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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.
Monday, November 3, 2014
9:30 a.m.
Trial Volume 25

BEFORE: THE HONORABLE THOMAS C. WHEELER

Susanne Bergling, RMR-CRR-CLR, Reporter

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	I N D E X				
1					
2					
3	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS VOIR
4	COLANNINO	5695	5766	5778	
5	BRANDOW	5791	5854	5881	5899
6	HUEBNER	5908			
7					
8					
9	EXHIBITS	FOR ID		IN EVID	
10	Plaintiff's				
11	Number689			5768	
12	Number1593			5772	
13	Number2038			5906	
14					
15	Defendant's				
16	NumberDXX 036			5908	
17	Number98			5708	
18	Number139			5712	
19	Number151			5716	
20	Number258			5722	
21	Number331			5736	
22	Number430			5950	
23	Number490			5741	
24	Number522			5876	
25	Number543			5877	

	EXHIBITS	FOR ID	IN EVID
1			
2	Defendant 's		
3	Number650		5750
4	Number685		5758
5	Number706		5896
6	Number959		5730
7	Number1552		5767

8
9 Joint
10 None

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22 *All exhibits premarked for identification prior to
23 trial.

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

1 PROCEEDINGS

2 - - - - -

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

4 THE COURT: Good morning.

5 ALL COUNSEL: Good morning, Your Honor.

6 THE COURT: Please be seated.

7 We're on the record this morning for day number
8 25 in the trial of Starr International Company versus
9 the United States.

10 I think we're ready for the Government's next
11 witness.

12 MR. GARDNER: We are, Your Honor. The
13 Government calls Andrew Colannino as our next witness.

14 THE COURT: All right. Please come forward,
15 sir. Please raise your right hand.

16 Whereupon--

17 ANDREW COLANNINO

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

20 THE COURT: Please be seated.

21 DIRECT EXAMINATION

22 BY MR. SCARLATO:

23 Q. Good morning, sir.

24 A. Good morning.

25 Q. Can you begin by introducing yourself to the

1 Court?

2 A. Yes. My name is Andrew Colannino.

3 Q. And, Mr. Colannino, what college and advanced
4 degrees do you hold?

5 A. I have a BA from Rutgers University and an MBA
6 from Seton Hall University.

7 Q. And what do you do for a living?

8 A. I'm a vice president in the Property and
9 Casualty Division at A.M. Best Company.

10 Q. And what is A.M. Best Company?

11 A. A.M. Best is a rating agency that specializes in
12 insurance companies. It also provides information about
13 the insurance industry, and we also have a news
14 division.

15 Q. And you mentioned a rating agency. What's the
16 difference between A.M. Best and other credit rating
17 agencies?

18 A. A.M. Best is the only one, to my knowledge, who
19 specializes in insurance.

20 Q. And so who do you consider your peers or
21 competitors?

22 A. Competitors would be companies such as Standard
23 & Poor's and Moody's and -- and Fitch.

24 Q. And how long have you worked at A.M. Best?

25 A. I have been at A.M. Best since 1996, with a

1 brief time away for about a year.

2 Q. Can you give the Court a general overview of
3 what positions you've held at A.M. Best?

4 A. Sure. Starting in 1996, I was a financial
5 analyst, and then I was promoted to a senior financial
6 analyst. After that, in 2000, around that time, I was
7 a -- considered a team leader and assistant vice
8 president. In 2004, I left for approximately a year and
9 came back in 2005 as a vice president in the Ratings
10 Division.

11 Q. And that's the same position you hold today?

12 A. That's currently my position.

13 Q. Okay. And what are your job responsibilities in
14 your current role?

15 A. My job responsibilities are to oversee a group
16 of analysts that follow the insurance industry. I have
17 three teams of analysts that follow predominantly
18 property/casualty companies.

19 Q. And how many analysts work underneath you?

20 Excuse me.

21 A. There are three team leaders and nine analysts.

22 Q. And all of those individuals work beneath you,
23 you're saying?

24 A. Yes, they do.

25 Q. So, let's talk about the ratings that A.M. Best

1 issues. Can you explain for the Court what types of
2 ratings A.M. Best issues?

3 A. Sure. There's a financial strength rating,
4 which is our opinion of an insurer's financial strength
5 to meet policyholder obligations. There is also what we
6 call an issuer credit rating, which is our opinion of a
7 company's obligations to meet its senior-most
8 obligations. And then we also have debt ratings, which
9 are our opinion of the insurer's obligation -- not
10 insurer's, but a company's obligation to meet its
11 obligations when due.

12 Q. Okay. And just to be clear, can you explain the
13 difference between the financial strength rating and the
14 issuer credit rating?

15 A. Sure. The financial strength rating is a rating
16 that pertains to policyholder security, whereas the
17 issuer credit rating pertains to the senior-most
18 obligation of a company.

19 For example, in a holding company, the
20 senior-most obligation is the senior debt of the
21 organization, and in a -- in an insurance company, the
22 senior-most obligation is the -- is the
23 policyholders' -- the policyholders' claims.

24 Q. Policyholders are like customers?

25 A. Customers, yes.

1 Q. And let's talk about the grading system. For
2 the financial strength ratings, what grading system does
3 A.M. Best use?

4 A. We have -- an A++ is our highest rating, and it
5 goes all the way down to F. So, there are a number of
6 ratings in between. B+ and above would be considered a
7 secure financial strength rating, and B and below would
8 be considered a vulnerable rating.

9 Q. And what do you mean by a secure versus
10 vulnerable?

11 A. Secure is where we expect that the company has
12 the financial strength to pay its claims, whereas a
13 vulnerable, we do not expect, in the long term, for it
14 to be able to pay its claims.

15 Q. So, when you say "secure," to what extent, if
16 any, does that mean -- does it reflect the company's
17 ability to engage in future business?

18 A. It's a good ability to engage in future
19 business.

20 Q. Okay. So, how about the issuer credit rating,
21 how is that graded by A.M. Best?

22 A. The issuer credit rating is more on the -- what
23 I would call the traditional bond rating scale, which is
24 AAA, would be the highest rating, and the start of
25 investment grade ratings would be BBB-, so BBB- to AAA

1 would be investment grade, and then below BBB- would be
2 noninvestment grade.

3 Q. And is there any connection between a particular
4 entity's financial strength rating and its issuer credit
5 rating?

6 A. The connection is that an issuer credit rating,
7 there is -- there are issuer credit ratings for the
8 insurance companies themselves, where there is a
9 financial strength rating, and the issuer credit rating
10 is basically mapped to the financial -- to the financial
11 strength rating.

12 Q. What do you mean by "mapped"?

13 A. What I mean by "mapped" is that -- if there's --
14 I will use an example, that's probably the best way. If
15 there is an A+ -- A++ financial strength rating, that
16 could be either a AAA or a AA+ plus issuer credit
17 rating.

18 Q. Meaning in some range that -- could you just
19 explain that a little more, why one is related to the
20 other in that sense?

21 A. Basically, when we put a rating on a company, we
22 do it on the issuer credit rating scale.

23 Q. Right.

24 A. And then it is just -- it's just a lookup chart
25 basically for the financial strength rating.

1 Q. And what's your understanding as to how A.M.
2 Best financial strength ratings are used generally in
3 the insurance industry?

4 A. Oh, they're generally used by agents, brokers,
5 insureds who are purchasing policies. Basically what we
6 do is we provide a service to -- to opine on the
7 financial strength of a -- of an insurance company so
8 that the users of our rating can feel comfortable doing
9 business with a viable company.

10 Q. And what about the issuer credit rating, how is
11 that used in the insurance industry?

12 A. The issuer credit rating is probably not used as
13 much in the insurance industry. The financial strength
14 rating is the rating where the insurance industry
15 would -- is more familiar with.

16 Q. Can you explain why?

17 A. That is the -- that basically is what we were
18 founded on. The issuer credit rating is more the bond
19 rating scale.

20 Q. And so, then, when A.M. Best assigns a rating,
21 what types of information does it look at?

22 A. We're looking at all types of financial
23 information. We have public and nonpublic rating --
24 nonpublic information that we look at. Generally, every
25 quarter, in the United States, a -- an insurance company

1 is required to file financial -- statutory financial
2 statements. So, we look at the financial statements.
3 We will look at GAAP financial statements. We will
4 review, if it's a public company, 10-Ks and 10-Qs.

5 From a nonpublic perspective, we have meetings
6 with management at least -- at least once a year and
7 more often than that if there is -- if there are issues
8 at the company, and we will have meetings with them.
9 They will give us presentations.

10 We also ask for information on things such as
11 capacity exposure, the number of agents they have, their
12 technology -- technological capabilities. So, there's a
13 whole host of information that we look at.

14 Q. Okay, thank you.

15 And the process, just briefly, can you explain
16 for the Court how the process by which A.M. Best assigns
17 a rating?

18 A. Sure. There's an analyst that has a portfolio
19 of companies that they follow, and basically the analyst
20 is our point person. They gather all the information.
21 They do an analysis on the company. They meet with the
22 company's management.

23 Then the team leader that the analyst reports to
24 will review that information. They will both meet and
25 come up with a recommendation for the company's rating.

1 Then at that point the analyst and the team leader take
2 it to a -- what we call a rating committee, and -- which
3 is six to twelve members of the committee, which are --
4 which is made up of the senior management of -- and --
5 middle and senior management of the Rating Division at
6 A.M. Best, and then that will be presented.

7 The rating committee members will ask questions
8 to get some clarity about the rating, and then at that
9 point -- at the end of -- at the end of that, we will
10 vote, and the majority wins in terms of what the rating
11 is.

12 Q. And how often does A.M. Best review its existing
13 ratings of the company?

14 A. We review them at least once a year; however, we
15 do have quarterly financial statements that we look at.
16 So, if there is a -- if there is an issue with the
17 financial statements, we may give the company a call.
18 And then if there are any other events, such as a
19 transaction or any other events in the news, we will
20 react to that accordingly.

21 Q. Okay. And, Mr. Colannino, did there come a time
22 when you were responsible for rating AIG and its
23 insurance subsidiaries?

24 A. Yes, there was. That was 2005.

25 Q. Until when?

1 A. 2005 until the end of 2008.

2 Q. And what was your role in rating AIG from 2005
3 until the end?

4 A. My role was I was the team leader.

5 Q. And as a team leader, what role did you play,
6 specifically?

7 A. Basically, I -- as I explained before, I
8 reviewed the analysts' recommendations and information
9 that they gathered, met with company management, and we
10 formulated an opinion as to what the rating should be.

11 Q. And what types of insurance companies did you
12 look at at AIG?

13 A. We looked at -- we had -- our team looked at the
14 property/casualty insurance companies.

15 Q. Can you explain what property/casualty insurance
16 is, generally?

17 A. Sure. Property/casualty is -- basically
18 property -- the first part of it is a property
19 insurance, and that's insurance against -- against
20 property, insurance for property, such as homeowners,
21 for businesses, and, you know, insurance against things
22 such as fires, weather-related losses, and theft.

23 And then there is also casualty insurance, where
24 there may be liabilities that are a result of an
25 accident or a mistake or -- that the insurer may have.

1 Q. Do you recall, starting in 2005, what types of
2 insurance AIG sold?

3 A. AIG did sell property/casualty insurance, and
4 they also did -- they sold life insurance, also.

5 Q. And so to what extent, if any, were you involved
6 in the rating of AIG's life insurance companies?

7 A. I've sat on some of the rating committees of the
8 life insurance after -- it was more toward 2008 and
9 2009 -- 2008, I'm sorry. That didn't fall into 2009.

10 Q. And so did they -- did A.M. Best have a separate
11 team that rated the insurance companies?

12 A. The life insurance companies, yes.

13 Q. And then how would you all come together and
14 come to a final decision?

15 A. Well, we would all come together and see what
16 kind of impact each of the subsidiaries may have had on
17 the others.

18 Q. And what about the parent company? Did A.M.
19 Best rate AIG, the parent?

20 A. Yes, we did. We had an issuer credit rating on
21 the parent -- on the parent company.

22 Q. Just that one?

23 A. Just the one, yes.

24 Q. Okay. And did you sit on the ratings committee
25 for all of the types of ratings that we just described?

1 A. I did -- maybe not every rating committee, but I
2 sat on -- on some of them or many of them.

3 Q. Okay. And did A.M. Best rate AIG's noninsurance
4 subsidiaries?

5 A. No, we did not.

6 Q. So, I'd like to turn now to A.M. Best's ratings
7 of AIG starting in 2008, if I can direct your attention
8 to that time frame.

9 A. Okay.

10 Q. Did there come a time in 2008 when A.M. Best
11 considered downgrading some of AIG's businesses?

12 A. Yes, I believe in the beginning of 2008.

13 Q. Do you recall why?

14 A. It was because of losses -- potential losses
15 from their credit default swap portfolio.

16 Q. Okay. And do you recall where the credit swap
17 portfolio, what business of AIG that came from?

18 A. Yes. It was in their financial products area.

19 Q. And did A.M. Best rate the Financial Products
20 Division?

21 A. No.

22 Q. Can you turn -- there's a white binder that was
23 put on your -- that one right there, yep. If you can
24 turn in that binder to DX 98 and tell me when you have
25 that in front of you.

1 A. I have it in front of me.

2 Q. Do you recognize DX 98?

3 A. Yes.

4 Q. And what is it?

5 A. It is a press release from A.M. Best announcing
6 that the property, casualty, and life subsidiaries were
7 placed under review with negative implications.

8 Q. And what role, if any, did you play in creating
9 this press release?

10 A. I -- I reviewed the press release.

11 Q. And was it A.M. Best's regular practice to issue
12 press releases of this type?

13 A. Yes, it is.

14 Q. And was DX 98 created at or around the time that
15 A.M. Best took this action?

16 A. Yes, it was.

17 MR. SCARLATO: Your Honor, we move for the
18 admission of DX 98.

19 MR. BOIES: Your Honor, if it's offered for the
20 truth of the matter asserted, we would object on hearsay
21 grounds. If it's offered simply to demonstrate what
22 A.M. Best was saying to the market at the time, we would
23 not have an objection.

24 MR. SCARLATO: Your Honor, we would like to
25 offer it for the truth of the matter asserted. I

1 believe a foundation for the business record exception
2 has just been satisfied.

3 THE COURT: I'm going to overrule the objection.
4 I'll admit the document, Defendant's Exhibit 98, on the
5 basis of a business record exception.

6 MR. SCARLATO: Thank you, Your Honor.

7 (Defendant's Exhibit Number 98 was admitted into
8 evidence.)

9 BY MR. SCARLATO:

10 Q. So, Mr. Colannino, can you explain for the Court
11 what this DX 98 would have announced?

12 A. It announced that A.M. Best placed the property,
13 casualty, and life subsidiaries under review.

14 Q. And what does "under review" mean?

15 A. Under review means that there is an event that
16 happened, and we would assign, in general, negative,
17 positive, or developing implications. So, there's an
18 event that happened, and we would at some point in the
19 near future either affirm, downgrade, or upgrade a
20 company.

21 Now, in this case, it's a negative implication,
22 so the implication was that the rating may be
23 downgraded.

24 Q. And the date of this document is February 14th,
25 2008?

1 A. That's correct.

2 Q. You said there was an event that happened.
3 Looking at DX 98, can you describe for the Court what
4 event happened?

5 A. Basically AIG had -- had losses in -- had losses
6 on its credit default swap portfolio.

7 Q. And that was, again, in their noninsurance
8 subsidiary?

9 A. That's correct.

10 Q. So, why did issues at AIG's noninsurance
11 subsidiary affect A.M. Best's views of the ratings of
12 their other companies?

13 A. Well, because the issues can affect the holding
14 company, and if -- if a holding company is affected,
15 there are things that can happen to the insurance
16 entities, such as a decline in the franchise value,
17 the -- if a rating is downgraded, it would be in -- not
18 as well thought of as before by insureds and by -- by
19 agents. It could affect the quality of business that is
20 at the company. So, there are a number of things that
21 can impact it.

22 Q. And those conditions you described applied to
23 the insurance subsidiaries. Is that your testimony?

24 A. That applies to the insurance subsidiaries, yes.

25 Q. Okay.

1 A. And the financial flexibility of the holding
2 company could be affected, also.

3 Q. What does that mean? Can you explain?

4 A. Basically the ability to raise capital.

5 Q. Can I turn your attention to the first paragraph
6 of DX 98? About two-thirds of the way down, I see a
7 sentence stating, "The FSRs" -- that's financial
8 strength ratings?

9 A. That's correct.

10 Q. -- "and ICRs" -- issuer credit ratings?

11 A. That's correct.

12 Q. -- "of these rating groups incorporate implicit
13 support from AIG."

14 What does that mean?

15 A. Implicit support from AIG is basically support
16 from -- it could be support from its holding company.
17 It's implicitly, it's not contractual, but they have
18 demonstrated support.

19 Q. And to what extent, if any, did that implicit
20 support affect the ratings of AIG's insurance
21 subsidiaries?

22 A. It could have a positive impact on it.

23 Q. And why is that?

24 A. Because it could raise -- it could raise capital
25 for the insurance entities.

1 Q. Okay. If you'd turn now -- in the same
2 document, if you would turn to page 2 of DX 98, the
3 first full paragraph, starting, "The implied support
4 incorporated into the operating..." Do you see that?

5 A. Yes.

6 Q. Can you explain for the Court what that means?

7 A. Oh, we needed to evaluate the -- the support
8 that was in the operating subsidiary because of the
9 financial volatility from the derivatives business.

10 Q. Okay. Mr. Colannino, can you turn now to the
11 next document, DX 139. Do you recognize DX 139?

12 A. Yes, I do.

13 Q. What is it?

14 A. It's a press release from A.M. Best announcing
15 that we removed AIG's ratings from under review and we
16 assigned a negative outlook.

17 Q. And what role did you play in issuing DX 139?

18 A. I was the team leader at the time.

19 Q. And was it A.M. Best's regular practice to issue
20 press releases of this type?

21 A. Yes, it was.

22 Q. And was DX 139 created at or around the time of
23 the events described therein?

24 A. Yes, it was.

25 MR. SCARLATO: Your Honor, we move for the

1 admission of DX 139.

2 MR. BOIES: Your Honor, I would just continue to
3 object. I don't think press releases fall within the
4 business records exception, and this document, unlike
5 the prior document, doesn't even mention the witness.
6 The prior document at least mentions the witness.

7 THE COURT: Well, nevertheless, I think we'll
8 admit the document under the business record exception.
9 It is an A.M. Best press release, and we have the
10 witness on the stand who is familiar with it. So, I'll
11 overrule the objection. Defendant's Exhibit 139 is
12 admitted.

13 MR. SCARLATO: Thank you, Your Honor.

14 (Defendant's Exhibit Number 139 was admitted
15 into evidence.)

16 BY MR. SCARLATO:

17 Q. Mr. Colannino, can you describe for the Court
18 what DX 139 announced?

19 A. It announced that A.M. Best removed AIG's
20 ratings from under review. We affirmed them and
21 assigned a negative rating outlook.

22 Q. Okay. And what prompted that decision?

23 A. What prompted the decision was that -- could I
24 review the document first?

25 Q. Sure, of course. Take your time.

1 A. (Document review.) Basically what happened was
2 there were significant losses to AIG's equity, which
3 prompted our negative outlook.

4 Q. And can you explain what a negative outlook
5 means?

6 A. Yeah. It's different from -- it's longer term
7 than when a rating is put under review with negative
8 implications. It's basically our opinion of where the
9 rating will go within 12 to 18 months, whereas under
10 review is more short term.

11 Q. Okay. And so what -- at the time, then, of
12 DX 139, May 28th, 2008, what was A.M. Best's expectation
13 of where these ratings would go in 12 to 18 months?

14 A. The ratings could be -- could be downgraded
15 within 12 to 18 months.

16 Q. Okay. Mr. Colannino, if you would turn to page
17 2 of this document, I'm curious what the last sentence
18 in the first full paragraph indicates, starting, "AIG's
19 ability and willingness to provide implicit and explicit
20 support remains and, coupled with the quality of these
21 franchises, was the basis of the affirmation."

22 Can you explain that?

23 A. Yes. At the time we believed that AIG's holding
24 company could provide implicit and explicit support and
25 that the franchises had significant value.

1 Q. And that was the basis for the decision?

2 A. Yes.

3 Q. The next paragraph begins, "The holding company
4 downgrade reflects A.M. Best's viewpoint of the
5 detrimental implications of AIG's risk management and
6 aggressive risk appetite relating to investment
7 concentrations within the securities lending portfolio
8 and matched investment programs tied to the
9 mortgage-related securities."

10 Can you explain that sentence?

11 A. Yes. The -- basically what happened was the
12 holding company was downgraded, but the operating
13 companies were not, and the reason for that was we
14 believed that the risk appetite that AIG had in its
15 noninsurance subsidiaries, particularly, was high.

16 Q. And that sentence also mentions a securities
17 lending program. Why was A.M. Best concerned about that
18 piece of AIG's business?

19 A. Yes, the securities lending program was also a
20 program where AIG would lend securities and take in
21 capital, and it's usually a low-margin business, but
22 what happened was they would invest that capital in more
23 risky securities, and they had losses.

24 Q. Okay. And do you know if that business was tied
25 to the parent company or the insurance subsidiaries or

1 what -- what entity was conducting that business?

2 A. That was more the life companies of AIG.

3 Q. Okay. And I'm not sure, did you say why -- why
4 was A.M. Best concerned with that program?

5 A. Because of the capital deterioration, the
6 riskiness of the assets that they were investing in, and
7 those assets had losses.

8 Q. Okay. Can you turn now to DX 151, which I
9 believe is the next document in your binder. Do you
10 have that?

11 A. Yes.

12 Q. What is this?

13 A. It's a press release from A.M. Best.

14 Q. And what role did you play in A.M. Best's
15 issuance of this press release?

16 A. I would have reviewed this press release.

17 Q. And is this another press release that was
18 issued in the normal course of A.M. Best's business?

19 A. Yes, it was.

20 Q. And it was created around the time of the events
21 described therein?

22 A. Yes.

23 MR. SCARLATO: Your Honor, we move for the
24 admission of DX 151.

25 MR. BOIES: No objection, Your Honor. I've

1 learned.

2 THE COURT: Defendant's Exhibit 151 is admitted.

3 MR. SCARLATO: Thank you.

4 (Defendant's Exhibit Number 151 was admitted
5 into evidence.)

6 BY MR. SCARLATO:

7 Q. So, what events are described in DX 151,
8 Mr. Colannino?

9 A. Basically what happened was we downgraded the
10 rating of the holding company, American International
11 Group, Inc., and we also downgraded the life
12 subsidiaries.

13 Q. And that was on June 17th, 2008?

14 A. That's correct.

15 Q. And why were they downgraded?

16 A. They were downgraded -- there was a change in
17 the senior management -- in the CEO of AIG, and at the
18 time, the rating, at least of the life subsidiary, was
19 at or near our highest ratings, and we thought that the
20 change in the -- in the CEO and -- and their -- his
21 announcement -- their announcement to review all of
22 their businesses weren't -- weren't consistent with
23 having one of our highest ratings.

24 Q. And why not?

25 THE COURT: Mr. Scarlato, if I may?

1 MR. SCARLATO: Sure, yes.

2 THE COURT: Sir, what is the relationship, if
3 any, between the change in the CEO and the need for A.M.
4 Best to downgrade the company?

5 THE WITNESS: Well, it was a change in the CEO
6 and his plan to review all of the operating
7 subsidiaries, basically whether or not they were going
8 to -- to keep them or not. They may have to put them up
9 for sale. And it was -- it was our view that that
10 created a lot of uncertainty. So, while the rating was
11 still high, we didn't believe that it should be at our
12 highest levels.

13 THE COURT: I'm just a little bit puzzled by the
14 change in a CEO. I mean, companies change CEOs all the
15 time. I don't see why that would necessarily cause the
16 downgrade.

17 THE WITNESS: Right. Well, it wasn't the change
18 in the C -- it wasn't necessarily the change in the CEO.
19 It was the change in the CEO and the plans that he was
20 announcing about reviewing all of their subsidiaries
21 because they needed to raise capital.

22 THE COURT: Okay, thank you.

23 THE WITNESS: You're welcome.

24 BY MR. SCARLATO:

25 Q. And further on that question, Mr. Colannino, is

1 that fact expressed in the -- I believe the fifth
2 paragraph, which starts, "The downgrades are based"?
3 And then the second sentence is what I would like to
4 direct your attention to. Do you see this, "A.M. Best
5 believes that AIG's need to embark on a company-wide
6 strategic and operational review of all of its
7 businesses is not representative of A.M. Best's highest
8 rating categories"?

9 A. That's correct.

10 Q. And that's consistent with what you just told
11 His Honor?

12 A. Yes, I believe so.

13 Q. So, DX 151 mentions a strategic review. Did
14 there come a time when AIG met with A.M. Best to discuss
15 that review?

16 A. Yes, there was.

17 Q. Do you recall when?

18 A. That was I believe in September of 2008.

19 Q. And what was the purpose of that meeting on
20 September -- in September 2008?

21 A. Basically, with the new CEO, he announced
22 that -- at this time that he would -- Mr. Willumstad --
23 he would present to the public what the -- what AIG's
24 plans were in terms of what businesses they were
25 planning on disposing of and what businesses they were

1 planning on keeping.

2 So, he was going to do -- I believe it was a
3 90-day review at the time, and then he was going to
4 present that to us, meaning A.M. Best, before he
5 presented it to the public.

6 Q. And why would he have to present it to you
7 before the public?

8 A. You know, in the normal course of business,
9 they -- companies usually do that so that we know what
10 is going to happen so that we can react from a ratings
11 standpoint.

12 Q. Okay. And so did AIG prepare any materials for
13 A.M. Best, for this meeting with A.M. Best?

14 A. Yes, they did.

15 Q. Okay. Can you turn to DX 258 in your binder.

16 A. Yes.

17 Q. Do you recognize this document?

18 A. Yes, I do.

19 Q. And what is it?

20 A. It's a presentation from AIG to A.M. Best on
21 September 12th, 2008.

22 Q. And the reference to September 12th, 2008, is
23 that the meeting you were just testifying about?

24 A. Yes.

25 Q. Okay. And do you recall reviewing DX 258 at

1 this meeting?

2 A. Basically it was a meeting between A.M. Best and
3 AIG where they did -- they had a presentation, and they
4 took us through this presentation.

5 Q. DX 258?

6 A. DX 258, yes.

7 Q. Okay. And if you need to look through it, I
8 don't want to rush you in any way, but...

9 Okay. So, Mr. Colannino, is it your
10 understanding that it was part of AIG's regular business
11 practices to prepare materials such as DX 258 and
12 present them to A.M. Best?

13 A. Yes.

14 Q. Okay. And do you understand if AIG would have
15 prepared this material at or around the time of the
16 meeting it held with A.M. Best?

17 A. Yes. It is my understanding that they did.

18 MR. SCARLATO: Your Honor, we would move for the
19 admission of DX 258.

20 THE COURT: Sir, were you present at this
21 meeting?

22 THE WITNESS: Yes, I was.

23 THE COURT: Okay.

24 MR. BOIES: I am going to object. This is an
25 AIG document, not an A.M. Best document, Your Honor.

1 MR. SCARLATO: Your Honor, if I may be heard?
2 It was a document that Mr. Colannino just testified that
3 he attended and that AIG, in its normal course of
4 business, would create and present to A.M. Best and
5 Mr. Colannino. So, for that reason, we believe he is a
6 qualified witness to permit its admission under the
7 business records exception.

8 THE COURT: But if AIG prepared the document, I
9 don't know how this witness can vouch for the truth of
10 the assertions in the document. How does he know?

11 MR. SCARLATO: Your Honor, because Mr. Colannino
12 testified before that AIG regularly created these types
13 of documents in the course of their business. So, it
14 has that indicia of reliability that he would know.

15 THE COURT: Well, I know, but you are asking me
16 to accept this document for the truth of the matters
17 asserted, and how do I know that something that AIG
18 prepared on this particular date is -- can be relied
19 upon as truthful?

20 MR. SCARLATO: Well, Your Honor, if -- we can
21 also offer it for the more limited purpose of the effect
22 on A.M. Best and the state of mind of AIG as of the date
23 of this document.

24 THE COURT: I think that would be more
25 appropriate. I will --

1 MR. BOIES: I have no objection to it being
2 admitted for purposes of demonstrating what A.M. Best
3 relied on in preparing its ratings.

4 THE COURT: Yes. So, we will admit Defendant's
5 Exhibit 258 for that limited purpose.

6 MR. SCARLATO: Thank you, Your Honor.

7 (Defendant's Exhibit Number 258 was admitted
8 into evidence.)

9 BY MR. SCARLATO:

10 Q. Mr. Colannino, who attended this September 12th
11 meeting?

12 A. We had representatives from AIG and also from
13 A.M. Best. Do you need their names?

14 Q. Sure. Give me a few names of the people you
15 recall at this meeting.

16 A. Bob Willumstad, who was the CEO of AIG, was one
17 person who attended. Steve Bensinger, who was the CFO
18 of AIG, attended. I attended the meeting. Joyce
19 Sharaf, who was our -- who was the analyst, attended the
20 meeting. I know there was Manny Nowacki, who was the
21 head of our Life Division at the time.

22 And I don't recall the rest of the people, but
23 there were a number of people who did -- who did attend.
24 Oh, and the life analyst from A.M. Best, also.

25 Q. Okay. And going into this meeting, to what

1 extent were you and your colleagues considering another
2 downgrade of AIG?

3 A. This -- this meeting was scheduled previously,
4 and at this point in time, we were just gathering
5 information in terms of what their plan was that was
6 going to be implemented sometime in September, shortly
7 after this meeting. So, that was our expectations.

8 Q. Okay. Can you turn to page 13 of DX 258, and
9 I'm going to go by the -- there's numbers in the bottom
10 right-hand corner, if you look at it sideways. Do you
11 see those numbers?

12 A. Okay.

13 Q. Do you have page 13 in front of you?

14 A. I have page --

15 Q. "Strategic Review" it states at the top.

16 A. "Strategic Review," yes.

17 Q. What is your understanding of the reference to
18 "Under consideration for potential action," which is the
19 sort of subtitle of this page?

20 A. Right. These were entities within AIG that were
21 targets that -- that were under -- that were going to be
22 potentially sold.

23 Q. Okay. And do you recall why AIG was considering
24 selling certain assets?

25 A. Because they needed to raise capital because of

1 their losses that they were having.

2 Q. Okay. And why did that information matter to
3 A.M. Best at the time?

4 A. Because it -- they needed to -- to meet their
5 obligations and their liquidity.

6 Q. And that could impact the ratings?

7 A. That could impact the rating, yes.

8 Q. Okay. Could you turn to page 14 of DX 258.
9 What's your understanding of this slide which says, "AIG
10 is revamping its risk management function..." What is
11 that?

12 A. Basically they were trying to improve their risk
13 management of the entire organization.

14 Q. And do you recall why?

15 A. Because they -- they had significant risk, and
16 they were trying to manage that better and lessen their
17 risk appetite.

18 Q. And why did that matter for A.M. Best?

19 A. Because it could have an impact on the ratings.

20 Q. And why?

21 A. It -- it could -- it could limit the company --
22 if they continued to have those losses, it could limit
23 their ability to raise capital, and it could -- it could
24 have an effect on the franchise reputation.

25 Q. Okay. And you mentioned earlier that AIG was

1 considering selling certain assets. Do you recall the
2 timeline that AIG had suggested in which it would sell
3 these assets?

4 A. I don't recall the exact timeline, but I think
5 it was over a couple of years.

6 Q. Okay. If you can turn to the -- I think it's
7 the last page of this document, entitled "Next Steps."
8 Do you see that?

9 A. Yes.

10 Q. Okay. And to what extent, if any, does this
11 slide refresh your recollection about the timeline for
12 what AIG's next steps were on its plan?

13 A. Well, its next steps were to -- were over the
14 next couple of weeks, to review its options.

15 Q. Okay. And what -- how did this September 12th
16 meeting with AIG conclude?

17 A. The September 12th meeting concluded by us
18 saying that we would review the information that we
19 received, and we would let them know what impact it had
20 on the rating of the company.

21 Q. And so what do you recall about your -- you and
22 your team's reaction to AIG's presentation?

23 A. Well, our reaction was that we were -- that we
24 would review it at the time.

25 Q. Okay. And then after the fact, did you, in

1 fact, review it?

2 A. Well, it was a coincidence, but that was the
3 weekend that the financial crisis of 2008 really came
4 into full effect, and Lehman Brothers was -- you know,
5 there was news of it going into bankruptcy, and I
6 believe that happened on Sunday or Monday of -- after
7 this meeting. This meeting was on a Friday.

8 Q. And it's your testimony that the scheduling of
9 this meeting had no relationship with --

10 A. It had no relationship at all with that.

11 Q. -- that? Okay.

12 So, generally, your team's -- you're talking
13 about the views of your team in reaction to this plan.
14 What were those views?

15 A. The views were that, you know, they needed to
16 shed some assets, to sell some assets to raise capital,
17 and we had to review if we thought that it was enough
18 capital and if it was possible for them to get their --
19 the -- the prices that they thought they would get from
20 these businesses.

