

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

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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

Courtroom 4

Howard T. Markey National Courts Building

717 Madison Place, N.W.

Washington, D.C.

Friday, November 14, 2014

9:30 a.m.

Trial Volume 31

BEFORE: THE HONORABLE THOMAS C. WHEELER

Josett F. Whalen, RMR-CRR, Reporter

1 APPEARANCES:

2

3 ON BEHALF OF THE PLAINTIFFS:

4 DAVID BOIES, II, ESQ.

5 Boies, Schiller & Flexner, LLP

6 333 Main Street

7 Armonk, New York 10504

8 (914) 749-8201

9 dboies@bsfllp.com

10

11 and

12

13 AMY J. MAUSER, ESQ.

14 ABBY L. DENNIS, ESQ.

15 Boies, Schiller & Flexner, LLP

16 5301 Wisconsin Avenue, N.W.

17 Washington, D.C. 20015

18 (202) 237-2727

19 amauser@bsfllp.com

20 adennis@bsfllp.com

21

22

23

24

25

1 APPEARANCES: (continued)

2

3 ON BEHALF OF THE PLAINTIFFS:

4 ROBERT J. DWYER, ESQ.

5 ALANNA C. RUTHERFORD, ESQ.

6 Boies, Schiller & Flexner, LLP

7 575 Lexington Avenue, 7th Floor

8 New York, New York 10022

9 (212) 446-2300

10 rdwyer@bsfllp.com

11 arutherford@bsfllp.com

12

13 and

14

15 JOHN L. GARDINER, ESQ.

16 Skadden, Arps, Slate, Meagher & Flom LLP

17 4 Times Square

18 New York, New York 10036

19 (212) 735-2442

20 john.gardiner@skadden.com

21

22

23

24

25

1 APPEARANCES: (continued)

2

3 ON BEHALF OF THE DEFENDANT:

4 KENNETH DINTZER, ESQ.

5 BRIAN A. MIZOGUCHI, ESQ.

6 CLAUDIA BURKE, ESQ.

7 JOSHUA GARDNER, ESQ.

8 SCOTT AUSTIN, ESQ.

9 JOHN TODOR, ESQ.

10 JOHN H. ROBERSON, ESQ.

11 MATTHEW SCARLATO, ESQ.

12 RENÉE GERBER, ESQ.

13 MARIANO TERESA ACEVEDO, ESQ.

14 VINCENT D. PHILLIPS, ESQ.

15 ZACHARY SULLIVAN, ESQ.

16 U.S. Department of Justice - Civil Division

17 Post Office Box 480

18 Ben Franklin Station

19 Washington, D.C. 20044

20 (202) 305-3319

21 brian.mizoguchi@usdoj.gov

22

23

24

25

1 APPEARANCES: (continued)

2

3 ON BEHALF OF DAVIS POLK & WARDWELL LLP:

4 FRANCES E. BIVENS, ESQ.

5 Davis Polk & Wardwell LLP

6 450 Lexington Avenue

7 New York, New York 10017

8 (212) 450-4935

9 frances.bivens@davispolk.com

10

11 ON BEHALF OF MORRIS OFFIT:

12 PAUL C. CURNIN, ESQ.

13 Simpson Thacher & Bartlett LLP

14 425 Lexington Avenue

15 New York, New York 10017-3954

16 (212) 455-2881

17 pcurnin@stblaw.com

18

19 ON BEHALF OF AIG:

20 SUNNY J. THOMPSON, ESQ.

21 Weil, Gotshal & Manges LLP

22 1300 I Street, N.W. - Suite 900

23 Washington, D.C. 20005-3314

24 (202) 682-7142

25 sunny.thompson@weil.com

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

I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR
LANGERMAN	7155	7205	7304	7323	
OFFIT	7333				

EXHIBITS FOR ID IN EVID

Plaintiffs'

Number2836 7259

Defendant's

Number843 7167

Number868 7182

NumberDXX-038 7323

Joint

(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 are on the record this morning for  
5 day 31 of the trial in Starr International Company versus  
6 the United States.

7 Mr. Gardner, I see you have something to say.

8 MR. GARDNER: I was going to call the next  
9 witness, unless the parties have any housekeeping  
10 matters.

11 THE COURT: All right. Let's go ahead.

12 MR. GARDNER: The government calls as its next  
13 witness Peter Langerman.

14 THE COURT: All right. Thank you.

15 - - - - -

16 Whereupon --

17 PETER LANGERMAN

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

20 THE COURT: Good morning, Ms. Acevedo.

21 MS. ACEVEDO: Good morning.

22 May I proceed, Your Honor?

23 THE COURT: You certainly may.

24 MS. ACEVEDO: Thank you.

25 - - - - -

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

DIRECT EXAMINATION

BY MS. ACEVEDO:

Q. Good morning, Mr. Langerman.

A. Good morning.

Q. Could you please state your full name for the record.

A. Peter Langerman.

Q. Where do you work, Mr. Langerman?

A. Franklin Mutual Advisers.

Q. And what do you do there?

A. I'm an investment manager for a number of funds, and I'm the CEO of the Franklin Mutual Advisers fund group.

Q. And what funds do you manage?

A. Among the funds I manage are something called the Franklin Mutual Shares Fund and the Franklin Mutual Global Discovery Fund, and there are a number of other related funds that are modeled off of that. I'm actually co-portfolio manager on all of those products.

Q. What is the approximate amount of the funds managed by the group for which you are CEO?

A. Approximately \$75 billion.

Q. And what is the approximate amount of funds that you yourself manage?

A. A little over half of that.

1 Q. Can you please briefly summarize for the Court  
2 your employment history leading up to your current  
3 position at Franklin.

4 A. Sure.

5 My first job out of college, which was in 1977,  
6 was as an accountant with what was Arthur Young  
7 and Company, became eventually Ernst & Young.

8 I then went to law school. And after law school,  
9 I first worked for a law firm in New Haven, Connecticut.  
10 And then I joined a firm in New York, Weil,  
11 Gotshal & Manges, working in the creditors'  
12 rights/bankruptcy group. That was from about 1983 to  
13 1986.

14 And in 1986 I joined the predecessor of  
15 Franklin Mutual Advisers, which was called  
16 Heine Securities Corporation, worked until approximately  
17 2002 for that firm.

18 I then for a couple years did some other things,  
19 including serving as the division director for  
20 New Jersey's Division of Investment, which manages the  
21 state pension funds for New Jersey.

22 And in 2005 I came to Franklin Mutual Advisers,  
23 where I've been since.

24 Q. Can you briefly summarize for the Court your  
25 educational background.

1           A. Sure.

2                   So as I mentioned that I graduated college, I went  
3 to Yale, graduated in 1977 with a bachelor's in Russian  
4 studies.

5                   When I went to work for Arthur Young, I also went  
6 to school at NYU business school, and I got a master's in  
7 accounting.

8                   Then I got a JD from Stanford University  
9 Law School in 1979.

10           Q. Outside of your employment, have you had any  
11 professional appointments, such as positions on boards or  
12 not-for-profit associations?

13           A. Yes.

14                   Over the years I've served on a couple of public  
15 company boards where our funds had investments.

16                   I serve today on our mutual fund board.

17                   I've been on and am today on some not-for-profit  
18 boards.

19                   I was also a trustee of the AIG credit trust back  
20 in 2010.

21           Q. You mentioned the AIG Credit Facility Trust.

22                   How did you learn about the trust?

23           A. I think I first learned about the trust via a  
24 telephone call from Jim Millstein, who called me to  
25 explain from his perspective what was going on in AIG,

1 the fact that there was a trust, that there were three  
2 trustees, one of whom might be leaving, and he was  
3 exploring whether I might have an interest in discussing  
4 becoming a successor trustee to the departing trustee.

5 Q. Did you know Mr. Millstein?

6 A. I did.

7 We had a professional relationship going back many  
8 years where Jim at the time initially was a lawyer. He  
9 worked at a firm and did a fair bit of stuff in  
10 restructurings and turnarounds where we are active in  
11 investing, so I probably met him at some point in that  
12 course of activity.

13 And actually in 1996, when our firm was in  
14 discussions with Franklin about becoming part of  
15 Franklin Resources, a few of the senior members of our  
16 group actually engaged Jim's firm, and Jim worked on  
17 helping us negotiate a transaction with Franklin.

18 But it had been probably years since I had last  
19 heard from Jim or talked to Jim when I got that phone  
20 call, so it was, you know, a professional relationship  
21 but not -- not a very close one.

22 Q. When did you become a trustee for the  
23 AIG Credit Facility Trust?

24 A. Early 2010.

25 Q. Did you have any prior relationship with either

1 the New York Fed or the Federal Reserve at that time?

2 A. No.

3 Q. When in relation to being asked about serving as a  
4 trustee did you become one?

5 A. I think it was a couple of months between the time  
6 that I had the phone call that I just referred to and  
7 ultimately becoming a trustee.

8 Q. And what was the reason for the delay?

9 A. Well, I know on my side, one is I wanted to  
10 understand what becoming a trustee meant,  
11 responsibilities, the commitment, just sort of the  
12 big-picture context of what this was all about. I had to  
13 vet internally the possibility of doing this. I had a  
14 full-time job and I had to make sure that this wouldn't  
15 represent any conflicts from a business perspective or  
16 from a time perspective.

17 And so I had to do my diligence on sort of, again,  
18 what was all involved in this to make sure I was going  
19 into this with my eyes open, and presumably on the other  
20 side they were doing some diligence on me.

21 Certainly when Jim first made the phone call and  
22 even in the course of my discussions with various people,  
23 there was no commitment on their part to offer me the  
24 position, so I think it was a little bit both sides  
25 checking one another out and making sure it was the right

1 kind of fit.

2 Q. You mentioned doing diligence.

3 Did you have any concerns about becoming a  
4 trustee?

5 A. Well, concerns -- I wanted to understand what I  
6 was getting into. Obviously there was lots of public  
7 discussions about what was going on at AIG. I certainly  
8 hadn't focused on the trust part of that, but I knew  
9 enough about what was going on in the financial markets  
10 and AIG generally.

11 So sure, I mean, my concerns were, again, one,  
12 understanding what the roles and responsibilities were  
13 and, two, from my perspective making sure that I felt  
14 comfortable that I could do the job as I perceived it and  
15 could do a good job and could act independently and  
16 autonomously and, again, act as I thought was  
17 appropriate.

18 Q. What did you understand your role to be as a  
19 trustee?

20 A. Well, my understanding bottom line was to maximize  
21 the value of the Series C preferred stock, which is what  
22 we had responsibility for, we, the trustees and the  
23 trust, had responsibility for.

24 Q. Prior to becoming a trustee, what experience did  
25 you have with restructuring and distressed companies?

1           A. As I mentioned, our funds invest in lots of  
2 different kinds of vehicles, but among the things we look  
3 at are distressed situations, companies that are in  
4 turnaround mode, companies that may be in bankruptcy or  
5 on the verge of bankruptcy.

6           We invest in different parts of the capital  
7 structure, meaning not only do we own stocks, common  
8 stocks, but we also buy debt of companies, so again we're  
9 looking at companies that are in many times, you know,  
10 some state of difficulty.

11           And also as I mentioned, prior to becoming part of  
12 the Franklin group, the Heine Securities group, I was a  
13 lawyer in the bankruptcy/creditors' rights group at  
14 Weil Gotshal, so I had some experience on the legal side  
15 of dealing with companies in that context, so in all, a  
16 fair bit of experience certainly in the restructuring  
17 arena.

18           Q. How did that experience inform your role as a  
19 trustee?

20           A. Well, again, in part of my diligence it was clear  
21 that at a certain point in time, and probably sooner than  
22 later, after becoming a trustee that part of the focus  
23 would be on some kind of a restructuring of AIG's balance  
24 sheet.

25           It was clear that the status quo at the time was

1 not a permanent situation, and I think all parties  
2 understood that there would be a next phase of whether a  
3 recapitalization, restructuring of some kind, so that was  
4 clearly going to be a major part of the role of the  
5 trustees over that next period.

6 Q. Let's take a look at a document in your binder.  
7 You should have a binder there with some documents that I  
8 intend to ask you some questions about.

9 A. Yes.

10 Q. If I could direct you to JX 172, please.

11 A. Okay.

12 Q. Can you identify this document for the Court?

13 A. This is the credit facility trust document that  
14 predated my becoming a trustee, but this was essentially  
15 the governing document for the trust.

16 Q. I'd like to direct you to page 10 of 25 to  
17 section 2.04(d).

18 A. Okay.

19 Q. If you could read that paragraph and let me know  
20 when you're done, that would be great.

21 A. Okay. This is (d) you want; right?

22 Q. Yes. It begins --

23 A. "In exercising their discretion hereunder" --

24 Q. I'm sorry, sir.

25 THE COURT: Sir, just read it to yourself.

1 THE WITNESS: Sorry. I thought you wanted me to  
2 read it out loud.

3 MS. ACEVEDO: I should have specified that. I  
4 apologize.

5 THE COURT: I think you did actually, but that's  
6 okay.

7 (Pause in the proceedings.)

8 THE WITNESS: Okay.

9 BY MS. ACEVEDO:

10 Q. Okay. You can see there that the first sentence  
11 articulates the New York Fed's view with respect to  
12 maximizing the value of the trust stock and the second  
13 references the trust's power to vote that stock.

14 What weight, if any, did you afford the  
15 New York Fed's view as articulated there in 2.04(d)?

16 A. Well, I understood this to be their view on these  
17 matters. It was interesting and relevant to know what  
18 their views are, but that's as far as it went. You know,  
19 this is their view, and now it's up to me and us as  
20 trustees to make our decisions as we feel appropriate.

21 Q. What constraints, if any, were there on your  
22 ability to make decisions?

23 A. I would say there were no specific constraints.  
24 We had to take all the facts and circumstances into  
25 account, but we felt and I felt certainly that we had

1 discretion to do what we thought was appropriate.

2 Q. Were you able to exercise your responsibilities as  
3 you felt appropriate?

4 A. Yes.

5 Q. Let's talk about -- you can set that document  
6 aside for now. We'll come back to it in a little while.

7 Let's talk about the recapitalization process.

8 You mentioned that a moment ago.

9 What did you do and why?

10 A. Well, we did a number of things.

11 I mean, initially when I became a trustee,  
12 you know, one of the early discussions that we had,  
13 probably even in the course of me thinking about  
14 becoming a trustee, was how to go about participating in  
15 that recapitalization process or getting to the point of  
16 which there would be a recap plan.

17 One of the first things that happened when I  
18 became a trustee is we determined that it was the right  
19 time to hire an outside financial advisor, an expert who  
20 could help us, guide us through a process and help us in  
21 that process, so we went about hiring a firm to assist  
22 us, which we did.

23 And over the course of the months leading up  
24 ultimately to the recap plan, we participated actively in  
25 the discussions and process and negotiations with the

1 various other parties.

2 Q. What was the purpose of the recapitalization  
3 process?

4 A. Again, as I mentioned, I think virtually  
5 everyone -- I can't think of anyone who didn't believe  
6 that there needed to be some kind of a restructuring of  
7 the balance sheet of AIG. The government had poured in a  
8 tremendous amount of money. Clearly that had to change  
9 over a period of time.

10 AIG wanted to get out from under at least the view  
11 that it was largely under the government auspices.  
12 That's not a very positive way to be presenting yourself  
13 in the marketplace.

14 The rating agencies certainly had concerns about  
15 the sustainability of AIG as an independent company, so I  
16 think we all collectively had to find a way to get,  
17 you know, to the next stage.

18 And certainly the Fed wanted to get paid. They  
19 weren't I think in the business of having permanent loans  
20 out to a company like AIG, so lots of people had an  
21 interest in moving this the thing along to the next stage  
22 of its life.

23 Q. You mentioned a moment ago that you hired an  
24 outside financial advisor to assist the trust in the  
25 recapitalization process.

1           Who did you hire?

2           A. We hired a company called Evercore.

3           Q. Please describe the process by which you selected  
4 Evercore as your financial advisor.

5           A. Sure.

6           So again, as I mentioned, one of the early  
7 discussions that I was certainly having with the  
8 trustees and our advisors, the legal advisors, was  
9 whether it made sense to hire an outside financial  
10 advisor, and we all agreed that this was the right time  
11 to do it.

12           I have some experience certainly in dealing with  
13 financial advisors given what I talked about in terms of  
14 my own background and work, so we, the trustees, and I  
15 think as kind of the point person in that process went  
16 about thinking about what's the universe of potential  
17 advisors that we should look at, winnowing that down,  
18 discussing with individuals at each of the potential  
19 firms how they might interact with us, what their views  
20 of the situation might be and, you know, went through  
21 that process and ended up again winnowing it down,  
22 interviewing several firms and ultimately deciding on one  
23 that we negotiated terms of engagement with, and  
24 ultimately that was Evercore.

25           Q. If I can direct you to another document in your

1 binder, DX 843.

2 A. Okay.

3 Q. Can you identify this document for the Court?

4 A. Yes.

5 So this is a copy of the periodic reports which  
6 we were required to deliver pursuant to the trust  
7 agreement.

8 Q. If you take a look at the third page of the  
9 document ending in page number 45544, there's a list of  
10 cc's there, and your name appears there at the bottom of  
11 that list.

12 Do you see that?

13 A. I do.

14 Q. Did you receive these materials?

15 A. Yes.

16 MS. ACEVEDO: Your Honor, I'd like to move for the  
17 admission of DX 843.

18 MR. BOIES: No objection, Your Honor.

19 THE COURT: Defendant's Exhibit 843 is admitted.

20 (Defendant's Exhibit Number 843 was admitted into  
21 evidence.)

22 MS. ACEVEDO: Thank you, Your Honor.

23 BY MS. ACEVEDO:

24 Q. If I can have you turn now to the page ending in  
25 45584.

1           A.    Okay.

2           Q.    Can you identify what's shown here,  
3    Mr. Langerman?

4           A.    These are minutes of one of the trustee meetings.  
5    February 26, 2010 is the date.

6           Q.    Okay.  And if you take a look at the second page  
7    of the minutes there, there are three headings that state  
8    "Meeting with Evercore Partners," "Meeting with  
9    Houlihan Lokey" and "Meeting with Greenhill."  And the  
10   discussion there references meetings with those firms  
11   with respect to potential engagement as a financial  
12   advisor.

13                    Of the firms identified here, why did you select  
14   Evercore?

15           A.    Well, first let me say that each of these firms  
16   are highly qualified, very well-known in the business, do  
17   lots of things among them, advising on these kinds of  
18   situations, so I think any of these firms could have done  
19   an excellent job.

20                    In the case of Evercore, I happen to know at  
21   least one of the individuals.  David Ying I had prior  
22   experience with, so I had a very high comfort level  
23   about his expertise and ability to help us and the  
24   trustees through the process.

25                    And it also came down to -- and I did have

1 discussions with each of the firms about the terms of  
2 their engagement or proposed terms of the engagement.

3 We, you know, as trustees, I think took all of  
4 our responsibilities seriously, one of them being again  
5 getting the best economic deal that we could. And we  
6 were able to negotiate what we all thought was a very  
7 favorable agreement from an economic standpoint with the  
8 Evercore folks, and so I think that was probably the  
9 deciding factor ultimately.

10 Q. Describe the activities that Evercore took on  
11 behalf of the trust.

12 A. Well, initially, even before they were fully  
13 engaged or formally engaged, they did an analysis based  
14 on public information as to the business of AIG, what it  
15 was worth, some potential options in terms of how a  
16 recap and other restructuring proposals might look. And  
17 they were really our -- you know, they were our eyes and  
18 ears in many respects to help us along the process of  
19 discussing and negotiating with the other  
20 constituencies, understanding again the business, the  
21 valuations.

22 You know, part of a recapitalization process is,  
23 one, understanding what the different pieces are. AIG  
24 was and is a complicated business, so they were helpful  
25 to us in terms of looking as deeply as we all possibly

1     could into the details and the specifics and then,  
2     you know, engaging with the other constituencies along  
3     the several-month road of getting to an ultimate  
4     recapitalization process and, you know, giving us advice  
5     on different ideas, potential alternatives for what this  
6     all might look like, and also just keeping us up to  
7     speed.

8             There were lots of developments, lots of moving  
9     pieces along the way. It wasn't just about a recap  
10    process. That wasn't their exclusive role. It was also  
11    just advising us along the way about the various  
12    developments in the company.

13            Q. When did you begin discussions relating to the  
14    recapitalization process?

15            A. You know, I think those discussions in a sense  
16    began very early because, again, part of the engagement  
17    process and part of the thought process was, although we  
18    didn't necessarily know the timetable, that this was  
19    being teed up.

20            So I would say discussions certainly from a sort  
21    of general overall perspective began very early in the  
22    assignment and continued throughout the process.

23            Q. When you say "very early in the assignment," can  
24    you give me an approximate time frame?

25            A. Well, as I said, I mean, I don't remember

1 exactly, but I'm sure that when we initially even were  
2 talking to these folks, Evercore and the others, about  
3 what's the nature of the engagement and what would you be  
4 doing, you know, part of that was looking at the AIG  
5 business and looking at the status quo balance sheet as  
6 well as saying okay, what could this look like, what  
7 should it look like going forward, so, you know, I would  
8 say again those discussions started the first time we met  
9 with them.

10 Q. And would that be in the winter or the spring  
11 or --

12 A. Well, it was the winter I think we -- this is  
13 February; right? I mean, these are dated February, so  
14 yeah, I mean, I'd say February or even before because  
15 this wasn't the first time that clearly I talked or we  
16 had talked to these people, so yeah, it was -- it was  
17 certainly -- at the latest it was February, but it was  
18 certainly earlier than that and probably January.

19 I mean, I only got the call -- I think it was  
20 December, so it was, you know, somewhere in those first  
21 couple of months of 2010 that those discussions from my  
22 perspective started. Now, it may be before I showed up  
23 on the scene that there were other discussions that I  
24 wasn't aware of or wasn't part of, but, you know, when I  
25 showed up, it was quite immediate that we began these

1 discussions.

2 Q. What was your assessment of the company at that  
3 time?

4 A. Well, AIG had been a fascinating company, was and  
5 is.

6 And again, part of it was informed by public  
7 information. You know, I work in the public market, and  
8 so AIG was a big deal in terms of what was going on.

9 And then as part of being a trustee, we met with  
10 various people internally in the company and other  
11 constituents, so I learned obviously a lot more.

12 I guess my overall view was that clearly, I mean,  
13 AIG, it had some valuable businesses, some very valuable  
14 businesses, some perhaps unique businesses, but that the  
15 infrastructure, the internal or infrastructure of the  
16 company had lagged tremendously behind the growth of the  
17 company, that there were lots of issues and problems.  
18 Some of them were people. Some of them were operational.  
19 Some of them were technological.

20 Clearly what got AIG into trouble was a huge  
21 problem, and I think the risk controls were seriously  
22 deficient at AIG.

23 So there were lots of -- you know, lots of moving  
24 pieces. It was I would say a fairly tenuous situation.  
25 We had this company that was at least temporarily saved

1 by a huge government infusion. There was lots of  
2 controversy in the marketplace, customers, employees,  
3 politicians, so I mean, this thing was -- it was pretty  
4 tenuous.

5 So, you know, we all I think, you know, the  
6 trustees, had a common interest in finding a way to  
7 stabilize the situation both from a balance sheet  
8 perspective and an employee perspective, an operational  
9 perspective, to sort of move it off of the lifeline that  
10 it was on.

11 MR. BOIES: Your Honor, could I ask the Court to  
12 instruct the witness to try to be responsive to the  
13 questioner's question. Ordinarily I wouldn't care about  
14 that when it's the other side asking questions, but it  
15 makes it impossible to object to something ahead of time  
16 if I don't know what's coming.

17 She asked a question about "what was your  
18 assessment of AIG at that time" when he became a trustee,  
19 and I didn't have an objection to that. He then goes  
20 back into how AIG supposedly got into the problems that  
21 it got into, which I would have had a foundation  
22 objection, among others, to make.

23 So if we could have a meeting of the answer with  
24 the question as opposed to a narrative response, I think  
25 that would facilitate things.

1           THE COURT: Well, yes. I think it was a broad  
2 question to begin with and I certainly think the witness  
3 did his best to be responsive.

4           But I think Mr. Boies' comment is well-taken.  
5 Always try to listen to the question and be responsive to  
6 that question.

7           THE WITNESS: Okay.

8           THE COURT: Thank you.

9           MS. ACEVEDO: Thank you, Your Honor.

10          BY MS. ACEVEDO:

11          Q. I'd like to switch gears now and talk a little bit  
12 about the role of the trust in negotiating the  
13 recapitalization plan.

14                 What was the role of the trust in the  
15 recapitalization process?

16          A. Our role was to represent our interest, which was  
17 to maximize the value of the Series C preferred.

18          Q. And what was your role in particular in that  
19 process?

20          A. Well, you know, each of our -- each of the  
21 trustees had that collective responsibility. I think to  
22 the extent that I had a background and experience in some  
23 of these restructuring situations that I'm sure the other  
24 trustees were interested in what I had to say. But I  
25 think we all played a very important role in that

1 process.

2           You know, clearly in terms of engaging the  
3 advisors, perhaps attending some of the meetings, I  
4 probably was a bit more active in certain situations, but  
5 I certainly did my best, as did the advisors and our  
6 lawyers, to make sure everyone was on the same  
7 wavelength, that it wasn't any one person who was  
8 dictating the process.

9           Q. With whom did the trust negotiate the  
10 recapitalization plan?

11           A. There were a lot of parties involved here  
12 clearly, some of whom had common interests and some of  
13 whom had different interests, and you know, you might  
14 have common interests with one and some different  
15 interests with one, so there were lots of different  
16 moving pieces, as is often the case in these kind of  
17 situations.

18           AIG was a complicated company, but not unique in  
19 trying to forge a recap or restructuring when you've got  
20 a bunch of different constituencies out there, so  
21 certainly, you know, we met with, negotiated with the  
22 Fed, with the Treasury, with the company.

23           I mean, we were certainly aligned with the  
24 company in many respects. We listened to them in terms  
25 of what they had to say and what their recommendations

1 were, but again we had -- you know, we had our own  
2 responsibilities, so at the end of the day we knew who we  
3 were responsible to, but we negotiated and discussed the  
4 plan with everyone.

5 Q. How did you view the New York Fed and Treasury in  
6 negotiations?

7 A. Well, they had their views. They had their  
8 interests. They may not have always been completely  
9 open. I'm sure they had their own discussions behind  
10 closed doors about what their goals were.

11 I think we each respected one another. We each  
12 knew that we had responsibilities to our own  
13 constituencies. And you know, at the end of the day, I  
14 think there were certainly common interests, but there  
15 were also divergent interests, so we viewed them as,  
16 you know, they've got to do what they've got to do,  
17 they've got a job and we've got a job.

18 Q. For whose benefit were you negotiating?

19 A. Ultimately it was the taxpayer of the  
20 United States.

21 Q. And how did the discussions relating to the  
22 recapitalization evolve over time?

23 A. Well, as is often the case, there's a process.  
24 There's an evolution.

25 You had the company which was an ongoing business,

1 so, you know, the company was in its own way trying to  
2 figure out what it ought to look like, should it sell  
3 some assets, should it do some other things  
4 operationally.

5 And so, you know, again this was a -- this was a  
6 moving, multiparty, multifaceted process that didn't all  
7 happen in one shot, sit down in a room and, you know,  
8 lock up the folks in the room and walk out with a deal.  
9 This took, you know, lots of -- lots of different steps,  
10 iterations and discussions, and it evolves.

11 And you know, I don't know that anybody  
12 necessarily would have predicted exactly how it was  
13 going to come out at the beginning of it, but you  
14 discuss, you push and pull and you hear different things.  
15 The world changes. The markets change a little bit. And  
16 ultimately, you know, you try to come out with something  
17 which is at least acceptable to the group, may not be  
18 perfect, but that's where you try to get to.

19 Q. And what was the trustees' goal in those  
20 negotiations?

21 A. To do the best we could for the Series C preferred  
22 and, you know, viewing all of our responsibilities,  
23 et cetera, but at the end of the day, that's -- that's  
24 who we were responsible for, and that's what we -- that's  
25 what we did.

1 Q. And how would you describe the nature or  
2 character of the negotiations with the other  
3 constituencies?

4 A. You know, professional, but -- but it was  
5 working-like. You know, we went in there, and again, we  
6 had a job to do. They had a job to do.

7 We had over, you know, certain times disagreements  
8 about what we ought to be doing perhaps, how this thing  
9 ought to look, but it was -- you know, it was a bunch of  
10 different parties again who had certain common interests  
11 and certain divergent interests, and that was how the  
12 process went along.

13 THE COURT: Ms. Acevedo, if I could interrupt with  
14 a brief question.

15 MS. ACEVEDO: Certainly, Your Honor.

16 THE COURT: Sir, you testified that you became a  
17 trustee in early 2010 I believe?

18 THE WITNESS: Correct.

19 THE COURT: How long were you a trustee? I didn't  
20 get an end date. I want to sort of --

21 THE WITNESS: Yes. Well, the trust technically  
22 was terminated toward the end or the -- toward the end of  
23 the year or the beginning of the next year, so for me it  
24 was about a one-year process basically that I was  
25 involved.

1 THE COURT: Thank you.

2 BY MS. ACEVEDO:

3 Q. You mentioned a little bit -- you mentioned  
4 earlier a little bit about similarities and differences  
5 that you had with the other constituencies.

6 Did you have the same or different interests as  
7 the New York Fed or Treasury in the negotiations?

8 A. Well, I would include them in what I said as  
9 having certain common interests and certain perhaps  
10 divergent interests.

11 I mean, if you want me to elaborate, I will, if  
12 that's the next question.

13 Q. Certainly, please.

14 A. Okay.

15 I mean, for example, you know, it was clear that,  
16 you know, the Fed had put in a bunch of money and wanted  
17 to get repaid. At the same time, the Fed didn't want to  
18 have round two or three of AIG resuscitation, so it was  
19 at least clear that they wanted whatever AIG was going  
20 to look like in this next step to basically solve the  
21 problem from the Fed's perspective. They didn't want to  
22 have to go to reenter in the same way that they had.

23 Treasury, you know, I think generally certainly  
24 was interested in putting AIG in a form and fashion that  
25 it would sustain itself, that again there wouldn't be a

1 round two or round three. But, you know, it wasn't  
2 always clear exactly what their ultimate goals were, and  
3 you know, they had their own pieces of paper that they  
4 had to sort of figure out what they were going to get.

5 But again I think the common interest was a  
6 stable, self-sustaining AIG. Exactly how the pieces got  
7 broken up and who got what and who got satisfied by  
8 getting what chunk of the value or specific pieces, I  
9 know there were points along which, you know, Treasury  
10 certainly had some views that I didn't agree with about  
11 how we might -- how they -- the plan might satisfy the  
12 Series C preferred.

13 So, you know, again I think common interests were  
14 making sure AIG didn't fall apart again, making sure  
15 that it could live on its own effectively even if it's  
16 not immediate on a clear path toward  
17 self-sustainability.

18 So that's how, you know, that's how these  
19 discussions evolved, but again there were, you know,  
20 different focuses that I think each group had about sort  
21 of at the end of the day what was really important to  
22 them.

23 Q. A moment ago you mentioned that Treasury had some  
24 views that you didn't agree with about how the plan might  
25 satisfy the Series C preferred.

1           To what were you referring?

2           A. Well, I just remember -- again, there were lots of  
3 discussions along the way. But, I mean, I remember at  
4 one point that I think there was not a formal proposal,  
5 sort of an informal proposal from Treasury that the  
6 Series C preferred take certain assets in satisfaction of  
7 its claim, which I thought myself would be extremely  
8 difficult to ultimately get to some kind of agreement on  
9 that basis.

10           At the sort of -- toward the end, the end game,  
11 there was discussion about warrants going to the  
12 minority shareholders and effectively whose pocket would  
13 those warrants come out of, who would basically have to  
14 pay for those warrants, so there was discussion about  
15 that. And we had different views about that, that  
16 particular subject.

17           So, you know, there were -- again, those are just  
18 a couple things that I remember, but I'm sure there were  
19 other things along the way where, you know, they had a  
20 view and we had a different view.

21           Q. Let's take a look at a document in your binder,  
22 868, DX 868.

23           A. Got it.

24           Q. Can you identify this document for the Court?

25           A. This is another one of the periodic reports that

1 we were required to submit under the trust agreement.

2 Q. And if you look at the second page there, there's  
3 a list of cc's and your name again is at the bottom of  
4 that list.

5 A. Yes.

6 Q. Did you receive these materials?

7 A. Yes, I did.

8 MS. ACEVEDO: Your Honor, I'd like to move for the  
9 admission of DX 868.

10 MR. BOIES: No objection, Your Honor.

11 THE COURT: Defendant's Exhibit 868 is admitted.

12 (Defendant's Exhibit Number 868 was admitted into  
13 evidence.)

14 MS. ACEVEDO: Thank you, Your Honor.

15 BY MS. ACEVEDO:

16 Q. Now, let's take a look at some meeting minutes on  
17 page 39481.

18 You mentioned a moment ago in your discussion a  
19 reference to warrants. If you see there, in the second  
20 paragraph, there is a reference to the latest iteration  
21 of the proposed recapitalization plan, and it says, in  
22 the second sentence, the trustees discussed certain  
23 aspects of that plan, including warrants for public  
24 shareholders.

