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2                                   IN THE MATTER OF  
3                   STARR INTERNATIONAL VS. USA  
4                                   TRIAL VOL. 33, 11/18/2014

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

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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

-----)

Courtroom 4  
Howard T. Markey National Courts Building  
717 Madison Place, N.W.  
Washington, D.C.  
Tuesday, November 18, 2014  
9:30 a.m.  
Trial Volume 33

BEFORE: THE HONORABLE THOMAS C. WHEELER

Susanne Bergling, RMR-CRR-CLR, Reporter

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ROUGH DRAFT

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

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

THE COURT: Good morning. Please be seated.

ALL COUNSEL: Good morning. Your Honor.

THE COURT: We are on the record for day 33 in the matter of Starr International Company versus United States.

Good morning, Mr. Dintzer.

MR. DINTZER: Good morning, Your Honor. I know Dr. Mordecai is on the stand, but we are pausing Dr. Mordecai's examination so that Howard Smith, an employee of Starr, who we are also calling, might appear now as opposed to later in the case when we had anticipated. So, to accommodate them, we are -- we are breaking this -- Dr. Mordecai's cross and calling Mr. Smith, and then we will put Dr. Mordecai back on afterwards.

THE COURT: Okay. I also received the Government's filing overnight, the Government's filing under seal regarding an offer of proof for the lawyers -- two of the lawyers that are on the witness list.

MR. DINTZER: Yes, Your Honor.

THE COURT: And I want to address that at some point sooner rather than later, but, I mean, we could

1 hear Mr. Smith.

2 MR. DINTZER: Could we do that, Your Honor, and  
3 then perhaps after Mr. Smith is done, we could address  
4 that?

5 THE COURT: Sure. That's fine.

6 MR. DINTZER: So, at this time, the United States  
7 calls Howard Smith to the stand.

8 And, Your Honor, it is our understanding -- I  
9 mean, it has been the practice for both sides to have  
10 their experts in the courtroom when people are  
11 testifying; 615 doesn't apply to them. Just to be  
12 clear, unless the Court has a concern about it,  
13 Dr. Mordecai will be sitting in the courtroom and  
14 watching this.

15 THE COURT: No, that's fine. That's not a  
16 problem.

17 MR. DINTZER: Okay.

18 THE COURT: Good morning, Mr. Smith.

19 THE WITNESS: Good morning, Your Honor.

20 THE COURT: Please raise your right hand.

21 Whereupon--

22 **HOWARD SMITH**

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

25 THE COURT: Please be seated.



1 THE WITNESS: Thank you.

2 **DIRECT EXAMINATION**

3 BY MR. DINTZER:

4 Q. Good morning, Mr. Smith.

5 A. Good morning.

6 Q. My name is Kenneth Dintzer. I'm with the  
7 Department of Justice, and I'll be asking you a few  
8 questions this morning.

9 Sir, if you could tell the Court your current  
10 title and position and for whom you work.

11 A. Yes. Vice chairman of finance of C.V. Starr.

12 Q. Do you have any position at Starr International?

13 A. Yes, I do. I'm a director.

14 Q. And how long have you been with the Starr  
15 organizations?

16 A. Probably dating back to about '84, 1984.

17 Q. And have you ever worked for AIG?

18 A. Yes, I have.

19 Q. And what positions did you hold, just generally  
20 speaking, with AIG?

21 A. I started as a corporate controller, became chief  
22 financial officer in 1996, also a director on the board  
23 in that same year, and also assumed the role of chief  
24 administrative officer early in 2000.

25 Q. And at some point did you leave AIG?

1 A. Yes, I did.

2 Q. And what year was that?

3 A. 2005.

4 Q. And what position did you hold at that time?

5 A. Chief financial officer and chief administrative  
6 officer.

7 Q. Now, as you know, Starr is a Plaintiff in this  
8 action. Is that right?

9 A. Yes.

10 Q. And you yourself also owned shares in the  
11 relevant time periods. Is that right?

12 A. That's correct.

13 Q. And you have opted into the Plaintiffs' class.  
14 Is that right?

15 A. I have.

16 Q. And your share ownership was around 200,000  
17 shares before the reverse stock split. Am I correct?

18 A. That's correct.

19 Q. Okay. Now, Starr -- as I understand it, in  
20 September 2008, Starr owned about 11 percent of AIG's  
21 stock. Is that right?

22 A. That's correct.

23 Q. And I understand at some point the New York  
24 insurance regulators asked Starr to file some paperwork  
25 regarding whether it had a controlling interest in AIG.

1 Do you recall that?

2 A. I do recall that, yes.

3 Q. And that was because AIG had more than 10 percent  
4 of AI -- Starr had more than 10 percent of AIG's shares.  
5 Is that right?

6 A. I believe that's accurate.

7 Q. And do you -- the ultimate conclusion that the  
8 New York State insurance regulators concluded was that  
9 Starr did not have a controlling interest in AIG. Is  
10 that correct?

11 A. That's correct.

12 Q. And so in September 2008, Starr did not have a  
13 controlling interest in AIG, even though it owned 11  
14 percent of the outstanding stock.

15 A. That's correct.

16 Q. Now, going back to before 2005, there was a  
17 relationship between AIG and Starr. Is that right?

18 A. Well, there were related-party transactions that  
19 may have occurred between the parties.

20 Q. Well, let me put it this way. Briefly, could you  
21 describe how Starr ended up owning so much of AIG's  
22 stock?

23 A. I think it goes back to the period of about 1969,  
24 when I think AIG became public at that point in time,  
25 there was an ownership interest that Starr International

1 received in AIG, and I think it was in exchange for some  
2 properties, as I recall, and that was the start of their  
3 acquiring an interest in AIG.

4 Q. Now, in 2007 and 2008, Starr had an adversarial  
5 relationship with AIG. Is that correct?

6 A. That would be correct.

7 Q. There was a significant lawsuit between the  
8 companies.

9 A. Yes.

10 Q. And the thrust of that lawsuit was that AIG  
11 contended it owned Starr International. Is that right?

12 A. That was their contention.

13 Q. And the lawsuit didn't get settled until 2009.  
14 Is that correct?

15 A. That's also correct.

16 Q. And because of the lawsuit, as well as perhaps  
17 other reasons, AIG wasn't talking to Starr in 2008. Is  
18 that correct?

19 A. That's correct.

20 Q. And AIG and Starr had a hostile relationship  
21 until the lawsuit was settled.

22 A. That's correct.

23 Q. Now, in 2008, Hank Greenberg offered to assist  
24 Mr. Willumstad with AIG's problems. True?

25 A. I recall that.

1 Q. But he offered that assistance only if AIG  
2 dropped the lawsuit regarding ownership of Starr.

3 A. I think the understanding there was that they  
4 would work to drop the lawsuit so that we could have a  
5 settlement of the issues, and then I think Hank's offer  
6 still stands, to be of assistance to Willumstad.

7 Q. But Mr. Greenberg conditioned his offer to help  
8 on settling the litigation, correct?

9 A. I think that's probably accurate, yeah.

10 Q. And AIG refused.

11 A. AIG at that point in time did refuse to settle,  
12 right.

13 Q. Okay. Now, turning to securities lending -- and  
14 I'm not going to get into a lot of detail, because I  
15 don't want to repeat certain things that the Court's  
16 heard, but in general, AIG would lend securities to a  
17 brokerage firm or trader. Is that right?

18 A. Yes.

19 Q. And in exchange they would get collateral, which  
20 was usually cash.

21 A. That's correct.

22 Q. And when you were at AIG, there were very strict  
23 guidelines about collateral being invested in liquid  
24 instruments, right?

25 A. Also correct.

1 Q. And when you were at AIG, the securities lending  
2 really only provided a very slim margin.

3 A. That's correct.

4 Q. And you recognized that a securities lending  
5 investor might take greater risks with the collateral  
6 positions to try to make higher returns. That was a  
7 possibility.

8 A. Always a possibility.

9 Q. One that you didn't advocate.

10 A. That's correct.

11 Q. And you recognized that if you got -- if you  
12 ended up taking more aggressive positions with the  
13 collateral, if you got greedy, you could end up losing a  
14 lot of money. Is that right?

15 A. The possibility existed.

16 Q. And you recognized that back when you were at  
17 AIG.

18 A. We did.

19 Q. Now, AIG's securities lending practice changed  
20 after you left.

21 A. That was our understanding.

22 Q. And the securities lending practice -- operation  
23 took more risk in the collateral positions than when you  
24 were there.

25 A. That appeared to be the case from the public

1 disclosures.

2 Q. And from what you're aware of?

3 A. What I was aware of was from the public  
4 disclosures.

5 Q. Okay. And to your understanding, sir, after you  
6 left, the securities lending program took more risks  
7 than you would have taken.

8 A. I would agree with that.

9 Q. Now, in 2008, you discussed on more than one  
10 occasion AIG's securities lending program with  
11 Mr. Greenberg. Is that correct?

12 A. We had conversations about it, yes.

13 Q. And he agreed with your assessment that AIG was  
14 taking too much risk in investing the securities lending  
15 collateral.

16 A. I think that's a fair statement.

17 Q. Now, are you familiar with a gentleman named ^  
18 Wynn Neuger, N-E-I-G-E-R?

19 A. I think it was N-E-U-G-E-R, yes.

20 Q. Oh, Neuger?

21 A. Yes.

22 Q. And who was he, sir?

23 A. ^ Wynn was the chief investment officer at AIG.

24 Q. Over what period, sir?

25 A. Probably late nineties. I don't know when that

1 terminated. It was probably in the 2007, '8 range, I  
2 would guess, or '9.

3 Q. Well, in 2008, in June 2008, he was still there,  
4 wasn't he?

5 A. I think so, yes.

6 Q. And he was in charge, among other things, of the  
7 securities lending investments, correct?

8 A. That would have come under his jurisdiction, yes.

9 Q. And in June 2008, you believed that Mr. Neuger  
10 should be fired.

11 A. I had concerns about Mr. Neuger, so -- I don't  
12 know that I believed he should be fired. I didn't think  
13 he was the right guy for the spot.

14 Q. You didn't think Mr. Neuger was doing a good job  
15 in managing the securities lending program.

16 A. I thought they had moved in the wrong direction.

17 Q. And so he wasn't doing a good job in managing the  
18 securities lending program.

19 A. He was -- mistakes were being made.

20 Q. And so he wasn't doing a good job in managing the  
21 securities lending program.

22 A. I don't know that I'd say. I said he was making  
23 mistakes.

24 Q. Well, you believed he should be fired. Is that  
25 right, sir?



1           A. If it were my choice, he would have been  
2 terminated, yes.

3           Q. Okay. Now, AIG faced a series of financial  
4 problems throughout the last part of 2007 and the first  
5 half of 2008. Is that right?

6           A. That's correct based on -- again, on their public  
7 disclosures, yes.

8           Q. And part of your job at Starr was to monitor AIG  
9 as closely as you could based on the public information,  
10 correct?

11          A. Well, it's not really part of my job. It's  
12 something I do because we had an interest in AIG.

13          Q. Financial interest.

14          A. But I wouldn't say it's part of my job  
15 responsibilities.

16          Q. Fair enough, sir.

17                 Because of Starr's significant financial interest  
18 in AIG, you now and in the past, in 2007, 2008,  
19 monitored AIG's performance as best you could.

20          A. I reviewed the public disclosures, the quarterly  
21 financials, and their annual reports, yes.

22          Q. And Mr. Greenberg was not impressed with AIG's  
23 response to these financial problems that were taking  
24 place in 2007 and 2008.

25          A. Just please rephrase that.

1 Q. Sure.

2 So, we talked and you said, based on the public  
3 information, you understood that in late 2007 and 2008  
4 that AIG was going through a series of financial  
5 problems. Is that correct?

6 A. That's correct.

7 Q. And Mr. Greenberg was not impressed with AIG's  
8 response, efforts to cure, to solve these financial  
9 problems. Is that correct?

10 A. Well, we -- we both assessed that there were  
11 issues. We frankly didn't know what efforts they were  
12 making to cure the response, because we weren't there.

13 Q. But the efforts that you did see from the public  
14 information, you weren't impressed with those efforts.

15 A. Again, we couldn't really discern that other than  
16 the results that we saw. If you're asking about the  
17 results, the results were not as good as we believed  
18 they should have been.

19 Q. In April 2008, Mr. Greenberg compared AIG's  
20 efforts to solve these financial problems as moving the  
21 deck chairs around the Titanic. Is that correct?

22 A. I think I recall that statement was made.

23 Q. And did you agree with that?

24 A. That would be a statement he would use. It  
25 wouldn't be a statement that I would necessarily use.

1 Q. And ultimately, in May 2008, Mr. Greenberg  
2 concluded that AIG was in crisis, correct?

3 A. He assumed that they had significant problems  
4 that needed to be addressed.

5 Q. Okay. And my question was, in 2008, he concluded  
6 that AIG was in crisis. Is that correct, sir?

7 MR. BOIES: Objection, Your Honor. They could  
8 have called Mr. Greenberg. They're now asking what  
9 Mr. Greenberg's state of mind was and with particular  
10 words.

11 THE COURT: I think state of mind would be off  
12 limits here, but -- so, why don't you move on to your  
13 next question.

14 MR. DINTZER: Sure.

15 BY MR. DINTZER:

16 Q. Sir, do you see the binder in front of you?

17 A. Yes, I do.

18 Q. Okay. And if we can go to DX 130, and just let  
19 me know when you're there.

20 A. Okay, I'm there.

21 Q. Okay. And this is a letter. Is that right, sir?

22 A. Let me take a second to take a look at it,  
23 please.

24 Q. Certainly. Take all the time you need, sir.

25 And this is already in evidence, Your Honor.

1           A. Okay. It looks like a letter from Mr. Greenberg  
2 to the board of directors of AIG.

3           Q. Okay. And, sir, just to take a second, could you  
4 describe what you did in preparation for your testimony  
5 here today?

6           A. I spent a couple of days with some of the  
7 attorneys, and I also reviewed my prior deposition.

8           Q. And when you say a couple of days, how many days,  
9 sir?

10          A. About two days.

11          Q. And full days?

12          A. Yeah, essentially two days, full days.

13          Q. Okay. And did they show you documents?

14          A. Yes, they did.

15          Q. And was this one of the documents they showed  
16 you?

17          A. I believe I saw this document, yes.

18          Q. Okay. And about how much time did you spend  
19 looking at this document? Do you recall?

20          A. A couple of minutes, maybe.

21          Q. Okay. And if you could turn to the second page  
22 on this -- and I can walk through it if you'd like, but  
23 since you're familiar with it, Mr. Greenberg in this  
24 document is writing to AIG's board. Is that correct?

25          A. Yes.

1 Q. And he's listing a number of facts that he finds  
2 disturbing on the first page about AIG's performance.

3 Is that right?

4 A. That is correct.

5 Q. Okay. If we go to the second page, in the last  
6 paragraph, he tells AIG's board that he believes AIG is  
7 in crisis. Do you see that?

8 A. I see that.

9 Q. Did you agree with him that in May 2008, AIG was  
10 in crisis?

11 A. My feeling was that they had issues. I couldn't  
12 assess whether they were in crisis or not.

13 Q. Okay. Now, if we could go to JX 41, which is  
14 also in your binder. It should be towards the end, I  
15 think. And just let me know when you're there.

16 A. Okay.

17 Q. Okay. And I don't know, did we give you the  
18 whole document or did we -- we probably just gave you  
19 some pages. If you want to see the whole thing, we  
20 should have that available, but do you have an  
21 understanding of what this document is?

22 A. Yes. This was the AIG 10-Q for the period ending  
23 June 30th, 2008.

24 Q. And it was your practice to review --

25 THE COURT: I think the whole document is there.

1 MR. DINTZER: It is all there?

2 THE COURT: It looks like it.

3 MR. DINTZER: Okay. Excellent, Your Honor.

4 BY MR. DINTZER:

5 Q. And it was your practice, sir, to review AIG's Ks  
6 and Qs when they were issued. Is that right?

7 A. I did read through them, yes.

8 Q. Okay. And so you would have read through JX 41  
9 around the time that it came out.

10 A. Yes. And I'm not suggesting that I read through  
11 every page, but I did get familiar with what I thought  
12 was interesting.

13 Q. Okay. And if I could get you to go to page  
14 number 120 of 141 at the bottom, and just let me know  
15 when you're there.

16 A. Okay, I'm there.

17 Q. Okay. And towards the bottom there, it says  
18 "Securities Lending Activities." Do you see that?

19 A. Yes, I do.

20 Q. And the first part -- the first paragraph under  
21 that heading talks about the securities lending program.  
22 Is that right?

23 A. Yes, it does.

24 Q. And the next paragraph says, "AIG's liability to  
25 the borrower for collateral received was \$75.1 billion

1 and the fair value of the collateral reinvested was  
2 \$59.5 billion as of June 30, 2008." Do you see that?

3 A. I see that.

4 Q. And so there was a \$16 billion differential  
5 between -- between what they had received and what was  
6 currently invested. Is that right?

7 A. Yes.

8 Q. And at some point, when those loans were  
9 terminated, there would be \$16 billion that AIG would  
10 have to cover.

11 A. Assuming that the value of the underlying  
12 collateral didn't recover.

13 Q. Fair enough.

14 And you believed that AIG shouldn't be investing  
15 in the way that it was with respect to the securities  
16 lending program. Is that right?

17 A. I believed that they were taking more risks than  
18 we would have taken.

19 Q. And in your deposition, I think you said that it  
20 was invested inappropriately. Is that fair?

21 A. Again, I think they were taking more risks than  
22 we would have taken.

23 Q. And you concluded it was inappropriate, correct?

24 A. It would have been inappropriate for me.

25 Q. And in August of 2008, you were also concerned

1 with the size of AIG's securities lending program,  
2 right?

3 A. That's correct.

4 Q. You were concerned with their -- and you were  
5 concerned with the risky collateral that was being  
6 invested, right?

7 A. Again, I didn't know what the collateral was that  
8 they were investing in, but it appeared to be  
9 instruments that were different than what we would have  
10 invested in, and, therefore, it did appear they were  
11 taking more risk.

12 Q. And you believed that AIG's securities lending  
13 investments and their outcome demonstrated a failure of  
14 risk management.

15 A. I couldn't assess what risk management was doing.  
16 That was one of the questions I had, and I had no basis  
17 of knowing what they were doing.

18 Q. Right. But you concluded, based on what you  
19 knew, that risk management was insufficient based on  
20 their investments, correct?

21 A. I don't think I concluded that. I questioned  
22 what was happening in risk management, but I didn't have  
23 the facts.

24 Q. Okay. And if we could go to DX 191, and just let  
25 me know when you're there, sir.



1           And I believe this is also in, Your Honor.

2           A. DX 191, I have that.

3           Q. Okay. And so this is a memo that you wrote to  
4 Mr. Greenberg in August of 2008. Is that right?

5           A. That appears to be correct, yes.

6           Q. And what it is is the front page is a memo, and  
7 then the other two pages are actually taken from the  
8 10-Q that we just looked at.

9           A. That looks to be correct, yes.

10          Q. And what you write is -- you write (as read):  
11 "It is astonishing to comprehend this disclosure with  
12 respect to both the current size of the program and the  
13 risky collateral that is being invested in by AIG."

14           Do you see that?

15          A. I see the words.

16          Q. And so on August 18th, 2008, you believed that  
17 AIG's securities lending program was investing in risky  
18 collateral, correct?

19          A. I think that's fair.

20          Q. Okay. And then the next line is, you write,  
21 "Again, where is AIG's Risk Management process?" Do you  
22 see that?

23          A. I do.

24          Q. Okay. And you used the word "again," so you must  
25 have raised this more than once with Mr. Greenberg,

1 right?

2 A. Yes.

3 Q. And the question, "Where is AIG's Risk Management  
4 process," you didn't expect Mr. Greenberg to give you an  
5 answer; it was a rhetorical question, right?

6 A. With respect to Mr. Greenberg, yes.

7 Q. Okay.

8 A. But, again, I think I need to add the frustration  
9 was we were not there and we didn't know what was going  
10 on in the risk management process, and that was the  
11 point we were trying to get across.

12 Q. You were frustrated because you thought that  
13 AIG's risk management process was not doing what you  
14 thought it should be, correct?

15 A. I couldn't tell that.

16 Q. Right. You couldn't tell, but your frustration  
17 was that you -- that the results suggested that their  
18 risk management process wasn't what it should have been,  
19 correct?

20 A. Possibly.

21 Q. No further questions on that document, sir.

22 A. I'd just like to add one thing on the securities  
23 lending program.

24 Q. If I could just get you to answer my questions,  
25 that would be great, sir.

1           Okay, sir, we've been talking about risk  
2 management, and so do you know who ^ Bob Louis was?

3           A. Yes, I do.

4           Q. And was he the director of risk management at AIG  
5 in 2007 and 2008?

6           A. I believe that's correct.

7           Q. Okay. And do you recall who he reported to with  
8 respect to risk management?

9           A. I assumed it was to the CFO.

10          Q. And the CFO in 2007, 2008 was Mr. Bensinger?

11          A. Yes.

12          Q. And Mr. Louis had responsibility for AIG's whole  
13 risk management function. Is that right?

14          A. I believe that's accurate.

15          Q. And then Mr. Bensinger as the CFO, of course, he  
16 reported to the CEO. Is that right?

17          A. That's right.

18          Q. And until June of 2008, was that Mr. Sullivan?

19          A. I believe it was June 2008, yes.

20          Q. Okay. And Mr. Sullivan, just so that I'm clear,  
21 was he the CEO that took over after Mr. Greenberg left  
22 in 2005?

23          A. Yes, he did.

24          Q. Okay. And so all three of these people at the  
25 top had the responsibility for AIG's risk management in

1 late 2007 and early 2008, correct?

2 A. I think that's fair.

3 Q. Okay. And if we could go to DX 211. And that's  
4 already in evidence, Your Honor.

5 If you would just tell me if you recognize this  
6 document.

7 A. Okay, I do recognize the document.

8 Q. And what is it, sir?

9 A. It was a memo that I had prepared for  
10 Mr. Greenberg in September of 2008.

11 Q. Okay. And so -- and that little -- there's a  
12 writing on the front page, "From Howie, for your meeting  
13 with Willumstad." Do you see that?

14 A. I do.

15 Q. And was that part of the memo that you sent or do  
16 you think somebody added that afterwards?

17 A. I have to believe somebody added that.

18 Q. Okay. And -- so, let's go to the second page,  
19 and you write this memo to Mr. Willumstad -- I'm sorry,  
20 to Mr. Greenberg on September 2nd, 2008. Is that  
21 correct?

22 A. Yes.

23 Q. And the subject is "Credit Default Swaps and  
24 Subprime Issues." Is that right?

25 A. That's correct.

1 Q. And so this was a memo about your concerns  
2 regarding credit default swaps and subprime issues in  
3 September 2008, correct?

4 A. I'm sorry. Please repeat that.

5 Q. Sure.

6 So, this memo, you were laying out your concerns  
7 about AIG's credit default swaps and subprime issues,  
8 correct?

9 A. Well, I was reporting on it to him as to what the  
10 public information disclosures were that they had made  
11 with respect to credit default swaps and subprime  
12 issues.

13 Q. Okay. And is this one of the documents you  
14 reviewed with your attorneys in preparation today -- for  
15 today?

16 A. We did look at this, yes.

17 Q. Okay. And if I could get you to turn to the --  
18 it's the document's third page, but it's the second page  
19 of your memo, and just let me know when you're there.

20 A. Okay.

21 Q. Okay. And the bullet that says "Page 83 (2007  
22 10-K)," do you see that?

23 A. I was a page ahead of you. I'm back to the right  
24 page.

25 Q. Okay. Just let me know when you're there, sir.

1 A. Yes. "Page 83 (2007 10-K)," yes.

2 Q. Very good, sir. What you're doing in that bullet  
3 is you're describing what the 10-K said about the  
4 multisector CDOs. Is that right?

5 A. That's correct.

6 Q. And then -- and then you write, still in that  
7 section, you write, "As the above table reflects, the  
8 overwhelming majority of these losses were not  
9 recognized until the fourth quarter of ^ 2007." And  
10 you emphasized that, correct? You emphasized "fourth  
11 quarter" and you emphasized ^ "2007."

12 A. Those were my words, yes.

13 Q. And then you write, "Where was the risk  
14 management group at FP and AIG corporate between March  
15 2005 and December 2007?" Do you see that?

16 A. I do.

17 Q. And you were concerned that -- about the absence  
18 of AIG's risk management group at FP and at corporate  
19 during that time period, correct?

20 A. I was concerned about what their process was  
21 because I had no information on it.

22 Q. And you were concerned about the results,  
23 correct?

24 A. Well, the results spoke for themselves.

25 Q. And, in fact, they not only spoke for themselves,

1 sir, the results concerned you, which is why you put it  
2 in the memo, right?

3 A. That's fair.

4 Q. Okay. So, now, still at that document, sir, and  
5 now we're going to go to the seventh page, and just to  
6 make it easy, when you look at the Bates number at the  
7 bottom, it's the page that ends 576. And just let me  
8 know when you're there.

9 A. Okay, I have that.

10 Q. Okay. And so we're going to go to the top bullet  
11 on that page, and it says "Page 16." So, you are still  
12 on the 10-K for 2007. Do you see that?

13 A. Yes.

14 Q. And you write, "Comments on Risk Management." Do  
15 you see that?

16 A. I do.

17 Q. And these are your comments on risk management,  
18 on AIG's risk management, correct?

19 A. No, I don't think that's right.

20 Q. Okay, well, let's see. So, the first thing looks  
21 like a quote, and it says, "AIG has devoted significant  
22 resources to the development and implementation of risk  
23 management processes and controls across AIG's  
24 operations, including by establishing review and  
25 oversight committees to monitor risks, setting limits

1 and identifying risk mitigating strategies and  
2 techniques."

3 Do you see that?

4 A. Right.

5 Q. And you are quoting there the comments on risk  
6 management from AIG's 10-K. Is that right?

7 A. That's the quote that they had in their 10-K.

8 Q. Okay. And so you're pulling that out and putting  
9 it in here.

10 A. Yes.

11 Q. Okay. And then you write, "It appears that their  
12 procedures to mitigate risk in the credit default swaps  
13 were a colossal failure!" Is that right?

14 A. That's what I wrote.

15 Q. Okay. Now, that wasn't in the 10-K; that's your  
16 opinion, correct?

17 A. That's correct.

18 Q. So, on September 2nd, 2008, in a memo to  
19 Mr. Greenberg, you tell him that AIG's procedures to  
20 mitigate risk in the CDS portfolio were a colossal  
21 failure, correct?

22 A. Correct.

23 Q. And you believed that when you put it in the  
24 memo.

25 A. The results spoke for themselves.



1 Q. You believed it when you put it in the memo,  
2 right, sir?

3 A. Yes.

4 Q. Now, you believed -- now, let's back up.

5 From late 2007 until September 2008, AIG suffered  
6 massive losses. Is that right?

7 A. AIG recognized significant mark-to-market losses,  
8 which, again, I think was a major issue for AIG and  
9 everybody else who was, in my opinion, using  
10 mark-to-market accounting inappropriately at that point  
11 in time.

