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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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

Courtroom 4

Howard T. Markey National Courts Building

717 Madison Place, N.W.

Washington, D.C.

Thursday, November 13, 2014

9:30 a.m.

Trial Volume 30

BEFORE: THE HONORABLE THOMAS C. WHEELER

Josett F. Whalen, RMR-CRR, Reporter

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	I N D E X				
1					
2					
3	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS VOIR
4	HERZOG	6953	7022	7045	
5	LEE	7067	7088	7104	7105
6	STUDZINSKI (via video)	7107			
7					
8					
9	EXHIBITS	FOR ID	IN EVID		
10	Plaintiffs'				
11	Number66		7095		
12	Number108		7142		
13	Number381		7036		
14	Number398		7036		
15	Number424		7016		
16	Number703		7045		
17	Number3120		7039		
18	Number3121		7042		
19					
20	Defendant's				
21	Number285		7094		
22	Number1450		7035		
23					
24	Joint				
25	(none)				

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
5 number 30 in the trial of Starr International Company
6 versus the United States.

7 I'm not sure what's next. I suppose the next
8 witness for the defendant.

9 MR. SCARLATO: Your Honor, we're moving on to
10 David Herzog. The United States calls him next.

11 THE COURT: All right. Very well.
12 And yes, I see his binders are already up
13 here.

14 (Pause in the proceedings.)

15 Please come forward, sir. Good morning.

16 - - - - -

17 Whereupon --

18 DAVID HERZOG

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

21 THE COURT: Good morning, Mr. Scarlato.

22 MR. SCARLATO: Good morning, Your Honor.

23 THE COURT: You may go ahead.

24 MR. SCARLATO: Thank you.

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DIRECT EXAMINATION

BY MR. SCARLATO:

Q. Good morning, sir.

A. Good morning.

Q. Could you please introduce yourself to the Court.

A. My name is David Herzog.

Q. And Mr. Herzog, do you work for AIG?

A. I do.

Q. What position at AIG did you hold in
September 2008?

A. I was a senior vice president and comptroller.

Q. And what were your responsibilities in that
position?

A. I was the company's principal accounting officer.

Q. And what about now? What do you do for AIG?

A. I'm AIG's chief financial officer.

Q. And when did you assume that position?

A. In October of 2008.

Q. And what are your current responsibilities as
chief financial officer?

A. I'm responsible for the financial matters of the
firm, and I have the financial reporting, strategy,
treasury, the finance transformation, global actuarial,
so matters related to the financial operation of the
firm.

1 Q. And if we can just back up briefly for a minute,
2 can you describe for the Court your educational
3 background starting with college.

4 A. Yes. I have an undergraduate degree from the
5 University of Missouri Columbia in accounting, and I have
6 an MBA from the University of Chicago.

7 Q. And other than your time at AIG, what other
8 positions have you had in the insurance industry?

9 A. I've -- prior to joining American General in
10 2000, prior to that, I was with a company called
11 GenAmerica Corp., which was the holding company for
12 Reinsurance Group of America, among other companies, as
13 well as General American Life Insurance Company.

14 Q. And when did you start working for AIG?

15 A. In 2000.

16 Q. Okay. And what was your position at that time?

17 A. Well, I was with American General at the time.
18 American General was acquired in August of 2001 by AIG,
19 and so from 2000 through August of '01 I was the vice
20 president and chief financial officer for the life
21 division of American General.

22 Q. Any other positions that you've held at AIG?

23 A. Several since being acquired. I was
24 chief operating officer for north -- for the
25 North American life insurance operations for a period of

1 time.

2 And in July of 2005, I was named AIG's controller
3 or comptroller as it was called at the time, and I held
4 that position from July of 2005 through October of 2008.

5 Q. Okay. And I'd like to turn your attention,
6 Mr. Herzog, to September 2008.

7 Did there come a time that month when you were
8 involved in efforts by AIG to obtain capital from the
9 private market?

10 A. There were. We had -- we had undertaken a review.
11 There were -- I think there were five banks involved,
12 that we, AIG, had asked the banks for ideas, their best
13 ideas to raise liquidity at the time because liquidity
14 was an issue.

15 Q. Can you explain why liquidity was an issue?

16 A. Well, there were two principal areas -- well,
17 first, as a backdrop, the capital markets were
18 faltering, were not functioning, and our ability to sell
19 securities at reasonable prices were -- was quite
20 challenged. That was the, again general market
21 condition.

22 And there were two areas in particular that were
23 consuming a good deal of liquidity. One was as part of
24 our Financial Products area, AIGFP, and the multi-sector
25 credit default swap book, as well as the securities

1 lending portfolio that was in a number of our operating
2 insurance companies, most notably in our domestic life
3 and retirement businesses.

4 Q. And my earlier question was September 2008.

5 Can you put a more specific date on when these
6 discussions with the five banks occurred?

7 A. They were throughout the -- you know, throughout
8 the month. It may have actually started a bit earlier.
9 I don't recall the specific date, but it was certainly
10 towards the -- you know, leading up to the mid-month.

11 Q. Do you recall the names of any of the banks that
12 you were in discussions with at that time?

13 A. Well, I recall we had discussions with -- I
14 believe it was Citibank, JPMorgan, Lehman Brothers, and
15 there were -- there were a couple of others. I don't
16 recall specifically who, but, you know -- and it may
17 have -- I'm sure there were -- I recall there were five,
18 but those are the three that come to mind.

19 Q. Do you recall discussions with a private equity
20 firm called KKR?

21 A. I do, but it wasn't -- it was -- it was -- it was
22 after -- after the five that we had undertaken as part of
23 the strategy review, so that -- that process did not
24 yield, you know, an executable solution, and so there
25 were -- I do remember conversations with KKR the weekend

1 of I guess it was September 15, 14-15, whatever that
2 weekend was.

3 Q. So in your mind, there were two phases, these five
4 banks and then the KKR discussions; is that -- did I
5 understand your testimony correctly?

6 A. Well, the -- yes. The KKR was part of a broader
7 effort over that weekend. The -- I'm trying to --
8 whatever that -- whatever that Friday, Saturday, Sunday
9 was before the September 16, which was the day that the
10 loan was discussed, so it was that weekend before.

11 So there were KKR and there were a number of
12 other -- a number of other firms that were involved.

13 Q. And just to take it in steps, first, the five
14 banks, what do you recall resulting from AIG's
15 discussions with those five banks?

16 A. Nothing that was ultimately seen as executable.

17 Q. And why not?

18 A. You know, I don't recall specifically why. I
19 mean, capital markets were in pretty -- a pretty
20 distressed state, so I don't -- I don't recall the
21 specific provisions of what we had learned from them.
22 There were some that were interesting, but again, just
23 given the state of the capital markets, they -- it was
24 determined that whatever ideas they came up with just
25 simply weren't executable.

1 Q. Do you recall any of the specific terms that were
2 proposed in these discussions?

3 A. I do not.

4 Q. Do you recall the specific amount that AIG was
5 attempting to raise at that point?

6 A. I don't have a specific amount, but it was -- it
7 was -- you know, it was -- order of magnitude, it was in
8 the tens of billions of dollars.

9 Q. Okay. So then turning to -- you mentioned the KKR
10 discussions over that weekend leading up to the 16th.

11 First, what was your role in those discussions?
12 Why were you involved?

13 A. Well, as I said, I was the controller of the
14 company, so I had awareness of lots of the financial
15 information of the firm at the time, so I was involved in
16 due diligence sessions representing AIG and answering
17 questions from the various banks.

18 Q. Do you recall how much money was discussed being
19 raised by AIG in these discussions with KKR?

20 A. I do not recall the specific amount.

21 Q. What came of these discussions between you, AIG
22 and KKR?

23 A. Ultimately, nothing came of it. It was,
24 you know -- there were a number of different -- again, a
25 number of different institutions that -- that particular

1 weekend, but none of the ideas or structures or
2 transactions were seen as sufficient or executable.

3 Q. And can you explain why they weren't sufficient or
4 executable?

5 A. Just given the time frame and the time pressure
6 and the general market conditions.

7 Q. Do you recall any of the specific terms proposed
8 by KKR?

9 A. I do not.

10 Q. Mr. Herzog, did there come a time in
11 September 2008 that you met with representatives of the
12 New York Fed or the U.S. government to discuss AIG's
13 financial condition?

14 A. I recall I guess a couple of meetings. And again,
15 the exact date eludes me at the moment. But it was
16 before the weekend, and there were -- there are two
17 meetings that I recall in particular.

18 One was on a -- I think it was on that Friday,
19 Thursday or Friday, of that week. I was asked to attend
20 a meeting at the Fed with a number of my colleagues. I
21 recall the CFO at the time was there, the treasurer from
22 AIG was there at the time, our chief economist was there
23 at the meeting, so that was -- that was the first.

24 And then the second one was -- I think it was that
25 Saturday evening late.

1 Q. Okay. Let's take them one by one.

2 The first meeting, do you recall which
3 New York Fed or government representatives attended?

4 A. I do not.

5 Q. Did you recognize any of them at the time?

6 A. I did not.

7 Q. Okay. What was the purpose of that first meeting
8 that I think you said was on Friday?

9 A. I believe the purpose of the meeting, at least my
10 participation in it, was really to provide information,
11 respond to questions and convey financial data to the
12 Fed.

13 Q. Did you have an understanding as to why AIG was
14 communicating financial information to the Fed?

15 A. I don't know specifically what the purpose was.
16 I -- I just -- I don't know the exact reason. I
17 didn't -- I didn't set the meeting up.

18 Q. Understood.

19 Do you recall if you or anyone at AIG asked the
20 New York Fed for assistance, any sort of financial
21 assistance at that time?

22 A. I did not. I didn't ask -- I didn't ask them and
23 I'm not aware of who inside AIG may have.

24 Q. But in that meeting do you recall anyone at AIG
25 asking the New York Fed for assistance?

1 A. Not at that meeting, no.

2 Q. So at that time, that Friday meeting, do you
3 recall if you had an understanding as to whether AIG
4 might be able to find a private market solution for its
5 financial difficulties?

6 A. Can you repeat the question?

7 Q. Sure.

8 I'm just trying to understand what your belief was
9 in that first meeting as to whether AIG thought it might
10 or you thought AIG might be able to find a private market
11 solution to its financial problems.

12 A. Well, I think we -- well, what I recall at the
13 time was we were -- we were working very diligently and
14 literally around the clock to try to find solutions to
15 the liquidity problems we were having in a private sector
16 solution, which is why we held a -- the due diligence
17 sessions over that weekend in an effort to find a
18 solution.

19 Q. By "due diligence sessions" you mean the KKR?

20 A. Among others, yes.

21 Q. So that --

22 A. KKR, among other firms, were in the building
23 looking, you know, meeting with us throughout that
24 weekend.

25 Q. So do you remember any of the other entities that

1 you were meeting with over that weekend?

2 A. I believe there was a firm, Chris Flowers, his
3 organization was involved that weekend. I'm sure there
4 were others, but those are the two that come to mind.

5 Q. Do you recall the end result of the meetings with
6 Chris Flowers?

7 A. I do not.

8 Q. So turning back to the Friday meeting with the
9 New York Fed, do you recall how that meeting concluded?
10 Were there next steps?

11 A. I don't recall the specific next steps. The --
12 there were -- I didn't -- I don't recall any particular
13 follow-up items that I needed to deal with.

14 Q. You testified earlier about the second meeting I
15 believe you said occurred Saturday night. Do I remember
16 you correctly?

17 A. I think it was Saturday night. Yes.

18 Q. So that would be I guess the 13th is Saturday?
19 Do you recall who was in that meeting?

20 A. Well, it was -- it was pretty late.
21 Mr. Willumstad asked me to accompany him. Mr. Willumstad
22 was the CEO at the time and asked me to accompany him to
23 the Fed that evening for a meeting. I didn't know going
24 over there who we were going to meet with, but he asked
25 me to accompany him there.

1 Q. And who was at that meeting?

2 A. Well, as it turned out, Mr. Geithner and
3 Mr. Paulson, and then there were a number of other -- a
4 number of other people that were on the other side of the
5 table. I'm assuming they were representatives from the
6 Federal Reserve, but I don't -- I don't recall
7 specifically who they were from.

8 Q. Do you recall the purpose of that meeting?

9 A. I believe it was an update, just an update
10 meeting with Mr. Willumstad to brief Mr. Geithner and
11 Mr. Paulson at the time on the evolving circumstances of
12 AIG.

13 Q. And do you remember generally what those
14 circumstances were at that time?

15 A. Well, we would have been in -- conveyed the
16 mounting financial pressure from liquidity strains and
17 the, you know, updates from rating agency discussions
18 and our view of what was happening in the capital
19 markets.

20 Q. Do you recall if you or Mr. Willumstad requested
21 some sort of assistance from the New York Fed or the
22 government at that time?

23 A. I don't recall that from that meeting.

24 Q. In that meeting do you recall receiving any
25 instructions from Mr. Geithner or Mr. Paulson?

1 A. No.

2 Q. So you mentioned these two meetings, Mr. Herzog.
3 Were there any other meetings you attended over
4 those ensuing days with the New York Fed?

5 A. On Monday morning, Mr. Willumstad asked me again
6 to accompany him over to the Fed for a meeting. He
7 didn't indicate who was going to be at the meeting, or at
8 least I don't recall knowing before I arrived who was
9 going to be there. But we had a meeting. It was a
10 fairly large gathering of people.

11 I remember representatives from JPMorgan and
12 Goldman Sachs at the meeting. There were a large number
13 of people. Again, I don't know exactly how many, but it
14 was, you know, 25-plus people in the room.

15 Q. Do you recall the purpose of that meeting?

16 A. Well, I -- I, again, going in, don't recall the
17 purpose going over, but it was to meet with banks to try
18 to find a -- find a solution to our liquidity problems.

19 Q. Do you recall if any New York Fed or government
20 representatives were at that meeting?

21 A. I recognized Mr. Geithner when he entered the --
22 when the meeting -- so there may have been other
23 representatives from the Federal Reserve, but I
24 recognized him.

25 Q. Did Mr. Geithner give any instructions at that

1 time?

2 A. Well, he -- I overheard him say to
3 representatives from the -- at least the two firms -- and
4 there may have been another firm there. I just -- the
5 two I remember were JPMorgan and Goldman.

6 I remember him saying to a group of their
7 representatives -- and I was just -- I happened to be
8 standing nearby. Before the meeting started, he said to
9 them -- it was very clear and I heard him say it. He
10 said, You need to find a private sector solution to this.
11 And he said, There will be no public money involved.
12 And then he then convened -- then he convened the
13 meeting.

14 Q. Do you recall -- did he give a reason why he made
15 that statement?

16 A. I don't know.

17 Q. Okay. And so you -- how long did these meetings
18 last, to your knowledge?

19 A. That particular meeting lasted a couple of hours
20 that morning. It was -- it was a couple of hours.

21 Q. And what was your role in those meetings?

22 A. Like before, to respond to questions, to help the
23 people around the table get a sense of what the -- what
24 was happening at the company and what the pressure points
25 were and orders of magnitude. I again don't recall

1 specific numbers being talked about, but I would have
2 had -- whatever the current estimates were at the time I
3 would have had with me.

4 Q. Other than answering these questions, did you have
5 any other role in these meetings on September 15?

6 A. I did not.

7 Q. What did you learn about the results of these
8 meetings on September 15?

9 A. I think that there were -- at some point coming
10 out of those meetings there were broad -- you know, a
11 broad construct of a loan arrangement and had -- and
12 again, I don't recall having seen a specific term sheet
13 coming out of that, but I recall there were -- there was,
14 again, a broad construct, so again I don't recall, again,
15 seeing a tangible piece of paper. I just don't recall
16 that.

17 But coming out of that meeting, there were --
18 there were -- there were, again, what I would call
19 indicative terms.

20 Q. Do you recall the specifics of any of those
21 terms?

22 A. Not specifics, but there was -- again, the order
23 of magnitude, it was -- I think the size of the loan
24 facility or at least the broad outline was -- you know,
25 was a very significant -- again, tens of billions of

1 dollars of financing.

2 There was an equity component to the terms and
3 interest rate component to the terms. Again, it was --
4 it was -- that's my recollection.

5 Q. And do you recall if those discussions resulted in
6 an offer to AIG of a loan or otherwise?

7 A. Not to my knowledge.

8 Q. So what was your understanding of the result of
9 these September 15 meetings?

10 A. It didn't result in a private sector solution.

11 Q. Do you know why?

12 A. I do not know why.

13 Q. So turning to the next day, Mr. Herzog, did you
14 attend a board meeting at AIG on September 16?

15 A. I did.

16 Q. And what do you recall being the subject matter of
17 that meeting?

18 A. Well, the subject matter of the meeting was to
19 discuss -- for the board to discuss the -- a loan
20 arrangement being -- that would have been offered from
21 the Federal Reserve Bank of New York.

22 Q. At the time, did you have an understanding of how
23 the terms of the New York Fed's offer compared to the
24 private sector efforts that were discussed on the 15th?

25 A. Can you repeat the question?

1 Q. Sure.

2 I'm wondering if in your recollection you can draw
3 a comparison between the terms you recall from the 15th
4 efforts, the private sector efforts, to the loan that was
5 proposed on the 16th by the New York Fed.

6 A. Again, I don't recall the specific terms of the
7 Monday meeting, again, just general recollection that
8 they were similar terms, again, a very substantial
9 amount, again measured in the tens of billions, an equity
10 component and interest rate component, so they were --
11 again, my general recollection is that they were -- they
12 were similar.

13 Q. Mr. Herzog, there's a binder that's been put on
14 your -- right in front of you, the white binder.

15 There's a -- two?

16 A. There are two of them, yes.

17 Q. Okay. The larger one. There should be a series
18 of documents in there. There's also water behind you if
19 you need.

20 A. Thank you.

21 Q. So there's a number of exhibits in here and
22 starting with DXs and then there's JXs. I'm wondering if
23 you can turn to JX 74, and tell me when you have that in
24 front of you.

25 A. I do.

1 Q. Okay. Mr. Herzog, these are the minutes of the
2 meeting held on September 16, 2008 that you attended; is
3 that consistent with your recollection?

4 A. Yes.

5 Q. So starting on page 8 of JX 64 (sic) -- it's the
6 number on the bottom, 8 of 24.

7 Do you have that in front of you?

8 A. I do.

9 Q. Starting on the bottom-hand of page 8, there are a
10 number of statements attributed to you.

11 Have you reviewed these minutes before?

12 A. I've seen the minutes before, yes, sir.

13 Q. And do you believe these minutes reflect the sum
14 and substance of what you said at the AIG
15 September 16 board meeting?

16 A. I have no reason to believe they're not accurate.

17 Q. Okay. Well, I'd like to briefly walk you through
18 some of the statements reflected in the minutes, starting
19 with that last full paragraph on page 8.

20 It says you then joined the meeting, so do you
21 recall joining the meeting while it was in progress?

22 A. I don't have a specific recollection. Again, I --
23 if that's what the minutes say, I must have joined the
24 meeting in progress. I...

25 Q. Okay. It then goes on to say that you explained

Starr International Company, Inc. v. USA

1 AIG's immediate liquidity needs, and the next sentence
2 talks about the securities lending program and that there
3 was \$4.5 billion short.

4 Can you just explain to the Court what information
5 you conveyed there?

6 A. Well, again, this -- I don't have a specific
7 recollection of the briefing I gave the board, but I do
8 know on -- or I do recall on that day, the securities
9 lending program, which I'll trust that everyone
10 understands what the securities lending program is, that
11 that -- the program was under a great deal of stress
12 because the securities lending transactions were coming
13 due. And it was an obligation of AIG and its operating
14 companies to take the cash -- take cash and give it back
15 to the counterparty in exchange to get our securities
16 back, so the counterparties wanted their cash and they
17 had a contractual right to receive that cash.

18 We had set up a pool so that all the operating
19 company participants would pool their -- pool their
20 securities and we'd pool cash, and so it was by -- it was
21 designed to be more efficient that way.

22 Anyway, the -- on that particular day, there were
23 about \$4.5 billion worth of contracts that needed to be
24 settled that the pool, while it had assets, was -- had
25 its -- the cash or liquidity had been depleted, and this

1 was the -- that was what I was referring to there. This
2 was the amount of remaining, at least on that day, the
3 remaining security lending transactions that need to be
4 settled.

5 Q. So did I understand you correctly, the 4.5 billion
6 short had to be paid on that day, September 16?

7 A. Yes.

8 Q. The minutes then reflect, two sentences later,
9 Mr. Herzog stated he has been in contact with AIG's
10 principal state regulators during the day.

11 Do you recall talking to principal state
12 regulators that day?

13 A. I recall that day speaking with a regulator, in
14 particular, the State of Texas, which was the regulator
15 or still is the regulator, principal regulator, for our
16 domestic life and retirement companies. We had other
17 state regulators that were where the insurance companies
18 were domiciled in, and the state of domicile is the
19 principal regulator.

20 So anyway, Texas happened to be -- that's where a
21 very significant portion of the securities lending
22 transactions and thus, accordingly, the -- this
23 \$4.5 billion was coming due from securities lending
24 transactions that involved the Texas companies.

25 Q. And so why were you contacting the Texas

1 regulators that day?

2 A. Well, the -- again, as I had said a moment ago,
3 the pool that normally would fund the transactions was --
4 had its cash depleted, and so we needed to satisfy these,
5 these securities lending transactions.

6 And the -- but at that moment in time I -- I had a
7 recollection or I have a recollection that the existence
8 of a -- or at least the potential for a loan from the
9 Federal Reserve was possible. It had -- the board hadn't
10 concluded on it yet, hadn't even -- I don't think the
11 meeting had started yet when I started the conversation,
12 or maybe it had just started.

13 But I recall that we needed to make sure we
14 weren't in default of any obligations at the time we,
15 quote, entered into or accepted, at least that was my
16 recollection.

17 So we needed to satisfy this \$4.5 billion worth of
18 security lending transactions. And there had been
19 liquidity built up inside the operating companies prior
20 to this. And we had at this -- at that moment had
21 sufficient liquidity in those operating companies where
22 these transactions were to satisfy these securities
23 lending transactions that were being unwound, and so I
24 wanted to make sure that the state regulator wouldn't
25 object to us using that cash in those operating companies

1 to satisfy these obligations so that we wouldn't be in
2 default as of the end of the day.

3 Q. And just so we're clear, why would the regulators
4 be in a position to object to AIG using the funds in that
5 manner?

6 A. Well, I mean, the mission of the state regulators,
7 among other things, is to regulate insurance companies
8 for the -- to look after and oversee the safety and
9 soundness to make sure that their policyholders are
10 protected, and so the state regulators could have
11 objected to us using cash in the operating company for
12 these transactions.

13 Q. So what do you mean by "objected"? What would
14 have happened?

15 A. They could have said no.

16 Q. So then AIG wouldn't have been able to do that?

17 A. We would have -- I don't know what we would have
18 done.

19 Q. Do you recall if you received permission from the
20 Texas regulators that day?

21 A. Well, I again was asking them not to object, so I
22 don't know if that's permission or, you know -- but it --
23 my ask of them was to not object to us using cash that
24 day for that 4.5 billion so that we wouldn't be in
25 default.

1 Q. And so what was the result? Were you able to do
2 that?

3 A. The regulator did not object.

4 Q. Do you recall anything else about your
5 conversation with the Texas regulators on September 16?

6 A. I just -- I'm scanning the note here.

7 Q. Are you talking about the minutes?

8 A. Yes. I'm sorry.

9 Q. Well, let's look back at the minutes.
10 The next line from where I left off states, "The
11 regulators made clear that if AIG made use of insurance
12 company assets to pay the securities lending liabilities
13 without the permission of the regulators, the regulators
14 would seize the insurance companies."

15 Do you have any reason to doubt that they told you
16 that on September 16?

17 A. Could you say your question -- I believe, as I
18 said before, I think the -- I think the minutes are -- I
19 have no reason to believe the minutes aren't accurate, so
20 I think it speaks for itself.

21 Q. And what is meant by to seize the insurance
22 companies?

23 A. Well, they -- I mean, what they could do is take
24 control of it through state supervision or some mechanism
25 to protect the interests of policyholders.

1 Q. Can you just describe for the Court what types of
2 actions they could take, generally speaking?

3 THE COURT: Are you talking about Texas or any
4 regulator?

5 BY MR. SCARLATO:

6 Q. I'm not sure there's a distinction, but let's
7 start with Texas, so in the context of your
8 discussion --

9 THE COURT: I just want a clear understanding.

10 MR. SCARLATO: Okay.

11 BY MR. SCARLATO:

12 Q. The Texas regulators, what was your understanding
13 of what authority they had to seize AIG's insurance
14 assets?

15 A. I can't comment on their -- the legal authority
16 for it. I just -- again, I was under the -- again,
17 general knowledge that, again, it was -- it's obviously a
18 very significant transaction. And again, I don't -- I
19 don't recall if -- you know, exactly how I became aware
20 of the need to make sure that the regulator didn't object
21 to the use of that money.

