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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.  
Monday, October 20, 2014  
9:30 a.m.  
Trial Volume 15

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

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             VINCENT PHILLIPS, ESQ.  
10            MARIANA TERESA ACEVEDO  
11            RENEE GERBER, ESQ.  
12            U.S. Department of Justice - Civil Division  
13            Post Office Box 480  
14            Ben Franklin Station  
15            Washington, D.C. 20044  
16            (202) 305-3319  
17            brian.mizoguchi@usdoj.gov  
18  
19  
20  
21  
22  
23  
24  
25

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I N D E X

2

3	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR
4	FELDBERG	3333	3396	3435	3444	
5	FOSHEE	3452	3503			

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8	EXHIBITS	FOR ID	IN EVID
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9 Plaintiff's

10 Number298 3455

11 Number2108 3369

12

13 Defendant's

14 Number602 3397

15 Number624 3402

16 Number789 3524

17 Number800 3519

18 Number822 3429

19 Number831 3532

20 Number849 3431

21 Number859 3432

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24 \*All exhibits premarked for identification prior to trial.

25 \*See full attached list of admitted exhibits following

1 PROCEEDINGS

2 - - - - -

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

4 THE COURT: Good morning, please be seated.

5 We are on the record for day 15 of the trial in  
6 Starr International Company versus the United States.

7 Good morning, Mr. Boies.

8 MR. BOIES: Good morning, Your Honor.

9 We call as our next Mr. Chester Feldberg.

10 THE COURT: Okay. I assume he's nearby.

11 Please come forward, sir. Good morning. Raise  
12 your right hand.

13 Whereupon--

14 CHESTER FELDBERG

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

17 DIRECT EXAMINATION

18 BY MR. BOIES:

19 Q. Good morning, Mr. Feldberg.

20 A. Good morning.

21 Q. We haven't met, but my name is David Boies, and  
22 I suspect that you have been told that I represent the  
23 Plaintiffs, correct?

24 A. Yes.

25 Q. Would you begin by telling the Court when you

1 became a trustee of the AIG trust and how long you  
2 remained a trustee?

3 A. I believe the trust came into being in January  
4 of 2010.

5 Q. How long did you remain a trustee?

6 A. Until the trust was terminated in -- I think it  
7 was the fall of 2012. I'm not good on dates.

8 Q. Could it be that the trust was formed in January  
9 of 2009, not 2010?

10 A. It definitely could have been.

11 Q. Now, when you were asked to be a trustee, you  
12 were contacted by Mr. Thomas Baxter, correct?

13 A. That's correct.

14 Q. And at that time you were retired, correct?

15 A. At that time I had retired from my second job,  
16 yes.

17 Q. And was your first job a job at the Federal  
18 Reserve System?

19 A. Yes, it was.

20 Q. And you were at the Federal Reserve System for  
21 36 years, correct?

22 A. That's correct.

23 Q. From 1964 to 2000?

24 A. Yes. Those years are correct.

25 Q. Okay. And as a result of your long career with

1 the Federal Reserve System, you had a close relationship  
2 with many Federal Reserve employees and officials,  
3 correct?

4 A. Yes.

5 Q. For example, you knew Vice Chairman Donald Kohn  
6 well?

7 A. Yes.

8 Q. And you worked closely with Mr. Baxter for many  
9 years when you were at the Federal Reserve, correct?

10 A. Yes.

11 Q. Am I correct, also, that you and Mr. Baxter  
12 actually coauthored an article that's in the so-called  
13 Doomsday Book?

14 A. I honestly don't remember. I remember the book.  
15 It would have been very possible that we would have  
16 coauthored.

17 Q. I think I saw your name in there, but I --

18 A. I haven't seen the book in 40 years or 30 years.

19 Q. Now, Sarah Dahlgren was the senior Federal  
20 Reserve Bank of New York officer who ran the AIG  
21 monitoring team, correct?

22 A. That's correct.

23 Q. And am I correct that she had worked for you for  
24 a while while you were at the Federal Reserve Bank?

25 A. Yes.



1 Q. Did you talk to anyone else, other than  
2 Mr. Baxter, about becoming a trustee before you became a  
3 trustee?

4 A. I do not -- I do not recall talking to anybody  
5 else at the time I was approached. There was a gap of a  
6 couple of months between the time I was first approached  
7 and the time we actually were -- commenced our  
8 activities as trustees. I'm sure I talked to a lot of  
9 people during that period.

10 Q. Did you talk to a lot of people during that  
11 period who were at the Federal Reserve?

12 A. I don't know about a lot. I'm sure I talked to  
13 some people at the Federal Reserve during that period.

14 Q. Who did you talk to at the Federal Reserve or  
15 Treasury between the period when you were first  
16 approached by Mr. Baxter and the time when you actually  
17 became a trustee?

18 A. To the best of my recollection, I didn't talk to  
19 anybody at the Treasury. I can recall being at meetings  
20 with some lawyers for the New York Fed during that  
21 period when we were in the process of negotiating or  
22 drafting the trust agreement.

23 THE COURT: Mr. Boies, just so I can get my  
24 bearings here, Mr. Feldberg, are you a lawyer by trade?

25 THE WITNESS: I am. I'm a lawyer by degree.

1 THE COURT: Degree, okay.

2 THE WITNESS: I practiced in the New York Fed's  
3 Legal Department for five years when I first started at  
4 the Fed. I have not practiced law since then.

5 THE COURT: Okay. But for this lengthy period  
6 that you worked in the Federal Reserve System, were you  
7 in the Legal Department?

8 THE WITNESS: No, just for the first five  
9 years --

10 THE COURT: The first five years.

11 THE WITNESS: -- or 4 1/2 years. Then I was in  
12 other positions the rest of my career and never  
13 "practiced law."

14 THE COURT: Okay, that's helpful. Thank you.

15 BY MR. BOIES:

16 Q. And I should have probably asked you this at the  
17 beginning. Where did you graduate from college and  
18 where did you graduate from law school?

19 A. I went to Union College in Schenectady, New  
20 York, and I went to Harvard Law School.

21 Q. Prior to the time that you were approached about  
22 becoming a trustee, had Mr. Baxter asked you to serve on  
23 the investment committee for the Federal Reserve Bank of  
24 New York in connection with the Bear Stearns Maiden Lane  
25 facility?

1 A. Yes.

2 Q. And how long did you serve on the investment  
3 committee at the Federal Reserve for the Bear Stearns  
4 Maiden Lane facility?

5 A. It was a very short period. I'm not sure  
6 exactly how long, but I would guess it was not more than  
7 three months, maybe less.

8 Q. You went on the investment committee for the  
9 Federal Reserve Bank of New York in connection with the  
10 Bear Stearns Maiden Lane facility in July of 2008. Is  
11 that correct?

12 A. Yes. That sounds right. Can I just add that I  
13 was not on the committee? I was asked to come in and be  
14 a consultant or an advisor to the Federal Reserve Bank  
15 of New York employees who made up the committee, but I  
16 was not on it.

17 Q. You mentioned the trust agreement and some  
18 meetings with lawyers. Do you recall that?

19 A. I do.

20 Q. When was the first time that you saw a draft of  
21 the AIG trust agreement?

22 A. I do not recall, other than that it would have  
23 been sometime between November and January. That would  
24 be November 2009 and January 2010.

25 Q. Did you actually receive a copy of the draft

1 trust agreement yourself?

2 A. Yes.

3 Q. And did you read it?

4 A. Yes.

5 Q. And did you comment on it?

6 A. Yes.

7 Q. What comments did you make on it?

8 A. The -- there were lots of comments, and I'm sure  
9 I don't remember half of them.

10 Q. What comments did you --

11 A. One I do remember was one which related to the  
12 independence of the trustees.

13 Q. And what was your comment on that?

14 A. Well, when I was first approached, I had  
15 questioned Mr. Baxter --

16 Q. I'm just really asking right now for your  
17 comment on the language.

18 A. I wanted to be sure that the language of the  
19 trust agreement was consistent with my understanding  
20 that the trustees were to be independent.

21 Q. Did any change get made to the draft as a result  
22 of your comment?

23 A. Yes, I believe changes were made, although I  
24 could not tell you now what those changes were.

25 Q. Is there any change to the draft trust agreement

1 that you recall was made based on any comments that you  
2 made?

3 A. The one where I do recall there being changes  
4 made was the indemnity clause. The trustees were very  
5 concerned as to the scope of the indemnity that they  
6 were being given under the agreement.

7 Q. Other than changes to the scope of the indemnity  
8 clause, can you recall any changes that were made to the  
9 draft of the trust agreement following comments that you  
10 made?

11 A. I don't recall any specifically, but I'm  
12 reasonably sure there were some.

13 Q. Did you receive more than one draft of the trust  
14 agreement before the final version?

15 A. I probably received closer to a hundred than  
16 one, but, yes, I saw -- I saw a number of drafts of the  
17 agreement.

18 Q. Who was making changes to these draft  
19 agreements, these very many -- obviously if it was  
20 closer to 100, that's got to be more than 50 drafts.  
21 So, that's a lot of drafts.

22 A. I don't remember.

23 Q. And I assume each one of these drafts was  
24 different in some respects?

25 A. Yes.

1 Q. Now, did you personally read all 50 or more  
2 drafts of the trust agreement?

3 A. I read the agreement many times between the time  
4 I got the first one and the time we signed it, but I  
5 can't tell you how many times.

6 Q. With respect to the more than 50 drafts of the  
7 trust agreement that came to you, how many of those do  
8 you think you read?

9 A. I believe that I read every new draft that came  
10 out. It was probably closer to ten than 50, but I don't  
11 remember the number. It felt like 50.

12 Q. Did you supply any written comments on any  
13 drafts?

14 A. I believe that we did, although I can't tell you  
15 at this point what exactly they related to. There  
16 probably was some stuff on the indemnity. Beyond that,  
17 I don't remember.

18 Q. Now, once the trust agreement was signed, that  
19 was the document that really controlled what you did,  
20 correct?

21 A. Yes.

22 Q. You have described the trust agreement as being  
23 your bible, correct?

24 A. I did.

25 Q. And you had no other document that really

1 provided you with a road map for carrying out your  
2 duties, correct?

3 A. That's correct.

4 Q. Let me ask you to look at the trust agreement,  
5 and in that connection, we have given you two binders.  
6 One binder has your deposition transcript in it, and the  
7 other binder has excerpts from selected documents that  
8 we may direct your attention to.

9 A. Okay.

10 Q. Now, the binder that has excerpts of documents,  
11 sometimes if the document is short, it has the entire  
12 document; when the document is very voluminous, it only  
13 has those pages that we think we may use. At any time,  
14 if you would like to see the entire document for  
15 context, just let me know and we'll furnish it to you.

16 A. If I never see the trust agreement again, it  
17 would be too soon.

18 Q. Well, I apologize, but we're going to have to  
19 spend a little time on it today.

20 If you would turn to Joint Exhibit 172, do you  
21 recognize that as the trust agreement?

22 A. I do.

23 Q. Now, let me begin by directing your attention to  
24 Section 2.04(c) of the trust agreement. And when you  
25 have that, would you let me know. I think it's on page

1 9 of the exhibit, at the bottom of the page.

2 A. Did you say 2.04?

3 Q. 2.04(c). It's on page 9 of the exhibit.

4 A. Okay. I've got it.

5 Q. And subparagraph (c) says that the trustees  
6 shall take any and all reasonable actions available to  
7 them and necessary to cause the actions described below  
8 to be effected. Do you see that?

9 A. I do.

10 Q. And the first item there is amending article  
11 four of the company's certificate of incorporation to  
12 provide for an increase in the number of authorized  
13 shares of the company common Stock from 5 billion to 19  
14 billion, and a decrease in the par value of the company  
15 common stock from \$2.50 to a small fraction of a penny  
16 per share.

17 Do you see that?

18 A. Yes.

19 Q. And did the trustees take such actions?

20 A. No.

21 Q. Why not?

22 A. The -- those provisions in my mind, as one of  
23 the trustees, were technical, ministerial actions that  
24 it was necessary for the trustees to take in order to  
25 facilitate the expectations in the credit agreement



1 between AIG and the Government that common shares would  
2 be issued to the extent of 80 percent of the total  
3 common stock of the company.

4 There was no urgency that I was aware of to  
5 taking those actions at the time the trust was  
6 implemented, and, in fact, the trustees were consumed at  
7 that point with a long list of significant, substantive  
8 issues that concerned us, mainly involved around getting  
9 the trust up and running. We had no staff, we had no  
10 office, we had to determine how -- what our modus  
11 operandi was going to be. Those were the issues that we  
12 were focused on.

13 This one, at that time, to the extent I thought  
14 of it at all -- and quite honestly, I don't remember  
15 thinking of it at all -- would have been something that  
16 was not high priority but that would have to be attended  
17 to at some point.

18 Q. Why did you understand that this had to be  
19 attended to at some point?

20 A. Well, because the credit agreement contemplated  
21 that the Government would receive effectively 80 percent  
22 of the common stock of the company as consideration for  
23 providing the financial support that it did to AIG, and  
24 in order to do that, it was necessary to -- as I recall,  
25 to issue more common stock, and to issue more common

1 stock required an amendment to the charter.

2 Q. Did there come a time later in the trust when  
3 the trustees did take action to amend the company's  
4 certificate of incorporation to increase the number of  
5 shares of the company's common stock?

6 A. I believe the answer to that is yes, but it was  
7 not -- it was not this issue that was -- that was being  
8 raised at that point. It was the issue of additional  
9 common stock for the debenture -- to take out the  
10 debenture holders, as I recall. It was a different  
11 amount of stock. It was for a different purpose.

12 Q. When, as you understand it, was additional  
13 common stock to take out debenture holders authorized?

14 A. I'm sorry. Could you repeat the question?

15 Q. Yes.

16 I think you said that there was a time when  
17 additional common stock was authorized to take out  
18 debenture holders, correct?

19 A. I believe that's right, yes.

20 Q. When, as you understand it, did that happen?

21 A. In the -- bless you.

22 Q. Excuse me.

23 A. In the proxy that was filed -- that was filed or  
24 whatever in mid-2009, the annual proxy.

25 Q. Other than the increase in the authorized number

1 of common shares to take out debenture holders that you  
2 have described in June of 2009, was there ever any other  
3 action taken by the trustees to increase the company's  
4 common stock in order to implement the credit agreement?

5 A. Not that I -- that I recall.

6 Q. Did there come a time when anyone told you that  
7 this provision of the trust agreement was no longer  
8 operative?

9 A. No.

10 Q. Did there ever come a time when anyone told you  
11 that it was no longer necessary to increase the  
12 authorized shares of AIG common stock in order to  
13 implement the credit agreement?

14 A. I don't recall a discussion of that.

15 Q. Did there ever come a time when anyone told you  
16 that it was no longer necessary to decrease the par  
17 value of the AIG common stock in order to implement the  
18 credit agreement?

19 A. The same answer. I don't recall -- I don't  
20 recall that. As it turned out, it wasn't necessary to  
21 do it because of the ultimate disposition plan that was  
22 put in effect for -- or recapitalization, I guess is a  
23 better way to put it, for AIG in -- whenever it was,  
24 2011.

25 Q. Would it refresh your recollection if I

1 suggested that there was a recapitalization plan that  
2 was announced in perhaps December of 2010?

3 A. I really don't remember.

4 Q. Okay. This recapitalization plan, is that  
5 something that you participated in the negotiation of?

6 A. I did not personally participate in the  
7 discussion. One of the three trustees who was  
8 experienced in restructuring -- had significant  
9 experience with restructurings represented the trust at  
10 some of those discussions, and, of course, at that point  
11 we had engaged an investment advisor who was attending  
12 the meetings and advising us. So, I was informed, but I  
13 was not a participant.

14 Q. Who was the trustee that you say was the expert  
15 in restructuring?

16 A. Peter Langerman.

17 Q. When did he become a trustee?

18 A. He became a trustee upon the -- or following the  
19 resignation of Doug Foshee, who had been a trustee. I  
20 don't remember when it was.

21 Q. As you understood it, was the recapitalization  
22 plan drafted initially before or after Mr. Langerman  
23 became a trustee?

24 A. You have to understand that there were ongoing  
25 discussions about how to manage the way forward, and I

1 don't know when those -- when you would argue those  
2 discussions started for purposes of the recapitalization  
3 plan; it was an ongoing process. But I -- to the best  
4 of my knowledge, he was a trustee by the time  
5 substantive discussions of the ultimate  
6 capitalization -- recapitalization plan had begun.

7 Q. Because --

8 A. I think he was there through the whole process.

9 Q. Because of the issue as to when discussions  
10 become substantive or not, I'm not asking about  
11 discussions. I'm asking about drafts. Drafts.

12 A. Drafts?

13 Q. There were drafts of the recapitalization plan,  
14 correct?

15 A. Yes.

16 Q. And insofar as you are aware, were any drafts of  
17 the recapitalization plan prepared while Mr. Foshee was  
18 still a trustee?

19 A. I don't know the answer to that.

20 Q. When was the first time you were aware of any  
21 draft of a recapitalization plan?

22 A. As I sit here today, I cannot tell you when I  
23 first became aware.

24 Q. Can you tell me approximately?

25 A. I really can't, cannot.

1 Q. Okay. Now, you said that -- and I think I have  
2 it right -- that you believed it was no longer necessary  
3 to decrease the par value of the AIG common stock in  
4 order to implement the credit agreement because of  
5 something that happened in the recapitalization  
6 agreement. Did I understand you correctly?

7 A. Yes.

8 Q. What happened in the recapitalization plan that  
9 made it unnecessary to decrease the par value of the  
10 company's common stock?

11 A. I am not an expert on restructuring, so I may  
12 not get this right, but my understanding was that the  
13 ultimate plan was effectuated without the need to issue  
14 as many common shares as had originally been anticipated  
15 when the trust agreement and the credit agreement were  
16 put together.

17 Q. And did you have an understanding of how it  
18 happened that there was not a need to decrease the par  
19 value of the AIG common stock and not necessary to  
20 increase the number of authorized common stock shares?

21 A. I really don't remember that. This was  
22 something that to my mind was being handled by lawyers  
23 and our investment advisors, and I was relying on them  
24 to keep us informed of what we needed to know to carry  
25 out our responsibilities.

1           Q. Now, the first time that you retained investment  
2 advisors was when, sir?

3           A. It would have been as the process of developing  
4 the recapitalization plan began. I can't tell you what  
5 day or month that was. It was -- it was late in our  
6 service as trustees. We -- and there's a reason for  
7 that, and that is that we had made the decision going in  
8 that we would not build our own infrastructure  
9 unnecessarily and spend AIG's money if we didn't have  
10 to.

11                   And while we knew we would need an investment  
12 advisor when we got around to focusing on the  
13 disposition plan of the assets we held, our expectation  
14 going in was that was three to five years down the road,  
15 and we would wait until it became a live issue before  
16 engaging someone. And that's why we didn't engage him  
17 until late in the game.

18           Q. Do I understand what you're saying is that you  
19 engaged an investment advisor for the first time after  
20 you understood that there was going to be a  
21 recapitalization plan earlier than you might have  
22 anticipated?

23           A. Yes.

24           Q. And who was your investment advisor?

25           A. I'm drawing a blank. I'm sorry, I'm drawing a

1 blank on it. I mean, I -- it's a matter of record.

2 Q. I will try to find that and come back to that.

3 A. Okay.

4 Q. The -- was the investment advisor a company?

5 A. It was an investment advisory firm.

6 Q. If I suggested to you the name Evercore Group,  
7 LLC, would that refresh your recollection?

8 A. I would say that I'm embarrassed to have  
9 forgotten it, but that's the name, yes.

10 Q. Who from the Evercore Group worked with the  
11 trustees?

12 A. I think the senior fellow was David Ying.

13 Q. Was there anyone else that you recall?

14 A. There were a couple of others. I don't remember  
15 their names. Scott somebody, I think.

16 Q. Did your investment advisors provide you with  
17 anything in writing concerning their recommendations  
18 with respect to the recapitalization plan?

19 A. They may have. I don't remember seeing written  
20 analyses -- written recommendations from them. We had  
21 many meetings with them.

22 Q. And did you keep any notes of those meetings?

23 A. I did not.

24 Q. Were minutes kept of those meetings? Were  
25 minutes kept of those meetings?



1           A. Minutes -- I believe minutes were kept of those  
2 meetings.

3           Q. And do you have a copy of those minutes?

4           A. I do not have a copy of the minutes.

5           Q. What happened to the trust files when the trust  
6 went out of existence?

7           A. Well, those files were all maintained, I  
8 believe, in the offices of our attorney, and while I  
9 don't know where those files are today, my working  
10 assumption would be that they're still in the offices of  
11 our attorney.

12          Q. Now, let me go back to the issue of 2.04(c) in  
13 the trust agreement and the particular issues of  
14 increasing the number of authorized shares and  
15 decreasing the par value of the AIG common stock.

16                 When did you first become aware that someone  
17 thought that was not going to be necessary?

18          A. Well, again, those issues were not really on my  
19 radar screen. I regarded them, rightly or wrongly, as  
20 technical issues that had to be met at some point, but I  
21 was relying on our lawyers to let us know when the time  
22 had come when we needed to do something.

23          Q. My question is not --

24          A. I think it was late in the game.

25          Q. -- why. My question is not why didn't you do

1 something. My question is, when did you first become  
2 aware that someone thought it was not going to be  
3 necessary to increase the number of authorized shares  
4 and decrease the par value of the AIG common stock in  
5 order to implement the credit agreement?

6 A. I don't remember that specific issue being  
7 addressed at some meeting and agreed at that point, but  
8 it would have come up in the context of the discussions  
9 of the recapitalization plan. I don't think it would  
10 have come up before then.

11 Q. Let me turn to the subject of the  
12 recapitalization plan. At the time of the  
13 recapitalization plan, there was going to be an exchange  
14 of certain AIG preferred stock for AIG common stock,  
15 correct?

16 A. Yes.

17 Q. You understood, didn't you, that there had been  
18 more than one series of AIG stock issued to the  
19 Government?

20 A. Yes.

21 Q. The first AIG preferred stock issued to the  
22 Government was issued in connection with the credit  
23 agreement, correct?

24 A. Yes.

25 Q. And would it refresh your recollection if I told

1 you that that was referred to as the Series C preferred?

2 A. Yes. That was the stock that the trustees held.

3 Q. Yes, sir.

4 Now, what additional series of preferred stock  
5 were you aware of?

6 A. I don't remember specifically.

7 Q. How did the Government get AIG preferred stock,  
8 other than the Series C stock?

9 A. I guess I'm not sure of the -- your question.

10 Q. Did the Government, as you understood it, have  
11 AIG preferred stock other than the Series C preferred  
12 stock?

13 A. I believe they did, but I really don't remember  
14 the specifics of it.

15 Q. To the extent that AIG preferred stock other  
16 than the Series C stock had been issued to the  
17 Government, do you have an understanding as to why it  
18 had been issued to the Government or in return for what  
19 it had been issued to the Government?

20 A. I really don't remember focusing on that.

21 Q. When the recapitalization plan was being  
22 prepared, did you understand that that plan had to be  
23 fair to the minority shareholders of AIG?

24 A. I honestly don't remember that specific issue  
25 being on the table, but I wouldn't disagree with the

1     notion that it should be fair to -- to all the  
2     shareholders.

3           Q. Did the trustees either seek or review any  
4     fairness opinion with respect to the recapitalization?

5           A. We did not get a formal fairness opinion.

6           Q. Did you ever review any written fairness  
7     opinion, whether formal or not?

8           A. I don't remember reviewing documents on that. I  
9     do remember that there were discussions of it, and we  
10    were -- as I recall, we were assured that our investment  
11    advisors felt that it was appropriate for us to execute  
12    it.

13          Q. Had your investment advisors, as far as you  
14    know, seen any written fairness opinions?

15          A. That, I don't know.

16          Q. Did you ever ask?

17          A. I don't recall.

18          Q. Did you have an understanding as to whether the  
19    Series C preferred stock was or was not convertible  
20    preferred stock?

21          A. I'm sorry? I didn't hear you.

22          Q. Did you have an understanding as to whether the  
23    Series C preferred stock was or was not convertible  
24    preferred stock?

25          A. It was convertible preferred stock.

1 Q. And was it ever converted?

2 A. I thought it -- my recollection is that it was  
3 converted as part of the recapitalization, but I could  
4 be wrong.

5 Q. Did anyone ever tell you that a decision had  
6 been made not to convert the Series C preferred stock?

7 A. I remember that there was an issue about  
8 conversion, but I don't remember the specific  
9 discussion.

10 Q. Do you remember what that issue was?

11 A. Well, I guess I don't remember the specifics of  
12 the discussion.

13 Q. Do you remember generally what the issue was  
14 with respect to why, if at all, a decision had been made  
15 not to try to convert the Series C preferred stock?

16 A. I am not -- I do not clearly remember that  
17 discussion.

18 Q. Do you remember it enough to be able to identify  
19 any reason that you understood why someone might not  
20 convert the Series C preferred stock?

21 A. I'm not sure I understand the question.

22 Q. Okay. As you understood it, was the Series C  
23 stock -- that you have accurately identified as  
24 convertible preferred -- ever converted?

25 A. It wasn't converted by the trust. I don't know

1       whether it was converted as part of the  
2       recapitalization. I would have thought that it was, but  
3       I don't remember.

4           Q. Did you have an understanding that in order for  
5       the preferred stock -- the Series C convertible  
6       preferred stock -- to be converted into common shares, a  
7       shareholder vote was required?

8           A. Yes.

9           Q. And did you understand that that shareholder  
10       vote included a vote of the then existing common  
11       shareholders voting as a class?

12          A. Yes. There came a time where I learned that.

13          Q. When did you learn that?

14          A. I can't -- again, I can't give you a specific  
15       date, but it was fairly late in the -- in the game.

16          Q. And did you understand when you learned that  
17       that it was the view of the Federal Reserve Bank that  
18       such a vote would not succeed; that is, you would not  
19       get a majority of the then existing common shareholders  
20       voting to increase the number of shares and decrease the  
21       par value?

22          A. I don't recall knowing that it was the view of  
23       the Federal Reserve Bank, in particular, that that was  
24       the case, but I do recall that at some point in time I  
25       knew that there was a concern as to whether that -- that

1 vote would be positive.

2 Q. And, indeed, did there come a time when you  
3 reached a conclusion that the vote would be negative?

4 A. I personally?

5 Q. Well, as a trustee.

6 A. I was not spending a lot of time as a trustee on  
7 this issue. This was an issue that from the beginning  
8 had been put with the lawyers to let us know when the  
9 right time for us to act was, and I had not gotten  
10 involved in the nitty-gritty of the discussions and  
11 concerns of the lawyers with respect to the  
12 implementation of those amendments.

