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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

STARR INTERNATIONAL COMPANY,)
INC., Individually and on)
Behalf of All Others)
Similarly Situated,)
Plaintiffs,) Case No. 11-779C
vs.)
UNITED STATES OF AMERICA,)
Defendant.)
-----)

Courtroom 4
Howard T. Markey National Courts Building
717 Madison Place, N.W.
Washington, D.C.
Tuesday, October 7, 2014
9:30 a.m.
Trial Volume 7

BEFORE: THE HONORABLE THOMAS C. WHEELER

Susanne Bergling, RMR-CRR-CLR, Reporter

1 APPEARANCES:

2

3 ON BEHALF OF THE PLAINTIFF:

4 DAVID BOIES, II, ESQ.

5 Boies, Schiller & Flexner, LLP

6 333 Main Street

7 Armonk, New York 10504

8 (914) 749-8201

9 dboies@bsfllp.com

10

11 and

12

13 AMY J. MAUSER, ESQ.

14 ABBY L. DENNIS, ESQ.

15 Boies, Schiller & Flexner, LLP

16 5301 Wisconsin Avenue, N.W.

17 Washington, D.C. 20015

18 (202) 237-2727

19 amauser@bsfllp.com

20

21 and

22

23

24

25

Starr International Company, Inc. v. USA

1 ROBERT J. DWYER, ESQ.
2 ALANNA C. RUTHERFORD, ESQ.
3 CRAIG WENNER, ESQ.
4 Boies, Schiller & Flexner, LLP
5 575 Lexington Avenue, 7th Floor
6 New York, New York 10022
7 (212) 446-2300
8 rdwyer@bsfllp.com
9 arutherford@bsfllp.com

10

11 and

12

13 JOHN L. GARDINER, ESQ.
14 Skadden, Arps, Slate, Meagher & Flom LLP
15 4 Times Square
16 New York, New York 10036
17 (212) 735-2442
18 john.gardiner@skadden.com

19

20

21

22

23

24

25

1 ON BEHALF OF THE DEFENDANT:
2 BRIAN A. MIZOGUCHI, ESQ.
3 KENNETH DINTZER, ESQ.
4 MATTHEW SCARLATO, ESQ.
5 SCOTT AUSTIN, ESQ.
6 JOHN TODOR, ESQ.
7 CLAUDIA BURKE, ESQ.
8 JOSHUA GARDNER, ESQ.
9 U.S. Department of Justice - Civil Division
10 Post Office Box 480
11 Ben Franklin Station
12 Washington, D.C. 20044
13 (202) 305-3319
14 brian.mizoguchi@usdoj.gov
15
16
17
18
19
20
21
22
23
24
25

1	I N D E X				
2					
3	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS VOIR
4	GEITHNER	1386			
5					
6					
7	EXHIBITS	FOR ID		IN EVID	
8	Plaintiff's				
9	Number7			1463	
10	Number17			1410	
11	Number26			1412	
12	Number29			1415	
13	Number34			1414	
14	Number37			1417	
15	Number38			1417	
16	Number77			1467	
17	Number85			1437	
18	Number126			1535	
19	Number129			1503	
20	Number131			1484	
21	Number161			1499	
22	Number198			1552	
23	Number207			1522	
24	Number379			1564	
25	Number409			1586	

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	EXHIBITS	FOR ID	IN EVID
1			
2	Plaintiff's		
3	Number563		1422
4	Number564		1423
5	Number583		1443
6	Number651		1463
7	Number663		1445
8	Number673		1533
9	Number706		1431
10	Number708		1431
11	Number709		1431
12	Number715		1418
13	Number2717		1407
14	Number2736		1485
15			
16	Defendant's		
17	Number286		1464
18	Number416		1488
19			
20	Joint		
21	Number352-378		1385
22			
23			
24	*All exhibits premarked for identification prior to trial.		
25	*See full attached list of admitted exhibits following transcript.		

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P R O C E E D I N G S

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(Proceeding called to order, 9:30 a.m.)

THE COURT: Please be seated. Good morning.

We are on the record this morning for day seven of the trial of Starr International Company vs. The United States.

Before we begin with more testimony today, I did receive the joint status report you all filed yesterday designating some additional exhibits for admission as evidence as joint exhibits and thereby obviating the need to call a few witnesses. So, this is all encouraging news.

MR. BOIES: Yes, it is, Your Honor.

THE COURT: And based on your representations, I will admit Joint Exhibits 352 through 378.

MR. BOIES: Thank you, Your Honor.

(Joint Exhibit Numbers 352 through 378 were admitted into evidence.)

THE COURT: And I will look for you all to submit hard copies to the Court as exhibits.

MR. BOIES: We will do that, Your Honor.

THE COURT: All right. I think we're ready for our next witness.

MR. BOIES: We are, and we call Mr. Timothy

1 Geithner, Your Honor.

2 THE COURT: All right. Please come forward,
3 sir. Please raise your right hand.

4 Whereupon--

5 TIMOTHY GEITHNER

6 a witness, called for examination, having been first
7 duly sworn, was examined and testified as follows:

8 THE COURT: Please be seated.

9 DIRECT EXAMINATION

10 BY MR. BOIES:

11 Q. Good morning, Mr. Geithner.

12 A. Good morning.

13 Q. You have up there on the podium two binders.

14 One is your full deposition transcript, and the other is
15 a binder that contains excerpts of documents that we may
16 use during your testimony.

17 We have put in only the excerpts that we think
18 it is most likely that we are going to use; however, if
19 at any time you want to see the entire document for
20 context, let me know, and we'll get it for you.

21 And we have also given you your book, which I am
22 going to be referring to, so that you have the entire
23 book for context if you want to take a look at it.

24 Let me begin by asking you what you have done to
25 prepare for this testimony. I take it you have reviewed

1 some documents?

2 A. Yes.

3 Q. And you have met with counsel?

4 A. I have.

5 Q. And how many times have you met with counsel?

6 A. Oh, on many occasions in preparation for your
7 deposition -- my deposition with you and also for
8 this -- for the trial itself.

9 Q. How many times have you met with counsel just
10 for purposes of preparing for this trial?

11 A. I would have to look at my calendar, but I would
12 estimate five to seven times.

13 Q. Okay. When was the last such time?

14 A. Last evening.

15 Q. I'm sorry?

16 A. Last evening.

17 Q. And with whom did you meet last evening?

18 A. Last evening I met with the three members or two
19 members of the Justice team, my lawyers from Debevoise,
20 and a representative of the Treasury Department. I
21 think that was the group.

22 Q. And at that time --

23 A. On the conference call, though, there may have
24 been other people. On the speakerphone, there may have
25 been other people.

1 Q. Do I understand from your last answer that you
2 were meeting in person with certain people and then
3 there were other people participating by conference
4 call?

5 A. Yes.

6 Q. And after the meeting last evening, did any of
7 the people present provide you with any documents?

8 A. No.

9 Q. When was the last time that you were provided
10 with any documents in preparation for this testimony?

11 A. I believe on Sunday, three days ago -- two days
12 ago.

13 Q. And was Sunday, two or three days ago, the most
14 immediate meeting that you had prior to last night?

15 A. Yes.

16 Q. And where did that meeting take place?

17 A. In New York.

18 Q. And who was present at that meeting?

19 A. A similar group.

20 Q. And you were provided with documents on Sunday?

21 A. Yes.

22 Q. Were any of those documents that you were
23 provided with documents from a period after 2009?

24 A. I do not believe so, no.

25 Q. So, all of the documents that you looked at were

1 documents that had been prepared in the regular course
2 of business in 2009 or earlier. Is that correct?

3 A. That's my belief. It's possible, in the Sunday
4 session, that they may have referred to transcripts from
5 my work in preparing for my book, which would have been
6 after that period.

7 Q. At any time in preparation for your testimony,
8 were you given any materials to refresh your
9 recollection?

10 A. Yes.

11 Q. What materials were you given to refresh your
12 recollection?

13 A. I was shown, for example, emails sent to me when
14 I was president of the New York Fed in the period of
15 '08, as an example.

16 Q. Let me turn to the time that you were president
17 of the New York Fed. You were president of the New York
18 Fed from when to when?

19 A. From October 2003 to January of 2009.

20 Q. And there came a time during the time that you
21 were president of the New York Fed when you began to
22 anticipate that there would be a financial crisis,
23 correct?

24 A. Yes, that there might be a financial crisis, was
25 likely to be, yes.

1 Q. Likely to be a financial crisis.

2 When did you first conclude that there was
3 likely to be a financial crisis?

4 A. I thought the risks of a financial crisis were
5 very significant in the years before 2007, but by the
6 summer of -- by the summer of 2007, we were in it, in
7 the early stages of it.

8 Q. And in connection with the financial crisis that
9 you say began in the summer of 2007, when did you first
10 contemplate making loans pursuant to Section 13(3) of
11 the Federal Reserve Act?

12 A. We didn't -- we didn't decide to do it until
13 March of 2008, but we considered -- we considered
14 finding ways to lend outside the banking system, debated
15 it beginning probably towards the end of 2007.

16 Q. And who participated, towards the end of 2007,
17 in the consideration of, as you put it, finding ways to
18 lend outside the banking system?

19 A. Well, those discussions would have been with my
20 colleagues at the New York Fed, and we would have done
21 that in close consultation with the chairman of the
22 Board of Governors, Ben Bernanke, and the vice chairman,
23 Don Kohn, and their colleagues in Washington, and on
24 occasion with Secretary Paulson and his colleagues.

25 Q. Now, when you refer to your colleagues at the

1 New York Fed, could you identify those people, please.

2 A. Well, that would be the range of people who
3 reported to me directly who were in charge of, for
4 example, the markets function of the New York Fed, the
5 supervisory function of the New York Fed, the payments
6 function, the research function, principally that mix of
7 colleagues.

8 Q. What I'm asking is, what are the names of the
9 people --

10 A. I'm sorry.

11 Q. -- that you participated with in considering
12 lending outside of the banking system?

13 A. Well, it's a long list.

14 Q. Give me the five most important, please.

15 A. Okay. I think the five most important would be
16 Bill Dudley, head of the markets group; Bill Rutledge,
17 head of bank supervision; Jamie McAndrews and Simon
18 Potter, which were senior members of the Research
19 Department; Tom Baxter, who was the general counsel of
20 the New York Fed; Chris McCurdy, who was in charge of
21 the payments function; and the mix of their
22 direct-reports.

23 Q. Okay. Now, when you talk about lending outside
24 of the banking system, you are talking about lending
25 pursuant to Section 13(3) of the Federal Reserve Act,

1 correct?

2 A. Yes.

3 Q. Now, we've previously put up on a handwritten
4 chart -- the handwriting which I apologize for -- that
5 has been marked as Plaintiffs' Trial Exhibit 5006-A a
6 list of Federal Reserve emergency credit facilities
7 pursuant to 13(3), and I'd like to go down those with
8 you and first have you confirm that these are, in fact,
9 Federal Reserve 13(3) credit facilities, and second, to
10 tell me whether there are any that are not on this list.

11 A. They are, in fact, Federal Reserve 13(3)
12 facilities, I believe each one of them, and I don't
13 believe there are any not on this list.

14 Q. Okay. Now, with respect to each of these credit
15 facilities, there would have been an interest rate,
16 correct?

17 A. That's correct.

18 Q. And what was the highest interest rate that was
19 charged on any of these 13(3) facilities, other than the
20 AIG facility?

21 A. I don't think I can do that by memory. I would
22 have to look at the documents.

23 Q. Could you tell me approximately?

24 A. Each of them would have had a modest spread to
25 the Fed fund rate, for example, but if I'm not mistaken,

1 the precise rate varied across those facilities, and it
2 depended on the circumstance.

3 Q. What was the Fed fund rate in the fourth quarter
4 of 2008 and continuing into 2009?

5 A. Well, by two thousand -- in 2008 it was
6 essentially zero, almost zero if not zero at that time.

7 Q. And when you say a modest spread to the Fed fund
8 rate, you mean that the interest rate for these
9 facilities would be modestly above the Fed fund rate.
10 Is that correct?

11 A. Maybe I should clarify. I think in some of
12 those facilities, the reference rate would not have been
13 the Fed fund rate, it would have been LIBOR or some
14 other interest rate. So, I think I misspoke. I think
15 it's more correct to say that they each would have had
16 a -- each would have had a level of spread above a
17 reference rate, and I guess it's possible that most of
18 those reference rates -- I think I misspoke -- was to
19 LIBOR. But I would have to go back and look at the
20 documents.

21 Q. What was LIBOR in the fourth quarter of 2008 and
22 continuing into 2009?

23 A. I'd have to go back and look.

24 Q. Approximately?

25 A. Several percentage points, I would guess. It

1 was moving down probably over that period of time, but I
2 couldn't recall it precisely.

3 Q. Recognizing that the ultimate interest rate for
4 these would be some amount above some reference rate,
5 can you tell me approximately what the total interest
6 rate would have been for these facilities, other than
7 AIG? That is, what is the highest total interest rate
8 that would have been charged?

9 A. Well, since the reference rates were coming
10 down, so moving quite a bit over that period of time,
11 it's a little hard to tell. I think my guess is, if I
12 can answer it a slightly different way, is that the
13 maximum spread relative to the reference rate -- but I'm
14 really -- I'm really doing this with imperfect memory --
15 would have been in the neighborhood of 300 basis points,
16 three percentage points. But, again, I would have to go
17 back and look.

18 Q. Let me just try to get a general sense. Do you
19 know of any credit facility, other than the AIG credit
20 facility, where the borrower for a 13(3) loan was
21 charged as much as 4 percent interest?

22 A. Four percent above the reference rate or 4
23 percent --

24 Q. No, 4 percent total.

25 A. That's certainly possible, I mean, but it

1 depends. I just would have to go back and look.

2 Q. As you sit here now, are you aware of any credit
3 facility, other than AIG, where the actual interest rate
4 charged was above or equal to 4 percent?

5 MR. DINTZER: Objection, Your Honor. The
6 witness has said that he can't recall. We would
7 encourage counsel to put a document in front of him if
8 he wants to refresh his memory.

9 THE COURT: Overruled. I'll take his answer. I
10 think we're slowly getting more and more specific
11 information.

12 MR. DINTZER: Thank you, Your Honor.

13 THE WITNESS: I guess my -- I guess my
14 challenge, Counselor, is that if LIBOR was in the range
15 of 3 to 4 percent in parts of '08, last quarter, last --
16 the fall of '08, then it's possible that the spread
17 above that in these facilities was enough to have put
18 the rate above 4 percent. I just -- I would have to go
19 back and look.

20 BY MR. BOIES:

21 Q. I take it your answer is, as you sit here now,
22 you just can't answer that question. Is that correct?

23 A. That would be a simpler way to say it.

24 Q. Okay. Now, with respect to all of these 13(3)
25 credit facilities, other than AIG, none of them involved

1 any compensation or consideration other than an interest
2 rate, correct?

3 A. I don't know if that's the case. I would have
4 to go back and look precisely whether there were other
5 fees associated with the interest rate on the loan. I
6 mean --

7 Q. Are you aware, at least, that none of these
8 Federal Reserve emergency credit facilities pursuant to
9 13(3) that are listed on PTX 5006-A, other than the AIG
10 facility, involved the borrower giving up equity?

11 A. Not in any of those facilities, except that you
12 put on the list there Citigroup and Bank of America, and
13 in the exceptional assistance that was provided to those
14 two institutions after TARP was passed, that
15 assistance -- that assistance included the injection of
16 equity into those institutions. The context was
17 different than AIG. But -- but not in the other
18 facilities you listed there.

19 Q. With respect to Citigroup and Bank of America,
20 there was TARP assistance. There was also a 13(3)
21 credit facility that was approved, correct?

22 A. That's correct.

23 Q. Did the 13(3) credit facility that was approved
24 involve either Citigroup or Bank of America providing
25 any equity?

1 A. Not -- not to the Fed as part of the 13(3)
2 facility, but in the context --

3 Q. That's what I'm asking.

4 A. -- of the broader -- yes.

5 Q. In other words, under TARP, people sometimes
6 provided certain kinds of equity, correct?

7 A. That's correct.

8 Q. And was that equity nonvoting stock?

9 A. That is my recollection of the TARP equity, but
10 I'd have to go back and look at the precise terms.

11 Q. In September of 2008, the Federal Reserve
12 obviously made a 13(3) credit facility available to AIG,
13 correct?

14 A. Yes.

15 Q. And at the same time -- and I've picked just one
16 company out for an example -- the Federal Reserve was
17 loaning money to Morgan Stanley, correct?

18 A. Correct, although it was a very different type
19 of facility.

20 Q. Yes. It was, among others, the primary dealer
21 credit facility, correct?

22 A. That's correct.

23 Q. And that was a credit facility that did not
24 require any equity as compensation, correct?

25 A. That's correct.

1 Q. And that was a credit facility, the interest
2 rate of which was the primary rate, correct?

3 A. That's my recollection, but I'd have to go back
4 and look at the precise terms.

5 Q. Now, I want to focus on the amount of lending at
6 various times, and in that connection, let me ask you to
7 look at a demonstrative that has been marked for
8 identification as Plaintiffs' Trial Exhibit 5008. What
9 I'd like to do is get your best testimony as to what the
10 outstanding 13(3) balances were on all of the 13(3)
11 loans made to AIG and Morgan Stanley at particular
12 points in time.

13 I'd like to begin with September 15th, 2008, and
14 am I correct at that point there had been no credit
15 extended to AIG?

16 A. That's correct, I believe. Actually, I'm
17 certain that's correct.

18 Q. And how much credit had been extended to Morgan
19 Stanley?

20 A. I don't recall precisely, but they had access to
21 the primary credit facility at that time, as they had
22 for five months.

23 Q. And is it fair to say that, although you cannot
24 remember the exact amount, Morgan Stanley would have
25 drawn billions of dollars from the PDCF by September

1 15th, 2008?

2 A. I wouldn't know the magnitude without going back
3 and looking at the facts. It could have been very
4 substantial, but I don't know for sure at that point.

5 Q. Now, on September 16th, 2008, credit was
6 extended to AIG, correct?

7 A. That's correct, yes.

8 Q. And do you recall that that was approximately
9 \$14 billion?

10 A. Approximately, yes.

11 Q. And then additional credit was extended to AIG
12 over the next few days, correct?

13 A. That's my recollection, although I don't recall
14 the magnitude.

15 Q. Do you recall that at the end of September 22nd,
16 that was about \$37 billion?

17 A. That's possible, but I'd have to go back and
18 look at the -- at the facts.

19 Q. And on September 29th, 2008, at the end of the
20 month, how much had AIG drawn?

21 A. I don't recall.

22 Q. Does \$55 billion sound about right?

23 A. I don't -- I don't know without checking.

24 Q. Okay. Now --

25 MR. DINTZER: Objection, Your Honor. If counsel

1 is going to write the numbers down that are going to
2 represent or have any connection with the witness'
3 testimony, the witness is saying he doesn't know, and
4 counsel's writing 55 billion. So, I just want to make
5 sure that there's a connection, that if this is going to
6 be a demonstrative, that it's not demonstrating anything
7 that the witness has said.

8 THE COURT: Mr. Boies?

9 MR. BOIES: It is demonstrating what I am
10 suggesting to the witness are the right numbers, and he
11 is saying he doesn't know. That's what I'm
12 demonstrating.

13 THE COURT: All right.

14 THE WITNESS: Could I say it a little
15 differently?

16 THE COURT: I think it's all right.

17 MR. DINTZER: Thank you, Your Honor.

18 THE COURT: As long as we understand it.

19 THE WITNESS: I think it's plausible that that's
20 the right magnitude, but I couldn't speak to the precise
21 magnitude.

22 BY MR. BOIES:

23 Q. That's really what I was asking. Even though
24 you don't carry those numbers around in your head and
25 nobody expects you to, are these approximately the

1 numbers that you recall?

2 A. I think just to say it the same way, it's
3 perfectly plausible that that's the right order of
4 magnitude, but I don't carry those numbers around in my
5 head.

6 Q. Now, let me turn to Morgan Stanley, and I assume
7 that you don't remember what the Morgan Stanley numbers
8 were either?

9 A. I don't.

10 Q. And that's perfectly understandable. However,
11 do you at least remember that for each one of those
12 days, Morgan Stanley had borrowed more from the Fed,
13 pursuant to 13(3), than AIG had?

14 A. I don't know if that's the case, but I wouldn't
15 find it surprising.

16 Q. Okay. And all of Morgan Stanley's borrowings in
17 September of 2008 pursuant to 13(3) were at the primary
18 credit rate or a rate within 1 percent of the primary
19 credit rate, correct?

20 A. They were at the rate that was charged for
21 accessing the primary dealer credit facility, whatever
22 that rate was.

23 Q. I think we identified that rate as the -- the
24 primary rate, correct?

25 A. Well, I believe that's the term we used, but,

1 again, I can't be sure what the -- what the term was or
2 what its actual amount was at that time.

3 Q. Now, in addition to borrowing money pursuant to
4 the PDCF, there's also another 13(3) credit facility,
5 the TSLF. Is that correct?

6 A. That's correct.

7 Q. And Morgan Stanley borrowed money from the Fed
8 pursuant to the TSLF as well, correct?

9 A. That's correct, although the nature of that
10 facility was a very different type of facility. So, I'm
11 not quite sure it's accurate to say, but it's just to
12 try to be precise about whether they borrowed money from
13 that facility. They were able to access that facility,
14 but that's a very different type of facility.

15 Q. Both facilities provided liquidity to Morgan
16 Stanley. Fair?

17 A. That's correct.

18 Q. And do you have any estimate as to how much
19 liquidity the Federal Reserve had provided to Morgan
20 Stanley pursuant to 13(3) in September 2008?

21 A. I don't remember, but it could have been very
22 substantial, because -- the securities that were
23 eligible for borrowing under those two facilities,
24 again, could have been very substantial, again, but they
25 were very different types of facilities, very different

1 types of assistance.

2 Q. Now, when you say the securities were eligible
3 for borrowing under those two facilities could have been
4 very substantial, the PDCF facility made a change to
5 what collateral it would accept -- what collateral the
6 Fed would accept for that facility on September 14th,
7 2008, correct?

8 A. If that's Sunday, yeah, that's correct.

9 Q. And the purpose was to permit people who had
10 access to the primary dealer credit facility to use
11 collateral that had not previously been acceptable to
12 the Fed, correct?

13 A. Yes.

14 Q. And that included noninvestment grade debt and
15 equity securities, correct?

16 A. It would include noninvestment grade debt and
17 included equity, yes. Public -- publicly issued shares
18 of equity, I believe.

19 Q. During the period of September 15th through
20 September 22nd, did the Federal Reserve also make
21 liquidity available pursuant to 13(3) to the Lehman
22 Brothers broker-dealer?

23 A. Yes.

24 Q. And what collateral did the Fed accept from the
25 Lehman Brothers broker-dealer the week of September 15th

1 for the 13(3) liquidity it was providing?

2 A. I don't know precisely what type of collateral,
3 but my recollection is it would have been collateral
4 that was eligible for the PDCF.

5 Q. The reason that I ask is that you referred a
6 moment ago to publicly issued shares of equity. Do you
7 recall that?

8 A. Yes. That was my recollection of the expansion
9 of eligible collateral that we decided to put in place
10 on the 14th.

11 Q. During the week of September 15th, 2008, was the
12 Lehman Brothers broker-dealer permitted to access
13 Federal Reserve liquidity pursuant to 13(3) using
14 illiquid collateral?

15 A. I don't recall precisely the range of collateral
16 that we lent against, but many forms of collateral,
17 marketable securities, were illiquid at that time.

18 Q. Without necessarily recalling precisely the
19 range of collateral that you lent against, is it the
20 case that some of the collateral that you lent against
21 to the Lehman Brothers broker-dealer this week of
22 September 15th included real estate assets?

23 A. That's possible, but I don't recall precisely.

24 Q. Let me turn to AIG. There came a time when you
25 concluded that in the absence of federal assistance from

1 the Federal Reserve, AIG would file for bankruptcy,
2 correct?

3 A. Yes.

4 Q. And for how long prior to that time had you been
5 following what was happening with respect to AIG?

6 A. Well, I looked every morning at a list of
7 indicators, typically looked several times during the
8 day at a list of indicators about the -- that tried to
9 capture the perceived default risk in a range of
10 financial institutions, and those measures had been
11 eroding for many, many months. I don't know if that
12 helps answer your question, but if you -- if you look at
13 a measure of that perceived default, it was rising, and
14 as it was rising, we were paying more attention to those
15 risks.

16 Q. This list that you looked at that included a
17 range of financial institutions, was one of those
18 institutions AIG?

19 A. Well, when the -- when perceived -- when market
20 perceptions about default risk went up substantially on
21 AIG, then I would naturally have -- that would have been
22 brought to my attention. I would have paid attention to
23 that. I don't know when we actually -- we placed them
24 on that dashboard I looked at, precisely.

25 Q. Now, can you explain for the record what you

1 mean when you refer to a "dashboard" that you looked at?

2 A. I got my -- my colleagues at the Fed prepared
3 for me and my other officials at the Fed a note in the
4 morning that included a long list of different types of
5 indicators about stress in markets and institutions.
6 They typically updated that over the course of the day.
7 They did at the end of the day, too.

8 But I also had a Bloomberg screen and typically
9 would monitor what things were -- what was happening
10 during the day on that Bloomberg screen.

11 Q. Now, one of the things I'm trying to get is when
12 you began to focus on AIG, and you've told me that every
13 morning you got a list that had sort of indicators and
14 that tried to capture the perceived default risk in a
15 range of financial institutions. Do you recall that?

16 A. Yes.

17 Q. And what I'm asking is when was AIG included
18 among the national institutions that you were looking at
19 the perceived default risk for?

20 A. Actually, the phrase I used was financial
21 institutions, not national institutions, and I can't
22 precisely remember when they would have been added to
23 that list.

24 Q. Approximately when?

25 A. I would be guessing, but -- but I guess I would

1 guess sometime in the -- sometime in '08, but really I'm
2 not sure.

3 Q. Let me ask you to look at some documents in this
4 connection, and in that connection, let me ask you to
5 look first at a document that's been marked as
6 Plaintiffs' Trial Exhibit 2717, which is a May 21st,
7 2008, email to you.

8 A. In the big binder or the small binder?

9 Q. This is in the big binder. The small binder is
10 your deposition.

11 A. What are the letters that precede the number?

12 Q. PTX. It stands for Plaintiffs' Trial Exhibit.

13 A. PTX -- I'm sorry, what was the number again?

14 Q. PTX 2717, which I would offer.

15 MR. DINTZER: No objection.

16 THE COURT: Plaintiffs' Trial Exhibit 2717 is
17 admitted.

18 (Plaintiffs' Exhibit Number 2717 was admitted
19 into evidence.)

20 BY MR. BOIES:

21 Q. And this is an email to you from Alex Cohen. Is
22 that correct?

23 A. Yes.

24 Q. And he is reporting to you on the fact that the
25 AIG CDS is wider. Do you see that?

1 A. Yes.

2 Q. Why was that of significance?

3 A. A CDS is one measure that captures the market's
4 perception of default risk in a financial institution,
5 because it measures the price of buying insurance
6 against the risk of default. So, the both absolute
7 level of that spread or that CDS and the magnitude of
8 the change would be an indication of the market's
9 perception of default risk.

10 Q. Now, Mr. Cohen writes to you, "Just to follow up
11 on AIG..." What was he following up on?

12 A. I don't recall.

13 Q. Now, let me also next ask you to look at
14 Plaintiffs' Trial Exhibit 641, which I would offer. Oh,
15 it's already admitted, I'm told.

16 Let me direct your attention --

17 MR. DINTZER: We have no objection.

18 BY MR. BOIES:

19 Q. Let me ask -- direct your attention to page 19.
20 This is a timeline of events and contacts. Do you see
21 that?

22 A. I do.

23 Q. And there is a reference to October 25, 2007.
24 Do you see that?

25 A. Yes.

1 Q. And it says (as read): "Federal Reserve Bank of
2 New York staffer sends market update to FRBNY President
3 and other FRBNY officials, citing decline in AIG stock
4 price on rumors of multi-billion dollar write-down
5 stemming from subprime mortgage assets." Do you see
6 that?