22 I think you'd asked me what the -- what they --
23 what "seizure" means, what they could do. You know,
24 again, they would take control of the operations of the
25 company to make sure that the surplus liquidity was not

1 diverted out of the company for purposes other than
2 meeting the obligations and benefits of the
3 policyholders.

4 Q. Do you recall why that mattered to you at the
5 time?

6 A. Well, to have a regulated rate -- you know, rated
7 regulated company part of the group being seized by a
8 regulator would be -- it would be very detrimental to the
9 company's reputation and the firm. I mean, it's just
10 that that would have been a -- in my judgment, would have
11 been a very significant disruption to the firm.

12 Q. Can you just explain a little bit more about why
13 that would be a disruption to the firm?

14 A. Well, the -- you know, the disruption like that
15 undermines the credibility of the company, the reputation
16 of the company, erodes confidence by various
17 stakeholders, be it policyholders or distributors,
18 counterparties in the case of securities lending, but it
19 just -- it undermines confidence. And insurance
20 companies are by and large in the business of selling
21 contracts and confidence.

22 Q. What do you mean by selling confidence?

23 A. Well, you're selling an insurance contract as a
24 promise to pay.

25 Q. So turning now, Mr. Herzog, to page 9, the second

1 full paragraph, there's a statement from Mr. Bensinger
2 reflected there.

3 Who is Mr. Bensinger?

4 A. Steve was the chief financial officer of AIG at
5 the time.

6 Q. He was your -- sort of your predecessor as CFO?

7 A. Yes. And he was my boss at the time.

8 Q. Okay. And it reflects that he added that the
9 New York Department of Insurance stated that it would
10 seize the New York insurance companies if AIG went into
11 bankruptcy.

12 Do you recall the basis for Mr. Bensinger's
13 statement? Did he explain it?

14 A. I do not.

15 Q. Do you recall why he said you -- it reflects here
16 you agreed and stated that, based on your discussions,
17 other insurance commissioners would likely do the same.

18 A. I don't recall specifically why I agreed. Again,
19 I will -- I don't have any reason to believe that the
20 minutes aren't accurate. I would have agreed with that,
21 with that statement.

22 Q. Okay. Then turning up now to the paragraph above
23 that, it says, "Mr. Herzog also noted that certain
24 insurance subsidiaries had tens of billions of dollars of
25 zero surrender penalty annuity contracts which could, in

Starr International Company, Inc. v. USA

1 his judgment, be immediately surrendered if AIG sought
2 bankruptcy."

3 First, what tens of billions of dollars of zero
4 surrender penalty annuity contracts were you referring
5 to?

6 A. At the time, we had a company -- Western National
7 was the name of it -- that had written and still does --
8 or the company has been merged into other companies, but
9 it is -- it's a -- this -- these companies -- or this
10 company wrote what's called a CD annuity.

11 It's a contract that you take a policyholder's
12 deposit, and the contract has a stipulated interest
13 crediting rate for a stipulated period of time. And over
14 that period of time there's a surrender charge that's
15 associated with it.

16 So as an example, if you had a five-year CD
17 annuity, on day one you're paying a specified interest
18 rate for a period of time, and the surrender charge -- in
19 other words, if the contract holder surrenders their
20 contract early, they pay a penalty. They pay a
21 withdrawal penalty. And that penalty steps down over the
22 period of time, so in year five, again, illustratively,
23 it's 5 percent, year four -- or at the end of year one
24 it's 4 percent, at the end of year two it's 3, so it
25 steps down.

1 And so it's quite natural that at the end of,
2 you know, your -- we've been in this business for a very
3 long period of time, and so we had a number of contracts,
4 again -- or I said, again, tens of billions of dollars of
5 these contracts where the surrender charge period had
6 elapsed, and so the surrender charge or the surrender
7 charge protection for the company had gone from whatever
8 number it started at to zero.

9 And so effectively those, those deposits, are akin
10 to time deposits, meaning the policyholder could withdraw
11 them.

12 Q. You mean at any time essentially?

13 A. Yes. There are provisions in the contract that
14 allow the insurance company to delay for a period of time
15 the actual payment, but the contracts themselves could
16 have been surrendered at any given time.

17 Q. And the sentence I just read said "if AIG sought
18 bankruptcy."

19 Would you have been referring to the parent
20 company AIG?

21 A. I don't recall specifically, but I think that's
22 what the -- I think what's the minutes say.

23 Q. Okay. So if AIG sought bankruptcy and the annuity
24 contracts were at the insurance company level, sort of
25 what's the relationship there, why one would trigger the

1 other?

2 A. Well, again, it goes back to my comment earlier
3 about eroding confidence and increasing reputation risk
4 and headline risk for the company.

5 Q. Can you explain what "headline risk" means?

6 A. Well, you know, again, we were -- we were in the
7 midst of a financial crisis and adverse or negative
8 headlines in various, you know, news media and the like,
9 that's how it gets conveyed. Those are headlines.
10 That's why I call it headline risk.

11 That erodes confidence of policyholders and
12 distributors, and that heightens the risk that
13 policyholders get, understandably, nervous and want their
14 money back.

15 Q. And so that's why you were making these statements
16 on September 16?

17 A. That would have been the basis for it.

18 Q. Okay. And can you explain what the effect of
19 this, you know, failure in confidence, what effect you
20 believed, in your judgment at that time, would have had
21 on AIG's insurance companies?

22 A. Well, I -- as I said, or at least as is reported
23 in the minutes, that it would -- it could have led to
24 heightened surrenders, which would have put added
25 pressure on the liquidity resources of the company.

1 That's -- that's -- you know, that's one practical
2 implication.

3 And the other is, you know, what it does to the
4 confidence of distribution partners.

5 Q. Why do they matter?

6 A. Well, they're -- they're very important -- they're
7 a very important integral part of running an insurance
8 company because that's your source of distribution, in
9 the case of our domestic life and retirement companies a
10 very substantial portion of the distribution, in other
11 words, brokers, agents, financial advisors that
12 they're -- they're what we call independent.

13 In other words, they have a contract with the
14 operating company, and they have contracts with many
15 other companies, so they're not -- they're not
16 writing -- they're not sole producers for a particular
17 company. They produce business for a number of
18 companies.

19 And so their loss of confidence in a particular
20 carrier, they would direct their new business to the
21 other carriers and they would, could, heighten the
22 surrenders of their existing policyholders.

23 Q. And you just --

24 A. And that was the basis of why I said what I said
25 at the board meeting.

1 Q. And just to be clear, so in your judgment at the
2 time, how would that -- you know, all the issues you
3 described, how would that affect AIG's profitability
4 going forward?

5 A. It certainly would not have been helpful.

6 Q. Can you be a little more specific?

7 A. Well, if you're losing your distribution and
8 you're losing in-force business, your company -- I mean,
9 that adds financial stress to the company. It's going to
10 erode future profitability. It will erode the value of
11 the company.

12 Q. And it says in the minutes that -- the sentence
13 that I have -- the piece of the sentence I haven't read
14 says "further eroding the value of the franchise."

15 Is that why you thought that at the time?

16 A. Yes, sir.

17 Q. And it says "further eroding."

18 Was it your understanding at that time that AIG's
19 franchise had been eroding?

20 A. You know, I don't have a -- I don't have a
21 specific recollection about what I was thinking in terms
22 of the then value versus what other point in time, just
23 it -- describing what happens in that situation where a
24 company is suffering financial stress and has a crisis in
25 confidence, that crisis causes distributors and

1 policyholders to withdraw money or not -- not produce new
2 business, that's -- you know, that is core to the value
3 of a franchise. And obviously we were -- we were in a
4 lot of financial distress then, and so, you know, to say
5 how much it was -- the value had eroded, you know, I
6 can't comment on that, but just it was -- it was eroding
7 because we were in a financial crisis.

8 Q. And so to be clear, I was talking about the real
9 world as of September 16.

10 At that time to what extent, if any, was AIG's
11 insurance franchise eroding?

12 A. Well, we had been -- I believe we had actually --
13 either the ratings had been -- ratings outlooks or there
14 had been negative ratings action taken, and that does
15 not -- you know, that erodes confidence and it erodes
16 value of a firm, no question.

17 Q. And so in your judgment, that was actually
18 occurring as of September 16?

19 A. I believe as -- as of -- there was a -- there was
20 a ratings outlook action taken the prior weekend. I
21 believe on that Monday there was -- or actual ratings
22 downgrades, if my memory serves.

23 Q. And what impact do you recall that ratings action
24 had on AIG's insurance companies?

25 A. I don't recall specifically the cause and effect.

1 The surrenders were mount -- you know, were increasing in
2 parts of the company.

3 The ratings downgrades themselves would have
4 triggered additional collateral postings at AIG
5 Financial Products as well.

6 Q. Do you know what a spiraling effect is in the
7 insurance industry?

8 A. I mean, I have a -- I have a general knowledge of
9 what -- you know, what spiraling effect is. I've heard
10 of it. You know, I've heard people and I've referred to
11 it as a -- as a circumstance where, again, if there's an
12 event, whatever kind of an event, whether it's a
13 financial crisis -- lots of different things can trigger
14 it, but you have -- you have an event or market condition
15 could lead to ratings actions, either outlooks or actual
16 ratings, which leads to, again, loss of confidence in a
17 company, which leads to -- could lead to policyholder
18 behavior, distributor behavior that is negative to a
19 company.

20 And then that -- then that leads to or could lead
21 to further ratings actions, which leads to further loss
22 of confidence, which leads to further policy -- negative
23 policyholder/distributor action, and so there's a -- if
24 you will, a spiraling of one begets another begets
25 another and it's sort of a cycle that leads to a downward

1 pressure on the company.

2 Q. And in your judgment, was that an issue for AIG at
3 that time?

4 A. Well, that was -- it was certainly a risk that,
5 again, with -- there were -- there were, you know, signs
6 of what I just said. There were financial distress
7 events. Financial markets were in distress. Our ratings
8 had been -- negative action had been taken.

9 We were already seeing heightened activity in the
10 securities lending portfolio. There were ratings
11 triggers in the products group, so it was -- you know,
12 had all of the -- had all of the makings of a spiraling
13 circumstance.

14 Q. And just one last question about the minutes. If
15 you could turn to page 10.

16 And the second sentence at the top -- I'll read
17 it -- says, "Mr. Herzog continued that as an officer of
18 AIG, he felt it necessary to tell the Board that in his
19 view a bankruptcy filing would irreparably harm the value
20 of AIG and its subsidiary insurance companies, which
21 would harm all the constituencies to which the Board owes
22 a duty, including the shareholders, creditors and
23 employees."

24 Can you explain what you meant by that statement?

25 A. Well, if the -- at this meeting where the board

1 was considering the loan from the Federal Reserve, there
2 was -- there was a discussion of bankruptcy. And I
3 recall a director posing the question or at least the
4 topic. And that's why I was referencing it here. I
5 didn't -- it wasn't -- it wasn't -- it wasn't something I
6 brought up. It was something a director had mentioned or
7 had discussed.

8 And again, in my -- in my judgment, in my business
9 judgment, that a bankruptcy filing would have harmed the
10 reputation of these operating companies. What would have
11 happened I don't know. It would be speculation on my
12 part what various regulators, state regulators or
13 regulators around the world, might have done.

14 But I -- I believed, based on my judgment, that it
15 would -- it would harm, dramatically harm, the value of
16 those, those companies, and in particular hurt the
17 relationships we had with distributors and, again,
18 particularly in the domestic life and retirement
19 businesses, which was a business I was most familiar
20 with, that that would have -- that would have -- it would
21 have created, you know, a very big problem and a
22 challenge for the company and would have hurt the value
23 of those very valuable franchises.

24 Q. And the minutes say "irreparably harm."

25 Do you have a sense for what you meant by that?

1 A. Well, if a company loses its distribution --
2 again, these are independent distribution -- they're not
3 required -- they don't have to -- the business they do
4 with you you earn every day, every policy. They have a
5 choice. They can put that policy with your company or
6 they can put it with someone -- they can sell it. They
7 can place it with another company. And if those key
8 business partners lose faith and confidence and decide to
9 take business elsewhere, that hurts the value of your
10 franchise.

11 Q. And so you just explained your judgment on
12 September 16.

13 Can you give the Court an understanding of what
14 the basis for your business judgment was at the time?

15 A. Well, I've been in the insurance business for many
16 years, and again, just based on my business experience
17 over the time, I had had experience at another company
18 who had a liquidity problem and it ultimately got --
19 ended up getting sold, but it -- that -- I knew -- I
20 believed how distribution would react and it was,
21 you know, based on my -- again, based on my business
22 judgment at the time.

23 Q. So at the September 16 meeting, what action did
24 you recommend the board take?

25 A. I recommended to the board that they take the

1 terms of and avail ourselves of the loan from the
2 Federal Reserve.

3 Q. And in your understanding at the time, what other
4 options did AIG have?

5 A. Well, you know, I -- you know, in our -- in our
6 economic system, bankruptcy is always -- it's a legal
7 alternative. I mean, it just is.

8 But in my business judgment, it wasn't -- in light
9 of the fact at that moment in time, in light of the fact
10 that there was an alternative, and in my business
11 judgment, that was a better alternative than bankruptcy,
12 so -- and I was not -- and I was not aware of another
13 solution, another private sector solution.

14 Q. And you said in your judgment. It's for the
15 reasons you described earlier? I won't make you say them
16 again.

17 A. Yes.

18 Q. And so were you aware of any reason that AIG's
19 board could not -- could have rejected the New York Fed's
20 offer and taken another alternative, such as bankruptcy?

21 A. Could you repeat that question.

22 Q. Sure.

23 Were you aware of any reason that AIG's board
24 could have rejected that New York Fed's offer and taken
25 another alternative?

1 A. To my knowledge, they -- they -- they could
2 have -- they were free to act on their own, so I --
3 you know, again, I wasn't on the board, so I -- I'm not
4 going to say what they might or might not or could or
5 could not have done.

6 I mean, they had -- they had the alternative from
7 the Fed and they -- there was -- again, as I said, there
8 was some -- and there's reference to bankruptcy filing
9 here, so I think they had a -- they had a choice to
10 make.

11 Q. So after the September 16 board meeting, were you
12 involved in discussions about the finalization of the
13 terms of the loan to AIG?

14 A. I was not involved in the details. I don't recall
15 being involved. You know, I was -- helped try to put
16 together some documentation that night, you know, very
17 late into that evening, to try to pull together
18 information again in response to things that our legal
19 team and the Federal Reserve's legal team were working
20 on, but I wasn't involved in setting the terms or the
21 like.

22 Q. Mr. Herzog, I'd like to turn now to after the loan
23 was extended.

24 After the loan was extended, did you have
25 interactions with representatives of the New York Fed?

1 A. After -- yes, I did after the loan, indeed.

2 Q. Who comes to mind as to individuals at the
3 New York Fed you were interacting with?

4 A. Well, on a very frequent basis was Sarah Dahlgren
5 and Steve Manzari, Mike Alex.

6 I think it was Jim Mahoney. Mahoney was his last
7 name.

8 Those were the people -- and there were many
9 others, but those were the ones that come to mind that I
10 had fairly frequent interaction with during their
11 supervision.

12 Q. And what's your understanding of the
13 New York Fed's role at that time after the loan was
14 extended?

15 A. Well, they were -- they were the senior secured
16 lender of the company, and so they were observing or
17 supervising the affairs of the company, and so they were
18 involved in observing what we were doing.

19 We had -- there were provisions or covenants to
20 the loan agreement that we were required to comply with,
21 and so that would certainly have been part of their
22 oversight as well.

23 Q. You said "observing or supervising."

24 Other than the covenant issue you just raised, is
25 there any other manner in which you intend to mean the

1 New York Fed was observing or supervising AIG?

2 A. Well, we had waivers that were required to
3 essentially seek permission to do certain things,
4 principally related to moving capital or cash around or,
5 you know, again, using it for specific obligations of the
6 firm.

7 Q. To your knowledge, do you recall the New York Fed
8 ever not granting a waiver AIG requested?

9 A. I'm not aware of or nothing comes to mind that
10 were -- that was actually rejected. There may have been.
11 There were I think over a thousand waivers during the
12 course of the period of time that the loan was
13 outstanding. There may have been some, but it -- nothing
14 comes -- nothing comes to mind.

15 Q. So other than this waiver and covenant process,
16 do you recall any other manner in which the New York Fed
17 was observing or supervising AIG in the days after the
18 loan?

19 A. Well, they -- again, they were present --
20 representatives were present during various of the
21 committees and groups or project teams that we had
22 assembled to address various aspects of the stabilization
23 and the recovery and restructuring.

24 And so, as an example, they would -- there were
25 several representatives that sat in on the steering

1 committee we had set up to oversee the wind-down of
2 AIG Financial Products, so they had members of the
3 Federal Reserve team and others on their behalf
4 observing, attending and observing the meetings to
5 observe and monitor the progress that we were making.

6 Q. So you just used the word "observe."

7 Sitting in on these meetings, how would you
8 describe how active a role the New York Fed played in
9 these meetings?

10 A. They were engaged. They didn't just -- I mean,
11 they -- they -- they didn't -- they were -- attended the
12 meetings. They engaged, asked questions. But, you know,
13 the management was running the company at the time, so it
14 was, you know, again, they were -- they -- they were --
15 they were present and they asked lots of questions. And
16 that's -- was my experience.

17 THE COURT: Mr. Scarlato, can I ask a question?

18 MR. SCARLATO: You may, Your Honor.

19 THE COURT: Maybe you were going to cover this
20 anyway, but -- and if you have follow-up, certainly I
21 would encourage you to ask.

22 Sir, you just mentioned the steering committee for
23 the wind-down of AIG Financial Products. I've heard
24 about that a few times from other witnesses.

25 Does Financial Products still exist today?

1 THE WITNESS: The legal entities, sir, do still
2 exist. There were multitudes of legal entities. There
3 wasn't just one entity called AIG Financial -- there was
4 one, but there were lots of legal entities involved in
5 that, in that structure.

6 But the -- what we refer to as
7 AIG Financial Products doesn't exist today as an ongoing
8 activity. The legal entity still exists because we use
9 it for -- to house -- there's still a very small piece of
10 derivatives that are still on the books from the old,
11 what we call the legacy book, so they're still there, but
12 they're a very small fraction of what they -- of what
13 they were -- of what they once were, so the wind-down
14 is -- you know, is, you know, 98-99 percent complete on
15 all these various -- all these various legacy books of
16 derivatives.

17 THE COURT: I was wondering whether there was a
18 decision at some point to discontinue the wind-down and
19 keep it going, or was the wind-down plan always being
20 implemented?

21 THE WITNESS: It -- there was a point I guess
22 in -- I think it was like June or July of I want to say
23 2011, but we had -- from 2008, early '08 through sometime
24 that -- it took several years. We had what I would call
25 an active wind-down.

1 We had a very specific team and a very organized
2 process by which we took the derivative portfolio and
3 categorized it or grouped it into I think it was 23 books
4 of like transactions, like counterparties, so that you
5 can -- you had to somehow organize this book of
6 derivatives that was at the time -- and you know, when we
7 started the unwind, you know, it was 40,000-plus trades
8 and, you know, upwards of \$1.8 trillion of notional, so
9 very big numbers, and so in order to start unwinding this
10 or winding those down and canceling trades, you needed to
11 put it in some sort of organization or framework.

12 And that's what we -- that's what that group, that
13 steering committee, oversaw, A, the construction of those
14 23 books, and then on a weekly basis we would review the
15 progress that was being made.

16 So we had a plan, put the plan in place and then
17 monitored progress towards that plan on a weekly basis.
18 And at some point along there -- and I want to say it
19 was -- I don't have my date exactly right, but it was
20 somewhere along there we had unwound, you know, well over
21 50 percent. It was -- it was -- it was a very
22 substantial amount of it that had been unwound or what
23 we -- we were able to replace the trades or move the
24 trades to another counterparty, where we declared the --
25 I think what we said was we called it the active

1 wind-down had been concluded.

2 In other words, the bulk of what needed to be done
3 was in fact done. And the most substantial things like
4 liquidity risk or the things that were creating the most
5 volatility in our income statement had been -- had been
6 wound down or had been terminated.

7 Now, the -- we still have -- there are still
8 derivatives on the books today from that legacy
9 portfolio, but as I said, they're -- it's a small
10 fraction of what they are.

11 And even today we have people, colleagues of mine,
12 that are working on unwinding even the remnants of those
13 trades because at some point they'll all be gone and the
14 derivatives that we will use and we will for -- we will
15 use derivatives as a risk mitigant going forward, but
16 they're not part of the legacy book.

17 THE COURT: All right. Thank you.

18 THE WITNESS: You're welcome, sir.

19 BY MR. SCARLATO:

20 Q. When did that wind-down -- when was that decision
21 made to wind down AIGFP?

22 A. I don't have a specific date, but it would have --
23 I believe -- and I was not personally involved in that
24 decision, but I recall in -- at the end of '07, early
25 '08, so it was December of '07, January of '08. It was

1 somewhere in that, in that time period.

2 Q. Do you have an understanding of why the decision
3 was made to unwind AIGFP?

4 A. I was not involved in the decision.

5 Q. So, Mr. Herzog, turning back for a second, we
6 were talking about the New York Fed's interactions with
7 AIG.

8 Throughout the course of your interactions with
9 the New York Fed, did the New York Fed ever take any
10 action to compromise your ability to fulfill your
11 responsibilities as an officer of AIG?

12 A. Not to my knowledge.

13 Q. Do you recall any instance in which the
14 New York Fed directed you or one of your AIG colleagues
15 to take a specific business action?

16 A. As it related to the running of the business, I
17 don't recall being directed by the Fed.

18 I am aware of some direction that was given as it
19 related to some of the -- to the wind-down activities of
20 AIGFP when we were trying to wind down or tear up trades
21 that we were -- we were involved in, and one of my
22 colleagues was instructed to stand down on trying to tear
23 up the trades.

24 Q. And is that the only example you can think of?

25 A. That's the one that I recall.

1 Q. Okay. Well, let's turn to that topic.

2 Mr. Herzog, do you recall what Maiden Lane III
3 was?

4 A. I do.

5 Q. And what role, if any, did you have in
6 resolving -- well, what did ML III relate to first,
7 Maiden Lane III?

8 A. Well, Maiden Lane III was a -- it ended up being a
9 structure in place, so when I refer to ML III, it was
10 the -- it was the end -- it was the end-state structure
11 that resulted from an effort to resolve what was one of
12 the two major sources of liquidity strain on the firm,
13 one being securities lending. That was Maiden Lane II.
14 And Maiden Lane III was for or it was related to
15 AIG Financial Products, was the multi-sector CDS book.

16 And so that's what it was -- that's what -- that's
17 what it related to.

18 Q. And so what role, if any, did you have in
19 resolving the issues relating to AIG's CDS book at the
20 time?

21 A. I -- I was generally not involved firsthand with
22 the unwind activities. Generally speaking, there
23 were -- there were -- there were two counterparties that
24 I met with and I -- and I don't recall what -- what --
25 what led to my involvement.

1 I mean, I had relationships with one of the
2 counterparties, and not directly, we were discussing it
3 with but with the firm in general.

4 And so I participated in discussions, meetings,
5 phone calls, in an effort to terminate the -- some of the
6 trades, the multi-sector CDS trades.

7 Q. Do you recall when you participated in these
8 discussions?

9 A. I believe that it was sometime after the
10 Federal Reserve loan, if my recollection, my timing, is
11 right, but I believe it was somewhere in that period of
12 time.

13 Q. Do you recall what your position was at that
14 time?

15 A. I can't specifically -- it was -- it was -- if it
16 was right -- it was either right before or right after I
17 was named CFO.

18 Q. And you testified earlier that was in
19 October 2008?

20 A. Yes, sir.

21 Q. Which counterparties do you recall having
22 discussions with?

23 A. SocGen and Goldman Sachs.

24 Q. Did your discussions with these two entities occur
25 around the same time?

1 A. Generally, yes.

2 Q. Within weeks, let's say?

3 A. Yeah. It was somewhere in that, that general time
4 period.

5 Q. And what -- you said to terminate the CDS
6 contracts.

7 Sort of what options were discussed as to how to
8 terminate AIG's CDS contracts?

9 A. Well, we had -- if I recall the conversation at
10 SocGen, there were -- there were -- you know, each one of
11 these counterparties had a number of -- had a number of
12 contracts with us. I don't recall the specific number,
13 but they -- it was more than just one contract.

14 And the -- what we were trying -- the objective of
15 the tear-ups was to try to put an end to the liquidity
16 drains on the firm, so we wanted the contracts to be
17 terminated, so we were attempting to negotiate, if you
18 will, with the counterparty to come up with either a
19 structure or a price, an amount of money that we could
20 pay or allow them to keep that would be a basis for
21 tearing up the contracts.