13 Q. Did your lawyers ever tell you, one way or the  
14 other, whether they believed that a vote of the common  
15 shareholders on the question of increasing the number of  
16 shares and reducing the par value of the common shares  
17 would pass?

18 A. Would pass? I don't recall them indicating one  
19 way or the other.

20 Q. Did you ever ask them?

21 A. I don't recall asking them, because, again, in  
22 my mind, going back to the beginning, I regarded this as  
23 a technical, ministerial issue rather than something  
24 substantive in policy.

25 Q. You understood that Section 2.04(c) required the

1 trustees to take any and all reasonable actions  
2 available to them to cause this shareholder vote to take  
3 place, correct?

4 A. I understood that there was a provision here  
5 stating that -- in effect that at an appropriate time,  
6 this would be done.

7 Q. But --

8 A. It doesn't say when it should be done.

9 Q. No, but it does say that the trustees shall take  
10 any and all reasonable actions available to them,  
11 correct?

12 A. Yeah.

13 Q. And you understood that that was all and any  
14 reasonable actions available to you to have this  
15 shareholder vote to increase the number of common shares  
16 and decrease the par value, correct?

17 A. Right.

18 Q. And I understand that you say you didn't think  
19 that had to be done right away, but you understood it  
20 had to be done at some point, correct, under the trust  
21 agreement?

22 A. There was an expectation going in that at some  
23 point it would be done. This was necessary in order to  
24 implement the terms of the credit agreement, and both of  
25 these provisions, as I understood it, were designed to



1 enable the Government to put itself in position to  
2 dispose of the assets it held at some point in the  
3 future. Again, we were thinking three to five years at  
4 the outset.

5 Q. And when you say "dispose of the assets," you  
6 mean dispose of the stock that it got, correct?

7 A. The common stock or the -- the cumulative  
8 preferred, which were expected to be converted.

9 Q. And you understood, as a practical matter, in  
10 order to dispose of the equity that the trust had --

11 A. A better word.

12 Q. -- that equity had to be converted into common  
13 stock, correct?

14 A. Yes. That was my understanding.

15 Q. And you understood that this provision, 2.04(c),  
16 was designed to enable that to happen, correct?

17 A. Yes.

18 Q. And unless somebody told you that that wasn't  
19 going to happen, you would have pursued this at some  
20 point as a trustee, correct?

21 A. I would have expected it to be pursued and would  
22 have relied, as we did, on our legal counsel to let us  
23 know when it was necessary and appropriate for us to do  
24 it.

25 Q. Did your legal counsel ever tell you, in words

1 or in substance, that you did not have to follow  
2 2.04(c)?

3 A. I do not recall there ever being a discussion of  
4 that.

5 Q. Did your legal counsel ever tell you, in words  
6 or in substance, that anyone had concluded that there  
7 was a way to implement the Government getting common  
8 shares without completing the steps provided for in  
9 2.04(c)?

10 A. I mean, I guess there came a point in time --  
11 but I can't tell you when, it was very late in the  
12 game -- where that issue did surface.

13 Q. Who surfaced that issue?

14 A. I mean, I guess I would have been informed -- I  
15 don't remember discussions of this -- but I would have  
16 been informed by the people that were working on the  
17 recapitalization arrangements, would have been our  
18 lawyers, our investment advisors, or conceivably Peter  
19 Langerman, who was attending some of the meetings. I do  
20 not remember having that discussion with any of them.

21 Q. Let me try to approach it this way. You  
22 mentioned that there was an AIG annual meeting at the  
23 end of June of 2009. Do you recall that?

24 A. 2009 was it? I'm sorry, I didn't hear what you  
25 said.

1 Q. I said 2009. There may have been more than one  
2 annual meeting while you were trustee.

3 A. It's 2009.

4 Q. Okay. But there was one in 2009?

5 A. Yes.

6 Q. Let me ask you that. Was there more than one  
7 annual meeting of the AIG shareholders while you were a  
8 trustee?

9 A. I do not remember whether there was one in 2010  
10 or not. There may have been, but...

11 Q. Let me turn to the one in 2009, and there was a  
12 proxy statement that was prepared in connection with  
13 that meeting, correct?

14 A. Yes.

15 Q. And did you see a draft of that proxy statement?

16 A. I do not remember seeing the draft at this  
17 point. I may well have at some point along the period  
18 leading up to the final.

19 Q. Let me ask you to look at Joint Exhibit 221 that  
20 is in your book.

21 A. Yep.

22 Q. And is this a copy of the final proxy statement?

23 A. It looks like it.

24 Q. And this is dated June 5, 2009, correct?

25 A. Yes.

1 Q. Did you see this proxy statement on or about  
2 June 5, 2009?

3 A. Yes.

4 Q. And you read it?

5 A. I assume I did, yes.

6 Q. Let me -- let me direct your attention to page 4  
7 of Exhibit 221. Do you see the third bullet there --

8 A. Yes.

9 Q. -- says that one of the items of business at the  
10 annual meeting is to "act upon a proposal to amend AIG's  
11 Restated Certificate of Incorporation to increase the  
12 authorized shares of common stock from 5,000,000,000  
13 shares to 9,225,000,000 shares"?

14 A. Yes.

15 Q. Do you know what the purpose of that proposal  
16 was?

17 A. I thought it had to do with the plan to issue  
18 common stock to certain debenture holders in place of  
19 their debenture holdings.

20 Q. Did that have anything to do with converting or  
21 exchanging or turning government equity into common  
22 shares, as you understood it?

23 A. No, I don't believe so.

24 Q. Did this proposal pass?

25 A. I believe it passed.

1 Q. The item of business immediately after the one  
2 relating to increasing the authorized shares of common  
3 stock says that the meeting will "act upon a proposal to  
4 amend AIG's Restated Certificate of Incorporation..."

5 Do you see that?

6 A. Yes.

7 Q. And the proxy statement here says that the  
8 annual meeting will be asked to "act upon a proposal to  
9 amend AIG's Restated Certificate of Incorporation to  
10 effect a reverse stock split of AIG's outstanding common  
11 stock at a ratio of one-for-twenty."

12 Do you see that?

13 A. Yes.

14 Q. When was the first time you were aware that  
15 there was going to be consideration of a reverse stock  
16 split of AIG's common stock?

17 A. I can't answer that in terms of specifics, but  
18 I -- my recollection is that I found out about it fairly  
19 late in the game.

20 Q. By "fairly late in the game," do you mean --

21 A. Shortly before the proxy was issued.

22 Q. And from whom did you find this out?

23 A. That, I don't remember.

24 Q. As you understood it, what was the purpose of  
25 this proposed reverse stock split?

1           A. The way I remember it, the company was -- had  
2 concerns as to whether it would continue to be able to  
3 comply with a New York Stock Exchange rule that stock --  
4 I may not have this exactly right, but that stock had to  
5 have a market value of over a dollar to be listed on the  
6 New York Stock Exchange, and they were getting close to  
7 that point. And the way they saw to cure the problem  
8 was to do a reverse stock split and reduce the number of  
9 common shares outstanding and increase the value of  
10 individual shares. I thought that's discussed in the  
11 explanation of the proxy.

12           Q. Yes, I think you are right, and if you -- if you  
13 want to look at that, we can direct your attention to  
14 it.

15                   In the meantime, while I'm finding that, as you  
16 understood it in 2009, was there any purpose of the  
17 reverse stock split, other than to increase AIG's share  
18 price and avoid New York Stock Exchange delisting?

19           A. I do not recall any other discussions.

20           Q. As you understood it in 2009, who had originally  
21 proposed the idea of a reverse stock split, if you know?

22           A. I don't know the answer to that.

23           Q. As you understood it, in 2009, did the proposed  
24 reverse stock split have anything to do at all with  
25 getting common shares to the trust?

1           A. I don't think it was presented that way at that  
2 time. I do not remember that.

3           Q. When you say it wasn't presented that way at the  
4 time, do you mean it wasn't presented that way in this  
5 proxy statement?

6           A. No, in the discussions. I don't remember  
7 discussions at that time of that being a purpose.

8           Q. Let me be sure I understand. You're saying that  
9 as far as you were concerned in 2009, the reverse stock  
10 split didn't have anything to do with getting common  
11 shares to the trust?

12          A. I don't think I knew any more but that it was  
13 designed to increase the value of the stock --

14          Q. And avoid the --

15          A. -- and avoid delisting.

16          Q. Okay. Let me hand up a -- let me hand up the  
17 full proxy materials. Let me direct your attention to  
18 page 69, where up at the top of the page, it says,  
19 "Proposal 4 -- Amendment of AIG's Certificate of  
20 Incorporation to Effect a Reverse Stock Split of AIG's  
21 Outstanding Common Stock."

22                 Do you see that?

23          A. Yes.

24          Q. Is this what you were referring to earlier, this  
25 discussion?

1           A. Yes, I believe so.

2           Q. And the next-to-last paragraph at the bottom of  
3 the page says, "The primary purpose of the reverse stock  
4 split is to increase the per share trading price of AIG  
5 Common Stock. AIG believes a reverse stock split will  
6 increase the price of AIG Common Stock, and thus allow a  
7 broader range of institutional investors to invest in  
8 AIG Common Stock, increase other investor interest in  
9 AIG Common Stock and help ensure the continued listing  
10 of AIG Common Stock on the New York Stock Exchange."

11           Do you see that?

12           A. Yes.

13           Q. And that was your understanding of the purpose  
14 of this reverse stock split at the time?

15           A. I didn't remember the first part of that, but  
16 that's -- yes, at the time, that was my understanding.

17           Q. And is it correct that in 2009, you were not  
18 aware of any other purpose of the reverse stock split,  
19 other than what is stated here?

20           A. As of the time of the proxy, I wasn't, yes.

21           Q. Did there come a time after the proxy when you  
22 came to believe that there was a purpose of the reverse  
23 stock split other than what was stated in the proxy that  
24 we just looked at?

25           A. I never -- I don't recall there being any point



1 in time where my view -- my understanding of the purpose  
2 of this provision changed.

3 Q. Incidentally, just to clear one thing up, I want  
4 to just show you Plaintiffs' Trial Exhibit 2108. And if  
5 you would look down at subparagraph (c) on the first  
6 page. Do you see that?

7 A. Yes.

8 Q. Does this refresh your recollection that the  
9 proposal at the June 2009 annual AIG meeting to increase  
10 the authorized shares of common stock from 5 billion to  
11 9.225 billion failed?

12 A. Yes. I will accept that this is better evidence  
13 than my recollection.

14 Q. And it failed because even though there was a  
15 majority vote in favor of it, there was not a majority  
16 of the outstanding common stock voting in favor of it,  
17 correct?

18 A. I did not remember that, but I accept that as  
19 correct.

20 MR. BOIES: Your Honor, this is an AIG document.  
21 I am happy to offer it since I've used it. On the other  
22 hand, I don't need it, other than for how I've used it  
23 in terms of refreshing the witness' recollection. For  
24 purposes of the record, I'm happy to offer it, but it is  
25 hearsay, and so I think it would be subject to an

1 objection.

2 Do you want it in or out?

3 MS. GERBER: We have no objection.

4 MR. BOIES: I would offer it, then.

5 THE COURT: All right. Without objection,

6 Plaintiffs' Trial Exhibit 2108 is admitted.

7 (Plaintiffs' Exhibit Number 2108 was admitted  
8 into evidence.)

9 BY MR. BOIES:

10 Q. As we saw a few moments ago the proxy statement  
11 for the 2009 annual meeting was issued in June. Were  
12 you aware of any decisions to delay the proxy statement?

13 A. Prior to -- prior to --

14 Q. Yes.

15 A. Yes.

16 Q. Who wanted to delay the proxy statement?

17 A. I don't know if there was only one party that  
18 wanted to delay it. The way I remember it was we were  
19 in the process at that point of revamping the board of  
20 directors of AIG, and it was thought desirable to  
21 include the election of new directors -- of those new  
22 directors in the proxy, and the timing was such that  
23 there had to be some delay to do that. That's -- that's  
24 what I remember being the cause of the delay.

25 Q. Were you aware that Mr. Liddy wanted to have the

1 proxy issued earlier than people at the Federal Reserve  
2 Bank?

3 A. I don't remember the specifics of that.

4 Q. Do you remember that there was a disagreement as  
5 to whether the proxy statement should be issued earlier  
6 than June or not?

7 A. I remember that.

8 Q. Do you remember who was on each side of that  
9 disagreement?

10 A. It's pretty fuzzy to me at this point. I mean,  
11 I do remember that there was an active desire to include  
12 in the proxy the proposed new candidates for the board,  
13 and there was a timing problem because we -- you know,  
14 we were just identifying those candidates in the spring.

15 Q. When you became a trustee, were you aware that a  
16 proxy statement had already been drafted for a meeting  
17 of AIG shareholders?

18 A. I do not recall being aware of it at that point  
19 in time. I'm aware of it now.

20 Q. How did you become aware of it now?

21 A. It was in some of the documents that I've  
22 reviewed in the course of preparing for the testimony,  
23 but I don't have a recollection of it as of that time.

24 Q. Do I understand that one of the things that you  
25 did in order to prepare for this testimony is go back

1 and review certain documents?

2 A. Absolutely.

3 Q. And who furnished you those documents?

4 A. My lawyers.

5 Q. Did anyone else furnish any documents?

6 A. Basically all I can remember is my counsel doing  
7 it.

8 Q. And do you know where your counsel got those  
9 documents?

10 A. I think the answer is I really don't know.

11 Q. In preparing for this testimony, I assume you  
12 met with your lawyers, correct?

13 A. Yes.

14 Q. And did you meet with lawyers for the United  
15 States?

16 A. Yes. I considered them both my lawyers for  
17 these purposes.

18 Q. Okay. So that when you say your lawyers gave  
19 you documents, some of those documents would have been  
20 given to you by lawyers for the United States. Is that  
21 correct?

22 A. Yes. I think that's right.

23 Q. How many times did you meet with lawyers to  
24 prepare for this testimony?

25 A. Well, I met with the lawyers before the taking

1 of the deposition, and then I met with the lawyers  
2 before the testimony last week.

3 Q. Last week?

4 A. Last week.

5 Q. On more than one occasion?

6 A. Are you referring to last week or to the  
7 deposition?

8 Q. Well, I --

9 A. The deposition was more than one occasion.  
10 The -- last week, I think it was -- it was once with  
11 each, I think.

12 Q. When you say "once with each," what do you mean?

13 A. Well, I met with my -- with the lawyers for the  
14 trust, and then I met with the lawyers for the  
15 Government.

16 Q. Separately? Is that what you're saying?

17 A. I'm trying to remember. I know this was only  
18 last week, but I really am having trouble. I think -- I  
19 think I met with the lawyers for the trust first and  
20 then met with the lawyers for the trust and the lawyers  
21 for the Government. I'm not positive of that, but I  
22 think that's right.

23 Q. And do I understand that one of the documents  
24 that you were shown indicated that there had been a  
25 proxy that had been prepared or drafted prior to the

1 time you became a trustee?

2 A. I'm not saying that I hadn't seen it back in the  
3 winter. I have no recollection of having seen it until  
4 it was discussed at the recent meetings.

5 Q. Do I understand your testimony that you can't  
6 tell me now, one way or the other, whether or not you  
7 saw this draft proxy when you became a trustee?

8 A. That's correct.

9 Q. Whether or not you saw that draft proxy, were  
10 you aware in 2009, after you became a trustee, that the  
11 initial drafts of the proxy statement did not include a  
12 reverse stock split proposal?

13 A. I don't think I had focused on it at the time,  
14 but I don't recall hearing about reverse stock splits  
15 until we were close to the annual shareholders meeting.

16 Q. Let me ask you to look at Joint Exhibit 181. Is  
17 this one of the documents that was shown you in  
18 preparation for your testimony?

19 A. You have to bear with me. This I have to read,  
20 because I --

21 Q. Absolutely. Take your time, and when you've  
22 finished, let me know.

23 A. (Document review.) I can't say definitively,  
24 but I think this could have been one of the documents  
25 that I reviewed last week.

1           Q. Let me ask you to look at pages 5 and 6 of Joint  
2 Exhibit 181, and this is a draft proxy statement dated  
3 October 2, 2008. Do you see that?

4           A. I see it, yeah.

5           Q. And did you ever see this draft proxy statement  
6 while you were a trustee?

7           A. I do not recall ever seeing this document.

8           Q. Did you ever see a draft proxy statement while  
9 you were a trustee that did not include a provision for  
10 a reverse stock split?

11          A. I -- I have no recollection of having seen one,  
12 but I don't know that if I had seen one it would have  
13 jumped out at me that it was a reverse stock split. I  
14 do not remember knowing about the reverse stock split  
15 issue until the context of the -- the final proxy in  
16 June.

17          Q. Now, this exhibit, Joint Exhibit 181, is  
18 something that was submitted in a lawsuit in Delaware,  
19 the so-called Walker lawsuit. Do you see that?

20          A. Yes.

21          Q. And as a trustee, were you aware that there had  
22 been a Walker lawsuit?

23          A. I was not aware of that lawsuit at the time the  
24 trust was created.

25          Q. The -- had the trust been created by the time

1 this affidavit was filed?

2 A. No.

3 Q. This affidavit --

4 A. If I'm correct that this was filed in October of  
5 2008.

6 Q. This affidavit, if you go to the second page,  
7 was submitted --

8 A. Oh, I apologize. I was looking at the -- the  
9 other attachment, which is dated October of 2008.

10 Q. Certainly. And the confusion is --

11 A. The trust would have been created at the time  
12 this document was filed.

13 Q. So, this document would have been filed February  
14 25 or served February 25, 2009, and at that point, the  
15 trust had been created, correct?

16 A. Yes.

17 Q. And were you aware at the time that this  
18 material was being submitted in the Walker lawsuit?

19 A. To the best of my knowledge, I do not recall  
20 knowing that there was a lawsuit outstanding at that  
21 point in time. It could have conceivably come up  
22 incidentally, but certainly I hadn't been focused on it  
23 as -- you know, as something that people thought I  
24 needed to know about.

25 Q. Did there come a time after February 2009 when



1 you did learn that there was this Walker lawsuit?

2 A. There did, but I can't tell you when that was.  
3 I really don't recall. I don't think it was -- I don't  
4 think it was in the period immediately following the  
5 formation of the trust. I think it was later.

6 Q. Was it in 2009?

7 A. Yes, I think it would have been in 2009.

8 Q. And you understood that the Walker lawsuit was  
9 dismissed as moot, correct?

10 A. Yes.

11 Q. And who discussed with you the Walker lawsuit  
12 and its dismissal?

13 A. I do not recall the discussion at which it was  
14 first discussed. My working assumption would have been  
15 that it came from my lawyers, but I do not know that.

16 Q. Did you ever have any discussions with anyone  
17 from or representing the Federal Reserve concerning the  
18 Walker lawsuit?

19 A. I do not recall having such discussion.

20 Q. Let me ask you to look at Joint Exhibit 176.  
21 This is a stipulation and order of dismissal in the  
22 Walker lawsuit, and it is so ordered February 5, 2009.  
23 Do you see that?

24 A. Yes.

25 Q. And that was the date that the affidavit from

1 Kathleen Shannon that we were just looking at, which  
2 was -- which is Joint Exhibit 181, was also dated,  
3 correct?

4 A. Yes.

5 Q. And were you aware of this stipulation and order  
6 of dismissal at or about the time it was entered?

7 A. Sitting here today, I have no recollection of  
8 this issue having been raised with the trustees in  
9 February of 2009. It might have been. If it had been,  
10 it would have been, again, as I said earlier, in my  
11 mind, you know, all relating to technical, legal issues  
12 having to do with implementation of the credit  
13 agreement, and, you know, it might have -- it might have  
14 been mentioned and it just didn't -- it wasn't  
15 significant from my vantage point at that point. That's  
16 speculation on my part. I do not remember.

17 Q. If you look at the last five lines on the first  
18 page, do you see where the stipulation ordering  
19 dismissal says that the Walker plaintiff "sought, among  
20 other things, an order declaring that the Series C  
21 Preferred Stock is not convertible into common stock  
22 absent a class vote by the holders of the common stock  
23 to amend AIG's Restated Certificate of Incorporation to  
24 increase the number of authorized common shares and  
25 decrease the par value of the common shares"?

1           Do you see that?

2           A. I do see that.

3           Q. And when you learned of the Walker lawsuit, did  
4 you understand that that is what the plaintiff in that  
5 lawsuit had sought?

6           A. I honestly don't remember focusing on the  
7 specifics of the lawsuit. I learned that there was a  
8 lawsuit. I understood that it was being worked on by  
9 the lawyers, and I did not at that time understand that  
10 it had any immediate implications for the trust.

11          Q. Did you understand -- even if you didn't  
12 understand the specifics, did you understand that the  
13 lawsuit related to the trust?

14          A. I'm not even sure at that point that I did  
15 understand it related to the trust.

16          Q. Did you understand at least that the Plaintiffs  
17 sought an order declaring that there had to be a class  
18 vote of common shareholders in order to permit the  
19 conversion of the Series C preferred stock that the  
20 trust held into common stock?

21          A. At that time I'm not even sure that I had  
22 focused on even that part of it. I mean, this was early  
23 on in the days of the trust, and we were consumed with  
24 getting the trust organized and operating, and we were  
25 relying on our lawyers to take care of the myriad of

1 issues that arose that had to be dealt with.

2 And my expectation was that when an issue like  
3 this was ripe for discussion or action by the trust,  
4 that it would be brought to our attention and an  
5 indication of what they thought needed to be done. This  
6 was not high on my list of priorities at that point in  
7 time, as best I recall it.

8 Q. Did there come a time in 2009 when you learned  
9 that the plaintiff in the Walker lawsuit had sought an  
10 order declaring that the Series C preferred stock that  
11 the trust held could not be converted into common stock  
12 without a class vote of the AIG common shareholders?

13 A. Yes. There came a point in time where I  
14 realized that this issue was one that had to be  
15 addressed in some way.

16 Q. When was that?

17 A. It would have been, I think, sometime after  
18 the -- the annual proxy statement, but I really don't  
19 remember.

20 Q. After -- after the proxy statement for the June  
21 30, 2009, annual meeting?

22 A. That's my best recollection, but I'm not sure.

23 Q. And who brought this to your attention?

24 A. Again, I don't remember the specific discussion,  
25 but I have to assume that it was our counsel that raised

1 it with us or informed us of the issue.

2 Q. And do you know how they were informed of the  
3 issue, how your counsel was informed of the issue?

4 A. I don't know, but I do know that they were  
5 having ongoing discussions with the lawyers for the  
6 Government and the lawyers for AIG.

7 Q. Was there any discussion at any time while you  
8 were still a trustee of a need to correct any of the  
9 statements in the June 5, 2009, proxy statement?

10 A. I'm sorry, on the need to do what?

11 Q. To correct any of the --

12 A. Correct?

13 Q. -- statements in the June 5, 2009, proxy  
14 statement.

15 A. I don't remember any.

16 Q. In connection with your duties as a trustee, you  
17 wanted to see the preferred stock that you held  
18 converted into common stock, correct?

19 A. Our expectation going in was that at some point  
20 the convertible preferred we held would be converted  
21 into common stock to facilitate the disposition of that  
22 stock and the realization of the proceeds on behalf of  
23 the U.S. Government.

24 Q. Not only was that your expectation, but in  
25 connection with your duties as a trustee, you wanted to

1 see the preferred stock that you held converted into  
2 common stock, correct?

3 A. Well, we thought that conversion was the vehicle  
4 for being able to dispose of the stock and realize the  
5 benefit of the proceeds for the Government.

6 Q. And as a result, you wanted that to happen,  
7 correct?

8 MS. GERBER: Objection. Asked and answered.

9 THE COURT: Overruled.

10 THE WITNESS: I'm not -- I'm not sure what  
11 you're getting at. We -- we wanted to be able to -- I  
12 don't know how to say it differently -- to realize  
13 the -- liquidate the Government's investment in AIG, and  
14 what we held was convertible preferred stock, and in  
15 order to ultimately dispose of the Government's  
16 interests, that stock had to be converted or otherwise  
17 transferred into -- into a common stock vehicle that  
18 could be liquidated.

19 BY MR. BOIES:

20 Q. Okay. Now, there came a time when it was  
21 decided that the preferred stock would not be converted  
22 but would instead be exchanged, correct?

23 A. Correct.

24 Q. And did you understand what the difference was  
25 between converting and exchanging?

1           A. The honest answer to that is I'm not sure I did  
2           fully understand the difference, but I understood the  
3           consequence of it.

4           Q. What was the consequence?

5           A. The consequence was that it could be exchanged  
6           without the need to issue all those additional --  
7           without the need for a charter amendment. I'll put it  
8           that way.

9           Q. So, if you were going to convert your preferred  
10          into common, you needed a charter amendment, correct?

11          A. If we were going to convert it, we would need a  
12          charter amendment, yes.

13          Q. But if you were going to exchange it, you  
14          believed that you did not need a charter amendment,  
15          correct?

16          A. That was my understanding. I don't know what I  
17          believed.

18          Q. You did understand that in order to permit the  
19          exchange of Series C into common, there had to be a  
20          shareholder vote although not a class vote of the common  
21          shareholders, correct?

22          A. Yes. I think I understood that.

23          Q. And you understood that the trust had to vote  
24          its shares in favor of this exchange.

25          A. Yes.

1 Q. And you understood that by voting in favor of  
2 this exchange, the effect would be that the common  
3 shareholders would not have a class vote on whether or  
4 not the Series C preferred was going to be changed --

5 A. The same problem I had.

6 Q. -- into common stock, correct?

7 A. Yes.

8 Q. I was looking for that neutral word.

9 A. And as was I.

10 Q. And did you understand that changing the Series  
11 C preferred stock into common stock without a  
12 shareholder vote was related to what had been the issue  
13 in the Walker litigation?

14 A. I think the answer to that is yes.

15 Q. And was it in connection with considering this  
16 exchange proposal that you recall being familiar with  
17 the Walker litigation?

18 A. Yeah, I may have known about the litigation  
19 before that, but it was that point in time where I would  
20 have focused more closely on it.

21 Q. Let me turn to another subject.

22 THE COURT: Should we take a break, Mr. Boies?

23 MR. BOIES: Yes, Your Honor.

24 THE COURT: All right. Let's take a morning  
25 break. We will reconvene at 11:20.



1 (Court in recess.)

2 THE COURT: Thank you. Please be seated.

3 Let's go ahead.

4 MR. BOIES: Thank you, Your Honor.

5 BY MR. BOIES:

6 Q. Let me hand you a copy of amendment number 2 to  
7 the AIG credit agreement. Now, this was a document that  
8 was executed before you became a trustee, and I  
9 understand that. My question first to you is whether  
10 this is a document that you became aware of after you  
11 became a trustee.

