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2 IN THE MATTER OF
3 STARR INTERNATIONAL VS. USA
4 TRIAL VOL. 34, NOVEMBER 19, 2014.

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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

Plaintiffs,) Case No. 11-779C

vs.)

UNITED STATES OF AMERICA,)
Defendant.)

-----)

Courtroom 4
Howard T. Markey National Courts Building
717 Madison Place, N.W.
Washington, D.C.

Wednesday, November 19, 2014

9:30 a.m.

Trial Volume 34

BEFORE: THE HONORABLE THOMAS C. WHEELER

Josett F. Whalen, RMR-CRR, Reporter

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

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

4 THE COURT: We're on the record this morning for
5 day 34 of the trial in Starr International Company versus
6 the United States.

7 Good morning, Mr. Offit.

8 THE WITNESS: Good morning, sir.

9 THE COURT: Welcome back.

10 THE WITNESS: Thank you.

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

13 THE WITNESS: Yes, I do.

14 THE COURT: All right.

15 Let's go ahead, Mr. Gardner.

16 MR. GARDNER: Thank you, Your Honor.

17 - - - - -

18 Whereupon --

19 **MORRIS W. OFFIT**20 a witness, called for examination, having been previously
21 duly sworn, was examined and testified further as
22 follows:23 **DIRECT EXAMINATION** (resumed)

24 BY MR. GARDNER:

25 Q. Welcome back, Mr. Offit.

1 Where we left off on Friday, I believe it was
2 discussion of the September 16 meeting of the AIG board,
3 and now I want to jump ahead a little bit and ask you
4 some questions about the appointment of Ed Liddy to
5 become the CEO and chairman of AIG.

6 Did there come a time, Mr. Offit, where the AIG
7 board approved Ed Liddy to serve as the CEO and chairman
8 of AIG?

9 A. Yes. Yes.

10 Q. Can I ask you to draw your attention to JX 74 once
11 more. That is the meeting minutes from September 14, 15
12 and 16.

13 And in particular, I want to ask you a question
14 about page 3. And it's the very end of that page and it
15 rolls on to the next page.

16 And it says here that Mr. Willumstad explained to
17 the board that the secretary of the Treasury had informed
18 him that as a condition to the government facility,
19 Mr. Willumstad would be replaced as chief executive
20 officer of the company.

21 Do you see that?

22 A. Yes, I do.

23 Q. Now, Mr. Offit, at the time that you voted to
24 accept the loan on September 16, did you have an
25 understanding that one condition of the loan was that

1 Mr. Willumstad be replaced as CEO?

2 A. Yes.

3 Q. And in your experience, sir, is it unusual that
4 the CEO of a distressed corporation be replaced as a
5 condition of that corporation receiving a loan?

6 A. I don't have enough experience really to answer
7 that.

8 Q. Fair enough.

9 I want to draw your attention now to JX 94.

10 And these are the meeting minutes from
11 September 18, 2008; correct?

12 A. Yes.

13 Q. And you participated in this meeting?

14 A. Yes, I did.

15 Q. Now, was this the meeting, sir, where Mr. Liddy
16 was voted in as CEO and chairman?

17 A. Yes.

18 Q. I want to draw your attention to page 2 of these
19 meeting minutes.

20 And in the last full paragraph on this page, the
21 second sentence, it indicates that both Mr. Beattie and
22 Mr. Bollenbach had spoken to Mr. Liddy regarding the role
23 of chairman of the board before the meeting.

24 Is that consistent with your recollection, sir?

25 A. I did not know that Steve Bollenbach had spoken to

1 Ed Liddy before the meeting.

2 Q. Okay. Now, if you turn to page 3, the next page,
3 of JX 94, it indicates in the second full paragraph that
4 the directors then discussed Mr. Liddy's qualifications
5 and experience as well as their knowledge of him from
6 prior business relationships or dealings.

7 Do you recall that discussion, sir?

8 A. Yes.

9 Q. Were you familiar with Mr. Liddy's professional
10 reputation prior to him becoming CEO of AIG?

11 A. I knew of Ed Liddy's qualifications in serving as
12 the CEO of Allstate. Certainly he was a high-profiled
13 CEO, and all my impressions were positive.

14 Q. And do you recall whether any board members had
15 positive things to say about Mr. Liddy prior to the
16 board's vote on Mr. Liddy as CEO and chairman?

17 A. Yes. The way the directors were seated around the
18 table was by alphabetical order, so you had Offit, O, and
19 Rometty, R. Ginni Rometty and I used to chat off-line a
20 good deal, and she knew Ed very well from Chicago and had
21 very positive things to say about Ed Liddy.

22 Q. And what was your personal impression of
23 Mr. Liddy's performance as CEO of Allstate based on your
24 knowledge?

25 A. Very positive.

1 Q. Now, prior to Mr. Liddy's appointment as CEO and
2 chairman, did any member of the board express
3 reservations concerning his appointment as CEO?

4 A. I do not recall any reservations.

5 Q. Did you ultimately vote in favor of Mr. Liddy?

6 A. Yes, I did.

7 Q. Why?

8 A. Mainly on the basis of the comments made during
9 the meeting, and they were all favorable, and especially
10 Ginni Rometty's thoughts about Ed Liddy, a woman who I
11 respected greatly.

12 Q. Now, after Mr. Liddy became CEO of AIG, did you
13 have a view as to whether he acted in the best interest
14 of AIG and its shareholders?

15 A. Yes.

16 Q. What was your view?

17 A. Very positive.

18 Q. And once Mr. Liddy became CEO of AIG, did you
19 continue to act in the best interest of AIG and its
20 shareholders?

21 A. Yes, I did.

22 Q. Did Mr. Liddy ever force you to vote in any
23 particular way?

24 A. He did not.

25 Q. At any time Mr. Liddy became CEO and chairman of

1 AIG, did you feel any coercion by representatives of the
2 federal government in the terms of the exercise of your
3 duties to AIG and its shareholders?

4 A. I did not.

5 Q. Now, while we're in the meeting minutes, if you
6 turn to page 6, there's -- in the last full paragraph on
7 this page, it states that "A number of questions were
8 raised regarding the price and voting rights of the
9 equity interest that was included in the term sheet
10 approved on September 16. Mr. Wiseman stated that those
11 details would be part of the documents that counsel for
12 the Corporation expected to receive shortly, and that
13 until those documents were completed it was not possible
14 to answer the Board's questions on the specifics of the
15 equity interests."

16 Mr. Offit, do you recall that discussion?

17 A. Not in any detail.

18 Q. Do you have a general recollection?

19 A. I do not.

20 Q. Okay. Let's talk about the September 21, 2008
21 board meeting.

22 Did there come a point after September 16 where
23 the AIG board voted to approve a credit agreement between
24 AIG and the New York Fed?

25 A. Yes.

1 Now, where are you? I just wan to --

2 Q. I'm going to get you right there.

3 Can you take a look at JX 103, please.

4 A. Yes. Okay.

5 Q. Are these the meeting minutes where the board
6 approved of the credit facility?

7 A. Yes.

8 Q. And you participated in this meeting?

9 A. Yes, I did.

10 Q. And to the best of your knowledge, are these
11 meeting minutes accurate?

12 A. Yes, they are.

13 Q. Now, I want to draw your attention to page 3 of
14 these meeting minutes.

15 Now, in the middle of the paragraph on page 3, the
16 run-over paragraph, it states "that although the Board
17 had originally been led to believe that the form of
18 equity participation by the Treasury Department would be
19 warrants, the form of equity participation to be issued
20 in connection with the Credit Agreement is now proposed
21 to be convertible preferred stock, the terms of which
22 were reflected in a term sheet delivered to Board members
23 prior to the meeting."

24 Mr. Offit, what, if any, reaction did you have to
25 the discussion of the form of the equity participation at

1 this meeting?

2 A. Not surprised at all.

3 Q. Why is that?

4 A. Well, I felt the meeting was so frenzied, the
5 September I think 16 meeting, that I think the government
6 had goofed with respect to the warrants and that the
7 mistake would be rectified in very short course.

8 Q. As of September 21, 2008, did you view the form of
9 the equity participation to be a material term?

10 A. No, not at all be- -- I had testified previously
11 that I personally gave the government a pass because of
12 the spirit and what the government's intentions were and
13 the form of it would be decided at a later date. I
14 didn't think it was that important.

15 Q. From your perspective, Mr. Offit, did it make any
16 difference to you, in your September 21 vote on whether
17 to approve the credit agreement, what the form of the
18 79.9 percent equity interest took?

19 A. Absolutely not.

20 Q. Why not?

21 A. As I just said, the whole intention was the
22 approximate 80 percent interest and the form of it didn't
23 make any difference to me because I knew what the
24 government's intentions were. And of course, you always
25 go back to the spirit of the transaction, and that was

1 to -- for the government to succeed to that approximate
2 80 percent interest in AIG.

3 Q. Let me follow up on that. Can you turn to
4 page 6 of the meeting minutes.

5 Now, in the second full paragraph, the first
6 sentence, it indicates that "Mr. Liddy expressed his
7 opinion that in all material respects, the terms of the
8 proposed transaction are consistent with the term sheet
9 presented to the Board at the prior meeting."

10 Mr. Offit, did you agree that in all material
11 respects, the terms presented on September 21 were
12 consistent with the term sheet presented on
13 September 16?

14 A. From the spirit of the intent of the government,
15 absolutely yes, in what the government wanted to
16 accomplish.

17 Q. Now, in the last sentence in that paragraph, it
18 states that "In response to a director's question,
19 Mr. Beattie stated that the grant of equity rights to the
20 government in the form of preferred stock rather than
21 warrants is consistent with the spirit of the agreement
22 approved at the September 16 meeting."

23 Do you see that?

24 A. Yes.

25 Q. And did you have a view concerning that issue?

1 A. Certainly these were my thoughts.

2 Q. ^ Startproof now, I want to back up just a second
3 here and go to page 4 of these meeting minutes.

4 Now, in the middle of the second full paragraph,
5 it states that Mr. Liddy informed the members that AIG
6 had drawn \$37 billion to date.

7 Was that consistent with your recollection
8 generally that AIG had drawn up -- drawn upon \$37 billion
9 in those five days after the 16th?

10 A. No. There was an extraordinary drain on liquidity
11 and the government support was already very, very visible
12 and I used to check it day to day to see what kind of the
13 drawdowns were and was sort of surprised at the magnitude
14 of them happening so quickly, but that was all in the
15 course of what was going on in the financial markets
16 generally anyway.

17 Q. Now, in that same paragraph, it states that
18 Mr. Studzinski, who we spoke about on Friday, said that
19 even though the terms of the credit agreement provided
20 the government with ownership of 80 percent of AIG, the
21 value that could be preserved through the government loan
22 was likely more valuable to current shareholders in
23 retaining a hundred percent interest than in the
24 bankruptcy -- bankrupt entity which might be worth
25 nothing.

1 Do you see that?

2 A. Yes.

3 Q. Did you agree with that statement?

4 A. Yes.

5 Q. Now, on page 6, moving back to page 6 now, in the
6 middle of the first full paragraph, it states that
7 concern was raised about the corporation's inability to
8 conduct further negotiations with the bank, but
9 Mr. Studzinski noted that the material erosion likely to
10 result from bankruptcy and opined that bankruptcy had far
11 too great a downside compared to the transaction under
12 consideration.

13 Mr. Offit, did you agree with that sentiment?

14 A. I have to go back. Concern was raised about the
15 corporation's inability to conduct further negotiations
16 with the bank. All of a sudden I'm drawing a blank.
17 What bank is he referring.

18 Q. I believe the bank there is the New York Fed?

19 A. Okay. Please.

20 Q. Sure. Take your time.

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

22 A. Concern was raised about the corporation's
23 inability to conduct...

24 Let me go back and read the whole paragraph.

25 Q. Please, take your time, sir.

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

2 A. Yes. I agree with it.

3 Q. Now, you'll see on page 7, there's a series of
4 resolutions by the board.

5 Do you see that?

6 A. Yes.

7 Q. And to your knowledge, did the board approve those
8 resolutions at the September 21 meeting?

9 A. Yes.

10 Q. In your view, Mr. Offit, did the board act in the
11 best interest of AIG and its shareholders in approving
12 the New York Fed's credit facility on September 21?

13 A. Yes.

14 Q. To your knowledge, sir, did the board reach its
15 conclusion based on the exercise of its independent
16 business judgment?

17 A. Yes.

18 Q. In your view, Mr. Offit, did AIG's board have the
19 ability to --

20 MR. BOIES: Your Honor, I'm going to object as
21 leading.

22 THE COURT: I think it is leading.

23 BY MR. GARDNER:

24 Q. Mr. Offit, to what extent did AIG's board have the
25 ability to choose bankruptcy rather than the

1 New York Fed's credit facility on September 21, 2008?

2 A. It had complete latitude, complete discretion and
3 complete --

4 Q. Why do you say that?

5 A. Excuse me?

6 Q. Why do you say that, sir?

7 A. Because there was a very thorough discussion of
8 all the factors, the issues, very well I think informed
9 by outside advisors, counsel, and certainly gave it very
10 deliberate thinking and came to the conclusion that
11 accepting the government's facility was certainly much
12 more advantageous to all concerned rather than filing
13 bankruptcy.

14 Q. To what extent, Mr. Offit, do you believe that you
15 were able to exercise your business judgment voluntarily
16 on September 21, 2008?

17 A. Yeah, absolutely yes.

18 Q. To what extent, Mr. Offit, do you believe that you
19 were coerced by the government in any way when you
20 decided to vote in favor of the New York Fed's credit
21 facility on September 21?

22 A. Never was there any iota of in fact coercion.

23 Q. Now, I want to change topics one last time,
24 Mr. Offit. Did there come a time when you left the AIG
25 board?

1 A. Say that again?

2 Q. Did there come a point in time, sir, when you left
3 the AIG board?

4 A. Yes.

5 Q. And when was that?

6 A. In May of 2013.

7 Q. Why did you leave the AIG board?

8 A. I reached age -- aged out as a director.

9 Q. Do you recall instances, sir, when employees of
10 the New York Fed or the Department of the Treasury
11 attended AIG board meetings?

12 A. Yes.

13 Q. And in those instances where employees of the
14 New York Fed or the Department of the Treasury attended
15 those board meetings, to what extent did their presence
16 interfere with your ability to exercise your independent
17 judgment about what was best for AIG and its
18 shareholders?

19 A. None whatsoever.

20 Q. Throughout your time on the AIG board, to what
21 extent were you ever coerced by the government to vote in
22 a particular way on the issues that came before the
23 board?

24 A. Never.

25 Q. Throughout your time on the AIG board, sir, to

1 what extent were you able to exercise your free will and
2 vote in a manner that you thought was in the best
3 interest of AIG and its shareholders?

4 A. Every opportunity.

5 MR. GARDNER: Your Honor, I pass the witness.

6 THE COURT: All right. Cross-examination?

7 MR. BOIES: Yes, Your Honor.

8 - - - - -

9 **CROSS-EXAMINATION**

10 BY MR. BOIES:

11 Q. Good morning, Mr. Offit.

12 A. Good morning, sir.

13 Q. I think we've met before. I think you were
14 obviously at the board meeting that I attended when you
15 considered the shareholder demand a few years ago.

16 A. I believe so.

17 Q. I want to begin the way counsel for the defendant
18 began and sort of go through this chronologically.

19 And you were on the AIG audit committee in 2006,
20 2007 and 2008; correct?

21 A. Yes.

22 Q. And what years were you chairman of the audit
23 committee?

24 A. Starting in May I believe or the summer of 2005.

25 Q. And you were also on the finance and risk

1 management committee; correct?

2 A. Yes.

3 Q. And during what years were you on the finance and
4 risk management committee?

5 A. I can't recall. I became chairman -- I think it
6 was 2007 or '8.

7 Q. And before you became chairman, had you been a
8 member of the committee?

9 A. Yes.

10 Q. And during the time that you were a chairman or a
11 member of the audit committee and the risk management
12 committee, you believed that AIG's financial statements
13 and SEC filings were in all respects accurate and
14 complete and truthful; correct?

15 A. I think there were some problems that came up from
16 an audit standpoint. There were some issues having to do
17 with the Greenberg era. And --

18 Q. That was before you came on the board; correct?

19 A. Well, there were -- that was certainly before, but
20 then some of the restatements -- they talked about -- I'm
21 a little vague about that, but there are some problems
22 with restatements and some considerations of that and I'm
23 a little vague on it.

24 Q. Other than being a little vague on accounting
25 issues related to a 2005 restatement, was it your view

1 when you were the chairman and member of the audit
2 committee and the finance and risk management committee,
3 that the AIG financial statements and SEC filings were in
4 all respects accurate, complete and truthful?

5 A. Well, there was a problem with some material
6 weaknesses as I recall in 2007 or '8, so there was a lot
7 of discussion with Pricewaterhouse at that particular
8 time and I forget the year when -- it was either a
9 material weakness or significant deficiencies, as I
10 recalled.

11 Q. And with respect to that material weakness that
12 you talked about, AIG made certain disclosures about that
13 in its SEC filings; correct?

14 A. I believe so.

15 Q. And you as a member of the audit committee
16 reviewed those; correct?

17 A. Yes. Now, I went off the audit committee and I
18 can't when I went off the committee and I think it was
19 2008.

20 Q. You were still a member of the committee in
21 September of 2008; right, sir?

22 A. You're telling me -- I can't recall whether I was
23 or not. Yes, I was. Yes, I had the minutes from that.
24 Yes.

25 Q. Let me hand you out a binder of documents.

1 This binder has documents and excerpts from
2 documents that we may use as we go through your
3 testimony.

4 A. Uh-huh.

5 Q. And some of these are quite lengthy documents, and
6 so they are excerpted. If there's ever a time that you
7 feel you need the entire document for context, just let
8 me know. We have it in the courtroom and we can furnish
9 it to you easily.

10 Let me ask you --

11

12 **(Telephone interruption.)**

13 MR. BOIES: Your Honor, I apologize.

14 THE COURT: That's quite all right. I think it's
15 only happened about three or four times in eight weeks,
16 so that's not too bad.

17 BY MR. BOIES:

18 Q. Mr. Offit, would you turn to Joint Exhibit 7.

19 A. Uh-huh.

20 Q. And this is AIG's 8-K dated February 11, 2008;
21 correct?

22 A. I can't --

23 Q. If you look at the very first page?

24 A. Yes. Yes, yes.

25 Q. And you were on the audit committee?

1 A. Yes.

2 Q. At the time you filed?

3 A. Uh-huh.

4 Q. And you would have read this at the time it was
5 filed; correct?

6 A. Yes.

7 Q. And you would have assured yourself it was in all
8 respects accurate and truthful and complete; correct?

9 MR. GARDNER: Objection, Your Honor. We're beyond
10 the scope of the government's direct examination.

11 THE COURT: Mr. Boies?

12 MR. BOIES: I don't think so, Your Honor. Right
13 now all I'm doing is establishing why this is a relevant
14 document to use with this witness, and then I'm going to
15 get to the substantive point. I haven't even gotten to
16 the substantive point here.

17 THE COURT: I'll let it go a little further and
18 we'll see where we end up here.

19 MR. GARDNER: Thank you.

20 BY MR. BOIES:

21 Q. I don't think I got an answer to my question,
22 Mr. Offit, because of the objection.

23 A. Would you restate it. I'm sorry.

24 Q. You would have assured yourself that this SEC
25 filing that is Joint Exhibit 7 was in all respects

1 accurate and truthful and complete at the time it was
2 filed; correct?

3 A. Yes.

4 Q. Now, let me ask you to look at the last paragraph
5 on page 5 of the exhibit.

6 And you recall that you had said a few minutes
7 ago --

8 A. Page 5. I'm sorry. I was on the wrong page.

9 All right.

10 Q. Do you recall you had said a few minutes ago that
11 there had been some issue about a material weakness?

12 A. Uh-huh. Yes.

13 Q. I direct your attention to the last paragraph on
14 page 5, where it says, "AIG has been advised by its
15 independent auditors, PricewaterhouseCoopers LLC, that
16 they have concluded that at December 31, 2007, AIG had a
17 material weakness in its internal control over financial
18 reporting and oversight relating to the fair value
19 valuation of the AIGFP super senior credit default swap
20 portfolio. Do you see that?

21 A. I have a problem. I'm looking at page 5 of 17,

22 JX 9. I want to make sure I'm --

23 THE COURT: It's JX 7.

24 BY MR. BOIES:

25 Q. JX 7, sir.

1 A. All right.

2 A. Yes. Now I'm with you. Okay.

3 Q. And do you see the sentence that I just read?

4 A. Yes.

5 Q. And then the next sentence says, "AIG's assessment
6 of its internal controls relating to the fair value
7 valuation of the AIGFP super senior credit default swap
8 portfolio is ongoing, but AIG believes that it currently
9 has in place the necessary compensating controls and
10 procedures to appropriately determine the fair value of
11 AIGFP's super senior credit default swap portfolio for
12 purposes of AIG's year-end financial statements."

13 Do you see that?

14 A. Yes, I do.

15 Q. And you believed that at the time; correct?

16 A. Yes.

17 Q. Did there ever come a time when you concluded that
18 that was in any way false or misleading?

19 A. I don't recall.

20 Q. During the time that you were a member and
21 chairman of the finance and risk management committee,
22 did you believe that AIG had in place controls to assure
23 itself that its financial statements and SEC filings were
24 truthful and accurate?

25 MR. GARDNER: Objection, Your Honor. Beyond the

1 scope of the government's direct examination.

2 THE COURT: Mr. Boies?

3 MR. BOIES: Your Honor, there are a number of
4 documents that I need to use or desire at least to use
5 with this witness with respect to his testimony. I think
6 the first thing that I need to do is establish his
7 confidence in their accuracy and reliability. I don't
8 think that's outside of the scope. They brought out that
9 he was on the risk management committee. They brought
10 out that he was on the audit committee. Now, if we're
11 going to continue to talk about this, I think we might do
12 it outside the presence of the witness.

13 MR. GARDNER: That's fine, Your Honor. We can
14 excuse Mr. Offit briefly. I would like to address this.

15 THE COURT: Mr. Offit, could I ask you just to
16 step outside the courtroom for a moment, and we'll get
17 you momentarily.

18 (Whereupon, Mr. Offit was not present in open
19 court.)

20 THE COURT: This is one of the difficulties when
21 there are gaps in the witness' testimony, like we've had
22 in the case of Mr. Offit, and my notes from the other day
23 are upstairs in chambers, so I don't have them in front
24 of me.

25 MR. GARDNER: I understand. Your Honor, all I

1 asked Mr. Offit was what positions he held at AIG. I
2 didn't can him about how well-managed AIG was or not
3 well-managed AIG was. That's not pertinent at all to the
4 government's examination of Mr. Offit. I understand
5 Mr. Boies wants to ask Mr. Offit questions about how
6 well-managed or not well-managed AIG was, but they could
7 have called Mr. Offit in their case in chief and
8 presented that. We made a conscious choice to limit
9 Mr. Offit's direct examination to those parts that we
10 thought were important for the Court to hear. This
11 testimony that Mr. Boies seeks to adduce is beyond the
12 scope of the government's examination.

13 THE COURT: Mr. Boies?

14 MR. BOIES: Your Honor, to begin with, at
15 transcript page 7337 at line 25, counsel asked could you
16 please describe for the Court your duties on AIG's
17 finance and risk management committee. And he goes on to
18 describe in several lines his duties.

19 And then he's asked in your service on AIG's board
20 and the finance committee, were you apprised by
21 management of the status of AIG's liquidity needs? He
22 goes on. And then he's asked about AIG's liquidity
23 problems and how much time they thought they were going
24 to have to deal with them. And what was the cause of the
25 liquidity problems.

1 I mean, they go on and on about all of the
2 financial aspects, and I'm really just dealing with
3 exactly what they dealt with on their direct case. And
4 the fact that I'm choosing different documents is because
5 they picked the documents they thought were relevant to
6 the financial crisis. I'm picking the documents I think
7 are relevant to the financial crisis.

8 MR. GARDNER: It's not about choosing documents,
9 Your Honor. You may recall that we asked Mr. Offit
10 questions about what his general job responsibilities
11 are. That certainly doesn't open the door to a
12 wide-ranging discussion about how well-managed or not
13 well-managed AIG was and then we asked him questions
14 about you might recall the September 5, 2008 AIG board
15 meeting and about the liquidity needs at that time and
16 then up to the 16th. Mr. Boies is asking about a
17 completely different time frame. He's asking about
18 documents from February of that year. That can't
19 possibly be within the scope of the government's
20 examination.

21 THE COURT: I still think that the portions that
22 Mr. Boies cited in the transcript regarding the causes of
23 the liquidity problems that AIG faced I think that brings
24 the questioning within the proper scope here.

25 MR. GARDNER: Understood, Your Honor.

1 THE COURT: So we can go ahead with this.

2 (Whereupon, the witness was present in open
3 court.)

4 THE COURT: Thank you for your patience,
5 Mr. Offit. We're going to go ahead now.

6 BY MR. BOIES:

7 Q. Mr. Offit, during the time that you were a member
8 and chairman of the finance and risk management
9 committee, did you believe that AIG had in place controls
10 to assure itself that its financial statements and SEC
11 filings were truthful and accurate?

12 A. Yes.

13 Q. Now, you were a member of the finance and risk
14 management committee at the time that AIG raised
15 additional capital in 2008; correct?

16 A. Yes.

17 Q. And did you believe during 2008, while you were a
18 member and perhaps chairman of the finance and risk
19 management committee, that AIG was prudently managing its
20 liquidity and capital needs?

21 A. Yes. But after the successful raising of the
22 \$20 billion and equity financing I had made a statement
23 to the board and I said I didn't know whether we were the
24 most overcapitalized company in this country or the most
25 undercapitalized. I said it all depends on housing

1 prices. And that was really the variable.

2 Q. And as you went further into the year, the housing
3 market and financial markets generally deteriorated;
4 correct, sir?

5 A. Well, they deteriorated, but it has to do with
6 mortgage securities because the housing prices were
7 underlying the value of the mortgage securities, so if
8 you went into a period where you had a paralyzed bond
9 market where mortgage securities trade and you had in
10 effect the cauldron effect of the Lehman and so forth and
11 a frenzied marketplace, then you really had the crisis.

12 Q. Let me ask you to look at Joint Exhibit 9 that is
13 in your binder and I'm going to direct your attention in
14 particular to page 5. And I want to direct your
15 attention to the third paragraph, five lines down.

16 And do you see a sentence there that begins "based
17 upon"?

18 A. Yes.

19 Q. It says, "Based upon its most current analyses,
20 AIG believes that any credit impairment losses realized
21 over time by AIGFP will not be material to AIG's
22 consolidated financial condition, although it is possible
23 that realized losses could be material to AIG's
24 consolidated results of operations for an individual
25 reporting period."

1 Do you see that?

2 A. Yes.

3 Q. And at the time that this 8-K was filed on
4 February 28, 2008, you believed that that was accurate
5 and truthful; correct?

6 A. Yeah, that's an accurate portrayal, absolutely.

7 Q. And the next sentence says except to the extent of
8 any realized credit impairment losses, AIG expects
9 AIGFP's unrealized market valuation losses to reverse
10 over the remaining life of the super senior credit
11 default swap portfolio. Do you see that?

12 A. Fair statement.

13 Q. That was also a fair statement.

14 A. Uh-huh.

15 Q. And you have believed that the trigger for what
16 happened in mid-September of 2008 was the Lehman failure;
17 correct?