22 So the way the CDS worked, I mean, there were
23 lots of intricate details to it, but at the end -- the
24 way I think about it was, there was an underlying
25 security of CDO. And the credit default swap was

1 written in a way that the contract itself was going to
2 pay the counterparty for credit losses. That was the CDS
3 itself.

4 And then there was an annex to the CDS agreement
5 that required the posting of collateral for, among other
6 things, the difference between the face value of the
7 credit default swap and the market value of the
8 underlying security.

9 And it was -- and it was that difference between
10 the notional and the market value that was causing the
11 liquidity stress on the firm, so the idea was, if we
12 could tear up the CDS, however that was, to get it to go
13 away, you would put a -- you know, you'd begin to
14 eliminate or alleviate the financial stress on the firm.
15 And that's what we were negotiating to come up with.

16 Q. And so you mentioned notional amount.

17 What does "notional amount" mean?

18 A. Well, so, I mean, it's the -- think of it as the
19 face value of the underlying -- in this case of the
20 underlying CDOs.

21 Q. So you mentioned two counterparties. Let's take
22 them one at a time.

23 What was the outcome of your discussions with
24 SocGen?

25 And what is SocGen first?

1 A. It's a bank. I think it's a French bank. And
2 they had a U.S. branch. That's what we were -- that's
3 who we were meeting with.

4 Q. And what was the outcome of those discussions?

5 A. Well, it was not successful. I mean, the bottom
6 line is that the -- we couldn't agree on a price. And I
7 don't recall specifically the price that we ended up
8 terminating or concluding the meeting. I was only in the
9 one meeting that I recall. But it was -- it was
10 unsuccessful.

11 In other words, we could not agree on an
12 acceptable price.

13 Q. Do you recall what price SocGen offered?

14 A. No. I don't remember the specific amount, but it
15 was more than a hundred cents on the dollar.

16 Q. Above the notional value; is that --

17 A. Yes.

18 Q. What about the Goldman negotiations? What was the
19 outcome of those?

20 A. Well, the conversation -- I had -- it was the two
21 of us involved in that. At least the part I was involved
22 in, I was with Bill Dooley, a colleague of mine who -- he
23 and I -- he had a relationship with the trader, the
24 person on the desk, if you will, from Goldman, or at
25 least he knew the person. He was there I guess through

1 his long and -- his long career.

2 And so we had a discussion, had a negotiation with
3 them, and at the end of the day, the best price we got to
4 was 103. I just remember that number, 103, and was a bit
5 taken back by it because I didn't think we should have to
6 pay more than a hundred for something, but that's where
7 we ended up. It was a negotiation and we couldn't come
8 to terms on it.

9 Q. And by "a hundred," that would be par?

10 A. Correct.

11 Q. Do you recall why Goldman wanted above par?

12 A. Well, I -- again, I don't recall the -- in the
13 conversation with them -- and again, it's a recollection.
14 I don't -- I can't -- I don't know if it was -- what
15 their -- you know, what the rationale was, but it's what
16 I recall them saying, was that they'd have to replace the
17 trade if they terminated the trade with us. That was --
18 you know, I just remember them saying -- you know, at
19 least that's what they said.

20 Q. Just so we're clear, what do you mean by "replace
21 the trade"?

22 A. Well, they may have -- they -- my understanding of
23 what that meant was that they'd have to go out and find
24 another counterparty to put the CDS back.

25 So if we terminated our CDS, they would still not

1 want -- they would want to still have protection, credit
2 protection, or their counterparty would want credit
3 protection, so they would have to replace the trade.
4 They did not want to hold -- I'm assuming they did not
5 want to hold the CDO without the protection on top of
6 it.

7 Q. So I'm just trying to understand what the
8 connection is between the price that they offered, 103,
9 with the situation about replacing the trade.

10 A. Well, I would -- again, I -- they said -- to me,
11 what it meant was they'd have to go pay more to replace
12 the CDS that they were terminating with us. That's --
13 that was what I -- what I inferred from what they were
14 saying. But again, they -- I'm -- I -- I don't -- I
15 can't speak for why they were negotiating for 103.

16 Q. Mr. Herzog, did there come a time when you
17 understood that the New York Fed became involved in
18 discussions with AIG's CDS counterparties?

19 A. Well, my -- a colleague of mine was -- I recall
20 was asked to stand down or to stop negotiating for the
21 terminations.

22 Q. Can you turn in the white binder in front of you
23 to PTX 333. It should be towards the back. Tell me when
24 you have that in front of you.

25 A. Yes, I have it.

1 MR. SCARLATO: Your Honor, this is already in
2 evidence.

3 BY MR. SCARLATO:

4 Q. It appears to be an e-mail from -- between you and
5 Elias Habayeb. Did I say that right?

6 A. Elias Habayeb, yes.

7 Q. And who is he?

8 A. Elias at the time was the chief financial officer
9 for the segment we called financial services, which
10 included AIGFP.

11 Q. And the date of this e-mail, PTX 333, is
12 October 31, 2008.

13 Do you recall receiving this e-mail around that
14 time?

15 A. I don't have a specific recollection of it, but
16 I'm copied on it, so I assume I received it.

17 Q. I'll call him Elias. In the middle of page 1, he
18 says, "I spoke to Manzari this morning."

19 Who is Manzari?

20 A. That's Steve Manzari, who was a -- worked for
21 Sarah Dahlgren, who was on the supervisory team.

22 Q. And Elias states, "He asked me to stand down on
23 all discussions with counterparties on tearing
24 up/unwinding CDS trades on the CDO portfolio."

25 I'll also direct your attention as you reply at

1 the top. You say, "Thanks and noted on the tear up stand
2 down."

3 Is that the basis for your testimony earlier about
4 the stand-down?

5 A. It's consistent with it. Yes, sir.

6 Q. And do you have an understanding as to why
7 Mr. Manzari told Elias to stand down?

8 A. I do not.

9 Q. What is your understanding of the New York Fed's
10 involvement in AIG's negotiations with counterparties?

11 A. Could you repeat that question.

12 Q. What's your understanding of the -- of the --
13 why -- as to why the New York Fed was involved in
14 discussions with AIG's counterparties?

15 A. I don't -- I don't know. I don't -- I don't
16 recall their -- I wasn't -- I wasn't on point for that.

17 Q. Other than looking at PTX 333, do you have any
18 other recollection of the stand-down request?

19 A. I do not.

20 Q. Do you have an understanding of what the
21 New York Fed's goals were in talking to AIG's
22 counterparties at that time?

23 A. I do not.

24 Q. To what extent do you have knowledge about the
25 substance of the New York Fed's conversations with AIG's

1 counterparties, if any?

2 A. I don't have any knowledge of that.

3 Q. If you can turn now to I believe the next
4 document, PTX 366.

5 And first, what's your understanding of how the --
6 sort of the end result of the New York Fed's discussions
7 with AIG's counterparties?

8 A. Say that again?

9 Q. What's your understanding of the end result of the
10 New York Fed's discussions with AIG's counterparties?

11 A. I believe it culminated in the creation of
12 Maiden Lane III, which resulted in the termination of the
13 bulk -- not a hundred percent but the bulk of the
14 multi-sector credit default swap portfolio.

15 Q. Now, PTX 336 (sic) is another e-mail exchange
16 between you and Elias.

17 And do you recall receiving PTX 366?

18 A. I don't recall specifically, but I -- I must have
19 received it because I did respond to it.

20 Q. And at the top of PTX 366, you state, "I
21 understood the Fed to be negotiating with the
22 counterparties directly on the buyout of the CDOs
23 directly. The trade was to happen as far below par as
24 possible."

25 Do you recall what you meant by that?

1 A. I don't recall. I mean, I think it speaks for
2 itself, but I don't -- I don't have a specific
3 recollection of the e-mail.

4 Q. And because you wrote it, I'd just like to get a
5 sense for what your understanding of what it -- it speaks
6 for itself.

7 What does it say?

8 A. Well, it says the trade was to happen as far below
9 par as possible.

10 Q. Do you recall at the time having an understanding
11 that the New York Fed would be able to negotiate the
12 trade below par?

13 A. I don't recall a specific expectation. I just
14 know from my own personal experience I was not able with
15 my colleagues to get it done below -- at least the two
16 specific ones that I was involved in, we couldn't get it
17 done at par.

18 Q. Did you have any reason to believe the
19 New York Fed would have been able to achieve a different
20 result?

21 A. I don't recall a specific expectation. Again,
22 they're probably in a better position to respond to that
23 than me.

24 THE COURT: Mr. Scarlato, should we take a morning
25 break?

1 MR. SCARLATO: Certainly, Your Honor.

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

3 (Court in recess.)

4 THE COURT: You may go ahead, Mr. Scarlato.

5 MR. SCARLATO: Thank you, Your Honor.

6 BY MR. SCARLATO:

7 Q. Mr. Herzog, before the break, we were talking
8 about your discussions with the CDS counterparties. Do
9 you remember that?

10 A. Yes.

11 Q. Another question.

12 In those discussions that you had with AIG's
13 counterparties, what was your understanding of the
14 leverage that the counterparties had in those
15 negotiations?

16 A. The negotiations -- to clarify, the negotiating
17 leverage?

18 Q. Correct.

19 A. Well, they didn't have to agree. I mean, it was
20 a -- there was an open-market, arm's length discussion,
21 so I don't know if it's leverage, but they -- they didn't
22 have to agree to a price.

23 Q. And what was your understanding of the leverage
24 that you and your AIG colleagues had in those
25 negotiations?

1 A. Well, I -- as I said earlier, I was only in two
2 discussions, so I don't know that I -- that I have a view
3 whether we had leverage or not. I don't -- I don't -- I
4 don't recall having a point of view on that.

5 Q. Okay. Do you recall what price the CDS book was
6 ultimately settled for as part of Maiden Lane III?

7 A. I believe, although I don't -- I don't have a
8 specific recollection of a report or something I saw, but
9 I believe it was -- it was settled at or near par.

10 Q. Do you have an understanding as to why that was
11 ultimately the price it was settled at?

12 A. I do not.

13 Q. Okay. And what was your understanding of the
14 purpose of what became Maiden Lane III?

15 A. The purpose from my perspective was to resolve or
16 substantially resolve the liquidity strains from the
17 multi-sector CDS book, so that was -- that was the
18 purpose, from my perspective as the CFO of the company.

19 Q. And why did it matter to resolve the strain, as
20 you described it, on the CDS book?

21 A. Well, in my business judgment at the time, I felt
22 it was necessary to resolve that as well as the
23 securities lending stress in order to help the company
24 stabilize to begin to move forward.

25 Q. And in your judgment, did Maiden Lane III

1 ultimately achieve that objective?

2 A. In my business judgment, it was effective at
3 resolving the liquidity strains on the company.

4 Q. And so in your judgment, how did resolving those
5 liquidity strains affect AIG's profitability after the
6 transaction was entered into?

7 A. Could you repeat that, please.

8 Q. Sure.

9 In your judgment, how did resolving those
10 liquidity strains that you described affect AIG's
11 profitability going forward?

12 A. Well, terminating the trades alleviated the
13 liquidity strains. It -- the mark-to-market related to
14 the CDS was -- was also terminated because the trades
15 were gone.

16 And I don't recall how we -- exactly how we were
17 accounting for the Maiden Lane III instrument or our
18 participation in that. It -- that may have been
19 mark-to-market as well, so it would have had some
20 variability to it. But the key to me was the liquidity.

21 Q. And why was that the key to you?

22 A. Because it was -- in my business judgment, we
23 needed to resolve the two biggest liquidity strains on
24 the firm in order to then begin to restructure and move
25 forward.

1 Q. I'd like to shift gears a little bit now.

2 Mr. Herzog, did there come a time in 2008 when you
3 had concerns that AIG might face delisting on the
4 New York Stock Exchange?

5 A. I did.

6 Q. Do you recall what prompted those concerns?

7 A. Well, the stock price had fallen below a dollar
8 for a period of time. I don't recall specifically how
9 long. But falling below a dollar I felt, again in my
10 judgment, was -- was or could be problematic to the
11 company longer term getting -- becoming delisted from the
12 New York Stock Exchange, although I'm not a -- was not an
13 expert in the listing rules, but I believed that it was
14 important to not become delisted.

15 Q. Could you explain why that was important.

16 A. Well, just I -- I just thought in the long term --
17 again, I had no specific reason other than the fact that
18 I thought it was important for us to have a -- equity in
19 the firm, didn't know exactly how or when or the
20 specifics behind it, but having our stock delisted, in my
21 judgment at the time, was detrimental to our recovery
22 efforts.

23 Q. I'm sorry if my questions are imprecise. I'm just
24 trying to understand why you thought that was detrimental
25 to your recovery efforts.

1 A. Well, because I believe that, again, we'd want the
2 possibility at some point to have a publicly traded
3 stock, and having it delisted was further reputational
4 risk, just further adverse headlines that, in my view, we
5 should avoid.

6 Q. Do you recall when you first had those concerns?
7 When?

8 A. When? It would have been sometime after the stock
9 had fallen below a dollar.

10 Q. I'm sorry if I'm testing your memory too much.

11 A. That's okay.

12 Q. Was it after the loan from the New York Fed?

13 A. It would have been after the loan, sir.

14 Q. Any sense for how long after?

15 A. I don't remember the specific time period.

16 Q. Okay. Do you recall if you had any ideas on how
17 to avoid this delisting?

18 A. I did. I recall --

19 Q. Did you have discussions with another officer or
20 director of AIG about that?

21 A. I did. I had a conversation with the chairman of
22 our finance committee.

23 Q. Who's that?

24 A. Morris Offit.

25 Q. And what was your idea?

1 A. I suggested to Morris, in light of the stock's
2 price, that in order to get it above a dollar to consider
3 a reverse stock split that would result in the share
4 price going up commensurate with the ratio of the
5 exchange.

6 Q. And do you recall whether Morris Offit agreed that
7 that was a good idea or not?

8 A. I don't recall him raising any concerns or
9 objection.

10 Q. Do you recall when this conversation with
11 Mr. Offit occurred?

12 A. It would have been before -- it would have been
13 before a finance committee -- again, I don't have the
14 specific date, but it would have been in the -- my
15 conversation with him was in the context of an ordinary
16 briefing that I used to do with Mr. Offit before finance
17 committee meetings, so it was in the context of that, so
18 it wasn't anything one-off specific to this particular
19 topic. It was a part of a broader discussion around the
20 upcoming finance committee agenda.

21 Q. Do you recall if you were the CFO of AIG at that
22 time?

23 A. I believe I was. Yes, sir.

24 Q. So that would have been at least October 2008?

25 A. Yes.

1 Q. Do you recall if AIG ultimately proposed a reverse
2 stock split?

3 A. We did ultimately do a reverse split.

4 Q. Do you recall when?

5 A. Again, not -- not specifically. I guess it was
6 sometime in -- was it in 2009? I don't -- again, I just
7 don't have a specific date.

8 Q. So what's your understanding as to why AIG
9 proposed a reverse stock split at that time?

10 A. Well, I know why I suggested it, and that was
11 because I was concerned about the delisting of the stock,
12 and that's why I suggested it to Morris.

13 Q. Do you recall any other reason that AIG proposed a
14 reverse stock split?

15 A. I don't have any knowledge of that.

16 Q. Can you turn now in your binder to PTX 424. It
17 should be towards the back.

18 A. The large?

19 Q. The large one.

20 Do you have it in front of you?

21 A. Yes, I do.

22 Q. And PTX 424 purports to be an e-mail between
23 Brian Schreiber and you, at least at the top.

24 Who is Brian Schreiber?

25 A. Brian at the time of this e-mail was -- was and

1 still is a colleague of mine. At the time, he was
2 heading strategy and was very much involved in the
3 restructuring planning and execution for the company.

4 Q. The subject line of PTX 424 is Debt Opportunity.

5 Do you recall discussions around the time of this
6 e-mail, February 2009, with Mr. Herzog about a debt
7 opportunity?

8 A. My recollection of the general period of time,
9 there were -- there were discussions around debt capital
10 management because we were -- the debt was trading at a
11 fairly steep discount to its par value or to the face
12 amount of the debt. And that was because of all the
13 financial stress the company was in.

14 And so in -- there -- I know there -- there were
15 conversations. I was part of some of them. Again, I
16 don't have a specific recollection, but particularly with
17 the team from Blackstone, which was a financial advisory
18 firm, or they were advising -- advising us along the way
19 along the restructuring, along the -- the general idea
20 was to buy in debt using whatever currency we had, that
21 the idea was to buy in the debt at these, quote, low
22 prices because the debt was trading at distressed
23 levels.

24 That was the general topic of the conversation.

25 Q. I'm not sure I gave you enough time to review this

1 e-mail, but take the time if you need it, and so my
2 question is, is that opportunity you just described
3 the -- your understanding of what's being discussed in
4 PTX 424?

5 A. Again, I don't have a specific recollection of
6 this, of this -- of this e-mail. I just know, you know,
7 in this period of time we were -- we were -- there were
8 discussions within the -- within the company and with --
9 particularly with respect to the team from Blackstone. I
10 think they were -- my recollection is they were -- they
11 were advocates of that type of a strategy.

12 Q. And Blackstone is copied on the e-mail down below,
13 PTX 424, Larry L. Nath?

14 A. Yeah. That would be -- my understanding is that
15 would be Larry Nath from Blackstone. Yes.

16 MR. SCARLATO: Your Honor, we would offer
17 PTX 424 in evidence.

18 MR. BOIES: No objection, Your Honor.

19 THE COURT: Plaintiffs' Trial Exhibit 424 is
20 admitted.

21 (Plaintiffs' Exhibit Number 424 was admitted into
22 evidence.)

23 BY MR. SCARLATO:

24 Q. Mr. Herzog, the middle e-mail from Mr. Schreiber
25 says "attached is a draft presentation outlining the

1 opportunity for AIG to restructure/repurchase its debt."

2 This particular e-mail doesn't have the
3 presentation, but is the reference from Mr. Schreiber
4 consistent with your testimony about what opportunities
5 AIG was looking at around this time?

6 A. I think generally, yes, that describe -- I mean,
7 that's what the e-mail says.

8 Q. And then at the top -- so was it your testimony
9 you don't recall receiving this e-mail at the time?

10 A. Yeah. I don't have a specific recollection of
11 this, this particular e-mail.

12 Q. Understood.

13 So you say at the top, "Thanks. Reviewing now.
14 Sense of timing? I doubt we could do anything between
15 now and the earnings release. Thoughts?"

16 And then you state, "Do we have enough shares
17 authorized?"

18 Do you recall why you asked that question?

19 A. I do not recall specifically why I asked that.

20 Q. And thinking about it now, can you think of any
21 connection between the number of AIG shares that were
22 authorized at the time would have with the debt
23 opportunity described in this e-mail?

24 A. Again, I don't -- I don't recall whether this
25 particular opportunity was to buy in the debt for cash or

1 if -- if it was related to buying in the stock -- or
2 buying in the debt in exchange for stock.

3 Q. I'm wondering if it helps to read the last line.
4 It says, "If I did the math right, it would take
5 approximately 17-plus billion shares to do all in
6 stock."

7 MR. BOIES: Your Honor, if he's going to use
8 documents to lead the witness, I think he needs to read
9 the immediately preceding sentence for context. He
10 skipped over, went from reverse stock split down to the
11 bottom, and he skipped over the middle part.

12 THE COURT: I think that's fair.

13 MR. SCARLATO: Yeah, I intended to go there,
14 Your Honor. I just wanted to give the -- try to give the
15 witness some context to refresh his recollection a
16 little.

17 THE COURT: Well, why don't you read the preceding
18 sentence.

19 MR. SCARLATO: I'll read the whole thing.

20 BY MR. SCARLATO:

21 Q. So after the question I just asked you about, you
22 say, "We are going to have a shareholder meeting coming
23 up and were considering a reverse split."

24 Is that reverse split the same reverse stock split
25 you testified about earlier?

1 A. I believe it is.

2 Q. Okay. And do you recall why you were raising the
3 reverse split in this context?

4 A. I don't recall specifically.

5 Q. Your e-mail goes on to state, "We were also going
6 to authorize more shares to accommodate the Fed's
7 79.9 percent ownership."

8 What did you mean by that?

9 A. I don't recall specifically. I -- you know, I
10 think it -- I mean, it speaks for itself what I was --
11 what I had written. Again, just sitting here today, I
12 don't recall the topic, but that's the -- I mean, it says
13 what it says.

14 Q. And I'm sorry for testing your memory too much,
15 but to your recollection now, to what extent, if any, did
16 you consider the reverse split mentioned here related to
17 the authorization to get more shares to accommodate the
18 Fed's 79.9 percent interest?

19 A. Could you say that again.

20 Q. I'm trying to understand the relationship between
21 those two -- essentially the two sentences in your
22 e-mail.

23 A. Again, I don't have a recollection that the --
24 that the 17 billion share reference is connected to
25 the -- to the -- to the stock split. I mean, I -- I

1 just don't recall what the -- the 17 billion shares, if
2 we do all -- if we do it all in stock, I just -- I -- I
3 don't recall connecting that to the -- the -- the second
4 and third sentence you just wrote -- or you just read.

5 Q. And when you said "it," you meant the debt
6 opportunity?

7 A. The last sentence.

8 Q. Uh-huh.

9 A. Again, I just don't recall if those were --
10 were -- were connected. I think these are -- these are
11 different thoughts.

12 Q. Right.

13 A. But again, I don't -- I don't have a specific
14 recollection about this particular note.

15 Q. Then I'll just try one more then.

16 You then say, "Let's put all this together with
17 Kathy to see how we optimize our path and timing."

18 Do you have an understanding of what you meant by
19 that?

20 A. Well, that -- again, it's why -- again, I just
21 don't have a specific recollection of it.

22 Kathy was our corporate secretary and would have
23 been the legal person on point with respect to any --
24 any -- any actions, shareholder actions, that type of
25 thing, so that's why I said just let's get it all to

1 Kathy and put it all together, "all" being to me, again,
2 the things I'm referencing in this note. But again, I
3 don't have a specific recollection of what I was thinking
4 at that time.

5 Q. So let me try a general question then.

6 Mr. Herzog, to your knowledge, did AIG's reverse
7 stock split have any connection with the monetization of
8 any preferred stock AIG issued as part of its
9 transactions with the New York Fed or the government?

10 A. Not to my recollection, not that -- again, what I
11 said earlier was the stock split, from my perspective,
12 was -- was designed to improve or increase the share
13 price to keep it from being delisted.

14 Q. Mr. Herzog, to your knowledge, did anyone at the
15 New York Fed or the U.S. government have any influence
16 over whether AIG proposed a reverse stock split?

17 MR. BOIES: Objection, Your Honor. Foundation.

18 THE COURT: Sustained.

19 Maybe you can give us a little foundation for
20 this.

21 MR. SCARLATO: Sure.

22 BY MR. SCARLATO:

23 Q. Mr. Herzog, did you give -- did you engage in any
24 discussions with the New York Fed or the U.S. government
25 about AIG's reverse stock split?

1 A. Not to my recollection.

2 MR. SCARLATO: And I'll end there, Your Honor. I
3 pass the witness.

4 THE COURT: All right. Thank you, Mr. Scarlato.
5 Cross-examination.

6 MR. BOIES: Thank you, Your Honor.

7 (Pause in the proceedings.)

8 - - - - -

9 CROSS-EXAMINATION

10 BY MR. BOIES:

11 Q. Good morning, Mr. Herzog.

12 A. Good morning, sir.

13 Q. I don't remember whether we've ever met, but if
14 we did, it was a long time ago. But my name is
15 David Boies.

16 A. Yes, sir.

17 Q. Let me pick up with what counsel for the
18 United States was just talking to you about.

19 And do you still have Plaintiffs' Exhibit 424 in
20 front of you?

21 And when you have it, let me know.

22 A. Yes, sir, I have it.

23 Q. In the sentence in the third paragraph, the third
24 sentence of the third paragraph, where you write, "We
25 were also going to authorize more shares to accommodate

1 the Fed's 79.9 percent ownership," do you see that?

2 A. Yes, sir.

3 Q. You were aware in February of 2009 that in order
4 to provide common shares to the Federal Reserve for its
5 79.9 percent ownership, it was necessary for AIG to
6 authorize additional common shares; correct?

7 A. I don't have a specific recollection of that, sir,
8 but again I -- I -- I wrote what I believed at the time
9 in this note.

10 Q. You didn't have any role in designing the reverse
11 stock split, did you?

12 A. Not specifically other than just the notion of
13 doing one to, again, as I said earlier, to accommodate a
14 way to get the stock price up. I don't have any
15 recollection of being involved in the details of it.

16 Q. And for example, you now know that the reverse
17 stock split was 20-to-1; correct?

18 A. Yes, sir.

19 Q. You didn't have any role in selecting that ratio;
20 correct?

21 A. Correct.

22 Q. And do you know whether or not the reverse stock
23 split applied to both authorized and issued shares or
24 only to one?

25 A. I -- I know now that it applied to one, not both,

1 but again, I don't have a specific recollection of the
2 design of the specifics to it.

