

1 IN THE UNITED STATES COURT OF FEDERAL CLAIMS
2
3 STARR INTERNATIONAL COMPANY,)
4 INC., Individually and on)
5 Behalf of All Others)
6 Similarly Situated,)
7 Plaintiffs,) Case No. 11-779C
8 vs.)
9 UNITED STATES OF AMERICA,)
10 Defendant.)
11 -----)

12
13 Courtroom 4
14 Howard T. Markey National Courts Building
15 717 Madison Place, N.W.
16 Washington, D.C.
17 Wednesday, October 22, 2014
18 9:30 a.m.
19 Trial Volume 17

20
21 BEFORE: THE HONORABLE THOMAS C. WHEELER
22
23
24
25 Susanne Bergling, RMR-CRR-CLR, Reporter

1 APPEARANCES:

2

3 ON BEHALF OF THE PLAINTIFF:

4 DAVID BOIES, II, ESQ.
5 Boies, Schiller & Flexner, LLP
6 333 Main Street
7 Armonk, New York 10504
8 (914) 749-8201
9 dboies@bsfllp.com

10

11 and

12

13 AMY J. MAUSER, ESQ.
14 ABBY L. DENNIS, ESQ.
15 Boies, Schiller & Flexner, LLP
16 5301 Wisconsin Avenue, N.W.
17 Washington, D.C. 20015
18 (202) 237-2727
19 amauser@bsfllp.com

20

21 and

22

23

24

25

1 ROBERT J. DWYER, ESQ.
2 ALANNA C. RUTHERFORD, ESQ.
3 CRAIG WENNER, ESQ.
4 Boies, Schiller & Flexner, LLP
5 575 Lexington Avenue, 7th Floor
6 New York, New York 10022
7 (212) 446-2300
8 rdwyer@bsfllp.com
9 arutherford@bsfllp.com

10

11 and

12

13 JOHN L. GARDINER, ESQ.
14 Skadden, Arps, Slate, Meagher & Flom LLP
15 4 Times Square
16 New York, New York 10036
17 (212) 735-2442
18 john.gardiner@skadden.com

19

20

21

22

23

24

25

1 ON BEHALF OF THE DEFENDANT:
2 BRIAN A. MIZOGUCHI, ESQ.
3 KENNETH DINTZER, ESQ.
4 MATTHEW SCARLATO, ESQ.
5 SCOTT AUSTIN, ESQ.
6 JOHN TODOR, ESQ.
7 CLAUDIA BURKE, ESQ.
8 JOSHUA GARDNER, ESQ.
9 VINCENT PHILLIPS, ESQ.
10 MARIANA TERESA ACEVEDO, ESQ.
11 RENEE GERBER, ESQ.
12 U.S. Department of Justice - Civil Division
13 Post Office Box 480
14 Ben Franklin Station
15 Washington, D.C. 20044
16 (202) 305-3319
17 brian.mizoguchi@usdoj.gov
18
19
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I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR
ZINGALES	3789	3860			3796
	3799				3809
	3810				

EXHIBITS	FOR ID	IN EVID
Plaintiff's		
Number2579		3810
Number2827		3792
Defendant's		
Number419		3881
Number436		3902
Joint		
Number379-391		3963

*All exhibits premarked for identification prior to trial.
*See full attached list of admitted exhibits following transcript.

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

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

4 THE COURT: Good morning.

5 ALL COUNSEL: Good morning, Your Honor.

6 THE COURT: Please be seated.

7 We're on the record for day 17 of the trial in
8 Starr International Company versus the United States.

9 Good morning, Mr. Boies.

10 MR. BOIES: Good morning, Your Honor. We call
11 as our next witness Professor Luigi Zingales.

12 THE COURT: All right.

13 Good morning, sir.

14 THE WITNESS: Good morning.

15 THE COURT: Please come forward. Please raise
16 your right hand.

17 Whereupon--

18 LUIGI ZINGALES

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

21 THE COURT: Please be seated.

22 DIRECT EXAMINATION

23 BY MR. BOIES:

24 Q. Good morning, Professor.

25 A. Good morning.

1 Q. Have you ever testified in court before?

2 A. No.

3 Q. Have you had your deposition taken before?

4 A. Yes, once. Once besides this case.

5 Q. Once besides this case.

6 If there's ever any question that you have about
7 any of the questions I ask, let me know, and I'll
8 clarify. So, if you don't understand something, just
9 ask me and I will try to make it clear.

10 What is your present position?

11 A. What is my present position? I am a professor
12 of entrepreneurship and finance at the University of
13 Chicago, Booth School of Business, and I am on leave
14 this academic year at Harvard University.

15 Q. And are you -- do you have a particular position
16 at Harvard?

17 A. Technically it's called the Tassig Research
18 Chair.

19 Q. And does your chair at the University of Chicago
20 have a name?

21 A. Yes. I am the Distinguished Service
22 Professor -- Distinguished Service McCormack Professor
23 of Entrepreneurship and Finance.

24 Q. You should have with you two binders. One is a
25 binder of some documents. Do you have that up there?

1 A. It's called witness binder?
2 Q. Yes.
3 THE COURT: Mr. Boies, I don't have these
4 binders yet.
5 MR. BOIES: I apologize, Your Honor.
6 THE COURT: That's okay.
7 MR. BOIES: You are the one person, other than
8 the witness, who I want to have them. Thank you.
9 THE COURT: Thank you.
10 MR. BOIES: Wait a minute. I think I gave you
11 two copies of the same thing.
12 THE COURT: Yes, I think so. Yes.
13 MR. BOIES: All right.
14 THE COURT: Sir, you do not need to be quite so
15 close to that microphone, because we will get a little
16 feedback from time to time.
17 THE WITNESS: Okay.
18 THE COURT: You have a strong enough voice that
19 we don't need that.
20 THE WITNESS: Okay, thank you.
21 BY MR. BOIES:
22 Q. Would you turn to Plaintiffs' Trial Exhibit 2827
23 that is in your book. Is that in the book?
24 A. Twenty --
25 Q. I think it is not in your book.

1 A. Oh, okay.

2 Q. Let me hand up Plaintiffs' Trial Exhibit 2827.
3 Is Plaintiffs' Trial Exhibit 2827 your CV?

4 A. Yes.

5 MR. BOIES: Your Honor, I would offer
6 Plaintiffs' Trial Exhibit 2827.

7 MR. DINTZER: No objection, Your Honor.

8 THE COURT: All right. Plaintiffs' Trial
9 Exhibit 2827 is admitted.

10 (Plaintiffs' Exhibit Number 2827 was admitted
11 into evidence.)

12 BY MR. BOIES:

13 Q. You received your Ph.D. from MIT. Is that
14 correct?

15 A. That's correct.

16 Q. And to earn your Ph.D., I assume you wrote a
17 thesis?

18 A. Yes.

19 Q. What was the subject of your thesis?

20 A. It was on the value of corporate control.

21 Q. And how long have you been on the faculty at the
22 University of Chicago?

23 A. Since 1992, so 22 years.

24 Q. In what school do you teach at the University of
25 school?

1 A. In the Booth School of Business.

2 Q. What are your primary responsibilities?

3 A. I currently -- currently, except for this year
4 of leave, I teach one course in entrepreneurial finance
5 and private equity, and I teach a Ph.D. course in
6 corporate finance. Early in my career, I taught for
7 many years a course in basic corporate finance.

8 Q. And I think you have indicated that you are
9 currently teaching at Harvard. Is that correct?

10 A. Yes. I am on leave on a research position where
11 I will have to teach a bit in the next semester. I'm
12 not currently teaching this semester.

13 Q. Where else have you taught, if anywhere, other
14 than at the University of Chicago and Harvard?

15 A. I had some very short spot courses at my alma
16 mater, Bocconi University. I did one, again, spot
17 course at the University of Michigan once, but basically
18 I did all my career at Chicago, except for that leave at
19 Harvard.

20 Q. Are you a member of any professional societies?

21 A. Yeah. I am a member of the American Finance
22 Association. Actually, this year, it turns out I am
23 actually the president of the American Finance
24 Association. I am a research associate, I think that's
25 the name, for the National Bureau of Economic Research

1 and for the CEPR, which is the Center for Economic
2 Policy Research in England, and a fellow of the European
3 Corporate Governance Network.

4 Q. What has been the focus of your research?

5 A. My research has been fairly broad, but the main
6 focus has been on corporate governance and corporate
7 control.

8 Q. Have you published articles in academic journals
9 relating to your research?

10 A. Yes, absolutely.

11 Q. And are those, or at least some of them, listed
12 in your CV that we have just offered?

13 A. Yeah. Hopefully, all the published articles
14 should be here.

15 Q. And have you won awards for your work?

16 A. Yes. I won a few prizes for my articles, and
17 then when I was young, in 2003, I got a prize for -- as
18 a young economist, and I think it was the best financial
19 European young economist or something like that.

20 Q. Have you ever served on the board of any public
21 companies?

22 A. Yes. I -- from 2007 to April 2014, I was on the
23 board of Telecom Italia, an Italian company but listed
24 on the NYSE; and during that period, I was also for one
25 year chair of the compensation committee, for three

1 years member of the compensation committee, for three
2 years member of kind of the audit committee, and for
3 three years, also, leading independent director.

4 And starting in May of this year, I'm on the
5 board of ENI, another Italian company listed on the
6 NYSE, and I'm a member of what amounts to roughly the
7 audit committee.

8 Q. I think you said that you had been deposed in
9 one case other than this case. Am I right?

10 A. That's correct.

11 Q. What case was that?

12 A. This was a case brought in front of the New
13 Jersey Court, if I remember correctly, brought by
14 Parmalat against Citigroup for aiding and abetting the
15 sort of financial fraud that took place in Parmalat.

16 Q. And I take it that you did not testify in that
17 case.

18 A. No, I didn't.

19 Q. Are you working with a consulting firm in this
20 matter?

21 A. Yes, I do.

22 Q. What firm is that?

23 A. Charles River Associates.

24 Q. Are you being compensated for your work in this
25 case?

1 A. Yes, I do.

2 Q. Is your compensation contingent on how you
3 testify here in court or on the ultimate result of the
4 case?

5 A. No.

6 MR. BOIES: Your Honor, we would offer Professor
7 Zingales as an expert in the field of economics and
8 corporate governance.

9 THE COURT: All right.

10 Mr. Dintzer, any voir dire?

11 MR. DINTZER: Yes, Your Honor, briefly.

12 THE COURT: Yes.

13 VOIR DIRE EXAMINATION

14 BY MR. DINTZER:

15 Q. Good morning, sir.

16 A. Good morning.

17 Q. Sir, you are not an expert in bankruptcy. Is
18 that right?

19 A. I do not consider me -- consider myself an
20 expert in bankruptcy. I have written some articles
21 about bankruptcy, but I don't consider myself an expert
22 in bankruptcy.

23 Q. Or in the insurance industry?

24 A. Definitely not in the insurance industry.

25 Q. And you have no expertise in insurance

1 regulation. Is that right?

2 A. I don't have any expertise in insurance
3 regulation. That's correct.

4 Q. And you've never worked for a commercial bank,
5 is that right, as an employee?

6 A. As an employee, no.

7 Q. Or an investment bank?

8 A. No.

9 Q. And you've never organized or negotiated a loan
10 offering for an American corporation.

11 A. When you say "American corporation," that means
12 incorporated in America?

13 Q. Basically under American law, wherever the
14 corporation did business.

15 A. Yeah, I didn't.

16 Q. Okay. And you are not qualified to opine
17 whether there was a illegal exaction in this case. Is
18 that right?

19 A. I'm not a legal expert.

20 Q. Fair enough.

21 You're not an expert in government contracting
22 as well?

23 A. Government contracting is so broad.

24 Q. It is.

25 A. It could be sort of a -- even, like, aircraft

1 carrier contracting? Of course not.

2 Q. Okay.

3 A. So, if you are more specific, maybe I --

4 Q. Well, so, it's kind of a broad field, and so if
5 you think that there's any specific part, but the
6 Government -- there's a specific field of government
7 contracting where the Government does contracts in some
8 ways differently than others, and I'm wondering if you
9 have any specific expertise in government contracting.

10 A. I would say no.

11 Q. Okay. So, if I asked you what the FAR was, do
12 you know that is?

13 A. No.

14 Q. Okay. And you are not an expert in sovereign
15 wealth fund investing. Is that right?

16 A. Now we start to get closer to my area of
17 expertise. When you say an expert in sovereign fund
18 investing, does it mean putting my money into sovereign
19 funds or how they deploy their money? This is --
20 sovereign funds are a big player in the private equity
21 market, a subject I'm an expert of and I teach, so --

22 Q. Let me narrow the question. You've never worked
23 with a sovereign wealth fund and helped guide its
24 investments, have you?

25 A. No.

1 Q. Okay.

2 And so with that, Your Honor, we do not oppose
3 the witness' qualification as an expert in economics and
4 corporate -- and corporate governance. We do have a
5 concern -- and I'm just going to flag it for Your Honor,
6 we won't raise it now, but I might be raising it soon --
7 based on what we've seen on the Plaintiffs' slides.

8 There's a tremendous amount that doesn't seem to
9 have anything to do with economics, and so while we
10 believe that -- while we do not challenge his
11 qualification as proffered, whether that falls within
12 that scope of that, we might be raising some objections,
13 and shortly.

14 THE COURT: All right. Well, we'll take that as
15 it comes.

16 MR. DINTZER: I appreciate that, Your Honor.

17 THE COURT: All right, thank you.

18 So, I will accept Dr. Zingales as an expert in
19 the field of economics and corporate governance.

20 DIRECT EXAMINATION (cont.)

21 BY MR. BOIES:

22 Q. Professor Zingales, counsel for the United
23 States referenced some charts that we provided to them.
24 Did you prepare some charts as demonstrative exhibits to
25 illustrate certain points of your testimony?

1 A. Yes, I did.

2 Q. And do you have a small binder of those up on
3 the stand with you?

4 A. Yes, I do.

5 Q. Let me go through at the beginning a summary of
6 your opinions, and then I want to go through each of the
7 opinions in more detail, but I'd like to give the Court
8 sort of a road map of what we're going to cover.

9 First, were you asked to provide an opinion as
10 to whether Defendant exercised control over AIG?

11 A. Yes, I did.

12 Q. What did you conclude with respect to whether
13 Defendant exercised control over AIG?

14 A. I concluded that Defendant exercised control
15 over AIG starting at least from September 16, 2008,
16 until at least 2011.

17 Q. Were you asked to provide an opinion as to
18 whether there were economic differences between the
19 credit facility terms approved by the Federal Reserve
20 Board of Governors on September 16th, 2008, and the
21 terms presented to the AIG board on September 21st,
22 2008?

23 A. Yes, I was asked.

24 Q. What did you conclude with respect to that
25 question?

1 A. I concluded there were significant economic
2 differences between the two.

3 Q. Were you asked to analyze any issues relating to
4 the reverse stock split on June 30, 2009?

5 A. Yes, I was.

6 Q. And what did you conclude with respect to that?

7 A. I concluded that the reverse stock split and, in
8 particular, the fact that this reverse stock split was
9 applied just to the issued shares and not to the
10 authorized and nonissued shares was not explainable in
11 any other way, other than the Government wanted to
12 bypass a vote separate by common shareholders for a
13 modification of the corporate statute.

14 Q. Let me turn to your first opinion, the question
15 as to whether the Defendant had effective economic
16 control. What do you mean by effective economic
17 control?

18 A. Not -- not being a lawyer, I don't opine on the
19 legal control. I opine on whether, de facto, an entity
20 could exercise control over another one, and that's what
21 I mean by effective economic control, is the de facto
22 ability to make a decision.

23 Q. Where does the concept of effective economic
24 control originate?

25 A. So, in a free market economy where there's no

1 power of coercion, you wonder what it means to be in
2 control of a person or an organization. So, if I ask my
3 assistant to bring me some coffee, what gives me the
4 power to ask him to do so?

5 And the economic literature has analyzed this
6 question, and the answer is that what gives me power is
7 my ability to influence -- and I apologize for using
8 some economic jargon and maybe I explain later -- but to
9 influence the outside option of this person. So, my
10 ability to fire my assistant gives me -- reduces his
11 utility in the state of the world in which we don't
12 collaborate, and that ability gives me some sort of
13 leeway in extracting some surplus out of him, for
14 example, getting a coffee, even if this is not in the
15 job specification.

16 And, of course, this power is very much a
17 function of how strong is my -- sorry, how important is
18 the asset I control or the situation I control, in this
19 case his employment, and how bad it is for him if I
20 subtract that. So, if I am in the middle of a major
21 recession and no jobs around, me subtracting that job
22 can put him in a very uncomfortable position, so I am
23 able to extract more, for example, have my dog walked,
24 even if it is not in my job specification.

25 Q. How do you determine whether one entity

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1 possesses effective economic control over another
2 entity, in particular, a large corporation?

3 A. So, I analyze it in two ways, from a, if you
4 want, input way and an output way. From an input way,
5 it is does this entity control a scarce resource that is
6 crucial for this corporation or this entity? And that
7 is what the incomplete contractor theory suggests to us.

8 The second is to see of the outcome, if these
9 outcomes tend to be consistent in term of both
10 allocation of surplus, am I able to extract most of the
11 surplus from this relationship, and in terms of are the
12 outcomes consistent with the interests of the person
13 sort of trying to exercise control. So, I think those
14 are the two kind of points to analyze.

15 Q. You mentioned an incomplete contractor theory?

16 A. Yes.

17 Q. What is -- what is the incomplete contractor
18 theory?

19 A. So, incomplete contract theory is a theory that
20 got started by Grossman and Hart in 1986 and has become
21 sort of a very important part of the economic
22 literature. One of the articles in this literature by
23 Aghion and Tirole has been nominated recently in the
24 Nobel Prize Award for Jean Tirole last week.

25 This theory try to explain exactly the question

1 that you ask me at the beginning, which is how do I get
2 power or control over people, because there was an older
3 literature that was saying there is no difference for me
4 sort of firing my assistant or for me firing my
5 grocery -- my grocer, sorry. So, when I stop buying at
6 my grocery shop, I -- and I should not use it, quote,
7 unquote -- fire my grocer.