18 MR. GARDNER: Objection. Leading.

19 THE COURT: I think leading would be appropriate
20 for cross-examination of this type. Overruled.

21 THE WITNESS: Now, would you repeat the question,
22 sir.

23 BY MR. BOIES:

24 Q. Sure.

25 Between February 28, 2008, when this 8-K was filed

1 that we just looked at --

2 A. Uh-huh.

3 Q. -- and September 16, 2008, a lot changed in the
4 financial markets; correct?

5 A. Yes.

6 Q. And in particular, beginning around September 8, 9
7 and 10, the financial markets began to deteriorate very
8 significantly; correct?

9 A. Uh-huh. They had been deteriorating over time,
10 Fannie Mae, Freddie Mac, conservatorships, so there were
11 certainly indications of real tremors in the marketplace
12 and then capped by the Lehman. But it was cumulative.

13 Q. It was certainly cumulative, and what had been
14 happening is that the markets had been deteriorating all
15 year long; is that fair?

16 A. Yes.

17 Q. And would you say that that deterioration
18 accelerated in September of 2008?

19 A. What was the trigger more than anything else was
20 the closing of the commercial paper market and the GE
21 situation was more the headline than anything else.

22 Q. And the closing of the commercial paper market was
23 itself a result of the Lehman failure; correct, sir?

24 A. It's cumulative. Yes. A number of factors.

25 Q. You believed that between September 5 and

1 September 12 it was obvious that the markets were
2 deteriorating; correct?

3 A. Yes.

4 Q. And you believed that all financial institutions
5 were being put under pressure; correct?

6 A. Yes.

7 Q. You believed the whole financial climate was under
8 severe strain?

9 A. Yes.

10 Q. You believed that the marketplace generally was
11 frenzied; correct?

12 A. Yes.

13 Q. And you believed that the banks themselves were
14 under tremendous stress; correct?

15 A. Generally speaking.

16 Q. And you believed that this was something that was
17 affecting the whole financial climate and that you just
18 can't identify or isolate AIG as the only situation in
19 the marketplace; correct?

20 MR. GARDNER: Objection. Compound.

21 THE COURT: I'll let the witness answer, assuming
22 he can understand it.

23 THE WITNESS: Yeah, I'm not sure I understand the
24 question. Thank you, sir.

25 THE COURT: Then we'll break it up. Let's

1 rephrase. .

2 BY MR. BOIES:

3 Q. You believed that the banks themselves as well as
4 all other financial institutions were under tremendous
5 stress in the period of September leading up to
6 September 15; correct?

7 A. Yes. But when you say the banks, you have to make
8 a distinction between the money center banks and the
9 so-called community banks and the -- what was causing the
10 stress in the community banks was the downturn in the
11 residential real estate market. So there were different
12 reasons for different stress.

13 Q. Now, let me ask you to look at your deposition,
14 which I will hand up. .

15 And let me direct your attention to page 82 of
16 your deposition. And the portion I'm particularly
17 interested in is the answer on lines 16 through 20, but
18 for context, the question was -- and this was a question
19 that was asked you by a representative of the
20 United States -- was it your understanding, as of
21 September 12, 2008, that AIG did not have sufficient
22 creditworthiness in the perception of the market to where
23 banks would be willing to extend it sufficient financing
24 to cover the size of AIG's liquidity shortfall?"

25 And your answer begins --

1 MR. GARDNER: Objection, Your Honor. Improper use
2 of the deposition. That's not the question he just asked
3 Mr. Offit, and therefore, this isn't impeachment. I
4 don't understand there to be a refresh recollection use
5 here.

6 THE COURT: Mr. Boies, for what purpose are we
7 using the deposition?

8 MR. BOIES: Your Honor, all I was doing was
9 reading the question for context. I can skip the
10 question entirely and go directly to the answer. Because
11 the very first line of the answer is you have to remember
12 that the banks themselves were under tremendous stress,
13 which is exactly the question that I was asking the
14 witness before.

15 MR. GARDNER: And again, Your Honor, there's no
16 demonstration of impeachment or refresh recollection.
17 Therefore, it's an improper use of the deposition.

18 MR. BOIES: Your Honor, can we excuse the witness
19 if we're going to make these kind of speeches in front of
20 the witness.

21 THE COURT: I'm going to overrule the objection
22 and let's go ahead.

23 BY MR. BOIES:

24 Q. Do you see where you say you have to remember that
25 the banks themselves were under tremendous stress?

1 A. Yes.

2 Q. And the banks that you were referring to there,
3 what banks were those?

4 A. Well, the entire banking system was under stress,
5 but for different reasons.

6 Q. And then you go on to say, "So that's why I keep
7 pointing to the whole climate. You just can't identify
8 or isolate AIG as the only situation in the marketplace."

9 Do you see that?

10 A. Yes.

11 Q. Now, in a normalized climate, you believe that it
12 would be possible for AIG to have received bank financing
13 for its liquidity shortfall; correct?

14 A. I mean, to me, that's a very hypothetical
15 question, not to challenge you in your questioning, but I
16 mean, you want to rephrase the question or you want me to
17 answer your question?

18 Q. Well, let me direct your attention to page 83, the
19 next page in your deposition.

20 MR. GARDNER: Your Honor, again, objection.
21 Improper use of deposition.

22 THE COURT: Overruled.

23 BY MR. BOIES:

24 Q. Do you see at line 8 there's a question and --
25 which I will read for context, but I'm really focused on

1 the answer. The question says, "So, from your answer, is
2 it correct to say that your understanding at the time was
3 that the banks were not willing to lend AIG enough money
4 to cover AIG's liquidity shortfall?" And you answer, "I
5 think banks had, in a normalized climate, maybe could
6 have accepted the magnitude of this credit, but we were
7 not in normal times."

8 Do you recall that?

9 A. Yes.

10 Q. And that was accurate expression of your views;
11 correct?

12 A. Yeah. But I think it needs amplification,
13 you know, in thinking about my answer, I think it needs
14 more explanation.

15 Q. You did not give that --

16 A. No, not I did not in my deposition, that's true.
17 Because I would have -- I would have given more
18 explanation to what is magnitude of this credit mean. I
19 mean, that's -- it's a statement or a phrase that is just
20 too vague.

21 Q. Well, the very next question and answer in the
22 deposition does talk about what you meant by magnitude;
23 correct?

24 A. Yes.

25 Q. And the magnitude that you were talking about were

1 financings in --

2 A. I think I would have used larger amounts than
3 40 billion.

4 Q. And after Lehman Brothers' failure, the amount
5 that AIG needed to cover its liquidity shortfall
6 increased; correct?

7 A. Yes.

8 Q. And that's because the whole marketplace was
9 frenzied and you were basically dealing with a paralyzed
10 marketplace; correct?

11 A. Yes.

12 Q. Dealers weren't dealing and capital couldn't be
13 raised through the commercial paper market; correct?

14 MR. GARDNER: Objection. Compound.

15 THE WITNESS: You're reading my deposition, sir?

16 BY MR. BOIES:

17 Q. I am asking questions based on your deposition.

18 A. Uh-huh. Okay.

19 Q. After Lehman Brothers' failure, you believed
20 dealers weren't dealing; correct?

21 A. Yes.

22 Q. And that you couldn't raise capital through the
23 commercial paper market; correct?

24 A. Yes.

25 Q. This was a period the likes of which you had never

1 seen before; correct?

2 A. Yes.

3 Q. And because of Lehman's failure, there was
4 extraordinary market uncertainty; correct?

5 A. Yes.

6 Q. And the marketplace was paralyzed and you had
7 tremendous spreads between your bid and offer?

8 A. Yes.

9 Q. And the quotes on bonds were an extraordinary
10 range; correct?

11 A. Yes.

12 Q. And you didn't know where to price them and where
13 to price these instruments; correct?

14 A. Uh-huh. Yes.

15 Q. And when you have market uncertainty, people
16 generally aren't willing to lend or invest; correct?

17 A. Yes.

18 Q. Now, let me come to September 16.

19 On September 16, the marketplace was in extremis;
20 correct?

21 A. Yes.

22 Q. The entire market was in complete disarray;
23 correct?

24 A. Yes.

25 Q. Markets particularly debt markets, were freezing

1 up; correct?

2 A. Yes.

3 Q. Companies were unable to finance externally;
4 correct?

5 A. Yes.

6 Q. And with the deterioration of the market each day
7 you had a new set of circumstances; correct?

8 A. Yes.

9 Q. And by virtue of the financial climate, AIG's
10 liquidity shortfall kept increasing; correct?

11 A. Yes.

12 Q. Let me turn now to the AIG board meeting on
13 September 16.

14 One of the things that counsel asked you about was
15 Mr. Liddy's replacement of Mr. Willumstad, and you were
16 informed at the September 16 board meeting that
17 Mr. Willumstad's resignation was going to be a condition
18 of the Federal Reserve loan; correct?

19 A. Yes.

20 Q. Now, you had a high regard for Mr. Willumstad;
21 correct?

22 A. Yes.

23 Q. You believed that he was doing a good job for the
24 company and its shareholders; correct?

25 A. Yes.

1 Q. And if it had been up to you, you would have
2 retained Mr. Willumstad; correct?

3 A. I'm -- how do you know that? Are you just asking
4 me or -- I mean, the question is on the basis that -- is
5 there any evidence that I would have? Because I would
6 have. I was just wondering what the source was.

7 Q. I think you had previously indicated that if the
8 government had not required him to be replaced --

9 A. Yes, I would have.

10 Q. -- you would have been happy to have him. You
11 would have kept him.

12 A. Yeah. I believe the government goofed on that.

13 Q. Now, I can't remember whether -- I think the
14 government did show you the minutes from the September 18
15 board meeting. Joint Exhibit 94 in the book that counsel
16 for the government gave you.

17 A. Yeah. I have it in your book as well. Yeah.

18 Q. And I think they asked you some questions about
19 this -- yes, they did. They asked you questions about
20 the portion on page 3 where the minutes say that the
21 directors discussed Mr. Liddy.

22 A. Yes. Second paragraph.

23 Q. I'd like to direct your attention to page 2.

24 A. Yes.

25 Q. Where in the last paragraph, it says that

1 Mr. Beattie explained that these are uncharted waters for
2 any board but that Mr. Liddy was accepted as chief
3 executive officer as part of the agreement to accept
4 government financing on September 16 and the board was
5 acting in accordance with its duties to formally
6 implement that agreement by appointing Mr. Liddy as chief
7 executive officer.

8 Do you see that?

9 A. Yes.

10 Q. And did you believe that on September 18, 2008?

11 A. Yes.

12 Q. The next sentence says, "Both Mr. Beattie and
13 Mr. Bollenbach indicated that they had spoken with
14 Mr. Liddy regarding the role of Chairman of the Board and
15 Mr. Liddy had stated to both of them that he expected,
16 and he understood the Department of the Treasury and the
17 Federal Reserve Bank of New York to expect, that
18 Mr. Liddy would be both Chief Executive Officer and
19 Chairman."

20 And do you recall being informed of that on
21 September 18?

22 A. Yes.

23 Q. Now let me go back to the September 16 board
24 meeting, and the minutes for that are Joint Exhibit 74.

25 A. Uh-huh.

1 Q. I would ask you to turn to that.

2 A. Yes.

3 Q. And counsel for the government asked you some
4 questions about whether it made any difference to you
5 what the form of equity was. Do you recall that?

6 A. Yes.

7 Q. At the time that you were at this board meeting on
8 the 16th of September, your understanding at that time
9 was that the form of equity was going to be warrants;
10 correct, sir?

11 A. Yes.

12 Q. And you understood that warrants would not have
13 the ability to control the corporation until the warrants
14 were exercised; correct?

15 A. Well, it was a little mysterious to me because
16 based on corporate finance generally warrants do not
17 carry voting rights, but I didn't know whether or not
18 these would be a special type of warrants or not. So
19 there was confusion in my own mind, and you know, in
20 finance there's all sorts of creativity, so...

21 Q. Did you ever try to clarify whether the warrants
22 that you understood were going to be issued as a result
23 of the September 16 board meeting would or would not have
24 voting rights?

25 A. I did not because I knew what the government was

1 trying to accomplish. And again, as I said previously,
2 such an abnormal period and trying to structure this kind
3 of a facility transaction within such a shortened period
4 of time.

5 Q. Did you understand that the government's intention
6 was to gain control over AIG?

7 A. The word "control" has different meanings, but
8 from the standpoint of the government's succeeding to an
9 approximate 80 percent interest of ownership, yes.

10 Q. I want to distinguish between ownership and
11 control. And I understand that ownership often gives you
12 control.

13 But you understood that if the government had
14 warrants, they were not going to be able to, for example,
15 replace the board; correct?

16 A. I -- I don't know how to answer that.

17 Q. Let me ask the question this way.

18 There came a time when you understood that the
19 form of equity that the government was demanding was
20 going to be preferred stock; correct?

21 A. Say that again. We go from warrants to preferred?
22 When did you get to preferred?

23 Q. All I said was there came a time.

24 A. Yes. Okay.

25 Q. I didn't specify what the time was.

1 A. Yes. True.

2 Q. And that time we'll come to, but did there come a
3 time at some point when you understood that the
4 government was demanding preferred stock; correct?

5 A. Yes.

6 Q. And at that time, you were uncertain as to whether
7 that preferred stock would or would not have voting
8 control prior to the time it was converted into common
9 stock; correct?

10 A. It was of no concern to me. It was immaterial.

11 Q. When you say it was immaterial, let me focus first
12 on whether you had an understanding as to whether or not
13 the preferred stock would have voting control prior to
14 the time that it was converted into common.

15 A. The question being? Is there a question?

16 Q. Yes.

17 Let me put it this way.

18 You believed in September of 2008 that the
19 preferred shares that were going to be issued to the
20 government as part of the revolving credit facility
21 agreement would not have voting rights prior to their
22 conversion into common stock; correct?

23 A. I didn't believe anything. All I knew is that the
24 government was succeeding to an approximate 80 percent
25 ownership and in time it would work out that the

1 government in form, substance, et cetera would have that
2 representative interest in AIG. I'm not giving this a
3 time period. It was just I know what the government's
4 intention was, period.

5 Q. Let me ask you to look at your deposition.

6 A. Yeah.

7 Q. And I am particularly interested in the questions
8 and answers that begin at line 13 there, but for
9 context --

10 THE COURT: What page are we on?

11 MR. BOIES: Page 287. And I am as I say
12 interested in the questions and answers that begin at
13 line 13.

14 A. 287? Oh, that's day two. Okay.

15 BY MR. BOIES:

16 Q. But for context, you might look back all the way
17 to page 285 line 18 and just review that, and when you've
18 finished, let me know.

19 A. I'm on page 285.

20 Q. Yes.

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

22 A. Okay.

23 Q. And then at 287 we get to line 13:

24 "QUESTION: My question is in reference to the
25 holder of the preferred share.

1 "ANSWER: If the preferred, and as we have already
2 identified, has conversion rights (sic), then the
3 underlying shares would have voting rights.

4 "QUESTION: Prior to --

5 MR. GARDNER: Objection. Misreading the
6 transcript, Your Honor.

7 THE COURT: I'm sorry?

8 MR. GARDNER: He misread the transcript. He said
9 "voting rights." It's not "voting rights." It's
10 "terms."

11 MR. BOIES: It says "voting rights."

12 MR. GARDNER: No. It says, "If the preferred, and
13 as we have already identified, has conversion terms."

14 MR. BOIES: "Then the underlying shares would have
15 voting rights."

16 MR. GARDNER: Correct. You said "conversion
17 rights." I just think you misread it.

18 THE WITNESS: Right.

19 BY MR. BOIES:

20 Q. Let me read it again just to be sure, and if I
21 misread it, I apologize.

22 "QUESTION: My question is in reference to the
23 holder of the preferred share.

24 "ANSWER: If the preferred, and as we have already
25 identified, has conversion terms, then the underlying

1 shares would have voting rights."

2 "ANSWER: (sic) Prior to conversion?

3 "ANSWER: No. You have to convert."

4 Do you see that?

5 A. Yes.

6 Q. And was that your view on September 21?

7 A. Yeah. That's simple corporate finance basically
8 speaking.

9 Q. Did there ever come a time when you learned that
10 the preferred shares that were issued to the government
11 had voting rights prior to conversion?

12 A. I don't recall.

13 Q. On September 16, did you see any term sheet?

14 A. I think the term sheet -- I forget the sequencing
15 of it. I don't believe so.

16 Q. Did there come a time when you saw a term sheet?

17 A. Yes.

18 Q. When was the first such time?

19 A. It's in the minutes and I forget the time period.
20 I can't be specific as to the sequence of dates here
21 because you had three consecutive meetings.

22 Q. Let me --

23 A. It's in the minutes of course, so...

24 Q. Let me ask you to look at the minutes for the
25 September 21 board meeting, which is Joint Exhibit 103.

1 A. Yes.

2 Q. And if you look at page 3 -- and this was a
3 portion that government counsel directed your attention
4 to.

5 A. Yes.

6 Q. -- where in the middle of page 3 the minutes say
7 it was noted that although the board had originally been
8 led to believe that the form of equity participation by
9 the Treasury Department would be warrants, the form of
10 equity participation to be issued in connection with the
11 Credit Agreement is now proposed to be convertible
12 preferred stock, the terms of which were reflected in a
13 term sheet delivered to Board members prior to the
14 meeting."

15 Do you see that?

16 A. Yes.

17 Q. Now, is that the reference in the board minutes to
18 a term sheet that you were referring to?

19 A. Yes.

20 Q. Prior to seeing the term sheet that was delivered
21 to board members on September 21, had you ever seen a
22 term sheet?

23 A. A specific sheet, I don't believe so. I'm a
24 little vague on that because I -- the sequencing of the
25 dates, I can't quite place what happened at what specific

1 day. That's my problem.

2 Q. Do you recall that when you saw the term sheet
3 that was presented to the board or given to the board on
4 September 21, there was a provision for the preferred
5 shares to have voting control prior to conversion?

6 A. I don't recall.

7 Q. Was it significant to you as a director whether
8 the government would or would not have immediate voting
9 control over the corporation?

10 A. I believe the government had immediate control
11 upon the lending of the money under the facility.

12 Q. And did that control, as you understand it, begin
13 when the government began to advance funds on
14 September 16?

15 A. Yes. That would be the operative time.

16 Q. Now, with respect to the conversion of preferred
17 shares into common shares, did you understand that a vote
18 of the common shareholders was required before that could
19 happen?

20 A. No.

21 Q. Let me ask you to look at a document that has been
22 marked as Plaintiffs' Trial Exhibit 239.

23 A. I have 240.

24 MR. GARDNER: I don't think it's in the binders.

25 MR. BOIES: I apologize, Your Honor. We'll hand

1 it up.

2 Your Honor, we only have a single copy. What I'll
3 do is I'll move on and we'll make copies during the break
4 and I'll come back to this subject.

5 THE COURT: Okay. That's fine.

6 BY MR. BOIES:

7 Q. Let me go to the subject of warrants.

8 You understood that a warrant would not have any
9 rights until it converts; correct?

10 A. Yes.

11 Q. And --

12 A. Normally. Normally.

13 Q. And you understood that a warrant also would
14 require an exercise price; correct?

15 A. Yes.

16 Q. And did you understand in September of 2008 that
17 the par value of AIG's common stock was \$2.50 a share?

18 A. I don't know.

19 Q. Let me ask you to look at Plaintiffs' Trial
20 Exhibit 195, which is in the binder that we handed up.

21 A. I have 186 and then to 198. I don't think I have
22 it.

23 MR. BOIES: Could I just approach, Your Honor?

24 THE COURT: Sure.

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

1 BY MR. BOIES:

2 Q. Now, these have been identified previously as
3 notes of the September 21 board meeting.

4 A. Uh-huh.

5 Q. Have you ever seen these notes before?

6 A. Yes.

7 Q. When did you see them?

8 A. In preparation for my deposition.

9 Excuse me. In preparation for this testimony.

10 Q. Let me ask you to look at page 3 of the notes.

11 A. Yes.

12 Q. And in the top part of the page, about a quarter
13 of the way down, there is a reference to an MW?

14 A. Uh-huh.

15 Q. And you recall that there was a Michael Wiseman
16 from Sullivan & Cromwell?

17 A. Yes.

18 Q. -- present?

19 A. Yes yes yes.

20 Q. And do you see where the notes attribute to him a
21 statement that EL, which you understand refers to
22 Ed Liddy; correct?

23 A. All right.

24 Q. Ed Liddy made an approach and spoke to Tom Baxter.
25 Tom Baxter made it clear likely result would not fund and

1 would call note. Do you see that?

2 A. Yes.

3 Q. And do you recall being told at the board meeting
4 that if the board did not accept the government's
5 proposal, the likely result, according to Mr. Baxter,
6 would be that the government would not fund further and
7 would call the demand notes?

8 A. I'm vague on that.

9 Q. You understood that if the government had called
10 the demand notes and not continued to fund that that
11 would have had a disastrous effect on AIG; correct?

12 MR. GARDNER: Objection. Calls for speculation.

13 THE COURT: Overruled.

14 THE WITNESS: Yeah, I -- you could certainly make
15 that case.

16 BY MR. BOIES:

17 Q. Now, a number of directors during the board
18 meeting expressed the view that they didn't think they
19 had a choice; correct?

20 A. That, I don't recall at all.

21 Q. Let me direct your attention to Plaintiffs' Trial
22 Exhibit 195 at page 4.

23 And do you see at the bottom there is a reference
24 to a VR?

25 A. Uh-huh. Who's VR?

1 Q. Was there a director with the initials VR?

2 A. Oh, that's -- that's probably Ginni Rometty.

3 Q. And this is a statement that is attributed to her
4 saying don't have choice.

5 Do you see that?

6 A. Sure.

7 Q. And do you recall Ms. Rometty saying in words or
8 in substance at the board meeting that he didn't believe
9 that she had a choice?

10 A. Yeah, I don't -- I don't know what she's referring
11 to.

12 Q. If you look up higher on the page --

13 A. Uh-huh.

14 Q. -- eight lines down, do you see where it says GM
15 doesn't think we had choice?

16 A. Yes.

17 Q. And GM refers to a director that you know;
18 correct?

19 A. I'm trying to think who it is. All right.

20 Q. Was there a director by the name of George Miles?

21 A. Yes. Yes, yes.

22 Q. And do you recall George Miles saying in words or
23 in substance at the September 21 board meeting that he
24 didn't believe that the directors had a choice?

25 A. Yeah, I -- I think that you're taking this comment

1 out of context. I don't -- I don't know what this means.

2 Q. Well, do you see the context that Mr. Miles's
3 statement here in the notes do you see what is said
4 immediately after that?

5 A. Yeah. Concern that we are in worse shape bigger
6 embarrassment.

7 Q. And worse shape, do you recall Mr. Miles saying at
8 the board meeting that he believed that you were now in
9 worse shape and there would be a bigger embarrassment if
10 you didn't accept the government terms and loan?

11 MR. GARDNER: Objection to the extent it
12 mischaracterizes the document.

13 THE COURT: Overruled.

14 THE WITNESS: These are little snippets that I
15 just can't -- it's difficult for me to comment on.

16 BY MR. BOIES:

17 Q. Do you recall that several of the directors said
18 in words or in substance that they did not feel as though
19 they had any choice but to approve the transaction
20 because bankruptcy would have such a bad effect on the
21 company?

22 A. Well, in effect, that was my position from the
23 standpoint of the wiping out of the shareholders as
24 against the possibility of being able to resuscitate the
25 company with a 20 percent interest.

1 Q. And in addition to that being your view, do you
2 recall that several other directors expressed the same
3 view?

4 A. Yes. That's how they voted.

5 Q. But in addition to voting that way, do you recall
6 that they said in words or in substance that they didn't
7 feel they had any choice but to approve the transaction
8 because upon bankruptcy, the company's assets would be
9 immediately worth less?

10 A. You know, it's -- as I testified before, it's the
11 proverbial between a rock and a hard place.

12 Q. And I just want to be sure that I'm capturing both
13 of two different things. One is what you believed, and
14 you've testified about what you believed.

15 A. Yes.

16 Q. And second, what other directors said. And am I
17 correct that it is true that both you believed and other
18 directors said that they did not feel that they had any
19 choice but to approve the transaction because upon
20 bankruptcy, the corporation's assets, particularly
21 perhaps the regulated insurance companies, would
22 immediately be worth less?

23 MR. GARDNER: Objection. Compound.

24 THE COURT: Do you understand the question?

25 THE WITNESS: Yeah. I think that has to be the

1 supposition. .

2 BY MR. BOIES:

3 Q. And do you recall them saying that?

4 A. I said that. Yes, I said that at the meeting.

5 Q. And did other people say that at the meeting,
6 other directors?

7 A. That was the tenor of the discussion.

8 Q. Okay. Thank you.

9 Do you recall being advised at the meeting that a
10 decision to file bankruptcy would no longer be protected
11 by the business judgment rule?

12 A. I don't recall.

13 Q. You recall that on September 16 the board was
14 advised that if they chose bankruptcy, they would be
15 protected by the business judgment rule or if they chose
16 the government loan, they would be protected by the
17 business judgment rule. Do you recall that?

18 A. I don't.

19 Q. You don't have any reason to believe that the
20 minutes are inaccurate in that respect, do you?

21 A. No, I do not.

22 Q. Now, going back to Plaintiffs' Trial Exhibit 195,
23 let me direct your attention to page 5.

24 A. Yes.

25 Q. In the middle of the page, there is a reference to

1 you.

2 Do you see that?

3 A. Yes.

4 Q. And these notes attribute to you the statement
5 "don't see why we need to do it tonight."

6 Do you see that?

7 A. Yes.

8 Q. And did you say that at the September 21 board
9 meeting?

10 A. I personally have no idea. I -- I don't -- I
11 don't know what it refers to and I certainly don't recall
12 saying it.

13 Q. Let me ask you to go to page 6.

14 A. Yeah.

15 Q. In the middle of the page, do you see another
16 statement attributed to you?

17 A. Yes.

18 Q. And that statement is "thought maybe there would
19 be competitive period where 30 days chance to express
20 interest."

21 Do you see that?

22 A. Yes.

23 Q. And did you say that in words or in substance?

24 A. I don't recall. I don't.

25 Q. On September 21, did you say at the board meeting

1 that you thought there would be a period of perhaps
2 30 days when there would be an opportunity to see whether
3 there were private sources that might express interest in
4 taking out the government loan?

5 A. I don't recall.

6 Q. On September 21, were you aware of any expressions
7 of interest on the part of anybody to take out all or
8 part of the government loan?

9 A. The only interest I had heard about was possibly
10 Morgan bank and Bob Willumstad initially had Citibank
11 interested. Then Morgan came into the picture. And then
12 Morgan in effect faded repudiated any interest, said
13 that -- any interest.

14 Q. Other than any interest that might have at some
15 point been expressed by JPMorgan or Citibank, were you
16 aware of any expressions of interest on the part of any
17 parties to either participate with the government or to
18 substitute for the government in terms of making funds
19 available to AIG?

20 MR. GARDNER: Objection. Compound.

21 THE COURT: I'll allow it.

22 Go ahead.

23 THE WITNESS: Yeah. The Blackstone people as
24 advisors canvassed the marketplace certainly among the
25 sovereign wealth funds to generate some interest and

1 that's when they came back to us and said that it was
2 impossible. There wasn't any interest, and possibly if
3 they're -- I'm not sure if they said -- well, I'm
4 speculating myself. Let me finish my comment.