3 Q. And am I correct that you did not play any role in
4 deciding that the reverse stock split would apply to
5 issued shares but not authorized shares? Correct?

6 A. That's correct, sir.

7 Q. Were you aware of what has been referred to as the
8 Walker lawsuit?

9 A. I -- I'm not familiar with the details of it. It
10 may be referenced in our public filings, but I'm not --
11 I'm not familiar with the details of it.

12 Q. This was a lawsuit that had been brought in the
13 state courts in Delaware with respect to whether there
14 had to be a class vote of the common shareholders prior
15 to authorizing additional common shares. Do you recall
16 that generally?

17 A. I do not.

18 Q. Okay.

19 A. I do not.

20 Q. Then we will pass a whole folder.

21 Let me turn to Maiden Lane III, and let me ask you
22 to look at Plaintiffs' Trial Exhibit 366 that counsel --

23 A. Is that in your binder, sir, or is that --

24 Q. No. This is in the government's binder.

25 A. Okay. PTX 366?

1 Q. PTX 366.

2 A. Okay.

3 Q. And you say that -- at the very top, that you
4 understood the Federal Reserve to be negotiating with the
5 counterparties directly on the buyout of the CDOs
6 directly.

7 Do you see that?

8 A. Yes, sir.

9 Q. Now, you understood, with respect to what the
10 Federal Reserve was doing, was that they were -- to the
11 extent they succeeded in the negotiations, they were
12 negotiating for a payment to the counterparties and in
13 exchange the counterparties would tear up the CDS and
14 hand over the underlying CDOs; correct?

15 A. I was -- I don't have a full recollection of the
16 context of my response. If I -- if I could just take a
17 second and read Elias' note to me, it may be helpful.

18 Q. Absolutely.

19 A. Try to put context around it.

20 Q. Sure.

21 (Pause in the proceedings.)

22 A. Okay. Thank you, sir.

23 Q. Sure.

24 Does that refresh your recollection at all?

25 A. Well, it doesn't refresh. I just want to make

1 sure I had a context of what I was -- had some context
2 around it because I see this -- the whole series is a
3 response to a question from a colleague.

4 Q. Right.

5 Having looked at that in context, do you
6 understand that what the Federal Reserve was trying to
7 do was to negotiate a payment that would be made to the
8 counterparties in exchange for which the counterparties
9 would tear up the CDS and hand over the underlying CDOs?

10 A. Yeah. That -- yes, sir. That was the basic
11 framework or structure for how ML III was to be put
12 together to -- again, to terminate, so again, as I said
13 before, to eliminate the liquidity drain on the firm.

14 Q. Now, you had mentioned that you had had a
15 conversation or participated in a conversation with
16 somebody from Goldman Sachs with respect to a tear-up;
17 correct?

18 A. Yes, sir.

19 Q. Now, in that tear-up, that was a different
20 negotiation; correct? That is, under that tear-up,
21 Goldman Sachs was not going to hand over the underlying
22 CDOs; correct?

23 A. I don't -- I -- I don't recall if -- all what that
24 particular negotiation was. My -- again, my recollection
25 was around the price on the CDS.

1 Q. But, for example, one of the things that you said
2 was that Goldman Sachs' explanation for why they needed a
3 certain price was because they were then going to have to
4 go out and get another CDS for those CDOs. Do you recall
5 that?

6 A. I do, sir, yes.

7 Q. So that would necessarily mean they were going to
8 keep the CDOs; correct?

9 A. Either -- I mean, that's what it would --
10 certainly would infer. Or as I -- as I also understood,
11 there were instances where we didn't actually -- there
12 weren't actually CDOs underneath it. They were
13 synthetic.

14 So, again, the conversation with Goldman was, my
15 recollection was it was really around the price on that
16 CDS.

17 Q. But my point is that with respect to
18 Maiden Lane III, that was a situation in which what the
19 Fed was negotiating for was to buy out the CDOs so that
20 Maiden Lane III would now own the CDOs; correct?

21 A. That is correct.

22 Q. But with respect to what you were talking about
23 with Goldman Sachs, that was a situation in which
24 Goldman Sachs would continue to own the CDOs, if they
25 existed, and that's why they would need to go out and get

1 another CDS; correct?

2 A. Well, either -- it could be -- it certainly could
3 be that, sir. Again, I don't recall specifically on the
4 one or the trade or bucket of trades, but --

5 Q. Okay.

6 A. -- it could be that.

7 Q. Okay. Let me turn next to Joint Exhibit 74 that's
8 again in the government's book.

9 And this is minutes of an AIG board meeting that
10 you were asked about. Do you recall that?

11 A. Yes, sir.

12 Q. And you were asked about, beginning on pages 8 and
13 9, various statements that are attributed to you. Do you
14 recall that?

15 A. Yes, sir.

16 Q. Now, you said a number of times that you don't
17 have any reason to believe that the minutes aren't
18 accurate. Do you recall that?

19 A. Yes, sir.

20 Q. You do not, as you sit here now and indeed at the
21 time of your deposition for that matter, which was
22 earlier, have any specific recollection yourself of what
23 you said at that board meeting; correct?

24 A. That's correct.

25 Q. And you've not seen any notes of what was said at

1 this board meeting; correct?

2 A. That's correct.

3 Q. Did you have a chance to review the minutes of
4 this board meeting before they were finalized?

5 A. I do not recall.

6 Q. Now, counsel also asked you a number of questions
7 about what might happen in the event of a bankruptcy.

8 You're not a bankruptcy expert; correct?

9 A. That is correct.

10 Q. And indeed, you're not an expert in insurance
11 regulation, although you've worked for an insurance
12 company for a long time; correct?

13 A. That's correct.

14 Q. Now, there was a reference to the word "seizure."
15 Do you distinguish between the term "seizure" and
16 the terms "rehabilitation" or "supervision"?

17 A. Can you rephrase or make that clearer?

18 Q. Sure. Absolutely.

19 A. Thank you.

20 Q. Are you familiar with a concept of rehabilitation
21 in the context of insurance regulation?

22 A. I've heard the phrase certainly or the concept of
23 it. I have. I am -- again, I'm aware of the term. I
24 wouldn't -- wouldn't -- wouldn't be able to recite to you
25 precisely what it is or what it involves.

1 Q. Would the same be true of the term "supervision";
2 that is, you would be familiar with that generally as
3 something that is referred to in insurance regulation,
4 but you wouldn't have any detailed knowledge about it?

5 A. Well, I did have an experience earlier in my
6 career with a company that was put in supervision, state
7 supervision, in order to resolve a similar-type
8 situation with a liquidity problem that particular
9 company was having, and so it availed itself of state
10 supervision.

11 Q. What company was that?

12 A. That was General American Life Insurance Company.

13 Q. And that was a situation in which there was a
14 problem with that particular insurance company, not a
15 problem with its parent; is that fair?

16 A. That's correct, sir.

17 Q. Are you aware of situations in which insurance
18 holding companies, that is, holding companies that have
19 insurance subsidiaries, the way the AIG parent did, have
20 gone into bankruptcy?

21 A. I don't have firsthand experience with that.

22 Q. Are you aware generally that that has happened?

23 A. I'm aware of examples, but again I'm not -- I
24 don't have firsthand knowledge of that.

25 Q. In the examples that you're aware of, what

1 happened to the insurance subsidiaries when the parent
2 went into bankruptcy, if you know?

3 A. I don't have firsthand knowledge of what
4 happened.

5 Q. Now, with respect to bankruptcy, you said in
6 response to questions from the government that you
7 believe that it was a legal option. Do you recall that?

8 A. I do.

9 Q. Your view in September of 2008 was that even
10 though it may have been a legal option, it was not a
11 realistic or viable option; correct?

12 A. That's correct.

13 Q. Let me ask you to go back in your mind to
14 Saturday, September 13. And you testified to some
15 questions from the government about a meeting that you
16 had at the Fed that Saturday. Do you recall that?

17 A. Yes, sir.

18 Q. And one of the things that you said that you were
19 doing at that meeting or that AIG was doing at that
20 meeting was updating the Fed on your view of what was
21 happening in the capital markets. Do you recall that?

22 A. Yes, sir.

23 Q. What was AIG's view on Saturday, September 13, as
24 to what was happening in the capital markets?

25 A. Well, I recall that at the -- you know, that in or

1 around that period of time the -- I know we were having
2 difficulty or some of our subsidiaries were having
3 difficulty rolling their commercial paper. That's
4 something that sticks in my mind as memorable, that that
5 was creating further financial stress on the company,
6 because if we weren't able to roll the commercial paper,
7 we had to re- -- had to basically refund the cash, so
8 that was -- that was one dimension of it.

9 Again, I don't -- that's one that's pretty
10 specific. And there -- again, just from a general
11 recollection, given the -- what was happening with the
12 attempts to mark assets to market --

13 Q. Right.

14 A. -- when there aren't markets can sometimes be
15 challenging, so I again have a general recollection of
16 making some comments to the people at that meeting about
17 that, but -- but I would have said that to almost anyone
18 who -- that might have asked at the time what was the
19 world like then.

20 Q. And talking about Saturday and Sunday and Monday,
21 September 14, 15 and 16, is it fair to say that your view
22 was that the financial markets were in a crisis condition
23 and essentially not functioning?

24 A. Generally that's -- that's consistent with my
25 recollection, sir.

1 Q. Let me ask you -- and this is a document I'm going
2 to have to hand up I think because I don't think it's in
3 our binder, Plaintiffs' Trial Exhibit 311.

4 And I would offer Plaintiffs' Trial Exhibit 311.
5 It is already in evidence I'm told.

6 MR. SCARLATO: Yep.

7 THE COURT: Okay.

8 THE WITNESS: I'm sorry, sir. Were you speaking
9 to me?

10 BY MR. BOIES:

11 Q. No. I was doing something redundantly. I was
12 offering an exhibit that was already admitted into
13 evidence.

14 This is an e-mail from you to Sarah Dahlgren
15 October 20 2008; is that correct?

16 A. That's what it says on the e-mail, sir.

17 Q. Now, was this before or after, if you can
18 remember, that one conversation that you said you had
19 with Goldman Sachs?

20 A. I don't -- I just don't recall, sitting here
21 today.

22 Q. There is -- in the second sentence, you say that
23 Goldman has "asked for collateral per our agreed-upon
24 protocol."

25 What was the agreed-upon protocol that you were

1 referring to there?

2 A. I don't recall specifically what that is making
3 reference to, whether that was the existing CSA -- the
4 annex agreements to the credit default swaps or something
5 else. I just -- I just don't recall what that -- what
6 that's making reference to.

7 Q. You then go on to say, "We are discussing
8 tear-ups." And then you say, "I want to be in a position
9 to agree with Goldman. I will get approval from Ed, but
10 what about Fed approval?"

11 Do you see that?

12 A. Yes, sir.

13 Q. And am I correct that "Ed" there would be
14 Ed Liddy?

15 A. Yes, sir.

16 Q. Let me turn just briefly to another subject.

17 You testified about your responsibilities both as
18 comptroller and as the chief financial officer.

19 Is it the case that you believe that AIG's SEC
20 filings in 2007 and 2008 were accurate and reliable?

21 A. Yes, sir.

22 MR. BOIES: May I have just a moment,
23 Your Honor?

24 THE COURT: Yes.

25 (Pause in the proceedings.)

1 BY MR. BOIES:

2 Q. I think I'm now going to direct your attention to
3 one of our documents or, rather, one of the documents
4 that is in our binder. It is Defendant's Exhibit 1450
5 that's at the very back of your book.

6 Can you identify what this document is?

7 A. It is an e-mail from me to Bob Gender, who was the
8 treasurer of the firm, and Steve Bensinger, who was the
9 CFO, at this particular date, September -- on Tuesday,
10 the 16th.

11 MR. BOIES: Your Honor, I would offer
12 Defendant's Exhibit 1450.

13 MR. SCARLATO: No objection.

14 THE COURT: Defendant's Exhibit 1450 is admitted.

15 (Defendant's Exhibit Number 1450 was admitted into
16 evidence.)

17 BY MR. BOIES:

18 Q. Let me ask you to look next at Plaintiffs' Trial
19 Exhibit 381.

20 And can you identify what this document is?

21 A. I'm sorry, sir. 381?

22 Q. Yes. Plaintiffs' Trial Exhibit 381.

23 A. Oh, I'm sorry.

24 Q. This is in the binder we handed out.

25 A. I have it, sir, yes. Thank you.

1 Q. And can you identify this document?

2 A. This -- I mean, the document is from
3 Paula Reynolds to what appears to be all AIG employees,
4 and it's entitled New Guidelines for AIG Interactions.

5 Q. Who was Paula Reynolds on November 25, 2008?

6 A. Paula -- her title -- she was vice chairman and
7 the chief restructuring -- restructuring officer of the
8 company working for Ed Liddy.

9 MR. BOIES: Your Honor, I'd offer
10 Plaintiffs' Trial Exhibit 381.

11 MR. SCARLATO: No objection.

12 THE COURT: Plaintiffs' Trial Exhibit 381 is
13 admitted.

14 (Plaintiffs' Exhibit Number 381 was admitted into
15 evidence.)

16 MR. BOIES: I next want to hand up a document that
17 has been previously marked as Plaintiffs' Trial
18 Exhibit 398 for identification, which I would offer.

19 MR. SCARLATO: No objection, Your Honor.

20 THE COURT: Plaintiffs' Trial Exhibit 398 is
21 admitted.

22 (Plaintiffs' Exhibit Number 398 was admitted into
23 evidence.)

24 BY MR. BOIES:

25 Q. Is this a document that you saw in or about

1 January of 2009?

2 A. I don't have a recollection of this, of this
3 particular document.

4 Q. Let me ask you to look at page 4 of the exhibit.
5 The pages are at the bottom of the page where it says
6 "PTX-398 Page 4 of 23."

7 A. Page 4 of 23?

8 Q. Yes. Yes.

9 A. Okay.

10 Q. And it says "Affirmative Covenants"?

11 A. Yes, sir.

12 Q. And did you understand that there were certain
13 affirmative covenants that AIG was required to comply
14 with in connection with the Federal Reserve credit
15 facility?

16 A. I was familiar with or at least aware of covenants
17 that we were required to comply with.

18 Q. And were you aware that they were both affirmative
19 covenants and, as shown beginning on page 11 of the
20 exhibit, negative covenants?

21 A. I don't recall the specific provisions on them. I
22 just knew there were covenants that we were required to
23 comply with.

24 Q. Let me hand you a copy of Plaintiffs' Trial
25 Exhibit 3120.

1 And this is a document that we've recently marked.
2 It's part of the production that was made to us starting
3 on Monday of this week.

4 And I would offer the exhibit.

5 MR. SCARLATO: Your Honor, we would object on
6 foundation grounds. I don't believe there's any
7 connection with AIG or this witness reflected in the
8 document.

9 MR. BOIES: Your Honor, it's -- it is a
10 Davis Polk memorandum, but it relates to a meeting that
11 Mr. Herzog attended, and that is described in the first
12 paragraph of the memorandum itself which starts at
13 page 2 of the exhibit.

14 MR. SCARLATO: If I may, Your Honor.

15 So then we object to the admission of this
16 document using this witness as a sponsor, but I don't
17 object to Mr. Boies asking questions off of this
18 document.

19 THE COURT: I'm sorry? I don't understand your
20 position.

21 MR. SCARLATO: I don't -- I don't have an
22 objection if Mr. Boies plans to ask questions of this
23 witness about the meeting reflected herein, but in terms
24 of admitting it into evidence, we have a foundation
25 objection.

1 THE COURT: Okay. I'm going to overrule the
2 objection.

3 MR. SCARLATO: Thank you.

4 THE COURT: Plaintiffs' Trial Exhibit 3120 is
5 admitted.

6 (Plaintiffs' Exhibit Number 3120 was admitted into
7 evidence.)

8 BY MR. BOIES:

9 Q. This document, if you turn to page 2 of the
10 exhibit, is a memorandum from Marshall Huebner.

11 Do you know who Mr. Huebner is?

12 A. I have met Mr. Huebner. Yes, sir.

13 Q. And he talks about a meeting that he says you and
14 he attended on Tuesday, September 23.

15 Do you recall, as you sit here now, attending that
16 meeting?

17 A. I do not.

18 Q. Do you recall that there was a meeting that you
19 attended in September, after the credit facility had been
20 agreed to, that included certain AIG shareholders and
21 their financial advisor?

22 A. I do not.

23 Q. In the first paragraph of this memorandum, could
24 you just read that to yourself.

25 A. Is it the paragraph that says, "They are 'very

1 concerned'"? Is that the paragraph?

2 Q. Actually it was -- it was actually the first
3 paragraph --

4 A. The very first -- of the memo. I see.

5 Q. The first paragraph of the memo.

6 A. Yes, sir.

7 (Pause in the proceedings.)

8 Q. And when you're finished, please let me know.

9 (Pause in the proceedings.)

10 A. Yeah, I've read it, sir. Thank you.

11 Q. Does that refresh your recollection in any way
12 about a meeting on September 23, 2008?

13 A. It does not.

14 Q. Okay. Let me go to the paragraph numbered 1, the
15 one that you looked at before, that says, referring to
16 the shareholders and the financial advisor, "They are
17 'very concerned' about the 79.9 percent equity interest
18 and are focused on the 'ability to claw it back should
19 the facility be repaid in a reasonable time.' They
20 articulated a belief that adding an 'equity clawback' to
21 the deal would provide substantial incentive to help both
22 the taxpayers and AIG and was synergistic to all."

23 Do you see that?

24 A. I do, sir.

25 Q. Do you recall -- even though you don't recall this

1 meeting, do you recall that there were proposals to try
2 to get the government to agree to an equity clawback if
3 the facility could be repaid in a reasonable time?

4 A. I just don't have a recollection of that.

5 Q. Mr. Huebner then goes on to say "that we, of
6 course, find this statement incorrect."

7 Do you see that?

8 A. Where do you see that, sir? I just want to make
9 sure I'm following along.

10 Q. It says, "They articulated a belief that adding
11 an equity clawback to the deal would provide
12 substantial" --

13 A. Yes, sir. I'm sorry. It's in that parenthetical
14 in the first paragraph.

15 Q. Yes.

16 A. I see it now.

17 Q. Did Mr. Huebner ever convey that to you or ever
18 convey his view to you in words or in substance?

19 A. I don't recall that he did.

20 Q. Let me ask you to look next at Plaintiffs' Trial
21 Exhibit 3121, which I would also offer.

22 This is another document that was produced to us
23 in the production that started Monday of this week.

24 MR. SCARLATO: With that understanding,
25 Your Honor, we have no objection.

1 THE COURT: All right. Plaintiffs' Trial
2 Exhibit 3121 is admitted.

3 (Plaintiffs' Exhibit Number 3121 was admitted into
4 evidence.)

5 BY MR. BOIES:

6 Q. Could you take a moment just to familiarize
7 yourself with this document.

8 I'm going to ask you about the e-mail at the very
9 top of the first page, where Ms. Dahlgren writes, "We
10 told David Herzog today that this was coming and to
11 notify Bob Lewis about his role....he and Liddy were
12 totally fine with this and agreed...."

13 I'm going to ask you some questions about that,
14 but for context, take a moment and familiarize yourself
15 with the e-mail chain that's here.

16 (Pause in the proceedings.)

17 A. I started at the back and worked my way forward to
18 get a little bit of context.

19 Q. Okay. Now, focusing on the portion at the top of
20 the first page, who is Bob Lewis?

21 A. Bob Lewis at this moment in time was AIG's chief
22 risk officer.

23 Q. And did you in fact have the conversation that
24 Sarah Dahlgren indicates here that she had told you to
25 have with Mr. Lewis?

1 A. I don't recall the conversations.

2 Q. Do you recall this subject generally; that is, do
3 you recall being assigned this role?

4 A. I don't. You know, again, I'm just reading
5 through the e-mail I guess starting from Sarah, and
6 this -- it sounds to me like that this related to the
7 waiver process, the approval of the multitude of waivers,
8 as I spoke about earlier, the thousand-plus waivers that
9 we were having to get reviewed and approved.

10 We would have to prepare them, document them,
11 review them, get them signed off internally and then
12 submit them to the Fed for review and approval.

13 Q. Okay. Let me ask you to look at one more
14 document, 703.

15 And I apologize both for the bulk of this document
16 and for the format of this document, and I would say to
17 the Court this is the format that AIG produced it to us
18 in, and it's really hard to read.

19 This is a document that sets forth a series of
20 contacts between a variety of people, including from time
21 to time yourself and various people from the
22 Federal Reserve.

23 My understanding is that although this is the way
24 it was produced to us, in the original Excel spreadsheet
25 there were more columns than would fit on a page, and so

1 what you have to do is you have to take two or more pages
2 together to see all of the columns.

3 Did you play any role in keeping track of these
4 contacts?

5 A. Not to my knowledge, sir.

6 Q. It says -- it's headed Federal Reserve Issues and
7 Inquiries, Requests for Information.

8 Do you know who was responsible for maintaining or
9 keeping this?

10 A. I -- I don't know. I don't know who was involved.
11 I just don't -- I don't recall.

12 MR. BOIES: Your Honor, we would offer this
13 document. It is an authentic report from AIG. It
14 includes various contacts and requests and meetings that
15 included the witness even though he doesn't recall them.

16 MR. SCARLATO: Your Honor, regardless of
17 authenticity, we still have a foundation objection. The
18 witness didn't have any knowledge of it, and there's no
19 real headers or titles, so it's hard to understand where
20 it comes from, so we would object on foundation grounds.

21 THE COURT: Do you have any disagreement that the
22 document is what it purports to be?

23 MR. SCARLATO: Well, we stipulated to
24 authenticity, but I just -- other than that, it wasn't
25 produced by us, so I can't say one way or the other,

1 Your Honor, just no foundation has been laid and for that
2 reason we object.

3 THE COURT: Well, since it is an authentic AIG
4 business record, I'm going to admit Plaintiffs' Trial
5 Exhibit 703.

6 (Plaintiffs' Exhibit Number 703 was admitted into
7 evidence.)

8 MR. SCARLATO: Thank you, Your Honor.

9 BY MR. BOIES:

10 Q. Let me show you one last document -- no, I'm not
11 going to because the only copies we have are highlighted
12 copies. We have seven highlighted copies for reasons
13 that are obscure to me.

14 Your Honor, with that dramatic moment, I pass the
15 witness.

16 THE COURT: All right. Do you have any redirect,
17 Mr. Scarlato?

18 MR. SCARLATO: Briefly, Your Honor.

19 THE COURT: Okay.

20 - - - - -

21 REDIRECT EXAMINATION

22 BY MR. SCARLATO:

23 Q. Good morning again, Mr. Herzog.

24 A. Good morning.

25 Q. Just a couple of quick questions to follow up

1 Mr. Boies' examination.

2 First, I believe Mr. Boies asked you some
3 questions about your views on bankruptcy on September 16,
4 2008. Do you recall testifying about that?

5 A. Yes.

6 Q. And I believe you testified on his examination
7 that you believed bankruptcy wasn't realistic or viable.
8 Did you say those words?

9 A. I believe --

10 MR. BOIES: I think the testimony was whether or
11 not it was a realistic or viable option.

12 THE COURT: Right.

13 MR. SCARLATO: Thank you for that clarification,
14 so is that consistent with --

15 THE COURT: My notes actually say that he
16 considered it -- bankruptcy to be a legal option but that
17 he thought it was not a realistic or viable option.

18 BY MR. SCARLATO:

19 Q. Is the way Your Honor just described it consistent
20 with your understanding of the truth?

21 A. Yes.

22 Q. And can you explain why you believed it was a
23 legal option but not realistic or viable?

24 A. Again, based on my business judgment, and I'm not
25 a bankruptcy lawyer or an expert in the area, but I

1 believed, based on my business experience and just
2 general knowledge, that bankruptcy is -- it's a legal
3 option. It's something a company can and a board of
4 directors can consider, which is what I -- which is what
5 I said, what I believe.

6 And I also, you know, further described it as at
7 that moment in time, with the availability of the credit
8 facility, that it wasn't -- it wasn't the best
9 alternative. It wasn't -- it wasn't practical, again, in
10 light of the fact that the Federal Reserve credit
11 facility was available.

12 Q. Is there any other reason why you thought it
13 wasn't viable or realistic?

14 A. I don't recall the -- you know, any specific
15 criteria or framework I was referring to, just, again,
16 in my business judgment, to move the company forward
17 that there was, in my view, a better alternative. But,
18 again, that's -- that's just based on my own -- my own
19 judgment.

20 Q. Can you turn now -- Mr. Boies handed you a
21 document, PTX 311. It's a single piece of paper.

22 A. I have it.

23 Q. Okay. Do you remember seeing this document
24 earlier?

25 A. Yes, I do.

1 Q. Okay. So I wanted to ask you -- the last line --
2 and this is an e-mail from you to Ms. Dahlgren -- you
3 say, "I want to be in a position to agree with Goldman.
4 I will get approval from Ed, but what about Fed
5 approval?"

