

1 THIS IS AN UNCERTIFIED ROUGH DRAFT
2 IN THE MATTER OF
3 STARR INTERNATIONAL VS. USA
4 TRIAL VOL. 26, NOVEMBER 4, 2014.

5
6 THE FINAL TRANSCRIPT MAY VARY
7 WITH REGARD TO PAGE/LINE NUMBERING
8 AS WELL AS SUBSTANTIVE CONTENT.

9
10 THE COURT REPORTER RESERVES THE
11 RIGHT TO MAKE ANY AND ALL CHANGES
12 NECESSARY TO PROVIDE AN ACCURATE
13 FINAL TRANSCRIPT.

14
15 THEREFORE, THIS DRAFT IS FOR
16 INTERNAL LAW FIRM/AGENCY PREPARATION ONLY
17 AND SHOULD NOT BE CITED TO THE COURT,
18 COUNSEL, THE MEDIA, OR OTHER WITNESSES WITHOUT
19 APPROPRIATE DISCLOSURES.

20
21 ACCEPTANCE OF THIS DRAFT TRANSCRIPT
22 CONSTITUTES A FINAL TRANSCRIPT ORDER.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

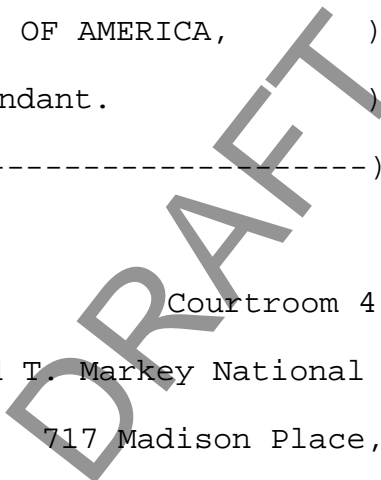
STARR INTERNATIONAL COMPANY,)
INC., *Individually and on*)
Behalf of All Others)
Similarly Situated,)

Plaintiffs,) Case No. 11-779C

vs.)

UNITED STATES OF AMERICA,)
Defendant.)

-----)



Courtroom 4

Howard T. Markey National Courts Building

717 Madison Place, N.W.

Washington, D.C.

Tuesday, November 4, 2014

9:30 a.m.

Trial Volume 26

BEFORE: THE HONORABLE THOMAS C. WHEELER

Josett F. Whalen, RMR-CRR, Reporter

1 APPEARANCES:

2

3 ON BEHALF OF THE PLAINTIFFS:

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 adennis@bsfllp.com

21

22

23

24

25

1 APPEARANCES: (continued)

2

3 ON BEHALF OF THE PLAINTIFFS:

4 **ROBERT J. DWYER, ESQ.**

5 **ALANNA C. RUTHERFORD, ESQ.**

6 Boies, Schiller & Flexner, LLP
7 575 Lexington Avenue, 7th Floor
8 New York, New York 10022
9 (212) 446-2300
10 rdwyer@bsfllp.com
11 arutherford@bsfllp.com

12

13 and

14

15 **JOHN L. GARDINER, ESQ.**

16 Skadden, Arps, Slate, Meagher & Flom LLP
17 4 Times Square
18 New York, New York 10036
19 (212) 735-2442
20 john.gardiner@skadden.com

21

22

23

24

25

1 APPEARANCES: (continued)

2

3 ON BEHALF OF THE DEFENDANT:

4 **KENNETH DINTZER, ESQ.**

5 **BRIAN A. MIZOGUCHI, ESQ.**

6 **CLAUDIA BURKE, ESQ.**

7 **JOSHUA GARDNER, ESQ.**

8 **SCOTT AUSTIN, ESQ.**

9 **JOHN TODOR, ESQ.**

10 **JOHN H. ROBERSON, ESQ.**

11 **MATTHEW SCARLATO, ESQ.**

12 **RENÉE GERBER, ESQ.**

13 **MARIANO TERESA ACEVEDO, ESQ.**

14 **VINCENT D. PHILLIPS, ESQ.**

15 **ZACHARY SULLIVAN, ESQ.**

16 U.S. Department of Justice - Civil Division

17 Post Office Box 480

18 Ben Franklin Station

19 Washington, D.C. 20044

20 (202) 305-3319

21 brian.mizoguchi@usdoj.gov

22

23

24

25

1 P R O C E E D I N G S

2 - - - - -

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

4 THE COURT: We're on the record for day 26 of the
5 trial in Starr International Company versus the
6 United States.

7 Good morning, Mr. Gardner.

8 MR. GARDNER: Good morning, Your Honor.

9 THE COURT: Good morning, Mr. Huebner.

10 THE WITNESS: Good morning, sir.

11 THE COURT: Do you understand you're still under
12 oath in these proceedings?

13 THE WITNESS: I do understand that, Your Honor.

14 THE COURT: Just before we begin, I want to remind
15 you all -- I'm sure you know this -- we're going to take
16 a short break this Friday and also not meeting on Monday
17 or Tuesday, Tuesday being a federal holiday, so we'll
18 have a little break from Friday through next Wednesday.19 MR. BOIES: We have not forgotten that,
20 Your Honor.

21 THE COURT: I noticed everyone was smiling.

22 All right. Why don't we begin.

23 - - - - -

24 Whereupon --

25 MARSHALL HUEBNER

1 a witness, called for examination, having been previously
2 duly sworn, was examined and testified further as
3 follows:

4 **DIRECT EXAMINATION** (continued)

5 BY MR. GARDNER:

6 Q. Good morning, Mr. Huebner.

7 A. Good morning.

8 Q. When we left off, we were discussing the
9 iterations of the term sheet, and that's where I want to
10 pick up.

11 Could you turn to Defendant's Exhibit 422 in your
12 binder. And if you could just make sure you keep your
13 voice up.

14 A. Yes. I apologize. I will try harder.

15 I'm there, sir.

16 Q. Do you recognize what's been marked as Defendant's
17 Exhibit 422?

18 A. Yes. This appears to be a cover e-mail, and there
19 are a few different cover e-mails on it, but this is
20 ultimately the circulation of what I referred to
21 yesterday as the 3:49 term sheet, the one that ultimately
22 went to AIG's advisors.

23 MR. GARDNER: Your Honor, the government moves for
24 the admission of DX 422.

25 MR. BOIES: No objection, Your Honor.

1 THE COURT: Defendant's Exhibit 422 is admitted.
2 (Defendant's Exhibit Number 422 was admitted into
3 evidence.)

4 BY MR. GARDNER:

5 Q. Now, could you describe the process by which the
6 349 PM term sheet draft was created from the 1:44 p.m.
7 draft term sheet that is represented by DX 430.

8 A. In general terms I can. That day was rather a
9 while ago, but as I described yesterday, between the time
10 that Davis Polk circulated the first draft of the term
11 sheet that it had taken over and created at 1:44, there
12 were meetings and conversations with clients, some in my
13 presence, some not in my presence, in which essentially
14 as I described yesterday, a variety of blanks and
15 brackets and changes were ultimately filled in, both
16 things that were either in blank or bracketed in the
17 earlier draft or things that were in the earlier draft,
18 for example, a very important one is that on the 1:44
19 term sheet if my memory is right, the length of the
20 facility was only 18 months, and by the time we got to
21 this document it was 24 months, the decision having been
22 made that a year and a half wasn't going to be long
23 enough and so there were a variety of changes caused,
24 you know, as they would be in a financing deal by
25 consultation with the clients about what terms they

1 wanted in the document.

2 Q. Now, you mentioned that one of the changes between
3 the 1:44 p.m. term sheet, which is DX 430 and the
4 3:49 p.m. AIG term sheet, which is DX 422, was the
5 extension of the maturity date; correct?

6 A. Yes.

7 Q. Were there other changes made between those two
8 versions of the term sheet?

9 A. Yes. There were a variety of changes. I couldn't
10 recall them, you know, with owe I mean, I couldn't list a
11 human black line of them, but there were changes
12 obviously to the equity term, which I've -- obviously not
13 unaware is a focus of this proceeding. There were also
14 changes to other economic terms and covenant terms and
15 the like. There were a variety of changes as one would
16 expect.

17 Q. Now, yesterday you discussed a periodic commitment
18 fee contained in the early draft of the term sheet. Can
19 you describe how that term changed between DX 430 and
20 DX 422?

21 A. Sure. So my recollection from yesterday is that
22 in the 1:44 version the periodic commitment fee was
23 2.5 percent payable in kind every three months prior to
24 shareholder approval of the increase in authorized
25 shares, then dropping down to .5 percent payable every

1 three months once that vote had been obtained, so to say
2 it on an annualized basis, in the earlier draft it was a
3 10 percent annual fee accrued and payable quarterly that
4 dropped down to a 2 percent annual fee by the time we got
5 to this draft, the 10 percent annual fee disappeared
6 entirely upon the shareholder approval being obtained.

7 Q. Now, at the time the decision was made to change
8 the description of the equity from warrants to equity
9 equivalent to 79.9 percent of the common stock in a form
10 to be determined, to your knowledge, had a decision been
11 made to obtain preferred shares?

12 A. No. A decision had definitely not been made to
13 obtain preferred shares. That was under discussion, and
14 again the thought process was as I believe I described
15 yesterday, you know, there just isn't certainty yet so
16 let's put in the more general term that sewer if fact
17 that it's 79.9 percent equivalent to common stock, which
18 means economic rights and voting rights, that needed to
19 be known and was known, but the exact form that it would
20 take had not yet been decided upon by the clients.

21 Q. Now, yesterday you discussed a meeting that you
22 participated in with Mr. Baxter and the Wachtell
23 attorneys to determine what terms were going to be
24 conveyed to AIG. Do you recall that?

25 A. I do. And you know, if it's appropriate, could I

1 very slightly supplement my answer to a question from
2 yesterday? Your Honor, one of the things you asked me
3 yesterday is who was Wachtell representing. I'm still
4 not sure, but I didn't want to leave any doubt in the
5 record. They were definitely not representing AIG. They
6 were there on behalf of on some level either Treasury or
7 the Fed. My understanding was that they had done prior
8 work in prior financial crises and were just sort of
9 trusted advisors to someone. My testimony was absolutely
10 correct yesterday. I still don't know whether they were
11 formally retained by either the Treasury or the Fed or
12 sent to bill or anything but I didn't want to leave the
13 impression that they might have been there as party to
14 some third or fourth entity including AIG. They were
15 most certainly there on behalf of either the Fed or the
16 Treasury in some capacity.

17 THE COURT: Did you consult with them at all with
18 regard to this AIG issue?

19 THE WITNESS: So there were -- the Wachtell
20 involvement, to my recollection, Your Honor, essentially
21 spanned Tuesday to Friday. They appeared at this meeting
22 in the early afternoon on the 16th and they had a view
23 that preferred shares were, you know, a route they
24 thought should be incorporated. We ended up reaching a
25 consensus as I discussed yesterday. Then for the next

1 couple of days I didn't see them again. They sent
2 e-mails in and we had some exchanges about primarily the
3 equity terms. I believe that Friday afternoon the 19th
4 possibly Saturday the 20th although that would not have
5 been with me I believe was the last time they had any
6 involvement. I think their involvement ended then.
7 There were further exchanges on Friday afternoon about
8 the terms of the equity and their views about how those
9 terms should be structured.

10 THE COURT: Thank you.

11 BY MR. GARDNER:

12 Q. And I'm going to hopefully set this into more of a
13 chronology as we go forward about Wachtell's involvement.

14 When were the terms of the deal conveyed to AIG,
15 to your knowledge?

16 A. In the approximately 4:00 time range on
17 September 16.

18 Q. And did you participate in a meeting with
19 individuals from AIG in which and where those terms were
20 conveyed?

21 A. So I don't -- I don't specifically remember that
22 AIG had its own employees there. My memory is that there
23 were bankers from Blackstone, which was AIG's financial
24 advisor, and my memory -- again, you know, I could be
25 proven wrong, but my memory is Michael Wiseman from

1 Sullivan & Cromwell was at the Fed that day and we had a
2 discussion that afternoon about the AIG term sheet before
3 he left for a board meeting. There was some temporal
4 urgency because there was a board meeting starting and
5 essentially the document had to be given over so
6 Mr. Wiseman could physically leave with it and go to AIG
7 for the board meeting.

8 Q. And to your knowledge, was a copy of the term
9 sheet provided to attorneys for Sullivan & Cromwell at
10 that meeting that you participated in?

11 A. So copies were definitely given to
12 Sullivan & Cromwell and more than one copy was given to
13 Mr. Wiseman before he left the building. The only thing
14 I can't recall with precision was did we sit down with
15 the document in front of us and hand it out or did we
16 have a discussion about it and then handed the
17 document -- I could not testify today that I remember the
18 exact order, but for sure the document was e-mailed to
19 Sullivan & Cromwell attorneys in the 4:00 range and it
20 was handed to Mr. Wiseman in fact several more than one
21 copy of it before he left for the AIG building and board
22 meeting.

23 Q. And just for purposes of the record because we now
24 talked about various term sheets, which version of the
25 term sheet to your knowledge was provided to Mr. Wiseman

1 of Sullivan & Cromwell?

2 A. Yeah. To my knowledge and recollection, the only
3 term sheet that any AIG representative had seen would be
4 the one that you are referring to as DX 422 and the one
5 that I called the 3:49 term sheet.

6 Q. Can you take a look at JX 76 in your binder.

7 And let me know when you're there.

8 A. Yes.

9 Q. I should also say for your convenience we also
10 have the exhibits on your screen, one to your left and a
11 bigger version to your right if it's easier. Do you
12 recognize what's been marked as JX 76?

13 A. I do recognize it.

14 Q. What is it?

15 A. This is an e-mail I'm looking I guess beginning
16 with the third e-mail on page 1 of 2 where later that
17 evening at 6:27 a Sullivan & Cromwell attorney who I
18 assume was back at the office, Erik Lindauer, e-mailed
19 saying is the term sheet coming later from Davis Polk or
20 is it something originating else where we're just trying
21 to be sure everyone is on the same page particularly
22 since people seem to be spread out across multiple
23 locations, which they most assuredly were. Then I
24 respond a few minutes later with five question marks
25 adding in Mr. Wiseman I always he was on the first e-mail

1 when I send e-mails with question that means I'm
2 flummoxed I don't understand how you can be understanding
3 this question this doesn't make any sense to me and then
4 the text that follows it was sent hours ago and handed to
5 S&C, which is a reference to Sullivan & Cromwell
6 (Michael Wiseman) here at the Fed before he left for the
7 board meeting question mark question mark Brad or Brian
8 and that's a reference to two Davis Polk colleagues,
9 Brad Smith who I discussed yesterday and Brian Resnick,
10 can you please resend and then Mr. Lindauer with a nod to
11 the situation that people were sent out all over the
12 place and he may have and that would be fine I'm not with
13 him and just want to be sure no one is looking for it and
14 then it was resent yet again and when we say "it," it was
15 the 3:49 version that I believe was then recirculated by
16 Mr. Resnick yet again to a larger group at
17 Sullivan & Cromwell.

18 Q. So to your knowledge, was Michael Wiseman provided
19 with the term sheet hours before 6:45 p.m. on
20 September 16?

21 A. Yes. And this is obviously an e-mail from me,
22 you know, that day that says it was sent hours ago and
23 handled to S&C Michael Wiseman here at the Fed before he
24 left for a board meeting and so it's sort of right there.

25 Q. Could you turn to DX 392, please.

1 Do you recognize this exhibit?

2 A. Yes.

3 Q. What is it?

4 A. This is an e-mail looking at the bottom e-mail on
5 the page first that is only a literally a couple of
6 minutes later / (where Brad Smith, the aforementioned
7 Davis Polk partner who was actually doing the document
8 back at the firm, is yet again recirculating the term
9 sheet. Actually this is what I mentioned yesterday.
10 Someone had caught that we said lenders in the document
11 when in fact given that it was the Federal Reserve Bank
12 of New York there was only a single lender and so the
13 plural needed to be changed to singular, so Brad is
14 confirming for the benefit of the Sullivan & Cromwell
15 lawyer that the only change from the 3:49 version
16 previously delivered to Sullivan & Cromwell is the
17 correction in lender of the parenthetical reference from
18 purchaser to lender and then like many of us he actually
19 forgot to attach the attachment and then you see an
20 e-mail from him three minutes later saying with enclosure
21 at this time when he realized his error and sent the
22 second e-mail that actually had the promised very, very
23 blacklined attached.

24 MR. GARDNER: Your Honor, the government moves for
25 the admission of DX 392.

1 MR. BOIES: No objection, Your Honor.

2 THE COURT: Defendant's Exhibit 392 is admitted.

3 **(Defendant's Exhibit Number 392 was admitted into**
4 **evidence.)**

5 BY MR. GARDNER:

6 Q. Now, let's turn to DX 437. And let me know when
7 you're there.

8 A. I am there.

9 Q. Do you recognize this exhibit?

10 A. Yes. There were very minor ministerial requests
11 from Sullivan & Cromwell. One I think was a very minor
12 pro AIG change to the definition of material subsidiary
13 that were made to the term sheet and this was the final
14 final and a broad distribution of what was believed to be
15 not only the term sheet but the security agreement I
16 mentioned yesterday that in order to do the same day
17 \$14 billion loan there had to be a grant of collateral
18 and the perfection of collateral before the Fed could
19 fund and a cover note that reflected the parties'
20 agreement to the terms. And then there are various
21 attachments to the e-mail which if you'd like I could
22 flip through.

23 Q. Let me, before you do that -- Your Honor, the
24 government moves for the admission of DX 437.

25 MR. BOIES: No objection, Your Honor.

1 THE COURT: Defendant's Exhibit 437 is admitted.

2 (Defendant's Exhibit Number 437 was admitted into
3 evidence.)

4 BY MR. GARDNER:

5 Q. Now, the e-mail itself states: Attached is what
6 we believe to be the final version of the term sheet,
7 security agreement and cover note. The term sheet, which
8 reflects minor comments from S&C is blacklined against
9 the previous distribution."

10 So at this juncture, Mr. Huebner, did
11 Sullivan & Cromwell provide additional comments on the
12 term sheet?

13 A. Yeah. So I see two changes in here. One is on
14 the page with the -- I don't know this a Bates stamp or a
15 trailer? I don't know what it's called. The 0026
16 reference you'll see the change from lenders to lender.
17 I think sac had actually caught that comment earlier but
18 there just wasn't a broad distribution of the term sheet
19 yet relevanting that ministerial emendation then if you
20 look on the page number 0025, I don't have a recollection
21 of this, but clearly S&C clearly must have asked that the
22 definition of material subsidiary that that asset
23 threshold be raised which is a small pro borrower change
24 which material subsidiaries have more restrictions than
25 immaterial subsidiaries and they asked that the threshold

1 I'm guessing be raised from 10 million to 50 million
2 which somebody accede to. I don't recall the
3 conversation about that but those are the only changes
4 since the cover e-mails these were made at the request of
5 Sullivan & Cromwell.

6 Q. Now, if you go back to that cover e-mail, it
7 further requests please e-mail or fax the executed
8 signature pages to my attention. Do you see that?

9 A. I do.

10 Q. What does that refer to?

11 A. So it was important -- it was important that it
12 not just be a term sheet that was offered to AIG. AIG
13 and I guess the Fed also were looking to announce that an
14 agreement had been reached that evening, and I think that
15 both sides were hard at work at communications terse that
16 reflected that and so in order to have the term sheet
17 essentially be accepted by AIG as a binding document,
18 Davis Polk prepared the document that is bears the stamp
19 number 0030 of which was designed to be a signature page
20 essentially to the term sheet that says the undersigned
21 hereby confirm their agreement to the annexed summary of
22 terms for the senior bridge facility and then there are
23 two signature blocks.

24 Q. Now, did AIG in fact fax a signature page back?

25 A. They D they actually did not fax this one back.

1 If my memory of the timestamps from my preparation are
2 correct, they actually beat us to the punch and actually
3 sent back a signed document acknowledging their
4 acceptance of the terms of the facility even, you know,
5 at this almost exactly the same time or even a few
6 minutes before we actually sent this out because,
7 you know, it was important that it be accepted and
8 binding.

9 Q. Now, let's take a look at DX 956, which is already
10 in evidence.

11 A. Yes, sir.

12 Q. Do you recognize this exhibit?

13 A. I do.

14 Q. And what is it?

15 A. So this is essentially the final term sheet. It
16 already has the \$50 million threshold in it and the
17 material subsidiary definition, so this is the final
18 final term sheet. And then at page -- I guess 15489 in
19 the bottom right is the signature page of Mr. Willumstad,
20 the then CEO of AIG indicating their I could read it but
21 it says what it says.

22 Q. You don't need to read it.

23 To your understanding, Mr. Huebner, what was the
24 significance of Mr. Willumstad's signature on this fax
25 cover page?

1 MR. BOIES: Objection, Your Honor. It's calling
2 for a legal conclusion and opinion.

3 THE COURT: I'll sustain the objection.

4 MR. GARDNER: Fair enough.

5 BY MR. GARDNER:

6 Q. To your knowledge, Mr. Huebner, did you or any
7 other representative of the New York Fed or Treasury
8 attend the September 16 meeting of the AIG board?

9 A. No.

10 Q. Did there come a point on September 16 when you
11 participated in a phone call with Mr. Willumstad and
12 Rodgin Cohen of Sullivan & Cromwell?

13 A. Yes. I remember Mr. Cohen being on the call and I
14 don't actually have a specific -- because he did most of
15 the talking to my recollection. I don't remember who
16 else was on the call, but it -- I have no reason to
17 believe that Mr. Willumstad and perhaps another person or
18 two were not also on the call.

19 Q. When did this call occur?

20 A. Somewhere probably between 6:30 and 8:00 on the
21 16th. I could not pinpoint the time more precisely. It
22 occurred in the middle of the AIG board meeting, that I
23 believe started at approximately 5:00 range and obviously
24 occurred before this 8:44 fax with the signature page
25 agreeing and accepting the term sheet, so it, you know,

1 was somewhere in that window.

2 Q. To your recollection, who participated in that
3 call?

4 A. Well, from the AIG side, as I said, I remember
5 Mr. Cohen and I have no reason to doubt that
6 Mr. Willumstad was on it and possibly others. It was not
7 a big call. It was a relatively small call. On the
8 Federal Reserve Bank of New York side, the call was
9 actually taken in then President Geithner's office with
10 Tom Baxter and myself. It's very possible Mr. Geithner
11 president I'm not sure what to call him.

12 Q. President is fine?

13 A. President Geithner it just seems funny in
14 Washington to call someone else the president.

15 Q. We won't tell?

16 A. Then President Geithner's chief of staff was
17 invariably in his office, you know, a little bit more,
18 you know, sort of off to the side, but I don't have a
19 specific recollection. I know -- my memory is that the
20 three of us were sort of near the speakerphone and there
21 may have been others in the office as well.

22 Q. And what was your understanding of the purpose of
23 the call?

24 A. The call essentially was more or less the
25 following. I'll just sort of role play. It's easier.

1 They called from the AIG boardroom or they stepped out of
2 the AIG room to say, you know, in general the AIG board
3 is fine with the term sheet is willing to accept the term
4 sheet but people are definitely hesitating about the
5 equity provision and we'd like to know whether there's
6 flexibility about the equity, you know, possibly as to
7 amount, possibly as to some sort of, you know, repurchase
8 agreement. In other words, can we do anything to soften
9 the terms of the equity provision other than that, we're
10 not going to retrade or renegotiate but that is given
11 people pause in the boardroom.

12 Q. And to your understanding, was AIG requesting that
13 the equity provision be eliminated or that the amount of
14 the equity sought be reduced?

15 A. They were asking for changes to it. They weren't
16 specific. It was along the lines of can you work with us
17 on this, can we do something to soften the provision. It
18 was not, you know, equity is not going to work. It was
19 can you work with us on the equity. This is striking
20 some people as very hard to swallow.

21 Q. And what was President Geithner's response to your
22 recollection?

23 A. The response was that this term sheet had been
24 signed off on at very senior levels and was not open to
25 negotiation. AIG was welcome to accept the loan or not

1 accept the loan, but we were not going to -- the Fed was
2 not going to engage in negotiation of its economic terms.

3 Q. Mr. Huebner, did you believe that
4 President Geithner was bluffing when he said that the
5 terms were not negotiable?

6 MR. BOIES: Objection, Your Honor.

7 THE COURT: Sustained.

8 MR. GARDNER: Can I ask what the basis for the
9 objection was, Your Honor? Just so I can try to meet it
10 with a better question.

11 THE COURT: Well, our problem is how would this
12 witness possibly know whether Mr. Geithner was --

13 MR. GARDNER: I think present sense impression as
14 someone we've heard -- I don't want to violate 615, but
15 this is not the first witness who would be testifying on
16 this issue.

17 THE COURT: Sir, do you have any basis to know
18 whether Mr. Geithner was bluffing or not?

19 THE WITNESS: I do, Your Honor.

20 THE COURT: Okay. Well, we'll take it.

21 MR. BOIES: Your Honor, could we have the basis
22 first so that we can.

23 THE COURT: Yes. What is the basis?

24 THE WITNESS: I mean, I was right there,
25 Your Honor, and we were discussing it and the decision

1 was they also put the call on hold and there was a small
2 internal conversation before we took it back off of hold.
3 The client's position was very clear. They're welcome to
4 take this loan or to not take this loan, but we're not
5 going to change it. And when are lender's counsel,
6 Your Honor, you're in this situation all the time where
7 lender present a deal and you have a lot of what-ifs and
8 we have to be flexible and we'll say no what's our fall
9 back there was no discussion like that. This was very
10 straight up, which is this is the deal, let's see whether
11 or not they take it.

12 THE COURT: Well, I still am going to sustain this
13 objection. I just I do not see any basis to know how
14 this witness, how someone other than Mr. Geithner could
15 tell us whether he's bluffing or not.

16 MR. GARDNER: Fair enough.

17 BY MR. GARDNER:

18 Q. Let me ask it this way. Mr. Huebner, were you
19 aware of any alternative proposal that the New York Fed
20 was prepared to offer if AIG had rejected the original
21 offer?

22 A. No. There was no work going on, nor did I hear or
23 apparent in any discussions about an alternative term
24 sheet or an amended term sheet or a change of terms if
25 AIG came back and said we simply can't accept this but

1 here's what we could accept. There was no work at all
2 going on with respect to that which did form the basis of
3 my view that this was the deal.

4 Q. Now, I want to turn back to DX 430, which attaches
5 the 1:44 p.m. internal draft term sheet.

6 And as I believe you testified to yesterday, this
7 version of the term sheet, DX 430, describes the equity
8 in the form of warrants that could be converted to common
9 stock; correct?

10 A. Yes. Warrants representing 79 -- warrants for the
11 purchase of common stock representing 79.9 percent on a
12 fully diluted basis ^ .

13 Q. Mr. Huebner, as of September 16 or I should say on
14 September 16, did you have any knowledge as to whether
15 shareholder approval would be necessary to effectuate the
16 exercise of the warrants into common stock?

17 A. I think that there were general discussions about
18 it and clearly the term sheet says there's a periodic
19 commitment fee that says prior to shareholder approval of
20 the increase in authorized shares and then there's a fee
21 provided for and so it necessarily must have been the
22 case that I was aware that some things require
23 shareholder approval. But the equity provision, while it
24 is of great interest in these proceedings, was not
25 actually the primary focus of the work on September 16.

1 I don't specifically remember when I learned exactly what
2 the shareholder approval issues were. But they were in
3 the term sheet, so it's not like they were unknown to
4 someone.

5 Q. And as the time -- at the time that you
6 participated in the preparation of the 1:44 p.m. internal
7 term sheet draft, did you know what the par value was of
8 AIG's common stock?

9 A. No. That, I'm very confident about.

10 Q. Now, Mr. Huebner, plaintiffs have alleged that if
11 the form of equity had been warrants for 79.9 percent of
12 the AIG common stock, the New York Fed would have had to
13 pay 30 billion to exercise them. To your knowledge, was
14 it contemplated on September 16 that the New York Fed
15 would pay billions of dollars for the 79.9 percent equity
16 interest in addition to providing the \$85 billion credit
17 facility?

18 MR. BOIES: Objection, Your Honor. Foundation and
19 depending on what the foundation is hearsay.

20 THE COURT: All right.

21 MR. GARDNER: I can lay a foundation, Your Honor.

22 THE COURT: Why don't you try to do that.

23 BY MR. GARDNER:

24 Q. Do you have any knowledge, Mr. Huebner, one way or
25 the other as to what was contemplated with respect to

1 paying billions of dollars in addition to making an
2 \$85 billion credit facility available?

3 MR. BOIES: Same objection, Your Honor.

4 MR. GARDNER: I'm asking does he have knowledge.

5 THE WITNESS: I do have actually knowledge.

6 BY MR. GARDNER:

7 Q. And what is that knowledge?

8 MR. BOIES: Excuse me, Your Honor. Foundation
9 until we have the basis for the knowledge. In other
10 words, that fact that he says he has knowledge.

11 THE COURT: Mr. Huebner, tell us first what the
12 basis of your knowledge is.

13 THE WITNESS: Sure.

14 THE COURT: And then we'll go from there.

15 THE WITNESS: So again, I was the lead outside
16 lawyer for Davis Polk as this term sheet was being
17 developed during the day and there were discussions of
18 how to structure it and its economic terms and then there
19 were disclosures both by the Fed and by the AIG. I mean,
20 for worse or for better, I was in the kitchen when this
21 was being cooked and created, and so I have very direct
22 knowledge about what was consideration and what the
23 expected cash flows from the Fed were, including with
24 respect to the equity.

25 MR. BOIES: Your Honor, all of those he could

1 testify to. He could testify to what people said as long
2 as it isn't hearsay. He could testify about cash flows,
3 what I'm objecting to is his characterization that
4 purports to say what everybody's knowledge and
5 contemplation was.

6 MR. GARDNER: To be sure, Your Honor, my question
7 was to his knowledge. I'm just asking about his
8 knowledge. I'm not asking him to represent the universe
9 of individuals who were involved in the preparation of
10 these term sheets, on either side. I'm just asking about
11 his personal knowledge.

12 THE COURT: Can you restate the question for us,
13 please.

14 MR. GARDNER: Sure. Absolutely.

15 BY MR. GARDNER:

16 Q. Mr. Huebner, to your knowledge, was it
17 contemplated on September 16 that the New York Fed would
18 pay billions of dollars for the \$79.9 percent equity
19 interest in addition to providing the 85 billion credit
20 facility?

21 MR. BOIES: Your Honor, if he means belief, I'll
22 withdraw the objection. But knowledge has to have a
23 foundation.

24 MR. GARDNER: And I think we just laid the
25 foundation, Your Honor. He was the primary cooks or one

1 of the primary cooks in the kitchen.

2 THE COURT: Mr. Huebner, could I ask you to step
3 outside just for a moment while I discuss this at length
4 with counsel. Thank you for your patience.

5 (Whereupon, the witness was not present in open
6 court.)

7 THE COURT: Well, my problem with all of this is I
8 don't know what his answer may be obviously, but it seems
9 to be that the question on the table is whether he or
10 anyone else at the Federal Reserve Bank was aware of the
11 par value at the time, and his answer to that might be
12 no, nobody was thinking about the par value, in which
13 case nobody was considering the payment of 30 billion or
14 whatever it is to AIG. But the fact that he might say
15 no, we weren't contemplating that, that has multiple
16 meanings potentially here. So I don't know where you
17 want to go with this.

18 MR. GARDNER: I mean, I don't want to testify for
19 Mr. Huebner obviously. I mean, he will say what he says.
20 But I would intend to follow up whatever his initial
21 answer is. I do think, though, to the extent Mr. Boies
22 has objected on lack of foundation or personal knowledge,
23 Mr. Huebner has demonstrated that he has personal
24 knowledge, so I think that's the objection that I was
25 trying to meet and respectfully I think I've met that

1 objection.

2 I haven't heard a separate objection from
3 Mr. Boies other than that he would change the term
4 knowledge to belief. Candidly, I don't really understand
5 the distinction between those two things. I think
6 they're synonyms, so I'm really to take the formulation
7 of belief over knowledge. I don't think it's material to
8 the question. But beyond that, I'm not sure that I've
9 heard another objection that I would need to meet.

10 MR. BOIES: Your Honor, the reason that I make a
11 distinction between belief is that he's already testified
12 that he did not know what the par value was. He
13 testified to that a few minutes ago. And I think that to
14 move things along, while I agree knowledge and belief is
15 not that distinct, I'd be prepared to let him testify
16 about that just to move it on. But this is obviously a
17 very experienced lawyer. He's a very eloquent lawyer.
18 He's making an argument here. He's laying things out for
19 them and I have no objection to that. They're entitled
20 to do that to some extent. But I do think it's
21 particularly important, given the fact that what we
22 really have here is a, you know, a lawyer witness who is
23 making the client are case for his client that we keep
24 the factual aspects of it as tight as we can. And he
25 can't tell what everybody's belief was. He doesn't have

1 knowledge about that. Nobody was thinking about the par
2 value. They've established that. If he asks him was
3 anybody else thinking about par value to your knowledge,
4 I wouldn't object to that. But it's these long narrative
5 answers that include things that I object to.

6 THE COURT: Well, I'm inclined to hear his
7 testimony on this subject with the thought that I'll be
8 able to evaluate the importance and relevance of it. I
9 do think this is an important issue in the case for sure,
10 and therefore it would be better to hear what he has to
11 say as opposed to cutting him off. I agree with
12 everything you said, Mr. Boies, but I think nevertheless
13 let's hear what he has to say on this subject.

14 MR. GARDNER: Thank you.
15 Could someone call him back.

16 **(Whereupon, the witness was present in open**
17 **court.)**

18 THE WITNESS: May I approach, Your Honor?

19 THE COURT: Yes. Please resume your place.

20 Again, thank you for your patience. While you
21 were out of the room, we reached the decision to allow
22 you to tell us what you know about the pending question,
23 so maybe Mr. Gardner will want to restate it once again.