7 Do you see that?

8 A. Yes.

9 Q. And you would have been the president referred
10 to there, correct?

11 A. Yes.

12 Q. And do you recall receiving that email?

13 A. Not that particular -- not that particular
14 email, but, again, it's hard to tell from the context.
15 It could have been the normal update on market
16 conditions, which I received several times a day,
17 obviously.

18 Q. And in October of 2007, did that normal daily
19 update include AIG?

20 A. Again, as I said, I just can't recall. That --
21 that template, that dashboard underwent several
22 iterations, expansions, changes in scope and frequency,
23 and I just can't remember how broad the list was
24 initially and how that evolved.

25 Q. Let me ask you to look next at Plaintiffs' Trial

1 Exhibit 17, which I will offer. I don't think this
2 one's in evidence.

3 MR. DINTZER: Objection, Your Honor. Contains
4 hearsay.

5 THE COURT: I'm going to overrule the objection.
6 I will allow examination on this document. So,
7 Plaintiffs' Trial Exhibit 17 is admitted.

8 (Plaintiffs' Exhibit Number 17 was admitted into
9 evidence.)

10 BY MR. BOIES:

11 Q. This is a document that was sent by Mr. Kevin
12 Coffey to you and a large number of other Federal
13 Reserve personnel on May 29, 2008, at 9:02 p.m.,
14 correct?

15 A. That's what it appears to be, yes.

16 Q. And the subject is "Update on Financial
17 Guarantor Negotiations; AIG CDS-related margin call
18 impact."

19 A. Yes.

20 Q. Do you see that?

21 A. I do.

22 Q. And did you receive this document at or about
23 the time it was sent?

24 A. Well, I -- I received it, although I don't
25 recall receiving it, but it looks like I received it,

1 and I would have read it, I believe.

2 Q. And would this have been one of a series of such
3 reports that you would have been receiving?

4 A. Yeah. I mean, I would typically have been given
5 a blizzard of reports about market conditions throughout
6 that period of time.

7 Q. And would those reports about market conditions
8 have included reports about AIG?

9 A. It's possible. When things material were
10 happening, it's likely they would have, yes.

11 Q. In July 2008, you contacted Mr. Willumstad to
12 request a meeting shortly after Mr. Willumstad had been
13 named chairman and CEO of AIG, correct?

14 A. That's correct.

15 Q. And you, in fact, had such a meeting on July
16 8th, 2008, correct?

17 A. That's correct.

18 Q. Let me direct your attention to Plaintiffs'
19 Trial Exhibit 24 that is already in evidence.

20 A. I don't have 24. I have -- mine goes from 17 to
21 26.

22 Q. I apologize.

23 MR. DINTZER: We don't have it either, Your
24 Honor.

25 THE COURT: Nor do I.

1 MR. BOIES: I apologize, Your Honor. I think it
2 was not put into our binder. It is already in evidence,
3 so we can reference it later.

4 BY MR. BOIES:

5 Q. Let me turn to Plaintiffs' Trial Exhibit 26.
6 This is an August 7, 2008, email from Meg McConnell to
7 you, and the subject is "AIG Liquidity and Capital." Is
8 that correct?

9 A. Yes. She's forwarding an email from Kevin
10 Coffey.

11 Q. Yes.

12 And I now know why Plaintiffs' Trial Exhibit 24
13 was not in the book, Your Honor. It is because
14 Plaintiffs' Exhibit 24 is the Coffey email that is now
15 being forwarded on to Mr. Geithner.

16 THE COURT: Okay.

17 MR. BOIES: I would offer Plaintiffs' Trial
18 Exhibit 26.

19 MR. DINTZER: No objection, Your Honor.

20 THE COURT: Plaintiffs' Trial Exhibit 26 is
21 admitted.

22 (Plaintiffs' Exhibit Number 26 was admitted into
23 evidence.)

24 BY MR. BOIES:

25 Q. In the first half of August of 2007, am I

1 correct that the Federal Reserve Bank of New York staff
2 met with employees of OTS to discuss AIG?

3 A. I'm sorry. Could you repeat the date?

4 Q. In the first half of August of 2008.

5 A. 2008. That's possible. I don't recall
6 precisely, though.

7 Q. Let me ask you to look at Plaintiffs' Trial
8 Exhibit 34. This is an email from a Christopher Calabria
9 to Mr. Coffey, with copies to another individual that I
10 don't think that we have identified. Who is that other
11 individual?

12 A. I'm sorry. Who is copied on the email?

13 Q. Yes.

14 A. Arthur Angulo.

15 Q. And who is he?

16 A. He was a senior official in bank supervision.

17 Q. And this is, among other things, forwarding on a
18 further email, the subject of which was, "AIG -- Summary
19 of Potential Earnings, Capital, and Liquidity Issues."
20 Do you see that?

21 A. Yes, although that's not attached to my
22 document, but it's referred to in the memo.

23 Q. Is it on the second page of the document?

24 A. The second page is the cover note, but the
25 attachment, which is the "Summary of Potential Earnings,

1 Capital, and Liquidity Needs," isn't attached here.

2 Q. Do you see on page 2, Plaintiffs' Trial Exhibit
3 34, an email from Mr. Coffey to Mr. Checki and
4 Mr. Rutledge, Ms. McConnell, Mr. Peters, Arthur Angulo,
5 copy to Christopher Calabia, dated August 14th, 2008, at
6 2:45 p.m.?

7 A. Yes.

8 Q. And the subject of that is "AIG -- Summary of
9 Potential Earnings, Capital, and Liquidity Issues,"
10 correct?

11 A. That's correct.

12 Q. And that email was then forwarded on by
13 Mr. Calabia in the email that was at the top of page 1
14 of Plaintiffs' Trial Exhibit 34, correct?

15 A. Yeah, although it's indirectly forwarded. But,
16 yes, that's correct.

17 MR. BOIES: Your Honor, I would offer
18 Plaintiffs' Trial Exhibit 34.

19 MR. DINTZER: No objection, Your Honor.

20 THE COURT: Plaintiffs' Trial Exhibit 34 is
21 admitted.

22 (Plaintiffs' Exhibit Number 34 was admitted into
23 evidence.)

24 BY MR. BOIES:

25 Q. Let me ask you to look at Plaintiffs' Trial

1 Exhibit 29, and, in particular, it is the second email,
2 which is the email from Brian Peters, dated August 14th,
3 2008, at 6:28 p.m. Do you see that?

4 A. I do.

5 Q. And this is an email that goes to Sarah
6 Dahlgren, and what was her position?

7 A. She was a senior official in bank supervision.

8 Q. And then a large number of other Federal Reserve
9 personnel, most of whom I think we have previously
10 identified.

11 And then there's a second email at 8:51 from
12 Brian Peters just to Sarah Dahlgren. Do you see that?

13 A. At 1851, yes.

14 Q. 1851.

15 I would offer Plaintiffs' Trial Exhibit 29.

16 MR. DINTZER: Your Honor, we don't object to it.
17 We will note that the witness is not on this document or
18 the past document and that the people who are on these
19 documents are actually going to testify. So, I -- we're
20 not sure exactly -- we are not going to object, we don't
21 oppose them moving it in, but we're not exactly sure why
22 counsel is actually bringing it in with this witness.

23 THE COURT: All right. Without objection,
24 Plaintiffs' Trial Exhibit 29 is admitted.

25 (Plaintiffs' Exhibit Number 29 was admitted into

1 evidence.)

2 BY MR. BOIES:

3 Q. At the top of the page, Mr. Peters writes:
4 "Neither AIG nor Citi can raise sufficient term money at
5 decent rates." Do you see that?

6 A. Yes.

7 Q. Was that brought to your attention on or about
8 August 14th, 2008?

9 A. I don't remember seeing this memo, but it
10 wouldn't surprise me if my staff characterized the
11 market at that time the way this memo characterizes it,
12 not surprising to me.

13 Q. Let me ask you to look next at Plaintiffs' Trial
14 Exhibit 37, and Plaintiffs' Trial Exhibit 37 includes
15 two emails from Meg McConnell to you, correct?

16 A. Yes.

17 Q. And the first one is dated September 4th, 2008;
18 the second one is dated September 6th, 2008, correct?

19 A. Yes.

20 Q. In the first email, she sends to you something
21 that Kevin Coffey had circulated on AIG, correct?

22 A. That is correct.

23 Q. And then on September 6th, she sends it to you
24 again, correct?

25 A. That's correct.

1 MR. BOIES: Your Honor, I would offer
2 Plaintiffs' Trial Exhibit 37.

3 MR. DINTZER: No objection, Your Honor.

4 THE COURT: Plaintiffs' Trial Exhibit 37 is
5 admitted.

6 (Plaintiffs' Exhibit Number 37 was admitted into
7 evidence.)

8 BY MR. BOIES:

9 Q. And then let me ask you to look at Plaintiffs'
10 Trial Exhibit 38 and, in particular, the second page of
11 that, which is an email from you, dated September 6th,
12 2008, to Mr. Rutledge and Mr. Angulo, with a copy to Meg
13 McConnell. Do you see that?

14 A. I do.

15 MR. BOIES: I would offer Plaintiffs' Trial
16 Exhibit 38.

17 MR. DINTZER: No objection, Your Honor.

18 THE COURT: Plaintiffs' Trial Exhibit 38 is
19 admitted.

20 (Plaintiffs' Exhibit Number 38 was admitted into
21 evidence.)

22 BY MR. BOIES:

23 Q. And the first line of your email says, "Could
24 you put someone on AIG and GE capital?" Do you see
25 that?

1 A. I do.

2 Q. And did the persons to whom you were addressing
3 this, in fact, put someone on AIG and GE Capital?

4 A. I believe they did.

5 Q. Let me ask you to look at Plaintiffs' Trial
6 Exhibit 715, and this is questions that the GAO had
7 prepared for you and your written responses to the GAO,
8 correct?

9 A. That's correct.

10 MR. BOIES: I would offer Plaintiffs' Trial
11 Exhibit 715.

12 MR. DINTZER: Objection, Your Honor. Hearsay.

13 THE COURT: It's a GAO report, from what I
14 understand, correct?

15 MR. DINTZER: That's my understanding, Your
16 Honor.

17 THE COURT: All right. So, I will admit the GAO
18 report, Plaintiffs' Trial Exhibit 715.

19 (Plaintiffs' Exhibit Number 715 was admitted
20 into evidence.)

21 BY MR. BOIES:

22 Q. And if you look at the first page, the GAO
23 writes, "We have compiled the following timeline of
24 Federal Reserve specific events and contacts leading up
25 to the initial provision of federal assistance to AIG."

1 And then the first question after that is, "Please
2 correct any inaccuracies," and you write, "I am not
3 aware of any inaccuracies in the timeline; however, I
4 was not personally involved in all of the events
5 described." Correct?

6 A. I'm sorry. At this point, you're reading from
7 where?

8 Q. I'm reading from --

9 A. Oh, I see, from (a) on page 2. I see it, yes.

10 Q. And that's what you told the GAO, correct?

11 A. Yes. That's what this document says I submitted
12 to the GAO.

13 Q. And, indeed, it's not only what the document
14 says, but you, in fact, submitted this to the GAO, did
15 you not, sir?

16 A. Yes. That's what this appears to be.

17 Q. Now, if you look at the timeline on the first
18 page, opposite July 29, 2008, it says, "Mr. Willumstad
19 meets with President Geithner, asks if government
20 assistance would be available in a crisis, discusses
21 possible AIG access to discount window."

22 Do you see that?

23 A. I do.

24 Q. And then on September 9, 2008, it says:

25 "Mr. Willumstad meets with President Geithner to inquire

1 about discount window access by means of becoming
2 primary dealer."

3 Do you see that?

4 A. I do.

5 Q. And then on September 12, 2008, it says:

6 "Mr. Willumstad talks with President Geithner, saying
7 AIG faces serious situation, and efforts to find private
8 financing underway, but no solution possible without the
9 Federal Reserve."

10 Do you see that?

11 A. I do.

12 Q. And you were personally involved in each one of
13 those three?

14 A. Yes.

15 Q. Now, the first consideration of AIG becoming a
16 primary dealer and having access to the primary dealer
17 credit facility that you were aware of took place during
18 the summer of 2008, correct?

19 A. I'm sorry. Could you repeat the first part of
20 that question?

21 Q. Sure.

22 The first consideration of AIG becoming a
23 primary dealer and having access to the primary dealer
24 credit facility that you were aware of took place during
25 the summer of 2008, correct?

1 A. If by "consideration" you mean it's the first
2 time that I was -- it was -- that a question of that was
3 raised with me by AIG, by the CEO of AIG, that's
4 correct, yes.

5 Q. And then you posed that question to Mr. Baxter,
6 correct?

7 A. To -- I can't remember to whom exactly I posed
8 that question, but it may have been Mr. Baxter, yes.
9 But I don't -- I don't remember precisely when I would
10 have asked him that question, but probably after
11 Willumstad first alluded to the possibility with me.

12 Q. By September 16th, 2008, you had concluded that
13 AIG would fail unless it received assistance from the
14 Fed, correct?

15 A. Yes.

16 Q. And you believed that the failure of AIG would
17 have been catastrophic for a financial system already in
18 freefall, correct?

19 A. Yes.

20 Q. And that was something that you not only
21 believed but that you told people that you believed it,
22 correct?

23 A. Yes.

24 Q. And if you look at Plaintiffs' Trial Exhibit
25 563, which are answers that you submitted to the House

1 Committee on Oversight and Government Reform on January
2 27, 2010, which I would offer.

3 MR. DINTZER: No objection, Your Honor.

4 THE COURT: Plaintiffs' Trial Exhibit 563 is
5 admitted.

6 (Plaintiffs' Exhibit Number 563 was admitted
7 into evidence.)

8 BY MR. BOIES:

9 Q. And this was one of the times that you said that
10 the failure of AIG would have been catastrophic for a
11 financial system already in freefall, correct, sir?

12 A. Could you just refer me precisely to in which
13 part of this document I said that? It seems likely, but
14 I just want to make sure I get to it.

15 Q. Sure. If you look on page 3, the answer to --

16 A. I see it. I see it now. Thank you.

17 Q. And you believed on September 16th, 2008, that
18 "we did not have the option of bankruptcy, did not have
19 the option of defaults, did not have the option of
20 selective haircuts. It would have been catastrophic to
21 let AIG fail." Correct?

22 A. Can you -- can you also draw my attention to in
23 what part of that document I used those words? Is that
24 what you're referring to, this document?

25 Q. It's actually a different document. I would

1 direct your attention to Plaintiffs' Trial Exhibit 564,
2 which I would offer.

3 MR. DINTZER: No objection, Your Honor.

4 THE COURT: Plaintiffs' Trial Exhibit 564 is
5 admitted.

6 (Plaintiffs' Exhibit Number 564 was admitted
7 into evidence.)

8 BY MR. BOIES:

9 Q. If you look at page 139, it's the last full
10 sentence where you say --

11 A. I see it. Thank you.

12 Q. -- "we did not have the option of bankruptcy, we
13 did not have the option of defaults, we did not have the
14 option of selective haircuts. It would have been
15 catastrophic to let the institution fail."

16 Do you see that?

17 A. I do see that.

18 Q. And that's what you believed at the time,
19 correct?

20 A. Yes, but could I make one point of context,
21 Counselor?

22 Q. Certainly.

23 A. In using those words, I didn't mean to imply
24 that AIG did not have the option of those -- of those
25 options. It did have those options. I meant to say

1 that those options, although they were available to AIG
2 and to us, would have been catastrophic for the broader
3 economy.

4 Q. Yes. Let me -- let me follow up on that,
5 because I think that's a useful clarification.

6 When you said to Congress, "We did not have the
7 option of bankruptcy, we did not have the option of
8 defaults, we did not have the option of selective
9 haircuts," the "we" there was the Federal Reserve or the
10 Federal Reserve and the Government more generally,
11 correct?

12 A. What I meant to -- what I was trying to explain
13 is that those options, yes, they existed for us
14 theoretically, but if we had pursued them, they would
15 have been catastrophic in impact. That was my
16 intention.

17 Q. My question now is simply, when you used the
18 word "we," as in "We did not have the option of an AIG
19 bankruptcy," the "we" there was the Federal Reserve and
20 perhaps the Federal Reserve and the broader government,
21 correct?

22 A. Yes.

23 Q. And you believed in September of 2008 that
24 letting AIG fail seemed like a formula for a second
25 Great Depression. It was essential that you do

1 everything in your power to try to avoid that. Correct?

2 A. That sounds like you're quoting from me, but,
3 yeah, that sounds like me, and, yes, I believed that.

4 Q. I am quoting from you. It's at page 193 of your
5 book, page 209 of Plaintiffs' Trial Exhibit 709, which
6 you are free to look at but don't have to.

7 You also believed that in September of 2008 AIG
8 faced the prospect of default and bankruptcy, which
9 would have had catastrophic consequences for the
10 economy, including because of the breadth and depth of
11 AIG's financial relationships with a large number of
12 other financial institutions, correct?

13 A. Well, that also sounds like you're quoting me.

14 Q. Let me ask you to look at Plaintiffs' Trial
15 Exhibit 563, which we admitted just a moment ago, and if
16 you look at page 3, do you see where, following the
17 statement "In late 2008, AIG faced the prospect of
18 default and bankruptcy, which would have had
19 catastrophic consequences for the economy," you go on to
20 talk about how AIG was the largest provider of
21 conventional insurance in the world, that if AIG had
22 failed, the crisis would have almost certainly spread to
23 the entire insurance industry, and that the Government
24 was taking action to prevent AIG's failure, protect the
25 financial system, and to help restructure the credit

1 default swap contracts that AIG had entered into with
2 various counterparties?

3 Do you see that?

4 A. I do.

5 Q. And all of that was something that you believed
6 in September of 2008, correct?

7 A. Yes.

8 Q. Now, there were a number of approaches that were
9 considered in terms of how to structure a 13(3) credit
10 facility for AIG, correct?

11 A. Is your question about the precise terms to
12 attach to the loan or other -- other types of assistance
13 beyond that?

14 Q. Let me -- let me approach it this way. Let me
15 ask you to look at Plaintiffs' Trial Exhibit 70, and
16 Mr. Hoyt at Treasury, on September 16th, 2008, at 12:47
17 a.m. -- that is, shortly after midnight on September
18 15th -- sends an email to a variety of people, including
19 yourself, correct, sir?

20 A. Yes. I'm listed on the -- among the addressees.

21 Q. And he is attaching an earlier email that is
22 headed "Use of existing Authority," correct?

23 A. Yes. That's correct.

24 Q. And did you receive this email at or about the
25 time indicated?

1 A. Well, it indicates on the email on this document
2 that it was sent at 12:47 a.m. on Tuesday, the 16th, and
3 I'm listed, but I don't recall ever seeing it.

4 MR. BOIES: Your Honor, I would offer
5 Plaintiffs' Trial Exhibit 70.

6 MR. DINTZER: It's our understanding, Your
7 Honor, that this is already in. If we've miscalculated
8 we would not object.

9 THE COURT: My Law Clerk agrees with me that it
10 is in evidence, so I think that's the answer.

11 MR. BOIES: It is, Your Honor. I apologize.

12 BY MR. BOIES:

13 Q. Let me ask you to turn to the second page of the
14 exhibit, where it says "Use of existing Authority," and
15 it says (as read):

16 "Core approach: NY Fed extends a non-recourse
17 loan secured, to the extent permitted by law, by
18 specified unencumbered assets of AIG."

19 Second, that the "Loan would be accompanied by
20 warrants and covenants giving the U.S. Government
21 governance rights."

22 Do you see that?

23 A. I do.

24 Q. And were you aware, even though you say you
25 didn't receive or don't recall receiving this document,

1 were you aware that that was the core approach that was
2 being considered late on September 15th, early on
3 September 16th?

4 A. Yeah. I'm not sure I would have used that
5 language exactly, but yes.

6 Q. And then there is a Scenario 1 and a Scenario 2
7 that are described there, correct?

8 A. That's right.

9 Q. And without simply repeating what's in the
10 document, did you understand that those were possible
11 approaches to structuring a 13(3) credit facility for
12 AIG?

13 A. I don't recall ever discussing or being aware of
14 any serious consideration of what's described here as
15 Scenario 2.

16 Q. Now, at the time that you were considering how
17 to structure a 13(3) credit facility for AIG, Lehman's
18 failure the day before was very much in your mind,
19 correct?

20 A. Yeah, among other -- among other -- among
21 other -- other things.

22 Q. I did not mean to suggest that that was the only
23 problem that you were facing, but that was certainly one
24 significant event that was very much in your mind,
25 correct?

1 A. Maybe -- maybe a better way -- I'm sorry, a more
2 precise way to answer would be to say that the aftermath
3 of that and the aftershocks of that and the continuation
4 of the pressures we had seen building over the course of
5 the summer, yes, that was very much in my mind.

6 Q. And on September 16th, 2008, you believed that a
7 failure of AIG would have been even scarier to markets
8 than the failure of Lehman, correct?

9 A. Are you quoting me there, too? I mean, yeah,
10 that generally is what I believed, even more damaging.

11 Q. And just so you have -- I am now going to quote
12 you, and I'm quoting from Plaintiffs' Trial Exhibit 709
13 at page 208, which is page 192 of your book. As you
14 say --

15 MR. DINTZER: Your Honor, just a point of
16 clarification. Are the Plaintiffs going to offer
17 PTX 709, because counsel has read from it on a couple of
18 occasions. We just want a clarification on it.

19 THE COURT: Would you like him to?

20 MR. DINTZER: We -- it's our understanding that
21 before a document should be read into the record, that
22 they either be -- I mean, unless they're impeachment or
23 for some other reason, that they need to be offered.
24 So, we, at a minimum, Your Honor, would like it ruled
25 on.

1 THE COURT: Mr. Boies?

2 MR. BOIES: Your Honor, the three key witnesses
3 here all have written books, and while I would not
4 ordinarily do this in a jury trial, in a bench trial, I
5 would -- I think it is probably appropriate, since I
6 have quoted from two of them and I am going to quote
7 from the third when Mr. Bernanke arrives, that we offer
8 them so that the Court has them for context purposes.

9 So, I will -- I will offer Plaintiffs' Trial
10 Exhibits 706, 708, and 709.

11 THE COURT: Is that acceptable?

12 MR. DINTZER: Just one second to check, because
13 he is offering three documents. Just one second, Your
14 Honor.

15 THE COURT: Okay, very well.

16 MR. DINTZER: We don't have -- can counsel
17 represent to us, are those --

18 MR. BOIES: Those are the books, all three
19 books.

20 MR. DINTZER: Chairman Bernanke, while he's
21 working on a book, has not finished a book, so we are
22 just trying to clarify.

23 MR. BOIES: There is the book of lectures.

24 MR. DINTZER: Oh, the lectures, okay. Just one
25 moment, Your Honor.

1 (Pause in the proceedings.)

2 MR. DINTZER: Your Honor, as long as the books
3 come in in full, we will not lodge any objection.

4 THE COURT: All right. Do you have a copy for
5 the Court or should I visit Barnes & Noble?

6 MR. BOIES: We do have a copy for the Court.

7 THE COURT: Thank you.

8 MR. BOIES: And we will, with the Court's
9 permission, working with the Clerk, we will attach
10 exhibit stickers to those books so that you have the
11 trial exhibit that they relate to.

12 THE COURT: Very well. Thank you.

13 (Plaintiffs' Exhibit Number 706 was admitted
14 into evidence.)

15 (Plaintiffs' Exhibit Number 708 was admitted
16 into evidence.)

17 (Plaintiffs' Exhibit Number 709 was admitted
18 into evidence.)

19 BY MR. BOIES:

20 Q. Let me ask you to -- oh, I hadn't finished.

21 On September 16th, 2008, you said that if AIG
22 defaults, you'll see default probabilities explode on
23 all financial firms. In other words, mass panic on a
24 global scale. Correct, sir?

25 A. That sounds like you're quoting me, too, and

1 that is what I believed.

2 MR. DINTZER: Counsel, is this at 190 -- I'm
3 sorry, I'm trying to follow along. Is this at 192?

4 MR. BOIES: Yes.

5 MR. DINTZER: Thank you.

6 BY MR. BOIES:

7 Q. Now, let me ask you to turn to Plaintiffs' Trial
8 Exhibit 85. Now, this is an email, and why don't you
9 identify the people that received this and the author of
10 this.

11 A. It's from Alexandra Merle-Huet to Meg McConnell
12 and Calvin Mitchell. Meg McConnell is a senior advisor
13 to me. Calvin Mitchell was, in effect, the head of
14 communications at the New York Fed.

15 Q. And who was the author?

16 A. The author was Alexandra Merle-Huet, and her
17 title is listed here as chief of staff's office.

18 Q. And the subject is "Latest document Meg working
19 on." Do you see that?

20 A. Yes. Yes.

21 Q. And is this a document that you have seen
22 before?

23 A. I don't recall seeing this before, but it's
24 possible I have.

25 Q. Let me direct your attention to a couple of

1 portions of this, and let me start by directing your
2 attention to page 6. At the very top of the page, the
3 first full sentence says, "I don't have the burden to
4 explain to the public the zig and the zag."

5 Do you see that?

6 A. I do.

7 Q. Now, is that something that Ms. McConnell is
8 writing based on what you said?

9 A. It looks like she's trying to characterize
10 something I said, but I can't be sure.

11 Q. Now --

12 A. And that is something I have said.

13 Q. Now, the reason I am using this document with
14 you is because Ms. McConnell is going to come and she is
15 going to testify to what it is, but while you're here, I
16 simply want to give you an opportunity to address this
17 in case she says this was meant to reflect things that
18 you had said.

19 A. I wouldn't want to imply, though -- I mean, I
20 was just referring to that one sentence. That is
21 definitely something I have said and would have said, I
22 think. I don't know about the rest. I would have to
23 look at it.

24 Q. Right. And I'm not suggesting what this is,
25 because I honestly don't know. At the bottom of page 6,

1 there is a small letter (d), and then following that it
2 says, "In the Depression, we did not take over the
3 firms."

4 Do you see that?

5 A. Yes, I see that.

6 Q. And is that something that you said?

7 A. I don't know what that means, really, and it's
8 not something -- I don't -- it doesn't sound familiar to
9 me.

10 Q. During the 1930s, the Federal Reserve made 13(3)
11 loans, correct?

12 A. That's correct.

13 Q. And, in fact, 13(3) loans were first made in the
14 1930s, correct?

15 A. I actually am not sure. I can't remember when
16 that -- whether that was part of the original Federal
17 Reserve Act or whether that would have been used before
18 the Great Depression. I just don't know for sure.

19 Q. The first time that the Federal Reserve had made
20 13(3) loans after the 1930s was in March of 2008,
21 correct?

22 A. That's my view. That's my belief, yes.

23 Q. And the 13(3) loans that were made by the
24 Federal Reserve in the 1930s did not involve any
25 compensation or consideration in the form of equity,

1 correct?

2 A. I actually can't -- don't know that. I don't
3 know that.

4 Q. Insofar as you're aware, other than AIG, was
5 there ever, in the 1930s or after March of 2008, any
6 13(3) loan that involved equity in the borrower, other
7 than AIG?

8 A. I don't believe so --

9 MR. DINTZER: Object --

10 THE WITNESS: -- but I can only speak with
11 confidence about the time that I was running the New
12 York Fed. I'm not sure I can -- that I'm the best
13 definitive source on the history before that.