6 First, do you recall drafting this e-mail?

7 A. I do not.

8 Q. Okay. Do you know what you meant by "what about
9 Fed approval?"

10 A. I do not.

11 Q. Do you recall ever asking for Fed approval to
12 engage in -- with AIG's counterparties?

13 A. I do not.

14 Q. Do you recall ever receiving a response from
15 Ms. Dahlgren?

16 A. I do not.

17 Q. Well, then what about -- you testified earlier
18 about your discussions with Goldman. Do you remember
19 that?

20 A. I do.

21 Q. When you had those discussions, did you have a
22 belief as to whether or not you had the ability to come
23 to an agreement with Goldman at that time?

24 A. I'm trying to recall. I -- yeah, I don't -- I
25 don't recall that being a particular point of concern. I

1 just -- I don't -- I don't recall that at this time.

2 Q. Let me ask it this way.

3 I believe you testified earlier that the reason
4 those negotiations failed was you couldn't agree on a
5 price. Is that what you said earlier?

6 A. That's my recollection.

7 Q. Other than that reason, do you have any
8 understanding as to why you were unable to come to an
9 agreement with Goldman in resolving AIG's CDS contract?

10 A. I -- what sticks in my mind was the -- was the
11 price of the CDS tear-up.

12 Q. And nothing else?

13 A. That's all I recall.

14 Q. Okay. Finally, Mr. Boies asked you about the
15 reverse stock split. Do you remember talking to
16 Mr. Boies about that?

17 A. Yes, I do.

18 Q. And I believe you testified you -- other than
19 proposing an idea, you had no involvement in how it would
20 be implemented; is that what you said?

21 A. That's correct.

22 Q. Can you turn in the white binder that I handed to
23 you earlier, the big one, to JX 178.

24 Do you have that in front of you?

25 A. I do.

1 Q. And these are the minutes of the finance committee
2 of AIG on February 10, 2009.

3 Do you have any recollection now about that, the
4 substance of that meeting, at this time?

5 A. I do not.

6 Q. Okay. I just want to ask you briefly, do you have
7 a recollection -- turn to page 7 of 8. Tell me when you
8 have that in front of you.

9 A. I have it, yes, sir.

10 Q. And there are some comments attributed to you on
11 page 7 stating, towards the bottom, "Mr. Herzog responded
12 to Director questions" -- I'm sorry. Let's skip that.

13 The next one, "Mr. Herzog also advised the
14 Committee that Management is reviewing and expects to
15 propose that a reverse stock split be included for
16 shareholder approval" at that time.

17 Do you have a recollection now as to why that
18 management expected to propose that a reverse stock split
19 be included at the annual meeting?

20 A. I do not.

21 Q. And do you recall discussing the reverse stock
22 split at this finance committee meeting in February 2009?

23 A. Not specifically. It doesn't -- I don't have a
24 recollection of it.

25 Q. And then it goes on to attribute some statements

1 to Ms. Shannon.

2 Do you recall who Ms. Shannon was?

3 A. Yes, I do.

4 Q. And it states, "Ms. Shannon noted that an analysis
5 done by AIG's proxy solicitation firm, D.F. King
6 and Company" -- do you recall AIG engaging with D.F. King
7 and Company?

8 A. I do not.

9 Q. Do you know who they were?

10 A. I do not.

11 Q. Okay. And it says "has shown that the decision to
12 select a reverse stock split ratio should not be
13 influenced by the potential payout for fractional
14 shareholders as the difference in cost at ratios from
15 5 to 1 to 25 to 1 is negligible, and therefore Management
16 will likely recommend a 20-to-1 ratio."

17 Do you recall discussion about that?

18 A. I do not.

19 Q. Okay. And it says "Management will likely
20 recommend a 20-to-1 ratio."

21 Do you recall that being the reason, as reflected
22 in these minutes, as to why it was proposed?

23 A. I do not recall.

24 MR. SCARLATO: And I pass the witness again,

25 Your Honor.

1 THE COURT: All right. Anything further?

2 MR. BOIES: Nothing further, Your Honor.

3 THE COURT: All right. Mr. Herzog, thank you
4 very much for your testimony in this matter. You are
5 excused.

6 THE WITNESS: Thank you.

7 THE COURT: All right. Do you think it would be
8 wise to take a lunch break before we call our next
9 witness?

10 MR. GARDNER: I do, Your Honor.

11 And just one housekeeping matter if we could
12 before we break.

13 THE COURT: Sure.

14 Who is the next witness, may I ask?

15 MR. GARDNER: Jimmy Lee. He is a JPMorgan
16 executive.

17 THE COURT: All right.

18 MR. GARDNER: We had planned today, Your Honor,
19 to call Jimmy Lee followed by Mr. Allerhand,
20 Joseph Allerhand, an attorney who was involved in the
21 Walker litigation -- I'm sorry.

22 THE WITNESS: I didn't want to interrupt.

23 MR. GARDNER: Sorry about that.

24 THE WITNESS: No worries.

25 (Pause in the proceedings.)

1 THE COURT: Okay. Go ahead.

2 MR. GARDNER: In light of the events of
3 yesterday, we're obviously trying to determine the best
4 way we can go forward with that kind of testimony that's
5 satisfactory to everyone, so we made a judgment last
6 night after court that it made sense to put off
7 Mr. Allerhand, who was scheduled to go this afternoon,
8 to, you know, sometime next week, assuming he's available
9 or not -- we'll have to figure out a plan B -- to work
10 through the issues that were raised yesterday.

11 What that means as a consequence is our plan now
12 is to finish Mr. Lee, who in our judgment will not be a
13 long witness at least from the government's perspective,
14 and then play the remainder of the Studzinski video,
15 which I expect we will finish today, but there may be a
16 small gap at the end of the day today because of the
17 movement of Mr. Allerhand.

18 But I wanted to alert the Court to that ahead of
19 time. It wasn't our expectation to have a gap. I don't
20 think there would have been one, but in light of
21 yesterday, we wanted to move some things around a bit.

22 THE COURT: Well, I know these people are
23 traveling from New York City to be here to testify.

24 I did do some serious thinking about this overall
25 issue between yesterday afternoon and now, and I'll give

1 you some preliminary views that I have, which may guide
2 your thinking. And I'm still very willing to take a look
3 at whatever proffer you may wish to submit.

4 MR. GARDNER: Thank you, Your Honor. And we are
5 expecting to do that as quickly as we possibly can to
6 give this Court the latitude or the ability to look at it
7 seriously to give us some guidance.

8 THE COURT: And here's the major concern that I
9 have.

10 We've been through the testimony of Mr. Huebner,
11 and that situation I think is much different than the
12 situation we face now.

13 In Mr. Huebner's case, he was counsel to agencies
14 that are aligned with the defendant's side of the case,
15 and your decision to waive the attorney-client privilege
16 I think was intentionally made, and we are where we are
17 on that with the document production that has occurred
18 since then.

19 In the case of the outside counsel for AIG, it
20 seems to me to be a much different consideration. AIG
21 is not a party to this case. They are, as far as I can
22 tell, a cooperating nonparty. And their counsel who have
23 been present here in court have made it crystal clear
24 that they have no intention of waiving the company's
25 attorney-client privilege.

1 So when you put these witnesses on the stand who
2 were operating in a legal capacity, the events that they
3 are -- seem to be called to address are all events in
4 which they are in the role of providing legal advice and
5 counseling to their client AIG. They are functioning in
6 a legal capacity. They are doing what they have been
7 trained to do.

8 And although it may be possible to craft a line of
9 questions that walk a narrow path and would not of
10 themselves evoke privileged communication, there to me is
11 a significant risk that the witness either inadvertently
12 would slip into privileged information or, by opening
13 that door, it would seem to me to subject them to
14 cross-examination in which the disclosure of privileged
15 information, you know, might be relevant.

16 So my present thinking is to give paramount
17 importance to the interests of AIG and maybe even not
18 hear from these witnesses at all.

19 I think that there are probably other ways that
20 the defendant can make the record it desires in this
21 case, either through witnesses that are not -- do not
22 have the restrictions of privileged communications or
23 possibly through stipulations with the plaintiff because
24 I think a number of the fact items probably are not in
25 dispute and you can probably work them out. And I would

1 encourage you to do so as an alternative to subjecting
2 AIG to the considerable risk of disclosure that I see.

3 MR. GARDNER: Thank you, Your Honor. And we --

4 THE COURT: I mean, that's my present view on
5 that.

6 MR. GARDNER: And we certainly appreciate that.

7 And I can speak on behalf of the Department of
8 Justice and the United States. We have no intention of
9 trying to get AIG to blow any legitimate privileges they
10 may have, to be sure. And we're also not in the business
11 of putting attorneys on the stand simply to put attorneys
12 on the stand.

13 I would back up and note that, you know, many of
14 the attorneys who have been identified in this case were
15 identified as will-call witnesses by the plaintiffs as
16 well, Mr. Cohen from Sullivan & Cromwell. Mr. Allerhand,
17 the individual we want to call, is on plaintiffs' list.

18 So I think there is a meeting of the minds that
19 these witnesses have relevant information that doesn't
20 implicate the attorney-client privilege, because if it
21 were otherwise, my suspicion is the plaintiffs wouldn't
22 have put them on their list either.

23 We've been very careful and we've been, you know,
24 spending a tremendous amount of time internally to avoid
25 duplicative testimony and really trying to cull down

1 what's left in this case.

2 From the government's perspective, the plaintiffs
3 have not met their burden of proof, and we could probably
4 just sit down right now and call it a day, but we know
5 that this Court has said multiple times it wants to hear
6 the story.

7 Plaintiffs haven't really called anyone from AIG
8 to tell you that story. The government is intending to
9 do that because we think that the Court wants to hear
10 that story.

11 Mr. Reeder in particular tells a good portion of
12 that story, not about legal advice, but literally what he
13 saw, where he was, the chain of custody issues that we
14 talked about yesterday that we think would be helpful to
15 the Court in resolving these ultimate issues.

16 So we're trying to come up with, you know, a way
17 that we can get before the Court what those facts are
18 and what it actually is responsive to to give the Court
19 the opportunity to provide AIG some guidance. Because I
20 think where I sit, where I see things are, the Court is
21 uncomfortable giving a ruling without specific questions
22 and answers, which is completely understandable, and then
23 AIG is uncomfortable allowing it to go forward without a
24 clear ruling from the Court, so we have a bit of an
25 impasse here and we're trying to figure out a way we can

1 get past that impasse.

2 And that's why we thought the proffer idea, which
3 we are working on steadily and trying to get to you as
4 quickly as we can, will hopefully break that logjam and
5 will give the Court some I think comfort as to what kind
6 of testimony we seek to, you know, adduce, how it's
7 relevant to the issues in this case, and why we think
8 that that wouldn't effectuate a privilege, let alone a
9 subject-matter privilege.

10 But we definitely appreciate obviously the Court's
11 views and guidance on that.

12 THE COURT: And I appreciate your efforts, and it
13 just kind of places AIG in a very difficult position.

14 I was thinking -- and I don't know what the facts
15 might be, but just to give you a hypothetical, when you
16 say that you're trying to show a chain of custody for
17 this term sheet that resulted from a meeting at the
18 Federal Reserve Bank of New York, and I understand that
19 Mr. Wiseman of Sullivan & Cromwell attended this meeting,
20 and then he comes back later in the day and he gives it
21 to Mr. Reeder.

22 Well, I think it's perfectly appropriate to
23 inquire, well, who gave you that document from the
24 Federal Reserve Bank, so we get an answer to that. What
25 did he say to you? Well, he might say, He told me to

1 take it back and give it to AIG. What should we do with
2 it? Well, now we're getting into privileged
3 communications I think.

4 And then you get to Reeder and he might be asked,
5 Well, who did you talk to at AIG about that? What did
6 you tell them to do with it?

7 Those are all natural offshoots of the
8 chain-of-custody evidence that you want to present, and
9 yet plaintiff would be precluded from even going into
10 those subjects if we were to honor AIG's concerns.

11 MR. GARDNER: I hear you, Your Honor, and I think
12 that this Court has the inherent discretion and ability
13 to work out a solution that preserves AIG's privilege,
14 allows the government the ability to put on evidence, and
15 allows the plaintiffs a fair and full opportunity for
16 cross-exam.

17 And perhaps it is, you know, an ugly
18 question-by-question basis. Certainly that's not our
19 intention. We want to move things along as quickly as
20 possible, but we also want to make sure that the record
21 is complete.

22 So I think -- I hear the Court's concern about
23 cross-exam. I think there are ways to deal with that,
24 and we're just going to I think have to work collectively
25 and creatively to do that.

1 THE COURT: Well, one thought that I had -- and I
2 don't know what the deposition might say, but I've heard
3 that you have a 30(b)(6) deposition of Mr. Reeder.

4 MR. GARDNER: Mr. Reeder was AIG's
5 30(b)(6) designee.

6 THE COURT: So whatever testimony appears from
7 that deposition, it's already out there.

8 MR. GARDNER: That's true.

9 THE COURT: Maybe you want to offer the
10 deposition as a substitute for testimony. It's a
11 possibility.

12 MR. GARDNER: And that is something, Your Honor,
13 we have actually been very seriously considering.

14 You know, on the one hand, we have the
15 unavailability problems where, you know, I'm not sure
16 that we could conclude that he is unavailable.

17 On the other hand, one could conclude that because
18 of the privilege issues, he might be unavailable, so
19 under 801(d), you know, maybe we could designate
20 deposition testimony and the plaintiffs could
21 counter-designate. That is something that we have also
22 been seriously thinking about as a substitute or maybe in
23 addition to that proffer. And that's --

24 THE COURT: Well, as a practical approach to
25 giving paramount importance to AIG's privilege concerns,

1 that might be a practical way to deal with the issue.

2 MR. GARDNER: I don't disagree at all. And we are
3 actively working on trying to come to that, and if that's
4 where we ultimately rest, you know, everyone, you know,
5 so be it, and you know.

6 THE COURT: And the comments that I made may apply
7 with equal force to Mr. Allerhand's proposed testimony.
8 I don't -- I don't know how that's going to be any
9 different really.

10 MR. GARDNER: So I guess a few things.

11 In my judgment -- and I don't know how anyone else
12 feels -- I think Mr. Cohen and Mr. Reeder are sort of on
13 one side of the spectrum. They're Sullivan & Cromwell
14 attorneys who participated in the board meetings. Their
15 advice is reflected in those board meetings, which are
16 joint exhibits. They're in evidence now.

17 Mr. Allerhand was the attorney representing AIG in
18 the Walker litigation. You may remember Mr. Allerhand.
19 He presented the argument on behalf of AIG during the
20 demand.

21 THE COURT: I sure do. I remember him being in
22 court --

23 MR. GARDNER: Correct. That's exactly right.

24 THE COURT: -- on a memorable occasion when he
25 spilled water all over his notes.

1 MR. GARDNER: I'm guilty of doing the exact same,
2 except on computers.

3 THE COURT: And yet he went on, never skipping a
4 beat.

5 MR. GARDNER: He's impressive. He is impressive.

6 Mr. Allerhand's testimony, though, really would
7 be to clear up I think a misimpression that the
8 plaintiffs have made that somehow the government had
9 been involved in the Walker litigation. And our
10 expectation, although Mr. Allerhand was not deposed,
11 based on the documents and everything else we've seen,
12 that Mr. Allerhand would just testify as to what the
13 representations were that was made by AIG during the
14 Walker litigation and the United States government's
15 involvement in that litigation.

16 It strikes me that that is a very different side
17 of the spectrum which really I don't think even raises a
18 specter of privilege. What did he say to the Court, the
19 Delaware Chancery Court, and what is his understanding
20 about the involvement of the federal government in that
21 litigation, I think that's purely perception and speaking
22 to third parties.

23 THE COURT: Well, I'm certainly willing to hear
24 you out and I want to see what your proffer looks like
25 and --

1 MR. GARDNER: Absolutely.

2 THE COURT: -- I will give all the other counsel
3 involved here a chance to speak their minds, but I wanted
4 to share with you my preliminary thinking on this
5 subject, and I don't want people to have to make
6 unnecessary trips.

7 MR. GARDNER: Absolutely, Your Honor. That's why
8 we told Mr. Allerhand's counsel last night that perhaps
9 Mr. Allerhand should not fly down this morning to avoid
10 that unnecessary trip, and we will work through those
11 issues.

12 THE COURT: So why don't we take Mr. Lee this
13 afternoon, and are we -- do we have a full day tomorrow
14 then? Are we filled up?

15 MR. GARDNER: I think we are. We have two
16 witnesses tomorrow, Mr. Langerman, who was one of the
17 trustees of AIG Credit Facility Trust, and then
18 Mr. Offit, who's going to be I guess the second board
19 member this Court has heard from, not including
20 Mr. Willumstad, or third if you include Mr. Liddy.

21 And my sense is that if it doesn't go the full
22 day, it will go a good amount of the day. Part of it
23 depends on Mr. Boies or the plaintiffs'
24 cross-examinations, which I can't estimate right now, but
25 I think we'll go a pretty full day tomorrow.

1 THE COURT: Mr. Boies, would you like to weigh
2 in?

3 MR. BOIES: Your Honor, two things.

4 One, with respect to the schedule tomorrow, unless
5 they have a lot more with these two witnesses than I
6 think they do, I would be very surprised if they take
7 anything close to the day. I mean, my examination of
8 these witnesses, unless they say something that I don't
9 expect them to say, would be no longer than my
10 examination of this witness today.

11 I would like just to have the Court, when it's
12 thinking about this, have in mind a couple of points that
13 I might say in response to some of the things counsel for
14 the government said about this issue.

15 The first is with respect to Mr. Allerhand. If
16 what he's going to come in and do is say, This is what I
17 said to the Delaware court, that's not privileged.

18 On the other hand, I also think it's not
19 necessary because everything he said to the Delaware
20 court is either in a written paper or it's on the
21 transcript, I think.

22 Now, if they had an in camera discussion with the
23 Delaware court, then there might be some relevance to his
24 testimony. But just to say, This is what I said, unless
25 there is something that's off the record, I don't see

1 what that adds.

2 With respect to him saying what his understanding
3 was, that I think goes directly to the question of
4 privilege.

5 Now, with respect to Mr. Reeder, I know the Court
6 is looking for a practical solution to this, but I think
7 the attempt to use that deposition is going to end up
8 being very problematic for a variety of reasons,
9 including that there were some instructions not to answer
10 at the deposition and including the fact that that was
11 subject to the discovery rule.

12 And it's one thing for there to be no privilege
13 waiver because of an order on discovery. It's another
14 thing if they now affirmatively try to use that in
15 court. And I think there is a distinction there that if
16 they actually -- gets introduced -- and I also think
17 there is an unavailability issue, so I think -- I think
18 the use of the deposition is going to be problematic.

19 On the other hand, I have always believed that
20 this is something that we ought to be able to stipulate
21 to.

22 As I say, the only thing he's testified to so far,
23 which is that he took this thing at 8:44 and instructed
24 these two pages to be faxed to the Fed and the fact that
25 Mr. Wiseman brought back a document from the Fed, is

1 something that we would have stipulated to.

2 So I think that it may very well be, it should
3 be, if we can, you know, both sides be reasonable, I
4 think we ought to be able to stipulate to most of this
5 stuff.

6 THE COURT: That's my thought. In the little bit
7 of testimony that he offered yesterday I didn't see many
8 controversial subjects come up. You may be right about
9 the deposition.

10 I just want you, both sides, to understand that
11 I'm going to hold AIG's privilege claim as being of
12 paramount importance. I'm not going to do anything that
13 jeopardizes that.

14 MR. GARDNER: We understand, Your Honor.

15 THE COURT: So why don't we resume at 1:50 with
16 the testimony of Mr. Lee.

17 (Whereupon, at 12:48 p.m., a lunch recess was
18 taken.)

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1 Q. And what are your responsibilities as vice
2 chairman?

3 A. Well, I have many responsibilities. One of them
4 is as the company's senior investment banker working on
5 large and complex transactions.

6 Q. And how long have you held the position of
7 vice chairman?

8 A. Approximately ten years.

9 Q. So as of September 2008, the position you held at
10 JPMorgan was vice chairman?

11 A. Yes.

12 Q. Okay. Now, can you please briefly describe your
13 employment prior to serving as vice chairman of
14 JPMorgan.

15 A. Well, I joined Chemical Bank right out of college
16 and went through the management training program and then
17 built large parts of our investment bank with a great
18 many teams of people and then ran the investment bank for
19 a considerable amount of time.

20 Q. Now, to back up just a second, when you said that
21 you are the senior investment banker at JPMorgan, what
22 exactly does that entail?

23 A. That means when there's a very large transaction
24 that has, you know, extreme importance to the company,
25 the country, and so on, I'll be called on to work on it.

1 Q. Okay. Now, are you familiar with Jamie Dimon?

2 A. Yes. He's my boss.

3 Q. And as the boss, what's his position at JPMorgan?

4 A. He's chairman and CEO.

5 Q. Okay. Were you contacted by Mr. Dimon on the
6 morning of September 15, 2008 regarding AIG?

7 A. Yes.

8 Q. And what did Mr. Dimon ask you to do?

9 A. Well, he came by my office very early on that
10 Monday morning and asked me to go downtown and meet with
11 Tim Geithner and see if there was a private sector
12 solution to save AIG.

13 Q. Had you previously had any involvement with
14 helping to address AIG's liquidity issues prior to
15 September 15, 2008?

16 A. No.

17 Q. Okay. And were you aware of any efforts, if any,
18 that JPMorgan had undertaken to provide potential
19 financing to AIG before September 15, 2008?

20 A. No. I mean, I knew we had some folks working
21 there, but I was not involved. I was not aware of the
22 details. You know, I had plenty of other things to do at
23 the time.

24 Q. Of course.

25 So after your conversation with Mr. Dimon, what

1 did you do next?

2 A. I got in the car and went downtown, spent about an
3 hour with Bob Willumstad and then went over to sit with
4 Tim.

5 Q. So let's back up just a little bit.

6 When you say that you went downtown and met with
7 Mr. Willumstad, did you first go to AIG?

8 A. Yes. Yes.

9 Q. Okay.

10 A. Yes, I went to AIG and sat with Bob Willumstad for
11 about an hour.

12 Q. And what was the purpose of sitting with
13 Mr. Willumstad for about an hour on September 15, 2008?

14 A. Well, I needed to know a lot of things
15 immediately, and they all revolved around liquidity and
16 how much they had and how long they'd have it, and so on,
17 those sorts of things.

18 THE COURT: Sir, did you know Mr. Willumstad
19 previously?

20 THE WITNESS: Yes.

21 THE COURT: Okay. Thank you.

22 BY MR. GARDNER:

23 Q. How did you know Mr. Willumstad previously?

24 A. Bob worked at Chemical Bank a long time ago and
25 when I was there. I didn't know him that well, but I

1 knew him.

2 Q. Understood.

3 What information, if any, did Mr. Willumstad
4 provide you about AIG's liquidity needs at that
5 September 15 meeting?

6 A. Well, he gave me -- he gave me an indication of
7 the situation. I didn't get all the answers to my
8 questions, but he gave me -- he gave me a sense of the
9 problem.

10 Q. And what impression or sense did you have of AIG's
11 problems after meeting with Mr. Willumstad?

12 A. Well, after the meeting, my instinct was that he
13 thought they had longer than they had and he probably was
14 underestimating the size of the problem.

15 Q. What led you to those conclusions?

16 A. Well, I've been doing this a long time, and it
17 didn't take me long to come to that conclusion, and
18 so...

19 Q. Now, I think you said a few minutes ago you went
20 downtown, you met with Mr. Willumstad at AIG, and then
21 after that, you met with Mr. Geithner at the
22 New York Fed?

23 A. Yes.

24 Q. Is that correct? Okay.

25 Did anyone else attend that meeting with

1 Mr. Geithner at the New York Fed other than yourself?

2 A. Yes. There were plenty of people around the
3 table. Yes, is the answer.

4 Q. And can you describe either by their affiliation
5 or by who they actually are who attended that meeting?

6 A. Well, there were some folks there that I
7 recognized from Goldman Sachs, from Morgan Stanley, and
8 then of course I knew Tim and I assumed some of the
9 people there worked for Tim.

10 Q. Now, what was discussed during this meeting on
11 September 15 at the New York Fed?

12 A. Well, Tim was really laying out the state of play
13 and saying that, you know, I was -- been brought there to
14 see if there was a private sector solution and time was
15 of the essence, and so it was really sort of, you know,
16 state of play, what next.

17 Q. And did you then at that point try to find a way
18 to provide liquidity to AIG?

19 A. Well, what I did then was lay out what I thought
20 would be the appropriate game plan for the next 24 hours
21 to determine, you know, whether or not there was any
22 indication that you could have a private sector solution
23 to save the company, so it was more of a -- okay, what
24 kind of process are we going to follow, who's
25 accountable, when do we meet next, what information do we

1 need, that sort of thing, game plan.