24 MR. GARDNER: That might be better, Your Honor.
25 Thank you.

1 BY MR. GARDNER:

2 Q. Thank you, Mr. Huebner. Sorry about that.

3 To your knowledge, was it contemplated on
4 September 16 that the New York Fed would pay billions of
5 dollars for the 79.9 percent equity interest in addition
6 to providing the 85 billion credit facility?

7 A. It definitely was not contemplated.

8 Q. Why do you say that?

9 A. Because there were several pieces of consideration
10 for the extension of the \$85 billion credit. There was
11 an interest rate. There were fees. And there was an
12 equity component. And that is how all the -- to my
13 knowledge, that's certainly how I believe I and my
14 client, the New York Fed, understood it. It is certainly
15 how everybody disclosed it. And the term sheet would
16 have looked totally different if there were essentially
17 any strike price let alone a multibillion dollar strike
18 price and the disclosures by both parties would have been
19 totally different. Instead, every disclosure said and
20 until frankly this lawsuit I never heard anybody even
21 claim really that more money was supposed to be paid --
22 the disclosures said in exchange for a loan of
23 \$85 billion the Fed is getting can X Y and Z including
24 79.9 percent interest. Those disclosures would have all
25 been materially misleading and this term sheet certainly

1 did not describe a deal whether anything other than the
2 loan consideration -- anything other than the extension
3 of credit itself was the consideration for, among other
4 things, the equity interest.

5 Q. You said that in your last answer that the term
6 sheet would have looked totally different if there were a
7 multibillion dollar strike price. What did you mean by
8 that?

9 A. Well, sometimes part of a negotiated deal includes
10 a grant of equity. Sometimes it includes a right to
11 purchase equity for a specified sum. If there is a right
12 to purchase equity for a specified sum, that usually
13 results in a whole separate term sheet that lays out the
14 terms. You could have, you know, I'm not an expert in
15 the structuring of securities, but generally warrants
16 would have a specific term and they would have a strike
17 price. They might have an escalating strike price over
18 time. They might vest in different ways. They might
19 vest in tranches. Again, it would just have been a very
20 different deal if the Fed was being offered the right to
21 buy common stock of AIG rather than being granted a
22 79.9 percent equity interest for the Fed or its designee
23 and that is definitely not the deal that is described in
24 this term sheet. This term sheet provided for the loans
25 consideration back from AIG including a grant of

1 79.9 percent as part of the consideration for the loan
2 itself.

3 Q. You also said in your previous answer that the
4 disclosures would have looked totally different if there
5 were a multibillion dollar strike price. What did you
6 mean by that?

7 A. Well, again, if you assume that a component of a
8 transaction, a loan, let's just take this one for a
9 lender gets an equity kicker that is the right to
10 purchase stock, the terms of that purchase, including the
11 potential income and consideration to the borrower as
12 part of the purchase would all be very material terms to
13 the transaction and they would be disclosed, so if it
14 was, you know, the Fed has agreed to pay \$11 a share to
15 buy up to X shares of AIG, a warrant that is exercised
16 both for the next three years that could result in
17 maximum proceeds of, you know, 2.6 million dollars to
18 AIG, that's kind of what the disclosure would have looked
19 like and there would have been a whole bunch of term
20 sheet provisions that actually described the terms under
21 which such a quote purchase of equity could have been
22 effectuated. This was not a purchase of equity. This
23 was a grant of equity as part of the consideration for a
24 rather breathtaking extension of credit.

25 Q. Now, could you turn back to Defendant's

1 Exhibit 956, which is in your binder, we looked at
2 earlier.

3 A. Yes, sir.

4 Q. Are you there?

5 A. I am.

6 Q. Excellent.

7 And do you see the description on the second page
8 of a periodic commitment fee?

9 A. Yes.

10 Q. Can you explain to the Court how the periodic
11 commitment fee in DX 956 was structured?

12 A. Yes. So this is the final term sheet, so by this
13 point the loan amount had been set at \$85 billion. The
14 periodic commitment fee was a 2.5 percent fee payable in
15 kind. Payable in kind just means it does not have to be
16 currently paid in cash. It adds -- it gets added to the
17 loan balance and then that amount backs like it's a new
18 extension of credit and it accrues interest. I'll leave
19 aside sort of interest accruing on the fee and just talk
20 about it in a more simplified form. This was essentially
21 an \$8.5 billion annual fee that accrued in three-month
22 increments that stopped entirely once shareholder
23 approval of the increase in authorized shares had been
24 obtained.

25 Q. To your knowledge, why was a periodic commitment

1 fee provided for in the term sheet that was provided to
2 AIG?

3 A. So I actually don't have a specific recollection
4 of discussing this, but it is rather obvious as to
5 import, which is it is a.

6 MR. BOIES: Objection, Your Honor, if he doesn't
7 have a recollection of discussing it. I think it is just
8 his speculation.

9 THE COURT: That answer would tend to indicate
10 lack of knowledge to me but.

11 BY MR. GARDNER:

12 Q. And if I could follow up with one question and if
13 he doesn't have knowledge we'll take it as it is?

14 THE COURT: Okay.

15 BY MR. GARDNER:

16 Q. Do you have any knowledge as to why there was the
17 inclusion of a periodic commitment fee in the term sheet
18 that was provided to AIG?

19 A. Yeah. And I'm sorry for being imprecise. On the
20 16th, I did not have knowledge, but later the
21 transmission or lack of transmission of this provision
22 into the credit agreement I was involved in. Just think
23 I what you asked me the first time you said on the 16th
24 do you know why this was in. I don't have a recollection
25 of it on the 16th, but a few days later, I was involved

1 in discussions about it, and so if you could fast-forward
2 me, I think I might be able to fairly testify, but if
3 it's about the 16th, then my answer is unchanged.

4 Q. And I want to take it out of the 16th.

5 MR. BOIES: Your Honor, the question and answer
6 did not relate to the 16th. The question was:

7 "QUESTION: To your knowledge, why was a periodic
8 commitment fee provided for in the term sheet that was
9 provided to AIG?

10 "ANSWER: So I actually don't have a specific
11 recollection of discussing this."

12 THE WITNESS: Because it was the 16th.

13 MR. BOIES: It's rather obvious.

14 THE COURT: Based on his answer, I think he does
15 have knowledge as of the date of the credit agreement, so
16 I'll take his answer in that respect.

17 BY MR. GARDNER:

18 Q. Let me re-ask the question just so we have a clean
19 question and answer.

20 To your knowledge, Mr. Huebner, why was a periodic
21 commitment fee provided for in the term sheet that was
22 provided to AIG?

23 A. To incentivize the --

24 MR. BOIES: Your Honor, this is the thing that he
25 just said he didn't have knowledge. This is not the

1 credit agreement. This is the term sheet provided to AIG
2 and this is exactly what he testified a few minutes ago
3 he did not have knowledge about.

4 THE COURT: I think you have to go to the credit
5 agreement if you want this information.

6 MR. GARDNER: Your Honor, respectfully, what I
7 understood Mr. Huebner to be saying is that in
8 anticipation of finalizing the credit agreement he
9 understood or gained an understanding as to why it was
10 that the term sheet on the 16th included the periodic
11 commitment fee. Now, if there's confusion, my suggestion
12 rather than me testifying as to what Mr. Huebner said,
13 why don't I re-ask the question to make sure we have a
14 sufficient foundational basis and if we don't, you know,
15 obviously I'm willing to move on. I don't want him to
16 speculate.

17 THE COURT: All right. Go ahead.

18 BY MR. GARDNER:

19 Q. Mr. Huebner, between September 16 and
20 September 22, did you obtain an understanding as to why a
21 periodic commitment fee was included in the term sheet
22 that was provided to AIG on September 16?

23 A. Yes.

24 Q. And how did you develop that understanding?

25 A. Because this provision ultimately did not make it

1 into the credit agreement and I wondered what happened to
2 it, and so it was explained to me and I then gained an
3 understanding both of why it was no longer a part of the
4 deal and why it was on in the deal on the 16th.

5 Q. And what is your understanding as to why the
6 periodic commitment fee was included in the term sheet
7 that was provided to AIG on September 16?

8 MR. BOIES: Objection. Hearsay.

9 THE COURT: Mr. Gardner.

10 MR. BOIES:

11 BY MR. GARDNER:

12 Q. Who explained to you, Mr. Huebner, why the
13 periodic commitment fee was initially included in the
14 term sheet on September 16?

15 A. I mean.

16 Q. To the best of your knowledge?

17 A. I mean, I know who it is. I'm just trying to
18 think of a better way -- Your Honor, can I just explain
19 for a minute or may I not?

20 THE COURT: Yes, go ahead.

21 THE WITNESS: It became very obvious to me in
22 retrospect why it was in the document on the 16th. I
23 just didn't -- I don't remember recollecting it on the
24 16th. It's not that it had to be explained to me. The
25 provision is rather clear on its face. My question when

1 we were moving to the credit agreement was what happened
2 to this and why isn't it there anymore, and the answer
3 was because now that we've moved to preferred stock
4 structure.

5 MR. BOIES: Your Honor, is this the -- this is --
6 what he just said was, my question when we're moving why
7 isn't it there and the answer was who gave the answer.

8 THE WITNESS: Oh, Brad Smith, my partner.

9 MR. BOIES: Hearsay, Your Honor.

10 THE COURT: Overruled. I'll take his answer.
11 Continue with your answer.

12 THE WITNESS: Your Honor, the answer was, when it
13 was going to be warrants, in order for the warrants to
14 convert into common stock, as I now understand perfectly
15 well at the time one would have needed a shareholder
16 vote. Preferred stock on the other hand had all the
17 attributes of the 79.9 percent equity ownership, both
18 voting and economic, and so there was no longer the same
19 type of need to have a shareholder vote for the
20 Federal Reserve Bank of New York to actually get what it
21 had bargained for in the term sheet, which was a
22 79.9 percent equity interest and so the thought was it
23 just wasn't -- it wasn't needed anymore. It still might
24 have been nice to have the ability to convert it, but in
25 terms of the economics and the voting rights, because

1 AIG's charter authorized blank check preferred with any
2 terms that either the board or a subcommittee could
3 simply grant without any shareholder approval, there was
4 no need to have a potentially quite large ticking fee to
5 incentivize the shareholders because the preferred stock
6 was fully authorized by the certificate -- by AIG's
7 certificate of incorporation.

8 BY MR. GARDNER:

9 Q. Now, Mr. Huebner, I want to advance past
10 September 16 now, so September 17 moving forward.

11 After the 85 billion New York Fed facility closed,
12 to your knowledge, did any party at any time present a
13 proposal to refinance or replace that 85 billion facility
14 and address AIG's liquidity needs?

15 A. No. There were several preliminary meetings with
16 parties who indicated their dissatisfaction with
17 components of the transaction. Those parties were
18 offered the opportunity in very clear terms to please
19 come up with an alternative and present it that met AIG's
20 liquidity needs and it would be considered by the Fed,
21 and to my knowledge, there was never a follow-up meeting
22 where any party presented any credible refinancing or
23 financing proposal that could have in fact taken out the
24 Fed loan.

25 Q. Did you participate in those meetings?

1 A. I did.

2 Q. And who were those meetings with?

3 A. There was one meeting in particular with
4 Mickey Kantor, who was then a lawyer in private practice,
5 and I believe Eli Broad, who was a very large AIG
6 shareholder. I think he owned one of the large insurance
7 companies that was rolled up into AIG. I think the sun
8 America companies. /(there were also phone calls
9 between Mr. Baxter and Mr. Greenberg and his
10 representatives that were described to me by Mr. Baxter
11 in terms of figuring out sort of how to respond.

12 Q. And to your knowledge, did either Mr. Cantor or
13 the representative for Hank Greenberg ever come up with
14 an offer to relieve AIG of the New York Fed's credit
15 facility?

16 A. No. I don't believe any party ever presented any
17 financing alternative. I'm guessing everybody in the
18 courtroom knows, AIG's liquidity needs continued to grow
19 by tens and tens of billions of dollars after the Fed
20 facility was put in place on September 16, and so at that
21 point it was no longer just an issue of 85 billion, it
22 was an issue of 100, then 130 and then 150 and then 180.
23 Ultimately I believe the final number was either 182 or
24 184 billion dollars that was financed.

25 Q. Now, did you ever learn of a proposal for a

1 guarantee of AIG's assets?

2 A. At one point I did hear and I believe it was
3 Mr. Greenberg, although I could be called out on that and
4 could be wrong, that had suggested that in lieu of
5 providing financing, the federal government should simply
6 announce that it was guaranteeing that the full faith and
7 credit of the government or maybe the Federal Reserve all
8 of AIG's obligations and if that happened, then there
9 wouldn't be a need for a financing.

10 Q. What was the reaction to that proposal?

11 A. That proposal was utterly infeasible for many
12 reasons. First of all, there was no legal authority for
13 the United States of America --

14 MR. BOIES: Objection, Your Honor. He continues
15 to give legal advice and I think there have already been
16 subject matter waivers, but I just note and I'm not going
17 to object to him giving legal advice because the Court
18 can take it for what its worth, but I do emphasize that
19 we are going to come back and we can are going to assert
20 subject matter waivers.

21 THE WITNESS: To be clear, Your Honor, I did not
22 give legal advice on whether or not the United States of
23 America could guarantee all of AIG's obligations that was
24 discussed in my presence by people who understood and
25 practiced in that. I'm just a private law firm partner

1 that's into the my area of focus.

2 MR. GARDNER: Let me see if I.

3 MR. BOIES: Later outside the presence of this
4 witness but if the discussions are with his client and
5 other lawyers and he's now repeating those, with
6 authorization and with notice, that is a complete
7 subject-matter waiver. And we -- I'm not going to object
8 to his doing it. I just want to be absolutely clear as I
9 have been several times before and as I was before
10 Mr. Huebner testified, we're going to rely on that.

11 MR. GARDNER: And Your Honor, I would disagree
12 there's been a subject-matter waiver on the issue of,
13 you know, the legal feasibility of the guarantee, but to
14 be sure, I'm not really interested in what the legal
15 ability is to give a guarantee here. I want to know why
16 it was determined to be infeasible beyond any legal
17 impediments, so I want to phrase my question that way and
18 that's the answer I'm.

19 THE COURT: And I'm not going to give you any
20 ruling right now because I don't think it's necessary,
21 but I think you are on notice about the possible
22 ramifications.

23 THE WITNESS: Your Honor, let me stay away from
24 the legal aspects of it and talk about the nonlegal
25 reasons if that's helpful.

1 It would have been potentially phenomenal for some
2 people like AIG shareholders but for the guarantor it
3 would have been terrible because essentially with an
4 almost two trillion dollar balance sheet, the guarantor,
5 whether it was the government or the Fed, would have been
6 taking on potentially two trillion dollars of liabilities
7 in the event of a melt down with no potential source of
8 repayment and no potential priority in a bankruptcy or
9 other set of proceedings. It would have just been a
10 naked guarantee with, you know, potentially more than a
11 trillion dollars of downside for the taxpayer and no
12 visible upside, so it -- I mean, nobody would do that
13 he'll. We'd all love to have people guarantee all of our
14 obligations, but it just makes no sense.

15 Q. Now, at a fairly high level, Mr. Huebner, could
16 you describe the work that was being done after
17 September 16 with respect to AIG?

18 MR. BOIES: Your Honor, I'm going to object to
19 these questions that just say describe this at a very
20 high level and then we get a speech by the client's
21 lawyer. And I'd ask that we get specific questions and
22 answers.

23 MR. GARDNER: Your Honor, I'm fine doing that. I
24 simply want the witness to be speaking and not me
25 testifying. I think there's a middle ground and let me

1 try again.

2 THE COURT: Let's try to hit it.

3 MR. GARDNER: That's fair enough.

4 BY MR. GARDNER:

5 Q. Can you describe the work, Mr. Huebner, that you
6 were involved in after September 16, 2008 with respect to
7 AIG.

8 A. Yes.

9 So one -- well, that potentially stretches until
10 I -- do you want to take the days after September 16?

11 Q. Let's take the -- let's go from the 17th through,
12 say, the 22nd of September.

13 A. Okay. Thank you T.

14 So one major undertaking was meeting AIG's
15 same-day financing needs for four of the days beginning
16 on September 16. I need to back up for one second
17 because what happened on September 16 was that in the
18 late morning on September 16, it was our understanding
19 that AIG did not need same-day financing and then there
20 was a call a couple of hours later from AIG saying we
21 were wrong, we actually need \$14 billion tonight, because
22 we have to have it before the markets open in Asia. That
23 was obviously a relatively dramatic and memorable moment,
24 and so a big part of the work that went on that week, my
25 memory is that there were four loans that week. I know

1 they totaled 37 billion. I think it was 14, 14 and
2 either 3 and 6 or 6 and 3. I apologize. I don't
3 remember the order of the amount of the last two. And so
4 one of the major streams that was going on that week was
5 meeting AIG's multibillion dollar same day liquidity
6 needs every single day with new credit documentation and
7 new security documentation and new perfection of security
8 to support those loans. That was sort of work stream
9 number one.

10 Work stream number two in general terms was moving
11 at warp speed to create the underlying documents
12 necessary to evidence and secure the loan. You know, my
13 memory is that these same-day loans were done with one
14 page demand notes, so literally the Federal Reserve Bank
15 lent \$14 billion to AIG with a one-page demand note and a
16 two or three or four-page I don't remember the lends of
17 it security document. Obviously those were going to be
18 rolled up into a \$85 billion credit facility, and so
19 another primary task was drafting and a long and detailed
20 credit agreement at very high speed and associated
21 security documents.

22 There were obviously communications issues going
23 on in general with respect to communicating what was
24 going on, and then there was work on finalizing various
25 terms of it, including obviously the form of the equity

1 interest, which ultimately ended up and memorialized in
2 the term sheet that was a or a two-page description of
3 terms that was an exhibit to the credit agreement.

4 Q. Now, did there come a point shortly after
5 September 16, 2008 when AIG issued an 8-K?

6 A. Yes.

7 Q. And do you recall when AIG issued its initial 8-K?

8 A. I do.

9 Q. When was that?

10 A. So AIG had issued a press release the night of
11 September 16 and then on Thursday, September 18 AIG
12 issued an 8-K that purported to describe the transaction
13 with the Federal Reserve Bank of New York.

14 Q. And just to orient everyone, can you turn to JX 96
15 in your binder.

16 Are you there, sir?

17 A. I am.

18 Q. What is JX 96?

19 A. JX 96 appears to be a copy of the 8-K that AIG
20 issued on September 18, 2008.

21 Q. And what was your reaction upon reviewing JX 96?

22 A. Astonished and extremely upset.

23 Q. Why?

24 A. There were two fundamental reasons. One was a
25 process issue, and one was a substance issue. The

1 process issue was that the Federal Reserve Bank of
2 New York was a lender to AIG to the tune of \$85 billion,
3 and without any notice of any kind to the Federal Reserve
4 or any of its representatives, AIG just dropped an 8-K on
5 the world on Edgar on the public filing system that
6 purported to describe the transaction. This was not
7 consistent in any way, shape, or form with my practice
8 and experience that when a major transaction is entered
9 into between a borrower and a lender, there is courtesy
10 and coordination in the release of public documents
11 describing what is essentially a two-party transaction,
12 you know, number one, people want to just line up any
13 necessary communications, you know, hey just want to let
14 you know we're tiling a release at such and such a time
15 and two accuracy, you know, in general especially when
16 things are moving quickly, you know, when you're the
17 borrower and somebody is lending you a lot of money you
18 would send them a draft 8-K and say hey here's what we're
19 supposing to release think of it coming out at Thursday
20 at 5:00, you know, anything we missed any issues,
21 you know, does that timing work for you. The fact that
22 in this context at this particular time in the sort of
23 U.S. financial situation they simply dropped it on the
24 docket without even letting us know that it was being
25 filed and when I mean us I mean the Fed or any of its

1 representatives to my knowledge, I thought was
2 procedurally extremely surprising. What compounded and
3 the reason I guess I used the word upset and I was very
4 upset and even -- even seeing it in front of me now it
5 still actually makes it pretty upset was that it was
6 just -- it was wrong in multiple ways, just factually had
7 falsities in it. The notion that a public company of
8 AIG's size and scope and its then situation at a time of
9 incredible stability in the financial markets would issue
10 an 8-K with no notice to anybody that had several
11 misstatements of fact in it was I mean, you know, I guess
12 corporate lawyers probably don't use the word shocking
13 very often but it really bordered on shocking. It was
14 very upsetting.

15 Q. What were the misstatements that you believe were
16 contained in that original 8-K that AIG filed?

17 A. Well, if you -- if you go down it, you know, the
18 errors -- I mean, first of all, I thought they created an
19 impression that the credit agreement had been signed
20 because they say several times entered into a revolving
21 credit facility revolving credit facility contains, and
22 they were just creating the impression that a credit
23 agreement had been signed, but that's not really where
24 the real problems were. They begin in the third full
25 paragraph on the page 2 of 5 that says in connection --

1 if you look at the third paragraph on page 2 of 5, it
2 says in connection with the revolving credit facility,
3 AIG issued a warrant to the Board of Governors of the
4 Federal Reserve, so let me just stop on that for a
5 minute. They made a factual statement that they had
6 issued a warrant which was untrue and was never going to
7 be true even if it were warrants, it was not going to be
8 a warrant and it certainly wasn't in the past tens. To
9 is Board of Governors of the reserve, I to this day have
10 no idea where anyone got that from. The
11 Board of Governors of the Federal Reserve is not a
12 lending entity. It was not on the term sheet. It was
13 not on the documents. Again, I just -- I don't know
14 where that came from and certainly I don't believe any
15 security ever was or was contemplated to be issued to the
16 Board of Governors which I don't think is a lending
17 borrowing entity that permits the Federal Reserve which
18 again refers to the Board of Governors which is wrong.
19 Subject to shareholder approval, now, this was Thursday
20 morning, and the Fed had not yet decided on the form of
21 equity definitively. There were conversations going on
22 as I described before starting on the 16th for the next
23 several days, but it was by no means certain and in fact
24 I think by that time people were gravitating strongly
25 tore structure that would not have shareholder approval

1 the form that was ultimately taken so I thought that was
2 false and misleading with respect to owners of publicly
3 traded securities to obtain up to 79.9 of the outstanding
4 common stock.

5 So you know, it just -- it was just filled with
6 errors.

7 Q. So, Mr. Huebner, after receiving JX 96, which is
8 the September 18, 2008 8-K and reviewing it, what did you
9 do next?

10 A. I forwarded it to a group of clients with an
11 e-mail indicating that they had a right to be very angry
12 at the -- you know, I was not going to be the bearer of
13 very good news that by the way AIG had just issued an 8-K
14 without telling us that misdescribes the deal and I
15 believe I went through some of the misstatements, many of
16 the misstatements, maybe all of them, in the
17 American International Group in my e-mail so that I could
18 provide a summary of what was wrong with it and the fact
19 that we needed to -- the Fed needed to figure out how to
20 work with AIG to get this corrected.

21 Q. Why don't we take a look at PTX 154, which is
22 already in evidence.

23 A. I assume you want me to go to page 2?

24 Q. First let me ask you a question. Do you recognize
25 this exhibit?

1 A. I do.

2 Q. And at a general level, can you describe what this
3 exhibit is?

4 A. Yes. This is -- well, at the bottom of page 2 I
5 think the first e-mail in the chain is a chain from
6 Michelle bass sorry row who was a securities associate at
7 Davis Polk forwarding the 8-K to the Davis Polk group
8 that was working on the AIG matter. And then there is an
9 e-mail from me which takes up, you know, roughly
10 two-thirds of page 2 that is to a group of people with my
11 reactions to the 8-K.

12 Q. Now, we've touched on this a little bit, but I
13 want to ask you about some of the specific statements in
14 your e-mail on page 2 of the exhibit.

15 And in that e-mail, you say that of the 8-K
16 "misdescribes the deal by stating that we are being given
17 a warrant and then in parens it says quite possibly not
18 true. What did you mean there?

19 A. Well, again, the term sheet did not say warrants
20 anywhere, and as I described before, one of the many
21 things that was going on between the 16th and the 21st I
22 think it was was coming to grips with exactly which form
23 the equity would take that the equity the term sheet that
24 AIG saw and its board approved to my knowledge said 79.9
25 common stock equivalent form to be determined and at that

1 point having spent a couple of days thinking about it and
2 looking at the options, the client group was trending
3 relatively heavily towards preferred stock, which AIG's
4 board was authorized to issue.

5 Q. You go on to say in this e-mail that the 8-K
6 misdescribes the deal by stating that the warrant
7 requires shareholder approval (definitely not true and
8 harmful to boot. Now I want to break that sentence up.
9 What did you mean when you said definitely not true?

10 A. Well, it was the same thought, which is the client
11 group was gravitating by that time relatively strongly
12 towards a structure that would not have required
13 shareholder approval and so specifically putting into an
14 8-K that it was a warrant that was issued to the
15 Board of Governors that would require shareholder
16 approval was simply almost every word of it was wrong.

17 Q. And then what did you mean when you said it was
18 harmful to boot?

19 A. So these -- the equity of AIG at that time was a
20 publicly traded security, and people were presumably
21 making buying and selling decisions based on the
22 disclosures of a public company under the securities
23 laws. That's the whole point of the securities laws.
24 The companies need to disclose material events and give
25 securities holders an accurate understanding of their

1 rights. I was very concerned that by AIG misdescribing
2 both the securities and whether or not something had
3 already been issued and what people's rights were that
4 they could be misleading the public markets in ways that
5 are in direct contravention of the prime directive of the
6 federal securities laws, which is honest, accurate
7 disclosure.

8 Q. Now, after raising the issue about the 8-K with
9 Mr. Baxter and others at the New York Fed, what did you
10 do next with respect to the 8-K?

11 A. So there was a call early the next morning, sort
12 of the businessperson call from the New York Fed to
13 Stasia Kelly, who was the general counsel, and then she
14 sent me an e-mail saying we essentially spoke to Stasia
15 and why don't you go ahead and call Kathy Shannon and
16 talk about sort of the right way to get this addressed.

17 Q. When you say Stasia Kelly was the general counsel,
18 the general counsel of where?

19 A. I'm sorry. Stasia Kelly was the general counsel
20 of AIG.

21 Q. Thank you.

22 A. I believe the call was made by Sarah Dahlgren and
23 an internal Fed lawyer to Stasia. I think.

24 Q. And then you had a call you said with Kathy
25 Shannon?

1 A. Yes. Also very early Friday morning, you know,
2 somewhere in the sevens I think. I believe it was before
3 8:00.

4 Q. Let's take a look at another exhibit, JX 97.

5 A. Yeah.

6 Q. Do you recognize what's been marked as JX 97?

7 A. I do.

8 Q. And can you generally describe what JX 97 is?

9 A. Yes. JX 97 is two e-mails. The first is an
10 earlier morning e-mail from Richard Charlton, who
11 was an internal New York Fed person, describing their
12 7:15 call and suggesting a possibility of running things
13 by Davis Polk. And then there is a 8:02 a.m. e-mail from
14 me back to a small group, mostly Davis Polk, but I think
15 just Richard Charlton at the Fed summarizing my call to
16 Kathy Shannon at 7:39 a.m. about the 8-K.

17 Q. Now, as reflected in the e-mail, you identify for
18 Ms. Shannon errors in the 8-K that included AIG had not
19 entered into the credit agreement yet that AIG had not
20 issued an warrant and likely never would and that the
21 equity interest would likely not be subject to
22 shareholder approval. To your recollection, what was
23 Ms. Shannon's reaction to this information?

24 A. I don't have a crystal clear recollection of the
25 call, but I did summarize her reaction in the next

1 sentence and I believe that e-mails I send are truthful
2 and accurate at all times, and so you know, so when I say
3 in a cordial document W to be clear I meant that.
4 You know, this was a very business like no anger just
5 matter of fact there were mistakes in here we need to get
6 this fixed. You know, as a corporate lawyer, I tend not
7 to be kind of a screamer ever. And then what I said was
8 she was embarrassed and apologetic and said a correction
9 was in works, which I believe is exactly what happened.

10 Q. And to your recollection, what, if anything, did
11 you tell Ms. Shannon about the form of equity that you
12 believed would be part of the credit agreement?

13 A. Yeah so.

14 MR. BOIES: Your Honor, I'm going to object to
15 this. We asked -- there's a request for admission that
16 bared on this. We asked them in a request for admission
17 to admit that -- could we do this outside the presence of
18 the witness, Your Honor.

19 THE COURT: I think so. As you get into this, I
20 think that would be appropriate.

21 THE WITNESS: Sure.

22 THE COURT: Thank you, Mr. Huebner. We'll be back
23 with you shortly.

24 **(Whereupon, the witness was not present in open**
25 **court.)**

1 MR. BOIES: We asked in a request for admission to
2 admit -- we asked in a request for admission to admit
3 that the first time that AIG was advised that the form of
4 equity would be preferred stock was on the 22nd. They
5 responded with an answer that said the first term sheet
6 given to them that had it was on September 22.

7 And did not provide any suggestion that anybody
8 had advised or provided AIG with information that was
9 going to be preferred stock in any other way.

10 Now, if I can find that request for admission,
11 I'll hand it up so the Court can see that.

12 It is a request for admission in the book that I
13 distributed with Mr. Brandow.

14 MR. GARDNER: Do you want to put it on the ELMO so
15 we all can see it?

16 MR. BOIES: It is request for admission -- may I
17 have just a moment, Your Honor?

18 THE COURT: Sure.

19 **(Pause in the proceedings.)**

20 MR. BOIES: I apologize.

21 THE COURT: That's quite all right.

22 MR. BOIES: I didn't expect this witness to be
23 testifying about this subject in terms of oral advice.

24 MR. GARDNER: Your Honor, might I suggest
25 something, because I -- you know, I don't want Mr. Boies

1 to be spinning his wheels. I don't want to be testifying
2 for Mr. Huebner, but what I expect Mr. Huebner's
3 testimony is going to be, consistent with his testimony a
4 few minutes ago was the form of equity had not been
5 decided upon yet, particularly as of the 19th, but we
6 were gravitating wars preferred.

7 I don't pretend to have exquisite knowledge as to
8 what RFA Mr. Boies is talking about, but if that RFA is
9 at what point in time did you definitively tell AIG that
10 the form of equity was going to be preferred, I don't
11 think anything Mr. Huebner is going to say is going to be
12 inconsistent with that. But maybe I'm presuming what
13 that RFA says.

14 THE COURT: Well, I want to give plaintiff a
15 chance to make the point here, so we'll do that.

16 MR. GARDNER: Sure, that's fine. I'm just trying
17 to move things along.

18 THE COURT: No. I understand. I appreciate it.

19 **(Pause in the proceedings.)**

20 MR. GARDNER: And while we're waiting, Your Honor,
21 could I move in DXX 037 as a demonstrative exhibit?

22 MR. BOIES: No objection, Your Honor.

23 THE COURT: Defendant's Demonstrative Exhibit 037
24 is admitted. I'll look for a reduced copy.

25 MR. GARDNER: We will take the pictures and do all

1 that.

2 **(Defendant's Exhibit Number DXX-037 was admitted**
3 **into evidence.)**

4 MR. BOIES: This is request for admission 448.
5 I've never used one of these before in my life. I just
6 want to be able to the Court to be able to see it.

7 MR. GARDNER: Is that too small?

8 MR. BOIES: That's great, yeah.

9 This is request for admission number 448. It says
10 prior to the afternoon of September 21, 2008, the
11 government had not advised AIG that the government's
12 equity participation in AIG would be in the form of
13 convertible preferred stock. Answer the response is:
14 The United States objects on the grounds advised and the
15 government's equity participation in AIG are vague,
16 ambiguous and misleading as used in the request and the
17 defined term government is overinclusive such that the
18 request is not direct simple and limited to single
19 already relevant facts. Subject to the foregoing
20 objections, the United States admits that the afternoon
21 of September 21, 2008 was the first time a draft equity
22 term sheet was sent to AIG containing language proposing
23 a specified form for the equity participation to be
24 issued in connection with the agreement, and that that
25 specified form was convertible preferred stock. ^ NDQ

1 and then there's a statement the United States otherwise
2 responses has made a reasonable inquiry and that the
3 information it knows or can readily obtain is instuff to
4 inability it to admit or deny the remainder of the
5 request, so what they're saying is they can't -- they
6 made a reasonable inquiry and they cannot admit or deny
7 the remainder of the request. And I think they're bound
8 by that in terms of when AIG was advised that the equity
9 participation would be in the form of convertible
10 preferred stock.

11 THE COURT: Mr. Gardner.

12 MR. GARDNER: Sure. I guess I've got two very
13 quick points, Your Honor. One, Mr. Huebner testified to
14 this exact issue in his deposition and we'll represent to
15 you what he said in his deposition I can't /OUBL what
16 precisely he'll say on the stand, although I have a good
17 suspicion it will be consistent with his deposition.
18 What he said was he does not have a hundred percent
19 recollection, but it is, you know, his belief that what
20 he told Ms. Shannon was that they were gravitating
21 towards equity in the form of preferred.

22 THE COURT: And when did he tell her that?

23 MR. GARDNER: That was reflected in that e-mail
24 which is on September 19. But to be sure, Your Honor, I
25 don't think there's any inconsistency here that the final

1 form of equity was not determined until a later point in
2 time. I mean, I think the record is clear from every
3 witness and the contemporaneous documents about that
4 issue. Nothing Mr. Huebner I'd expect him to testify
5 about would be inconsistent with that point. There's
6 simply I mean respectfully, Your Honor, there's no
7 inconsistency between what I anticipate Mr. Huebner will
8 testify to and what is stated in this request for
9 admission number 448. I mean, I think one other approach
10 we can take, Your Honor, is rather than speculate, I can
11 ask Mr. Huebner the question and if Mr. Boies has some
12 concern that his testimony is inconsistent with his
13 answer it seems like we can address that at that period
14 of time but I don't think it is going to be inconsistent.

15 THE COURT: Well, I think I'll hear what he has to
16 say on this subject. And we'll just await the outcome on
17 that.