25 Do you see that?

1           A. I do.

2           Q. Can you explain to the Court what's being conveyed  
3 here?

4           A. Well, the subject -- I mean, let me step back to  
5 try to explain it.

6                   So before the recap plan happened, the Series C  
7 preferred represented around 80 percent of the common  
8 stock holdings of AIG, and the remainder at that time was  
9 publicly traded, referred to as the minority  
10 shareholders. That's how most people refer to them.

11                   So in terms of the recap plan, certainly our  
12 starting point and what we thought was appropriate, that  
13 the sort of the holdings of the Series C effectively  
14 common shares and the minority shares would be dealt with  
15 similarly, so if we were 80 percent and they were  
16 20 percent, we would maintain that pro rata. Whatever  
17 the value distribution would be, the minority would get  
18 their share of the total value, so we would be treated  
19 equally.

20                   What this concept refers to is basically giving  
21 incremental value, more value to the public shareholders  
22 by virtue of in this case a warrant to buy AIG  
23 securities, AIG stock, for a period of time, which has a  
24 value. And there's lots of ways of calculating that, the  
25 most common of which is the Black-Scholes method.

1           The warrants could trade publicly as well, so  
2 there's real value that is incorporated in this warrant  
3 concept.

4           So that's the reference here, is the possibility,  
5 suggestion, potential for these extra warrants going to  
6 the public shareholders.

7           Q. And you used a couple terms in your answer that I  
8 want to follow up on for clarity of the record.

9           One of them was "pro rata?" What did you mean by  
10 that?

11          A. Well, what I mean by that is, again, if the  
12 Series C preferred represented 80 percent of the shares  
13 and the minority represented 20 percent of the shares, so  
14 that four-to-one ratio would be reflected in any  
15 distribution, so if there were a dollar of value given  
16 out, that ratio of four-to-one would be how the value  
17 would be allocated between majority and minority, so  
18 again equal treatment.

19           Whether you owned a share of the Series C  
20 effective holdings or you owned a share of the minority,  
21 you would get the same amount of value distributed to  
22 you. That's the pro rata concept.

23          Q. How about Black-Scholes? You mentioned the  
24 Black-Scholes method. To what were you referring?

25          A. Well, that's just a -- it's sort of the most

Starr International Company, Inc. v. USA

1 commonly used methodology for valuing a warrant.

2 So a warrant, in sort of short summary form, is an  
3 option to buy a security for a certain period of time at  
4 a certain price.

5 Now, one might say, well, let's say -- let's say  
6 the stock was trading at \$10 and you have a warrant to  
7 buy that stock for \$12, but it lasts for ten years. Now,  
8 you might say, well, why would I want to -- what value is  
9 there to have a right to buy something higher than the  
10 current market price.

11 Well, the fact is, if you have that right for ten  
12 years, there is some chance that the stock goes up  
13 between now and then, number one, so, you know, maybe the  
14 stock is 15 in three years, so having that right to buy  
15 it at what looks like a premium price today actually is a  
16 discount price in a few years.

17 And also the fact is that you have that right and  
18 don't have to put any money up, so you own that warrant  
19 without actually having to invest the money in the  
20 stock, so there's a concept of kind of a carrying value  
21 benefit.

22 So in any event, some very intelligent people a  
23 while back, Black and Scholes, two individuals, came up  
24 with a formula, a method for valuing what that warrant,  
25 even if it's at a premium to today's market price, what

1 it should trade at, what its worth, its intrinsic value  
2 in today's market. And just about everybody accepts and  
3 uses that methodology to say what's it worth today. Even  
4 if it's not, quote, in the money, there's a value for it  
5 and what it's worth today, and that's how people value  
6 them and trade them.

7 Q. Thank you.

8 A. You're welcome.

9 Q. Let's talk about the deal itself.

10 Did you agree to give the public shareholders  
11 warrants?

12 A. Yes.

13 Q. Why?

14 A. We agreed to the recap plan which incorporated  
15 that, that concept.

16 You know, again, as I tried to explain, this  
17 process was an evolutionary process. And this was --  
18 this was one of the pieces that was put on the table.

19 I think the company was certainly in favor of  
20 giving the minority shareholders incremental value.

21 Treasury certainly at a point in time bought into  
22 that concept and felt that it was the right thing to do  
23 and perhaps necessary and appropriate to get this deal  
24 done.

25 And we certainly didn't have any objection to

1 giving incremental value to the minority shareholders.  
2 It certainly meant that they were going to be getting  
3 more favorable treatment than we were.

4 Our initial issue, I guess if you want to call it  
5 that, was where it would come from, that I, you know,  
6 myself was happy to see incremental value go to the  
7 minority shareholders. I would have preferred if someone  
8 else had paid for it in the sense that it didn't come out  
9 of the allocation that we got.

10 Ultimately, you know, when we looked at how the  
11 numbers worked and what the -- you know, what that  
12 sharing of value was, we felt it was an acceptable  
13 accommodation to getting this recapitalization plan done,  
14 so at the end of the day, looking at the full context of  
15 the plan, we felt it was certainly appropriate and an  
16 acceptable part of the plan to agree to.

17 Q. And a moment ago in your answer you referenced  
18 giving the minority more favorable treatment than you  
19 were.

20 To what were you referring?

21 A. Well, I was referring to these warrants, which  
22 again we -- we stuck with the concept of pro rata  
23 treatment but then supplemented it by essentially giving  
24 extra value in the form of these warrants to the public  
25 shareholders.

1 Q. Let's take a look at the page in DX -- staying in  
2 DX 868, ending in 39486.

3 They appear to be meeting minutes dated  
4 September 29, 2010?

5 A. Yes.

6 Q. Are you there?

7 A. Yes.

8 Q. And if you look at the fourth paragraph down,  
9 there's a reference there to a briefing by Evercore to  
10 the trustees on the recapitalization plan.

11 Do you see that?

12 A. I do.

13 Q. And it says there that Evercore provided financial  
14 analyses of the recapitalization plan.

15 Can you tell us about those analyses?

16 A. I believe among other things, you know, we had  
17 obviously conversation, and I think Evercore prepared  
18 for us a couple of spreadsheets which showed under  
19 various scenarios the real illustration of what the recap  
20 plan meant in terms of how the shares of AIG and these  
21 warrants would be allocated among the various  
22 constituencies.

23 Q. And you mentioned there are spreadsheets.

24 Were these written or oral presentations?

25 A. Well, they certainly supplemented their oral

1 presentations with written documents, so there were  
2 written documents as well.

3 Q. And did they give you multiple iterations or only  
4 the final? Do you know?

5 A. Well, over time we certainly looked at different  
6 alternatives and iterations. I think at this particular  
7 meeting, this was when the recap plan was teed up, so I  
8 think we -- we and what they did is said let's look at  
9 what the recap plan is and let's look at at least a  
10 couple of different scenarios of valuation and what it  
11 would look like.

12 But certainly along the way there were many other  
13 periods and meetings at which we discussed, again, what  
14 things could look like and what different options might  
15 look like for us and for, you know, all the constituents.

16 Q. Over what period of time did you receive those  
17 analyses?

18 A. Multiple months. You know, I can't say I remember  
19 exactly the first time, but again, you know, you asked  
20 before when the recap discussions started. They started  
21 quite early, so we were constantly getting inputs from  
22 the financial advisors about not only the recap plan but  
23 other things, so, you know, discussions and analyses were  
24 an ongoing part of their engagement.

25 Q. In reviewing the recapitalization plan, did the

1 trustees consider those financial analyses?

2 A. Yes.

3 Q. How so?

4 A. Well, they were illustrative of what the plan was  
5 on the table, so, you know, that was -- it was again part  
6 of the overall discussion and analysis to make sure that  
7 we all understood exactly what was being proposed, what  
8 was on the table and what we ultimately might be agreeing  
9 to.

10 Q. When did the trustees vote to accept the  
11 recapitalization plan?

12 A. I think at that meeting that these minutes refer  
13 to.

14 Q. Is that the September 29, 2010 meeting --

15 A. Yes.

16 Q. -- that you're referring to?

17 A. Yes.

18 Q. Okay. Let's take a look back at the trust  
19 agreement that you looked at earlier, and that's JX 172.  
20 And I'd like to direct you this time to page 11 of that  
21 document to section 2.05. It's 11 of 25.

22 Are you there?

23 A. I am. And I won't read it aloud either.

24 Q. It says "Disposition of Trust Stock." Okay.

25 If you look at the section (iii) -- it's the last

1 paragraph on that page there -- it indicates that the  
2 trustees can't sell or otherwise dispose of the trust  
3 stock without "prior approval of the FRBNY, after its  
4 consultation with the Treasury Department."

5 A. I see it.

6 Q. Do you see that?

7 A. I do.

8 Q. Okay. How, if at all, did this provision affect  
9 your negotiation of the recapitalization plan?

10 A. Well, in my view, it really didn't. I understood  
11 and we understood that ultimately the Fed could approve  
12 or disprove -- disapprove what we might otherwise be  
13 proposing. But that didn't influence my view about what  
14 we ought to be doing. They were going to have the right  
15 to say yes or no. That was their right. But we had to  
16 do what we felt was appropriate in our own right, and  
17 that's what we did.

18 Q. What influence, if any, did either the  
19 New York Fed or Treasury have on your decision to accept  
20 the recapitalization plan?

21 A. Well, I mean, specifically they didn't have any  
22 influence, but this was a process, so we were moving  
23 along and we were having discussions. And certainly,  
24 you know, a goal was to have a consensual plan, so that  
25 was part of the process.

1           But at the end of the day, the fact that they were  
2   in favor or not in favor or this or that, I mean, that  
3   was their job. We each had to make an independent  
4   decision whether it made sense for us, which we did, and  
5   hopefully with a goal of getting to a plan, but in and of  
6   itself, their -- you know, their views didn't have any  
7   influence over my views.

8           Q. Let's take a look now at point (iv) which is on  
9   the top of the next page, page 12 of 25.

10          A. Okay.

11          Q. It states here that the trustees may but shall not  
12   be required to obtain a fairness opinion in connection  
13   with the disposition of the trust stock?

14          A. I see it.

15          Q. Did you obtain a fairness opinion?

16          A. We ourselves did not.

17          Q. Why not?

18          A. We didn't feel it was necessary.

19                 If -- well, we looked at ourselves versus the  
20   minority shareholders to whom we -- and we understood  
21   that we certainly couldn't take advantage of them and  
22   couldn't disadvantage them in any way, and we didn't. As  
23   I got through mentioning, they got treated better than we  
24   did, so they were already a step ahead, a step ahead of  
25   us.

1           You know, we were certainly aware that the  
2           company obtained a fairness opinion on its issues  
3           vis-à-vis, among other things, Treasury. But for us,  
4           you know, we -- for the constituents we were looking for  
5           and for those we had a responsibility for, we thought it  
6           was -- it was, frankly, a waste of money to get a  
7           fairness opinion.

8           And if we need it, we obviously could have gotten  
9           one. The document provided it.

10           So there was in a sense, you know, nothing to be  
11           gained if we needed one not to get one, but to spend  
12           probably multimillions of dollars for an unnecessary  
13           document we just thought was not wise.

14           Q. And you mentioned there that you felt the minority  
15           "got treated better than we did."

16           Why is that?

17           A. Because the minority got extra value that the  
18           Series C preferred/common didn't get.

19           Q. And what was that value?

20           A. It was that warrant package that we referred to.

21           Q. Let's take a look back at DX 868 at the page  
22           ending in number 39488.

23           Are you there?

24           A. I am.

25           Q. Okay. What's shown here, Mr. Langerman?

1           A. This is titled the Credit Facility Trust  
2    Divestiture Plan, which I think under the trust document  
3    we were required to submit and, you know, effectively is  
4    a short summary of pieces of the recapitalization plan  
5    that we agreed to.

6           Q. Let's take a look at the page ending in 39494.

7                    There's a signature there above your name.

8                    Is that your signature?

9           A. Yes.

10          Q. Let's take a look at the summary of terms that  
11    begins on the next couple pages, starting at 39496.

12          A. Okay.

13          Q. Can you explain to the Court what the summary of  
14    terms is?

15          A. This was a detailed term sheet which reflected the  
16    terms of the recapitalization plan.

17          Q. And at a high level, what were the terms of the  
18    recapitalization plan?

19          A. Well, at a high level because obviously there's a  
20    lot here, but the Fed was getting paid off.

21                    The Treasury's E and F was being converted to  
22    common.

23                    Our Series C preferred was getting the common to  
24    which it was entitled.

25                    The minority shareholders were maintaining their

1 shares and again in that same pro rata fashion that I had  
2 discussed before plus getting the warrant package that  
3 we've discussed.

4 That's the summary.

5 Q. Let's take a look at the chart that's on the  
6 second page there, the page ending in 39497.

7 A. Okay.

8 Q. What's shown there?

9 A. That's what the share ownership would look like  
10 assuming this plan happened.

11 Q. And can you describe for the Court the allocation  
12 of the common shares between the Series C preferred  
13 stock, the Series E preferred stock, the Series F  
14 preferred stock, and the existing holders of AIG common  
15 stock?

16 A. Well, the Series E and F, the Treasury preferred,  
17 became common shares.

18 We -- the Series C preferred again maintained its  
19 ownership of the common shares.

20 The existing holders maintained -- the minority  
21 maintained their ownership of the shares as well.

22 Q. And we see here -- we've been talking about  
23 different letters with respect to series of preferred  
24 stock, C, E, F.

25 What was the relationship, if any, between those

1 series?

2 A. Well, the E and the F were the Treasury's  
3 preferred, which was a senior -- senior piece of paper,  
4 meaning basically entitled to be satisfied before the  
5 next level down.

6 We were the common equity, so the common equity is  
7 kind of what's left over after everyone else is satisfied  
8 in the capital structure, debt, preferred, et cetera.

9 So their piece of paper, their preferred stock,  
10 was in the capital structure a senior piece of paper as  
11 far as the rankings go.

12 THE COURT: Ms. Acevedo, if I could interrupt once  
13 more.

14 MS. ACEVEDO: Sure. Of course. Please.

15 THE COURT: Sir, do you have an understanding of  
16 how the percentage ownership of the minority  
17 shareholders became reduced from 20 percent to  
18 7.9 percent?

19 THE WITNESS: Sure.

20 THE COURT: Can you explain that to me just in a  
21 very simple fashion?

22 THE WITNESS: Yeah.

23 So a part of this plan converted preferred stock  
24 that the Treasury owned, the E and the F, into common  
25 shares.

1           So, I mean, just to -- let's say we have -- put  
2 this aside. Let's say currently there are 100 shares  
3 outstanding. Let's say the Series C preferred  
4 represented 80 and the minority represented 20.

5           Well, to come up with a plan that made sense,  
6 which we can talk about further, the preferred stock  
7 became common stock, so the denominator increased  
8 substantially, the total number of shares increased  
9 substantially, because what the Treasury had in preferred  
10 became common.

11           So the total number of shares increases.  
12 Therefore, your percentage, the minority's percentage and  
13 the Series C preferred percentage of the overall  
14 outstanding goes down because the total number of shares  
15 outstanding goes up.

16           So that's how, even by them not doing anything  
17 specifically, because more shares are issued, they own  
18 less of the total that's outstanding.

19           THE COURT: Okay. And then how does the  
20 Series C preferred which previously had been 79.9 percent  
21 get reduced to 31.3 percent?

22           THE WITNESS: Same way. Same way.

23           We were diluted; right? We owned a certain number  
24 of shares or had rights to a certain number of shares,  
25 but if 500 million shares used to represent 80 percent of

1 the stock and now of all a sudden there are a billion  
2 shares outstanding, our percentage of the total is going  
3 to come down arithmetically.

4 And it happened exactly the same way. The amount  
5 of dilution that the majority incurred was the same  
6 dilution as the minority incurred.

7 So we didn't advantage ourselves in this process.  
8 We maintained, that between the majority and the minority  
9 we maintained the same relationship we had beforehand as  
10 afterwards.

11 THE COURT: All right. Well, it's still a little  
12 bit mystifying, but thank you.

13 THE WITNESS: I'll be happy to try to elaborate  
14 further if you'd like.

15 THE COURT: No. That's fine.

16 BY MS. ACEVEDO:

17 Q. You mentioned a moment ago that the E and the  
18 F were senior pieces of paper vis-à-vis the Series C.

19 What was the effect of them being senior vis-à-vis  
20 the Series C?

21 A. Well, contractually, the Series E and F had  
22 certain rights that the Series C did not have. There  
23 were certain limitations on what the company could do  
24 vis-à-vis the common stock with the Series E and F  
25 outstanding.

1           So it's -- you know, it's kind of a -- in a sense  
2 a blocking position because you have to respect their  
3 rights before you can do much to help out the common  
4 shares.

5           Q. Let's take a look at another document in your  
6 binder, JX 306.

7           Can you identify this document for the Court?

8           A. Yes.

9           So this is the document that was the full version  
10 with all the details and specifics of the detailed term  
11 sheet which we just looked at before. This was the final  
12 document, the definitive document.

13          Q. And let's take a look at page 107 of 108.

14           There's a signature there above your name.

15           Is that your signature?

16          A. It is.

17          Q. And if I can direct you to section 4.05, which is  
18 on page 41 of 108, there's a section there entitled  
19 Exchange of the Series C Preferred Stock and Termination  
20 of the Trust.

21          A. Yes.

22          Q. What's articulated there?

23          A. Well, this is the implementation of the plan  
24 vis-à-vis the Series C.

25          Q. And what happened to the Series C in the

1 recapitalization and why?

2 A. The Series C was exchanged into common shares.  
3 That was -- that was a critical part of the plan.  
4 That's what the plan called for and that's what was  
5 happening.

6 Q. And what happened to the trust and why?

7 A. Ultimately the trust -- the trust was terminated  
8 because -- well, one is we had -- we had fulfilled our  
9 responsibilities under the trust document. And this is  
10 of course once the plan actually became effective. If it  
11 hadn't, we would have gone into round two or three I  
12 suppose of life of the trust.

13 And so that was -- you know, that was the  
14 appropriate thing to happen, I mean, ultimately, because  
15 everyone recognized that the government had a large  
16 ownership stake in AIG, that it made sense for the  
17 disposition program, meaning the sale of the common  
18 shares, be coordinated.

19 It wouldn't have made sense, certainly in my  
20 view, to have competing large block sellers of AIG's  
21 stock. That's not the way to maximize value, so I think  
22 the right decision was made there to put the blocks  
23 together and have a coordinated, effective disposition  
24 program.

25 Q. And when you say "put the blocks together," who

1 held the common stock that the Series C was converted  
2 into following the --

3 A. Well, ultimately the Treasury was given the  
4 responsibility to dispose of the stock.

5 Q. Okay. And before we move on, I want to follow up  
6 on a point that you referenced earlier, and that is the  
7 contractual rights of the Series E and F preferred stock.

8 Before the recapitalization was agreed to, did  
9 the Series E and F have a contractual right to common  
10 stock?

11 A. Contractual right to common stock?

12 Q. Yes.

13 A. It didn't have a contractual right to common  
14 stock, but they had certain blocking rights vis-à-vis the  
15 outstanding common stock.

16 Q. And what were those?

17 MR. BOIES: Your Honor, I'm going to object unless  
18 the witness clarifies whether he's giving a legal opinion  
19 or not.

20 MS. ACEVEDO: I can move on, Your Honor.

21 THE COURT: Okay. Let's move on.

22 BY MS. ACEVEDO:

23 Q. We'll move on to a different subject.

24 A. Okay.

25 Q. And I want to talk about minority shareholders,

1 the effect of the recap on the minority shareholders.

2 THE COURT: One follow-up question, if I may, to  
3 what we were discussing a few moments ago.

4 These reallocations of the percentage ownership of  
5 the Series C, E and F, did that all occur at the time of  
6 this master transaction agreement?

7 THE WITNESS: When it became effective, yes.

8 THE COURT: Yes.

9 THE WITNESS: Yes.

10 THE COURT: So that apparently was December 8,  
11 2010?

12 THE WITNESS: Yeah. I don't remember the actual  
13 effective date because even in that agreement there might  
14 have been some conditions that had to happen. I don't  
15 remember specifically. But when the plan went  
16 effective, yes, all that reallocation happened at that  
17 time.

18 THE COURT: All right. Thank you.

19 Go ahead.

20 MS. ACEVEDO: Thank you, Your Honor.

21 BY MS. ACEVEDO:

22 Q. So going back to the topic of minority  
23 shareholders, you've mentioned minority shareholders  
24 several times in our conversation today.

25 Did you understand that you had a duty to the

1 minority shareholders?

2 A. Yes.

3 Q. And what was your understanding of that duty?

4 A. My understanding was, we certainly couldn't take  
5 advantage of the minority shareholders.

6 You know, I've got enough experience in my own  
7 experience with restructuring companies dealing with  
8 minority and majority shareholdings that the majority  
9 can't take advantage of the minority.

10 And certainly, if not in this case, there are  
11 opportunities when that can happen. And we knew that,  
12 and we certainly didn't have any intention of doing that  
13 and understood that we couldn't and shouldn't, and so it  
14 wasn't ever even an issue that we were going to try to  
15 somehow disadvantage the minority vis-à-vis our own  
16 situation.

17 Q. Do you believe that the recapitalization plan was  
18 fair to minority shareholders?

19 A. I do.

20 Q. And why is that?

21 A. Because the minority got what the majority got  
22 plus on top of that. They did better than we did. Well,  
23 you know, they benefited.

24 Q. And how did you satisfy yourself that the plan was  
25 fair to them?

1           A. Well, that was -- again, that was a critical part  
2 of the plan. We did -- we, the trustees, I think  
3 effectively fulfilled our responsibilities to the  
4 Series C preferred constituency and the U.S. taxpayer,  
5 and the minority did better than that. I think that on  
6 its face satisfied our obligations to the minority  
7 shareholders.

8           Q. Okay. And to -- just to wrap up here, to swing  
9 back to His Honor's question earlier, when did your  
10 position as a trustee end?

11          A. When the trust terminated.

12          Q. And were you paid for your work as a trustee?

13          A. I was not.

14                 In other words, there was a provision in the trust  
15 agreement which did provide for compensation to the  
16 trustees, but I decided that this was -- I was doing this  
17 as a matter of public service anyway, so I -- I said,  
18 Don't bother to pay me.

19          Q. And why did you agree to become a trustee?

20          A. I felt this was -- it was an important situation  
21 for the United States, for the U.S. taxpayer, and having  
22 the ability and responsibility to represent the U.S.  
23 taxpayer as best I could I thought was important. I felt  
24 I could do a good job. I felt that my skill set was  
25 appropriate here. And I wanted to, as I said, perform

1 public service to the best extent I could.

2 Q. And do you believe you were successful in that  
3 respect?

4 A. I do.

5 MS. ACEVEDO: Thank you, Your Honor. I have no  
6 further questions at this time.

7 THE COURT: All right. Thank you, Ms. Acevedo.  
8 Cross-examination?

9 MR. BOIES: Thank you, Your Honor.

10 - - - - -

11 CROSS-EXAMINATION

12 BY MR. BOIES:

13 Q. Good morning.

14 A. Good morning.

15 Q. Mr. Langerman, we haven't met before, but my name  
16 is David Boies, and you understand I represent the  
17 plaintiffs here.

18 A. Yes, sir.

19 Q. What did you do to prepare for this testimony?

20 A. I discussed it with my lawyers.

21 Q. And who are your lawyers?

22 A. Arnold & Porter.

23 Q. Anyone else?

24 A. Anyone else who are my lawyers?

25 Q. Anyone else you discussed it with.

1           A. I think at various points there were other lawyers  
2 in the room. At different times different people were in  
3 the room.

4           Q. Who were those people?

5           A. I know the Department of Justice had lawyers,  
6 different lawyers from time to time.

7                   I believe, again, from time to time there were  
8 other lawyers in the room from -- it may have been  
9 Debevoise and Davis Polk. Again, sometimes they were  
10 there; sometimes they weren't. I didn't have  
11 independent discussions with them. It was always part of  
12 something else going on, but they were on occasion  
13 present.

14          Q. How many meetings were there with your lawyers  
15 and then other lawyers as well to prepare for this  
16 testimony?

17          A. I think -- the first one was I believe sometime in  
18 the summer, several months ago. Actually I think the  
19 first meeting I had was with my own lawyers.

20                   Then I think there was a follow-up with the DOJ  
21 lawyers, may have been somebody else in the room at the  
22 time.

23                   And then over the last few weeks, we had a few  
24 sessions. And I was teed up to do this a week ago, so we  
25 went through a process before that, didn't get to testify

1 last week because there were other things going on, and  
2 then -- so then we had I think another session last  
3 evening as well.

4 Q. And at all of these sessions other than the very  
5 first one, were representatives of the Department of  
6 Justice present during the preparation?

7 A. Well, I had sessions with my own lawyers at which  
8 they were not present, so, I mean, I did have some  
9 meetings with my own guys a few times.

10 Q. How many meetings did you have to prepare  
11 for this testimony where representatives of the  
12 Department of Justice were present?

13 A. Well, as I mentioned, so there was one in the  
14 summer. I think the next one was when I was supposed to  
15 testify a week ago. And then yesterday.

16 There might have been one other, but I don't  
17 remember. That's what I recall.

18 Q. And at how many meetings during your preparation  
19 were representatives of Davis Polk and the Debevoise firm  
20 present?

21 A. I kind of lost track. I mean, I wasn't paying all  
22 that much attention.

23 I think the first meeting in the summer I believe  
24 there was -- one of the non-DOJ lawyers was there.

25 And then last week, when I was prepping for the

1 testimony, I think that there was a lawyer from Debevoise  
2 and maybe from Davis Polk as well for at least parts of  
3 the meetings. They weren't always there. They were in  
4 and out. And then I think the same last night.

5 Q. That is, last night there were lawyers from  
6 Davis Polk and Debevoise present?

7 A. I believe so.

8 Q. And when you said during the summer there was a  
9 non-DOJ lawyer there, you mean a lawyer from Debevoise or  
10 Davis Polk?

11 A. I think one or the other. Yes.

12 Q. And in these preparation sessions did they show  
13 you documents?

14 A. "They" meaning who?

15 Q. Did anybody show you documents?

16 A. Yes.

17 Q. And ask you questions?

18 A. Yes.

19 Q. And did they go over what they thought the issues  
20 were that were going to be raised?

21 A. Well, now, are you referring to my own lawyers?

22 Q. Did anyone in these preparation meetings.

23 A. Yes.

24 Q. What did they tell you last night they thought the  
25 issues were that were going to be raised today?

1           A. Well, it was -- it was not really talking about  
2 the issues that would be raised. It was what my  
3 testimony would be.

4           Q. Okay. What did they tell you about what your  
5 testimony would be?

6           A. Just the questions that you heard asked.

7           Q. The same questions.

8           A. Effectively. I mean, there might have been some  
9 changes, but the subject matter was what we just  
10 covered.

11          Q. Now, did they give you any outlines or memoranda?

12          A. No.

13          Q. Now, with respect to what happened a week ago, was  
14 it basically the same thing?

15          A. Yes.

16          Q. With respect to your job at Franklin Mutual, is  
17 Franklin Mutual or any of the Franklin Mutual entities a  
18 class member in this case?

19          A. In this particular case? I don't believe so, no.

20          Q. That is --

21          A. Not to my knowledge.

22          Q. -- none of the entities that are related to  
23 Franklin Mutual have opted in to this; is that your  
24 testimony?

25          A. Yes.

1           Just to be clear, Franklin has lots of different  
2 money management groups. We're an independent  
3 management group.

4           I can't definitively say that there isn't  
5 somewhere else in Franklin unrelated to us that may -- I  
6 don't believe that's the case, but I don't know, so I  
7 couldn't make a statement about, you know,  
8 The Templeton Group or some other group that might be in  
9 the Franklin complex. I don't believe it's the case, but  
10 I'm not positive.

11          Q. When you met with the Department of Justice  
12 lawyers and your lawyers and Davis Polk lawyers a week  
13 ago, did you discuss the extent to which, if any,  
14 Franklin Mutual entities had opted in to this case?

15          A. I think they -- they asked whether we had, whether  
16 we were part of the class, and I told them that we  
17 weren't, Franklin Mutual was not.

18          Q. So it's your testimony that they asked and you  
19 told them that none of the Franklin Mutual entities that  
20 you were aware of had opted in?

21          A. Correct.

22          Q. Is that your testimony?

23          A. Yes.

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

25                 THE COURT: Sure.

1 (Pause in the proceedings.)

2 BY MR. BOIES:

3 Q. Do you have any explanation for why a week ago the  
4 Justice Department lawyers would have contacted us and  
5 told us that in fact a Franklin Mutual entity had opted  
6 in to the class? Do you have any explanation for that at  
7 all?

8 A. No. Other than they were confused.

9 Q. Is Franklin Templeton Investments a  
10 Franklin Mutual entity?

11 A. Well, Franklin Templeton Investments is a name  
12 that could refer to different things, so I need to know a  
13 little bit more. Sometimes people call us part of  
14 Franklin Templeton Investments because it's sort of a  
15 brand name, so I'm not exactly sure, you know, in what  
16 context you're using that.

17 MR. BOIES: Your Honor, I'll come back to this  
18 line of questioning after we try to look up the materials  
19 I have in mind. And we may have an opportunity at the  
20 next break to discuss this with the Court prior to the  
21 witness coming back on the stand.

22 THE COURT: All right. Very well.

23 We'll take a break in about 18 to 20 minutes,  
24 something along those lines.

25 MR. BOIES: Thank you.

1 BY MR. BOIES:

2 Q. Now, you testified, in your examination by the  
3 government lawyers, that you understood that you had an  
4 obligation to AIG's minority shareholders; correct?

5 A. Yes.

6 Q. And you understood that that was because you were  
7 a controlling shareholder; correct?

8 A. I'm not sure I would use the term "controlling  
9 shareholder." We were a majority shareholder.

10 Q. Well, sir, you're familiar with the term  
11 "controlling shareholder"; correct?

12 A. It can mean different things to different people.  
13 I wouldn't say there's one definition for "controlling  
14 shareholder," but...

15 Q. You're a lawyer; correct?

16 A. I used to be.

17 Q. Yes.

18 Practiced law at Weil Gotshal; correct?

19 A. A long time ago.

20 Q. Okay. But you haven't forgotten what a  
21 controlling shareholder is, have you?

22 A. Well, I just testified that I think different  
23 people may have different views of what -- there's maybe  
24 a legal definition, which I'm certainly not prepared to  
25 tell you exactly what the legal definition is, and

1 there's a practical definition of what a controlling  
2 shareholder is.

3 Q. While you were a trustee of the trust, was the  
4 trust described in documents that you were familiar with  
5 as a controlling shareholder?

6 A. I don't know. It may have been, but I don't have  
7 a specific recollection of that.

8 Q. In terms of your duties to the minority  
9 shareholders, did you seek any advice or counsel from  
10 anyone concerning what those duties were in connection  
11 with the recapitalization?

12 A. Well, I know that we with our own counsel  
13 discussed that subject.

14 Q. And did your counsel provide you with advice as to  
15 what your duties were to the minority shareholders?

16 MS. ACEVEDO: Your Honor, I just want to caution  
17 the witness not to reveal the nature of that advice as I  
18 understand that would be privileged information.

19 Thank you.

20 MR. BOIES: This is a yes-or-no question.

21 THE COURT: Right. Right, it's a yes-or-no  
22 question.

23 THE WITNESS: Yes.

24 BY MR. BOIES:

25 Q. Was that in writing?

1           A. I do not believe so.

2           Q. Did you ever ask your lawyers to provide you in  
3 writing any advice as to what your duties were to the  
4 minority shareholders?

5           A. I don't recall doing that.

6           Q. Did you ever discuss what the trust's duties were  
7 or what your duties were to the minority shareholders  
8 with anyone other than your counsel?

9           A. No. Not to my recollection.

10          Q. Did you ever discuss it with any representative of  
11 the Federal Reserve?

12          A. Again, not to my recollection, no.

13          Q. Did you ever discuss it with any representative of  
14 the Treasury?

15          A. Certainly not to my recollection.

16          Q. How many times did your lawyers provide you with  
17 advice as to what the trust's duties or what your duties  
18 were to the minority shareholders?

19                MS. ACEVEDO: Your Honor, I'm going to object. I  
20 think that that's getting into privileged information.

21                He's established that he received legal advice,  
22 and I think anything beyond that is really going to the  
23 nature of those communications and I think it's --

24                THE COURT: Mr. Boies?

25                MR. BOIES: Your Honor, I think I'm entitled to

1 find out how many times it was, who provided the advice,  
2 whether anyone else was present at the time, where the  
3 advice was provided, all the kinds of things that you  
4 ordinarily get in a privilege log.

5 THE COURT: Yeah, I'm going to overrule the  
6 objection. I'll take his answer as to the number of  
7 times.

8 MS. ACEVEDO: Thank you, Your Honor.

9 THE WITNESS: Well, I don't recall the number of  
10 times, but it was something that we certainly vetted, in  
11 my view, quite extensively. But I don't remember the  
12 number of times.

13 BY MR. BOIES:

14 Q. Now, did you ever discuss the Series E and  
15 Series F exchange with your counsel to determine whether  
16 or not they had a view as to whether or not that exchange  
17 was consistent with your duties to the minority  
18 shareholders?

19 MS. ACEVEDO: Your Honor, again I'm going to  
20 object because he's asking about the nature of counsel's  
21 advice, and I think that that is across the line.