8 Now, the grocer, if I am a small buyer, hardly
9 notice -- notices that I fire him, and that's exactly
10 the point. So, the crucial aspect of this theory is
11 what is my ability to affect not the -- what happens in
12 the relationship, because in both cases, the grocery
13 shop benefits from me patronizing that shop, and the
14 employee benefits from working with me.

15 The difference is when I fire the grocery shop,
16 I don't really change the alternative available to the
17 grocery shop. When I fire my employee, I affect sort of
18 his alternatives or her alternatives. So, the
19 difference is my ability -- so, if I am the owner of a
20 grocery shop, if I subtract the shop from the employee,
21 then I have some power over the employee. If I simply
22 stop buying or patronizing there, I don't do that. So,
23 the crucial aspect is my ability to influence the
24 outside option of this employee.

25 Q. In general, who has control over a corporation?

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1 A. In a normal situation, I would say that in a
2 small company, definitely the shareholders are the ones
3 in control, and if you have a majority shareholder in a
4 corporation, this person can be deemed in control.
5 In -- in a publicly traded corporation where ownership
6 is disbursed, generally control is delegated to the
7 board, but there are situations in which a large
8 supplier or a large buyer or -- generally suppliers or
9 buyers can -- or lenders, a lender is a supplier -- can
10 exercise control given the fact that they might control
11 some crucial resources.

12 Q. Could you provide an example of an entity that
13 has control over a corporation in the absence of stock
14 ownership?

15 A. Yes. If I am a large lender to a corporation, I
16 can have some or a lot of economic control over that
17 corporation. The some or a lot depends crucially on the
18 situations. Even the Fed itself, in the Fed policy that
19 is designed to explain basically what it means to be in
20 control, the Bank Holding Company Act, the Fed says
21 whether a lender is -- exercises a controlling influence
22 over a bank corporation depends crucially on the
23 condition under which this lending take place.

24 So, if the lending is arm's length in a
25 competitive market, I cannot interrupt that lending at

1 will and that lending does not represent a major part of
2 the lending of that corporation, then a lender is
3 definitely not in control. When -- if the lender is a
4 monopolist, then dollars exercise control and influence,
5 and the easier it is for the lender to stop the lending
6 and the more important it is that lending is to the
7 borrower, I think that's a key element of determining
8 whether it is in control.

9 Q. Now, in response to questions from counsel for
10 Defendant, you indicated that you were not an expert on
11 insurance regulation. Do you recall that?

12 A. Yeah, that's correct.

13 Q. As an economist examining an economic issue, do
14 you nevertheless look at the regulations that are in
15 effect in the area that you are investigating?

16 A. Of course.

17 Q. Why is that?

18 A. So, in my opinion, like in I think most of the
19 research I do, I start from some economic theory, and
20 then I want to make sure that this economic theory has
21 some bearing to reality. Sometimes economic theories
22 are very abstract, and so I want to make sure that there
23 is some validity in what the theory predicts or implies.

24 And so in the case of this particular opinion,
25 what I did, I look at some regulation as corroborating

1 evidence of what the theory suggests, and in particular,
2 I thought it was useful to look at Fed regulation.
3 Given that the Fed is part of what we classify as the
4 Defendant in this case, I think it is interesting to see
5 how the Fed looks at the question of what it means to be
6 in control.

7 And by the way, what I -- why that regulation is
8 particularly useful is what the Fed is concerned -- in
9 the Bank Holding Company Act and the Fed policy
10 statement, what the Fed is concerned about is precisely
11 somebody taking control of a bank and using that bank
12 for some purposes that are not in interest --

13 MR. DINTZER: Objection. Your Honor, the
14 witness has said that he's not an expert in bank
15 regulation and now he is expressly stating why and how
16 the Fed regulates banks and offering what seems to be an
17 opinion based on that. So, we would object that he
18 offer that; it's beyond the scope of his expertise.

19 THE COURT: Mr. Boies?

20 MR. BOIES: Your Honor, as the witness has said,
21 as part of his normal economic research, he will look at
22 the regulations that are in effect and try to understand
23 how they affect a particular industry or issue that he
24 is investigating. He is not offering opinions as an
25 expert in bank regulations or insurance regulations.

1 He's offering an opinion based on economic control, and
2 as part of that, he looks at the facts in the industry.

3 THE COURT: Well, I think we're inching toward
4 the outside boundaries that you alerted me to,
5 Mr. Dintzer, but I am going to allow this answer.

6 MR. DINTZER: Thank you, Your Honor.

7 THE COURT: He probably doesn't remember the
8 question at this point.

9 MR. BOIES: You were partway through your
10 answer.

11 THE WITNESS: Yes. I think that, if I remember
12 correctly, I was trying to explain why I thought that
13 looking at the Fed policy was relevant for this case,
14 and I said one reason is because the Fed is involved, so
15 we want to judge it by some laws. But most importantly,
16 it's because the concern beyond sort of the Fed
17 regulation and -- it is precisely to avoid somebody
18 taking control of the banking organization and using the
19 banking organization for scopes that are different than
20 sort of the safety of the bank. So, I thought that this
21 was particularly relevant in starting, whether there was
22 that control here.

23 And then I also look at some insurance
24 regulation in -- because AIG operates in a lot of
25 markets, I looked at a sample of this regulation, most

1 importantly in the State of New York, Texas,
2 Pennsylvania, and North Carolina. And they pretty much
3 all say the same thing as far as this sort of control is
4 concerned.

5 BY MR. BOIES:

6 Q. Let me ask you to look at Plaintiffs' Trial
7 Exhibit 2579 that is in your binder.

8 A. Okay.

9 Q. Is this the Federal Reserve policy statement to
10 which you made reference in your prior answers?

11 A. Yes.

12 MR. BOIES: Your Honor, I would offer
13 Plaintiffs' Trial Exhibit 2579.

14 MR. DINTZER: Your Honor, may I have a question
15 or two on voir for the witness about the document?

16 THE COURT: Sure.

17 MR. DINTZER: Okay.

18 FURTHER VOIR DIRE EXAMINATION

19 BY MR. DINTZER:

20 Q. Sir, before this case, had you ever seen this
21 policy before?

22 A. The Bank Holding Company Act in general or this
23 particular number of this thing?

24 Q. This particular number of this thing.

25 A. I don't remember.

1 Q. Okay.

2 Your Honor, we don't believe it should be
3 brought in with this witness since he hasn't seen it
4 before. We object.

5 THE COURT: Mr. Boies?

6 MR. BOIES: Your Honor, part of what an
7 economist does in terms of doing research on a subject
8 or an industry is to look at things that the economist
9 has not previously seen. This is a part of the context
10 of understanding what actions do or do not represent
11 control in this particular instance. He's not offering
12 an opinion about this. He's offering an opinion about
13 how this and other factors contribute to control.

14 THE COURT: I am going to allow it. Plaintiffs'
15 Trial Exhibit 2579 is admitted.

16 (Plaintiffs' Exhibit Number 2579 was admitted
17 into evidence.)

18 DIRECT EXAMINATION (cont.)

19 BY MR. BOIES:

20 Q. Did you prepare a demonstrative exhibit
21 identifying your understanding of this policy statement
22 with respect to the issue of indicia of control?

23 A. Yes, I did.

24 Q. Would you turn to your binder that contains your
25 exhibits and, in particular, look at Plaintiffs' Trial

1 Exhibit 5045.

2 A. Okay.

3 Q. And can you explain what that is?

4 A. Yes. This is trying to summarize what are the
5 conditions under which the Fed policy identify the
6 present control, and these conditions are either an
7 equity ownership above 25 percent or the ability to
8 select directors or a number of indicia of control or
9 influence over management.

10 And what I want to stress is, number one, these
11 are either/or, so one of the three is sufficient to
12 indicate control; and two, again, these are what theory
13 would predict regardless of the Fed policy. So, the
14 fact that the Fed policy identify is a consequence of I
15 think good law, because I -- good regulation. I think
16 that good regulation is the result of applying economic
17 principle to the economy, and this seems to be the case.

18 Q. Let me ask you to look at Plaintiffs' Trial
19 Exhibit 2579, page 15.

20 A. Okay.

21 Q. And the first full paragraph on that page, the
22 first sentence. Do you see that?

23 A. The one, "Importantly, controlling-influence
24 determinations depend not just on the contractual rights
25 and obligations of the investor and the banking

1 organization." Should I keep reading?

2 Q. Yes.

3 A. "They also depend on the amount of influence the
4 investor in fact exercises over the banking
5 organization."

6 Q. And is that consistent with your understanding
7 of economic theory?

8 A. Absolutely. This term of the "investor in fact"
9 is what I earlier mentioned and I also mention in my
10 articles, is what I call de facto control.

11 Q. And what is the relationship between de facto
12 control and effective control?

13 A. I use them as synonyms. They are the same thing
14 for me.

15 Q. Let me ask you to turn to the next demonstrative
16 exhibit, Plaintiffs' Trial Exhibit 5046.

17 A. Okay.

18 Q. And can you explain the significance, if any, of
19 this exhibit?

20 A. Yes. This is just a useful way to summarize
21 some of what I earlier referred to as output of control.
22 What do I want to look at in -- to determine that a
23 person has de facto control? And, again, I could have
24 listed -- and, in fact, I did start listing them
25 straight out of economic theory, and I found support in

1 the Fed policy statement and -- which indicates, very
2 detailed, the conditions that determine whether you are
3 exercising a controlling influence.

4 And so one of these characteristics is, not
5 surprisingly, hiring, firing, and compensating the
6 executive officers. As I said, the ability to fire
7 somebody is really a clear indicator of control. The
8 ability to engage in new business lines, the ability to
9 make substantial change in operation, the ability to
10 raise debt or equity capital, the ability to merge or
11 consolidate, and the ability to sell, transfer, or
12 dispose of large subsidiaries or assets.

13 Q. You mentioned in a recent answer that in
14 addition to looking at the Fed policy statement, you
15 looked at insurance regulations. Do you recall that?

16 A. Yes.

17 Q. Now, you are not an expert in insurance
18 regulations, correct?

19 A. Yes.

20 Q. What is the purpose of an economist looking at
21 regulations affecting the company that the economist is
22 examining?

23 A. I think I am going to repeat myself in the sense
24 that the purpose of looking at the regulation is to see
25 to what extent the economic theory is embedded in this

1 regulation, and as I said earlier, good regulation
2 follows from economic theory, and good theory is able to
3 explain good regulation.

4 So, I wanted to make sure that the theory I was
5 using, and I used in the past in my work, would apply to
6 this particular case, which ultimately has to do with
7 insurance company. And so that's the reason why I look
8 at that regulation.

9 Q. And what did you find in looking at those
10 regulations that was significant to your investigation
11 of the issue of control?

12 MR. DINTZER: Objection, Your Honor. Again,
13 we -- I think we've stumbled over the line with his
14 expertise. He is welcome to look at whatever regulation
15 to inform his analysis, we don't object to that, but for
16 him to then look at regulations in a field that he
17 admits he doesn't have expertise in and then drag them
18 in and try to apply them here exceeds his expertise and
19 doesn't offer any insight to the court.

20 THE COURT: Well, no, I think it's fair game, at
21 least at this point. So, I am going to overrule the
22 objection.

23 MR. DINTZER: Thank you, Your Honor.

24 THE WITNESS: So, the insurance regulation --
25 and this is kind of a summary of the main state

1 regulations I looked at -- focuses mostly on two things.
2 One is the -- an equity ownership, and in that case, the
3 threshold is actually lower, it's 10 percent. And in
4 addition to that, they look, as an alternative
5 characterization of control, some controlling influence
6 over management with sort of items or criteria that are
7 very much in the spirit of what is listed here that
8 applies to the Fed policy.

9 BY MR. BOIES:

10 Q. You mentioned that one of the things you looked
11 at is when the Government began having control, and let
12 me ask you to look at Plaintiffs' Trial Exhibit 5047.

13 A. Yes.

14 Q. And this -- these are in the binder of the
15 demonstrative exhibits.

16 And can you explain what this exhibit's
17 significance is; in particular, whether it relates to
18 your input and output discussion earlier?

19 A. Yes. So, the -- during the day of the 16th, the
20 Government started to exercise effective economic
21 control by using in conjunction two sort of levers. On
22 the one hand, the controlling over the lender of last
23 resort facility, and on the other hand is
24 political/regulatory power. So, that's the source of
25 the control, and the indicia that control is exercised

1 are some elements of what happened during that day.

2 So, the two sources is the lender of last resort
3 facility was not crucial until the failure of Lehman.
4 We have heard in testimony that many people have said
5 that before the Lehman failure, there was a private
6 solution available to AIG. So, there wasn't a monopoly
7 power of the Government vis-à-vis the lending ability to
8 AIG.

9 At the same time, there were some efforts to
10 find resources outside of the United States, and during
11 the weekend, the previous weekend, there was an effort
12 in contacting both Chinese and Singapore Wealth Fund to
13 invest in AIG. In -- on the day of the 16th, the
14 Chinese expressed an interest to then Secretary Paulson,
15 but Paulson said that they couldn't proceed in this
16 respect and did not even communicate this information to
17 AIG.

18 So, on the one hand, the power of the lending of
19 last resort facility became more crucial as a result of
20 events beyond the control of everybody. On the other
21 hand, outside facilities -- outside options -- sorry,
22 options outside of United States were limited. So, this
23 is what I call the input in my -- in my analysis.

24 What are the outputs? The outputs is the fact
25 that the Government is able to tell Willumstad, the then

1 CEO, that he was out. Not only that, the Government go
2 out and recruit a new CEO and call him and say you are
3 in, even before contacting anybody on the board. So,
4 from a de facto point of view, the Government acts like
5 it is in control.

6 Q. If you look at Plaintiffs' Trial Exhibit 5048,
7 can you explain what the significance of that chart is
8 with respect to what you just said?

9 A. Yes. So, one item I already mentioned is the
10 Government's ability to recruit and seal that deal with
11 the new AIG CEO, I think it is quite important. The
12 fact that it wasn't -- one characteristic of a
13 contractual -- a normal contractual relationship is the
14 ability to sort of negotiate a deal. This deal was
15 nonnegotiated. It was a take-it-or-leave-it offer from
16 the Government, which indicates all the bargaining power
17 was on the side of the Government.

18 We have heard Former Chairman of the Fed
19 Bernanke saying that the Bagehot principle was not
20 applied to AIG. So, the common understanding of how the
21 lender of last resort facility should be used is to
22 follow the Bagehot principle, which is to lend freely to
23 solvent companies, against good collateral, at a rate
24 which is slightly higher than the rate in the normal
25 market condition.

1 By contrary here, we see that the Government is
2 taking, at least on the 16th, the characteristics of a
3 private deal and applying those characteristics, in
4 fact, over the course between the 16th and 22nd, make
5 them worse, and in a way that is unprecedented before
6 and I would say even after. And the Government is
7 telling a government official or at least an employee of
8 the Fed that we're going to take on AIG, we are going to
9 make them a loan, and you are going to run it. So, this
10 is a pretty clear indication in my view that the
11 Government felt in control of AIG.

12 MR. DINTZER: Objection, Your Honor. The
13 witness just testified about how the Government felt,
14 and I -- in fact, "pretty clear indication in my view
15 that the Government felt in control of AIG." I don't
16 think that that's really within the scope of economics
17 or corporate governance, and so we would move to strike
18 that from -- well, it's an opinion, but that statement
19 from his testimony.

20 THE COURT: Well, I -- Mr. Dintzer, I think you
21 are splitting hairs with his word choice perhaps. I
22 think the lion's share of what he said was perfectly
23 proper. So, I don't feel inclined to strike a small
24 phrase from it.

25 BY MR. BOIES:

1 Q. Now, did you analyze what the sources of the
2 Government's power to control AIG was after September
3 16th?

4 A. Yes, I did.

5 Q. And did you prepare a chart that relates to
6 that?

7 A. Yes, I did.

8 Q. And would you identify that for the record.

9 A. Yes. This is Plaintiffs' Trial Exhibit 5049.

10 Q. And what is the significance, if any, of what
11 you describe here as examples of the sources of the
12 Government's power to control AIG during the period of
13 September 17th through 23rd of 2008?

14 A. I think that here we want to look at indicia of
15 effective use of control over this period, and these
16 indicia are pretty powerful, at least according to Sarah
17 Dahlgren testimony. The government-appointed CEO shows
18 up on the premises of AIG before the board even have the
19 ability to decide whether to appoint him, let alone to
20 even do the due diligence.

21 The situation is such that the government
22 appointee, Sarah Dahlgren, is sort of showing up and
23 saying we are -- you are going cooperate, talk to the
24 employees, you are going to cooperate. At the same
25 time, we have the Government still sort of discouraging

1 potential private solution. There was an interest of
2 GIC communicated through, if I remember correctly,
3 Senator Clinton, that was stopped, and there was a clear
4 sense that the Government will not continue to fund.

5 By the way, what I forgot to say, which was very
6 important, as of the end of the day on the 16th, there
7 is a temporary secure lending done by the Fed to AIG,
8 which is drawn down in a significant way, so that by the
9 21st, we're down to 37 billion in that secure lending
10 that will expire on September the 23rd. So, remember,
11 the Fed policy is saying that a contractual lender can
12 get a disproportionate amount of controlling influence
13 as a result of being in a situation where he is the
14 monopoly lender, and this is exactly what happens,
15 because if the situation was bad on the 16th, it only
16 got worse afterward.

17 Q. Let me ask you to go down the points that you
18 have on Plaintiffs' Trial Exhibit 5049 and try to get
19 you to focus on the significance, if any, that each of
20 these have to your conclusion as to whether or not the
21 Government had effective control over AIG.

22 The first one here talks about Mr. Liddy having
23 been "accepted as Chief Executive Officer as part of the
24 agreement to accept government financing." Do you see
25 that?