18 MR. BOIES: Thank you, Your Honor.

19 THE COURT: All right, we can ask -- yes, come on
20 back.

21 **(Whereupon, the witness was present in open**
22 **court.)**

23 THE COURT: Thank you again, Mr. Huebner.

24 When you were out of the room, we were discussing
25 a particular request for admission that had been

1 furnished in this case, and the upshot is that we're
2 going to hear what you have to say on this subject as
3 well.

4 THE WITNESS: Okay. Would you mind --

5 BY MR. GARDNER:

6 Q. Let me re-ask the question.

7 A. You know, last time I was sent out I was
8 regretting saying one of the chief cooks in the kitchen,
9 so I'm regretting having anything read back to me.

10 Q. It's not you. It's me.

11 A. Fair enough.

12 Q. What is it that you told Ms. Shannon about the
13 form of equity that you believed would be part of the
14 credit agreement?

15 A. So I'm not able to testify as I sit here today
16 under oath that I told her it would likely be preferred,
17 although based on my e-mail I have a -- I believe it is
18 exceedingly more likely than not that I did say that.
19 But I don't have a specific recollection of it because
20 what my e-mail says was AIG has not issued a warrant and
21 likely never will, which means we did discuss the equity
22 term and the fact that I did not think it was going to be
23 a warrant, but I cannot testify under oath six years
24 later that I remember saying Ms. Shannon, you know, Kathy
25 it wouldn't have been Ms. Shannon, you know, you guys had

1 warrant it's not going to be a warrant it's likely to be
2 preferred that's what we're working on. I don't recall
3 the conversation although my e-mail suggests to me very
4 strongly that that would have been, but I just can't say
5 more than that under oath or otherwise.

6 Q. May we proceed?

7 THE COURT: Sure. Go ahead.

8 BY MR. GARDNER:

9 Q. Mr. Huebner, did you discuss next steps during
10 your call with Ms. Shannon?

11 A. Yes.

12 Q. And what did you discuss with respect to next
13 steps?

14 A. Well, AIG was responsible for its own securities
15 disclosure, so Ms. Shannon undertook, as it says in the
16 e-mail, to draft a proposed 8-K/A, which is a corrective
17 8-K that amends a prior 8-K that they would then shoot to
18 us to take a look at.

19 Q. Did Ms. Shannon in fact forward a draft of the
20 8-K/A to you?

21 A. Yes.

22 Q. Why don't we take a look at Defendant's
23 Exhibit 973.

24 A. Yes, I have it here.

25 Q. Do you recognize what's been marked as Defendant's

1 Exhibit 973?

2 A. Yes.

3 Q. What is it?

4 A. This is the same day, you know, we spoke. This
5 was a little bit later. It was not a very long document
6 I was a proposed amended 8-K. And they requested,
7 you know, views as soon as possible.

8 Q. The government moves for the admission of DX 973?

9 MR. BOIES: No objection, Your Honor.

10 THE COURT: Defendant's Exhibit 973 is admitted.

11 **(Defendant's Exhibit Number 973 was admitted into**
12 **evidence.)**

13 BY MR. GARDNER:

14 Q. Now, Mr. Huebner, did Davis Polk suggest edits to
15 AIG's proposed revisions to the 8-K?

16 A. Yeah. We only had I think a couple of comments in
17 the main, but we did have a couple of suggestions. Yes.

18 Q. Why don't we take a look at PTX 163.

19 Do you recognize this exhibit?

20 A. Yes.

21 Q. What is it?

22 A. This is the clean form of proposed emendation to
23 their proposed draft 8-K. My memory is that the two --
24 there really I think only two fundamentally real
25 comments. One was the second sentence, the one that's

1 sort of a one-sentence paragraph, this form 8-K filing
2 corrects certain errors in and supersedes yesterday's
3 filing I don't think they had that language in theirs. I
4 think we did think it important that the markets clearly
5 understand that this really supersedes yesterday and
6 that -- you know, sometimes in 8-K just adds the
7 amendment like something is forgotten, but this is
8 really intended to superseded yesterday and I thought I
9 don't remember it if it was me or people working with me
10 but ultimately me thought that they needed to be a little
11 more up front about the fact that waits a super session
12 of yesterday's. And I think the other change was that we
13 added the phrase I think the summary of terms of because
14 again, I didn't want to create a misimpression that the
15 credit agreement had already been executed, that a new
16 document that was not attached was being described and so
17 my memory is and again I'm not a human black lining
18 machine but I have a, you know, my belief is that those
19 are the two primary changes the rest the language is fine
20 and I don't think we had other comments of substance.

21 MR. GARDNER: Your Honor, the government moves for
22 the admission of PTX 163.

23 THE COURT: Isn't this already in? I remember
24 seeing this from before.

25 MR. GARDNER: My records might be incomplete. I

1 don't think it is in, but I could be proven wrong. As I
2 often am.

3 MR. BOIES: Audio we have certainly talked about
4 it and I didn't have an objection then and I don't have
5 an objection now.

6 THE COURT: Plaintiffs' Trial Exhibit 163 is
7 admitted.

8 **(Plaintiff's Exhibit Number 163 was admitted into**
9 **evidence.)**

10 BY MR. GARDNER:

11 Q. Mr. Huebner, did you or to your knowledge anyone
12 else from Davis Polk tell Ms. Shannon that she had to
13 accept Davis Polk's comments?

14 A. Definitely not.

15 Q. Did AIG ultimately issue the amended 8-K?

16 A. Yes. I believe they did.

17 Q. Did you receive a copy of the amended 8-K?

18 A. Yes.

19 Q. Why don't we take a look at JX 99.

20 A. Yes.

21 Q. Do you recognize what's been marked as JX 99?

22 A. Yes. I believe this is their actual filed 8-K/A
23 later in the day Friday, September 19.

24 Q. The 8-K/A?

25 A. Yeah. I believe that's what I said. I apologize

1 if I swallowed my words.

2 Q. And to your knowledge, Mr. Huebner, did the 8-K/A
3 accurately describe the terms agreed to by AIG in the
4 New York Fed on September 16, 2008?

5 A. Yes. I believe it did.

6 Q. Now, please turn back to JX 97. We're going to go
7 back just a little bit.

8 A. Yes, sir, I'm there.

9 Q. Now, in that e-mail it indicates that future SEC
10 filings, press releases and other significant
11 communications should be run by DPW, Davis Polk, first.

12 Does that accurately reflect what happened?

13 A. No.

14 Q. Why not?

15 A. So this early morning conversation -- this e-mail
16 describes an early morning conversation between AIG and
17 Federal Reserve folks. Their initial reaction was
18 certainly understandable, which is AIG had just issued an
19 erroneous 8-K describing a transaction without even
20 letting us know it was coming. The initial reaction on a
21 call in which I did not participate was that henceforth
22 Davis Polk should be reviewing these categories. I spoke
23 to the clients that day and on multiple occasions
24 thereafter about the fact that this was not going to be a
25 workable approach and was not going to be how we would,

1 should or could proceed. AIG was a, you know, 200
2 jurisdiction 200 country, you know, company and it was
3 not feasible or appropriate.

4 What we ended up doing over the next several
5 days -- it happened very quickly -- was because,
6 you know, in an analogous situations before we -- I
7 suggested to the Fed a tiered approach where the only
8 things that really the Fed or its representatives should
9 be getting advanced copies of and advanced notice of
10 filings were essentially major filings of material
11 transactions or things that directly described or
12 involved the Fed or the Treasury. The clients agreed and
13 said you know what on reflection that's sensible you're
14 right this initial thought of run everything by
15 Davis Polk or the Fed is not going to work. I then
16 communicated with AIG the clients are agreeable to a
17 tearing approach where really only the very high life
18 level, very important stuff that -- and no small spare
19 parts is both material and/or involves the Fed directly
20 should be sent for advanced courtesy review and where
21 appropriate we will allow to recommend comments and then
22 other than that AIG should essentially be running its own
23 affairs. The marching orders from the clients were very
24 clear, which is AIG is a public securities filer with
25 experienced counsel. We were to make suggestions where

1 appropriate, but never had essentially a veto or an
2 ability to command that they do anything. They were
3 always in the guise of suggestions.

4 THE COURT: Shall we take a short break?

5 MR. GARDNER: Yes, Your Honor.

6 THE COURT: Let's reconvene at 11:15.

7 **(Court in recess.)**

8 THE COURT: You may go ahead, Mr. Gardner.

9 MR. GARDNER: Thank you, Your Honor.

10 BY MR. GARDNER:

11 Q. Mr. Huebner, could you please turn to DX 555 in
12 your binder.

13 A. Yes, sir, I'm there.

14 Q. Thank you.

15 Do you recognize what's been marked as DX 555?

16 A. Yes. I mean, it's a series of e-mails that were
17 going around between September 22 and September 23 going
18 to the very back of the exhibit I guess or -- I'm
19 sorry -- to what page would you like to direct me in
20 particular?

21 Q. I'm actually just looking for a general drippings
22 description and then seek to introduce it and then we can
23 talk bit?

24 A. These are e-mails in part about the communications
25 issues that we just discussed and about a couple of sort

1 of next step issues subsequent to the closing that had to
2 be undertaken as everybody's work continued on the AIG
3 loan transaction.

4 MR. GARDNER: Your Honor, the government moves for
5 the admission of DX 555. And just for the Court's
6 benefit, much of DX 555 has already been admitted as
7 PTX 1638, with the -- what was not included in DX 555 to
8 my understanding is the top e-mail, which I just wanted
9 to move in because obviously Mr. Huebner is on it and
10 then I'm going to ask him some questions about it.

11 MR. BOIES: No objection, Your Honor.

12 THE COURT: All right. Defendant's Exhibit 555 is
13 admitted.

14 **(Defendant's Exhibit Number 555 was admitted into**
15 **evidence.)**

16 BY MR. GARDNER:

17 Q. Now, Mr. Huebner, I want to draw your attention to
18 the last e-mail on the Bates ending in 8904. And it's
19 the one that rolls over to the next page. And there's an
20 e-mail from you to Kathy Shannon.

21 A. Yeah, it's -- it's Stasia Kelly and Kathy Shannon.

22 Q. Correct. Thank you?

23 A. Yeah.

24 Q. And in this e-mail you say hope you're hanging in
25 there. When you have a chance, please send proposal on

1 disclosure tiers so that I can get you (and we) freed up
2 for all but tier A. Happily, they thought my tiered
3 suggestion sensible. ^ NDQ.

4 Can you describe what you're referring to?

5 A. Yes. And the timing of this e-mail also matters a
6 lot. The e-mail that you asked me about before that said
7 let's, you know, all -- the e-mail that you read -- I've
8 never done this before, Your Honor, so I -- I apologize.
9 I will.

10 Q. Just slow down.

11 A. The e-mail that you showed me before the break was
12 from Friday morning the 19th. That was the e-mail where
13 the clients said, you know, we communicate to them that,
14 you know -- I don't remember the exact quote, but
15 significant filings should be run by DPW first. As I
16 testified before the break, I communicated almost
17 immediately to the clients, said that was not going to be
18 a feasible way forward. This is a totally Sunday morning
19 and I'm not available and don't work Friday nights or
20 Saturdays, so for me this is literally the next available
21 day where I'm already on the issue and as you see from
22 the e-mail, the hope you guys are hanging in there was a
23 nod to the fact that, you know, people had been working
24 almost literally around the clock for days and days and
25 days ain't was a very challenging circumstance. When you

1 have a chance, please send proposal on disclosure tiers
2 so I can get you and we freed up for all but tier A was
3 what I discussed with them was what I mentioned before
4 the break, that I had discussed with my clients, which
5 is -- you know, let me start from the bottom sentence.
6 Happily, they thought my tearing suggestion sensible was
7 me telling Kathy and Stasia the Fed agreed with my
8 approach that only things that were of material import,
9 you know, truly material import or directly involved or
10 described the Fed and its own transactions should be,
11 you know, run in advance or given a courtesy heads up
12 copy or at least a possibility of comment before release
13 to the Fed's representatives including Davis Polk. The
14 sentence right above so the bottom sentence is that the
15 clients agreed that we had to do this in a tiered way
16 tune notion that we had to sign off on AIG stuff was
17 crazy and was never going to be the plan that was a
18 7:00 a.m. initial reaction to a tremendous troubling 8-K.
19 The sentence right above that, I suggested to them that
20 they actually come up with a proposal since they knew
21 their own communications and disclosures and issues and
22 that they actually make the recommendation and so the
23 reference to so that I can get you and we freed up for
24 all but tier A meaning that they shouldn't have to send
25 us things that weren't in tier A and we shouldn't have to

1 receive and review things that weren't in tier A in other
2 words, you know, only this category of very material
3 important stuff would be the stuff that would likely end
4 up in the end up in the this would be if possible sent to
5 the Fed's representatives in advance to see if they had
6 comments or concerns.

7 Q. Now, Ms. Shannon in her e-mail back to you
8 recommends sharing SEC filings, insurance filings and
9 significant press releases. Do you see that? The e-mail
10 above? The examples as examples of the types of items?

11 A. You know what I'd like to take a minute and read
12 the e-mail if I may.

13 Q. Please.

14 **(Pause in the proceedings.)**

15 A. Yes. I'm sorry. I've had a minute to read it.

16 Q. Okay. So does Ms. Shannon's e-mail reflect, to
17 your understanding, the tiered proposal that AIG was
18 proposing?

19 A. More or less. I mean, we never ended up with any
20 sort of formal agreement on, you know, these six
21 categories. You know, the goal was to capture things
22 that they viewed as what I called tier A, you know, big,
23 really important, not sort of, you know, things other
24 than that. And this is, you know, more or less an
25 accurate recitation. I mean, the in general exchange act

1 filings I believe are term definition /STKPWHR-FRPBLGTS
2 they are either material contracts, transactions or
3 events or quarterly or annual filings. And the same is
4 true for the rest of the e-mail.

5 Q. And if you go to the e-mail right above that, to
6 your e-mail back to Ms. Shannon on September 23, 2008,
7 you say here on first blush, it seems like the right
8 approach, the goal wasn't and isn't for us as
9 stockholders or lenders to have intrusive and unworkable
10 involvement in the daily conduct of the company's
11 affairs.

12 Now, my question to you is why do you use the term
13 "stockholders here?"

14 A. Yeah. I was using it loosely. Again, keeping the
15 time period in mind, this was either the actual day or
16 the day after the credit agreement and the trust
17 structure and the preferred had actually been agreed to
18 and effectuated. You know, in retrospect, you know,
19 party granted the equity that it then gave to a trust or
20 designated to others, but that's just not the way you
21 write and I should also note when I first saw this e-mail
22 I thought, well it's 3:31 in the morning. I mean, I
23 haven't slept in a week. I'm obviously using shorthand
24 I'm exhausted. It was later advised that there is a four
25 hour time stamp problems with some of the documents so

1 this was actually about midnight or a little bit before
2 midnight so it was still pretty late but it is is short
3 the Fed or its designee had been granted both equity and
4 was a lender and my point was as the rest of the e-mail
5 goes on to say by the way, you know, the goal was that we
6 were all on the same page, which is we didn't -- the Fed
7 did not want to have intrusive unworkable involvement
8 whatever its role was and there's a parenthetical about a
9 specific example where someone said an employee memo had
10 to be, you know, sent for Fed or DPW approval and I wrote
11 that was of course not the plan and we will quickly get
12 it righted. And I believe that there were several
13 examples that week where they came and said, you know,
14 does this need to be approved and the answer was no,
15 like, you know, Ed Liddy, for example, I believe sent an
16 all employee letter that they said oh, should we have run
17 this by you first and my answer was no thanks not what
18 we're going to be doing this is is really
19 /STKPWHR-FRPBLGTS the response was that Mr. Liddy should
20 communicate with his employees as he see fits -- as he
21 sees fit.

22 Q. Now, with respect to securities filing, what was
23 the approach that you and Davis Polk took with respect to
24 the reviewing those filings on a going-forward basis?

25 A. So a major registrant does not issue that many

1 8-Ks a year. Sometimes there are none. Sometimes there
2 are a couple. Sometimes there are a few. Those I think
3 by their terms although I'm not a securities lawyer by
4 profession I'm a restructuring and distressed finance
5 lawyer. Those in general are definitionally material
6 transactions. That's what public companies have to
7 disclose, and so in general I believe most of the time we
8 were given an advance copy or a courtesy heads up with
9 respect to securities filings of material transactions.
10 Sometimes it was a very limited window. Sometimes it was
11 slightly longer.

12 Q. And to your knowledge, did you or others at
13 Davis Polk ever direct AIG as to the inclusion of
14 particular language in AIG's securities filings?

15 A. Absolutely not. As I testified before, the
16 clients view on how our marching orders was that AIG was
17 a public reporting company with a board and executives
18 and sophisticated counsel and we were free to make
19 whatever comments we thought appropriate. Often after a
20 client review and sign-off but at the end of the day AIG
21 took some rejected others and was also exclusively
22 responsible for its own filings.

23 Q. Now, earlier, meaning about five minutes ago, you
24 mentioned something with Ed Liddy and a memo that went to
25 all staff. Just to sort of close the loop on this topic,

1 can you take a look at DX 561 that's in your binder.

2 A. Yes.

3 Q. Do you recognize this exhibit?

4 A. Yes.

5 Q. What is it?

6 A. This is actually what I talked about a few minutes
7 ago. Again, this was the same week. I think it it was
8 early the next day. This was Wednesday, September 24,
9 where we were still feeling our way forward together on
10 exactly how this was going to work and they were asking
11 whether this was the type of communication we should have
12 seed since it was an all employee letter that did in fact
13 describe the Fed facility and at least in part and my
14 response, which is at the top of the first page is looks
15 great. Didn't see, but don't feel we need to. Ed should
16 communicate with the workforce as he sees fit.
17 Informational copies as things like this go out would be
18 nice if feasible. So this was jet.

19 Q. Who is Ed?

20 A. Ed is Ed Liddy the CEO so this is another example
21 of us pushing back and carving out what should not have
22 been and did not knee to be run by either the Fed or its
23 representatives.

24 MR. GARDNER: Your Honor, the government moves for
25 the admission of DX 561.

1 MR. BOIES: No objection, Your Honor.

2 THE COURT: Defendant's Exhibit 561 is admitted.

3 **(Defendant's Exhibit Number 561 was admitted into**
4 **evidence.)**

5 BY MR. GARDNER:

6 Q. Now, I want to change topics slightly. You
7 mentioned in general the work you were involved in after
8 September 16 with respect to the credit agreement, and as
9 part of that, were you involved in discussions with
10 members of the New York Fed concerning the form of equity
11 that AIG would provide to the New York Fed?

12 A. I was.

13 Q. Could you please describe the nature of those
14 conversations.

15 A. So during the days from the 16th through the next
16 weekend, you know, Tuesday, Wednesday, Thursday, Friday,
17 Saturday, Sunday, there were a series of conversations
18 going on about exactly what form the 79.9 percent equity
19 interest would take. There were conversations, some in
20 my presence, some not in my presence, about whether the
21 Treasury or the Fed or some other entity should be the
22 beneficiary or the beneficial owner. There were
23 conversations where people were looking into both
24 potential legal questions and potential -- not potential
25 and policy questions about the form of ownership,

1 you know, Tom Baxter repeatedly said, you know, it's not.

2 MR. BOIES: Objection, Your Honor. Hearsay with
3 respect to when he begins to testify as to the substance
4 of communications.

5 MR. GARDNER: I think that's fine, Your Honor.
6 I -- I think we can proceed with his answer without
7 getting into what Tom Baxter told him.

8 THE COURT: All right. Why don't we ask the next
9 question.

10 MR. GARDNER: Fair enough. In fact, let me see if
11 I can ask the same question or let me do one better.

12 BY MR. GARDNER:

13 Q. Can you please continue with your answer without
14 divulging what Tom Baxter may have told you?

15 A. Yes. There was also consideration as I said as to
16 structure and so we had been asked to look at the
17 possibility of preferred, the possibility of warrants and
18 the possibility of using a trust to hold or vote or
19 otherwise have control over the equity in the form in
20 which it was ultimately issued.

21 Q. Now --

22 A. And I'm sorry. When I say "we" in this case I
23 mean Davis Polk. I'm aware that I use pronouns sometimes
24 a little bit imprecisely, so when I say we were asked to
25 look at it, I mean on behalf of our client.

1 Q. And I really appreciate that because that was. To
2 what extent was Davis Polk responsible for analyzing the
3 legal issues associated with the New York Fed or the
4 Department of the Treasury holding the equity interest?

5 A. Davis Polk had no responsibility for that. There
6 was / (one phone call on which the head of our bank
7 regulatory practice essentially --

8 MR. BOIES: Objection, Your Honor, if he's going
9 to say what somebody else said.

10 MR. GARDNER: And Your Honor, I think we're fine
11 with the answer that Davis Polk had no involvement and we
12 can move on to the next question.

13 THE COURT: Okay. Very well.

14 BY MR. GARDNER:

15 Q. I want to take a look at JX 88.

16 And do you recognize this exhibit, sir?

17 A. Yes, I do.

18 Q. Now, in this e-mail, which is dated September 17,
19 2008, Mr. Baxter asks Davis Polk to consider alternative
20 forms of regulatory ownership of the equity shares. And
21 he says that control is the key issue. We cannot have
22 control.

23 Mr. Huebner, what did you understand Mr. Baxter
24 meant by this?

25 MR. BOIES: Objection, Your Honor. He can't know

1 what was in Mr. Baxter's mind and if it's based on what
2 somebody told him, like Mr. Baxter, that would be
3 hearsay.

4 THE COURT: Mr. Gardner.

5 BY MR. GARDNER:

6 Q. My response is simple, Your Honor. I'm not asking
7 Mr. Huebner what Mr. Baxter thinks. Mr. Huebner, who is
8 going to testify and I think this document reflects is
9 going to be analyzing the various possibilities for
10 holding the equity. I'm asking him what he understands
11 the marching order to be with respect to the issue of
12 control. I'm not asking him to read, you know,
13 Tom Baxter's mind but as an attorney who was working for
14 and with Mr. Baxter I'm just asking for his
15 understanding.

16 THE COURT: Overruled. I'll take his answer.

17 THE WITNESS: My understanding was that Mr. Baxter
18 felt that from a policy perspective, it was not
19 appropriate.

20 MR. BOIES: Your Honor, could we have a foundation
21 when he says my knowledge in advance of the substance.

22 THE COURT: I think that's fair.

23 MR. GARDNER: Sure.

24 BY MR. GARDNER:

25 Q. What is your basis, Mr. Huebner, for the

1 understanding of Mr. Baxter's concerns about control?

2 A. So this e-mail is one document. It was during
3 that five or six-day time period from the 16th to the
4 roughly 22nd. There were also a series of conversations.
5 You know, we were doing this in real time and working on
6 the transaction and there were several conversations
7 although I could not place them, you know, the 18th at
8 8:00 a.m. I absolutely could not do that under oath, but
9 one of the jobs we were asked to do that week was meet
10 the client's needs and the client articulated what the
11 concerns were that they want us to thread in thinking
12 about and recommending possible structures for them, so
13 there were, you know, a set of -- a series of
14 conversations really throughout the week on this and
15 other topics.

16 MR. BOIES: And I now have a clear hearsay
17 objection, Your Honor.

18 MR. GARDNER: And I think I have a clear way to
19 meet it, Your Honor. We're not offering it for the truth
20 of the matter asserted about what Tom Baxter actually
21 believed. We're showing the effect on the recipient,
22 Mr. Huebner, as someone who is now going to be tasked
23 with developing potential alternatives to meet his
24 client's wishes. We're not offering it for the truth of
25 the matter.

1 THE COURT: I'll overrule the objection. I'll
2 take his understanding.

3 BY MR. GARDNER:

4 Q. Let me see if I can back up now and ask the
5 question again.

6 When Mr. Baxter says in this e-mail on
7 September 17, 2008 control is the key we cannot have
8 control, what did you understand Mr. Baxter meant by
9 this?

10 A. My understanding was that this was from a policy
11 perspective. You know, the client was trying to balance
12 a lot of very complicated issues in terms of protecting
13 the investment of the U.S. taxpayer, but at the same time
14 not being sort of as the words mean, in control of AIG.
15 Mr. Baxter felt that it was inappropriate for the
16 Federal Reserve Bank of New York to directly own and vote
17 a majority equity stake in the world's largest insurance
18 company, and so we were directed to try to find a
19 structure that essentially attenuated control. And
20 again, this was a complex balancing act. There was no
21 single right answer, to my knowledge. It was what is the
22 best way to balance competing concerns, you know, the
23 Federal Reserve should not in a kind of policy,
24 regulatory type sense be the owner and voter, you know,
25 filling out proxies, selecting something and the like.

1 Q. When you say balancing competing concerns I
2 understood your last answer to say one of the concerns
3 was actually controlling AIG that's the concern on one
4 side. What's the other concern that you're balancing?

5 A. Well, I guess to take the two extremes as I
6 thought about them then /(), you know, one possibility
7 would be like if, for example, this was a private loan by
8 a private entity that had the equity issued to itself as
9 part of the loan, that entity would have come in probably
10 on the first day, fired the whole management team, fired
11 the whole board and installed its own literally its own
12 personnel as the board of directors and the management
13 team. It then would have had the ability to direct the
14 company in whatever way it saw fit, you know, 24 hours
15 every day.

16 The other end of the spectrum was to have,
17 you know, to sort of make the loan and then to sort of
18 leave the premises and hope that the taxpayers did okay
19 and that the equity investment was maximized. The
20 problem there is there is a, you know, real probability
21 that other entities other issues, other constituencies,
22 other stakeholders, you know, essentially can act in ways
23 that are highly adverse to both the repayment of the
24 \$85 billion loan, which was by no means a forgone
25 conclusion, and to the maximization of the taxpayers

1 other interests and the regulatory interest that I
2 believe motivated the loan in the first place, which was
3 stabilizing the economy, stabilizing AIG, which itself
4 could have caused, you know -- was thought substantial
5 negative follow-on effects.

6 Q. Now, in JX 88, Mr. Baxter continues that someone
7 at Davis Polk might want to think through (a) warrants
8 that are exercisable upon sale and (b) holding shares in
9 a voting trust where the trustee votes with management.

10 Did Davis Polk in fact think through these
11 alternatives?

12 A. Yes. I mean, I think we thought through a whole
13 range of possibilities. Obviously at the client says
14 please make sure you all think about these two you think
15 about those two also.

16 Q. Now, I want to turn back now to PTX 154. We
17 looked at that a little bit earlier today.

18 And on the first page of PTX 154, the second
19 e-mail on that page is from you, and you state, "I feel
20 even more strongly about my long voice mail to you about
21 structure preference after I learned that the board is
22 not staggered and has only one year terms. I don't see
23 how we leave this asset at risk of minority shareholder
24 takeover. Mr. Huebner, what concern were you attempting
25 to convey here?"

1 A. So, again, looking at the timing of this e-mail
2 which I believe is accurate, this was after midnight on
3 the 19th, so the structure preference I believe by that
4 point in time I had come to be of the view that the
5 preferred stock for a variety of reasons was the most
6 attractive available structure to balance the various
7 types of concerns we spoke about a few minutes ago. What
8 this e-mail refers to is that when I learned that the
9 board was not staggered and has only one-year terms, that
10 was a new fact to me and an additional cause for concern
11 which I'm -- should I explain?

12 Q. Please.

13 A. So in general terms, some boards stand for
14 election every year and the entire board can be replaced
15 in a single shareholder vote. That in general terms is
16 more unstable because it means that if a single group
17 gets together, either new investors, existing investors
18 or a combination of investors, essentially they can fire
19 the entire board in one shot and fire all of management
20 the day after because now they have a board that they've
21 installed.

22 A staggered board, which many companies have, if
23 you assume hypothetically a board of nine, in a staggered
24 board, directors one, two and three stand for election in
25 year one, directors four and five and six in years two,

1 directors seven 80 and night in year three so there's
2 just more stability to the corporate structure because it
3 takes three years in my hypothetical example for the
4 board to turn over. AIG's board put it at I believe,
5 you know, relatively high risk of being fired all in one
6 shot by a possible constituency, which I can expand on
7 more in a minute if you like because they were not
8 staggered and the terms were only one year. And that, to
9 me, presented incremental risks, especially in a
10 distressed situation in a company with a greatly declined
11 stock price.

12 Q. How did the fact that there was a nonstaggered
13 board create a high risk of being fired all in one shot
14 by a possible constituency?

15 A. Well, because that's what it means. If it's not
16 staggered, it means they all stand for election every
17 single year and they can all be replaced in one shot.
18 And what happens in the distressed world a lot, and
19 you know, there are funds that people unkindly refer to
20 as vulture funds, they may be more kindly referred to as
21 litigation arbitrage funds or distress hedge funds who
22 have tens and tens of billions of dollars of capital to
23 put to work. What they do for a living is they wait for
24 either the bonds or the stock of formally more successful
25 companies to decline substantially in price and then they

1 move in and they buy controlling blocks either of stock
2 if the company is still outside of bankruptcy and the
3 stock carries with it the potential to extract an
4 outsized return or do other things in their own interest.
5 Once you're in the bankruptcy space, it's usually bonds.
6 In other words, what will happen is, you know, a fund
7 will say oh, in this capital structure I think the
8 unsecured debt is going to get wiped out. I think the
9 middle tier debt, the junior secure paper will end up
10 owning the company, if I buy 34 percent of that and this
11 stuff is now trading at 13 cents to dollar because people
12 don't understand this yet, I can essentially grab the
13 company by the throat and then get an outsized return for
14 myself by what some people view as extortion means others
15 just view as appropriately exercising leverage within the
16 context of securities ownership and law but again
17 distressed prices, you know, they're an incredible
18 attractant I don't think that's a word I apologize they
19 attract /STKPWHR-FRPBLGTS funds in very large funds
20 through specialized in situations like this who announce,
21 you know, I've bought in to the, you know, stock of X and
22 now I intend to, you know, not speak softly but yet carry
23 a big stick.

24 Q. How does -- and just to close the loop here, how
25 does having voting preferred stock as compared to

1 warrants without immediate voting rights protect against
2 a minority shareholder takeover?

3 A. So a warrant is in general terms a right to get a
4 share of common stock, but until the warrant is
5 exercised, you just have a claim ticket to get a share of
6 common stock. And where there's a strike price, there's
7 a strike price or an express strike price that has to be
8 paid. A preferred share again it depends entirely on the
9 certificate of incorporation of the company. Some
10 corporations don't allow preferred shares without a
11 shareholder vote at all. Some corporations allow
12 preferred shares but with only certain types of
13 attributes.

14 AIG's charter or certificate of incorporation like
15 what I understand to be the vast majority of Delaware
16 corporation certificates of incorporation, allows for
17 what's called blank check preferred, which is essentially
18 preferred with any attributes, any voting rights, any
19 liquidation preference, any economic rights. You can
20 essentially sculpt preferred into whatever the board
21 decides to issue and I don't think it's even only the
22 board I think it's the board or any authorized
23 subcommittee of the board so you don't even need the
24 whole board. And my memory is that, you know, something
25 like /TPAOEUFRL of the ten pages of AIG's certificate of

1 incorporation list all the attributes that are allowed to
2 be in the preferred shares.

3 Now, to more directly answer your question,
4 preferred shares, once they are issued, have whatever
5 rights they are permitted to have, so hypothetically, if
6 on September 17 the preferred shares had been issued that
7 day, the owner of those preferred shares would as of that
8 day have a vote equal to 79.9 percent of the common and
9 economic rights equal to 79.9. There was no further
10 event that needed to happen to effectuates those rights.

11 Q. And how does the fact that there was no further
12 need to -- actually strike that.

13 Did the New York Fed ask Davis Polk to address
14 certain possible options for the form of the equity
15 received from AIG?

16 A. Yes.

17 Q. Let's take a look at PTX 159, which is already in
18 evidence?

19 A. Before we do that, Mr. Guard Z.

20 THE COURT: Before we do that, Mr. Gardner, I want
21 to ask you something about Joint Exhibit 88 that we were
22 looking at just a moment ago.

23 MR. GARDNER: Sure.

24 THE COURT: I notice that that document has a
25 small portion at the top that's been redacted for

1 attorney-client communication.

2 MR. GARDNER: Yes, I see that, Your Honor.

3 THE COURT: I think it would be appropriate to
4 furnish an unredacted version of this document to
5 substitute for JX 88 because I think a waiver clearly has
6 occurred here.

7 MR. GARDNER: Your Honor, I can say two things to
8 that. One is, I do not pretend to know what is under
9 this cover portion. Two, my understanding of the course
10 of discovery was those things we redacted are not
11 relevant to the issues of discovery order 6, even as has
12 been expanded in this case. What I would suggest,
13 Your Honor, if we could, which is consistent with what we
14 did earlier in this case, is that we submit a version
15 in camera and you can make an assessment as to whether or
16 not that which has been redacted relates to the
17 discussion that is above it and if it doesn't, then we
18 would suggest that it remain privileged.

19 THE COURT: I think that's acceptable. Why don't
20 you do that.

21 MR. GARDNER: Will do, Your Honor.

22 THE COURT: Okay.

23 BY MR. GARDNER:

24 Q. Let's go to PTX 159 if we could. And as I
25 mentioned a few minutes ago, PTX 159 is already in

1 evidence. And let me know when you're there,
2 Mr. Huebner. Binder malfunction?

3 A. Technical binder issue. Just one minute.

4 Q. Take your time.

5 A. Okay. I'm there.

6 Q. Do you recognize what has been marked as PTX 159?

7 A. I do. This --

8 Q. I'm sorry? Please. What is PTX 159?

9 A. The bottom document is an e-mail from me to a
10 group with a requested two-page document with two
11 possible equity structures. I say obviously Emma's
12 variations are possible then we express a preference for
13 option B and explain why.

14 Q. So let me stop you there. Can you just?

15 A.

16 THE COURT: Mr. Gardner, it seems like you have
17 the same issue with this document. You might as well
18 submit them both at the same time.

19 MR. GARDNER: And PTX -- just so the Court is --
20 Your Honor is aware, PTX 159 had been offered into
21 evidence a while ago, so I mean, I'm happy to do that
22 same process.