12 THE COURT: Just for the record --

13 THE WITNESS: It doesn't --

14 THE COURT: Excuse me. Just for the record, may  
15 we point out that this is Joint Exhibit 147?

16 MR. BOIES: Yes, Your Honor. I apologize.

17 THE COURT: Thank you.

18 THE WITNESS: This does not look familiar to me.

19 BY MR. BOIES:

20 Q. Let me ask you to turn to the last page of the  
21 exhibit. Actually, it's the next-to-last page, it's  
22 Exhibit A. And with respect to top portion there, do  
23 you see that, where it says "New York Stock Exchange"?

24 A. Yes.

25 Q. And it says, "AIG will take all actions

1 necessary or expedient for obtaining New York Stock  
2 Exchange approval for the issuance and voting of the  
3 Preferred Stock..." Do you see that?

4 A. Yes.

5 Q. Were you familiar with that requirement? Even  
6 though you may not have seen this document, were you  
7 familiar with that requirement when you were a trustee?

8 A. I do not recall.

9 Q. Let me ask you to go to page 9 of the exhibit,  
10 and up at the top, it says "Stockholder vote." Do you  
11 see that?

12 A. Yes.

13 Q. And it says, "AIG's board will call a meeting of  
14 stockholders as soon as practicable after the issuance  
15 of the Preferred Stock." Do you see that?

16 A. Yes.

17 Q. Now, were you familiar when you were a trustee  
18 with that requirement?

19 A. I'm not sure what "that requirement" is yet.

20 Q. The requirement of AIG's board calling a meeting  
21 of shareholders as soon as practicable after the  
22 issuance of the preferred stock.

23 A. I am not aware of that.

24 Q. And you were not aware of that when you were a  
25 trustee?

1           A. I was not aware of it -- well, at the beginning  
2 of the trust, and I don't remember becoming aware of it  
3 afterwards.

4           Q. This goes on to say, in the next sentence, "At  
5 that meeting, the stockholders, with the common  
6 stockholders voting as a separate class in the case of  
7 matters in clause (i)" -- and those matters are the  
8 amendment to the certificate of incorporation to reduce  
9 the par value of the common stock and increase the  
10 authorized shares to 19 billion.

11                   Do you see that?

12           A. I do.

13           Q. And when you became a trustee, were you aware of  
14 this provision in the credit agreement?

15           A. No.

16           Q. And did you become ever aware of this provision  
17 in the credit agreement during the time that you were a  
18 trustee?

19           A. I do not recall ever becoming aware of this  
20 provision.

21           Q. Let me ask you to look next at Joint Exhibit  
22 207.

23           A. Thank you.

24           Q. This is an AIG Form 8-K. Do you see that?

25           A. Yes.

1 Q. And this is dated April 17th, 2009, on page 4.

2 Do you see that?

3 A. Yes.

4 Q. And while you were a trustee, you received  
5 copies of AIG's 8-Ks, correct?

6 A. I don't recall it, but I won't argue it.

7 Q. Did you receive drafts of AIG's 8-Ks before they  
8 were filed?

9 A. I do not recall receiving the drafts.

10 Q. Did you see this 8-K in or about April of 2009?

11 A. I don't recall it, but I'm not sure what this  
12 relates to.

13 Q. If you look on page 5, do you see that attached  
14 to this 8-K is amendment number 3 to the AIG credit  
15 agreement?

16 A. Okay.

17 Q. Were you aware of amendments to the AIG credit  
18 agreement that were done while you were a trustee?

19 A. I can't think of any, no.

20 Q. So, is it fair to say you were not aware of this  
21 amendment to the credit agreement?

22 A. To the best of my recollection, yes, I am not  
23 aware.

24 Q. Let me ask you to turn to page 17 of Joint  
25 Exhibit 207, and there is a paragraph at the bottom of

1 the page entitled "Stockholder vote." Do you see that?

2 A. Yes.

3 Q. Would you read that paragraph to yourself and  
4 then let me know when you've done that.

5 A. (Document review.) Okay.

6 Q. Do you see that in this amendment number 3, the  
7 requirement that had existed in amendment number 2 for  
8 the holding of a shareholder vote, with the common  
9 shareholders voting as a class, has been eliminated?

10 A. I did not notice it as I read this, but yes, I  
11 see that.

12 Q. But you see it now?

13 A. Yes.

14 Q. And in its place it says the trust will have the  
15 right to cause AIG's board of directors to call a  
16 special meeting for that purpose. Do you see that?

17 A. Yes.

18 Q. Were you ever informed, while you were a  
19 trustee, of this change in the credit agreement?

20 A. I really have no recollection of having been  
21 informed, but I can't say that I wasn't.

22 Q. Did anyone ever tell you that the trust had the  
23 right to cause AIG's board of directors to call a  
24 special meeting of the stockholders for purposes of  
25 considering a charter amendment?

1           A. I have no recollection of it.

2           Q. Let me ask you to look at Joint Exhibit 185,  
3 which is in your binder, and this is the stock purchase  
4 agreement between the trust and AIG with respect to the  
5 preferred stock, the Series C preferred stock, correct?

6           A. Yes.

7           Q. And was this an agreement that you participated  
8 in the negotiation of?

9           A. I do not recall participating in the negotiation  
10 of it.

11          Q. Did you see any drafts of this document before  
12 the final version?

13          A. I don't recall seeing a draft of it. I do  
14 believe that I saw an executed copy of it.

15          Q. If you turn to page 7 of this exhibit, and let  
16 me direct your attention to the middle of the paragraph  
17 (c) at the bottom of the page.

18          A. Yes.

19          Q. There is a sentence that begins, "The Company  
20 shall prepare the preliminary proxy statement..." Do  
21 you see that?

22          A. Yes.

23          Q. It says, "The Company shall prepare the  
24 preliminary proxy statement describing the Special  
25 Meeting Shareholder Proposals as promptly as practicable

1 following the Closing Date, but shall not file it with  
2 the SEC unless so directed by the Trust."

3 Do you see that?

4 A. Yes.

5 Q. Were you, when you were a trustee, aware of this  
6 provision of the stock purchase agreement?

7 A. I have no recollection of it. This was exactly  
8 the kind of stuff that we would have been looking to our  
9 lawyers to review and to advise us as to what action to  
10 take.

11 Q. Did your lawyers ever advise you as to what  
12 action to take with respect to the subject matter of  
13 this statement?

14 A. I have no recollection of the discussion, but I  
15 believe that the trustees signed it, so we must have  
16 been advised that it was in order to sign it. I do not  
17 remember a discussion.

18 Q. Well, you say the trustees signed it. You're  
19 talking about the stock purchase agreement? Is that  
20 what you're referring to?

21 A. Yes. I think that's what I have, um-hum.

22 Q. My question had to do with the preliminary proxy  
23 statement. Did you -- you under -- did you understand,  
24 when you were a trustee, that AIG was responsible for  
25 preparing a preliminary proxy statement but was not

1 permitted to file it with the SEC unless so directed by  
2 the trust?

3 A. I have no recollection of that.

4 Q. Were you ever asked, as a trustee, whether or  
5 not AIG should or should not file a proxy statement?

6 A. I have no recollection of it.

7 Q. Let me ask you to look at Joint Exhibit 187.

8 MS. GERBER: Counsel, I don't believe that's in  
9 the binders.

10 MR. BOIES: No, it's not. That's why we're  
11 going to hand it out.

12 MS. GERBER: Okay.

13 BY MR. BOIES:

14 Q. While we're looking for that, let me go on to  
15 another subject, and then I'll come back to that once we  
16 have Exhibit 187, and that is the recapitalization that  
17 you referred to this morning. And in that connection,  
18 what was your role in terms of the recapitalization?

19 A. The role of the trustees or my personal role?

20 Q. Did you have any different role with respect to  
21 the recapitalization than the other trustees?

22 A. Yes.

23 Q. Other than the fact that there was this new  
24 trustee, Langerman, who was a restructuring expert?

25 A. That's what I'm referring to.



1 Q. Other than that, did you have --

2 A. No.

3 Q. Okay. The -- you ultimately executed the  
4 recapitalization plan, correct?

5 A. Yes.

6 Q. And if you turn to Joint Exhibit 285 in your  
7 binder, is this a copy of the AIG recapitalization plan?

8 A. Yes. I'm sorry, yes.

9 Q. And did you understand at the time of the  
10 recapitalization plan that as a result of it, the  
11 existing holders of AIG common stock would be diluted to  
12 7.9 percent and that the Government would have 92.1  
13 percent of the AIG common stock?

14 A. Yes.

15 Q. Did you understand at the time of this  
16 recapitalization that the Series E preferred stock was  
17 noncumulative preferred stock?

18 A. I think I did, yes.

19 Q. And did you understand that the Series E  
20 preferred stock was not convertible stock?

21 A. At this point I don't really remember exactly  
22 what the terms of those different preferred stock issues  
23 were.

24 Q. Did you understand at the time of the  
25 recapitalization plan that one of the effects of the

1 recapitalization plan would be to provide 51.4 percent  
2 of AIG's common stock to the Government in exchange for  
3 Series E preferred stock?

4 A. In general terms I remember that, yes.

5 Q. And did you understand that except for this  
6 exchange, the Government had no ability to change its  
7 Series E preferred stock into common stock?

8 A. I understood that this was the solution that had  
9 been negotiated between the parties, yes.

10 Q. Who were the parties?

11 A. I believe they were AIG and the Government.

12 Q. Had you or the other trustees participated in  
13 those negotiations?

14 A. As I said earlier, Mr. Langerman represented the  
15 trustees at at least some of those discussions. I don't  
16 know if he was at all of them. And our investment  
17 bankers, Evercore, participated in those meetings.

18 Q. Did Mr. Langerman ever provide you with any  
19 information or advice as to the aspect of the  
20 recapitalization plan that related to the exchange of  
21 the Series E preferred stock?

22 A. He reported back to the trustees on the --  
23 periodically on the state of the negotiations. I do not  
24 recall discussion of that specific issue or, indeed, any  
25 other specific issue.

1 Q. Did your investment advisors, Evercore, ever  
2 provide you with any advice or information concerning  
3 the exchange of the Series E preferred stock?

4 A. I do not recall specifically their providing  
5 advice on that. But in fairness, I do not recall  
6 specifically what they provided advice on in terms of  
7 specific issues.

8 Q. Did you have any understanding of whether the  
9 common stock that the Government was going to receive in  
10 exchange for the Series E preferred stock was more  
11 valuable than the Series E preferred stock that was  
12 being exchanged?

13 A. I'm sorry. Could you repeat that?

14 Q. Yes.

15 The Government was exchanging Series E preferred  
16 stock for AIG common stock, correct?

17 A. Yes.

18 Q. Was the AIG common stock that the Government  
19 received more valuable than the Series E preferred stock  
20 that the Government gave up?

21 A. I don't recall it being more valuable.

22 Q. Did you or, insofar as you were aware, anyone  
23 else on behalf of the trustees attempt to value the  
24 Series E preferred stock?

25 A. I don't believe so, but I don't recall.

1 Q. Did you or, insofar as you were aware, anyone on  
2 behalf of the trustees attempt to value the AIG common  
3 stock that was being exchanged for the Series E  
4 preferred stock?

5 A. I don't recall.

6 Q. Let me now turn to Joint Exhibit 187, which we  
7 found. This is an AIG 8-K dated March 2, 2009. Do you  
8 see that?

9 A. Yes.

10 Q. And this deals with a restructuring, correct?

11 A. It appears to, yes.

12 Q. And if you turn to page 20, the last page of the  
13 exhibit, it's labeled Appendix A.

14 A. Yes.

15 Q. Do you see the details of that restructuring?

16 A. Yes.

17 Q. Was this a restructuring that the trustees  
18 approved?

19 A. I do not remember approving this restructuring.  
20 In fact, I do not remember this restructuring.

21 MR. BOIES: Your Honor, I pass the witness.

22 THE COURT: All right. Very well.

23 Ms. Gerber, cross examination.

24 MS. GERBER: If we get these passed out quickly,  
25 I can still say good morning.

1 THE WITNESS: Good morning.

2 CROSS EXAMINATION

3 BY MS. GERBER:

4 Q. Good morning, Mr. Feldberg.

5 A. Good morning.

6 Q. Earlier this morning, you testified that before  
7 becoming a trustee, you had retired from your second  
8 job. What was that second job?

9 A. I had been nonexecutive chairman of operations  
10 of Barclays Bank in the Western Hemisphere.

11 Q. And when was that?

12 A. I retired from the Fed in June 2000, maybe May,  
13 and almost immediately thereafter went to work for  
14 Barclays in that capacity.

15 Q. And when did you retire from Barclays?

16 A. In mid-June of 2008.

17 Q. And as the nonexecutive chairman, what was your  
18 role?

19 A. Well, the -- my principal role was in the area  
20 of corporate governance and regulatory relations.  
21 Barclays, like many other major domestic and foreign  
22 banks at that time, had a variety of regulatory issues  
23 they were contending with, and I was asked to come in  
24 and help them get those issues behind them.

25 Q. Now, earlier this morning, I believe you were a

1 little bit fuzzy on dates, so I'm going to direct you to  
2 some documents --

3 A. Any help you can give me, I would appreciate.

4 Q. -- that I hope will orient us all.

5 If you will turn to DX 602 in the binder you've  
6 just received, and it's dated October 14th, 2008, and  
7 are you a recipient on this email?

8 A. Yes.

9 Q. And you received this email?

10 A. I assume I did.

11 MS. GERBER: We offer DX 602 into evidence.

12 MR. BOIES: No objection, Your Honor.

13 THE COURT: Defendant's Exhibit 602 is admitted.

14 (Defendant's Exhibit Number 602 was admitted  
15 into evidence.)

16 BY MS. GERBER:

17 Q. Now, were you contacted by Mr. Baxter before  
18 this October 14th --

19 A. Before?

20 Q. -- before this October 14th, 2008, email about  
21 the AIG credit facility trust?

22 A. Yes, I must have been, because my first contact  
23 was with him.

24 Q. Do you recall if it was much before this or --

25 A. I don't think it was much before.

1 Q. And when Mr. Baxter first contacted you, what  
2 topics did you discuss?

3 A. Well, at that point, I had been serving as -- as  
4 I testified earlier -- as a consultant to the committee  
5 at the Fed that was dealing with the Bear Stearns issue,  
6 and he called and asked if I would consider a new  
7 assignment in place of that one. So, it was a package  
8 deal; give up one, take another.

9 And he explained the state of play of the AIG  
10 issue and the Government's role in it and the intention  
11 of the Government to create a trust of all the stock  
12 that it was taking in consideration for its providing  
13 financial support to AIG and that he was looking for  
14 three independent trustees to administer the trust,  
15 because the Government, both the Treasury and the Fed,  
16 were concerned about the potential appearance of  
17 conflict of interest if the Government itself voted the  
18 stock. So, they were looking to create a trust of  
19 independent trustees to vote -- primarily to vote the  
20 stock.

21 Q. Were you aware of any other reason that the  
22 trust was being created, other than this conflict of  
23 interest potential that you just mentioned?

24 A. As I understood it, the primary reason for  
25 creating the trust was to deal with this concern that

1 people at the Treasury and the Fed had as -- you know,  
2 as to the appearance or actual conflict of interest.

3 Q. And in your initial conversations with  
4 Mr. Baxter, did you raise any concerns with him?

5 A. I did. One is how much time it was going to  
6 take; that was a minor concern, but it was a concern.  
7 And the other is I wanted to be sure going in that it  
8 was a real job.

9 Q. And what do you mean by "a real job"?

10 A. Well, that they were looking for trustees that  
11 would act independently and not just be there to  
12 rubberstamp actions that the Fed or the Treasury wanted  
13 them take.

14 Q. And what was your understanding about  
15 Mr. Baxter's position about whether the trustees had a  
16 real job?

17 A. He was very clear that he was looking to the  
18 trustees to provide their collective and individual  
19 knowledge and experience to help out and to administer  
20 the trust, vote the stock, and ultimately come up with a  
21 disposition plan for the stock.

22 Q. Did you understand Mr. Baxter to agree that the  
23 trustees should be independent?

24 A. He was very clear in the initial conversation  
25 that it was absolutely critical from their standpoint



1 that the trustees be independent and that he was looking  
2 to the trustees -- that they were looking to the  
3 trustees to provide judgment and experience that would  
4 be helpful to the best interests of the trust and the  
5 Government.

6 Q. And when did you agree to become a trustee?

7 A. I don't remember whether -- which  
8 conversation -- I had several conversations with  
9 Mr. Baxter during that initial period, and it would have  
10 been at some point early on that I agreed, in principle,  
11 to become a trustee.

12 Q. And why did you agree?

13 A. Well, I had spent most of my career in public  
14 service, and this was an opportunity to get back into  
15 the game, if you will, and provide some public service,  
16 and it sounded like something where from my background  
17 and experience I could be helpful.

18 Q. And in --

19 A. Not to the restructuring terms, per se, but --  
20 but to the policy issues associated with it.

21 Q. And in your preliminary conversations in the  
22 fall of 2008, did you have an understanding of who would  
23 be the beneficiary of the trust?

24 A. Yes.

25 Q. And who was that?

1           A. It was -- it was defined in the trust agreement  
2 as the Treasury. What it meant was the -- the U.S.  
3 taxpayers.

4           Q. This morning with Plaintiffs' counsel, you  
5 discussed the drafts of the trust agreement and your  
6 comments on that. So, with that in mind again, I want  
7 to direct your attention to some documents that can  
8 orient that discussion.

9           If you would turn to DX 624.

10          A. Yes.

11          Q. And this is an email from a person at the New  
12 York Fed to you and Jill Considine. Who is Jill  
13 Considine?

14          A. Jill Considine was one of the three original  
15 trustees and was a trustee throughout the term of the  
16 trust, as was I.

17          Q. The email is also to William Thompson. Who is  
18 William Thompson?

19          A. William Thompson was somebody that the -- I  
20 guess I'm not sure who found him, whether it was the  
21 Federal Reserve or the Treasury or some combination, but  
22 he had been identified as a third potential trustee  
23 along with Jill and myself.

24                 It wasn't too long after he was identified  
25 that -- again, I'm not sure whether it was the Fed or

1 the Treasury, probably collectively -- but they decided  
2 they had a different position that they wanted to get  
3 him involved in, and he did not become a trustee of the  
4 AIG trust. A third trustee was found.

5 MS. GERBER: Your Honor, I move DX 624 into  
6 evidence.

7 MR. BOIES: No objection, Your Honor.

8 THE COURT: Defendant's Exhibit 624 is admitted.  
9 (Defendant's Exhibit Number 624 was admitted  
10 into evidence.)

11 BY MS. GERBER:

12 Q. And in this email it starts, "Tom asked me to  
13 forward you some materials for Thursday's 2:45 meeting."

14 A. Do I have this?

15 Q. DX 624.

16 A. Oh, still 624. I'm sorry.

17 Q. Same document, yes.

18 Do you see that first line? "Tom asked me to  
19 forward you some materials..."? It's on the first page.

20 A. Oh, yes.

21 Q. And who is "Tom"?

22 A. "Tom" is Tom Baxter, who was general counsel of  
23 the New York Fed.

24 Q. And the second-to-last sentence in this  
25 paragraph says, "For your convenience, I am also sending

1 the latest draft of the AIG Credit Facility Trust  
2 Agreement."

3 Do you see that?

4 A. Yes.

5 Q. And then if you turn the page, one of the  
6 attachments here is "Hypothetical Scenarios for  
7 Discussion with Proposed Trustees." How were these  
8 hypotheticals developed?

9 A. I'm not sure I remember who was the originator  
10 of this document. These were issues that were obviously  
11 critically important to the -- to the trustees, but  
12 whether this document was prepared by the New York Fed  
13 for discussion purposes when we got together, I really  
14 don't recall with certainty. I suspect it was.

15 Q. I believe you just said that these were issues  
16 that were important to the trustees.

17 A. I'm having trouble hearing you.

18 Q. I'm sorry. I'll speak up.

19 I believe you just said that these were issues  
20 that were important to the trustees. Is that right?

21 A. Yeah. I haven't read the whole memo, but, I  
22 mean, I see staffing, secretariat, questions for  
23 the media, you know, and choice of directors. These  
24 were all issues.

25 Q. Now, I would like to direct your attention to

1 number 4, "The Sharing of Information for a Material  
2 Corporate Governance Event." That's on the third page.  
3 Do you see that?

4 A. Yes.

5 Q. And the first line is, "In keeping with the  
6 Trust's role as a shareholder, it is not expected that  
7 the Trustees will be involved in the day-to-day  
8 operations of the Company."

9 A. Correct.

10 Q. Was that your understanding of the trustees'  
11 role in -- as trustees?

12 A. That was in the bible. That was in the trust  
13 agreement.

14 Q. And in your judgment, did you fulfill that part  
15 of the trust agreement?

16 A. I certainly tried to.

17 Q. And if you turn the page, at the very top of the  
18 page, it says, "In all cases, the exchange of  
19 information from the FRBNY to the Trustees should not be  
20 viewed as a direction on how to act."

21 Was that your understanding of how information  
22 from the FRBNY was to be considered by the trustees?

23 A. Absolutely. From our vantage point, we didn't  
24 want to reinvent the wheel. We wanted to be able to  
25 draw on the expertise of the Fed, the Treasury, their

1 advisors, AIG, the external and internal accountants  
2 freely, and to use that information to the extent that  
3 we could to assist us in making our decisions and going  
4 through our deliberations. We in no sense felt that by  
5 having that kind of exchange of information, that we  
6 were co-opting our independence.

7 Q. Now, when you were negotiating the trust  
8 agreement with the New York Fed, did you have advisors  
9 or an advisor?

10 A. We engaged a lawyer to advise us on the drafting  
11 of the trust agreement, yes.

12 Q. And who was that?

13 A. His name was Charles Bethill.

14 Q. And who chose Mr. Bethill?

15 A. Well, the trustees chose him. The name was  
16 submitted, as I recall, by one of the trustees, Jill  
17 Considine, who had worked with him on some other case  
18 around -- I guess around that time and thought that he  
19 had the kind of experience that would be helpful to the  
20 trustees in drafting the trust agreement.

21 Q. And what kind of experience was that?

22 A. I don't remember. I think he had trust  
23 experience, but I don't remember.

24 Q. So, if you can turn to what I think is the next  
25 tab in your document, DX 630, which is already in

1 evidence.

2 A. Yes.

3 Q. This has an attachment from Mr. Bethill, and he  
4 says that on behalf of Jill Considine, Chet Feldberg,  
5 and William Thompson, please find this memo.

6 A. Yes.

7 Q. Was this memo sent at the direction of you and  
8 the other potential trustees?

9 A. I believe so.

10 Q. Now, on the first page of the attachment, in  
11 about the middle of the page, it says "Independence of  
12 the Trustees." Do you see that?

13 A. Yes.

14 Q. Okay. And the first line says, "We would like  
15 clarification with respect to the independence of the  
16 Trustees."

17 Why were you asking for clarification with  
18 respect to the independence of the trustees?

19 A. Well, I mean, in general terms, that was a vital  
20 issue for us. I think all of us were very concerned  
21 that there be a clear understanding that our  
22 deliberations and decisions would be our own. I think  
23 the specific concern here was that there was language in  
24 the draft of the trust agreement that suggested that  
25 there were some areas where the Federal Reserve -- I

1 don't remember, the language changed along the way, but  
2 basically that the Federal Reserve expected or requested  
3 or hoped that the trustees would take into account  
4 certain things in their deliberation.

5 We were concerned that the language of the trust  
6 agreement not suggest that -- that they -- that their  
7 independence was in any way reduced, influenced by the  
8 fact that there were these provisions in the trust  
9 agreement. We suggested, as I recall, that those  
10 provisions be taken out of the trust agreement.

11 As I remember it, they weren't taken out, but  
12 they were revised to make it clear that they were -- my  
13 words -- dicta rather than commands to the trustees;  
14 that this was something that we were being asked to  
15 consider, but the decision-making was ours. And based  
16 on the revised language, the trustees were comfortable  
17 going forward with it.

18 Q. Now, in the middle of the paragraph following  
19 "We would like clarification," there's this sentence  
20 that starts, "On the other hand, there is Section  
21 2.04(d) of the Trust Agreement which sets forth two  
22 'views' of the FRBNY..."

23 Do you see that?

24 A. Yes.

25 Q. Is 2.04(d) the section of the trust agreement



1 that you were just referring to?

2 A. Yes. Those are the two provisions that I was  
3 just referring to.

4 Q. Now, I'd like to go through what those changes  
5 were, and I think our tech person is going to be able to  
6 put both provisions, the draft and the final, up in  
7 front of you, but if not, if you would turn to DX 624,  
8 which you were just talking about, and if you turn to  
9 the page that ends in 8016.

10 A. I think I may be lost. Where am I now?

11 Q. This is DX 624.

12 A. Yes.

13 Q. And on the bottom right hand, there's a page  
14 number ending in 8016.

15 A. Okay. Okay.

16 Q. Okay. And at the bottom there is Section  
17 2.04(d). Do you see that?

18 A. Yes.

19 Q. Okay. Now, I don't know if you want to take  
20 that page out or just hold your finger there, and if --

21 A. I have my finger on it.

22 Q. -- and then flip to JX 172, which should be near  
23 the back of your binder.

24 A. Okay.

25 Q. And this is the final AIG credit facility trust

1 agreement, right?

2 A. Yes.

3 Q. Okay. And if you turn to page 10 of 25 in those  
4 big numbers at the bottom, that's Section 2.04(d) in the  
5 final agreement.

6 A. Yes.

7 Q. Okay. So, do you see both of those now?

8 A. Yep.

9 Q. Okay. And if you're looking at the screen, the  
10 top one is the draft and the bottom one is the final,  
11 correct?

12 A. Okay.

13 Q. Okay. So, the draft in DX 624 says, "In  
14 exercising their discretion," and then it says "(except  
15 as to matters as to which express instruction is given  
16 pursuant to subsections 2.04(c), (e) and (f)), the  
17 Trustees are advised that it is the FRBNY's view that,"  
18 and then it goes on to explain the FRBNY's view.

19 Then the third sentence starts, "With those  
20 views in mind, with respect to any and all matters  
21 (other than matters as to which express instruction is  
22 given pursuant to Section 2.04) to be Voted on by the  
23 Trustees as holders of the Trust Stock, the Trustees  
24 shall have full discretionary power to Vote the Trust  
25 Stock," and then it goes on with a "provided."