22 THE COURT: I'm going to overrule it and take a  
23 yes or no answer on this.

24 MS. ACEVEDO: Thank you, Your Honor.

25 THE WITNESS: Well, I don't know if I can give a

1 yes or no answer, Your Honor, but I would answer it this  
2 way, that we discussed with our counsel and certainly  
3 with our counsel present with our financial advisors all  
4 elements of the recap plan and proposed recap plan, so  
5 that was part of it that we certainly discussed.

6 BY MR. BOIES:

7 Q. Let me ask the question this way.

8 Did you view the entire recapitalization plan as a  
9 single integrated transaction such that you were going to  
10 look at the plan as a whole to determine whether it was  
11 fair and consistent with your duties to the minority  
12 shareholders?

13 A. I'm not sure I really understand the question.

14 Q. Okay. You understand that the recapitalization  
15 plan had a number of elements to it.

16 A. Yes.

17 Q. One of the elements was what you described as  
18 converting the E and F to common shares. Another was, as  
19 you described it, converting the Series C to common  
20 shares; correct?

21 A. Yes.

22 Q. And --

23 A. Or exchange.

24 Q. Well, you said "convert" in your testimony to  
25 counsel for the government.

1           Did you mean "exchange" when you said "convert"?

2           A. Well, when I say "convert," I'm talking not sort  
3 of the technical term, I'm talking a practical term. I  
4 know that technically it was an exchange, but in when I'm  
5 discussing conceptually the plan, I would probably use  
6 the terms interchangeably because the effect of the  
7 result is preferred becomes common.

8           Q. What you're saying is that in effect, exchanging  
9 accomplished the same result as converting would have  
10 accomplished; is that your testimony?

11          A. Same -- right. The same end result, yes.

12          Q. Now, did you have an understanding at the end of  
13 2010 whether or not the trust could have converted its  
14 common -- its preferred shares into common shares?

15          A. I'm trying to remember back. I don't -- I don't  
16 remember particularly focusing on that issue.

17          Q. You understood that the Series C was described as  
18 convertible preferred stock; correct?

19          A. Yes.

20          Q. And did you understand when you became a trustee  
21 that the plan was to have that converted, in the  
22 technical sense?

23          A. I don't think I particularly focused on that.

24          No.

25          Q. When you became a trustee, did you read the trust

1 agreement?

2 A. Yes.

3 Q. The trust agreement is in the book that the  
4 government gave you?

5 A. Yes.

6 Q. And that's Joint Exhibit 172.

7 A. Yes.

8 Q. And let me direct your attention to page 9 of  
9 Joint Exhibit 172 and in particular --

10 A. You mean at the bottom the big page 9, not the  
11 actual document page 9, just so I understand?

12 Q. I mean page 9 of the exhibit, page 9 of  
13 Joint Exhibit 172.

14 A. I'm just -- this says page 6 and then this says  
15 page 9. I just want to make sure I know which  
16 page 9 you're referring to.

17 Q. I'm using the same page numbers counsel for the  
18 government used.

19 A. Okay. So that's the big -- all right. It's the  
20 big page 9. You said -- because this is page 6 and this  
21 is page 9, I just want to make sure I'm following what  
22 you're asking me to look at.

23 Q. I'm asking you to look at Joint Exhibit 172 at  
24 page 9 using exactly the same page numbers that counsel  
25 for the government used that you didn't have any problem

1 with at the time.

2 Do you understand that, sir?

3 A. I do. I think they were a little clearer in  
4 asking me to turn to a particular page, but let's ask  
5 your question.

6 Q. Let me ask you to look at section 2.04(c).

7 A. I'm looking at it.

8 Q. And do you see there that the trust agreement  
9 provides, "The trustees shall take any and all reasonable  
10 actions available to them and necessary to cause the  
11 actions described in items (i), (ii), (iii) and (iv)"?  
12 Do you see that?

13 A. I do.

14 Q. And item (i) there is amending article four of  
15 the company's certificate of incorporation to provide  
16 for an increase in authorized shares of the company's  
17 common stock and a decrease in the par value of that  
18 stock.

19 Do you see that?

20 A. I see that, yes.

21 Q. Did you or, while you were a trustee, any of the  
22 other trustees take any actions to amend article four of  
23 the company's certificate of incorporation?

24 A. I don't know.

25 Q. Did you ever discuss with anyone your obligation

1 under section 2.04(c) to take any and all reasonable  
2 actions available to you to amend article four of the  
3 company's certificate of incorporation?

4 A. I don't recall if we did or not.

5 Q. You were aware of this obligation because you read  
6 the trust agreement; correct?

7 A. I certainly read the agreement. But I don't  
8 recall in the course of my service whether we had  
9 specific discussions of this.

10 Q. Were you aware, during the time that you were a  
11 trustee, that amending article four of the company's  
12 certificate of incorporation to increase the number of  
13 authorized common stock and decrease the par value of  
14 that common stock would have required a class vote of the  
15 common shareholders?

16 A. I'm sorry. Was I aware that that would have  
17 required? I don't -- I don't recall having that  
18 discussion or, you know, discussing the topic.

19 Q. Did you have an understanding, while you were a  
20 trustee working on the recapitalization, as to why the  
21 Series C stock was being exchanged as opposed to  
22 converted?

23 A. I do not recall that discussion. No.

24 Q. Did you ever ask anybody?

25 A. I don't recall.

1 Q. Did anyone ever tell you any reason why the  
2 Series C stock was being exchanged as opposed to  
3 converted?

4 A. Certainly not that I remember, no.

5 Q. Before you met the other trustees, you were  
6 interviewed by Mr. Tom Baxter of the Federal Reserve  
7 Board; is that correct?

8 A. Interview, discussion, I mean, it was a meeting I  
9 guess -- I don't know if it was an interview or not, but  
10 it was certainly a discussion, yes.

11 Q. You met with Mr. Tom Baxter prior to the time that  
12 you met or had any discussion with the other trustees;  
13 correct?

14 A. Yes.

15 Q. And that meeting was to discuss the possibility of  
16 you becoming a trustee; correct?

17 A. Yes.

18 Q. In the course of that discussion, did Mr. Baxter  
19 talk to you about the Series C preferred stock?

20 A. I mean, I really don't remember the specifics of  
21 that discussion. It may very well have been because that was  
22 why I was sitting there, but I don't remember the  
23 specifics of --

24 Q. Did Mr. --

25 A. -- that.

1 Q. Did Mr. Baxter talk to you about issues with  
2 respect to the conversion, using that in what you refer  
3 to as the technical sense, of the Series C preferred  
4 stock into common stock?

5 A. Not that I recall, no.

6 Q. Did Mr. Baxter, in this initial meeting that he  
7 had with you, discuss with you the Walker lawsuit?

8 A. That doesn't ring any bells, so I don't think so.

9 Q. Up to this morning -- moment, had anyone ever  
10 discussed with you the Walker lawsuit?

11 A. I mean, that doesn't -- I don't even -- I don't  
12 know what the Walker lawsuit is, so unless they called it  
13 something else, I don't -- I don't know what the Walker  
14 lawsuit is.

15 Q. The Walker lawsuit I would recommend -- I would  
16 represent to you was a lawsuit filed in November of  
17 2008 by an AIG shareholder in Delaware.

18 Were you aware of such a shareholder suit?

19 A. No. I mean, I guess -- I'm sure it wouldn't have  
20 surprised me back then that there were shareholder  
21 lawsuits. I mean, those are quite common. But like I  
22 said, the term "Walker lawsuit" doesn't ring any bells,  
23 so I would say did I have some specific knowledge about  
24 this specific lawsuit, I don't think so.

25 Q. Were you aware of a lawsuit in Delaware in which

1     AIG made a representation to the Court that the number of  
2     authorized common shares would not be increased without a  
3     class vote of the common shareholders?

4             A.    No.

5             Q.    And no one has ever mentioned that to you before  
6     this morning; is that your testimony?

7             A.    I don't have any recollection of it.  Yeah, that  
8     is my testimony.

9             THE COURT:  Shall we take that break now,  
10    Mr. Boies?

11            MR. BOIES:  Yes, Your Honor.

12            THE COURT:  I'm going to give you a few extra  
13    minutes on this, so let's reconvene at 11:20.

14            (Court in recess.)

15            MR. BOIES:  Your Honor, we have something to raise  
16    outside the presence of the witness.

17            THE COURT:  All right.  Mr. Langerman, can I ask  
18    you to relax in the hallway for a moment.  We'll call you  
19    back shortly.

20            (Whereupon, the witness was not present in  
21    open court.)

22            THE COURT:  All right.  Go ahead.

23            MR. BOIES:  Your Honor, as part of our attempt to  
24    reach closure in terms of the privilege issues, we asked  
25    counsel for Davis Polk to be present this morning, and

1 they are present now, and so in order not to keep them  
2 here all day, we'd like to just discuss that issue with  
3 the Court if the Court would permit.

4 THE COURT: Sure.

5 MR. BOIES: As I promised I would do, I went back  
6 and tried to figure out as narrow a way as possible to  
7 address the Davis Polk privilege production.

8 As the Court will recall, we did not get a  
9 privilege log from Davis Polk because of the volume of  
10 the privileged materials.

11 And what I have proposed to counsel for the  
12 government and counsel for Davis Polk is that they  
13 produce simply from seven people's e-mails essentially,  
14 files, and then two AIG central repositories of  
15 electronic documents the materials that they have. Those  
16 can be done readily because they're all electronic.

17 And I would simply ask as a good faith matter, if  
18 they can by just asking these people to determine whether  
19 any nonelectronic papers are available, I would not ask  
20 for a search for the paper documents but just a  
21 good-faith effort to tell me if they know of any  
22 nonelectronic documents that are available.

23 If that is acceptable to them and acceptable to  
24 the Court, that is the way we would propose to approach  
25 it.

1 THE COURT: All right. I'll let Mr. Gardner speak  
2 first.

3 MR. GARDNER: Thank you, Your Honor. And I think  
4 at some juncture this morning you're going to want to  
5 hear from Davis Polk and perhaps the New York Fed as  
6 well, but, you know, we'll probably take it one step at a  
7 time if that's okay.

8 THE COURT: Well, before you go ahead, is counsel  
9 for Davis Polk in the courtroom?

10 MS. BIVENS: Your Honor, Frances Bivens for  
11 Davis Polk.

12 THE COURT: All right. I'll hear from you, too.  
13 You can come forward if you'd like.

14 MS. BIVENS: Whatever works the best, Your Honor.

15 THE COURT: I assume you'll want to say  
16 something.

17 MR. GARDNER: And Your Honor, I mean, I'm happy to  
18 come to the podium or I can just stay right here. It  
19 seems like there's a lot of folks around now, so --

20 THE COURT: As long as the court reporter can pick  
21 up what you're saying, I think we're good.

22 MR. GARDNER: I have full confidence she can,  
23 Your Honor.

24 I think to properly frame this issue we need to  
25 start sort of, you know, back where discovery left off.

1 And I think to frame this issue properly, during the  
2 course of discovery in this case, Your Honor, there has  
3 been more than 20 million pages of documents produced in  
4 this case. More than 70 fact witnesses, just fact  
5 witnesses, have been deposed in this case. And that's  
6 just pretrial discovery.

7 Now, since then, in response to the Court's  
8 direction last week, an enormous number of documents  
9 contained on the privilege logs on the basis of  
10 attorney-client privilege have been produced.

11 And just to give the Court some perspectives of  
12 the numbers we're talking about here, from the  
13 New York Fed alone approximately 120,000 pages were  
14 produced just this past week, from the Board of Governors  
15 approximately 38,000 pages of documents, and from  
16 Treasury approximately 32,000 pages of documents. And  
17 that's just this week, Your Honor.

18 THE COURT: I understand all of that. I know  
19 there's a lot of documents and it's a big case. We all  
20 know that.

21 MR. GARDNER: Well, but I think that's important,  
22 Your Honor, because now we're talking about approximately  
23 190,000 pages of documents just produced in this last  
24 week on top of the millions of pages that have previously  
25 been produced.

1           Now, a substantial portion of those documents that  
2           were produced this past week are the communications and  
3           legal advice between Davis Polk on the one hand and the  
4           New York Fed and the Treasury on the others.

5           So plaintiffs now have that information, so any  
6           communications between Davis Polk, the New York Fed,  
7           Treasury or the Board of Governors should be captured in  
8           those productions.

9           So what Mr. Boies is now talking about is internal  
10          communications amongst Davis Polk attorneys that never  
11          went to the client agencies.

12          This Court has the inherent power to determine the  
13          scope of both the subject-matter waiver and what those  
14          consequences are, and as the case law in the Court of  
15          Federal Claims and the Federal Circuit makes clear, the  
16          Court has to balance the interests and the needs of the  
17          parties.

18          And here, it seems that plaintiffs are really  
19          engaged at this juncture in a fishing expedition.

20          I can say --

21          THE COURT: No. I disagree.

22          MR. GARDNER: Well, I can say, Your Honor, with  
23          complete confidence, as a matter of law, there is no  
24          internal communication amongst Davis Polk attorneys that  
25          make a physical invasion of an intangible property

1 interest more or less likely. As a matter of law, that  
2 cannot be the case.

3 And I haven't heard plaintiffs argue otherwise.  
4 And that's significant.

5 Nor can there be any dispute, Your Honor, that  
6 internal communications amongst Davis Polk attorneys  
7 cannot bear on the legal question of whether the  
8 New York Fed under 13(3) of the Federal Reserve Act has  
9 the authority to accept equity as consideration for a  
10 loan.

11 Again, I haven't heard plaintiffs argue  
12 otherwise.

13 THE COURT: But here's the problem, Mr. Gardner.  
14 If the plaintiff had been aware during discovery that  
15 the government intended to waive the privilege as to  
16 Davis Polk and its clients, the plaintiff clearly would  
17 have been entitled to those documents during discovery,  
18 including the internal documents of Davis Polk. There's  
19 no question about that.

20 MR. GARDNER: Well, Your Honor, I resist the  
21 notion that the waiver that this Court has concluded is  
22 as broad as the waiver as concluded, but I'm not here to  
23 reargue that issue and the intentions of the government  
24 to waive the privilege. But I do want to make clear for  
25 the record that we don't agree with the scope of the

1 waiver the Court has found.

2 But beyond that, what we're doing is we're  
3 weighing two things now; right? We're weighing the  
4 potential relevance of the information on the one hand,  
5 which, as I've represented to the Court, is  
6 extraordinarily low given what the issues are in this  
7 case, with the burden on Davis Polk on the other.

8 And that's why I think Ms. Bivens needs to speak  
9 to the burden issue with Davis Polk. That's an issue I  
10 am not competent to speak to.

11 So at this juncture, Your Honor, given that the  
12 relevance is very low, I'd ask that you hear from  
13 Ms. Bivens now about what those burdens would be.

14 THE COURT: Sure. I'm happy to hear from  
15 Ms. Bivens. Please come forward.

16 MS. BIVENS: Your Honor, thank you.

17 I'm here principally to address some practical  
18 questions of the logistics of what this all means.

19 As Mr. Boies indicated, we were not asked to  
20 collect privileged materials during the course of  
21 discovery, so anything that we do now will need not just  
22 collection but then review of documents.

23 And I know there's been some talk about all of the  
24 fancy electronic things that we all can do with documents  
25 these days. But any production that we make, we will

1 have to have eyes on every page because, as you can  
2 understand, all of the lawyers involved in this were also  
3 working for other clients at the time, and we certainly  
4 can't be in the position of producing anything that we  
5 haven't reviewed to make sure that we're not revealing  
6 the attorney-client privileged material from other  
7 clients.

8 So they've asked for documents from seven lawyers  
9 without time limitation, so it would be a three-year time  
10 period as I understand the request. And --

11 THE COURT: Can we put a time limit -- a time  
12 parameter on this, Mr. Boies?

13 MR. BOIES: Your Honor, we probably could put  
14 some time limitations on it. The problem is that, as  
15 the Court is aware, it moves through from September of  
16 2008 to essentially December of 2010. Now, that's like  
17 two years and a quarter, two and a quarter years. And  
18 there's almost never a time when there's nothing  
19 happening.

20 Now, there's times when there's going to be very  
21 little documents, but the times when there are very  
22 little documents, that's not much of a -- that's not much  
23 of a burden.

24 I would also note to the Court that there are two  
25 Web addresses or e-mail addresses that were used to

1 communicate to people who were working at Davis Polk on  
2 this matter, something called ACO.DPW and something  
3 called Command.DPW. And the Court is familiar with those  
4 from some of the documents that --

5 THE COURT: Yes. I've seen that.

6 MS. BIVENS: So I can actually -- so some help I  
7 can provide here is actually to explain what those are  
8 because I think that there just might be a  
9 misunderstanding. There's actually not a physical  
10 mailbox anywhere. There's not a repository anywhere.

11 Command.DPW is actually the client distribution  
12 list, so it goes -- the people on Command, the members of  
13 that, were three Treasury people and three Fed people, so  
14 all of those should already be produced because  
15 they're -- the -- anything that went out should have been  
16 logged by the clients and produced by the clients  
17 already, so I think we might be okay on Command.DPW.

18 The ACO list was an ever contracting and  
19 expanding list of who was working on the matter at the  
20 time.

21 And just to clarify the role that we played over  
22 the three-year period, Davis Polk was initially retained,  
23 as everyone knows, on the initial rescue transaction and  
24 did all of the corporate essentially papering and  
25 advising on that transaction, much of which has nothing

1 to do with this case, and there's a lot of people  
2 involved who you've never heard their names and work that  
3 was done that's never been relevant to the case.

4 We were then retained by Treasury to do the TARP  
5 transactions that took place in November and then again  
6 in March. And there's an enormous amount of  
7 transactional work again that doesn't go to the central  
8 issues of this case and involved people that -- or  
9 they're not on these custodian names, but in any event,  
10 there was an enormous amount of work going on during that  
11 time period.

12 Some of the people involved here and whose names  
13 are listed here were working on things that are, again,  
14 things that you guys are not interested in, don't come  
15 up in the case. The volume that we're talking about if  
16 we really do this whole time period is really  
17 substantial.

18 And just to give the Court an understanding of  
19 the burden that we're talking about in terms of time to  
20 review and collect, the production that we actually did  
21 in this case, in agreement with Mr. Boies' firm, was that  
22 we produce from two custodians all of their  
23 communications for that three-year period with AIG and  
24 AIG's advisors and lawyers and things like that.

25 That production and review took 500 attorney

1 hours. It took a month and a half to collect and  
2 produce. And that was two custodians and a much narrower  
3 segment of documents than what we would be talking about  
4 here.

5 So I'm just concerned that if we are talking about  
6 seven custodians over a three-year period for all  
7 documents related to AIG -- you know, I think what you're  
8 interested in is limited to internal communications, and  
9 I think we all know the really critical time periods  
10 here. I think the 16th of September to the 24th of  
11 September is a very important time period that most of  
12 these people that you've listed would be involved in.

13 Martine Beamon is a litigation lawyer who was  
14 involved for about two weeks on the Walker lawsuit, so we  
15 might be able to look at her documents for a narrow  
16 period of time.

17 Bjorn Bjerke only worked on Maiden Lane III.  
18 Davis Polk has already produced to the Fed who produced  
19 to Congress privileged documents related to  
20 Maiden Lane III, so you might be able to decide that  
21 we're okay on that point.

22 I think there could be some narrowing of this that  
23 might get us to a point where we wouldn't be spending the  
24 next six months looking through documents to produce and  
25 to satisfy the obligations here.

1 THE COURT: Right. I think you may be right.  
2 Maybe there's a good way to narrow this down a bit and  
3 make it more manageable.

4 MR. BOIES: I think we may be able do that,  
5 Your Honor.

6 The ACO.DPW, that is something that was a  
7 distribution list for people working on this case.

8 MS. BIVENS: Right. And there's no place to go  
9 get those documents.

10 In other words, it was just the same as writing  
11 "Steve, Joe and Sarah" on an e-mail line.

12 In other words, it doesn't -- there's no physical  
13 place where those kinds of documents travel to. They  
14 actually just go to people's e-mail accounts.

15 MR. BOIES: But what I'm saying is that we know  
16 that everything that was addressed to ACO.DPW was  
17 something that relates to AIG.

18 MS. BIVENS: Only in the broadest sense.

19 MR. BOIES: In the broadest sense. I understand.

20 MS. BIVENS: So, for example, if there was tax  
21 advice that was being solicited for purposes of some  
22 small piece of a TARP transaction, that would be --  
23 you know, it -- that would -- ACO.DPW is actually and  
24 could potentially include all -- it's a way -- that  
25 would be the way of including all the custodians at

1 Davis Polk.

2 But certainly, for example, if Marshall Huebner  
3 received something from ACO, that's in his mailbox.

4 So if we care about Marshall, we can get  
5 Marshall's documents. Whether it came through that  
6 mechanism or some other mechanism, we can do that by  
7 going to his e-mail.

8 MR. BOIES: What I would suggest -- and we have  
9 two problems here. One is the number of people. And  
10 the other is the fact that these people may be working on  
11 matters other than AIG.

12 And I assure the Court, as I think probably  
13 everybody knows, having had 150 to 200 thousand pages of  
14 documents received this week with all the trial that's  
15 going on, we don't want unnecessary documents.

16 THE COURT: Well, especially when you want to do  
17 things quickly, you have to be realistic about it.

18 MR. BOIES: Exactly, precisely right, Your Honor.

19 So what I would suggest is that we take just the  
20 people we've identified and just the ACO.DPW documents.  
21 That means that we're not taking --

22 THE COURT: Not the ACO, the other one.

23 MS. BIVENS: ACO gets you everybody.

24 MR. BOIES: No, no, no.

25 MS. BIVENS: So if there is a first-year and a

1 third-year and a second -- and a fifth-year all working  
2 for Marshall --

3 THE COURT: Okay. Let him finish.

4 MS. BIVENS: -- that gets all their e-mails.

5 MR. BOIES: No. What I'm saying is that you only  
6 get the ACO.DPW transmissions to or from these seven  
7 people.

8 In other words, I'm not asking for all the  
9 ACO.DPW. I'm having two different filters. One is these  
10 seven names and the other is ACO.DPW. The seven names  
11 reduces the volume hugely, and the DPW -- ACO.DPW means  
12 that we don't have Procter & Gamble, or whoever else  
13 these people are working for, documents.

14 MS. BIVENS: So what you're saying is that you  
15 want all of Marshall's documents that say "ACO."

16 MR. BOIES: Yes. I mean, what --

17 MS. BIVENS: And nothing else out of Marshall's  
18 documents.

19 (Admonition from the court reporter.)

20 MR. BOIES: I mean, my understanding -- and if  
21 this understanding that I'm now going to state is wrong,  
22 then we need to go back. But my understanding is that  
23 everything that went to Mr. Huebner that related to AIG  
24 would have been in ACO.DPW --

25 MS. BIVENS: I think it was a list that you could

1 use if you wanted to --

2 MR. BOIES: But you didn't --

3 MS. BIVENS: -- if you wanted the whole team to  
4 know what it was, just to be clear on what it is.

5 So I think that the -- I actually would recommend  
6 that we try to talk to each other about a solution that  
7 would be practical because I think it might not be worth  
8 trying to hash it out with -- you know, and waste any  
9 more time. But I think there could be a way of  
10 narrowing this that could get us to a practical, workable  
11 solution.

12 MR. BOIES: The problem is, Your Honor, it's now  
13 Friday.

14 THE COURT: It is.

15 MR. BOIES: And I want to -- I want to be sure  
16 this gets started because we've already gone a week and  
17 we're going to run out of time, so --

18 MS. BIVENS: Just to be clear, the collection  
19 alone is going to take us past trial. Just as a  
20 practical matter, we just don't have them -- I think as  
21 Mr. Boies knows, you can't just go into people's Outlook  
22 accounts and grab -- you have to actually have documents  
23 processed before you can actually do a review, so I  
24 think -- I think that we're unlikely to be able to do a  
25 discrete thing before the end of next week, but I think

1 we can come to something that will be practical and  
2 something we can implement.

3 MR. BOIES: For example, I mean, I fundamentally  
4 don't agree that this has to take a lot of time. This is  
5 electronic stuff.

6 I mean, we go in to clients all the time and  
7 sometimes -- I'm sure Davis Polk does this, too -- you've  
8 got a tender offer. You've got a preliminary injunction.  
9 You don't have weeks. What you do is you go into the  
10 electronic files, you upload them and you sort them. And  
11 that is something that is done in a matter of hours, not  
12 days or weeks.

13 And we've got to have a way, I mean, that we  
14 don't let this bog down on a practical basis. I'm trying  
15 to limit this as much as I can, but there's got to be a  
16 way to get at these documents and do it in a timely  
17 fashion.

18 MS. BIVENS: I agree that we can do this in a  
19 timely fashion if we get the volume down to something  
20 that we can take a look at. But I can tell you that the  
21 general counsel of my firm will not let us turn over  
22 documents that we haven't put eyes on. It's just as a  
23 practical matter we just have ethical obligations to  
24 other clients that prevent us from doing that. We will  
25 have to look at them.

1           So we have to make sure that what we're sending  
2 out is actually what we intend to be giving over.

3           So we just need to find a way to get this down to  
4 a practical time period that's relevant to the case that  
5 gets us to the -- to most likely relevant, to the extent  
6 the internal communications could be relevant to  
7 anything.

8           THE COURT: Ms. Bivens, give me -- since you know  
9 the system perhaps better than anyone in the room, give  
10 me your idea on what a reasonable approach to this would  
11 be.

12           MS. BIVENS: So my suggestion, Your Honor, would  
13 be that -- I don't know if you have the list in front of  
14 you of the seven custodians.

15           THE COURT: No, I don't.

16           MS. BIVENS: I'm not sure if that was provided to  
17 you.

18           THE COURT: You can just tell me who they are.

19           MS. BIVENS: Sure.

20           Five of the seven custodians were working during  
21 the 16th to the 24th, and I think that it would be  
22 reasonable to do a search for the internal  
23 communications among the DPW lawyers during that time  
24 period, and that would be a discrete time period that I  
25 think we all can agree was a time period that you'd be

1 interested in.

2 MR. BOIES: Yes.

3 MS. BIVENS: Martine Beamon, as I mentioned, is a  
4 litigation lawyer. I'm confident that her only  
5 involvement in the case was in connection with the Walker  
6 lawsuit. We could look for her internal communications  
7 with respect to the Walker litigation.

8 Bjorn Bjerke, who's the seventh custodian here,  
9 worked on Maiden Lane III. We could -- I think that  
10 transaction also took place in a time period that has  
11 limitations on it that I don't know off the top of my  
12 head but we could come to an agreement on and we could  
13 look for his documents during that time period.

14 With respect to other things, the waiver was  
15 obviously something that came up in Marshall Huebner's  
16 deposition. I do think that his bankruptcy-related  
17 advice was one of the reasons that the waiver came to  
18 light in the first instance, and I think it would be  
19 reasonable for us to look for his documents that relate  
20 to the bankruptcy advice, which I think happened in two  
21 time periods that he testified to, and we could look for  
22 those documents.

23 If we start there, I think we would have a very  
24 reasonable production that we could come up with, and it  
25 seems like a practical approach that addresses the issues

1 that we -- I think would most be at interest for --

2 MR. BOIES: I think that's right, Your Honor, with  
3 just one modification.

4 That is, with respect to the Walker lawsuit issue,  
5 that is, whether you have a conversion or exchange or  
6 reverse stock split and the like, I think there are some  
7 discrete points in time where we know, for example,  
8 Mr. Huebner got communications. We will try to identify  
9 like a discrete period of time that they can search those  
10 files for.

11 THE COURT: All right. Well, you know what, I'm  
12 really inclined to adopt Ms. Bivens' proposal here. And  
13 I know how large this case is and the number of  
14 documents, and I don't want to impose an unbelievable  
15 burden on your law firm at this point in the trial.

16 So if you can do those things that you described  
17 in short order, that would be terrific.

18 MS. BIVENS: Okay. Thank you, Your Honor. I  
19 appreciate it.

20 THE COURT: I appreciate both your assistance and  
21 the assistance of your law firm.

22 MS. BIVENS: Thank you very much.

23 MR. BOIES: Thank you.

24 MS. BIVENS: Thank you.

25 MR. BOIES: I think we're ready to go back to

1 work.

2 THE COURT: Okay. All right.

3 Should we have the witness come in?

4 (Whereupon, the witness was present in  
5 open court.)

6 THE COURT: Thank you for your patience,  
7 Mr. Langerman. I think we're about ready to proceed with  
8 your cross-examination.

9 BY MR. BOIES:

10 Q. Good morning again.

11 A. Good morning.

12 MR. BOIES: Your Honor, I'm going to, with the  
13 Court's permission, hand up a document that we have over  
14 the break marked as Plaintiffs' Trial Exhibit 3168.

15 This is a copy of a document that's already in the  
16 court file and I mark it as a -- or I mark an excerpt of  
17 this as an exhibit just so that we have something that  
18 defines for the record what we're looking at.

19 THE COURT: All right.

20 BY MR. BOIES:

21 Q. And this is a notice identifying certain members  
22 of the class. And if you look at pages 3 through 8,  
23 there are a number of class members that are described as  
24 Franklin Templeton Investments, and you know, I would ask  
25 the witness to look at that and tell me whether this

1 indicates that entities that he's associated with are in  
2 fact class members.

3 A. Well, first of all, I haven't seen this document  
4 before, so, I mean, if you want me to look at it, I can  
5 look at every single name if you want me to go through  
6 it. I don't see any of our funds listed here yet.

7 Do you want me to go through each line item, which  
8 I will if you want me to?

9 Q. You say you don't see any of your funds listed.

10 A. Right.

11 Q. Franklin Templeton Investments is the overall  
12 name for the business that encompasses your funds;  
13 correct?

14 A. Yes.

15 Q. I mean, for example, you mentioned that there  
16 was certain information that Mr. Baxter and others needed  
17 and that your entity needed to supply in connection with  
18 being considered -- you being considered for a trustee,  
19 and that was supplied by something called  
20 Franklin Templeton Investments; correct?

21 A. I mean, it was supplied by the company. You know,  
22 when you say it was supplied by something called  
23 Franklin Templeton Investments, I know that he was put in  
24 touch with the company's legal counsel.

25 I mean, the parent company is called

1 Franklin Resources, Inc. That is the legal name of the  
2 company. It's a public company. It trades on the  
3 New York Stock Exchange.

4 I frankly don't know if there's an entity called  
5 Franklin Templeton Investments. I just don't know.

6 MR. BOIES: Your Honor, at the risk of spending  
7 more time on this than it may deserve, let me hand up  
8 Plaintiffs' Trial Exhibit 2945.

9 This is a March 12, 2010 letter on the letterhead  
10 of Franklin Templeton Investments, addressed to  
11 Mr. Timothy Massad of the Department of Treasury and  
12 Mr. Thomas Baxter of the Federal Reserve Board of  
13 New York, concerning the possibility of the witness  
14 becoming a trustee.

15 BY MR. BOIES:

16 Q. Let me just ask you, did you see this document at  
17 or about the time it was sent by your company to the  
18 Department of Treasury and the Federal Reserve Bank of  
19 New York?

20 A. I may have, but I don't recall if I did see it.  
21 But can I -- oh, I was going to point out that, again,  
22 while it is -- there's a logo Franklin Templeton  
23 Investments. Did you see -- Craig Tyle, he's general  
24 counsel for Franklin, Franklin Resources, Inc.

25 I mean, I can just tell you as a matter of

1 practical that we use the term "Franklin Templeton  
2 Investments" as kind of a generic term. There may  
3 actually be an entity, but that -- that's not the name of  
4 the public company. It's not the name of a company that  
5 is our advisor, so that's sort of in general what  
6 "Franklin Templeton Investments" stands for. I think  
7 it's more of a generic terminology. But it could be an  
8 actual entity. I just don't know.

9 But the other thing that just again maybe -- I  
10 don't know where you're going with this. But the way --  
11 the way our -- our group is organized -- and I think it's  
12 actually referenced in here.

13 So Franklin Mutual Advisers actually has an  
14 information barrier around it, so we operate  
15 independently from a research portfolio management  
16 perspective from all the other Franklin investment  
17 groups. We don't -- we don't exchange information. We  
18 have our own trading. In fact, when we make SEC filings,  
19 we're recognized as a separate entity for 13(d) purposes  
20 from the rest of the investment groups.

21 So I don't know. I have no current or ongoing  
22 knowledge of what happens from an investment perspective  
23 in the other investment groups.

24 Q. I spend this time on this issue which I think is  
25 peripheral to what we're doing simply because we were

1 told a week ago, we were advised a week ago by counsel  
2 for the defendant that entities you were involved in  
3 were class members. Now, there's nothing wrong with  
4 that.

5 A. Okay. I think --

6 Q. I'm --

7 A. I think that was a mistake on their -- they may  
8 have misinterpreted. I believe that was a mistake. I'm  
9 not sure why they made that communication, but I believe  
10 that was a mistake on their part. They just  
11 misunderstood.

12 Q. And then we went to look at the document and it  
13 said a number of Franklin Templeton Investments class  
14 members --

15 A. Right. And that's why I'm -- and again, I'm happy  
16 to take the time, but if you look at -- for example, if  
17 you look at the sheet that you gave me, this 3168 -- and  
18 first of all, there are a bunch of individual names, but  
19 I don't believe you will find going through this any  
20 reference to the funds that are under the Franklin Mutual  
21 Advisers umbrella.