5 THE COURT: Mr. Boies, shall we take a break at
6 this time.

7 MR. BOIES: Yes, Your Honor.

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

9 **(Court in recess.)**

10 THE COURT: Let's go ahead, Mr. Boies.

11 MR. BOIES: Thank you, Your Honor.

12 BY MR. BOIES:

13 Q. Mr. Offit, just before the break, you were talking
14 about the Blackstone advisors who had canvassed the
15 marketplace among the sovereign wealth funds. Do you
16 recall that?

17 A. Yes.

18 Q. And you testified that it was your recollection
19 that they had come back and said that any interest from
20 sovereign wealth funds was impossible; is that your
21 testimony?

22 A. That -- that -- yes. I mean, your -- did I
23 exactly say that or were you paraphrasing? Did I exactly
24 say that?

25 Q. I think I was somewhat paraphrasing, but what you

1 exactly said was: The Blackstone people as advisors
2 canvassed the marketplace certainly among the sovereign
3 wealth funds to generate some interest and that's when
4 they came back to us and said that it was impossible.
5 There wasn't any interest."

6 A. Yeah, there wasn't any interest, but based on,
7 you know, time period, amounts of money, the
8 due diligence, da, da, da. Excuse me. You can't record
9 that. Yes. Okay.

10 THE COURT: She can record it. I'm not sure it's
11 going to mean anything.

12 THE WITNESS: Thank you, Your Honor. I apologize.

13 BY MR. BOIES:

14 Q. You had not personally ever been involved in any
15 investments by sovereign wealth funds in your
16 professional experience; correct?

17 A. I'm trying to think. Not directly.

18 Q. With respect to Blackstone, was the person that
19 you were referring to Mr. Studzinski?

20 A. Yes.

21 Q. Did Mr. Studzinski ever convey to you that the
22 Chinese Sovereign Wealth Fund was interested in making a
23 big investment in AIG?

24 A. I don't recall.

25 Q. Did you ever discuss the possibility of an

1 investment by the Chinese in AIG with Mr. Liddy?

2 A. I think it -- I had said that there was some
3 market intelligence and I forget the sources that maybe
4 there would be some interest in -- Chinese wealth funds
5 interested in AIG, pure speculation on my part.

6 Q. Other than pure speculation on your part, did you
7 ever have any discussion with Mr. Liddy about the
8 possibility of an investment by the Chinese in AIG?

9 A. I -- I don't recall.

10 Q. Did Mr. Liddy ever tell you that his understanding
11 was that Secretary Paulson didn't want to have the
12 Chinese government undertake an investment in AIG?

13 A. I don't recall.

14 Q. Let me ask you to look at Plaintiffs' Trial
15 Exhibit 253 that is in your binder. It's a document
16 that's already in evidence.

17 When you have it, please let me know.

18 A. Yeah. I'm not known to be too technologically
19 facile, but I didn't think I was this bad. Could
20 somebody help me?

21 Q. Sure.

22 A. I just don't see it.

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

24 Oh, it was hidden. I see.

25 Q. This is an e-mail from Mr. Studzinski to

1 Mr. Liddy, Mr. Schreiber and certain other AIG people?

2 A. Yes.

3 Q. And the subject of Chinese vice premier this
4 morning?

5 A. Yes.

6 Q. Do you see that?

7 A. Yes, I do.

8 Q. Have you ever seen this document before?

9 A. I have not.

10 Q. This was not one of the documents that was shown
11 you during your preparation for your testimony?

12 A. I don't recall.

13 Q. The e-mail begins good morning, busy China
14 dialogue again today and it goes on to say Chinese remain
15 interested in a large investment and writing a large
16 check. I know you are busy, but I need you to focus
17 because this could be a silver bullet solution and afford
18 the company the strategic and timing flexibility it
19 needs.

20 Do you see that?

21 A. Yes.

22 Q. Were you ever aware of that interest on the part
23 of the Chinese?

24 A. I had not seen this document.

25 Q. And no one had discussed the substance of it with

1 you; is that correct?

2 A. I don't recall. May have.

3 Q. Now, let me turn back to Plaintiffs' Trial
4 Exhibit 195. And I think we were last on page 6 of that
5 document. I want to go to page 7.

6 And do you see in the top half of the page where
7 there is a statement attributed to you?

8 A. I'm -- you know, these things are not well
9 organized. I don't mean to be critical, but -- okay.
10 Now I'm with you. What page are you on?

11 Q. Page 7.

12 A. Yes, I'm with you.

13 Q. And do you see the statement attributed to you on
14 the top half of the page?

15 A. Yeah.

16 Q. It says "Fed gets it both ways."

17 Do you see that?

18 A. Yes.

19 Q. And it then says "not purely negotiated." Do you
20 see that?

21 A. Yes.

22 Q. And then it says "extremely uncomfortable"?

23 A. Yes.

24 Q. Did you say that in words or in substance at the
25 September 21 board meeting?

1 A. I think the minutes summed up what I said, that it
2 was a very difficult decision, and certainly thought the
3 terms were punitive and so forth and certainly didn't
4 like the terms of the facility but certainly understood
5 it relative to filing for bankruptcy.

6 Q. And if you go to the next page, page 8, up at the
7 top do you see where a statement is attributed to you
8 "don't find it balanced reasoning"?

9 A. I do. I see the statement. I don't know what it
10 refers to. As I said before, these are snippets, and I
11 just don't -- can't put it in context.

12 Q. Let me turn now to the subject of a stockholder
13 vote.

14 A. Yes.

15 Q. And I want to ask you to look at Plaintiffs' Trial
16 Exhibit 239, which turns out is actually in the binder.

17 A. I go from 221 to 240 and 239 is someplace else?

18 Q. One of the things that may be a little confusing
19 is in the beginning of the book there are JXs.

20 A. Okay.

21 Q. Which are joint exhibits?

22 A. Yeah. Sure. That, I understand.

23 Q. And then after all the joint exhibits, which are
24 in numerical order, we come to the plaintiffs' trial
25 exhibits?

1 A. Oh, okay. Is that what you call them. 239. I
2 got it. I got it.

3 Q. And this is a communication from an AIG
4 shareholder to you and other members of the board of
5 directors; is that correct?

6 A. Yes.

7 Q. And did you receive this on or about September 24,
8 2008?

9 A. I imagine so. I just don't recall it. I should
10 have received it certainly.

11 Q. Did you receive other communications from
12 shareholders talking about the issue of whether there
13 would or would not be a shareholder vote?

14 A. I don't recall, certainly think so.

15 Q. And was it the case that the shareholders that
16 communicated with you were telling you in words or in
17 substance that they felt, as this shareholder did, that
18 they should be given an opportunity to vote prior to the
19 time that shares, preferred shares, were converted into
20 common shares?

21 A. Yes.

22 Q. And as you understood it on September 24, 2008,
23 was there a requirement that before the Series C
24 preferred shares could be converted into common shares,
25 there had to be a vote of the common shareholders?

1 MR. GARDNER: Objection, Your Honor. Beyond the
2 scope of the government's examination.

3 MR. BOIES: Your Honor.

4 THE COURT: Mr. Boies.

5 MR. BOIES: They spent a lot of time both the
6 first day and today eliciting from the witness that he
7 didn't think there was any difference between the form of
8 equity. And I think this goes directly to that issue.

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

10 THE WITNESS: No. I could understand why
11 shareholder would feel -- is entitled to a vote. But in
12 my way of thinking, this was the role of the director i
13 was there representing the directors and there was
14 absolute -- representing the shareholders. Excuse me.
15 In a financial emergency, so I felt I was in effect
16 discharging my responsibilities as a director in
17 representing the shareholder and there was absolutely no
18 time at all to go through a formalized voting procedure
19 in light of what was happening in the marketplace, just
20 one of those extraordinary periods, so again you have to
21 go back to what was happening at that particular time in
22 the global financial markets.

23 BY MR. BOIES:

24 Q. Is it your testimony that you never contemplated
25 that there would be a shareholder vote prior to

1 converting the Series C preferred stock into common
2 stock?

3 A. No. I'm saying there certainly could be a vote, a
4 formalized vote. Certainly that's in accordance with
5 appropriate governance, but from the standpoint of this
6 point in time, voting on the government facility that
7 evening I was in effect representing the shareholder as a
8 director of the company at that particular time.

9 Q. I'm focusing on that particular time. At that
10 particular time, in September of 2008, did you believe
11 that there was going to be a shareholder vote before the
12 Series C preferred stock was converted into common stock?

13 A. I assumed -- I can't recall. I can't recall
14 exactly what I thought at that particular time. But I
15 didn't think it was that material.

16 Q. Did you understand that it was material to the
17 shareholders?

18 MR. GARDNER: Objection. Calls for speculation.

19 THE COURT: Sustained.

20 THE WITNESS: But I thought it was --

21 THE COURT: Whoa, whoa, whoa. Wait a minute.

22 THE WITNESS: Excuse me. I'm sorry. Excuse me.

23 BY MR. BOIES:

24 Q. Did you receive any communications from
25 shareholders indicating that the shareholders believed

1 that the right to approve the conversion of preferred
2 stock into common stock was important to them?

3 A. I think that's -- wasn't this the document you
4 referred to from the shareholder?

5 Q. That was one such document, and did you receive
6 other such documents?

7 A. Could have. Don't recall. But should have.

8 Q. Did you receive a lawsuit from shareholders
9 indicating that they thought it was important that there
10 be a shareholder vote of common shareholders before
11 conversion of the Series C preferred stock into common
12 stock?

13 MR. GARDNER: Objection, Your Honor. Beyond the
14 scope. And this I actually would like to be heard on
15 before we go forward.

16 THE COURT: All right. Would you step outside
17 again, Mr. Offit. Sorry.

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

20 THE COURT: Go ahead.

21 MR. GARDNER: Thank you, Your Honor.

22 As I imagine the Court can surmise, we are now
23 getting into the Walker litigation. As the Court may
24 recall, I ended my examination with Mr. Offit on
25 September 21 other than to ask him why he left the board

1 and those circumstances. This is well beyond the scope.
2 And now we're going to get into things like the reverse
3 stock split and things like that which the government
4 deliberately did not ask Mr. Offit we could have we chose
5 not to so this is well beyond the scope.

6 THE COURT: But I think it relates to the issue of
7 whether there was some significance to a shareholder
8 vote, and I think it's permissible follow-up on that
9 issue. It's true it's a later event, but that doesn't
10 mean it's outside the scope of the issues you raised with
11 him.

12 MR. GARDNER: The issues I raised with him,
13 Your Honor, was what his understanding was and his view
14 when he made the vote. What happens after that fact
15 can't possibly bear on his understanding at that time.

16 THE COURT: Well, still I think -- I don't know
17 what his answer is going to be whether he knew about this
18 or not, but I think it's relevant follow-up on that
19 issue.

20 MR. GARDNER: All right. I understand,
21 Your Honor. Okay.

22 MR. BOIES: And I am going to go into a number of
23 those things that he indicates and it goes both to the
24 issue that we're just talking about but also to where he
25 says there is in his view no difference between the form

1 of equity. I think all of these things go to the fact
2 that there's a big difference between the form of equity.

3 MR. GARDNER: But whether there is in fact a
4 difference and whether Mr. Offit thinks there is or is
5 not are two very different issues, Your Honor be and I
6 think that's the difference here, is that Mr. Boies now
7 is trying to his advance his Walker reverse stock split
8 theory with Mr. Offit, a witness who was not asked about
9 those issues and this is well far afield of that.
10 Whatever his personal understanding is could be right cog
11 wrong could be other. It doesn't really matter. It's
12 what his view was.

13 THE COURT: Well, but I still think it's relevant
14 to the issue of whether there's any difference between
15 the form of equity. And I don't think it's going to take
16 very long, will it, Mr. Boies.

17 MR. GARDNER: Mr. Boies has represented he has
18 another 50 minutes with the witness which is longer than
19 my entire exam, but that is, Your Honor, it is what it
20 is.

21 THE COURT: All right.

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

24 THE COURT: Thank you again, Mr. Offit. We're
25 ready to go forward.

1 THE WITNESS: Yes, sir.

2 BY MR. BOIES:

3 Q. My question was, in 2008, did you receive a copy
4 of a lawsuit filed by shareholders who were contending
5 that they had a right to a common shareholder vote before
6 the Series C stock was converted into common stock?

7 A. I believe so.

8 Q. And were you aware that in response to that
9 lawsuit, the company represented that before the
10 authorized shares of the company were increased to permit
11 that conversion there would be a common shareholder vote?

12 A. I'm vague on that.

13 Q. You understood from that lawsuit that the
14 shareholder vote was important to the shareholders;
15 correct?

16 MR. GARDNER: Objection. Calls for speculation.

17 THE COURT: I'll sustain the objection.

18 BY MR. BOIES:

19 Q. One of the differences between preferred stock and
20 warrants was that with preferred stock, the government
21 was able to elect all of AIG's directors; correct?

22 A. Generally speaking, yes.

23 Q. And as early as October, members of the board were
24 approached, including yourself, and some were asked to
25 stay on the board and others were told that they would

1 not remain on the board; correct?

2 A. Yes. I'm not sure of the time period, but I think
3 generally that was the thrust.

4 Q. In order to just refresh your recollection as to
5 the time period, would you look at Plaintiffs' Trial
6 Exhibit 310.

7 A. I have it.

8 Q. And this is an e-mail that's already in evidence
9 from Sarah Dahlgren to Mr. Geithner, dated October 19,
10 2008?

11 A. Yes.

12 Q. Do you see that?

13 A. Uh-huh. Yes.

14 Q. And the very last line says, "Morris Offit is
15 prepared to hand his resignation to Ed when he asks."

16 Do you see that?

17 A. Yes.

18 Q. And had you told Mr. Liddy that you were prepared
19 to hand in your resignation when he asked you?

20 A. I don't recall, but I accept what's written here.
21 I really don't recall.

22 Q. And in fact, in the period between September 16,
23 2008 and the end of June 2009, eight of the members of
24 the AIG board had been replaced; correct?

25 A. I don't know specific numbers, but certainly

1 that's again the thrust of it.

2 Q. For example, Mr. Willumstad had obviously been
3 replaced, and Mr. Langhammer resigned; correct?

4 A. Yes.

5 Q. And Ms. Rometty resigned; correct?

6 A. Yes.

7 Q. And Mr. Sutton resigned; correct?

8 A. Yes.

9 Q. And Mr. Bollenbach did not stand for reelection in
10 June of 2009; correct?

11 A. Yes.

12 Q. And Mr. Feldstein did not stand for reelection in
13 June of 2009; correct?

14 A. Yes.

15 Q. And Mr. Orr and Mr. Tse also did not say for
16 reelection in June of 2009; correct?

17 A. Yes.

18 Q. And the only three members of the board who had
19 been members of the board in September of 2008 that
20 stayed on the board were yourself, Mr. Miles and
21 Ms. Johnson; correct?

22 A. Yes.

23 Q. Another difference between warrants and preferred
24 stock was that in addition to electing, having the right
25 to elect all the directors, the preferred stock enabled

1 the government to control shareholder votes on other
2 matters; correct?

3 MR. GARDNER: I'm going to object on vagueness
4 grounds, Your Honor.

5 THE COURT: I'll sustain that objection.

6 BY MR. BOIES:

7 Q. There came a time when AIG exchanged Series C, E
8 and F preferred stock for common stock; correct, sir?

9 A. I believe so. You know, I can't recall when, but
10 you're generally speaking you're right.

11 Q. And that was done by the government on consent,
12 written consent, because the government controlled more
13 than a majority of the votes; correct?

14 MR. GARDNER: Objection, Your Honor. Well beyond
15 the scope of the government's examination.

16 THE COURT: No. I think it's the same issue we've
17 spoken about, Mr. Gardner.

18 MR. GARDNER: Respectfully, Your Honor, I think
19 it's different, but I understand the Court's ruling.

20 THE COURT: All right.

21 THE WITNESS: Yes.

22 BY MR. BOIES:

23 Q. And the government could not have done that if all
24 they held were warrants; correct?

25 A. Warrants in this case did not carry voting rights,

1 so the answer is yes.

2 Q. You testified to the government that you
3 understood what the government's intention was with
4 respect to the terms of the credit agreement. Do you
5 recall that?

6 A. Yes.

7 Q. Was it your understanding that it was the
8 government's intention to be in a position to exercise
9 control over AIG?

10 A. The government succeeded to an 80 percent
11 interest, approximate 80 percent interest in AIG.
12 Certainly the government had latitude to do whatever it
13 wished in that respect.

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

15 THE COURT: Sure.

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

17 BY MR. BOIES:

18 Q. With respect to the credit agreement?

19 A. Yes.

20 Q. Did you ever see the credit agreement yourself?

21 A. The physical document, the answer is no.

22 Q. Did you ever see a draft of the credit agreement?

23 A. I saw the terms. I saw a term sheet.

24 Q. Other than --

25 A. But I never saw anything other than that.

1 Q. Other than seeing a term sheet, did you ever see a
2 draft of the credit agreement itself?

3 A. No.

4 Q. And the term sheet, was that a two-page term
5 sheet?

6 A. It's in the minutes. I don't know whether it's
7 two pages or three pages. I don't know.

8 Q. And when you say it's in the minutes, you're
9 talking about the minutes of the September 21 board
10 meeting?

11 A. Yeah. I believe so. I know it's appended to one
12 of the minutes.

13 Q. Let me just direct your attention to
14 Joint Exhibit 103 and annex B at pages 13 and 14 is
15 headed summary of terms of preferred stock and related
16 issues?

17 A. Yeah.

18 Q. Is that the term sheet you're referring to?

19 A. Yes. Uh-huh.

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

21 THE COURT: All right. Do you have any redirect,
22 Mr. Gardner?

23 MR. GARDNER: Briefly, Your Honor.

24 THE COURT: All right.

25 - - - - -

REDIRECT EXAMINATION

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BY MR. GARDNER:

Q. Just a few brief questions, Mr. Offit.

Since you're on JX 103, could I ask you to turn to annex A which begins on page 11. And it's entitled Summary of Credit Agreement.

A. Yes. I got it.

Q. Do you recognize this as a summary of the terms of the credit agreement that you would have seen before the board meeting on September 21?

A. Could have been. I just can't be that specific.

Q. Now, I want to draw your attention back if we could to JX 74. It's the September 16 board meeting that we discussed quite a bit today.

A. Yes.

Q. And if I can turn your attention to the resolutions on page 13.

Now, with respect to these resolutions, Mr. Offit, on September 16, when you voted for this resolution, did you have an understanding one way or the other whether AIG's board had reached an agreement with the New York Fed that the New York Fed would provide up to \$85 billion in exchange for a 79.9 percent equity interest?

A. Yes.

1 Q. Now, earlier, on cross-examination by plaintiffs'
2 counsel, you testified that as of 9-16 the government had
3 control of AIG. Do you recall that?

4 A. Yes.

5 Q. And what was the basis for your statement that as
6 of 9-16 that the government had control of AIG?

7 A. The government I believe -- and again, I -- it's a
8 little challenging to know 16th, 17th, 18th, exactly on
9 the date sequence here, but as soon as the government
10 advanced money under the facility, in my opinion, that
11 represented control.

12 Q. Now, the money you're referring to is the
13 14 billion advanced on the 16th?

14 A. Yes.

15 Q. And did you have an understanding, Mr. Offit, one
16 way or the other how that 14 billion that was advanced,
17 how it related to the 85 billion that the New York Fed
18 had committed to providing AIG as of September 16?

19 A. Well, certainly it was in effect a part of the
20 loan facility.

21 Q. Now, at any time after September 16 did you
22 believe that the government's involvement in AIG had any
23 effect on your ability to exercise your independent
24 judgment?

25 A. Absolutely not.

1 MR. GARDNER: Your Honor, I have no further
2 questions.

3 THE COURT: All right. Anything further,
4 Mr. Boies?

5 MR. BOIES: Just briefly, Your Honor.

6 THE COURT: Okay.

7 - - - - -

8 **RECROSS-EXAMINATION**

9 BY MR. BOIES:

10 Q. Counsel just asked you whether at the time you
11 voted for the resolutions that are reflected in the
12 September 16 board minutes that you believed that AIG had
13 entered into an agreement with the Federal Reserve. Do
14 you recall that?

15 A. Yes.

16 Q. Did you have any understanding on September 16 as
17 to whether as a result of that, quote, agreement, close
18 quote, there was any binding obligation on the
19 Federal Reserve to continue to provide the \$85 billion of
20 funding?

21 A. That was my assumption.

22 Q. Now, you say that was your assumption.

23 Was that based on anything anybody told you?

24 A. Well, as a reasonable person, if the loan facility
25 was 85 billion, I would assume that we entered into a

1 transaction with the government salvaging the company and
2 whatever monies were advanced were against the 85 billion
3 loan facility.

4 Q. Let me ask the question this way.

5 If there was an agreement, a binding agreement, on
6 September 16, then both parties would have had certain
7 obligations to each other; correct?

8 A. I would believe so.

9 Q. And did you believe that on September 16 AIG had a
10 binding obligation to provide equity representing
11 79.9 percent of the shareholders' equity to the
12 government?

13 A. In view of the circumstances of an imploding
14 company, that in effect was virtually bankrupt from the
15 standpoint of the liquidity pressures, certainly I would
16 think that would be a binding agreement.

17 Q. I'm a little confused about one thing.

18 What is the condition of the company have to do
19 about whether it's a binding agreement or not?

20 A. Because why enter into an agreement unless there
21 is an extremis type of situation. This company was in
22 extremis.

23 Q. I understand that it's your testimony that you
24 wouldn't have entered into this agreement if the company
25 had been in extremis; correct?

1 A. Yeah.

2 Q. Even if the company is in extremis, that doesn't
3 necessarily make the agreement binding or not binding;
4 correct?

5 A. Well, if you only have a choice between bankruptcy
6 and a loan facility taking 80 percent versus a hundred
7 percent of the stock certainly, in my opinion, you would
8 have taken the government facility.

9 Q. I'm not now asking a question about whether you
10 think bankruptcy or the government facility was better.
11 Even though you're not a lawyer, you understand that some
12 agreements are legally binding and some agreements are
13 not legally binding; correct?

14 A. Yeah. But I have trouble when you say legally,
15 you know, I'm the kind of guy that I shake hands with
16 somebody, that to me is a binding agreement if I'm
17 entered into a transaction, so I -- we're caught up here
18 in definitions a little bit.

19 Q. You do understand that even though a handshake may
20 be a deal?

21 A. Yeah.

22 Q. In your mind, a hand slake is not necessarily
23 always a legal deal. You do understand that.

24 MR. GARDNER: Objection, Your Honor. Now I think
25 we are calling for a legal conclusion.

1 THE WITNESS: Well --

2 THE COURT: I'll take his answer just on this
3 question.

4 THE WITNESS: It's good faith. I don't know how
5 to answer you.

6 BY MR. BOIES:

7 Q. Let me try to put the question this way.

8 A. You know, I mean -- go ahead.

9 Q. Okay. Even though you've testified that you
10 didn't see any difference between warrants and preferred
11 stock --

12 A. That's right.

13 Q. -- you do understand that there are people who do
14 see a difference between warrants and preferred stock;
15 correct?

16 MR. GARDNER: Objection, Your Honor. Calls for
17 speculation and beyond the scope of the government's
18 redirect.

19 MR. BOIES: This part I don't think does and I'm
20 happy to explain it to you if we can excuse the witness.

21 THE COURT: I'm going to overrule the objection.
22 I want to get Mr. Offit on his way shortly.

23 THE WITNESS: I -- I should answer the question,
24 sir?

25 THE COURT: Yes.

1 THE WITNESS: The question again is?

2 BY MR. BOIES:

3 Q. You understand that there are people who do see a
4 difference between warrants and preferred stock.

5 A. Of course. Reasonable people can disagree about
6 anything. Certainly.

7 Q. But it's more than just people can disagree about
8 anything. You understand that there are reasonable reasons
9 why some people would see a difference between warrants
10 and preferred stock; correct?

11 A. Between any financial instruments. The answer is
12 sure, any financial instruments.

13 Q. Okay. Now, and you've said that on September 16
14 everybody contemplated it would be warrants; correct?

15 A. Yes.

16 Q. Was there a binding contractual right on AIG's
17 part to be able to get that credit facility of
18 \$85 billion in exchange for 79.9 percent warrants in your
19 understanding? Just yes or no or I don't know.

20 A. My understanding is that the government was --

21 Q. Could you focus on my question, just my question
22 here?

23 MR. GARDNER: Your Honor --

24 THE WITNESS: Well, it's not a yes and no answer,
25 sir.

1 BY MR. BOIES:

2 Q. I'm asking, as you understood it, on September 16,
3 was there a binding contractual right on AIG's part to be
4 able to get the \$85 billion credit facility in exchange
5 for 79.9 percent of its equity in the form of warrants.
6 That is a yes, no, or I don't know question?

7 MR. GARDNER: Objection. Calls for a legal
8 conclusion.

9 MR. BOIES: I'm just asking his understanding.

10 THE COURT: You're asking for his understanding.

11 THE WITNESS: Is there -- let me ask a question.
12 Is there a legal definition of the word "binding"?

13 BY MR. BOIES:

14 Q. By contractual binding I meant legally binding?

15 A. Well, contractual, we certainly entered into a
16 contractual arrangement with the U.S. government.

17 Q. And was that contractual arrangement with the U.S.
18 government that was entered into on September 16 a
19 contractual arrangement for the government to provide an
20 \$85 billion credit facility and for AIG to provide
21 79.9 percent of its equity in warrants? That's yes, no,
22 or I don't know.

23 A. The answer is I don't know, and the reason I don't
24 know is because it didn't make any difference to me
25 whether it was warrants, common stock, preferred stock.

1 It just what represented the 80 percent approximate
2 interest.

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

4 THE COURT: All right. I just want to observe, I
5 think I know the answer to your question and that may be
6 all that matters.

7 MR. BOIES: I think so.

8 THE COURT: All right.

9 MR. BOIES: Thank you. Mr. Offit, thank you very
10 much for your testimony in this matter. You are excused.

11 THE WITNESS: Thank you, sir.

12 MR. GARDNER: The government calls as its
13 continued next witness Dr. Mordecai to the stand.

14 THE COURT: All right.

15 Good morning, Dr. Mordecai.

16 THE WITNESS: Good morning, sir. How are you?

17 THE COURT: Please be seated and make yourself
18 comfortable.

19 THE WITNESS: I will, sir. Thank you.

20 THE COURT: You understand that you're still under
21 oath in these proceedings?

22 THE WITNESS: I do, sir.

23 THE COURT: All right.

24 THE WITNESS: Thank you.

25 THE COURT: Now we're on redirect as I recall.

1 MR. AUSTIN: That's correct, Your Honor.

2 (Pause in the proceedings.)

3 THE COURT: Please go ahead when you're ready.

4 MR. AUSTIN: Thank you, Your Honor.

5 - - - - -

6 Whereupon --

7 DAVID K.A. MORDECAI

8 a witness, called for examination, having been previously

9 duly sworn, was examined and testified further as

10 follows:

11 REDIRECT EXAMINATION (resumed)

12 BY MR. AUSTIN:

13 Q. Dr. Mordecai, good morning.

14 A. Good morning.

15 Q. Hopefully you have the same binders that were in
16 front of you yesterday.

17 A. I believe so. Yes, sir.

18 Q. Dr. Mordecai, do you recall that you were asked
19 multiple questions on cross-examination about the reverse
20 stock split?