14 BY MR. BOIES:

15 Q. Let me ask you to look at page 4, seven lines up
16 from the bottom.

17 MR. DINTZER: I'm sorry, Counsel. Are we on
18 PTX 85?

19 MR. BOIES: Yes.

20 MR. DINTZER: All right. Thank you.

21 THE WITNESS: I see that.

22 BY MR. BOIES:

23 Q. Do you see the statement, "It has to be large if
24 you want to be decisive"?

25 A. Yes.

1 Q. And is that something that you had said?

2 A. It sounds like me.

3 THE COURT: I'm sorry. Can you tell me where
4 that is again?

5 MR. BOIES: Yes, Your Honor. It's hard to --
6 it's one, two, three, four, five, six -- it's seven
7 lines up from the bottom, and it's a line that starts
8 "bil," on page 4 of --

9 THE COURT: Just a minute. Oh, page 4, okay.

10 MR. BOIES: -- of Plaintiffs' Trial Exhibit 85.

11 THE COURT: Yes. Thank you.

12 BY MR. BOIES:

13 Q. Let me ask you to look at page 2 of this
14 document, and right at the top, it says, "Allowing AIG
15 to default poses systemic risks through its impact on a
16 range of critical money and capital markets."

17 Do you see that?

18 A. Yes.

19 Q. Is that something you said?

20 A. I don't know if that's my precise language, but
21 that's consistent with what I believed.

22 Q. And then the third sentence -- the third
23 paragraph down on this page 2 of Plaintiffs' Trial
24 Exhibit 85, it says, "The most important risk is
25 systemic. If this continues unabated, greater

1 probability of widespread insolvencies, severe and
2 protracted damage to the financial system and to the
3 whole economy. This is not something the market can
4 solve on its own."

5 Is that something that you said with respect to
6 AIG?

7 A. Again, I don't know if these are my words, but
8 that's something I believed.

9 MR. BOIES: I'm going to move on, and I'm
10 prepared to offer the document if counsel for the
11 Defendant wants me to or I'm prepared to wait until
12 Ms. McConnell comes.

13 MR. DINTZER: No objection, Your Honor.

14 THE COURT: All right. Plaintiffs' Trial
15 Exhibit 85 is admitted.

16 (Plaintiffs' Exhibit Number 85 was admitted into
17 evidence.)

18 BY MR. BOIES:

19 Q. Let me -- let me turn for a moment to your view
20 of the role of the Federal Reserve. You believed that
21 the Federal Reserve and the Central Bank had the
22 responsibility to provide liquidity in periods when
23 financial markets were disrupted and private sources of
24 capital or liquidity were inadequate, correct?

25 A. Yes.

1 Q. And that the goal is to keep the financial
2 system functioning by providing liquidity to solvent
3 institutions when private markets freeze, correct?

4 A. Well, it sounds like you're quoting from me
5 there, too, but --

6 Q. I am, but --

7 A. -- that sounds like a general description of my
8 belief, yes.

9 Q. And for your reference or for counsel's
10 reference, that comes from page 118 of your book.

11 And you believed that in September of 2008, as
12 you describe it, private markets had frozen, correct?

13 A. Yes.

14 Q. And you also believed in September of 2008 that
15 in circumstances such as those present then, the Federal
16 Reserve needed to lean against the forces of panic, to
17 restore confidence, to reduce uncertainty, to make the
18 system investable again. That means no messy failures
19 of systemic firms and no haircuts that would encourage
20 runs, correct?

21 A. That sounds like my book, too; and, yes, I
22 believe that.

23 Q. And you also believed that under the
24 circumstances that existed in September of 2008, there
25 will be intense pressure to let major firms fail, avoid

1 moral hazard, minimize government intervention, but
2 that's a formula for a larger crisis that will
3 ultimately require greater government intervention and
4 create moral hazard, correct, sir?

5 A. Yes. That's my belief.

6 Q. And you also believe that when the Government
7 does intervene, it will be tempting to try to maximize
8 the immediate losses absorbed by the private sector, as
9 the FDIC tried to do when it haircut WaMu's senior
10 creditors. But that is not a desirable approach,
11 correct?

12 MR. DINTZER: Your Honor, no objection, but we
13 would be willing to stipulate that Secretary Geithner
14 believes the things that he wrote in his book. So, we
15 wouldn't -- just -- I mean, it's in evidence, so it
16 won't -- it's not necessary for him to then read to the
17 Secretary his own words and get him to confirm his
18 belief in what he wrote.

19 THE COURT: All right. That statement is
20 useful, I think, but I think we can go ahead.

21 Actually, I was thinking about a morning break
22 at this point. Let's reconvene at 11:15.

23 (Court in recess.)

24 THE COURT: All right, please be seated.

25 Let's continue.

1 MR. BOIES: Thank you, Your Honor.

2 I would like the Court's permission to hand up a
3 document that has been marked as Plaintiffs' Trial
4 Exhibit 583. I don't have a lot of questions about it,
5 but I want to -- I do want to identify it and get it
6 admitted for the record.

7 BY MR. BOIES:

8 Q. Plaintiffs' Exhibit 583 is an official
9 transcript of a Financial Crisis Inquiry Commission
10 hearing, and this is one that you testified at, correct,
11 Mr. Geithner?

12 A. Yes.

13 MR. BOIES: Your Honor, I would offer
14 Plaintiffs' Exhibit 583.

15 MR. DINTZER: Objection, Your Honor. Hearsay.

16 THE COURT: What is your understanding of what
17 is the Financial Crisis Inquiry Commission? Maybe we
18 should ask the witness.

19 MR. DINTZER: It's an -- my understanding, Your
20 Honor, is that this is a commission that received
21 testimony from a number of people in this one document,
22 including people who are not government employees,
23 government witnesses, and so, Your Honor, we assert that
24 it's hearsay.

25 THE COURT: I'd like to hear a little more about

1 what this commission is.

2 MR. BOIES: Sure.

3 BY MR. BOIES:

4 Q. Mr. Geithner, would you explain for the record
5 what the Financial Crisis Inquiry Commission was?

6 A. It's a commission established to examine the
7 causes of the crisis and the actions taken by the
8 Government during the crisis.

9 Q. And who established the commission?

10 A. I can't recall if it was a commission appointed
11 by the President or it was a commission mandated by the
12 Congress. I believe the former, but I can't -- I can't
13 be sure.

14 Q. And was this a commission that took testimony
15 from a number of government officials, as well as
16 others?

17 A. That's my understanding, yes.

18 Q. And in preparation for your testimony before the
19 Financial Crisis Inquiry Commission, you would have, of
20 course, made an effort to be sure that your testimony
21 was truthful and complete and accurate, correct?

22 A. Of course, yes.

23 MR. BOIES: Your Honor, I would offer this
24 exhibit. I would be prepared to limit the offer just to
25 the government testimony if government counsel prefers

1 that. I do think there's a distinction, and if the
2 government counsel would prefer that I limit it to
3 government officials, I will so limit it and so limit
4 the offer.

5 MR. DINTZER: If I could have just one second,
6 Your Honor, to confer.

7 (Counsel conferring.)

8 MR. DINTZER: Your Honor, we withdraw the
9 hearsay objections to the testimony of Secretary
10 Geithner in the document. The rest of the testimony we
11 would suggest should be included but not for the truth
12 of the matter asserted to the extent that -- and I don't
13 know if this is the case or not -- to the extent he's
14 responding to or interacting with those people. It
15 should be in the record just to show that he's
16 responding to or interacting with them. We withdraw the
17 hearsay objection with respect to Secretary Geithner.

18 THE COURT: The government representatives who
19 testified were Secretary Paulson and Secretary Geithner?

20 MR. BOIES: Yes, Your Honor. That's my
21 understanding.

22 THE COURT: And the others are private --

23 MR. BOIES: That's my understanding.

24 MR. DINTZER: If I could speak to that, Your
25 Honor? As I understand it, on this date, Secretary

1 Paulson is no longer a government employee. At that
2 point, he's a former government employee. So,
3 obviously, it's just -- at that point, it's no longer an
4 admission by the Government. So, we would ask the Court
5 to include that as part of the "not offered for the
6 truth" portion.

7 THE COURT: I am going to admit the exhibit as
8 to the statements of Secretary Paulson and Secretary
9 Geithner. So, Plaintiffs' Trial Exhibit 583 is admitted
10 to that extent.

11 MR. DINTZER: And just so we can be clear, Your
12 Honor, to the extent of the other testimony, are you
13 admitting it for the not truth of the matter or are you
14 simply not -- just so we're clear on the record?

15 THE COURT: I guess we can admit it for some
16 other purpose.

17 MR. DINTZER: Just to show the context?

18 THE COURT: Yes.

19 MR. DINTZER: Thank you, Your Honor.

20 MR. BOIES: Thank you, Your Honor.

21 (Plaintiffs' Exhibit Number 583 was admitted
22 into evidence.)

23 BY MR. BOIES:

24 Q. Mr. Geithner, during the break, I tried to
25 remove most of my questions relating to your book so

1 that we can move this along. I may come to it every now
2 and then just to emphasize a point, but I will try to
3 reduce the number of times I ask you about it.

4 Let me ask you about the Fed's role, though,
5 generally, and that is that you understood that in
6 September of 2008, the New York Fed was really -- or the
7 Federal Reserve System, generally, was really the only
8 government agency that was capable of addressing AIG's
9 liquidity crisis, correct?

10 A. Do you mean in September 2008?

11 Q. Yes.

12 A. Yes. Up until the point that the Congress
13 passed the emergency measures we refer to as TARP,
14 that's correct.

15 Q. And you have described the Federal Reserve as
16 being in the classic position where, in effect, the
17 Federal Reserve was the only fire station in town that
18 you could turn to when things fell apart for liquidity,
19 correct, sir?

20 A. Yes.

21 Q. And let me turn next and ask you to look at
22 Plaintiffs' Trial Exhibit 663, and can you identify what
23 this document is?

24 A. These are notes to myself that I wrote in the
25 early stage of drafting my book.

1 MR. BOIES: Your Honor, I would offer
2 Plaintiffs' Trial Exhibit 663.

3 MR. DINTZER: No objection, Your Honor.

4 THE COURT: Plaintiffs' Trial Exhibit 663 is
5 admitted.

6 (Plaintiffs' Exhibit Number 663 was admitted
7 into evidence.)

8 BY MR. BOIES:

9 Q. Now, in September of 2008, you believed that
10 under the unusual circumstances that existed at that
11 time, even solvent institutions become illiquid, and if
12 they are caught up in a run, even the strongest will not
13 survive, correct, sir?

14 A. That sounds like something I've written, sounds
15 like you're quoting me, but I believe that, yes.

16 Q. And let me focus now on AIG. You have said that
17 the Government effectively nationalized AIG, correct?

18 A. I have used that phrase. I believe that's
19 correct, yes.

20 Q. And that referred to what happened in September
21 of 2008, correct?

22 A. It referred to the fact that AIG gave us equity
23 as a condition for the loan we extended in 2008, yes,
24 September 2008.

25 Q. And by the time that happened, the Government

1 could decide how to carve up, dismember, sell, or
2 restructure AIG as it decided, correct?

3 A. Well, that sounds like you're quoting from me.

4 Q. I will direct your attention, if you'd like, to
5 Plaintiffs' Trial Exhibit 663, page 14. It's the fifth
6 paragraph down. Do you see where you write, "By that
7 point we had already effectively nationalized the GSEs
8 and AIG, and could decide how to carve up, dismember,
9 sell or restructure those institutions"?

10 A. That's what I wrote, yes.

11 Q. And you believed that at the time you wrote it,
12 correct?

13 A. Well, it's not the most precise language.

14 THE COURT: If I may ask, who are the GSEs?

15 THE WITNESS: Fannie Mae and Freddie Mac.

16 THE COURT: Thank you.

17 BY MR. BOIES:

18 Q. The GSEs were placed into a conservatorship in
19 early September 2008, correct?

20 A. That's correct.

21 Q. And that had an adverse effect on financial
22 markets, correct?

23 A. I don't think I would say it that way, no.

24 Q. Do you believe that the fact that the GSEs were
25 placed into conservatorship unsettled financial markets?

1 A. Well, I think that -- you have to ask that
2 question, I think, relative to what? I mean, if AIG had
3 defaulted on its obligations, that would have been
4 deeply unsettling to markets, and what conservatorship
5 did was prevent that outcome.

6 Q. Did you mean AIG in that answer?

7 A. No, I don't think I did. I think you're
8 referring to the Fannie and Freddie. Did I mishear you?

9 Q. I think you may have misspoke.

10 A. Oh, I'm sorry.

11 Q. But what you were saying was that if the GSEs
12 had defaulted on their obligations, that would have been
13 really bad.

14 A. That's what I meant to say, yes.

15 Q. But going into conservatorship was worse for the
16 markets than them being able to continue to operate,
17 correct?

18 A. I'm not sure I would agree with that.

19 Q. Okay.

20 A. They didn't have the ability to continue to
21 operate on their own, and, therefore, that option wasn't
22 before them -- wasn't before them.

23 Q. Let me try to put it this way: The fact that
24 the GSEs had gotten themselves into a position where
25 they needed to be put into a conservatorship --

1 A. That was deeply unsettling --

2 Q. -- was deeply unsettling.

3 A. -- that was deeply unsettling, that's true.

4 Q. Now, with respect to AIG, what was required of
5 AIG to give up in terms of its equity effectively wiped
6 out the equity holders, correct?

7 A. I believe I've used that phrase, but more
8 precisely what happened was AIG provided the Government
9 equity in the amount of 79.9 percent of the stock.
10 Effectively, that's what they did.

11 Q. And you believed that that transaction
12 effectively wiped out the equity holders, correct?

13 A. Well, it -- it -- I probably used that phrase,
14 but it -- it -- that transaction did what I said it did,
15 which is that it provided the Government equity worth
16 79.9 percent of the shares of the company.

17 Q. And by providing the Government with 79.9
18 percent of the company and by having whatever other
19 terms there were, including interest rate, you concluded
20 that that, in the aggregate, effectively wiped out
21 equity holders, correct? That's what you said.

22 A. It's true I've used that phrase. It's not
23 completely accurate in reality, because the equity
24 holders were still provided a very substantial benefit.

25 Q. Well, let me ask you --

1 A. But I believe I used that phrase, that's true.

2 Q. Let me ask you to look at the top of page 15 of
3 Plaintiffs' Trial Exhibit 663, where you write, "There
4 were institutions like the GSEs or AIG or GMAC that we
5 put into a type of conservatorship or quasi
6 nationalization, using special authority provided by the
7 Congress. In these cases, we changed management and the
8 boards, effectively wiped out equity holders, protected
9 their core functions, until they could be restructured."

10 Do you see that?

11 A. Yes. That's what I wrote.

12 Q. And these were notes that you were writing to
13 yourself in preparation for your book, correct?

14 A. That's correct.

15 Q. And you were obviously trying to be accurate
16 when you were writing to yourself. You weren't trying
17 to mislead yourself, correct?

18 A. There was no risk I could mislead myself.

19 Q. Okay. Let me -- let me ask you about something
20 that is in your book, but I want to -- I want to cover
21 it, and that is that the causes of the financial crisis
22 included failures of the regulators and regulatory
23 agencies, correct?

24 A. Yes.

25 Q. And would you tell the Court some of those

1 failures that contributed to the financial crisis.

2 A. Well, I described them in -- my views, at least,
3 in considerable detail in my book and in many other
4 contexts. Do you want me to summarize my views?

5 Q. Yes. The book is in evidence, but in terms of
6 the trial presentation, if you could just give a summary
7 of those that we can supplement by referring to the
8 book.

9 A. Thank you. Well, my -- my central view about
10 the central failure of regulation was the failure of the
11 country to put in place a set of constraints on
12 risk-taking outside the core of the banking system. So,
13 what happened over time, over the decades after the
14 Great Depression, is risk gradually migrated from where
15 it was constrained by things like capital requirements,
16 leverage requirements, which in our system was
17 principally over banks, risk migrated to where those
18 constraints did not exist.

19 That is a regulatory -- it's not really a
20 regulatory failure, because you have to have laws in
21 place to provide the foundation for regulation to limit
22 risk-taking, but our country, in the decades before the
23 crisis, leading to the crisis, did not have in place a
24 set of authority, no accountable agency, to limit risk
25 to the financial system outside the core of the banking

1 system, and that, in my judgment, is the principal risk,
2 the principal aspect of the crisis that made it most
3 damaging to the economy and hardest to manage. But
4 there were many other failures of regulation, too,
5 including where we had authority.

6 Q. Yes. And the constraints on risk-taking that
7 you say were missing, were missing in your regulation of
8 banks as well as in areas that you did not regulate,
9 correct?

10 A. The -- the constraints that applied to the risks
11 that banks could take were obviously too -- how should I
12 say? -- insufficient before the crisis, but they were
13 sufficient enough, they were constraining enough that
14 they encouraged the migration of risk outside the
15 financial system, because it became profitable or
16 economic or possible for entities to compete with banks,
17 to take on much more risk, and to gradually take market
18 share away from banks.

19 So, for example, by the summer of 2007, the role
20 of the banks in the economy, because they were
21 constrained by regulation, had shrunk to the point where
22 a group of nonbanks were more important to the provision
23 of credit to the economy than was true for the core of
24 the banking system.

25 Q. And what were those nonbanks? Who were those

1 nonbanks that you say comprised a group of nonbanks that
2 were more important to the provision of credit to the
3 economy than was true for the core of the banking
4 system?

5 A. They included a substantial diversity of
6 different types of financial institutions. Fannie and
7 Freddie Mac -- Fannie Mae and Freddie Mac would fall
8 into that category, as would the major investment banks,
9 as would a mix of large nonbank financial
10 institutions -- GE Capital would be one of the largest
11 of those -- and a substantial additional diversity of
12 institutions would fit that category.

13 Q. Would you put AIG in that category?

14 A. I'm sorry. I meant to mention AIG.

15 Q. Now, let me focus on the banking sector. With
16 respect to the Federal Reserve itself, you believed that
17 the Federal Reserve had not required Citibank, as an
18 example, to hold enough capital because the Fed had not
19 fully understood the risks that Citibank was taking,
20 correct?

21 A. That sounds like you're quoting me, too, but
22 perhaps I could just say more broadly, that as I said
23 earlier, the capital requirements that applied to banks
24 that the Federal Reserve was probably responsible for
25 shaping and responsible for enforcing on part of the

1 banking system were, I believe, not sufficient to give
2 the system enough capital, enough resources, enough
3 financial strength to withstand the risk of a major
4 financial panic and great depression.

5 Q. And that applied particularly, as an example --
6 I don't mean it's the only example -- but that applied
7 particularly to Citigroup, correct?

8 A. I'm not sure I would even say particularly to
9 Citigroup, because there were many banks, even large
10 banks that were in substantially weaker financial
11 condition. So, I would describe it as a condition that
12 applied across the banking system.

13 Q. Was there any large bank that was in
14 substantially weaker financial condition than Citi?

15 A. Yes.

16 Q. And which banks were those?

17 A. Well, I guess I would list among those certainly
18 Washington Mutual and Wachovia. Bank of America,
19 certainly after Countrywide, came close. And if you
20 want to go beyond that, I probably could find some
21 others.

22 Q. Now, of course, Washington Mutual and Wachovia
23 failed, correct?

24 A. That's correct.

25 Q. Let me -- let me direct your attention to a

1 portion of your book, and that is at page 137 of the
2 book. It is page 153 of our original Plaintiffs' Trial
3 Exhibit 709. When you have that, let me know.

4 The portion I am interested in is at the top of
5 page 137 of the book, and it's the second full sentence,
6 where you write: "As Citi's supervisors and regulators,
7 the New York Fed, the OCC, and the SEC had missed what
8 Citi's leadership, creditors, and shareholders also
9 missed: Its dramatic exposure to an increase in
10 mortgage defaults and even more dramatic declines in the
11 price of mortgage securities. We weren't expecting
12 default levels high enough to destabilize the entire
13 financial system. We didn't realize how panic-induced
14 fire sales and radically diminished expectations could
15 cause the kind of losses we thought would happen only in
16 a full-blown economic depression."

17 Do you see that?

18 A. I do.

19 Q. And you believe that that is, as counsel for the
20 Defendant previously stated, accurate, correct?

21 A. Yes.

22 Q. And in connection with your regulation of Citi,
23 did you become aware of the extent to which Citi had
24 increased its participation in subprime-backed mortgage
25 securities from 2005 to 2006 to 2007?

1 A. Yes, but as I think I wrote, I was not aware --
2 we were not aware about the extent of the
3 vulnerabilities that created for the firm.

4 Q. Let me see if I understand what you're saying.
5 You're saying that when you were regulating Citi, you
6 were aware of their increased participation in
7 subprime-backed mortgage securities in 2006 and 2007,
8 but you were not aware of the extent of the
9 vulnerabilities that created for the firm.

10 A. That's correct.

11 Q. In terms of what you learned about AIG in
12 September of 2008 or thereafter, were you aware of when
13 AIG stopped offering credit default swap protection for
14 mortgage-backed securities?

15 A. I don't believe I was.

16 Q. Did you ever find that out?

17 A. It's possible that in subsequent years I learned
18 that it was some period before that, but I couldn't say
19 that with confidence.

20 Q. Okay. Let me turn to the nature and
21 requirements of Section 13(3). Section 13(3) is
22 sometimes referred to as IPC lending, correct?

23 A. Not a term I was -- I used or was familiar with.
24 Individuals, partnerships and corporations, that's what
25 it refers to?

1 Q. That was not a -- that was not a term that you
2 were familiar with?

3 A. It's possible it was commonly used, but not the
4 way I used it.

5 Q. You were aware, however, that under Section
6 13(3), unlike some of its other sections that relate
7 particularly to banking institutions, the Federal
8 Reserve could make credit available to any individual,
9 partnership or corporation?

10 A. If another -- if a set of other conditions were
11 satisfied, yes.

12 Q. And Section 13(3), assuming that the other
13 conditions are satisfied, does not distinguish between
14 what kind of individual, partnership or corporation is
15 being loaned to; it simply says any individual,
16 partnership or corporation, correct?

17 A. It's not in front of me, but that's my
18 recollection, yes.

19 MR. BOIES: Your Honor, we're now going to offer
20 a document referred to as the Domsday Book that was
21 referenced to before, and at the request of counsel, I
22 will offer that under seal. The Court can decide what
23 it is appropriate to do with it, but rather than have an
24 argument about what is -- ought to be held confidential
25 or not, if the Court permits, I would offer it now under

1 seal.

2 I have -- I have two versions of it that I am
3 going to be offering. One was the version when
4 Mr. Geithner was president, and one was a version when
5 Mr. Geithner was Secretary of the Treasury.

6 THE COURT: All right. You're correct, I heard
7 the term before a few days ago, but I have no idea what
8 this document is.

9 MR. BOIES: Let me lay a little foundation with
10 the witness.

11 BY MR. BOIES:

12 Q. When you were president of the New York Fed
13 during the financial crisis, you carried around with you
14 something referred to as the Doomsday Book, right?

15 A. Well, I never -- I don't think I ever carried it
16 with me. It's kind of a big, fat binder, but I believe
17 I was -- I was shown it at one point, and it was
18 described to me, I believe at that point, by Tom Baxter
19 as the Doomsday Book.

20 Q. It was more than just your being shown it by
21 Mr. Baxter. This was something that was an integral
22 part of your consideration of what you were doing,
23 correct?

24 A. I wouldn't say that, because so much of what we
25 were doing was really not described in the precedence

1 referred to in that book. It was sort of novel, but --
2 and I'm not sure that I personally referred to it more
3 than a few times in my initial exposure to the Fed's
4 authority.

5 Q. That is something, though, during the financial
6 crisis that you studied to try to figure out what your
7 authority was, correct?

8 A. Well, we did occasionally go back and consult it
9 as things were eroding around us, but -- so, yes, it was
10 a reference material that described precedent and
11 authority.

12 Q. Let me ask you to look at your book again. This
13 is at page 83 of your book, which is page 91 of the
14 original Plaintiffs' Trial Exhibit 709, but it is page
15 83 of your book. And in the first full paragraph, the
16 second sentence says:

17 "There was a widespread perception that we had
18 awesome powers to fight financial fires, but when I
19 studied our actual firefighting equipment -- cataloged
20 in a New York Fed binder known internally as the
21 Doomsday Book -- I was not particularly impressed."

22 And am I correct that it was during the
23 financial crisis that you had studied the Doomsday Book?

24 A. What I'm referring to here was the fact that
25 when I first got to the New York Fed, there was a time,

1 as I was being briefed on the role the Fed plays in the
2 system, that I was first exposed to the Doomsday Book,
3 and that's what I was referring to.

4 Q. Are you saying that you studied it only when you
5 first got there; you didn't go back to it during the
6 financial crisis?

7 A. I -- it's possible that I went back and read
8 specific documents in March of '08, in particular, and,
9 of course, we had extensive -- extensive iterative
10 examinations within the New York Fed about the limits of
11 each of our authority as the crisis intensified. So, I
12 just don't -- I don't know that it would be fair to say
13 that I consulted it extensively during that period,
14 because, again, we were operating really outside the
15 boundaries of established precedent.

16 Q. When you say you were operating outside the
17 boundaries of established precedent, is that because
18 there had not been 13(3) loans since the 1930s?

19 A. Neither a financial panic, anything like this in
20 the system, designed anything like this, nor did any use
21 of the facility of that authority since the thirties.

22 Q. When you confronted the possibility of using
23 13(3) for the first time since the 1930s, did you -- or
24 insofar as you're aware, anyone -- go back to the last
25 use of 13(3) to examine what the criteria was that was

1 employed by the Federal Reserve at that time?

2 A. I don't remember personally doing that, but I
3 had -- but I had general exposure to the history of the
4 Government's actions and the Fed's actions in that
5 crisis, and most of those were actions we were not
6 intending to repeat.

7 Q. Now, when you say you had general exposure to
8 the history of the Fed's actions in that crisis and most
9 of those actions you were not intending to repeat, did
10 that include the Fed's lending under 13(3)?

11 A. No. I just meant that just in a general sense,
12 the Great Depression was an example of terrible failures
13 in crisis response. Our crisis was different, and we
14 were going to try to design a more effective strategy.

15 Q. My question is just limited to Section 13(3).
16 The Federal Reserve had made credit available pursuant
17 to 13(3) during the 1930s, correct?

18 A. That's my understanding, yes.

19 Q. And did you believe that there was anything
20 ineffective or a failure in the way the Federal Reserve
21 had used 13(3) during the 1930s?

22 A. I don't believe so. I was referring to the
23 broad scope of strategy at that time.

24 Q. Did you ask anyone to go back and look at what
25 the Federal Reserve had done with respect to 13(3)

1 during the 1930s?

2 A. I don't know if I -- I don't remember what the
3 book described about that, and I don't remember having
4 that conversation in any detail. So, I only had a sort
5 of general knowledge.

6 MR. BOIES: Your Honor, I would offer
7 Plaintiffs' Trial Exhibit 7 and Plaintiffs' Trial
8 Exhibit 651, which are two versions of the Doomsday
9 Book.

10 THE COURT: And which is which?

11 MR. BOIES: Plaintiffs' Trial Exhibit 7 is the
12 Doomsday Book that, as we understand it, existed when
13 Mr. Geithner was president; and Plaintiffs' Exhibit 651
14 is the 2012 version of the Doomsday Book.

15 I will say that there's also a 2014 version of
16 the Doomsday Book that we have, and in order to respond
17 to confidentiality concerns, we're not offering that at
18 the present time, although we reserve the right to
19 perhaps offer limited sections of it.

20 But at the present time, we would offer
21 Plaintiffs' Trial Exhibit 7 and Plaintiffs' Trial
22 Exhibit 651.

23 THE COURT: Well, I need to hear about why this
24 book needs to be sealed, but I want to do it in a
25 setting that's appropriate, I suppose.

1 Mr. Dintzer, does this document need to be
2 sealed?

3 MR. DINTZER: Your Honor, this is a request by
4 the Federal Reserve Bank of New York, but what I would
5 suggest, Your Honor, would be that after this witness
6 has completed his testimony, we could hold a hearing to
7 address that specific point, and we could address -- and
8 at that point we would be in favor of -- we would
9 present the Court with the reasons.

10 We could do it now, but it would just seem to be
11 simpler if right now it goes under seal, and then
12 immediately after this witness, those issues could be
13 considered.

