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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.
Friday, November 21, 2014
9:30 a.m.
Trial Volume 36

BEFORE: THE HONORABLE THOMAS C. WHEELER

Josett F. Whalen, RMR-CRR, Reporter

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1 I N D E X

2

3 WITNESS:	DIRECT	CROSS	REDIRECT	RE CROSS	VOIR
4 SAUNDERS		8373	8418	8422	
5 DAINES	8424	8500	8574	8579	

6

7 EXHIBITS FOR ID IN EVID

8 Plaintiffs'

9 Number3129	8558
10 Number3211	8560
11 Number3232	8564
12 Number3248	8556
13 Number3259	8567
14 Number5403	8418

15

16 Defendant's

17 Number481	8420
18 Number482	8421
19 Number1878	8435
20 Number1879	8435
21 Number1879-A	8425
22 Number2801-2823	8500

23

24 *All exhibits premarked for identification prior to trial.

25 *See full attached list of admitted exhibits following transcript.

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

2 - - - - -

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

4 THE COURT: We're on the record for day 36 in the
5 trial of Starr International Company versus the
6 United States.

7 Good morning, Mr. Boies.

8 MR. BOIES: Good morning, Your Honor.

9 THE COURT: Good morning, Dr. Saunders.

10 THE WITNESS: Good morning.

11 THE COURT: You understand that you're still
12 understood oath?

13 THE WITNESS: Yes.

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

15 MR. BOIES: Thank you, Your Honor.

16 - - - - -

17 Whereupon --

18 ANTHONY SAUNDERS

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

22 CROSS-EXAMINATION (continued)

23 BY MR. BOIES:

24 Q. Just before the break, we were talking about
25 Plaintiffs' Trial Exhibit 5403, and I was asking you what

1 the opening stock price was for AIG's stock on
2 January 14, 2011, which is the day you testified that the
3 Series C, E and F exchange took place. Do you recall
4 that?

5 A. I think so at the end, yes. You asked me the
6 price.

7 Q. Yes.

8 And you were going to look in your report, and I
9 take it we can agree that it's not in your report.

10 A. Yes. The prices aren't there.

11 Q. So what I'm going to do is ask you to look at
12 Defendant's Exhibit 1875 page 100, which is an appendix
13 to the report of Dr. Mordecai.

14 A. 18 --

15 Q. It's on the screen. We're putting it up on the
16 screen.

17 A. I'll look here (indicating).

18 Q. And you know who Dr. Mordecai is.

19 A. Yes.

20 Q. And you -- in the course of your investigation,
21 even though you didn't put it in your report, you did
22 look at what the stock price was on September 20, 2011;
23 correct?

24 A. I focused on the 14th because that was when the
25 exchange took place.

1 Q. Okay. Then on the 14th you did look at what that
2 price was.

3 A. Yes. There's two prices. There's one -- and I'm
4 not quite sure why -- which is the price that you show
5 here. Then there's an adjusted price which is a little
6 bit lower, like \$46 or so. And if you look on Yahoo,
7 there was two prices given for the 14th. I'm not sure
8 why.

9 Q. Let's address that.
10 The --

11 A. It's called the adjusted price on the 14th, which
12 is about \$10 lower than the \$56 shown here.

13 Q. Right.

14 So there are two prices on the 14th for the AIG
15 stock, and what are they?

16 A. I just -- from memory, it was around mid-40s. And
17 you've shown me 56 here for the opening price.

18 Q. So this --

19 A. The adjusted price was about mid-40s.

20 Q. This chart says 56.90.

21 A. Yeah. But there's two prices announced that day.
22 One is called the adjusted price and one is the price I
23 think you're representing here.

24 Q. Now, you're also talking about an adjusted price;
25 correct?

1 A. There's two prices listed on Yahoo, which I looked
2 at.

3 Q. And when did you look at Yahoo?

4 A. Last night.

5 Q. Okay. Okay. So there are two prices that you
6 looked up last night.

7 A. Because you asked me the question and I didn't
8 have it in my script.

9 Q. Okay.

10 A. So I thought how could I answer your question when
11 I don't have the data.

12 Q. Okay. Since you looked it up, we can use your
13 testimony rather than Dr. Mordecai's chart.

14 A. Well, I don't mind checking it with Mordecai's
15 numbers, because there are various sources for data, if
16 you'd like. I mean, I can do it either way, whatever you
17 prefer.

18 Q. Let's begin -- there are two prices on January 14,
19 2011 for AIG's stock; correct?

20 A. I believe so. Yes.

21 Q. One of them is \$56.90; correct?

22 A. I saw two prices, yes. I just remember -- I
23 didn't write them down, but it seems right, one of them,
24 yes. I didn't write them down. I just looked on Yahoo.

25 Q. And the other price is about \$46 a share.

1 A. That's correct. I think if I remember, that's
2 correct.

3 Q. Now, do you understand why there is both a price
4 and an adjusted price?

5 A. No. I was hoping you'd tell me.

6 Q. Okay. Let me -- if I don't get in trouble with
7 counsel for the United States, let me represent to you
8 that on January 14 the stock was trading with a warrant
9 attached.

10 A. Uh-huh.

11 Q. And so the 56.90 would be the price with the
12 warrant attached and the \$46 and some cents would be the
13 price that's adjusted to reflect what somebody thinks
14 would be the price without the warrant.

15 A. Okay.

16 Q. Does that sound right?

17 A. I know it's plausible given there were warrants
18 attached. Yes.

19 Q. Now, do you know that on January 20 the stock
20 began to trade without the warrant attached?

21 A. I remember that. Yes.

22 Q. And the price there was \$45.15; correct?

23 A. Yes. Opening, yes.

24 Q. And that is about the same price as the adjusted
25 price on January 14; correct?

1 A. Right.

2 Q. One of the fundamental rights assigned to common
3 stock is voting rights; correct, sir?

4 A. Yes.

5 Q. And to the extent that common shareholders are
6 deprived of voting rights, that is something that is a
7 significant deprivation; correct?

8 A. Well, the value of a stock is the sum of the
9 economic value of the underlying stock value plus the
10 value of the voting right, and it's hard to decompose.

11 Q. It's hard to decompose, but you do know that the
12 value of a stock is the sum of those two rights, that is,
13 the underlying economic value and the voting right value;
14 correct?

15 A. Correct.

16 Q. Did you do any analysis or study to try to
17 determine how to decompose the underlying economic value
18 from the voting right value for AIG's stock?

19 A. No.

20 Q. Let me turn to your testimony about the causes of
21 AIG's liquidity crisis.

22 The roots of the financial crisis of 2008 go back
23 to the early 2000s; correct, sir?

24 A. No. I think when the market turned in 2006,
25 mid-2006, for subprime mortgages was the initiation of

1 the crisis.

2 Q. Let me ask you to look at Plaintiffs' Trial
3 Exhibit 3130.

4 And this is excerpts from a book that you
5 coauthored; correct, sir?

6 A. Correct. Well, I'm assuming when I get there.

7 Q. And when you get there, would you turn to
8 page 214.

9 A. 3130?

10 Q. 3130 page 214.

11 A. I have 111, 112 -- oh, okay. Okay. The pages are
12 jumping.

13 Okay. Yeah.

14 Q. And do you see, in the bottom of the page, the
15 last paragraph, the third sentence, where you write, "The
16 roots of the financial crisis go back to the early
17 2000s"? Do you see that?

18 A. Yes.

19 Q. And the financial crisis that you were talking
20 about was the financial crisis of 2008; correct?

21 A. I mean, that's the roots, but the actual crisis
22 was triggered. I think that's the distinction I'm trying
23 to make. It goes back to after the financial crisis when
24 interest rates were lowered after 9-11 and then there was
25 a buildup of subprime mortgages, but the actual trigger,

1 in my opinion, was the turning point in the mid-2006
2 period, which was the breaking of the bubble, which it
3 says here, experienced a boom -- when the U.S. economy
4 experienced a boom bubble in the housing markets
5 following the relaxation of mortgage restrictions on
6 availability of mortgages by the banks.

7 Q. And just as this housing bubble was beginning to
8 break in 2006, housing prices started to fall; correct?

9 A. That's correct.

10 Q. And at the same time, the Federal Reserve started
11 to raise interest rates; correct?

12 A. That's -- the Fed funds rate was increased for a
13 period. Yes.

14 Q. And since many of the subprime mortgages that
15 originated in the 2001 to 2005 period had floating rates,
16 the cost of meeting mortgage commitments rose to
17 unsustainable levels for many low-income households;
18 correct?

19 A. Yes. For the subprime sector, yes.

20 Q. And the confluence of falling house prices, rising
21 interest rates and rising mortgage costs led to a wave of
22 mortgage defaults in the subprime market and foreclosures
23 that only reinforced the downward trend in housing
24 prices; correct?

25 A. Correct.

1 Q. In January 2006 and continuing throughout 2006,
2 the market for residential mortgage-backed securities was
3 a highly liquid market; correct?

4 A. Which tranches do you mean? What were the
5 tranches? I mean, there were -- or do you mean AAA or --

6 Q. Certainly for the AAA and the super senior tranche
7 of subprime mortgage-backed securities, the market in
8 2006 was a highly liquid market; correct?

9 A. Yes. I think the -- up to the breaking of the
10 bubble. Then a bit later, the super senior and the AAA
11 were affected, but with some delay.

12 Q. Yes. The super senior and the --

13 A. Senior.

14 Q. -- senior, that is, AAA tranches, continued to
15 trade in a very liquid market up until late 2007, early
16 2008; correct?

17 A. I don't know -- I mean, when you mean liquid, I
18 don't know what the volume of transactions was. All I
19 know, the prices of the AAA didn't start to fall,
20 according to the ABX index, until about mid-2007.

21 It's an over-the-counter market, so I don't know
22 what the volume is.

23 Q. Did you investigate that?

24 A. I don't -- I've never really seen figures on
25 volume, daily volume of trading of over-the-counter

1 residential mortgage-backed securities.

2 Q. Did you try to find that in the course of your
3 investigation?

4 A. I've looked at it -- for it before, but I've never
5 found it. People make comments about it, but I've never
6 seen any true underlying full data set that tells you the
7 over-the-counter trading across all the different
8 participants, buyers and sellers of mortgage-backed
9 securities.

10 Q. That really wasn't my question, but I'm really
11 just asking not about all of the full data set, but did
12 you ever look for the volume or the degree of liquidity
13 for senior and AAA tranches of residential
14 mortgage-backed securities?

15 A. No.

16 Q. Now, the institutional investors who invested in
17 residential mortgage-backed securities relied on credit
18 ratings; correct?

19 A. I think they did trust the rating agencies up to
20 the crisis.

21 Q. And when you say "up to the crisis," there came a
22 time when people concluded that the rating agencies'
23 ratings were not reliable; correct?

24 A. Yes. I think after they started to lose a lot of
25 money on the RMBSs they decided that the rating agencies

1 had overrated the securities.

2 Q. And that took place in or began to take place in
3 September or prior to September of 2008; correct?

4 MR. ROBERSON: Compound.

5 THE COURT: Sustained.

6 BY MR. BOIES:

7 Q. People began to lose confidence in rating
8 agencies' ratings with respect to RMBS securities prior
9 to September of 2008; correct?

10 A. Yes. I think so. As the house prices -- price
11 bubble fell and prices fell considerably and RMBS values
12 started to fall, the people did think the rating agencies
13 had not rated the quality directly and -- sorry --
14 credibly and accurately.

15 Q. And that loss of confidence in the rating
16 agencies' ratings caused still greater uncertainty about
17 the value of the RMBS-backed securities; correct?

18 A. I think that's a fair statement. Yes.

19 Q. Now, the RMB-backed securities that were in the
20 CDOs for which AIG issued CDSs were the super senior or
21 AAA-rated tranche of those CDOs; correct?

22 A. They -- the CDSs backed the super senior tranche
23 of the CDOs.

24 Q. And that segment of the securitization posed the
25 least credit risk; correct?

1 A. A priori, yes. Ex ante, you would have thought if
2 they had rated them incorrectly, that would be the least
3 risky, yes.

4 Q. And in fact, as of September 30, 2008, there had
5 been no actual realized credit losses from the
6 underlying CDOs that were the subject of AIG-issued
7 swaps; correct?

8 A. I really don't know.

9 Q. Did you look at that?

10 A. No.

11 Q. Up until June of 2007, the results of AIGFP's
12 models indicated that the risk of loss was a remote
13 possibility even under worst-case scenarios; correct?

14 A. Correct.

15 Q. And the model that AIGFP used was generally
16 acceptable to the rating agencies and PwC; correct?

17 A. I haven't seen what the rating agencies made of
18 it, but I saw PwC discuss it and compare it with the BET
19 model, which was an alternative model, binomial expansion
20 tree model.

21 Q. And PwC found that the models that AIG was using
22 up until June of 2007 were generally acceptable;
23 correct?

24 A. No. I think they were just questioning why the
25 BET model was showing losses while the Gorton model was

1 not.

2 Q. Let me ask you to look at Plaintiffs' Trial
3 Exhibit 449. That is a document that is already in
4 evidence.

5 A. 449?

6 Q. Uh-huh.

7 And I'm going to direct your attention to
8 page 59.

9 A. 59.

10 Q. 59 of the exhibit. Page 59 of 72.

11 A. Yes.

12 Q. And is this a document that you reviewed in the
13 course of your work?

14 A. I did read the whole financial crisis inquiry
15 report, but do I remember reading this page, no.

16 Q. You know who OTS Director Polakoff is; correct?

17 A. Yes. I don't know him personally, but I know he
18 was the director at the time.

19 Q. And do you know that the Office of Thrift
20 Supervision supervised AIG prior to the financial
21 crisis?

22 A. Yes. He was the over- -- it was the -- AIG was a
23 one-thrift holding company, so the overarching regulator
24 was the OTS, correct.

25 Q. And if you look at the second paragraph, the

1 second full paragraph on page 59, five lines down in the
2 paragraph, do you see the sentence that begins, "Up until
3 June 2007"?

4 A. It's very small print. I'm trying to find it.
5 Second paragraph?

6 Q. The second full paragraph.

7 A. Yeah.

8 Q. And five lines down.

9 A. You said the paragraph starts "Second"? Is that
10 the one we're talking about?

11 Q. No.

12 Could I approach, Your Honor?

13 THE COURT: Yes.

14 (Pause in the proceedings.)

15 BY MR. BOIES:

16 Q. And do you see where --

17 A. Can you tell me who this is written -- the
18 discussion is --

19 Q. Polakoff.

20 A. I'm sorry?

21 Q. Polakoff.

22 A. Oh, Polakoff. I'm sorry. Okay.

23 Q. And he says, "Up until June 2007, the results of
24 the AIGFP models indicated that the risk of loss was a
25 remote possibility, even under worst-case scenarios. The

1 model used mainstream assumptions that were generally
2 acceptable to the rating agencies, PwC, and AIG."

3 Do you see that?

4 A. I'm still trying to find it.

5 But I heard what you said.

6 Q. And do you have any reason to disagree with that?

7 A. Yes. I think PwC were worried about the model
8 because they did have -- I saw internal e-mails and
9 discussions at PwC and puzzled why the Gorton EOD model
10 reduced virtually zero predicted losses while the BET
11 model, which took into account prices and values,
12 actually showed some losses, but they continued I think
13 to use the Gorton model.

14 Q. Do you recall whether any of those e-mails that
15 you say that you saw were prior to June of 2007?

16 A. I seem to remember them in 2007, but when in
17 2007 I can't remember.

18 Q. Because -- the reason I ask is because
19 Director Polakoff is only talking about up until June of
20 2007.

21 A. Those e-mails, I think they're dated 2007, that
22 I've seen from PricewaterhouseCoopers discussing the
23 models.

24 Q. But you don't know when in 2007.

25 A. I can't -- my memory is not that good to exactly

1 remember it.

2 Q. But whatever e-mails they were that you relied on,
3 may I assume that they're cited in your report?

4 A. I believe they are. Yes.

5 Q. Okay. Now, through the week of September 10,
6 2008, turning to AIG's securities lending program --

7 A. Can I put this away now (indicating)?

8 Q. Yes.

9 Through the week of September 10, 2008, AIG's
10 securities lending program was operating normally and
11 building significant cash positions; correct?

12 A. Well, I thought I saw other reports saying that
13 there were withdrawals in securities lending portfolio
14 starting from early September.

15 Q. Do you recall what the source of those reports
16 were?

17 A. Not at the moment, not sitting here now, but I
18 think I saw documents discussing securities lending
19 withdrawals early in 2008, September 2008.

20 Q. Let me ask you to look at Plaintiffs' Trial
21 Exhibit 1679. It's in your book.

22 And in particular --

23 A. One second.

24 Q. -- page 7 of the exhibit.

25 A. 1679. Plaintiffs' Exhibit.

1 Q. Plaintiffs' Exhibit 1679, page 7.

2 A. One second. PTX. I got it.

3 Q. Do you see at the top of the page it says,
4 "Through the week of September 10, 2008, AIG's" --

5 A. I'm sorry. Where are you? I've opened the
6 exhibit, but what page?

7 Q. Page 7, at the top of the page.

8 A. Yeah.

9 Q. Do you have that page now?

10 A. Yes, I do.

11 Q. And do you see at the top of the page it says,
12 "Through the week of September 10, 2008, AIG's securities
13 lending program operated normally while building
14 significant cash position"? Do you see that?

15 A. Yeah.

16 Q. Had you seen this AIG report prior to my showing
17 it to you today?

18 A. I don't believe so.

19 Q. Do you have any reason to doubt what is stated
20 here?

21 A. I'd have to look at the securities lending flow,
22 what the data is, but to -- I believe I saw some other
23 documents saying that there was concerns amongst the
24 security lending collateral providers regarding AIG early
25 in September. This is September 10. I can't give you a

1 date, but I thought there were some concerns before this
2 date.

3 Q. With respect to the RMBSs purchased by the
4 securities lending program at AIG, do you know how many
5 of those securities were later charged by the
6 United States government as having been marketed
7 fraudulently?

8 A. How many? That's a big question. I don't know
9 how many.

10 Q. You do know that a number of the RMBS securities
11 purchased by AIG in connection with its securities
12 lending program were later charged by the government as
13 having been fraudulently marketed; correct?

14 A. I don't know regarding what AIG purchased, but
15 there's been general claims against a number of
16 underwriters regarding fraudulent underwriting.

17 Q. And do you know whether AIG in fact has made some
18 claims of that nature?

19 A. No.

20 Q. Did you investigate that?

21 A. No.

22 Q. Did you make any attempt to determine the extent
23 to which, if any, AIG's RMBS securities that it purchased
24 for its securities lending or offered CDS protection for
25 were marketed fraudulently?

1 A. No.

2 Q. When AIG got into trouble in September of 2008 and
3 received the revolving credit facility from the
4 Federal Reserve, it was required to surrender
5 79.9 percent of its shareholder equity; correct?

6 A. Yes. Part of the terms of the deal was a
7 79.9 percent equity stake.

8 Q. Now, prior to September 16, 2008, had any
9 government loan assistance been made available to AIG?

10 A. Loan assistance.

11 Not that I'm aware of, no. Other than through --
12 whether the subsidiary, the savings bank subsidiary, had
13 borrowed from the discount window I don't know.

14 Q. But insofar as you're aware, you're not aware of
15 any; is that correct?

16 A. I've not seen any data on borrowings from the
17 discount window by the savings bank subsidiary of the
18 holding company.

19 Q. Now, in your demonstrative exhibits, you compared
20 how AIG was doing with how certain of its financial peers
21 were doing. Do you recall that?

22 A. Yes.

23 Q. Now, which of those financial peers had received
24 Federal Reserve Bank loan assistance prior to
25 September 16, 2008?

1 A. Can you tell me what exhibit you're pointing to,
2 what demonstrative?

3 Q. Let me ask you to look as an example at your chart
4 DX 2719.

5 A. Yes.

6 Q. And you compare AIG with JPMorgan,
7 Bank of America, Merrill Lynch, Citigroup, Morgan Stanley
8 and Goldman Sachs; correct?

9 A. Correct.

10 Q. Of those six financial peer institutions to which
11 you compare AIG, which had received Federal Reserve loan
12 funds prior to September 16, 2008?

13 A. These are -- this is showing debt issued by the
14 holding companies, and the holding companies had no
15 access to federal facilities at all.

16 Only bonds can be issued by holding companies,
17 such as Citigroup or Bank of America. The bank itself
18 cannot issue bonds.

19 Q. I may not have been clear in my question.

20 Of the six financial peer institutions to which
21 you compare AIG in your Defendant's Exhibit 2719, which
22 of them had received Federal Reserve loan funds prior to
23 September 16, 2008?

24 A. Again, these are holding companies. This is
25 showing holding company debt, CDSs. It's the debt

1 issued, and the holding company themselves had no access
2 to federal assistance.

3 Q. Sir, I'm not asking you about whether the holding
4 companies were issuing debt securities or bonds. I'm
5 asking you which of these companies had borrowed money
6 from the Federal Reserve.

7 A. But these are holding companies. None of them.

8 Q. Did Goldman Sachs become a bank holding company?

9 A. Yes, it did. Around about the 21st or 22nd of
10 September.

11 Q. And when it became a bank holding company, did it
12 get Federal Reserve funds? That's a yes-or-no question.

13 A. No.

14 Q. No.

15 A. No.

16 Q. It did not.

17 A. No.

18 Q. Do you know how much money Morgan Stanley
19 received from the Federal Reserve prior to September 16,
20 2008?

21 A. The holding company and --

22 Q. You keep saying the holding company, sir.

23 A. Because the holding company owns subsidiaries.
24 I'm not quite sure -- and there's a big distinction in
25 terms of what a subsidiary can do versus a holding

1 company.

2 For example, a bank holding company can issue
3 bonds, but a bank cannot. Therefore, when you see CDS
4 spreads, they're on the holding company. A holding
5 company has no access to federal borrowing facilities.

6 Q. Let me see if I can understand what you're
7 saying.

8 You're saying that when you refer here to
9 Morgan Stanley, you're referring only to Morgan Stanley,
10 the holding company, and not the entire Morgan Stanley
11 enterprise; is that what you're saying?

12 A. Well, this is what the CDSs are written on.

13 Q. Sir, I'm just asking a simple question, yes or
14 no.

15 A. I'm just trying to explain what the CDSs are
16 written on.

17 Q. I'm going to try to get through this this morning
18 if I can.

19 A. Yes.

20 Q. And if you could just answer my questions yes or
21 no or I don't know, I think we can do that, but we can't
22 do that if you give your explanations.

23 So my question is just a simple one.

24 You have a name here that says "Morgan Stanley."

25 A. Yes.

1 Q. It's not Morgan Stanley, Inc. It's not
2 Morgan Stanley Corporation. It just says
3 "Morgan Stanley."

4 And do I understand what you are saying is that
5 you are only referring to the holding company, not the
6 entire Morgan Stanley enterprise?

7 A. Well, there's --

8 Q. Yes or no?

9 A. The enterprise contains subsidiaries.

10 Q. Just yes or no, sir.

11 A. Well, the holding company --

12 MR. BOIES: Your Honor, could I get a --

13 THE COURT: I'll let him explain, but let's get it
14 out on the table and go from there.

15 MR. BOIES: Okay.

16 THE WITNESS: There's a holding company, and it
17 has subsidiaries. The holding company issues the bonds,
18 and this is the CDS spreads on the holding company bonds,
19 but not anything to do with the subsidiaries' issue of
20 bonds.

21 BY MR. BOIES:

22 Q. But do you understand that I'm not asking about
23 the CDS spreads?

24 A. I thought you were.

25 Q. No, I'm not. I'm not asking about the CDS

1 spreads. I am asking about the companies here, and I'm
2 asking about their borrowings from the Federal Reserve.

3 And for Morgan Stanley, Morgan Stanley was an
4 investment bank prior to September 21.

5 A. They had an investment bank subsidiary,
6 Morgan Stanley, the holding company.

7 Q. And when you say that they didn't get federal
8 funds, you mean the holding company didn't directly get
9 federal funds, it was one of their subsidiaries; is that
10 right?

11 A. That's correct.

12 Q. Okay. Now, let's treat these six companies as
13 enterprises that encompass the entire enterprises,
14 including the subsidiaries and the holding company.
15 Okay?

16 A. Okay. Consolidated.

17 Q. Yes, consolidated.

18 A. That's the word.

19 Q. Okay. Morgan Stanley as a consolidated entity
20 received Federal Reserve loan assistance prior to
21 September 16, 2008; correct?

22 A. From its primary dealer, yes.

23 Q. And indeed, every one of these six institutions,
24 consolidated institutions, that you identify as AIG's
25 peers on your Exhibit DX 2719 received Federal Reserve

1 loan assistance prior to September 16, 2008; correct?

2 A. From their subsidiaries, yes.

3 Q. With respect to --

4 A. Can I just add one more small thing just to --
5 the -- there are limits on upstreaming funds from the
6 subsidiaries to the holding companies as well. I should
7 have mentioned that.

8 But sorry, I didn't mean to interject.

9 Q. When you say there are limits on upstreaming
10 funds from the subsidiaries to the holding companies,
11 what were the limitations on Morgan Stanley upstreaming
12 funds from its broker-dealer subsidiary to the parent?

13 A. I'm not sure. I was talking more about bank
14 holding companies like Bank of America --

15 Q. I'm asking now about Morgan Stanley.

16 A. I don't know what the restrictions are. They're
17 under SEC regulations, so I don't know what the SEC
18 regulations are.

19 Q. Okay. Treating Morgan Stanley as what you call a
20 consolidated enterprise and taking AIG as a consolidated
21 enterprise, was there ever a time in September, including
22 both the first half of September and the second half of
23 September, when AIG had borrowed as much money from the
24 Federal Reserve as Morgan Stanley had?

25 A. In aggregate do you mean over the whole month

1 or --

2 Q. Was there ever a day in the month of September of
3 2008 when the outstanding balance of what AIG had
4 borrowed from the Federal Reserve was as high as the
5 outstanding balance of what Morgan Stanley had borrowed
6 from the Federal Reserve?

7 A. I can't remember.

8 Q. Did you look at that?

9 A. I may have done, but I can't remember.

10 Q. Let me hand up Plaintiffs' Trial Exhibit 5356,
11 which was a demonstrative that was used earlier in the
12 trial.

13 And this purports to show what amounts of money
14 had been borrowed or were outstanding from the
15 Federal Reserve for both AIG and Morgan Stanley on
16 September 16, September 22 and September 29.

17 A. Across all subsidiaries and on a consolidated
18 basis?

19 Q. On a consolidated basis.

20 A. Yes.

21 Q. And do you have any reason to doubt that on
22 September 16, 2008, AIG had \$14 billion in loan balances
23 outstanding and Morgan Stanley had \$16.5 billion in loan
24 balances outstanding from the Federal Reserve?