2 Q. Can you describe to the best of your recollection
3 the game plan that you articulated on September 15?

4 A. Yes.

5 So I said, Look, we'll take teams from both
6 Goldman and JPMorgan, and we will obviously need access
7 to information, AIG information. And we broke the teams
8 down into four teams, broke the people down into four
9 teams.

10 One team was tasked with determining what was the
11 liquidity need for the company, the immediate liquidity
12 need, near-term liquidity need.

13 The second team was tasked with what is the value
14 of the company today, all the assets of the company, if
15 we were trying to establish a current value of them, what
16 number would that be.

17 The third team was to put together a term sheet,
18 was tasked to put together a term sheet, just in case we
19 determine that you could actually pull this thing
20 together. I didn't want to have to be scrambling for a
21 term sheet.

22 And the fourth team was who are the banks that
23 would participate in this and why.

24 So those were the four teams, senior Goldman and
25 JPMorgan people on all four teams.

1 Q. Let's march through what those four teams were
2 doing.

3 With respect to the first team, did that first
4 team establish an estimate of how much liquidity AIG
5 needed?

6 A. Yes.

7 Q. And what was the conclusions reached by that first
8 team?

9 A. Well, the conclusion was that -- you know, we
10 worked through the night to get to the conclusion or at
11 least the conclusion that we had as of sunrise the next
12 day. And the conclusion was that the company was going
13 to need around a hundred billion dollars. It could have
14 been less than a hundred billion dollars.

15 My instinct, having done so many of these, is
16 you're invariably wrong and you're -- and where you make
17 the mistake is the number is too low, especially in a
18 very large, complex company.

19 So that was -- that was the zone that we had come
20 up with.

21 Q. With respect to the second team that you
22 identified --

23 A. Yes.

24 Q. -- did the second team determine an actual present
25 value of the company?

1 A. I try not to use the word "present value" because
2 it's got sort of corporate finance connotations to it.
3 There was no discounting or anything.

4 Q. Sure.

5 A. This -- we were trying to establish what would
6 be -- if we offered the banks a lien on all the assets of
7 the company, what would they be worth today, what was
8 their current value.

9 Q. And did you reach a conclusion as to what the
10 current value of AIG was?

11 A. Yes, we did.

12 Q. And what conclusion did you reach?

13 A. Well, I would say the headline was that it was
14 dwarfed by the size of the liquidity need, even at the
15 low end of the liquidity need, so our sense was that it
16 might be 50-60 billion dollars, that kind of zone, to the
17 best of my recollection.

18 Q. Now, you mentioned a third team that was
19 responsible for creating a term sheet.

20 A. Right.

21 Q. Did a third team in fact create a term sheet?

22 A. Yes.

23 Q. And you mentioned a fourth team that was
24 determining who the private lenders might be.

25 Can you describe what efforts were undertaken by

1 that fourth team to identify private lenders.

2 A. Well, in a circumstance like this, the only
3 lenders you can reasonably expect are the banks that have
4 the existing exposure to the company, so they would be
5 engaged in some form of self-help exercise, which is how
6 these deals get done, and so we -- we were given a list
7 of the banks and their exposures. And that was really
8 the core, core list of participants who would participate
9 in a loan if there were one.

10 Q. And you say you were given a list of banks.

11 Who provided you that list? Was that AIG?

12 A. I don't remember exactly, but I think that list
13 came from the Fed.

14 Q. Okay. And did you ever contact any of these
15 potential private lenders or banks to propose a loan to
16 AIG?

17 A. No.

18 Q. Why not?

19 A. Well, there would be no reason to call them if you
20 had already come to the conclusion that this was not a
21 loan that could be made safely, securely, timely fashion,
22 et cetera.

23 Q. Did you reach a conclusion that this was not a
24 loan that could be made safely, securely, and in a timely
25 fashion?

1 A. Yes.

2 Q. And why did you reach that conclusion?

3 A. Well, no bank is, you know, knowingly going to
4 make a loan that the collateral value is insufficient to
5 repay it.

6 Q. Was this a close call, in your view?

7 A. No, it wasn't a close call. It was not a close
8 call. And there was 100 percent agreement at least
9 between the two banks on this was the right call.

10 Q. Now, you mentioned that AIG's liquidity needs were
11 greater than the value of AIG's assets.

12 Based on your experience, Mr. Lee, are lenders to
13 distressed companies reluctant to extend loans in amounts
14 as large as the total value of the collateral supporting
15 the loans?

16 A. Well, it's slightly more complicated than that
17 because the collateral, for example, in this particular
18 case would have been a large aggregation of securities,
19 some liquid, some not, long-dated securities, probably
20 innumerable fixed assets, so -- so banks would then -- if
21 this had actually gone forward, the due diligence process
22 would have entailed at least in part going through asset
23 class by asset class by asset class and then determining
24 what was the correct loan-to-value for that particular
25 asset, working off the notion that you would lend more

1 money against cash of course than you would against, say,
2 a building.

3 Q. Do lenders tend to take haircuts against the
4 collateral?

5 A. Yes. Yes. That's in effect what I'm saying.

6 Q. Okay. I just wanted to --

7 A. Like a margin loan, for example.

8 Q. Got it. Got it.

9 Now, the conclusions that you just discussed, did
10 you share those conclusions with Mr. Geithner?

11 A. Yes.

12 Q. And what, if anything, did Mr. Geithner ask you
13 after sharing those conclusions?

14 A. Well, I don't recall the exact questions, but we
15 talked about it for a little bit, and then he wanted to
16 switch the discussion into, well, what if this company
17 were to fail, what if we were just to let it go.

18 Q. Did Mr. Geithner ask you for your views on that
19 topic?

20 A. Yes, he did. Yeah.

21 Q. Did you share those views?

22 A. I did, yes.

23 Q. And what views did you share with Mr. Geithner?

24 A. Well, I said simply that -- you know, by then of
25 course I was quite familiar with who the banks were and

1 what their exposures were. And you know, there was
2 plenty of concentration of AIG risk in large groups of
3 global banks, and the numbers were actually -- they
4 actually surprised me, they were so large per bank,
5 especially the European banks.

6 And you know, my -- my conclusion at the time was,
7 if this company went down, there would be just an
8 enormous domino effect and you wouldn't really know,
9 you know -- you couldn't predict the end of it.

10 Q. Now, this discussion that you had about the
11 consequences of bankruptcy, is that a conversation you
12 had with Mr. Geithner in the morning of September 16?

13 A. Yes.

14 MR. GARDNER: Okay.

15 Your Honor, we didn't provide a binder because
16 there's a single document we're using. May I approach?

17 THE COURT: Sure.

18 MR. GARDNER: Thank you.

19 THE COURT: This is a first.

20 MR. DINTZER: We're slimming down, Your Honor.

21 BY MR. GARDNER:

22 Q. Now, Mr. Lee, do you recognize what has been
23 marked as JX 65?

24 A. Yes.

25 Q. And the second page of this -- sorry.

1 The third page of JX 65, is this the term sheet
2 that you were referring to earlier in your testimony that
3 was developed by I believe the third of the teams?

4 A. Yes.

5 Q. Now, if you could explain, what was the purpose of
6 the draft term sheet?

7 A. Well, you know, as I said, our goal was to report
8 back to Tim Geithner first thing the next morning, and I
9 didn't want to be scrambling for any of the important
10 pieces to this exercise if indeed we were going to move
11 forward, so that's why I -- before I even knew whether or
12 not a loan would be made, I wanted to see, if we made a
13 loan, what would it look like so that we could have a
14 reasonable discussion about it.

15 Q. Now, I want to ask you a question about some of
16 the particular terms, and I notice the term sheet states
17 in brackets that the loan will be for 75 billion.

18 Do you see that?

19 A. Yes.

20 Q. How was the 75 billion figure determined?

21 A. Well, first of all, it's got brackets around it,
22 which was meant to signal we don't know if this is the
23 right number. That's number one.

24 Number two is, when the term sheet was actually
25 written, which was somewhere in the middle of the night,

1 this was basically a placeholder-type number. It was in
2 the general zone of where we thought the liquidity need
3 was, but it would certainly, again with brackets, would
4 have been adjusted based on due diligence, based on what
5 other banks felt if you actually got everyone in a room
6 and started having a conversation like that.

7 It also reflected some calculus that you would be
8 making with respect to, okay, well, how many banks are
9 there that have sufficiently large individual exposures
10 that would say, I would like to participate in this
11 exercise in order to protect my exposure, so I think the
12 simple math here was something like -- oh, and one
13 other -- one additional part of the calculus would have
14 been and how much did we think each bank might consider
15 lending.

16 Again, these were all -- these were all very
17 educated estimates, but we hadn't spoken to any bank, so
18 a term sheet like this could change considerably if you
19 actually went forward.

20 So taking those considerations into account, there
21 was, say, 15 big global banks that might participate in a
22 loan like this. Based on the list that we had,
23 \$5 billion each seemed like a reasonable place to start
24 with these banks, and so that's sort of triangulating
25 around the 75.

1 Q. You've mentioned several times this afternoon
2 your experience in working on big deals and things like
3 that, and I neglected to ask you this, so I should just
4 straight up ask you.

5 Can you describe some of the big deals that you've
6 worked on in your career that informed your experience
7 and judgment working on this deal.

8 A. Well, I've worked on many of them and at varying
9 points in time in my career. And when we started and
10 built our first risk structuring practice, I worked on
11 many, many bankruptcies, largely of large retailers,
12 Macy's, Alex stores, Zale's, Hill's, Ames, in that credit
13 cycle, and then more recently, you know, bigger, more
14 industrial-type companies like General Motors and
15 Chrysler, and so on, so...

16 Q. You mentioned with respect to the dollar amount,
17 the 75 billion figure, that ultimately that could be
18 adjusted based upon a number of factors, including
19 due diligence?

20 A. Yes.

21 Q. Is that right?

22 A. Yes.

23 Q. What is the significance of doing due diligence
24 vis-à-vis coming up with a number for lending purposes?
25 Can you describe what that relationship is.

1 A. Well, part of your due diligence would be
2 ensuring that whatever size of the facility you
3 ultimately arrived at would be more than comfortable to
4 satisfy all the liquidity needs that the company could
5 reasonably expect to have in the near term.

6 So that would be one question you would be asking
7 yourself in a due diligence process.

8 Q. And based on your experience, given a company the
9 size of AIG, how long would it take to conduct full
10 due diligence to make a reasonable determination of a
11 proper loan amount?

12 A. Well, if you weren't forced into doing it in a
13 distressed situation, it would take -- I think in this
14 case it probably would have taken from start to finish a
15 week, two weeks, something like that. It could have
16 taken longer than that.

17 It depends on how much information you've got
18 readily available, instantaneously and in a form that
19 people can review it and understand it and sort of so on
20 and so forth. And I would say one to two weeks is
21 aggressive. In a regularized situation to do
22 due diligence on a company of this size, scale and scope,
23 it would take at least a month.

24 Q. What about in a distressed situation?

25 A. Well, in a distressed situation, it's going to

1 take -- you're just going to drill down harder and
2 harder and harder and you're going to have trouble
3 finding information. That's one thing that always slows
4 down a due diligence process, is is the information
5 readily available in a form that you can understand, and
6 so on.

7 And you'd be, you know, getting banks from all
8 over the world. They'd be sending their senior teams.
9 You know, it would be quite a process.

10 Q. Now, turning back to the indicative term sheet,
11 JX 65, there's an interest rate identified, again in
12 brackets, of LIBOR plus 650 basis points with a
13 3.5 percent LIBOR floor.

14 Do you see that?

15 A. Yes.

16 Q. Do you know how the team arrived at that interest
17 rate?

18 A. No, I don't. I can just safely assume, though,
19 because it was a good team, that they were trying to
20 index it against other high-risk loans.

21 Q. And did you have any view at the time as to
22 whether it was possible that that interest rate could
23 have been adjusted to be even higher had a loan gone
24 through?

25 A. Sure. And that's why it's got brackets on it.

1 And that number, like the amount number, in these
2 situations, when you just start analyzing them, the rates
3 tend to go up. The liquidity need tends to go up. I
4 mean, they tend to be sort of in a one direction kind of
5 thing when you get into these situations.

6 Q. And when the liquidity needs go up, what impact
7 does that have on the interest rate?

8 A. Well, if the liquidity needs go up and nothing
9 else changes, i.e., the fundamentals of the credit, the
10 loan will be perceived as a riskier loan, so therefore,
11 lenders would, at least in theory, demand a higher
12 interest rate.

13 Q. Now, the term sheet also calls for a 79.9 percent
14 equity stake to be provided to the lender.

15 What was the reason for the inclusion of this term
16 in the term sheet?

17 A. Well, I'd say there's two reasons at least. One
18 would be, you know, you're functioning as lender of last
19 resort for this company if you were to have made the
20 loan. And second -- and therefore, this would be
21 characterized as equity risk by a banker.

22 And then secondly, it wasn't clear to me anyhow
23 that the LIBOR plus in effect 10 percent would be
24 sufficient to get banks to participate in the financing.

25 Q. You said something called equity risk?

1 A. Yes.

2 Q. I'm not familiar with that term.

3 What's equity risk?

4 A. Equity risk is subordinate to debt risk. I mean,
5 it's the bottom of the balance sheet, and you know,
6 typically you don't receive an interest rate only when
7 you take an equity risk, as any stock investor would tell
8 you.

9 Q. You also said something that you -- you were not
10 sure that the interest rate alone would have been
11 sufficient to attract investors.

12 A. Right.

13 Q. What did you mean by that?

14 What does the equity component do that you believe
15 would have attracted investors?

16 A. Well, at this stage, the banks would be
17 functioning as lenders of last resort and they would have
18 perceived it as equity risk, and therefore, they would
19 have wanted an equity feature to the security that they
20 were going to be asked to participate in.

21 Q. And when you say the term "risk," what risks in
22 particular are you referring to here?

23 A. Risk of survival, risk of the company making it.

24 Q. Now, after you advised President Geithner that a
25 private sector loan would not be possible, did there come

1 a time when you learned that the Federal Reserve Bank of
2 New York was considering making a loan to AIG?

3 A. Yes.

4 Q. Do you recall when you learned that?

5 A. Well, Tim had been very clear that there was no
6 government solution here, so in our discussions, that
7 was the -- those were the instructions that we were
8 given. And it really wasn't until later in the day
9 actually on that Tuesday that I had a sense that
10 something like that might happen.

11 Q. And Tuesday being September 16?

12 A. Yes.

13 Q. Okay.

14 A. Yes. Sorry.

15 Q. Now, after you advised Mr. Geithner that a
16 private sector loan would not be possible, did you have
17 any discussions with representatives of Morgan Stanley
18 about releasing JPMorgan's attorneys?

19 A. Yes.

20 Q. When did that discussion take place?

21 A. It was around the lunch hour, approximately.

22 Q. And what was your understanding at the time of
23 Morgan Stanley's role?

24 A. My understanding was that they were advising the
25 Fed.

1 Q. And did you ultimately give a release to the
2 Davis Polk attorneys to perform work on behalf of the
3 New York Fed?

4 A. Yes.

5 Q. And what lawyers in particular are you referring
6 to there? Do you recall any particular attorneys?

7 A. This gentleman whose name is on the e-mail,
8 Marshall Huebner.

9 MR. GARDNER: Okay. Your Honor, I pass the
10 witness.

11 THE COURT: All right. Thank you, Mr. Gardner.

12 MR. BOIES: Your Honor?

13 THE COURT: Yes, go ahead.

14 MR. BOIES: Thank you.

15 - - - - -

16 CROSS-EXAMINATION

17 BY MR. BOIES:

18 Q. Good afternoon, Mr. Lee. My name is David Boies.
19 We haven't met, but I suspect you understand that I
20 represent the plaintiffs in this case.

21 A. Yes.

22 Q. Let me begin with what counsel for the defendant
23 was asking you about, and that is Joint Exhibit 65.

24 A. I'm in one of these binders here (indicating)?

25 Q. Actually I think what it was was it was handed up

1 to you.

2 THE COURT: It's the list document that the
3 government gave you.

4 THE WITNESS: Oh, that one. Okay. Sorry.

5 BY MR. BOIES:

6 Q. I take it that you did not personally participate
7 in the preparation of this term sheet; is that correct?

8 A. That's correct.

9 Q. Who led the effort to prepare this term sheet?

10 A. I don't remember exactly who led it, but I do know
11 that some of our senior people who do this for a living
12 were very involved.

13 Q. Who were those senior people?

14 A. Well, one was a gentleman named Andy O'Brien, who
15 ran this business for us.

16 Q. And did Mr. O'Brien participate in the preparation
17 of this term sheet?

18 A. To the best of my recollection, yes.

19 Q. Did you have discussions with Mr. O'Brien about
20 the term sheet?

21 A. To the best of my recollection, yes.

22 Q. When did those discussions take place?

23 A. Somewhere in the middle of the night that night.

24 Q. When did you first see a copy of this term sheet?

25 A. Somewhere in the middle of the night. I don't

1 remember exactly when.

2 Q. Can you be a little more specific than saying it
3 was in the middle of the night?

4 A. I wish I could. I mean, it was -- each team
5 reported out, and when the term sheet team reported out,
6 they handed me the piece of paper.

7 Q. And the interest rate that counsel for the
8 government was talking to you about --

9 A. Yes.

10 Q. -- was quite a high interest rate; correct?

11 A. I wouldn't describe it as high. I would describe
12 it as the rate that they felt was appropriate for the
13 risk.

14 Q. Let me ask you if you could to turn to your
15 deposition.

16 A. Okay.

17 Q. And I'm particularly going to direct your
18 attention to pages 44 and 45.

19 A. Okay.

20 Q. And at the bottom of page 44 line 24:

21 "QUESTION: How did JPMorgan arrive at LIBOR plus
22 650 basis points for the interest rate?

23 "ANSWER: I don't recall the precise analysis that
24 we did that night on that, but it would have been indexed
25 against a series of very high-risk loans. The rate is

1 10 percent, as you can understand it, I'm sure, so, which
2 would have been quite a high interest rate."

3 Do you see that?

4 A. Right. No. I see it. And you can --

5 Q. Did you --

6 A. Oh, I'm sorry. Go ahead, please. Sorry.

7 Q. And you do recall having your deposition taken;
8 correct?

9 A. Yes.

10 Q. And you were under oath at the time; correct?

11 A. Yes.

12 Q. And you were giving complete, honest and accurate
13 testimony.

14 A. Yes.

15 Q. Now, let me turn to the warrants that are provided
16 for.

17 These are warrants for 79.9 percent of the equity;
18 correct?

19 A. Yes.

20 Q. And you don't know where the figure 79.9 percent
21 came from, do you?

22 A. No.

23 Q. Let me ask you to look at Defendant's Exhibit 285,
24 which I will hand up to you.

25 (Pause in the proceedings.)

1 This is an e-mail from someone at JPMorgan to
2 other people, at least some of whom are from JPMorgan.

3 Do you recognize any of the people, either the
4 person who authored this or any of the people who got
5 it?

6 A. Yes.

7 Q. Can you identify those that you recognize and what
8 their position was.

9 A. Doug Braunstein, I don't remember what his
10 position was at the time, senior banker.

11 Tim Main, the same, senior banker.

12 Marty Dolan, the same, senior banker.

13 Mark Feldman, the same, senior banker.

14 Shall I keep going or --

15 Q. Yes.

16 A. Oh, okay.

17 Therese Esperdy, the same, senior banker.

18 Jeff Zajkowski, senior banker.

19 Kevin Willsey, senior banker.

20 Warfield Price, banker.

21 I would say that's it.

22 Q. Which of those people, if any, worked with you
23 during the roughly 18 hours or so that you were involved
24 in the assignment that government counsel has asked you
25 about?

1 A. Doug Braunstein was there.

2 Marty Dolan was there.

3 Mark Feldman was there.

4 Those are the ones I remember.

5 Q. Now, this is dated September 13, 2008; correct?

6 A. Yes.

7 Q. And that was before you had undertaken the
8 assignment that came from Mr. Geithner; correct?

9 A. Yes.

10 Q. Counsel asked you whether you were aware of work
11 that JPMorgan was doing for AIG, and I think you said
12 that you were aware that there were some people working
13 on it, but you didn't know the details?

14 A. That's right.

15 Q. Is that fair?

16 A. Yes.

17 Q. Did you ever have any discussions with any of
18 these people -- well, let me back up for a minute.

19 Were any of the people that you've identified here
20 involved in the team that was preparing the term sheet
21 that you testified became Joint Exhibit 65?

22 A. I don't recall.

23 MR. BOIES: Your Honor, I would offer
24 Defendant's Exhibit 285.

25 MR. GARDNER: No objection.

1 THE COURT: Defendant's Exhibit 285 is admitted.
2 (Defendant's Exhibit Number 285 was admitted into
3 evidence.)

4 BY MR. BOIES:

5 Q. Now, prior to just now, had you ever seen this
6 series of term sheets before?

7 A. They don't look familiar to me.

8 Q. Prior to my showing you these term sheets this
9 morning, were you aware they existed?

10 A. No.

11 Q. And I take it that means you've never had any
12 discussions with any of these people about it; is that
13 fair?

14 A. I certainly don't remember having any.

15 Q. Did counsel give you a copy of Plaintiffs' Trial
16 Exhibit 66 in their book? Is that in --

17 MR. GARDNER: There was no book, Your Honor.

18 THE COURT: There's no book.

19 MR. BOIES: A single document.

20 BY MR. BOIES:

21 Q. You talked about a list that you believed was
22 given to you by the Federal Reserve of banks that had AIG
23 counterparty exposure. Do you recall that?

24 A. Yes.

25 Q. Would you look in the binder that we have given

1 you at Plaintiffs' Trial Exhibit 66, which I would offer.

2 MR. GARDNER: No objection.

3 THE COURT: Plaintiffs' Trial Exhibit 66 is
4 admitted.

5 (Plaintiffs' Exhibit Number 66 was admitted into
6 evidence.)

7 BY MR. BOIES:

8 Q. And if you'd turn to pages 2 and 3 of this
9 exhibit, is this the counterparty exposure list that was
10 furnished to you by the government?

11 A. I don't remember seeing this exact document
12 before.

13 Q. What was the form of the exposure list that you
14 did get?

15 A. I remember it being more simply stated than this
16 with just aggregate exposure numbers.

17 Q. Now, is that a document that you threw away or
18 destroyed in some way?

19 A. No. I mean, it was passed around. I certainly
20 didn't even keep it.

21 Q. It was what?

22 A. It was just passed around and I certainly didn't
23 even keep it. I just remember looking at it.

24 Q. Now, you've been prepared for this testimony;
25 correct?

1 A. Yes.

2 Q. And in connection with that preparation, you were
3 shown documents; correct?

4 A. Yes.

5 Q. Were any of the documents that you were shown the
6 exposure report that you say existed?

7 A. I don't remember seeing one.

8 Q. Who did you meet with in preparation for your
9 testimony?

10 A. Our attorneys (indicating).

11 Q. Just -- you've got to just identify them for the
12 record.

13 A. Richard Rosen and Mike O'Connor.

14 Q. Anyone else?

15 A. No.

16 Q. And were all the documents that they showed you
17 documents that were JPMorgan documents?

18 A. I don't know what that means.

19 Q. Well, I mean -- you know what I mean by
20 "JPMorgan."

21 A. I know that. I got that one.

22 Q. And obviously you know what I mean by "documents."

23 A. Prepared by JPMorgan?

24 Q. Yes.

25 A. They were documents that the attorneys showed me.

1 I don't know who prepared them, honestly.

2 Q. Well, let me back up.

3 Were the -- and I may have missed a step here.

4 Were all the documents that were shown to you --

5 A. Yes.

6 Q. -- documents that originated back in 2008?

7 A. As best as I know, yes.

8 Q. Okay. And were all of those documents documents
9 that in 2008 had been prepared by someone at JPMorgan?

10 A. Well, this exposure document that we're talking
11 about was not prepared by JPMorgan.

12 Q. But you've told me you didn't see the exposure
13 document in your preparation; right?

14 A. That's correct. I'm talking about that day when I
15 was at the Fed, I was shown an exposure document. And I
16 never saw it again.

17 Q. When you left the Fed, did you take a copy of the
18 exposure document with you?

19 A. I certainly don't remember taking one with me.

20 Q. As I understood your testimony -- correct me if
21 I'm wrong --

22 A. Right, right.

23 Q. -- your testimony was that the banks that you were
24 going to contact --

25 A. Right.

1 Q. -- were the banks that were listed on this
2 exposure document.

3 A. That's correct.

4 Q. And while I would grant that you may have a great
5 memory, you would have needed something on paper to
6 remind you who those banks were; correct?

7 A. That's correct.

8 Q. And so does that refresh your recollection that
9 you probably took a copy of this with you?

10 A. I highly doubt that I took a copy with me. It was
11 not -- it was not something that I was focused on, that
12 particular issue. Once I saw the names on a piece of
13 paper and saw the amounts, it was quite clear to me that
14 there was a group of banks who, if you had a loan, they
15 would be interested if the loan was a sound, secure loan,
16 and so on.