14 THE COURT: Yes.

15 Mr. Kiernan, is that acceptable?

16 MR. KIERNAN: Yes, Your Honor.

17 THE COURT: Okay. Mr. Boies, that's okay with
18 you?

19 MR. BOIES: Yes, it is, Your Honor.

20 THE COURT: Are you planning to do anything with
21 this document other than admit it?

22 MR. BOIES: No. I am planning to ask him some
23 questions.

24 THE COURT: Okay.

25 MR. BOIES: And my understanding with

1 Mr. Kiernan is that as long as the questions that I have
2 in open court relate to what is said in the book about
3 13(3), it will not raise any questions.

4 MR. KIERNAN: Your Honor, that's our current
5 understanding. We may reserve on individual questions,
6 but I think it may be possible, Your Honor, for
7 Mr. Boies to ask the questions he wants to ask without
8 intruding into the issues of confidentiality that are of
9 great sensitivity to the Federal Reserve Bank.

10 THE COURT: Mr. Geithner, when you are
11 responding to these questions, if you would keep an eye
12 on Mr. Kiernan, and if he starts jumping up and down,
13 we'll hear what he has to say.

14 MR. BOIES: Thank you, Your Honor.

15 MR. KIERNAN: Thank you.

16 (Plaintiffs' Exhibit Number 7 was admitted into
17 evidence.)

18 (Plaintiffs' Exhibit Number 651 was admitted
19 into evidence.)

20 BY MR. BOIES:

21 Q. In the days leading up to September 16th, you
22 had communications with Chairman Bernanke concerning
23 what the authority was of the Federal Reserve to assist
24 with a 13(3) credit facility for AIG, correct?

25 A. Yes.

1 Q. Let me direct your attention to Defendant's
2 Exhibit 286, which is, I believe, in your book. You
3 know what, I think it is not in your book. It's not. I
4 am going to hand up Defendant's Exhibit 286.

5 This is a document this contains two emails,
6 both dated September 13th, 2008, correct?

7 A. Yes.

8 Q. And the first one, at 11:14 a.m., is from
9 Chairman Bernanke to Donald Kohn, Kevin Warsh, and
10 yourself, correct?

11 A. That's correct.

12 Q. And then there is an email at 11:36 a.m. from
13 Vice Chairman Kohn back to the chairman, correct?

14 A. That's correct.

15 Q. Let me focus on the email from Chairman Bernanke
16 to you --

17 MR. DINTZER: Your Honor, we would just ask --
18 we will not object, but we would just ask that it be
19 moved into evidence if counsel is going to read from it.

20 MR. BOIES: I offer the document.

21 THE COURT: All right.

22 MR. DINTZER: And no objection, Your Honor.

23 THE COURT: All right. Defendant's Exhibit 286
24 is admitted.

25 (Defendant's Exhibit Number 286 was admitted)

1 into evidence.)

2 BY MR. BOIES:

3 Q. Let me direct your attention to the fourth line
4 of the chairman's email where he writes, "I would be
5 willing to consider lending to them against good
6 collateral if we have explicit and public commitments
7 regarding the actions they will take to wean themselves
8 and restore stability."

9 Do you see that?

10 A. Yes.

11 Q. And he's talking there about lending to AIG
12 pursuant to 13(3), correct?

13 A. Yes.

14 Q. When, as you understand it, was the first time
15 that AIG was told that Chairman Bernanke or anyone from
16 the Fed was willing to consider lending to AIG against
17 good collateral if the Fed had explicit and public
18 commitments regarding the actions AIG would take to wean
19 themselves and restore stability?

20 A. I don't believe I conveyed that to them until
21 September 16th.

22 Q. Do you know if anyone conveyed that to AIG
23 before September 16th?

24 A. I don't know. I don't think so.

25 Q. Let me ask you to look next at Plaintiffs' Trial

1 Exhibit 715, which is in evidence, and there's a
2 September 12th reference that you have already referred
3 to when it said Mr. Willumstad talked with you saying
4 AIG faces a serious situation, and no solution is
5 possible without the Federal Reserve.

6 Did you convey that to Chairman Bernanke?

7 A. Yes. I think that's what precipitated those
8 emails that we just referred to.

9 Q. Thank you. That's what I was asking.

10 Let me ask you to look at Plaintiffs' Trial
11 Exhibit 77.

12 THE COURT: I'm sorry. Did you say Plaintiff or
13 Defendant?

14 MR. BOIES: Plaintiffs' Trial Exhibit 77.

15 BY MR. BOIES:

16 Q. This is an email to you on the morning of
17 September 16th from Jay Fishman. Is that correct?

18 A. Yes.

19 Q. And Mr. Fishman at the time was chairman and CEO
20 of the Travelers Companies?

21 A. That's what this says, yes.

22 MR. BOIES: Your Honor, I would offer this
23 document.

24 MR. DINTZER: Your Honor, we have no objection
25 to this coming in as not for the truth of the matter.

1 Obviously this is from a third party who has sent it,
2 apparently unsolicited, to then President Geithner, and
3 so we would ask that -- we believe it's hearsay. And so
4 we would ask that the Court not admit the body of the
5 material for the truth.

6 THE COURT: Mr. Boies?

7 MR. BOIES: Let me accept that qualification
8 until I examine the witness, and then, if I think it's
9 appropriate to go beyond that, I'll come back to the
10 Court.

11 THE COURT: All right. Plaintiffs' Trial
12 Exhibit 77 is admitted but not for the truth of the
13 matters asserted.

14 MR. DINTZER: Thank you, Your Honor.

15 (Plaintiffs' Exhibit Number 77 was admitted into
16 evidence.)

17 BY MR. BOIES:

18 Q. Mr. Geithner, you received this email on
19 September 16th, correct?

20 A. Yes.

21 Q. And had you had any conversations with
22 Mr. Fishman before this email?

23 A. I don't remember, but the first sentence reads,
24 "I want to reiterate that my team and I..." So, that
25 implies he had some conversation with somebody else.

1 Q. And he says, "I want to reiterate that my team
2 and I are prepared to engage immediately to address the
3 situation at AIG." Do you see that?

4 A. I do, yes.

5 Q. And he goes on to say, "We believe that we can
6 be a positive force in developing and anchoring a
7 solution." Do you see that?

8 A. I do.

9 Q. Did you have any conversations with Mr. Fishman
10 after this email?

11 A. I don't believe I did.

12 Q. Did you ask anyone else to follow up with him?

13 A. I'm not -- not sure. I don't know.

14 Q. Did you have an understanding of what he was
15 referring to when he referred to Travelers as "anchoring
16 a solution"?

17 A. No.

18 Q. Did you ever try to find out?

19 A. I don't recall whether -- I don't believe I ever
20 spoke to him to follow up. I don't recall whether
21 anybody at AIG or anybody else involved or anybody at
22 the New York Fed followed up with him.

23 Q. Did you pass this on to anyone at AIG?

24 A. I don't -- I don't believe that I did, but I
25 don't recall.

1 Q. Were you aware on September 16th, 2008, of any
2 interest by the CIC or the Chinese Government in
3 providing liquidity assistance to AIG?

4 A. You know, over the course of that weekend, there
5 were -- in our meetings with Willumstad and his team,
6 they alluded to a range of different avenues they were
7 exploring, institutions that had approached them, and in
8 that context, they -- those -- as you mentioned, you
9 mentioned CIC and -- did you mention anything beyond
10 CIC?

11 Q. Just the Chinese Government.

12 A. Just CIC, the Chinese Government? It's possible
13 in that context they came up, but I don't believe I was
14 approached by them directly.

15 Q. Were you aware of any approaches by the CIC --
16 and for the record, what does CIC stand for?

17 A. I believe it stands for the China Investment
18 Corporation, which is an investment arm of the Chinese
19 Government.

20 Q. Were you aware of any approaches on September
21 16th by the CIC or the Chinese Government to any United
22 States Government officials or representatives?

23 A. I don't have any detailed recollection of that.
24 I just -- I guess I would say it was in the air. I'm
25 not sure that -- where I would have heard it, though.

1 Q. Did you ever have any discussions concerning
2 possible CIC or Chinese Government provision of
3 liquidity to AIG with Secretary Paulson?

4 A. That's possible, but I don't recall the -- I
5 don't recall the substance of those conversations
6 except -- except the judgment that it was not a viable
7 solution to AIG's problems.

8 Q. Who said that?

9 A. I don't recall. That was just my sense of
10 the -- if they were in the air, that was the sense
11 around the judgment about the -- whether that was sort
12 of relevant to the challenges we were trying to solve.
13 It's possible. I just don't recall exactly where that
14 would have come from.

15 Q. Now, on September 16th, did you have any
16 conversations with Mr. Dinallo of the New York State
17 Insurance regulatory agency?

18 A. I don't recall if I had any on that day, but I
19 certainly would have over the preceding days.

20 Q. And you knew that Mr. Dinallo was the New York
21 State Insurance Commissioner, correct?

22 A. Yes.

23 Q. And did you talk to Mr. Dinallo personally?

24 A. I did several times over the preceding days or
25 at least once over the preceding days.

1 Q. And did Mr. Dinallo propose providing liquidity
2 to the AIG parent from assets in the related insurance
3 subsidiaries that were considered excess?

4 A. I believe he did.

5 Q. And do you know the amount that Mr. Dinallo
6 proposed?

7 A. To the best of my knowledge, it was in the range
8 of \$20 billion, but I can't be sure. I can't be sure.

9 Q. And did you have any conversation with
10 Mr. Dinallo on September 16th about Mr. Dinallo's
11 proposal?

12 A. I don't know if I did on that day, but I was
13 aware that that was his view. So, that would have been
14 probably communicated to my colleagues at the New York
15 Fed.

16 Q. And did you, either directly to Mr. Dinallo or
17 indirectly through other New York Fed officials, on
18 September 16th convey to Mr. Dinallo that the New York
19 Fed did not want to accept that proposal?

20 A. I believe that's true. I don't remember how
21 that was conveyed, though.

22 Q. Now, let me turn to the Board of Governors
23 meeting. You attended this Board of Governors meeting
24 on September 16th by telephone, correct?

25 A. I believe that's correct.

1 Q. And in your book, right near the beginning,
2 there is Joint Exhibit 63, which is the minutes of that
3 board meeting. Do you have any recollection of what
4 happened at this board meeting, other than what is
5 contained in the minutes?

6 A. Well, do you want me to read the minutes first
7 before I answer that?

8 Q. Certainly.

9 A. (Document review.)

10 MR. DINTZER: Your Honor, just a question for
11 clarification while the witness is reading. Is counsel
12 directing the witness just to pages 2 and 3 or to the
13 items attached? Just as to the substance of counsel's
14 question.

15 MR. BOIES: I want the witness to review as much
16 as he needs to to have in his mind what is contained in
17 these minutes so that he can answer my question as to
18 whether or not he recalls anything that was said at this
19 meeting, other than what is reflected in this exhibit.

20 MR. DINTZER: Thank you, Your Honor.

21 THE WITNESS: To answer your question, your
22 question was do I recall anything that happened at this
23 meeting apart from what is conveyed in the minutes --
24 contained in the minutes? Is that your question?

25 BY MR. BOIES:

1 Q. Yes. I think that's a fair description. What I
2 said was whether you recalled anything that was said at
3 the meeting, other than what is contained in Joint
4 Exhibit 63.

5 A. I don't have any personal recollection of the
6 back-and-forth at the meeting, but I have been shown, in
7 preparation for this trial, documents that include notes
8 of participants in that meeting.

9 Q. Which notes were you shown?

10 A. I believe I was shown notes prepared by Scott
11 Alvarez.

12 Q. We will try to find those notes while I continue
13 my examination.

14 Let me ask you to look at Plaintiffs' Trial
15 Exhibit 80, which is in evidence already. We will hand
16 that up. While we're getting Plaintiffs' Trial Exhibit
17 80, I'm going to hand up Joint Exhibit 80, which is
18 the -- I think may be the notes that you were referring
19 to, but I want to ask you that.

20 I've handed you Joint Exhibit 80. Are these the
21 notes that you were shown in preparation for your
22 testimony?

23 A. Yes.

24 Q. And as you understand it, are these the notes
25 that Mr. Alvarez took of the board meeting?

1 A. That's how they were described to me.

2 Q. And did you see anything in these notes that you
3 believed to be not accurate?

4 A. No, but I don't -- I don't -- I'm not sure -- I
5 don't think I read every note in here. But when I
6 reviewed it, at least for the part I read, I did not see
7 anything that I did not believe to be accurate.

8 Q. Do you have a personal recollection of people
9 saying the things that are recorded in these notes?

10 A. I don't think I would have a recollection of
11 precisely who said what or even generally. I recall the
12 outcome, but I don't think I recall the back-and-forth.

13 Q. Now let me show you Plaintiffs' Trial Exhibit
14 80. This is a two-page exhibit. The first page is an
15 email from Mr. Alvarez to you and Mr. Baxter, and the
16 subject is "Latest resolution." And then the second
17 page is a draft resolution for the Board of Governors
18 with respect to the AIG credit facility. Do you see
19 that?

20 A. Yes.

21 Q. Did you see this document at or about the time
22 it was sent?

23 A. I don't know that I did. It was sent to me, but
24 I don't know that I would have read it at that time.

25 Q. Did you have any discussions with anyone

1 concerning this exhibit?

2 A. I don't -- I don't remember. Again, my -- well,
3 I'm sorry. Go ahead.

4 Q. This exhibit refers to a recommendation of the
5 Federal Reserve Bank of New York that the credit to AIG
6 be extended at the primary credit rate. Do you see
7 that?

8 A. Are you referring to the draft resolution? To
9 the -- I'm sorry, to the exhibit that includes the draft
10 from Scott Alvarez?

11 Q. Yes. The second page that is headed
12 "Resolution."

13 A. Yes.

14 Q. And really I'm referring to the last couple of
15 lines.

16 A. I see it. Yes, I see it. Yeah.

17 Q. Did you ever have any discussions with anyone
18 concerning that recommendation?

19 A. Well, I -- we had extensive discussions about
20 the terms of the loans that we were considering
21 proposing to AIG's board, including, of course, on the
22 interest rate, but all the other conditions, too.

23 Q. And did those discussions include Mr. Alvarez?

24 A. Yes.

25 Q. Now, the resolution -- draft resolution was sent

1 to Mr. Alvarez by Mr. Rich Ashton. Do you see that?

2 A. Yes.

3 Q. Who was Mr. Ashton, if you know?

4 A. I believe Mr. Ashton worked for Mr. Alvarez as a
5 lawyer at the Board of Governors.

6 Q. Let me go back to Joint Exhibit 63. There is a
7 term sheet that is included as part of Joint Exhibit 63
8 on pages 5 through 10 of that exhibit. Do you see that?

9 A. I do.

10 Q. Do you know when this term sheet was prepared?

11 A. Well, it's dated -- it's timestamped or the
12 indication on the document is 7:42:23 a.m. on September
13 16th.

14 Q. Now, I think there's also a timestamp at the
15 bottom, and it says September 16th, 2008, 1:44 p.m. Do
16 you see that?

17 A. I do, yes.

18 Q. Now, other than simply trying to interpret these
19 timestamps, do you have any knowledge as to when this
20 term sheet was prepared?

21 A. I believe this term sheet was prepared in the
22 early -- very early morning of September 16th.

23 Q. And when was this term sheet sent to the Board
24 of Governors, if you know?

25 A. I don't know.

1 Q. Do you know who sent it?

2 A. No, I do not.

3 Q. Do you know why it was sent?

4 A. It was sent, of course, because they were
5 considering whether we should propose to AIG a loan with
6 conditions, and if we were going to do that under
7 Section 13(3), we needed the approval of five governors.

8 Q. Did you participate in the preparation of this
9 term sheet?

10 A. In the -- in -- definitely in the conditions --
11 in discussing the conditions attached in the term sheet,
12 yes.

13 Q. And do the conditions include the various points
14 that are addressed on page 6 of Joint Exhibit 63?

15 A. If you're asking -- if you're asking -- your
16 question is which conditions was I personally involved
17 in?

18 Q. Yes, let me put it that way. That's a better
19 question than I asked.

20 A. The --

21 Q. In which of these conditions were you directly
22 involved?

23 A. The amount, the interest rate, the equity, the
24 term, certainly those.

25 Q. In terms of the interest rate, that would

1 include the drawn interest rate. Is that correct?

2 A. Yes, although I'm not sure that I recall
3 discussions about the floor on LIBOR, but...

4 Q. Were your discussions also including the undrawn
5 fee?

6 A. I would say -- I guess to be accurate about it,
7 I would say that I was, of course, deeply involved in
8 the decision to propose an interest rate that was set at
9 850 basis points above three-month LIBOR, and I don't
10 recall whether I was involved in any detailed
11 discussions about the other specific terms described in
12 here, including the undrawn fee. It's likely, but I
13 don't recall.

14 Q. There is a commitment fee and an undrawn fee and
15 a periodic commitment fee, correct?

16 A. That's correct.

17 Q. Do you recall being involved in any of those?

18 A. I don't recall being involved in discussions
19 around the details of any of those. It's possible,
20 though. I just don't recall.

21 Q. Let me ask you to look for a moment at Joint
22 Exhibit 64, which is the very next document. This is a
23 document that was sent by Mr. Baxter to Mr. Alvarez and
24 Mr. Ashton at 2:15 in the afternoon on September 16th,
25 correct?

1 A. Yes, that's correct.

2 Q. And this says "Revised Term Sheet"?

3 A. That's correct.

4 Q. Now, do you know what the purpose of this term
5 sheet was?

6 A. Well, the term sheet attached is dated 3:50 a.m.
7 on September 16th. So, what I suspect this represents
8 is another draft as we were debating internally what
9 conditions to attach to our proposal.

10 Q. The term sheet that Mr. Baxter sent Mr. Alvarez
11 at 2:15 on the 16th, Joint Exhibit 64, is not the same
12 as the term sheet that's included in Joint Exhibit 63,
13 correct?

14 A. I don't -- I don't know that. I mean, from
15 the -- all I can tell -- I mean, I would have to look at
16 it carefully. All I can tell is that the time in the
17 upper right-hand corner is different. The one you just
18 referred to in Joint Exhibit 64 is sent at -- is
19 prepared or stamped at 3:50 a.m. The one you referred
20 to in Joint Exhibit 63 is at 7:42 a.m. Other than that,
21 I don't know whether they're different.

22 Q. And I'm not suggesting that the substance is
23 necessarily different. I'm just saying that these are
24 two different documents, correct, because they have two
25 different times?

1 A. In that sense they're different documents, yeah.

2 Q. Do you know how the Board of Governors got the
3 term sheet that is in Joint Exhibit 63?

4 A. I don't know.

5 Q. Did you ever review what term sheet was being
6 given to the Board of Governors?

7 A. I believe I would have, but I'm not certain I
8 did. But I certainly was aware of the key terms in the
9 term sheet, the key conditions we proposed to attach to
10 the loan.

11 Q. Do the key terms, as you use that term, include
12 the commitment fee, the undrawn fee, and the periodic
13 commitment fee?

14 A. I guess the way I would define the key terms is
15 the amount, the interest rate, the equity, and the
16 duration, which are the ones that I was -- that I recall
17 being directly involved in determining.

18 Q. After the September 16th Board of Governors
19 meeting, was there ever another Board of Governors
20 meeting that you are aware of that dealt with the \$85
21 billion 13(3) credit facility?

22 A. I don't recall directly. What I believe is true
23 is the board had to vote. I don't believe they voted in
24 my presence, while I was on the phone. What I don't
25 know is whether they convened a second meeting, a

1 subsequent meeting to do that or to do anything else, or
2 they did it after I left the phone.

3 Q. So, the vote to approve this by the Board of
4 Governors was a vote that did not take place in your
5 telephonic or other presence, right?

6 A. I don't think so.

7 Q. Was the meeting still going on when you left the
8 phone?

9 A. I believe so, but I can't be certain.

10 Q. When did you stop your participation in the
11 Board of Governors meeting?

12 A. I don't know. Perhaps when I had something else
13 to do, but I can't remember.

14 Q. Do you remember that there came a time when
15 there were proposals that the equity component of the
16 consideration for the credit facility for AIG would be
17 in the form of preferred stock as opposed to warrants?

18 A. Your question is do I remember when that
19 happened?

20 Q. Do you remember that there came a time when that
21 happened? And then you'll say, I hope, yes, and then
22 I'll ask you if --

23 A. I believe, yes, that there was a time when that
24 happened.

25 Q. And when was that?

1 A. I don't recall precisely. My recollection is is
2 the precise form of the equity was something that was
3 evolving certainly -- we were considering certainly as
4 we were discussing with the Board that day.

5 Q. You were aware that following September 16th,
6 that is, on September 17th and 18th and to some extent
7 for some days thereafter, there were a number of press
8 reports concerning the terms of the proposed AIG credit
9 facility, correct?

10 A. I believe that's the case, although I'm not sure
11 I was aware of them at the time.

12 Q. Let me just show you a few and see if you are
13 aware of these. Let me ask you to look at Plaintiffs'
14 Trial Exhibit 131. This is a New York Times article
15 dated September 17th, 2008. Was this an article that
16 you saw at or about the time?

17 A. I don't know if I did. I don't recall. I just
18 don't know.

19 Q. Let me ask you to look at page 3 of Exhibit 131
20 and the second full paragraph, the first sentence that
21 begins, "Under the plan." Do you see that?

22 A. Yes.

23 Q. And would you read that sentence to yourself.

24 A. Yes.

25 Q. Were you aware on September 17th that there were

1 press reports that, in words or in substance, were
2 reporting this description of the proposed AIG Federal
3 Reserve credit facility?

4 A. It's possible, but I don't recall.

5 Q. This report, in addition to referring to the \$85
6 billion amount, says that the Federal Reserve will
7 receive warrants --

8 MR. DINTZER: Objection, Your Honor. The
9 document hasn't been moved into evidence. We have
10 hearsay concerns. I don't know if counsel plans to
11 proffer it or not, but at this point, it is not
12 appropriate for counsel to read from it.

13 THE COURT: Mr. Boies?

14 MR. BOIES: Your Honor, I'm not being -- this
15 has nothing to do with the truth of the matter asserted.
16 This has to do with his knowledge of what was being
17 publicly reported. There's no dispute that this is an
18 authentic New York Times article; that is, there is no
19 dispute that this is what was being reported. I'm not
20 introducing it to establish the truth of the report but
21 merely the fact that this is what people were reporting
22 on September 17th.

23 THE COURT: Are you introducing it at all?

24 MR. BOIES: Your Honor, I will offer it for that
25 very limited purpose.

1 THE COURT: All right.

2 MR. DINTZER: And we do not object -- given
3 counsel's indication, we do not object that it can come
4 into evidence, but not for the truth of the matter
5 asserted.

6 THE COURT: All right. Plaintiffs' Trial
7 Exhibit 131 is admitted but not for the truth of the
8 matter asserted.

9 MR. DINTZER: Thank you, Your Honor.
10 (Plaintiffs' Exhibit Number 131 was admitted
11 into evidence.)

12 BY MR. BOIES:

13 Q. This report talks about the Fed making a
14 two-year loan of up to \$85 billion and receiving
15 warrants that can be converted into common stock, giving
16 the Government nearly 80 percent ownership of the
17 insurer if the existing shareholders approve. Do you
18 see that?

19 A. I do.

20 Q. And my question is whether you were aware of
21 reports in substance that were describing the
22 consideration or part of the consideration for the
23 Federal Reserve credit facility for AIG as being these
24 kind of warrants.

25 A. I don't recall being aware that there was -- of

1 the content of the reporting in the press about the form
2 of equity we were considering.

3 Q. Let me ask you to look at Plaintiffs' Trial
4 Exhibit 2736, and I would -- again, I would offer this
5 not for the truth of the matter asserted but merely for
6 purposes of showing what the press was reporting during
7 this period about the terms of the AIG Federal Reserve
8 credit facility.

9 MR. DINTZER: We do not object to it coming in
10 under that purpose and not for the truth of the matter
11 asserted.

12 THE COURT: All right. Plaintiffs' Trial
13 Exhibit 2736 is admitted but not for the truth of the
14 matter asserted.

15 (Plaintiffs' Exhibit Number 2736 was admitted
16 into evidence.)

17 BY MR. BOIES:

18 Q. Let me direct your attention to the second
19 paragraph, beginning with the second sentence, where the
20 newspaper reports, "Fed staffers, who briefed reporters
21 at 9:15 tonight, don't even want us to say the
22 government will control AIG." Let me stop there.

23 Were you aware of Fed staffers briefing
24 reporters the evening of September 16th concerning the
25 terms of the proposed AIG credit facility?

1 A. Yes. Generally, that would be our practice.

2 Q. And it then goes on to talk about management and
3 veto powers, and then it says that the credit facility
4 will involve a warrant allowing the Fed to take 79.9
5 percent of the stock whenever it wants, but that the Fed
6 contends or the Fed staffers contend there is no control
7 until the warrant is exercised.

8 First, were you aware of reports the evening of
9 September 16th that the credit facility involved a
10 warrant for 79.9 percent of the stock?

11 A. I don't recall if I was aware about the content
12 of the press reports on what type of equity we were
13 considering.

14 Q. Second, as you understood it, were Fed staffers
15 who briefed reporters briefing reporters in terms of
16 saying there would be no control over AIG by the
17 Government until the warrant was exercised?

18 A. I don't -- I don't recall. I don't know who was
19 briefing, I don't know how knowledgeable they were. All
20 I knew is that the form of the equity we were
21 considering proposing had not yet been determined.

22 Q. At any time on the evening of September 16th,
23 during September 17th, 18th, 19th, 20th, or 21st, did
24 any person representing the Fed, to your knowledge,
25 brief any reporters to the effect that the equity

1 component was not going to be warrants?

2 A. I don't know. You said until the 21st? Does
3 your question include the 21st?

4 Q. It included the 21st, but not the 22nd. In
5 other words, I stopped before the 22nd.

6 A. And the credit agreement was signed on what
7 date?

8 Q. The credit agreement, I would represent, was
9 signed the morning of September 23, effective September
10 22, based on a board meeting the evening of September
11 21, an AIG board meeting.

12 Let me ask you to look at Defendant's Exhibit
13 416. Defendant's Exhibit, that's DX. This is a
14 document that represents an email to you and a number of
15 other people enclosing a draft Federal Reserve press
16 release dated September 16th, 2008, together with your
17 reply. Do you see that?

18 A. I do.

19 MR. BOIES: I would offer Defendant's Exhibit
20 416.

21 MR. DINTZER: We obviously don't have any
22 objection, Your Honor. I was just running down whether
23 it's been admitted. We just wanted to confirm.

24 Okay, it hasn't. We have no objection, Your
25 Honor.

1 THE COURT: Defendant's Exhibit 416 is admitted.
2 (Defendant's Exhibit Number 416 was admitted
3 into evidence.)

4 BY MR. BOIES:

5 Q. Now, the draft press release, which is the
6 second page of the exhibit, the bottom paragraph, the
7 second sentence says, "The Federal Reserve will receive
8 warrants to acquire up to 79.99 percent of AIG's
9 equity."

10 Do you see that?

11 A. I do.

12 Q. And after reviewing this press release, you
13 responded, "Good." Correct?

14 A. I don't believe that's accurate. I was
15 responding "good" to the content of the email from
16 Michelle Smith, which is a -- a few sentences or one
17 sentence, which reads -- is preceded by the words, "and
18 just in case the whole thing falls through, here's a
19 quick rough draft of something we might put out."

20 So, my recollection is, in saying "good," I'm
21 referring to the sentence she's conveyed to me, which is
22 a sentence that the Fed would consider putting out in
23 the event that the whole thing falls through.

24 Q. You did get the press release that's attached
25 here, correct?

1 A. It's attached, but I don't know that I -- I
2 don't know that I would have reviewed it or that it
3 would -- yeah, I just don't know that I would have
4 reviewed it or that I did review it.

5 Q. Did you ever make any comments on this press
6 release that you received?

7 A. On that draft? I don't -- I wouldn't typically
8 comment on a press release by the Board of Governors.
9 Typically, they would show it to my colleagues at the
10 New York Fed, but I typically wouldn't review the
11 details of the press release.