23 THE COURT: I'm just saying we're sort of focusing
24 on this question now, so. Have.

25 MR. GARDNER: Fair enough. Fair enough, will do.

1 BY MR. GARDNER:

2 Q. In general terms, Mr. Huebner, can you describe
3 the two options, option A and option B that was being
4 presented in PTX 159.

5 A. Yeah. In general terms, option A was a
6 combination of warrants and preferred and option B was
7 preferred going into a trust, which is ultimately what
8 was brought to life in the transaction and when I say it
9 option B was ultimately the option that was effectuated.

10 Q. I see. And you said that Davis Polk had
11 recommended option B over option A; is that correct?

12 A. Yes.

13 Q. Why did Davis Polk advise that option B was the
14 best yet identified option?

15 MR. BOIES: Your Honor, I simply want to make
16 clear that this is calling directly for legal advice. I
17 do it only because I don't want there to be any argument
18 later that somehow this was inadvertent or that they were
19 led into the waiver.

20 MR. GARDNER: And Your Honor, I think my only
21 response to that would be this is exactly what the
22 expanded scope of discovery order number 6 is that we've
23 all come to grounds on. I mean, this is the issue, so I
24 don't know that I understand Mr. Boies to be suggesting
25 there is a second or separate subject-matter waiver

1 beyond that which we have already addressed earlier in
2 this case and I would want to say that if we go any
3 further with this we probably should excuse Mr. Huebner
4 which I deeply regret because I don't want to keep you up
5 and down.

6 THE WITNESS: I work for the Court.

7 MR. BOIES: I think it's useful to excuse the
8 witness.

9 THE COURT: Sorry.

10 THE WITNESS: I actually don't mind the breaks,
11 Your Honor.

12 **(Whereupon, the witness was not present in open**
13 **court.)**

14 THE COURT: Just don't go to lunch yet.

15 THE WITNESS: I actually was considering leaving
16 entirely.

17 MR. GARDNER: I have ways to find you.

18 **(Whereupon, the witness was not present in open**
19 **court.)**

20 MR. GARDNER: The only reason I wanted to suggest
21 that Mr. Huebner should be excused is if Mr. Boies wanted
22 to say something in addition to what I just said. I
23 don't think I have anything to add to those statements
24 about the government's understanding about the broadened
25 scope of the subject-matter waiver based on discovery

1 order number 6 that we discussed I guess it was the first
2 week of trial at this point.

3 THE COURT: Mr. Boies?

4 MR. BOIES: Your Honor, the subject-matter waiver
5 that was made at the beginning of trial was a
6 subject-matter waiver with respect to issues that went to
7 the authority of the Federal Reserve to take equity or
8 perhaps the government more broadly to take equity.

9 As the Court is aware, and indeed as this witness
10 has said, Davis Polk didn't look at that and indeed we
11 had a representation when we were trying to get some
12 additional documents pursuant to the waiver, we had a
13 representation that Davis Polk had not been asked for and
14 had not given any advice with respect to the issue of
15 authority.

16 That being so, this question necessarily, if there
17 is an answer to it, calls for something that goes beyond
18 that subject-matter waiver and indeed I think the
19 question itself asked why did you prefer A to B. And I
20 don't think the answer to that would have been a question
21 of authority. Maybe it would have been, but if it was a
22 question -- if the answer would have been a question of
23 authority, that is inconsistent with the representation
24 we have. If the answer would have been it's something
25 else, then that is the new subject-matter waiver.

1 MR. GARDNER: Your Honor, I must say, respectfully
2 to Mr. Boies, I disagree. The whole impetus for these
3 two options are what Mr. Huebner just said. There were
4 legal issues that were being thought about. That was the
5 New York Fed's job. And then there were also policy
6 considerations. This option A and option B are taking
7 into account the New York Fed's policy and legal,
8 you know, preferences, so I respectfully disagree that
9 this is somehow beyond the scope of the subject-matter
10 waiver. This is directly about the scope of the
11 subject-matter waiver.

12 THE COURT: Well, I think it will suffice to say
13 that if you continue to press these areas of questioning,
14 you do run the risk of an even broader subject-matter
15 waiver and I don't know if such a waiver will occur. It
16 depends what his answers are I suppose. But I think
17 you're, you know, you're on notice that this could occur.

18 MR. GARDNER: And I guess then, Your Honor, I just
19 need to be very blunt and ask, it's not apparent to me,
20 now that we are five weeks into a trial of what the
21 consequence of a broader subject-matter waiver is than we
22 already have. I mean, discovery is over. We have
23 produced the documents that we have. Particularly those
24 related to these scope of authority. So when Mr. Boies
25 says there is a additional subject-matter waiver, I

1 suppose I would need to know what he understands or more
2 importantly you understand the consequence of that waiver
3 to be.

4 THE COURT: Well, all I can say at this stage that
5 cross-examination has not yet occurred and I suppose
6 Mr. Boies could ask him virtually anything.

7 MR. GARDNER: And Your Honor, let me say on the
8 record, I am not going to shut Mr. Boies down on the
9 basis of privilege if I've asked Mr. Huebner questions on
10 direct. That's not going to happen, so if that is what
11 Mr. Boies means by a subject-matter waiver, then I don't
12 really think there's any disagreement amongst the
13 parties. If Mr. Boies is envisioning something beyond
14 that, I certainly think that we would be entitled to
15 understand what that is so we can weigh the consequences
16 of what Mr. Boies may be claiming is a broader
17 subject-matter waiver.

18 MR. BOIES: Your Honor, I will address that. And
19 obviously it is a little uncertain until I hear the
20 answer. But I certainly would contemplate the
21 possibility of in my rebuttal case serving a subpoena on
22 Davis Polk either for a person with knowledge of some of
23 these materials or a specific person and requiring them
24 to bring with them documents that are relevant to
25 whatever it is the witness says. Until I hear what the

1 witness says, I don't know exactly what I'm going to do.
2 But I would certainly contemplate the possibility of
3 responding. And this is something that we were precluded
4 from examining into even after as I understand it and let
5 me just check for one second -- I thought Mr. Huebner's
6 deposition was after discovery order 6. And that's at
7 least the understanding of my colleagues as well. And I
8 mean, for example, Mr. Huebner was asked isn't it true
9 that your view, Mr. Huebner, was that it was critically
10 important for the government to obtain control of AIG?
11 Instruction not to answer.

12 "QUESTION: Isn't it true that you personally were
13 very concerned about the government extending a loan
14 facility of \$85 billion to AIG without the government
15 obtaining immediate voting control over AIG? Again,
16 instruction not to answer.

17 As I look at -- as I look at some of these, I
18 think he ought to be precluded from testifying simply on
19 the grounds that we were barred from discovery on this
20 issue. And this is -- this is after discovery order 6,
21 so they were -- they were interpreting discovery order 6
22 at the time the way I interpreted it at the beginning of
23 the trial, which is that it related to the question of
24 authority, not the question of control.

25 MR. GARDNER: Of course, Your Honor, that is

1 before this Court has determined there is a broader
2 subject-matter waiver and Mr. Boies has asked many
3 witnesses many questions about these precise issues, so
4 you know, look, I understand we're in a world now where
5 we had an original discovery order number 6 that has now
6 been broadened, but we are now in 2 position, Your Honor,
7 of responding to plaintiffs' case in chief where for
8 better or worse this Court has concluded that the door
9 has been opened i think it's demonstrably clear in my
10 judgment that the control issue is part and parcel with
11 the authority issue. You heard that from Alvarez Baxter
12 Bernanke. So I think this delineation that Mr. Boies is
13 suggesting is just one it's artificial and two I think
14 it's inconsistent with the testimony in this case at this
15 juncture we are sort of where we are for lack of a better
16 word.

17 MR. BOIES: I would only make one point more,
18 Your Honor, and that is that the issue of what we are
19 foreclosed from taking discovery on is different than the
20 issue of what the scope of the waiver is. They made a
21 waiver at the beginning of this trial that was broader
22 than the waiver that they have been permitted before.

23 That enables me to ask certain questions. It does
24 not I respectfully suggest, enable them to elicit
25 testimony that we were precluded from getting at at

1 trial. Otherwise, what a party could do is instruct
2 people not to answer, come to trial, waive the privilege
3 and now have the answer without our having the benefit of
4 discovery on it.

5 MR. GARDNER: Your Honor, I'm a little surprised
6 by Mr. Boies' statement because it's exact opposite that
7 has happened now right so in other words we are in a
8 circumstance where the Court has concluded there's a
9 broad subject-matter waiver, Mr. Boies then has the
10 opportunity to ask all sorts of questions and what
11 Mr. Boies is suggesting we are somehow foredisclosed now
12 from responding to those kinds of issues. To be very
13 clear, Your Honor, I am not taking the position now, nor
14 have I earlier and I won't later on that if I present
15 Mr. X with testimony, I'm going to object to Mr. Boies or
16 his colleagues from examining the witness about X. I'm
17 not trying to use privilege as a sword and shield here.

18 THE COURT: Well, it seems to me the way this
19 witness has freely spoken about counseling advice given
20 to his client, I'm not sure you can parse the waiver so
21 finely anymore. I think there's maybe a waiver as to
22 everything AIG -- by the way this witness has testified,
23 he's basically freely spoken about everything that he
24 spoke to his client about.

25 MR. GARDNER: I mean, Your Honor, so first of all,

1 I would resist the notion that there's been sort of a
2 broader subject-matter waiver than this Court has already
3 found. I think, two, many of these documents are already
4 in evidence, so if Mr. Boies is suggesting that I can't
5 ask the author of an exhibit that's already in evidence
6 what he meant by that exhibit, then we have a sword and
7 shield problem in the reverse. Mr. Boies can put
8 exhibits if I can't ask witness what they meant by those
9 exhibits and that is fundamentally unfair. I mean,
10 Your Honor, maybe to move forward because I would very
11 much like to move forward and I imagine Mr. Boies would
12 as well, I mean, I think we just need to take it as it
13 comes.

14 THE COURT: Well, I think that may be right, and I
15 obviously am not going to rule in advance on things that
16 may come down the road as part of plaintiffs' rebuttal
17 case or what plaintiff would like to do in that regard.
18 We're just going to have to see what develops, but I just
19 have to tell you I think the door has probably been
20 opened as to all things relating to Davis Polk's legal
21 advice on AIG issues.

22 MR. GARDNER: I I understand you understand 2
23 Court's position.

24 THE COURT: I mean, I don't see how you can parse
25 that by subject matter i think the whole thing is out in

1 the open.

2 MR. GARDNER: I certainly understand the Court's
3 view on that.

4 THE COURT: All right.

5 Okay.

6 **(Whereupon, the witness was present in open**
7 **court.)**

8 THE COURT: Thank you again, Mr. Huebner. We're
9 just going to proceed with Mr. Gardner's next question.

10 MR. GARDNER: Thank you, Your Honor. And my
11 apologies, Mr. Huebner.

12 BY MR. GARDNER:

13 Q.

14 Q. I think the question that was pending is, why did
15 Davis Polk advise that option B was the best yet
16 identified option?

17 A. As I testified before, I stepped out, the Fed was
18 trying to balance a series of concerns and figure out
19 sort of the best available way forward, and having the
20 shares issued as preferred seemed to importantly give the
21 Fed the benefit of the bargain, in other words, what the
22 Fed had negotiated for or was, you know, was contained in
23 the term sheet and had been -- was expecting and simply
24 was the deal was a 79.9 percent equity equivalent to
25 common stock, so the preferred met what was actually in

1 the term sheet as one of the forms of consideration that
2 had been agreed to as part of the underlying transaction.

3 Two, although ironically it was not issued for
4 many months after this, but when issued, the preferred
5 had the advantage of having, again, what was in the term
6 sheet from the beginning, which is, you know,
7 79.9 percent common stock equivalent both the economic
8 rights and the voting rights, and then the trust
9 structure appeared to again balance the various concerns
10 that the clients were wrestling with, which was how to
11 appropriately safeguard the, you know, returns and the
12 loan and the equity that were the critical components of
13 the deal that were for the benefit of the entire U.S.,
14 you know, citizenry, with not wanting to be in quote
15 control of AIG. It was very important as I said before,
16 for Mr. Baxter and the Fed generally to attenuate that
17 and to have a level of removal, which they felt very
18 strongly about, and so the trust seemed to meet those
19 concerns much as I said before, there also were
20 discussions being had that week about potential legal
21 issues and so the trust also to the knowledge of those --
22 certainly in my earshot addressed those because then,
23 you know, the beneficiary under the trust was the
24 United States Treasury. It was actually the bank account
25 of our nation. It wasn't the Department of Treasury, and

1 so it seemed to meet all of the concerns that people were
2 wrestling with that week on a sort of best available
3 basis.

4 Q. Now?

5 MR. BOIES: Your Honor, I appreciate it's a bench
6 trial. Nevertheless, sometimes I feel I have to make
7 these motions.

8 I move to strike his testimony about what was very
9 important to Mr. Baxter and the Fed. That's not
10 something that is within his competence.

11 MR. GARDNER: And Your Honor, if I could respond
12 to that quickly, again, Mr. Huebner isn't testifying as I
13 understand it to the truth of the matter asserted. He is
14 testifying as to what his understanding is in
15 implementing or recommending option B over option A.
16 You've already heard from Mr. Baxter.

17 THE COURT: I'll accept his testimony in that
18 light.

19 MR. GARDNER: Thank you.

20 BY MR. GARDNER:

21 Q. Now, if you could turn to page 7 of PTX 159.

22 A. Yes.

23 Q. Under the voting bullet point, it states vote
24 arranged to address par value and authorized common share
25 number (likely as soon as possible, but not imperative).

1 Can you describe what this means?

2 A. Yes. So by this point in time, which was several
3 days after the 16th, I had learned, as I think the core
4 team working on the transaction had learned, that
5 ultimately if one were to want to convert X whenever X
6 was into common stock, there were two issues that would
7 need to be addressed by a common stockholder only vote
8 that was increasing the number of authorized shares and
9 the second was lowering the par value of the shares. AIG
10 had what I came to understand was an extremely unusual
11 par value. You know, it's typically sort of .0001 cent
12 and par value is not a particularly meaning full concept
13 anymore. But AIG happened to have a \$2.50 per share par
14 value.

15 So the parenthetical is very important where it
16 says likely as soon as possible, at the time on whatever
17 this was, September 18 or 19, the thought was that a vote
18 would take place in case ultimately people wanted to
19 convert the preferred shares to common, but it was not
20 imperative, in fact it was not imperative because as I
21 said before, the minute the preferred shares were issued,
22 they had and were absolutely authorized by the
23 certificate of incorporation to have all of the
24 79.9 percent rights that were promised in the term sheet.
25 Those shares were delivered with voting rights and

1 economic rights, so you know, maybe someday they would be
2 converted to common or something else, but it wasn't a
3 pressing issue at all because the securities gave the Fed
4 the benefit of its bargain on the day they were issued.

5 Q. Now, if you go back to the cover e-mail of
6 PTX 159, that last e-mail on that first page, the third
7 paragraph you say under B, neither the Fed nor Treasury
8 'control' AIG. But their trusted and presumably blue
9 chip designees will and right out of the box. What did
10 you mean here?

11 A. Yes. So as I said several times before the break,
12 all that week Mr. Baxter just kept saying both in writing
13 and orally and in fact if you look up above on this same
14 piece of paper he's doing it again when he's e-mailing
15 Mr. Baxter with the alternative -- e-mailing I'm sorry
16 Mr. Alvarez who is the Board of Governors lawyer how we
17 might deal with control. Mr. Baxter just kept say we
18 can't have control it's not appropriate to have control,
19 we're the Federal Reserve Bank, you know, we don't want
20 to be in control of AIG.

21 And so this was making it loud and clear in the
22 opening sentence of the description that we had very
23 directly focused on and addressed his concern that we
24 thought that the trust structure in fact met the goal of
25 neither the Fed nor the Treasury quote controlling AIG,

1 which was his, you know, essentially prime directive that
2 week as we tried to figure out how to make
3 recommendations for structures to balance the concerns.

4 Q. And in that same incidence, what did you mean by
5 the term blue chip?

6 A. Yeah. So the sentence is very important, but
7 their trusted and presumably blue-chip designees will and
8 right out of the box. You know, blue chip to me means
9 very high quality, you know, I only invest in this is
10 hypothetical I only invest in blue chip stocks, you know,
11 we only want blue chip candidates for this. You know, I
12 actually did not know at the time that it's origin is
13 actually the highest denomination of poker chip which I
14 learned only recently when I said I don't even know the
15 entomology of this work but it turns out it's not a
16 flattering supposed to stand for unimpeachable
17 nonetheless that's how I use it and hope you children
18 marry sort of blue chip spouses, you know, of sort of
19 great quality and so the right and the right out of the
20 box point essentially realities back to what we discussed
21 before that the preferred shares once issued
22 /STKPWHR-FRPBLGTS /STKPWHR-FRPBLGTS /STKPWHR-FRPBLGTS
23 which again as I said before we did not happen for
24 several months but once they were issued, whoever it was
25 that had the votes would be able to exercise them the day

1 they were issued. They wouldn't have to wait for a
2 subsequent triggering event so I was merely describing
3 what the approach was which was trust it since obviously
4 you would only want people of very high quality and
5 reputation not, you know, random people you met on the
6 street to actually have, you know, very powerful rights
7 with respect to a very material investment of the U.S.
8 citizenry. /STKPWHR-FRPBLGTS.

9 Q. Now, in that next sentence you state that the
10 preferred shares "may well be critically necessary given
11 the very public winging (pronounced in this case
12 winzhing) going on by certain board members (see below),
13 the annual nonstaggered risk of having a known board
14 voted out, and the ability of anyone (and there are
15 several logical candidates) to have/acquire big stock
16 positions and make much trouble for us."

17 What were you intending to convey here?

18 A. So one I was making clear that I /STKPWHR-FRPBLGTS
19 again, not to be glib, but I was first pointing out that
20 it shouldn't be misread as winging as, you know, people
21 are winging it. Winging, to my knowledge, means
22 complaining and there was an attached article where there
23 were a couple of board members, you know, saying things
24 like we felt violated by the terms of the loan or,
25 you know, negative sentiments that concerned me. The

1 annual nonstaggered risk of having a known board voted
2 out I already discussed, which is and it ties into the
3 next point that absent having voting rights available to
4 the 79.9 percent equity that was promised, you know,
5 anybody could or could buy into this and in one swoop
6 call a shareholders vote and fire the whole board, fire
7 the whole management and install people who might be
8 decidedly hostile, including to AIG by the way. I mean,
9 people have just -- I don't want to, you know, overblow
10 the specter of corporate raiders and we all read the
11 newspapers and we know what happens when people swoop in
12 on companies that are troubled and whose securities are
13 depressed. April that's what the next pretend --
14 subordinate clause refers to, the ability of anyone and
15 there are several logical candidates to have/acquire big
16 stock positions and make much trouble for us, in this
17 case us once again is a reference to the clients, not
18 really for me personally or Davis Polk. And again, ins
19 what I do for a living, you know, for two decades I've
20 dealt with distressed companies and watched them go quote
21 in play, you know, a company will begin to stumble and
22 will go in play and all of a sudden its debt will turn
23 over, its securities will turn over, its stock will turn
24 over the board will start getting threatening letters
25 from new holders who have a playbook that they use to

1 many would say extort value, including risking the
2 destabilization of the company, you know, some companies
3 end up in bankruptcy for years because, you know,
4 managing hedge fund A who bought into the senior
5 department is locked in a multiyear battle with major
6 hedge fund B junior debt about which one of them
7 ultimately, you know, crushes the other one and thanks
8 their plan confirmed and companies actually die in
9 situations like that because the fights go on for long
10 enough to drain out the value so this was a very real
11 concern ensuring stability and responsibility, you know,
12 to a company as to which, you know, tens of billions of
13 dollars of taxpayer funds had been loaned.

14 Q. Now, earlier you mentioned that Davis Polk had
15 recommended option B over option A; correct?

16 A. Yes.

17 Q. Now, to your knowledge, did the New York Fed
18 ultimately agree with your recommendation to pursue
19 option B?

20 A. Yes.

21 Q. Now, to your understanding, based on your
22 involvement in structuring the equity, did the
23 New York Fed think it important that the equity issued by
24 AIG have immediate voting rights?

25 A. It was one of the concerns that was being weighed,

1 yes.

2 Q. And what is your understanding as to why the
3 New York Fed wanted the equity to have immediate voting
4 rights?

5 A. In essence it's for the reasons I just described.
6 If, you know, you only had a security that ultimately
7 some day could be turned into a security that had voting
8 rights, you were essentially utterly powerless from a
9 corporate governance perspective in the interim and you
10 be buffeted by very dangerous and unsavory winds.

11 Q. And?

12 A. And when I say you, I'm sorry, let me be clear
13 because I should the company was at risk of being
14 buffeted by dangerous and unsavory winds which could
15 ultimately affect the company and its ability to repay
16 the loan and the ability to maximize the taxpayer
17 investment generally.

18 Q. The company being AIG?

19 A. Absolutely.

20 Q. Now, this again upon your personal knowledge, did
21 the New York Fed want the equity to have immediate voting
22 rights so that it could control AIG?

23 A. No. In fact, as I think these e-mails made clear
24 and my testimony I hope makes clear, not controlling AIG
25 was actually, you know, sort of a pulsating thought that

1 we just kept hearing from our client and figuring out a
2 way to balance, you know, issues with respect to
3 oversight with appropriately protecting the taxpayer
4 investment and frankly to some extent AIG itself, that
5 was the balancing act that we were trying hard to figure
6 out as a collective.

7 Q. Now, earlier in your testimony, it might have even
8 been yesterday at this point I've sort of lost track you
9 had mentioned the presence of Wachtell Lipton do you
10 recall that?

11 A. I do.

12 Q. Did Wachtell Lipton provide feedback on the
13 Exhibit PTX 159?

14 A. They did.

15 Q. And what feedback did Wachtell provide?

16 A. So Friday -- so I sent this document out Friday
17 morning at 11:50 a.m. and unless someone corrects me I'll
18 assume that time stamp is correct I think only the top
19 ones or I'm not sure I believe that's correct.

20 Q. I can represent to the Court and to you that the
21 time on this e-mail is the time it represents.

22 A. Thank you.

23 So I sent the e-mail out to the group at just
24 before noon on Friday. That afternoon, Wachtell
25 communicated with me along with a markup of the document

1 for a structure that would have had much more direct
2 New York Fed control over the shares and over the trust
3 and therefore over AIG. I believe there was both a cover
4 e-mail and a markup that both indicated sort of what
5 their philosophical approach was inform our alternative
6 suggestions.

7 Q. And what was your reaction -- what was your
8 response to Wachtell's philosophical approach?

9 A. My response was that that the client did not want
10 to take that approach, that the client understood that,
11 you know, hypothetically more control meant more safety
12 and ability to influence and I certainly understood
13 Wachtell's drafting, but that the Fed had been very clear
14 that they did not want to go down that route with that
15 calibration of how to weigh the various issues in front
16 of them. And you know, sent a polite, you know, thanks,
17 but I understand your concerns, I don't think we were
18 going to what they were trying to solve for, but that's
19 just not where the client is. They're not willing to
20 strike the balance more heavily on the side of
21 involvement and control in AIG and its affairs.

22 Q. Let's take a look at PTX 167.

23 A. Yes.

24 Q. Do you recognize this exhibit?

25 A. I do.

1 Q. What is it?

2 A. This is an -- the e-mail at the bottom of the
3 first page is an e-mail from Larry make company, who is
4 one of the Wachtell partners I mentioned some time ago.
5 Just before 1:00 p.m., so about a little under an hour
6 after I sent the term sheet out that clearly had been
7 forwarded to them and then they say where they're coming
8 from. Marshall, we continue to have concerns about a
9 structure that gives the government less than the
10 affirmative ability to exercise direct control (which
11 also relates to the ability to conclude definitive
12 documentation quickly). Recent and current events only
13 underscore the potential for mischief. Then they go on
14 to say, you know, but if we have to choose, we prefer
15 something like option B. And then as you see in the
16 e-mail on top, they went to the either courtesy or
17 trouble depending on your point of view of actually
18 sending us a black line of option B, which is attached.
19 That's page 3 of 7 and 4 of 7 that would have very
20 substantially enhanced the New York Fed's, you know,
21 control for lack of a better word, over the trust and
22 therefore over AIG itself.

23 MR. GARDNER: Your Honor, the --

24 THE COURT: Go ahead.

25 MR. GARDNER: I don't want to interrupt you.

1 THE COURT: I was just going to say, I think this
2 document also should be submitted as part of your
3 in camera review submittal.

4 MR. GARDNER: We will, Your Honor. And in that
5 regard, let me move in or move for the admission of
6 PTX 167.

7 MR. BOIES: Your Honor, I don't have -- I don't
8 have an objection. And I may be wrong in this, but we
9 can check it very quickly. I thought that PTX 167 was
10 Joint Exhibit 376, which would already be in evidence.
11 There may be a difference between the two.

12 MR. GARDNER: I don't pretend to have that kind of
13 knowledge, but I can certainly check. I mean, if
14 Your Honor will woe owe what we could potentially do
15 now -- or actually -- the Court's indulgence?

16 THE COURT: Sure.

17 MR. BOIES: I don't have an objection. Looking at
18 it, I think it is exactly the same, but I don't have any
19 objection to --

20 MR. GARDNER: I -- obviously am doing this on the
21 fly, Your Honor, but it does seem that JX 376 is the same
22 as PTX 167, so I'm fine with just substituting in the
23 transcript where we said PTX 167 and replacing it with
24 JX 376.

25 THE COURT: All right. That's fine. We'll do

1 that.

2 Just the Court's indulgence, I just want to make
3 sure.

4 THE WITNESS: Yeah, I mean -- I'm sorry.

5 BY MR. GARDNER:

6 Q. Okay. Now, Mr. Huebner, upon receiving this
7 e-mail from Wachtell with their preference, what did you
8 do in response?

9 A. I read it, and I read the attachment and I tried
10 to form an understanding of obviously what their black
11 lining meant and how that would have changed the deal,
12 and you know, for example, their I read it to gain an
13 understanding of what Wachtell was proposing in terms of
14 the actual draft of the document, which obviously was the
15 effectuation of their philosophical view that, you know,
16 much more quote control was in their view appropriate and
17 I formed a view, which I then advised the client and
18 ultimately communicated back to Wachtell that while I
19 certainly understood what target they were aiming at and
20 I certainly understood what this black line would have
21 done that that was not where the clients were and that
22 was not the balance that the New York Fed believed it
23 appropriate to strike in weighing these various concerns.

24 Q. Now, I want to draw your attention to DX 982.
25 Now, Your Honor, DX 982 is essentially most of JX 376 as

1 well as PTX 167, with the one additional e-mail on top,
2 just so we are all on the same page. And what I'm going
3 to ask Mr. Huebner about is that one additional e-mail on
4 top.

5 THE WITNESS: Yes.

6 BY MR. GARDNER:

7 Q. So, Mr. Huebner, do you recognize what's been
8 marked as DX 982?

9 A. Yes.

10 Q. And what is it?

11 A. This is my response to the Wachtell folks and
12 their markup, where I communicated to them that in what I
13 thought was a courteous way that I understood what was
14 motivating them but my sense of the client was that,
15 you know, this was, you know, really ultimately not going
16 to make its way into the document.

17 MR. GARDNER: And Your Honor, the government moves
18 for the admission of DX 982.

19 MR. BOIES: Your Honor, I don't have an objection,
20 although I do believe that since they're moving this into
21 evidence, we ought to have the unredacted copy.

22 THE COURT: Yes. Well, I think this document will
23 be covered by what you submit.

24 MR. GARDNER: Correct. And my understanding,
25 Your Honor, is that we are going to be submitting those

1 in camera for the court to make its assertion as to
2 whether or not those redactions are appropriately made,
3 and if they are, they will stay where they are, and if
4 they're not, they will be unredacted.

5 THE COURT: Yes.

6 MR. GARDNER: And I agree, Your Honor, that this
7 redaction appears in JX 376 as well, so one would be
8 subsumed by the other.

9 THE COURT: Right.

10 So Defendant's Exhibit 982 is admitted subject to
11 the discussion we had.

12 **(Defendant's Exhibit Number 982 was admitted into**
13 **evidence.)**

14 BY MR. GARDNER:

15 Q. Now, Mr. Huebner, in DX 982, there's a statement
16 that you make where you say, "We share your concerns
17 about mischief in spades."

18 Can you explain what you're referring to here?

19 A. Yes. I'm responding pretty directly to a
20 analogous line in Mr. Makow's e-mail recent and current
21 events wholly underscore the potential for mischief and
22 again I think it was, you know, the number of issues we
23 just discussed only a few minutes ago about the potential
24 of hostile action, people buying into the situation and
25 existing people as well, and you know, some winging that

1 had already begun as people were reflecting on the terms
2 of the transaction.

3 Q. Now, Mr. Huebner, did there come a point when a
4 decision had been made on the form of equity to be
5 received from AIG?

6 A. Yes.

7 Q. And do you recall approximately when that
8 occurred?

9 A. I believe it was made on Sunday, the 21st of
10 September.

11 Q. Okay. Let's take a look at JX 100, which is in
12 your binder.

13 And do you recognize this exhibit?

14 A. I do.

15 Q. Now, this is a September 21, 2008 e-mail from you;
16 correct?

17 A. Yes. It's marked 5:03 a.m. I believe it was
18 actually sent at 1:03 a.m., and so it would have been
19 very, very late Saturday night, i.e., technically Sunday
20 morning after 1:00 a.m.

21 MR. GARDNER: And Your Honor, just so you are
22 aware of this, the e-mails with the T R E A S Bates
23 labels are the ones that were produced I believe it's in
24 Greenwich mean time and it just affects the first e-mail
25 in the chain please do not ask me why that is because I

1 do not have an answer for you but that is is what it is.

2 BY MR. GARDNER:

3 Q. Does JX 100 attach the proposed preferred stock
4 term sheet that became Exhibit D to the credit agreement?

5 A. Yes. The two-page document that is attached to
6 the e-mail and actually referred to in my e-mail is
7 ultimately became Exhibit D to the credit agreement.

8 Q. Now, going back to the e-mail, the e-mail notes
9 that the intention is to get the term sheet to AIG ASAP.

10 Do you see that?

11 A. Yeah. Well that -- that's in Mr. James's e-mail
12 below. That e-mail was at 12:30 in the morning. Once
13 again, we were working almost literally around the clock
14 to get the documents prepared and over as soon as humanly
15 possible. I would not care to calculate the number of
16 hours of sleep many people got penis the 16th and the
17 23rd, so Mr. James is confirming that we would like to
18 send it to the company ASAP. And then my e-mail makes
19 clear both that this is the structure towards which which
20 we are collectively gravitating and that we want to --
21 want/need to keep it rocketing along on the schedule and
22 for the reasons described below. In other words, I just
23 want to make sure anybody who might need it had it
24 because we were once again racing at very high speed to
25 get the documents out as soon as possible.

1 Q. Now, Mr. Huebner, to your knowledge, pardon me, do
2 you know whether the preferred stock equity term sheet
3 that became Exhibit D to the credit agreement was
4 provided to AIG in advance of the September 21, 2008
5 board meeting?

6 A. Yes.

7 Q. Okay. And how do you know that?

8 A. Because it was provided to Sullivan & Cromwell
9 that afternoon.

10 Q. Let's take a look at PTX 190, which is an exhibit
11 that is already in evidence.

12 Now, do you recognize this exhibit?

13 A. Yes.

14 Q. Now, the first e-mail in this chain refers to a
15 call.

16 Do you see that? And by first e-mail in this
17 chain I am sorry I think I mean the earlier?

18 A. You mean the one on page 4 of 4.

19 Q. Page 4. I'm chronologically challenged.

20 A. Yes.

21 Q. Do you know what that's a reference to?

22 A. Yes.

23 Q. What does it refer to?

24 A. There was a call mid to late morning on Sunday to
25 sort of continue to finalize/finalize the proposed terms

1 of the 79.9 percent common stock equivalent instrument.

2 Q. Now, if you look at page 2 of PTX 190 running on
3 to page 3, Mr. Baxter sends you an e-mail at 2:22 p.m.
4 that states: I am interpreting this as a green light for
5 the trust that we discussed.

6 What was your understanding of what Mr. Baxter
7 meant by that?

8 A. So I don't perfectly understand the relationship
9 between the Board of Governors and its internal lawyers
10 and the New York Fed and its internal lawyers, but
11 clearly getting Mr. Alvarez who was the general counsel
12 of the Board of Governors I believe that was his title
13 sort of on board was important and so this is -- and
14 forwarding an e-mail from Mr. Alvarez to Mr. Baxter and
15 then Mr. Baxter saying to me I'm interpreting the below
16 e-mail from Mr. Alvarez as a green light to move ahead
17 with the trust structure.

18 Q. Now, on page 2 of the e-mail, you write that but
19 you guys have said on every call that you not the trees
20 control disposition decisions. That is a rather big way
21 in which the Fed is involved. ^ NDQ.

22 What were you intending to convey here?

23 A. Yes. So I guess I wish you would have started
24 reading a little earlier is and so for the court' benefit
25 I'm going to actually do because I think the context is

1 quite important.

2 Q. Let me back up then and withdrew the question?

3 A. I'm sorry. That's probably the not right thing
4 for me to say.

5 Q. No apologies. Let me ask you a foundational
6 question.

7 What is the context in which this e-mail is being
8 written?

9 A. Right. So Mr. Baxter, who is my client, forwarded
10 me an e-mail from Mr. Alvarez and said, you know, this is
11 a green light in other words go like we're going with
12 this option. Having read Mr. Alvarez' e-mail below, my
13 mind sort of slightly snagged on one little sentence or
14 one clause within it and being sometimes a focused
15 person, I thought that it was important to point out to
16 Mr. Baxter my one remaining thought on the below e-mail
17 exchange.