25 A. I can't remember Morgan Stanley, but I do remember

1 AIG's demand note was 14 billion on the 16th.

2 Q. Do you have any reason to doubt that
3 Morgan Stanley had an outstanding balance of
4 16.5 billion?

5 A. I can't remember the figures, but I'll take what's
6 written here as true.

7 Q. And on September 22, 2008, AIG had an outstanding
8 loan balance of 37 billion; is that correct?

9 A. That's what it says, yes.

10 Q. And Morgan Stanley had an outstanding balance to
11 the Federal Reserve of 60.6 billion; is that correct?

12 A. That's correct.

13 Q. Do you have any reason to doubt that?

14 A. No.

15 Q. And on September 29, it shows that AIG had an
16 outstanding balance to the Federal Reserve of
17 \$55 billion.

18 Do you see that?

19 A. Yes.

20 Q. And Morgan Stanley had an outstanding balance to
21 the Federal Reserve of 97.3 billion?

22 A. Yes.

23 Q. And do you have any reason to doubt that?

24 A. No.

25 Q. In the summer of 2007, to respond to the building

1 housing crisis, the Federal Reserve augmented what you've
2 described as an easy money policy; correct?

3 A. Yes. They started to lower interest rates because
4 we were in a recession.

5 Q. And as the crisis went on, the Federal Reserve
6 expanded its safety net and made money available to both
7 bank and nonbank financial institutions; correct?

8 A. That's correct.

9 Q. Let me ask you to look at Plaintiffs' Trial
10 Exhibit 2759, which is in your book.

11 My first question to you is, is this a document
12 you've seen before?

13 A. No.

14 Q. This is a proceeding at which Mr. Donald Kohn
15 spoke at The Brookings Institution on April 30, 2014.

16 Do you see that?

17 A. Yes. I see the date.

18 Q. And do you know who Mr. Kohn is?

19 A. He was a deputy chair of the Federal Reserve in
20 the past, but I think now he's a senior fellow presumably
21 at Brookings.

22 Q. Let me ask you to look at page 10 of the exhibit
23 and the third substantive paragraph that begins, "I think
24 it's a critical function."

25 Do you see that?

1 A. Yes.

2 Q. Would you read that to yourself, please, and when
3 you're finished, let me know.

4 (Pause in the proceedings.)

5 A. Yes.

6 MR. ROBERSON: Your Honor, before we proceed, I'd
7 like to object to the use of the document. It's clearly
8 a hearsay document and this is -- there's no
9 certification of the sworn testimony of any nature of
10 reliability, and to be using it with this witness I think
11 is improper.

12 THE COURT: Is this document in evidence?

13 MR. BOIES: No, Your Honor, not yet.

14 THE COURT: All right.

15 MR. BOIES: I haven't --

16 MR. ROBERSON: As I understand it, it's not on the
17 exhibit list either.

18 MR. BOIES: All I've done is present it to the
19 witness, and I'm going to ask the witness a question,
20 which is: Do you agree with what Mr. Kohn says here?

21 THE COURT: I'll allow that.

22 THE WITNESS: He says a lot of things here.

23 BY MR. BOIES:

24 Q. Do you agree with some of them and disagree with
25 others?

1 A. I believe the first sentence is correct.

2 Q. And read what you think is correct.

3 A. When Bagehot was talking, he was talking just
4 about banks, not other financial intermediaries, because
5 he was concerned -- can I just explain?

6 Q. Well, let me try to get what you agree with and
7 what you disagree with. Okay?

8 A. I'm just saying that I disagree that he -- he had
9 no concern about financial intermediaries. He was
10 worried about the country banks in England. Because I
11 did my Ph.D. in this area, so I know exactly what type of
12 banks he's talking about.

13 MR. ROBERSON: Your Honor, this is an indication
14 of why using this document now is not -- it's not
15 admitted into evidence. It wasn't on their exhibit list.
16 It's going to a topic, the Bagehot principle -- Bagehot
17 principles, that wasn't part of his presentation, and
18 this is why we believe it's improper to be using this
19 document.

20 THE COURT: I think once we get past that first
21 question, I think we're treading on thin ice here, so
22 I'll sustain the objection.

23 MR. BOIES: Your Honor, I'll pass it.

24 BY MR. BOIES:

25 Q. In September of 2008, as a result of the

1 deteriorating conditions in the financial markets, the
2 financial condition of virtually every financial
3 institution was fragile; correct?

4 A. Virtually every one, yes.

5 Q. And there was uncertainty about the solvency and
6 long-term viability of a wide range of financial
7 institutions; correct?

8 A. Yes.

9 Q. Now, you talked about the extent to which, if any,
10 the loan to AIG carried risk.

11 Have you assessed the extent to which that risk,
12 if any, was more or less or about the same as the risk
13 taken in financial assistance given to AIG's peers on a
14 consolidated basis?

15 A. No.

16 Q. Am I correct that one of the witnesses whose trial
17 testimony you read was Secretary Paulson?

18 A. Yes.

19 Q. Do you recall Secretary Paulson testifying that
20 the taxpayer was definitely taking more risk with Citi
21 than with AIG?

22 A. No, I don't.

23 Q. You testified that there was a period of time
24 prior to September of 2008 when the primary dealers were
25 not borrowing from the Primary Dealer Credit Facility?

1 A. Correct.

2 Q. Were the primary dealers nevertheless borrowing
3 from the Federal Reserve?

4 A. I don't understand the question.

5 Q. Well, you understand what the Federal Reserve is.

6 A. Primary dealers were borrowing from the
7 Primary Dealer Credit Facility because that's their
8 facility. Primary dealers could borrow from the PDCF
9 because that was their facility. I don't understand your
10 question about Federal Reserve. Federal Reserve provided
11 the PDCF facility for primary dealers and that was their
12 source of funds.

13 Q. Did the Federal Reserve lend money to primary
14 dealers other than through the Primary Dealer Credit
15 Facility?

16 A. I don't know.

17 Q. Did you ever investigate that?

18 A. I think that -- I believe the loans were made
19 through the PDCF.

20 Q. There were certainly loans made to primary dealers
21 through the PDCF.

22 My question is, did the Federal Reserve make loans
23 to institutions that were primary dealers other than
24 through the PDCF in 2008?

25 A. I don't know.

1 Q. Did you investigate that?

2 A. No.

3 Q. Now, the reason the federal government, in your
4 opinion, stepped in and assisted AIG was that AIG was a
5 dominant player in the CDS market, and if AIG had
6 defaulted, every financial institution that had bought a
7 CDS contract from AIG would have suffered substantial
8 losses; correct?

9 A. Yes.

10 Q. Let me turn back to the question of the PDCF.

11 You said, during your direct examination, you were
12 not aware of AIG requesting to permit its insurance
13 subsidiaries to have access to the PDCF. Do you recall
14 that?

15 A. Yes.

16 Q. Were you aware of AIG requesting that it have
17 access to the PDCF?

18 A. I vaguely remember some discussion between
19 Willumstad and Geithner in July I believe regarding that,
20 but that's all I can recall.

21 Q. Do you recall that in July Mr. Willumstad of AIG
22 requested access to the PDCF for AIG?

23 A. I've only seen some general discussion about this,
24 but I'm not -- I was not there, so I don't know what was
25 particularly asked at the time, so I've not seen any

1 recorded record of this.

2 Q. Did you try to determine that?

3 A. No.

4 Q. Okay. Now, you're aware that Morgan Stanley
5 became a bank holding company over the weekend of
6 September 20; correct?

7 A. Correct.

8 Q. And are you aware whether it was the
9 Federal Reserve that suggested to Morgan Stanley that
10 Morgan Stanley apply to become a bank holding company?

11 A. I don't know who requested it, in which direction,
12 whether Morgan Stanley requested the Fed or the Fed
13 requested Morgan Stanley.

14 Q. Did you investigate that?

15 A. No.

16 Q. Now, during September of 2008, primary dealers did
17 borrow money from the PDCF; correct?

18 A. Sorry. Could you just repeat that again.

19 Q. During September of 2008, primary dealers borrowed
20 money from the PDCF; correct?

21 A. That's correct.

22 Q. And do you have an order of magnitude of what the
23 amount of money outstanding at any given point in time
24 was during September of 2008 with respect to the PDCF?

25 A. I think it was fairly small prior to the Lehman

1 failure, but after that, it was quite substantial.

2 Q. For example, on September 15, 2008, what was it?

3 A. I can't give you a number, but it was large.

4 Q. Approximately.

5 A. I can't give you a number.

6 Q. But you do recall that starting on September 12 it
7 began to go up very sharply; correct?

8 A. I remember seeing a bump in the borrowing just
9 before the Lehman crisis, but I can't remember how much,
10 a small bump.

11 Q. Let me ask you to look at Plaintiffs' Trial
12 Exhibit 638, which is in evidence, and the first page of
13 that exhibit.

14 And does that chart accord with your recollection
15 of what happened with respect to PDCF lending in
16 September of 2008?

17 A. Yes. It shows a dramatic increase.

18 Q. The events of the weekend of
19 September 13 and 14 were unexpected events; correct?

20 A. Well, I think AIG had been put on CreditWatch and
21 Lehman was -- I think people in the market realized
22 Lehman had significant problems with liquidity.

23 Q. Let me ask you to look at Plaintiffs' Trial
24 Exhibit 2161-A, which is in your binder, and particularly
25 at page 37.

1 And this is your book Credit Risk. I think you've
2 got the actual book up there as well.

3 And if you'd turn to page 7.

4 A. 7. Mine starts at 15.

5 Q. Page 37.

6 A. Yes.

7 Q. And do you see the heading in the middle of the
8 page that says "Phase 3: The Lehman Failure"?

9 A. Yes.

10 Q. And in the second paragraph under there, you
11 write, "This recovery process was halted by the
12 unexpected events of the weekend of September 13-14,
13 2008 -- dubbed by the Wall Street Journal 'the weekend
14 that Wall Street died' -- which culminated on
15 September 15 in the bankruptcy of Lehman Brothers, the
16 nationalization of AIG, and the acquisition of
17 Merrill Lynch by the Bank of America."

18 Do you see that?

19 A. Yes.

20 Q. And you believe that to be accurate; correct?

21 A. Well, I think that nationalization I've
22 discovered, which I thought at the time I wrote the book
23 was the majority stake in AIG, but I've discovered that
24 79.9 percent is not quite nationalization under purchase
25 and assumption accounting rules.

1 So yeah, I wrote at the time I think using a sort
2 of generality to describe the situation, but to be
3 specifically accurate, I suppose it's not as accurate as
4 it might be.

5 Q. What you're saying is that it was only
6 79.9 percent nationalized?

7 A. No. It says the share purchased was 79.9 percent,
8 but 80 percent is required for consolidation into the
9 balance sheet of the Treasury.

10 Q. Well, you have asserted that 75 percent stock
11 ownership is nationalization; correct?

12 A. No. When did I do -- did I do that somewhere?

13 Q. Well, let me ask you to look at Plaintiffs' Trial
14 Exhibit 3139, paragraph 6.

15 And 3139 is your expert testimony in the
16 JSC BTA Bank case; correct?

17 A. 3139.

18 Yes.

19 Q. And --

20 A. What page are we on?

21 Q. It's page 8 of 67. It is the last sentence of
22 paragraph 6 of your expert report in this case that I'm
23 particularly interested in.

24 A. Page 8. I don't have a page 8 here, 7 to 11.

25 MR. BOIES: May I approach, Your Honor?

1 THE COURT: Yes.

2 (Pause in the proceedings.)

3 BY MR. BOIES:

4 Q. And you can also use the paragraph numbers.

5 Now, just as background, this is an expert report
6 that you prepared and filed in the JSC BTA Bank case;
7 correct?

8 A. Yes.

9 Q. And you were representing BTA Bank; correct?

10 A. The former owner of BTA Bank.

11 Q. And what had happened is that the government of
12 the country in which BTA Bank was operating --

13 A. Kazakhstan.

14 Q. -- had required BTA Bank to sell it 75 percent of
15 its stock; correct?

16 A. I'm trying to find -- I haven't seen this for
17 years, so can you just remind me where I say that?

18 Q. The --

19 A. I'm on page 7.

20 Q. The portion that I'm interested in first is the
21 last sentence of your paragraph 6 of this expert report,
22 where you say, "The forced nationalization of BTA was
23 inconsistent with prudent bank supervisory policies."

24 Do you see that?

25 A. In paragraph 6?

1 Q. The last sentence of paragraph 6.

2 A. Page 5? Page 7 of 67? Indeed, at the time a
3 forced nationalization? Is that the question? It's
4 talking about foreign liability repayments.

5 Q. I'm talking about the last sentence of
6 paragraph 6 of your report.

7 A. Yes.

8 Q. Do you have that?

9 A. Yes.

10 Q. And that says, "The forced nationalization of BTA
11 was inconsistent with prudent bank supervisory policies."

12 Do you see that?

13 A. Yes.

14 Q. And what you're asserting there is that BTA has
15 been nationalized; correct?

16 A. Yes. Under Kazakhstan rules. This is a
17 Kazakhstan bank, and regulatory rules are different
18 across different countries.

19 Q. Is it your testimony that in Kazakhstan, a
20 75 percent ownership would require the government to
21 consolidate the bank on the country's balance sheet?

22 A. Well, there's a political force at stake here.

23 Q. This is just --

24 A. Can I just explain what the Kazakhstan case is
25 about? Then that might be helpful.

1 MR. BOIES: Your Honor, this is entirely a
2 question of time. I'm prepared to --

3 THE WITNESS: I can't explain it without the
4 context of what happened here.

5 THE COURT: I'll let you explain.

6 THE WITNESS: So if I remember -- and it's -- now,
7 it's -- it was that the president of Kazakhstan was in
8 dispute with Mr. Mukhtar Ablyazov, and he took over the
9 bank just forcefully. And he assigned Mr. Mukhtar to
10 the gulag, where he escaped to England, and he brought
11 this case in English High Court to recover his property.

12 BY MR. BOIES:

13 Q. Have you finished?

14 A. I was just giving you context to the case. That's
15 all. From what I remember.

16 Q. Have you finished giving the context that you
17 think you need to give?

18 A. Yes. Yes.

19 Q. Now, one of the things that you were asserting in
20 this expert report to the English High Court was that
21 BTA Bank had been nationalized; correct?

22 A. Forcefully nationalized by the takeover of the
23 president of the country.

24 Q. Well, the takeover consisted of Kazakhstan
25 requiring the bank to sell it 75 percent of the bank's

1 stock; correct?

2 A. Correct.

3 Q. And the Kazakhstan government paid for that stock;
4 correct?

5 A. I don't remember. It's a long time since I've
6 seen this.

7 Q. They paid the market price for that stock;
8 correct, sir?

9 A. I can't remember. As I say, this is some years
10 ago.

11 Q. Maybe we can find where you say that in your
12 report, and while we're trying to do that, let me go back
13 to Plaintiffs' Trial Exhibit 2161, which is where you
14 described AIG as being nationalized.

15 A. 2161-A?

16 Q. 2161-A at page 37.

17 While you're looking for that, we've actually
18 found I think -- I think we've actually found in your
19 expert report where you talk about the nationalization of
20 BTA.

21 And let me ask you to look at --

22 A. Which was the exhibit again? Sorry.

23 Q. 3139, Plaintiffs' Trial Exhibit 3139, your expert
24 report for BTA?

25 A. Yeah.

1 Q. And if you look at paragraph 53 of your report?

2 A. Yes.

3 Q. In the last sentence, the one that says "Despite
4 this"? Do you see that?

5 A. Yes.

6 Q. And you say "the government nationalized BTA on
7 February 2, 2009 by acquiring 75.1 percent of its
8 shares"?

9 A. At the suspended share price.

10 Q. Yes.

11 A. But the question was did they -- I can't remember
12 why it was suspended. I think because the government
13 seized the bank and paid some price. Whether it was the
14 market price or not I can't remember.

15 Q. Well, that --

16 A. It was not being traded at the time. The stock
17 had not -- had stopped trading on the Kazakhstan Stock
18 Exchange, KASE.

19 Q. And the share price while it was suspended was
20 8400 Kazakhstan to the -- to -- per share; correct?

21 A. Well, the last traded price -- but I can't
22 remember when it occurred -- was before February 2, and
23 the last price I think was likely 8,400 Kazakhstan -- I
24 can't remember what "T" stands for.

25 Q. My only point is that when the Kazakhstan

1 government acquired the 75.1 percent, it paid the
2 suspended share price of 8400 Kazakhstan dollars, if
3 that's what it is.

4 A. It's not dollars, but it -- it paid a price based
5 on --

6 Q. And that price was the stock market price as of
7 February 2, 2009; correct?

8 A. No. Because it had been suspended before this,
9 and so I don't -- I can't remember the exact date when
10 trading was suspended.

11 Q. But whenever trading was suspended, the price was
12 8400 KZTs; correct?

13 A. That was the price paid for the stock, yes.

14 Q. Paid by the government.

15 A. I believe so.

16 Q. And you say that price is unlikely to reflect the
17 fair market value of BTA's common stock; correct?

18 A. Yes. Because that was a political decision to
19 take over the bank. And --

20 Q. My question, sir --

21 A. Sorry. Yes.

22 Q. My question is, you say that the stock price of
23 8400 KZTs is unlikely to reflect the fair market value of
24 BTA's common stock; correct?

25 A. You missed out suspended traded, so it's hard to

1 figure out what the true stock price should be based --
2 looking at stock prices because the market was very thin
3 in the stock whereas -- so the question about the
4 efficiency of the Kazakhstan stock market.

5 Q. When you say "the true price," what do you mean by
6 "the true price"?

7 A. Its underlying fundamental value.

8 Q. And when you refer to the fair market price, what
9 are you referring to?

10 A. The price reflects its underlying fundamental
11 intrinsic value.

12 Q. So as you use the terms, true price and fair
13 market price would be equivalent; is that correct?

14 A. Yeah. In a fair and efficient market with all
15 information available, price reflects people's opinions
16 about the fundamental value of the company.

17 Q. And other than looking at the price at which AIG's
18 stock was trading on September 16 --

19 A. AIG, not Kazakhstan.

20 Q. -- did you make any investigation or analysis to
21 determine what you believed the true value or fair market
22 value of AIG's stock was?

23 A. I didn't need to. I just looked --

24 Q. Sir, please just answer -- this is a yes-or-no
25 question. Okay? It's not asking you what you thought

1 you needed to do, what you wanted to do. It's simply
2 asking what you did do, so please listen to the question.
3 Okay?

4 Other than looking at the price at which AIG's
5 stock was trading on September 16, 2008, did you
6 undertake any investigation or analysis to determine what
7 you believed the true value or fair market value of AIG's
8 stock was? That is a yes-no question.

9 A. Yes. I looked at the stock price. Yes.

10 Q. Other than looking at the stock price, did you
11 undertake any investigation or analysis to determine what
12 you believed the true value or fair market value of AIG's
13 stock was?

14 A. Other than stock market price, no.

15 MR. BOIES: Thank you.

16 I pass the witness.

17 THE COURT: All right. Redirect, Mr. Roberson?

18 MR. ROBERSON: Sure. Is there -- is this the
19 break time?

20 THE COURT: Not yet.

21 MR. ROBERSON: Not yet. Okay. I'm sorry.

22 Can I have a few moments to consult with my
23 colleagues?

24 THE COURT: Sure. I'm going to stay right here.
25 We'll go off the record briefly.

1 (Discussion off the record.)

2 THE COURT: Back on the record.

3 MR. ROBERSON: Thank you, Your Honor.

4 THE COURT: It think Mr. Boies wanted to raise one
5 more matter.

6 MR. BOIES: I just wanted to offer my
7 demonstrative.

8 THE COURT: 5403?

9 MR. BOIES: 5403, Your Honor.

10 THE COURT: All right.

11 MR. ROBERSON: I don't think I've seen it.

12 (Pause in the proceedings.)

13 No objection, Your Honor.

14 THE COURT: All right. Plaintiffs' Trial
15 Exhibit 5403 is admitted as a demonstrative.

16 (Plaintiffs' Exhibit Number 5403 was admitted into
17 evidence.)

18 THE COURT: And now we go to redirect,
19 Mr. Roberson.

20 MR. ROBERSON: Thank you, Your Honor.

21 - - - - -
22 REDIRECT EXAMINATION

23 BY MR. ROBERSON:

24 Q. Professor Saunders, do you recall yesterday

25 Mr. Boies asked you some questions about analyst reports

1 on September 17, 2008 that were included or cited in your
2 expert report?

3 A. Yes.

4 Q. Can you please turn to page 19 of your expert
5 report.

6 A. It's over here (indicating). Sorry.

7 Yeah.

8 Q. You cited a source document from Dr. Kothari, a
9 September 17 Morgan Stanley analyst report.

10 Do you see that?

11 A. Yes.

12 MR. ROBERSON: And Your Honor, just for the
13 record, we'd like to put a number to that. It's already
14 been admitted. It's PTX 1590. And I can distribute it
15 if you'd like a copy. I don't intend to ask any
16 questions.

17 THE COURT: That's fine.

18 MR. ROBERSON: Okay.

19 THE COURT: I have a record of it.

20 MR. ROBERSON: Okay.

21 BY MR. ROBERSON:

22 Q. And on the -- the second document you cite is a
23 September 17 Wachovia document.

24 May I approach, Your Honor?

25 THE COURT: Sure.

1 MR. ROBERSON: And is -- this is DX 481, and we
2 move to admit DX 481 under rule 703.

3 THE COURT: Is that the report referenced in the
4 expert report?

5 MR. ROBERSON: Correct.

6 MR. BOIES: No objection, Your Honor.

7 THE COURT: All right. Defendant's Exhibit 481 is
8 admitted with a rule 703 restriction.

9 (Defendant's Exhibit Number 481 was admitted into
10 evidence.)

11 MR. BOIES: It is I believe already in as
12 Plaintiffs' Exhibit 1592, but we don't have any objection
13 to putting it in again.

14 MR. ROBERSON: Then it's my error if that's the
15 case.

16 But I guess to be sure, if we can --

17 THE COURT: Well, let's just have it in once
18 then.

19 MR. ROBERSON: Okay. If their representation is
20 that 1592 is --

21 MR. BOIES: We'll confirm that, Your Honor, and --

22 THE COURT: All right.

23 MR. BOIES: -- we'll either leave it in or
24 withdraw it depending on whether it's an exact
25 duplicate.

1 THE COURT: All right.

2 MR. ROBERSON: Well, I was going to do the same
3 exercise with the next document, which is the
4 Credit Suisse document, labeled DX 482.

5 MR. BOIES: I have no objection to it, and
6 we'll --

7 MR. ROBERSON: We'll clear up the record between
8 us. Okay. Fair enough.

9 So let me distribute this, if I can.

10 THE COURT: 482; correct?

11 MR. ROBERSON: Yes.

12 THE COURT: Sure.

13 So Defendant's Exhibit 482, if not already
14 admitted with another number, it is admitted now with a
15 rule 703 restriction.

16 (Defendant's Exhibit Number 482 was admitted into
17 evidence.)

18 BY MR. ROBERSON:

19 Q. Just to tie this down, Professor Saunders, are
20 these the documents that you -- DX 482 and DX 481,
21 documents that you were referring to in your expert
22 report?

23 A. Yeah. The Morgan Stanley, Wachovia and
24 Credit Suisse documents.

25 MR. ROBERSON: We have no further questions,

1 Your Honor.

2 THE COURT: All right. I'm fairly -- did that
3 generate any recross?

4 MR. BOIES: I think only one question that I can
5 ask from here.

6 - - - - -
7 RECROSS-EXAMINATION

8 BY MR. BOIES:

9 Q. These analyst reports that you were just shown,
10 those were all published on September 17, 2008; correct?

11 A. That's correct, yes.

12 Q. And so those would not have been available to
13 people as of the opening of the market on that day;
14 correct, sir?

15 MR. ROBERSON: Objection, Your Honor. Published
16 on the 17th is not sure what time it is on the 17th, so
17 that's --

18 THE COURT: I'll let him answer this last
19 question.

20 THE WITNESS: I was going to say the same thing.
21 I don't know the time stamp on these documents.

22 MR. BOIES: Okay.

23 THE COURT: All right.

24 Professor Saunders, thank you very much for your
25 testimony. You are excused.

1 THE WITNESS: Thank you so much.

2 THE COURT: Why don't we take a break at this
3 point, and we'll reconvene with the next witness at
4 11:15.

5 (Court in recess.)

6 MR. DINTZER: Your Honor, we're prepared to call
7 our next witness, but right before we do, we wanted to go
8 ahead -- I believe I already moved these into evidence,
9 but we wanted to go ahead and pass these out. These are
10 the demonstratives -- this is the demonstrative used with
11 Mr. Smith when he was on the stand, DXX 039, and those
12 are already in as demonstratives I believe.

13 May I approach, Your Honor?

14 THE COURT: Yes.

15 MR. DINTZER: And with that, I'll pass the podium
16 to Ms. Acevedo.

17 THE COURT: All right.

18 MS. ACEVEDO: Good morning, Your Honor.

19 THE COURT: Welcome back to the front line.

20 MS. ACEVEDO: Thank you.

21 We would like to call our next witness,
22 Professor Robert Daines.

23 THE COURT: All right.

24 Please come forward, sir.

25 - - - - -

1 Whereupon --

2 ROBERT DAINES

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

5 MS. ACEVEDO: May I proceed, Your Honor?

6 THE COURT: Yes.

7 - - - - -

8 DIRECT EXAMINATION

9 BY MS. ACEVEDO:

10 Q. Professor, can you please state your name for the
11 record.

12 A. Robert Daines.

13 Q. And you should have two binders up there, one with
14 some exhibits that I intend to ask you about.

15 Professor Daines, if you could please turn to
16 DX 1879-A in the binder with documents, that would be
17 great.

18 A. All right.

19 Q. Are you there?

20 A. Yes.

21 Q. Can you identify this exhibit for the Court.

22 A. This is a copy of my CV.

23 MS. ACEVEDO: Your Honor, we'd like to move for
24 the admission of DX 1879-A.

25 MR. BOIES: No objection, Your Honor.

1 THE COURT: All right. Defendant's Exhibit 1879-A
2 is admitted.

3 (Defendant's Exhibit Number 1879-A was admitted
4 into evidence.)

5 BY MS. ACEVEDO:

6 Q. Professor, where do you currently work?

7 A. I'm the Pritzker Professor of Law and Business at
8 Stanford University.

9 I'm also a professor of finance, by courtesy, of
10 the Graduate School of Business at Stanford.

11 Q. Do you hold any other positions at Stanford?

12 A. I'm the codirector of the Rock Center for
13 Corporate Governance at Stanford University, and I also
14 do admissions at the law school.

15 Q. And what is the Rock Center for Corporate
16 Governance?

17 A. We do three things.

18 The first is that we promote and fund and conduct
19 high-quality research on corporate governance. Many
20 people have opinions on corporate governance and fewer
21 people have evidence of about what is good corporate
22 governance, so we try to fund and promote academic
23 research of a high quality on corporate governance.