21 Q. Can you turn now in your binder to the last
22 document, which is DX 959, and tell me when you have
23 that in front of you.

24 A. It's in front of me.

25 Q. Do you recognize DX 959?

1 A. Yes. It is an email.

2 Q. And I see you're on the "To" line of both the
3 bottom and the -- and then the "Copy" line of the top
4 email?

5 A. Yes. I am -- I was copied on this email.

6 Q. And there are two emails here. Is that -- is
7 that right?

8 A. Oh, yes, yes.

9 Q. The bottom email is from Joyce Sharaf. Did I
10 say that right?

11 A. Yes, Joyce Sharaf.

12 Q. Who is she, Joyce Sharaf?

13 A. She was the lead analyst for AIG, for AIG's
14 property/casualty subsidiaries.

15 Q. And she reported to you?

16 A. She reported to me, yes.

17 Q. What about Matthew Mosher? Did I say that
18 right?

19 A. Matt Mosher?

20 Q. Who is he?

21 A. Yes, he was the head of the Property/Casualty
22 Rating Division at the time, and now he is the head of
23 all of our ratings.

24 Q. And if you need to look at it to assist your
25 answer, then that's fine, but what's your understanding

1 of why Ms. Sharaf and Mr. Mosher were sending these
2 emails?

3 A. My understanding is that, you know, Joyce was --
4 was concerned about the execution of selling these
5 assets and the timing of selling them.

6 Q. And -- by that you mean the presentation we just
7 walked through?

8 A. Yes.

9 Q. And is it Ms. Sharaf and Mr. Mosher's regular
10 business duties to send emails in response to company
11 plans such as this?

12 A. Yes.

13 Q. And --

14 A. Could I step back on that a little bit?

15 Q. Please.

16 A. This was a bit unique because of the fluidity of
17 the situation at this time, and we did involve the
18 senior management of -- of our division.

19 Q. And in that sense it was unusual? Is that what
20 you're saying?

21 A. In that sense, it was -- it was a little bit
22 unusual, yes.

23 Q. And to what extent, if any, was it Ms. Sharaf's
24 or Mr. Mosher's job responsibilities to react to
25 presentations from companies such as AIG?

1 A. As members of a -- as the analysts, it was their
2 job, and as a member of a rating committee, it would be
3 their job, also.

4 Q. Okay. And was it your job responsibility to
5 review emails such as this?

6 A. Well, if it was sent to me, yes.

7 Q. Okay. Do you recall reviewing this
8 contemporaneously?

9 A. I don't really recall reviewing it specifically,
10 but it -- I -- I believe I did.

11 Q. Would it have been part of your business
12 practices to review these types of emails?

13 A. Yes.

14 MR. SCARLATO: Your Honor. We would move for
15 the admission of DX 959.

16 MR. BOIES: Your Honor, I think it's -- it's
17 certainly within the Court's discretion as to whether to
18 treat emails as business records or not. Ordinarily, I
19 think emails by their nature, and particularly in an
20 unusual situation, is not something that is
21 conventionally a business record. But I think that --
22 I'll -- if the Court thinks it is useful to treat them
23 that way, I have no objection to it, but I wanted to
24 raise the issue for the Court's consideration.

25 THE COURT: I have to tell you all that whenever

1 I get a document like this, I just get out my
2 reliability yardstick and try to place it somewhere on
3 that benchmark, and I think consistent with the way
4 we've been dealing with emails in the case so far, I
5 think we'll admit this document. So, Defendant's
6 Exhibit 959 is admitted.

7 MR. SCARLATO: Thank you, Your Honor.

8 (Defendant's Exhibit Number 959 was admitted
9 into evidence.)

10 BY MR. SCARLATO:

11 Q. Now, Mr. Colannino, at the -- let's start with
12 the bottom email. I have just a couple of quick
13 questions.

14 A. Okay.

15 Q. Ms. Sharaf -- how do you --

16 A. Sharaf.

17 Q. Sharaf, I'm sorry. She starts, "Since our
18 meeting, I have gone through AIG's presentation again."

19 First, what meeting is she referring to, if you
20 recall?

21 A. She is referring to the September 12th meeting.

22 Q. The one you just testified about?

23 A. Yes.

24 Q. Okay. And what presentation is she referring
25 to?

1 A. She is referring to the presentation we just
2 went over.

3 Q. DX 258?

4 A. Yes.

5 Q. Okay. And the title of her email is, "AIG -
6 Ringing the Alarm Bell." What's your understanding of
7 what she meant by that?

8 A. She was concerned.

9 Q. Concerned about what?

10 A. About their ability to execute their plan.

11 Q. And you can review it if it helps, but do you
12 recall why Ms. Sharaf was concerned about this plan?

13 A. I think at the time, you know, it was two days
14 after, but the news of Lehman Brothers -- Lehman
15 Brothers going into bankruptcy was becoming more and
16 more apparent and that she believed that it would be --
17 that it would be difficult for them to -- to sell their
18 assets given the condition of the financial markets,
19 first because of evaluations of the -- of the
20 businesses, and second, because of -- of the ability of
21 buyers to actually raise the capital.

22 Q. And if you can turn your attention to the second
23 sentence of DX 959 at the bottom, it says, "The plan is
24 so completely fraught with execution and timing issues
25 that I strongly suggest we hold a committee as soon as

1 possible."

2 What was she explaining there?

3 A. She believed that there was -- that there was
4 risk in them executing it and disposing of the assets on
5 a timely basis.

6 Q. And so why did she say "I strongly suggest we
7 hold a committee as soon as possible"? What is she
8 referring to?

9 A. She's referring to a rating committee for A.M.
10 Best.

11 Q. And what would be the purpose of holding that
12 committee meeting?

13 A. To decide what action, if any, A.M. Best would
14 take on its rating.

15 Q. Okay. If you can turn now about halfway down in
16 that paragraph, there's a sentence beginning, "The
17 alternatives/options..." Do you see that?

18 A. Yes.

19 Q. "The alternatives/options they are resorting to
20 are representative of a drowning company (despite
21 franchise values) and appropriate action on our part
22 needs to be discussed in a committee."

23 What is she explaining there?

24 A. She believes it was a company that was in -- in
25 financial difficulty.

1 Q. And what does she -- why does she say "despite
2 franchise values"?

3 A. The franchise value of -- she was referring to,
4 I believe, the franchise values of the -- of the
5 insurance subsidiaries, which were still considered
6 strong.

7 Q. So, why would she say "despite the franchise
8 values"?

9 A. Because she -- she thought that the franchise
10 values could eventually deteriorate because of the
11 issues at the holding company.

12 Q. And can you explain for the Court why issues at
13 the holding company would affect franchise values of
14 insurance subsidiaries?

15 A. Yes. It could -- it could affect the quality of
16 business that is placed in the insurance companies. The
17 agents, brokers, and even insureds may not want to do
18 business with them. The insurance companies may have to
19 cut prices to keep their business. That could be one
20 thing.

21 The ability -- if the companies need to raise
22 capital, the holding company is where the capital is
23 usually raised, and that would have an impact on it.
24 And also, the management talent may leave the company,
25 also.

1 Q. And why would management talent leave?

2 A. Because -- because of the issues, and if they
3 perceive that the company is in financial difficulty,
4 they may -- they may leave and go to a viable company.

5 Q. Okay. And, Mr. Colannino, if you can turn now
6 to the second-to-last sentence in that paragraph, she
7 states, "In my opinion, Under Review is a given right up
8 there with death and taxes."

9 What does she mean there?

10 A. Well, she had a flare for the dramatic, and
11 the -- she thought that at least the company would be
12 placed under review.

13 Q. Okay. Can you remind us what that means?

14 A. Under review is that we believe -- and in this
15 case, I assume that it would be under review, negative.
16 Under review, again, is that we are reacting to where we
17 think the rating will go because of an event.

18 Q. And just to be clear, when you said "the
19 company," are you talking about just the parent or are
20 you talking about the entire structure of the
21 subsidiaries?

22 A. I believe it was -- it was the entire structure.

23 Q. Okay. Now, Mr. Colannino, do you recall if
24 your -- if the committee at A.M. Best, in fact, met
25 after this email in DX 959?

1 A. Yes. It met the next week or the next day,
2 maybe.

3 Q. Okay. Do you recall what you and your team
4 decided to do?

5 A. I believe we put the ratings under review with
6 negative implications.

7 Q. Okay. Can you turn to -- in your binder to
8 DX 331. Tell me when you have that in front of you.

9 A. Okay. It's in front of me.

10 Q. And does DX 331 reflect the action that A.M.
11 Best took at or around September 15th, 2008?

12 A. Yes, it does.

13 Q. Or it would actually be on September 15, 2008,
14 right?

15 A. It was on September 15.

16 Q. Okay. And is DX 231 another press release that
17 announces a rating action that A.M. Best takes in the
18 normal course of its business?

19 A. Yes, it is.

20 MR. SCARLATO: Your Honor, we offer DX 331 into
21 evidence.

22 MR. BOIES: No objection, Your Honor.

23 THE COURT: All right. Defendant's Exhibit 331
24 is admitted.

25 MR. SCARLATO: Thank you, Your Honor.

1 (Defendant's Exhibit Number 331 was admitted
2 into evidence.)

3 BY MR. SCARLATO:

4 Q. Mr. Colannino, the title of DX 331 is "A.M. Best
5 Downgrades and Places Under Review American
6 International Group, Inc. and Most of Its Subsidiaries."
7 Can you explain what action is being taken there?

8 A. Yes. We downgraded the issuer credit rating of
9 AIG, Inc., which is the holding company, and most of the
10 subsidiaries, property/casualty and the life
11 subsidiaries, and we placed them under review with
12 negative implications.

13 Q. And do you recall which subsidiaries were not
14 affected by this action?

15 A. I don't recall specific subsidiaries, but
16 they -- they had very small, minor subsidiaries that --
17 that were lower rated already, so those were probably --
18 when we say "most," that's why -- these were most of the
19 major subsidiaries of AIG's.

20 Q. Okay. And I'd like to get an understanding as
21 to why this action was taken, and if it helps, you can
22 look at the fifth paragraph of DX 331.

23 A. Yes. We were concerned with AIG's fragile
24 financial condition at the time.

25 Q. You mean the parent company?

1 A. The parent company.

2 Q. Okay.

3 A. And its lack of liquidity at the holding company
4 level, and management had to secure funding options, and
5 this was not reflect -- not reflective of AIG's -- of
6 AIG's ratings at the time.

7 Q. And so now the issues you just described were at
8 the holding company level. Can you explain for the
9 Court why those issues required a downgrade of most of
10 AIG's insurance subsidiaries?

11 A. Sure. They're related because of what --
12 it's -- it's what I said before in terms of the
13 financial flexibility of the holding company was
14 compromised, so its ability to raise capital would have
15 been compromised at this point.

16 Again, the reputation of AIG in terms of its
17 financial strength, which would spill over to agents and
18 brokers maybe not writing business with them or them
19 having to cut prices to keep business. And also, again,
20 the -- the possibility of management and insureds
21 leaving the company.

22 Q. And so in taking this action reflected in
23 DX 331, those were concerns that A.M. Best had at the
24 time?

25 A. Yes.

1 Q. Okay. And to what extent, if any, was A.M. Best
2 considering further downgrades as of the date of DX 331,
3 which is September 15th, 2008?

4 A. Well, placing the company under review,
5 negative, indicates that there could be a further
6 downgrade.

7 Q. And was -- at the time, to what extent, if any,
8 was A.M. Best concerned about a potential bankruptcy of
9 AIG, the parent company?

10 A. It -- it was a concern. It was in the realm of
11 possibilities.

12 Q. Okay. And what was your understanding as to how
13 a bankruptcy of the parent company would affect AIG's
14 insurance subsidiaries?

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

16 THE COURT: I think that's a valid objection.

17 MR. SCARLATO: Okay.

18 THE COURT: Do you want to lay a foundation? Do
19 you want to try to lay a foundation?

20 MR. SCARLATO: How about I rephrases? I will,
21 indeed, Your Honor. Thank you.

22 BY MR. SCARLATO:

23 Q. Mr. Colannino, at the time, did you and your
24 colleagues discuss the impact that an AIG bankruptcy
25 might have had on its insurance subsidiaries?

1 A. Yes.

2 Q. And what concerns were expressed about what
3 could happen?

4 A. The concerns are a lot of what I've -- what I've
5 previously testified to; again, the financial
6 flexibility of the holding company, the ability to
7 retain its business, because agents and brokers and --
8 and insureds might not want to do business with A --
9 with AIG.

10 Q. And if -- and if the AIG parent had declared
11 bankruptcy at that time, would A.M. Best have conducted
12 another review of its insurance subsidiaries, the
13 ratings?

14 A. Yes.

15 Q. The ratings?

16 A. Yes, it would have.

17 Q. Yes. Mr. Colannino, have you ever heard the
18 term "death spiral" used in the insurance industry?

19 A. Yes, I've heard the term.

20 Q. And what is your understanding of that term?

21 A. Well, it's not something that we pay particular
22 attention to as rating analysts, but I am aware of the
23 term, and what happens is when a company is downgraded
24 by A.M. Best below a certain level, if they have what we
25 would call rating-sensitive business, that the business

1 depends on what the rating is, for insureds or agents
2 and brokers to write the business in that company, the
3 company may not be able to write that business anymore
4 because of the downgrade of the rating, and it sort of
5 has a snowball effect.

6 Q. Okay. And you said it's not something that we
7 pay particular attention to as rating analysts. What
8 did you mean by that?

9 A. Well, we can't consider it when we do a rating.
10 When we do a rating, we call it as we see it, and we
11 can't consider what will happen to the company because
12 of a -- of a rating action.

13 Q. So, then, how are you aware of the circumstances
14 you just described?

15 A. Well, we're aware of it through -- through
16 knowing what goes on in the industry.

17 Q. Okay. Now, Mr. Colannino, do you recall if AIG
18 declared bankruptcy in September 2008?

19 A. I recall that they did not.

20 Q. And do you recall why it didn't?

21 A. Because they -- they were able to raise capital
22 through the government loan.

23 Q. And can you turn now to DX 490 in your binder.
24 And can you describe what is on DX 490?

25 A. Yes, it's a press release from A.M. Best.

1 Q. Dated September 15th, 2008?

2 A. Correct.

3 Q. And is DX 490 another A.M. Best press release
4 that announced an action that A.M. Best took in
5 accordance with its regular business practices?

6 A. Yes, it is.

7 MR. SCARLATO: Your Honor, we move for the
8 admission of DX 490.

9 MR. BOIES: No objection, Your Honor.

10 THE COURT: Defendant's Exhibit 490 is admitted.

11 (Defendant's Exhibit Number 490 was admitted
12 into evidence.)

13 BY MR. SCARLATO:

14 Q. Now, Mr. Colannino, the title of DX 490 is "A.M.
15 Best Comments on Ratings of American International
16 Group, Inc. and Its Subsidiaries." Can you explain why
17 A.M. Best was commenting on AIG's ratings at this time?

18 A. Yes. We commented that -- the comment basically
19 is that we did not take any rating action at the time,
20 and the reason for that was because AIG secured a loan
21 from the -- from the Federal Government to address its
22 liquidity issues.

23 Q. And if you could turn to the second paragraph,
24 about halfway through, there's a sentence starting, "The
25 extension of a two-year \$85 billion secured loan from

1 the Federal Reserve..." Do you see that?

2 A. Yes, I do.

3 Q. Is that the loan that you were referring to?

4 A. Yes.

5 Q. And does this refresh your recollection that the
6 loan was from the Federal Reserve?

7 A. Yes.

8 Q. Mr. Colannino, if you can turn now to the
9 subsequent paragraph -- I'm sorry, let's finish with
10 that one. So, I stopped at "Federal Reserve," and it
11 says, "Has removed the imminent threat of bankruptcy and
12 staved off the concern of a disorderly unraveling of
13 AIG's businesses."

14 Can you explain what's being reflected there?

15 A. Yes. It -- it basically -- it bought A -- it
16 bought AIG time to -- to sell its businesses to raise
17 capital.

18 Q. And if you can turn now to the next paragraph,
19 which starts, "A.M. Best believes it is premature to
20 declare financial stability to such an extent that a
21 change in outlook or ratings is warranted."

22 Can you explain why A.M. Best thought it was
23 premature at that time?

24 A. Because it was a -- a significant loan that AIG
25 had to -- had to pay back. At that point, we did not

1 know if it was -- if it was enough to -- to cover its
2 losses and that the terms of the loan and the cost of it
3 were pretty onerous.

4 Q. And just so we're all clear, the first paragraph
5 states, "Account under review with negative implications
6 status is also unchanged." So, at that time, that was
7 the status of A.M. Best's outlook --

8 A. That's correct.

9 Q. -- with negative implications?

10 A. Under review with negative implications, yes.

11 Q. Right. And then what -- turning back to that
12 third paragraph, the long one, the second sentence
13 states, "The ratings of AIG's major property/casualty
14 and life and retirement services subsidiaries which
15 remain within the Excellent rating category were
16 downgraded as a result of the removal of a financial
17 lift afforded to the subsidiaries by the perceived
18 financial flexibility," and then it goes on.

19 Can you just explain what "financial lift" means
20 in that sentence?

21 A. In -- in some cases, if there is -- if there is
22 strength at another business or at a holding company,
23 what we do is we do a -- what we call a stand-alone
24 rating, the company on its own merits; and then if there
25 are any other subsidiaries or parents that have the

1 financial strength or have -- have a flexibility to --
2 to lift that rating up, meaning provide capital to it or
3 providing resources to the company. So, that's what we
4 mean by that, and we believed that was diminished.

5 Q. Is that diminishment reflected in the next
6 sentence, which starts, "AIG's ability to provide rating
7 enhancement based on these factors is not viable"?

8 A. Correct.

9 Q. And why was it not viable?

10 A. Because we didn't think that they had the
11 ability to -- to -- we didn't think it had the financial
12 flexibility to raise additional capital and lift those
13 ratings.

14 Q. Okay. And just a couple of more quick questions
15 on DX 490. The next paragraph starts, "Despite notable
16 relief with regard to liquidity, A.M. Best's short-term
17 concerns include potential for policyholder departures
18 and surrenders and continued erosion of confidence from
19 consumers, policyholders, counterparties, credit
20 facility banks and employees."

21 Can you explain why that was still a concern
22 after the Government's loan to AIG or the New York Fed's
23 loan to AIG? Excuse me.

24 A. It was still a concern about we didn't -- we
25 were on uncharted waters here for a while, and we didn't

1 know if the -- first, if the loan was made, if they
2 would be able to operate and dispose of -- and carry out
3 their plan to sell assets, and because of the -- the
4 amount of interest that they had to pay on the loan.

5 Q. Okay. The next sentence says, "In addition,
6 A.M. Best needs to monitor potential erosion of
7 franchise value..." Can you explain what that means?

8 A. Yes. We had to monitor the life and the
9 property/casualty subsidiaries of the company to make
10 sure that the franchise value didn't deteriorate.

11 Q. And I'm not going to ask you to say it again,
12 but it's for the reasons you described earlier?

13 A. For the reasons I described before, yes.

14 Q. Okay, thank you. So, no more questions about
15 this document, Mr. Colannino, but subsequent to
16 September 2008, did there come another time when A.M.
17 Best again considered downgrading AIG?

18 A. Yes, I -- yes, there was.

19 Q. Okay. And do you recall why?

20 A. I don't recall the -- if you have a document
21 that you can --

22 Q. Sure. Let's start with DX 650 in your binder.
23 Do you have that?

24 A. Yes, I do.

25 Q. Do you recognize DX 650?

1 A. Yes. It is a rating committee package.

2 Q. What do you mean by "package"?

3 A. Rating committee documents. It's a -- it's --
4 they're documents related to AIG that were presented to
5 a rating committee.

6 Q. Are those the documents towards the end of
7 DX 650? Is that what you're referring to, starting
8 on -- there are small numbers in the bottom right,
9 starting on number -- the document ending 6171, entitled
10 "AIG Capital Plan"? Do you see that?

11 A. 6171?

12 Q. 6 -- yep, those numbers in the -- the small
13 numbers in the bottom right.

14 A. Okay.

15 Q. Do you see that? You can look at the screen,
16 too, if it helps.

17 A. AIG Capital -- well, that was a -- that was a
18 plan that AIG presented to us, but the rest of this was
19 also information that we would put in for our internal
20 rating committee. So, it wasn't produced by AIG; it was
21 produced by us, but -- except for this plan starting on
22 6171, which was produced by AIG.

23 Q. Okay. So, to be clear, the first -- the pages
24 before that in DX 650 were records created by A.M. Best?

25 A. That's correct.

1 Q. And what was the purpose of those records?

2 A. The purpose of those records were we have a
3 rating -- a recommendation form, which basically
4 describes the recommendation from the analyst as to the
5 rating committee, and we also have some financial
6 information about AIG.

7 Q. Okay. And the date on page 1 of DX 650 is
8 November 5th, 2008. Do you see that?

9 A. 650?

10 Q. The first page, on the top right I see a date.
11 The first page.

12 A. November 5th, 2008, yes.

13 Q. Okay. Is it your understanding that this
14 document would have been created at or around that date?

15 A. Yes.

16 Q. And under -- there's a bunch of -- it looks like
17 initials. I see "Team Leader Initials" on the left side
18 and "AC." Is that you?

19 A. Yes, that is me.

20 Q. What does that indicate?

21 A. That indicates that I reviewed this document.

22 Q. And would you have reviewed that in the normal
23 course of your business at A.M. Best?

24 A. Yes.

25 Q. And would your team have created DX 650 in the

1 normal course of its business in assigning ratings to
2 such companies as AIG?

3 A. Yes.

4 MR. SCARLATO: Your Honor, we move -- in two
5 parts, we move for the admission of DX 650 up until the
6 page that Mr. Colannino testified he did not -- he and
7 his team did not create, which starts on Bates numbered
8 ending 6171, the AIG presentation.

9 And then secondly, Your Honor, we would move for
10 the remainder of this document, the AIG presentation of
11 DX 650, to show the impact it had on A.M. Best and its
12 rating but not for the truth of the matter asserted.

13 MR. BOIES: No objection, Your Honor.

14 THE COURT: All right. Before I admit this
15 document, how should we treat the handwriting that
16 appears on this document?

17 MR. SCARLATO: That's an excellent question.
18 Can I lay a foundation for that handwriting?

19 THE COURT: Sure.

20 MR. SCARLATO: Okay.

21 BY MR. SCARLATO:

22 Q. Mr. Colannino, if you page through the AIG
23 presentation towards the back, there are a number of
24 handwritten notes on -- on them. Do you see that?

25 A. On -- through the AIG presentation or --

1 Q. Yeah, through the back half of DX 650. Maybe
2 not the very end, but around page 4 through 10, at
3 least, I see --

4 A. Oh.

5 Q. Do you see that?

6 A. Yes.

7 Q. Do you recognize that handwriting?

8 A. I do not recognize it.

9 Q. Okay. So, it's not yours?

10 A. It's not mine.

11 Q. Do you -- can you recognize whose handwriting
12 that is?

13 A. I don't recognize the handwriting, but I would
14 believe that it is Joyce Sharaf's.

15 MR. SCARLATO: Your Honor, we would offer it for
16 the same purpose, the state of mind of A.M. Best, but if
17 Your Honor -- we can also redact it if Your Honor
18 wouldn't want it in evidence.

19 THE COURT: I think what we will do is we will
20 admit the first portion of Defendant's Exhibit 650 as
21 you described it, and the AIG presentation part of it we
22 will admit as information presented to A.M. Best, and I
23 think it would be best to just disregard the handwritten
24 notes in this document.

25 MR. SCARLATO: That will be fine, Your Honor.

1 THE COURT: All right.

2 (Defendant's Exhibit Number 650 was admitted
3 into evidence.)

4 BY MR. SCARLATO:

5 Q. So, Mr. Colannino, just a few quick questions on
6 this document. Can you turn first to page 2 of DX 650.
7 Do you see that?

8 A. Yes.

9 Q. Can you explain for the Court what that
10 information describes?

11 A. That information describes -- and I'm --

12 Q. Take your time.

13 A. -- on 148, is that --

14 Q. Correct.

15 A. Okay. That information describes the outcome of
16 the rating committee.

17 Q. Okay. And can you explain that outcome for the
18 Court?

19 A. The outcome -- actually, there were -- there
20 were two outcomes of the rating committee. The first
21 one was if the -- the Fed followed through on its
22 proposed capital structure, which the end result was
23 placing the rating of -- of AIG at a bbb-, and that's
24 the issuer credit rating, and that is of the holding
25 company.

1 And the stand-alone life subsidiaries would be
2 an "a" with a stable outlook, and the -- I believe it
3 was the PC subsidiaries would be an "a" with a negative
4 outlook.

5 Q. Okay. And, Mr. Colannino, what's the second set
6 of information indicated below that?

7 A. And the second set is -- was actually another
8 vote, if the Fed did not follow through with the
9 proposed capital structure that they were proposing, and
10 in that case, it would be -- the rating would have been
11 downgraded to a "bb+," and it would be left under
12 review, negative.

13 Q. And was that a lower rating than the first
14 conditions you went through?

15 A. Yes, it is.

16 Q. And it says, "Proposed Capital Structure." Do
17 you recall what that proposed capital structure was at
18 the time?

19 A. I don't -- I believe it was a restructuring --
20 it was a restructuring of the -- of the loan, the \$85
21 billion loan.

22 Q. Okay. And why did that restructuring matter for
23 A.M. Best's ratings at the time?

24 A. Well, because I believe that AIG needed more
25 capital to -- to solve its liquidity needs.

1 Q. Understood. And so I'm just trying to get a
2 sense for why the two separate votes were taken at the
3 time.

4 A. Oh, one was -- one was that if the -- if the Fed
5 continued its support of AIG, and one was if the -- if
6 the Fed did not consider -- did not continue with the
7 support, the second one, the lower rating.

8 Q. Okay. If you can turn now to -- a couple pages
9 further, there's a memo -- a typed-up memo starting --
10 it's the Bates number 6159, with a title "American
11 International Group, Inc., Rating Committee, November
12 5th, 2008."

13 A. Okay.

14 Q. What does this portion of the package reflect?

15 A. This is a -- this is a recommendation form. It
16 was actually -- it was actually the same as the first
17 part of this package starting on page 6154.

18 Q. Um-hum.

19 A. I believe it was the same thing, but we just did
20 it in a more user friendly, I believe, Word --

21 Q. Yeah, that's why I asked you to look at this
22 one.

23 A. Yeah.

24 Q. Okay. Just a couple quick questions. First,
25 the second full paragraph talks about postponing a

1 change in ratings. Do you see that? The second full
2 paragraph.

3 A. Yes.

4 Q. Okay. I'm just curious what the last two
5 sentences indicate. "There is far too much negative
6 information to ignore regarding pricing and employee
7 defection. These assets are deteriorating every day."

8 Can you explain what that means?

9 A. It's pretty much what I was saying before,
10 about -- about pricing in the subsidiaries, in the
11 insurance subsidiaries, that they would have to -- that
12 they may have to cut prices to keep business, and also
13 about talent leaving the company.

14 Q. And so it states, "These assets are
15 deteriorating every day." So, to what extent was that a
16 reality at the time?

17 A. Right. Well, they were having an adverse
18 impact, we believed, on the financial strength of the --
19 of the companies.

20 Q. Okay. And do you recall why that was? Why were
21 the assets deteriorating every day?

22 A. Oh, because of what I discussed before about --
23 about pricing, underpricing business, about business
24 leaving AIG, and about management and employees
25 defecting.

1 Q. If you could turn now to "Basis for Rating
2 Recommendation." Do you see that?

3 A. Yes.

4 Q. The first bullet talks about an October 9th,
5 2008, meeting. Were you at that meeting?

6 A. I don't recall, but I believe I was there.

7 Q. Okay. Can you explain the second sentence? It
8 says, "The Fed" -- and do you know what they're
9 referring to by "the Fed"?

10 A. Yes. The Federal Reserve Bank.

11 Q. Okay.

12 -- "has requested a stabilization of ratings
13 although apparently will accept a negative outlook. The
14 benefits of the Fed restructuring may call for A.M. Best
15 to reconsider a downgrade but it does NOT provide
16 stabilization. The restructured Fed credit facility
17 allows AIG to remain out of bankruptcy - again."

18 Can you explain what that means?

19 A. Yes. If the -- if the Fed was going to
20 restructure its credit facility, we would -- and provide
21 additional support, we would be more comfortable with
22 that.

23 Q. And -- with what?

24 A. We would remain comfortable with it.

25 Q. With what?

1 A. With the support that the Fed was giving AIG.

2 Q. Okay. And around this time, were you in
3 discussions with Fed officials?

4 A. Yes.

5 Q. Okay. Do you recall why you were meeting
6 with -- and this is the New York Fed officials, right?

7 A. Yes.

8 Q. And do you recall why you were meeting with
9 them?

10 A. Just -- just to be clear, I had -- myself, I did
11 have some discussions with them, but not with -- I
12 wasn't involved in every discussion with them, and the
13 reason why was just to see if they were having -- if
14 they had continued support -- if they would continually
15 support AIG.

16 Q. And why did that matter?

17 A. It mattered to -- to basically -- to -- to keep
18 it out of -- to keep AIG out of bankruptcy.

19 THE COURT: Mr. Scarlato, before we leave --

20 MR. SCARLATO: Please.

21 THE COURT: -- Defendant's Exhibit 650.

22 Mr. Colannino, there's a rather long list of AIG
23 insurance subsidiaries, I would take it to be, that
24 begins toward the end of the recommendation memo, pages
25 3 through 6 of that memo. Do you see that list?

1 THE WITNESS: Yes, I do.

2 THE COURT: I just want to get a better feel for
3 your involvement in AIG, because there are property and
4 casualty companies listed at the end of the list, but I
5 wanted to know, as to the long list of international
6 subsidiaries, were you involved in overseeing those
7 entities?

8 THE WITNESS: I was not involved in overseeing
9 those.

10 THE COURT: So, it would be, what, the property
11 and casualty companies listed at the end? Is that
12 right?

13 THE WITNESS: Yes. Let me try to explain this.
14 These are our -- these are a list of -- a lot of these
15 companies are not rated by A.M. Best, but our system
16 would -- would include companies -- like, for example,
17 we're rating AIG. If there are other companies that
18 they have, our system would just put them in here just
19 to show that there were other companies with AIG. This
20 is just for informational purposes, basically.

21 THE COURT: Okay. Thank you.

22 THE WITNESS: You're welcome.

23 BY MR. SCARLATO:

24 Q. And, Mr. Colannino, just to follow up, to what
25 extent, if any, did A.M. Best rate AIG's foreign

1 insurance companies?

2 A. We rated companies that were in the U.S. that
3 did business in foreign countries on the -- on the --
4 they were domiciled in the United States. For example,
5 on the property/casualty side, there was a company
6 called American International Underwriters who did
7 business in foreign companies -- in foreign countries,
8 and then on the life side, there was a large -- they
9 called it ALICO, who was domiciled in the United States
10 but also did business in foreign countries, but that was
11 handled through -- through A.M. Best in the United
12 States.

13 Q. Were there any other ratings of AIG's foreign
14 companies?

15 A. No, there -- to my -- to the best of my
16 recollection, no.

17 Q. Okay. So, turning back, let's go quickly back
18 to the page after the one we were just talking about,
19 that you and I were talking about, which is the Bates
20 number ending 160.

21 A. Okay.

22 Q. Do you see that?

23 Can you explain -- it's the first bullet on that
24 page, which states, "The new Fed capital structure is
25 tantamount to rearranging chairs on the deck of the

1 Titanic." What does that mean?

2 A. Well, that was Joyce Sharaf's language, and I
3 believe that she thought that the -- that the Fed was
4 just -- was just restructuring their capital.

5 Q. Okay. And do you recall what action A.M. Best
6 ultimately took at that time?

7 A. I don't recall specifically. I don't think we
8 took any action.

9 Q. Sure. Why don't I turn your attention to
10 DX 685. Is DX 685, Mr. Colannino, another press release
11 announcing A.M. Best's ratings actions with respect to
12 AIG?

13 A. Yes.

14 Q. And that would be a press release it would issue
15 in the normal course of its business?

16 A. That's correct.

17 MR. SCARLATO: Your Honor, we would like to move
18 for the admission of DX 685.

19 MR. BOIES: No objection, Your Honor.

20 THE COURT: Defendant's Exhibit 685 is admitted.
21 (Defendant's Exhibit Number 685 was admitted
22 into evidence.)

23 BY MR. SCARLATO:

24 Q. Mr. Colannino, the title is "A.M. Best Affirms
25 Ratings of American International Group, Inc. and Its

1 Subsidiaries; Assigns Negative Outlook."

2 Do you recall why A.M. Best took that action?

3 A. Basically what happened was we removed the
4 company from under review and we assigned a negative
5 outlook, which basically made it more long term because
6 of the continued support of the Fed.

7 Q. Okay. And if you can turn now to the third
8 paragraph of DX 685, it says, "A.M. Best's rating
9 affirmations are heavily based on the U.S. Government's
10 intervention and provision of immense capital levels
11 partially without recourse to AIG."