18 Q. So the one little phrase or sentence that you got
19 slightly snagged on I think, what were you referring to?

20 A. Right. So after calling Mr. Baxter a king among
21 kings, Mr. Alvarez went on to say I understand dot dot
22 dot that the Federal Reserve will not be involved in the
23 trust in any way. And while it is true that the trust
24 very greatly removed the New York Fed and very greatly
25 attenuated its ability to control AIG via the stock

1 ownership, there was one small exception to that, and in
2 the interest to make sure that nobody missed it and
3 nobody could say later, you know, why didn't you point
4 this out or the like, you know, in general, I find that
5 when people make incredibly broad statements with no
6 exceptions, it is often the case that they're just not
7 quite true, and just by personality type, I tend to pause
8 and step back and say, you know, really? Never ever?
9 And so that's kind of me saying, you know, but one note
10 Scott's words of the Fed quote not involved in any way'
11 are not quite met? Then I describe, you know, parts of
12 the trust and then I say but, in other words, there is
13 one exception to this very broad statement that the Fed
14 is not involved in any way, which is a disposition issue.
15 In other words, were there ever two be a disposition
16 event of the shares, you know, a sale or merger of AIG
17 itself, for example, my recollection is that the Fed
18 would have had the potential right to step back in,
19 either alongside or maybe instead of the trustees, and so
20 I was just pointing out, you know, this is one exception,
21 that if it ever happens would be a big one. And I just
22 felt it important to point that out.

23 Q. Now, let's turn to DX 531?

24 A. And who is picking the trustees sorry I don't
25 think it was yet known at the time who would pick them so

1 I did mention. I don't -- I did mention that as well.

2 Q. Understood.

3 So if we can turn to DX 531.

4 And do you recognize this exhibit?

5 A. Yes.

6 Q. What is it?

7 A. So literally within a teeny number of minutes of
8 being authorized by the client to send the two-page
9 document out to AIG and its representatives, we did so.
10 Michel Beshara I believe I referred to before was a
11 securities lawyer at Davis Polk who at 3:22 p.m. sent to
12 two-page document to a bunch of AIG folks and
13 representatives.

14 MR. GARDNER: Your Honor, the government moves for
15 the admission of DX 531, which I will represent is
16 similar to an exhibit that was admitted yesterday but
17 without the cover -- sorry -- the latest e-mail from
18 Mr. Huebner.

19 MR. BOIES: No objection, Your Honor.

20 THE COURT: All right. Defendant's Exhibit 531 is
21 admitted.

22 **(Defendant's Exhibit Number 531 was admitted into**
23 **evidence.)**

24 BY MR. GARDNER:

25 Q. Mr. Huebner, to sort of take a step back for a

1 second, why did it take so long for the New York Fed to
2 provide representatives of AIG /(with the preferred
3 share term sheet?

4 A. So as I testified about before, what was generally
5 going on in the period between the 16th and the 21st was
6 very difficult to overstate in terms of the sheer
7 incredible amount of work that was a true emergency as,
8 you know, lawyer work goes. There were four multibillion
9 dollar same-day loans that had to be documented and made
10 and funded and secured. There was a hundred thirty,
11 forty, fifty, sixty page credit agreement that was,
12 you know, among the very most important documents /(that
13 had to appropriately protect the government which had
14 already lent \$37 billion on one-page demand notes which I
15 don't imagine any -- anyone would have otherwise done but
16 for the situation.

17 There was the collateral with respect to those
18 loans, and this was one piece of the transaction which,
19 again, as I said before, I'm not unaware as an object of
20 great focus is here but was one piece of the transaction
21 and we were working as fast as we could as you saw from
22 the e-mail times, you know, 7:00 a.m., 1:00 a.m.,
23 you know, we were going almost literally around the clock
24 for six days. Issues had to be threaded. People were
25 trying to figure out back at, you know, various

1 governmental offices and otherwise who should own it, how
2 to own it, preferred, trust, et cetera, and it simply
3 took until Sunday afternoon at 3:22 p.m. to come to
4 ground on what in the end -- you know, if you -- I mean,
5 it's painful to ultimately look at a document that's only
6 two pages and have to say under oath that it took days
7 and days to get it drafted and finalized, but that's
8 actually what it took given the circumstances, and
9 you know, the e-mail from me as requested 3:22 p.m. was
10 confirming, you know, it's literally nothing other than
11 it went it went at 3:2 in other words we were working
12 surface humanly possible we got it out as soon as it was
13 ready.

14 Q. Was Sullivan & Cromwell attorneys for AIG involved
15 in providing input to the terms of the equity term sheet
16 that became Exhibit D to the credit agreement?

17 A. Yes.

18 Q. And to your recollection, when did
19 Sullivan & Cromwell provide that input?

20 A. So I don't remember if there was also a call
21 Sunday afternoon or evening. I just don't remember. I
22 believe they sent either one or two light markups, some
23 combination of Sunday into Monday is my memory, and I
24 don't remember if there was, you know, one or two, but
25 I -- they definitely sent a markup because I described it

1 in an e-mail that went to the clients.

2 Q. Let's take a look at PTX 214. It's in your
3 binder.

4 Do you recognize this exhibit, Mr. Huebner?

5 A. May I just have a minute to look at it?

6 Q. Please take your time.

7 **(Pause in the proceedings.)**

8 Q. And what I'm most interested in is on page 2 of 3,
9 the middle e-mail.

10 A. Yes.

11 So things are crumpled together. I apologize for
12 taking the extra time. In the middle of what looks like
13 a single final paragraph on page 2 of 3, the formatting
14 is just messed up, it actually is -- it's the bottom of
15 an e-mail trailer that actually goes to the prior e-mail
16 and then one two three four five six lines in near the
17 end of the line it says from Jared Fishman, who's a
18 Sullivan & Cromwell lawyer, sent Monday, September 22 at
19 2:42 a.m. and then there's a large distribution group, so
20 this is, as I said, I think this was Sunday into Monday
21 at, you know, very late at night, early in the morning
22 Sullivan & Cromwell's either first or second I'm assuming
23 because it says our comments this was probably their
24 first markup possibly the only written markup of the two
25 pager.

1 MR. GARDNER: Your Honor, the government moves for
2 the admission of PTX 214.

3 MR. BOIES: Your Honor, this does not have
4 attached to it the comments that are asserted to be
5 attached. And we have been trying to find those and have
6 been unable to. I guess I would object to this as an
7 incomplete document, mostly to urge the other side to
8 come forward with the attachments.

9 MR. GARDNER: Your Honor, I can represent to the
10 Court my understanding is that the Department of Treasury
11 and the New York Fed and the Board of Governors have
12 conducted diligent searches. I haven't heard anything
13 from Mr. Boies during pretrial to suggest that somehow we
14 have been deficient in those efforts. And again, this is
15 a plaintiffs' exhibit. The point that we wish to
16 introduce it for is simply to show that
17 Sullivan & Cromwell had in fact provided edits to the
18 equity term sheet that ultimately became Exhibit D to the
19 credit agreement. What those comments actually are are
20 frankly immaterial to my questioning of Mr. Huebner.

21 MR. BOIES: These are -- this is one of the
22 documents that's marked for identification because we've
23 not offered it pending an ability to determine whether or
24 not we can find the attachments. The problem with nugget
25 in is that all we have is now the witness' testimony as

1 to what was there and it's -- I'm not suggesting that
2 they've not done a diligent search, but what I'm saying
3 is that this went to Davis Polk. This on a lot of e-mail
4 servers, and I don't think it ought to be admitted
5 without the attachment that will put in context and show
6 us what really the comments were.

7 MR. GARDNER: I mean, Your Honor, look, we have
8 engaged in good faith discovery. We've produced what are
9 in the piles as reasonably identifiable. Again, I do not
10 recall Mr. Boies during discovery objecting to the nature
11 of this exhibit as incomplete. And again, the only point
12 which I wish to provide to the Court at this juncture is
13 that Sullivan & Cromwell was providing comments. What
14 the nature of those comments are frankly not that
15 material.

16 THE COURT: And I understand. I will admit the
17 document into evidence. It seems odd to me that the
18 attachment cannot be found given the great many people
19 that apparently received it.

20 MR. GARDNER: I mean, I understand, Your Honor.

21 THE COURT: I don't know what else I can do about
22 it.

23 MR. GARDNER: I understand.

24 THE COURT: If the attachment does turn up, please
25 furnish it.

1 MR. GARDNER: Of course, Your Honor. I don't
2 think there -- I can represent on behalf of the
3 United States that no one is trying to hide, you know,
4 exhibits that are --

5 THE COURT: I understand. I mean, it's just hard
6 to believe that it can't be found.

7 MR. GARDNER: Your Honor, in my experience working
8 for a government agencies, it is oftentimes difficult to
9 find certain things that were once electronically stored.

10 THE COURT: But the law firm would have it as
11 well.

12 MR. GARDNER: I understand. I understand.

13 THE COURT: And probably in multiple places.

14 MR. GARDNER: You would think so, Your Honor.

15 BY MR. GARDNER:

16 Q. Now, Mr. Huebner, did Davis Polk provide a draft
17 of the credit agreement to attorneys for AIG on
18 September 19, 2008?

19 A. Is that Friday?

20 Q. I believe so.

21 A. Yes. It is Friday, and the answer is yes.

22 Q. Why don't we take a look at DX 943.

23 THE COURT: Let's take a lunch break at this
24 point.

25 MR. GARDNER: Do you understand good Your Honor.

1 THE COURT: We'll get to Exhibit 943 in a little
2 bit. Let's come back at 1:45.

3 (Whereupon, at 12:43 p.m., a lunch recess was
4 taken.)

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DRAFT

1 A F T E R N O O N S E S S I O N

2 (1:46 p.m.)

3 THE COURT: You may go ahead, Mr. Gardner.

4 MR. GARDNER: Your Honor, before I do, one very
5 brief housekeeping matter. I always like to report good
6 news after lunch.7 You might recall that PTX 214 was the exhibit that
8 the government sought to introduce that didn't have the
9 attachment, and we have the conversation about whether
10 the attachment exists or doesn't exist. And in fact,
11 during the course of discovery in this case, it was
12 produced to plaintiff with the attachment. I conferred
13 with Mr. Boies about -- see, it's amazing; right I
14 conferred with Mr. Boies during the break and we both
15 thought it was the most sensible approach pending the
16 Court's approval to simply mark this version that I'm
17 handing up as PTX 214-A and it will reflect the
18 attachment.19 MR. BOIES: Neither of us marked the complete
20 document, Your Honor, but we both agree it ought to be
21 marked.22 THE COURT: So I'm going to take this as a sign
23 that if I encourage you all to do something, somehow it
24 will happen.

25 MR. BOIES: Every lunch.

1 THE COURT: Over lunch.

2 THE WITNESS: May I step down, Your Honor?

3 MR. GARDNER: We're done. No. But if you want,
4 Your Honor, over the next break, I can sticker this and
5 then we can hand it out to the Court.

6 THE COURT: That's great. Thank you. Thank you
7 for following up.

8 MR. GARDNER: You're welcome, Your Honor. And we
9 are working on the redaction issue. I think it may be
10 the case because we're dealing with different parties and
11 different redactions, it may not be until the first thing
12 in the morning, but for better or worse, my suspicion is
13 Mr. Huebner may still be here, so we'll see how it works.

14 THE WITNESS: For worse.

15 THE COURT: Sorry about that.

16 THE WITNESS: That's okay, Your Honor.

17 MR. GARDNER: I'm with the government. I'm here
18 to help.

19 BY MR. GARDNER:

20 Q. Can you turn to Defendant's Exhibit 943, please.

21 A. Yes, sir, I'm there.

22 Q. And do you recognize what Defendant's Exhibit 943
23 is?

24 A. I do. This is a blacklined version of the credit
25 agreement. There's a cover e-mail referencing for the

1 AIG folks that it is blacklined against the draft they
2 got Friday evening.

3 MR. GARDNER: Your Honor, the government moves for
4 the admission of DX 943.

5 MR. BOIES: No objection, Your Honor.

6 THE COURT: Defendant's Exhibit 943 is admitted.

7 **(Defendant's Exhibit Number 943 was admitted into**
8 **evidence.)**

9 THE WITNESS: I should also note that this
10 indicates that the client hadn't even reviewed this draft
11 yet and that we were getting it out to AIG's
12 professionals as quickly as possible and -- the cover
13 e-mail makes clear that this was being distributed to AIG
14 as quickly as possible prior to even review by
15 Davis Polk's own client.

16 Q. I want to turn to now PTX 368 and I want to
17 briefly change topics.

18 And let me know when you're there.

19 A. Yes, sir.

20 Q. Mr. Huebner, have you ever seen what's been marked
21 as PTX 368 before?

22 A. Yes.

23 Q. When did you see PTX 368?

24 A. This was given to me as part of my preparation for
25 the deposition in this matter a few months ago and when I

1 got it at the time, I indicated then and I am happy to
2 repeat now, I had never seen this document before or
3 known of its existence until it was shown to me in
4 connection with preparing for my deposition.

5 Q. Could you turn to page 3 of the document.

6 In the first full paragraph on page 3, it states,
7 "Neither the Reserve Bank nor the Treasury Department has
8 the legal authority to hold the equity in the form of
9 preferred or common stock directly."

10 Mr. Huebner, I recognize you had never seen this
11 exhibit contemporaneously, but is that statement
12 consistent with your understanding?

13 MR. BOIES: Objection, Your Honor.

14 THE COURT: Well, okay. Before we get to your
15 objection, where are you reading from?

16 MR. GARDNER: Page 3.

17 THE COURT: PTX 368.

18 MR. GARDNER: Correct. First full paragraph, so
19 it says the creation of the trust.

20 THE COURT: Yes.

21 MR. GARDNER: And in that sense, it says neither
22 the Reserve Bank nor the Treasury Department has the
23 legal authority to hold the equity in the form of
24 preferred or common stock directly."

25 Do you see that judge.

1 THE COURT: Right. Now, your objection is what.

2 MR. BOIES: It's a legal conclusion. And it is
3 something that he did not by his own testimony and by
4 representation that we had earlier in this trial his law
5 firm did not ever give any advice to or ever look at.

6 MR. GARDNER: And if I can respond to that,
7 Your Honor, it is absolutely true that Davis Polk was not
8 responsible for providing the legal determination as to
9 who could or could not hold the equity. I think
10 Mr. Huebner testified to that. I'm asking because
11 Mr. Huebner was involved in those conversations with
12 respect to the legal and policy issues, that's what he
13 testified to earlier -- and I am asking him, because
14 without invoking of 15 or getting into 615 issues you may
15 recall this exhibit had previously come up with another
16 issue. And it is addressed to Mr. Huebner. You'll see
17 that on the first page. Mr. Huebner's testimony is he's
18 never seen -- he did not see this exhibit at the time and
19 the first time he saw it was at his deposition, but
20 because it's in evidence already and because he was
21 involved in those conversations, I'm simply asking him
22 based on what his understanding is, his involvement at
23 the time with Mr. Baxter and others, whether that
24 statement is consistent with his understanding. I'm not
25 asking for a legal conclusion to be sure.

1 MR. BOIES: This is a legal conclusion. He's
2 asking whether the witness agrees with it or not,
3 Your Honor. And we've had people testify about their
4 views expressed at the time because that could
5 tangentially be relevant to some of the issues like,
6 you know, issues related to deference and things like
7 that as to what the views were, but a lawyer's
8 after-the-fact conclusion whether he agrees or disagrees
9 with a legal conclusion, I don't think that has anyplace
10 in the trial.

11 MR. GARDNER: And to the extent I'm sorry I didn't
12 mean to interrupt you.

13 THE COURT: If you want to add one more point, go
14 ahead.

15 MR. GARDNER: Very quickly, my question is not
16 designed to ask him what Mr. Huebner's view is today.
17 I'd agree that's completely irrelevant. I'm asking based
18 upon, you know, his involvement at the time between the
19 16th and the 21st whether or not that statement in this
20 document which is in evidence already is consistent with
21 that view. I think Mr. Boies and I have a common
22 agreement or understanding that testimony about legal
23 authority ought not to be relevant, but I think that door
24 has been blown wide open with, you know, much testimony
25 in this case.

1 THE COURT: Well, on this particular issue,
2 whatever this witness says cannot change the language in
3 the statute or in other legal memos that we have in
4 evidence and I think due to the importance of the issue
5 to the case, I'd like to hear what the witness has to say
6 and then Mr. Boies can certainly cross-examine when the
7 time comes, so the objection is overruled.

8 BY MR. GARDNER:

9 Q. Let me re-ask the question just so we have a clean
10 question and answer.

11 The statement that I've identified for you on
12 PTX 368, is that consistent with your understanding?

13 A. No, it is not.

14 Q. Why not?

15 A. Because, as I testified to before, and I think we
16 actually covered this, there were conversations going on
17 during those few days about both policy issues and legal
18 issues. The Treasury, for example, I think was off in
19 conversations in which I believe I was not involved
20 thinking about these issues I was aware of that going on.
21 I never heard, to my knowledge and memory, anybody
22 express the view that it was not legal for either the Fed
23 or the Treasury to hold the stock directly, rather, this
24 was among the penumbra of issues being quite seriously
25 thought about and in the end the trust structure seemed

1 to meet this and many other needs, so whether anybody
2 thought about this to conclusion I don't know.

3 Q. So let's talk about the trust for a few minutes.

4 Were you involved in drafting the trust agreement?

5 A. Yes.

6 Q. Let's take a look at PTX 235. And do you
7 recognize what's been marked as PTX 235?

8 A. I do.

9 Q. What is it?

10 A. The e-mail at the bottom of page 1 is my
11 transmission again to a group of some size of the first
12 draft of the trust agreement with what I believe to be an
13 appropriate explanatory message for the context of
14 reviewing the document.

15 MR. GARDNER: Your Honor, the government moves for
16 the admission of PTX 235. And for the Court's
17 convenience, you know, obviously I see that there is a
18 redaction on the top of this. I would seek to admit the
19 document only insofar as from the Marshall Huebner e-mail
20 on the first page down. I'm not going to ask him any
21 questions about anything above that point, which I don't
22 even believe Mr. Huebner is on. My question -- I'm
23 sorry.

24 MR. BOIES: I'm sorry.

25 MR. GARDNER: No, please, please.

1 MR. BOIES: No objection to that offer.

2 THE COURT: All right. Plaintiffs' Trial
3 Exhibit 235 is admitted.

4 **(Plaintiff's Exhibit Number 235 was admitted into**
5 **evidence.)**

6 BY MR. GARDNER:

7 Q. Now, Mr. Huebner, in this e-mail, on the bottom of
8 page 1 from you, you state that the proposed trust is a
9 very odd animal, a state trust where the grantor is the
10 New York Fed and the beneficiary is the U.S. Treasury.
11 We know have no precedent and also imagine that both
12 client institutions may have experts who have before
13 delved into analogous arcana E G the New York Fed's
14 pension trust and will have a lot to add/change.

15 Mr. Huebner, would you explain what you were
16 trying to convey here.

17 A. Yes, I can.

18 So this is not the type of document or issue in
19 which a private law firm -- scratch that have that's a
20 very inarticulate way to proceed.

21 What I was trying to convey was that this was a
22 very unusual document and that as a private law firm,
23 Davis Polk was not experienced in drafting trusts that
24 involved both the Federal Reserve Bank and the
25 United States Treasury, and so I was in essence sending

1 up a flare that somewhere in either institution there
2 were probably experts who had substantially more
3 experience in what I characterized as analogous arcana,
4 in other words, issues about how the government would or
5 the Federal Reserve would hold or otherwise address
6 issues of ownership, especially since it involved both
7 the United States Treasury and the Federal Reserve Bank,
8 and so it was essentially a heavily caveated cover note
9 as the first sentence makes clear we did our best to come
10 up with something that we think from a trust law
11 perspective addresses what the clients asked us to take a
12 stab at, but we're being very up front about the fact
13 that this would likely need a fair amount of input from
14 people who may be substantially more expert in the
15 related issues.

16 Q. And based upon your involvement, Mr. Huebner, in
17 drafting the trust agreement or your involvement in
18 drafting the trust, what purpose did you understand that
19 the trust would serve?

20 A. The purpose of the trust is as I think we already
21 discussed at least to some extent, was precisely to
22 attenuate the ownership to not have the Federal Reserve
23 Bank of New York or the Treasury be the owners of the
24 preferred stock, not be the entities with the right to
25 vote 79.9 percent of the equity votes of a large private

1 corporation. And again, to strike a balance in a very
2 complicated situation between needing to safeguard,
3 you know, to some extent AIG, the loan, the recovery on
4 the equity with serious policy and other concerns about
5 not wanting to be the owner of almost 80 percent of a
6 very large private corporation.

7 Q. Now, Mr. Huebner, I want to change topics again
8 and ask you just a few questions about Maiden Lane III.

9 A. Yes.

10 Q. First, let's turn to DX 652 in your binder. And
11 let me know when you're there.

12 A. I'm there.

13 Q. Do you recognize this exhibit?

14 A. I do.

15 Q. And what is it?

16 A. This is an e-mail exchange between -- well, the
17 below e-mail is an e-mail from Ethan James, who at the
18 time was a Davis Polk partner, to Tom Baxter and another
19 client, Steve Manzari at the Fed, about AIG's request to
20 the New York Fed that the New York Fed assist AIG with
21 respect to counterparty negotiations on credit default
22 swaps.

23 MR. GARDNER: Your Honor, the government moves for
24 the admission of DX 652.

25 MR. BOIES: No objection, Your Honor.

1 THE COURT: Defendant's Exhibit 652 is admitted.
2 **(Defendant's Exhibit Number 652 was admitted into**
3 **evidence.)**

4 BY MR. GARDNER:

5 Q. Now, Mr. Huebner, in this e-mail, Mr. James
6 writes, I spoke to Stasia about getting authorization to
7 talk to the FP counterparties, she will work with Ed and
8 Kathy to engine something up and send it over. To back
9 up a second, who is Stasia?

10 A. Stasia is Anastasia Kelly, the then general
11 counsel of AIG.

12 Q. And do you know who the Ed was that was being
13 referred to there?

14 A. I believe it's Ed Liddy, the then CEO of AIG.

15 Q. And Kathy?

16 A. Kathy Shannon was, as we discussed before, one of
17 Stasia's primary deputies in the legal department at AIG.

18 Q. And what was the issue that's being discussed in
19 DX 652?

20 A. The issue was that AIG had for some time been
21 requesting the New York Fed's assistance with respect to
22 counterparty negotiations and the New York Fed was
23 ultimately at around this point in time willing to lend
24 assistance and we thought it important that there
25 actually be a formal document evidencing that AIG had

1 asked and that the Fed had agreed to assist where
2 seemingly its assistance was required.

3 Q. Now, you say in this top e-mail on DX 652 that
4 Ms. Kelly papered the request to talk to counterparties
5 which happily is a hundred percent the truth as them
6 asking us for assistance not as them quote authorizing
7 unquote us which sounds like we asked/demanded the right.
8 They've been begging us for weeks to help them.
9 Mr. Huebner, what did you mean when you asked that and I
10 Stasia Kelly paper the request?

11 A. Right. So in this e-mail let first set the
12 context if I may. The us is the Federal Reserve Bank of
13 New York. And the them and the they is AIG. So as for
14 worse or for better as we saw before about me being a
15 little bit nitpicky about Mr. Alvarez' e-mail despite
16 being the boss of my client on some level, when I see
17 words or phrase solution that I think are not accurate, I
18 try to get them fixed and point them out. And so I
19 didn't like the fact that Ethan -- sorry -- that
20 Mr. James, who was working under me on the AIG
21 transaction, used the words getting authorization because
22 that was actually wrong. The Fed did not want to be
23 doing this. AIG had been asking for help, and so I was
24 making it clear to him that when the document that we
25 thought it was important to have to accurately reflect

1 what was going on, that it needed to be accurate. And as
2 I say in my each, which a happily 100 percent the truth,
3 them I E AIG asking the Fed for assistance, not
4 authorizing, which sounds like and I'll fill the names in
5 instead of pronouns the Fed asked/demanded the right.
6 AIG has been begging the Fed for weeks to help them.

7 And so this again -- maybe it's persnickety, but I
8 didn't like Ethan's phraseology of yeah we'll get an
9 e-mail confirming they were authorizing us.

10 A. They weren't authorizing. They were begging
11 because they were racing towards a November 10
12 \$24 billion quarterly loss announcement and if they were
13 not able to solve the CDS problem, they were going to
14 have very adverse consequences.

15 Q. Now, did Anastasia Kelly subsequently confirm in
16 writing AIG's request that the New York Fed negotiate
17 with AIG's counterparties?

18 A. Yes, she did.

19 Q. Let's take a look at DX 659 which my understanding
20 is already in evidence.

21 Mr. Huebner, do you recognize what has been marked
22 as DX 659?

23 A. Yes.

24 Q. And what is it?

25 A. This is forwarding to me the e-mail that

1 ultimately Stasia sent Ethan as requested confirming kind
2 of existential reality that AIG continues to have CDS
3 exposure and would be grateful for the assistance of the
4 Fed in attempting to mitigate that exposure.

5 Q. I want to now move on to yet another new topic and
6 discuss the Walker litigation, and I want to start off by
7 looking at an exhibit. Let's take a look at PTX 377.

8 This should be one of the last documents in the
9 binder.

10 A. There's just -- the binder is not very tight. I
11 need to flip a few pages at a time.

12 Q. Taxpayer dollars at work, sir?

13 A. I'm there.

14 Q. And do you recognize what has been marked as
15 PTX 377?

16 A. Yes, I do.

17 Q. Now, the top e-mail is from Joseph Allerhand. Who
18 is Mr. Allerhand?

19 A. Joseph Allerhand is a senior litigation partner at
20 Weil Gotshal, AIG's firm, who was a senior lawyer
21 advising AIG with respect to various litigation matters.

22 MR. GARDNER: Your Honor, the government moves for
23 the admission of PX 377.

24 MR. BOIES: No objection, Your Honor.

25 THE COURT: Plaintiffs' Trial Exhibit 377 is

1 admitted.

2 **(Plaintiff's Exhibit Number 377 was admitted into**
3 **evidence.)**

4 MR. GARDNER: The Court's indulgence, Your Honor.

5 BY MR. GARDNER:

6 Q. Now, Mr. Huebner, on page 1 of PTX 377 towards the
7 bottom, there's an e-mail from you. Do you see that?

8 A. I do.

9 Q. And you write that they're sort of clever. They
10 are trying to allege they changed the disclosure but even
11 if true they didn't really benefit anyone did it
12 shouldn't they have to prove they changed the vote to
13 show a benefit conferred and of course the fact that they
14 could have just called and asked rather undercuts the
15 feeds for face. Taking a step back, what is the issue
16 that you're discussing here, Mr. Huebner?

17 A. So as I came to understand / (via AIG's attorneys
18 at Weil Gotshal, a law firm in Delaware with some class
19 plaintiffs filed a lawsuit against AIG alleging that AIG
20 had been planning to try to increase the number of
21 authorized shares without a existing common stock
22 shareholder only vote and that they were reporting sort
23 of good news, which was that they thought they could
24 settle the suit, you know, essentially only for the
25 payment of several hundred thousand dollars of legal

1 fees.

2 I was a little bit perplexed and surprised at that
3 characterization that this was going to be good news
4 because and now I'll explain sort of what approximate 3
5 and 4 are. 3 and the word disclosure is in all caps to
6 try to let the reader understand what I was saying, which
7 is I don't understand why the plaintiffs are being
8 offered anything here. They didn't change anything. And
9 it's probably easier to start from number 4 actually and
10 work backwards when I say of course the fact that they
11 could have just called and asked rather undercuts the
12 need for fees. In other words, from my perspective, AIG
13 and the Fed and the outside lawyers knew for months that
14 were there ever to be a conversion of the preferred into
15 common that it would require a shareholder vote. Had
16 they just called up AIG and said, does this need a common
17 stockholder only vote? The answer would have been yeah,
18 of course it does. And they would have said, okay,
19 thank you, good-bye. Instead, they filed a lawsuit
20 without ever calling and saying this is an outrage. They
21 intend to do this. And then AIG said to them, no, we
22 don't. What are you talking about? And they said, Oh,
23 okay, well, pay us \$350,000 and we'll settle the lawsuit.
24 And I couldn't understand why the answer because
25 I'm, you know, I'm just me why the answer wasn't they

1 should be like sanctioned for filing this lawsuit, which
2 was to my mind kind of ridiculous, never checking whether
3 their factual assertions were correct, so that's what
4 number 4 was. They couldn't have just called and asked
5 and they would have been told obviously we understand
6 bedrock Delaware corporate law, of course.

7 3 was their sort of clever in other words the
8 e-mails below attach a letter somewhere from the
9 plaintiffs' lawyers that say we added all this value
10 because now you're going to even more clearly disclose
11 that you understand the law and you intend to comply with
12 it. And what I was saying was, I don't understand what
13 benefits that this conferred. Like you generally don't
14 file disclosures saying yes, we will not violate the law.
15 They didn't change the outcome. They didn't change the
16 need for a vote. Everybody was aware of it. So their
17 only little quote benefit was that this alleged
18 disclosure change, which I was sort of surprised at, and
19 in the end, you know, AIG was in this case and others
20 free to do what it saw fit under the circumstances and
21 despite my head scratching, because I was just the Fed's
22 outside restructuring lawyer, AIG I believe actually paid
23 several hundred thousand dollars to settle this lawsuit
24 as was absolutely its right to do as a public company,
25 you know, being sued by, you know, shareholders and a law

1 firm.

2 Q. Now, if you look at the top e-mail, as I read
3 this, it looks like it's from Mr. Allerhand. He states
4 that as we discussed, attached are relevant pages of an
5 internal draft of the proxy statement (you have agreed
6 that its production will not waive any privilege). As
7 you will see, it /ES shows that a class vote of the
8 common was contemplated as early as October 2. Let's
9 discuss this once you have a chance to review it.

10 Mr. Huebner, did you have any discussions about
11 the Walker litigation with Mr. Allerhand?

12 A. Yes.

13 Q. And what was the nature of those discussions?

14 A. So he explained the lawsuit to me generally and
15 then one of the things that they explained to us was that
16 as part of showing the plaintiffs that they did not add
17 value or right any wrong or discover anything that,
18 you know, they then succeeded in stopping, I think it was
19 several weeks before the lawsuit was even filed AIG had
20 already been working on a draft proxy statement that
21 expressly called for the very common stockholder only
22 vote that the plaintiffs wrongly insinuated or stated in
23 their complaint AIG was attempting to avoid and secretly
24 didn't intend to hold. It was sort of like what are you
25 talking about, here's our draft proxy from weeks ago. Of

1 course we know that we have to have a shareholder vote if
2 we are ever to seek to increase the number of authorized
3 shares. It might have been par value also. I don't
4 remember whether it was one or both of the issues, but it
5 was commonly understood.

6 Q. Now, I want to draw your attention to PTX 376
7 which has already been admitted into evidence.

8 Now, in this e-mail, Mr. Huebner, this includes an
9 additional top e-mail where you forward the chain we just
10 discussed to Tom Baxter, Sarah Dahlgren, James Hennessy
11 and Tom Roche; correct?

12 A. Yes.

13 Q. And what was the purpose of forwarding this
14 information about the Walker litigation to employees of
15 the New York Fed?

16 A. Well, I think of them as my clients. As
17 illustrate says in my e-mail, FYI, in other words, AIG is
18 keeping us updated on what's going on here, you know,
19 just here's the latest from AIG, you know, here's where
20 it's going. It was exactly as my e-mail had stated.

21 Q. Can you describe generally your involvement in the
22 Walker litigation.

23 A. I had only the involvement that I just described
24 to you. Mr. Allerhand called to let us know it was going
25 on. They then advised us both with these e-mails and in

1 a phone call or two about the developments. I expressed
2 surprise and I guess just sadness as a citizen that,
3 you know, a law firm could file the suit without ever
4 calling that had no merit and get a large attorneys fee
5 award. AIG said, you know, thanks but this is what we're
6 doing and we said great, you know, it's your ball. There
7 was no other involvement other than being generally
8 involved and asking those questions about, you know,
9 understanding how and why they were proceeding.

10 Q. Did you or other Davis Polk attorneys have any
11 involvement in settling the Walker litigation?

12 A. Absolutely none.

13 Q. To your knowledge, to what extent were individuals
14 at the New York Fed or Treasury involved in the Walker
15 litigation?

16 A. I don't believe they were involved at all.

17 Q. To your knowledge, were individuals at Davis Polk
18 involved in drafting any documents filed in the Walker
19 litigation?

20 A. I do not believe so.

21 Q. To your knowledge, did employees of the
22 New York Fed or the Treasury draft any documents filed in
23 the Walker litigation?

24 A. I do not believe so.

25 Q. To your knowledge, did individuals at Davis Polk

1 participate in any hearings in the Walker litigation?

2 A. No. I don't even think we attended as observers.
3 I think we got our information from AIG's attorneys.

4 Q. To your knowledge, did employees of the
5 New York Fed or the Treasury participate in any hearings
6 in the Walker litigation?

7 A. The same answer. I don't -- and I don't know who
8 was in court, but I have no knowledge or reason to
9 believe that anybody from the Fed or Treasury was in any
10 of the hearings.

11 Q. I want to draw your attention to DX 961, which is
12 in your binder.

13 Do you recognize what's been marked as DX 961?

14 A. Yes.

15 Q. And what is it?

16 A. This is a -- some e-mail exchanges on the couple
17 of topics. The bottom one on -- the bottom of beige
18 there really is only one page I apologize on the bottom
19 of page 1 is from Stasia Kelly, AIG's general counsel, to
20 me and Mr. James copying Paul Reynolds who was then AIG's
21 C R O, chief restructuring officer, and Kathy Shannon,
22 her -- Ms. Kelly's aforementioned deputy, then I respond
23 by reply all to that e-mail and then Ms. Reynolds sends
24 me an e-mail directly essentially overlapping with
25 Ms. Kelly's in terms of subject matter.