1           Do you see that?

2           A.   Yes.

3           Q.   And then in the final, it says, "In exercising  
4           their discretion hereunder with respect to the Trust  
5           Stock, the Trustees are advised that it is the FRBNY's  
6           view that you that" -- and then it lists the FRBNY's  
7           views -- "are both consistent with maximizing the value  
8           of the Trust Stock. With those nonbinding views in  
9           mind, with respect to any and all matters (other than  
10          matters as to which express instruction is given  
11          pursuant to this Section 2.04) to be Voted on by the  
12          Trustees as holders of the Trust Stock, the Trustees  
13          shall have full discretionary power to Vote the Trust  
14          Stock."

15          A.   Yes.

16          Q.   So, do you agree that the first -- the draft  
17          says "With these views -- with those views in mind," and  
18          in the final, it says "With nonbinding views in mind,"  
19          correct?

20          A.   Yes. That was not accidental.

21          Q.   And what was the purpose of adding that word, in  
22          your judgment?

23          A.   To try to make it as clear as we could that any  
24          decisions that we were taking were our decisions and  
25          that we were not acting at the behest of the Fed or the

1 Treasury.

2 Q. And were you satisfied with the final language  
3 in JX 172?

4 A. I would have preferred that that language just  
5 have been eliminated, but I was comfortable that this  
6 language was no more than dicta and we could ignore it  
7 and -- or deal with it as we wished.

8 Q. Was there anything in the trust agreement that  
9 you believed impaired your independence as a trustee?

10 A. No.

11 Q. And what would you have done if there had been  
12 such a provision, in your judgment?

13 A. Well, we would have done what we did here, which  
14 was get the trust agreement amended to clarify it, and  
15 that was one of the -- the most -- one of the most  
16 specific issues that the trustees were zeroed in on as  
17 we went through the trust agreement, indemnity being  
18 another.

19 Q. And with respect to independence, what was your  
20 understanding of the trustees' independence with respect  
21 to voting the preferred shares by the time you signed  
22 the trust agreement in January of 2009?

23 A. That any decisions taken with respect to voting  
24 the shares were our decision.

25 Q. And did that understanding ever change?

1 A. No.

2 Q. And what did you under --

3 A. And let me be clear on this.

4 Q. Yeah.

5 A. Going back to that language that we read before  
6 about exchange of information, you know, we did exchange  
7 information with all of the other players, mostly  
8 getting information rather than giving, but -- so, we  
9 were happy to have whatever views anybody wanted to give  
10 us, but when it got around to making the decision, the  
11 decisions were our decisions.

12 Q. And we'll talk a little bit more about how you  
13 got information in a few questions.

14 A. Okay.

15 Q. But while we have JX 172 in front of you --

16 A. Which finger is on that?

17 Q. That's at the back of the binder. That's the  
18 final trust agreement.

19 A. Oh, the back.

20 Q. Yes. JX 172, do you have it?

21 A. Yeah.

22 Q. And if you turn to page 12 of 25 of the  
23 exhibit --

24 A. Got it.

25 Q. -- at the very top of the page, it says, "The

1 Trustees may, but shall not be required to, obtain a  
2 'fairness opinion' from an investment bank in connection  
3 with the sale or other disposition of Trust Stock."

4 What was your understanding of the requirement  
5 or lack of requirement there?

6 A. At the time that the trust agreement was  
7 executed?

8 Q. Yes.

9 A. I don't think I had an opinion on it. I mean,  
10 this was something that was -- again, we thought it was  
11 three to five years down the road. We had stuff that  
12 was tomorrow or today to deal with.

13 Q. Now, I think earlier this morning you were  
14 talking with Plaintiffs' counsel about whether a  
15 fairness opinion was gotten for the Series C preferred  
16 stock in the recapitalization. Do you recall that?

17 A. Yes.

18 Q. And forgive me if I forget your testimony. Did  
19 you -- did you say whether you knew that there had or  
20 had not been a fairness opinion?

21 A. There had not been a fairness opinion. We  
22 were -- as I recall, we were advised by our investment  
23 advisors, or maybe by our lawyers as well, that a  
24 fairness opinion wasn't required.

25 Q. And in your understanding, is that consistent

1 with the provision of the trust agreement that we just  
2 read?

3 A. It looks consistent to me.

4 Q. Now, if you will turn to page 15 of this  
5 exhibit, it's Section 3.03(a), the "Standard of Care."  
6 Do you see that?

7 A. Yes.

8 Q. And it says, "A Trustee shall have no liability  
9 hereunder for any action taken or refrained from or  
10 suffered by such Trustee, provided that such Trustee (i)  
11 acted in good faith in a manner that the Trustee  
12 reasonably believed to be in accordance with the  
13 provisions of this Trust Agreement and in or not opposed  
14 to the best interests of the Treasury," and then it goes  
15 on.

16 In your understanding, who is the "Treasury"  
17 listed here?

18 A. Well, the Treasury here is -- is the way the  
19 Treasury term is used almost exclusively through the  
20 whole agreement, and that is the Treasury is the  
21 taxpayers of the United States.

22 Q. And what did you understand your fiduciary duty  
23 as a trustee to be when you were voting the preferred  
24 stock?

25 A. Well, the -- the overriding expectation was that

1 we would act as trustees in the best interests of the  
2 taxpayer to maximize the value of the assets we held,  
3 the equity, for the benefit of the taxpayers.

4 Q. And in your judgment, when you maximized the  
5 value of the assets you held, how did that affect the  
6 common shareholders, the other shareholders of AIG?

7 A. Well, to the extent that we maximized the -- the  
8 value of the common stock we held and it increased in  
9 value, the value of the common stock held by the  
10 existing shareholders would have increased  
11 proportionately.

12 Q. And in your judgment, did you ever take an  
13 action as a trustee that was against the interests of  
14 the minority shareholders?

15 A. No, but we did take an action that I, at the  
16 time, was concerned was a benefit to the existing  
17 shareholders in contrast to the -- to the trust. I  
18 didn't say that very well, but that there was one  
19 provision of the agreement that gave the preexisting  
20 shareholders something that the trust wasn't getting for  
21 its common stock.

22 Q. And when you said there was a provision in "the  
23 agreement," what agreement are you referring to?

24 A. The recapitalization -- the final  
25 recapitalization agreement.



1 Q. And what provision was that? Not specifically,  
2 in general.

3 A. Pardon? Well, the provision, as I recall, gave  
4 warrants to the existing shareholders that had a cash or  
5 could have cash value that were not being given to  
6 the -- to the trust. And at the time I remember being  
7 concerned and raising the issue as to whether we were --  
8 could be said to be maximizing the value of the stock we  
9 held in agreeing to something that gave other  
10 shareholders more than we were getting.

11 Q. Earlier, you referenced information, getting  
12 information from various sources, so let's talk about  
13 that.

14 Did the New York -- did the New York Fed direct  
15 you to choose certain advisors at any time?

16 A. I'm sorry?

17 Q. I'm sorry. Did the New York Fed direct you to  
18 choose specific advisors?

19 A. Absolutely not.

20 Q. And what advisors did you and the trust get at  
21 any point during the existence of the trust?

22 A. Well, we hired a -- our lawyers. We hired a law  
23 firm. We got suggestions on that from the New York Fed.  
24 One of the problems there was that most of the law firms  
25 already did work for AIG, so that the pool of firms

1 was -- was not as big as it would normally be, but we  
2 were fortunate in that we were able to get the counsel  
3 that we did.

4 We hired a person to be our interface with the  
5 press and the public, because we felt we were going to  
6 need somebody, since there were just three of us, to  
7 answer questions about the trust.

8 Q. And when did you hire that person?

9 A. That was done -- we hired the lawyers first, and  
10 within a relatively short period after that, we hired  
11 the person to assist us with public information.

12 We discussed at that point in time what other  
13 staff needs we had. The big one was an investment  
14 advisor. As I think I said this morning, we decided  
15 that at that point we didn't need an investment advisor  
16 because we weren't going to be dealing with  
17 recapitalizations or disposition plans for three to five  
18 years, and, you know, while it would be helpful to have  
19 them up to speed, the cost of doing that when we didn't  
20 expect to really need them seemed excessive.

21 We decided that we would use the law firm we  
22 hired to kind of act as our chief of staff, if you will,  
23 chief administrative -- lawyers might not like that  
24 phrase, but chief administrative officer. I mean, they  
25 were our support, our support staff, but we decided to

1 do that rather than go out and hire a bunch of people to  
2 do it.

3 And we did all this -- the timing is a little  
4 fuzzy, but in the expectation that we were going to be  
5 able to draw freely for the information we needed from  
6 the other players, and we did it with our eyes open and  
7 a recognition that if at any point in time we felt that  
8 we weren't getting the information we needed from the  
9 other players, that at that point we would go out and  
10 engage additional support. The best I can recall, we  
11 never got to that point.

12 Q. And did you consult directly with AIG and its  
13 advisors? Did you consult directly with AIG and --

14 A. You mean during the course of --

15 Q. Yes.

16 A. Oh, yes. Absolutely.

17 Q. And did you meet AIG and its advisors without  
18 anyone from the New York Fed present?

19 A. Yes.

20 Q. And did you meet with your own advisors without  
21 the New York Fed or anyone from the Government present?

22 A. Yes, yes. We -- you know, we went into it with  
23 nothing and developed a -- kind of a process, and the  
24 process involved regular meetings with all of the  
25 players that we've just discussed, as well as periodic

1 meetings with the external and internal accountants or  
2 auditors. But we were having weekly meetings with many  
3 of these players and monthly meetings for sure.

4 Q. And in your judgment, did you receive the  
5 information you required to make decisions as trustees?

6 A. Yes. If we hadn't felt -- if the answer to that  
7 wasn't yes, then we would have gone out and gotten  
8 additional help.

9 Q. In your binder, if you would turn to DX 754,  
10 which is already in evidence.

11 A. Got it.

12 Q. Okay. And this is a document for an AIG credit  
13 facility trust meeting on February 27th, 2009, about a  
14 month after the trust agreement is signed or somewhere  
15 thereabouts.

16 This meeting occurred at the Federal Reserve  
17 Bank of New York, correct?

18 A. Yes.

19 Q. And why was that?

20 A. That -- this was the staff people that I forgot  
21 in my iteration, but during the period after the trust  
22 was established, immediately after, the bonus  
23 compensation scandal or fiasco or however you want to  
24 describe it occurred, and the trustees had a number of  
25 conversations among themselves about this and ultimately

1 concluded that in order to restore the reputation and  
2 credibility of the company and "maximize" the value of  
3 the stock we used for the benefit of the Government,  
4 that there needed to be a revamping of the board of  
5 directors.

6 This was something that, to my knowledge, the  
7 idea originated with us, not with any of the other  
8 parties, that we sat down and we decided what kind of  
9 resources the board needed, needed a new chairman of the  
10 audit committee and what kind of person could we recruit  
11 for that; and we needed somebody for HR and what kind of  
12 a person could we recruit for HR, to oversee the HR  
13 committee; and we thought that we needed at least a  
14 couple of directors who had the potential to be CEOs of  
15 the company if that should prove necessary going  
16 forward.

17 And I guess the one other thing that we did was  
18 we -- we thought that it would be helpful if we could  
19 get a -- a named person -- that's not the right word,  
20 a -- somebody with a -- with an impeccable -- an  
21 impeccable reputation to join the board and lend their  
22 credibility to the board. And we actually approached a  
23 few people to do it. We were not successful. They  
24 were, for one reason or another, not able to do it.

25 But we did at that point engage Spencer Stuart

1 to advise us and to help us find candidates to join the  
2 board. We told them what our requirements were, what we  
3 were looking for, and they went and came back to us  
4 with, as I remember it, half a dozen names of people  
5 that -- it may have been more, but it was at least a  
6 half a dozen names of people that they felt were  
7 qualified to accomplish the things we were looking for.

8 Q. I think at the beginning of your answer you  
9 said --

10 A. I'm sorry. It got to be a long answer.

11 Q. -- I think you said this is another of your  
12 staff that you forgot.

13 A. Just that we were hiring -- you asked me who we  
14 brought in to assist us, and I forgot to mention that we  
15 brought in a consulting firm to -- a headhunter firm.

16 Q. Spencer Stuart, that is?

17 A. Spencer Stuart, yes.

18 Q. I believe I was asking about the meeting appears  
19 to have been held at the Federal Reserve Bank of New  
20 York. Why were you having a meeting at the Federal  
21 Reserve Bank of New York?

22 A. Well, we didn't have office space of our own.  
23 We did have -- our attorneys gave us access to space  
24 there. That space was uptown. As I recall, we had some  
25 meetings uptown, but we also had a number of meetings

1 downtown at the Federal Reserve because it was most  
2 convenient to the people who were coming to the meeting.

3 It was convenient for the Fed people, but it was  
4 also very convenient for AIG's people whose offices were  
5 a block or two away. Those meetings were our meetings.  
6 The attendance at those meetings was limited to the  
7 people that we wanted at those meetings, and different  
8 meetings had different people present.

9 Q. When you say it was "our" meetings, who is the  
10 "our" in that reference?

11 A. The trust, the trustees.

12 Q. And who created this agenda in DX 754?

13 A. Well, it was our agenda, but I think the input  
14 to the agenda included things that we wanted to do but  
15 also things that others might want to report to us on.  
16 So, I mean, typically, the -- there would be a meeting  
17 with the Fed people at some point during our overall day  
18 or whatever at which they would bring us the current  
19 state of play from their perspective.

20 And their perspective was far better than  
21 anything that we could produce on our own, and they were  
22 attending the board meetings of AIG, they had a staff of  
23 quite a few people that were living at AIG and reporting  
24 back, I'm sure, on a daily basis on one issue or  
25 another, and this was an effort to keep us in the loop,

1 in part.

2 Q. Now, this agenda has several items with people  
3 other than New York Fed or government employees; namely,  
4 Arnold & Porter, Spencer Stuart, Ed Liddy. Did you have  
5 those meetings with or without the New York Fed present  
6 or anyone from the Government present?

7 A. I mean, I won't say that there was never a case  
8 where the Fed didn't participate in a meeting with other  
9 groups, but for the most part they were not invited and  
10 did not attend. The fact that the meeting was held at  
11 the Fed was a matter of convenience to everybody but not  
12 an open door to them to attend.

13 Q. Do you recall any time in which the New York Fed  
14 or the Government directed the trustees to take an  
15 action against the trustees' own judgment?

16 A. The use of the word "directed" makes it no. I  
17 can only remember one instance where there was a  
18 material difference of view -- I thought a material  
19 difference of view between the trustees and in this case  
20 it was the Treasury, and that was in connection with the  
21 selection of the new directors. I can elaborate on it  
22 if you want.

23 Q. We will get to that in just a minute, actually.

24 A. Okay.

25 Q. So, let's talk about the choice of new



1 directors. Who decided that there should be a change in  
2 the AIG board of directors?

3 A. To the best of my recollection, that issue arose  
4 among the three trustees, and I am pretty sure that the  
5 person who initiated it was Doug Foshee, one of the  
6 three directors.

7 Q. One of the three directors?

8 A. One of the three trustees. Sorry.

9 Q. Now, earlier you also testified about hiring  
10 Spencer Stuart in connection with finding directors.  
11 Did Spencer Stuart give you a list of names --

12 A. Yes.

13 Q. -- of potential directors?

14 A. Yes. They gave us, as I remember it, a book  
15 with profiles of these people in it.

16 Q. And before you received those names, did you  
17 consult with either the New York Fed or Treasury about  
18 potential directors?

19 A. To the -- I get fuzzy on timing of things.

20 Q. Sure.

21 A. But my best recollection is that we told the Fed  
22 what we were doing, but we did not discuss names with  
23 them, either give names or get names, until we had  
24 gotten the feedback from Spencer Stuart.

25 Q. And did you eventually receive names --

1 suggested names from either the New York Fed or  
2 Treasury --

3 A. That's what I was starting to refer to before.  
4 We did not get names from the Federal Reserve. We had  
5 also -- we had asked both -- after we had the names and  
6 believed that this was a good group to bring on board,  
7 we informed both the Fed and the Treasury, probably the  
8 Treasury through the Fed, because there was still nobody  
9 representing the Treasury at that point.

10 We didn't get any feedback from the Fed. From  
11 the Treasury we didn't get anything for some period of  
12 time, and then we got a list of six names. We were  
13 looking for six. We had given them six names. They  
14 gave us six names.

15 As I recall, it was simply a list of six names.  
16 There was no background material on each of the names.  
17 And at this point, I don't remember recognizing any of  
18 those names. There may have been one I recognized.

19 Q. And what did you do with Treasury's suggestions  
20 for directors of AIG's board?

21 A. We filed it.

22 Q. I'm sorry?

23 A. We filed it.

24 Q. And what does that mean?

25 A. That means we didn't adopt it. We stayed with

1       our own recommendations and went back to the Fed and  
2       Treasury and said we didn't think that -- that their  
3       list made more sense than ours, or more colorful words  
4       to that effect.

5           Q.   And did you consult with AIG about the suggested  
6       directors for AIG's board?

7           A.   I'm sorry.  Could you repeat that?

8           Q.   Did you consult with AIG about the potential  
9       board of directors -- new board of directors?

10          A.   I'm reasonably sure that we would have, again,  
11       just to get the benefit of any input that -- that they  
12       might have.  It wasn't for their approval or anything  
13       like that.

14          Q.   And did you interview the potential directors  
15       that Spencer Stuart gave you?

16          A.   At least one of us interviewed each of the --  
17       each of the directors -- each of the potential trustees.

18          Q.   Potential directors?  Is that --

19          A.   I'm sorry.  Now I'm getting really confused.  
20       Potential directors.

21          Q.   Okay.  Now, I'd like to direct your attention to  
22       the proxy from June 2009.  It's in the other binder, but  
23       it's also in this binder, and it's JX 221.  It should be  
24       at the end of your binder.

25          A.   I've got it.

1 Q. Now, if you turn to the second page, it lists  
2 the votes on a high level. I want to direct your  
3 attention to the fourth proposal for the reverse stock  
4 split.

5 A. Yes.

6 Q. All right. Do you know who proposed the reverse  
7 stock split?

8 A. I am sure that it wasn't anybody on behalf of  
9 the trust. I do not know whether it originated with AIG  
10 or the Government.

11 Q. All right. Do you remember reviewing drafts of  
12 this proxy?

13 A. I really don't remember. I imagine I -- that we  
14 did, but I really don't -- don't remember.

15 Q. Do you remember viewing drafts of any other  
16 proxy?

17 A. No.

18 Q. In your testimony with Plaintiffs' counsel, you  
19 discussed the purpose of the reverse stock split to  
20 increase the price per share of AIG's stock. Were you  
21 concerned about that issue of delisting?

22 A. Yeah. I'm not an expert on that stuff, but I  
23 would have thought that if AIG had been delisted by the  
24 New York Stock Exchange, that would have been terminal.

25 Q. And how did the trust vote on the proposal for

1 the reverse stock split?

2 A. I guess I don't remember. I would have -- I  
3 don't remember. I guess we got the -- I mean, didn't I  
4 learn this morning that that proposal was turned down?

5 Q. I believe that was proposal 3.

6 A. I'm sorry?

7 Q. I believe that was proposal 3, but we can look  
8 at that again. If you --

9 A. Oh, you're talking about proposal 4. I'm sorry.

10 Q. Yes.

11 A. I think we voted for it.

12 Q. And why did you vote for it?

13 A. Because of our concern that if the company's  
14 stock was delisted, the company could fail, and the  
15 value of the stock that we held for the benefit of the  
16 taxpayer would be less, if not worthless.

17 Q. Now, I'd like to turn to your continued  
18 activities as trustee after the draft proxy. If you  
19 would turn to DX 822 in your binder, it should be about  
20 in the middle.

21 A. Yes. I have it.

22 Q. Okay. Do you recognize what this is?

23 A. Yes.

24 Q. And what is it?

25 A. It's -- well, I guess it's a monthly report that

1 we -- that we filed with the -- with the Fed and I would  
2 have thought the Treasury, but I don't know. I guess  
3 not.

4 MS. GERBER: Your Honor, I move for the  
5 admittance of DX 822.

6 THE WITNESS: I'm sorry?

7 MS. GERBER: Oh, I was talking to the Court.

8 MR. BOIES: No objection, Your Honor.

9 THE COURT: Defendant's Exhibit 822 is admitted.  
10 (Defendant's Exhibit Number 822 was admitted  
11 into evidence.)

12 BY MS. GERBER:

13 Q. Now, if you will turn to the page -- in the  
14 right-hand corner, it ends in 9810.

15 A. Yes.

16 Q. Do you have it?

17 And this is entitled the "AIG Credit Facility  
18 Trust Divestiture Plan." It's dated July 16th, 2009.  
19 And I won't read it out loud, but if you would just read  
20 the last paragraph there.

21 A. (Document review.) Yes.

22 Q. And is that consistent with your understanding  
23 of the trustees' intent with regards to the trust stock  
24 as of July of 2009?

25 A. Yes.

1 Q. Okay. Now, this morning you were asked some  
2 questions about the recapitalization and the  
3 relationship between the Walker litigation and the  
4 recapitalization. Do you recall that?

5 A. Yes.

6 Q. Do you have any firsthand information about that  
7 relationship between the Walker litigation and the  
8 exchange?

9 A. I don't think so, no.

10 Q. You also testified about whether the trust stock  
11 was converted or convertible. Do you understand if  
12 there was any other way to dispose of the trust equity  
13 without changing the stock into common stock?

14 A. As I understood it at the time, the approach  
15 followed was the only approach that was on the table and  
16 that nobody had a better approach that they were looking  
17 at.

18 Q. If you would turn to DX 849 in your binder.

19 A. Yes.

20 Q. And this looks very similar to the last document  
21 you looked at, but this one is dated July 22nd, 2010.

22 A. Yes.

23 Q. What is this?

24 A. It's the -- I guess the monthly report to the  
25 Fed, I believe as required by the terms of the trust

1 agreement.

2 MS. GERBER: Your Honor, I move to admit DX 849.

3 MR. BOIES: No objection, Your Honor.

4 THE COURT: Defendant's Exhibit 849 is admitted.

5 (Defendant's Exhibit Number 849 was admitted  
6 into evidence.)

7 BY MS. GERBER:

8 Q. Now, if you will turn to the page ending in  
9 3864.

10 A. I have it.

11 Q. Okay. And this morning I believe you weren't  
12 sure when the trustees retained their financial  
13 advisors. That first sentence --

14 A. How about April 1st, 2010?

15 Q. You jumped the gun on my question there, sir,  
16 but yes, that was what I was pointing you to.

17 Now, you also testified that you signed the  
18 recapitalization term sheet. Do you recall that?

19 A. Yes.

20 Q. Okay. If you will turn to DX 859.

21 A. Yes.

22 Q. And if you will turn to the second page. What  
23 is this?

24 A. The minutes of the meeting of the trustees on  
25 September 29th, 2010.



1 MS. GERBER: Your Honor, I move to admit DX 859  
2 into the record.

3 MR. BOIES: No objection, Your Honor.

4 THE COURT: Defendant's Exhibit 859 is admitted.

5 (Defendant's Exhibit Number 859 was admitted  
6 into evidence.)

7 BY MS. GERBER:

8 Q. And if you'll see the -- I guess it's the  
9 third-to-last paragraph, that large paragraph on the  
10 bottom of this page.

11 A. Yes.

12 Q. Again, I won't read it out loud, but if you  
13 could read through it and then let me know when you're  
14 done.

15 A. (Document review.) Yes.

16 Q. Are the considerations listed in that paragraph  
17 consistent with your understanding about why the  
18 trustees were in favor of the recapitalization?

19 A. Yes. The purpose of this minute was to try to  
20 make clear what the rationale for the trustees' action  
21 was.

22 Q. And then just one last question, I think. You  
23 were asked this morning about the Series E preferred  
24 stock. Do you recall that?

25 A. I recall being asked about it, yes.

1 Q. Okay. And do you recall that the trust  
2 preferred stock was the Series C preferred stock?

3 A. Yes, yes.

4 Q. So, am I correct that your testimony is that you  
5 don't know what the value was for the Series E preferred  
6 stock? Is that right?

7 A. Yes.

8 Q. Okay.

9 Your Honor, if I may have a minute?

10 (Counsel conferring.)

11 BY MS. GERBER:

12 Q. Now my last question.

13 You were asked by Plaintiffs' counsel about  
14 whether you focused on the mechanics of the reverse  
15 stock split, and I believe you testified that you were  
16 not. Is that correct?

17 A. (Witness nodding.)

18 Q. What issues were you focused on leading into the  
19 June 2009 shareholders meeting?

20 A. General issues?

21 Q. Yes.

22 A. Well, we -- I mean, at that point we had the new  
23 board. We were probably focused on trying to -- I guess  
24 I don't really know. There was no specific issue at  
25 that point, other than all the continuing stuff and our

1       efforts to find a way to dispose of the stock and  
2       realize maximum gain for the taxpayer. And that was our  
3       mission and that was our focus, but if I -- I'm not sure  
4       I'm addressing your question.

5           Q. Oh, no. It addresses my question.

6           A. Okay.

7           Q. But I think you just said that you had a new  
8       board of directors at that point. Is that what you just  
9       said?

10          A. Well, after the -- the proxy -- the meeting of  
11       the shareholders, we had the new directors, yes.

12          Q. Okay.

13                No further questions.

14           THE COURT: All right. Let's take our lunch  
15       break, and we will reconvene at 1:45.

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

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Starr International Company, Inc. v. USA

1 Q. This meeting started at 1:00 in the afternoon.

2 Is that correct?

3 A. Yes.

4 Q. How long did it last?

5 A. I really don't recall.

6 Q. Do you recall approximately?

7 A. I don't have a clue.

8 Q. One of the things that is referenced here that  
9 you took into account -- and this is four lines from the  
10 bottom of the last substantive paragraph, where there's  
11 a reference to the "the estimated range of combined  
12 value of the common stock to be received by the Trust  
13 for the Series C Preferred Stock and the Treasury  
14 Department for the Series E and F Preferred Stock."

15 Do you see that?

16 A. Yes.

17 Q. Now, when you talk about the range of combined  
18 value, you're talking about the total value for all  
19 three preferred stock series. Is that correct?

20 A. That would -- that would be the way I would read  
21 it, yes.

22 Q. What was that range of combined value?

23 A. I really don't remember.

24 Q. Approximately?

25 A. I don't even have an approximation.

1 Q. Was there any record kept of what the estimated  
2 range of combined value was?

3 A. I don't know whose calculation that was, but I  
4 assume that there's a record of it somewhere.

5 Q. Do you know how that range of combined value was  
6 arrived at?

7 A. I do not.

8 Q. There was a valuation in 2010 of the Series E  
9 stock or of the Series c stock, and I assume of the  
10 Series F stock, correct?