12 What did you mean by -- what did A.M. Best mean
13 by "heavily based"?

14 A. "Heavily based" would mean the rating relied
15 heavily on the U.S. Government continuing to support
16 AIG.

17 Q. And then if you look towards the bottom, the
18 last couple of sentences of that paragraph, the same
19 paragraph, it starts, "The negative" -- I'm sorry, let's
20 go back up, while we're there.

21 The next sentence, after the one I just read, it
22 says, "All of A.M. Best's future rating considerations
23 are based on continued U.S. Government support as long
24 as support is needed."

25 What does that mean?

1 A. I think that -- I think it pretty much speaks
2 for itself, that sentence.

3 Q. I would like you to explain it.

4 A. Okay.

5 Q. Thank you.

6 A. Basically, future ratings are -- government
7 support is a very strong factor in the future ratings of
8 AIG.

9 Q. Okay. When it says "continued government
10 support," does that contemplate additional support? Is
11 that what that means?

12 A. Yes.

13 Q. Okay. And why was that important at that time?

14 A. Because at that time AIG still had liquidity
15 issues and still had losses, and the Government -- you
16 know, the support of the Government was still needed.

17 MR. SCARLATO: A moment's indulgence, Your
18 Honor.

19 (Pause in the proceedings.)

20 BY MR. SCARLATO:

21 Q. Okay. Mr. Colannino, if you can turn now to
22 the -- to the end of that paragraph, the same paragraph.
23 It says, "The negative outlook reflects the interim
24 concern of franchise deterioration during a period of
25 potential disparity between expected and offered

1 valuations."

2 What does that mean?

3 A. Basically, we were -- we assigned the negative
4 outlook and we -- we kept the outlook on, because we
5 were skeptical that the valuations of the businesses
6 would continue to be what AIG expected. For example,
7 we -- we thought that -- we thought that there was risk
8 in them -- in -- meaning AIG -- getting the price that
9 they wanted for the businesses.

10 Q. Okay. And then the next paragraph states, "The
11 material support provided to AIG from the Federal
12 Reserve Bank of New York and the U.S. Government in its
13 entirety is the underlying impetus to affirm the current
14 ratings."

15 Can you explain what that means, "underlying
16 impetus"?

17 A. Yes. That is the underlying reason to affirm
18 the ratings.

19 Q. Okay. And at the time, were you and your team
20 at A.M. Best considering what would happen to AIG's
21 ratings if it did not receive that support from the New
22 York Fed and the U.S. Government?

23 A. Yes. That was a concern throughout, whether or
24 not the -- the Fed and the Government would continue to
25 support AIG.

1 Q. And what did you discuss doing if AI -- if the
2 New York Fed and the Government did not continue to give
3 that support?

4 A. Well, it's implied in assigning a negative
5 rating outlook and, you know, through discussions that
6 we would possibly downgrade the rating if AIG needed
7 more capital and the Government did not support it.

8 Q. Now, Mr. Colannino, I'm sorry to do this, but if
9 we could turn quickly back to the last document, which
10 was DX 650. Tell me when you have that again.

11 A. Okay.

12 Q. This is the document, Your Honor, that we
13 admitted partially into evidence, and if you could just
14 turn to the page ending 160, which is that memo that we
15 talked about a few things in there.

16 There's a series of bullets on page 160. Tell
17 me when you have that in front of you.

18 A. It's in front of me.

19 Q. Okay. I just wanted to ask you one more
20 question about the second full bullet, starting, "The
21 positive news..." Can you review that paragraph and
22 explain to the Court what information is being described
23 there?

24 A. (Document review.) Do you want me to describe
25 it?

1 Q. Please.

2 A. That paragraph? Yeah, it -- it is a
3 restructuring of the credit facility. Basically it
4 lowered the credit facility to 60 billion and, you know,
5 converted the facility -- part of the facility to
6 preferred stock, with 10 percent -- 10 percent dividend
7 on the preferred stock.

8 Q. And what does it mean, "The only reason
9 additional availability is provided is that AIG has been
10 given access to other Fed money through the SPV
11 structure and the CFFF facility"? Do you know what that
12 means?

13 A. Basically that it was another form of support,
14 another form of funding that AIG was getting from the
15 Fed.

16 Q. And why did that matter?

17 A. Because AIG needed the capital to meet its
18 liquidity.

19 Q. Finally, Mr. Colannino, can you turn to DX 762.
20 Tell me when you have that in front of you.

21 A. It's in front of me.

22 Q. And what is DX 762?

23 A. It's a press release from A.M. Best.

24 Q. Okay. And is this another A.M. Best press
25 release announcing an action A.M. Best was taking as

1 part of its normal business practices?

2 A. Yes, it was.

3 MR. SCARLATO: Your Honor, we would like to move
4 for the admission of DX 762.

5 MR. BOIES: No objection, Your Honor.

6 THE COURT: Just before we do that,
7 Mr. Colannino, were you still involved with AIG in March
8 of 2009?

9 THE WITNESS: Not as the team leader, no. I may
10 have sat on rating committees for AIG, but I was not
11 following them at that time directly.

12 THE COURT: Well, even though there is no
13 objection, that is a bit of an issue for me.

14 MR. SCARLATO: Okay. I can withdraw the offer,
15 Your Honor, if that's -- if you prefer.

16 THE COURT: So, let's not admit this -- this
17 exhibit.

18 MR. SCARLATO: Okay.

19 BY MR. SCARLATO:

20 Q. So, what we talked about, Mr. Colannino, the
21 November 2008 action. So, at that time, you were still
22 involved with AIG?

23 A. Yes.

24 Q. Okay. And at that time, was it your
25 professional judgment that the Government's continuing

1 support avoided further downgrades by A.M. Best?

2 A. Yes.

3 Q. Okay. And so generally, in your professional
4 judgment, if AIG had not received additional assistance,
5 do you think you would have voted for additional
6 downgrades of AIG and its insurance subsidiaries?

7 MR. BOIES: Objection, Your Honor. Compound.

8 THE COURT: Sustained.

9 MR. SCARLATO: Okay.

10 BY MR. SCARLATO:

11 Q. At the time -- at November 2008, did you
12 consider whether AIG should -- and its insurance
13 subsidiaries should be given further downgrades?

14 MR. BOIES: Objection, Your Honor. Compound.

15 THE COURT: Sustained.

16 BY MR. SCARLATO:

17 Q. Mr. Colannino, just to close out, generally, at
18 any time during your oversight of AIG at A.M. Best,
19 after the Government's support was provided, did -- did
20 A.M. Best further downgrade AIG?

21 A. No.

22 Q. And what's your understanding as to why it did
23 not?

24 A. Because the Government continued to support AIG
25 every step of the way, basically.

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

3 THE COURT: All right. This is a good time, I
4 think, for our morning recess. Let's reconvene at
5 11:15.

6 (Court in recess.)

7 THE COURT: Thank you. Please be seated.

8 Good morning, Mr. Boies.

9 MR. BOIES: Good morning.

10 THE COURT: You may go ahead.

11 MR. BOIES: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. BOIES:

14 Q. Good morning, Mr. Colannino.

15 A. Good morning.

16 Q. We haven't met, but I suspect they have told you
17 I am David Boies and represent the Plaintiffs.

18 A. Yes.

19 Q. When did A.M. Best first begin to be concerned
20 that AIG's investment actions posed a risk to AIG?

21 A. I believe it was the end of 2007, the beginning
22 of 2008.

23 Q. Um-hum. And let me ask you to look at a
24 document that we've marked or -- actually, that we have
25 not marked, that the Defendants have marked as

1 Defendant's Exhibit 1552.

2 A. 1552?

3 THE COURT: He is going to hand it out to you.

4 THE WITNESS: Oh, okay. Thank you.

5 BY MR. BOIES:

6 Q. Can you identify this document?

7 A. Yes. It's the preface to our -- "our" meaning
8 A.M. Best's -- Best Insurance Reports.

9 MR. BOIES: Your Honor, I would offer
10 Defendant's Exhibit 1552.

11 MR. SCARLATO: No objection, Your Honor.

12 THE COURT: Defendant's Exhibit 1552 is
13 admitted.

14 (Defendant's Exhibit Number 1552 was admitted
15 into evidence.)

16 BY MR. BOIES:

17 Q. And does this, among other things, explain what
18 the financial strength ratings and the issuer credit
19 ratings mean?

20 A. Yes, it does.

21 Q. And let me ask you to look at Plaintiffs' Trial
22 Exhibit 689.

23 A. Thank you.

24 Q. And can you explain what this document is?

25 A. Yes. It is our method -- excuse me, A.M. Best's

1 methodology in determining credit ratings.

2 MR. BOIES: Your Honor, I would offer
3 Plaintiffs' Trial Exhibit 689.

4 MR. SCARLATO: No objection, Your Honor.

5 THE COURT: Plaintiffs' Trial Exhibit 689 is
6 admitted.

7 (Plaintiffs' Exhibit Number 689 was admitted
8 into evidence.)

9 BY MR. BOIES:

10 Q. Do you know who Andrew Edelsberg is?

11 A. Yes.

12 Q. Who is he?

13 A. He is a vice president at A.M. Best Company in
14 the Life/Health Rating Department.

15 Q. And do you know who Tom Rosendale is?

16 A. Yes.

17 Q. And who is he?

18 A. He is an assistant vice president in the
19 Life/Health Division at A.M. Best.

20 Q. And were these individuals that you worked with
21 in 2008?

22 A. Yes. I worked with them.

23 Q. And what were their responsibilities in 2008?

24 A. They are -- Andrew Edelsberg is a vice
25 president, which is basically the same as mine, except

1 for on the -- in the Life/Health Rating Division; and
2 Tom Rosendale is an assistant vice president. He's what
3 we would call also a team leader in the life/health
4 area.

5 Q. Okay. Let me ask you to look at Plaintiffs'
6 Trial Exhibit 2948. This is a Washington Post article
7 on September 29, 2008. Let me direct your attention to
8 the fifth paragraph, and do you see a quotation that's
9 attributed there to Mr. Edelsberg?

10 A. Yes, I do.

11 Q. Mr. Edelsberg is said to have said, "At this
12 point, the insurance subsidiaries have an excellent
13 ability to pay claims, AIG's life insurance companies
14 are still highly rated, as most of the issues are at the
15 holding company. We believe that policyholders will be
16 paid in the long term."

17 Do you see that?

18 MR. SCARLATO: Your Honor, we move -- we object
19 to that question and move to strike, given that it's
20 double hearsay and this is a New York -- or some sort of
21 article and then it's quoting someone in the article, so
22 we have two levels of hearsay that Mr. Boies just read
23 into the record. So, we would object and move to strike
24 that question.

25 MR. BOIES: I haven't gotten to my question yet.

1 THE COURT: All we've done is read so far.

2 MR. SCARLATO: Well, we object to that being
3 read into the record.

4 THE COURT: Well, let's see what the question
5 is.

6 MR. SCARLATO: Yes, Your Honor.

7 BY MR. BOIES:

8 Q. Do you disagree with what Mr. Edelsberg said
9 there?

10 A. No, I don't.

11 MR. SCARLATO: Your Honor, we would object again
12 on hearsay grounds.

13 THE COURT: Overruled.

14 BY MR. BOIES:

15 Q. Now, let me ask you to look at the next-to-last
16 paragraph, the -- the last sentence, where you say --
17 you see that there is a quotation attributed to Mr. Tom
18 Rosendale?

19 A. Yes, I see that.

20 Q. Do you agree with that statement?

21 A. Yes, I do.

22 Q. And that statement says, "AIG's insurance
23 subsidiaries 'weren't even close to being at that level'
24 even before the government bailout of the holding
25 company, says Tom Rosendale."

1 And "being at that level" is talking about being
2 in a situation in which the company became insolvent.
3 Is that correct?

4 A. That's correct.

5 Q. Let me ask you to look next at Plaintiffs' Trial
6 Exhibit 1593.

7 A. Thank you.

8 Q. This is a publication by A.M. Best dated
9 September 17th, 2008, headed "American International
10 Group, Inc., A Quick Look at the 6-Month Numbers." Do
11 you see that?

12 A. Yes.

13 Q. And were you involved in preparing this?

14 A. I do not believe I was involved in preparing
15 this.

16 Q. Who was involved in preparing this?

17 A. I don't know who was involved in preparing this.
18 It was most likely Joyce Sharaf.

19 Q. And she worked for you?

20 A. Yes.

21 MR. BOIES: Your Honor, I would offer
22 Plaintiffs' Trial Exhibit 1593.

23 MR. SCARLATO: Your Honor, we would object. I
24 understand that this document has already been admitted
25 for a limited purpose for Dr. Kothari's opinion,

1 Plaintiffs' expert, but we would object to any further
2 admission of this document for the truth of the matter
3 asserted on hearsay grounds.

4 THE COURT: Overruled. I will accept
5 Plaintiffs' Trial Exhibit 1593.

6 MR. SCARLATO: Thank you, Your Honor.

7 (Plaintiffs' Exhibit Number 1593 was admitted
8 into evidence.)

9 BY MR. BOIES:

10 Q. Let me direct your attention to the last page,
11 the last paragraph, where it says, "Current AIG
12 shareholders will see their equity diluted 79.9% by the
13 issuance of warrants to the federal government, which
14 also retains the right to veto dividend payments."

15 Do you see that?

16 A. Yes.

17 Q. Was that your understanding on or about
18 September 17th, 2008?

19 A. Yes.

20 Q. Where did you get that understanding?

21 A. Well, the understanding was that -- that -- I
22 don't recall where I -- where I got that understanding
23 from.

24 Q. Okay. Let me ask you to look at some of the
25 documents that counsel for the United States directed

1 your attention to. First, let me direct your attention
2 to Defendant's Exhibit 490 that's in your book.

3 A. Okay.

4 Q. And to begin with, counsel for the Defendant
5 read a number of sentences on page 1 of Defendant's
6 Exhibit 490, but he skipped one sentence that was in the
7 middle of what he was reading, and I want to come back
8 to that. Do you see the second paragraph, the last
9 sentence?

10 A. Yes.

11 Q. And it reads, "While A.M. Best remains
12 optimistic for the insurance businesses based on its
13 knowledge of the subsidiaries' sufficient capital
14 levels, quality management and enviable franchise value,
15 the long-term corporate structure within which the
16 remaining businesses will operate is not clear."

17 Do you see that?

18 A. Yes.

19 Q. And that was your view as of September 18th,
20 2008, correct?

21 A. That's correct.

22 Q. Let me ask you to look on the next page. Do you
23 see the last sentence of the carryover paragraph --

24 A. Yes.

25 Q. -- where it's referring to the \$85 billion

1 federally funded facility?

2 A. Yes.

3 Q. And it says "the cost of drawing this facility
4 is exorbitant and could impede profitability going
5 forward." Do you see that?

6 A. Yes.

7 Q. And was that your view on or about September
8 18th, 2008?

9 A. Yes.

10 Q. Let me ask you to look next at Defendant's
11 Exhibit 650 that counsel for the United States directed
12 your attention to, and in particular, I want to begin
13 with the page that he was looking at first, which was
14 the second page of the document that has these votes.

15 A. Yes.

16 Q. Now, am I right that bb+ is a higher rating than
17 bb?

18 A. That's correct.

19 Q. And Joyce Sharaf, if you look at the published
20 ratings for the holding company, she votes for a bb
21 rating, assuming the Fed follows through proposed
22 capital structure, but a bb+ rating assuming the Fed
23 does not follow through with a proposed capital
24 structure. Do you see that?

25 A. Yes.

1 Q. And John Andre votes bb+ in both cases, and Mark
2 Steinberg, again, votes bb, assuming the Federal Reserve
3 follows through with its proposed capital structure, and
4 bb+ assuming that it does not. Do you see that?

5 A. Yes.

6 Q. Do you have an understanding as to why
7 Ms. Sharaf and Mr. Steinberg voted for a higher rating
8 assuming the Federal Reserve did not follow through with
9 its proposed capital structure?

10 A. No, I don't.

11 Q. Now, if you look at the section that is labeled
12 "Vote Assuming the Federal Reserve Follows Through
13 Proposed Capital Structure," there are three columns.
14 One says "Published Ratings Holding Companies," and the
15 next says "Published Rating All Insurance Subsidiaries,"
16 and the next says "Stand-Alone Life Subsidiaries."

17 Do you see that?

18 A. Yes, I do.

19 Q. What does the column "Published Ratings All
20 Insurance Subsidiaries" refer to, if you know?

21 A. That refers to all of the insurance
22 subsidiaries, both the life and the property/casualty
23 subsidiaries.

24 Q. Did A.M. Best publish ratings -- a single rating
25 for all of the subsidiaries at any point in time?

1 A. No. Each subsidiary has its own -- has its own
2 rating.

3 Q. And Hartford Steam Boiler was one of those
4 subsidiaries. Is that correct?

5 A. That's correct.

6 Q. And Hartford Steam Boiler had its own rating.
7 Is that correct?

8 A. That's correct.

9 Q. And what was Hartford Steam Boiler's rating?

10 A. I don't recall the exact rating at the time.

11 Q. Do you recall that it was a high rating?

12 A. At this particular time, I don't recall if it --
13 I recall it was a high rating. I don't recall if it was
14 the same rating.

15 Q. By the way, there was some testimony about the
16 danger of management and talent leaving the companies.
17 Do you recall that?

18 A. Yes.

19 Q. Did -- insofar as you were aware, did any
20 significant talent ever leave any of the AIG sub --
21 insurance subsidiaries during 2008 or two thousand --
22 well, you stopped in 2008 -- during 2008?

23 A. I don't recall -- there was management talent
24 that left.

25 Q. Do you recall who?

1 A. I don't recall what year.

2 Q. Do you recall whether that was in 2008?

3 A. I don't recall if it was in 2008.

4 Q. Incidentally, you mentioned ALICO as a company
5 that was organized in the United States but did business
6 abroad.

7 A. Yes.

8 Q. Is ALICO included in what you were rating?

9 A. ALICO, I believe, was included with what we were
10 rating.

11 Q. And what was ALICO's rating at this time?

12 A. I don't recall. It was a life subsidiary. I
13 don't recall exactly.

14 Q. Is it possible to figure that out by looking at
15 one of these documents?

16 A. It should be in the life -- there was a life
17 rating committee. Not in this document.

18 Q. Or in any of the documents that you were shown?

19 A. I don't think it was specifically in any of the
20 documents I was shown.

21 Q. All right. Are you aware of any insurance
22 company holding companies that have filed for
23 bankruptcy?

24 A. Yes.

25 Q. Which ones?

1 A. I believe Conseco's company filed for
2 bankruptcy.

3 Q. Are you aware of any others?

4 A. No.

5 Q. Did you ever participate in rating any of the
6 Conseco insurance company subsidiaries?

7 A. No.

8 Q. Are you aware of whether, after Conseco went
9 into bankruptcy, the insurance subsidiaries continued to
10 operate?

11 A. Yes, they did.

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

13 THE COURT: All right. Thank you, Mr. Boies.
14 Any redirect?

15 MR. SCARLATO: Yes, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. SCARLATO:

18 Q. Good morning again, Mr. Colannino.

19 A. Good morning.

20 Q. Let's take this in reverse order from
21 Plaintiffs' counsel. You were just testifying about
22 Conseco. Do you remember that?

23 A. Yes.

24 Q. And you said it was your belief that the Conseco
25 insurance subsidiaries continued to operate after the

1 parent filed for bankruptcy?

2 A. That's correct.

3 Q. So, do you recall to what extent Conseco's
4 shareholders in the parent company retained any value
5 after the parent company declared bankruptcy?

6 MR. BOIES: Objection, Your Honor. Outside the
7 scope. Also, a foundation --

8 MR. SCARLATO: I'm asking about Conseco, Your
9 Honor.

10 MR. BOIES: -- issue. I was asking about the
11 insurance subsidiaries. I was not asking about what
12 happened to the shareholders.

13 MR. SCARLATO: Your Honor, I would submit that
14 that's cutting it a little too fine. Mr. Boies made a
15 point that I would like to address.

16 THE COURT: Do you have any knowledge about what
17 happened to the Conseco shareholders?

18 THE WITNESS: No, I don't.

19 THE COURT: End of subject.

20 MR. SCARLATO: That's fine.

21 BY MR. SCARLATO:

22 Q. Mr. Colannino, let's turn now to DX 650, which
23 Plaintiffs' counsel just showed you. Tell me when
24 you -- I would like to direct your attention to page 25
25 that you were just looking at.

1 A. Okay.

2 Q. Do you see that?

3 A. Yes.

4 Q. Now, I'd like to ask you about the second
5 category of votes, "Assuming the Fed Does Not Follow
6 Through." Do you see that?

7 A. Yes.

8 Q. Okay. And for the published rating "All
9 Insurance Subsidiaries," so that would be every
10 insurance subsidiary that A.M. Best rates.

11 A. Okay.

12 Q. And it reflects what rating they would have been
13 given?

14 A. Yes, it does.

15 Q. What was the rating?

16 A. "a"-.

17 Q. Okay. And how does that compare to the rating
18 of the -- if it follows through the proposed capital
19 structure, noted above?

20 A. It is lower.

21 Q. Okay. And it says "UR Neg." What does that
22 mean?

23 A. Under review, negative.

24 Q. And so what does that mean? Could you remind
25 the Court?

1 A. Sure. Under review means that in the short
2 term, there is an event that in our opinion -- in A.M.
3 Best's opinion, at the conclusion of that event, we may,
4 in the short term, downgrade the rating. It's possible
5 that we could downgrade the --

6 Q. Are you talking about a downgrade beyond the
7 downgrade that is reflected in this exhibit?

8 A. In the top -- the top rating?

9 Q. In the bottom part. I'm just trying to
10 understand it, so that --

11 A. Oh, in the bottom part, yes.

12 Q. Beyond the A- --

13 A. The downgrade would be beyond that.

14 Q. -- that is shown in this document?

15 A. Yes. It's possible, yes.

16 Q. Okay. I believe, Mr. Colannino, you also
17 testified earlier in our discussion about the
18 deteriorating franchise value. Do you recall testimony
19 about that?

20 A. That's correct.

21 Q. And to what extent, if any, could a potential
22 deteriorating franchise value affect A.M. Best's ratings
23 in the future?

24 A. To what -- to what extent can it?

25 Q. Yeah.

1 A. It could have the effect of -- of resulting in a
2 downgrade.

3 Q. Okay. And I believe you testified earlier that
4 A.M. Best did not, in fact, downgrade AIG after the
5 Government's initial rescue. Did you say that?

6 A. That's correct.

7 Q. Okay. And that was -- so, to what extent, if
8 any, did the deteriorating franchise value that A.M.
9 Best observed, as you testified earlier, impact A.M.
10 Best's views on AIG's ratings after the original rescue?

11 A. It -- it's very difficult to take each -- to
12 take each factor individually. We have to look at the
13 whole picture. So, it's hard for me to -- to make a
14 distinction.

15 Q. Okay. Well, at the time of DX 650, A.M. Best
16 was contemplating the possibility that no further
17 government assistance would be provided. Is that --

18 A. 650?

19 Q. -- fair? DX 650, the votes. There are two
20 votes.

21 A. Yes.

22 Q. And one contemplates no government intervention.

23 A. Right.

24 Q. So, if we were to take that -- you said it's a
25 full picture. So, if we were to take that out of the

1 picture, how would the other element you just testified
2 about, deteriorating franchise values, what effect, if
3 any, would that have on A.M. Best's ratings?

4 A. It could have a -- it could go to the extent
5 that a rating would be downgraded.

6 Q. Can you turn now to one of the exhibits you were
7 handed, PTX 1593. It's a short document. It's at the
8 bottom, the PTX 1593.

9 A. Okay.

10 Q. I'm sorry, not that one. Can you turn to
11 PTX 689, the longer document? Do you see that?

12 A. Yes.

13 MR. SCARLATO: One moment, Your Honor.

14 (Pause in the proceedings.)

15 BY MR. SCARLATO:

16 Q. Let's do it this way, Mr. Colannino. I'm sorry
17 to do this again, but PTX 298, if you could turn to that
18 one. Tell me when you have that in front of you.

19 A. 2948?

20 Q. 2948, I'm sorry. Yep.

21 A. Okay.

22 Q. And Mr. Boies asked you whether you agreed with
23 certain statements in this document. Do you recall
24 that?

25 A. Yes.

1 Q. So, I just want to get -- to get your
2 understanding. The first statement he asked you about
3 was, "At this point, the insurance subsidiaries have an
4 excellent ability to pay claims." Do you see that,
5 about four paragraphs down?

6 A. Yes, I do.

7 Q. Okay. And what does that mean, "an excellent
8 ability to pay claims"?

9 A. That is our description of -- excellent is our
10 description of an A rating.

11 Q. What does that mean, to pay claims?

12 A. To have the financial strength to meet its
13 policyholders -- to pay claims of the policyholders.

14 Q. And would that be existing policyholders?

15 A. Yes.

16 Q. And to what -- and you're relating that back, if
17 I'm understanding you correctly, to the financial
18 strength ratings?

19 A. Yes, I am.

20 Q. Okay. And so to what extent, if any, does that
21 quote reflect the ability to write additional business
22 in the future?

23 A. That quote exactly doesn't say anything about
24 writing future business.

25 Q. Okay. And then the last quote that Mr. Boies

1 asked you about in that paragraph, it states, "We
2 believe that policyholders will be paid in the long
3 term." What does that mean?

4 A. Basically, we believe that the company has a
5 financial strength to pay its -- to pay the
6 policyholders' claims in the long term.

7 Q. And why does it say "long term"?

8 A. Because our ratings are long term in nature.

9 Q. Okay. But why does it connect that "long term"
10 with the policyholders in that -- in that quote?

11 A. Basically because there is a -- what we would
12 call a tail on claims. For example, when an insurer has
13 a claim, it could -- it could be that the claim is not
14 settled for years. So, that's what we mean by -- by
15 "long term," in that the company will have the financial
16 strength to be around to pay that claim.

17 Q. And to what extent, if any, do you understand
18 that quote to be discussing the ability to write new
19 business?

20 A. That quote itself doesn't talk about its ability
21 to write new business.

22 Q. Okay. And then finally, Mr. Boies asked you
23 about the -- two paragraphs down, the statement that "If
24 the insurance subsidiaries were to have financial
25 troubles, the state regulators would first require the

1 insurer to implement a plan to improve its financial
2 condition. If that didn't work, regulators would take
3 control of the company."

4 What does that mean?

5 A. Regulators would supervise the --

6 MR. BOIES: Objection. This is outside the
7 scope.

8 THE COURT: Sustained.

9 MR. SCARLATO: Maybe I'm just misremembering.
10 Is it the next sentence that Mr. Boies asked you about,
11 where it says, "If the company became insolvent"?

12 THE COURT: No, that's not it either.

13 MR. SCARLATO: That's not it? Okay.

14 Do you recall what statement Mr. Boies referred
15 you to?

16 MR. BOIES: It's the quote by his colleagues.

17 MR. SCARLATO: "AIG's insurance subsidiaries" --
18 I'm sorry, Your Honor.

19 BY MR. SCARLATO:

20 Q. The last line in that paragraph, Mr. Colannino,
21 it says the "insurance subsidiaries 'weren't even close
22 to being at that level' even before the government
23 bailout of the holding company."

24 The same question as to the other quotes. To
25 what extent does that quote affect AIG's ability to

1 write new business after -- at that time?

2 A. It's -- it's not referring to new business.

3 MR. SCARLATO: No further questions.

4 THE COURT: All right.

5 Anything further, Mr. Boies?

6 MR. BOIES: No, Your Honor.

7 THE COURT: All right.

8 Mr. Colannino, thank you very much for your
9 testimony in this matter. You are excused.

10 THE WITNESS: Thank you.

11 THE COURT: Mr. Gardner?

12 MR. GARDNER: Thank you, Your Honor. The
13 Government calls as its next witness John Brandow, and
14 Mr. Scarlato will be handling that witness as well.

15 THE COURT: Before we bring this witness in, I
16 looked for Mr. Brandow's name on your witness list, and
17 I didn't see him anywhere.

18 MR. GARDNER: Your Honor, as indicated on both
19 parties' witness lists, we both reserved the right to
20 call witnesses on either party's witness list.

21 THE COURT: Oh, so this gentleman was on the
22 Plaintiffs' witness list?

23 MR. GARDNER: Correct, Your Honor.

24 MR. BOIES: Your Honor, there's a housekeeping
25 matter that I think we ought to address before

1 Mr. Brandow testifies, and -- perhaps he can be excused.

2 THE COURT: He's just entered the doorway.

3 (Witness excused.)

4 MR. BOIES: And this may relate to the next two
5 witnesses. The next two witnesses are partners from
6 Davis Polk, the outside law firm representing the
7 Department of the Treasury and the Federal Reserve Bank.
8 The Court will recall that at the beginning of the
9 trial, there was a subject matter waiver of the
10 attorney-client privilege related to issues of
11 authority. It was not a broader waiver of the
12 attorney-client privilege.

13 The Court will also recall that it was
14 represented to us -- and we put it on the record -- that
15 Davis Polk had not been asked to advise and did not, in
16 fact, give any advice with respect to the authority
17 issue. Now, what that means is that if he's going to
18 testify about advice, he's going to testify about advice
19 that did not relate to the authority issue, where
20 there's not been a subject matter waiver as of now.

21 Now, there will be some things that he could
22 testify to without implicating an attorney-client
23 waiver. For example, he could talk about what his
24 conversations were with AIG, because that would not be
25 privileged in any event. But I think that we are

1 very -- it's always complicated with a lawyer
2 testifying, and I think that if he does testify about
3 anything other than communications outside of the
4 privileged area, we are going to contend that that is a
5 waiver of the attorney-client privilege.

6 THE COURT: Who did they represent? Remind me,
7 please. The Department of Treasury?

8 MR. BOIES: And the Federal Reserve Bank of New
9 York.

10 THE COURT: So, both of them?

11 MR. BOIES: Both of them.

12 THE COURT: Okay.

13 MR. BOIES: And so I want to alert the Court to
14 that issue. I would also ask that the Court instruct
15 the witness to be particularly careful to be responsive
16 to the questions and not go beyond the questions,
17 because that is the way that we are more likely -- most
18 likely to get into a waiver situation. So, I would ask
19 the Court to instruct the witness to be particularly
20 careful to be responsive to the particular question
21 asked by either side so that we don't inadvertently get
22 into that area.

23 THE COURT: Mr. Gardner, would you like to be
24 heard?

25 MR. GARDNER: Your Honor, I mean, I think we

1 will have to take it up on a question-by-question basis.
2 We are obviously very sensitive to eliciting privileged
3 information. I would note that Davis Polk was deposed
4 as a 30(b)(6) entity and representatives were deposed
5 and testimony was provided, and the Government will
6 endeavor obviously to be very careful not to disclose
7 that which would, you know, be a subject matter waiver.

8 I don't expect that to happen with either
9 Mr. Brandow, who will testify next, or Mr. Huebner, who
10 will testify after that. But I think other than a
11 generic statement, it's sort of hard to respond to any
12 particulars.

13 THE COURT: All right. I think I understand the
14 situation, but I think also that in presenting this
15 witness' testimony, any doors that the Government opens
16 with this witness run the risk of waiving subject matter
17 attorney-client privilege.

18 MR. GARDNER: I understand, Your Honor.

19 THE COURT: Sure.

20 MR. GARDNER: Okay.

21 THE COURT: All right.

22 (Witness present.)

23 THE COURT: Please come forward, sir. It's a
24 little bit of a maze to work through.

25 Please raise your right hand.

1 Q. And what kind of law do you practice?

2 A. Generally speaking, securities law. I do
3 capital-raising transactions involving convertible
4 securities and equity derivatives.

5 Q. And can you just generally describe for the
6 Court what that work entails?

7 A. Well, the capital-raising transactions involve
8 sales by public companies of securities that combine
9 usually features of debt and equity, usually convertible
10 debt securities. The second category are basically
11 bilateral transactions that involve options or forward
12 contracts on equity securities.

13 Q. Mr. Brandow, did there come a time in September
14 2008 that Davis Polk was retained by the New York Fed
15 regarding a loan to AIG?

16 A. Yes, there was.

17 Q. And were you involved in that effort?

18 A. Not initially, but fairly soon after Davis Polk
19 got started, I got involved.

20 Q. Can you explain how the Davis Polk team was
21 organized around that time, September 2008?

22 A. Well, there were a number of different tasks
23 that Davis Polk was working on at that time. There were
24 people whose primary assignment was to draft the credit
25 agreement that the New York Fed ultimately entered into

1 with AIG. I didn't have very much to do with that
2 exercise. I was asked to focus on the issues that would
3 arise if AIG were to issue convertible preferred stock.

4 Q. And so then after -- after that agreement was
5 signed, what was your role on the representation after
6 that?

7 A. After that I worked out the negotiation of the
8 securities purchase agreement for what became the Series
9 C preferred stock. There were some amendments to the
10 credit agreement that I worked on that related to the
11 Series C preferred stock. I also worked for the
12 Treasury with respect to the TARP preferred stock that
13 AIG issued.