21 A. Yes, sir.

22 Q. Now, all else being equal, in a 20-to-1 reverse
23 stock split by how much mathematically would you expect
24 the per-share stock price increase to be?

25 A. Mathematically?

1 Q. Yes. Pure mathematical basis, everything else
2 being equal.

3 A. Well, it's going to be the reciprocal of the
4 20-to-1.

5 Q. So you'd expect the price to go up twenty times.

6 A. Yes.

7 Q. Okay. Now, please turn to DX 1875 in your large
8 binder, which are the exhibits to your report, and
9 specifically to Exhibit C-2 of your report at page 5 of
10 16.

11 A. Could you repeat the number again, sir.

12 Q. Exhibit 2.

13 A. Uh-huh.

14 Q. At page 5 of 16.

15 Let me know when you've been able to find that.

16 A. Yes, sir.

17 Q. And that's where you're demonstrating the AIG
18 stock data for different dates; is that right?

19 A. Correct.

20 Q. And again on page 5, please look at the closing
21 price of AIG's stock right before the stock split on
22 June 30, 2009. Do you see that?

23 A. I do.

24 Q. And do you see where it shows a price of \$1.16?

25 A. I do.

1 Q. And then if you look at the next day, on July 1,
2 2009, what is the closing price on that day?

3 A. \$18.08.

4 Q. Now, comparing those two stock prices, did AIG's
5 stock in fact increase a full twenty times the amount
6 after the split?

7 A. Approximately.

8 Q. Well, if you multiply twenty times \$1.16, you
9 would get about \$22; right?

10 A. That's correct.

11 Q. So it didn't quite advance the twenty times did
12 it?

13 A. Not surprising since it's a market not just a pure
14 mathematical calculation.

15 Q. Now, would you please describe what happened to
16 the stock price in the month after the vote starting with
17 the opening price on July 1 and take us through early
18 August, say, August 5.

19 A. August 5, the opening or closing price? Opening
20 price?

21 Q. Yes. We just sort of take us through what
22 happened over the month, not just those two days but what
23 happened in the interim.

24 A. So it declined to the around the tenth where the
25 opening price was -- I'm going to use all opening prices

1 if that's okay -- was \$8.81. It then started creeping up
2 again. You see the -- you see volatility obviously
3 intraday as well based on the opening and closing prices.
4 And then it continues to sort of bounce around with a
5 range between 12 and three-quartersish and twelve and a
6 half and I'm going to say the mid sort of 13 and a half
7 around there and then on the 5th it pops way up to 22.

8 Q. And then in fact it opens on the 6th at \$26.88?

9 A. It opened on the 6th at 26 what we would typically
10 call you could refer to it as a convergence to new
11 equilibrium because it sort of stays there for a time.

12 Q. Now, focusing in the early period you described,
13 for example, the July 10, 2009 opening price of \$8.81,
14 does this illustrate that even though mathematically a
15 20-to-1 reverse stock split should increase the stock
16 price by twenty times, there could be, depending on the
17 circumstances, other developments in the general markets
18 or even with respect to AIG specifically that could cause
19 the stock price to continue to fall?

20 MR. BOIES: Objection.

21 THE WITNESS: The reality of economics.

22 THE COURT: Hang on.

23 THE WITNESS: I'm sorry.

24 THE COURT: What's the objection, please?

25 MR. BOIES: Leading, Your Honor.

1 THE COURT: I think it is leading.

2 MR. AUSTIN: I'll rephrase it.

3 BY MR. AUSTIN:

4 Q. The stock D price -- the decrease in the stock
5 price that you see in July 10, 2009, how could that occur
6 notwithstanding the fact that there had been a 20-to-1
7 stock split?

8 A. Because there's still a wide range of economic
9 risks. There are still what we call random processes
10 that exist in markets that exist in nature. The -- the
11 fact -- that's the reason why runs an event study with
12 market proxies as well as other industry proxies to try
13 to isolate these other influences that may influence a
14 stock's value or a stock's movements apart from the one
15 thing that you're -- we're talking about here, which is a
16 reverse stock split.

17 Q. Now, are there any assurances that a stock price
18 will remain above a certain particular price because
19 there has been a reverse stock split?

20 A. There isn't or we could call just make a bet and
21 retire and that would be the end of it. No, there isn't.

22 Q. And would that be the case regardless of whether
23 it were a -- it was a 20-to-1 stock split or a five to
24 one stock split or a ten to one stock split?

25 A. No guarantees. That's why it's a market. .

1 Q. So if hypothetically AIG wanted to maintain its
2 New York Stock Exchange listing to keep the share price
3 above one dollar a stock or five dollars a stock for
4 institutional investors, but is concerned in this
5 hypothetical there could continue to be downward pressure
6 on the stock price, how -- what does AIG have to do to
7 consider how large the stock price split needs to be,
8 stock reverse split needs to be? What does it have to
9 consider?

10 A. It has to consider its underlying business
11 economics. It has to consider what market conditions
12 are. It has to think about -- and when I -- when I say
13 its underlying business economics, I'm not just referring
14 to its firm-specific conditions but also industry
15 conditions and market conditions. A lot of factors play
16 into that.

17 Q. And AIG would have to use its judgment in weighing
18 those factors to determine that.

19 A. The senior management of AIG would have to use its
20 judgment.

21 Q. Now, please turn to Exhibit 9 in your report,
22 which is DX 1875. Exhibit 29.

23 A. Exhibit 29 or Exhibit 9?

24 Q. No. Exhibit 29.

25 Now, do you recall referencing your Exhibit 29 on

1 Monday during your cross-examination from plaintiffs'
2 counsel?

3 A. I recall referencing it. I don't remember the
4 specific day. It's been a couple days.

5 Q. But you recall it came up in your
6 cross-examination.

7 A. I do. I do.

8 Q. Now, Exhibit 29 is an analysis that you did of the
9 market's reaction to the shareholder vote on the reverse
10 stock split; is that right?

11 A. Correct.

12 Q. Do you recall in response to one of plaintiffs'
13 counsel's questions in your cross-examination referring
14 to the fact that both the actual and the residual returns
15 were negative?

16 A. Yes. Correct.

17 Q. Now, in the sixth column, if you count from the
18 left, the sixth column there, there is a category with a
19 caption statistically significant. Do you see that?

20 A. I do.

21 Q. And you show four Ns under that; is that right?

22 A. That's correct.

23 Q. What do those Ns stand for?

24 A. Those Ns stand for the fact that the effect of the
25 price effect seemed for the residual movement of AIG

1 relative to the market, the industry -- market and the
2 industry cannot be distinguished from background noise,
3 from just general movements, random movements in the
4 marketplace. This is a standard statistical -- it's
5 based on the T statistic to the left. It's a standard
6 statistical measure. Typically something is considered
7 statistically significant if that T statistic is greater
8 than 2. And that has to do with the relationship or the
9 statistical relationship between the what's called the
10 leftover movement called the error or residual error in
11 the -- in the regression equation and what would be
12 called normally distributed noise, which has a zero mean.
13 All of that means is this says you can't tell the
14 difference between this and background noise, so it would
15 not be considered an informative signal of a movement.

16 Q. Okay. To go back to something more basic, the N
17 there stands for no?

18 A. The N there stands for no.

19 Q. And so it's not statistically significant?

20 A. Not statistically significant.

21 Q. What is the import for your analysis in Exhibit 29
22 that the results were not statistically significant?
23 What did -- what's the import of that?

24 A. The economic import?

25 Q. Yes.

1 A. The economic import is that there was no negative
2 stock price reaction to that shareholder vote. The
3 import is -- or the import to be very, very specific,
4 there's no -- there's no statistically significant
5 evidence of a negative stock price reaction to that
6 shareholder vote because it's undistinguishable from
7 noise.

8 Q. Now, let me turn to some questions that Mr. Boies
9 asked you on cross-examination about issued and
10 authorized shares resulting from the stock split. Do you
11 recall testifying on that subject?

12 A. I do, sir.

13 Q. And do you recall testifying that the reverse
14 stock split applied only to issued and outstanding
15 shares?

16 A. Agreed.

17 Q. And the effect of the fact that the reverse stock
18 split applied only to issued and outstanding shares was
19 that it increased the number of unissued but authorized
20 shares; correct?

21 A. Repeat the question, please.

22 Q. Sure.

23 The fact that the reverse stock split applied only
24 to issued and outstanding shares, the result of that was
25 that it increased the number of unissued but authorized

1 shares; correct?

2 A. Fair enough.

3 Q. And then you also testified during your
4 cross-examination that the number of common shares that
5 were exchanged for the E and F preferred stock was over
6 one billion. Do you recall that testimony?

7 A. Yes.

8 Q. Now --

9 THE COURT: Mr. Austin, could you just ask him a
10 new question rather than recounting his previous
11 testimony.

12 MR. AUSTIN: Oh, certainly. I was just trying to
13 get to the point a little quicker.

14 THE COURT: No. You can just go right to the
15 question.

16 MR. AUSTIN: Okay. Thank you, Your Honor.

17 BY MR. AUSTIN:

18 Q. Now, if the amount of authorized shares was
19 reduced by twenty to one just like the issued and
20 outstanding shares, there would not have been one billion
21 shares that were authorized to exchange for the E and F
22 preferred shares; correct?

23 A. Correct.

24 Q. And therefore, unless other steps were taken to
25 increase the number of authorized shares to do an

1 exchange for the one billion common shares, there could
2 be no such exchange for the E and F preferred stock.

3 A. Fair enough.

4 Q. Now, turning back to the price change in AIG's
5 stock at the time of the reverse stock split on June 30,
6 2009 and July 1, 2009 that we see in Exhibit 2 that we
7 had on the screen a moment ago -- sorry. Exhibit C-2.

8 A. C-2?

9 Q. Yes.

10 Tell me when you get there.

11 A. I will.

12 Q. Now, you recall on cross-examination you were
13 asked a series of questions about the liquidation
14 preference value on the Series E and F preferred stock?

15 A. Page 5 of 68 on C-2. Yes, sir.

16 Q. Do you recall being asked questions on
17 cross-examination about the Series E and F preferred
18 stock?

19 A. Yes.

20 Q. And I'm going to ask that you be handed a document
21 that has previously been admitted as a demonstrative
22 evidence document PTX 5224.

23 MR. PHILLIPS: May I approach, Your Honor?

24 THE COURT: Yes.

25 BY MR. AUSTIN:

1 Q. Do you have a copy of that, Dr. Mordecai?

2 A. I do.

3 Q. Now, from your review of the record, Dr. Mordecai,
4 are you able to recognize PTX 5224 as one of the
5 demonstratives that Dr. Kothari discussed in his trial
6 Tom to support his opinion as indicated at the top that
7 the fair value of Series E and F preferred was
8 \$23.547 billion lower than its liquidation preference as
9 of June 30, 2009?

10 A. I do recognize it as such.

11 Q. Now, with respect to that date of June 30, 2009,
12 let me divert your attention momentarily to your
13 demonstrative 2632.

14 A. 2632?

15 Q. Yes.

16 A. Yes, sir.

17 Q. And demonstrative 2632 is your criticism of
18 Dr. Kothari that he analyzed the wrong event in looking
19 at the second hyphen under the bullet and that was
20 because the recapitalization -- one of your arguments was
21 the recapitalization was first announced in September
22 2010 15 months after the reverse stock split at a time
23 when AIG's common stock had more than doubled in value.

24 A. Correct.

25 Q. Do you recall that testimony?

1 A. I do.

2 Q. Now, going back to Dr. Kothari's demonstrative
3 exhibit PTX 5224, what does Dr. Kothari show to be the
4 amount of the liquidation preference?

5 A. Well, he shows a liquidation preference in the red
6 bar -- well, he -- I would say the liquidation preference
7 is the -- sorry -- the -- the left-hand blue bar 41.15
8 billion dollars. So it's the whole blue bar plus the
9 yellow on the left-hand bar.

10 Q. And you recall that the exchange rate used in the
11 recapitalization was \$45 per share?

12 A. Correct.

13 Q. Now, I'm going to -- do you have a calculator up
14 there with you?

15 A. I do. I couldn't tell if it worked. I tried
16 getting it started, but -- oh, here. Right. Got it. So
17 it actually works.

18 Q. Now, using that exchange rate, how many shares
19 would be received for that amount of \$41.150 billion?

20 A. I have 914,444,444.

21 Q. 914.4 million?

22 A. Approximately, yes.

23 Q. According to your Exhibit C, what was the closing
24 price -- C-2 I should say. What was the closing price of
25 AIG's stock on July 1, 2009 after the reverse stock split

1 as shown on Exhibit C-2?

2 A. The closing price.

3 Q. The closing price on July 1.

4 A. \$18.08.

5 Q. And that's the day after the stock split?

6 A. It's the day after, sir.

7 Q. Another calculation for you. What would be the

8 value of these 914.4 million shares of AIG's stock at

9 \$18.08 per share?

10 A. 16 billion.

11 Q. About 16.5?

12 A. I was going to read the whole number, but about

13 16.5 billion that's correct as a generalization.

14 Q. \$16.5 billion.

15 A. That's correct.

16 Q. How does that figure, the \$16.5 billion, compare

17 to the fair value of the Series E and F preferred stock

18 as shown on Dr. Kothari's exhibit PTX 5224?

19 A. It's considerably -- it's lower. It's lower by --

20 well, he's saying 17.1. I'm showing 16.5.

21 Q. The 17.1 he has there, if you add in the .492

22 above it, the F, you get?

23 A. Yeah 17 yeah.

24 Q. And the figure you just calculated was

25 16.5 billion dollars?

1 A. That's correct.

2 Q. So that's lower than the fair value that

3 Dr. Kothari calculated --

4 A. It is.

5 Q. -- in PTX 5224?

6 A. It is.

7 Q. If you would please turn to your report in

8 DX 1874.

9 A. Yes, sir.

10 Q. To page 95 footnote 335. And I believe you

11 mentioned this footnote in your cross-examination

12 yesterday.

13 A. Yes, sir, I did.

14 Q. And what are you addressing in that footnote with

15 respect to the decline in the stock price at or about the

16 time of the stock split or right after?

17 A. I am providing market commentary with

18 association -- in association to which support of the

19 equity market decline which I earlier mentioned earlier

20 was not statistically significant. I'm providing

21 attribution from the marketplace for market commentators

22 as to why the raw decline occurred and why the residual

23 AIG decline occurred, so it's really talking about what I

24 previously discussed as confounding effects that affected

25 how the market responded overall that day.

1 Q. And what confounding effect did you identify in
2 footnote 335?

3 A. In 335?

4 Q. Yes.

5 A. A supplemental risk disclosure provided by AIG in
6 Form 8-K after the close of trading on 6-29-09 is that
7 the shares of AIG sank Tuesday after the company reported
8 that it would face unrealized losses in its portfolio of
9 credit default swap contracts written to provide
10 regulatory capital relief to EU banks if credit markets
11 continue to deteriorate and that result was that the
12 shares traded on that news down by 15 percent, almost 16,
13 15.8 percent to a buck twelve.

14 Q. Now, could you please turn in your large binder to
15 JX 225. The white binder. I'm sorry. This has to be
16 handed out to you. I'm sorry.

17 A. Okay.

18 Q. JX 225.

19 This is just a portion of the 8-K, Your Honor.

20 Could you identify what JX 225 is, Dr. Mordecai.

21 A. This is the Form 8-K filed by AIG. The filing
22 date June 29, 2009.

23 Q. Is that the 8-K you were referring to in your
24 footnote 335?

25 A. Yes.

1 Q. Now, turning to page 6?

2 A. Yes, sir.

3 Q. In the first full paragraph after the introduction
4 under Risk Factors, do you see there where it says if the
5 credit markets continue to deteriorate, AIG may recognize
6 unrealized market valuation losses in AIGFP's regulatory
7 capital super senior credit default swap portfolio in
8 future periods which could have a material adverse effect
9 on AIG's consolidated financial condition or consolidated
10 results of operations. Moreover, the period of time that
11 AIGFP remains at risk for such deterioration could be
12 significantly longer than anticipated if AIGFP's
13 expectations with respect to the termination of
14 transactions in its regulatory capital portfolio do not
15 materialize"? Do you see that?

16 A. I do.

17 Q. Is that what you were referring to in your
18 footnote 335?

19 A. It is.

20 Q. Now, if you could please turn in your -- well, I'm
21 sorry. This has to be handed out also. DX 1744.

22 MR. PHILLIPS: Your Honor, may I approach?

23 THE COURT: Sure.

24 BY MR. AUSTIN:

25 Q. Could you please identify what DX 1744 is

1 Dr. Mordecai?

2 A. It's a Dow Jones newswire. It looks like it was
3 released at 10:16 am on June 30, 2009.

4 Q. And if you would direct your attention to the --
5 it looks like about the sixth or seventh paragraph
6 beginning with the term -- words "Shares of AIG sank."
7 Do you see that?

8 A. Yes, sir.

9 Q. And it says shares of AIG sank Tuesday after the
10 company reported that it could face unrealized losses in
11 its portfolio of credit default swaps contracts written
12 to provide regulatory capital relief to EU banks, if
13 credit markets continue to deteriorate. Shares of AIG
14 recently traded down 15.8 percent to \$1.12.

15 Is that significant with respect to the decrease
16 in this price of AIG at the time of this reverse stock
17 split?

18 A. Substantive -- substantive and relevant, yes, sir.

19 Q. Why is that?

20 A. This was larger than their credit default swap --
21 the gross notional exposure of the regulatory capital CDS
22 business was significantly larger than even their CDO and
23 ABS CDO businesses, so this would be a particularly -- a
24 particular point of focus for the markets when you hear
25 that there are crystallizing issues in that portfolio.

1 MR. AUSTIN: Your Honor, I would move to admit
2 DX 1744 as a demonstrative exhibit pursuant to 17 -- I'm
3 sorry -- exhibit pursuant to rule 703.

4 MR. BOIES: No objection, Your Honor.

5 THE COURT: All right. Defendant's Exhibit 1744
6 is admitted with a rule 703 limitation.

7 **(Defendant's Exhibit Number 1744 was admitted into**
8 **evidence.)**

9 BY MR. AUSTIN:

10 Q. Now, Dr. Mordecai, you discussed the topic of
11 short selling with Mr. Boies on cross-examination
12 specifically in the context of PTX 168 which is a SEC
13 document. Do you remember that discussion?

14 A. Yes, sir.

15 Q. Okay. Let me ask you to turn to DX 818. And I'm
16 sorry. That also has to be handed out to you.

17 MR. PHILLIPS: May I approach, Your Honor?

18 THE COURT: Yes.

19 BY MR. AUSTIN:

20 Q. And could you identify what this document is and
21 the date of it.

22 A. A Citigroup research report dated July 8, 2009.
23 It's definitely covers a number of issues that I
24 reflected on.

25 Q. Now, in the first paragraph, it states shares of

1 AIG are down by more than 50 percent in the past seven
2 trading days. Following a 20-to-1 reverse split of the
3 stock on 7-1, the ease and cost of borrowing AIG shares
4 increased dramatically, and we believe investors have
5 come in on the short side in anticipation of future
6 financial woes.

7 Is that relevant to your opinion?

8 A. Most definitely.

9 Q. Why?

10 A. Well, there are two things going on here. First
11 of all, the short sellers have identified a short sell
12 opportunity because this company's prospects have gotten
13 worse second of all the thing that would usually inhibit
14 or impair their ability to express their views from the
15 marketplace just got easier because cost of borrowing
16 stock through stock loan got cheaper.

17 Q. Now, in the next paragraph, it says more CDS
18 losses possible. AIG has added the risk of loss
19 associated with its European capital relief CDS as a new
20 risk factor for the company. The company has not been
21 forthcoming about the sequence of events that would
22 result in a loss, but the notional value of this
23 portfolio is around \$193 billion, so even a
24 proportionally small loss could be significant.

25 Was that relevant to your opinion?

1 A. Most definitely. It was quite a surprise. I
2 recall from my -- activities in the market at the time
3 and my prior knowledge of these markets that regulatory
4 capital super senior was considered relatively safe
5 compared to the other forms of what was called portfolio
6 swap or CDS credit default swaps written on portfolios of
7 credit obligations, so once you start to hear that
8 something of this size which was previously thought to be
9 relatively more stable than the other CDS business
10 started having significant issues, that was -- that's
11 definitely an alarm bell, pretty loud alarm bell.

12 MR. AUSTIN: Your Honor, I would move into
13 evidence DX 818 pursuant to rule 703.

14 MR. BOIES: No objection, Your Honor. I think
15 this is not only outside the scope of our examination,
16 but I don't think he talks about regulatory capital in
17 his expert report. But if it's -- but if it's useful for
18 the Court's information, I don't object to the line of
19 questioning.

20 THE COURT: All right. Defendant's Exhibit 818 is
21 admitted with a rule 703 limitation.

22 **(Defendant's Exhibit Number 818 was admitted into**
23 **evidence.)**

24 BY MR. AUSTIN:

25 Q. Now, Dr. Mordecai, you recall on cross-examination

1 being asked about your calculation of an analyzed rate of
2 return of 5.7 percent across all the government's
3 investments in AIG?

4 A. Yes, sir.

5 Q. And the results of your calculation are set forth
6 in your demonstrative DX 2619; is that right?

7 A. That's correct, sir.

8 Q. And in connection with your discussion on
9 cross-examination, you also discussed Exhibit 13 to your
10 expert report, which is DX 1875 in your white binder,
11 which you reference directly in DX 2619; is that right?

12 A. Yes, sir.

13 Q. Now, sir, if you could please turn to Exhibit 13
14 of DX 1875.

15 A. I have, sir.

16 Q. Now, you see up on your screen also.

17 Do you recall being asked some questions about the
18 figure of 67835 that refers under -- under the preferred
19 and common stock?

20 A. Yes.

21 Q. And cumulative cash provided?

22 A. Yes.

23 Q. And do you recall being asked whether or not that
24 figure included cash from Series C preferred stock? Do
25 you recall being asked about that?

1 A. I do now, sir.

2 Q. Okay?

3 MR. BOIES: Objection, Your Honor. I don't think
4 that's what was asked.

5 MR. AUSTIN: Your Honor, I don't have the exact
6 transcript pages for the formal transcript. I do have
7 the exact transcript pages from the rough transcript.

8 THE COURT: Well, as I was saying before, I don't
9 think any of this is necessary. Just ask him a question.

10 MR. AUSTIN: Okay. Well, I want to demonstrate
11 that it's within the scope. That's why I'm doing that.

12 THE COURT: I don't have a problem with that.
13 Just ask him your next question.

14 MR. AUSTIN: Thank you, Your Honor.

15 BY MR. AUSTIN:

16 Q. Now, what were the total cash flows that you see
17 in the next column under cumulative cash provided?
18 What's the figure there?

19 A. Cumulative cash provided?

20 Q. Yes?

21 A. Total cash flows is 263096.

22 Is that what you're referring to, sir?

23 Q. Yes. Not what's there. Cumulative cash provided
24 total cash flows.

25 A. 263969 that is what you're asking about no I'm not

1 much.

2 A. What are you asking about?

3 Q. Total cash?

4 A. Oh, provided. I'm thinking received. I'm sorry
5 /STKPWHR-FRPBLGTS it's 2 hundred -- 240379.

6 Q. Okay. And that is the total cash flows that were
7 received by the government.

8 A. Okay. That's what keeps throwing me off. That is
9 total cash flows received by AIG from the government.

10 Q. From the government?

11 A. It's provided received that was screwing me up
12 last time too.

13 Q. Okay.

14 A. Okay.

15 Q. Now if you go on down the next figure there?

16 A. Yes.

17 Q. Cash flows excluding proceeds related to Series C
18 preferred stock.

19 A. Yes, sir.

20 Q. What figure is there?

21 A. It's the exact same one I just read, 24379.

22 Q. So what does that tell you about whether or not
23 the 67,835 million figure above that includes proceeds
24 related to Series C preferred stock?

25 A. It does not. It's -- it does not -- 67835 does

1 not contain proceeds related to series -- proceeds
2 provided by the government to AIG is not included there.

3 Q. Now, do you recall if Dr. Kothari also prepared an
4 annualized rate of return of government investment in AIG
5 chart?

6 A. I don't remember, sir.

7 Q. Let me ask -- see if I can refresh your
8 recollection on that and show you Dr. Kothari's report,
9 which is PTX 2853.

10 MR. PHILLIPS: May I approach, Your Honor?

11 THE COURT: Yes.

12 BY MR. AUSTIN:

13 Q. Now, if you could turn to page 46 of that report
14 to Dr. Kothari's Exhibit 2.

15 A. 46?

16 Q. Yes.

17 A. Okay. Yes, sir. Well, yeah.

18 Q. Does that refresh your recollection that
19 Dr. Kothari prepared a report about the annualized rate
20 of return?

21 A. Yes, it does.

22 Q. Okay. Now, I'm going to ask you to have two
23 documents up against each other, which is your chart,
24 your Exhibit 13 from DX 1875 and Dr. Kothari's report.
25 If you could do that. If we can get those on the screen.

1 I'm going to ask you first to look at the numbers
2 in the first column under Cumulative Cash Provided in
3 your chart and Dr. Kothari's chart I'm going to ask you
4 to compare those numbers.

5 A. They're almost identical.

6 Q. Now, if you look at your chart, under Cumulative
7 Cash Received do you see there where your number is
8 72.836 million at the bottom there? In millions. So
9 it's 72 billion?

10 A. Oh, yeah. That's right.

11 Q. And compare that to the number that Dr. Kothari
12 has above it.

13 A. Yes.

14 Q. Do you see that? And what is his number there?

15 A. He's got 92 billion 690 million.

16 Q. And that's 20 billion higher than your figure; is
17 that right?

18 A. Correct.

19 Q. Now, if you look at the caption of PTX 2853,
20 that's Dr. Kothari's report?

21 A. Yes.

22 Q. It says annualized rate of return of government
23 investment in AIG assuming value of government common
24 stock on January 20, 2001?

25 A. Yes.

1 Q. So he's -- your understanding is that he's
2 assuming what the value of the stock would be on that
3 day?

4 A. That's correct.

5 THE COURT: I think you misspoke. I think it's
6 2011.

7 MR. AUSTIN: I'm sorry, Your Honor. I apologize.
8 January 20, 2011.

9 A. Right. And I heard what you meant and not what
10 you said.

11 Q. Thank you. Thank you for correcting me,
12 Your Honor.

13 Now, January 20, 2011, that's not the actual date
14 that the government sold the common stock; correct?

15 A. That's exactly what -- one of the points I was
16 making the last couple of days, sir.

17 Q. Now, if you?

18 A. They held that stock in inventory.

19 Q. If you turn to your chart, the 72836, is that the
20 actual number in actual sales?

21 A. These were the actual proceeds from sales over the
22 I guess 15-month period that the government sold the
23 stock basically what we call in the street working the
24 order, working the inventory trying to get, you know,
25 sell the stock and get the cash.