1 MR. GARDNER: Your Honor, the government moves for
2 the admission of DX 961.

3 MR. BOIES: Not to my recollection, Your Honor.

4 THE COURT: Defendant's Exhibit 961 is admitted.

5 **(Defendant's Exhibit Number 961 was admitted into**
6 **evidence.)**

7 BY MR. GARDNER:

8 Q. Now, Mr. Huebner, what is the subject matter of
9 this e-mail?

10 A. Well, I guess it's slightly personal in that the
11 new year had turned and we were all sort of, you know,
12 just wishing each other happy holidays and hope you got a
13 little bit of downtime, and then AIG was e-mailing us to
14 let us know its developing thoughts on the need and
15 potential timing of the shareholder vote that we were
16 just discussing. And then various next steps with
17 respect to the trust.

18 Q. Now, I want to draw your attention to the bottom
19 e-mail from Anastasia Kelly, who as I think you
20 identified is the general counsel of AIG.

21 Now, in this e-mail dated January 8, 2009, she
22 notes in the second paragraph that I wanted to get to you
23 this week about the need to have the special shareholder
24 meeting. Do you see that?

25 A. I do.

1 Q. Now, at the time that you received this e-mail,
2 Mr. Huebner, did you have an understanding what the
3 purpose was of holding a special shareholder meeting?

4 A. Yes.

5 Q. What did you understand the purpose of that
6 special shareholder meeting was?

7 A. I believe that that was to be the common
8 stockholder only vote with respect to addressing either
9 or both of the number of authorized shares issue and/or
10 the par value issue of the existing common stock should
11 there ever be a desire to convert the preferred into
12 common.

13 Q. Now, if you go to the top e-mail from
14 Ms. Reynolds, she says, "We sort of decided today that the
15 shareholder meeting was not the main event anymore."

16 Do you see that?

17 A. I do.

18 Q. And as the recipient of this e-mail, Mr. Huebner,
19 what did you understand Ms. Reynolds to mean?

20 A. There was a developing view that crystallized I
21 guess in early January 2009 that it just made no sense to
22 have a shareholder meeting for the -- on the topics we
23 just discussed a minute ago at this point in time.

24 Q. And why?

25 A. So there were a whole bunch of reasons. One, the

1 preferred stock hadn't even been issued yet. In fact, I
2 think it wasn't issued for a couple more months, so the
3 idea of having a common shareholder vote on the potential
4 future pathway of securities, the preferred, that didn't
5 even exist yet, seemed totally remature. The second
6 factor was the preferred as I discussed before, already
7 had all the attributes of 79.9 percent common stock
8 equivalent built into it. This was a mere remember we
9 discussed several hours ago the vote is not imperative.
10 It may well have been the case that that vote would never
11 need to take place, that the Fed or its designee, the
12 trust, could just stay with the preferred because the
13 preferred gave it 79.9 and that was just fine. And the
14 third issue was that one could not know -- I don't think
15 AIG nor me nor the Fed or anybody which way that vote
16 would go if the question was called entirely premarl with
17 no context.

18 So there was frankly no reason to have the vote
19 because it would take a whole bunch of paperwork and be
20 expensive and the outcome is uncertain and there were
21 many scenarios in which the vote would never be necessary
22 and as I said, the preferred literally wasn't even issued
23 yet so to have a vote that says if someday this is ever
24 issued let's change other things so that if someday after
25 that this one possibility happens and we want to convert

1 illustrate just seemed unnecessary in many ways.

2 Q. I want to change topics one final time.

3 Yesterday I believe it was you discussed the views
4 concerning bankruptcy expressed during the September 16,
5 2008 meeting. Do you recall that?

6 A. I do.

7 Q. At any time after September 2008 were you asked by
8 representatives of the New York Fed or the Department of
9 the Treasury to consider the impact of an AIG bankruptcy?

10 A. Yes.

11 Q. And did you have an understanding as to why you
12 were being asked to consider the consequences of an AIG
13 bankruptcy after September 16, 2008?

14 A. Yes.

15 Q. And what was your understanding?

16 A. So I was asked several times over the third
17 quarter of 2008 and roughly speaking the first quarter of
18 2009 to again provide my views/advice/guidance on whether
19 at that point in time AIG could have what again I
20 slightly chafe against saying bankruptcy. The junctures
21 come.

22 MR. BOIES: Your Honor, he's now going to get into
23 advice that he gave. I just want to again make clear for
24 the record that this is not being done inadvertently.

25 THE COURT: I understand.

1 MR. GARDNER: I understand, too, Your Honor.

2 THE COURT: It just confirms my earlier views I
3 think.

4 THE WITNESS: What do I do.

5 BY MR. GARDNER:

6 Q. You can continue?

7 A. May I continue? So the junctures largely were of
8 two different natures. Number one is, as I briefly
9 mentioned before, the \$85 billion loan by no means
10 addressed AIG's liquidity needs and there were a series
11 of additional facilities and fundings in the tens of
12 billions of dollars each range that had to be dunning
13 throughout 2008 and parts of 2009. At many of those
14 junctures someone would say, do we really have to put in,
15 we the U.S. taxpayer, another \$30 billion, another
16 \$40 billion. Isn't it the case by now that there has
17 been a stabilization or the systemic impacts might not be
18 as great or AIG could have a softer landing in a failure,
19 for lack of a better term than it would have had in
20 September 16, so one type of juncture was, you know,
21 there were a variety of additional funding dates, a
22 November 10, 2008, which was the quarterly loss I was
23 talking about before, in addition to restructuring the
24 \$85 billion of facility, there was, among other things, a
25 \$40 billion TARP investment.

1 The other type of juncture where someone or other
2 often asked me/Davis Polk to advise on the possibilities
3 of a bankruptcy/controlled failure was when there was a
4 change of personnel. Sometimes somebody new would arrive
5 at Treasury, you know, a senior new person would roll
6 onto the team and would say, you know, why can't they
7 just go bankrupt, could we really have to put in more
8 money, you know, can somebody explain to me whether
9 bankruptcy is yet a feasible option and on some of those
10 occasions as well I would be asked as a insolvency
11 practitioner to express my best judgment at the time.

12 Q. Now, what advice did you provide on how regulators
13 would respond to a bankruptcy filing by AIG?

14 A. It was my view throughout the relevant time period
15 that a bankruptcy filing by the AIG parent company would
16 with virtual certainty lead to regulatory seizures around
17 the world and domestically. You know, AIG had actually
18 continued to have very serious problems with its -- with
19 some of its regulators even after the \$85 billion went in
20 and AIG had seemingly announced that it was being funded
21 by the Federal Reserve, there were still regulators who
22 looking at their obligations under state law or foreign
23 law primarily the policyholders who were finding the
24 situation unstable and considering seizing and ring
25 fencing their own regulated entities. My view was that

1 if the parent company went bankrupt with all of what that
2 entailed, including, you know, multiple downticks in
3 credit ratings and insurance ratings that the probability
4 of regulatory seizures and an extraordinary value
5 destruction certainly for AIG's stakeholders and possibly
6 much more broadly remained extremely high all the way
7 through the relevant time period.

8 Q. You said I think multiple times in that answer the
9 word seizures. What is a seizure?

10 A. Well, not being an expert in insurance law, I
11 guess I don't want to -- I would prefer not to run the
12 risk of being sworn testimony about what an insurance
13 seizure really entails but simply stated my general
14 understanding is that an insurance regulator has the
15 ability to essentially take control of a regulated
16 insurance entity within its jurisdiction and can either
17 appoint fiduciaries in place of the management. It can
18 issue a moratorium which is very frequently done on the
19 payment even of insurance claims let alone regular
20 creditors, let alone let alone dividends up to the parent
21 company, the ultimate shareholder, which as we discussed
22 yesterday with the champagne glasses is junior junior
23 junior to policyholders and AIG of course had a very
24 interlocking structure with, you know, some companies
25 regulatory capital consisting of the stock of other

1 insurance companies and so my general understanding was
2 that, you know, insurance action against the subs could
3 lead to a very extremely value destructive chain
4 reaction.

5 Q. And just so the record is clear, even though
6 you're not an expert in insurance, what you've just
7 testified to, is that advice that you provided to the
8 New York Fed and Treasury after September 2008?

9 A. Yes. I mean, Davis Polk had insurance lawyers and
10 there were also bankruptcies in which I've been involved
11 that also involve insurance subs or captive insurance
12 companies and the like and so I do have a general
13 understanding, you know, even in the Detroit case right
14 now, for example, you know, there are multiple large
15 monoline insurers that are heavily involved, some of
16 which are in their own state insurance regulatory
17 procedures and only paying a small fraction of their
18 claims over a many, many year period.

19 Q. And what advice, if any, did you provide on how
20 derivative counterparties would respond to a bankruptcy
21 filing by AIG?

22 A. So this is one of sort of the great ironies of the
23 situation.

24 So I am aware that the payments to the
25 counterparties, the CDS counterparties, have received a

1 great deal of media attention and I guess I would
2 describe the irony as follows.

3 Just like we discussed yesterday, that certain
4 types of entities just cannot go into Chapter 11,
5 including insurance companies, there are certain
6 categories of transactions that essentially get an almost
7 free pass from the protections of bankruptcy that
8 companies otherwise get. Derivative transactions are
9 basically the archetype of safe harbored transactions, so
10 what happened when a company goes bankrupt and Lehman is
11 a great example of this -- is that all of their
12 derivative counterparties, which in AIG's case totaled
13 tens and tens and tens of billions of dollars, have a
14 complete pass, an exemption from the automatic stay.
15 They can accelerate their contracts. They can seize
16 their collateral. They can apply it against their
17 claims. And they are essentially bankruptcy proof. And
18 some of the greatest damage and decline that financial
19 companies experience in Chapter 11 is precisely their
20 derivatives counterparties terminating at the all time
21 lowest point in many cases of the value of securities and
22 essentially making off completely exempt from bankruptcy
23 and in many cases whole. So to give a mathematical
24 example because it might be very helpful, assume for a
25 minute that I own a CDO, a credit -- a collateralized

1 debt obligation with a face amount of a hundred dollars
2 and I buy an insurance policy from AIG. I buy a CDS. A
3 credit default swap. So I have a face amount of a
4 hundred. The security begins to decline in value, so my
5 CDO that I own is now worth only 60. So AIG's nominal
6 obligation is \$40. But of course AIG once it was
7 downgraded began to have the obligation to post
8 collateral, so for many of the counterparties and I don't
9 know the exact numbers -- the \$40 was already posted to
10 and held by the counterparty. So the counterparty held a
11 CDO worth 60, collateral from AIG worth 40, and it was
12 fully protected on its hundred dollars. If AIG filed
13 for, quote, bankruptcy, and the parent company and FP
14 were bankruptcy eligible, that counterparty was allowed
15 by law to terminate the contract, lock in the \$60 value,
16 keep the \$40, and be done. And if it had accurately
17 requested the proper amount of collateral, its losses
18 would be zero.

19 And so unlike most other AIG stakeholders who
20 would have suffered extraordinary losses from an AIG
21 failure, ironically the derivatives counterparties were
22 possibly the best protected parties in the entire system,
23 which parenthetically is why they had so little incentive
24 to do a deal and some of them -- I'm sorry -- do you want
25 me to be even more technical or stop.

1 Q. When you say do a deal, I'm not quite sure what
2 you're referring to?

3 MR. BOIES: Your Honor, since I didn't want to
4 interrupt the witness in the course of his remarks, but
5 the question was what advice did you give, and he's now
6 launched into a legal analysis.

7 THE WITNESS: I'm sorry. I can -- oh.

8 THE COURT: Go ahead.

9 BY MR. GARDNER:

10 Q. Mr. Huebner, the --

11 THE WITNESS: Sorry.

12 Q. The answer you just gave, was that the advice that
13 you provided to the New York Fed and Treasury after
14 September 2008 with respect to the derivative
15 counterparties?

16 A. Yes. My advice was that as they did in Lehman and
17 most other cases, the derivatives counterparties would in
18 fact terminate, apply their collateral and lock in
19 catastrophic losses for AIG.

20 Q. And about two answers ago you were beginning to
21 say why the counterparties had so little incentive to do
22 a deal, and my question to you was what deal are you
23 referring to and I think that's when you got cut off.
24 What deal are you referring to?

25 A. So as I briefly discussed before, AIG had been

1 trying to negotiate their ups of their CDS exposure with
2 the counterparties and had been unable to do so and
3 ultimately asked the Fed for assistance. My view is that
4 the counterparties had all the cards because they had
5 their CDOs and they had collateral and some of them may
6 have even had naked CDS protection they didn't even own
7 the underlying bond. They were just making a bet that
8 the markets would go down, and so they had very little
9 incentive to do any sort of deal to hand back their CDSs,
10 which were very valuable to me.

11 Q. Now, what advice did you provide to the
12 New York Fed or the Treasury on the likelihood that the
13 New York Fed would be fully repaid in the event of a
14 bankruptcy?

15 A. My view and my advice was that there were
16 substantial doubts as to whether the \$85 billion loan,
17 which had ultimately been reduced in November as part of
18 the restructuring, would necessarily be paid in cash in
19 full in connection with an AIG failure.

20 Q. And what was the basis for your views and opinions
21 that you shared with the government?

22 A. So something that's easy to sort of lose sight of
23 in all the noise and the drama is that the collateral
24 that AIG posted for this loan was in many respects
25 fundamentally different than the type of collateral that

1 lenders often get for loans. It was not hard assets. It
2 was on the main not marketable securities. It was not
3 things that could, you know, easily be measured and sold
4 into a willing market. On the whole, it was the stock of
5 regulated insurance companies because one of the things
6 that we discussed a very long time ago near the beginning
7 was that in lending to AIG, one of the things that had to
8 be underneath early on was that the regulated insurance
9 companies themselves held very real assets, municipal
10 bonds, you know, they have all sorts of regulatory
11 requirements to have an appropriate asset base. They
12 were not fudging those assets in support of the loan.
13 It was only the stock of the regulated insurance
14 companies in most cases that served as the collateral and
15 not their assets. And so if regulators sort of grabbed
16 the companies and they couldn't produce actual equity
17 value to upstream the potential recovery of the equity on
18 the -- which was in no small part the Fed's collateral
19 package was very uncertain. It also bears mention that
20 in the fourth quarter of 2009 almost all of the world's
21 major insurance companies who were in situations much
22 stronger than AIG's experienced huge declines in their
23 market capitalization, and so not only were insurance
24 values extraordinarily challenged, but the very companies
25 that one would have looked to to buy this company that

1 company, et cetera, were in my mind in no position to
2 make attractive offers. Many people were just all
3 fighting for their lives and if you can't sell stuff and
4 get money, you captain repay a loan.

5 Q. Now, what advice did you provide on the likelihood
6 of policyholder cancellations if AIG filed for
7 bankruptcy?

8 A.

9 MR. BOIES: Objection, Your Honor. Foundation.

10 THE COURT: Can you lay a foundation for this,
11 Mr. Gardner.

12 MR. BOIES:

13 MR. GARDNER: I think so.

14 BY MR. BOIES:

15 Q.

16 BY MR. GARDNER:

17 Q. Did you provide advice to the New York Fed and
18 Treasury after September 2008 regarding the likelihood of
19 policyholder cancellations if AIG filed for bankruptcy?

20 A. Yes.

21 Q. And what was that advice?

22 A. I viewed there as being very substantial risk that
23 if the AIG companies that could go bankrupt went
24 bankrupt, many people who had a right to cancel their
25 policies and demand prorated refunds would do so. My

1 advice was that confidence-related businesses, like
2 financial services or insurance in particular, do very
3 badly when they fail because, you know, I mean I'll just
4 make it personal which I actually said at the time if I
5 have a twenty year life insurance policy to protect my
6 family if God forbid I die, it's almost impossible to
7 overstate the importance to me for knowing that for the
8 next twenty years that company will be there and will pay
9 my family the money that they need and so if your
10 insurance company goes bankrupt, you're pretty heavily
11 incentivized whether as a human being or as a company to
12 replace your insurance with someone in whom you have
13 confidence because you're often insuring, you know,
14 terrifying events and you need to know that somebody will
15 be there to pay.

16 Q. Mr. Huebner, please turn to Defendant's
17 Exhibit 735 in your binder.

18 A. Yes.

19 Q. And do you recognize this exhibit?

20 A. I do.

21 Q. Now, you'll see that there's two attached slide
22 decks to this cover e-mail, and I want to ask you first
23 about the second slide deck.

24 Do you know who prepared that?

25 A. So this is the one that begins on page 19?

1 Q. That's right.

2 A. So this is essentially my deck and my me and
3 people at Davis Polk working under my direction. There
4 are some interlineated comments as Ms. Dahlgren's cover
5 e-mail makes clear, they were looking for an update of
6 this, and so this contains a few, you know, for example,
7 on page 21, there's an all caps insert MS, which I assume
8 is Morgan Stanley, value bullets for regulated entities,
9 so there's some interlineated comments in the deck that
10 begins at page 19, but essentially the raw material was
11 mine.

12 Q. And did you provide your views as to the
13 consequences of an AIG bankruptcy in this slide deck?

14 A. Yes.

15 Q. And were these slides actually presented to the
16 Treasury at some point?

17 A. Yeah. This particular draft was a working draft,
18 but ultimately there were presentations made with a draft
19 that was, you know, finished.

20 Q. And now let's move to the first slide deck just so
21 we lay a little foundation. Do you recognize the first
22 slide deck which begins on page 3 of 24?

23 A. In general terms, yes. You know, there were other
24 people sort of duping and revising and creating various
25 forms of deck. I don't -- I don't remember if this one

1 was, you know, largely sort of typed or wordsmithed by
2 E&Y or by Morgan Stanley, but this is a largely
3 overlapping deck, deck with the one that was on the main
4 prepared by Davis Polk that begins at page 19 of the
5 exhibit.

6 MR. GARDNER: Your Honor, government moves for the
7 admission of DX 735.

8 MR. BOIES: Objection, Your Honor. He said this
9 is a draft. This wasn't presented to Treasury. There is
10 apparently something that was. And this is something
11 that we're going to have to deal with off-line in terms
12 of what we do to deal with this, these kind of issues.
13 But I suspect that some of that stuff may have been
14 withheld on privilege ground. We don't have that I know
15 about although it may be somewhere in the discovery, the
16 final version. They obviously have the final version and
17 it seems to me that that is the thing that ought to be
18 introduced.

19 MR. GARDNER: Not to get ahead of my case,
20 Your Honor, but my understanding is we actually have
21 produced versions of these slide decks to the plaintiffs.
22 Obviously I can confirm that at a break, but my
23 understanding is we actually have produced versions.

24 MR. BOIES: And if that's so, that's what ought to
25 be used. In other words, if they say they've produced it

1 to us, then they clearly have it and we ought to be using
2 what was actually presented and not these drafts.

3 THE COURT: Should we be using the final version
4 then instead?

5 MR. GARDNER: You know, Your Honor, I don't think
6 so is for the sole reason one I could back up a little
7 bit. The objection is hearsay, we aren't offering this
8 for the truth of the matter asserted. All this reflects,
9 frankly, if you look through Mr. Huebner's presentation
10 is it's consistent with the testimony he just provided
11 about the advice he gave to the New York Fed and Treasury
12 after September 2008. The truth of that advice is
13 neither here nor there have it's reflecting the advice
14 that was provided. And this e-mail -- and is this e-mail
15 may look familiar to you, Your Honor, because this was
16 used with I believe Ms. Dahlgren -- sorry strike that it
17 was used with another witness consistent with 615 earlier
18 in this trial. But again, this whole -- the whole point
19 of this exhibit is notice related and advice related, not
20 truth of the matter asserted related, so we think it will
21 be appropriate to admit DX 735 because we're not offering
22 it for the truth of the matter and I probably should have
23 said that when I offered it initially so I apologize to
24 get to this at the back end that was my fault. It's been
25 a long time.

1 THE COURT: My problem is, what is the relevance
2 of a draft that was never presented 1234.

3 MR. GARDNER: Well, it was received, though, by
4 individuals at the New York Fed and it's absolutely
5 consistent with what Mr. Huebner testified to for the
6 past several minutes about the advice that he provided on
7 bankruptcy. I mean, look, Your Honor, I don't want to
8 take up a lot of time with this. If the Court has
9 concerns, I can withdraw its admission. I don't feel
10 that strongly about it, but it does seem to I think
11 demonstrate that what Mr. Huebner just said isn't
12 manufactured, it's reflected in his presentations that he
13 provided multiple times.

14 THE COURT: Well, if you had the final version,
15 I'd probably let it come in, but I'm going to sustain the
16 objection on this one.

17 MR. GARDNER: Thank you, Your Honor. And to go
18 off on a strong note, I will pass the witness.

19 THE COURT: Thank you, Mr. Gardner.

20 MR. GARDNER: Thank you. And could we have just
21 three minutes to just sort of change things around?

22 THE COURT: Absolutely. We'll go off the record.
23 I'm going to stay right here and maybe we'll reconvene in
24 about five minutes.

25 **(Discussion off the record.)**

1 THE COURT: Let's go back on the record.

2 **(Pause in the proceedings.)**

3 MR. BOIES: Thank you, Your Honor.

4 - - - - -

5 **CROSS-EXAMINATION**

6 BY MR. BOIES:

7 Q. Good afternoon, Mr. Huebner.

8 A. Good afternoon, Mr. Boies.

9 Q. Good to see you again.

10 A. Likewise.

11 Q. Let me follow up on what counsel was just asking
12 you about.

13 You said that you had provided a variety of advice
14 to either both the Federal Reserve and the Treasury on
15 these issues that you were talking about?

16 A. Yes.

17 Q. And is it fair to say that that advice was at
18 least in part in writing?

19 A. Yes.

20 Q. Did you provide any formal opinion memos?

21 A. No. Bankruptcy is generally not an opinionable
22 matter.

23 Q. Did you provide any formal opinion letter or
24 memorandum to either the New York Fed or the Treasury on
25 any of the subjects about which you've testified today?

1 A. Well, the answer to the formal opinion is
2 definitely no since an opinion is a very formal thing.
3 I've never delivered an opinion in my life, which is not
4 a bankrupt lawyers do. Were there ever legal memoranda
5 on any topic I justified at all today? Probably.

6 Q. When you say probably, " have you seen them?

7 A. There were, as we discussed a few minutes ago,
8 there were definitely PowerPoint decks on the
9 consequences of an AIG failure that were delivered at
10 several junctures. There were probably underlying legal
11 memoranda at some point, not really about an AIG
12 bankruptcy but possibly about other matters. Again,
13 you're asking an extremely broad question and I just -- I
14 don't -- when you say everything you testified about,
15 that just can be very, very broad.

16 Q. Gentlemen yes, it could and I meant it to be quite
17 broad?

18 A. Okay.

19 Q. Because your testimony was quite broad?

20 A. Yes.

21 Q. And so what I'm trying to do is find out whether
22 this advice that you say you gave in 2008 and 2009 was
23 reflected in writings.

24 A. Yes. There were certainly must have been memos at
25 various points on different discrete topics. A lot of

1 the advice was also delivered orally.

2 Q. And these memos, these were delivered to the
3 New York Fed and to the Treasury, were they? ?

4 A. I would guess primarily to the New York Fed,
5 probably much more than the Treasury. I mean, for
6 example, there was an I L F C transaction I think we did
7 some sort of memo on how to structure a loan and
8 transactions with AIG's aircraft leasing division to give
9 one example. I think that was a Fed issue.

10 Q. For example, with respect to the possibility that
11 the AIG insurance subsidiaries would be, to use your
12 terminology, seized, did you ever provide any legal
13 memorandum or analysis to either the Fed or the Treasury
14 about that?

15 A. Yes. I don't know if it's really fair to call it
16 legal analysis. There was precedent analysis that was
17 undertaken by a combination of the Fed's advisors about
18 what had happened in prior insurance failures that made
19 its way into the PowerPoint decks.

20 Q. Let me ask you to try to focus on my questions.
21 Okay? And try to listen to the question and if you don't
22 understand if question, let me know.

23 A. Okay.

24 Q. But if it's susceptible to a yes or no answer, I'd
25 like a yes or no answer?

1 A. Absolutely.

2 A. I apologize.

3 Q. With respect to the possibility that AIG insurance
4 subsidiaries would be, to use your terminology, seized,
5 did you ever provide any legal memoranda or analysis to
6 either the Fed or the Treasury about that?

7 A. Not legal memoranda, no.

8 Q. Did you ever provide any written memoranda to the
9 Fed or to the Treasury concerning what would happen to
10 AIG subsidiaries outside of the United States in the
11 event of an AIG bankruptcy?

12 A. No.

13 Q. Are you familiar with ALICO and AIA?

14 A. In general terms, yes.

15 Q. Do you know what they are?

16 A. I believe those are two of formerly part of the
17 AIG constellation of families, two of the valuable Asian
18 subsidiaries.

19 Q. And you testified that in the fourth quarter of
20 2008 and the first quarter of 2009, almost all the major
21 insurance companies were in no position to buy AIG
22 subsidiaries. Do you recall that?

23 A. I believe I testified not for prices that were
24 attractive and were likely to lead to a successful
25 financial outcome. That's correct.

1 Q. Were you ever provided with any information about
2 entities outside the United States that were interested
3 in buying ALICO or AIA?

4 A. Yes.

5 Q. Who provided you that information?

6 A. Well, when you say you, do you mean me personally
7 or Davis Polk?

8 Q. Well, let's start with you personally since you're
9 the witness.

10 A. Okay. So the Fed was receiving guidance with
11 respect to possible values and possible asset sales,
12 including with respect to AIA and ALICO. I don't
13 remember which -- this is a financial question, not a
14 legal question. I don't remember which financial
15 advisors and Fed personnel were specifically assigned to
16 that.

17 Q. And the reason I ask you, because you're not a
18 financial analyst; correct?

19 A. Most definitely not.

20 Q. But the reason I ask you is because you were
21 testifying about the extent to which insurance companies
22 were able to buy AIG subsidiaries. Do you recall
23 testifying about that?

24 A. I do.

25 Q. And what I'm -- and are you aware of what the

1 largest AIG subsidiaries that were actually sold were?

2 A. Well, I believe they were not sold until quite a
3 bit after the time period you're talking about, and I
4 believe they included AIA and ALICO.

5 Q. Again, I would ask you to please try to listen to
6 my question and give me a yes or no or I don't know.

7 Were the two largest AIG subsidiaries that were
8 actually sold AIA and ALICO?

9 A. I believe so.

10 Q. And do you know whether there were offers to buy
11 AIA and ALICO in 2008?

12 A. My general recollection is that the values the
13 parties were discussing in 2008 were much lower than --
14 I -- I'm not sure whether they were firm offers.

15 Q. My question is, do you know whether there were
16 offers to buy AIA and ALICO in 2008?

17 A. I'm not sure whether there were firm offers during
18 that time period.

19 Q. Are you sure that there were some offers even
20 though you might not characterize them as firm?

21 A. My general recollection is that parties were
22 talking about potential transactions in that earlier time
23 period at much lower levels than ultimately achieved.
24 Whether they were formal offers or not I don't know.

25 Q. Now, you say at much lower levels than were

1 ultimately achieved. How much money was gotten for ALICO
2 and AIA together?

3 A. I don't remember because.

4 Q. Approximately?

5 A. I think one was actually at SPV originally that
6 ultimately morphed I don't recall they were both outright
7 sales originally I think they were a actually a multistep
8 transaction but possibly in the neighbor -- I would
9 rather not guess at a number, although I have a vague
10 recollection of what it might have been but if you would
11 like me to, I will tell you my vague recollection.

12 Q. Why don't you give me your vague recollection as
13 to how much AIG got for AIA and ALICO in total.

14 A. Yeah. I believe it may have been in the
15 \$50 billion range.

16 Q. And do you know whether there was a \$50 billion
17 offer for ALICO and AIA in 2008?

18 A. I do not.

19 Q. Let me turn to your testimony right at the
20 beginning of yesterday. And do you recall testifying
21 about what is on DXX 037 about these term sheets?

22 A. I'm sorry. I don't know what 037 is. I
23 apologize.

24 Q. That's the chart that counsel for the
25 United States drew based on your testimony.

1 A. Oh, this chart is an exhibit? I'm sorry. I did
2 not know that. I just see --

3 THE COURT: It's a demonstrative exhibit.

4 THE WITNESS: Okay. I apologize. Yes, I see that
5 chart.

6 BY MR. BOIES:

7 Q. And it was very impressive your testimony
8 yesterday because without any notes or looking at
9 anything you went through and you talked about the terms
10 of various term sheets and not only gave the date but the
11 actual times to the minutes of when they were prepared or
12 received. Do you recall that?

13 A. I do.

14 Q. Now, is it fair to infer that your memory, while
15 probably very good, is not good enough to have done that
16 without some extensive preparation?

17 A. Yes. Being deposed by Boies Schiller focused my
18 memory.

19 Q. Well, sir, it's not your testimony to the Court,
20 is it, that the only preparation for this testimony where
21 you were able to say to the minute when something was
22 prepared or received was being at a deposition?

23 A. No. I'm sorry. I wasn't trying to speak glib.
24 What I was trying to express, which I should have done
25 more longhand, was that in preparation for the

1 deposition, which I took quite seriously, I reviewed
2 documents very carefully, and having become aware that
3 times of day mattered, the times did stick in my head.

4 Q. You're not trying to imply, are you, that between
5 your deposition and now you've not gone through an
6 extensive preparation for this testimony, are you?

7 A. I definitely am not. Today I am yet more nervous
8 than I was in my deposition.

9 Q. Because you've been extensively prepared; right?

10 A. I have.

11 Q. Okay. Now, one of the things that you talked
12 about was JX 269, and you may want to just look at it.
13 That's in the book that you have from counsel for the
14 United States.

15 A. Yes, sir, I have it open.

16 Q. And you described this as the banker term sheet.
17 Do you recall that?

18 A. In general terms. I actually -- I believe as I
19 said, I actually don't know who drafted it, so I'm a
20 little bit reluctant to attach a label to it, but I
21 received it from Morgan Stanley.

22 Q. Yeah, you did say that you didn't know who
23 prepared it, but nevertheless, you kept referring to it
24 as the banker's draft or the banker's term sheet;
25 correct?

1 A. I think that's correct.

2 Q. Now, you were not meaning to imply by that
3 testimony that you thought this term sheet came out of
4 the private sector negotiations that were trying to raise
5 money for AIG before the Fed got involved. You weren't
6 trying to imply that, were you?

7 A. No. I don't know its providence or origin.

8 Q. And in fact, you know that the private sector term
9 sheet is different than JX 269, don't you, sir?

10 A. I don't think there was such a thing as a private
11 sector term sheet. There was a JPMorgan term sheet that
12 I came to see later that week that was different.

13 Q. And the JPMorgan term sheet that you say you came
14 to see?

15 A. Yes.

16 Q. That JPMorgan term sheet was the term sheet that
17 you knew at the time was the private sector term sheet;
18 correct?

19 A. No, that's not correct.

20 Q. That's not correct?

21 A. No, it is not.

22 Q. Didn't you tell the GAO that that was correct?

23 A. No.

24 Q. Let me ask you to look at a document that has been
25 marked by the defendant as Defendant's Exhibit 883. /(?

1 A. Sir, is that a DX 883?

2 THE COURT: He's going to hand it out.

3 THE WITNESS: Okay.

4 BY MR. BOIES:

5 Q. And you recognize this document, don't you, sir?

6 A. Yes. Definitely.

7 Q. This is an exchange of e-mails between you and
8 somebody at the GAO; correct?

9 A. Yes.

10 MR. BOIES: Your Honor, I would offer Defendant's
11 Exhibit 883.

12 MR. GARDNER: No objection.

13 THE COURT: Defendant's Exhibit 883 is admitted.

14 **(Defendant's Exhibit Number 883 was admitted into**
15 **evidence.)**

16 BY MR. BOIES:

17 Q. Now, if you go to page 2 of this exhibit?

18 A. Yes, sir.

19 Q. There is a e-mail to you from Christopher Schmitt
20 of the GAO; correct?

21 A. Yes.

22 Q. And you had met Mr. Schmitt earlier that year,
23 that is, earlier in 2010; correct?

24 A. Yes.

25 Q. And you understood that what Mr. Schmitt was

1 asking you for was the terms as exactly and as completely
2 as they existed at the time the private sector lending
3 effort came to its unsuccessful conclusion, and I'm
4 reading from the middle of the second paragraph.

5 Do you see where he says, "We would like to obtain
6 any and all contemplated terms as exactly and as
7 completely as they existed at the time the private sector
8 lending effort came to its unsuccessful conclusion"?

9 A. Absolutely.

10 Q. And then in the last sentence he says,
11 additionally, if there are any earlier versions created
12 or discussed prior to the final terms contemplated, we
13 would like to obtain those as well.

14 Do you see that?

15 A. I do.

16 Q. And you understood when you received this that
17 what he was looking for was the private sector term sheet
18 and any earlier drafts that you might know about;
19 correct?

20 A. Uh-huh. Yes.

21 Q. And you responded JPMorgan has consented to me
22 forwarding the requested term sheet to you. This is on
23 the first page?

24 A. Yes.

25 Q. This is the only draft I have. ; correct?

1 A. Yeah. Absolutely.

2 Q. And then what you attach is page 3 of Defendant's
3 Exhibit 833; correct? -- 883?

4 A. Yes, sir.

5 Q. And this is what you understood to be the only
6 draft of the private sector term sheet that you had;
7 correct?

8 A. Sort of.

9 Q. Sort of.

10 A. May I explain?

11 Q. Well, when you said this is the only draft I have
12 in this document, did you mean the only draft you had of
13 the private sector term sheet?

14 A. No. I spoke with him in the interim and explained
15 the only document I ever saw was a JPMorgan term sheet,
16 which I did not receive for the first time until late in
17 the afternoon on the 16th and did not open until the
18 17th.

19 So I -- there's a perfect explanation. It's just
20 the way you're asking the questions, it's hard for me to
21 explain to you what happened.