12 Q. Okay. And I'm sure -- I'm not going to ask you  
13 about accounting, because I -- that's not my strength.  
14 So, I'm going to just ask you --

15 A. Well, just -- that is a significant issue here.

16 Q. Okay. But my question, though, is simply AIG  
17 recognized massive losses in late 2007 and through  
18 September -- it -- up to September 2008. Isn't that  
19 correct?

20 A. That's correct.

21 Q. Okay. And those massive losses resulted from the  
22 way AIGFP did business, correct?

23 A. It was the -- the outcome based on the positions  
24 that they were writing, yeah, I have to say that.

25 Q. Okay. And AIGFP had excessive exposure to

1 subprime mortgages during that time. Isn't that  
2 correct?

3 A. They had exposure to subprime mortgages at that  
4 point.

5 Q. And you believed it was excessive, correct?

6 A. In my opinion, it probably was more than it  
7 should have been, yes.

8 Q. And that makes it excessive, right?

9 A. Yes.

10 Q. And you believed that the risks in the securities  
11 lending program demonstrated a lack of risk management.  
12 Isn't that right?

13 A. I can't answer that affirmatively because I  
14 didn't know what their procedures were.

15 Q. Right. And I'm not asking about the procedures,  
16 sir. I'm just asking you about what you believed. You  
17 believed that the risks in the securities lending  
18 program demonstrated a lack of risk management. Yes or  
19 no.

20 A. I can't say that. All I can speak to is the  
21 results.

22 Q. Okay. And based on the results, you concluded  
23 that the securities lending program demonstrated a lack  
24 of risk management. Yes, no, or I don't know.

25 A. I don't know.

1 Q. Now, Mr. Sullivan was -- I understand he was a  
2 friend of yours. Is that right?

3 A. That's correct.

4 Q. And -- but at the same time, you believed that as  
5 CEO of AIG, he was in over his head.

6 A. Yeah, I believed that his experience was limited  
7 to a great knowledge of the insurance businesses.

8 Q. Right. And so he knew a lot about insurance, and  
9 he didn't know that much about the rest of AIG's other  
10 activities and investments, correct?

11 A. He needed support from the people in those  
12 positions, yes.

13 Q. And so you concluded that as CEO of AIG,  
14 Mr. Sullivan was in over his head, correct?

15 A. I think I made that statement at some point, yes.

16 Q. And you believed in April, May, June of 2008 that  
17 Mr. Sullivan should be replaced as AIG's CEO.

18 A. I would have felt that way, yes.

19 Q. Okay. Now, if we go to DX 142, sir, and just let  
20 me know when you're there.

21 A. Um-hum. 142, okay.

22 Q. Okay. And do you see, sir, that this is a  
23 transcript of an interview between Mr. Greenberg and  
24 someone from CNBC named ^ Maria Bartaromo? Do you see  
25 that?

1 A. Yes.

2 Q. And was this one of the documents you reviewed as  
3 part of your preparation for today?

4 A. We did look at this, yes.

5 Q. Okay.

6 Your Honor, we move at this time for the  
7 admission of DX 142.

8 MR. BOIES: No objection, Your Honor.

9 THE COURT: All right. Defendant's Exhibit 142  
10 is admitted.

11 **(Defendant's Exhibit Number 142 was admitted into**  
12 **evidence.)**

13 BY MR. DINTZER:

14 Q. And, sir, I'm going to take you to the fourth  
15 page of this transcript, and just let me know when  
16 you're there.

17 A. That's 158 at the bottom?

18 Q. It's 156 at the bottom, sir.

19 A. 156.

20 Q. It's the actual page --

21 A. Okay.

22 Q. Fair enough, because it's got a cover page.

23 A. All right, gotcha.

24 Q. And Ms. Bartaromo, on the first full question,  
25 writes -- says, "And I know you've been traveling around

1 the world. I want to ask you about that. But let me  
2 move on to AIG now. Obviously this big shareholders  
3 letter that we read about today in the journal and the  
4 continued upset with which you've been so vocal on, tell  
5 me how you believe that things should change at AIG."

6 Then Mr. Greenberg says, "Look, I think the  
7 company is falling apart. The price of the stock is  
8 very clear. The stock is down, you know, close to,  
9 what, about 60, \$70 billion since I left the company.  
10 If you tell me that's good management, then I don't know  
11 much about management. Look, I think my view of the  
12 board of directors has got to be changed and management  
13 has got to be changed. Shareholders are fed up."

14 Do you see that?

15 A. I do.

16 Q. Okay. And so that was June 2008. Did you share  
17 Mr. Greenberg's view of the board and the share -- and  
18 the -- and the management of AIG at that time?

19 A. I think we had similar views, yes.

20 Q. Okay. And the next question was, "So you want  
21 Martin Sullivan out?"

22 And then Mr. Greenberg said, "I think the company  
23 has got to change its board and management."

24 Do you see that?

25 A. I do.

1 Q. And did you understand that that answer by  
2 Mr. Greenberg was him telling -- saying that he wanted  
3 Mr. Sullivan out?

4 A. I think that's correct.

5 Q. Okay. Now, in June 2008, AIG did, in fact,  
6 remove Mr. Sullivan as CEO. Is that correct?

7 A. Yes, I believe that's the right date.

8 Q. And that's when they put in Mr. Willumstad. Is  
9 that right?

10 A. Yes.

11 Q. Okay. So, Mr. Sullivan was removed.

12 Now, I'd like to go to page 5 of this document,  
13 the second part of it. Ms. Bartaromo states, "The  
14 company might say look, this is an environment that  
15 we're pressured along with other financial service  
16 businesses. Is there any sort of validity to the idea  
17 that in this era of this losses and write downs because  
18 of the mortgage portfolio derivatives that they are also  
19 sort of bundled in that? Or is this specific to what is  
20 happening at AIG and the management operating the  
21 company?"

22 And then Mr. Greenberg says, "First of all, you  
23 have to manage a portfolio. You don't just take a  
24 portfolio of financial products, and put it in the safe  
25 and lock it. You manage it day to day. And you hedge.

1 You don't just build it up as if -- and there's no risk  
2 management --" and then he says, and this is the place I  
3 want to direct you to -- "and there's no risk  
4 management. Where's the risk management that's supposed  
5 to be looking at overinvesting in a particular area and  
6 in addition to that, the basic business is showing  
7 weakness. Expense ratio went way up in the general  
8 insurance area. Life insurance in Asia, which is one of  
9 the crown jewels of the company, did not do well.  
10 Investment side did not do well. Consumer finance did  
11 not do well." ^ Ck quote

12 Do you see that?

13 A. I do.

14 Q. Okay. And in June 2008, did you agree with  
15 Mr. Greenberg's statement that there is no risk  
16 management?

17 A. I don't think that's what it says.

18 Q. Well, actually, I mean, if -- it does say those  
19 words, "There is no risk management," correct?

20 A. Well, it says where is the risk management, but  
21 he doesn't know what their procedures and processes are,  
22 nor do I.

23 Q. Okay. Just as a matter of reading, he says the  
24 words, "There is no risk management." Is that correct?

25 A. He says that, but then he goes on to modify that.

1 Q. Okay. So, all I'm asking you -- so, now, moving  
2 away from the document now, sir, in June 2008, did you  
3 believe that there was no risk management or  
4 insufficient risk management at AIG?

5 MR. BOIES: Objection. Compound.

6 THE COURT: Can we break it up?

7 MR. DINTZER: Of course.

8 BY MR. DINTZER:

9 Q. Sir, in June 2008, did you believe that there was  
10 insufficient risk management at AIG?

11 A. I didn't know whether there was insufficient risk  
12 management or that they made mistakes in risk  
13 management.

14 Q. Okay. Well, let's look at both of them. In June  
15 2008, you believed that there was either insufficient  
16 risk management or the people who were doing risk  
17 management were making mistakes, correct?

18 A. I still stay with my point. I think mistakes  
19 were made.

20 Q. Okay. By AIG's risk management?

21 A. I believe so.

22 Q. Okay. No further questions on that document,  
23 sir.

24 Oh, actually, you know what, I take it back. As  
25 long as we're on it, did you agree with Mr. Greenberg in



1 June 2008 that -- that AIG's life insurance in Asia was  
2 not doing very well?

3 A. Well, I think they -- think did a little bit  
4 worse than they had done in prior quarters, but I still  
5 think it was a very significant, profitable operation.

6 Q. Okay. And so my question just is -- and this, I  
7 think, is a yes or no -- did you agree with him that --  
8 at the time, in June 2008, that the life insurance in  
9 Asia did not do well? Yes or no.

10 A. I can't argue with that based on what the numbers  
11 were.

12 Q. Okay. And that's a yes, right?

13 A. Yes.

14 Q. Okay. Now, so, we've talked about ^ Mr. Louis  
15 here. In June of 2008, you believed that Mr. Louis  
16 should be fired because of his work, correct?

17 A. I -- it appears from the outside that he had to  
18 take some responsibility, yes.

19 Q. You believed, from the outside, that Mr. Louis  
20 had to take responsibility for the failures in risk  
21 management.

22 A. For the mistakes that were presumably -- were  
23 obviously made.

24 Q. And so you believed he should be fired by AIG.

25 A. Yes.

1 Q. Okay. And in June 2008, you also believed that  
2 Mr. Bensinger should be fired as AIG's CFO, correct?

3 A. Yes.

4 Q. Okay. And so with respect to AIG's risk  
5 management structure, you believed that the top three  
6 people in charge of it in June of 2008 should be fired,  
7 correct?

8 A. Correct.

9 Q. Now, if we can go to DX 170, sir, and -- I guess  
10 I should follow up. Do you know if Mr. Bensinger and  
11 Mr. Louis were, in fact, let go?

12 A. They both are out of there. I think they were  
13 both terminated. ^ Read

14 Q. Do you know what year?

15 A. I think it was also in '08.

16 Q. Okay.

17 A. I think.

18 Q. Okay. If we could go to DX 170, and this says,  
19 "Project Aurora Valuation Analysis."

20 Do you see that?

21 A. I do.

22 Q. And so was this one of the documents you reviewed  
23 in your preparation, sir?

24 A. Yes, it was.

25 Q. And this is by Perella Weinberg partners. Do you

1 see that?

2 A. Yes.

3 Q. And they were a consultant for Starr in 2008. Is  
4 that right?

5 A. That's correct.

6 Q. And Aurora, Project Aurora, was related to AIG.  
7 Is that correct?

8 A. Correct.

9 Q. In fact, Aurora was the code name for AIG.

10 A. Yes.

11 Q. And so this is a valuation analysis from August  
12 2008 by Starr's consultant regarding AIG, right?

13 A. Yes.

14 Q. And then if we could just go to the page with the  
15 Bates number 315, and unfortunately, this doesn't have  
16 page numbers. I think the document page number is page  
17 number 10. The heading is, "The Roots of Aurora's  
18 Decline."

19 A. I see that.

20 Q. Okay. And are you familiar with this document?  
21 Is that right, sir?

22 A. I did look at it during the preparation, as I  
23 said.

24 Q. Okay.

25 Your Honor, we move to admit DX 170.

1 MR. BOIES: Objection, Your Honor. This is  
2 not -- I don't think is a Starr document. I don't think  
3 this witness had any role in its preparation.

4 THE COURT: Mr. Dintzer?

5 MR. DINTZER: Your Honor, the preparers of this,  
6 Perella, were a consultant for Starr. They provided  
7 this -- they created this for Starr. The witness said  
8 that he reviewed this as part of his prep, clearly  
9 because they anticipated that he'd be shown this,  
10 because this is one of the documents that was given to  
11 them. So, we'd ask to admit it.

12 MR. BOIES: Your Honor, the fact that we review  
13 something with the witness in preparation for his  
14 testimony can't be a standard in terms of whether it is  
15 admissible.

16 THE COURT: But I think the fact that AIG hired  
17 this firm apparently as a consultant would opt for its  
18 admission. So, I am going to admit Defendant's Exhibit  
19 170.

20 MR. DINTZER: Thank you, Your Honor.

21 BY MR. DINTZER:

22 Q. And so we take ourselves back, sir, to page --  
23 Bates 315 --

24 MR. BOIES: Your Honor, I just want to be clear.  
25 These people were hired not by AIG, but by Starr. In

1 other words, this document was produced by a consultant  
2 to Starr, but not a consultant to AIG.

3 THE COURT: That probably makes it even stronger.

4 MR. DINTZER: I was thinking the same thing.

5 BY MR. DINTZER:

6 Q. So, we're at "The Roots of Aurora's Decline." Do  
7 you see that, sir?

8 A. I do.

9 Q. So, that's the roots of AIG's decline, is what  
10 they're saying. Is that right?

11 A. Yes.

12 Q. And the first one that they say is, "Headline  
13 risk; lack of transparency." Is that right?

14 A. I see that.

15 Q. Okay. And then farther down, the last bullet  
16 says, "Loss of management credibility." Do you see  
17 that?

18 A. Yes.

19 Q. "Loss of leadership and performance culture."

20 Did you agree with AIG -- with Starr's consultant  
21 that one of the roots of AIG's decline was a loss of  
22 management credibility?

23 A. I don't know if "credibility" -- I would agree  
24 with the word "credibility." I definitely agree with  
25 the performance issues.

1 Q. Okay. So, you -- you agreed with them that AIG  
2 had a loss of performance culture?

3 A. Performance in terms of results -- reported  
4 results.

5 Q. Okay. And did you believe -- I mean, you've told  
6 me earlier that you thought that the CEO, CFO, and the  
7 head of risk management should be removed. Did you  
8 believe that to at least some extent AIG had lost  
9 management credibility in 2008?

10 A. I think you could say that.

11 Q. And would you agree with that if I said that?

12 A. Yes.

13 Q. Okay. And then it says, "unclear if CEO change  
14 is sufficient to regain market confidence." Do you see  
15 that?

16 A. Yes.

17 Q. Did you have the same concern?

18 A. I did not.

19 Q. Okay. No further questions on that document,  
20 sir.

21 If we could go to DX 919, and just let me know  
22 when you're there.

23 THE COURT: I don't see that in my binder.

24 THE WITNESS: I don't see that.

25 MR. DINTZER: Oh. We'll get back to that, Your

1 Honor.

2 BY MR. DINTZER:

3 Q. In 2009, sir, there was a risk that AIG might be  
4 delisted. Is that right?

5 A. In 2009, yes.

6 Q. You knew that if AIG -- if the value of a single  
7 stop dropped below a dollar, there was a risk that they  
8 would be delisted, correct?

9 A. Yes.

10 Q. And you knew that if AIG wasn't listed on the New  
11 York Stock Exchange, that would have a significant  
12 effect on the share value, right?

13 A. It could, yes.

14 Q. It could cut down on the tradability and  
15 liquidity of the common shares, right?

16 A. Yes.

17 Q. The twenty-to-one reverse stock split addressed  
18 the delisting concern, correct?

19 A. The one-for-twenty did address the delisting  
20 concern, yes.

21 Q. Yes. And you yourself supported the  
22 one-for-twenty stock split, correct?

23 A. Solely for the reason that it addressed the  
24 delisting issue.

25 Q. And Starr, in fact, voted for the reverse stock

1 split. Is that right?

2 A. Yes.

3 Q. And if we can go to DX 811, and just let me know  
4 when you're there.

5 A. Okay.

6 Q. Do you recognize this document, sir?

7 A. I do.

8 Q. And this is a memo regarding the resolution  
9 basically authorizing the vote on the proxy at AIG's  
10 annual meeting. Is that right?

11 A. Correct.

12 Q. And since this is June 25th, 2009, this was for  
13 the June 30th, 2009, meeting. Is that right?

14 A. I believe -- I believe that was the date, yes.

15 Q. And if you go to "Description" on that same first  
16 page, in the middle, you'll see that?

17 A. Yes.

18 MR. DINTZER: Your Honor, we move to admit

19 DX 811.

20 MR. BOIES: No objection, Your Honor.

21 THE COURT: Defendant's Exhibit 811 is admitted.

22 **(Defendant's Exhibit Number 811 was admitted into**  
23 **evidence.)**

24 BY MR. DINTZER:

25 Q. And you received this document and you would have



1 reviewed it in the normal course of business. Is that  
2 right?

3 A. Yes.

4 Q. And if you go to the second page, it says,  
5 "Action by consent of -- written consent of the board of  
6 directors of Starr International Company, Inc. " Do you  
7 see that?

8 A. Yes.

9 Q. And then basically it walks -- it -- there is  
10 sort of the formal language of authorizing something to  
11 be done, and the thing to be done is the voting on  
12 the -- at the A -- on the AIG shares. Is that right?

13 A. Yes.

14 Q. And if you go down, there's the -- the election  
15 of directors and the voting against and for. Do you see  
16 that?

17 A. Yes.

18 Q. And then there's the proposals, and there's  
19 the -- and the third one, it says, "For: Ratification  
20 of amend to AIG's Restated Certificate of Incorporation  
21 to effect a reverse stock split of AIG's outstanding  
22 common stock at a ratio of one-for-twenty."

23 Do you see that?

24 A. Yes.

25 Q. And this shows that AIG's -- that it -- that the

1 action being taken is voting for. Is that right?

2 A. Yes.

3 Q. Okay. And then if we go -- if we can dig in a  
4 couple more pages deeper to the one Bates numbered 831,  
5 we see your signature there.

6 A. I do.

7 Q. Okay. And did Starr have a company do an  
8 analysis of each of these positions to kind of advise it  
9 on which ones to vote for and against or did you all do  
10 that in-house? Did you have sort of an external advisor  
11 or company do that or did you guys do it?

12 A. My recollection was we did that in-house.

13 Q. Do you know who was in charge of doing that?

14 A. I think it was probably the group of more senior  
15 SICO -- Starr directors.

16 Q. So -- and it was their responsibility to  
17 understand the repercussions of any of the items they  
18 voted for or against. Is that right?

19 A. Yes, that's fair.

20 Q. Okay. No further questions on that document.

21 Now, when you were at AIG, AIGFP, it existed at  
22 that time, correct?

23 A. Correct.

24 Q. And it was supposed to run a balanced book. Is  
25 that right?

1 A. That's correct.

2 Q. And that means that sort of the trades for  
3 something more or less evened out with the trades  
4 against it, so you wouldn't be long or short in any one  
5 area. Is that right?

6 A. Yeah, you try, exactly, to run a balanced book so  
7 you would not be too long or too short.

8 Q. And the goal was to make money on the spreads, on  
9 the differences in between things, correct?

10 A. That's correct.

11 Q. And so there was a hedging philosophy for the  
12 firm's overall exposure.

13 A. That's fair, yes.

14 Q. And do you know what the ABX index is?

15 A. Yes. It was a -- an index that came into  
16 being -- I forget the exact year, but to deal with the  
17 credit default swaps. You could use that index to hedge  
18 it if you chose to.

19 Q. The ABX came into being around 2006?

20 A. That sounds right, yes.

21 Q. And AIG could have used the ABX index to hedge  
22 the credit default swaps if it wanted to.

23 A. To partially hedge it, yes.

24 Q. Okay. And is it your understanding that after  
25 you left AIG, that AIGFP didn't use hedging techniques

1 to hedge its credit default swaps?

2 A. Couldn't -- couldn't really tell, again, from any  
3 public disclosures.

4 Q. But from the results?

5 A. You'd have to say if they did hedge it, it was  
6 probably not sufficient.

7 Q. All right. If we could go to DX 326, and just  
8 let me know when you're there, sir.

9 A. Okay.

10 Q. Okay. So, this is a series of emails. Is that  
11 right, sir?

12 A. That's what it looks like, yes.

13 Q. Is this one of the documents you reviewed in your  
14 prep, sir?

15 A. I did see this, yes.

16 Q. Okay. And so you're familiar with the fact that  
17 sort of you read the documents, the emails up, and the  
18 last one is the -- sort of the final email and  
19 everything else is folded into that?

20 A. Yes.

21 Q. And the top one is actually to Mr. -- it says  
22 Maurice Greenberg, and that's the gentleman known as  
23 Hank Greenberg. Is that correct?

24 A. Yes.

25 Q. And then if you go farther down, you are the

1 recipient of the one that's dated September 14th, 2008.

2 Do you see that?

3 A. Yes.

4 MR. DINTZER: Your Honor, we move for the

5 admission of DX 326.

6 MR. BOIES: No objection, Your Honor.

7 THE COURT: Defendant's Exhibit 326 is admitted.

8 **(Defendant's Exhibit Number 326 was admitted into**  
9 **evidence.)**

10 BY MR. DINTZER:

11 Q. And so about how long did you spend with your  
12 lawyers reviewing and preparing for this document, sir?

13 A. On this specific document?

14 Q. Yes.

15 A. A few minutes, nothing extraordinary.

16 Q. Okay. And so -- so, this -- the part that goes  
17 to you -- I'm not going to you about the parts that  
18 didn't go to you, but the part that goes to you is from  
19 Joseph Perella, and he's from that consulting firm we  
20 talked about earlier. Is that right?

21 A. Yes.

22 Q. And he writes, "You may have all this already but  
23 Dawn sent this to me last night so I am forwarding it to  
24 you. I think it is an excellent summary of their  
25 situation."

1 Do you see that?

2 A. I do.

3 Q. And based on the subject line, "their" means  
4 AIG's liquidity and capital needs, correct?

5 A. Yes.

6 Q. And then if you look at Dawn, who would be  
7 Ms. Sheirer?

8 A. Yes.

9 Q. And she prepared this on September 13th, 2008,  
10 she writes, "Below is a summary of AIG's potential  
11 immediate liquidity, long-term liquidity and capital  
12 needs." Do you see that?

13 A. I do.

14 Q. So, she is doing her best to summarize what AI --  
15 what the position AIG is in at that time.

16 A. From her -- from her analysis.

17 Q. From the information she has available.

18 A. Yes.

19 Q. And she writes, "In summary, the company could  
20 require \$47Bn of cash and capital if it is downgraded  
21 two notches by both rating agencies (to single-A) and  
22 the investments wrapped by AIGFP and in the investment  
23 portfolio are as impaired as some market observers  
24 believe."

25 Do you see that?

1 A. I do.

2 Q. Did you have, at that time, any reason to  
3 disagree with her analysis?

4 A. No reason to disagree with what she did.

5 Q. Okay. And then she writes, "Net of asset sales  
6 and debt issuance, AIG would need to raise \$24Bn of  
7 equity in this scenario." Do you see that?

8 A. I do.

9 Q. And she writes, at a 15% discount, an offering of  
10 this size would dilute the existing shareholders down to  
11 53% ownership of the company." Do you see that?

12 A. I do.

13 Q. So, as part of her analysis on September 13th,  
14 she is suggesting that to -- to cover a \$47 billion  
15 shortfall, the existing shareholders could be diluted  
16 down to 53 percent ownership, correct?

17 A. That's -- that's what she said.

18 Q. Okay. And you hadn't done any analysis to  
19 disagree with that, correct?

20 A. Not to disagree with that, but I believed there  
21 were many other options available to the company.

22 Q. Okay. And she's looking at a 53 percent  
23 ownership dilution just to raise 24 billion, right?

24 A. That's what she says.

25 Q. Okay. And this is the prediction that went to

1 Mr. Greenberg. Is that right?

2 A. Let's look back and see if he was -- yes, he  
3 would have -- he would have received this.

4 Q. Okay. So, now, Joseph Perella, the one who calls  
5 this an "excellent summary of their situation," he is  
6 the principal of Perella Weinberg. Is that right?

7 A. Yes.

8 Q. And he -- and Perella Weinberg is a -- is a  
9 consulting firm, correct?

10 A. Correct.

11 Q. And they're one of the top advisers in the field  
12 of financial advisory services, correct?

13 A. I think that's accurate.

14 Q. And that's why Starr hired them for this  
15 analysis.

16 A. Yes.

17 Q. Okay. No further questions on that document,  
18 sir.

19 Starr purchased shares of Lehman Brothers in  
20 2008. Is that correct?

21 A. Preferred shares.

22 Q. Preferred shares, thank you, sir.

23 A. Yes.

24 Q. About \$200 million worth?

25 A. I think that's right.



1 Q. Do you recall when in 2008 those were purchased?

2 A. Sometime in the spring. I don't recall the exact  
3 month.

4 Q. And ultimately, I mean, as we all know, Lehman  
5 Brothers filed for bankruptcy in 2008. Is that right?

6 A. Yes.

7 Q. And Starr has not recovered any money in  
8 bankruptcy on the Lehman preferred shares. Is that  
9 right?

10 A. That's correct.

11 Q. And Starr is now carrying the preferred shares on  
12 its balance sheet as having no value. Is that right?

13 A. Correct.

14 Q. And the bankruptcy is still not settled. Is that  
15 right?

16 A. That's correct.

17 Q. Sir, when Starr invested in AIG, there was no  
18 expectation that if AIG hit a liquidity crisis, the U.S.  
19 taxpayer would rescue AIG, correct?

20 A. When Starr invested in AIG?

21 Q. Right. When Starr bought shares in AIG --

22 A. Yeah.

23 Q. -- there was no expectation that if AIG hit a  
24 liquidity crisis, the Government would bail out AIG.

25 A. I don't think anybody really thought about that.

1 Q. Right. There was no anticipation that there  
2 would be a rescue, right, sir?

3 A. That's probably accurate, yes.

4 Q. And with that, Your Honor -- well, hang on.

5 And you personally didn't expect that, correct?

6 A. Not at the time we invest understand it, yeah.

7 Q. Okay.

8 With that, Your Honor, no further questions, and  
9 we pass the witness.

10 THE COURT: All right. Thank you, Mr. Dintzer.

11 Cross examination?

12 THE WITNESS: I just want to take a drink of  
13 water.

14 THE COURT: Oh, sure. That's there for you.

15 **CROSS EXAMINATION**

16 BY MR. BOIES:

17 Q. Good morning, Mr. Smith.

18 A. Good morning, Mr. Boies.

19 Q. It's a pleasure to meet somebody who I don't have  
20 to introduce myself to.

21 Let me begin with the document that you were just  
22 being questioned about, which is Defendant's Exhibit  
23 326.

24 A. Okay.

25 Q. And go to the second page of the exhibit, the

1 page that has the Bates number ending 507 on it.

2 A. Okay.

3 Q. Now, counsel asked you some questions about the  
4 possible dilution of shareholders. Do you recall that?

5 A. Yes.

6 Q. And that was for \$24 billion of equity. Is that  
7 correct?

8 A. Correct.

9 Q. Was there any projection here of any dilution for  
10 any debt that might be raised?

11 A. Not to my knowledge, no.

12 Q. And the date of this memorandum is September  
13 13th. Is that correct?

14 A. Yes.

15 Q. And do you have any recollection of what had  
16 happened to AIG's stock around that weekend?

17 A. I think it would be fair to say it was in a  
18 depressed state.

19 Q. Now, you testified that Starr supported the  
20 reverse stock split because of the danger that the  
21 company would otherwise be delisted. Do you recall  
22 that?