24 The second thing we do is provide training to
25 various policymakers, regulators, journalists, boards of

1 directors, interested members of the public on corporate
2 governance, the current empirical corporate finance
3 literature that suggests what counts as good corporate
4 governance or bad corporate governance.

5 And finally, we produce classroom materials to be
6 used in business schools and law schools around the
7 country to teach the principles of corporate governance.

8 Q. How long have you been teaching at Stanford?

9 A. Ten years about.

10 Q. And how long have you been in academia overall?

11 A. A little over 17 years.

12 Q. Can you briefly describe for the Court the faculty
13 positions that you've held at other universities.

14 A. Sure.

15 I started at NYU School of Law and I taught there
16 for a number of years. Then I went for a little while to
17 Columbia where I visited and then at Yale Law School.
18 And I ultimately moved to Stanford Law School in 2004.

19 Q. Focusing on Stanford, what courses have you taught
20 at Stanford Law School?

21 A. I teach the basic corporations course and courses
22 on economic analysis of complex transactions. I teach
23 those regularly.

24 I've also taught corporate finance, taught
25 advanced courses on corporate governance and mergers and

1 acquisitions.

2 This year, I'm teaching two different courses on
3 international business transactions.

4 So I think that's the range of stuff I teach.

5 Q. Have you taught courses in the business school as
6 well as the law school?

7 A. Yeah. I've taught courses on economic analysis of
8 complex transactions and mergers and acquisitions. Some
9 of my courses are cross-listed in both the business
10 school and the law school, so I teach both students.

11 I also teach a class or help teach a class on --
12 sorry -- that introduces business school students and
13 graduate students around the university on the principles
14 of corporate governance and mergers and acquisitions and
15 empirical corporate finance that's relevant to those
16 areas.

17 Q. Do any of the courses that you mentioned cover
18 concepts that relate to your testimony in this case?

19 A. Yes. Basically every course I teach covers
20 economic analysis of corporate control, corporate
21 governance and principles of corporate finance that are
22 relevant.

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

25 A. Yes.

1 I have degrees in economics and American studies
2 from Brigham Young University, where I attended as an
3 undergraduate.

4 I then went to Yale Law School, where I graduated
5 with a JD.

6 Following Yale, I did a postgraduate fellowship
7 where I studied economic analysis of law at
8 Yale Law School before I -- before I went to Goldman --
9 sorry -- before I went into practice.

10 Q. What did you do after law school?

11 A. Well, after law school, I did this -- immediately
12 after law school, I clerked on the Second Circuit Court
13 of Appeals for Ralph Winter. And after that, I did that
14 postgraduate fellowship at Yale that I told you about.

15 And then after that, I went and worked for
16 Goldman Sachs as an associate in the investment banking
17 division, where I helped firms borrow money.

18 And then when I was finished there, I started at
19 NYU and have been in academics since then.

20 Q. Professor Daines, are you a lawyer?

21 A. No. I took and passed the bar, but I'm not
22 admitted and have never practiced law.

23 Q. What are the areas of focus in your academic
24 research?

25 A. I write primarily in corporate governance and

1 corporate finance and sometimes on the boundaries of law
2 and finance, so in that regard, I've written on the
3 market for corporate control and how corporate governance
4 mechanisms shape control of the firm and its resources.

5 So that means I write on mergers and acquisitions.
6 I've written on public disclosures, written on CEO
7 compensation, and currently writing on shareholder voting
8 and compensation, CEO compensation.

9 Q. Have you published any articles?

10 A. Yes.

11 Q. What types of journals are your articles published
12 in?

13 A. They're generally intended for finance and
14 economics audiences, sometimes again on the boundary of
15 law and finance, but I try to evaluate economic evidence
16 or arguments as they relate to complex transactions.

17 Q. Have any of your articles been peer-reviewed?

18 A. Yes.

19 Q. Do any of your articles deal with concepts that
20 relate to your testimony in this case?

21 A. Yeah. Essentially almost all the articles deal
22 with the market for corporate control, economic analysis
23 of the market for corporate control, corporate governance
24 and principles of corporate finance.

25 Q. And have any of those articles won any prizes?

1 A. Yes. One of my articles won an All Star Paper
2 award for the Journal of Financial Economics.

3 Q. Have you been asked to be a peer reviewer for any
4 journals?

5 A. Yes, I've been asked to be a peer reviewer.

6 And that's a weird word, so I'll say what it
7 means. It means to evaluate submissions to journals and
8 to recommend whether the methodology and the arguments
9 qualify -- are good enough for publication in the
10 journal.

11 And I've been asked to be a peer reviewer for,
12 you know, the primary journals in my field, Journal of
13 Financial Economics, Journal of Finance, Journal of
14 Financial and Quantitative Analysis, Journal of Legal
15 Studies, just a bunch of the primary article -- journals
16 in my field.

17 Q. Have you been invited to lecture to various
18 audiences?

19 A. Yes. I'm often asked to give talks about
20 corporate governance and relevant corporate finance
21 principles to groups of journalists or board members or
22 policymakers. I've -- I frequently am invited to do that
23 and do it fairly regularly.

24 Q. Do you provide training to corporate boards and
25 board members?

1 A. Yes.

2 Probably three or four times a year or so I'm
3 asked to provide training on corporate governance or
4 complex transactions to boards of directors, and I do it
5 two ways primarily. I'm part of a group of -- a
6 consortium it's called -- that's put together by
7 Stanford Business School, Stanford Law School, Chicago
8 Business School, and the business school at Dartmouth.

9 And as part of that consortium, I provide
10 training, you know, a couple times a year, about
11 corporate governance, empirical corporate finance that's
12 relevant, and mergers and acquisitions. And I provide
13 training to probably a couple hundred directors a year
14 that participate in these programs put on by Stanford and
15 Chicago and Dartmouth.

16 Sometimes I'm asked to provide training to
17 individual boards of directors of public firms and
18 probably -- so between those two, probably three or four
19 times a year or so and a couple hundred directors a
20 year.

21 Q. Have you been appointed by a stock exchange to
22 any position?

23 A. Yeah. I was for a few years on the Nasdaq Stock
24 Market Review Council. I'm not now.

25 Q. Have you ever testified as an expert before?

1 A. Yes.

2 Q. How many times have you testified in court?

3 A. Three times.

4 Q. How many times have you been deposed?

5 A. Probably three times a year for the last seven or
6 eight years.

7 Q. Have you ever testified as an expert in the area
8 of corporate governance or corporate finance?

9 A. Yes.

10 Q. Have you ever testified as an expert concerning
11 the economics of corporate control?

12 A. Yes.

13 Q. Has a court ever refused to accept your testimony
14 as an expert in the areas in which you were offered?

15 A. No.

16 Q. Is your compensation contingent in any way on how
17 you testify or the outcome of this litigation?

18 A. No.

19 MS. ACEVEDO: Your Honor, I would like to tender
20 Professor Daines as an expert in corporate governance,
21 corporate finance, and the economic analysis of corporate
22 control.

23 MR. BOIES: Your Honor, I don't think I have an
24 objection, but one of the questions was: Have you ever
25 testified as an expert in the area of corporate

1 governance or corporate finance? And I think it ought to
2 be clear for the record whether that is either-or or
3 both.

4 THE COURT: I think that's a good question. Can
5 you answer that?

6 THE WITNESS: Sure. Both.

7 MR. BOIES: No objection, Your Honor.

8 THE COURT: All right. Without objection, we will
9 accept Professor Daines as an expert witness in corporate
10 governance, corporate finance, and -- what was the last
11 part of that?

12 MS. ACEVEDO: The economic analysis of corporate
13 control, Your Honor.

14 THE COURT: All right. Very well. Let's go
15 ahead.

16 BY MS. ACEVEDO:

17 Q. Professor Daines, were you retained by the
18 government in this case?

19 A. Yes.

20 Q. And what was your assignment?

21 A. I was asked to review several reports from
22 Professor Zingales and to evaluate the economic evidence
23 as it related to his reports.

24 Q. What did you review in preparation for your expert
25 testimony today?

1 A. Well, I reviewed his reports and the documents
2 that he -- some of the documents that he cites or refers
3 to.

4 I reviewed my report and some of the documents
5 that I considered in that report.

6 I reviewed Professor Zingales' courtroom
7 testimony.

8 And I reviewed some other testimony that I thought
9 would be relevant for my opinion, testimony from the
10 directors of AIG, so I reviewed those.

11 And then there were some other pieces of evidence
12 or testimony that other people suggested, counsel
13 suggested I take a look at as well.

14 Q. Were there any documents that you requested from
15 counsel that you didn't receive?

16 A. No.

17 Q. Did you prepare a report setting forth your
18 opinions and the bases for your opinions in this case?

19 A. Yes.

20 Q. If I can have you take a look at the binder with
21 exhibits again, if you could please turn to DX 1878 and
22 1879, that would be terrific, and let me know when you're
23 there.

24 A. Okay. I'm there.

25 Q. Can you identify DX 1878 and 1879 for the Court.

1 A. This is my report.

2 Q. And when you say "this," is that DX 1878?

3 A. Yes.

4 Q. And how about DX 1879?

5 A. These look like the attachments or the appendix or
6 exhibits to my report.

7 MS. ACEVEDO: Your Honor, we would like to move
8 for the admission of DX 1878 and 1879.

9 MR. BOIES: I assume for the purposes that we've
10 previously indicated.

11 MS. ACEVEDO: Certainly.

12 MR. BOIES: No objection, Your Honor.

13 THE COURT: Defendant's Exhibits 1878 and 1879 are
14 admitted as expert reports and exhibits.

15 (Defendant's Exhibit Number 1878 was admitted into
16 evidence.)

17 (Defendant's Exhibit Number 1879 was admitted into
18 evidence.)

19 MS. ACEVEDO: Thank you, Your Honor.

20 BY MS. ACEVEDO:

21 Q. Have you prepared demonstrative exhibits to assist
22 you with your testimony today?

23 A. Yes.

24 Q. Now, you should have -- do your demonstratives
25 contain a summary of your opinions in this case?

1 A. Yes.

2 Q. And now, you should have a separate binder of
3 documents there, one that contains some slides.

4 A. Okay.

5 Q. If you can turn to DX 2801 in that binder.

6 Can you explain what's shown on DX 2801 to the
7 Court.

8 A. This is a summary of my opinions. And I have
9 three basic opinions.

10 The first is that Professor Zingales' analysis of
11 effective economic control is just fundamentally flawed.

12 The second is that the equity participation terms
13 that AIG got on September 22 were not materially
14 different than the terms that were approved by the board
15 resolution on September 16, so what the board authorized
16 or approved on the 16th is no material -- not materially
17 different from what they got then on the 21st or 22nd.

18 And third, that Professor Zingales' analysis of
19 the reverse stock split is fundamentally flawed.

20 Q. Okay. I'd like to talk about each of those
21 opinions, starting with your first opinion.

22 Have you prepared a slide that provides the bases
23 for that opinion?

24 A. Yes.

25 Q. And is that DX 2802?

1 A. Yes, it is.

2 Q. Can you please explain what's shown on DX 2802 to
3 the Court.

4 A. This shows three reasons why I think his analysis
5 of effective economic control is fundamentally flawed.

6 And the first is that when a board's incentives
7 are aligned with those of shareholders, then --

8 MR. BOIES: Your Honor, I'm going to object to
9 this opinion on the grounds that it's outside the scope
10 of his expertise. It's either a legal opinion or it is
11 outside the scope of his expertise.

12 THE COURT: Well, Professor Daines, since we're
13 going to have a little discussion with counsel here, can
14 I ask you to step outside just for a moment.

15 THE WITNESS: You bet.

16 THE COURT: We'll get you shortly.

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

19 THE COURT: Okay. Ms. Acevedo?

20 MS. ACEVEDO: Yes, Your Honor.

21 This is not a legal opinion. Professor Daines is
22 not offering a legal opinion in this case for the reasons
23 that he explained in his report and at his deposition.
24 And I can ask him to clarify that, but this report is --
25 this opinion is certainly not outside the scope of his

1 expertise.

2 He has been qualified in the economic analysis of
3 corporate control, corporate finance and -- I don't want
4 to get it wrong -- corporate governance, and this
5 opinion relates to all three of those topics. And it's
6 something that is directly out of his report and was
7 discussed for many, many hours at his deposition. And if
8 they had an objection to it, they could have said so
9 earlier.

10 They did not move in limine to exclude this
11 opinion on the grounds it was a legal opinion, and I
12 suspect that they did not for the reasons that
13 Professor Daines has explained to them previously. It is
14 not a legal opinion. It is grounded in the customs and
15 practice of corporate governance.

16 And the opinion that he's offering is no more
17 legal than the opinion that Professor Zingales offered to
18 Your Honor. He's a rebuttal expert to
19 Professor Zingales, and he's speaking on the same terms.

20 THE COURT: Mr. Boies?

21 MR. BOIES: Your Honor, I don't think
22 Professor Zingales offered an opinion as to what should
23 be respected.

24 He can testify about what a particular board's
25 incentives were if he has made a study. He can testify

1 about what the economic consequences are of various
2 choices. But something that says a board's decisions
3 should be respected as a matter of corporate governance
4 is either a legal opinion or it is an irrelevant
5 opinion.

6 This is a question for the Court. Whether the
7 board's decisions should have been or should not be
8 respected is a matter for the Court to decide. What the
9 board's incentives are, what the board did are all things
10 that are fair game. What the consequences were, to the
11 extent he studied and has expertise, is fair game. But
12 to go to the question of whether the board's decisions
13 should or should not be respected, I respectfully suggest
14 that's a legal question for the Court.

15 THE COURT: Well, your points I think are serious
16 ones. But I think also that since this is a bench trial,
17 I'm able to keep it all straight, and I'll decide
18 ultimately what weight, if anything, should be given to
19 this position. I mean, it --

20 MR. BOIES: I agree with that, Your Honor.

21 THE COURT: It seems like it's a restatement of
22 the business judgment rule really.

23 MR. BOIES: I think that's exactly what it is.

24 THE COURT: So it's -- in that sense, it's perhaps
25 unremarkable.

1 So let's go ahead. Let's have the witness come
2 back.

3 MS. ACEVEDO: Thank you, Your Honor.

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

6 THE COURT: Thank you for your patience,
7 Professor Daines. I think we're ready to go ahead.

8 THE WITNESS: Okay.

9 BY MS. ACEVEDO:

10 Q. If I could just back up just for a moment to
11 clarify the record.

12 Professor Daines, are you offering a legal
13 opinion?

14 A. No.

15 Q. What is the professional basis for your opinion in
16 this case?

17 A. There's a large economic literature that examines
18 the basic principles of corporate governance, that is,
19 the relationship between shareholders and the board of
20 directors.

21 And there's a large economic literature that
22 examines both the theory, that is, the theoretical
23 conditions on which the board of directors will be a
24 faithful agent or do what's in shareholders' interests,
25 and there's a large economic literature that evaluates

1 evidence about various corporate governance mechanisms,
2 which ones work, which ones don't, which ones seem to be
3 effective.

4 And I'm trying to -- the basis of my opinion
5 would be those two literatures, that is, the theoretical
6 basis for understanding directors' incentives -- and on
7 that there's been a lot of writing, articles by
8 Professors Jensen and Meckling, Jensen and Fama, who won
9 the recent Nobel Prize in economics -- and to try to
10 explain the conditions under which the board of directors
11 will act in shareholders' interest and that's the subject
12 of corporate finance and corporate governance.

13 And so those two -- it's either the analysis of
14 incentives or economic and financial evidence about which
15 corporate governance mechanisms work. And that's the
16 basis of the opinion that I'm offering about whether --
17 that we're talking about, opinion one. It's not laws.
18 It's not statutes. It's not court decisions.

19 Q. Thank you, Professor.

20 If I can have you turn back then to DX 2802, where
21 we were when we were interrupted.

22 If you can please again explain what's shown on
23 DX 2802 to the Court.

24 A. These are the three reasons why I think his
25 analysis -- and by "his" I mean Professor Zingales'

1 analysis -- of effective economic control is
2 fundamentally flawed.

3 And the first one, where we were interrupted --
4 and I guess I have to keep talking about it; right?

5 Q. Yes. If you would, please.

6 A. Okay.

7 That when a board's incentives are aligned with
8 shareholders, as a matter of corporate governance, those
9 decisions are likely to represent what's in shareholders'
10 interests and should be respected as a matter of
11 corporate governance.

12 The second is that the concept of effective
13 economic control doesn't tell us whether AIG board acted
14 in the shareholders' interest.

15 And the third is that effective economic control
16 does not mean that the government's conditions made AIG
17 worse off, that is, extracted surplus or worse off than
18 it would have been without the loan.

19 And the reason you know that is the parties agree
20 to terms and conditions that make them better off, i.e.,
21 create surplus, not extract surplus, as the board did
22 when it considered -- approved the terms of the credit
23 facility on the 16th and the credit agreement on the
24 21st.

25 Q. And I'd like to go over each one of these points

1 in more detail.

2 Can you please explain the first point on
3 DX 2802 to the Court.

4 A. I'm sorry. 20?

5 Q. The same slide, DX 2802.

6 A. I'm sorry.

7 Q. I want to review each of these points in turn, and
8 if you could just elaborate on that first point for the
9 Court, that would be great.

10 A. Yeah.

11 I understand that one of the issues in this
12 matter is whether to credit the decisions of the AIG
13 board of directors that they made on several key dates
14 or, on the other hand, whether to set them aside as being
15 controlled by the government.

16 And you know, this is something that corporate
17 governance experts think about a lot, that is, when do
18 you credit the decisions of a board or when do you
19 mistrust them as being controlled.

20 And in order to understand the answer given by
21 economic analysis, you have to understand a little more
22 about what boards of directors are for and why they're a
23 solution to a problem.

24 So, in our economy, it's typical for public firms
25 to sell shares to shareholders, and then each shareholder

Starr International Company, Inc. v. USA

1 owns a little piece of stock. And that makes them an
2 owner of the firm, but they usually don't know very much
3 about the firm.

4 If you own Apple, you don't have an incentive --
5 with just a little piece of Apple stock, you don't have
6 the incentive to figure out everything that Apple should
7 be doing to be able to give advice on important
8 decisions. And you don't have -- it's not easy for you
9 to collect and make sure that the people at Apple are
10 actually doing what they're supposed to be doing.

11 So because shareholders can't easily do that --
12 you know, you show up at Apple and say, Hey, I'm the
13 owner, I'd like to look around, you know, you get thrown
14 off, thrown off the property.

15 So what happens is, shareholders elect a board of
16 directors, and that board is supposed to do what's in the
17 interest of the shareholders. It's supposed to do two
18 things. It's supposed to make sure that the managers,
19 the people who work for Apple, work hard and don't steal,
20 so that the board is supposed to make sure that they're
21 working for the shareholders.

22 The board is also supposed to make decisions about
23 Apple's strategy and operations because, except for
24 really unusual circumstances, the shareholders don't get
25 together and have a town meeting and tell the Apple

1 managers what to do.

2 As an economic function, that's the function.

3 They're the agent of the shareholders generally.

4 Now, they may not do that; right? They may -- you
5 just have to read the newspaper to see that directors
6 sometimes act in their own interest and not in the
7 interest of shareholders. Even if they usually act for
8 shareholder interest, sometimes boards look out after
9 themselves.

10 And so corporate governance experts have spent a
11 lot of time to try to tell when are they likely to be
12 looking out for themselves or when are they likely to be
13 doing something other than serving shareholder interest,
14 are they being controlled by somebody else, so should we
15 not trust them because they're not doing the right thing
16 for shareholders.

17 And the answer is, as a matter of corporate
18 governance, that if a board of directors' incentives are
19 aligned with the interests of shareholders, then they're
20 likely to do the right thing and their decisions are
21 likely the proxies for what's in shareholder interest,
22 and as a matter of corporate governance, those decisions
23 should be respected as proper and in the interest of
24 shareholders.

25 Q. And why is that?

1 A. Well, because if their incentives are aligned with
2 shareholders and if they consider a matter and in good
3 faith make a decision, that that decision is likely to
4 represent what's in the shareholders' best interest.
5 That is, it's likely to do what boards of directors are
6 supposed to do.

7 Q. When would you question a director's ability to
8 make decisions in the best interest of the company or its
9 shareholders?

10 A. Well, if their incentives were misaligned with
11 shareholders, that is, if the directors were better off
12 whenever shareholders were worse off, that would be a bad
13 sign. Then it wouldn't be a good prox- -- their
14 decisions would not be a good proxy for the firm's
15 interest.

16 Q. Did Professor Zingales examine whether the AIG
17 board had the incentives and ability to make decisions
18 in the best interest of the company and its
19 shareholders?

20 A. No, he didn't.

21 Q. Are there factors that are commonly looked to
22 when assessing the ability of directors to make
23 decisions in the best interest of the company and its
24 shareholders?

25 A. Yes.

1 Q. And have you prepared an exhibit that identifies
2 some of those factors?

3 A. Yes, I have.

4 Q. And is that DX 2803?

5 A. Yes, it is.

6 Q. Can you please explain for the Court what's
7 demonstrated on DX 2803.

8 A. This slide explains some of the key criteria that
9 are commonly looked at in corporate governance and
10 empirical corporate finance to assess whether directors
11 are able to act in the interest of the firm and its
12 shareholders. They're not used every time. They're not
13 exhaustive. But these are key ones that are commonly
14 used.

15 And the first one is we look at a director's
16 background and where they came from, what their former
17 job was. And we look at the origins of their board
18 service, who appointed them. That might be relevant.

19 The second thing is we look at their current
20 employment and their compensation, that is, how does
21 their compensation relate to the welfare of the
22 shareholders of the firm they're on the board. Those are
23 relevant -- that might be relevant.

24 We also look at whether the directors are able to
25 get independent advice, whether they have the freedom to

1 get expert advice from the outside, to receive legal or
2 financial advice. That can be relevant in assessing
3 whether they're able to pursue or likely to pursue the
4 interests of shareholders.

5 And finally, this is a broad term, but we look at
6 a director's material relationships. And people mean
7 different things by that. Sometimes people look at,
8 you know, this in a broad sense, their social
9 relationships, their family members, do they have a
10 cousin on the other side, do they have a former college
11 roommate or something like that, so they could be broad
12 sort of social factors that might be material.

13 Or it could be material relationships, so if
14 there's a control shareholder, are you working for the
15 control shareholder or what your ties are.

16 And the goal is to try to figure out whether from
17 these mix of factors the director's incentives were
18 aligned or misaligned with those of shareholders.

19 Q. Now, you mentioned a control shareholder.

20 Does the existence of a control shareholder that
21 can remove the directors mean that as a matter of
22 corporate governance, the directors can't act in the best
23 interest of the company or its shareholders?

24 A. No. A control shareholder is relevant and may
25 affect the analysis, but that doesn't mean that the

1 directors won't do the -- make a decision that's in the
2 interest of the firm.

3 Q. I want to turn now to AIG's board.

4 Let's take a look at your next demonstrative, and
5 that's DX 2804.

6 Can you please explain for the Court what's shown
7 on DX 2804.

8 A. Yes. This is a demonstrative, and it's intended
9 to provide some insight that might be relevant in
10 assessing the incentives of the board.

11 So across the top you see three columns, the
12 credit facility on the 16th, the agreement on the 21st
13 and the reverse stock split proposal on the May 20, 2009.
14 We'll get to that, but let's look now at this first
15 column.

16 And down the first column, the rows, you'll see
17 the directors, and these are all the directors of AIG at
18 the various times I'm considering. And I have a little
19 X in this first column if they were on the board at the
20 time of when the board decided to accept the terms of
21 the facility on September 16, so just X means they're
22 there.

23 Now, they're arranged from -- in chronological
24 order, so from the time they were appointed down -- from
25 the oldest to the most recent. And there's a little line

1 here for December 16 for reasons that we'll talk about
2 later.

3 The key -- for my purposes, the key part of the
4 chart is this little blue box on the bottom. And it
5 shows that if you want to know who was on the board,
6 well, eleven of the eleven directors who approved the
7 terms of the facility were -- joined the board before the
8 government ever became involved. That's kind of a simple
9 point obviously on the 16th. That is, they were elected
10 by shareholders or appointed to serve shareholder
11 interests.

12 So on the 16th when they made the decision,
13 they -- eleven of the eleven people who voted, eleven of
14 the eleven people who were there, were all appointed by
15 shareholders and not by the government, kind of a simple
16 point.

17 Q. And I want to ask you about your conclusion
18 relating to each of the decisions that are identified on
19 the top, starting with September 16.

20 What did you conclude with respect to the board's
21 September 16 decision?

22 A. Well, just, as summarized on the bottom, that
23 eleven of the eleven people who decided to accept the
24 terms of the credit facility were appointed by -- elected
25 by shareholders or appointed to serve shareholder

1 interest. And that's -- that might be relevant in
2 assessing their incentives, right, whether they're likely
3 to do the right thing for shareholders.

4 Now, there's two things that I guess you might
5 flag here, and that's -- one is Mr. Willumstad. He's got
6 an X there because he's on the board as of that date.
7 And he votes for the terms of the credit facility even
8 though he's going to be fired if it's accepted, right, or
9 he'll resign. That's one of the terms.

10 So that's consistent with the idea that he is not
11 serving the government's interest in making this
12 decision. He's -- he's -- because he's -- because if he
13 accepts it, he's out of a job the next day.

14 And I think the other thing I might notice is that
15 I think Professor Zingales conceded in his testimony that
16 the directors were independent of the government; that
17 is, they would be free to consider the best interest of
18 AIG when making this decision, and they wouldn't be
19 considering what's in the best interest of the federal
20 government.

21 Q. Let's talk about the second decision that's
22 identified there, the credit agreement decision on
23 September 21.

24 What did you conclude with respect to the board's
25 September 21 decision?

1 A. Well, in this column you can see a bunch of Xs for
2 people who were there. There's a little dash because
3 Mr. Willumstad is no longer there, and Mr. Liddy has
4 shown up, so he's got an X there in that column.

5 And this -- the key information from my
6 perspective is summarized in that bottom blue box, which
7 is that ten of the eleven board members and nine of the
8 ten people who voted on the credit agreement, who decided
9 it was in the best interest of shareholders to accept the
10 terms of the credit agreement, were actually elected by
11 shareholders to advance shareholder interest or appointed
12 to advance shareholder interest. They weren't selected
13 by the government. They were elected before the
14 government ever came on the scene.

15 Q. Now, you can see there's an asterisk there next to
16 Mr. Orr's name.

17 What's the significance of that asterisk?

18 A. That means -- it says on the bottom it means that
19 that person wasn't there at the board meeting.

20 Q. And what is the significance of the dashed line
21 that is dated September 16, 2008 there?

22 A. Well, the dashed line means that as of that date,
23 that person is not on the board.

24 Q. Oh, I'm sorry. The dashed line under Ms. Johnson
25 and above Mr. Liddy.

1 THE COURT: The one that goes all the way across
2 the page?

3 THE WITNESS: Sorry. I was looking for the --
4 thank you. Thanks for bailing me out.

5 That long dashed line just means that person shows
6 up before the 16th if they're above the line. If they're
7 below the line, they were appointed to the board after
8 the 16th.

