UP 50/50 BETWEEN MR. BARACH AND
5 MR. GUNDLACH.

10:35AM

6 AND THEN THERE WAS ADDITIONAL
7 ADJUSTMENTS TO THE SEPARATE POOLS THAT WERE CREATED
8 AFTER YOU DIVIDE THE MASTER POOL, IN THE CONTEXT OF HOW
9 EACH OF THEM WERE TREATED.

10 Q. THAT WAS THE DEAL THAT WAS THEN IN EFFECT?

10:36AM

11 A. YES.

12 Q. AND WAS THAT CALLED THE B AND G POOL?

13 A. THAT WAS THE MASTER POOL, BEFORE IT GOT
14 DIVVIED UP INTO THE RESPECTIVE BARACH POOL AND GUNDLACH
15 POOL; BUT, YES.

10:36AM

16 Q. BUT THAT WAS A 50/50 POOL THEY USED TO HAVE?

17 A. YES.

18 Q. SO WHAT HAPPENED AT THE END OF 2006?

19 A. AT THE END OF 2006 --

20 MR. BRIAN: OBJECTION, YOUR HONOR. CALLS FOR
21 A NARRATIVE.

10:36AM

22 THE COURT: SUSTAINED.

23 Q. BY MR. QUINN: YOU MADE REFERENCE TO THE FACT
24 THERE WAS A CHANGE WITH RESPECT TO MR. BARACH AT THE
25 END OF 2006.

10:36AM

26 COULD YOU EXPLAIN WHAT THAT WAS?

27 A. YES. MR. BARACH'S EMPLOYMENT AGREEMENT, WHICH
28 HAD THE SAME ECONOMIC TERMS, ROUGHLY, AS

1 MR. GUNDLACH'S, WHICH WAS EXPIRING AT THE END OF 2006.
2 MR. GUNDLACH'S WAS EXPIRING AT THE END OF '07.

3 IN ADVANCE OF THE EXPIRATION OF
4 MR. BARACH'S EMPLOYMENT AGREEMENT IN '06, I HAD A
5 CONVERSATION WITH MR. GUNDLACH ON MR. BARACH.

10:36AM

6 Q. AND WHAT DID MR. GUNDLACH TELL YOU AT THE END
7 OF 2006, AS THE END OF MR. BARACH'S CONTRACT TERM IS
8 EXPIRING?

9 WHAT DID HE SAY TO YOU?

10 A. JEFFREY CAME TO MY OFFICE TO TALK ABOUT PHIL.

10:37AM

11 AND THIS WAS IN LIGHT OF PHIL ALSO BEING
12 CO-MANAGER OF THE TOTAL RETURN BOND FUND AND BEING PART
13 OF THE MORNING STAR MANAGER OF THE YEAR ANNOUNCEMENT.
14 AND TOLD ME THAT PHIL BARACH WAS MAKING \$15 MILLION,
15 BUT HE WAS ONLY WORTH TWO.

10:37AM

16 AND THAT LED TO A DISCUSSION ON A
17 VARIETY OF SUBJECTS, FROM SUCCESSION WITHIN HIS OVERALL
18 TEAM, AS WELL AS WHAT THE RIGHT COMPENSATION
19 ARRANGEMENTS WOULD BE FOR MR. BARACH GOING FORWARD.

20 Q. AND DID YOU AND MR. GUNDLACH HAVE A
21 DISCUSSION, AND THEN AN AGREEMENT, REGARDING
22 MR. BARACH'S NEW COMPENSATION AFTER DECEMBER 31, 2006,
23 WHEN HIS CONTRACT EXPIRED?

10:37AM

24 A. WE DISCUSSED BRINGING MR. BARACH DOWN, NOT TO
25 THE TWO MILLION THAT MR. GUNDLACH HAD SUGGESTED, BUT
26 SOMEWHERE BETWEEN WHAT HE CLEARLY WAS MAKING, AT THE
27 \$15 MILLION RUN RATE RANGE AND THAT TWO MILLION
28 THRESHOLD, YES.

10:37AM

1 Q. AND WAS THERE A DISCUSSION BETWEEN YOU AND
2 MR. GUNDLACH ABOUT WHETHER -- WHAT MR. BARACH'S
3 EMPLOYMENT STATUS WOULD BE, WHETHER HE WOULD HAVE A NEW
4 CONTRACT, OR ANYTHING OF THAT NATURE?

5 A. YES. I TALKED ABOUT IT WITH MR. GUNDLACH,
6 WHETHER MR. GUNDLACH FELT IT WAS IMPORTANT FOR
7 MR. BARACH TO HAVE AN EMPLOYMENT AGREEMENT WITH DEFINED
8 TERMS, AND EFFECTIVELY ENSURING HIS EMPLOYMENT AT THE
9 FIRM.

10:38AM

10 MR. GUNDLACH FELT THAT MR. BARACH,
11 BECAUSE THE LESSER VALUE HE WAS ADDING TO THE OVERALL
12 BUSINESS, SHOULD NOT HAVE AN EMPLOYMENT AGREEMENT WHICH
13 WOULD ALLOW FLEXIBILITY TO REDUCE HIS COMPENSATION IN
14 FUTURE YEARS, BASED UPON THE VALUES OR SERVICES HE WAS
15 PROVIDING.

10:38AM

16 ONE ADDITIONAL EXPLANATION:
17 MR. GUNDLACH, AT THE TIME, FELT MR. BARACH WOULD LIKELY
18 RETIRE IN 2011.

10:38AM

19 Q. WOULD YOU TAKE A LOOK, PLEASE, AT EXHIBIT 38,
20 WHICH IS IN THE BINDER YOU SHOULD HAVE UP THERE, AND
21 THIS IS IN EVIDENCE.

10:38AM

22 IF WE COULD PUT THAT ON THE SCREEN,
23 MIKE.

24 THIS IS AN E-MAIL DATED DECEMBER 12,
25 2006, FROM YOU TO MR. SULLIVAN AND OTHERS?

10:39AM

26 A. YES.

27 Q. AND DOES THIS E-MAIL REFLECT A CONVERSATION
28 YOU HAD HAD WITH MR. GUNDLACH?

1 A. YES. IT REFLECTS THAT JEFFREY AND I HAD
2 DISCUSSED, AND THAT MR. BARACH WOULD BECOME AN AT-WILL
3 EMPLOYEE FOLLOWING THE END OF THE CONTRACTUAL TERM OF
4 HIS EXISTING AGREEMENT AT THE END OF 2006, AND BRINGING
5 HIS COMPENSATION DOWN FROM ROUGHLY 16 MILLION TO SEVEN
6 TO \$8 MILLION PER YEAR.

10:39AM

7 Q. AND THE IDEA OF BRINGING MR. BARACH'S
8 COMPENSATION DOWN, WHOSE IDEA WAS THAT?

9 A. IT STARTED WITH JEFFREY'S VIEW THAT PHIL
10 WASN'T WORTH THE \$16 MILLION THAT WERE BEING PAID --

10:39AM

11 AND IT RELATES TO THE OVERALL
12 DISCUSSIONS WE HAD BEEN HAVING, AS A BUSINESS MATTER,
13 IN TERMS OF HOW WE HAD GROWN AND EXPANDED TCW.

14 Q. AT THAT TIME, DID YOU HAVE ANY DISCUSSION WITH
15 MR. GUNDLACH ON THE SUBJECT OF A SUCCESSION PLAN WITHIN
16 HIS GROUP?

10:40AM

17 A. YES. ONE OF THE TOPICS THAT WE WERE
18 DISCUSSING AT THE TIME WAS, I ASKED JEFFREY, IF HE WAS
19 EVER HIT BY A BUS DRIVING HOME ON THE 10 FREEWAY TO
20 SANTA MONICA, WHO WOULD BE THE NATURAL SUCCESSOR TO
21 MANAGE OUR MORTGAGE TEAM AND INVESTMENTS WITHIN HIS
22 TEAM.

10:40AM

23 Q. AND DID HE HAVE A RESPONSE TO THAT?

24 A. HE FELT THERE WAS NO ONE WITHIN THE TEAM THAT
25 COULD SUCCEED HIM, IN THE CONTEXT OF BEING ABLE TO
26 MANAGE THE BUSINESS.

10:40AM

27 AND I ENCOURAGED, LIKE WITH ALL OF OUR
28 INVESTMENT TEAMS, HIM TO MAKE SURE WE WERE INVESTING IN

1 AND DEVELOPING SOMEONE THAT COULD BE A SUCCESSOR IN THE
2 FUTURE SO -- BECAUSE TCW WILL SURVIVE A HUNDRED YEARS,
3 BUT JEFFREY GUNDLACH WON'T.

4 Q. WAS THERE ANY -- DID THIS FACTOR -- THE IDEA
5 THAT YOU NEEDED TO HAVE A SUCCESSOR FOR MR. GUNDLACH,
6 AS PART OF SUCCESSION PLANNING, DID THIS FACTOR AT ALL
7 INTO THE NEGOTIATIONS REGARDING HIS FEE DEAL?

10:41AM

8 A. ARE YOU TALKING ABOUT IN 2007?

9 Q. 2006, 2007?

10 A. IT DID, IN A NUMBER OF WAYS, ON A SPECIFIC
11 TERM THAT WE WERE NEGOTIATING, YES.

10:41AM

12 Q. AND WHAT IS THAT?

13 A. THE TERM WAS NOT ONLY THE ECONOMIC PACKAGE, IN
14 TERMS OF THE OVERALL COMPENSATION DOLLARS FOR INCENTIVE
15 PURPOSES THAT WE WOULD BE WILLING TO PAY THE TEAM, BUT
16 ALSO IN THE CONTEXT OF HOW THOSE DOLLARS COULD BE
17 ALLOCATED TO FREE UP MONEY TO FIND AND PAY A REASONABLE
18 SALARY AND BONUS TO FIND THAT SUCCESSOR.

10:41AM

19 Q. SO WAS THAT SOMETHING THAT WAS A SUBJECT OF
20 DISCUSSION BETWEEN AND YOU MR. GUNDLACH?

10:41AM

21 A. YES.

22 Q. AT THE TIME YOU HAD THESE DISCUSSIONS WITH
23 MR. GUNDLACH REGARDING MR. BARACH'S COMPENSATION AND
24 HIS EMPLOYMENT STATUS AFTER 2006, DID YOU TALK TO HIM
25 ABOUT WHO SHOULD TELL MR. BARACH?

10:42AM

26 A. YES. AFTER JEFFREY AND I AGREED ON THE
27 FRAMEWORK FOR MR. BARACH, GOING FORWARD POST 2006, WE
28 TALKED ABOUT WHO SHOULD DELIVER THAT MESSAGE TO PHIL.

1 AT THE TIME, JEFFREY FELT THAT BECAUSE
2 IT WAS GOING TO BE A SOMEWHAT DIFFICULT DISCUSSION, HE
3 PREFERRED ME TO HAVE THAT DISCUSSION, SO HE COULD
4 PRESERVE HIS RELATIONSHIP AND PARTNERSHIP WITH PHIL.

5 Q. AND DID YOU DO THAT?

10:42AM

6 A. I AGREED TO BE THE GUY DOING THE DIRTY WORK
7 AND HAVE THAT DISCUSSION, YES.

8 Q. NOW, DID -- YOU TOLD US THAT THERE CAME A
9 POINT THEN, IN 2007, WHERE MR. GUNDLACH EXPRESSED
10 INTEREST IN NEGOTIATING HIS OWN FEE DEAL AFTER THIS?

10:42AM

11 A. YES.

12 Q. AND HOW DID THAT COME UP, OR HOW DID THAT --
13 WHAT RELATION DID THAT BEAR TO THE NEW DEAL FOR
14 MR. BARACH?

15 A. WELL, IT WAS IN THE FIRST QUARTER, RIGHT AT
16 THE END, OR TOWARDS THE END OF THE FIRST QUARTER OF
17 2007, AND JEFFREY HAD -- I THINK, AT THAT POINT,
18 REALIZED THAT THE ADJUSTMENTS TO PHIL'S --

10:42AM

19 MR. BRIAN: OBJECTION. MOVE TO STRIKE AS
20 SPECULATIVE.

10:43AM

21 THE COURT: SUSTAINED.

22 I DON'T THINK IT'S RESPONSIVE, EITHER,
23 AT THIS POINT.

24 GO AHEAD.

25 Q. BY MR. QUINN: DO YOU RECALL, IN YOUR
26 DISCUSSIONS WITH MR. GUNDLACH, MR. GUNDLACH TELLING YOU
27 WHY HE WANTED TO RENEGOTIATE HIS FEE DEAL?

10:43AM

28 A. YES, I DO.

1 Q. AND DID HE TELL YOU THAT IT HAD ANYTHING TO DO
2 WITH THE ADJUSTMENT REGARDING MR. BARACH?

3 A. IT WAS VERY CLEAR IN THE DISCUSSIONS THAT IT
4 DID, YES.

5 Q. AND WHAT DID HE MAKE CLEAR IN THAT REGARD? 10:43AM

6 A. WELL, UNDER THE ADJUSTMENT THAT WAS BEING PUT
7 IN PLACE FOR PHIL, BASED UPON THE AGREED ARRANGEMENTS
8 IN '06, NONE OF THOSE ECONOMICS -- THE REDUCTION, IF
9 YOU WILL, OF PHIL'S COMPENSATION, WAS INURING TO THE
10 BENEFIT OF JEFFREY. 10:43AM

11 Q. WHY IS THAT?

12 A. BECAUSE OF THE SIDE-BY-SIDE NATURE OF HOW
13 THEIR POOLS WORKED, AND THE ADJUSTMENTS BEING IN THE
14 PHIL PART OF THE POOL, NOT IN THE MASTER POOL.

15 Q. SO UNDER THE EXISTING DEAL, IF MR. BARACH'S 10:43AM
16 COMPENSATION WAS REDUCED, WHO WOULD GET THE BENEFIT OF
17 THAT SAVINGS?

18 A. THAT WOULD COME TO TCW.

19 Q. AND IS THAT SOMETHING THAT MR. GUNDLACH
20 POINTED OUT TO YOU? 10:44AM

21 A. YES.

22 Q. AND CAN YOU TELL US WHETHER OR NOT HE TOLD YOU
23 THAT'S WHY HE WANTED TO RENEGOTIATE HIS OWN FEE DEAL?

24 A. THERE WAS A VARIETY OF FACTORS.

25 IT WAS A CONTRIBUTING FACTOR, BUT NOT 10:44AM
26 THE ONLY FACTOR.

27 Q. WAS TCW ALSO -- DID IT ALSO HAVE REASONS WHY
28 IT WAS INTERESTED IN RENEGOTIATING MR. GUNDLACH'S FEE

1 ARRANGEMENT IN THE SPRING OF 2007?

2 A. YES.

3 Q. AND WHAT WERE THOSE?

4 A. REALLY, THE MARGINS.

5 I PREVIOUSLY TESTIFIED THAT THE WAY THE
6 BUSINESS WAS LARGE IN TERMS OF ASSETS AND REVENUE, IT
7 WAS LOWER IN THE LIST, IN TERMS OF PROFITABILITY.

10:44AM

8 Q. WHEN YOU SAY THE BUSINESS, WHAT ARE YOU
9 REFERRING TO?

10 A. THE BUSINESS THAT JEFFREY HAD RESPONSIBILITY
11 FOR.

10:44AM

12 Q. YOU SAY IT'S LARGE IN REVENUE, BUT THE MARGINS
13 WERE NOT AMONG THE HIGHEST?

14 A. THAT'S CORRECT.

15 Q. AND WHY IS THAT?

10:44AM

16 A. BECAUSE OF THE SHEER COMPENSATION DOLLARS THAT
17 WERE BEING PAID TO THE MEMBERS OF THE TEAM.

18 Q. WERE THERE ALSO COSTS ASSOCIATED WITH
19 ANALYTICAL PLATFORMS AND IT INVESTMENTS?

20 A. YES. THERE'S A NUMBER OF COSTS.

10:45AM

21 THERE ARE PAYROLL TAXES AND ALL THOSE
22 COMPENSATION DOLLARS. THERE WAS ALL OF THE EMPLOYEE
23 BENEFITS, HEALTH, WELFARE, DENTAL BENEFITS THAT WE PAID
24 FOR ALL OF THE EMPLOYEES, AS WELL AS THE INVESTMENTS WE
25 WERE MAKING IN SALES AND MARKETING, PARTICULARLY TO
26 SUPPORT OUR MUTUAL FUND DISTRIBUTION, AS WELL AS
27 TECHNOLOGY TO SUPPORT THE GROWTH AND EXPANSION OF THE
28 PLATFORM.

10:45AM

1 Q. SO DID YOU TELL MR. GUNDLACH THAT TCW WAS
2 INTERESTED IN REDOING THE DEAL IN A WAY THAT TCW'S
3 MARGIN ON THAT AREA THAT HE HEADED WOULD BE IMPROVED?

4 A. WE HAD -- I EXPRESSED WE HAD AN INTEREST.
5 WE WERE NOT IN AN URGENT NEED TO HAVE
6 THAT DISCUSSION.

7 THE URGENCY AROUND THE WHOLE NEGOTIATION
8 WAS REALLY DRIVEN BY MR. GUNDLACH; BUT WE CLEARLY SET A
9 FRAMEWORK WITH HIM OF THE ISSUES WE HAD IN THE EXISTING
10 COMPENSATION FORMULA.

11 Q. SO DID YOU MAKE A PROPOSAL TO MR. GUNDLACH
12 ABOUT WHAT THE NEW COMPENSATION ARRANGEMENT OUGHT TO
13 BE?

14 A. NO. THAT HAD BEEN HOW THE NEGOTIATIONS WORKED
15 WITH HIM IN 1998 AND 2003, WHICH IT WAS US PRESENTING A
16 PROPOSAL TO HIM, AND THEN NEGOTIATING IN A VERY KIND
17 OF -- WITH A LOT OF ANIMOSITY AGAINST EACH OTHER, TILL
18 WE GET TO A RESOLUTION.

19 IN THIS CASE, IN THE SPIRIT OF KIND OF
20 FILLING A PARTNERSHIP, IN THE CONTEXT OF HOW WE WERE
21 GOING TO TRY TO RESOLVE THE VARIOUS PARTIES' ISSUES, I
22 ASKED HIM TO COME UP WITH A SOLUTION THAT FIT WITHIN
23 THE FRAMEWORK THAT MET THE OBJECTIVES OF THE FIRM.

24 Q. SO IS IT TRUE THAT YOU HAD NEGOTIATED HIS
25 PREVIOUS CONTRACTS?

26 A. THE ECONOMIC ARRANGEMENTS IN HIS 1998
27 TRANSACTION, AND IN 2003, I BELIEVE WAS THE ADDITIONAL
28 ADJUSTMENT.

1 Q. DID HE COME BACK TO YOU THEN WITH A PROPOSAL?

2 A. HE CAME BACK WITH THE HANDWRITTEN PIECE OF
3 PAPER WITH HIS INITIAL PROPOSAL OF HOW HE FELT HE COULD
4 ADDRESS THE FIRM ISSUES THAT I EXPRESSED, AND ALLOW HIM
5 TO HIT THE COMPENSATION NUMBER THAT HE FELT HE NEEDED
6 TO GET AND STILL DEAL WITH THE INDIVIDUALS IN HIS TEAM
7 AND WHAT THEIR EXPECTATIONS WERE.

10:47AM

8 Q. IF YOU LOOK, PLEASE, AT EXHIBIT 6165, WHICH IS
9 IN EVIDENCE --

10 WE CAN PUT THAT UP ON THE SCREEN.

10:47AM

11 YOU CAN LOOK AT IT ON THE SCREEN.

12 CAN YOU IDENTIFY THIS DOCUMENT?

13 A. YES.

14 Q. AND WHAT IS THIS?

15 A. THAT WAS THE INITIAL PROPOSAL THAT JEFFREY
16 PRESENTED TO ME ON HOW HE WOULD REVISE THE ECONOMIC
17 TERMS FOR HIM AND EACH OF THE MEMBERS OF HIS TEAM,
18 FITTING WITHIN THE FRAMEWORK I HAD LAID OUT FOR HIM.

10:47AM

19 Q. AND IF WE COULD LOOK AT THE SECOND PAGE, MIKE.

20 IT'S A TWO-PAGE SET OF HANDWRITTEN NOTES
21 WHICH HE PROVIDED TO YOU?

10:47AM

22 A. YES.

23 Q. THANK YOU, MIKE.

24 NOW IN THIS TRIAL, WE'VE HEARD TESTIMONY
25 FROM PETE SULLIVAN.

10:48AM

26 YOU OBVIOUSLY KNOW MR. SULLIVAN?

27 A. YES.

28 Q. WHAT WAS HIS POSITION AT TCW?

1 A. PETE WAS A FINANCIAL ANALYST, AND HE WAS
2 RESPONSIBLE FOR DOING ALL OF THE MATHEMATICAL
3 CALCULATIONS ASSOCIATED WITH INCENTIVE COMPENSATION
4 ARRANGEMENTS WITHIN THE FIRM.

5 Q. WAS HE RESPONSIBLE FOR ACTUALLY NEGOTIATING
6 THE TERMS OF ANY EMPLOYMENT AGREEMENT OR COMPENSATION
7 ARRANGEMENT WITH MR. GUNDLACH OR ANY OTHER PORTFOLIO
8 MANAGER?

10:48AM

9 A. NO. HE PROVIDED THE ANALYTICAL HORSEPOWER TO
10 CREATE MODELS, AND MODELED HOW THE COMPENSATION
11 FORMULAS WOULD IMPACT THE FIRM.

10:48AM

12 Q. AND AT ANY POINT, DID YOU REGARD THESE MODELS
13 THAT HE'D PREPARED AS CONTRACTS IN THEMSELVES?

14 A. NO. THEY WERE JUST ANALYSIS SO WE COULD
15 UNDERSTAND, AND SOME OF THESE VERY COMPLEX NEGOTIATIONS
16 ON INCENTIVE COMPENSATION ARRANGEMENTS, WHAT THE
17 IMPACTS WOULD BE TO THE FIRM IN A VARIETY OF SCENARIOS.

10:48AM

18 Q. IF WE COULD LOOK AT EXHIBIT 5032.

19 THIS IS IN EVIDENCE.

20 IF WE CAN PUT IT UP ON THE SCREEN, MIKE.

10:49AM

21 AND THIS IS A -- THERE'S AN E-MAIL HERE,
22 IT BEGINS DOWN AT THE BOTTOM OF PAGE DASH 1, FROM YOU
23 TO MR. GUNDLACH.

24 AND IF WE LOOK AT THE TOP OF THE SECOND
25 PAGE, THE SUBJECT LINE SAYS, EXISTING VERSUS NEW DEAL
26 ECONOMICS.

10:49AM

27 DO YOU SEE THAT? IT BEGINS AT THE
28 BOTTOM OF PAGE DASH 1, AND THEN THE TOP OF DASH 2

1 SUBJECT LINE?

2 A. YES.

3 Q. EXISTING VERSUS NEW DEAL ECONOMICS?

4 A. YES.

5 Q. AND CAN YOU TELL US WHETHER OR NOT YOU'RE
6 RESPONDING HERE TO THAT PROPOSAL THAT MR. GUNDLACH HAD
7 MADE?

10:49AM

8 A. YES. IT'S MY INITIAL RESPONSE AFTER WE HAD
9 TAKEN HIS HANDWRITTEN PROPOSAL, AND PETE HAD RUN SOME
10 ANALYSIS AND MODELS ON IT.

10:50AM

11 IT WAS MY RESPONSE TO THAT INITIAL
12 PROPOSAL.

13 Q. IS THIS A SITUATION WHERE, WHEN YOU GET A
14 HANDWRITTEN SORT OF SKETCH OF A DEAL TERM LIKE THIS,
15 THAT YOU HAVE TO RUN A FINANCIAL MODEL TO SEE WHAT THE
16 CONSEQUENCES WOULD BE?

10:50AM

17 MR. BRIAN: IT'S A BIT LEADING, YOUR HONOR.

18 MR. QUINN: YEAH, IT IS.

19 THE COURT: SUSTAINED.

20 Q. BY MR. QUINN: IS IT POSSIBLE TO TELL, JUST
21 FROM LOOKING AT THE HANDWRITTEN NOTES, WHAT THE RESULTS
22 WOULD BE UNDER DIFFERENT OUTCOMES?

10:50AM

23 A. NO. IT WAS A SHEET WITH A BUNCH OF
24 PERCENTAGES ON IT.

25 YOU HAD TO APPLY THE PERCENTAGES TO THE
26 REVENUES AND EXPENSES ASSOCIATED WITH EACH OF THE
27 PRODUCT AREAS, TO DETERMINE THE IMPACT THAT IT HAS ON
28 THE FIRM.

10:50AM

1 Q. AND THAT WAS DONE?

2 A. AND THAT WAS THE ANALYSIS THAT WAS DONE BY
3 PETE, YES.

4 Q. AND WHAT WAS YOUR ASSESSMENT OF MR. GUNDLACH'S
5 INITIAL PROPOSAL, AFTER YOU HAD HAD A CHANCE TO SEE
6 ABOUT THE MODEL?

10:50AM

7 A. IT WAS NEGATIVE.

8 I THINK THIS E-MAIL -- I'M JUST READING
9 IT NOW, SAYS, (READING):

10 UNLESS I'M MISSING SOMETHING,
11 REALLY KILLS OUR BUDGET AND
12 FORECAST.

10:51AM

13 Q. AND YOU SAY HERE, (READING):

14 OUR PROBLEM HAS BEEN ONE OF
15 TRYING TO BUILD, SCALE AND MARGIN
16 IN FIXED INCOME SO IT CAN OPERATE
17 ON INCREMENTAL MARGINS THAT ARE
18 ATTRACTIVE.

10:51AM

19 WHAT DID YOU MEAN BY THAT?

20 A. WELL, THE CHALLENGE OF HOW THE FIXED INCOME
21 BUSINESS WAS SET UP, WITH THE COMPENSATION ARRANGEMENTS
22 IN PLACE, IT WAS RUNNING PERPETUALLY ON ROUGHLY 18
23 PERCENT INCREMENTAL MARGINS, BEFORE COSTS ASSOCIATED
24 WITH RUNNING TCW AS A BUSINESS.

10:51AM

25 THAT DID NOT FREE UP A LOT OF CAPITAL TO
26 REINVEST BACK INTO THE BUSINESS FOR FURTHER GROWTH,
27 WHICH HAD BEEN A DISCUSSION TOPIC THAT JEFFREY AND I
28 HAD BEEN HAVING FOR A CONSIDERABLE AMOUNT OF TIME.

10:51AM

1 SO WE WANTED TO FOCUS ON THE NEXT DOLLAR
2 OF REVENUE GROWTH, FREEING UP SOME OF THAT ADDITIONAL
3 REVENUE TO REINVEST BACK IN THE FIRM.

4 SO THAT'S WHAT INCREMENTAL MARGINS -- IF
5 WE WERE MAKING 18 PERCENT TODAY, WE WANTED THE NEXT
6 DOLLAR OF GROWTH TO BE SLIGHTLY HIGHER MARGIN THAN 18
7 PERCENT.

10:51AM

8 Q. CAN YOU TELL US WHETHER THIS REFERS TO -- WHAT
9 YOU HAVE JUST DESCRIBED FOR US, DOES THIS REFER TO THE
10 ISSUE YOU DISCUSSED EARLIER WITH MR. GUNDLACH ABOUT
11 IMPROVING THE MARGINS IN HIS BUSINESS?

10:52AM

12 A. YES.

13 Q. AND YOU INDICATE HERE THAT THE LAST SENTENCE
14 REFERS TO (READING):

15 THE COMPLETE AND IMMEDIATE
16 REMOVAL OF GOVERNORS.

10:52AM

17 DO YOU SEE THAT?

18 A. YES, I DO.

19 Q. AND WHAT DOES THAT REFER TO?

20 A. SO IN THE 2003 AMENDMENT TO JEFFREY AND PHIL'S
21 CONTRACTS WE PUT IN PLACE AT THAT TIME, AND IT WAS PART
22 AND PARCEL -- WAS A FIRM-WIDE COST REDUCTION PLAN THAT
23 AFFECTED EVERYONE; NOT IMMEDIATE COST SAVINGS, BECAUSE
24 JEFFREY AND PHIL WERE UNWILLING TO CONTRIBUTE TO THE
25 OVERALL COST SAVINGS PLAN, DAY ONE, BUT THEY WERE
26 WILLING TO SLOW THEIR GROWTH OF COMPENSATION AT A
27 SLIGHTLY LESS ANGLE THAN REVENUES.

10:52AM

10:52AM

28 SO IF REVENUES GREW BY TEN PERCENT,

1 THEIR COMPENSATION MAY ONLY GO UP BY NINE AND A HALF
2 PERCENT.

3 SO THAT SMALL CHANGE EFFECTIVELY WOULD
4 ALLOW FOR ECONOMIES OF SKILL TO BE BUILT IN.

5 Q. SO THESE GOVERNORS THEY RELATED TO, THEY PUT
6 SORT OF SMALL BREAKS ON THESE INCREASES IN --

10:53AM

7 A. ALLOWED FOR THEIR INCREASE OF THEIR
8 COMPENSATION TO BE AT A SLIGHTLY FAST PACE AS WHAT
9 REVENUES WOULD BE; WHICH ALLOWS, AGAIN, THAT
10 INCREMENTAL MARGIN TO BE A LITTLE HIGHER.

10:53AM

11 BUT IT WAS A SMALL DIFFERENCE.

12 Q. DID MR. GUNDLACH THEN PROVIDE A REVISED
13 PROPOSAL, AFTER YOU GOT BACK TO HIM ON THIS?

14 A. HE DID.

15 Q. IF WE COULD LOOK AT EXHIBIT 5035, IN EVIDENCE.

10:53AM

16 AND IF WE COULD PUT UP PAGE 2.

17 AND THERE'S AN E-MAIL THERE IN THE
18 MIDDLE OF THE PAGE FROM YOU TO MR. SULLIVAN, DATED
19 APRIL 30.

20 DO YOU SEE THIS?

10:54AM

21 A. YES.

22 Q. AND YOU SAY, IN THE FIRST LINE, JUST SAW THIS,
23 THIS LOOKS LIKE A PRETTY ATTRACTIVE DEAL RELATIVE TO
24 WHERE WE WERE, CORRECT?

25 DO YOU SEE THAT?

10:54AM

26 A. YES.

27 Q. AND WHAT ARE YOU REFERRING TO THERE?

28 A. I WAS JUST REFERRING TO THE EXISTING

1 COMPENSATION ARRANGEMENTS THAT WERE IN PLACE UNDER THE
2 EXISTING JEFFREY CONTRACT EMPLOYMENT AGREEMENT IN 2007.

3 Q. SO CAN YOU TELL US WHETHER THIS WAS YOUR
4 REACTION TO MR. GUNDLACH'S REVISED PROPOSAL?

5 A. YES. THIS IS MY REACTION TO HIM REWORKING HIS
6 PROPOSAL, BASED UPON MY FEEDBACK THAT IT DID NOT HIT
7 THE FRAMEWORK THAT HE AND I HAD TALKED ABOUT IN THE
8 INCEPTION OF THE DISCUSSIONS.

10:54AM

9 Q. AND WERE YOU ULTIMATELY ABLE TO REACH AN
10 AGREEMENT WITH MR. GUNDLACH ON A NEW COMPENSATION
11 ARRANGEMENT?

10:54AM

12 A. YES.

13 Q. AND WHEN DID YOU DO THAT, AND WHERE DID YOU DO
14 THAT?

15 A. IN -- WE INITIALLY HAD AN AGREEMENT ON THE
16 COMPENSATION TERMS, APPROXIMATELY, I BELIEVE IT WAS
17 MAY 1ST IN 2007.

10:55AM

18 UPON LOOKING AT THESE NUMBERS, AND
19 PETE'S ANALYSIS, JEFFREY CAME UP, WE TALKED IT THROUGH,
20 AND I SHOOK HANDS ON THE FORMULA.

10:55AM

21 Q. AND DO YOU RECALL -- DO YOU RECALL WHERE THAT
22 WAS, WHERE YOU SHOOK HANDS?

23 A. IT WAS IN MY OFFICE.

24 Q. ON MAY 1?

25 A. ON MAY 1ST.

10:55AM

26 Q. AND AS OF THAT POINT, HAD ANY DRAFT EMPLOYMENT
27 CONTRACT BEEN PREPARED?

28 A. NO.

1 Q. WAS IT -- CAN YOU TELL US WHETHER OR NOT IT
2 WAS YOUR INTENTION THAT IF THERE WAS GOING TO BE AN
3 AGREEMENT FOR EMPLOYMENT FOR A TERM OF YEARS, THAT THAT
4 WOULD ULTIMATELY NEED TO BE EMBODIED IN A WRITTEN
5 CONTRACT?

10:55AM

6 MR. BRIAN: PAROL EVIDENCE, UNCOMMUNICATED
7 INTENT.

8 THE COURT: OVERRULED.

9 THE WITNESS: ABSOLUTELY, YES.

10 Q. BY MR. QUINN: AND WHY DO YOU SAY THAT,
11 ABSOLUTELY?

10:55AM

12 A. WELL, AT TCW, THE WHOLE HISTORICAL PATTERN IN
13 SITUATIONS LIKE THIS IS AGREEING TO A COMPENSATION
14 ARRANGEMENT; AND THEN THERE'S A SECOND -- WHOLE SECOND
15 LEVEL, WHICH IS EMBODYING THAT IN AN EMPLOYMENT
16 AGREEMENT, AND NEGOTIATING THOSE TERMS, WHICH INCLUDE
17 PROTECTIONS FOR TCW, AND POTENTIALLY, THE EMPLOYEE.

10:56AM

18 Q. ARE YOU AWARE OF ANY CIRCUMSTANCE WHERE TCW
19 EVER ENTERED INTO AN EMPLOYMENT AGREEMENT FOR A TERM OF
20 YEARS THAT WAS ORAL -- THAT WAS NOT EMBODIED IN A
21 WRITTEN AGREEMENT?

10:56AM

22 MR. BRIAN: OBJECTION. SAME OBJECTIONS.

23 THE COURT: SUSTAINED.

24 Q. BY MR. QUINN: WELL, DID YOU, SIR, IN
25 NEGOTIATING THE ARRANGEMENTS THAT YOU DID WITH
26 PORTFOLIO MANAGERS, DID YOU EVER ENTER INTO AN ORAL
27 AGREEMENT WITH ANY PORTFOLIO MANAGER FOR EMPLOYMENT --
28 FOR A TERM OF YEARS?

10:56AM

1 MR. BRIAN: RELEVANCE.

2 THE COURT: SUSTAINED.

3 Q. BY MR. QUINN: WERE THERE PORTFOLIO -- LET ME
4 ASK YOU A DIFFERENT QUESTION, THEN.

5 DID TCW HAVE PORTFOLIO MANAGERS WHO WERE
6 AT-WILL EMPLOYEES? 10:56AM

7 MR. BRIAN: SAME OBJECTION, YOUR HONOR.
8 RELEVANCE, 352 PAROL EVIDENCE.

9 THE COURT: SUSTAINED.

10 MR. QUINN: I'M SORRY, YOUR HONOR? 10:57AM

11 THE COURT: SUSTAINED.

12 MR. QUINN: SUSTAINED.

13 Q. LET ME ASK YOU, IN TERMS OF TCW'S PRACTICE AND
14 POLICY AT TCW, DID TCW HAVE A PRACTICE OR POLICY AS TO
15 WHETHER OR NOT IT ENTERED INTO ORAL EMPLOYMENT
16 AGREEMENTS FOR A TERM OF YEARS WITH PORTFOLIO MANAGERS? 10:57AM

17 MR. BRIAN: RELEVANCE 352, PAROL EVIDENCE.

18 THE COURT: OVERRULED.

19 THE WITNESS: WE DEFINITELY DID NOT HAVE THAT
20 PRACTICE. 10:57AM

21 Q. BY MR. QUINN: WAS IT A POLICY THAT YOU
22 WOULDN'T DO THAT?

23 A. THERE WAS A POLICY WE WOULD NOT DO THAT. AND
24 WE PUT CONTROLS --

25 THE COURT: SIR, YOU HAVE ANSWERED THE
26 QUESTION. 10:57AM

27 Q. BY MR. QUINN: THERE HAS BEEN TESTIMONY IN
28 THIS CASE THAT THERE WERE PORTFOLIO MANAGERS WHO HAD

1 FEE DEALS, BUT DID NOT HAVE CONTRACTS FOR A TERM OF
2 YEARS.

3 ARE YOU FAMILIAR WITH THE EXAMPLES OF
4 PORTFOLIO MANAGERS WHO HAD THAT SITUATION; THEY HAD A
5 FEE DEAL, BUT THEY DIDN'T HAVE -- THEY WERE AT-WILL
6 EMPLOYEES, BUT DID NOT HAVE A CONTRACT FOR A TERM OF
7 YEARS?

10:57AM

8 A. YES.

9 Q. AND CAN YOU NAME SOME OF THOSE PORTFOLIO
10 MANAGERS FOR US?

10:58AM

11 MR. BRIAN: RELEVANCE, 352.

12 THE COURT: SUSTAINED.

13 Q. BY MR. QUINN: WELL, DO YOU KNOW, FOR EXAMPLE,
14 WHETHER DIANE JAFFEE HAD A -- WHETHER SHE WAS AN
15 AT-WILL EMPLOYEE?

10:58AM

16 MR. BRIAN: SAME OBJECTION. ALSO CUMULATIVE.

17 THE COURT: SUSTAINED.

18 Q. BY MR. QUINN: THERE WERE PEOPLE -- HOW ABOUT
19 MR. BARACH. AFTER DECEMBER 31, 2006, YOU TOLD US HE
20 WAS AN AT-WILL EMPLOYEE?

10:58AM

21 A. YES.

22 Q. DID HE HAVE A FEE DEAL?

23 A. YES.

24 Q. WERE THERE OTHER PEOPLE WHO REPORTED TO
25 MR. GUNDLACH WHO SIMILARLY WERE AT-WILL EMPLOYEES, BUT
26 HAD FEE DEALS?