1 Q. Okay. Now, if you look at your number under total
2 cash flows, the number there is 22.7 billion?

3 A. Yes. That's.

4 Q. Total cash flows going across?

5 A. That is, yeah. Those are the net cash flows in
6 excess of proceeds provided.

7 Q. And then if you look at Dr. Kothari's --

8 Q. If you look at your number under total cash flows,
9 it's 22.717 billion?

10 A. Yes. The extreme right-hand side, it's the total
11 cash flows is 22 billion 717 million, that is correct.

12 Q. And then if you look at Dr. Kothari's total cash
13 flows, it's 42.568 billion; is that right?

14 A. That is correct.

15 Q. Okay. And so that \$20 billion difference between
16 the 22 and 42 is the same difference we've seen between
17 the 72 and the 92; right?

18 A. That's correct.

19 Q. So that's essentially the difference in the two
20 calculations; is that fair to say?

21 A. Correct.

22 Q. Now, your figure of for total cash flows of
23 22.717 billion, is that documented in any official
24 documents that you reviewed for purposes of performing
25 your calculation?

1 A. I can think of at least one.

2 Q. Let me ask you to turn to your report and to your
3 documents considered list. Your report again is DX 1874.

4 A. Uh-huh.

5 Q. I'm sorry. 1875 is where your exhibits are.

6 And ask you if you would turn to, under Exhibit 2,
7 page 6 of 9.

8 A. Yes, sir.

9 Q. And do you see right before court documents the
10 second bullet point up from that?

11 A. Yes. "Treasury Sells Final Shares of AIG Common
12 Stock, Positive Return on Overall Commitment Reaches
13 \$22.7 Billion."

14 Q. Total commitment reaches 22.7 billion.

15 A. The -- the proceeds, yes.

16 Q. And is that the figure that you have in your
17 Exhibit 13?

18 A. It is.

19 Q. And is that the figure that's \$20 billion less
20 than Dr. Kothari has in his analysis?

21 A. It is.

22 Q. Let me ask, Dr. Mordecai, if we could hand out to
23 you PTX 658.

24 THE COURT: Let's take a lunch break right now.

25 MR. AUSTIN: Certainly, Your Honor.

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THE COURT: Let's come back at 1:50.
**(Whereupon, at 12:47 p.m., a lunch recess was
taken.)**

DRAFT

1 MR. AUSTIN: Your Honor, I would move into
2 evidence PTX 658.

3 MR. BOIES: No objection if it's offered for 703,
4 Your Honor.

5 MR. AUSTIN: Actually, Your Honor, I'd like to
6 offer this as a regular exhibit. I think it's a public
7 record from the Department of Treasury and it would fall
8 under the hearsay rule for, you know, official documents
9 of the department, so --

10 MR. BOIES: No objection, Your Honor.

11 THE COURT: All right. Plaintiffs' Trial
12 Exhibit 658 is admitted.

13 **(Plaintiff's Exhibit Number 658 was admitted into**
14 **evidence.)**

15 BY MR. AUSTIN:

16 Q. Now, Dr. Mordecai, you mentioned a moment ago the
17 22.7 billion dollar figure that we see on PTX 658.

18 A. Yes.

19 Q. Is that the same \$22.7 billion figure that we see
20 in your report, Exhibit 13 to your report?

21 A. It is.

22 Q. And is it the same -- turning back to DX 2619, do
23 we also see the \$22.7 billion figure there for total
24 receipts?

25 A. Yes.

1 Q. And when you say total government return, that's
2 the money that was returned to the government above and
3 beyond what they put in; correct?

4 A. Those are the -- yes. The surplus or excess cash
5 flows, and I mean surplus cash flows, not an insurance
6 surplus, surplus cash flows, excess cash flows, I use
7 that interchangeably.

8 Q. Now, you were asked and responded to some
9 questions about trying to parse out the return on the
10 initial rescue. Do you remember those questions?

11 A. I do.

12 Q. And you indicated at some point that it was
13 difficult and that you would like an opportunity to
14 explain why it was difficult.

15 A. Yes.

16 Q. Could you please explain why it is difficult to do
17 that. What are the problems with it?

18 A. The issues are that -- and it's explained fairly
19 clearly in my report. The initial rescue or what we've
20 decided to call the initial rescue was a commitment of
21 revolving credit facility with an equity return
22 participation and then a set of interest and fees
23 associated with that extension of credit.

24 That loan was subsequently restructured in
25 November and also there was a March restructuring. In

1 that process, there were a number of exchanges made where
2 the government moved its -- its investment in AIG and
3 deferred a lot of its compensation and also subordinated
4 itself by accepting more junior -- exchanging for more
5 junior claims in the company until finally the way they
6 worked their way out of the the position as we would say
7 and went cash in other words liquidated the position to
8 get their cash back was sales of common stock over a -- I
9 want to say a 15 or 18-month period at the end of,
10 you know, which is culminated with this press release so
11 the idea of trying to parse that from what was meant to
12 be a summary slide reflecting this document is actually
13 quite challenging (**indicating**). There's a lot of
14 mechanics to the trade. The economics of the trade are
15 laid out here.

16 And when I say the trade, I'm talking about -- I'm
17 talking about the restructuring overall. .

18 Q. You were handed a notebook called the Dr. -- sorry
19 David K.A. Mordecai warrants binder and shown several
20 documents from that binder, including, for example,
21 PTX 1606 which dealt with comments concerning from the
22 media or from market commentary about the existence of
23 warrants in the September 16 to September 18 time period.
24 Do you remember that discussion?

25 A. I do.

1 Q. Okay. And you were also shown your demonstrative
2 2608.

3 A. Yes, sir.

4 Q. If we assume -- first of all, what was the reason
5 you had six different event windows with different ending
6 dates in DX 2608?

7 A. It was to try to capture the -- or try to have a
8 time period or series of time periods that would capture
9 the incorporation of any new information into the market
10 equilibrium price, the observed market equilibrium price,
11 right, which is that return that we've been talking
12 about. So I start with that -- the same beginning date
13 for -- or event window start for awful these windows, but
14 I -- I incorporate dates that would include additional
15 news events, additional information, based on observed
16 information documents, you know.

17 Q. Let's assume hypothetically that certain market
18 participants who felt there were going to be warrants
19 from the initial rescue and then after the credit
20 agreement is signed and it says preferred stock that that
21 affects the market in some way or the price movement in
22 some way.

23 Would any of your event windows in DX 2608
24 encapsulate that market movement?

25 A. Well, yes.

1 Q. Which windows?

2 A. To the extent that there was resolution on the
3 24th and further confirmation on the 29th, either of
4 those windows incorporate that, but I'd say the most
5 likely, based on my immediate recollection right now, I
6 think going through September 24 I guess window 4 would
7 certainly do so.

8 Q. How about window 5? Would that encompass that
9 time period?

10 A. Absolutely. As would window 6.

11 Q. And how about window 3?

12 A. It's capturing the open on 9-24, so we've got
13 three windows that would -- would cover time period to
14 capture that release of information and we then go a bit
15 further to see if there's any additional leakage into the
16 marketplace.

17 Q. And if we look at the results of the six different
18 windows, how does the reaction of the market differ with
19 respect to windows 4 through 6 compared to windows 1
20 through 3?

21 A. In each case you have no negative stock price
22 reaction. In fact, you have positive movements in market
23 cap, so you have no -- the thing is, it rejects the
24 hypothesis of a negative stock price reaction. That, I
25 can definitively say based on the actual empirical

1 results. Or put in a more general way, it fails to
2 accept most certainly the hypothesis of a negative stock
3 price reaction over that window.

4 Q. And that's true for all six windows?

5 A. It's true for all six windows.

6 Q. Now, going back to Dr. Kothari's exhibit with
7 respect to the annualized rate of return --

8 A. Just one second.

9 Yes, sir.

10 Q. And again, what was the figure -- what was the
11 date upon which he assumes the value of the government's
12 common stock? Is that January 20, 2011?

13 A. Can you remind me what exhibit it was? I put it
14 away.

15 Q. Yeah. It's on the screen.

16 A. Oh, sure.

17 Q. It's Exhibit 2 to his report?

18 A. And you asked me about the date? It's January 20,
19 2011, that is correct.

20 Q. And that differs from your report again because
21 you used the actual dates of the sales?

22 A. I used the actual dates of the sales which is
23 important to any kind of return analysis.

24 Q. Now, do you have an opinion, Dr. Mordecai, as to
25 what effect it would have had on the price of AIG's stock

1 if the government had decided to sell all of its
2 92 percent share of the company's stock on January 20,
3 2011?

4 A. That is would have created a massive downward
5 pressure on the price. It would -- you would have
6 created illiquidity in the stock because of the size of
7 the position and there's a lot of -- a lot of academic
8 research and it's something that's generally understood
9 in industry, but there is still nonetheless you would be
10 able to find industry references as well. There are a
11 whole host of things they do in markets including block
12 trading, value weighted average price trading, you know,
13 the whole liquidity pool, all of that stuff is really
14 around trying to avoid doing those kinds of things.

15 Q. Thank you. I'll pass the witness, Your Honor, at
16 this time?

17 THE COURT: All right. Any recross?

18 MR. BOIES: Yes, Your Honor.

19 - - - - -

20 **RECROSS-EXAMINATION**

21 BY MR. BOIES:

22 Q. Good afternoon again, Dr. Mordecai.

23 A. Good afternoon, sir.

24 Q. Let me stay with Defendant's Exhibit 2608.

25 And do you recall that earlier in your examination

1 with respect to I think it was Exhibit 29, you discussed
2 with counsel for the defendant whether certain results
3 were or were not significantly or statistically
4 significant. Do you recall that?

5 A. Yes, I do.

6 Q. And with respect to Exhibit 29, you told counsel
7 for the United States that the changes in price on
8 May 22, June 8 and June 30 of 2009, none of those were
9 statistically significant; correct?

10 A. Correct.

11 Q. Focusing on Defendant's Exhibit 2608, which of the
12 windows that you have shown here are statistically
13 significant?

14 You don't show it on the chart, but you know it,
15 don't you, sir?

16 A. I'd have to refresh my memory. I can try and look
17 and see if I have it in my footnotes.

18 Q. Well, why don't you look at your Exhibit 24.

19 A. The -- yeah. Thank you. That helps me refresh my
20 memory.

21 The 9-16 open to 9-24 open is statistically
22 significant. In fact --

23 Q. None of the others are; correct, sir?

24 A. Well, some of them have N As and the reason you
25 have N As is to get from an open on the 16th to a close

1 on the 17th requires you to run two models back to back
2 and you cannot statistically combine those models, so --

3 Q. So let's just be clear. Okay?

4 A. Uh-huh.

5 Q. The only window that you found to be statistically
6 significant was the 9-16 open to 9-24 open window;
7 correct, sir?

8 A. That's correct.

9 Q. Okay. But you didn't put that on Defendant's
10 Exhibit 2608, did you, sir?

11 A. No.

12 Q. Did you prepare Defendant's Exhibit 2608
13 personally?

14 A. I had input into it.

15 Q. I understand you had input into it. Did you
16 prepare it yourself?

17 A. I did not, but I oversaw it.

18 Q. Now, you also told counsel for the government that
19 the last three windows, windows 4, 5 and 6, would tell
20 you whether someone who thought there were going to be
21 warrants but ended up getting preferred stock would have
22 been or would not have been disappointed with that
23 result. Do you recall that?

24 A. Was that my exact phrasing, sir?

25 Q. I don't know whether it was your exact phrasing,

1 but you can tell me if that -- if that phrasing is wrong.

2 A. It is wrong, sir.

3 Q. Okay.

4 A. It mischaracterizes.

5 Q. So do you recall counsel for the defendant asking
6 you, what if someone thought there would be warrants but
7 was disappointed with preferred stock? Would any of your
8 windows show that?

9 Do you recall him asking you that?

10 A. I don't recall the exact --

11 Q. Do you recall that in substance?

12 A. I think if what he's asking is whether the markets
13 would adjust to the market equilibrium price would adjust
14 to new information regarding warrants versus preferred
15 stock, it would incorporate that.

16 Q. I guarantee you, sir, he did not ask you about
17 market equilibrium prices.

18 A. Okay.

19 Q. But with the miracle of live note, we have the
20 question?

21 A. So I will be happy to respond to the question.

22 Q.

23 "QUESTION: Let's assume hypothetically that
24 certain market participants who felt they were going to
25 be warrants from the initial rescue and then after the

1 credit agreement is signed and it says preferred stock
2 that that affects the market in some way or the price
3 movement in some way, would any of your event windows in
4 DX 2608 encapsulate that market movement?

5 Do you recall that question?

6 A. I do recall that question, sir.

7 Q. And you answered yes; correct?

8 A. I did, sir.

9 Q. And you said that that would be captured by your
10 windows 4, 5 and 6; correct?

11 A. Yes, sir.

12 Q. Now, we're dealing with a participant who felt
13 there was going to be warrants from the initial rescue;
14 correct?

15 A. You've picked out one participant. Is that what
16 you're saying by your question?

17 Q. Not just one participant. I'm saying
18 participants, plural just like counsel for the defendant
19 said.

20 We're assuming participants who felt there were
21 going to be warrants.

22 A. Okay.

23 Q. So to begin with, you need to have a window, an
24 opening window, that has participants who felt there were
25 going to be warrants; correct?

1 A. Yes.

2 Q. Okay. Now, when did participants first feel there
3 were going to be warrants?

4 A. Well, your --

5 Q. Sir, when did participants first feel that there
6 were going to be warrants?

7 A. I saw evidence of news circulating regarding
8 warrants as early as after the close of 9-16.

9 Q. After the close of 9-16.

10 A. That I saw evidence of that. I don't recall
11 whether I saw evidence of news of warrants on -- I can
12 look because you did give me a binder of things on
13 warrants, so let me take a look.

14 Q. Sure.

15 A. So here's 11:59 9-16.

16 Q. Sir, I can assure you -- and I'm sure counsel for
17 the defendants will correct me if I'm wrong, but I can
18 assure you you're not going to find anything in there
19 talking about warrants before the close of the market on
20 9-16?

21 A. But you wouldn't have a problem if I took a look,
22 would you?

23 Q. Not a bit.

24 A. Thank you.

25 Q. Let me know when you've finished.

1 A. I'll be as quick as I can.

2 (Pause in the proceedings.)

3 A. To the best of my immediate recollection, the
4 evidence that I have before me all are post closing on
5 9-16.

6 A. I don't recall immediately whether there was
7 anything else that I looked at.

8 Q. And just to be clear, you looked not only at the
9 binder that I've given you relating to warrants, but you
10 looked at your report as well; correct, sir?

11 A. I took a quick survey of my Exhibit Number 2 and I
12 looked under news items and news articles I guess it's
13 called and the only one that I particularly wonder about
14 right now is I don't know the exact intraday timing of
15 the F T article AIG looks to U.S. government for rescue
16 or stocks move higher on AIG bailout hopes so since I
17 can't verify them since in my immediate recollection I'm
18 going to go with the ones you provided, sir.

19 Q. The only windows that you have are windows that
20 start with the 9-16 open; correct, sir?

21 A. That is correct, sir.

22 Q. And none of those windows would therefore capture
23 the price movement related to participants who felt there
24 were going to be warrants from the initial rescue and
25 then found out after the credit agreement was signed that

1 it was going to be preferred stock; fair?

2 A. No, not fair, sir. Mischaracterizes, sir.

3 Q. Okay?

4 A. That statistics are wrong. Your statistics are
5 wrong, sir.

6 Q. I wasn't --

7 A. Your statistics are wrong, sir.

8 Q. Which statistics do you think just owe?

9 A. You're describing an event study sir it's a
10 statistical interpretation is incorrect, sir.

11 Q. Just to be clear, I'm not making a statistical
12 interpretation, sir?

13 A. Sir event study you're with our working with
14 event.

15 Q. Would you just let me finish, sir?

16 A. Okay. /STKPWHR-FRPBLGTS.

17 Q. I'm just asking you questions.

18 A. Okay.

19 Q. And if your answer is that the event window start
20 on the open of 9-16 includes people who felt there were
21 going to be warrants, that's -- that's an okay answer for
22 me to have on the record.

23 A. Okay.

24 Q. And that's your answer; right?

25 A. It would include people that would consider a wide

1 range of possible sources of equity, warrants and
2 otherwise. We have many different views expressed in the
3 market at any time, sir, in the equilibrium price and as
4 that window includes new information trickling into the
5 market.

6 MR. BOIES: Your Honor, could I ask that the
7 witness be instructed just please listen to my questions.

8 THE COURT: Please listen to the questions once
9 again.

10 THE WITNESS: Certainly, sir. Thank you.

11 BY MR. BOIES:

12 Q. There were no indications that you're aware of
13 that anybody contemplated that there would be warrants
14 issued in connection with a government loan as of the
15 open of September 16, 2008; correct?

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

17 Q. All of the windows that you provide are windows
18 that begin with the open on September 16; correct?

19 A. All of my windows start on the open of
20 September 16, that is correct.

21 Q. And as of the open of September 16, there was
22 nothing in the marketplace about the possibility of a
23 government loan or bailout of AIG; correct?

24 A. As of the open?

25 Q. Yes.

1 A. Not to my knowledge.

2 Q. Okay. And as of the close of September 16, there
3 was nothing in the market that discussed the possibility
4 that any government bailout would include warrants;
5 correct?

6 A. Not to my immediate recollection.

7 Q. The first time that the market was informed that
8 what you refer to as the initial rescue package would
9 include preferred stock was after the close on
10 September 23; correct, sir?

11 A. Could you repeat the question, please, sir.

12 Q. Yes.

13 The first time that the market was informed that
14 what you refer to as the initial rescue package would
15 include preferred stock was after the close on
16 September 23; correct, sir?

17 A. Not necessarily. The evidence that we have of the
18 uncertainty as to what it would be or could be was
19 certainly at the date that you described, but as to
20 whether there were rumors or other forms of perspective
21 or views by various market participants circulating, that
22 could have occurred prior to that, and that would have
23 affected, you know, things like volatility variance the
24 dispersion of prices and so on.

25 Q. I'm not asking what could have occurred.

1 The first time that you are aware that the market
2 was informed that there would be preferred stock as part
3 of what you call the initial rescue package was after the
4 close on September 23; correct, sir?

5 A. The first evidence I have that the market
6 definitively knew it was preferred stock in my
7 recollection the first evidence of definitive knowledge
8 of preferred stock was on the date you mentioned, sir.

9 Q. Now, you inserted the word "definitive knowledge"
10 into your answer.

11 A. Uh-huh.

12 Q. Let me ask you a broader question. When was the
13 first time that you are aware that the market received
14 any statement, definitive or otherwise, that the initial
15 rescue package as you describe it, would include
16 preferred stock?

17 A. Would or could, sir?

18 Q. Would include preferred stock.

19 A. I don't know.

20 Q. Approximately, sir?

21 A. I don't -- I don't know, sir.

22 Q. It was after the close on September 23. And you
23 know that perfectly well, don't you, sir?

24 A. I believe definitive knowledge, sir, in terms of
25 actual evidence, I would agree with you. I don't recall

1 whether I saw any other indications that I would have
2 considered at the time.

3 Q. Is it your testimony to the Court as you sit here
4 now that you think it's possible that you've seen some
5 statement in the market that the initial rescue package
6 would include preferred stock prior to the close of the
7 market on September 23?

8 A. I don't know, sir. I think what I can say is --
9 well, as I said --

10 Q. If you don't know, you don't know, sir.

11 A. Okay.

12 Q. Let me turn to your demonstrative 2619 that you
13 discussed with counsel for the government. And at the
14 same time, would you look at your Exhibit 13, which you
15 discussed at the same time.

16 And when you have those, would you let me know.

17 A. I do, sir.

18 Q. Now, first, focusing on Exhibit 13, counsel for
19 the government pointed out that the total cash flow in
20 terms of cumulative cash provided by the government of
21 \$240 million was the same regardless of whether it
22 included or excluded proceeds related to the Series C
23 preferred stock. Do you recall that?

24 A. I do, sir.

25 Q. And you prepared this exhibit; correct?

1 A. I certainly had oversight and input into the
2 exhibit, sir.

3 Q. And you agreed with it; correct?

4 A. Yes, sir.

5 Q. And what this shows is there was no cash provided
6 by the government in connection with the Series C
7 preferred stock; correct, sir? That's yes, no, I don't
8 know.

9 A. I would say that the --

10 Q. That's yes, no, or I don't know, sir.

11 A. It's conditionally yes, sir. Would you like to
12 hear my condition?

13 Q. Not --

14 A. You haven't given me.

15 Q. Actually not?

16 A. Not? Okay. That's fine.

17 Q. Not because --

18 A. That's fine.

19 Q. -- it either includes it or it doesn't include it.

20 A. Not necessarily, sir. Well, let's put it this
21 way. The table as written does not, sir, so that -- in
22 that sense, yes, you're right.

23 Q. That's exactly what I was asking.

24 A. Okay. Yeah.

25 Q. The table as written here?

1 A. That's correct.

2 Q. -- where you show what are described as the
3 cumulative cash provided by the government of 240 billion
4 379 million dollars does not include any cash provided
5 with respect to the Series C preferred stock; is that
6 fair?

7 A. That -- part -- that panel of the table, sir, does
8 not include the Series C, any cash provided for Series C,
9 as the table is written, sir. If you want to talk about
10 the logic of the total table, that's fine.

11 Q. If you want to talk about the logic of the total
12 table.

13 A. Yes.

14 Q. I'm talking about the total table here. Okay.
15 There's only one column that is cumulative cash provided;
16 correct?

17 A. Correct.

18 Q. And that one column of cumulative cash provided
19 shows the total cash provided by the government to AIG;
20 correct?

21 A. Yes, sir.

22 Q. And that table, that column, does not include any
23 cash provided with respect to the Series C preferred
24 stock. That's a simple yes or no.

25 A. The table as it's currently -- as you're reading

1 it, that's correct, sir.

2 Q. Well, the table as you wrote it; correct?

3 A. Fair enough.

4 Q. Okay. Now, with respect to the value of the
5 Series C preferred stock, I think you've said you did not
6 make any attempt to estimate or calculate a value for the
7 Series C preferred stock; is that correct?

8 A. I didn't try to do a book value analysis or
9 anything like that. That's correct.

10 Q. Not only did you not try to do a book value
11 analysis, you did not try to calculate the value of the
12 Series C preferred stock that the government received;
13 correct?

14 A. Yes. Fair enough.

15 Q. Let me turn next to your Exhibit 29.

16 And this was an exhibit that you prepared to show
17 what AIG's common stock did on certain days that were
18 relevant to the reverse stock split shareholder vote;
19 correct?

20 A. Correct.

21 Q. And you've identified three here. One is the date
22 the preliminary proxy was filed, which is March or
23 May 22, 2009; correct?

24 A. Correct.

25 Q. And one is June 8, 2009, the date the proxy was

1 filed; correct?

2 A. Correct.

3 Q. And one was June 30, 2009, the date the
4 shareholder vote results were announced; correct?

5 A. Correct.

6 Q. Now, of those three, do you have any view as to
7 which, if any of them, is more significant than the
8 others in terms of understanding the reaction of
9 shareholders to the reverse stock split?

10 A. I do not.

11 Q. You understand that the government supported the
12 reverse stock split in terms of what the government held
13 shares were going to be voted for; correct?

14 A. Could you restate the question or state it
15 differently, please.

16 Q. Sure.

17 A. I'm not sure what you mean by "support."

18 Q. It was clear that the government was going to vote
19 its shares in favor of the reverse stock split; correct?

20 A. Repeat the question, please.

21 Q. Certainly. And your hesitation suggests to me
22 that maybe I'll rephrase it.

23 Do you have a view one way or another as to
24 whether it was clear, at the time the proxy was filed,
25 that the government supported the proposal to do a

1 reverse stock split?

2 A. In your question did you ask me for evidence or
3 just a view as to what --

4 Q. Well, I first asked you whether you had a view one
5 way or another as to whether it was clear at the time the
6 proxy was filed that the government supported the
7 proposal to do a reverse stock split.

8 A. I would say that I've seen some indications that
9 the government did not disagree with management's and
10 their -- and the various advisors' perspective on the
11 benefits of the reverse stock split for the company as
12 outlined in my demonstratives.

13 Q. Does that mean that it was your understanding that
14 the government was going to vote its shares in favor of
15 the reverse stock split proposal?

16 A. I think that's a fair sort of reasonable position
17 to take, reasonable you would take from what I said.

18 Q. And to the extent it was clear that the government
19 was going to support the reverse stock split proposal, it
20 was clear that that proposal was going to pass; correct?

21 A. I would say that's not an unreasonable thing to
22 surmise based on -- based on what you've said so far.

23 Q. Not only is it not an unreasonable thing to
24 surmise, but it's absolutely certain that if the
25 government supported the reverse stock split proposal,

1 that proposal was going to pass; correct?

2 A. And we're agreeing this is not a governance
3 question; right? This is strictly a sort of common-sense
4 reasonability, commercial reasonability question.

5 Q. The kind of thing that any trader in the market
6 would know.

7 A. From that perspective, that's a reasonable
8 conclusion.

9 Q. I mean, because the government had 79.9 percent
10 votes; correct?

11 A. It's a possible view to take absolutely.

12 Q. And if anybody with 79.9 percent of votes is
13 supporting a proposition, any trader knows that that
14 proposition is going to pass; correct?

15 A. I think that's reasonable. Absolutely.

16 Q. So would you conclude that at least by the time
17 the proxy was filed, the market would have known that the
18 reverse stock split proposal was going to pass?

19 A. I think that's a reasonable assumption.

20 Q. Now --

21 A. Or reasonable view. I won't call it an
22 assumption.

23 Q. That's certainly the way a trader would have acted
24 and believed; correct, sir?

25 A. I think if you say a commercial -- I think you can

1 say that is definitely a view one might take.

2 Q. Not that one might take, but one would take;
3 correct, sir?

4 A. Would likely take. Yes.

5 Q. Now, when counsel for the government prepared
6 Defendant's Exhibit 040, Defendant's Demonstrative
7 Exhibit 040, and purported to calculate a \$16.5 billion
8 amount for the government receiving for Series E and
9 Series F stock, the government used a closing date of
10 July 1, 2009.

11 Do you see that?

12 A. I do.

13 Q. Do you know why they did that?

14 A. That was when the vote took place.

15 Q. That's when the vote took place?

16 A. Oh, let me take a look at my dates again.

17 I may have misspoke. Let me just take a look at
18 my dates.

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

20 Q. Sir, I don't think you have to look any further
21 than Exhibit 29?

22 A. I'm sorry. If you don't mind, it was -- it -- the
23 shareholder vote results announced on after the close on
24 6-30, so on 7-01-09, if you're using that closing price,
25 that's the period in which the actual vote resolution

1 would be known with -- to the marketplace.

2 Are you asking me a different question, sir?

3 Q. Did you just tell me that the shareholder vote
4 results were announced after the close on June 30?

5 A. Okay. I'm getting a little confused. I'm sorry.
6 Give me a second, please.

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

8 Q. Sir --

9 A. Sir, just give me a second, please.

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

11 I already spoke to this before. I'm just trying
12 to make sure I'm speaking consistent. Just give me a
13 second.

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

15 Q. I think I could help you, sir.

16 A. Okay. I'll take that help. .

17 Q. Okay. You recall that you were directed to your
18 footnote I think it was 395 in your report.

19 A. That was based on an answer I gave you before.
20 That's right.

21 Q. And in footnote 395, if I've got the right number?

22 A. That's not quite right.

23 Q. 335? 335. 335. If you look at footnote 335 on
24 page 95 of your report?

25 A. That's correct. There was a -- I think I

1 mentioned that --

2 Q. Sir, just if I could just direct your attention to
3 something. Okay?

4 A. Okay.

5 Q. Because I think this will speed it along.

6 If you look at the last sentence of footnote
7 335 --

8 A. That's correct.

9 Q. It says AIG's common stock price increased from
10 approximately \$1.11 per share at 10:52 a.m. Eastern
11 Standard Time when the results of the shareholder vote
12 were announced to a closing price of \$1.33 per share on
13 June 30, 2009. Do you see that?