23 A. Yes.

24 Q. Was there a option presented to shareholders for  
25 splitting authorized shares as well as issued shares?

1 A. There was -- there was not that I recall.

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

3 THE COURT: Sure.

4 **(Counsel conferring.)**

5 BY MR. BOIES:

6 Q. The -- you were asked a number of questions about  
7 whether you believed AIG had made mistakes and taking  
8 risks that you would not have taken. Do you recall  
9 that?

10 A. Yes.

11 Q. Did you believe at any time prior to the  
12 so-called Lehman weekend that the risks or mistakes that  
13 AIG had made or taken --

14 MR. DINTZER: Objection, Your Honor, and I don't  
15 know what's going to follow, but with that starting, I'm  
16 pretty sure it's going to lead, so we would object in  
17 that it's leading.

18 THE COURT: All right.

19 MR. BOIES: Actually, I don't think it was going  
20 to be leading, Your Honor, but --

21 THE COURT: You are welcome to finish the  
22 question and we'll see.

23 MR. DINTZER: I don't mean to set the bar for  
24 counsel, but...

25 BY MR. BOIES:

1 Q. At any time prior to the so-called Lehman  
2 weekend, did you have any belief or understanding  
3 whether or not the risks or mistakes that AIG had made  
4 or taken threatened its viability?

5 MR. DINTZER: Objection, Your Honor. Leading.

6 THE COURT: No, I think it's okay, because of the  
7 use of the word "any."

8 THE WITNESS: I think -- I did not have any  
9 concerns about the viability, and I think that's what  
10 you asked.

11 BY MR. BOIES:

12 Q. You were asked a question by counsel as to  
13 whether, when Starr made an investment in AIG, it  
14 thought that the Government would bail out AIG. Do you  
15 recall that?

16 A. Yes.

17 Q. At any time that Starr owned AIG prior to Lehman  
18 weekend, did you have any expectation one way or the  
19 other as to whether AIG would be in a position where it  
20 would need a bailout?

21 A. Some indications just from articles that they may  
22 have had some liquidity issues.

23 Q. Anything else?

24 A. That's really what I -- what I recall, and I  
25 don't think they would have from my perception, needed a

1 bailout. I think there were many, many options that  
2 were available to AIG that we haven't talked about this  
3 morning.

4 Q. Counsel asked you whether there were people that  
5 you thought ought to be replaced at AIG. Do you recall  
6 that?

7 A. Yes.

8 Q. Were executives at other financial firms being  
9 replaced in 2007, 2008, and 2009?

10 A. Yes.

11 MR. DINTZER: Objection, Your Honor. Relevance  
12 and foundation as far as his knowledge about what's  
13 happening at other financial firms.

14 THE COURT: I'm going to overrule the objection.  
15 I'll take his answer.

16 BY MR. BOIES:

17 Q. You were asked whether in 2008 Mr. Greenberg had  
18 offered to help AIG. Do you recall that?

19 A. Yes.

20 Q. And do you recall when Mr. Greenberg first  
21 offered to help AIG in 2008?

22 A. I think it was an offer that he made directly to  
23 Bob Willumstad.

24 Q. And do you recall when that was, approximately?

25 A. I'm guessing sometime in the May, June, July time

1 frame.

2 Q. And counsel asked you whether that help was  
3 conditioned on a resolution of the litigation between  
4 Starr and AIG. Do you recall that?

5 A. Yes.

6 Q. And you said at that time you thought it was. Do  
7 you recall that?

8 A. Yes.

9 Q. Did there come a subsequent time when  
10 Mr. Greenberg offered to help AIG?

11 A. Yes, I -- yeah, I do recall that. Yes.

12 Q. And do you recall when that was?

13 A. Well, I know specifically one occasion he -- he  
14 offered to -- to both Mr. Geithner and Mr. Paulson, he  
15 was attempting to get a seat at the table on that  
16 so-called Lehman weekend.

17 Q. And was he successful?

18 A. He was not.

19 Q. At that time, was Mr. Greenberg's offer to help  
20 conditioned on anything?

21 A. I do not believe it was conditioned on anything.

22 Q. Let me ask you to look at Defendant's Exhibit 434  
23 that's in the binder that government counsel gave you.

24 I would offer Defendant's Exhibit 434.

25 MR. DINTZER: No objection, Your Honor.

1 THE COURT: Defendant's Exhibit 434 is admitted.

2 **(Defendant's Exhibit Number 434 was admitted into**  
3 **evidence.)**

4 BY MR. BOIES:

5 Q. And is the second and third pages of this a  
6 letter or a copy of a letter that Mr. Greenberg wrote to  
7 the chairman and CEO of AIG and to the AIG board of  
8 directors on September 16th, 2008?

9 A. Yes.

10 Q. And is the first page an email in which this was  
11 sent that evening to Eric Litzky of AIG?

12 A. I see that.

13 Q. And the first line of that says, "Dear Eric: I  
14 was disappointed not to have received any response to my  
15 letter to the board of directors and Mr. Willumstad of  
16 this morning." Do you see that?

17 A. Yes.

18 Q. And was it your understanding that that was  
19 accurate?

20 A. Yes.

21 Q. Let me ask you to turn to the last page of the  
22 exhibit, the second page of Mr. Greenberg's September  
23 16th letter, the first paragraph up at the top of the  
24 page.

25 A. Yes.



1 Q. And the last two sentences of that paragraph,  
2 where Mr. Greenberg writes, "I remain ready to offer any  
3 assistance that I can and to meet with you and the Board  
4 at any time. I ask nothing from you or the Board except  
5 the opportunity to help."

6 Do you see that?

7 A. Yes, I do.

8 Q. And was that your understanding of what  
9 Mr. Greenberg had communicated on September 16th?

10 A. That is my understanding, and I think he  
11 communicated that on a continuous basis via phone calls.

12 MR. BOIES: Your Honor, I have no more questions.  
13 I pass the witness.

14 THE COURT: All right.

15 Any redirect?

16 MR. DINTZER: Yes, Your Honor.

17 **REDIRECT EXAMINATION**

18 BY MR. DINTZER:

19 Q. Sir, let's stay with that document.

20 Now, just to be clear, September 16th, 2008,  
21 there was still the lawsuit where AIG was challenging  
22 Starr's ownership, correct?

23 A. Yes.

24 Q. And if you go ahead and turn to the second page  
25 of this document, and do you see what's been attached to

1 the email is the letter that was sent to AIG? Do you  
2 see that?

3 A. I'm sorry. You're on page 2?

4 Q. Let me be clearer. We're at DX 434. Do you see  
5 that, sir?

6 A. Yeah.

7 Q. And I'm on the second page of the document, the  
8 first page of the letter.

9 A. Yes.

10 Q. And in the second paragraph on that page -- this  
11 is a letter that Mr. Greenberg sends to Mr. Willumstad.  
12 Is that right?

13 A. Yes.

14 Q. And in the second paragraph, right there in the  
15 middle, he writes -- well, the first sentence, I am not  
16 going to read it, but he summarizes how the company has  
17 lost 90 percent of its value over the prior year. Do  
18 you see that?

19 A. I do.

20 Q. And then he writes, "Despite repeated assurances  
21 from management and the company that everything was  
22 under control, it is now clear that nothing was under  
23 control." Do you see that?

24 A. I see that.

25 Q. Mr. Greenberg believed that throughout two

1 thousand -- throughout the prior year, two thousand --  
2 from, say, late 2007 and 2008, AIG's management and  
3 board didn't have control of the situation in the  
4 company, correct?

5 A. Well, that's what the words are saying.

6 Q. Okay.

7 A. He always believed, though, that this was a solid  
8 franchise that remained with core businesses that could  
9 produce huge amounts of income on an ongoing basis.

10 Q. And he doesn't write that in this letter, right?

11 A. He does not write that in this letter.

12 Q. Okay. And instead what he writes, if you go to  
13 the next page, the top of the last paragraph, he writes,  
14 "Since you became Chairman of AIG, you and the Board  
15 have presided over the virtual destruction of  
16 shareholder value built up over 35 years."

17 Do you see that?

18 A. Yes.

19 Q. "Virtual destruction of shareholder value."

20 Mr. Greenberg blamed AIG's board for what happened to  
21 AIG, correct?

22 A. I see the words, yes.

23 Q. Okay. And he wouldn't have written them if he  
24 didn't believe them, correct?

25 A. I would agree with that.

1 Q. Okay.

2 MR. DINTZER: No further questions, Your Honor.

3 We pass the witness.

4 THE COURT: All right.

5 Anything further, Mr. Boies?

6 MR. DINTZER: Oh, actually, Your Honor, just  
7 because they managed to deliver the documents just on  
8 time, if it pleases Your Honor, could we go ahead and  
9 address these?

10 THE COURT: Just under the wire.

11 MR. DINTZER: Okay, thank you. We will make this  
12 brief.

13 May I approach, Your Honor?

14 BY MR. DINTZER:

15 Q. Sir, you have been handed what's been marked as  
16 Defendant's Exhibit 919. Do you see that?

17 A. I do.

18 Q. Do you have an understanding of what this  
19 document is?

20 A. Yeah. Just from the cover of these, they're the  
21 consolidated financial statements for Starr  
22 International and subs.

23 Q. And this is something you would be familiar with  
24 in your job at Starr, right?

25 A. Yes.

1 MR. DINTZER: Your Honor, we move for the  
2 admission of Defendant's Exhibit 919.

3 MR. BOIES: No objection, Your Honor.

4 THE COURT: Defendant's Exhibit 919 is admitted.

5 **(Defendant's Exhibit Number 919 was admitted into**  
6 **evidence.)**

7 MR. DINTZER: Thank you, Your Honor. With that,  
8 we do pass the witness.

9 THE COURT: Any recross, Mr. Boies?

10 **RECROSS EXAMINATION**

11 BY MR. BOIES:

12 Q. You testified just a moment ago that you believed  
13 you understood Mr. Greenberg believed -- and I don't  
14 remember exactly which it was -- that there was still  
15 substantial value in the core businesses of AIG. Do you  
16 recall that generally?

17 A. Yes.

18 Q. Can you explain what you meant by that?

19 A. Sure. If you looked at the domestic and foreign  
20 property and casualty businesses of AIG and you also  
21 looked at the domestic life business, forgetting the  
22 fact that they had to dispose of some of the foreign  
23 life businesses, which were also crown jewels, my own  
24 calculations would suggest that on a recurring basis,  
25 those operations could provide between 8 and 10 billion

1 dollars of pretax income on an annual basis.

2 MR. DINTZER: Objection, Your Honor. Objection,  
3 Your Honor. This is beyond the scope. What happened  
4 was -- and just to be clear, what happened was in a  
5 question that I asked the witness, he gave a  
6 nonresponsive answer where he talked about the value of  
7 the core businesses. I certainly didn't ask about that.  
8 And then -- and now counsel is using the existence of  
9 that nonresponsive answer to exceed the scope of the  
10 questions that I actually did ask. So, we would ask the  
11 Court to rule that it's beyond the scope.

12 MR. BOIES: Your Honor, among other things, he  
13 asked about the virtual destruction of shareholder  
14 value. I think this goes directly to that issue.

15 THE COURT: I'm going to overrule the objection.  
16 I'll take his answer to this.

17 MR. DINTZER: Thank you.

18 MR. BOIES: Had you finished your answer?

19 THE WITNESS: I did.

20 MR. BOIES: Then I have no more questions, Your  
21 Honor.

22 THE COURT: Mr. Smith, thank you very much for  
23 your testimony in this matter. You are excused.

24 THE WITNESS: Thank you, Your Honor.

25 MR. DINTZER: And, Your Honor, we move to admit

1 DXX, this demonstrative, 039, as a demonstrative.

2 MR. BOIES: No objection as a demonstrative, Your  
3 Honor.

4 THE COURT: All right. Defendant's Demonstrative  
5 Exhibit 039 is admitted.

6 MR. DINTZER: Thank you, Your Honor.

7 **(Defendant's Exhibit Number DXX 039 was admitted**  
8 **into evidence.)**

9 MR. DINTZER: At this time, Your Honor, the  
10 Government will recall Dr. Mordecai to the stand.

11 THE COURT: Well, do you want to do this -- talk  
12 about this proffer first?

13 MR. DINTZER: Yes, Your Honor.

14 THE COURT: All right. Let's do that.

15 Just be patient, Dr. Mordecai. We will get with  
16 you in a moment.

17 MR. BOIES: Your Honor, we received this proffer  
18 yesterday evening, somewhat after 10:00. We have --  
19 somebody, not me -- but somebody has prepared a brief  
20 response to that, which is about -- a the response is  
21 about 2 1/2 pages long. I haven't had a chance actually  
22 to read it myself, but if it would help, I would hand it  
23 up for the Court.

24 THE COURT: Sure, that would be fine.

25 MR. BOIES: Just so that the Court understands

1 what at least some of the people on my side think what  
2 the response ought to be.

3 THE COURT: Okay. I also would like to know, who  
4 is available to speak for AIG this morning?

5 MR. CARANGELO: Your Honor, Robert Carangelo from  
6 Weil Gotshal for AIG.

7 THE COURT: Yes. Could you come forward, sir?  
8 I'm sure you are going to play a bit of a role in this.  
9 Have you seen the proffer that was filed late yesterday?

10 MR. CARANGELO: I did, Your Honor.

11 THE COURT: Okay. My first question is whether  
12 you think that this document needs to be filed under  
13 seal or whether we can file it as a public document.

14 MR. CARANGELO: Well, again, Your Honor, a lot  
15 depends on Your Honor's view of the privilege. As I  
16 said here last week, AIG does not intend to waive the  
17 privilege, and we would like the document to remain  
18 filed under seal until Your Honor determines whether or  
19 not the information is privileged. Again, it is a --  
20 AIG's position has been consistent without this  
21 proceeding and throughout discovery to not waive the  
22 privilege.

23 THE COURT: I understand your position, and I  
24 hate to knock the ball back into your court, and I think  
25 it's an AIG position that I want to hear, whether you



1 think there's anything privileged in the proffer that  
2 was filed.

3 MR. CARANGELO: I think it's -- I think certainly  
4 some stuff is clearly not privileged. Some of the stuff  
5 is -- is a close call, and I personally don't think it  
6 is privileged, but, again, if it's limited to just that  
7 information, I don't think it's privileged. It could  
8 obviously lead to other things, and, again, if that is  
9 the case, AIG's position is they do not want to have  
10 this, you know, admitted, because AIG is not intending  
11 to waive privilege.

12 THE COURT: All right.

13 Mr. Gardner, you seem eager to speak.

14 MR. GARDNER: No, I'm here to answer whatever  
15 questions you may have. I'm sorry I was a little late  
16 this morning, traffic was terrible, but I don't know if  
17 anything was addressed before we started with Mr. Smith,  
18 but I'm happy to answer any questions you have.  
19 Obviously, I haven't had an opportunity yet to fully  
20 digest Plaintiffs' filing.

21 THE COURT: Why don't we do this. We're kind of  
22 close to the morning break anyway. Let's give ourselves  
23 a chance to review the Plaintiffs' response to the  
24 Defendant's proffer, and then we can reconvene at 11:15.

25 MR. GARDNER: That sounds great. Thank you.

1           **(Court in recess.)**

2           THE COURT: Thank you. Please be seated.

3           All right. I have considered the issue before us  
4 regarding the privilege -- attorney-client privilege  
5 issues raised here, and I want to begin by reiterating  
6 what I said last week, that in considering this entire  
7 matter, I give paramount importance to the privilege  
8 concerns of AIG, and in looking at the proffer offered  
9 by the Defendant, I also think that there's not very  
10 much here that's new information. I think that we got a  
11 pretty good record already, sufficient for the Court to  
12 make findings of fact in the long run. So -- and I look  
13 at the activities of the lawyers in this case, as I said  
14 last week, as involving performance of their  
15 professional duties, providing advice, counseling as  
16 needed, getting AIG through a rough stretch here and  
17 trying to make sound decisions.

18           So, my feeling about all of this is that I'm not  
19 going to hear testimony in open court from any of these  
20 lawyers. So, that includes Mr. Cohen, Mr. Reeder, and  
21 Mr. Allerhand.

22           As to the possible marking of depositions and  
23 submittal of that type of information, I think that  
24 creates the same problem as admitting direct testimony  
25 that may be nonprivileged. You can walk a fine line and

1 perhaps skirt privilege issues, but it leaves Plaintiff  
2 in a no-win situation, a difficult spot, in trying to  
3 cross examine. I think the questions would present  
4 legitimate areas of cross examination, and yet the  
5 Plaintiff would be unable to go into those areas without  
6 imperilling AIG's attorney-client privilege.

7 I also think, in looking at the Plaintiffs'  
8 response that I just reviewed up in chambers, that there  
9 are some reasonable stipulations that could be pursued  
10 here. I think the Plaintiffs' observations about the  
11 stipulations are definitely workable and might get the  
12 Government at least part-way where it wants to be. So,  
13 I don't see that there's any prejudice here to the  
14 Government from this ruling.

15 So, I'm happy to address any nuances you might  
16 want to raise that I haven't addressed, but other than  
17 that, that's my ruling on this privilege question.

18 MR. GARDNER: Thank you, Your Honor. The  
19 Government understands. I think the Government's, you  
20 know, primary goal was to get a ruling from the Court so  
21 that we would have one, and we will, you know, obviously  
22 act accordingly. So, thank you, Your Honor.

23 THE COURT: Yes, you're welcome.

24 MR. CARANGELO: And thank you, Your Honor, for  
25 placing such important on AIG's privilege. I know that

1     AIG appreciates that.

2             THE COURT: Well, yes. As I said, that's the  
3 most important thing I was looking at, and I think this  
4 way the interests of a nonparty will nevertheless be  
5 fully protected.

6             MR. CARANGELO: Thank you, Your Honor.

7             THE COURT: Yes.

8             So, with that, I think we're ready for the next  
9 witness.

10            MR. AUSTIN: Your Honor, we would call  
11 Dr. Mordecai back to the stand.

12            THE COURT: All right.

13            Oh, just before he comes in, we did have the  
14 issue also about whether the filing from yesterday  
15 should be sealed or not. As far as I'm concerned, we  
16 can leave it in a sealed condition unless somebody wants  
17 to move to unseal it. I don't view that as a huge  
18 issue.

19            MR. DINTZER: Thank you, Your Honor.

20            THE COURT: Yes.

21            Welcome back, Dr. Mordecai.

22            THE WITNESS: Thank you.

23            THE COURT: Do you understand that you are still  
24 under oath in these proceedings?

25            THE WITNESS: I do.

1 THE COURT: You may be seated.

2 THE WITNESS: Thank you.

3 Whereupon --

4 **DAVID K.A. MORDECAI**

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

8 **CROSS EXAMINATION**

9 BY MR. BOIES:

10 Q. Good morning, Dr. Mordecai.

11 A. Good morning.

12 Q. At the break yesterday, we were talking about  
13 your demonstrative exhibit 2619, and if I could get you  
14 to turn to that again. And this talks about the  
15 Government's return across all of its investments in  
16 AIG, correct?

17 A. Correct.

18 Q. And during your direct testimony, you talked  
19 about something called the initial rescue package. Do  
20 you recall that?

21 A. I do.

22 Q. And I'd like you to tell me what the elements  
23 were of the initial rescue package that you identified.

24 A. The initial rescue package, as I said in my  
25 report and in my demonstrative, consists of the \$85

1 billion revolving credit facility and any associated  
2 advances under that, as well as the included 79.9  
3 percent equity return participation, and when I  
4 mentioned the revolving credit facility under equity  
5 return participation, I'm also including by reference,  
6 if you will, any of the terms, conditions associated  
7 with the \$85 billion revolving credit facility. So, the  
8 associated fees, interest, you know, any covenants  
9 associated with that.

10 Q. Okay. Now, what was the Government's return on  
11 what you've referred to as the initial rescue package?

12 A. Conceptually --

13 Q. No, not conceptually. Numerically. You say the  
14 Government earned a return of 5.7 percent across all of  
15 its investments in AIG. What I'm asking you is what  
16 return, what percentage return did the Government earn  
17 on what you have referred to as the initial rescue  
18 package?

19 A. That's difficult to calculate because --

20 Q. Have you calculated it?

21 A. I did not, because it's difficult to calculate.

22 Would you like me to explain?

23 Q. Well, I'd like mostly for you to answer my  
24 questions.

25 MR. AUSTIN: Your Honor, I admit. Argumentative.

1 He's answered the question.

2 MR. BOIES: He asked me a question. He asked me  
3 whether he --

4 MR. AUSTIN: But he did answer your question.  
5 You're arguing with him.

6 MR. BOIES: He asked me whether I would like him  
7 to explain, and I responded that I would like him to  
8 just answer my questions.

9 MR. AUSTIN: Which he did.

10 THE COURT: All right. Let's go with the next  
11 question.

12 BY MR. BOIES:

13 Q. Did you make any attempt at all to calculate or  
14 estimate the Government's return on what you have  
15 referred to as the initial rescue package?

16 A. I did review the sources and uses of cash flows  
17 from the subsequent extensions of credit that were used  
18 to either replace or write down the \$85 billion  
19 revolving credit facility commitment. I would -- I  
20 would challenge your considering that to be return,  
21 because it was actually further extension of credit that  
22 was used to replace the revolving credit facility, which  
23 is why I said that it's difficult to calculate.

24 MR. BOIES: Your Honor --

25 THE COURT: You're going to have to try harder to

1 just answer the question he asks you.

2 THE WITNESS: Okay. So, the answer is I tried  
3 and I was unable to separate the revolving credit  
4 facility and the initial rescue package from the rest of  
5 the -- the rest of it.

6 BY MR. BOIES:

7 Q. Okay. Now, when was the initial rescue package  
8 agreed to?

9 A. The initial term sheet was accepted by AIG on  
10 September 16th, as per their announcement.

11 Q. And is that when you think the initial rescue  
12 package was agreed to?

13 A. The terms were agreed in principle on September  
14 16th, yes.

15 Q. And you said the words "agreed in principle." Do  
16 you distinguish between agreed in principle and agreed?

17 A. No, I do not. As a transactor, as a deal person,  
18 as a trader, when you agree to a transaction, you've  
19 agreed. There is a concept called DK, did not know, and  
20 that is considered one of the worst violations that a  
21 trader can do when you have agreed in principle. You  
22 can still work out details, but you have an agreement on  
23 business terms.

24 Q. Now, you are not a lawyer, of course.

25 A. I'm not pretending to be a lawyer here. I'm



1 speaking as a deal person and as an economist.

2 Q. And as a deal person and as an economist, you  
3 know that certain agreements are binding and certain  
4 agreements are not binding, correct?

5 A. Are you asking me that legally or --

6 Q. No.

7 A. -- are you asking me that as a deal guy?

8 Q. I'm asking you as an economist and as a deal guy,  
9 as you describe it, or maybe us even as an ordinary  
10 citizen. You understand that there are certain  
11 agreements that are contractually binding and certain  
12 agreements that are not, correct?

13 A. I would accept that legal distinction as  
14 something that I would actually, as a deal guy, confer  
15 with counsel on in the middle of a deal, but there is a  
16 distinction like that I'm aware of.

17 Q. Right. And I'm not asking you whether something  
18 was or was not binding.

19 A. I understand.

20 Q. I'm not asking you to make that conclusion.

21 A. I understand.

22 Q. I'm simply saying, you understand that some  
23 agreements are legally binding and some agreements are  
24 not.

25 A. I understand that those issues exist, yes.

1 Q. Not only do those issues exist, but you  
2 understand that there are some agreements that are  
3 binding and some agreements that are not binding. Yes  
4 or no.

5 A. I don't think that -- I don't think I would  
6 disagree with that statement. How's that?

7 Q. Is that a yes?

8 A. I guess that's a yes. Conditionally, yes.  
9 Conditionally, yes.

10 Q. Is your analysis at all dependent on an  
11 assumption as to when what you describe as the initial  
12 rescue package was legally binding? That's yes, no, or  
13 I don't know.

14 A. My analysis is not dependent on a legal  
15 definition of whether or not an agreement is binding.  
16 It's dependent on the economics associated with it, if I  
17 understand your question.

18 Q. I'm going to -- I'm going to try to get through  
19 this as fast as I can.

20 A. I appreciate that.

21 Q. And I would ask you to just answer my questions  
22 yes, no, I don't know, or I don't understand your  
23 question, okay, sir?

24 A. Yes.

25 MR. AUSTIN: Your Honor, I object to that

1 instruction. That answer was directly responsive to the  
2 question that was asked of the witness.

3 THE COURT: Well, I am going to overrule the  
4 objection. I think the guidance is well taken for the  
5 most part.

6 BY MR. BOIES:

7 Q. When you say that you didn't -- and I want to use  
8 your words -- you didn't have your analysis dependent on  
9 a legal definition of whether an agreement is binding --  
10 do you remember saying that?

11 A. Yes, I do.

12 Q. Did you make any assumption one way or the other  
13 as to whether what you referred to as the initial rescue  
14 package was legally binding on September 16th?

15 A. I based it on an observation of actual evidence,  
16 not on an assumption. Would you like me to describe the  
17 things I observed?

18 Q. No.

19 A. Okay.

20 Q. I'd like you simply to focus on what I'm asking.  
21 Did you conclude that the initial rescue package was  
22 legally binding on September 16th?

23 A. I did not draw any legal opinion with regard to  
24 my review of the evidence. My opinion -- my economic  
25 and financial opinion was based upon my review of what

1 was available to me at the time. So, I did not draw --  
2 you asked me a question, did I draw a legal opinion. My  
3 answer is --

4 Q. No, I didn't.

5 A. -- or a legal assumption, and I did not --

6 Q. No, I didn't. I didn't say "assumption." Let me  
7 ask my question again.

8 Did you conclude for purposes of your analysis  
9 that the initial rescue package was legally binding on  
10 September 16th? That's yes or no or I don't know.

11 A. I'm going to repeat the question back to make  
12 sure, because I don't have a -- it's not visual. I tend  
13 to be a visual person. So, I think what you said was --  
14 your question was did I conclude for the purposes of my  
15 analysis that the revolving credit facility and the  
16 associated terms of the revolving credit facility,  
17 including the equity return participation, were legally  
18 binding on September 16th when the term sheet was  
19 accepted and signed by the senior management of AIG,  
20 and, you know, once cash flows actually started flowing  
21 from -- from the Government to AIG under the term sheet,  
22 I did not try to reach any conclusion with regard to  
23 legal binding. I was basing my entire perspective on  
24 deal terms and on actions between the parties that are  
25 consistent with my own experience. So, the concept of

1 legal binding, not legally binding did not enter into  
2 that part of my analysis at all. I had enough evidence  
3 that spoke for itself that I didn't need to. Cash flows  
4 started changing hands. Securities started changing  
5 hands. I'm trying to -- I'm trying to provide you, sir,  
6 with the best answer I can.