10:58AM

27 MR. BRIAN: OBJECTION. RELEVANCE, 352.

28 THE COURT: SUSTAINED.

1 Q. BY MR. QUINN: WELL, PEOPLE WHO REPORT TO
2 MR. GUNDLACH, WHO HE WOULD KNOW ABOUT --

3 LET ME FOCUS SPECIFICALLY ON PEOPLE WHO
4 REPORTED TO HIM, WHERE HE WOULD KNOW ABOUT THEIR
5 COMPENSATION ARRANGEMENT.

10:58AM

6 DO YOU UNDERSTAND WHAT I'M ASKING?

7 A. I THINK SO.

8 SO SOMEONE LIKE LOU LUCIDO, AS AN
9 EXAMPLE.

10 Q. YES. PEOPLE WHO WORKED FOR HIM, AND PEOPLE
11 WHO -- WHERE HE SET THE COMPENSATION?

10:59AM

12 MR. BRIAN: OBJECTION, IF THAT'S A QUESTION.

13 THE COURT: I DON'T THINK THAT'S A QUESTION.

14 Q. BY MR. QUINN: ALL RIGHT.

15 OTHER THAN MR. BARACH, ARE YOU AWARE OF
16 ANYONE ELSE WHO WORKED FOR MR. GUNDLACH WHO WAS AN
17 AT-WILL EMPLOYEE?

10:59AM

18 MR. BRIAN: OBJECTION. RELEVANCE, 352.

19 THE WITNESS: SUSTAINED.

20 Q. BY MR. QUINN: IF WE COULD LOOK AT EXHIBIT
21 2296.

10:59AM

22 THIS IS NOT IN EVIDENCE.

23 AND THIS IS A --

24 CAN YOU IDENTIFY THIS?

25 A. YES.

10:59AM

26 Q. IS THIS AN E-MAIL STRING ON WHICH YOU ARE
27 COPIED, AND MR. GUNDLACH IS ON IT?

28 A. YES.

1 MR. QUINN: WE'D OFFER EXHIBIT 2296, YOUR
2 HONOR.

3 AND IF WE COULD PUT THAT UP --

4 MR. BRIAN: I HAVE NO OBJECTION, YOUR HONOR.

5 THE COURT: IT WILL BE ADMITTED.

10:59AM

6
7 (EXHIBIT 2296 ADMITTED.)

8
9 Q. BY MR. QUINN: IF WE COULD PUT THAT UP ON THE
10 SCREEN. THE TOP E-MAIL. THIS IS DATED APRIL 30.

11:00AM

11 MR. -- THE "FROM" LINE IS BLANK ON THIS
12 E-MAIL.

13 CAN YOU TELL, FROM THE CONTENT AND THE
14 CONTEXT, WHO THE AUTHOR OF THAT E-MAIL IS, ALTHOUGH FOR
15 SOME REASON, WE DON'T HAVE "FROM"?

11:00AM

16 A. I REMEMBER THIS E-MAIL. IT CAME FROM JEFFREY,
17 MR. GUNDLACH.

18 Q. HE SAYS (READING):

19 THE EXHIBITS PETE HAS SENT ARE
20 THE CULMINATION OF MY EFFORTS TO
21 ACHIEVE THE OPTIMAL SOLUTION TO THE
22 GREATEST PRACTICAL MATH PROBLEM I
23 HAVE FACED. I AM VERY GOOD AT
24 MATH. I WAS A TOP SCHOLAR IN
25 THEORETICAL MATHEMATICS AT
26 DARTMOUTH, SUMMA CUM LAUDE, RUFUS
27 CHOATE CHOLAR, AND YALE E. TAPPAN
28 STANNARD FELLOW. THE SOLUTION I

11:00AM

11:00AM

1 HAVE MERELY SLAVED OVER IS
2 REFLECTIVE OF MY WELL RECOGNIZED
3 SKILLS IN THIS AREA.

4 SOUND LIKE MR. GUNDLACH TO YOU?

5 A. SOUNDS LIKE MR. GUNDLACH.

11:01AM

6 Q. HE SAYS HERE. "THE EXHIBITS PROVIDE A VERY
7 GOOD SOLUTION".

8 DO YOU SEE THAT?

9 A. YES.

10 Q. AND THEN IF WE COULD LOOK AT EXHIBIT 5035.

11:01AM

11 THIS IS IN EVIDENCE.

12 IF WE COULD PUT THAT UP ON THE SCREEN.

13 WE HAVE AN E-MAIL ON PAGE -- THERE'S AN

14 E-MAIL, I KNOW IT'S IN EVIDENCE, FROM YOU, WHERE YOU

15 SAY, (READING):

11:01AM

16 I THINK IT'S AWESOME. YOU AND

17 PETE DID THIS PERFECTLY.

18 DO YOU -- I'M SURE FOLKS REMEMBER THIS?

19 THE COURT: MR. QUINN, WE HAVE SEEN THAT.

20 BUT JUST KEEP AN EYE, BECAUSE WE HAVE

11:02AM

21 OUR DEAL.

22 MR. QUINN: I'M REALLY CONSCIOUS OF THAT, AND
23 I'M GOING TO MOVE ON.

24 Q. DO YOU RECALL WRITING THAT YOU THOUGHT THE
25 DEAL WAS AWESOME, AND YOU THOUGHT YOU AND PETE HAD DONE
26 SOMETHING PERFECTLY?

11:02AM

27 A. I THOUGHT THAT THE SOLUTIONS TO THE INITIAL
28 PROPOSAL RESULTED IN A DEAL THAT WAS VERY FAIR FOR THE

1 FIRM, RELATIVE TO THE '07 CONTRACT IN PLACE.

2 Q. 5035-1 AT THE TOP.

3 AND YOU SAY, YOU SAY, I THINK IT'S
4 AWESOME, THAT LANGUAGE THAT WE'RE -- WHAT ARE YOU
5 REFERRING TO, THAT YOU THOUGHT WAS AWESOME, AT THAT
6 POINT, MR. SONNEBORN?

11:02AM

7 A. THE AGGREGATE COSTS TO TCW OF THIS TRANSACTION
8 IMMEDIATELY IN '07, WAS LESS THAN WHAT WE WOULD HAVE
9 PAID UNDER THE OLD ARRANGEMENTS.

10 Q. AND CAN YOU TELL US WHETHER OR NOT THE
11 MODELING SHOWED THAT MR. GUNDLACH WOULD MAKE MORE
12 MONEY, TOO?

11:03AM

13 A. MR. GUNDLACH, WITHIN THAT AGGREGATE KIND OF
14 TCW TO THE ENTIRE TEAM OF 60 PEOPLE'S COMPENSATIONS,
15 COMPENSATION WAS GOING TO GO UP MATERIALLY, WHICH WAS
16 HIS OBJECTIVE; WHICH RELATES TO HIS MATH SKILLS, AS HOW
17 TO HAVE TCW HAVE HIGHER MARGINS, BUT HIM GET PAID MORE
18 INDIVIDUALLY.

11:03AM

19 Q. RIGHT.

20 NOW, IS THIS -- YOU SHOOK MR. GUNDLACH'S
21 HAND ON THE DEAL?

11:03AM

22 A. THIS DATE, YES, MAY 1ST.

23 Q. LET ME JUST ASK: DO YOU RECALL MR. BEYER EVER
24 SAYING THAT THE FRENCH MAY HAVE A PROBLEM WITH
25 MR. GUNDLACH'S COMPENSATION BEING AT ANY LEVEL?

11:03AM

26 MR. BRIAN: OBJECTION, HEARSAY.

27 THE COURT: SUSTAINED.

28 Q. BY MR. QUINN: IT'S NOT FOR THE TRUTH, YOUR

1 HONOR. IT'S -- THIS IS --

2 THE COURT: MR. BEYER HAS TESTIFIED.

3 Q. BY MR. QUINN: WELL, WERE YOU PRESENT WITH
4 MR. BEYER WITH DISCUSSIONS WITH MR. GUNDLACH ABOUT HIS
5 FEE DEAL?

11:04AM

6 A. YES.

7 AND THIS MAY 1ST DATE, MR. BEYER WAS
8 THERE.

9 MR. BRIAN: OBJECTION. BEYOND YES OR NO, YOUR
10 HONOR.

11:04AM

11 THE COURT: YOU WERE PRESENT, RIGHT?

12 THE WITNESS: YES, I WAS PRESENT.

13 Q. BY MR. QUINN: SO THERE'S BEEN TESTIMONY THAT
14 THERE'S OCCASION WHERE YOU, MR. BEYER AND MR. GUNDLACH
15 WERE PRESENT. YOU ARE LOOKING AT A MODEL.

11:04AM

16 AND MR. BEYER SAID, IN YOUR PRESENCE,
17 THE FRENCH MAY -- WILL HAVE A PROBLEM WITH THIS,
18 REFERRING TO THE LEVEL OF MR. GUNDLACH'S COMPENSATION.

19 MY QUESTION TO YOU IS: DO YOU RECALL
20 THAT EVER HAPPENING?

11:04AM

21 MR. BRIAN: OBJECTION. HEARSAY.

22 THE COURT: SUSTAINED.

23 MR. QUINN: IT'S IMPEACHMENT, YOUR HONOR.

24 THE COURT: NO.

25 MR. QUINN: MOVE ON.

11:04AM

26 Q. NOW, AT THE TIME THAT YOU SHOOK HANDS WITH
27 MR. GUNDLACH, HAD YOU HAD ANY DISCUSSIONS ABOUT THE
28 TERMS, THE OTHER TERMS OF AN EMPLOYMENT AGREEMENT,

1 OTHER THAN THE FEE TERMS?

2 A. NO. AFTER WE SHOOK HANDS --

3 IT WAS LATER, WHEN WE STARTED TO TALK
4 ABOUT ANY TERMS OF AN EMPLOYMENT AGREEMENT.

5 Q. AND IF YOU CAN LOOK AT EXHIBIT 2150.

11:05AM

6 THIS IS IN EVIDENCE.

7 IF WE CAN PUT THAT UP ON THE SCREEN.

8 DID YOU HAVE A CONVERSATION WITH

9 MR. CAHILL AFTER THIS -- CAN YOU TELL US WHETHER OR NOT
10 YOU HAD A CONVERSATION WITH MR. CAHILL ABOUT PREPARING
11 AN EMPLOYMENT AGREEMENT?

11:05AM

12 A. YES.

13 Q. CAN YOU TELL US WHETHER OR NOT YOU TOLD
14 MR. GUNDLACH THAT YOU WERE GOING TO DO THAT?

15 A. YES.

11:05AM

16 Q. AND WHAT DID YOU TELL MR. GUNDLACH?

17 A. AFTER WE SHOOK HANDS, I ASKED JEFFREY IF HE
18 WANTED AN EMPLOYMENT AGREEMENT, AND WOULD IT REFLECT
19 ALL OF THE ECONOMIC TERMS THAT WE JUST NEGOTIATED.

20 HE SAID YES.

11:05AM

21 AND THEN I ASKED HIM WHAT TERM, IN TERMS
22 OF LENGTH, HE'D BE WILLING TO ENTER INTO SUCH AN
23 EMPLOYMENT AGREEMENT, AND HE SUGGESTED FIVE YEARS.

24 I TOLD HIM THAT I'D ASK MICHAEL CAHILL
25 TO BEGIN A DRAFT THAT WE COULD START DISCUSSING AND
26 NEGOTIATING.

11:06AM

27 AND I ALSO TOLD HIM THAT THAT
28 APPOINTMENT WOULD ULTIMATELY HAVE TO BE APPROVED BY THE

1 COMPENSATION COMMITTEE.

2 Q. AND DID YOU TELL HIM THAT THERE WERE OTHER
3 TERMS THAT WOULD HAVE TO BE INCLUDED --

4 MR. BRIAN: OBJECTION. LEADING.

5 THE COURT: SUSTAINED.

11:06AM

6 Q. BY MR. QUINN: DID MR. CAHILL PREPARE A FORM
7 OF EXHIBIT A?

8 A. YES, HE DID.

9 Q. AND DID HE GO OVER THAT WITH YOU?

10 A. YES, HE DID.

11:06AM

11 Q. AND DID -- CAN YOU TELL US WHETHER OR NOT YOU
12 GAVE HIM ANY COMMENTS ON IT?

13 A. I DID GIVE HIM COMMENTS ON HIS INITIAL DRAFT,
14 YES.

15 Q. AND IF WE COULD LOOK AT THE TOP OF THE E-MAIL
16 ON EXHIBIT 2150-1, DID HE -- IT APPEARS THAT THERE ARE
17 TWO ATTACHMENTS HERE?

11:06AM

18 A. YES.

19 Q. AND --

20 A. IT LOOKS THAT WAY.

11:06AM

21 Q. AND CAN YOU TELL WHAT THOSE TWO ATTACHMENTS
22 ARE?

23 A. YES. THE FIRST WAS EXHIBIT A, WHICH WAS JUST
24 PUTTING THE NEGOTIATED COMPENSATION FORMULA DOWN ON
25 PAPER, BECAUSE IT HAD BEEN DONE IN HANDWRITING AND
26 SPREADSHEETS, AS TO EXACTLY HOW TO APPLY THAT FORMULA.

11:07AM

27 AND THEN THE SECOND IS THE INITIAL DRAFT
28 OF AN EMPLOYMENT AGREEMENT, AND ALL OF THE TERMS OF THE

1 EMPLOYMENT AGREEMENT, FROM A LEGAL AND OTHER TERM
2 PERSPECTIVE.

3 Q. DID YOU EVER TELL MR. GUNDLACH -- LET ME READ
4 TO YOU FROM MR. GUNDLACH'S TRIAL TESTIMONY ON
5 SEPTEMBER 7TH, 2011.

11:07AM

6 MR. GUNDLACH TESTIFIED, IN RESPONSE TO A
7 QUESTION FROM MR. HELM:

8 "Q WELL, WHAT DID YOU
9 BELIEVE THE DEAL WAS THAT REQUIRED
10 NO FURTHER DOCUMENTATION?

11:07AM

11 "A WHAT I WAS GOING TO BE
12 PAID, HOW LONG I WAS GOING TO BE
13 PAID FOR IT, AND UNDER WHAT
14 CIRCUMSTANCES THEY COULD STOP
15 PAYING."

11:08AM

16 DID YOU EVER TELL MR. GUNDLACH THAT IT
17 WOULD BE OKAY WITH YOU IF YOU JUST HAD AN AGREEMENT
18 THAT COVERED THOSE TERMS ALONE?

19 A. NO.

20 Q. CAN YOU TELL US WHETHER OR NOT, IN THE DRAFT
21 AGREEMENT THAT WAS PREPARED, THERE WERE OTHER ISSUES
22 THAT WERE IMPORTANT TO YOU, AS TCW'S NEGOTIATOR, THAT
23 YOU EXPECTED TO HAVE HIS AGREEMENT TO?

11:08AM

24 A. YES.

25 Q. AND WERE THESE -- DID YOU REGARD THESE AS
26 ESSENTIAL CONDITIONS, IF YOU WERE GOING TO HAVE A DEAL
27 WITH HIM?

11:08AM

28 MR. BRIAN: OBJECTION. PAROL EVIDENCE,

1 UNCOMMUNICATED INTENT.

2 THE COURT: OVERRULED.

3 THE WITNESS: YES.

4 Q. BY MR. QUINN: AND WHAT WERE THOSE ADDITIONAL
5 TERMS?

11:08AM

6 A. THERE WERE TRADITIONAL TERMS, IN TERMS OF
7 ENSURING THE RIGHT OF NON-SOLICITATION OF CLIENTS AND
8 EMPLOYEES.

9 THERE WERE TERMS ASSOCIATED WITH HOW WE
10 WOULD DEAL WITH COMPENSATING MEMBERS OF HIS TEAM, WHERE
11 IT WAS STILL AN OPEN ISSUE BETWEEN US IN NEGOTIATION
12 WITH RESPECT TO WHETHER TCW HAD AUTHORITY TO APPROVE
13 COMPENSATION AMOUNTS TO ANYONE WITHIN THE MORTGAGE
14 GROUP.

11:08AM

15 JEFFREY WANTED THE RIGHT TO BE ABLE TO
16 CONTROL THAT HIMSELF, AND IT WAS STILL AN OPEN
17 DISCUSSION.

11:09AM

18 Q. ARE YOU AWARE OF WHETHER OR NOT THERE WERE
19 ACTUALLY DRAFTS THAT WERE PREPARED BY MR. CAHILL?

20 A. YES.

11:09AM

21 Q. AND ARE YOU AWARE WHETHER OR NOT, WITHOUT
22 GETTING INTO THE SUBSTANCE OF IT, CAN YOU TELL US JUST
23 YES OR NO WHETHER MR. CAHILL REPORTED TO YOU THE
24 PROGRESS OF HIS NEGOTIATIONS WITH MR. GUNDLACH?

25 A. YES, HE DID.

11:09AM

26 Q. AND WAS IT YOUR UNDERSTANDING THAT THEY WERE
27 ABLE TO REACH AGREEMENT ON ALL THE TERMS, AS OF THE
28 TIME OF THE LAST DRAFT THAT WAS PREPARED?

1 MR. BRIAN: OBJECTION. PAROL EVIDENCE,
2 HEARSAY, UNCOMMUNICATED INTENT, AND NO FOUNDATION.

3 THE COURT: SUSTAINED.

4 Q. BY MR. QUINN: THERE'S SOMETHING CALLED A
5 COMPENSATION COMMITTEE OF THE BOARD THAT WE'VE HEARD AT
6 TCW.

11:09AM

7 DID THEY HAVE A ROLE WITH RESPECT TO
8 APPROVING EMPLOYMENT AGREEMENTS AND COMPENSATION
9 ARRANGEMENTS?

10 A. YES.

11:10AM

11 Q. WHAT IS THAT ROLE?

12 A. WELL, EXECUTIVE OFFICERS, INCLUDING ME, IN THE
13 ROLE AS PRESIDENT OF THE FIRM, CANNOT ENTER INTO OR
14 EXECUTE OR SIGN AN EMPLOYMENT AGREEMENT WITHOUT
15 COMPENSATION COMMITTEE'S PRIOR APPROVAL.

11:10AM

16 Q. WAS MR. GUNDLACH A MEMBER OF THE BOARD OF
17 DIRECTORS?

18 A. YES.

19 Q. AND AS A MEMBER OF THE BOARD OF DIRECTORS,
20 WOULD HE HAVE HEARD REPORTS FROM THE COMPENSATION
21 COMMITTEE?

11:10AM

22 A. YES.

23 Q. AND WOULD HE HAVE KNOWN THAT, THAT THE
24 COMPENSATION COMMITTEE APPROVAL WAS REQUIRED?

25 MR. BRIAN: OBJECTION. CALLS FOR SPECULATION.

11:10AM

26 THE COURT: OVERRULED.

27 THE WITNESS: YES. I ACTUALLY TOLD HIM THAT
28 WHEN WE WERE NEGOTIATING, AFTER WE HAD NEGOTIATED THE

1 COMPENSATION ARRANGEMENTS.

2 Q. AND WAS THERE A PRACTICE AND PROCEDURE, A
3 STANDARD PRACTICE AT TCW, AS TO THE ORDER IN WHICH
4 THESE STEPS WOULD BE TAKEN, COMPENSATION COMMITTEE
5 APPROVAL, EXECUTION OF AGREEMENTS, AND THE LIKE?

11:10AM

6 MR. BRIAN: OBJECTION. RELEVANCE, PAROL
7 EVIDENCE.

8 THE COURT: SUSTAINED.

9 Q. BY MR. QUINN: WELL, WAS THERE A PRACTICE AT
10 TCW AS TO WHETHER TCW OR THE EMPLOYEE WOULD SIGN THE
11 COMPENSATION AGREEMENT FIRST?

11:11AM

12 MR. BRIAN: SAME OBJECTIONS.

13 THE COURT: OVERRULED.

14 Q. BY MR. QUINN: AND WHAT WAS THE PRACTICE?

15 A. WE HAD A FIRM POLICY THAT WE WOULD REQUIRE AN
16 EMPLOYEE TO SIGN AN EMPLOYMENT AGREEMENT PRIOR TO THE
17 FIRM COUNTERSIGNING IT.

11:11AM

18 Q. AND WHY?

19 A. TO AVOID THE SITUATION OF FREE OPTIONS, WHERE
20 IF THE FIRM SIGNED AN EMPLOYMENT AGREEMENT, AND GAVE IT
21 TO AN EMPLOYEE, AND THEY DID NOT COUNTERSIGN, THEY
22 WOULD HAVE ALL OF THE FREEDOM AS AN AT-WILL EMPLOYEE,
23 PERSONALLY, AND AT A FUTURE DATE, BE ABLE TO
24 COUNTERSIGN IT QUICKLY, TO GET THE CONTRACTUAL
25 OBLIGATION.

11:11AM

11:11AM

26 Q. AND AS I WALK TO MY CHAIR, WAS THERE A
27 PRACTICE WITH RESPECT TO THE TIMING OF SIGNING THE
28 AGREEMENTS AND GETTING COMPENSATION COMMITTEE APPROVAL?

1 A. YES.

2 Q. AND WHAT WAS THAT PRACTICE?

3 A. FIRST, GET COMPENSATION COMMITTEE APPROVAL,
4 THEN GET THE EMPLOYEE TO SIGN, THEN TCW WOULD SIGN THE
5 AGREEMENT.

11:12AM

6 MR. QUINN: NOTHING FURTHER.

7 THE COURT: ALL RIGHT.

8 CROSS-EXAMINATION, MR. BRIAN?

9 MR. BRIAN: CERTAINLY, YOUR HONOR.

10 I THINK WE'RE GOING TO PASS OUT SOME
11 BINDERS, SOME OF THE SAME STUFF.

11:12AM

12

13

14

CROSS-EXAMINATION

15

16 BY MR. BRIAN:

17 Q. GOOD MORNING, MR. SONNEBORN.

18 A. GOOD MORNING.

19 MR. BRIAN: GOOD MORNING, LADIES AND
20 GENTLEMEN.

11:12AM

21 THE JURY: MORNING.

22 Q. BY MR. BRIAN: WE HAVE NOT MET, HAVE WE, SIR?

23 A. WE HAVE NOT -- WELL, BRIEFLY THIS MORNING.

24 Q. WE SAID HELLO WHEN YOU WERE IN THE COURTROOM?

25 A. YES.

11:12AM

26 Q. YOU TESTIFIED THAT YOU WERE ENGAGED IN
27 DISCUSSIONS IN 2007 WITH MR. GUNDLACH.

28 YOU HAD ACTUALLY BEEN ENGAGED IN EARLIER

1 DISCUSSIONS WITH HIM WITH RESPECT TO AT LEAST HIS 1998
2 AND 2003 CONTRACTS; IS THAT RIGHT, AS WELL?

3 A. THAT'S CORRECT.

4 Q. TAKE A LOOK, IF YOU WOULD, IN YOUR BINDER AT
5 EXHIBIT 16.

11:13AM

6 THAT'S IN EVIDENCE. WE CAN PUT THAT UP.

7 A. 16?

8 Q. THE BINDER THAT JOANETTE JUST PASSED OUT TO
9 YOU.

10 THAT'S A COPY OF MR. GUNDLACH'S
11 SEPTEMBER 1ST, 2003 EMPLOYMENT CONTRACT, IS IT NOT?

11:13AM

12 A. YES.

13 Q. AND IF YOU LOOK AT PAGE 5 OF THAT, JUST
14 CONFIRM THAT IS YOUR SIGNATURE ON PAGE 5, IS IT NOT?

15 A. YES.

11:13AM

16 AND MY INITIALS, ALSO, IN PREVIOUS
17 PAGES.

18 Q. AND IF YOU GO BACK TO PAGE 1, PLEASE?

19 A. YES.

20 Q. DO YOU SEE THE VERY FIRST PARAGRAPH, WHERE IT
21 STATES THAT TO THE EXTENT NOT INCONSISTENT WITH THE
22 CERTAIN NUMBER PARAGRAPHS, ALL TERMS OF YOUR FORMER
23 EMPLOYMENT AGREEMENT DATED AS OF JANUARY 1, 1998, ARE
24 INCORPORATED HEREIN.

11:13AM

25 DO YOU SEE THAT?

11:13AM

26 A. YES.

27 Q. AND THAT'S CONSISTENT WITH YOUR RECOLLECTION,
28 IS IT NOT, THAT THERE WERE THESE FOUR OR FIVE TERMS

1 THAT WERE MODIFIED, AND THE REST OF HIS CONTRACT WAS
2 SIMPLY INCORPORATED INTO THE 2003, RIGHT?

3 A. IN CONTEXT WITH THIS NEGOTIATION, YES.

4 Q. SO THAT, FOR EXAMPLE, IF YOU WOULD TURN TO --
5 LOOK AT PARAGRAPH 12. I'M SORRY, EXHIBIT 12.

11:14AM

6 YOU CAN PUT THAT UP, DENNIS.

7 THAT'S THE 1998 CONTRACT, IS IT NOT?

8 A. YES, IT IS.

9 Q. AND SO IF YOU TURN TO 12-7, IF WE COULD
10 ENLARGE THAT PARAGRAPH AT THE BOTTOM, UNDER

11:14AM

11 "TERMINATION", DENNIS.

12 OR YOU CAN JUST LOOK AT THE SCREEN, TOO?

13 A. THAT WILL BE EASIER.

14 Q. DO YOU SEE THE REFERENCE TO THE TERMINATION
15 CLAUSE?

11:14AM

16 A. YES, I DO.

17 Q. THE TERMINATION CLAUSE FOR CAUSE, FOR EXAMPLE,
18 THE LANGUAGE FOR CAUSE THAT WAS IN THE 1998 CONTRACT
19 WAS SIMPLY INCORPORATED WITHOUT CHANGE INTO THE 2003
20 CONTRACT, CORRECT?

11:15AM

21 A. YES.

22 Q. SO LET'S TURN TO -- WELL ACTUALLY, LET'S FIRST
23 TALK A LITTLE BIT ABOUT MR. BARACH.

24 YOU TESTIFIED THAT YOU HAD SOME
25 CONVERSATION WITH MR. GUNDLACH IN THE LATE 2006 TIME
26 PERIOD ABOUT MR. BARACH'S COMPENSATION.

11:15AM

27 DO YOU RECALL THAT, GENERALLY?

28 A. YES, I DO.

1 Q. IS IT FAIR TO SAY THAT -- WELL, FIRST OF ALL,
2 MR. BARACH'S OLDER THAN MR. GUNDLACH, RIGHT?

3 A. YES, HE IS.

4 Q. AND WOULD YOU AGREE WITH ME THAT BY LATE 2006,
5 EARLY 2007, MR. GUNDLACH, AT LEAST RELATIVE TO
6 MR. BARACH, HAD BECOME MORE OF A DRIVER OF THE BUSINESS
7 IN THE MBS GROUP?

11:15AM

8 A. YES.

9 Q. AND IT IS NOT UNUSUAL, IS IT, IN THE BUSINESS
10 WORLD, THAT YOUNG PERFORMERS COME TO A POINT WHERE THEY
11 ECLIPSE, IN COMPENSATION AND PERFORMANCE, THE PEOPLE
12 WHO ARE OLDER THAN THEM, RIGHT?

11:15AM

13 A. SURE.

14 Q. YOU ARE A CLASSIC EXAMPLE OF THAT, AREN'T YOU,
15 SIR?

11:16AM

16 A. I DON'T KNOW IF I'M AN EXAMPLE, BUT IT'S
17 GENERALLY TRUE.

18 Q. AND ONE OF THE THINGS YOU TALKED ABOUT, THE
19 LOWER MARGINS IN THE FIXED INCOME AREA?

20 A. YES.

11:16AM

21 Q. I WANT TO ASK YOU A FEW QUESTIONS ABOUT THAT.

22 I TAKE IT THAT -- IS IT TRUE THAT THE --
23 SOME OF THE FIXED INCOME PRODUCTS, THE FEE STRUCTURE IS
24 GENERALLY A LITTLE BIT LOWER THAN THE FEE STRUCTURE IN
25 THE EQUITY PRODUCTS?

11:16AM

26 A. SOME OF THEM, YES.

27 Q. AND THE COSTS OF SOME OF THE FIXED INCOME
28 PRODUCTS OF RUNNING THAT BUSINESS CAN BE, RELATIVE TO

1 THE EQUITIES, A LITTLE HIGHER, RIGHT?

2 A. SYSTEMS COSTS, YOU MEAN? IS THAT YOUR
3 QUESTION?

4 Q. YES.

5 A. YES.

11:16AM

6 Q. AND AS A RESULT, THAT'S WHY THE MARGINS CAN BE
7 A LITTLE LOWER IN THAT GROUP, RIGHT?

8 A. YES.

9 Q. AND THEREFORE, IT'S IMPORTANT, IN THE
10 COMPENSATION STRUCTURE, TO TRY TO CREATE INCENTIVES AND
11 REWARDS, IN ORDER TO MOTIVATE PEOPLE IN THAT GROUP TO
12 TRY TO BUILD THE SCALE, AND THEREFORE INCREASE THE
13 MARGINS, RIGHT?

11:16AM

14 A. I'M NOT SURE I AGREE WITH THAT.

15 I THINK -- THE ISSUE IS COMPARING
16 MARGINS OF TCW'S FIXED INCOME BUSINESS WITH, SAY,
17 BLACKROCK'S FIXED INCOME MARGINS.

11:17AM

18 IT'S THE ISSUE OF LOWER MARGINS.

19 Q. ALL RIGHT. IN 2007, I THINK YOU SAID THIS
20 LAST TIME, MR. GUNDLACH HAD BECOME A VERY SIGNIFICANT
21 PORTFOLIO MANAGER AT TCW, HAD HE NOT?

11:17AM

22 A. HE WAS ONE OF OUR LEADING PORTFOLIO MANAGERS,
23 YES.

24 Q. AND YOU WERE CONCERNED, WERE YOU NOT, THAT HIS
25 EMPLOYMENT CONTRACT WAS GOING TO EXPIRE AT THE END OF
26 2007?

11:17AM

27 A. I WAS NOT CONCERNED.

28 Q. ISN'T IT A FACT THAT YOU WERE CONCERNED THAT

1 AFTER HIS CONTRACT EXPIRED, THERE WOULD BE NO STOCK OR
2 OTHER RETENTION MECHANISM IN PLACE, OTHER THAN
3 SIGNIFICANT CASH COMPENSATION?

4 WEREN'T YOU CONCERNED ABOUT THAT?

5 A. NO.

11:18AM

6 Q. YOU MADE A PRESENTATION TO THE COMPENSATION
7 COMMITTEE IN MID JULY OF 2007 IN WHICH YOU RECOMMENDED
8 A FIVE-YEAR EMPLOYMENT CONTRACT FOR JEFFREY GUNDLACH,
9 DIDN'T YOU?

10 A. YES.

11:18AM

11 Q. TAKE A LOOK AT EXHIBIT 5048, PLEASE.

12 PUT THAT UP, DENNIS, PAGE 4.

13 IT'S PROBABLY TOWARD THE BACK OF THE
14 BINDER. IN FACT, IT'S PROBABLY THE NEXT TO THE LAST
15 TAB, I THINK.

11:18AM

16 A. I FOUND IT. THANK YOU.

17 THE COURT: WHAT IS THE NUMBER AGAIN?

18 MR. BRIAN: 5048. FIVE ZERO FOUR EIGHT.

19 THE COURT: THANK YOU.

20 Q. BY MR. BRIAN: THESE ARE THE MINUTES OF THE
21 COMPENSATION COMMITTEE OF JULY 16TH, 2007, IN WHICH YOU
22 RECOMMENDED THE RATIFICATION AND APPROVAL OF
23 MR. GUNDLACH'S FIVE-YEAR EMPLOYMENT AGREEMENT, DID YOU
24 NOT?

11:18AM

25 A. YES, I DID.

11:18AM

26 Q. TAKE A LOOK AT THE VERY FIRST PARAGRAPH AND,
27 DENNIS, IF YOU COULD HIGHLIGHT THE LAST SENTENCE.

28 YOU TOLD THE COMPENSATION COMMITTEE THAT

1 MR. GUNDLACH'S CONTRACT CURRENTLY ENDS ON DECEMBER
2 31ST, 2007, DIDN'T YOU?

3 A. YES.

4 Q. AND YOU TOLD THEM, AS WELL, THAT (READING):

5 THERE IS CURRENTLY NO STOCK OR
6 OTHER RETENTION MECHANISM IN PLACE,
7 OTHER THAN SIGNIFICANT CASH
8 COMPENSATION.

11:19AM

9 YOU TOLD THE COMPENSATION COMMITTEE THAT
10 ON JULY 16TH, 2007, DIDN'T YOU, SIR?

11:19AM

11 A. I DID.

12 CAN I EXPLAIN?

13 Q. AND LET'S TALK ABOUT RETENTION.

14 RETENTION -- RETAINING SOMEBODY MEANS TO
15 KEEP THEM, RIGHT?

11:19AM

16 A. YES.

17 Q. AND ONE OF THE VEHICLES THAT MANAGEMENT OF A
18 COMPANY OFTEN USES TO RETAIN ITS VALUABLE EMPLOYEES IS
19 TO GIVE THEM STOCK, OR STOCK OPTIONS, RIGHT?

20 A. IT COULD BE A FORM OF COMPENSATION, YES.

11:19AM

21 Q. AND THAT'S BECAUSE WHEN YOU GIVE AN EMPLOYEE
22 STOCK, THEY HAVE A STAKE IN THE PERFORMANCE OF THE
23 COMPANY, RIGHT?

24 ISN'T THAT THE THEORY?

25 A. WELL, IT'S STOCK OPTION VERSUS CASH AS JUST A
26 SUBSTITUTE FORM OF COMPENSATION.

11:20AM

27 Q. WELL, YOU TOLD THE COMPENSATION COMMITTEE THAT
28 THERE WAS, FOR EXAMPLE, NO STOCK OR OTHER RETENTION

1 MECHANISM IN PLACE, RIGHT?

2 A. I DID.

3 Q. AND YOU WERE TELLING THE COMPENSATION
4 COMMITTEE THAT THE COMPANY NEEDED TO TAKE STEPS TO
5 RETAIN MR. GUNDLACH, WEREN'T YOU?

11:20AM

6 A. YES, I TOLD THE COMPENSATION COMMITTEE THAT.

7 Q. AND AS PART OF THAT, YOU RECOMMENDED THAT THE
8 COMPENSATION COMMITTEE APPROVE AND RATIFY A FIVE-YEAR
9 EMPLOYMENT AGREEMENT, RIGHT?

10 A. I DID.

11:20AM

11 Q. NOW, I THINK I HEARD YOU TESTIFY, IN RESPONSE
12 TO MR. QUINN'S QUESTION, THAT TCW HAD A POLICY OR A
13 PRACTICE OF GETTING ITS EMPLOYEES TO SIGN THE CONTRACT
14 BEFORE THE COMPANY SIGNED; IS THAT YOUR TESTIMONY?

15 A. YES.

11:21AM

16 Q. NOW, MR. QUINN DIDN'T SHOW YOU ANY WRITTEN
17 POLICY TO THAT EFFECT, DID HE?

18 A. NO.

19 Q. AND YOU DIDN'T BRING ANY SUCH WRITTEN POLICY
20 WITH YOU TODAY, DID YOU, SIR?

11:21AM

21 A. I AM NO LONGER AT TCW, SO I WOULDN'T HAVE
22 TCW'S INFORMATION.

23 Q. AND WHEN THE COMPENSATION COMMITTEE RATIFIED
24 AND APPROVED YOUR RECOMMENDATION, THEY DID NOT ISSUE A
25 RESOLUTION SAYING THAT MR. GUNDLACH HAD TO SIGN THE
26 CONTRACT FIRST, DID THEY?

11:21AM

27 A. NO.

28 THEY AUTHORIZED ME.

1 Q. I THINK THAT'S A NO.

2 MR. BRIAN: I'LL MOVE TO STRIKE EVERYTHING
3 AFTER THAT.

4 THE COURT: OKAY.

5 Q. BY MR. BRIAN: TURN TO PAGE 5 --

11:21AM

6 I'LL TELL YOU WHAT THEY TOLD YOU AFTER
7 THAT --

8 -- OF EXHIBIT 5048.

9 LET'S ENLARGE THOSE FIRST TWO RESOLVE
10 PARAGRAPHS. RIGHT THERE, DENNIS. (READING):

11:22AM

11 THE COMPENSATION COMMITTEE
12 RESOLVED THAT THE COMMITTEE HEREBY
13 CONFIRMS, RATIFIES AND APPROVES THE
14 FIVE-YEAR EMPLOYMENT ARRANGEMENT
15 WITH JEFFREY GUNDLACH, COMMENCING
16 ON OR ABOUT JANUARY 1, 2007, ON
17 SUBSTANTIALLY THE TERMS PRESENTED
18 TO THIS COMMITTEE.

11:22AM

19 DID I READ THAT PARAGRAPH CORRECTLY,
20 SIR?

11:22AM

21 A. YES.

22 Q. AND THEN LOOK AT THE NEXT PARAGRAPH.
23 (READING):

24 THEY ISSUED A RESOLUTION THAT
25 AUTHORIZED THE CHIEF EXECUTIVE
26 OFFICER, THE PRESIDENT --

11:22AM

27 THAT WAS YOU, RIGHT?

28 A. YES.

1 Q. (READING):

2 AND SEVERAL OTHER INDIVIDUALS,
3 INCLUDING THE EXECUTIVE VICE
4 PRESIDENT AND GENERAL COUNSEL.
5 THEY AUTHORIZE AND EMPOWER YOU.

11:22AM

6 DENNIS, GO DOWN A LITTLE BIT MORE --

7 (READING):

8 TO EXECUTE AND DELIVER, ON
9 BEHALF OF THE COMPANY, AN
10 EMPLOYMENT ARRANGEMENT WITH JEFFREY
11 GUNDLACH ON SUBSTANTIALLY THE TERMS
12 PRESENTED TO THIS COMMITTEE.