14 A. I do.

15 Q. And so that indicates to you two things. One,
16 that the shareholder results with respect to the reverse
17 stock split were announced at 10:52 a.m. Eastern Standard
18 Time; correct?

19 A. Correct.

20 Q. And second, that the stock closed on June 30 at a
21 price of \$1.33 per share; correct?

22 A. That's correct.

23 Q. And you are attributing that closing price to the
24 market's knowledge about the shareholder vote; correct?

25 A. It's a reasonable way to describe it.

1 Q. A reasonable way to describe what you're saying
2 here.

3 A. Yes.

4 Q. So I come back to my question, sir.

5 Do you have any idea why the government picked
6 July 1, 2009 to peg a price to do the calculation?

7 Could you just identify for the record what you're
8 looking at to try to find the answer?

9 A. I'm trying to refresh my memory you asked me to
10 make a speculation here. I'm trying to think about what
11 reasonable -- what reasons I can come up.

12 Q. Do any reasons just occur on you without looking
13 at your report? Do any reasons occur to you as you sit
14 here now? ?

15 A. One reason, sir, is because it's the X date which
16 I mentioned. I think the primary reason is that as I
17 mentioned in 336 the reverse stock split X date July 1,
18 2009.

19 Q. And now let me ask you a question. If you thought
20 that was relevant, why didn't you include July 1, 2009 on
21 your Exhibit 29?

22 A. The rest of footnote 336 explains the nature of
23 the confound, sir. Would you like me to highlight them?

24 Q. No, I don't want you to highlight anything. I
25 simply want you to tell me why you left July 1, 2009 off

1 if you thought it was relevant.

2 A. Well, I said the X -- I said that subsequent to --

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

4 Q. Again, could you just let the record know what
5 you're reading from.

6 A. Yes. I'm looking at the footnote in the area and
7 I'm trying to refresh my memory as to why I made that
8 choice.

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

10 I think my reasons off the top of my head would be
11 a judgment call around confounds, confounds as
12 highlighted in footnote 336.

13 Q. Were there confounds, as you describe them, on
14 June 30?

15 A. Yes, there were.

16 Q. But you included June 30.

17 A. Well, I included June 30 because that was when the
18 information was initially released and that's how we
19 ended up with the result that we did in that exhibit.

20 Q. And just to underscore that, June 30 was the date
21 in the morning that the shareholder results were
22 announced; correct?

23 A. Among other things, sir, yes.

24 Q. And June 8, 2009 was when the proxy was filed and
25 it became reasonably clear to the marketplace that the

1 reverse stock split was going to be adopted; correct,
2 sir?

3 A. I would say that was when the proxy was filed.
4 Although it was clear that the reverse stock split seemed
5 like a likely outcome there's also a window of time here
6 where a lot of other risks may have occurred to other
7 confounds may come into place as we saw the day, the very
8 day that the vote was announced.

9 Q. There are always possibility of other confounds?

10 A. That's true, sir.

11 Q. But when we're talking about the reverse stock
12 split, by June 8, 2009, the market knew that there was
13 going to be a reverse stock split; fair, sir?

14 A. There was an announcement -- there was a proxy
15 filed on -- on June 8 as we said.

16 Q. Yes, sir. And as we also said, it was clear then
17 that because the government was supporting it, it was
18 going to pass?

19 A. I think what I said is it is a view of a typical
20 market participant that if you have a majority voting for
21 something in this case the government it's highly likely
22 that you would end up with that outcome.

23 Q. Okay. And when you refer to July 1 as the X date,
24 the only thing that happens on the X date is that now
25 it's trading at 20 for 1 as opposed to the original

1 trading; correct, sir?

2 A. The execution has taken place on the actual
3 reverse stock split itself to be as precise as I can be.

4 Q. And all that means is that the stock price is
5 arithmetically twenty times what it would have been in
6 the absence of the reverse stock split; correct, what you
7 told the government? Is that right?

8 A. Can you repeat what you just said, sir.

9 Q. Sure. That the only thing that's happened on
10 July 1, 2009 with respect to the reverse stock split I
11 understand there may be other factors that are
12 happening -- but the only thing that's happening on
13 July 1, 2009 with respect to the reverse stock split is
14 the reverse stock split has now been implemented and the
15 price is twenty times arithmetically higher than it would
16 have been all other things being equal; correct?

17 A. Generally we'll accept that point.

18 Q. Okay. Now, let's do the same calculation that the
19 government did with you using dates that you picked as
20 relevant on Exhibit 29.

21 Now, the closing price on June 30, 2009 you said
22 was \$1.33 per share; is that right?

23 A. The opening price was 1.33.

24 Q. I thought you said the closing price was 1.33?

25 A. No, I didn't. I said I was using opening prices

1 throughout. The closing price is 1.16.

2 Oh, I don't have the footnotes. 6-30 opening
3 price was 1.33 according to the C-2.

4 Q. Where are you reading from now?

5 A. Exhibit C-2, which is the actual stock data. 5 of
6 16. The closing price on 6-29 is 1.33. The opening
7 price on 6-30 is 1.33.

8 Q. When you said on page 95 in footnote 335 the thing
9 we quoted before?

10 A. Yes.

11 Q. That AIG's common stock price increased from \$1.11
12 per share at 10:52 a.m. when the results of the
13 shareholder vote were announced to a closing price of
14 \$1.33 per share on June 30, 2009, a 20 percent increase,
15 what were you referring to?

16 A. I'd have to go back and look. I don't know if --
17 I -- I need to -- I need to go back and look to -- to
18 clarify that discrepancy.

19 Q. Now, what you were trying to say here in this
20 footnote was that the market reacted positively to the
21 shareholder vote announcement; correct?

22 A. Yes, sir.

23 Q. And you were saying there was a 20 percent
24 increase, but if it's only \$1.13 as you now say, that
25 would only be like less than 2 percent increase; correct?

1 A. True. And it's actually 1.16, not 1.13, but...

2 Q. All right.

3 A. I can follow up on that. That may be -- that's a
4 discrepancy I can clarify one or the other of them needs
5 to be addressed.

6 Q. Well, let's use them both. Let's do the
7 calculation two different ways. We'll use \$1.33 and
8 we'll use \$1.16.

9 Now, what the government counsel had you do was
10 multiply that stock price times 914.4 million shares.

11 Okay?

12 So would you do those calculations and let me know
13 what the answer is.

14 A. At 1.16 it's 1,060,704, so call it 1.1 if you want
15 to try to round up or 1.06.

16 Q. No, no, sir.

17 A. Uh-huh.

18 Q. Remember, you've got to convert this. This is
19 the -- this is before the reverse stock split; right?

20 In other words, this is one-twentieth of a new
21 share; correct?

22 A. Can -- I'm sorry?

23 Q. The 18.08 July 1, 2009 closing price that the
24 government used was for the new share, the share after
25 the reverse stock split; correct?

1 A. Are you asking about the difference between when
2 it goes --

3 Q. Can I ask what's puzzling you?

4 A. I'm trying to recall whether I need to do the X
5 date conversion or not based on the price you're using.
6 Sorry. I'm a little disoriented.

7 Q. My point and this really is not a trick question.
8 My point is that on July 1, 2009, the reason the stock
9 price is so much higher than it was before is because the
10 reverse stock split has now been implemented.

11 A. Right.

12 Q. And this share that's trading on July 1 is now the
13 accumulation of twenty of the old shares; correct?

14 A. Yes, correct.

15 Q. So in order to figure out what the price --

16 A. I see what you're saying.

17 Q. Okay. So if you do a calculation for the two
18 closing prices that you have in your report of \$1.16 and
19 \$1.33 for June 30, 2009, what you would do is you would
20 first multiply each of those times 20 and then multiply
21 them times the 914.4 million shares; is that correct? As
22 an analytical matter?

23 A. I don't disagree.

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

25 Q. Do you have my answers?

1 A. Well, the 1.33 times 20 is 26.2 and the -- I'm
2 sorry -- 26.6 and the 1.16 times 20 is 23.2. If you
3 multiply those by 914.4, you get 2432 and 2121.

4 Q. Give me the number for the \$1.33.

5 A. The \$1.33 is 26.6 or -- you mean the total. Okay.
6 It's 24.3.

7 Q. And what is the total value of the 914.4 million
8 shares if you use a closing price on June 30 of \$1.16?

9 A. 21.21.

10 Q. Now, if we use the price for June 8, 2009, the
11 closing price for June 8, 2009, what was that closing
12 price?

13 A. The closing price is 1.66.

14 Q. Now, would you do the same arithmetic calculation
15 for that.

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

17 A. 30.4 by your calculation.

18 Q. Now, I'm going to ask you to do one more time and
19 that is would you look up the stock price, closing stock
20 price, for January 20, 2010, which was the first time
21 that they could actually sell the stock. Is that right?
22 They got the stock on the 14th, but they could only sell
23 it on the 20th; is that right? Of 2011?

24 A. What do you mean, they could only sell it?

25 Q. Well, on January --

1 A. I don't know who they is, first of all.

2 Q. The government.

3 A. Okay. All right. Yes. Fair enough. Okay. I
4 wanted to know what you mean by fair they. Fair enough.
5 So you're saying January 20, 2011?

6 Q. Yeah.

7 A. You want to know the closing price?

8 Q. Yes.

9 A. Okay.

10 43.18.

11 Q. 40-what?

12 A. 43.18.

13 Q. Now, this is a post-split price; correct?

14 A. It's a post-split price.

15 Q. So you would simply multiply that by the
16 914.4 million shares; right?

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

18 What is puzzling you?

19 A. I'm just thinking through a couple things. Excuse
20 me.

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

22 Give me a second, please.

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

24 Could you repeat your question, sir. I mean, I
25 agree with you that as you get closer to that date, the

1 price converges to the liquidation preference price of
2 45.

3 Q. Yes.

4 A. Which is what it does.

5 Q. And indeed, if we had taken the opening price on
6 January 20, it would have in fact been essentially the
7 \$45 liquidation price; correct?

8 A. It converged there. That's what -- that is
9 consistent with market -- market forces.

10 Q. Right. That is, you would expect that market
11 forces would take the stock price to the liquidation
12 price.

13 A. It would converge.

14 Q. And by converge you mean they would become the
15 same or very close to the same.

16 A. Very close to the same.

17 Q. And indeed, the opening price on January 20 was
18 \$45.15; correct?

19 A. Correct.

20 Q. And just so that we have the chart complete, could
21 you multiply 43.18 times 914.4 million shares.

22 A. I've got 39.5.

23 Q. And then could you do the same for the opening
24 price on January 20, which was \$45.15.

25 A. 41.3. 41.285 is what I got, so is there something

1 wrong? Do you want me to do it again?

2 Q. It doesn't make any difference in terms of the
3 approximate value, but there may be something that's
4 happening with the rounding.

5 A. Okay. Do you want me to add all the zeros in and
6 see what we get?

7 Q. Yes.

8 A. Okay.

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

10 41285160000, so I'm still getting.

11 Q. 41285. I'll put it down.

12 41.3 billion.

13 This is a small point, but we started out with
14 41.5 billion dollars of liquidation preference; correct?

15 A. Yes.

16 Q. We divided that by \$45 to come up with a certain
17 number of shares; correct?

18 A. Okay. Yes.

19 Q. We're now multiplying that number of shares times
20 \$45.15; correct?

21 A. Yes.

22 Q. And just as a matter of arithmetic, that result
23 should be higher than 41.5 billion; correct? Just as a
24 matter of arithmetic.

25 A. Okay. And your point, sir?

1 Q. My point is just as a matter of arithmetic, this
2 has to be a little higher.

3 A. Okay.

4 Q. So something --

5 MR. AUSTIN: Mr. Boies, it's 41.15. I think that
6 may be -- the figure on PTX 5224 is 41.15 million.

7 MR. BOIES: 41.15.

8 MR. AUSTIN: So that would explain it.

9 MR. BOIES: Thank you. Thank you very much. That
10 was bothering me.

11 THE WITNESS: It's been happening to me for three
12 days. I can understand that. And I'm supposed to be --

13 BY MR. BOIES:

14 Q. Right. Right.

15 Okay. Now, I take it that you would agree with me
16 that one of the things this chart shows is that the value
17 of what the government is getting is significantly
18 dependent on what date you pick to select a stock price;
19 fair?

20 A. You -- you're saying the value of the stock ends
21 up changing based on the date you use.

22 Q. Yes.

23 A. Of course. Stock prices move around. That's why
24 I refer to as them staying at risk until they were into
25 cash, right, they continued to share the risk of AIG

1 until they liquidated into cash I agree with that a
2 hundred percent.

3 Q. Shared the risk in the upside?

4 A. Both hey I've been talking about that all week I,
5 you know.

6 Q. /STKPWHR-FRPBLGTS just so that the record is
7 clear, in fact the government got more than 914.4 million
8 shares of common for their Series E and F preferred;
9 correct?

10 A. That -- because that's just for the C; right? Or
11 is that -- what do you mean, they got more than -- I
12 don't remember what they got at this point. I can look.

13 Q. You can look if you want, but could I suggest to
14 you that they got approximately?

15 A. 1.655 is what's coming to mind. Is that right?
16 Or I'm just trying to --

17 Q. I would suggest to you that the 1.655 number,
18 which is a right number, for something that's different,
19 that is the total number of common shares that they got
20 for C, E and F combined.

21 A. Correct.

22 Q. And for the E and F, which is all we're talking
23 about here?

24 A. Oh, 9 -- 963 plus 168 I think was the right
25 numbers.

1 Q. It was about a billion point 09?

2 A. We talked about this a couple days ago.

3 Q. Yes. Exactly.

4 And the reason that we came up with a
5 914.4 million shares was because that was what was
6 resulted from dividing 41.15 by \$45.

7 A. Okay.

8 Q. And by the time you got to the actual
9 recapitalization, there were more Series F stock?

10 A. Yes.

11 Q. And so you used the same \$45, but you came out
12 with more shares of common.

13 A. I'll take your point for the time being. I don't
14 want to take up any more of your time by looking through
15 my notes.

16 Q. Okay. And just one last point on this.

17 The number of shares of common that you would get
18 for a share of preferred was something that was set not
19 in 2009 but in 2010; correct?

20 A. As part of the recap plan.

21 Q. Yes.

22 A. I believe that's correct.

23 Q. And the --

24 A. To the best of my recollection anyway. Go ahead,
25 sir.

1 Q. And the amount of common stock that was going to
2 be provided for each share of preferred stock was set to
3 achieve the goal of fully repaying the United States
4 Department of Treasury and the Federal Reserve Bank of
5 New York for their investments in AIG; correct?

6 A. Would you repeat that last bit, please.

7 Q. Sure.

8 The number of common shares --

9 A. Uh-huh.

10 Q. -- that were going to be provided for each share
11 of preferred stock was set in the recapitalization?

12 A. Right. I already heard that.

13 Q. -- to achieve the goal of fully repaying the
14 United States Department of Treasury and the
15 Federal Reserve Bank of New York for their investments or
16 loans in or to AIG; correct?

17 A. I would change that to safe compensate, not just
18 repay but compensate, which would include bearing the
19 risk in the manner in which I spoke about with the
20 initial rescue and the rescue overall. This is about
21 fair -- about compensation economic compensation
22 consistent with my demonstrative number -- I don't even
23 remember what the numbers on the demonstratives are
24 anymore -- 2628.

25 Q. As you use the term compensate in that answer?

1 A. Uh-huh.

2 Q. -- compensate would be at least equal and
3 presumably somewhat higher than just repayment; correct?

4 A. It would be a place where the acceptor of the
5 funds, the borrower, if you will, or the one being
6 invested in and the granter of the funds, the provider of
7 the funds, the commercially reasonable lender or investor
8 in this case the government, would agree to split what I
9 call the games from trade, which are the risk-adjusted
10 present value of the capital commitment plus splitting
11 the benefits of the rescue, so that is my actual specific
12 definition I'm coming back to benefits.

13 Q. Please just listen to my question.

14 A. I am, sir.

15 Q. My question is, I asked you whether the number of
16 common shares that were going to be provided in the
17 recapitalization for each share of preferred stock was
18 set to fully repay Treasury and the Federal Reserve for
19 their investments in or loans to AIG.

20 A. And my economic answer there is in accordance with
21 2628, okay, I used the word "compensate."

22 Q. And all I'm trying to do now, sir?

23 A. Right. Okay.

24 Q. Al I'm trying to do I'm not trying to debate with
25 you whether it ought to be payment or compensation. I'm

1 just trying to make clear for the record that when you use
2 the word compensate, that is something that is a higher
3 amount than just repayment; correct? Yes or no?

4 A. Conditionally yes.

5 Q. Let me focus just on the Department of Treasury?

6 A. And I'm say conditionally oh, you don't want to
7 know condition I'll let you go sorry.

8 Q. Let me focus just on the United States Treasury.

9 A. Okay.

10 Q. As you understood it, was the number of shares of
11 common stock that were provided for the Series E and F
12 preferred stock intended to fully repay the United States
13 Department of Treasury for the investment made in the
14 TARP preferred stock?

15 A. Could you repeat the question.

16 Q. As you understood it, was the number of shares of
17 common stock that were provided for is Series E and F
18 preferred stock in the recapitalization intended to fully
19 repay the United States Department of Treasury for what
20 the Treasury had provided to AIG in exchange for the TARP
21 preferred stock?

22 A. In order to try to answer your question one way or
23 the other, I need to ask for some clarifications and
24 following. Are we talking in terms of either legal terms
25 or are we talking in terms of 13(3) lending terms? Or

1 are we talking just commercially reasonable terms?

2 Q. I'm not actually talking about any of those terms.
3 I'm just asking you --

4 A. But my understanding is going to be from -- I'm
5 sorry, sir. I'm sorry. Go ahead. I'm sorry.

6 A.

7 Q. I'm just asking what your understanding was of
8 what was intended to be done in the recapitalization. Do
9 you understand that?

10 A. My understanding of what was intended to be done
11 in the recapitalization was for the U.S. government to
12 exit their risk position, their investments, their
13 commitments of capital, the exit the rescue package
14 entered into with AIG, and I interpret that from the
15 perspective and scope of my assignment, which is as a
16 commercially reasonable market practitioner and
17 economist.

18 So I am answering your question from that context.

19 Q. Answering my question from that context, is it
20 your answer that the number of common shares that were
21 fixed for each share of E and F preferred stock in the
22 recapitalization was set in order to fully repay or at
23 least fully repay the United States Treasury for all of
24 the money that the United States Treasury had provided to
25 AIG in exchange for TARP preferred stock?

1 A. I think your use of at least is closer to the
2 spirit of my Exhibit 2628 and I think that it nicely fits
3 in with the notion that given the risk borne at the time
4 the funds were granted and given --

5 Q. This has nothing to do -- Your Honor, this has
6 nothing to do with the risk borne?

7 THE WITNESS: Sir, from my understanding which is
8 what you asked me about as an economist and finance
9 person it does.

10 BY MR. BOIES:

11 Q. Sir, can you just listen to the question?

12 A. Yes.

13 Q. I'm not asking why they were doing it.

14 A. Well, for you to answer your question you said my
15 understanding sir and you said at least fully repay I
16 need to provide context for that otherwise I'll give you
17 a conditionally yes I think that's consistent your at
18 least fully pay at least consistent and I will say yes
19 but I'm providing you with context for the consistency.

20 Q. Let me try to answer -- ask if question. And I
21 think this is -- I'm trying to be as simple as I can on
22 this. Okay?

23 In the recapitalization, the Department of
24 Treasury got common shares for E and F preferred stock;
25 correct?

1 A. Yes.

2 Q. And the number of AIG common shares that the
3 Department of Treasury got for each share of E and F
4 preferred stock was set in the recapitalization; correct?

5 A. That's my recollection. I would generally say
6 yes. I accept that.

7 Q. And the number of common shares that the
8 Department of Treasury received for each share of
9 preferred stock in the recapitalization was set in order
10 to ensure that the Department of Treasury at least
11 received as much money as the Department of Treasury had
12 provided to AIG in exchange for TARP preferred shares.

13 A. I think I can accept that.

14 Q. Thank you.

15 A. That -- okay.

16 MR. BOIES: I pass the witness.

17 THE COURT: No more passing him anymore.

18 Dr. Mordecai, you are excused.

19 THE WITNESS: Oh, okay.

20 THE COURT: We're going to take a break. We'll
21 reconvene at 3:45.

22 **(Court in recess.)**

23 MR. AUSTIN: Your Honor, before we start with the
24 next witness, we wanted to move in the demonstrative if
25 we could have both sides forgot to do it. So we would

1 move in DXX 040 for pursuant to rule 703.

2 MR. BOIES: And I have no objection to that. And
3 I would also offer Plaintiffs' Trial Exhibit 5402 as a
4 demonstrative exhibit.

5 MR. AUSTIN: No objection to that, Your Honor.

6 THE COURT: All right. Without objection,
7 defendant's demonstrative 40 and plaintiff's
8 demonstrative Exhibit 5402 are admitted.

9 (Defendant's Exhibit Number DXX-40 was admitted
10 into evidence.)

11 (Plaintiff's Exhibit Number 5402 was admitted into
12 evidence.)

13 MR. DINTZER: Before we move on to the next
14 witness, who will be Dr. Saunders, we have a few small
15 housekeeping matters that we thought we'd raise right
16 now.

17 THE COURT: Okay.

18 MR. DINTZER: The first one is that with respect
19 to the Studzinski video, it is our understanding that the
20 plaintiffs don't have any objections. They had reserved
21 their right but we just want to make sure the record
22 reflected that.

23 MR. BOIES: That is correct, Your Honor.

24 THE COURT: All right. Very well.

25 MR. DINTZER: The second one is that we have -- we

1 would like to ask the Court to take judicial notice of
2 two specific facts or two facts. I believe that the
3 plaintiffs based on my discussion with them, they will
4 not oppose and then down the line they may ask for the
5 Court to take similar notice. These are the number of
6 bankruptcy filings by businesses. These are taken
7 actually from the Court's -- the United States federal
8 Court's Web page and we ask the Court to take judicial
9 notice that in 2008 there were 4, -- 43,546 business
10 filings and that in 2009 there were 60,837 business
11 filings, according to the Court's Web site.

12 MR. BOIES: We have no objection to the Court
13 taking judicial notice of that. And it's our
14 understanding that we will provide similar statistics for
15 earlier time periods for the Court to take judicial
16 notice of. We do so despite our position that that's
17 irrelevant, but in order to provide the context if the
18 Court wishes to consider it, we will do that as well.

19 THE COURT: Very well. So with without objection
20 from the plaintiff, I will take judicial notice of the
21 bankruptcy data you just provided.

22 MR. DINTZER: Thank you, Your Honor.

23 Next, when Dr. Cragg was on the stand, the
24 plaintiffs provided a set of slides which were entered
25 into evidence as demonstratives and we provided the

1 caveat, Your Honor, that we would be able to go to the
2 transcript to make sure that if there were any slides to
3 which he did not testify, we would reserve the right to
4 ask for the removal. We have done that have we have
5 identified that PTX 5381, which was the last slide in his
6 deck, was one that he did not testify to, and at this
7 time we would ask that that actually be removed from as
8 it was provisionally provided into evidence that it now
9 be removed from evidence.

10 MR. BOIES: We agree that Dr. Cragg did not
11 testify about that chart and we have no objection to it
12 being withdrawn or whatever happens to charts that turn
13 out not to actually have been used by the witness.

14 THE COURT: All right. Plaintiff's demonstrative
15 Exhibit 5381 shall be considered as withdrawn.

16 MR. DINTZER: Thank you, Your Honor.

17 Finally, we touched base with the plaintiffs
18 regarding a request of a proffer regarding the parameters
19 of a rebuttal case. They've asked us to push that to the
20 end of the day, which we have no problem doing, what we
21 would ask the Court is if we could reserve five minutes
22 at the end of the day before -- so basically cut the
23 witness off five minutes early so we might be able to
24 discuss that, we would ask that.

25 MR. BOIES: We have given them a proffer with

1 respect to Mr. James Millstein, who appeared as a
2 30(b)(6) witness. Our view is that as a 30(b)(6) witness
3 what he testifies to an admission and we can introduce a
4 portion of it as an admission. However, if it turns out
5 that the Court wants to hear him live, it is really for
6 like two pages of prior testimony.

7 In addition to that, we intend to have some live
8 testimony. We are still formulating what that is since a
9 good part of it is going to relate to what the last
10 witness says and the current witness has said. And we'll
11 be prepared to talk a little bit about that this
12 afternoon if the Court wishes, and we'll learn more after
13 we've got a chance to absorb the current witness'
14 testimony.

15 THE COURT: All right. Well, we'll reserve five
16 minutes at the end of today. It sounds like admitting
17 the small deposition portions of the 30(b)(6) witness
18 would work fine.

19 MR. DINTZER: Could we -- and we could do that
20 now, Your Honor. We would want to be heard on that.

21 THE COURT: Okay. Sure.

22 MR. DINTZER: Perhaps maybe we should save ten
23 minutes at the end of the day.

24 MR. GARDNER: 15. Just kidding.

25 MR. DINTZER: If we could save ten minutes at the

1 end of the day so we could address that, Your Honor.

2 THE COURT: Very well.

3 MR. DINTZER: And with that, United States calls
4 to the stand Dr. Saunders.

5 THE COURT: All right.

6 Good afternoon, Mr. Roberson.

7 MR. ROBERSON: Good afternoon, Your Honor.

8 THE COURT: Please come forward, sir.

9

10 Whereupon --

11

ANTHONY SAUNDERS

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

14

DIRECT EXAMINATION

15

BY MR. ROBERSON:

16

Q. Good afternoon, Professor Saunders.

17

A. Good afternoon, Mr. Roberson.

18

Q. What is your current position?

19

A. I am the John M. Schiff Professor of Finance at

20

the Stern School of Business at NYU.

21

Q. And what is your John M. Schiff Professor of

22

Finance?

23

A. It's teaching research in the area of financial

24

markets and institutions and I've also been chair of the

25

department for twelve years not currently but it ended

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1 thankfully in 2007.

2 Q. How long have you worked at NYU?

3 A. 36 years.

4 Q. And when did you become a faculty member at NYU?

5 A. 1978.

6 Q. And a tenured professor?

7 A. 1984.

8 Q. And what courses have you taught at NYU?

9 A. I teach a course on financial markets and
10 financial institutions.

11 Q. And at what levels?

12 A. Bachelor degrees, master's and Ph.D.

13 Q. Have you held any academic positions outside of
14 your work at NYU?

15 A. Academic positions outside you mean visiting
16 positions?

17 Q. Yes.

18 A. Some of in private sector currently I'm on the
19 investment advisory board of Zurich financial services
20 Zurich financial services one of the largest insurance
21 companies in the world in the areas of general and life
22 insurance. I've been on the board since 2003. And the
23 regulatory sphere I've worked various times for the IMF
24 Federal Reserve Board of Governors Federal Reserve Bank
25 of Philadelphia, Federal Reserve Bank of New York,

1 comptroller of the currency and the FDIC.