7 THE COURT: I know you're doing your best,  
8 Dr. Mordecai, but you're not answering the question.

9 THE WITNESS: Okay. So --

10 THE COURT: Let's try it again.

11 BY MR. BOIES:

12 Q. Did you conclude for purposes of your analysis  
13 one way or the other whether the initial rescue package  
14 was legally binding on September 16th?

15 A. I didn't draw any conclusions of the kind. I --  
16 so, the answer is I can't answer the question the way  
17 you're asking it, I guess. I don't know if that ends up  
18 being I don't know. I don't know, sir. I'm trying to  
19 do the best I can. I've never been asked a question  
20 like that before, in that way.

21 Q. When did the Federal Reserve first provide any  
22 funds to AIG pursuant to the initial rescue package?  
23 What day?

24 A. I seem to recall that cash started transferring  
25 as bridge under demand notes with terms quite similar to

1 the ultimate revolver. Those advances were then rolled  
2 into the ultimate revolver. I'm thinking around the  
3 17th or 18th of September.

4 Q. Do you consider the funds advanced pursuant to  
5 what you referred to as demand notes --

6 A. Um-hum.

7 Q. -- as part of what you refer to as the initial  
8 rescue package?

9 A. I do. And, in fact, I said that in my first  
10 answer. You didn't list it, but I said it, "associated  
11 advances." I do, in my professional opinion.

12 Q. Did you reach a conclusion one way or another or  
13 form an opinion one way or another as to whether AIG had  
14 any obligation to provide equity participation prior to  
15 September 22, 2008? That's a yes or no or I don't know  
16 or I don't understand the question.

17 A. I do have an opinion.

18 Q. Did AIG, in your opinion, have an obligation to  
19 provide equity participation prior to September 22,  
20 2008?

21 MR. AUSTIN: Objection, Your Honor. Calls for a  
22 legal conclusion.

23 THE COURT: Overruled. I'll take his answer to  
24 this.

25 THE WITNESS: Apart from --

1 BY MR. BOIES:

2 Q. This is yes, no, I don't know, or I don't  
3 understand the question.

4 A. Okay. By not -- I'm going to answer  
5 conditionally, yes, and the condition is that this is  
6 not a legal opinion; this is a business, an economic  
7 opinion, and this is based on custom and practice in  
8 industry, both trading as well as lending as well as  
9 other deals I've been involved with. To the extent that  
10 AIG signed on the acceptance of the term sheet which  
11 listed 79.9 percent equity to the form to be determined,  
12 to the extent that they went to the further actions of  
13 pledging securities -- you -- the answer is -- so, the  
14 answer, again, is conditionally, yes. I can explain if  
15 you would like me to.

16 Q. Just to be clear --

17 A. Um-hum.

18 Q. -- when I ask you a question that's a yes or no,  
19 I'm not asking you to try to justify your answer.

20 A. Okay.

21 Q. I'm simply asking, trying to get your views down.

22 A. Okay, which I'm trying to share. So, I will just  
23 say yes. Conditionally, yes, but not as a legal  
24 opinion. That's my primary condition. This is as a  
25 business opinion.

1 Q. Are you aware of any evidence in the record as to  
2 whether or not the Federal Reserve Bank believed AIG was  
3 under any legal obligation to provide equity prior to  
4 September 22?

5 A. Provide equity of any kind, sir?

6 Q. Yes, provide equity of any kind to the Federal  
7 Reserve Bank.

8 A. In exchange for funds event? Yes?

9 Q. Yes.

10 A. Okay. I am aware of this, yes. I am aware of  
11 such evidence, and not a legal -- now, again, I am not  
12 providing a legal opinion. I'm providing what I  
13 actually reviewed and examined.

14 Q. My question to you --

15 A. Um-hum.

16 Q. -- are you aware of any evidence in the record as  
17 to whether the Federal Reserve Bank believed AIG was  
18 under any legal obligation to provide equity prior to  
19 September 22?

20 A. Then my answer to that question is I don't know,  
21 to my immediate recollection.

22 Q. Did you review Mr. Baxter's testimony in this  
23 trial?

24 A. I did. It's been a while. I don't know that I'm  
25 going to recall everything.



1 Q. Do you recall whether Mr. Baxter testified that  
2 the first time that AIG was obligated to provide equity  
3 to the Government, broadly defined, was when the  
4 September 22 credit facility was signed?

5 A. I do not recall that. I'm sorry.

6 Q. You know Mr. Baxter was the general counsel of  
7 the Federal Reserve Bank of New York?

8 A. Yes.

9 Q. And you know Mr. Alvarez was the general counsel  
10 of the Federal Reserve Board of Governors?

11 A. I seem to recall that.

12 Q. Did you review Mr. Alvarez's testimony in  
13 preparation for your opinions?

14 A. I may have, yes. I believe I did.

15 Q. And do you recall whether or not Mr. Alvarez  
16 testified that the first time that AIG was under a  
17 contractual obligation to abide by the terms of the term  
18 sheet was when the actual contract was signed September  
19 22?

20 A. Okay. I -- I do not recall that specific  
21 testimony.

22 Q. You don't have any reason to disagree with  
23 Mr. Baxter and Mr. Alvarez with respect to when AIG was  
24 first under a legal obligation to provide equity to the  
25 Government, do you?

1           A. I have no reason to try to disagree with two  
2 attorneys with regard to a legal opinion since I am not  
3 an attorney.

4           Q. Now, let me go back to Defendant's Exhibit 2619,  
5 and you said that you had not estimated or calculated a  
6 return to the Government from the initial rescue  
7 package, correct?

8           A. I did not do an *ex post* analysis of the return to  
9 the Government specific to the initial rescue package as  
10 described, as we just described.

11          Q. Did you determine that AIG paid the Government  
12 more under the terms of the initial rescue package than  
13 it received from the Government?

14          A. Before I answer the second question, sir, what  
15 you're writing down mischaracterizes what I just said.

16          Q. Excuse me?

17          A. What I said I didn't know *ex post* calculation. I  
18 didn't say there was no estimate in my analysis. I said  
19 there is no *ex post* calculation of the return to the  
20 Government.

21          Q. Is there an estimate of any kind of the return to  
22 the Government from the initial rescue package?

23          A. My market analysis --

24          Q. Yes, no --

25          A. Yes.

1 Q. There is?

2 A. Yes.

3 Q. What is that return in numbers?

4 A. I believe, as I said in my previous testimony --

5 Q. Is there a return in numbers?

6 A. What do you mean, "in numbers"? A percentage?

7 Q. Well, by numbers, I mean on Exhibit 2619, do you  
8 see where you say, "The Government earned a return of  
9 5.7 percent across all of its investments in AIG?"

10 A. That's an *ex post* analysis, not an *ex ante*  
11 analysis, sir. That's an *ex post* calculation, right?  
12 I'm trying to make a distinction here based on my  
13 professional experience between what you wrote down as  
14 no estimate, right? Well, a market estimate is still an  
15 estimate and a market estimate is still numbers and a  
16 market estimate of a subpar security is still an  
17 estimate, sir, at least in my experience.

18 Q. Did you, Dr. Mordecai, make any estimate of the  
19 return to the Government from the initial rescue  
20 package?

21 A. If you're asking me whether I tried to do a  
22 calculation *ex post*, I did not.

23 Q. Did you try to do any calculation at all, you,  
24 Dr. Mordecai?

25 A. I -- are you excluding my -- my analysis of the

1 markets estimate of what the value of the security is?

2 Q. I'm not talking about the value of the security.

3 You made --

4 A. Because the value of the security indicates --

5 Q. -- a statement --

6 A. -- that the market thought it was a negative,  
7 sir. That's why I'm asking you to make a distinction so  
8 I can answer your question.

9 Q. Well, you know that the initial rescue package  
10 was all repaid, correct?

11 A. Ultimately, the overall package was repaid.

12 Q. Okay.

13 A. The initial rescue package ended up being repaid  
14 out of other advances the Government provided.

15 Q. Yes, from the TARP, right?

16 A. After the TARP, as of the recapitalization  
17 announcement, there was still \$40 billion owed under the  
18 revolving credit facility, sir. There was still an  
19 outstanding balance of \$40 billion.

20 Q. Let me stop you right there. When was there a  
21 \$40 billion balance on the RCF?

22 A. From my recollection, at the announcement of the  
23 recapitalization, there was still \$40 billion owed under  
24 the RCF, to my recollection, sir.

25 Q. Okay. And the recapitalization, are you using

1 that for June 30, 2010?

2 A. It might even have been as late as September.

3 Q. When was the recapitalization announcement?

4 A. It was -- well, there was the -- a -- it --

5 Q. You said "recapitalization announcement." When  
6 was the recapitalization announcement?

7 A. There were two announcements. There was the  
8 initial recapitalization plan announcement, sir, and  
9 then there was the master plan agreement announcement,  
10 which was the second date that I mentioned, which I  
11 think was September.

12 Q. When you said "There was \$40 billion owed at the  
13 time of the recapitalization announcement," what were  
14 you referring to?

15 A. I may have meant the master agreement  
16 announcement, sir, if I -- I may have meant the --  
17 actually meant the master agreement announcement.

18 Q. Is that what you meant?

19 A. I believe so, sir.

20 Q. Okay. And the master agreement announcement was  
21 when?

22 A. I think it was in September of 2010. It might  
23 have been the 30th. I do not recall the exact date, but  
24 I think it was September of 2010.

25 Q. Okay. And when was the RCF repaid, according to

1 what you have concluded?

2 A. In cash, actual cash? Actual cash received to  
3 the Government?

4 Q. The RCF was paid in actual cash, correct?

5 A. The ultimate repayment of the RCF, sir?

6 Q. Yes.

7 A. Okay. The ultimate repayment of the RCF happened  
8 in cash -- in cash --

9 Q. It was paid -- that's what I'm asking. If the  
10 answer to my question is yes, if you could just say  
11 "yes," it would move things along.

12 A. Right, see, but you asked me when, sir.

13 Q. Yeah, but first I asked you -- I asked you when,  
14 and you said in cash, and I said it was repaid in cash.

15 A. I'm asking you whether you're talking about  
16 securities for cash transaction or are you talking about  
17 an actual ultimate recoupment of actual cash, where the  
18 position is now closed? That distinction, from my  
19 experience, matters, sir, as a deal person. That's why  
20 I need to know that in order to answer your question as  
21 best I can, sir.

22 Q. How was the RCF repaid? Was it repaid in cash?  
23 Yes, no, I don't know, or I don't understand the  
24 question.

25 A. My recollection is there was an exchange offer of

1 stock and that over time the Government sold that stock  
2 in the open market in order to -- in order to get its  
3 cash. That's my recollection.

4 I mean, mechanically, if you want to look at  
5 the -- if you want to look at the exchanges -- at the  
6 exchange offers and whether there was cash round trip as  
7 a result of the exchange offers, that's a different  
8 question, so...

9 Q. The revolving credit facility was something that  
10 was repaid in cash, correct, sir?

11 A. Ultimately, the Government got cash for --

12 Q. Not the Government got cash. What I'm saying is,  
13 AIG paid the Government cash to repay the RCF, correct?

14 A. Yes, and --

15 Q. Okay.

16 A. -- as a -- as --

17 Q. If the answer is yes, can we just stay with that?

18 A. Okay. So, you don't want me to talk about the  
19 sources of those cash, just the use of the cash. So, if  
20 you want to just talk about the use of the cash, then  
21 the answer is simply yes, sir.

22 Q. Well, I want to be clear, the cash the RCF  
23 repayment came from was AIG, right, not the exchange of  
24 stock, not selling stock in the market. AIG paid the  
25 Government cash to repay the RCF, right?

1 A. With funds received from the Government, sir?

2 Q. What?

3 A. With funds received from transactions it engaged  
4 in with the Government, sir.

5 Q. When did those transactions take place?

6 A. The exchange offers followed the -- well, which  
7 specific ones, sir?

8 Q. I asked you, sir, whether the RCF was repaid by  
9 AIG in cash. Do you recall that?

10 A. Yes.

11 Q. And you said it was.

12 A. I said, ultimately -- ultimately, the Government  
13 did receive cash -- did actually ultimately end up  
14 recouping its cash, yes, that's what it was.

15 Q. But do you understand I'm not asking you about  
16 what the Government recouped, because they could recoup  
17 it from a variety of ways.

18 A. I agree, sir. That is one thing I will  
19 definitely agree with you on.

20 Q. Okay. Now, so --

21 A. And, in fact, they did.

22 Q. -- so let me focus on just one way, okay?

23 A. Okay.

24 Q. And that is AIG paying cash to the Federal  
25 Reserve Bank of New York.



1 A. Okay.

2 Q. And am I correct, sir, that the RCF was repaid in  
3 full by one method, which is AIG paying cash to the  
4 Federal Reserve Bank of New York? Yes, no, or I don't  
5 know.

6 A. I'm going to answer that with an I don't know,  
7 sir, because of the way the question is asked.

8 Q. Okay. Let me try to approach it this way. Let  
9 me look at -- ask you to look at Defendant's Exhibit  
10 2619.

11 A. Yes, sir.

12 Q. And you say the source is your Exhibit 13,  
13 correct?

14 A. Yes, sir.

15 Q. Would you turn to Exhibit 13. Do you have that?

16 A. I do.

17 Q. And let me ask you first, how much money did the  
18 Government get as a result of the Series C preferred  
19 stock?

20 A. How much money did the Government get as a result  
21 of the Series C preferred? Is that what you asked me,  
22 sir?

23 Q. Yes.

24 A. Well, to the best of my recollection --  
25 cumulative cash, sir? Yes?

1 Q. Total cash.

2 A. Total cash, excluding the Series C preferred  
3 proceeds, would be --

4 Q. Sir --

5 A. -- about 19 -- I think about 19 billion, based on  
6 my calculations on Exhibit 13.

7 Q. So, the amount -- the total amount that the  
8 Government received from the sale of AIG common stock  
9 that had been received for Series C preferred was about  
10 19 billion?

11 A. Based on my exhibit here that I'm using to  
12 refresh my memory, if you subtract the total cash flows  
13 in column B from the cash flows excluding proceeds  
14 related to Series C preferred, that difference is about  
15 19 billion.

16 Q. And that 19 billion --

17 A. 18, 19, somewhere in that neighborhood.

18 Q. Well, let's try to be a little more precise. Is  
19 it 18 billion or 19 billion?

20 A. It's closer to 18. Does this calculator work?

21 Q. Is it 18.3 billion?

22 A. There you go, yep.

23 Q. So, the total amount that the Government received  
24 from the sale of AIG common stock, received for Series C  
25 preferred stock, was 18.3 billion.

1 A. Yep.

2 Q. Now, in addition to \$18.3 billion, the Government  
3 received interest for the loans advanced pursuant to the  
4 revolving credit facility, correct?

5 A. There were coupon payments associated with the  
6 RCF. The timing and extent, since they were PIK,  
7 payment in kind, the timing and extent of when they  
8 actually received those payments in cash, I cannot speak  
9 to at this time.

10 Q. Well, you know that they received it at some  
11 point, correct, even though you can't tell me when they  
12 received it, you know they did receive it.

13 A. I'm not sure in what -- I don't know whether --  
14 the extent to which it was forgiven or forborne or  
15 replaced by some other form of payment. I don't know  
16 that answer as I sit here, sir.

17 Q. As you sit there --

18 A. That's correct.

19 Q. -- do you know that AIG paid at least some  
20 interest to the Government on the RCF?

21 A. I have no reason to assume they got nothing in  
22 the form of interest. I don't know the exact number  
23 right now at this time.

24 Q. Do you know approximately how much interest --

25 A. I do not --

1 Q. -- AIG paid on the RCF?

2 A. Not as I sit here. I don't recall immediately.

3 Q. Did you investigate that?

4 A. I -- yes, I did investigate it. I just don't  
5 remember the number right now.

6 Q. In your investigation, did you determine that  
7 even though you can't remember the exact number, that  
8 AIG paid billions of dollars of interest on the RCF?

9 A. I just really don't want to try to speak off the  
10 top of my head.

11 Q. Going back to your Exhibit 13 --

12 A. Yes.

13 Q. -- you say the Government provided cumulative  
14 cash of \$67,835,000,000 for preferred and common stock.  
15 Do you see that?

16 A. Yes.

17 Q. How much of that was provided for common stock?

18 A. Could you point me to the reference again? I  
19 just kind of lost my place.

20 Q. Sure. You can see it on the screen --

21 A. Oh, okay, the last line there, "Preferred and  
22 Common"?

23 Q. We can highlight it maybe, yeah.

24 A. Can you repeat your question, sir?

25 Q. Sure. You say there are \$67,835,000,000

1 cumulative cash provided by the Government --

2 A. Correct.

3 Q. -- in exchange for preferred and common stock.

4 Do you see that?

5 A. Yes.

6 Q. How much was provided for common stock?

7 A. I wouldn't be able to answer that question now in  
8 terms of making that -- separating those two things, any  
9 more than I'd be able to separate the cash flows  
10 received between the revolving credit facility and the  
11 securities lending facility. I'm not prepared at this  
12 time to make those distinctions in either case, sir.

13 Q. Did the Government provide any cash at all for  
14 common stock of AIG?

15 A. Did the Government provide any cash for common  
16 stock of AIG? Is that what you asked me, sir?

17 Q. Yes.

18 A. Well, they provided -- they ultimately ended up  
19 with common stock, and they provided a hundred and --  
20 well, they actually provided a total of \$240 billion in  
21 resources over the time -- \$182 billion total, you know,  
22 commitment. So, they ultimately ended up with common  
23 stock for that, sir.

24 Q. Well, when you say on this line that the  
25 Government provided \$67,835,000,000 for preferred and

1 common stock, you're not talking about the fact that  
2 they got preferred stock and common stock, for example,  
3 through the revolving credit agreement, are you, because  
4 that's got a separate line. Do you see what I'm saying?

5 A. I -- yes. I thought the question was a more  
6 global question.

7 Q. Let me try to explain what I'm asking.

8 A. Okay.

9 Q. You've got these numbers on this exhibit.

10 A. Yes.

11 Q. And I'm trying to find out where they came from  
12 and what they mean.

13 A. Okay.

14 Q. You say the Government provided \$67 billion for  
15 preferred and common stock. Do you see that?

16 A. I do.

17 Q. And the only way the Government got common stock  
18 was by exchanging preferred stock for it, right?

19 A. Correct.

20 Q. They didn't provide any cash directly for common  
21 stock, correct?

22 A. That's correct. They provided cash for  
23 preferred, and then there were exchange offers for  
24 common.

25 Q. Okay. And the preferred stock was of two kinds.

1 There was the Series C preferred stock, correct?

2 A. Correct. Correct.

3 Q. And there was the Series E and F preferred stock,  
4 correct?

5 A. Which were -- yes, converted or exchanged for  
6 Series D. So, D became E and F or D became E and then F  
7 was added.

8 Q. And the Series D, E, and F preferred stock --

9 A. Um-hum.

10 Q. -- that was all TARP stock, correct?

11 A. That's a fair statement, I think. That was  
12 TARP-related.

13 Q. And the Series D, E, and F stock, how much  
14 cumulative cash did the Government provide for that?

15 A. Well, if one were to -- if one were to go with  
16 the --

17 Q. I'm not asking you what one -- I'm asking --

18 A. I'm not -- I'm trying to use this to refresh my  
19 memory. I don't have an exact recollection right now of  
20 that specific element; however, it says here that cash  
21 provided was 67.8 billion is associated with -- with  
22 preferred, which as you point out, was exchanged for  
23 common. So, I mean, that's a reasonable way to  
24 interpret my own exhibit.

25 Q. Other than just sitting here reading your

1 exhibit, do you have any recollection at all about what  
2 you meant by this line?

3 A. This line was -- this -- well, the table was  
4 meant to give some sense of cash inflows and outflows,  
5 and some sense, without capturing the detail of sources  
6 and uses, of approximate allocations of the cash  
7 flows -- the bulk cash flows or gross cash flows that  
8 were ultimately received, and those that were extended  
9 as well. It's really a top-down type of thing. It was  
10 not a -- meant to be a detailed description at the time.

11 Q. What do you mean by "top-down"?

12 A. What I mean is it's capturing the broad  
13 categories of funds extended, funds received. I would  
14 have to go back and look at more detailed notes or  
15 spreadsheets to -- to remember anything more specific.

16 Q. But this was the exhibit that you used to prepare  
17 your Demonstrative Exhibit 2619, correct?

18 A. That's correct, sir, and I've got footnotes on  
19 the next page that describe some of the elements of what  
20 the sources of that information are. The next page of  
21 my report.

22 Q. You mean the next page following Exhibit 13?

23 A. Yes, sir.

24 Q. Using whatever you want to use, can you tell me  
25 how much of this \$67,835,000,000 cumulative cash



1 provided that you say was provided by the Government was  
2 provided for TARP stock?

3 A. I don't --

4 Q. Had you finished your answer?

5 A. Ah, I can't really recall the exact breakdown  
6 right now, sir.

7 Q. What about the approximate breakdown?

8 A. I'd have to go back and research it. I don't --  
9 I can't recall it off the top of my head.

10 Q. Would you agree that the cumulative cash provided  
11 by the Government to AIG for TARP preferred stock was  
12 less than \$50 billion?

13 A. Would I agree that the -- could you repeat the  
14 question, sir?

15 Q. Would you agree that the cumulative cash provided  
16 by the Government to AIG for TARP preferred stock was  
17 less than \$50 billion?

18 A. I don't know that I'd necessarily agree with that  
19 statement.

20 Q. Do you disagree with that statement?

21 A. Are you simply talking about the amount of cash  
22 that was provided to the firm and that in my own  
23 analysis I don't make distinctions between the  
24 associations between TARP or not TARP and I view the  
25 rescue as a -- a complete -- one complete series of

1 transactions, I think the answer is I'm likely to  
2 disagree. Because the preferred stock became the common  
3 stock which became the ultimate source of repayment to  
4 the Government, I think I disagree.

5 Q. When you say the preferred stock became the  
6 common stock which became the ultimate source of  
7 repayment to the Government, are you talking about the  
8 revolving credit facility?

9 A. I'm talking about the entire rescue, sir.

10 Q. Do you recall several times, indeed, throughout  
11 your testimony on direct, talking about what you called  
12 the initial rescue package?

13 A. Yes, sir.

14 Q. And the initial rescue package wasn't what you  
15 now refer to as the --

16 A. Rescue package?

17 Q. -- the overall rescue package or the complete  
18 rescue package?

19 A. Yes. Just the rescue package, sir. The only  
20 distinction I made was initial versus just rescue.

21 Q. And the just rescue package includes but is not  
22 limited to the initial rescue package?

23 A. It includes -- it includes the initial rescue  
24 package, sir, because, in fact --

25 Q. It includes -- just listen to my question,

1 please, okay? I think this is really simple.

2 A. Okay.

3 Q. As you use the terms, the rescue package --

4 A. Yes, sir.

5 Q. -- included but is not limited to the initial  
6 rescue package.

7 A. Yes, sir.

8 Q. Now, I want to focus on the initial rescue  
9 package, which you have defined, you know, previously.

10 A. Yes, sir.

11 Q. With respect to that initial rescue package, the  
12 revolving credit facility rescue package, that rescue  
13 package was not repaid with stock, correct? Yes, no, or  
14 I don't know.

15 A. It was indirectly repaid with stock. It was not  
16 directly repaid with stock. The ultimate source of  
17 funds to the Government ended up ultimately being the  
18 sale of stock. Sir, if I have a transaction where I  
19 roll --

20 Q. This is not --

21 A. All right. I'll save it.

22 Q. -- the opportunity for a narrative, okay?

23 You just said that the ultimate source of funds  
24 to the Government to repay the revolving credit facility  
25 ended up ultimately being the sale of stock. Did you

1 mean that?

2 A. On a cash-in/cash-out basis, ultimately, it was  
3 the sale of the stock that resulted in cash -- in the  
4 total rescue package being fully satisfied.

5 Q. Sir, you understood that I was not asking about  
6 the total rescue package; I was asking about the  
7 revolving credit facility, right?

8 A. Okay.

9 Q. Was any part of the ultimate source of funds to  
10 the Government to repay the revolving credit facility  
11 the sale of stock?

12 A. Since I don't have a complete table in front of  
13 me of sources and uses for each of the mechanical  
14 transactions here, I'm going to have to say I don't  
15 know. As I sit here, I cannot recollect, other than to  
16 say --

17 Q. Let me try again.

18 A. Yeah.

19 Q. Let me ask you to look at a document that has  
20 been marked as Plaintiffs' Trial Exhibit 720. And I'm  
21 going to hand up a binder of documents, which I had  
22 hoped to avoid doing, but I think I'm going to have to.

23 You have, in this binder that I've handed up,  
24 documents and excerpts from documents. If there is an  
25 excerpt that you need to see the complete document at

1 any time for context, please let me know, and I will  
2 furnish it to you.

3 The initial document I'm asking you to look at is  
4 Plaintiffs' Trial Exhibit 720, which is in evidence.  
5 Have you seen this document before?

6 A. Yes.

7 Q. And did you rely on it in your investigation and  
8 analysis?

9 A. I'm just looking at it, refreshing my memory.  
10 (Document review.) I would have considered it and to  
11 some degree I may have relied upon it, but I did  
12 definitely consider it.

13 Q. You don't have any reason to doubt the accuracy  
14 of this Federal Reserve Bank of New York publication, do  
15 you?

16 A. I do not.

17 Q. Now, this says that the AIG revolving credit  
18 facility was repaid in full on January 14th, 2011. Do  
19 you see that?

20 A. I do, sir.

21 Q. And it says that the maximum amount loaned under  
22 that facility was \$72 billion. Do you see that?

23 A. Yes, sir.

24 Q. And it says that in addition to being repaid the  
25 principal, the Federal Reserve Bank of New York received

1 interest and fees of \$6.7 billion. Do you see that?

2 A. I do.

3 Q. As you understand it, was the principal  
4 repayments made to the Federal Reserve Bank of New York  
5 pursuant to the RCF payments that were made in cash by  
6 AIG?

7 A. Excluding sources of -- sources of the cash, the  
8 answer is yes, it was cash.

9 Q. Okay. So, what you're saying is AIG paid the  
10 Federal Reserve Bank cash, but there is then a question  
11 of where AIG got that cash. Is that what you're saying?

12 A. That's a fair -- I think that's a fair statement.

13 Q. Okay. And is it fair to say that AIG got the  
14 cash to repay what it had borrowed under the RCF from a  
15 variety of sources?

16 A. I think that's fair.

17 Q. Some of those sources were money that AIG  
18 received for TARP preferred stock, correct?

19 A. That's fair, yes.

20 Q. And some of the sources were money that AIG  
21 received from asset sales, correct?

22 A. Correct.

23 Q. Do you know what the total amount of asset sales  
24 were that AIG made during the time that the RCF was in  
25 force?