11:22AM

13 THAT'S WHAT THEY RESOLVED, DIDN'T THEY,
14 SIR?

15 A. THEY DID.

11:22AM

16 Q. NOW, AFTER THAT RESOLUTION WAS ISSUED, YOU
17 PERSONALLY DID NOTHING IN FURTHERANCE OF THE
18 DOCUMENTATION OF WHAT HAD BEEN RATIFIED AND APPROVED,
19 DID YOU, SIR --

20 A. EXCUSE ME. COULD YOU REPEAT THE QUESTION?

11:23AM

21 Q. AFTER JULY 16TH --

22 A. YES.

23 Q. -- YOU, PERSONALLY, DID NOTHING, TOOK NO
24 ADDITIONAL STEPS, WITH RESPECT TO THE DOCUMENTATION OF
25 WHAT HAD BEEN RATIFIED AND APPROVED, DID YOU?

11:23AM

26 A. I DID.

27 Q. WELL, YOU LEFT IT TO MR. CAHILL, DIDN'T YOU,
28 SIR?

1 A. I HAD CONVERSATIONS WITH MR. CAHILL.

2 Q. RIGHT. OTHER THAN LEAVING IT TO MR. CAHILL --
3 WELL, I'LL REFRAME THAT.

4 WHAT YOU DID WAS TO GO TO MR. CAHILL AND
5 LEAVE IT UP TO HIM TO TAKE THE FURTHER STEPS, RIGHT?

11:23AM

6 A. MR. CAHILL WAS NEGOTIATING TERMS, AND WOULD
7 COME TO ME, SAYING, WHAT DO YOU THINK ABOUT THIS?

8 AND I WOULD GIVE HIM A RESPONSE, OR A
9 POINT OF VIEW ON ANY ASPECT OF THOSE TERMS.

10 Q. IS IT YOUR TESTIMONY THAT AFTER JULY 16TH,
11 THERE WERE FURTHER DRAFTS OF THE AGREEMENT?

11:23AM

12 IS THAT YOUR TESTIMONY?

13 A. THAT IS NOT MY TESTIMONY.

14 Q. I DIDN'T THINK SO.

15 MR. QUINN: MOVE TO STRIKE THE COMMENT, YOUR
16 HONOR.

11:24AM

17 THE COURT: STRIKE THE COMMENT.

18 Q. BY MR. BRIAN: SIR, AFTER JULY 16TH, DID YOU,
19 PERSONALLY -- NOT MR. CAHILL, NOT MR. BEYER -- DID YOU,
20 PERSONALLY, APPROACH MR. GUNDLACH AND SAY, HERE, I'M
21 SIGNING ON BEHALF OF TCW. JEFFREY WANTED YOU TO SIGN.

11:24AM

22 DID YOU DO THAT?

23 A. THE AGREEMENT HAD NOT BEEN NEGOTIATED.

24 Q. SIR, THAT'S A VERY SIMPLE QUESTION.

25 DID YOU DO THAT?

11:24AM

26 A. NO.

27 Q. NOW, YOU WERE STILL A PRESIDENT OF TCW AT THE
28 END OF 2007, WEREN'T YOU?

1 A. YES.

2 Q. YOU DIDN'T GO TO MR. GUNDLACH, AT THE END OF
3 2007, AND SAY, JEFFREY, YOUR CONTRACT IS EXPIRING, DID
4 YOU?

5 A. NO. 11:24AM

6 Q. NOW, THE REASON YOU DIDN'T DO THOSE THINGS IS
7 THAT YOU THOUGHT THE DEAL THAT YOU HAD WAS AWESOME;
8 ISN'T THAT RIGHT?

9 A. NOPE.

10 Q. YOU DID THINK THE DEAL WAS AWESOME, DIDN'T
11 YOU, SIR? 11:25AM

12 A. NO.

13 THAT WAS NOT THE REASON I DIDN'T DO
14 THOSE.

15 Q. OKAY. TAKE A LOOK AT EXHIBIT 5035. 11:25AM

16 IT'S IN EVIDENCE.

17 IF WE COULD ENLARGE THE FIRST E-MAIL AT
18 THE TOP, DENNIS.

19 THAT'S THE E-MAIL THAT MR. QUINN SHOWED
20 YOU THE -- MAY 1ST, THE DAY YOU HAD THE HANDSHAKE
21 AGREEMENT WITH MR. GUNDLACH, WHERE YOU SAID, (READING): 11:25AM

22 I LOVE GOING FROM 18 PERCENT
23 INCREMENTAL MARGINS ON THE CMBS,
24 (WHICH IS WHAT WE'VE OPERATED ON
25 FOR THE LAST THREE YEARS,
26 PRE-OVERHEAD) TO 50 PERCENT. AND
27 IF THEY HIT A WALL, THE FIXED COST
28 IS ALL THEIR NICKEL. 11:25AM

1 AND WHEN YOU SAY, THE FIXED COST IS
2 ALL THEIR NICKEL, YOU ARE TALKING ABOUT THE AGREEMENT
3 WHERE MR. GUNDLACH HAD AGREED TO ABSORB ADDITIONAL
4 COSTS, RIGHT?

5 A. NO.

11:25AM

6 Q. OKAY. DID YOU SAY -- I THINK IT'S AWESOME, IN
7 THAT E-MAIL?

8 A. I DID.

9 Q. NOW, TAKE A LOOK AT EXHIBIT 50 -- WELL, LOOK
10 AT PAGE 2 OF THAT EXHIBIT. YOUR E-MAIL AT THE BOTTOM,
11 DENNIS, IF YOU CAN MAKE THAT BIGGER. RIGHT THERE.

11:26AM

12 (READING):

13 JUST SAW THIS.

14 THIS IS WHAT YOU WROTE ON APRIL 30TH,
15 THE DAY BEFORE YOU SHOOK HANDS WITH MR. GUNDLACH.

11:26AM

16 (READING):

17 THIS LOOKS LIKE A PRETTY
18 ATTRACTIVE DEAL, RELATIVE TO WHERE
19 WE WERE, CORRECT? WE HAVE GREATER
20 DOWNSIDE PROTECTION VERSUS THE
21 CURRENT DEAL. WE SAVE SOME MONEY
22 ON THE CURRENT BOOK OF BUSINESS
23 VERSUS THE CURRENT DEAL, AND ONLY
24 GIVE AWAY ECONOMICS ON THE
25 UPSIDE -- BUT DO SO ONLY UNDER THE
26 ASSUMPTION YOU CLEVERLY BUILT IN,
27 THAT UNDER THE CURRENT DEAL, THEY
28 WOULDN'T HIRE ANOTHER 40 PEOPLE

11:26AM

11:26AM

1 WITH TCW, PICKING UP 75 PERCENT OF
2 THE TAB.

3 IN REAL LIFE, WOULDN'T THE
4 CURRENT DEAL BE MUCH WORSE THAN
5 WHAT I THINK HE'S GOING TO PROPOSE?

11:27AM

6 THAT'S WHAT YOU WROTE, DIDN'T YOU?

7 A. YES.

8 Q. NOW, MR. DEVITO, HE WAS THE CHIEF FINANCIAL
9 OFFICER?

11:27AM

10 A. YES.

11 Q. DID HE REPORT DIRECTLY TO YOU, ON APRIL 30TH
12 AND MAY 1ST OF 2007?

13 A. YES.

14 Q. HE THOUGHT IT WAS A PRETTY FAIR DEAL TO THE
15 COMPANY, TOO, DIDN'T HE?

11:27AM

16 A. YES.

17 Q. IF YOU LOOK AT THAT SAME PAGE --

18 IF YOU GO ABOVE THAT, DENNIS, AND
19 HIGHLIGHT THE E-MAIL ABOVE THAT.

20 THIS IS MR. DEVITO'S E-MAIL TO YOU,
21 MR. SULLIVAN, COPIED TO MR. VILLA WHO'S SEATED HERE.

11:27AM

22 HE SAID IN THE SECOND LINE -- WELL, THE
23 FIRST LINE, HE SAID, THIS IS JEFF'S PROPOSAL.

24 THEN HE SAID, I AM IN THE CAMP OF IT
25 BEING FAIR, AS WELL.

11:27AM

26 THAT WAS MR. DEVITO'S POSITION, WAS IT
27 NOT?

28 A. THAT'S WHAT HE WROTE.

1 Q. AND MR. VILLA, SEATED RIGHT HERE, TOLD YOU
2 THAT HE THOUGHT THE NEW DEAL WAS GOOD FOR TCW, AS WELL,
3 DIDN'T HE?

4 A. I BELIEVE SO, YES.

5 Q. TAKE A LOOK AT EXHIBIT 2303 IN YOUR BINDER. 11:28AM
6 THE -- LET ME KNOW WHEN YOU HAVE IT.
7 I DON'T KNOW IF THAT'S IN EVIDENCE YET.
8 THE TOP E-MAIL ON THE FIRST PAGE IS AN
9 E-MAIL FROM MR. SULLIVAN TO YOURSELF, CORRECT?

10 A. YES. 11:28AM

11 MR. BRIAN: I WOULD OFFER EXHIBIT 2303, YOUR
12 HONOR.

13 MR. QUINN: 23 -- I'M SORRY?

14 MR. BRIAN: 2303.

15 MR. QUINN: I'M ASTONISHED THERE'S AN E-MAIL 11:28AM
16 THAT ISN'T IN EVIDENCE.

17 AND TO COMPLETE THE RECORD, I WHOLLY
18 JOIN.

19 THE COURT: IT WILL BE ADMITTED.

20 MR. BRIAN: TURN, IF YOU COULD, TO 2303-4. 11:28AM

21 THE WITNESS: COULD I SPEND A FEW MINUTES
22 READING THIS E-MAIL, PLEASE? IT'S A LONG CHAIN.

23 MR. BRIAN: I'M NOT GOING TO ASK YOU MUCH.
24 WE'RE ON A LITTLE BIT OF A CLOCK.

25 Q. TURN TO THE BOTTOM OF 2303-3. 11:29AM

26 A. UH-HUH.

27 Q. AND YOU SEE AN E-MAIL FROM MR. VILLA TO
28 YOURSELF AND MR. DEVITO, CORRECT?

1 A. YES.

2 Q. AND HE SAYS, HERE'S THE FIVE-YEAR GROWTH
3 SCENARIO.

4 AND THEN I WANT TO DIRECT YOUR ATTENTION
5 TO THIS NEXT PAGE, WHERE THE CARRYOVER --

11:29AM

6 IF YOU CAN GO TO PAGE FOUR, DENNIS.

7 AND IN THE SECOND PARAGRAPH, MR. VILLA
8 WROTE, DID HE NOT, THE RESULTS INDICATE A SAVINGS TO
9 TCW OF ABOUT 2.5 MILLION IN 2007 UNDER THE NEW DEAL
10 ECONOMICS, WITH THE SAVINGS UPSIDE OF 19 MILLION UNDER
11 THE 40 PERCENT EXPENSE GROWTH SCENARIO.

11:30AM

12 IT ALSO SHOWS THAT UNDER THESE
13 ASSUMPTIONS, THE COMPENSATION COSTS STAY STABLE AT 48
14 TO 49 PERCENT OF REVENUES, WHEREAS UNDER THE EXISTING
15 DEAL ECONOMICS, COMPENSATION COSTS INCREASE UP TO 54
16 PERCENT OF REVENUE.

11:30AM

17 THAT'S WHAT MR. VILLA WROTE AT THIS SAME
18 TIME PERIOD, DID HE NOT?

19 A. YES.

20 Q. COULD YOU TAKE A LOOK AT EXHIBIT 5036.

11:30AM

21 THAT'S IN EVIDENCE, DENNIS.

22 YOU CAN PUT THAT UP.

23 MR. BEYER WROTE A PRIVATE E-MAIL TO
24 MR. GUNDLACH ON MAY 1ST, THE DAY AFTER YOU -- THE DAY
25 YOU HAD THE HANDSHAKE DEAL, IN WHICH HE SAID IT WAS A
26 WIN/WIN.

11:31AM

27 DID MR. BEYER TELL YOU HE WAS GOING TO
28 WRITE A PRIVATE E-MAIL TO MR. GUNDLACH?

1 A. NO.

2 Q. AND WHEN YOU APPEARED IN FRONT OF THE
3 COMPENSATION COMMITTEE, ON JULY 16TH, 2007, YOU TOLD
4 THE COMPENSATION COMMITTEE WHY YOU THOUGHT THIS WAS A
5 FAVORABLE EMPLOYMENT AGREEMENT FOR THE COMPANY, DIDN'T
6 YOU?

11:31AM

7 A. YES.

8 Q. LET'S GO BACK TO EXHIBIT 5048; PAGE 4.
9 IF WE COULD ENLARGE THE MIDDLE
10 PARAGRAPH. IS THAT POSSIBLE, DENNIS?

11:31AM

11 RIGHT THERE. THAT'S THE PARAGRAPH WHERE
12 YOU EXPLAIN TO THE COMMITTEE WHY THIS WAS A GOOD DEAL
13 FOR THE COMPANY, ISN'T IT?

14 A. I THINK IT'S MINUTES DESCRIBING MY
15 PRESENTATION TO THE COMP COMMITTEE, YES.

11:32AM

16 Q. WELL, ONE OF THE THINGS YOU NOTED ON THE --
17 FIFTH LINE, TOWARD THE END OF THAT, IT SAYS HE NOTED
18 THAT THE --

19 RIGHT ABOVE THAT. RIGHT ABOVE THAT.

20 (READING):

11:32AM

21 HE NOTED THAT THE NEW
22 COMPENSATION STRUCTURE WOULD RESULT
23 IN SAVINGS TO TCW.

24 YOU TOLD THAT TO THE COMPENSATION
25 COMMITTEE, DIDN'T YOU?

11:32AM

26 A. YES.

27 Q. YOU THEN NOTED THAT MR. PHIL BARACH, ALSO A
28 GROUP MANAGING DIRECTOR IN THE MBS DEPARTMENT, WILL BE

1 HAVING A COMPENSATION REDUCTION.

2 YOU TOLD HIM THAT, AS WELL, DIDN'T YOU?

3 A. YES.

4 Q. AND THEN IF YOU SKIP THE NEXT SENTENCE.

5 (READING):

11:32AM

6 YOU NOTED THAT THE EXPENSE OF
7 INCREASED HIRING HAS NOW BEEN
8 TRANSFERRED TO THE MBS/CMBS GROUP,
9 BECAUSE THEY WILL BEAR 100 PERCENT
10 OF THE COMPENSATION EXPENSE.

11:32AM

11 YOU EXPLAINED THAT AS ANOTHER REASON WHY
12 IT WAS FAVORABLE TO THE COMPANY, DIDN'T YOU?

13 A. I DON'T KNOW IF I EXPLAINED IT, WHY IT WAS
14 FAVORABLE.

15 I WAS NOTING A FACT.

11:33AM

16 Q. WHEN YOU WENT TO THE COMPENSATION COMMITTEE,
17 YOU WANTED THEM TO APPROVE THIS, DIDN'T YOU, SIR?

18 A. I WAS CONCERNED THEY WOULDN'T, SO I WOULD
19 LIKE -- WANTED THEM TO APPROVE IT, YES.

20 Q. YOU WERE TRYING TO PERSUADE THEM TO APPROVE
21 IT, WEREN'T YOU?

11:33AM

22 A. YES.

23 Q. AND YOU NOTED THAT TCW WILL CONTINUE TO BEAR
24 OTHER COSTS, INCLUDING PAYROLL TAXES AND OFFICE SPACE,
25 RIGHT?

11:33AM

26 A. YES.

27 Q. AND THEN YOU SAID, (READING):

28 THEREFORE, MARGIN CONTRACTION

1 IN THE MBS AND CMBS AREA WILL BE
2 BORNE BY THOSE GROUPS.

3 YOU SAID THAT AS WELL, DID YOU NOT?

4 A. YES.

5 Q. AND THEN YOU SAID, (READING):

11:33AM

6 CONVERSELY, IF THE BUSINESS
7 GROWS, TCW WILL HAVE SIGNIFICANT
8 BENEFITS.

9 YOU SAID THAT, AS WELL, DIDN'T YOU?

10 A. YES.

11:33AM

11 Q. I WANT TO CHANGE -- I THINK INSIDE YOUR
12 BINDER, IN THE FLAP, THERE ARE TWO FOLDERS, AND THEY
13 HAVE EXHIBIT 60 AND 61 IN THEM.

14 WHY DON'T YOU TAKE BOTH OF THOSE OUT.

15 THE COURT: 60 AND 66?

11:34AM

16 MR. BRIAN: SORRY. I MEANT 60 AND 66.

17 THE COURT: THAT'S --

18 MR. BRIAN: YOUR HONOR, YOU'VE BEEN ALERT
19 TODAY.

20 THE COURT: IS THAT REFRESHING, OR SOMETHING
21 NEW?

11:34AM

22 MR. QUINN: I THINK YOUR HONOR IS ALERT EVERY
23 DAY.

24 THE COURT: THANK YOU, MR. QUINN.

25 GO AHEAD.

11:34AM

26 MR. BRIAN: AND GOOD LOOKING, AND HUMOROUS,
27 TOO, YOUR HONOR.

28 THE COURT: GO AHEAD.

1 Q. BY MR. BRIAN: SO YOU DO HAVE EXHIBIT 60 IN
2 FRONT OF YOU, SIR?

3 A. YES.

4 Q. LET'S PUT THAT UP ON THE SCREEN, DENNIS.

5 NOW, THE FIRST PAGE OF 60, SO 60-1,
6 THERE ARE TWO E-MAILS. THERE'S A -- THE FIRST ONE
7 IS -- THE BOTTOM ONE IS MR. CAHILL, MAY 3RD, TO
8 MR. GUNDLACH, YOURSELF AND MR. BEYER, CORRECT?

11:34AM

9 A. YES.

10 Q. AND THIS IS DATED MAY 3RD, SO IT'S TWO DAYS
11 AFTER YOU AND MR. GUNDLACH SHOOK ON THE DEAL IN YOUR
12 OFFICE, RIGHT?

11:35AM

13 A. YES.

14 Q. AND THEN HE -- MR. CAHILL ATTACHED TO THIS
15 E-MAIL, BEGINNING AT 60-2, A DRAFT AGREEMENT, RIGHT?

11:35AM

16 A. THIS WAS THE SECOND DISTRIBUTION OF THE SAME
17 AGREEMENT.

18 Q. YES, BECAUSE -- AND BECAUSE HE RE-SENT IT TO
19 MR. GUNDLACH ON MAY 21ST, RIGHT?

20 A. YES, 'CAUSE JEFFREY HADN'T RESPONDED YET.

11:35AM

21 Q. WELL, MR. CAHILL TESTIFIED ABOUT THAT.

22 TAKE A LOOK IN YOUR BINDER.

23 KEEP THOSE TWO OUT, BUT TAKE A LOOK IN
24 YOUR BINDER AT EXHIBIT 61, IF YOU WOULD.

25 NOW, THIS IS AN E-MAIL THAT MR. GUNDLACH
26 SENT ON MAY 25TH, TO MR. CAHILL, COPY TO YOU, SAYING
27 (READING):

11:36AM

28 YES, WE SHOULD GO UNDER THE

1 NEW ARRANGEMENT. EVERYONE HAS
2 AGREED TO EVERYTHING IN GOOD FAITH.

3 DO YOU SEE THAT?

4 A. YES.

5 Q. AND AFTER YOU HAD THE HANDSHAKE DEAL, AND
6 AFTER YOU GOT THIS E-MAIL FROM MR. GUNDLACH, YOU
7 AUTHORIZED -- YOU AND MR. BEYER, I GUESS, AUTHORIZED
8 THE FINANCIAL FOLKS AT THE COMPANY TO BEGIN PAYING
9 MR. GUNDLACH PURSUANT TO THE REVISED COMPENSATION
10 FORMULA YOU HAD SHAKEN HANDS ON, RIGHT?

11:36AM

11:36AM

11 A. I DID, FOLLOWING JEFFREY AGREEING TO MODIFY
12 HIS EXISTING CONTRACTUAL ARRANGEMENTS, YES.

13 Q. WELL, THAT'S NOT TRUE, IS IT, SIR?

14 A. IT'S VERY TRUE.

15 Q. YOU AUTHORIZED THE FINANCIAL PEOPLE TO BEGIN
16 PAYING HIM ON THE NEW ECONOMICS ONCE YOU GOT
17 AUTHORIZATION THEN FROM MR. GUNDLACH THAT EVERYTHING
18 HAS BEEN AGREED TO IN GOOD FAITH, DIDN'T YOU, SIR?

11:37AM

19 A. NO. FIRST, WE HAD TO GET JEFFREY TO AGREE
20 THAT HE WOULD VOID THE EXISTING CONTRACTUAL FORMULA IN
21 HIS '07 CONTRACT.

11:37AM

22 Q. OKAY.

23 A. BECAUSE THAT EXISTING CONTRACT WOULD REQUIRE
24 TCW TO PAY MORE MONEY THAN WHAT THIS NEW ARRANGEMENT
25 WILL BE, BY THE TWO AND A HALF MILLION DOLLARS.

11:37AM

26 Q. GOT IT. I'LL ACCEPT THAT MODIFICATION.

27 SO IN ANY EVENT, WITH THAT MODIFICATION,
28 YOU AUTHORIZED THE PEOPLE TO PAY MR. GUNDLACH UNDER THE

1 NEW FORMULA, RIGHT?

2 A. YES. IT WAS LESS THAN WE OTHERWISE WOULD HAVE
3 PAID UNDER THE OLD FORMULA.

4 Q. RIGHT. SO FOR THE NEAR FUTURE, AT LEAST, TCW
5 WAS PAYING LESS TO MR. GUNDLACH THAN YOU WOULD HAVE
6 PAID UNDER THE OLD FORMULA, RIGHT?

11:37AM

7 A. IN VIRTUALLY EVERY CASE, WE ASSUMED, YES.

8 Q. AND IN FACT, MR. GUNDLACH WAS PAID UNDER THIS
9 NEW FORMULA CONTINUOUSLY FROM THE TIME -- FROM THAT
10 TIME ON, UNTIL -- CERTAINLY UNTIL YOU LEFT IN 2008,
11 RIGHT?

11:38AM

12 A. YES.

13 Q. NOW, YOU TESTIFIED THIS MORNING THAT YOU SHOOK
14 HANDS ON THE ECONOMICS, RIGHT?

15 A. YES.

11:38AM

16 Q. AND YOU ASKED MR. GUNDLACH IF HE WANTED A
17 WRITTEN CONTRACT, AND HE SAID YES, CORRECT?

18 A. YES.

19 Q. YOU ASKED HIM HOW MANY YEARS, AND HE SAID FIVE
20 YEARS, RIGHT?

11:38AM

21 A. YES.

22 Q. BOTH OF THOSE, THE FIVE YEARS AND HAVING A
23 CONTRACT, WERE ACCEPTABLE TO YOU, WEREN'T THEY?

24 A. SUBJECT TO TERMS BEING ACCEPTABLE, YES.

25 Q. WELL, YOU WERE AGREEABLE TO FIVE YEARS,
26 WEREN'T YOU, SIR?

11:38AM

27 A. I WAS AGREEABLE TO FIVE YEARS.

28 WE STILL WERE NEGOTIATING THIS WHOLE

1 ASPECT OF CONTROLLING EMPLOYEE COMPENSATION.

2 Q. SIR, AFTER YOU NEGOTIATED THE ECONOMIC TERMS,
3 WHICH YOU SHOOK ON ON MAY 1ST --

4 A. YES.

5 Q. -- YOU LEFT TO MR. CAHILL THE RESPONSIBILITY
6 TO GET WHATEVER CONTRACT WOULD NEED TO BE IN PLACE,
7 DIDN'T YOU, SIR?

11:39AM

8 A. I LET HIM LEAD THE NEGOTIATIONS OF THE LEGAL
9 TERMS.

10 Q. YOU HAD NO --

11:39AM

11 THE COURT: LET HIM FINISH.

12 THE WITNESS: I'VE LET HIM LEAD THE
13 NEGOTIATIONS ON THE LEGAL TERMS TO PROTECT THE FIRM.

14 ON BUSINESS POINTS, I WAS STILL VERY
15 MUCH INVOLVED.

11:39AM

16 Q. BY MR. BRIAN: TAKE A LOOK AT EXHIBIT 60.

17 A. OKAY.

18 Q. LET'S PUT UP EXHIBIT 60-2.

19 THIS IS THE DRAFT THAT MR. CAHILL
20 CIRCULATED ON MAY 3RD, IS IT NOT?

11:39AM

21 A. YES, IT IS.

22 Q. OKAY. TAKE A LOOK AT --

23 PARAGRAPH 1, IF WE CAN ENLARGE THAT --

24 IT SAYS TERM, DOESN'T IT, SIR?

25 A. YES, IT DOES.

11:40AM

26 Q. (READING):

27 THE COMPANY AGREES TO EMPLOY

28 YOU, AND YOU AGREE TO SERVE THE

1 COMPANY ON THE TERMS DESCRIBED IN
2 THIS AGREEMENT.
3 THIS AGREEMENT WILL BE EFFECTIVE AS
4 OF JANUARY 1, 2007, THE
5 COMMENCEMENT DATE, AND WILL
6 CONTINUE UNTIL THE CLOSE OF
7 BUSINESS ON DECEMBER 31ST, 2011, OR
8 UNTIL TERMINATED, AS PROVIDED IN
9 SECTION SIX BELOW TERM.

11:40AM

10 THAT WAS WHAT WAS IN THE DRAFT THAT
11 MR. CAHILL CIRCULATED ON MAY 3RD, 2007, CORRECT?

11:40AM

12 A. YES.

13 Q. NOW, TURN TO EXHIBIT 66.

14 WE CAN PUT THAT UP, DENNIS.

15 NOW, THIS IS A JUNE 7TH E-MAIL FROM
16 MR. CAHILL TO MR. GUNDLACH, MR. BEYER AND YOURSELF, IS
17 IT NOT?

11:40AM

18 A. YES.

19 Q. AND THE SUBJECT LINE SAYS, EMPLOYMENT
20 CONTRACT, DOESN'T IT?

11:41AM

21 A. YES.

22 Q. AND HE ATTACHED TO IT A RED LINE, DID HE NOT?

23 A. YES, HE DID.

24 Q. TAKE A LOOK AT 66-2.

25 IF YOU COULD PUT THAT UP, DENNIS.

11:41AM

26 AND WE'LL ENLARGE THE PARAGRAPH CALLED
27 TERM.

28 AND IT SAYS, (READING):

1 THE COMPANY AGREES TO EMPLOY
2 YOU, AND YOU AGREE TO SERVE THE
3 COMPANY, ON THE TERMS DESCRIBED IN
4 THIS AGREEMENT.

5 THIS AGREEMENT WILL BE
6 EFFECTIVE AS OF JANUARY 1, 2007,
7 THE COMMENCEMENT DATE, AND WILL
8 CONTINUE UNTIL THE CLOSE OF
9 BUSINESS ON DECEMBER 31, 2011, OR
10 UNTIL TERMINATED, AS PROVIDED IN
11 CONNECTION SIX BELOW.

11:41AM

11:41AM

12 NOW, THAT LANGUAGE IS IDENTICAL TO THE
13 LANGUAGE I READ ON EXHIBIT 60-2, IS IT NOT?

14 A. YES.

15 Q. THERE WAS NO CHANGE WHATSOEVER IN THAT
16 LANGUAGE, BETWEEN THE MAY 3RD DRAFT AND THE JUNE 7TH
17 VERSION THAT MR. CAHILL CIRCULATED, WAS THERE?

11:41AM

18 A. CLEARLY, NOT.

19 Q. OKAY. NOW, TAKE A LOOK -- LET'S GO BACK TO
20 EXHIBIT 60.

11:42AM

21 AND DENNIS -- IF YOU COULD TURN TO 60-4,
22 SIR.

23 A. OKAY.

24 Q. TAKE A LOOK AT THE PARAGRAPH FOR CAUSE.
25 IF YOU COULD ENLARGE THAT ONE, FOR
26 CAUSE.

11:42AM

27 NOW, TAKE A LOOK --

28 I'LL JUST LEAVE THAT UP THERE --

1 TAKE A LOOK NOW AT EXHIBIT 66, PAGE-4.

2 A. YES.

3 Q. THE WORDS IN PARAGRAPH A, FOR CAUSE, ARE
4 IDENTICAL IN THOSE TWO VERSIONS, AREN'T THEY, SIR?

5 A. YES.

11:43AM

6 Q. NOW, IF YOU COULD TAKE THAT OFF.

7 LET'S GO DOWN TO THE LAST PARAGRAPH OF
8 PARAGRAPH 6, THAT LITTLE ONE PARAGRAPH -- ONE MORE.
9 RIGHT THERE, DENNIS.

10 SO, THAT'S EXHIBIT 60.

11:43AM

11 (READING):

12 YOUR COMPENSATION, INCLUDING
13 ANY BASE DRAW, ANY AMOUNT OF PROFIT
14 SHARING, AND ADDITIONAL BENEFITS,
15 WILL CEASE WHEN TERMINATION OCCURS,
16 EXCEPT ADDITIONAL BENEFITS THAT BY
17 THEIR TERMS APPLY AFTER
18 TERMINATION. AND THE COMPANY WILL
19 PAY YOU YOUR BASE SALARY, AND ANY
20 AMOUNT OF PROFIT SHARING, PLUS
21 ACCRUED VACATION, ACCRUED TO THE
22 DATE OF TERMINATION, IN ACCORDANCE
23 WITH THE COMPANY'S POLICIES.

11:43AM

11:43AM

24 THAT EXACT LANGUAGE APPEARS IN THE
25 VERSION 66-4 THAT MR. CAHILL CIRCULATED ON JUNE 7TH,
26 CORRECT?

11:43AM

27 A. YES.

28 JEFFREY CLEARLY DIDN'T NEGOTIATE THOSE

1 POINTS.

2 Q. THERE WERE NO CHANGES, WERE THERE?

3 A. JEFFREY DID NOT PROVIDE ANY COMMENTS.

4 Q. AND BOTH OF THOSE PROVISIONS THAT MR. CAHILL
5 CIRCULATED, FIRST ON MAY 3RD, AND THEN ON JUNE 7TH,
6 WERE ACCEPTABLE TO TCW, WEREN'T THEY, SIR?

11:44AM

7 A. YOU CAN'T TAKE SPECIFIC PROVISIONS OUT OF AN
8 AGREEMENT AND ASSUME THEY ARE ACCEPTABLE. THEY ARE
9 PARTS OF AN OVERALL ARRANGEMENT THAT NEEDS TO BE TAKEN
10 IN THE WHOLE.

11:44AM

11 Q. DID YOU EVER, EVER COMMUNICATE TO MR. GUNDLACH
12 THAT EITHER OF THOSE PROVISIONS I SHOWED WAS
13 UNACCEPTABLE TO YOU, OR TO THE COMPANY?

14 DID YOU EVER TELL HIM THAT?

15 A. NO.

11:44AM

16 BUT IF WE COULDN'T AGREE --

17 MR. QUINN: I'LL MOVE TO STRIKE, YOUR HONOR.

18 THE COURT: SIR, YOU HAVE ANSWERED THE
19 QUESTION.

20 Q. BY MR. BRIAN: DID -- DID YOU OR YOUR OFFICE
21 KEEP TRACK OF THE STATUS OF EMPLOYMENT CONTRACTS? DID
22 YOU KEEP A RECORD OR A LIST OR ANYTHING?

11:44AM

23 A. I THINK MY OFFICE HAD COPIES OF EVERY SIGNED
24 EMPLOYMENT AGREEMENT, AND A FACT FOR ANY EMPLOYEE AT
25 THE FIRM.

11:45AM

26 Q. DO YOU KNOW WHETHER THE LAW DEPARTMENT KEPT
27 RECORDS -- LISTS, SPREADSHEETS OF SORTS OF THE CONTRACT
28 STATUS?

1 A. I ASSUME SO, BUT I DON'T KNOW AS A FACT.
2 CHECKCHECK.

3 Q. LET ME TURN TO A DIFFERENT SUBJECT.

4 WHEN WERE YOU FIRST HIRED BY TCW?

5 A. I WAS FIRST GIVEN AN OFFER OF EMPLOYMENT, IN
6 DECEMBER '97.

11:45AM

7 Q. AND YOU WERE HIRED, AT 27 YEARS OLD, AS THE
8 CHIEF FINANCIAL OFFICER, WERE YOU NOT?

9 A. YES.

10 Q. AND THE PRESIDENT WHO BROUGHT YOU IN TO HIRE
11 YOU WAS MARC STERN, WASN'T HE?

11:45AM

12 A. MARC WAS PRESIDENT, AND ROBERT DAY WAS CEO,
13 YES.

14 Q. AND ROBERT DAY WAS CHIEF EXECUTIVE OFFICER
15 WHEN HE BROUGHT YOU IN, RIGHT?

11:45AM

16 A. YES.

17 Q. NOW, BETWEEN THE TIME THAT YOU WERE BROUGHT
18 IN, AND THE TIME YOU LEFT IN 2008, YOU WERE GRANTED
19 STOCK IN TCW, WEREN'T YOU, SIR?

20 A. YES.

11:46AM

21 Q. AND THAT STOCK THAT YOU WERE GRANTED, WAS THEN
22 BOUGHT BY SOCIETE GENERALE IN THE OVER FIVE-YEAR,
23 SIX-YEAR PERIOD IN THE 2000S, WASN'T IT?

24 A. YES.

25 Q. HOW MUCH MONEY DID YOU GET FROM THAT?

11:46AM

26 A. A REASONABLE AMOUNT.

27 Q. HOW MUCH?

28 A. I'M GUESSING, SOMEWHERE IN THE RANGE OF \$40

1 MILLION.

2 Q. AND YOU STILL STAY IN TOUCH WITH MR. STERN,
3 DON'T YOU, SIR?

4 A. MAYBE ONCE A YEAR.

5 Q. WHEN YOU TOOK THAT LITTLE WALK ON THE BEACH
6 YOU TALKED ABOUT LAST TIME, THAT WAS A WALK YOU TOOK IN
7 MALIBU, BECAUSE YOU WERE STAYING AT HIS HOUSE, WASN'T
8 IT?

11:46AM

9 A. THAT'S FALSE.

10 Q. WERE YOU AT HIS HOUSE?

11:46AM

11 A. NO. I WAS ON THE BEACH BY HIS HOUSE.

12 Q. DO YOU STAY WITH MR. STERN SOMETIMES WHEN YOU
13 COME TO L.A.?

14 A. I NEVER STAYED WITH MR. STERN IN L.A.

15 Q. DO YOU THINK THAT MR. STERN WAS HELPFUL TO
16 YOUR FINANCIAL AND PROFESSIONAL CAREER?

11:47AM

17 A. YES.

18 MR. BRIAN: NOTHING FURTHER.

19 THE COURT: VERY BRIEFLY, MR. QUINN, KEEPING
20 WITH OUR PLAN, FIVE AND FIVE.

11:47AM

21 MR. QUINN: OKAY.

22 THE COURT: OR SIX.

23 YOU KNOW, WITHIN REASON.

24

25

26 REDIRECT EXAMINATION

27

28 BY MR. QUINN:

1 Q. YOU MADE THE COMMENT, IN RESPONSE TO ONE OF
2 MR. BRIAN'S QUESTIONS THAT HE WAS ASKING YOU, THIS --
3 THESE PARAGRAPHS DIDN'T CHANGE BETWEEN DRAFTS?

4 DO YOU RECALL BEING ASKED THOSE
5 QUESTIONS?

11:47AM

6 A. YES.

7 Q. AND YOU MADE THE COMMENT THAT YOU CAN'T
8 ISOLATE PROVISIONS?

9 A. YES.

10 Q. CAN YOU EXPLAIN WHAT YOU MEAN BY THAT?

11:47AM

11 A. THE ENTIRE ELEMENT OF ENTERING INTO AN
12 EMPLOYMENT INCLUDES NOT ONLY THE COMPENSATION ELEMENTS,
13 BUT ALL OF THE BUSINESS TERMS. AND THEY ALL
14 INTERRELATE TO EACH OTHER.

15 SO IF SOMEONE WANTS TO GET PAID MORE,
16 THAT COULD MEAN LONGER NON-SOLICITATION OF EMPLOYEES OR
17 CUSTOMERS. IT ALL RELATES IN THE CONTEXT OF WHAT YOU
18 ARE AGREEING, AS A FIRM, TO COMMIT TO DO OVER A PERIOD
19 OF TIME.

11:48AM

20 Q. NOW, MR. BRIAN, I THINK, SHOWED YOU TWO OR
21 THREE PARAGRAPHS OR CLAUSES THAT DID NOT CHANGE AMONG
22 THE DRAFTS.

11:48AM

23 DO YOU RECALL THAT?

24 A. YES.

25 Q. WAS THERE EVER A DRAFT PREPARED THAT JUST HAD
26 THOSE TWO OR THREE CLAUSES IN IT, THAT THAT WAS THE
27 ENTIRE WRITTEN AGREEMENT?

11:48AM

28 A. NO.

1 Q. AND DID YOU SEE RED LINE VERSIONS --
2 IF WE LOOK AT EXHIBIT 66, DID YOU SEE A
3 RED LINE VERSION INDICATING COMMENTS AND RANGES HAD
4 BEEN MADE EVEN BY MR. GUNDLACH?

5 A. THESE --

11:48AM

6 MR. BRIAN: OBJECTION, NO FOUNDATION, YOUR
7 HONOR.

8 THE WITNESS: I'M NOT SURE I UNDERSTAND THE
9 QUESTION.

10 THE COURT: SUSTAINED AS TO --

11:48AM

11 YOU CAN REPHRASE IT.

12 Q. BY MR. QUINN: YOU HAVE SEEN A RED LINE DRAFT
13 INDICATING THAT THERE WERE NEGOTIATIONS ONGOING, AND
14 CHANGES WERE BEING MADE?

15 A. YES.

11:49AM

16 Q. AND YOU INDICATED, IN RESPONSE TO ONE OF
17 MR. BRIAN'S QUESTIONS, THAT FROM A BUSINESS STANDPOINT,
18 ON BUSINESS POINTS, I WAS STILL VERY MUCH INVOLVED?