22 So all these funds -- Templeton, that's not us.  
23 Franklin U.S. Equity Fund, Franklin Large Cap Growth  
24 Securities, those aren't us. They're other investment  
25 groups within Franklin Resources, but they're not us.

1           So I don't think you will see any of our funds. I  
2 mean, I'm just looking through it as quickly as I can.

3           Templeton Growth Fund is not us. Bissett is not  
4 us. Global Equity Series. And certainly the individual  
5 names, I don't even know what these names are. But I  
6 would be surprised if I had seen our names and this --  
7 and it confirms that none of the Franklin Mutual Series  
8 funds I believe are on this list.

9           Q. And I take it from what you're saying is that  
10 Franklin Mutual is a part of Franklin Templeton  
11 Investments but only a part, and what you're saying is  
12 these parts are unrelated to you. Is that what you're  
13 saying?

14          A. Well, related in the sense that we're all under  
15 one big public company but unrelated from an investment  
16 perspective. We have no common management or daily  
17 interaction with the other investment groups.

18          Q. Let me just ask you --

19          A. And then if -- well, if I could just add, so, for  
20 example, in a class action situation, we each make  
21 independent decisions as to whether we're going to be  
22 part of a class or not part of a class. What they do  
23 doesn't have an impact on what I do and vice versa.

24          Q. Let me just ask you to look at page 3.

25          A. Sure.

1 Q. And three lines up from the bottom, it's class  
2 member 50023796.

3 Do you see that?

4 A. I do.

5 Q. And then it says "Franklin Templeton Investments"  
6 and then it says "Franklin MPF U.S. Opportunities Fund."

7 Do you see that?

8 A. I do.

9 Q. And it's your testimony that that is something  
10 that you have no relationship with other than the fact  
11 that you're part of a larger organization.

12 A. That's correct.

13 Q. Let me return to something that is more directly  
14 related to the issues in the case.

15 When were you first aware that an exchange of  
16 Series C preferred stock for common stock was being  
17 considered?

18 A. I really don't have a specific recollection of  
19 that.

20 Q. Approximately.

21 A. I -- I can say I never really spent a lot of time  
22 thinking about the technical exchange terminology, so I'm  
23 sure I read it, but I don't remember having any  
24 discussion or in my own mind thinking exchange,  
25 conversion, and any substantive discussion about it, so I

1 don't know that I ever had that discussion.

2 Q. Well, you're an accomplished, experienced and  
3 sophisticated investment advisor; correct?

4 A. Well, up until "investment advisor" -- I work for  
5 an investment advisor. We manage money.

6 Q. Okay. You're a sophisticated and experienced  
7 person who manages money, and the company is certainly  
8 well-known.

9 And you certainly understood, did you not, that an  
10 exchange was different than a conversion?

11 A. I do understand that. But I can tell you that in  
12 the course of our discussions and work, we didn't focus  
13 on exchange versus conversion. That wasn't -- I mean, it  
14 wasn't something that we focused on.

15 Q. And is it your testimony no one ever brought that  
16 up to you or raised that with you? Is that correct?

17 A. Not that I recall.

18 Q. No one ever told you that there was any issue or  
19 problem or inhibition with converting the stock?

20 A. Not to my recollection, no.

21 Q. Let me ask you to look at Defendant's Exhibit 868,  
22 which is one of the documents that counsel for the  
23 United States discussed with you.

24 And in particular, let me ask you to look at the  
25 page that has the Bates number that ends 39485.

1 A. Okay.

2 Q. Now, this is minutes of a meeting of trustees on  
3 September 28, 2010; correct?

4 A. Yes.

5 Q. And this is the day before the trustees approved  
6 the recapitalization plan; correct?

7 A. Yes.

8 Q. I'd like you to look at the second paragraph, the  
9 second sentence, where it says the trustees and their  
10 advisors "discussed (i) the revised terms of the  
11 proposal, including the change in terms from a  
12 cancellation of the Series C Preferred Stock to an  
13 exchange of the Series C Preferred Stock for common  
14 shares of AIG."

15 Do you see that?

16 A. I do.

17 Q. And what's happening here is that you and your  
18 advisors are discussing the latest revision of the  
19 proposed recapitalization plan; correct?

20 A. That's what the minutes say.

21 Q. And the latest revision of the proposed  
22 recapitalization plan made certain changes; correct?

23 A. That's what the minutes say. Yes.

24 Q. And one of those changes is that instead of  
25 canceling the Series C preferred stock, it was going to

1 be exchanged for common shares; correct?

2 A. Yes.

3 Q. What was the reason for that change?

4 A. I don't know.

5 Q. That was a significant change, was it not, sir?

6 A. I don't know.

7 Q. Well, certainly getting common shares for the  
8 Series C preferred stock as opposed to canceling the  
9 Series C preferred stock was an important step; correct?

10 A. Again, I'm trying to think back. You know, my  
11 focus was on what this all looked like at the end of the  
12 day. I'd say the mechanics of getting there, not  
13 something that I focused on.

14 Q. Well, sir, if the Series C preferred stock had  
15 been canceled and you had not gotten your common stock,  
16 that would have been a matter of significance to you;  
17 correct?

18 A. I was focused on what -- where we were going.  
19 Again, cancellation, exchange, conversion, those weren't  
20 things I focused on.

21 Q. Well, however much alike conversion and exchange  
22 are, cancellation is something quite different; correct?

23 A. Not if what you end up with is -- you know, we  
24 were looking at where this thing was going, what we were  
25 going to end up with. The specific mechanics and the

1 detailed term sheet and the ultimate, you know, very  
2 detailed formal agreement, I mean, certainly were ways to  
3 implement how we got there. I did not focus on those  
4 mechanics.

5 Q. When you say "what we were going to end up with,"  
6 who is the "we" there?

7 A. Well, I view the "we" is the constituency that we  
8 were representing, which was the Series C preferred.

9 Q. So if the only constituency you are representing  
10 is the Series C preferred, you were obviously very  
11 concerned with what you got in exchange or for the  
12 Series C preferred; correct?

13 A. What we ended up with, sure.

14 Q. And there were proposals where you would not end  
15 up with AIG common shares; correct?

16 A. You mean going back in time?

17 Q. While you were a trustee.

18 A. There were certainly discussions that we might end  
19 up with something other than common stock. Correct.

20 Q. And there were proposals where the Series C  
21 preferred stock would be canceled for what was described  
22 as nominal consideration; correct?

23 A. No. That, I don't recall that.

24 Q. No one ever told you about that, is your  
25 testimony?

1           A. I don't recall. No. I don't recall ever someone  
2 saying, You're going to get -- you know, for what  
3 you're -- for what you represent, you're going to get  
4 nominal consideration, because that would have been a  
5 nonstarter.

6           Q. Let me try to be as clear as I can.

7                   Did anyone ever discuss with you a plan whereby  
8 the Series C preferred stock would be canceled for  
9 nominal consideration and the government would get common  
10 stock for its Series E and F preferred stock?

11          A. I do not recall any discussion like that.

12          Q. Did anyone ever discuss with you a proposal  
13 whereby the Series C preferred stock would be canceled  
14 for nominal consideration and the government would get  
15 common stock for its Series E and F preferred stock?

16          A. I certainly don't recall any of those discussions  
17 because it would have been a nonstarter for me.

18          Q. Did anyone ever discuss with you a proposal  
19 whereby the Series C preferred stock would be canceled  
20 for \$1 billion and the government would get common stock  
21 for its Series E and F preferred stock?

22          A. The one billion, that's the first time I'm hearing  
23 that, so no, I don't ever remember anybody saying a  
24 billion dollars.

25          Q. And all I'm asking is, no one ever discussed that

1 with you. No one ever mentioned that possibility.

2 A. I don't -- I certainly don't recall because I'm  
3 quite sure if somebody had said to me, Oh, by the way,  
4 the job you're doing, you're going to get zero for it,  
5 what do you think, I mean, it was a joke. That would  
6 be -- that's crazy.

7 Q. Do you know a Mr. Brian Schreiber?

8 A. Who?

9 Q. Brian Schreiber?

10 A. I think I saw him patrolling the halls last week,  
11 but I don't know him.

12 Q. But you didn't -- you didn't meet with  
13 Mr. Brian Schreiber in 2010; is that your testimony?

14 A. On what date?

15 Q. In 2010.

16 A. Oh, 2010.

17 He may have been one of the people we met with  
18 over time. I don't remember specifically. We met with a  
19 number of AIG people, and he -- he could very well have  
20 been at one of the meetings, although I must say I didn't  
21 recognize him when I saw him last week. He was  
22 identified -- so it's possible, but I don't remember.

23 Q. Do you know what his role was with respect to the  
24 recapitalization?

25 A. Not specifically.

1 Q. Do you know whether he had any role at all with  
2 respect to the recapitalization?

3 A. I think he did, but I couldn't be specific.

4 Q. Could you give me your general understanding as to  
5 what you believe Mr. Schreiber's role was with respect to  
6 the recapitalization?

7 A. I couldn't. I think he was one of probably a lot  
8 of people at AIG who were working on it.

9 Q. One of the proposals that you had to approve as a  
10 trustee was the proposal to exchange Series E and F  
11 preferred stock for common stock; correct?

12 A. The treatment of the Series E and F were part of  
13 the whole recap plan, so yeah, we were -- to the extent  
14 we were signing on to that, that was certainly part of  
15 that deal.

16 Q. And you understood that when you signed on to  
17 that, that meant voting your shares in favor of it;  
18 correct?

19 A. Again, you know, the mechanics of voting our  
20 shares, we were -- we were approving it, so whatever went  
21 along with approving it, yes, we were endorsing a plan  
22 which incorporated that, that treatment.

23 Q. As you understood it at the time, after you  
24 endorsed this plan, how was it implemented?

25 A. I don't recall.

1 Q. Was there a shareholder vote?

2 A. I don't believe so. Well, we voted, so when we  
3 voted, we approved it. I don't -- I really don't recall,  
4 again, the specifics of how it was implemented.

5 Q. Do you recall that at one point the trustees  
6 wanted there to be a shareholder vote?

7 A. Not to my recollection.

8 Q. Do you recall discussions about whether or not  
9 there would be a shareholder vote with respect to the  
10 recapitalization?

11 A. No.

12 Q. Let me see if I can find a document.

13 And while we're looking for that document, do you  
14 recall any discussions about whether there was any reason  
15 not to have a shareholder vote with respect to the  
16 recapitalization?

17 A. No.

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

19 THE COURT: Sure.

20 (Pause in the proceedings.)

21 BY MR. BOIES:

22 Q. Let me hand up a binder of exhibits.

23 (Pause in the proceedings.)

24 Let me ask you to turn to Plaintiffs' Trial  
25 Exhibit 2836.

1           A. 2836.  
2           Q. 2836.  
3           A. Okay. Yep.  
4           Q. Now, this is an e-mail exchange that I have no  
5 reason to believe you got at the time because you're not  
6 an addressee or a copyee on it. But the e-mail that I'd  
7 like to direct your attention to is at the bottom of the  
8 page, an e-mail from Mr. Peter Hancock to  
9 Mr. Jim Millstein --  
10          A. Okay.  
11          Q. -- on September 28, 2010.  
12          A. Okay.  
13          Q. And do you know who Mr. Peter Hancock is?  
14          A. Yes.  
15          Q. Who is he?  
16          A. Well, today he's the CEO of AIG.  
17          Q. And at this time?  
18          A. One of the senior people at AIG.  
19          Q. And it's addressed to Mr. Jim Millstein.  
20             Do you see that?  
21          A. Yes.  
22             MS. ACEVEDO: I object -- Your Honor, if I can  
23 just insert myself here, we want to object to the use of  
24 this document. It's not identified on the plaintiffs'  
25 exhibit list, and we feel it's inappropriate to be asking

1 Mr. Langerman about it.

2 THE COURT: Mr. Boies?

3 MR. BOIES: Your Honor, I have not offered the  
4 exhibit and I've not read from it. I'm simply going  
5 to -- after setting the stage, I'm going to ask him to  
6 look at a particular portion of it and see if it  
7 refreshes his recollection.

8 THE COURT: Go ahead.

9 MS. ACEVEDO: Thank you, Your Honor.

10 BY MR. BOIES:

11 Q. Now, would you look at paragraph numbered 4 --

12 A. Yes.

13 Q. -- at the bottom of the page.

14 A. Yes.

15 Q. Does that refresh your recollection that as of  
16 September 28, 2010, the trustees were asking for a  
17 shareholder vote?

18 A. No, it doesn't.

19 Q. Do you have any reason to understand why  
20 Peter Hancock would have thought that the trustees were  
21 asking for a shareholder vote if you were not?

22 A. No.

23 MR. BOIES: Your Honor, I am going to offer this  
24 document now as an impeachment document.

25 MS. ACEVEDO: Your Honor, impeachment, as you

1 know, does not come into evidence. And Mr. Langerman is  
2 not referenced on this document. This is an internal --  
3 I'm sorry. It is a communication between Treasury and  
4 AIG. There's no indication and certainly no foundation  
5 has been laid that Mr. Langerman is knowledgeable about  
6 this document. And we would object to offering it into  
7 evidence at this time.

8 THE COURT: Well, I think you're incorrect. An  
9 impeachment document can come into evidence. And then if  
10 it's used for that purpose, it doesn't have to be on the  
11 plaintiffs' exhibit list to begin with.

12 So I will admit Plaintiffs' Trial Exhibit 2836.  
13 (Plaintiff's Exhibit Number 2836 was admitted into  
14 evidence.)

15 MS. ACEVEDO: Thank you, Your Honor.

16 BY MR. BOIES:

17 Q. Let me go back to Defendant's Exhibit 868 and the  
18 page we were looking at, which is the page with the Bates  
19 number ending 39485.

20 The first point we were just talking about in  
21 terms of revised terms was changing the terms from a  
22 cancellation of the Series C preferred stock to an  
23 exchange of the Series C preferred stock for common  
24 shares of AIG. Do you remember that?

25 A. Yes. Well, I remember the reference to it in this

1 document.

2 Q. That is, you remember the reference in the minutes  
3 of the trustees meeting.

4 A. Yes.

5 Q. But you don't as you sit here now recall anything  
6 about that meeting; is that fair?

7 A. Well, I don't remember anything about certainly  
8 discussing that particular provision.

9 Q. Well, do you remember anything at all about the  
10 meeting on September 28, 2010?

11 A. I mean, I remember there were discussions before  
12 we got to the final day, but I don't have a specific  
13 recollection of that meeting or the specifics. But,  
14 you know, I kind of remember there was a lot going on and  
15 before we got to the final approval we were having  
16 discussions, and I think this was one of them.

17 Q. Do you remember a meeting of the trustees the day  
18 before the trustees approved the recapitalization plan?

19 A. I mean, I have a general recollection, but I don't  
20 remember the specifics of it. But as I said, I remember  
21 there was a lot going on and I kind of remember having to  
22 have a meeting before the final meeting, but I don't  
23 remember the specifics of it.

24 Q. When did you get the revised terms of the  
25 recapitalization plan?

1 A. I don't recall.

2 Q. How soon before the September 29 approval did you  
3 get the revised terms of the recapitalization plan?

4 A. I don't recall.

5 Q. From whom did you get the revised terms of the  
6 recapitalization plan?

7 A. I don't recall that either.

8 Q. When you got the revised terms of the  
9 recapitalization plan, did you get a blacklined or  
10 redlined version that showed you the changes?

11 A. You know, I don't remember. I do remember over a  
12 period of time getting blacklined versions of things, but  
13 I couldn't say that specifically this day we got a  
14 blacklined version. I just don't recall.

15 Q. Regardless of recalling the exact date you got it,  
16 when you got the final proposed recapitalization plan  
17 terms, was there a blackline or a redline that showed you  
18 what changes had been made from the last proposal that  
19 you'd looked at?

20 A. I don't know.

21 Q. Did anyone explain to you the reasons for the  
22 changes that were made to the recapitalization plan prior  
23 to its presentation to you for consideration?

24 A. I -- I couldn't say today. I don't recall a  
25 discussion specifically.

1 Q. Did anyone explain to you any reasons for the  
2 change in the way the Series C preferred stock was going  
3 to be treated in the recapitalization plan?

4 A. I don't know. I mean, they may have, but I don't  
5 recall.

6 Q. As you understood it, did it make any difference  
7 what order the Series C compared to the Series E were  
8 exchanged for common shares?

9 A. I don't recall a specific discussion of that.

10 Q. You do recall that the Series C and the Series E  
11 were both going to be exchanged for common shares.

12 A. They were both going to become common shares.

13 Q. And did you have an understanding back in 2010 as  
14 to how that was going to happen?

15 A. I'm trying to remember back. I don't remember  
16 sitting here today, you know, thinking about the  
17 mechanics specifically of how that would happen.

18 Q. Okay. Regardless of the mechanics of how it  
19 happened that the Series C and the Series E preferred  
20 stock became common shares, did you have an  
21 understanding whether or not it made any difference in  
22 what order those two series of preferred shares became  
23 common shares?

24 A. I -- I certainly don't recall thinking about that  
25 specific question.

1 Q. Did anyone ever discuss that with you?

2 A. Not that I recall.

3 Q. You recall that counsel for the government and the  
4 Court asked you some questions about the relative  
5 ownership percentages of the trust, minority, Treasury,  
6 immediately after the recapitalization. Do you recall  
7 that?

8 A. Yes.

9 Q. And the common shareholders were going to end up  
10 with about 7.9 percent of the stock after  
11 recapitalization; is that correct?

12 A. The existing common holders, yes.

13 Q. Were you aware of any proposal that would have  
14 given the existing common shareholders a different  
15 percentage of the common shares after the completion of  
16 the recapitalization?

17 A. Well, I think over the course of the many months  
18 of discussions and negotiations that there were other  
19 proposals that had been floated that would have come out  
20 with a different result, so I'm sure over time there were  
21 different possibilities that could have resulted in  
22 something that was different than what this recap plan  
23 ultimately did.

24 Q. Do you remember any of those proposals?

25 A. I remember at one point -- and I think I referred

1 to this earlier -- some suggestion or possibility that  
2 the Series C preferred would be satisfied in something  
3 other than common stock, that there might be certain  
4 assets that we would receive as consideration, so  
5 there -- certainly that was one possibility that I -- as  
6 I mentioned, I was not particularly enthusiastic about.

7 Q. Who proposed that?

8 A. I don't remember who proposed it. I'm pretty sure  
9 that I --

10 Q. That's my question.

11 A. Yeah. Okay. Then I don't recall.

12 Q. When was it proposed?

13 A. I don't remember.

14 Q. Approximately.

15 A. I just don't remember.

16 Q. Was it before or after September of 2010?

17 A. I mean, I don't know for sure. Probably before,  
18 but I -- you know, it could have been early I suppose  
19 since this happened the end of September. I don't  
20 remember the exact time sequence of when that was  
21 floated.

22 Q. Would that have resulted in the AIG existing  
23 common shareholders ending up with a larger percentage of  
24 the AIG common stock after the completion of the  
25 recapitalization plan?

1           A. Well, I don't know how developed that proposal  
2 got. I mean, I just -- I remember the discussion, so I  
3 don't know that we got very far in the discussion. It  
4 could have hypothetically, but again I don't think that  
5 that was particularly well fleshed out because it wasn't  
6 going to happen as far as I was concerned.

7           Q. Well, what was going to happen and was going to  
8 happen right up until September 28, 2010 was a plan to  
9 cancel the Series C preferred stock; correct?

10          A. I -- I again don't recall the specifics, so...

11          Q. You don't have any reason to doubt what's in the  
12 September 28, 2010 minutes, do you, sir?

13          A. No.

14          Q. My question originally was, were there any  
15 proposals that you were aware of that would have resulted  
16 in the AIG existing common shareholders ending up with  
17 more than 7.9 percent of the AIG common stock after the  
18 recapitalization?

19          A. And my answer is, I don't recall any proposals  
20 that got to the point of actually being a proposal that  
21 set forth that kind of treatment.

22                 So the answer is, there may have been, but I  
23 don't recall any that got that far in the discussion  
24 process.

25          Q. Were you aware of anybody taking a position that

1 the AIG common shareholders after the recapitalization  
2 should end up with less than 5 percent of the AIG common  
3 stock?

4 A. I don't recall that.

5 Q. Did you ever look at the issue as to whether or  
6 not the Series E and Series F stock were or were not  
7 exchangeable for common stock?

8 A. I don't recall.

9 Q. Did you ever ask anybody for advice on that?

10 A. Don't recall.

11 Q. Did that make a difference to you in terms of  
12 deciding whether or not it was appropriate to exchange  
13 common stock for Series E and F preferred stock?

14 A. I think we tried to focus on kind of the value  
15 that that had and how it should be treated and whether it  
16 made sense in the context of how everyone else was being  
17 treated, so it was -- it was part of the multi --  
18 multifaceted puzzle that we were looking at.

19 Q. You understood that Series E and F preferred stock  
20 was going to become common stock as part of the  
21 recapitalization; correct?

22 A. Yes.

23 Q. And you understood that that would dilute the  
24 existing common shareholders; correct?

25 A. Yes.

1 Q. And you understood that you had a fiduciary duty  
2 to be sure that that dilution was fair to the existing  
3 common shareholders; correct?

4 A. Well, to both existing common shareholders and to  
5 the Series C. We were common shareholders as well, so we  
6 were looking out for the common shareholders  
7 collectively.

8 Q. Well, sir, you weren't common shareholders. The  
9 Series C were not common shareholders before the  
10 recapitalization; correct?

11 A. But we viewed ourselves as the 80 percent holder,  
12 so whether we were or weren't technically, that's how we  
13 viewed ourselves. That's -- that was my approach.

14 Q. So your approach was that prior to the  
15 recapitalization you saw no difference between the  
16 interests of the Series C preferred stock and the  
17 existing common shareholders; is that your testimony?

18 A. I viewed us as having the same interests.

19 Q. And you saw no difference between the interests of  
20 the Series C preferred stock and the existing common  
21 shareholders prior to the recapitalization. That is your  
22 testimony; correct?

23 A. My testimony and my view is that we were trying to  
24 maximize what was left over for the Series C and all  
25 common shareholders, and so to the extent that we could

1 benefit the Series C, we were going to benefit the  
2 minority shareholders equally.

3 Q. Is it your understanding and testimony that the  
4 recapitalization gave the Series C preferred only what it  
5 was legally entitled to?

6 A. Well, I -- the way I --

7 Q. That's a yes, no, I don't know, or I don't  
8 understand the question.

9 MS. ACEVEDO: Your Honor, I'm going to object here  
10 because that calls for a legal conclusion.

11 THE COURT: Well, I'm going to take his  
12 understanding given his experience and background.

13 MS. ACEVEDO: Thank you, Your Honor.

14 THE WITNESS: I have trouble answering that as a  
15 yes or no, Your Honor, so if that's my -- if that's my  
16 choice, I guess I'd say I -- either I don't understand it  
17 or I don't feel I can give the appropriate answer by a  
18 yes or no.

19 BY MR. BOIES:

20 Q. Okay. Let me ask another question and see if you  
21 can answer that.

22 Did you believe, at the time that you were  
23 considering the recapitalization, that there was any  
24 difference between the interests of the trust and the  
25 interests of the existing common shareholders? Again,

1 that's yes, no, I don't know, or I don't understand the  
2 question.

3 A. I thought we had the same interests.

4 Q. Did anyone ever suggest to you that there were any  
5 difference in the interests of the trust and the existing  
6 common shareholders in advance of the adoption of the  
7 recapitalization plan?

8 A. Not that I recall.

9 Q. Did you understand that the trust was in a  
10 position to determine whether or not the recapitalization  
11 plan was or was not adopted?

12 A. Well, I understood that without our approval it  
13 wouldn't happen. Or maybe there was some other mechanism  
14 that someone could create that would cram us down. I  
15 suppose that was a theoretical possibility. But we  
16 were -- we were one of the elements that had to sign off  
17 for this plan to happen, not the only one but certainly  
18 one that had to sign off on it.

19 Q. When you say you were not the only one, who else  
20 had to sign off on the recapitalization plan for it to be  
21 adopted?

22 A. Well, there were a number of signatories to it:  
23 the Fed, Treasury, among others, the company.

24 Q. As you understood it in 2010, did the trust have  
25 the power to adopt the recapitalization plan on its own

1 without the approval of anybody else?

2 A. Well, I think -- I guess --

3 Q. That's a yes, no, or I don't know or I don't  
4 understand the question.

5 A. I would repeat, I don't feel I can give the  
6 appropriate answer by yes, no, or I don't understand the  
7 question, so if those are my limitations, then I don't  
8 feel I can answer the question properly.

9 Q. So you cannot tell the Court whether, as you  
10 understood it in 2010, the trust did or did not have the  
11 power to adopt the recapitalization plan on its own  
12 without the approval of anybody else. That's your  
13 testimony?

14 MS. ACEVEDO: Your Honor, that mischaracterizes  
15 his testimony. He said he needed to provide an  
16 explanation, and if he does need to provide an  
17 explanation, we believe he should be afforded to do so.

18 THE COURT: Overruled. I'll take his answer to  
19 this question.

20 MS. ACEVEDO: Thank you.

21 BY MR. BOIES:

22 Q. Do you have the question in mind, sir?

23 A. Can you repeat it, please?

24 Q. Sure.

25 Can you tell the Court whether, as you understood

1 it in 2010, the trust did or did not have the power to  
2 adopt the recapitalization plan on its own without the  
3 approval of anybody else?

4 A. No. We -- for the plan to be implemented, we  
5 needed the approval. We could sign on to it, but for the  
6 plan to be implemented, I think the Fed had to give its  
7 sign-off as well.

8 Q. The Fed had to sign off, and that's because in the  
9 trust agreement the Fed had to approve the final  
10 disposition plan; correct?

11 A. Yes.

12 Q. Okay. Assuming that you got the Fed to sign off  
13 under the trust agreement, could the trust, as you  
14 understood it in 2010, adopt the recapitalization plan on  
15 its own without the approval of anybody else?

16 A. I believe so.

17 Q. And you understood in 2010 that the trust had an  
18 obligation to the minority shareholders to be certain  
19 that the recapitalization plan was fair to the minority  
20 shareholders; correct?

21 A. We certainly had to treat them fairly.

22 Q. And you understood that one of the things the  
23 recapitalization plan did was that it exchanged or  
24 changed Series E preferred stock into or for common  
25 stock; correct?

1 A. Yes.

2 Q. And as you understood it in 2010, what was the  
3 fair value of the common stock that the Department of  
4 Treasury got for its Series E preferred stock?

5 A. Well, I think the value is to some extent in the  
6 eyes of a judge or the beholder in a sense.

7 Q. Let me clarify the question if you think that.

8 A. Okay. Okay.

9 Q. You are familiar with the concept of fair market  
10 value; correct?

11 A. Yes.

12 Q. What was the fair market value of the common stock  
13 that the Department of Treasury got for its Series E  
14 preferred stock as a result of the recapitalization?

15 A. I don't recall.

16 Q. Approximately.

17 A. I don't recall. There was a trading -- but,  
18 you know, when you say "fair value" --

19 Q. Can you tell me approximately?

20 A. I don't recall. It was --

21 Q. Did you try to find that out?

22 A. Yes.

23 I mean, there was a liquidation value that I  
24 think people were looking at as some approximate  
25 valuation but again depended on where AIG was trading or

1 it would ultimately trade, so there could be a wide range  
2 of judgment as to what the real value because, again, we  
3 were -- they were getting shares. We were getting  
4 shares. While there was a trading market, there was a  
5 wide range of view as to what AIG stock was worth, could  
6 be worth, so that was a -- that was a wide range, put it  
7 that way.

8 Q. There was no trading market for the Series E  
9 preferred stock; correct?

10 A. No, not for the preferred, but for the common  
11 there was.

12 Q. Now, with respect to the common, there was no  
13 liquidation value for the common; correct?

14 A. For the common, no.

15 Q. Okay. So when you were talking about trading  
16 market, you were talking about a trading market for the  
17 common stock; correct?

18 A. Yes.

19 Q. And when you were talking about liquidation value,  
20 you were talking about liquidation value for the  
21 preferred stock.

22 A. Yes. Nominal value, liquidation value.

23 Q. Now, with respect to the fair market value, as you  
24 understand that term --

25 A. Uh-huh.

1 Q. -- was the trading market price at the end of  
2 2010 something that you think or thought at the time  
3 represented the fair market value of the AIG stock?

4 A. Well, I believed that if AIG were to successfully  
5 recapitalize, it could be worth substantially more  
6 potentially than the current trading value of the stock.

7 So, you know, fair market value, you know,  
8 that's -- do you mean on that particular day because --  
9 well, the other reality is that given the number of  
10 shares that the Series C represented, given the number of  
11 shares that ultimately Treasury was getting was a large  
12 number of shares that could not be liquidated on any one  
13 particular day --

14 Q. Do you remember the question that you're  
15 answering?

16 A. I'm trying to answer your question.

17 Q. What question are you trying to answer?

18 A. As to what the fair value of the stock and/or  
19 their securities was. And I'm trying to explain that --

20 Q. That wasn't my question.

21 A. Okay. Then maybe I misinterpreted the question.

22 Q. My question is whether at the end of 2010 you  
23 believed that the stock market price for AIG's stock  
24 represented the fair market value, as you use that term,  
25 for that stock.

1           A. It was -- it was a proxy for a snapshot of what  
2 the market thought the stock was worth at that moment in  
3 time.

4                   Did I think that that represented potential  
5 intrinsic value?

6           Q. Not potential intrinsic value.

7           A. Okay. So --

8           Q. You understand what fair market value is; right?

9           A. I don't know if I understand the way you're using  
10 it. No. I mean, I know how I would think about it, but  
11 I don't know -- when you're using the term, maybe it's  
12 not the same thing that I'm thinking about.

13          Q. Well, let's -- since you're the witness, why don't  
14 you tell the Court what your definition of "fair market  
15 value" is.

16          A. Fair market value would be what something could be  
17 liquidated in a very short period of time for, monetized,  
18 sold, dollars received.

19          Q. In a very short period of time.

20          A. In a short period of time. Yes. Today's fair  
21 value, that's what -- that's how I would interpret that.  
22 Yes.

23          Q. As you use the term "fair market value" in your  
24 work managing money and in your prior work as a lawyer,  
25 did the concept of fair market value have to do with what

1 a willing buyer and a willing seller, neither of whom  
2 were compelled to sell, would arrive at?

3 MS. ACEVEDO: Your Honor, we're going to object on  
4 the ground that it calls for a legal conclusion. He  
5 specifically asked for his understanding in his prior  
6 work as a lawyer.

7 THE COURT: Overruled.

8 MS. ACEVEDO: Thank you, Your Honor.

9 THE WITNESS: I would say the concept of fair  
10 value, yes, would incorporate a willing seller and a  
11 willing buyer. That's why I say over a reasonably short  
12 period of time.

13 BY MR. BOIES:

14 Q. As you use the term "fair market value" -- or as  
15 you used the term fair market value in 2010, which is  
16 really more relevant, did you believe that that was for  
17 the AIG stock equivalent to the market price at any given  
18 point in time of the AIG common stock?

19 A. I'm really having trouble sort of understanding  
20 the question.

21 Q. Okay. You understand the term "fair market  
22 value"; correct?

23 A. Well, as we've just -- I mean, so the definition  
24 or the description that we just gave, yes. Let's assume  
25 that that's what "fair value" means. Okay.

1 Q. And you understood obviously that AIG's stock  
2 price was quoted on the New York Stock Exchange.

3 A. Yes.

4 Q. In 2010, did you believe that the price for AIG's  
5 common stock that was quoted on the New York Stock  
6 Exchange represented what you refer to as the fair market  
7 value of that stock?

8 A. Well, at the time, I would say that was -- that  
9 was the best proxy. I mean, that was -- that was the  
10 only trading environment that existed. There were  
11 willing sellers and willing buyers. Again, the size was  
12 different than the size we're talking about here, but  
13 that was as good a proxy as there was out there for what  
14 the market believed the value was, and I'm a believer in  
15 that concept.

16 Q. And in 2010, at the end of 2010, you did not have  
17 any other proxy for the fair market value of AIG's common  
18 stock; is that true?

19 A. I'd say no other proxy, but, you know, one could  
20 look at and get -- part of our work and part of the work  
21 of our advisors was that -- and it's what we do on a  
22 daily basis in our jobs as managers, is to look at what  
23 we think something could be worth, intrinsic value, is  
24 the market getting it wrong. But in terms of  
25 transactions, you look at the market, and that's --

1 that's today's proxy for value. It doesn't mean that  
2 there aren't other ways potentially of looking at things  
3 and using other kinds of valuation metrics and exercises  
4 to go through to see -- you know, the market is not  
5 always right either.

6 Q. Let me try to use your words.

7 A. Okay.

8 Q. In December 2010 when this transaction was  
9 approved, if that's what you -- if that's what you  
10 testified to, did you think the market had gotten AIG's  
11 stock price wrong, as you use that term?

12 A. I guess I would say at the moment in time, no,  
13 but --

14 Q. Okay.

15 A. But there were lots of overhangs. And I was  
16 hopeful that once this recap -- that the recap plan in  
17 and of itself could create value for the equity.

18 Q. Let me see if I understand what you're saying.

19 You're saying that in December of 2010 you thought  
20 the stock market price represented the fair market value  
21 of AIG's stock at that time but that with the  
22 implementation of the recapitalization plan the value  
23 would go up; is that fair?