1 A. Yes, I do see that, and --

2 Q. What's the significance, if any, of that to your
3 conclusion?

4 A. A CEO has an enormous amount of power in a
5 corporation and also in its ability to communicate
6 things to the board and, being chairman, to also set
7 agenda of the board. So, if you have somebody that has
8 been handpicked by the Government, not by the board, and
9 to some extent the board did not even have the option to
10 choose whether he would be just CEO or CEO and chairman,
11 because in the minutes of the 18th, when he's appointed,
12 there is a discussion of -- and some board members are
13 saying that they would prefer to have those positions
14 separate -- which, by the way, creates more balance in a
15 company -- and there is a clear statement that the
16 Treasury expects him to be both chairman and CEO, at
17 which point sort of the board agrees.

18 So, the significance is you have the person --
19 so, the -- at the helm of the corporation that is
20 appointed -- handpicked by the Government and is running
21 it even to some extent before he's appointed by the
22 board.

23 Q. Let me ask you to look at the next item on your
24 chart where you talk about Mr. Liddy believing that the
25 Federal Reserve had invested in AIG and owned 79 percent

1 of the equity, treated the Federal Reserve Bank as a
2 full partner, and, in general, didn't do anything
3 without reviewing it with the Federal Reserve and
4 Treasury. Do you see that?

5 A. Yeah, absolutely.

6 Q. What's the significance of that, if any?

7 A. Again, just lending is not enough to tell you
8 are in control, but the combination of lending and
9 intermingling in the day-to-day affairs, to the point
10 that Mr. Liddy is saying that I don't do anything
11 without reviewing, suggests a very strong control over
12 the affairs of the corporation.

13 Q. I think the next item, where you talk about an
14 on-site presence at AIG, you've covered.

15 A. Actually, Counsel, may I?

16 Q. Sure.

17 A. One thing. In -- I think that I did cover it,
18 but I didn't stress one important point. When we talk
19 about source of power, one important source of power is
20 information, and actually, the article by Aghion and
21 Tirole that I was mentioning before makes this point
22 very clear.

23 So, if you have some monopoly power to
24 information, you have a large degree of control over an
25 institution. So, here, what the Government does is gets

1 a direct source of information that bypass the board and
2 the CEO and direct access to the company's information.
3 So, again, by itself, it is not indicative, but in
4 combination with the other, that's a very strong
5 indication of the degree of control of the Government.

6 Q. The next item relates to the fact that the
7 private credit markets remain frozen, with many firms,
8 other than AIG, dependent on government assistance for
9 survival.

10 What's the significance, if any, of that to the
11 issue of the sources of the Government's power to
12 control AIG?

13 A. One key element is that the lender of last
14 resort ability was the only game in town, and if this
15 was true on the 16th, it became even more true in the
16 period from the 16th to the 22nd. Remember that after
17 the failure of Lehman, there was the breaking the back
18 of the Prime Reserve Fund, which led to a run on money
19 market funds and led to a freezing of the commercial
20 paper market, which is crucial to the financing of banks
21 and some even industrial corporations, so much so that
22 the Government needed to intervene also on that front.

23 By the Friday or Saturday, Morgan Stanley
24 announced to Secretary -- sorry, to the head of the Fed,
25 Geithner, that they would not open up on Monday, and the

1 understanding was that if Morgan would not open up on
2 Monday, Goldman would be unable to operate as well. So,
3 the situation was very quickly unraveling.

4 Q. The next item relates to sovereign wealth funds,
5 which I think you have already addressed.

6 The item after that talks about whether the
7 Government increased the pressure on AIG by demanding a
8 answer at the September 21st board meeting after waiting
9 to provide its revised demand. Do you see that?

10 A. Yes.

11 Q. What's the significance of that, if any?

12 A. Again, the difference between a normal contract
13 and a contract with a person who is in control is that
14 the person in control dictate the terms and make it
15 basically impossible to negotiate. And so what the
16 Government did, there was a clear understanding of
17 management, and including the outside legal counselor,
18 that on the 16th, the offer of the Government was in
19 term of warrants, and the -- the board learn only hours
20 before the meeting on the 21st, if at all, because it
21 was a Sunday and they got an email I think at 3:30 in
22 the afternoon, so they -- they learn only at the last
23 minute that the Government had changed those terms into
24 preferred equity, making it clear that they will not
25 fund the secure lending that they had funded up to that

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1 point and it would come to termination on the 23rd, they
2 will not fund that in -- if those terms were not
3 approved.

4 Q. Let me -- let me turn to the next chart,
5 Plaintiffs' Trial Exhibit 5050, and can you explain the
6 significance of what you have set out here?

7 A. Yes. This is another sort of exhibit where I
8 document actions that indicates who is in charge in the
9 corporation. So, the fact that Sarah Dahlgren says that
10 he clearly is the one in charge, it refers to Ed Liddy,
11 on the 17th, before he was appointed, is a pretty
12 interesting point, a pretty important point, I should
13 say.

14 The fact that the Government provides to the new
15 CEO the talking points indicates who was running the
16 agenda. The fact that Sarah Dahlgren, say, "We are
17 here, you are going to cooperate," again, is an
18 indication of who appears in control in that situation.

19 The fact that the Government revises the terms
20 of the credit facility I explain earlier. The fact that
21 on the 19th, the Government not only block -- ask AIG to
22 amend an SEC filing, but then say all security filings,
23 press releases, and any other significant releases or
24 communications would be ran past the Government's lawyer
25 in advance.

1 Now, what is important here -- and it is
2 important to underline this -- it is not unusual that if
3 we are -- if I am a lender and you are a company and you
4 have to file something that has to do with our
5 relationship, I get to see those filings before they are
6 filed. I think that's not unusual. What is unusual is
7 that here, it applies to all security filings regardless
8 of whether this is part of our relationship. And I
9 think that I can not summarize this better than the then
10 vice chairman of the Fed, who said, "We're definitely
11 acting like we own the company."

12 Q. Now, you talked about the Government revising
13 the terms of the credit facility, and did you look at
14 the issue of whether the difference between warrants and
15 convertible voting preferred stock was economically
16 meaningful?

17 A. Yes, I did.

18 Q. And does Plaintiffs' Trial Exhibit 5052
19 represent a chart that you prepared addressing that
20 issue?

21 A. Yes.

22 Q. And can you explain what the significance of
23 this is?

24 A. Yes. So, the clear expectation of AIG board was
25 that they would have received a warrant. Now, there are

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1 two major differences between a warrant and a
2 convertible voting preferred stock, as was finally
3 approved.

4 The first one is that the convertible voting
5 preferred stock has voting right from the moment they
6 are issued. The warrant has voting right only after the
7 warrant is exercised, only -- so, if the warrant is
8 exercised and after the warrant is exercised. So, it
9 does not confer voting right immediately.

10 And second, in order to exercise the warrant,
11 you have to pay a strike price. Now, in most
12 situations, this is not a binding constraint, because
13 the strike price is set to a cent, and so it's not a big
14 deal; however, the strike price cannot be set below the
15 par value of shares. Now, generally, this par value is
16 a trivial amount, but it just happens that in AIG the
17 par value was 2.5 dollars per share. So, this -- the
18 warrant could not have been exercised at a strike price
19 below 2.5 dollars a share.

20 Now, given that in order to give 80 percent of
21 equity to the Government upon exercising of the warrant,
22 you had to issue roughly 12 billion shares. Twelve
23 billion times 2.5 dollars per share is roughly 30
24 billion. So, it would have cost the Government 30
25 billion to achieve those voting rights that they were

1 receiving right away in the convertible voting
2 preferred.

3 Q. Now, were there other differences between the
4 September 16th term sheet and the credit agreement terms
5 that the board of AIG was asked to consider on September
6 21st, other than the issue of warrants?

7 A. Yes. I think if you turn to Trial Exhibit 5053,
8 in -- the fact is that the -- number one, the
9 convertible voting preferred should have been voted --
10 should have been held by a trust that was not in the
11 terms described to the board on the 16th, and the fact
12 that there would be sort of an AIG shareholder vote at
13 some point that was understood on the 16th but not on
14 the 21st, and, of course, the fact that ultimately you
15 have convertible voting preferred.

16 Q. Now, did you also analyze what the sources of
17 the Government's power to control AIG were after
18 September 23rd or on or after September 23rd, the day
19 the credit agreement was actually signed?

20 A. That's correct.

21 Q. And do you have a chart on that?

22 A. Yeah. That's Trial Exhibit 5054.

23 Q. And what is the significance of the materials
24 that you've set out here?

25 A. So, first of all, as of September 23rd, after

1 the credit agreement is signed, the Government has the
2 right to ask -- within 45 days, the right to have those
3 preferred shares issued. So, we know also, economic
4 logic but also the Fed policy says that if you have a
5 nonvoting stock that can immediately, at will of the
6 holder, be converted into voting stock, it is as if you
7 had voting stock.

8 So, in this case, the Government has the ability
9 to convert into voting stock that will control 79.9
10 percent of the voting in AIG, and so that alone will
11 grant the Government control. But in addition to that,
12 there were other factors that will -- that substantiate
13 the point even farther.

14 Q. And let me go through those factors one at a
15 time.

16 A. Okay.

17 Q. What is the first such factor that you identify
18 here?

19 A. So, this is the power to stop funding at any
20 time. So, if the Government, you know, actually decided
21 that the collateral was not good enough, they will
22 stop -- stop the funding facility.

23 Q. What is the significance, if any, of that?

24 A. If -- you remember we just said that the -- the
25 source of power for the Government was the control as

1 the lender of last resort, because the Government was
2 the only game in town in that situation. So, it is like
3 I am the monopolist in providing water or electricity to
4 this town, and at my discretion, I can stop providing
5 that electricity or that water, and that clearly sort of
6 impair the ability of the town to operate.

7 MR. DINTZER: Objection, Your Honor. The
8 witness is testifying as to what terms in the credit
9 agreement meant. That is a legal conclusion and beyond
10 the scope of his expertise. He is actually saying what
11 could and could not have been done under the credit
12 agreement, and I think that's for the Court.

13 THE COURT: Mr. Boies?

14 MR. BOIES: Your Honor, I don't think he is
15 testifying as to what they meant. What he's saying is
16 that where there is a provision that says that the
17 Federal Reserve Bank of New York "in its sole
18 discretion" can decline to fund because it, "in its sole
19 discretion," is not satisfied with the collateral, he
20 can talk -- testify about the economic significance of
21 that without interpreting it.

22 MR. DINTZER: Could I respond to that, Your
23 Honor?

24 THE COURT: Sure.

25 MR. DINTZER: So, what this passage is saying

1 basically is he wants to make sure that whatever
2 collateral is being posted is within its discretion, you
3 know, something that it would want to accept, and it's a
4 single term in an entire contract, and the witness is
5 now saying that this term in the contract creates
6 control, and that -- I mean, what -- how to interpret a
7 single term within a contract is really within the -- a
8 legal analysis and beyond the scope.

9 THE COURT: Well, I think he's certainly
10 entitled to review the credit agreement and point out
11 the provisions that seem to have significance from his
12 economic standpoint, and I think that's what he's doing.
13 I don't sense any legal interpretation or judgment
14 involved here, and, you know, if you want to test this,
15 of course, you'll have an opportunity on cross
16 examination.

17 MR. DINTZER: Thank you, Your Honor.

18 THE COURT: Yes.

19 BY MR. BOIES:

20 Q. Were there other aspects of the credit agreement
21 that you believed had potential significance to your
22 economic analysis as to whether or not the Federal
23 Reserve Bank had control or whether the Government had
24 control over AIG?

25 A. Yes. So, in -- there are a number of covenants

1 that are present in the credit agreement. Now, it is
2 not unusual to have covenants in credit agreement, but
3 generally those covenants tend to be what are called
4 negative covenants, that you, for example, cannot issue
5 debt which is senior to the existing debt or limits the
6 amount of debt you can issue at all. But here, in
7 addition to these standard negative covenants, you have
8 a lot of so-called policy covenants, so -- that get much
9 more involved in the day-to-day operations.

10 So, one point here is 4.01(E), "be reasonably
11 satisfied in all respects with the corporate governance
12 of the board," and there are sort of more detailed
13 covenants, which I just listed the numbers here,
14 regarding what AIG can and cannot do. And, again, going
15 back to the Fed policy statement, the Fed says that
16 lending by itself is not evidence of control, but in
17 conjunction with very intrusive covenants, that is
18 indicia of control.

19 Q. Now, you also, in Plaintiffs' Trial Exhibit
20 5054, reference the Federal Reserve Bank of New York's
21 monitoring team. What is the significance of that as a
22 source of the Government's power of control over AIG?

23 A. So, as I said, first of all, it is important
24 because it provides a channel of information independent
25 of the company. So, in a sense, you neuter the power of

1 the board or the CEO to have a monopoly of information
2 of the company, but this is doing more, because the
3 Government -- mostly in the person of Sarah Dahlgren --
4 was participating to the board meetings, even some
5 executive sessions, and not only participate as a silent
6 person.

7 At least in one case I saw, she even spoke at
8 those meetings, so much so that at some point the lead
9 independent director, Bollenbach, said that the
10 Government at the board meeting made very clear what it
11 wanted, and because as early as September 18, if I
12 remember correctly, the Government, with the outside
13 counsel, had to explore how to replace all directors
14 even without a shareholders vote. It was pretty clear
15 that the directors were serving at the will of the
16 Government.

17 Q. The last item on Plaintiffs' Trial Exhibit 5054
18 talks about Mr. Liddy's attitude. Can you explain what
19 the significance of that is?

20 A. Yes. It's very important that the CEO feels a
21 partnership with a major investor. So, he felt he was
22 completely aligned with the Government, considered the
23 Federal Reserve Bank of New York as a full partner, and
24 trusted the Federal Reserve to do what was in AIG's
25 interests, and even say that we don't do a single thing

1 of strategic importance without making certain we have
2 talked to the Federal Reserve about it and given them an
3 opportunity to weigh in on it.

4 Now, let me say that I don't consider this
5 necessarily, from an economic point of view, bad. If I
6 am a large lender, I want to protect my lending. So,
7 the fact that the Fed does all these things is not
8 irrational from an economic point of view, but it is an
9 indication that the Fed needs or the Government needs --
10 it felt the need -- I'm sorry, felt, I don't know what
11 they felt -- but the Government wanted to have some
12 degree of control to protect its investments.

13 And so I'm not disputing that from an economic
14 point of view, that degree of control was reasonable.
15 I'm simply asserting that there was that control.

16 Q. And in addition to looking at the sources of the
17 Government's control over AIG on and after September
18 23rd, did you look at evidence that the Government
19 actually exercised control over AIG in that period?

20 A. Yes, I did. That's the Trial Exhibit 5055.

21 Q. And what is that, the significance?

22 A. So, I think, again, I am sort of pointing out to
23 evidence I found in documents of actions that are
24 consistent with not simply a arm's length lending but a
25 direct involvement of the lender, in this case the

1 Federal Reserve Bank of New York, into the daily
2 activities of the corporation. So --

3 Q. This chart relates to the Federal Reserve Bank
4 of New York's monitoring team. Is that right?

5 A. Yes.

6 Q. And what is the significance of that?

7 A. So, again, sometimes you have some outside
8 monitors to a board. So, if you are a company and you
9 are convicted of a serious violation of the Foreign
10 Corrupt Practices Act, sometimes the DOJ imposes a
11 monitor to your corporate -- to your boards to make sure
12 that you don't do it again. Those monitors tend to be
13 very sort of passive.

14 That's not the case for the AIG monitoring team
15 led by the Fed. So, they were going to daily meetings
16 with key corporate managers. They had multiple daily
17 interactions with the CEO. They had frequent dialogue.
18 They discussed both high-level and tactical issues at
19 the corporate level. They decided what assets to be
20 disposed. They spent an enormous amount of time, and
21 they had a pretty large team. I think that Sarah
22 Dahlgren said that, including consultants, it was up to
23 150 people.

24 And they also met frequently with operating
25 companies to understand their business performance.

1 They even talked with credit rating agencies directly
2 without the presence of AIG people.

3 Q. Let me ask you to turn to your next chart,
4 Plaintiffs' Trial Exhibit 5056, and I would ask you what
5 the significance, if any, is of the information that you
6 present there to your conclusion with respect to the
7 Government's exercise of control over AIG.

8 A. So, as I mentioned earlier, as early as
9 September 18, the Government's outside counsel said it
10 was ready to advise how the entire board can be replaced
11 without a shareholder vote. So, this seems to be an
12 indication that they were actively thinking about
13 replacing the board, and the combination of this threat
14 plus sort of the constant monitoring of the board makes
15 it very easy for the Government to get what they want.

16 And then in -- this was March of 2009, the
17 sitting board approves a slate of new directors, and one
18 of those directors is -- I think it's Offit, if I
19 remember correctly, says he is not sure whether he wants
20 to run to -- again, and one of the reasons is because
21 he's saying there is too much interference of the
22 Government in daily affairs.

23 In spite of that, the Government or maybe -- in
24 spite of that -- as a proof of that, that slate was not
25 actually the slate presented in the proxy. The

1 Government intervened and stopped the filing of the
2 proxy by the Government -- by the board, and on May 19,
3 if I go -- or 18, I don't remember correctly, but in --
4 there is a board meeting, and before the board meeting,
5 there is the nominating committee.

6 Now, good practice is that a new slate of
7 directors are vetted through a nominating committee.
8 Now, that nominating committee vets -- if I can use that
9 word -- the new slate in 15 minutes. The meeting is at
10 5:45, and at 6:00 the board meets. So, they look at the
11 list, and they say that's the list for the proxy
12 statement. That list was chosen by the Government,
13 where people who were not in line with the Government
14 were forced out.

15 For example, Bollenbach was the lead independent
16 director, and by looking at board minutes, he was the
17 one most willing to challenge the consensus view or the
18 Government's view, and there was a clear indication from
19 Sarah Dahlgren that she did not want Bollenbach back on
20 the board to lead, and Bollenbach was off the board.

21 So, I think that the Government was able to get,
22 up to the new slate, some compliant or mostly compliant
23 board members, and by 2009, a slate of directors they
24 handpicked.

25 Q. Let me ask you to jump, in the interest of time,

1 to your chart, Plaintiffs' Trial Exhibit 5058, and can
2 you explain what the significance of the materials that
3 you set forth here are to your conclusion that there
4 were sources of the Government's power to control AIG on
5 or after September 23, 2008?