14 Q. Okay. And so I'd like to walk that -- through
15 that a little bit. Let's start by turning to -- you
16 have a binder, a white binder on your --

17 A. Um-hum.

18 Q. Can you turn to JX 107.

19 A. Okay.

20 Q. And can you explain what JX 107 is, Mr. Brandow?

21 A. This is a portion of the credit agreement that
22 AIG and the New York Fed signed.

23 Q. Okay. And it's an excerpt because it's a long
24 document. If you need more, just let me know, and we'll
25 hand you a full copy.

1 But for now, can you turn to page 137 of 139 in
2 JX 107?

3 A. Okay.

4 Q. It's a document entitled "Exhibit D, Summary of
5 Terms of Preferred Stock and Related Issues." What is
6 this document?

7 A. This is an exhibit to the credit agreement that
8 lays out some of the terms of the Series C preferred
9 stock that AIG had agreed to issue as a condition to the
10 granting of the loan.

11 Q. And you may have said this already, but what was
12 your role in the drafting of this document?

13 A. I picked up the actual drafting of this
14 document, I believe, the Monday, I guess that was the
15 22nd of September. Prior to that time, I had seen
16 drafts and I had commented on those drafts.

17 Q. Okay. And so what was the form of equity that
18 AIG ultimately agreed to in this -- in this agreement?

19 A. This is preferred stock, participating in a
20 sense that it had the same rights to dividends and could
21 be converted, upon a satisfaction of the necessary
22 conditions, into 79.9 percent of the common stock.

23 Q. And did AIG's issuance of this preferred stock
24 require shareholder vote?

25 A. The issuance did not.

1 Q. And can you explain why?

2 A. Well, AIG's charter had a provision that's
3 called a blank check preferred provision. What that
4 means is the board of directors of AIG had the power to
5 issue shares of preferred stock that had whatever voting
6 rights and rights to dividends the board decided were
7 appropriate.

8 Q. Okay. Let me draw your attention now,
9 Mr. Brandow, to the last page of JX 107, and that --
10 again, as the Court cautioned, I would like you to be
11 careful about your answer, but in negotiating this term
12 with AIG, can you explain for the Court what the purpose
13 of the NYSE provision is?

14 A. The NYSE provision had to do with a rule of the
15 New York Stock Exchange, and it's a rule of the
16 Exchange -- it's not law, it doesn't have the force of
17 law -- but it's a rule that says that if a listed
18 company is going to issue more than 20 percent of its
19 equity in a private placement, the company either has to
20 get shareholder approval or qualify for an exemption.

21 Q. And so why was this included -- why was this
22 negotiated between AIG and the New York Fed as a part of
23 the credit agreement?

24 A. This provision was --

25 MR. BOIES: Your Honor, a "why" question

1 implicates exactly what I was advising the Court about
2 earlier.

3 MR. SCARLATO: Your Honor, and that's why I
4 limited my question to the discussions with AIG, but I
5 can withdraw the question if --

6 THE COURT: As a precaution, why don't you
7 rephrase it, if you can.

8 BY MR. SCARLATO:

9 Q. Mr. Brandow, I'll move on.

10 So, generally, can a company -- talking about
11 this New York Stock Exchange rule, can a company issue
12 stock without holding a shareholder vote contemplated by
13 the New York Stock Exchange rule?

14 A. Yes. As a legal matter, the company has that
15 power.

16 Q. And how -- why is that?

17 A. Well, again, because the -- the limitation on
18 the company's power is set out in the certificate of --
19 the charter, the certificate of incorporation. And the
20 charter in this case gave the board of directors that
21 power. The New York Stock Exchange rule, as I
22 mentioned, is just a rule of the Exchange. If it's
23 violated, the sanction is that the company's common
24 stock can be delisted.

25 Q. Okay. So, then, what effect, if any, would the

1 failure to comply with this New York Stock Exchange rule
2 affect AIG and its shareholders?

3 A. Well, it wouldn't have affected the issuance of
4 this Series C preferred; that could have happened in any
5 event. If the rule had been violated and the Exchange
6 had decided to delist the common stock, that would have
7 been bad for the stockholders because public companies
8 like to have their shares listed on an exchange. Some
9 institutional shareholders can only hold shares of
10 public companies if the shares are listed on an
11 exchange. And retail investors in public companies like
12 to see the stock price in the newspaper, and it's -- the
13 newspaper prints the prices of the Exchange.

14 Q. And so you mentioned this delisting impact.
15 What impact would that potential delisting have on AIG's
16 ability to issue the preferred stock as part of the
17 credit agreement?

18 A. None.

19 Q. So, JX -- the provision here in JX 107
20 references Section 312.05. Can you explain for the
21 Court -- for the Court's benefit what that rule
22 provides?

23 A. That rule -- I'm not sure about the 05 part, but
24 the rule generally sets out the requirement that if a
25 listed company is going to issue, in a private

1 placement, more than 20 percent of its equity, voting
2 power of its equity, that the company either has to get
3 that shareholder vote to approve the issuance or qualify
4 for an exemption.

5 Q. Okay. And how is that exemption invoked?

6 A. The company would make an application to the New
7 York Stock Exchange.

8 Q. And who makes the final decision as to whether a
9 company satisfies that exemption?

10 A. It would be the Exchange, the New York Stock
11 Exchange.

12 Q. Do you recall if AIG, in fact, applied for that
13 exemption?

14 A. It did.

15 Q. And do you recall if, in fact, the New York
16 Stock Exchange approved AIG's attempts to seek that
17 exemption?

18 A. It did.

19 Q. And as to you, Mr. Brandow, to what extent were
20 you involved in AIG's efforts to invoke that exemption?

21 A. I wasn't involved in the efforts to invoke the
22 exemption. I did look at the letters to shareholders
23 and the press release that AIG was issuing at the time
24 of invoking the exemption.

25 Q. And without revealing the content of any legal

1 advice, what was your understanding of why you were
2 involved in reviewing those documents?

3 A. We were in the -- in the situation of looking
4 at, among other things, all of AIG's public filings, in
5 part because AIG, early in the process, had issued an
6 8-K that was wrong in some very important respects and
7 had to be corrected. And so going forward, Davis Polk
8 was looking at what AIG was putting out to the public.

9 Q. And, Mr. Brandow, to your knowledge, did anyone
10 at the New York Fed or any of its consultants, including
11 Davis Polk, contact the New York Stock Exchange directly
12 concerning this -- this rule?

13 A. To my knowledge, no.

14 Q. Mr. Brandow, can you turn now to PTX 249 in your
15 white binder? It should be towards the back.

16 And, Your Honor, this document is in evidence.

17 A. Okay.

18 Q. Do you have that in front of you?

19 A. I do.

20 Q. Okay. It's an email from Jose Macias. Who is
21 that?

22 A. He is a legal secretary at Davis Polk.

23 Q. Is he your secretary?

24 A. Not usually.

25 Q. Okay. I see your name at the bottom of PTX 249.

1 Does that indicate that you authorized Mr. Macias to
2 write this email?

3 A. I basically wrote it and he just sent it out for
4 me.

5 Q. Okay. And can you explain the context in which
6 Mr. Macias sent PTX 249?

7 A. This email transmits my comments on the early
8 drafts of the -- the letter to shareholders that AIG had
9 to send out as part of invoking the exemption.

10 Q. Okay. And I'd like for you to explain for the
11 Court the cover email, where you state -- you talk about
12 the point of the new language, this language, I guess,
13 you proposed in that second sentence -- third sentence.

14 A. The -- the point of my comment was there is a
15 New York Stock Exchange rules requirement that a company
16 that's invoking exemption has to give notice to the
17 shareholders ten days in advance of issuing the shares
18 that carry the greater than 20 percent voting power, and
19 in reviewing AIG's draft of the letter to shareholders,
20 I was concerned that the language suggested that the
21 point of that ten days was to give the shareholders an
22 opportunity to try to prevent the issuance or that the
23 shareholders would have an opportunity to vote on the
24 exemption. So, I was trying to change the press release
25 so that that impression was not created, because, in

1 fact, the shareholders didn't have the right to stop the
2 issuance.

3 Q. And can you just quickly explain why the
4 shareholders didn't have that right to stop the
5 issuance?

6 A. Because as I said, the rule in question is a
7 rule of the Exchange, and it didn't confer any rights on
8 shareholders. If the Exchange decided that the company
9 was entitled to the exemption, that was it, and there
10 was nothing the shareholders had to -- they didn't have
11 any say in the matter at that point.

12 Q. Mr. Brandow, can you turn to the next document
13 in your binder, PTX 251?

14 THE COURT: Just a second. Before we leave this
15 document, who is Bob Reeder mentioned in this email?

16 THE WITNESS: He is a partner at Sullivan &
17 Cromwell. He was representing AIG.

18 THE COURT: Thank you.

19 BY MR. SCARLATO:

20 Q. So, as reflected in PTX 249, you had discussed
21 with Mr. Reeder about the letter and press release noted
22 in that document?

23 A. That's right.

24 Q. Okay. So, turning now to PTX 251, do you see
25 that document?

1 A. Yes.

2 Q. This, Your Honor, is also in evidence.

3 You're not on this email, Mr. Reeder is, but if
4 you can -- I'd like to turn your attention to pages 8
5 and 9 of PTX 251. Do you see those two pages?

6 A. I do, um-hum.

7 Q. I want to ask you about -- there are references
8 to statements from -- first on page 9, it says, "Counsel
9 for the New York Fed have requested that we not mention
10 the ten days in the letter or release." Do you see
11 that?

12 A. I do.

13 Q. Would that have been you talking to AIG about
14 this issue?

15 A. I think so, yeah.

16 Q. Okay. Do you recall if any other counsel for
17 the New York Fed was discussing this issue with AIG at
18 that time?

19 A. There could have been; I don't remember.

20 Q. Okay. If you can look now at page 8, there's
21 another email from Kathleen Shannon. Do you know who
22 she is?

23 A. I do.

24 Q. Who is she?

25 A. She is in the Legal Department at AIG or was in

1 the Legal Department at AIG.

2 Q. And to what extent, if any, did you have
3 discussions with Ms. Shannon about the New York Stock
4 Exchange rule issue?

5 A. I don't recall having a conversation with her.
6 She was the recipient of that email that we were just
7 looking at.

8 Q. PTX 249?

9 A. Yeah, that's right.

10 Q. Okay. So, I want to ask you, on page 8,
11 Ms. Shannon says, "For what it is worth" -- do you see
12 that?

13 A. Um-hum.

14 Q. -- "we have all intentions of complying with the
15 'waiting period' but I was told 'they don't want to give
16 a roadmap for someone to seek an injunction.'"

17 First, do you recall ever making a statement
18 like that to Ms. Shannon?

19 A. I don't believe I ever said a "roadmap to seek
20 an injunction."

21 Q. And why don't you believe that?

22 A. As I said, I think the only communication I had
23 with her was this email, in which I said "to avoid a
24 suggestion that the shareholders would have a ten-day
25 period within which to prevent the issuance."

1 Q. And so at the time did you think that disclosing
2 the ten-day rule would, in fact, provide a roadmap to
3 shareholders to seek an injunction?

4 A. No.

5 (Discussion off the record.)

6 Q. Mr. Brandow, did you discuss with AIG what would
7 happen if AIG did not follow the ten-day waiting period?

8 A. I don't believe I discussed it with AIG, no.

9 Q. And to your knowledge, to what extent did AIG
10 ultimately disclose this ten-day waiting period in the
11 relevant documents at issue?

12 A. It was disclosed in a letter to shareholders.

13 Q. Okay. What other documents did it have to issue
14 at the time?

15 A. There was also a press release that AIG put out
16 at the time. I don't believe there was a mention of the
17 ten days in the press release.

18 Q. Can you turn in your binder to JX 119. It's
19 toward the front. In the middle, actually.

20 A. I have it.

21 Q. Is this the letter to shareholders you just
22 testified about?

23 A. That's right.

24 Q. Okay. And to what extent does this letter
25 disclose the ten-day issue?

1 A. In the very last couple of lines of the last
2 paragraph, there's a reference to the ten-day
3 requirement.

4 Q. And do you know to whom this letter from Ed
5 Liddy would have been sent?

6 A. To all the shareholders of AIG.

7 Q. No further questions about that document.

8 Let's turn now back to the JX 107, the credit
9 agreement we looked at earlier. Do you have that?

10 A. I do.

11 Q. And one thing I didn't ask earlier that I'd like
12 to be clear on, page 137 starts Exhibit D.

13 A. Right.

14 Q. Was this a document that you assisted the New
15 York Fed in finalizing?

16 A. That's right.

17 Q. Was there any other part of the credit agreement
18 that you were involved in working on at the time?

19 A. As I recall, this was the only part that I
20 worked on.

21 Q. And just definitionally, I make reference to
22 AIG. Can we agree that when I say "AIG," I also mean
23 their counsel?

24 A. Yes.

25 Q. Okay. Do you recall who AIG's counsel was at

1 this time?

2 A. The outside counsel was Sullivan & Cromwell,
3 primarily Bob Reeder, and the person in the AIG Legal
4 Department who mostly handled this matter was Kathy
5 Shannon.

6 Q. Okay. So, from -- going forward, when I ask you
7 about AIG, I mean that entire -- their representatives
8 as well, okay?

9 A. Um-hum.

10 Q. Thanks.

11 So, turning back to my earlier question about
12 discussions about the ten-day rule with AIG, were there
13 any discussions not just with AIG but with its
14 consultants about what would happen if AIG did not
15 follow the ten-day rule?

16 A. No, I don't think there were discussions.

17 Q. Okay. So, looking now at JX 107, can you
18 explain for the Court what the shareholder vote
19 provision provides on page 138?

20 A. The shareholder vote provision had -- related to
21 the fact that because of limitations in AIG's charter,
22 it wasn't possible to convert the Series C preferred
23 into the necessary underlying shares of common stock.

24 Q. Can you explain -- can you explain why AIG's
25 charter did not permit the conversion of Series C

1 preferred into common?

2 A. The Series C preferred was issued in the form of
3 100,000 shares, and each share had a par value of \$5,
4 and under Delaware law, converting the preferred into
5 common was restricted by the fact that the aggregate par
6 value of the common stock that would be received upon
7 conversion could not exceed \$500,000.

8 The common stock had a par value of \$2.50. So,
9 starting with 100,000 shares of preferred, and given
10 that limitation, we could only convert the -- the trust
11 that owned the preferred stock could only convert the
12 preferred stock into 200,000 shares of common. 200,000
13 shares of common was much, much less than 79.9 percent
14 of the common.

15 So, it was necessary or it would be necessary,
16 to permit conversion, to both authorize many more shares
17 of common stock than were authorized and to lower the
18 par value of those shares of common stock so that that
19 \$500,000 could be spread among all the shares that would
20 be issued upon conversion.

21 Q. So, that was a long answer. Just to be clear,
22 there were two different issues that needed to be voted
23 on to permit -- is that right? Is that --

24 A. That's right.

25 Q. Thank you. Verbal answers, please.

1 A. All right.

2 Q. Is that true of all conversions from preferred
3 to common stock, that a shareholder vote is necessary?

4 A. No. If there had been enough flexibility in the
5 charter, then it would not have been necessary to have a
6 shareholder vote.

7 Q. And was this contemplated conversion of common
8 stock the only way that the trust could have monetized
9 the Series C preferred stock?

10 A. No.

11 Q. And did you discuss other ways with AIG and its
12 counsel over the course of your representation of the
13 Fed?

14 A. I did.

15 Q. Okay. Can you just describe for the Court what
16 other options existed, other than the conversion?

17 A. Well --

18 MR. BOIES: That were discussed with AIG? Is
19 that the question?

20 THE COURT: Is that what you meant?

21 MR. SCARLATO: We -- yes, we can start there.

22 THE WITNESS: Okay. So, with AIG, in addition
23 to the conversion idea, we also discussed the idea of
24 subdividing the preferred stock into many smaller
25 pieces, and the end result of that process would have

1 been to create shares of preferred stock that had the
2 same rights to dividends and had one vote per share,
3 just the way common stock had, so that preferred would
4 be functionally equivalent to common stock. And that
5 preferred could have been sold to the public.

6 BY MR. SCARLATO:

7 Q. Okay. So, I think we might get complicated. It
8 might be helpful if we go to a demonstrative.

9 MR. BOIES: Your Honor, the question was what
10 did they discuss with AIG. He answers that, and then he
11 adds, not responsive to the question and also getting
12 into the exact area that we've talked about, "and that
13 preferred could have been sold to the public." That is
14 clearly advice, that's clearly a legal opinion, and --
15 and it wasn't responsive to the question.

16 MR. SCARLATO: Your Honor, we would take issue
17 with that statement. He did preface his entire question
18 that we also discussed with AIG -- with AIG, we also
19 discussed the idea, and then he explained the idea
20 discussed with AIG. So, I have a different
21 understanding of that answer. Maybe Mr. Brandow can
22 clarify, though.

23 THE COURT: Well, I mean, I will allow the
24 answer to stand. I don't quite understand why we are
25 going into these other things that were considered when

1 none of it was adopted, but --

2 MR. SCARLATO: I'll get to that.

3 THE COURT: -- that's your call. All right.

4 MR. SCARLATO: Okay.

5 BY MR. SCARLATO:

6 Q. So, Mr. Brandow, the idea that you just
7 described was discussed with AIG?

8 A. That's right.

9 Q. Okay. So, I would like to just put them up on
10 the demonstrative so that the Court understands. Can
11 you see over here?

12 A. Yeah, I can.

13 Q. So, the first option you discussed was the
14 option reflected in JX 107, conversion?

15 A. Conversion, that's right.

16 Q. Okay. Now, the second option discussed with
17 AIG, you gave a long answer. Can you give me a word or
18 two that I can use to describe what that option was?

19 A. It would have been subdividing the preferred or
20 listing the preferred.

21 Q. Listing the preferred? Is that -- all right.
22 So, a second option was listing the preferred.

23 Now, while I write this in my best handwriting,
24 can you tell the Court if there were other options that
25 you talked to AIG about as a means to monetize the

1 Series C preferred?

2 A. Well, eventually, as the recapitalization was
3 implemented, there was exchanging the Series C preferred
4 for common stock.

5 Q. So, can I call that option the exchange?

6 A. Sure.

7 Q. So, we just walked through three options. Is
8 there -- are there any others that you discussed with
9 AIG?

10 A. Not that I discussed with AIG, no.

11 Q. Okay. Sorry about my handwriting.

12 So, I'd like to put some context around these
13 options. You -- the first option, the conversion, you
14 testified about what it provided for in the credit
15 agreement, so we already covered that, but the second
16 option, listing the preferred, you gave a long answer to
17 it.

18 Can you explain this option as it was discussed
19 with AIG? And can you explain it in steps? So, what
20 would be the first steps in selling the preferred in
21 this manner?

22 A. The first step would be to make changes to the
23 AIG charter. As I mentioned, originally, the AIG
24 charter had a limitation on the number of shares of
25 preferred that could be issued, and to implement this

1 idea, there would have to be many more shares of
2 preferred stock that were authorized.

3 And in addition, because the original shares of
4 preferred stock had an aggregate par value of 500,000
5 shares -- sorry, \$500,000, that value would have to be
6 spread across these billions of shares of preferred, so
7 each share would have to have a very low par value.

8 So, you both increase the number of authorized
9 shares of preferred, you lower the par value of the
10 preferred, and then you divide the preferred up so that
11 each share of preferred acted like a share of common.

12 Q. Okay. So, I think you walked through all the
13 steps.

14 A. Sorry.

15 Q. That's okay. Just so we're clear, the first
16 step was -- just briefly, what was the first step?

17 A. The first step would be to divide the -- to
18 create many more shares of preferred.

19 Q. Okay. And how could that be accomplished?

20 A. That would require an amendment to the AIG
21 charter.

22 Q. To do -- first, let me say, any question I'm
23 asking you now, I'm talking about your discussions with
24 AIG about how this would be accomplished.

25 A. That's correct.

1 Q. Is that right?

2 A. That's right.

3 Q. Okay. So, how would that -- how would that
4 amendment to the charter be accomplished?

5 A. Well, the board of directors would have to pass
6 a resolution authorizing the putting of that question
7 before the shareholders.

8 Q. Okay. And which shareholders would vote on
9 that?

10 A. There would be a vote of all the shareholders
11 entitled to vote, and that would mean that the common
12 and the preferred would vote together. There would also
13 be a separate vote of the preferred to effect that
14 amendment.

15 Q. Okay. And so how would that -- so, who -- so,
16 you mentioned two separate votes. How would that vote
17 ultimately come out when you have the circumstances of
18 the structure that was created after the Series C was --

19 A. The amendment would be approved because the
20 trust had 79.9 percent of the voting power, and it would
21 be able to approve the amendment.

22 Q. So, who controlled that vote?

23 A. The trustees of the trust.

24 Q. Okay. So, the first was -- the first step was
25 to amend the charter on the number of shares. What did

1 you say the second step was?

2 A. The second step would be to lower the par value
3 of the preferred, to spread the \$500,000 aggregate par
4 value of the preferred across the -- I think it was 13
5 billion shares of preferred that would be needed to
6 accomplish this approach.

7 Q. And how would -- what vote controlled that
8 approach?

9 A. The same vote. The trust would control the
10 outcome of that vote as well.

11 Q. Okay. And so you mentioned the two amendments
12 to the charter. What would be a third step in order to
13 sell the Series C in this second option, listing the
14 preferred?

15 A. Well, once the Series C had been subdivided in
16 this way, then to sell it effectively, you would want to
17 register the sale under the Securities Act, so it could
18 be sold to the public, so the shares could be sold to
19 the public.

20 Q. Okay. And was there any shareholder vote
21 required in executing on that part of it?

22 A. No.

23 Q. Okay.

24 A. No.

25 Q. Would there be anything else required in order

1 to sell the Series C in this second method, listing the
2 preferred?

3 A. No. I think that would have been sufficient.

4 Q. Okay. So, just going back to my demonstrative
5 here, which, Your Honor, has been identified as DXX 036.
6 So, turning first to the conversion, you said that
7 required a vote of who?

8 A. That would require a vote of all the
9 shareholders but also a separate class vote of the
10 common stock.

11 Q. So, who controlled that vote?

12 A. The common stockholders.

13 Q. The second option, listing the preferred, you
14 just walked through that option?

15 A. That's right.

16 Q. Who controlled -- what shareholders controlled
17 the monetization in that manner?

18 A. The holders of the preferred, the trust.

19 Q. Okay. While I'm here -- let's leave that up.

20 So, Mr. Brandow, you just testified that this
21 option two, listing the preferred, was discussed with
22 AIG and its counsel?

23 A. That's right.

24 Q. Do you recall when?

25 A. Well, there were quite a few occasions, but the

1 implementation of this idea was reflected in the Series
2 C preferred securities purchase agreement.

3 Q. Can you turn now to JX 156 in your binder. Tell
4 me when you have that in front of you.

5 A. Okay.

6 MR. SCARLATO: Your Honor, I will note that this
7 document is in evidence. It was also produced as part
8 of discovery order number six, Your Honor's ruling that
9 documents produced to Congress waived privilege for
10 those documents. So, we would assert that this is
11 otherwise a privileged document.

12 The parties have an agreement that such
13 documents, witnesses can testify as to what they meant
14 by the documents without revealing or waiving the
15 privilege, other than this Court has held in discovery
16 order number six.

17 MR. BOIES: No, Your Honor. We do not have that
18 agreement for this trial. We said in discovery there
19 would not be a waiver if people answered the questions.
20 There is no agreement at this trial that people can come
21 in and testify about legal opinions and not waive the
22 privilege on a subject matter basis.

23 MR. SCARLATO: Your Honor, we think that would
24 be unfair to the United States. This is a document in
25 evidence, and it was an agreement throughout discovery.

1 Plaintiffs' counsel had every opportunity to conduct
2 discovery on this document and many others that were
3 produced. So, we believe, especially considering it's
4 already in evidence, that this witness should be
5 permitted to testify about it without any potential
6 waiver of privilege.

7 THE COURT: Mr. Mizoguchi, I notice that you're
8 standing.

9 MR. MIZOGUCHI: I just thought I might add to
10 the discussion. The September 8 pretrial agenda/joint
11 status report contains, I believe in paragraph 2, a
12 provision that discusses whether the use of documents
13 produced under discovery order six and testimony about
14 those documents would continue to be protected under the
15 discovery order six-related and Federal Rule of Evidence
16 502-related agreements that we had, and I can get those
17 over the break and look at those, but I do believe the
18 parties entered into an agreement concerning those
19 documents produced during discovery and their use at
20 trial.

21 MR. BOIES: Your Honor, the documents that are
22 used we've agree doesn't -- does not waive on a subject
23 matter basis; it's waived with respect to that document,
24 does not waive on a subject matter basis. I do not --
25 I'll check, I think we need to check the exact language,

1 but I know there was never an intent that people could
2 come in to court and selectively testify about
3 attorney-client privileged matters and not -- and not
4 have a subject matter waiver.

5 THE COURT: Well, and that -- I think that would
6 certainly be my view during the trial. You can't
7 testify about a document and then refuse to answer other
8 questions about the same document on the basis of
9 privilege.

10 MR. SCARLATO: If Your Honor's concern is that
11 I'm asking questions about this document, we would have
12 no objection to that. What our objection would be, if
13 Plaintiffs were to seek additional discovery or
14 otherwise based on this witness' testimony about the
15 document that's already been produced and is in
16 evidence.

17 THE COURT: Well, this is why it's a slippery
18 slope.

19 MR. SCARLATO: And if Your Honor would permit,
20 we would limit our examination to the substance of this
21 document. It's in evidence, and we would like Your
22 Honor's understanding of what the document reflects. It
23 also reflects conversations with AIG and its counsel, so
24 to that extent, we can certainly -- I believe we can
25 certainly talk to the witness about that, but we do have

1 the broader concern about these types of documents.

2 MR. BOIES: Your Honor, if all he wants to do is
3 ask the witness what he told AIG and what AIG told him,
4 that's not privileged, and that doesn't waive anything.
5 I would -- I would ask the Court to consider -- to be
6 clear, when the question is asked and answered, that it
7 does relate to what was actually said, because I --
8 otherwise, we're going to get in on cross examination
9 finding that some of these things were not actually said
10 between the parties.

11 But as long as he only testifies about what he
12 said to AIG and AIG said to him, that's not privileged,
13 and there's no waiver, and I agree with that. But
14 beyond that, I think he waives the privilege if he
15 starts giving his interpretation and his analysis and
16 his understanding of what this meant and why it was in
17 there. That's all at the core of the privilege.

18 MR. SCARLATO: Your Honor, on this particular
19 document, I believe that we may not have an issue. I
20 can ask Mr. Brandow to what extent this document
21 reflects information not discussed with AIG, and we
22 might get a favorable answer there, but I think I would
23 have to discuss with my counsel about whether we have
24 broader concerns about Mr. Boies's position. But maybe
25 for purposes of this document, I think we're on -- we

1 may be on okay ground.

2 THE COURT: All right. Well, let's go ahead.

3 BY MR. SCARLATO:

4 Q. Okay. Well, then, let me ask you, Mr. Brandow,
5 if you can review JX 156 and tell the Court if there's
6 any information provided on this document that you did
7 not express to AIG or its counsel.

8 A. (Document review.) I think some of this
9 document is explaining to people at the New York Fed
10 what they needed to know in order to have a negotiation
11 with AIG's business people about the objection that S&C
12 relayed to me as part of the conversation I had with
13 them.

14 Q. And so there is some information provided in
15 here that --

16 A. I think that's right.

17 Q. Okay. So, maybe for now we'll try to keep it
18 within the bounds of your discussions with AIG and its
19 counsel --

20 A. Um-hum.

21 Q. -- and we'll see if we get where we need to be.
22 My initial question, then, Mr. Brandow, this was
23 an email you sent to the New York Fed on November 19th,
24 2008?

25 A. That's right.

1 Q. And can you just give the Court just the context
2 generally about what was happening at this time that
3 caused you to write this email?

4 A. We were in the process, among other things, of
5 negotiating the securities purchase agreement for the
6 Series C preferred stock, and as I mentioned, there were
7 provisions in the securities purchase agreement that
8 were designed to implement option number two, the
9 listing of the preferred, and one of those steps was to,
10 in the agreement, get the board to agree or get the --
11 AIG to agree that the board would recommend that the
12 shareholders voted in favor of both the conversion
13 option and the listing option.

14 And S&C relayed to me that as a business matter,
15 the company didn't want to do that, didn't want to have
16 the directors recommend those votes to the shareholders.

17 Q. Okay. Let's pick it up from there, then. So,
18 why did AIG tell you it didn't want to recommend
19 shareholder votes?

20 A. There was no real explanation as to why. They
21 just said, as a business matter, this is the way AIG
22 felt about the issue, and basically said that if the New
23 York Fed wanted to continue the discussions, it would
24 have to be done at the business level.

25 Q. So, that wouldn't include you. Is that what

1 you're saying?

2 A. That's right.

3 Q. Okay. And just to be clear, you said to
4 recommend shareholder votes. Which votes was AIG
5 objecting to recommending?

6 A. To both, to both the recommendation to convert
7 the preferred -- sorry, amend the charter to permit
8 conversion of the preferred and also the vote to amend
9 the charter to permit the listing of the preferred.

10 Q. So, that's numbers one and two on DXX --

11 A. Numbers one and two, that's right.

12 Q. -- 036. I just want you to wait for me to
13 finish for a clear record.

14 A. Sure.

15 Q. Thank you.

16 And so if you turn to page 1 of JX 156 -- and I
17 apologize for being -- sort of the block text, but if
18 you try to look down kind of eight lines -- and, again,
19 we are going to have to be careful, but I want to make
20 sure this is something discussed with AIG -- you note
21 that "Even though we have an alternative for the sale of
22 the investment if the convertible preferred can't be
23 converted..." Is that something that you discussed with
24 AIG?

25 A. That's right.

1 Q. Okay. So, on that ground, when you say "if the
2 convertible preferred can't be converted," is that
3 describing one of the options on DXX 036?

4 A. That's right.

5 Q. Which one is that?

6 A. It's describing option number one.

7 Q. Okay. And the sentence starts, "Even though we
8 have an alternative for the sale of the investment..."
9 Which alternative are you referring to in this document?

10 A. That would be option number two.

11 Q. Listing the preferred?

12 A. That's right.

13 Q. And do you -- did you explain what that
14 alternative number two option would be to AIG and its
15 counsel?

16 A. Yes. I mean, we would -- we had already had
17 discussions about the securities purchase agreement at
18 this point and based on how option number two was going
19 to be implemented.

20 Q. Do you recall when you first discussed option
21 number two, the preferred -- listing the preferred
22 option with AIG and its counsel?

23 A. I think it was right after the first draft of
24 the securities purchase agreement.

25 Q. And do you recall when that was?

1 A. Sometime before this, but I don't remember
2 exactly.

3 Q. Okay, understood.

4 And in -- so, you talked with AIG about this
5 alternative. To be clear, to what extent were you
6 referring to this alternative that's being -- number
7 three, the possible -- the exchange option?

8 A. It wasn't number three.

9 Q. Okay. And to what extent were you referencing a
10 potential split of AIG's stock to facilitate the con --
11 the monetization of the Series C?

12 A. We were talking about a subdivision of the
13 preferred, changing the par value of the preferred,
14 basically the steps that I indicated were necessary to
15 implement option number two.

16 Q. I'm sorry. My question was too imprecise.

17 A. Sorry.

18 Q. A split of the then existing common stock, to
19 what extent was the alternative involved in a reverse
20 stock split of that particular class of security?

21 A. If I understood the question, there was no vote
22 of the common that was required in order to implement
23 number two.

24 Q. In discussing this alternative with AIG as of
25 November 2008, to what extent did that alternative

1 incorporate a reverse stock split of common stock?

2 A. Not at all.

3 Q. And -- okay. So, at this time of JX 156,
4 November 11 -- 19th, excuse me, 2008, had the Series C
5 stock even been issued at that time?

6 A. No.

7 Q. Okay. And you mentioned a securities purchase
8 agreement. Was that the document that would ultimately
9 result in the issuance of the preferred stock?

10 A. That's right.

11 Q. Okay. So, now on page 1, just to finish that
12 sentence I read that started "Even though," the second
13 half of it -- read it to yourself and tell me if it's
14 something you discussed with AIG. It's starting, "I
15 think..."

16 A. Well, yes, because we put the provision they
17 were objecting to in a document because we thought that
18 the -- "we" being the New York Fed -- thought that it
19 was the right thing for the board to do.

20 Q. Okay. And you told that to AIG?

21 A. That's right.

22 Q. Okay. Can you explain why that was the right
23 thing to do?

24 A. Well, because if you compare option number one
25 and option number two, if option number two ultimately

1 gets implemented, the end result, once the listed
2 preferred has been sold to the public, is that AIG has
3 now two classes of voting securities trading on the
4 public market. The common stock would be roughly 20
5 percent of the total, and the listed preferred would be
6 80 percent of the total.

7 That's a very unusual capital structure, and the
8 New York Fed and -- well, and that seemed like a -- a
9 capital structure that would not be to the advantage of
10 the AIG common stockholders.