9 BY MS. ACEVEDO:

10 Q. Thank you.

11 A. Sorry about that.

12 Q. Just trying to make sure the record is clear.

13 Let's take a look --

14 A. It's my own exhibit. You'd think I'd be able to
15 understand it.

16 Q. Let's take a look at the last decision there.

17 Can you please explain what you concluded with
18 regard to the board's May 20, 2009 decision on the
19 reverse stock split proposal.

20 A. I'm just doing the same thing as the other
21 columns. I have Xs or dashes depending on whether these
22 people are on the board as of May 20, 2009 when the board
23 of directors decided to propose the reverse stock split
24 proposal.

25 And all that information is summarized in the blue

1 box below. The membership's turned over. But as of that
2 date, five of the seven members who voted to propose this
3 had been elected by shareholders or appointed to serve
4 shareholder interest before the government came on the
5 scene. They weren't appointed by the government because
6 they would be expected to advance the government's
7 interest; they were appointed or elected by shareholders
8 because they would be expected to advance shareholder
9 interest.

10 Q. If any directors who voted to include the reverse
11 stock split proposal in the June proxy were not standing
12 for reelection in that proxy, would that be relevant to
13 your opinion?

14 A. Yes. If somebody was stepping down after the
15 vote, you couldn't very well argue that their vote was
16 colored by their desire to remain on the board. That is,
17 you couldn't say, well, they were just voting this way
18 because they wanted to keep the government happy so that
19 they could stay on the board. It would be -- it's more
20 likely to be a sincere expression of their views on what
21 helped the shareholders.

22 And so, for example, I guess that refers to
23 Mr. Bollenbach, who was going to step down shortly. And
24 it's just hard to argue that he was going to change his
25 vote in order to stay on the board to please the

1 government when he's stepping down right after.

2 Q. Did you review the board minutes reflecting the
3 decisions that are referred to on DX 2804?

4 A. I did.

5 Q. And did you prepare a demonstrative showing what
6 you found with respect to the first decision, the
7 September 16, 2008 decision?

8 A. I did.

9 THE COURT: Before we leave this one, could I just
10 ask --

11 MS. ACEVEDO: Sure.

12 THE COURT: -- Professor Daines, what does
13 footnote 2 mean on this exhibit, inside director.

14 THE WITNESS: It means they work for AIG. When
15 they -- they park their car when they go to work at AIG.

16 Outside directors are usually people who have a
17 day job somewhere else and they just show up for board
18 meetings. The directors who are inside directors get
19 their paycheck from AIG.

20 THE COURT: Thank you.

21 MS. ACEVEDO: Thank you, Your Honor.

22 BY MS. ACEVEDO:

23 Q. Did you prepare a demonstrative exhibit showing
24 what you found with respect to the September 16 board --

25 A. I did. Surprisingly, it's the very next one.

1 Q. And is that DX 2805?

2 A. Yes.

3 Q. Can you please explain for the Court what's shown
4 on DX 2805.

5 A. Sure.

6 The exhibit we just went over show -- is showing
7 three different decisions of the board, decisions that I
8 understand are being challenged or evaluated. And these
9 are the minutes from the first of that, those meetings,
10 the September 16. And these are things that I thought
11 were relevant.

12 And it shows that there was a lengthy discussion
13 of the pros and cons of the government facility.

14 It shows they got outside advice from lawyers and
15 financial advisors.

16 They then -- each expressed their views -- that's
17 the third bullet point -- and they concluded, as it says
18 there in the third bullet point, that that was the better
19 alternative.

20 And so after this discussion, they resolved --
21 that's the fourth bullet point -- to accept the credit
22 facility on terms consistent with those described in the
23 meeting, including the equity participation equivalent to
24 79.9 percent of the common stock.

25 So these are just a summary of key things that I

1 thought were relevant in evaluating the board's actions
2 along some of the criteria we've talked about.

3 Q. Okay. Let's move on to the second decision that
4 you analyzed, the September 21 decision to enter into the
5 credit agreement.

6 Can you please turn to DX 2806.

7 A. Yes.

8 Q. And can you please explain for the Court what's
9 shown on DX 2806.

10 A. Well, these are excerpts from the minutes on the
11 21st, where it shows there was a lengthy discussion.
12 Independent advisors are present. They think that it's
13 in the best interests of the corporation of AIG and so
14 therefore passed this fourth bullet point, the resolution
15 to enter into the credit agreement, including issuing
16 preferred stock equivalent to -- or reflecting a
17 79.9 percent common stock equivalent.

18 Q. And finally, let's turn to the minutes containing
19 information on the May 20 decision to include the reverse
20 stock split in the June proposal.

21 If you can turn to 2807 and explain what's shown
22 on DX 2807 for the Court.

23 A. Just more of the same. The board considers the
24 proposal and decides to propose a reverse stock split.

25 Q. And how do the AIG board meeting minutes that are

1 reflected on DX 2805, DX 2806 and DX 2807 relate to your
2 opinion?

3 A. Well, they show, according to the minutes, the
4 board considering the alternatives and voting for
5 proposals that they believed were in the best interests
6 of AIG.

7 Q. Now, I'd like to turn to the second entry on
8 DX 2802, which is reproduced here as DX 2808.

9 As a matter of corporate governance, Professor, is
10 the concept of effective economic control helpful in
11 assessing whether the directors acted in the interest of
12 the company and its shareholders?

13 A. No, it's not.

14 Professor Zingales uses the term "effective
15 economic control," but it's important to understand what
16 he means by that and what he doesn't mean. And it's --
17 he uses it as a way to describe why the government had
18 some bargaining leverage, it was the lender of last
19 resort and why it might have been able to ask a lot of
20 AIG as a result. But it doesn't tell us whether the
21 board acted in shareholder interest.

22 Q. Why doesn't the concept of effective economic
23 control tell us whether the board acted in shareholder
24 interest?

25 A. Well, it doesn't do that in part because it's

1 trying to answer -- well, let me put it this way. It
2 doesn't tell us whether the board acts in shareholder
3 interest.

4 And maybe it would help to understand what the
5 term means. That is, if we try to use this concept as a
6 guide to shareholder welfare or whether the board
7 advanced shareholder interest, you'd end up with really
8 perverse and confusing results. And maybe I can explain
9 why that is.

10 That is, as Professor Zingales used the term
11 "effective economic control," that only comes when you
12 make somebody else better off.

13 That is, if the government's offer to AIG was a
14 lot better than bankruptcy, it would have effective
15 economic control. Well, that makes shareholders better
16 off, to have a really good alternative to bankruptcy.
17 But as the offer gets worse and worse, if it's just a
18 little better than bankruptcy, then you don't have
19 economic control.

20 So this is an unusual kind of control. That is,
21 the better off the shareholders are, the more control
22 that -- the more they're deemed to be in control, so
23 that's not a good guide to shareholder welfare.

24 In fact, if you were to then criticize the board,
25 you'd end up with this perverse finding that the better

1 the alternative was, the more they did what was right for
2 shareholders, the more they'd be controlled, and that
3 would be weird to set aside the board's -- "weird" is a
4 technical term. I hope that you understand "weird" -- it
5 would be really weird to -- I have teenagers; maybe
6 that's my problem -- it would be weird to criticize or
7 set aside the board's decisions if they were doing what
8 they were supposed to be doing.

9 That's an unusual kind of control. That is, the
10 better off you are, the better off you could be, the more
11 you're controlled. It just doesn't mean you're worse
12 off. We just have to get what kind of control that is.
13 It doesn't mean you're worse off.

14 So that's why in this bullet I say, well, it
15 doesn't tell us whether the board acted in shareholder
16 interest. That's right, but in a way, it actually
17 presumes that they're acting in shareholder interest.
18 That is, the government only has effective economic
19 control, here with quotes, as Professor Zingales is using
20 it, if the board is doing the right thing and trying to
21 get this big benefit.

22 So I just want to be clear about what control
23 means and what it doesn't mean. It's perfectly
24 consistent with the idea that AIG is better off, that the
25 board is doing the right thing, and that this is a good

1 thing for AIG. It's that kind of control we're talking
2 about. That's the kind of control that can -- that
3 Professor Zingales means.

4 Q. Now, I'd like to ask you some questions about the
5 third point on DX 2802, which is reproduced here as
6 DX 2809.

7 Can you explain this third point to the Court.

8 A. Yes. Well, as I just -- I guess maybe I've
9 already said part of it, which is economic -- effective
10 economic control does not mean that the government's
11 conditions made AIG worse off or extracted surplus.
12 That's the technical term that's sometimes used.

13 On the contrary, the fact that the parties agreed
14 to it suggests it creates surplus, that is, it makes AIG
15 better off, as the board concluded when it agreed to the
16 terms of the credit facility or the credit agreement. It
17 in fact suggests that the shareholders are better off.

18 Q. Now, I'd like to show you a portion of
19 Professor Zingales' testimony.

20 Permission to approach, Your Honor?

21 THE COURT: Yes.

22 BY MS. ACEVEDO:

23 Q. If I could direct you to page 3801 line 23 to
24 3802 line 24. If you could take a look at that and read
25 it to yourself and let me know when you're done, that

1 would be terrific.

2 (Pause in the proceedings.)

3 A. I'm sorry. Where am I supposed to stop?

4 Q. At 3802 line 24.

5 A. Okay.

6 Q. It's highlighted on the screen for you as well.

7 A. Or is it.

8 Oh, there you go. Sorry.

9 Okay. All right.

10 Q. Are you familiar with this portion of
11 Professor Zingales' testimony?

12 A. Yes.

13 Q. And in your opinion, is Professor Zingales' coffee
14 example analogous to AIG's situation on September 16,
15 2008?

16 A. No, I don't think it is.

17 Q. Why not?

18 A. Well, in this example, he has an assistant with
19 the job specifications that didn't include getting
20 coffee, and then he adds a new condition, effectively
21 renegotiating or reneging on the prior understanding.

22 And so there's an existing agreement. He's
23 renegotiating it or reneging.

24 On September 16, there's not an existing
25 agreement, an existing understanding that the federal

1 government is renegotiating or reneging on, so I think
2 they're just very different. It's hard to take an
3 example of somebody changing the terms of the contract to
4 criticize or enlighten a situation where there's no
5 contract that's been signed or when they're proposing,
6 when they're proposing the original credit facility.

7 Q. And if I could direct your attention to line 13 on
8 page 3802.

9 A. Okay.

10 Q. What do you understand Professor Zingales to mean
11 here when he says "extracting some surplus"?

12 A. Extracting surplus means -- this is economic
13 jargon, but it means making the assistant worse off.
14 They had a prior understanding, and he's able to extract
15 gains or take something that the assistant enjoyed and
16 appropriate it for himself by virtue of his position.

17 Q. Let's take a look at your next demonstrative,
18 DX 2810.

19 A. Okay.

20 Q. Can you please explain what DX 2810 demonstrates.

21 A. This is just supposed to be a picture that
22 describes what we just talked about. This shows their
23 original agreement for Professor Zingales to hire the
24 assistant.

25 And that understanding or that agreement creates

1 gains. They're gains to trade, is the way an economist
2 would say it. There's a surplus that's created.

3 And under the original job specification -- that's
4 that green horizontal line -- Professor Zingales enjoys
5 everything above that. That's the part of the exchange
6 that he gets to enjoy. That's his portion of the
7 surplus. And the assistant gets everything in blue
8 that's below.

9 So the total height of the bar is how many gains
10 are traded, and the green line divides and shows how much
11 Professor Zingales gets and how much the assistant
12 surplus get. That's the original understanding.

13 Now, if we -- I think we can advance the slide.
14 There you go.

15 There's the red horizontal line, and that's the
16 new requirements. Professor Zingales now says, You know
17 what, I think I'd like you to get my coffee, I'd like you
18 to walk my dog. And that makes the assistant worse off.
19 That is, that space between the green and the red line,
20 that is the surplus that Professor Zingales extracts.
21 That is, it was the assistant's, and now he gets it
22 because he's got new requirements, but the pay is the
23 same.

24 So that's the surplus extraction he's talking
25 about, that area there between the green and the red.

1 Q. Would it be possible for Professor Zingales to
2 get his assistant to bring him coffee or walk his dog
3 without extracting some surplus and without making the
4 assistant worse off than he was under the original
5 agreement?

6 A. Sure. He can say, You know what, I got new
7 requirements, but I'll pay you more, I'll give you a
8 raise or some other thing that you would like. And then
9 the assistant would be better off and not worse off.

10 Q. And how would you characterize that second
11 situation, where Zingales pays the assistant more to get
12 him coffee or walk his dog?

13 A. Well, the outcome would look kind of the same,
14 that is, the assistant does what he wants, but the
15 assistant is better off. That is, surplus is created,
16 not extracted. And I think that's an important
17 distinction.

18 Q. If two parties voluntarily enter into a
19 transaction, does that create surplus or extract
20 surplus?

21 A. Well, it presumably creates surplus in that
22 parties will only agree to the deal if they're better
23 off. The way to say that is it would create surplus for
24 them.

25 Q. Would your answer concerning the surplus created

1 by a voluntary transaction change if one party has more
2 bargaining power than the other?

3 A. No. No. It would still create surplus.

4 Now, bargaining power might mean that you can get
5 more of the surplus, but the -- the counterparty won't
6 agree unless it creates some surplus for them.

7 Q. Would your answer concerning surplus created by
8 voluntary transactions change if one party made a
9 take-it-or-leave-it offer?

10 A. No. The same answer. That is, you wouldn't agree
11 to the take-it-or-leave-it offer unless you were better
12 off, that is, some surplus was created for you. It might
13 affect the allocation of the surplus, but you still get
14 surplus.

15 Q. Would your answer concerning the surplus created
16 by a voluntary transaction change if there were
17 conditions attached to the offer?

18 A. No. Same answer. You wouldn't agree to it unless
19 you were better off. If you're better off, surplus is
20 created.

21 Q. Can you give us an example of an offer with
22 conditions that creates surplus?

23 A. Well, the one we just talked about. That is,
24 Professor Zingales asks for more coffee, but he's willing
25 to pay in exchange. This original agreement. These all

1 create surplus for the assistant.

2 Q. And how do these concepts that we've just been
3 discussing relate to AIG and the issues in this case?

4 A. Well, as I understand Professor Zingales'
5 testimony that we looked at, he said, you know, the
6 government extracted surplus, and he gave the coffee
7 example. But I've tried to say why the -- a voluntary
8 agreement creates surplus. It makes you better off, not
9 worse off.

10 And so AIG's agreement to the terms is
11 presumptively making them better off and not worse off as
12 the coffee assistant, the assistant is with the coffee.
13 And the way you know that is they agreed to it, and that
14 makes them better off, so it creates surplus.

15 Q. Now, I'd like to show you another portion of
16 Professor Zingales' testimony.

17 Your Honor, may I have permission to approach?

18 THE COURT: Sure.

19 BY MS. ACEVEDO:

20 Q. If I can direct you to page 3914 line 12 to
21 3915 line 11. And again, it's highlighted for you there
22 on your screen. And if you can just read that to
23 yourself and let me know when you're done, that would be
24 terrific.

25 (Pause in the proceedings.)

1 A. Okay.

2 Q. What is your reaction to this portion of
3 Professor Zingales' testimony?

4 A. Well, look at the bottom, the very bottom
5 exchange, where he says -- well, the question is, the
6 board voted for the credit facility on the 16th because
7 that was the better choice. And he says, Yeah, it's in
8 the same way in which my assistant thinks it's better to
9 bring me coffee than to be fired.

10 And my reaction is that this is not the same
11 thing. That is, in this coffee example, the assistant is
12 worse off. That's the portion of the column that he
13 extracts. That extraction means the assistant is worse
14 off. I get that.

15 But that's not what's going on, as I understand
16 it, in this question, which is, on the 16th, AIG is
17 better off and they agreed -- let me put it this way.
18 They agreed to the terms of the credit facility. That
19 agreement is -- people only agree to things when they are
20 better off, not worse off, that is, when surplus is
21 created.

22 And so I want to be clear that this surplus
23 extraction is not what we're talking about here. It's
24 not -- the agreement on the 16th is not similar to the
25 coffee example in Professor Zingales' hypothetical.

1 Q. Could the assistant decide that his job is
2 sufficiently desirable that the additional burden of
3 getting coffee is tolerable as compared to the threat of
4 unemployment?

5 A. Yeah. And as he said, it's a free market, so the
6 assistant is always free to decide, you know what, the
7 new requirements are now so onerous, I'm better off
8 looking for work elsewhere, find somebody besides the
9 evil Professor Zingales to work for.

10 Q. And how, if at all, does this example compare to
11 the AIG's board's decision on September 16?

12 A. Well, just that the board could consider other
13 alternatives, that they'd be free to consider bankruptcy
14 if they wanted to. My understanding is they decided that
15 the terms of the credit facility were preferable to
16 bankruptcy, so that means -- well, I'll stop there.

17 Q. Turning to another topic, do you understand that
18 the New York Fed was AIG's lender of last resort?

19 A. Yes, that's my understanding, that they were the
20 last one willing to lend money.

21 Q. And how might that lender of last resort status
22 have affected the government's bargaining leverage?

23 A. Well, it would give them more bargaining leverage.
24 It would give them more influence, and they would have
25 the ability to again have more leverage.

1 Q. And what's your reaction to Professor Zingales'
2 assertion that as a lender of last resort to AIG, the
3 government was a monopolist regarding the terms of the
4 loan?

5 A. Well, on its terms, fair enough. The -- there's
6 only one lender of last resort. That's the last part of
7 the last resort. There's one lender, so of course
8 there's only one, so you can say that's a monopoly.

9 But I just want to be clear. We've been talking
10 about voluntary exchanges and how -- what if the other
11 party has bargaining leverage and makes you a
12 take-it-or-leave-it offer.

13 Just to be clear, that sort of monopoly power or
14 bargaining leverage is perfectly consistent with the idea
15 that, A, AIG is better off with it than without it,
16 better off with the loan than without the loan, and B,
17 the board carefully considered options and acted in the
18 best interest of shareholders or was likely to act in the
19 best interest of shareholders, so that sort of monopoly
20 power argument is perfectly consistent with those two
21 things that I mentioned, the board doing the right thing
22 and AIG being better off with it than without it.

23 Q. Now, I'd like to show you some of
24 Professor Zingales' demonstrative exhibits.

25 If you could look in the binder that has documents

1 and turn to PTX 5048.

2 A. Okay.

3 Q. Have you reviewed this exhibit, Professor Daines?

4 A. Yes.

5 Q. Do any of the entries on this exhibit establish
6 that AIG's board did not enact the interest of AIG or its
7 shareholders or that AIG was harmed when the board voted
8 on September 16 to accept the terms of the credit
9 facility?

10 A. No. These are all consistent with the idea that
11 the board acted in the shareholders' interest and the
12 shareholders were in fact better off as a result.

13 Q. Let's take a look at PTX 5050.

14 Have you reviewed this exhibit?

15 A. Yes.

16 Q. Do any of the entries on this exhibit, PTX 5050,
17 establish that AIG's board did not act in the best
18 interest of the company or its shareholders or that AIG
19 was harmed when the board voted on September 21 to accept
20 the credit agreement?

21 A. No. These are all consistent with both the idea
22 that the board acted in shareholders' interest and that
23 the shareholders were better off with the loan than
24 without it.

25 Q. Now, you can see here in this exhibit there's a

1 reference to Mr. Liddy as the new CEO.

2 In particular, does the board's agreement to
3 accept the resignation of Mr. Willumstad and to appoint
4 Mr. Liddy as the new CEO suggest that the board did not
5 act in the interest of AIG or its shareholders or that
6 AIG was harmed?

7 A. Absolutely not. It's just -- it's a condition of
8 the loan, as I understand it, just like other conditions.
9 And the board was free to say and had the incentives to
10 make the decision on the grounds that -- to pursue AIG's
11 interest and to make the decision that best served AIG's
12 interest.

13 Q. Let's take a look at the next two PTX exhibits,
14 PTX 5055 and PTX 5056. Please review those and let me
15 know when you've had a chance to look at them. And they
16 are both there up on your screen as well.

17 A. Okay.

18 Q. Do any of the entries on either PTX 5055 or
19 PTX 5056 establish that AIG's board did not act in the
20 best interest of the company or its shareholders or that
21 AIG was harmed when the board voted on May 20, 2009 to
22 include the reverse stock split proposal in the June
23 proxy?

24 A. No. They're both consistent with -- these
25 exhibits are both consistent with the ideas you just --

1 you just asked about.

2 Q. Now, we've reviewed Professor Zingales' theory of
3 effective economic control.

4 Do you have a general reaction to that theory as
5 it relates to corporate governance?

6 A. Yes.

7 Q. What is it?

8 A. Well, he talked a lot about effective economic
9 control, and that word "control" catches our attention,
10 so it's important to know what it means and what it
11 doesn't mean. And this is an important point I think.
12 It's a really important point from my point of view.

13 That is, the kind of control he's talking about is
14 a very unusual sort of control that doesn't match what we
15 usually mean when we say the word "control" like I'm
16 controlling you and it doesn't -- it doesn't mean the
17 same thing it means in other corporate governance
18 contexts, so let me try to summarize the difference.

19 The kind of control he's talking about comes from
20 the federal government's ability to make AIG better off.
21 And it has control over AIG in that AIG would be seeking
22 to capture that benefit for its shareholders; that is,
23 the directors would be trying to get that benefit for its
24 shareholders.

25 And that's a kind of control that doesn't mean

1 I'm -- like would mean if I'm controlling you, you're
2 doing my interest and maybe at your harm I can make you
3 serve my interest rather than yours. It's not talking
4 about that kind of control. It's an unusual kind of
5 control.

6 Here's an example for why it's an unusual kind of
7 control. The kind of control he means --

8 (Admonition from the court reporter.)

9 It's exciting to me, but my wife tells me it's not
10 exciting to everybody.

11 So the kind of control he's talking about means
12 that I control you and you can control me at the same
13 time. That's an unusual kind of control. How does that
14 happen? Well, if I have something you need and you have
15 something I need, I control you, you control me.

16 So I hire a baby-sitter and I pay her a lot
17 because I just want to get one baby-sitter and have that
18 one baby-sitter, so I pay her a lot more than she gets
19 somewhere else. And then my kids really like her.

20 So I pay her a lot. I have control over her. My
21 kids really like here, so she controls me.

22 Well, that's an unusual kind of control. It's not
23 the kind of control we mean. And that's perfectly
24 consistent -- that's what he's talking about. That's the
25 kind of control he's talking about.

1 That's perfectly consistent with the idea that the
2 board was doing the right thing. That is, this is an
3 unusual kind of control. It doesn't mean that somebody
4 is being controlled and acts against their interest and
5 in somebody else's interest. That's a separate kind of
6 control and that's just not what he's talking about.

7 Now, in corporate governance, we sometimes talk
8 about this other kind of control. There's a separate
9 kind of control, and that's are the directors controlled,
10 that is, are they doing somebody else's bidding rather
11 than the shareholders. And then we're going to be
12 suspicious of that kind of director who's being
13 controlled, so not seeking shareholder interest.

14 That's not what he's talking about. And I just
15 want to be clear of the -- what control means because it
16 means very different things at very different times.

17 And he didn't consider that kind of control, the
18 kind of control he's talking about, perfectly consistent
19 with -- in fact, it presumes that the board is doing the
20 right thing for the shareholders and that the
21 shareholders are better off. Otherwise, there would be
22 no economic control.

23 Done.

24 Q. Thank you.

25 I'd like to turn to your next opinion on DX 2801,

1 which is reproduced here as DX 2811.

2 A. Okay.

3 Q. Can you please explain the second opinion to the
4 Court.

5 A. Yes.

6 In my opinion, the terms that were approved on the
7 22nd were not materially different from the terms that
8 the board approved on the 16th. As an economic matter,
9 they're materially the same thing.

10 Q. Please turn to DX 2812.

11 A. Okay.

12 Q. How is this slide related to your opinion?

13 A. Well, this is just the basis for my opinion, that
14 is, the comparison.

15 Look on the left. This is the exact words, I
16 believe -- they're supposed to be -- from the board
17 resolution on September 16. And you'll notice what the
18 board resolved, it says, well, resolved, blah, blah,
19 blah, provide 85 billion on terms consistent with those
20 described at the meeting, including -- and here's the key
21 part in bold, "equity participation equivalent to
22 79.9 percent of the common stock of the Corporation on a
23 fully diluted basis," so that's what's approved on the
24 16th.

25 Now, if we go to the right side, you look at that

1 little blue box on the right. That's the resolution on
2 the 21st. On the 21st, when they enter into the terms of
3 the credit agreement, they describe them and the bottom
4 in bold and it says "to issue preferred stock reflecting
5 a 79.9 percent common stock equivalent interest in the
6 Corporation."

7 So on the left what they approve on the 16th, on
8 the right what they approve on the 21st, and the parts
9 in bold, in my opinion as an economic matter, are
10 materially the same thing. There's no change between
11 these two.

12 Q. Okay. I want to direct your attention to some
13 trial testimony that Professor Zingales gave.

14 A. Okay.

15 Q. I'm sorry. It's already up here on the screen.
16 I've already handed it out.

17 If I can direct you to the first page I gave you
18 earlier --

19 A. Okay.

20 Q. -- which contains pages 3800 and I'd like to
21 direct your attention to line 17 to 3801 line 2.

22 A. Okay.

23 Q. What's your reaction to this testimony,
24 Professor Daines?

25 A. Well, then the question he's asked to --

1 whether -- and this is describing his assignment I
2 believe, and he's saying are there economic differences
3 between the terms approved by the Board of Governors on
4 the 16th and the terms presented on the 21st. And he
5 concludes that there are significant economic differences
6 between those two things.

7 Q. Professor Daines, there's been some testimony here
8 at trial about warrants as a possible form of equity
9 participation.

10 And I should just say, Your Honor, I understand
11 you've heard quite a bit of testimony about this. I
12 have just literally a handful of questions for the
13 professor.

14 THE COURT: That's fine.

15 BY MS. ACEVEDO:

16 Q. If I can have you turn to DX 2813, please.

17 A. Yeah. But can we go back to the slide really --
18 I'm sorry with that preamble --

19 Q. Sure. Of course.

20 A. No. The excerpt. I guess -- I think that I
21 should just make one thing clear.

22 That is, he's comparing the terms from the
23 Board of Governors on the 16th and the 21st, but
24 presumably I'm comparing the -- what the board approved
25 on the 16th -- for me, that's a relevant question, what

1 did the board approve and what did they get. And I'm
2 saying there's no difference there.

3 Does that make sense?

4 Q. Yes.

5 And when you say "board," just for clarity of the
6 record --

7 A. Sorry.

8 Q. -- you mean the AIG board --

9 A. Yes.

10 Q. -- is that right?

11 A. Yeah. What the board approved on the 16th is
12 materially the same thing as what they approve and get on
13 the 21st.