11 A. Not to my knowledge.

12 Q. So, you could not have gotten a combined value  
13 simply by adding up individual valuations, correct?

14 A. I guess that's right, but I -- I said to my  
15 knowledge. It may be that it was done without my  
16 knowledge.

17 Q. Did you ever ask how those ranges or that range  
18 of combined value was arrived at?

19 A. I really don't remember the discussion. What I  
20 do know or recollect is that we had a presentation from  
21 our investment advisor indicating that they thought it  
22 was an appropriate valuation, an appropriate  
23 transaction.

24 Q. That's what I was going to clarify. They told  
25 you they thought it was an appropriate transaction, but

1 they didn't give you any information on the valuation,  
2 did they?

3 A. I don't recall them giving any information.

4 Q. Your answers may be the same, but I need to ask.  
5 Four lines up from there, there's a reference to "the  
6 current estimated valuation range for AIG." Do you see  
7 that?

8 A. Yes.

9 Q. And do you recall what that was?

10 A. I do not.

11 Q. You did not have any discussions concerning  
12 diluting the common shareholders, correct?

13 A. Concerning the?

14 Q. Diluting the common shareholders.

15 A. At this time?

16 Q. Yes.

17 A. I do not remember having any discussion about  
18 that.

19 Q. Or at any time that you were trustee, were there  
20 any discussions concerning diluting minority  
21 shareholders?

22 A. I don't recall a discussion. It could have come  
23 up when I was raising questions about the warrants being  
24 given to the existing shareholders.

25 Q. But you don't recall now one way or the other?

1 A. I do not.

2 Q. You told counsel for the United States that you  
3 were happy to have information from anybody, but when it  
4 came down to making decisions as to how to vote, that  
5 was a decision for the trustees. Do you recall that?

6 A. That's correct.

7 Q. While you were a trustee, in terms of the things  
8 that you had to vote on, there was a March 2009  
9 restructuring, correct?

10 A. Yes.

11 Q. And there was a June 30, 2009, shareholder  
12 meeting and related proxy, correct?

13 A. Yes.

14 Q. And then there was the recap that you voted on  
15 on September 28th, 2010, correct?

16 A. Yes.

17 Q. Was there anything else that the trustees had to  
18 vote on or give their consent to while you were a  
19 trustee, other than those three major things?

20 A. Well, if you're talking about formal vote, I'm  
21 not sure I -- I can't think of any offhand.

22 Q. Either a formal vote or a written consent to  
23 shareholder action that can sometimes substitute for a  
24 formal vote.

25 A. Yeah, I -- I don't think I've got anything that



1 I can think of that fits in those categories, but there  
2 were any number of "actions" that we took; for example,  
3 the decision on bringing in six new directors.

4 Q. And, indeed, the six new directors would have  
5 been one of the things you would have voted on at the  
6 June 30, 2009, meeting, correct?

7 A. Yes, but we would have "acted" on that well in  
8 advance of that meeting when we made the decision.

9 Q. And, indeed, there presumably would have been  
10 some actions you would have taken leading up to the  
11 recap as well, correct?

12 A. Yes.

13 Q. But what I'm trying to focus on is I'm trying to  
14 focus on not the actions leading up to the vote but the  
15 vote, where you are actually making the decision.

16 A. Yeah, and I was trying to draw that distinction.  
17 I can't think of other votes, but I can think of many  
18 actions that we took along the way. Hiring the  
19 consultant would have been one.

20 Q. I'm sorry. Did you finish your answer?

21 A. Well, no, we made a decision to engage Spencer  
22 Stuart to advise us. That was a decision, but that  
23 wasn't a formal act.

24 Q. Right. What I'm trying to do is just make sure  
25 that I understand all the formal decisions that you

1       made, not what you did to get yourself in a position to  
2       make those decisions.

3           A.   Yep.

4           Q.   And am I right that the March '09 restructuring,  
5       the June '09 shareholder meeting/proxy, and the  
6       September 28, 2010, recap --

7           A.   Yeah, I can't think of any others as I sit here  
8       now. We did not take that many formal actions.

9           Q.   All right. And with respect to the March 2,  
10       2009, restructuring, that is a subject that at the  
11       present time you don't have any memory of, correct?

12          A.   That's correct.

13          Q.   And with respect to the June 30, 2009,  
14       shareholder meeting and proxy and the September 28th,  
15       2010, recap, between counsel for the United States and  
16       myself, we have exhausted your memory about those events  
17       as well, correct?

18          A.   That was easy to do.

19          Q.   Let me turn to another subject. You said that  
20       one of the things that you did was come up with a  
21       disposition plan. Do you recall that?

22          A.   Yes.

23          Q.   Now, the disposition plan was the restructuring,  
24       correct? I mean the recap.

25          A.   Yes.

1 Q. The disposition plan was --

2 A. The recapitalization plan ended up being the  
3 disposition plan.

4 Q. Yes. And the trustees were not able to sell or  
5 dispose of the trust stock except with the prior  
6 approval of the Federal Reserve Bank of New York,  
7 correct?

8 A. That's correct. By the terms of the trust  
9 agreement, that's correct.

10 Q. You also told counsel for the United States that  
11 you did not think that you took any action that was  
12 against the interests of the minority shareholders. Do  
13 you recall that?

14 A. Yes.

15 Q. Now, you understood from the trust agreement  
16 that you had a fiduciary duty to the Treasury, correct?

17 A. Yes.

18 Q. And when you were doing and considering the  
19 recapitalization, what steps did you take to protect the  
20 interests of the minority shareholders, if any?

21 A. Well, that really wasn't our mandate. As you  
22 just stated, our mandate was to protect the best  
23 interests of the Treasury, that is, the U.S. taxpayer,  
24 not the Treasury Department.

25 Q. Right. And I'm not suggesting that you -- that

1     you should have done anything differently.

2             A.    Okay.

3             Q.    I'm just trying to follow up on a question and  
4     answer that counsel from the United States presented you  
5     with.  And you understood that taking an action that  
6     deprived the minority shareholders of a class vote of  
7     the common shareholders was something that was against  
8     their interests, correct?

9             A.    Yes.  I would have understood that.

10            Q.    And you would have understood that to the extent  
11    that you exchanged more common stock than value for  
12    Series E preferred stock, as an example, in terms of  
13    value, that that would also have been against the  
14    interests of the minority shareholders.

15            A.    Yes, I guess that's right.  I also, as I said  
16    earlier, thought there were provisions in that  
17    recapitalization agreement that gave preference to the  
18    existing shareholders.

19            Q.    And that was this ten-year \$45 warrant?

20            A.    Yes.

21            Q.    Did you make any attempt to value that ten-year  
22    \$45 warrant?

23            A.    No, I did not.

24            Q.    Or to compare the value of that warrant to  
25    anything else that was being done in the

1 recapitalization?

2 A. No. I remember raising the issue and being  
3 satisfied that the parties felt it was necessary to get  
4 the deal done, to offer the warrants.

5 MR. BOIES: May I have just one moment, Your  
6 Honor?

7 THE COURT: Sure.

8 (Counsel conferring.)

9 MR. BOIES: I pass the witness.

10 THE COURT: All right. Thank you, Mr. Boies.  
11 Any recross, Ms. Gerber?

12 MS. GERBER: Very briefly, Your Honor.

13 THE COURT: Okay.

14 RE CROSS EXAMINATION

15 BY MS. GERBER:

16 Q. You were just asked a few questions about the  
17 March 2009 restructuring.

18 A. Yes.

19 Q. Do you recall being asked those questions?

20 A. I recall being asked the questions. I don't  
21 recall the restructuring.

22 Q. Now, you were passed earlier this morning  
23 JX 187. It looks like this (indicating). Can you find  
24 that?

25 A. I wish I could tell you I could see that. Okay.

1 Q. I think it's on the first page. Do you have the  
2 hard copy there? You should have the hard copy up  
3 there.

4 A. What's the date of it?

5 Q. It says March 2nd, 2009, on the front.

6 A. Yes, I have it.

7 Q. And you saw that this restructuring occurred on  
8 March 2nd and March 1st of 2009, right?

9 A. Yes.

10 Q. Okay. And if you turn in your white -- in the  
11 binder that's the Government's binder, the white binder,  
12 JX 185.

13 A. Yes. Yes.

14 Q. And this is the "Series C Perpetual, Convertible  
15 Stock Purchase Agreement." Turn to page 54 of 56 of the  
16 exhibit.

17 A. Yes.

18 Q. The middle of that second paragraph, it says,  
19 "The Securities are being issued pursuant to the  
20 Certificate of Designations of the Series C Preferred  
21 Stock, as filed by the Company with the Secretary of  
22 State of the State of Delaware on March 4th, 2009."

23 Is it your understanding that the stock purchase  
24 agreement gave the stock to the trust on March 4, 2009?

25 A. That rings a bell. I think we got the stock in

1 March, yeah.

2 Q. And does that refresh your recollection about  
3 whether you voted for the March 2009 restructuring?

4 A. I believe that we did execute an agreement at  
5 the time we received the stock, and I assume it was the  
6 purchase.

7 Q. The stock purchase -- you executed the stock  
8 purchase agreement, correct?

9 A. Yes.

10 Q. Do you recall whether you voted for a separate  
11 market restructuring?

12 A. That, I don't remember.

13 Q. Okay.

14 No further questions, Your Honor.

15 THE COURT: All right. Mr. Feldberg, thank you  
16 very much for your testimony in this matter. You are  
17 excused.

18 THE WITNESS: Thank you, Your Honor.

19 MR. DINTZER: Your Honor, before the next  
20 witness is called, could we possibly raise a  
21 housekeeping matter?

22 THE COURT: Sure. Let's wait for Mr. Feldberg  
23 to depart, and then we will surely do that.

24 (Witness excused.)

25 THE COURT: Yes, Mr. Dintzer, good afternoon.

1           MR. DINTZER: When we received the Plaintiffs'  
2 letter on October 17th identifying their batting order  
3 for this week, they included a statement that they  
4 were -- and Plaintiffs' counsel had raised this a while  
5 back, but this was the first time that we saw this in  
6 their letter, that for some of the witnesses they were  
7 going to ask the Court to limit the scope of the  
8 Government's cross examination to the scope of the  
9 direct, as opposed to allowing us to complete the  
10 witness and avoid having to call the witness back. And  
11 so they indicated in their letter that they were going  
12 to do this.

13           For planning purposes, so we can know what  
14 witnesses we're going to be identifying in our case and  
15 also the scope and how are going to treat the witnesses  
16 that are coming up this week, we were hoping that we  
17 might get a chance to resolve whether -- we will  
18 generally oppose that, we -- just for the -- if for no  
19 other reason, the convenience of the witnesses, but we  
20 would like to get the issue vetted, if it's okay with  
21 Your Honor, now, so that we can sort of plan for the  
22 rest of the week and know what's coming up.

23           It's the Plaintiffs who are asking to sort of  
24 change the rules that we've been operating under, so I  
25 don't mean to be the person to raise it and to describe



1     their position, but we would like to ask the Court to  
2     address it.

3             THE COURT: Well, I remember they did raise it,  
4     I think, maybe at the very beginning of this, that there  
5     might be witnesses that would fall into this category,  
6     that they would call the witness for a very limited  
7     purpose, and they did not want to thereby open the --  
8     you know, the witness to a lot of different subjects,  
9     but you probably are wanting to know which witnesses  
10    those are.

11            MR. DINTZER: That would be a good place to  
12    start, Your Honor, and then we could perhaps address the  
13    -- our concerns depending on which witnesses they  
14    identify.

15            THE COURT: Yes.

16            MR. BOIES: Your Honor, I think that all of the  
17    witnesses this week after Mr. Foshee -- Mr. Foshee is  
18    the next witness, and although we will have a pretty  
19    limited examination, given the issue about the  
20    convenience of the witness and his schedule, we are  
21    going to have no objection to them taking their full  
22    examination of Mr. Foshee.

23            But once we finish with Mr. Foshee, all of our  
24    witnesses thereafter, except our expert witnesses, are  
25    very focused witnesses. I will have only a handful of

1 subjects to cover. Probably the longest is Kathleen  
2 Shannon, but I expect even with Kathleen Shannon there  
3 will be probably about five topics, and some of these  
4 witnesses, there will be only two or three topics.

5 And we do want to now, as we move into this  
6 final phase of our case, limit the cross to the scope of  
7 the direct so that we don't totally have our case  
8 unravel as it goes.

9 THE COURT: All right.

10 Mr. Dintzer, does that help?

11 MR. DINTZER: It does, Your Honor, and it allows  
12 me to address our concern now so that we would hope  
13 the -- we could discuss this with the Court, if it  
14 please the Court.

15 The witnesses that the Plaintiffs are talking  
16 about include Ms. Shannon, Mr. Willumstad, Mr. Farnan,  
17 Mr. Head, and Ms. Worth. Some of these witnesses, for  
18 example, Ms. Worth -- all of these witnesses are from  
19 out of town, so we are not talking about anybody who's  
20 local, and these would be witnesses that we would then  
21 have to bring back.

22 For example, Ms. Worth, our anticipated  
23 examination of her is scheduled for 1.5 hours. She's  
24 from California. I don't know what the scope of  
25 Plaintiffs' counsel's case -- examination of her would

1 be, but the amount of time she would be spending on a  
2 plane just to get here and back would greatly exceed the  
3 amount of time, whatever extra that we need to do to  
4 finish her as a witness.

5 Mr. Head, another one, he is only in New York,  
6 but we have a total schedule for Mr. Head of one hour.  
7 So, again, however -- whatever the part they're not  
8 covering, to ask him to come back, we -- for the  
9 convenience of the witness and just for the clarity of  
10 the Court, we bring the witness once, we get them done,  
11 we would ask the Court to do that.

12 Ms. Shannon, she will be out of the country for  
13 most or all of our case, and so if we don't get the  
14 opportunity here, then we would be in a position of  
15 asking the Court to reopen the case or to let us keep  
16 the case open until she returns so we can finish the  
17 witness.

18 These are witnesses that are not -- are --  
19 there's no real reason not to do them now for their  
20 convenience, for the Government's, for the Plaintiffs',  
21 for the Court's convenience, and we have every  
22 confidence -- just as the Plaintiffs have said numerous  
23 times, that it's a bench trial. There is not a jury,  
24 and obviously the Court understands whose contentions,  
25 whose issues are being raised and addressed, and so we

1 have no concern on a lack of clarity in that manner.

2 So, we would ask the Court to continue on with  
3 the practice in this case -- and often the tradition in  
4 this Court -- of allowing the witnesses to be completed  
5 once called so that they don't have to return.

6 THE COURT: All right.

7 I mean, I'm inclined to do what's in the best  
8 interests of the witnesses in this situation. I  
9 think -- I mean, I understand the Plaintiffs' point,  
10 that you don't want to raise two issues and then  
11 suddenly open up a few hours of additional examination  
12 on the other side, but I don't know, I'm trusting that  
13 that's not really going to happen, that we're going to  
14 be practical and reasonable in our approach to these  
15 witnesses. But I think it's paramount for witnesses who  
16 come from out of town that they be dealt with at one  
17 time, if we can do that.

18 MR. DINTZER: We appreciate that, Your Honor.  
19 Thank you.

20 THE COURT: Sure, okay.

21 MR. BOIES: Thank you, Your Honor. And we will  
22 take a look at our witness list and see if there are --  
23 if there are some people who we have a representation  
24 that they're going to bring in their case, then I don't  
25 think we're going to need them just for our prima facie

1 case, and we could do our examination of them when they  
2 bring them in their case.

3 THE COURT: All right.

4 MR. BOIES: We will try to see if we can't,  
5 through a combination of that, make sure that we don't  
6 inconvenience anybody.

7 THE COURT: All right, very well.

8 MR. DINTZER: Thank you, Your Honor.

9 THE COURT: Yes.

10 So, do I understand that Mr. Foshee is next?

11 MR. BOIES: Yes, Your Honor.

12 THE COURT: Okay.

13 Please come forward, sir. Please raise your  
14 right hand.

15 Whereupon--

16 DOUGLAS FOSHEE

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

19 THE COURT: Please be seated.

20 DIRECT EXAMINATION

21 BY MR. BOIES:

22 Q. Good afternoon, Mr. Foshee.

23 A. Hello.

24 Q. We haven't met, but my name is David Boies, and  
25 I suspect you have been told that I represent the

1 Plaintiffs, correct?

2 A. Yes, sir.

3 Q. When did you serve as a trustee to the AIG  
4 trust?

5 A. From the -- from the beginning of 2009 until  
6 just into 2010.

7 THE COURT: Mr. Foshee, can I ask you to move  
8 the microphone a little bit closer to where you're  
9 speaking?

10 THE WITNESS: Move these as well?

11 THE COURT: Sure, you can move those. You don't  
12 have to speak directly into it, but I just want to make  
13 sure that we are going to get --

14 THE WITNESS: Is that better?

15 THE COURT: Yes.

16 BY MR. BOIES:

17 Q. During the entire time that you were a trustee,  
18 you were also chairman of the Houston Branch of the  
19 Federal Reserve Bank of Dallas. Is that correct?

20 A. The Houston Branch of the Federal Reserve Bank  
21 of Dallas, yes, that's correct.

22 Q. And when did you become chairman of the Houston  
23 Branch of the Federal Reserve Bank of Dallas?

24 A. I'm not sure exactly. 2008, I believe.

25 Q. And when did you cease being chairman of the

1 Houston Branch?

2 A. 2011.

3 Q. Who first called you about becoming a trustee?

4 A. I received a call from Tom Baxter.

5 Q. Had you spoken to anyone about becoming a  
6 trustee before your call with Mr. Baxter?

7 A. Yes. Richard Fisher.

8 Q. And who is Mr. Fisher?

9 A. He is the president of the Federal Reserve Bank  
10 of Dallas.

11 Q. So, when Mr. Baxter called you, that didn't come  
12 out of the blue.

13 A. I'm not sure of the chain of events, but  
14 Mr. Baxter did call me.

15 Q. Called you after you had raised this possibility  
16 with Mr. Fisher?

17 A. That's correct.

18 Q. And did you volunteer to Mr. Fisher that you  
19 would be prepared to serve as a trustee?

20 A. I volunteered -- I -- I volunteered to Mr. -- I  
21 shouldn't say I volunteered. I said to Mr. Fisher that  
22 at the time, given what was going on in the global  
23 capital markets and given the things that were happening  
24 in the business community, I felt like it would be -- it  
25 could be useful to have people with restructuring

1 business -- restructuring experience involved, and I  
2 volunteered in sort of a mode, to use my terms, "a  
3 dollar a year capacity."

4 Q. Let me ask you to look at Plaintiffs' Trial  
5 Exhibit 298, which I will hand up to you. This may be  
6 in the binder up there.

7 A. It is, I believe.

8 Q. You have two binders that we have put up there.  
9 One is your deposition. The other is a selection of  
10 documents or excerpts of documents we may be using.

11 A. Yes.

12 Q. And the documents are arranged in order. Do you  
13 have 298? And which I would offer.

14 MR. TODOR: No objection.

15 THE COURT: Plaintiffs' Trial Exhibit 298 is  
16 admitted.

17 (Plaintiffs' Exhibit Number 298 was admitted  
18 into evidence.)

19 BY MR. BOIES:

20 Q. If you look at page 2, is that your email to  
21 Mr. Fisher that you were referencing a few minutes ago?

22 A. Yes.

23 Q. And in the second paragraph, you say, "I would  
24 be willing to ask my Board for the ability to commit my  
25 time to this, and at no cost to the taxpayer." Do you



1 see that?

2 A. Yes.

3 Q. And the board that you're referring to is which  
4 board?

5 A. The El Paso Corporation board.

6 Q. And then how long after this did you get a call  
7 from Mr. Baxter?

8 A. I don't know the date of the call.

9 Q. Approximately?

10 A. I don't know the approximate date of the call.

11 Q. Let me ask you to look at your deposition at  
12 page 19.

13 A. Yes.

14 Q. And I would just like to ask you to clarify  
15 something. At line 17, after you testified about  
16 Mr. Baxter calling you, there's a question:

17 "QUESTION: Did it strike you as at all unusual  
18 that Mr. Baxter would be calling you and asking if you  
19 would serve as a trustee?

20 "ANSWER: Unusual? I don't know about unusual,  
21 but certainly unanticipated."

22 Do you see that?

23 A. Yes.

24 Q. Why did you consider it unanticipated if you had  
25 just volunteered to do this?

1           A. Again, I don't know that I had just volunteered.  
2           As I said before, I don't know the time span between my  
3           email to Mr. Fisher and the call from Mr. Baxter, but  
4           the fact that I volunteered didn't necessarily mean that  
5           I felt like I would be asked. So, getting a phone call  
6           from the general counsel of the Federal Reserve Bank of  
7           New York was unanticipated.

8           Q. Um-hum. How much after October 15th did you  
9           begin to have a conversation with Mr. Feldberg?

10          A. I don't know the answer to that.

11          Q. Approximately?

12          A. I -- I don't know the answer to that. Sometime  
13          obviously in the fall of 2008. Beyond that, I couldn't  
14          say.

15          Q. While you were trustee, how many times did the  
16          trust vote or give consent to shareholder action with  
17          respect to AIG?

18          A. In my recollection, that would have been one  
19          time.

20          Q. And what was --

21          A. Excuse me, one event. More than one vote, but  
22          one event.

23          Q. And what was that one event?

24          A. The shareholders meeting.

25          Q. Did you have any involvement in the March 2009

1 restructuring as a trustee?

2 A. Can you explain that restructuring that you're  
3 talking about.

4 Q. Certainly. Let me try to show you a document  
5 that we had earlier today that I didn't think I would be  
6 needing now.

7 Excuse me just one moment, Your Honor. I  
8 believe it is Plaintiffs' Trial Exhibit 187, Your Honor.  
9 JX.

10 A. I'm sorry, is it in my binder?

11 Q. I don't think it is. I think it was in the  
12 binder that we used this morning.

13 THE COURT: Is it JX 187?

14 MR. BOIES: Yes, JX 187.

15 THE COURT: Yes, I have it.

16 MR. BOIES: May I hand this to the witness, Your  
17 Honor?

18 THE COURT: Sure.

19 BY MR. BOIES:

20 Q. Do you recognize this document?

21 A. (Document review.) I'm not familiar -- I'm not  
22 familiar with the document, but it purports to be an 8-K  
23 filed by AIG releasing earnings.

24 Q. Yes. And if you turn to page 17 of the exhibit.

25 A. Yes.

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1 Q. It talks about a restructuring of support for  
2 AIG. Do you see that?

3 A. Yes.

4 Q. Were you familiar with this restructuring when  
5 you were a trustee?

6 A. I'm sure I was at the time.

7 Q. Do you have any recollection of it today?

8 A. Other than that there was a restructuring, no.

9 Q. Did you receive any presentation concerning the  
10 terms of this restructuring in February or March of  
11 2009?

12 A. I don't recall if I did or not.

13 Q. Now, the one event that you referred to would  
14 have been the June 30, 2009, shareholder meeting and the  
15 related proxy. Is that correct?

16 A. That's correct.

17 Q. And in that connection, there was -- there were  
18 a number of proposals considered at that meeting,  
19 correct?

20 A. I believe that's correct, yes.

21 Q. And what role, if any, did the trustees have in  
22 formulating those proposals?

23 A. The proposals were the formulation of the  
24 company to be voted on by the trustees on behalf of the  
25 trust.

1 Q. My question was, what role, if any, did the  
2 trustees have in formulating those proposals?

3 A. I don't recall that we had a role in that.

4 Q. Okay. When did the trustees become aware that  
5 these proposals would be made?

6 A. Well, of course, we knew there was going to be a  
7 shareholders meeting, and I -- though I can't recall,  
8 I'm sure we would have received a draft some time ahead  
9 of that.

10 Q. When did you receive a draft of the proxy  
11 statement?

12 A. I don't know the answer to that.

13 Q. Approximately?

14 A. I don't know the answer to that.

15 Q. From whom did you receive a draft of the June  
16 2009 proxy?

17 A. I don't recall that.

18 Q. Did you make any comments on the draft proxy  
19 that you received?

20 A. I don't recall making any, no.

21 Q. Did any other trustee or anyone on behalf of the  
22 trustees make any comment on the draft proxy?

23 A. I -- I don't know whether they did or not.

24 Q. Let me ask you to look in your binder at Joint  
25 Exhibit 221, which is the June 5, 2009, AIG proxy.

1 A. Yes.

2 Q. You will see that on page 2 of the exhibit,  
3 there is a list of the matters to be considered at the  
4 meeting. Do you see that, sir?

5 A. Yes. Yes.

6 Q. And the third item of business is "To act upon a  
7 proposal to amend AIG's Restated Certificate of  
8 Incorporation to increase the authorized shares of  
9 common stock from 5,000,000,000 to 9,225,000,000  
10 shares."

11 Do you see that?

12 A. I do.

13 Q. As you understood it in 2009, what was the  
14 purpose of that proposal?

15 A. Actually, I think what you purported to give me  
16 was a copy of the proxy, but it only goes through about  
17 page 17. So, I would have no reason to --

18 Q. Do you have any -- may I?

19 This is a complete --

20 A. Thank you.

21 Q. -- document.

22 As you sit here now, do you have any  
23 recollection, without looking it up in the proxy, what  
24 the purpose of that proposal was?

25 A. I just wanted to be correct in my response by

1 looking back at it.

2 MR. BOIES: Your Honor, may I have the witness'  
3 testimony?

4 THE COURT: Mr. Foshee, Mr. Boies would like  
5 your best recollection now before going to look at the  
6 page, and then if you want to look at the page later, I  
7 guess that will be all right.

8 MR. BOIES: Absolutely, Your Honor.

9 THE WITNESS: I think it was to allow the  
10 company as much flexibility as possible to be able to  
11 prosecute its business by using equity capital to either  
12 swap for debt or raise capital or whatever it needed to  
13 do in the future, give it that flexibility.

14 BY MR. BOIES:

15 Q. All right. So, as you recall it now, there was  
16 no specific purpose other than the general purpose of  
17 having more stock.

18 A. None that I'm aware of.

19 Q. Okay. And take as much time as you want to look  
20 in the proxy statement to understand the context, and  
21 when you have finished, let me know.

22 A. (Document review.) Yes. I've read it.

23 Q. And do you have anything to add to your response  
24 based on looking at the proxy?

25 A. Yeah. At the -- at the bottom of page 65, which

1 is page 68 of the exhibit, it says (as read): "The  
2 increase in shares being authorized in connection with  
3 this Proposal is in connection with AIG's agreement in  
4 connection with the issuance of the Junior Subordinated  
5 Debentures and to provide the Board of Directors the  
6 ability to opportunistically raise capital, reduce debt  
7 and engage in other transactions the Board deems  
8 beneficial to AIG and its shareholders," and then it  
9 goes on. "AIG has no specific plans or understandings  
10 with respect to issuance of common stock."