11 Q. And did you tell that to AIG?

12 A. Yes.

13 Q. Did you tell AIG why it wouldn't be in their
14 interests?

15 A. Just -- yes.

16 Q. Okay. Can you explain why, then?

17 A. Because that's a -- as I say, it's a very
18 unusual capital structure. The value of a security, in
19 part, goes to its trading volume and liquidity. To have
20 the common stockholders relegated to the smaller
21 publicly traded class would be disadvantageous to the
22 common stockholders. They would be much better off if
23 they were part of the fungible mass of voting
24 securities.

25 Q. And so you're talking about the impact on the

1 common shareholders, but you said you told AIG it was in
2 the New York Fed's interest. Is that --

3 A. It was really in everybody's interests to have
4 a -- sort of a workable, normal capital structure once
5 the trust had monetized its holding of the Series C
6 preferred.

7 Q. And so why -- to what extent -- what did you
8 tell AIG about why the New York Fed was interested in
9 the effect, that the monetization method would affect
10 those common shareholders?

11 A. Well, I said to AIG that -- that it -- as a
12 business matter, it did not make sense to have a capital
13 structure of the kind that would result from
14 implementing the second alternative, because you'd have
15 those two classes of securities, and the preferred would
16 be the dominant class and the common stock would be kind
17 of a rump class, would be the less liquid class of
18 voting securities.

19 Q. Why do you call it a rump class?

20 A. It would just be 20 percent compared to 80
21 percent.

22 Q. Okay. And what impact did you tell AIG that
23 would have on the common shareholders at the time?

24 A. Just that we thought that would be a -- a bad
25 outcome for the common shareholders, because they

1 wouldn't be holding the dominant security; they would be
2 holding the minority security.

3 Q. That's why you called it the rump?

4 A. Yeah.

5 Q. And just -- who were you talking to at AIG or
6 its counsel at the time?

7 A. Some combination of Bob Reeder and Kathy
8 Shannon.

9 Q. Okay. If you turn to page 2 of JX 156, I won't
10 ask you to read it, but I just want -- so the Court
11 understands, the part starting on the second line, with
12 "The votes..." Do you see that?

13 A. Yes, right.

14 Q. And just look at -- read that through the --
15 sort of the thought that starts there, and then explain
16 for the Court if that thought expressed in JX 156 is
17 this number two, listing the preferred option, on DXX
18 036.

19 A. It is. It's the same.

20 Q. Okay. So, now, if you go towards the end of
21 JX 156, there's a sentence starting, "AIG wasn't on the
22 phone..." Do you see that?

23 A. That's right.

24 Q. Okay. So, I think that means we're on -- "When
25 we discussed the issue with S&C," that's Sullivan &

1 Cromwell?

2 A. That's right.

3 Q. Okay. So, I think we're on good ground here.

4 Can you explain what you told S&C, "So I don't
5 know how well they appreciate the difference"? Can you
6 just explain what that refers to?

7 A. Well, because I was only talking to Sullivan &
8 Cromwell and they weren't explaining what the business
9 rationale was for AIG's objection, and I didn't
10 understand why the board would be objecting or why AIG
11 would be objecting, I was explaining to the New York Fed
12 that I'd understand their objection if what we were
13 asking the AIG shareholders to do would be to ratify the
14 issuance of the Series C preferred. I understand that
15 they would not have wanted to do that, but that wasn't
16 what we were asking for; they had no right to ratify
17 that issuance.

18 Q. So, then, what instead were you explaining to
19 them, Sullivan & Cromwell?

20 A. I was explaining that what we were trying to get
21 the board to recommend is an outcome that would
22 ultimately create one class of voting securities that
23 would be more beneficial to the common shareholders than
24 having two classes where the common shareholders had the
25 minority class.

1 Q. And is that you summarizing -- when you say
2 "create a weird capital structure," is that --

3 A. That's what I'm talking about.

4 Q. Okay.

5 THE COURT: Mr. Scarlato, shall we take a lunch
6 break?

7 MR. SCARLATO: We may, Your Honor. Thank you.

8 THE COURT: All right. Let's come back at 1:45.

9 (Lunch recess, 12:45 p.m. to 1:45 p.m.)

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1 your understanding as to why they ultimately agreed to
2 that?

3 A. I think because they realized that the --
4 listing the preferred option would leave the
5 shareholders -- the common shareholders in a worse place
6 than if the shareholders voted in favor of the
7 conversion option.

8 Q. Which is the first option?

9 A. The first option.

10 Q. And so was this reflected in some of the deal
11 documentation?

12 A. Yes. It was reflected in the purchase
13 agreement for the securities -- sorry, the Series C
14 preferred; it was also reflected in an amendment to
15 Exhibit D to the credit agreement.

16 Q. Can you turn now to JX 185 in your binder. When
17 you have that in front of you, tell the Court what that
18 is.

19 A. This is the securities purchase agreement for
20 the Series C preferred.

21 Q. And what was your role in negotiating and
22 drafting this agreement?

23 A. This is an agreement that an associate at Davis
24 Polk and I drafted, and I negotiated it with Sullivan &
25 Cromwell and AIG.

1 Q. And is this a document that you were negotiating
2 as we discussed in reference to the previous email,
3 JX 156?

4 A. That's right.

5 Q. So, this is the final version?

6 A. That's right.

7 Q. And remind the Court, who were you negotiating
8 this agreement with?

9 A. I think it was primarily Bob Reeder.

10 Q. Okay. If you can turn now to page 5 of JX 185.

11 A. Okay.

12 Q. I'd like to draw your attention to Section 6,
13 "Covenants." Do you see that?

14 A. I do.

15 Q. And, you know, it carries on to page 6, and
16 there's a lot of words in this provision, so I'd like
17 you to walk the Court through it at an understandable
18 pace.

19 6.1(a), do you see that?

20 A. Yes.

21 Q. And then if you go on to page 6, there are three
22 little Roman numerals, (i), and then on page 6, (ii) and
23 (iii), right?

24 Okay. Can you explain for the Court first, (i),
25 what provision that -- what is provided for in that

1 section of this stock purchase agreement?

2 A. That provision relates to the changes to the AIG
3 charter that would permit conversion of the Series C
4 preferred. So, that was the amendment or those were the
5 amendments that would authorize an increased number of
6 shares of common stock and reduce the par value of the
7 common stock.

8 Q. And for the shorthand, that's number one on the
9 demonstrative?

10 A. That's number one.

11 Q. Okay. And first, actually, what was the date of
12 this agreement, just so we have a record of that? On
13 page 1, I believe it says March 1st, 2009.

14 A. That's right.

15 Q. Okay. So, now, turning back, if you go to page
16 6, Roman numeral (ii) and (iii) have something called
17 the "Serial Preferred Stock Amendment Proposal," and
18 then (iii) has something called the "Series C Preferred
19 Stock Amendment Proposal." Could you describe what
20 those are separately and then put them together for us?

21 A. The first one was the amendment that would
22 create the greater number of shares of the preferred and
23 lower the par value of the preferred, and that would
24 apply to all of the series of preferred; and then the
25 second one more specifically would subdivide the Series

1 C preferred into small pieces so that the Series C
2 preferred would act like common, and that was done both
3 by increasing the number of Series C preferred and
4 adjusting the conversion ratio so that each share would
5 basically convert into one share of common.

6 Q. And is that a different proposal than the (i)
7 that --

8 A. No, that's -- I'm sorry.

9 Q. I'm sorry. My question is whether it's
10 different than the first Roman numeral in that
11 agreement.

12 A. It's different from the first proposal.

13 Q. Right. So, is it reflected --

14 A. And it was, in fact, the second one.

15 Q. -- on the demonstrative?

16 A. That's right.

17 Q. It's number two on the --

18 A. Number two --

19 Q. I'm sorry, if you can wait for my question.

20 So, Roman numerals (ii) and (iii), that's
21 essentially calling for the second proposal on the
22 demonstrative?

23 A. That's right.

24 Q. Okay.

25 And if you turn now to Section 6.1(b) right

1 below that, can you explain for the Court what AIG and
2 the trust agreed to in that provision?

3 THE COURT: Counsel, I have a problem with
4 questions about agreements unless there's some ambiguity
5 in the agreement that needs interpreting.

6 MR. SCARLATO: Okay.

7 THE COURT: It strikes me as objectionable.
8 Now, this is a bench trial, of course, and so I can
9 handle it, but questions about what a provision means,
10 we can all read it and figure out what it means. If you
11 think it's a complicated clause that requires some
12 explanation, something like, you know, what is the
13 effect of that clause --

14 MR. SCARLATO: Right.

15 THE COURT: -- I think would be acceptable, but
16 I just -- I have a problem with you having a witness
17 explain to me what a provision means unless there's some
18 agreed ambiguity that needs to be resolved.

19 MR. SCARLATO: My intent, Your Honor, was not
20 because of an ambiguity but because it is somewhat
21 complicated, and so I thought a witness explaining it
22 would be helpful for the Court, but I can move on.

23 THE COURT: No, I think it's okay and perhaps it
24 will be helpful. I just take issue with the way in
25 which the questions are phrased.

1 MR. SCARLATO: Understood, Your Honor.

2 BY MR. SCARLATO:

3 Q. Well, the purpose of Section -- Mr. Brandow, my
4 referring you to 6.1(b) was to understand to what
5 extent, if any, does that provision show that AIG agreed
6 to recommend the votes provided for in Section 6.1(a)?

7 A. It reflected that the board of directors would
8 do what was necessary under Delaware law to put the
9 matter before the shareholders.

10 Q. And is that the subject of the negotiation
11 described in the previous email, JX 156?

12 A. It was that and what is in 6.2(a).

13 Q. Okay. And so can you explain, in general
14 detail, what -- how 6.2(a) is relevant to the
15 negotiation you had with AIG about the monetization of
16 the series?

17 A. 6.2(a) basically gave the trust the right to
18 cause the matter to be placed before shareholders.

19 Q. And what matter?

20 A. So, the trust would basically inform AIG that it
21 wanted the matter put before shareholders, either at a
22 special meeting or as part of a general shareholders
23 meeting, and then the board and the company would do
24 what was necessary to call that meeting and place the
25 matter before the shareholders.

1 Q. And I just want to be clear on what "matter" are
2 you referring to?

3 A. The -- in this case, it was both the changes to
4 the charter that would be required for alternative one
5 and also the changes to the charter that would be
6 required for alternative two.

7 Q. So, to what extent, if any, did the trust have
8 discretion about which matter to put before the
9 shareholders?

10 A. The arrangement was that both matters would be
11 placed before the shareholders, but there was an
12 agreement that if the shareholders voted in favor of the
13 changes to permit conversion, the common shareholders
14 voted to permit conversion, then the voting by the trust
15 to subdivide the preferred and list the preferred would
16 not be affected.

17 Q. So, the logic would be if one, not two on the
18 demonstrative?

19 A. That's right.

20 Q. Okay. And do you recall who -- was that a
21 proposal that AIG wanted in the stock purchase
22 agreement?

23 A. Yes. That was requested by Bob Reeder.

24 Q. And why did he request that?

25 A. Because he realized that if the stockholders

1 voted in favor of the changes to permit conversion, it
2 would be harmful to the stockholders to have the trust
3 implement alternative two, because that leaves the
4 common stockholders in a worse position. So, the
5 agreement between the New York Fed and AIG was that if
6 the changes to permit conversion were voted favorably,
7 then the changes to permit the subdivision of the
8 preferred would not count.

9 Q. So, just so I'm clear, it's one or the other.

10 A. That's right. It would be one or the other.

11 Q. And that is reflected in Section 6.2(a), the
12 agreement that you just described?

13 A. That's right. It's in the proviso over on page
14 7, halfway down the carryover paragraph.

15 Q. Okay. And you mentioned a trust. In your
16 understanding, did the trust have any intention to sell
17 the Series C preferred stock at the time of the
18 securities purchase agreement?

19 A. Not in the short term, no.

20 Q. And why not?

21 A. Because AIG was still in a fairly difficult
22 position. A lot had to happen before AIG would be in a
23 position where the trust could monetize the Series C
24 preferred.

25 Q. Before the break, you mentioned an amendment to

1 the credit agreement. I'd like to turn to that, JX 206.
2 My first question is, is JX 206 the third amendment to
3 the credit agreement, dated as of April 17, 2009?

4 A. It is.

5 Q. Did you play a role in negotiating and
6 finalizing this document?

7 A. I did.

8 Q. What role did you play?

9 A. Primarily the changes to Exhibit D.

10 Q. Which is the equity portion of the credit
11 agreement?

12 A. That's right. There were other things that were
13 affected through this amendment, and some of those were
14 things that I participated in. There's reference to the
15 Series E preferred and the Series F preferred stock and
16 the Series F warrant. Those are all transactions I
17 worked on, but I also worked on the amendments to
18 Exhibit D.

19 Q. And just to give some context, what's your
20 recollection about the circumstances around this third
21 amendment in April 2009?

22 A. This was about the time that the securities
23 purchase agreement for the Series C was being finalized,
24 and so in this exhibit we needed to sort of contemplate
25 in the credit agreement what we were also contemplating

1 in the securities purchase agreement.

2 Q. And do you recall anything else going on around
3 that time, April 2009?

4 A. Well, we were also getting close to the annual
5 meeting of shareholders for AIG's common -- common and
6 preferred shareholders.

7 Q. And why was that relevant to this agreement?

8 A. Because we -- one of the things that changed in
9 Exhibit D was this whole question of the stockholder
10 vote and what it would be and when it would happen, and
11 under the previous version of the credit agreement, the
12 previous version of Exhibit D, AIG was obligated to put
13 the question of the changes that would be necessary to
14 permit conversion to the shareholders as soon as
15 possible after the Series C was issued, and one of the
16 things that this amendment did was give the trust the
17 ability to control the timing of that vote.

18 Q. And is that what's reflected, if you turn to
19 page 13 of JX 206?

20 A. That's right.

21 Q. Under "Stockholder Vote"?

22 A. That's right.

23 Q. And that would be -- would it be the second
24 paragraph?

25 A. The second paragraph.

1 Q. Do you recall why the trust wanted discretion to
2 call a vote on these issues?

3 A. We knew it was going to be a difficult vote, and
4 we knew that it wasn't necessary at the time of the
5 annual meeting, because there was no current plan to
6 have the trust sell the Series C preferred or to convert
7 the Series C preferred and sell the common stock,
8 because those events were going to be farther down the
9 road.

10 Q. Okay. Just so we're clear, to step back, given
11 the different options we walked through, if it were the
12 case that option one, the conversion, wasn't passed,
13 would that have prevented the trust from monetizing its
14 Series C preferred stock?

15 A. No.

16 MR. BOIES: Objection, Your Honor. That calls
17 for a legal opinion. I don't -- I actually don't think
18 it's relevant to have testimony about legal opinions
19 anyway, but it is exactly that kind of legal opinion
20 that gets us into the privilege area.

21 MR. SCARLATO: Your Honor, I was just trying to
22 get him to explain prior testimony, but I can withdraw
23 if Your Honor permits.

24 THE COURT: I'll sustain the objection.

25 BY MR. SCARLATO:

1 Q. Mr. Brandow, you mentioned the two thousand --
2 the annual shareholder meeting of AIG common
3 shareholders.

4 A. Right.

5 Q. What role, if any, did you serve in the
6 preparations for that meeting?

7 A. I reviewed a draft of the AIG proxy statement.

8 Q. And why was Davis Polk involved in reviewing
9 that statement?

10 A. Well, as I mentioned before, we were looking at
11 all of AIG's public filings just to make sure that they
12 were consistent with what the New York Fed was expecting
13 AIG to do.

14 Q. And how would you describe the nature of your
15 review of those draft documents?

16 A. Depending on the proposal -- there were some
17 proposals that were there at the request of Treasury,
18 and there were some proposals that were there because of
19 other contractual arrangements that AIG had, and there
20 were some proposals that were there because AIG wanted
21 them there. We were just reviewing those for sense.

22 Q. Do you recall which proposals were there for --
23 at the request of the Treasury?

24 A. Treasury wanted to amend the charter so that the
25 TARP preferred that Treasury purchased was senior to the

1 Series C preferred.

2 Q. Okay. So, to what extent, if any, did that
3 proposal relate to the -- to the monetization of the
4 Series C preferred?

5 A. It didn't.

6 Q. Okay. Were there any other proposals you recall
7 Treasury requesting of AIG?

8 A. I don't believe so, no.

9 Q. Okay. And just so we have a clear record, when
10 you said the Series D and you mentioned some other types
11 of preferred stock, what were those?

12 A. There was the Series D, there was a Series E,
13 and there was a Series F, and those were all different
14 series of TARP preferred.

15 Q. As a result of the TARP legislation?

16 A. That's right. Sorry.

17 Q. Okay. If you could turn to JX 201 in your
18 binder.

19 A. Okay.

20 Q. If we can start on page 2 of JX 201, it's an
21 email from Peter Bazos. Who is he?

22 A. He was an associate at Davis Polk.

23 Q. And I see on the -- I'm trying to find your
24 name. I see your name towards the end of the "To" line.
25 So, this is an email you would have received on March

1 18th, 2009. Is that consistent with your recollection?

2 A. Yeah. No, I did.

3 Q. Okay. And what was Mr. Bazos sending in this
4 email?

5 A. He was sending the draft AIG proxy to different
6 people at David Polk for their review.

7 Q. And who had created that draft proxy?

8 A. AIG.

9 Q. And is this the first time you recall seeing
10 AIG's draft proxy? The date is March 18th, 2009.

11 A. That's right.

12 Q. Before receiving this proxy on March 18th, 2009,
13 do you recall any discussions with AIG concerning
14 whether to include or not include certain proposals in
15 their draft proxy?

16 A. No.

17 Q. So, now, looking down at Mr. Bazos' email, he
18 appears to be assigning different proposals to different
19 people. Is that what I'm --

20 A. That's right.

21 Q. If you look towards -- it says, "Notice of
22 annual meeting actions," and then it -- does that mean
23 the proposals?

24 A. I think so, yes.

25 Q. Okay. So, is it -- where it says, "Mr. J.

1 Brandow," that's you?

2 A. That's right.

3 Q. So, it was your responsibility over Proposal 4?

4 A. That's right.

5 Q. And first, let's turn to -- I believe it's page

6 12. Do you see that?

7 A. I do.

8 Q. Page 12 says "Proposal 4," and then it describes
9 the proposal. Can you describe what that proposal was?

10 A. This was a proposal to do a reverse stock split
11 of the AIG common stock so that every 20 outstanding
12 shares of common stock going forward would be
13 represented by one share.

14 Q. And so I believe you testified that it was
15 your -- you were assigned to review that proposal,
16 Proposal 4?

17 A. That's right.

18 Q. Okay. And what was the purpose of your review
19 of that proposal?

20 A. That was one of the ones I was looking at just
21 for sense. This was AIG's proposal.

22 Q. They initiated it? Is that --

23 A. That's right.

24 Q. And what was your understanding of why AIG
25 proposed Proposal 4?

1 MR. BOIES: Objection, Your Honor. If he's
2 going to testify about what a particular person told him
3 from AIG, that's hearsay. If he's going to do it on
4 some other basis, it's speculation.

5 THE COURT: Mr. Scarlato?

6 MR. SCARLATO: Your Honor, I'll withdraw the
7 question for now.

8 THE COURT: All right. Objection sustained.

9 BY MR. SCARLATO:

10 Q. Mr. Brandow, was this Proposal 4, to your
11 understanding, related in way to the sale of the Series
12 C preferred?

13 A. No.

14 Q. Okay. Did a -- was it your understanding that a
15 reverse -- this proposal, Proposal 4, could have
16 permitted the conversion of the Series C preferred to
17 common stock?

18 A. No.

19 Q. Why not?

20 A. Because as I mentioned, one of the problems that
21 had to be overcome in the AIG charter with respect to
22 conversion was the so-called par value problem, and this
23 proposal didn't affect the par value problem.

24 Q. Can you turn now to JX 221 in your binder.

25 A. I have it.

1 Q. Do you recognize what this document is?

2 A. Yes, I do.

3 Q. What is it?

4 A. It's -- this is the final proxy.

5 Q. Can you turn to page 67 of JX 221.

6 A. Okay.

7 Q. Do you see Proposal 3?

8 A. I do.

9 Q. What is your understanding of what Proposal 3
10 was?

11 A. Proposal 3 was a proposal to increase the number
12 of authorized shares of AIG common stock. This was a
13 proposal that AIG had --

14 MR. BOIES: Objection, Your Honor. The question
15 didn't call for that. If the question had called for
16 that, I would have objected either on foundation,
17 hearsay, or speculation, depending on what the basis was
18 and what the witness would say.

19 MR. SCARLATO: Your Honor, if I can be permitted
20 to lay a foundation for this?

21 THE COURT: Sure. I will sustain the objection
22 for the time being.

23 BY MR. SCARLATO:

24 Q. Mr. Brandow, did you do any work relating to the
25 reasons why Proposal 3 was ultimately in AIG's 2009

1 annual shareholder meeting?

2 A. Yes, I did.

3 Q. And was that work not AIG related?

4 A. It was AIG related.

5 Q. Or not for the New York Fed? I'm sorry.

6 A. It was not for the New York Fed.

7 Q. All right. What was that work?

8 A. I worked as underwriter's counsel on an offering
9 by AIG of what are called hybrid securities. These are
10 debt securities, but they're -- they have some features
11 of equity securities in the sense that they're very
12 subordinated and they had, in particular, a provision
13 that allowed AIG to defer interest payments to the
14 holders of the hybrid securities. And for rating agency
15 purposes, AIG had to agree that if it did defer
16 interest, it could only pay that interest out of the
17 proceeds of common stock offerings.

18 Sullivan & Cromwell, who was representing AIG,
19 was concerned as a tax matter that if AIG didn't have
20 enough authorized shares to create proceeds to pay the
21 deferred interest, the hybrid securities would not be
22 deductible for tax purposes --

23 MR. BOIES: Your Honor, I am going to object.
24 The question was what was that work. He's now beginning
25 to testify about what Sullivan & Cromwell told him, and,

1 again, I'd ask that the answer try to meet the question
2 so I at least have a chance to object and don't have to
3 interrupt him in the middle.

4 MR. SCARLATO: It was going to be my next
5 question, but if Your Honor will allow that answer to
6 stand and the witness can --

7 THE COURT: No, I will sustain the objection and
8 strike the answer. You can ask a new question.

9 MR. SCARLATO: Sure.

10 BY MR. SCARLATO:

11 Q. Mr. Brandow, this Proposal 3 in JX 221, to what
12 extent, if any, did it have to do with the monetization
13 of the Series C preferred stock?

14 A. It did not --

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

16 THE COURT: Sustained.

17 BY MR. SCARLATO:

18 Q. If you can turn now, Mr. Brandow, to the next
19 page or to page 69, actually.

20 A. Sixty-nine? Yes.

21 Q. And it says "Proposal 4." Do you see that?

22 A. I do.

23 Q. Is that the same proposal you testified earlier
24 about in the previous document?

25 A. That's right.

1 Q. Okay. If you can go to the second-to-last
2 paragraph, starting, "The primary purpose..."

3 A. Yes, right.

4 Q. It says, "The primary purpose of the reverse
5 stock split is to increase the per share trading price
6 of AIG Common Stock." Do you see that?

7 A. I do.

8 Q. Okay. Do you have any reason to doubt that
9 AIG's statement in this proxy was untrue?

10 A. No, no reason to doubt it.

11 Q. At the time of your review of the draft proxies,
12 do you recall any discussions with AIG about another
13 purpose for the reverse stock split?

14 A. No --

15 MR. BOIES: That's a yes or no.

16 MR. SCARLATO: Yes or no.

17 THE WITNESS: No.

18 BY MR. SCARLATO:

19 Q. If you turn now to page 70 of this document, and
20 directing your attention to the second-to-last full
21 paragraph, starting, "An overall effect..." Do you see
22 that?

23 A. I do.

24 Q. I want to ask you, about three lines down,
25 towards the right, it says, "AIG currently has no plans

1 for these authorized but unissued shares of AIG Common
2 Stock..." Do you see that?

3 A. That's right.

4 Q. In your discussions with AIG and its counsel in
5 the days leading up to this shareholder meeting, did you
6 have any reason to believe that that statement was
7 untrue?

8 A. No.

9 Q. So, before this Proposal 4, the reverse stock
10 split vote, did you have any discussions with AIG or the
11 trust about what AIG would do with the additional
12 authorized shares that would be created if the reverse
13 stock split vote passed?

14 A. No.

15 Q. And before the reverse stock split vote, did you
16 have discussions with AIG or the trust about whether the
17 reverse stock split could facilitate the selling of the
18 Series C preferred stock?

19 A. No discussions.

20 Q. Mr. Brandow, finally, I'd like to turn -- we
21 have neglected number three in our demonstrative,
22 DX 036, the exchange. Just a yes or no answer, can you
23 please tell the Court if you provided legal advice to
24 the New York Fed or Treasury in connection with the
25 exchange transaction?

1 A. Yes.

2 Q. Okay. And a predicate to that, was the exchange
3 transaction the manner in which the Series C was
4 ultimately monetized?

5 A. It was.

6 Q. Okay. And when did that exchange occur?

7 A. 2011.

8 Q. Can you describe for the Court what an exchange
9 transaction is?

10 A. An exchange transaction is basically a trade,
11 both sides having to agree on the exchange in order for
12 the exchange to happen.

13 Q. Is that -- is that it?

14 A. That's an exchange, yes.

15 Q. Okay. And to what extent, if any, does an
16 exchange require a shareholder vote?

17 A. It does not.

18 Q. Okay. I am going to go back to the
19 demonstrative. I'm also going to add "shareholders" to
20 this one, to number two.

21 Okay. And when do you recall any discussions
22 with AIG about monetizing the Series C in a number three
23 exchange?

24 A. Not until 2010.

25 Q. And what was re -- withdrawn.

1 And so to be clear, Mr. Brandow, to what extent,
2 if any, did the 2009 reverse stock split of AIG common
3 stock facilitate the 2011 exchange transaction?

4 A. It left AIG with enough authorized but unissued
5 shares to permit the exchange.

6 Q. And to what extent, if at all, could the 2011
7 exchange have occurred if AIG had not executed the
8 reverse stock split in 2009?

9 A. As it occurred, the reverse stock split was
10 necessary for the exchange.

11 Q. Okay. Are there alternative ways that were
12 discussed as to how to execute the exchange transaction?

13 A. No.

14 Q. And at the time that this exchange transaction
15 was being negotiated, was -- was it also possible for
16 the trust to have requested option two as a method in
17 order to monetize the Series C preferred stock?

18 A. Yes. Two was still a possibility.

19 MR. SCARLATO: I pass the witness, Your Honor.

20 THE COURT: All right.

21 Mr. Boies, cross examination?

22 MR. BOIES: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. BOIES:

25 Q. Good afternoon, Mr. Brandow.

1 A. Good afternoon.

2 Q. I don't think we've met. I'm David Boies, and I
3 suspect they've explained to you that my job is to
4 represent the Plaintiffs here.

5 A. That's right. We have met, but it was a long
6 time ago.

7 Q. Okay. I probably had more hair.

8 This is an exhibit binder that we will be
9 referencing, and like the binder that counsel for the
10 United States gave you, we have a lot of excerpts in
11 here, and if at any time you'd like to see the entire
12 document, just let me know and we'll furnish it.

13 First, let me ask you a few questions about the
14 three options that counsel for the United States put up,
15 and these are three options in order to get the Series C
16 stock in a position where you could reasonably
17 distribute it. You understood that?

18 A. That's right.

19 Q. And one of them was conversion, one was listing
20 the preferred, and the other was exchange. When did you
21 first conceive of the idea of using the listing option
22 as a possible means of getting the preferred Series C
23 stock into a form where it could be effectively
24 marketed?

25 A. I don't remember exactly, but I know it was

1 before the first week in October of 2008.

2 Q. And when was the first time that there was any
3 writing that you are aware of that identified listing
4 the preferred as a possible option?

5 A. I think probably the email that we were talking
6 about before, which was in, I guess, mid-November.

7 Q. Mid-November.

8 Now, when was the first time that anyone
9 conceived of using an exchange as a means for getting
10 the Series C stock into a form where it could be
11 effectively marketed?

12 A. I think that would have been 2010.

13 Q. And who came up with that idea?

14 A. I think that came from -- I'm drawing a blank on
15 his name. He was working for the U.S. Treasury and the
16 New York Fed.

17 Q. When was the first time that AIG had any
18 obligation to facilitate listing the preferred in order
19 to make it marketable?

20 MR. SCARLATO: Your Honor, objection.
21 "Obligation to facilitate," that just seems unclear.

22 MR. BOIES: I accept that, Your Honor. I
23 withdraw the question.

24 THE COURT: All right. All right.

25 BY MR. BOIES:

1 Q. When was the first time that there was any
2 negotiation with AIG over a requirement that AIG
3 cooperate in listing the preferred in order to
4 facilitate its marketing?

5 A. Having the preferred covered by the registration
6 rights that were contemplated in Exhibit D to the credit
7 agreement was a term of that exhibit from the time of
8 the signing of the credit agreement. The changes to the
9 charter that were necessary to permit the listing of the
10 preferred were negotiated as part of the securities
11 purchase agreement and the third amendment to the credit
12 agreement.

13 Q. All right. Now, the listing of the preferred
14 was something that was first reflected in writing in
15 mid-November of 2008, correct?

16 A. In writing, yes.

17 Q. And what had happened between the signing of the
18 credit agreement and mid-November of 2008 that affected
19 the ability of the Government to get the preferred into
20 a form where it could be readily marketed?

21 MR. SCARLATO: Your Honor, I'll object.
22 Foundation and vague.

23 THE COURT: Overruled. I'll let the witness
24 answer it.

25 THE WITNESS: Nothing had happened that would

1 change the ability of the New York Fed to implement the
2 second alternative.

3 BY MR. BOIES:

4 Q. Were you familiar with the Walker lawsuit, sir?

5 A. Yes.

6 Q. You were made aware of that at the time that it
7 was filed, correct?

8 A. That's right.

9 Q. And you were aware of the eventual dismissal of
10 that lawsuit, correct?

11 A. Yes.

12 Q. And you were aware of the representations that
13 were made to the Delaware court in order to get the
14 lawsuit dismissed, correct?

15 A. Yes.

16 Q. And you are aware that the Walker lawsuit sought
17 an order that would have precluded the ability of the
18 Government to convert the Series C preferred stock into
19 common, correct?

20 A. That was true before the Walker lawsuit.

21 Q. You do understand that what the Walker lawsuit
22 sought, among other things, was an order that the Series
23 C preferred stock not be converted into a common stock
24 without a shareholder vote. You know that that's what
25 they sought an order for, right?

1 A. That's right.

2 (Discussion off the record.)

3 BY MR. BOIES:

4 Q. Now, let me ask you to look at Joint Exhibit
5 143, and, in particular, let me ask you to look at page
6 11. There is a statement by the Delaware court starting
7 at line 17, and the Court is addressing Mr. Nachbar.
8 And you understand that Mr. Nachbar was a partner of
9 Morris Nichols representing AIG, correct?

10 A. I do now.

11 Q. And the Court says:

12 "THE COURT: Mr. Nachbar, let me ask you one
13 thing. I think I understood you earlier. You were very
14 clear that if there was going to be an increase in the
15 number of authorized shares or in the par value of the
16 shares, that there will be a class vote on that issue.
17 You were very clear about that."

18 Do you see that?

19 A. I do.

20 Q. And you understood that that was a
21 representation that had been made to the Delaware court,
22 correct?

23 A. That's right.

24 Q. With respect -- and this was a representation
25 that was made on November 7th, 2008, correct?

1 A. That's right.

2 Q. And almost immediately thereafter, the credit
3 agreement was amended to provide for a class vote,
4 correct?

5 A. Among other things, yes.

6 Q. And if you look at Joint Exhibit 147, this is
7 amendment number two to the credit agreement --

8 A. I'm sorry, 147?

9 Q. Joint Exhibit 147. Is that one in your binder?
10 That's in the DOJ binder. I'm sorry.

11 A. This one (indicating)?

12 Q. Yes. That's in the white binder.

13 A. Right.

14 Q. And this was dated November 9, 2008, correct?

15 A. That's right.

16 Q. Did you participate in the negotiation of this?

17 A. I did.

18 Q. And this amended Exhibit D that you have
19 referred to previously, correct?

20 A. That's one of the things it did, yes.

21 Q. And it amended -- on page 9 at the top, opposite
22 "Stockholder Vote," it amended this portion of the
23 credit agreement to provide that "AIG's board will call
24 a meeting of stockholders as soon as practicable after
25 the issuance of the preferred stock. At that meeting,

1 the stockholders, with the common stockholders voting as
2 a separate class..." Do you see that?

3 A. I do.

4 Q. And that was to implement the representation
5 that had been made to the Delaware court two days
6 earlier, correct?

7 A. That's right.

8 Q. And then if you turn to Joint Exhibit 150, which
9 I think is back in our volume.

10 A. Right.

11 Q. There was a Form 10-Q filed by AIG with the SEC,
12 and on page 32 of the exhibit, under a heading
13 "Litigation Relating to the Credit Agreement with the
14 New York Fed" --

15 A. I'm sorry, page 32?

16 Q. Page 32 of the exhibit.

17 MR. SCARLATO: It's not in my binder either.

18 THE WITNESS: I don't have page 32.

19 MR. BOIES: I apologize.

20 BY MR. BOIES:

21 Q. Do you have page -- do you have page 28?

22 A. I do.

23 Q. The statement is on page 28, too, so let me just
24 go to that one. Under the heading "Series C Convertible
25 Participating Preferred Stock," do you see that?