14 Q. Let's turn to DX 2813.

15 Is this a demonstrative that you prepared?

16 A. Yes.

17 Q. And Professor, what is a warrant?

18 A. In finance, it's the right to buy stock in a
19 company at a certain price for a certain time.

20 Q. Can warrants provide a holder with equity
21 participation equivalent to common stock?

22 A. Yes. Depending on the terms of the warrant.

23 Q. Please turn to DX 2814.

24 When are warrants equivalent to common stock?

25 A. Well, it depends on the terms. They can be

1 identical.

2 So if a warrant is immediately convertible into a
3 common stock, that is, I turn in my warrant and I get a
4 share of stock right away, that suggests it's identical,
5 and if I can do it at a nominal price or I can do it
6 cheaply.

7 So if I can do both things, the warrant is
8 functionally identical to common stock.

9 Q. When would a warrant not provide the holder with
10 equity participation equivalent to common stock?

11 A. Well, if I can't turn it into common stock right
12 away, that is, it's not immediately exercisable, or I
13 have to pay a lot of money to do it, it's not cheap, then
14 it's different.

15 Q. What's your understanding of the form of equity
16 participation that was provided for in the credit
17 agreement?

18 A. Preferred stock with dividends and voting rights.

19 Q. And is preferred stock with dividends and voting
20 rights equivalent to common stock?

21 A. Yes. As an economic matter, it is, if it has the
22 same rights to dividends and the same rights to voting,
23 it's the same thing.

24 Q. Was there an economically meaningful change
25 between the equity participation term approved by the

1 board on September 16 and the credit agreement?

2 A. No. As -- remember those two blue boxes I was
3 comparing. Those are the same things.

4 That is, preferred -- voting preferred with
5 dividends is one way to satisfy what the board approved
6 on the 16th that's identical.

7 Q. Let's move on to your third opinion on DX 2801,
8 which is reproduced at DX 2815.

9 Can you briefly summarize this opinion for the
10 Court.

11 A. Yeah. In my opinion, Professor Zingales'
12 analysis of the reverse stock split is fundamentally
13 flawed.

14 Q. Have you prepared a demonstrative summarizing the
15 reasons Professor Zingales' analysis of the reverse stock
16 split is fundamentally flawed?

17 A. Yes, I have.

18 Q. And is that DX 2816?

19 A. Yes, it is.

20 Q. And can you please explain for the Court what
21 DX 2816 demonstrates.

22 A. Well, these are the three reasons for my opinion.

23 And they're that -- although I believe
24 Professor Zingales testified otherwise, that the primary
25 purpose of the reverse stock split, as AIG disclosed, was

1 to increase the trading price of AIG common stock, not to
2 increase the percentage of shares that were as yet
3 unissued.

4 Secondly, again contrary to his testimony, many
5 companies conducted reverse stock splits like AIG's in
6 that they didn't reduce the number of authorized shares.
7 Many people did that same thing -- I mean companies.

8 And finally, common shareholders voted for --
9 including plaintiff, voted for the reverse stock split.

10 Q. And I'd like to focus on each of these three
11 points in turn. Let's focus on the first point.

12 Can you please explain this first point to the
13 Court.

14 A. Yes.

15 I believe there was testimony from
16 Professor Zingales that suggested that the reason for the
17 reverse stock split was to facilitate a government
18 conversion, that is, to increase the percentage of shares
19 that they had in inventory, that they could issue in the
20 future. And as I understand the proxy that's the -- AIG
21 said that's not why they were proposing it, but it was to
22 increase the stock price of AIG.

23 Q. Let's take a look at the next slide, DX 2817.

24 How is this relevant to your opinion, Professor?

25 A. Well, this is the -- an excerpt from the proxy

1 that the shareholders received and voted on. And it
2 says -- well, the primary purpose of the reverse stock
3 split is to increase the trading price, and then it says
4 some of the reasons why. It says, well, it will increase
5 the price of AIG common stock, it will allow more
6 institutional investors to invest, and importantly, the
7 last part there, it will assure that AIG's continued
8 listing -- AIG won't be delisted, so that's why we're
9 doing it, to avoid delisting.

10 Q. And you mentioned doing it to avoid delisting.
11 Why is that important?

12 A. There's a lot of academic research on this that
13 shows that when a company is delisted, that's really
14 costly for the shareholders. The shareholders lose a lot
15 of value when that happens.

16 Q. And you also mentioned that one purpose of the
17 reverse stock split would be to allow a broader range of
18 institutional investors. And I'm referring there to the
19 fourth line from either the top or bottom --

20 A. Sure.

21 Q. -- in the slide.

22 Why would allowing a broader range of
23 institutional investors to invest in AIG be an important
24 consideration?

25 A. Well, as the proxy disclosed elsewhere and as many

1 people say, institutional investors are sometimes
2 prohibited/discouraged from buying and trading in stocks
3 that are below five dollars and because it's more costly
4 for a variety of reasons.

5 And so if there are an important shareholder group
6 that can't buy your stock, it's below five dollars, or
7 that would be less likely at any rate to buy shares, they
8 may still buy them but may be less likely to, that's not
9 good for shareholders. The shareholders aren't benefited
10 from that.

11 So if you can do a reverse stock split, you
12 increase the stock price, you can avoid delisting and you
13 can get a bigger group of customers, investors.

14 Q. Are reverse stock splits common ways for companies
15 to increase their per-share trading price and avoid
16 delisting?

17 A. Yeah. It was especially common at this time, but
18 it's a common way to do it.

19 Q. Let's take a look at the next exhibit, DX 2818.

20 Can you explain for the Court what's demonstrated
21 in DX 2818.

22 A. Well, because we're talking about reverse stock
23 splits, I thought it would be useful to collect evidence
24 about reverse stock splits, open the window and look and
25 see what people do.

1 And so in this exhibit are all the examples of all
2 the firms who did reverse stock splits in 2009 that, one,
3 that were trading on the New York Stock Exchange or
4 Nasdaq and, two, that I could find data on in a commonly
5 used financial database called CRSP.

6 So these are all the reverse stock splits in
7 2009 that meet those conditions. And you can see there's
8 a column for the name. I have the date of the reverse
9 stock split, the split ratio. I've got the closing price
10 and then whether or not the reverse stock split reduced
11 the number of authorized shares. And we'll talk about
12 each of these later I guess.

13 Q. Certainly. And let's start with the trading price
14 first.

15 What is the relevance of the trading price on your
16 demonstrative?

17 A. Well, as you can see if you just go down the
18 columns on these various pages, many of the firms that
19 were proposing reverse stock splits had low trading
20 prices, and so I looked at what they said in their
21 proxies. And many of them, not all of them, but many of
22 them said, you know, our stock price is getting low. We
23 might be delisted. We're going to do a reverse stock
24 split to avoid delisting.

25 And that's consistent with AIG's descriptions in

1 the proxy that they were avoiding -- they wanted to avoid
2 delisting and they were doing a reverse stock split for
3 that reason.

4 So I think I'm saying that there are many
5 companies, the vast majority of these, not all but the
6 vast majority, had a low stock price, which is consistent
7 with the idea that a reverse stock split is a solution to
8 that problem.

9 Q. And what about the Split Ratio column?

10 A. That just shows --

11 Q. What's the importance of that column? I'm sorry.

12 A. That shows that a variety -- a variety of the
13 companies that did reverse stock splits did them on,
14 you know, relatively high split ratios like AIG's. AIG's
15 was high, but there are a number of other that also did
16 it at high ratios.

17 Q. Now, I'd like to turn to the second point on
18 DX 16, which is reproduced here as DX 19.

19 Can you briefly describe this point to the Court.

20 A. Yes.

21 This is that contrary to Professor Zingales'
22 testimony, many companies that did reverse stock splits
23 like AIG; that is, they did reverse stock splits where
24 they left the number of authorized shares alone and they
25 just did the split to the number of outstanding shares.

1 So that's -- that's different than what he said,
2 but many companies did the exact same thing.

3 Q. And you can see here on the bottom left-hand
4 corner of the slide there's some testimony that's
5 referenced.

6 A. Yes.

7 Q. And I'd like to review that testimony with you.

8 A. Okay.

9 MS. ACEVEDO: Your Honor, may I have permission to
10 approach?

11 THE COURT: Sure, if I can ask a question while
12 you're doing that.

13 MS. ACEVEDO: Sure.

14 THE COURT: Going back to your list of reverse
15 stock splits during 2009, you have a source listed as
16 CRSP. I'm not familiar with that. What is it?

17 THE WITNESS: Okay. That's a good question. It's
18 that financial database I was talking about. It's a
19 database on -- the research on security prices. That's
20 the CRSP. And it's commonly used by academics when
21 they're trying to study stock prices or security prices
22 and used -- it's probably the most commonly used in sort
23 of the financial industry and academics.

24 THE COURT: Thank you.

25 THE WITNESS: You bet. That's a good question.

1 BY MS. ACEVEDO:

2 Q. Now, Professor, if I can direct you to
3 pages 3854 line 19 to 3855 line 6, and if you could read
4 that to yourself and let me know when you're done, that
5 would be terrific.

6 (Pause in the proceedings.)

7 A. Okay.

8 Q. What's your reaction to Professor Zingales'
9 testimony?

10 A. Well, with all due respect to Professor Zingales,
11 his inability to think of a reason to do one doesn't mean
12 there isn't one.

13 My economics professors taught me, you know, go
14 collect evidence about what people do, and if people are
15 doing something, there's -- you're going to make more
16 progress if you assume they're rational and look for the
17 reasons that they're doing that rather than to assume
18 that they're irrational.

19 So I think as we're going to discuss later, there
20 are a lot of these firms on this list that are doing what
21 he says he can't think of any reason to do; that is, I
22 can't think of any reason, he says, to have a reverse
23 stock split to apply just to the issued shares and not to
24 the authorized shares.

25 Well, this exhibit, the ones with the -- let's go

1 back to --

2 Q. DX 2818?

3 A. This lists firms, and it identifies whether they
4 did what AIG did, that is, whether they -- look on this
5 far right column. It says: Does the reverse stock split
6 reduce the number of authorized shares?

7 And you can see AIG is number 3. And if you'll
8 read across the row, it says no, they didn't reduce the
9 number of authorized shares.

10 But if you look down the page, you'll see other
11 companies did the same thing, and they're all in red and
12 nos.

13 So let's go to the next page. You'll see more
14 nos, on the next page more nos.

15 So the fact that he couldn't think of one doesn't
16 mean there isn't one. In fact, a lot of the firms here
17 are doing that.

18 Q. Let's take a look at some more testimony from
19 Professor Zingales.

20 A. Okay.

21 Q. And it's contained on pages 3800 to 3803. It's
22 the first handout that I gave you with testimony.

23 A. Okay.

24 Q. And I'd like to direct you to 3800-3 to 13.

25 Oh, I'm sorry. Did I say 3800? I misspoke.

1 3801. I'm sorry. 3801-3 to 13. My apologies.

2 A. I was lost.

3 Q. Charles was --

4 A. Saving you.

5 Q. Yes. He put the correct testimony on the screen.

6 I apologize. I misspoke.

7 A. Okay.

8 (Pause in the proceedings.)

9 Okay.

10 Q. What's your reaction to this testimony?

11 A. Well, this is dead wrong. That is, he says, well,
12 the fact that the reverse stock split did not -- was
13 applied just to the issued shares and not to the
14 authorized shares, unissued shares, is not explainable in
15 any other way -- that's a strong statement -- other than
16 that the government wanted to bypass a vote by common
17 shareholders. If you do it, that's got to be the reason.
18 It's the government control.

19 Well, if we go back to the slide, there are a lot
20 of companies not controlled by the government, and
21 they're doing it. It just can't be. It just can't be
22 that the only reason for doing this is because the
23 government is facili- -- controlling and facilitating a
24 conversion or some other plot to avoid shareholder votes.
25 It's just --

1 THE COURT: Sir, based upon what you know about
2 the facts of this case, could that be a reason? Not that
3 it was, but could it have been a reason for doing it that
4 way?

5 THE WITNESS: So I -- I haven't looked at the
6 evidence to try to see whether that's consistent with
7 the evidence. I suspect that's a matter that the
8 parties are disagreeing about, how to interpret the
9 evidence.

10 A reverse stock split of this kind would
11 certainly give AIG enough shares in reserve to
12 facilitate a conversion, but as to whether or not it
13 was, I don't know.

14 All I can observe is the -- what everybody else
15 is doing, and they're doing the same thing for reasons
16 that are unrelated. And in fact, they give different
17 reasons that are -- that are not related to -- sorry --
18 that aren't sort of made up to justify AIG's reverse
19 stock split. There are reasons that other parties give
20 it.

21 But yes, it would facilitate any conversion that
22 needed more than a certain number of shares.

23 THE COURT: Thank you.

24 THE WITNESS: Yeah.

25 THE COURT: Let's take a lunch break.

1 MS. ACEVEDO: Certainly, Your Honor.
2 THE COURT: We'll reconvene at 1:45.
3 (Whereupon, at 12:45 p.m., a lunch recess was
4 taken.)
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1 reasons that were related to the general proposition that
2 it was useful for them to have additional shares for
3 financial flexibility, that it would help them be
4 valuable in case they needed extra shares in connection
5 with a financing or some transaction or employee
6 compensation.

7 So some -- when they gave an answer, it was an
8 answer that was, well, it's useful to have more shares in
9 case we need it and that was valuable.

10 Q. Have you prepared an exhibit that summarizes the
11 results of your study of reverse stock splits in 2009?

12 A. Yes.

13 Q. And is that DX 2020 -- or 2820? I'm sorry.

14 A. 2820 it is.

15 Q. And can you please explain for the Court what's
16 demonstrated in DX 2820.

17 A. These are just summary descriptive statistics of
18 what I found in that sample of all the other firms on the
19 exchanges that did reverse stock splits.

20 And it shows that roughly a third, 32 percent of
21 them, were similar to AIG in that they did not reduce the
22 number of authorized shares for reasons I've just
23 described. You know, a lot of them, 92 percent, had low
24 stock prices below the 5 percent that we mentioned and
25 that AIG's proxies disclosed and that the average reverse

1 stock split ratio was 1-for-8.

2 Q. And you I believe you said prices below 5 percent.

3 Did you mean prices below \$5?

4 A. Oh, yeah. Sorry.

5 Q. That's fine. I just want to make sure the record
6 is clear.

7 A. And while we're clearing up my mistakes --

8 Q. Certainly.

9 A. I'm sure we'll have an opportunity to clear up
10 more of them shortly.

11 But I was thinking about my answer to your
12 question, and it just was bugging me, so can I try it
13 again (addressing the Court)?

14 That is, I couldn't remember whether you'd asked
15 about whether it was possible for this to facilitate a
16 conversion or an exchange. And if the answer was for an
17 exchange, the simple answer is yes, it's possible. And
18 if it was for a conversion of the shares, then I would
19 have a -- then I would say not really because there would
20 still be other problems.

21 So the simple answer is yes for an exchange, not
22 so much for just a conversion.

23 THE COURT: I don't think I asked you about that,
24 but --

25 THE WITNESS: Oh.

1 THE COURT: -- as I remember, the question came
2 up when you were explaining that you saw only the one
3 reason for the reverse stock split, namely, to avoid
4 delisting, and you were saying that you didn't really
5 know much about any other reason, and that's when I
6 decided to ask you, well, could it have been a reason to
7 allow for the conversion or exchange of the preferred
8 stock.

9 THE WITNESS: Right.

10 And so the answer is no on the conversion. If
11 they were just going to -- you can't just -- even with a
12 reverse stock split, you couldn't have just converted
13 them into common because there's still that par problem,
14 as I remember. That would have required a different
15 vote, so no on a conversion. But a simple exchange, the
16 answer is yes.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: That's my understanding anyway.

19 BY MS. ACEVEDO:

20 Q. And just to clarify, what is your understanding of
21 why AIG did the reverse stock split?

22 A. Well, they disclosed in their proxy that it was,
23 A, to avoid the cost of delisting and, B, to increase the
24 stock price to attract more investors. There are certain
25 institutional investors who couldn't buy or would be less

1 likely to buy probably.

2 Q. And did AIG's proxy statement also disclose what
3 would happen to AIG's various categories of shares if the
4 reverse stock split was approved by its shareholders?

5 A. Yes.

6 Q. And let's turn to a document in your documents
7 binder, and that document is JX 221.

8 Can you identify this document for the Court?

9 A. This is the -- a copy of the proxy that the
10 shareholders received before the meeting in 2009.

11 Q. And if I can direct your attention to page 70 of
12 105, I'd like you to read the paragraph at the bottom of
13 the page that begins with "An overall effect of the
14 reverse stock split." If you could read that to
15 yourself and let me know when you're done, that would be
16 terrific.

17 (Pause in the proceedings.)

18 A. Okay.

19 Q. How does what's shown there in that paragraph
20 relate to your opinion?

21 A. Well, it shows that the basic facts of the
22 reverse stock split were disclosed.

23 That is, in the first sentence there, it says
24 they'll do a one-for-twenty reverse stock split, which
25 means that they'll take twenty old shares and squash them

1 into one new share. That's what the "one-for-twenty"
2 means.

3 It means that -- and then it says they have no
4 plans for the shares that would be left over, the shares
5 that would now no longer be issued.

6 And in the last line there, it says, "Any future
7 issuance will have the effect of diluting the percentage
8 of stock ownership and voting rights of the present
9 holders."

10 So the basic facts, the one-for-twenty and that
11 there would be room for additional dilution.

12 Q. And let's take a look at the next slide in your
13 demonstrative book, 2821.

14 A. Okay.

15 Q. Is this a demonstrative that you created?

16 A. Yes.

17 Q. And can you please describe for the Court what's
18 demonstrated in DX 2821.

19 A. Yes.

20 This shows the various shares of AIG and how the
21 split affected them.

22 So if we look at the middle column, this shows
23 what the basic facts were before the split. That is,
24 they had five billion shares that were authorized, that
25 is, how many shares could they issue. That's the

1 authorized share.

2 And then the next row down is issued shares. And
3 that says, well, they'd issued 60 percent of those or,
4 you know, 2.9 billion.

5 And the bottom row is just whatever is left over,
6 and that's the unissued shares. That's the shares they
7 still could issue if they wanted.

8 That's the before.

9 Then the next column is the after. And it shows,
10 well, the authorized shares stays the same. The issued
11 shares, they get squashed together at a ratio of one for
12 twenty, and so now there's only 147 million. That's
13 3 percent.

14 And then the bottom line is the remainder, and it
15 shows that 97 percent of the authorized shares which
16 didn't change are now unissued.

17 Q. I'd like to turn now to the last point on DX 2816,
18 your last reason why you believe that Professor Zingales'
19 analysis of the reverse stock split is flawed --

20 A. Okay.

21 Q. -- which is reproduced here as 2822.

22 Can you please explain this point to the Court.

23 A. Yes. Just that the common shareholders voted for
24 the split.

25 Q. And have you prepared an exhibit that describes

1 the outcome of the vote on the reverse stock split
2 proposal?

3 A. Yes.

4 Q. And is that DX 2823?

5 A. Yes.

6 Q. And can you explain for the Court what's shown on
7 DX 2823.

8 A. Well, it shows -- I have highlighted the
9 84 percent, and that just shows that 84 percent of the
10 shareholders, excluding the ones, you know, that did not
11 vote, have voted for the reverse stock split.

12 MS. ACEVEDO: Your Honor, at this time I have no
13 further questions, but I'd like to move for the admission
14 of DX 2801 to DX 2823.

15 MR. BOIES: No objection, Your Honor.

16 THE COURT: All right.

17 Defendant's Exhibits 2801 through 2823 are
18 admitted as demonstrative exhibits.

19 (Defendant's Exhibit Numbers 2801-2823 were
20 admitted into evidence.)

21 MR. BOIES: Thank you, Your Honor.

22 - - - - -

23 CROSS-EXAMINATION

24 BY MR. BOIES:

25 Q. Good afternoon, Professor Daines.

1 A. Hi.

2 Q. Hi.

3 We haven't met, but I suspect they've told you
4 that I represent the plaintiffs.

5 A. I've heard rumors to that effect.

6 Q. Let me begin by focusing on the answer that you
7 gave to the Court's question.

8 And you said that the reverse stock split would
9 enable an exchange but not enable conversion. Do you
10 recall that?

11 A. That's my understanding.

12 Q. And the reason that it might not enable conversion
13 is that in addition to having the number of authorized
14 shares that were necessary, you would have needed to
15 reduce the par value; correct?

16 A. Yes.

17 Q. So that the reverse stock split took one of two
18 necessary steps for a conversion but didn't take the
19 second; correct?

20 A. Yeah. It wouldn't have gotten you to conversion.

21 Q. But it did get you to exchange; correct?

22 A. Yes. To any exchange that required more shares.

23 Q. And of course, the exchange that was done in
24 connection with the recapitalization did require more
25 shares; correct?

1 A. Yes.

2 Q. And were you aware, in connection with your
3 examination of the corporate governance issues about
4 which you've testified, that the lawyers representing the
5 Federal Reserve and the Treasury understood that AIG had
6 represented to the Court that there would be no increase
7 in the authorized shares of the company without a class
8 vote by the common shareholders?

9 A. You mean the Court -- are you talking about the
10 Walker litigation? Is that what you're talking about?

11 Q. Yes. Yes.

12 A. Yeah. I'm aware of some of the details of that,
13 but not all of them. I'm not aware as to who knew what
14 when, but I think I'm aware of the representation you're
15 talking about.

16 Q. Okay. And just to be clear, the Walker litigation
17 was something that was brought in November of 2008;
18 correct?

19 A. That's my understanding.

20 Q. And prior to the Walker litigation, the
21 Federal Reserve Bank and the lawyers representing the
22 Federal Reserve Bank had believed that you didn't need a
23 class vote of common shareholders; correct?

24 A. I'm sorry. I don't offer an opinion about what
25 they believed or what they didn't. That's not something

1 that's relevant for my opinion.

2 Q. Did you look into that?

3 A. No.

4 Q. Did you look into the fact that the reverse stock
5 split idea of reverse -- of reverse-stock-splitting the
6 issued but not the authorized shares was something that
7 was developed after the Walker lawsuit made clear that
8 they did need a class vote in order to increase the
9 authorized number of shares?

10 A. Well, I haven't looked into the question -- the
11 origin of the idea.

12 The only thing I would add is that I don't believe
13 the Walker litigation -- again, this is my understanding.
14 I don't know that I would agree that the Walker
15 litigation made that clear. It's a -- I don't know
16 whether that was always clear. It's a pretty common --
17 it's a basic rule, so I don't know whether that has
18 anything to do with the Walker litigation making that
19 clear or not.

20 Q. In terms of it being clear, you're talking about
21 the necessity for a class vote to increase the number of
22 authorized shares?

23 A. Yes, that's what I'm talking about.

24 Q. You may not have looked at this, but did you see
25 evidence that the Federal Reserve Bank and their lawyers

1 did not agree with you that, at least before the Walker
2 litigation, that there was a necessity for a class vote
3 to increase the number of authorized shares?

4 A. That's not something I've looked into.

5 Q. With respect to the reverse stock split, is it
6 your understanding that the origins of the reverse stock
7 split are -- perhaps you said you didn't look into the
8 origins of the reverse stock split. Is that correct?

9 A. Yes, sir.

10 Q. So you don't know anything about how it
11 originated.

12 A. That's correct. I just read the proxy and
13 describe generally the reasons that are commonly given or
14 used for a reverse stock split, but I don't have any
15 opinion about who thought of what when.

16 Q. You do understand that the only reason to do a
17 reverse stock split of issued shares but not authorized
18 shares is to effectively increase the number of
19 authorized but unissued shares.

20 A. I don't, no. Not at all.

21 Q. Really?

22 A. Yeah.

23 Q. What other reasons do you know of?

24 A. Well, the reasons we discussed in my direct, that
25 is -- oh, sorry. The reverse stock split has other

1 reasons. Maybe I misunderstood you. That is, that's to
2 increase the stock price and to be attractive to more
3 investors.

4 Is that what you're saying? Did I mis- --

5 Q. I think we just --

6 A. Okay. My bad.

7 Q. No. My question may have been unclear.

8 There are many reasons to have a reverse stock
9 split that are related to increasing the trading price of
10 a stock; correct?

11 A. Yes.

12 Q. But the only reason to have a reverse stock split
13 of issued shares but not authorized shares is to
14 increase the number of authorized but unissued shares;
15 correct?

16 A. Well, that's the effect, right. I don't know that
17 I would say that's the reason. But that is the effect.

18 Q. Although the majority of companies that do
19 reverse stock splits reverse both authorized and issued
20 shares, you've noted that there are some companies that
21 reverse-stock-split only the issued shares but not the
22 authorized shares; correct?

23 A. Yes.

24 Q. In those cases, the only reason to do that is to
25 increase the number of authorized but unissued shares;

1 correct?

2 A. I'd say that's the reason that's most commonly
3 given, is the financial flexibility that comes from
4 having more shares in inventory, so to speak.

5 Some people do say that there are other reasons
6 that relate to transaction planning and simplicity, that
7 it might easier to do one thing rather than two at the
8 same time. I don't have an opinion about that. But I
9 have heard that justification for only doing the issued
10 shares but not the unissued shares.

11 Q. Are you saying that it's more complicated to
12 reverse-stock-split both issued and authorized shares
13 than it is to reverse-stock-split just issued shares?

14 A. Oh, no. I said some people say that. I don't
15 have an opinion as to that myself, but I've heard other
16 people say that.

17 Q. Who have you heard say that?

18 A. I -- I've heard lawyers say that. I believe I
19 read deposition testimony, but I'm not -- you'll have
20 to -- well, I think I heard Reeder say that. It was in
21 deposition testimony from him.

22 Q. You read Mr. Reeder's deposition?

23 A. Yes.

24 Q. All the way through?

25 A. No.

1 Q. How did you select the portions that you read?

2 A. I -- I skimmed I think the whole thing and tried
3 to pay attention to things I thought were relevant to my
4 opinion.

5 Q. So you made the choice as to what you looked at.

6 A. Yes.

7 Q. No one --

8 A. I may have made the wrong choice but --

9 Q. Nobody gave you any selections you're saying.

10 A. I received the whole opinion -- sorry -- the whole
11 deposition and I read the parts, whatever parts I thought
12 were relevant.

13 Q. My question was, did anybody give you any excerpts
14 or selections from any of the depositions?

15 A. I don't remember.

16 Q. You don't remember?

17 A. It may have been. Separately from what I just
18 described, somebody may have said, Oh, look at this part,
19 but I don't remember any, but it could have been.