2 Q. And what about visiting academic positions?

3 A. Visit University of Melbourne, Stockholm school of
4 economics, ISEAS which is the institute of southeast
5 Asian studies, INSEAD in Paris and in next bottom I go to
6 Pembroke college Cambridge /STKPWHR-FRPBLGTS.

7 Q. And when and for how long did you have your
8 positions at the IMF?

9 A. These were in the early '80s. I think it was
10 1983.

11 Q. And the Fed?

12 A. The Federal Reserve has been various intervals
13 mostly during Federal Reserve Board of Governors mostly
14 in the '80s originally I was on the board of consultants
15 to the Board of Governors which was meeting periodically
16 called by the chair of the Federal Reserve and then more
17 recently during the '90s I was -- I went for two or three
18 weeks at various intervals just to work with research
19 people there.

20 Q. In the office of the controller?

21 A. It was early 1980s as a summer intern.

22 Q. Can you provide a brief summary of your
23 educational background?

24 A. Yes. I got a bachelor's master's and Ph.D. from
25 London school of economics.

1 Q. And what years were those?

2 A. Starting in '78, finished in 1981.

3 Q. For the Ph.D.?

4 A. For the Ph.D., yeah.

5 Q. Okay. And what was your focus of studies at the
6 London school of economics?

7 A. Monetary economics, financial institutions and
8 financial markets.

9 Q. And what has been the focus of your teaching and
10 research endeavors after you earned your Ph.D.?

11 A. Financial on -- issues in financial markets and
12 institutions.

13 Q. And what would you say is your primary area of
14 expertise?

15 A. Financial markets and institutions.

16 Q. And have you published any books?

17 A. I've published a number of books, including two
18 textbooks. One is called Financial Institutions: A Risk
19 Approach. Another one is called Financial Markets and
20 Institutions. These textbooks are used pretty
21 comprehensively both in the U.S. and worldwide by
22 students during bachelor's and master's degrees. And so
23 other more professional books.

24 Q. And what about you said some other professional
25 books what other sort of journal articles, books and

1 papers have you presented?

2 A. Well, there was probably published about 80 papers
3 or more in peer-reviewed journals in finance and
4 economics.

5 Q. Have you served as an editor for any publications?

6 A. Yes. I served for a while as the editor of the
7 monograph series at the Salomon center at NYU which was a
8 monograph and that morphed into 1992 to a journal called
9 Journal of Financial Markets, Instruments and
10 Institutions. And then also between '94 and 2007 I was
11 an editor of the Journal of Banking and Finance.

12 Q. And with respect to the editor -- your position at
13 the as editor of the financial markets instruments and
14 institutions, is that a position you currently hold?

15 A. Yes.

16 Q. And Journal of Banking and Finance, is that a
17 journal that you've served as editor for?

18 A. Yes. I mentioned from I think 1994 to 2007 I was
19 an editor of Journal of Banking and Finance.

20 Q. Okay. Let's discuss your experience as an expert
21 witness or consultant. Other than this case, have you
22 been retained as an expert witness or consultant in any
23 other cases?

24 A. Yes. A number of other cases.

25 Q. And could you describe your prior consulting work

1 in the field of financial economics.

2 A. As an expert witness, I've served as an expert
3 witness in a number of cases with law firms such as
4 Debevoise Plimpton, Patterson Belknap, Boies Schiller,
5 White and Case, and also on more public sector U.S.
6 Department of Justice, the SEC and IRS and in certain
7 foreign governments as well Czech Republic, U.S. --
8 sorry -- Canadian government agency, Australian tax
9 authority and New Zealand tax authority.

10 Q. Have you testified in court as an expert?

11 A. Yes, I have.

12 Q. And how many times prior to this case?

13 A. About nine or ten times.

14 Q. And in what courts have you testified?

15 A. I think I just mentioned the cases, so the courts
16 have been the U.S. District Court in Texas, federal court
17 of claims, U.S. tax court, the new sealed high court, the
18 Canadian high court, the state courts of New York,
19 Pennsylvania -- New York, New York, Pennsylvania,
20 Connecticut and a more which I forgot Tennessee.

21 Q. And on what subjects have you testified?

22 A. Issues relating to markets and institutions.

23 Q. Have you served any role with the Nobel committee?

24 A. Yeah. I get each year a nomination letter to
25 nominate somebody for a Nobel Prize, which is a document

1 from the Nobel Prize committee asking me to do a
2 nomination. And I make a nomination by writing out the
3 case for who I think should be nominated any particular
4 year.

5 Q. Now, are you being compensated for your time
6 working on this case?

7 A. Yes.

8 Q. Is your compensation in any way contingent on your
9 testimony in this case or on the result of the case?

10 A. No.

11 Q. I'd like to introduce your expert report, the
12 binder with the expert report. The Court has it. If we
13 could give it to the plaintiffs yet? Okay. It's already
14 been distributed.

15 Your Honor, we'd offer Professor Anthony Saunders
16 as an expert in the field of financial economics.

17 THE COURT: Financial economics?

18 MR. ROBERSON: Yes.

19 MR. BOIES: No objection, Your Honor.

20 THE COURT: All right. I shall accept the witness
21 as an expert in financial economics.

22 MR. ROBERSON: Thank you, Your Honor.

23 MR. ROBERSON: And at this point in time we
24 distribute the -- the demonstrative exhibits have been
25 distributed okay.

1 BY MR. ROBERSON:

2 Q. Before we get going, I'd like to move into
3 evidence his expert report and the attachments which
4 includes his CV and other attachments to his expert
5 report. That's DX 1882 and DX 1883.

6 MR. BOIES: No objection for the reasons the Court
7 has previously admitted these materials.

8 THE COURT: All right. Defendant's Exhibits 1882
9 and 1883 are admitted as expert reports and exhibits.

10 **(Defendant's Exhibit Number 1882 was admitted into**
11 **evidence.)**

12 **(Defendant's Exhibit Number 1883 was admitted into**
13 **evidence.)**

14 MR. ROBERSON: Thank you, Your Honor.

15 BY MR. ROBERSON:

16 Q. Professor Saunders, why were you retained in this
17 matter?

18 A. I was retained on the U.S. Department of Justice
19 on behalf of the United States to evaluate six expert
20 witness reports of the plaintiffs regarding the two cases
21 at hand here, the stock split claim and the credit
22 agreement class claim.

23 Q. And based on the work you've done in this matter,
24 have you formed any opinions?

25 A. Yes, I have.

1 Q. And in connection with your work, what types of
2 information did you rely upon in forming your opinions?

3 A. A lot of information I think I've summarized it in
4 the Exhibit E of my report.

5 Q. Okay. And have you prepared anything to assist
6 with your testimony today?

7 A. Yes. I've prepared a set of demonstratives.

8 Q. Okay. And I take it the demonstratives have been
9 distributed as well? Okay.

10 So let's turn to your demonstratives. And if you
11 would turn first to DX 2701. The title of the slide is
12 Summary of Primary Opinions. Can you tell us what you
13 mean by primary opinion?

14 A. These are my overarching opinions as to the issues
15 at hand.

16 Q. Okay. And are there any opinions supporting or
17 underneath these opinions as well?

18 A. Yes. I'll have some subopinions, if you like,
19 that will embellish I guess my overarching opinions.

20 Q. Okay. What is your first primary opinion?

21 A. AIGFP's unhedged multi-sector CDS portfolio
22 exposed AIG to significant liquidity risk.

23 Q. And what is your second primary opinion?

24 A. The deterioration in AIG's financial condition and
25 risk profile were primarily caused by factors unique to

1 AIG, not market-wide factors as Dr. Cragg claims.

2 Q. Your third primary opinion?

3 A. AIG could not meet the requirements to become a
4 primary dealer and in any event access to the PDCF would
5 not have solved AIG's liquidity crisis.

6 Q. What is your fourth primary opinion, sir?

7 A. The ex ante risk of lending to AIG was extremely
8 high as of September 16, 2008.

9 Q. If you'd turn the page to DX 2702.

10 This is a continuation of your primary opinions?

11 A. Yes a fifth opinion is the rescue transaction did
12 not result in an economic loss to the credit agreement
13 agreement class.

14 And the sixth opinion, Dr. Kothari's conclusion
15 that the value of the credit agreement class claim is
16 \$35.4 billion or \$13.16 per share makes no economic
17 sense.

18 Q. Your seventh primary opinion?

19 A. The seventh opinion is that the increase in number
20 of unissued authorized shares did not result in an
21 economic loss to the stock split class as of June 30,
22 2009.

23 And the eighth opinion, Dr. Kothari's valuation of
24 the stock split class claim as of June 30, 2009 makes no
25 economic sense.

1 Q. Okay. Please turn to demonstrative 3 and what
2 again is your first primary opinion, Professor Saunders?

3 A. AIGFP's unhedged multi-sector CDS portfolio
4 exposed AIG to significant liquidity risk.

5 Q. And if you'd turn to the next slide, DX 2704, can
6 you explain how AIGFP's multi-sector CDS contracts
7 worked?

8 A. Yes. This is a setup of how the contracts worked.
9 On the left-hand side, you have AIG, which is a seller of
10 credit protection through the CDS contract. Then you
11 have the buyer of credit protection. This is -- here
12 shown as being a bank in general. And they own
13 multi-sector CDOs from senior multi-sector CDOs. The
14 buyer protection concerned about losses in his CDO
15 portfolio holdings and it's just like buying insurance
16 I'm concerned about making a loss. So buyer would pay a
17 fee up here the swap fee or something called the CDS swap
18 rate to the seller of credit protection in turn for
19 offsetting any losses on his CDO portfolio. And at the
20 bottom in the red box is shown four what's called payment
21 triggers as to payments that could be made by the seller
22 of credit protection, in this case AIG, to the bank
23 protecting the bank against losses on its CDO portfolio.
24 And the first is the repayment if there was an event of
25 adult. In FRBNY the CDO itself, there was an event of

1 default declared by the buyer of credit protection.

2 Q. What is an event of default?

3 A. It's when the collateral covering the tranche of
4 securities / (which were owned by the bank which was
5 super senior securities is insufficient to pay off the
6 CDO tranche.

7 Q. Okay.

8 A. And but there are also other triggers as well
9 prior to event of default being called that would also
10 lead to collateral postings. As you see, these are A, B
11 and C under item 2 in the red box. Thus if AIG was
12 downgraded by the rating agencies, there will be a
13 collateral call. Second, if the CDO itself, the CDO
14 tranche was downgraded, downgraded by the rating agency,
15 there would be a collateral call. And thirdly, if there
16 was a decline in the value of the CDO, so in fact there
17 are four payments that could be made by the protection
18 seller to the protection buyer under a CDS contract. In
19 this case the super senior contracts CDOs held by the
20 buyer of credit protection which was the banks.

21 Q. And would under this category two collateral
22 postings could those be triggered prior to an event of
23 default?

24 A. Yes.

25 Q. Okay. Now, in the event of default, however, what

1 would FP have had to pay?

2 A. In the event of default basically FP would have to
3 pay repurchase the CDO from the buyer of credit
4 protection and therefore repay a par so in other words
5 capital part cost the CDO by buying back the CDO from the
6 buyer of credit protection and paying full par
7 /STKPWHR-FRPBLGTS if collateral had been posted before,
8 then it would be difference between the collateral posted
9 and the par value of the underlying CDO.

10 Q. Okay. Now, with respect to the multi-sector CDS
11 portfolio, was FP's short-term liquidity risk exposure
12 limited to credit losses?

13 A. No. As I said, the first item is event of
14 default. That's pure credit loss. But there are other
15 reasons why a collateral postings and liquidity needs of
16 AIG would be triggered by these three other events which
17 are listed in the red box under number 2.

18 Q. Okay. Could you please turn to slide DX 2705.

19 A. Yes.

20 Q. And what is illustrated on this page?

21 A. This is illustrated from AIG investor
22 presentation, the composition of AIG's super senior
23 contracts in the CDS market.

24 Q. And can you describe how the different components
25 of the -- of this super senior book?

1 A. As you see, the total exposure was around
2 465 billion net of subordination as of June 30, 2007 and
3 the book was divided into three major parts, corporate
4 loan protection, non-U.S. residential mortgage protection
5 and multi-sector CDO protection. The corporate loan
6 protection of 258 billion and non-U.S. residential
7 mortgage protection of 128 billion was mostly written to
8 protect European banks largely because under capital
9 requirements in force at the time, if a foreign bank had
10 bought credit swap protection, the capital requirements
11 of the bank would be lower. So these are often called
12 regulatory arbitrage transactions.

13 The transactions at hand at issue in this case on
14 the multi-sector CDOs which are in I can't which is
15 79 billion.

16 Q. And of the 79 billion dollars there's a
17 description of how that was split up between types of or
18 exposure to subprime?

19 A. Yeah. It's the as it's shown here deals with
20 mixed collateral including subprime accounted for
21 64 billion of the 79 billion.

22 Q. Now, how are these two books related to your first
23 opinion?

24 A. It's just to show that a large component of these
25 CDOs were susceptible to the risk in the subprime

1 mortgage market and that's a key point that one would
2 draw from this slide.

3 Q. Could you just turn the microphone toward you or
4 pull it toward you a little bit. Perfect.

5 A. Yeah.

6 Q. Can you describe generally what the
7 characteristics of a subprime loan are?

8 A. Yeah. A subprime loan is usually a loan with a
9 low credit score of the borrower. And there's a score
10 called the FICO score, which was based on a model
11 originally developed by Fair Isaacs which is based on
12 various characteristics of the borrower. It's a
13 numerical rating and generally it was not total
14 agreement, general agreement is that a subprime borrower
15 is somebody with a FICO score arcs credit score, below
16 620.

17 Q. Okay. And are there other characteristics of a
18 subprime loan?

19 A. In most cases but not all cases the loan-to-value
20 ratios of subprime borrowers was higher than -- was
21 commonly found in a mortgage market. Loan-to-value
22 ratios is a ratio of loans borrowed relative to the
23 underlying collateral value, so if you take a loan out
24 for 80 million and you -- the value of the property is a
25 hundred million, the loan-to-value ratio would be

1 80 percent.

2 Q. Okay.

3 A. So the -- generally speaking, the lower the
4 loan-to-value ratio of, the more safe the loan is and a
5 higher loan-to-value ratio, the more risky the loan is.

6 Q. Okay. Did AIG ever estimate what its liquidity
7 obligations would be on its multi-sector CDS portfolio?

8 A. I believe it did does in you turn to slide DX.

9 Q. Before you do, let me move in under rule 703
10 DX 1356.

11 MR. BOIES: No objection, Your Honor.

12 THE COURT: All right. Defendant's Exhibit 1356
13 is admitted with a rule 703 restriction.

14 **(Defendant's Exhibit Number 1356 was admitted into**
15 **evidence.)**

16 BY MR. ROBERSON:

17 Q. And you were just saying you would move on to the
18 next slide and describe --

19 A. Yes. This is an e-mail from Mr. Kolesnikov of
20 AIGFP as of September 15, Monday, September 15. And it's
21 a calculation of or a reports of what the calculation of
22 needs, funding needs were for the CDO book, the
23 multi-sector CDO book. And as you can see in the bottom
24 white block number 3.

25 A. AIG had projected a loss of 51 billion over the

1 life of the book. There's also BlackRock to also come up
2 with a funding estimate of the lie of the book and they
3 came up with a funding estimate of 45 billion, so and
4 basically I think the summary were quite close in terms
5 of projection of losses of the life of the CD -- senior
6 CDO book super senior CD book.

7 Q. Are you talking about losses or cash flows speak?

8 A. Loss in terms of liquidity needs, funding
9 requirements.

10 Q. Okay.

11 A. Funding requirements or liquidity needs.

12 Q. Okay. And what role, if any did the collateral
13 posting provisions of FP's multi-sector CDS contracts
14 play in AIG's liquidity crisis?

15 A. Well, I think it was a major part given the size
16 of these projected needs for liquidity as of the 15th of
17 September.

18 Q. Now, what was the name of the analytical model
19 that FP relied upon to conduct due diligence on its new
20 multi-sector CDS transactions?

21 A. I think the underlying model used was originally
22 called the Gorton model after gather Gorton who at this
23 time was a professor at Wharton school.

24 Q. And what was he a professor in do you recall?

25 A. His area was finance in general, but he's I think

1 his historically focused much on financial history.

2 Q. Okay. And what type of risk was the Gorton model
3 designed to stress-test for with respect to the
4 multi-sector CDS contracts?

5 A. Primarily exposure default. Exposure of default.

6 Q. Credit risk.

7 A. Credit risk, yeah.

8 Q. And what is the basis for your understanding of
9 that?

10 A. If we turn to the next demonstrative?

11 Q. I -- well, let me -- let's see if you can just
12 answer the question before we go to the next
13 demonstrative.

14 A. Well, there was, as I say, it was internally
15 AIG -- there was this concern about these liquidity
16 needs.

17 Q. Well, no. I'm actually talking specifically about
18 the Gorton model have?

19 A. Oh, the Gorton model.

20 Q. Your understanding of the Gorton model --

21 A. I thought I mentioned that it was focused just
22 purely on the event of default and did not take into
23 account any collateral triggers that were in part of the
24 contract that they written the three collateral triggers
25 that I mentioned earlier.

1 Q. And did you see any documents that indicated that
2 that was the case with the Gorton model?

3 A. Yes. There was in price water Coopers had a
4 couple of discussion papers where they noted that the E O
5 D event of default projection losses from the Gorton
6 model were basically zero. /STKPWHR-FRPBLGTS

7 Q. I'm sorry. I need to get this refreshed for a
8 second.

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

10 Q. Right. And you were discussing the risks from --
11 an event of default; right?

12 A. Yes. The Gorton model focused just purely on
13 protecting default losses, events of default. The
14 payouts that would have to occur should counterparty CDOs
15 default.

16 Q. And did the Gorton model factor in collateral
17 posting requirements of the multi-sector CDS contracts?

18 A. No. As I just mentioned, it did not build in
19 those three extra collateral call factors I mentioned
20 earlier in describing the CDS contracts.

21 Q. And what is your view of the significance of the
22 fact that the Gorton model only addressed the risk of
23 credit loss and not liquidity risk?

24 A. Well, I think it dramatically underestimated
25 liquidity needs of AIGFP in valuing those super senior

1 CDOs, CDO contracts in CDSs to protect against such
2 losses in liquidity needs.

3 Q. Okay. I'd like to move into on DX 2706 I'd like
4 to move into evidence DX 1440 under rule 703.

5 MR. BOIES: No objection, Your Honor.

6 THE COURT: All right. Defendant's Exhibit 1440
7 is admitted with a rule 703 limitation.

8 BY MR. ROBERSON:

9 Q. Now, Professor Saunders, did there come a point in
10 time when FP decided to stop writing new CDS protection
11 on multi-sector CDOs?

12 A. Yes. I think at the end of 2005.

13 Q. And if you'd turn to your next demonstrative,
14 2707, can you tell us what's shown in this demonstrative?

15 A. This is a quote from a document from an AIG
16 investor meeting on December 5, 2005. It's a quote from
17 Joe Cassano who was I believe the head of AIGFP. And
18 he's saying that in yellow late in 2005 there were --
19 there was a fundamental shift in underwriting standards
20 for subprime business in the United States and so the
21 only thing we could do at the point in time was pull back
22 from the business and that's why I think we're lucky
23 enough not to have much of the 2006 and 2007 vintages.
24 Here, he means a vintage RMBS or mortgages.

25 Q. And was he speaking specifically about FP's

1 multi-sector CDS portfolio?

2 A. Yes. My understanding they my understanding is
3 they stopped writing new CDSs as of the end of 2005.

4 Q. If you could just point the microphone a little
5 bit more closer to you?

6 A. Is that better.

7 Q. Now, you mentioned vintages. Can you explain what
8 a vintage is, Professor Saunders?

9 A. A vintage is the year in which a mortgage loan is
10 originated.

11 Q. And was there any difference in terms of quality
12 with respect to the vintages of subprime backed
13 residential mortgage-backed securities or RMBS?

14 A. Yes. The general view was and actually empirical
15 evidence shows it was a relaxation of guidelines for
16 underwriting mortgage loans in 2006 as reflected in much
17 higher default rates for those mortgages.

18 Q. And there was a higher default rate for those
19 mortgages for what reason?

20 A. Well simply relaxed underwriting guidelines and
21 there's been numbeous academic
22 studies that have shown there was a laxity in
23 underwriting during this period and empirical evidence
24 shows more RMBSs of this vintage got into trouble than
25 earlier vintages.

1 Q. Okay. Now, can you know when housing prices
2 peaked in the United States?

3 A. According to which is the well followed case
4 Schiller index about middle of 2006.

5 Q. And what happened to housing prices after mid
6 2006?

7 A. That was a fairly dramatic fall in housing prices
8 after mid 2006.

9 Q. And did the collapse in housing prices affect in
10 2006 affect subprime securities that were issued prior to
11 2006?

12 A. Well, what happened is that many people who took
13 out mortgages in 2006 and 2007 found that they had what's
14 called negative equity because the foreign value of their
15 houses so generally a lot of these houses were foreclosed
16 upon or they just walked away from their houses and that
17 accentuated the excess supply of housing in the market,
18 so in fact all house values started to fall, so it would
19 have affected mortgages originated between -- before
20 2005, for example. In fact, all house values in general
21 across the nation fell. /STKPWHR-FRPBLGTS.

22 Q. Okay. Now, can you describe at a high level what
23 it means to hedge?

24 A. Hedges to mitigate risk in terms of exposure to a
25 particular risk.

1 Q. And can you talk in general terms about how, if at
2 all, FP could have reduced its multi-sector CDS portfolio
3 exposure between 2005 and 2008?

4 A. Well, once you realize that, you know, in its
5 assessment that the C -- that the RMBSs of the subprime
6 vintages in 2002, 2006, 2007 were increasingly risky, in
7 my view they could have taken some hedging, hedging
8 instruments to reduce that risk. One of course would be
9 to buy back the CDOs. A second would be perhaps to
10 negotiate a tear-up of the contracts with the underlying
11 buyer protection. A third would be to -- there are
12 futures contracts on mortgage-backed securities. They
13 could have taken positions either in index or on an
14 individual residential mortgage-backed securities in
15 seeking to hedge the instruments. They might have sought
16 to sell the contracts to a counterparty, somebody willing
17 to absorb that risk, what's called novation. Another
18 possibility they could sought to securitize the contracts
19 by setting up a special-purpose vehicle and selling
20 securities backed by those CDS contracts. And also as a
21 risk was apparent perhaps they could have held more
22 reserves or capital against those potential risks.

23 Q. Now, did FP or AIG implement any of these options
24 in order to reduce the exposure to the multi-sector CDS
25 portfolio prior to mid September of 2008?

1 A. Yeah. My impression was they did take some
2 position for a short period of time in index futures in
3 residential mortgage-backed securities so-called ABX
4 index futures.

5 Q. And what happened to that hedge?

6 A. I think it was fairly short-lived.

7 Q. And what do you mean -- what happened to it and --

8 A. Well, I think they just didn't -- it must have
9 just not continued with it because I understand that it
10 was -- they took a position and they didn't continue in
11 that position for a long time.

12 Q. Okay. Can you -- well, before we move on to the
13 next slide, I'd like to move in DX 72 under rule 703.

14 MR. BOIES: No objection, Your Honor.

15 THE COURT: Defendant's Exhibit 72 is admitted
16 with a rule 703 restriction.

17 **(Defendant's Exhibit Number 72 was admitted into**
18 **evidence.)**

19 BY MR. ROBERSON:

20 Q. If you'd turn to the next demonstrative, can you
21 tell us what you're addressing here?

22 A. This is in demonstrative 2708, and it's the fact
23 that I mentioned a number of ways in which AIG could have
24 mitigated the risk and in fact they received a number of
25 proposals that were very similar to what I just suggested

1 from a variety of banks, Credit Suisse, Deutsche Bank,
2 Goldman, et cetera, in July and August and early
3 September 2008. This suggests that certain resolutions
4 to their exposure on the lines that I just suggested.

5 Q. And did FP implement any of the options discussed
6 in these proposals?

7 A. No, they did not.

8 Q. Were the types of risk mitigation options
9 identified in the proposals from these investment banks
10 that you've referred to available to FP prior to 2008?

11 A. Yes.

12 Q. Okay. Now, would there have been a cost to FP to
13 implement these risk mitigation options?

14 A. Yeah. There's always a cost to risk mitigation
15 because you're hedging and hedging involves a cost.

16 Q. Now, how if the all would the cost of the
17 mitigating FP's risk exposure in 2008 have compared to
18 the cost of mitigation in the 2005 and 2006 time frame?

19 A. Well, as I said, the mortgage market really turned
20 in mid-2006 and AIG recognized that risk was going,
21 you know, was increasing as early as late 2005 and the
22 market turned in mid 2006 certainly early on they could
23 have started to take positions that would have mitigated
24 the risk of much lower cost than as the housing crisis
25 continued and grew.

1 Q. Okay. Before we turn to next lied, I'd like to
2 move into evidence under 703 DX 1410.

3 MR. BOIES: No objection, Your Honor.

4 THE COURT: Defendant's Exhibit 1410 is admitted
5 with a 703 restriction.

6 **(Defendant's Exhibit Number 1410 was admitted into**
7 **evidence.)**

8 MR. AUSTIN:

9 MR. ROBERSON: I'd like to move into DX 1416.

10 MR. BOIES: Your Honor, I take it there's a
11 representation that a witness has relied on all of these
12 documents in the preparation of his testimony?

13 MR. ROBERSON: That's -- well, I'll let the
14 witness speak.

15 THE WITNESS: Yes.

16 MR. BOIES: In that case, no objection,
17 Your Honor.

18 THE COURT: All right. Is that the last one here.

19 MR. ROBERSON: We have two more. DX 1911.

20 MR. BOIES: No objection on the assumption of the
21 same representation.

22 MR. ROBERSON: And DX 1910.

23 MR. BOIES: Again, no objection on the same
24 understanding.

25 MR. ROBERSON: And just for the record, DX 1418 I

1 believe is already admitted.

2 THE COURT: All right. Well, without objection,
3 Defendant's Exhibits 1416, 1910 and 1911 are admitted
4 with a rule 703 restriction.

5 (Defendant's Exhibit Number 1416 was admitted into
6 evidence.)

7 (Defendant's Exhibit Number 1910 was admitted into
8 evidence.)

9 (Defendant's Exhibit Number 1911 was admitted into
10 evidence.)

11 BY MR. ROBERSON:

12 Q. So Professor Saunders, can you turn to slide
13 DX 2709 and tell us what your second primary opinion is.

14 A. The deterioration in AIG's financial condition and
15 risk profile were primarily caused by factors unique to
16 AIG, not market-wide forces as Dr. Cragg claims.

17 Q. What does Dr. Cragg claim caused AIG's liquidity
18 problems in its securities lending program?

19 A. I mean, he focuses on the argument was market-wide
20 forces caused losses in AIG's securities lending program
21 and for AIG in general.