6 A. Yes. So, as of September 23rd, the Defendant
7 had the right -- there was a 45 days period -- but has
8 the right to ask for the issuance of voting -- of
9 preferred voting shares to an amount of 79.9 percent of
10 the voting interests of AIG. And what is interesting
11 here is the Defendant chooses not to exercise this right
12 until basically proxy season comes along, which suggests
13 that they did not feel the need to use their voting
14 power because things were going their way anyway. When
15 there is the need for a vote, then those shares are
16 issued, and those votes are exercised.

17 Q. Would you turn to your chart 5059 and explain
18 what the significance of that is.

19 A. Yes. The shares -- these preferred shares were
20 supposed to be held by a trust. So, in -- I think in
21 the testimony of Baxter, we learned that he had a
22 previous experience with BCCI and First American in
23 which they created a trust to hold the First American
24 shares in order to create some separation between, at
25 that time, the BCCI company that was under investigation

1 and this American banking institution.

2 And so the -- my understanding is there was an
3 attempt to do the same, to put some layer between the
4 Defendant and AIG; however, if we compare the two
5 trusts, they are very different in every respect. So,
6 first of all, the trust in the BCCI case had a clear
7 mandate to liquidate the assets in the most effective
8 way. Here, the trust has a mandate to operate for the
9 sole benefit of the Treasury, and what is interesting,
10 it also says that for the purpose of the trust,
11 maximizing the recovery rate and the repayment to the
12 Government and to the Treasury and stabilizing the
13 economy are both consistent with maximization of value
14 of the trust.

15 So, I think that's -- that's pretty indicative,
16 because one of the goals of the Government -- and I
17 would say a good goal of the Government, I have no
18 complaint with that -- was to try to stabilize the
19 economy. Now, what I find it peculiar is that this is a
20 goal that is attributed to some trustee that, in
21 principle, should act to maximize the value of the trust
22 and not the -- the economy overall.

23 The second difference in the two trusts is that
24 the trust of -- created to separate BCCI, the trustee
25 was appointed by the Court. Here, the trustees were

1 appointed by the Fed itself, and the trust -- the
2 trustees in the BCCI case were very independent. They
3 did not have previous dealing with the Fed. Here, all
4 the three trustees were people with a pretty close
5 connection to the Fed, so much so that --

6 MR. DINTZER: Objection, Your Honor. The
7 witness has not been qualified as an expert on trusts,
8 and he's crossed the line and -- it sounds like -- and
9 offering expert testimony about trusts.

10 THE COURT: Well, I appreciate your view, but I
11 don't see it that way. I think he's commenting upon the
12 selection of the trustees.

13 MR. DINTZER: Thank you.

14 THE COURT: I don't think he's really
15 interpreting the trust.

16 MR. DINTZER: Thank you, Your Honor.

17 THE WITNESS: The last point is that the
18 Defendant not only appointed the trustees but had the
19 right to replace them. So, I think that in -- that all
20 this suggests that there wasn't that degree of
21 separation, that the Government really controlled the
22 trust, and through the trust, AIG.

23 BY MR. BOIES:

24 Q. As part of your analysis as to whether the
25 Government had effective control over AIG, did you look

1 at actions that the Government and AIG took after
2 September 23?

3 A. Yes. I look at two actions. One is the Maiden
4 Lane III sort of transaction and the other is the
5 reverse stock split.

6 Q. Let me turn to Maiden Lane --

7 THE COURT: Before we get into these somewhat
8 new subjects right now, why don't we take our morning
9 break.

10 MR. BOIES: Thank you, Your Honor.

11 THE COURT: I need a few extra minutes for
12 something else. So, let's reconvene at 11:15.

13 MR. BOIES: Thank you, Your Honor.

14 (Court in recess.)

15 THE COURT: Thank you. Please be seated.
16 Go ahead, Mr. Boies.

17 MR. BOIES: Thank you, Your Honor.

18 BY MR. BOIES:

19 Q. Just before the break, we were turning to two
20 transactions that you had identified, the Maiden Lane
21 III transaction and the reverse stock split transaction.
22 Do you recall that generally?

23 A. Yes.

24 Q. And would you begin with the Maiden Lane III
25 transaction, and if I could direct your attention to

1 your chart, Plaintiffs' Trial Exhibit 5061.

2 A. Yes.

3 Q. And can you explain what the significance is
4 here of what you describe as examples of evidence of the
5 Government's exercise of control over AIG in connection
6 with the Maiden Lane III transaction?

7 A. Sure. Should I give the -- should I assume that
8 all the details of the transaction are known or should I
9 explain what we're talking about here?

10 Q. I think we've probably gone over Maiden Lane III
11 enough so that I think everybody in the courtroom
12 probably understands the structure.

13 THE COURT: I think we have a good handle on
14 that subject.

15 THE WITNESS: Okay, good.

16 So, since you understand how important this
17 transaction was for keeping under control the cash calls
18 that AIG had, it's very important to understand how this
19 operation was managed, because it's in the crucial
20 interests of AIG that it is done in a proper way.

21 And what I am reviewing here in these bullets is
22 sort of evidence that this was not a -- done in an arm's
23 length transaction between the Government or AIG or
24 between AIG and the counterparty, but the Government
25 inserted itself even in negotiation with the

1 counterparty, and sort of operated in a non-arm's length
2 way with AIG, even if the two had conflicted interests,
3 at least to some extent.

4 So, going down the bullet points, the Government
5 sort of started to think about the ML III before even
6 talking to AIG and did not disclose this. So, this is
7 an indication that -- this is an important decision for
8 AIG, is started and analyzed outside of AIG, before even
9 AIG management is aware of that.

10 BY MR. BOIES:

11 Q. What is the significance in terms of the control
12 issue with respect to what you say here, where you say
13 that the Government selected the structure of Maiden
14 Lane III but did not tell AIG about it?

15 A. So, here we're talking about a major strategic
16 decision. That's the reason why I put that little
17 preamble, was to explain how this was a strategic
18 decision. It was not like a minor decision. And here
19 the Government not only sort of interferes, but in a
20 sense, design, gives the key elements of this key
21 decisions -- key strategic decision.

22 Q. Let me ask you to go to the next bullet, where
23 you say, "On October 31, 2008, the Government instructed
24 AIG to stop negotiating with Maiden Lane III
25 counterparties."

1 Do you see that?

2 A. Yes. So --

3 Q. What's the significance of that?

4 A. So, as you know, the AIG -- what AIG or what
5 Maiden Lane III was supposed to do was to buy the
6 underlying CDO to the CDSs that AIG had sort of
7 underwritten, and in that particular situation, buying
8 some CDOs at full cash now could be very beneficial to
9 the counterparties. So, in a normal situation, what the
10 Government -- what the AIG would have done and should
11 have done is to negotiate with a counterparty for some
12 kind of discount vis-à-vis the full notional value. And
13 here, the Government interferes in this process by
14 saying, "Stop negotiating with the counterparty."

15 Q. Now, the next that you've identified is you say
16 that when the AIG board approved the Maiden Lane III
17 transaction on November 9, 2008, it was led to believe
18 that the Government would seek concessions from AIG's
19 counterparties.

20 Do you see that?

21 A. Yes.

22 Q. What's the significance of that?

23 A. Again, in making its decision, the board relies
24 on the Government information. If I remember correctly,
25 this is the case in which counsel Rodgin Cohen is --

1 candor on the side of the Government is assumed, and so
2 they rely on what the Government says even if the
3 Government had already decided that it would not do
4 concessions. So, at the very minimum, Rodgin Cohen's
5 assumption was not valid.

6 Q. And then you've already addressed the next
7 bullet.

8 The one after that says, "AIG had no involvement
9 with the decision to pay the ML3 counterparties par."
10 Do you see that?

11 A. Yes. So, that --

12 Q. What's the significance of that?

13 A. I was saying earlier, this is a key element. We
14 are talking about, if I remember correctly, the overall
15 transaction to purchase \$79 billion. We're talking
16 about an enormous amount of money where even the
17 smallest discount could make a difference, and AIG is
18 not part of that negotiation. So, if that's not
19 evidence that the Government is in control, I don't know
20 what -- I don't know what it is.

21 Q. Your next bullet says, "AIG had no involvement
22 with the decision to give the Maiden Lane III
23 counterparties full releases." Do you see that?

24 A. Yes.

25 Q. What's the significance, if any, of that?

1 A. I find this the piece of evidence that is
2 basically impossible to explain unless the Government is
3 giving direction to do so, because we can discuss a lot
4 of other things, but why a private party will give full
5 release to the counterparty, in exchange for no
6 consideration?

7 So, they pay the full value to the other side,
8 and they release the right to bring suits that ex post
9 we know would have been worth a lot to AIG, but even at
10 the time, there were sort of hints that there was
11 something wrong with the CDOs, so AIG could have brought
12 suit and made money. Now, why AIG would do that is sort
13 of -- I can't explain.

14 Q. Your next bullet on this page and the last
15 bullet on this page says that the Federal Reserve Bank
16 of New York appropriated two-thirds of the profits from
17 Maiden Lane III even though it bore no significant risk
18 and put up no new equity.

19 Do you see that?

20 A. Yes.

21 Q. First, what is your basis for saying that in
22 Maiden Lane III, the Federal Reserve Bank of New York
23 bore no significant risk?

24 A. So, I read at least part of the Cragg report
25 where it's very clearly indicated that --

Starr International Company, Inc. v. USA

1 Q. Let me just stop you. Is what -- is your -- is
2 your reliance here on the level of risk based
3 exclusively on the -- what the Cragg report says?

4 A. No.

5 Q. Okay. If you would give us what your opinion is
6 based on other than the Cragg report, because Dr. Cragg
7 will be here to testify about that.

8 A. Okay. So, the -- at the time of that
9 transaction, the value of the CDOs and so the value of
10 the CDS liability was already marked down quite
11 aggressively, and the -- what was put into Maiden Lane
12 III was the value of the CDOs that were marked down very
13 aggressively, and in addition, the -- AIG put another 5
14 billion of equity cushion.

15 And the Fed had a secure lending, which was
16 senior to everybody else, on that value for less than
17 the marked-down value of the CDOs, and there was a 5
18 billion equity cushion. So, the -- not only the -- the
19 Fed itself said it was secure lending, there was
20 adequate collateral, but also, looking at the number,
21 those positions were adequately collateralized. So,
22 there was not really much risk that the Fed was taking
23 in that transaction.

24 Q. On Plaintiffs' Trial Exhibits 5062 through 5064,
25 you set forth a number of specific events in

Starr International Company, Inc. v. USA

1 mid-September, October, and November of 2008, relating
2 to Maiden Lane III.

3 A. Yes.

4 Q. And what I want to do is I want you to go
5 through and briefly explain what the significance of
6 each of those events are, if any, to your conclusion
7 concerning control over AIG.

8 A. So, I think that there are a couple of issues we
9 need to focus on. The first one is in deciding how to
10 split the proceeds and how to organize this, there is
11 clearly a potential conflict of interest between the
12 Government and AIG, because it's a related-party
13 transaction, and in this, basically the decision of the
14 two-third/one-third split of the profits was a decision
15 that the Fed made without any sort of -- without
16 following the rules that generally takes place in a
17 related-party transaction.

18 And here, as you can see, a member of the Fed
19 itself saying that in Maiden Lane II and III, AIG is
20 giving up a potential upside that, depending on the
21 scenario, is between 57 and 95 billion dollars. So, it
22 is something that could cost AIG a lot.

23 And I mentioned that they tell AIG to stand down
24 from the -- from the negotiation, and they give script
25 in the negotiation where there is no request that the

1 counterparty accept a haircut, and they decide pretty
2 quickly that there is no room to take haircut, because
3 one of the considerations is that the Government should
4 treat everybody equally, but in principle, this is a
5 transaction of AIG.

6 So, why the Government concern should limit AIG
7 ability to treat counterparties differently, because a
8 private company is not forced to treat everybody the
9 same. The Government is, but a private entity is not.
10 And we see that sort of -- there are even indications
11 that some counterparty, like Bank of America, is willing
12 to accept less than par, but this is not followed up.

13 And I think that what is most interesting in my
14 view is that -- sorry, I go back to 5063 -- the decision
15 or the authorization to negotiate in name of AIG was an
16 ex post paper-over organized by the Defendant with
17 Anastasia Kelly rather than an ex ante authorization.

18 And there is an email that I don't think is
19 listed here, but it says sort of we are already
20 pregnant, so the concern about lender liability should
21 not be at the front end of our concern. So, the
22 Government itself is saying we are sort of already in
23 trouble with the lender liability, is -- we shouldn't
24 worry too much about the details, and that -- those
25 would be the details.

1 And if this was not enough -- and I'm here at
2 5064 -- Dahlgren tells the Defendant when and how to
3 file report about AIG. Filing reports is a duty of the
4 company, an indication of control. So, if AIG cannot
5 independently file the report and decide what to
6 disclose, I think that's a pretty strong indication on
7 who felt control over the situation.

8 Q. Turning to your chart that is Plaintiffs' Trial
9 Exhibit 5064, the November 25, 2008 entry.

10 A. Yes.

11 Q. What is the significance of the response from
12 Defendant's counsel to Ms. Dahlgren's email to your
13 conclusion with respect to control?

14 A. So, when -- we have an email saying, "We gotcha
15 covered. You only need to hear Kathy Shannon's pathetic
16 voicemail to understand how well trained she is--at
17 least for now!" So, it seems to indicate that employees
18 of AIG had been trained to say yes to higher authority,
19 which is the authority of the Defendant.

20 Q. Let me ask you to turn to the reverse stock
21 split transaction.

22 A. Okay.

23 Q. And can you explain what the effect of the
24 reverse stock split transaction was?

25 A. So, there were two effects of the reverse stock

1 split. One was to increase the trading price of AIG, so
2 to make sure that AIG would not be delisted. The second
3 one, that to do with the fact the stock -- the reverse
4 stock split was applied just to the issued shares and
5 not to the authorized but unissued shares is -- as the
6 Exhibit 5065 shows, is to shrink dramatically the ratio
7 of outstanding shares over authorized shares.

8 So, in the -- before the reverse stock split,
9 the authorized but unissued shares represented only 40
10 percent of the total and after they represent 97 percent
11 of the total. So, the effect was to disproportionately
12 increase the number of authorized but not issued shares.

13 Q. Now, you've mentioned that there were two
14 effects of the reverse stock split. One was to increase
15 the trading price of AIG to make sure that it would not
16 be delisted. Would that objective, as a matter of
17 economics, have been obtained if you had split both the
18 authorized and the issued shares?

19 A. Yes.

20 Q. Let me ask you to look at the evidence that you
21 have cited beginning on Plaintiffs' Trial Exhibit 5066
22 about the reverse stock split and ask you to tell me
23 what the significance is of these pieces of evidence, if
24 any.

25 First, you refer to the September 22nd, 2008,

1 credit agreement. What's the significance of that?

2 A. So, in the September 22nd credit agreement,
3 there was a understanding that it would be a vote to
4 amend AIG's certificate of incorporation to increase the
5 number of authorized shares to allow for the conversion
6 of the shares issued to the Fed from preferred into
7 common, because even if I -- I am not a lawyer, I
8 understand that in order to do that, you need to have --
9 because this is a modification of a corporate statute,
10 you need a vote by shareholders.

11 Q. And you reference an October of 2008 AIG draft
12 proxy. What's the significance of that?

13 A. So, the draft proxy suggests that there was an
14 initial intent to have a shareholders vote to modify the
15 corporate statute, so to allow Series C to be converted
16 into common.

17 Q. And then you reference November 9, 2008. What's
18 the significance of that date?

19 A. So, in the meantime, a shareholder, Walker,
20 brought a case in Delaware, saying that the modification
21 of the corporate statute required not only a vote of all
22 the shareholders but also a separate vote by common
23 shareholders.

24 So, remember that in the share -- in the vote of
25 all shareholders, the Government, once the preferred

1 shares were issued, would have had 79.9 percent of the
2 vote, but the Government did not own common, so
3 potentially, a separate vote by common could have
4 blocked the change in the corporate statute, and by
5 blocking that, would have blocked the ability of the
6 preferred to be converted into common.

7 Q. You indicate that November 9 was the date that
8 the credit agreement was amended to provide that, and
9 what's the significance of November 10?

10 A. So, on November 10, AIG files a 10-Q where it
11 states clearly that AIG will be required to hold a
12 special shareholders meeting to increase the number of
13 authorized shares, at which -- and this is the most
14 important part -- holders of the common stock will be
15 entitled to vote as a class separate from the holders of
16 Series C preferred.

17 So, basically, the modification of the credit
18 agreement and the statement by AIG makes the substantive
19 point of the Walker suit irrelevant, because AIG seems
20 to agree that they have to do that.

21 Q. What's the significance of the next date, which
22 is December 19, 2008?

23 A. So, there is an AIG proxy that we'll see in the
24 next shareholders meeting, exactly what AIG said would
25 be done, that is, a vote of the common shareholders on

1 the conversion of the preferred shares.

2 Q. Then going on to Plaintiffs' Trial Exhibit 5067,
3 you have a date of January 28th, 2009. What is the
4 significance of what happened then, if any, to your
5 conclusion with respect to government control of AIG?

6 A. So, the Defendant's counsel says very clearly
7 that omitting the shareholder vote might run afoul of
8 the Walker court because we told them we needed to vote
9 to make the preferred convertible. And as a result of
10 the AIG 10-Q and all the statements, I think that the
11 Delaware Chancery Court dismisses the Walker case
12 because it basically was -- was irrelevant. AIG had
13 voluntarily agreed to do what Walker asked.

14 And attached to an affidavit by Kathleen
15 Shannon, there is a proxy statement where there is no
16 discussion of the reverse stock split, nor is that --
17 the proxy statement that they attach to affidavit is not
18 the latest proxy statement but is an earlier draft.

19 Q. Now, as a matter of economics, can you think of
20 any reason why a company not controlled by the
21 Government would want to have a reverse stock split only
22 of the issued shares and not the authorized shares?

23 MR. DINTZER: Objection, Your Honor. Leading
24 and confusing.

25 THE COURT: Overruled. I don't think it's

1 leading.