24 A. Potentially could go up. Yeah.

25 Q. Okay.

1           A. I believe this was value-enhancing.

2           Q. Now, what was the value of the common stock that  
3 the Department of Treasury was going to get for its  
4 Series E preferred stock under the recapitalization plan  
5 using the proxy that you have identified?

6           A. I really -- I don't recall the specific numbers.

7           Q. Approximately.

8           A. I believe it was approximately the liquidation  
9 value or the face value of their preferreds. The amount  
10 of money that they had put in effectively was what they  
11 were -- and I think that concept was important. I think  
12 repaying the Treasury what they had put in was an  
13 important concept for the company I believe in -- that  
14 was -- that was one of the goals, repay the Treasury.

15          Q. You understood that the Series E preferred stock  
16 only got the liquidation value if the company was  
17 liquidated or the company agreed to bring it in under  
18 certain circumstances; correct?

19          A. Those were the -- that was the terms of the  
20 preferred.

21          Q. The preferred was not puttable preferred;  
22 correct?

23          A. Right.

24          Q. And there was no cumulative dividend for the  
25 preferred; correct?

1 A. Yes, correct.

2 Q. So that AIG at the time was not paying any  
3 dividend; correct?

4 A. Correct.

5 Q. And unless the Series E preferred stock was  
6 changed into common stock, there was no practical way  
7 for the government to market that preferred stock;  
8 correct?

9 A. I'm not sure if that's correct.

10 Q. Did you think in 2010 that there was a practical  
11 way for the government to market the Series E preferred  
12 stock if it didn't change it into common?

13 A. I -- I'm not sure I remember having that  
14 discussion, but --

15 Q. I didn't ask about a discussion. I said, did you  
16 think in 2010 --

17 A. I don't remember having the internal discussion  
18 when I say "discussion" in my own mind, so I don't -- I  
19 just don't recall.

20 Q. Did you have an external discussion with someone  
21 else about that?

22 A. No. But, look, I think that over time -- and I --  
23 I think people thought about different ways to extricate  
24 the government. It wouldn't surprise me if Treasury  
25 said, you know, is there some other way to get around

1 this.

2 I know at one point there was -- there was some  
3 suggestion floated that maybe the Series C in its own  
4 form ought to be marketed for any recap plan, so,  
5 you know -- and people were tossing a lot of ideas out  
6 there in terms of how to -- how to move forward.

7 Q. Did anyone ever toss an idea out, as you describe  
8 it, that involved the Series E preferred stock being  
9 marketable without being changed into common stock?

10 A. I mean, I don't remember a specific reference to  
11 that.

12 Q. Do you remember a general reference to that?

13 A. No.

14 Q. Okay.

15 THE COURT: Shall we take a lunch break,  
16 Mr. Boies?

17 MR. BOIES: Yes, Your Honor.

18 THE COURT: Let's reconvene at 1:45.

19 (Whereupon, at 12:47 p.m., a lunch recess was  
20 taken.)

21

22

23

24

25



1 liquidation value of the E and F preferred; is that  
2 right?

3 A. Approximate.

4 Q. Approximate.

5 A. Yeah.

6 Q. Now, the liquidation value of the E and F  
7 preferred was substantially higher than the market value  
8 of the E and F preferred; correct?

9 A. Now, again, when you say "market value of the E  
10 and F," you mean post conversion into the common or you  
11 mean --

12 Q. Well, once it's converted into common, we know  
13 what it's worth. It's worth the market price, according  
14 to you; right?

15 A. Okay. Well, I don't know that there was a  
16 market -- when you say "the market value of the E and F  
17 preferred," I mean, there was not a public trading market  
18 for those, for those securities.

19 Q. Okay. That's a good point. Before recap.

20 No public market; right?

21 A. Yes.

22 Q. No dividends; right?

23 A. Yes.

24 Q. Now, as somebody who manages money, if you had an  
25 instrument with no public market, no dividends -- also no

1 vote; right?

2 A. I think they had certain contractual rights  
3 but --

4 Q. Yeah.

5 A. -- no vote as a common shareholder.

6 Q. Well, they couldn't vote for directors, for  
7 example.

8 A. That's correct, yes.

9 Q. Now, as a money manager, if you had this  
10 instrument that had the characteristics of the E and F  
11 preferred, you wouldn't pay liquidation value for that,  
12 would you?

13 A. Well, I think you'd have to look at other  
14 elements of what that piece of paper represented. If  
15 that piece of paper in some sense had blockage provisions  
16 that would prevent the common equity from accruing value,  
17 if -- if it had other aspects of it that would prohibit  
18 or make it extremely difficult for the company to grow,  
19 you know, there are other things -- there are other  
20 elements that you've got to look at in terms of what's  
21 the position of that paper and how to deal with it and  
22 whether there are other ways around it.

23 Q. Let me try to make the question simple.

24 A. Okay.

25 Q. As a money manager, in September or December of

1 2010 -- and you were a money manager in September and  
2 December of 2010, weren't you?

3 A. Yes.

4 Q. In fact, while you stayed at Franklin Templeton  
5 while you went to the position as a trustee; correct?

6 A. Yes.

7 Q. That is, you continued to do your regular job at  
8 Franklin Mutual while you were a trustee.

9 A. Yes.

10 Q. In December of 2010, you wouldn't have paid the  
11 liquidation value for the Series E and F preferred if  
12 the government had come and offered that to you, would  
13 you?

14 A. Well, they didn't, so --

15 Q. Of course not. But I'm asking you whether or not,  
16 if they'd come and offered you this, you would have paid  
17 them the liquidation value. That's a yes, no, or I don't  
18 understand the question.

19 A. No, I understand the question, but it's a  
20 hypothetical, so I never --

21 Q. You're right, it is a hypothetical.

22 A. -- I never considered whether I would pay par or  
23 some discount to par for that piece of paper.

24 Q. And just so that I have your testimony, is it  
25 your testimony to the Court right now that sitting here,

1 you can't tell the Court one way or the other whether you  
2 would have been prepared to pay the liquidation value for  
3 the E and F preferred stock as a money manager in  
4 December of 2010?

5 A. I can't say definitively.

6 Q. All right, sir.

7 In your role as a trustee in 2010, did you  
8 investigate what the government said the fair value of  
9 the Series E and F preferred was?

10 A. Well, I knew that the government felt that it  
11 should be repaid what it put into the company. And I  
12 know that the company felt that it should repay what the  
13 government put in. And I know that I think anything  
14 short of that would have led to a scorched-earth kind of  
15 a process which I think would have ultimately destroyed  
16 value for the common equity holders.

17 Q. Do you remember my question?

18 A. I tried to answer your question. If you don't  
19 think I answered it, I guess ask it again.

20 Q. I'm just asking you if you remember the question.

21 A. Generally.

22 Q. What?

23 A. Generally, yes.

24 Q. What was it?

25 A. What did the government think its position was

1 worth.

2 Q. What did the government say the fair value of the  
3 Series E and F preferred was in 2010?

4 A. I don't know what it said it was.

5 Q. Did you make any effort to find out as a trustee?

6 A. I tried to explain that in my answer.

7 Q. My question is whether you made any effort to find  
8 out, as a trustee in 2010, what the government said the  
9 fair value of the E and F preferred stock was.

10 A. I think the government felt that it was worth  
11 par. That was my understanding, that the government felt  
12 that it put in the money and that it needed to be repaid  
13 that money, effectively saying it's worth par.

14 Q. Okay. So your understanding as a trustee in  
15 2010 was that the government's position that the E and F  
16 preferred stock was worth par or liquidation value.

17 A. In a recap context, yes, that it needed to be paid  
18 off full value.

19 Q. Well, when you say "in a recap context," is there  
20 any other context that you were aware of?

21 A. No. But that's what we're talking about. We're  
22 talking about, as I was thinking about it, how to get AIG  
23 to point A to B to C. We had the Treasury having this  
24 preferred it clearly believed --

25 MR. BOIES: Your Honor, could I ask for an

1 instruction.

2 THE COURT: Ms. Acevedo?

3 MS. ACEVEDO: Your Honor, he is trying sincerely  
4 to answer his questions.

5 THE COURT: Well, sincere as you are, please  
6 concentrate once again on listening to the question and  
7 then answering it.

8 THE WITNESS: Okay.

9 BY MR. BOIES:

10 Q. What I'm trying to do is see if I can find out  
11 whether, while you were a trustee, you made any effort to  
12 find out or did find out what the government said the C,  
13 the E and F preferred stock was worth.

14 A. My understanding is the government believed that  
15 it was full value.

16 Q. Okay.

17 A. That's my understanding.

18 Q. Now, did you ever learn anything that was  
19 inconsistent with that?

20 A. You mean about the government's belief?

21 Q. Yes.

22 A. Not that I recall.

23 Q. Did anyone ever tell you that the government  
24 believed that the fair value of the E and F preferred  
25 stock before the recap was less than its liquidation

1 value?

2 MS. ACEVEDO: Your Honor, I'm just going to object  
3 to the use of the word "government." If he could be more  
4 specific in his question, that would be very much  
5 appreciated.

6 THE COURT: Overruled.

7 MS. ACEVEDO: Thank you, Your Honor.

8 THE WITNESS: Not that I recall.

9 BY MR. BOIES:

10 Q. Did anyone ever tell you that anyone believed that  
11 the fair value of the E and F preferred stock before the  
12 recap was less than its liquidation value?

13 A. I mean, I'm sure in the course of our discussions  
14 with our financial advisors we had discussions about the  
15 other constituents and what their positions were. I  
16 don't have a specific recollection of someone saying  
17 it's worth 75 cents on the dollar or 50 cents on the  
18 dollar, but certainly as we were exploring different  
19 options or the possibility of trying to extract value  
20 from Treasury was something that was a relevant  
21 consideration to us.

22 Q. My question was whether anyone ever told you that  
23 anyone believed that the fair value of the E and F  
24 preferred stock before the recap was less than its  
25 liquidation value.

1           A. I guess I'd have to answer I don't know if they  
2 did or not.

3           Q. Let me ask you to look at Plaintiffs' Trial  
4 Exhibit 622, which is a document in evidence.

5           A. Is it toward the back here?

6           Q. It's kind of in the middle.

7           A. Okay.

8           Q. When you have it, let me know.

9           A. I actually don't see it, but maybe you can help me  
10 find it here.

11           MR. BOIES: Could I approach, Your Honor?

12           THE COURT: Sure.

13           THE WITNESS: Sorry.

14           (Pause in the proceedings.)

15           MS. ACEVEDO: Your Honor, before we talk about  
16 this document, I just wanted to ask Your Honor for a  
17 point of clarification.

18           I understand that this document was admitted but  
19 not for the truth, for demonstrative purposes with one of  
20 the experts, and I'd ask that if he is going to ask  
21 Mr. Langerman about it that he lay the proper  
22 foundation.

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

24           (Pause in the proceedings.)

25           MR. BOIES: Your Honor, our notes indicate that it

1 is in without limitation.

2 THE COURT: My law clerk is telling me that we  
3 agree with you, that it is in without limitation.

4 MS. ACEVEDO: Thank you, Your Honor.

5 BY MR. BOIES:

6 Q. Is this a document that you've ever seen before,  
7 sir?

8 A. I don't remember seeing it before.

9 Q. Let me direct your attention to page 19 of the  
10 exhibit.

11 And I will say, as I may have said before, what  
12 you have in your binder are excerpts from documents, and  
13 if you ever think you need the entire document for  
14 context, just please let us know, and we'll get it for  
15 you.

16 Do you have page 19?

17 A. Yes.

18 Q. Do you see table number 4?

19 A. Yes.

20 Q. And do you see where there is a summary of TARP  
21 direct loans and equity investments?

22 A. Yes.

23 Q. And do you see where three lines down it says  
24 "AIG Investment Program"?

25 A. Yes.

1 Q. And you understand that that's the Series E and F  
2 preferred stock; correct?

3 A. Yes.

4 Q. And it shows an outstanding amount as of  
5 September 30, 2010 of \$47.6 billion.

6 Do you see that?

7 A. I do.

8 Q. And you understand that that's the amount that  
9 they put in or the so-called liquidation value; correct?

10 A. Yes.

11 Q. And then in the next column it says "Estimated  
12 Value of Investment as of September 30, 2010."

13 Do you see that?

14 A. I do.

15 Q. And it says 26.1 billion.

16 Do you see that?

17 A. Yes.

18 Q. Did anyone ever tell you while you were a trustee  
19 in 2010 that the government estimated that the value of  
20 the E and F preferred stock was approximately \$20 billion  
21 less than its liquidation value?

22 A. I mean, I do recall some discussion. I don't -- I  
23 don't know exactly, you know, what that estimated value  
24 was based upon, what the calculation was based upon. But  
25 now that I'm looking at the document, I do have some

1 recollection of the fact that the government carrying  
2 value was less than the face value or the estimated value  
3 was less than the face value.

4 Q. And less than the face value by approximately  
5 \$20 billion; is that correct?

6 A. Yes.

7 Q. And that was something that you knew in the fall  
8 of 2010; is that correct?

9 A. Yeah. I mean, now that I'm looking at it, I do  
10 recall that, yes. I don't know if I knew the specific  
11 number, but yes, significantly less than the face value.

12 Q. Let me ask you now to turn back to, in the  
13 defendant's book, Defendant's Exhibit 868.

14 A. Okay.

15 Q. And if you go to page 39486, you will see the page  
16 that defendant's counsel directed your attention to  
17 earlier?

18 A. Yes.

19 Q. And I'd like to focus on the last substantive  
20 paragraph here at the bottom of the page that begins,  
21 "The trustees then discussed the following  
22 considerations, among others."

23 A. Yes.

24 Q. And three lines down, there is a factor that is  
25 described as "the maximization of overall value to the

1 beneficiary of the Trust."

2 Do you see that?

3 A. I do.

4 Q. And what was referred to there as "overall value  
5 to the beneficiary of the trust"?

6 A. I think what that was referring to was -- I'm not  
7 sure what the "overall" adds to it, but basically --

8 Q. And that's actually what I'm talking about.

9 What is the overall aspect --

10 A. I don't remember the specific reference, but  
11 my -- you know, my recollection of, again, the  
12 discussion was we were looking at maximizing the value  
13 to the Series C preferred in all respects, so that meant  
14 how to best maximize the value of the AIG entity itself,  
15 the pie, how to maximize the value of the Series C  
16 allocation of that pie, so that could have been why that  
17 term was used there.

18 Q. Well, sir, if you look at the end of that  
19 paragraph, there's a factor that is described as "the  
20 estimated range of combined value of the common stock to  
21 be received by the Trust for the Series C Preferred Stock  
22 and the Treasury Department for the Series E and F  
23 Preferred Stock pursuant to the Recapitalization Plan."

24 Do you see that?

25 A. I do.

1 Q. First, what was the estimated range of combined  
2 value?

3 A. Oh, I think again under different assumptions give  
4 or take ours was, you know, in the high teens to twenties  
5 billions and then sort of add on kind of an approximate  
6 liquidation value for the E and the F, is my  
7 recollection.

8 So that's -- that's my recollection of --  
9 you know, we were looking -- again, I think what that is  
10 referring to is -- we were the common shareholders. We  
11 were the largest block of common shareholders, and so  
12 we're looking at sort of what the -- what the entity is  
13 likely to be valued at or approximately and what the  
14 common stock that was to be issued -- the new common  
15 stock effectively because this was, whether it's exchange  
16 or whatever it was, new common stock that was becoming  
17 part of the capital structure of AIG.

18 Q. My question, sir, was, what was the estimated  
19 range of combined value?

20 A. I think that's what I tried to answer initially.

21 Q. Well, what was it?

22 A. Well, that's what I'm trying to answer.

23 I believe that it was the liquidation value give  
24 or take 50 billion plus the value of the common shares  
25 that we had.

1 Q. When it says "estimated range," was there a high  
2 and low?

3 A. I believe that among the exercises that Evercore  
4 went through was looking at a couple of different  
5 valuation ranges, again, and looking pro forma what this  
6 could look like.

7 Q. And did Evercore give you that in writing?

8 A. I believe that was part of a presentation that we  
9 were discussing. Yes.

10 Q. So this estimated range of combined value of the  
11 common stock to be received by the trust and the  
12 Treasury Department is something that would have come to  
13 the trustees in writing from Evercore; is that your  
14 testimony?

15 A. That was part of -- part of a presentation that we  
16 went through. Yes.

17 Q. And I take it that presentation would have been  
18 preserved, you wouldn't have thrown it away; correct?

19 A. I'm sure it's out there. Yes.

20 Q. Is it your testimony that this Evercore  
21 presentation that you say you received showed values for  
22 the common stock to be received from the Series C  
23 preferred stock separate from the value for the E and F?

24 A. Yes.

25 Q. In any of the work that you did to prepare for

1 this testimony, did you see that Evercore presentation?

2 A. I believe so. Yes.

3 Q. You did see it.

4 A. Yes.

5 Q. Did you see more than one presentation that  
6 included estimated valuations?

7 A. I think I only saw the one that was presented at  
8 this meeting that we're discussing.

9 Q. Was there one that was presented at an earlier  
10 meeting?

11 A. I don't recall.

12 Q. Let me ask you to look at Plaintiffs' Trial  
13 Exhibit 584, which I think I have to hand up.

14 A. Oh, not in the book. Okay.

15 Q. Right.

16 Let me -- in that case, let me try a different  
17 document.

18 Is 609 in the book?

19 A. I don't believe so.

20 THE COURT: I'm not seeing that one in the book  
21 either.

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

24 THE COURT: Sure.

25 (Pause in the proceedings.)

1 BY MR. BOIES:

2 Q. While we're looking for that document so we have  
3 copies to hand up, let me ask you to look at  
4 Plaintiffs' Trial Exhibit 2248 that is in the binder.

5 A. 2248.

6 Q. This is a document that is in evidence.

7 A. Okay.

8 Q. This is a Project Independence board of directors  
9 presentation on September 29, 2010 by Bank of America  
10 Merrill Lynch and Citigroup.

11 Do you see that?

12 A. Yes.

13 Q. Is this a document you've seen before?

14 A. It doesn't look familiar.

15 Q. Was this one of the documents that was shown to  
16 you in preparation for your testimony?

17 A. No. I don't believe so.

18 Q. In September of 2010, were you aware that  
19 Bank of America Merrill Lynch and Citigroup were  
20 providing fairness opinions on the recapitalization  
21 transaction?

22 A. I knew someone was providing them. I don't know  
23 if I knew it was Citi, but I knew that there was an  
24 advisor who was providing a fairness opinion for the  
25 company.

1 Q. That is, you knew that there was a fairness  
2 opinion or fairness opinions being provided; correct?

3 A. Yes.

4 Q. But it is your testimony that you didn't know who  
5 was providing them?

6 A. I don't remember it specifically being Citi or  
7 Bank -- you know, B of A, so...

8 Q. Did you ever see a copy of those fairness  
9 opinions?

10 A. I -- I don't know.

11 Q. Did you ever ask to see a copy of the fairness  
12 opinions?

13 A. I don't believe so.

14 Q. Did you ever discuss with anyone what the contents  
15 of those fairness opinions were?

16 A. Content as opposed to conclusions? I -- I don't  
17 recall discussing the contents of the fairness opinion.  
18 Conclusions, yes, but not contents necessarily.

19 Q. With whom did you discuss the conclusions?

20 A. Well, I think we knew --

21 Q. With whom did you discuss the conclusions?

22 A. Our advisors.

23 Q. Which advisors?

24 A. I would say it would have to be our legal advisors  
25 and financial advisors.

1 Q. Other than your legal and financial advisors, did  
2 you discuss the conclusions of the fairness opinions that  
3 were given the AIG board in connection with the  
4 recapitalization with anyone?

5 A. I don't think so.

6 Q. Let me ask you to look at page 35 of  
7 Plaintiffs' Trial Exhibit 2248.

8 A. Oh. Uh-huh.

9 Q. And do you see in the bottom there's a box that  
10 says "Series C"?

11 A. Yes.

12 Q. And you see that the first bullet there says  
13 "Series C was received by United States Treasury for no  
14 financial consideration, merely to obtain governance  
15 rights until Federal Reserve Bank of New York Facility  
16 repaid." Do you see that?

17 A. Yes.

18 Q. Did anyone ever tell you that while you were a  
19 trustee?

20 MS. ACEVEDO: Your Honor, we're going to object.  
21 He said he's never seen this document and he has no  
22 memory of it, didn't discuss it. I think it's really  
23 improper to be asking him questions about the document.  
24 No foundation has been laid.

25 THE COURT: Overruled. If he doesn't know

1 anything about it, he can say that.

2 MS. ACEVEDO: Thank you, Your Honor.

3 THE WITNESS: I'm sorry. Can you repeat the  
4 question?

5 BY MR. BOIES:

6 Q. Sure.

7 At any time when anyone was discussing AIG matters  
8 with you during the time that you were a trustee, did  
9 they say that the Series C preferred stock was received  
10 by the United States Treasury for no financial  
11 consideration, merely to obtain governance rights until  
12 the Federal Reserve Bank of New York facility was repaid?

13 A. No.

14 Q. Did they say that to you in words or in  
15 substance?

16 A. No. I don't think they said it either way.

17 Q. Let me hand up a document that has previously  
18 been marked and offered in evidence as Joint Exhibit 271.

19 This is a document that in June 2010 goes to the  
20 AIG board and a significant number of other AIG  
21 personnel, and it attaches a June 9, 2010 presentation.

22 Let me ask you first if you would turn to  
23 page 3 of the exhibit, which is the first page of the  
24 restructuring plan presentation. I would ask you whether  
25 you've ever seen this before.

1 A. I don't know.

2 Q. Let me ask you to look at page 7 of the exhibit,  
3 which is headed Executive Summary.

4 Do you see that?

5 A. Yes.

6 Q. And beneath that it says, "The basic steps of the  
7 Restructuring Plan also remain the same."

8 Do you see that?

9 A. Yes, I do.

10 Q. And under the second heading beneath that that  
11 says "Simultaneous Recapitalization," do you see that?

12 A. Yes.

13 Q. The first point there says "Series C extinguished  
14 for nominal amount of other assets."

15 Do you see that?

16 A. I do.

17 Q. As you understood it when you were a trustee, had  
18 that ever been a proposed element of the recapitalization  
19 plan?

20 A. Not to me.

21 Q. Did anyone ever tell you that on or about June 16,  
22 2010, the AIG board of directors was telling -- was being  
23 told that this was one of the basic steps of the  
24 restructuring plan that remained the same?

25 A. No. No. I probably would have resigned if that

1 were the case because what role was I playing, so...

2 Q. You would have resigned if --

3 A. I would have said this is inconsistent --  
4 you know, if that's the way this is going, if we're just  
5 going to be thrown out, trashed and not taken account of,  
6 then what was I doing there as a trustee.

7 Q. Did you think you were being thrown out, trashed  
8 and not taken account of --

9 A. No.

10 Q. -- because AIG's board was being told that this  
11 was the basic steps of the restructuring plan on June 16,  
12 2010?

13 A. I never saw this, I never knew it, so no one --  
14 no one ever said to me the plan contemplates  
15 extinguishing the Series C for zero.

16 Q. And it's your testimony that insofar as you were  
17 aware, you were not even aware that AIG was even  
18 proposing this. That's your testimony?

19 A. Yes.

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

21 THE COURT: All right. Thank you, Mr. Boies.  
22 Redirect, Ms. Acevedo?

23 MS. ACEVEDO: I do have a few minutes,  
24 Your Honor.

25 THE COURT: Okay.

1 - - - - -

2 REDIRECT EXAMINATION

3 BY MS. ACEVEDO:

4 Q. Good afternoon, Mr. Langerman.

5 You talked to -- a great deal earlier with  
6 Mr. Boies about some of the -- about the different series  
7 of preferred shares that were issued in connection with  
8 the AIG loan?

9 A. Yes.

10 Q. Did you have an understanding as to the E and the  
11 F, the Series C, E and F preferred shares?

12 A. As to what they constituted or why they were  
13 there?

14 Q. Yes.

15 Did you have an understanding as to where they  
16 came from?

17 A. They came from the Treasury having put in a bunch  
18 of money into AIG and that's what they took in exchange.

19 Q. And you were shown a document earlier that  
20 referenced a \$47.6 billion number.

21 A. Yes.

22 Q. Do you recall that?

23 A. Yes.

24 Q. And that number was TARP funding; is that right?

25 A. I believe so.

1 Q. Okay. And so the Series E and F then, did you  
2 understand that the Series E and F preferred shares were  
3 given to Treasury in exchange for that TARP funding?

4 A. Yes.

5 Q. Okay. And let's talk -- I want to compare the  
6 Series E and F, the nature of the Series E and F  
7 preferred shares to the nature of the Series C preferred  
8 shares in an effort to help elaborate on your earlier  
9 answer to Judge Wheeler with respect to why the  
10 percentages of ownership changed once the  
11 recapitalization plan happened.

12 A. Okay.

13 Q. Did the Series C preferred shares held by the  
14 trust carry an ownership interest in AIG?

15 A. Yes.

16 Q. Okay. And that was roughly 80 percent; is that  
17 right?

18 A. Yes.

19 Q. Okay. And did the Series E and F shares also  
20 carry an ownership interest in AIG?

21 A. No.

22 Q. Did AIG owe money to Treasury -- owe back the  
23 money to Treasury, the TARP funding, that it was paid for  
24 the Series E and F?

25 MR. BOIES: Objection, Your Honor. I don't know

1 what that means. If it calls for a legal conclusion, I  
2 would object. If it doesn't call for a legal conclusion,  
3 I'm not sure what it means to owe back.

4 THE COURT: Would "repay" be a better word or is  
5 there --

6 MR. BOIES: Exactly, Your Honor. I think because  
7 he's testified that this is how much the Treasury paid  
8 for it. If it's a debt, you know you owe the debt back.  
9 If it's an investment in an equity instrument, I'm not  
10 sure "owe" is the right phraseology.

11 THE COURT: I think that's a fair comment. Can  
12 you rephrase the question?

13 MS. ACEVEDO: Certainly, Your Honor.

14 THE COURT: Okay.

15 BY MS. ACEVEDO:

16 Q. Did you understand that AIG had to repay the  
17 Treasury for the TARP funds that it was lent?

18 MR. BOIES: Objection, Your Honor. "Had to repay"  
19 goes again to the obligation. And if she's talking about  
20 a moral obligation, maybe he's qualified to talk about  
21 that. If it's a legal obligation, not.

22 MS. ACEVEDO: Your Honor, I'm asking for his  
23 understanding. I'm not asking for a legal conclusion or  
24 a moral conclusion.

25 THE COURT: I mean, I'll take his answer.

1 Overruled.

2 MS. ACEVEDO: Thank you.

3 THE WITNESS: So to distinguish between preferred  
4 and common, preferred stock, as you said, doesn't have an  
5 ownership interest.

6 THE COURT: I'm not sure that was the question,  
7 though.

8 THE WITNESS: Well -- okay. The answer is that  
9 the preferred stock has a certain amount that, in my  
10 view, to extinguish it needed to be repaid and to  
11 successfully recapitalize AIG needed to be repaid.

12 BY MS. ACEVEDO:

13 Q. When you refer to preferred stock there, are you  
14 referring --

15 A. The E and the F.

16 Q. Thank you. Okay.

17 Now, I want to have my colleague here, Ms. Gerber,  
18 assist me in drawing a chart to reflect the overall  
19 equity ownership of AIG before the recap transaction, and  
20 then we're going to do another chart to show that  
21 ownership after, to help assist the judge in  
22 understanding how the percentages changed.

23 Before we get there, though, in your earlier  
24 answer, you mentioned that the preferred stock had a  
25 certain amount that it had to extinguish or needed to be

1 repaid.

2 What did you mean by "extinguish"?

3 A. To remove the obligation from the company's  
4 balance sheet.

5 Q. Thank you.

6 Okay. Now, prior to the recap, what was the  
7 percentage of overall equity ownership that was  
8 represented by the Series C preferred stock?

9 A. Approximately 80 percent.

10 MS. ACEVEDO: And Your Honor, we're going to round  
11 to 80 percent for simplicity.

12 THE COURT: I understand.

13 MS. ACEVEDO: Thank you.

14 THE COURT: 79.9 is about 80.

15 MS. ACEVEDO: Thank you.

16 THE COURT: I can see why you're using Ms. Gerber.  
17 She's got the best writing of anybody.

18 MS. ACEVEDO: I'm very fortunate to have her.

19 BY MS. ACEVEDO:

20 Q. Now, what percentage of the equity ownership of  
21 AIG was owned by the common shareholders of AIG prior to  
22 the recapitalization?

23 A. 20 percent.

24 Q. And just to clarify, was any ownership interest  
25 represented by the Series E and F preferred shares before

1 the recap transaction?

2 A. No.

3 Q. Okay. So the Series E and F represented the TARP  
4 funds that needed to be provided by Treasury but not an  
5 ownership interest; is that right?

6 A. Yes.

7 Q. Okay. Now, let's turn to the recap transaction.  
8 And I think it might be useful to turn back to something  
9 that we looked at earlier, which is the chart in the  
10 recap term sheet in Exhibit 868, DX 868, page 39497.  
11 This is something that we spoke about earlier today.

12 A. I have it.

13 Q. Okay. Now, before we get to that chart, what  
14 happened to the TARP funds that were owed to the Treasury  
15 under the Series E and F preferred stock?

16 A. Well, they were effectively repaid in the form of  
17 common stock.

18 Q. Okay. And so did you understand that the amount  
19 owed was discharged in return for getting approximately  
20 60 percent of AIG's common stock?

21 A. Yes.

22 Q. Okay. And let's look here at the chart.

23 You can see that the Series E preferred stock  
24 receives 51.4 percent and the Series F 9.3 percent.

25 Do you see that?

1 A. Yes.

2 Q. So I'm horrible at math, but I believe it's  
3 61.7 percent; is that right?

4 A. I think it's actually 60.7.

5 Q. 60.7? Oh, it is. You're right. I'm sorry.  
6 That's very embarrassing. I told you I was horrible.

7 Okay. So we will round -- again, Your Honor,  
8 we're going to use, if it's okay, round numbers for  
9 simplicity.

10 So is it fair to say then that you understood the  
11 amount for which that -- the amount owed for the Series E  
12 and F preferred stock was discharged in the form of  
13 60 percent of AIG's common stock in the recap?

14 A. Yes.

15 Q. Okay. And what does issuing new shares of AIG's  
16 common stock sufficient to give Treasury a 60 percent  
17 ownership interest in return for the E and the F do to  
18 the ownership interest of the Series C and the common  
19 shareholders?

20 A. It reduces their percentage ownership because  
21 there are a larger number of shares outstanding.

22 Q. So is it fair to say that prior to the recap, if  
23 you look at the Before Recap column there, the Series C  
24 and the common shareholders had a 100 percent equity  
25 ownership interest and after the recap they had

1 40 percent, the 40 percent that was remaining?

2 A. Yes.

3 Q. Okay. And is that what you meant earlier when you  
4 told His Honor, Judge Wheeler, that the denominator got  
5 bigger?

6 A. Yes.

7 Q. Okay. And now, you've talked about the pro rata  
8 relationship or how the I guess ratio of ownership  
9 between the Series C and the common shareholders stayed  
10 the same.

11 And using the percentages 80 to 20, that's a  
12 four-to-one ratio; is that right?

13 A. Yes.

14 Q. Okay. And so when you issue enough shares to  
15 give the Treasury 60 percent of the common stock in  
16 discharge of the TARP obligation, what happens to the  
17 percentage ownership of Series C, the percentage of  
18 ownership of the Series C preferred stock and the common  
19 shareholders?

20 A. Well, those percentages both go down by an equal  
21 percentage. They're both equally diluted, so the  
22 pro rata relationship stays intact, but they each own  
23 less.

24 Q. So after the recap, using that ratio, how would  
25 that ownership be divided?

1           A. Well, if you've got 40 left divide by 5 and  
2           four-fifths are owned by the majority hold C and  
3           one-fifth is owned by the minority of the remainder.

4           Q. So would that be 32 and 8?

5           A. So -- yes, give or take. Yeah.

6           THE COURT: And I take it you accomplish that by  
7           issuing more shares of stock.

8           THE WITNESS: That's correct.

9           BY MS. ACEVEDO:

10          Q. Okay. Now, focusing on the 60 percent there given  
11          in exchange -- in discharge of the TARP obligation for  
12          the Series E and F, were there efforts to confirm that  
13          that 60 percent was an acceptable interest for the  
14          Treasury to get?

15          A. Yes.

16          Q. Okay. And there was reference to it a few moments  
17          ago, but was there a fairness opinion that was obtained  
18          for that transaction?

19          A. Yes. By the company.

20          MS. ACEVEDO: Okay. And if I can approach,  
21          Your Honor?

22          THE COURT: Sure.

23          BY MS. ACEVEDO:

24          Q. Mr. Langerman, I've just handed you a document  
25          that's marked JX 284. Can you just take a moment and

1 look at that document.

2 (Pause in the proceedings.)

3 A. Okay.

4 Q. Is this the fairness opinion that was obtained in  
5 connection with the exchange of the Series E and F  
6 preferred stock?

7 A. I believe so.

8 Q. And we talked about this earlier this morning in  
9 your testimony. You mentioned that there was not a  
10 fairness opinion with respect to the exchange of the  
11 Series C preferred stock. Do you recall that?