20 Q. Now, in addition to reading Mr. Reeder's
21 deposition, did you read Mr. Brandow's trial testimony?

22 A. No, sir.

23 Q. Mr. Huebner's trial testimony?

24 A. I read part of that, skimmed part of that.

25 Q. Did you read Mr. Huebner's deposition testimony?

1 A. I don't remember whether I did or not. If it's on
2 my list in my report, I did, but I don't remember doing
3 it.

4 Q. What -- how did you decide what depositions to
5 read or skim?

6 A. Well, I thought the depositions of the directors
7 were relevant, so I read those.

8 I read Professor Zingales' deposition testimony.

9 I asked for Reeder's or I -- I don't know if
10 somebody sent me Reeder's or I asked for Reeder's.

11 But nobody said read -- only read these pages. I
12 just got them and I read whatever I thought bore on my
13 testimony.

14 Q. Did you read Jacob Frenkel's deposition?

15 A. No.

16 Q. Do you know who he is?

17 A. No.

18 Q. You don't know that he was the vice chairman of
19 AIG?

20 A. No. His name sounds familiar, but I don't
21 remember his exact title.

22 Q. In addition to reading the depositions of the
23 directors, did you read the trial testimony of directors
24 who testified?

25 A. Yes, sir. I read or at least skimmed -- I don't

1 know if I read the whole things, but I read all of
2 Offit's and Liddy's and Willumstad's.

3 Q. Now, going back to the question I asked you about
4 the representations, did you -- in connection with your
5 review of Mr. Huebner's trial testimony, did you come
6 across where he discussed the Walker lawsuit?

7 A. I don't recall that.

8 Q. Did you become aware at any time, in the work that
9 you did, that the Federal Reserve Bank lawyers were aware
10 that a representation had been made to the Walker court
11 that there would be no increase in the authorized shares
12 of AIG without a shareholder vote of the common
13 shareholders voting as a class?

14 MS. ACEVEDO: Your Honor, I'm going to object to
15 the question on the grounds it's confusing and ask that
16 Mr. Boies restate it.

17 THE COURT: Well, I'll let the witness answer if
18 he understands the question.

19 MS. ACEVEDO: Thank you, Your Honor.

20 THE WITNESS: I'm not positive I do. I'm -- I
21 believe I'm aware of the representation that there would
22 not be an increase in the authorized shares without a
23 vote, if that's helpful.

24 BY MR. BOIES:

25 Q. Yes, that's helpful.

1 And were you aware that that representation was
2 not only made by the company but was known by the
3 Federal Reserve Bank's lawyers?

4 A. No. That's not something I've investigated.

5 Q. Let me -- I thought I had that here, but I don't,
6 Your Honor. If I can find it, I'll come back to it;
7 otherwise, I'll pass it.

8 You understood that the credit agreement
9 explicitly called for a shareholder vote on whether or
10 not to increase the number of authorized shares;
11 correct?

12 A. That's my understanding.

13 Q. And you're aware that after the Walker lawsuit was
14 brought, indeed two or three days after the Walker
15 lawsuit was brought, the credit agreement was amended to
16 provide that that shareholder vote would include a class
17 vote by common shareholders.

18 A. I haven't investigated the timing here. I think
19 I've said that the Walker litigation is something I'm
20 aware of, but it's not something I'm opining on. It's
21 not relevant to my opinions, so it's not something I
22 investigated about the chronology here.

23 Q. In terms of corporate governance, if it were the
24 case that the company and its majority shareholder had
25 made a representation to the Court to solve a shareholder

1 lawsuit and then worked to evade that representation,
2 that would certainly be relevant to a corporate
3 governance analysis, would it not, sir?

4 A. Well, maybe, maybe not. This sounds like a
5 disclosure problem; that is, if control shareholder says
6 X and does Y, that's a disclosure problem, for sure.

7 Are you saying that this didn't -- that there was
8 not a vote and yet the authorized shares were increased?
9 That -- did that -- are you saying that happened?

10 Q. Well, actually I'm not supposed to be saying. I
11 have said that to the Court, but in this particular
12 context --

13 A. I just gave you --

14 Q. I'm supposed to be just asking questions.

15 A. Okay.

16 Q. You do understand that there never was a common
17 shareholder class vote on increasing the number of
18 authorized shares; correct?

19 A. That's my understanding, and therefore, there was
20 no increase in authorized shares.

21 Q. When you say there was no increase in authorized
22 shares, did you review the materials from
23 Professor Saunders, another expert for the government
24 that testified here?

25 A. No.

1 Q. And it was very recent, so I assume you haven't
2 read Professor Saunders' testimony?

3 A. That's correct.

4 Q. And nobody from the Department of Justice talked
5 to you about Professor Saunders' testimony?

6 A. No. I was here for about an hour of it, so I just
7 want to be clear I heard an hour, but I haven't read
8 anything and didn't sit through very much.

9 Q. Did you sit through his testimony about his view
10 that the reverse stock split increased the number of
11 authorized shares?

12 A. No. I wasn't there for that if he said that.

13 Q. You understand that whether you characterize the
14 reverse stock split as increasing the number of
15 authorized shares, the effect of the reverse stock split
16 was to increase the number of authorized shares;
17 correct?

18 A. No. I -- no.

19 Q. No?

20 A. No. You may be misspeaking.

21 Q. As a corporate governance expert, it is your
22 testimony to this Court that the reverse stock split did
23 not have the effect of increasing the number of
24 authorized shares?

25 A. That's correct.

1 Q. Okay.

2 A. I think you may be misspeaking.

3 Q. No, I'm not misspeaking, sir.

4 A. Okay.

5 Q. I assure you I'm not --

6 A. Okay.

7 Q. -- misspeaking.

8 Let me just finish the sequence.

9 You said that you're aware that the original
10 credit agreement required a vote on increasing or whether
11 to increase the number of authorized common stock. You
12 said you understood that there was an amendment to that
13 that provided that that vote would be on a class basis
14 for the common shareholders.

15 MS. ACEVEDO: Your Honor, I'm going to object.
16 That mischaracterizes the witness' testimony. If he
17 wants to ask if he does believe that, that's fine, but I
18 really don't believe he testified to that.

19 MR. BOIES: If I've misstated, I apologize. I
20 thought he had said that, but I'll ask him directly.

21 THE COURT: Yeah, just ask him directly.

22 MS. ACEVEDO: Thank you, Your Honor.

23 BY MR. BOIES:

24 Q. You are aware that the original credit agreement
25 required a vote on increasing or whether to increase the

1 number of authorized shares of common stock; correct?

2 A. That's my understanding.

3 Q. Were you aware that there was an amendment to the
4 credit agreement that provided that that vote, that is,
5 the vote on increasing the authorized number of common
6 shares, would include a class vote for common
7 shareholders?

8 A. I -- I haven't tracked the amendments to the
9 credit agreement. That's not something that's -- I
10 focused on for my opinion.

11 Q. Were you aware that there was an amendment to the
12 credit agreement that provided that the required vote to
13 increase the authorized number of common shares would
14 include a class vote for common shareholders?

15 A. That's consistent with my understanding if -- I'm
16 happy to accept that.

17 Q. Were you aware that there was then -- after the
18 lawsuit brought by Mrs. Walker had been dismissed, there
19 was another amendment to the credit agreement to provide
20 that it would not be necessary to have a vote on
21 increasing the authorized number of common shares unless
22 the trust requested it?

23 A. Again, I don't -- since the Walker litigation
24 wasn't something that was relevant for me and my opinion,
25 I can't say on the timing. But I am familiar with the

1 general idea that the credit agreement was amended to
2 allow for more flexibility in when there would be a vote
3 if there was going to be a vote held.

4 Q. And did you reach any conclusion or draw any
5 inference from the timing of these various amendments to
6 the credit agreement?

7 A. No. Since I didn't investigate it, I don't draw
8 inferences from things I haven't investigated.

9 Q. Well, you did, though, investigate the reverse
10 stock split; correct?

11 A. That's correct. Certain elements of it.

12 That is, I earlier said I didn't investigate who
13 came up with what idea when.

14 Q. But you did investigate whether or not the reverse
15 stock split was necessary in order to accomplish the
16 exchange of shares that took place in the
17 recapitalization; correct?

18 A. I don't know if I'd say investigated it, but I
19 have that understanding.

20 Q. And the reason that the reverse stock split was
21 necessary in order to accomplish the exchange of shares
22 that took place in the recapitalization was because the
23 reverse stock split in effect increased the number of
24 authorized but unissued shares; correct?

25 A. I'm sorry. I may -- may not have heard your

1 question correctly. Are you saying -- what's the
2 predicate that you're saying? What's -- the reason that
3 what? I apologize.

4 Q. Sure.

5 The reason that the reverse stock split was
6 necessary in order to accomplish the exchange of shares
7 that took place in the recapitalization was because the
8 reverse stock split in effect increased the number of
9 authorized but unissued shares; correct?

10 A. I don't have an opinion about the exchange and
11 whether that was the reason for it or not. I believe I
12 answered questions about the effect, but the reason for
13 it I don't have an opinion on.

14 Q. My question may have been awkward, but I was not
15 asking you for the reason for the reverse stock split.

16 A. Okay. Well --

17 Q. What I was saying was that the reason the reverse
18 stock split was necessary in order to accomplish the
19 exchange of shares that took place in the
20 recapitalization was because the reverse stock split in
21 effect increased the number of authorized but unissued
22 shares; correct?

23 A. Well, I -- I'll try to give you the same -- the
24 answer. Maybe my answer will be awkward but --

25 Q. Just -- if you can't give a yes or no to that,

1 I'll -- because you think it's confusing, I'll rephrase
2 the question.

3 A. I haven't investigated the reason for the
4 exchange or much at all to do with the exchange at all.
5 I can observe the effect is to free up more unissued
6 shares, and I think that's where you may have misspoken
7 earlier.

8 Q. Let me -- let me see if I understand what you're
9 saying.

10 First, the reverse stock split in effect
11 increased the number of authorized but unissued shares;
12 correct?

13 A. Yes.

14 Q. By increasing in effect the number of authorized
15 but unissued shares, the reverse stock split made it
16 possible to do the exchange of shares that took place in
17 the recapitalization; correct?

18 A. That's my understanding.

19 Q. Okay.

20 A. As to whether -- oh.

21 Q. Let me turn to Glass Lewis.

22 You know what Glass Lewis is; correct, sir?

23 A. Yes, sir.

24 Q. What is Glass Lewis?

25 A. They are a firm that's called a proxy advisory

1 firm. They give advice on how shareholders should vote.

2 Q. And in connection with your work on this case, did
3 you review what Glass Lewis said about the reverse stock
4 split proxy statement?

5 A. I didn't read all of it, but I -- somebody showed
6 me segments or I remember reading segments.

7 Q. Who showed you these segments?

8 A. I don't remember. I don't remember if I read them
9 in a document or looked at the underlying document. I
10 just remember parts of it.

11 Q. And do you recall that Glass Lewis' analysis was
12 that it would have been preferable if the number of
13 authorized shares of the company's stock was adjusted in
14 proportion with the reverse stock split of the company's
15 issued common stock?

16 A. Yes, sir.

17 Q. Let me ask you to -- let me ask you to look at
18 Plaintiffs' Trial Exhibit 3200. And I'm going to pass
19 out the binder of documents.

20 And I apologize for the size of this. I guarantee
21 you, we're not going to go through all of them.

22 A. Oh, rats.

23 Q. I know how disappointing it is to you.

24 A. Yeah.

25 Q. But when we're preparing these binders, it's

1 before we've heard the testimony, and so we have to put
2 in there all the documents --

3 A. All the goodies?

4 Q. -- that we think we might end up using.

5 I now want to ask you to look at Plaintiffs' Trial
6 Exhibit 3200 --

7 A. Just give me a second.

8 Q. -- which is a -- and just have you identify that
9 document.

10 A. Okay. This looks like a copy of a report I
11 followed -- I filed a long time ago in a case involving a
12 firm called Cryobanks.

13 MS. ACEVEDO: Your Honor, I'd like to object to
14 the use of this exhibit on the grounds that it's hearsay.
15 This is a report that Professor Daines has issued in
16 another matter. It's an out-of-court statement that
17 presumably is being offered for its truth, and it's not
18 identified on plaintiffs' exhibit list.

19 THE COURT: Well, I assume Mr. Boies is going to
20 point him to specific statements to find out whether the
21 witness agrees, so in that respect, since this is
22 cross-examination, it hasn't been offered into evidence,
23 so I'll let it go ahead.

24 MR. BOIES: And I don't intend to offer the whole
25 document into evidence, Your Honor.

1 MS. ACEVEDO: Thank you, Your Honor.

2 BY MR. BOIES:

3 Q. In this expert report, you were talking about
4 transactions between a control shareholder and the firm
5 in which the shareholder was a controlling shareholder;
6 correct?

7 A. That's -- I believe that. It's been a long time
8 since I looked at that, but that's my rough memory, but I
9 don't remember much more than that.

10 Q. You would agree that transactions between a
11 control shareholder and the firm pose a high risk to
12 minority shareholders; correct?

13 A. A transaction between a control shareholder and
14 the firm, yes, poses a high risk to minority
15 shareholders.

16 Q. And the recapitalization was a transaction between
17 a controlling shareholder and the firm; correct?

18 A. I think I've said I haven't studied the
19 recapitalization or the exchange in any degree of
20 specificity.

21 Q. But without studying it in any level of degree,
22 you know that it was a transaction between a controlling
23 shareholder and the firm; correct?

24 A. Well, I actually don't know who it was between. I
25 understand there are -- there's the trust. There's the

1 Treasury. I don't have an opinion about whether those
2 are two things or one.

3 So I understand there was an exchange. There was
4 somebody, an entity that owned a big block of -- a
5 controlling block of the shares, but more than that, I'm
6 afraid I don't know.

7 Q. Do you know that the holder of the preferred
8 shares was the Department of Treasury in the case of the
9 E and F preferred and was a trust that the Treasury was
10 the beneficiary of for the Series C preferred?

11 A. No. Like I said, I haven't investigated these
12 other securities or the other transactions.

13 Q. You're familiar with the entire fairness doctrine;
14 is that correct?

15 A. Yes.

16 Q. And you believe that as a matter of good
17 corporate governance, in a transaction between a majority
18 shareholder and the firm, the transaction should be
19 judged by the entire fairness doctrine; correct?

20 A. Well, that's -- yeah. Generally, yes. That is,
21 it sounds like a legal conclusion, and I'm certainly not
22 offering a legal conclusion here. But in general, that's
23 customary to view that as a -- at least a transaction
24 where fairness will need to be shown.

25 Q. And as a matter of good corporate governance, the

1 relevant question in an entire fairness transaction is
2 not whether the transaction was potentially beneficial to
3 the firm, but whether the price and process adopted were,
4 in the end, entirely fair to minority shareholders;
5 correct?

6 A. Well, that sounds like a legal -- it sounds like a
7 statement of the legal rule. As a matter of corporate
8 governance, there are procedures and practices that are
9 adopted as a matter of corporate governance to try to
10 establish that. That is, that's a relevant -- that
11 that's the relevant question for minority shareholders.

12 Q. Let me ask you to look at Plaintiffs' Trial
13 Exhibit 3200 on page 5.

14 A. Okay.

15 Q. Subparagraph (e).

16 A. Okay.

17 Q. And do you see where you write there, "As a matter
18 of good corporate governance, the relevant question in an
19 entire fairness transaction is not whether the
20 transaction was potentially beneficial to the firm, but
21 whether the price and process adopted were, in the end,
22 entirely fair to minority shareholders"? Do you see
23 that?

24 A. Yes.

25 Q. And you certainly believed that at the time;

1 correct?

2 A. Yes.

3 Q. And you believe it now; correct?

4 A. Yes. With the additional flavor that I just gave
5 you in my prior answer.

6 Q. When you were making these statements in these
7 expert -- in this particular expert report, you were not
8 purporting to give legal opinions, were you?

9 A. No.

10 Q. And I take it that you are not aware from your
11 investigation one way or the other what the involvement
12 was of lawyers for the Federal Reserve Bank and the
13 Treasury in the design of the recapitalization.

14 A. That's correct.

15 Q. Let me turn to the board meeting on September 16,
16 2008 about which you testified.

17 You believe that if a board is to fulfill its
18 obligations, it must have knowledge of all of the
19 material terms of the transaction that it is being asked
20 to approve; correct?

21 A. Well, I guess yes with the following conditions or
22 clarification. That is, it's common and perfectly
23 acceptable for them to get advice about what's material
24 and what's not and summaries of what's material and
25 what's not, and it's perfectly appropriate to rely on

1 that. And -- yeah, I guess I'll stop there.

2 Q. Let me ask you to go back to Plaintiffs' Trial
3 Exhibit 3200 and this time to page 4.

4 And do you see your paragraph (c) where you talk
5 about practices and norms that have emerged that are
6 intended to protect the interests of minority
7 shareholders?

8 A. Okay.

9 Q. And the first one is "full disclosure to the board
10 of directors of all material details of the proposed
11 transaction."

12 Do you see that?

13 A. Yes, sir.

14 Q. And do you believe that the AIG board had full
15 disclosure of all the material details of the proposed
16 transaction at the time of the September 16 board
17 meeting?

18 A. That's not something I've been asked to evaluate.

19 Q. Okay.

20 A. And I'll note that in -- I don't know that this
21 changes anything, but this is a very different setting.
22 That is, I'm talking here about procedures where there's
23 a control shareholder and a conflict of interest. And I
24 don't understand that that's the facts on September 16,
25 so -- nevertheless, I haven't been asked to evaluate

1 disclosure questions.

2 Q. And by "disclosure questions" you understand I'm
3 talking about disclosure questions to the board; I'm not
4 talking about disclosure questions to the market.

5 A. Yes, sir.

6 Q. And what you're saying is that you have not
7 analyzed or investigated whether the AIG board received
8 full disclosure of all the material details of the
9 proposed transaction for the September 16 meeting; is
10 that correct?

11 A. That's correct.

12 Q. Now, you were asked a question about whether you
13 were aware that the board had been given a
14 take-it-or-leave-it offer. Do you recall that?

15 A. Yes.

16 Q. And I think you said that you were aware that
17 they'd been given a take-it-or-leave-it offer?

18 A. Yes.

19 Q. And you're also aware that the board was given
20 only a limited amount of time to consider the offer;
21 correct?

22 A. That's correct.

23 Q. Do you know whether the board even had available
24 to it a term sheet for the transaction?

25 A. Can I -- can I add to my last answer? That is, I

1 understand that they had a limited amount of time. And
2 when you say "given," I understand that there were
3 serious problems and that they were facing bankruptcy. I
4 don't know whether the time frame was constrained by the
5 government or not, so I just want to be clear. I
6 understand yes, they're limited, but I don't know whether
7 it was somebody gave them a short clock.

8 I apologize for forgetting that.

9 Q. You don't know whether the government gave them a
10 deadline?

11 A. I -- I understand that there was a deadline.

12 Q. No, but do you understand my question now is not
13 whether there was a deadline? Because you made a
14 distinction between them having a short amount of time
15 and being given a short amount of time. Do you recall
16 that just a minute ago?

17 A. Yes, sir.

18 Q. And my question to you is, do you understand that
19 the government gave the board a deadline?

20 A. Yes.

21 So that's my understanding on the 16th. I guess I
22 was thinking on the 21st when the deadline was
23 bankruptcy, which was -- that's my understanding. But
24 yes, you're right if we're talking about the 16th.
25 That's my general recollection.

1 Q. That the government had given them a couple-hours
2 deadline; correct?

3 A. I don't -- I don't remember the -- I don't
4 remember any of the details about whether -- that's my
5 general recollection, but I don't remember any details.

6 Q. Let me ask you to look at Plaintiffs' Trial
7 Exhibit 673.

8 Is this a document --

9 A. I'm sorry, I'm sorry. I'm still not there.
10 673?

11 Q. Yes.

12 A. Okay. Sorry.

13 Q. Is this a document that you've seen before?

14 A. No. I don't think so.

15 Q. Did you review documents in which Mr. Geithner
16 described what had happened on September 16?

17 A. I don't think so. I mean, I may have come across
18 something in the -- in the briefings or something in
19 connection with this, but no, I don't think so.

20 Q. Let me ask you to look at page 24 of this exhibit,
21 which is already in evidence.

22 A. Okay.

23 Q. And at line 11, Mr. Geithner says, "I get on the
24 phone with Willumstad and basically said we're going to
25 send you a term sheet, you're not going to like it, but

1 you have an hour to get your Board to approve it, two
2 hours, we gave them a deadline, and you are not going to
3 be running the company."

4 Do you see that?

5 A. I do.

6 Q. And is that consistent with your understanding of
7 the deadline that the government gave AIG on
8 September 16?

9 A. I don't have any opinion about the government's
10 deadline. I --

11 Q. That's not something you looked at.

12 A. Yes, that's correct.

13 Or the -- yeah, I don't have an opinion whether
14 there was one, how long it was and --

15 Q. Okay.

16 A. I just don't have an opinion.

17 Q. Okay.

18 Let me ask you to look at Joint Exhibit 103.

19 This is the board meeting on September 21 that you
20 referred to.

21 A. Okay.

22 Q. And first, you have gone through these minutes in
23 their entirety; correct?

24 A. Yes.

25 Q. Let me go through some portions of this with you.

1 And let me start on page 2, where -- in the first
2 substantive paragraph there in the middle of the page
3 that begins "Mr. Liddy advised the Board," do you see
4 that?

5 A. Yes.

6 Q. And Mr. Liddy goes on to say, in the third line,
7 "the Corporation will be required by the Bank," referring
8 to the Federal Reserve Bank of New York, "and the
9 Treasury Department to finalize the documentation and
10 sign the Credit Agreement before the opening of the
11 market the following day."

12 Do you see?

13 A. Yes.

14 Q. Now, as you understand it, did the board even have
15 a copy of the credit agreement at that time?

16 A. I don't have an opinion on that.

17 Q. Do you have an opinion as to whether as a matter
18 of good corporate governance it would be desirable for a
19 board to have a copy of the agreement that they are being
20 asked to approve?

21 A. Well, it sounds like as a general matter that's
22 preferable, but it's perfectly acceptable to rely on
23 summaries and it's quite common to rely on summaries from
24 outside or inside advisors.

25 Q. Is it quite common as a matter of good corporate

1 governance, in your view, for the board to rely on
2 summaries when they do not even have the agreement
3 available to them to review?

4 A. Well, then it sounds like they would have to rely
5 on a summary.

6 Am I misunderstanding?

7 Q. Do you believe that as a matter of good corporate
8 governance it's desirable that boards at least have
9 available for their review copies of agreements that they
10 are going to approve that is going to transfer
11 79.9 percent of the equity of their company to a party?

12 A. As a general matter, that sounds preferable,
13 but --

14 Q. Yes.

15 A. -- it's perfectly acceptable to rely on outside or
16 inside advice and summaries of terms.

17 Q. Do you know whether the board was given a summary
18 of terms of the credit agreement?

19 A. Well, I believe there are references here to the
20 terms and there's a resolution that discusses the terms,
21 so that's my understanding.

22 Q. Do you understand that they were given any more
23 detailed summary of the terms of the credit agreement
24 than is set forth in the resolution and the board
25 minutes?

1 A. Well, the minutes describe discussions of the
2 terms, and those are throughout the board minutes, but I
3 don't -- I don't have an opinion. I wasn't asked to
4 compare the agreement with the directors' understanding
5 of the agreement.

6 Q. I didn't ask you about --

7 A. That's not something I've investigated.

8 Q. I didn't ask you about the directors'
9 understanding of the agreement.

10 A. Okay.

11 Q. Do you understand that the board was given any
12 more detailed summary of the terms of the credit
13 agreement than is set forth in the minutes and in the
14 resolution?

15 A. I don't have an -- I don't have an opinion about
16 what they understood about all the -- or was discussed
17 about the terms of the credit agreement other than what's
18 in the minutes.

19 Q. I just want to be sure the question and answer are
20 meeting because I'm not asking about what they understood
21 or even what was discussed.

22 A. Okay.

23 Q. I'm asking whether, as you understand it, the
24 board was given any more information about the terms of
25 the credit agreement other than what is set forth in the

1 minutes and in the resolution, if you know.

2 A. Yeah, I -- that's not something I investigated,
3 the board's information on that agreement.

4 Q. Okay. Let me go back to Joint Exhibit 103.

5 The next sentence says that Mr. Liddy said that
6 the urgency was because there were indications that the
7 bank was not going to come to the aid of other troubled
8 issuers and turmoil was expected.

9 Do you see that?

10 A. Yes.

11 Q. And is that your understanding of how Mr. Liddy
12 described the urgency to sign the credit agreement before
13 the opening of the market the following day?

14 A. I have no opinion on this.

15 Q. One way or the other.

16 A. That's correct.

17 Q. Let me ask you to go to page 3.

18 Nine lines down from the top of the page?

19 A. Okay.

20 Q. Do you see a sentence that begins "It was noted"?

21 A. Yes.

22 Q. The minutes here say, "It was noted that although
23 the Board had originally been led to believe that the
24 form of equity participation by the Treasury Department
25 would be warrants, the form of equity participation to be

1 issued in connection with the Credit Agreement is now
2 proposed to be convertible preferred stock, the terms of
3 which were reflected in a term sheet delivered to Board
4 members prior to the meeting."

5 Do you see that?

6 A. I do.

7 Q. Is it consistent with your understanding that the
8 AIG board had originally been led to believe that the
9 form of equity participation by the Treasury Department
10 would be warrants?

11 A. I don't have an opinion about what the board --
12 sorry -- the board believes. I'm aware there's
13 conflicting evidence on that, and I don't see that as my
14 role to offer to find the facts there, so I haven't
15 undertaken that investigation.

16 Q. Okay. One of the things that you did say in your
17 demonstratives was that the terms on September 16 were
18 not materially different from the terms on September 21.
19 Didn't you say that?

20 A. In one particular regard, and that is in the
21 description of the equity participation interest. I'm
22 certainly not characterizing all of the terms of the
23 agreement. I haven't done that and don't offer any
24 opinion there. I'm offering only the opinions that I'm
25 offering, which are the parts that are quoted there.

1 Q. Well, let's look at Defendant's Exhibit 2812,
2 which is your demonstrative.

3 A. Okay.

4 Q. And you have emphasized in bold certain portions
5 of the two resolutions; correct?

6 A. Yes.

7 Q. For example, on the September 16 resolution you
8 have emphasized in bold the words "equity participation
9 equivalent to 79.9 percent of the common stock of the
10 Corporation on a fully diluted basis"?

11 A. Yes.

12 Q. And you have bolded for the
13 September 21 resolution the words "preferred stock
14 reflecting a 79.9 percent common stock equivalent
15 interest in the Corporation."

16 Do you see that?

17 A. Yes.

18 Q. Now, the portion that immediately precedes what
19 you have bolded in the September 16 resolution says "to
20 provide a revolving credit facility of up to \$85 billion
21 on terms consistent with those described at this meeting,
22 including," and then you begin with your bolded language;
23 correct?

24 A. Yes.

25 Q. Now, did you understand that the terms that were

1 described at the September 16 meeting were terms that
2 involved the equity participation being warrants?