2 THE WITNESS: So, while I think there are some
3 reasons, as I said earlier, to have a reverse stock
4 split in general, I cannot think of any reason to have a
5 reverse stock split to apply just to the issued shares
6 and not to the authorized and unissued shares.

7 BY MR. BOIES:

8 Q. Let me ask you to look next at Plaintiffs' Trial
9 Exhibit 5069. Can you explain what the significance, if
10 any, is to this chart in terms of your conclusion with
11 respect to the Government's exercise of control over
12 AIG?

13 A. Yes. The particular way in which the reverse
14 stock split was done created enough authorized but not
15 issued shares to make convertible not only the shares
16 that -- the preferred shares that the Defendant got in
17 the credit facility of September 22nd, but also the
18 Series E and F preferred.

19 In the process of converting, the Government
20 took the face value of this preferred, the liquidation
21 value, I should say -- sorry, the liquidation value of
22 this preferred in spite of taking the Defendant -- the
23 fair value as calculated by the Defendant in, if I'm not
24 mistaken, GAO report.

25 So, by doing that, by the very government

1 calculation, the Government basically benefited almost
2 \$20 billion in this transaction.

3 Q. With respect to Plaintiffs' Trial Exhibit 5069,
4 what is the red bar that has \$26.1 billion on it?

5 A. The red bar is the fair market value of the
6 Class E and F preferred shares as calculated, if I
7 remember correctly, in the GAO report.

8 Q. And that is the reported fair value as of when?

9 A. As of September 30, 2010.

10 Q. And then what is the blue bar that has \$47.5
11 billion represented?

12 A. The blue bar is two things, is the amount of
13 liquidation preference that those shares had, but also
14 is what Citigroup defined was the fairness value, but in
15 that opinion, Citigroup was instructed to take the
16 liquidation preference as a -- as an indication, and so
17 basically it was not a -- a truly independent opinion of
18 what the market -- fair market value was, but just sort
19 of a -- was based on their liquidation preference.

20 Q. As you understand it, in terms of your analysis,
21 who gave that instruction to Citi?

22 A. The way I understand it, it was the Defendant.

23 Q. And as a matter of economics, if you have
24 preferred stock that is noncumulative, will the
25 liquidation preference equal the fair value of that

1 stock?

2 A. Not as a general term. In a sense it could,
3 under sort of market conditions, but it is something
4 that you definitely take into consideration in the
5 evaluation, but it is not necessarily the fair market
6 value.

7 Q. Why is that?

8 A. For two reasons. One is you're not sure to get
9 that value at liquidation; and two, it depends very much
10 on how much you get along the way in terms of dividends.
11 So, if I promise you \$40 billion but I promise you in
12 200 years, then it's not worth \$40 billion today.

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

15 THE COURT: Sure.

16 (Pause in the proceedings.)

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

18 THE COURT: Okay. Before we do that, did we
19 have a -- did you all have a stipulation or an
20 understanding about the admissibility of expert reports?

21 MR. DINTZER: We haven't reached one yet, Your
22 Honor. Would you like us to see if we can come to some
23 sort of agreement at lunch?

24 THE COURT: Well, let me just suggest to you, my
25 usual approach, considering the amount of effort that

1 the experts put into their expert reports, is that I
2 prefer to have them as part of the record, but in
3 analyzing the case, I probably will not pay any
4 attention to portions of the report that was not
5 mentioned during the testimony. So, basically what you
6 have is a documented viewpoint from the expert in which
7 I will pay most attention to those subjects addressed in
8 testimony.

9 MR. DINTZER: If that would be to the Court's
10 convenience, then we -- as a general rule, we oppose the
11 entry of exhibit reports, but with that understanding --
12 because, quite honestly, Your Honor, one of the reasons
13 we oppose them is sometimes there are issues in the
14 reports that don't get touched on in court, but with
15 that understanding, Your Honor, we could reach an
16 accommodation that we would not oppose that.

17 THE COURT: You can rely on the fact that I am
18 not going to pay any attention to subjects that were not
19 addressed. And I think the only housekeeping chore you
20 need is to give them an exhibit number so that we can
21 receive them in evidence.

22 MR. DINTZER: Then we can agree to that without
23 objection, Your Honor.

24 THE COURT: All right, very well.

25 MR. BOIES: And we certainly agree with that,

1 Your Honor.

2 THE COURT: Very well, okay.

3 Cross examination?

4 MR. DINTZER: May we have just a couple minutes
5 to switch things out, Your Honor?

6 THE COURT: Sure, yes. We will go off the
7 record for a moment.

8 (Pause in the proceedings.)

9 THE COURT: All right, back on the record.
10 Whenever you're ready.

11 MR. DINTZER: Thank you, Your Honor. I was
12 actually reminded to check on a point of clarification.
13 Did the Court also want -- when the Court referred to
14 the expert reports, we actually hadn't discussed the
15 slides, and I just wanted to -- typically the Government
16 asks that they be -- for ourselves and for the other
17 party, we don't have any objection if they are entered
18 as demonstratives to show what they talked about but not
19 as evidence, of course.

20 THE COURT: Yes, that's --

21 MR. BOIES: That is our understanding, Your
22 Honor.

23 THE COURT: And that's the way we will do it, as
24 I've done it before. The demonstratives will be in the
25 record as demonstrative exhibits.

1 MR. DINTZER: Thank you very much, Your Honor.

2 CROSS EXAMINATION

3 BY MR. DINTZER:

4 Q. It's still morning. Good morning, sir.

5 A. Good morning.

6 Q. Sir, if you could explain to me how your slides
7 were created.

8 A. So, I drafted them and I sort of revised them
9 several times with the help of a bunch of people.

10 Q. But everything on the slides was your analysis
11 and your conclusion?

12 A. Yes.

13 Q. And we actually -- we received two sets. We got
14 an early set and then I guess you had some extra time so
15 you put some more time in on the second set.

16 A. That's correct.

17 Q. But the first set was also your work. Is that
18 right?

19 A. Yes.

20 Q. Okay. And you made sure that was accurate as
21 well. Is that correct?

22 A. To the best of my ability, yes.

23 Q. Of course.

24 Now, sir, during your testimony for the
25 Plaintiff, you said that a large buyer or a supplier can

1 exercise control. Is that right? Economic control, as
2 you described.

3 A. Yes.

4 Q. And so if I sell widgets and Wal-Mart buys all
5 my widgets, they might have that effective economic
6 control you talked about.

7 A. They might. It depends on your alternatives,
8 yes, but if I am the large and only potential buyer of
9 widgets -- so, if you produce widgets that can be bought
10 by me or somebody else, then the degree of control that
11 I have is very limited. If you produce some special
12 widgets of which I'm the only buyer around, then I can
13 have quite a bit of the effective economic control.

14 Q. And there's nothing illegal or improper about --
15 under that circumstance about that type of economic
16 control, is there?

17 A. I'm not so sure I can opine on legality.

18 Q. Okay, I'll take back the illegal. I've made my
19 point about that.

20 But there is nothing improper, it happens fairly
21 frequently in the business place, when that type of
22 control exists. Is that right?

23 A. You have to help me out a little bit here. When
24 you say "improper," what does it mean? Under what
25 metric?

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1 Q. Well, Wal-Mart buys all my widgets. Wal-Mart is
2 so big and they're really the only people I sell my
3 widgets to, and if Wal-Mart stops buying my widgets,
4 maybe I can find somebody else, but I am going to take
5 an economic hit.

6 I mean, that happens in the marketplace, right?
7 Sometimes you have a big buyer who buys a lot of what
8 you're selling.

9 A. I think it depends very much on the context.
10 The example I gave at the beginning, I think I would
11 consider -- but this is maybe my sort of morality or
12 whatever -- I would consider it improper to have my
13 assistant walk my dog. So, I exercise some form of
14 control, it is normal. Is it normal or proper to ask
15 him to bring coffee? Different people might disagree on
16 that. I am completely sort of convinced that asking him
17 to walk my dog is improper.

18 Q. Okay, sir. So, I'm asking you not about that,
19 but I'm actually asking you, if Wal-Mart buys all my
20 widgets and they're the only people who buy my widgets,
21 they can have -- because of scale or whatever, they can
22 have the type of economic control you've discussed
23 today. Is that correct, sir?

24 A. I am not an expert in antitrust, but my
25 understanding is that there are situations in which that

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1 control can be abusive, and this is -- the fact that you
2 have a huge amount of market power, per se, is not bad,
3 but the way it is used could be abusive and could be
4 sanctioned.

5 Q. Okay. So, we will put aside the antitrust,
6 because you are not -- I am not going to ask you for a
7 legal conclusion and it's not your expertise.

8 But putting aside the antitrust issues, if I
9 sell all my widgets to Wal-Mart and I like selling all
10 my widgets to Wal-Mart, but they are so big and they buy
11 them all, that can create the economic control that
12 you've described here today. Isn't that correct, sir?

13 A. It does create that control, and that's the
14 reason why generally people try to protect themselves ex
15 ante against that instance, because the reason why, at
16 least in the incomplete contract literature, control is
17 so important, because it shapes the allocation of the
18 surplus of a relationship ex post.

19 So, if I am a supplier of widgets to Wal-Mart, I
20 am afraid that Wal-Mart will take advantage of me, and
21 so generally there are two things that happen. Either I
22 vertically integrate with Wal-Mart, that's what happens
23 in a lot of cases -- that's the famous sort of article
24 by Coase trying to explain why GM was vertically
25 integrated, is related exactly to that -- or I try to

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1 find contractual provision that protect me, because I
2 don't think it would be a wise situation for a supplier
3 to put itself in that condition without some proper --
4 proper protection.

5 Q. Did AIG ask the New York Fed for a loan?

6 A. AIG started early in July to ask to have access
7 to the lender of last resort facility of the Fed, like
8 many other players in the market received access to.

9 Q. Okay. And, you know, I didn't quite get it
10 during your direct. When exactly did this economic
11 control that you describe, when did it happen?

12 A. It started in September 16.

13 Q. Right. When on September 16th, sir?

14 A. Ah, I think that certainly by the evening, that
15 there was no -- by the evening -- certainly by the
16 evening, let's put it.

17 Q. Okay, and so by the evening.

18 Now, I'm going to ask you, sir, has that
19 changed? Did you earlier think that the economic
20 control happened earlier in the day?

21 MR. BOIES: Objection, Your Honor. I think that
22 misstates the witness' testimony. He didn't say exactly
23 when it happened. He said it certainly happened by the
24 evening, so...

25 THE COURT: Well, I'm okay with the question.

1 It's cross examination.

2 MR. DINTZER: Thank you, Your Honor.

3 THE COURT: If he disagrees, he can tell us.

4 BY MR. DINTZER:

5 Q. Go ahead, sir.

6 A. So, can you ask the question again?

7 Q. Sure. Let's try to pin this down a bit.

8 You said it happened by the evening. Now, I'm
9 asking you when -- you're offering an expert opinion.
10 When, in your expert opinion, does this economic control
11 that you've described, when does it start?

12 A. I think I restate my answer. Certainly by the
13 evening.

14 Q. Okay, by the evening. And when you say "by" --
15 because counsel has made an observation. When you say
16 "by the evening," do you mean that it started in the
17 evening? Is that your expert opinion?

18 A. I am saying that at least at the time when the
19 board of AIG met, the conditions for control by the
20 Defendant were established.

21 Q. Okay. So, by the time the AIG board met.

22 Do you have an opinion, are you offering an
23 opinion as to whether the Federal Reserve had what you
24 call economic control before the evening of September
25 16th? Yes or no, sir.

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1 A. I think that the control of the Government was
2 increasing over the day. So, if you want an exact
3 hour -- but I think that for the purpose of this
4 testimony, I think it is enough to say that by the time
5 the board met, those conditions were satisfied.

6 Q. And you're not offering an opinion that they
7 were satisfied before that.

8 A. No.

9 Q. All right. Now -- so, not by the evening, but
10 actually in the evening.

11 Now, my next question, sir, is did you
12 previously --

13 A. Sorry. Can you help me? Maybe it's my foreign
14 language, but why you are making distinction? I did not
15 say that I deny that it could have been before. I'm
16 just saying that I -- what I analyze is sort of "by the
17 evening," and then you change it to "in the evening."
18 So, I would like to understand what is the significance
19 of that.

20 Q. Of course, sir. I'm just trying to find out --
21 it could have happened at any time, but I'm trying to
22 find out, when you are offering the expert opinion --

23 A. Um-hum.

24 Q. -- that it started, just so that we can all
25 understand when that is. I don't really care. Whenever

1 you want to tell me it is, I'll write here, but I need
2 you to tell me, sir.

3 When did -- what you call economic control, when
4 did it start? Now, I've got "in," but I'll change it to
5 whatever time you want me to change it to.

6 A. No, I would like to understand. I wasn't -- I
7 would like to understand the significance of your change
8 between "by the evening" and "in the evening." So, you
9 change it, so there must be a meaning why you change it.

10 Q. Well, because your counsel suggested that "by
11 the evening" might have suggested that it came before.

12 A. Um-hum.

13 Q. And so now I wanted to make sure the record was
14 clear. If you could tell me, sir, again, as clear as
15 you can, just tell me, when you are offering the expert
16 opinion that economic control, as you've described it,
17 when it began.

18 A. So, my expert opinion is certainly by the
19 evening, those conditions were in place. Now, some of
20 the conditions are present during the day, so we can
21 discuss about that, but certainly by the evening.

22 Q. Okay. Now, did you previously, before today,
23 have the opinion that economic control happened before
24 the evening of September 16?

25 A. Are you asking whether in my expert witness

1 [sic] or in my rebuttal I said otherwise?

2 Q. I'm just asking you, sir, if you have had that
3 opinion. Right now you're saying -- I've got it -- in
4 the evening.

5 A. Um-hum.

6 Q. How -- did you -- have you changed your opinion?
7 Did you previously have the opinion that it happened
8 earlier in the day, on the 15th, at some other time?

9 MR. BOIES: Your Honor, what counsel just said
10 is that his opinion was in the evening, and the witness
11 has been very clear that he's talking about by the
12 evening, not in the evening. That's why I object to the
13 form of that question.

14 MR. DINTZER: Your Honor, I actually think --
15 this is like my first question in my outline. I didn't
16 think this was going to be a difficult one. I just want
17 to be able to write down, so we can understand what his
18 opinion is, and so if it -- really, I don't even care
19 what it is. I just want to know so we can have it for
20 the record.

21 MR. BOIES: Your Honor, I do think this has been
22 asked and answered.

23 THE COURT: Well --

24 MR. BOIES: I have been patient because it is
25 cross.

1 THE COURT: -- let me just take a shot at this.
2 Dr. Zingales, this is your testimony, so you get
3 to pick. Do you want him to write down "by the evening"
4 or "in the evening"?

5 THE WITNESS: By the evening.

6 THE COURT: Okay. That's what he'll do.

7 BY MR. DINTZER:

8 Q. Do you have the expert opinion, are you offering
9 it, that in the morning of September 16th, there was
10 economic control? Yes or no or I don't know.

11 A. I need to elaborate on the answer. It is not a
12 simple yes or no answer. So, in the -- remember when I
13 sort of testified earlier, I said you have to look at
14 the input and the output. The input are the conditions
15 for control. So, let's check the conditions for
16 control.

17 Was the Fed a lender of last resort? Yes. But
18 was that power the only game in town? We know that by
19 the evening, yes. In the morning, I don't know. Was
20 the political power of the Treasury present? Yes. But
21 by the morning, when people got up, did they exercise
22 that the power to filter? I have no way to know, but
23 during the day, they did.

24 So, that's the reason why, in the manifestation
25 both under the input criteria and under output criteria,

1 by the evening, things are clear-cut. During the day,
2 they are not as clear-cut.

3 Q. So, the answer to my question of do you have an
4 expert opinion, are you offering that, in the morning
5 there was economic control, your answer is no, because
6 it wasn't clear-cut.

7 A. I'm sorry, but saying it wasn't clear-cut
8 doesn't mean no. Economic control is not a zero/one
9 variable. So, you have some degree of control, and that
10 degree of control was increasing by the minute. So, I
11 think that -- is that control enough to characterize
12 that the Defendant was in effective economic control by
13 the evening? The answer is yes.

14 And if you ask me sort of what degree, maybe I
15 should -- I didn't, like, prepare a detailed analysis,
16 but did this degree of control increase over the day?
17 So, you want to say it's 45 one moment, 55, sort of a...

18 Q. Now, on September 16th, President Geithner and
19 Secretary Paulson called Mr. Willumstad. Is that right?

20 A. Yeah.

21 Q. Okay. And I think we already got this a little
22 earlier, that before 9/16, AIG asked for a loan. Is
23 that right? We can just say before 9/16, would you
24 agree with me on that, that AIG asked for a loan?

25 A. Yeah.

1 Q. Okay. And when AIG asked for a loan, would you
2 agree with me that there wasn't economic control then,
3 whenever it was?

4 A. I agree.

5 Q. Okay. So -- now, so, on 9/16, we have President
6 Geithner and Secretary Paulson calling Mr. Willumstad.
7 Is that right?

8 A. If I remember correctly, Geithner called
9 Willumstad. I'm not so sure I remember that Paulson
10 called Willumstad.

11 Q. You mean in the morning phone call?

12 A. In the morning.

13 Q. I'm talking about the afternoon phone call.

14 A. Okay, sorry.

15 Q. So, they called him in the afternoon and told
16 him that a term sheet would be coming. Is that right?

17 A. Yeah.

18 Q. And during that conversation about the term
19 sheet, they also told him that assistance was contingent
20 on his resignation. Is that right?

21 A. Yes.

22 Q. And so -- so --

23 A. "You are going to receive a term sheet. You are
24 not going to like it."

25 Q. You are not going to like it. And it's

1 contingent -- the assistance is contingent on
2 resignation, right?

3 A. Yes.

4 Q. Okay. And so they -- and they got a term sheet.
5 AIG got a term sheet that was sent to them by the New
6 York Fed or by the Treasury.

7 A. I would say yes and no. My understanding is
8 that Willumstad received a piece of paper that he
9 describes as sort of was written by my grandchild, and
10 this piece of paper is not in evidence, nobody has seen
11 it. And at the board meeting, there wasn't a clear term
12 sheet. There was a discussion of the understanding, but
13 at least to my knowledge, there wasn't a term sheet
14 attached to the minutes and discussed at the board.