12 Q. You knew that this press release was going to go
13 out to the public, correct?

14 A. I'm not sure this one was, but some press
15 releases went to the public.

16 Q. A press release was going to go out to the
17 public that night, and this was a current draft of that
18 press release, correct?

19 A. Well, I don't know that either, because I don't
20 know how many drafts there were.

21 Q. I said current, at the time it was sent to you.

22 A. Yes, this was current as of the timestamp there,
23 which was 6:14.

24 Q. And you knew that Fed staffers were going to
25 brief the press, right?

1 A. Yes. I believe I knew that.

2 Q. And you wanted to be sure that both the press
3 release and what Fed staffers said to the press and the
4 public was accurate, correct?

5 A. Of course, yes.

6 THE COURT: Mr. Boies, shall we break for lunch?

7 MR. BOIES: Yes, Your Honor.

8 THE COURT: All right. Let's reconvene at 1:45.

9 (Lunch recess, 12:46 p.m. to 1:45 p.m.)

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AFTERNOON SESSION

(1:45 p.m.)

THE COURT: Thank you. Please be seated.
You may proceed.

MR. BOIES: Thank you, Your Honor.

BY MR. BOIES:

Q. As originally contemplated at the time of the Board of Governors meeting on September 16th, the equity consideration that the Federal Reserve was going to receive was in the form of warrants, correct?

A. Well, that's what those draft term sheets imply, yes.

Q. And that is what you understood when you participated in the Board of Governors meeting, correct?

A. Yes. I believe that's correct.

Q. One of the characteristics of those warrants was that they did not have any voting power until they were exercised, correct?

A. I'm not sure I can speak to that, although I think I just read it in our -- in the documents you showed me earlier today.

Q. Back in September of 2008, were you aware that one of the characteristics of the warrants that were provided in the term sheet that is included in the Board of Governors September 16 minutes was that there would

1 be no vote until the warrants were exercised?

2 A. Well, you showed me a draft term sheet to that
3 effect, I believe, but I don't know that I was aware of
4 that particular feature at that time.

5 Q. Did there come a time when you did become aware
6 that the warrants that were provided for in the Board of
7 Governors September 16 term sheet did not have a vote
8 until they were exercised?

9 A. I don't know, Mr. Boies. I don't know if this
10 would be helpful. Would you like me to explain what I
11 think I was aware of?

12 Q. Does it relate to the voting of the warrants?
13 If not, I'm not interested in it right now.

14 A. No. So, I don't -- I don't know that -- I don't
15 recall being aware of that particular feature of what we
16 were considering, although I agree that you just showed
17 me documents in which it is -- draft term sheets in
18 which it's described that way.

19 Q. There came a time when the Federal Reserve
20 wanted to be sure that it had equity that would provide
21 it with voting control, correct?

22 A. That's correct.

23 Q. And in pursuit of that, ultimately, what the
24 Federal Reserve required as consideration for the credit
25 facility was voting preferred stock, correct?

1 A. That's correct.

2 Q. At the time of the September 16 Board of
3 Governors meeting, you understood, did you not, that the
4 equity component of the consideration for the credit
5 facility required a shareholder vote?

6 A. I don't know that I was aware of that at the
7 time.

8 Q. Did you ever become aware of the fact that the
9 provisions of the credit facility considered by the
10 Board of Governors would have required a shareholder
11 vote before the equity could be converted into common
12 stock?

13 A. I don't know, but I just -- maybe I should
14 clarify one thing. Although there was a draft term
15 sheet that your documents show the Board of Governors
16 considered, at that point the form of the equity and
17 that structure -- that piece of the conditions we had
18 not yet come to a view on.

19 Q. Let me be sure if I understand what you're
20 saying. In that connection, let's look at Joint Exhibit
21 63, which is the Board of Governors minutes and the term
22 sheet that the Board of Governors considered. This was
23 the only term sheet that the Board of Governors ever had
24 presented to it, correct?

25 A. I don't know if that's the case.

1 Q. You do not know of another term sheet that was
2 presented to the Board of Governors in connection with
3 the AIG credit facility, do you?

4 A. Well, Mr. Boies, I don't -- I don't believe that
5 I did or could have had knowledge of all the drafts of
6 things they saw because our views were evolving, and so
7 I don't know what they saw.

8 Q. Now, when you say "our views were evolving,"
9 you're talking about the views of the Federal Reserve?

10 A. Both the -- both the New York Fed and the
11 members of the Board of Governors of the Federal
12 Reserve.

13 Q. Are you aware of any term sheet that was
14 presented to the Board of Governors of the Federal
15 Reserve, other than the term sheet that is included in
16 Joint Exhibit 63?

17 A. No, I'm not aware there was another specific
18 one.

19 Q. When you say you're not aware there was another
20 specific one, are you aware that there was a general one
21 that we --

22 A. I'm sorry. I didn't mean to be unclear. No, I
23 was not aware of another term sheet, other -- I guess
24 what I'm saying is my recollection is that the
25 resolution, which is in this exhibit at page 4, says the

1 New York Fed may, as it deems appropriate, impose
2 conditions such as those described, and my recollection
3 is that language was designed to recognize the fact that
4 we had not at that time come to a final view about the
5 form of the equity. And so as I said, our views on that
6 were evolving, and I believe that was clear to the
7 participants in that call, that meeting, as the
8 resolution suggests.

9 Q. Now, you said that the resolution said that the
10 New York Fed may, as it deems appropriate, impose
11 conditions such as those described. In fact, what it
12 says is, "The New York Federal Reserve Bank may, as it
13 deems appropriate, impose conditions such as those
14 described in its proposed lending facility term sheet on
15 its extension of credit to AIG," correct?

16 A. Yes, that's what it says.

17 Q. And the proposed lending facility term sheet was
18 the term sheet that was included in JX 63, correct?

19 A. Yes, that's correct, which was described as a
20 draft.

21 Q. I think I understand what you're saying. It's
22 not described as a draft in the language we're looking
23 at, but it's headed "Draft," correct?

24 A. "Preliminary Draft."

25 Q. The Board of Governors, when they considered

1 this, did someone say at this meeting that the form of
2 equity had not yet been determined?

3 A. I don't know. As I testified earlier, in
4 response to your earlier question, I don't have a
5 detailed recollection of the back-and-forth of what was
6 said at that meeting, but what I'm very confident of is
7 the principal decision-makers at the New York Fed and
8 the Federal Reserve Board at that time had not reached a
9 decision yet on the form of equity that we would suggest
10 be a condition for a loan.

11 Q. My question has to do with what happened at the
12 September 16 Board of Governors meeting. At that Board
13 of Governors meeting, was there discussion of any form
14 of equity other than warrants?

15 A. I don't recall. I don't know.

16 Q. At the September 16th Board of Governors
17 meeting, did anyone say that the form of equity had not
18 yet been determined?

19 A. I do not know -- do not recall whether they
20 said -- that was said or not.

21 Q. Prior to the Board of Governors meeting on
22 September 16th, are you aware of any writing that says
23 that the form of equity is going to be anything other
24 than warrants?

25 A. Prior to the board meeting?

1 Q. Yes.

2 A. I don't -- I don't recall whether there was any
3 writing. I don't -- I don't know. There was a lot of
4 writing. I just don't know.

5 Q. There's not any writing that you're aware of.
6 Is that fair?

7 A. Today, no. There's not a writing that I recall
8 being aware of at that time.

9 Q. When was the first time that anyone mentioned to
10 you the possibility of requiring voting preferred stock
11 as consideration for the AIG 13(3) credit facility?

12 A. I don't remember when that occurred.

13 Q. Can you tell me whether it was before September
14 20th?

15 A. I don't know.

16 Q. Did you participate in any discussions
17 concerning whether or not in the absence of voting
18 control there was a danger that dissident shareholders
19 would try to undo the proposed credit facility?

20 A. I don't believe I did.

21 Q. You were aware of the concern that other people
22 had with respect to that, were you not, sir?

23 A. I don't believe that at that time I had any
24 appreciation for the -- the type of implications of the
25 various forms of equity we were considering. I don't --

1 I don't know that for sure, but I don't believe I did.

2 Q. Without tying it, then, to any particular form
3 of equity, were you aware that people at the Federal
4 Reserve were concerned that dissident shareholders were
5 going to make an effort to undo the proposed credit
6 facility?

7 A. I think it's likely that I was aware of that
8 risk, particularly given what I had been -- the
9 discussions we had around the Bear Stearns transaction,
10 but I don't recall the context for or any details around
11 those conversations.

12 Q. Do you recall what efforts the Federal Reserve
13 took to avoid a shareholder vote with respect to the
14 issuance of equity related to the AIG credit facility?

15 A. I do not.

16 Q. Do you recall that the Federal Reserve made
17 efforts to avoid a shareholder vote with respect to the
18 issuance of equity related to the AIG credit facility,
19 even if you don't recall what those efforts were?

20 A. I think the most accurate thing I could say is I
21 recall being aware of the -- the risk or the concern
22 that if we did this, we wanted it to work and to hold
23 and be successful; but I don't believe, beyond that, I
24 was aware of how we sought to address that concern.

25 Q. Let me ask you to look at Plaintiffs' Trial

1 Exhibit 161, the top email of which is a memo or email
2 to you from Meg McConnell attaching an article, and the
3 subject is, "AIG Gains on Speculation, Investors may
4 Derail Federal Takeover." Do you see that?

5 A. I do.

6 MR. BOIES: Your Honor, I would offer
7 Plaintiffs' Trial Exhibit 161.

8 MR. DINTZER: Your Honor, we have no objection
9 to it coming into evidence for the truth of the matter
10 for the top part. For the article, we would ask, based
11 on hearsay concerns, that it not come in for the truth
12 of the matter considered. But otherwise, it can come
13 in.

14 MR. BOIES: Your Honor, I agree with that.

15 THE COURT: All right. Plaintiffs' Trial
16 Exhibit 161 is admitted with the condition that the
17 bottom half of the exhibit, containing an article from
18 Bloomberg News by Hugh Son, S-O-N, is not admitted for
19 the truth of the matter asserted.

20 (Plaintiffs' Exhibit Number 161 was admitted
21 into evidence.)

22 BY MR. BOIES:

23 Q. Now, do you recall receiving this email?

24 A. I do not.

25 Q. Do you recall Meg McConnell raising with you

1 concerns that investors might try to derail what is
2 referred to here as the federal takeover?

3 A. I don't recall her making me aware of that, but
4 it's perfectly possible, of course, that I had a general
5 awareness of that risk.

6 Q. In addition to it being perfectly possible, do
7 you recall that you were aware of the risk that
8 investors might try to derail what Ms. McConnell refers
9 to as the federal takeover, even though you may not
10 recall who made you aware of that risk?

11 A. I don't think Meg McConnell referred to it as
12 the federal takeover. She's just repeating the title of
13 the Bloomberg News story in that context. But could you
14 repeat the first part of your question?

15 Q. Sure.

16 Do you recall that you were aware of the risk
17 that investors might try to derail what is referred to
18 here as the federal takeover and which, I think we can
19 agree, related to the AIG credit facility?

20 A. I believe I was generally aware of that possible
21 risk.

22 Q. Were you aware that some investors were actually
23 talking about that as opposed to just being generally
24 aware that it was a possible risk?

25 A. I don't know that I was aware of that.

1 Q. Let me ask you to look at a document that is
2 already in evidence, Plaintiffs' Trial Exhibit 159.
3 This is not a document that I have any reason to believe
4 you have seen before, but I want to ask you whether what
5 is discussed here was brought to your attention or not.

6 MR. DINTZER: Your Honor, we don't have that.

7 MR. BOIES: No, we're --

8 THE COURT: It's not in the book.

9 MR. BOIES: I'm told we don't have copies of
10 that, Your Honor. We will get copies made and we will
11 come back to it.

12 THE COURT: All right.

13 BY MR. BOIES:

14 Q. Let me ask you in the meantime to look at
15 Plaintiffs' Exhibit 129.

16 MR. DINTZER: We also don't have that, Your
17 Honor.

18 MR. BOIES: That should be in the book.

19 MR. DINTZER: I stand corrected, Your Honor. I
20 apologize.

21 THE COURT: It's in -- it's not in my book,
22 apparently. PTX 129?

23 MR. BOIES: Yes. It's not in your book?

24 THE COURT: No.

25 MR. BOIES: I apologize, Your Honor.

1 THE COURT: Oh, wait.

2 MR. DINTZER: It's hiding behind a tab, Your
3 Honor.

4 THE COURT: It's hidden. I have it.

5 MR. BOIES: And I would offer this exhibit.

6 MR. DINTZER: Your Honor, we don't have any
7 objection to this coming in. The -- the first page can
8 come -- we have no objection for it coming in at all.
9 On the second page, that is a letter that was sent from
10 someone outside of the Government, and we object on
11 hearsay grounds to that. So, as long as that's not
12 being offered for the truth of the matter asserted, we
13 would not oppose it.

14 MR. BOIES: Your Honor, this is a little bit
15 different than the prior ones. This is somebody who's
16 writing to Mr. Bernanke and Mr. Geithner who -- and then
17 Mr. Geithner has forwarded this on to other people. So,
18 this is not just something that we think is -- is
19 hearsay. We think this has, because of its adoption by
20 the witness, the necessary prerequisites under 807.
21 Now, I can pursue that with the witness and perhaps lay
22 that foundation a little more precisely if the Court
23 would --

24 THE COURT: I think we better do that, because
25 the document, by itself, doesn't show adoption to me.

1 BY MR. BOIES:

2 Q. Mr. Geithner --

3 THE COURT: So, conditionally, I will admit
4 Plaintiffs' Trial Exhibit 129, but as to the attached
5 message from Laurence H. Meyer, from Macroeconomic
6 Advisers, it is not at this point admitted as to the
7 truth of the matter asserted.

8 MR. DINTZER: Thank you, Your Honor.

9 (Plaintiffs' Exhibit Number 129 was admitted
10 into evidence.)

11 BY MR. BOIES:

12 Q. Mr. Geithner, the initial email is from a
13 Laurence Meyer, correct?

14 A. Yes.

15 Q. Who is he?

16 A. He is a former Federal Reserve Board Governor
17 and economist who ran a consulting firm called -- it was
18 called Macroeconomic Advisers.

19 Q. He was a former Federal Reserve Board Governor.
20 Is that what you said?

21 A. That's correct.

22 Q. And this is somebody who you knew?

23 A. Yes.

24 Q. When had he served as a member of the Federal
25 Reserve Board of Governors?

1 A. I couldn't recall the dates. We didn't -- we
2 didn't overlap, at least I don't think we did.

3 Q. And this message begins, "Hi, Ben and Tim." And
4 I take it that is Mr. Bernanke and yourself?

5 A. Yes.

6 Q. And this is somebody, I take it from the nature
7 of the greeting, somebody who you knew?

8 A. Yes.

9 Q. And then you forwarded it on to Kristin Mayer,
10 correct?

11 A. Yes.

12 Q. And who is Kristin Mayer?

13 A. She was a member of the staff of the Federal
14 Reserve Board -- the Federal Reserve Bank of New York
15 who worked directly for me.

16 Q. And although the email that you sent to
17 Ms. Mayer does not say so, I take it from the substance
18 of her email that you asked her to then, in turn, pass
19 it on to Mr. Dan Jester.

20 A. That's what this implies, yes.

21 Q. That's what it says.

22 A. I'm sorry. That's what it states.

23 Q. And Mr. Jester at the time was working at the
24 Treasury Department, correct?

25 A. That's correct.

1 Q. And what Mr. Meyer proposed was a basic concept
2 by which a consortium --

3 MR. DINTZER: Objection, Your Honor. That part
4 still hasn't come into evidence, and so having counsel
5 read it would be inappropriate.

6 MR. BOIES: Your Honor, first, it has come into
7 evidence, except not for the truth of the matter
8 asserted. To discuss the proposal that is made -- that
9 is being made, it is not hearsay at all. I actually
10 think that based on the testimony of the witness, who
11 this person was, the relationship, and who he forwarded
12 it on to, it is sufficient to meet the standards of 807.

13 But for my present purposes, I think all that's
14 important is that my quotation of this is simply asking
15 about a concept that was proposed. It doesn't raise a
16 hearsay problem at all, I don't think.

17 MR. DINTZER: Your Honor, I'll withdraw my
18 objection if I misunderstood. I understood that the
19 Court was withholding consideration on the second part,
20 et al. If the Court has moved that in for -- not for
21 the truth, then I will withdraw my objection.

22 THE COURT: It is admitted for the limited
23 purpose, not for --

24 MR. DINTZER: All right. Then I withdraw my
25 objection, Your Honor.

1 THE COURT: All right. Let's go ahead.

2 BY MR. BOIES:

3 Q. What Dr. Meyer proposes is a concept by which a
4 consortium of investor groups, private investor groups
5 would be able to participate with the Federal Reserve in
6 the \$85 billion AIG credit facility on a pari passu
7 basis. Do you see that?

8 A. I'm trying to find that. Yes, that's what the
9 quoted language says.

10 Q. And Mr. Meyer goes on to say, "Based on our
11 conversation with other significant investor groups, we
12 believe that a consortium could be organized that would
13 be willing to purchase about \$40 billion of the loan
14 that is being provided to AIG."

15 Do you see that?

16 A. That's what it says. Yes, that's right.

17 Q. After receiving this, did you have any
18 discussions with Mr. Meyer about this proposal?

19 A. I don't know. I don't recall.

20 Q. Did you ask anybody --

21 A. Could I just say -- could I just say one thing?
22 I wouldn't consider this as a proposal, because -- you
23 didn't read it, but the language preceding that says,
24 "Clients also call with suggestions dealing with the
25 challenges you face -- I felt the idea developed below

1 was particularly interesting, wanted to pass it on to
2 you." It's from one client. So, I would just say it's
3 like an idea described as a basic concept, not -- I
4 wouldn't consider this as a proposal.

5 Q. First of all, it doesn't say it came from one
6 client, does it, sir?

7 A. It does -- it says -- well, it says, "If you
8 also find this interesting, I would like you to talk to
9 this client." So, the implication by that is that --
10 but I guess this is an implication, is that the idea
11 came from this client.

12 Q. This was certainly an idea, to use your
13 language, that Dr. Meyer thought was worth passing on to
14 you, correct?

15 A. It was his -- his language was "idea," but yes,
16 he thought it was worth passing on to me, and he did.

17 Q. And you felt it was worth passing on to
18 Ms. Mayer, correct?

19 A. Yes.

20 Q. And you felt it was worthwhile asking Ms. Mayer
21 to share it with Dan Jester, correct?

22 A. Well, I don't remember if I did that, but that's
23 what this states, yes.

24 Q. You don't have any reason to doubt that that's
25 what you --

1 A. I don't have any reason to doubt it. It sounds
2 perfectly reasonable.

3 Q. Let me go back to my question. Did you ever do
4 anything yourself, other than passing this on, to follow
5 up on what is described here as -- once as an idea and
6 once as a basic concept?

7 A. I don't know whether, beyond apparently asking
8 for this to be forwarded to Dan Jester, I did anything
9 personally to follow up on this idea, nor do I believe I
10 was ever contacted by anybody about this idea beyond
11 this email.

12 My general approach, being made aware of
13 suggestions or concepts or ideas that someone might be
14 willing to come in and lend to AIG, was to say -- well,
15 you haven't asked me that yet, so I guess I won't say
16 that.

17 Q. Let me just be sure I have down answers to the
18 questions I have asked. Other than passing this idea or
19 concept on to Ms. Mayer and, indirectly, to Mr. Jester,
20 did you do anything to follow up with Mr. Meyer or
21 anyone else?

22 A. I don't remember if I did or not.

23 Q. Okay.

24 A. But perhaps I could just offer the context,
25 which is if there was ever any possibility of a credible

1 proposal to take some of the extraordinary risk off our
2 hands, we would have welcomed that.

3 Q. Did you ever ask Mr. Meyer who the client was
4 that had presented this idea?

5 A. I don't know if I did, but I didn't normally
6 need people with massive financial resources to go
7 through a consulting economist if they wanted to
8 approach me with a suggestion, and most people were not
9 shy in doing that.

10 Q. Are you saying that because his client went
11 through Dr. Meyer, that that led you to believe that the
12 client did not have the necessary financial resources?

13 A. No, just that, you know, in that time, all sorts
14 of people had ideas, but if they were real, you know,
15 normally they had a way of figuring out a way to make
16 them credible to me and my colleagues.

17 Q. Well, Dr. Meyer was a credible person, correct?

18 A. Well, he was a very well regarded macroeconomist
19 with a consulting firm that produced that kind of
20 product.

21 Q. And a former Governor of the Federal Reserve
22 Board of Governors, correct?

23 A. Yes, correct.

24 Q. And is it your testimony that just based on this
25 email, you concluded that this was not a real proposal

1 or a real alternative?

2 A. No. I concluded that I could not judge, based
3 on the email, if it was a credible alternative.

4 Q. So, did you ever follow up with Dr. Meyer to try
5 to determine whether it was a credible alternative?

6 A. Well, I referred it, I guess, apparently to Dan
7 Jester, I guess in part so that we could have a better
8 basis for understanding, if this were forthcoming as a
9 real proposal, we would be better able to consider it.
10 But, again, I don't -- I mean, normally I would have
11 been exposed to, directly or indirectly, all sorts of
12 ideas and certainly would not personally have tried to
13 follow up on each one of them or even direct my staff to
14 follow up on each one of them, because, again, in this
15 world, if it's serious and real and involved a credible
16 commitment of large sums of money that would take risk
17 off our hands, then we would have been made aware of
18 that and would have had every incentive to pursue it.

19 Q. Do I take it that the answer to my question is
20 that you never did follow up with Dr. Meyer to try to
21 determine whether this was a credible alternative?

22 A. I don't recall that I did or if I did.

23 Q. Did you ever ask anyone else to follow up with
24 Dr. Meyer to try to determine whether this was a
25 credible alternative?

1 A. Don't recall if I did.

2 Q. Did you ever have any discussions with
3 Mr. Jester as to what he thought of this alternative?

4 A. I suspect that I did, but I don't recall whether
5 I did.

6 Q. Did Mr. Jester ever follow up with Dr. Meyer to
7 try to determine whether this was a credible
8 alternative?

9 A. I don't know.

10 Q. Did you ever ask him?

11 A. I don't recall, but I -- I believe that any idea
12 that we had or somebody else had that offered the
13 prospect of us reducing the amount of risk we took,
14 realistically, you know, that would have some viability
15 to it, we talked about those things, absolutely.

16 Q. Are you saying that you think you talked about
17 this but you just don't remember it?

18 A. I don't know if I talked about this specific
19 idea, but I do remember discussing with him a range of
20 ideas that we were made aware of that came to us in the
21 course of those days and the succeeding weeks.

22 Q. And you're saying you just don't remember
23 whether this was one of them or not?

24 A. Yes. That's what I'm saying.

25 Q. If, on September 17th, there was a private

1 consortium that would have been prepared to participate
2 pari passu with the Federal Reserve for about \$40
3 billion of the \$85 billion credit facility, that is
4 something that, as I understand your testimony, you
5 would have liked to have happen. Is that correct?

6 A. Well, it -- of course, it would have to be -- it
7 would typically depend on the nature of the assistance,
8 their financial capacity to make that commitment,
9 whether realistically it would have been pari passu in
10 all forms. But in concept, as I said, if there was a
11 credible proposal out there to take some of the risk off
12 our hands, on conditions that wouldn't undermine what we
13 were trying to achieve, then we were open to that and
14 would have welcomed that.

15 Q. Part of my question is whether a private sector
16 consortium that took about half of the credit facility
17 on a pari passu basis would have, in your judgment,
18 undermined what you were trying to accomplish.

19 A. Well, this -- it's a -- I'm not trying to be --
20 it's just -- it's a complicated thing. You know, if we
21 come in as the Federal Government, with our unique
22 strengths and abilities -- in this case the Federal
23 Reserve -- and provide a financial commitment that the
24 world is designed to interpret as trying to assure the
25 viability of a firm, and private lenders come in and

1 say, "We'd be happy to take your terms," then you'd
2 still have to ask whether, in effect, they were
3 benefiting disproportionately from the risk we had
4 assumed.

5 So, *pari passu* is a general concept, is
6 interesting, potentially promising, but you have to look
7 at its precise application in this context to avoid a
8 situation where private investors were simply trying to
9 get benefits that we were providing without taking, in
10 reality, an equal share of the risks. So, that's the
11 qualification I would put on it.

12 Q. Let me try to make this as precise as I can.
13 Suppose that a private consortium of investors had come
14 in and said, "We will take 40 billion of the 85 billion,
15 we want to have exactly the same interest rate, exactly
16 the same commitment fee, exactly the same maturity date,
17 exactly the same equity consideration, and all of the
18 other covenants and terms that you are negotiating, we
19 will accept whatever you negotiate," is that something
20 that you would have been prepared to accept?

21 MR. DINTZER: Objection, Your Honor. He began
22 with "suppose," so I'm going to assert that this is
23 hypothetical and object to it.

24 THE COURT: Overruled. I'm going to take his
25 answer.

1 THE WITNESS: I can't tell. Because it's
2 hypothetical, I never fully faced that, but I would have
3 had to ask a million questions after that first thing
4 before I could come to a judgment whether it would work,
5 it would make sense. I mean, for example -- well, I'm
6 not sure you need a for-example.

7 BY MR. BOIES:

8 Q. I take it that just knowing that the private
9 investor was prepared to take \$40 billion on exactly the
10 same terms as you were going to take the remaining 45
11 would not be sufficient to enable you to make a judgment
12 that that made sense.

13 A. Yes.

14 Q. Am I correct about that?

15 A. That's correct. That's correct.

16 Q. We now have copies of Plaintiffs' Trial Exhibit
17 159 that I mentioned before. This document I believe is
18 already in evidence.

19 The top email is from Mr. Baxter to Mr. Alvarez
20 talking about equity alternatives, and then there are a
21 series of additional emails that include material from
22 Mr. Huebner and to Mr. Huebner, among others.

23 I take it you've never seen this document
24 before. Is that right?

25 A. I don't believe I have.

1 Q. Let me ask you to look at the paragraph at the
2 bottom where Mr. Huebner writes to Dan Jester and Thomas
3 Baxter and a variety of other people on the subject of
4 equity alternatives. Do you see that?

5 A. I do.

6 Q. And it's talking about two options, an Option A
7 and an Option B. My first preliminary question is, were
8 you aware, on or about September 19th, that the Federal
9 Reserve and Treasury were talking about Option A and
10 Option B for AIG equity investment options?

11 A. I don't -- I don't believe I was aware of the
12 precise contents of these options, just that we were
13 still thinking through what form the equity should take.

14 Q. Let me ask you to look at pages 6 and 7 of this
15 exhibit, which is headed "AIG Equity Investment
16 Options." Do you see that?

17 A. I do.

18 Q. Prior to my just showing this document to you,
19 had you ever seen this document before, these pages?

20 A. I don't know. I don't believe I have, but I
21 don't know.

22 Q. Going back to the first page of the exhibit, it
23 says, under Option B, "Neither the Fed nor Treasury
24 'control' AIG. But their trusted and presumably
25 blue-chip designees will -- and right out of the box.

1 This may well be critically necessary given the very
2 public winging (pronounced in this case winzhing) going
3 on by certain board members (see below), the annual
4 nonstaggered risk of having a known board voted out, and
5 the ability of anyone (and there are several logical
6 candidates) to have/acquire big stock positions and make
7 much trouble for us."

8 Do you see that?

9 A. Yes.

10 Q. Were you aware, on or about September 19th,
11 2008, that there were certain board members that opposed
12 what the Federal Reserve was trying to do?

13 A. I don't recall that I was.

14 Q. Were you aware, on or about September 19th,
15 2008, that your counsel had concluded that there was a
16 risk because of the nonstaggered board of having the
17 existing and known board voted out?

18 A. I don't know that I was aware of that. You
19 referred to him as my counsel, but -- maybe we should
20 clarify that, that this is an email, I believe, from a
21 Davis Polk lawyer who we had retained as counsel. So,
22 it wasn't the Federal Reserve lawyers.