19 A. YES.

20 Q. AND ALL RIGHT.

11:49AM

21 SO WITHOUT GETTING INTO THE SUBSTANCE OF
22 IT, CAN YOU TELL US WHAT YOU MEANT BY THIS?

23 A. THIS DRAFT, MR. CAHILL SENT EXHIBIT 66-1,
24 WHICH INCLUDES MR. GUNDLACH'S COMMENTS, I DID NOT FIND
25 PARTICULARLY ACCEPTABLE BECAUSE OF THE FACT THAT THIS
26 STILL BUSINESS POINT OF GIVING JEFFREY CONTROL OF HOW
27 EMPLOYEES COMPENSATION WAS SET.

11:49AM

28 Q. AND THAT IS -- CAN YOU TELL US EXACTLY WHERE

1 THAT IS?

2 A. SO IF YOU LOOK IN THE DRAFT THAT I -- THE
3 LANGUAGE I HAD GIVEN MICHAEL CAHILL IN THE INITIAL
4 DRAFT, WHICH IS ON 66-3 IN PARAGRAPH C.

5 Q. IS THAT THE LANGUAGE AT THE BOTTOM? 11:49AM

6 A. IT'S IN C, WHERE IT HAD, HE HAD STRUCK WITHOUT
7 THE PRIOR WRITTEN APPROVAL OF YOUR SUPERVISORS.

8 Q. RIGHT.

9 A. WHICH WAS IN THE ORIGINAL DRAFT TO ME AND
10 MR. BEYER. 11:50AM

11 Q. ALL RIGHT.

12 WAS THAT CHANGE ACCEPTABLE TO YOU?

13 A. NO, IT WASN'T.

14 Q. NOW, YOU INDICATED THAT --

15 IF YOU COULD TAKE A LOOK AT EXHIBIT
16 2297. 11:50AM

17 A. YES.

18 Q. PAGE DASH 2, 2297-2.

19 MR. BRIAN: I'M SORRY, WHAT WAS THE PAGE?

20 MR. QUINN: 2297-2. 11:50AM

21 MR. BRIAN: THANK YOU, SIR.

22 Q. BY MR. BRIAN: THIS IS ON MAY 17TH, 2007, IF
23 YOU LOOK AT THE SECOND PAGE.

24 A. YES.

25 Q. THE E-MAIL FROM MR. GUNDLACH, WHERE HE SAYS,
26 THE NEW CONTRACT DEAL HAS NOT BEEN FINALIZED, RIGHT? 11:50AM

27 DO YOU SEE THAT?

28 A. YES.

1 Q. AND IF WE COULD LOOK AT THE DRAFT, THE LAST
2 DRAFT, 66-6, 66-7, LOOK AT THOSE TWO PAGE.

3 THE SIGNATURE PAGE THERE, THERE'S
4 LANGUAGE AT THE BOTTOM, ABOVE THE SIGNATURE LINE.

5 IT SAYS, (READING):

6 IF YOU AGREE TO AND
7 ACCEPT THE FOREGOING, PLEASE SO
8 INDICATE BY SIGNING THIS AGREEMENT
9 IN THE SPACE PROVIDED BELOW AND
10 RETURNING A SIGNED COPY TO US.
11 UPON ACCEPTANCE BY YOU, THIS
12 AGREEMENT WILL BECOME OUR AGREEMENT
13 AS TO THE TERMS AND CONDITIONS OF
14 YOUR EMPLOYMENT.

15 DO YOU SEE THAT?

16 A. YES.

17 Q. AND IS THAT ALSO LANGUAGE THAT DID NOT CHANGE
18 IN THE DRAFT?

19 A. IT DID NOT CHANGE, I DON'T BELIEVE, BETWEEN
20 THE TWO DRAFTS, BUT I'LL CHECK.

21 Q. AND IS THAT KIND OF STANDARD LANGUAGE THAT WAS
22 USED IN CONTRACTS AT TCW?

23 A. YES, IT'S PRETTY MUCH BOILERPLATE LANGUAGE.

24 Q. ALL RIGHT. YOU WERE ASKED THE QUESTION
25 ABOUT -- BY MR. BRIAN WHERE HE ASKED YOU, WEREN'T YOU
26 CONCERNED -- HE WAS ASKING ABOUT EXHIBIT 5048-5 --
27 SORRY, -4 -- ABOUT THE COMP COMMITTEE APPROVAL. AND HE
28 ASKED YOU WHETHER, 5048-4, (READING):

11:51AM

11:51AM

11:51AM

11:51AM

11:51AM

1 WEREN'T YOU CONCERNED ABOUT
2 THE FACT --
3 AND IT WILL BE UP ON THE SCREEN,
4 MR. SONNEBORN --

11:52AM

5 WEREN'T YOU CONCERNED ABOUT
6 THE FACT THAT IN THE SPRING OF
7 2007, WEREN'T YOU REALLY WORRIED
8 ABOUT THE FACT THAT MR. GUNDLACH'S
9 CONTRACT WOULD BE EXPIRING AT THE
10 END OF THE YEAR?

11:52AM

11 DO YOU RECALL HIM ASKING YOU THAT?

12 A. YES, I DO.

13 Q. WERE YOU CONCERNED ABOUT THAT?

14 A. NO.

15 Q. WHY NOT?

11:52AM

16 A. JEFFREY HAD BEEN, YOU KNOW, LOYAL TO TCW FROM
17 THE DAY HE STARTED, AND TOOK PRIDE IN HOW TCW HAD GIVEN
18 HIM THE OPPORTUNITY.

19 WE HAD, UNDER HIS EXISTING CONTRACT THAT
20 WAS IN PLACE, AMPLE PROTECTIONS THAT WOULD SURVIVE THE
21 TERMINATION OF THAT CONTRACT OR THE END OF THAT
22 CONTRACT.

11:52AM

23 AND SO I WASN'T PARTICULARLY CONCERNED,
24 OTHER THAN THE ECONOMIC ASPECTS AND, IN FACT, THE
25 MARGINS OF THE BUSINESS.

11:52AM

26 Q. BY THE END OF THAT CONTRACT, DID YOU MEAN
27 DECEMBER 31, 2007?

28 A. YES.

1 Q. AND THEN IF WE CAN LOOK AT THOSE
2 RESOLUTIONS --

3 5048-5, IF WE CAN PUT THOSE UP.

4 AND BY THE WAY, YOU WERE ASKED BY
5 MR. BRIAN, AT THE END OF 2007, DID YOU GO TO
6 MR. GUNDLACH AND SAY, YOU ARE NOW AN AT-WILL EMPLOYEE?

11:53AM

7 DO YOU RECALL BEING ASKED THAT?

8 A. YES.

9 Q. YOU SAID YOU DIDN'T DO IT?

10 A. I DIDN'T DO IT.

11:53AM

11 Q. WHY DIDN'T DO YOU IT?

12 A. IT WAS OBVIOUS.

13 I MEAN, IT WAS COMPLETELY OBVIOUS THAT
14 HE WAS AN AT-WILL EMPLOYEE, JUST LIKE PHIL BARACH WAS.

15 Q. AND IF WE LOOK AT THIS RESOLUTION, EXHIBIT
16 5048-5, MR. -- LET ME FOCUS ON SOME LANGUAGE THAT
17 MR. BRIAN DIDN'T POINT OUT TO YOU, IN THE SECOND
18 RESOLUTION THERE.

11:53AM

19 IT SAYS, (READING):

20 THE VARIOUS PEOPLE ARE
21 AUTHORIZED TO EXECUTE AND DELIVER,
22 ON BEHALF OF THE COMPANY, AN
23 EMPLOYMENT AGREEMENT WITH JEFFREY
24 GUNDLACH ON SUBSTANTIALLY THE TERMS
25 PRESENTED TO THIS COMMITTEE, WITH
26 SUCH CHANGES AS THE EXECUTING
27 OFFICER DEEMS NECESSARY OR
28 APPROPRIATE, ALL TO BE CONCLUSIVELY

11:53AM

11:53AM

1 EVIDENCED BY SUCH EXECUTION AND
2 DELIVERY OF SUCH EMPLOYMENT
3 AGREEMENT.

4 AS A RESULT OF THIS RESOLUTION, DID YOU
5 HAVE AN UNDERSTANDING THAT THE DEAL WASN'T DONE YET,
6 THAT YOU WERE STILL AUTHORIZED TO MAKE CHANGES?

11:54AM

7 A. AS LONG AS THE TERMS DID NOT GET WORSE FROM
8 THOSE PRESENTED TO THE COMMITTEE IN JULY, WE HAD
9 FLEXIBILITY TO CONTINUE TO NEGOTIATE BETTER TERMS ON
10 BEHALF OF THE COMPANY WITH MR. GUNDLACH.

11:54AM

11 Q. NOW, YOU HAVE SAID THAT THIS WAS A REALLY --
12 LANGUAGE HAS BEEN POINTED OUT TO YOU WHERE YOU
13 INDICATED YOU THOUGHT THIS WAS A GOOD DEAL FOR TCW?

14 A. YES.

15 Q. BUT YOU ALSO SAID ALL THE MODELING SHOWED
16 MR. GUNDLACH WOULD MAKE MONEY?

11:54AM

17 A. MR. GUNDLACH MOVED HOW THE EXPENSES WERE
18 CHARGED AMONGST VARIOUS PEOPLE WITHIN THE TEAM, SO HE
19 WAS ABLE TO INCREASE HIS COMPENSATION SUBSTANTIALLY.

20 Q. DID THE MODELS ALL INDICATE HE'D MAKE MORE
21 MONEY, TOO?

11:54AM

22 A. YES.

23 Q. HOW IS THAT POSSIBLE, THAT IT'S A REALLY GOOD
24 DEAL FOR TCW, AND ALSO A REALLY GOOD DEAL FOR
25 MR. GUNDLACH?

11:54AM

26 MR. BRIAN: YOUR HONOR, CUMULATIVE, AND TIME.

27 THE COURT: SUSTAINED.

28 MR. BRIAN: IT'S LIKE THE TWO MINUTE WARNING.

1 THE COURT: WE DID MAKE A DEAL TO FINISH BY
2 NOON, FOR YOU.

3 MR. QUINN: OKAY.

4 WE DID MAKE A DEAL, EVEN THOUGH WE
5 DIDN'T SHAKE ON IT.

11:55AM

6 THE COURT: THANK YOU, MR. QUINN.

7

8

9

RECROSS EXAMINATION

10

11 BY MR. QUINN:

12 Q. TAKE A LOOK AT EXHIBIT 66-3?

13 WOULD YOU PUT THAT UP, DENNIS.

14 I'M SORRY THERE'S SO MANY PIECES OF
15 PAPER.

11:55AM

16 THAT'S THE PARAGRAPH -- YOU SEE THE
17 PARAGRAPH THAT MR. --

18 YOU SAID IN RESPONSE TO MR. QUINN'S
19 QUESTIONS THAT THAT WAS NOT ACCEPTABLE TO YOU.

20 IS THAT YOUR TESTIMONY?

11:55AM

21 A. I'M SAYING THAT THAT HAD BEEN AN OPEN
22 NEGOTIATION POINT BETWEEN JEFFREY AND ME, DATING BACK
23 TO THE MAY 1ST TIME PERIOD.

24 Q. AND AFTER THIS JUNE 7TH DRAFT WENT OUT, AND
25 AFTER YOU PRESENTED THE FIVE-YEAR EMPLOYMENT AGREEMENT
26 TO THE COMP COMMITTEE, AND AFTER THE COMP COMMITTEE
27 APPROVED AND RATIFIED THAT, YOU NEVER INSTRUCTED
28 MR. CAHILL TO SEND OUT REVISED LANGUAGE OF THAT, DID

11:55AM

1 YOU, SIR?

2 A. NO.

3 I INSTRUCTED --

4 Q. AND YOU NEVER --

5 MR. QUINN: CAN HE FINISH HIS ANSWER, YOUR
6 HONOR?

11:56AM

7 MR. BRIAN: IT'S A YES OR NO.

8 THE COURT: WELL, LET HIM FINISH THE ANSWER.

9 EVEN THOUGH WE'VE GOT TIME CONSTRAINTS,
10 WHAT WAS NO, YOU INSTRUCTED HIM -- AND THEN YOU STOPPED
11 TALKING.

11:56AM

12 THE WITNESS: I THEN ASKED MR. CAHILL TO NO
13 LONGER CONTINUE TO FOLLOW UP WITH MR. GUNDLACH ON
14 GETTING HIM TO SIGN AN EMPLOYMENT AGREEMENT.

15 Q. BY MR. QUINN: SO YOU DIDN'T -- YOU, FOR
16 EXAMPLE, YOU ARE NOT AWARE, AS YOU SIT HERE TODAY, OF
17 ANY REVISIONS CIRCULATED BY YOURSELF OR MR. CAHILL THAT
18 CAME AFTER EXHIBIT 66, ARE YOU?

11:56AM

19 A. NO.

20 Q. AND WHEN YOU WENT IN FRONT OF THE COMP
21 COMMITTEE ON JULY 16TH, 2007, AS EVIDENCED BY EXHIBIT
22 5048, THE ONLY TERMS THAT YOU PRESENTED TO THEM WERE
23 THE ECONOMIC FEE SHARING AGREEMENT AND THE FIVE-YEAR
24 TERM, RIGHT?

11:56AM

25 A. A DRAFT OF THE EMPLOYMENT AGREEMENT, WAS
26 PRESENTED TO THEM, AS WELL.

11:57AM

27 Q. AND YOU DIDN'T COMMENT, AS REFLECTED IN THE
28 MINUTES, ON ANY OF THE TERMS, OTHER THAN THE TWO I

1 MENTIONED: ECONOMICS OF FEE SHARING AND THE FIVE-YEAR
2 DURATION, RIGHT?

3 MR. QUINN: THE DOCUMENT SPEAKS FOR ITSELF.

4 THE WITNESS: THE MINUTES DON'T REFLECT THE
5 ENTIRE DISCUSSION.

11:57AM

6 MR. BRIAN: OKAY.

7 Q. DID YOU COMMENT ON ANY OTHER TERM BESIDES THE
8 ONES THAT ARE REFLECTED IN THE MINUTES?

9 A. WE TALKED FOR APPROXIMATELY AN HOUR ON THIS
10 PARTICULAR ISSUE, OF WHICH YOU ARE USING HERE, MINUTES,
11 THAT ARE SHORT FORM OF ALL OF THAT DISCUSSION.

11:57AM

12 Q. MR. CAHILL IS A PRETTY CONFIDENT GUY, YOU
13 THOUGHT, DIDN'T YOU?

14 A. YEAH, HE'S A VERY COMPETENT COUNSEL, YES.

15 Q. DID YOU TRUST HIM TO GET THE MINUTES RIGHT?

11:57AM

16 A. YES; BUT HE WASN'T RECORDING EVERY WORD
17 SPOKEN.

18 Q. BUT WHAT HE RECORDED YOU BELIEVED AT THE TIME,
19 AND STILL BELIEVE TODAY, THAT HE RECORDED ACCURATELY,
20 RIGHT?

11:58AM

21 A. WITHIN REASONABLE ACCURACY, YES.

22 Q. WELL, AS YOU LOOKED AT THESE MINUTES, THERE'S
23 NOTHING THAT'S INACCURATE, IS IT, SIR?

24 A. THERE'S ONE THAT I LOOKED AT THAT'S
25 INACCURATE, JUST WHEN WE WERE GOING THROUGH TESTIMONY
26 WITH YOU EARLIER TODAY.

11:58AM

27 Q. LET ME ASK YOU THIS: WHEN ON PAGE 5, HE WROTE
28 DOWN IN THE MINUTES, IN THE SECOND PARAGRAPH, RESOLVE

1 FURTHER THAT YOU ARE AUTHORIZED AND EMPOWERED TO
2 EXECUTE AND DELIVER, DID HE GET THAT RIGHT?

3 A. THAT WAS CORRECT.

4 AT THAT POINT, I HAD AUTHORIZATION TO
5 SIGN AN EMPLOYMENT AGREEMENT.

11:58AM

6 MR. BRIAN: NOTHING FURTHER, YOUR HONOR.

7 THE COURT: ALL RIGHT, MR. SONNEBORN.

8 THANK YOU FOR COMING BY AND SPENDING THE
9 MORNING WITH US. YOU ARE EXCUSED.

11:58AM

10 LADIES AND GENTLEMEN, WE'RE GOING TO
11 RECONVENE AT 8:30 ON MONDAY MORNING. WE WILL FINISH UP
12 ON MONDAY. AND OUR NORMAL TIME, 8:30 TO 2:00.

13 WE'LL PLAN TO HAVE CLOSING ARGUMENTS ON
14 TUESDAY, AND THEY WILL TAKE ALL DAY.

15 AS I'VE SAID, WE'LL STAY IN SESSION ALL
16 DAY ON TUESDAY.

11:59AM

17 WE'LL TAKE A LUNCH BREAK, BUT THEN WE'LL
18 COME BACK AT 1:00 OR 1:30, AND GO TILL 4:00 OR 4:30.

19 WEDNESDAY MORNING, THERE ARE A COUPLE OF
20 CONFLICTS THAT -- AMONG YOUR GROUP WITH GETTING STARTED
21 AT 8:30, SO WE WILL PLAN TO START AT 10 O'CLOCK.

11:59AM

22 WILL THAT WORK FOR EVERYBODY?

23 THAT WORKS FOR YOU, MR. SOTELIS -- OR
24 NOT MR. SOTELIS, MR. SANTOS? THAT WILL WORK FOR YOU?

25 THE JUROR: YES.

11:59AM

26 THE COURT: SO 10 O'CLOCK ON WEDNESDAY.

27 AND THEN I WILL INSTRUCT YOU WEDNESDAY
28 MORNING, PROBABLY WILL TAKE AN HOUR, HOUR AND A HALF.

1 MANY PEOPLE FEEL THAT THAT PROCESS IS --
2 YOU HAVE BEEN HERE A LONG TIME, YOU HAVE LISTENED TO A
3 LOT OF TESTIMONY. IT MAY BE THE HARDEST PART OF THE
4 WHOLE THING, BUT I HAVE TO READ THE INSTRUCTIONS TO
5 YOU, AND I WILL.

12:00PM

6 AND THEN YOU WILL BEGIN YOUR
7 DELIBERATIONS WEDNESDAY AFTERNOON.

8 ALL RIGHT. HAVE A NICE WEEKEND. DON'T
9 DISCUSS THE MATTER AMONG YOURSELVES OR WITH ANYONE ELSE
10 OR FORM ANY CONCLUSIONS OR OPINIONS.

12:00PM

11 ALTERNATE JUROR: WILL THERE BE DELIBERATIONS
12 NEXT FRIDAY?

13 THE COURT: STARTING WEDNESDAY.

14 AND I'M COMFORTABLE WITH YOU WORKING ON
15 A SCHEDULE THAT'S -- EVERYBODY AGREES TO. YOU CAN GO
16 THE FOUR DAYS WE'VE BEEN GOING, OR YOU CAN DELIBERATE
17 FIVE DAYS A WEEK.

12:00PM

18 JUROR NO. 11: WE WERE TALKING ABOUT SHIFTING
19 THE HOUR INTERVALS DAY TO DAY LIKE, WE COME IN BECAUSE
20 WE AGREE TO WEDNESDAY TERMS AND BY THE END OF
21 WEDNESDAY, WE'LL PICK OUR THURSDAY HOURS. AND BY THE
22 END OF THURSDAY, WE'LL PICK OUR FRIDAY HOURS; IS THAT
23 AGREEABLE?

12:00PM

24 THE COURT: WITHIN REASON.

25 IT'S GOT TO BE A FULL DAY. AND WHETHER
26 YOU WANT TO STAY WITH THE NO LUNCH BREAK, GOING TILL
27 2:00 OR 2:30, I'M HAPPY TO LET YOU CONTINUE THAT, IF
28 YOU LIKE IT.

12:00PM

1 IF YOU WOULD RATHER GO 9:00 TO 4:00, WE
2 CAN DO THAT, AND TAKE A LUNCH BREAK.

3 AND THERE'S A REASONABLE FLEXIBILITY, AS
4 LONG AS WE HAVE A CONSENSUS, AND WE'RE NOT CAUSING A
5 PROBLEM FOR ONE JUROR TO THE BENEFIT OF ANOTHER JUROR,
6 SO YOU CAN TALK ABOUT IT.

12:01PM

7 HAVE A NICE WEEKEND.

8 THE JURY: THANK YOU, YOUR HONOR.

9
10 (AT 12:01 P.M. THE FOLLOWING
11 PROCEEDINGS WERE HELD IN OPEN
12 COURT OUT OF THE PRESENCE OF
13 THE JURY:)

14
15 THE COURT: ALL RIGHT. WE'RE OUT OF THE
16 PRESENCE OF THE JURY.

12:01PM

17 WE HAVE A NUMBER OF ITEMS THAT WE'RE
18 GOING TO ADDRESS, BUT I'D LIKE TO TAKE A 10-MINUTE
19 BREAK, UNLESS THERE'S SOMETHING --

20 MR. MADISON: JUST WHILE IT'S FRESH IN OUR
21 MIND, MR. COLANGEN ASKED ABOUT NEXT FRIDAY. HE'S AN
22 ALTERNATE.

12:02PM

23 HOW DID YOUR HONOR TEND TO HANDLE THE
24 ALTERNATES DURING DELIBERATIONS?

25 THE COURT: THE ALTERNATES NEED TO BE HERE ALL
26 DAY DURING DELIBERATION.

12:02PM

27 AND WE WILL PROBABLY ALLOW THEM TO
28 REMAIN IN THE ROOM THAT THE JURY HAS BEEN USING AS A

1 CONFERENCE ROOM.

2 MR. MADISON: THANK YOU, YOUR HONOR.

3 MR. BRIAN: CAN WE TAKE FIVE OR 10 MINUTES?

4 THE COURT: WE'LL TAKE 10 MINUTES.

5 AND WE'LL COME BACK AT 15 AFTER.

12:02PM

6

7 (RECESS TAKEN.)

8

9 (THE NEXT PAGE NUMBER IS 7801.)

10

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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, FRIDAY, SEPTEMBER 9, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 12:18 P.M.

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

15
16 THE COURT: ALL RIGHT. LET'S GET WHATEVER WE
17 HAVE LEFT TO DO DONE.

18 I HAD A LITTLE LIST OF THINGS THAT WE
19 CAN RUN THROUGH, AND THEN DECIDE WHERE WE ARE.

20 THE MOTION ON THE TESTIMONY OF LINDA
21 BAKER.

22 MR. BRIAN: I THINK IT'S BARKER, YOUR HONOR.

23 THE COURT: BARKER, I'M SORRY. I HAVE BARKER
24 WRITTEN DOWN HERE.

25 MR. QUINN: CAN WE GO ON TO THE SECOND ITEM,
26 YOUR HONOR? MS. OSMAN, SHE'S IN THE BUILDING, I KNOW
27 THAT.

28 THE COURT: ALL RIGHT.

12:18PM

12:18PM

12:18PM

1 WHAT ABOUT THE DEFENDANT'S REQUEST FOR
2 JURY INSTRUCTION ENFORCING TCW'S ON THE RECORD
3 STIPULATION REGARDING THE EXISTENCE OF A CONTRACT? I
4 THINK WE MIGHT WANT TO HOLD THAT.

5 BUT DID WE GET A REVISED AGREEMENT ON --
6 THERE WAS AN INSTRUCTION KIND OF BLENDING A COUPLE OF
7 CONCEPTS THAT I HAD ASKED BE PREPARED YESTERDAY.

12:19PM

8 MR. MADISON: WE RECEIVED AN E-MAIL, WHILE WE
9 WERE IN COURT, FROM MS. STEIN, OR PERHAPS REALLY EARLY
10 THIS MORNING, WITH THREE INSTRUCTIONS THAT HE --

12:19PM

11 THE COURT: THERE WAS A FILING. I READ THAT
12 BEFORE WE STARTED TODAY.

13 MR. MADISON: NO, I'M REFERRING TO SOMETHING
14 ELSE, YOUR HONOR.

15 MS. STEIN: I THOUGHT THERE WERE THREE ISSUES
16 YOU WANTED US TO MEET AND CONFER ON. ONE WAS 4401, THE
17 LIST OF TRADE SECRETS; THE OTHER WAS THE 4411, WHICH
18 WAS WILLFUL MALICIOUS UNDER -- FOR MISAPPROPRIATION OF
19 TRADE SECRETS; AND THE THIRD WAS THE LANGUAGE THAT YOU
20 SUGGESTED TO IDENTIFYING THE PARTIES.

12:19PM

12:20PM

21 THE COURT: RIGHT. RIGHT.

22 MS. STEIN: AND I'VE SUBMITTED THEM ALL, AND
23 I'VE BEEN IN CONTACT WITH MR. COREY FROM --

24 THE COURT: THAT'S ALL RIGHT. THOSE THREE ARE
25 NOT -- THEY AREN'T GOING TO IMPACT WHAT WE'RE GOING TO
26 DO HERE.

12:20PM

27 MS. STEIN: BUT THOSE ARE HANDLED.

28 THE COURT: LET THEM TALK ABOUT IT.

1 WORST CASE, WE CAN FINALIZE THOSE ON
2 MONDAY.

3 MS. STEIN: RIGHT.

4 THE COURT: LET'S SEE.

5 MR. MADISON: ONE THAT I KNOW WE'RE READY ON,
6 YOUR HONOR, IS THE FOUR EXHIBITS THAT DEFENDANTS WERE
7 OBJECTING TO, THE 3(C) --

12:20PM

8 THE COURT: I'VE GOT THOSE.

9 EXHIBIT 148, 295, 546, AND 1959, WILL BE
10 ADMITTED WITHOUT OBJECTION.

12:20PM

11
12 (EXHIBITS 148, 295, 546 AND 1959
13 ADMITTED.)

14
15 MR. MADISON: I'M SORRY, YOUR HONOR. THOSE
16 WEREN'T THE FOUR I WAS THINKING OF, BUT MAY I JUST TAKE
17 THAT DOWN, IF YOU'D SAY IT MORE SLOWLY?

12:20PM

18 THE COURT: THAT WAS ONE WHICH HAD BEEN
19 SUBMITTED. 148, 295, 546 AND 1959.

20 MR. BRIAN: WE DO NOT -- THAT'S CORRECT. WE
21 DO NOT OBJECT TO THOSE.

12:21PM

22 THE COURT: TO BE ADMITTED WITHOUT OBJECTION.

23 I HAVE TO GET THESE NOTES TO ELMER. AND
24 HE'S NOT GONG TO BE WITH US THIS AFTERNOON.

25 MR. MADISON: I THINK WE HAD SUBMITTED -- THAT
26 REFERS TO A LIST OF EIGHT THAT WE HAD SUBMITTED.

12:21PM

27 THE COURT: WELL, THERE'S ANOTHER ONE.

28 EXHIBITS 1501E, 1505E AND 1506E ARE CDS

1 OF DATA. I'M NOT INCLINED TO ADMIT THOSE, ALTHOUGH
2 I'LL LISTEN TO ARGUMENT.

3 IT SEEMS TO ME, THAT ADMISSION OF THAT
4 TYPE OF EVIDENCE WOULD NECESSITATE PROVIDING THE JURY
5 WITH A MEANS OF ACCESSING THE DATA, AND WOULD PROMOTE
6 SPECULATION AND CONJECTURE AND INAPPROPRIATE
7 DELIBERATIONS ON TECHNICAL MATTERS THAT MUST BE DECIDED
8 BASED ON THE EXPERT TESTIMONY THAT'S BEEN OFFERED IN
9 THE CASE.

12:21PM

10 MR. MADISON: WE FILED A SHORT BRIEF, I THINK
11 PROBABLY WITHIN THE LAST HOUR ON THIS, AS WE SAID WE
12 WOULD.

12:21PM

13 THE COURT: I HAVEN'T SEEN IT.

14 WHY DON'T YOU JUST TELL ME WHAT IT SAYS,
15 AND WHY I'M OFF THE MARK.

12:22PM

16 MR. MADISON: IT ADDRESSES FOUR EXHIBITS: THE
17 THREE CDS, AND THEN THE SECOND SEMLER BROSSY --

18 THE COURT: I'VE GOT THAT. THAT'S ANOTHER --
19 THAT'S THE NEXT ITEM.

20 MR. MADISON: ALL RIGHT. MR. SURPRENANT IS
21 GOING TO SPEAK TO THE THREE CDS, YOUR HONOR.

12:22PM

22 MR. SURPRENANT: THERE'S NO QUESTION
23 MR. MADISON, IN A VERY THOROUGH WAY, LAID THE PROPER
24 FOUNDATION FOR THEM.

25 AND MR. SMITH'S TESTIMONY AND
26 MR. ARENTSEN'S TESTIMONY BOTH WENT TO THAT THE VALUE IN
27 THESE CLAIMS TRADE SECRETS WAS THE SCOPE AND THE DEPTH
28 OF THE MATERIAL AND THE DATA THEY CONTAINED, AND

12:22PM

1 THAT THE LENGTH OF TIME AND THE AMOUNT OF RESOURCES
2 THAT IT WOULD IT TAKE TO ACQUIRE THEM.

3 AND THE JURY WILL BE LEFT WITH A SINGLE
4 SHEET OF PAPER THAT I THINK IS VERY LIKELY TO ENGENDER
5 THE VERY CONFUSION THAT YOUR HONOR IS CONCERNED ABOUT. 12:23PM

6 THEY'LL SAY, WAIT A SECOND. MR. SMITH
7 SAID THESE WERE BIG, SPACIOUS DATABASES CONTAINING
8 GREAT DEALS OF INFORMATION, AND ALL WE HAVE A SINGLE
9 SHEET OF PAPER.

10 AND I THINK THE JURORS KNOW THAT A DISK 12:23PM
11 IS CAPABLE OF CONTAINING THAT TYPE OF DATA OR THAT TYPE
12 OF INFORMATION.

13 JURORS ARE VERY CONSCIENTIOUS, BUT
14 SOMETIMES THEY MISS THINGS. AND THERE COULD BE
15 DISCUSSIONS IN THE JURY ROOM WHERE A JUROR IS SAYING, 12:23PM
16 LOOK, IT'S JUST A SINGLE SHEET OF PAPER HERE.

17 THE COURT: THERE'S GOING TO BE
18 SUBSTANTIAL ARGUMENT. YOU HAVE PARADED PILES OF PAPER
19 AROUND, TO SHOW, AND I THINK IT WAS -- WHAT WAS IT?
20 AROUND THE EMPIRE STATE BUILDING OR SOMETHING? 12:23PM

21 MS. STEIN: THREE TIMES THE EMPIRE STATE
22 BUILDING.

23 MR. EMANUEL: TWO AND A HALF.

24 THE COURT: YOU GUYS ARE A LOT MORE TUNED INTO
25 IT THAN I AM. 12:23PM

26 AT ANY RATE, IF YOU GIVE THEM A CD, YOU
27 ARE INVITING A REQUEST BY SOMEBODY THAT HAS SOME
28 LIMITED TECHNICAL SAVVY TO SAY, WE WANT A COMPUTER. WE

1 WANT TO BE ABLE TO LOOK AT WHAT'S ON THE CD. I DON'T
2 WANT TO GO THERE.

3 MR. QUINN: YOUR HONOR IS AWARE, THERE ARE CDS
4 IN EVIDENCE. THERE ARE FOUR OF THEM THAT WERE PUT IN
5 THROUGH THE FIRST WITNESS.

12:24PM

6 AND I THINK THE JURORS SHOULD HAVE A
7 COMPUTER. WE'RE MAKING PREJUDGMENTS ABOUT HOW SAVVY OR
8 NOT SAVVY JURORS ARE AND WHAT THEY ABSORB.

9 WE'VE HAD A JURY NOTE FROM ONE JUROR WHO
10 INDICATES HE HAS A PRETTY SOPHISTICATED UNDERSTANDING
11 OF SOFTWARE. IT IS NOT AT ALL UNUSUAL THESE DAYS,
12 WHERE YOU HAVE EVIDENCE WHICH IS IN ELECTRONIC FORM, TO
13 GIVE THE JURY ACCESS TO A COMPUTER TO READ IT.

12:24PM

14 AND I DON'T KNOW WHY WE'RE ADMITTING
15 SOME CDS, AND WE'RE NOT ADMITTING OTHER CDS.

12:24PM

16 THE COURT: SOME WERE ADMITTED WITHOUT
17 OBJECTION. AND THAT WAS EARLY ON IN THE CASE.

18 AND NOW I'M NOT EVEN SURE THOSE SHOULD
19 GO IN THE JURY ROOM, ACTUALLY.

20 MR. BRIAN: I'M ACTUALLY THERE. I'M GOING TO
21 GO BACK TO LOOK AT THOSE BECAUSE IT'S OBVIOUS THAT
22 OUR -- THAT THERE IS A LARGE VOLUME OF DATA THAT IS THE
23 EVIDENCE. THE RECORD IS FILLED WITH TESTIMONY ABOUT
24 THAT.

12:24PM

25 WE ARE NOT CONTESTING THE VOLUME OF THE
26 DATA. THAT'S NOT WHAT OUR DEFENSE IS. IT'S OBVIOUS,
27 AND THIS WOULD BE A DISTRACTION. IT'S A CONFUSION.
28 THE JURY IS GOING TO GET -- SOMEBODY MAY OR MAY NOT

12:25PM

1 HAVE ABILITY.

2 IT'S JUST FOR ALL THE REASONS, YOUR
3 HONOR SAID, IT'S A HUGE MISTAKE. IT'S APPROPRIATELY
4 EXCLUDED UNDER 352 OF THE EVIDENCE CODE.

5 MR. MADISON: YOUR HONOR, IF I COULD JUST --
6 BECAUSE I DRAFTED THE BRIEF. 12:25PM

7 MR. BRIAN: I'M GOING TO RESPOND TO THREE
8 LAWYERS.

9 THE COURT: THAT'S BECAUSE YOU ARE SO GOOD.
10 AND IT TAKES THREE OF THEM JUST TO COME UP WITH WHAT
11 YOU HAVE GOT TO SAY. 12:25PM

12 MR. MADISON: THAT JUST ISN'T A LEGAL
13 OBJECTION.

14 I UNDERSTAND 352. THE PROBLEM IS ONCE
15 WE'VE ADMITTED SOME AND NOT OTHERS, WITH MR. BUSTOS -- 12:25PM

16 THE COURT: WELL, I MAY WITHDRAW THOSE OTHERS,
17 DEPENDING WHAT THEY ARE.

18 MR. QUINN: THAT SENDS THE JURY A COMPLETELY
19 WRONG MESSAGE. AFTER WE'VE OFFERED SOMETHING IN
20 EVIDENCE, IT'S BEEN RECEIVED -- 12:26PM

21 THE COURT: I'M NOT SURE WHO OFFERED IT, QUITE
22 FRANKLY.

23 MR. QUINN: WE OFFERED IT. AND WE OFFERED IT
24 WITH THE FIRST WITNESS AND MADE A BIG DEAL OUT OF IT,
25 AND YOU CAN'T -- I MEAN, YOUR HONOR CAN DO ANYTHING, I
26 KNOW. 12:26PM

27 THE COURT: LET ME ASK YOU THIS. LET'S
28 CLARIFY SOMETHING FIRST.

1 1501E, 1505E, AND 1506E HAVE WHAT, ON
2 THEM? WHAT DATA IS ON THOSE CDS THAT WAS NOT ON THE
3 CDS THAT WERE PREVIOUSLY ENTERED?

4 MR. MADISON: I CAN TELL YOU THAT IT'S
5 DIFFERENT DATA.

12:26PM

6 THE COURT: WHAT IS IT? DOES ANYBODY KNOW?

7 MR. BRIAN: EVIDENCE HAS REPRESENTATIVE
8 SAMPLES OF WHAT'S ON THOSE CDS.

9 THE COURT: WELL, I KNOW THAT.

10 MR. SURPRENANT: THE PROGRAMS, YOUR HONOR,
11 CAME THROUGH KALE.

12:27PM

12 THESE WERE THE FIXED INCOME FEE
13 SCHEDULE, THE TASK LIST.

14 THE COURT: JUST A MINUTE.

15 MR. MADISON: I THINK I HAVE THE ANSWER, YOUR
16 HONOR.

12:27PM

17 1501E WAS THE MULTI-STRATEGY FIXED
18 INCOME GRID.

19 MR. BRIAN: I THINK WE IDENTIFIED THEM IN OUR
20 BRIEF, YOUR HONOR.

12:27PM

21 THE COURT: JUST A MINUTE. MY COMPUTER IS
22 ACTING UP HERE. SO, I'M SORRY.

23 MR. MADISON: DID YOU GET THAT, YOUR HONOR, OR
24 SHOULD I REPEAT IT?

25 THE COURT: NO. JUST A MOMENT.

12:28PM

26 SOMETHING HAS GONE HAYWIRE HERE, AND
27 I'VE LOST MY DOCUMENT.

28 ALL RIGHT. IT'S THE MULTI WHAT?

1 MR. MADISON: MULTI-STRATEGY FIXED INCOME GRID
2 ON CD. AND MR. ARENTSEN --

3 THE COURT: AND IS THAT LISTED AS ONE OF THE
4 TRADE SECRETS THAT WE'RE TALKING ABOUT?

5 MR. SURPRENANT: YES. MR. SMITH ADDRESSED IT
6 AT SOME LENGTH. 12:28PM

7 THE COURT: I'M TALKING ABOUT THE JURY
8 INSTRUCTION THAT HAS THE LIST OF ITEMS THAT ARE COINED
9 AS TRADE SECRETS.

10 MR. MADISON: IT IS, YOUR HONOR. 12:28PM

11 THE COURT: WHAT'S 1501 -- OR EXCUSE ME,
12 1505E?

13 MR. MADISON: 1505E IS THE MBS TASK LIST ON
14 DISK. AND MR. ARENTSEN TESTIFIED ABOUT THAT, AS WELL.

15 THE COURT: AND 1506E? 12:28PM

16 MR. MADISON: 1506E IS THE FIXED INCOME FEE
17 SCHEDULE ON DISK.

18 AND AGAIN, MR. ARENTSEN WAS THE WITNESS
19 WHO TESTIFIED TO THAT.

20 THE COURT: AND ARE THESE ITEMS ALL LISTED
21 THERE IN THE INSTRUCTION? 12:29PM

22 MR. HELM: I DIDN'T HEAR WHAT THE SECOND ONE
23 WAS.

24 THE COURT: THE SECOND ONE WAS THE FIXED
25 INCOME GRID OR THE TASK LIST. I'M SORRY, TASK LIST. 12:29PM

26 MR. MADISON: THE MBS TASK LIST.

27 THE COURT: AND THE FIXED INCOME FEE
28 SCHEDULES?

1 MS. STEIN: YES.

2 MR. MADISON: AND THE ONLY THING I WANT
3 TO MENTION FROM OUR BRIEF, YOUR HONOR. WE GIVE THINGS
4 TO JURORS ALL THE TIME THAT THEY CAN'T USE, MAY NOT
5 USE, WON'T USE.