3 A. No. I'm comparing the board's resolution, that
4 is, the final product of their deliberation. I'm not
5 opining on their mental states or understandings. I'm
6 saying the words that are here are the same as the
7 words -- as an economic matter, equivalent to what they
8 approve on the 21st.

9 Q. I'm not sure I understood that answer, sir.
10 The words of the AIG board resolution is that what
11 they are approving is a revolving credit facility of up
12 to \$85 billion on terms consistent with those described
13 at this meeting, including the equity participation;
14 correct?

15 A. Yes.

16 Q. And so the terms of the resolution, the words of
17 the board resolution from September 16, relate to terms
18 consistent with those described at the board meeting of
19 that day; correct?

20 A. Yes.

21 Q. And the terms that were described at the meeting
22 that day that are referred to in this board resolution
23 are terms that referenced warrants; correct?

24 A. Yes. I remember warrants being discussed. If I
25 remember correctly, the board minutes say if they're

1 warrants. And it wouldn't surprise me because warrants,
2 depending on their terms, can be economically equivalent
3 to common stock.

4 Q. Let me divert. I want to come back to the
5 resolutions --

6 A. Okay.

7 Q. -- but let me divert to follow up on what you just
8 said.

9 You said "warrants, depending on their terms, can
10 be economically equivalent to common stock."

11 And you have said that in your demonstrative,
12 Defendant's Exhibit 2814 as well; correct?

13 A. Yes. Depending on their terms.

14 Q. Were the terms that were proposed to AIG with
15 respect to warrants -- were those warrants equivalent to
16 common stock, in your view?

17 A. I don't know the terms of the warrants that were
18 described. I don't know that there were descriptions.

19 Q. Well, in order for a warrant to be equivalent to
20 common stock, in your view, a warrant must be
21 immediately exercisable at a nominal exercise price;
22 correct?

23 A. Yes.

24 Q. In the course of your investigation, did you come
25 to know whether AIG could issue warrants for 79.9 percent

1 of its common stock that would be immediately
2 exercisable?

3 A. I -- yeah. I think they could not have. I think
4 that became --

5 Q. They could not have.

6 A. It wouldn't surprise me if that became -- as I've
7 investigated it, that's -- that's my conclusion, that
8 they would not have been able to. I don't offer an
9 opinion as to whether they knew that at the time or not.

10 Q. So that any warrants that AIG issued to the
11 government in connection with the revolving credit
12 facility would be warrants that were not immediately
13 exercisable; fair?

14 A. Yeah. By the -- by the time they issued
15 warrants, they would not be. I guess I'm saying that a
16 general discussion of warrants would not answer the
17 question as to whether or not they were exercisable or
18 not and therefore equivalent or not. But I believe it's
19 obvious that in the end they couldn't exercise -- issue
20 warrants that were equivalent.

21 Maybe I garbled that answer.

22 Q. Let me just be clear.

23 On September 16, 2008, AIG could not have issued
24 warrants to the government in connection with the credit
25 facility that would have been immediately exercisable;

1 correct?

2 A. That's correct.

3 And what I don't know and I'm not offering an
4 opinion on is to whether anybody knew that. It doesn't
5 surprise me that they're discussing warrants because
6 warrants, depending on their terms, could be, but in the
7 end, it turns out AIG could not have done it -- I'm
8 sorry -- could not have issued warrants that were the
9 equivalent. But I don't know whether they knew that at
10 the time.

11 Q. Let me go back to page 3.

12 A. The minutes? Sorry.

13 Q. Yes, page 3 of the minutes, Joint Exhibit 103.

14 The last sentence of the paragraph we were looking
15 at on page 3 says, "Members of the Board noted that the
16 change from warrants to preferred stock would give the
17 Bank current voting rights and would not require
18 shareholder approval to the issuance."

19 Do you see that?

20 A. Yes.

21 Q. Does that refresh your recollection that the
22 members of the board knew at the time that any warrants
23 that they issued would require shareholder approval
24 before common stock could be issued to permit the
25 exercise of those warrants?

1 MS. ACEVEDO: Your Honor, I'm going to object as
2 confusing as to what time. These are the September 21,
3 2008 minutes, and I believe we were just having this
4 discussion with respect to the 16th. If he could just
5 clarify his question, that would be much appreciated.

6 THE COURT: I think we can put a time on it.

7 MS. ACEVEDO: Thank you.

8 BY MR. BOIES:

9 Q. You understand that at least as of September 21,
10 members of the board knew that any warrants that they
11 issued would not be immediately exercisable; correct?

12 A. Yeah. That's just what I was saying. That is, we
13 were talking earlier on the 16th. I don't know what they
14 knew then. It doesn't surprise me they were talking
15 about warrants because they might have been equivalent.
16 But by the 21st they say there's a difference, and that's
17 perfectly consistent.

18 Q. Did you see a term sheet for warrants?

19 A. No.

20 Q. No one ever gave you that?

21 A. No.

22 Q. Let me see if I understand.

23 You knew that the board believed that the
24 September 16 form of equity would be warrants; correct?

25 A. No. I'm sorry if I've given that impression. I'm

1 explicitly not offering an opinion about what the board
2 believed.

3 I'm offering an opinion about their resolution
4 that's sort of the final product of their deliberations.
5 I'm not -- I'm certainly not offering about -- a view
6 into their mental state and understanding. That's not my
7 role.

8 Q. Does that mean that when the minutes of the
9 September 21 meeting talk about a change from warrants to
10 preferred stock, that is something about which you have
11 no view?

12 A. I see the words. I know what you're talking
13 about. I don't have an opinion about whether the
14 board -- about what the board expected at what time.

15 My opinion is that comparison of what they
16 approved on the 16th and what they approved on the 21st.
17 I'm aware there's conflicting evidence about who believed
18 what and when.

19 Q. Whatever the conflicting evidence is, you don't
20 have any reason to believe that these board minutes are
21 not accurate, do you, sir?

22 A. No.

23 Q. And for purposes of your investigation and
24 analysis, do you accept the accuracy of the minutes?

25 A. Well, minutes are partial. I don't -- I don't --

1 I don't have a -- I don't have a particular example I can
2 point to to say, Ah, that part is wrong. But minutes are
3 obviously a snapshot and sometimes capture and sometimes
4 don't.

5 I mean, I understand Mr. Bollenbach testified that
6 his vote was incorrectly recorded, so -- I mean, I don't
7 want to make more out of it than that. That is, I'm not
8 objecting to that. I understand that that's what it
9 says.

10 Q. What I'm asking you, sir, is, for purposes of your
11 analysis, do you accept that the board concluded that the
12 terms of the equity participation had changed from
13 warrants to preferred stock?

14 A. I'm agnostic on that in part because I've seen
15 testimony from directors that looked contradictory to
16 that. I'm happy to explain more if you want, but in the
17 end, I don't have an opinion.

18 Q. You have given an opinion, though, that the terms
19 that were approved on September 21 were not materially
20 different than the terms that were approved on
21 September 16; correct?

22 A. As noted in the minutes.

23 That is, the description --

24 Q. Well, as noted in the minutes, I thought you just
25 told me that you didn't know whether these minutes were

1 accurate or not.

2 A. I -- I'm waiting for someone to object as
3 mischaracterizing my testimony.

4 I'm offering a description of the resolution --
5 I'm comparing two resolutions. I'm not comparing the
6 terms.

7 Q. But the resolution references the terms --

8 A. Yes.

9 Q. -- right, sir?

10 A. Yeah.

11 Q. So you can't understand what this resolution means
12 unless you know what the terms were that were described
13 at the meeting; correct?

14 A. I'm not offering an opinion about terms that
15 aren't mentioned. I'm offering opinions about the term
16 that is described, the equity participation term. That
17 is given there, and I can read it and I can give you my
18 opinion as a matter of economics and finance, and that's
19 all I'm doing.

20 Q. But as a matter of economics and finance and just
21 common sense, when the resolution says that they are
22 approving a credit facility on terms consistent with
23 those described at this meeting, including equity
24 participation equivalent to 79.9 percent, don't you have
25 to know what the terms were that were described at that

1 meeting in order to determine whether something else is
2 consistent with them? Yes or no?

3 A. Not if I'm not looking at those terms.

4 That is, there are a hundred terms. I'm not
5 looking at 99 of them. I'm looking at this phrase in the
6 board resolution.

7 Q. But the equity participation is one of the terms;
8 correct?

9 A. Correct.

10 Q. And the equity participation term has to be
11 consistent with what was described at the meeting;
12 correct?

13 A. I don't have an opinion as to whether or not the
14 resolution is accurate. I have an opinion that the
15 resolution as passed is economically equivalent to the
16 resolution on the 21st.

17 Q. Did the resolution on the 16th mention preferred
18 stock?

19 A. I don't think so.

20 Q. In your understanding, had anyone mentioned
21 preferred stock or the possibility of preferred stock on
22 September 16?

23 A. That's not something I've asked or investigated.
24 It's not part of my inquiry.

25 Q. Let me put the question this way.

1 You recognize that preferred stock is materially
2 different from the warrants that AIG could issue on
3 September 16; correct?

4 A. Yes.

5 Q. And if the September 16 resolution were read as
6 saying that what was approved there was equity
7 participation equivalent to 79.9 percent of the stock
8 consistent with the terms of that equity participation
9 described at the meeting, you would not be in a position
10 to say one way or the other whether that was materially
11 different from what was approved on September 21;
12 correct?

13 A. Well, I think I would. That is, warrants that
14 can't be immediately convertible at a nominal price are
15 not what's described in the board resolution.

16 Q. Are not described in what board resolution?

17 A. Well, the language in bold that I'm quoting. That
18 is --

19 Q. On September 16?

20 A. Yes, sir.

21 Q. Okay. What you're saying --

22 A. So I'm talking about the -- sorry. I'm talking
23 over you.

24 Q. What you're saying is that the language that you
25 have bolded from the September 16 AIG board resolution

1 about "equity participation equivalent to 79.9 percent of
2 the common stock of the Corporation on a fully diluted
3 basis" is not consistent with that equity participation
4 being warrants.

5 MS. ACEVEDO: Your Honor, we're going to object.
6 That's been asked and answered.

7 THE COURT: I'll take his answer one more time.

8 MS. ACEVEDO: Thank you, Your Honor.

9 THE WITNESS: Okay.

10 BY MR. BOIES:

11 Q. That's a yes, no, or I don't know question.

12 A. Well, now, I don't remember the question well
13 enough to give that to you. I think --

14 Q. I'll ask it again because I want to be sure that
15 you do understand the question when you answer it.

16 Is what you are saying that the language that you
17 have bolded from the September 16 board resolution about
18 equity participation equivalent to 79.9 percent of the
19 common stock of AIG is not consistent with that equity
20 participation being warrants?

21 A. Depending on the terms of the warrants. It may or
22 may not be, depending on the terms of the warrants. And
23 it depends if the warrants are immediately convertible at
24 a nominal price. If they are, that would be consistent;
25 if they're not, they would not be.

1 Q. Okay. And in the investigation and analysis that
2 you have done, you have not attempted to look at the
3 terms of the warrants that were being considered on
4 September 16; correct?

5 A. That's correct. I -- I -- I'm not investigating
6 people's understandings. I'm aware that --

7 Q. No, no, no.

8 A. Sorry.

9 Q. I'm not asking about people's understanding.

10 A. Okay.

11 Q. I'm talking about the terms of the warrant.

12 Do you understand -- even though you didn't see
13 them, do you understand that there were term sheets on
14 September 16 that talked about warrants?

15 A. I'm sorry. Maybe I misspoke.

16 I have seen term sheets from the
17 Board of Governors meeting, if that's what we're
18 talking about. They're not -- it's not part of my
19 opinion, so I don't have an opinion about that.

20 Maybe I was not clear earlier.

21 Q. I at least didn't understand that you'd seen a
22 term sheet that mentioned warrants.

23 A. Maybe I misunderstood your question.

24 Q. The term sheet that the Board of Governors
25 approved on September 16 was a term sheet where the

1 equity participation was warrants; correct?

2 A. Well, because it's not part of my opinion, I
3 don't remember exactly. I remember warrants were
4 described, but I thought it also said "to be determined,"
5 but --

6 Q. If you don't remember, you don't remember.

7 But you saw the Board of Governors term sheet;
8 correct?

9 A. Yes.

10 Q. And as you sit here now, do you remember what that
11 term sheet said about warrants?

12 A. I remember different bits, so I can't swear to
13 which one was which. I remember discussion of warrants.
14 I remember private term sheets talking about penny
15 warrants. I remember equity to be determined. But
16 sitting right here now, I can't say which phrase came up
17 on which page of which term sheet.

18 Q. Now, these phrases about penny warrants and the
19 form to be determined, were those on term sheets that you
20 saw?

21 A. As I think I mentioned, I looked at them, but
22 they're not part of my opinion, so I can't accurately
23 recall now which one shows up where.

24 Again, what I'm trying to compare is the result of
25 the board's deliberations with what they approved on the

1 22nd. And I'm aware things were changing and moving
2 fast. I just don't have an opinion on that. I don't
3 think that's my assignment.

4 Q. Did you understand that immediately after the
5 September 16 AIG board meeting there was an audit
6 committee meeting?

7 A. Yes.

8 Q. And do you know what happened at that audit
9 committee meeting?

10 A. I know what's found in their minutes. Yes.

11 Q. And based on what's found in their minutes, what
12 happened at that audit committee meeting?

13 A. They applied for an exception to the New York
14 Stock Exchange rules to be able to -- that normally call
15 for a shareholder vote in the event more than 20 percent
16 of the firm's equity is going to be sold. And that --
17 that document mentions the word "warrants."

18 Q. It not only mentions the word "warrants," but what
19 that document is is it is the audit committee's
20 approval --

21 A. Yes.

22 Q. -- of seeking an exception to the New York Stock
23 Exchange rules in order to issue warrants without a
24 shareholder vote; correct?

25 A. That's correct.

1 Q. Did that lead you to conclude that the terms that
2 had been approved by the AIG board just a few minutes
3 earlier were terms related to warrants?

4 A. No.

5 Q. Okay.

6 A. But for the reason that warrants, depending on
7 their terms, can be exactly what's described there.

8 Q. Exactly what's described where?

9 A. On the board resolution on the 16th.

10 Q. You knew that the board could not have issued
11 warrants that were equivalent to common stock; correct?

12 MS. ACEVEDO: Your Honor, that's been asked and
13 answered several times now.

14 THE COURT: As before, we'll go one more time.

15 MS. ACEVEDO: Okay. Thank you.

16 MR. BOIES: And Your Honor, I apologize, but what
17 he does he is volunteers things in response to my
18 question that seem inconsistent with what we've done
19 before.

20 BY MR. BOIES:

21 Q. Let me just ask you to focus on this question.

22 A. Okay. I think they're perfectly consistent, just
23 FYI, but I'll listen.

24 Q. Okay. I appreciate your advocacy, but your
25 role --

1 A. Oh, wow.

2 Q. -- you understand your role is as a witness here,
3 right, to answer questions?

4 MS. ACEVEDO: Object. That's a gross
5 mischaracterization, Your Honor. He's not an advocate.
6 He's an expert.

7 THE COURT: We're just going to get pass the
8 colloquy and move to the next question.

9 MS. ACEVEDO: Thank you.

10 BY MR. BOIES:

11 Q. My question, which I would ask you to answer as
12 responsively as you can without making statements that
13 you think may or may not be helpful --

14 A. Sure.

15 Q. -- you knew that the board, the AIG board, could
16 not have issued warrants in September of 2008 that were
17 equivalent to common stock; correct?

18 A. Yes, I know that.

19 Q. Okay. And if the board knew that on September 16,
20 2008, would you agree with me that the resolution that
21 they passed where they talk about terms consistent with
22 those described at this meeting would not be the same as
23 what was approved on September 21?

24 Just yes or no, and I hope that will be the end of
25 the inquiry. But I do need a yes or no to that question.

1 A. Yeah. If they -- if they could not issue
2 warrants, then that would be different -- and they knew
3 it, then there would be a difference between what they
4 knew on the 16th and what they approved on the 21st, if I
5 understand it correctly.

6 Q. There would be a difference between what they
7 approved on the 16th and what they approved on the 21st;
8 correct?

9 A. Well, you're going to object, but --

10 Q. That's a yes or no answer.

11 A. No. The --

12 Q. Okay. If you give me a no answer, sir, all I can
13 do is get your answers down.

14 A. Sure.

15 Q. And then the Court has to judge about those
16 answers.

17 But your answer to me is that even if the board
18 knew on September 16, 2008 that the warrants that were
19 being discussed at that point were not equivalent to
20 common stock, it would still be your opinion that the
21 board resolution on the 16th and the board resolution on
22 the 21st are not materially different.

23 MS. ACEVEDO: Your Honor, we're going to object.
24 That's been asked and answered.

25 THE COURT: We'll take his answer.

1 MS. ACEVEDO: Thank you.

2 THE WITNESS: My opinion --

3 BY MR. BOIES:

4 Q. And if you simply say yes or no to that, we can
5 stop the inquiry, but I've got to get a yes or no answer.
6 I've got to get your views down --

7 A. Okay.

8 Q. -- one way or the other.

9 And if you need the question back, I'll give you
10 the question back.

11 A. Let's do that.

12 Q. Okay.

13 A. I'm happy to say why I'm confused, but I can also
14 wait for the answer -- question.

15 Q. You recognize that the warrants that the board
16 could have issued on September 16, 2008 would not have
17 been equivalent to common stock; correct?

18 A. Yes.

19 Q. It is your opinion that the preferred stock that
20 was agreed to on September 21 was equivalent to common
21 stock.

22 A. Yes.

23 Q. You recognize that the board minutes at least say
24 that the board had originally been led to believe that
25 the form of equity participation would be warrants;

1 correct?

2 A. I see that sentence that you refer to.

3 Q. And despite the fact that you have a certain
4 dubiety about board of directors minutes in some cases,
5 you don't have any reason to doubt the accuracy of that
6 particular statement, do you?

7 If the answer is that you --

8 A. No. No. Though I've -- I guess I've seen
9 evidence, but I'm not making an opinion on whether it's
10 accurate or not, that seems to me to be inconsistent with
11 that, but I don't have an opinion about it.

12 Q. When the minutes say the members of the board
13 noted the change from warrants to preferred stock, do you
14 have any reason to doubt the accuracy of that?

15 A. No.

16 THE COURT: Shall we take a break, Mr. Boies?

17 MR. BOIES: Yes, Your Honor.

18 THE COURT: Let's reconvene at 3:35.

19 (Court in recess.)

20 THE COURT: Let's go ahead.

21 MR. BOIES: Thank you, Your Honor.

22 BY MR. BOIES:

23 Q. From a corporate governance standpoint, one
24 important element is who controls the shareholder vote;
25 correct?

1 A. That's important, yes.

2 Q. And indeed, as you I think testified on direct,
3 there is a market for corporate control; correct?

4 A. Yes.

5 Q. Buyers are willing to pay a premium for control;
6 correct?

7 A. Yes. Generally.

8 Q. Let me ask you to look at Plaintiffs' Trial
9 Exhibit 3248, which I would offer.

10 A. I'm sorry. What number?

11 Q. 3248.

12 THE COURT: He's handing it out.

13 THE WITNESS: Oh, sorry.

14 MS. ACEVEDO: Your Honor, this is not a document
15 that was on their exhibit list, and we'd ask that he
16 establish a foundation.

17 MR. BOIES: This is a series of e-mails from and
18 to counsel for the defendant. It is a newly produced
19 document that could not have been on our witness (sic)
20 list because we hadn't had it produced at the time.

21 THE COURT: You can go ahead, Mr. Boies.

22 MR. BOIES: Thank you.

23 BY MR. BOIES:

24 Q. This I assume is a document that you have not seen
25 before.

1 A. Correct.

2 Q. I want to direct your attention first to an e-mail
3 on page 2 of the document --

4 A. Okay.

5 Q. -- in the middle of the page.

6 It is from H. Oliver Smith, dated September 20,
7 2008 at 1:22 p.m.

8 And he writes "so presumably the charter needs to
9 be amended prior to the issuance of the preferred, but we
10 need a stockholder vote to amend so how do we get around
11 the vote?"

12 Do you see that?

13 A. Yes.

14 Q. And then Ethan James responds, "No need for a
15 shareholder vote to issue the preferred, assuming the
16 New York Stock Exchange will play ball (which we expect
17 to happen). The preferred will be able to vote to fix
18 the charter."

19 Do you see that?

20 A. I do.

21 Q. And your understanding is that because a class
22 vote was required, the preferred would not have been able
23 to vote to fix the charter; correct?

24 A. I'm not -- I am not sure I know what we're talking
25 about.

1 Q. You're not sure --

2 A. I should probably wait.

3 Q. You understood that in order to amend the charter
4 to authorize additional shares and to reduce the par
5 value of shares, a class vote of the common was required;
6 correct?

7 A. That's my understanding. But the reason for my
8 earlier answer was that some votes don't require class
9 votes, including both to fix the charter like the reverse
10 stock split. That's all.

11 THE COURT: I'm sorry, Mr. Boies. Did you offer
12 this into evidence.

13 MR. BOIES: I did, Your Honor. And I don't know
14 whether there's an objection or not.

15 MS. ACEVEDO: We had objected on the grounds that
16 it was hearsay and that it was not on their exhibit list
17 and that he had not laid a foundation with this witness
18 for asking him about it, but I understood that Your Honor
19 had overruled that objection, so I sat down.

20 THE COURT: Perhaps I wasn't specific enough, and
21 I would formally admit into evidence Plaintiffs' Trial
22 Exhibit 3248.

23 (Plaintiffs' Exhibit Number 3248 was admitted into
24 evidence.)

25 MS. ACEVEDO: Thank you.

1 BY MR. BOIES:

2 Q. Now, do I understand what you're saying is that
3 you don't understand what kind of fix to the charter is
4 being talked about here?

5 A. Well, I didn't understand the vote that your
6 question was asking about.

7 Q. Let me just direct your attention to --

8 A. Okay.

9 Q. -- the first e-mail that I showed you.

10 A. Okay.

11 Q. The one from Mr. Oliver Smith that says "so
12 presumably the charter needs to be amended prior to the
13 issuance of the preferred, but we need a stockholder vote
14 to amend so how do we get around the vote?"

15 Do you see that?

16 A. Yes.

17 Q. And then there is a response from Mr. James: "No
18 need for a shareholder vote to issue the preferred. The
19 preferred will be able to vote to fix the charter."

20 Do you see that?

21 A. Yes.

22 Q. Let me show you next Plaintiffs' Trial
23 Exhibit 3129, which is in your binder and which I would
24 offer.

25 MS. ACEVEDO: Your Honor, we have the same

1 objection as we stated earlier, that this is not an
2 exhibit that was on their exhibit list and he's not laid
3 a foundation with this witness.

4 MR. BOIES: This is a newly produced exhibit. The
5 portion I'm interested in is on pages 6 through 9 of the
6 exhibit, and that portion of the exhibit is an exchange
7 of e-mails by counsel for defendant. And I'm happy to
8 limit my offer just to those pages of the exhibit if
9 counsel would like.

10 THE COURT: Well, it's cross-examination and it's
11 a newly produced document. Under the circumstances, I
12 will admit Plaintiffs' Trial Exhibit 3129.

13 MS. ACEVEDO: Thank you, Your Honor.

14 (Plaintiffs' Exhibit Number 3129 was admitted into
15 evidence.)

16 BY MR. BOIES:

17 Q. Let me direct your attention to page 7.

18 A. Okay.

19 Q. And this is an e-mail from John Brandow of
20 Davis Polk on November 5, 2008 at 8:18 p.m.

21 Do you see that?

22 A. It carries over on to 7?

23 Q. Yes.

24 A. Okay.

25 Q. And at the top of the page on page 7, it says, "A

1 few points to make about the suit that was filed
2 yesterday."

3 And you understand that that refers to the Walker
4 lawsuit; correct?

5 A. I don't, but I'm happy to assume it. I've never
6 read this e-mail obviously, but I'm happy to assume
7 that's we're talking about.

8 Q. And you know that the Walker lawsuit was filed on
9 or about November 4, 2008; correct?

10 A. I don't. I remember it was filed in November, but
11 that's all.

12 Q. And Mr. Brandow then goes on, "Even if the
13 plaintiffs are right that the charter amendments to
14 increase the number of authorized shares and to lower the
15 par value of the common stock require a vote of the
16 common shareholders (sic) voting as a class in addition
17 to a vote of all the stockholders, the DGCL section
18 plaintiffs cite does not undermine the issuance of the
19 preferred securities themselves."

20 Do you see that?

21 A. Yes.

22 Q. And then going down two more sentences, do you
23 see where Mr. Brandow writes, "We succeeded in finding a
24 structure that allows the trust to gain control of the
25 company without a shareholder vote. If plaintiffs are

1 right, that's as much as we could do"? Do you see that?

2 A. I do.

3 Q. And in the course of your investigation and
4 analysis, did you form an opinion or reach a conclusion
5 as to the importance to the Federal Reserve of getting
6 voting control of AIG without a shareholder vote?

7 A. No.

8 Q. If warrants had been issued, the Federal Reserve
9 could not have gained control of the -- AIG without a
10 shareholder vote; correct?

11 A. That's my understanding.

12 Q. Let me ask you to look next at --

13 A. Just -- sorry. Just -- people mean different
14 things by "control" and I -- and I'm thinking here in
15 shareholder vote, control of the vote, so yeah, I'm happy
16 to say yeah.

17 Q. Let me ask you to look next at Plaintiffs' Trial
18 Exhibit 3211.

19 And this also is a newly produced document, which
20 I would offer.

21 MS. ACEVEDO: We have no objection, Your Honor.

22 THE COURT: All right. Plaintiffs' Trial
23 Exhibit 3211 is admitted.

24 (Plaintiffs' Exhibit Number 3211 was admitted into
25 evidence.)

1 BY MR. BOIES:

2 Q. And I'm going to direct your attention to the
3 e-mail on the first page, the one from John Brandow at
4 November 9, 2008 at 2:40 p.m., and the sentence at the
5 very bottom of the page that says, "My focus from the
6 start of this transaction was to find a way for the
7 trust to acquire the power to control the company
8 without having to get the consent of the common
9 stockholders."

10 Do you see that?

11 A. Yes.

12 Q. And does that indicate to you that the change from
13 warrants to preferred stock was something that was
14 important to the Federal Reserve?

15 A. I don't have any opinion about this document.

16 Q. Whether you have an opinion about the document or
17 not, does the statement here by the Federal Reserve's
18 counsel indicate to you that the change from warrants to
19 preferred was important to the Federal Reserve Bank?

20 A. Well, all I can do is read this sentence. I mean,
21 it's not talking about a change of warrants to preferred
22 and -- but I have no reason to disagree with what's here.