1 A. I see the heading, yes, "Perpetual, Convertible
2 Participating Preferred Stock."

3 Q. And then do you see six lines down from that
4 first paragraph, the sentence that says, "The holders of
5 the common stock will be entitled to vote as a class
6 separate from the holders of the Series C Preferred
7 Stock on these changes to AIG's Restated Certificate of
8 Incorporation"?

9 A. I do.

10 Q. And that's reflecting the amendment number two
11 to the credit agreement that had been made the day
12 before, correct?

13 A. That's right.

14 Q. Let me ask you to look at Joint Exhibit 152,
15 which are minutes of the meeting of the regulatory
16 compliance and legal committee --

17 A. I'm sorry, 152?

18 Q. You should have Exhibit -- Joint Exhibit 152.

19 A. No. I have 144 and then I go to 160.

20 Q. We will -- we will pass that for the time being.

21 You do have Joint Exhibit 156 up there in the
22 Defendant's binder. I know that because this is a
23 document that you talked about before.

24 A. I have it.

25 Q. And this is November 19th, 2008.

1 A. That's right.

2 Q. And this is ten days after amendment number two
3 of the credit agreement, correct?

4 A. That's right.

5 Q. And here is the first written reference to the
6 possibility of amending the charter to break down the
7 convertible shares so that each share carries one vote
8 and is entitled the same dividends per share as the
9 common shares, correct?

10 A. That's right.

11 Q. There then came a time when the Walker lawsuit
12 was dismissed, correct?

13 A. That's right.

14 Q. And do you recall when that was?

15 A. Sometime in November 2008. I don't remember the
16 date.

17 Q. If I suggested it had happened in February of
18 2009, would that refresh your recollection?

19 A. It would tell me I was wrong, but I don't -- I
20 don't remember the date.

21 Q. Let me ask you to look at Joint Exhibit 176 --

22 A. In this one?

23 Q. -- which I hope is in the binder that I handed
24 up.

25 A. Yes.

1 Q. And do you see that this stipulation and order
2 of dismissal is dated February 5, 2009?

3 A. Yes.

4 Q. And you're aware that Kathy Shannon submitted an
5 affidavit in that litigation, are you not?

6 A. Yes.

7 Q. And let me ask you to turn to Joint Exhibit 181.

8 A. Okay.

9 Q. And is that that affidavit?

10 A. Yes.

11 Q. Now, after the Walker lawsuit was dismissed, the
12 stock purchase agreement for the preferred shares, the
13 Series C preferred shares, was entered into, correct?

14 A. That's right.

15 Q. And this was March 1 of 2009?

16 A. That's right.

17 Q. And in this stock purchase agreement, there is a
18 reference to the possibility of breaking down the Series
19 C preferred shares pursuant to a charter amendment so
20 that they could be put into a position where they might
21 be able to be marketed without being converted into
22 common shares, correct?

23 A. That's right.

24 Q. And was this the first time that there was any
25 written indication of that outside of your clients and

1 their counsel?

2 A. Except for prior drafts of what became the final
3 document, yes.

4 Q. Okay. And when was the first draft of the stock
5 purchase agreement that implemented the listing
6 alternative that you've identified as a means of getting
7 the Series C stock into a marketable condition?

8 A. I don't remember when we sent the first draft.
9 It would have been probably several weeks before we
10 finalized it, but whether it was four weeks or six
11 weeks, I don't remember.

12 Q. And when was the first time that the possibility
13 of breaking down the Series C preferred stock so that it
14 could be marketed was made public?

15 A. I believe AIG was filing -- did file the
16 securities purchase agreement and Exhibit D to the
17 credit agreement as part of its '34 Act filings, but I
18 don't remember when that was.

19 Q. By the '34 Act filings, you're talking about the
20 10-K?

21 A. Well, or it might have been on a 10-Q or it
22 might have been on an 8-K, but one of the filings
23 required under the Exchange Act.

24 Q. There came a time when the credit agreement was
25 amended again, correct?

1 A. That's right.

2 Q. That is, we looked at amendment number two where
3 the provision for a class vote was added a little while
4 ago, and then there was amendment number three, correct?

5 A. Correct.

6 Q. And amendment number three was dated April 17th,
7 2009, correct?

8 A. I believe so. I don't remember the date.

9 Q. Let me ask you to look at Joint Exhibit 207.

10 A. Okay.

11 Q. And this is an AIG Form 8-K dated April 17th,
12 2009, correct?

13 A. Yes.

14 Q. And it attaches amendment number three to the
15 credit agreement?

16 A. Yes.

17 Q. And that is dated April 17th, 2009, correct?

18 A. That's right.

19 Q. And did you participate in negotiating this?

20 A. The 8-K?

21 Q. No, the amendment number three to the credit
22 agreement.

23 A. Yes, I participated in the negotiation of
24 amendment number three.

25 Q. And this was the amendment that perhaps, among

1 other things, changed the timing of a vote on an
2 increase in the number of authorized common shares and
3 the decrease in the par value from one that was going to
4 take place within a certain number of days to one that
5 was within the timing of the trust, correct?

6 A. Correct.

7 Q. Now, let me go back to the original drafting of
8 the equity term sheet that was attached to the credit
9 agreement, the so-called Annex D. That is something
10 that you were personally involved in, correct?

11 A. That's right.

12 Q. And, in fact, you had principal responsibility
13 for the drafting of that, correct?

14 A. Eventually. I didn't draft the first couple
15 versions, but I started taking responsibility as a
16 drafting matter that Monday, I guess the 22nd.

17 Q. When you took responsibility for it on Monday,
18 the 22nd, who had been responsible for that drafting
19 before then?

20 A. I think it was some combination of Ethan James
21 and Brad Smith.

22 Q. Let me ask you to look at Joint Exhibit 100.

23 A. Okay.

24 Q. And is this -- is this document -- let's see --
25 do you have Joint Exhibit 100?

1 A. Yes, I have it.

2 Q. Okay. And is this the term sheet that was in
3 existence when you took responsibility for its drafting?

4 A. I think this was an earlier version.

5 Q. Okay.

6 A. I commented on this version, but I didn't start
7 drafting until a later version.

8 Q. Okay. So, before you got the responsibility for
9 drafting, were you seeing earlier versions that you were
10 commenting on?

11 A. Yes.

12 Q. And is Joint Exhibit 100 an example of a
13 document that you saw and commented on?

14 A. I believe so.

15 Q. And what comments did you provide on this term
16 sheet?

17 A. I don't remember specifically what comments I
18 had on this term sheet.

19 Q. Do you remember generally?

20 A. I remember looking at the provisions that
21 related to the stockholder vote and the New York Stock
22 Exchange -- really, pretty much all these terms, but I
23 don't remember specifically what my changes were.

24 Q. I know you said that before, and then I asked
25 you whether you --

- 1 A. Yeah, and I --
- 2 Q. -- whether you remember generally.
- 3 A. Generally, the whole term sheet.
- 4 Q. But you don't remember any of the comments?
- 5 A. I don't remember specifically what I wanted to
- 6 have changed.
- 7 Q. Do you remember generally what you wanted to
- 8 have changed?
- 9 A. No.
- 10 Q. Now, Mr. James sent this around, it says, 34
- 11 minutes into September 21st, that is, just after
- 12 midnight on September 20th, correct?
- 13 A. That's right.
- 14 Q. And at that time, this draft, which referenced
- 15 convertible participating preferred, was not being sent
- 16 to anyone at AIG, correct?
- 17 A. That's right.
- 18 Q. And as of this time, no one at AIG had been sent
- 19 any term sheet that referenced convertible preferred
- 20 shares or preferred shares of any kind, correct?
- 21 A. I think that's right.
- 22 Q. Now, let me ask you to look at Plaintiffs' Trial
- 23 Exhibit 184.
- 24 A. I'm sorry, that's PTX 184?
- 25 Q. Yeah, that's PTX 184.

1 A. I've got -- I'm sorry, I -- no, I have it,
2 sorry. It was under another one. Yeah, I have it.

3 Q. Now, I want to direct your attention -- and this
4 is -- this document's in evidence. I want to direct
5 your attention to the email to Sarah Dahlgren from
6 Charles Gray. And you know who Ms. Dahlgren is,
7 correct?

8 A. Yes.

9 Q. And do you know who Mr. Gray is?

10 A. I do.

11 Q. And they're both with the Federal Reserve Bank,
12 correct?

13 A. That's right.

14 Q. And Mr. Gray writes, "Rich Charlton just came up
15 and shared with Tom your concern about whether the terms
16 of the equity investment will adequately protect us
17 against shareholder activism among minority shareholders
18 at AIG. I can say that this issue has been a key focus
19 of both Tom and the Davis Polk lawyers drafting the Term
20 Sheet, and the Davis Polk lawyers think the proposed
21 plan will protect us."

22 Do you see that?

23 A. I do.

24 Q. Now, did that -- I know you are a Davis Polk
25 lawyer, but were you a Davis Polk lawyer who shared that

1 point of view?

2 A. I did.

3 Q. There was then a noon meeting, correct?

4 A. I'm sorry?

5 Q. There was then a noon meeting at Davis Polk to
6 discuss this term sheet?

7 A. I don't know. Maybe. I didn't participate in
8 it, so I don't know.

9 Q. Okay. There's a reference here in the next
10 sentence, "There will be a call at noon with Davis Polk
11 to discuss the equity terms in general and this issue in
12 particular." Do you see that?

13 A. I do.

14 Q. And it's your testimony that you did not
15 participate in that?

16 A. That's right.

17 Q. Let me ask you to look at Joint Exhibit 101.

18 A. I have it.

19 Q. Now, this is a document that Mr. James sends
20 around at 2:18 p.m., and it says, "Here's a revised
21 equity term sheet marked to show changes resulting from
22 our noon call."

23 Do you see that?

24 A. I do.

25 Q. Did you receive a copy of this term sheet?

1 A. I don't remember specifically, but I think I was
2 part of aco.dpw, so I probably did.

3 Q. And this added a provision providing for certain
4 voting of the preferred before conversion, correct?

5 A. Yes. And looking at this, I think this was one
6 of my comments on the earlier term sheet, because I
7 remember looking at an email, and I think the email and
8 this change was what I thought was wrong about the
9 earlier version of the term sheet.

10 Q. And when you talk about "this change," what
11 change are you talking about?

12 A. The deletion of the first paragraph under
13 "Conversion."

14 Q. Let's go to that. That's on page 2 of Joint
15 Exhibit 101, correct?

16 A. That's right. That's right.

17 Q. And the -- the prior version of the term sheet
18 had provided that there would be a partial conversion of
19 the Series C preferred stock into common before there
20 was a shareholder vote, correct?

21 A. That's right.

22 Q. And then after the shareholder vote the
23 remaining shares would be converted, correct?

24 A. That's what's contemplated, yes.

25 Q. And that was because until the shareholder vote,

1 there were not enough common shares to convert all of
2 the preferred stock, correct?

3 A. Yes. It would have been way short.

4 Q. And -- and you had suggested that they eliminate
5 the partial conversion before the shareholder vote,
6 correct?

7 A. That's right.

8 Q. And the reason for that was that until the
9 shareholder vote reduced the par value of the shares,
10 you would only get two common shares for each preferred
11 share, right?

12 A. That's right. That's right.

13 Q. And you only had 100,000 preferred shares --

14 A. Right.

15 Q. -- and that means if you converted them all, you
16 only get 200,000 common stock, which would not be nearly
17 enough.

18 A. That's right.

19 Q. Now, after this exhibit, which is still dated on
20 the 21st, you took over the drafting, correct?

21 A. Yes, basically that Monday.

22 Q. Which would have been the next day.

23 A. That's right, the next day.

24 Q. And what further changes did you make to this
25 equity term sheet?

1 A. There was a change requested by AIG with respect
2 to the "Equity Issues" caption in the version that we've
3 been looking at, any further issuance of common stock or
4 securities convertible or exchangeable into common
5 stock, other than commitments that existed on September
6 16th, 2008, would require the vote of the -- the
7 separate vote of the preferred stock.

8 AIG objected to that provision, and what was
9 ultimately negotiated in the term sheet was flexibility
10 to allow AIG to issue common stock or options on common
11 stock to employees to facilitate employee benefit plans.

12 And then there were further changes that
13 basically fleshed out exactly how the 79.9 percent would
14 be translated into a number of shares, because you have
15 to for that purpose know how many shares go into the
16 numerator of the fraction, how many shares go into the
17 denominator of the fraction, and depending on what was
18 included in the denominator, shareholders would or would
19 not be affected by the conversion. And for one thing,
20 AIG didn't want the employees who received common stock
21 to be affected by the conversion, and the New York Fed
22 agreed to that.

23 Q. Were there any other changes that AIG wanted,
24 other than these that related to their employee
25 benefits?

1 A. I don't remember.

2 Q. Let me ask you to look at Defendant's Exhibit

3 522.

4 A. I have it.

5 Q. And this is another term sheet. Do you see

6 that?

7 A. Oh, I'm sorry. 522?

8 Q. Defendant's Exhibit.

9 A. No, I've now turned to it.

10 Q. And there's a cover memo --

11 A. Yes.

12 Q. -- a cover memo, September 21, 2008, at 3:22

13 p.m.

14 A. Yes.

15 Q. Do you see that?

16 A. I do.

17 Q. And did you get a copy of this?

18 A. Yes, I believe so.

19 Q. And is this the first time, insofar as you are

20 aware, that a copy of the equity term sheet mentioning

21 preferred stock went to any counsel for AIG?

22 A. I believe so, yes.

23 Q. And now let me go forward to Defendant's Exhibit

24 543.

25 MR. SCARLATO: Your Honor, if I may, does

1 Mr. Boies want to offer that document?

2 MR. BOIES: I will offer it.

3 MR. SCARLATO: And we don't object.

4 THE COURT: Defendant's Exhibit 522 is admitted.

5 (Defendant's Exhibit Number 522 was admitted
6 into evidence.)

7 BY MR. BOIES:

8 Q. And you understand that there was a meeting of
9 the AIG board of directors to consider the issue of the
10 credit agreement the evening of September 21st, correct?

11 A. I do, yes.

12 Q. And that they approved a credit agreement?

13 A. Yes, I believe so.

14 Q. And that credit agreement was not, however,
15 signed until September 23, correct?

16 A. I think so.

17 Q. And in between the evening of September 21st and
18 the morning of September 23rd, there continued to be
19 changes to the credit agreement and to the equity term
20 sheet that was attached to it, correct?

21 A. That's correct.

22 Q. And Defendant's Exhibit 543 is something that
23 you sent around on September 22nd, 2008, at 10:26 p.m.
24 Do you see that?

25 A. I do.

1 Q. And this is a revised equity term sheet, and you
2 say it is a "clean and blacklined to show the changes
3 from the version originally sent to Sullivan &
4 Cromwell"?

5 A. That's right.

6 Q. And the version that was originally sent to
7 Sullivan & Cromwell is Defendant's Exhibit 522 that we
8 looked at just a moment ago, correct?

9 A. That's right.

10 MR. BOIES: Now, I am told that Defendant's
11 Exhibit 543 is also not admitted, and I would offer it.

12 MR. SCARLATO: No objection.

13 THE COURT: Defendant's Exhibit 543 is admitted.
14 (Defendant's Exhibit Number 543 was admitted
15 into evidence.)

16 BY MR. BOIES:

17 Q. Defendant's Exhibit 543 goes only to the
18 Treasury and Federal Reserve and their clients, correct?

19 A. That's right. In this email, anyway.

20 Q. That is, it does not go to AIG or any of its
21 counsel, correct?

22 A. Yeah. This email only went to people at the New
23 York Fed and people at Davis Polk.

24 Q. When was the revised term sheet furnished to
25 counsel for AIG?

1 A. I don't know how much later than this it went
2 over to S&C.

3 Q. Let me turn to the subject of New York Stock
4 Exchange Rule 312.05 that you talked to counsel for the
5 Government about, and you said that you did not believe
6 that you had told Ms. Shannon that you wanted to avoid a
7 roadmap for someone to seek an injunction. Do you
8 recall that?

9 A. I don't think I used those words, that's right.

10 Q. Did you -- did you convey to Ms. Shannon the
11 substance of what she reports; that is, that you didn't
12 want to mention the ten-day waiting period because you
13 did not want to give shareholders a sense of how or when
14 they might seek an injunction?

15 A. The way I put it was in that email that we
16 talked about earlier.

17 Q. So, it's your testimony that the only
18 communications that you personally had with Ms. Shannon
19 about the subject of an exception to the New York Stock
20 Exchange rule was by that one email?

21 A. That's right.

22 Q. You understood that the exception to the stock
23 exchange rule requiring shareholder approval could only
24 be obtained if the delay in issuing stock would have
25 severe financial consequences for the company, did you?

1 A. It's -- I think the rule reads if the delay in
2 seeking the approval would seriously jeopardize the
3 financial condition of the company.

4 Q. Maybe I can find the -- the rule. I think it's
5 Joint Exhibit 240, perhaps.

6 A. In this one?

7 Q. That would be in the binder we gave you. I
8 guess it's in the DOJ binder.

9 A. Okay.

10 Q. And if you turn to page 96, you will see that
11 exceptions may be made to the shareholder approval
12 policy only when, one, the delay in securing stockholder
13 approval would seriously jeopardize the financial
14 viability of the enterprise; and, two, reliance by the
15 company on this exception is expressly approved by the
16 Audit Committee of the board.

17 Do you see that?

18 A. I do, but that's what I was saying, that number
19 one talks about a delay in securing the approval; it
20 doesn't talk about issuing the preferred or issuing the
21 securities.

22 Q. Now, there was going to be a delay in issuing
23 the securities, correct?

24 A. That's right.

25 Q. And there was plenty of time between the signing

1 of the agreement and the issuance of the securities for
2 there to have been stockholder approval. Fair?

3 MR. SCARLATO: Objection, Your Honor. "Plenty
4 of time" is vague.

5 THE COURT: Overruled.

6 THE WITNESS: There was time.

7 BY MR. BOIES:

8 Q. There was enough time -- getting away from the
9 word "plenty" -- there was enough time --

10 A. I think so.

11 Q. -- for there to have been stockholder approval,
12 correct?

13 MR. SCARLATO: Object to what the "enough"
14 means.

15 THE COURT: Overruled. I believe the witness
16 understood what the question means.

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

18 THE COURT: All right. Do you have any
19 redirect?

20 MR. SCARLATO: I do, Your Honor.

21 THE COURT: Well, why don't we take a break. We
22 will resume at 3:25.

23 MR. SCARLATO: Very well.

24 (Court in recess.)

25 THE COURT: Thank you, please be seated.

1 Please go ahead, Mr. Scarlato.

2 MR. SCARLATO: Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. SCARLATO:

5 Q. Good afternoon again, Mr. Brandow.

6 A. Good afternoon.

7 Q. I just want to follow up on a couple of issues
8 that Mr. Boies raised. Can you turn first in the black
9 binder to JX 101.

10 A. I have it.

11 Q. Well, maybe we don't need to look at this
12 document, but my question is, I believe Mr. Boies asked
13 you questions about your negotiations with AIG in
14 arriving at the Exhibit D to the credit agreement. Do
15 you remember that?

16 A. I do.

17 Q. And do you recall testifying that AIG requested
18 a number of changes to Exhibit D?

19 A. That's right.

20 Q. Do you recall at any time that AIG either
21 complained about or sought to renegotiate the type --
22 the form of equity that was included in Exhibit D?

23 MR. BOIES: Objection, Your Honor. That's way
24 outside the scope. I didn't go into that at all.

25 MR. SCARLATO: Your Honor, he was discussing --

1 he asked what negotiations occurred and on what issues,
2 and I just wanted to be clear -- I believe he already
3 testified to the full extent of it. I want to be clear
4 as to whether this issue was discussed.

5 THE COURT: I'll allow it. Go ahead.

6 BY MR. SCARLATO:

7 Q. Do you remember the question?

8 A. Could you repeat the question?

9 Q. I will repeat the question.

10 A. Okay, thank you.

11 Q. So, you were testifying about issues in Exhibit
12 D, that were negotiated over Exhibit D. Is that right?

13 A. That's correct.

14 Q. And to what extent, if at all, did AIG seek to
15 negotiate or complain about the form of equity that was
16 included in the Exhibit D?

17 A. Not at all.

18 Q. Can you turn now to DX 543, which I believe is
19 in the black binder. Maybe it's in the white one.

20 THE COURT: I believe it's the last document in
21 the black binder.

22 THE WITNESS: I have it.

23 MR. SCARLATO: Thank you, Your Honor.

24 BY MR. SCARLATO:

25 Q. And I believe you testified, Mr. Brandow, that

1 DX 523 was, to your understanding, the first draft of
2 the -- it says "Equity Term Sheet." Is that Exhibit D?

3 A. That's right.

4 Q. And this was the first draft of the term sheet
5 or Exhibit D that was sent to AIG's counsel?

6 A. That's right.

7 Q. Okay. Can you turn now to --

8 A. First draft that I drafted.

9 Q. That you were involved in?

10 A. The first draft, correct, that I was involved
11 in.

12 Q. Okay.

13 A. Earlier versions had gone to AIG's counsel.

14 Q. And if you could turn now to DX 543.

15 A. I'm sorry, that's what I was looking at.

16 THE COURT: That's what we were just looking at.

17 MR. SCARLATO: Oh, okay, 543.

18 THE WITNESS: Right.

19 BY MR. SCARLATO:

20 Q. Then my question was incorrect. What does 543
21 reflect?

22 A. 543 is the first version that I took the
23 drafting responsibility for, and that's the version that
24 went out on Monday, the 22nd.

25 Q. And it shows a blackline version. It says,

1 "clean and blacklined."

2 A. That's right.

3 Q. Is that right?

4 A. Um-hum.

5 Q. And just generally, what do those blacklines
6 reflect?

7 A. They mostly go to the two issues I talked about
8 before, the sort of details for how you would convert
9 the percentage 79.9 percent into a number of shares, and
10 then changes that AIG requested under equity issues to
11 permit the issuance of common stock as part of employee
12 benefit plans without the consent of the holders of the
13 Series C preferred.

14 Q. Okay. Plaintiffs' counsel asked you about the
15 timing of AIG's request. Do you recall what day those
16 changes were requested?

17 A. Monday.

18 Q. Okay. And so do you recall any changes that
19 were discussed on that Monday with AIG that were
20 requested by your client?

21 A. No.

22 Q. Okay. So, the changes you just testified about
23 were the changes that AIG requested on the Monday?

24 A. That's right.

25 Q. And is it unusual, in your practice, for the --

1 for the counterparty to request changes after its board
2 had voted on approving a document?

3 A. Sometimes.

4 Q. No further questions about that document.

5 Can you turn now to JX 100, which I believe is
6 in the black binder.

7 A. Can I just go back to the last question?

8 Q. You may.

9 A. Because I think I said sometimes. It's almost
10 all the time.

11 Q. Almost?

12 A. Almost always.

13 Q. I'm sorry? Almost always what?

14 A. In my practice, in the way that, say,
15 convertible debt is often done, a company goes to the
16 board to get approval to do the deal, and the board
17 delegates authority to management to specify the final
18 terms, and that's usually the sequence. There's board
19 approval and then there's further negotiation and you
20 come to a final document.

21 Q. Okay. Thank you for that clarification.

22 Are you looking now at JX 100?

23 A. Yes, I am.

24 Q. And do you recall Mr. Boies asking you a couple
25 of questions about this document?

1 A. That's right.

2 Q. Can you explain for the Court, the bottom email
3 from Ethan James -- and who is Ethan James, for the
4 record, please?

5 A. He at the time was a partner at Davis Polk.

6 Q. And you were working with him on Exhibit D?

7 A. That's right.

8 Q. I believe you testified that you took over
9 primary drafting of Exhibit D on the Monday, the 22nd?

10 A. That's right.

11 Q. Okay. Who was responsible for that Exhibit D
12 before that?

13 A. It was I would say some combination of Brad
14 Smith very early on and Ethan James more recently, and
15 then I took it over.

16 Q. Do you know who was the primary -- primarily
17 responsible as of the date of JX 100, which at the
18 bottom email is after midnight on Sunday?

19 A. That Sunday? I think it would still have been
20 Ethan.

21 Q. Okay. And in his email, he writes, "Here is the
22 game plan for the equity-related documents, in order of
23 priority." Do you see that?

24 A. I do. Excuse me.

25 Q. And the first priority item is -- it says,

1 "Attached term sheet." Is that what that means in your
2 understanding?

3 A. I think so, yes.

4 Q. It says, "We would like to send this to the
5 company ASAP and certainly by no later than early Sunday
6 afternoon."

7 Do you understand why Mr. Ethan put a time limit
8 on sending the draft to AIG?

9 A. Because there was to be a board meeting that
10 evening, and the idea was to get the term sheet to AIG
11 and its counsel so they could see it before the board
12 meeting.

13 Q. And at this time I presume they had not sent it
14 to AIG yet?

15 A. This version, that's right.

16 Q. Right. And do you know why it was not sent to
17 AIG at this time?

18 A. It was still being reviewed by the New York Fed.

19 Q. Turning your attention to the top email from
20 Marshall Huebner, who is that?

21 A. He's another Davis Polk partner.

22 Q. And he was working with you on Exhibit D?

23 A. Yes.

24 Q. And he states, "Given that (1) the attached
25 2-page document describes the proposed equity structure

1 towards which we are collectively gravitating."

2 What does that mean, "collectively gravitating"?

3 A. I think it means that the New York Fed was
4 coming to the view that the right form of equity would
5 be the convertible preferred.

6 Q. But when saying "collectively gravitating," had
7 a decision been made at that time?

8 A. I don't believe so.

9 Q. Mr. Boies asked you -- let's turn topics to the
10 New York Stock Exchange rule.

11 A. Um-hum.

12 Q. You just gave some testimony about the timing of
13 seeking the exemption. What's your understanding of the
14 exigency that AIG claimed in invoking the exception to
15 the New York Stock Exchange rule?

16 MR. BOIES: Objection, Your Honor, foundation,
17 as an initial matter.

18 THE COURT: Sustained. Do you want to try to
19 lay some foundation?

20 MR. SCARLATO: I thought I did on direct, but I
21 will, Your Honor.

22 BY MR. SCARLATO:

23 Q. To what extent, if any, do you recall an
24 exemption to the New York Stock Exchange rule was
25 sought?

1 A. AIG did seek an exemption.

2 Q. Okay. And what's your understanding of the
3 basis upon which AIG sought that exemption?

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

5 THE COURT: Sustained.

6 BY MR. SCARLATO:

7 Q. Did you have discussions with AIG about its
8 efforts to seek an exemption from the New York Stock
9 Exchange rules?

10 A. With -- yes.

11 Q. And what did they tell you as to how they were
12 going to seek an exemption to the New York Stock
13 Exchange rules?

14 MR. BOIES: Objection, Your Honor. Hearsay.

15 THE COURT: Sustained.

16 MR. SCARLATO: Your Honor, if I would offer it
17 not for the truth but for the state of mind of AIG at
18 the time, would that be acceptable?

19 THE COURT: I mean, who knows why AIG took a
20 particular action other than somebody from AIG or their
21 counsel, perhaps?

22 MR. SCARLATO: Understood, Your Honor.

23 BY MR. SCARLATO:

24 Q. On what basis, Mr. Brandow, would you have any
25 knowledge -- personal knowledge as to why or the basis

1 for AIG's seeking the New York Stock Exchange exemption?

2 A. Because the term sheet specified the particular
3 Stock Exchange rule that included the financial
4 viability exemption.

5 Q. And what's your understanding of that?

6 MR. BOIES: I have an objection. It depends
7 what he means by "that." If he means what's your
8 understanding of that provision of the document, the
9 document speaks for itself. If he is asking what -- if
10 "that" means what AIG was thinking, I have the
11 objections that I made before.

12 THE COURT: Do you want to clarify?

13 MR. SCARLATO: Yes. Yes, I would, Your Honor.

14 BY MR. SCARLATO:

15 Q. I'm just trying to understand the basis for your
16 knowledge about the extent to which AIG sought an
17 exemption and why.

18 A. The basis for my knowledge is that in the
19 Exhibit D -- in Exhibit D, there was a provision that
20 discussed AIG's seeking an exemption from the
21 shareholder approval rules based on the financial
22 viability exception.

23 Q. And you had a -- you were personally involved in
24 negotiating that -- that part of the credit agreement?

25 A. That -- that provision was in the credit

1 agreement, I think, from the first draft I saw.

2 Q. And that was Exhibit D, which you took over
3 responsibility for on the Monday?

4 A. That's right.

5 Q. Okay. And based on those negotiations, what's
6 your understanding as the basis that AIG sought a, I
7 think you said, financial viability exemption from the
8 New York Stock Exchange rules?

9 MR. BOIES: Same objection, Your Honor.

10 THE COURT: Sustained.

11 MR. SCARLATO: I'll move on, Your Honor.

12 BY MR. SCARLATO:

13 Q. Mr. Brandow, do you recall who was
14 responsible -- who -- what entity ultimately makes the
15 determination as to whether to approve an exemption
16 request?

17 A. The New York Stock Exchange.

18 Q. I'd like to talk a little bit about the Walker
19 lawsuit. Mr. Boies and you touched on that.

20 A. Um-hum.

21 Q. Well, first, let's turn to JX 143, which is in
22 the black binder.

23 A. All right.

24 Q. Mr. Boies asked you about a reference on page
25 11, if you can turn to that.

1 A. Yep.

2 Q. And I believe these were -- this is the Court in
3 the Walker litigation describing his understanding of
4 what was agreed to. Is that what you testified about
5 earlier?

6 A. That's right.

7 Q. Okay. And what's your understanding of when he
8 states -- starting on line 18, it says:

9 "You were very clear that if there is going to
10 be an increase in the number of authorized shares or in
11 the par value of the shares, that there will be a class
12 vote on that issue. You were very clear about that."

13 Why do you think the Court said "if" in that
14 statement?

15 MR. BOIES: Objection, Your Honor. He's asking
16 the witness to speculate as to what was in the Court's
17 mind. I think the language speaks for itself.

18 MR. SCARLATO: Your Honor, we didn't object when
19 Mr. Boies sought the same type of speculation on cross,
20 so I'd just like to get the witness' understanding on
21 redirect now.

22 THE COURT: Well, you know, I think Mr. Boies
23 presented it in a -- in a different way. I don't think
24 he really asked for the understanding, and I agree with
25 the objection.

1 MR. SCARLATO: Okay. So, I'll withdraw the
2 question, Your Honor.

3 BY MR. SCARLATO:

4 Q. Mr. Brandow, after the Walker lawsuit was filed,
5 did you have discussions with AIG or its counsel about
6 the impact of that lawsuit?

7 A. I did.

8 Q. Do you recall who you spoke to?

9 A. I think it would have been Bob Reeder about
10 changes to the exhibit to the credit agreement.

11 Q. And so your involvement in that was limited to
12 whether to change the exhibit to the credit agreement?

13 A. In terms of discussions, yes.

14 Q. Okay. So, let's turn to that amendment. I
15 believe it -- the second amendment, JX 147. It's in the
16 white binder.

17 A. I have it.

18 Q. Can you identify for the Court which provision
19 was changed as a result of the Walker resolution?

20 A. I think it was under "Stockholder Vote," this is
21 in Exhibit D on page 147 -- page 9, sorry, of the 11
22 pages, the second sentence under "Shareholder Vote" --
23 or under "Stockholder Vote," that says "with the
24 stockholders voting as a separate class."

25 Q. So, you are saying that language was added?

1 A. Yes.

2 Q. And do you recall who asked that that language
3 be added to the amended credit agreement?

4 A. I believe it was AIG.

5 Q. And do you recall why they requested that of the
6 New York Fed?

7 MR. BOIES: Objection, Your Honor.

8 MR. SCARLATO: At least to show state of mind,
9 Your Honor.

10 MR. BOIES: Whose state of mind?

11 MR. SCARLATO: The purpose of -- AIG's state of
12 mind and the reasons for the amendment being made.

13 THE COURT: Objection sustained.

14 MR. SCARLATO: A moment's indulgence, Your
15 Honor.

16 (Pause in the proceedings.)

17 BY MR. SCARLATO:

18 Q. Mr. Brandow, I don't -- I withdraw that
19 question.

20 Can we turn now to a new document?

21 May I approach, Your Honor?

22 THE COURT: Yes.

23 BY MR. SCARLATO:

24 Q. Mr. Brandow, if you can take a few minutes to
25 look at that.

1 A. Sure.

2 Q. And then tell me if you recognize this document.

3 A. (Document review.) Okay.

4 Q. And what is DX 706?

5 A. This is an email that attaches revisions to the
6 purchase agreement for the Series C preferred stock and
7 the certificate of designations for the Series C
8 preferred stock, both clean and blacklined to show
9 changes.