12:29PM

6 THE COURT: WELL, THAT'S JUST YOUR APPROACH TO
7 THE PRACTICE.

8 MR. MADISON: BUT I MEAN, YOU GIVE THEM
9 SURGICAL DEVICES. I DON'T MEAN EVIDENCE. I MEAN THE
10 ITEMS OF EVIDENCE THAT, YOU KNOW, JUST BECAUSE THEY ARE
11 NOT GOING TO ACCESS, DOESN'T MEAN SHOULDN'T BE --
12 APPROPRIATELY BE PART OF THE RECORD.

12:29PM

13 THE COURT: I'M GOING TO ADMIT THEM, BUT I'M
14 NOT COMMITTING TO ALLOWING THE JURY TO HAVE A COMPUTER
15 TO ACCESS THESE DISKS.

12:30PM

16 SO AS A PHYSICAL PIECE OF COMPUTER,
17 WHATEVER, THEY CAN HAVE THEM WITH THE OTHERS, AND WE'LL
18 HAVE TO DECIDE DOWN THE ROAD.

19 MR. BRIAN: WELL, YOUR HONOR, I GUESS I DON'T
20 UNDERSTAND THE CHANGES, BECAUSE THERE'S BEEN TESTIMONY
21 ABOUT THEM; THEY ARE REPRESENTATIVE SAMPLES IN
22 EVIDENCE. THAT'S THE ONLY THING COUNSEL IS GOING TO
23 USE IN CLOSING ARGUMENT, IF ANYTHING.

12:30PM

24 AND IF WE GO DOWN THE ROAD OF PUTTING
25 DISKS IN EVIDENCE, THE NEXT REQUEST, OF COURSE, IS
26 LET'S GIVE THEM A COMPUTER.

12:30PM

27 THAT'S NOT WHAT THIS CASE IS --

28 THE COURT: I'M NOT GOING TO GIVE THEM A

1 COMPUTER.

2 MR. BRIAN: -- IS ABOUT.

3 WE'RE NOT DISPUTING THAT THERE WAS A
4 LARGE VOLUME THAT WAS DOWNLOADED. THAT'S NOT OUR
5 DEFENSE.

12:30PM

6 AND WE'RE NOT GOING TO STAND UP AND SAY
7 THEY DIDN'T DOWNLOAD IT. THAT'S NOT OUR DEFENSE AT
8 ALL.

9 THE COURT: I UNDERSTAND THAT.

10 SO BUT WE'VE ADMITTED OTHER ONES WITHOUT
11 OBJECTION. WHY DIDN'T YOU STIPULATE TO HAVE THE OTHER
12 ONES ADMITTED? AND I GUESS THAT'S MY ISSUE.

12:30PM

13 MR. BRIAN: I THINK THE OTHER ONES SHOULD BE
14 STRICKEN.

15 THE COURT: YOU HAVE MADE NO MOTION ON THAT.
16 I'VE HEARD NOTHING ABOUT ANYBODY ASKING TO WITHDRAW ANY
17 EVIDENCE. IT WAS ENTERED ON STIPULATION.

12:31PM

18 NOW THAT I KNOW WHAT THESE ARE, THESE
19 ARE RELATIVELY -- IT'S REALLY NOT A LOT, BUT I'M NOT
20 INCLINED TO GO -- AT LEAST NOT ON THIS CASE, BECAUSE I
21 DON'T THINK THERE'S ANY NEED FOR THEM TO LOOK AT IT.

12:31PM

22 THERE ARE MULTI-PAGE, HUNDRED-PAGE
23 EXHIBITS THAT HAVE JUST INVENTORIES OF ALL THESE DISKS.

24 AND YOU HAVE OFFERED ALL OF THOSE, HAVE
25 YOU NOT, MR. MADISON?

12:31PM

26 MR. MADISON: I KNOW WE'VE OFFERED PRINTOUTS
27 OF SOME OF THE DATA. I DON'T -- I DON'T THINK IT'S THE
28 SAME AS ALL THE DATA, BECAUSE IN SOME CASES, IT

1 WOULDND'T BE POSSIBLE.

2 THE COURT: ANYWAY, WE'LL ADMIT THEM. IT'S
3 KIND OF A NO HARM, NO FOUL.

4 THAT'S THE POWERPOINT BY BROSSY.
5 THERE'S NO FOUNDATION FOR IT. IT'S PURE HEARSAY, AND
6 YOU FAILED TO ESTABLISH THAT IT'S SUBJECT TO ANY
7 EXCEPTION.

12:31PM

8 MR. MADISON: YOUR HONOR, COULD I JUST
9 SUMMARIZE THE BRIEF WE FILED ON THAT, BECAUSE I DO
10 BELIEVE --

12:32PM

11 THE COURT: CAN YOU TELL ME --

12 MR. MADISON: YES. THERE IS FOUNDATION.

13 MR. GUNDLACH TESTIFIED ABOUT THIS
14 EXHIBIT. THEY GAVE IT TO ME, REFERRING TO SEMLER
15 BROSSY. THAT IS IN THE TRIAL TRANSCRIPT, AT PAGE 3069.

12:32PM

16 THE COURT: SO WHAT? HE SAYS HE NEVER SAW IT.

17 MR. MADISON: THAT'S PART -- LET ME LAY OUT
18 THE FOUNDATION, YOUR HONOR.

19 SO FIRST IS, HE SAID THEY GAVE IT TO ME.
20 THERE IS A HANDWRITTEN SUDOKU PUZZLE IN MR. GUNDLACH'S
21 HANDWRITING ON THE BACK OF ONE OF THE PAGES. SO
22 THERE'S NO DISPUTE THAT IT WAS IN HIS HANDS, AND THAT
23 IT CAME FROM SEMLER BROSSY.

12:32PM

24 MR. BROSSY, WHO PREPARED OR OVERSAW THE
25 PREPARATION OF 1899 AND 1900, TESTIFIED THAT THEY WERE
26 BOTH GIVEN TO MR. GUNDLACH, AND THAT 1900 WAS A
27 REVISION OF 1899, BASED ON THE NEGOTIATIONS, THE
28 DISCUSSIONS.

12:32PM

1 THE COURT: NOW, I DON'T HAVE A REQUEST FOR
2 1899, DO I?

3 MR. MADISON: 1899 IS ALREADY IN.

4 THE COURT: ALL RIGHT.

5 MR. MADISON: AND FINALLY --

12:33PM

6 MR. BRIAN: OVER OBJECTION, I'M SURE.

7 MR. MADISON: WELL, WE CAN CHECK THAT.

8 BUT IT IS IN EVIDENCE.

9 THE COURT: GO AHEAD.

10 MR. MADISON: AND FINALLY -- THIS IS THE FINAL
11 LINK -- MR. BROSSY TESTIFIED THAT ALL THE FINANCIAL
12 INFORMATION IN THESE PROPOSALS WAS FROM MR. GUNDLACH.

12:33PM

13 SO IT SEEMS AS IF, HERE AGAIN, WE HAVE A
14 SITUATION WHERE MR. BROSSY, SAYS I'VE GOT FINANCIAL
15 INFORMATION FROM MR. GUNDLACH. I USED IT TO PREPARE
16 THESE PROPOSALS.

12:33PM

17 THIS IS THE FIRST ONE. THEN WE HAD SOME
18 MORE TALK, AND WE HAD -- A WEEK LATER, WE GIVE THEM A
19 SECOND ONE.

20 MR. GUNDLACH CAN'T DENY THAT HE WAS
21 GIVEN IT. MR. BROSSY SAYS THAT; HE ADMITS IT. WE'VE
22 GOT HIS HANDWRITING ON THE BACK OF ONE OF THE PAGES.

12:33PM

23 NOW, HE WANTS TO SAY, BUT I NEVER LOOKED
24 AT IT, SO NOT THAT SHOULDN'T BE CONSIDERED, WHAT THE
25 WEIGHT IT WAS GIVEN, BUT IT SHOULDN'T EVEN COME INTO
26 EVIDENCE.

12:34PM

27 AND WE REALLY THINK THAT WOULD BE A
28 DISSERVICE. IT GOES TO THE NATURE OF THE NEGOTIATIONS

1 WITH WAMCO, THE EXTENT OF THEM. IT'S ADDITIONAL
2 EVIDENCE OF HOW SERIOUS, AND WHAT MR. GUNDLACH WAS
3 INTENDING TO DO. SO RESPECTFULLY --

4 THE COURT: I'M NOT SURE -- YOU CAN DRAW
5 WHATEVER INFERENCES YOU CHOOSE FROM IT. I'M NOT
6 PREPARED TO DRAW THOSE INFERENCES. THERE ARE -- BOTH
7 SIDES HAVE THEIR ARGUMENTS.

8 MR. BRIAN, DO YOU WANT TO BE HEARD ON
9 THIS?

12:34PM

12:34PM

10 MR. BRIAN: BRIEFLY, YOUR HONOR.

11 I THINK YOUR HONOR'S INTERPRETATION IS
12 CORRECT. I DIDN'T THINK 1899 SHOULD HAVE COME IN. I
13 DIDN'T THINK THE FOUNDATION WAS LAID FOR THAT.

14 MR. GUNDLACH'S TESTIFIED THAT HE DIDN'T
15 READ IT. MR. BROSSY DID NOT TESTIFY THAT HE AND
16 MR. GUNDLACH SAT DOWN AND REVIEWED ALL THE ENTRIES.

12:34PM

17 THERE WAS A -- MY RECOLLECTION, I
18 HAVEN'T GONE BACK AND LOOKED AT ALL THE TESTIMONY THAT
19 IS CITED IN THEIR BRIEF, BECAUSE I JUST SAW IT RIGHT
20 NOW.

12:35PM

21 BUT MY RECOLLECTION IS, THERE WAS A
22 SINGLE SORT OF GENERAL QUESTION THAT WAS THROWN OUT TO
23 MR. BROSSY, DID YOU BASE THIS FINANCIAL INFORMATION ON
24 INFORMATION PROVIDED BY MR. GUNDLACH. THAT WAS IT.
25 AND THERE WAS NO LINE BY LINE, DID HE GIVE YOU THIS,
26 DID HE GIVE YOU THAT.

12:35PM

27 AND THAT, COUPLED WITH THE TESTIMONY
28 THAT MR. GUNDLACH NEVER READ IT, JUST DOESN'T ESTABLISH

1 FOUNDATION. AND IT'S HEARSAY.

2 MR. MADISON: WE REALLY THINK THAT ALL GOES TO
3 WEIGHT, YOUR HONOR, NOT ADMISSIBILITY. ALL OF THOSE
4 ARGUMENTS CAN BE MADE.

5 AND REMEMBER THAT MR. GUNDLACH
6 CONSTANTLY TRIED TO MINIMIZE THE NATURE AND THE EXTENT
7 OF HIS CONVERSATIONS WITH WAMCO.

12:35PM

8 THE COURT: JUST A MINUTE. I'M JUST LOOKING
9 AT MY NOTES ON WHAT WAS TESTIFIED ABOUT 1899.

10 MR. BRIAN: MR. HELM WAS JUST SAYING, MY BAD,
11 ON THAT. I HAD ASSUMED THAT HE WAS OBJECTING TO IT.

12:35PM

12 MR. HELM: I'M SURE I WAS DISTRACTED BY SOME
13 FRIVOLOUS LINE OF INQUIRY THAT MR. MADISON WAS PURSUING
14 AT THE TIME.

15 THE COURT: THERE WAS AN OBJECTION ON 1900.

12:36PM

16 MR. BRIAN: YES.

17 THE COURT: BUT IT WAS HEARSAY, AND I
18 SUSTAINED IT.

19 MR. BRIAN: CORRECT.

20 MR. MADISON: MY RECOLLECTION, YOUR HONOR, WAS
21 THAT YOU TOOK IT UNDER ADVISEMENT, AND WE MOVED IT INTO
22 EVIDENCE.

12:36PM

23 THE COURT: I HAVE PRETTY DETAILED NOTES HERE.
24 YOU DON'T JUST HEAR THE CLICKING UP HERE FOR THE HELL
25 OF IT.

12:36PM

26 MR. MADISON: YOU MAY BE REFERRING TO THE
27 TESTIMONY THAT I COULDN'T GET INTO THE RECORD --

28 THE COURT: I HAVE A NOTE HERE THAT SAYS

1 EXHIBIT 1900, SECOND PROPOSED FROM WAMCO 6/19/09.
2 HEARSAY. OBJECTION SUSTAINED.

3 AND I'M NOT JUST GUESSING AT IT. THAT'S
4 WHAT IT SAYS.

5 MR. BRIAN: ONE THING MR. MADISON IS IS
6 PERSISTENT, YOUR HONOR.

12:37PM

7 YOUR HONOR DID SUSTAIN THE OBJECTION AT
8 THE TIME.

9 MR. MADISON: MY RECOLLECTION IS, WHEN I TRIED
10 TO EXAMINE MR. BROSSY ABOUT THE CONTENTS, THERE WAS AN
11 OBJECTION ON HEARSAY THAT WAS SUSTAINED.

12:37PM

12 I BELIEVE THAT WE MOVED THE DOCUMENT,
13 AND THAT THE COURT TOOK THAT UNDER ADVISEMENT, AND
14 ASKED ME TO MOVE ON. BUT --

15 THE COURT: I THINK YOU ARE MISTAKEN, BECAUSE
16 USUALLY I WOULD EITHER PUT IT IN ALL CAPS OR HIGHLIGHT
17 IT, IF IT WAS SOMETHING THAT I HAVE TO GO BACK TO, OR
18 THAT'S AN OPEN ISSUE.

12:37PM

19 MR. MADISON: YOUR HONOR, I DO NOT BELIEVE WE
20 WOULD HAVE MADE THIS MOTION IF THE COURT HAD EXCLUDED
21 THE DOCUMENT ALREADY. THAT WOULD --

12:37PM

22 THE COURT: YOU HAVE THE TRANSCRIPTS, SO YOU
23 MAY FIND THAT YOU ARE ABSOLUTELY RIGHT.

24 MR. MADISON: BUT ON THE MERITS, THERE'S
25 SIMPLY NO REASON THAT SHOULDN'T COME INTO EVIDENCE.

12:37PM

26 AND ALL OF THESE STATEMENTS GO TO
27 WEIGHT, NOT ADMISSIBILITY.

28 THE COURT: I THINK IT GOES TO ADMISSIBILITY.

1 IF IT'S HEARSAY, AND YOU DON'T HAVE AN EXCEPTION, IT
2 SHOULDN'T COME IN.

3 NOW, THAT'S NOT TO SAY THAT THERE
4 HAVEN'T BEEN SOME ISSUES, HEARSAY DOCUMENTS THAT HAVE
5 BEEN ADMITTED, MAYBE WITHOUT AN EXCEPTION, ON ARGUMENTS
6 THAT THEY GO TO STATE OF MIND, OR A NUMBER OF OTHER
7 THINGS.

12:38PM

8 THIS ISN'T A HUNDRED -- WE NEVER BAT A
9 THOUSAND; AND I'M THE FIRST TO ADMIT THAT.

12:38PM

10 MR. MADISON: THE OTHER FACT I MAY NOT HAVE
11 MENTIONED IS THIS WAS IN MR. GUNDLACH'S WATER GARDEN
12 OFFICE, SO IT WAS SOMETHING THAT HE KEPT.

13 THE COURT: IS THAT THE WATER GARDEN OFFICE
14 EXCEPTION TO THE HEARSAY RULE? I MEAN, I'M TRYING TO
15 FOLLOW.

12:38PM

16 MR. MADISON: THAT WOULD BE --

17 MR. BRIAN: WE ONLY GOT FIVE MORE HOURS, YOUR
18 HONOR.

19 MR. MADISON: WE HAVEN'T HAD A LOT OF SUCCESS
20 WITH OTHER THINGS.

12:38PM

21 BUT MY POINT ON THIS DOCUMENT IS, THAT
22 MR. GUNDLACH, THERE'S NO DISPUTE THAT HE RECEIVED IT
23 AND KEPT IT, AND IT'S NOT --

24 THE COURT: THE OBJECTION IS SUSTAINED AS TO
25 1900.

12:38PM

26 I'M GOING TO ADMIT THE OTHER ONES THAT
27 YOU TALKED ME OUT OF MY TENTATIVE ON, AND --

28 MR. MADISON: JUST TO BE CLEAR, WE WERE NOT

1 OFFERING IT FOR THE TRUTH. AND IF THE COURT WANTED TO
2 GIVE A LIMITING INSTRUCTION, OR SOMETHING, BUT THE FACT
3 THAT HE --

4 THE COURT: WE HAVE TO MOVE ON.

5 MR. BRIAN: LET'S MOVE. YOU'VE GOT TO WIN
6 SOME AND LOSE SOME.

12:39PM

7 THE COURT: ALL RIGHT. LET'S SEE WHAT ELSE IS
8 ON MY LIST.

9 TCW'S MOTION TO AMEND TO CONFORM TO
10 PROOF. THAT -- JUST A MINUTE HERE.

12:39PM

11 I DIDN'T GET AN OPPOSITION ON THAT.

12 DID YOU FILE ANYTHING?

13 MR. HELM: WE DIDN'T, YOUR HONOR.

14 I THINK WHAT WE INDICATED IS WE WOULD
15 LIKE TO DEAL WITH IT IN THE CONTEXT OF THE VERDICT
16 FORM. I THINK THAT AS LONG AS WE DON'T HAVE TO
17 COMPLICATE THE VERDICT FORM UNNECESSARILY WITH ALL THE
18 ENTITIES, AND WE CAN SORT OF DO A TCW THING WITH
19 ALLOCATIONS, MAYBE LATER, WE'RE NOT OPPOSING THE MOTION
20 TO AMEND TO CONFORM.

12:39PM

12:40PM

21 THE COURT: I GUESS MY QUESTION ON THAT WAS --
22 MY TENTATIVE WOULD BE, AND I'M INCLINED TO GRANT THE
23 MOTION. I HAVE NOT HAD ANY OPPOSITION.

24 MY QUESTION IS WHETHER THE PROPOSED
25 THIRD AMENDED COMPLAINT SHOULD BE FILED OR, IN THE
26 ALTERNATIVE, WHETHER THE COURT SHOULD ENTER AN ORDER
27 DEEMING THE TCW ENTITIES TO HAVE THE ADDITIONAL RELATED
28 ENTITIES OR AFFILIATED ENTITIES TO HAVE BEEN ADDED AS

12:40PM

1 PLAINTIFFS.

2 THAT WOULD BE, AS I UNDERSTAND IT, TCW
3 ASSET MANAGEMENT COMPANY, TCW SPECIAL MORTGAGE CREDITS
4 FUND II GP LLC, A DELAWARE COMPANY, AND TCW GROUP,
5 INC., AND TCW INVESTMENT MANAGEMENT COMPANY, A
6 CALIFORNIA CORPORATION.

12:40PM

7 I THINK THE SIMPLER APPROACH, IF WE CAN
8 GET A STIPULATION, RATHER THAN THIS KIND OF ELABORATE
9 THIRD AMENDED COMPLAINT, WHERE IT'S JUST -- I COULDN'T
10 GO THROUGH LINE BY LINE AND SEE IF THAT'S ALL WE'RE
11 CHANGING, WOULD BE TO ADD THESE PARTIES AS PARTY
12 PLAINTIFFS, AND THEN HAVE A STIPULATION, MUCH AS I
13 SUGGESTED WE HAVE AN INSTRUCTION, THAT SAYS REFERENCE
14 TO TCW SHALL BE DEEMED A REFERENCE TO TCW OR THE
15 AFFILIATED ENTITY, TO THE EXTENT THAT THE ENTITY MAY BE
16 INVOLVED IN THE CONTEXT OF THE EVIDENCE, OR OTHERWISE,
17 OR SOMETHING LIKE THAT.

12:41PM

12:41PM

18 WHAT'S TCW'S VIEW ON THAT?

19 MR. QUINN: I THINK THAT WORKS, YOUR HONOR.

20 I AGREE WITH MR. HELM'S COMMENT. LET'S
21 KEEP IT SIMPLE.

12:41PM

22 THE COURT: RATHER THAN PUTTING A THIRD
23 AMENDED COMPLAINT IN, AND HAVING SOME ISSUE WITH ALL OF
24 THE RULINGS THAT HAVE BEEN MADE ON THE SECOND AMENDED
25 COMPLAINT, I'LL JUST ISSUE A MINUTE ORDER TODAY.

12:41PM

26 AND HAVE I GOT THE RIGHT -- THERE ARE, I
27 THINK, ONE, TWO, THREE, FOUR -- FOUR NEW ENTITIES THAT
28 ARE BEING ADDED AS AFFILIATED ENTITIES; AND IT'S TCW

1 ASSET MANAGEMENT COMPANY, TCW SPECIAL MORTGAGE CREDITS
2 FUND II GP, LLC, AND TCW GROUP, INC., AND TCW
3 INVESTMENT MANAGEMENT COMPANY. THOSE ARE THE FOUR.

4 MR. HELM: I GUESS WE'RE -- I GUESS TWO
5 THOUGHTS ON IT.

12:42PM

6 OUR THOUGHT WAS, SINCE THEY'D GONE
7 THROUGH THE TROUBLE OF DOING THE AMENDED COMPLAINT, AND
8 IT'S ALL SPELLED OUT, AND WE KNOW EXACTLY WHAT IT IS --

9 THE COURT: IF YOU ARE COMFORTABLE.

10 I DID NOT GO THROUGH ALL OF THE PAGES,
11 AND IT SEEMED VERY CONVOLUTED TO ME.

12:42PM

12 DO YOU WANT TO STIPULATE TO THE FILING OF THE
13 THIRD AMENDED COMPLAINT? I'M --

14 MR. HELM: SUBJECT TO OUR COMMENT ON THE
15 SPECIAL VERDICT FORM, YES, YOUR HONOR.

12:43PM

16 MR. MADISON: YOUR HONOR, BEFORE YOU RULE
17 THAT, I'D LIKE TO JUST BE HEARD ON THE ORAL
18 AMENDMENT -- THE ORAL MOTION TO AMEND ON THE
19 CO-CONSPIRACY CLAIM.

20 THE COURT: THAT'S GOING TO BE DIFFERENT,
21 BECAUSE THAT'S ANOTHER ISSUE AND THAT WILL HAVE TO BE
22 IN THE MINUTE ORDER, BECAUSE WE HAVE NOTHING.

12:43PM

23 MR. MADISON: YES.

24 THE COURT: SO THE MOTION TO AMEND TO CONFORM
25 TO PROOF -- THE WRITTEN MOTION THAT WAS FILED -- WILL
26 BE GRANTED. ADDITIONAL TCW AFFILIATES WILL BE ADDED AS
27 NOTED IN THE MOTION.

12:43PM

28 DID YOU LODGE A PROPOSED THIRD AMENDED

1 COMPLAINT?

2 MR. MADISON: I'M SURE WE DID, WITH OUR
3 MOTION.

4 MR. HELM: WE BELIEVE THEY DID, YOUR HONOR.

5 THE COURT: ALL RIGHT. SO OUR MINUTE ORDER
6 WILL INDICATE THAT THE MOTION IS GRANTED.

12:44PM

7 ADDITIONAL TCW AFFILIATES WILL BE ADDED
8 AS NOTED IN THE MOTION. THE THIRD AMENDED COMPLAINT
9 WILL BE DEEMED FILED AS PROPOSED, AND IS ORDERED FILED
10 THIS DATE.

12:44PM

11 SO THAT TAKES CARE OF THAT.

12 AND THEN --

13 MR. MADISON: WHILE WE'RE ON THE SUBJECT OF
14 AMENDMENT, CAN I ADDRESS THE CONSPIRACY AMENDMENT?

15 THE COURT: SURE. GO AHEAD.

12:44PM

16 MR. MADISON: WELL, WE WOULD REALLY JUST
17 FOLLOW THE COURT'S DIRECTION, I THINK THE OTHER DAY,
18 AND MAKE AN ORAL MOTION TO AMEND THE CONSPIRACY CLAIM
19 TO PROVIDE AND -- I AM -- I APOLOGIZE, YOUR HONOR, BUT
20 I'M LOOKING AT THE SECOND AMENDED COMPLAINT. AND --

12:45PM

21 THE COURT: BUT WE'RE NOW DEALING WITH THE
22 THIRD AMENDED COMPLAINT.

23 MR. MADISON: I UNDERSTAND.

24 THE COURT: AND MY ONLY SUGGESTION WAS, YOU
25 COULD MAKE A MOTION TO AMEND ORALLY. I WAS NOT
26 SANCTIONING IT OR INVITING IT. AND I DON'T WANT TO
27 GIVE THAT IMPRESSION.

12:45PM

28 MR. MADISON: I DIDN'T MEAN TO CREATE THAT

1 IMPRESSION, YOUR HONOR, BUT --

2 THE COURT: JUST GIVE ME -- TO AMEND THE
3 CONSPIRACY CLAIM TO PROVIDE WHAT?

4 MR. MADISON: THAT AT PARAGRAPH 140 --

5 THE COURT: YOU CAN'T REFERENCE THE PARAGRAPH,
6 BECAUSE WE HAVE A DIFFERENT OPERATIVE PLEADING NOW.

12:45PM

7 MR. MADISON: I BELIEVE IT'S THE SAME
8 PARAGRAPH. I DON'T THINK THAT CHANGED.

9 THE COURT: ARE YOU SURE?

10 MR. MADISON: I'M NOT POSITIVE. THAT'S WHY
11 I'M WAITING FOR THE THIRD AMENDED COMPLAINT.

12:45PM

12 THE COURT: BUT ANYWAY --

13 MR. MADISON: AT THE PARAGRAPH IN THE
14 CONSPIRACY CLAIM THAT -- IT'S THE SECOND PARAGRAPH OF
15 THAT CLAIM, IT IDENTIFIES GUNDLACH, VANEVERY, SANTA
16 ANA, MAYBERRY. AND THE DOE-DEFENDANTS HAVE CONSPIRED
17 TO VIOLATE THEIR OBLIGATIONS TO TCW.

12:45PM

18 I WOULD SIMPLY INSERT AFTER MAYBERRY,
19 AND BEFORE AND THE DEFENDANTS, AND OTHERS, INCLUDING
20 BUT NOT LIMITED TO, GREGORY WARD, JP, CASEY MOORE, AND
21 RACHEL --

12:46PM

22 THE COURT: WAIT JP. IS JIRAINDIRA -- OKAY.
23 I REMEMBER THAT ONE.

24 AND WHO WAS THE -- DID YOU HAVE ANOTHER
25 NAME?

12:46PM

26 MR. MADISON: CASEY MOORE. AND RACHEL CODY.

27 AND THAT'S WHAT WE DISCUSSED THE OTHER
28 DAY.

1 THE COURT: WELL, WE DISCUSSED IT IN THE
2 CONTEXT OF THE JURY INSTRUCTIONS, BECAUSE IN TRYING TO
3 DECIDE HOW THE CONSPIRACY INSTRUCTIONS SHOULD BE GIVEN,
4 THERE WAS NO BASIS ON WHICH TO REFER TO OTHERS UNNAMED
5 AS CO-CONSPIRATORS.

12:47PM

6 MR. BRIAN: I TOTALLY OBJECT TO THIS MOTION
7 BEING MADE ORALLY AT THIS STAGE OF PROCEEDINGS.

8 IT'S BEING MADE FOR TACTICAL REASONS,
9 YOUR HONOR. THEY NOW REALIZE THAT SOME OF THE EVIDENCE
10 THAT CAME IN DIDN'T COME IN AS FAVORABLY TO THEM AS
11 THEY THOUGHT IT WOULD, SPECIFICALLY, GREG WARD'S
12 DEPOSITION.

12:47PM

13 AND NOW THEY WANT TO SAY THAT HE'S AN
14 UNINDICTED CO-CONSPIRATOR, AND THEREFORE HAS A BIAS.

15 THAT'S WHAT THEY ARE DOING. AND IT'S
16 NOT -- I WANT TO SEE SOME LEGAL AUTHORITY OR SOME BASIS
17 TO MAKE THAT MOTION, AT THIS POINT.

12:47PM

18 MR. HELM: AND FURTHERMORE, YOUR HONOR, WE
19 WENT THROUGH THE WHOLE DISCOVERY PERIOD, AND NOW THE
20 TRIAL, WITHOUT NOTICE THAT THEY WERE GOING TO BE
21 ALLEGING AT THE LAST MINUTE THAT THERE WERE AGREEMENTS
22 OF A CONSPIRACY BETWEEN THESE OTHER INDIVIDUALS.

12:47PM

23 WE COULD HAVE ASKED DIFFERENT QUESTIONS
24 AT TRIAL OF THESE WITNESSES AND OTHER WITNESSES. WE
25 COULD HAVE ANALYZED DOCUMENTS IN A DIFFERENT WAY.

12:47PM

26 WE JUST THINK IT'S A TOTAL SANDBAG. AND
27 NOW AT THE LAST MINUTE? WHY COULDN'T THEY HAVE SAID
28 THIS BEFORE? THERE'S NO -- THERE'S PREJUDICE TO US.

1 IT'S UNTIMELY, AND THERE'S NO JUSTIFICATION FOR WHY IT
2 COULDN'T HAVE BEEN DONE BEFORE.

3 AND THAT IS THE STANDARD ON AMENDMENTS:
4 IF IT'S PREJUDICIAL AND UNTIMELY, THERE'S NO BASIS FOR
5 IT.

12:48PM

6 THERE ISN'T A GENERAL RULE THAT JUST
7 BECAUSE IT COMES IN AT EVIDENCE, YOU CAN CHANGE IT
8 HOWEVER YOU WANT TO CONFORM TO PROOF. THE STANDARDS OF
9 PREJUDICE STILL APPLY.

12:48PM

10 AND IT WOULD BE HIGHLY PREJUDICIAL TO
11 US, AT THIS LATE DATE, TO ADD THESE ALLEGATIONS.

12 THE COURT: ANYTHING FURTHER, MR. -- THIS IS
13 THE LAST WORD. AND AFTER I RULE, WE'RE NOT GOING TO
14 TALK ABOUT IT ANYMORE; SO SAY THE BEST THING YOU WANT,
15 MR. MADISON.

12:48PM

16 MR. MADISON: I WILL, AND THEN I'LL SAY,
17 SUBMITTED.

18 FIRST OF ALL, THE LAW, AS WE POINTED OUT
19 IN OUR OTHER MOTION, IS TO LIBERALLY PERMIT AMENDMENTS
20 TO CONFORM TO PROOF, EVEN AT TRIAL, OR AFTER THE CLOSE
21 OF EVIDENCE.

12:48PM

22 NUMBER TWO, FACTUALLY, THE NOTION THAT
23 THE DEPOSITION TESTIMONY DIDN'T COME IN THE WAY WE
24 WANTED, AND THAT'S WHAT DROVE THIS, WE HAVE THAT
25 DEPOSITION TESTIMONY FOR MONTHS.

12:49PM

26 IT WASN'T ABOUT THAT AT ALL. AND IT'S
27 BEEN NO SECRET IN THIS CASE THAT GREG WARD WAS A
28 CO-CONSPIRATOR, THAT JP WAS A CO-CONSPIRATOR.

1 FOR SUBSTANTIAL PREJUDICE, IF I WERE TO ALLOW THAT TYPE
2 OF ARGUMENT TO BE MADE AT THIS LATE DATE; SO THE MOTION
3 WILL BE DENIED.

4 MR. SURPRENANT: YOUR HONOR, MAY I BE EXCUSED?

5 THE COURT: YES, YOU MAY. YOU DON'T HAVE
6 ANYTHING TO ADD TODAY?

12:50PM

7 MR. SURPRENANT: I MAY HAVE, BUT I HAVE TO
8 CHECK WITH MR. QUINN LATER.

9 I'LL BE DOWN ON THE 12TH FLOOR.

10 THE COURT: ALL RIGHT.

12:50PM

11 I HAVE NEXT IS TCW'S REQUEST TO REVISE
12 CROSS-COMPLAINANTS' SPECIAL INSTRUCTION NUMBER 2A.

13 MR. BRIAN: YOUR HONOR, PERHAPS BEFORE YOU GET
14 TO THE INSTRUCTIONS, THERE WAS AN EXHIBIT THAT WE --
15 THAT YOU TOOK UNDER ADVISEMENT DURING MR. BARACH'S
16 TESTIMONY. IT WAS EXHIBIT 6208.

12:51PM

17 YOU WILL RECALL THAT THAT PERTAINED TO
18 THE E-MAIL THAT PHIL BARACH'S WIFE HAD SENT, THAT
19 MR. QUINN HAD COMMENTED ON DURING HIS OPENING
20 STATEMENTS SUGGESTING THAT IT WAS PART OF A COVERING UP
21 AND MANUFACTURING A DEFENSE. AND WE WANTED TO
22 INTRODUCE 6208, WHICH WAS THE FINAL PRODUCT OF THOSE
23 DISCUSSIONS, WHICH SHOW THAT NO SUCH --

12:51PM

24 THE COURT: I DIDN'T -- HAVE I ADMITTED 6208?

25 MR. BRIAN: NO. YOU TOOK IT UNDER ADVISEMENT.

12:51PM

26 THE COURT: LET ME GET THIS CLEAR.

27 IS 6208 THE E-MAIL?

28 MR. BRIAN: NO.

1 THE COURT: IT'S THE LETTER?

2 MR. BRIAN: IT'S THE LETTER THAT GOES OUT.

3 THE COURT: AND WHAT IS THE EXHIBIT FOR THE --

4 MR. BRIAN: I KNEW YOU WERE GOING TO ASK THAT.

5 SEVEN -- THIS IS A TEST. I THINK IT'S

12:52PM

6 764A.

7 THE COURT: WELL, I CAN --

8 MR. QUINN: I KNOW WHAT HE'S TALKING ABOUT.

9 THE COURT: THAT IS EXACTLY RIGHT. IT'S

10 EXHIBIT 764A. IT'S AN E-MAIL DATED JANUARY 9TH, 2010,

12:52PM

11 THAT WAS PREPARED BY MR. BARACH'S WIFE.

12 AND 6208 IS THE E-MAIL --

13 MR. BRIAN: IT'S AN E-MAIL FROM --

14 THE COURT: IT IS THE DOUBLELINE LETTER TO

15 FRIENDS.

12:52PM

16 MR. BRIAN: YES, ATTACHED TO AN E-MAIL FROM A

17 LOREN FLECKENSTEIN.

18 MR. QUINN MADE A BIG DEAL ABOUT IT IN

19 OPENING STATEMENTS, AND ACCUSED US -- OUR CLIENTS, OF

20 MANUFACTURING A DEFENSE AFTER THE FACTS. AND HE

12:53PM

21 REFERRED TO THAT E-MAIL.

22 AND 6208 DISPROVES THAT. IT SHOWS THAT

23 THAT IS SIMPLY NOT TRUE; THAT THE E-MAIL OF 764A WAS A

24 PERSON WHO KNEW NOTHING ABOUT THE CASE, WHO WAS

25 SUGGESTING A POSSIBLE DRAFT OF SOMETHING.

12:53PM

26 THE COURT: WELL, WHY DID WE ADMIT IT THEN?

27 MR. BRIAN: WHY DID YOU ADMIT IT?

28 THE COURT: I DON'T SHOW THERE'S ANY OBJECTION

1 WHEN IT WAS OFFERED.

2 MR. BRIAN: I'M NOT SAYING IT WAS -- I DON'T
3 KNOW THAT WE OBJECTED, BUT THAT ISN'T --

4 THE COURT: IT WOULD SEEM TO ME THAT
5 NEITHER -- A GOOD ARGUMENT COULD BE MADE THAT NEITHER
6 764A NOR 6208 SHOULD COME IN. 12:53PM

7 MR. BRIAN: WELL, THAT MAY BE.

8 BUT HE OPENED THE DOOR BY PUTTING IN
9 764, WHICH BECAME 764A, AND HE ALLUDED TO IT
10 EXTENSIVELY IN OPENING STATEMENT. 12:53PM

11 THEIR OBJECTION TO 6208, IS HEARSAY.

12 IT IS HEARSAY. IT'S NOT OFFERED FOR THE
13 TRUTH. IT'S OFFERED FOR THE FACT THAT IT WAS MADE TO
14 REBUT THE INFERENCE THAT HE WANTED THE JURY TO DRAW.