23 Q. That is, it wasn't a Federal Reserve employee.

24 A. That's right.

25 Q. But it was a large, well-known law firm that the

1 Federal Reserve had retained as its counsel, correct?

2 A. That's right.

3 Q. All right. And that has continued to serve as
4 the Federal Reserve's counsel, correct?

5 A. I don't know if that's the case.

6 Q. Did it continue to serve as the Federal
7 Reserve's counsel while you were Secretary of Treasury?

8 A. I believe so, but I'm not sure.

9 Q. Now, there is a reference here to a nonstaggered
10 board, and you understand that what is referred to here
11 is the fact that the AIG board was all elected at one
12 time, so that in one shareholder meeting, you could
13 replace the entire board, correct?

14 A. I did not know -- I did not know that I was
15 aware of that at the time.

16 Q. You know what a nonstaggered board is, though,
17 correct?

18 A. Well, you having described it to me that way,
19 now I understand it.

20 Q. But prior to my understanding, did you know what
21 a nonstaggered board was?

22 A. Your explanation was very helpful, and I'm not
23 sure that I would have known that.

24 Q. Mr. Huebner also talks here about the ability of
25 anyone -- and he says there are several logical

1 candidates -- to either have or acquire a big stock
2 position and make much trouble for you. Do you see
3 that?

4 A. I do.

5 Q. Were you aware, on or about September 19th, of
6 concern that your outside counsel had that somebody
7 might acquire or already have a large stock position in
8 AIG and oppose what you were trying to do?

9 A. Beyond what I said to you earlier today, which
10 is I was aware of the general risk, I don't believe I
11 was aware beyond that.

12 Q. Okay. At the time of the September 16th Board
13 of Governors meeting that approved the AIG credit
14 facility, there was no discussion of a trust to hold
15 whatever equity the Government acquired, correct?

16 A. I don't know if that's the case.

17 Q. Well, you were on the call, correct?

18 A. I was on the call for at least part of the
19 meeting.

20 Q. During the part of the meeting that you were on
21 the call for, nobody talked about a possible trust, did
22 they?

23 A. I don't know. As I said earlier, I don't recall
24 the back-and-forth of that conversation at that meeting,
25 I mean, beyond the outcome.

1 Q. With respect to the issuance of the voting
2 preferred stock that we talked about before, that voting
3 preferred stock was convertible into common stock,
4 correct?

5 A. I believe that's correct.

6 Q. And it was important to the Government that the
7 preferred stock be convertible into common stock because
8 common stock was much more liquid and could be
9 transferred more easily and, hence, was more valuable,
10 correct?

11 A. I believe that's correct, yes.

12 Q. And were you aware that there was a New York
13 Stock Exchange rule that, in the absence of a particular
14 exception, required that prior to issuance of securities
15 convertible into common stock, the common stockholders
16 have a right to vote if the conversion is going to be in
17 excess of 20 percent of the voting power?

18 A. I don't know if I was aware of that.

19 Q. Did you become aware of that at some point?

20 A. I don't know that I did.

21 Q. Were you aware that AIG was required, as a
22 condition of the loan, to invoke a waiver of the New
23 York Stock Exchange rule requiring shareholder approval?

24 MR. DINTZER: Objection, Your Honor. He's asked
25 the witness about the rule. The witness said he

1 didn't -- "I don't know if I was aware of it." If he's
2 going to question the witness, in fairness, he should
3 put the rule in front of him.

4 MR. BOIES: I have no objection to that, Your
5 Honor.

6 THE COURT: All right.

7 MR. BOIES: Can we get Joint Exhibit 240? And
8 get PTX 207.

9 Your Honor, with the Court's permission, I'm
10 going to hand up my only copy to the witness.

11 THE COURT: You are going to put it on the
12 screen, right?

13 BY MR. BOIES:

14 Q. If you look to page --

15 MR. DINTZER: Your Honor, if I can just have a
16 moment, what exactly is -- JX 240 or PTX 207?

17 MR. BOIES: JX 240.

18 MR. DINTZER: Okay. If we could just ask for
19 just one moment, Your Honor, while we pull out the book.

20 THE COURT: Sure.

21 MR. DINTZER: We're ready, Your Honor.

22 BY MR. BOIES:

23 Q. If you look at page 94 of the exhibit, I hope
24 you will find Section 312.03, which is headed
25 "Shareholder Approval." Do you see that?

1 A. I do.

2 Q. And do you see that a New York Stock Exchange
3 listed company is required to have shareholder approval
4 for the issuance of securities having more than 20
5 percent of the vote, except if the Section 312.05
6 exception is applicable?

7 A. Yes.

8 Q. And if you look at Section 312.05, in order to
9 come within that exception, there are two requirements:
10 First, a delay in securing stockholder approval would
11 jeopardize -- would seriously jeopardize the financial
12 viability of the enterprise; and two, reliance by the
13 company on this exception is expressly approved by the
14 audit committee of the board.

15 A. I see that.

16 Q. Now, leaving aside the requirement that the
17 delay in securing stockholder approval would seriously
18 jeopardize the financial viability of the enterprise, as
19 you understood it, was it a condition of the credit
20 facility that the AIG board and the audit committee of
21 the board expressly approve AIG taking advantage of this
22 exception?

23 A. I don't know.

24 Q. Let me ask you to look at Plaintiffs' Trial
25 Exhibit 207.

1 MR. DINTZER: Counsel, are we done with this?

2 MR. BOIES: I think so, unless he has a question
3 based on 207.

4 BY MR. BOIES:

5 Q. Plaintiffs' Exhibit 207 is an email from James
6 Ethan at Davis Polk on September 22nd, 2008, at 12:09
7 a.m., to Dan Jester and Thomas Baxter and a large number
8 of other people, most all of whom you know. Do you see
9 that?

10 A. Yes.

11 Q. This is on the subject of the New York Stock
12 Exchange outline?

13 A. Yes.

14 MR. BOIES: Your Honor, I would offer this
15 document.

16 MR. DINTZER: No objection, Your Honor.

17 THE COURT: Plaintiffs' Trial Exhibit 207 is
18 admitted.

19 (Plaintiffs' Exhibit Number 207 was admitted
20 into evidence.)

21 BY MR. BOIES:

22 Q. You are not shown as a copyee on this email that
23 deals with the 312.03 exception to requiring a
24 shareholder vote. My initial question is, did anybody
25 bring this to your attention in September of 2008?

1 A. I don't know if they did.

2 Q. Do you have any reason to doubt that a condition
3 of the AIG September 22nd credit facility provided that
4 the AIG audit committee take the action that was
5 required to get an exception to Section 312.03 and the
6 requirement for a shareholder vote?

7 MR. DINTZER: Objection, Your Honor. I'm sorry,
8 it's just a very confusing question, and we would ask
9 for it to be restated and clarified.

10 MR. BOIES: I'll restate it.

11 THE COURT: Okay.

12 BY MR. BOIES:

13 Q. You have told me that you don't know whether the
14 Federal Reserve required AIG's audit committee to take
15 action to qualify for the exception to a shareholder
16 vote, correct?

17 A. Yes.

18 Q. Do you have any reason to doubt that the Federal
19 Reserve did, in fact, require AIG's audit committee to
20 take that action?

21 MR. DINTZER: Your Honor, if the witness doesn't
22 know, then asking him if he has any reason to doubt
23 seems to duplicate the exact same question that he just
24 asked.

25 THE COURT: Overruled. I'll take his answer, if

1 he understands it.

2 THE WITNESS: I think it's kind of a hard
3 question to answer, because you're saying that if I had
4 known it was a condition for the credit agreement, would
5 I have any reason to doubt whether we asked them to
6 satisfy this condition? So, I don't know how I would
7 answer that question since I didn't -- I wasn't aware
8 that it was a provision of the credit agreement.

9 BY MR. BOIES:

10 Q. I think my question, as counsel had suggested
11 earlier, may not have been clear.

12 You understand, looking at the New York Stock
13 Exchange rule that you've been shown, that if you were
14 going to avoid a shareholder vote, at least one thing
15 that would have to have been done is to bring AIG within
16 the Section 312.03 exception, correct?

17 A. Well, I have taken it on your explanation that
18 that's what that says.

19 Q. But you have had a chance to read it yourself.

20 A. True, but I didn't read it that carefully --
21 it's not something I've read before, but if that's what
22 you say it says.

23 Q. Well, let's just look at Plaintiffs' Trial
24 Exhibit 207, where I think they state it pretty
25 concisely, and at the top -- near the top of the page,

1 where there's the small (a), do you see that?

2 A. I do.

3 Q. The Federal Reserve's counsel, Davis Polk,
4 writes, "Section 312.03 of the NYSE listed company
5 manual requires shareholder approval for the issuance of
6 securities having more than 20% of the vote, except in
7 certain circumstances that do not apply here."

8 Do you see that?

9 A. I do.

10 Q. And that's -- that's pretty clear, correct?

11 A. Yes.

12 Q. And Davis Polk then goes on, "Section 312.05
13 provides an exception to this limitation upon
14 application to the NYSE when:

15 "(1) the delay in securing stockholder approval
16 would seriously jeopardize the financial viability of
17 the enterprise; and (2) reliance by the company on this
18 exception is expressly approved by the Audit Committee
19 of the Board."

20 Do you see that?

21 A. I do.

22 Q. So, you understand that approval by the audit
23 committee of the AIG board was necessary in order to
24 avoid a shareholder vote, correct?

25 A. That's what this states, yes.

1 Q. And you were aware that the Federal Reserve
2 wanted to avoid a shareholder vote, correct?

3 A. No, I did not say that. I said that I was aware
4 that there was some concern about a variety of risks to
5 this -- what we were trying to achieve, but as I said, I
6 don't think I -- I don't believe I was aware of the ways
7 in which we sought to mitigate that risk.

8 Q. Let me ask the question directly. As you sit
9 here now, do you know one way or the other whether the
10 Federal Reserve wanted to avoid a shareholder vote with
11 respect to the issuance of the voting convertible
12 preferred stock that it received in connection with the
13 September 22nd AIG credit facility?

14 A. A vote at any time?

15 Q. Let me take it one step at a time. The Stock
16 Exchange rule that we were talking about requires
17 approval for the issuance. As you sit here now, do you
18 know one way or the other whether the Federal Reserve
19 wanted to avoid a shareholder vote with respect to the
20 issuance of the convertible voting preferred stock that
21 it received in connection with the September 22nd AIG
22 credit facility?

23 A. Well, the documents you show me suggest that is
24 the case, but I don't know that I could speak to that
25 with any personal knowledge or recollection.

1 Q. That's really the question I'm asking you. As
2 you sit here now, without simply reading documents that
3 I've shown you, do you have any knowledge yourself that
4 the Federal Reserve wanted to avoid a shareholder vote
5 prior to the issuance of the preferred stock that the
6 Fed received in connection with the September 22nd AIG
7 credit facility?

8 A. I guess I'm just trying to be careful in how I
9 say this. As I said before, I was aware that they
10 were -- that my colleagues thought there were a variety
11 of risks to this transaction achieving the effects we
12 desired, and I was aware generally that we were
13 exploring ways to mitigate those risks.

14 And it's perfectly conceivable that one of those
15 risks was the possibility of a shareholder vote, but I
16 don't believe I can -- I don't recall the details around
17 that particular consideration. Does that help?

18 Q. I think it might. I just want to be clear,
19 though.

20 Is it fair to say that although you were aware
21 of these general concerns and some effort to address
22 those concerns, as you sit here now, other than simply
23 reading documents that I've shown you, you don't have
24 any personal recollection as to whether or not the
25 Federal Reserve was or was not trying to avoid a

1 shareholder vote before the issuance of the preferred
2 stock?

3 MR. DINTZER: Objection, Your Honor. He uses
4 the word "general concerns" after a very long answer,
5 and I just want to make sure we're being precise here,
6 and I just want to ask counsel if he could clarify his
7 question just a little.

8 THE COURT: Well, we probably have to start over
9 anyway, so --

10 MR. DINTZER: Thank you, Your Honor.

11 THE COURT: -- I guess we will hear it again.

12 BY MR. BOIES:

13 Q. Let me try to break it down.

14 You have said that you were aware generally that
15 your colleagues had concerns about shareholder --
16 dissident shareholder action and were exploring ways of
17 dealing with that risk, correct?

18 A. Well, the risk that actions like that might
19 jeopardize what we were trying to do, yes.

20 Q. And my question is -- and I don't want you
21 simply to repeat documents that I've shown you, but
22 based on your own personal knowledge, was one of the
23 things that the Federal Reserve was trying to do was
24 avoid a shareholder vote prior to the issuance of the
25 September 22nd credit facility preferred stock?

1 A. I don't know.

2 Q. Okay. Do you know when the preferred stock was
3 actually taken possession of by the trust?

4 A. I do not, sir.

5 Q. Does March 2009 sound right?

6 A. Only on the strength of documents I reviewed in
7 preparation for my testimony.

8 Q. Okay. You were aware on September 16th that if
9 there were warrants, those warrants would have an
10 exercise price, correct?

11 A. Possibly, but I did not have and still do not
12 have a detailed knowledge of what warrants convey and
13 how they're structured. So, it's possible I knew that;
14 I just don't know.

15 Q. Did you ever make any inquiries as to how much
16 it would cost to exercise warrants for the purchase of
17 AIG common stock?

18 A. I don't know.

19 Q. Let me ask one more question along this line,
20 which you might not know the answer to, but I would like
21 to know if you do.

22 Did you ever become aware that there was a
23 minimum price for the exercise of warrants equal to the
24 par value of the common stock that was going to be
25 obtained?

1 A. I don't know.

2 Q. Do you know what the par value of AIG common
3 stock was?

4 A. No. I may have known that. I don't recall. I
5 don't recall if I knew.

6 Q. Are you familiar with something that has been
7 referred to as the Walker lawsuit?

8 A. I don't believe I am.

9 Q. Are you aware that some time after September
10 22nd, 2008, certain shareholders of AIG sued AIG in
11 Delaware to establish the right to a shareholder vote?

12 A. I don't know if I was aware of that.

13 Q. Did you ever have any discussions about that
14 with anybody?

15 A. I don't know. I can't recall.

16 Q. Did you attend any meeting of the Board of
17 Governors, either in person or by telephone, after the
18 September 16th, 2008, meeting?

19 A. I don't think so, but I'm not certain.

20 Q. If you did, you don't recall any such meeting.
21 Is that fair?

22 A. That's right. I don't recall.

23 Q. Let me turn to the subject of the offer that you
24 made to Mr. Willumstad on September 16th, 2008.

25 Mr. Willumstad at the time was the chief executive

1 officer of AIG, correct?

2 A. That's correct.

3 Q. And you learned that AIG was planning to file
4 for bankruptcy on September 16th, correct?

5 A. I learned that they were considering taking
6 steps that could lead to that -- would lead to that,
7 yes.

8 Q. And when you found that out, you called up
9 Mr. Willumstad, correct?

10 A. That's correct.

11 Q. And you told Mr. Willumstad not to take those
12 steps and to wait for an offer from the Federal Reserve,
13 correct?

14 A. Well, my recollection is I told him that we were
15 considering whether we could help, and I discouraged him
16 from taking any actions that would be irreversible in
17 that context.

18 Q. Okay.

19 A. Steps toward a bankruptcy that would be
20 irreversible.

21 Q. And then -- well, let me ask you, when was that
22 conversation?

23 A. Sometime that Tuesday, but I don't recall
24 precisely when on Tuesday.

25 Q. That was Tuesday morning, correct?

1 A. Well, I would have to refer to my calendar --

2 Q. Okay, we will try to find your calendar.

3 A. -- or my call sheet. I would have to look at
4 that. I don't remember precisely when. It's possible
5 it was that morning.

6 Q. We will try to find your calendar to show you.

7 In the meantime, there came a time later on
8 September 16th when you called Mr. Willumstad back,
9 correct?

10 A. That's correct.

11 Q. And you told him that you were going to send him
12 a term sheet and that Mr. Willumstad was not going to
13 like it, but he had an hour to get his board to approve
14 it or two hours. You gave them a deadline, correct?

15 A. I don't know if I -- how I framed the deadline,
16 but I made it clear that we had very little time.

17 Q. Let me ask you to look at Plaintiffs' Trial
18 Exhibit 673.

19 A. You said 673?

20 Q. 673. This is an interview that was conducted of
21 you on May 15th, 2013, by somebody who was working with
22 you on your book, correct?

23 A. That's correct.

24 MR. BOIES: Your Honor, I would offer PTX 673.

25 MR. DINTZER: No objection, Your Honor.

1 THE COURT: Plaintiffs' Trial Exhibit 673 is
2 admitted.

3 (Plaintiffs' Exhibit Number 673 was admitted
4 into evidence.)

5 BY MR. BOIES:

6 Q. Let me ask you to look at page 24, and starting
7 at line 11, do you see where you say, "I get on the
8 phone with Willumstad and basically said we're going to
9 send you a term sheet, you're not going to like it, but
10 you have an hour to get your Board to approve it, two
11 hours, we gave them a deadline, and you are not going to
12 be running the company."

13 Do you see that?

14 A. Yes.

15 Q. And is that a fair way of summarizing the
16 conversation you had with Mr. Willumstad?

17 A. Yes. I think it is.

18 Q. And there came a time when Mr. Willumstad,
19 perhaps with other representatives of AIG, came back and
20 tried to get you to change some of the terms, including
21 reduce the amount of equity that was demanded, correct?

22 A. That's correct, asked if we would be willing --
23 open to changing some of the terms, including that one.

24 Q. And you said no, correct?

25 A. That's correct.

1 Q. I would ask you to look at Plaintiffs' Trial
2 Exhibit 126, which is an email dated February -- dated
3 September 17th, 2008, at 6:44 p.m. Eastern Daylight
4 Time, and Mr. Baxter is summarizing your conversation
5 with Mr. Willumstad.

6 THE COURT: I'm sorry. What exhibit is it,
7 please?

8 MR. BOIES: It is Exhibit 126, Plaintiffs' Trial
9 Exhibit 126, which I'm told is not in evidence, and I
10 would offer it.

11 THE COURT: Okay.

12 MR. DINTZER: Your Honor, we have no objection
13 to it coming into evidence, and the portion Mr. Boies is
14 pointing to, we don't have any objection at all. Way
15 down on the email, there's a discussion with outside
16 parties on page 5, and we assert hearsay on that. So,
17 as long as that's not offered for the truth, we have no
18 problem with the rest of the document.

19 MR. BOIES: I have no objection to page 5 coming
20 in limited to the purpose of simply showing the
21 communication, without being admitted for the truth of
22 the matter asserted.

23 MR. DINTZER: Then we have no objection, Your
24 Honor.

25 THE COURT: All right. Plaintiffs' Trial

1 Exhibit 126 is admitted, with a restriction that the
2 information on page 5 is not admitted for the truth of
3 the matter asserted.

4 (Plaintiffs' Exhibit Number 126 was admitted
5 into evidence.)

6 BY MR. BOIES:

7 Q. Going to the very first page and the first line,
8 where Mr. Baxter writes, on September 17th, "AIG was
9 told this was 'take it or leave it'. Nothing could be
10 negotiated."

11 Is that a fair description of what you told
12 Mr. Willumstad and AIG?

13 A. I don't know if I used those words, "take it or
14 leave it," but I made it clear that we would not
15 consider alternative terms to what we proposed.

16 Q. You made it clear this was the only offer they
17 were going to get, correct?

18 A. That's correct.

19 Q. And it was either this offer -- that is, they
20 either accepted the offer as you had made it with the
21 terms that you had given them -- or there was going to
22 be no offer of assistance from the Federal Reserve,
23 correct?

24 A. That's correct.

25 Q. After September 16th, the credit agreement was

1 drafted, correct?

2 A. Yes.

3 Q. When was the first time that you saw a draft of
4 the credit agreement?

5 A. I don't know.

6 Q. And by "credit agreement," you understand I'm
7 talking about the revolving credit agreement that was
8 signed effective September 22nd, 2008.

9 A. Yes.

10 Q. Who was responsible for drafting the credit
11 agreement?

12 A. I'm not certain, but I think I would -- I would
13 regard Tom Baxter as being principally responsible for
14 drafting.

15 Q. Do you know whether AIG played any role in
16 drafting the credit agreement?

17 A. I don't know.

18 Q. AIG was going to be the counterparty to the
19 Federal Reserve in signing the credit agreement,
20 correct?

21 A. Yes. That's correct.

22 Q. Do you know whether AIG was given any
23 opportunity to negotiate the terms of the credit
24 agreement between September 16th and the evening of
25 September 21st?

1 A. I don't know.

2 Q. Do you know that the AIG board considered the
3 terms of the credit agreement the evening of September
4 21st?

5 A. Only because you told me that earlier today.

6 Q. Other than what I told you, you have no personal
7 knowledge of when, if at all, the AIG board considered
8 the terms of the credit agreement, correct?

9 A. Well, I believe that they accepted it, agreed to
10 it, but I don't recall when, precisely when.

11 Q. Do you know whether it was before or after
12 September 22nd?

13 A. Only what you told me earlier today.

14 Q. When was AIG first given a copy of the credit
15 agreement?

16 A. I don't know.

17 Q. Do you know whether AIG had a copy of the credit
18 agreement at the time of the September 21st board
19 meeting?

20 A. I don't know.

21 Q. Do you know whether a copy of the credit
22 agreement or a draft of the credit agreement even
23 existed as of the time of the September 21st AIG board
24 meeting?

25 A. I don't know.

1 Q. You know that the credit agreement was signed on
2 behalf of AIG by Mr. Ed Liddy, correct?

3 A. I don't think I could state with certainty who
4 signed it on behalf of AIG, but that sounds to make
5 sense -- seems to make sense, that he would be the one
6 to do it.

7 Q. Do you know whether the AIG board had ever seen
8 a draft of the credit agreement or a version of the
9 credit agreement before the time that Mr. Liddy signed
10 it?

11 A. I don't know.

12 Q. The credit agreement, as signed by Mr. Liddy,
13 provided for preferred stock, correct?

14 A. I believe that's correct, yes.

15 Q. When did you first learn that it had been
16 decided that the credit agreement would require
17 preferred stock?

18 A. I believe you asked me that earlier today, and I
19 think my answer was -- and still is my answer -- which
20 is I don't know. I don't remember when I knew -- when
21 we reached the decision that that would be the form of
22 the equity. I don't remember exactly when. Sometime
23 between the 16th and that time, but I'm not sure exactly
24 when.

25 Q. Was it before September 21st?

1 A. I don't recall.

2 Q. When was AIG first informed that preferred stock
3 would be required as consideration for the September
4 22nd credit agreement?

5 A. I do not know.

6 Q. Was AIG informed that preferred stock would be
7 required as consideration for the September 22nd credit
8 agreement prior to September 21st?

9 A. I don't -- I don't know.

10 Q. Was AIG given any revised term sheet subsequent
11 to September 16th but prior to the commencement of the
12 AIG board meeting on September 21st?

13 A. I don't know.

14 THE COURT: Mr. Boies, shall we take our
15 afternoon break?

16 MR. BOIES: Yes, Your Honor.

17 THE COURT: Let's reconvene, then, at 3:30.

18 (Court in recess.)

19 THE COURT: Please be seated.

20 Let's go ahead, Mr. Boies.

21 MR. BOIES: Thank you, Your Honor.

22 BY MR. BOIES:

23 Q. I'd like to begin by referring you to your talk
24 sheet that you referred to, and that is Joint Exhibit
25 10. There are excerpts in your book. I will hand you

1 up a complete copy in case you want to look at it.

2 You'll recall, the question was when did you
3 talk to Mr. Willumstad the morning of September 16th.
4 Do you recall that?

5 A. So, I see on here two. Are you asking me the
6 times?

7 Q. Yes.

8 A. In the morning of that day, I see on here two
9 times. The first is 11:17 with Willumstad and Rodgin
10 Cohen, and the second is 11:39 with Willumstad.

11 Q. And as you sit here now, can you tell me which
12 of those calls was the call that you referred to earlier
13 when you told Mr. Willumstad about not taking certain
14 action and waiting for an offer?

15 A. I don't know. And, in fact, I don't recall
16 there being two calls. I recall only one that morning.

17 Q. There is a call earlier in the morning, at 10:16
18 a.m., to Warren Buffett. Do you see that?

19 A. I do.

20 Q. Was that about the AIG issue?

21 A. Yes.

22 Q. And what did you ask Mr. Buffett?

23 A. I called him to ask him whether he had any
24 sense -- could give me any sense of his view of the
25 value of AIG's insurance companies around the world.

1 Q. And what did he say?

2 A. Not a precise economic value, but -- I don't
3 recall precisely the words he said, but they were to the
4 effect of -- at least what I concluded from them were
5 that if AIG survived and the global economy didn't
6 collapse, that they had substantial value.

7 Q. Now, can you also tell by looking at this talk
8 sheet when it was that you got back to Mr. Willumstad
9 with the offer that you have described?

10 A. Well, if I'm reading this correctly, it says
11 7:54 p.m. and then 9:36 p.m., but there must have been
12 an earlier call sometime that afternoon, but I don't see
13 a reference to that earlier call, to a call where I
14 informed him that we were going to send him a proposal.

15 Q. There is a -- there is a call, as you say, in
16 the late evening, which is the first call that's shown
17 on this call sheet to Mr. Willumstad after your morning
18 calls. What was said at that call, as you testify now?

19 A. I don't know. As I've -- as we've --

20 MR. DINTZER: Your Honor, just so that the
21 record's clear, I just want to make sure, is counsel
22 referring to the 7:54 p.m. or the --

23 MR. BOIES: Yes.

24 MR. DINTZER: Okay, thank you.

25 MR. BOIES: There was a 7:54 p.m. and then there

1 was a later call.

2 MR. DINTZER: Right. I just wanted to make
3 sure.

4 MR. BOIES: I was talking about the 7:54 p.m.
5 call.

6 THE COURT: My question is, who took my water
7 during the break?

8 MR. BOIES: Not me.

9 THE WITNESS: Would you like to -- oh, yeah,
10 mine's gone, too. Mine's gone, too.

11 THE COURT: Yours is gone, too?

12 MR. BOIES: We didn't take it.

13 THE COURT: Thanks very much. Maybe
14 Mr. Geithner would like one, too.

15 THE WITNESS: Yes. Thanks.

16 I don't -- my -- this call sheet does not -- is
17 not consistent with my recollection. My recollection is
18 that I had three calls with Mr. Willumstad that day.

19 The first we discussed, which was to inform him that we
20 were considering helping and suggesting he not put in
21 place any actions towards bankruptcy that would be
22 irreversible. I believe that call came in the morning
23 and was probably the call that's listed here as 11:39.

24 Then, as we discussed, there was a second call
25 in which I told him we were going to send him a term

1 sheet. There was a third call where he called in and
2 said -- called me and said, "Would you be open to
3 modifying any of those terms?" That's the best of my
4 recollection, and it seems unlikely to me that these
5 latter two calls were at 7:54 and 9:36, but that's what
6 this says, because my recollection is is that it was
7 sometime in the late afternoon when I called him to send
8 him a term sheet, but I may be mistaken in my
9 recollection.

10 BY MR. BOIES:

11 Q. Now, there's also a call on September 15th at
12 3:36 p.m. with Hank Greenberg. Is that correct?

13 A. What was the time you said?

14 Q. 3:36 p.m.

15 A. Yes, I see that.

16 Q. And Mr. Greenberg had called you, correct?

17 A. I did not recall -- I don't recall that
18 conversation, and I certainly don't recall reaching out
19 to him. So, if, in fact, he -- we spoke, then he called
20 me.

21 Q. And you don't have any doubt, after looking at
22 this talk sheet, that you spoke to Mr. Greenberg, do
23 you?

24 A. Well, I don't have any doubt, but I don't
25 remember the -- I don't remember that phone call, the

1 content of the phone call.

2 Q. Do you remember that Mr. Greenberg was seeking
3 to have a seat at the table in terms of any discussions
4 concerning AIG?

5 A. I was -- I had been told that since, and it's --
6 and it's perfectly plausible that I was aware of that at
7 the time; in fact, it's perfectly plausible that that
8 came from him to me directly. I just don't remember.