1 A. I don't recall off the top of my head.

2 Q. Approximately.

3 A. Again, I really don't recall.

4 Q. Was it more than \$75 billion?

5 A. I don't recall. I'm sorry.

6 Q. Do you recall that two of the assets that AIG  
7 sold were AIA and ALICO?

8 A. I do.

9 Q. And do you recall how much AIG received just from  
10 AIA and ALICO?

11 A. I'd need to check -- I'd need to check my reports  
12 or my notes for that. I don't recall off the top of my  
13 head.

14 Q. Was it approximately \$50 billion?

15 A. I really don't recall, sir.

16 Q. Now, with respect to the \$6.7 billion of interest  
17 that is shown on this Federal Reserve Bank of New York  
18 publication, that was all paid in cash by AIG, correct?

19 A. Could you ask the question again, please?

20 Q. With respect to the \$6.7 billion of interest that  
21 is shown on this Federal Reserve Bank of New York  
22 publication, that was all paid in cash by AIG, correct?

23 A. Yes, to the best of my knowledge.

24 Q. Now, let me go back to your Exhibit 13, which was  
25 what you used to prepare Defendant's Exhibit 2619. You

1 say that cumulative cash provided by the Government was  
2 \$240 billion. Do you see that?

3 A. One second, sir. I do.

4 Q. What do you mean by "cumulative cash provided"?

5 A. There were a sequence of draw-downs and advances  
6 and draw-downs and advances that took place over the  
7 course of the time in question, and so what this  
8 represents are funds extended and funds received, hence  
9 funds at risk, over the course of the total rescue  
10 period.

11 Q. Let me put the question this way, because I'm  
12 just trying to understand what you mean. If AIG  
13 borrowed \$50 million, paid it back, then borrowed \$25  
14 million, would the cumulative cash received, as you use  
15 that term, be \$75 billion?

16 A. Yes.

17 Q. Okay. So, the \$240 billion would be more than  
18 AIG ever borrowed or was ever outstanding at any point  
19 in time.

20 A. It's more than the outstanding.

21 Q. What was the maximum amount of government  
22 investment in AIG, as you describe it on Exhibit 13, at  
23 any one point in time?

24 A. To the best of my recollection, something in the  
25 neighborhood of -- there's a total outstanding



1 commitment overall of about -- you know, both funded and  
2 unfunded of 182, of which I think approximately 100 may  
3 be -- somewhere in the neighborhood of 100 was  
4 outstanding.

5 Q. That is the maximum amount of government money in  
6 AIG at any given point in time was approximately \$100  
7 billion. Is that correct?

8 A. A hundred, 120, someplace in there, just, again,  
9 sort of ballpark based on general memory.

10 Q. Is that something you have in your report  
11 somewhere?

12 A. It may be. I'd have to take -- I'd have to look.  
13 Do you want me to take the time to try to find it?

14 Q. If you can find it in a reasonable period of  
15 time, I'd like you to do that, but if you conclude that  
16 you're not going to be able to do so in a reasonable  
17 point in time, just let me know, and we'll move off.

18 A. (Document review.) My concern is it's going to  
19 be one of the footnotes, which could take some time.  
20 (Further document review.) My concern is it's going to  
21 be either in one of the footnotes or one of the  
22 footnotes to the exhibits, so it may take me some time.

23 Q. Okay. Okay, let me move on and go back to  
24 Exhibit 13, the line that says "Preferred and Common  
25 Stock." Am I correct that some amount of the \$67.8

1 billion that is shown here is an amount that is  
2 attributable to the Series C preferred stock?

3           Again, if you could just identify for the record  
4 what you're looking at.

5           A. I'm trying to find the spot in the text of my  
6 main report that describes Exhibit 13 in more detail, to  
7 refresh my memory as to how I allocated the Series C.  
8 (Document review.)

9           Q. Do you understand that I'm not asking you for the  
10 exact amount that's attributable to the Series C  
11 preferred stock; I'm simply asking whether some amount,  
12 some part of the \$67.8 billion that you show here on  
13 Exhibit 13 is attributable to the Series C preferred  
14 stock?

15           A. And what I don't recall is whether it's there or  
16 whether it's up in the -- whether it's up in the RCF and  
17 securities lending facility cash flows. I just don't  
18 recall, so -- yeah, I can't recall at this time. I'm  
19 sorry.

20           Q. Whether it's in the preferred and common stock  
21 line or the revolving credit facility line, did you  
22 attribute some amount of money to the Series C preferred  
23 stock in terms of what you considered to be the  
24 government investment in AIG?

25           A. Well, I considered the Series C equity return

1 participation part of the \$85 billion revolving credit  
2 facility extension. So, that's why I'm kind of having  
3 some difficulty parsing your question.

4 Q. And I'm really testing that statement right now  
5 by the questions I'm asking you.

6 A. Um-hum.

7 Q. Your understanding was, as expressed during your  
8 direct testimony, that the Government got the Series C  
9 preferred stock without any additional payment other  
10 than the providing of the RCF, correct? That's your  
11 position, correct?

12 A. Well, there was some mention of -- I don't have a  
13 direct knowledge of how it was actually booked by the  
14 accounting -- the accountants, per se, but my view, as I  
15 was doing my analysis, based on my review of the  
16 agreements and the term sheets, is that it is -- it is  
17 part and parcel of the overall credit extension.

18 Q. And now what I'm asking you is whether, in  
19 preparing Exhibit 13, there is a specific value attached  
20 to the Series C preferred stock that's embedded either  
21 in the revolving credit line or in the preferred stock  
22 line.

23 A. And I would not be able to tell you that off the  
24 top of my head, as I'm sitting here now, without further  
25 investigation as to, you know, how I prepared -- how

1 this exhibit was prepared. I don't know.

2 Q. Who prepared this exhibit?

3 A. Some support folks under my direction. I mean,  
4 this -- I signed this report back in April. So, I would  
5 have to go back and look at what I actually instructed  
6 them to do.

7 Q. When you say "some support folks," who are they?

8 A. I think they're -- I think -- I had a support  
9 team of analysts who worked with me on the preparation  
10 of the report.

11 Q. Who do they work for?

12 A. What do you mean, who do they work for? They --

13 Q. What company do they work for?

14 A. They are Compass lexicon analysts.

15 Q. Do you know their names, the names of the people  
16 who prepared Exhibit 13?

17 A. I don't know who specifically worked on Exhibit  
18 13. I know I provided directions to numbers of my  
19 staff, and the work was allocated accordingly.

20 Q. When you provided directions to your staff for  
21 the preparation of Exhibit 13, did you tell them what  
22 value to attribute to the Series C preferred stock?

23 A. We would have reviewed and discussed --

24 Q. No, I'm not asking what you would have done.

25 What I'm asking you is, when you provided directions to

1 your staff for the preparation of Exhibit 13, did you  
2 tell them what value to attribute to the Series C  
3 preferred stock?

4 A. This is not a valuation attribution; this is a  
5 cash flow analysis. So, I'm looking here at cash  
6 inflows and outflows.

7 Q. Did you tell them --

8 A. So, you're asking about value --

9 Q. -- did you tell them in Exhibit 13 how much  
10 cumulative cash provided they should attribute to the  
11 Series C preferred stock?

12 A. We had a discussion about the calculations more  
13 than once. I don't remember exactly what -- how that  
14 particular treatment was ultimately resolved or  
15 addressed.

16 Q. Did you tell the unidentified support staff that  
17 prepared Exhibit 13 how much of the cumulative cash  
18 provided that is described here should be attributed to  
19 the Series C preferred stock?

20 A. Did I tell them?

21 Q. Yes.

22 A. We investigated it as a team and discussed it and  
23 came up with a number. I just don't remember what it is  
24 at this time, and I don't remember how -- how I did the  
25 allocation at this time. I can certainly investigate it

1 and come back to you another time.

2 Q. Okay.

3 THE COURT: Mr. Boies, should we take a lunch  
4 break?

5 MR. BOIES: Yes, Your Honor.

6 THE COURT: Let's reconvene at 1:45.

7 **(Lunch recess, 12:43 p.m. to 1:45 p.m.)**

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ROUGH DRAFT



1           A. Off the top of my head, I think I recall -- but  
2 this is purely loose recollection, I'd have to check my  
3 carefully -- a number I think somewhere in -- I'm  
4 tempted to -- I'm thinking to say something in the  
5 neighborhood of 26 billion, but that's the one valuation  
6 that I seem to recall. I could be wrong.

7           Q. And what other valuations of the Series C  
8 preferred stock are you aware of?

9           A. I think a number of analyses included those, and  
10 I don't remember them off the top of my head. So, it's  
11 hard for me to say.

12          Q. Do you remember a Ernst & Young valuation of the  
13 Series C preferred stock?

14          A. I remember seeing something; I just don't  
15 remember what the details of it are right now.

16          Q. What about a Deloitte valuation?

17          A. That, I don't recall.

18          Q. Did AIG itself value the Series C preferred?

19          A. I believe so. I don't remember the number, but I  
20 believe they did.

21          Q. Do you remember approximately what the number  
22 was?

23          A. I think, as a general comment, I think the -- the  
24 valuations were all in sort of the same range, give or  
25 take.



1 Q. Do you recall a valuation by KPMG?

2 A. Yes.

3 Q. Do you recall what that was?

4 A. I do not.

5 Q. What?

6 A. I do not.

7 Q. What about a valuation by PwC?

8 A. I recall seeing a PwC valuation, but I don't  
9 recall which was which.

10 Q. Do you recall that all of these valuations were  
11 about in the same range?

12 A. I think they were generally in a similar range.

13 Q. And they were -- were they all somewhere between  
14 23 and 26 billion dollars?

15 A. That sounds about right.

16 Q. Did you have any reason to disagree with those  
17 valuations?

18 A. Well, other than to say I'm not sure whether  
19 those were book values or market values. I've got to  
20 believe, since there was no market for the Series C, as  
21 indicated by other analyses that I looked at, that those  
22 were simply book values or carrying values.

23 Q. Is it your testimony that Duff & Phelps and KPMG  
24 and AIG and the others were not trying to value the  
25 market value of the Series C preferred?

1           A. Like I said, I don't recall the details, and so I  
2 don't know whether they were -- I don't recall right now  
3 whether they were book values or market values.

4           Q. If they were --

5           A. I mean, I could look at them and give you a  
6 better answer. If you want to let me look at one of  
7 them, I could certainly give you a -- you know,  
8 interpret it based on my experience.

9           Q. Did you look at them in the course of your  
10 investigation?

11          A. I did, which was some months ago.

12          Q. Now, if it were a book value, that book value  
13 would have had to be something that was created, because  
14 there obviously wasn't a book value before, correct?

15          A. It would be something that was probably produced  
16 according to some kind of accounting rules, which I  
17 don't claim to be an expert of.

18          Q. Do you recall that the valuations were done based  
19 on a market approach?

20          A. Yes, I do. And I think there were multiple  
21 market approaches employed. I think one of them used  
22 four market approaches, I believe. I now recall A, B,  
23 C, and D. It's back there someplace. It's not always  
24 easy to pull it all out and make sure it's organized and  
25 right.

1 Q. Sure, and I appreciate that.

2 A. And I think A and B -- all market values were  
3 considered useful. Some may have been relied on more  
4 than others.

5 Q. Um-hum.

6 A. So, I -- sort of I'm refining my prior answers,  
7 if you will.

8 Q. Now, I want to turn to -- oh, before I do, I just  
9 want to go back and clear something up. We talked this  
10 morning about the master agreement --

11 A. Yes, sir.

12 Q. -- and we had indicated that you thought that was  
13 September 2010, and you thought that there was about \$40  
14 billion owed on the RCF at that time, correct?

15 A. I recall a principal outstanding amount owed to  
16 the Government of about \$40 billion that I thought was  
17 attributable to the RCF.

18 Q. Right. And let me just see if I can refresh your  
19 recollection. First, with respect to when the master  
20 agreement was signed, would it refresh your recollection  
21 if I suggested that that might have been signed December  
22 8th of 2010?

23 A. That's -- you are actually correct about that.  
24 That's right.

25 Q. And would it refresh your recollection if I

1 suggested that the amount outstanding on the revolving  
2 credit facility as of September 2010 was between 20 and  
3 21 billion dollars?

4 A. Again, my memory is still a little faulty on  
5 that, but I have no reason to -- I don't speak to that.

6 Q. Okay.

7 A. I don't recall the exact number.

8 Q. Okay. Let me turn now --

9 A. That said, I do recall that there was an  
10 outstanding amount of 40 billion attributable to some  
11 part of this at around September 2010, so...

12 Q. Well, let me try to unpack that.

13 A. Okay.

14 Q. When you say that you recall there's on  
15 outstanding amount of 40 billion attributable to some  
16 part of this around September '10 --

17 A. Or a combination of facilities.

18 Q. Well, in September 2010, there was still the RCF,  
19 correct?

20 A. Um-hum.

21 Q. And there was the Series E and Series F  
22 preferred, right?

23 A. Correct.

24 Q. And there was the Series C preferred, correct?

25 A. Correct.

1 Q. And there was the Maiden Lane II and Maiden Lane  
2 III, correct?

3 A. Yes.

4 Q. Were there any other forms of government  
5 assistance that you include in what you refer to as "the  
6 rescue"?

7 A. At this stage, that sounds like that's everything  
8 I'd think of off the top of my head.

9 Q. Okay. Now, the Series E and F preferred stock  
10 would have had a liquidation value or liquidation  
11 preference of somewhere over \$40 billion at this point,  
12 correct?

13 A. The terms of the E and F had a liquidation  
14 preference of -- correct.

15 Q. What I'm -- what I'm getting at is, the \$40  
16 billion that you say were owed, does that include the  
17 liquidation preference of preferred stock?

18 A. What do you mean? Do you mean is it offset by or  
19 do you mean does it include?

20 Q. We were talking about how much money AIG "owed"  
21 the Government as of September 2010.

22 A. Yes.

23 Q. And what I'm asking you is, we know that there  
24 were the Series E and Series F preferred stock with  
25 liquidation preferences that were existing at that point

1 in time, and I'm just trying to understand whether you  
2 consider those liquidation preferences amounts "owed" to  
3 the Government when you do your analysis.

4 A. Well, the liquidation preference was a  
5 contractual right of AIG management to retire the E and  
6 F since it was -- since they were perpetual preferred,  
7 so...

8 Q. I'm really just asking, when you use the term  
9 "owed" --

10 A. Um-hum.

11 Q. -- what are you including?

12 A. I was just talking about principal balance  
13 outstanding. I don't -- since the 41 billion of  
14 liquidation preference is a -- basically a repayment --  
15 contractual repayment mechanism for AIG to exercise, I  
16 don't think that I would treat that as part of what was  
17 owed.

18 Q. Okay. If you don't include the liquidation  
19 preferences of the TARP Series E and Series F stock, how  
20 would you get to \$40 billion owed by AIG as of September  
21 2010?

22 A. As I mentioned, all I recall from my review --  
23 prior review of the documents at that particular point  
24 in time, I just recall the fact that there was a \$40  
25 billion outstanding on or around September 10th --

1 September 2010. I can't recall, right off the top of my  
2 head, without reviewing further, as to what the elements  
3 of that or how that would be attributed or allocated.  
4 So, I'm not trying to provide those details without  
5 further investigation at this time.

6 Q. Okay. Let me turn to the -- to the  
7 recapitalization that we just started to talk about  
8 earlier, and the master agreement was signed December 8,  
9 2010, correct?

10 A. I believe that's correct.

11 Q. And at the time the master agreement was signed,  
12 it provided for the exchange of Series E and Series F  
13 preferred stock for common stock, correct?

14 A. Correct.

15 Q. And what was the liquidation preference of the E  
16 and F combined as of December 8th, 2010?

17 A. The -- according to the terms of the preferred  
18 agreement, it was a \$45-a-share liquidation preference,  
19 to the best of my recollection.

20 Q. \$45 a share --

21 A. Liquidation preference.

22 Q. -- liquidation preference, okay.

23 And that was true for both the E and the F?

24 A. To the best of my recollection.

25 Q. And how many shares of E and F were there?

1           A. I don't remember the actual shares of preferred,  
2 the breakdowns. I do remember breakdowns of stock  
3 between the C, E, and F at the time, ^ the common.

4           Q. Sir, let me ask you just to think about this for  
5 a second. The \$45-per-share liquidation preference,  
6 you're saying that's the liquidation preference of the  
7 shares of E and F preferred stock?

8           A. To the best of my -- again, this is based on  
9 recollection, but I have no documents in front of me  
10 that I can easily turn to to refresh my memory.

11          Q. This is something that you did in the course of  
12 your investigation, though, right?

13          A. Yeah. I signed the report in April. So, it's  
14 something I did between when I first started working on  
15 this and when I signed the report in April. That's why  
16 I really do not recall, off the top of my head, without  
17 actually looking back at the documents themselves.

18          Q. Do you recall what the total liquidation  
19 preference was for the E and F preferred stock?

20          A. Well, the liquidation preference was never  
21 actually paid in cash, as I recall. There was an  
22 exchange for common stock. So, I don't recall off the  
23 top of my head what it was. I can tell you I think it  
24 was about one -- yeah, I don't recall exactly what the  
25 total amount was.



1 Q. To be clear, I'm not asking you for what was  
2 paid. I was asking you what the liquidation preference  
3 is. You understand the difference?

4 A. And the \$45 per share would be used to determine  
5 the number of shares to get to a dollar amount. I don't  
6 have that off the top of my head right now, of  
7 conversion from the common to the preferred.

8 Q. You described the liquidation preference --

9 A. Um-hum.

10 Q. -- as AIG's contractual right to, in effect, buy  
11 out the preferred stock --

12 A. Correct.

13 Q. -- for a given amount of money.

14 A. That's right.

15 Q. And if AIG had exercised that right just to buy  
16 the preferred out --

17 A. Yes.

18 Q. -- for that amount of money --

19 A. Right.

20 Q. -- how much would it have cost AIG?

21 A. I think someplace in the neighborhood of 40 or 41  
22 billion, maybe. That's a guess off the top of my head.  
23 I'm not completely sure.

24 Q. I don't want you to guess.

25 A. Okay. Well, I'm not sure. I don't recall.

1 Q. Is that something that's in your report?

2 A. I was going to start looking for it. I don't  
3 know whether it is.

4 Q. If I suggested to you that as of December 8th,  
5 2010, the total liquidation preference of all of the E  
6 and F preferred stock together was approximately \$49  
7 billion, would that refresh your recollection?

8 A. It's also in -- yeah, I think 49 billion, I can  
9 accept that number for -- at this stage, because that's  
10 also a number I recall seeing.

11 Q. And just for clarity, for comparison with some  
12 other numbers, that number was higher than it had been  
13 in June of 2009, correct?

14 A. Can you repeat the question, please?

15 Q. Sure. In June of 2009, in particular June 30th  
16 of 2009, when the reverse stock split was passed --

17 A. Yes.

18 Q. -- the total liquidation preference of all E and  
19 F preferred stock was about \$41.5 billion, correct?

20 A. What date was that?

21 Q. Do you recall that the reverse stock split --

22 A. Um-hum.

23 Q. -- was approved on June 30, 2009?

24 A. Yes.

25 Q. And at that time, the total liquidation

1 preference of all E and F preferred stock was \$41.5  
2 billion, correct?

3 A. That number sounds familiar.

4 Q. And what had happened after that but before  
5 December 8th, 2010, is additional Series F preferred  
6 stock --

7 A. Had been issued.

8 Q. -- had been drawn down and issued.

9 A. That's correct. That's correct.

10 Q. Now, common shares were issued for E and F  
11 preferred shares, correct?

12 A. Exchanged.

13 Q. Exchanged.

14 A. Yes.

15 Q. And do you recall approximately how many -- I  
16 think we did this yesterday -- common shares were  
17 received for the E and F preferred shares?

18 A. Yeah, it's in my report.

19 Q. And what is that?

20 A. A billion shares of common stock for Government  
21 Series E and F. This is footnote 321 on page 91.

22 Q. How many did you say?

23 A. It says over 1 billion shares.

24 Q. Yeah, over --

25 A. -- for E and F --

1 Q. -- over 1 --

2 A. Yeah, over 1 billion, and I think the breakdown  
3 from my own memory is 963 plus 168. So, 168 for the F  
4 and 963 for the E, I think. I think that's right. At  
5 any rate, the way I have it right now in my -- in this  
6 one particular footnote is Series E and F for over a  
7 billion shares of common.

8 Q. Well, if it were, in fact, 963 million for the E  
9 and 168 million for the F, that would be over 1.1  
10 billion, correct?

11 A. That's correct.

12 Q. And do you recall that it's actually a little bit  
13 less than that?

14 A. I think yesterday, when we looked at the  
15 Merrill/Bank of America/Citigroup analysis, it was maybe  
16 1.165 --

17 Q. Or maybe 1.092?

18 A. Yeah, perhaps. Perhaps.

19 Q. Let me just see if I can refresh your  
20 recollection on the exact number, because I don't --

21 A. I think one way to do it is in my report,  
22 paragraph 155 has the exchange of C, E, and F for 1.655  
23 billion shares. The footnote describes the C being  
24 exchanged for 562,868,096 shares, and so obviously the  
25 difference between what was E and F.

1 Q. And that would be 1.09 billion, correct?

2 A. ^ that's what it is, yep.

3 Q. Now, as of December 8th, 2010 --

4 A. Yes.

5 Q. -- how much were those 1.09 billion shares worth?

6 A. They had risen from a September price of 39.10,  
7 by December 8th, they had converged to a price of 42.22,  
8 according to --

9 Q. 42.22?

10 A. -- according to my Exhibit C-8 in my report.

11 Q. So, on December 8th, it was 42.22.

12 As part of your investigation, did you try to  
13 estimate the value of the Series E and F preferred stock  
14 prior to the recap?

15 A. No, not to my recollection.

16 Q. Are you aware of anyone, other than the  
17 Government -- because we talked about what the  
18 Government valued it at yesterday -- are you aware of  
19 anyone other than the Government that valued the Series  
20 E and F preferred stock prior to the recap?

21 A. At the time?

22 Q. Yes.

23 A. Contemporaneously?

24 Q. Contemporaneously.

25 A. Didn't I already answer this question?

1 Q. When?

2 A. We talked about some valuations earlier. I just  
3 don't -- I guess my answer is I don't recall.

4 Q. Now, the valuation of the Government that we  
5 talked about yesterday, we had talked about a valuation  
6 as of September 30, 2009, that is, more than a year  
7 before the master recap agreement, correct?

8 A. Yes.

9 Q. Let me ask you to look at that exhibit, which was  
10 622, I think page 19. Do you have that page,  
11 Dr. Mordecai?

12 A. I do.

13 Q. And we looked at the far right-hand column  
14 yesterday, which showed that the estimated value of the  
15 investment was 13.2 billion as of September 30, 2009,  
16 correct?

17 A. Yes.

18 Q. And at that time point, the amount of the  
19 investment had been 40.3 billion, correct? 43.2  
20 billion.

21 A. The outstanding balance shows itself as 43.2  
22 billion. You had highlighted a different section.  
23 That's why I was pausing.

24 Q. And as you understand it, that 43.2 billion  
25 represented the amount of money that the Government had

1 actually paid for the Series E and F stock, correct?

2 A. I don't know that I can draw a specific  
3 conclusion as to is that -- as to if that was their  
4 consideration for the E and F stock. I think all this  
5 table really says to me is that -- it's a summary table,  
6 first of all, without a lot of detail, and it says  
7 direct loans and equity investments. So, it shows an  
8 outstanding balance as of that date, and then it shows a  
9 value associated with that just to the right of it. I  
10 don't know that that is the actual total consideration  
11 at all from what I have here. I wouldn't try to leap to  
12 that conclusion.

13 Q. Do you have any understanding one way or the  
14 other as to how much the Government had actually paid  
15 for the Series E and F preferred stock as of September  
16 30, 2009?

17 A. I think page 887 and 88 of the exhibit provides  
18 in a footnote some detail describing the actual  
19 investment made in cumulative Series D and how it was  
20 exchanged for E, and so depending upon how you're  
21 defining payment, it indicates that originally the D was  
22 issued to the Government for an investment of 40  
23 billion, and then upon a restructuring, the D was  
24 exchanged for E, where the value of the E -- or the  
25 amount of the E, I should say, not the value, but the

1 amount of the E, which I guess would be the face, with  
2 the 40 billion plus \$733 million in undeclared dividends  
3 as of February 1st, 2009, and an additional 15 million  
4 compounded and an additional 855 million --

5 Q. I'm not actually asking you just to read the  
6 document, sir.

7 A. No, I'm sorry, I'm trying -- I'm not trying to do  
8 the arithmetic in my head. I'm just trying to say that  
9 according to the document that I had not really focused  
10 on until today or yesterday, this is the explanation for  
11 -- the closest answer that I can give to the question  
12 you're asking.

13 Q. Is it fair to say that without reading this  
14 document, which you hadn't seen, you say, until  
15 yesterday --

16 A. Hadn't focused on. Focused on.

17 Q. -- without just reading this document, you do not  
18 have any understanding one way or the other as to how  
19 much the Government had actually paid for the Series E  
20 and F preferred stock? Is that fair?

21 A. I think that mischaracterizes what I said.

22 Q. I'm not characterizing what you're saying. I'm  
23 just trying to find out what you're saying.

24 A. Yeah. What I'm saying is there was an original  
25 \$40 billion investment in Series D. Those Series D were



1 exchanged for Series E. That Series E included the  
2 original amount of the investment plus a series of  
3 dividends that had been unpaid, plus some additional  
4 PIK, and so what I'm saying is that that total amount is  
5 the number exchanged, and so I'm saying depending on how  
6 you are using the word "payment," which I am still not  
7 sure of, that is the closest that I can come to  
8 answering the question.

9 Q. Let me just try to clarify what you just said.  
10 The Government paid \$40 billion for a certain number of  
11 shares of Series D preferred stock, correct?

12 A. They invested \$40 billion in exchange for a  
13 certain amount of -- a certain, if you will, number of  
14 shares of Series D, correct, or Series D with a face  
15 amount of some -- of...

16 Q. Let me just try to ask you to listen to my  
17 question --

18 A. Okay.

19 Q. -- and if it's yes, no, I don't know, or I don't  
20 understand the question --

21 A. Okay.

22 Q. -- we can move on.

23 As you understand it --

24 A. Um-hum.

25 Q. -- did the Government pay AIG \$40 billion for a

1 certain number of shares of Series D preferred stock?

2 A. As I understand it --

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

5 A. The answer is yes, if what you mean is that the  
6 Government received Series D for a \$40 billion  
7 investment in AIG.

8 Q. And am I correct that it is your understanding  
9 that at some point thereafter, the Series D preferred  
10 stock was exchanged for \$41.6 billion face amount of  
11 Series E preferred stock?