12 A. Yes.

13 Q. And that's because it was simply arithmetic;  
14 right? If you --

15 MR. BOIES: Objection, Your Honor. Leading.

16 THE COURT: Sustained.

17 BY MS. ACEVEDO:

18 Q. Looking at the chart, the post-recap chart, can  
19 you explain for the judge why there was no fairness  
20 opinion for the Series C.

21 MR. BOIES: Objection. Foundation.

22 THE COURT: Do you have any knowledge of this,  
23 sir, of why there would be no fairness opinion for the  
24 Series C?

25 THE WITNESS: Yes.

1 THE COURT: What is the basis of your knowledge?

2 THE WITNESS: We had to make a judgment whether we  
3 felt it was necessary and appropriate to obtain a  
4 fairness opinion.

5 THE COURT: All right. I'll take his answer.

6 MS. ACEVEDO: Thank you, Your Honor.

7 THE WITNESS: Well, what that doesn't include, the  
8 chart doesn't include, is the warrants that we talked  
9 about earlier this morning, so -- and what this says and  
10 the reason why we didn't believe we needed a fairness  
11 opinion was that the -- what shows as the 8 percent  
12 common were treated not only equally to the Series C but  
13 treated better than the Series C preferred because there  
14 was additional value that was being distributed to that  
15 class.

16 BY MS. ACEVEDO:

17 Q. And you've anticipated my next question, which was  
18 that you testified earlier today that you felt the  
19 minority shareholders got a better deal. Do you remember  
20 that testimony?

21 A. Yes.

22 Q. Okay. And how would you capture that better deal  
23 here on this chart?

24 A. Well, you would include in that 8 percent common  
25 or next to the 8 percent common the allocation of the

1 warrants that were given just to that 8 percent common,  
2 so there was -- there was something of value given to  
3 that slice of the pie that wasn't given to the 32 percent  
4 Series C slice of the pie.

5 Q. Does the dotted line reflecting the warrants there  
6 accurately reflect the additional value provided to the  
7 common shareholders pursuant to the recap?

8 A. Well, I mean, I don't know exactly, you know,  
9 that that -- I mean, it illustrates that there's  
10 something extra being given there. You know, the -- if  
11 you wanted to get really technical, you would say, well,  
12 if the warrants were exercised, there's an exercise  
13 price. You have to pay something for that in exchange  
14 for which you get share ownership back, but there is  
15 definitely value in that warrant package that is  
16 incremental value and ultimately incremental share  
17 ownership for that, for that slice.

18 Q. And that value would be above and beyond the  
19 8 percent that's reflected --

20 A. Yes.

21 Q. -- there.

22 A. Yes.

23 Q. Okay. And after the Series E and F preferred  
24 stock was exchanged for 60 percent of AIG common stock,  
25 how was Treasury repaid for its TARP obligation?

1           A. Well, it would have to liquidate the stock, sell  
2     it in the market or some other way of liquidating the  
3     position.

4           Q. Okay. I have just a few questions relating to the  
5     valuation ranges with respect to the Series C preferred  
6     stock that Mr. Boies asked you about earlier.

7                   Mr. Boies asked you about the Evercore or about --  
8     I guess about the valuations that were done in  
9     connection with the exchange of the Series C. Do you  
10    recall that?

11          A. Yes.

12          Q. And you were asked about ranges with respect to  
13    what the liquidation value would be for those -- or I'm  
14    sorry -- the market value would be for the Series C as  
15    part of the exchange. Do you recall that?

16          A. Yes.

17          Q. Is there something that would refresh your  
18    recollection as to what those values were?

19          A. Well, as I think I was asked, there was a  
20    document that Evercore prepared in connection with our  
21    overall valuation of the transaction which I believe  
22    included those illustrations of their value ranges or  
23    potential value ranges and how that -- the waterfall of  
24    that for each of the classes that would be receiving  
25    common equity.

1 MS. ACEVEDO: May I approach, Your Honor?

2 THE COURT: Sure.

3 MS. ACEVEDO: Your Honor, this is actually not an  
4 exhibit, but because it was asked about earlier, I'm  
5 providing it for purposes of refreshing his  
6 recollection, but we would also be happy to mark it as an  
7 exhibit if Your Honor would so like since it was  
8 referenced earlier.

9 THE COURT: Well, let's see what develops here.

10 MS. ACEVEDO: Sure.

11 BY MS. ACEVEDO:

12 Q. Can I direct you, Mr. Langerman, to pages 36 and  
13 37 of the document.

14 A. Yes.

15 Q. And if you can just -- without reading out loud on  
16 the record, if you can just refer to what's shown in the  
17 bottom rectangular box there with respect to the Series C  
18 stock on page 36 and the same with respect to the  
19 Series C on page 37 and let me know when you're done.

20 A. Okay.

21 Q. Does that refresh your recollection as to the  
22 range of value that was assigned to the Series C?

23 A. Well, I guess I wouldn't necessarily say assigned  
24 to the Series C. This was an exercise that Evercore went  
25 through and was taking a range, kind of a low base case,

1 higher base case, this is what it will look like once the  
2 recap is done.

3 So they weren't saying it was one or the other or  
4 they weren't saying necessarily it was the midpoint.  
5 They were saying here's a range, reasonable range, this  
6 is what it will look like in terms of value  
7 distribution.

8 Q. Okay. And what was that range?

9 A. For the Series C?

10 Q. Yes.

11 A. Well, again, now, there are a few different  
12 iterations here, so I'm not sure which one you want me to  
13 refer -- there's the AIG proposal, what's called AIG  
14 proposal.

15 THE COURT: Sir, having looked at the -- having  
16 looked at the document to refresh your recollection --  
17 and now let's just said that aside -- can you now answer  
18 the question.

19 THE WITNESS: Well, okay. I mean, the ultimate  
20 deal, which is the last box on the right, the  
21 compromise --

22 MR. BOIES: Your Honor --

23 THE COURT: That's not what I asked you to do.

24 THE WITNESS: I'm sorry.

25 THE COURT: Set the document aside now that you've

1 looked at it.

2 THE WITNESS: Yes. Sure. Okay.

3 THE COURT: Close it up and put it aside.

4 MS. ACEVEDO: Your Honor, I can take it back.

5 THE COURT: All right.

6 I want you to answer it as best you can now having  
7 looked at the document.

8 THE WITNESS: Okay. And the question was what was  
9 the value for the Series C?

10 BY MS. ACEVEDO:

11 Q. Having looked at the document, do you recall --

12 A. So somewhere in the high teens billions of dollars  
13 for the Series C to into the twenties, could be more, but  
14 that was kind of a range of valuation.

15 Q. Okay. And you were also asked earlier -- I want  
16 to talk about another topic now.

17 You were asked about if the New York Fed had  
18 agreed to the recap plan whether the trust could have  
19 agreed to I guess the recap plan on its own.

20 But did you also understand whether AIG had to  
21 also agree to the recap plan?

22 A. I think AIG was a necessary party to the recap  
23 plan.

24 Q. You were asked about shareholder dilution as a  
25 result of the recap plan, and you indicated earlier that

1 you view yourself as common shareholders. Do you recall  
2 that?

3 A. Yes.

4 Q. And why did you do that? Why was that?

5 A. Why did we view ourselves as common shareholders?

6 Q. Uh-huh.

7 A. That was effectively what our security was.

8 Q. And why do you say "effectively"?

9 A. Because that was -- the value of the Series C came  
10 in its 80 percent ownership of the common equity.

11 Q. Let's take a look at -- I want to move on to  
12 another topic now, and that is the shareholder vote.

13 You were asked several questions earlier with  
14 respect to a shareholder vote. Do you recall those  
15 discussions?

16 A. Yes.

17 Q. Okay. Do you know if there was a shareholder vote  
18 in connection with the recapitalization plan?

19 A. I don't believe there was.

20 Q. And do you know why there wasn't?

21 A. No.

22 Q. Okay. Let's just take a look at JX 307, which  
23 should be in your witness binder that I handed you this  
24 morning.

25 And again, this is a very large document. It's

1 over 1100 pages, so I've only provided excerpts.

2 A. I see 306. I actually don't see 307.

3 Q. Do you not have 307?

4 A. I don't think so.

5 MS. ACEVEDO: I'm sorry. Permission to approach,  
6 Your Honor?

7 THE COURT: Yes.

8 MS. ACEVEDO: Now, I'll represent to the Court,  
9 this is, as you can tell from the pagination, over  
10 1100 pages, so I'm only providing excerpts. We do have a  
11 full copy of the entire document if anybody would like to  
12 see it. But I'll -- sadly.

13 BY MS. ACEVEDO:

14 Q. But I'll direct you to page 4 of 1127, using the  
15 page numbers in the center on the bottom of the page.

16 A. Okay.

17 Q. And there's a heading there that says "Action by  
18 Written Consent." And it indicates that on the record  
19 date, the trust delivered an executed written consent  
20 approving the issuance, subject to the closing.

21 Do you see that?

22 A. Yes.

23 Q. And if you turn to page 17 of 1127, there is a  
24 document titled Written Consent in Lieu of a Special  
25 Meeting of Shareholders. If you can just review that for

1 a minute and let me know when you've had a chance to look  
2 at it, that would be great.

3 (Pause in the proceedings.)

4 A. I mean, if you want me to read the whole thing,  
5 I'll need another minute or so, but I've generally  
6 reviewed it.

7 Q. Okay. And you can see there's a series of  
8 signatures on the third page of the document, which is  
9 actually identified as A-4, and one of those is yours; is  
10 that right?

11 A. Yes.

12 Q. And the document is dated December 7, 2010?

13 A. Yes.

14 Q. Okay. And can you explain for the Court generally  
15 what this document is?

16 A. I mean, my recollection is this was -- again, it  
17 was one of the documents that was necessary for us to  
18 sign to implement the transaction.

19 Q. Do you know why a written consent in lieu of a  
20 special meeting of shareholders was provided?

21 A. No.

22 MS. ACEVEDO: I have no further questions,  
23 Your Honor.

24 THE COURT: All right. Any recross, Mr. Boies?

25 MS. ACEVEDO: Oh, I'm --

1 THE COURT: I'm sorry?

2 MS. ACEVEDO: I'm sorry. I intended to move for  
3 the admission of the demonstrative. I would, Your Honor,  
4 like to move for DXX 38.

5 THE COURT: I was going to move it in myself if  
6 you forgot.

7 MS. ACEVEDO: Thank you.

8 THE COURT: All right.

9 So your Demonstrative 038 is admitted.

10 (Defendant's Exhibit Number DXX-038 was admitted  
11 into evidence.)

12 MS. ACEVEDO: Thank you.

13 THE COURT: All right. Recross.

14 MR. BOIES: Thank you, Your Honor.

15 - - - - -

16 RE-CROSS-EXAMINATION

17 BY MR. BOIES:

18 Q. Good afternoon again, Mr. Langerman.

19 A. Good afternoon, Mr. Boies.

20 Q. Counsel for the government asked you about  
21 ownership interests.

22 And do I understand your testimony to be that the  
23 Series C represented an ownership interest, but the  
24 Series E and F did not?

25 A. Yes. Before the recap, yes.

1 Q. Before the recap.

2 A. Yeah.

3 Q. And after the recap, they didn't exist, in  
4 effect, that is, they'd gone back to the company;  
5 correct?

6 A. Yeah.

7 Q. Now, she showed you a document that was the  
8 fairness opinion, Joint Exhibit 284.

9 Do you still have that?

10 A. Yeah, I do.

11 Q. And she asked you whether this was a fairness  
12 opinion that had been received as part of the  
13 consideration of the recapitalization. Do you recall  
14 that?

15 A. Yes.

16 Q. And you said that it had been?

17 A. Yes.

18 Q. Do you recall that?

19 A. Yes.

20 Q. Had you seen this fairness opinion prior to her  
21 showing it to you today?

22 A. I don't know.

23 Q. Had you discussed it with anyone?

24 A. I think the fact that there was a fairness opinion  
25 we discussed back in 2010 when we were considering the

1 transaction.

2 Q. Other than discussing the fact that there was a  
3 fairness opinion, did you discuss with anyone what the  
4 contents of the fairness opinion were?

5 A. Well, we discussed what it concluded. I don't  
6 remember whether we had a discussion of the specifics,  
7 but certainly the conclusion, yes.

8 Q. And for example, if you turn to page 3, the bottom  
9 paragraph, where Citigroup says, "With respect to the  
10 Series E Preferred Stock and the Series F Preferred Stock  
11 to be repurchased by AIG pursuant to the Exchange  
12 Transactions, we have assumed, at your direction and with  
13 your consent, that the fair value of each of the Series E  
14 Preferred Stock and Series F Preferred Stock is equal to  
15 the liquidation value thereof."

16 Do you see that?

17 A. I do.

18 Q. Were you aware that Citigroup and Bank of America  
19 Merrill Lynch had been instructed to assume for purposes  
20 of their fairness opinion that the fair value of each  
21 Series E and F preferred stock were equal to its  
22 liquidation value?

23 A. I don't recall.

24 Q. Did you ever have any discussions with anyone  
25 about whether that instruction was or was not

1 appropriate?

2 A. I don't recall.

3 Q. Counsel for the government also asked you why  
4 there had not been a fairness opinion for the Series C  
5 exchange. Do you recall that?

6 A. Yes.

7 Q. And you gave her your explanation as to why there  
8 had not been. Do you recall that?

9 A. Yes.

10 Q. Now, in fact you didn't play any role, according  
11 to your earlier testimony, in determining what fairness  
12 opinions would or would not be sought; correct?

13 A. No. I don't believe I said that. Not for the  
14 Series C. I definitely didn't say that.

15 Q. So you were aware that the company was not getting  
16 a fairness opinion on Series C; correct?

17 A. I think I was aware of that, yes.

18 Q. And did you have any discussions with anyone as to  
19 whether the company should or should not ask  
20 Bank of America and Citicorp for a fairness opinion on  
21 Series C?

22 A. I don't recall any of those discussions. No.

23 Q. Do you recall whether there were any such  
24 discussions?

25 A. With the company?

1 Q. Yes.

2 A. No, I do not recall.

3 Q. Now, this chart, the lettering of which I am  
4 extremely envious of given my own charts, talks about  
5 what the ownership was after the recap. Do you recall  
6 that?

7 A. Yes.

8 Q. Now, this was an ownership structure that was  
9 negotiated, according to you; correct?

10 A. Yes.

11 Q. Now, if the company had first exchanged common  
12 stock for the E and F preferred stock before they did  
13 anything with the Series C stock, and let's assume they  
14 gave the E and F exactly the common stock that they got,  
15 and after that, they had then exchanged or converted the  
16 Series C stock, what would be the percentage ownership of  
17 the original common shareholders?

18 A. I really don't follow the question. Because the  
19 way -- I think you asked this before.

20 I mean, I wasn't focusing on the timing of one  
21 before the other. What we were looking at was -- what I  
22 was looking at was what's it going to look like when all  
23 this was said and done, what did we want it to look like  
24 and what was the expectation, and this was the design,  
25 not by accident, as to what it would ultimately look

1 like.

2 Q. Oh, I'm sure it was not by accident.

3 But my question is, one of the things you were  
4 trying to do here and you knew you had an obligation to  
5 do was to be fair to the old common shareholders;  
6 correct?

7 A. Yes.

8 Q. And in terms of trying to fulfill that duty that  
9 you say you knew you had to be fair to the old common  
10 shareholders, did you investigate what percentage those  
11 common shareholders would have had if you had done the  
12 E and F exchange according to the very terms that you  
13 negotiated and then done the Series C exchange, again,  
14 exactly according to the terms that you did, what the  
15 effect would be?

16 A. I don't remember having that discussion about if  
17 we changed timing. I just don't remember if we had any  
18 discussion like that.

19 Q. Did you investigate that at all?

20 A. I mean, not to my recollection. That doesn't  
21 sound like something we were discussing, whether if we  
22 did this before or this after because, again, I was  
23 looking at what do we want it to look like and this is  
24 the way to get there, so I certainly don't remember that  
25 kind of a discussion.

1 Q. But in addition to saying this is where you wanted  
2 to get and how do you get there, you needed also to  
3 determine whether where you were trying to get was going  
4 to be fair to the minority shareholders; correct?

5 A. Yes.

6 Q. And did you believe that you could do that without  
7 understanding what the minority shareholders or existing  
8 shareholders would have gotten if you had done an  
9 E and F exchange before the Series C exchange?

10 A. I believe that what we did satisfied --

11 Q. Excuse me.

12 A. -- my obligations to be fair to the shareholders.

13 MR. BOIES: Your Honor?

14 THE COURT: Could you answer the question,  
15 please.

16 THE WITNESS: I'm sorry. Could you repeat the  
17 question.

18 BY MR. BOIES:

19 Q. Did you believe that you could fulfill your  
20 obligation to be fair to the minority shareholders  
21 without understanding what the minority shareholders  
22 would have gotten if you had done an E and F exchange  
23 before the Series C exchange?

24 A. Yes. I believe we fulfilled our fiduciary duties,  
25 so yes.

1 Q. Without knowing that.

2 A. I believe what we did satisfied --

3 Q. That's not my question, sir.

4 A. Well, I -- I would have to go through the  
5 analysis because I'm not sure exactly that I follow what  
6 would have been the consequences, but I believe that the  
7 process we went through -- so if we didn't go through  
8 that process, you know, I'm sure there are other things  
9 we may not have done, but I believe that the process we  
10 went through was satisfactory, so yes, I believe that we  
11 fulfilled our duties to the minority shareholders in the  
12 process that we went through doing what we did and not  
13 doing what we didn't do.

14 Q. Have you finished your answer?

15 A. Yes.

16 Q. Okay. Now, let's just be clear what you did not  
17 do.

18 One thing that you did not do is ever look at the  
19 certificates of designation for the E and F shares;  
20 correct?

21 A. No. I'm sure our lawyers looked at that and I'm  
22 sure our advisors looked at that, so...

23 Q. Well, did they ever tell you what those  
24 certificates said?

25 A. We had discussions of the terms of those, sure.

1 Q. And did they tell you that the Series E and F  
2 preferred stock was or was not exchangeable?

3 A. It was not a piece of paper that was convertible  
4 or exchangeable into common by its terms, if that's the  
5 question.

6 Q. Okay. Second, assuming that you were going to  
7 give the E and F their full liquidation value, you never  
8 investigated what the effect would be on what the  
9 Series C stock got of doing that before the Series C was  
10 exchanged; correct? You did not do that.

11 A. I don't believe we did.

12 Q. Okay.

13 A. But the advisors may have. I mean, I don't have  
14 knowledge -- they may have, but I don't have knowledge  
15 whether they did or not.

16 Q. And if they did it, no one ever told you.

17 A. Not to my recollection.

18 Q. And you never asked anybody to do it.

19 A. I'm not sure but not to my recollection.

20 Q. And another thing that you never did was ask  
21 anybody for an opinion as to whether or not it was fair  
22 to the minority shareholders to treat the value of the  
23 E and F stock as the liquidation value; correct?

24 A. We did -- we ourselves did not ask for a fairness  
25 opinion on that.

1 Q. And insofar as you would know, no one asked for a  
2 fairness opinion on that; correct?

3 A. Well, I think the -- the company got a fairness  
4 opinion.

5 Q. The company got a fairness opinion, but the  
6 company's fairness opinion expressly excluded the  
7 question I asked; correct?

8 A. Yes.

9 MR. BOIES: No more questions, Your Honor.

10 THE COURT: All right. Mr. Langerman, I think  
11 you're finished, and thank you very much for your  
12 testimony. You are excused.

13 THE WITNESS: Thank you.

14 Do I just leave these here (indicating)?

15 THE COURT: Yes.

16 THE WITNESS: Okay.

17 THE COURT: Mr. Gardner.

18 MR. GARDNER: Thank you, Your Honor.

19 The government calls as its next witness  
20 Morris Offit.

21 THE COURT: Okay.

22 MR. GARDNER: I can assure you, Your Honor, there  
23 will be no math involved this afternoon. It's beyond my  
24 confidence.

25 - - - - -

1 Whereupon --

2 MORRIS W. OFFIT

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

5 THE COURT: I can tell you that we're going to  
6 take an afternoon break in about ten minutes or so, but  
7 we can get started I think.

8 MR. GARDNER: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. GARDNER:

11 Q. And thank you for your patience. I was hoping I  
12 was going to be able to say good morning to you, but it  
13 didn't quite work out that way, so good afternoon.

14 A. Thank you.

15 Q. We met in the hallway a little while ago, but just  
16 to reintroduce myself, my name is Josh Gardner. I'm an  
17 attorney with the United States Department of Justice,  
18 and I represent the defendant in this case, the  
19 United States.

20 Could you please state your name for the record,  
21 sir.

22 A. Morris W. Offit.

23 Q. And where are you currently employed, sir?

24 A. The firm of Offit Capital.

25 Q. What's Offit Capital?

1 A. It's a wealth management and advisory firm.

2 Q. What's a wealth management advisory firm?

3 A. We work with wealthy families and nonprofit  
4 institutions as their outsourced investment officer, so  
5 we have multi families and nonprofits in our service as  
6 their chief investment officer.

7 Q. I'm going to take a wild stab based upon the name  
8 of the company and your last name, but what position do  
9 you hold with Offit Capital?

10 A. Chairman.

11 Q. And when did you found Offit Capital?

12 A. It was founded 2007.

13 Q. And prior to working at Offit Capital, where did  
14 you work?

15 A. The firm of Offit Hall.

16 Q. And what was Offit Hall?

17 A. Also a wealth management advisory firm.

18 Q. What position did you hold with Offit Capital?

19 A. As co-CEO, chief executive officer.

20 Q. Now, prior to working at Offit Hall, where did you  
21 work?

22 A. The firm of Offit Bank. And that was a trust bank  
23 under New York state primarily investing in fixed-income  
24 securities for families and nonprofit institutions. And  
25 the bank was founded in 1890, but the predecessor firm

1 was Offit Associates in the year 1880 -- 1980.

2 Q. And what became of Offit Bank?

3 A. Offit Bank was merged into Wachovia Bank in the  
4 year 1999.

5 Q. Now, Mr. Offit, have you served on any boards of  
6 directors throughout your career?

7 A. Yes, I have.

8 Q. On which boards have you served, sir?

9 A. Wachovia Bank.

10 Q. Where else?

11 A. Hasbro toy company.

12 Cantel Medical.

13 I believe those are the nonprofits.

14 Q. And beyond the nonprofits --

15 A. Excuse me. Those were the for-profits.

16 Excuse me.

17 Q. What other boards have you served on, sir?

18 A. In the nonprofit community.

19 Q. Okay. Did you serve on the board of AIG?

20 A. Yes.

21 Q. Okay.

22 A. Certainly. Certainly.

23 Q. Okay. The reason we're here today.

24 A. I was the thinking of the predecessor. Jeez.

25 Excuse me.

1 THE COURT: I'm hearing a big sigh of relief.

2 MR. GARDNER: There's actually a point of this  
3 examination, Your Honor.

4 THE WITNESS: I was -- I was -- excuse me.

5 MR. GARDNER: It was a trick question, I know,  
6 late in the day.

7 BY MR. GARDNER:

8 Q. And did you serve on the board of a company called  
9 Aegon, A-E-G-O-N? I'm probably butchering it.

10 A. Yes, I did. The -- that was a U.S. subsidiary  
11 board of Aegon Insurance Company headquartered in  
12 The Netherlands.

13 Q. Now, beyond your work on the AIG and Aegon -- is  
14 that how you --

15 A. Aegon Insurance Company.

16 Q. -- Aegon boards -- thank you -- do you have any  
17 other professional experience in the insurance industry?

18 A. Yes. My beginning years as an investment  
19 professional, as a research analyst, in my beginning  
20 years served as a financial analyst covering both the  
21 banks and the insurance companies.

22 Q. Now, you mentioned earlier that you served on the  
23 board of AIG.

24 When did you begin your service on the AIG board?

25 A. In May 2005.

1 Q. And when did you complete your service on the AIG  
2 board?

3 A. In May 2013.

4 Q. Okay. Now, in May of 2005 were you elected to the  
5 board by AIG's shareholders?

6 A. Yes, I was.

7 Q. And while you were on the AIG board of directors  
8 from May of 2005 to May 2013, did you serve on any  
9 committees?

10 A. Yes. Initially I chaired the audit committee, and  
11 then I succeeded in serving as the chairman of the  
12 finance and later to be called finance and risk  
13 management committee.

14 Q. And do you recall the approximate time frames you  
15 served on the audit committee?

16 A. I believe it was two to three years.

17 Q. And then do you recall the time frame when you  
18 served on AIG's -- I think you called it the finance and  
19 risk management committee?

20 A. Yes. I think it was beginning in 2007 or '8. I  
21 can't be exact.

22 Q. And did you serve on that committee until you left  
23 the board in 2013?

24 A. Yes, I did.

25 Q. Okay. And could you please describe for the Court

1 your duties on AIG's finance and risk management  
2 committee.

3 A. Duties responsible for the financing of AIG's --  
4 generally their outside financings, certainly working  
5 closely with the treasurer and the chief financial  
6 officer in planning liquidity and capital needs. And  
7 later we incorporated the risk management function and  
8 certainly trying to understand the risk exposures of  
9 AIG.

10 Q. Now, that's a nice segue.

11 In your service on AIG's board and the finance  
12 committee, were you apprised by management of the status  
13 of AIG's liquidity needs?

14 A. Yes, I was.

15 Q. Now, I want to talk about September 2008, and  
16 let's talk about the early part of that month.

17 As of early September 2008, did you become aware  
18 of a liquidity problem being faced by AIG?

19 A. Yes.

20 Q. What was your understanding, Mr. Offit, of the  
21 severity of AIG's liquidity problems during that time  
22 period?

23 A. Well, if you go back a few months earlier, we  
24 certainly were aware of the liquidity, the severity,  
25 beginning in January of 2008, which resulted in our going

1 to the open market to raise some \$20 billion in equity  
2 capital, so that tried to service or satisfy some of the  
3 financials which we thought were the exigencies at that  
4 particular time.

5 Q. And did that raising of capital ultimately solve  
6 AIG's liquidity problems?

7 A. We thought that we helped to satisfy it, but there  
8 was still one unknown that we couldn't really answer, and  
9 that was the condition of the mortgage market.

10 Q. Now, as of early September 2008, what was your  
11 understanding as to when AIG would need to raise  
12 additional capital to meet the company's liquidity  
13 needs?

14 A. Well, certainly had a -- was always uncomfortable,  
15 even subsequent to the equity financing, but then AIG got  
16 caught in the cauldron of the Lehman debacle, and that's  
17 what -- in effect, everything became a financial crisis  
18 right after because AIG was then frozen out of the  
19 commercial paper market. And once you're frozen out of  
20 the commercial paper market, then in effect all  
21 liquidities sort of -- outside liquidity disappears.

22 Q. Now -- and my question might have been a little  
23 imprecise and for that I apologize.

24 Prior to Lehman weekend, so, say, the beginning  
25 part of September 2008, did you have an understanding of

1 the timing of AIG's liquidity needs, meaning, was it a  
2 matter of days, months, weeks, something else?

3 A. Well, liquidity need is really a function of the  
4 condition of the marketplace, so the marketplace started  
5 to freeze up, and the dealers weren't dealing. And  
6 that's the whole concept of a fixed-income market. If  
7 the dealers choose not to deal, then in effect you have a  
8 nonfunctioning marketplace or better expressed as a  
9 paralyzed marketplace.

10 Q. And what does that paralyzed marketplace -- or  
11 what impact does that have on a company's liquidity needs  
12 such as AIG's?

13 A. In effect it shuts off the company from accessing  
14 the market for additional liquidity.

15 MR. GARDNER: Your Honor, I'm about to turn to a  
16 document. I can do it or --

17 THE COURT: Sure. Let's take an afternoon break.  
18 We'll reconvene at 3:30.

19 (Court in recess.)

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

21 MR. GARDNER: Thank you, Your Honor.

22 BY MR. GARDNER:

23 Q. Good afternoon again, Mr. Offit.

24 A. Yes. Thank you.

25 Q. You should have in front of you a binder, and that

1 binder contains exhibits. They begin with DXs or  
2 defendant's exhibits, and then you'll see JXs in  
3 numerical order. And I'd ask you if you could turn to  
4 JX 43, please.

5 A. Uh-huh. Yes.

6 Q. Do you recognize this exhibit, sir?

7 A. I do.

8 Q. And what is it?

9 A. Exhibit -- the minutes from the September 5 board  
10 meeting.

11 Q. September 5, 2008?

12 A. 2008. Excuse me.

13 Q. And did you in fact attend this  
14 September 5 meeting?

15 A. Yes, I did.

16 Q. Now, before I get into asking you questions about  
17 this particular meeting, I have a couple broader  
18 questions I'd like to ask you.

19 In your role as a board member of AIG, were you  
20 responsible for reviewing and ultimately approving the  
21 accuracy of the board meeting minutes?

22 A. Yes.

23 Q. And while you were on the board from I believe you  
24 said it was 2005 through 2013, did you regularly approve  
25 the accuracy of the board minutes?

1 A. Yes.

2 Q. And if you saw errors or irregularities, would you  
3 seek to correct those?

4 A. Yes.

5 Q. Now, I want to ask you some questions specifically  
6 about JX 43 now.

7 And could you turn to page 2 of 5. You'll see at  
8 the bottom it says "Page 1 of 5." I want to ask you some  
9 questions about page 2.

10 Now, in the middle of the second paragraph -- and  
11 for ease, Mr. Offit, we also have the documents on the  
12 screen, just so you know.

13 In the middle of the second paragraph, it states,  
14 "Mr. Willumstad described the liquidity and capital  
15 issues facing the organization and advised the members  
16 that an additional capital raise will be required and  
17 JPMorgan had been engaged as an advisor."

18 Do you see that.

19 A. Yes.

20 Q. Do you recall Mr. Willumstad saying that at the  
21 September 5 meeting?

22 A. Yes.

23 Q. And what was your understanding, sir, of why  
24 JPMorgan was engaged?

25 A. We had the liquidity pressures and we needed to

1 have access to additional liquidity, and Morgan was  
2 engaged for that purpose.

3 Q. The purpose of trying to find liquidity for AIG?

4 A. Yes.

5 Q. Okay. Now, at the end of that paragraph, it  
6 states "that a ratings downgrade would put additional  
7 pressure on liquidity and might require drawing on the  
8 backup lines."

9 Was the possibility of a ratings downgrade  
10 discussed at this meeting on September 5, 2008?

11 A. Yes.

12 Q. And what was discussed about the possibility of a  
13 ratings downgrade at that meeting?

14 A. I think the primary problem here was how a  
15 downgrade would affect collateral calls with regard to  
16 the CDS instruments.

17 Q. And can you --

18 A. Credit default swaps.

19 Q. Thank you.

20 And can you explain the relationship between a  
21 rating downgrade and the collateral calls as best you  
22 understand it.

23 A. Well, if your ratings went below a certain level,  
24 then in effect your counterparty had the right to call  
25 for collateral, which meant that that would be a

1 liquidity drain on the corporation.

2 Q. Now, if you turn to the next page, page 3 of  
3 JX 43, the last sentence of the rollover paragraph, it  
4 states that "Mr. Bensinger said that JPMorgan will be  
5 asked to address various funding alternatives, including  
6 asset sales, and all proposals and recommendations will  
7 be shared with the Board.

8 Just as an initial matter, sir, who was  
9 Mr. Bensinger?

10 A. The chief financial officer of AIG at that time.

11 Q. And were there any particular asset sales that you  
12 recall being discussed to raise capital as of this time  
13 frame?

14 A. Well, I think the board was advised and had  
15 deliberated before this time in making a distinction  
16 between primary or core assets in effect or less than  
17 core assets, those that could in effect be sold without  
18 impairing the underlying product base of the company.

19 Q. And was there a general -- well, strike that.

20 What were some of the -- what was the distinction  
21 between what would be a core asset versus a noncore  
22 asset?

23 A. Well, you have your basic insurance companies, the  
24 property and casualty company, and then you have your  
25 life and retirement companies, so they would be the core

1 companies, and anything noncore would be the other  
2 companies.

3 Q. Now, was there any view at the time as to how long  
4 an asset sale would take?

5 A. Yes. We all realized that because of the  
6 due diligence on the part of a prospective buyer  
7 certainly would be three to six to nine-month period.

8 Q. Now, if we stay on page 3 of JX 43, the first full  
9 paragraph, the first full sentence states that  
10 "Mr. Willumstad reported that there had been initial  
11 discussions with the Federal Reserve on whether the  
12 discount window could be made available to AIG, but  
13 discussions are now focusing on the possibility of AIG  
14 establishing a primary dealer, a process that can be  
15 completed in about two months."

16 Mr. Offit, do you recall Mr. Willumstad discussing  
17 that topic during the meeting?

18 A. Yes. Yes, I do.

19 Q. And what is your understanding, sir, of the term  
20 "primary dealer"?

21 A. Well, a primary dealer is a dealer appointed by  
22 the Federal Reserve System to in effect be an open-market  
23 participant in the making of markets in Treasury  
24 securities.

25 Q. Did you personally ever work for a primary

1 dealer?

2 A. Yes. I was a partner at the firm of  
3 Salomon Brothers the year 1970 to 1980 and was the  
4 partner responsible for sales at Salomon Brothers during  
5 that time, and as such, all the trading desks reported to  
6 me as well as to the trading head and part of -- and my  
7 role was in sales management.

8 Q. I think this is probably implicit in your last  
9 answer, but just so we have a clear record, as part of  
10 your duties at Salomon Brothers, did you become familiar  
11 with the duties of a primary dealer?