15 AND FRANKLY, 6208 -- 12:54PM

16 YES, IT'S AN ARTICULATION OF THE
17 DEFENDANT'S POSITION TO SOME EXTENT; BUT MANY OF THE
18 DOCUMENTS IN THIS CASE ARE ARTICULATIONS OF THE OTHER
19 SIDE'S, OF THEIR POSITION. THAT DOESN'T MAKE IT
20 OBJECTIONABLE, IF IT'S OTHERWISE ADMISSIBLE. 12:54PM

21 MR. QUINN: MY TURN, YOUR HONOR?

22 THE COURT: YES.

23 MR. QUINN: THE FACT THAT THEY ARE TALKING
24 AMONGST THEMSELVES ABOUT CONCOCTING A DEFENSE, MAYBE
25 SAY THAT WE GOT CONCERNED -- WE THOUGHT ABOUT SETTING
26 UP A NEW BUSINESS, OR LEAVING TCW, AFTER WE GOT
27 CONCERNED ABOUT OUR JOBS. THAT IS INDEPENDENTLY
28 RELEVANT, WHETHER OR NOT IT LATER TURNS UP IN A PRESS 12:54PM

1 RELEASE --

2 THE COURT: WELL, I GUESS THE PROBLEM IS WHEN
3 THEY ARE TALKING ABOUT THESE THINGS, AND IT'S
4 SOMEBODY'S WIFE, BECAUSE SHE'S BETTER AT ENGLISH THAN I
5 AM --

12:55PM

6 MR. QUINN: TIME OUT, YOUR HONOR. THAT FIRST
7 THING?

8 THEY ARE NOT CHALLENGING THE
9 ADMISSIBILITY OF THE E-MAIL.

12:55PM

10 THE COURT: THAT'S THE JG E-MAIL?

11 MR. QUINN: YES. IT'S JG, TO JG.

12 AND THERE'S TESTIMONY IT WAS CREATED BY
13 MR. BARACH'S WIFE. THAT'S IN EVIDENCE.

14 I'M TALKING ABOUT, I GUESS IT'S 6208.

15 THE COURT: YES.

12:55PM

16 MR. QUINN: THE PRESS RELEASE THAT THEY ALSO
17 ISSUED.

18 THE COURT: IT'S NOT A PRESS RELEASE, IT'S A
19 LETTER DIRECTED TO FRIENDS AND INVESTORS OR SOMETHING.

20 MR. QUINN: OKAY. IT IS THERE -- AND I TRUST
21 THE COURT HAS HAD AN OPPORTUNITY TO READ THAT. IT IS A
22 COMPLETELY SELF-SERVING STATEMENT OF THEIR POSITION
23 WITH RESPECT TO THE EVENTS THAT HAVE HAPPENED; SLAMMING
24 TCW, MAKING SELF-SERVING STATEMENTS ABOUT THEMSELVES.

12:55PM

25 MY POINT IS, YOUR HONOR, THAT THE FACT
26 THEY ARE TALKING AMONGST THEMSELVES, AS REFLECTED IN
27 THE JG TO JG E-MAIL, MAYBE WE SHOULD SAY XYZ. AND THEN
28 XYZ DOES NOT END UP IN THE LETTER TO INVESTORS IS

12:56PM

1 COMPLETELY IRRELEVANT TO THE ADMISSIBILITY OF THE
2 LETTER TO INVESTORS.

3 THE E-MAIL ITSELF IS RELEVANT AND
4 ADMISSIBLE, AND IS IN EVIDENCE, BECAUSE OF WHAT THEY
5 ARE SAYING TO EACH OTHER. THE FACT THAT IT DOESN'T
6 HAPPEN TO BE IN A LETTER TO INVESTORS, DOESN'T MAKE
7 THAT LETTER, OTHERWISE HEARSAY, ADMISSIBLE.

12:56PM

8 MR. BRIAN: BUT IT DOES, YOUR HONOR, IN THIS
9 CONTEXT.

10 AND THE REASON IS, YOU CAN'T LOOK AT THE
11 764A IN ISOLATION. IT'S NOT THE CASE, AS HE WANTS THE
12 JURY TO INFER, THAT THE DEFENDANTS WERE SITTING AROUND
13 CONCOCTING A DEFENSE.

12:56PM

14 TO EXPLAIN WHY THAT IS NOT WHAT
15 HAPPENED, WE HAVE TO EXPLAIN THE CONTEXT, WHICH WAS
16 THAT IT WAS BEING DISCUSSED IN THE CONTEXT OF A PUBLIC
17 STATEMENT, IN THE FORM OF A LETTER TO FRIENDS AND
18 CLIENTS, AND THAT A NON INTERESTED, NON KNOWING PERSON
19 SUGGESTED SOMETHING, AND THOSE WHO ARE IN THE KNOW THEN
20 ISSUED 6208.

12:57PM

21 IT'S ENTIRELY CONNECTED TO THE EXHIBIT
22 THAT MR. QUINN OFFERED AND OPENED THE DOOR TO, AND
23 HE --

12:57PM

24 I WOULD INVITE THE COURT TO GO BACK AND
25 LOOK AT THE OPENING. HE MADE A BIG, BIG DEAL OF THIS
26 IN HIS OPENING.

12:57PM

27 MR. QUINN: I WOULD DEFY ANYONE TO READ 764A,
28 AS REDACTED, AND HAVE ANY UNDERSTANDING THAT THEY ARE

1 TALKING ABOUT A FORM OF LETTER TO GO TO INVESTORS. IT
2 IS SO CRYPTIC.

3 THE COURT: WELL, I THOUGHT IT WAS A DRAFT.
4 THAT'S WHAT THE TESTIMONY WAS; IT WAS A DRAFT OF A
5 LETTER THAT WAS TO BE AN ANNOUNCEMENT TO BE MADE TO
6 FRIENDS AND PEOPLE. 12:58PM

7 MR. BRIAN: THAT'S WHY WE INTRODUCED 764A;
8 BECAUSE MR. QUINN IS RIGHT ABOUT 764. IT WAS TOTALLY
9 UNINTELLIGIBLE.

10 THE REASON WE PUT IN 764A IS, YOU PUT IN 12:58PM
11 THE BOTTOM E-MAIL, WHICH WE HEAVILY REDACTED, BECAUSE
12 IT DEALT WITH SOME OF THE ISSUES THAT YOUR HONOR HAS
13 EXCLUDED.

14 MR. BARACH TESTIFIED, AND IT'S
15 CONSISTENT WITH THE DOCUMENT, THAT IT WAS A DRAFT 12:58PM
16 CIRCULATED FOR COMMENT. THAT'S WHAT IT WAS.

17 AND THEY THEN DISCUSSED IT, PHIL
18 BARACH'S WIFE COMMENTED, AND A FINAL VERSION WENT OUT.

19 MR. QUINN: I'LL MAKE ONE FINAL COMMENT AND
20 SUBMIT, YOUR HONOR. 12:58PM

21 AND THAT IS, IF I'M RIGHT THAT IT'S
22 RELEVANT, WHAT THEY SAY TO THEMSELVES, WHEN THEY ARE
23 TALKING TO THEMSELVES -- AND THAT, IN AND OF ITSELF,
24 DOESN'T MAKE THE LETTER THAT GOES OUT TO INVESTORS
25 ADMISSIBLE. 12:58PM

26 OTHERWISE, HEARSAY.

27 IF I'M RIGHT ABOUT THAT, THE FACT THAT
28 THEY ELICITED TESTIMONY THAT THIS WAS COMMENTING ON A

1 DRAFT OF A STATEMENT THAT WAS GOING TO BE PREPARED,
2 WHICH ULTIMATELY BECAME THE INVESTOR LETTER, DOESN'T
3 RENDER THE LETTER ADMISSIBLE.

4 THE COURT: WELL, BUT IS THE LETTER
5 ADMISSIBLE, NOT FOR THE TRUTH OF THE MATTER STATED IN
6 IT, BUT TO SHOW THAT WHAT YOU WOULD LIKE TO SAY WAS
7 WHAT THEY WERE DOING NEVER SAW THE LIGHT OF DAY?

12:59PM

8 MR. QUINN: IT DOESN'T MATTER. IF THAT'S WHAT
9 THEY ARE SAYING TO EACH OTHER, THAT MAYBE WE CAN SAY
10 THIS, THAT WE WERE -- WE DISCUSSED -- ACCOUNT FOR THE
11 FACT THAT WE WERE PLANNING TO LEAVE, BY SAYING IT
12 DIDN'T HAPPEN UNTIL WE THOUGHT WE WERE FIRED, THAT HAS
13 INDEPENDENT RELEVANCE. IT HAS NOTHING DO WITH WHETHER
14 IT EVER ENDS UP IN A LETTER OR DOESN'T END UP IN A
15 LETTER.

12:59PM

12:59PM

16 THE COURT: WELL, BUT THE CREDIBILITY OF THAT
17 EVIDENCE AND THE WEIGHT OF THAT EVIDENCE IS
18 CONSIDERABLY LESS IF ONE SAYS, A WEEK LATER, THEY SENT
19 A STATEMENT OUT AND IT HAD NONE OF THOSE THINGS IN IT.

20 MR. BRIAN: TWO DAYS LATER -- I THINK IT WAS
21 TWO DAYS LATER.

12:59PM

22 MR. QUINN: IT WOULD BE MUCH MORE POWERFUL IF
23 THEY TOLD THE WORLD THAT.

24 MR. BRIAN: I AGREE.

25 MR. QUINN: I DON'T THINK THAT RENDERS A
26 HEARSAY -- THE FACT THAT THEY DIDN'T TELL THE WORLD,
27 DIDN'T RENDER THE HEARSAY STATEMENT ADMISSIBLE.

01:00PM

28 I SUBMIT, YOUR HONOR.

1 I SAID THE "S" WORD.

2 THE COURT: MR. MADISON, I RESPECT YOUR -- YOU
3 WHISPER TO ONE ANOTHER ALL THE TIME, SOMETIMES ONE OR
4 THE OTHER --

5 MR. BRIAN: DON'T INVITE IT. 01:00PM

6 THE COURT: WHAT IS IT?

7 MR. MADISON: I SAID, HIS HONOR SEEMS
8 PARTICULARLY AERIODITE TODAY.

9 MY POINT WAS, THEIR DEFENSE IN THIS
10 WHOLE LITIGATION IS BASICALLY WHAT'S WRITTEN IN THAT 01:00PM
11 E-MAIL. THAT'S IN EVIDENCE.

12 THE COURT: WELL, MAYBE IT'S THE TRUTH. I
13 DON'T KNOW. LET THEM DECIDE.

14 MR. MADISON: EXACTLY. BUT THAT SHOULDN'T
15 AUTHORIZE THE ADMISSION OF A SELF-SERVING LETTER WHERE 01:00PM
16 THEY BASH TCW. IT JUST DOESN'T HAVE ANY --

17 THE COURT: THE SELF-SERVING CONCEPT RUNS BOTH
18 WAYS IN THE EVIDENCE, AND I'VE SEEN IT.

19 SO I'M GOING TO ADMIT IT, NOT FOR THE
20 TRUTH OF THE MATTER. AND YOU CAN ARGUE ABOUT IT ALL 01:01PM
21 YOU WANT.

22 MR. BRIAN: THANK YOU, YOUR HONOR.

23 THE COURT: NOW --

24 MR. ALLRED: YOUR HONOR, MS. OSMAN IS BACK
25 HERE. 01:01PM

26 THE COURT: THE TESTIMONY REGARDING LINDA
27 BARKER, I'VE LOOKED AT THOSE BRIEFS, AND I HAVE TO SAY,
28 MY INCLINATION IS TO NOT ALLOW HER TO TESTIFY AT ALL.

1 THE MORE I THINK ABOUT IT, THE MORE I
2 THINK THIS IS SOMEBODY THAT'S BEEN KEPT UNDER WRAPS
3 UNDER A CLAIM OF ATTORNEY/CLIENT PRIVILEGE IN ALL
4 RESPECTS.

5 THERE'S BEEN NO DISCOVERY ON IT, THERE'S
6 NO INDICATION OF ANY KIND THAT THIS ISSUE WAS EVER
7 TABLED, OTHER THAN CLOAKED IN THE PRIVILEGE; AND/OR PUT
8 ON THE TABLE, OTHER THAN BEING CLOAKED BY THE
9 PRIVILEGE.

01:01PM

10 AND IT JUST DOESN'T SEEM CONSISTENT WITH
11 THE COURT'S RULING ON MOTION IN LIMINE 8C.

01:01PM

12 MR. QUINN: YOUR HONOR, WE NEVER CLAIMED
13 PRIVILEGE ON THIS. FOR THE FIRST TIME IN THIS TRIAL,
14 WE WERE ACCUSED OF ALTERING A DOCUMENT, AND THIS WOULD
15 MEAN WE CAN'T EXPLAIN WHAT HAPPENED. THAT'S NOT RIGHT.

01:02PM

16 THE COURT: WELL, I'M NOT SURE THAT THERE'S
17 ANY CLAIM THAT DOCUMENTS WERE NECESSARILY ALTERED. I
18 KNOW THEY WERE CHANGED.

19 MR. QUINN: NO, NO, NO. EXACTLY. THEY SAID
20 ALTERED, THE "A" WORD.

01:02PM

21 MR. BRIAN: THAT'S MISSTATES WHAT WE WERE
22 CLAIMING -- WHAT WE CLAIMED WAS ALTERED, WAS
23 MR. SULLIVAN TESTIFIED ABOUT A DOCUMENT HE PREPARED, IN
24 WHICH HE INDICATED THAT THE EXPIRATION DATE FOR
25 MR. GUNDLACH'S CONTRACT WAS 12/31/11.

01:02PM

26 HE THEN CREATED A SEPARATE DOCUMENT, I
27 THINK TWO WEEKS LATER, OR SOMETHING LIKE THAT, WHICH
28 CHANGED THAT.

1 THAT'S WHAT WE QUESTIONED THE WITNESS,
2 AND SAID WAS ALTERED.

3 MS. OSMAN: BUT LINDA BARKER'S DOCUMENT, YOUR
4 HONOR, WAS THE SOURCE OF THE INFORMATION THAT
5 MR. SULLIVAN USED.

01:03PM

6 THE COURT: THAT'S NOT WHAT HE SAID.

7 MS. OSMAN: HE SAID IT WAS A DOCUMENT FROM
8 LEGAL, MS. BARKER, IN THE LEGAL DEPARTMENT.

9 SHE CREATED A DOCUMENT FROM ANOTHER
10 LEGAL DEPARTMENT DOCUMENT. AND SHE CUT OFF THE LAST
11 TWO COLUMNS OF THAT DOCUMENT.

01:03PM

12 MS. BARKER CAN EXPLAIN WHY SHE CUT OFF
13 THE LAST TWO COLUMNS. IT WAS THE COMMENT SECTION --
14 THE LAST COMMENT OF THE DOCUMENT FROM THE LEGAL
15 DEPARTMENT THAT HAD THE IN-PROCESS, AND EXPLAINED THAT
16 THE CONTRACT WAS NOT A CONTRACT, THAT IT WAS STILL
17 UNDER DISCUSSION, OR IN PROCESS.

01:03PM

18 THE COURT: WELL, BUT SOME -- IT WAS ALSO CUT
19 OFF FOR THE CITIBANK DOCUMENTS THAT WERE SENT.

20 BUT THEN WE DO HAVE UNREDACTED, IF YOU
21 WILL, OR UNEDITED PORTIONS OF THOSE SCHEDULES IN
22 EVIDENCE THAT HAVE THE IN-PROCESS AND HAVE ALL THE
23 OTHER THINGS.

01:03PM

24 MS. OSMAN: BUT MS. BARKER'S TESTIMONY IS
25 NECESSARY TO EXPLAIN WHY MR. SULLIVAN'S DOCUMENT, AND
26 WHY THE DOCUMENT THAT WAS ULTIMATELY SENT TO CITI BY
27 MR. CONN, DOESN'T HAVE THE IN-PROCESS LANGUAGE; BECAUSE
28 WITHOUT MS. BARKER'S EXPLANATION, IT LOOKS LIKE THEY

01:03PM

1 JUST HAVE A CONTRACT WITH AN EXPIRATION OF 12/31/2011.
2 AND THAT WAS AN ERROR, BECAUSE
3 MS. BARKER TOOK OFF THE TWO COLUMNS. AND WE NEED TO
4 EXPLAIN THAT.

5 AND THERE WAS A SUGGESTION, YOUR HONOR,
6 THAT MR. SULLIVAN ALTERED COMPANY RECORDS. IT'S
7 NECESSARY TO EXPLAIN WHERE THAT INFORMATION CAME FROM,
8 AND THAT IT WASN'T AN ALTERATION OF COMPANY RECORDS.

9 MR. HELM: YOUR HONOR, IF I COULD BE CLEAR.

01:04PM

10 THE COURT: WELL, THERE WERE CHANGES THAT WERE
11 MADE. YOU CAN CALL IT ALTERATION, OR CAN YOU CALL IT A
12 CHANGE.

01:04PM

13 I PREFER CHANGE; ALTERATION HAS A
14 PEJORATIVE NOTION. BUT IT SEEMS TO ME THAT THERE WAS
15 AN EVOLUTION, AND THAT DOCUMENT INDICATED ONE THING ONE
16 DAY, AND THE NEXT MONTH ANOTHER; AND IT WAS CHANGED
17 TWICE, IN DIFFERENT WAYS.

01:04PM

18 MS. OSMAN: THE DOCUMENT THAT MS. BARKER CAN
19 EXPLAIN, YOUR HONOR, WAS SORT OF THE SOURCE FOR
20 MR. SULLIVAN'S AND MR. CONN'S DOCUMENTS, THAT DON'T
21 HAVE THE IN-PROCESS LANGUAGE, AND CREATE THE IMPRESSION
22 OF A CONTRACT.

01:05PM

23 TCW NEEDS TO EXPLAIN WHY THOSE DOCUMENTS
24 EVER FOUND -- OR THAT INFORMATION FOUND ITS WAY TO
25 MR. CONN AND MR. SULLIVAN SO THAT THEY COULD CREATE
26 THOSE DOCUMENTS. IT WAS PURELY IN ERROR.

01:05PM

27 THE COURT: BUT THESE ARE SIGNIFICANTLY
28 DIFFERENT POINTS IN TIME, WEREN'T THEY?

1 MS. OSMAN: IT'S ALSO, IT'S NOT A PRIVILEGED
2 COMMUNICATION. WE'RE JUST DISCUSSING WHAT MS. --
3 MS. BARKER WILL EXPLAIN WHAT SHE DID, NOT ANY
4 COMMUNICATIONS.

5 AND THERE'S NEVER BEEN AN ASSERTION OF
6 PRIVILEGE TO MS. BARKER'S COMMUNICATION. SHE WAS ALSO
7 ON DEFENDANT'S WITNESS LIST IN JUNE, AND SO THEY WERE
8 AWARE OF MS. BARKER.

01:05PM

9 THE COURT: ALL RIGHT, MR. ALLRED?

10 MR. ALLRED: OUR FIRST REQUEST FOR PRODUCTION,
11 REQUEST FOR PRODUCTION NUMBER ONE, WAS ALL DOCUMENTS
12 RELATING TO ANY EMPLOYMENT AGREEMENT WITH MR. GUNDLACH,
13 OR DRAFT AGREEMENT, OR STATUS OF THE AGREEMENT, OR
14 TERMS OF THE AGREEMENT, THAT WAS REQUEST FOR PRODUCTION
15 NUMBER ONE IN THIS CASE.

01:05PM

16 MS. OSMAN HAS DESCRIBED THREE DOCUMENTS
17 IN THE LAST FIVE MINUTES WHICH WERE NOT PRODUCED, THAT
18 ARE RIGHT IN THE CORE OF RESPONSIVENESS TO THAT
19 REQUEST. AND YET WE'RE BEING TOLD THERE WAS NO
20 PRIVILEGE ASSERTION.

01:06PM

01:06PM

21 I CAN'T EXPLAIN THAT, BUT IT'S FAR TOO
22 LATE FOR US TO GET SANDBAGGED WITH THIS NOW.

23 MS. OSMAN: YOUR HONOR, IF I COULD ADDRESS
24 THAT POINT. TO ARGUE THAT THOSE DOCUMENTS WERE NOT
25 SOMEHOW PRODUCED IN RESPONSE TO THE REQUEST FOR
26 DISCOVERY, THE DOCUMENTS WERE ASKED ABOUT IN
27 DEPOSITION.

01:06PM

28 AND THEY'RE ADMITTED TRIAL EXHIBITS;

1 MS. BARKER IS NOT GOING TO BE TESTIFYING ABOUT ANY --

2 THE COURT: WHEN DID THEY COME TO LIGHT?

3 MS. OSMAN: I THINK THEY CAME INTO LIGHT IN
4 THE SPRING OF THIS YEAR, BUT I'M NOT SURE.

5 MR. HELM: WHEN THEY FIRST STARTED TO COME TO
6 LIGHT WAS WHEN WE GOT A PRODUCTION FROM CITIGROUP THAT
7 CONTAINED THESE CHARTS.

01:06PM

8 AND MR. ALLRED CAN --

9 MR. ALLRED: YES, WE FIRST GOT AN INKLING OF
10 THIS FROM CITIGROUP PRODUCTION -- AND I WANT TO CLARIFY
11 ONE THING. WE JUST HEARD ABOUT THESE DOCUMENTS BEING
12 SENT TO MR. CONN AND MR. SULLIVAN. I HAVEN'T SEEN ANY
13 SUCH E-MAILS.

01:06PM

14 MR. BRIAN: IT HAD TO BE TRANSMITTED
15 ELECTRONICALLY, AND WE DON'T HAVE THAT.

01:07PM

16 MS. OSMAN: WELL, THE INFORMATION THAT WAS
17 PROVIDED TO MR. CONN AND MR. SULLIVAN, MS. BARKER WILL
18 TESTIFY HOW SHE CREATED THE DOCUMENTS AND THAT SHE
19 COMMUNICATED TO THEM.

20 THE COURT: WELL, WERE THOSE COMMUNICATIONS
21 PRODUCTION DENIED UNDER CLAIM OF PRIVILEGE? ISN'T IT A
22 COMMUNICATION FROM COUNSEL TO A COMPANY OFFICER, AND
23 YOU SAID, WE'RE NOT PRODUCING ANYTHING; COMES OUT OF
24 THE GENERAL COUNSEL'S OFFICE?

01:07PM

25 MS. OSMAN: AN E-MAIL THAT HAS COMMUNICATION
26 WRITTEN IN IT FROM MS. BARKER TO MR. CONN OR
27 MR. SULLIVAN WOULD BE PRIVILEGED, BECAUSE IT'S THE
28 COMMUNICATION.

01:07PM

1 MS. BARKER IS NOT HERE TO TALK ABOUT HER
2 COMMUNICATION. SHE'S HERE TO TALK ABOUT WHAT SHE DID
3 WITH THAT DOCUMENT; THAT'S NOT PRIVILEGED, IT'S WHAT
4 SHE DID.

5 THE COURT: WELL, WHAT SHE DID IS PART OF HER
6 LEGAL -- I DON'T THINK -- IT'S HER FUNCTION, AS COUNSEL
7 FOR THE COMPANY. 01:07PM

8 AND TO NOW SAY, I INADVERTENTLY CUT
9 THESE OFF, WHEN MAYBE SHE CUT THEM OFF BECAUSE THEY
10 WEREN'T RELEVANT, OR IT WAS INFORMATION THAT SHOULDN'T
11 GO OUT OF THE LEGAL DEPARTMENT -- 01:08PM

12 I THINK THE FACT THAT YOU HAVE CLOAKED
13 THESE THINGS UNDER CLAIM OF PRIVILEGE UNTIL RIGHT NOW
14 IS NOT APPROPRIATE. AND I THINK IT COMES WITHIN MY
15 RULING ON MOTION IN LIMINE 8C. AND I'M NOT GOING TO
16 ALLOW IT AS TESTIMONY. 01:08PM

17 MS. OSMAN: YOUR HONOR, THERE WAS NO CLOAKING
18 OF THESE DOCUMENTS. WE PRODUCED THE UNDERLYING
19 DOCUMENTS FROM WHICH MS. BARKER CREATED THE CHARTS.

20 THE COURT: ONLY AFTER THEY FOUND THEM IN THE
21 CITIBANK -- AND I'M NOT GOING BACK THROUGH ALL YOUR
22 PRIVILEGED LOGS, OR WHETHER THESE DOCUMENTS AND THE
23 COMMUNICATIONS AND ATTACHMENTS FROM LEGAL TO OTHER
24 PEOPLE IN THE COMPANY WERE NOT PRODUCED UNDER CLAIM OF
25 PRIVILEGE, BECAUSE WE DON'T HAVE TIME TO DO THAT, QUITE
26 FRANKLY. BUT IT CERTAINLY SOUNDS TO ME, LIKE THAT'S
27 WHAT WAS OCCURRING. 01:08PM

28 MS. OSMAN: THAT'S NOT WHAT HAPPENED, YOUR

1 HONOR.

2 I THINK THIS IS A CLASSIC EXAMPLE OF
3 WHAT A REBUTTAL WITNESS IS THOUGH. DEFENDANTS ARE
4 ACCUSING THE TCW OF ALTERING DOCUMENTS.

5 MS. BARKER IS THE ONE WHO CAN RESPOND TO
6 THAT PARTICULAR ALLEGATION. THERE'S NO PREJUDICE,
7 BECAUSE THE DOCUMENTS ARE ALREADY IN EVIDENCE. AND
8 SHE'S JUST EXPLAINING THOSE DOCUMENTS, WHAT SHE DID.

01:09PM

9 MR. BRIAN: THEY WANT TO PUT IN HER ORAL
10 TESTIMONY ABOUT A COMMUNICATION AND CONTINUE TO ASSERT
11 PRIVILEGE OVER THE COMMUNICATION. THAT IS NOT
12 APPROPRIATE.

01:09PM

13 THEY'VE ASSERTED PRIVILEGE FOR A YEAR
14 AND A HALF.

15 WE GOT THIS FROM CITIGROUP, WHICH IS HOW
16 WE STUMBLED ON THIS ISSUE. IT'S NOT APPROPRIATE. IT'S
17 UNTIMELY. AND IT'S BARRED BY THEIR ASSERTION OF
18 PRIVILEGE.

01:09PM

19 I WOULD SUBMIT IT, YOUR HONOR.

20 THE COURT: ALL RIGHT.

01:10PM

21 MS. BARKER WILL NOT BE PERMITTED TO
22 TESTIFY. PRIOR CLAIMS OF PRIVILEGE BRING THE TESTIMONY
23 WITHIN THE COURT'S RULING ON DEFENDANT'S MOTION IN
24 LIMINE 8C, WHICH PRECLUDED EVIDENCE WITHHELD FROM
25 DISCOVERY UNDER CLAIM OF PRIVILEGE. SO THAT TAKES CARE
26 OF THAT ONE.

01:10PM

27 I STILL HAVE TCW'S REQUEST TO REVISE
28 SPECIAL INSTRUCTION NUMBER 2A.

1 WERE WE GOING TO TAKE THAT UP WITH THE
2 VERDICT FORM OR IS THAT --

3 MR. EMANUEL: YOUR HONOR, I BELIEVE THE PHRASE
4 IS OVERTAKEN BY EVENTS.

5 THE COURT HAS LOOKED AT THIS ISSUE IN
6 ANOTHER CONTEXT.

01:10PM

7 THE COURT: AND WHAT DID I DO?

8 MR. EMANUEL: AND WOULDN'T PERMIT IT.

9 MR. QUINN: WHAT I UNDERSTAND IS, IS THE COURT
10 SAYS THAT WE DON'T HAVE ANY EVIDENCE OF A CONSPIRACY TO
11 LEAVE EN MASSE -- IS WHAT I HEARD.

01:10PM

12 MR. HELM: THIS IS THE TIME BOMB ISSUE.

13 MR. QUINN: OH. SO WE ALL LEAVE TOGETHER IN
14 MARCH AFTER BONUSES ARE PAID AS A BIG F-U TO MARC STERN
15 AND THAT TESTIMONY IS IN EVIDENCE.

01:11PM

16 THE COURT: THAT'S AMONG -- NO, NO.

17 BUT IT'S NOT AN EN MASSE LEAVING, THE
18 WAY MS. ESTRICH DESCRIBES THIS ARGUMENT AND THE
19 RESTATEMENT TALKS ABOUT IT. THIS IS AMONG TWO OR THREE
20 PEOPLE.

01:11PM

21 AND YOU CAN SAY WHAT YOU WANT. MAYBE
22 THEY WERE PLOTTING, BUT THEY DIDN'T HAVE EVERYBODY ELSE
23 ON THE GAME, OR IN THE GAME.

24 MR. QUINN: CAN I JUST RAISE --

25 THE COURT: SURE.

01:11PM

26 MR. QUINN: -- A COUPLE OF DIFFERENT WAYS OF
27 LOOKING AT THIS.

28 LET'S SAY WE GOT 40 EMPLOYEES IN THE

1 GROUP.

2 THE COURT: LET ME TELL YOU WHAT I WAS GONG TO
3 PROPOSE. BEFORE WE GO THROUGH THIS ARGUMENT, LET ME
4 TELL YOU WHAT I WAS GOING TO PROPOSE.

5 I PROPOSE THAT THE BRACKETED LANGUAGE ON
6 THE TCW 2A, AS PROPOSED BY TCW, IN THIS REVISED, BE
7 CHANGED TO "OR INTENDED TO PREVENT THE CORPORATION FROM
8 OPERATING ITS BUSINESS AFTER THE OFFICER OR EMPLOYER IS
9 NO LONGER EMPLOYED BY THE CORPORATION".

01:11PM

10 MR. EMANUEL: WOULD YOU READ IT AGAIN, YOUR
11 HONOR?

01:12PM

12 YOU WERE CONCEDING IT TOO SOON, BECAUSE
13 I LOOKED AT THIS. YOU SAY, OR PLANNED IN A WAY THAT
14 WILL PREVENT THE CORPORATION FROM OPERATING ITS
15 BUSINESS.

01:12PM

16 I CHANGED THAT TO, OR INTENDED SO; IN
17 OTHER WORDS, IT WOULD READ: PROVIDED SUCH CONDUCT IS
18 NOT HARMFUL TO THE CORPORATION, OR INTENDED TO PREVENT
19 THE CORPORATION FROM OPERATING ITS BUSINESS AFTER THE
20 OFFICER OR EMPLOYEE IS NO LONGER EMPLOYED BY THE
21 CORPORATION.

01:12PM

22 MR. QUINN: WE CAN LIVE WITH THAT.

23 MR. HELM: MAY I EXPRESS TWO RESERVATIONS TO
24 THAT, YOUR HONOR. AND I APPRECIATE THAT YOU HAVE GONE
25 THROUGH THE TROUBLE OF DRAFTING THAT, AND I MEAN NO
26 DISRESPECT, BUT --

01:12PM

27 THE COURT: MAYBE WITH ALL DUE RESPECT.

28 DO YOU WANT TO SAY THAT?

1 MR. HELM: WITH ALL DUE RESPECT.

2 TWO POINTS, YOUR HONOR.

3 I DON'T KNOW WHAT THE EVIDENCE IS THAT
4 THERE WAS AN INTENTION TO PREVENT THEM FROM OPERATING
5 THEIR BUSINESS. THEY SAY THERE WAS THIS CONSPIRACY SO
6 THEY COULD LEAVE.

01:13PM

7 WHERE IS THE EVIDENCE THAT THEY WERE
8 GOING TO BE PREVENTED FROM OPERATING THEIR BUSINESS?
9 THAT'S POINT ONE.

10 POINT TWO IS. THE PROBLEM WE'VE HAD
11 WITH DRAFTING THIS CLAUSE ALL ALONG IS THAT THEY
12 HAVEN'T BEEN ABLE TO COME UP WITH A WAY THAT
13 DISTINGUISHES THE EFFECTS OF A LAWFUL DEPARTURE.

01:13PM

14 SUPPOSE YOU SAY. I INTEND -- I LEAVE,
15 KNOWING FULL WELL -- I'M JEFFREY GUNDLACH, I AM THE
16 BUSINESS --

01:13PM

17 THE COURT: I UNDERSTAND YOU CAN HAVE A LAWFUL
18 DEPARTURE, AND YOU CAN HAVE LAWFUL AND LEGITIMATE
19 COMPETITION.

20 BUT IF THE DEPARTURE IS MADE IN SUCH A
21 MANNER, AND THE RESTATEMENT SEEMS TO SUPPORT THIS, THAT
22 IT WAS INTENDED TO DISABLE OR TO DECIMATE THE BUSINESS
23 OF THE EMPLOYER; AND YOU ARE AN OFFICER -- AND THE
24 CASES THAT DEAL WITH IT ARE USUALLY HIGH-RANKING
25 OFFICERS; BUT THERE IS AN ARGUMENT ON BOTH SIDES OF
26 THIS CASE. NEITHER SIDE HAS A CORNER.

01:13PM

27 IS IT -- FOR THE SAME REASONS TCW MAY
28 HAVE CHOSEN TO KEEP CONFIDENTIAL ALL THE PROJECT G AND

01:14PM

1 ALL THEY WERE DOING NOT TO FIRE MR. GUNDLACH UNTIL
2 DECEMBER 4TH, THE DAY THEY EXECUTED THE MET WEST
3 TRANSACTION, AND WE DON'T A BREACH OF FIDUCIARY DUTY
4 CLAIM AGAINST THEM.

5 BUT THEY HAD THEIR REASONS. AND THE
6 PLAINTIFFS HAVE THEIR ARGUMENT ON GUNDLACH, AND WHAT HE
7 WAS DOING. AND THERE WAS CONSIDERABLE EFFORT, AT LEAST
8 BY THREE OR FOUR PEOPLE, TO UNDERTAKE AN INVESTIGATION
9 AND OVERT EFFORTS TO RETAIN SPACE THAT WOULD HAVE
10 ACCOMMODATED FAR MORE THAN FOUR PEOPLE. AND SO YOU
11 HAVE GOT TO DEAL WITH THAT.

01:14PM

01:15PM

12 AND THEIR ARGUMENT IS, WE NEEDED A
13 BACKUP PLAN BECAUSE WE HAD TO HAVE SOMEBODY IN PLACE IN
14 CASE HE LEFT.

15 WELL, YOU BELIEVE THAT OR YOU BELIEVE WE
16 WERE GOING TO GET RID OF HIM, BUT WE WEREN'T GOING TO
17 GET RID OF HIM UNTIL IT WAS GOOD FOR US. AND YOUR SIDE
18 OF THE COIN IS WE WEREN'T GOING ANYWHERE IF WE COULDN'T
19 NEGOTIATE IT. THERE'S LOTS OF OPTIONS TO DRAW FROM THE
20 EVIDENCE IN THIS CASE.

01:15PM

01:15PM

21 MS. STEIN: ONE OF THE PROBLEMS HERE IS THAT
22 THE WAY THIS IS CURRENTLY DRAFTED, THAT IT EFFECTUALLY
23 PREVENTS MR. GUNDLACH FROM LEAVING, WITHOUT GIVING
24 MONTHS AND MONTHS AND MONTHS OF NOTICE.

25 THE COURT: WELL, IT ISN'T MONTHS AND MONTHS.
26 AND I'M NOT SURE THAT'S THE --

01:15PM

27 MS. STEIN: WELL, HE WAS THE REASON THAT TCW
28 LOST INVESTORS. AND BY SUGGESTING THAT SOMEONE WITH

1 THAT STATURE, SOMEHOW DISABLES A COMPANY BECAUSE HE
2 LEAVES, THEN HE IS EFFECTIVELY BEING PREVENTED FROM
3 LEAVING. AND CALIFORNIA JUST DOESN'T SANCTION THAT
4 RESTRICTION ON HIS MOBILITY AND HIS ABILITY TO SEEK
5 OTHER EMPLOYMENT.

01:16PM

6 THE COURT: WELL, THE QUESTION IS, WAS THERE
7 AN INTENT.

8 AND THAT'S WHERE I CHANGED THE LANGUAGE.
9 IF THEY INTENDED TO DO IT SURREPTITIOUSLY AND TO SPRING
10 IT ON THE COMPANY ON A DAY'S NOTICE AND HAVE THE WHOLE
11 GROUP WALK OUT, THAT IS DIFFERENT THAN THE ABILITY TO
12 COMPETE WHEN YOU CHOOSE TO LEAVE.

01:16PM

13 MR. HELM: YOUR HONOR, BUT JUST
14 HYPOTHETICALLY, SUPPOSE THE JURY WERE TO CONCLUDE THAT
15 MR. GUNDLACH IS SO IMPORTANT TO THE BUSINESS, THAT
16 WHENEVER HE LEAVES, HE'S GOING TO PREVENT TCW FROM
17 OPERATING HIS BUSINESS; THAT THERE ARE NO CIRCUMSTANCES
18 IN WHICH TCW CAN CONTINUE TO OPERATE ITS BUSINESS AFTER
19 HE LEAVES.

01:16PM

20 IF HE KNOWS THAT THAT'S THE NATURAL AND
21 PROBABLE CONSEQUENCE OF HIS LEAVING, THEY MAY CONCLUDE
22 HE INTENDED THAT.

01:16PM

23 SO THIS INSTRUCTION, UNDER THOSE FACTS,
24 WOULD ALLOW THEM TO DEFINE LIABILITY, EVEN THOUGH IT
25 SIMPLY -- I'M INDISPENSABLE TO THIS WHOLE ORGANIZATION,
26 AND I KNOW IT CAN'T OPERATE WITHOUT ME, BUT ALL I WANT
27 TO DO IS LEAVE.