22 Q. And can you describe generally how AIG's
23 securities lending program worked?

24 A. Basically the life insurance companies would often
25 engage in what's called securities lending, which is to

1 loan certain securities to outside dealers and buyers
2 that -- and banks that need them for short-term purposes
3 for short-term purposes so AIG's insurance subsidiaries
4 life insurance subsidiaries would upstream these bonds,
5 say, corporate bonds to AIGSL which was a centralized
6 institution affiliate that would then unlend the
7 securities to banks and other dealers that might need
8 them for various transactions for short periods of time.
9 And in return when they received these securities, the
10 borrowers of the securities would provide collateral to
11 AIGSL, which will then invest on behalf of the life
12 insurance subsidiaries in various assets, in this case
13 commonly residential mortgage-backed securities.

14 Q. Okay. What did you do to analyze whether AIG's
15 securities lending liquidity problems were due to AIG's
16 specific or market-wide risk factors as Dr. Cragg claims?

17 A. Well, I focused on the P A group of institutions
18 that AIG S O could be compared to.

19 Q. And why did you do that?

20 A. Well, because I think that's the most relevant
21 because if market wide forces was responsible for AIG's
22 problems, this would have been reflected in similar
23 problems for similar peer groups of institutions.

24 Q. And what sort of peer groups did you look at?

25 A. I started off looking at insurance companies, life

1 insurance companies, because they -- especially life
2 insurance companies that had securities lending programs.

3 Q. And how did you reach -- well, you looked at
4 insurance companies. Did you reach a conclusion as to
5 AIG's primary sort of core business?

6 A. Well, the core business, you know, is in fact
7 insurance, so that's why I started off to look at AIG's
8 competitors in the insurance industry.

9 Q. Okay. Can you turn to the next slide.

10 A. Is this slide 2710 and this is the foundation that
11 just showing that why AIG was prominently involved in
12 insurance and on the left-hand side it is based on 2006
13 data refuse by operating segment and on the right-hand
14 side are profits or operating income by operating segment
15 and you can see that 44 percent of the revenue was coming
16 from general insurance and 45 percent from life insurance
17 and 46 percent of revenue was coming from -- profits was
18 coming from general insurance and 45 percent from life
19 insurance, so roughly speaking, over 90 percent of AIG's
20 revenue and operating income was coming from the core
21 activity which was insurance.

22 Q. Okay. Now, if you'd turn to the next slide,
23 DX 2711, can you describe what you're setting forth here.

24 A. My determination was AIG's securities lending
25 program was higher risk than the programs run by other

1 insurance companies.

2 Q. Okay. How, if at all, were the securities lending
3 programs of other insurance companies impacted by
4 market-wide forces?

5 A. Well, I believe less so.

6 Q. Okay. Would they -- if market wide forces caused
7 AIG's securities lending problems, what would you expect
8 to see with respect to the securities lending programs of
9 other insurance companies?

10 A. Well, they would be similarly affected because
11 market factors are generally factors and all S L programs
12 would have been affected by similar market forces.

13 Q. Okay. Can you turn to slide DX 2712. And what
14 does this demonstrative identify?

15 A. So as I said, I'm trying to find peer groups of
16 insurance companies or peer insurance companies that also
17 had S L programs, securities lending programs. And I
18 started off by looking at comparables to AIG and AIG
19 had -- and JPMorgan had determined when they're doing
20 valuation analysis of AIG in terms of the insurance
21 companies that they thought were relevant and if I
22 remember it was over 80 insurance companies then I
23 drilled it down to the 15 largest life insurance
24 companies in terms of market cap. And then I looked at
25 the securities lending portfolio and as shown here,

1 roughly, other than AIG, roughly seven other insurance
2 companies, life insurance companies, had material
3 securities lending programs. And as shown in the graph
4 on 2712. As a percent of the assets. In other words,
5 what I'm showing here, when I say material, I'm saying
6 how material materiality in terms of securities lending
7 portfolio in terms of the overall assets of the company.

8 Q. And what, if anything, did you conclude with
9 respect to the size of AIG's securities lending program
10 relative to its peers?

11 A. I felt the only real comparable in terms
12 of percent of assets as you see the red bar is AIG, the
13 blue bar is met life, they have roughly between 7 and
14 8 percent of their assets in the securities lending
15 portfolios. There were others that had securities
16 lending activities, but they were generally under
17 3 percent of their assets, so my feeling was the peer
18 that was most comparable with AIG was MetLife.

19 Q. Now, you mentioned that you had obtained these
20 peers from information from AIG and JPMorgan; is that
21 right?

22 A. Yes. They had done a comparability analysis to
23 determine the valuation of AIG, so they had listed the
24 number of companies that they thought were relevant
25 comparables and as I said I picked the 15 with the

1 largest market cap.

2 Q. Okay. Now, with respect to -- you -- you limit it
3 to 15 initially; is that right?

4 A. No. I started with over 80 and then drilled down
5 to 15 and then looked aft securities lending activities
6 of those 15. Many had none or minimal. And the seven
7 that had, you know, let's say anything of materiality as
8 shown in that graph as a percent of assets, only MetLife
9 was comparable to AIG.

10 Q. Okay. What happened to the size of AIG's
11 securities lending portfolio between the end of 2005 and
12 the third quarter of 2007?

13 A. If you turn the slide to 2713, demonstrative 2713,
14 one can see that it grew quite dramatically. In the
15 fourth quarter of 2005 securities lending portfolio was
16 around 59 billion which is the blue bar. And by the
17 quarter three end 2007 it had grown to 86 billion. In
18 other words, it had grown by 26 billion more than it was
19 in the fourth quarter of 2005.

20 Q. Do you off the top of your head do you have a
21 sense of the sense of the percentage increase?

22 A. Yes. It says in the top yellow rubric to this, to
23 the slide, AIG's securities lending portfolio increased
24 by nearly 45 percent, so the increase in 26 billion over
25 and above the 59 billion is about 45 percent, so that was

1 a quite dramatic growth of that period.

2 Q. Okay. Now, you mentioned earlier that in exchange
3 for the securities third parties would provide AIG with
4 cash collateral. What type of assets did AIG purchase
5 with the securities lending counterparties cash
6 collateral after 2005?

7 A. Primarily residential mortgage-backed securities.

8 Q. And what type of residential mortgage-backed
9 securities?

10 A. That would depend on two types of on line
11 mortgage, subprime mortgages and so-called outA mortgages
12 alternate A means alternative A paper mortgages.

13 Q. And what does that mean /STKPWHR-FRPBLGTS?

14 A. Essentially they are not quite prime because
15 they're based on what's called stated income of the
16 individual, whereas prime generally you have to reveal
17 all your full details about your income, your debt, and
18 your assets. Stated income loans or so-called alt-A
19 loans often relied more on a very limited amount of
20 information, that the borrower would reveal about his
21 income, debt and assets.

22 Q. Did the owe?

23 A. So in some sense they were more risky.

24 Q. And did there -- was there a term that was later
25 coined with respect to alt-A loans?

1 A. Well, some of them -- some people called them
2 liars loans.

3 Q. And why was that? Do you know?

4 A. Because people lied about their income assets and
5 their debt exposures.

6 Q. Okay. Now, are you familiar with the term "prime
7 loans"?

8 A. Yes.

9 Q. And what is a prime loan?

10 A. A prime loan is usually has I mentioned the FICO
11 score before. It usually has a high FICO score, high
12 secret score, often a relatively low loan-to-value ratio,
13 in other words, the amount of loans outstanding relative
14 to value is quite low, in other words, exposure of the
15 bank is relatively low. And normally full documentation
16 has to be out there before a loan is made.

17 Q. Okay. And how does the credit risk of an alt-A
18 loan compare to the credit risk of a prime loan?

19 A. Generally speaking, it would be below a prime.

20 Q. In terms of risk?

21 A. Well, in terms of risk, because of the stated
22 income nature of the loan.

23 Q. When you let's just clarify our terms when I said
24 that the alt-A loan you said it was below?

25 A. Below prime, yes.

1 Q. It's riskier just get our terms right it's a
2 riskier loan?

3 A. Well, prime is the top and alt-A is below that, so
4 yes, it's riskier. Alt-A is riskier than prime.

5 Q. Now, what happened to housing prices from mid 2006
6 to 2007 /STKPWHR-FRPBLGTS?

7 A. They declined quite dramatically.

8 Q. Okay. And just in terms of again going back to
9 our comparison with subprime loans and prime loans, how
10 does the credit risk of subprime loans compare to the
11 credit risk of prime loans?

12 A. Well, again subprime loans have relatively low
13 credit rating scores FICO scores commonly below 620. And
14 prime loans would have higher FICO scores and generally
15 lower loan-to-value ratios than subprime mortgages.

16 Q. And in terms of risk?

17 A. Would tend to be lower risk. Prime loans would be
18 lower risky than prime loans.

19 Q. Subprime loans would have higher risk?

20 A. /STKPWHR-FRPBLGTS I think we just discussed that
21 housing prices fell from 2006 to 2007?

22 A. Correct.

23 Q. What is the significance of the fact that AIG's
24 securities lending portfolio increased by 45 percent
25 during the time when housing prices were falling?

1 A. And the fact that they were mostly invested in
2 residential mortgage-backed securities is -- suggests
3 they had a very risky appetite in terms of their asset
4 portfolios selection and growth decisions.

5 Q. And how did insurance regulators view the
6 expansion of AIG's securities lending portfolio during
7 this time?

8 A. They became very concerned around the third-party
9 quarter 2007 and put a lot of pressure on AIG and sell
10 program to wind itself down.

11 Q. And were the investments AIG made using the cash
12 collateral concentrated in any particular types of
13 investments in early 2008?

14 A. Yes. They had a considerable investment in 2006,
15 2000 vintage. Mortgages and hence in mortgage-backed
16 securities originated in those years which were more
17 risky than the vintages in earlier year.

18 Q. And what type of mortgage-backed securities
19 were -- was AIG concentrated in?

20 A. I think more than 70 percent AIGSL portfolio was
21 more than 70 percent concentrated in either subprime or
22 so-called alt-A mortgages underlying those RMBSs.

23 Q. Okay. Now, how much of the securities lending
24 counterparties' cash collateral was invested in subprime
25 and alt-A mortgages in September of 2008?

1 A. In September about as I said over 70 percent. And
2 in early 2008 it was around 65 percent, so it grew over
3 the 2008 period.

4 Q. Okay. Can you -- well, before we move on, on
5 DX 2713 I would move to admit under rule 703 DX 938 and
6 DX 1361.

7 MR. BOIES: Again, I take it it's the
8 representation that the witness relied on these materials
9 in preparing these charts?

10 THE WITNESS: I did.

11 MR. BOIES: No objection, Your Honor.

12 THE COURT: All right. Defendant's Exhibits 938
13 and 1361 are admitted with a rule 703 limitation.

14 **(Defendant's Exhibit Number 938 was admitted into**
15 **evidence.)**

16 **(Defendant's Exhibit Number 1361 was admitted into**
17 **evidence.)**

18 BY MR. ROBERSON:

19 Q. Now, if you could turn to slide DX 2714, can you
20 explain what this slide illustrates?

21 A. This shows the structure of their securities
22 lending portfolio collateral. That's the assets they
23 invested in through the securities lending portfolio as
24 of September 2008. And it shows basically that
25 84 percent of the collateral was invested either in

1 subprime mortgages or alt-A mortgages.

2 Q. Do you recall -- well, let me just ask you this
3 first did AIG purchase 2006 and 2007 vintage subprime and
4 alt-A RMBS securities with the counterparties cash
5 collateral?

6 A. Yes.

7 Q. And do you recall how much of the subprime and
8 alt-A securities were invested in 2006 and 2007 vintages?

9 A. Yes. I think as I said just somewhat over
10 70 percent.

11 Q. How would you characterize AIG's securities
12 lending investment strategy?

13 A. Well, I think it was aggressively risky given what
14 was happening to the mortgage market at the time.

15 Q. And why do you think it was aggressively risky?

16 A. Because already in 2005 AIG itself had recognized
17 that underwriting guidelines for mortgages had got very
18 lacks and were concerned about the growth of subprime
19 mortgages and they stopped writing CDSs, so whereas,
20 you know, AIGFP had recognized increased risk in terms of
21 its CDS portfolio of subprime mortgages and alt-A
22 mortgages, the securities lending portfolio program kept
23 expanding its investments, so there's a bit of a
24 disconnect between the CDS portfolio and the securities
25 lending portfolio. They continued to invest in these,

1 you know, poor vintage mortgages even though they saw
2 house prices turning and the concerns about losses on
3 these subprime mortgages and alt-A mortgages of 2006 2007
4 vintage.

5 Q. Did AIG report losses on its securities lending
6 investments?

7 A. Yes, it did.

8 Q. What is the correlation, if any, between the
9 losses AIG reported on its securities lending investments
10 and its investment strategy?

11 A. Well, its investment strategy was, as I said, very
12 aggressive and the downside risk of an investment
13 strategy is to lose considerable amounts of money.

14 MR. ROBERSON: Your Honor, on DX 2714 we move to
15 admit DX 567 under rule 703.

16 MR. BOIES: Again, Your Honor, I assume the
17 witness represents that he relied on that document in
18 preparing his opinions?

19 THE WITNESS: Yes, I did.

20 MR. BOIES: No objection, Your Honor.

21 THE COURT: All right. Defendant's Exhibit 567 is
22 admitted with a rule 703 limitation.

23 **(Defendant's Exhibit Number 567 was admitted into**
24 **evidence.)**

25 Dr. Saunders, we're going to adjourn your

1 testimony for today so that I can talk to the counsel
2 about some housekeeping matters.

3 THE WITNESS: Okay. That's fine. Thank you,
4 Your Honor.

5 THE COURT: So you can excuse yourself and then
6 we'll reconvene at 9:30 tomorrow morning.

7 THE WITNESS: Okay. Thank you.

8 THE COURT: Yes.

9 MR. DINTZER: Thank you, Your Honor.

10 THE COURT: Sure.

11 MR. DINTZER: So there are two issues really. The
12 first is the request for a proffer so that we can know
13 what's coming up. After Professor Saunders, they're
14 putting Professor Daines on the stand, our fourth expert.
15 We have provided the slides of course they have the
16 slides for Professor Saunders they've had those for two
17 days now. We've already provided the slides for
18 Professor Daines. They've had their reports. They've
19 deposed these individuals, so they know what's coming up
20 as well as we do. And as the time grows short in this
21 case, the plaintiffs have -- it would be starting with
22 during their own case in chief have been saying they
23 wanted a rebuttal case. And we would ask now,
24 Your Honor, you know, they have identified certain
25 aspects of Mr. Millstein and we are prepared to discuss

1 with the Court how that should be considered. But before
2 we get to that, Your Honor, we would ask that at this
3 point we get a clear proffer of what they're asking for
4 so that we could then do two things. One is, is we
5 could, if we believe it's necessary, challenge the need
6 for rebuttal testimony on whatever they're asking for.
7 We don't know. And second, we can begin to prepare for
8 it. As the Court foes, we've operated throughout this
9 trial with a certain amount of advanced notice of what's
10 coming, and if we end up closing our case either
11 Friday -- I don't think it will happen Thursday, but
12 sometime, say, Friday, and we understand the Court's
13 strong preference for wrapping things up -- that we would
14 know what's coming and not only just names but subjects
15 and so that we could proper prepare and not waste
16 anybody's time on unnecessary investigation.

17 So that's where we're at with respect to the
18 proffer aspect and we'd ask the Court to ask the
19 plaintiffs if they want to seek a rebuttal case with
20 testimony what that would consist of.

21 THE COURT: Well, let me turn to Mr. Boies.

22 MR. DINTZER: Thank you, Your Honor.

23 MR. BOIES: Your Honor, we have I think three
24 items of potential testimony that we've identified and
25 there may be a fourth one that we're going to talk about

1 tonight. The three that we've identified is
2 Mr. Millstein, who was the 30(b)(6) witness for the
3 United States, both in this case and in other cases. And
4 we have I think probably no more than two, maybe three --
5 I don't even think it's three pages long, but roughly two
6 to three pages of excerpts from that testimony that we
7 believe are admissible as admissions, but we would be
8 prepared to call Mr. Millstein essentially to say is this
9 true and if he says yes, it's over, if he says no, I
10 confront him with the deposition.

11 We also --

12 THE COURT: Let me inquire, what is the subject of
13 this information?

14 MR. BOIES: It is -- there are like three
15 subjects, fan I can get the -- we furnished it to the
16 other side and hopefully they or we will have a copy of
17 it.

18 MR. GARDNER: I have a copy, Your Honor.

19 MR. BOIES: Could I just --

20 MR. GARDNER: Absolutely. Of course. It's five
21 separate topics by the government's count, Your Honor.

22 MR. BOIES: And it's --

23 THE COURT: Just generally I'd like to know.

24 MR. BOIES: I think there are three basic, maybe
25 four basic topics, but I think basically three. I think

1 all fits under three.

2 One is that the purpose of the taking of the
3 equity was not to give the government an upside
4 potential. It was to deprive the shareholders of what
5 was considered to be a windfall. The Court will recall
6 that we've had a variety of explanations for the equity
7 component and prior to trial, the 30(b)(6) witness said
8 that it was simply a windfall deprivation. It was not to
9 give the government an upside share of any gain that AIG
10 might enjoy.

11 At trial, some of the witnesses have asserted that
12 this was necessary in order to provide additional
13 compensation so that they would have a gain in the event
14 that AIG prospered. I think everybody agrees and I
15 believe that their witnesses have admitted from the stand
16 that equity does not provide additional security if
17 you've got a security interest in essentially all the
18 assets of the company. That is, if the -- if the
19 creditor securities interest is not sufficient to repay
20 the loan, then the equity adds nothing because the equity
21 is worthless. The only purpose of taking equity as
22 compensation for risk is to give an upside potential, and
23 this was directly asked of their 30(b)(6) witness and
24 directly denied as a justification.

25 The second is to respond to the arguments that

1 we've heard at trial that this was an extremely risky
2 loan. The Court will recall that contrary to the
3 testimony before Congress and contrary to a lot of
4 documents, some witnesses have come in and said this was
5 actually an extremely risky loan. And Mr. Millstein as
6 the 30(b)(6) witness responds to that.

7 And the -- you've just heard this witness testify
8 essentially that AIG was -- I'm not sure it will turn out
9 to be unique but very, very unusual in what it was doing.
10 And Mr. Millstein responds to that as well.

11 THE COURT: What is the government's position
12 about Mr. Millstein?

13 MR. GARDNER: At least four reasons, independent
14 reasons why Mr. Millstein should not testify in a
15 rebuttal case, Your Honor.

16 First, the plaintiffs have known about
17 Mr. Millstein since the beginning of this case. They
18 actually cite to him in their opening statement. They
19 included him as a will-call witness on their witness
20 list, and apparently made a strategic decision not to
21 call him despite knowing full well what his testimony
22 would be because again they've got the depositions.

23 Now, they're claiming that they somehow need him
24 to rebut something in this case. The odd thing that I
25 heard from Mr. Boies is what they're having him allegedly

1 rebut are things that came up in plaintiffs' case in
2 cheese, things such as whether or not the loan was fully
3 secured, that came up with Mr. Paulson, it came up with
4 Mr. Geithner, it came up with Mr. Baxter. It came up
5 with Mr. Alvarez and I could go on, but I know this Court
6 remembers that. The notions about whether this is an
7 unduly risky loan, that came up with a number of
8 witnesses as well, so there's simply -- and we talked
9 about this last week, Your Honor, that, you know, there's
10 no entitlement to a rebuttal case. One has to make a
11 showing that issues have come up that were a surprise or
12 could not be anticipated. Both sides pretrial statements
13 and witness lists clearly laid out the parties'
14 positions, and as Mr. Dintzer noted, they had the expert
15 reports from our experts for years. There's no surprise
16 there.

17 But there's two additional problems we have. As
18 Mr. Boies alluded to, what they want to do is designate
19 testimony not just from this case but from two other
20 cases. One is Brookfield and one is a case called
21 Murray. Those cases are against AIG and raise very
22 different issues. One is an establishment clause case,
23 the Murray case, about whether or not there was my
24 understanding a violation of sharia law and Mr. Millstein
25 was a 30(b)(6) in that case. The other case Brookfield

1 is a case against AIG about whether or not, as I
2 understand it, they were contemplating bankruptcy on the
3 16th.

4 So there isn't the full and fair opportunity to
5 examine Mr. Millstein because the issues are very
6 different in those two cases. In fact, of the five areas
7 that I've identified that plaintiffs wish to designate or
8 present Mr. Millstein's testimony on, there's only two
9 very small topics for which the issues were raised in the
10 30(b)(6) in this case.

11 But then we get to the fourth point, Your Honor,
12 and that is that Mr. Millstein lacks personal knowledge
13 about those issues upon which they wish to identify him.
14 It is absolutely true that Mr. Millstein was a 30(b)(6)
15 witness, but he was not a 30(b)(6) witness with personal
16 knowledge. And as this Court I know is aware, 30(b)(6)
17 is a rule of civil procedure, not evidence. And in fact,
18 with the Court's indulgence, I have two cases just from
19 this past month that explain that distinction between
20 resume 30(b)(6) on the one hand and federal rule of
21 evidence 602 on the other and both have held one in D
22 D.C. one in the middle district of Florida and these are
23 just illustrative they're are dozens of cases that stand
24 for this proposition that even if a witness is a 30(b)(6)
25 for discovery, in the absence of personal knowledge, it

1 is inappropriate for them to testify at trial. And of
2 course, Mr. Boies has a dozen witnesses who can testify
3 to these issues. He's called some. He's chosen not to
4 call others. So it isn't as if somehow they're dis
5 chosen. But if I may, Your Honor, present these cases
6 just to the Court has them for its, I'm happy to present
7 them and I have copies obviously for Mr. Boies. .

8 And the saber case, the case from D D.C. from I
9 believe it's judge committees letter from just last month
10 I think is particularly instructive. There, the
11 plaintiff -- sorry. I believe it was the defendant who
12 had a 30(b)(6) deposition. The witness who was the 30
13 about. 6 wasn't employed at the time of the events at
14 issue, just like Mr. Millstein. Mr. Millstein started at
15 the Department of Treasury in May 2009.

16 And the Court concluded, judge committees letter
17 concluded that there in the absence of personal knowledge
18 about the events at issue, there was no personal
19 knowledge established and therefore the witness could not
20 testify.

21 Now, I know it's getting a little late,
22 Your Honor. I'm not trying to belabor anything. I'm
23 happy to go statement and statement and establish one
24 where plaintiffs identify the same subject matter in
25 their pretrial findings of fact and/or their opening

1 statement and two why Mr. Millstein lacks knowledge, but
2 I think the Court gets my point. I'm happy to brief this
3 if we need to.

4 THE COURT: Let me consider this question
5 overnight. I'll look at your cases and we can address it
6 maybe before we get into Dr. Saunders' testimony
7 tomorrow.

8 MR. GARDNER: That would be fine, Your Honor just
9 the last point a practical one. That one I am still
10 trying to figure out the availability of Mr. Millstein.

11 THE COURT: Is he local.

12 MR. GARDNER: No, he's not. He spends most of his
13 time in New York, although I understand he has a
14 residency here in D.C. when I inquired last night, the
15 message I heard back was that he is quote crazy busy
16 Friday and Monday, but I don't know what that means, so I
17 need to figure that out because crazy busy does not equal
18 unavailable obviously. But on the other hand, with such
19 short notice, I do know that this Court has an interest
20 in not inconveniencing witnesses, we may be at a point
21 where if the Court does allow this to come in, we may
22 want to consider it by doing it by deposition designation
23 but if we do that then we will have to consider
24 counter-designations that seems like much to do about
25 nothing given where we are in the case and frankly the

1 cumulative nature of this testimony.

2 THE COURT: And I think also on the plaintiffs'
3 side, if he you wish to review defendant's cases and
4 submit your own authorities first thing tomorrow, that
5 would be fine.

6 MR. BOIES: We will do that, Your Honor.

7 THE COURT: Okay.

8 MR. BOIES: And if I could just maybe spend 60 or
9 120 seconds on responding to -- I think one of the
10 reasons that a lot came out was that during our case,
11 they were permitted, as the Court will recall over my
12 objection in some cases, to introduce their evidence from
13 the witnesses that we called. And I think that we are
14 entitled to wait until all of their evidence comes in to
15 determine what it is that we want to rebut, and the Court
16 will recall that we heard here from the witness stand a
17 distinction drawn between the authority to take and the
18 authority to hold. And if that was a distinction that
19 was made early on, that was not a distinction that was
20 clear to us in any event. And that's one of the things
21 beings, for example, that Mr. Millstein addresses. I
22 think there are two different kinds of issues, one
23 remitting to experts, one relating to Mr. Millstein. I
24 mean, for example, with respect to the experts, there are
25 a number of things that we need to address, including the

1 fact that it was much harder than I thought it would be
2 to get their experts to agree that if they had simply
3 exchanged the E and F stock before the C, it would not
4 have, contrary to what the Court heard from their
5 witnesses have increased the share to 95 or 99 percent.
6 It would have capped the share at 79.9 percent. And
7 that's something that is extremely difficult to get from
8 a witness who is simply asserting that he can't
9 understand what the question is. But we could have our
10 own expert deal with that. So there are, you know,
11 very -- I've always said I had a rebuttal case. I've
12 also always also said it would be very short.

13 THE COURT: Well, let me get up to speed on the
14 cases and we can address it further tomorrow morning.

15 MR. BOIES: Thank you, Your Honor.

16 MR. GARDNER: And Your Honor, before we leave,
17 though, we would appreciate from Mr. Boies an
18 articulation certainly at least from Dr. Cragg given that
19 he said definitively they intend to call him on what
20 specific topics so that obviously we can be prepared, and
21 you know, to the extent we can go further further.

22 MR. BOIES: And for example, I mean, one of the
23 things that we do want to address is we want to -- and it
24 would either be Mr. Zingales or Mr. Cragg. I think each
25 of them have something to say and which of them would

1 deal with which of these issues is not something that I
2 can address right at this second. But one of the things
3 that we want to do is we do want and I don't think this
4 takes very long we want to explain why if they had not
5 gerrymandered the order in which they did this exchange,
6 the government ownership in total would have been capped
7 at 79.9 percent as opposed to go up to 92 percent.

8 The -- another item that came out from
9 Dr. Mordecai's testimony is he had this chart that showed
10 the three bonds that he said he'd taken just because they
11 were the most representative bonds. In fact, we think
12 that is not the case. We think they happen to be the
13 bonds that came down at the lowest possible price and
14 that there were other bonds that were at much higher
15 prices on the 16th.

16 THE COURT: Okay. Can you discuss with
17 defendant's counsel off the record and tell him what
18 subjects you are planning to cover and then we can talk
19 tomorrow morning I think and see whether there are any
20 areas of disagreement.

21 MR. DINTZER: If we could get a written proffer
22 tonight, Your Honor, that would be terrific and then we
23 could raise whatever issues we have.

24 THE COURT: I think that's fair to the extent you
25 can provide that.

1 MR. BOIES: I will try. The Court will understand
2 that even though we have their charts, the testimony ends
3 up being somewhat different from the charts sometimes.

4 THE COURT: Do the best you can.

5 MR. BOIES: We'll do the best we can.

6 THE COURT: Yeah.

7 MR. DINTZER: Thank you, Your Honor.

8 MR. BOIES: And I think that we'll be able to do a
9 pretty good job. I mean, I just don't want to be too
10 finite until I hear it all.

11 THE COURT: I understand.

12 MR. DINTZER: Thank you, Your Honor.

13 THE COURT: All right. I think we'll adjourn
14 until 9:30 tomorrow morning.

15 *******END OF ROUGH DRAFT*******

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