17 Q. Didn't you tell counsel for the United States
18 that one of the four teams that you had working
19 diligently away was a team working on who the banks
20 would be?

21 A. Yes.

22 Q. And is it your testimony that you didn't give
23 that team the list of exposed counterparties that you'd
24 been furnished?

25 A. I don't know what happened to that list. I just

1 remember seeing it in Tim's -- in the conference room. I
2 looked at it. I would assume that I gave it to somebody,
3 and I didn't look at it again, at least I don't recall
4 looking at it again.

5 Q. When you say you assume that you gave it to
6 somebody, now, that would imply that you actually took it
7 back from the Fed and gave it perhaps to your team, which
8 would be a logical thing to do.

9 A. That could -- it could have happened. I honestly
10 just don't recall.

11 Q. Do you recall, from your memory of this exposure
12 list that you say you only saw once, that JPMorgan was on
13 that list?

14 A. Yes.

15 Q. And do you remember what JPMorgan's exposure to
16 AIG was?

17 A. I don't remember the precise number, but I knew we
18 were on the list.

19 Q. And was it in the range of \$10 billion?

20 A. I just really don't remember.

21 Q. Was it a substantial amount of money?

22 A. Yes.

23 Q. Now, you told counsel for the United States that
24 Joint Exhibit 65 or at least the last two pages of
25 Joint Exhibit 65 was the term sheet that your

1 private sector group had prepared; correct?

2 A. Yes.

3 Q. Let me ask you to turn to page 35 of your
4 exhibit -- of your deposition, of your deposition. And
5 if you look at page 34, you'll see that we're talking
6 about Joint Exhibit 65, the cover e-mail from you to
7 Marshall Huebner and the four-page document.

8 Do you see that?

9 A. On page 34?

10 Q. Yes.

11 A. Yes.

12 Q. And then on page 35 line 9 you're asked:

13 "QUESTION: Is this the term sheet that the group
14 prepared?

15 "ANSWER: I don't know if it's exactly the term
16 sheet, but it looks like it."

17 Do you see that?

18 A. Yes.

19 Q. And that was --

20 MR. GARDNER: Your Honor, I would ask that
21 Mr. Boies read the next two lines as well. It's not
22 really quite clear to me why he's reading the deposition
23 because it does not appear to be impeachment.

24 MR. BOIES: Your Honor, if we're going to have
25 speeches like that, could we have them outside the

1 presence of the witness?

2 THE COURT: Yeah, let's not --

3 MR. GARDNER: Your Honor, objection. Improper
4 use of the deposition transcript. And also I would ask
5 that counsel read the next two lines because it is
6 incomplete.

7 MR. BOIES: Your Honor, I don't think it's
8 incomplete at all. I'll read the next two lines, but I
9 don't think it's at all incomplete.

10 THE COURT: All right. Let's read the next two
11 lines.

12 BY MR. BOIES:

13 Q. In fact, I'll read the rest of the page or at
14 least down to line 22.

15 Starting at line 9:

16 "QUESTION: Is this the term sheet that the group
17 prepared?

18 "ANSWER: I don't know if it's exactly the term
19 sheet, but it looks like it.

20 "QUESTION: Any reason to believe it isn't?

21 "ANSWER: No.

22 "QUESTION: Do you know who the specific
23 individuals were who were involved in preparing this term
24 sheet?

25 "ANSWER: I remember one of the guys who was on

1 that team was -- is one of our top guys in this field,
2 and he is copied here, Andy O'Brien."

3 And you gave that testimony; correct?

4 A. Yes.

5 Q. Now, is it still the case that you do not know
6 whether this is exactly the term sheet that your group
7 prepared or not?

8 A. I'm assuming it is.

9 Q. Yes. And there's no reason why that would not be
10 a reasonable assumption.

11 A. Okay.

12 Q. But I'm trying to distinguish between reasonable
13 assumptions --

14 A. Right.

15 Q. -- and testimony that's based on personal
16 knowledge.

17 A. Okay.

18 Q. And is it fair to say that based on your personal
19 knowledge, you don't know whether this is exactly the
20 term sheet or not, as you said in your deposition?

21 A. I'd say that's true, yeah.

22 MR. BOIES: Moving right along, Your Honor.

23 BY MR. BOIES:

24 Q. Did you discuss any of the terms contained in this
25 term sheet or any term sheet with anyone at AIG prior to

1 the evening of September 16, 2008?

2 A. I don't remember discussing any of these terms
3 with anyone at AIG.

4 Q. Did you or, insofar as you are aware, anyone
5 ever show a draft of what has been marked as
6 Joint Exhibit 65 or any other term sheet to any employee,
7 officer, director, attorney or other representative of
8 AIG?

9 A. No.

10 Q. Did you ever discuss the proposed terms in any
11 term sheet with anyone outside of JPMorgan or
12 Goldman Sachs?

13 A. I don't remember doing so. No.

14 MR. BOIES: Your Honor, I pass the witness.
15 Thank you.

16 THE WITNESS: Okay.

17 THE COURT: All right. Any redirect?

18 MR. GARDNER: Very brief, Your Honor. Two
19 questions.

20 THE COURT: All right.

21 MR. GARDNER: Maybe three, depending on the
22 answers.

23 THE COURT: Okay. I'm going to write that down.

24 MR. GARDNER: Hold me to it, please.

25 - - - - -

1 REDIRECT EXAMINATION

2 BY MR. GARDNER:

3 Q. Mr. Lee, can you turn to JX 65. That's the e-mail
4 with the indicative term sheet. It's the loose document
5 I handed you earlier.

6 A. Yes.

7 Q. Now, on the top of this e-mail, is that an e-mail
8 from you to Mr. Huebner?

9 A. Yes.

10 Q. And did you provide him in this e-mail with this
11 indicative term sheet?

12 A. Yes. It looks that way.

13 Q. Do you have any reason to doubt that you actually
14 had in your possession the term sheet that is the
15 attachment to JX 65?

16 A. Can you repeat that. I want to make sure I'm
17 answering --

18 Q. Sure.

19 Do you have any doubt that you had in your
20 possession on September 16 the indicative term sheet
21 that's connected to the e-mail that is JX 65?

22 A. No.

23 Q. Now, you were asked a question by Mr. Boies about
24 a high interest rate. Do you recall that?

25 A. Yes.

1 Q. He showed you your deposition?

2 A. Yes.

3 Q. Was the rate, in your judgment, high when
4 compared to the risk that you viewed associated with the
5 loan?

6 A. No. Not at all.

7 Q. Why do you say that?

8 A. Well, by any measure, it was -- had it been made,
9 it would have been an extremely risky loan.

10 MR. GARDNER: Your Honor, that was my second or
11 third question. I pass the witness.

12 THE COURT: All right. Anything further,
13 Mr. Boies?

14 MR. BOIES: Just briefly, Your Honor.

15 - - - - -

16 RECROSS-EXAMINATION

17 BY MR. BOIES:

18 Q. Mr. Lee, let me direct your attention to
19 pages 44 and 45 of your deposition --

20 A. Uh-huh.

21 Q. -- which we looked at before, although we may have
22 stopped one question too soon last time.

23 At the bottom of page 44, line 24:

24 "QUESTION: How did JPMorgan arrive at LIBOR plus
25 650 basis points for the interest rate?

1 "ANSWER: I don't recall the precise analysis that
2 we did that night on that, but it would have been indexed
3 against a series of very high-risk loans. The rate is
4 10 percent, as you can understand it, I'm sure, so, which
5 would have been quite a high interest rate.

6 "QUESTION: When you say other high-risk loans,
7 what are you referring to?

8 "ANSWER: High-risk loans in the market,
9 high-yielding loans."

10 Do you see that?

11 A. Yes.

12 Q. And that was your truthful, accurate and complete
13 testimony at your deposition?

14 A. Yes.

15 MR. BOIES: No more questions, Your Honor.

16 THE COURT: All right. Mr. Lee, thank you very
17 much for your testimony in this matter. You are
18 excused.

19 THE WITNESS: Okay. Thank you. Thank you,
20 Your Honor.

21 THE COURT: Yes.

22 MR. GARDNER: Your Honor, at this juncture we're
23 going to thrill the Court with more video deposition
24 designations from Mr. Studzinski.

25 THE COURT: All right. Who's bringing the

1 popcorn?

2 MR. GARDNER: Your Honor, I assume Mr. Boies is
3 bringing the popcorn, but I could be mistaken.

4 MR. BOIES: It would be only fair.

5 (Pause in the proceedings.)

6 MR. MIZOGUCHI: Your Honor, could we have a few
7 minutes while we set up?

8 THE COURT: Sure. Let's go off the record and
9 just let me know when you're ready.

10 MR. MIZOGUCHI: Thank you.

11 (Discussion off the record.)

12 THE COURT: Back on the record.

13 MR. MIZOGUCHI: Oh, Your Honor, I believe there is
14 an exhibit coming up, PX 929.

15 Your Honor, it was one of two -- I understand that
16 this is one of two exhibits that was handed up separately
17 and that it was a deposition exhibit, PX 929.

18 THE COURT: Yes.

19 MR. MIZOGUCHI: Thank you.

20 (Video on.)

21 Whereupon --

22 JOHN STUDZINSKI

23 a witness, called for examination, having been previously
24 duly sworn, was examined and testified, via videotape,
25 further as follows:

1 Q. PX 929, the top e-mail, is an e-mail from
2 Brian Schreiber to you, dated 9-14 with the Bates number
3 BXSTARR 579.

4 Have you had a chance to review the e-mail,
5 Mr. Studzinski?

6 A. Yes. Where I'm telling the client off here. "I
7 should sit in on as many meetings as possible to ensure
8 transparency." Yes, that's exactly right. I was very
9 assiduous that weekend about not letting too many people
10 have conversations unless I could witness what was going
11 on.

12 (Admonition from the court reporter.)

13 (Video off.)

14 THE COURT: The audio seems more garbled today
15 than previously.

16 (Discussion off the record.)

17 (Video on.)

18 Q. PX 929, the top e-mail, is an e-mail from
19 Brian Schreiber to you, dated 9-14, with the Bates number
20 BXSTARR 579.

21 Have you had a chance to review the e-mail,
22 Mr. Studzinski?

23 A. Yes. Where I'm telling the client off here. "I
24 should sit in on as many meetings as possible to ensure
25 transparency." Yes, that's exactly right. I was very

1 assiduous that weekend about not letting too many people
2 have conversations unless I could witness what was going
3 on.

4 Q. Let me direct you to the subject line, which is
5 "Mr. Bing CIC."

6 Who is Mr. Bing?

7 A. Mr. Bing -- sounds like something out of a
8 Fitzgerald novel.

9 Mr. Bing is one of a number of a investment
10 professionals located in New York City who is employed by
11 CIC, and he was contacted by Brian Schreiber and invited
12 to participate in reviewing material that weekend. He is
13 more junior than other people who we were also going to
14 deal with at CIC. He was also being represented, I think
15 you may know, by Deutsche Bank.

16 Q. Were you ever made aware of a proposal by
17 Mr. Bing, if any?

18 A. I did not -- my understanding was that Mr. Bing
19 was in receipt mode that weekend and that he had no
20 authority or decision-making power. And I don't believe
21 he was doing anything other than receiving.

22 And for those of us that know CIC well, he would
23 have done nothing other than receive and analyze and then
24 converse with Beijing, which I think he agreed to do.

25 Q. What was the cause of the shift between Sunday and

1 Monday that you described just now?

2 A. What was the cause? Good question.

3 I would say the cause was an increasing -- number
4 one, it was very clear as of the end of Sunday there were
5 no tangible proposals.

6 Number two, it was very clear that whether there
7 was going to be a liquidity problem on Monday, Tuesday or
8 Wednesday, there would probably be one, based on our
9 modeling, by Tuesday or Wednesday, and therefore, we
10 probably -- none of those discussions were going to bear
11 fruit and produce a solution that was long-lasting.

12 And number three, obviously as of Monday morning,
13 JPMorgan and Goldman Sachs had been asked by the
14 government to play a much more proactive role in trying
15 to raise funding, either from banks, third parties or
16 private sector funding and what have you.

17 Also, last point, I would say that given that
18 Blackstone was now on board for 48 hours from Sunday into
19 Monday, we had a much greater professional concern as to
20 what the real magnitude of the hole was, and therefore,
21 our own professional judgment and our reputation was such
22 that we couldn't look any possible investor straight in
23 the face and say that the right level of capital required
24 to solve this in the short-term was X. There were too
25 many moving pieces and there was too much uncertainty

1 given the state of the company, the lack of clear
2 information.

3 And thirdly, what was going on in the market more
4 broadly, as you'll recall, was many financial
5 institutions that Monday were withholding liquidity.
6 Because remember, the markets opened, you had to deal
7 with CDSs and how the market was looking at credit
8 derivatives. And the market was looking at -- you had --
9 the market's view of AIG, rightly or wrongly, was
10 becoming more skeptical, if not onerous.

11 Q. Do you know if the unavailability of the liquidity
12 window impacted the decision of CIC to make an equity
13 investment?

14 A. There was no direct discussion with CIC or with
15 GIC for that matter, since they're both referenced here
16 as having been discussed at the board meeting, about
17 their further need for time and due diligence to secure
18 commitment of investment and whether or not they would
19 need any type of liquidity undertaking by the Fed.

20 They were not -- they were not -- they -- they
21 were not aware of the need for liquidity and we would
22 never ever -- and remember, I'm a financial advisor. I
23 must keep certain information private. We would never on
24 a Sunday or a Saturday have been -- made the reference to
25 liquidity as being a material issue to GIC or to CIC with

1 the view that it could have caused a greater run on
2 financial markets.

3 We did -- so the answer is no. I mean, that had
4 nothing to do with it. It was more the fact that they
5 needed to take their time to confirm the issues.

6 We knew privately, of course, what the company's
7 state of play was and we knew the company's state of play
8 wasn't going to make five to ten business days.

9 So they were totally mutually exclusive events.
10 One was not affected by the other.

11 Q. Do you agree that one of the primary constraints
12 faced by AIG during -- between September 12 and
13 September 16 weekend was the short time frame in which it
14 was seeking capital?

15 A. Well --

16 (Video off.)

17 MR. MIZOGUCHI: Your Honor, the next document is
18 DX 388, and it is already in evidence I understand.

19 (Video on.)

20 A. -- just to be clear, AIG had a short window, and
21 it was the ability to secure private funding over a
22 weekend without an orderly process or without being able
23 to provide proper information was a major constraint.

24 Q. I have just one question for you on this e-mail.

25 On the second sentence, you write, "We continue to

1 plan for a possible filing for bankruptcy."

2 Do you know when AIG first considered bankruptcy
3 as an option?

4 A. Someday you have to explain to me why you object
5 to all these things. I don't...

6 Well, I think as a matter of professional
7 thoroughness, when we began having discussions with the
8 board on Sunday evening, we had a whole range of
9 financing scenarios, capital-raising scenarios, but
10 ultimately, to be a good financial advisor, you have to
11 plan even for a scenario that is, as I said earlier,
12 a .000001 percent scenario. And therefore, we began
13 including the list of bankruptcy administration or
14 insolvency on Sunday and then -- and we made it very
15 clear when we spoke to Mr. Geithner on Sunday night that
16 we were in search of a liquidity facility, and we did not
17 use the word "bankruptcy."

18 I'm very careful to use the word "bankruptcy."
19 It's one of those words you don't use unless you're
20 actually quite serious about it. You can study it,
21 consider it, but you don't use it unless you start to
22 think about it as a viable, real option.

23 Now, when this e-mail was written, which is on
24 Monday -- or it was on Tuesday.

25 Q. It was on Tuesday.

1 A. We had gotten through Monday. There was no
2 Goldman Sachs/JPMorgan private sector, bank-driven
3 funding solution. We went through Monday night, and the
4 Fed and I had a very general discussion through
5 Ruth Porat that we weren't sure they were going to get
6 there, and therefore we went to bed on Monday night with
7 the view that, you know, all the king's horses and all
8 the king's men may not be able to put Humpty Dumpty
9 together again here. And the reality was we needed to
10 think more vividly about real options, which had to
11 include bankruptcy.

12 The reason for that also is that we were mindful
13 of the fact that we had a number of state insurance
14 regulators, particularly the states of California and
15 Texas, who were ready to seize the insurance assets under
16 their jurisdiction and their right under law and seize
17 the assets in those states because they felt the
18 financial frailty of the company was becoming more and
19 more onerous.

20 So on Tuesday, when this was written, we continued
21 to plan for a possible filing for bankruptcy. I would
22 say it was both real, but we also had to make it very
23 clear to the government that this was real, that it was a
24 financial situation, potentially a disaster waiting to
25 happen, and that they had to be -- that this was real and

1 we were not playing games.

2 And because if you were me -- and I know this is a
3 speculative comment. You won't like this -- but if you
4 were me and the government didn't really believe it,
5 we're under a legal obligation to file bankruptcy if the
6 company could not operate as an ongoing concern. We had
7 no choice. We had to comply with the law. And the board
8 was not going to violate the law as a financial
9 institution, particularly in the face of a financial
10 crisis where clearly a lot of other financial
11 institutions had had a serious problem, so we had to
12 really -- we were being very, very disciplined in how we
13 approached this whole definition of liquidity and
14 solvency during that day.

15 Q. I would like to just stay for a moment on a point
16 you made earlier about the state insurance regulators.

17 What was your understanding of the insurance
18 regulators' position with regard to seizure if AIG
19 decided to file for bankruptcy?

20 A. Well, we were advised by a number of lawyers that
21 the insurance companies of AIG all were perfectly
22 financially standalone viable, that the insurance
23 regulators, state insurance commissioners in the states
24 of -- depending on how they were incorporated in their
25 jurisdictions, could seize the companies if they felt

1 that the companies' policyholders or the companies'
2 financial position were in danger of jeopardizing, they
3 could actually seize them and take full control of them.

4 And we not only had that advice, but we also had
5 the visitor from the New York commissioner and phone
6 calls and rather aggressive communications with other
7 states, including Texas and California, who made it very
8 clear that they would not necessarily wait for the board
9 to do anything, that if they felt the situation had
10 deteriorated, they would basically seize the assets
11 themselves.

12 And we were advised -- and I think it is minuted
13 in a number of places here -- was that they had a perfect
14 legal right to do that under state law.

15 Q. Do you know if the New York state commissioner --
16 the New York state insurance commissioner told anybody at
17 AIG that it would seize the insurance assets if AIG filed
18 bankruptcy?

19 A. The protocol that all these state insurance
20 commissioners follow -- I think they are well-scripted by
21 their lawyers -- is that under law they have a right, if
22 they feel as though policyholders are jeopardized and
23 their financial interests are jeopardized, they have a
24 right to seize assets and they have to take that -- and
25 we had to take that under advisement. And they would

1 only -- they didn't say that in the context of
2 bankruptcy. They said that in the context of their
3 assessment of their perceived eroding financial
4 situation. They never ever said that it was related to
5 bankruptcy. They said it was related to the perception
6 of the company's financial position was getting perceived
7 to be weaker and weaker.

8 What is the difference between "definitively
9 seize" and "seize"?

10 Q. That it would do so regardless of any future
11 events.

12 Did Mr. Alderson Smith tell you that the insurance
13 regulators in California and Texas would definitively
14 seize AIG's insurance subsidiaries?

15 MR. BROWN: Objection to form.

16 MR. PHILLIPS: Same objection.

17 THE WITNESS: What is the definition -- what is
18 the difference between "definitively seize" and "seize"?

19 BY MS. CHAN:

20 Q. That it would do so regardless of any future
21 events.

22 MR. BROWN: Objection to form.

23 BY MS. CHAN:

24 Q. That's the definition I am providing here.

25 A. I will use my words, which is, if they felt that

1 the financial situation of the company with respect to
2 its policyholders and the financial position of the
3 policyholders was jeopardized or endangered and such that
4 the financial viability of the holding company of AIG
5 and/or its insurance companies was endangered, they would
6 exercise their right to seize the insurance company
7 assets and take operating responsibility as well. They
8 have that right.

9 And we knew it because they not only said it was
10 on the telephone, but they also were physically
11 downstairs in the building, so it was -- you know, it was
12 definitely "Annie Get Your Gun" here. It was not
13 conceptual. It was not hypothetical. It was real.

14 Q. And Mr. Studzinski, when you say "they" were
15 downstairs, who were "they"?

16 (Video off.)

17 THE COURT: Can we stop here for a moment and take
18 an afternoon break?

19 MR. MIZOGUCHI: Yes, Your Honor.

20 THE COURT: Let's resume at 3:30.

21 (Court in recess.)

22 THE COURT: All right. Let's go ahead with the
23 video.

24 (Video on.)

25 A. Representatives. They were representatives from

1 the states of Texas and California. And that was told to
2 me by Martin Alderson Smith.

3 Q. Do you know any of the names of the individuals
4 that were there from the states of --

5 A. No.

6 Q. -- California and Texas?

7 A. No.

8 Q. Mr. Studzinski, have you ever dealt with a
9 situation where an insurance company's parent -- the
10 parent of an insurance company files for bankruptcy while
11 the insurance subsidiaries themselves are
12 overcapitalized?

13 A. I would say that this situation is unique and I
14 can't generalize. I've never dealt with -- I don't
15 understand the question you raise.

16 Q. What I'm trying to understand is in your
17 professional experience if you've ever dealt with a
18 situation where a parent company files for bankruptcy
19 even though their insurance subsidiaries are
20 well-capitalized.

21 A. I am not familiar with any.

22 Other than you have to remember one thing in your
23 own due diligence and investigation here, that the parent
24 company is beholden to its equity and debt, its
25 shareholders and its bondholders. The insurance

1 companies are beholden to their policyholders, and even
2 if they are overcapitalized, they remain overcapitalized
3 if the state insurance commissioner where they're
4 domiciled decides that that is what they are going to
5 remain.

6 State insurance commissioners have incredible
7 power over this. And you must -- you have to understand
8 that. They do not have -- you do not have carte blanche
9 with respect to insurance companies under state insurance
10 commission law to sort of restructure capital of
11 insurance companies without the approval of the state
12 regulator. That was black-and-white.

13 So I have never dealt with a situation like this
14 before. It is unique. I never dealt with the situation
15 where you have a bankruptcy of the holding company and
16 overcapitalization of insurance companies.

17 But I do know, since I've been doing insurance
18 company work since I started at Morgan Stanley in August
19 of 1980, I first joined the insurance group then, so I
20 knew insurance companies pretty well and I dealt with
21 insurance regulators before. They don't have a sense of
22 humor. And if you want to meet people that don't have a
23 sense of humor in a situation like this, they have no
24 sense of humor. Zero. This is not -- this was not even
25 something where lateral thinking was an option.

1 Q. Okay. Outside of New York, California and
2 Texas, were you aware of any other state insurance
3 regulators that were in contact with AIG between
4 September 12 and 16 of 2008?

5 A. Not state insurance regulators.

6 Q. Okay. What other -- are there other insurance
7 regulators outside of state insurance regulators that
8 were in touch with AIG between September 12 and 16 of
9 2008?

10 A. Well, no. I mean, we have to remember this is
11 not a U.S. insurance company. This is effectively
12 de facto an Asian insurance company. And therefore,
13 Asian insurance regulators were all very concerned
14 because in some cases the large AIA insurance entity
15 based in Hong Kong, which had some 13 subsidiaries or
16 14 or 15 subsidiaries, depending on how you look at it,
17 some of those were providing just insurance products and
18 some of them were providing other types of products and
19 in some cases they were providing banking products.

20 So some of the countries involved who had
21 jurisdictional oversight, such as Hong Kong and
22 Singapore, were very worried that they might have to
23 seize assets and take financial responsibility.

24 As a matter of fact, it was very clear to me -- it
25 was told to me by the governor of Singapore that if the

1 holding company had a problem, they would have to take
2 financial responsibility for ensuring that the business
3 in Singapore did not -- and the customers, the consumers
4 in Singapore, did not suffer or did not have a problem.
5 They were very focused on that.

6 All of Asia was very focused on that because there
7 hadn't been a financial crisis since the Asia financial
8 crisis many years prior, where they had not seen a
9 situation where you had one financial institution that
10 touched almost every country in Asia.

11 Q. What work, if any, did Blackstone do around AIG's
12 options concerning the filing of bankruptcy?

13 A. I would say that we did very little formal work
14 around filing of bankruptcy because we didn't really
15 discuss the filing of bankruptcy until the proper board
16 meeting on the evening of Tuesday, September 16.

17 (Video off.)

18 MR. MIZOGUCHI: Your Honor, the next document that
19 is about to be used is PTX 705.

20 (Video on.)

21 Q. I believe that earlier, just a few minutes ago,
22 you said that you remember that Mr. Geithner said, Don't
23 do that. Is that correct?

24 A. We said -- Bob was very clear that if we didn't
25 have any indication of financial support or liquidity

1 facilities or bailout, we would have to be in a position
2 to file bankruptcy.