15 Q. Okay. And we will come back to that, but for
16 now, let me just ask you, the board ultimately -- AIG's
17 board ultimately met. They had a meeting, right?

18 A. Yes.

19 Q. And then Mr. Willumstad called back President
20 Geithner and asked if there was room for negotiation.
21 Is that right?

22 A. Yes.

23 Q. And he was told no, that there would be no
24 negotiation. Is that right?

25 A. Yes.

1 Q. Okay. So, I am going to add this.

2 And as you understand it -- and I think you've
3 said it -- Mr. Geithner made Mr. Willumstad a
4 take-it-or-leave-it offer. Is that right?

5 A. Yes.

6 Q. All right. Now -- and then AIG's board went
7 back and they voted, is that right, that same night?

8 A. When you say "went back," I thought that there
9 was just one meeting of the board.

10 Q. Well, there -- there's one meeting of the board.
11 Mr. Willumstad goes and makes the phone call, then he
12 comes back. Is that right?

13 A. Okay, yes.

14 Q. Okay. And then AIG's board votes. Is that
15 correct?

16 A. Yes.

17 Q. And they vote unanimously.

18 A. Actually, I think there is a little bit of, if I
19 remember correctly, confusion on that. If I remember
20 correctly, in the minutes, they say that Bollenbach
21 might have voted against, but in his testimony, he say
22 he voted in favor. So, it's --

23 Q. Either unanimously or nearly unanimously.

24 A. Okay.

25 Q. Okay. And so there's an AIG vote, and they vote

1 in favor, to accept the offer. Is that right?

2 A. Yes.

3 Q. Okay. And they not only voted to accept the
4 offer, they voted to authorize AIG to send in a -- to
5 send in a signed page. Is that right?

6 A. Excuse me, a sign?

7 Q. Let me try it this way. After the vote,
8 Mr. Willumstad signed a page and sent it to the
9 Government -- to the New York Fed. Is that right?

10 A. I think it's interesting how you characterize
11 it, because it was literally, I think, a page. So, it
12 was a blank statement. So, he signed a blank document
13 basically saying, "I accept whatever."

14 Q. Okay. And let's look at that, DX 955-A, which
15 is in your binder, sir.

16 A. DX, sir?

17 Q. DX 955-A.

18 A. Yeah.

19 MR. DINTZER: And it's A, Your Honor, because we
20 are only going to use two of the pages.

21 THE WITNESS: Um-hum.

22 BY MR. DINTZER:

23 Q. And the page that I would like you to look at,
24 sir -- so, the front page is a fax page to Mr. Baxter.
25 Is that right?

1 A. That's my understanding, yes.

2 Q. Okay. And so -- and the second page says
3 "American" --

4 Have you got it? No? We can just use the ELMO.
5 That's fine.

6 And it says -- now, Mr. Willumstad signed this
7 on the 16th. You understand that, right?

8 A. Yeah.

9 Q. Okay. And it says, "American International
10 Group, Inc. hereby agrees to and accepts the summary of
11 terms for the Senior Bridge Facility presented to
12 AIG..."

13 Do you see that?

14 A. Of course, I do see that.

15 Q. Okay, okay. And so after AIG voted to accept
16 the offer, they sent a signed page with "agrees to and
17 accepts," right? Is that right, sir?

18 A. They definitely signed this page, that's my
19 understanding. What I find sort of remarkable is this
20 page is not attached to anything.

21 Q. Okay.

22 A. So, I don't know exactly what the terms were --
23 were, because it's sort of a -- there is no page
24 attached.

25 Q. And so -- now, in your report, you've called --

1 you state that there was an offer to AIG and an
2 acceptance of the Government's offer to extend an \$85
3 billion facility on September 16th. Is that right?

4 A. So, I -- I'm not a lawyer, so I'm not qualified
5 to know whether this sort of constitute a -- sort of
6 binding contract, sir --

7 Q. And I won't ask you that question, I promise.
8 So, we won't use the word "binding," we won't use the
9 word "contract."

10 A. Good.

11 Q. Okay. But in your report, you say that AIG
12 accepted the Government's offer of an \$85 billion
13 facility on September 16. Is that right?

14 A. Yes.

15 MR. BOIES: Your Honor, if the report is going
16 to be referenced, could I ask that the witness have an
17 opportunity to see the statement in the context?

18 MR. DINTZER: I think he just answered my
19 question, Your Honor.

20 THE COURT: I think he did, but any time you
21 want to take a look at your report, you have every right
22 to.

23 THE WITNESS: Okay, thank you.

24 BY MR. DINTZER:

25 Q. So, on September 16th, the Federal Reserve

1 issued a press release. Is that right?

2 A. On September 16th, okay.

3 Q. Is -- am I right? Have you seen that? Was that
4 one of the documents that you had a chance to see?

5 A. Standing here at this moment, I don't remember
6 having seen it. Whether sort of I or some of the people
7 around me saw it, I don't remember at this moment.

8 Q. Okay. We will show it to you sir, and you tell
9 me if this was one that you had a chance to see, 419.
10 Sir, you can look in your binder for DX 419.

11 I'm falling behind here. So, we have...

12 A. Sorry, what -- I'm not so sure I'm finding it.

13 Q. Okay, let me just finish writing, and then I'll
14 help you.

15 A. Okay.

16 Q. Accepted the facility on 9/16.

17 So, DX 419, sir. And it's on the screen, sir,
18 too, just for your convenience.

19 A. D, like in daddy? 1394? No, I'm sorry.

20 Q. No problem.

21 A. DX 419, got it.

22 Q. Okay. So, this is -- and this has been entered
23 into evidence, Your Honor -- this is the Federal
24 Reserve's press release from September 16th, 2008. Do
25 you see that?

1 A. Yes.

2 Q. And on that day, they issued a press release
3 that said -- that said that the secured loan -- so, the
4 first line is, "The Federal Reserve Board on Tuesday,
5 with the full support of the Treasury Department,
6 authorized the Federal Reserve Bank of New York to lend
7 \$85 billion to the American International Group under
8 Section 13(3) of the Federal Reserve Act."

9 Do you see that, sir?

10 A. Yes, I do.

11 Q. And so -- and the next sentence is really the
12 one I want to focus on.

13 A. Um-hum.

14 Q. It says that "The secured loan has terms and
15 conditions designed to protect the interests of the U.S.
16 Government and taxpayers."

17 Do you see that?

18 A. Yes.

19 Q. And so it was an affirmative statement at that
20 time that the loan has those terms and conditions. Do
21 you see that, sir?

22 A. Of course, yeah.

23 Q. Okay. And if you go farther down the document,
24 it says, "The United States Government" -- do you see
25 that towards the bottom? "The United States Government

1 will receive...?"

2 A. Um-hum.

3 Q. And it says "...a 79.9 percent equity interest
4 in AIG and has the right to veto the payment of
5 dividends to common and preferred shareholders."

6 Do you see that?

7 A. Yes, I do.

8 Q. And there is no mention of warrants really
9 anywhere in the document, is there, sir?

10 A. There is not even mention of preferred.

11 Q. Absolutely, because it was to be determined.
12 But there's no mention of warrants, is there, sir?

13 A. That's correct.

14 Q. Okay. And if we can go now to JX 79.

15 A. Yes.

16 Q. Okay. And if you can see -- if you can turn to
17 page -- the second page to take a look, have you seen
18 that document before, sir?

19 A. Yeah.

20 Q. What is that document?

21 A. This is the -- if I remember correctly, it's the
22 press release of AIG.

23 Q. AIG. And on the second page -- this is also in
24 evidence, Your Honor.

25 On the second page here, we see -- it says, in

1 the second paragraph, "The AIG Board has approved this
2 transaction" -- no forward-looking language -- "based on
3 its determination that this is the best alternative for
4 all of AIG's constituencies, including policyholders,
5 customers, creditors, counterparties, employees, and
6 shareholders."

7 Do you see that?

8 A. Yes, I do.

9 Q. And farther down in that paragraph, it says, "In
10 return for providing this essential support, American
11 taxpayers will receive a substantial majority ownership
12 interest in AIG." Do you see that?

13 A. At this moment, no. Where do I see?

14 Q. If you look at the screen, sir, that will show
15 you exactly what we're looking at.

16 A. At the end, sure, in providing -- okay.

17 Q. And it doesn't mention warrants either, does it,
18 sir?

19 A. Nor the preferred, yeah.

20 Q. Okay. So, on September 16th, the formal public
21 statements by AIG and the Federal Reserve, they
22 described this -- the deal and the 79 percent ownership,
23 but they don't mention warrants. Is that right?

24 A. Yes.

25 MR. DINTZER: And, Your Honor, actually, I stand

1 corrected. DX 419 isn't yet in evidence.

2 THE COURT: All right.

3 MR. DINTZER: So, I am jumping the gun on that.

4 THE COURT: Did you want to offer it?

5 MR. DINTZER: Yes, Your Honor. We offer DX 419
6 into evidence.

7 MR. BOIES: No objection, Your Honor.

8 THE COURT: All right. Defendant's Exhibit 419
9 is admitted.

10 (Defendant's Exhibit Number 419 was admitted
11 into evidence.)

12 BY MR. DINTZER:

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

14 Now, AIG's board voted to make Mr. Liddy the
15 CEO. Is that right?

16 A. Yes.

17 Q. Okay. And they actually had a formal vote, and
18 they actually cast their votes in favor of Mr. Liddy.
19 Is that right?

20 A. I think you used the right word, "formal," in
21 the sense there is a difference between de jure and de
22 facto, there is a difference between formal and
23 substantive.

24 Q. Okay. So, we are going to look at your JX --
25 I'm sorry, we are going to look at your demonstrative.

1 So, we are going to look at your slides, sir, and I am
2 going to ask you to go to PTX 5049. Do you see that?
3 Just tell me when you're there.

4 A. Yes, I do, yeah.

5 Q. Okay. And we are going to be looking at the
6 first bullet point.

7 A. Um-hum.

8 Q. And it says, "The Government's" -- well, we will
9 jumped over the handpicked CEO part, but let's look at
10 the quoted part, and I believe you're quoting the
11 minutes from that meeting, but -- we can look at it if
12 you want, but I think JX 94 is the minutes from that
13 formal board meeting. Is that right?

14 A. I don't remember off the top of my head, but I
15 take your word for it.

16 Q. And I -- it's my memory, too, but I believe it
17 is. And you're quoting that Mr. Liddy was "accepted as
18 Chief Executive Officer as part of the agreement to
19 accept government financing." Do you see that?

20 A. Yes.

21 Q. Okay. And so that was -- do you remember which
22 date that was? Was that the 18th or the --

23 A. The minutes?

24 Q. The date that they had the vote for Mr. Liddy.

25 A. Ah, it was the 18th.

1 Q. Okay. So, on 9/18, AIG is taking an action that
2 they believed was based on an agreement with the
3 Government to get financing. Is that right? Is that
4 what it says?

5 A. Yes.

6 Q. Okay. And will you agree with me, sir, that
7 they wouldn't have done it -- they wouldn't have taken
8 the action you describe here if they didn't think that
9 there was an agreement?

10 A. Actually, I -- I don't agree with you on this,
11 in the sense that by that time -- by the 18th, I think
12 already 28 billion had been given by the Fed to the AIG,
13 and AIG had, I think, no chances to -- in that -- in the
14 short notice get any other form of financing, and
15 between the 16 and 18, the world has gotten much worse.

16 As I mentioned earlier, there was the sort of
17 breaking of the back of the Prime Reserve Fund, and a
18 lot of things were worse in the marketplace. So, if my
19 lender is -- even if there is no agreement before, but
20 my lender asks me something and I have no other chance,
21 I will do it.

22 Q. Okay. And so I'm going to ask you to look at
23 the language that you yourself quoted, sir, okay?

24 A. Um-hum.

25 Q. "Accepted as Chief Executive Officer as part of

1 the agreement." AIG's board believed they had an
2 agreement to accept government financing. Is that
3 right?

4 A. But if I'm not mistaken, the question that --

5 Q. No, just this question, sir.

6 A. Okay.

7 Q. AIG's board had -- believed they had an
8 agreement to accept government financing. Is that
9 right?

10 A. Yes.

11 Q. Okay. No further questions on that document,
12 sir.

13 Now, Mr. Willumstad also resigned. Is that
14 right?

15 A. Yes.

16 Q. Okay. And your understanding is that he
17 resigned as part of that agreement to accept financing.

18 A. Actually, he was told to resign even before the
19 agreement was reached with the board.

20 Q. Well, he was told that -- and we can go back and
21 look at the testimony, but he was told that that would
22 be -- that his resignation would be one of the
23 conditions of financing. Isn't that right?

24 A. He was told that, yeah.

25 Q. And then he resigned on September 18th. Is that

1 right?

2 A. Yes.

3 Q. Now, I'm going to go to PTX 2493, and I think
4 that's in your binder, and it's going to be Exhibit --
5 and this is -- this is Exhibit 1 to your report. So,
6 just Exhibit 1. And this may just be too small to -- we
7 might have to bring some of these up.

8 A. I'm sorry, this is in the new binder or in the
9 old binder?

10 Q. It would be in the binder that we gave you with
11 documents.

12 A. Okay.

13 Q. And it should be --

14 A. PTX 2 --

15 Q. It's your report, sir, and it should be under
16 PTX 2493, but it might be under something else.

17 THE COURT: It's the very last document in the
18 white binder.

19 THE WITNESS: Okay, thank you.

20 BY MR. DINTZER:

21 Q. Sir, if you can take a look at just Exhibit 1,
22 this is to your own report. Can you tell me what we're
23 looking at here?

24 A. This is the board composition of the AIG board.

25 Q. Okay. And it's not just at one specific time.

1 You actually give us the help of actually laying out
2 everybody on the board and when they were on the board.
3 Is that right?

4 A. Yeah, from September 16 to the proxy season of
5 2009.

6 Q. Okay.

7 MR. BOIES: Your Honor, may I just approach
8 counsel? I don't have that in my binder.

9 MR. DINTZER: I apologize, Counsel. I have an
10 extra one here.

11 Does the Court have one?

12 THE COURT: I do.

13 MR. DINTZER: All right, Your Honor.

14 MR. BOIES: Apparently it's in one of the two
15 binders you gave me, so --

16 MR. DINTZER: Okay, absolutely.

17 Let me make sure I have -- pardon me just one
18 second, Your Honor. I've got it.

19 BY MR. DINTZER:

20 Q. Okay. So, sir, if you look at this, this list
21 shows the start date for each of the AIG directors who
22 were in place on September 16th. Is that right?

23 A. Yes.

24 Q. And if you look, as you understand it, in May
25 2008, there was a shareholder vote. Is that right?

1 A. Yes.

2 Q. And just as a matter of corporate governance,
3 what happens is, is the names of the board members are
4 on the proxy, and the shareholders get a chance to vote
5 on which board members they want. Is that right?

6 A. Yeah. That's the practice, yeah.

7 Q. Okay. And so in May 2008, AIG's shareholders
8 picked the board members that they wanted to represent
9 them.

10 A. Yeah, that's correct.

11 Q. Okay.

12 A. And in the -- I have to qualify my previous
13 statement a second in the sense that when you say --
14 this may have nothing to do with this case, but it is my
15 opinion, so --

16 Q. Okay. And it wasn't supposed to be a sneaky
17 question, but go ahead, sir.

18 A. No, it is the fact that I always said and I
19 state that in many cases board election in United States
20 goes on like Soviet election, in sense that you have a
21 slate that is decided by the incumbent in most cases,
22 and then you can say yes or withhold, and you can get
23 humiliated if you withhold, and even if there is a
24 majority that says no, in most cases, you get appointed
25 anyway. So, when you say that in general, in corporate

1 America, shareholders get the people they want, I have
2 to qualify and say no.

3 Q. Fair enough.

4 So, there is a certain formality and -- but
5 however it's usually done in corporate America, the AIG
6 board was picked in May 2008, it was done that way. Is
7 that right?

8 A. That's my understanding, yeah.

9 Q. Okay. And so we can agree that the share --
10 that the board members who were picked in May 2008 were
11 completely independent from the United States.

12 A. Yes.

13 Q. Okay. And we can also agree that nothing
14 happened before September 16th that changed that; they
15 were still independent from the United States on
16 September 16.

17 A. I would like you to qualify what "independent"
18 means. Of course, I'm not qualified to give you a legal
19 opinion about whether they were independent or not. If
20 you are telling me, from an economic point of view, were
21 they independent, from an economic point of view, again,
22 what I have to look at is the future sort of payoff of
23 these people, how it can be affected by the U.S.
24 Government.

25 And I think that given the circumstances of

1 September 16, can I see that they are afraid of
2 potential consequences of getting in the way of the U.S.
3 Government? Yes.

4 Q. Are you offering that as an opinion, that any
5 one of these individuals was individually afraid of
6 getting in the way of the United States Government?

7 A. I didn't say that.

8 Q. All right. But I'm asking you, sir. Are you
9 offering that as an opinion?

10 A. You earlier asked me if they were independent,
11 and I said from a legal point of view, I'm not
12 qualified. From an economic point of view, I said I can
13 see -- the way in which I will determine whether you are
14 independent is to what extent the party that might be
15 controlling can impact me going forward, and I said can
16 I see that the Government could impact the way going
17 forward? Yes.

18 Q. Okay. Now, the -- the -- we're going to back up
19 just a step. You will agree with me that the board
20 members who were elected by the shareholders in May of
21 2008, those were the board members who voted to accept
22 the Government's \$85 billion facility on September 16th,
23 right?

24 A. Yes.

25 Q. Okay. And just generally, shareholders -- after

1 shareholders elect the board of directors, the board of
2 directors has control of the firm, just generally; not
3 in this specific case, I understand, but just generally,
4 that's the way it works. The board has control of the
5 firm after the shareholders elect them.