01:16PM

28 SO IT'S OVERBROAD IN THAT SENSE, YOUR

1 HONOR.

2 THE COURT: SO HOW CAN YOU CONVEY, IN A
3 REASONABLE WAY, THE CONCEPT?

4 AND WHAT I'M SAYING IS -- THERE'S
5 ARGUMENTS ON BOTH SIDES OF THIS THAT ARE 180 DEGREES
6 APART. 01:17PM

7 BUT YOU WERE ARGUING, PERSUASIVELY, YOU
8 BEING DEFENDANTS, THEY KNEW WHAT WAS GOING TO HAPPEN,
9 AND THEY BROUGHT THE LOSS OF BUSINESS ON THEMSELVES,
10 BECAUSE THEY FIRED MR. GUNDLACH. AND THAT'S YOUR SIDE
11 OF THE CASE. 01:17PM

12 THEIR SIDE OF THE CASE IS, WE HAD TO DO
13 WHAT WE HAD TO DO. AND IF WE'D LET THEM GO THE WAY
14 THEY WERE GOING, WE WERE GOING TO HAVE OUR BUSINESS
15 DECIMATED, AND WE WOULDN'T BE ABLE TO MEET OUR
16 OBLIGATIONS TO OUR CLIENTS. 01:17PM

17 THAT'S THE TWO SIDES.

18 SO HOW DO I DEAL WITH THAT, REASONABLY,
19 GIVING BOTH SIDES THEIR ARGUMENT?

20 MR. HELM: WELL, YOUR HONOR, AS I SAY, WE
21 THOUGHT THAT THE FIRST PROVISIO THAT YOU PUT IN THAT IT
22 WAS HARMFUL DURING THE TIME WAS ENOUGH. THEY SAID THAT
23 THEY WOULD TRY TO ADD SOMETHING TO CAPTURE THE TIME
24 BOMBS; I AGREE THAT YOUR HONOR'S REVISION IS BETTER
25 THAN WHAT THEY HAVE, BUT I STILL THINK IT'S OVERBROAD,
26 FOR THE REASON THAT I STATED. 01:18PM

27 AND IN TERMS OF DO I HAVE BETTER
28 LANGUAGE, I DON'T THINK I DO. 01:18PM

1 THE COURT: ALL RIGHT.

2 I'LL ALLOW THE REVISED INSTRUCTION, WITH
3 THE LANGUAGE AS I'VE INDICATED.

4 DO YOU HAVE THAT DOWN?

5 MR. HELM: I THINK SO. 01:18PM

6 MS. STEIN: YES, YOUR HONOR.

7 MR. BRIAN: WE UNDERSTAND THE RULING, YOUR
8 HONOR.

9 WE DO WANT TO PRESERVE OUR OBJECTION TO
10 IT, THOUGH. 01:18PM

11 THE COURT: ALL OBJECTIONS TO THE JURY
12 INSTRUCTIONS ARE PRESERVED. AND WE'VE MADE THAT
13 STATEMENT BEFORE.

14 MR. BRIAN: I FIGURED I SAID YOU WERE HUMOROUS
15 AND GOOD LOOKING TODAY, SO I CAN AT LEAST MAKE ONE
16 OBJECTION. 01:18PM

17 THE COURT: THEY ARE TRYING, TOO, THE FURTHER
18 WE GET IN THIS, THE DEEPER IT'S GETTING.

19 MR. MADISON: I USED A BIGGER WORD THAN
20 MR. BRIAN. 01:19PM

21 THE COURT: THE ONLY THING WE HAVE LEFT THEN
22 ON MY LIST IS THE VERDICT FORMS.

23 MR. HELM: WELL, YOUR HONOR, WE HAD A -- WE
24 DID HAVE THIS ISSUE THAT WE RAISED YESTERDAY.

25 THE COURT: THE INSTRUCTION -- 01:19PM

26 MR. HELM: THE INSTRUCTION ON THERE BEING A
27 CONTRACT.

28 THE COURT: THE INSTRUCTION ON THE AGREEMENT.

1 MR. BRIAN: I THINK SO -- ON THE INSTRUCTIONS,
2 I THINK MR. SONNEBORN'S TESTIMONY TODAY IS ANOTHER
3 EXAMPLE OF WHY WE NEED IT.

4 THE COURT: I DO, TOO.

5 MR. QUINN INDICATED, WHEN WE HAD THIS 01:19PM
6 ARGUMENT THERE IS AN AGREEMENT. THERE'S AN AGREEMENT
7 FOR COMPENSATION WHICH IS REFLECTED IN EXHIBIT A.

8 THE WHOLE CASE BOILS DOWN TO WHO GETS TO
9 PICK WHAT THEY WANT OUT OF THE DRAFTS, AS TERMS THAT
10 THE JURY IS GOING TO SAY CONSTITUTE THE AGREEMENT 01:20PM
11 BETWEEN PARTIES.

12 MR. BRIAN: I WOULD SAY SLIGHTLY DIFFERENTLY.
13 I WOULD SAY THERE'S NO DISPUTE IN THIS CASE.

14 I'M GOING TO TELL THE JURY IN CLOSING,
15 THERE WAS NO DISPUTE IN THIS CASE THAT THERE IS A 01:20PM
16 CONTRACT, A CONTRACT WAS FORMED.

17 THE COURT: WELL, I'M THINKING, BECAUSE YOU
18 ALL MAKE SUCH A BIG DISTINCTION OUT OF AGREEMENT OF
19 CONTRACT --

20 MR. BRIAN: I DON'T. 01:20PM

21 THE COURT: -- THAT MAYBE THERE OUGHT BE AN
22 INSTRUCTION THAT SAYS A CONTRACT AND AGREEMENT FOR ALL
23 PRACTICAL PERSONS IN THE EYES OF THE LAW ARE NO
24 DIFFERENT.

25 MR. BRIAN: THAT'S EXACTLY RIGHT. 01:20PM

26 AND MY POINT IS -- AND I'LL BE DONE AND
27 YOU CAN TALK.

28 BUT MY POINT IS, I'M GOING TO TELL THE

1 JURY THERE IS NO DISPUTE A CONTRACT WAS FORMED.

2 THE DISPUTE IS OVER THE TERMS. THEY SAY
3 THERE WAS ONE TERM, SIMPLY THE FEE-SHARING TERM.

4 WE SAY, OTHER ESSENTIAL TERMS WERE
5 AGREED TO: THE FIVE YEARS, THE CIRCUMSTANCES BY WHICH
6 HE COULD BE TERMINATED, AND THE PAYMENT UPON
7 TERMINATION. THOSE WERE ALL AGREED TO, AND ARE PART OF
8 THE CONTRACTS.

01:20PM

9 AND ALL THESE OTHER THINGS ARE JUST, IN
10 OUR JUDGMENT, IN AN EFFORT TO CONFUSE THAT ISSUE. AND
11 THE ISSUE IS ACTUALLY VERY STRAIGHTFORWARD FOR THE
12 JURY.

01:21PM

13 MR. QUINN: I UNDERSTAND THIS ARGUMENT BEGAN
14 YESTERDAY, AND STARTED WITH A STIPULATION. I --
15 FRANKLY, I -- CANDIDLY, YOUR HONOR, I DIDN'T REALIZE I
16 HAD MADE.

01:21PM

17 THE COURT: WELL, I'M NOT SURE IT WAS A
18 STIPULATION. I INVITED ONE, I'VE GONE BACK, AND YOU
19 HAVE LOOKED AT YOUR OWN COMMENTS.

20 MR. QUINN: YEAH, WAS THERE A CONTRACT? THERE
21 WAS THE SAME CONTRACT --

01:21PM

22 WHAT KIND OF CONTRACT DOES AN AT-WILL
23 EMPLOYEE HAVE? AT-WILL EMPLOYEE CAN BE FIRED ANY TIME,
24 THE NEXT DAY, AND YOU CAN GO TO THE AT-WILL EMPLOYEE
25 THE NEXT DAY AND SAY, YOU CAN ONLY STAY HERE TOMORROW
26 IF YOU TAKE A 10 PERCENT REDUCTION; AND THE NEXT DAY
27 ANOTHER 10 PERCENT REDUCTION.

01:21PM

28 THE AT-WILL EMPLOYEE HAS A CONTRACT

1 ESSENTIALLY FOR A STARTING SALARY, PERIOD. THAT'S ALL
2 AN AT-WILL EMPLOYEE HAS.

3 AND FOR -- THE TERM CONTRACT, HAS BEEN
4 USED IN THIS TRIAL FOR, HOW MANY WEEKS HAVE WE BEEN
5 HERE? SIX, SEVEN WEEKS -- TO HAVE A PARTICULAR
6 MEETING, EVERYBODY SAID SO-AND-SO HAD A CONTRACT,
7 SO-AND-SO WAS AT-WILL.

01:22PM

8 THAT'S THE STATE OF THE EVIDENCE IN THIS
9 CASE.

10 THE COURT: WELL, BUT WHAT'S THE --
11 MR. MADISON MAKES A POINT, AND REFERS GENERALLY TO
12 AGREEMENT, AS OPPOSED TO CONTRACT.

01:22PM

13 MR. QUINN: WELL, I THINK AN AGREEMENT AND
14 CONTRACT ARE THE SAME. I'M TALKING ABOUT --

15 MR. BRIAN: CAN YOU MARK THAT?

01:22PM

16 MR. QUINN: I'M TALKING ABOUT HOW WITNESSES ON
17 THE STAND HAVE TALKED ABOUT IT AT THIS COMPANY, AND
18 WHAT -- THEREFORE, WHAT THE JURY HAS HEARD.

19 AND I SUBMIT THAT WHAT THE JURY HAS
20 HEARD IS THAT A CONTRACT REFERS TO -- I WON'T GO FAR AS
21 TO SAY A WRITING. I DON'T NEED TO GO THAT FAR; BUT
22 SOMETHING WHERE SOMEBODY HAS AN AGREEMENT OF A TERM.

01:22PM

23 THE COURT: WELL, BUT WE HAVE A JURY
24 INSTRUCTION. AND IT'S VERY CLEAR THAT THE CONTRACT CAN
25 BE IN WRITING, OR ORALLY, IT CAN BE IMPLIED FROM
26 CONDUCT, AND THE TERMS CAN BE IMPLIED FROM THE CONDUCT.

01:22PM

27 AND THERE IS SUBSTANTIAL EVIDENCE OF
28 SOME AGREEMENT BETWEEN MR. SONNEBORN AND MR. GUNDLACH

1 ON A HANDSHAKE. YOUR SIDE OF THE CASE SAYS THAT
2 AGREEMENT WAS ONLY, WE'LL PAY YOU THIS AMOUNT OF MONEY.

3 THERE'S ALSO AN ARGUMENT, AND I'VE SAID
4 WE'RE NOT GOING TO HAVE ESTOPPEL AND WAIVER
5 INSTRUCTIONS, BECAUSE I'M NOT SURE THERE'S EVIDENCE TO 01:23PM
6 SUPPORT THOSE CLAIMS, BUT BOTH SIDES KIND OF PUT THEIR
7 HEAD IN THE SAND.

8 AND THERE WAS A COMMENT FROM
9 MR. SONNEBORN TODAY, NEAR THE END OF HIS TESTIMONY,
10 ABOUT WHY HE NEVER PRESENTED A CONTRACT TO 01:23PM
11 MR. GUNDLACH, FROM JUNE OR JULY OF 2007 THROUGH THE
12 TIME HE LEFT IN DECEMBER, OR IN 2008, WHICH I THOUGHT
13 COULD BE TELLING.

14 MR. QUINN: SURE, YOUR HONOR.

15 THE COURT: AND MR. GUNDLACH NEVER WENT AND 01:24PM
16 ASKED FOR IT.

17 SO BOTH SIDES WERE PUTTING THEIR HEAD IN
18 THE SAND AND SAYING, WHO GETS THE BEST OUT OF THIS NOT
19 HAVING THE DEAL, IF THERE'S NO DEAL?

20 MR. QUINN: I'M SAYING, AFTER THE WAY ALL THE 01:24PM
21 EVIDENCE HAS GONE IN, AND THE WAY THE TERM "CONTRACT"
22 HAS BEEN USED FOR -- I THINK IT'S REALLY PUTTING THE
23 THUMB ON THE SCALES AT THIS -- AFTER SIX, SEVEN WEEKS,
24 TO THEN TELL THE JURY, THERE'S NO DISPUTE THERE WAS A
25 CONTRACT. IT'S COMPLETELY GRATUITOUS. 01:24PM

26 MR. BRIAN CAN MAKE THE ARGUMENT THAT HE
27 JUST MADE -- THE COURT DOESN'T HAVE TO GO OUT OF ITS
28 WAY AND, YOU KNOW, PUT ITS IMPRIMATUR ON THE WORD

1 CONTRACT.

2 NOBODY HAS SAID IN THIS CASE -- NO
3 WITNESS HAS USED THE WORD CONTRACT TO REFER TO AN
4 AT-WILL RELATIONSHIP. THAT'S A DISTINCTION THAT'S BEEN
5 DRAWN. WITNESSES HAVE SAID, YOU ARE AT WILL, OR YOU
6 HAVE A CONTRACT.

01:24PM

7 AND I DEFY ANYBODY TO POINT TO AN
8 EXAMPLE IN THE RECORD DIFFERENT THAN THAT. THAT WOULD
9 BE -- PLEASE LET ME FINISH.

10 IT WOULD BE -- TO TELL THESE JURORS NOW
11 THAT AN AT-WILL RELATIONSHIP IS A CONTRACT OF A SORT
12 IS -- IS COMPLETELY UNNECESSARY. HE CAN ARGUE THAT.

01:25PM

13 AND THIS IS NOT -- THIS DOESN'T HAPPEN
14 IN A VACUUM. WE'VE HAD TESTIMONY ABOUT WHAT THESE
15 TERMS, AT LEAST AT TCW, HOW THEY ARE USED AND WHAT THEY
16 MEAN.

01:25PM

17 THE COURT: ONE OF THE STRONGEST ARGUMENTS
18 THAT YOU MADE AND I ACCEPTED, ON TAKING OUT OF THIS
19 CASE, THE UNJUST ENRICHMENT ARGUMENT, IS THAT THERE WAS
20 AN AGREEMENT.

01:25PM

21 AND YOU DON'T GET UNJUST ENRICHMENT, IF
22 THE AGREEMENT DOESN'T PROVIDE FOR THE COMPENSATION THAT
23 ONE IS SEEKING. AND SO IT'S A -- IT'S A SLIPPERY --
24 IT'S THE FALLING KNIFE. WHERE ARE YOU GOING TO GRAB
25 IT?

01:25PM

26 MR. QUINN: THAT'S BECAUSE YOU HAVE AN AT-WILL
27 EMPLOYEE WHO CAN BE TERMINATED ANY DAY. YOU LOOK BACK
28 RETROACTIVELY --

1 THE COURT: WELL, BUT IF HE'S AN AT-WILL
2 EMPLOYEE, THEN MAYBE AN UNJUST ENRICHMENT THEORY IS
3 VIABLE UNDER THE WRIGHT CASE. I THINK IT IS; OR A
4 NUMBER OF THE CASES THAT ALLOW THE COMMISSIONED
5 SALESMEN TO BE ENTITLED TO UNJUST ENRICHMENT
6 COMPENSATION POST TERMINATION, EVEN THOUGH THEY ARE
7 AT-WILL, FOR COMMISSIONS EARNED AND PAID LATER.

01:26PM

8 AND SO YOU KNOW, IT'S A TWO-SIDED SWORD
9 HERE.

10 MR. QUINN: OF COURSE, IT'S TWO-SIDED.

01:26PM

11 BUT IF YOU ARE LOOKING BACK
12 RETROSPECTIVELY, DID THIS PERSON --

13 THE COURT: WELL, WHAT WOULD YOU RATHER HAVE?
14 SOME CONCESSION THAT THERE IS SOME AGREEMENT AND THAT
15 IT'S FOR THE JURY TO DETERMINE WHAT THE TERMS OF THAT
16 AGREEMENT ARE, OR AN ALTERNATIVE INSTRUCTION ON UNJUST
17 ENRICHMENT THAT WOULD ALLOW THE JURY TO CONSIDER THAT?

01:26PM

18 NOW, IT'S A LITTLE LATE IN THE DAY NOW,
19 BECAUSE I HAVE ALLOWED THE EVIDENCE ON THE TESTIMONY.

20 MR. QUINN: WHY WOULD THE COURT CONSIDER
21 INSTRUCTING THE JURY THAT THERE'S A CONTRACT?

01:27PM

22 THE COURT: I'M ASKING YOU A QUESTION, AND YOU
23 ARE ASKING ME --

24 MR. QUINN: YEAH, BUT YOU ARE ASKING ME A
25 HOBSON'S CHOICE, FRANKLY.

01:27PM

26 IF THE COURT WANTS TO KNOW WHAT WE
27 THINK -- IF THERE'S GOING TO BE INSTRUCTION ON WHAT WE
28 CONTEND THE CONTRACTUAL RELATIONSHIP WAS, WE WOULD SAY

1 HE WAS AN AT-WILL EMPLOYEE WHOSE EMPLOYMENT COULD BE
2 TERMINATED AT ANY TIME, WHO CAN BE TOLD AT ANY TIME,
3 WE'RE REPUDIATED THAT FEE SHARING DEAL, AND YOU HAVE TO
4 TAKE A DISCOUNT.

5 I MEAN, ANY AT-WILL EMPLOYEE THAT'S
6 THE -- LOOKING PROSPECTIVELY, THAT'S THE SITUATION THAT
7 EXISTS. THEY HAVE NO GUARANTEE WHAT THEY ARE GOING TO
8 MAKE NEXT WEEK. THE EMPLOYER COULD COME, AND THEY
9 COULD BE TERMINATED. THEY WOULD NOT BE EMPLOYED NEXT
10 WEEK.

01:27PM

01:27PM

11 LOOKING BACK, RETROSPECTIVELY, WHICH IS
12 WHAT WE'RE DOING HERE, THE REASON WHY QUANTUM MERUIT
13 DOESN'T WORK, BECAUSE CLEARLY HE CONTINUED TO WORK, DAY
14 AFTER DAY AFTER DAY AFTER DAY, WITH AN UNDERSTANDING ON
15 A DAY-TO-DAY BASIS WHAT HE WAS GOING TO BE PAID.

01:28PM

16 BUT THE COURT SHOULD NOT BE GOING OUT OF
17 ITS WAY NOW TO TELL THE JURY THAT THERE WAS A CONTRACT.

18 IF THE COURT IS GOING TO DO THAT, WE
19 SUBMIT, THE COURT IS GOING TO TELL THE JURY WHAT AN
20 AT-WILL RELATIONSHIP IS AND WHAT IT MEANS.

01:28PM

21 MR. BRIAN: MAY I RESPOND, YOUR HONOR?

22 THE COURT: YES.

23 MR. BRIAN: THAT LAST COMMENT IS A
24 TOTALLY SEPARATE ISSUE, WHICH I'M HAPPY TO ADDRESS IT,
25 IF MR. QUINN WANTS TO PROPOSE THAT.

01:28PM

26 BUT THIS ISSUE, THE ARGUMENT THAT HE
27 JUST MADE, THE TESTIMONY THAT HAS BEEN ELICITED FROM
28 TCW'S WITNESSES, DEMONSTRATE EXACTLY WHAT THEY WANT TO

1 HAPPEN IN THAT JURY ROOM. THEY WANT PEOPLE TO GO BACK
2 THERE AND SPECULATE ON WHETHER THERE WAS OR WAS NOT A
3 CONTRACT.

4 THERE IS NO CAUSE OF ACTION THAT I KNOW
5 OF THAT WE'VE BROUGHT CALLED BREACH OF AGREEMENT. IT'S
6 BREACH OF CONTRACT. 01:28PM

7 MR. QUINN SAID 10 MINUTES AGO THAT AN
8 AGREEMENT IS A CONTRACT. I WASN'T JOKING WHEN I ASKED
9 THE COURT REPORTER TO MARK IT.

10 AN AGREEMENT IS A CONTRACT. BUT THEY
11 HAVE VERY CLEVERLY, THROUGH THEIR WITNESSES, STAYED
12 AWAY FROM WORDS LIKE CONTRACT, OTHER THAN WHEN THEY SAY
13 THERE WASN'T A CONTRACT, WHICH IS WHAT THIS WITNESS
14 SAID THIS MORNING. 01:28PM

15 THEY ARE TRYING TO HAVE IT BOTH WAYS.
16 THEY STOOD UP IN COURT AND SAID, IN THE PARAGRAPH THAT
17 WE QUOTED, THERE'S NO DISPUTE THERE'S AN AGREEMENT. 01:29PM

18 THERE'S A DISPUTE ABOUT WHAT THE TERMS
19 OF THE CONTRACT WERE. THAT'S WHAT MR. QUINN SAID ON
20 JULY 5TH. THAT IS THE ISSUE. I AGREE WITH THEM. 01:29PM

21 BUT BECAUSE OF THAT REPRESENTATION WE
22 LOST OUR QUANTUM MERUIT CASE. WE'VE NOW TRIED THE
23 CASE, AND THE JURY CANNOT BE MISLED INTO THINKING
24 THERE'S AN ISSUE ABOUT WHETHER THERE WAS A CONTRACT.

25 NOW, IF HE WANTS TO PROPOSE A JURY
26 INSTRUCTION ON WHAT AN AT-WILL CONTRACT MEANS, WE
27 SHOULD TALK ABOUT THAT. THAT'S A SEPARATE ISSUE. 01:29PM

28 BUT THERE CANNOT BE CONFUSION IN THE

1 JURY'S MIND ABOUT WHETHER THERE WAS AN ENFORCEABLE
2 CONTRACT, AND IF THE ISSUE FOR THEM TO DECIDE IS WHAT
3 THOSE TERMS WERE.

4 OTHERWISE, I GUARANTEE YOU, BASED ON
5 THIS EVIDENCE, WHICH THEY VERY CLEVERLY PUT ON, THEY
6 ARE GOING TO BE SPECULATING ABOUT WHETHER THERE WAS A
7 CONTRACT, BECAUSE IT WASN'T SIGNED. AND I THINK THAT'S
8 THEIR GAME PLAN, AND HAS BEEN THROUGHOUT THIS PART OF
9 THE CASE.

01:30PM

10 MR. MADISON: YOUR HONOR, COULD I CHIME IN?

01:30PM

11 THE COURT: NO. MR. QUINN IS ON HIS OWN ON
12 THIS ONE -- MR. EMANUEL.

13 MR. EMANUEL: JUST FROM THE JURY DRAFT POINT
14 OF VIEW --

15 THE COURT: YOU ARE THE ONLY NICE GUY IN THE
16 WHOLE GROUP. I'LL ALWAYS LISTEN TO YOU.

01:30PM

17 MR. EMANUEL: THANK YOU, YOUR HONOR.

18 FROM A JURY DRAFTING POINT OF VIEW, YOUR
19 HONOR, FROM A JURY INSTRUCTION DRAFTING POINT OF VIEW,
20 MR. QUINN'S STATEMENT THAT THEY POINT TO WAS MADE BACK
21 IN JULY.

01:30PM

22 WE MET AND CONFERRED BEFORE THE FIRST
23 JULY JURY INSTRUCTION HEARING. THEY PROPOSED
24 INSTRUCTIONS, WE AGREED TO SOME, WHICH THEY ARE NOW
25 SEEKING TO WITHDRAW.

01:30PM

26 AS LATE AS LAST NIGHT, WE ARE ARGUING
27 ABOUT THEIR PROPOSED INSTRUCTIONS REGARDING THE TERMS
28 OF THE EMPLOYMENT CONTRACT.

1 THE JURY INSTRUCTIONS, AS THEY ARE NOW,
2 SIMPLY ASK THE JURY TO DECIDE WHAT ARE THE TERMS OF THE
3 CONTRACT. WHO HERE DISAGREES WITH THAT INSTRUCTION?
4 YOU HAVE GOT TO ASK THEM TO DO THAT.

5 WHAT THE OPPOSING COUNSEL IS ASKING THE
6 COURT TO DO IS ADOPT A CHARACTERIZATION. YOUR HONOR
7 HAS YOUR FINGER RIGHT ON IT.

01:31PM

8 WE SAY COMPENSATION AGREEMENT. THEY SAY
9 EMPLOYMENT CONTRACT.

10 BUT THOSE AREN'T THE ISSUES. THE ISSUES
11 ARE, WAS THERE A CONTRACT TO BE TERMINATED ONLY FOR
12 GROSS MISCONDUCT? WHAT WAS THE TERM OF THE CONTRACT?
13 THOSE ISSUES ARE PUT TO THE JURY IN THE CURRENT STATE
14 OF THE JURY INSTRUCTIONS.

01:31PM

15 BOTH SIDES CAN STAND UP AND SAY --

01:31PM

16 THE COURT: I GOT IT.

17 HERE'S THE SOLUTION FOR YOU, THAT YOU
18 ALL CAN SOAK ON FOR A DAY OR SO, AND TAKE THE RISK OF
19 MY CREATING AN INSTRUCTION FOR YOU:

20 THERE'S AN AT-WILL EMPLOYEE. THERE'S AN
21 ARGUMENT THAT THERE'S AN AGREEMENT -- EVEN AN AT-WILL
22 EMPLOYEE HAS AN AGREEMENT OR CONTRACT TO BE COMPENSATED
23 ON THE BASIS THAT HAS BEEN AGREED AT THE COMMENCEMENT
24 OF THE RELATIONSHIP.

01:31PM

25 SO WE CAN BLEND THOSE TWO TOGETHER AND
26 SAY, IT IS YOUR -- GIVEN -- TAKING ALL OF THE OTHER
27 INSTRUCTIONS -- AND I WOULDN'T ALLOW CACI 302, 305 OR
28 318 TO BE WITHDRAWN.

01:32PM

1 BUT THIS INSTRUCTION ABOUT AT-WILL, AND
2 THE EXISTENCE OF AN AGREEMENT FOR COMPENSATION BEING A
3 COMPONENT OF AN AT-WILL RELATIONSHIP, AND THAT IT'S UP
4 TO THE JURY IN THIS CASE TO DETERMINE THE TERMS OF THE
5 RELATIONSHIP BETWEEN TCW AND MR. GUNDLACH.

01:32PM

6 THAT'S UNARTFULLY GIVEN, BUT SOME
7 COMBINATION ON THAT.

8 AND YOU NEED -- I'D SAY MR. HELM AND
9 MR. EMANUEL SHOULD GET TOGETHER. THEY HAVE A BETTER
10 CHANCE OF WORDSMITHING THIS. BUT THAT WOULD BE AN
11 INTRODUCTION TO THE BREACH OF CONTRACT INSTRUCTIONS,
12 BECAUSE THESE OTHER INSTRUCTIONS ARE IMPORTANT, I DON'T
13 THINK THEY SHOULD BE WITHDRAWN, BECAUSE THE ELEMENTS
14 AND THE TERMS ARE PART OF THOSE INSTRUCTIONS.

01:33PM

15 MR. HELM: LET'S -- LEAVE ASIDE THE WITHDRAWN
16 ONES FOR A SECOND, JUST SO I UNDERSTAND WHAT THE COURT
17 IS SAYING.

01:33PM

18 THE COURT: IT'S ONE INSTRUCTION, NOT TWO.

19 MR. HELM: I UNDERSTAND.

20 IF WE'RE USING AS THE STARTING POINT,
21 THE FIRST INSTRUCTION, WE SUBMITTED AN INSTRUCTION
22 AFTER THE QUANTUM MERUIT WAS DEFINITELY GOTTEN RID OF
23 ON TUESDAY OR ON WEDNESDAY.

01:33PM

24 WE SUBMITTED THIS INSTRUCTION THAT SAYS,
25 THE PARTIES AGREE THAT MR. GUNDLACH AND TCW ENTERED
26 INTO A CONTRACT IN 2007 REGARDING MR. GUNDLACH'S
27 EMPLOYMENT --

01:33PM

28 THE COURT: I'VE GOT IT RIGHT IN FRONT OF ME.

1 MR. HELM: -- THE PARTIES DISAGREE ON ITS
2 TERMS.

3 IF WHAT THE COURT IS SAYING IS THAT WE
4 SHOULD GRAFT INTO THIS IS HOW A CONTRACT WORKS IN AN
5 AT-WILL EMPLOYEE BASIS --

01:33PM

6 THE COURT: NO, NO. IT'S A LITTLE MORE
7 NUANCED THAN THAT. YOU CAN'T HAVE IT JUST THE WAY YOU
8 WANT IT.

9 MR. BRIAN: YOUR HONOR, MAY I SUGGEST
10 SOMETHING IN THIS? I'M LISTENING TO THIS, AND ONE OF
11 THE WAYS TO DO IT, I THINK, IS TO SAY -- I THINK
12 THERE'S A WAY, SO AS NOT TO PREJUDICE EITHER SIDE TO
13 TALK ABOUT AN AGREEMENT THAT, BY LAW, IS A CONTRACT.
14 THAT HAS TO BE SAID, SO THERE'S NO CONFUSION.

01:34PM

15 THE SECOND POINT THAT HAS TO BE
16 INCORPORATED INTO IT IS MR. QUINN'S CONCEPT ABOUT AN
17 AT-WILL. I AGREE WITH THAT. I DON'T HAVE A PROBLEM
18 WITH THAT.

01:34PM

19 BUT THERE CAN'T BE ANY CONFUSION THAT
20 SOMEHOW AN AGREEMENT DOESN'T MAKE IT A CONTRACT.
21 OTHERWISE, WE ARE SEVERELY PREJUDICED BY THAT.

01:34PM

22 MR. EMANUEL: WE CAN WORK THAT OUT.

23 MR. QUINN: WE CAN WORK THAT OUT. WE ARE --
24 CONTRARY TO THE IMPRESSION I MUST HAVE GIVEN, I'M
25 REALLY NOT RUNNING FROM THE WORD -- THE "C" WORD.

01:34PM

26 THE COURT: GIVE ME ONE MINUTE. I'M ONLY
27 GOING TO GIVE YOU AN IDEA, BUT LET ME WRITE IT OUT,
28 HERE.

1 MR. QUINN: BUT THERE IS SOMETHING ELSE I'D
2 LIKE TO SAY ON A RELATED BUT DIFFERENT SUBJECT.

3 THE COURT: ALL RIGHT.

4 HERE'S WHAT -- YOU CAN TAKE IT ANYWAY
5 YOU WANT, BUT THIS -- I'M SAYING, PARTIES ARE TO DRAFT
6 AN INSTRUCTION ADVISING THE JURY OF THE NATURE OF THE
7 EMPLOYMENT RELATIONSHIP.

01:35PM

8 AND WHAT I SAID WAS, EVERY EMPLOYMENT
9 RELATIONSHIP REQUIRES AN AGREEMENT OR CONTRACT
10 PROVIDING FOR COMPENSATION AND OTHER TERMS, EVEN IF THE
11 EMPLOYEE IS AN AT-WILL EMPLOYEE. THE JURY MUST
12 DETERMINE THE TERMS OF ANY SUCH AGREEMENT OR CONTRACT
13 IN A MANNER CONSISTENT WITH ALL OF THE COURT'S
14 INSTRUCTIONS. SOMETHING LIKE THAT.

01:36PM

15 AND I THINK THE BASIC -- THAT GIVES BOTH
16 SIDES WHAT THEY WANT, IN TERMS OF THEIR ARGUMENT. AND
17 I THINK THAT'S PROBABLY AN ACCURATE STATEMENT OF THE
18 LAW. BECAUSE EVEN IF YOU ARE AN AT-WILL EMPLOYEE,
19 THERE'S AN AGREEMENT CONCERNING YOUR COMPENSATION,
20 THERE'S PROBABLY AN AGREEMENT THAT YOU WILL SHOW UP AT
21 8 O'CLOCK AND STAY TILL 4:00. THERE'S PROBABLY AN
22 AGREEMENT YOU WILL DO OTHER THINGS. IT'S PART AND
23 PARCEL OF THE EMPLOYMENT RELATIONSHIP.

01:36PM

01:36PM

24 MR. BRIAN: WE'LL WORK ON IT, YOUR HONOR.

25 THE COURT: YOU'VE GOT THE CONCEPT.

01:37PM

26 MS. STEIN: CAN YOU REPEAT IT ONE MORE TIME?

27 MR. EMANUEL: WE'LL GET THE TRANSCRIPT.

28 THE COURT: I'LL GIVE YOU SOMETHING.

1 I CAN PRINT IT OUT AND GIVE IT TO YOU.

2 I DON'T HAVE ANY PRIDE OF AUTHORSHIP.

3 MR. BRIAN: THERE JUST CAN'T BE, FROM OUR
4 STANDPOINT, ANY CONFUSION ABOUT SOMETHING BEING
5 BINDING.

01:37PM

6 MR. QUINN: I'D LIKE TO INVITE MR. BRIAN TO
7 LEAVE WITH ME AND WE'RE GOING TO WORK ON ARGUMENTS --
8 NOT WITH ME, BUT SEPARATELY; BUT BEFORE I LEAVE, I'D
9 LIKE TO REVISIT AN INSTRUCTION THAT THE COURT REJECTED
10 BEFORE THE TRIAL STARTED.

01:37PM

11 THE COURT: WHICH ONE IS THIS?

12 MR. QUINN: LABOR CODE SECTION 2922.

13 SOMETIMES THINGS CHANGE, AFTER THE
14 EVIDENCE COMES IN.

15 I SUBMIT, WE'RE ENTITLED TO AN
16 INSTRUCTION, THAT TRACKS 2922 --

01:37PM

17 MR. BRIAN: WHAT IS IT?

18 MR. QUINN: THIS SAYS, (READING):

19 AN EMPLOYMENT NOT FOR A
20 SPECIFIED TERM IS TERMINABLE AT
21 WILL, AT THE WILL OF EITHER PARTY.

01:37PM

22 MR. HELM: I THINK WE HAVE SOMETHING
23 ADDRESSING AT-WILL, YOUR HONOR.

24 MS. STEIN: WE HAVE SOMETHING ADDRESSING
25 AT-WILL.

01:38PM

26 THE COURT: OKAY. LET MR. EMANUEL COME UP
27 WITH THE INSTRUCTION.

28 MR. QUINN: HE'S THE ONE WHO TOLD ME WE DIDN'T

1 HAVE IT.

2 MR. EMANUEL: WE HAD SUBMITTED AN INSTRUCTION
3 AT THE FIRST SESSION, NUMBER 13, WHICH WAS BASED ON
4 2922. AND THE COURT DENIED IT WITHOUT PREJUDICE.
5 THERE ARE --

01:38PM

6 THE COURT: THIS IS PLAINTIFF'S SPECIAL NUMBER
7 13?

8 MR. EMANUEL: YES.

9 AT THE VERY BEGINNING, BACK IN JULY --
10 AND THE COURT MAY RECALL THAT IT'S DENIED -- THE RULING
11 WAS DENIED WITHOUT PREJUDICE.

01:38PM

12 AND MR. QUINN IS POINTING OUT THAT AS
13 THE CASE HAS MOVED ALONG, THE FACTS MAY SHOW THAT THIS
14 2922 IS CLEARLY IN PLAY HERE.

15 MR. BRIAN: I DON'T THINK, YOUR HONOR, IT CAN
16 BE TAKEN UP IN ISOLATION. I THINK IT HAS TO BE
17 CONSIDERED TOGETHER WITH THIS OTHER INSTRUCTION YOU'VE
18 ASKED US TO DRAFT.

01:38PM

19 THE COURT: WHY TALK ABOUT IT? YOU JUST LIKE
20 TO THROW A LITTLE GASOLINE IN AND RUN OUT THE DOOR.

01:38PM

21 MS. STEIN: YOUR HONOR, WE HAVE --

22 THE COURT: IT'S THE WAY YOU OPERATE.

23 MS. STEIN: YOUR HONOR, WE HAVE AN
24 INSTRUCTION. WE HAVE THE CACI 2400 THAT ADDRESSES THAT
25 PRECISELY.

01:39PM

26 MR. HELM: AN EMPLOYMENT RELATIONSHIP BEING
27 ENDED BY EITHER THE EMPLOYER --

28 THE COURT: WHY DON'T YOU TALK AMONG

1 YOURSELVES ABOUT IT. AND IF IT ADDRESSES THE ISSUES
2 THEY ARE RAISING, FINE. IF IT DOESN'T, WE'LL HAVE
3 ANOTHER SESSION MONDAY AFTERNOON, I'M SURE.

4 MR. BRIAN: I'M GOING TO ACCEPT MR. QUINN'S
5 OFFER, BECAUSE I NEVER EVER GOT AN OFFER TO WRITE THE
6 OTHER SIDE'S CLOSING BEFORE.

7 THE COURT: I THINK YOU OUGHT TO GET TOGETHER.

8 MR. HELM: CAN YOU TAKE ME WITH YOU?

9 THE COURT: ENOUGH, ENOUGH.

10 LET'S -- THE JURY VERDICT FORM, I MEAN,
11 I NEED TO GET THIS DONE, BECAUSE I'VE GOT SOME OTHER
12 THINGS, AND I HAVE TO GO TO A SERVICE.

13 MR. MADISON: BEFORE MR. BRIAN LEAVES, THERE
14 IS AN IMPORTANT ISSUE ABOUT HIS LAW PARTNER,
15 MR. SANCHEZ --

16 THE COURT: WHAT'S UP WITH THAT?

17 MR. MADISON: -- WHO'S A WITNESS.

18 WE HAVE A STIPULATION THAT WE'VE AGREED
19 TO, EXCEPT FOR ONE PROVISION, AND I THINK WE WOULD JUST
20 LIKE YOUR HONOR'S GUIDANCE ON THAT.

21 THE ONLY REASON I NEED AN ANSWER TODAY
22 IS OTHERWISE, WE HAVE TO HAVE HIM IN COURT MONDAY
23 MORNING.

24 THE COURT: WHAT'S THE STIPULATION?

25 MR. MADISON: WELL, IT'S A FACTUAL
26 STIPULATION, BASED ON HIS DEPOSITION TESTIMONY.

27 AND THE ONLY PART THAT IS IN DISPUTE, I
28 BELIEVE, I'LL LET MUNGER SPEAK TO THIS, IS -- DO YOU

01:39PM

01:39PM

01:39PM

01:39PM

01:40PM

1 NEED ME TO --

2 THE COURT: GOODBYE, MR. QUINN. HAVE A NICE
3 WEEKEND.

4 MR. QUINN: THANK YOU, YOUR HONOR. YOU, TOO.

5 THE COURT: THANKS.

01:40PM

6 ALL RIGHT. GO AHEAD, MR. MADISON.

7 MR. MADISON: DO YOU NEED ME TO SAY ANYTHING
8 ABOUT MR. SANCHEZ'S ROLE?

9 THE COURT: I UNDERSTAND HIS ROLE. I JUST
10 NEED TO KNOW WHAT THE ISSUE IS.

01:40PM

11 MR. MADISON: WELL, THE ONLY ISSUE IS -- IT'S,
12 FRANKLY, KIND OF A SECONDARY ISSUE, BUT WE THINK --

13 THE COURT: WHY DON'T YOU PASS THE WRITTEN
14 STIP UP AND JUST TELL ME WHAT THE ISSUE IS.

15 MR. BRIAN: DO YOU HAVE OUR VERSION?

01:40PM

16 MR. MADISON: YES. I'M WORKING OFF YOUR
17 VERSION.

18 CAN I APPROACH, YOUR HONOR?

19 THE COURT: YES.

20 DO YOU HAVE TWO COPIES OR JUST ONE?

01:40PM

21 MR. BRIAN: DO YOU HAVE AN EXTRA ONE?

22 MR. MADISON: I DON'T KNOW IF YOU WANT TO REA
23 IT ALL, YOUR HONOR.

24 THE COURT: JUST THE DISPUTED PART.

25 MR. MADISON: THE DISPUTED PART IS PARAGRAPH
26 2.

01:41PM

27 MR. BRIAN: YOU WILL SEE, YOUR HONOR, THAT --

28 MR. MADISON: LET HIM READ PARAGRAPH 2.

1 THE COURT: LET ME JUST READ IT, AND I'LL PUT
2 IT IN PERSPECTIVE.

3 MR. MADISON: YOUR HONOR, IF YOU ARE READING
4 ON, ONE OF THE THINGS I THINK WE RESOLVED --

5 THE COURT: WELL, I READ 2, WHICH IS ABOUT THE
6 FEES. AND I'M NOT SO SURE THAT THAT NEEDS TO BE IN
7 THERE AT ALL.

01:42PM

8 MR. MADISON: AND IF IT'S THE FEES THAT ARE
9 THE OBJECTION, I THINK WE COULD DROP THAT.

10 WHAT WE FELT WAS IMPORTANT WAS THAT
11 MR. SANCHEZ'S RELATIONSHIP WITH DOUBLELINE AND OAKTREE,
12 AS WELL AS WITH WAMCO, BE INCLUDED.