23 Q. Let me ask you to look at Plaintiffs' Trial
24 Exhibit 3232, which I am going to have to hand up to
25 you.

1 Which I am going to have to hand up to you later.
2 While we're getting that, let me turn to another
3 subject.

4 Actually I'm being told that I have 3232 here.

5 But whoever says that speaketh with forked tongue
6 because I don't, so let me turn to another subject.

7 In the course of your investigation and analysis,
8 you had said a number of times that the fact that there
9 is effective economic control does not mean that the
10 actions that are taken are contrary to shareholders'
11 interests; correct?

12 A. Correct.

13 Q. Have you made an independent evaluation as to
14 whether the actions that we've been talking about here,
15 the reverse stock split and the September 21 approval of
16 the credit agreement, were or were not in the interest of
17 the AIG shareholders?

18 A. No. I'm certain that the board decided that they
19 were.

20 Q. Have you made an evaluation or formed an opinion
21 as to when, if at all, the government had effective
22 economic control over AIG?

23 A. No.

24 Q. In the course of your investigation, you did come
25 to understand the role that the government played with

1 respect to AIG; correct?

2 MS. ACEVEDO: Your Honor, I'm going to object.
3 That's a very vague question, "the role that the
4 government played." If he can be more specific as to
5 what it means by "role" and time --

6 MR. BOIES: I will.

7 THE COURT: I think he will.

8 MR. BOIES: I will.

9 MS. ACEVEDO: Thank you, Your Honor.

10 BY MR. BOIES:

11 Q. You understood, for example, that as part of the
12 agreement to provide funding on September 16 that AIG had
13 agreed to accept Mr. Liddy as their chief executive
14 officer.

15 A. Yes.

16 Q. And you understood that as part of the credit
17 agreement, AIG had entered into a number of affirmative
18 and negative covenants.

19 A. Yes.

20 Q. And you understood that there were Federal Reserve
21 Bank of New York personnel and Federal Reserve Bank of
22 New York consultants who were assigned to monitor AIG;
23 correct?

24 A. I think I understand. Yes.

25 Q. And you understood that the Federal Reserve Bank

1 required that it approve a variety of statements, filings
2 and actions of AIG; correct?

3 A. I'm aware of the evidence on this, but it's not
4 something I have an opinion on. It wasn't relevant to my
5 opinion.

6 MR. BOIES: I now have Plaintiffs' Trial
7 Exhibit 3232, which is another recently produced
8 document, which I would offer.

9 MS. ACEVEDO: No objection, Your Honor.

10 THE COURT: Plaintiffs' Trial Exhibit 3232 is
11 admitted.

12 (Plaintiffs' Exhibit Number 3232 was admitted into
13 evidence.)

14 BY MR. BOIES:

15 Q. And this document goes back to the point we were
16 talking about a few minutes ago about the extent to which
17 control, voting control, without a shareholder vote was
18 important to the Federal Reserve Bank.

19 And I want to direct your attention to the e-mail
20 at the top of page 1 of this exhibit, an e-mail from
21 Mr. Huebner, dated November 6, 2008 at 6:10 p.m.

22 Do you see that?

23 A. Yes.

24 MS. ACEVEDO: Your Honor, I just want to make sure
25 the record is clear. It's to Mr. Huebner, not from

1 Mr. Huebner.

2 MR. BOIES: To Mr. Huebner from John Brandow.

3 THE COURT: Thank you.

4 MR. BOIES: Thank you.

5 BY MR. BOIES:

6 Q. And Mr. Brandow writes to Mr. Huebner, "Not to
7 complicate anyone's life given where we've gotten to, but
8 Louis Goldberg has come up with a way to avoid the
9 separate common stockholders' vote."

10 And you understand that that's the separate
11 common stockholders' vote that was the subject of the
12 Walker litigation that had been filed two days before;
13 correct?

14 A. I don't have any particular opinion on this. I'm
15 happy to take your representation, but I don't have one.

16 Q. And it goes on to say that Mr. Goldberg has
17 confirmed this approach on a no-names basis with
18 Richards Layton. "The proposal turns on the fact that
19 under Delaware law, the stockholder vote that is required
20 for a merger (which is a vote of all the stockholders
21 entitled to vote and not a class-by-class vote) would
22 also let us amend the charter. In this way we can avoid
23 the separate class vote of the common. Louis' proposal
24 is to create a new sub of AIG that will merge into AIG so
25 that AIG is the survivor. The stockholder vote that

1 approves the merger, which we will control, will also let
2 us amend the charter to change the number of authorized
3 common shares and lower their par value. Sneaky but
4 legal."

5 Do you see that?

6 A. Yes.

7 Q. And would you agree with me that this indicates
8 that avoiding a separate class vote by the common
9 shareholders is something that was quite important to the
10 Federal Reserve Bank and its counsel?

11 A. I'm just looking at this now. I don't have an
12 opinion about the Federal Reserve Bank's priorities or
13 and certainly don't want to offer an opinion based on an
14 e-mail I've just seen.

15 Q. Do you know who Mr. Brandow and Mr. Huebner are?

16 A. I think what -- I think we've said earlier that
17 they were counsel for Davis Polk.

18 Q. Other than what may have been suggested to you
19 during this examination, did you know who they were?

20 A. I knew the name Marshall Huebner but not
21 John Brandow.

22 Q. And assuming that Mr. Brandow is Mr. Huebner's
23 partner, you know that Davis Polk, their law firm, was
24 representing the Federal Reserve Bank of New York;
25 correct?

1 A. That's my understanding.

2 Q. And assuming that this is, as I think we've all
3 stipulated, an authentic e-mail, does that give you an
4 indication that avoiding a class shareholder vote was
5 important to the Federal Reserve Bank and its lawyers?

6 A. So I see this e-mail. I see -- obviously I can
7 read it. But since I haven't studied how this e-mail
8 fits into Davis Polk's own internal debate, I assume they
9 didn't arrive at the solution instantly, and so I just --
10 I just wouldn't want to characterize one e-mail out of a
11 complex process.

12 Q. Let me try one more and then -- which is
13 Plaintiffs' Trial Exhibit 3259, which is another recently
14 produced document, which I would offer.

15 MS. ACEVEDO: No objection, Your Honor.

16 THE COURT: Plaintiffs' Trial Exhibit 3259 is
17 admitted.

18 (Plaintiffs' Exhibit Number 3259 was admitted into
19 evidence.)

20 BY MR. BOIES:

21 Q. Now, I want to start at the bottom of page 1 with
22 the e-mail from Michael Leahy, dated November 5, 2009 at
23 9:36.

24 Do you see that?

25 A. I'm sorry. At the bottom of page 1 -- yes.

1 Q. And the subject is "New Complaint"?

2 A. Yes.

3 Q. And it says, "Here is a copy of the new
4 shareholder complaint filed last night in Delaware."

5 Do you see that?

6 A. Yes.

7 Q. And it says that the complaint is seeking, among
8 other things, an order declaring that the super voting
9 preferred is not convertible into common stock absent a
10 class vote by the common stock.

11 Do you see that?

12 A. Yes.

13 Q. And then that goes to Martine Beamon, and
14 Martine Beamon then at 9:53 a.m. forwards that on to
15 Marshall Huebner, Ethan James and Scott Muller.

16 Do you see that?

17 A. Yes.

18 Q. And then at 10:14 a.m. on the 5th, Mr. Huebner
19 writes, focusing on the second sentence, "Martine - this
20 is potentially serious. Please also copy Tom Baxter,
21 Jim H., Sarah, and me and Ethan."

22 Do you see that?

23 A. Yes.

24 Q. And then at 10:31 a.m., Ms. Beamon writes, to a
25 number of people, "Marshall mentioned to me last night

1 that he would like to have a conversation with Baxter
2 regarding the management of these various issues and our
3 roles, so I wanted to confirm to whom we should be
4 sending the document." And that is again the subject
5 line "New Complaint."

6 Do you see that?

7 A. Yes.

8 Q. Taking these e-mails that I've shown you
9 together, does that lead you to believe and understand
10 that the issue of avoiding a class vote by the common
11 shareholders and getting immediate voting control over
12 AIG was something that was very important to the
13 Federal Reserve Bank and its counsel?

14 A. But again, I just -- I don't have any opinion
15 about the Federal Reserve Bank's intentions.

16 Q. Okay.

17 May I have just a moment, Your Honor?

18 THE COURT: Sure.

19 (Pause in the proceedings.)

20 BY MR. BOIES:

21 Q. Let me turn to what I hope will be the last
22 subject.

23 You are aware that on September 21 the government
24 told AIG that if AIG did not approve the credit
25 agreement, the government would not provide further

1 funding and would call the demand notes that had been
2 issued over the last few days; correct?

3 A. Yes.

4 Q. And where lenders use their lending position to
5 make those kind of demands, that is something that you
6 believe, as a matter of corporate governance, is
7 something that is relevant to the question of control;
8 correct?

9 A. It's relevant to the kind of control that
10 Professor Zingales is talking about, that is, as the
11 holder of a right or an asset that's important to AIG,
12 that it's in a position to get something in exchange for
13 funding.

14 Q. It's not just Professor Zingales.

15 You believe that it is a matter of concern if a
16 major lender obtains influence over an organization's
17 management and policies by threatening to terminate or
18 change the terms of the business relationship; correct,
19 sir?

20 A. Yeah. That can be -- right. That's -- I was just
21 saying that that's the kind of control that
22 Professor Zingales is talking about.

23 Q. And although you have some disagreements with
24 Professor Zingales, you don't disagree with him on that
25 part; correct?

1 A. That's correct.

2 Q. In the course of your investigation, did you
3 determine that the directors believed on
4 September 21 that they did not feel as if they had any
5 viable or realistic choice except to accept the credit
6 agreement terms that were proposed by the government?

7 A. No other choice than bankruptcy, which they
8 thought was a lot worse.

9 Q. And indeed, they expressed their views in terms of
10 saying they did not feel that they had any choice;
11 correct?

12 A. That's correct. And I understand that in the
13 context to be a colloquial term.

14 Q. A colloquial term.

15 A. Right. Any choice. That is, a real easy choice.
16 That is. No choice.

17 Q. That's the way you interpret it?

18 A. That's the way I understand it. That seems
19 consistent with --

20 Q. That's what you think was in their mind?

21 A. That's how I understood no -- no choice, was that
22 it was -- because they talk about bankruptcy, right.
23 It's right there. They say, well, bankruptcy is a lot
24 worse, so that's not a choice.

25 Q. And before, you were quite clear that you didn't

1 want to be interpreting people's language, even in board
2 minutes. Do you remember that?

3 A. Right. Right.

4 Q. And so when the board minutes talk about several
5 of the directors commented that they did not feel as
6 though they had any choice, you wouldn't be wanting to
7 interpret that, would you, sir?

8 A. Well, again, I can't say what's in their head
9 obviously --

10 Q. Okay.

11 A. -- but --

12 Q. But you're still going to go ahead and try to
13 interpret it?

14 A. Well, the same sentence or near the same sentence
15 says they're talking about choosing between that and
16 bankruptcy, so I assume what they mean is it was an easy
17 choice.

18 Q. Let's look at it. Let's look at
19 Joint Exhibit 103.

20 And let's go to page 5.

21 A. Okay.

22 Q. And go down -- one two, three, four, five -- six
23 lines.

24 A. Yes.

25 Q. Where it says, "Several of the directors commented

1 that they did not feel as though they had any choice but
2 to approve the transaction with the Bank because upon
3 bankruptcy of the Corporation the assets, particularly
4 the regulated insurance companies, would immediately be
5 worth less. They also queried whether there was anything
6 in the transaction that would make the current situation
7 worse."

8 Do you see that?

9 A. Yes.

10 Q. And are you also aware that Mr. Cohen, the lawyer
11 for the board, advised the board that the board's
12 exercise of its business judgment in accepting the
13 proposal of the Federal Reserve Bank would protect the
14 board, but he could not say that if the board chose to
15 file for bankruptcy, they would be protected by the
16 business judgment rule? Do you recall that?

17 A. Yes.

18 Q. In your experience in the area of corporate
19 governance, are you aware of any instance in which board
20 members have taken action that their counsel advised
21 them would not be protected by the business judgment
22 rule?

23 A. No.

24 MR. BOIES: Your Honor, I have no more questions.
25 I pass the witness.

1 THE COURT: All right. Thank you, Mr. Boies.

2 MS. ACEVEDO: Your Honor, can we have a two-minute
3 recess to talk amongst ourselves with respect to
4 redirect?

5 THE COURT: Sure. I'm going to stay right here,
6 but we'll go off the record until you return.

7 MS. ACEVEDO: Thank you so much.

8 THE COURT: Sure.

9 (Discussion off the record.)

10 MS. ACEVEDO: Thank you, Your Honor.

11 THE COURT: Sure.

12 - - - - -

13 REDIRECT EXAMINATION

14 BY MS. ACEVEDO:

15 Q. Professor, I'd like to draw your attention to
16 JX 74, which is in the plaintiffs' big binder there in
17 front of you.

18 A. Okay.

19 Q. And in particular, I'd like to draw your attention
20 to page 5 of 24 to the first paragraph there.

21 A. Okay.

22 Q. And there's a reference there to a statement by
23 Mr. Cohen wherein he says "because a part of the
24 Government Facility was expected to involve warrants or
25 other instruments that would give the Federal Government

1 an interest in AIG equal to 79.9 percent of its total
2 equity," and then he continues on.

3 Do you see that?

4 A. Yes.

5 Q. Does "warrants or other instruments," as
6 identified in that sentence, suggest to you that warrants
7 was the exclusive instrument that the AIG board was
8 considering for the form of equity participation?

9 A. No. That's what I meant in my earlier testimony
10 when I said there were -- that if there would be
11 warrants.

12 Q. And let's turn now to page 12 of 24, to the bottom
13 paragraph there, to the second sentence. And there is a
14 reference there to counsel again.

15 It says, "Counsel explained that if the equity
16 interest took the form of warrants, then a shareholder
17 vote would be necessary," and it continues.

18 Do you see that?

19 A. Yes.

20 Q. Is this what you were referring to when you said
21 if the equity interest took the form of warrants?

22 A. Yes.

23 Q. And does the phrase here "if the equity interest
24 took the form of warrants" suggest to you that warrants
25 was the exclusive instrument that the AIG board was

1 considering for the form of equity participation?

2 A. No.

3 Q. You can set that document aside.

4 Let's take a look now at JX 75, which is also in
5 this binder. And I'd like to direct you to page 2.

6 First of all, can you just identify this document
7 for the Court.

8 A. These are the minutes of the audit committee
9 that -- meeting that was held on September 16, 2008.

10 Q. And you were asked about this meeting earlier. Do
11 you recall that?

12 A. Yes.

13 Q. And let's take a look at page 2.

14 The first sentence there says Mr. Reeder requested
15 the committee consider taking action pursuant to the
16 stock exchange rules.

17 Do you see that?

18 A. Yes.

19 Q. And it goes on to say "the warrants thought to be
20 contemplated in connection with a secured revolving
21 credit facility."

22 Do you see that?

23 A. Yes.

24 Q. And does the reference there to warrants thought
25 to be contemplated suggest that warrants was the only

1 form of equity that was being -- only form of I guess
2 consideration that was being formed as -- that was being
3 considered for the equity participation?

4 A. No.

5 Q. Let's take a look at JX 103 in that binder.

6 You were asked about these minutes earlier. I'm
7 going to direct you to the last paragraph at the bottom
8 of page 2.

9 If you look at the first sentence there, it says,
10 "Mr. Reeder reviewed a summary of the principal terms of
11 the facility that had been prepared for review by the
12 members."

13 Do you see that?

14 A. Yes.

15 Q. And then you were asked about some of the terms
16 that were discussed in that summary. Do you recall
17 that?

18 A. Yes.

19 Q. Is this summary of principal terms the kind of
20 summary that's commonly relied upon by boards?

21 A. There are summaries that are commonly relied on by
22 boards.

23 Q. In making decisions with respect to lending
24 facilities?

25 A. Yes.

1 Q. You can set that aside.

2 Now, if you can just get out PTX 3211.

3 And Professor, I actually don't have a question
4 for you about this document. I have a question for
5 His Honor.

6 THE COURT: Oh.

7 THE WITNESS: Is that allowed?

8 THE COURT: Is somebody going to swear me in?

9 MS. ACEVEDO: And that is, pursuant to the rule of
10 completeness, I'm not going to ask the witness about a
11 particular reference in this document because it's not
12 pertinent to his opinion, but there is a paragraph here
13 that we believe identifies ways that the Series C could
14 have been -- additional ways that the series C could have
15 been monetized, and we think it's important for the rule
16 of completeness to direct Your Honor's attention to it.
17 And with your permission, I'd like to do that.

18 THE COURT: Sure. I'm fine with that. You can
19 point it out to me.

20 MS. ACEVEDO: Certainly.

21 So if you look at 3211 page 1 of 7, in the second
22 e-mail or bottom e-mail that's on that page there,
23 there's a paragraph there that says "It's absolutely
24 true that I said that the best way to exit"? Do you see
25 that?

1 THE COURT: Just one second. Where are you
2 again?

3 THE WITNESS: I don't see it.

4 MS. ACEVEDO: 3111 page 1 of 7.

5 THE COURT: Page 1. Okay.

6 Okay. Go ahead.

7 MS. ACEVEDO: And it's the paragraph that begins
8 "It's absolutely true." Do you see that?

9 THE COURT: Yes.

10 MS. ACEVEDO: So I draw Your Honor's attention
11 under the rule of completeness, for the sake of
12 completeness, to that particular paragraph as containing
13 additional ways that the Series C could be monetized.

14 THE COURT: Okay.

15 MS. ACEVEDO: And with that, Your Honor, I have no
16 further questions.

17 THE COURT: Thank you, Ms. Acevedo.
18 Any recross, Mr. Boies?

19 - - - - -

20 RE-CROSS-EXAMINATION

21 BY MR. BOIES:

22 Q. Professor Daines, the portions that were just
23 read to you from the minutes, did that lead you to
24 believe that there were or were not material changes
25 between what was proposed on September 16 and what was

1 proposed on September 21? Or did it not relate to that
2 at all?

3 A. No. I'm just comparing the board resolutions, the
4 final product of their deliberations. And I'm saying
5 those are similar.

6 Q. Let me see if I understand what you're saying.
7 Because what was just shown you did not deal
8 directly with the board resolutions; correct?

9 A. That's correct.

10 Q. Are you saying that what you did is you just
11 looked at the board resolutions to see if the language
12 was similar? Is that right?

13 A. That's my conclusion, but I did more than that.
14 And I think the reason that -- well, the reason this is
15 maybe relevant is that these are the terms. There were
16 terms as in the resolution. You asked me about those
17 terms.

18 Q. Let me put it this way.

19 Counsel for the United States read you certain
20 portions from the minutes of the 18th and the 16th of
21 September.

22 A. Yes.

23 Q. Do you recall that?

24 A. Yeah.

25 Q. And asked you whether --

1 A. 21st and 16th.

2 Q. And asked you whether that led you to believe
3 something. And let me ask the same question about a
4 different portion of the minutes --

5 A. Okay.

6 Q. -- which is the portion I'd asked you about
7 before, if you go to Joint Exhibit 103 page 3.

8 The last sentence of the --

9 A. Wait. I'm sorry. Just give me -- I'm slow.

10 Q. No. This is a big volume and it's hard to
11 manipulate. When you have it, just let me know.

12 A. 103. Sorry. What page?

13 Q. Page 3.

14 And I've pointed your attention to this before,
15 but I now want to do it in the context of asking you the
16 same question that counsel for the United States did or a
17 similar question anyway.

18 If you look at the bottom of page 3, the last
19 sentence of the carryover paragraph, do you see the
20 sentence that we've talked about before, where it says,
21 "Members of the Board noted that the change from warrants
22 to preferred stock would give the Bank current voting
23 rights and would not require shareholder approval to the
24 issuance"? Do you see that?

25 A. Yes.

1 Q. And did that lead you to conclude that the members
2 of the board believed that there had been a change from
3 warrants to preferred stock?

4 A. No. I don't have an opinion as -- about whether
5 they believed there was a change.

6 Q. Did you have an opinion as to whether the
7 September 21 resolution represented a change from the
8 resolution that was passed by the audit committee on
9 September 18 -- on September 16?

10 A. No. I don't think so.

11 Q. The resolution that was passed by the audit
12 committee is in Joint Exhibit 75.

13 A. Okay.

14 Q. And let me ask you to look at page 2 of the
15 exhibit.

16 A. Okay.

17 Q. The second whereas clause.

18 And this is a resolution of the AIG audit
19 committee; correct?

20 A. Yes.

21 Q. And all the members of the audit committee are
22 members of the board; correct?

23 A. Yes.

24 Q. And it says, "Whereas, the Board has deemed it
25 desirable and in the best interests of the Corporation

1 to enter into a secured revolving credit facility with
2 an aggregate principal amount at any time outstanding
3 not to exceed \$85,000,000,000 to be entered into between
4 the Corporation and the Federal Reserve Bank of New York
5 and in connection therewith to issue warrants
6 convertible into 79.9 percent of the Corporation's
7 common stock."

8 Do you see that?

9 A. Yes.

10 Q. And what the audit committee there is saying is
11 that the AIG board has deemed it desirable to enter into
12 a revolving credit facility and in connection therewith
13 to issue warrants; correct?

14 A. That's what it says in this "whereas." I don't
15 have a -- again, I'm trying not to characterize the
16 board's intentions. I can look at the language, and I'm
17 offering an opinion about which things are economically
18 equivalent.

19 MR. BOIES: Okay. No more questions, Your Honor.

20 THE COURT: All right. Thank you.

21 Let's see. Professor Daines, thank you very much
22 for your testimony. You are excused.

23 THE WITNESS: Am I allowed to shake hands?

24 THE COURT: Sure.

25 THE WITNESS: Thanks. Thanks a lot.

1 MR. DINTZER: And with that, Your Honor, the
2 United States rests.

3 THE COURT: All right. Thank you, Mr. Dintzer.
4 Back to the plaintiff.

5 MR. BOIES: Okay. Your Honor, if we could start
6 our case tomorrow morning --

7 THE COURT: We won't be here tomorrow.

8 MR. BOIES: Yes. Monday morning I meant. It
9 would take us at least twenty minutes to get things over
10 here for that now.

11 THE COURT: Have you given a more detailed proffer
12 to the defendant?

13 MR. BOIES: We are working on that, and we said
14 we would give that to them tonight. And we of course
15 will give them our full demonstratives tomorrow morning.

16 And we will have I think something that is almost
17 in the form of a request for admission that goes to them.
18 And if they agree to some of these statements, we may not
19 even have to put on the witnesses. But it will tell them
20 exactly who the witness is that's going to sponsor it and
21 what the point that we're going to make is.

22 THE COURT: All right.

23 MR. BOIES: So I think it will be quite specific.

24 MR. DINTZER: Your Honor, as I believe the Court
25 had, we had anticipated it happening before the close of

1 business so that if there were any concerns, we would
2 have a chance to raise those with the Court.

3 We will take Mr. Boies at what he says, but it is
4 our anticipation, to allow us to prepare, that we're
5 going to receive these at some sort of reasonable time
6 tonight, and it will identify which witnesses will be
7 speaking to which very specific points so that we can
8 prepare for those. I mean, that would be our expectation
9 based on the representation.

10 MR. BOIES: We will do that, and we'll do that on
11 a rolling basis, Your Honor. That is, we'll give them
12 some stuff, you know, as soon as we get back to the
13 office and get straightened out, and then we'll give them
14 some more as we go through it.

15 THE COURT: All right.

16 I know that perhaps was not your expectation,
17 Mr. Dintzer, but, you know, we'll do the best we can
18 under the circumstances.

19 MR. DINTZER: We appreciate that, Your Honor.

20 THE COURT: And I'm confident that both sides will
21 be acting in good faith as has been the case throughout
22 the trial.

23 MR. DINTZER: I have no doubt about that,
24 Your Honor.

25 THE COURT: All right. Very well then.

1 Is there anything else before we adjourn for the
2 weekend?

3 MR. DINTZER: One other request, Your Honor.

4 THE COURT: Okay.

5 MR. DINTZER: So that we -- we understand that
6 there was a production of documents and so those couldn't
7 be on the exhibit lists that we had prepared in this
8 case. But to the extent that the plaintiffs plan on
9 using on Monday any documents that they have culled from
10 these groups, if we could get that identified tomorrow as
11 well so that we would have that as part of our
12 preparation.

13 MR. BOIES: We will do that, Your Honor.

14 THE COURT: All right.

15 MR. BOIES: We're still actually receiving
16 documents, so we're -- we don't even I think have all
17 the documents yet, but to the extent that we can
18 identify those documents, we will. And I suspect that
19 any document that we don't have by tomorrow we're not
20 going to be in a position to use on Monday in any event.

21 THE COURT: All right. Well, I think that's
22 reasonable, and again, we'll do the best that we can. I
23 knew this wouldn't be a perfect way to deal with the
24 documents, but, you know, I think it's worked out fairly
25 well under the circumstances.

1 MR. BOIES: Yes, Your Honor.

2 THE COURT: All right. Have a good weekend, and
3 Monday morning at 9:30.

4 (Whereupon, at 4:32 p.m., the proceedings were
5 adjourned.)

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CERTIFICATE OF TRANSCRIBER

I, Josett F. Whalen, court-approved transcriber,
certify that the foregoing is a correct transcription
from the official digital sound recording of the
proceedings in the above-titled matter.

DATED: NOVEMBER 22, 2014

/S/ Josett F. Whalen

JOSETT F. WHALEN, COURT REPORTER

1 ADMITTED EXHIBITS
2 Plaintiffs'
3 Number3129 8558 E-mail from John Brandow of
4 Davis Polk on 11/5/2008
5 Number3211 8560 E-mail from John Brandow from
6 Davis Polk on 11/9/2008
7 Number3232 8564 W-mail from Mr. Huebner of
8 Davis Polk, 11/6/2008
9 Number3248 8556 Series of e-mails from and to
10 counsel for the defendant
11 Number3259 8567 E-mail from Michael Leahy,
12 11/5/2009
13 Number5403 8418 Dr. Saunders handwritten
14 demonstrative
15
16 Defendant's
17 Number481 8420 ARTICLE AMERICAN
18 INTERNATIONAL GROUP, INC.
19 AIG: AVERTS BANKRUPTCY;
20 SHAREHOLDER DILUTED BUT NOT
21 TO ZERO, WACHOVIA CAPITAL
22 MARKETS, LLC, EQUITY
23 RESEARCH, SEPTEMBER 17, 2008
24
25

1	Number482	8421	AMERICAN INTERNATIONAL GROUP
2			FED LIFELINE FOR AIG TO
3			RESULT IN AUCTION OF MANY (IF
4			NOT ALL) BUSINESSES, CREDIT
5			SUISSE, EQUITY RESEARCH,
6			SEPTEMBER 17, 2008
7	Number1878	8435	ROBERT DAINES EXPERT REPORT
8	Number1879	8435	ROBERT DAINES EXHIBITS
9	Number1879-A	8425	Professor Daines CV
10	Number2801-	8500	Professor Daines
11	2823		demonstrative slides
12			
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