9 Q. You knew Mr. Greenberg, correct?

10 A. Yes.

11 Q. And you had a high regard for him, correct?

12 A. I -- I had a -- a high regard but I would say a
13 complicated regard for him, just to be honest about it.

14 Q. Always good when you're under oath to be honest.

15 A. High regard, your words or my words? I just
16 can't remember.

17 Q. I can't either. But he's certainly somebody
18 whose judgment about AIG you respected. Is that fair?

19 A. When he was the chairman of AIG, yes. I didn't
20 know how to -- I didn't know how to assess the quality
21 of his judgment at that time.

22 Q. And he had been gone from AIG for about three
23 years. Is that right?

24 A. That's my recollection, yes.

25 Q. He was the chairman of Starr International,

1 correct?

2 A. That's my belief, yes.

3 Q. And Starr International was the largest
4 shareholder of AIG, correct?

5 A. That is my recollection, yes, although I'm not
6 sure I knew at the time that it was the largest, but
7 certainly a substantial shareholder.

8 Q. And Mr. Greenberg personally, at the time, was
9 the largest individual shareholder of AIG, correct?

10 A. I don't know that I was aware of that, but
11 certainly a substantial -- I was aware that he was a
12 substantial shareholder.

13 Q. And you knew both on his own behalf and on
14 behalf of Starr International, he wanted to participate
15 in any discussions that related to what was going to
16 happen to AIG, correct?

17 A. I believe I was aware of that, yes.

18 Q. And you declined to have him participate. Is
19 that fair?

20 A. Yes. I think that's fair.

21 Q. Let me turn to something else that was happening
22 the week of September 16th, and that has to do with
23 Goldman Sachs and Morgan Stanley. And in that
24 connection, I would like you to begin by looking at
25 Plaintiffs' Exhibit 175, which is already in evidence.

1 This is an email from Michael Silva to Christine
2 Cumming, dated September 20, 2008, at 10:25 a.m. Eastern
3 Daylight Time. Would you identify what positions
4 Mr. Silva and Ms. Cumming had at that time?

5 A. Mike Silva was my chief of staff, and Christine
6 Cumming, I believe, was the first vice president of the
7 New York Fed.

8 Q. And Mr. Silva writes (as read): "Morgan Stanley
9 called Mr. Geithner late last night and indicated they
10 can not open Monday. Morgan Stanley advised Goldman
11 Sachs of that and Goldman Sachs is now panicked because
12 it feels that if Morgan Stanley does not open, then
13 Goldman Sachs is toast."

14 Do you see that?

15 A. I do.

16 Q. First, is it accurate that Morgan Stanley called
17 you late on September 19th, 2008, and indicated that
18 they could not open on Monday?

19 A. I believe that's correct.

20 Q. And were you also told that Morgan Stanley had
21 advised Goldman Sachs of that and that Goldman Sachs now
22 felt that if Morgan Stanley did not open, then Goldman
23 Sachs was, as they colloquially put it here, "toast"?

24 A. I believe that that's correct.

25 Q. All right. And following this call to you, did

1 you then call other people and ask them to begin trying
2 to deal with this issue?

3 A. Yes.

4 Q. Who did you call?

5 A. Well, I had a series of calls over the next
6 several days, extensive meetings within the New York
7 Fed, but -- extensive conversations with Chairman
8 Bernanke, Vice Chairman Kohn, with Secretary Paulson and
9 his colleagues.

10 Q. And did there come a time when it was decided to
11 tell Morgan Stanley that the Fed believed that Morgan
12 Stanley should become a bank holding company?

13 A. Yes.

14 Q. When was that?

15 A. My recollection is sometime late on Sunday.

16 Q. And who told Morgan Stanley that the Federal
17 Reserve thought they should become a bank holding
18 company?

19 A. I don't recall. It could have been me, but I'm
20 not certain.

21 Q. Who at Morgan Stanley was told that the Federal
22 Reserve thought that Morgan Stanley should become a bank
23 holding company?

24 A. I don't recall, but it could have been the CEO
25 or it could have been one of his principal officers.

- 1 Q. And the CEO at the time was?
- 2 A. You're testing my memory.
- 3 Q. But in any event, it was the person who held
- 4 the --
- 5 A. The CEO at the time.
- 6 Q. -- position of CEO at the time.
- 7 And how long did it take, after Morgan Stanley
- 8 was told that the Federal Reserve believed that Morgan
- 9 Stanley should become a bank holding company, for Morgan
- 10 Stanley to make an application to become a bank holding
- 11 company?
- 12 A. My recollection is it happened very quickly.
- 13 Q. On the same day?
- 14 A. That's my recollection.
- 15 Q. And how long did it take after Morgan Stanley
- 16 made the application for the Federal Reserve to approve
- 17 the application?
- 18 A. I don't recall precisely, but my recollection is
- 19 it happened very quickly.
- 20 Q. Again, the same day?
- 21 A. Sometime Sunday night, I believe.
- 22 Q. Now, contemporaneously, did the Federal Reserve
- 23 contact Goldman Sachs?
- 24 A. Yes.
- 25 Q. And who contacted Goldman Sachs?

1 A. I don't recall. It could have been me, but I
2 don't -- I'm not certain.

3 Q. And was Goldman Sachs also told that the Federal
4 Reserve believed that Goldman Sachs should become a bank
5 holding company?

6 A. Yes.

7 Q. And do you recall who at Goldman Sachs was told
8 this?

9 A. I don't recall precisely. If it was me, it
10 would have been directly to the CEO.

11 Q. And that was Mr. Blankfein?

12 A. That's correct.

13 Q. And is it fair to say that the same day Goldman
14 Sachs was told that the Federal Reserve believed that
15 Goldman Sachs should become a bank holding company,
16 Goldman Sachs made an application to do that and that
17 application was approved?

18 A. That's correct.

19 Q. Were you involved in any way in discussions
20 concerning possible sovereign wealth injections into
21 either Goldman Sachs or Morgan Stanley?

22 A. I was aware that there was some suggestions made
23 that one, in particular, might have been interested in
24 investing in -- I believe it was Morgan Stanley.

25 Q. That one sovereign wealth fund?

1 A. Yes.

2 Q. What was the sovereign wealth fund that you
3 believed was interested in investing in Morgan Stanley?

4 A. I believe it was CIC, but I'm not certain.

5 Q. And did anybody have any conversations with CIC
6 about that?

7 A. I don't know. I didn't. I don't think I did.
8 And I don't know whether anyone at the Treasury or the
9 Fed had those conversations directly with them. They
10 may have come indirectly.

11 Q. The third sentence of Mr. Silva's email says,
12 "Options under active discussion range from sovereign
13 wealth injection..." Who was participating in that
14 discussion?

15 A. It's unclear from this -- from this email, but
16 that could be a reference to what Morgan Stanley was
17 considering, what Morgan Stanley thought they were
18 considering, that Goldman might be considering, to what
19 we were considering, or it just may have been just a --
20 yeah, I mean, I think that's -- that covers it.

21 Q. As of September 20 or September 19, both Morgan
22 Stanley and Goldman Sachs had access to the primary
23 dealer credit facility, correct?

24 A. I'm sorry. Can you repeat the first part of
25 that question? You said as of that date?

1 Q. Yes.

2 A. Yes, that's correct.

3 Q. And Morgan Stanley, at least, had already
4 borrowed billions of dollars pursuant to that facility,
5 correct?

6 A. What was the number you referred to?

7 Q. I said billions.

8 A. That seemed likely to me.

9 Q. Let me ask you to look at Plaintiffs' Trial
10 Exhibit 198.

11 A. Mr. Boies, would it be helpful if I just went
12 back to one question you asked --

13 Q. Yes.

14 A. -- about who informed -- who informed Morgan
15 Stanley and Goldman Sachs, who was informed?

16 Q. Yes.

17 A. I believe that I called both John Mack and Lloyd
18 Blankfein directly to suggest to them that path. I
19 think that came from me.

20 Which exhibit did you ask me to --

21 Q. I am now going to hand you Plaintiffs' Trial
22 Exhibit 198. This is a Federal Reserve press release
23 dated September 21, 2008, at 9:00 p.m. Eastern Daylight
24 Time, and I would offer this document.

25 MR. DINTZER: No objection, Your Honor.

1 THE COURT: Plaintiffs' Trial Exhibit 198 is
2 admitted.

3 (Plaintiffs' Exhibit Number 198 was admitted
4 into evidence.)

5 BY MR. BOIES:

6 Q. And this document says that "The Federal Reserve
7 Board that day had approved, pending the statutory
8 five-day antitrust waiting period, the applications of
9 Goldman Sachs and Morgan Stanley to become bank holding
10 companies." Do you see that?

11 A. I do.

12 Q. And was that five-day waiting period waived at
13 the request of the Federal Reserve?

14 A. I don't know.

15 Q. The release also says, "To provide increased
16 liquidity support to these firms as they transition to
17 managing their funding within a bank holding company
18 structure, the Federal Reserve Board authorized the
19 Federal Reserve Bank of New York to extend credit to the
20 U.S. broker-dealer subsidiaries of Goldman Sachs and
21 Morgan Stanley against all types of collateral that may
22 be pledged at the Federal Reserve's primary credit
23 facility for depository institutions or at the existing
24 Primary Dealer Credit Facility."

25 Do you see that?

1 A. I do.

2 Q. And then the release goes on to say, "The
3 Federal Reserve has also made these collateral
4 arrangements available to the broker-dealer subsidiary
5 of Merrill Lynch. In addition, the Board also
6 authorized the Federal Reserve Bank of New York to
7 extend credit to the London-based broker-dealer
8 subsidiaries of Goldman Sachs, Morgan Stanley, and
9 Merrill Lynch against collateral that would be eligible
10 to be pledged at the PDCF."

11 Do you see that?

12 A. I do.

13 Q. And did Morgan Stanley and Goldman Sachs
14 promptly borrow money through their London-based
15 broker-dealer subsidiaries pursuant to the PDCF?

16 A. I don't recall.

17 Q. By the end of the month, that is, about eight or
18 nine days after this release, do you recall how much
19 Morgan Stanley had borrowed pursuant to all of these
20 credit facilities that were made available to them?

21 A. I believe it was substantial, but I don't recall
22 how substantial.

23 Q. Was it in the range of \$100 billion?

24 A. That's possible, but I'd have to go back and
25 look at the facts.

1 Q. The interest rate that was being paid by Morgan
2 Stanley and Goldman Sachs on these borrowings was the
3 primary credit rate. Is that correct?

4 A. I believe that's correct.

5 Q. All right. Let me turn to another subject.
6 There came a time when a \$306 billion guarantee was
7 provided to Citicorp, correct?

8 A. Are you referring to the -- the Federal
9 Reserve's piece of that supplemental financial package
10 in November -- late November of '08?

11 Q. I think your answer identifies something that we
12 ought to make clear for the record. There was a
13 financial package for Citicorp that several government
14 agencies participated in, correct?

15 A. That's correct.

16 Q. And those included the Federal Reserve,
17 Treasury, the FDIC, at least?

18 A. That's correct.

19 Q. Any others?

20 A. Not to my recollection. Not with financial
21 exposure, I don't think.

22 Q. And the way it was structured was that there was
23 a guarantee of certain Citicorp assets, and Citicorp
24 took the first loss, and then there was a loss by
25 Treasury, and then a loss by FDIC, if I've got the order

1 right, and then the Federal Reserve covered the balance.
2 Is that accurate?

3 A. Mr. Boies, I don't think I can speak in any
4 detail to that, because as you may know, before that
5 package of assistance was finalized and this design took
6 effect, I effectively removed myself from those
7 deliberations, because at that point my nomination or
8 the President's intention to nominate was imminent.

9 Q. When was this package offered to Citicorp?

10 A. Sometime in late November of 2008.

11 Q. So, it would be your testimony that the part of
12 the package that was represented by the Federal Reserve
13 was not a package that you had any role in designing?

14 A. I had a role in the first stage of those
15 discussions about design, but not in the final days
16 where it all came together.

17 Q. During the time that you were involved in it,
18 was the structure as I've described it?

19 A. I don't recall precisely. I agree it was a
20 complicated arrangement with a mix of loss-sharing
21 arrangements that was part of it.

22 Q. You do recall that you believed that Citi was
23 insolvent, correct?

24 A. I don't know that I came to that view then.
25 They definitely needed additional capital on a

1 substantial scale.

2 Q. They needed additional capital on a substantial
3 scale or they would fail, correct?

4 A. Yes. They were experiencing severely acute
5 funding difficulties, and it was our judgment -- my
6 judgment at the time that without additional financial
7 support, that they were at significant risk of failure.

8 Q. Now, I want to distinguish between needing
9 additional capital, which a company may need in order to
10 survive but still be insolvent, and a company that's
11 insolvent. And as a first step, you would agree, I take
12 it, that a company may fail because it needs additional
13 capital that it can't get, even if the company is still
14 solvent.

15 A. Because it would become illiquid.

16 Q. Yes.

17 A. Yes.

18 Q. I -- and I understand that it is your testimony
19 that Citibank was at least in that predicament; that is,
20 it needed additional capital or it would become illiquid
21 and fail, correct?

22 A. Just to be precise about it, it needed
23 something, some mix of things that would make it able
24 for them to finance their assets to access funding, and
25 that could have come in any number of different forms.

1 Q. One of those forms could be additional capital?

2 A. Yes.

3 Q. What could some of the other forms have been?

4 A. In theory, you could have put in place -- the
5 FDIC could have put in place a broader guarantee of the
6 liabilities of Citi and its affiliates. That's not
7 perfectly equivalent or a functional substitute for it,
8 but that would have mitigated some of the funding
9 pressures, too.

10 Q. Now, the funding issues that Citibank had went
11 beyond the areas that the FDIC could guarantee, correct?

12 A. I don't think I would say it exactly that way.
13 The FDIC's authority to guarantee covered any entity
14 that was a bank, a depository institution, as well as
15 the obligations of the holding companies. It would not
16 have extended to the obligations of the broker-dealer or
17 other nonbank affiliates of Citigroup. I think that's
18 correct.

19 Q. And as you understood it, were there obligations
20 of the broker-dealer or other nonbank affiliates of
21 Citigroup that needed additional liquidity, either in
22 the form of capital or some other kind of funding?

23 A. I believe that's the case, but I'm not sure I
24 could locate precisely at that point where the focus of
25 their funding pressures were, nor where the actual

1 incidence of likely losses was across the entity
2 relative to their capital.

3 Q. Let me ask you to turn to Plaintiffs' Trial
4 Exhibit 678. This is a transcript of an interview that
5 you participated in in preparation for the writing of
6 your book, correct, sir?

7 A. I can't tell what this is, actually, and who
8 it's a conversation with. It may have been -- I did a
9 bunch of teaching or discussions with students and
10 faculty at universities. It may have been that. I
11 don't remember. I can't tell from this.

12 Q. Let me hand you the entire document for context.

13 A. I can't tell the context still. It could have
14 been something else, too.

15 Q. Now, this is a document produced to us from your
16 files in connection with this litigation. Is it your
17 testimony you've never seen this document before?

18 A. No. It's possible that I saw this, but if I'd
19 seen it was only in the context of my preparation for my
20 testimony or the deposition, and -- I still can't figure
21 out the context.

22 Q. Let me ask you to look at pages 44 through 52,
23 where they're blacked out based on a claim of potential
24 privilege.

25 A. Right.

1 Q. That was a claim of potential privilege that you
2 made, correct?

3 A. Yes.

4 MR. BOIES: Your Honor, I would offer
5 Plaintiffs' Trial Exhibit 678.

6 MR. DINTZER: Your Honor, we object and would
7 oppose it being entered. It's highly problematic. Not
8 only are there individuals who are not identified as
9 Secretary Geithner speaking and saying -- what, I don't
10 know, but it may or may not be complete to the extent
11 that it looks like it starts at the beginning of a con
12 -- in the middle of a conversation. The witness can't
13 authenticate it -- I mean, can't say what it is or what
14 he was saying, and there is no indication he was sworn,
15 and there is no indication that he ever had a chance or
16 ever did go back and correct it or clean it up. And so,
17 Your Honor, it's pure hearsay, and we would challenge
18 it.

19 THE COURT: Mr. Boies?

20 MR. BOIES: Your Honor, this was produced by the
21 witness from his files. It is numbered in the upper
22 right-hand corner pages 1 through 118. At the end,
23 there is a page that says "Attested to by," and there's
24 a name that I don't recognize.

25 The witness made privilege redactions from this

1 document. We think it certainly is admissible with
2 respect to his statements. With respect to statements
3 other than his statements, I would agree to have those
4 admitted not for the truth of the matter asserted but
5 simply to put in context the witness' own statements.

6 MR. DINTZER: Your Honor, if we could be heard
7 on that, please?

8 THE COURT: Yes.

9 MR. DINTZER: Your Honor, to the extent that
10 counsel wishes to ask the witness any question referring
11 to any of the information that might be in here, there
12 is no need for the document to come in, and he can just
13 ask the witness. To the extent that he needs to use
14 this document to refresh the witness' memory, to the
15 extent he can, we would have no objection to him using
16 it in that way.

17 But to the extent that he actually wants to put
18 this in the record and then at some later date quote
19 this as opposed to actually having asked the witness a
20 question and relying on this, which there's no indicia
21 at all, not even a cover page, of what it is or when it
22 was done or how it was done, Your Honor, we wouldn't
23 want the Court or anyone else to rely upon something
24 like this when the witness is here and he can ask the
25 witness whatever questions wants to.

1 THE COURT: I am going to overrule the
2 objection, and I will admit Plaintiffs' Trial Exhibit
3 678. I'm persuaded that it's a document from
4 Mr. Geithner's files, and Mr. Boies can ask about it.
5 We will see what develops.

6 MR. DINTZER: Thank you, Your Honor.

7 BY MR. BOIES:

8 Q. Mr. Geithner, if you would turn to page 61 on
9 line 10, do you see where you are reported here as
10 saying, "Certainly Citi and Bank of America were
11 insolvent"?

12 A. I see that line.

13 Q. And was that your view in the 2008 to 2009 time
14 frame?

15 A. I don't believe that's an accurate
16 representation of my view in the sense that I would
17 certainly say that without additional support in the
18 form of capital or in the form of funding guarantees,
19 that they were at risk of failure, but I don't know that
20 that's -- just to be careful and precise about it, that
21 that's equivalent to saying they were insolvent at that
22 time.

23 You know, one -- just as an example, one test of
24 solvency is whether you can raise private capital, which
25 they were able to do on a very substantial scale even as

1 the crisis intensified. So, I guess that's what I would
2 say in response to your question.

3 Q. When you said "Certainly Citi and Bank of
4 America were insolvent," what did you mean by
5 "insolvent" there?

6 A. Well, I think as I just said, I believe my view
7 at the time -- and I think that's my view today -- is
8 they certainly needed substantial additional financial
9 support in some form or they would fail. So, if in a --
10 if -- if in a sense people in a shorthand way want to
11 say that's insolvency, maybe it is. I usually am --
12 usually I don't speak that way about it.

13 Q. In the very same paragraph that this sentence
14 ends, you're talking about questions of insolvency and
15 liquidity both, correct?

16 A. Yeah. I mean, as you pointed out and as we
17 discussed, the distinction between solvency and
18 liquidity is a complex decision -- a complex distinction
19 in any circumstance. It's particularly difficult in the
20 context of a liquidity crisis, a classic panic. As you
21 said before, even the solvent can be illiquid in that
22 context and that would make them insolvent. So, as I
23 said here, "Complete fog of diagnostic problem."

24 So, I guess in this context I'm saying relative
25 to many other institutions getting caught up in that

1 storm, Citi and B of A were at the weaker end of that
2 spectrum. If all were insolvent because they became
3 illiquid, then they were all -- they were certainly
4 insolvent.

5 Q. Well, what you say immediately before the
6 sentence we were looking at is you say, "They were the
7 people who thought that most of the thing was
8 insolvent," and then you go on and say, "Certainly Citi
9 and Bank of America were insolvent," correct?

10 A. That's what this says. That's correct.

11 Q. Let me ask you to look at Plaintiffs' Trial
12 Exhibit 379.

13 A. You said PTX?

14 Q. PTX 379. And would you explain what this is.

15 A. Well, it says "Report Pursuant to Section 129 of
16 the Emergency Economic Stabilization Act of 2008:
17 Authorization to Provide Residual Financing to
18 Citigroup, Inc., For a Designated Asset Pool."

19 Q. And the reports pursuant to Section 129 of the
20 EESA were reports with which you were familiar at the
21 time, correct?

22 A. Yes, in general. I couldn't cite a specific
23 provision or section, but yeah.

24 MR. BOIES: Your Honor, I would offer
25 Plaintiffs' Trial Exhibit 379.

1 MR. DINTZER: No objection, Your Honor.

2 THE COURT: Plaintiffs' Trial Exhibit 379 is
3 admitted.

4 (Plaintiffs' Exhibit Number 379 was admitted
5 into evidence.)

6 BY MR. BOIES:

7 Q. And if you look at page 3, there are some
8 numbered paragraphs. The first paragraph talks about an
9 additional equity investment by the Treasury; and the
10 second paragraph talks about Treasury and FDIC
11 loss-sharing arrangements with Citigroup; and then the
12 third talks about residual Federal Reserve financing.
13 Do you see that?

14 A. Yes.

15 Q. And it says, under "Residual Federal Reserve
16 Financing," in connection with the actions taken by
17 Treasury and the FDIC, "The Federal Reserve authorized
18 the Reserve Bank under section 13(3) of the Federal
19 Reserve Act, if necessary, to provide Citigroup with
20 financing up to the value of the assets remaining in the
21 designated pool after the loss sharing arrangements with
22 Treasury and FDIC are exhausted."

23 Do you see that?

24 A. I do.

25 Q. And it says that "The financing would be

1 provided to Citigroup on a nonrecourse basis, except
2 with respect to interest payments. Outstanding advances
3 made to Citigroup under the facility would bear interest
4 at a floating rate equal to the 3-month overnight index
5 swap rate plus 300 basis points."

6 A. I see that.

7 Q. Now, in November of 2008, what was the overnight
8 index swap rate?

9 A. I believe it was very low.

10 Q. Like how low?

11 A. Like potentially below 1 percent, but I'm not
12 certain. It might have been below 0.5 percent.

13 Q. Does 0.5 percent or 50 basis points sound about
14 right?

15 A. Could be, yeah.

16 Q. So, if that were right, what Citigroup would be
17 paying would be 3 1/2 percent interest for this.

18 A. That's correct.

19 Q. Let me turn to the subject of the Federal
20 Reserve's participation in the monitoring and control of
21 AIG. The Federal Reserve Bank of New York appointed a
22 group of people to monitor and be present on the
23 premises of AIG, correct?

24 A. That's correct.

25 Q. And that was headed by Vice President Dahlgren.

1 Is that correct?

2 A. I believe that's correct, yes.

3 Q. Did you have any role in supervising
4 Ms. Dahlgren?

5 A. Yes.

6 Q. And would I be correct that that would have
7 lasted until the time in November when you stopped
8 participating in Federal Reserve Bank of New York
9 affairs?

10 A. Yes. Now, you said "supervise," and I think she
11 reported formally to the head of supervision, who
12 reported to me directly. So, I don't know if it would
13 be fair to say I directly supervised her, but, yes,
14 she -- she was my subordinate at the New York Fed.

15 Q. How many people did she have working with her in
16 connection with her AIG responsibilities?

17 A. I don't recall.

18 Q. Approximately?

19 A. I -- I don't know. I mean, it could have been
20 ten at the beginning, could have been more over time. I
21 don't -- I'm not sure.

22 Q. All right. Now, in addition to Ms. Dahlgren's
23 group, did the Federal Reserve have outside agencies or
24 institutions that were working with the Federal Reserve
25 in terms of monitoring and managing AIG?

1 A. I believe that we retained BlackRock to play
2 some role in advising us or advising AIG -- I'm not sure
3 that I recall directly -- on a set of questions like the
4 ones you referred to.

5 Q. Did the Federal Reserve retain a law firm to
6 assist in management and operation of AIG?

7 MR. DINTZER: Objection, Your Honor. Compound.
8 If you could just break that up between management and
9 operation?

10 THE COURT: Sure.

11 MR. DINTZER: Thank you, Your Honor.

12 BY MR. BOIES:

13 Q. Did the Federal Reserve retain a law firm to
14 assist in the control of AIG?

15 A. By "control," what do you mean?

16 Q. I mean --

17 A. You mean in the concept of monitoring our
18 exposure through AIG?

19 Q. In the ordinary, common sense definition of the
20 word.

21 A. My sense of that term is fraught in this case,
22 just my sense. Do you mean monitored?

23 Q. Let me ask the question this way: Did the
24 Federal Reserve retain a law firm to help it with
25 respect to AIG?

1 A. I believe we retained, as we discussed earlier
2 today, a law firm to certainly advise us as we were
3 considering the terms of the transaction, and I think
4 that relationship continued. And I don't know and don't
5 remember whether we employed or retained a different law
6 firm to help us in other respects with respect to AIG.
7 I just don't remember.

8 Q. The law firm that you were talking about was
9 Davis Polk?

10 A. That's correct.

11 Q. And Davis Polk continued to work with the
12 Federal Reserve with respect to AIG after the credit
13 agreement was executed, correct?

14 A. That's my sense, yes.

15 Q. And did the Federal Reserve retain any other
16 outside consultants?

17 A. I believe back in -- back in September, the
18 period we were discussing earlier, we also retained
19 Morgan Stanley in an advisory role, or it's possible
20 that Treasury retained Morgan Stanley, I can't remember,
21 but I don't recall beyond those three institutions.

22 Q. Did the Federal Reserve retain an accounting
23 firm to help the Federal Reserve with respect to AIG?

24 A. I don't -- I don't recall.

25 Q. What was the budget for all of the personnel and

1 firms that were helping the Federal Reserve with respect
2 to AIG?

3 A. What was the cost, the ultimate cost, or what
4 was the budget?

5 Q. Good point.

6 A. No budget.

7 Q. No budget.

8 A. Expensive is my sense.

9 Q. How expensive?

10 A. Very expensive.

11 Q. Can you give me --

12 A. I'm not saying relative to the value they
13 provided. I'm just saying expensive, but I don't have a
14 sense of the total cost.

15 Q. And the reason I'm asking you is as an
16 indication of the extent of the work that was being
17 done, and so what I'm asking is, can you give me any
18 range of what the total cost was of all of the personnel
19 inside and outside that you had working on AIG?

20 A. I could not. Do you mean over the entire time
21 that the Federal Reserve and the Treasury had credit
22 exposure or equity in the entity?

23 Q. I would take any estimate you can give me,
24 whether it's annual or -- or incomplete or --

25 A. I couldn't hazard a guess. I would probably say

1 expensive, but I just don't know. I just don't have a
2 guess. I mean, just to clarify again, I stepped away
3 from those responsibilities at the New York Fed in late
4 November, which was relatively early innings in our
5 involvement with AIG.

6 Q. Even when you stepped away, though, you stepped
7 away to become Secretary of the Treasury, correct?

8 A. That's correct, yeah.

9 Q. And in that capacity you also would have been
10 aware of the cost and expense of the Government's
11 actions with respect to AIG.

12 A. Only that they were extensive and expensive, but
13 I wouldn't -- I wouldn't have any awareness of what the
14 Fed's direct costs were, the Federal Reserve Bank of New
15 York's direct costs were.

16 Q. The costs of what the Fed and Treasury did with
17 respect to AIG were costs that the Fed and Treasury
18 charged AIG for, correct?

19 A. I do not know if that was the case, but it
20 wouldn't surprise me if it was the case.

21 Q. At the time that you were Secretary of the
22 Treasury, did you try to find out how much all of this
23 was costing AIG since the Treasury was the beneficiary
24 owner of 79.9 or more percent of the stock?

25 A. I don't know if I did. I don't recall asking

1 for an ongoing estimate of the total cost. I don't.

2 Q. Was the total cost recorded anywhere?

3 A. I don't know.

4 Q. Did you ever see -- even though you can't
5 remember it today, did you ever see any record or
6 estimate at all of how much this was costing?