11 Q. It goes on to say, "AIG currently has no  
12 specific plans or understandings with respect to the  
13 issuance of any AIG common stock, except items for which  
14 AIG has previously reserved shares for issuance as  
15 follows," and it then identifies several employment  
16 benefit plans and the Series C stock purchase agreement.

17 A. Yes.

18 Q. Let me ask you to look at -- because I want to  
19 come back to Joint Exhibit 221, but first I want to ask  
20 you to look at Joint Exhibit 172 that is in your binder.  
21 This is a copy of the AIG credit facility trust  
22 agreement, correct?

23 A. That's correct.

24 Q. And this was the agreement between the three  
25 trustees, including yourself, and the Federal Reserve



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1 Bank of New York, correct?

2 A. That's correct.

3 Q. And you understood that this was the document  
4 that controlled what your duties and responsibilities  
5 and powers were as a trustee, correct?

6 A. That's correct.

7 Q. Let me ask you to look at page 9 of this exhibit  
8 and at the bottom of the page, where you will see  
9 Section 2.04.

10 A. I'm sorry. Can you say that again?

11 Q. Sure. 2.04, Section 2.04, subsection (c).

12 A. Yes.

13 Q. And it says there (as read): "The Trustees  
14 shall take any and all reasonable actions available to  
15 them and necessary to cause the actions described in  
16 items (i) through (iv) of this Subsection (c) to be  
17 effected..."

18 Do you see that?

19 A. Yes.

20 Q. And the first item is amending article four of  
21 the company's certificate of incorporation to provide  
22 for an increase in the number of authorized shares of  
23 the company's common stock from 5,000,000,000 to  
24 19,000,000,000 and a decrease in the par value of the  
25 company's common stock from \$2.50 to some tiny fraction

1 of a penny per share.

2 Do you see that?

3 A. Yes.

4 Q. Did the trustees ever take such actions?

5 A. Not that I recall.

6 Q. Did the trustees ever discuss taking such  
7 actions?

8 A. I don't recall whether we did or not.

9 Q. Did anyone tell you that it was unnecessary for  
10 the trustees to take these actions?

11 A. Not that I recall.

12 Q. You understood that this was an obligation that  
13 the trustees had taken on in connection with the trust  
14 agreement, correct?

15 A. As it's stated in the agreement, yes.

16 Q. Did you understand that the actions that were  
17 identified here were actions that at the time were  
18 believed to be necessary in order to change the Series C  
19 preferred stock into common stock?

20 A. No.

21 Q. You did not understand that?

22 A. I don't -- not necessarily, no.

23 Q. Did you ever have any discussions with any of  
24 the other trustees about that?

25 A. Not that I recall, no.

1 Q. Did you ever have any discussions with anyone  
2 about that?

3 A. Not that I recall, no.

4 Q. So, this was just your unexpressed view that you  
5 had at the time. Is that your testimony?

6 A. What was my unexpressed view?

7 Q. That these actions were not necessary in order  
8 to change the preferred Series C stock into common  
9 stock.

10 A. No, I don't recall whether they were or not.

11 Q. Well, you don't recall whether they were or not?

12 A. No.

13 Q. You did understand, did you not, that in order  
14 to realize the value of the equity interest that the  
15 trust had, it was desirable to change that equity into  
16 common stock.

17 A. I don't know that I would have viewed that as  
18 necessarily a precursor to maximizing value, no.

19 Q. Did you ever have any discussions with anyone as  
20 to whether other trustees believed that it was desirable  
21 to change the preferred stock into common stock in order  
22 to maximize its value?

23 A. That -- that's possible, but I don't recall  
24 those conversations.

25 Q. Did you ever have any discussions with anyone

1 about whether it was desirable to change preferred stock  
2 into common stock in order to maximize its value?

3 A. Not that I recall.

4 Q. Did the trustees have as an objective converting  
5 the preferred stock into common stock?

6 A. I think the trustees had as an objective to  
7 maximize the value of the equity that we represented for  
8 the long-term benefit of the U.S. taxpayer.

9 Q. My question was, did the trustees have as an  
10 objective converting the preferred stock into common  
11 stock?

12 A. I don't know that we had that as a specific  
13 objective, no.

14 Q. Did you have it as a general objective?

15 A. It's -- I would say the answer requires more  
16 than a yes or no, if I could give some context to the  
17 answer.

18 Q. If you can begin with a yes or no and then give  
19 an explanation that might help us understand it.

20 A. Yeah. I would say -- I would say first of all  
21 that I don't recall having conversations about the  
22 conversion of the stock, remembering, of course, that  
23 this was -- this was in -- I don't know, mid -- the  
24 middle of March, beginning of March, which was when the  
25 stock was actually put into the trust.

1           I don't think any trustee had a view at the time  
2           that we were anywhere close to a monetization of the  
3           stock for the benefit of the U.S. taxpayers; rather, we  
4           were focused on making sure that we did what was  
5           important to do from a business standpoint as trustees  
6           in order to make sure that there was some value at the  
7           end for people to argue over.

8           That would have been first ensuring that the  
9           company had the best, most qualified board that was  
10          possible -- that we could possibly get, ensuring that  
11          that board recruited an effective CEO and senior  
12          management team and properly motivated them, that they  
13          had a good business plan, those kinds of things.

14          MR. BOIES: Your Honor, can I ask the Court to  
15          ask the witness to listen the question?

16          THE COURT: Yes. Mr. Foshee, listen carefully  
17          to the question and see if you can respond to that  
18          question, and then we'll go from there.

19          THE WITNESS: Yes.

20          BY MR. BOIES:

21          Q. Did the trustees have as an objective changing  
22          the preferred stock into common stock?

23          A. I think we had an objective to maximize the  
24          long-term value of the equity on behalf of the U.S.  
25          taxpayers. Whether that happened through the sale of a

1 common stock or the sale of a preferred stock, I don't  
2 know that I would have viewed those as being mutually  
3 exclusive.

4 Q. Does that mean you did not have an objective of  
5 changing the preferred stock into common stock?

6 A. To the extent that that would maximize the  
7 long-term value for the taxpayers, yes.

8 Q. That's my question.

9 A. If it was un -- if it was unnecessary, then no.

10 Q. My question, sir, was as a trustee, did you  
11 think that changing the preferred stock into common  
12 stock was a desirable thing to do? That is a yes, no,  
13 or I don't know question.

14 A. It was impossible for me to forecast what I  
15 viewed as a very long-term issue, meaning years down the  
16 road before whatever was owned by the trust was  
17 monetized, and I couldn't predict whether there would be  
18 more value in the sale of a preferred share or the sale  
19 of a common share three years prior to that.

20 So, if, in the view of the trustees, it would  
21 have been in the long-term best interests to convert the  
22 shares, we would have done everything in our power to do  
23 that; and if it would have been of higher value to sell  
24 a preferred share, we would have done that.

25 Q. All I'm asking, sir, is did it ever come to your

1 view that it was in the long-term interest of your  
2 beneficiary to convert the preferred stock into common  
3 stock?

4 A. It's -- it's one possible outcome.

5 Q. It is, indeed, one possible outcome, but my  
6 question is whether you, as a trustee, reached the  
7 conclusion that that outcome was desirable.

8 MR. TODOR: Objection. Asked and answered.

9 THE COURT: No, I don't think so. We don't have  
10 an answer yet.

11 THE WITNESS: I don't know that I had a view on,  
12 as I was a trustee, whether it was desirable or not.

13 BY MR. BOIES:

14 Q. At any time?

15 A. No.

16 Q. Okay. Do you know whether any of your fellow  
17 trustees had a view at any time whether it was desirable  
18 to change preferred stock into common stock?

19 A. I don't recall whether they did or not.

20 Q. Did any of your advisors have a view as to  
21 whether it was desirable to change preferred stock into  
22 common stock?

23 A. Well, we had two advisors at the time. One was  
24 Peter Bakstansky, who sort of handled press relations,  
25 so with regard to him, I have -- I have no recollection

1       that he would have had that opinion. Our other advisor  
2       was our counsel, and those conversations were  
3       privileged.

4           Q. I'm not asking for any legal advice. What I'm  
5       asking is whether any of your advisors told you, in  
6       words or in substance, that they believed it was  
7       desirable for maximizing the value of the corpus of the  
8       trust to change the preferred stock into common stock.

9           A. I don't recall that, no.

10          Q. Did anyone from the Federal Reserve Bank or the  
11       Federal Reserve System or the Treasury ever convey to  
12       you that they believed that it was desirable to change  
13       the preferred stock that you held into common stock?

14          A. I don't recall whether they did or not.

15          Q. Did the trustees ever take any action that was  
16       intended to change the preferred stock into common  
17       stock?

18          A. Not that I recall while I was a trustee, no.

19          Q. Did the trustees ever discuss possibly changing  
20       preferred stock into common stock while you were  
21       trustee?

22          A. I don't recall whether we did or not.

23          Q. Let me turn to the -- back to the joint exhibit  
24       that is the proxy statement.

25          A. Yes.



1 Q. As you understood it in June of 2009, did the  
2 proposal number 3 to increase the authorized shares of  
3 common stock from 5 billion to 9.225 billion shares have  
4 anything to do with the instruction and direction that  
5 was provided in 2.04(c) of the trust agreement?

6 A. Not that I'm aware, no.

7 Q. Did you have any discussions with anyone  
8 concerning proposal number 3 prior to the annual meeting  
9 on June 30th?

10 A. I don't recall.

11 Q. Did you receive anything in writing, other than  
12 possibly a draft proxy statement, concerning proposal  
13 number 3 prior to the June 30 annual meeting?

14 A. Not that I recall.

15 Q. Let me turn to proposal number 4 in the June 5,  
16 2009, proxy. This is a proposal to amend AIG's restated  
17 certificate of incorporation to effect a reverse stock  
18 split of AIG's outstanding common stock at a ratio of  
19 one-for-twenty. Do you see that?

20 A. Yes.

21 Q. When did you first become aware that there was a  
22 proposal for a reverse stock split?

23 A. I don't recall.

24 Q. Was it before you saw this June 5 final proxy  
25 statement?

1           A. As I said, I've -- I -- I have a feeling that we  
2           may have seen a draft of a proxy before that, and so to  
3           the extent that it was in a prior draft, but I don't  
4           recall specifically.

5           Q. Do you recall whether there was a draft that  
6           contained a reverse stock split?

7           A. No, I don't recall.

8           Q. Did you see a draft proxy statement prepared by  
9           Sullivan & Cromwell dated in October of 2008?

10          A. Not that I recall, no.

11          Q. I understand you would not have been a trustee  
12          at that time, correct?

13          A. That's correct.

14          Q. And what I'm asking is whether after you became  
15          a trustee, you saw that draft.

16          A. I -- I could have. I don't recall seeing that,  
17          no.

18          Q. Let me ask you to look at Joint Exhibit 181.

19          A. I don't believe I have this one.

20                 MR. BOIES: You may have this from this morning.

21                 THE COURT: I'll take another one.

22                 BY MR. BOIES:

23          Q. Is this a document you've seen before, sir?

24          A. (Document review.) Not that I recall, no.

25          Q. Let me ask you to look at pages 5 and 6, which

1 is an October 2, 2008, Sullivan & Cromwell draft proxy  
2 statement.

3 A. It's a -- okay. Yeah, it's the cover -- two  
4 pages from -- is that what you're talking about  
5 (indicating)?

6 Q. Yes.

7 A. Yeah.

8 Q. It's the last two pages of Joint Exhibit 181.

9 A. Yeah. I just wanted to make sure it's not -- it  
10 doesn't feel like a complete proxy statement. I just  
11 want to make sure we're correct.

12 Q. Have you seen that before, sir?

13 A. Not that I'm aware, no.

14 Q. If you'll look at the first proposal on page 6  
15 of this Joint Exhibit 181.

16 A. Yes.

17 Q. It says that at the meeting, tentatively in this  
18 document, in draft form, to be held November 19, 2008,  
19 there is going to be a proposal to amend the restated  
20 certificate of incorporation to reduce the par value of  
21 AIG's common stock from \$2.50 per share to a tiny  
22 percentage of a penny per share and increase the  
23 authorized shares of common stock from 5 billion to 19  
24 billion shares.

25 Do you see that?

1 A. Yes.

2 Q. That is the same proposal that the trustees were  
3 instructed to do in Section 2.04(c), correct?

4 A. In a -- in a portion of 2.04(c), yes.

5 Q. Were you ever aware, while you were a trustee,  
6 of a draft proxy statement that sought to implement the  
7 direction provided to the trustees in 2.04(c)?

8 A. Not that I recall, no.

9 Q. Let me turn back to the beginning of Joint  
10 Exhibit 181, which is an affidavit of Kathleen Shannon,  
11 and do you know who she is?

12 A. I do not, no. 181 is -- yes, okay.

13 Q. In the affidavit, Ms. Shannon identifies herself  
14 as senior vice president, secretary, and deputy general  
15 counsel of AIG. Do you see that?

16 A. Yes.

17 Q. Did you ever have any conversations with  
18 Ms. Shannon while you were a trustee?

19 A. It's entirely possible, but I don't recall any,  
20 no.

21 Q. This affidavit was submitted in a lawsuit in the  
22 State of Delaware, the so-called "Walker" lawsuit. Do  
23 you see that?

24 A. Yes.

25 Q. Were you familiar with the Walker lawsuit at any

1 time while you were a trustee?

2 A. Not that I recall, no.

3 Q. Did you ever have any discussions with anyone  
4 about a lawsuit in Delaware that related in any way to  
5 the AIG trust, of which you were a trustee, while you  
6 were a trustee?

7 A. Not that I recall.

8 Q. Were you ever aware of any litigation that  
9 attempted to establish, by declaratory judgment, that  
10 the common shareholders of AIG had an entitlement to  
11 vote as a class before the number of shares necessary to  
12 permit the conversion of the Series C preferred into  
13 common could be authorized?

14 A. Not that I recall, no.

15 Q. Let me turn back to Joint Exhibit 172, the  
16 credit facility trust. Was this a document that you  
17 received drafts of prior to the final version?

18 A. Yes.

19 Q. And did you make comments on those drafts?

20 A. I'm sure I did.

21 Q. Were those written or oral?

22 A. I don't recall whether they were written or  
23 oral.

24 Q. To whom did you give those comments?

25 A. I -- I don't recall specifically.

1 Q. Were any changes made to the trust agreement  
2 based on comments that you gave?

3 A. I'm certain that they were, but I can't recall  
4 what they would have been specifically, no.

5 Q. Can you tell me any change that was made to the  
6 trust agreement based on a comment that you made?

7 A. I -- I don't recall which comments were  
8 incorporated in the document and which weren't.

9 Q. Let me ask you to turn next to Joint Exhibit  
10 185. Is this a document that you're familiar with? And  
11 I should say, as I think is clear, what you have in  
12 front of you are excerpts from the exhibit. If you  
13 would like to see the entire exhibit for context, just  
14 let me know at any time.

15 A. Yeah, I think this is the -- the -- if I'm  
16 reading it correctly, it's the purchase agreement that  
17 actually put the Series C preferred stock into the  
18 trust.

19 Q. And this was dated as of March 1, 2009, correct?

20 A. Yes. That's what it says.

21 Q. Now, it was, in fact, signed at a later time.  
22 Is that correct?

23 A. I don't recall when it was signed.

24 Q. Do you recall that it was signed after March 1,  
25 2009, even though you don't recall when it was signed?

1           A. I -- I would guess that it wouldn't have been  
2           dated before, but I don't recall when it was signed.

3           Q. Let me direct your attention to page 7, and at  
4           the bottom of the page, do you see subparagraph (c)?

5           A. Yes.

6           Q. And in the middle of that paragraph, do you see  
7           a statement -- a statement or sentence that says, "The  
8           Company shall prepare the preliminary proxy statement  
9           describing the Special Meeting Shareholder Proposals as  
10          promptly as practicable following the Closing Date, but  
11          shall not file it with the SEC unless so directed by the  
12          Trust"?

13          A. Yes, I see that.

14          Q. Now, this was an agreement between the trust, of  
15          which you were a trustee, and AIG, correct?

16          A. Yes.

17          Q. And did you participate in any way in the  
18          negotiation and preparation of this agreement?

19          A. I don't think I negotiated any of the words in  
20          this agreement, no.

21          Q. Did you participate in giving comments on drafts  
22          of this agreement?

23          A. I don't recall if I did or not.

24          Q. Did you see drafts of this agreement?

25          A. I don't recall whether I saw a draft or not.

1 Q. Did you have an understanding as to what the  
2 purpose was of the provision that I read from page 7 of  
3 Joint Exhibit 185?

4 A. I don't recall whether I did or not.

5 Q. Let me go back now to Joint Exhibit 221, which  
6 is the June 5, 2009, proxy statement.

7 A. Yes.

8 Q. At any time prior to the June 30, 2009, meeting,  
9 did you have an understanding what the purpose of the  
10 proposed one-for-twenty reverse stock split was?

11 A. Beyond what's referenced in the document, no.

12 Q. Were you aware in June of 2009 of the purpose of  
13 the proposal as specified in the proxy statement itself?

14 A. I'm sure I would have been.

15 Q. As you sit here now, do you recall one way or  
16 another whether you were?

17 A. I -- I said I'm sure I would have been.

18 Q. All right. And are you also sure you would have  
19 read the proxy statement at some point prior to June 30?

20 A. Yes.

21 Q. Were you aware of any purpose of the  
22 twenty-to-one reverse stock split other than what is set  
23 forth in the proxy statement?

24 A. No.

25 Q. Did you ever have any discussions with anyone



1 with respect to any purpose of the twenty-to-one stock  
2 split, other than what was set forth in the proxy  
3 statement?

4 A. Not that I recall.

5 Q. And as you sit here now, do you recall what the  
6 purpose was as set forth in the proxy statement?

7 A. I think the reverse split was meant to avoid the  
8 possibility of delisting; and secondarily, to be able to  
9 have -- to avoid the possibility that this stock would  
10 slip into penny stock territory and not be able to be  
11 held by certain portfolio managers.

12 Q. Am I correct that the purpose, as you understood  
13 it, of the twenty-to-one stock split was to increase the  
14 trading price of the AIG shares?

15 A. Though there's no guarantee of that, I think the  
16 intent of that is yes.

17 Q. What I'm asking is what the purpose was. The  
18 purpose, as you understood it, was to increase the  
19 trading price of AIG's shares, correct?

20 A. (Document review.) I believe, as it says in the  
21 proxy statement on page 67, exhibit page 70. But then  
22 the following paragraph starts with, "In addition, the  
23 reverse stock split may not increase the price." But I  
24 think that was the intent.

25 Q. Did the reverse stock split increase the price

1 of the AIG stock?

2 A. I believe the answer to that is yes.

3 Q. Are you aware of any purpose for the  
4 twenty-for-one stock split other than to increase the  
5 price of the AIG stock?

6 A. Well, as I said, the secondary purpose was to  
7 allow the stock to be held by institutional investors  
8 who couldn't hold it if it was -- if it -- if it fell  
9 into penny stock territory. But beyond that, no.

10 Q. And the institutional investor objective related  
11 to increasing the price of the stock, correct?

12 A. That's a byproduct of -- that should be a  
13 byproduct of the split, although there's no guarantee.

14 Q. Unless the stock declined very sharply, to 95 --

15 A. By more than -- by more than twenty-to-one, yes.

16 Q. Unless it lost 95 percent of its value --

17 A. That's correct.

18 Q. -- the stock was going to go up with a reverse  
19 stock split.

20 A. Mathematically, that's the way it works, but  
21 markets don't always cooperate, so...

22 Q. Did you have any conversations with anyone about  
23 the recapitalization prior to the time that you left?

24 A. There -- there were the beginnings of a  
25 recapitalization plan being formed, I believe, as my

1 tenure was ending.

2 Q. All right. You're aware that there was a  
3 recapitalization that took place after you left,  
4 correct?

5 A. Yes, yes.

6 Q. And I understand that the -- the trustees voted  
7 on that on September 28th, 2010, and you were gone by  
8 then, correct?

9 A. Um-hum.

10 Q. You have to say --

11 A. Yes. I'm sorry, that's correct.

12 Q. But my question is whether, prior to the time  
13 you left, you reviewed the goals of that  
14 recapitalization.

15 A. I'm -- I feel certain that I would not have  
16 reviewed the goals of the final recapitalization.

17 Q. Did you have any understanding before you left  
18 that the recapitalization would involve exchanging  
19 preferred shares held by the trust for common shares?

20 A. Not that I recall.

21 Q. You were aware of the issuance by AIG of Series  
22 D preferred stock, correct?

23 A. I know there was a Series D issue, yes.

24 Q. And was it your understanding that that Series D  
25 preferred stock was issued in connection with the TARP

1 program?

2 A. I -- I don't recall off the top of my head, no.

3 Q. During the period of time that you were trustee,  
4 how many series of preferred stock did AIG have  
5 outstanding?

6 A. Well, I know there was a C, a D, and I believe  
7 an E and an F.

8 Q. And were the series C, D, E, and F all owned by  
9 the Government?

10 A. I don't know that I know the answer to that.

11 Q. Were there any --

12 A. Series C was owned by the trust.

13 Q. And what about Series D, E, and F?

14 A. I don't recall specifically which entity they --  
15 that those series lie.

16 Q. Did you have any conversations with anyone,  
17 either at the Federal Reserve or at Treasury or  
18 elsewhere in the Government, concerning the Series D, E,  
19 and F preferred stock from AIG while you were trustee?

20 A. I'd feel certain that we did, but I don't recall  
21 any conversations, no.

22 Q. Did you have any conversations with any of your  
23 advisors concerning the Series D, E, and F preferred  
24 stock?

25 A. I don't recall.

1 Q. The same question with respect to other  
2 trustees.

3 A. Again, I feel certain I -- we would have had  
4 conversations as trustees, but I don't recall any of  
5 those conversations.

6 Q. And when you say you feel certain you would have  
7 had conversations with the trustees, are you talking  
8 about conversations about the D, E, and F preferred  
9 shares?

10 A. Yes.

11 Q. What were the issues, as you understood it,  
12 relevant to the trustees concerning the Series D, E, and  
13 F preferred shares?

14 A. I don't recall.

15 Q. Do you recall any of them?

16 A. No.

17 Q. Did you at any time that you were a trustee take  
18 any action towards amending the AIG charter in any way?

19 A. I don't recall whether any of the actions taken  
20 up by the shareholders at the June 30 shareholders  
21 meeting had as a component a charter change, but other  
22 than -- outside the scope of that, no, none that I'm  
23 aware of.

24 Q. Let me ask you to look at Joint Exhibit 185,  
25 which is the stock purchase agreement, and particularly

1 Section 6.1. And under heading 6, it says, "The Company  
2 covenants and agrees with the Trust that:" Do you see  
3 that?

4 A. Yes.

5 Q. And the "Company" there is AIG, correct?

6 A. Correct.

7 Q. And 6.1, under the subheading "Board of  
8 Directors Resolutions," says (as read): "The Board of  
9 Directors of AIG shall adopt within 45 days of the  
10 Effective Date resolutions pursuant to 8 Delaware Code  
11 Section 242(b), in form and substance reasonably  
12 satisfactory to the Trustees, to amend the Charter to  
13 reduce the par value of the Common Stock, and increase  
14 the number of authorized shares of Common Stock."

15 Do you see that?

16 A. Yes.

17 Q. And this was an obligation, as you understood  
18 it, of the AIG board of directors to the trust, correct?

19 A. That's what this purports to be, yes.

20 Q. And did the trust ever take any actions to try  
21 to see that that obligation was complied with?

22 A. Not that I recall.

23 Q. Did you ever have any discussions with anyone  
24 concerning whether the trustees should or should not  
25 take any action to see that that provision was complied

1 with?

2 A. Not that I recall.

3 Q. Now, at the time that you were a trustee, were  
4 you aware of this provision?

5 A. I'm sure I would have been at some point.

6 Q. Did the AIG board of directors or anyone from  
7 AIG ever present you as a trustee with a proposed  
8 resolution directed to accomplishing what is set forth  
9 in 6.1(a) of the stock purchase agreement?

10 A. Not that I recall, no.

11 Q. Let me ask you to look at Joint Exhibit 201, and  
12 I would ask you whether this is a document that you've  
13 seen before.

14 A. I don't recall seeing this, no.

15 Q. This refers to "clean and marked versions of the  
16 proxy statement" that is being prepared in March 2009,  
17 on or about March 27th, 2009. Do you see that?

18 A. Yes.

19 Q. Were you aware of drafts of the proxy statement  
20 that were being circulated on or about March 27th, 2009?

21 A. I don't recall.

22 Q. Now, let me ask you to direct your attention now  
23 not to the substance of the proxy statement but the  
24 timing of the proxy statement. Were you aware of any  
25 disagreements as to when the proxy statement should be

1 issued?

2 A. I don't know about disagreement, but I know  
3 there were lots of discussions about when the proxy  
4 statement should be issued.

5 Q. Did you participate in those discussions?

6 A. I'm sure I did.

7 Q. And was there a difference of views between the  
8 Treasury Department and the Federal Reserve Board and  
9 AIG as to how soon the proxy statement should be put  
10 out?

11 A. As I said, I don't know that there were  
12 disagreements. I know there were discussions about the  
13 proper time to hold the proxy, to follow the proxy  
14 statement.

15 Q. Were there differences of view as to when the  
16 proper time to file the proxy statement was?

17 A. There very well could have been, but I don't  
18 recall specifically what those were. I know -- I know  
19 what my concerns were about following the proxy  
20 statement.

21 Q. When did you think the proxy statement should be  
22 filed?

23 A. Well, I didn't have a specific date that the  
24 proxy should be filed, but I very much wanted to make  
25 sure that we had a full slate of board members to



1 present at the shareholders meeting and not have the  
2 proxy go out early and then a month later or six weeks  
3 later have the board elect new board members.

4 Q. There were a number of new board members added  
5 at the June meeting, correct?

6 A. There were.

7 Q. And then there was another board member added in  
8 August of 2009, correct?

9 A. August of 2009? Well, when -- are you talking  
10 about Mr. Benmosche?

11 Q. Yes.

12 A. Yes, I'm sorry. I think of him as CEO, but he's  
13 a board member.

14 Q. Yes. And prior to the June 30 meeting --

15 A. Yes.

16 Q. -- had there been discussions with Mr. Benmosche  
17 about joining the board and/or becoming CEO of AIG?

18 A. Prior to the June -- I don't -- not that I'm  
19 aware of.

20 Q. Who first contacted Mr. Benmosche?

21 A. I don't know the answer to that.

22 Q. When did you first become aware that  
23 Mr. Benmosche was being considered as a new CEO for AIG?

24 A. After -- after the new board was elected and  
25 after the -- their committee began the CEO search, at

1 some point beyond that, they notified us that  
2 Mr. Benmosche was either a candidate or the preferred  
3 candidate. I don't remember which.