22 Q. Well, let me see if I understand what you're
23 saying.

24 You're saying that he wrote you this letter, this
25 e-mail?

1 A. Uh-huh.

2 Q. You gave him this response; correct?

3 A. No. I spoke to him.

4 Q. But you did give him this written response?

5 A. Yeah and said JPMorgan has consented. I called
6 and said I didn't work for the private sector. We were
7 retained by JPMorgan. I got one draft of a term sheet.
8 If you would like to see it, I need to call them and get
9 their consent because that was a different client. If
10 they give their consent, I'm delighted to forward it to
11 you. He said great. And then I e-mailed him saying I
12 got JPMorgan's consent here's the only draft of the term
13 sheet I ever got.

14 Q. And you understood that JPMorgan and Goldman Sachs
15 were leading an effort to come up with a private sector
16 solution for AIG; correct?

17 A. Only in part. As I testified yesterday, JPMorgan
18 had been engaged for two weeks as an entity retained by
19 AIG to try to find it financing. Davis Polk's role was
20 to represent JPMorgan in its work to become a lender to
21 AIG. Over the course of the weekend, Goldman Sachs sort
22 of arrived, but they were never my client and I was not
23 aware of meetings on the 15th where they were somehow
24 formally tasked with working together as I believe I
25 testified yesterday.

1 Q. I'm not asking you who your clients were.
2 Although I would come to that later in the examination.
3 But you were aware, were you not, that on September 15
4 there was a meeting at the New York Fed and that there
5 had been a meeting on September 14 that involved both
6 Goldman Sachs and JPMorgan attempting to come up with a
7 private sector financing for AIG?

8 MR. GARDNER: Objection, Your Honor. Compound.

9 MR. BOIES: It is, Your Honor. I'll break it up.

10 THE COURT: Okay.

11 BY MR. BOIES:

12 Q. Were you ever aware that there was a meeting at
13 the New York Fed that involved Goldman Sachs and JPMorgan
14 attempting to come up with a private sector financing for
15 AIG?

16 A. Yes. I believe so.

17 Q. When did you first become aware of such a meeting?

18 A. I don't have a precise enough recollection.

19 Q. Approximately.

20 A. The marching orders -- I'm sorry. I don't -- I
21 could not give you an approximate date.

22 Q. Were you aware in September of 2008 that there had
23 been a meeting at the New York Fed that involved
24 Goldman Sachs and JPMorgan attempting to come up with a
25 private sector financing for AIG?

1 A. I believe that when I was advised to come with the
2 clients on the 16th to present JPMorgan's conclusions, I
3 was generally aware as I testified yesterday, that
4 Goldman Sachs was part of the equation. I don't -- I
5 don't know that there was -- that I was advised of a
6 formal tasking of the two entities to work together to
7 somehow represent the private sector.

8 Q. That wasn't my question. My question wasn't
9 whether you'd been advised of a formal tasking of these
10 two entities to work together to somehow represent the
11 private sector. My question was whether you were aware
12 in September of 2008 that there been a meeting at the
13 New York Fed that involved Goldman Sachs and JPMorgan
14 attempting to come up with a private sector financing for
15 AIG.

16 A. Well, I described the meeting --

17 Q. That's a yes, no or I don't know question, sir.

18 A. Yes.

19 Q. Okay. Were you aware of that before September 16?

20 A. No. I don't believe so.

21 Q. When you were retained by JPMorgan, at any time
22 during that retention that you've testified about, did
23 JPMorgan or anybody from that institution tell you that
24 JPMorgan and Goldman Sachs were meeting at the
25 New York Fed to try to come up with a private sector

1 financing for AIG?

2 A. I don't believe there was a meeting at the Fed
3 where that was the goal, so the answer to that question
4 would be no.

5 Q. When you say you don't believe there was a meeting
6 at the Fed where that was the goal, by "that" are you
7 referring to an attempt to come up with a private sector
8 financing solution for AIG?

9 A. Yes. And if I --

10 Q. Okay.

11 A. May I explain or no? Because I could make this
12 very clear if you would give me 20 seconds.

13 Q. Go ahead.

14 A. I later became aware by reading news articles and
15 otherwise that, quote, on the 15th the Fed had asked
16 JPMorgan and Goldman Sachs to work together. I was not a
17 part of that. I was working for JPMorgan, and I was
18 asked to join the meeting on the 16th, which I've
19 described at some length, where JPMorgan's conclusions
20 with which Goldman Sachs did not disagree were presented.
21 I apologize. I don't remotely mean to be obstructionist
22 but the way you're asking a meeting where the purpose
23 was, that's actually my recollection on those issues.

24 Q. Sir, is it fair to say that if there was a meeting
25 on the 15th involving JPMorgan and Goldman Sachs, you've

1 never heard about that?

2 A. No. I said I did later learn about pit. It was
3 the subject of news articles in September of 2008, but I
4 was not aware of it at the time. I think that's what I
5 just said.

6 Q. Is it fair to say that if there was a meeting to
7 14th involving JPMorgan and Goldman Sachs, you never
8 heard about that?

9 A. No. There were definitely meetings on the 14th at
10 AIG which I believe I described.

11 Q. No, no, no. I'm talking about the New York Fed?

12 A. Oh, at the Fed? No.

13 Q. So as far as a meeting at the New York Fed, do you
14 know whether there ever was a meeting at the New York Fed
15 involving JPMorgan and Goldman Sachs to try to come up
16 with a private sector financing solution for AIG?

17 A. I have -- I later read things that suggested on
18 the 15th there was a meeting and that led to the tasking
19 that led to the meeting on the 16th that I had described
20 at some length.

21 Q. Was the meeting that you read things about later a
22 meeting at the New York Fed?

23 A. That's what I believe I read, that on -- that the
24 Fed summoned JPMorgan and Goldman Sachs to the Fed on the
25 15th to say can you get this done, we want a report

1 tomorrow from my more narrow vantage point, I got the we
2 need to report on this tomorrow be at the Fed at
3 7:00 a.m. part of it.

4 Q. And you only found out about that on the 16th
5 about this meeting.

6 A. On the 15th. Because I knew the marching orders.
7 I just didn't know the genesis of it being that specific
8 meeting. And I was there before 7:00 a.m. I obviously
9 knew about it the day before.

10 Q. Do you remember my asking you just a little while
11 ago whether you were aware in September of 2008 that
12 there had been a meeting at the New York Fed that
13 involved Goldman Sachs and JPMorgan attempting to come up
14 with a private sector financing for AIG?

15 A. Yes.

16 Q. And you said that you were? And I then asked you
17 were you aware of that before September 16? And you
18 answered no, I don't believe so? Do you remember that?

19 A. Yes.

20 Q. And was that accurate testimony?

21 A. Yes, it was. I believe everything I'm saying is
22 accurate testimony. I just sometimes find your questions
23 a little bit confusing and I apologize for that.

24 Q. If at any point you find my question confusing,
25 just tell me, and I'll rephrase it.

1 A. Okay. So when you say attempting to come up with
2 a financing, that sounded to me like the Fed, JPMorgan
3 and Goldman Sachs were together at a meeting attempting
4 to come up with a financing, and I don't think any
5 meeting like that occurred, which is why I keep pausing
6 and trying to explain my experience of how those two days
7 actually unfolded, so I apologize that was one thing I
8 was stumbling on because I think you changed your
9 phraseology in some of the questions in way that I
10 thought might be important to you.

11 Q. Well, my phraseology is important to me, sir. And
12 I'm not asking you about a meeting in which Goldman Sachs
13 and JPMorgan and the New York Fed were working together.

14 A. Well, you said attempting to come up with a
15 financing.

16 Q. A private sector financing?

17 A. That's not what you said. You said attempting to
18 come up with a financing. And I apologize if I erred but
19 those are your words that I stumbled on so I believe I'm
20 correct. .

21 Q. Do you remember my saying just less than two
22 minutes ago, referring you to a question and answer,
23 where I said, asked you whether you were aware in
24 September of 2008 that there had been a meeting at the
25 New York Fed that involved Goldman Sachs and JPMorgan

1 attempting to come up with a private sector financing for
2 AIG and you said yes and then I said were you aware of
3 that before September 16 and you said no, I don't believe
4 so do you recall going over that?

5 A. I do.

6 Q. Do you recall I asked you that question and then
7 later I read it to you again and you said the answer was
8 the same?

9 A. I apologize if there were not other iterations of
10 it that omitted the phrase private sector financing fan
11 the mistake is mine I'm very sorry.

12 Q. And you're right, there were other iterations.
13 For example, I asked you.

14 "QUESTION: When you were retained by JPMorgan at
15 any time during that retention that you've testified
16 about, did JPMorgan or anybody from that institution tell
17 you that JPMorgan and Goldman Sachs were meeting with the
18 New York Fed to try to come up with a private sector
19 financing for AIG? You said I don't believe there was a
20 meeting at the Fed where that was the goal.

21 A. That's correct.

22 Q. Now, let me try to be very clear now and if there
23 was any confusion, we'll clear it up.

24 Do you understand today that there was a meeting
25 in September of 2008 at the New York Fed by JPMorgan and

1 Goldman Sachs to try to come up with a private sector
2 financing for AIG?

3 A. Is this a yes or no?

4 Q. Yes. Or I don't know.

5 A. Yes.

6 Q. Okay. And is it the case that you first became
7 aware of that on September 16?

8 A. I don't know when I became aware in September that
9 there was a prior meeting at which the two banks were
10 tasked along the lines of your prior question. I knew
11 what my role was in the September 6 meeting --
12 September 16 meeting.

13 Q. Is it your testimony that you don't recall one way
14 or the other whether on September 16 you were aware that
15 there had been a meeting at the New York Fed involving
16 your client JPMorgan and Goldman Sachs the previous day
17 or days?

18 A. That's correct. I knew that the Fed had asked
19 JPMorgan to come report on the 16th, but I don't recall
20 whether it was via a meeting the day before or via a
21 phone call the day before, but I knew what the subject
22 matter was and what their request was and what we were
23 called down to the Fed on the 16th to report on.

24 Q. Did you understand on the 16th that you were
25 reporting on the efforts that JPMorgan and Goldman Sachs

1 had made the prior day?

2 A. No.

3 Q. Okay.

4 A. I was reporting on the efforts that I was there as
5 JPMorgan's counsel with JPMorgan speaking for itself.

6 Q. At this meeting on September 16 in the morning,
7 was Goldman Sachs there?

8 A. Yes. I -- they were.

9 Q. Now, let me go back to Defendant's Exhibit 883.

10 THE COURT: Shall we take a break right now?

11 MR. BOIES: Yes, Your Honor.

12 THE COURT: Let's reconvene at 3:35.

13 **(Court in recess.)**

14 THE COURT: Please go ahead, Mr. Boies.

15 MR. BOIES: Thank you, Your Honor.

16 BY MR. BOIES:

17 Q. Just before the break, Mr. Huebner, I directed
18 your attention back to Defendant's Exhibit 883. Do you
19 have that in front of you?

20 A. I do.

21 Q. At the time that you responded to this GAO
22 request, were you aware that you had the Morgan Stanley
23 term sheet that has been marked as JX 269?

24 A. Yes.

25 Q. And did you furnish that to the GAO?

1 A. No.

2 Q. Let me now turn to another subject. And do you
3 recall testifying earlier today to counsel for the
4 United States that it was important that the agreement on
5 September 16 be binding? Do you recall that?

6 A. Yes.

7 Q. And you referred to the September 16 term sheet as
8 a binding document. Do you recall that?

9 A. Yes.

10 Q. Now, Defendant's Exhibit 956, which I think you
11 have in the government's binder, you described as the
12 final September 16 term sheet; is that correct?

13 A. Yes. The cover e-mail is from October, but I
14 believe the document attached to it is the final version
15 from September.

16 This was attached to several documents, but when I
17 see the \$50 million material sub on page 2 -- on page 1,
18 that tells me like that was the final change so this I
19 believe is a correct copy of the final document.

20 Q. Now, attached to this document is a signature
21 page; correct?

22 A. Yes.

23 Q. Do you know how that signature page came to be
24 attached to this document?

25 A. I believe that it was faxed from AIG to Mr. Baxter

1 at the New York Fed on the evening of September 16.

2 Q. And then who attached it to this term sheet?

3 A. That, I mean, mechanically who physically -- I
4 don't know the answer to.

5 Q. But you understand that the signature page was
6 faxed separately from the term sheet; correct?

7 A. Yeah. I mean, the signature page, it says -- yes,
8 I do. I believe -- actually you know what? I'm sorry.
9 I don't. I don't know whether it was a two-page fax or a
10 six-page fax. This exhibit doesn't appear to have a fax
11 cover sheet or other information like that, so I actually
12 don't know. I apologize. I should not have rushed to
13 agree with you.

14 Q. Well, the signature page does have a fax header;
15 correct?

16 A. Yes.

17 Q. And the signature page is page 2; correct?

18 A. Yes. But I don't know 2 of how many nor what else
19 was in the fax.

20 Q. Yes, but you do know that the term sheet is more
21 than one page; correct?

22 A. Yeah, but it could have been underneath it. I
23 mean, especially if it was -- well, I'm sorry.

24 Q. Are you saying that you think that the -- this fax
25 cover sheet or this fax signature page may have been on

1 top of the term sheet when it was faxed?

2 A. No. I'm only saying I don't know what was faxed.

3 Q. Okay.

4 A. You're showing me a one-page e-mail of a fax one
5 pager that's attached to another document I'm just saying
6 I don't know what was in the fax.

7 Q. Okay. I think that's fair. You don't know how it
8 was faxed or what was attached to the signature page when
9 it was faxed; correct?

10 A. Yes. I believe -- I mean, there's a time stamp on
11 it, but I don't -- I don't think I could testify to much
12 more than what I said before, which is my understanding
13 was that the signature page was faxed from AIG to
14 Mr. Baxter and it says here 8:44 p.m. on September 16. I
15 have no reason to believe that's wrong, but I wasn't
16 standing by the fax machine and don't have a memory of
17 seeing the fax and its number of pages.

18 Q. My question is not when it was faxed. My question
19 is, do you know whether, whenever it was faxed, it was
20 attached to anything or just came by itself with a cover
21 page?

22 A. I don't, I don't know.

23 Q. Okay. Let me ask you to look at Defendant's
24 Exhibit 437, which again I believe is in the government's
25 binder.

1 A. Yes, sir.

2 Q. Now, this is a draft of the term sheet as of
3 September 16 at 8:51 p.m.

4 Do you see that?

5 A. Yes.

6 Q. And it has --

7 A. Well, to be clear, the e-mail is 8:51.

8 Q. Yes.

9 A. I don't know because I don't see actually a time
10 stamp on this version of the term sheet exactly what time
11 the term sheet was generated and finalized, but the cover
12 distribution e-mail is timed at 8:51. That may or may
13 not make a difference to you.

14 Q. And this was a fax draft or term sheet that
15 somebody from Davis Polk distributed to a wide variety of
16 people, including people at Treasury, Morgan Stanley and
17 Federal Reserve Bank and Sullivan & Cromwell; correct?

18 A. Yeah. It was not a fax. It was an e-mail. But
19 otherwise, yes.

20 Q. And this has attached to it a different signature
21 page. Do you see that?

22 A. I do.

23 Q. And this signature page has a place for both the
24 Federal Reserve Bank and AIG to sign.

25 Do you see that?

1 A. Yes, I do.

2 Q. Did, insofar as you are aware, the Federal Reserve
3 Bank ever sign a term sheet on September 16?

4 A. I don't know.

5 Q. Did you ever try to find out?

6 A. No.

7 Q. Now, if you look at, if you go back to Defendant's
8 Exhibit 956?

9 A. Yes, sir.

10 Q. Which you described as the final September 16 term
11 sheet.

12 Do you see the very first paragraph in italics
13 says, "This Summary of Terms is not intended to be
14 legally binding on any person or entity"?

15 A. Yes.

16 Q. Do you see that?

17 A. I do.

18 Q. And then the next sentence says, "Any binding
19 agreement with respect to the matters referred to herein
20 shall be evidenced by appropriate documentation, executed
21 by the applicable parties."

22 Do you see that?

23 A. I do.

24 Q. And one of the applicable parties would have been
25 the New York Fed; correct?

1 A. Yes.

2 Q. This term sheet in terms of equity, talks about
3 there will be equity participation equivalent to
4 79.9 percent of the common stock form to be determined.

5 Do you see that?

6 A. You left out the words of AIG on a fully diluted
7 basis, but other than your omission, yes, I do see that.

8 Q. And with respect to the form to be determined
9 language, you believe this to be a binding agreement;
10 correct?

11 A. So --

12 Q. That's a yes, no or I don't know.

13 A. Yes. I believe so.

14 Q. Okay. And with respect to this binding agreement,
15 was it your understanding that the Federal Reserve could
16 pick any form of equity that it wanted?

17 A. I don't know. I think I would have to speculate
18 to answer that.

19 Q. You were aware, in part, based on your long
20 experience as a corporate lawyer, that there were a
21 variety of forms of equity; correct?

22 A. Yes.

23 Q. And you were aware that those forms of equity had
24 different characteristics; correct?

25 A. Yes.

1 Q. And you were aware that some of those forms of
2 equity would provide the Federal Reserve with immediate
3 control and some would not; correct?

4 A. Yes.

5 Q. And you were also aware that in terms of the
6 desirability of these different forms of equity, some of
7 them would be more desirable to the Federal Reserve and
8 some of them would be more desirable to AIG; correct?

9 A. No. I don't think I would agree with that.

10 Q. You wouldn't agree to that?

11 A. I would agree to the first half of it. There
12 would certainly be some that would be more desirable to
13 the Federal Reserve, but whether those would be more
14 desirable to AIG I don't know.

15 Q. Is it your testimony that AIG would find voting
16 convertible participating preferred stock to be equally
17 desirable or undesirable to warrants, for example?

18 A. I don't know that the corporation itself -- I
19 mean, I can't speak for them, but I don't know why they
20 would necessarily have a preference for one over the
21 other. I think that -- AIG's existing equity holders
22 might have a preference for something that was harder for
23 the Federal Reserve to get the benefit of its bargain,
24 but you're talking about AIG itself. I actually don't
25 know that AIG would or should have a preference. They

1 might have a preference in the other direction, which is
2 to have more stability and a simplified capital structure
3 and I mean again I just can't speak for them but I don't
4 think it's a necessary conclusion which I think is what
5 you're asking me to -- either testify about or speculate
6 about.

7 Q. And you make a good distinction that I want to
8 follow up on.

9 With respect to the form of equity, AIG's existing
10 common shareholders would have interests that are
11 different from AIG's; correct?

12 A. Not necessarily correct. They might; they might
13 not.

14 Q. Well, sir, didn't you just tell me that AIG's
15 existing shareholders would prefer that the form of
16 equity be warrants rather than preferred convertible
17 participating stock?

18 MR. GARDNER: Your Honor, objection. That
19 mischaracterizes Mr. Huebner's prior testimony.

20 MR. BOIES: Let me not characterize the testimony.
21 I'll reframe the question.

22 THE COURT: Okay.

23 BY MR. BOIES:

24 Q. Do you believe that AIG's existing shareholders
25 would have preferred that the form of equity provided in

1 connection with the Federal Reserve credit facility be
2 warrants as opposed to preferred stock?

3 A. No. I have no reason to believe that to
4 necessarily be true. It's certainly possible some
5 shareholders might have believed that. Others might have
6 believed exactly the contrary. For very good reasons.

7 Q. Do you remember testifying earlier today that one
8 reason that you wanted to have the stock issued as
9 opposed to have warrants is you did not want or you did
10 not want there to be a need to have a potentially quite
11 large ticking fee?

12 A. I'm sorry. Could you -- the question didn't end
13 as I suspected it to. Could I ask you to repeat it for
14 me.

15 Q. Sure. Do you remember talking about a ticking fee
16 earlier today?

17 A. I do.

18 Q. And what did you --

19 A. As it happens, it's not actually a ticking fee.
20 That's actually a different term. But the fee you're
21 talking about I believe is the periodic commitment fee.
22 A ticking fee is generally a fee on undrawn commitment on
23 a facility which we did not discuss this morning. I
24 think you mean the periodic commitment fee.

25 Q. No, I don't mean a periodic commitment fee.

1 A. I don't believe we ever discussed a ticking fee.
2 But I believe it's just a terminological issue. The fee
3 take that we discussed at some length this morning was
4 the periodic commitment fee, which I'm happy to discuss.
5 What's called the undrawn fee is normally what banking
6 lawyers refer to as a ticking fee, which I do not believe
7 we discussed.

8 Q. Well, sir, let me -- do you remember -- do you
9 remember saying that in terms of the economics and the
10 voting rights, because AIG's charter authorized blank
11 check preferred with any terms that either the board or a
12 subcommittee could simply grant without any shareholder
13 approval, there was no need to have a potentially quite
14 large ticking fee to incentivize shareholders?

15 A. Yes. Then the mistake was mine and let me -- we
16 are talking about the same thing. I have the term sheet
17 open and it was certainly also referred to by its term
18 sheet name which is the periodic commitment fee but I
19 understand what you're talking about and I'm happy to
20 proceed and I apologize for any confusion.

21 Q. That's okay?

22 A. In general, a ticking fee is the fee on an undrawn
23 commitment. This fee also ticked which is why in the
24 course of a longer answer I might have inadvertently used
25 the phrase.

1 Q. And in connection with the September 16 term
2 sheet, there was both a periodic commitment fee and an
3 undrawn fee; correct?

4 A. Yes.

5 Q. Now, let me go back to my question.

6 You've testified that some shareholders might
7 prefer the equity to be in the form of preferred stock
8 and others in the form of warrants; right?

9 A. Yes.

10 Q. If the participation was in the form of preferred
11 stock, the existing shareholders' voting power would be
12 diluted; correct?

13 A. Yes.

14 Q. But if the participation was in the form of
15 warrants, there would be no immediate dilution of their
16 voting power; correct?

17 A. When you say they, the shareholders generally,
18 yes, taken as a class.

19 Q. Yes.

20 A. That's correct.

21 Q. The common -- the existing common shareholders.

22 A. Correct. That still doesn't address the
23 preference of individual common shareholders who might
24 very much dislike what certain shareholders new or old
25 were doing which is why shareholders might have very

1 different preferences despite the factual predicate with
2 which I agree about how voting rights work.

3 Q. And is it your understanding based on your long
4 experience in practicing corporate law that in general,
5 shareholders like to see their voting power diluted?

6 A. In abstract terms, people do not favor dilution.
7 I would agree with that straight -- that abstract
8 statement.

9 Q. And would you also agree that --

10 A. Well, actually you know what I'm not sure I even
11 agree with it at that level because there are white
12 knights and there are all sorts of transactions where
13 people in order to avoid a potential takeover by certain
14 shareholders embrace others and the dilution that comes
15 with that. Corporate finance is actually very
16 complicated, and so I know you tried to take it to a
17 level that is so abstract that one seemingly could not
18 disagree with it but I'm not seal even sure at that level
19 it's correct. Sometimes you want dilution because you
20 want to be protected from something else that you think
21 is worse.

22 Q. And in 2008, in September of 2008, did you have
23 any understanding one way or the other as to whether
24 AIG's common shareholders wanted to be diluted?

25 MR. GARDNER: Your Honor, I'm going to object now.

1 I've let this go on, but this really does call for
2 speculation absent laying some foundation that
3 Mr. Huebner has knowledge as to what the shareholders
4 wanted one way or the other.

5 THE COURT: Overruled. I'll allow the answer.

6 THE WITNESS: My understanding was that certain
7 shareholders in particular I believe that I testified to
8 before Mr. Broad and Mr. Greenberg, wanted a much more
9 attractive deal to have been given to AIG, and you know,
10 didn't want the equity to be part of the deal. But I
11 don't think I can speak for shareholders really other
12 than those two because, as I testified to before, I was
13 aware of calls from Mr. Greenberg to the Fed and other
14 articles and actually even statements by yourself,
15 Mr. Boies, quoted as his representative and I did attend
16 a meeting with Mr. Broad where, again, they were offered
17 as I testified the Fed was very open to being taken out
18 and said bring us a transaction and we're very happy to
19 think about it, you know, this is not a loan we yearned
20 to make and there was never follow-up with a potential
21 transaction to the best of my knowledge.

22 Q. Did the Fed ever say they were prepared to give up
23 the equity that they had?

24 A. My recollection is that at the meeting I attended.

25 Q. I'm asking a question. Did the Fed ever say they

1 were prepared to give up the equity that they had?

2 A. As part of being open to a takeout, all options
3 were on the table.

4 Q. Did the Fed ever say that it was prepared to give
5 up the equity that it had? That's a yes, no, or I don't
6 know.

7 A. I don't think I can give an answer different than
8 the one I did.

9 MR. BOIES: Your Honor, could I get an answer to
10 my question?

11 THE WITNESS: I -- I'm sorry, irrelevant.

12 THE COURT: Can you answer the question yes, no or
13 I don't know?

14 THE WITNESS: I can't. The Fed said bring us a
15 deal and we're happy to look at whatever you want to
16 propose. That implicit live included the equity. That
17 was the nature of the communication with shareholders in
18 which I participated.

19 THE COURT: It sounds like an I don't know. Would
20 that be the fair?

21 THE WITNESS: I guess I don't know.

22 BY MR. BOIES:

23 Q. Did anyone ever tell you that there had been a
24 proposal to have \$40 billion of the \$85 billion credit
25 facility taken over by a private group?

1 A. I don't believe so.

2 Q. Now, you mentioned that there were some people who
3 didn't want equity, some of the common shareholders of
4 AIG. Were you aware of any common shareholders of AIG
5 who wanted the Federal Reserve to take 79.9 percent of
6 their equity?

7 A. No. As I only believe I heard about or from
8 Mr. Greenberg and his representatives and Mr. Broad and
9 his representatives.

10 Q. And --

11 A. And only via the client. I don't want to inflate
12 my importance. I didn't heard from them directly. By
13 and large it was only by the client.

14 Q. You personally had a view in September of 2008
15 that it was desirable for the Federal Reserve to get
16 voting stock without a shareholder vote that preceded
17 getting the voting stock; correct?

18 A. The Federal Reserve or its designee, yes.

19 Q. Now, there was no designee in September of 2008;
20 correct?

21 A. I believe that is not correct. I believe that by
22 the September 22 term sheet that became Exhibit D and
23 forgive me if I'm wrong, I believe the the trust was
24 already contemplated and in the exhibit that was attached
25 to the executed credit agreement.

1 Q. Let me break that up.

2 First, there wasn't a trust in existence in
3 September at any time in September correct?

4 A. That's correct.

5 Q. In fact, there wasn't any trust in existence at
6 any time in 2008; correct?

7 A. Yeah. I believe it got executed in January 2009.

8 Q. Now?

9 A. There are also no shares in 2008. I mean, I don't
10 agree with the misimpression that the shares went to the
11 Fed.

12 Q. You know who Mr. Alvarez is?

13 A. I do.

14 Q. Do you know what Mr. Alvarez' view was as to when
15 the shares were purchased?

16 A. I don't believe shares were ever purchased. I'm
17 sorry. I don't understand your question.

18 Q. So the answer is you don't think any shares were
19 ever purchased. That's your answer?

20 A. The shares were consideration for the loan.

21 Q. No. Is your answer that the shares were never
22 purchased?

23 A. Whenever shares are issued, including as
24 consideration for a loan, there is a document called a
25 share purchase agreement, even when there is no

1 additional consideration changing hands, so again, if the
2 term matters to you, I don't want to be caught out on it.
3 There was a purchase agreement ultimately for the
4 preferred stock that ultimately did cause the issuance in
5 transfer to the trust. I'm just now sure how precisely
6 you're attempting to use the word purchase and I don't
7 want to mislead.

8 Q. I don't want you to mislead either, sir.

9 But do you remember my asking you, do you know
10 what Mr. Alvarez' view was as to when the shares were
11 purchased, and you answered I don't believe shares were
12 ever purchased?

13 A. Then let me answer your question. I apologize. I
14 don't know anything about Mr. Alvarez' view as to when
15 shares were purchased. That would be a definite I don't
16 know.

17 Q. Now, you were aware of a Board of Governors
18 meeting? In September of 2008? ; correct?

19 A. I believe I was actually not aware of it.

20 Q. Oh.

21 A. Until I saw the document of the minutes and the
22 term sheet attached to it in preparation for my
23 deposition.

24 Q. So prior to your deposition in this case, you had
25 never seen the term sheet that the Federal Reserve Board

1 of Governors considered when it approved the credit
2 facility; is that your testimony?

3 A. No. The 144 term sheet was the one that
4 Brad Smith distributed that I later learned only a few
5 months ago was distributed to the board, but -- so I
6 certainly saw the the draft because I was a recipient of
7 the term sheet. I didn't know until only a few months
8 ago that that draft was actually sent to the
9 Board of Governors and that they had a meeting to
10 consider the draft and that there were resolutions
11 passed. I actually learned that only in 2014.

12 Q. So prior to 2014, you were unaware that the
13 Board of Governors of the Federal Reserve had ever
14 considered any term sheet; is that correct?

15 A. That is correct. I knew on the 16th that,
16 you know, the New York Fed had approval to do the deal.
17 I had never worked for the Fed before and didn't really
18 have -- I didn't even know who was who on the 16th let
19 alone what the layers of approval were. I actually had
20 no idea who Scott Alvarez was on the 16th to be Canada.

21 Q. And you had never actually done a loan or credit
22 pursuant to the section 13 of the Federal Reserve Act is;
23 correct?

24 A. That's correct. /(.

25 Q. In September of 2008, at any time that you were

1 working on the term sheets or the credit agreement, was
2 it your understanding that the Federal Reserve was going
3 to purchase preferred stock?

4 MR. GARDNER: Your Honor, objection just vague as
5 to time frame as to when in September 2008 Mr. Boies is
6 referring to.

7 MR. BOIES: I said at any time in September.

8 MR. GARDNER: I see actually it comes out as in
9 September. Withdrawn, Your Honor. I see it comes out
10 after that. Sorry. Withdrawn.

11 THE COURT: Okay.

12 THE WITNESS: Sir, when you say Federal Reserve,
13 do you mean the Federal Reserve Bank of New York? Or
14 the --

15 BY MR. BOIES:

16 Q. Yes. The Federal Reserve Bank of New York.

17 A. So from September 16 to roughly September 21 late
18 at night, September 22 in the morning, there was a lot of
19 discussion about both what the form of equity would be
20 and who would be the ultimate holder of it. I don't
21 think there was ever --

22 Q. Do you remember my question?

23 A. I do. I'm about to answer it.

24 Q. What was my question?

25 A. Did I have knowledge that the Federal Reserve,

1 which you've clarified as Bank of New York, was to be
2 issued preferred stock.

3 Q. Yes. At any time in September, while you were
4 working on the term sheets or the credit agreement, was
5 it your understanding that the Federal Reserve was going
6 to purchase preferred stock? That's a yes, no or I don't
7 know.

8 A. I believe the way you phrased it, the answer would
9 be no. .

10 Q. Let me ask you to look at joint Exhibit 100 that
11 is again in the defendant's book?

12 A. Yes, sir.

13 Q. Now, this is the e-mail that I think counsel for
14 the government talked to you about before and there is
15 first an e-mail from Mr. James on September 21 shortly
16 after midnight?

17 A. Yes.

18 Q. And shortly after midnight on the 20th. Do you
19 see that?

20 A. Yes. And it also leads me to want to correct
21 something that I said a few minutes ago, if I may?

22 The first line of this document says Mr. James'
23 e-mail or the -- the first -- this document does not
24 mention the voting trust agreement as that does not
25 involve AIG directly. It's possible that therefore the

1 trust was not yet referred to in this document. I would
2 have to read the two pager slowly. I think I said before
3 I thought the trust was in the two pager, but in -- you
4 asked me to look at the e-mail. I see something that at
5 least suggests the possibility of the trust not yet
6 having been in the document.

7 Q. Now, this was a draft document that you saw at the
8 time; correct?

9 A. Yes. I believe so.

10 Q. And in fact, you responded to it a little less
11 than an hour later or maybe about half an hour later;
12 correct?

13 A. Yes.

14 Q. And you say that the two-page document describes
15 the proposed equity structure towards which we are
16 collectively gravitating; correct?

17 A. Yes.

18 Q. And this two-page document, which describes the
19 proposed equity structure towards which you were
20 collectively gravitating, describes the Federal Reserve
21 Bank of New York as the purchaser of the preferred stock;
22 correct?

23 A. Yes, it does.

24 Q. Let me go back to the 11 -- what was the date of
25 the draft that was sent to -- that you now know was sent

1 to the Federal Reserve? 1:44?

2 A. Yes.

3 Q. The 1:44 p.m. draft, that draft also talked about
4 the purchase of stock; correct?

5 A. Yes. It said warrants for the purchase of common
6 stock, that's correct.

7 Q. And that contemplated that the holder of the
8 warrants would use those warrants to purchase common
9 stock; correct?

10 A. I don't know how to answer that. I'm sorry. I'm
11 not sure I can agree with you, but I don't know that you
12 want me to explain why I'm not sure I agree with you. I
13 mean, you don't tender warrants to purchase stock.

14 Q. I'm sorry. Say that again?

15 A. A warrant is generally not the consideration that
16 is used to purchase stock. A warrant is the vehicle for
17 ultimately getting the stock. Here, for example, the
18 consideration was the loan agreement itself, which I
19 think the parties clearly understood at the time and
20 documented in a variety of places.

21 Q. Let me see if I can understand what you're saying.

22 And let's look at Defendant's Exhibit 430, which
23 is a document that you talked with counsel for the
24 United States about.

25 A. Yes.

1 Q. And this is a document where a lawyer from
2 Davis Polk distributes to a variety of people what you
3 have referred to as the 1:44 p.m. draft of September 16;
4 correct?

5 A. Yes.

6 Q. And under the heading Warrants, on the page with
7 the Bates number ending 335?

8 A. Yes.

9 Q. Which is the fourth page of the exhibit? Do you
10 see that?

11 A. Yes.

12 Q. And opposite the heading Warrants it says
13 "warrants for the purchase of common stock of AIG
14 representing 79.9 percent of the common stock on a fully
15 diluted basis.