7 A. I don't recall.

8 Q. Let me turn to the terms of the credit
9 agreement. First, the interest rate, you said that you
10 were familiar with the interest rate as it related to
11 the 850 basis points above LIBOR. You didn't remember
12 whether you were familiar with the fact that there was a
13 LIBOR floor. Do you recall that?

14 A. Yes.

15 Q. Who set that rate as it was contained in the
16 term sheet?

17 A. I think ultimately I was the one responsible for
18 setting that rate.

19 Q. And did you consider different rates before you
20 selected this particular one?

21 A. Yes.

22 Q. What other rates did you consider?

23 A. Well, by "consider," I would say we looked at
24 the rates that were under consideration by a group of
25 banks that AIG and the New York Fed had approached about

1 trying to arrange a sizeable financing, and we looked at
2 a variety of other precedents for interest rates in
3 obviously different but somewhat similar circumstances,
4 including the rates that were -- prevailed in the
5 context of the Fannie and Freddie conservatorship.

6 Q. The Federal Reserve had approved a 13(3) credit
7 facility for Fannie and Freddie, correct?

8 A. No, I don't believe that's the case. I think
9 what I was referring to in that context was the terms of
10 the preferred stock arrangements between the Treasury
11 Department and Fannie and Freddie.

12 Q. Regardless of what you were referring to, my
13 question was whether the Federal Reserve approved a
14 13(3) credit facility for Fannie and Freddie.

15 A. I don't believe we did. I do believe that we
16 did at various points make some adjustments to our
17 standard liquidity facilities that would be helpful to
18 them, but I don't know. I would have to think for a bit
19 about whether we had a separate or when the Federal
20 Reserve Bank of New York might have had a separate 13(3)
21 facility for Fannie and Freddie.

22 Q. Let me ask you to look at Plaintiffs' Trial
23 Exhibit 696, which I would offer.

24 MR. DINTZER: No objection, Your Honor.

25 THE COURT: Plaintiffs' Trial Exhibit 696 is

1 admitted.

2 MR. DINTZER: Actually, Your Honor, I'm told
3 it's already in, so -- just so the Court knows.

4 THE COURT: Okay.

5 THE WITNESS: This helps refresh my memory.

6 BY MR. BOIES:

7 Q. Okay. And does this refresh your recollection
8 that on July 13th, 2008, the Federal Reserve Board
9 approved a 13(3) credit facility for Fannie and Freddie?

10 A. Yeah. This helps refresh my memory. Now I
11 understand what you were referring to.

12 Q. And the Board also approved the New York Reserve
13 Bank's recommendation that the advances to Fannie and
14 Freddie be made at the primary credit rate, correct?

15 A. That's what this says, yes.

16 Q. And that would have been a recommendation that
17 you would have been responsible for, correct?

18 A. Yeah. Ultimately, yes.

19 Q. Now, let me go back to the question that was on
20 the table before, and you said that one of the things
21 that you had looked at was a rate that was under
22 consideration for a group of banks that the New York Fed
23 had approached --

24 A. That -- I'm sorry, go ahead.

25 Q. -- had approached in connection with trying to

1 obtain liquidity for AIG. Is that correct?

2 A. Yes. What I was referring to was a set of
3 discussions that we, together with AIG, initiated on
4 Monday morning of September 15th to ask a group of major
5 banks whether they would be prepared to arrange a
6 sizeable credit facility for AIG.

7 Q. Now, first, this was Monday morning, September
8 15th?

9 A. That's my recollection, yes.

10 Q. And you said that you, together with AIG,
11 initiated something. Is that correct?

12 A. That's what I said, yes.

13 Q. Did AIG participate in any of the discussions
14 with these major banks, this group of major banks that
15 you referred to?

16 A. I don't know what exactly the nature of their
17 participation was.

18 Q. You do know that the Federal Reserve contacted
19 certain banks, correct?

20 A. I do.

21 Q. Now, when you refer to a group of major banks,
22 is it the case that the only banks involved were
23 JPMorgan and -- who else? --

24 A. Goldman Sachs.

25 Q. -- Goldman Sachs? Is that right?

1 A. Those were the two banks that, on the basis of
2 my conversation with Bob Willumstad on Monday morning,
3 we approached to coordinate that process, to lead the
4 exploration.

5 Q. Let me be sure I understand what you're saying.
6 The Federal Reserve approached JPMorgan and Goldman
7 Sachs on Monday morning, September 15th, correct?

8 A. Well, just to be precise about it, I called
9 Mr. Willumstad that morning to suggest that we make
10 another more forceful run -- help them explore whether
11 there could be a substantial source of private financing
12 for AIG, and in that context we discussed what was the
13 best way to proceed, including, for example, the
14 question of who should we ask to lead that.

15 And on the basis of that conversation with him
16 and with his approval or what I took to be his approval,
17 we asked JPMorgan and Goldman Sachs to lead that
18 process.

19 Q. Is the answer to my question whether the Federal
20 Reserve approached JPMorgan and Goldman Sachs on Monday
21 morning, September 15, yes?

22 A. Yes.

23 Q. And when the Federal Reserve approached Goldman
24 Sachs on Monday, September 15th, who on behalf of the
25 Federal Reserve made that approach?

1 A. I don't recall. It could have been me.

2 Q. That was going to be my next question. Was it
3 you?

4 A. It could have been me, but I'm not certain.

5 Q. On Monday, September 15th, did anyone from AIG
6 communicate with Goldman Sachs or JPMorgan?

7 A. I don't know. Maybe for context, JPMorgan was
8 in -- well, I won't give you context. Sorry, go ahead.

9 Q. At any point prior to the time that this effort
10 collapsed, was any bank, other than Goldman Sachs and
11 JPMorgan, involved?

12 A. I don't know. My belief was that they were
13 speaking with authority and confidence on the basis of
14 their view of what the market would be prepared to do,
15 meaning what a consortium of banks would or would not be
16 prepared to do.

17 Q. What was that belief based on?

18 A. Their representations to me.

19 Q. That's what they told you?

20 A. I don't know how that was communicated, but that
21 was my sense.

22 Q. Did they have any conversations with you at all
23 on September 15th?

24 A. Yes.

25 Q. Who had conversations with you personally on

1 September 15th?

2 A. I think the only conversation I had was at the
3 initial -- my recollection -- and I would have to go
4 back and look at my calendar -- was that I convened or
5 we convened and I attended an initial meeting at the New
6 York Fed with those institutions to start that process,
7 and I do not believe -- do not recall whether I had any
8 other conversations with them over the course of that
9 day on Monday.

10 Q. All right. And do I understand something that
11 you said earlier to be that it is your belief that
12 JPMorgan and Goldman Sachs had come up with an interest
13 rate for consideration?

14 A. My recollection is that they were -- I was -- I
15 was given at some point later or that I had described to
16 me or reported to me at some point later the basic terms
17 of the term sheet they were considering.

18 Q. Let me try to unpack that. Were you given a
19 copy of any term sheet that had been prepared by
20 JPMorgan and/or Goldman Sachs?

21 A. I believe that my colleagues were, and I don't
22 know if I -- I, myself, was given it or was just briefed
23 on its contents.

24 Q. Did you personally ever see a term sheet that
25 you understood was a term sheet prepared by JPMorgan

1 and/or Goldman Sachs?

2 A. I don't recall.

3 Q. Do you know whether any term sheet ever prepared
4 by JPMorgan and/or Goldman Sachs had ever been shared
5 with AIG?

6 A. I do not know.

7 Q. Do you know whether any of the terms contained
8 in any term sheet ever prepared by JPMorgan and/or
9 Goldman Sachs had ever been shared with AIG?

10 A. I do not know.

11 Q. The interest rate that you testified before that
12 you understood was under consideration by a group of
13 banks that the New York Fed had approached, was that
14 interest rate, as you understood it, ever shared with
15 AIG?

16 A. I do not know.

17 Q. Do you know who drafted the term sheet, if there
18 was a term sheet prepared by JPMorgan and/or Goldman
19 Sachs?

20 A. I don't know.

21 Q. Do you know whether it would have been somebody
22 from one of those banks?

23 A. I don't know.

24 Q. Did you ever try to find out any of the facts
25 that you just indicated that you don't know, September

1 15th or September 16th, or, indeed, at any time in
2 September of 2008?

3 A. Of the questions you just listed, you asked me
4 just about when -- who told AIG, whether they were
5 showed to AIG? No, I don't recall whether I was ever --
6 I don't believe, don't recall whether I ever asked
7 whether those terms had been shared with AIG.

8 Q. Did you ever try to find out who had drafted any
9 term sheet that may have been prepared by or for
10 JPMorgan and/or Goldman Sachs?

11 A. I don't believe so. It was -- it was presented
12 to me in a way that I deemed authoritative.

13 Q. Who presented it to you?

14 A. I don't recall, but somebody I trusted.

15 Q. And when this person that you trusted presented
16 whatever it is they presented to you, did they tell you
17 who had prepared it?

18 A. I do not believe so, but I don't know.

19 Q. Did they tell you the basis that this term sheet
20 or terms had been prepared?

21 A. What do you mean?

22 Q. I think you've said --

23 A. The rationale for the conditions?

24 Q. Yes. I think you've said that you don't
25 remember whether somebody actually gave you a term sheet

1 or told you certain terms, correct?

2 A. That's correct.

3 Q. And what I'm asking is, regardless of whether it
4 was a term sheet or certain terms, do you remember the
5 person who conveyed this to you conveying what the basis
6 was for coming up with that term sheet or terms?

7 A. Not beyond the judgment of those banks, that
8 that was a reasonable set of conditions in their
9 judgment. Nothing other than that.

10 Q. Did somebody tell you that the terms that were
11 conveyed to you were terms that JPMorgan and Goldman
12 Sachs had concluded were reasonable terms in their
13 judgment?

14 A. Yes, that is my recollection.

15 Q. Who told you that?

16 A. I don't recall.

17 Q. Was that told you orally or in writing?

18 A. My recollection is it was oral, but I'm not
19 sure.

20 Q. Did you ever discuss with any representative of
21 JPMorgan or Goldman Sachs whether either one of those
22 institutions believed that the terms that you were
23 referring to were reasonable?

24 A. I don't believe I had that conversation directly
25 with them.

1 Q. Did you ever ask for anything in writing from
2 either Goldman Sachs or JPMorgan concerning the terms or
3 term sheet that you say someone conveyed to you?

4 A. I don't recall that I did.

5 Q. Was the interest rate that you set for the term
6 sheet that was presented to the Federal Reserve Board of
7 Governors the interest rate that came from the terms or
8 term sheet that was conveyed to you by the person who
9 you don't recall on or about September 15th or 16th?

10 MR. DINTZER: Your Honor, if we could -- that's
11 an extremely complicatedly worded question and --

12 THE WITNESS: I think I understand it.

13 MR. DINTZER: I think I don't, but, okay, then
14 I'll withdraw my question.

15 THE WITNESS: By the way, Mr. Boies, just to
16 simplify things, I believe that those terms were
17 described to me by someone who worked for me at the New
18 York Fed.

19 BY MR. BOIES:

20 Q. But you just don't remember the person?

21 A. I don't remember exactly who it was. My
22 recollection is that the interest rate in the term --
23 the draft term sheet that you showed me earlier that was
24 before the Board of Governors in that meeting was
25 significantly higher than the interest rate that I've

1 been told was the one being considered by that group of
2 banks.

3 Q. And were you the person that made the decision
4 to put in a higher interest rate than the one being
5 considered by what you refer to as "that group of
6 banks"?

7 A. Ultimately, yes, but in consultation with all of
8 the other principals involved at the Federal Reserve
9 Board and the Treasury.

10 Q. Who were the people with whom you consulted with
11 respect to the interest rate to be charged to AIG?

12 A. My colleagues at the New York Fed, Secretary
13 Paulson and Chairman Bernanke and Vice Chairman Kohn,
14 principally.

15 Q. Who were your colleagues at the New York Fed
16 that you consulted with with respect to the interest
17 rate to be charged to AIG?

18 A. I don't recall precisely, but in this case, that
19 group would have included Tom Baxter and it could be
20 many of the other people whom we've listed and talked
21 about today in your documents.

22 Q. Do you recall anybody at the New York Fed, other
23 than Tom Baxter, with whom you consulted with respect to
24 the interest rate to be charged to AIG?

25 A. Not specifically, but -- we would have probably

1 had that conversation around a table with a bunch of
2 people, but I can't recall precisely.

3 Q. Was anything in writing ever prepared concerning
4 what the appropriate interest rate would be to charge
5 AIG?

6 A. You mean -- do you mean in writing, describing
7 the rationale for that?

8 Q. Yes.

9 A. I do not know.

10 Q. Did you ever ask to have anything prepared like
11 that?

12 A. I do not believe so, but -- I don't remember
13 doing that. We were moving kind of quickly.

14 Q. At the time that the proposal was made to the
15 Federal Reserve for the interest rate, was there any
16 analysis of comparative interest rates that was provided
17 to the Board of Governors?

18 A. Beyond what I've described?

19 Q. I'm not sure I know what you've described as
20 being presented to the Board of Governors.

21 A. I meant the analysis beyond what I referred to?

22 Q. Was any analysis of comparative interest rates
23 provided to the Board of Governors?

24 A. I do not know. What we had before us and what
25 they had before them was a whole range of market

1 indicators about the terms at which the market was
2 willing to finance for institutions like AIG and other
3 institutions, and we had before us the precedent of the
4 terms that applied to the conservatorship of Fannie and
5 Freddie, and we had the indications we had been given by
6 those banks about what they would consider reasonable
7 terms if they were to lend.

8 Q. And when you said we had the indications we had
9 been given by those banks about what they would consider
10 reasonable terms if they were to lend, you had not had
11 any of those conversations with those banks, correct?

12 A. That's what I said, yes.

13 Q. And you don't know who, if anyone, had those
14 conversations with those banks, correct?

15 A. I don't recall exactly who had it, but I viewed
16 it as a -- as an authoritative source.

17 Q. You say you don't recall exactly who had it. Do
18 you recall the names of anybody who you believe had any
19 conversation with JPMorgan or Goldman Sachs about
20 whether those terms were reasonable?

21 A. I -- I just don't remember who else it might
22 have been. I mean, it could have been Tom Baxter, but I
23 just don't remember.

24 Q. You were aware of questions as to what the
25 statutory authority was of the Federal Reserve to make

1 credit facilities available under Section 13(3),
2 correct?

3 A. Well, did you say I was aware about questions
4 about the authority?

5 Q. Yes.

6 A. Yes, I was aware of questions about -- about the
7 -- considerations about the scope of that authority,
8 yes.

9 Q. And you were aware that the scope of 13(3)
10 authority had been something that had been analyzed and
11 written about a number of times in materials that were
12 contained in and referenced in the so-called "Doomsday
13 Book," correct?

14 A. Yes, in that and other contexts, yes.

15 Q. And just so we're clear about this Doomsday
16 Book, what you have is you have sort of an index and
17 summary, and then you have references to a large number
18 of other materials, which include forms, legal memos,
19 and other papers, sometimes in paper form and sometimes
20 on a CD-ROM, correct?

21 A. I don't remember the CD-ROM, but it's possible,
22 I guess.

23 Q. And the summary is of relatively modest
24 thickness, an inch or two, but the whole thing is very
25 voluminous, correct?

1 A. It must be, but I never saw the full, assembled
2 supporting documentation, at least I don't recall seeing
3 that. I remember the thickness of the book itself being
4 roughly two inches.

5 Q. Right. And did you ever go and look at any of
6 the materials that are referenced in the two-inch
7 summary?

8 A. I don't recall that I did, although I did ask a
9 lot of questions of my staff about -- specific questions
10 around the scope of that authority.

11 Q. Um-hum. Let me ask you to look at Plaintiffs'
12 Trial Exhibit 409, which I don't think is in evidence,
13 but I will offer.

14 MR. DINTZER: No objection, Your Honor.

15 THE COURT: Plaintiffs' Trial Exhibit 409 is
16 admitted.

17 (Plaintiffs' Exhibit Number 409 was admitted
18 into evidence.)

19 BY MR. BOIES:

20 Q. Let me ask you to look at page 177, and these
21 are answers that you were giving to questions from
22 Senator Snowe, correct?

23 A. Yes.

24 Q. And one of the things that you said to Senator
25 Snowe -- and this is at the bottom of the page, the

1 second sentence -- "Under Section 13(3) of the Federal
2 Reserve Act, the Fed is prohibited from taking equity or
3 unsecured debt positions in a firm. At its core, this
4 restriction reflects the importance of maintaining the
5 line between the responsibilities and authorities of the
6 fiscal authority, and those of the monetary authority."

7 Do you see that?

8 A. I do.

9 Q. And this was in January of 2009, correct?

10 A. That's correct.

11 Q. Now, in September of 2008, you were aware of
12 proposals to expand the legislative authority of the
13 Federal Reserve with respect to 13(3) loans, correct?

14 A. I don't -- I'm not sure exactly what you're
15 referring to. You're referring to a legislative
16 proposal in the context of the TARP deliberations or
17 separately?

18 Q. I'm talking about before or -- I don't know
19 whether it was related to TARP or not, but it was
20 related not to TARP authority but to Federal Reserve
21 Bank authority.

22 A. But in the context of the legislative
23 discussions that were around the TARP authority or prior
24 to that, separate from that?

25 Q. Let me try to approach it this way. There was

1 an effort to get TARP authority on September 14th, 2008,
2 correct?

3 A. I'm not sure exactly when we proposed that, but
4 in that time frame, yes.

5 Q. And the TARP authority that was being asked for
6 was authority to do a variety of things, including some
7 resolution authority, that was not under 13(3), correct?

8 A. That's my -- yes, that's correct.

9 Q. Now, in addition to that, did the Federal
10 Reserve want to get statutory changes that would expand
11 its 13(3) authority?

12 A. I don't recall that.

13 Q. Let me ask you to look at Plaintiffs' Trial
14 Exhibit 132. That, I am told, is already admitted.

15 All right. And the first page of this exhibit
16 is an email from Scott Alvarez to you, dated September
17 18th, 2008, entitled "Simple legislation." Do you see
18 that?

19 A. I do.

20 Q. And it says, "Tim, it took more than 3 word
21 changes, but not many. Haven't shared this with anyone
22 else." Do you see that?

23 A. Yes. This refreshes my memory.

24 Q. And you had had discussions with Mr. Alvarez
25 about changing the Federal Reserve's legislative

1 authority under 13(3)?

2 A. That's what this suggests, and I believe that's
3 the case, although I don't remember what we were trying
4 to achieve.

5 Q. If you look at the second and third pages of
6 this exhibit, does that refresh your recollection of
7 what you were trying to achieve?

8 A. Reading that, and I see in the explanation at
9 the bottom of page 2 and the top of page 3 a little bit
10 of context for that.

11 Q. And the legislative changes that were being
12 proposed for consideration were changes both to Section
13 4 and to Section 13(3), correct?

14 A. That's what this suggests, yes.

15 Q. And one of the changes to Section 4 is to
16 broaden the authority that is provided in Section 4,
17 correct?

18 A. Well, based on the explanation, that seems to be
19 the intention.

20 Q. Um-hum. And the same thing is true with respect
21 to the proposed changes to 13(3); those also are
22 designed to broaden the authority of the Federal Reserve
23 to extend 13(3) credit and to provide the scope of what
24 the Federal Reserve can receive in exchange for those
25 credits, correct?

1 A. That's what the explanation suggests, yes.

2 Q. Were these proposed legislative changes ever
3 actually submitted to Congress?

4 A. I don't recall.

5 Q. Do you recall what happened to these proposed
6 legislative changes?

7 A. I don't believe they were enacted.

8 Q. Do you know why they were not enacted?

9 A. I don't. I mean, I could speculate, but I don't
10 know.

11 Q. Let me ask you to look next at Plaintiffs' Trial
12 Exhibit 564.

13 THE COURT: Mr. Boies, I think it's about time
14 to adjourn, but I wanted to ask you, what is the plan
15 for tomorrow?

16 MR. BOIES: We have -- at the luncheon recess,
17 we consulted and concluded that it was unlikely that we
18 would be finished with Mr. Geithner by tomorrow morning.
19 So, rather than have Mr. Bernanke stay around for what
20 would probably be an abbreviated day, to accommodate his
21 schedule, we agreed that he would commence his testimony
22 Thursday morning. So, tomorrow we will complete with
23 Mr. Geithner and then hopefully complete Dr. Mosser and
24 then move to Ms. McConnell and Ms. McLaughlin, to the
25 extent there's time.

Starr International Company, Inc. v. USA

1 THE COURT: All right, very well. Thank you
2 very much. We will adjourn until 9:30 tomorrow morning.

3 (Whereupon, at 4:58 p.m., the proceedings were
4 adjourned.)

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CERTIFICATE OF TRANSCRIBER

I, Susanne Bergling, court-approved transcriber,
certify that the foregoing is a correct transcription
from the official digital sound recording of the
proceedings in the above-titled matter.

DATED: 10/8/2014

SUSANNE BERGLING, RMR-CRR-CLR

1	ADMITTED EXHIBITS		
2	PX	PAGE	DESCRIPTION
3	7	1463	Doomsday Book v. 4.1
4	17	1410	Email (5/29/2008) From: Kevin Coffey
5			To: Timothy Geithner, Christine Cumming,
6			Terrence Checki, William Rutledge, Meg
7			McConnell, Arthur Angulo, Robard Williams,
8			Sarah Dahlgren, Brian Peters, John Ricketti,
9			Jeanmarie Davis, cc: Tim Clark, Elise Liebers,
10			Clay Saylor, Erika Gotfried, Dennis Herbst,
11			Jane Wakefield, Daniel Sullivan, Moses Cheng
12			re: Update on Financial Guarantor
13			Negotiations; AIG CDS-related margin call
14			impact
15	26	1412	Email (8/7/2008) From: Meg McConnell
16			To: Timothy Geithner re: Fw: AIG Liquidity and
17			Capital
18	29	1415	Email (8/14/2008) From: Brian Peters
19			To: Sarah Dahlgren re: Fw: Scenarios
20	34	1414	Email (8/25/08 11:13 am) From: Christopher
21			Calabia To: Kevin Coffey, cc: Arthur Angulo
22			re: Re: Fw: AIG - Summary of Potential
23			Earnings, Capital and Liquidity Issues
24			
25			

1 37 1417 Email (9/6/2008 7:27 am) From: Meg McConnell
2 To: Timothy Geithner, cc: Tanshel Pointer,
3 Marlene Williams, Kristin Mayer
4 re: Recent short piece on AIG by Coffey
5 Attaching AIG - Summary of Drivers of
6 Potential Earnings, Capital and Liquidity
7 Issues (August 14, 2008)
8 38 1417 Email (9/6/2008 10:44 am) From: Arthur Angulo
9 To: Timothy Geithner, William Rutledge, cc:
10 Meg McConnell, Brian Peters, Sarah Dahlgren
11 re: Re: Misc.
12 77 1467 Email (9/16/2008) From: Donna Payer
13 To: Timothy Geithner re: AIG
14 85 1437 Email (9/16/2008 1:45 pm) From: Alexandra
15 Merle-Huet To: Meg McConnell, Calvin Mitchell,
16 cc: Alexandra Merle-Huet re: Latest Document
17 Meg Working on Attaching Document with first
18 line"Allowing AIG to default poses systemic
19 risks through its impact on a range of
20 critical money and capital markets"
21
22
23
24
25

1	207	1522	Email (9/22/2008 12:09 am) From: Ethan James
2			To: Dan Jester, Jeremiah Norton, Thomas
3			Baxter, Joyce Hansen, Stephen Albrecht,
4			Richard Charlton, Catherine Kung, Haeran Kim,
5			Helen Mucciolo, Stephen Albrecht, Charles
6			Gray, Sarah Dahlgren, cc: Aco.dpw
7			re: NYSE outline
8	379	1564	Report Pursuant to Section 129 of the
9			Emergency Economic Stabilization Act of 2008:
10			Authorization to Provide Residual Financing to
11			Citigroup, Inc. For a Designated Asset Pool
12	409	1586	January 21, 2009 Hearing before the Senate
13			Committee on Finance: Nomination of Timothy F.
14			Geithner
15	563	1422	Geithner Questions for the Record - House
16			Committee on Oversight and Government Reform
17	564	1423	January 27, 2010 Hearing before the House
18			Committee on Oversight and Government Reform:
19			The Federal Bailout of AIG
20	583	1443	2010.05.06 FCIC Hearing on "The Shadow Banking
21			System"
22	651	1463	Doomsday Book v. 5.0
23	663	1445	"Thesis Notes" (document produced from
24			Geithner's personal files)
25			

1	673	1533	Transcript of May 15, 2013 interview of
2			Timothy Geithner by Mike Grunwald
3	706	1431	On the Brink by Henry M. Paulson, Jr.
4	708	1431	The Federal Reserve and the Financial Crisis
5			by Ben Bernanke
6	709	1431	Stress Test by Timothy Geithner
7	715	1418	GAO Review of American International Group,
8			Inc. Federal Assistance: Questions prepared
9			for written response by Secretary Geithner
10	2717	1407	Email (5/21/2008) From: Alex Cohen To: Timothy
11			Geithner re: AIG CDS
12	2736	1485	Newspaper article
13			
14	DX	PAGE	DESCRIPTION
15	286	1464	EMAIL FROM CHAIRMAN TO DONALD L KOHN RE:
16			AIG
17	416	1488	EMAIL CHAIN AND ATTACHMENT FROM TIMOTHY
18			GEITHNER TO MICHELLE SMITH RE: PRESS
19			RELEASE, STILL SEARCHING
20			
21	JX	PAGE	DESCRIPTION
22	352	1385	Goldman Sachs Slides: Strategy Review:
23			Presentation to the Board of Directors
24			of the Goldman Sachs Group, Inc., (June
25			2008)

1 361 1385 Email from Chris Cole to Rich Griedman
2 and list, Re: New Twist Not Good,
3 Stating that Paul will keep him updated
4 and that he is their friend
5 362 1385 Email from Andy Chisholm to Rich
6 Friedman BCC Rich Friedman re: Where
7 Are You, Stating they are freed up to
8 chat
9 363 1385 Document Forward Purchase Agreement
10 364 1385 Document Termination Agreement, Draft
11 365 1385 Email and attachment from Paul Whynott
12 to Harvey Schwartz et al, re: Proposal
13 Attachments
14 366 1385 Email (9/16/2008 11:29 am) From
15 Christine McLaughlin To: Philip Mindlin,
16 Lawrence Makow re: FW: Term Sheet
17 Attaching 2008_09_16 Term Sheet.DOC
18 (1:07 pm draft)
19 367 1385 Email (9/16/2008) From: Richard Kim To:
20 Steven Rosenblum, Lawrence Makow,
21 Stephanie Seligman re: RE: 2008_09_16
22 Term Sheet
23
24
25

1 368 1385 Email (9/16/2008 5:13 pm) From: Steven
2 Rosenblum To: Richard Kim, Edward
3 Herlihy, Lawrence Makow, Stephanie
4 Seligman, Philip Mindlin, Eric Rosof re:
5 RE: AIG Regulatory Aspects
6 369 1385 Email (9/16/2008 8:49 pm) From: Richard
7 Kim To: Lawrence Makow re: No Subject -
8 14978.EML
9 370 1385 Email (9/16/2008 10:46 pm) From: David
10 Neill To: Nelson Fitts re: Re:
11 371 1385 Email (9/17/2008) From: Stephen Albrecht
12 To: Jim Wilkinson, Jeremiah Norton, Dan
13 Jester, Steven Shafran, Laurie Scheffer,
14 John Knepper, Peter Bieger, Richard Kim,
15 Lawrence Makow, cc: Robert Hoyt re: AIG
16 Equity Call
17 372 1385 Email (9/18/2008 1:14 am) From: Stephen
18 Albrecht To: Laurie Schaffer, John
19 Knepper, Peter Bieger re: FW: Draft
20 Preferred Stock Attaching Draft
21 Certificate of Designations of Series A
22 Participating Preferred Stock
23
24
25