01:43PM

13 THE COURT: WHY CAN'T IT BE A SINGLE SENTENCE
14 THAT MR. SANCHEZ, THROUGH HIS FIRM, HAS PROVIDED
15 SERVICES TO DOUBLELINE, OAKTREE AND WAMCO, FROM TIME TO
16 TIME, OVER THE PAST SEVERAL YEARS?

01:43PM

17 MR. MADISON: WE WOULD AGREE TO THAT.

18 MR. BRIAN: WELL, YOU WILL SEE THE WAY WE
19 STRUCTURED IT. WE OBJECTED TO PARAGRAPH 2. WE SAID,
20 IF ANY OF IT COMES IN, WE PROPOSED A SENTENCE AT THE
21 END OF PARAGRAPH THREE, A SINGLE SENTENCE, THAT'S WHAT
22 WE DID.

01:43PM

23 THE COURT: WELL, WHERE IS THE SINGLE
24 SENTENCE?

25 MR. BRIAN: AT THE END OF PARAGRAPH 3, IT'S
26 BRACKETED. WE SAID ALL OF PARAGRAPH 2 SHOULD GO OUT.

01:43PM

27 THE COURT: I SEE THAT.

28 MR. BRIAN: NONE OF IT SHALL COME IN.

1 IF YOUR HONOR IS INCLINED TO PUT ANY OF
2 IT IN, WE DRAFTED A SINGLE SENTENCE TO GO AT THE END OF
3 PARAGRAPH 3.

4 THE COURT: BUT --

5 MR. BRIAN: BUT HERE'S WHY IT SHOULDN'T COME
6 IN AT ALL: THIS IS A STIPULATION OF FACTS. THIS IS
7 NOT A STIPULATION OF A WITNESS' TESTIMONY.

8 THE COURT: I AGREE. I MEAN, I'M LOOKING AT
9 THIS, AND I READ ON. AND IT SEEMS TO ME THAT, YOU
10 KNOW, IT OUGHT TO BE A THREE OR FOUR-LINE, OR TWO OR
11 THREE VERY SHORT PARAGRAPH STATEMENT.

12 I ASSUME ALL IT'S GOING TO IS
13 MR. SANCHEZ'S REPRESENTATION OF WAMCO IN CONNECTION
14 WITH THE DISCUSSIONS BETWEEN MR. GUNDLACH AND WAMCO,
15 SOME INDICATION OF MR. SANCHEZ'S INTERACTION WITH
16 MR. GROSS, AND STATEMENTS MADE BY MR. GROSS TO
17 MR. SANCHEZ.

18 MR. BRIAN: YOU WILL RECALL, THAT THERE WAS A
19 MOTION.

20 THE COURT: I THOUGHT WE HAD A MOTION.

21 MR. BRIAN: THERE WAS A MOTION IN LIMINE
22 FILED.

23 AND WHAT WAS ARGUED -- AND I'D HAVE TO
24 GO BACK AND LOOK AT THE RULINGS, AND ALL THIS; BUT YOU
25 ASKED US TO MEET AND CONFER.

26 BUT THE ONLY EVIDENCE THAT IS POSSIBLY
27 ADMISSIBLE ARE STATEMENTS BY MR. GUNDLACH OR HIS
28 REPRESENTATIVES --

1 THE COURT: RIGHT.

2 MR. BRIAN: -- THAT GO TO THE QUESTION OF
3 WHETHER HE HAD A CONTRACT. THAT'S IT.

4 THE COURT: AND THAT'S A STATEMENT OF
5 MR. GROSS, NOT MR. SANCHEZ.

01:45PM

6 MR. BRIAN: AND THEREFORE -- LET ME FINISH,
7 MR. MADISON.

8 THEREFORE, IF WE'RE GOING TO STIPULATE
9 TO FACTS, THE FACTS ARE WHAT MR. GROSS DID OR DID NOT
10 SAY, WHAT HE DID OR DID NOT COMMUNICATE.

01:45PM

11 ALL THIS STUFF ABOUT WHAT
12 MR. SANCHEZ'S -- WHO MR. SANCHEZ'S LAW FIRM REPRESENTED
13 OR WHAT WAS IN MR. SANCHEZ'S STATE OF MIND; FRANKLY,
14 WHAT WAS IN MR. GROSS' STATE OF MIND, THAT IS ALL
15 IRRELEVANT.

01:45PM

16 WHY CAN'T THE STIPULATION JUST BE
17 PARAGRAPH 6 AND 7?

18 MR. MADISON: WELL, YOUR HONOR, THIS IS MUNGER
19 TOLLES' DRAFT.

20 IF WE'RE GOING TO REWRITE THE
21 STIPULATION, THEN I'D RATHER JUST EITHER PLAY THE
22 DEPOSITION --

01:45PM

23 THE COURT: WELL, DID YOU PUT ALL THIS IN THE
24 DRAFT YOU PROPOSED?

25 MR. BRIAN: NO, NO. WHAT WE DID IS TOOK
26 MR. MADISON'S LENGTHY DRAFT; WE MODIFIED IT. WE'RE
27 WORKING OFF HIS --

01:45PM

28 THE COURT: WELL, WHO STARTED IT?

1 MR. BRIAN: HE DID.

2 MR. MADISON: THE WITNESS HAPPENS TO BE A
3 PARTNER IN MUNGER.

4 THE COURT: I UNDERSTAND THAT.

5 AND WHAT I'M SAYING, THE FACTS, AS I SEE
6 IT, THE SIGNIFICANT FACTS APPEAR TO BE IN 6 AND 7.

01:46PM

7 MR. MADISON: YOUR HONOR, WE'VE NEGOTIATED
8 THIS BACK AND FORTH REPEATEDLY.

9 IF YOU ARE TELLING ME YOU ARE REJECTING
10 THE STIPULATION THAT BOTH PARTIES HAVE WORKED ON FOR
11 THE LAST WEEK, AND WE'RE NOW PRESENTING TO YOU, I DON'T
12 KNOW WHAT TO DO, OTHER THAN HAVE THE WITNESS HERE
13 MONDAY MORNING.

01:46PM

14 THE COURT: WELL, IF YOU CAN FINALIZE THE
15 STIPULATION, THAT'S FINE. BRING IT TO ME.

01:46PM

16 I'M TELLING YOU, I THINK IT'S OVERKILL.
17 PARAGRAPH 2 DOES NOT NEED ALL THE INFORMATION ABOUT
18 FEES.

19 WHAT ELSE IS THERE? THERE'S AN
20 OBJECTION TO PARAGRAPH 3.

01:46PM

21 MR. MADISON: THAT WAS WHAT WE NEEDED YOUR
22 GUIDANCE ON.

23 AND THEN ON NUMBER 3, THAT WAS OUR
24 OBJECTION, TO THAT LAST SENTENCE.

25 BUT IT SOUNDS LIKE YOUR HONOR PREFERS A
26 SHORT VERSION. I DON'T HAVE A PROBLEM WITH JUST THAT
27 ONE SENTENCE.

01:46PM

28 THE COURT: WELL, LEAVE THAT SENTENCE IN, AND

1 TAKE YOUR OBJECTION OUT.

2 MR. MADISON: I WILL.

3 THE COURT: AND THEN TAKE 2 OUT.

4 MR. MADISON: YES, YOUR HONOR.

5 BUT IF YOU'LL NOTICE, IT DOESN'T INCLUDE
6 OAKTREE. AND I WANT TO INCLUDE OAKTREE AS ONE OF THE
7 PARTIES THAT MR. SANCHEZ'S DOES LEGAL WORK --

01:46PM

8 MR. BRIAN: I DON'T UNDERSTAND THE RELEVANCE
9 OF THAT. NONE OF THIS SHOULD COME IN.

10 IF WE'RE GOING TO STIPULATE TO FACTS,
11 WHAT MR. MADISON WANTS TO DO IS A STIPULATION OF FACTS,
12 AND THEN ARGUE, WELL, THEY ARE NOT REALLY QUITE
13 COMPLETE; BECAUSE THERE MUST BE A CREDIBILITY ISSUE.

01:47PM

14 MR. MADISON: NO. IT'S TO THE CONTRARY.

15 THE COURT: JUST A MINUTE.

01:47PM

16 JUST RELAX, BOTH OF YOU.

17 WE'VE GOT -- MY COURT REPORTER HAS
18 STAYED TWO HOURS LONGER THAN SHE'S SUPPOSED TO. AND
19 YOU ARE JUST ABUSING HER. AS AM I. AND I APOLOGIZE,
20 WENDY, BUT I CAN GET AWAY WITH IT, MORE THAN YOU GUYS
21 CAN.

01:47PM

22 WELL, I'LL TELL YOU, I'VE GIVEN YOU MY
23 COMMENTS ON THOSE THINGS.

24 THERE APPEAR TO BE SOME OTHER OBJECTIONS
25 ON RELEVANCE AND 352 GROUNDS, WHICH MAY BE WELL TAKEN.

01:47PM

26 IT SEEMS TO ME THAT IT SHOULD BE A MUCH
27 SIMPLER STIPULATION. IF YOU DON'T WANT TO DO THAT, AND
28 YOU DON'T WANT TO STIPULATE, THERE MAY BE SOME

1 OBJECTIONS TO MR. SANCHEZ'S TESTIMONY, IN ANY INSTANCE.

2 BUT IF HE IS ALLOWED TO TESTIFY, IT WILL
3 BE ON VERY NARROW NARROW GROUNDS, AND WILL NOT
4 ENCOMPASS AS MUCH AS I SEE IN THIS STIPULATION.

5 MR. MADISON: YOUR HONOR, MAY I JUST -- LET ME
6 DO IT THIS WAY. PARAGRAPH 7, THEY OBJECT.

01:48PM

7 LET'S DROP THAT PARAGRAPH.

8 CAN WE JUST TAKE THAT OUT?

9 THE COURT: THAT'S FINE.

10 MR. MADISON: THIS IS THEIR DRAFT.

01:48PM

11 THE COURT: WELL, IT'S YOUR DRAFT, MODIFIED BY
12 THEM TO THINGS YOU HAD IN YOURS.

13 WELL, DON'T CHARACTERIZE IT AS THEIR'S
14 THEN. YOU STARTED THIS GAME.

15 MR. MADISON: I STARTED IT, BUT THIS IS THE
16 VERSION THAT THEY SENT BACK; AND EXCEPT FOR THE
17 OBJECTIONS, WE HAVE AN AGREEMENT.

01:48PM

18 THE COURT: WE'RE TAKING 7 OUT AND WE'RE
19 TAKING 2 OUT --

20 MR. MADISON: AND LET'S TAKE 9 OUT. IF THEY
21 OBJECT TO THAT, TOO, I'LL TAKE 9 OUT.

01:48PM

22 I JUST WANT TO KNOW WHETHER I NEED TO
23 PREPARE FOR THIS WITNESS.

24 AND THEN IF I CAN JUST GO BACK TO THE
25 POINT THAT MR. BRIAN MADE ABOUT INCLUDING OAKTREE IN
26 THAT SHORT STATEMENT.

01:48PM

27 IT'S ACTUALLY THE OPPOSITE OF WHAT
28 MR. BRIAN IS SAYING. IT'S NOT TO ATTACK MR. SANCHEZ'S

1 CREDIBILITY. IT'S TO SHOW THAT BY ALL OF THE PARTIES
2 ON THEIR SIDE OF THIS CASE, HE IS A LAWYER WHO IS
3 TRUSTED AND IS HIGHLY COMPETENT AT WHAT HE DOES.

4 THAT'S WHY I WANT THAT IN.

5 MR. BRIAN: WE'LL STIPULATE TO THAT. I'LL
6 PROPOSE THAT SENTENCE.

01:49PM

7 MR. MADISON: THEN LET'S SAY THAT.

8 MR. BRIAN: WITH ALL RESPECT, THAT'S --

9 THE COURT: JUST DON'T --

10 MR. MADISON: THAT IS WHY WE WANT THAT IN
11 THERE, YOUR HONOR.

01:49PM

12 MR. BRIAN: YOUR HONOR, WE ARE WILLING TO
13 STIPULATE TO SOME BACKGROUND INFORMATION THAT GOES WAY
14 BEYOND NECESSARY TO AVOID THE TIME, INCONVENIENCE OF
15 THIS.

01:49PM

16 THE COURT: ALL RIGHT.

17 MR. BRIAN: WE ARE NOT WILLING TO STIPULATE TO
18 THINGS THAT WOULD NOT BE ADMISSIBLE.

19 THE COURT: WE'VE JUST GONE THROUGH AND
20 SCRATCHED OUT ALL THE PARAGRAPHS YOU HAD AN OBJECTION
21 TO.

01:49PM

22 MR. BRIAN: I DON'T THINK 8 SHOULD BE IN
23 THERE. I DON'T THINK 9 SHOULD BE IN THERE.

24 THE COURT: WELL, THEN, ARE WE STARTING ALL
25 OVER? BECAUSE I'M LOOKING AT A DRAFT THAT HAS
26 HIGHLIGHTED OBJECTIONS THAT I'M TOLD CAME FROM YOUR
27 OFFICE.

01:49PM

28 AND IF YOU ARE LOOKING AT IT FOR THE

1 FIRST TIME AND TAKING A DIFFERENT VIEW OF IT, AND
2 SOMEBODY ELSE IN YOUR OFFICE HAS BEEN NEGOTIATING IT,
3 THEN I DON'T WANT TO SEE IT UNTIL YOU ARE DONE.

4 MR. BRIAN: FINE. I CAN STIPULATE TO
5 PARAGRAPH 1. WE'VE OBJECTED --

01:50PM

6 THE COURT: I'M NOT GOING THROUGH IT ONE AT A
7 TIME, MR. BRIAN. YOU EITHER WORK YOUR DEAL OUT --

8 MR. MADISON HAS SAID 2 YOU HAVE AN
9 OBJECTION, HE'LL ELIMINATE THAT.

10 3, HE WILL ACCEPT THE LANGUAGE YOU
11 PROPOSE.

01:50PM

12 MR. BRIAN: WE HAVEN'T -- WE OBJECT TO THAT
13 SENTENCE.

14 THE COURT: THAT'S THEIR OBJECTION; ISN'T IT?

15 MR. BRIAN: NO.

01:50PM

16 READ WHAT WE WROTE AT THE END OF
17 PARAGRAPH 2. ALL OF IT SHOULD -- WE DON'T THINK ANY OF
18 THAT IS ADMISSIBLE.

19 THAT WAS AN ALTERNATIVE IF YOU REJECT
20 OUR ARGUMENT. WE THINK NONE OF THAT SHOULD COME IN.

01:50PM

21 THE COURT: I'M NOT ACCEPTING OR REJECTING
22 ANYTHING. EITHER YOU STIPULATE OR YOU DON'T.

23 MR. BRIAN: WE DON'T.

24 THE COURT: AND IF THERE'S A STIPULATION, I
25 READ IT TO THE JURY AND SAY THESE ARE FACTS YOU MUST
26 TAKE AS HAVING BEEN PROVED.

01:50PM

27 MR. BRIAN: WE AGREE, YOUR HONOR -- WE
28 STIPULATED TO FACTS.

1 I WILL NOT BACKTRACK FROM MR. --

2 THE COURT: YOU SAY IT'S LESS PREJUDICIAL.

3 DO YOU HAVE A PROBLEM SAYING, SUBSEQUENT
4 TO THE FORMATION OF DOUBLELINE AND THE CONCLUSION OF
5 THE WAMCO ADVICE -- WELL, WHAT IS THAT RELEVANT FOR?

01:51PM

6 MR. BRIAN: IT IS FACTUALLY ACCURATE.

7 WE SAY IT'S IRRELEVANT.

8 THE AGREEMENT WITH MR. MADISON IS WE
9 AGREE TO FACTUALLY ACCURATELY STIPULATE FACTUALLY. WE
10 RESERVE OUR RELEVANCE IN 352. AND WE'RE ASKING YOUR
11 HONOR TO RULE.

01:51PM

12 WE THINK ALL OF PARAGRAPH 2 SHOULD BE
13 EXCLUDED, AND WE THINK THAT BRACKETED SENTENCE ON
14 PARAGRAPH 3 SHOULD BE EXCLUDED.

15 MR. MADISON: AND I CAN JUST MAKE THE OFFER OF
16 PROOF, YOUR HONOR.

01:51PM

17 THE REASON WE THINK IT'S RELEVANT IS TO
18 SHOW THAT MR. SANCHEZ IS NOT SOME LAWYER -- WE'RE NOT
19 SAYING WHAT FIRM HE'S FROM, OR ANYTHING LIKE THAT.

20 BUT THIS IS NOT JUST SOME LAWYER. HE'S
21 A LAWYER THAT THESE VERY PARTIES BELIEVE AND TRUST TO
22 BE A COMPETENT AND EFFECTIVE LAWYER; THAT'S ALL.

01:51PM

23 THE COURT: WELL, I DON'T THINK THAT WHAT
24 HAPPENS AFTER THE CONCLUSION OF HIS WAMCO ADVICE HAS
25 ANY RELEVANCE; AND SO THE FACT HE'S DONE WORK AFTER
26 THAT FACT, I'M NOT SURE HAS ANYTHING --

01:52PM

27 SO I GUESS I WOULD SAY, IF LEFT TO ME,
28 I'D TAKE THAT OUT, AS WELL. TAKE OUT PARAGRAPH 2, TAKE

1 OUT PARAGRAPH 7 AND TAKE OUT PARAGRAPH 9.

2 AND IF YOU CAN LIVE WITH THE REST OF IT,
3 GIVE ME A STIPULATION. IF YOU CAN'T, YOU BRING
4 MR. SANCHEZ IN HERE.

5 I THINK THERE'S SOME SERIOUS ISSUES
6 REGARDING THE SCOPE, AND THAT IT MAY GO TO A PRIOR
7 MOTION IN LIMINE. I'D HAVE TO GO BACK AND LOOK AT IT,
8 BUT I THOUGHT WE DEALT WITH THAT. AND THEN I ALLOWED
9 THE DEPOSITION.

01:52PM

10 YOU HAVE TAKEN HIS DEPO?

01:52PM

11 MR. MADISON: YEAH.

12 AND REMEMBER, MR. SANCHEZ IS THE ONE
13 COMMUNICATING WITH MR. GUNDLACH'S COUNSEL ON THIS
14 ISSUE. AND THAT'S ALL THAT THIS STIP SUMMARIZES IS
15 THOSE --

01:52PM

16 THE COURT: I WOULD SAY A STIP IS PROBABLY
17 BETTER THAN BRINGING THE WITNESS IN, BECAUSE YOU WILL
18 BE BATTLING AND OBJECTING AND CAUSING --

19 MR. MADISON: THE PROBLEM IS, ON A FRIDAY
20 AFTERNOON, I REALLY NEED TO KNOW WHICH ONE WE'RE DOING.

01:52PM

21 MR. BRIAN: WELL, I HEARD YOUR HONOR SUSTAIN
22 OUR OBJECTION TO PARAGRAPH 2 --

23 THE COURT: I'M NOT SUSTAINING IT. I'M
24 TELLING YOU YOU EITHER STIPULATE, MR. BRIAN, OR YOU
25 DON'T.

01:53PM

26 MR. BRIAN: YOUR HONOR, WITH ALL RESPECT, AND
27 I HAVE A LOT OF RESPECT FOR YOUR HONOR, WE ARE
28 STIPULATING FACTUALLY.

1 THAT DOESN'T MEAN WE ARE STIPULATING TO
2 THE ADMISSIBILITY.

3 THE COURT: BUT I DON'T HAVE A STIPULATION.

4 MR. BRIAN: YES, YOU DO, ON THAT PARAGRAPH.

5 THE COURT: WELL, YOU GIVE ME A WRITTEN
6 STIPULATION OF FACTS, AND THEN YOU WANT TO PRESERVE
7 OBJECTIONS TO THE ADMISSIBILITY.

01:53PM

8 HE WON'T GIVE YOU A STIPULATION UNLESS
9 IT'S A --

10 MR. BRIAN: I THOUGHT THE AGREEMENT WE HAD,
11 AND I APOLOGIZE IF I BACKTRACK, AND THERE IS A
12 PARAGRAPH I'M BACKTRACKING ON, AND I APOLOGIZE, AND
13 I'LL TELL WHAT YOU THAT IS.

01:53PM

14 BUT ON PARAGRAPH -- WE HAVE AN AGREEMENT
15 ON PARAGRAPH 2 THAT'S FACTUALLY ACCURATE.

01:53PM

16 THE AGREEMENT WAS, WE WOULD PRESENT IT
17 TO YOUR HONOR AND YOU WOULD RULE.

18 MR. MADISON: AND I WITHDREW --

19 THE COURT: WELL, HE'S WITHDRAWN IT.

20 MR. MADISON: I MADE MY ARGUMENT.

01:53PM

21 THE COURT: PARAGRAPH 2 IS GONE.

22 MR. BRIAN: I JUST WANT TO MOVE FORWARD.

23 THE COURT: SO THEN THE QUESTION IS THE LAST
24 LINE OF PARAGRAPH 3.

25 AND I'M SAYING, ALL THINGS BEING EQUAL,
26 I'M NOT SURE I SEE THE RELEVANCE. I'D PROBABLY THROW
27 IT OUT.

01:54PM

28 MR. MADISON: THEN I'LL TAKE IT OUT.

1 MR. BRIAN: PARAGRAPH 7 IS OUT.

2 I WILL NOT BACKTRACK ON PARAGRAPH 8. WE
3 AGREED TO THAT.

4 PARAGRAPH 9, I THINK, IS WITHDRAWN.

5 THE ONLY ONE -- WHICH FRANKLY, I THOUGHT
6 WE HAD PREVIOUSLY OBJECTED TO, AND -- IS PARAGRAPH 12.
7 BUT I DON'T THINK PARAGRAPH 12 IS RELEVANT. I'M NOT
8 SURE WHICH WAY IT CUTS. YOU SEE IT'S THE CONCLUSIONS
9 OF THE LAWYERS. I DON'T KNOW WHO THAT HELPS OR NOT.

01:54PM

01:54PM

10 MR. MADISON: THAT WAS IN THEIR CONVERSATION,
11 YOUR HONOR. SO WHEN THEY ARE TALKING ABOUT WHETHER
12 THESE NEGOTIATIONS CAN GO FORWARD, THE FACT THAT
13 TOGETHER THEY CAN -- AND THAT'S NOT PRIVILEGED.

14 THE COURT: WELL, IF THIS --

15 MR. BRIAN: I DON'T CARE.

01:54PM

16 THE COURT: FINALIZE THE STIP AND BRING IT TO
17 ME ON MONDAY.

18 MR. MADISON: YOU HONOR, MAY I JUST -- FINAL
19 POINT ON THIS?

20 THE COURT: WHAT IS IT NOW?

01:54PM

21 MR. MADISON: WE WILL REDO THE STIPULATION
22 WITH THOSE PARAGRAPHS STRICKEN. AND -- BUT I -- IT
23 WILL BE MY UNDERSTANDING THAT WE DO HAVE A STIPULATION
24 AS TO THAT; IN WHICH CASE, I WILL NOT NEED MR. SANCHEZ
25 HERE MONDAY MORNING; WITH THE FINAL PROVISIO THAT THE
26 EXHIBITS THAT WE IDENTIFY IN THE STIPULATION, WE WILL
27 MOVE INTO EVIDENCE.

01:55PM

28 AND I WILL NEED MR. SANCHEZ, IF THERE'S

1 SOME OBJECTION TO THAT, THAT CAN BE CURED WITH HIS
2 TESTIMONY.

3 SO WHAT I WOULD DO AT THIS TIME, IF I
4 COULD, JUST SO WE HAVE A CLEAR RECORD, IS I WOULD MOVE
5 EXHIBITS 157, 162, 168, 164 AND 176 INTO EVIDENCE.

01:55PM

6 AND I WILL JUST REPRESENT --

7 MR. BRIAN: WHAT ARE THEY?

8 MR. MADISON: THOSE ARE ALL COMMUNICATIONS
9 BACK AND FORTH BETWEEN MR. GROSS AND MR. SANCHEZ ABOUT
10 THIS SUBJECT MATTER.

01:56PM

11 AND THEY INCLUDE --

12 THE COURT: YOU HAVE GOT TO HAVE THEM ON THE
13 TABLE BEFORE WE CAN -- I DON'T KNOW YOU GUYS --

14 MR. BRIAN: DO WE HAVE THEM HERE?

15 MR. HELM: THERE'S NO AUTHENTICITY, SO WE
16 DON'T HAVE TO RULE.

01:56PM

17 MR. BRIAN: WE CAN GO DOWN TO THE 12TH FLOOR.
18 WE'LL TAKE A LOOK AT THEM.

19 MR. MADISON: BUT AGAIN, IF THERE'S A PROBLEM,
20 AN OBJECTION, THEN I'LL NEED MR. SANCHEZ HERE, BECAUSE
21 THAT MIGHT CURE IT.

01:56PM

22 MR. BRIAN: THAT'S A FAIR POINT.

23 I'LL LOOK AT THEM RIGHT NOW. WE JUST
24 HADN'T HAD TIME TO FOCUS ON THE DOCUMENTS.

25 THE COURT: WELL, WHAT SHOULD WE DO WHILE WE
26 WAIT FOR YOU TO FOCUS ON THEM?

01:56PM

27 MR. BRIAN: I'M GOING TO DO IT RIGHT NOW.

28 MR. HELM: THERE'S ANOTHER ISSUE, ACTUALLY,

1 YOUR HONOR.

2 YOU WERE GOING TO LOOK AT THE
3 SUBSTANTIAL FACTOR.

4 THE COURT: I HAVEN'T FINISHED THAT YET.

5 MR. HELM: PARDON?

01:56PM

6 THE COURT: I HAVEN'T CONCLUDED THAT YET.

7 MR. MADISON: IF WE'RE TAKING A MOMENT --

8 THE COURT: WE'RE GOING TO ADJOURN IS WHAT I'M
9 GOING TO DO. WE'RE NOT GOING TO GET TO THE VERDICT
10 FORM. WE'RE GOING TO HAVE TO DO IT FIRST THING MONDAY,
11 OR --

01:56PM

12 MR. MADISON: THERE'S STILL SOME ORPHAN
13 EXHIBITS OUT THERE THAT WE NEED TO CLEAN UP.

14 IT'S THE -- REMEMBER ALL THE STUDLEY
15 DECLARATION?

01:57PM

16 THE COURT: I'VE GOT THE STACK OF STUDLEY
17 DOCUMENTS ON MY -- WHATEVER THERE IS, YOU ALL NEED TO
18 ABSOLUTELY FINALIZE THIS WEEKEND.

19 AND IF YOU WANT TO GIVE ME, YOU KNOW, BY
20 8 O'CLOCK SUNDAY NIGHT, AS YOU DID LAST WEEKEND, AN
21 AGENDA OF ITEMS REMAINING OPEN, I'M HAPPY TO LOOK AT
22 IT. AND I'M HAPPY TO DEAL WITH IT ON MONDAY.

01:57PM

23 BUT I'M NOT ALLOWING, EVERY TIME I GET
24 OFF THE BENCH, TO GO FIND SOMETHING ELSE THAT'S SLIPPED
25 IN THE BACK DOOR THAT'S A NEW ISSUE. AND SO I NEED A
26 LIST. AND WE NEED TO KNOW EXACTLY WHAT'S LEFT.

01:57PM

27 I KNOW I'VE GOT THE VERDICT FORM LEFT,
28 AND WE'RE GOING TO FINALIZE THAT. I DON'T THINK THAT

1 WILL BE THAT DIFFICULT, QUITE FRANKLY. IT'S A MATTER
2 OF SEMANTICS, MORE THAN ANYTHING ELSE.

3 AND WE'VE GOT THE SUBSTANTIAL FACTOR
4 ISSUE IS STILL, WHETHER IT'S A BUT-FOR OR SUBSTANTIAL
5 FACTOR IN THE VINER VS. SWEET ARGUMENT.

01:58PM

6 MR. HELM: AND YOST V LONGO I THINK WE ALSO
7 HAVE.

8 THE COURT: YEAH, I'VE GOT THAT ONE.

9 MR. MADISON: AND THE STUDLEY DOCUMENTS.

10 THE COURT: WE'RE GOING TO HAVE TWO OR THREE
11 SHOPPING CARTS WORTH OF EXHIBITS TO TAKE INTO THE JURY
12 ROOM, WHICH I BELIEVE IS ABSOLUTE OVERKILL, QUITE
13 FRANKLY.

01:58PM

14 AND I DON'T KNOW WHAT ELSE THERE IS.

15 MR. MADISON: I'M SURE BY THE TIME WE BOTH
16 REST ON MONDAY, THERE WILL BE SOME MORE EXHIBITS.

01:58PM

17 AND PERHAPS WE COULD ADDRESS THOSE
18 MONDAY, THEN, THE EXHIBITS.

19 MR. HELM: BUT WE WILL ACCEPT YOUR HONOR'S
20 INVITATION TO PROVIDE AN ORDERLY AGENDA AT THE END OF
21 THE WEEKEND --

01:58PM

22 THE COURT: AND I DON'T WANT ANY ORPHANED
23 EXHIBITS OR OTHER THINGS COMING UP AT 2 O'CLOCK ON
24 MONDAY. IF IT ISN'T DISCLOSED TO BOTH SIDES, ONE TO
25 THE OTHER, THROUGH THE WEEKEND AND ON THE LIST THAT I
26 GET SUNDAY NIGHT, I JUST DON'T WANT -- THE SURPRISES
27 CAUSE EVERYBODY A PROBLEM; CAUSE A LOT OF CONSTERNATION
28 FOR YOU, MORE FOR YOU THAN FOR ME. BUT WE'VE GOT TO

01:58PM

1 FINISH THIS UP.

2 EVERYBODY HAS GOT TO KNOW WHERE THEY
3 STAND BY THE END OF THE DAY ON MONDAY, SO YOU CAN HAVE
4 CLOSING ARGUMENTS ON TUESDAY.

5 AND SO, YOU KNOW, I'LL CHECK MY BOX ON
6 THE COMPUTER SUNDAY NIGHT AT 8:00, AND YOU TELL ME WHAT
7 I'VE GOT TO DO, AND I'LL GET IT DONE.

01:59PM

8 MR. HELM: THANK YOU, YOUR HONOR.

9 MR. MADISON: JUST ONE OTHER THING I WANTED TO
10 MENTION IS IN OUR REBUTTAL CASE ON MONDAY.

01:59PM

11 THE COURT: YEAH.

12 MR. MADISON: WHICH I THINK WE'RE TAILORING
13 DOWN, WE'RE NARROWING IT DOWN; SO I'M OPTIMISTIC THAT
14 WE WON'T NEED THE WHOLE DAY MONDAY.

15 THE COURT: WELL, WE ONLY HAVE TILL 2:00; YOU
16 KNOW THAT?

01:59PM

17 MR. MADISON: THAT'S THE WHOLE DAY.

18 BUT WE MAY WISH TO PLAY SOME EXCERPTS
19 FROM MR. GUNDLACH'S DEPOSITION IN REBUTTAL TO HIS TRIAL
20 TESTIMONY OF THIS WEEK.

01:59PM

21 AND I HAVE -- THERE'S A LOT OF THAT
22 TESTIMONY. AND IF THERE IS -- IF THERE ARE STATEMENTS
23 BY THE DEFENDANT THAT ARE CONTRARY OR REBUT HIS
24 TESTIMONY THIS WEEK, WE BELIEVE WE'RE ENTITLED, BECAUSE
25 THEY ARE PARTY ADMISSIONS, TO PLAY THOSE.

02:00PM

26 I THINK THEY WOULD BE VERY NARROW. AND
27 I WOULD PROPOSE GETTING THOSE OVER TO MUNGER TOMORROW
28 MORNING.

1 AND THEN IF THERE ARE COMPLETION ISSUES
2 OR OBJECTIONS --

3 THE COURT: HERE'S WHAT I'D SAY. YOU BETTER
4 GET THEM TO THEM BY NOON TOMORROW. AND IF THERE ARE
5 ANY OBJECTIONS TO THE CLIPS, YOU NEED TO HAVE THEM
6 FINALIZED BY THE END OF THE DAY TOMORROW.

02:00PM

7 I'LL GIVE YOU ALL DAY, ALL NIGHT; BUT
8 THEN I NEED TO HAVE THOSE POSTED ON LEXIS. AND YOU
9 JUST NEED TO HAVE SOMEBODY SCAN WHAT YOU HAVE BEEN
10 GIVING ME IN THE NOTEBOOKS BY NOON ON SUNDAY, SO THAT I
11 CAN GET THROUGH THEM.

02:00PM

12 NOW, IF THEY ARE VERY BRIEF, I HAVE SOME
13 FLEXIBILITY.

14 MR. MADISON: YES, YOUR HONOR.

15 THE COURT: BUT IF THEY ARE SANDBAGGING
16 VOLUMINOUS VIDEOS I DON'T WANT TO THIS COME TO ME IN
17 THE MIDDLE OF THE NIGHT ON SUNDAY.

02:01PM

18 MR. MADISON: YES, YOUR HONOR.

19 MR. BRIAN: YOUR HONOR, WE'RE TALKING ABOUT
20 NOW REBUTTAL?

02:01PM

21 THE COURT: YEAH. AND THEY'RE ENTITLED TO IT.

22 MR. BRIAN: WELL, WELL --

23 THE COURT: WITHIN THE SCOPE AND COURSE OF THE
24 DIRECT CASE.

25 MR. BRIAN: THEY ARE NOW WELL OVER THEIR TIME
26 LIMITS.

02:01PM

27 THE COURT: I UNDERSTAND.

28 MR. BRIAN: WELL OVER.

1 AND IF -- IT'S ONE THING IF THEY HAVE A
2 SPECIFIC QUESTION AND ANSWER THAT DIRECTLY IMPEACHES, I
3 WOULD WONDER WHY THEY DIDN'T DO IT DURING CROSS.

4 BUT IF THEY HAVE SOMETHING LIKE THAT,
5 MAYBE -- BUT IF WHAT THEY INTEND TO PLAY ARE SEGMENTS
6 OF THE DEPOSITION, AND ARGUE AS HE JUST ARGUED, THAT
7 THESE ARE ADMISSIONS AGAINST A PARTY OPPONENT, THAT'S A
8 DIFFERENT PURPOSE.

9 THE COURT: I'LL BE VERY CIRCUMSPECT.

10 MR. BRIAN: THANK YOU, YOUR HONOR.

11 THE COURT: ANYTHING ELSE?

12 MR. MADISON: YES, YOUR HONOR. WERE WE
13 WAITING RIGHT NOW?

14 THE COURT: NO, WE'RE NOT WAITING FOR ANY
15 MORE.

16 MS. STEIN: YOUR HONOR, I HAVE ONE QUESTION,
17 SO I CAN BE PRESENT --

18 THE COURT: OKAY, MS. STEIN.

19 MS. STEIN: WHEN DO YOU INTEND TO TAKE UP THE
20 SUBSTANTIAL FACTOR ISSUE?

21 THE COURT: WHY DON'T WE TRY TO DO THAT, SAY
22 AT 7:30 OR 8:00 ON -- WE CAN GO TO THE JURY ROOM AND
23 TALK ABOUT THE VERDICT FORM, INFORMALLY, OFF THE
24 RECORD.

25 AND THE SUBSTANTIAL FACTOR, I'LL COMMIT
26 TO GETTING THROUGH IT THIS WEEKEND.

27 AND CAN YOU CHECK WITH MR. EMANUEL, TO
28 SEE IF HE WOULD BE AVAILABLE? I ASSUME HE'S ON THE

1 VERDICT FORM ISSUE.

2 MR. MADISON: YES, YOUR HONOR.

3 THE COURT: OR YOU --

4 MR. MADISON: WHO IS --

5 THE COURT: ANYBODY WHO WANTS TO GET UP EARLY,
6 PLAN ON 7:30.

02:02PM

7 YEAH. JUST COME IN THE BACK DOOR.

8 I JUST DON'T WANT TOO MUCH OF THIS
9 HANGING OVER OUR HEAD.

10 THOSE TWO THINGS ARE MY FAULT, FOR NOT
11 HAVING THEM DONE TODAY, BUT YOU ALL HAD LOTS OF OTHER
12 ISSUES.

02:02PM

13 MS. STEIN: THANK YOU, YOUR HONOR.

14 THE COURT: ALL RIGHT. THANKS.

15

16 (AT 2:03 P.M. AN ADJOURNMENT
17 WAS TAKEN UNTIL MONDAY,
18 SEPTEMBER 12, 2011 AT 8:30 A.M.)

19

20 (THE NEXT PAGE NUMBER IS 7901.)

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