16 A. Yes.

17 Q. Do you see that?

18 A. That is the language I just read. Yes, I do see
19 that.

20 Q. And that was your understanding at the time;
21 correct, sir?

22 A. I'm not sure what you'd like it to be my
23 understanding of. Those are the words on the page.

24 Q. Well, those are the words on the page and those
25 were the words on the page that as you understood it at

1 the time described the proposed terms for the credit
2 facility; correct?

3 A. Sure. Yes.

4 Q. Okay.

5 A. Correct.

6 Q. One of the things that you testified about as to
7 why there was a need for immediate voting control was
8 that you were worried about somebody swooping in and
9 replacing directors and thereby replacing management. Do
10 you recall that?

11 A. I do.

12 Q. And you talked about the threat of hostile
13 actions; correct?

14 A. Yes.

15 Q. Now, there were ways that you were aware of and
16 considered that would have avoided a threat of a hostile
17 takeover without requiring immediate voting control to be
18 vested in the Federal Reserve or its designee; correct?

19 A. I'm sorry, sir. I actually do not know what
20 you're referring to.

21 Q. Okay.

22 A. So my answer would be incorrect, but you
23 obvious -- I don't know what you're referring to.

24 Q. Okay. And as I say, anytime that you don't know,
25 let me know, and I'll try to rephrase the the question.

1 In explaining why it was important to have
2 preferred stock that had immediate voting control, you
3 talked about the need to prevent somebody from swooping
4 in and having a hostile takeover and replacing the
5 directors.

6 A. Yes. That was one of the considerations.

7 Q. Yes.

8 Well, what other considerations were there for
9 wanting to have immediate voting control in the Fed or
10 its designee?

11 A. So the term sheet that was provided to AIG and
12 agreed to by the parties provided for a 79.9 percent
13 equity equivalent, which involved both voting rights and
14 economic rights. The point was actually remarkably
15 simple, which was, the Fed had lent \$85 million and this
16 was the consideration part of the consideration for which
17 it had bargained and what lawyers do every day is design
18 transactions to be closeable and to deliver to both sides
19 the consideration that they had bargained for without the
20 need for additional hurdles, approvals, complexities,
21 contraventions. Like I described at the very beginning
22 of yesterday, that when a loan was done, you have to make
23 sure that you didn't require other waivers and consents
24 from other lenders or regulatory bodies. This was very
25 similar. You design a transaction and you figure out how

1 to deliver to both sides what they bargain for.

2 Q. Have you finished?

3 A. I am.

4 Q. Do you remember what my question was?

5 A. I believe so. What were the other reasons why the
6 Fed wanted to use the preferred structure.

7 Q. No. It was, what were the other reasons in effect
8 for the Fed wanting to have immediate voting control?

9 And you told me that --

10 A. Okay.

11 Q. When this question was asked of you by the
12 defendant's counsel?

13 A. Right.

14 Q. Do you remember they asked you why did you want to
15 have voting control?

16 A. Right.

17 Q. And you said we wanted to have voting control
18 because we wanted to avoid somebody swooping in and doing
19 a hostile takeover?

20 A. Well, actually I think my answer was broader than
21 that I think I referenced the existing shareholders and
22 new people in a depressed environment. But the reason
23 they wanted voting control is because that was what they
24 bargained for and it's a right and it has value and it's
25 important.

1 Q. Now, when you say that's what they bargained for,
2 that's not what they bargained for in the binding
3 document that was executed according to your testimony,
4 on September 16; correct?

5 A. No, I don't believe that's correct.

6 Q. Well, is it -- is there any provision in that
7 agreement that provides for immediate voting control?

8 A. 79.9 percent equity equivalent to common stock
9 means instruments that equate to the equivalent of an
10 79.9 percent common stock right which carries with it
11 voting control and economic control. I don't know how
12 you control any other conclusion.

13 Q. Sir, didn't you tell me that for several days
14 after September 16, you all debated whether it agent to
15 be warrants or preferred stock or something else?

16 A. Yes. But that was the Fed's internal discussion
17 about what it thought best, not about what AIG should
18 have expected the terms to be.

19 Q. But that's my question, sir. And it's a question
20 I don't think I got an answer to before but maybe now
21 you're prepared to give me an answer.

22 Is it your testimony that as of September 16, at
23 the end of September 16, there was a binding agreement
24 between AIG and the Fed that the Fed could have whatever
25 form of equity it wanted?

1 A. No. I think you asked me that question about an
2 hour ago and I said no then and I mean no now.

3 Q. Okay.

4 A. It had to be consistent with the provision of the
5 term sheet, which is 79.9 percent equity equivalent to
6 common stock. So if we put in, you know, crazy stuff or
7 stuff that was inconsistent with that or unreasonable,
8 AIG would have said this is not what was in the term
9 sheet.

10 Q. But as long as it was equivalent to 79.9 percent
11 of the common stock, it could be any form of equity that
12 the Fed wanted; is that your testimony, that AIG had
13 bound itself on September 16 to give the Fed any form of
14 equity that the Fed came forward and said they wanted?

15 A. That was consistent with the term sheet provision.

16 Q. Well, by "consistent with the term sheet
17 provision" -- let's go over that term sheet provision,
18 which is in DX 956.

19 And the first sentence after equity participation
20 or the first clause says equity participation equivalent
21 to 79.9 percent of the common stock of AIG on a fully
22 diluted basis. And then it says form to be determined."

23 Do you see that?

24 A. Yes.

25 Q. Now, as long as the first clause was satisfied, is

1 it your testimony that on September 16, 2008, AIG had
2 bound itself to give the Federal Reserve or its designee
3 any form of equity that the Federal Reserve asked for?
4 That's yes, no or I don't know. ?

5 A. I believe the answer is yes.

6 Q. Okay.

7 A. I mean, I --

8 Q. Okay. That's -- if that's your testimony, we have
9 it.

10 A. Okay.

11 Q. And did you ever have any conversations yourself
12 with anyone at AIG concerning whether AIG agreed that as
13 of September 16, they had bound themselves to give the
14 Federal Reserve or its designee whatever form of equity
15 the Fed asked for as long as it was consistent with the
16 first clause?

17 A. I don't believe there was ever a conversation
18 along the lines of can we pick anything we want and don't
19 you agree you have to do it, so phrased that way, I
20 believe the answer would be no.

21 Q. Okay. Did you ever have any conversations
22 directly with Mr. Willumstad?

23 A. As I testified to on direct, I now believe that
24 had he was on the call from the AIG -- the people that
25 came out of the AIG boardroom on the night of

1 September 16, and I believe Mr. Cohen did a substantial
2 amount if not all of the talking. Other than that, I
3 don't believe I was ever on the phone with
4 Mr. Willumstad.

5 Q. And the only reason that you believe he was on the
6 phone, that is, Mr. Willumstad was on the phone, was that
7 you've been informed of that either by reading documents
8 or talking to people in connection with this litigation;
9 correct?

10 A. Yeah. I mean, my memory before the litigation was
11 that there was a call from the board and I remember
12 Mr. Cohen and I remember that there were others, but I
13 would not have been able to take a solid -- I don't mean
14 to use the word guess in that sense, but yes, it was in
15 looking at documents that led me to believe that the
16 other people that I vaguely thought were on the phone
17 included Mr. Willumstad, assuming those documents are
18 accurate.

19 Q. Let me turn to another subject, and in that
20 connection, I'm going to show you a chart that has been
21 marked as defendant's demonstrative Exhibit 036, which
22 purports to list three ways that the preferred stock that
23 the Federal Reserve or its designee received could be
24 changed into common stock.

25 A. I don't believe the middle one involves changing

1 it to common stock. I apologize. I think that's not
2 correct.

3 Q. You're familiar with all three of these?

4 A. I'm actually not a securities lawyer and I'm
5 actually not sure I could testify the difference between
6 a conversion and an exchange, but I do think that the
7 preferred being listed directly does not involve a change
8 into common stock.

9 MR. GARDNER: Your Honor, if I could just lodge an
10 objection, I do believe this is actually beyond the scope
11 of the government's examination of Mr. Huebner. I did
12 not ask about these alternatives with him, specifically
13 because he isn't a securities attorney.

14 THE COURT: Didn't the testimony about the
15 preference of method A versus method B go to this
16 subject?

17 MR. GARDNER: Not -- I don't want to be testifying
18 for Mr. Huebner, but no. My short answer is no, not
19 exactly. That is a different issue.

20 THE COURT: All right. .

21 MR. BOIES: Let me approach it this way,
22 Your Honor.

23 BY MR. BOIES:

24 Q. You recall that counsel for the United States
25 asked you some questions about the Walker litigation.

1 A. Yes.

2 Q. And you said that the Walker litigation was
3 designed to prevent the company or assertedly was
4 designed to prevent the company from increasing its
5 authorized shares without a common shareholder vote. Do
6 you recall that?

7 A. The way I think about it is that the Walker
8 litigation alleged that the company planned to try to
9 increase the shares without a shareholder vote, but I
10 think we're saying things that are very close cousins.

11 Q. Right. That is, the Walker plaintiffs made that
12 allegation and went into court to try to get an order
13 that would stop you from doing that and you responded --

14 A. Don't say you because that's quite wrong.

15 Q. Okay. Let me -- let me try to make it neutral.

16 A. Or just say AIG.

17 Q. I'll try to make it neutral because one of the
18 issues in here is where the line got separated.

19 A. Well, if we're only describing the lawsuit itself,
20 I'm sorry. It's.

21 Q. /STKPWHR-FRPBLGTS?

22 Q. This was a lawsuit that took place after AIG had
23 already signed the credit agreement; correct?

24 A. Yes. I believe it was in either late October or
25 early November 2009.

1 Q. And at that point in time, the CEO of the company
2 was somebody who had been selected by the
3 Federal Reserve; correct?

4 A. I actually.

5 MR. GARDNER: I'm going to object, Your Honor.
6 This mischaracterizing the testimony.

7 MR. BOIES: I wasn't characterizing in that
8 question I wasn't characterizing anybody's testimony.

9 THE WITNESS: Yeah, I don't know exactly who
10 selected Mr. Liddy or how.

11 THE COURT: Overruled.

12 THE WITNESS: I was not involved.

13 THE COURT: Just too many people speaking at once.
14 The objection was overruled. And then you can provide
15 your answer.

16 THE WITNESS: Oh. I was not involved in the
17 process of the selection or Mr. Liddy becoming CEO, so I
18 don't have knowledge as to whether it was the
19 Federal Reserve who selected Mr. Liddy. I just don't
20 know.

21 BY MR. BOIES:

22 Q. Okay.

23 A. I was not involved.

24 Q. As you understood it, the Walker lawsuit claimed
25 that AIG was planning to increase its authorized shares

1 without a common shareholder vote; correct?

2 A. Yes. That formation I quite agree with we might
3 both be wrong but that's how I understand it.

4 Q. And the plaintiffs sought a court order to prevent
5 that; correct?

6 A. I actually don't know the form of relief that was
7 sockets. I don't know if it with an is an injunction or
8 a -- I can agree with the first half but I'm sure you're
9 right if what they were seeking was an injunction, I just
10 don't know or I don't remember I may have known at the
11 time.

12 Q. And what AIG did was they went in and they said we
13 always have planned to have a vote of the common
14 shareholders on a class basis before we increased the
15 authorized shares; correct?

16 A. Yes. I believe that's correct.

17 Q. And you talked about and they showed you some
18 exhibits about how you knew about this lawsuit in
19 November, around November 20. Do you recall that?

20 A. I don't remember the date, but if that's the date
21 on the e-mails, I'm sure it's correct.

22 Q. November was after it had already been agreed that
23 the lawsuit would be terminated; correct?

24 A. I'm sorry. I'm confused. Wasn't it not filed
25 until -- I don't understand your question. I'm very

1 sorry.

2 Q. Okay. You understand that after AIG went in and
3 said we always planned to have a shareholder vote before
4 increasing the number of authorized shares, it was agreed
5 that that lawsuit was moot; correct?

6 MR. GARDNER: Your Honor, I'm sorry. I object.
7 That question is very vague. I wonder if there might be
8 a way to rephrase it.

9 THE COURT: I think it's fine. I think the
10 question is fine.

11 THE WITNESS: Yeah. I don't know the litigation
12 answer as to whether it was moot. I believe it was
13 settled in exchange for the payment of legal fees, but as
14 to the specific pathway of mootness or dismissal without
15 prejudice, I don't know the pathway. My understanding
16 was they filed this lawsuit -- well, I described it. I
17 don't need to redescribe it. I don't know. Mootness in
18 the bankruptcy world a very different doctrine and I
19 don't know how it applies to litigation. I believe it
20 means something different in appellate it's only a
21 appellate concept in bankruptcy world /STKPWHR-FRPBLGTS.

22 BY MR. BOIES:

23 Q. From your general understanding of the law,
24 realizing that it's been a long time since you've been in
25 court, you understand that the concept of mootness

1 generally not just in the bankruptcy context?

2 A. Well, but again the e-mail we looked at before
3 suggested that the plaintiffs' view was we got the
4 disclosure changed, so we actually made a change and
5 because of that we deserve to have our fees paid, so I
6 just -- I'm not sure it was as simple as oh, sorry, we
7 agree it's moot. I think there was some sort of document
8 in which the parties memorialized a settlement of the
9 lawsuit. I don't know if it was dismissed as moot or it
10 was settled. I don't have knowledge about the pathway of
11 the resolution of the lawsuit other than as I believe I
12 described it before.

13 Q. Let me ask you this. Were you aware of the Walker
14 lawsuit before it was settled, as you describe it, as you
15 describe it as being settled?

16 A. Yes. The e-mails we looked at -- yes.

17 Q. Were you aware of the Walker lawsuit before AIG
18 went in and said we always planned to have a class vote
19 of the common shareholders before there was an increase
20 in the authorized number of shares?

21 A. I don't think so, but I'm not positive about,
22 you know, the day-to-day of that. I don't think I knew
23 about it before. I remember there was some skirmishing
24 where we learned that the people were ex parte and AIG
25 criticized them for that and then they said it wasn't ex

1 parte and there was a bunch of litigationy stuff that I
2 didn't frankly particularly have a reason to follow. I
3 understood the general gravamen of the lawsuit and how it
4 was resolved and the fact that as I said before they paid
5 attorney's fees to settle something that I found a little
6 bit /STKPWHR-FRPBLGTS.

7 Q. Let me hand up a binder of documents and this
8 binder does not have your name on it. It has the name of
9 your partner John Brandow because these were documents
10 that I pulled together for Mr. Brandow's examination, but
11 it may have some documents I want to refer to.

12 A. Thank you.

13 Q. And?

14 THE COURT: Is this the same binder.

15 MR. BOIES: Exactly the same binder, so after
16 today, you can throw one of them totally away.

17 MR. GARDNER: We do not view the witness as not
18 being interchangeable, Your Honor, to be sure.

19 THE WITNESS: You knew John Brandow and I know
20 John Brandow.

21 BY MR. BOIES:

22 Q. The scary thing is that they're getting fewer and
23 fewer people?

24 A. Who understand that reference. I'm not going to
25 tell you how old I was when that was actually uttered,

1 Mr. Boies.

2 Q. I want to direct your attention to a couple of
3 e-mails where people at Davis Polk do exchange
4 information about this Walker lawsuit and I want to ask
5 you what your knowledge was of those, of those e-mails.
6 And as a predicate for that, at the time that the Walker
7 lawsuit was filed, which was early November of 2008, am I
8 correct that you contemplated that the Series C preferred
9 stock would be converted into common shares, that is, you
10 were going to go past number 1 on the three ways that are
11 identified on DX X 036 of making the Series C preferred
12 stock readily markable?

13 MR. GARDNER: Your Honor, let me object again as
14 beyond the scope of my direct examination. This is not
15 an issue that we covered.

16 THE COURT: Well, certainly as it relates to the
17 Walker litigation.

18 MR. GARDNER: We covered an aspect of the Walker
19 litigation for sure, Your Honor, but we -- again, I don't
20 want to be testifying, we did not cover, though, how the
21 Walker litigation related to whatever ultimately became
22 the Series C preferred. Other witnesses have testified
23 with respect to that issue. Mr. Huebner is not one of
24 them.

25 THE COURT: Well, I'm going to allow it at least

1 for a brief time.

2 MR. GARDNER: Thank you, Your Honor.

3 THE WITNESS: I don't actually believe that I had
4 knowledge in November 2008 that any path had been decided
5 upon as we talked about before, the preferred stock was
6 not issued -- was not even issued for many months until
7 after that, and I think the trust was still in its very
8 early stages of being negotiated and documented. There
9 just was a lot of -- in the real world, there was a lot
10 of messy uncertainty about, you know, lots of things and
11 I don't think I had a view at the time as to whether a
12 path had been chosen.

13 BY MR. BOIES:

14 Q. You were aware in November of 2008 that one path
15 for making the Series C preferred stock marketable was
16 converting it into common; correct?

17 A. Yes.

18 Q. And is it your testimony that you don't recall at
19 that point being aware of any other alternative ways?

20 A. No. That's not my testimony.

21 Q. Were you aware of alternative ways?

22 A. Yes. As I testified to on direct, listing the
23 preferred was in other words what we said in the options
24 term sheet, not -- you know, conversion not imperative,
25 the preferred could have just stayed preferred and it

1 may -- would have had all the rights and values of the
2 799 that it was issued with from inception.

3 Q. When you say as we said in the options term sheet,
4 what are you referring to there?

5 A. Not the options term sheet. I'm sorry. On direct
6 I was shown a document, the option A, option B, that was
7 the September 19 document where the Fed asked us to
8 present alternatives, and counsel for the government
9 asked me about parenthetical that said, you know,
10 shareholder vote for conversion, you know, blah, blah,
11 blah but not imperative and the point was that it was
12 recognized even before that -- that -- in that very early
13 time frame in September that it might have been the case
14 that the preferred never would have been converted or
15 exchanged. It just would have had its own value as a
16 almost any percent fully alive and vibrant equity
17 ownership interest in AIG with all the rights identical
18 to common.

19 Q. You understood, did you not, that in order to
20 realize the value of that stock, the Fed wanted to have
21 it in a way that it could be readily and in a liquid way
22 marketed? Yes or no or I don't know?

23 A. At that point in time, I don't know that I had
24 that knowledge.

25 Q. Okay. I'll move on from this subject now. I want

1 to come back and talk about this after -- at the close
2 just for five minutes after the witness has been excused
3 just in terms of what the guidelines are going forward.
4 But right now I will move to another subject. And that
5 is the subject of the guarantee.

6 A. Yes.

7 Q. Do you recall that you told counsel that you
8 thought from a business or economic standpoint a
9 guarantee was undesirable because it would expose the
10 government potentially to more than a trillion dollars of
11 liability? Do you recall that?

12 A. I believe I said the guarantor. I don't know it
13 could have been the Federal Reserve or the Treasury, but
14 the guarantor could have been liable for any of AIG's
15 liabilities. I just don't know if you meant something
16 very precise when you said the government. Whoever on
17 would issue the guarantee would obviously be liable for
18 awful AIG's obligations and I believe that its
19 liabilities, you know, were, you know, something like a
20 trillion dollars.

21 Q. Now, were you aware of any proposals that involved
22 a guarantee from some agency of the government, whether
23 it's the Treasury or the Federal Reserve, that would not
24 have involved anything like a trillion dollars of
25 exposure but would have provided AIG with liquidity?

1 A. A guarantee doesn't provide liquidity per se. A
2 guarantee is a guarantee. It helps with credit ratings.
3 It might ease pressure. It might encourage others to
4 lend. Again, your question is a little bit complicated
5 and it -- I can't exactly answer it the way you asked it.

6 Q. Well, sir, you understood that if, for example,
7 AIG's liabilities to counterparties with respect to CDSs
8 and securities lending had been guaranteed by an agency
9 of the federal government that that would have, one,
10 prevented additional collateral calls and, two, would
11 have allowed AIG to recover collateral that had already
12 been posted?

13 A. Had I had the counterparties you left out a really
14 important middle phrasing there. Had counterparties
15 agreed to accept a federal government guarantee in lieu
16 of the obligation to post collateral or had it restored
17 AIG's credit rating retroactively but there are a lot of
18 assumptions without which your statement not true.

19 Q. Let me just ask you a question.

20 A. Okay.

21 Q. Okay?

22 Did you understand that the Federal Reserve
23 believed that if the Federal Reserve or some other agency
24 of the federal government guaranteed the AIG CDS
25 obligations that that would result in AIG recovering

1 collateral already posted regardless of whether the
2 counterparty agreed to it or not?

3 A. I actually don't have a recollection of that. And
4 I believe --

5 Q. Okay. If you don't have a recollection, you don't
6 have an a recollection.

7 A. Okay.

8 Q. That's my question.

9 A. I don't have a recollection.

10 Q. If you did.

11 Now, you do understand that AIG had to post
12 collateral for two different reasons.

13 A. I think I would need you to elaborate before I
14 would be prepared to agree or disagree with you.

15 Q. Well, do you know the reasons that AIG was
16 required to post collateral for its CDS obligations?

17 A. Oh, for CDS obligations, I believe that I do.

18 Q. And there were two reasons; right?

19 A. Yes. There was in essence a double trigger. One
20 was AIG's own downgrade, the second was a downgrade in
21 the quality of the underlying securities, each of
22 which -- and again, I believe every contract was
23 different and so I'm very wary of overgeneralizing
24 because I'm also guessing you may know things much more
25 specific than I know them and candidly I'm.

1 Q. Let me make a narrow statement?

2 A. Okay.

3 Q. Because my question was just / (there were two
4 reasons and you said yes.

5 A. Yes. In general terms, I believe that the CDS
6 collateral was due to an AIG downgrade and a decrease in
7 the credit quality of the underlying CDOs.

8 Q. And if that credit quality of the underlying CDOs
9 had been guaranteed by the Federal Reserve or an agency
10 of the federal government, do you have an understanding
11 one way or the other whether that would have eliminated
12 the need to post collateral because of a decrease in
13 credit quality of the underlying CDOs? And that again is
14 yes, no, I don't know or I simply don't understand the
15 question.

16 A. I definitely do not understand the question. I
17 don't think it makes sense.

18 Q. Okay.

19 A. Because the government was never going to
20 guarantee the CDOs presumably your question was about
21 guaranteeing AIG's obligations which would have affected
22 the other trigger, not the CDO quality trigger.

23 Q. The holder of the CDO security had come to AIG for
24 a credit default swap to protect against a default in the
25 CDO; correct?

1 A. In general terms, yes.

2 Q. Okay. And if the Federal Reserve or some other
3 agency of the federal government had guaranteed the
4 holder of the CDO to protect it against a default in the
5 CDO, do you have an understanding one way or the other as
6 to whether that would have eliminated the need to post
7 collateral because of a decrease in the credit quality of
8 the underlying CDOs? And if you tell me you don't
9 understand that question, sir, I will move on, because I
10 will have made whatever record I need.

11 A. What you're asking is --

12 Q. That's yes, no, I don't know or I don't understand
13 the question. And with respect to any one of those
14 answers, I will have made the record I need and I will
15 move on.

16 A. Had the government directly guaranteed the CDOs
17 with a replacement CDS, presumably AIG would have been
18 let off the hook on its CDS.

19 Q. Okay. And if AIG had been let off the hook on its
20 CDS, that would have meant that it would have not had to
21 put additional collateral postings because of a decrease
22 in credit quality of the CDs; correct?

23 A. Correct. If the counterparties had let AIG off
24 the hook by taking a federal government CDS instead, then
25 AIG would have had no further obligations of any kind.

1 Q. Well, sir?

2 A. That's exactly correct.

3 Q. If the government had directly guaranteed the
4 CDOs?

5 A. Which is essentially a CDS. That's what a CDS is.
6 It's a guarantees of someone else's CDOs.

7 Q. But then AIG would have been let off the hook, as
8 you describe?

9 A. I said presumably because they still would have
10 had to agree --

11 Q. For the -- so it's your testimony that if the
12 Federal Reserve had guaranteed the performance the way
13 we've described it, AIG would not have been able to stop
14 posting collateral for declines in the credit quality of
15 the CDOs unless the CDO holder had agreed?

16 A. Which I presume they would have. But yes, with
17 that caveat, I agree.

18 Q. Okay.

19 A. They would have let to AIG off the hook and accept
20 a replacement CDS from the Fed.

21 Q. When you say they would have had to let AIG off
22 the hook and accept a replacement CDS, is it your
23 understanding that a novation would have been required in
24 order for AIG to get off the hook?

25 A. I don't believe that's what a novation is. A

1 novation is generally -- no. I believe you're -- I
2 believe as you asked it, the answer would be no.

3 Q. Okay. So there did not have to be a novation to
4 let AIG off the hook; correct?

5 A. It would have to be a tear-up.

6 Q. Now, in terms of a tear-up, is it your
7 understanding that the only way to let AIG off the
8 hook -- let me put it this way. Is it your understanding
9 that the only way to let AIG off the hook for posting
10 more collateral because of a decrease in the credit
11 quality of the CDOs was for the counterparty to give
12 their agreement? Yes, no --

13 A. No. Because we discussed before a double trigger.
14 If AIG's balance sheet had become AAA rated again and I
15 don't know the terms of each and every CDO or CDS. There
16 were many of these and I never read any of these
17 documents.

18 Q. Okay.

19 A. But my general --

20 Q. Okay. I think that solves it, too.

21 A. Okay.

22 Q. Let me turn to the subject of the demand notes.

23 A. Yes.

24 Q. You testified that between sometime on
25 September 16 and September 22, the Federal Reserve had

1 lent AIG \$37 billion. Do you recall that?

2 A. I believe it was between the 16th and the 19th of
3 September. I believe by Friday the \$37 billion had been
4 lent.

5 Q. And you described the \$37 billion that the
6 Federal Reserve lent AIG between the 16th and the 19th,
7 as you describe it, as having been lent on one-page
8 demand notes. Do you recall that?

9 A. I believe I also discussed associated security
10 documents whose length I did not know, but I do believe
11 that each note was in essence a one-page document.

12 Q. When you say each note was in essence a one-page
13 document, these were secured demand notes; correct?

14 A. Yes.

15 Q. And the security agreements were a lot longer than
16 one page; correct?

17 A. I don't know how long they were, which is what I
18 believe I said on direct, and remains true right now. I
19 just don't know. I believe they were relatively short
20 form. I don't think there was a full loan security
21 agreement but I'm just not sure. My memory is the demand
22 notes themselves, the notes were one-page each.

23 Q. Let me ask you whether you are familiar with the
24 pledge agreement that accompanied each of the demand
25 notes.

1 A. I don't have specific knowledge. I mean, a pledge
2 agreement is how one would grant a security interest in
3 stock, so it's entirely possible though what I colloquial
4 are an called the security agreement would have been
5 called a pledge agreement if it included stock as some or
6 all of the underlying collateral.

7 Q. When you refer to the Federal Reserve lending
8 \$37 billion on one-page demand notes, you weren't meaning
9 to imply that the Federal Reserve was somehow not
10 protected, did you?

11 A. No.

12 Q. Okay.

13 A. But.

14 Q. All I need is yes, no or I don't know?

15 A. No, but doesn't work?

16 Q. If you feel -- if you feel compelled to --

17 A. Then give me ten seconds and I promise I will stop
18 at this answer.

19 Q. Okay.

20 A. I know of no other fact pattern where \$14 billion
21 was lent in one day with the loan agreement being a
22 one-page demand note. That was an extraordinary event.
23 Obviously lenders negotiate for full-blown credit
24 agreements because things in the credit agreement are
25 very important to them. I'm not prepared to say the Fed

1 was unprotected, but it certainly was less protected than
2 it was with a credit agreement and it repeated that
3 effort four times the week of the 16th because of AIG's
4 need for \$37 billion in four days.

5 Q. And I don't think anybody is saying that AIG did
6 not need substantial liquidity. That's not an issue I
7 don't think.

8 My question was simply you testified about how
9 \$37 billion was lent on one-page demand notes. Do you
10 recall that?

11 A. With an associated security agreement whose length
12 I did not know. I believe I said that at the time and
13 it's important. I might be mistaken, but I'm pretty sure
14 I said that on direct.

15 Q. Well, by tomorrow morning, we will have figured
16 that out.

17 A. What do I get if I'm right?

18 Q. Because it's all written down. Earlier exit.

19 A. Now I'm really going to prey hard that I'm right.

20 THE COURT: Now we're talking; right?

21 THE WITNESS: Stupid me. I was asking for the
22 /STKPWHR-FRPBLGTS wait.

23 A. Is this I cut, you choose, that if I'm right I'm
24 done? I'll take that best, Mr. Boies.

25 MR. BOIES: Only if they would agree that if I'm

1 right, they're done.

2 THE WITNESS: Can I confer with my lawyer for a
3 minute? You might regret this offer.

4 Q. Let me direct your attention in the meantime to
5 another subject.

6 And that is you said that the preferred decision,
7 the decision to go with preferred stock, was made on
8 September 21, a Sunday; correct?

9 A. Yes. I believe that's when it was -- as we saw in
10 the e-mails, people were gravitating towards, had
11 preserves for, but it was not finally decided until the
12 22nd. There were many parties involved as we saw from
13 the e-mails.

14 Q. And in fact, do you remember the e-mail where
15 Mr. Baxter writes you that he's going to interpret
16 something that Mr. Alvarez said as a green light?

17 A. I do.

18 Q. And that was the point insofar as you were aware
19 that a let me say final decision, not necessarily a
20 preliminary decision because you were gravitating wars
21 it, but a final decision was made to take the equity in
22 the form of preferred stock; correct?

23 A. Yes. I believe that's right.

24 Q. And AIG was informed of that in the afternoon of
25 September 21; right?

1 A. I believe so, although as we discussed also on
2 direct, I believe it is very substantially more likely
3 than not that I might well have discussed it with
4 Ms. Shannon but I cannot testify under oath that I
5 remember the conversation, so leaving that aside, I
6 believe that it was on Sunday.

7 Q. And you were aware, were you not, of a number of
8 statements that were made both publicly and within the
9 Federal Reserve after September 16 that referred to the
10 form of equity being warrants; correct?

11 A. I'm sorry. I don't know what you're referring to.

12 Q. Well?

13 A. I mean, did anybody use the word warrant oh, yeah
14 we were considering -- many people were chewing on
15 various alternatives. Absolutely warrants was one of
16 them and I'm sure that phrase was used multiple times
17 between the 16th. I think many of the e-mails I went
18 through on direct included a consideration of warrants.

19 Q. I'm not now referring to simply considering
20 warrants. You were aware of statements that were made
21 both publicly and within the Federal Reserve that the
22 form of equity was going to be warrants; correct?

23 A. I'm sorry. I actually don't know what you're
24 referring to. We were very careful in the public
25 communications of the Fed, the public communications of

1 AIG and the 8-K episode that we discussed to actually not
2 say that it would be warrants because in fact that was
3 not known. Did somebody maybe use the phrase warrants
4 during that week somewhere in an e-mail? If that's what
5 you're asking, I'm sure the answer is yes. But I
6 don't -- I don't think there was a choice or a policy
7 position that it was to be warrants, but again you have
8 something in mind so let me stop talking.

9 Q. I'm just -- I actually have a number of things in
10 mind, but I'm -- what I'm really trying to get at as an
11 initial matter is, is it your testimony that insofar as
12 you were aware, there were no statements by the
13 Federal Reserve after September 16 that the form of
14 equity was going to be warrants?

15 A. I don't know. It's certainly possible somebody
16 used that phrase. It wouldn't surprise me, but I
17 don't -- I can't remember a specific document where
18 somebody said we, the Federal Reserve, are going to get a
19 warrant. It's certainly possible documents exist. I
20 don't have a recollection right now of any like that.

21 Q. When you said earlier that you were very careful
22 not to say that warrants were going to be the result
23 because you hadn't made that decision, who were you
24 referring to when you said "we"?

25 A. So -- and this is where we've discussed a few

1 times the use of pronouns. I believe that, as I
2 discussed at some length yesterday and today, from the
3 16th to the 21st the form of equity was not known and in
4 general the clients and the professionals working on the
5 deal I believe tried to be and I certainly tried to be
6 careful not to use the term "warrant" or the term
7 preferred or any other specific term because it wasn't
8 known. There were many communications in e-mails during
9 this period. It's entirely possible somebody shorthanded
10 it or said it. I don't know.

11 Q. Let me ask you to turn and this will be very
12 quick -- to Plaintiffs' Trial Exhibit 148.

13 MR. GARDNER: Mr. Boies, which binder are you in
14 now?

15 MR. BOIES: I'm in the Brandow binder.

16 MR. GARDNER: Thank you.

17 THE WITNESS: Yes.

18 BY MR. BOIES:

19 Q. And this is Plaintiffs' Trial Exhibit 148 which I
20 will represent to you have been identified as notes of a
21 conference call on September 18, 2008.

22 A. Yes.

23 Q. And did you participate in a conference call on
24 September 18 with Mr. Baxter, representatives of the
25 Treasury and other lawyers from Davis Polk?

1 A. I would definitely not have remembered this six
2 years later, but I was shown this document as part of
3 preparation, and I have no doubt that I was on such a
4 call. If, you know, Ms. Mosser listed me as a
5 participant, I'm sure I was on it. And I had a speaking
6 part, so I'm double sure I was on it.

7 Q. And that's what I'm going to direct your attention
8 to --

9 A. Yep.

10 Q. -- which is at the bottom of the page, where it
11 says "Marshall:"

12 And you understand that that's referring to you;
13 correct?

14 A. I think that is highly likely.

15 Q. And it says, "Does Fed care who gets benefit of
16 warrant: Fed or Treasury?"

17 Do you see that?

18 A. I do.

19 Q. And did you say that in words or in substance on
20 this call?

21 A. I have no idea what phrase I used for the equity
22 on a specific call six years ago. I remember asking this
23 question because this question was important to me in
24 figuring out structuring it, whether ultimately all funds
25 flowed to the taxpayer, but whether I said "who gets the

1 warrant" I have no idea.

2 Q. All right.

3 THE COURT: Shall we break for the day, Mr. Boies?

4 MR. BOIES: Yes, Your Honor.

5 THE COURT: All right. We'll adjourn until 9:30
6 tomorrow morning.

7 *****END OF ROUGH DRAFT*****

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DRAFT