4 Q. The trust agreement required the trustees to  
5 provide the Federal Reserve Bank of New York various  
6 reports, correct?

7 A. That's correct.

8 Q. And those reports were prepared by your counsel,  
9 correct?

10 A. They were.

11 Q. You would have read those reports, nevertheless,  
12 correct?

13 A. That's correct.

14 Q. And you would have satisfied yourself that those  
15 reports were accurate, correct?

16 A. That's correct.

17 Q. And do those reports accurately describe the  
18 process by which an effort was made to find and recruit  
19 additional board members for AIG?

20 A. Well, the -- the -- most of those reports, if I  
21 recall, were minutes of meetings. So, I don't know that  
22 I would say it's a full reporting, but I'm sure that to  
23 the extent that it focuses on the issue, it's accurate  
24 as far as it goes.

25 Q. Let me just tie down the timing issue with

1 respect to the proxy. Were you aware of people who  
2 sought to have the proxy filed in March of 2009?

3 A. It's possible, but I don't recall that, no.

4 Q. Do you -- do you recall by April you were asking  
5 the Federal Reserve Bank for information as to when  
6 Treasury would let the company file the proxy?

7 A. No, I don't recall that.

8 Q. Let me hand you --

9 THE COURT: Mr. Boies, should we take a break?

10 MR. BOIES: Yes, Your Honor.

11 THE COURT: Let's reconvene at 3:35.

12 (Court in recess.)

13 THE COURT: Thank you. Please be seated.

14 Please continue.

15 MR. BOIES: Thank you, Your Honor.

16 BY MR. BOIES:

17 Q. Would you please turn to Plaintiffs' Exhibit  
18 2731, which is already in evidence and is in your  
19 binder. This is from you to Sarah Dahlgren, on the  
20 subject of proxy, on April 26, 2009, and the point I am  
21 particularly interested in is the second sentence of the  
22 first paragraph, where you ask Ms. Dahlgren, "Do have  
23 any updated info on when company wants to file and when  
24 Treasury will let them file?"

25 Do you see that?

1           A.   Yes.

2           Q.   And you're talking about filing the proxy there,  
3   correct?

4           A.   Yes.

5           Q.   And it is the case, is it not, that in April and  
6   beginning before then, you had been involved in coming  
7   up with additional candidates to be added to the AIG  
8   board, correct?

9           A.   That's correct.

10          Q.   When was the first time that anyone raised with  
11   you the question of management succession in terms of a  
12   replacement for Mr. Liddy?

13          A.   I don't recall the exact time.  I think  
14   Mr. Liddy himself was expressing the view that at some  
15   point he would step aside.  There certainly were issues  
16   expressed by the Federal Reserve Bank of New York around  
17   succession.  I think everybody was concerned about  
18   succession.

19          Q.   Um-hum.  Let me ask you to look at Plaintiffs'  
20   Trial Exhibit 510, which is also in your binder and is  
21   also in evidence.  This is an email from Mr. Baxter to  
22   you, with a copy to Ms. Dahlgren and also Mr. Hennessy,  
23   dated two days later, that is, April 28th, 2009, on page  
24   3 of Plaintiffs' Trial Exhibit 510.

25          A.   Yes.

1 Q. And Mr. Baxter begins, "Doug, as promised, I  
2 spoke last night with Michael Wiseman from Sullivan &  
3 Cromwell, which has long represented" --

4 A. I'm sorry. You're in 510, which page? I  
5 apologize.

6 Q. Page 3.

7 A. Sorry. Yeah.

8 Q. Do you have that?

9 A. 510, page 3. Yes. I apologize.

10 Q. Mr. Baxter's email, April 28th, 2009, at 8:43  
11 a.m.?

12 A. Yes.

13 Q. And he begins, "As promised, I spoke last night  
14 with Michael Wiseman from Sullivan & Cromwell, which has  
15 long represented AIG on corporate matters."

16 What is Mr. Baxter referring to when he says "as  
17 promised"?

18 A. I don't recall, but -- hold on just one second.  
19 (Document review.) I don't recall specifically what  
20 that was.

21 Q. Mr. Baxter continues, "Michael is an old friend,  
22 and he agreed that our conversation would be kept very  
23 close. I will address the issues in sequence. (1)  
24 Appointment of New Board. It is not necessary to move  
25 the new board through the lead director. It is

1 necessary to move it through the Nominating and  
2 Governance Committee of the board, but Michael believes  
3 this can be done very quickly, and it may be done  
4 telephonically."

5 Who was the lead director that's being referred  
6 to here?

7 A. I don't recall who the lead director was at the  
8 time.

9 Q. Was there a desire not to move the new board  
10 through the lead director?

11 A. Not that I'm aware of, no.

12 Q. What did you understand Mr. Baxter to mean when  
13 he said, "It is not necessary to move the new board  
14 through the lead director"?

15 A. I presume that what he meant by that is that he  
16 had a conversation with Michael Wiseman and that's what  
17 Michael Wiseman told him.

18 Q. Did you have an understanding as to why  
19 Mr. Baxter thought that was information that was useful  
20 to you?

21 A. Well, as we were in late April of 2009 trying to  
22 recruit several new members to the board, we were trying  
23 to establish what process would be necessary to get that  
24 done. I'm sure that he thought that was a relevant  
25 piece of information.

1 Q. Um-hum. Now, both the Federal Reserve Bank of  
2 New York and the trust had its own counsel, correct?

3 A. That is correct.

4 Q. Did you have an understanding as to why  
5 Mr. Baxter was consulting AIG's long-term counsel on a  
6 confidential basis?

7 A. I suppose he was trying to find out from AIG's  
8 counsel what would be -- what would be the right process  
9 to go through to get a slate of new directors elected.

10 Q. And did you ever have any conversations with  
11 Mr. Baxter about the substance of this email?

12 A. If -- if -- I'm sure I did, but I don't recall  
13 what those were.

14 Q. Okay. Now, let me turn to what I hope is my  
15 last subject, and in that connection, I am going to ask  
16 you to look first at Joint Exhibit 207, which I will  
17 hand you. This is an AIG Form 8-K, correct?

18 A. Yes.

19 Q. And it's dated April 17th, 2009, correct?

20 A. Yes.

21 Q. And I want to direct your attention to page 20.  
22 Let me start with page 17. Page 17, where it says  
23 "Stockholder vote." Do you see that?

24 A. Yes.

25 Q. This is an amendment to the AIG credit

1 agreement. It's amendment number 3 to the AIG credit  
2 agreement, correct, if you look on page 5 --

3 A. Yes.

4 Q. -- of Joint Exhibit 207?

5 A. Yes.

6 Q. In April of 2007, did you have any --

7 A. 2009?

8 Q. Exactly, of 2009. Thank you.

9 A. 2007 would have been an easier question.

10 Q. In April of 2009, did you have any understanding  
11 as to what the purpose was for amending the "Stockholder  
12 vote" section related to the credit agreement, as shown  
13 on Joint Exhibit 207 on page 17?

14 A. I don't recall whether I did or not.

15 Q. Did you understand in April of 2009 that what  
16 was being done, perhaps among other things, was this  
17 amendment was eliminating the requirement that there be  
18 a prompt shareholder vote on increasing the authorized  
19 shares of AIG and reducing the par value of those  
20 shares?

21 A. I don't recall whether I knew that at the time  
22 or not.

23 Q. Were you aware, when you became a trustee, that  
24 there was a requirement in the credit agreement that  
25 promptly --



1 A. I'm sorry, in the original credit agreement?

2 Q. In the credit agreement that was in effect when  
3 you became a trustee.

4 A. Okay.

5 Q. And just to be sure that we're talking about the  
6 same thing, I am going to put in front of you Joint  
7 Exhibit 147, and the reason that I do so is to show you  
8 the evolution of this provision and so that you have the  
9 original credit agreement in front of you. I will also  
10 hand you Joint Exhibit 107.

11 Your Honor, do you want another copy of this?  
12 This is the same one as this morning. I apologize, I  
13 probably should have had one book for both witnesses.

14 And Joint Exhibit 107 is the original credit  
15 agreement, correct?

16 A. I have no idea.

17 Q. Do you have it in front of you?

18 A. Yes. I don't know if it's the original credit  
19 agreement. It says "Credit Agreement."

20 Q. It says, "Credit Agreement dated as of September  
21 22, 2008."

22 A. Right.

23 Q. You know that that was when the original credit  
24 agreement was signed as of, correct?

25 A. Yes.

1 Q. I just wanted to be sure. I don't know what  
2 other credit agreements AIG may have had, so this is  
3 September 22nd, 2008.

4 When you became a trustee, did you understand  
5 that the shares that you were going to be receiving were  
6 being received pursuant to a credit agreement that had  
7 been entered into between the Federal Reserve Bank of  
8 New York and AIG?

9 A. Yes, sir, I did.

10 Q. And did you understand that that credit  
11 agreement had been dated as of September 22, 2008?

12 A. I don't recall.

13 Q. Did you ever see that credit agreement?

14 A. I'm sure I did.

15 Q. And do you recall that that credit agreement had  
16 a provision in it relating to a shareholder vote on  
17 increasing the authorized number of common shares and  
18 reducing the par value of those shares?

19 A. No, I don't.

20 Q. Let me ask you to look at page 138 of Joint  
21 Exhibit 107. At the top, where it says "Stockholder  
22 vote," do you see that?

23 A. Yes.

24 Q. It says, "AIG's board will call a meeting of  
25 stockholders as soon as practicable after the issuance

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1 of the Preferred Stock." Do you see that?

2 A. Yes.

3 Q. And do you understand that that preferred stock  
4 is the Series C preferred stock that ultimately went  
5 into the trust?

6 A. As far as I know, yes.

7 Q. And then it goes on to say that at that meeting,  
8 the stockholders will vote on, among other things, the  
9 amendments reducing the value of the par for AIG's  
10 common stock and increasing the number of authorized  
11 shares to 19 billion.

12 A. That's what it says, yes.

13 Q. And then, prior to the time that you became a  
14 trustee, although perhaps during the time that you were  
15 engaged in conversations with Mr. Baxter and others  
16 about becoming a trustee, Joint Exhibit 147, which you  
17 also have in front of you, was signed, and this is  
18 amendment number 2 to the credit agreement. Do you see  
19 that?

20 A. I do.

21 Q. And this is dated November 9, 2008. Do you see  
22 that?

23 A. I do.

24 Q. And if you turn to page 9, up at the top, where  
25 it says "Stockholder vote."

1           A.  Yes, yes.

2           Q.  Do you see it has the same first sentence?

3           "AIG's board will call a meeting of the stockholders as  
4           soon as practicable after the issuance of the Preferred  
5           Stock."  Do you see that?

6           A.  Yes.

7           Q.  It then says, "At that meeting, the  
8           stockholders" -- and then it inserts the words -- "with  
9           the common stockholders voting as a separate class" --  
10          do you see that?

11          A.  Yes.

12          Q.  -- and it goes on to talk about (as read) "will  
13          vote on, among other things, amendments to the  
14          certificate of incorporation, reducing the par value of  
15          AIG's common stock, and increasing the number of  
16          authorized shares to 19 billion."  Do you see that?

17          A.  Yes.

18          Q.  Were you aware at any time that the credit  
19          agreement had been amended to require a separate class  
20          vote for the common shareholders on the reduction of par  
21          value and increase in authorized common shares?

22          A.  Not that I recall.

23          Q.  Did you know what the significance was at any  
24          time while you were a trustee of requiring a class vote  
25          of the common shareholders in order to reduce the par

1 value of the common shares and increase the authorized  
2 number of common shares?

3 A. Yes.

4 Q. What was the significance, as you understood it?

5 A. It requires two votes, one of which would, by  
6 definition, be -- be one, in effect, by the way that the  
7 trustees voted the trust shares, and the other voted by  
8 the common shareholders.

9 Q. And did you have an understanding that while you  
10 would win one of those votes because you had 79.9  
11 percent of the votes overall, it was likely that you  
12 would lose the class vote of common shareholders?

13 A. I don't recall that.

14 Q. Do you recall that there was a proposal on the  
15 June 30, 2009, proxy to increase the number of common  
16 shares to 9.225 billion?

17 A. Yes.

18 Q. And that proposal was defeated because while it  
19 received a majority of all votes, it received a minority  
20 of common shareholder votes, correct?

21 A. I believe that's correct, yes.

22 Q. Now, let me ask you to look at Joint Exhibit  
23 207. This is the 8-K dated April 17th, 2009.

24 A. Yes.

25 Q. And now if you would turn to page 17 --

1 A. Yes.

2 Q. -- and look at the section on stockholder vote.

3 A. Yes.

4 Q. Do you see that the provision that had been in  
5 Joint Exhibit 147, that is, the November 9, 2008, credit  
6 agreement amendment providing for a required common  
7 shareholder class vote, has been eliminated? Do you see  
8 that?

9 A. So, this -- just one second, sorry. (Document  
10 review.)

11 Under "Stockholder vote," in the middle of that  
12 paragraph, it says, "At such meeting, the stockholders,  
13 with common stockholders voting as a separate class in  
14 the case of the matters in cause (i), will vote on  
15 amendments," et cetera.

16 Q. The very beginning of that sentence says --

17 A. Yes.

18 Q. -- "The Trust will have the right to cause AIG's  
19 Board of Directors to call a Special Meeting of the  
20 stockholders..."

21 A. Yes.

22 Q. And "At such meeting, the stockholders," et  
23 cetera, correct?

24 A. Yes, yes.

25 Q. So, now there is not a class vote unless the

1 trustees so decide, correct?

2 A. I don't -- I don't -- I don't know that that's  
3 the case, but it does say that the trust will have the  
4 right to cause the board to call a special meeting.

5 Q. And it does not provide for such a meeting under  
6 any other circumstances, correct?

7 A. Not in this paragraph. I just don't know what  
8 other rights there are for other parties.

9 Q. In April of 2009, did you have an understanding  
10 that the credit agreement had been changed to change the  
11 circumstances under which there would be a class vote of  
12 the common shareholders?

13 A. No, I don't recall it.

14 Q. The trust, as an important shareholder,  
15 obviously was interested in what issues were going to be  
16 put before the annual meeting or a special meeting,  
17 correct?

18 A. Correct.

19 Q. And did you read this 8-K at the time?

20 A. I'm sure I did at the time, yes.

21 Q. So, at the time, you would have known that the  
22 credit agreement had been changed.

23 A. Yes.

24 Q. And you would have understood that it had been  
25 changed in a way that affected what issues were going to

1 be brought before the shareholders, correct?

2 A. I -- I don't recall what I knew or didn't know  
3 at the time.

4 MR. BOIES: Your Honor, I pass the witness.

5 THE COURT: All right. Thank you, Mr. Boies.

6 Cross examination, Mr. Todor?

7 MR. TODOR: Yes. Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. TODOR:

10 Q. Good afternoon, Mr. Foshee.

11 A. Good afternoon.

12 Q. We have a binder set. Have you received your  
13 binder?

14 A. I have.

15 Q. You were asked some questions about your service  
16 on the Houston Branch of the Dallas Fed during your  
17 direct examination. Could you please describe your  
18 duties with the Houston Branch of the Dallas Fed?

19 A. I originally served as a board member of the  
20 Houston Branch and later as chair. So, our  
21 responsibilities were to manage the functions of the  
22 branch, to provide anecdotal business climate  
23 information to the Federal Reserve Bank of Dallas for  
24 forwarding on as they saw fit, or not, to the Board of  
25 Governors, and to vote on a nonbinding basis on monetary



1 decisions of the -- coming to the Board of Governors.

2 Q. What percentage of your time did those duties  
3 take?

4 A. A small percentage.

5 Q. What was your main job at the time?

6 A. I was the chairman, CEO, and president of El  
7 Paso Corporation.

8 Q. Could you please describe El Paso Corporation's  
9 business?

10 A. We did two things. We were the largest  
11 interstate natural gas pipeline company in the U.S. and  
12 a large exploration and production company in the U.S.  
13 and Mexico and Brazil.

14 Q. During what years were you chairman and CEO of  
15 El Paso Corporation?

16 A. I was CEO of El Paso from 2003 to 2012. I  
17 became chairman of El Paso -- I was -- I think I was  
18 chairman about the last four years, four or five years.

19 Q. Do you have an understanding of the annual  
20 revenues of El Paso Corporation while you were CEO and  
21 then CEO and chairman?

22 A. In excess of -- in excess of \$5 billion a year.

23 Q. Was El Paso part of the Standard & Poor's 500  
24 Index?

25 A. Yes, we were.

1 Q. Would you describe your experience at El Paso  
2 Corporation as involving corporate turnaround?

3 A. That's how others have described it.

4 Q. What, if anything, of your experience with El  
5 Paso Corporation was applicable to your service as an  
6 AIG trustee?

7 A. El Paso Corporation in 2003, when I joined the  
8 company, was a very troubled company. The stock had  
9 gone from \$73 a share to as low as \$3. The bonds were  
10 trading at distressed levels. Significant unhappiness  
11 among the employee population because of lack of bonuses  
12 and significant workforce reductions. Among other  
13 things, we had a very large trading operation that was  
14 in the wake of the end of the so-called energy merchant  
15 class following Enron, was a distressed trading  
16 operation that needed to be wound down. And at the  
17 time, we had -- I think at our peak, we had \$25 billion  
18 in debt. So, we were the second or third largest issuer  
19 of noninvestment grade debt in the U.S.

20 So, our job was to first save the company from  
21 bankruptcy and then try, as we could, to rebuild the  
22 brand and restore the confidence of regulators and  
23 investors and employees and board members and hopefully  
24 do a job that would cause the share price to perform in  
25 a manner that everybody was pleased with.

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1 Q. While at El Paso Corporation, did you have  
2 experience with large investment banks?

3 A. Yes.

4 Q. Did you have experience in any of your previous  
5 professional experience in dealing with large investment  
6 banks?

7 A. Yes.

8 Q. Could you please describe that experience?

9 A. I was, from 2001 to 2003, the chief financial  
10 officer and then chief operating officer for Haliburton  
11 & Company. Prior to that, I was the CEO and chairman of  
12 Nuevo Energy Company, also a publicly traded exploration  
13 and production company. And all of those companies had  
14 dealings in capital markets and so would have dealt with  
15 both commercial bankers and investment bankers.

16 Q. And do you hold a master's in business  
17 administration?

18 A. I do.

19 Q. Turning back to your experience with the Houston  
20 Branch of the Dallas Fed, were you financially  
21 compensated for those duties?

22 A. It was de minimus, if anything, in the hundreds  
23 of dollars a year, I suppose. I don't recall being  
24 paid, no.

25 Q. Turning your attention to the email counsel for

1 Plaintiffs directed to you that you sent to Richard  
2 Fisher, which I believe in your binder that we have  
3 handed up was identified as DX 604.

4 A. Yes.

5 Q. I'll direct your attention to DX 604, to page 2  
6 of the document, to the email from yourself to  
7 Mr. Fisher that counsel for Plaintiffs asked you about.  
8 Why did you send this email?

9 MR. BOIES: Just so the record is clear, I think  
10 it's the same document, but I think it -- I think I was  
11 using Plaintiffs' Trial Exhibit 298, so it doesn't get  
12 confused on the record.

13 MR. TODOR: Okay.

14 BY MR. TODOR:

15 Q. Mr. Foshee, can you refer to Plaintiffs' Exhibit  
16 298 from the binder that Plaintiffs handed to you?

17 THE COURT: It's the very same document, though.

18 MR. TODOR: All right, Your Honor. We apologize  
19 for the duplication in our records.

20 THE WITNESS: Yes.

21 BY MR. TODOR:

22 Q. Do you have that document before you, sir?

23 A. I do.

24 Q. Why did you send that email?

25 A. It was the fall of 2008, and, of course, global

1 capital markets were in the process of collapsing, and  
2 I, like everybody else in the country, was fearful of  
3 what might be ahead. I think I read in the paper that  
4 the Federal Reserve was going to name trustees for AIG.  
5 I thought that I might have some skills that would be  
6 relevant to that task, and at the risk of sounding  
7 corny, my dad served in World War II, and the only thing  
8 my country ever asked me to do was pay my taxes. And so  
9 I thought I would, in the vein of the so-called "dollar  
10 a year" guy, volunteer.

11 Q. You were asked during your direct about Thomas  
12 Baxter calling you. Did you have any understanding from  
13 your conversation with Mr. Baxter as to whether there  
14 was any expectation that there would be any  
15 preconditions as to how the trustees would act in any  
16 given situation?

17 A. I didn't have any discussions with him about  
18 that. I think I always felt like the trustees' rights  
19 and obligations were defined by the four corners of the  
20 trust agreement.

21 Q. Are you aware of any other rights or obligations  
22 of the trustees, other than those put forth in the trust  
23 agreement?

24 A. Not that I'm aware of.

25 Q. Were you financially compensated for your

1 service as a trustee?

2 A. Yes.

3 Q. How much?

4 A. \$100,000 a year.

5 Q. Did you want to be paid?

6 A. No.

7 Q. Why not?

8 A. I -- because I -- I offered my services in the  
9 spirit of civic duty, not to be paid.

10 Q. Was the compensation you received as a trustee a  
11 factor in any of the decisions you made?

12 A. No.

13 Q. I'll turn your attention to JX 172. I'll direct  
14 your attention to page 4 of this document, and there are  
15 some "Whereas" clauses on pages 4 and 5. I'll ask you  
16 about a couple of them.

17 The first is the second "Whereas" clause. It  
18 states (as read): "Whereas, as a condition of the  
19 Credit Agreement, the Company is obligated to issue to a  
20 trust for the sole benefit of the United States Treasury  
21 the Series C stock."

22 Do you see that, sir?

23 A. Yes.

24 Q. What was your understanding of the United States  
25 Treasury being referred to in this clause?

1           A.   The U.S. taxpayer.

2           Q.   I'll direct your attention to the fifth clause.  
3           It states, "Whereas, the FRBNY has worked in  
4           consultation with the United States Department of the  
5           Treasury (the 'Treasury Department') in structuring the  
6           Credit Agreement and this Trust Agreement."

7                     What was your understanding of the "Treasury  
8           Department" in the context of this agreement?

9           A.   Just the Department of the Treasury.

10          Q.   Did you have any understanding of any difference  
11          between the "Treasury Department" being referred to in  
12          this clause and the "United States Treasury" being  
13          referred to in the second clause?

14          A.   Well, I think as a trustee I felt like I was  
15          working for the benefit of the U.S. taxpayer and not for  
16          the -- not for the Department of the Treasury.

17          Q.   I'll direct your attention to page 5 of the  
18          document, to the second clause on that page.  It states,  
19          "Whereas, to avoid any possible conflict with its  
20          supervisory and monetary policy functions, the FRBNY  
21          does not intend to exercise any discretion or control  
22          over the voting and consent rights associated with the  
23          Trust Stock."

24                     Do you see that?

25          A.   Yes.

1 Q. Do you have an understanding as to what is meant  
2 by the supervisory and monetary policy functions and any  
3 possible conflict with them in the context of this  
4 agreement?

5 A. Well, I think at a very basic level, the  
6 formation of the trust was, in effect, the resolution of  
7 the potential for conflict between agencies that were at  
8 the same time lender, regulator, supervisor, and owner.

9 Q. Were you aware of any other possible conflicts,  
10 other than the conflict that is being referred to in  
11 this clause?

12 A. None that I'm aware of.

13 Q. I'll direct your attention to page 6 of the  
14 document -- page 5 of -- page 8 of the document. Now,  
15 I'll point you to clause (c) on this page.

16 A. Yes.

17 Q. There's a statement that "the Trustees may, as  
18 they deem appropriate in their independent judgment (i)  
19 engage legal, financial, press and other professional  
20 advisers and agents."

21 Do you see that?

22 A. Yes.

23 Q. While you were a trustee, did the trustee engage  
24 legal advisors?

25 A. Yes, we did.



1 Q. From which firm were those legal advisors?

2 A. The primary firm while I was a trustee was  
3 Arnold & Porter.

4 Q. While you were a trustee, did the trustees  
5 engage financial advisors?

6 A. No.

7 Q. Why not?

8 A. I mean, we always -- we always knew that we had  
9 the right to do that, but to be honest, between the  
10 Federal Reserve Bank of New York, the Treasury  
11 Department, and the company, there in our estimation  
12 were what you would have to describe as a plethora of  
13 financial advisors and legal advisors, and our -- part  
14 of our mandate we felt like as trustees was, A, not to  
15 spend money unwisely; and, B, when we did spend money,  
16 that it would be additive.

17 So, we always felt like in the end, meaning at  
18 the point in time at which we were going to be leading  
19 up to the sale of equity in AIG and, therefore, be  
20 active maximizing the value for the U.S. taxpayer, we  
21 would certainly have financial advisors. Prior to that,  
22 we felt like as long as we had access to everyone  
23 else's, we could do our jobs.

24 Q. Did you feel that you had adequate access to  
25 financial information from whatever source you needed

1 when you were serving as a trustee?

2 A. Yes. I don't ever recall requesting information  
3 that we didn't get.

4 Q. Could you please explain the sources of  
5 financial information that you had as a trustee?

6 A. Well, we got information from the Federal  
7 Reserve Bank of New York, we got information from public  
8 sources, we got information from the company, we got  
9 information from the out -- the financial advisors to  
10 both of those entities, I think, at various times, and  
11 as well as the company's outside auditors and outside  
12 legal counsel.

13 Q. Did you have the opportunity to meet, for  
14 example, with representatives of the company without  
15 having personnel from the Federal Reserve Bank of New  
16 York or Treasury present?

17 A. Yes.

18 Q. Turning your attention to Section 2.04 of the  
19 agreement, I'll start with 2.04(a). There's the  
20 statement that "the Trustees shall" -- subject to other  
21 sections -- "exercise all rights, titles, powers, and  
22 privileges of a stockholder of the Company, including,  
23 to the extent permitted by law, the right to convert the  
24 Company Preferred Stock to Company Common Stock and the  
25 exclusive right to exercise any and all voting and other

1 rights and benefits..." Do you see that?

2 A. Yes.

3 Q. What was your understanding of the scope of your  
4 authority as a trustee with respect to the company's  
5 stock?

6 A. That we were for all practical purposes acting  
7 as the majority shareholder of the company.

8 Q. And there are references to "the Company" in the  
9 agreement. Did you understand that company to be AIG?

10 A. Yes.

11 Q. Turning your attention to Section 2.04(c), which  
12 you were asked about in your direct examination. You  
13 were asked whether this issue was brought to a vote in  
14 the June 2009 shareholders meeting. Do you recall that?