12 A. It is my understanding, in accordance with --

13 Q. Yes, no, I don't know, I don't understand the  
14 question.

15 A. The answer is -- the answer is, yes, that would  
16 be consistent with my understanding from -- particularly  
17 from the review of that footnote I just referenced.

18 Q. Okay. And the Government also paid AIG a certain  
19 amount of money in exchange for Series F preferred  
20 stock, correct?

21 A. The answer is correct, with the clarification  
22 that the -- yes, AIG drew down on some funds and issued  
23 Series F to the Government.

24 Q. And AIG drew down, as you used the term,  
25 approximately \$7 1/2 billion for which it issued Series

1 F preferred stock to the Government, correct?

2 A. I do not recall the specific amount right now, as  
3 we're going through it.

4 Q. Do you recall that that was approximately \$7 1/2  
5 billion?

6 A. I know there was more than one draw under the  
7 Series F, which is why I'm saying it.

8 Q. Have you finished your answer?

9 A. I'm going to stop there. I don't recall the  
10 exact amount.

11 Q. Well, do you recall the approximate amount?

12 A. I don't recall the approximate. I remember there  
13 were two draws on Series F, and I don't remember whether  
14 it was \$7 billion total or whether that's just one draw.  
15 I don't recall.

16 Q. The AIG common stock, the 1.09 billion shares of  
17 AIG common stock that was received for the Series E and  
18 F preferred stock, if it were valued at \$42.22 per  
19 share, which is what you said the share price was on  
20 December 8th, 2010, that would total \$46 billion of  
21 total value, correct?

22 A. Fair enough.

23 Q. Did you, in the course of the work that you've  
24 done, come across any valuation of the Series E and F  
25 stock as of either September 30, 2010, or December 8,

1 2010, that was materially different from the estimated  
2 value of that stock of \$26.1 billion shown on the  
3 Department of Treasury report that is Plaintiffs' Trial  
4 Exhibit 622?

5 A. Are you talking about that page 19 that we looked  
6 at before?

7 Q. Yes. Page 19 --

8 A. Are you talking --

9 Q. -- shows the Government's estimated value of the  
10 Series E and F preferred stock at \$26.1 billion as of  
11 September 30, 2010, correct?

12 A. With the caveat that it doesn't give effect to  
13 the proposed restructuring.

14 Q. That is, it's prior to the restructuring,  
15 correct?

16 A. Correct.

17 Q. And by "restructuring," you mean the same thing  
18 as the recapitalization, correct?

19 A. I am assuming that that's what they're referring  
20 to. I, again, haven't had a chance to review this  
21 document in detail since yesterday.

22 Q. But just focusing on your own understanding --

23 A. You're asking me to remember something I've  
24 already said is -- and I'm trying to interpret it based  
25 on what you've put in front of me. I haven't had a

1 chance to review this.

2 Q. Leaving the document aside --

3 A. Okay.

4 Q. -- do you have any understanding, one way or the  
5 other, without just reading the document --

6 A. I understand.

7 Q. -- as to what the estimates of value of the  
8 Series E and F preferred stock were by the Government  
9 itself prior to the recapitalization?

10 A. I do not, not that I recall.

11 Q. That is something that you looked at, though,  
12 during your investigation?

13 A. I -- you know, at this point, sir, we have been  
14 going over so many different numbers and reports, I  
15 would have to go back and refresh my memory.

16 Q. Okay.

17 Your Honor, I forget to do this as my help  
18 constantly reminds me. So, I will offer now as a  
19 demonstrative exhibit Plaintiffs' Trial Exhibit 5401,  
20 which is the demonstrative we have just been talking  
21 about.

22 MR. AUSTIN: No objection, Your Honor.

23 THE COURT: Plaintiffs' Trial Exhibit  
24 Demonstrative 5401 is admitted.

25 **(Plaintiffs' Exhibit Number 5401 was admitted**

1 **into evidence.)**

2 MR. BOIES: And I will also offer Plaintiffs'  
3 Trial Exhibit 5399, which is the chart headed "Mordecai:  
4 Value of Series C Preferred," which is the chart that I  
5 went over with the witness when we were talking about  
6 different valuations of the Series C preferred.

7 MR. AUSTIN: No objection as a demonstrative  
8 exhibit, Your Honor.

9 THE COURT: All right. Plaintiffs' Demonstrative  
10 5399 is admitted.

11 **(Plaintiffs' Exhibit Number 5399 was admitted**  
12 **into evidence.)**

13 BY MR. BOIES:

14 Q. I now want to turn to your testimony concerning  
15 whether the Plaintiffs suffered any economic loss.

16 A. Yes.

17 Q. First, let me go back to Plaintiffs' Trial  
18 Exhibit 5396 --

19 A. Okay.

20 Q. -- that we talked about this morning, where we  
21 defined what you meant by the initial rescue package.  
22 Do you recall that?

23 A. Yes.

24 Q. And when you say the Plaintiffs suffered no  
25 economic loss, you're talking about no economic loss as

1 a result of this entire package. Is that correct?

2 A. It would depend on what part of my testimony and  
3 what part of my report we're referring to. I agree with  
4 the general statement, yes, I mean the entire package,  
5 but I also mean the elements constituting that entire  
6 package. So, I would include the initial rescue in  
7 that. In fact, I -- I said that specific -- made that  
8 specific statement.

9 Q. When you said it would include the initial rescue  
10 in that, I thought this was the initial rescue package.

11 A. I don't I didn't know whether you were talking to  
12 me about the initial rescue or the total rescue. It  
13 sounded like you said total rescue. Could you rephrase  
14 the question?

15 Q. Sure. This morning, you talked about what you  
16 had referred to during your direct examination as the  
17 initial rescue package. Do you recall that?

18 A. Yes, correct.

19 Q. And you said that that consisted of item one, \$85  
20 million revolving credit facility, including certain  
21 demand note advances; number two, 79.9 percent equity  
22 participation; number three, associated fees, interest,  
23 and covenants. Do you recall that?

24 A. Yes, I do.

25 Q. And when you say that, in your opinion, the

1 shareholders did not suffer any economic loss, you mean  
2 as a result of this entire package, correct?

3 A. Yes.

4 Q. You realize that the AIG shareholders would have  
5 been a lot better off if they had gotten the \$85 billion  
6 revolving credit facility without the required 79.9  
7 percent equity participation, correct?

8 A. If you're asking me whether or not they --

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

11 A. It's yes and no. It's conditionally yes. If  
12 what you're asking me is whether they would not have  
13 welcomed an additional windfall on more flexible  
14 terms --

15 Q. Your Honor --

16 A. -- and it's --

17 THE COURT: Do you want to ask the question  
18 again?

19 MR. BOIES: Yes, Your Honor.

20 BY MR. BOIES:

21 Q. You realize that the AIG shareholders would have  
22 been a lot better off if they had gotten the \$85 billion  
23 revolving credit facility without the required 79.9  
24 percent equity participation, correct?

25 A. I think if they had received --



1 MR. BOIES: Your Honor, this is yes, no --

2 THE WITNESS: Yes. Conditionally, yes, in that  
3 hypothetical.

4 BY MR. BOIES:

5 Q. You did not investigate at all or analyze at all  
6 whether the Federal Reserve was authorized to demand an  
7 equity participation, correct?

8 A. The answer is yes, I did not.

9 Q. And you did not investigate or analyze at all how  
10 much adding a 79.9 percent equity participation to the  
11 revolving credit facility cost the AIG shareholders,  
12 correct?

13 A. I did not.

14 Q. Okay. Let me turn now to your analysis of the  
15 valuation of the credit facility.

16 A. Okay.

17 Q. And one of the things that you did in arriving at  
18 that value is to infer from credit default swap spreads  
19 and AIG bond prices what a commercially reasonable  
20 revolving credit facility would have cost AIG in a  
21 private market transaction, correct?

22 A. What a commercially reasonable -- correct, what a  
23 commercially reasonable lender would have -- what the  
24 market ^ say of a commercially reasonable lender would  
25 have looked like.

1 Q. And you arrived at that by looking at credit  
2 default swap spreads and AIG bond prices, correct?

3 A. Yes, correct.

4 Q. And let me ask you to look at your Demonstrative  
5 Exhibit DX 2613.

6 A. Okay.

7 Q. This is a chart that you used to show what the  
8 bond prices were of certain bonds as of September 16th,  
9 2008, correct?

10 A. Correct.

11 Q. Now, first, during your testimony about your  
12 event studies --

13 A. Yes.

14 Q. -- you talked about using opening prices and  
15 closing prices. Do you recall that?

16 A. I do.

17 Q. Which did you use for this chart, opening prices  
18 or closing prices?

19 A. These are volume-weighted average prices based on  
20 trading for the day.

21 Q. For the entire day?

22 A. For the entire day.

23 Q. So, unlike what you did with your event study,  
24 here you used volume-weighted average pricing for all of  
25 the transactions during the day. Is that correct?

1           A. That is correct, and that is industry standard.  
2 That is the conventionally accepted practice for bond  
3 markets.

4           MR. BOIES: Your Honor, could I ask him to stick  
5 to my question? He will get a chance to explain it  
6 later or he already has, but --

7           THE WITNESS: Sorry.

8           THE COURT: Okay.

9           BY MR. BOIES:

10          Q. Now, who prepared Defendant's Exhibit 2613?

11          A. A member of my team. I can't really remember  
12 which specific member worked on it with me.

13          Q. Who selected the particular bonds?

14          A. I had input into how I wanted the bonds selected  
15 in terms of finding a representative bond for the cohort  
16 bonds.

17          Q. What did you tell the people who were helping you  
18 prepare this chart that you wanted them to use as  
19 criteria for selecting the bonds?

20          A. We -- and actually, there's a tremendously  
21 detailed -- appendix in my report describing the way we  
22 took bonds, but we basically took bonds that had  
23 observable prices, whether they were in the trace  
24 database or trace plus some others, and we put them into  
25 cohorts based on certain characteristics, particularly

1 maturities and others, and then what we did was we  
2 identified bonds from each of those cohorts that was  
3 representative of the cohort, and then picked an  
4 indicative bond with the most volume average weighted  
5 pricing that was also representative of the behavior of  
6 the general cohort. That is a method used in industry.  
7 It's called the bucketing method or the cohort method.

8 Q. This is what you told them to do?

9 A. This was as a result of our discussions over the  
10 course of assembling the bond sample, that is correct.

11 Q. Were there bonds that had lower prices than the  
12 bonds reflected here? If you know.

13 A. I don't know that I can tell you that one way or  
14 the other right now.

15 Q. You do know that there were bonds with prices  
16 higher on September 16th than these bonds, do you not,  
17 sir?

18 MR. AUSTIN: Your Honor, if I could just ask for  
19 a clarification, I assume counsel's referring only to  
20 AIG bonds, but --

21 MR. BOIES: Absolute.

22 MR. AUSTIN: -- for clarity purposes. I just  
23 wanted that clarified, thank you.

24 BY MR. BOIES:

25 Q. And you understood that, didn't you,

1 Dr. Mordecai?

2 A. I understood we were talking AIG bonds. Again,  
3 when one picks indicative bonds --

4 Q. Sir, do you know what the question is?

5 A. I do not know whether there were bonds higher or  
6 lower than these particular three bonds out of the AIG  
7 capital structure on this day. These were the  
8 representative bonds for the cohorts identified.

9 Q. I mean, for example, you have a bond here that's  
10 represented by a green line.

11 A. Um-hum.

12 Q. That's a \$500 million senior unsecured bond due  
13 October 2010. Do you see that?

14 A. I do.

15 Q. Do you know approximately how many trades that  
16 bond had on the 16th?

17 A. Not off the top of my head.

18 Q. Would 25 refresh your recollection?

19 A. Twenty-five trades?

20 Q. Yes.

21 A. How many -- how many bonds actually traded during  
22 that trade? I -- I don't know. I don't recall.

23 Q. Are you aware of an \$800 million senior  
24 secured -- senior unsecured bond due April 15th, 2010?

25 A. I don't recall that right off the top of my head.

1 Q. A bond that had 82 trades that day?

2 A. What was the volume of each trade? I mean, we're  
3 talking about the volume of bonds traded.

4 Q. The way this works is I ask you questions, you're  
5 supposed to give me answers. Do you understand that?

6 A. So, then, let me say I do not recall that  
7 specific bond, sir. How is that?

8 Q. That's good.

9 And not recalling that bond, I assume you would  
10 not recall that that bond's volume weighted average  
11 price on September 16th was over 60 as opposed to 40 or  
12 less, correct?

13 A. I don't recall that.

14 Q. Now, is it your testimony to the Court that you  
15 simply don't know one way or the other whether there  
16 were any AIG bonds trading on September 16th that traded  
17 higher than the three that you've picked for this chart?  
18 Is that your testimony to the Court?

19 A. I don't recall the exact distribution right now.

20 Q. I'm not asking for the exact distribution. I'm  
21 simply asking you whether it is your testimony to the  
22 Court that you simply don't know one way or the other  
23 whether there were any bonds of AIG trading on September  
24 16th, 2008, that were trading significantly higher than  
25 the three bonds shown on this chart? That's a yes or no

1 question, sir.

2 A. I can't specifically recall as I sit here.

3 Q. Okay, sir. You do understand that these bonds  
4 that you were using for purposes valuing the revolving  
5 credit facility were unsecured bonds, correct?

6 A. Yes.

7 Q. And you understood that the revolving credit  
8 facility was a secured facility, correct?

9 A. I understand that the -- that it was referred to  
10 in general parlance as a secured facility.

11 Q. Well, in terms of general parlance, did you, as  
12 part of your investigation, come to understand how the  
13 Federal Reserve described the level of security of the  
14 revolving credit facility when they were testifying  
15 before Congress?

16 A. They use the term -- some of them used the term  
17 "secured to their satisfaction."

18 Q. And did some of them use the term "fully  
19 secured"?

20 A. I remember seeing some discussion of  
21 securities -- of the revolving credit facility as being  
22 fully secured.

23 Q. Um-hum.

24 A. I think I mentioned that in my direct as well.

25 Q. The -- I mean, for example, did you come to

1 understand who the person was at the Federal Reserve  
2 Bank that was responsible for determining the amount of  
3 collateral that was required for the revolving credit  
4 facility?

5 A. I don't remember off the top of my head right  
6 now.

7 Q. Do you remember that she testified here at trial?

8 A. Yes, I do. I think I do.

9 Q. And do you remember what she testified to about  
10 whether the revolving credit facility was, in her  
11 judgment, fully secured at all times?

12 A. I do not.

13 Q. Did you come, as part of your investigation, to  
14 understand whether the Federal Reserve Bank employed  
15 Morgan Stanley and Ernst & Young to value the collateral  
16 that was supporting the revolving credit facility?

17 A. I recall that both firms had a role in this. I  
18 don't recall a specific assign -- their specific  
19 assignment.

20 Q. Do you recall whether or not they provided  
21 periodic valuations of the collateral that was securing  
22 the RCF?

23 A. Again, I recall them having a role, I don't -- at  
24 this point, as I sit here, I don't recall what their  
25 specific assignment was or the scope of their



1 assignment.

2 Q. Do you recall generally that their assignment was  
3 to evaluate the adequacy of the collateral backing up  
4 the RCF?

5 A. I have no reason to disagree with you on that  
6 point, at this point.

7 Q. At the time period that we're talking about,  
8 which is September of 2008, did AIG have any secured  
9 debt outstanding?

10 A. Could you repeat the date, please?

11 Q. September of 2008.

12 A. I believe there were some -- I believe there were  
13 some lines of credit, small lines of credit for some of  
14 the subsidiaries. I do not recall the parent having  
15 large secured lines. I mean, they had CP. I mean,  
16 obviously, we're not talking about things like the  
17 secured lending program or things like that, right, so  
18 in terms of things like bank lines, I don't think the  
19 parent had those, that I recall, or nothing  
20 substantially large, as I recall.

21 Q. What do you mean "substantially large"? Is a  
22 billion dollars substantially large, in your terms?

23 A. When you owe 75 billion or 85 billion or 75  
24 billion? It's small relative to 75 billion.

25 Q. It is, sir, but what you said to me a moment ago

1 is you didn't think that the parent had bank lines that  
2 were substantially large. Do you recall that?

3 A. Yeah, relative to the total size and scale of the  
4 firm.

5 Q. So, a bank line of a billion dollars you would  
6 consider to be not substantially large because AIG is  
7 such a large company. Is that what you're saying?

8 A. And because their total debt issuances are much,  
9 much larger than that.

10 Q. Do you understand that AIG did have bank lines?

11 A. As I think I mentioned, I know there were bank  
12 lines to a number of the subsidiaries --

13 Q. No, no. The parent. The parent. The parent.

14 A. I don't recall specifically about the exact size  
15 or number of the bank lines of the parent.

16 Q. Without recalling specifically the exact size or  
17 number of the bank lines of the parent, do you  
18 understand that the parent did have bank lines in early  
19 September of 2008?

20 A. I don't remember the exact details on that right  
21 now.

22 Q. If AIG had secured debt, would you agree that  
23 that would have been a more appropriate level of debt to  
24 use than what you used in terms of unsecured debt?

25 A. No.

1 Q. Okay. You were attempting to value a secured  
2 debt in the RCF, correct?

3 A. I was using -- correct, I was using market  
4 standard approaches to do that valuation with  
5 observable --

6 Q. Sir, whether or not --

7 A. The answer is yes.

8 Q. Okay. And you would agree with me that secured  
9 debt tends to, all other things being equal, trade  
10 higher and have a lower interest rate than unsecured  
11 debt, correct? Yes, no, I don't know.

12 A. It depends. Is that an acceptable answer?

13 Q. Only if you mean it.

14 A. I mean it. Is it an acceptable answer?

15 Q. Because if -- if what you're saying is that all  
16 other things being equal, whether or not secure debt  
17 will trade with a lower interest rate than unsecured  
18 debt --

19 A. Lower yield? Do you mean a yield or do you mean  
20 a rate? It's trading, so do you mean a yield or do you  
21 mean a rate?

22 Q. Either one, sir.

23 A. If it's trading, let's talk about yields.

24 Q. Okay. If you want to talk about yields, we'll  
25 talk about yields, all right?

1 A. Yeah.

2 Q. And then we'll go back to my question, but first  
3 we'll talk about the question you want to talk about,  
4 and that is yields. All other things being equal, do  
5 you believe that, in general, secured debt a lower yield  
6 than unsecured debt for the same company? Yes, no, I  
7 don't know.

8 A. It depends on the nature of the security backing  
9 the secured debt and what's left over for the interests  
10 of the unsecured debt, because often secured debt  
11 usually -- when the industry talks about secured debt,  
12 it's usually talking about a specific claim against  
13 specific assets, and unsecured debt still has a form of  
14 security against a broader range of other assets that  
15 are not specifically -- that are not specified. So, for  
16 a firm as large and complex as this, it may -- it  
17 matters.

18 Q. Sir, do you remember the question?

19 A. I do.

20 Q. What was the question?

21 A. The question was for a particular company, would  
22 secured debt have a higher yield or lower yield than  
23 unsecured debt?

24 Q. All other things being equal.

25 A. Okay. So --

1 Q. And your answer is that you can't answer that  
2 question without knowing what the secured is.

3 A. If you're going --

4 Q. Is that your answer?

5 A. If by "all other things being equal" you mean  
6 that the senior secured claim is on the same asset base  
7 and the same collateral as the unsecured claim, then  
8 obviously priority on the same asset base takes  
9 precedence and, therefore, ends up with a lower yield.

10 Q. Secured debt would have access to all of the  
11 assets the unsecured debt had access to, correct?

12 A. In the circumstance you're setting up now.

13 Q. And in addition to having access to all of the  
14 security that the unsecured debt had, the secured debt  
15 would have priority access to whatever assets were  
16 providing the security, correct?

17 A. As you described it here, yes.

18 Q. And that would mean that the secured debt would,  
19 to the extent that there was any value in its security,  
20 be expected to trade at a lower yield than the unsecured  
21 debt of the same company, correct?

22 A. Under those conditions, yes, generally speaking.

23 Q. Now, with respect to the RCF, did you have an  
24 understanding that the RCF had as security essentially  
25 all of the assets of AIG, the parent?

1           A. I recall that there were some assets that were  
2 not pledged. It had access to all the assets of the --  
3 of the company that were pledged. Some were not  
4 available to be pledged for a variety of reasons.

5           Q. Do you understand that the vast majority of the  
6 parent's assets were, in fact, pledged?

7           A. I don't think that's an unreasonable description.  
8 The vast majority obviously is a qualitative  
9 description.

10          Q. Did you ever try to make an estimate or a  
11 valuation of what percentage of AIG, the parent's  
12 assets, were, in fact, pledged to secure the RCF?

13          A. I did not conduct an independent evaluation of  
14 that type.

15          Q. Did you rely on the evaluations of other people?

16          A. I think I reviewed and considered some -- I think  
17 some market research along those lines.

18          Q. What market research did you consider?

19          A. I recall seeing some analysis -- I can't identify  
20 it specifically -- that discussed in the course of  
21 talking about the transaction, discussed -- I remember  
22 hearing something about a value of asset sales and  
23 breakup values of the firm, things of that nature, but I  
24 can't recall the specific ones at this time.

25          Q. Do you recall what they concluded ability the

1 percentage of AIG's assets that had been pledged as  
2 security for the RCF?

3 A. I don't.

4 Q. Now, you also used credit default swap spreads,  
5 correct?

6 A. That's correct.

7 Q. And the credit default swap spreads related to  
8 spreads concerning unsecured debt, correct?

9 A. Yes. It's consistent with industry standard.

10 Q. Are you aware of anyone who has criticized the  
11 use of bond prices and credit default swap spreads for  
12 purposes of valuing the RCF because the RCF was secured  
13 debt?

14 A. You mean am I aware of anyone in this case?

15 Q. Let's leave aside the experts on the Plaintiffs'  
16 side. I'm talking about representatives of AIG, the  
17 Federal Reserve, the Department of Treasury, the  
18 participants in the underlying transactions.

19 A. No one specific comes to mind if we're excluding  
20 Plaintiffs' experts.

21 Q. Did -- did you come across any analysis of the  
22 use or possible use of credit default swap spreads for  
23 the purpose that you used them by KPMG?

24 A. Oh, yes, there were uses of credit default swap  
25 spreads by KPMG and some of the other analysts. In

1 fact, they did use those.

2 Q. And did they conclude that those were unreliable,  
3 sir?

4 A. Not to my recollection. I remember reading the  
5 entire valuation on its -- on the balance, they used  
6 them and then they basically support their analysis with  
7 them, and they obviously do -- they provide caveats,  
8 they provide explanations and clarifications, but in  
9 general, they use them.

10 Q. Let me be sure I understand what you're saying.  
11 You're saying that you understand that the people who  
12 considered using credit default swap spreads concluded  
13 that those were a reliable way of accomplishing what you  
14 tried to do? Is that what your testimony is?

15 A. To my recollection, yes.

16 Q. Did you actually look at these yourself, sir?

17 A. I did review --

18 Q. Personally?

19 A. -- them, yes.

20 Q. Do you recall anything at all that was said about  
21 why those credit default swaps were unreliable?

22 A. No.

23 Q. All right. Let me turn to another subject. You  
24 testified on direct examination that, in general, market  
25 prices were a reliable indicator of value. Do you



1 recall that?

2 A. I do.

3 Q. Under what circumstances are market prices not a  
4 reliable indicator of value?

5 A. I would say, generally, when there are no  
6 observable activity or trading prices in a particular  
7 market, it's difficult to use nonexistent or stale  
8 prices to price assets, and often then what happens is  
9 the market goes to what they call mark-to-model.

10 Q. And were you aware of any securities on September  
11 16th, 2008, where there were not observable, reliable  
12 trading prices?

13 A. Any securities at all anywhere in the world?

14 Q. Well, you could start with that, or you could  
15 maybe start a little closer to home with things like  
16 CDOs and CDSs protecting CDOs.

17 A. Auction rate securities certainly had some  
18 issues. Variable rate debt obligations in the municipal  
19 market had issues. Those are two examples. Commercial  
20 paper had some trouble rolling.

21 Q. Had some trouble rolling on September 16th?

22 A. Yes. CP had issues throughout the period. I  
23 don't remember exactly what dates, but they -- there  
24 were issues with asset-backed commercial paper.

25 Q. The credit markets essentially froze on September

1 16th, didn't they, sir?

2 A. CP -- hmm, there was active trading in bonds,  
3 though. There was active trading in bonds. There was  
4 active repo. There was actually --

5 Q. There was active repo?

6 A. Yeah.

7 Q. You say in your report that the repo represented  
8 \$20 trillion of lending, correct?

9 A. Okay.

10 Q. On September 16th, what was the scope of repo  
11 lending?

12 A. I don't know.

13 Q. Approximately.

14 A. As I sit here, I couldn't give you that answer  
15 right off the top of my head.

16 Q. A small fraction of that \$20 trillion, correct?

17 A. How are you measuring that?

18 Q. How am I measuring what a small fraction is?  
19 Less than 25 percent of the \$20 trillion figure you use  
20 in your report.

21 A. I don't know whether that's the case or not, sir.

22 Q. Did you investigate that at all?

23 A. I did consider it.

24 Q. And when you considered it, how much of a repo  
25 lending market did you believe existed on September

1 16th?

2 A. The way that I think about --

3 Q. Please, sir, just think about my question. Do  
4 you understand what my question was?

5 A. Can you reask the question, please?

6 Q. Sure. How much of a repo lending market existed  
7 on September 16th? What was the volume?

8 A. I don't have that statistic off the top of my  
9 head right now.

10 Q. Approximately.

11 A. I don't have that statistic off the top of my  
12 head right now.

13 Q. Did you look at it? Investigate it?

14 A. I may have. I don't recall off the top of my  
15 head.

16 Q. Did you put it in your report?

17 A. I don't believe it's in my report.

18 Q.

19 THE COURT: Shall we take a break?

20 MR. BOIES: Yes, Your Honor.

21 THE COURT: Let's reconvene at 3:30.

22 **(Court in recess.)** ^ Scanned

23 THE COURT: Thank you. Please be seated.

24 Mr. Boies, go ahead.

25 MR. BOIES: Thank you, Your Honor.

1 BY MR. BOIES:

2 Q. Dr. Mordecai, would you turn to Plaintiffs' Trial  
3 Exhibit 40, which is in your binder?

4 A. This binder, sir?

5 Q. Yes, yes.

6 A. You said 40?

7 Q. Forty.

8 A. Yes.

9 Q. This is a Citigroup global markets publication,  
10 dated September 9, 2008. Is this a document that you  
11 reviewed or considered in connection with your work?