6 A. In general, that's the case, yes.

7 Q. And the board of directors then delegates
8 certain day-to-day decisions to the management of the
9 firm.

10 A. Yes, they do.

11 Q. And the board members of publicly traded
12 companies have a responsibility to the company's
13 shareholders.

14 A. In normal circumstances, their primary
15 responsibility is to the shareholders. Near insolvency,
16 they are responsible also to creditors and to employees
17 to the extent they are creditors.

18 Q. Okay. And each member of a board of directors
19 in the United States of a publicly traded company has a
20 fiduciary duty to represent the shareholders' best
21 interests as long as it's solvent, as long as the
22 company's solvent.

23 A. Yes.

24 Q. Now --

25 A. Actually, if I may qualify, my understanding --

1 and, again, we're going toward legal territory here --
2 my understanding is even if the company is solvent but
3 is close to insolvency, then you have to consider also
4 the other constituencies, not just the shareholders.

5 Q. Now, AIG's shares are traded on the New York
6 Stock Exchange.

7 A. Yes.

8 Q. And the New York Stock Exchange produces a
9 manual for the companies listed on the exchange.

10 A. Yes, they do.

11 Q. And you are familiar with this manual because
12 you cite it in your expert report.

13 A. Yes, I do.

14 Q. And the manual provides a definition of what
15 qualifies as an independent board member.

16 A. Yes, it does.

17 Q. And generally what it says is is an independent
18 board member is somebody who doesn't have a financial
19 relationship with the company itself.

20 A. Let's say, broadly, that --

21 Q. Correct.

22 A. -- that's -- yeah.

23 Q. And if I use that definition of "independent"
24 with respect to the Government, do you have any opinion
25 or are you offering an opinion as to whether the AIG

1 board members on September 16th were independent of the
2 United States or the Fed? Using the New York Stock
3 Exchange's definition.

4 A. Are you asking me a legal opinion, whether they
5 qualify as independent or --

6 Q. Okay. Well, the way that the New York Stock
7 Exchange Manual has it is that there can be no material
8 relationship with the listed company; they have to be --
9 is that right? And I can show it to you if you don't
10 know.

11 A. If you go by -- if I go by memory, it sounds
12 right, but I don't have it in front of me and -- yeah.

13 Q. Okay. So, we can look at it.

14 A. Okay.

15 Q. So, DX 2123.

16 May I approach, Your Honor?

17 THE COURT: Yes.

18 THE WITNESS: Thank you.

19 BY MR. DINTZER:

20 Q. Sir, do you recognize what this document is?

21 A. Yes, I do.

22 Q. What is it?

23 A. This is a part -- to my best understanding, part
24 of the NYSE sort of rules.

25 Q. And so if you can go to -- up in the right-hand

1 corner, there are page -- and, Your Honor, this has been
2 stickered DX 2123 -- and if you can go to page 8 of 43
3 and tell me when you get there.

4 A. Okay.

5 Q. And if you look at (A)(i), "No director
6 qualifies as independent unless the board of directors
7 affirmatively determines that the director has no
8 material relationship with the listed company."

9 Okay, and that would be if we were looking to
10 see if the director is independent of the company. Is
11 that right?

12 A. That's correct.

13 Q. And so if we applied that independence test with
14 these directors vis-à-vis the Federal Reserve, so the
15 question would be that the director has no material
16 relationship with the New York Fed, will you agree with
17 me that on September 15th, none of these directors who
18 voted on the offer and acceptance of the \$85 billion
19 facility had a material relationship with the New York
20 Fed or the Government?

21 A. I'm sorry, but if I read this correctly, it says
22 that no director qualifies as independent unless the
23 board of directors affirmatively determines.

24 Q. Right.

25 A. I'm not aware that the board of directors

1 affirmatively determined one way or another, so I
2 cannot --

3 Q. Is it not within the scope of your expertise to
4 make that understanding?

5 A. Here is a fact statement. Did the board of
6 directors affirmatively determine that?

7 Q. Right.

8 A. I'm not aware that they did.

9 Q. Fair enough.

10 Now I'm asking you, sir, have you yourself tried
11 to make a determination about applying this test, about
12 the materiality test, with respect to the board members
13 on September 15th to the New York Fed or the United
14 States?

15 A. No, I didn't, because I consider that irrelevant
16 for this decision, because once you have one decision,
17 whether you have independent or dependent, it doesn't
18 make a difference.

19 Q. Okay. So -- and that's really where I'm going,
20 sir. Your analysis of economic control has no
21 relationship to whether these board members were
22 actually independent of the New York Fed. Is that
23 right?

24 A. My analysis does not touch this point because it
25 considers it irrelevant as far as this point is

1 concerned.

2 Q. So, for example, Steve Bollenbach, who's on your
3 list here, he -- in fact, you mentioned him. He started
4 as a director in -- January 16th, 2008. Do you see
5 that? And he was --

6 A. So, we are going back to the previous exhibit,
7 right?

8 Q. Yes, sir.

9 A. Okay.

10 Q. Exhibit 1.

11 A. Yeah.

12 Q. Okay. And he was an independent director. Do
13 you see that?

14 A. Again, I think that the definition of
15 "independent" has been given by the board vis-à-vis sort
16 of the company itself.

17 Q. Right.

18 A. So, this doesn't apply vis-à-vis to the Fed.

19 Q. Right, but -- and now I'm asking you, do you
20 have any reason to believe that Mr. Bollenbach was not
21 also independent from and had no material relationship
22 with the Government for the preceding three years when
23 the vote was taken in September 2008?

24 A. I have not studied the issue, so I'm not
25 prepared to make a statement one way or the other.

1 Q. Fair enough.

2 And if I asked you about any of the board
3 members, that would be the same conclusion, right?

4 A. Yes, that would be.

5 Q. Okay.

6 A. By the way, I notice that there is a mistake
7 here, because one director is said to be starting in
8 1900, so unless he's been on the board for many years --

9 Q. That's a very experienced director. So, I
10 assume Ms. Ellen Futter had a start date that preceded
11 -- that succeeded that.

12 A. Yes.

13 THE COURT: I hope she appears as a witness.

14 THE WITNESS: Incredible longevity.

15 MR. DINTZER: She'll have some good stories to
16 tell.

17 BY MR. DINTZER:

18 Q. Now, AIG's board, when they considered the --
19 and accepted the \$85 billion facility on September 16th,
20 they had their own separate legal counsel. Is that
21 right?

22 A. Yes.

23 Q. And at that time, the Government had no
24 direct -- director representation on September 16th. Is
25 that right?

Starr International Company, Inc. v. USA

1 A. It wasn't -- directors? Yeah.

2 Q. So, I just want to make sure that it's clear.

3 On September 16th, when AIG's board voted to accept the
4 \$85 billion facility, the Government had no director
5 representation. Is that right?

6 A. That's correct.

7 Q. And the Government had no voting control on that
8 date either. Is that right?

9 A. Had no voting control, yes.

10 Q. Now, your effective economic control test that
11 you've described is not designed to determine whether
12 any individual director acted independently from the
13 Government during that week of September 16th.

14 A. Again, you have to define "independently," what
15 it means, for me.

16 Q. Sure. If we bring in that person, whoever it
17 is, one of the directors, and they say, look, you know,
18 I didn't care what the Government thought, I was acting
19 independently, that would -- would that be inconsistent
20 with your control test?

21 A. In this hypothetical, it would not be
22 inconsistent, no.

23 Q. Okay. So, the fact that you believe that there
24 was economic control is not inconsistent with
25 individual -- individual board members acting

1 independently. Is that right?

2 A. Ah, I don't want to sound more lawyerly than a
3 lawyer, but I would like to understand this business of
4 independent, what it means, in the sense when I -- going
5 back to my example, which I am very comfortable with,
6 when I tell my assistant to get me coffee, is he acting
7 independently or dependently? In a sense, does the
8 assistant have free will? Yes. Is --

9 Q. Can he make a voluntary decision?

10 A. I am afraid "voluntary" is a legal term, I'm not
11 sort of -- from an economic point of view, I'm saying
12 she is making a decision. She's not coerced in making
13 that decision, but there is a power that might induce
14 her to make that decision even if in that moment he is
15 not particularly thrilled with getting coffee.

16 So, in the sense that -- this goes back to what
17 I said earlier, in a free -- what it means to be in
18 control of a person in a free market economy, where,
19 thank God, there is no slavery. So, I -- there is free
20 will. So, people enter in transactions, unless
21 otherwise proven, freely.

22 Now, does it mean that there is no exertion of
23 control or power? No. And the example of the assistant
24 proves the point.

25 Q. Okay. So, let me see if I can clarify. In

1 describing your economic control test, you are not
2 trying to explain whether individual directors acted
3 independently or voluntary. That's not part of what
4 you're trying to address.

5 A. It's fair to say that I did not study whether
6 directors were independent or not, because I -- I don't
7 care for my analysis.

8 Q. And you also didn't study whether they were
9 acting voluntary. Is that right?

10 A. I am afraid that "voluntary" is a legal term,
11 and I'm not sure -- if you define it for me, maybe I
12 can help, but what does it mean, voluntary?

13 Q. All I'm looking for, sir, is if you say, no, I
14 didn't look at that -- I'm not trying to define it. If
15 you didn't look at voluntariness, than -- did you look
16 at voluntariness in examining your economic control
17 test?

18 A. No.

19 Q. So, they are not related?

20 A. What is not related with what? Sorry.

21 Q. Okay. Let me ask you this. Your economic
22 control test that you described is not designed to
23 determine whether or not any individual AIG director
24 acted in the best interests of the shareholders during
25 the week of September 16th.

1 A. Can you repeat the question? Sorry.

2 Q. Your test, your economic control test, is not
3 designed to determine whether or not any individual AIG
4 director acted in the best interests of the
5 shareholders. Isn't that correct?

6 A. Yeah.

7 MR. DINTZER: I'm at a good stop.

8 THE COURT: Ready for lunch?

9 MR. DINTZER: Yes.

10 THE COURT: Let's reconvene then at 1:45.

11 (Lunch recess, 12:44 p.m. to 1:45 p.m.)

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1 DX 436. Just let me know when you get there.

2 A. I am here.

3 Q. Sir, have you seen this document before?

4 A. Yes.

5 Q. Okay. And this is an email, if you look at the
6 top, from Mr. Norton at the Treasury Department to
7 Mr. Cohen, and he was outside counsel for AIG. Is that
8 right?

9 A. Yes.

10 Q. Okay, and -- at Sullivan & Cromwell. And this
11 is at 4:06 p.m. on September 16th. Is that right?

12 A. Yes.

13 Q. And then -- and what it says there is,
14 "Attached, please find a soft copy of the term sheet."
15 Do you see that?

16 A. Yes.

17 MR. DINTZER: Your Honor, we move for the
18 admission of DX 436.

19 MR. BOIES: No objection, Your Honor.

20 THE COURT: Defendant's Exhibit 436 is admitted.
21 (Defendant's Exhibit Number 436 was admitted
22 into evidence.)

23 BY MR. DINTZER:

24 Q. And when you -- you understand the term "soft
25 copy" to mean an electronic copy of the term sheet?

1 A. Yes.

2 Q. Okay. And if you turn to the next page, you'll
3 see that it says, "Summary of Terms for Senior Bridge
4 Facility," and it says "Agreement." Do you see that?

5 A. I --

6 Q. At the very top of the page, sir.

7 A. Of the -- on the first page? Yes.

8 Q. The first page of the term sheet. I apologize.

9 A. No, no, no, my confusion.

10 Q. Okay. So, this is another version of the term
11 sheet, right?

12 A. Yes.

13 Q. Okay. And if you go to the second page of the
14 term sheet, the third page of the document, under
15 "Equity Participation," it says, "Equity participation
16 equivalent to 79.9% of the common stock of AIG on a
17 fully-diluted basis. Form to be determined."

18 Do you see that?

19 A. I do.

20 Q. Okay. And so it doesn't mention warrants.

21 A. It does not mention warrants.

22 Q. Okay. So, the term sheet that was sent to AIG's
23 attorney at 4:06 p.m. on September 16th mentioned the
24 79.9 percent common stock but had the form to be
25 determined, right?

1 A. Yes, but if I remember correctly, Rodgin Cohen
2 said that he did not read this before the board meeting.
3 Am I wrong here?

4 Q. Well, I -- sir, I can't offer testimony. If you
5 don't know, then -- well, I'm going to leave that, but I
6 am going to go to the next document, and maybe -- so, if
7 you go ahead to JX 74, which should be in your binder.

8 A. Yes.

9 Q. And tell me if you recognize this.

10 A. Yes, I do.

11 Q. And what is it, sir?

12 A. These are the minutes of the board of directors
13 that took place at AIG September 16.

14 Q. Okay. And if you go to the second line of this
15 document, it says that the meeting was held at 5:00. Is
16 that right?

17 A. Yes.

18 Q. Okay. And farther down, the second-to-last line
19 on this page, it says that that same Rodgin Cohen is
20 sitting there in that meeting. Is that right?

21 A. Yes.

22 Q. Okay. And so -- so, the -- so, this is the
23 board meeting, September 16th, 2008, where AIG's board
24 will consider the \$85 billion credit facility.

25 A. Yes.

1 Q. Now, if you go to page 12 of the document --
2 well, actually, let's go to page 3. At the very bottom,
3 it says, "Mr. Willumstad explained to the board that the
4 Secretary of the Treasury had informed him that as a
5 condition of the government facility, Mr. Willumstad
6 would be replaced as chief executive officer of the
7 corporation."

8 Do you see that?

9 A. Yes.

10 Q. So, one of the requirements, one of the
11 conditions of getting the loan, as Mr. Willumstad and
12 the board understood it, was that he would have to step
13 down. Is that right?

14 A. Yes.

15 Q. And then if we go to page 12 of the document, it
16 states at the very bottom, "The Board discussed at
17 length the mechanics of how the equity portion of the
18 offering would work." Do you see that?

19 A. Yes.

20 Q. "Counsel explained that if the equity interest
21 took the form of warrants, then a shareholder vote would
22 be necessary," and it continues on. Do you see that?

23 A. I do.

24 Q. And that's a conditional, right, if/then?

25 A. Are you asking me a grammatic question? Yes.

1 Q. Yes, okay. So, at that point, it was a
2 conditional about the equity interest, as he -- at least
3 as it says right there on that line.

4 A. Clearly in this line it is a conditional. The
5 fact that a few minutes later the audit committee met
6 and approved the issuance of some warrants suggests that
7 this was more than just a condition.

8 Q. I'm glad you mentioned the audit committee,
9 because that's the next place I was going to take you.
10 And this is not in your binder, sir, so I am going to
11 hand it out. This is JX 75.

12 May I approach, Your Honor?

13 THE COURT: Yes.

14 MR. DINTZER: Here you go.

15 THE WITNESS: Thank you.

16 BY MR. DINTZER:

17 Q. Now, you're familiar with Mr. Reeder, who was
18 the outside counsel to AIG. Is that right?

19 A. Was a counsel.

20 Q. Was a counsel.

21 A. Yeah.

22 Q. So, let's look at JX 75, and do you recognize
23 this document?

24 A. Yes, I do.

25 Q. And what is it?

1 A. These are the minutes of the meeting of the
2 audit committee that takes place immediately after the
3 board of directors, and what I found interesting is that
4 it takes place at 6:00 p.m., so the other one was at
5 5:00, so it was really --

6 Q. One hour, immediately after.

7 A. One hour for a board meeting deciding for that
8 thing is pretty short by my standards, but...

9 Q. Okay. So, if we go to page 2 of this,
10 Mr. Reeder -- and he is identified -- is he identified
11 here? Well, perhaps he isn't, but I think we have that
12 he is outside counsel.

13 On page 2, it says that "Mr. Reeder requested
14 that the Committee consider taking action pursuant to
15 the rules of the New York Stock Exchange so that the
16 Corporation would be able to issue, without shareholder
17 approval, the warrants thought to be contemplated in
18 connection with a secured revolving credit facility to
19 be entered into between the Corporation and the Federal
20 Reserve Bank of New York."

21 Do you see that?

22 A. Yes, I do.

23 Q. Okay. And so this statement is that warrants
24 are contemplated. Is that right, sir?

25 A. Yes.

1 Q. In fact, they're thought to be contemplated.

2 Now, no further questions on that document, sir.

3 And if you go to JX 94, do you have that, sir?

4 A. Yes, I do.

5 Q. Okay. And do you recognize what this is?

6 A. Yes. These are the minutes of the board of
7 directors as of September 18.

8 Q. Okay. So, this is the -- this is the -- the
9 board of directors meeting where Ed Liddy becomes the
10 CEO. Is that right?

11 A. CEO and chairman, yes.

12 Q. And chairman. Do you know -- you know who Hank
13 Greenberg is. Is that right?

14 A. Yes, I do.

15 Q. Who is he with respect to AIG?

16 A. He was the CEO and chairman of AIG until, I
17 think, 2005.

18 Q. Okay. So, he had both those positions for a
19 number of years.

20 A. As far as I know, yes. I have not analyzed this
21 in detail.

22 Q. And there was no problem, nothing wrong about
23 him being CEO and chairman, was there?

24 A. Actually, the fact that -- having both positions
25 is an excessive concentration of power by the best

1 corporate governance rules, so I think it is a -- not
2 good governance at the very minimum.

3 Q. Do you know if Mr. Willumstad was both CEO and
4 chairman?

5 A. He became such, in the sense he started as just
6 chairman, and then the CEO left, and then the two things
7 were combined. So, it was not the original position to
8 have both.

9 In fact, if I remember correctly -- this was not
10 part of my analysis, so I go by memory -- but if I
11 remember correctly, in the -- one of the reasons why
12 sort of they forced out Greenberg from AIG was because
13 it wanted him not to play that overwhelming role over
14 AIG. So, I think that being chairman and CEO is a very
15 powerful position.

16 Q. When Mr. Liddy became chairman and CEO, he
17 replaced Mr. Willumstad who was chairman and CEO. Is
18 that correct?

19 A. Yes.

20 Q. And so if we go to JX 94, that's the September
21 18th meeting minutes, and if you look here at -- do you
22 know who Mr. Wiseman is?