15 A. I think that's correct, yes.

16 Q. What issues were you focused on leading up to  
17 the June 2009 shareholders meeting?

18 A. Well, I was more -- individually, I was focused  
19 on the issues that I thought had something to do with  
20 the long-term viability of AIG, the stock actually went  
21 in the trust I think the first week of March. Within a  
22 week, maybe, maybe a week and a half, Mr. Liddy was in  
23 front of Congress, and as a trustee watching that  
24 testimony, my view at the time, which I expressed to  
25 other trustees and to the Federal Reserve, was that no

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1 matter what you thought before that set of events, I  
2 thought everything changed, and I thought there was --  
3 there was great risk that the company could fail.

4 And I also felt individually that no matter what  
5 you thought of Mr. Liddy, and he gave valiant service  
6 and he was literally a "dollar a year" guy, no matter  
7 what you thought of him as an individual, I didn't think  
8 the Congress and the investment community and the  
9 American public was going to give him a break. And so  
10 if you're acting as a majority shareholder and you think  
11 that change has to be made, then the way -- a primary  
12 way you effect that change is through the board. And I  
13 felt very strongly that as opposed to adding one or two  
14 board members to the board, we needed to really  
15 reconstitute the board and start a CEO succession  
16 process immediately.

17 And it -- all of that, I would say, was  
18 compounded by at least my sense that we didn't have a  
19 lot of time, and I don't think it's a shock to anyone  
20 that people weren't standing in line for the opportunity  
21 to go be on the board of AIG at the time when people  
22 were driving around with pitch forks at AIG employees'  
23 homes. So, we needed in very short order -- in my  
24 estimation, in a matter of weeks, not months -- to  
25 reconstitute the board and force a succession process,

1 and that's where I spent my time.

2 Q. As of the time of the June 2009 shareholder  
3 meeting, did you and the trustee have any plan to  
4 dispose of the AIG trust stock?

5 A. We knew that was the ultimate goal, but no. No,  
6 we were -- I don't believe that -- at least I'll speak  
7 for myself. I didn't think we were nearing that point.

8 Q. Did you have an understanding of what would have  
9 needed to have happened in order to get to that point?

10 A. You know, lots of hypotheticals, but -- but the  
11 company needed to -- needed to restore itself to health  
12 and some kind of financial stability so that it could be  
13 fairly valued.

14 Q. I'll turn your attention to page 10 of this  
15 document, to Section 2.04(d), and there are some  
16 documents there that are -- references the FRBNY's view.  
17 Do you see those?

18 A. Yes.

19 Q. Did these views of the FRBNY constrain your  
20 judgment as a trustee?

21 A. No.

22 Q. Did you consider these views to be binding on  
23 you as a trustee in any way?

24 A. No. The paragraph says that they are  
25 nonbinding.

1           Q. At any time as a trustee, did you feel that  
2 there was a conflict between maximizing the company's  
3 ability to honor its commitments to and repay all  
4 amounts owed to the FRBNY or the Treasury Department and  
5 maximizing the value of the trust stock?

6           A. I -- I don't -- I don't think I ever felt like  
7 that was the case while I was a trustee, no.

8           Q. What is your basis for that opinion?

9           A. I don't -- I don't think that the -- during the  
10 time I was a trustee, there wasn't any -- there wasn't  
11 really any conflict between maximizing the company's  
12 ability to honor its commitments, which means returning  
13 to financial health, and maximizing the value of the  
14 long-term equity. Theoretically, I guess there could  
15 have been a point at which lender and equityholder's  
16 interests diverge, and that's, I guess, a part of the  
17 reason that the trust was created, but I never saw that  
18 in actual fact.

19          Q. Were your actions as a trustee geared toward  
20 maximizing the value of the trust stock?

21          A. That's what we tried to do, yes.

22          Q. Turning your attention to Section 3.03 of the  
23 agreement on page 15 of the document, I'll direct your  
24 attention to paragraph (a) and ask you whether in your  
25 mind there was ever an instance when you were a trustee

1 where you perceived there to be a conflict between  
2 maximizing the value of the trust stock and acting in  
3 accordance with the provisions of the trust agreement  
4 and in or not opposed to the best interests of the  
5 Treasury?

6 A. No.

7 Q. And what was your understanding of the  
8 "Treasury" being referred to in Section 3.03(a)?

9 A. The U.S. taxpayer.

10 Q. I'll direct your attention to JX 185, which you  
11 were asked about during your direct, and I will direct  
12 your attention to page 6 of the document, to Section  
13 6.2. The first sentence states, "The Trust shall have  
14 the right, in its sole discretion, by giving a notice in  
15 accordance with Section 8.3, to cause the Board of  
16 Directors, without regard to any subsequent  
17 determination by the Board of Directors concerning the  
18 Special Meeting Shareholder Proposals, to call, give  
19 notice of, and hold a special meeting of the holders of  
20 the Company's," and so on. Do you see that?

21 A. Yes.

22 Q. What was your understanding of the scope of the  
23 discretion given to the trustees under this provision  
24 with respect to a shareholder vote on those proposals?

25 A. Well, it says here in the first sentence that

1 the trust shall have the right, in its sole discretion.

2 Q. Did you have any understanding as to whether the  
3 trust was under some obligation to call for this meeting  
4 at any particular time during your service as a trustee?

5 A. I don't recall.

6 Q. Do you have any reason to believe that there is  
7 any obligation in terms of timing beyond what is stated  
8 in the trust agreement or the stock purchase agreement  
9 with respect to that question?

10 A. I don't have any reason to believe that.

11 Q. I'll direct your attention to the document  
12 marked as DX 800. Do you recognize this document as a  
13 part of the trustees' minutes?

14 A. This is more than just a report of the minutes,  
15 but yes. It's a report under the credit facility trust  
16 agreement.

17 MR. TODOR: Your Honor, we move the admission of  
18 DX 800.

19 MR. BOIES: No objection, Your Honor.

20 THE COURT: Defendant's Exhibit 800 is admitted.  
21 (Defendant's Exhibit Number 800 was admitted  
22 into evidence.)

23 BY MR. TODOR:

24 Q. Did the trust submit quarterly reports to the  
25 Federal Reserve Bank as part of its duties?



1           A. Yes, I believe we did.

2           Q. And I'll direct your attention to the page with  
3 the Bates number ending in 0035. It's marked as  
4 "Summary of Significant Actions" for the quarter ended  
5 March 31st, 2009.

6           A. Yes.

7           Q. And under point 4, it mentions that the trust  
8 entered into the stock purchase agreement on March 1st,  
9 2009, correct?

10          A. Yes.

11          Q. And then it states that on March 4th, 2009, upon  
12 the closing of the Stock C purchase agreement, Wells  
13 Fargo registered a certificate for the shares, correct?

14          A. Yes.

15          Q. You were asked some questions during your direct  
16 with respect to an amendment to the AIG credit agreement  
17 dated March 2nd, 2009. Is that correct?

18          A. Yes.

19          Q. Do you have an understanding as to whether the  
20 trust held this stock as of March 2nd, 2009?

21          A. I don't believe we did, no.

22          Q. How often would the trustees meet?

23          A. We met at various times. I don't think we ever  
24 went a month without an in-person meeting. Often we met  
25 weekly, and for significant periods of time we met

1 daily.

2 Q. Would those meetings have minutes taken and  
3 collected in these quarterly reports that were sent to  
4 the bank?

5 A. Yes. If they were official meetings of the  
6 trustees, yes.

7 Q. What percentage of your professional time would  
8 the -- did the trust take during your service as a  
9 trustee?

10 A. From -- from the second week of March of 2009  
11 through late 2009, significant.

12 Q. Turning your attention to the Bates number  
13 starting with 0058, there's a reference to a meeting on  
14 February 27th, 2009. Do you see that?

15 A. Yes.

16 Q. And there's a reference to a meeting with  
17 Spencer Stuart. Do you see that?

18 A. Yes.

19 Q. Who is Spencer Stuart?

20 A. A recruiting firm.

21 Q. Did you contact them about providing services to  
22 the trust?

23 A. Yes, we did.

24 Q. Why did you do that?

25 A. You know, we felt like one of our primary early

1 tasks as trustees was to evaluate the existing board in  
2 order to determine whether or not that was the right  
3 board for AIG going forward, and if not, to help -- you  
4 know, use Spencer Stuart to help in the vetting process  
5 and the recruiting process for any new board members  
6 that we might choose to try to attract.

7 Q. Did you ultimately engage Spencer Stuart?

8 A. Yes, we did.

9 Q. Did Spencer Stuart provide candidates or names  
10 of candidates for the trustees to review?

11 A. They did.

12 Q. What did you do once Spencer Stuart provided  
13 those names of candidates to you?

14 A. Well, we actually reached out to all the  
15 constituents that we thought were the appropriate  
16 constituents to get ideas for board members, from the  
17 Federal Reserve Bank, from the Treasury Department, from  
18 the company, and from Spencer Stuart. We funneled each  
19 of those names to Spencer Stuart to put together the  
20 appropriate biographical information, to -- based on  
21 their -- any prior experience they might have with them,  
22 to assess their skill-sets and whether they would be the  
23 right kind of people to put on the board and ultimately  
24 to, in some cases, gauge interest for joining the AIG  
25 board.

1 Q. I'll direct your attention in your binder to the  
2 document marked DX 789.

3 A. Yes.

4 Q. Is this your engagement letter with Spencer  
5 Stuart?

6 A. Yes. So, I think, if I could, the difference  
7 between the -- between February and 20 -- February 28th  
8 and April 8th, that the tenor of Spencer Stuart's role,  
9 I would say, changed pretty significantly.

10 Q. Please describe that change.

11 A. Well, I think in the beginning -- and in  
12 discussions with Ed, I know that Ed Liddy's  
13 preference -- I don't know about the rest of the  
14 board -- was that maybe we would add a board member and  
15 then maybe add another one in a year. We were -- we  
16 didn't agree to that, but we were evaluating that as a  
17 part of our diligence in evaluating the existing board  
18 overall.

19 But as I said, by the second week of March, I  
20 concluded and I think my cotrustees also concluded that  
21 we had a greater sense of urgency, number one, so the  
22 timetable was compressed, and we felt very strongly that  
23 we should be recruiting a majority if not all of the  
24 board.

25 MR. TODOR: Your Honor, we move to admit DX 789.

1 MR. BOIES: No objection, Your Honor.

2 THE COURT: Defendant's Exhibit 789 is admitted.

3 (Defendant's Exhibit Number 789 was admitted  
4 into evidence.)

5 BY MR. TODOR:

6 Q. Could you please explain your understanding of  
7 Spencer Stuart's reputation in terms of the field of  
8 executive recruitment?

9 A. Oh, I think they have a great reputation in  
10 executive recruitment. I think they have a particularly  
11 well regarded reputation with regard to public company  
12 board recruitment.

13 Q. Turning your attention back to DX 800, I'll  
14 direct your attention to the page with Bates ending in  
15 0070. This is marked as a "Meeting of the Trustees of  
16 March 19th, 2009." Do you see that?

17 A. Yes.

18 Q. And then there's a heading for "Recruitment --  
19 Board of Directors and Senior Management." Do you see  
20 that?

21 A. Yes.

22 Q. And then there's a statement that "The Trustees  
23 agreed that their primary goal continued to be to ensure  
24 that AIG is properly governed and that such goal  
25 required particular focus on the composition of the

1 board of directors of AIG and the recruitment of  
2 experienced and able candidates for senior management  
3 positions."

4 You mentioned there being a change in tenor of  
5 Spencer Stuart's engagement. Does this passage refresh  
6 your recollection as to what, if any, change there was?

7 A. Not beyond what I've already stated.

8 Q. Were the trustees -- were the trustees -- the  
9 nominees for AIG's board of directors at the June 2009  
10 shareholder meeting?

11 A. Yes.

12 Q. Who selected the new nominees?

13 A. Well, ultimately, the board -- the board of  
14 directors selected them. The -- of the -- of the six  
15 new board members, I believe that five were originally  
16 sourced through Spencer Stuart and one was sourced --  
17 and I don't know -- I don't know whether the sixth --  
18 the person I'm referring to is Doug Steenland. I don't  
19 recall whether he was sourced by Spencer Stuart or  
20 someone at AIG or both simultaneously.

21 Q. I'll direct your attention to JX 221, which I  
22 believe was in the Plaintiffs' binder.

23 A. Yes.

24 Q. And it would be page 13 of the document itself;  
25 I believe it would be page 16 of JX 221.

1           A.    Yes.

2           Q.    Are these the nominees for AIG's board of  
3           directors at the 2009 shareholder meeting?

4           A.    They are.

5           Q.    Which of these nominees were ones that the  
6           trustees proposed?

7           A.    Harvey Golub, Laurettte Koellner, Chris Lynch,  
8           Arthur Martinez, Steve Miller, and Doug Steenland.

9           Q.    Was there any particular professional background  
10          that the trustees felt would be valuable in the new  
11          slate of nominees?

12          A.    Yes.  I think -- first of all, I would say -- I  
13          couldn't overemphasize the difficulty of recruiting  
14          qualified board members to serve on the AIG board, where  
15          you were likely being asked to serve in a position that  
16          would require great amounts of time relative to a normal  
17          board, with the potential for great personal liability,  
18          and -- and compensation which wasn't commensurate with  
19          other public company board service.  So, we -- we were  
20          trying to get specific skill-sets.  We were also trying  
21          to get people who -- who had some sense of civic duty in  
22          serving on the board.

23                 So, you know, we got Laurettte Koellner, who  
24          previously was the head of human resources for Boeing.  
25          So, you can imagine at the time that AIG had significant

1 human capital issues to deal with, not just the  
2 compensation issue that was in the headlines but how do  
3 you -- how do you retain a workforce of what I think was  
4 over 200,000 people necessary to actually have the  
5 company survive and prosper.

6 Harvey Golub obviously had a very successful  
7 finance background, was CEO of American Express, well  
8 regarded public company director. Chris Lynch was  
9 particularly important because at the time, AIG had, I  
10 think, 550 separate general ledgers which didn't talk to  
11 each other electronically. So, if you're not in the  
12 business, that might not mean much, but if I told you  
13 that it took \$125 million to get an audit for a public  
14 company, it was significantly complicated, cumbersome.  
15 The company had had financial restatements and material  
16 weaknesses and significant deficiencies under  
17 Sarbanes-Oxley, and Chris had been -- not -- wasn't just  
18 a former partner with KPMG, I believe he was formerly  
19 the head of the national practice and had decided to  
20 retire and took the job on.

21 Arthur Martinez is another very successful  
22 executive with significant experience in retail. And  
23 then very importantly, at least for me, Steve Miller and  
24 Doug Steenland, two well-regarded folks in this sort of  
25 turnaround category.



1 Q. Did you have any doubts about the professional  
2 qualifications of any of the new nominees for the board  
3 that the trustees put forward?

4 A. I was extremely pleased with the nominees.

5 Q. Did the Department of the Treasury ever suggest  
6 any names of potential board members?

7 A. Yes.

8 Q. Did the trustees use any of those names?

9 A. No.

10 Q. Did the Federal Reserve Bank of New York ever  
11 suggest any names for potential directors?

12 A. I don't recall specifically. One of the names  
13 that -- that -- I had a view early on, before we  
14 recruited this group, that we should focus early on on  
15 what I termed sort of a "bell cow" director, someone  
16 that was beyond reproach, that would instantly bring  
17 credibility to the board. And so we had a group of  
18 people that we thought fit that category, one of whom  
19 was Paul Volcker. I don't remember whether Paul  
20 Volcker's name came from the Federal Reserve Bank or the  
21 trustees, but one or the other. Other than that, I  
22 don't recall the Federal Reserve Bank -- if they  
23 suggested any, they didn't make the cut.

24 Q. What was your understanding of who had the  
25 ultimate decision of which names of potential directors

Starr International Company, Inc. v. USA

1 would be sent to AIG for inclusion on the proxy?

2 A. Well, ultimately, that's the decision of the  
3 nominating and governance committee of the board.

4 Q. And who -- what was your understanding of who  
5 had the ultimate decision as to who would have names  
6 sent to that nominating and governance committee?

7 A. I mean, as a practical matter, if you sit on a  
8 nominating and governance committee of the board and  
9 your 79.9 percent shareholder says we would like these  
10 six names considered, I think you would give that great  
11 consideration.

12 Q. Would you turn to page 69 of JX 221, which was  
13 page 66 of the proxy.

14 A. Yes.

15 Q. I'll direct your attention to the next-to-last  
16 paragraph. I'll ask you to read that paragraph and just  
17 ask whether you're aware of any other reason for this  
18 proposal, other than what is stated in the proxy.

19 A. No, I'm not.

20 Q. Did you vote in favor of proposal 4?

21 A. Yes. The trust voted in favor of proposal 4.

22 Q. Did you believe that proposal 4 was in the best  
23 interests of AIG?

24 A. Yes.

25 Q. Did you believe that the proposal 4 was in the

1 best interests of AIG's shareholders?

2 A. Yes.

3 Q. What was your basis for that conclusion?

4 A. Well, I mean, the company was in a very tenuous  
5 spot. You know, there were very real concerns about --  
6 about AIG as a going concern. The idea that, with  
7 everything else going on in the company, you would risk  
8 delisting by the New York Stock Exchange or do anything  
9 that would cause anyone not -- who wanted to not to be  
10 able to own a share didn't seem to me to make a lot of  
11 sense. So, eliminating that as a possibility -- or not  
12 eliminating it, but, in theory, significantly reducing  
13 that probability by a stock split seemed to make sense  
14 to me.

15 Q. I'll direct your attention to DX 822. Do you  
16 recognize these as the trustees' quarterly reports for  
17 the second quarter of 2009?

18 A. I do.

19 MR. TODOR: Your Honor, we move the admission of  
20 DX 822.

21 THE COURT: Didn't this come in this morning?

22 MR. TODOR: There might be an earlier version of  
23 it. If there is, I don't recall it having been under  
24 this exhibit number. If it is an identical document,  
25 then we can find out if it is.

1           MR. BOIES: In any event, Your Honor, we're not  
2 going to have an objection to the document. If it is a  
3 duplicate, I think we're better off not duplicating, but  
4 if we -- I'm sure we didn't object the first time  
5 either.

6           MR. TODOR: Actually, our understanding is that  
7 822 itself was admitted this morning.

8           THE COURT: Yes, that's what I have, also. So,  
9 it's already in evidence.

10          MR. TODOR: It's already in evidence.

11          BY MR. TODOR:

12          Q. Mr. Foshee, I will direct your attention to the  
13 page with the Bates stamp marked 9784, and it's titled  
14 "The Summary of Efforts to Effect Sale of Trust Stock or  
15 Other Trust Assets for Quarter Ended June 30, 2009."

16                My question will be on the first sentence in the  
17 paragraph on the top of the second page there, and the  
18 statement is, "The Trustees, in their independent  
19 judgment, have determined that current circumstances do  
20 not recommend the near-term sale or other disposition of  
21 the Trust Stock."

22                Do you see that?

23                A. Yes.

24          Q. Did the trustees evaluate whether the  
25 circumstances recommend the near-term sale of the trust

1 stock on a quarterly basis?

2 A. I don't recall if we did that on a quarterly  
3 basis or not.

4 Q. Do you have any reason to believe that the  
5 statement, as put forth there, is inaccurate with  
6 respect to the trustees' intentions regarding the trust  
7 stock as of June 30th, 2009?

8 A. I do not.

9 Q. I'll turn your attention to the document marked  
10 DX 831. Mr. Foshee, do you recognize this as the  
11 trustees' quarterly report for the third quarter of  
12 2009?

13 A. Yes.

14 MR. TODOR: Your Honor, we move the admission of  
15 DX 831.

16 MR. BOIES: No objection, Your Honor.

17 THE COURT: Defendant's Exhibit 831 is admitted.  
18 (Defendant's Exhibit Number 831 was admitted  
19 into evidence.)

20 BY MR. TODOR:

21 Q. And I'll turn your attention to the page with  
22 the Bates stamp 9687, titled "Summary of Efforts to  
23 Effect Sale of Trust Stock or other Trust Assets for  
24 Quarter Ended September 30, 2009." Do you see that?

25 A. Yes.

1 Q. Was your -- was the trustees' -- was it the  
2 trustees' judgment as of September 30, 2009, also that  
3 current circumstances do not recommend the near-term  
4 sale or other disposition of the trust stock?

5 A. Yes.

6 Q. Okay.

7 A. That's what the document says.

8 Q. And was it your judgment that at any time during  
9 your service as a trustee that current circumstances did  
10 recommend the near-term sale or other disposition of the  
11 trust stock?

12 A. I don't know about -- I don't know how you would  
13 define "near-term," but I think at the end of my tenure  
14 as a trustee, certainly there was a view that the  
15 company had turned a corner and there were the  
16 beginnings of a process that would lead to a  
17 recapitalization of the company, hopefully, and a  
18 disposition of the stock at the time.

19 Q. At the time -- and turning your attention to  
20 PTX 568, which would be the last document in the binder  
21 we've handed up, what is this letter, sir?

22 A. That is my resignation letter as a trustee.

23 Q. And was -- what was -- what date was your  
24 resignation effective?

25 A. I don't recall the exact date.

1 Q. Okay. What was the date of this letter?

2 A. February 26th.

3 Q. Of what year, sir?

4 A. 2010. Sorry.

5 MR. TODOR: Your Honor, we move the admission of  
6 PTX 568.

7 MR. BOIES: No objection, Your Honor.

8 THE COURT: Plaintiffs' Trial Exhibit 568 is  
9 admitted.

10 BY MR. TODOR:

11 Q. Mr. Foshee, what were your reasons for resigning  
12 as a trustee?

13 A. Several. The -- my role as a trustee, I  
14 think -- and I'm fairly certain this would be shared by  
15 my cotrustees, but certainly in my opinion, it was much  
16 more time-consuming than any of us anticipated when we  
17 started. I had a -- I had a full-time job. I also felt  
18 like it was an opportune time, because I think that  
19 the -- the risk of the failure of the company had waned.  
20 The momentum for AIG at the time was, at least in my  
21 view, favorable, and I would say there was a -- for lack  
22 of a better term, there was a little bit of a lull in  
23 the action, but that was going to be temporary, because  
24 coming down the road was a -- at some point in time  
25 would be a significant capital markets exercise and

1 ultimate disposition of the stock, and for me, I -- that  
2 was a good time for me to leave. And I really didn't  
3 feel like I could honor my commitment to El Paso's  
4 shareholders and knowingly go into that.

5 And then secondarily, I have to say, I was -- I  
6 was very concerned by -- by the -- what I felt like was  
7 the limiting effect of the so-called paymaster's  
8 restrictions on compensation, that I felt like, if left  
9 unmediated, would limit the ability of the company to  
10 retain talent, to attract new talent, and, therefore,  
11 would have a detrimental long-term impact on the share  
12 price.

13 Q. Do you have an understanding as to whether in  
14 your judgment the trust acted to maximize the value of  
15 the stock it held?

16 A. While I was a trustee?

17 Q. Yes.

18 A. Yes. I believe we did.

19 MR. TODOR: Your Honor, may we have a moment?

20 THE COURT: Sure.

21 (Counsel conferring.)

22 BY MR. TODOR:

23 Q. The trust -- and you can refer to your previous  
24 documents. The trust agreement was signed on January  
25 16th, 2009. Do you recall that? You can refer back to



1 documents.

2 A. It was January.

3 Q. It was signed in January, and then the stock  
4 purchase agreement was signed in March. Do you recall  
5 that?

6 A. Yes.

7 Q. Do you have an understanding as to why it took  
8 from January until March for the stock to be issued?

9 A. Well, I'm sure I don't understand all the -- all  
10 the legal machinations, but I do know there were  
11 significant regulatory issues to be overcome. The  
12 company operated in 150 international jurisdictions, and  
13 I think most of those had in some form or another to go  
14 through an approval process. Again, I'm not aware of  
15 these things.

16 Q. And what, as trustees, were you doing between  
17 the signing of the agreement and when the stock was  
18 issued with respect to trust activities?

19 A. I'd say generally we were just trying to do some  
20 of the ministerial things, you know, make sure we had  
21 office space to be in when we met and a telephone line  
22 and someone to handle press inquiries and the beginnings  
23 of diligence on the company and those kinds of things.

24 Q. And would those meetings, to the extent they  
25 occurred, be reflected in your meeting minutes?

1           A.    Yes.

2           MR. TODOR:   Your Honor, we pass the witness.

3           THE COURT:   All right.  Thank you, Mr. Todor.

4           Do you have any redirect?

5           MR. BOIES:    I do, Your Honor.

6           THE COURT:   Do you want to take it straight  
7 through tomorrow morning?

8           MR. BOIES:    I could do that, yes.

9           THE COURT:   We are going to adjourn until 9:30  
10 tomorrow morning.

11                   (Whereupon, at 4:53 p.m., the proceedings were  
12 adjourned.)

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ADMITTED EXHIBITS

PX	PAGE	DESCRIPTION
298	3455	Email (10/15/2008 8:59 am) From: Timothy Geithner To: Thomas Baxter re: Fw: AIG Trustees
2108	3369	AIG Press Release (6/30/2009) - AIG Announces Voting Results of Annual Meeting of Shareholders
DX	PAGE	DESCRIPTION
602	3397	EMAIL FROM HELEN AYALA TO C FELDBERG AND CHARLES GRAY PROVIDING INFORMATION ON TIME RE: CONFERENCE CALL: AIG CREDIT FACILITY TRUST, OCTOBER 14, 2008
624	3402	EMAIL FROM DAVID GROSS TO C. FELDBERG, WILLIAM THOMPSON RE: THURSDAY'S MEETING, WITH ATTACHED AGENDA FOR MEETING WITH AIG TRUSTEES, AIG TRUST SCENARIOS, VERSION 6 TRUST AGREEMENT



1       849       3431       LETTER FROM ALAN AVERY TO SARAH DAHLGREN, CC  
2                   THOMAS C BAXTER, KEVIN F BARNARD, JILL M  
3                   CONSIDINE, CHESTER B FELDBERG, PETER A  
4                   LANGERMAN, RE: REPORTS UNDER THE AIG CREDIT  
5                   FACILITY TRUST AGREEMENT DATED JULY 22, 2010,  
6                   WITH ATTACHMENTS  
7       859       3432       9/28/2010 TRUSTEE MEETING MINUTES - DISCUSSING  
8                   THE REVISED TERMS OF THE PROPOSAL, INCLUDING  
9                   THE CHANGE IN TERMS FROM A CANCELLATION OF  
10                  SERIES C PREFERRED STOCK TO AN EXCHANGE FOR  
11                  COMMON STOCK  
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