3 Q. And in response, did Mr. Geithner say, Don't do
4 that?

5 A. I think -- I think that don't do that is not
6 entirely what he said. My impression of what he -- and
7 again, that's six years ago, so you have all the sort of
8 Hollywood and television in the interim here, but my
9 impression was we'll get back to you before you do that
10 or something. It was more constructive. I think it was
11 very much we'll get back to you before you'd have to do
12 that.

13 Q. If you look several lines down, it's the third
14 paragraph up from where that section break is that's
15 demarcated by a line in the middle of page 4 of 6, and it
16 starts with a quote, and it says, "You should try and
17 undo whatever you've done, Geithner ordered, and hung
18 up."

19 Do you recall Mr. Geithner making a substantially
20 similar statement in your conversation -- in the
21 conversation between him and Mr. Willumstad?

22 A. I don't know. Where are you referring to?

23 Q. It's the -- do you there's a small line in the
24 middle of page 4? And if you count up from there to the
25 third paragraph, and there's a quote that starts with the

1 word "you."

2 A. Well, what Bob was saying here is that we were
3 going to have to act as a board. Remember, the board was
4 being a board, and it was a good board, and they were
5 basically behaving: "Unless you can assure me we're
6 going to go ahead with the backup."

7 I don't recall this -- I do not recall this "you
8 should try and undo whatever you've done," because the
9 truth is we hadn't done that much other than to look at
10 the technical aspects of how the whole thing would be
11 work from a legal, regulatory standpoint.

12 One thing I would caution you about about using
13 this, which is a sort of docudrama, fiction/nonfiction
14 document, is that the way this was done is that Andrew
15 interviewed by everybody and then he circulated it. And
16 a number of people's lawyers went through it and edited
17 it. And there were a number of people threatening to sue
18 Andrew for defamation of character or professional
19 negligence or whatever, and therefore, he edited in a
20 way, my understanding, to -- he did not want the book to
21 get held up in court for twelve months because he felt
22 that he wanted to publish it ASAP while it was a timely
23 subject.

24 So for that reason, I'm quite -- I would be quite
25 careful from a judgment point about referring too much to

1 this because it was subject to a lot of lawyers -- I love
2 lawyers, of course -- going through it and wordsmithing
3 it a bit.

4 Q. Right. And that is why I wanted to ask you about
5 the document instead of relying on it.

6 A. So "undo the thing," Tim Geithner doesn't talk
7 that way generally unless -- and I don't know. I'm
8 assuming you've deposed Tim Geithner, so he'll have his
9 own view of this. Let him speak for himself.

10 Q. I would like to switch gears a little bit and ask
11 you, at some point on September 16, did you become aware
12 that the government decided to provide assistance to
13 AIG?

14 A. On September 16, which is Tuesday, did I become
15 aware?

16 I mean, could you rephrase the question and make
17 it more specific? Obviously the answer is yes, I did
18 become aware, but...

19 Q. How did you become aware of the government's
20 decision?

21 A. Well, there were shades of gray and nuances and
22 more than 50 shades of gray in this case. There was like
23 787 shades of gray I think technically if you go to your
24 color spectrum.

25 But the -- obviously throughout the morning, with

1 the conversations that Mr. Willumstad had had with
2 Mr. Geithner and that Mr. Peterson had had with
3 Mr. Geithner, we had some degree of comfort that there
4 would be some type of proposal or credit agreement
5 proposed to the board of AIG.

6 But of course, the formal agreement didn't
7 materialize, I think I said earlier, until
8 approximately -- the board meeting was 5:00. If I
9 recall, there was somewhere between 30 minutes --
10 approximately 30 minutes prior to the board meeting.
11 There was a Fed governors meeting at 2:00 that day where
12 they were actually going to discuss this proposal, and
13 that governors meeting -- we knew we wouldn't get
14 anything formal until after the Fed governors meeting,
15 but here we basically got a proposal around 4:30.

16 Q. What was your reaction to the terms under which
17 the government would provide aid to AIG?

18 A. Well, there's a reaction on several levels.

19 Number one, I was focused on why the number was
20 85 and not 75 or 95 because I felt in my own mind that no
21 one had had a real tangible handle on the liquidity needs
22 of the company in the next sort of 48 hours.

23 Number two, I understood why they were looking at
24 80 percent and not 99.9 percent because I knew enough
25 about the debt and how change of control at the parent

1 level beyond 80 percent -- beyond 79.9 would have caused
2 all the debt to become due, which would have a number
3 of -- which would cross-default into a number of other
4 elements of the capital structure, and that was not
5 something that anyone wanted to do, so any equity debt
6 injection. We knew enough about the capital structure to
7 know that.

8 Number three, I was sad that Bob Willumstad was
9 being asked to leave and Ed Liddy appointed and that I
10 knew that this was going to be the last thing I said to
11 the board or, I mean, a number of things, but I mean, it
12 was effectively a very cursory proposal and until you
13 actually saw the cost of the debt, because we thought the
14 cost of the debt might, in terms of greater detail, you
15 had to just be aware that this was not inexpensive, but
16 it was in fact the only option, and the other option was
17 bankruptcy.

18 Q. With regard to your second observation concerning
19 the 79.9 versus the 80 percent stake in equity, can you
20 describe or can you explain in more detail why you
21 believed 79.9 was necessary versus 80?

22 A. I can only explain that it's based upon a
23 technical interpretation of the debt covenants and a
24 technical definition of change of control as it related
25 to the parent holding company structure.

1 Q. And if you could explain those concepts, please.

2 A. The concept is very simple. If more than
3 79.9 percent is -- goes into the hands of a new owner,
4 then all the debt has the right to be repaid. And that
5 would require a much larger -- bondholders would be
6 happy, but that would require a much bigger cash
7 contribution by the U.S. government or by the
8 New York Fed.

9 So that was not something we wanted to do because
10 the essence of the whole restructuring was we wanted to
11 preserve creditworthiness.

12 So this was seen as a credit backstopping as much
13 as anything else as a loan. But what people miss in this
14 situation is that the credit, the AAA credit of the U.S.
15 government was actually standing behind this very
16 complicated, misunderstood and not understood capital
17 structure of AIG. And during that phase, while this was
18 sort of an \$85 billion loan, was effectively a liquidity
19 loan, because that 85 billion would be used up relatively
20 expediently, and the purpose of it was really at the same
21 time for the government to be standing there as an owner
22 because de facto then their credit rating, namely that of
23 the U.S. government of AAA, became -- or at least it was
24 at the time. Now, that's changed since then -- but that
25 became a very relevant part of maintaining the debt in

1 place.

2 Because -- and you can get much better people on
3 this than me. But the parent company debt was very much
4 based upon the creditworthiness of AIG staying at a
5 certain level. That has to be investment grade. And if
6 it went below investment grade, then all that debt would
7 have a problem in terms of having it be repaid.

8 So what people forget in this whole AIG situation
9 is it wasn't just a bailout. It was having the credit
10 backstop, the creditworthiness of the U.S. government's
11 balance sheet -- and I mean bigger balance sheet --
12 behind this AIG restructuring, which was now going to
13 take many months and certainly over a year to accomplish
14 on a professional level. It wasn't just a short-term
15 liquidity, as we of course learned subsequently when many
16 more -- much more cash was needed to draw down.

17 Q. I see Ms. --

18 (Video off.)

19 MR. MIZOGUCHI: Your Honor, the next document that
20 is about to be used is PTX 108.

21 (Video on.)

22 Q. -- Ms. Porat's response to you, but it doesn't
23 address your question. She writes, "Dan Jester asked me
24 to ensure that you and your client knows 8:00 p.m. is
25 absolute latest for funding. Call if you have

1 questions."

2 Did you have another conversation with Ms. Porat
3 where she responded to your question?

4 A. Yeah. I did call her because I was -- the problem
5 with this building, with where the boardroom was, was
6 there wasn't always uniform e-mail service.

7 So I did have a conversation with her, and that
8 was not an option at that juncture.

9 Now, of course what happened subsequent to that is
10 the amount of cash needed was far in excess of 85, as a
11 matter of fact.

12 So the issue of -- to be very blunt, the financial
13 situation of the company got so much worse rather than
14 better in terms of liquidity problems that -- and the
15 likelihood of selling any assets in the short term was --
16 because of the state of the world was pretty limited.

17 So, you know, the 85 number kept going up as a
18 liability. And the U.S. government was not -- it was
19 quite interesting. The U.S. government never once --
20 you know, we had meetings every Monday morning -- well,
21 at one point we were having meetings every morning. Then
22 we started shifting it to every Monday -- with the credit
23 rating agencies, with the Treasury, the Fed,
24 Morgan Stanley, AIG, Blackstone, and it was very clear
25 that the government had to keep providing liquidity here.

1 And even though that became politically more and more
2 awkward, it was necessary for the perception to stabilize
3 the situation and because it was the government's credit
4 standing is what, you know, was necessary to stabilize
5 this business.

6 So the 80 percent at that point became, you know,
7 a bit of a -- you know, we didn't really go there. We
8 discussed it from time to time, but it was not an ongoing
9 issue other than the first day when Ruth just said it was
10 not something the government was prepared to do.

11 Q. Well, what you had testified earlier was that the
12 board knew that 8:00 p.m. was the latest.

13 What I'm asking is, after receiving this e-mail,
14 did you advise the board, after receiving this e-mail at
15 that time, that 8:00 p.m. was the latest possible for
16 funding?

17 A. We advised the board, my colleagues and I, that we
18 had an 8:00 deadline. And I specifically personally
19 advised and walked up and whispered in the ear of
20 Bob Willumstad that we had an 8:00 funding deadline.

21 And our judgment was that that was not -- I should
22 ask you the question. Do you know why that is? Because
23 that was not an unofficial deadline because, remember,
24 the Asian businesses were twelve hours ahead, so they
25 were all going to open -- they were opening. Japan had

1 already opened. And I knew enough -- and again, it's
2 confidential, but Japan was one of the big liquidity
3 issues, and therefore, earlier in the day we did the
4 funding map as to where the businesses had liquidity
5 issues and what businesses.

6 So when you overlaid that on the clock,
7 8:00 wasn't a negotiating deadline, which is what some
8 would like to project, it was actually a commercial
9 deadline in that those businesses were going to open the
10 following day for business.

11 This wasn't about stock trading. These are all
12 AIG operating businesses in Asia that were going to need
13 funding and some of the banks may or may not. Because,
14 remember, Lehman had gone bankrupt, so you had a lot of
15 people in the market who were very skeptical about
16 providing liquidity, so the Fed wanted to make sure that
17 the Asian operations were going to open and stable,
18 because if they were not stable, that would have
19 reverberated back to New York in an hour or a half an
20 hour, and that would have caused a much bigger spiral of
21 counterparties. And it could have had much more
22 onerous -- and again, no one talks about this, but that
23 would have had a much more onerous impact on the
24 financial system.

25 And that's a judgment. Again, the 8:00 -- I mean,

1 Ruth and I talked about it that afternoon -- the 8:00 was
2 not some self-imposed deadline of some big swinging dick
3 trying to be a clever negotiator. It was a cycling -- it
4 was real because the clock -- I mean, it was 8:00 in
5 New York. That's -- that happens to be 8:00 in the --
6 well, you know your Asian clock is 8:00 or 9:00 or 7:00
7 in -- depending upon where you are in Asia.

8 Q. Do you recall any private investors that were
9 interested in taking over the funding role from the
10 Federal Reserve after September 16 of 2008?

11 A. Well, there was a whole lot of chest beating from
12 a number of constituencies.

13 Mr. Greenberg of course had said that he was in
14 touch with a number of sources of funding, both Asian and
15 other.

16 I think I mentioned in an earlier part of today's
17 deposition that Ed Liddy and I had a breakfast with
18 Roger Altman of Evercore and Eli Broad. And I think what
19 became very clear is that everybody wanted to step in and
20 be an investor, but when it actually came to taking an
21 un- -- you know, an unlimited indemnity for the financial
22 credit posture of this entity, no one was, A, in a
23 position to do that, partly because they weren't going to
24 take that risk; B, they weren't able to quantify it; and
25 C, the government, having to stabilize the situation,

1 wasn't going to be willing to enter.

2 Because what happened was -- it's quite
3 interesting -- we had a number of people who kept coming
4 in the door, saying, We've got to do this, this and this
5 and we'll step into the shoes of the government, but then
6 ultimately they would do it to a certain level and then
7 say, well, at this level, pick a number, 85, a hundred or
8 whatever, we ultimately want the government to be there.

9 So the government was saying, Wait a minute, we're
10 already there, so we're going to give someone else the
11 chance to make the upside, and yet under a worst-case
12 scenario you want us to be there anyway, so let's just
13 stay with the program.

14 So no one was prepared to take unlimited credit
15 backing for this entity. And remember, they had to be
16 sufficiently rich to maintain the investment grade
17 rating. This was not something we could go down the road
18 of a sub-investment grade rating, because if you did,
19 again, all the debt would trigger.

20 Again, this is not something that has been very
21 well-articulated by the market. People have to
22 understand this was a very intricate situation. We had a
23 lot of people walking in the door, and you can ask
24 Ed Liddy about Roger Altman and -- what's his name --
25 Eli Broad. Everybody was very confident and everybody

1 was very robust. We had lots of private equity people.
2 We had -- Mr. Greenberg was very confident.

3 And Mr. Greenberg was right in that the company
4 had great assets and they should be fundable. But this
5 was -- this big facility was a bridge facility that had
6 to be able to ultimately backstop an unlimited liability
7 for the foreseeable future. No one was prepared to do
8 that.

9 Remember, you were doing it not today, when
10 there's 3.5 trillion in cash in the S&P 500, but you were
11 doing it at a time when effectively the banks had no
12 money and everybody was pretty much terrified of poor
13 liquidity.

14 So it was a very different environment.

15 So there was -- and I actually thought
16 Tim Geithner's position here was very pragmatic. If
17 someone wanted to step into this, he was more than happy,
18 but I think he knew that there were a lot of people
19 looking, there were a lot of bottom dwellers, just to
20 call -- pick a good word, but no one at the end of the
21 day was prepared to take the unlimited credit
22 responsibility and at the investment grade level. No one
23 could do that.

24 Q. Let me know if I did not hear you correctly, but I
25 believe that one of the things that you just said was

1 that the government was happy to have the private market
2 take over the funding role from the Federal Reserve so
3 long as they took over the entire funding role and not
4 just a portion of it where the government would not be
5 able to --

6 A. The government --

7 Q. -- obtain all its upsides.

8 A. That's not what I said. You're trying to put
9 words in my mouth.

10 What I said was, everybody made proposals where
11 they were prepared to take responsibility for funding up
12 to a certain level, but then at beyond a certain level
13 they wanted the government to come back in, to step back
14 in or to remain there as an ultimate supporter.

15 And you know -- and politically that's ridiculous,
16 so the government basically gives the private sector the
17 upside and then the government sits there and holds the
18 can of shit if things don't work out.

19 Q. And I wasn't trying to put words in your mouth. I
20 was trying to clarify your answer so we have a clear
21 record.

22 A. The government was trying to be very fair I think
23 to the extent that anyone was in a position to do it.
24 And we did see a lot of people.

25 I mean, it became 80 Pine Street that -- from

1 Tuesday night when it was announced, it became a souk.
2 You know, it was a souk. Wednesday morning, Thursday
3 morning, Friday morning, the following week, we had
4 people calling and coming, financial investors from all
5 over the world, every smart investment banker, every
6 smart private equity person, everybody thought -- but of
7 course no one understood how complicated the capital
8 structure was.

9 And this is before Maiden Lane structures were
10 even contemplated and people didn't know -- because what
11 people didn't realize was what was happening at the
12 holding company, which of course, you know, the holding
13 company balance sheet -- and no one has asked this so
14 far -- \$6 trillion balance sheet, you know, it's
15 terrifying. What is that?

16 Q. So out of all of those financial investors that
17 were coming in the door after September 16, 2008, did any
18 one of them have a proposal for --

19 A. Lots of people said they wanted a proposal. Lots
20 of people said they wanted to make a proposal. Lots of
21 people said -- no. The short answer is no.

22 We quickly got proposals for people saying, We
23 would love to buy the crown jewels, you know, starting
24 with AIA. You had people who were all thinking they
25 could exploit the weakness in the short term, so you had

1 no one wanting to take responsibility for the whole
2 holding company, but then you had people quickly coming
3 in and saying, We'll give you, you know, \$15 billion,
4 \$10 billion, \$20 billion for AIA, whatever.

5 And it was Blackstone's judgment that we needed
6 to -- that wasn't a proposal for the whole company. That
7 didn't step into the shoes of the Fed. That was really
8 someone trying to cherry-pick assets from a company that
9 was basically on its ass.

10 (Video off.)

11 MR. MIZOGUCHI: Your Honor, the next exhibit is
12 JX 144.

13 (Video on.)

14 Q. Does this refresh your recollection that as of
15 November 9, 2008, there was discussions between the
16 New York Fed and AIG about a restructuring of the credit
17 facility that was agreed to on September 16?

18 A. Yes. No, no, no. This was -- no. This --
19 absolutely. No. This was -- I mean...

20 Q. Okay. And the first question I have for you is,
21 in this last sentence on page 6, it says, "Mr. Studzinski
22 described the differences between the proposed
23 arrangement and the situation at September 16, noting
24 that the former was very much a bridge decision while the
25 current situation was a thoughtful, comprehensive

1 partnership."

2 What was the basis of your understanding that the
3 situation on September 16 was a bridge decision?

4 Let me strike that and ask you, what is a bridge
5 decision?

6 A. It's a broad term and it applies to different
7 things in different situations.

8 Q. And what did you mean here?

9 And what did you mean here?

10 A. In discussing this, Blackstone and the comments
11 here were aimed at saying that the original proposal was
12 really aimed at stabilizing the financial capital
13 structure of AIG and the markets and the liquidity
14 position, and it was basically trying to deal with the
15 liquidity problem.

16 This looks longer term at putting in place a
17 financing arrangement, realizing that it would take
18 longer to restructure certain aspects of the capital
19 structure, and that the government would have to have
20 different -- would have to -- this was basically a
21 partnership in terms of selling certain assets and having
22 certain views about debt and equity in the broader
23 capital structure.

24 This was, to put another way, one was the finger
25 in the dike, which was based upon timing and urgency

1 given the financial markets and this company's situation.
2 The other one was a thoughtful restructuring plan to try
3 to work out an arrangement that would be a win-win for
4 the policyholders, the stakeholders of AIG, including the
5 shareholders, including the minority, which the board
6 continued to focus on, rightly, as well as, of course,
7 the government and the need of the government to
8 demonstrate to the taxpayer that it was going to pay the
9 taxpayer back.

10 And that was what I meant as a restructuring. It
11 was something we also had to do given the nature of
12 having to restructure Maiden Lane II and III, which in
13 itself is not uncomplicated.

14 Q. I would like to refer back to the
15 February 24 minutes that we were just looking at.

16 Was the ultimate restructuring, to use your words,
17 seemly, that the Fed ultimately agreed to later in March
18 of that year?

19 A. Seamy?

20 Q. I believe -- I thought you said --

21 A. Not seamy, seemly.

22 Q. I apologize, sir. I misspoke.

23 Was the ultimate restructuring acceptable to AIG
24 or, in your view, acceptable to AIG and different from
25 this proposed plan that was characterized as

1 nationalization?

2 A. The ultimate restructuring was what you know now,
3 which is the 80/20, and it was also -- you know, the
4 government -- you know, the government didn't sit on the
5 board. The government just had observers. They had
6 people they appointed at one point, but the reality was
7 they had the right to appoint board members and that they
8 had observers, so the government really treated this as
9 an arm's length thing, and they had to be very careful
10 not -- I mean, and in the end actually this has turned
11 out to be one of the most positive restructurings of all
12 time. And many business school cases will be written on
13 this as a great restructuring given how quickly actually
14 it had occurred in the context of, you know, when you
15 compare this to other financial institutions who had
16 problems in 2008.

17 I mean, the reason why it actually worked is that
18 there was a lot of discipline between the government, the
19 board, the management, and the policyholders really liked
20 AIG, so they didn't really want to abandon it. And
21 you know, 20 percent, while I think lots of people were
22 frustrated, it should have been more, whatever,
23 20 percent of the shareholders still were gaining a lot
24 of value there as the company came back and rebounded.

25 (Video off.)

1 MR. MIZOGUCHI: Your Honor, that is the end of the
2 designated clips.

3 The last session there was actually using JX 180.

4 THE COURT: Okay.

5 MR. MIZOGUCHI: And there are only two documents
6 that we have to deal with that have not previously been
7 admitted.

8 One was Plaintiffs' Trial Exhibit PTX 108, and
9 we'd like to move the admission of that.

10 MR. BOIES: No objection, Your Honor.

11 THE COURT: Plaintiffs' Trial Exhibit 108 is
12 admitted.

13 (Plaintiffs' Exhibit Number 108 was admitted into
14 evidence.)

15 MR. MIZOGUCHI: Thank you, Your Honor.

16 The other exhibit that was used was -- and we're
17 indifferent whether this was admitted. It is an excerpt
18 from PTX 705. It's really hearsay. It's the Too Big to
19 Fail book that was used to question the witness by
20 plaintiffs' counsel, so if the Court wants to just take
21 notice of that fact or -- we are not offering that as for
22 the truth.

23 THE COURT: Well, I think the pertinent portions
24 are on the record in the transcript. I think that will
25 suffice.

1 MR. MIZOGUCHI: I agree. Thank you, Your Honor.

2 THE COURT: Okay.

3 MR. DINTZER: Your Honor, with respect to the
4 videotape, now that the Court has seen it, plaintiffs'
5 counsel, which we appreciated, withheld objection during
6 the videotape so we didn't have to sort of argue those
7 out. But presumably they have the list of whichever
8 objections they preserved in the deposition that they
9 want to assert, and we think that probably the easiest
10 way is, if they give them to us in a written form and
11 then we decide which ones we want to challenge and then
12 we can get back to the Court, that would help us. And
13 hopefully we can perhaps do that today, if they could
14 give that to us today or the first thing tomorrow, then
15 we can resolve that.

16 MR. BOIES: We'll be happy to do that, Your Honor,
17 and I think that we'll go through and we'll remove a lot
18 of objections. This is a bench trial, and I think the
19 Court can take the testimony for what it's worth in
20 general, so we'll go through and see if we have any
21 objections we want to press.

22 THE COURT: All right. That sounds like an
23 efficient method.

24 MR. DINTZER: Thank you, Your Honor.

25 THE COURT: So is there anything else for today?

1 MR. DINTZER: For today, no, Your Honor.

2 We are prepared to begin first thing tomorrow
3 morning at 9:30 with our next witness.

4 THE COURT: All right. Very well. We'll adjourn
5 until tomorrow morning at 9:30.

6 (Whereupon, at 4:10 p.m., the proceedings were
7 adjourned.)

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CERTIFICATE OF TRANSCRIBER

I, Josett F. Whalen, court-approved transcriber,
certify that the foregoing is a correct transcription
from the official digital sound recording of the
proceedings in the above-titled matter.

DATED: NOVEMBER 14, 2014

JOSETT F. WHALEN, COURT REPORTER

1			ADMITTED EXHIBITS
2	PX	PAGE	DESCRIPTION
3	66	7095	Email (9/15/2008 11:29 pm)
4			From: Tim Stambaugh
5			To: Dan Jester, Mark Feldman, Helen Newcomb
6			re: AIG Banking Relationships Attaching
7			Counterparty exposure report 9-15 - Internal
8	108	7142	Email (9/17/2008 12:06 am)
9			From: Ruth Porat
10			To: Jeremiah Norton, Dan Jester, Robert Scully
11			re: Fw: Pls confirm receipt of this
12	381	7036	Memo (11/25/2008)
13			From: Paula Rosput Reynolds
14			To: AIG Employees
15			Dated: November 25, 2008
16			re: New Guidelines for AIG Interactions
17			Attaching Protocols for AIG Interactions
18	398	7036	AIG Slides - AIG/Federal Reserve Credit
19			Agreement - Compliance Control Framework For
20			Financial Reporting Management (January 2009
21			updates)
22	424	7016	Email (2/16/2009 6:39 pm)
23			From: David Herzog
24			To: Brian Screiber
25			re: RE: Debt Opportunity

1	703	7045	Chart of FRBNY Issues and Requests
2	3120	7039	Davis Polk memorandum
3	3121	7042	Sarah Dahlgren email
4			
5	DX	PAGE	DESCRIPTION
6	285	7094	EMAIL FROM FERNANDO X YANEZ TO DOUGLAS
7			BRAUSTEIN RE: NORTHSTAR / DRAFT TERM SHEETS,
8			WITH ATTACHED TERM SHEETS
9	1450	7035	EMAIL FROM DAVID HERZOG TO ROBERT GENDER AND
10			STEVEN BENSINGER RE: SHAREHOLDERS' EQUITY
11			ESTIMATE AS OF SEPTEMBER 16
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