12 A. I believe I may have -- excuse me, I believe I  
13 may have.

14 MR. BOIES: Your Honor, I would offer it for 703  
15 purposes.

16 THE WITNESS: This one dated September 9th,  
17 right?

18 MR. BOIES: Yes.

19 THE WITNESS: Right. I may have looked at it.  
20 I'd say considered versus relied on.

21 THE COURT: Just one second.

22 MR. AUSTIN: No objection for 703 purposes, Your  
23 Honor.

24 THE COURT: All right, Plaintiffs' Trial Exhibit  
25 40 is admitted within a Rule 703 restriction.

1                   **(Plaintiffs' Exhibit Number 40 was admitted into**  
2 **evidence.)**

3                   BY MR. BOIES:

4                   Q. Let me ask you to look at the sixth bullet that  
5 says, "Reiterate by," do you see that?

6                   A. I do.

7                   Q. And it says, "There are still options available  
8 to AIG and the stock trades meaningfully below intrinsic  
9 value." Do you see that?

10                  A. I do.

11                  Q. Were you aware of market participants who  
12 expressed the view that AIG's stock price in September  
13 of 2008 was meaningfully below intrinsic value?

14                  A. There were lots of -- yes, with the explanation  
15 that there were lots of different -- differing opinions  
16 that occur in markets, and at September 9th, they may  
17 have had a higher stock price and better -- better  
18 prospects than they did subsequent.

19                  Q. You understand that this states the stock trades  
20 meaningfully below intrinsic value, not higher; you do  
21 understand that that's what it's saying.

22                  A. I do understand that this is that -- that this is  
23 the view of this particular pair of analysts, yes.

24                  Q. Okay. Now, were you aware of any significant  
25 figure at AIG who took the same position?

1 A. An AIG individual?

2 Q. Yes.

3 A. Around September 9th?

4 Q. Yes, concerning the -- the stock price on  
5 September 9th.

6 A. It doesn't really come to my immediate  
7 recollection.

8 Q. For example, you know who Mr. Willumstad is,  
9 correct?

10 A. Sure.

11 Q. And you read his trial testimony in this case,  
12 correct?

13 A. I -- I did read parts of it.

14 Q. What parts?

15 A. I don't remember.

16 Q. How did you select the parts that you read?

17 A. I read -- I don't remember if I -- how much of it  
18 I read. I know I read some of it, I think just picked  
19 it myself.

20 Q. But how did you pick it yourself?

21 A. Flipped through, looked at pages, read pages,  
22 used the index to sort of say if there were particular  
23 topics that related to some things I was looking at at  
24 the time.

25 Q. Was the value of AIG's stock price something you

1 were looking at at the time?

2 A. I don't remember what particular day I was  
3 reading Mr. Willumstad's testimony.

4 Q. Is it your testimony that you just read portions  
5 of Mr. Willumstad's testimony at random?

6 A. No. I'm just saying I recall certain things I  
7 was looking for at the time. It doesn't mean I didn't  
8 look at the entire thing, but I recall --

9 Q. Did you look at the entire thing?

10 A. Yes.

11 Q. You looked at the entire Willumstad testimony?

12 A. Yes.

13 Q. So, you read the entire Willumstad testimony at  
14 the time?

15 A. To the best of my recollection.

16 Q. And do you recall what he said about whether the  
17 stock was trading meaningfully below its intrinsic  
18 value?

19 A. I don't.

20 Q. Let me see if I can refresh your recollection  
21 from Trial Transcript 6498, lines 13 to 24:

22 "QUESTION: At the time that we have been talking  
23 about generally, in other words, the week of September  
24 8, leading up to the weekend that we've just been  
25 talking about, AIG's stock price was, on September 8 or

1 9, \$19 or \$20 a share, correct?

2 "ANSWER: I think that's correct.

3 "QUESTION: And at that time, you believed that  
4 the stock was trading meaningfully below its intrinsic  
5 value, correct?

6 "ANSWER: Correct.

7 "QUESTION: And that was a view that other people  
8 in the financial markets had also stated or reported,  
9 correct?

10 "ANSWER: Yes."

11 Do you recall that testimony from Mr. Willumstad?

12 A. Specifically, perhaps; I'm not sure.

13 Q. Did you have any reason to disbelieve what  
14 Mr. Willumstad testified to?

15 A. I think, you know, he's entitled to his opinion  
16 as one of many market participants.

17 Q. Um-hum. Are you aware of anything that the  
18 Securities and Exchange Commission said about the stock  
19 prices of financial firms in the middle of September of  
20 2008?

21 A. Nothing specific.

22 Q. Let me ask you to look at Plaintiffs' Trial  
23 Exhibit 168 that's already in evidence.

24 A. Is it in the binder as well?

25 Q. That should be in the binder, um-hum. And the



1 portion I would like to direct your attention to is the  
2 last paragraph on the first page, and, in particular,  
3 the second sentence of that paragraph.

4 A. So, not the first one that says, "Short selling  
5 contributes to price efficiency and something  
6 liquidity," the one after that?

7 Q. Well, actually, you only read part of that  
8 sentence, sir.

9 A. Um-hum.

10 Q. That sentence actually says, "Under normal market  
11 conditions, short selling contributes to price  
12 efficiency and adds liquidity to the market." Do you  
13 see that?

14 A. You would like me to read the sentence after  
15 that?

16 Q. Do you see that sir?

17 A. You would like me to read the sentence after  
18 that?

19 Q. Do you see that, sir?

20 A. I do see that, yes.

21 Q. And the next sentence is, "It appears that  
22 unbridled short selling is contributing to the recent  
23 sudden price declines in the securities of financial  
24 institutions unrelated to the true price valuation."

25 Do you see that?

1 A. Yep.

2 Q. And did you come across this document in the  
3 course of your investigation?

4 A. I may have. I think so. Possibly.

5 Q. And did you see where, in this trial, this was  
6 admitted into evidence?

7 A. Well, I see the -- the number here at the bottom  
8 of the page.

9 Q. Well, that's -- that's just an exhibit for  
10 identification.

11 A. I don't recall where in the trial it was  
12 submitted into evidence, sir.

13 Q. Do you remember any discussion of this document  
14 at the trial?

15 A. I don't recall the specific circumstance.

16 Q. Did you rely on this document in the course of  
17 your investigation and analysis?

18 A. I think I may have considered it. I don't know  
19 if I'd say I relied upon it.

20 Q. Did you have any reason to disagree with the  
21 Securities and Exchange Commission's conclusion that in  
22 mid-September of 2008, there had been recent sudden  
23 price declines in the securities of financial  
24 institutions unrelated to true price valuation?

25 A. I don't think there's enough information in this

1 one document to basically be able to agree or disagree  
2 as it related to my specific analysis, which is why I  
3 previously said --

4 Q. That is not my question, sir. My question is not  
5 whether there is enough information in this one document  
6 to basically be able to agree or disagree. My question  
7 is, do you have any reason to disagree with the  
8 Securities and Exchange Commission's conclusion that in  
9 mid-September of 2008, there had been recent, sudden  
10 price declines in the securities of financial  
11 institutions unrelated to true price valuation? That's  
12 a simple yes or no question.

13 A. It's tough to parse that into a yes or no,  
14 because I don't know what they mean by "unbridled short  
15 selling." I don't know what they mean by "recent,  
16 sudden price declines" or what they consider a true  
17 price valuation. I mean, I read what's on the page. I  
18 don't know how to interpret it in the context of my  
19 experience or my analysis.

20 Q. Let's try. First, you understand that in  
21 mid-September 2008, there had been recent, sudden price  
22 declines in the securities of financial institutions  
23 generally, correct?

24 A. Yes.

25 Q. And you understand that the SEC here is saying

1 that those price declines were unrelated to true price  
2 valuation, correct? Do you understand what's that  
3 they're saying?

4 A. That's what -- it says "it appears," they think  
5 it appears or it says it appears.

6 Q. Okay.

7 A. But, again, I don't know what they're using as a  
8 standard for true price valuation. It's the problem of  
9 having me parse a -- from what they have on the page,  
10 the market movements due to bad news, and actual risk --  
11 crystallizing risk from -- from what they're trying to  
12 describe here.

13 Q. Do you have an understanding that in  
14 mid-September 2008, the country was in the throes of a  
15 severe financial panic?

16 A. As well as a pretty serious --

17 Q. It's just a very specific yes or no question,  
18 sir.

19 A. The answer is that in two -- in that -- during  
20 that period of time, there were very real economic,  
21 business, and financial pressures that the country was  
22 experiencing.

23 Q. Do you have an understanding that in  
24 mid-September 2008, the country was in the throes of a  
25 severe financial panic? Yes or no, sir, or I don't

1 understand the question.

2 A. How are you using the word "financial panic,"  
3 sir? "Panic" is a word that I'm particularly focused  
4 on, and how are you tying that to financial?

5 Q. Sir, if you can't answer my question, just tell  
6 me. If -- if you, as an expert in economics and  
7 financial economics, can't tell me whether you think the  
8 country was in the throes of a severe financial panic in  
9 mid-September 2008, I want the record to reflect that.  
10 Is that your testimony?

11 A. Financial -- my testimony is that financial  
12 markets were highly volatile at the time --

13 Q. That's not my question, sir. Do you understand  
14 my question?

15 A. Why don't you ask it again, sir, and perhaps if  
16 you could rephrase the question.

17 Q. Do you believe that in mid-September 2008 the  
18 country was in the throes of the worst financial panic  
19 since the Greater Depression?

20 A. I believe the country was in the worst financial  
21 crisis since the Great Depression.

22 Q. Okay. Is the term "financial panic" a term that  
23 you have come across from time to time in the economic  
24 literature?

25 A. It depends on the branch of economics. There's

1 financial economics, there's monetary economics.

2 Q. I'm just asking whether you've come across that  
3 term in the course of the economic literature?

4 A. Yes, both generally and -- mostly in the  
5 generally writings and literature, yes.

6 Q. And economists define certain periods as periods  
7 of financial panic, correct?

8 A. I think the NBER talks about recessions and  
9 expansions.

10 Q. They may talk about recessions and expansions,  
11 but all I'm talking about right now is financial panic,  
12 and you have heard of the financial panic, for example,  
13 of 1907?

14 A. Okay.

15 Q. Have you?

16 A. Well, there's a wonderful book by Charles  
17 Kindleberger called crashes, manias, and panics, if  
18 that's what you're referring to --

19 Q. I wasn't referring to that book.

20 A. Okay.

21 Q. I was referring to a period, and I was simply  
22 asking you whether you were aware of what is referred to  
23 as the financial panic of 1907.

24 A. I'm familiar with the general --

25 Q. That's not my question. My question is, are you

1 familiar --

2 A. Am I aware?

3 Q. Yes.

4 A. Yes, I'm aware.

5 Q. Okay. And are you aware --

6 A. Generally aware.

7 Q. -- are you aware that that's would led to the  
8 Federal Reserve Act?

9 A. Yes, I'm familiar with those facts as well.

10 Q. Okay. And the purpose of the Federal Reserve Act  
11 was to try to deal with financial panics, correct?

12 A. From my general knowledge --

13 Q. Yes or no.

14 A. Again, remember, I'm not acting as a 13(3) lender  
15 type person in this situation.

16 Q. I know that, sir, and --

17 A. I'm not providing policy opinion.

18 Q. Sir, if your answer is I don't know, I'll move  
19 on. All I'm trying to do is get a yes, no, I don't  
20 know --

21 A. From my general economic knowledge, the founding  
22 of the Federal Reserve in something 11 was related to  
23 the events you described and followed from the events  
24 that you have described.

25 Q. And the events that I have described is the

1 financial panic of 1907, correct?

2 A. It's been loosely referred to or commonly  
3 referred to that in general vernacular. Again, I'm  
4 reserving, as I have already, I'm caveating your worse  
5 of the word "panic" here, okay?

6 Q. Um-hum, but that's not --

7 A. For reasons I've previously stated.

8 Q. But that's not because the term "financial panic"  
9 is a term that's unfamiliar to you, is it?

10 A. You mean in terms of my general knowledge?

11 Q. Your general knowledge as an expert in financial  
12 economics.

13 A. My general knowledge as someone who's read  
14 economic -- popular economic literature, general  
15 economic literature, and a wide range of things. It is  
16 not something that I would be using in actual work as a  
17 relative financial analyst in markets. It is not  
18 something I would be using. It is a descriptive term.  
19 It is not a technical term that I would be using. It is  
20 way too emotionally and politically loaded to do a  
21 proper relative value analysis using solid economic  
22 principles, sir.

23 Q. Are you aware of people like Chairman Bernanke  
24 and Secretary Geithner who have described what was  
25 happening in 2008, in September, as a financial panic?



1 A. That's entirely -- well, let me just say -- are  
2 you asking me if I'm aware of it?

3 Q. That was all I was asking, is whether you were  
4 aware of it.

5 A. Yeah, perhaps they did. If you like to point me  
6 to a specific passage or something, I would have to look  
7 at it.

8 Q. You don't -- you don't disagree that using  
9 "financial panic" in the way that it is commonly used by  
10 economists, that the country was in the middle of a  
11 financial panic in September of 2008, do you?

12 A. I think there was --

13 Q. There was what?

14 A. There were other things -- a lot of terms that  
15 economists might have used.

16 Q. Yes, there may have been a lot of other terms,  
17 and we could get to some of them, but --

18 A. Flight to quality is another one.

19 Q. What?

20 A. Flight to quality, which is a rational -- a  
21 rational take on the same thing.

22 Q. With respect to -- since you mentioned it --  
23 flight to quality, when you have a flight to quality,  
24 then the -- the quality tends to get bid up, correct?

25 A. When you have a flight to quality --

1 Q. Yes or no, sir.

2 A. Demand increases, so the answer is yes. Demand  
3 for -- demand for --

4 Q. Okay, all you have to do is say yes.

5 A. Demand for -- okay. All right.

6 Q. I really am trying to move this along.

7 A. Okay.

8 Q. And if it's susceptible of a yes or no answer, if  
9 you could give it to me, that would help.

10 A. Yes.

11 Q. Okay. Now, are you aware of any financial firms  
12 whose stock increased during September of 2008?

13 A. I can't think of anything off the top of my head.  
14 You said during 2008 or during September 2008?

15 Q. September of 2008.

16 A. I can't think of anything off the top of my head.

17 Q. Do you know, for example, what firms, other than  
18 AIG, would have failed in September of 2008 without  
19 government assistance?

20 A. Well, I know Lehman did fail.

21 Q. Do you know, for example, what firms, other than  
22 AIG, would have failed in September of 2008 without  
23 government assistance?

24 A. Financial firms specifically?

25 Q. Yes.

1           A. I think that would require speculation on my  
2 part. I mean, I know that a lot of firms didn't --

3           Q. Is that something that --

4           A. I know a lot of firms did receive access to  
5 certain facilities, but to say whether they would have  
6 failed without government assistance requires  
7 speculation on my part. Bear Stearns certainly was  
8 acquired, but I don't remember the exact day.

9           Q. Did you study, as part of your analysis, whether  
10 there were firms, other than AIG, that would have failed  
11 in September of 2008 if they had not been provided  
12 government assistance? That's a yes or no question.

13          A. The answer is -- as you specifically posed the  
14 question, the answer is no. I did not specifically  
15 study firms that had failed in the absence of government  
16 assistance during September of 2008.

17          Q. No. My question was not whether you had  
18 specifically studied firms that had failed --

19          A. No, I would have is what I said, sir, I believe  
20 is what I said is would have.

21          Q. Just to --

22          A. But, again, if I misspoke, I apologize.

23          Q. Just to be clear, you did not study, as part of  
24 your work, whether there were firms other than AIG that  
25 would have failed in September of 2008 if they had not

1     been provided government assistance, correct?

2           A. Would have failed requires some speculation that  
3     I do not think I engaged in in the preparation of my  
4     report or my analysis.

5           Q. In addition to not speculating, you didn't study  
6     it, correct?

7           A. With the exception of Exhibit 25 of my report,  
8     that compares credit default swap spreads of a range of  
9     financial institutions on the day prior to receiving  
10    government assistance, bankruptcy, or merger, I did not  
11    do a specific study of which firms would have failed,  
12    because this, to me, does not mean they would have  
13    failed; this means they got government assistance. I  
14    did not go and overreach on my empirical analysis by  
15    baking in conclusions that are not called for from the  
16    evidence I had.

17          Q. My question was not what you had concluded. My  
18    question was whether you had attempted to study or  
19    determine what firms, if any, other than AIG, would have  
20    failed in September of 2008 if they had not been  
21    provided government assistance.

22          A. And the reason I've answered the question that I  
23    have is --

24          Q. Can you answer my question now, yes or no?

25          A. Sir, I'm trying to.

1 Q. Well, it's a yes or no question. It's about what  
2 you studied and tried to do. I'm not asking you for  
3 your conclusions. I'm just asking you what you tried to  
4 do. You either tried to do it or not, right?

5 A. Apart from comparing the credit default swap  
6 spreads of financial institutions just prior to either  
7 receiving government assistance, filing bankruptcy, or  
8 merging, I did not do any other such study that you  
9 described.

10 Q. Okay.

11 A. Which I've said three times now.

12 Q. Do you know how much money Morgan Stanley  
13 received in government assistance?

14 A. I don't recall that number.

15 Q. Did you study it?

16 A. I don't recall. I know that I looked at a bunch  
17 of things. I don't recall what they got.

18 Q. You know from your reviewing of the trial record  
19 of this case that we have frequently discussed the  
20 extent to which Morgan Stanley received more money than  
21 AIG. You know that just from looking at the trial  
22 record, right?

23 A. Yes.

24 Q. And did that lead you to examine Morgan Stanley's  
25 facts?

1           A. I think I already discussed that in my direct,  
2 actually, in one of my exhibits in my direct actually  
3 addressed that very line of reasoning you're asking me  
4 about.

5           Q. What is the line of reasoning? I'm not asking  
6 about a line of reasoning. I'm just asking what you  
7 studied.

8           A. I would say I considered whether it mattered and  
9 decided that it didn't. It wasn't relevant to my -- to  
10 my analysis or testimony, and then illustrated that in  
11 my demonstratives on direct.

12          Q. Now, when you say it wasn't relevant to your  
13 testimony, one of the things that you talk about in your  
14 testimony is what a commercially reasonable private  
15 market result would have been for AIG. Do you recall  
16 that?

17          A. Yes.

18          Q. Now, you are aware that with respect to all of  
19 the 13(3) loans that the Federal Reserve made, other  
20 than to AIG, there was no attempt to replicate a  
21 commercially reasonable private market result, correct?

22          A. I don't know that, sir.

23          Q. Did you look at that at all?

24          A. Because I wasn't looking at --

25          Q. Did you look at that at all? Please, sir.

1           A. In what way, sir? I'm trying to answer the  
2 question.

3           Q. Okay.

4           A. So, my -- my --

5           Q. Let me ask the question.

6           A. -- my --

7           Q. Let me ask the question, okay?

8                   I asked you first, as a predicate, whether you  
9 were aware that with respect to all of the 13(3) loans  
10 that Federal Reserve made, other than to AIG, there was  
11 no attempt to replicate a commercially reasonable  
12 private market result, and you said that you did not  
13 know whether that was right or not, correct?

14          A. I would -- I'm trying to parse your question --

15          Q. Don't parse my question, sir. Just listen,  
16 please.

17          A. For me to answer your question, sir, I have to  
18 parse your question, or can you rephrase the question?

19          Q. Sir, if you tell me you can't understand the  
20 question, I will ask it again.

21          A. I am not -- what I'm saying is, I don't know if  
22 those other names attempted to replicate commercially  
23 reasonable or not. First of all, I am not a 13(3)  
24 lending expert in this case, okay? Second of all, you  
25 don't have to have the identical structure of a

1 transaction in order for it to -- commercial  
2 reasonability can apply to a wide range of transactions  
3 with a wide range of terms.

4 Q. Do you understand my question?

5 A. Please, because obviously I don't.

6 Q. Did you attempt to determine at all whether any  
7 of the 13(3) loans that the Federal Reserve made to  
8 companies other than AIG sought to replicate a  
9 commercially reasonable private market result?

10 A. I did not study 13(3) lending at all, so I didn't  
11 look for -- look at other 13(3) loans. I -- my scope of  
12 testimony is about the commercial reason inability of  
13 this loan, of this recapitalization.

14 Q. And you also didn't look at anything at all about  
15 what the purpose of the Federal Reserve was with respect  
16 to 13(3) loans. Is that fair?

17 A. I did not look at the 13(3) purpose of Federal  
18 Reserve lending, no, I did not. I was not focused on  
19 policy issues for the scope of my testimony in this  
20 case.

21 Q. Policy issues or legal issues either, right, sir?

22 A. Or legal issues, correct.

23 Q. Let me turn to one last subject. Before I do  
24 that, Your Honor, I would offer Plaintiffs' Trial  
25 Exhibit 5396, which is my chart about Dr. Mordecai's



1 initial rescue package components, as a demonstrative  
2 exhibit.

3 MR. AUSTIN: No objection, Your Honor.

4 THE COURT: Plaintiffs' Demonstrative Exhibit  
5 5396 is admitted.

6 **(Plaintiffs' Exhibit Number 5396 was admitted  
7 into evidence.)**

8 MR. BOIES: And I would offer Plaintiffs' Trial  
9 Exhibit 5398, which is the calculation Dr. Mordecai has  
10 testified they had not received from the sale of common  
11 stock, which had been received from the Series C  
12 preferred stock. ^ Ck main audio

13 MR. AUSTIN: No objection, Your Honor.

14 THE COURT: Plaintiffs' Demonstrative Trial  
15 Exhibit 5398 is admitted.

16 **(Plaintiffs' Exhibit Number 5398 was admitted  
17 into evidence.)**

18 BY MR. BOIES:

19 Q. Let me now turn to the subject of stock prices  
20 and your event studies.

21 A. Okay.

22 Q. And in that connection, let me ask you to look at  
23 Defendant's Exhibit 2608.

24 A. Yes, sir.

25 Q. And the six windows that you identify here are

1 all windows that begin with the September 16th, 2008,  
2 opening, correct?

3 A. Correct.

4 Q. And you then go over and, with respect to each of  
5 these windows, there is a red "no" six times to the  
6 question of "Negative stock price reaction?"

7 A. That's correct.

8 Q. Now, if -- as a hypothetical measure, and I know  
9 that you didn't do this, and I'm assuming that you will  
10 argue that you shouldn't have done this, but just as a  
11 hypothetical, so the Court can understand the  
12 significance of your choices, if instead of taking the  
13 September 16th, 2008, opening you had taken the  
14 September 16th, 2008, close, how many of those "nos"  
15 would change to "yes"?

16 A. I'd have to do it.

17 Q. You don't know that, sir?

18 A. I'm not going to speculate on it.

19 Q. Well, is it really speculation?

20 A. Well, I think I've already mentioned or more than  
21 mentioned, I --

22 Q. The question is, is it really speculation?

23 A. Well, let me take a look. So, if I start with  
24 the close, you said? All right, I'm looking at Exhibit  
25 C-2 of my report --

1 Q. Sir, I'm not asking you how you get there. I'm  
2 simply asking you a simple question. If instead of  
3 using the opening price on September 16th, 2008, as the  
4 start of your window, you had used the closing price on  
5 that same day as the start of your window, how many of  
6 these "nos" would change to "yes"? If that's something  
7 that's simple for you to answer, I'd like you to do it.  
8 If it's going to take you a long time, we can figure out  
9 another way to make that record.

10 A. I actually can't answer the question with the  
11 information I have here, because I'd have to run the  
12 event study; I'd have to control for market movements,  
13 for all the industry movements, and then I'd have to  
14 test the statistical significance of the movements. So,  
15 actually, I cannot answer the question.

16 Q. You cannot answer the question with respect to  
17 any of the windows; that is your testimony?

18 A. Not without controlling for market movements,  
19 controlling for industry movements, because this is an  
20 event study. That equation requires you use all of  
21 those elements in order to do so. So, no, you can't --  
22 you can't just eyeball it and do that.

23 Q. Okay, sir.

24 You know that the stock price declined from the  
25 close on September 23rd to the close on September 24th,

1 correct?

2 A. Yes.

3 Q. And it declined a considerable amount, correct?

4 A. I wouldn't disagree with that characterization.

5 Q. Do you have an opinion or conclusion as to what  
6 caused that decline?

7 A. I cite in my report --

8 Q. Do you have an opinion or conclusion as to what  
9 caused that decline? That's a yes or no question.

10 A. I do not have a causal conclusion. I do have  
11 indications, as I cite in my report, as to how market  
12 participants attributed that decline.

13 Q. But you, yourself, have not reached any opinion  
14 as to the reasons for that decline. Is that your  
15 testimony?

16 A. My testimony is, other than --

17 Q. No. Is that your testimony?

18 A. I'm trying to answer the question, sir.

19 Q. Well, then--

20 A. You're asking me what my testimony is, and I'm  
21 trying to give it to you, because you --

22 Q. No, I'm not asking what your testimony is  
23 generally. I'm not asking you to simply start  
24 testifying. What I'm asking you is whether you have  
25 reached any opinion as to the reasons for the decline

1 from a \$5 closing price on September 23rd to a \$3.31  
2 closing price on September 24th. That question is a  
3 simple yes or no question.

4 A. And the question is do I have an opinion?

5 Q. As to the reasons for the decline.

6 A. I have opinions as to --

7 Q. I'm not asking you what other opinions you may  
8 have. I'm asking you whether you have an opinion as to  
9 the reasons for the decline from a \$5 closing price for  
10 AIG's stock on September 23rd to a \$3.31 closing price  
11 on September 24th.

12 A. Yes, and I've stated it already, and it is  
13 consistent with the participant attributions I document  
14 in my report.

15 Q. When you say you've stated it already, do you  
16 mean you've stated it already in your testimony here or  
17 in your report or both?

18 A. I stated in --

19 Q. I'm just asking that question.

20 A. Both, including our discussion yesterday.

21 Q. Okay.

22 A. Right.

23 Q. As you understand it, when did the market first  
24 understand all of the significant components of what you  
25 refer to as the initial rescue package?

1           A. Over the window, starting on September 16th,  
2 through their final -- and, again, you said all of the  
3 elements, so --

4           Q. No, I said actually all of the significant  
5 components or elements.

6           A. Well, the most significant components were the  
7 79.9 percent equity return participation and the general  
8 terms of the loan. Certainly most of that got out on  
9 the 16th with the press releases that were sent --  
10 released after the close; however, they became aware of  
11 the benefits of the rescue 10:52 of the 16th. Other  
12 details trickled out, but I think the most significant  
13 elements were those that were formally -- I guess what  
14 I'm saying is, they were formally documented in the  
15 press release. As to when the market actually learned  
16 of all those different elements, it's sometime during  
17 the 16th, during the day on the 16th. And that's about  
18 how you define the market, participants in the market,  
19 buyers and sellers.

20           Q. So, it is your testimony that the market was  
21 aware of all of the significant elements of what you  
22 define as the initial rescue package by the close of the  
23 market on the 16th?

24           A. It depends on how you define "significant."

25           Q. Let's use "significant" the way you do.

1 A. Well, during the day on the 16th, rumors began to  
2 circulate --

3 Q. Sir, do you understand what the question is? I'm  
4 not asking you to read your report.

5 A. I'm trying to --

6 Q. I'm not asking you to read documents. I'm simply  
7 asking a very simple question. Do you understand what  
8 the question is?