12 A. Yes.

13 Q. Now, as of September 5, 2008, was AIG a primary  
14 dealer?

15 A. No.

16 Q. Do you have an understanding as to what it would  
17 have taken for AIG to have become a primary dealer?

18 A. To be a primary dealer were you must have a  
19 distribution force as well as a trading desk. You're  
20 certainly talking about six, twelve months, two, three  
21 years in building a reputable trading operation because  
22 in effect you're taking on risk. You're making markets,  
23 and so you have exposure to the volatility in market  
24 making.

25 Q. You mentioned that there's a need to have a

1 distribution force and a trading desk; is that right?

2 A. Yes.

3 Q. Would AIG have needed to add a bond trading  
4 operation in order to become a primary dealer?

5 A. Yes.

6 Q. And to do that, in your judgment, would AIG have  
7 needed to hire new bond traders?

8 A. Extensively. Yes.

9 Q. Now, were you aware, as of September 5, 2008, of  
10 any discussions AIG had been having with bond traders for  
11 the purposes of acquiring them?

12 A. I am not.

13 Q. In your view, would AIG have needed to allocate  
14 capital for bond trading in particular?

15 A. Absolutely. Yes. It's a market-making function,  
16 and by self-definition that means a capital base.

17 Q. Now, the third page of these minutes, still on  
18 JX 43 here, reflect a question from you asking about  
19 membership in the Federal Home Loan Bank system.

20 Do you see that?

21 A. Yes.

22 Q. Would membership in the Federal Home Loan Bank  
23 system have solved AIG's liquidity needs, in your view?

24 A. No.

25 Q. Why not?

1           A. Well, AIG had a very small savings and loan at  
2 that time, and I'm not sure they would have been able to  
3 call on much capital in relationship to the size of that  
4 bank. And there are -- I can't think of the other  
5 considerations, but that's the primary one.

6           Q. Now, I want to move a little bit ahead in time now  
7 and talk about September 14 through September 16, 2008.  
8 And in particular, sir, I want to ask you some questions  
9 about the board meetings, the AIG board meetings from  
10 that time period.

11           If you could turn in your binder to JX 74, please.

12           A. Yes.

13           Q. Do you recognize this exhibit, sir?

14           A. Yes, I do.

15           Q. What is this?

16           A. The minutes from the September 16, 2008 board  
17 meeting.

18           Q. Does this also include the meeting minutes from  
19 September 14 and 15 as well?

20           A. Yes.

21           Q. Okay. Now -- and did you attend these board  
22 meetings on the 14th, 15th and 16th?

23           A. I did.

24           Q. Was it unusual, in your experience, for the board  
25 to meet on three consecutive days?

1 A. Yes.

2 Q. And why in this circumstance did AIG's board meet  
3 on September 14, 15 and 16?

4 A. The question asked again is?

5 Q. In other words, why was it that under this set of  
6 circumstances, why was the board meeting on three  
7 consecutive days given that you just indicated that was  
8 unusual for that time period?

9 A. We were involved in a financial crisis.

10 Q. Now, I want to start off by just identifying some  
11 of the participants at this meeting just to orient  
12 ourselves here.

13 And on the first page of JX 74, it identifies --  
14 and I'm probably going to butcher this name, but I'm  
15 going to do my best -- Richard I. Beattie?

16 A. Yes.

17 Q. Michael D. Nathan and James G. Gamble of Simpson  
18 Thacher & Bartlett LLP, outside counsel to the  
19 nonmanagement directors.

20 Do you see that?

21 A. Yes.

22 Q. Now, at the time, sir, were you a nonmanagement  
23 director on the AIG board?

24 A. Yes.

25 Q. So as a nonmanagement director, did Mr. Beattie,

1 Mr. Nathan and Mr. Gamble act as your counsel?

2 A. Yes.

3 Q. Now, also on the first page of JX 74, it  
4 identifies H. Rodgin Cohen and Michael W. Wiseman of  
5 Sullivan & Cromwell LLP, outside counsel to AIG.

6 Did they also participate in the meeting on  
7 September 16?

8 A. Yes.

9 Q. Now, if you go to the next page, page 2, among  
10 other folks that are identified, there's a reference to a  
11 John Studzinski, Martin Alderson-Smith, Arthur Newman and  
12 Larry Nath of The Blackstone Group, financial advisors to  
13 AIG.

14 To your recollection, sir, what was Blackstone  
15 retained to do?

16 A. Retained to provide the advice to the board in  
17 light of the financial crisis to discuss our  
18 alternatives.

19 Q. Now, to your knowledge, did anyone from the  
20 New York Fed or the Treasury attend the AIG board meeting  
21 on September 16?

22 A. No, they did not.

23 Q. Now, I want to take these minutes sort of one at a  
24 time, and let's start off with the September 14 meeting  
25 of the AIG board.

1           Now, on page 2, the third full paragraph, the  
2 first sentence says, "During the September 14 portion of  
3 the meeting, Mr. Willumstad brought the members up to  
4 date on the discussions over the weekend with respect to  
5 potential capital injections and other liquidity measures  
6 with private equity firms, sovereign wealth funds and  
7 other potential investors."

8           Sir, do you recall Mr. Willumstad discussing that  
9 with the board?

10          A. Yes, I do.

11          Q. And did you have an understanding of the time  
12 frame that would generally be required for a sovereign  
13 wealth fund to make a capital investment in a firm like  
14 AIG?

15          A. Yes.

16          Q. And what was that understanding?

17          A. Well, I'm familiar with the due diligence process,  
18 and certainly for investors and certainly an  
19 institutional investor, they're going to be engaged in  
20 extensive due diligence which could take anywhere from  
21 two, three months in doing the homework.

22          Q. Now, I want to step on to the September 15 board  
23 meeting at this point, which begins, as I understand it,  
24 in the fourth full paragraph on page 2 of JX 74.

25                 Now, as a general matter, sir, do you recall a

1 discussion during the September 15 board meeting about  
2 expected downgrades from the rating agencies later that  
3 day?

4 A. Yes.

5 Q. And what was your reaction to the information that  
6 the rating agencies were going to downgrade AIG later  
7 that day?

8 A. I was alarmed.

9 Q. Why?

10 A. Recognizing that we didn't have the liquidity to  
11 meet the capital in order to respond to the collateral  
12 calls.

13 Q. Now, staying on page 3, in the first full  
14 paragraph, the second sentence, it states that  
15 "Mr. Willumstad said that if a transaction is presented  
16 by the banks, it is expected to involve a substantial  
17 transfer of ownership of the Corporation."

18 Do you see that, Mr. Offit?

19 A. Yes, I do.

20 Q. Do you recall Mr. Willumstad saying that?

21 A. Yes.

22 Q. And do you recall what banks were being referred  
23 to here by Mr. Willumstad?

24 A. Yes.

25 Q. What banks were being referred to?

1           A. Initially JPMorgan. And also Citi was in the  
2 background, but it was primarily Morgan.

3           Q. And Mr. Offit, did you have an understanding at  
4 that time, meaning September 15, 2008, that any deal with  
5 the banks would have involved an equity component?

6           A. Yes.

7           Q. Now, as of September 15 -- we're staying on the  
8 15th now -- did you have an understanding as to what  
9 would happen to AIG if it did not obtain additional  
10 financing?

11          A. Yes.

12          Q. What was that understanding?

13          A. Probably a bankruptcy filing.

14          Q. Now, speaking of bankruptcy, what, if anything,  
15 was discussed during this meeting concerning the  
16 expected value of AIG to its shareholders in a  
17 bankruptcy?

18                 MR. BOIES: Objection, Your Honor, unless we  
19 identify the source of the information. If the source  
20 is lawyers, that's going to raise one issue. If the  
21 source is Mr. Studzinski and other people, it's not.

22                 THE COURT: Can you lay a little more foundation  
23 before we get into this?

24                 MR. GARDNER: I can, Your Honor, but if I could  
25 address Mr. Boies' objection.

1           The statements of the attorneys that are in this  
2 meeting minutes, they're -- I mean, I don't know if you  
3 want to call it a waiver or what you wish to call it, but  
4 those statements are open. And I do believe, Your Honor,  
5 that we are entitled to ask questions related to that  
6 specific legal advice.

7           Frankly, I'm not asking about legal advice right  
8 now. I'm asking about his understanding of what was  
9 discussed. But I do want to make clear for the record  
10 that the government's position is that if there is legal  
11 advice reflected in these meeting minutes, that's --  
12 whether you call it a waiver or whatever you wish to call  
13 it, that's fair game.

14           THE COURT: Mr. Boies?

15           MR. BOIES: Your Honor, should we continue this  
16 outside the presence of the witness?

17           THE COURT: I think so if we're going to have a  
18 discussion.

19           Mr. Offit, may I ask you to please step outside  
20 the courtroom for just a moment. We'll call you  
21 shortly.

22           MR. GARDNER: Terribly sorry, sir.

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

25           THE COURT: Yes. Go ahead.

1           MR. BOIES: During Mr. Offit's deposition, we  
2 asked a number of questions as to which there was  
3 instruction not to answer. And they went along the line  
4 not too dissimilar from this question, that is, what is  
5 your understanding about. And there was an objection  
6 that said, Well, if that understanding, you know, comes  
7 from lawyers, I instruct you not to answer. And in  
8 almost all the cases he said, Well, it comes from  
9 lawyers, and he didn't answer.

10           Now, it is true that the document is in evidence,  
11 but that does not mean that the subject matter has been  
12 waived. We agreed. We stipulated to that.

13           If they now in terms of testimony in open trial  
14 voluntarily elicit information about what attorneys said,  
15 I think that does cause the waiver. And I think it's  
16 particularly inappropriate to do that given the  
17 instructions that took place at the time of the  
18 deposition.

19           I would note that with respect to the  
20 January 16 meeting, we have a particular problem in  
21 that, unlike September 21, where they actually produced  
22 the underlying notes, here they have withheld the notes  
23 on a claim of privilege because they were taken by a  
24 lawyer.

25           So we don't even have the actual notes that

1 underlie the minutes, so I think it's particularly  
2 inappropriate at that point to just get witness testimony  
3 on a subject that we've been precluded from.

4 THE COURT: Mr. Gardner?

5 MR. GARDNER: Your Honor, I can address that.

6 First of all, you know, I haven't read Mr. Offit's  
7 deposition in the past few days, but my firm recollection  
8 is there were very few instructions not to answer  
9 questions. And certainly, as I recall, AIG's counsel  
10 allowed Mr. Offit, as well as every other board member,  
11 to answer questions where there are specific statements  
12 by attorneys in those minute meetings.

13 I think it's also important to understand,  
14 Your Honor, that AIG itself has waived any  
15 confidentiality to the minute meetings. They're on  
16 PACER. I mean, you can get these things publicly.

17 So the notion somehow that there is still a  
18 privilege with respect to the specific statements in  
19 these meetings, there's no legal basis for that. But  
20 there's a more fundamental point, Your Honor.

21 Plaintiffs are arguing that the AIG board members  
22 did not voluntarily enter into this transaction. What I  
23 am trying to elicit from Mr. Offit is what was his basis  
24 for making the decision. Plaintiffs have put this in  
25 issue by alleging this was not voluntary.

1           So, Your Honor, I mean, the minutes are in.  
2           They're taking a position. We have to be able to explore  
3           that position.

4           I'm not planning on going beyond the minute  
5           meetings -- meeting minutes -- sorry -- but we -- I mean,  
6           certainly we need to be entitled to ask questions about  
7           things in the public domain.

8           THE COURT: Well, I would very much like you to  
9           step carefully through this line of questioning. As I  
10          stated yesterday, given the representations of outside  
11          counsel for AIG, they quite clearly do not want to waive  
12          attorney-client privilege.

13          Now, you're right. We do have public minutes  
14          here. But it would also be highly unfair to elicit  
15          testimony where the witness was instructed not to answer  
16          during his deposition.

17          Now, I don't know what those questions were or  
18          how often they occurred because I don't have the  
19          deposition.

20          MR. GARDNER: I mean, I can represent to you,  
21          Your Honor, that I've never met Mr. Offit in my life, and  
22          my questions come from his deposition where there is a  
23          question and an answer, and so I'm certainly not planning  
24          on asking him questions where he was instructed not to  
25          answer, although, again, my recollection is that did not

1     happen with all that much frequency.

2             THE COURT: Well, just please stay away from those  
3     questions, if you will.

4             MR. GARDNER: I don't think there's a single one  
5     of those questions here, Your Honor.

6             THE COURT: All right.

7             MR. GARDNER: Mr. Boies can correct me if I'm  
8     wrong as we go along.

9             THE COURT: All right.

10            MR. BOIES: I have the questions here,  
11     Your Honor. It is -- the issue is not just whether he  
12     rephrases this exact question. The fact is that they  
13     were maintaining the privilege and they've maintained the  
14     privilege to keep the notes of these meetings from us.  
15     They've maintained the privilege to keep us from asking  
16     questions they didn't want us to ask or didn't want to  
17     have the answer.

18            As a result, there is -- there either is a  
19     subject-matter waiver privilege -- of the privilege or  
20     not. If there is, then it's open. If there's not, then  
21     he can't answer the questions about what lawyers told  
22     him.

23            The fact that there's a document that says that  
24     that has been produced pursuant to a stipulation doesn't  
25     change that. That doesn't constitute a subject-matter

1 waiver because we stipulated to that.

2 But if now in open court he starts talking about  
3 what lawyers told him or if he just says, This was my  
4 understanding, and then on cross-examination it turns out  
5 that some of that comes from a lawyer, then I think you  
6 do have a waiver.

7 MR. GARDNER: Your Honor, first of all, let me  
8 represent to you that my understanding is that  
9 Mr. Offit's attorney from Simpson Thacher is here, and he  
10 can certainly speak to this. We don't have enough  
11 attorneys from different law firms in this case. He can  
12 certainly speak to what his understanding is as to the  
13 scope of the waiver.

14 The government's understanding, though, is that  
15 where there is legal advice represented in publicly  
16 available documents, whether you want to call it a waiver  
17 or something else, that's fair game.

18 And again, Mr. Boies has not addressed the issue  
19 that they are challenging the voluntariness of the  
20 decision makers. That opens the door to us asking: What  
21 is the basis for your decision?

22 What I expect Mr. Offit to say is he weighed the  
23 differences between bankruptcy and the government's loan  
24 and determined that the government loan was the better  
25 option.

1           So we are going to be severely prejudiced,  
2 Your Honor, if Mr. Boies tries to shut down this line of  
3 questions given that it is his legal position that has  
4 opened the door to this.

5           MR. BOIES: Your Honor, their legal position is  
6 something that we can't challenge based on the  
7 privileged information of AIG. We've got a list, a  
8 privilege list as long -- much longer than my arm, from  
9 AIG about all of the documents that have been withheld  
10 from us on privilege which we would like to have to  
11 counter their allegations.

12           It can't be true that you always just eliminate  
13 the privilege because it's necessary to challenge  
14 somebody's allegation. This is a situation in which they  
15 have not, at least thus far, waived the privilege. And  
16 these things he's asking about, we've been precluded from  
17 getting the documents, the underlying documents.

18           So if he's going to start asking about legal  
19 advice about bankruptcy, we're entitled to have the  
20 documents that AIG has withheld with respect to  
21 bankruptcy.

22           THE COURT: Is counsel from Simpson Thacher here?

23           MR. CURNIN: Yes, Your Honor. Paul Curnin,  
24 Simpson Thacher.

25           THE COURT: Would you care to state your position

1 on this subject?

2 MR. CURNIN: I don't have a position. I have --  
3 I'll tell you what I know.

4 What I know is that --

5 THE COURT: Can you come up, please, so we can get  
6 you on the record.

7 Tell us your name again, please.

8 MR. CURNIN: Sure. It's Paul Curnin, C-U-R-N-I-N,  
9 from Simpson Thacher.

10 THE COURT: Thank you for being here.

11 MR. CURNIN: My pleasure.

12 At his deposition, Mr. Offit was cautioned not to  
13 give answers that would reveal attorney-client  
14 information outside of the attorney-client information in  
15 the minutes. He was allowed at his deposition to talk  
16 about what lawyers told him at the meeting minutes, as  
17 reflected in those minutes, and what he did with that  
18 information.

19 THE COURT: So you're okay it seems with him  
20 talking about legal recommendations made during the  
21 meeting?

22 MR. CURNIN: Your Honor, that's my understanding.

23 Mr. Offit isn't authorized to and is not here to  
24 waive anything today. He's no longer a member of the  
25 board.

1 THE COURT: Right.

2 MR. CURNIN: But he was allowed at his deposition  
3 to testify about the advice that the board got at the  
4 meetings, as reflected in those minutes.

5 THE COURT: Right.

6 MR. CURNIN: It's also my understanding I would  
7 say -- and both sides examined Mr. Offit about what  
8 lawyers told him at those meetings that you've heard  
9 about already.

10 I would also just say it's my understanding that  
11 there are no attorney notes for the 16th when my former  
12 partner Jamie Gamble acted as a secretary for that, so  
13 that we don't -- those underlying notes haven't been  
14 withheld from anybody. They don't exist.

15 THE COURT: Okay. Mr. Boies?

16 MR. BOIES: Well, I guess one thing I would ask  
17 the Court to do is to review in camera a couple of  
18 documents from the AIG privilege log. And I don't in  
19 any sense dispute Mr. Curnin's representation, because I  
20 know him to be a fine lawyer and a person of great  
21 integrity, but the entries on the privilege log give us  
22 some pause.

23 I mean, for example, there is something that is  
24 from James Gamble on September 17, 2008, the day after  
25 the board meeting, that is sent to Kathleen Shannon,

1 Michael Nathan, Eric Litzky, and the privilege  
2 description is "e-mail reflecting client's request for  
3 legal advice regarding board meeting notes."

4 Now, that suggested to us that there were such  
5 notes, and I would --

6 MR. CURNIN: There were. There were such notes.  
7 Jamie took notes at that meeting. I don't believe they  
8 exist and haven't for some time.

9 And I don't know what that particular document is  
10 that you're referring to --

11 MR. BOIES: I would ask the Court to at least look  
12 at that document in camera and then maybe take into  
13 account in looking at the document counsel's statement  
14 that there were notes, but the notes no longer exist,  
15 which itself may be a basis for getting this document.

16 But the main point I think, Your Honor, is that  
17 we had a deposition under 502 in discovery. And as the  
18 Court has recognized before, there's a difference between  
19 what you investigate during discovery and what you are  
20 able to put on at trial.

21 We were able to take as much discovery as we were  
22 permitted to take. We were not permitted to have the  
23 documents.

24 If there's a waiver of the privilege, we get the  
25 documents that are relevant. If there's not a waiver of

1 the privilege, they can't talk about it. And I think it  
2 is as simple as that.

3 THE COURT: There seems to be another person who  
4 wishes to be heard.

5 MR. GARDNER: There is, Your Honor.

6 So again, because I was aware there aren't enough  
7 attorneys here, there's also an attorney from  
8 Weil Gotshal here as well who, as you know, also  
9 represents AIG, Ms. Thompson, so there you go.

10 THE COURT: Good afternoon. You are?

11 MS. THOMPSON: Your Honor, Sunny Thompson from  
12 Weil Gotshal, representing AIG.

13 THE COURT: Thank you for being here.

14 MS. THOMPSON: Yes, Your Honor. I have been here  
15 every day of the trial.

16 THE COURT: I do, I remember that you have been.

17 MS. THOMPSON: Yes, sir.

18 You know, AIG has been a willing nonparty. I  
19 think that's how you described us a few days ago.

20 THE COURT: Yes.

21 MS. THOMPSON: But AIG 100 percent does not want  
22 to waive any privilege and has produced, under the  
23 stipulation that the parties have mentioned, these board  
24 minutes without redactions, and that was for -- as a  
25 result of the negotiated compromise. And any other

1 materials that have been designated as privileged by AIG  
2 we do not wish to come in.

3 And we do wish for Mr. Offit to be able to  
4 testify, but we disagree that any privilege has been  
5 waived or should be waived or that any documents should  
6 be reviewed by Your Honor under -- in camera. We do not  
7 think that is called for under the circumstances.

8 THE COURT: Do you think that it's acceptable for  
9 Mr. Offit to testify about statements or advice that  
10 lawyers made during these board of directors meetings?

11 MS. THOMPSON: I believe that the content of the  
12 minutes have already been into the public domain as a  
13 result of the stipulation, and discussing what happened  
14 at the meeting as reflected in the minutes is not  
15 problematic from AIG's perspective, and that is why we  
16 produced the minutes in their current form.

17 And my understanding, based on the deposition, is  
18 that Mr. Offit was very forthcoming and spoke about the  
19 meeting, and we do not feel that is problematic or that  
20 it remotely gets to a subject-matter waiver of AIG's  
21 privilege and with the result of the federal lending  
22 facility.

23 THE COURT: Are you familiar with the documents  
24 that are listed on the AIG privilege log?

25 MS. THOMPSON: Your Honor, I am not familiar with

1     them.

2             THE COURT:    Okay.

3             MS. THOMPSON:  There are others who are more  
4     familiar.  But I do understand that there are many, many  
5     items on the log and that AIG is not a party, and we  
6     don't believe that our privilege has been affected by  
7     what has happened thus far and what would happen with  
8     Mr. Offit testifying about the minutes.

9             THE COURT:  All right.  Thank you very much.  
10    Thanks to both of you.  It's helpful to have your  
11    position.

12            Well, I think that we are prepared to go ahead,  
13    with the understanding that it's fair game for Mr. Offit  
14    to testify about lawyer statements during the board  
15    meetings.

16            MR. GARDNER:  Thank you, Your Honor.

17            THE COURT:  And that's where I'm going to leave it  
18    for the time being.  Now, we'll see where this leads us.  
19    I hope it's not going to be difficult.

20            MR. GARDNER:  You know, Your Honor, I am doing my  
21    best to try to make things as simple as possible.

22            THE COURT:  Right.

23            Shall we have the witness come back in?

24            MR. GARDNER:  That would be great.

25            MR. BOIES:  And could I ask, Your Honor, if we are

1 going to go forward asking about legal advice, we could  
2 at least separate out what the source is of his  
3 understanding. If it is just nonlegal advice, that makes  
4 it easy. If it's both, then we can at least know what  
5 the issue is going to be there.

6 THE COURT: Okay.

7 MR. GARDNER: And Your Honor, to be clear, I was  
8 trying to avoid having to literally read in workmanlike  
9 fashion statements from the minutes and ask him what that  
10 meant because that does not seem like something  
11 Your Honor is particularly interested in. But for a  
12 witness like this, I am willing to do that to show,  
13 you know, to satisfy Mr. Boies and to, you know,  
14 alleviate concerns about a waiver beyond those minutes,  
15 what I'm talking about here.

16 I was just simply trying to meet the Court's  
17 desires about how to present testimony, so we'll just  
18 play it by ear I suppose.

19 THE COURT: Well, and I'm going to talk to the  
20 witness when he comes back in to establish some  
21 guidelines.

22 MR. GARDNER: Thank you.

23 (Whereupon, the witness was present in  
24 open court.)

25 THE COURT: Mr. Offit, thank you very much for

1 your patience.

2 THE WITNESS: Yes, sir.

3 THE COURT: While you were out of the courtroom,  
4 we had a discussion about matters relating to  
5 attorney-client privilege issues.

6 First of all, as you know, AIG is not a party to  
7 this litigation. And also you don't work for AIG  
8 anymore.

9 But during the discussion we just had while you  
10 were outside, I spoke -- or I heard the positions of your  
11 counsel from Simpson Thacher and I also heard from AIG's  
12 counsel from Weil Gotshal.

13 And you may well be asked questions that cause you  
14 to state the basis for your understanding or how you knew  
15 a certain fact. If you would, think about, before you  
16 answer such a question, did I get that message from a  
17 statement made during a meeting, during one of these  
18 board meetings, in which case it's fine, or did I hear  
19 this information from an attorney outside of the  
20 meeting.

21 It's a little bit tricky I admit and it's  
22 regarding events that are six years old now, but those  
23 are the ground rules that we want to establish here.

24 Or if it's something that you learned from a  
25 nonlawyer, in which case that's perfectly fine. We just

1 want to stay away from attorney-client communications  
2 that were made outside of a board of directors meeting.

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay?

5 THE WITNESS: Sure.

6 THE COURT: All right. And if you have any  
7 questions or problems with that, feel free to say so.

8 THE WITNESS: Yes, sir. Thanks.

9 BY MR. GARDNER:

10 Q. And I'm going to hopefully try to make this  
11 easier on you, Mr. Offit, because I want to focus on the  
12 board meeting minutes themselves, so that should  
13 hopefully create some bright lines. But again, as the  
14 Court said, if you ever have questions, obviously your  
15 attorneys are here, or you can certainly ask the Court.  
16 Okay?

17 A. Okay. Thank you.

18 Q. So I want to turn back to -- we're on JX 74, the  
19 meeting minutes, and page 3.

20 A. Yes.

21 Q. In the middle paragraph -- let's see. It's the  
22 third sentence.

23 It says, "Board members raised various questions  
24 on the expected value of the Corporation to shareholders  
25 in a bankruptcy."

1           Do you see that, sir?

2           A. Yes.

3           Q. And what do you recall about those discussions  
4 concerning the expected value of AIG to its shareholders  
5 in a bankruptcy?

6           A. I can only really answer that with respect to how  
7 I would look at the value to shareholders in the event of  
8 a bankruptcy. And based on my years as an investment  
9 professional, I would say that in most cases the  
10 shareholder is wiped out.

11          Q. Why? Why did you hold that view?

12          A. Well, first of all, you have the creditor claims,  
13 so you first have to satisfy the creditor, and you may  
14 have to satisfy pension fund obligations, who knows, but  
15 certainly you're the last in line, so you're the residual  
16 interest.

17                 And certainly in the event of a bankruptcy, your  
18 asset values are going to be diminished, so you have the  
19 shrinkage of the assets which in effect leads to a  
20 shrinkage in your capital base and in most cases wipes it  
21 out.

22          Q. Now, in making the ultimate decision as to whether  
23 to approve the New York Fed's credit facility, were you  
24 taking into account the notion that, in your view, in a  
25 bankruptcy the shareholders would be wiped out?

1           A. Yes. I didn't get the first part of your  
2 statement.

3           Q. Sorry.

4                   I said, in making the ultimate decision as to  
5 whether to approve or accept the New York Fed's credit  
6 facility, were you taking into account the notion that  
7 you expressed that in a bankruptcy the shareholders would  
8 be wiped out?

9           A. Yes.

10          Q. Now, I want to turn to the September 16 portion of  
11 the meeting minutes, and if you could, sir, could you  
12 turn to page 4 of JX 74.

13                   Now, in the third full paragraph, the second  
14 sentence, there's a reference to Mr. Cohen.

15                   Do you see that?

16          A. Yes.

17          Q. And that's Rodgin Cohen?

18          A. Yes.

19          Q. And Mr. Cohen here states "that based on  
20 discussions with AIG Management, the Corporation is  
21 currently insolvent because it is unable to pay its debts  
22 as they become due."

23                   Do you recall Mr. Cohen making that statement?

24          A. Yes.

25          Q. Was it your understanding, sir, that AIG was

1 insolvent as of September 16, 2008?

2 A. Yes. But it also has to do with a liquidity  
3 crisis.

4 Q. Can you explain what you mean by that?

5 A. Yes. Once a company is frozen out of the  
6 commercial paper market, you can't roll over commercial  
7 paper, which is the primary instrument in short-term  
8 liquidity, then it looks to its backup lines.

9 But the backup lines really are not going to be  
10 existent either, so you in effect have this liquidity  
11 crisis. And it's short-dated. The company may have  
12 solvency over time, but in the meantime your liquidity  
13 crisis is the primary reason for bankruptcies.

14 Q. And maybe I should back up.

15 What is your understanding of what it would have  
16 meant for AIG to have been insolvent?

17 A. Well, the technical term of insolvency has to do  
18 with the asset-liability relationship, which is much less  
19 important than a liquidity crisis. If you can't feed the  
20 company the amount of liquidity that's needed in  
21 operating day to day, then in effect you're out of  
22 business. Whether you call it insolvency or a bankruptcy  
23 due to a liquidity crisis, it all amounts to the same  
24 thing.

25 Q. Now, I want to draw your attention to page 5 of

1 JX 74 and the third paragraph, the second sentence there.

2 The minutes go on to state that Mr. Cohen  
3 explained "that bankruptcy in a financial institution is  
4 different than a bankruptcy in other types of companies.  
5 Financial institutions rely not on hard assets but on  
6 retaining the best people and on the confidence of the  
7 markets and customers. Bankruptcy has a tendency to  
8 impact those aspects of a financial institution very  
9 negatively."

10 Mr. Offit, do you recall that advice from  
11 Mr. Cohen?

12 A. Yes, I do.

13 Q. And what was your view as to whether bankruptcy  
14 had a tendency to impact those aspects of a financial  
15 institution very negatively?

16 A. Well, yes. A financial institution is based on  
17 trust, the trust, in effect the solvency, meaning there's  
18 enough liquidity in the institution to satisfy the --  
19 whether it's the insurance contract or whether in effect  
20 it is a deposit relationship with a commercial bank.  
21 It's all the same thing because it's money, which is in  
22 effect your product.

23 So once you lose the confidence of the depositor  
24 or the insurance contract holder, it's all the same  
25 thing. You want out because you no longer have

1 confidence that the company will be able to satisfy you  
2 when you present something for your redemption, whether  
3 you're withdrawing money or in effect you're presenting  
4 your insurance contract for a redemption. It doesn't  
5 make any difference.

6 Q. Now, did you consider this advice that we just  
7 discussed from Mr. Cohen when making your decision on  
8 whether to accept the government's rescue facility?

9 A. Yes. As a practice professional, certainly I  
10 understood very vividly what he was saying.

11 Q. Now, if you can turn to page 10 of the meeting  
12 minutes -- so we're going to jump ahead a little bit  
13 now -- the second full paragraph, Mr. Cohen goes on to  
14 state "that it is important for the Board to remember  
15 that it has a duty to creditors as well as equity holders  
16 in this circumstance. He explained that in a bankruptcy,  
17 equity holders would receive nothing unless all creditors  
18 were first paid in full."

19 Do you recall that advice from Mr. Cohen?

20 A. Yes, I do.

21 Q. And did you consider that advice as part of making  
22 your decision?

23 A. Yes.

24 Q. And did you have a view at the time as to whether  
25 there was a significant risk that creditors, so not

1 equity shareholders but creditors, would not be paid in  
2 full in a bankruptcy?

3 A. Well, it depends. It depends on in fact the  
4 diminution of the value of the assets.

5 Q. Sure.

6 A. So...

7 Q. And I guess what I'm asking is just putting  
8 yourself back into the time frame of September 16, 2008,  
9 to the extent you're even able to do that, did you have a  
10 particular view at that time as to whether there was a  
11 significant risk that the creditors would not be paid in  
12 full if AIG had declared bankruptcy?

13 A. Yes, I did.

14 Q. Okay. And why did you hold that view, sir?

15 A. Again, an understanding of how the value of the  
16 assets could be diminished by virtue of the bankruptcy.

17 Q. As of September 16, 2008, what concerns did you  
18 have, if any, regarding AIG personnel leaving to work for  
19 other companies if AIG had filed for bankruptcy?

20 A. Well, that certainly was a very important part of  
21 my personal consideration because I worked with these  
22 people and had extraordinary regard and respect for them,  
23 tremendous amount of human empathy here. And in the  
24 event of bankruptcy, you're splitting apart the  
25 corporation. And many of these people would move on to

1 other corporations if they could.

2 There's a taint aspect to here which I found very,  
3 very uncomfortable, the taint of bankruptcy.

4 Q. Can you -- I haven't heard that term before.

5 What do you mean by "the taint of bankruptcy"?

6 A. What I mean by that is, once a person is  
7 associated with a company that in effect has undergone a  
8 bankruptcy, there is a feeling maybe in the marketplace  
9 that that person may have been somewhat responsible for  
10 any of the deterioration in the company's operations.  
11 You don't know, but it's -- everything in the financial  
12 world is based on reputation.

13 Q. And just again to bring it back, was that a  
14 concern that you had as of September 16?

15 A. That's certainly my concern.

16 Q. And that was a concern you had as of  
17 September 16?

18 A. Absolutely.

19 Q. Now, I want to make sure the transcript is clear  
20 here because I may not have gotten an actual answer to  
21 this.

22 What was your view, as of September 16, 2008,  
23 regarding whether creditors would be paid in full if AIG  
24 had declared bankruptcy?

25 A. I -- I -- it was uncertain whether or not they'd

1 be paid in full because it has to do with the value of  
2 the assets.

3 Q. Got it. Got it.

4 Now, let's turn back now to page 6 of JX 74, so  
5 we're going to go just a little bit backwards here.

6 Now, in the middle -- I guess maybe two-thirds of  
7 the way into the second paragraph, there's a reference to  
8 Mr. Alderson-Smith.

9 Do you see that?

10 A. Yes.

11 Q. And it says here that "Mr. Alderson-Smith  
12 explained that the valuations represent going concern  
13 values prior to two forms of value erosion: (i) the fact  
14 that if you were to sell assets while in bankruptcy it is  
15 highly unlikely that AIG could obtain full value in the  
16 sales; and (ii) the fundamental businesses of AIG  
17 (insurance and other financial services) will likely  
18 erode significantly as a result of bankruptcy, which  
19 would shrink value because earnings (and therefore the  
20 P/E multiple) would likely shrink significantly."

21 Now, Mr. Offit, do you recall Mr. Alderson-Smith  
22 providing this information to the AIG board?

23 A. Yes, I do.

24 Q. Now, I want to break this up because there are a  
25 couple of things going on here.

1           The first part of Mr. Alderson-Smith's statement  
2    is that if AIG were to sell assets while in bankruptcy,  
3    it is highly unlikely that AIG could obtain full value  
4    for its assets.

5           What was your view on this issue as of  
6    September 16, 2008?

7           A. I think he was basically right. In my own mind I  
8    took it a step further and said it's more dependent  
9    whether or not you had a functioning bond market,  
10   certainly specifically directed to mortgage securities.

11          Q. Can you explain the relationship, just so I  
12   understand it, between the relationship between a  
13   functioning bond market on the one hand and the ability  
14   to sell assets in bankruptcy on the other?

15          A. Well, you had, as I said, a marketplace in  
16   complete disarray, something that hadn't happened  
17   certainly during my lifetime and I've been in the  
18   business for 55 years. And as I've said before, the  
19   bond market is in effect a market-making kind of  
20   operation in contrast to the stock market which is an  
21   option market. And I won't get further into that. I  
22   understand that.

23                As to the bond market, dealers don't have to  
24   deal. And they didn't want to commit capital because  
25   they didn't want to take bonds into inventory and they

1 didn't know what -- they'd buy a bond at 90 and the next  
2 day it could be selling at 80 and they'd have to  
3 mark-to-market.

4           And "mark-to-market" is the key phrase here  
5 because under FASB they -- the -- as you're familiar with  
6 that, the financial institutions have to mark-to-market  
7 their inventory, so the marks on mortgage securities were  
8 all over the place. On any one day you could have three  
9 dealers bidding on bonds and one would bid 50, another  
10 bid 70 and another bid 80, and you had to take the lesser  
11 of the -- or the two of the three. I forget. But you  
12 had to basically mark it on the lowest price.

13           And that is what is reflected in your assets and  
14 your bond holdings, so that's why I say you're in effect  
15 eroding the value of your assets every day because you  
16 have a paralyzed bond market. There's no action. And  
17 nobody knew where the bonds would trade because the marks  
18 were so erratic, which drove me out of my mind, I must  
19 say.

20           Q. Fair enough. Fair enough.

21           Now, the second part of Mr. Alderson-Smith's  
22 comment is that the fundamental business of AIG, the  
23 insurance and other financial services, will likely erode  
24 significantly as a result of bankruptcy, which would  
25 shrink value because earnings would likely shrink

1 significantly.

2 What was your view on that issue, Mr. Offit?

3 A. Well, you don't have a business. You don't have a  
4 going concern. In effect you have this kind of asset  
5 erosion, and nobody is going to trust you as a  
6 counterparty, so you can't in effect transact, so you're  
7 taken out of the marketplace. You're a nonparticipant,  
8 so therefore, you're frozen, and as I said, you're  
9 basically out of business.

10 Q. Now, if you go further down on page 6 to the next  
11 full paragraph, again Mr. Alderson-Smith is referenced,  
12 and he's discussing that he details the projections that  
13 Goldman Sachs and JPMorgan had made of AIG's liquidity  
14 needs, totaling 93 billion.

15 Do you recall Mr. Alderson-Smith say that in  
16 either words or in substance?

17 A. Yes, I do.

18 Q. And what was your reaction to hearing that  
19 information?

20 A. Well, as a somewhat of a market participant and  
21 investment professional, I was interested in the number.  
22 It was way beyond my expectation, but I didn't have  
23 access to the numbers or had done the homework or asked  
24 to do that kind of contextual study that he had done, I  
25 had not done, and I -- I was alarmed by the number and

1 certainly accepted it.

2 Q. And you sort of almost anticipated what my next  
3 question would be.

4 Before that September 16, 2008 meeting, had  
5 management communicated to you that AIG's liquidity needs  
6 could be as high as 93 billion?

7 A. I don't recall that number.

8 Q. Do you recall a lower number?

9 A. No. It -- it was just more the flavor of it  
10 saying that there was dramatic change in our liquidity  
11 position because every day there was a drain on the  
12 liquidity. And I had no idea what the sum and substance  
13 of it was at any particular time, but I knew the trend  
14 line certainly.

15 Q. And the trend line was going up?

16 A. Dramatically so.

17 Q. Now, please turn to the next page, page 7 of  
18 JX 74.

19 And in the third full paragraph, there's a  
20 reference to Mr. Newman, who I think you identified  
21 earlier as working with Blackstone.

22 A. Yes.

23 Q. And Mr. -- it says that "Mr. Newman then spoke  
24 regarding the likely effects of a bankruptcy filing on  
25 the business and the ability of AIG to operate in

1 bankruptcy."

2 And as an initial matter, who is Mr. Newman?

3 A. I believe -- and I knew Art, Arthur Newman. He  
4 was the restructuring head I believe, may have carried  
5 other titles, at Blackstone.

6 Q. And did you have a view of Mr. Newman as a  
7 professional?

8 A. Yes. A very, very positive view and certainly  
9 recognized as a real professional.

10 Q. Now, in the next sentence on page 7, it states  
11 that Mr. Newman first stated that all of the values  
12 listed for AIG assets would go down in a bankruptcy  
13 situation.

14 Do you recall, Mr. Offit, Mr. Newman saying that  
15 in either words or in substance?

16 A. Yes. Yes. Yes.

17 Q. And what was your view on that issue?

18 A. Full agreement.

19 Q. Now, in the next two sentences on page 7 of JX 74,  
20 it states that "Mr. Newman then stated that a key  
21 consideration is how regulators of the insurance  
22 companies would react to a filing by the AIG parent.  
23 Mr. Newman expressed his view that if the regulators were  
24 to seize the insurance companies, the value of those  
25 entities to AIG parent would be drastically reduced,

1 potentially to zero, almost immediately."

2 Mr. Offit, do you recall Mr. Newman saying that in  
3 words or substance?

4 A. Yes.

5 Q. And what was your view of that issue?

6 A. Certainly agreed with him.

7 Q. And did you consider that information in reaching  
8 your ultimate conclusion as to whether to vote for the  
9 New York Fed's credit facility?

10 A. Yes.

11 Q. Now, on the next page of JX 74 -- we're on  
12 page 8 now -- Mr. Newman describes a debtor-in-possession  
13 or DIP loan and indicates that it would have been  
14 difficult to obtain DIP financing for the company.

15 Do you see that?

16 A. Yes.

17 Q. Do you recall that discussion, sir?

18 A. Yes, I do.

19 Q. And what was your view on the issue of whether a  
20 DIP loan would have been difficult for AIG to obtain?

21 A. In my opinion, a DIP loan would have been  
22 impossible, nonsensical.

23 Q. Why do you say it would have been impossible and  
24 nonsensical?

25 A. Because you're talking about magnitudes in effect

1 that no creditor, in my opinion, would ever have ever  
2 agreed to.

3 Q. The meeting minutes further indicate -- again, in  
4 the same paragraph on page 8, there's a reference to a  
5 Mr. -- I can never pronounce this right -- Studzinski.

6 A. Yes.

7 Q. Do you see that?

8 And it says here that Mr. Studzinski stated that  
9 sovereign wealth funds, CIC and GIC, were consulted over  
10 the weekend regarding potential equity investments and  
11 they both stated they could not act for at least five to  
12 ten business days.

13 As an initial matter, sir, do you know  
14 Mr. Studzinski?

15 A. Yes, I do.

16 Q. And who is Mr. Studzinski?

17 A. One of the top professionals at Blackstone in the  
18 restructuring area.

19 Q. And did you have a view as to Mr. Studzinski's  
20 professional abilities?

21 A. Yes. Very professional.

22 Q. Did you have a view at the time, meaning  
23 September 2008, as to whether the sovereign wealth funds  
24 could have made an equity investment into a company in  
25 AIG's position in five to ten days?

1           A. I thought it was pie in the sky.

2           Q. What do you mean?

3           A. An impossible reach, no possibility of it ever  
4 being consummated.

5           Q. Why is that?

6           A. Well, you certainly -- institutional and  
7 professional investment -- investors of this nature  
8 certainly do extensive due diligence. And you're talking  
9 about a company that from the standpoint of the general  
10 market information was verging on bankruptcy, so  
11 certainly the Chinese or any of these other sovereign  
12 wealth funds didn't want to be so-called taken. They  
13 were going to do their homework. That homework is --  
14 would take, you know, six -- 30, 60, 90 days before the  
15 whole transaction would settle.

16          Q. Now, at the very bottom of that page, sir, and  
17 rolling over to page 9, there's a statement that says,  
18 "Because the securities lending liabilities reside at the  
19 insurance company level, that would cause the insurance  
20 companies to be in default and the regulators would  
21 likely seize the insurance companies."

22                 Do you recall that that was discussed during the  
23 September 16 board meeting?

24          A. Yes.

25          Q. And what view did you have on that issue?

1           A. I agreed with it.

2           Q. And why did you agree with that?

3           A. Well, that's the role of the regulator. The first  
4 thing you do is seize the property. That's -- they're  
5 there to protect the policyholder.

6           Q. Now, if you go down another two paragraphs --  
7 we're on page 9 now -- it states that "Mr. Bensinger  
8 added that the New York Department of Insurance stated  
9 that it would seize the New York insurance companies if  
10 AIG went into bankruptcy." Then "Mr. Herzog agreed and  
11 stated that, based on his discussions, other insurance  
12 commissioners would likely do the same."

13                   Do you recall that discussion during --

14           A. Yes, I do.

15           Q. Thank you.

16                   If you could, sir, I'd really appreciate if I  
17 could just finish my question first because we have a  
18 court reporter.

19                   What was your reaction to this information from  
20 Mr. Herzog and Mr. Bensinger?

21           A. Understandable. It certainly made sense to me.

22           Q. Now, the meeting minutes next state that  
23 Mr. Bollenbach -- and let me back up. We haven't  
24 identified Mr. Bollenbach yet.

25                   Who is Mr. Bollenbach?

1 A. A director.

2 Q. Got it.

3 A. Yes.

4 Q. Very good.

5 It says, "Mr. Bollenbach asked what would happen  
6 in practical terms if the insurance companies were  
7 seized."

8 And then Mr. Herzog stated that it could vary from  
9 state to state, it's possible for management to remain in  
10 charge, the state supervisor would be required to approve  
11 many decisions, this would make the insurer much harder  
12 to sell.

13 Do you recall that conversation during the  
14 meeting?

15 A. Yes, I do.

16 Q. And did you agree with Mr. Herzog's views?

17 A. Yes. Because the insurance contracts are mainly  
18 sold through distribution forces, and these distribution  
19 forces are outside distribution forces.

20 For example, the Raymond James brokerage firm are  
21 primary selling agents for AIG product. And once the  
22 agent is turned off on an AIG product because here's a  
23 company that's in bankruptcy, why in the world would they  
24 want to sell that product to their customers rather than  
25 some other insurance company's product.

1 I mean, it's sort of obvious.

2 Q. So we've spoken a bit about bankruptcy and what  
3 was discussed at the meeting minutes. I want to switch  
4 topics slightly and discuss the terms of the government  
5 facility and the discussions concerning that facility at  
6 the board minutes -- or the board meetings.

7 Sir, was there a lengthy discussion by the board  
8 at the September 16 meeting of the pros and cons of the  
9 government facility and the bankruptcy alternatives?

10 A. Yes.

11 Q. And do you recall approximately, recognizing it  
12 was six years ago, the length of those discussions?

13 A. I don't recall the actual time devoted to it. I  
14 know it was an extensive discussion. It was a fulsome  
15 discussion.

16 Q. In your view, did AIG's board carefully consider  
17 the alternatives that were available to it?

18 A. Yes.

19 Q. Did you have a view, Mr. Offit, as to whether  
20 AIG's board considered all the financial information that  
21 had been presented by its financial advisors?

22 A. Yes.

23 Q. And what was that view?

24 A. Well, it's the proverbial rock and a hard place  
25 and -- are we now talking about the government's --

1 I'm -- lost the thread here.

2 Q. No. All I'm asking right now is whether you had a  
3 view as to whether AIG's board considered all the  
4 financial information that had been presented by its  
5 financial advisors such as, say, BlackRock.

6 A. Yes. Yes.

7 Q. And what was that view?

8 A. A comprehensive --

9 Q. Okay.

10 A. -- presentation, yeah.

11 Q. Did you have a view as to whether the financial  
12 advisors that AIG had retained had given the board  
13 adequate financial information to make its decision?

14 A. I thought they were very professional.

15 Q. And did you believe that they provided the board,  
16 including yourself, sufficient or adequate financial  
17 information to make your decision?

18 A. Yes. As I said, fulsome.

19 Q. Got it.

20 And I think I said BlackRock. I think I meant  
21 Blackstone.

22 A. Blackstone.

23 Q. You understood --

24 A. I certainly understood.

25 Q. Thank you.

1           And maybe someday you can explain the difference  
2   between those two.

3           Did you have a view as to whether AIG's board had  
4   sufficient legal advice to consider the alternatives  
5   available to it?

6           A.   Yes.

7           Q.   And what was that view?

8           A.   Very professional.

9           Q.   And beyond being very professional, did they  
10   provide you with sufficient legal advice?

11          A.   Absolutely.

12          Q.   Okay.  I want to turn to the bottom of the third  
13   page of JX 74.  We're going backwards now a little bit.

14                 And at the very last paragraph on that page, it  
15   says, "The meeting resumed on September 16 with an  
16   executive session attended by the members of the Board  
17   and Mr. Beattie.  Mr. Beattie discussed with the Board  
18   various aspects of the \$85 billion loan facility and the  
19   80 percent equity interest in AIG proposed by the  
20   U.S. Department of Treasury and the Federal Reserve Bank  
21   of New York to provide liquidity to AIG."

22                 Mr. Offit, do you recall there being a discussion  
23   of an 85 billion loan facility from the New York Fed at  
24   this meeting?

25          A.   Yes.

1 Q. And what was discussed, to the best of your  
2 recollection, concerning the terms of the New York Fed  
3 facility during the September 16 meeting?

4 A. The 85 billion, the interest rate and the equity  
5 ownership.

6 Q. And what in particular, if anything, do you recall  
7 about the equity ownership?

8 A. Approximately 80 percent, in effect, ownership.

9 Q. Do you recall anything else about the discussion  
10 with respect to the equity interest other than the  
11 percentage?

12 A. I don't recall.

13 Q. Okay. And trust me, it's been six years. I get  
14 it.

15 Can you look at the bottom -- now we're going to  
16 go back to page 10. Sorry to jump around.

17 There's a bit of a method to this madness. I  
18 promise.

19 Now, if you look at the bottom of page 10, there  
20 is a statement that's attributed to you, and it says  
21 Mr. Offit "did not like the terms of the  
22 Government Facility, but that he was persuaded by  
23 Mr. Herzog's analysis of cash needs and the negative  
24 effect a bankruptcy would have on the value of the  
25 business that AIG had no alternative but to accept the

1 Government Facility."

2 Mr. Offit, do you recall saying that either in  
3 words or in substance?

4 A. Yes, I do.

5 Q. Could you elaborate on the views that you  
6 expressed at the September 16 meeting.

7 A. You know, it's the proverbial rock and the hard  
8 place. Certainly felt the terms were punitive,  
9 understood that, but at the same time, by accepting the  
10 terms, we were giving AIG the opportunity to, in effect,  
11 live, that the shareholder would still have a 20 percent  
12 interest rather than being wiped out by a bankruptcy, and  
13 that very important to me was the fact you'd have a going  
14 concern and my good friends at AIG would still have their  
15 livelihood and be able to prove that one day this could  
16 again be a very vibrant company, which was very  
17 meaningful to me.

18 Q. Now, when you say -- or when it's represented that  
19 you say in these meeting minutes that there was no  
20 alternative but to accept the government facility, to  
21 what extent was bankruptcy an option you could have  
22 chosen?

23 A. Well, we had hired bankruptcy counsel. We had  
24 met with the firm. We had discussed bankruptcy. I  
25 certainly had an understanding of the nature of

1 bankruptcy, could have always accepted it as an option.  
2 But when you have a 20 percent kind of still stock  
3 opportunity for you, that's in effect a passport to in  
4 effect living again.

5 Q. Now, if you turn to the top of page 11 of the  
6 board minutes, there's a reference again to  
7 Mr. Bollenbach. And here, Mr. Bollenbach -- I guess I  
8 interpret this as stating the opposite view. He says  
9 "that he understood the argument, but he believed that  
10 the Government Facility proposal essentially gives AIG to  
11 the government, and he believes AIG should attempt to  
12 work out its problems in a bankruptcy."

13 Do you recall Mr. Bollenbach saying that?

14 A. Yes.

15 Q. And what was your reaction to Mr. Bollenbach's  
16 view?

17 A. I thought he was out of his mind.

18 Q. Why?

19 A. Because he hadn't -- I knew Steve. He was with  
20 Hilton Hotels and some background here where at one time  
21 he had worked out of a bankruptcy and it made some sense.  
22 And I said, Steve, this is an insurance company. And  
23 with a distribution force of outsiders, there's no way in  
24 the world that you're going to be able to have a viable  
25 insurance product either in P&C or life and retirement.

1 I said, You're missing the whole point here. And I think  
2 he understood that.

3 Q. Now, it goes on to state in the sixth paragraph --  
4 we're on page 11, so we're still on page 11 here -- that  
5 "Each of the directors then expressed his or her views  
6 regarding the alternatives available to the Corporation  
7 at this time."

8 And then it says, "The view expressed by the  
9 directors, other than Mr. Bollenbach, was that despite  
10 the unfavorable terms of the Government Facility, the  
11 Government Facility was the better alternative to  
12 bankruptcy for the Corporation."

13 Do you see that?

14 A. Yes.

15 Q. And was that consistent with your views at the  
16 time?

17 A. Yes.

18 Q. And again, why did you believe that as between an  
19 AIG bankruptcy and the New York Fed credit facility that  
20 the New York Fed credit facility was the better option?

21 A. Well, as I answered before, it was two parts.  
22 Number one, the salvage value of the 20 percent interest  
23 in a going concern. Number two, the fact that it was a  
24 going concern for the benefit of keeping intact and alive  
25 the corporation, which again could do business.

1 Q. Did you have a view at the time, Mr. Offit, as to  
2 whether the decision to accept the government facility  
3 was consistent with your duty as a director to maximize  
4 enterprise value?

5 A. Yes.

6 Q. And what was your view?

7 A. As I said, this -- you had the 20 percent and  
8 this is the way to maximize value as against being wiped  
9 out.

10 Q. Now, do you recall that there came a point in time  
11 during the board meeting on September 16 when the board  
12 instructed Mr. Willumstad, the then CEO, and its advisors  
13 to ask the government for better terms?

14 A. Yes.

15 Q. And do you recall whether Mr. Willumstad in fact  
16 went back to the government to seek more favorable  
17 terms?

18 A. Yes.

19 Q. And do you recall what the government's response  
20 was?

21 A. Yes. It was nonnegotiable.

22 Q. Despite being nonnegotiable, sir, did you  
23 nonetheless believe that you had the ability to choose  
24 between the New York Fed's loan on the one hand and  
25 bankruptcy on the other?

1           A. Yes.

2           Q. Now, the meeting minutes state on page 12 -- and  
3 it's the first full paragraph, about halfway down the  
4 page. There's a reference to Mr. Geithner. And it --  
5 it's the fourth sentence down.

6           It says "Mr. Geithner stated that if private  
7 financing sources sufficient to pay off the  
8 Government Facility were found and if the plan presented  
9 by the private financing sources were sufficient to  
10 ensure AIG's continued viability, then the government  
11 would be happy to have the private market take over the  
12 funding role from the Federal Reserve."

13           Do you recall that message being conveyed either  
14 in words or in substance at the meeting?

15           A. Yes, I do.

16           Q. And what did you understand Mr. Geithner's  
17 statement to mean?

18           A. Sort of good for you guys and you think you can  
19 get somebody within the next hour, two hours who is in  
20 effect going to going to take over the ownership of the  
21 company, wonderful, but, you know, that's up to you, but  
22 you have the leeway to do that within a certain time  
23 period.

24           Q. Did you -- and I'm just asking for what your  
25 understanding is.

1           Did you understand that Mr. Geithner's offer to be  
2 taken out applied only to before AIG accepted the  
3 New York Fed facility?

4           A. No. It was during that time.

5           Q. So even after it accepted.

6           A. You know, it was a throwaway line by Mr. Geithner  
7 because nothing could be accomplished, but at least he  
8 gave the board the feeling that they could try to access  
9 other sources.

10          Q. And why could nothing be accomplished?

11          A. You're talking about 93 million -- billion,  
12 rather, and rising. You know, it's a "too big to fail"  
13 type of situation in modern-day terms.

14          Q. I think I've heard that term before.

15          A. Yes.

16          Q. Now, further down in the meeting minutes, same  
17 page, it states "that the government reiterated that AIG  
18 needed to act by 8:00 p.m. that evening so that money  
19 could be moved that evening to avoid defaults in the  
20 marketplace on Wednesday."

21                 Do you recall --

22          A. Now I do, yes.

23          Q. When you say now you do, did you recall -- do you  
24 recall that at the time that information was conveyed?

25          A. Yes. No, no. I forgot the -- yes.

1 Q. And did AIG in fact act by 8:00 p.m. that evening,  
2 to your knowledge?

3 A. No.

4 Q. They did not?

5 A. They did not identify -- let me understand your  
6 question. That the government needed to act by -- AIG  
7 did -- could not identify another possible lender.

8 Q. I'm sorry. I think my question might have been  
9 confusing.

10 A. Yep.

11 Q. Did AIG act to accept the federal government's --

12 A. Yes.

13 Q. -- credit facility by 8:00 p.m. that night?

14 A. Yes. Okay.

15 Q. And did you believe personally that the money  
16 needed to be moved that evening to avoid defaults in the  
17 marketplace by Wednesday?

18 A. Yes. Absolutely.

19 So it was sort of vivid because what was being  
20 said is that there were insurance holders lining up in  
21 Asia, Hong Kong, Singapore, elsewhere, possibly  
22 redeeming, trying to redeem, their insurance contracts.

23 Q. These are AIG insurance holders?

24 A. Insureds.

25 So this would be in effect a run on the company as

1 you had a run on the bank.

2 Q. And that was information --

3 A. And that's why you needed -- I mean, that's the  
4 vivid memory that I have because I could just see it in  
5 my own mind of that happening. And that's -- I was told  
6 that there was talk of that happening.

7 Q. And did you believe, Mr. Offit, in your view, that  
8 the board had sufficient time to fully discuss and  
9 consider the government's terms?

10 A. Yes.

11 Q. Did you believe that the board had sufficient  
12 time to fully discuss and consider the choice of whether  
13 to file for bankruptcy or accept the government's  
14 facility?

15 A. Yes.

16 Q. Now, if you turn to the next page, there are  
17 several resolutions. And I'm not going to read these  
18 resolutions.

19 But my question to you is, with respect to that  
20 first resolution, did you vote in favor of that  
21 resolution?

22 A. Yes.

23 Q. And what was your understanding at the time, sir,  
24 of what it meant to authorize AIG to enter into the  
25 transaction?

1           A. That AIG now had a lender in the amount of  
2     \$85 billion and at the same time that the government was  
3     acceding to an approximate 80 percent interest in AIG.

4           Q. I want to turn your attention to another exhibit  
5     in your binder. It's I believe the first exhibit. And  
6     it's DX 956.

7           And Your Honor, DX 956 is already in evidence.

8           A. DX.

9           Q. And -- yeah, it should be the very first document  
10    in your --

11          A. Oh, okay. DX 956. I have it.

12          Q. And you can disregard that first page --

13          A. Yes.

14          Q. -- cover e-mail. But I want to ask you a question  
15    about the term sheet that's attached to the e-mail and  
16    ask you if you recognize it.

17          A. Yes.

18          Q. And how do you recognize this document, sir?

19          A. Well, this is the term sheet for the loan.

20          Q. Now, if you -- I want to draw your attention to  
21    the second page of the term sheet, the third page of the  
22    document. There's a discussion called Equity  
23    Participation. And you can look on the screen if that's  
24    easier for you.

25          A. No. I have it.

1 Q. Okay. Good.

2 And here it states "Equity participation  
3 equivalent to 79.9 percent of the common stock of AIG on  
4 a fully diluted basis. Form to be determined."

5 How does that description of the form of the  
6 equity compare with your understanding of the equity term  
7 that the board authorized AIG to accept on September 16,  
8 2008?

9 A. I didn't make any distinction.

10 Q. Distinction? What do you mean, sir?

11 A. Whether I don't -- what are you referring to?  
12 You know, it's a -- the government would be -- as part of  
13 the facility would be succeeding to approximately  
14 80 percent interest in AIG, period. Whether it was  
15 common stock or otherwise didn't make any difference to  
16 me.

17 Q. And I probably should have backed up and asked you  
18 a foundational question.

19 Did you have an understanding, sir, at the time  
20 that you voted on September 16 what the form of the  
21 equity would be that would be conveyed by AIG?

22 A. All I know is that the government would succeed  
23 to that interest. We were in such a frenzied environment  
24 at that particular time that, in my opinion, the  
25 government had a pass as to how that would be

1 represented. It in my mind didn't -- because the spirit  
2 and the intention here was for the government to have  
3 that 80 percent interest, how was not in effect a  
4 consideration for me.

5 Q. Why didn't it make a difference to you, sir?

6 A. Excuse me?

7 Q. You said it didn't make a difference to you --

8 A. Yeah.

9 Q. -- what the form of the equity was. I'm just  
10 following it.

11 Why didn't it make a difference to you what the  
12 form of the equity was?

13 A. Because I know what the intention was and what the  
14 spirit of the extension of the structure of the facility,  
15 what the government wanted to achieve was something that  
16 I understood. And I was very aware that we were in a  
17 very deep financial crisis and people were working  
18 24 hours a day and couldn't dot all the I's at that  
19 particular time. You have to have an understanding of  
20 that particular time. It was frenzied.

21 Q. Did you consider whether accepting the  
22 New York Fed's loan was in the best interest of AIG's  
23 constituencies to whom the board owed its duties?

24 A. Yes.

25 Q. Did you believe you were acting in the best

1 interest of AIG, its shareholders, creditors and  
2 employees when you made the decision to accept the  
3 New York Fed's loan on September 16?

4 A. Yes.

5 Q. And why did you believe, sir, that it was in the  
6 best interest of the company and its shareholders to vote  
7 in favor of the New York Fed loan?

8 A. There was no alternative. We -- we still had a  
9 20 percent interest riding participating in that, so we  
10 had the opportunity to create some value.

11 Number two, we had a going concern.

12 Number three, the debt holders were going to be a  
13 much stronger position in a going concern because I still  
14 had some sense of the value of the underlying assets.  
15 Once the market would stabilize -- because, as I said,  
16 we're in a period of a paralyzed bond market, but looking  
17 ahead a few years -- and this is how I thought it out --  
18 certainly with regard to mortgage securities, if there  
19 was underlying value in these securities, that sometime  
20 in the future that there would be real value, so  
21 therefore you wouldn't be wiping out a lot of the  
22 assets.

23 Q. Mr. Offit, do you believe that you exercised your  
24 business judgment in an informed and careful manner?

25 A. Yes.

1 Q. Did you exercise your business judgment  
2 voluntarily on September 16?

3 A. Yes.

4 Q. In your view, sir, did AIG's board have the option  
5 to choose bankruptcy rather than the New York Fed's  
6 credit facility?

7 MR. BOIES: Objection. Leading, Your Honor.

8 THE COURT: I think you are. Can you rephrase  
9 that perhaps?

10 BY MR. GARDNER:

11 Q. To what extent, sir, did AIG's board have the  
12 option to choose bankruptcy rather than the New York  
13 Fed's credit facility?

14 A. Rephrase that.

15 Q. To what extent --

16 A. Yes.

17 Q. -- did AIG's board have the option to choose  
18 bankruptcy rather than the New York Fed's credit  
19 facility?

20 A. Complete extent.

21 Q. Did you believe, sir, that you were coerced by the  
22 government in any way when you exercised your business  
23 judgment to accept the New York Fed's credit facility on  
24 September 16?

25 A. Absolutely not.

1 Q. Were you directed to vote in favor of the  
2 September 16 term sheet by the New York Fed or the  
3 government?

4 A. Absolutely not.

5 Q. Were you instructed to vote in favor of the  
6 September 16 term sheet by the New York Fed or the  
7 government?

8 A. Absolutely not.

9 MR. GARDNER: Your Honor, I'm about ready to turn  
10 to another topic. We can start digging in or we can  
11 leave five minutes early, whatever the Court wishes.

12 THE COURT: Well, I assume we're not going to  
13 finish this witness within the next five minutes.

14 MR. GARDNER: I feel fairly confident, Your Honor,  
15 that you might be correct about that.

16 THE COURT: Or even within 10 or 15 minutes  
17 thereafter.

18 MR. GARDNER: That is also probably true,  
19 Your Honor.

20 THE COURT: So why don't we adjourn for today.

21 MR. CURNIN: Your Honor, I'm sorry to interrupt.

22 Mr. Offit learned this afternoon that Monday is  
23 the funeral of one his best friends. He's not going to  
24 be able to be here -- it would be difficult for him to be  
25 here.

1           MR. GARDNER: Your Honor, we can -- I don't want  
2 to speak for Mr. Boies, but the government can certainly  
3 accommodate putting him after another witness. I mean,  
4 obviously life gets in the way of a lot of things, and we  
5 have no objection to that. I assume Mr. Boies --

6           MR. BOIES: Yes, there's no objection here,  
7 Your Honor.

8           THE COURT: All right.

9           MR. BOIES: We will accommodate whatever the  
10 witness' needs are.

11          MR. GARDNER: But we can maybe work together  
12 off-line with Mr. Curnin to --

13          THE COURT: Sure. Why don't you just work that  
14 out, and whatever is convenient for you, we'll complete  
15 it when you can be here.

16          THE WITNESS: Thank you, Your Honor.

17          THE COURT: Yes.

18          Tell me, though, before we leave, what then is the  
19 plan for Monday?

20          MR. GARDNER: I think the plan for Monday would be  
21 as follows, Your Honor.

22                 We had sort of -- not sort of -- we intend next  
23 week to largely be filled with our expert witnesses.  
24 There may be one or two small fact witnesses, short fact  
25 witnesses, interspersed, then of course Mr. Offit's

1 remaining testimony. But the government's present  
2 intention is still to rest its case in chief by this  
3 Friday like we had previously discussed.

4 THE COURT: Well, that will be great.

5 Our clerk's office has been getting lots of  
6 inquiries about whether you plan to call Mr. Greenberg.

7 MR. GARDNER: Okay. I -- sitting here right now,  
8 I cannot say, Your Honor. I'm not sure a final decision  
9 has been made on that.

10 What I can say, Your Honor, though, consistent  
11 with what I said to you a few days ago, is we are making  
12 every effort to avoid duplicative testimony and only put  
13 on what we believe has not yet been put into evidence in  
14 this case, and so we're constantly trying to skinny  
15 things down. That's probably the best I can tell you.

16 THE COURT: Well, if you can give us a little  
17 heads-up if you do plan to call him --

18 MR. GARDNER: Understood.

19 THE COURT: -- there's some people in the  
20 courthouse that will be very angry with me if this just  
21 happens on a very short notice --

22 MR. GARDNER: Well, I --

23 THE COURT: -- because we have to be able to  
24 manage these things.

25 MR. GARDNER: I completely understand. We will

1 absolutely do that. And of course we will be giving the  
2 plaintiffs our, you know, list for next week tonight, so  
3 my sense is this will all be sorted out hopefully by the  
4 end of the day today.

5 THE COURT: Okay. Well, that sounds great.

6 MR. GARDNER: Absolutely, Your Honor. Thank you.

7 THE COURT: All right. Let's everybody have a  
8 good weekend and we'll reconvene on Monday morning at  
9 9:30.

10 (Whereupon, at 4:56 p.m., the proceedings were  
11 adjourned.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

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 15, 2014

---

JOSETT F. WHALEN, COURT

REPORTER.

1			
2			ADMITTED EXHIBITS
3	EXHIBITS	PAGE	DESCRIPTION
4	Plaintiffs'		
5	Number2836	7259	Email, Hancock to Millstein, 9/28/10
6			
7	Defendant's		
8	Number843	7167	EMAIL FROM ALAN AVERY TO
9			SARAH DAHLGREN AND THOMAS
10			BAXTER RE: REPORTS OF AIG
11			CREDIT FACILITY TRUST, WITH
12			ATTACHMENT OF REPORTS
13			REQUIRED UNDER SECTION 4.01
14			OF TRUST AGREEMENT, APRIL 27,
15			2010
16	Number868	7182	LETTER FROM ALAN AVERY TO
17			ROSEANN STICHNOTH, CC THOMAS
18			C BAXTER, KEVIN F BARNARD,
19			JILL M CONSIDINE, CHESTER B
20			FELDBERG, PETER A LANGERMAN,
21			RE: REPORTS UNDER THE AIG
22			CREDIT FACILITY TRUST
23			AGREEMENT DATED NOVEMBER 16,
24			2010, WITH ATTACHMENTS
25			

1      NumberDXX-038      7323      Langerman Demonstrative  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25