10 Q. And the date of DX 706 is November 25th, 2008?

11 A. That's right.

12 Q. And is it your understanding, was this the first
13 draft of these -- of these draft agreements that was --
14 I believe they were sent to AIG, if I'm correct there?

15 A. I think there would have been an earlier
16 version, because this shows blacklining since an earlier
17 version that would have been sent to AIG.

18 Q. Okay. When you -- remind the Court to what
19 extent you were involved in the drafting of these
20 documents.

21 A. I was the primary drafts person of these
22 documents.

23 Q. Okay. And why was it being sent from Rafal
24 Nowak?

25 A. He was the associate who was helping me do the

1 drafting.

2 Q. Okay. And did Mr. Nowak send this email in the
3 regular course of his business?

4 A. Yes.

5 MR. SCARLATO: Your Honor, we move for the
6 admission of DX 706.

7 MR. BOIES: No objection, Your Honor.

8 THE COURT: Defendant's Exhibit 706 is admitted.
9 (Defendant's Exhibit Number 706 was admitted
10 into evidence.)

11 BY MR. SCARLATO:

12 Q. Just generally, Mr. Brandow, who were these
13 drafts sent to?

14 A. Basically the working group at AIG, the working
15 group at Sullivan & Cromwell, the working group at the
16 New York Fed, and then various people at Davis Polk who
17 were working on the transaction.

18 Q. Okay, thank you.

19 Can you turn -- it's about two-thirds of the way
20 in, to -- at the bottom right, there are some page
21 numbers. I'd like you to go to the page numbered 8304.
22 It's about two-thirds of the way in.

23 A. 8304, okay.

24 Q. Um-hum. It might actually be easiest to start
25 at 8300, just for the sake of identifying what this

1 document is.

2 A. This is a draft of what became the securities
3 purchase agreement for the Series C.

4 Q. That was the March 1st, 2009, document we talked
5 about earlier?

6 A. That's right.

7 Q. Okay. And now if you can turn to the page
8 ending 8304, and I see a section, "Covenants," 6.1,
9 "Stockholder Vote." Do you see that?

10 A. I do.

11 Q. So, to what extent, if any, does that provision
12 reflect the various options you testified about earlier
13 that are reflected on DXX 036?

14 A. It's outlining the same set of options. It
15 doesn't have the defined terms that we've put finally
16 into the executed version.

17 Q. So, other than defining the terms, is there any
18 difference between the final version and the version
19 reflected in DX 706?

20 A. Not that I see.

21 Q. Okay. No further questions about that document.

22 Mr. Brandow, I believe Mr. Boies asked you, when
23 talking about the different options on DXX 036 --

24 A. Um-hum.

25 Q. -- he asked you -- I believe the question was

1 when the -- option two was first discussed. I think
2 that was the question, and you gave an answer of October
3 2008.

4 A. That's right.

5 Q. Okay. What -- what -- just at least to remind
6 myself, what happened in October 2008? And keep it at a
7 high level so that we don't impinge on any
8 attorney-client issues, if there are any.

9 A. I wanted to confirm that as a business matter
10 the listing of the preferred would work. That wasn't a
11 legal conclusion. That was would the market accept that
12 security that looked like common but was not common.
13 And so I discussed the idea with people at Morgan
14 Stanley.

15 Q. Do you recall who at Morgan Stanley?

16 A. Kevin Ryan.

17 Q. And why would you have that -- be having that
18 discussion with Morgan Stanley?

19 A. Well, because Morgan Stanley was advising the
20 New York Fed, and I remember having the discussion when
21 I did because I was talking to him from the putting
22 green of the ocean course on Kiawah Island in South
23 Carolina.

24 Q. No better way to end than on that. So, no
25 further questions, Mr. Brandow.

1 THE COURT: Any recross, Mr. Boies?

2 MR. BOIES: Just a brief one, Your Honor.

3 RECROSS EXAMINATION

4 BY MR. BOIES:

5 Q. The size of these binders has nothing to do with
6 my intended examination, you'll be happy to know.

7 Good afternoon, Mr. Brandow.

8 A. Good afternoon.

9 Q. I just want to clarify something. I asked you
10 and then counsel asked you some questions about what
11 versions of the term sheet, the equity term sheet had
12 gone to AIG, and let me ask you to look at Defendant's
13 Exhibit 522.

14 A. That's in which binder?

15 Q. That's in the back of the black binder.

16 A. I have it.

17 Q. And I had -- I had asked you earlier whether
18 this was the first time, insofar as you were aware, that
19 a copy of the equity term sheet mentioning preferred
20 stock went to any counsel for AIG. Do you recall that?

21 A. I do.

22 Q. And you told me that you believed that that was
23 the case. Do you recall that?

24 A. I do.

25 Q. And --

1 A. I still do.

2 Q. You still do, okay.

3 A. Yes.

4 Q. The -- let me ask you to look at Joint Exhibit
5 143 -- no, I'm sorry. I'll withdraw that.

6 Defendant's Exhibit 706, which was what was
7 handed up to you.

8 A. Yep.

9 Q. Now, this followed Joint Exhibit 156; that is,
10 that was the email in which there was a discussion of
11 the so-called listing alternative, it wasn't called the
12 listing alternative, but it was talking about breaking
13 down the preferred stock. Do you recall that?

14 A. I do.

15 Q. And Defendant's Exhibit 706 is after that,
16 correct?

17 A. That's right.

18 Q. And are you aware of anything in writing that
19 refers to breaking down the preferred stock before the
20 November email that is Joint Exhibit 156?

21 A. There would have been a version of this document
22 that we were talking about at the time I got the
23 objection from Sullivan & Cromwell. So, this is not the
24 first document that went to S&C that reflected that idea
25 in the securities purchase agreement. There would have

1 been a version before I sent that email to the New York
2 Fed because it was based on a discussion of that
3 document that S&C made the objection.

4 Q. Um-hum. And have you seen that document that
5 you believe went to S&C in preparation for this case?

6 A. I haven't gone back to look at it, no.

7 Q. But in preparation for your testimony, you've
8 met with counsel for the Government, correct?

9 A. That's right.

10 Q. And on a number of occasions, correct?

11 A. Right.

12 Q. And they've shown you a lot of documents,
13 correct?

14 A. That's right.

15 Q. In any of the documents they've shown you, have
16 they shown you anything that predated Joint Exhibit 156
17 that was in writing that referred or identified the
18 alternative of breaking down the preferred?

19 A. They didn't show it to me, but I know it
20 existed, because that's what I was discussing with S&C
21 at the time that they made the objection. That was the
22 reason I sent the email to the New York Fed.

23 Q. Now, when you say you know it exists, did you
24 participate in the document production that Davis Polk
25 was supposed to make to us of all of the relevant

1 documents?

2 A. I handed over everything I had.

3 Q. And when you handed over everything you had, did
4 you hand over this document that you say predated Joint
5 Exhibit 156?

6 A. I made everything I had available to the people
7 who were doing the document production. What they did
8 with it, I don't know.

9 Q. I understand you don't know what they did with
10 it, but all I'm asking is when you turned it over, when
11 you turned over what you had, did you turn over a copy
12 of this document that you say existed prior to the Joint
13 Exhibit 156?

14 A. Well, it would have been on the Davis Polk word
15 processing system.

16 Q. Was it on the word processing system?

17 A. Yes.

18 Q. What?

19 A. I believe it was, because as I say, if you read
20 the email, the email is an email that describes a
21 discussion I had with Sullivan & Cromwell about a
22 provision in a draft that AIG, as a business matter, was
23 objecting to.

24 Q. Turn to Joint Exhibit 156 just for a second.

25 A. I have it.

1 Q. Now, when you say it refers to a draft, could
2 you just point me to the language so I understand what
3 you're talking about?

4 A. In the third line that begins "is that we heard
5 from S&C earlier tonight that the company doesn't want
6 the Securities Purchase Agreement for either the TARP
7 preferred or the convertible preferred to require the
8 Board to recommend to the shareholders that they vote in
9 favor of the charter amendments."

10 The request for the board to make that
11 recommendation was a draft of the securities purchase
12 agreement that would have gone to Sullivan & Cromwell
13 before they made the objection.

14 Q. Okay. But just so it's clear, you're saying
15 that a draft of the securities purchase agreement went
16 to Sullivan & Cromwell before Joint Exhibit 156?

17 A. That's right.

18 Q. And you -- and you're saying that you know that
19 that document still exists? That is, nothing happened
20 to it. It still exists, correct?

21 A. As far as I know.

22 Q. And as far as you know, you turned that document
23 over to the people who were responsible for producing
24 those documents to us.

25 A. I think what they did is search the Davis Polk

1 word processing system to find earlier drafts, but that
2 draft would have been there.

3 Q. Now, you talk here about the TARP preferred.

4 A. That's right.

5 Q. And that was the Series D. Is that right?

6 A. That's right.

7 Q. And a decision was made to exchange that Series
8 D for Series E, correct?

9 A. That's right.

10 Q. And the reason that a decision was made to do
11 that through an exchange was to avoid a charter
12 amendment or an amendment to the certificate. Is that
13 correct?

14 A. No.

15 Q. Let me ask you to look at Plaintiffs' Trial
16 Exhibit 2038.

17 A. In the black binder?

18 Q. In the black binder. This is an email dated --

19 A. I'm sorry, 2038?

20 Q. 2038. It's near the end. It's a Plaintiffs'
21 trial exhibit.

22 A. I have -- sorry, I have 2027, I have 2035, I
23 have 2044.

24 Q. Let me hand it up.

25 Do you have it?

1 MR. SCARLATO: I have a copy of it.

2 MR. BOIES: And it is in yours? For some reason
3 the second most important person doesn't have it.

4 BY MR. BOIES:

5 Q. Okay. Do you see 2036?

6 A. I do.

7 Q. Or 2038, I'm sorry.

8 A. Yes. Oh, I'm sorry, I was looking at the --
9 I've got it now. I was looking for the wrong thing.

10 Q. If you -- if you look on the second page of
11 this -- the first page is an email from somebody at
12 Davis Polk to a large number of people, including
13 yourself, correct?

14 A. That's right.

15 Q. And on the second page, do you see the
16 footnote -- and this is a footnote off of a heading that
17 says, "Exchange of Series D Preferred Stock for Series E
18 Preferred Stock." Do you see that?

19 A. That's right.

20 Q. And it says, "In order to avoid an amendment to
21 the AIG Charter (which would require a board resolution
22 and shareholder vote) that would be required to amend
23 the Series D Certificate of Designations (which is part
24 of the AIG Charter) this would be done as an exchange
25 and not as an amendment."

1 Do you see that?

2 A. That's right.

3 MR. BOIES: Your Honor, I am told this is not
4 yet in evidence. I would offer Plaintiffs' Trial
5 Exhibit 2038.

6 MR. SCARLATO: No objection, Your Honor.

7 THE COURT: Plaintiffs' Trial Exhibit 2038 is
8 admitted.

9 (Plaintiffs' Exhibit Number 2038 was admitted
10 into evidence.)

11 BY MR. BOIES:

12 Q. So, does this refresh your recollection that the
13 reason for deciding to exchange the Series D for Series
14 E was to avoid an amendment to the AIG charter, which
15 would require a board resolution and shareholder vote?

16 A. I think I misunderstood your question. The
17 reason to go from Series D to Series E was to relieve
18 AIG with respect to the dividend requirements that were
19 in the Series D. Series D was a kind of preferred that
20 was both cumulative and compounding. What that means is
21 that if -- do you want to know this or --

22 THE COURT: No.

23 THE WITNESS: I'm sorry.

24 BY MR. BOIES:

25 Q. I mean, it's interesting, but --

1 A. No. I thought you wanted to know why they were
2 doing this.

3 Q. My question was why they were doing this by way
4 of an exchange.

5 A. By way of exchange.

6 Q. And the -- the point I -- I don't want to -- I
7 don't want to be indirect about the point. The point is
8 that you were aware that one of the ways of avoiding an
9 amendment to the AIG charter in terms of changing stock
10 from one form to another was to do it by an exchange,
11 correct?

12 A. That's right.

13 Q. And you knew that in February of 2009, correct?

14 A. Yes.

15 Q. And, indeed, you probably knew that just from
16 your experience much longer before, correct?

17 A. That's correct.

18 MR. BOIES: I have no more questions, Your
19 Honor.

20 THE COURT: All right. Thank you very much.

21 Mr. Brandow, thank you very much for your
22 testimony in this matter. You are excused.

23 THE WITNESS: Thank you very much.

24 MR. GARDNER: Your Honor, the Government's next
25 witness is Marshall Huebner. He's going to be somewhat

1 longer of a witness than Mr. Brandow. We are perfectly
2 ready to start him now, if you wish, or to start him
3 tomorrow morning, whatever the Court prefers.

4 THE COURT: Why don't we start with him now.

5 MR. GARDNER: Sounds good. The Government calls
6 Marshall Huebner as the next witness.

7 Your Honor, while the witness is taking the
8 stand, can we move DXX 036 in as a demonstrative?

9 MR. BOIES: No objection, Your Honor.

10 THE COURT: All right. Defendant's
11 Demonstrative Exhibit DXX 036 is admitted.

12 (Defendant's Exhibit Number DXX 036 was admitted
13 into evidence.)

14 MR. GARDNER: He is here, I promise.

15 THE COURT: Please come forward, sir.

16 THE WITNESS: Thank you, Your Honor. Good
17 afternoon, sir.

18 THE COURT: Good afternoon. Please raise your
19 right hand.

20 Whereupon--

21 MARSHALL HUEBNER

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

24 THE COURT: Please be seated.

25 DIRECT EXAMINATION

1 BY MR. GARDNER:

2 Q. Good afternoon, Mr. Huebner.

3 A. Good afternoon.

4 Q. Where do you currently work?

5 A. Davis, Polk & Wardwell, LLP.

6 Q. And what position do you hold at Davis Polk?

7 A. I am a partner and the cohead of the insolvency
8 and restructuring group.

9 Q. How long have you practiced in the insolvency
10 and restructuring group?

11 A. Well, I clerked after law school for Judge
12 Pierre Leval, and I've been in private practice since
13 1994.

14 THE COURT: Sir, please keep your voice up so
15 that we can all hear you.

16 THE WITNESS: I'm sorry. I haven't done this
17 before.

18 BY MR. GARDNER:

19 Q. Now, in your role as cohead of Davis Polk's
20 insolvency and restructuring group, have you been
21 involved in large corporate bankruptcies?

22 A. I have, quite a few.

23 Q. What kind of large corporate bankruptcies do you
24 work on?

25 A. I, in particular, and the group more generally I

1 think have worked on many, if not most, of the mega
2 bankruptcies over the last several decades. On the
3 company side, I was lead counsel to Delta Airlines,
4 Frontier Airlines, Pinnacle Airlines. I've done the two
5 major coal companies that have filed in the last few
6 years. I was lead U.S. counsel to Lehman Brothers UK,
7 which was the largest broker-dealer ever to file in
8 Europe and had about \$100 billion of claims against the
9 lead U.S. entities.

10 And now on the financing side, I think at one
11 point in time, I had done more than five, I think, of
12 the ten largest debtor-in-possession loans done in U.S.
13 history in many of the mega cases -- Enron, Adelphia,
14 Kodak, Polaroid, A&P. We have a fairly well established
15 financing practice and do a very large percentage of the
16 distressed finance, in the multibillion range.

17 Q. You used a term in that last answer,
18 "debtor-in-possession." What's that?

19 A. Sure. So, when a company files for Chapter 11
20 relief in the United States, it becomes a debtor in
21 possession, and the loan that is extended under the
22 federal bankruptcy system and is usually referred to as
23 a DIP or debtor-in-possession financing. Those loans
24 can grow into the billions of dollars for large
25 corporations. For example, in the United States, its

1 loan to General Motors; in the private sector, the loan
2 to Delta, which I worked on as lead lender's counsel at
3 the time, at \$8.5 billion, was the largest every
4 extended to a U.S. bankruptcy debtor.

5 Q. I want to turn your attention to September 2008.
6 When did Davis Polk begin doing work related to AIG?

7 A. In early September 2008.

8 Q. Do you recall approximately when?

9 A. I think it was maybe the 3rd or the 4th. I'm
10 not precisely sure of the date.

11 Q. And who retained Davis Polk to do work on its
12 behalf?

13 A. JPMorgan Chase.

14 Q. What was JPMorgan performing with respect to AIG
15 at that time?

16 A. JPMorgan had been asked to put together a
17 financing for AIG. It was retained by the company as
18 their advisor/as a financing source, and JPMorgan turned
19 to Davis Polk, as they do with some frequency, to assist
20 what was looking to be a very complicated potential loan
21 to a distressed company.

22 Q. Now, had AIG retained other advisors around that
23 same time period?

24 A. I don't know the date of the retentions of the
25 advisors. AIG had a cadre of financial advisors and

1 legal advisors. Certainly by a couple weeks later, they
2 had Blackstone, which is one of the premier company-side
3 distressed advisory firms, as well as Weil Gotshal and
4 Sullivan & Cromwell.

5 Q. Now, what work was Davis Polk retained to
6 perform on behalf of JPMorgan?

7 A. So, lending money to any large company is
8 actually a very complicated endeavor, because they have
9 existing debt instruments, both credit facilities and
10 indentures, that have to be threaded. In other words,
11 you can't violate, by and large, the existing debt
12 instruments of a company when it needs to borrow yet
13 more money.

14 In AIG's case, it was both a very large set of
15 companies, but equally importantly and adding a great
16 deal to the complexity, it was in a heavily regulated
17 industry. We call it AIG, but that's actually not
18 really right. It was really a series of dozens and
19 dozens of companies, many of which were regulated
20 insurance companies. And so figuring out exactly which
21 companies could even be borrowers or guarantors, which
22 ones could pledge collateral for the loan and which ones
23 could not, figuring out sort of the -- you know, the
24 plumbing of how a lender could lend money to AIG was a
25 big part of what was being done in those early days.

1 Q. And did there come a point in time when you
2 personally became involved in performing work related to
3 AIG?

4 A. Yes.

5 Q. When was that?

6 A. Saturday night, September 13th.

7 Q. And why were you brought in?

8 A. Davis Polk had multiple large clients at the
9 time that were dealing with counterparties and others
10 facing financial distress and dealing with the effects
11 of their counterparties facing financial distress. My
12 partner and cohead, Don Bernstein, until then had been
13 the lead person on the JPMorgan AIG engagement, but in
14 light of Lehman and other things that he was working on,
15 he simply couldn't do those -- all of them at the same
16 time and asked me to essentially step into his role on
17 the AIG financing transaction.

18 Q. Could you describe the nature of the work that
19 you undertook once you came in on September 13th?

20 A. Yes. So, the work that we had been doing for
21 the period before that, in essence, continued. I was by
22 the client's side over the next couple of days, again,
23 trying to figure out the pathways of lending AIG money
24 but also dimensioning how a loan might be structured,
25 what the amount of the financing required might be, you

1 know, in general just being lender's counsel to a
2 potential lender in a complex and variable and changing
3 situation.

4 Q. And in connection with the work that you were
5 personally involved in, did you come to an understanding
6 of AIG's liquidity needs at that time?

7 A. I mean, what I can say about AIG's liquidity
8 needs at the time are that I don't think anybody had an
9 understanding of them. I don't think that there is a
10 yes or a no answer to that. You know, I don't have a
11 precise memory of, on each day, what the dollar amount
12 was, but, you know, at the beginning of the weekend, the
13 numbers, to my memory, were in the 10 to 20 billion
14 dollar range, and then literally what happened, which I
15 had certainly never before experienced, was that AIG's
16 articulated liquidity needs were growing sometimes by
17 \$10 billion a day.

18 So, the numbers, in the space of, you know, a
19 three-, four-, five-day period, you know, essentially
20 went from something like the 10 to 20 billion dollar
21 range to the 60, 70, or more billion dollar range.
22 There was, suffice it to say, incredible pandemonium at
23 and involving AIG. You know, we spent a good chunk of
24 the hours of some of those days at AIG, and there were
25 literally people, you know, running to and fro in

1 different rooms trying to figure out and get a handle on
2 the situation.

3 Q. Now, as of September 14th, was JPMorgan
4 successfully putting together a private sector facility
5 for AIG?

6 A. No.

7 Q. Were you aware that on September 15th, President
8 Geithner from the New York Fed asked JPMorgan, along
9 with Goldman Sachs, to find a private sector solution to
10 AIG's liquidity needs?

11 A. I didn't really become aware of that
12 articulation of it until somewhat later. What I did
13 know was that we had been asked to come to a meeting on
14 the 16th -- "we" in this case being JPMorgan -- and I
15 learned also Goldman Sachs was coming, to report back to
16 the Fed on whether or not a private market solution led
17 by JPMorgan, which had been working on one for some time
18 now, although, again, we didn't call it a private market
19 solution. It was just a loan like any other corporate
20 loan. But I was aware that the -- that the request was
21 to come to the Fed on the morning of the 16th and
22 essentially report on where things stood among other
23 things.

24 Q. And before we get to the 16th, were you present
25 at meetings that took place at the New York Fed on

1 September 15th?

2 A. I was not.

3 Q. Do you have an understanding as to whether
4 JPMorgan and Goldman Sachs were successful in securing a
5 loan to meet AIG's liquidity needs?

6 A. Yes.

7 Q. And what is your understanding?

8 A. They were not going to be successful, and the
9 conclusion was that AIG was not going to be financable.

10 Q. Did you have an understanding at the time as to
11 why JPMorgan and Goldman Sachs were unsuccessful in
12 those efforts?

13 A. Well, I can really speak for JPMorgan. Goldman
14 Sachs was not our client.

15 Q. Fair enough.

16 A. They sort of got added to the conversation, but
17 that's not who I was having my conversations with.

18 It really was, I think, a combination of many
19 factors. One is that -- what I described a few minutes
20 ago. AIG's liquidity needs were simply growing by
21 billions and billions and billions and billions of
22 dollars on a daily basis.

23 In addition, the ability and the ability to
24 value on a timely basis the collateral available to
25 repay the loan was a very complicated endeavor.

1 The other thing is when a lender makes a loan,
2 in my experience, having a pathway to get you to
3 repayment of the loan -- in other words, it's not just
4 if we lend a million dollars where the collateral is
5 worth \$2 million, we're fine, because lenders don't lend
6 into liquidations. The goal is not, "Well, we'll just
7 sell everything in pieces." The goal is to see a
8 business plan that is financable and shows that the
9 company has the ability both to service the debt and to
10 repay the debt. AIG was quite unable at that point in
11 time to show any sort of plan that it could both service
12 debt and repay the debt.

13 And then obviously the overall events of that
14 period -- you know, these days it seems rather far
15 away -- but that was a relatively terrifying period in
16 general in terms of the economy. You know, Lehman
17 failed in the interim, there were economic dislocations,
18 you know, there were sort of, you know, large typeface
19 headlines in all the financial newspapers about sort of
20 how deep this crisis could end up going.

21 And so many lenders also sort of retreated into
22 a more defensive mentality, not that I think that an AIG
23 loan could have gotten done, you know, in any
24 circumstances at that point in time with those economics
25 and certainty and liquidity needs, but the overall

1 situation clearly made it, you know, yet more
2 challenging.

3 Q. You mentioned in your last answer the inability
4 of AIG to get a handle on what its liquidity needs were,
5 but what's the relationship between the inability to get
6 a handle on AIG's liquidity needs on the one hand and
7 the inability to get private financing on the other?

8 A. Sure. So, when -- when -- whether it's a
9 hundred million dollars or a billion dollars or 5
10 billion dollars, in general, when a company goes to the
11 financing markets to get a loan, it has a story, and the
12 story says this is the amount of financing I need, this
13 is what I'm going to use it for, here are my cash flows
14 that support it, here's the collateral that I can
15 pledge, I have a fair amount of certainty as to the
16 situation, and here's the return. And then the markets
17 price the return, and if there's a match, a loan is
18 made.

19 AIG was really not able at that point in time to
20 present almost any element of that package. It just
21 simply -- it just couldn't come to market with something
22 that lenders could get their hands around.

23 The timing, I think, also bears mention. You
24 know, approving a loan really of any size at a major
25 financial institution is a process, because obviously

1 regulators and others expect financial institutions to
2 make prudent, appropriate lending decisions. And so
3 there are credit committees and procedures and credit
4 memos that have to be written that all take time.

5 And the other thing that seemed to be, you know,
6 yet a further accelerant to this situation was AIG
7 didn't have a lot of time, and given the size of its
8 loan, that put it even farther out of the realm of the
9 possible for the private markets to accommodate them.

10 Q. Now, Mr. Huebner, do you know whether AIG was
11 considering filing for bankruptcy as a result of the
12 failure to find a private sector solution to meet its
13 liquidity needs?

14 A. I do.

15 Q. How do you know?

16 A. I know because the restructuring world is not so
17 big, and so as I mentioned, I learned early on that AIG
18 was working with Blackstone. I also learned either
19 overnight Sunday night or maybe Monday that AIG had
20 retained Weil Gotshal & Manges as their bankruptcy and
21 other restructuring law firm.

22 The lawyers who were retained by AIG are people
23 I have known for a very long time. You know, I ended up
24 sort of figuring out which people were assigned to it
25 and emailed them, and they were in the building, you

1 know, at 2:00 in the morning at AIG when I was in the
2 being, when people were all scrambling around, and I
3 went up and had a visit with them.

4 And, you know, they were trying to get the
5 information to fill in the paperwork necessary for an
6 AIG Chapter 11 filing.

7 Q. Now, I want to turn to September 16th, 2008.
8 Now, on the morning of September 16th, did you attend a
9 7:00 a.m. meeting at the New York Fed?

10 A. I did.

11 Q. Now, at that time, who did you represent?

12 A. At 7:00 a.m. that morning, I represented
13 JPMorgan.

14 Q. And who else participated in this meeting at the
15 New York Fed at 7:00 a.m. on September 16th?

16 A. So, to my memory, there were, I believe, at
17 least three, possibly more clients from JPMorgan at the
18 meeting with me. One is Jimmy Lee, James Lee, who is
19 one of the vice chairmen of JPMorgan, who I actually
20 believe many decades ago actually founded their
21 distressed lending business. One was Mary Helen Egbert,
22 who at the time I believe was the senior managing
23 director running their restructuring and distressed
24 finance practice. One was Doug Braunstein, who I
25 believe was a relationship person on the engagement by

1 AIG and also a very senior person at the bank.

2 There were also some people from Goldman Sachs.
3 Whether there are two or three or four, I just -- I do
4 not and did not remember. One of them, though, I know
5 was Jamie Sprayregen, who was and now yet again is a
6 bankruptcy lawyer at Kirkland & Ellis who had taken a
7 several-year detour in his career to become a distressed
8 financing banker at Goldman Sachs.

9 And then there were also various officials from
10 the Fed/Treasury side. And there were, to my memory, at
11 least two very senior Morgan Stanley bankers there, Bob
12 Scully and Ruth Porat, although I remember a somewhat
13 larger room, and so there were definitely other
14 individuals there as well. I just couldn't,
15 unfortunately, create a seating chart six years later.

16 Q. And I won't ask you to.

17 How long did that meeting last at the New York
18 Fed?

19 A. Between three hours and 15 minutes and about
20 3 1/2 hours, something like that.

21 Q. So, if it began at 7:00 a.m., it lasted until
22 approximately 10:00 a.m.?

23 A. 10:15, 10:30.

24 Q. Fair enough.

25 And can you describe generally what happened at

1 this meeting?

2 A. Yes. So, I went into the meeting believing that
3 we were there to discuss fundamentally two topics. One
4 is, you know, what is your answer, large banks, as to
5 whether you will be able to finance AIG? If the answer
6 is no, what do you believe the consequences of an AIG
7 failure would be sort of more broadly felt, you know, on
8 Main Street, on Wall Street, on the economy?

9 And then there ended up being kind of a very
10 long third section of the discussion, which was, you
11 know, could -- how could AIG otherwise be financed?
12 Could it be financed in bankruptcy? And then ultimately
13 the discussion turned towards a New York Federal Reserve
14 Bank financing for AIG.

15 Q. You said one of the first topics discussed was
16 about JPMorgan's attempts to secure a private solution.
17 Could you describe that discussion?

18 A. Yes. JPMorgan essentially came back and
19 reported, as it was asked to do, on its conclusion, and
20 the conclusion was it was not going to be possible. The
21 needs were simply too great. They were unknown -- I
22 guess I don't want to resummarize what I said earlier,
23 but all the things I said before were essentially
24 articulated at the meeting.

25 Q. So, once it was established that JPMorgan could

1 not syndicate a private loan, what was the next topic
2 discussed?

3 A. The next topic, in essence, was, you know, what
4 would an unplanned AIG failure look like? And that
5 ended up being really more of a round robin
6 conversation. That wasn't JPMorgan reporting to Ms. X
7 or Mr. Y. There were a fair number of people in the
8 room, you know, maybe 15 or so, and it ended up just
9 being a conversation of, you know, what do we think
10 might happen.

11 Part of the discussion -- and I was relatively
12 involved in this part of it -- morphed into what might a
13 failure of AIG look like, because that obviously --
14 whether it was a soft landing, a hard landing, or a
15 cataclysmic failure would, I think, have a lot to do
16 with and was discussed as having a lot to do with how
17 bad the consequences of an AIG failure might be.

18 Q. So, let me back up a minute. Earlier on you
19 mentioned this concept of debtor-in-possession
20 financing. Do you recall that?

21 A. I do.

22 Q. Was that topic of debtor-in-possession financing
23 discussed during that September 16th meeting at the New
24 York Fed?

25 A. Yes, it was.

1 Q. And what was discussed about
2 debtor-in-possession financing at that meeting?

3 A. So, what was discussed -- it was discussed at, I
4 don't know, moderate length or some length, was the fact
5 that, you know, a lot of people refer to an AIG
6 bankruptcy, like could AIG have gone bankrupt, you know,
7 AIG -- you know, the alternative was bankruptcy. What
8 was discussed at the meeting -- and I'll circle back in
9 a minute to the debtor-in-possession financing aspect of
10 it -- is that on some level, that is such an
11 overgeneralization that it's actually quite misleading,
12 because the vast, vast majority of AIG could not have
13 "gone bankrupt," and let me explain, because it's
14 actually, I think, quite critical.

15 Under the United States Bankruptcy Code,
16 domestic insurance companies are not allowed into
17 Chapter 11. Foreign insurance companies are not allowed
18 into Chapter 11. Banks are not allowed into Chapter 11.
19 And other institutions, like broker-dealers, are not
20 allowed into Chapter 11.

21 AIG was essentially an umbrella organization of
22 which a very substantial portion, probably the majority
23 both by value and sheer number of companies, were in
24 those excluded categories. Domestic -- I mean, it was a
25 big insurance company, worldwide, you know, the biggest

1 one in the world. Insurance companies can't go into
2 bankruptcy. So, why does this matter so much?

3 Because, you know, as a layman, one might say to
4 one's self, you know, how do bankrupt companies borrow
5 billions of dollars? Like, it just doesn't seem like it
6 should be possible. The answer is because when a
7 corporate enterprise goes into Chapter 11, the judge and
8 the U.S. Bankruptcy Code throw a protective cone down
9 over the assets, and once the assets are all in
10 bankruptcy, the Bankruptcy Code says, "Lenders, we can
11 provide you super priority claims, super priority
12 liens." Essentially, the Judge can give out the assets
13 in the orders provided in the Bankruptcy Code, but that
14 assumes that the assets all come into bankruptcy.

15 What you had instead with AIG was something like
16 200 different regulators all over the world, each having
17 jurisdiction over and very different duties and
18 priorities for their individual companies. So, you
19 know, the -- AIG's Asian operations, which ended up
20 being worth tens and tens and tens of billions of
21 dollars, couldn't go into bankruptcy, because they were
22 foreign insurance companies.

23 And so the whole notion of a
24 debtor-in-possession financing, where the judge could
25 protect the assets and encourage lenders to lend against

1 them, was utterly infeasible here. And so the
2 conclusion was that debtor-in-possession financing in
3 any material amount or in the amounts thought to be
4 needed was not going to be available to AIG and that, in
5 fact, what was very likely to happen was that each
6 regulator would do its job, which is what they should
7 do.

8 The ones in Tokyo would say, "We need to protect
9 Tokyo policyholders," and they would slam a metal ring
10 down around the Japanese insurance companies; and in
11 Taiwan, and in the Philippines, and in Tennessee, and in
12 New York. But AIG previously had been sort of a large
13 corporate body, and the notion of each regulator sort of
14 slamming an iron ring down around its piece of AIG was
15 thought and discussed at that meeting as making the
16 notion of a multi, multibillion dollar financing not
17 possible and meaning that a failure of AIG would likely
18 be a very hard landing.

19 Q. When you say a "very hard landing," what do you
20 mean?

21 A. Well, in general, the successful bankruptcies
22 are reorganizations, where a company goes into Chapter
23 11, borrows the money it needs to sort of make it
24 through surgery, fixes either its balance sheet or its
25 operations, and then comes out the other side as a

1 rejuvenated company. You know, Delta Airlines,
2 United Air -- I mean, pretty much every airline. I
3 think it's not possible to fly on one that hasn't been
4 through Chapter 11, in some cases twice.

5 AIG was thought to be a very unlikely candidate
6 for that, because it was going to be not financable and
7 because it would likely be, you know, sort of
8 dismembered, for lack of a better word -- and I
9 apologize that it's graphic -- by dozens and scores of
10 individual regulators each seizing its own piece of AIG.

11 Q. Seizing? What do you mean by "seizing"?

12 A. I'm sorry. I don't mean seizing in the literal
13 sense.

14 Q. No.

15 A. But the way insurance regulation works in
16 general terms -- and it's not my field -- is that, you
17 know, that's sort of the equivalent of a bankruptcy, is
18 an insurance scheme. It can be a rehabilitation, there
19 can actually be a seizure. A lot of times they put
20 designated professionals in to replace the company and
21 its management. They certainly prohibit the dividends
22 up to parent companies, as I understand it.

23 You know, it's there primarily to protect
24 policyholders, who are the insurance regulators', you
25 know, first concern, and if and only if, when it's all

1 done, often many, many years later, is there going to be
2 value left for the ultimate equity owners of the
3 regulated insurance company.

4 Q. Now, during this 7:00 a.m. meeting, was there a
5 discussion of the consequences of an AIG bankruptcy to
6 the global economy?

7 A. Yes.

8 Q. And what was discussed with respect to that
9 issue?

10 A. I mean, the -- the general timber or focus of
11 the discussion was that it was -- it was feared by
12 people in the room that it was going to be an extremely
13 negative and serious event, because AIG obviously was
14 such a large company and such an intertwined company
15 that its failure was likely to be, you know, chaotic and
16 potentially unfinancable.

17 Q. Was there any discussion of the consequences of
18 the bankruptcy to AIG's shareholders?

19 A. Not directly. It was, I think, assumed,
20 since in general -- and Lehman is probably a good
21 analogy. I mean, Lehman's creditors have lost tens and
22 tens and tens, if not hundreds of billions of dollars.
23 Equity holders virtually never get a recovery in any
24 bankruptcy, and so it would be very unusual to ever have
25 to explicitly talk about will shareholders not get a

1 recovery.

2 I don't know that I have ever been involved in a
3 case in my career where equity holders got a recovery,
4 but especially in a financial services and confidence
5 business, the thought that there would be enough value
6 left to pay creditors, you know, even at a material
7 fraction, let alone equity holders, I think everybody
8 just took that as an absolute given.

9 Q. You said, "I don't know that I have been
10 involved in a case in my career where equity holders got
11 a recovery." Why, in your experience, would common
12 shareholders typically recover nothing in a large
13 corporate bankruptcy?

14 A. Yeah, actually, you know what, let me just first
15 correct that, because I just thought of one. In
16 American Airlines actually, shareholders did get a
17 recovery because the airline industry recovered so
18 substantially during its long bankruptcy, and the merger
19 with USAir created synergies that did create equity
20 value. So, it's always dangerous to make broad,
21 declarative statements, and I apologize, and I'm sure
22 someone will find another one or two, but it's -- so,
23 can I correct my statement?

24 Q. Please.

25 A. It is extraordinarily rare in my experience for

1 equity holders to ever get any recovery. More likely,
2 creditors take a massive haircut, in some cases -- I
3 personally will now answer your question and explain
4 why.

5 The easiest way that I have found over the years
6 to explain why that is, is to think of bankruptcy
7 priorities like a series of stacked champagne glasses.
8 You basically put one glass inside and atop the other
9 and you stack them up. The creditors with the highest
10 priority are in the top glass; so, for example, secure
11 creditors, who have enormous constitutional-level
12 property interests in their collateral.

13 There are also creditors who are basically
14 largely exempt from bankruptcy, creditors who have safe
15 harbor contracts, for example. Then there are creditors
16 who have priority under the Bankruptcy Code itself. You
17 know, people lobby Congress, they get special rules
18 passed, and certain people just have a priority that
19 others don't.

20 Then you have general unsecured creditors; in
21 other words, if you don't have a special, extra right in
22 some way, you're just a regular creditor. And then at
23 the very, very bottom is equity.

24 The way that bankruptcy works and one of its
25 most fundamental premises is absolute priority. Until

1 the glass on top of you is full and begins cascading
2 champagne to your glass, your glass must remain empty.
3 And so you pour from the top, and then as soon as you're
4 out, whichever glass is partially full stays partially
5 full, and every glass below that must stay empty by law.

6 And so since shareholders are, of course, the
7 residual owners of a company after all of its
8 obligations are met, they only get a recovery if every
9 single other conceivable party has been satisfied. And
10 as you might imagine, in bankruptcy, it's really
11 relatively unusual for every single other conceivable
12 party to be paid in cash, in full, or otherwise fully
13 treated and satisfied, including, by the way, with post
14 petition interest in the rare case where a company
15 actually is solvent, which, as I said, is an extremely
16 rare event.

17 Q. Now, Mr. Huebner, you mentioned that there was
18 some discussion at the 7:00 a.m. meeting about the
19 ability of JPMorgan to secure a private loan, about the
20 consequences of bankruptcy, including the availability
21 of debtor-in-possession financing, and then I think you
22 also mentioned earlier on that there was some discussion
23 at the 7:00 a.m. meeting about the prospect of the New
24 York Fed making a loan to AIG?

25 A. Yes. That sort of came up near the end of

1 the -- it was the last section of the conversation, when
2 essentially I think there was a general consensus in the
3 room that the private market would not be able to meet
4 AIG's needs, that failing to meet those needs could have
5 very severe consequences, including the fact that a
6 "bankruptcy" really was not going to be feasible and
7 that AIG was likely unfinancable in a bankruptcy.

8 You know, the Fed then, you know, essentially
9 came forward with the possibility that in light of all
10 of those predicates, it was considering and seeking
11 authority and having discussions about potentially
12 stepping in and being -- being a lender.

13 Q. Now, was that the first time you had heard about
14 the prospect of the New York Fed providing a loan to
15 AIG?

16 A. Yes.

17 Q. Now, was there any discussion at the 7:00 a.m.
18 meeting about next steps?

19 A. Yes.

20 Q. And what was discussed about next steps?

21 A. So, procedurally, there were really two things
22 that were discussed at the meeting. One was the Fed
23 officials made it very clear to the participants that
24 essentially the Fed's potential willingness to provide a
25 loan was of extraordinary confidentiality, since

1 obviously it was still in the process of being discussed
2 and approved, and so they asked everybody not to discuss
3 it, essentially, outside of the room.

4 The second was that at the meeting, there was a
5 request that -- that Davis Polk essentially be released
6 by JPMorgan, because given the time available and the
7 complexity of the endeavor to provide financing to AIG,
8 irrespective of the identity of the lender, that the Fed
9 requested that Davis Polk essentially stay on as
10 lender's counsel, despite the potential switch in the
11 identity of the lender.

12 Q. So, after that 7:00 a.m. meeting, which I think
13 you testified ended about 10:15, 10:30-ish, did the New
14 York Fed, in fact, retain Davis Polk to assist it in
15 providing a loan to AIG?

16 A. Yes. I was allowed to use my phone, and so I
17 stepped out with Jimmy Lee and called Steve Cutler, who
18 was the general counsel of JPMorgan -- was and still
19 is -- and the request was made to essentially be
20 released to continue as lender's counsel, as financing
21 counsel, and switch to the Fed. Mr. Cutler said yes,
22 and then we sort of formally switched roles and stayed
23 on as lender's counsel to the, you know, now proposed
24 lender of the New York Fed.

25 Q. Now, in your experience, Mr. Huebner,

1 particularly with distressed lending, how common is it
2 for a law firm to switch clients?

3 A. Yeah, it's not so uncommon. What happens with
4 some frequency -- you know, borrowers, as you might not
5 be surprised to hear, are very concerned about costs and
6 cost control, and so a lot of times, like, for example,
7 in the underwriters counsel, which is a good analogy,
8 Davis Polk -- you know, law firm X, law firm Y, not
9 Davis Polk particularly, but using us an example -- you
10 know, we're designated underwriter's counsel to company
11 X.

12 So, whoever it is that is going to be doing
13 their bond financing knows in advance they have to use
14 Davis Polk, or we'll begin as lender's counsel
15 representing, hypothetically, Citibank in a big loan to
16 company X. That loan will be up for renewal. Citibank
17 will lose the mandate to someone else, but the company
18 will say, "But you need to stay with Davis Polk. We're
19 not going to pay to have some new law firm that we don't
20 know and may not like, you know, begin from ground zero
21 drafting documents and the like." And so it's not
22 atypical at all.

23 And since the company has to reimburse both the
24 old prospective lender's invoices and the new ones, you
25 just continue with the matter, because your role hasn't

1 really changed. It's only really the identity of the
2 lender, which the documents aren't really about the
3 lender, they are usually about the borrower, with
4 respect to these types of particulars.

5 Q. Now, at a high level, Mr. Huebner -- I promise
6 we'll drill down a little bit more as we go on -- but at
7 a high level, could you please describe Davis Polk's
8 involvement in the AIG matter on September 16th, once it
9 was retained by the New York Fed.

10 A. Yes. So, September 16th itself was a very
11 intense day, I guess, in sort of every possible way.
12 Our roles were really multifaceted. You know, we
13 received early in the morning, you know, after this
14 10:30 break and after we got clearance to switch
15 clients, we received a very preliminary, very rough I
16 guess what I'll call banker's draft/early term sheet
17 from Morgan Stanley, and so -- which was the Fed's
18 financial advisor. So, one of the things we were doing
19 on the 16th was turning a kind of, you know, 1 1/4 page,
20 very bare bones document into a real term sheet that
21 would have the terms and conditions of the financing.

22 The second thing that was going on was we were,
23 at an extraordinarily accelerated pace, doing some
24 collateral-related work, because in addition to
25 extending a loan, you know, based on loan terms, there

1 also were collateral issues with respect to securing
2 that loan.

3 And then the third thing that happened was --
4 which necessitated its own kind of fire drill, was that,
5 you know, in -- in the late morning range -- and I will
6 not be able to be more precise than that -- AIG advised
7 the Fed -- and, I'm sorry. When I say "Fed," I mean the
8 Federal Reserve Bank of New York. Is it okay to use
9 that as a shorthand and then if I mean someone else,
10 I'll say it, like Board of Governors?

11 Q. That's fine with me.

12 A. Your Honor, is that okay?

13 THE COURT: Yes, that's fine.

14 THE WITNESS: Thank you, sir.

15 So, the Fed was advised sometime in the very
16 late morning that AIG did not need same-day financing,
17 which was a big sigh of relief, because there was an
18 unbelievable amount to do just to document an \$85
19 billion loan in one day, but then a couple of hours
20 later, there was one of these very memorable moments
21 where someone came in and said, "They just called back
22 and they need \$14 billion tonight."

23 And, again, you know, by now we're all sort of
24 numb to these numbers, because we've been throwing them
25 around for so many years, but the notion of a company

1 calling and saying, you know, "Whoops, we need \$14
2 billion tonight," is obviously -- it speaks for itself.

3 So, to get back to your question, we then had to
4 both document and document the collateral for a same-day
5 \$14 billion loan while working on all the other work
6 streams at the same time.

7 BY MR. GARDNER:

8 Q. I hate to ask you an obvious question, but what,
9 if any, impact did the change in AIG's assessment of its
10 short-term liquidity needs have on the work that you
11 were doing on the 16th?

12 A. I mean, it just -- it just added a -- it wasn't
13 a personal thing to me. It just added even more
14 intensity and pressure to the tasks that had to be
15 accomplished that day. My memory is that they needed
16 the money before the open of markets in Asia, so it was
17 literally a race for a same-day funding, and I think --
18 I don't remember if it was 8:00 or 9:00 at night, but
19 the Fed actually -- you know, being the fact that the
20 Fed controls the Fed wire system, I believe that the Fed
21 actually held open the Fed wire system so that
22 ultimately when the loan and the collateral were done to
23 its satisfaction, it actually sent a wire in that amount
24 to AIG that night.

25 Q. Now, you mentioned that one of the activities

1 that you were involved in on the 16th was -- I think you
2 used the word "turning the term sheet," and could you
3 describe for the Court the evolution of the term sheet
4 over the course of September 16th, 2008, at a fairly
5 high level?

6 A. Sure.

7 MR. BOIES: Your Honor, I am going to object. I
8 think that we ought to have more specific questions and
9 answers, because we get an awful lot of hearsay and the
10 like in the course of these narratives. So, I would
11 object to something that is that broad.

12 THE COURT: I think that's fair. Maybe we can
13 drill down and take it in pieces.

14 MR. GARDNER: I -- and to be sure, Your Honor, I
15 was planning on doing that. I wanted to sort of lay out
16 broadly what it was that Mr. Huebner was working on and
17 then drill down into each one, but we can take it in
18 steps. That's fine with me.

19 THE COURT: Sure, thank you.

20 BY MR. GARDNER:

21 Q. Mr. Huebner, let's take it step by step. Can
22 you walk through each of the steps for the evolution of
23 the term sheet, starting with the first term sheet?

24 A. Yes. So, at 10:52 a.m. -- and I only know the
25 time because I saw the document, I don't want everyone

1 to think that remember the time from six years ago -- we
2 received this very short-form banker's term sheet that
3 my understanding -- it was sent to us by Morgan Stanley.
4 Who originally prepared it to this day, I don't know,
5 but I received it from Morgan Stanley.

6 And I forwarded it on to Brad Smith, who then
7 was the senior banking partner at Davis Polk, sort of
8 the head of our lending practice, who was back at the
9 office, and he was -- you know, he was in charge of
10 essentially turning and advancing the term sheet.

11 Q. And do you have a recollection, before we move
12 on, of how the Morgan Stanley term sheet described the
13 equity interest?

14 A. I believe it said warrants for 79.9 percent.

15 Q. Okay. So, the first term sheet is at 10:52 a.m.
16 Can you walk me through what the next term sheet or next
17 step was?

18 A. Yes. So, again, this was a very abbreviated
19 form that came from Morgan Stanley. I don't even know
20 if the client ever saw that version. You know, it then
21 was handed to Brad Smith, who, you know, does documents
22 like this.

23 For the next couple of hours, Davis Polk
24 essentially took the document and I guess what I would
25 say and -- I guess -- I don't mean it to sound

1 disparaging to bankers, but we turned it into a real
2 term sheet. You know, I think it grew from something
3 like 1 1/4 pages to like five full, chunky pages with,
4 you know, covenants and conditions to lending and
5 fleshed out economic terms and blanks and brackets.

6 And what you do next is you actually prepare a
7 draft for your client to say, you know, "Client, here --
8 here is our draft document describing this deal that has
9 a bunch of blanks, has a bunch of brackets that we need
10 to discuss, but, you know, here is a form of document
11 that is ready for you to chew on." And that's what
12 happened in the next, you know, roughly two to three
13 hours from the time we received the bare bones document
14 in the morning.

15 Q. And at what approximate time did you turn the
16 client term sheet?

17 A. So, my memory is that that document ended up
18 having a timestamp of 1:44 p.m. That's the draft that
19 Davis Polk sent to its clients at the Federal Reserve
20 and others on the team, you know, as the client -- our
21 client, the Fed-ready term sheet.

22 Q. And how was the equity term described in the
23 1:44 p.m. client term sheet?

24 A. I believe at that point it still said warrants
25 for 79.9 percent.

1 Q. Okay. Can you walk me through the next step in
2 the evolution of the term sheet?

3 A. Yes. There were some conversations, obviously
4 with the clients, during that early morning period, in
5 general -- again, it would be difficult to exaggerate
6 sort of the level of pandemonium that was going on as
7 people were madly running around trying to figure out
8 how to get all this done and get collateral and bring
9 stock certificates down the street with armed guards.
10 It's not a day that, you know, had clear, crisp meetings
11 sort of booked into somebody's date book, you know, at
12 1:00 we did this.

13 But after 1:44, when the term sheet came out and
14 Brad sends it over to the Fed, there was then an early
15 afternoon meeting where there was a much more detailed
16 discussion about what form the equity should take, and
17 actually, for reasons I can explain, I have a quite
18 clear recollection of that meeting.

19 Q. Okay. So, let's talk about that meeting, then.
20 What happened at that meeting?

21 A. So, one of the reasons I have a clear
22 recollection of it is because, you know, I -- we had
23 been asked to be the Fed's counsel. That was a
24 relatively dramatic event, having left JPMorgan and all
25 of a sudden being inside the Federal Reserve, and, you

1 know, our -- we had a very large team working away on
2 this. And then I was in a room, and then all of a
3 sudden I was being introduced to three very senior
4 partners at Wachtell Lipton. And I remember sort of
5 thinking to myself, what are they doing here? Like,
6 whose counsel are they?

7 And they came and had views on a bunch of
8 topics, but, in particular, Tom Baxter and the three
9 Wachtell partners, Ed Herlihy, Larry Makow, and I think
10 it's David Rosenbloom [sic], we ended up in a relatively
11 detailed discussion about exactly what form the
12 warrant -- the warrants/preferred/equity should have in
13 the term sheet before giving it over to AIG.

14 Q. And what was Wachtell's view?

15 A. Wachtell had pretty strong views that they
16 wanted the term sheet to say preferred stock. Their
17 view was it's a better vehicle, it's cleaner, let's just
18 go with preferred stock, and that was the view that they
19 were articulating.

20 THE COURT: I'm sorry. Who did Wachtell Lipton
21 represent?

22 THE WITNESS: So, Your Honor, I actually don't
23 really know even to this day. I think, you know, there
24 were a lot of people there, to be fair to everybody, as
25 just sort of "friends" of the people. You know, it was

1 a time of great uncertainty. You would have to ask
2 them.

3 They were no longer involved in the transaction,
4 to my knowledge, several days later. I think they
5 thought they were helping, but I'm not exactly sure who
6 they believed their client was. But they didn't prevail
7 that day anyway, so maybe it was okay.

8 So, should I tell you what happened at the
9 meeting?

10 BY MR. GARDNER:

11 Q. You just took my next question from me. Please.

12 A. Yeah.

13 Q. So, what was the reaction to Wachtell's proposal
14 that the term sheet list the equity provision as
15 preferred?

16 A. Sure. So, you know, I was listening to all
17 this, and, you know, I guess I've spent a lot of my
18 career in very complicated fact patterns with a lot of
19 unexpected adverse developments, and so in listening to
20 this, I said, you know what, some people say warrants,
21 some people say preferred, we just don't really know,
22 and there's just no reason to specify. There's just
23 none. This is a term sheet.

24 And so the way the conversation ends up going
25 was -- and by the way, everybody agreed, by the time we

1 sort of discussed it through, what -- why pick a
2 specific path for this? Let's just say 79.9 percent
3 equivalent to common stock, and we'll figure out the
4 form later. It will just be "form to be determined."

5 You know, the important thing from the
6 borrower's perspective is that part of the consideration
7 for the loan was the equity equivalent of 79.9. It was
8 not thought, at least at that meeting, at that term
9 sheet stage, that the exact form of that needed to be
10 determined on, you know, minutes' or hours' notice when
11 we were racing on, you know, things that were truly kind
12 of life- or death-sensitive for AIG, like getting it \$14
13 billion that evening.

14 Q. Now, once there was a consensus that the equity
15 provision should be described as 79.9 percent equity
16 equivalent to common stock, form to be determined, was a
17 term sheet developed that reflected that notion?

18 A. Yes. I mean, to be clear, I am aware that this
19 trial is very focused on the equity, but there were a
20 bunch of blanks and brackets in the 1:44 term sheet.
21 It's not like it was otherwise done and then there was
22 this one big discussion. We were racing on an \$85
23 billion loan that had many attributes. I mean, even
24 things like the amount was not certain earlier in the
25 day. I don't remember exactly when the numbers got

1 plugged in or the brackets got taken off, but a bunch of
2 things moved.

3 Again, this is what you do. You create a term
4 sheet, and then you talk to your clients and you say,
5 let's -- you know, here are the open issues. You figure
6 out what the client wants, you give your advice, you get
7 the term sheet finalized, and then you give it to the
8 borrower, saying here are the terms and conditions. So,
9 this is one thing among several. I think the rates
10 changed, time -- the length of the loan changed. A
11 bunch of things were changing. This is just one of
12 them.

13 Q. And do you recall the approximate time at which
14 a term sheet was provided to representatives for AIG
15 with the equity described as 79.9 percent equity
16 equivalent to common stock, form to be determined?

17 A. I do.

18 Q. And when was that time?

19 A. I believe it was in the approximately 4:00 range
20 on that day. The timestamp on the term sheet that
21 "went" to AIG was 3:49 p.m., which, in fact, is quite
22 consistent with my recollection of the events of that
23 day.

24 Q. Was that the only time during September 16th
25 when a term sheet describing the equity as 79.9 percent

1 equity equivalent to common stock, form to be
2 determined, was provided to representatives of AIG?

3 MR. BOIES: Objection, Your Honor. Foundation.
4 All he can do is testify to what he did.

5 MR. GARDNER: To your knowledge.

6 THE WITNESS: I do not believe or to my
7 knowledge --

8 BY MR. GARDNER:

9 Q. To your knowledge.

10 A. -- AIG never saw any term sheet that did not
11 have that formulation in it. There was a term sheet
12 later in the day that corrected a couple of very minor
13 ministerial typos, you know, "lenders" was plural
14 instead of singular because, you know, now it was just
15 going to be the Fed and not a group of banks. So, there
16 were essentially some, you know, de minimus ministerial
17 changes. But the 3:49 term sheet, for all intents and
18 purposes, was the -- became the final term sheet.

19 Q. So, let's walk through some of those iterations
20 now. If you could turn to JX 269 -- and I should have
21 told you right off the bat, you should have a binder in
22 front of you, and they should be organized by JXs, DXs,
23 and the occasional PX. I'm going to ask you first about
24 Joint Exhibit 269.

25 A. Would it be possible to ask for a glass of

1 water?

2 Q. Absolutely. Not only is it possible, it is
3 absolutely possible.

4 THE COURT: You should have some there.

5 THE WITNESS: Oh, I apologize. I have some
6 here. Sorry.

7 Yes, sir, I have it open.

8 BY MR. GARDNER:

9 Q. Do you recognize this exhibit?

10 A. I do.

11 Q. What is it?

12 A. This is the transmission at 10:52 a.m. that I
13 received from Morgan Stanley with the Morgan -- well,
14 with what I call the Morgan Stanley version, but, again,
15 I don't know if they created it; I don't even know if
16 the Fed ever saw it. I just know it was sent to me at
17 10:52 a.m. and then was forwarded to Davis Polk to be
18 the basis, the initial skeleton off of which we created
19 the term sheet.

20 Q. I see. And could you generally describe the
21 terms set forth in the -- what I'm going to call the
22 Morgan Stanley term sheet?

23 A. Sure. The lender is the New York Fed. The
24 borrower is AIG. Everyone is -- every AIG entity that
25 can be a borrower or a guarantor is supposed to be.

1 There is a blank for the amount of the loan, and what
2 was -- there wasn't even a number, just a blank with
3 brackets. And then it says that AIG will issue to the
4 -- bracket -- U.S. Treasury the warrants described
5 below.

6 There's a security package that essentially
7 boils -- although this doesn't even mention regulatory
8 and legal impediments, but it basically says anything
9 that you can give us as collateral that doesn't violate
10 your existing debt instruments, you will give to us.
11 Warrants for the purchase of common stock representing
12 79.9 percent on a fully diluted basis. A 3 percent
13 up-front fee.

14 Then there's a periodic commitment fee, which is
15 prior to shareholder approval of the increase in
16 authorized shares, 2.5 percent payable in kind every
17 three months. So, this was essentially a 10 percent
18 annual fee prior to shareholder approval that dropped to
19 a 2 percent annual fee once shareholder approval had
20 been obtained.

21 There's an interest rate of LIBOR plus 50, an
22 18-month maturity date, and then there was a termination
23 event after three months or if shareholder approval of
24 the increased shares was not granted. And the two last
25 things are, you know, lawyer blah-blah-blah.

1 Q. And is the purpose of the periodic fee --
2 commitment fee to incentivise a shareholder vote?

3 A. Well, again, I didn't draft it, and I don't know
4 who drafted it, and I never spoke to the client about
5 it, so I can't speak to the purpose. It would be
6 reasonable to infer that an extra 8 percent a year fee
7 on a very large loan until event X has happened is
8 designed to incentivise the occurrence of event X.

9 Q. Now, you talked about this briefly before, but I
10 just want to walk through the steps now that we have the
11 chart up. So, you received the -- what I'm going to
12 call the Morgan Stanley term sheet, JX 269, correct?

13 A. Yes.

14 Q. And what did you do upon receiving that draft
15 term sheet?

16 A. Well, I never left the Fed that day until very,
17 very late at night, and obviously I wasn't the one
18 physically creating and turning the credit documents.
19 So, I forwarded it I think virtually immediately to Brad
20 Smith, who is the head of our lending practice, who
21 then, you know, sat down and began to work, turning this
22 skeleton into a term sheet for the clients to review.

23 Q. Now, you said that you were at the New York Fed
24 on September 16th. Who was your primary New York Fed
25 interface that day?

1 A. Tom Baxter.

2 Q. Okay. Now, let's take a look at another
3 exhibit, DX 430. And let me know when you're there.

4 A. I am.

5 Q. Do you recognize this exhibit?

6 A. I do.

7 Q. And what is it?

8 A. This is the 1:44 p.m. term sheet that I referred
9 to a few moments ago that was Brad's distribution that
10 went to a group that's indicated on the email, with a
11 cover note that says (as read): "Dear all, Here is a
12 revised draft. We welcome any questions or comments.
13 Please advise if others should receive this." So, this
14 is the 1:44 version that still has -- as it should have,
15 since it was the one that went to the clients from Davis
16 Polk, I believe for the first time -- you know, a
17 variety of blanks and some brackets.

18 MR. GARDNER: Your Honor, the Government moves
19 for the admission of DX 430.

20 MR. BOIES: No objection, Your Honor.

21 THE COURT: Defendant's Exhibit 430 is admitted.
22 (Defendant's Exhibit Number 430 was admitted
23 into evidence.)

24 BY MR. GARDNER:

25 Q. Now, Mr. Huebner, what was the relationship

1 between the 1:44 p.m. internal draft term sheet and the
2 10:52 a.m. draft term sheet prepared by bankers?

3 A. Or prepared by someone.

4 Q. Someone.

5 A. I really --

6 Q. Question mark.

7 A. Well, you know, I'm much more comfortable with
8 this one. I mean, this -- you know, this is the type of
9 term sheet that lawyers create when they're trying to
10 encapsulate all the material terms and conditions of a
11 financing into a document for both clients to review.
12 You know, in general, it's really only the lawyers that
13 are going to take a hard look at the actual credit
14 documentation, which often runs into hundreds of pages,
15 and so, you know, this was a term sheet that was really
16 intended to encapsulate and summarize for the clients --
17 and ultimately for the borrower -- what the terms and
18 conditions of the financing would be.

19 Q. Now, as you just alluded to, DX 430 describes
20 the equity provision as warrants for purchase of common
21 stock of AIG representing 79.9 percent of the common
22 stock of AIG on a fully diluted basis. What
23 consideration was given to the form of equity between
24 the receipt of the 10:52 draft term sheet and the
25 circulation of the 1:44 draft term sheet?

1 A. Yeah. I believe little to none. You know, the
2 material -- some of the material terms, like, for
3 example, the maturity date was still unchanged, the
4 periodic commitment fee was still unchanged, you know,
5 lawyers don't change business terms by themselves. They
6 add all the detail that is necessary to have an
7 encapsulated transaction described. You then talk to
8 the clients and say, "Is this what you want, is this
9 what you want, is this what you want?"

10 So, there was not a change between the early
11 morning one and this one. It was more turning it from a
12 1 1/2-page document to a five-page document, so that it
13 would all be in there to then serve as the basis for a
14 fulsome discussion.

15 Q. Now, do you know whether this version of the
16 term sheet, the 1:44 p.m. that's been marked as DX 430,
17 was the version that was provided to the Federal Reserve
18 Board of Governors?

19 A. I did not know that until I was preparing for my
20 deposition. I learned it at that time.

21 Q. And do you know whether this version of the
22 draft term sheet, marked DX 430, was shared with the
23 representatives of AIG?

24 A. I do not --

25 MR. BOIES: Objection, Your Honor. Again, all

1 he can do is testify as to what he knows.

2 MR. GARDNER: To your knowledge.

3 THE WITNESS: Of course, that's what I would do.
4 I was about to say, to my knowledge, this never went to
5 AIG, nor do I think it would have or should have. And I
6 think it would have been within my knowledge if it did,
7 because I was the person at the Fed, you know,
8 interfacing on a lot of this stuff. So, to my
9 knowledge, the answer is no, the 1:44 version never went
10 to AIG.

11 THE COURT: Mr. Gardner, shall we break there
12 for the day?

13 MR. GARDNER: May I ask one just final question?

14 THE COURT: Sure.

15 BY MR. GARDNER:

16 Q. I promise, and that was going to be my last one,
17 but you said one thing. You said that "nor do I think
18 it would have or should have." Why do you say that?

19 A. And I apologize, I'm probably repeating myself,
20 but the way that it works is your client brings you onto
21 a deal. You create a document for them that is the
22 discussion draft that has everything in it, and then you
23 have a set of conversations with your client about
24 whether the business terms are the ones they want.

25 They then instruct you what they want and don't

1 want; change this, take that out; we don't want 18
2 months, we want two years; we don't want warrants, we
3 want it TBD; we don't want the fee to say this, we want
4 it to say that; lower the interest rate, the fee.

5 And then when it's done-done, and the client
6 believes that they are comfortable that they are ready
7 to lend on these terms, we would then give it to the
8 borrower and say, "Here is the loan we are prepared to
9 extend to you."

10 Q. Thank you.

11 Thank you, Your Honor.

12 THE COURT: Very well. We will reconvene at
13 9:30 tomorrow morning.

14 (Whereupon, at 4:59 p.m., the proceedings were
15 adjourned.)

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CERTIFICATE OF TRANSCRIBER

I, Susanne Bergling, 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: 11/4/2014

SUSANNE BERGLING, RMR-CRR-CLR

1 ADMITTED EXHIBITS

2

3	PX	PAGE	DESCRIPTION
4	689	5768	A.M. Best Methodology (April 2, 2014) Best's
5			Credit Rating Methodology: Global Life and
6			Non-Life Insurance Edition
7	1593	5772	A.M. Best Company "American International
8			Group, Inc.: A Quick Look at the 6-Month
9			Numbers" (9/17/2008)
10	2038	5906	Email (2/22/2009 10:25 pm) From: Rafal Nowak
11			To: Kathleen Shannon, David Herzog, Anthony
12			Valoroso, Suzanne Folsom, John Cafiero, Frank
13			Reda, Robert Reeder, Linda Sharaby, Anthony
14			Greco, Yang Wang, Jared Fishman, Duane Morse,
15			Stephen Albrecht, Michael Hsu, Sarah Dahlgren,
16			Thomas Baxter, Stephanie Heller, Charles Gray,
17			Brett Phillips, Steven Manzari, Joyce Hansen,
18			David Gross, Michele Kalstein, Tony Ryan, cc:
19			John Brandow, Ethan James, Kathleen Ferrell,
20			Diego Rotsztain, Rafal Nowak re: AIG - Term
21			Sheet Attaching AIG.Term.Sheet.doc
22			
23	DX	PAGE	DESCRIPTION
24	DXX036	5908	Hand Drawn Chart
25			

1 98 5708 ARTICLE, A.M. BEST PLACES RATINGS OF AIG'S
2 PROPERTY/CASUALTY AND LIFE SUBSIDIARIES UNDER
3 REVIEW WITH NEGATIVE IMPLICATIONS, FEBRUARY
4 14, 2008, BY ANDREW COLANNINO
5 139 5712 A.M. BEST REMOVES RATINGS OF AIG'S
6 PROPERTY/CASUALTY AND LIFE SUBSIDIARIES FROM
7 UNDER REVIEW; AFFIRMS, ASSIGNS NEGATIVE
8 OUTLOOK, BEST'S NEWS PUBLICATIONS AND PRESS
9 RELEASE, MAY 28, 2008
10 151 5716 BEST'S NEWS PUBLICATIONS & PRESS RELEASES RE:
11 A.M. BEST DOWNGRADES RATINGS OF AMERICAN
12 INTERNATIONAL GROUP, INC. AND LIFE
13 SUBSIDIARIES
14 258 5722 AIG POWERPOINT DECK RE: SEP 12 2008
15 PRESENTATION TO AMBEST
16 331 5736 DOCUMENT, AM BEST DOWNGRADES AND PLACES UNDER
17 REVIEW AMERICAN INTERNATIONAL GROUP INC. AND
18 MOST OF ITS SUBSIDIARIES, BESTS NEWS
19 PUBLICATIONS AND PRESS RELEASES, SEPTEMBER 15,
20 2008
21 430 5950 EMAIL CHAIN AND ATTACHMENT FROM BRADLEY SMITH
22 TO JEREMIAH NORTON RE: REVISED AIG TERM SHEET,
23 ATTACHMENT 2008_09_16 TERM SHEET.DOC;
24 DV_COMPARISON_2008_09_16 TERM SHEET
25 080916_1316-208_09_16 TERM SHEET.RTF