9 A. Why don't you repeat the question, sir.

10 Q. Do you believe that the market was aware of all  
11 of the significant elements, using "significant" in the  
12 way you do, of what you define as the initial rescue  
13 package by the close of the market on September 16th?  
14 That is a yes or no question, sir.

15 A. I believe the answer is, conditionally, yes.  
16 Would you like me to explain what I mean by  
17 "conditionally"?

18 Q. How long would it take?

19 A. One sentence.

20 Q. Yes, go ahead.

21 A. To the extent that the market understood that  
22 AIG's likelihood of impending bankruptcy would be  
23 relieved and the way in which the market -- stock market  
24 responded to that, I believe that the market's -- the  
25 effect of the market incorporating that information was

1 captured on the 16th. I think the details of the deal  
2 were certainly documented in the press release at the --  
3 after the close of the 16th, but I have no evidence to  
4 the contrary that that information had not begun  
5 circulating in the market prior to the close.

6 Q. Okay. So, for purposes of your analysis, for the  
7 reasons you just described, you treat the market as  
8 having been aware of all of the significant elements of  
9 the initial rescue package as of the close of the market  
10 on the 16th. Is that correct?

11 A. Yes, given the fact that you said aware, and to  
12 the extent that you define significance as the  
13 availability of a rescue package of a sufficient size to  
14 a bankruptcy due to a failure to pay some \$75 billion in  
15 liabilities by the end of the day.

16 Q. Let me try to clear about this. Looking back to  
17 Plaintiffs' Trial Exhibit 5396, where you identified  
18 three kinds of elements of that rescue package. The  
19 first was the \$85 billion revolving credit facility,  
20 including advances; the second was the 79.9 percent  
21 equity participation; and the third was associated fees,  
22 interest, and covenants.

23 Now, during the day of September 16th, the market  
24 was, you say, aware that there was going to be a rescue  
25 of some kind, even though the exact dollar amount and



1 the exact terms might not have been known. Fair?

2 A. Correct.

3 Q. Is it your understanding that on September 16th,  
4 the market was aware -- to use your terms -- that the  
5 initial rescue package would include terms comparable to  
6 the terms that were ultimately included?

7 A. I can't say -- I cannot say that for sure off the  
8 top of my head. I do -- I can say that those were  
9 certainly known with the press releases that were  
10 released that evening. I don't know the extent to which  
11 the terms within the term sheet that AIG's management  
12 received during the day, I don't know how -- to what  
13 degree that information may have become more broadly  
14 known. I would say, based on the stock price reaction,  
15 it would -- apparently some information was out there.

16 Q. By the opening of the stock market on September  
17 17th, were all of the material elements or components of  
18 the initial rescue package known by the market?

19 A. Are you using "material" in a way different from  
20 "significant" in your last question?

21 Q. No. Let's use "significant" if you're more  
22 comfortable with significant.

23 A. Well, you know --

24 Q. Whatever you are familiar with. I will use  
25 whatever --

1 A. How about substantive? Substantive and relevant?

2 Q. Substantive and relevant, I'll use that.

3 By the opening of the stock market on September  
4 17th, were all of the substantive or relevant components  
5 of the rescue package known by the market?

6 A. I believe it depends on the context. I think by  
7 then there was an understanding of the rate, some of the  
8 general terms, and the equity return participation, as  
9 well as the size of the facility, the initial credit  
10 facility, the revolving credit facility, because that  
11 was all discussed to some degree in some of the public  
12 disclosures, press release disclosures, and so forth.  
13 At least with regard to the 79.9 percent equity return  
14 participation, I think "to be determined" I think was  
15 something that was generally -- became somewhat publicly  
16 known.

17 Q. By opening of the market on September 17th, the  
18 market was aware at least that there was going to be an  
19 \$85 billion credit facility and that the Government was  
20 going to own 79.9 percent of the company. Fair?

21 A. Equity return participation of 79.9 --

22 Q. You keep saying "equity return participation."  
23 Is equity return participation a phrase that you found  
24 in any of the contemporaneous documents?

25 A. It's a phrase I'm familiar with based on my

1 professional deal experience.

2 Q. Is that a phrase you found in any of the  
3 contemporaneous documents?

4 A. I don't recall whether that phrase -- that's the  
5 way that I describe it, as equity to be determined,  
6 equity return participation.

7 Q. But --

8 A. Sir, the answer I have already given you is I  
9 don't recall seeing it in any particular document. That  
10 is my interpretation based on my experience.

11 Q. That is your interpretation of what's in the  
12 documents?

13 A. That is my interpretation of how -- what the --  
14 what category this fits in consistent with my  
15 experience.

16 Q. Now, when you say "equity return participation,"  
17 does that mean that the Government's going to own 79.9  
18 percent of the equity?

19 A. It can. That's one of the things --

20 Q. Does it mean something else?

21 A. It takes a wide range of possible structures.  
22 Sometimes it's warrants, sometimes it's preferred,  
23 sometimes it's -- it's various other kinds of return  
24 features, but -- or equity features.

25 Q. And are you saying that on September 17th, the

1 market knew, even though the words weren't used, that  
2 there would be something called 79.9 percent equity  
3 return participation, but they didn't know what form it  
4 would be in?

5 A. Form to be determined is, I believe, what was in  
6 the term sheet that was signed by the senior management  
7 of AIG.

8 Q. I don't want to get off the current question, so  
9 I'll come back to that, "form to be determined."

10 As of the opening of the market on September  
11 17th, was the market aware that there would be an \$85  
12 billion loan and that there would be what you refer to  
13 as a 79.9 percent equity interest on the part of the  
14 Government, form to be determined?

15 A. There were market participants out there that had  
16 that knowledge or had -- were aware of that, because  
17 you'll notice you're using "the market," and I'm --  
18 interchangeably with "market participants," who then  
19 have the ability to transact.

20 Q. When you do an event study --

21 A. Um-hum.

22 Q. -- one of the things you're trying to do is  
23 you're trying to determine when has the market absorbed  
24 certain information, correct?

25 A. The market responds to news events, that's

1 correct.

2 Q. Had the market, in your terms, responded to the  
3 news events of an \$85 billion loan and a 79.9 percent  
4 equity participation, form to be determined, by the  
5 opening of the market on September 17th?

6 A. Yes.

7 Q. Okay. Now, are you aware of whether or not the  
8 market participants on September 17th and September 18th  
9 believed that the form of the equity participation would  
10 be warrants?

11 A. I have no opinion as to -- I wouldn't speculate  
12 as to what market participants believed or didn't  
13 believe.

14 Q. You've certainly talked about what market  
15 participants believed or didn't believe in your direct  
16 testimony, didn't you?

17 A. I don't think so. I -- I -- I had excerpts of  
18 actual review -- excerpts reviewed from research  
19 reports.

20 Q. Yes.

21 A. -- that discussed views expressed, but that's not  
22 me speculating on what market participants believed  
23 about warrants versus something else.

24 Q. I'm not asking you to speculate. I'm just asking  
25 you whether, just like you looked at published reports

1 to figure out what you wanted to talk about on direct,  
2 you used published reports to figure out what the market  
3 participants believed the form of equity was going to  
4 be. Did you do that?

5 A. I don't recall a specific warrant example from  
6 that period of time. Maybe there was, maybe there  
7 wasn't. I don't recall. If you have one, I'm happy to  
8 look at it.

9 Q. You know that there has been some issue in this  
10 case as to when the market discovered that the form of  
11 equity was going to be preferred stock, correct?

12 A. I have seen some discussion about that, yes.

13 MR. BOIES: Your Honor, I apologize. We are  
14 going to hand out a small binder, but this was not a  
15 subject that I thought would come up.

16 THE WITNESS: Thank you.

17 BY MR. BOIES:

18 Q. This is a binder of some documents that we  
19 prepared just in case you didn't recall what you had  
20 seen about warrants.

21 First, let me look at or ask you to look at  
22 Plaintiffs' Trial Exhibit 2736. Is this a document that  
23 you saw in connection with your work?

24 A. I don't recall. I may have. I may have. I  
25 would say I -- I may have.

1 Q. Is this a document that you have read in  
2 connection with your review of the trial?

3 A. I believe so.

4 Q. And when you reviewed it as part of your reading  
5 of the trial record, was it something that you  
6 considered?

7 A. Yes.

8 Q. And was it something that you relied on in part  
9 as a way of knowing what information was made available  
10 to the market?

11 A. I would say I considered it. I don't know  
12 whether I gave it the same weight as I would give actual  
13 analysis or analytic research by actual street  
14 participants.

15 Q. Whether or not you would give it the same weight  
16 as you would give actual analysis or analytic research  
17 by actual street participants, was this something that  
18 you believed was relevant to assessing what information  
19 was known by the market?

20 A. Well, it was relevant to assessing the fact that  
21 79.9 percent of stock interest was -- was circulating as  
22 information. I don't put a lot of stock in general  
23 reporters getting financial instrument features right  
24 based on my long-standing experience on reading certain  
25 kinds of accounts, but they do the best they can, but

1 it's a matter of background.

2 Q. Is it your experience, based on your long  
3 experience that people in financial markets rely in  
4 significant part on the *New York Times* to provide them  
5 with information?

6 A. I think they consider it. I mean, different  
7 people consider different information to different  
8 degrees. It's a -- certainly a fine paper.

9 Q. Well, let me -- let me ask you to look at  
10 Plaintiffs' Trial Exhibit 103. Do market participants  
11 rely on the *Wall Street Journal* for information such as  
12 the terms of a government proposal such as we had on  
13 September 16th?

14 A. I'd say to varying degrees.

15 Q. Did you review Plaintiffs' Trial Exhibit 103 as  
16 part of your investigation?

17 A. I believe I may have.

18 Q. Well, you may have. Did you?

19 A. I -- I would probably say, to the best of my  
20 recollection, yes.

21 Q. Yeah. And --

22 A. At some point.

23 Q. -- and this September 16th report from the *Wall*  
24 *Street Journal*, like the *New York Times* report that was  
25 Plaintiffs' Trial Exhibit 2736, both indicate that the



1 form of equity is going to be warrants, correct?

2 A. It does seem to indicate that.

3 Q. It doesn't just seem to indicate that; it does  
4 indicate that, right?

5 A. It does, in fact, correct.

6 Q. Let me ask you to look next at Plaintiffs' Trial  
7 Exhibit 131. Is this a article from the *New York Times*,  
8 dated September 17th, 2008, that you reviewed in  
9 connection with your work?

10 A. (Document review.) I may have seen it. I don't  
11 recall specifically, but it looks somewhat familiar.  
12 Parts of it look familiar.

13 Q. Did you review this in connection with your  
14 review of the trial record?

15 A. I may have. Again, I don't remember exactly when  
16 I saw this.

17 Q. If you go to page 3 of the exhibit.

18 A. I'm there.

19 Q. The second full paragraph where it says, "Under  
20 the plan, the Fed will make a two-year loan to AIG of up  
21 to \$85 billion and, in return, will receive warrants  
22 that can be converted into common stock..." Do you see  
23 that?

24 A. I do.

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

1 Exhibit 1593. This is a September 17th, 2008,  
2 publication from A.M. Best. Is A.M. Best and is this  
3 publication right here something that you would consider  
4 actual analysis or analytic research by actual street  
5 participants?

6 A. I -- A.M. Best is a well-recognized insurance  
7 industry rating agency. So, the answer is yes, A.M.  
8 Best research would be considered by street  
9 participants.

10 Q. And if you go to the last page, the first  
11 sentence of the last paragraph, where it says, "Current  
12 AIG shareholders will see their equity diluted 79.9% by  
13 the issuance of warrants to the federal government..."

14 A. I see that.

15 Q. Let me ask you to look next at Plaintiffs' Trial  
16 Exhibit 1595.

17 A. Yes.

18 Q. This is the Dow Jones Newswire of September 17,  
19 2008. Is it your experience that traders and other  
20 market participants rely on Dow Jones Newswires for  
21 information?

22 A. Yes.

23 Q. If you look at the third paragraph, it says,  
24 "Under terms hammered out Tuesday night, the U.S.  
25 Federal Reserve will lend up to \$85 billion to AIG, and

1 the U.S. Government will effectively take a 79.9% equity  
2 stake in the insurer in the form of warrants..." Do you  
3 see that?

4 A. Yes.

5 Q. Let me ask you to look next at Plaintiffs' Trial  
6 Exhibit 2884, and this is a equity research publication  
7 from Societe Generale. Do you see that?

8 A. I do.

9 Q. Dated September 17th, 2008, correct?

10 A. Yes.

11 Q. And it, too, says that the Government's equity  
12 stake will be in the form of warrants. Do you see that  
13 in the third sentence -- the third line?

14 A. Yes.

15 Q. Now, the next day after the 17th is the 18th, and  
16 the 18th is obviously two days after the 16th, and we  
17 saw a *New York Times* article on the 16th, a *New York*  
18 *Times* article on the 17th. Now let me ask you to look  
19 at Plaintiffs' Trial Exhibit 137. Is this an article  
20 that you considered as part of your analysis?

21 A. I believe so.

22 Q. And if you look on page 7 --

23 A. Page 7?

24 Q. -- page 7 of the exhibit.

25 A. Seven of 10?

1 Q. Yes.

2 A. So, not the first page that says "Reportedly"?

3 Q. Not the first page? Excuse me, sir?

4 A. Seven of ten. Okay, I'm on 7 of 10.

5 Q. Were you saying before?

6 A. Well, I just didn't know if you wanted me to look  
7 at the first page. That's all.

8 Q. The first page mentions warrants, too.

9 A. Yes.

10 Q. But I was interested in page 7, the last  
11 sentence, where it says, "We still need to see the  
12 warrant to see when the government can exercise it." Do  
13 you see that?

14 A. On the last page? Yes, I do see that.

15 Q. Um-hum. And then if you turn to Plaintiffs'  
16 Trial Exhibit 1587, this is a Citigroup Global Markets  
17 Equity Research publication, dated September 18th, 2008,  
18 correct?

19 A. Yes.

20 Q. And is this a document that you considered as  
21 part of your analysis?

22 A. I don't specifically recall this one, but it may  
23 have been in my set.

24 Q. Do you recall seeing this as part of the trial  
25 record?

1           A. Again, I'm going to -- I don't know that I  
2 specifically recall this one, but it may have been  
3 there.

4           Q. If you look under "Government Action," eight  
5 lines down on the first page.

6           A. Yes.

7           Q. Do you see where it says "the government will  
8 receive warrants"?

9           A. Yes.

10          Q. And then if you look at Plaintiffs' Trial Exhibit  
11 1606, this is a Reuters report on September 18th, 2008.  
12 Do you see that?

13          A. I do.

14          Q. And is this a document that you have reviewed and  
15 considered as part of your work?

16          A. I believe so.

17          Q. And if you look at the second paragraph, it says,  
18 "The Central Bank will receive the warrants in return  
19 for an \$85 billion credit facility to be used by AIG."

20          A. I see that.

21          Q. And then going all the way to September 24th,  
22 2008, would you look at Plaintiffs' Trial Exhibit 1655.

23          A. Yes.

24          Q. And there is a heading called "Impact" on the  
25 first page. Do you see that?

1 A. I do.

2 Q. Now, going ten lines down, do you see the  
3 sentence that says, "Applying the 80% warrant dilution  
4 effect..." Do you see that?

5 A. I do.

6 Q. And then it says, "(We assume strike at \$2)."

7 A. Yes.

8 Q. And when it refers to a strike, you know that  
9 refers to strike price, correct?

10 A. Yes, I do.

11 Q. And the strike price is the amount that would be  
12 paid to exercise the warrant. Is that correct?

13 A. That is the exercise price to the warrant as a  
14 form of the long-term option.

15 Q. And you indicated that you had reviewed and  
16 considered this as part of your work. Is that correct?

17 A. Yes.

18 MR. BOIES: Your Honor, I would offer Plaintiffs'  
19 Trial Exhibit 1655 subject to a 703 limitation.

20 MR. AUSTIN: No objection if it's subject to 703,  
21 Your Honor.

22 THE COURT: Plaintiffs' Trial Exhibit 1655 is  
23 admitted with a Rule 703 restriction.

24 **(Plaintiffs' Exhibit Number 1655 was admitted**  
25 **into evidence.)**

1 THE WITNESS: I indicated that most of the things  
2 you showed me. I'm actually not sure about this one.  
3 You actually didn't ask me whether or not this was one I  
4 actually reviewed.

5 BY MR. BOIES:

6 Q. Do you remember the question and answer, like, 60  
7 seconds ago?

8 A. When you asked me if I had seen it? I apologize  
9 if I --

10 Q. In which I said:

11 "QUESTION: And you indicated that you had  
12 reviewed and considered this as part of your work. Is  
13 that correct?

14 "ANSWER: Yes."

15 THE WITNESS: I thought I misheard you -- I  
16 thought I misheard you or I misspoke. So, this is one I  
17 may have seen, but I don't recall. And I apologize.

18 BY MR. BOIES:

19 Q. Whatever the communications were or were not --

20 A. Um-hum.

21 Q. -- between AIG and the Federal Reserve Bank of  
22 New York about what the form of equity would be, is it  
23 fair to say that the market, on September 17th and 18th,  
24 at least, believed that the form of equity would be  
25 warrants?

1           A. There was certainly a lot of commentary out there  
2 indicating the likelihood of warrants.

3           Q. Um-hum. Were you aware of any commentary on  
4 September 17th or 18th that indicated that the form of  
5 equity would be preferred stock?

6           A. I'd have to go back and check my notes.

7           Q. As you sit here now, are you aware of that?

8           A. I couldn't point me finger to some specific  
9 reference right now. I don't know -- there may be  
10 something in my report. I don't recall.

11          Q. Except as it is in your report -- and we can  
12 check your report because it's in the record --

13          A. Um-hum.

14          Q. -- are you aware of any statement by market  
15 participants on September 17th or 18th indicating they  
16 believed that the form of equity would be preferred  
17 stock?

18          A. I don't recall off the top of my head. I do  
19 recall something that was form to be determined, but I  
20 don't remember the exact source at this time.

21          Q. Do you remember whether that was from a market  
22 participant or one of the term sheets that you were  
23 given to review?

24          A. I can't -- I wouldn't want to put a -- a bright  
25 line on it at this stage, at this late stage of the day



1 and --

2 Q. Okay.

3 With that, I'll pass the witness, Your Honor.

4 THE COURT: All right.

5 Mr. Austin, do you have any redirect?

6 MR. AUSTIN: I do, Your Honor.

7 **REDIRECT EXAMINATION**

8 BY MR. AUSTIN:

9 Q. Good afternoon, Dr. Mordecai.

10 A. Good afternoon.

11 Q. Do you recall on your cross examination today  
12 that Mr. Boies asked you some questions relevant to the  
13 analysis you did between the unsecured debt prior to the  
14 rescue and your comparison of that to the secured debt  
15 after the rescue?

16 A. I do recall.

17 Q. And you prepared a demonstrative that addresses  
18 that topic, correct?

19 A. Yes, I did.

20 Q. And just to refresh the Court's recollection,  
21 that is Demonstrative --

22 A. 2618.

23 Q. -- 2618. Thank you.

24 And, again, in Demonstrative 2618, you  
25 demonstrated that it was -- your title there is AIG's

1 Pre-Rescue Senior Unsecured Debt Yields are the  
2 Appropriate Comparison to the Revolving Credit  
3 Facility."

4 A. Correct.

5 Q. And that is your opinion, correct?

6 A. It is.

7 Q. Now, if you would turn in your big binder to --  
8 I'm sorry, I am going to hand this document out, to PTX  
9 64.

10 A. And you did say it's one I don't have, right?

11 Q. That's correct.

12 A. Thank you.

13 MR. AUSTIN: And, Your Honor, this document has  
14 been admitted into evidence.

15 BY MR. AUSTIN:

16 Q. And, Dr. Mordecai, I would refer you -- just take  
17 a moment to familiarize yourself with the document.

18 A. Yes, sir.

19 Q. I would refer you to page 10 of the document,  
20 under "Cost of Lending," starting with the words  
21 "Lending to AIG."

22 A. I see that.

23 Q. And do you see there where it says, "Lending to  
24 AIG for an extended period would also require the  
25 Federal Reserve to take on substantial additional credit

1 risk. The amount of risk would depend on the terms of  
2 the loan. If the loan were collateralized only by the  
3 stock of AIG's subsidiaries, then the credit risk would  
4 be substantial. The value of the collateral and the  
5 likelihood of default would be nearly perfectly  
6 correlated, making the loan more like a super-senior  
7 uncollateralized credit than a secured credit. If the  
8 loan were collateralized by municipal securities, the  
9 credit risk would be reduced."

10 Does that paragraph have any relevance to your  
11 opinion about comparing the unsecured debt prior to the  
12 rescue with the secured debt after the rescue?

13 A. Absolutely.

14 Q. And could you explain why?

15 A. There is a practice in the financial markets  
16 that's called counterparty valuation adjustment, and  
17 what that is is to what degree does the pledged  
18 collateral correlate with the fortunes of the borrower,  
19 and to the extent that the pledged collateral has a high  
20 correlation or perfect correlation with the borrower's  
21 fortunes or creditworthiness, okay, it is considered to  
22 be so risky relative to the borrower's own exposure, the  
23 naked exposure, is that it's considered in bad scenarios  
24 that you're basically unsecured. So, the liquidity of  
25 the underlying, the volatility on the underlying, and

1 it's relationship to the actual borrower are critical.  
2 So, that's why they're saying it would be better if we  
3 used something uncorrelated, independent of AIG's  
4 fortunes, relatively speaking, like municipal debt.

5 Q. And why does that indicate that it's appropriate  
6 to compare unsecured debt before the rescue came into  
7 the secured debt after the rescue?

8 A. Because the terms of the loan contemplated it,  
9 although it has, you know, security interest  
10 documentation to it, as all debt to some degree as  
11 security interest documentation to it. Effectively,  
12 what is being pledged is correlated with the general --  
13 with the general obligation of the overall firm. It's  
14 not something that you can easily take to the bank in a  
15 bad scenario for the firm and receive funds for it.  
16 It's not what we would call in the street "money good."

17 Q. Now, Mr. Boies asked you a series of questions  
18 about your opinion as to the decline in -- just  
19 recently -- in AIG's price between September 3, 2008,  
20 and September 4 -- September 24, 2008. Do you recall  
21 those questions within the last hour or so?

22 A. I do.

23 Q. Okay. Now --

24 MR. BOIES: You mean September 23.

25 MR. AUSTIN: September 23 and 4, okay?

1 MR. BOIES: Yes.

2 MR. AUSTIN: Okay.

3 BY MR. AUSTIN:

4 Q. Now, did you address this issue in your report?

5 A. I did.

6 Q. And can you turn to DX 1874 in your report and to  
7 page 79 and footnote 291.

8 A. Could you repeat those again? It's late in the  
9 day.

10 Q. Yes. It's page 79, footnote 291.

11 A. Okay. What exhibit number was my report again?

12 Q. I'm sorry. DX 1874. It's in the white binder.

13 A. Thank you. Okay, and page 79?

14 Q. 79, footnote 291.

15 A. I'm there.

16 Q. And in footnote 291, do you discuss your analysis  
17 of the decline for this time period?

18 A. I do.

19 Q. And we discussed in your direct examination the  
20 Credit Suisse report from that date --

21 A. Yes.

22 Q. -- which is JX 114. Do you recall that  
23 discussion?

24 A. I do. I do.

25 Q. And I'd also ask that PTX 242 be distributed.

1 MR. D'ALESSANDRIS: May I approach, Your Honor?

2 THE COURT: Yes.

3 MR. AUSTIN: Your Honor, PTX 242 has been  
4 introduced into evidence.

5 BY MR. AUSTIN:

6 Q. Do you recognize PTX 242, Dr. Mordecai?

7 A. I do.

8 Q. And do you see there where it says that, in the  
9 second line, "Some big AIG shareholders have reportedly  
10 been trying to raise capital in private markets to avoid  
11 the Government seizing control of the company"?

12 A. I do see that.

13 Q. And do you see, later on, where it says -- it  
14 starts with, "The agreement," and then the second  
15 sentence in that paragraph says, "Shareholder efforts to  
16 prevent the government from taking an equity stake in  
17 AIG will prove fruitless."

18 Do you see that?

19 A. I do.

20 Q. And then the next line, "Indeed, AIG's new chief  
21 executive, Edward Liddy, said the company made an  
22 exhaustive effort to borrow money in the private market,  
23 but failed."

24 A. I do see that.

25 Q. And then, finally, "This facility was the

1 company's best alternative," Liddy added in a statement  
2 last Tuesday.

3 A. I see that as well.

4 Q. And does that indicate anything to you with  
5 respect to the fact that the market decline in the  
6 September 23 to September 24 time period was due to the  
7 market's realization that there would not be an  
8 alternative or a white knight to the initial rescue?

9 A. As I previously said, this indicates -- is  
10 evidence that any speculation of an alternative deal  
11 evaporated at this time.

12 Q. And what would the absence or the -- the lack of  
13 that -- the possibility of a white knight, would effect  
14 would that have on the stock price?

15 A. So, to the extent that there was speculative the  
16 stock price on call it hopes of an alternative deal,  
17 that pressure would be relieved, and you would expect  
18 that upward pressure on price to disappear, and price  
19 would settle -- as I said in the original direct -- into  
20 a longer term equilibrium.

21 Q. Let me ask to be handed out PTX 246.

22 Your Honor, PTX 246 has been introduced into  
23 evidence.

24 Do you recognize PTX 246, Dr. Mordecai?

25 A. Yes.

1 Q. Is it one of the documents that you reviewed in  
2 your preparation for your trial testimony?

3 A. Yes.

4 Q. And then if you would look at under "What's New,"  
5 and then the last sentence there before investment  
6 thesis, "This announcement effectively puts to rest the  
7 question as to whether other private alternatives would  
8 be available to common equity holders."

9 A. I see that.

10 Q. Do you see that?

11 A. Yes, I do. And I also see preferred stock  
12 mentioned just above that.

13 Q. And is this further evidence of the market -- and  
14 what's the date on this document, by the way?

15 A. September 24th, 2008.

16 Q. And is this further evidence of the fact that the  
17 market price decreased between September 23 and 24,  
18 might be related to the market's realization that a  
19 white knight or a private alternative would not be  
20 available instead of the initial rescue?

21 A. This is evidence that the -- of exactly that. It  
22 says it right here, "The announcement effectively puts  
23 to rest the question..."

24 THE COURT: I think we are going to have to stop  
25 there for today.



1 MR. AUSTIN: Okay. Thank you, Your Honor.

2 THE COURT: We will reconvene at 9:30 tomorrow  
3 morning.

4 (Whereupon, at 4:58 p.m., the proceedings were  
5 adjourned.)

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\*\*\*\*END OF ROUGH DRAFT\*\*\*\*

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SUSANNE BERGLING, RMR-CRR-CLR

ROUGH DRAFT