23 A. He is one of the counselor.

24 Q. Okay. And if you go to page 6 of this document,
25 sort of in the middle, the paragraph that begins "A

1 number..." Do you see that, sir? It's on the screen,
2 too, if you --

3 A. Okay, yes.

4 Q. "A number of questions were raised regarding the
5 price and voting rights of the equity interest that was
6 included in the term sheet approved on September 16.
7 Mr. Wiseman stated that those details would be part of
8 the documents that counsel for the Corporation expected
9 to receive shortly, and that until those documents were
10 completed it was not possible to answer the Board's
11 questions on the specifics of the equity interests."

12 Do you see that?

13 A. I do see that, sir.

14 Q. Okay. So, if you draw the lines between the
15 16th and the 18th, at no time does the board have any
16 specific statement that warrants is the final decision.
17 Would you agree with me on that, sir?

18 A. We heard from Liddy that there was a clear
19 expectation by management there would be warrants. So,
20 if you're saying there was a definite agreement on
21 warrants, no, but was it a clear expectation? Yes.

22 Q. Now, I know you've read a number of depositions.
23 Did you read Mr. Reeder's deposition?

24 A. Not that I remember.

25 Q. Okay. So, let me introduce you to it. Let's

1 see.

2 May I approach, Your Honor?

3 THE COURT: Yes.

4 MR. DINTZER: Here you go, sir.

5 THE COURT: Thank you.

6 BY MR. DINTZER:

7 Q. Sir, I'm going to take you -- so, this is
8 Mr. Reeder, again, and I'm going to take you to page
9 117, line 21, and under questioning -- well, let me see
10 here -- and under questioning by Plaintiffs' counsel, at
11 line -- so, the question was, "What happened at the
12 meeting" -- the question was -- well, I take it back.
13 The question was:

14 "QUESTION: Is it correct that the members of
15 the board raised issues regarding the change from
16 warrants to preferred stock" --

17 MR. BOIES: Your Honor, this is not in evidence,
18 and I think there are a variety of ways that we could
19 treat depositions, and I'd like to do it in whatever way
20 the Court is comfortable, but I don't want to be faced
21 with a situation in which they introduce a deposition
22 into evidence without me objecting, and then when I do
23 it, they object. So, I just want to understand what the
24 rules of the road are early on.

25 MR. DINTZER: And to address it, if I may, Your

1 Honor --

2 THE COURT: Yes.

3 MR. DINTZER: -- I am not offering this for the
4 substance of the evidence but merely if -- the witness
5 has clearly considered a number of depositions, a number
6 of pieces of testimony. He didn't consider this. So, I
7 would like to put this in front of him, but I am not
8 offering it into evidence. I believe Mr. Reeder will
9 testify.

10 THE COURT: Well, the problem is I wasn't sure
11 exactly what purpose you had in mind for showing him
12 this, and then there's the question of whether the
13 Plaintiff wants to use other than just these excerpts on
14 redirect or somewhere down the road. Is there a way we
15 can give this an exhibit number?

16 MR. DINTZER: There is, Your Honor. We will --
17 I mean, we, as Your Honor does, prefer live witnesses
18 whenever possible, so we do not want to admit his
19 deposition in lieu of live testimony. That wasn't the
20 objective.

21 THE COURT: Well, to me, it would not be for the
22 truth of the matter asserted, but it's a record of what
23 you showed this witness.

24 MR. DINTZER: Yes, Your Honor. I don't know if
25 we have a complete -- if you would like, I can hold off

1 on this and come back to this and we can get complete
2 transcripts.

3 THE COURT: All right, let's do that.

4 MR. DINTZER: Okay.

5 BY MR. DINTZER:

6 Q. Now, sir, on the evening of September 16th,
7 2008, AIG's board had a choice. Is that right?

8 A. Can you be a bit more specific, because --

9 Q. Sure. They had a choice between the
10 Government's offer and bankruptcy, and filing for
11 bankruptcy.

12 A. Yes. They had a choice between a very certain
13 outcome and a very uncertain one, yes.

14 Q. And they considered -- and when you say -- just
15 so that we're clear, the certain outcome was getting \$85
16 billion from the Federal Reserve and the uncertain one
17 was what would happen in bankruptcy.

18 A. That's correct.

19 Q. And just to be clear, your theory of economic
20 control doesn't mean that AIG's board didn't have a
21 choice, because they had a choice.

22 A. So, the economic theory is not necessarily based
23 on the fact you have only one choice. I'm not saying
24 that -- in some situations the board may not have only
25 one choice, but the fact you have a choice -- in a free

1 market economy, you have a choice. In the example of
2 the assistant, the assistant has a choice to not bring
3 me coffee and potentially be fired. So, it's a choice.
4 Does it mean I don't have power over my assistant? No.
5 It's simply saying that my power is limited, because
6 thank God, we are in a free market economy with no
7 slavery. So, the amount of power that anybody can have
8 over somebody else is limited by what we call economic
9 outside option, so -- and clearly my power over somebody
10 is influenced by how the outside options look like
11 vis-à-vis the alternative.

12 Q. So, because we live in a free market economy,
13 AIG's board had a choice on September 16th between the
14 loan from the Federal Reserve and bankruptcy. Is that
15 correct?

16 A. Yes, they did.

17 Q. Okay. And AIG's board chose the Government's
18 loan offer over bankruptcy. Is that right?

19 A. The fact that they chose the government loan is
20 not evidence that the Government did not use its
21 monopoly power.

22 Q. And that's not my question.

23 A. Okay.

24 Q. My question is just --

25 A. I want to make sure that I'm not sort of --

1 Q. Absolutely. But they did ultimately choose the
2 government loan over bankruptcy, the board did. Is that
3 right?

4 A. They -- yeah, they accepted to go with the
5 credit facility at the time, yes.

6 Q. Okay. And the board voted to go with the credit
7 facility on September 16th because they perceived that
8 as the better choice.

9 A. Yeah, in the same way in which my assistant
10 perceives it's a better choice to bring me coffee rather
11 than be fired.

12 Q. Do you know what the business judgment rule is?

13 A. Yes.

14 Q. What is the business judgment rule?

15 A. The U.S. jurisprudence thinks it's a good idea
16 not to --

17 Q. Just so I'm not -- I'm not asking for a legal
18 opinion, but just -- I mean, I know you've reviewed
19 articles and stuff that describe it, but just in your
20 understanding.

21 A. In my understanding, if decisions are made free
22 of conflict of interest by -- by directors, this is
23 generally -- there are some exceptions -- generally
24 is -- that decision is protected so that directors
25 cannot be sued on the adverse consequences of that

1 decision.

2 Q. And each director has the ability to exercise
3 their best judgment in determining what is in the best
4 interests of the company, just generally.

5 A. If it has the ability?

6 Q. I mean, that's part of their job as a director,
7 to exercise their best judgment.

8 A. Yeah. I would say it's more than the ability.
9 I think they have a -- again, I'm not a legal expert,
10 but they have a duty to do so.

11 Q. And on September 16th, the -- AIG's board of
12 directors had a duty to use their best judgment to
13 determine whether they should go with bankruptcy or the
14 New York Fed's loan. Is that right?

15 A. They -- I'm sorry. Can you ask the question
16 again?

17 Q. Sure.

18 On September 16th --

19 A. Um-hum.

20 Q. -- AIG's board had a duty to use their best
21 judgment to decide whether to go with bankruptcy or the
22 New York Fed's loan.

23 A. Yes.

24 Q. And you have no reason to think that AIG's board
25 didn't carry out that duty.

1 A. I have no reason to believe so.

2 Q. You have no reason to think that AIG's board
3 wasn't acting in good faith during the week of September
4 16th.

5 A. As far as -- as far as I understand the term
6 "good faith," which is a legal term, yes.

7 Q. Okay. Now, so, we've talked about the loan, and
8 so as I understand it, the board determined that -- I
9 mean, well, we know that the board -- they had the
10 choice between bankruptcy and the -- and the loan,
11 right?

12 A. Um-hum.

13 Q. And -- and you're not a bankruptcy expert. We
14 talked about that earlier. So, you're not offering an
15 opinion yourself about what would have happened had AIG
16 entered bankruptcy. Is that right?

17 A. Yes. I don't offer an opinion on that.

18 Q. Okay. And so the board decided that -- the
19 board decided that the loan was a better choice than
20 bankruptcy, right?

21 A. Yes.

22 Q. Okay. And if the board had determined that
23 bankruptcy and the loan were about equal, would there
24 still have been economic control?

25 A. No.

1 Q. Okay. And -- so, I think I know the answer to
2 this one, then. If the board had determined that
3 bankruptcy was actually better than the loan, then
4 there's no economic control, right?

5 A. For the part -- I have to qualify, for the part
6 that has to do with your lending power -- there are all
7 the other aspects that were analyzed, but here we're
8 focusing on your ability to lend. And, yes, if the
9 ability to offer a loan was below that, but I think
10 that -- I'm not so sure what counterfactor you're
11 putting in here, because the Fed has been created to
12 address a problem of abuse of power of lending in a
13 situation of illiquidity.

14 If you remember, during the panic of 1907,
15 Pierpont Morgan was able to extract a fantastic good
16 deal for the purchase of the Tennessee Iron and Coal as
17 a result of its monopoly power -- his monopoly power
18 over liquidity. Now, nobody's saying that a
19 counterparty to that transaction were not sort of
20 choosing in their best interests at that moment, but the
21 alternative was so dramatically bad that Pierpont Morgan
22 extracted a lot of rent.

23 And as a result of that, it was decided it was
24 useful, number one, to have a government authority to
25 administer that liquidity, and number two, to subject

1 that use of what in those situations is a monopoly power
2 under some clear guidelines that are given by the 13(3)
3 statute, which is interpreted by the Fed as following
4 the Bagehot Rule. And we heard Bernanke say that they
5 did not follow the Bagehot Rule in that situation.

6 Q. And so my question was only if bankruptcy was
7 better than the loan, then there would be no EEC here,
8 no effective economic control there, right?

9 A. Yeah. That situation -- in a normal market
10 condition where the Fed price the discount window at
11 slightly higher than what is the market at the time, the
12 Fed does not exercise control of any company; otherwise,
13 we would be in a Soviet economy, not in a free market
14 economy.

15 So, I would say that under normal market
16 conditions, where the offers are above or equal to
17 market offers, the Fed has no market power over the
18 companies.

19 Q. Okay. And, sir, you're answering a question I'm
20 not asking. I'm not asking about 1907 and I'm not
21 asking about a hypothetical. I'm saying --

22 A. I'm sorry, 1907 is not a hypothetical.

23 Q. Fair enough.

24 I'm just asking that if the board had included
25 that bankruptcy was better than the loan -- I need a yes

1 or no and then you can explain however much you want --
2 if the board had concluded that the bankruptcy was
3 better than the loan, there would be no effective
4 economic control.

5 A. Yes.

6 Q. Okay. And so -- now, AIG's board met on
7 September 18th, and we talked about that. The -- the
8 number -- and they voted in Mr. Liddy. The board
9 members were the same ones who were on September 16th.
10 Is that right? There hadn't been any changes at that
11 point.

12 A. Except for Liddy himself.

13 Q. Well, he didn't vote on himself to become a
14 board member.

15 A. I'm sorry, yeah, he did not vote himself. Even
16 if he -- he greeted the board members when they came in,
17 which is a little bit funny, because I have been in the
18 situation of a change of CEO, and the new CEO does not
19 show up before the vote take place. So, the fact that
20 the new CEO to be appointed greets, as a host, the board
21 members, I think it's a pretty clear indication of who's
22 in control.

23 Q. Or maybe he's just very gregarious. So, maybe
24 he wanted to show up early because he wanted to be a
25 nice guy, and I'll ask you this, that you're not

1 offering an economic opinion that because he showed up
2 early instead of late, and was friendly instead of
3 sullen, that he had control of the board. Is that
4 right?

5 A. I am stating that -- it's not just being
6 gregarious and to show up early. It is de facto being
7 present at the meeting, because if I read the minutes,
8 he was not only at the door greeting, like a gregarious
9 person; he was at the meeting, greeted board members at
10 the meeting, and then left the room. So, that's a
11 pretty clear indication that he has already taken over
12 some function. I would say my experience is not like
13 that, and I challenge you to find experience in
14 normal -- normal boards where this takes place.

15 Q. Why did he leave the room?

16 A. The fact that you leave the room is a minimal
17 requirement, because otherwise -- first of all, you
18 never vote with a -- the person you vote on present.
19 So, that is the minimum requirement for that, but why
20 was he present before, I think that was my point.

21 Q. We can go over the minutes of the meeting, but
22 you'll agree with me that AIG's board followed the
23 formalities of properly voting in Mr. Liddy on September
24 18th, right?

25 A. You correctly said "formality." I think we're

1 talking about form here versus substance.

2 Q. Now, after being selected as AIG's CEO, just to
3 be clear, Mr. Liddy didn't work for the United States or
4 the Federal Reserve, right? He didn't take money from
5 them in any form.

6 A. No. He was head of the audit committee of
7 Goldman Sachs.

8 Q. Right. But Goldman Sachs is not the Federal
9 Reserve, is it?

10 A. Even if it sometimes looks like it, no.

11 Q. I kind of opened myself up for that one.

12 But the point is, sir, is that Mr. Liddy had no
13 financial connection with the New York Fed or the United
14 States Government. Is that correct?

15 A. As a -- this is a tricky question in the sense
16 that as a board member of Goldman and probably was also
17 shareholder of Goldman, he -- his position, his value
18 was highly dependent on the Government -- what happened
19 to Goldman. We know probably that Goldman would not
20 have opened shop on Monday morning, the 22nd, if it
21 wasn't for the fact that the Fed changed the rules and
22 accepted bank -- Morgan Stanley as bank holding company
23 basically overnight.

24 So, would it be tremendously benefiting --
25 tremendously maybe is too much, but would it have

1 benefited from Government being nice with him and
2 Goldman in some way? Yes.

3 Q. Okay, but that's not my question. My question
4 is, did he have a financial relationship with the New
5 York Federal Reserve or the United States on September
6 18th or thereafter?

7 A. When you say "financial relationship," you mean
8 a direct financial relationship --

9 Q. Yes.

10 A. -- or was his financial interest somewhat
11 dependent on the Government?

12 Q. Well, on September 18th, sir, given what was
13 happening in the economy, everybody's financial interest
14 was related to the Government, wasn't it?

15 A. I believe some more than others.

16 Q. Okay.

17 A. And when I say some, that is more than others.

18 Q. And so my question is on that date, he did not
19 have a direct financial relationship with -- Mr. Liddy
20 did not have a direct financial relationship with the
21 New York Reserve or the United States. Is that correct?

22 A. As far as I know, that's correct.

23 Q. Okay. And after being selected as AIG's CEO, he
24 had the ability to act in AIG's best interests. Is that
25 right?

1 A. After he was in -- when you say he had the
2 ability, what do you mean? Was he capable?

3 Q. Yes.

4 A. I have not seen evidence that he wasn't capable,
5 even if his testimony was not particularly reassuring on
6 his ability, but at the time, I have no reason to
7 believe that he was not capable.

8 Q. On September 21st, AIG's board voted on whether
9 to accept the credit agreement. Is that right?

10 A. Yes, they did.

11 Q. Okay. And that board had only had one change
12 from September 16th and from months earlier when the
13 shareholders had picked the board. Is that right?

14 A. In term of board members, there was only one
15 change, and you are correct.

16 Q. That would be Mr. Willumstad for Mr. Liddy?

17 A. Yeah, but -- but the situation had changed quite
18 a bit, and so much so that Rodgin Cohen, the outside
19 counselor, sort of was not prepared to extend the
20 opinion that filing for bankruptcy was protected under
21 the business judgment rule. So, at that time, clearly
22 it was no feasible option for the board members.

23 Q. And, sir, all I asked for was -- was that the
24 board -- the makeup of the board had not changed.

25 A. I'm sorry. I thought that that situation was a

1 change. I apologize.

2 Q. But the makeup of the board, Mr. Willumstad had
3 been replaced by Mr. Liddy, but other than that, the
4 board members who voted on September 21st for the credit
5 agreement were the same ones who had been picked by
6 shareholders months earlier. Is that right?

7 A. Yeah.

8 Q. And on September 21st, when the board voted --
9 before the board voted on the credit agreement, they had
10 their own separate legal counselor who considered the
11 credit agreement. Is that right?

12 A. Even if it was done in extreme sort of short
13 period of time, because the actual terms of the credit
14 agreement, as far as I remember, were delivered at 3:30
15 in the afternoon, and they met shortly afterward, and it
16 was a Sunday. So, I don't know how much sort of time
17 they had to analyze, but yes.

18 Q. And you're not suggesting that the directors,
19 when they voted on the credit agreement, that they had
20 any sort of conflict of interest or were financially
21 beholden to the United States. Is that right?

22 A. Again, we need to distinguish in what terms.

23 Q. Directly.

24 A. Directly? I'm not aware of any -- any.

25 Q. Now, sir, you've written rather prolifically

Starr International Company, Inc. v. USA

1 about the -- about AIG and about the entire happenings
2 of 2008, 2009. Is that right?

3 A. Yes.

4 Q. And you believed that the Government should have
5 let AIG file for bankruptcy, go bankrupt.

6 A. With the information I have now, I think that
7 the Government should have extended a 13(3) loan
8 following the Bagehot Rule. That's what was -- the Fed
9 was created for. That is the good rule. That's what
10 the Government should have done.

11 Q. And, you know, Plaintiffs' counsel asked you if
12 you were being compensated for this arrangement, and, of
13 course, that's not uncommon, but when did you actually
14 start working for the Plaintiffs?

15 A. I think that I had a first introductory meeting,
16 I think, in July probably of 2013, and then I started
17 working -- getting into sort of the actual work sometime
18 in the fall.

19 Q. Okay. And so before that time, you had written
20 and believed that the Government should have let AIG
21 file for bankruptcy. Is that right?

22 A. All this is very dependent on the view of
23 whether AIG had only liquidity problems or substantial
24 solvency problem. I think that the government role --
25 the Fed role is to intervene, given a financial crisis,

1 when companies are illiquid but solvent. In my view --
2 and I know a lot of people disagree -- but in my view,
3 the role is not to intervene when companies are
4 insolvent.

5 Q. And I'd like you to answer the question I'm
6 asking. