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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.
Tuesday, October 21, 2014
9:30 a.m.
Trial Volume 16

BEFORE: THE HONORABLE THOMAS C. WHEELER

Josett F. Whalen, RMR-CRR, Reporter

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1 I N D E X

2

3 WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
4 FOSHEE			3557	3578
5 SYMONS	3587	3601	3636	3641
6 SHANNON	3645	3702		
7 HEAD	3713	3748	3773	

8

9

10 EXHIBITS	FOR ID	IN EVID
11 Plaintiffs'		
12 Number76		3718
13 Number115		3670
14 Number166		3728
15 Number189		3651
16 Number195		3649
17 Number196		3666
18 Number204		3590
19 Number221		3592
20 Number249		3675
21 Number251		3671
22 Number290		3741
23 Number299		3680
24 Number303		3720

25

	EXHIBITS	FOR ID	IN EVID
1			
2	Plaintiffs'		
3	Number401		3687
4	Number420		3688
5	Number508		3742
6	Number524		3595
7	Number551		3590
8	Number630		3743
9	Number1620		3591
10	Number1795		3599
11	Number2724		3746
12			
13	Defendant's		
14	Number521		3598
15	Number728		3709
16	Number744		3766
17	Number956		3712
18			
19	Joint		
20	(none)		
21			
22			
23			
24			
25			

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

2 - - - - -

3 (Proceeding called to order, 9:31 a.m.)

4 THE COURT: We're on the record this morning for
5 day number 16 in the trial of Starr International Company
6 versus United States.

7 Good morning, Mr. Boies.

8 MR. BOIES: Good morning, Your Honor.

9 I have two housekeeping matters to raise with the
10 Court.

11 THE COURT: Okay.

12 MR. BOIES: The first is I think welcomed.

13 Treasury has provided us with a representation
14 that Treasury has now provided all documents, broadly
15 defined, which concern the authority of the
16 Federal Reserve or Treasury to acquire or hold equity in
17 connection with a 13(3) loan and has represented that
18 Davis Polk was not asked for and did not provide any
19 advice or do any research or analysis regarding that
20 authority.

21 With those representations, we are comfortable
22 with finally putting to an end the search for the
23 memoranda and other documents referring to that issue. I
24 think we have everything that we are entitled to have,
25 and so we're comfortable with that.

1 THE COURT: All right. Excellent.

2 MR. BOIES: The second, if I could just hand up to
3 the Court a letter that we received early yesterday
4 evening from counsel for the United States.

5 (Pause in the proceedings.)

6 THE COURT: Okay.

7 MR. BOIES: Yesterday, I accepted the Court's
8 guidance that we should permit the counsel for the
9 United States to do whatever examination they wanted of
10 witnesses that we brought. And I said at that time that
11 I would deal with that by finding out which witnesses
12 they had more than cross to do and then make a decision
13 as to whether I wanted to call them in my case or wait
14 until they called them.

15 THE COURT: By the way, this is principally, if
16 not solely, because of convenience of out-of-town
17 witnesses. I don't want people to have to come here
18 twice from some distance. If they were local in D.C., it
19 would be a different story.

20 MR. BOIES: And I understand that entirely,
21 Your Honor.

22 THE COURT: Okay.

23 MR. BOIES: And I am comfortable with having
24 witnesses that we both want called only once.

25 However, what I think is not appropriate is for

1 them not to tell us at this stage whether they are going
2 to call a particular witness as their witness in their
3 case or not, because when I put somebody on the stand
4 for a very narrow examination and then they broaden it
5 beyond that, beyond the scope of the direct, that's
6 something that obviously affects the presentation of my
7 case.

8 THE COURT: Sure.

9 MR. BOIES: And if they have direct of that
10 witness and they're going to bring the witness, then I
11 can make a decision I'll wait until their case comes.

12 However, what the letter says is that maybe
13 they'll bring him and maybe they won't, and I think that
14 is not an appropriate resolution given the fact that what
15 we're trying do is advance the convenience of the
16 witnesses. We're not trying here to change the balance
17 of the way trials are presented.

18 THE COURT: All right. Mr. Gardner, are you going
19 to address this issue?

20 MR. GARDNER: I am, Your Honor. I can either go
21 to the lectern or speak here, whatever is more
22 convenient.

23 THE COURT: You can stay there.

24 MR. GARDNER: Your Honor, I think both sides to
25 date have worked generally very cooperatively to present

1 witness in a manner that's convenient, particularly given
2 the large party of third-party witnesses, and I expect
3 we're going to continue doing that.

4 By my count, I believe there are approximately
5 five more fact witnesses that plaintiffs have expressed a
6 present intention to present.

7 What I understand Mr. Boies to really be focused
8 on is Mr. Willumstad, a third-party witness, the former
9 CEO and chairman of AIG, who, as I understand it, does
10 live out of town. I believe it's New York or Chicago.
11 And the question I think Mr. Boies is presenting is
12 whether or not the government is definitively going to
13 call him.

14 What I can tell the Court, Your Honor, is I think
15 we have a present intention of calling him, but I would
16 note that plaintiffs have approximately ten witnesses to
17 go, they have the burden of proof, and we take very
18 seriously this Court's admonition not to present
19 cumulative testimony.

20 So the best I can tell the Court -- and I should
21 also note, by the way, to back up, plaintiffs presented
22 us with a list the week before trial of 52 witnesses they
23 were going to call. They have shed those witnesses by
24 the dozen as each week has proceeded.

25 So I think Mr. Boies himself would recognize that

Starr International Company, Inc. v. USA

1 as you go through trial, things change and you make
2 decisions, so I can't possibly tell this Court right now
3 that we will definitively call any witness. I can tell
4 the Court my present intention is we would call
5 Mr. Willumstad.

6 But I would also note that Mr. Willumstad was
7 available last Wednesday for testimony. Plaintiffs
8 decided not to call him. He's available tomorrow all day
9 for testimony, so there is another opportunity should
10 plaintiffs wish to call him to call him then.

11 I can't even represent to the Court that
12 Mr. Willumstad is available after next Wednesday. I've
13 made inquiries of their counsel and I have not heard
14 back yet. And that's not to say anything negative about
15 opposing counsel. I think he's trying to figure out,
16 you know, what the scheduling logistics might be.

17 THE COURT: Mr. Boies, any further observation?

18 MR. BOIES: I think maybe just two.

19 We said at the very beginning of the case that we
20 had a lot of witnesses on our witness list that we didn't
21 think ought to be there, and they were only there because
22 we hadn't been able to stipulate to the admissibility of
23 certain documents and testimony.

24 As the trial has progressed, we've been able to
25 stipulate and eliminate three witnesses from Wachtell,

1 for example, and a number of other witnesses by
2 stipulating documents in. I had hoped that we would be
3 able to do that with respect to some of the remaining
4 witnesses, where I have only 20 minutes or less of
5 examination for some of these people.

6 And it's not just Mr. Willumstad. It's not just
7 five witnesses. If we continue not to be able to
8 stipulate, there are going to be additional witnesses
9 that fall into this category, as the government has been
10 made aware.

11 I mean, we have, for example, Carolyn Worth,
12 who's an accountant, who we have very, very narrow
13 examination for, really just to authenticate and make
14 admissible certain documents that they have objected
15 to.

16 And while I recognize everybody makes choices, I
17 guess I think that one possible way to do it is, if they
18 decide to change their mind and not to call this person,
19 I can call him during my rebuttal case even though he's
20 somebody who I know about now obviously. But if they
21 decide not to call him, I can I guess bring him in my
22 rebuttal case.

23 But I just think that this is -- there are some
24 witnesses where you really don't know whether you're
25 going to call them or not, and I appreciate that. I

1 don't think Mr. Willumstad falls in that category.
2 Ms. Worth might. They either know they're going to call
3 Mr. Willumstad or they're not, and I think that I ought
4 to be entitled to rely on that at this stage. But if the
5 Court thinks it's more appropriate, we'll call him in the
6 rebuttal case.

7 I just think that this is not -- this is not a
8 situation in which, since we're broadening the
9 examination to accommodate the witnesses and I accept the
10 desirability of doing that, I don't think that ought to
11 then turn into a situation where our case gets twisted
12 that way.

13 THE COURT: Well, knowing what I do about the
14 case and having heard the testimony thus far, I would
15 think Mr. Willumstad is a person that we'd want to hear
16 testify.

17 MR. GARDNER: He's a "will call" on both parties'
18 witness list, Your Honor.

19 THE COURT: Yes.

20 MR. BOIES: And on that basis, Your Honor, I'm
21 prepared to pass him in my case on the -- I think
22 listening to the Court say that probably increases the
23 chance that the government will feel that they need to
24 bring him, and if he doesn't -- if they don't, I'll bring
25 him in my rebuttal case.

1 THE COURT: I mean, he seems to me like a key
2 witness personally.

3 MR. BOIES: I agree with that, Your Honor, and so
4 I think -- I think we can do it that way if that's
5 acceptable to the Court.

6 MR. GARDNER: The only thing I would supply for
7 Your Honor is, you know, as we are approaching now week
8 four and plaintiffs still have not rested their case, it
9 isn't clear to the government what the timing would be
10 for a rebuttal case. We're already down day-wise fairly
11 substantially, and I think the government has a concern
12 that we're going to run out of days even before we're
13 able to finalize or finish our case in chief. The notion
14 of a rebuttal case I think is an additional complicator
15 that we'd probably want to know about sooner rather than
16 later in terms of logistics and timing.

17 THE COURT: Well, that's sort of a separate
18 scheduling issue it seems to me.

19 MR. GARDNER: Correct.

20 THE COURT: And I think if everybody keeps their
21 eye on the target here and avoids the presentation of
22 cumulative evidence, I think we're doing pretty well,
23 you know, at least in my assessment. And I do concur
24 with you that there seems to be very good cooperation
25 between the parties, so let's keep doing that and move it

1 along.

2 MR. GARDNER: Thank you, Your Honor.

3 MR. BOIES: Thank you, Your Honor.

4 And we share the Court's view that things are
5 moving quite well. We've taken what are really the
6 biggest witnesses from both sides, and both sides have
7 had their full examination of Mr. Alvarez, Mr. Baxter,
8 Chairman Bernanke, Secretary Paulson, Secretary Geithner,
9 Ms. Dahlgren, you know, key witnesses on both sides,
10 and I think we've completed both of our examinations of
11 all those people, so I think we're moving along pretty
12 well.

13 THE COURT: Yes. Very good.

14 MR. BOIES: We're now ready, if the Court
15 permits --

16 THE COURT: Yes.

17 MR. BOIES: -- to recall Mr. Foshee to the
18 stand.

19 THE COURT: Good morning, Mr. Foshee.

20 THE WITNESS: Good morning.

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

23 THE WITNESS: I do.

24 THE COURT: Very well. Be seated.

25 - - - - -

1 Whereupon --

2 DOUGLAS FOSHEE

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

5 REDIRECT EXAMINATION

6 BY MR. BOIES:

7 Q. Good morning, Mr. Foshee.

8 A. Good morning.

9 Q. I'd like to begin -- and I've only got about half
10 a dozen subjects, but I'd like to begin just trying to
11 clear up a little bit of confusion.

12 Yesterday, counsel for the United States asked you
13 a question that assumed that the credit agreement had
14 been amended on March 2, 2009 and asked you whether the
15 stock had yet been issued to the trust. Do you recall
16 that generally?

17 A. Yes.

18 Q. Now, in fact, the amendment to the credit
19 agreement was not on March 2, but it was on April 17,
20 2009; correct?

21 A. I don't recall.

22 Q. Do you still have Joint Exhibit 207 up there?
23 That's a document that we handed out yesterday. If you
24 don't, we can hand up another copy.

25 A. Yes, I have it.

1 Q. And --

2 A. Yes.

3 Q. -- this is an AIG 8-K dated April 17, 2009; is
4 that correct?

5 A. That's correct.

6 Q. And if you turn to page 3?

7 A. Yes.

8 Q. Up at the top?

9 A. Yes.

10 Q. Do you see where it says, "On April 17, 2009, AIG
11 and the Federal Reserve Bank of New York entered into an
12 Amendment Number 3 to the credit agreement"?

13 A. Yes.

14 Q. And does that refresh your recollection that that
15 was when the amendment was done?

16 A. That's correct.

17 Q. Now, I think that the confusion may have arisen
18 from the fact that on March 2, 2009, there was an
19 announcement of a restructuring. Do you recall that?

20 A. I don't. I'm sorry.

21 Q. But do you recall that when the restructuring was
22 announced, there was no announcement relating to the
23 issue that I examined you about, which was the issue of
24 whether there would be a shareholder vote of the common
25 shareholders on a class basis?

1 A. I don't recall that, no.

2 Q. Let me ask you to look at Joint Exhibit 187, which
3 again I think I handed you up yesterday, but I've got
4 copies, so it may be easier for me to just to --

5 A. I do not have -- that's not -- that's not in here.
6 Oh, yes, it is. Sorry. I've got it.

7 THE COURT: What does it look like?

8 MR. BOIES: It's -- (indicating).

9 THE COURT: Okay. Let me see if I can find it.
10 I have it.

11 BY MR. BOIES:

12 Q. And I show you this, which is an AIG 8-K dated
13 March 2, 2009, simply to ask you, is this what you had in
14 mind when you were talking yesterday about a
15 March 2 amendment?

16 A. I don't know the answer to that.

17 Q. Okay. Let me turn to Joint Exhibit 221 that is in
18 your white binder.

19 Do you recall that counsel for the defendant
20 directed your attention to this document and asked you
21 about proposal number 4, the reverse stock split?

22 A. Yes.

23 Q. And do you recall telling him that you voted for
24 this and believed it was in the best interest of AIG's
25 shareholders because it would help avoid delisting and

1 get -- and help try to get the price up so maybe other
2 people would buy the stock? Do you recall that?

3 A. I believe that's consistent with my testimony.

4 Q. Now, were you aware in June of 2009 that the stock
5 split applied to issued shares but not authorized shares?

6 A. I don't recall whether I was or not.

7 Q. Based on your extensive experience in business,
8 would you agree that whether or not the authorized shares
9 were split would not affect the price of the issued
10 shares if those were split?

11 A. That's correct.

12 Q. Let me ask you to turn next to the subject of CEO
13 succession.

14 You testified that you believed that you needed to
15 start a CEO succession process when you saw the
16 controversy, to use as neutral word as I can, that
17 resulted from the public announcement of the AIG bonuses.
18 Do you recall that?

19 A. I don't know that I would characterize it as start
20 a succession process. I think there were conversations
21 that had already taken place about succession. I think
22 what changed for me at that time was a sense of urgency
23 around the succession process.

24 Q. When did, as you understand it, a discussion or
25 consideration of a CEO succession process start?

1 A. I don't know when it started.

2 Q. When was the first time you were aware of it?

3 A. I don't know the exact date, but I would say
4 fairly early on in our discussions with Mr. Liddy, he
5 expressed his desire at some point to manage his way out
6 of his job.

7 Q. And when is your best memory as to when that was?

8 A. Again, I don't -- I don't recall. It would have
9 been fairly early on in that time period between when we
10 signed the trust agreement and the second week in March.

11 Q. That would have been before the publicity on the
12 bonuses; correct?

13 A. When we had those discussions?

14 Q. Yes.

15 A. I believe that's correct, yes.

16 Q. When you said yesterday, "We needed to really
17 reconstitute the board and start a CEO succession process
18 immediately" --

19 A. Yes.

20 Q. -- was that following the bonus controversy?

21 A. Yes.

22 Q. Now, there had been a time -- and I don't whether
23 this was before --

24 A. Yeah, I would -- I might characterize that
25 differently. I think I would characterize it as not

1 necessarily following the bonus fiasco but rather
2 following the congressional testimony. I just -- I think
3 it covered more ground than just that.

4 Q. Was the congressional testimony something that
5 followed the bonus controversy?

6 A. It was a significant part of it. Yes.

7 Q. There was a time when Mr. Millstein had approached
8 you about becoming CEO of AIG; correct?

9 A. That's correct.

10 Q. Was that before or after the March 2009 time
11 frame?

12 A. After.

13 Q. That was after.

14 A. Yes.

15 Q. When was that?

16 A. I don't recall specifically.

17 Q. It was many months before you left being a
18 trustee; correct?

19 A. It was sometime after the middle of March and
20 prior to the new board, so it would have been between --
21 sometime between the middle of March and probably the
22 1st of June.

23 Q. 1st of June of 2009.

24 A. Of 2009, yes.

25 Q. And did you discuss Mr. Millstein's approach to

1 you about possibly becoming CEO of AIG with anyone?

2 A. My wife.

3 Q. Did you discuss it with other trustees, for
4 example?

5 A. I wasn't trying to be flip.

6 I don't recall, but I suspect that I probably did
7 discuss that with the other trustees.

8 Q. Did you discuss it with people from the
9 Federal Reserve Bank of New York?

10 A. I don't know whether I discussed it with him or
11 not, but I think probably Tom Baxter was aware, and
12 probably Sarah Dahlgren. Again, I don't -- I don't
13 recall whether I had those conversations with them or
14 not.

15 Q. Is it your testimony that you discussed this with
16 your fellow trustees or that you think you would have?

17 A. My testimony is that I don't specifically recall
18 any conversations, but I think I would have.

19 Q. Let me just show -- try to show you something
20 just to -- for purposes of just refreshing your
21 recollection.

22 And I apologize to the Court. We only have one
23 copy of this, but I will pass it to counsel for the
24 United States so they can look at what I'm going to show
25 him.

1 (Pause in the proceedings.)

2 Your Honor, I'm going to show the witness
3 page 156 from this deposition of Mr. Feldberg starting at
4 line 11 going down to the bottom of the page.

5 THE COURT: Fine.

6 BY MR. BOIES:

7 Q. Would you look at Mr. Feldberg's deposition
8 testimony starting at page 156 line 11 and continuing to
9 157 line 1 and read that just to yourself, and when you
10 finish, let me know.

11 (Pause in the proceedings.)

12 A. And I'm sorry. Read through where?

13 Q. Just through line 1 on the next page, 157.

14 A. Yes.

15 Q. Does that refresh your recollection that at least
16 Mr. Feldberg had not been told of the approach to you
17 about becoming CEO of AIG?

18 A. No, it doesn't.

19 Q. Let me turn to the stock purchase agreement, which
20 is Joint Exhibit 185 that is, again, in your white
21 binder.

22 This is the credit facility trust agreement dated
23 as of January 16, 2009; correct?

24 A. I'm sorry. You said 185?

25 Q. Yes. The stock purchase agreement dated March 1,

1 2009. I apologize.

2 A. Yes. Yes.

3 Q. And the stock purchase agreement was dated
4 March 1, 2009, and the stock was actually issued on
5 March 4, 2009; correct?

6 A. I don't recall the March 4 date specifically.

7 Q. Do you recall telling counsel for the
8 United States yesterday that the stock had not been
9 issued as of March 2, 2009?

10 A. I believe that's the case, yes.

11 Q. And what is your best recollection of when the
12 stock was issued?

13 A. Sometime shortly thereafter.

14 Q. If you look at page 50 of Joint Exhibit 185, does
15 that refresh your recollection of that --

16 A. I'm sorry. My 185 only goes to page 9.

17 Q. In the white binder?

18 The binder that the government gave you
19 yesterday?

20 THE COURT: You're in the wrong binder. It's the
21 same document, but the black binder contains an excerpt.

22 THE WITNESS: Okay.

23 THE COURT: The white binder I believe --

24 THE WITNESS: This one (indicating)?

25 THE COURT: Yes -- contains the full document.

1 THE WITNESS: I'm sorry. This is the other side's
2 binder.

3 THE COURT: That's the one --

4 MR. BOIES: And that's the one I'm using.

5 THE COURT: That's the one he's using, so you
6 should find Joint Exhibit 185 in there.

7 THE WITNESS: Okay. Got it.

8 And you wanted me to go to page?

9 BY MR. BOIES:

10 Q. Page 50.

11 Does that refresh your recollection that the stock
12 was actually issued on March 4?

13 A. Yes. That's correct.

14 Q. Now let me turn to Joint Exhibit 172, which is the
15 AIG credit facility trust, that's also in the white
16 binder.

17 A. Yes.

18 Q. And do you recall that this was a document that
19 counsel for defendant asked you about?

20 A. Yes.

21 Q. And one of the things that counsel for the
22 defendant asked you about was the divestiture plan that
23 the trustees talked about. Do you recall that?

24 A. Yes.

25 Q. Now, under the trust agreement, you could not

1 divest the stock without the approval of the
2 Federal Reserve Bank of New York; correct?

3 A. I believe that's correct.

4 Q. And section 2.04(d) is a section that deals with
5 what the views of the Federal Reserve Bank of New York
6 are; correct?

7 A. That's correct.

8 Q. And did you have an understanding as to why the
9 trustees were being advised of what the Federal Reserve
10 Bank of New York's views were in the trust agreement
11 itself?

12 A. Not beyond what's written in the agreement, no.

13 Q. During the examination by counsel for the
14 United States, they directed your attention to a portion
15 of 2.04(d) that talked about the trustees having the
16 discretionary power to vote the trust stock. Do you
17 recall that?

18 A. Yes.

19 Q. The section goes on right after that to say
20 "provided, however, that the Trustees shall exercise all
21 such Voting and other similar rights with respect to the
22 Trust Stock in accordance with the Applicable Standard of
23 Care (as defined in Section 3.03(a) hereof)."

24 Do you see that?

25 A. Yes.

1 Q. And what did you understand the purpose of that
2 proviso was?

3 A. That as long as we acted in good faith and didn't
4 have reasonable cause to believe that our conduct was
5 unlawful, the trustees would have no liability for any
6 action taken or not taken.

7 Q. Well, it wasn't just unlawful, was it, sir?

8 A. It says -- well, I can read it -- "A Trustee
9 shall have no liability hereunder for any action taken
10 or refrained from or suffered by such Trustee, provided
11 that such Trustee acted in good faith in a manner" --

12 Q. There's a Romanette (i) after the word "Trustee";
13 correct?

14 A. Right.

15 Q. "Provided that such trustee (i)" -- continue.

16 A. "Acted in good faith in a manner the Trustee
17 reasonably believed to be in accordance with the
18 provisions of this Trust Agreement and in or not opposed
19 to the best interests of the Treasury and (ii) had no
20 reasonable cause to believe his or her conduct was
21 unlawful (the standard set forth in foregoing clauses (i)
22 and (ii) being the 'Applicable Standard of Care')."

23 Q. So that in order to be free from liability, you
24 had to act in or not opposed to the best interests of the
25 Treasury; correct, sir?

1 A. That's what the document says.

2 Q. And you understood that while you were trustee;
3 right?

4 A. That's correct.

5 Q. The counsel for the United States also pointed you
6 to various references to the Treasury in this document
7 and asked you what your understanding was of that. Do
8 you recall that?

9 A. Yes.

10 Q. If you look at 3.05(b)?

11 A. Yes.

12 Q. There is a reference to the Treasury Department.
13 Do you see that?

14 A. In 25 -- I mean, 3.05(b)?

15 Q. No, I guess not. That was 3.02(b).

16 A. 3.02(b)?

17 Q. In 3.02(b) there's a reference to
18 Treasury Department; correct?

19 A. Just bear with me for a second while I find it.
20 That's correct.

21 Q. And in 3.05(b) there is a reference to the
22 Treasury.

23 Do you see that?

24 A. 3.05(b).

25 That's correct.

1 Q. And you're talking about that the trustees do not
2 have an obligation to present any business activity or
3 investment opportunity or prospective economic advantage
4 to the Federal Reserve Bank of New York, the Treasury or
5 AIG.

6 Do you see that?

7 A. Or the company, yes.

8 Q. And the company there is AIG.

9 A. Yeah.

10 Q. And what was your understanding of what
11 "the Treasury" referred to there meant?

12 A. The -- in that context, I would have said that
13 "the Treasury" would likely have been the
14 Treasury Department. That's the way I read that.

15 Q. As you understood it, was the trust of which you
16 were a trustee a trustee (sic) that was revocable or
17 irrevocable or something in between?

18 MR. TODOR: Objection insofar as the question
19 calls for a legal conclusion.

20 THE COURT: I think we'll take his understanding.
21 Overruled.

22 THE WITNESS: Well, section 1.03, the heading of
23 that says "Trust Is Irrevocable."

24 BY MR. BOIES:

25 Q. Is that what your understanding was?

1 A. Well, my understanding was what is in the
2 document.

3 Q. There is more in the document --

4 A. It says, "This Trust Agreement and the Trust
5 shall be irrevocable and, except as provided in
6 Section 5.01 hereof, unamendable except that the
7 Board of Governors may terminate or amend its
8 authorization pursuant to Section 13.3 the
9 Federal Reserve Act, thereby revoking or amending the
10 Trust in accordance with Federal law, provided, however,
11 that a Trustee's rights to resign as a trustee hereunder
12 and to compensation and indemnification with respect to
13 acts or omissions occurring prior to any such revocation
14 or amendment may not be modified without the written
15 consent of that Trustee."

16 Q. Did you understand when you were the trustee that
17 the Board of Governors of the Federal Reserve System had
18 the power to revoke the trust by terminating its
19 authorization pursuant to section 13(3)?

20 A. Well, that's what the document says.

21 Q. And is that what you understood when you were a
22 trustee?

23 A. I don't recall whether I understood that at the
24 time I was the trustee or all the time or not.

25 Q. Now, in section 2.03(d) -- 2.03(d)?

1 A. 2.03(d).

2 Q. The trustees were required to execute and deliver
3 certain documents approved in form and substance by the
4 Federal Reserve Bank of New York; correct?

5 A. That's correct.

6 Q. And there are three such documents listed here;
7 correct?

8 A. That's correct.

9 Q. One is the multistate Form A statement regarding
10 the acquisition of control of or merger with a domestic
11 insurer; correct?

12 A. That's correct.

13 Q. And did the trustees in fact execute and deliver
14 that in form and with the substance specified by the
15 Federal Reserve Bank of New York?

16 A. I don't recall.

17 Q. You understood that that was an obligation that
18 you'd undertaken as a trustee.

19 A. That's correct.

20 Q. The second document here is a statement regarding
21 the acquisition of control of American International
22 Group, Inc.

23 Do you see that?

24 A. Yes.

25 Q. And was that a document that the trustees executed

1 and delivered subject to the approval in form and
2 substance by the Federal Reserve Bank of New York?

3 A. I don't recall, but I have no reason to believe we
4 didn't.

5 Q. And third, it says "Series C Perpetual,
6 Convertible, Participating Preferred Stock Purchase
7 Agreement Between the Trust and the Company."

8 Do you see that?

9 A. Yes.

10 Q. And that document is what has been marked as
11 Joint Exhibit 185, which is the next document in your
12 book; correct?

13 A. Yes, that's correct.

14 Q. And did you understand, in preparing and at the
15 time that Joint Exhibit 185 was being prepared, that it
16 was the trustees' obligation to make that document
17 consistent with the form and substance prescribed by the
18 Federal Reserve Bank of New York?

19 A. I don't recall whether I knew that at the time or
20 not.

21 Q. Do you have any reason to doubt that you knew that
22 at the time?

23 A. No.

24 Q. In section 2.05(a) Romanette (iii) at the bottom
25 of the page on page 11 of Joint Exhibit 172 -- do you see

1 that?

2 A. Yes.

3 Q. That's where the document provides that "The
4 Trustees may sell or otherwise dispose of the
5 Trust Stock, only with the prior approval of the
6 Federal Reserve Bank of New York, after its consultation
7 with the Treasury Department"; correct?

8 A. That's correct.

9 Q. Now, did you understand at the time that you were
10 a trustee that the Federal Reserve Bank of New York had
11 the power to remove you under certain circumstances?

12 A. I don't remember specifically, but it doesn't
13 surprise me that they would have the power to remove me.

14 Q. The beneficiary of this trust was the Treasury;
15 correct?

16 A. Correct.

17 Q. The Federal Reserve Bank of New York was not, at
18 least technically, a beneficiary of this trust; correct?

19 A. Well, I don't know what the legalities are, but --
20 but the trust was for the benefit, in my view, of the
21 U.S. taxpayer.

22 Q. Referred to here as the Treasury in your
23 testimony; right?

24 A. Yes. And therefore, not the Federal Reserve Bank
25 of New York.

1 Q. Let me ask you to look at section 3.02(d).

2 And this, perhaps among other places, is a
3 provision that deals with the circumstances under which
4 the Federal Reserve Bank of New York can remove a
5 trustee; correct?

6 A. I think this -- this section more appropriately
7 deals with how a trustee can resign rather than be
8 removed.

9 Am I missing --

10 Q. Is this section 3.02(d)?

11 A. Oh, I thought you said (b). I apologize.

12 Yes.

13 Q. And if the Federal Reserve Bank of New York
14 reasonably determines, in consultation with the
15 Treasury Department, that a trustee has demonstrated
16 untrustworthiness or to be derelict in the performance of
17 his or her duties under the trust agreement, the
18 Federal Reserve Bank of New York can remove the trustee;
19 correct?

20 A. Yeah. There's a lot of language in there, but I
21 think that's generally what it says.

22 Q. Uh-huh.

23 And they can do that or could do that without
24 having to go to court; correct?

25 A. I don't know the answer to that.

1 Q. Was that your understanding?

2 A. I don't know. I don't recall.

3 Q. Let me ask you, speaking of going to court, to
4 look at section 3.05(g).

5 And in this connection, let me ask you as a
6 background matter, have you ever been a trustee before?

7 A. I've served on the board -- on a board of
8 trustees. Yes.

9 Q. But have you ever been a trustee of a trust?

10 A. I don't believe I have.

11 Q. Have you ever set up a trust?

12 A. Yes.

13 Q. And do you have enough familiarity with trusts to
14 know that ordinarily a trustee, if it has a question or
15 ambiguity, can apply to the Court for a construction of
16 the trust?

17 A. No.

18 Q. Okay. You don't know that one way or the other?

19 A. (Witness shaking head.)

20 Q. Is that correct?

21 A. I do not.

22 Q. Did you understand that with respect to the AIG
23 trust, to the extent that the trustees had ambiguity or
24 uncertainty, they were to go not to the Court but to the
25 Federal Reserve Bank of New York for instructions?

1 A. I don't recall that, no.

2 Q. Let me ask you to look at subsection (g).

3 A. Yes.

4 Q. Do you have that?

5 And will you read that to yourself and let me know
6 when you've finished.

7 (Pause in the proceedings.)

8 A. Yes.

9 Q. And this provides that if the trustees in their
10 discretion believe that there is an ambiguity or
11 uncertainty as to what they're supposed to do, they may
12 apply to the Federal Reserve Bank of New York for a
13 clarification, and if the Federal Reserve Bank of
14 New York provides such clarification, then the trustees
15 shall act in accordance with such written instructions
16 from the Federal Reserve Bank of New York; correct?

17 (Pause in the proceedings.)

18 A. That's correct.

19 Q. And you understood that at the time that you were
20 a trustee; correct?

21 A. I don't recall.

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

23 THE COURT: All right. Thank you, Mr. Boies.

24 Do you have any further questions, Mr. Todor?

25 MR. TODOR: Brief recross, Your Honor.

1 THE COURT: Okay.

2 - - - - -

3 RECROSS-EXAMINATION

4 BY MR. TODOR:

5 Q. Good morning, Mr. Foshee.

6 First, you were asked during your redirect about
7 the JX 207, the April 17, 2009 Form 8-K. Direct your
8 attention to the page counsel for plaintiffs was
9 directing you to.

10 A. Can you bear with me there for just a second?

11 Okay. I'm with you.

12 Q. And do you see who it says the parties to the
13 agreement are on amendment 3 to the credit agreement that
14 counsel to plaintiff was directing you to? It is on
15 page 5 of the document.

16 A. Yes.

17 Q. Who were the parties to this amendment to the
18 credit agreement?

19 A. AIG, the company or the borrower, and the
20 Federal Reserve Bank of New York as lender.

21 Q. To your knowledge, did the trust have any role as
22 a party to this agreement?

23 A. The trust was not a party to the agreement, no.

24 Q. Did the trust vote on this agreement, on this
25 amendment to the credit agreement?

1 A. Not -- I -- I don't think there was a cause for a
2 vote from the trustees.

3 Q. You were asked about JX 221. And I'll direct your
4 attention to proposal 4, which starts on page 69 of the
5 document.

6 You were asked by counsel for plaintiffs whether
7 you had -- you're aware of any provision -- we're getting
8 to the effect of the reverse split on authorized shares
9 as opposed to issued shares. Do you recall that?

10 A. That's correct.

11 Q. I'll direct your attention to page 70 of the
12 document. And it's the next to last paragraph before the
13 bold heading at the bottom of the page.

14 A. Yes.

15 Q. It states, "An overall effect of the reverse stock
16 split of the outstanding AIG Common Stock will be a
17 reduction of the total number of outstanding shares of
18 AIG Common Stock approximately in proportion to the
19 one-for-twenty reverse stock split ratio and therefore an
20 increase in authorized but unissued shares of AIG Common
21 Stock."

22 Do you see that?

23 A. Yes.

24 Q. Were you able to review this language before
25 deciding how to vote on proposal 4?

1 A. Yes.

2 Q. The next sentence states, "AIG currently has no
3 plans for these authorized but unissued shares of AIG
4 Common Stock other than those shares previously reserved
5 for issuance under AIG's Equity Units, the Warrants and
6 AIG's employee benefit plans."

7 Do you see that?

8 A. Yes.

9 Q. Did you have access to this language before you
10 made your decision on voting on proposal 4?

11 A. Yes.

12 Q. I'll direct your attention to page 68 of JX 221.

13 And there is a chart in the middle of the page.

14 Do you see that?

15 A. Yes.

16 Q. And the language above states that "The following
17 table shows, as of May 1, 2009, the number of shares of
18 AIG Common Stock (1) authorized, (2) issued, (3) reserved
19 but unissued, and (4) authorized but unissued and
20 unreserved in the following scenarios," and then there
21 are three scenarios.

22 Do you see that?

23 A. Yes.

24 Q. And one is "If proposal 3 is approved, but
25 proposal 4 is not."

1 The second is "If proposal 4 is approved, but
2 proposal 3 is not."

3 And third is "If proposals 3 and 4 are both
4 approved."

5 Do you see that?

6 A. Yes.

7 Q. Did you understand that this chart would show the
8 numbers of shares in each of those scenarios?

9 A. Yes.

10 Q. Did you have access to this information when you
11 were making your decision on whether to vote on
12 proposal 4?

13 A. Yes.

14 Q. You were asked some questions about a
15 conversation with Mr. Millstein with respect to the
16 possibility of your becoming AIG's CEO. Do you recall
17 that?

18 A. Yes.

19 Q. What happened with those discussions?

20 A. Nothing.

21 Q. Who ultimately picked the CEO of AIG following
22 Mr. Liddy?

23 A. Following the recommendation of the nominating
24 governance committee, the full board of AIG, with -- with
25 the -- I would say the enthusiastic support of the

1 trustees.

2 Q. Why do you say "the enthusiastic support of the
3 trustees"?

4 A. Because we felt like he was a qualified executive
5 to take the reins and the right person for the job.

6 Q. And by "he," who did you mean there?

7 A. Mr. Benmosche.

8 Q. You were asked some questions about the language
9 of the trust agreement, JX 172. I will direct you back
10 to that.

11 First, you were asked about section 2.05(a)(iii)
12 which is on page 11 of the document.

13 A. Yes.

14 Q. And you were asked questions about whether the
15 trustees may sell or otherwise dispose of the trust stock
16 only with the prior approval of the Federal Reserve Bank
17 of New York after its consultation with the
18 Treasury Department; correct?

19 A. That's correct.

20 Q. Did you ever ask that approval?

21 A. No.

22 Q. Why not?

23 A. During my term as a trustee, we were never in a
24 position to sell the trust stock.

25 Q. Did you have an understanding as a trustee whether

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1 you were required to ask prior approval of the
2 Federal Reserve Bank of New York for any other acts aside
3 from the disposition of the trust stock?

4 A. Other than what may or may not be covered -- other
5 than the four corners of the document or the trust
6 agreement, no.

7 Q. You were asked about section 3.03(a) of the trust
8 agreement.

9 And you were asked by plaintiffs' counsel about
10 the clause dealing with "in or not opposed to the best
11 interests of the Treasury"; correct?

12 A. Yes.

13 Q. First, what was your understanding of what
14 "the Treasury" that's being referred to in 3.03(a) was?

15 A. The U.S. taxpayer.

16 Q. Did section 3.03(a) constrain your judgment in any
17 way as a trustee?

18 A. No.

19 Q. At any time during your service as a trustee, did
20 you perceive a potential conflict between maximizing the
21 value of the trust stock and the best interests of the
22 Treasury?

23 A. I can't imagine a scenario under which the
24 long-term best interests of the U.S. taxpayer would be
25 different from maximizing the long-term value of the

1 stock we held in the trust.

2 Q. You were asked some questions about
3 section 3.05(b).

4 A. Yes.

5 Q. And you were asked whether your understanding was
6 the Treasury Department was the Treasury that was being
7 referred to in that clause?

8 A. Yes.

9 Q. Did you ever perceive any conflict of interest
10 between any business activity, investment opportunity or
11 prospective economic advantage to the Federal Reserve
12 Bank, the Treasury or the company and the trustees?

13 A. No.

14 Q. What would you have done if there was such a
15 conflict?

16 A. I would have brought it to our counsel and the
17 Federal Reserve Bank of New York and the
18 Treasury Department and the company.

19 Q. You were asked about the removal provision in
20 section 3.02(d), which is on page 14 of the document.

21 A. Yes.

22 Q. Did this provision constrain your judgment as a
23 trustee?

24 A. No.

25 Q. Why not?

1 A. Well, because none of the events that were
2 outlined here were ever remotely the case for me or
3 either of my cotrustees.

4 Q. You made reference -- you were asked about your
5 previous service on a trust, and I believe in one of your
6 answers you mentioned serving on a board of trustees.

7 What is the board of trustees you were referring
8 to in that answer?

9 A. Rice University and the Houston Endowment and
10 KIPP Academy.

11 Q. What is the Houston Endowment you refer to?

12 A. It's a large private endowment, charitable
13 endowment in Houston, the largest -- I think it's the
14 largest in Houston. The legacy of Jesse Jones.

15 Q. And explain the KIPP Academy.

16 A. The KIPP Academy is the largest charter school
17 network in the country.

18 Q. Lastly, you were asked about section 3.05(g) of
19 the trust agreement.

20 A. You're not going to ask me about Rice? I'm sorry.

21 Many refer to Harvard as the Rice of the north. I
22 know you not that already, but...

23 Q. Why is the mascot an owl?

24 You were asked about section 3.05(g).

25 Did this provision constrain your judgment as a

Starr International Company, Inc. v. USA

1 trustee in any way?

2 A. No.

3 Q. Next I'll turn your attention to section 3.05(h).

4 And the section begins, "In the event of any
5 dispute or conflicting claims with respect to the Trust,
6 the Trust Assets or this Trust Agreement, the Trustees
7 shall be entitled to refuse to comply with any and all
8 claims, demands or instructions as long as such dispute
9 or conflict shall continue, and the Trustees shall not be
10 or become liable in any way," and it goes on.

11 Do you see that?

12 A. Yes.

13 Q. Direct your attention to the second sentence and
14 the clause (i) of that sentence.

15 It states, "The Trustees shall be entitled to
16 refuse to act until either (i) such conflicting or
17 adverse claims or demands shall have been determined by a
18 final order, judgment or decree of a court of competent
19 jurisdiction," and it goes on.

20 Do you see that?

21 A. Yes.

22 Q. Did you have an understanding as to whether you as
23 trustees would have the ability to go to court if there
24 was a dispute or conflicting claims with respect to the
25 trust, the trust assets or the trust agreement?

1 A. I don't recall.

2 Q. Do you have any reason to believe that the
3 language in 3.05(h) is in any way inconsistent with what
4 the governing structure of the trust was?

5 A. It's a provision in the document. Yes.

6 MR. TODOR: No further questions, Your Honor.

7 THE COURT: All right. Thank you, Mr. Todor.

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

10 THE WITNESS: Thank you.

11 MR. BOIES: Your Honor, for our next witness we
12 call Mr. Marc Symons.

13 (Pause in the proceedings.)

14 THE COURT: Your first test is to figure out how
15 to get to the witness stand.

16 THE WITNESS: Hopefully I passed that.

17 - - - - -

18 Whereupon --

19 MARC SYMONS

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

22 DIRECT EXAMINATION

23 BY MR. BOIES:

24 Q. Good morning, Mr. Symons.

25 A. Good morning.

1 Q. You were the engagement partner for Ernst & Young
2 in connection with its assignment from the
3 Federal Reserve Bank of New York in connection with the
4 AIG project in 2008 and 2009; correct?

5 A. That's correct.

6 Q. Could you begin by giving the Court a little bit
7 of your background up to 2008, where you went to school
8 and your employment history.

9 A. Certainly.

10 I've been working for about 25 years in public
11 accounting. I went to school -- I'm Canadian. I was
12 born in Canada. I went to school in Canada, a university
13 in Canada, worked for a short period of time in an
14 accounting firm in Toronto.

15 After that, I moved to London, England, where I
16 worked again in another accounting firm.

17 Subsequent to that, I moved to Hong Kong, where I
18 worked again in accounting and did due diligence.

19 I lived -- moved from there to Paris, where I
20 lived there for five years and worked across Europe,
21 Russia, Africa, primarily due diligence, consulting
22 services.

23 I moved to New York in 1996 and then to auditing,
24 always in financial services. The types of clients I
25 deal with are banks, insurance companies, asset managers,

1 hedge funds.

2 The past three years up until about July of this
3 summer I was working in Hong Kong, working with our Asian
4 clients primarily on buy and sell side due diligence
5 projects.

6 Q. Thank you.

7 Let me ask you to turn to Plaintiffs' Trial
8 Exhibit 169, which is in your binder.

9 And I should say that we have given you two
10 binders. One is a binder of documents, sometimes
11 excerpted, and the other is a binder of your deposition.

12 A. Okay. Thank you.

13 Q. And do you have Plaintiffs' Trial Exhibit 169,
14 which is in evidence?

15 A. I see it.

16 Q. And was this the initial engagement letter between
17 Ernst & Young and the Federal Reserve Bank of New York,
18 dated September 19, 2008?

19 A. Yes, it is.

20 Q. Let me ask you to look next at Plaintiffs' Trial
21 Exhibit 204.

22 A. Yes.

23 Q. And this is dated September 21, 2008 and is
24 addressed from Ernst & Young to the Federal Reserve Bank
25 of New York and AIG; correct?

1 A. That's correct.

2 Q. And is it fair to describe this generally as a
3 conflicts waiver letter?

4 A. That's correct.

5 Q. And then if I could ask you to look at
6 Plaintiffs' Trial Exhibit 551?

7 MR. SCARLATO: Your Honor, if we can just object
8 that the last exhibit was not in evidence. Mr. Boies
9 referred to it.

10 MR. BOIES: I would offer Plaintiffs' Trial
11 Exhibit 204.

12 MR. SCARLATO: We have no objection.

13 THE COURT: All right. Thank you, Mr. Scarlato.
14 Plaintiffs' Trial Exhibit 204 is admitted.

15 (Plaintiffs' Exhibit Number 204 was admitted into
16 evidence.)

17 BY MR. BOIES:

18 Q. And I would ask you to turn next to Plaintiffs'
19 Trial Exhibit 551, which I will offer.

20 MR. SCARLATO: No objection, Your Honor.

21 THE COURT: Plaintiffs' Trial Exhibit 551 is
22 admitted.

23 (Plaintiffs' Exhibit Number 551 was admitted into
24 evidence.)

25 BY MR. BOIES:

1 Q. And this is a letter again from Ernst & Young to
2 the Federal Reserve Bank of New York, dated November 20,
3 2009; correct?

4 A. That's correct, yes.

5 Q. And was this an amendment to your retention by the
6 Federal Reserve Bank of New York?

7 A. Yes. It's an amendment to our original engagement
8 letter.

9 Q. Let me ask you to look next at Plaintiffs' Trial
10 Exhibit 1620.

11 A. 1620. Yes.

12 Q. And is this a document that Ernst & Young prepared
13 for Ms. Sarah Dahlgren of the Federal Reserve Bank of
14 New York?

15 A. That's correct, it is.

16 MR. BOIES: I would offer this document,
17 Your Honor.

18 MR. SCARLATO: No objection, Your Honor.

19 THE COURT: All right. Plaintiffs' Trial
20 Exhibit 1620 is admitted.

21 (Plaintiffs' Exhibit Number 1620 was admitted into
22 evidence.)

23 BY MR. BOIES:

24 Q. And what did you understand the purpose of this
25 document to be?

1 A. Ms. Dahlgren was traveling from New York to
2 Washington, D.C. to speak at the NAIC conference. It was
3 a conference that had previously been organized that was
4 happening at about the same time as the transaction
5 between the Federal Reserve Bank of New York and AIG
6 occurred. She was meeting with two -- this memo covers
7 two events. She had in-person meetings on the first
8 night she arrived, and then she spoke to the attendees of
9 the conference on the second night -- on the second day.
10 Sorry.

11 Q. Let me ask you to turn next to Plaintiffs' Trial
12 Exhibit 221, which I would offer.

13 A. Yes, I have that.

14 MR. SCARLATO: Your Honor, I think the binder, my
15 copy of it -- nope. No. I got it.

16 No objection, Your Honor.

17 THE COURT: Plaintiffs' Trial Exhibit 221 is
18 admitted.

19 (Plaintiffs' Exhibit Number 221 was admitted into
20 evidence.)

21 BY MR. BOIES:

22 Q. Can you identify this document?

23 A. Yeah. This is a document prepared by one of my
24 team members on the team that I had working with the
25 Federal Reserve Bank of New York.

1 Q. And was this prepared in connection with a
2 presentation made to Federal Reserve Bank of New York
3 personnel?

4 A. Yes. Yes, it was.

5 Q. Let me ask you to look at page 4 of the exhibit.

6 A. Page 4 of 10?

7 Q. Page 4 of 10.

8 A. Yes, I see it.

9 Q. And there's a heading at the top that says "Key
10 findings and significant deal issues."

11 And in the middle of the page there's something
12 called "Collateral call process."

13 Do you see that?

14 A. I do, yes.

15 Q. And there are three points under that heading.

16 "Lack of liquid quotes from market participants"
17 is the first.

18 The second is "Industry CSA's didn't consider
19 illiquid markets."

20 And the third is "Subjectivity involved in
21 pricing."

22 Do you see that?

23 A. I do, yes.

24 Q. And do you have an understanding as to what was
25 being referred to here?

1 A. Yes, I do.

2 Q. Could you explain what was being referred to by
3 "lack of liquid quotes from market participants."

4 A. This presentation was prepared on September 22.
5 At this time we were at the beginnings of what people
6 refer to as the global financial crisis.

7 "Lack of liquid quotes from market participants"
8 means that many of the financial institutions were not
9 trading with one another, and as a consequence, it was
10 sometimes difficult, but possible, to get quotes for
11 securities that were traded in the public markets.

12 "Industry CSA's didn't consider illiquid
13 markets" -- "CSA" refers to credit swap agreements --
14 what this point is trying to iterate is that the
15 collateral calls that are attached to the agreements
16 under credit swap agreements potentially didn't consider
17 the types of -- the market situation that we were
18 experiencing at the time this presentation was prepared.

19 And then "subjectivity involved in pricing," this
20 addresses an issue primarily around credit default swaps
21 in that the pricing for some of these instruments is not
22 public pricing but is an over-the-counter market in
23 certain situations, and that pricing is usually prepared
24 through a modeling exercise, and oftentimes
25 counterparties have disagreements on what the instruments

1 are worth.

2 Q. Thank you.

3 Would you now turn to Plaintiffs' Trial
4 Exhibit 524, which I would offer.

5 A. Yes, I see it.

6 MR. SCARLATO: Your Honor, we have no objection.

7 THE COURT: Plaintiffs' Trial Exhibit 524 is
8 admitted.

9 (Plaintiffs' Exhibit Number 524 was admitted into
10 evidence.)

11 BY MR. BOIES:

12 Q. This is a working group list for the
13 Federal Reserve Bank of New York, AIG, Morgan Stanley,
14 Davis Polk, Blackstone, and what is referred to as the
15 E&Y teams.

16 Is this a document that you had available in
17 2009?

18 A. Yes. I haven't seen this document for a while,
19 but yeah, I have no reason do believe that I wouldn't
20 have had it in 2009.

21 Q. In connection with the work that E&Y was doing for
22 the Federal Reserve Bank of New York around the world, am
23 I correct that E&Y had about 550 people work on that?

24 A. Could you repeat the question, please, sir.

25 Q. Yes.

1 In connection with the work that Ernst & Young was
2 doing for the Federal Reserve Bank of New York in
3 connection with AIG, am I correct that Ernst & Young had
4 about 550 people working on that around the world?

5 A. In total, 550 people charged time to the code as
6 we call it in our industry. At no point did we have
7 550 people at the same time working on this engagement,
8 but these people would have worked throughout our
9 engagement with the Federal Reserve Bank of New York.

10 Q. What approximately was the largest number of
11 people that you had working on this project at any one
12 time?

13 A. I think that the peak of our work was in the last
14 quarter of 2008 and the first and second quarter of 2009.
15 At that time it would be maybe 60 to 80 people would be
16 on the engagement.

17 Q. Let me ask you to turn next to Plaintiffs' Trial
18 Exhibit 630.

19 A. Yes.

20 Q. Which is a document that I do not believe that
21 Ernst & Young prepared.

22 A. No. It doesn't appear to be a document that we
23 prepared.

24 Q. Is this a document that Ernst & Young reviewed in
25 connection with its work with AIG?

1 A. Was this document prepared by the Federal Reserve
2 Bank of New York?

3 Q. My understanding is it was prepared for the
4 Federal Reserve Bank of New York by Deloitte & Touche.

5 A. By Deloitte & Touche. Oh, okay.

6 It's a long document, so I'm not reading it in
7 its entirety. Our -- it's potentially -- I can't
8 remember if I did see this document before when we were
9 doing the work. We did have some interaction with
10 Deloitte. They were the auditor of the Federal Reserve
11 Bank of New York.

12 Q. Deloitte & Touche were the auditors for the
13 Federal Reserve Bank of New York.

14 A. That's correct, yeah.

15 Q. And in connection with that, did you understand
16 that they had to make valuation analyses of the AIG
17 collateral?

18 A. I don't know that answer. Sorry.

19 Q. Did you furnish Deloitte & Touche with the
20 valuation analyses that Ernst & Young did?

21 A. We would not have directly sent it to Deloitte. I
22 don't know what the Fed did with our work, though.

23 Q. Let me ask you to look at Defendant's Exhibit 521.
24 It is at the back of your --

25 A. Yes.

1 Q. -- book.

2 Which I would offer.

3 MR. SCARLATO: No objection, Your Honor.

4 THE COURT: Defendant's Exhibit 521 is admitted.

5 (Defendant's Exhibit Number 521 was admitted into
6 evidence.)

7 BY MR. BOIES:

8 Q. Is this a document that you saw at or about the
9 time indicated, that is, September 21, 2008?

10 A. I'm just looking to see if I was cc'd on it. I
11 don't see my name as a cc, so I can't say for sure if I
12 was -- if I saw this particular e-mail.

13 Q. At the e-mail that's on the top of the first page?

14 A. Yes.

15 Q. It says, "There are a few streams within the
16 valuation work with one team focusing on a DCF and
17 Market Valuation. The other is focusing on an actuarial
18 valuation."

19 Do you see that?

20 A. Yes, I do.

21 Q. Did Ernst & Young have these three streams of
22 valuation work going on?

23 A. I would characterize them as two teams. One was a
24 team of actuaries, and certainly they would have looked
25 at a DCF type of focus. And then we had a team, another

1 team of some of our valuation experts who would have been
2 working on the market valuation approach to a value.

3 Q. And was the first team that you referred to, the
4 one that was working on the DCF approach, also working on
5 an additional stream called market valuation?

6 A. This e-mail is dated September 21. This was -- we
7 were engaged a couple days before this date. What the
8 Fed had asked us to do is do a valuation of the AIG in a
9 very short period of time, so the teams were working very
10 much together. All right? I wouldn't characterize them
11 as being separate.

12 Q. Thank you.

13 A. Yeah.

14 Q. Let me turn to one last document, which is
15 Plaintiffs' Trial Exhibit 1795, which I would offer.

16 A. Yes.

17 MR. SCARLATO: No objection, Your Honor.

18 THE COURT: Plaintiffs' Trial Exhibit 1795 is
19 admitted.

20 (Plaintiffs' Exhibit Number 1795 was admitted into
21 evidence.)

22 BY MR. BOIES:

23 Q. This is an October 27, 2008 e-mail from
24 Ms. Dahlgren to you and a number of other people.

25 And she says, "AIG has been asking us for our

1 valuation on the preferred shares that represent the
2 79.9 percent."

3 Do you see that?

4 A. Yes, I do.

5 Q. And she goes on to say that "we won't value them,"
6 referring I think to the Federal Reserve Bank of
7 New York, but goes on to say, "AIG, nevertheless, wants
8 to run by us their valuation process for allocating the
9 value of the preferred shares."

10 Do you see that?

11 A. I see that, yes.

12 Q. And insofar as you are aware, was the AIG
13 valuation process for valuing the preferred shares run by
14 Ernst & Young?

15 A. No. We did not do any valuation of the preferred
16 shares.

17 Q. And did you have any review of the valuation of
18 the preferred shares done by anybody else?

19 A. No.

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

21 Thank you.

22 THE COURT: All right. Maybe we'll take a morning
23 break at this time. We'll reconvene at 11:15.

24 (Court in recess.)

25 THE COURT: Before we start here, we determined

1 during the break that Plaintiffs' Trial Exhibit 1795
2 actually was admitted during the testimony of
3 Ms. Dahlgren, so just for the record now I guess it's
4 admitted twice.

5 MR. BOIES: I apologize, Your Honor.

6 THE COURT: That's all right.

7 Mr. Scarlato, you may go ahead.

8 MR. SCARLATO: Thank you very much, Your Honor.

9 - - - - -

10 CROSS-EXAMINATION

11 BY MR. SCARLATO:

12 Q. Good morning, Mr. Symons.

13 A. Good morning.

14 Q. You were asked questions by plaintiffs' counsel
15 about the nature of the engagement with the New York Fed,
16 and I'd like to sort of talk a little bit more about that
17 and get some context.

18 THE COURT: Is it "Symons" or "Symons"?

19 THE WITNESS: "Symons."

20 THE COURT: Okay. Great.

21 BY MR. SCARLATO:

22 Q. Mr. Symons, when was Ernst & Young hired by the
23 New York Fed with respect to the AIG loan?

24 A. It was around September 18-19, 2008, yeah.

25 Q. And who were the heads of the Ernst & Young team?

1 A. It was myself and I had a colead. His name is
2 Chris McShea.

3 Q. And what expertise did your Ernst & Young team
4 have at that time?

5 A. Chris McShea comes from our insurance practice, so
6 he specializes in advisory service to insurance
7 companies.

8 Myself, I'm a partner in our transaction advisory
9 services group. I specialize in buy and sell advice to
10 financial institutions.

11 Q. And what's your understanding of Mr. McShea's
12 depth of experience in the insurance industry at that
13 time, as of September 2008?

14 A. Very experienced. He's about the same age as me,
15 so he would have about 25 years experience.

16 Q. And what about the remainder of the Ernst & Young
17 team? What level of experience do they have with
18 insurance, with the insurance industry?

19 A. Specific to insurance, we staffed this engagement
20 with really our most senior partners from our insurance
21 practice.

22 Q. And who was your primary contact with the
23 New York Fed as part of this engagement?

24 A. Sarah Dahlgren.

25 Q. And what was your understanding of the nature of

1 the relationship between the New York Fed and AIG?

2 A. When I was first engaged, Sarah really just
3 explained about the loan that had been extended to AIG.

4 Q. And generally how did your team assist the
5 New York Fed in carrying out that lender-borrower
6 relationship?

7 A. Oh, we were there to support Sarah and her team,
8 arms and legs, gathering information, some, you know,
9 accounting advice, other types of, you know, professional
10 service advice.

11 Q. So a variety of --

12 A. Yeah, a variety of professional service advice.

13 Q. What was your understanding as to why the
14 New York Fed needed this variety of advice?

15 A. The Fed was a relatively small team. I think AIG
16 is a large company. And they just really needed
17 arms-and-legs assistance in order to gather the
18 information that they needed.

19 Q. And why did the New York Fed need this
20 information? Can you just explain what information was
21 needed and why?

22 A. The primary focus of our work was around trying to
23 project the cash flow needs of AIG, and so that required
24 us to talk to many of the businesses of AIG to understand
25 what their future needs would be.

1 Q. And why was it important to understand the --
2 AIG's future needs?

3 A. The cash flow needs were, first off, potential
4 draws on the loan. And secondly, the companies were
5 operating, and so there were positive cash flows as well
6 that could be used to pay off the loan.

7 Q. I believe you testified earlier that there were --
8 Ernst & Young over the course of the engagement had about
9 550 people who billed time?

10 A. That's correct.

11 Q. Can you first say how long was the term of that
12 engagement, Ernst & Young and the New York Fed.

13 A. The most intense part was the last quarter of
14 2008 through to what we call the debt exchange with AIA
15 and ALICO. Ultimately, the last hour I charged would
16 have been around June 2011.

17 Q. And what's your understanding of why over the
18 course of that engagement Ernst & Young provided support
19 from 550 people?

20 A. AIG is not just an insurance company, has many
21 other different businesses in different sectors. We
22 brought expertise to the table, you know, our people,
23 partners who have expertise in those sectors. And then
24 also our service lines, whether it be, you know, tax
25 service lines or, you know, accounting valuation,

1 you know, we brought quite a few different people to the
2 table, a reflection of the complexity of AIG.

3 Q. And how often would Ernst & Young personnel be
4 on-site at an AIG office?

5 A. We had a team for a short period of time at FP who
6 were on-site. And then other than that, we were not
7 permanently on-site. We would just go to meetings at
8 AIG.

9 Q. So what was the purpose of Ernst & Young having
10 people on-site at AIGFP?

11 A. It was our understanding at the beginning of the
12 engagement that the most significant problems with the
13 liquidity of AIG were sourcing from the FP division.

14 Q. And did you conduct an analysis in that regard?

15 A. We did.

16 Q. And was your suspicion confirmed as part of that
17 analysis?

18 A. Yeah. It wasn't much of a secret. The company
19 also was aware that that was originally the source of
20 many of their liquidity needs.

21 Q. In going on-site at AIG and having interactions
22 with them, what instructions did you receive from the
23 New York Fed as to how your team was supposed to interact
24 with AIG?

25 A. Sarah Dahlgren gave us the rules of engagement as

1 we called them. We were really there to gather
2 information, ask questions, understand, and that was --
3 that was about it.

4 Q. Over the course of the engagement, do you recall
5 any of instance in which the New York Fed or any
6 consultant for the New York Fed directed AIG to take a
7 particular business action?

8 A. No. No.

9 Q. And what was your understanding, if any, as to
10 whether the New York Fed had an interest in AIG remaining
11 a profitable company at that time?

12 A. I think that FRBNY and AIG, their objectives were
13 aligned, as I say. AIG wanted to pay the loan off,
14 right, and the Fed wanted the loan to be paid off as
15 well.

16 Q. You mentioned earlier that at the peak there were
17 about I believe 60 to 80 Ernst & Young personnel working
18 on the matter?

19 A. Yeah. That's my --

20 Q. Can you explain what those peaks were?

21 A. The peaks were certainly at the beginning when we
22 were in the stage of gathering information. And then the
23 other peaks were around the additional transactions that
24 the Federal Reserve Bank did with AIG, and typically it
25 would peak when there was a new transaction that they

1 were entering into with AIG.

2 Q. So then am I right in believing the converse, that
3 when the New York Fed wasn't engaged in a potential new
4 transaction with AIG that the number of people would
5 diminish?

6 A. That's correct, yeah.

7 Q. Mr. Symons, can you turn to PTX 169, which is in
8 at least the black binder that you just -- that Mr. Boies
9 gave you, but it might be in the other one.

10 A. Mr. Boies' binder?

11 Q. Yeah. PTX 169?

12 A. Yes.

13 Q. Do you see that?

14 A. Yes, I do.

15 Q. I believe you testified earlier this is the
16 original engagement letter between Ernst & Young and the
17 New York Fed?

18 A. That's correct.

19 Q. Can you turn to page 5. At the bottom it says
20 "Page 5 of 31"?

21 A. Yes.

22 Q. Do you see that?

23 A. I do.

24 Q. Can you explain -- I see a chart starting in the
25 middle of the page that says the key objectives,

1 et cetera. Can you explain generally what that
2 information is describing?

3 A. This is typically what we call the scope component
4 of our engagement letter, so we write this. E&Y would
5 have written this. And it's really our interpretation of
6 what the client has asked us to do.

7 Q. And I see at the top of page 5 it says
8 "September 19, 2008," so that was the date?

9 A. Yes. I think this document was probably prepared
10 later, like a few days later the following week but --
11 and then dated at the beginning of our engagement.

12 Q. Mr. Symons, if I can ask you about number 2, it
13 says "Valuation."

14 Do you see that?

15 A. Yes.

16 Q. And under Key Objective it states "to understand
17 the extent of FRBNY credit exposure by performing
18 valuations of the entities posted as collateral."

19 Do you see that?

20 A. I do, yeah.

21 Q. And then there's a potential issue noted in the
22 next column.

23 Can you explain for the Court what that issue
24 was?

25 A. In the first paragraph, FRBNY may not have

1 accurate information to perform -- the first sentence,
2 "The FRBNY may not have accurate information to perform
3 an informed assessment of credit exposure," I think what
4 we're addressing here is that we're expressing that there
5 potentially be an issue that they may not have enough
6 information that we would normally need in order to do a
7 valuation.

8 Q. And that was as of on or about September 19, 2008?

9 A. Yes. Yeah.

10 Q. Mr. Symons, if you could turn now to
11 page 8 of 31 in PTX 169.

12 A. Yes.

13 Q. Do you see that?

14 I see an issue there noted regulatory?

15 A. Yes.

16 Q. Can you describe what the potential issue was
17 under this category of regulatory support?

18 A. I think the potential issue we're identifying is
19 that because of the difficulties the company had, many of
20 their subsidiaries or insurance companies, and that there
21 would be a potential that the regulators may try to seize
22 the assets of the insurance companies.

23 Q. And why would that be an issue at that time?

24 A. Much of the value -- a lot of value of AIG was in
25 the insurance companies, and certainly they were --

1 you know, at this point had already been identified as
2 potential divestiture opportunities, so if they were to
3 be seized, they would have been -- AIG wouldn't have been
4 able to sell them. They -- yeah, so...

5 Q. I meant to ask earlier -- we were talking about
6 the nature of the observations that you did over at AIG
7 over the course.

8 Can you explain for the Court, was -- in your
9 understanding, is that common practice for a lender,
10 especially a large lender, to monitor the borrower and
11 similar to how Ernst & Young monitored AIG?

12 A. Yes, it's normal course.

13 Q. Are you aware of other instances in which similar
14 types of monitoring occurred?

15 A. Particularly in situations where it's a distressed
16 company, that would -- that would be more common, yeah.

17 Q. And you think it's fair to say that AIG was a
18 distressed company at the time?

19 A. Yes.

20 Q. Mr. Symons, if you can turn now to PTX 1620, which
21 is in the black binder.

22 A. 1620.

23 Q. Please.

24 A. Yes.

25 Q. And I believe you testified these were talking

1 points that you created for Ms. Dahlgren?

2 A. My team and I created these. Yes.

3 Q. Thank you for that.

4 First, I'm not sure if it's been explained. What
5 is the NAIC?

6 A. It's the National Association of Insurance
7 Commissioners. It's a regulatory body of the -- that
8 consists of state regulators in the insurance industry.

9 Q. Do you know how many state regulators?

10 A. I don't know exactly.

11 Q. Do you know if they're foreign or domestic?

12 A. This is domestic.

13 Q. Okay.

14 A. U.S.

15 Q. And did you attend this meeting reflected in
16 PTX 1620?

17 A. No, I didn't attend the meeting.

18 Q. Do you know if Ms. Dahlgren in fact used these
19 talking points in that meeting?

20 A. I don't know if she did or not.

21 Q. And if I can just ask you briefly -- the first
22 page of 1620, at the bottom bullet, it says, "We expect
23 your cooperation" and "We look forward to working closely
24 with you through these unusual times."

25 Can you explain what you and your team were

1 expressing through that talking point?

2 A. What we were expressing is that, you know, it was
3 our hope that the regulators would not take actions
4 against AIG in the states that they regulated.

5 Q. And I think you might have made that clear, but
6 can you explain why that was an issue?

7 A. Again, the regulators would have the power to
8 seize the assets of the domestic insurance companies, and
9 you know, if that was to happen, it would be a difficulty
10 for AIG certainly, yeah.

11 Q. I'd like to turn now -- I believe you testified
12 earlier that Ernst & Young conducted a valuation of AIG
13 on September 21, 2008. Is that right?

14 A. That's correct, yeah.

15 Q. Just to get some context, do you recall why
16 Ernst & Young was asked to conduct a valuation on that
17 date?

18 A. It was my understanding that the company was
19 collateral for the loan that they extended.

20 Q. And was that the credit agreement --

21 A. Yes. Correct.

22 Q. Was it at the time the credit agreement about to
23 be signed?

24 A. Yes.

25 Q. September?

1 A. The terms of the agreement between AIG and the
2 Federal Reserve Bank of New York had been reached prior
3 to us being engaged, but the credit agreement
4 documentation hadn't been signed.

5 Q. And what was the connection between the valuation
6 that you conducted on that September 21 date and the
7 signing of the credit agreement?

8 A. I was never told of any specific connection
9 between our work and that signing, yeah, so --

10 Q. Do you recall who asked you to conduct that
11 valuation?

12 A. It would have been Sarah Dahlgren, yeah.

13 Q. Can you describe for the Court generally how you
14 and your team conducted the valuation on September 21?

15 A. We had just been engaged by the Federal Reserve
16 Bank. We were still working from our offices, the E&Y
17 offices, so this -- we did these valuations based on
18 public -- publicly available information. We didn't have
19 access to AIG at this time.

20 Q. And why was that?

21 A. We had just begun our engagement. We had not met
22 anyone at AIG yet, yeah.

23 Q. Do you recall how much time you had to conduct
24 that initial valuation?

25 A. It was performed over a weekend.

1 Q. And is that typical in your experience to conduct
2 a valuation over such a short period of time?

3 A. No.

4 Q. And do you know if the New York Fed conducted
5 any other valuations of AIG around the
6 September 21, 2008 date?

7 A. I don't know if the Fed did any other work
8 themselves, yeah.

9 Q. Was there any connection between the valuation you
10 did and any other valuation that may have occurred at
11 that time?

12 A. We were aware that there was some Morgan Stanley
13 work done as well, yeah.

14 Q. Was your work independent of their work?

15 A. Yes.

16 Q. If you can turn now -- Mr. Boies showed you an
17 e-mail marked DX 521 in the black binder.

18 A. Yes.

19 Q. If I can step back, I asked about your prior
20 experience.

21 What's your understanding of how long
22 Ernst & Young typically would take as a normal course
23 valuation of a company?

24 A. For a company of this size it would take -- really
25 three to four weeks typically would be how long it would

1 take us to do it, yeah.

2 Q. And what would be done in those three to four
3 weeks?

4 A. We would gather information from the company that
5 we're trying to value, very detailed information
6 typically, right, and have access to the company that
7 we're valuing, yeah.

8 Q. Turning now to DX 521, do you have that in front
9 of you? It's the last document in the black binder?

10 A. Yes, I've got it.

11 Q. It's an e-mail?

12 A. Yes.

13 Q. Now, this -- you said earlier that you're not on
14 this e-mail, and I understand that, but there are some
15 certain characterization here. I'm wondering if they're
16 consistent with your recollection at the time.

17 A. Okay.

18 Q. First, on page 3 of the document which on the
19 bottom right ends 4383 -- do you see that?

20 A. Yes.

21 Q. Just so we're on the same page so that -- you see
22 the date of this e-mail is September 21, 2008?

23 A. Yes.

24 Q. Okay. Well, and it's an e-mail from
25 Annmarie Rowe-Straker.

1 Do you know who she is?

2 A. No, I don't.

3 Q. Do you see that she has a New York Fed e-mail?

4 A. I'm sorry. I do know who that person is, yeah.

5 Q. Who is she?

6 A. Yeah. She's -- I've met her. She works at the
7 Fed, yeah. Yeah.

8 Q. Do you recall working with her on your valuation
9 work for A -- for the New York --

10 A. We had more interaction with Annmarie very late in
11 our engagement. She wasn't really part of the core team
12 that I remember, yeah.

13 Q. And she states in this e-mail (as read): Correct
14 me if I'm wrong, but Ernst & Young is working on this
15 through today, they have asked for information they need
16 to do a deeper dive on this stuff, and I'm doubtful they
17 can get us fully vested response to give us comfort today
18 that we can sign that agreement.

19 Do you recall relaying that, that information, to
20 the New York Fed on that day?

21 A. We certainly were in communication primarily --
22 with Sarah Dahlgren exclusively at this point. And yes,
23 I'm sure that we would have cautioned Sarah about the
24 limitations of the work that we could do without access
25 to the company.

1 Q. And so what was meant by "a deeper dive"? Is that
2 something that you would have said in --

3 A. Yeah. Certainly those sound like words that my
4 industry uses. It would mean a deeper dive into the
5 numbers having more information available to us.

6 Q. On September 21 did you receive that deeper dive?

7 A. We received some information that the Fed had
8 gathered, right, but in our view not enough information
9 to do a complete valuation, yeah, of the company, yeah.

10 Q. Mr. Symons, if you can turn to the first page of
11 DX 521?

12 A. Yes.

13 Q. That's an e-mail in the middle from Andrew Danzig.
14 Do you know who he is?

15 A. Yes. I've met Andrew.

16 Q. And who is he?

17 A. He works at the Fed. I can't remember exactly
18 what his role is there.

19 Q. Did you have contact with Mr. Danzig on
20 September 21, 2008?

21 A. I don't think so. I think I met him subsequent to
22 that, yeah.

23 Q. Mr. Danzig appears to indicate that Ernst & Young
24 will take its best shot at a valuation today including
25 range estimates.

1 Is that consistent with your understanding of the
2 work you did that day?

3 A. Yes, that's, yeah, what we did, yeah.

4 Q. And then the next -- and when he says "will take
5 its best shot," is that something that you would
6 characterize here as your work on that day?

7 A. I think those are his words. We did the best work
8 we could given the information we had.

9 Q. The next sentence says that they are digesting the
10 reams of information already received?

11 A. Yes.

12 Q. Would you describe the information you received
13 that day as reams of information?

14 A. No. It was not reams.

15 Q. How would you describe it?

16 A. It was very limited documentation, some of it not
17 useful to perform a valuation.

18 Q. And then finally it states, "There is supplemental
19 info/feedback that they'll need from AIG" --

20 A. Yes.

21 Q. -- "which is mostly beyond today in terms of
22 what's possible for its team."

23 A. Yeah.

24 Q. Do you recall if you ever received that
25 information on September 21?

1 A. Not on September 21, no.

2 Q. Mr. Symons, if you can turn now to the white
3 binder, there's a document marked JX 105?

4 A. Yes.

5 Q. Can you tell me when you have that document in
6 front of you?

7 A. Yes.

8 Q. Do you have it in front of you?

9 A. Yes, I do.

10 Q. Do you recognize this document?

11 A. Yes, I do.

12 Q. What is it?

13 A. This is the valuation -- it's a report to the
14 Federal Reserve Bank of New York on the valuation we --
15 work we did on that first weekend.

16 Q. Is this the valuation that we were talking about
17 just a minute ago?

18 A. Yes. I think so, yeah.

19 Q. And just so we're clear, the title of JX 105 is
20 Project Maiden Lane II.

21 Why is that the name of the -- this presentation?

22 A. In my industry, when we start a new project, we
23 give it a name, code name. This was the name we gave
24 this project.

25 Q. So that wouldn't refer to any -- any action taken

1 by the New York Fed that may have been called
2 Maiden Lane II.

3 A. No. It was our name.

4 Q. And it states on the first page that the analysis
5 as of June 30, 2008.

6 Can you explain why the analysis in September was
7 as of June 30?

8 A. The last publicly available information we could
9 get on AIG was dated as of June 30, 2008.

10 Q. And do you have a sense for how the data would
11 have changed from the June 30 date up until the date that
12 you conducted this valuation?

13 A. The difficulties AIG was having were not public at
14 June 30, 2008, so --

15 Q. So how would that affect the actual numbers as of
16 that date?

17 A. The June 30 numbers? It would definitely have
18 changed since June 30, yes.

19 Q. Changed in what direction?

20 A. I would imagine in a negative direction, yeah.

21 Q. And if you'd turn to page 15 of JX 105.

22 Do you see that?

23 A. Yes.

24 Q. Tell me if I'm incorrect, but it seems to list a
25 bunch of information that was provided to Ernst & Young

1 on that date.

2 A. Yeah. Not necessarily provided. Some of this
3 information we would have got ourselves, so information
4 relied upon includes but is not limited to the following.
5 The statutory statements would have been something we
6 could get ourselves, right, from the public domain. And
7 then the other AIG documents would have been given to us.
8 The corporate structure we could find probably publicly,
9 yeah.

10 Q. To the extent you recall, the date says "June 30,
11 2008," but do you recall to what extent this additional
12 information was more of an update as to AIG's numbers at
13 that time?

14 A. Some of these documents are dated after June 30,
15 so they would have been an update. I really can't recall
16 what was in these documents.

17 Q. But generally what was your sense of how
18 up-to-date the numbers were at that time?

19 A. I would say that primarily the numbers that we
20 were using were the June 30 numbers. Those were the most
21 detailed numbers we could get, yeah, so --

22 Q. If you could turn back to page 1 of that document?

23 A. Yeah.

24 Q. There's a box in the bottom right that's --

25 A. Yes.

1 Q. -- called it a windshield actuarial appraisal.

2 What does "windshield actuarial appraisal" mean?

3 A. It's a term that we use in valuation. It comes
4 from we believe -- or I believe real estate where you do
5 a valuation of a house or a building by looking through
6 the windshield of your car. It's very high level, yeah.

7 Q. The last sentence in that box states, "A more
8 robust and complete analysis would produce different, and
9 perhaps in some entities significantly different,
10 results."

11 Is that consistent with your understanding of the
12 numbers contained in this presentation?

13 A. Yes.

14 Q. Mr. Symons, if you'd turn now to page 5 of JX 105.

15 A. Yes.

16 Q. And at -- page 5 seems to indicate three critical
17 limitations.

18 Do you see that?

19 A. Yes.

20 Q. Can you explain for the Court what the first
21 critical limitation was to your analysis?

22 A. It reads, "Our estimated values assume that AIG is
23 not currently experiencing a flight to quality, and if
24 one does occur, the Federal Reserve Bank of New York will
25 take all appropriate actions to stop it."

1 And again, this is -- the "flight to quality"
2 means that customers may no longer want to do business
3 with AIG as a consequence of the difficulties it was
4 experiencing.

5 The second line, "the Federal Reserve Bank of
6 New York will take all appropriate actions to stop it,"
7 is probably not exactly accurate on our part. It was
8 early in the engagement.

9 The second point, "Our estimated values assume AIG
10 will not have its rating downgraded. Such a downgrade
11 would significantly reduce AIG's ability to write any new
12 property or casualty insurance," this refers to the
13 property and casualty business primarily of Chartis which
14 has contracts that are very ratings dependent and
15 customers may leave or not be able to do business with
16 Chartis below a certain credit rating.

17 Q. Why is that?

18 A. It's usually a trigger in the contracts that the
19 customers have entered into with the property and
20 casualty insurance company.

21 "Our estimated values do not consider the impact
22 of the cash flows on the assets held by AIG." At this
23 point we were aware that there were liquidity issues, but
24 we did not know the extent of them.

25 Q. If you could turn now to page 7 in this exhibit.

1 A. Yes.

2 Q. The last bullet on page 7 says that AIG's new
3 business experience is very fluid at this time?

4 A. Yes.

5 Q. What does that mean?

6 A. I think we were just trying to point out the
7 risks that -- of the flight to quality that we referred
8 to at the beginning of the presentation as to whether
9 customers would want to enter into new business with the
10 company.

11 Q. So did I understand your testimony correctly that
12 there was some assumption of a flight to quality in this
13 analysis?

14 A. Yes. We say that in the next point, that we did
15 take some haircut a little bit on the new business.

16 Q. To what -- are you finished?

17 A. That's all. Yeah. That's all I can say.

18 Q. And to what extent -- you know, why was this
19 number chosen, this 50 percent decrease?

20 A. It was based on the experience of the partners
21 that we had doing this work, primarily the insurance
22 actuarial partners, and based on their experience and to
23 our understanding at this point of AIG's issues that this
24 was the assumption they took.

25 Q. It was just a guess, though?

1 A. Pardon me?

2 Q. It was just an estimate?

3 A. An estimate, yes.

4 Q. If you can turn now -- well, first let me ask,
5 this estimate, how would you compare and quantify the
6 estimate that is -- we just talked about on page 7 with
7 the scenario where AIG was downgraded by A.M. Best below
8 A-minus, as you testified about earlier? Was there a
9 comparison of the impact of those scenarios?

10 A. The downgrade primarily affects the property and
11 casualty companies because of the triggers in those
12 contracts. The -- with -- for the life insurance
13 companies less -- the customers are less sensitive to the
14 rating of the insurance company. But the issues of AIG
15 were very public, so customers may be concerned about
16 doing business with them, yeah.

17 Q. If you could turn now to page 10 of this
18 presentation.

19 Am I correct in understanding that page 10 is the
20 results of your actuarial appraisal?

21 A. Yes. That would be correct.

22 Q. And the -- first it refers to pledged entities and
23 nonpledged entities?

24 A. Yeah.

25 Q. Do you have an understanding of what that

1 distinction was?

2 A. I can't remember, but I think that was a
3 distinction given to us by FRBNY.

4 Q. So at the bottom it says "Total"?

5 A. Yeah.

6 Q. And then there's a -- midpoint is 104.7 billion.

7 Do you see that?

8 A. Yes, I do.

9 Q. And is the midpoint the -- sort of your most
10 likely case conclusion; is that --

11 A. It's the median. It's the middle, yeah, so --

12 Q. And that 1.47 billion, how much of AIG's total
13 assets and collateral does that 1.7 billion represent?

14 A. 1.7 billion?

15 Q. 1.4.7.

16 A. Oh, I'm sorry. How much does it represent?

17 Q. Uh-huh.

18 A. I don't know the answer to that. Sorry.

19 Q. Do you know if there are any assets of AIG
20 excluded from that number?

21 A. This was our analysis. We were not talking to AIG
22 at this point, so this is the best number that we could
23 come up with given the information we had.

24 Q. And so that analysis was an estimation of what --
25 the value of AIG to what extent? In total or piece of

1 it?

2 A. There would certainly be companies in AIG that
3 were not included in this total value because we did not
4 have information on it, yeah.

5 Q. Mr. Symons, what analysis, if any, did your team
6 do on that day of whether AIG was capable of pledging
7 all the assets inclusive of this \$104.7 billion number?

8 A. That was never something that we were asked to
9 do.

10 Q. So on what basis did you determine the assets that
11 were valued in this presentation?

12 A. Our understanding -- my understanding of what we
13 were asked to do is try and come up with a valuation of
14 the company as a whole, AIG as a whole, yeah, so --

15 Q. So it's your understanding that the 1.4 --
16 104.7 -- excuse me -- billion dollar number was the
17 company as a whole?

18 A. As I said, it's based on the -- in details above.
19 These are the companies that we're including, and so
20 there are other companies in AIG that are not included in
21 this total, yeah.

22 Q. If you can turn now to page 13 of JX 105?

23 A. Yeah.

24 Q. 12 and 13 I see market-based methodology?

25 A. Yes.

1 Q. Can you just explain for the Court the difference
2 between what we just looked at and this market-based
3 methodology?

4 A. Sure. A market-based methodology endeavors to
5 take multiples from previous transactions in other
6 companies in similar businesses have traded at and apply
7 those multiples to the company you're trying to value.

8 Q. Did you ever tell the New York Fed which appraisal
9 was more accurate?

10 A. No.

11 Q. Is there an industry standard as to which approach
12 is more accurate?

13 A. For insurance companies, it would be the
14 appraisal or the actuarial appraisal approach is most
15 standard. For other businesses, typically you would go
16 with one of these three approaches, income, market or
17 cost approach.

18 Q. Thank you.

19 If you could turn now to page 17 of JX 105.

20 Do you see that?

21 A. Yes.

22 Q. I see it's called Limitations at the top?

23 A. Yes.

24 Q. Can you describe what the last -- and I assume
25 these are limitations to your analysis?

1 A. That's correct.

2 Q. And what is the last limitation described on
3 page 17?

4 A. So "AIG has not provided data on recent
5 policyholder and distribution channel experience." This
6 is in connection with the flight to quality that we
7 talked about earlier. We didn't know what their current
8 experience at the time of this report was.

9 "In previous insurance company insolvencies,
10 contract terminations showed immediate significant
11 increases which would have a significant impact on the
12 values provided in this document." We're flagging for
13 the FRBNY that because of the problems with AIG, yeah,
14 the historical experiences companies --

15 (Telephone interruption.)

16 MR. BOIES: Your Honor, that was me, and I
17 apologize.

18 THE COURT: All right.

19 THE WITNESS: Historical experience would show
20 that companies -- insurance companies in difficulty would
21 have a flight to quality, and that's what we're pointing
22 out to the Fed here, yeah.

23 BY MR. SCARLATO:

24 Q. If you can turn now to page 20 of JX 105, I
25 believe there are more limitations listed here. Is that

1 right?

2 A. That's correct.

3 Q. And there's a lot of words on this page, but can
4 you just summarize for the Court what the limitation
5 reflected on page 20 represents?

6 A. This page is pretty much of a catchall where we're
7 just trying to flag for the Fed the limitations to our
8 analysis at this point in time, primarily due to the lack
9 of information that we have available to perform the
10 valuation we've been asked to do.

11 Q. Why does it say "actual future results will vary
12 from those projected" at the end of the first bullet?

13 A. We're flagging that we're doing the best work we
14 can based on the information we have, but actual results
15 could vary from the work that we have once more
16 information becomes available.

17 Q. Mr. Symons, page 21 lists two more limitations I'd
18 like to discuss. The first -- can you explain for the
19 Court what the first limitation on page 21 represents?

20 A. "The calculations we have performed do not
21 constitute a valuation but instead are intended only to
22 provide a broad and preliminary view of a potential value
23 under a going concern assumption."

24 At the beginning of that point we're flagging that
25 the work that we have done is probably less than the work

1 that we'd typically do to issue a valuation report under
2 our professional standards, and this is simply an
3 indication based on the information we have.

4 And then the second part of the first point talks
5 about a going concern assumption, so we've assumed that
6 the companies that we're trying to value will continue to
7 stay in business.

8 Q. And what was your understanding of how the values
9 would change if they didn't remain going concerns?

10 A. We would believe that if the companies were not
11 going concerns that they would be less -- worth less than
12 on a going concern basis.

13 Q. Do you know how much less?

14 A. No. We were never asked to do that.

15 Q. And do you know why it would be less?

16 A. If the company was not a going concern, the
17 opposite of that would be a liquidation scenario, and
18 that would be a situation where, as we talked about
19 earlier, that potentially the insurance regulators would
20 seize the assets of the insurance companies, and then
21 certainly the other assets would have to be sold,
22 you know, in a faster manner.

23 Q. Mr. Symons, the second bullet says that the
24 calculations are not intended to represent the value of
25 the assets at any time other than the effective date, and

1 then it notes changes in market conditions, et cetera.

2 A. Yeah.

3 Q. Can you explain that?

4 A. The effective date of the report is June 30, so
5 that's what we're saying in that first part.

6 "Changes in market conditions could result in
7 calculations of value substantially different than those
8 presented at the stated effective date. We assume no
9 responsibility for changes in market conditions or for
10 the inability of the owner to locate a purchaser of the
11 subject assets at the values" -- we're simply pointing
12 out here that the information we're using to do this work
13 is dated and that things may have changed since that
14 information was publicly available.

15 Q. So given that the limitations and assumptions
16 we've discussed and I believe some others that are
17 reflected in here, was it your professional judgment that
18 the value of AIG could be lower than the valuation
19 reflected in JX 105?

20 A. Yeah. We were never asked to say what -- to
21 answer that question at the time of this work, but it
22 would be difficult for me to answer that now.

23 Q. Okay. So if I asked you to quantify it, you
24 wouldn't be able to do that as -- either?

25 A. Yeah, I would not be able to quantify it.

1 Q. Then I won't.

2 And in conducting the valuation reflected in
3 JX 105, what assessment did Ernst & Young do of the risks
4 that the New York Fed was taking in extending a loan to
5 AIG?

6 A. We were never asked to quantify or comment on the
7 risk of the loan I don't think. I don't remember having
8 that conversation.

9 Q. Then can you describe what's the relationship
10 between a valuation such as this one and the risks an
11 entity is taking in a loan?

12 A. The connection between the valuation and the risk
13 of the loan? I personally -- you know, there's really
14 no -- they're two I believe, you know, distinct
15 discussions.

16 Q. And why is that?

17 A. We've been asked simply to value the company to
18 the best of our ability at this time. We were never
19 consulted on what our views were on the risk of the loan,
20 yeah, so...

21 Q. On the valuation, did you communicate the results
22 of your valuation to the New York Fed?

23 A. Yes.

24 Q. Do you recall if you explained to them that it was
25 just an estimate?

- 1 A. Yes. They would have understood that.
- 2 Q. If you could turn to JX 111 in the white binder.
- 3 A. Yeah.
- 4 Q. This is in evidence already.
- 5 If you could turn to page 2?
- 6 A. Yes.
- 7 Q. The memo from Sandy Krieger?
- 8 A. Uh-huh.
- 9 Q. Who is Sandy Krieger?
- 10 A. She works at the Fed.
- 11 Q. And did you work with her on this engagement?
- 12 A. Yes, I did.
- 13 Q. If you can look at -- well, first, do you recall
- 14 talking to her about your valuation on September 21,
- 15 2008?
- 16 A. My recollection is that our primary contact at
- 17 that point was only with Sarah Dahlgren.
- 18 Q. In the second paragraph, I believe the second
- 19 sentence, Ms. Krieger states, "The estimated values were
- 20 presented by (sic) the bank by Ernst & Young on
- 21 September 21, 2008."
- 22 Is that consistent with your recommendation --
- 23 your recollection?
- 24 A. That sounds right, yeah.
- 25 Q. And did you explain to them that it was an

1 estimate and subject to change as reflected in the next
2 sentence?

3 A. Yes. We would have, yeah.

4 Q. Do you recall the duration of the New York Fed's
5 loan to AIG as of September 2008?

6 A. The original duration, it was two years.

7 Q. And to what extent did your September 2008
8 valuation predict whether the collateral would hold
9 their value over the life of this at the time two-year
10 period?

11 A. We were never asked to do that type of work.

12 Q. Did you have discussions with the New York Fed as
13 to whether it should apply a haircut to any valuation it
14 used for AIG's collateral?

15 A. No.

16 Q. Is it true that Ernst & Young conducted additional
17 valuations of AIG?

18 A. Yes. There are updates to the report we were just
19 looking at, the September 21.

20 Q. And we walked through -- you know, we can show
21 them to you if it's helpful, but is it -- is it -- to
22 what extent, if any, did the limitations and assumptions
23 of the subsequent valuations change from the
24 September 21, 2008 valuation we just discussed?

25 A. I think the one that I've seen during this process

1 is October 3. It's the one that was the furthest out
2 from this date, and the limitations in that report are
3 similar.

4 Q. And in those subsequent reports or valuations, did
5 you at any time describe for the New York Fed the risk
6 that it was taking in its loan to AIG?

7 A. No. We were never really engaged to talk about
8 the risk of the loan.

9 Q. Never really or not at all?

10 A. Not at all.

11 MR. SCARLATO: I pass the witness, Your Honor.

12 THE COURT: All right. Redirect?

13 - - - - -

14 REDIRECT EXAMINATION

15 BY MR. BOIES:

16 Q. Good morning again.

17 You were just saying, in response to a question,
18 that the October 3 document is the one that was the
19 furthest out that you've seen during this process.

20 A. Yeah.

21 Q. What did you mean by "during this process"?

22 A. Both this -- your side and the government's side
23 have shown me documents during this process, and I --

24 Q. During your deposition?

25 A. I can't remember if I saw that during the

1 deposition or from the discussions I had with the
2 government in --

3 Q. When did you have discussions with the
4 government?

5 A. Just recently, not yesterday -- yesterday morning.
6 And then I had one other phone call with them while I was
7 still living in Hong Kong that lasted about half an hour.

8 Q. And when you met with the government yesterday,
9 did they show you documents?

10 A. Yes.

11 Q. Now, after October 3, Ernst & Young continued to
12 do valuations of AIG; correct?

13 A. I don't think we were asked to do a valuation of
14 the entire company again. That's my recollection.
15 During the early -- the late part of September, we did do
16 some valuation work on individual pieces of collateral
17 that were posted.

18 Q. After October 3, is it fair to say that you did
19 valuation work on collateral that had been posted to the
20 Federal Reserve Bank?

21 A. I honestly cannot remember the date, but it is
22 true that we did do valuations of collateral that -- as
23 it was posted. I can't remember if it was before or
24 after October 3.

25 Q. Do you recall that AIG continued to post

1 collateral as it drew down funds from the credit
2 facility?

3 A. That's correct.

4 Q. And did you have an understanding in 2008 that
5 under the credit agreement, the Federal Reserve Bank of
6 New York did not have to continue to fund unless in its
7 sole discretion it was satisfied with the collateral that
8 was being posted?

9 A. That was more of a legal issue, so that was not
10 something I dealt with, yeah.

11 Q. With respect to the valuations of the collateral
12 that Ernst & Young did, am I correct that the way it
13 would do the work is that each time AIG made a borrowing
14 request, Ernst & Young would update its valuations for
15 the collateral that had been previously posted and value
16 any new collateral that AIG had pledged in support of its
17 new borrowing request?

18 A. That's correct.

19 Q. And the Federal Reserve Bank then would determine
20 itself whether it believed that the collateral was
21 adequate to secure AIG's new borrowing request.

22 A. That's correct.

23 Q. And were you aware of whether or not the
24 Federal Reserve Bank of New York had information
25 available to assist it in valuing collateral in addition

1 to whatever Ernst & Young was doing?

2 A. I'm -- I don't know what other things they had
3 available.

4 Q. Let me ask you to turn to Joint Exhibit 105 that
5 counsel for the government --

6 A. This is the government's binder?

7 Q. Yes. In the white book.

8 A. Yeah. Okay.

9 Q. And they asked you about page 5.

10 A. Yes.

11 Q. I would like to go there.

12 And one of the things that is said here is that
13 your estimated values assume that AIG will not have its
14 rating downgraded by A.M. Best below A-minus.

15 Do you see that?

16 A. Uh-huh, I do.

17 Q. What was AIG's rating by A.M. Best at the time
18 that JX 105 was prepared?

19 A. I can't remember. I'm sorry.

20 Q. Was it above A-minus?

21 A. I honestly can't remember. I'm sorry.

22 Q. Did AIG's rating by A.M. Best, during the time
23 that you were working on this project, ever fall below
24 A-minus?

25 A. I honestly don't remember what the ratings were on

1 the company.

2 Q. Okay. Let me ask you to look at page 10.

3 And there are three columns with three different
4 discount rates.

5 Do you see that?

6 A. I do, yeah.

7 Q. And am I correct that the higher the discount
8 rate, the lower the valuation?

9 A. That's correct.

10 Q. And can you explain why that is so.

11 A. A discount rate takes a discount of money,
12 discounts it back to the current, the date of the report,
13 right, so the value of money is reduced based on a higher
14 discount rate.

15 Q. And how were these particular discount rates
16 chosen?

17 A. These would have been chosen by the actuaries we
18 had doing the valuation work from my team, and they would
19 have, based on their experience, chosen discount rates
20 that are normal in the industry.

21 Q. Does, as you understand it, the appropriate
22 discount rate at any given point in time vary depending
23 on what interest rates are being charged at that point in
24 time?

25 A. Based on my experience, that would be a true

1 statement.

2 Q. Let me ask you to look at Joint Exhibit 105 at
3 page 21.

4 And you told counsel for the government that at
5 the very top when you're talking about a going concern
6 assumption that this assumed that the companies that were
7 being valued would continue to be going concerns. Do you
8 recall that?

9 A. Yes.

10 Q. What were those companies?

11 A. They would be the companies that are referred to
12 earlier in the report, the ones that are listed on
13 page 14. Page 14 and 13 we list the companies.

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

15 THE COURT: All right. Thank you.

16 Anything further, Mr. Scarlato?

17 MR. SCARLATO: Extremely briefly, Your Honor.

18 - - - - -

19 RE-CROSS-EXAMINATION

20 BY MR. SCARLATO:

21 Q. Hello again, Mr. Symons.

22 Sticking with JX 105, please, and we'll start
23 where plaintiffs' counsel finished, the going concern
24 assumption you just testified about?

25 A. Yes.

1 Q. To what extent did this assumption include a going
2 concern assumption about the AIG parent company?

3 A. I think the going concern assumption that we state
4 in the limitations relates to the companies that we are
5 valuing in this report, so we weren't asked to value the
6 parent as a separate entity.

7 Q. At any time did Ernst & Young conduct an analysis
8 of an AIG parent company bankruptcy?

9 A. Say that again, please.

10 Q. At any time did Ernst & Young conduct a valuation
11 based on a parent company bankruptcy?

12 A. We were never asked to perform a valuation in a
13 bankruptcy scenario. And the AIG parent as a separate
14 entity, I can't recall us valuing that as a separate,
15 stand-alone entity, no.

16 Q. If you could turn now back to page 5 of JX 105.

17 A. Page 5, yeah.

18 Q. And Mr. Boies asked you about the assumption about
19 the A.M. Best downgrading below A-minus?

20 A. Yes.

21 Q. Given that assumption, is it fair to say AIG's
22 credit rating was above that at the time?

23 A. Honestly, I really can't remember. I'm sorry, but
24 I can't remember exactly what the rating was at that
25 point.

Starr International Company, Inc. v. USA

1 Q. Okay. And do you know what would have caused
2 A.M. Best to downgrade, so what would have happened that
3 would have made that assumption not true?

4 A. A.M. Best is primarily known for providing ratings
5 on the -- of insurance companies. And the concern would
6 have been that if parent AIG was downgraded, there would
7 be a notching effect and A.M. Best would downgrade some
8 of the insurance companies.

9 Q. Can you explain what you mean by "a notching
10 effect"?

11 A. A notching effect is oftentimes what the rating
12 agencies do is they'll rate the debt of one parent entity
13 and then automatically downgrade the subsidiaries below
14 it.

15 Q. That would be the insurance subsidiaries in this
16 case?

17 A. They -- well, in the context of this company, yes,
18 some of them would have been insurance companies, yeah.

19 Q. So did I hear you correctly that it's your belief
20 that a parent company downgrade would also affect the
21 insurance companies under this notching effect?

22 A. It certainly was a risk. Whether it would happen
23 for sure or not I'm not -- I don't work at a rating
24 agency, so -- but it was a risk that we were trying to
25 point out.

1 Q. And did that risk not come to light because the
2 New York Fed and the U.S. government provided assistance
3 to AIG over this period?

4 A. Repeat the question.

5 Q. Did that risk not come to -- did not happen
6 because the New York Fed and the government provided
7 assistance to AIG at this time?

8 A. I don't know if I could answer that question, if
9 the ratings were directly linked to something that the
10 government did.

11 Q. Do you recall if AIG was ever downgraded below
12 A-minus by A.M. Best?

13 A. I can't remember. Sorry.

14 MR. BOIES:

15 MR. SCARLATO: That's okay.

16 No further questions, Your Honor.

17 THE COURT: All right. Mr. Symons, thank you very
18 much for your testimony. You are excused.

19 THE WITNESS: Okay. Thank you.

20 MR. BOIES: Your Honor, plaintiffs call for their
21 next witness Ms. Kathleen Shannon.

22 THE COURT: Very well.

23 (Pause in the proceedings.)

24 MR. BOIES: We are moving so fast that the
25 witnesses aren't keeping up.

1 THE COURT: I've seen a parade of people come in,
2 but none of them appear to be Ms. Shannon.

3 (Pause in the proceedings.)

4 - - - - -

5 Whereupon --

6 KATHLEEN SHANNON

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

9 DIRECT EXAMINATION

10 BY MR. BOIES:

11 Q. Good afternoon, Ms. Shannon.

12 A. Good afternoon.

13 Q. I think we once met many years ago.

14 A. I think so.

15 Q. Would you tell the Court what your current
16 position is.

17 A. I'm retired.

18 Q. When did that happen?

19 A. I actually left active employment as of January 1,
20 2013.

21 Q. Prior to that, what was your position?

22 A. My last position at AIG was deputy general counsel
23 and -- for securities and I was senior vice president.

24 Q. And what was your position in 2008 and 2009?

25 A. In addition to being senior vice president and

1 deputy general counsel, I was corporate secretary.

2 Q. I'd like to direct your attention to the period of
3 September 2008, and in that connection we've put up there
4 two volumes. One is a volume of documents and the other
5 is a volume of your deposition.

6 Do you have that?

7 A. Yes.

8 Q. And I'd like to begin by directing your attention
9 to a document that is Joint Exhibit 96, which is already
10 in evidence, obviously.

11 This is an 8-K that was prepared September 18,
12 2008 and which you signed; correct?

13 A. Yes.

14 Q. And what was the procedure before an 8-K was
15 submitted? What steps would you undertake to ensure
16 that an 8-K for which you were the signatory was
17 accurate?

18 A. It would depend upon what -- what the 8-K was
19 about. But I would customarily consult with -- if I was
20 not -- if I was not the original drafter, I would consult
21 with everyone -- anyone that I thought was appropriate to
22 determine that they agreed that the document was -- was
23 correct and ready to be filed.

24 Q. Were you the original drafter of Joint Exhibit 96?

25 A. I do not think so. No.

1 Q. Were you present at the September 16 AIG board
2 meeting?

3 A. No, I was not.

4 Q. So is it fair to say that before signing this, you
5 would have consulted with people who were present to be
6 sure that what was being stated was accurate?

7 A. Yes.

8 Q. And was the general counsel of the company,
9 Ms. Kelly, present at that board meeting?

10 A. I don't recall whether she was or not. It
11 would -- the minutes would indicate whether she was
12 present or not.

13 Q. Did you review this 8-K with Ms. Kelly prior to
14 submitting it?

15 A. I don't remember who I reviewed it with.

16 Q. Was outside counsel involved in the preparation of
17 this 8-K?

18 A. Yes. I believe that this 8-K was in fact prepared
19 by outside counsel.

20 Q. Which outside counsel?

21 A. Sullivan & Cromwell.

22 Q. And do you know who at Sullivan & Cromwell?

23 A. I don't know who -- well, I don't know what
24 associate prepared it. I think Mr. Reeder was one of the
25 partners that would have been involved in overseeing the

1 preparation of it.

2 Q. And it is fair to say, is it not, that at the time
3 that you signed this 8-K that is Joint Exhibit 96, you
4 believed it to be true and accurate?

5 A. Yes.

6 Q. I'd now like to turn to a board meeting that took
7 place on September 21, 2008.

8 And you were present at that board meeting;
9 correct?

10 A. I believe that I was present, that the minutes
11 indicate that, yes.

12 Q. And am I correct that you also took notes during
13 that board meeting?

14 A. Yes. I think that board meeting was by phone, and
15 so I'm not quite sure where I -- where I was when I -- by
16 phone, but -- but I was present by phone --

17 Q. Okay.

18 A. -- and took notes, yes.

19 Q. And let me ask you to look at Plaintiffs' Trial
20 Exhibit 195.

21 Are these the notes that you took during the board
22 of directors meeting on September 21, 2008?

23 A. I believe that they are since that's the date at
24 the top of the notation and they are my handwritten
25 notes.

1 Q. This is in your handwriting.
2 A. Yes.
3 Q. And at the top you've written "BOD."
4 Do you see that?
5 A. Yes.
6 Q. And what does that stand for?
7 A. Board of directors.
8 Q. Prior to the board of directors meeting, were you
9 aware of what the subject matter of that meeting would
10 be?
11 A. I don't recall whether I was aware or not.
12 Q. Let me ask you to look at Plaintiffs' Trial
13 Exhibit 189.
14 THE COURT: Mr. Boies, is Plaintiffs' Trial
15 Exhibit 195 in evidence or --
16 MR. BOIES: I believe it is not yet in evidence,
17 Your Honor, and I would offer it.
18 THE COURT: Okay.
19 MR. TODOR: No objection.
20 THE COURT: Plaintiffs' Trial Exhibit 195 is
21 admitted.
22 (Plaintiffs' Exhibit Number 195 was admitted into
23 evidence.)
24 BY MR. BOIES:
25 Q. Do you have Plaintiffs' Trial Exhibit 189?

1 A. Yes.

2 Q. And this is an e-mail from Eric Litzky to a number
3 of people, including yourself, on September 21, 2008 at
4 3:03 p.m.

5 Do you see that?

6 A. Yes.

7 MR. BOIES: Your Honor, I would offer Plaintiffs'
8 Trial Exhibit 189.

9 MR. TODOR: Your Honor, we do not object to the
10 admission of the document. However, we note that there
11 are redactions, and to the extent that we have the
12 unredacted versions produced to us by AIG, we'd ask that
13 that be substituted at a later time.

14 MR. BOIES: Absolutely, Your Honor. If they have
15 the unredacted versions, we would certainly want to
16 substitute them.

17 MR. TODOR: And by having the documents we're
18 referring to the -- AIG made a production pursuant to an
19 agreement with counsel for Starr and counsel for the
20 United States on production of some AIG documents. I
21 don't have reason to believe that we would have an
22 unredacted version if Starr does not have the version.
23 However, if we can find it in our files, we will bring it
24 to everyone's attention.

25 THE COURT: So you don't know whether you have the

1 unredacted version or not?

2 MR. TODOR: I do not know.

3 THE COURT: Okay. Thank you.

4 Well, without objection, Plaintiffs' Trial
5 Exhibit 189 is admitted, subject to a possible
6 substitution if the complete document exists somewhere.

7 (Plaintiffs' Exhibit Number 189 was admitted into
8 evidence.)

9 BY MR. BOIES:

10 Q. Now, this is an e-mail that says, "Attached is a
11 summary of the draft Credit Agreement to be presented at
12 the AIG Board meeting tonight."

13 Do you see that?

14 A. Yes.

15 Q. And then there's a redaction and then it
16 continues, "The terms of the equity participation have
17 not yet been received. A summary of those terms will
18 follow as soon as possible."

19 Do you see that?

20 A. Yes.

21 Q. Do you recall where you were, that is, in what
22 city you were, the morning of September 21?

23 A. Yes.

24 Q. Where were you?

25 A. I took a train back from Washington, D.C. to

1 New York on -- leaving sometime in the morning of the
2 21st.

3 Q. Now let me go back to your notes, which are
4 Plaintiffs' Trial Exhibit 195, and I want to go through
5 some of those notes because, while your handwriting is
6 very clear, I want to get it into the record.

7 And let me ask you to turn to page 2.

8 And in the bottom of the page there is a reference
9 to ET.

10 Do you see that?

11 A. Yes.

12 Q. Who does that refer to?

13 A. I think, although I'm not certain without looking
14 at a list of the -- of the attendees, I think it probably
15 refers to Edmund Tse.

16 Q. Let me ask you to look at Joint Exhibit 103.

17 These are the minutes of the AIG board meeting on
18 September 21, 2008.

19 Do you see that?

20 A. Yes.

21 Q. And Mr. Edmund Tse is present; correct?

22 A. Yes.

23 Q. And where you have an "ET" in your notes referring
24 in this case to Edmund Tse and then you have something
25 next to it, is that the substance of what the individual

1 said?

2 A. It's at least what I felt necessary for me to
3 trigger in my mind what -- what his -- what he had said.
4 It may not be exactly, you know, what he said, but it was
5 my -- my -- enough to make me under- -- remember what he
6 said, what he said.

7 Q. And what have you written here with respect to
8 what Mr. Edmund Tse said?

9 A. "Don't particularly understand equity."

10 Q. And do you remember any more details of what
11 Mr. Tse said about this at the time?

12 A. No, I don't.

13 Q. Let me go to the top of the next page, page 3 of
14 Plaintiffs' Trial Exhibit 195. And there is a reference
15 to RC.

16 Do you see that?

17 A. Yes.

18 Q. And would that be Mr. Rodge Cohen?

19 A. Yes.

20 Q. And Mr. Cohen at this time was a senior partner at
21 Sullivan & Cromwell; correct?

22 A. Yes.

23 Q. And can you read what you have attributed to
24 Mr. Cohen.

25 A. "Fed Res." -- that's "Reserve" -- "has indicated

1 that if board of directors does not approve, they will
2 refuse to fund tomorrow."

3 Q. Then there is shortly beneath that an "MW."

4 Do you see that?

5 A. Yes.

6 Q. And is that also a Sullivan & Cromwell partner?

7 A. Yes.

8 Q. Who is that?

9 A. Michael Wiseman.

10 Q. And can you read what you have attributed to
11 Mr. Wiseman.

12 A. (as read) Try to preserve position. Approached
13 DPW and -- I guess -- I don't know whether it's Fed -- or
14 department I guess -- I think that's Department of
15 Treasury. EL made approach. Spoke to Tom Baxter -- made
16 it clear likely result would not fund and would call
17 note.

18 Q. Who is EL?

19 A. I think it's Ed Liddy.

20 Q. And when Mr. Wiseman said "made it clear likely
21 result would not fund and would call note," do you see
22 that?

23 A. Yes.

24 Q. What note was being referred to?

25 A. I believe it was the -- the demand note or notes

1 signed when we had received the funds earlier in the
2 week.

3 Q. Is this the \$37 billion that's referred to further
4 down the page next to Mr. Liddy's initials?

5 A. I think so. I mean, that seems to say that that's
6 what we had drawn at that time. I don't recall what --
7 how much we had drawn, but that would appear to indicate
8 that that is the amount that we had drawn between the
9 time when they first started to fund.

10 Q. Without necessarily remembering exactly how much
11 had been drawn, did you understand Mr. Wiseman to be
12 saying that, according to Mr. Baxter, if there was not
13 board of directors approval, the Federal Reserve would
14 likely not fund and would likely call whatever note was
15 then outstanding?

16 A. I don't have a recollection of this apart from
17 these notes, but that is what the notes -- what I would
18 interpret the notes to mean, yes.

19 Q. Let me ask you to turn to page 4.

20 And eight lines down, do you see where it says,
21 "GM doesn't think we had choice"?

22 A. Yes.

23 Q. Who is GM?

24 A. I believe that refers to George Miles.

25 Q. And can you read what you attribute to Mr. Miles.

1 A. "GM doesn't think we had choice -- concern that we
2 are in worse shape -- bigger embarrassment."

3 Q. And did you understand that what Mr. Miles was
4 doing was comparing what he thought the situation was on
5 September 21 and what he had thought the situation had
6 been earlier?

7 MR. TODOR: Objection. Leading.

8 THE COURT: Mr. Boies?

9 MR. BOIES: I think it is leading, Your Honor, but
10 I'm asking her to interpret --

11 THE COURT: I think it is, too.

12 MR. BOIES: -- her notes and -- let me try to
13 rephrase it.

14 THE COURT: All right.

15 MR. BOIES: Because I don't think there's any
16 reason that I have the right to lead in this particular
17 context.

18 THE COURT: All right.

19 MR. BOIES: At least at this point.

20 BY MR. BOIES:

21 Q. When Mr. Miles said "that we are in worse shape,"
22 what was he comparing, as you understood it?

23 A. I don't have a recollection of what I thought at
24 the time.

25 Q. Can you interpret your notes here?

1 A. I think that -- that he was expressing a concern
2 that the situation had not improved, that AIG's situation
3 had not improved during the time since we got the first
4 funding until this date.

5 Q. And when he refers to "bigger embarrassment," can
6 you provide the Court with any understanding as to what
7 is being referred to?

8 A. I don't -- I have -- I really don't know what --
9 what I was referring to, what he was referring to.

10 Q. Let me go down to the bottom of page 4, where
11 you've written "VR. Don't have a choice."

12 Do you see that?

13 A. Yes.

14 Q. Who is VR?

15 A. Can I look -- I don't remember who VR --

16 Q. Could that be -- if you look at Joint Exhibit 103,
17 does that refresh your recollection as to who VR might be
18 or is?

19 A. Oh. I guess I didn't realize she was still on the
20 board at that point in time.

21 Q. Yeah.

22 A. It's Virginia Rometty.

23 Q. And what did Ms. Rometty say?

24 A. You want me to read what --

25 Q. Yes.

1 A. -- what she said here.

2 Q. With respect to "don't have a choice," can you
3 explain what the context of that was.

4 A. I don't -- I -- I mean, I can read what it says,
5 but I don't have any -- I don't have any recollection
6 with respect to what -- what she was meaning.

7 Q. Okay. Let me go to the next page, where you have
8 at the top a reference to RB.

9 Do you see that?

10 A. Yes.

11 Q. And who is RB?

12 A. I believe it was Richard Beattie.

13 Q. And he was a senior partner at this time at
14 Simpson Thacher; is that correct?

15 A. Yes.

16 Q. And he was and had been for some time outside
17 counsel to the board of directors; is that correct?

18 A. Yes.

19 Q. And Mr. Beattie is said to have said "government
20 getting vote now."

21 Do you see that?

22 A. Yes.

23 Q. And then the next line says "shareholders do not
24 have to approve issuance of preferred."

25 Do you see that?

1 A. Yes.

2 Q. And as you understood it at the time, was
3 Mr. Beattie referring to the issuance of the convertible
4 voting preferred that ultimately was part of the credit
5 agreement?

6 A. I don't have any recollection, but I believe that
7 that's what the notes indicate.

8 Q. Then Mr. Beattie goes on to say "don't think it is
9 bad faith."

10 Do you see that?

11 A. Yes.

12 Q. And then SP says -- SB says "bad faith?"

13 Do you see that?

14 A. Yes.

15 Q. And SB is who?

16 A. Steve Bollenbach.

17 Q. And then Mr. Beattie -- well, let me ask you. The
18 next three lines say "thinks they realized they did not
19 want to run risk of Bear Stearns situation."

20 Do you see that?

21 A. Yes.

22 Q. Who, according to your notes, said that?

23 A. It's really not clear whether it's Mr. Beattie or
24 Mr. Cohen from -- from where -- from the way my notes
25 are.

1 Q. But it would be one or the other or the two of
2 them together; is that correct?

3 A. I believe. That's what -- what -- the way I would
4 interpret these notes, yes.

5 Q. The next line is a statement attributed to
6 Mr. Liddy; correct?

7 A. Yes.

8 Q. And that says "agree with discomfort of everyone
9 in room"; is that right?

10 A. Yes.

11 Q. And then the next statement is attributed to MO.
12 Who is that?

13 A. Morris Offit.

14 Q. And Mr. Offit says "don't see why we need to do it
15 tonight."

16 Do you see that?

17 A. Yes.

18 Q. And as you understood it, was the "it" in that
19 statement approve the credit agreement?

20 MR. TODOR: Objection. Leading.

21 THE COURT: Overruled. I'm going to take this
22 answer.

23 THE WITNESS: I don't have a recollection, but the
24 way I would read the notes now is that he was referring
25 to agreeing to -- agreeing to enter into the credit

1 agreement.

2 BY MR. BOIES:

3 Q. Now, at the bottom of the page, there is a
4 statement attributed to Mr. Beattie.

5 Can you read that?

6 A. You mean the one that's covered up by the --

7 Q. Yes.

8 A. I think, although -- I think it says, "Both law
9 firms are in accord on this," although I'm having
10 difficulty making sure that's right.

11 Q. That is how I read it as well, and if counsel for
12 the government has a different reading, I wouldn't mind
13 them saying so. But that's the way I would read it,
14 too.

15 The problem is, when this was produced, the stamp
16 that says "Produced Pursuant to the Court's Federal Rule
17 of Evidence 502(d) Order" was placed right on top of
18 this, this particular note.

19 Is this Mr. Beattie's --

20 MR. TODOR: We have no other reading of that
21 sentence.

22 MR. BOIES: Thank you.

23 BY MR. BOIES:

24 Q. Mr. Beattie's statement then continues on to the
25 next page at the top; correct?

1 A. Yes.

2 Q. And can you --

3 A. There's no other -- there's no other name, so I
4 think it's a continuation of his.

5 Q. Can you just read that note.

6 A. "This can go in haec verba in minutes. Explain
7 why would not be" and then "regard this as generally in
8 spirit of transaction."

9 Q. And then there is two portions that are redacted
10 for privilege; correct?

11 A. Yes.

12 Q. And did Mr. Beattie give legal advice on this
13 subject at this meeting?

14 A. I don't remember if he did or not. The redaction
15 would seem to indicate that it was, was privileged
16 material.

17 Q. Then let me go to the next page, page 7.

18 The second entry for Mr. Offit, do you see where
19 he says, "Fed gets it both ways"?

20 A. Yes.

21 Q. And can you read that entire note with respect to
22 Mr. Offit's statement.

23 A. "Fed gets it both ways. Not purely negotiated --
24 extremely uncomfortable."

25 Q. Then there is a statement attributed to JS.

1 Do you see that?

2 A. Yes.

3 Q. And who is that?

4 A. I -- I need to try to refresh my recollection as
5 to who is it.

6 Q. Absolutely. I think the minutes are JX 103.

7 Would it refresh your recollection if I drew your
8 attention to the reference to John Studzinski as a
9 participant?

10 A. Yes. I believe that that's who the reference is
11 to.

12 Q. Can you just read into the record what you
13 attribute to Mr. Studzinski.

14 A. (as read) Board of directors meeting.
15 Art Newman. 125 billion U.S. dollars breakup number --
16 number sign. Material erosion from bankruptcy --
17 shareholders would get zero -- zero, the number -- I mean
18 the number zero. Today more onerous could unravel at
19 faster rate as Asia, et cetera. 20 percent of something
20 is 100 percent -- versus -- vs 100 percent of nothing.
21 Embraced that bankruptcy had far too great a downside.
22 Not in position to negotiate.

23 Q. Thank you.

24 And then let me direct your attention to
25 page 8, and six lines up from the bottom of the page

1 there is a line referencing voting.

2 Do you see that?

3 A. Yes.

4 Q. Could you read that.

5 A. "All voted in favor individually."

6 Q. And then can you read the immediately following
7 statement by Mr. Liddy.

8 A. "We live to fight another day."

9 Q. Now, immediately after the board meeting, was
10 there an audit committee meeting?

11 A. Yes. The minutes indicate that there was.

12 Q. And did you understand the purpose of the audit
13 committee meeting?

14 A. I don't recall what I understood at that -- that
15 time. But I have no reason to dispute the minutes
16 that -- what's indicated in the minutes as the purpose of
17 the meeting.

18 Q. Let me ask you to look at Plaintiffs' Trial
19 Exhibit 196, which I would offer.

20 THE COURT: Mr. Boies, I'm thinking about a lunch
21 break. I'm willing to let you go further with this if
22 you want.

23 MR. BOIES: This is a convenient time to stop,
24 Your Honor.

25 THE COURT: Okay. Let's do that.

1 Let's reconvene at 1:45.
2 (Whereupon, at 12:47 p.m., a lunch recess was
3 taken.)
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1 and after the board meeting there was an audit committee
2 meeting on September 16; is that correct?

3 A. It's my understanding that there was such a
4 meeting, yes.

5 Q. Let me hand you a document that has been
6 previously introduced as Joint Exhibit 75.

7 I will note that there's some highlighting on the
8 document, but I am told that that highlighting was the
9 way it was produced to us.

10 These are minutes of the audit committee meeting
11 of September 16, 2008; correct?

12 A. That's what it says they are, yes.

13 Q. And you signed these minutes; correct?

14 A. I signed the minutes. It is my signature.

15 Q. Yes. Okay.

16 And in the minutes there is a resolution or
17 resolutions that the audit committee adopted beginning on
18 page 2.

19 Do you see that?

20 A. Yes.

21 Q. And who drafted these resolutions?

22 A. I don't know who did the draft. I believe that it
23 was probably Sullivan & Cromwell.

24 Q. Was it the practice to have outside counsel draft
25 board resolutions or audit committee resolutions?

1 A. It depended upon the topic of the resolutions.
2 Some were; some weren't.

3 Q. With respect to resolutions relating to the credit
4 facility, were those resolutions drafted by outside
5 counsel?

6 A. I believe that they were -- that the original
7 drafts were done by outside counsel, yes.

8 Q. The second whereas clause in this resolution says,
9 "Whereas, the Board has deemed it desirable and in the
10 best interests of the Corporation to enter into a secured
11 revolving credit facility with an aggregate principal
12 amount at any time outstanding not to exceed
13 \$85,000,000,000 to be entered into between the
14 Corporation and the Federal Reserve Bank of New York and
15 in connection therewith to issue warrants convertible
16 into 79.9 percent of the Corporation's common stock."

17 Do you see that?

18 A. Yes.

19 Q. And was that your understanding of the transaction
20 as of the time you signed these minutes?

21 A. I don't know what my understanding was -- I don't
22 remember what my understanding was at the time that I
23 signed the minutes.

24 MR. BOIES: Thank you.

25 Just for the record, Your Honor, I'm informed that

1 that highlighting that's on the document represents what
2 was originally redacted for privilege and then
3 subsequently produced to us.

4 THE COURT: That was my suspicion, but thank you
5 for clarifying.

6 BY MR. BOIES:

7 Q. You don't have any reason to doubt that that would
8 have been your understanding at the time you signed the
9 minutes; correct?

10 MR. TODOR: Objection. Leading.

11 THE COURT: I'll sustain the objection.

12 BY MR. BOIES:

13 Q. Do you have any reason to doubt whether or not it
14 would have been your understanding at the time you signed
15 the minutes that the statement in this whereas clause
16 would be correct?

17 MR. TODOR: Objection. Leading. Asked and
18 answered.

19 THE COURT: Overruled.

20 THE WITNESS: I have no reason to doubt that, that
21 I believed the minutes to be correct, them to be correct
22 at the time that I signed them.

23 BY MR. BOIES:

24 Q. Let me turn to the subject of these minutes more
25 generally.

1 You understood that these minutes related to
2 getting a waiver from certain New York Stock Exchange
3 rules; correct?

4 A. Well, I don't remember what I thought at the time,
5 but the subject of the minutes is that waiver, that type
6 of a waiver, yes.

7 Q. Let me ask you to look at Plaintiffs' Trial
8 Exhibit 115, which I would offer.

9 MR. TODOR: No objection, Your Honor.

10 THE COURT: All right. Plaintiffs' Trial
11 Exhibit 115 is admitted.

12 (Plaintiffs' Exhibit Number 115 was admitted into
13 evidence.)

14 THE WITNESS: I'm sorry. I can't find it.

15 BY MR. BOIES:

16 Q. It's a little confusing because in the beginning
17 there are joint exhibit numbers that run all the way
18 through and then the plaintiffs' exhibit numbers start
19 after that.

20 A. Okay. So they start after that. Okay. Sorry.
21 Now I have it.

22 Q. And at the bottom of the page on the first page
23 and the top of the second page, there is an e-mail to you
24 from Tanya H-O-O-S.

25 Do you see that?

1 A. Yes.

2 Q. And she writes, "As you know, we've been trying to
3 reach you to set up a call this morning to discuss last
4 night's news. As one of the discussion topics will be
5 our shareholder approval policy (in light of the more
6 than 20 percent equity issuance to the government), we
7 wanted to share with you the attached materials in
8 advance of the call."

9 Do you see that?

10 A. Yes.

11 Q. And the attached materials were the shareholder
12 approval policy of the New York Stock Exchange; correct?

13 A. That's what appears to be attached. Yes.

14 Q. Let me ask you to look next at Plaintiffs' Trial
15 Exhibit 251, which I would offer.

16 MR. TODOR: No objection.

17 THE COURT: Plaintiffs' Trial Exhibit 251 is
18 admitted.

19 (Plaintiffs' Exhibit Number 251 was admitted into
20 evidence.)

21 BY MR. BOIES:

22 Q. This is a series of e-mails back and forth between
23 you and Tanya Hoos and perhaps other people relating to
24 the issue of shareholder approval and the letter that
25 would go to shareholders with respect to waiving the

1 New York Stock Exchange rule on shareholder approval
2 requirements; correct?

3 A. Yes.

4 Q. Let me ask you to look at page 12.

5 And you are there transmitting a proposed press
6 release and letter to shareholders to the New York Stock
7 Exchange; correct?

8 A. Yes.

9 Q. And then on page 9, you write, "Counsel for the
10 New York Fed has requested that we not mention the ten
11 days in the letter or release."

12 Do you see that?

13 A. Yes.

14 Q. And the letter or release that is referred to
15 there is the letter to shareholders and the press release
16 describing the fact that the company has taken an
17 exception to the New York Stock Exchange rules; correct?

18 MR. TODOR: Objection. Leading.

19 THE COURT: Sustained.

20 BY MR. BOIES:

21 Q. With respect to the statement where it says,
22 "Counsel for the New York Fed has requested that we not
23 mention the ten days in the letter or release," what
24 letter are you referring to?

25 A. I don't have a recollection of it, but the context

1 of the e-mail, I believe it's a reference to the letter
2 to shareholders and the press release which are required
3 as part of the rule, the Stock Exchange rule, and what
4 you have to do in connection with using the exigent
5 circumstances exception to the rule.

6 Q. As you understood it in 2008, what was necessary
7 to do in order to use the exigent circumstances exception
8 to the rule?

9 A. I don't remember what I thought in 2008, but I
10 believe somewhere in the materials we looked at earlier
11 before lunch the copy of the rule was included there that
12 indicates what's necessary.

13 Q. Let me try to get that rule and put it in front of
14 you.

15 In the meantime, if you look at page 8, you write
16 an e-mail September 25, 2008 at 9:42 p.m.

17 Do you see that?

18 A. Yes.

19 Q. And to whom are you writing this e-mail?

20 A. It's addressed to Glenn W. Tyranski.

21 Q. And who is Mr. Tyranski?

22 A. He is one of the people at the Stock Exchange that
23 was involved in -- in -- you know, in this process.

24 Q. And you write, "For what it is worth, we have all
25 intentions of complying with the 'waiting period' but I

1 was told 'they don't want to give a roadmap for someone
2 to seek an injunction.'"

3 Do you see that?

4 A. Yes.

5 Q. Who told you that?

6 A. I don't -- I don't remember who it was.

7 Q. Was it somebody at AIG?

8 A. I don't believe that it was someone at AIG. No.

9 Q. Was it an outside counsel for AIG?

10 A. I don't think so. I think it was the -- the
11 prior e-mail in the chain, I believe it's the counsel
12 for the New York Fed that is referred to previously that
13 that's who the -- the -- would have given me that
14 advice.

15 Q. Did the Stock Exchange ultimately require that the
16 ten-day waiting period be referred to in the letter to
17 shareholders?

18 A. I believe that they did.

19 Q. Did the New York Stock Exchange ultimately permit
20 AIG to omit reference to the ten-day waiting period from
21 the press release?

22 MR. TODOR: Objection. Leading.

23 THE COURT: Overruled.

24 THE WITNESS: I don't remember whether they --
25 whether they did or not.

1 BY MR. BOIES:

2 Q. Let me ask you to look at Plaintiffs' Trial
3 Exhibit 249, which I would offer.

4 MR. TODOR: No objection.

5 THE COURT: Plaintiffs' Trial Exhibit 249 is
6 admitted.

7 (Plaintiffs' Exhibit Number 249 was admitted into
8 evidence.)

9 BY MR. BOIES:

10 Q. This is an e-mail to you, dated
11 September 25, 2008 at 5:24 p.m.

12 Do you see that?

13 A. Yes.

14 Q. And it shows a copy to Mr. Reeder at
15 Sullivan & Cromwell?

16 A. Yes.

17 Q. As well as John Brandow.

18 Do you see that?

19 A. Yes.

20 Q. Who is John Brandow?

21 A. He was a partner from Davis Polk.

22 Q. And who was the person who sent this e-mail?

23 A. Well, I don't know who Jose Macias is, but the
24 body of the e-mail indicates that John Brandow is who is
25 really sending it.

1 Q. Yes.

2 This was sent to you on behalf of John Brandow,
3 who is the signatory to the e-mail; correct?

4 A. Yes.

5 Q. And it says, "Kathy: Attached are proposed
6 revisions to the Press Release and Letter to
7 Shareholders. I discussed the changes briefly with
8 Bob Reeder. The point of the new language is to track
9 the Credit Agreement provision for when the
10 Preferred Stock will be issued and to avoid any
11 suggestion that the shareholders have a ten-day period
12 within which to try to prevent the issuance."

13 Do you see that?

14 A. Yes.

15 Q. And attached is both a draft letter and a draft
16 press release; correct?

17 A. Yes.

18 Q. Now, let me ask you to look at a document that has
19 been previously marked as Plaintiffs' Trial Exhibit 2838,
20 which I will hand up.

21 Do you recognize this document?

22 A. It says that it's an AIG notice. I don't -- I
23 don't -- on essentially press release -- AIG press
24 release letterhead. I don't -- I don't recognize it, but
25 that's -- I mean, I don't have any recollection of it,

1 but...

2 Q. Did you review the final AIG press release with
3 respect to the announcement of the definitive agreement
4 with the Federal Reserve for the credit facility and the
5 audit committee determination to implement the exception
6 to the New York Stock Exchange rules?

7 A. I don't remember if I did or not.

8 Q. Let me ask you to look at this document and see if
9 that refreshes your recollection that the press release
10 with respect to this transaction omitted reference to the
11 ten-day waiting period.

12 A. It doesn't refresh my recollection, but there is
13 no mention of the ten-day period in this press release.

14 MR. BOIES: Your Honor, I would offer
15 Plaintiffs' Trial Exhibit 2838.

16 MR. TODOR: Objection, Your Honor. This document
17 was not on plaintiffs' exhibit list, and the witness has
18 testified that it did not refresh her recollection.
19 Therefore, we do not see a basis for admission.

20 THE COURT: Mr. Boies?

21 MR. BOIES: He is right on both of those counts,
22 Your Honor. On the other hand, I think this is -- I
23 think it's a close call, but I think it's arguably
24 rebuttal in terms of trying to establish what happened
25 here. I do, however, recognize that it's a very close

1 call and I --

2 THE COURT: All right. I'm going to sustain the
3 objection. The document will not be admitted.

4 BY MR. BOIES:

5 Q. Let me ask you to look next at Plaintiffs' Trial
6 Exhibit 239.

7 This is an e-mail from an AIG shareholder to the
8 board of directors, dated September 24, 2008.

9 Did you see a copy of this e-mail?

10 A. I don't remember if I did or didn't see a copy at
11 the time.

12 Q. Do you recall, whether or not you remember seeing
13 this particular e-mail, that there were shareholders who
14 communicated to AIG and/or the AIG board with respect to
15 the substance of this e-mail?

16 A. I don't recall whether I saw or knew exactly what
17 was going on.

18 Q. Okay. In 2008, did you understand that the
19 exception to the New York Stock Exchange shareholder
20 approval rules could only be used if there was not enough
21 time between the determination to seek what was being
22 sought and the issuance of the stock?

23 A. I don't remember what I -- what I knew or thought
24 about that the rule required at that point in time.

25 Q. With the Court's permission, I'll put

1 Joint Exhibit 240 up on the screen. We don't have
2 copies of this particular document or multiple copies in
3 court.

4 And I would ask you to look on the screen to
5 page 96 of Joint Exhibit 240 and in particular to the
6 section 312.05.

7 And it says, "Exceptions may be made to the
8 shareholder approval policy upon application to the
9 Exchange when (1) the delay in securing stockholder
10 approval would seriously jeopardize the financial
11 viability of the enterprise."

12 Do you see that?

13 A. Yes.

14 Q. Does that refresh your recollection of what you
15 knew in 2008?

16 A. It doesn't refresh my recollection, but I
17 certainly had access to this in 2008.

18 Q. Recognizing that you don't recall this, do you
19 recall that you at least had read the rule in 2008?

20 A. I'm sure that I had at least read the rule in
21 2008, yes.

22 Q. And based on your experience at AIG, how long
23 would it have taken to secure a stockholder vote on the
24 issuance of the preferred stock?

25 A. It would have depended upon how long it would take

1 to get through the process, the preliminary proxy
2 process, but my expectation is that it would probably
3 take four to six weeks to get through -- to give the
4 requisite notice that was required and then to go
5 through -- get through -- get through the preliminary
6 proxy process with the SEC and then have the required
7 notice time thereafter before the shareholder meeting
8 could be held.

9 Q. Let me turn to another subject. And in that
10 connection, let me ask you to look at Plaintiffs' Trial
11 Exhibit 299, which I would offer.

12 MR. TODOR: No objection.

13 THE COURT: Plaintiffs' Trial Exhibit 299 is
14 admitted.

15 (Plaintiffs' Exhibit Number 299 was admitted into
16 evidence.)

17 BY MR. BOIES:

18 Q. This is an exchange of e-mails between you and
19 people at the New York Stock Exchange in October 2008,
20 October 14 and October 15, 2008; is that correct?

21 A. Yes.

22 Q. I want to direct your attention to what I think is
23 the second sentence of your e-mail, where you say, "We
24 will be preparing the proxy materials."

25 Do you see that?

1 A. Yes.

2 Q. You say, "We will be preparing the proxy materials
3 for the special meeting with my current expectation that
4 the meeting will be held in early December."

5 Do you see that?

6 A. Yes.

7 Q. When did you first begin preparing the proxy
8 materials for the AIG shareholder meeting that followed
9 October of 2008?

10 A. I don't -- I don't remember when we began the
11 preparation.

12 Q. Let me ask you to look at a document that is
13 already in evidence, which is Joint Exhibit 181.

14 This is an affidavit that you signed and submitted
15 in the so-called Walker litigation in Delaware; correct?

16 A. That's what it seems to be, yes.

17 Q. And if you look on the second page, you see your
18 signature?

19 A. Yes.

20 Q. And it has been notarized; correct?

21 A. Yes.

22 Q. Who drafted this affidavit?

23 A. I don't remember -- I don't know who drafted it.

24 Q. Let me begin, did you draft it?

25 A. No.

1 Q. Who presented it to you?

2 A. I don't remember who it was, but I believe that it
3 would have been AIG's internal litigation counsel.

4 Q. And do you know whether they drafted the affidavit
5 or it was drafted by somebody outside of --

6 A. I don't know.

7 Q. You attach a draft proxy statement dated
8 October 2, 2008.

9 Do you see that?

10 A. Yes.

11 Q. And this is headed S&C Draft of October 2, 2008.

12 Do you see that?

13 A. Yes.

14 Q. And who do you understand S&C to be?

15 A. Sullivan & Cromwell.

16 Q. When did you first see this Sullivan & Cromwell
17 draft of a proxy statement?

18 A. I don't remember.

19 Q. It would have been prior to February 24, 2009,
20 when you signed the affidavit; correct?

21 A. Yes.

22 Q. Would it have been in October of 2008, that is,
23 roughly contemporaneously with the preparation of the
24 draft?

25 A. I don't remember whether -- you know, when I first

1 saw or when I knew -- knew that Sullivan & Cromwell had
2 done a -- any type of draft.

3 Q. If you turn to page 6 of Joint Exhibit 181, do you
4 see a list of proposals to be brought before the meeting
5 of shareholders?

6 A. Yes.

7 Q. And do you see in the preceding paragraph there is
8 in brackets a proposed date of Wednesday, November 19,
9 2008 for the meeting. Do you see that?

10 A. Yes.

11 Q. And proposal number 1 is a proposal to amend the
12 restated certificate of incorporation of AIG to reduce
13 the par value of AIG's common stock from \$2.50 per share
14 to a small fraction of a penny per share and increase the
15 authorized shares of common stock from 5 billion to
16 19 billion shares.

17 Do you see that?

18 A. Yes.

19 Q. Did you have an understanding of what the purpose
20 of that proposal was?

21 A. I don't remember what I thought at that point in
22 time, but I believe I knew what the purpose was.

23 Q. And what was the purpose as you knew it?

24 A. To have adequate shares for the conversion of the
25 Series C preferred stock, it was the charter amendment

1 that was -- the charter amendment required prior to the
2 stock becoming convertible.

3 Q. Ultimately, the shareholder meeting was not held
4 until June 30, 2009; correct?

5 A. Yes. There was -- the -- the annual meeting was
6 held on June 30. There was no special meeting.

7 Q. Thank you.

8 This proxy contemplated a special meeting before
9 the annual meeting; is that correct?

10 A. Yes.

11 Q. And was there a special meeting held?

12 A. No.

13 Q. The next annual meeting was held on June 30, 2009;
14 correct?

15 A. Yes.

16 Q. Let me ask you to look at Joint Exhibit 221, which
17 is in your binder.

18 And this is the proxy statement for that annual
19 meeting; is that correct?

20 A. It seems to be excerpts of the proxy statement for
21 that meeting, yes.

22 Q. Yes.

23 And as I should have said right at the beginning,
24 your binder has excerpts from lengthy documents, and if
25 at any time you want to see the entire document, just let

1 me know, and we'll give it to you.

2 If you would look at page 2 of the June 5, 2009
3 proxy statement, you see the business that is going to be
4 transacted at the annual meeting; correct?

5 A. Yes.

6 Q. Is there a proposal here in this June 5, 2009
7 final proxy statement comparable to the proposal
8 number 1 that we looked at in the October 2 draft?

9 A. No.

10 Q. Do you know why?

11 A. I don't -- I don't remember why the decision was
12 made not to go forward on that charter amendment.

13 Q. As of June 2009, did you have any understanding
14 that there was believed to be an alternative way of
15 implementing the change of preferred stock to common
16 stock?

17 A. I don't think that I had at -- in June of 2009, I
18 do not think that I had any -- was thinking in any way
19 about the alternative -- about any alternatives to the
20 conversion of the preferred stock.

21 Q. Insofar as you were aware, as of June 2009, was
22 anyone at AIG or the Federal Reserve Bank of New York
23 considering alternative ways of changing the preferred
24 stock that had been provided in connection with the
25 September 22 credit agreement into common stock?

1 A. Not so far as I was aware.

2 Q. Let me ask you to look at proposal number 4, which
3 is a proposal to amend AIG's certificate of incorporation
4 to effect a reverse stock split of AIG's outstanding
5 common stock at a ratio of one for twenty.

6 Do you see that?

7 A. Yes.

8 Q. In the Sullivan & Cromwell October 2, 2008 draft
9 proxy statement that we looked at, there was no proposal
10 for a reverse stock split; correct?

11 A. Yes, that's correct.

12 Q. When were you first aware that anyone was
13 proposing a reverse stock split?

14 A. I'm not sure when I first started to think about a
15 reverse stock split as a way of increasing the trading
16 price of AIG common stock so that there was less chance
17 of us being delisted from the Stock Exchange, but I
18 started thinking about it because the price -- at some
19 point along the line I started thinking about it because
20 it was -- the price was so close to one and I think what
21 was -- had gone under one at various points in time.

22 Q. As you understood it in June of 2009, was there
23 any purpose for the twenty-to-one reverse stock split
24 other than to increase the AIG stock price and avoid
25 delisting?

1 A. Not that I was aware of.

2 Q. Let me ask you to look at Plaintiffs' Trial
3 Exhibit 401, which I would offer.

4 MR. TODOR: No objection.

5 THE COURT: Plaintiffs' Trial Exhibit 401 is
6 admitted.

7 (Plaintiffs' Exhibit Number 401 was admitted into
8 evidence.)

9 BY MR. BOIES:

10 Q. At the time of the exchange of e-mails that is
11 represented by Plaintiffs' Trial Exhibit 401, which was
12 January, early January of 2009, at this point was a
13 shareholder vote on reducing the par value of AIG common
14 stock and increasing the authorized number of shares of
15 AIG common stock still being contemplated?

16 A. I don't remember whether it was or wasn't.

17 Q. Do you recall whether or not the idea for a
18 reverse stock split had surfaced?

19 A. As I said a moment ago, I don't remember when,
20 when I first started thinking about it, so I don't know
21 if it was -- I don't know when it was, so I'm not sure
22 whether I knew. My -- I think I -- it was probably prior
23 to this, but I don't -- I don't remember.

24 Q. Let me ask you to look at Plaintiffs' Trial
25 Exhibit 420, which I would offer.

1 MR. TODOR: No objection, Your Honor.

2 THE COURT: Plaintiffs' Trial Exhibit 420 is
3 admitted.

4 (Plaintiffs' Exhibit Number 420 was admitted into
5 evidence.)

6 BY MR. BOIES:

7 Q. These are a series of e-mails on the subject of
8 shareholder vote from early February 2009.

9 Do you see that?

10 A. Yes.

11 Q. I don't believe you are shown as an addressee or
12 copyee on these e-mails, but Ms. Kelly, among others,
13 is.

14 Did she ever share these e-mails with you at the
15 time?

16 A. I don't remember if she did or didn't.

17 Q. Let me ask you to look at the e-mail in the middle
18 of the first page, which is an e-mail from
19 Joseph Allerhand, dated February 4, 2009 at 5:34 p.m.

20 A. Yes.

21 Q. And you see that that goes to a number of people
22 at or representing AIG and at or representing the
23 Federal Reserve Bank?

24 A. Yes.

25 Q. The first sentence says, "Etan et al., here is a

1 quick recap of where we ended up.

2 "We all continue to believe that it makes sense
3 for a multitude of good reasons not to have a separate
4 class vote on 'conversion' now at the annual meeting."

5 Do you see that?

6 A. Yes.

7 Q. Did anyone share with you, at or about this time,
8 that there had been an agreement not to have a separate
9 class vote on "conversion" at the annual meeting?

10 A. I don't remember whether it was shared with me or
11 not.

12 Q. Let me ask you to look at Plaintiffs' Trial
13 Exhibit 401, which I would offer.

14 MR. TODOR: Your Honor, this document was recently
15 admitted into evidence?

16 THE COURT: Yes, we just admitted this a few
17 moments ago.

18 MR. BOIES: Thank you, Your Honor.

19 BY MR. BOIES:

20 Q. If you look on the first page down at the
21 bottom -- and this is an e-mail from Ms. Kelly to
22 Marshall Huebner and other Davis Polk people on which you
23 are copied?

24 A. Yes.

25 Q. And one of the subjects is special shareholder

1 meeting.

2 Do you see that?

3 A. Yes.

4 Q. And Ms. Kelly writes to Mr. Huebner, "I wanted to
5 get to you this week about the need to have the
6 Special Shareholders Meeting."

7 Do you see that?

8 A. Yes.

9 Q. Is it fair to say that as of January 8, there was
10 still a contemplation of a special shareholders meeting?

11 A. I don't recall, but this -- that's what I would
12 understand this e-mail to be indicating, yes.

13 Q. And when we go to Plaintiffs' Trial Exhibit 420,
14 which we just looked at a minute ago, where there is the
15 statement about not having a separate class vote at the
16 annual meeting, do you see that?

17 A. Yes.

18 Q. By February 4, had a decision been made not to
19 have a special meeting?

20 A. Well, I don't remember when that decision was
21 made, but the language in this e-mail from Joe Allerhand,
22 I would -- would expect that the sentence -- the second
23 sentence "makes sense to amend the relevant agreements to
24 change the provision requiring AIG to call a special
25 meeting to a provision providing the discretion to the

1 Trustees to decide when to ask AIG to call a meeting for
2 the class vote on 'conversion'" is a reference to that,
3 to the special meeting. And to me, that would indicate
4 that it has not yet been determined because this
5 provision -- it says that the provision requires us to
6 call a special meeting.

7 Q. And the provision requiring AIG to call a special
8 meeting to have a shareholder vote on reducing the par
9 value and increasing the number of authorized shares was
10 something that had been contained in the amended credit
11 agreement; correct?

12 MR. TODOR: Objection. Leading.

13 THE COURT: Sustained.

14 BY MR. BOIES:

15 Q. Where was the provision requiring AIG to call a
16 special meeting contained?

17 A. I'm -- I don't remember in which document it was.
18 It was in one of the agreements. I don't know whether it
19 was in the -- in the agreements with respect to the
20 preferred stock itself or in the -- or in the -- or in
21 the credit agreement. I'm just not sure what agreement
22 it was in.

23 Q. Do you recall whether or not there were any
24 amendments to the credit agreement?

25 A. I know that there were amendments to the credit

1 agreement. I can't remember when they were or what was
2 included in ones, but I do -- I do remember that there
3 were -- that there were at least one or two amendments to
4 the agreement.

5 Q. And do you recall that the amendments to the
6 credit agreement were filed with the SEC as part of 8-Ks?

7 A. I'm sure that the -- I don't recall, but I'm sure
8 that -- that they would have been -- that any amendments
9 would have been material -- changes -- would have
10 required under the rules that we file an 8-K to include
11 them.

12 MR. BOIES: Your Honor, with the Court's
13 permission, I'm going to display on the screen
14 Joint Exhibit 147. We handed up all of our copies
15 earlier today.

16 BY MR. BOIES:

17 Q. This is entitled Amendment Number 2 to Credit
18 Agreement.

19 Do you see that?

20 A. Yes.

21 Q. And it says "Amendment dated as of November 9,
22 2008 to the Credit Agreement dated as of September 22,
23 2008"?

24 A. Yes.

25 Q. And if you go to page 9, there is a heading

1 Stockholder Vote.

2 Do you see that?

3 A. Yes.

4 Q. Where it says, "AIG's board will call a meeting of
5 stockholders as soon as practicable after the issuance of
6 the Preferred Stock"?

7 A. Yes.

8 Q. At that meeting, the stockholders, with the common
9 stockholders voting as a separate class, will vote on,
10 among other things, reducing the par value and increasing
11 the number of authorized shares of common stock.

12 A. Yes.

13 Q. Does that refresh your recollection that the
14 requirement to call a special meeting that was referred
15 to in Plaintiffs' Trial Exhibit 420 came from this
16 amendment to the credit agreement?

17 A. I don't have a separate recollection of it, but
18 that's certainly the way I read this agreement, this
19 amendment to the agreement.

20 Q. And did there come a time when that provision
21 that's referred to in Plaintiffs' Trial Exhibit 420
22 requiring AIG to call that special meeting was changed?

23 A. My understanding is that, yes, that it was
24 changed from a requirement from the language that's
25 saying that AIG's board will call a meeting to different

1 language.

2 Q. And is it your understanding that that amendment
3 was dated as of April 17, 2009?

4 MR. TODOR: Objection. Leading.

5 THE COURT: Sustained.

6 BY MR. BOIES:

7 Q. Let me ask you to look at Joint Exhibit 207.

8 This is a document that is already in evidence,
9 and it is a document that is signed on page 4.

10 Do you see that?

11 A. Yes.

12 Q. And who signed that?

13 A. It's my electronic signature on the 8-K.

14 Q. And what is the date of that?

15 A. April 17, 2009.

16 Q. And you attach amendment number 3 to the credit
17 agreement; correct?

18 A. Yes.

19 Q. And what is the date of amendment number 3 to the
20 credit agreement?

21 A. April 17, 2009.

22 Q. And was this the amendment that changed the
23 requirement to hold the special meeting with a common
24 shareholder class vote?

25 A. I'd have to page through it to try to find it.

1 Q. If I could direct your attention to page 17 and
2 the paragraph that is opposite the heading Stockholder
3 Vote.

4 A. Yes. This is language saying that "The Trust will
5 have the right to cause AIG's Board of Directors to call
6 a special meeting or, if so elected by the Trust, direct
7 the following amendments be considered at an annual
8 meeting," and that's the provision that we were talking
9 about, yes.

10 Q. And the reference to the annual meeting describes
11 what the stockholders will vote on at that annual
12 meeting; correct?

13 A. Yes. If elected by the trust.

14 Q. And as you understood it in 2009, would an issue
15 of a common shareholder class vote to increase authorized
16 shares and decrease par value be included or not included
17 in the absence of a decision by the trust?

18 A. I don't remember what I was thinking at the time,
19 but this language indicates that the trust will have the
20 right to cause the board of directors to have that
21 amendment -- these amendments considered at the annual
22 meeting.

23 Q. And does it set out what the matters at the annual
24 meeting will be in the absence of the trust making that
25 decision?

1 A. Well, the first sentence of that paragraph says
2 that the stockholders -- at the annual -- at AIG's
3 2009 annual meeting, the stockholders will vote on, among
4 other things, amendments to AIG's certificate of
5 incorporation to (i) permit the board of directors to
6 issue classes of serial preferred stock that are not of
7 equal rank and to cause AIG's Series D Fixed Rate
8 Cumulative Perpetual Preferred Stock and any other
9 series of serial preferred stock subsequently issued to
10 the United States Department of the Treasury to rank
11 senior to the preferred stock and any other subsequently
12 issued series of serial preferred stock that is not
13 issued to the United States Department of the Treasury
14 and (ii) eliminate any restriction on the pledging of all
15 or substantially all of the property or assets of AIG.

16 Q. Do any of those items include a class vote of the
17 common shareholders?

18 A. The items that I just read in the first thing?

19 Q. Yes.

20 A. No, they do not.

21 Q. Just one more area.

22 And I want you to look now back at Plaintiffs'
23 Trial Exhibit 420, which is the e-mail dated February 4,
24 2009, in which it is stated, "We all continue to believe
25 that it makes sense for a multitude of good reasons not

1 to have a separate class vote on 'conversion' now at the
2 annual meeting."

3 And I'd like you to take that and either take it
4 out of your binder or just continue to look at it and at
5 the same time look at Joint Exhibit 181.

6 Now, in Joint Exhibit 181, you submit an affidavit
7 to the Delaware court attaching a draft proxy statement
8 that provides for a special meeting and a proposal to be
9 voted on at that special meeting of reducing the par
10 value of AIG's common stock and increasing the number of
11 authorized shares from 5 billion to 19 billion.

12 Do you see that?

13 A. Yes.

14 Q. I understand that you were not copied on
15 Plaintiffs' Trial Exhibit 420 and do not recall whether
16 you were informed of it at that time, but if you had
17 been informed of that at that time, would you still have
18 been prepared to submit this affidavit to the Delaware
19 court?

20 MR. TODOR: Objection. Beyond the rational
21 perception of the witness.

22 THE COURT: Overruled. I'm going to take her
23 answer to this.

24 THE WITNESS: The statement in the affidavit says
25 that the draft proxy statement reflects AIG's conclusion

1 by that date that the Delaware -- cite to the Delaware
2 statute "requires a class vote by the holders of AIG's
3 common stock on any vote to amend AIG's Restated
4 Certificate of Incorporation to increase the number of
5 authorized common shares or to decrease the par value of
6 the shares of common stock, and AIG's determination that
7 any vote would be conducted in accordance with Delaware
8 law."

9 The -- I don't think there's anything in the draft
10 that -- in my affidavit that says that the -- that goes
11 to timing of when AIG -- you know, when this vote would
12 be conducted.

13 And the affidavit goes on to state that no
14 shareholder vote has been scheduled and no preliminary
15 proxy materials have been filed, and so I don't think
16 there's anything in this, in my affidavit, that doesn't
17 remain -- that doesn't remain correct in February.

18 Q. What, as you understood it, was the purpose of
19 attaching to this affidavit this draft proxy statement
20 that is pages 5 and 6 that was purportedly a draft for a
21 proxy statement for a special meeting at which there
22 would be a vote on par value and number of authorized
23 shares?

24 A. I don't -- I don't remember why I was asked to
25 sign this affidavit, to submit it. I was not really

1 involved in the litigation, and I don't -- I don't know
2 why -- don't remember why I was -- what I was told as
3 with respect to why they wanted this submitted.

4 Q. As the person who signed this affidavit, did you
5 understand that there was at least an implication to the
6 Court that the draft that you were attaching was still
7 operative, still relevant?

8 MR. TODOR: Objection. Leading.

9 THE COURT: Overruled. I'll take the answer here.

10 THE WITNESS: Could you -- I'm sorry.

11 BY MR. BOIES:

12 Q. Sure.

13 A. Could you repeat it.

14 Q. As the person who signed this affidavit, did you
15 understand that there was at least an implication to the
16 Court, when you attached this October 2, 2008 draft, that
17 that draft was somehow relevant to your affidavit and to
18 the court proceeding?

19 A. I don't remember any of the details surrounding
20 this, but I would have assured myself that I was
21 comfortable that the -- that what was being submitted
22 was appropriate and accurate to the best of my
23 knowledge.

24 Q. If you had known that the October 2, 2008 draft
25 that you attached to your affidavit had been superseded,

1 would you have still attached that draft without
2 identifying to the Court that it had been superseded?

3 A. I'm not sure that I understand what superseded,
4 you know, what -- what you mean by "superseded" and
5 whether there -- if I were -- whether if I were aware
6 that there was a subsequent draft, whether it -- whether
7 it -- I'm not -- whether it changed the substance of what
8 was included, you know. I don't -- I don't know
9 whether -- whether a -- whether a subsequent draft was --
10 would have been relevant or not to -- to whether -- to
11 what was being submitted.

12 Q. If you had known on February 24, 2009 that there
13 was no longer an intent to have a special meeting, would
14 you have submitted a draft proxy statement relating to a
15 special meeting?

16 A. I don't know what I would have done because I
17 don't know what the circumstances were at the time and
18 what -- what -- the reason why this was being submitted.
19 I just -- I don't know enough.

20 Q. Let me ask one more question.

21 If you'd known, at the time you did this
22 affidavit, that there was no longer an intent to have a
23 requirement for a separate class vote on par value and
24 authorized shares, would you have submitted this
25 affidavit and this draft proxy statement talking about

1 such a proposal to be voted on?

2 MR. TODOR: Objection. Asked and answered.

3 THE COURT: Overruled.

4 THE WITNESS: I don't think I understood your
5 question correctly because I don't think that there was a
6 decision made that a separate class vote was not
7 necessary. If the shares were to be converted, a
8 separate class vote would be required at some point in
9 time.

10 The e-mail from Mr. Allerhand says that "not to
11 have a separate class vote on 'conversion' now at the
12 annual meeting." I don't think it says that there would
13 necessarily not be one at some point in the future.

14 BY MR. BOIES:

15 Q. Was a separate class vote ever held?

16 A. No.

17 Q. Were the preferred shares ultimately converted
18 into common shares?

19 A. No.

20 Q. How were they changed into common shares?

21 A. They were exchanged for common shares.

22 Q. And when was the first consideration that you're
23 aware of of exchanging them for common shares developed?

24 A. In connection with the restructuring, the plan of
25 restructuring and recapitalization or whatever it ended

1 up being called in late two thousand -- in the fall of
2 2010 I think it was before the restructuring occurred in
3 early 2011.

4 Q. Just for clarity of the record, there have been
5 two things that have been talked about. There's been a
6 restructuring that's been talked about in March-April of
7 2009 and a recapitalization that's been talked about in
8 the fall of 2010, and I just want you --

9 A. My reference is to the recapitalization --

10 Q. Yes.

11 A. -- not the restructuring.

12 Q. That's what I understood.

13 A. I'm sorry.

14 MR. BOIES: Thank you, Your Honor. I pass the
15 witness.

16 THE COURT: All right. Cross-examination?

17 - - - - -

18 CROSS-EXAMINATION

19 BY MR. TODOR:

20 Q. Good afternoon, Ms. Shannon.

21 We haven't met before. My name is John Todor.

22 I'm an attorney from the Department of Justice, and I
23 represent the defendant in this case, the United States.

24 You were asked some questions about that document
25 JX 181, the affidavit you were just asked about by

1 plaintiffs' counsel?

2 A. It's 181? Is that what it was?

3 Q. 181.

4 A. Yes.

5 Q. I'll direct your attention to paragraph 5 of the
6 affidavit.

7 The first sentence of the affidavit states, "The
8 Series C Preferred Stock that was the subject of the
9 draft proxy statement has not yet been issued"; correct?

10 A. Yes.

11 Q. Then the affidavit states, "No shareholder vote
12 has yet been scheduled concerning the amendment of AIG's
13 Restated Certificate of Incorporation to increase the
14 number of authorized shares of AIG common stock or to
15 reduce the par value of the common stock in order to
16 permit conversion of the Series C Preferred Stock into
17 common stock, and no preliminary proxy materials have
18 been filed with the SEC"; correct?

19 A. Yes.

20 Q. And those statements were accurate, to your
21 knowledge, when you filed the affidavit; correct?

22 A. Yes.

23 Q. You were asked some questions about the draft
24 proxy on page 6 of that affidavit; correct?

25 A. Yes.

1 MR. BOIES: Your Honor, I'm going to object to
2 leading questions. And if it's an issue, I'd like to
3 have a discussion outside the presence of the witness.

4 THE COURT: Very well.

5 Ms. Shannon, can I ask you to excuse yourself into
6 the hallway just briefly?

7 THE WITNESS: I will use the ladies' room.

8 THE COURT: Oh. Very well. This is a good
9 opportunity.

10 (Whereupon, the witness was not present in open
11 court.)

12 THE COURT: Yes, Mr. Boies.

13 MR. BOIES: Your Honor, I believe that this
14 witness qualifies as an adverse witness on my side. She
15 was prepared by the government in part. We have been at
16 odds with AIG in this litigation with respect to a number
17 of issues. We are attacking her affidavit as misleading
18 at a minimum.

19 I did not seek to lead her because I think
20 that -- and the Court will obviously make its own
21 judgment, but I think she is somebody that is quite
22 susceptible to being led, and I did not want to do that.

23 But I do think that it is inappropriate for the
24 government to conduct its examination with leading
25 questions for the same reason it would have been

1 inappropriate with the prior witnesses.

2 THE COURT: Did plaintiffs' counsel meet with
3 Ms. Shannon in advance of the trial?

4 MR. BOIES: We did not, Your Honor.

5 THE COURT: Mr. Todor, did the government meet
6 with Ms. Shannon?

7 MR. TODOR: Not to my knowledge, Your Honor.
8 Counsel for AIG and Ms. Shannon's own separate counsel
9 met with her. If the Court wishes to inquire into those
10 counsel whether anyone else was present, but not -- to my
11 knowledge, government counsel or government advisors were
12 not participating in Ms. Shannon's prep sessions.

13 We would also mention that Ms. Shannon is adopted
14 into the plaintiff class in this case, and therefore, she
15 actually is an adverse party to the government.

16 THE COURT: Oh, as a former AIG --

17 MR. TODOR: As a shareholder.

18 THE COURT: -- shareholder?

19 MR. TODOR: Yes.

20 MR. BOIES: Your Honor, I'm not sure whether the
21 government lawyers directly met with her or not, but I
22 don't think they're prepared to represent that they did
23 not through her lawyer help prepare her for this
24 testimony. I think that is the fact, and at least in the
25 absence of a very clean representation from them that

1 that is not the fact, I think she is clearly adverse to
2 us.

3 I think she's adverse to us anyway for the reasons
4 that I stated. I mean, we are attacking her affidavit as
5 a misleading representation to the Delaware court. She
6 says that she doesn't remember it, somebody else prepared
7 it, and I'm prepared probably to believe that, but
8 nevertheless she signed and notarized it.

9 And I think the context of this is that she's
10 clearly an adverse witness, and I think it creates a very
11 misleading record, particularly for a very leadable
12 witness, to permit the government to lead in this
13 circumstance.

14 THE COURT: Do you want the last word, Mr. Todor?

15 MR. TODOR: Nothing in addition to what I've
16 asked. If the Court wishes to inquire with counsel for
17 AIG or the witness' counsel as to, you know, what their
18 preparation arrangements were, the Court is free, but as
19 far as I'm aware, I know I was not involved in any
20 meetings with the witness and I'm not aware of anyone
21 else on the government's side who was.

22 THE COURT: I'll tell you what. We're getting
23 close to a point for a break anyway. Why don't we take
24 15 minutes at this point, and I'll mull this question
25 over briefly and I'll get back to you after the break.

1 MR. TODOR: Thank you, Your Honor.

2 THE COURT: We'll reconvene at 3:25.

3 (Court in recess.)

4 THE COURT: I presume Ms. Shannon is still in the
5 hallway? Well, I don't see her anywhere.

6 I'll tell you what, ladies and gentlemen, I think
7 this is an area where, as the trial judge, I have
8 discretion to do things that I believe are the most fair
9 under the circumstances.

10 And during the break, we double-checked to see if
11 Ms. Shannon also was on the government's witness list,
12 and she is, and she's there as a "will call" witness, and
13 so at this stage of the case, the government is welcome
14 to examine her about anything that they think is helpful
15 to their case.

16 AIG is not a party to the case, so they're sort of
17 in between here as I see it. During Mr. Boies'
18 examination, I didn't perceive any alliance or bias
19 toward the plaintiffs' side of the case, so I'm going to
20 say for this witness and possibly for other AIG
21 witnesses, to the extent there are any, that there will
22 be no leading questions either during direct or cross.

23 Now, you're welcome to try to establish if you
24 wish that this witness is adverse to your interests, and
25 I'd be happy to reconsider it if there was new

1 information that came to light on this subject. But I
2 think at least as of the present I'm going to say no
3 leading questions.

4 MR. TODOR: Your Honor, I understand your ruling.

5 In respect to the issue that came up before the
6 break with respect to the preparation for Ms. Shannon,
7 AIG's counsel is present in the courtroom and is prepared
8 to address the Court regarding the preparation. But they
9 did inform us that government counsel or people
10 contracted by the government were not involved in the
11 preparation, but if the Court would like to hear from
12 them, counsel from AIG is here in the courtroom.

13 THE COURT: Well, I think it's -- the situation is
14 basically as you represented it; right? There's nothing
15 new?

16 MR. TODOR: Yes, Your Honor.

17 THE COURT: Okay. So we can go ahead.

18 MR. TODOR: Thank you, Your Honor.

19 THE COURT: All right.

20 Any questions? Okay. All right.

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

23 THE COURT: Ms. Shannon, thank you very much for
24 your patience. I want you to know that we were not
25 talking the whole time you were gone. We took a break

1 ourselves for the last few minutes.

2 So at this point Mr. Todor can go ahead with his
3 examination.

4 BY MR. TODOR:

5 Q. Welcome back, Ms. Shannon.

6 A. Thank you.

7 Q. You've been handed up a white binder.

8 Do you have that in front of you?

9 A. Yes.

10 Q. I'd like to ask you to turn to the tab in the
11 binder marked DX 728. The DXs are in the front of the
12 binder.

13 And is this an e-mail you received as part of your
14 duties at AIG?

15 A. I don't remember it, but yes, that's what it
16 appears to be.

17 MR. TODOR: Your Honor, we move the admission of
18 DX 728.

19 MR. BOIES: No objection, Your Honor.

20 THE COURT: Defendant's Exhibit 728 is admitted.

21 (Defendant's Exhibit Number 728 was admitted into
22 evidence.)

23 BY MR. TODOR:

24 Q. The "from" line on the e-mail refers to a
25 Jordan Kovler at dfking.com?

1 A. Yes.

2 Q. What is D.F. King?

3 A. They were AIG's proxy solicitor at this point in
4 time.

5 Q. I'll direct your attention to the page of the
6 document right after the Bates 298709. There's what
7 appears to be a page marked Reverse Stock Split. Could
8 you please tell me when you're there, ma'am.

9 A. Yes. This page, Potential Reverse Stock Split
10 Estimated Cost?

11 Q. Yes, ma'am.

12 A. Okay.

13 Q. Is this a presentation you received from
14 D.F. King?

15 A. That's what it -- what it seems to be, yes.

16 Q. And directing your attention to the next page of
17 the document?

18 A. Yes.

19 Q. There is a statement that "D.F. King has been
20 asked to assess the estimated cost of paying out
21 fractional shares held by shareholders in a reverse stock
22 split, contemplated at the following ratios."

23 Do you see that?

24 A. Yes.

25 Q. To your knowledge, was D.F. King asked to do

1 that?

2 A. Yes.

3 Q. Was the cost of paying out fractional shares a
4 consideration AIG had in implementing a reverse stock
5 split?

6 A. Yes.

7 Q. There are five ratios listed there: 5:1, 10:1,
8 15:1, 20:1 and 25:1.

9 Do you see that?

10 A. Yes.

11 Q. Were those ratios that AIG was considering as of
12 the date of this presentation?

13 A. I don't know -- I don't recall what we were
14 considering, but I'm not sure that we were actually
15 considering them. We asked D.F. King to do an analysis
16 of a range. I don't know whether we were really
17 considering all those in the range or not.

18 Q. Turn your attention to the document marked
19 DX 956.

20 A. Yes.

21 Q. And there is e-mail marked from a Jon Aronson?

22 A. Yes.

23 Q. Who is Mr. Aronson?

24 A. He was my executive assistant at this point in
25 time.

1 Q. Okay. This is marked as an e-mail from
2 Mr. Aronson to Mr. Eric Litzky, titled Summary of Terms
3 of Senior Bridge Facility; is that correct?

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

5 MR. TODOR: Your Honor, we move the admission of
6 DX 956.

7 MR. BOIES: No objection, Your Honor.

8 THE COURT: Defendant's Exhibit 956 is admitted.
9 (Defendant's Exhibit Number 956 was admitted into
10 evidence.)

11 MR. TODOR: Your Honor, may I have a moment?

12 THE COURT: Sure.

13 (Pause in the proceedings.)

14 MR. TODOR: Your Honor, we pass the witness.

15 THE COURT: Thank you, Mr. Todor.

16 Any redirect?

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

19 THE COURT: Sure.

20 (Pause in the proceedings.)

21 MR. BOIES: No, Your Honor, nothing further.

22 THE COURT: All right. Ms. Shannon, you get off
23 pretty easy this afternoon. Thank you very much for your
24 testimony in this matter. You are excused.

25 THE WITNESS: Thank you.

1 MR. BOIES: Your Honor, we call as our next
2 witness Mr. James Head, and Ms. Rutherford will examine
3 Mr. Head.

4 THE COURT: All right.

5 I was wondering when you were going to swing into
6 action here.

7 (Pause in the proceedings.)

8 MS. RUTHERFORD: Your Honor, we're going to try
9 and do this witness very quickly because this is his
10 second time down from New York, so as soon as he makes
11 his appearance, we'll try and swing into action.

12 THE COURT: Okay.

13 - - - - -
14 Whereupon --

15 JAMES HEAD

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

18 DIRECT EXAMINATION

19 BY MS. RUTHERFORD:

20 Q. Good afternoon, Mr. Head. How are you?

21 A. Good afternoon.

22 Q. I'm Alanna Rutherford. You may remember me from
23 your deposition?

24 A. I do.

25 Q. Do you currently work at Morgan Stanley?

1 A. Yes.

2 Q. And how long have you worked there?

3 A. Twenty years.

4 Q. And what's your focus at Morgan Stanley?

5 A. Mergers and acquisitions.

6 Q. At some point in the fall of 2008, were you
7 contacted by the government?

8 A. Yes.

9 Q. And why were you contacted by the government?

10 A. Morgan Stanley was contacted by the government to
11 assist them in assessing the challenges at AIG. I guess
12 it was the morning of the 15th of September.

13 Q. If you look at your podium, you have two binders
14 there. One is your deposition and one --

15 A. Okay.

16 Q. -- are exhibits.

17 If you could turn to Plaintiffs' Exhibit 72 or
18 it's PTX 72?

19 A. And that's in the witness binder or the
20 deposition?

21 Q. The witness binder.

22 A. Thank you.

23 PT 72 you said?

24 Q. PTX 72.

25 A. PTX 72.

1 Sorry. I'm having trouble finding it.

2 Q. There should be a series of JXs and then PTXs and
3 it's all in chron- -- it's all in numerical order.

4 A. I see. There it is. It was hiding.

5 Q. Got it.

6 A. Thank you.

7 Q. Is PTX 72 a document you've seen before?

8 A. Yes. I recall this document from the testimony
9 back in February.

10 Q. Are you familiar with this document?

11 A. I had not -- I don't recall seeing it until you've
12 showed it to me in February of this year.

13 Q. Is it a Morgan Stanley document?

14 A. Yes, it's a Morgan Stanley document.

15 MS. RUTHERFORD: I'd move for admission of PTX 72.

16 MR. SCARLATO: Your Honor, two things. I think,
17 first, this is an incomplete piece of a larger document
18 from my recollection. And secondly, I'm not sure the
19 witness has any personal knowledge that would permit the
20 admission of this exhibit.

21 MS. RUTHERFORD: Okay. I'll establish a
22 background if that's okay.

23 THE COURT: Sure.

24 BY MS. RUTHERFORD:

25 Q. This document says on the top "To Do List"; is

1 that correct?

2 A. That's correct.

3 Q. And it's dated Tuesday, September 16, 2008.

4 A. Correct.

5 Q. The first thing it has here is "3:30 a.m. Draft
6 press release" and in parentheses "MS."

7 A. Right.

8 Q. Do you know what "MS" stands for on the document?

9 A. I'm assuming this was Morgan Stanley, the acronym
10 for Morgan Stanley.

11 Q. Did Morgan Stanley draft a press release on
12 September 16?

13 A. I don't know the answer to that question. I
14 wasn't involved in drafting a press release.

15 Q. At the time of your -- you were the
16 30(b)(6) witness at your deposition; is that correct?

17 A. Right.

18 Q. In preparation for that deposition, did you
19 research the issue?

20 A. I did not.

21 Q. You did not.

22 Can I ask you -- the next item says "Draft term
23 sheet" and it also has "MS" next to it.

24 Did Morgan Stanley draft a term sheet?

25 A. It's my understanding they did.

1 Q. That Morgan Stanley did draft --

2 A. Morgan Stanley did.

3 Q. Do you know who drafted the term sheet?

4 A. It's my understanding that Kevin Ryan was a member
5 of the team that did that.

6 Q. Could you turn to JX 71, which is in the front of
7 your binder.

8 A. Okay.

9 Q. I'd like you to take a look at this document and
10 let me know whether this is the term sheet that Mr. Ryan
11 drafted.

12 (Pause in the proceedings.)

13 A. It looks like a term sheet that Morgan Stanley
14 drafted. Yes.

15 Q. I'd like you now to take a look at Plaintiffs'
16 Exhibit 76.

17 A. Is that different?

18 Q. Sorry?

19 A. Is that different?

20 Q. Yes. Plaintiffs' Exhibit 76.

21 It will be in the same exhibit binder.

22 A. So I'm looking at 71. Sorry. I'm not -- oh,
23 PTX 76.

24 Q. Yes.

25 A. Thank you.

1 Q. Does this -- is this a document that
2 Morgan Stanley drafted?

3 A. It looks like an e-mail from Pete Juhas. Yes.

4 Q. And it's on -- the title of the document -- the
5 subject is Draft Press Release; is that correct?

6 A. Okay. Yeah.

7 Q. Would this be the draft press release that
8 Morgan Stanley drafted on September 16?

9 A. That looks like it, yes.

10 MS. RUTHERFORD: I move for admission of PTX 76.

11 MR. SCARLATO: No objection, Your Honor.

12 THE COURT: Plaintiffs' Trial Exhibit 76 is
13 admitted.

14 (Plaintiffs' Exhibit Number 76 was admitted into
15 evidence.)

16 BY MS. RUTHERFORD:

17 Q. If you look at the document -- at Plaintiffs'
18 Exhibit 76, the third paragraph says, "As consideration
19 for providing this facility, AIG will grant to the
20 Federal Reserve warrants to purchase [79.9] percent of
21 the common stock of AIG at an exercise price of [\$XXX]
22 per share."

23 Do you see that?

24 A. Yes.

25 Q. Was it your understanding on September 16 that the

1 Federal Reserve was entering into an agreement with AIG
2 with the form of equity being warrants?

3 A. I don't recall on that date what the form of
4 equity was, but based on these two exhibits, I think that
5 states that they were warrants.

6 Q. Do you have any understanding or any recollection
7 of understanding what the form of equity would be between
8 September 16 and September 20, 2008?

9 A. No.

10 THE COURT: Mr. Head, swing that microphone a
11 little bit closer to where you're speaking.

12 THE WITNESS: Oh, I'm sorry.

13 THE COURT: Yeah. Perfect.

14 BY MS. RUTHERFORD:

15 Q. Let me show you -- would your recollection have
16 been stronger at your -- at the time of your deposition a
17 year ago than it would be today?

18 A. I -- I don't know what my recollection was back
19 then versus now in terms of facts and circumstances.
20 These are -- I'm telling you what I know today.

21 Q. Okay. If you'd turn to your deposition binder,
22 page 82.

23 A. Okay.

24 Q. If you look at line 14, I asked you, "Was it
25 Morgan Stanley's understanding as of the morning of the

1 16th that the form of equity would be warrants?" And you
2 said, "Yes."

3 Does that refresh your recollection as to what you
4 understood on September 16, 2008?

5 A. Yeah. I'm sorry if I was inconsistent. I looked
6 at these last two exhibits and it said warrants, and so I
7 said yes, warrants.

8 Q. Okay. I thought --

9 A. Okay.

10 Q. -- you were saying you did not recall.

11 A. Yeah.

12 Q. Okay.

13 I'd like you to turn to Plaintiffs' Exhibit 303.

14 Is this the engagement agreement between
15 Morgan Stanley and the Federal Reserve Bank of New York?

16 A. Yes. That is correct.

17 MS. RUTHERFORD: I'd move for admission of
18 Plaintiffs' Exhibit 303.

19 MR. SCARLATO: No objection, Your Honor.

20 THE COURT: Plaintiffs' Trial Exhibit 303 is
21 admitted.

22 (Plaintiffs' Exhibit Number 303 was admitted into
23 evidence.)

24 BY MS. RUTHERFORD:

25 Q. Who ultimately signed the engagement agreement on

1 behalf of Morgan Stanley?

2 A. I did.

3 Q. Did Morgan Stanley -- if you notice on page 7, the
4 agreement is dated October 17, 2008.

5 A. Yes.

6 Q. Was that the date that Morgan Stanley started
7 working with the Federal Reserve Bank of New York with
8 respect to AIG?

9 A. No. We signed the letter on the 17th, but we had
10 been working the previous -- and this is recollection --
11 the previous weeks trying to help them get organized.

12 Q. If you look on the next page, page 8, there's
13 something called Schedule I, Identified Transactions?

14 A. Yes.

15 Q. Could you explain what that is, please.

16 A. It -- in the engagement letter, we had a variety
17 of different activities that we performed. One was just
18 kind of a general advisory role.

19 The second was advising the Federal Reserve Bank
20 on several large potential M&A transactions. We listed
21 these schedule identified transactions as the ones that
22 were -- that we would advise directly on.

23 Q. Turning to page 13, on June 18, 2009, did
24 Morgan Stanley amend its engagement agreement with the
25 Federal Reserve?

1 A. Yes.

2 Q. What was the purpose of that amendment?

3 A. So approximately nine months had passed on the
4 engagement. The -- as we all know, there were several
5 restructurings of the -- of the facility as well as
6 Treasury securities, and the evolution of the
7 restructuring of AIG was in a different place than it was
8 back in the fall of 2008.

9 This update reflects other tools that the
10 Federal Reserve was going to use with respect to capital
11 markets transactions as well as other potential M&A
12 transactions as part of the overall restructuring.

13 Q. How many Morgan Stanley employees worked on the
14 AIG engagement on behalf of the New York Fed?

15 A. I estimated this before, but to my recollection,
16 it was probably a hundred individuals throughout the firm
17 in different disciplines.

18 Q. Were any of them located on-site at AIG?

19 A. No one was seconded to either the Federal Reserve
20 or AIG, but I would say a core team of individuals was
21 there practically every day, usually at the
22 Federal Reserve Bank of New York.

23 Q. Did you have office space at the Federal Reserve
24 Bank of New York?

25 A. I think we had a couple conference rooms but

1 not -- nothing formal.

2 Q. I'd like you to turn to Joint Exhibit 222. It's
3 an e-mail from you to several people, including --

4 A. All right. Hold on. I'm just trying to find the
5 222. I apologize.

6 Q. It's about the fifth document in the binder.

7 A. There you are.

8 Q. Do you have it?

9 A. Yes.

10 Q. It's an e-mail from you to several people at the
11 Federal Reserve Bank of New York, including

12 Sarah Dahlgren. And it's called -- the subject is

13 "Summary of Morgan Stanley work to date."

14 Do you see it?

15 A. Yes.

16 Q. Turning to page 3 of the document, it's entitled
17 Scope of Original Engagement?

18 A. Bear with me. I've got page 3 of the document --
19 oh, you mean --

20 Q. I'm sorry. Page 3 of 17?

21 A. -- page 4. Okay. Sorry. Yeah. Page --

22 Q. On the bottom?

23 A. Yep.

24 Q. The third bullet says the "Scope of Morgan Stanley
25 as financial advisor to the Federal Reserve Bank of

Starr International Company, Inc. v. USA

1 New York encompassed the consideration and execution of
2 various strategic alternatives for AIG, including:
3 Proposed divestitures of certain material businesses."

4 Do you see that?

5 A. Yes.

6 Q. How many divestitures did Morgan Stanley work on,
7 approximately?

8 A. To clarify, we -- we bifurcated between smaller
9 divestitures where we monitored on behalf of the
10 Federal Reserve Bank, so that was probably I'm guessing
11 twenty or so.

12 On the listed divestitures which we just looked at
13 a couple exhibits ago, the bigger ones, we were much more
14 involved, some of which never actually happened, some
15 like ALICO actually did happen, so there was probably
16 five to eight bigger ones that we actually were engaged
17 in.

18 Q. How are you defining smaller versus bigger?

19 A. I think probably the smallest listed transaction
20 might be somewhere in the neighborhood of \$5 billion.
21 But those were the most material to the collateral and
22 the evaluation of the overall company, so anything above
23 five billion roughly.

24 Q. Just to be clear, so Morgan Stanley worked on
25 divestitures of transactions over \$5 billion; is that --

1 A. Yeah. And in the engagement letter there is a --
2 we were kind of a full advisor where we were very
3 hands-on in terms of being involved with understanding
4 the assets and being part -- understanding what was
5 going on in the negotiations on those larger
6 transactions.

7 On the smaller ones, we were in a little bit more
8 of a monitoring aspect on behalf of the Federal Reserve.

9 Q. If you'd turn to the next page, page 4, it says
10 "Activities" -- the title of the page is Activities to
11 Date - First 9 Months?

12 A. Yes.

13 Q. Additional -- under Additional Activities,
14 point 6 says "Rating agency and investor relations
15 advice."

16 Could you explain what Morgan Stanley's role was
17 with the rating agencies.

18 A. We -- because of our knowledge of the business at
19 that point and our expertise -- certain individuals had
20 expertise on the rating agency decision-making -- one
21 member of our team actually participated in the
22 discussions between AIG and the rating agencies as an
23 observer. And the sole purpose of that was to help
24 provide advice to AIG to put themselves in the best
25 position so that it didn't get downgraded.

Starr International Company, Inc. v. USA

1 Investor relations was -- was a similar vein,
2 helping provide advice around the quarterly earnings
3 releases and general advice.

4 Q. Did Morgan Stanley review all of the investor
5 relations information that went out to the public?

6 A. I'm not sure all, but we -- we oftentimes
7 reviewed the earnings press releases, which was a
8 primary element of interaction with the investors, so
9 there was a -- material aspects of the press releases
10 and things like that we usually were asked for our
11 opinion.

12 Q. How frequently did Morgan Stanley interact with
13 the rating -- AIG's rating agencies?

14 A. I don't -- I don't know whether that was a
15 monthly occurrence, but in the September two
16 thousand -- October 2008 through at least March or April
17 of 2009 there was a fair amount of concern by the rating
18 agencies, so I would -- I would assume that that would
19 have been more, you know, maybe on a monthly basis.
20 Thereafter, it dissipated in terms of intensity because
21 the ratings had been stabilized at the company.

22 Q. How frequently did Morgan Stanley interact with
23 the New York Fed or Treasury on ratings issues?

24 A. It was a -- almost a daily discussion because the
25 ratings on the businesses were so core to their health,

1 their viability, and how they performed in the
2 marketplace, but also the rating agency implications were
3 a fundamental part of any of the restructuring actions
4 that were undertaken here.

5 Q. Was Morgan Stanley ever asked advice about
6 replacements for executive-level AIG positions?

7 A. We -- we often got asked to say if we knew
8 anybody that would -- could be, you know, almost a part
9 of the search process as they were looking for new
10 executives to bolster their staff. But we never made
11 recommendations one way or the other about whether
12 actions should be taken.

13 Q. How -- when you say "often," how frequently
14 were -- was Morgan Stanley asked to provide this advice?

15 A. I would say a handful of times in the early stages
16 of the assignment. There was a view that they needed
17 more talent as part of the organization, and so I think a
18 lot of the advisors were asked that very question, do you
19 know anybody that's good and could help out.

20 Q. I'm going to show you Plaintiffs' Exhibit 166.

21 Oh, it's not in there?

22 A. Yeah. Sorry.

23 Q. Sorry. I thought it was in your binder.

24 A. Thank you.

25 Q. Would this be an example of the type of advice you

1 would be providing to the government concerning potential
2 people to fill positions?

3 A. Well, it -- if I'm reading this correctly, it was
4 a recommendation for a qualified person that might be
5 helpful if they're ever looking for one, so I guess that
6 would be consistent with what I described.

7 MS. RUTHERFORD: And I'd ask to move in
8 Plaintiffs' Exhibit 166.

9 MR. SCARLATO: No objection, Your Honor.

10 THE COURT: Plaintiffs' Trial Exhibit 166 is
11 admitted.

12 (Plaintiffs' Exhibit Number 166 was admitted into
13 evidence.)

14 BY MS. RUTHERFORD:

15 Q. Turning back to Joint Exhibit 222, this time
16 page 17?

17 A. Is this the Additional Services and Support page?

18 Q. That's correct.

19 A. Okay.

20 Q. The fourth major heading down, it says one of the
21 additional services that Morgan Stanley provided was
22 asset guarantee advice.

23 Do you see that?

24 A. Bear with me.

25 Oh, yeah. Understood. Yeah.

1 Q. And the first subbullet says "Discussion of asset
2 guarantee as potential government tool to stem investment
3 losses."

4 Do you see that?

5 A. Yes.

6 Q. Could you explain what that means?

7 A. Well, asset guarantee was -- it was a tool that
8 could be both very specific and narrow but also broader,
9 so I'm not sure whether this was described as something
10 to an asset guarantee against a pool of assets, an asset
11 guarantee against a specific subsidiary or kind of an
12 asset guarantee against the financial products arena.

13 But having said that, this was a tool that was
14 used throughout or at least a tool that was discussed as
15 a potential option.

16 Q. It was a tool that was discussed throughout
17 the --

18 A. Engagement.

19 Q. -- engagement with --

20 A. Yes.

21 Q. -- for AIG.

22 A. Can we use an asset guarantee on this to solve
23 this problem, for instance.

24 Q. The next bullet says "Daily meetings with AIG and
25 Federal Reserve Bank of New York teams to assess

1 feasibility, structure, potential third-party
2 participation and other key issues" as related to the
3 asset guarantees.

4 Were you involved in those discussions?

5 A. I'm not sure I was in a daily discussion with
6 this, but it was often enough that it was pretty
7 consistent.

8 Q. What kind of -- well, I'll leave it there.

9 Did -- were conclusions reached as to whether the
10 Federal Reserve Bank of New York compiled -- could
11 provide an asset guarantee to AIG?

12 MR. SCARLATO: Your Honor, if I could just
13 limit -- make sure that the witness limits his answer to
14 a yes or no for privilege reasons.

15 THE COURT: Sure.

16 THE WITNESS: Okay. Sorry. Could you repeat the
17 question just so --

18 BY MS. RUTHERFORD:

19 Q. Was a conclusion reached as to whether the
20 Federal Reserve Bank of New York could provide an asset
21 guarantee to AIG?

22 A. Yes.

23 Q. Was there a decision as to whether an asset
24 guarantee would be provided to AIG?

25 A. Is this -- is this a yes-or-no question?

1 MS. RUTHERFORD: I'm not quite sure what the
2 scope of the privilege objection is that's being raised,
3 but...

4 THE COURT: I'm unclear on that myself,
5 Mr. Scarlato. How do these questions implicate a
6 privilege potentially?

7 MR. SCARLATO: Your Honor, we just have concern
8 that they're asking for what the legal basis was whether
9 a guarantee was acceptable or not. We would not want the
10 witness to divulge the content of any attorney-client
11 communication, but so far we're on okay ground.

12 MS. RUTHERFORD: Because I do not believe the
13 witness is a lawyer I will not solicit the legal basis
14 for it.

15 THE COURT: Okay.

16 MR. SCARLATO: Thank you, Your Honor.

17 THE WITNESS: Okay.

18 BY MS. RUTHERFORD:

19 Q. I think you probably need the last question.

20 My question was: Was there a decision as to
21 whether an asset guarantee could be provided to AIG?

22 A. Yes.

23 Q. Did the Federal Reserve Bank of New York provide
24 an asset guarantee to AIG?

25 A. Not in the -- I'll call it in the broad sense,

1 no.

2 Q. What do you mean by that?

3 A. Meaning guaranteeing all the assets or liabilities
4 of AIG.

5 Q. Was any form of asset guarantee provided to AIG?

6 A. Well, I think in the -- I think you could argue
7 that the ML II or ML III might be part of a narrower
8 solution around a specific pool of assets.

9 Q. Does that -- does Maiden Lane II qualify as an
10 asset guarantee in your mind?

11 A. I -- I -- when -- that's why at the beginning of
12 this conversation I said there's a whole variety of asset
13 guarantees. The questions you just asked were about the
14 big asset guarantee, meaning all of AIG, you know, assets
15 and liabilities. There was no asset guarantee matched on
16 that. Whether it was very specific, narrower things
17 where there were guarantees in pools of assets,
18 et cetera, I -- I thought ML II and ML III might be an
19 example of that.

20 Q. Sticking for a moment to the larger asset
21 guarantee as you call it, the broader asset guarantee --

22 A. Yeah.

23 Q. -- were there multiple discussions about
24 providing AIG with a guarantee for -- for all its
25 liabilities?

1 MR. SCARLATO: Your Honor, if I may impose a
2 suggestion, to the extent Ms. Rutherford wants to ask
3 about conversations with AIG directly, we will have no
4 objections to this line of questioning.

5 MS. RUTHERFORD: If I may, Your Honor, I just
6 wanted to know if there were discussions. I didn't say
7 who with or --

8 MR. SCARLATO: Well, it was a broad question.
9 That was my point.

10 THE COURT: Well, to me, you can ask any question
11 you want, and we'll see what the answer is and then we'll
12 see whether there's an objection.

13 THE WITNESS: There were discussions about broad
14 asset guarantees.

15 BY MS. RUTHERFORD:

16 Q. Because Mr. Scarlato asked, were those
17 discussions with the Federal Reserve Bank of New York or
18 Treasury?

19 A. Yes.

20 Q. And were there multiple discussions about this?

21 A. Yes.

22 Q. Not attempting to solicit any privileged
23 conversations, but do you know why a broad asset
24 guarantee was not provided to AIG?

25 MR. SCARLATO: Your Honor, if I -- if -- if

1 Ms. Rutherford wants to ask his understanding of why, I
2 would accept that.

3 BY MS. RUTHERFORD:

4 Q. Do you have an understanding as to why a broad
5 asset guarantee was not provided to AIG?

6 A. Yes. A broad understanding, yes.

7 Q. Could you explain, please.

8 A. Yeah. The broad guarantee represented an
9 unlimited liability by the government, meaning
10 open-ended. And for I think -- and this is my
11 recollection. I don't have all the facts. I'm not an
12 expert in accounting, governmental accounting, but it is
13 my understanding that there were constraints both in
14 terms of the accounting for AIG, whether it will be
15 consolidated onto the books of the United States
16 government, or just the economic aspect of an unlimited
17 potential risk.

18 That's my recollection.

19 Q. Do you have an understanding as to why an asset
20 guarantee was not provided? Just a -- sorry.

21 Withdrawn.

22 Do you know -- do you have an understanding of
23 whether an asset guarantee could have been provided to
24 AIG?

25 A. I don't know. I just identified two of the big

1 constraints that I recall that inhibited the ability to
2 put in an asset guarantee.

3 Q. Was the fact that AIG would have to be
4 consolidated onto the Federal Reserve Bank of New York's
5 books, as you just testified to, a significant concern in
6 the -- during discussions?

7 A. It was a factor. I -- I don't recall whether it
8 was a significant concern. I just recall it being a --
9 an element of or a constraint as to why that might have
10 not occurred.

11 Q. Was there any discussion of providing AIG with a
12 collateralized guarantee?

13 A. The nomenclature, I'd have to have an example of
14 what that might be versus collateralized guarantee. I
15 understand "guarantee," I understand "collateralized,"
16 but --

17 Q. Sure.

18 Was there any discussion of providing AIG a
19 guarantee in which AIG provided the government assets
20 that would provide --

21 A. Right. I don't recall a specific discussion on
22 that, on that topic.

23 Q. Okay. What kind of guarantees were discussed
24 other than the very broad guarantee?

25 A. And over the -- over the life of the engagement,

1 the broad guarantees, right, which I just described, were
2 discussed. And the rating agencies were actually,
3 you know, wondering whether that was part of the -- part
4 of the equation. You know, or very specific guarantees
5 or what -- we might call them keep-well arrangements with
6 insurance subsidiaries.

7 So a keep-well arrangement is a commitment to
8 inject capital if the capital ratios get lower at a
9 insurance subsidiary, so is that a guarantee? You know,
10 in our nomenclature in the toolbox it was one of the
11 tools that was bandied about as a potential guarantee
12 option, so there were very specific ones and there were
13 broader ones.

14 Q. And any other types of --

15 A. So keep-well arrangements. I am certain that
16 there was discussions about whether the financial
17 products area with all their trading positions could
18 be -- you know, could have guarantees to make sure that
19 that -- that the trading book would stabilize and you
20 could find -- buy a little bit more time to potentially
21 liquidate the positions, so those were kind of part of
22 the dialogue.

23 Q. Turning to a different subject, were you involved
24 in any way with the credit facility?

25 A. If you're referring to the September 15 and 16,

1 2008 term sheet?

2 Q. I wasn't. I was actually referring to the
3 agreement on the 21st or dated the --

4 A. Okay. Well, that's why --

5 Q. -- dated the 22nd.

6 A. -- that's why I asked the question.

7 After the term sheet, I was not really involved in
8 any elements of the actual credit agreement that -- that
9 was drafted.

10 Q. You mentioned the term sheet.

11 Were you involved in the term sheet?

12 A. Yes.

13 Q. And what was your role with the term sheet?

14 A. I would say two, two big elements of the term
15 sheet. Number one, the interest rate. And the other
16 aspect of it that I was heavily involved with was the
17 collateral, meaning, assessing the collateral of AIG to
18 make sure that the loan was secured by adequate
19 collateral.

20 Q. And what was your involvement in setting the
21 interest rate?

22 A. The -- there -- the investment bankers involved,
23 which were from several firms -- Morgan Stanley,
24 Goldman Sachs, JPMorgan -- had a -- a discussion about
25 what -- what kind of interest rate would represent,

1 quote-unquote, market, recognizing that this was a
2 unique situation, and so there was a discussion about
3 what people had seen in their experiences over the last
4 year. There was a discussion about what the -- what the
5 credit profile of this business might look like. And as
6 a result, there was a consensus developed around an
7 interest rate.

8 I was part of that discussion with several other
9 bankers.

10 Q. So you said you were part of a consensus with
11 several other bankers.

12 Those bankers were from JPMorgan --

13 A. Yeah. A handful from JPMorgan, a handful from
14 Goldman Sachs, a handful from Morgan Stanley.

15 Q. Was anyone else present?

16 A. I don't recall other, other people being present.

17 Q. And when you say that you -- you -- that group
18 reached a consensus, was that consensus formed only
19 through discussions in the room?

20 A. Well, I think the consensus was probably from a
21 variety of inputs, but we reached a consensus in that
22 room, so I remember -- I remember that.

23 Q. Did you speak to anybody else in reaching that
24 consensus?

25 A. I don't recall who I spoke to, but we -- we were

1 over a period of time kind of independently assessing it
2 before we had the conversation with the group, so I don't
3 know whether I had conversations with other folks about
4 that topic.

5 Q. You mentioned you were heavily involved in the
6 collateral.

7 What was Morgan Stanley's role in the collateral
8 valuation?

9 A. Well, by Tuesday, the 16th, the -- as this turned
10 into a government solution -- I'm using that just as a
11 loose term -- which was the FRB loan, it was our
12 understanding that the FRB loan had to have enough
13 collateral, be collateralized by the assets of AIG, so we
14 were involved in helping to value that collateral to make
15 sure that there was, you know -- that the loan met the
16 requirements that the Federal Reserve had to do a secured
17 loan.

18 Q. Do you know if the assets met the requirements of
19 the Federal Reserve to provide a secured loan?

20 A. Yes.

21 Q. And did it --

22 A. Yes.

23 Q. -- in fact? Yes.

24 What assets did Morgan Stanley value?

25 A. We looked at the -- largely the insurance

1 subsidiaries, the major subsidiaries.

2 So there were -- just to kind of recount, there
3 was probably 25 to 30 subsidiaries, some very large --
4 you know, those are the \$5 billion-plus -- but then down
5 to smaller, say, billion-dollar businesses.

6 And so we went through and assessed value on all
7 those assets along the way, whether it was a book value
8 or a -- you know, an assessment of M&A value, et cetera,
9 so the Federal Reserve asked us for input on those, those
10 assets, and we essentially crawled through a list.

11 Q. When you say you valued all the assets, was that
12 all the major assets or all the assets of the company
13 overall?

14 A. I think we captured the vast -- I would say there
15 wasn't any billion-dollar-plus assets that we missed.
16 That would be my judgment in terms of the -- how deep we
17 went at that time.

18 Q. I'd like to show you Plaintiffs' Exhibit 290.

19 A. Okay.

20 Q. If you'd turn to page 2, was this one of the
21 valuations that Morgan Stanley did?

22 A. Yes.

23 MS. RUTHERFORD: I'd move to admit Plaintiffs'
24 Exhibit 290.

25 MR. SCARLATO: No objection, Your Honor.

1 THE COURT: Plaintiffs' Trial Exhibit 290 is
2 admitted.

3 (Plaintiffs' Exhibit Number 290 was admitted into
4 evidence.)

5 BY MS. RUTHERFORD:

6 Q. How frequently did Morgan Stanley value the
7 collateral?

8 A. I'm not sure it was every single month, but it was
9 pretty close to that in terms of the periodic nature of
10 doing this type of valuation analysis, so it never went
11 more than a couple months without us updating these,
12 these figures.

13 Q. And did you provide a collateral analysis for your
14 entire -- the entire stand of your engagement on an
15 updated basis?

16 A. Whenever -- whenever they needed it, you know,
17 oftentimes on a quarterly basis, but also in the context
18 of thinking through options, the restructuring aspects
19 that we had, so we -- you know, this was -- this was a
20 constant throughout the entire engagement. I just don't
21 know whether it was done monthly.

22 Q. I'd like you to take a look at Plaintiffs'
23 Exhibit 508.

24 Was that -- are you there?

25 A. Yep.

1 Q. Is that another collateral analysis that
2 Morgan Stanley did?

3 A. I'm just reading through this, but it -- yes.
4 Page 3 is a similar -- similar analysis. This is page --
5 yeah, page 3 of the --

6 MS. RUTHERFORD: I'd move to admit Plaintiffs'
7 Exhibit 508.

8 MR. SCARLATO: No objection.

9 THE COURT: Plaintiffs' Trial Exhibit 508 is
10 admitted.

11 (Plaintiffs' Exhibit Number 508 was admitted into
12 evidence.)

13 BY MS. RUTHERFORD:

14 Q. I'd like you to turn to Plaintiffs' Exhibit 630.

15 A. Okay.

16 Q. Did Morgan Stanley have discussions with
17 Deloitte & Touche about its -- about its valuation work?

18 A. Deloitte & Touche being the auditor of the
19 FRBNY --

20 Q. That's correct.

21 A. -- yes. Yes. In that regard, yes.

22 Q. If you turn to page 4 of Exhibit 630, under the
23 heading Changes in Business Valuations, it
24 says (as read): On a quarterly basis, Morgan Stanley
25 prepares a business valuation report for the primary AIG

1 entities included the banks -- included in the bank's
2 collateral package.

3 Do you see that?

4 A. Yes.

5 Q. Is that a correct statement?

6 A. Yes. I don't know when we embarked on that first
7 one, but yes, we did that throughout the -- on a
8 quarterly basis.

9 Q. And then if you turn to page 5, there -- this
10 would be a -- one of the quarterly -- or a comparison of
11 the quarterly valuations that Morgan Stanley performed;
12 is that correct?

13 A. Yes. Although this was not prepared by us, but it
14 looks like they took our inputs.

15 MS. RUTHERFORD: I move to admit Plaintiffs'
16 Exhibit 630.

17 MR. SCARLATO: No objection, Your Honor.

18 THE COURT: Plaintiffs' Trial Exhibit 630 is
19 admitted.

20 (Plaintiffs' Exhibit Number 630 was admitted into
21 evidence.)

22 BY MS. RUTHERFORD:

23 Q. You mentioned earlier Maiden Lane II and III.

24 A. Yes.

25 Q. What was Morgan Stanley's involvement in

1 Maiden Lane II and III?

2 A. I think we were -- we were more involved in that
3 as -- in terms of oversight of the -- or advice around
4 the overall restructuring, and so ML II and ML III were
5 relatively big pieces of that puzzle.

6 But we did not architect those structures.
7 BlackRock was a third-party advisor that had basically
8 put those together and picked collateral and things like
9 that, so we knew about them in the context of what it
10 meant to the overall AIG portfolio, the restructuring,
11 et cetera. That's how we think -- that's how I thought
12 about it.

13 Q. Was Morgan Stanley involved in the discussions to
14 create the structure that became Maiden Lane II and
15 Maiden Lane III -- or the structures?

16 A. I don't know if we were involved in the
17 conversations at the outset, but as it pertained to the
18 overall restructuring, we must have been part of that
19 conversation because it was important to the rating
20 agencies. It was a big element of the restructuring, but
21 I don't know how we got involved in the -- you know,
22 the -- the construction of ML II and III.

23 Q. You mentioned just a moment ago that
24 Maiden Lane II and III was -- were important to the
25 ratings agencies.

1 A. Uh-huh.

2 Q. Did the ratings agencies express any concerns that
3 AIG was forgoing the upside in the -- in committing to
4 Maiden Lane III?

5 A. In my memory, yes. But it was part of a broader
6 list of concerns about various elements of the
7 go-forward restructuring plan of AIG, so that was but
8 one.

9 Q. Sticking to that first -- that first concern that
10 the ratings agencies expressed --

11 A. Uh-huh.

12 Q. -- what was your understanding as to why they
13 were -- why they were concerned that AIG was forgoing the
14 upside and taking a big loss on Maiden Lane III?

15 A. Well, on one hand, there -- it stabilized losses.
16 On the other hand, you'd forgo upside. And so as part of
17 the overall economics of the company going forward,
18 the -- or the -- the ultimate equity value, that was a --
19 that was a piece of the puzzle, and the rating agencies
20 wanted to understand that.

21 Q. I'd like you to turn to 2724. Is that in the
22 binder? Oh, well, then we'll hand it up.

23 What is Project Independence?

24 A. That was the name of the project, our engagement,
25 the overall advice and restructuring of AIG.

1 MS. RUTHERFORD: I'd move to admit Plaintiffs'
2 Exhibit 2724.

3 MR. SCARLATO: No objection, Your Honor.

4 THE COURT: Plaintiffs' Trial Exhibit 2724 is
5 admitted.

6 (Plaintiffs' Exhibit Number 2724 was admitted into
7 evidence.)

8 BY MS. RUTHERFORD:

9 Q. Finally, do you know who Adeesh Setya is?

10 A. No.

11 Q. Perhaps I'm saying his name wrong.

12 Do you know who the treasurer of Morgan Stanley --
13 Stanley's treasurer -- the treasurer of Morgan Stanley
14 Bank North America is?

15 A. I do not.

16 Q. You do not.

17 Are you aware that Morgan Stanley -- are you aware
18 that Morgan Stanley was provided with 13(3) funds by the
19 Federal Reserve Bank of New York?

20 A. That -- the nomenclature "13(3) funds," I don't
21 know what that means.

22 Q. Oh. I'll re-ask the question in a -- slightly
23 differently.

24 A. Okay.

25 Q. Are you aware that Morgan Stanley received funds

1 from the Federal Reserve Bank of New York at some point
2 in the fall of 2008?

3 A. Meaning the discount window, the Fed discount
4 window? If that's --

5 Q. Under the Fed discount window or any other way.

6 A. Yeah. I think so, yes. I recall that.

7 Q. Are you aware that Morgan Stanley in fact received
8 a large amount of funds over the course of
9 September 2008?

10 A. I don't know any of the facts on that.

11 Q. When you testified as a 30(b)(6) witness, do you
12 recall that you testified with respect to some of the
13 topics and one of your colleagues testified with respect
14 to one additional topic?

15 A. I vaguely remember that. I don't know what the
16 additional topic was.

17 MS. RUTHERFORD: Okay.

18 No more questions. I pass the witness.

19 THE COURT: Thank you.

20 Mr. Scarlato?

21 MR. SCARLATO: Thank you, Your Honor.

22 Your Honor, I intend to exceed the scope of
23 Ms. Rutherford's examination, but I'm trying to do it in
24 a way that we can finish up today with you so that you
25 don't have to come back a third time.

1 - - - - -

2 CROSS-EXAMINATION

3 BY MR. SCARLATO:

4 Q. So let me begin, Mr. Head -- good afternoon.

5 Let me begin with -- once you have that binder.

6 THE COURT: Does the government not have any
7 one-inch binders?

8 MR. SCARLATO: I've been fighting with my
9 contractors about that, Your Honor. There's been an
10 internal debate about that. We apologize for the size.

11 THE COURT: I have limited shelf space back here.

12 BY MR. SCARLATO:

13 Q. Mr. Head, if we can start with -- Mr. Head, if we
14 can begin with your discussion earlier with
15 Ms. Rutherford about the -- about the term sheet?

16 A. Yes.

17 Q. First, I'm not sure it was clear. Which term
18 sheet -- you said you were involved in crafting terms.
19 Which term sheet was that?

20 A. I remember being involved in the -- what was
21 called the private market term sheet.

22 Q. When was that?

23 A. On the -- largely on the 15th and might have
24 rolled over to the 16th of September.

25 Q. And so did there come a time you were asked to

1 provide input on a term sheet that would become a loan
2 from the New York Federal Reserve Bank?

3 A. In my recollection, the private market term sheet
4 was the template that ultimately became the FRBNY term
5 sheet.

6 Q. So you don't draw a distinction.

7 A. But I think by the time largely the -- we provided
8 input on the private market term sheet, that just flipped
9 over into what was turned into the RCF.

10 Q. Understood.

11 And do you recall -- you said you provided input
12 on the interest rate?

13 A. Yes.

14 Q. Do you recall what interest rate was -- you
15 recommended?

16 A. LIBOR plus 850.

17 Q. When I say "you," can you explain --

18 A. Meaning the -- well, the -- the joint
19 recommendation of the investment bankers in the room,
20 which was a group of 15 people who had a lot of
21 experience, we reached a conclusion and we all nodded our
22 heads and said that smells right.

23 Q. And why did it smell right?

24 A. There was -- people had been working over the last
25 year trying to come up with funding solutions for

1 financial institutions in a difficult market. There was
2 experience of people understanding both the credit
3 quality of the specific situation but also what rates
4 were in the market at that time for both investment-grade
5 and non-investment-grade security of the loans, and so
6 there was a breadth of experience, both market at that
7 point but also financial services expertise that was
8 brought to bear.

9 Q. And was that recommendation of 850 plus -- 850
10 basis points plus LIBOR expressed to the New York
11 Federal Reserve Bank?

12 A. To -- well, when it was a private market solution,
13 it was expressed to the government, if you will, which
14 was -- in our minds was -- we didn't know who was -- who
15 was ultimately going to provide assistance or not, so we
16 made our recommendation.

17 Q. So someone at the government or --

18 A. In the government. I don't know whether it was a
19 Fed or Treasury official.

20 Q. Understood.

21 Did you have any involvement in determining a
22 potential equity component of the loan from the
23 New York Fed?

24 A. No.

25 Q. And did you have any role in determining the form

1 of any equity that would be included as part of that
2 deal?

3 A. No.

4 Q. Earlier, Ms. Rutherford showed you a term sheet
5 or -- excuse me. And let's turn to it. It was PTX 76 I
6 believe in the black binder.

7 PTX 76?

8 A. Sorry.

9 Q. Towards the beginning.

10 A. PTX 76 is a press release.

11 Q. Yep. That's the one. I meant to say press
12 release.

13 A. Okay.

14 Q. Sorry.

15 So I'm correct in saying you -- this was not a
16 document that you were sent?

17 A. I didn't produce this document.

18 Q. And Ms. Rutherford pointed out that it mentions
19 warrants in the third paragraph?

20 Do you see that?

21 A. Yes.

22 Q. And what role, if any, did you have in determining
23 the form of equity that would be proposed to AIG on the
24 16th of September?

25 A. I didn't have any role in that.

1 Q. And what role, if any, did you have in finalizing
2 the New York Fed's term sheet that was proposed or may
3 have been proposed to AIG?

4 A. As I stated before, I was part of the group that
5 recommended the LIBOR plus 850 and I was very involved
6 in the collateral aspect, which was an important element
7 in the term sheet to make sure there was enough
8 collateral.

9 Q. So let's turn to that, so on the 16th you were
10 part of a team valuing the collateral for the loan from
11 the New York Fed?

12 A. Yes.

13 Q. Okay. And can you recall who asked you to do
14 that?

15 A. I don't know who asked to do it, but we worked
16 with the credit department of the New York Fed in that
17 activity.

18 Q. And did your team make any assessment of what --
19 which assets of AIG could actually be pledged as part of
20 a loan?

21 A. Well, we were looking at all of them essentially
22 and because we were trying to make sure there was enough
23 collateral there, so...

24 Q. Was there any assessment made as to what actual
25 assets AIG could pledge in the event of a loan?

Starr International Company, Inc. v. USA

1 A. Well, we knew that there were several large
2 operating subsidiaries and there was probably
3 25 operating businesses, so that was a good place to
4 start in terms of finding where the big -- big amounts of
5 collateral might exist.

6 Q. Okay. And how did your team conduct the valuation
7 on September 16?

8 A. We -- we were looking at book value numbers, and
9 this is the statutory book as well as the GAAP book
10 values of the business, largely, in a, you know, list
11 format, not unlike -- it really wasn't that much
12 different than some of the exhibits that you've seen
13 later on where you start with some of the major
14 businesses of AIG, look at the book value and assess
15 whether what we thought the value was at the time, would
16 it be a premium to book, would it be a discount to book,
17 and worked our way through applying judgments based on
18 what we knew in the market, based on what we thought
19 about M&A values and based on comparable companies.

20 Q. What types of information did your team have
21 access to on September 16?

22 A. Not -- not a lot of information. Some of it was
23 provided by AIG, i.e., the list of subsidiaries and their
24 book values.

25 We might have looked at analysis done by

1 JPMorgan, who had been working for weeks, months prior
2 to that.

3 But in the end, once we gathered the specific
4 details on each of the individual businesses, we applied
5 judgment based on comparable companies and things like
6 that to assess what we thought the value of the
7 collateral would be.

8 Q. And just to -- you mentioned JPMorgan. You said
9 in the weeks, months.

10 Do you have an understanding as to what JPMorgan
11 was doing in those weeks and months?

12 A. Yes.

13 Q. What -- can you explain what that understanding
14 is?

15 MS. RUTHERFORD: Your Honor, I'm going to object
16 to this witness speaking to what other companies were
17 doing or not doing.

18 MR. SCARLATO: Your Honor, he has personal
19 knowledge to the events. I'm asking about it.

20 THE COURT: Well, if he has personal knowledge,
21 I'll allow it.

22 THE WITNESS: Well, I knew many of the JPMorgan
23 bankers, and it was -- it was -- I wouldn't call it
24 public knowledge, but it was knowledge inside the
25 investment banking community that JPMorgan had been

1 working with AIG on a variety of alternatives, and so
2 when I showed up on the morning of the 15th, I saw folks
3 from JPMorgan that I'd known for years, and they
4 explained what was going on.

5 BY MR. SCARLATO:

6 Q. And so am I hearing you correctly that it was your
7 understanding that still at that time JPMorgan was
8 representing AIG?

9 A. That was my understanding.

10 Q. So turning to the numbers that you used on the
11 16th, what diligence were you and your team able to do
12 before rendering a final valuation?

13 A. In the time allotted, we had very little, if none,
14 in terms of diligence.

15 Q. What time was allotted for this task?

16 A. Less than 24 hours.

17 Q. Why did you have less than 24 hours?

18 A. The liquidity requirements, the funding
19 requirements were expressed to us in terms of we need
20 this much funds on Wednesday of this week, we need this
21 much funds by Thursday and Friday this week, so there was
22 a -- there was a clear view, based on the company's
23 input, that collateral calls and other things had to be
24 met by Wednesday.

25 Q. Do you recall at approximately what time you

1 started conducting this valuation?

2 A. Well, there were discussions about a lot of the
3 businesses throughout the 15th and the 16th, so it
4 wasn't as if we started with no knowledge of the
5 situation, because people were talking about solutions
6 and what were -- some of the big assets are and what they
7 were.

8 So I don't recall when the Federal Reserve Bank
9 asked us to perform that, you know, an assessment, but it
10 was probably the middle of the day on the 16th, so it was
11 not a lengthy period of time between that and the actual
12 funding of the loan.

13 Q. Was this valuation you conducted on the 16th
14 similar to prior valuations or subsequent valuations
15 you've conducted in your professional capacity?

16 A. In one sense, the framework and the methodologies
17 were somewhat similar to what we did later on, but the
18 depth of understanding and knowledge obviously grew as we
19 got more information from the company and became engaged
20 as an advisor.

21 Q. You're talking about after the 16th.

22 A. Correct.

23 Q. I was limiting my question just to the 16th.

24 A. Oh.

25 Q. So how did that compare to other valuations you've

1 conducted in your professional capacity?

2 A. It was -- it was done on a relatively -- a very
3 short time frame with limited information.

4 Q. So -- and I believe you testified earlier that the
5 ultimate conclusion was that there was enough collateral
6 to secure the loan. Is that right?

7 A. Yes.

8 Q. So in finding sufficient collateral for the loan
9 was it also your professional judgment that the
10 New York Fed would not be taking risk in extending an
11 \$85 billion loan to AIG?

12 A. No.

13 Q. Why not?

14 A. The -- first of all, the collateral is a point in
15 time. But in the late 2008, early 2009, the value of
16 these -- the underlying businesses, the value of
17 financial assets was -- was oscillating dramatically, and
18 so we would take a point-in-time view and assess the
19 value of the collateral, but that doesn't mean things
20 can't change.

21 Q. At any time did Morgan Stanley conduct a valuation
22 of the collateral AIG posted for the loan in the event
23 AIG declared bankruptcy?

24 A. I believe we analyzed that at various points
25 throughout the engagement in early 2009 in particular.

1 Q. And you're speaking in terms of actual numbers
2 arrived at?

3 A. I don't recall whether we looked at the impact of
4 bankruptcy on the individual business units, but I know
5 we thought about high-level impairments.

6 Q. And what's your understanding of how the
7 New York Fed would have been able to recover on its loan
8 amount in the event that AIG declared bankruptcy?

9 A. When we did -- I -- I think the -- the view from
10 the bankers -- and this was a consensus view -- was that
11 bankruptcy would change the framework for looking at
12 collateral, i.e., the performance of the businesses, the
13 value of the businesses to third parties, and
14 potentially, if their regulators get involved, maybe
15 seizures of the business to stabilize them or insulate
16 them on behalf of policyholders, and so that is a very
17 different analysis than the collateral analysis we were
18 doing which would assume that this was a going concern.

19 Q. Ms. Rutherford -- well, first you said change the
20 framework for looking at the collateral on a bankruptcy
21 scenario. What does that mean?

22 A. Meaning it's not a -- it might not be a going
23 concern, and so, therefore, market multiples where you're
24 comparing it to another company that's a going concern
25 value, et cetera, might be different. You might look

1 more at the -- the actuarial value of the business, the
2 assets and liabilities over time, which is much more of a
3 runoff or liquidation mode, so it's a different -- it is
4 a different valuation analysis.

5 Q. And in terms directionally, which direction would
6 you expect the collateral value to go in that scenario?

7 A. In a bankruptcy scenario, the collateral value
8 goes down.

9 Q. Ms. Rutherford showed you a couple of other
10 valuations that Morgan Stanley conducted. I can show
11 them to you, but my question is similar to I asked about
12 your September 16 valuation.

13 At any time did you -- did Morgan Stanley assess
14 the risks that the New York Fed was taking in extending
15 that loan to AIG?

16 A. Well, that's -- I'm struggling with how to answer
17 your question because throughout the entire engagement we
18 were assessing the risks of bankruptcy and other things,
19 so -- so the answer is yes, we were assessing risks on
20 behalf of the Fed throughout the engagement.

21 Q. I see. My question was too broad. I was just
22 speaking in terms of the valuations that you were shown
23 earlier by Ms. Rutherford.

24 A. Yeah.

25 Q. Did those assess the risks that the New York Fed

1 was taking?

2 A. Oh, oh, oh. But those, as I said, are kind of a
3 static view at a point in time and did not qualify what
4 risks surrounded those, those assets.

5 Q. Mr. Head, I'd like to turn now -- you spoke
6 earlier about sort of the nature of the engagement
7 between Morgan Stanley and the New York Fed. Do you
8 remember that?

9 Other than the valuation work we just described,
10 what services did Morgan Stanley provide as a general
11 proposition to the New York Fed in connection with the
12 loan to AIG?

13 A. Well, we just went through a document that
14 displayed it, so I might not get everything from my
15 memory.

16 Q. You don't have to. Just generally.

17 A. But generally, there was broad restructuring
18 advice, meaning, advice on kind of all the actions that
19 were taken throughout that two-year period.

20 There was insight into the specific industry. You
21 saw that on a couple of the documents, i.e., what's going
22 on in the insurance industry. Because we had experts on
23 the insurance industry, the Federal Reserve Bank was
24 trying to get up to speed. And they don't follow the
25 insurance industry. They regulate banks. They don't

1 follow the insurance industry.

2 And a variety of other activities. In essence, we
3 were trying to do our best to help them and deliver all
4 the expertise of our firm.

5 Q. I believe you testified earlier that at its peak,
6 there were about a hundred Morgan Stanley employees
7 working with the New York Fed. Is that -- do you
8 remember that?

9 A. Correct.

10 Q. Why were so many people needed to assist the
11 New York Fed in its loan to AIG?

12 A. There were -- it was a highly complex financial
13 institution, and various experts within our firm were
14 helping to understand whether it was the financial
15 products situation, the various operating businesses, so
16 our Japanese bankers on ALICO, our aircraft finance team
17 on ILFC, which was still needed to fund, fund its
18 business throughout this process.

19 So there was a variety of areas of expertise
20 beyond the core team that was there kind of most every
21 day.

22 Q. And what was your understanding of the
23 relationship between the New York Fed and AIG?

24 A. Broadly, a lender and a corporation.

25 Q. And is it in your experience typical for a lender

1 to engage a firm such as yours to assist in its
2 monitoring of a borrower?

3 A. No.

4 Q. Why not?

5 A. Well, most -- most lenders have infrastructure to
6 deal with various industries and the companies they
7 cover. They also have a -- typically they have a risk
8 profile or risk framework on their lending book, so
9 they're never ever specifically exposed to more than a
10 certain amount to a certain company.

11 This was a very big loan. It was a situation
12 where the Federal Reserve Bank was not familiar with the
13 insurance industry or restructuring or M&A or all the
14 various parts of this complex restructuring, so it wasn't
15 surprising that they needed some advice.

16 Q. Do you recall any instance in which the
17 New York Fed or any consultant for the New York Fed
18 ordered AIG to take a particular business action?

19 A. Not to my knowledge.

20 Q. And what was the understanding of
21 Morgan Stanley's relationship with AIG in the course of
22 this engagement?

23 A. I think AIG understood that we were -- who our
24 client was. But we were also often involved in all the
25 updates that were going on as -- as -- as -- I wouldn't

Starr International Company, Inc. v. USA

1 call members of the team because we weren't members of
2 the AIG team, but we worked in a very collaborative
3 manner in large part because we had a common goal, which
4 was getting this business restructured.

5 And so for us to be up to speed and participate
6 was valuable to the AIG team because it would help them
7 get things done faster.

8 Q. Ms. Rutherford also asked you some questions about
9 reviewing AIG's -- I don't know if she said public
10 filings or -- or reviewing AIG public statements I'll
11 say. Do you remember that?

12 A. Uh-huh. Yes.

13 Q. Can you describe the purpose that Morgan Stanley
14 was involved in reviewing those documents?

15 A. Well, most every rating agency report, public
16 filing, whether that was an earnings release or the 10-Q,
17 10-K, had a relatively large component discussing this
18 relationship with their lender. Okay?

19 So as a result, we oftentimes were very focused on
20 making sure that that was characterized correctly and
21 positioned appropriately because, you know, the
22 Federal Reserve Bank of New York was mentioned in every
23 SEC filing and every press release because it was --
24 you know, it was a restructuring plan that was under
25 way.

1 Q. Mr. Head, you testified earlier that
2 Morgan Stanley conducted some analysis of the AIG
3 bankruptcy scenario.

4 Can you turn to, in the white binder, DX 744. And
5 tell me when you have that in front of you.

6 A. Yes.

7 Q. Am I correct in seeing your name on the cover
8 e-mail about halfway through a very large --

9 A. Yes.

10 Q. -- set of --

11 A. I see my name, yeah.

12 Q. And starting on page 2 of DX 744, I see a
13 presentation entitled AIG Systemic Impact.

14 Do you see that?

15 A. Yes.

16 Q. Did you play any role in drafting this
17 presentation?

18 A. Can you let me just take a quick look through here
19 to make sure?

20 Q. Please.

21 (Pause in the proceedings.)

22 A. Okay. Yeah, I do remember this.

23 Q. Did you play a role in drafting it?

24 A. Yes.

25 Q. And can you turn to the page -- the numbers in the

1 bottom right ending 878. It's about halfway through.

2 Do you see that?

3 A. It says "Proposed Restructuring Plan"; is that
4 right?

5 Q. It's a separate presentation?

6 A. Yes.

7 Q. Can you take a look and let the Court know if you
8 played a role in drafting this presentation?

9 (Pause in the proceedings.)

10 A. Yes.

11 Q. And was it your job responsibilities to put
12 together this type of information as part of your
13 engagement with the New York Fed?

14 A. Yes.

15 Q. And were these presentations made at or near the
16 time of the events described within?

17 A. That, I don't -- I don't understand that question.
18 This presentation from February of 2009?

19 Q. That's right.

20 Does it describe events that were occurring
21 around --

22 A. Yes. Yes. Yes.

23 MR. SCARLATO: Your Honor, we move for the
24 admission of DX 744.

25 MS. RUTHERFORD: No objection, Your Honor. The

1 only thing I'll mention is that it seems to be two
2 separate presentations marked --

3 MR. SCARLATO: Yeah. That's why I asked him that,
4 but they were both attached to the e-mail as far as I
5 can --

6 MS. RUTHERFORD: They were both attached to the
7 e-mail?

8 MR. SCARLATO: Yeah. If you look at the cover
9 e-mail.

10 THE COURT: All right. Without objection,
11 Defendant's Exhibit 744 is admitted.

12 (Defendant's Exhibit Number 744 was admitted into
13 evidence.)

14 BY MR. SCARLATO:

15 Q. Briefly, Mr. Head, if you turn to page 2 -- or
16 actually let's use the bottom right numbers as ending
17 859, the third page of your document, entitled AIG
18 Remains Systematically Important?

19 A. I'm sorry. Was this backing up here?

20 Q. Yeah. I'm just trying to get to the --

21 A. Okay. Sorry.

22 Q. -- the page -- do you see that page?

23 A. Yes.

24 Q. Now, if you look at the bottom, it says
25 "Significant Value Destruction (TARP)."

1 Do you see that?

2 A. Yes. I need to read this page.

3 Q. Please.

4 (Pause in the proceedings.)

5 A. Okay.

6 Q. Can you describe for the Court what that -- what
7 information that that is conveying there?

8 A. Okay. I think what it speaks to is if there's
9 a -- what would happen if there's a failure, meaning a
10 bankruptcy. And it -- I think the consensus view -- and
11 I had mentioned this before -- is the result of a failure
12 would be that the value of the component assets, the
13 insurance subsidiaries, the aircraft leasing subsidiary
14 and other various operating businesses, would be likely
15 reduced. This would significantly disrupt the ability to
16 transact M&A transactions or do IPOs or any of the tools
17 that we had in our tool kit.

18 And if the component asset values declined, there
19 may be impairments to the value of the TARP preferred.

20 Q. What was the TARP preferred?

21 A. That was a preferred stock that Treasury owned.

22 Q. And if there was an impairment to the TARP
23 preferred, what's your understanding of what would have
24 happened to the Series C stock that was part of the
25 original loan to AIG in September 2008?

1 A. Well, it would be easier if I could see it all on
2 a capital structure, but the -- but if you're saying --
3 preferred is higher up in the capital structure and would
4 get liquidation preference or first priority of funds, so
5 if that's impaired, anything below that, that preferred
6 in the capital structure, would get nothing.

7 Q. And you mentioned the insurance companies.

8 What would -- can you describe for the Court your
9 Morgan Stanley's team experience in the insurance
10 industry at the time?

11 A. Well, we had a team of bankers that spent all
12 their time working with insurance companies to finance
13 them, to do M&A transactions, to raise equity, look at
14 specific funding of assets, et cetera.

15 Q. Okay. Mr. Head, switching gears, just going back
16 in time now, the beginning of your engagement with the
17 New York Fed in connection with the AIG loan I think you
18 said earlier was on September 15, 2008?

19 A. Yes.

20 Q. What were you asked to do on September 15, 2008?

21 A. I would describe it simply as two, two major
22 areas. One was to help identify the size of the
23 liquidity need and the timing. When those funds were
24 absolutely needed on which days, that would be the first
25 part. The second part would be assessing private market

1 solutions.

2 Q. And who did you engage in that work with on the
3 15th?

4 A. The -- you know, the -- this group of three
5 bankers -- Morgan Stanley, Goldman Sachs, JPMorgan --
6 were working collaboratively to pursue both of those
7 paths, so there were teams that split up.

8 Q. And who was representing AIG in those meetings?

9 A. In a lot of ways there was just a common goal, so
10 I don't think there were -- people didn't say I'm
11 representing this party or that party. I think that the
12 task at hand was -- was clear.

13 Q. And was AIG involved in these meetings at all?

14 A. AIG provided inputs largely on the first category,
15 which was the funding needs.

16 Q. Can you generally describe how those funding needs
17 evolved, your knowledge of them evolved over the course
18 of the day?

19 A. Well, the -- I would say that the funding needs
20 continued to go up over the course of the day. I don't
21 know where they started. But it was in the kind of -- it
22 started off in the tens of billions of dollars because I
23 recall it being just a big number, and that was -- that
24 was alarming to me because it was a big number.

25 But that's -- the AIG team was getting inputs from

1 their business units, from the financial products area,
2 et cetera, and providing the group updates.

3 Q. Did there come a time when possible solutions to
4 that need was discussed amongst your group?

5 A. Say that again. Possible solutions?

6 Q. Yeah. Did there come --

7 A. Meaning the private market solutions?

8 Q. Correct.

9 A. Well, we worked throughout the 15th to look at a
10 variety of private market solutions in parallel to the
11 liquidity analysis.

12 Q. And did any of these private market solutions come
13 to fruition?

14 A. No.

15 Q. Why not?

16 A. I would say one of the primary reasons was we
17 didn't have enough time.

18 When we talk about just about any private market
19 solution, the time frame to execute these types of
20 transactions is measured in days and months -- excuse
21 me -- weeks and months, not 24-48 hours.

22 An M&A transaction cannot happen in 48 hours.
23 There's regulatory approvals. There's all sorts of
24 stuff.

25 An equity offering, you'd have to register the

1 securities. It can't happen in 24 hours.

2 So one of the constraints to the private market
3 solutions at that time was the -- was just the limited
4 amount of time frame measured in 24-48 hours, okay, so
5 that was one of them.

6 And then the size of this was quite large, so as
7 it started creeping up towards 85 billion, that was a
8 very, very large -- you know, very large and beyond the
9 depth of private equity funds and beyond the scope of
10 the -- the equity markets to actually raise capital.

11 Q. Anything else?

12 A. No. I think those were kind of the two big, two
13 big issues.

14 THE COURT: Mr. Scarlato, is this a good place to
15 break for the day?

16 MR. SCARLATO: Your Honor, I would ask the Court's
17 permission just to go another minute or so, so I can wrap
18 this up, given that it's Mr. Head's second appearance in
19 D.C.

20 THE COURT: Okay. One minute.

21 MR. SCARLATO: One minute? Thank you.

22 BY MR. SCARLATO:

23 Q. So you mentioned the reasons that the private
24 solution did not occur.

25 Did there come a time when that conclusion was

1 communicated to the New York Fed?

2 A. The government. I would -- I don't know the
3 exact moment because this was a little bit more of a
4 continuum. When some of the ideas didn't look feasible,
5 it started narrowing in terms of possibility, and so I
6 would -- I would -- I would guess that the evening of
7 the 15th going into the 16th it became clearer that a
8 private market solution was not in the cards in that
9 time frame.

10 Q. Did there come a time when you and your group
11 expressed that to then President Geithner?

12 A. I just don't remember when that occurred.

13 MR. SCARLATO: No further questions, Your Honor.

14 THE COURT: Well done, Mr. Scarlato.

15 MR. SCARLATO: I tried really hard.

16 THE COURT: Do you have any redirect,

17 Ms. Rutherford?

18 MS. RUTHERFORD: I do have a few questions.

19 THE COURT: It's not going to take very long?

20 MS. RUTHERFORD: It's not going to take very long.

21 If you don't mind, if we could just do it now?

22 THE COURT: Yeah, let's do it.

23 MR. SCARLATO: Thank you, Your Honor.

24 MS. RUTHERFORD: Thank you.

25 THE COURT: Mr. Head seems like a nice guy.

1 - - - - -

2 REDIRECT EXAMINATION

3 BY MS. RUTHERFORD:

4 Q. Let's just start briefly where you left off. You
5 were talking about whether there was a private market
6 solution.

7 On September 15 and 16, how much M&A activity was
8 going on in the market?

9 A. Well, the -- there was a pretty significant pause
10 in the market, so if there was a deal that was in
11 discussions and trying to get signed -- I'm using our
12 nomenclature, but if there was something imminent or
13 close, that probably was put on pause for a moment
14 because everybody was assessing what the markets were.

15 Even deals that had been announced and were going
16 to close, there was a significant concern that they --
17 the financing markets or other issues may cause problems
18 in those M&A transactions closing.

19 Q. So you'd say on the 15th and 16th of 2008,
20 September 15 and 16, 2008, there weren't any deals being
21 done in the market; is that correct?

22 A. I would be surprised if deals were actually
23 announced on those two days. There probably was some,
24 but not many.

25 Q. You mentioned that everybody in the private sector

1 consortium was working in a collaborative manner and not
2 necessarily representing this party or that party.

3 Who did Morgan Stanley represent at those
4 meetings?

5 A. We -- we were asked to join by the -- what we
6 thought about at that time as the government. We weren't
7 sure who -- we -- we hadn't been hired. We were asked to
8 come participate and help them. We understood that we
9 were going to help the government, but as it pertained
10 to, you know, being in a room with the other bankers and
11 trying to come up with solutions, it wasn't a
12 negotiation. People didn't have sides. We were all
13 trying to come up with ideas that could solve the
14 problem.

15 Q. You -- at the beginning of his examination,
16 Mr. Scarlato asked you about the interest rate that the
17 group of bankers you were in the room with came up under
18 the smell test?

19 A. Uh-huh.

20 Q. And you said that it was LIBOR plus 850 basis
21 points; is that correct?

22 A. Yes.

23 Q. I'd like you to look at JX 65, which I'm going to
24 hand you.

25 Was this the draft term sheet that the

1 private sector group that involved JPMorgan Chase came up
2 with?

3 A. I -- we saw this in -- you gave me this in
4 testimony. I don't recall it. And I don't recall
5 JPMorgan being the -- the person that scribed the
6 conclusion for the private market term sheet, so I hadn't
7 seen this before.

8 Q. So looking at the third page?

9 A. Yes.

10 Q. If you see the drawn pricing, it says LIBOR plus
11 650 basis points?

12 A. Yes.

13 Q. Do you recall there being a difference between the
14 650 basis points in the JPMorgan term sheet and what was
15 later --

16 A. Yeah. Well --

17 Q. Can I --

18 A. -- what was discussed --

19 Q. Can I -- just let me finish asking the question
20 first.

21 Do you recall there being a difference between the
22 650 basis points in the JPMorgan term sheet and the one
23 later drafted by Mr. Ryan of your organization that said
24 850 basis points?

25 A. You're showing me a -- this draft term sheet that

1 was prepared by JPMorgan. We had no input on this. It
2 says a different number than what was reached by the
3 consensus group. And it is a different number than what
4 Kevin Ryan described, so I don't know the genesis of
5 JPMorgan's view on 650. That might have been their view
6 for the discussion, but I remember the discussion landing
7 on 850 basis points.

8 Q. Are there any other differences between this
9 version of the term sheet and the Kevin Ryan version of
10 the term sheet, to your knowledge?

11 A. I -- I -- I would have to look at both of them and
12 tell you what the differences are, but I don't know.

13 Q. When you're referring to a market rate that was
14 discussed for the interest rate on September 15 and 16,
15 what exactly are you referring to?

16 A. I would describe it as what a private market rate
17 might look like, so -- so the -- the bankers were tasked
18 to theoretically come up with what a private market rate
19 would look like for a loan of this type. There's --
20 there was -- there's never been an \$85 billion loan,
21 so --

22 Q. Was it a loan of this type as of September 16 when
23 the markets were frozen?

24 A. Well, it -- we -- we didn't make an adjustment for
25 the 16th of September. And as I said before, there was

1 plenty of experience of the team in the months precedent
2 in terms of what -- where -- where market rates were.

3 Q. And in the months precedent, what -- let me ask it
4 a different way.

5 In your opinion, when did the financial crisis
6 start?

7 A. I -- I -- I have no idea. I --

8 Q. Was it ongoing in July 2008?

9 A. There were -- there was notable bankruptcies of
10 companies in 2007. Bear Stearns was rescued in March of
11 2008, so I don't know when the crisis started, but there
12 was turmoil as early as 2007 in the financial markets.

13 Q. So when you were looking at what interest rate to
14 set and whether the conditions met the market, you
15 weren't looking at normal market conditions, you were
16 looking under distressed market conditions; is that
17 correct?

18 A. Well, it had been -- it had been choppy for at
19 least 18 months. We didn't -- we didn't make an
20 assessment of an additional layer of choppiness for the
21 15th and the 16th of September, if that's what you're
22 asking.

23 Q. That was not my question. I think you answered
24 that. Thank you.

25 THE COURT: All done?

1 Anything further, Mr. Scarlato?

2 MR. SCARLATO: No, Your Honor.

3 THE COURT: Thank you.

4 All right. Mr. Head, thank you very much for your
5 testimony. You are excused.

6 THE WITNESS: Thank you.

7 THE COURT: We'll get you on your way home.

8 We will reconvene tomorrow morning at 9:30.

9 (Whereupon, at 5:09 p.m., the proceedings were
10 adjourned.)

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CERTIFICATE OF TRANSCRIBER

I, Josett F. Whalen, court-approved transcriber,
certify that the foregoing is a correct transcription
from the official digital sound recording of the
proceedings in the above-titled matter.

DATED: OCTOBER 22, 2014

s/Josett F. Whalen

JOSETT F. WHALEN, COURT REPORTER

1 ADMITTED EXHIBITS

2

3	PX	PAGE	DESCRIPTION
4	76	3718	Email (9/16/2008) From: Peter Juhas
5			To: Jeremiah Norton, Dan Jester, Robert
6			Scully, Daniel Simkowitz, Ruth Porat, Gavin
7			McFarland, Kevin Ryan, Matthew Salvner
8			re: Draft Press Release
9	115	3670	Email (9/17/2008 12:54 pm) From: Kathleen
10			Shannon To: James Gamble re: FW: NYSE Call -
11			Preparation Materials Attaching NYSE
12			Shareholder Approval Policy - Financial
13			Distress Exception
14	166	3728	Email (9/19/2008 8:35 pm) From: Ruth Porat
15			To: Dan Jester, Ken Wilson re: General counsel
16	189	3651	Email (9/21/2008 3:03 pm) From: Eric Litzky
17			To: AIG Board of Directors re: AIG Board of
18			Directors - Sunday, September 21st, 8:00 p.m.
19			(New York City Time)
20	195	3649	Kathy Shannon handwritten notes from AIG Board
21			of Directors Meeting (9/21/2008)
22			
23			
24			
25			

1 196 3666 Email (9/21/2008 8:15 pm) From: Anastasia
2 Kelly To: Tom Kelly (forwarding email from E.
3 Litzky to members of the AIG Board)
4 re: Fw: AIG Board of Directors - Sunday,
5 September 21st, 8:00 p.m. (New York City time)
6 attaching Term Sheet

7 204 3590 Letter (9/21/2008) From: Ernst & Young LLP
8 To: AIG (attn: Stasia Kelly)

9 221 3592 2008.09.22 E&Y Draft Powerpoint: "Project
10 Maiden Lane II: Update Meeting"

11 249 3675 Email (9/25/2008 5:24 pm) From: Jose Macias
12 To: Kathleen Shannon, cc: Robert Reeder, John
13 Brandow re: NYSE Attaching Draft Letter and
14 Draft Press Release

15 251 3671 Email (9/26/2008 7:46 pm) From: Robert Reeder
16 To: Kathleen Shannon, Robert DeLaMater,
17 Michael Wiseman re: Re: Press Release/Letter
18 to Shareholders

19 290 3741 Morgan Stanley slides: Project Independence:
20 Valuation (8 October 2008)

21 299 3680 Email (10/15/2008 9:31 am) From: Kathleen
22 Shannon To: Tanya Hoos, cc: Glenn Tyranski,
23 Richard Wohlmacher, Tara Dziedzic re: AIG
24 Letter Attaching 9-26-08 Final Shareholder Ltr
25 (from Liddy) and 9-21-08 AC Resolution

1 303 3720 2008.10.16 Morgan Stanley Engagement Agreement
2 with FRBNY
3 401 3687 Email (1/8/2009 7:03 pm) From: Ethan James
4 To: James Hennessy, Stephanie Heller, cc: John
5 Brandow, Rafal Nowak, John Amorosi, AIG Fig
6 re: FW: Happy New Year and Special
7 ShareholderMeeting
8 420 3688 Email (2/4/2009 5:36 pm) From: James Gamble
9 To: Eric Litzky re: FW: SH vote
10 508 3742 Morgan Stanley slides: Project Independence:
11 FRB Facility and Collateral Analysis
12 (4/22/2009)
13 524 3595 Email (6/1/2009 10:08 pm) From: Jim Millstein
14 To: Matthew Kabaker, Michael Hsu re: FW:
15 Working Group List Attaching Working Group
16 List for Project Independence (Updated: June
17 1, 2009)
18 551 3590 Letter (11/20/2009) From: Ernst & Young LLP
19 To: FRBNY (attn: Christine Cumming) re:
20 Amendment No. 2
21 630 3743 Document with Heading "Federal Reserve Bank of
22 New York: AIG Collateral Valuation Analysis:
23 Fourth Quarter 2010: Final"
24
25

1	1620	3591	Draft Slides: NAIC Talking Points: Monday
2			Night 1-1's (Sept 22), Tues Regulator Session
3			(Sept 23)
4	1795	3599	Email (10/27/2008 10:02 pm) From: Sarah
5			Dahlgren To: Marc Symons, Eric Bischof, Peter
6			Juhas, Steven Manzari, cc: Amy Flynn re: Fw:
7			AIG Valuations
8	2724	3746	Preliminary Draft: Project Independence:
9			Discussion Materials (4 November 2008)
10	DX	PAGE	DESCRIPTION
11	521	3598	EMAIL FROM PAUL WHYMOTT TO ANDREW DANZIG ET AL
12			SUBJECT RE: E&Y CALL BRIDGE #
13	728	3709	EMAIL FROM JORDAN KOVLER TO KATHLEEN SHANNON
14			SUBJECT ESTIMATED COST OF FRACTIONAL SHARES
15			WITH ATTACHMENTS AIG_EST COST OF FRACTIONAL
16			SHARES.PPT
17	744	3766	EMAIL FROM AMY FLYNN TO ALEJANDRO LATORRE
18			SUBJECT <BRIEFING MATERIALS> 4:30 AIG UPDATE
19			CALL WITH ATTACHMENTS: 2009 02 14 AIG
20			SYSTEMIC IMPACT VREVISSED.PDF; 2009.02.15
21			PROPOSED PLAN V12.PDF
22	956	3712	EMAIL AND ATTACHMENT FROM JON ARONSON TO ERIC
23			LITZKY RE: SUMMARY OF TERMS OF SENIOR BRIDGE
24			FACILITY; 09-16-08 SUMMARY OF TERMS FOR SENIOR
25			BRIDGE FACILITY.PDF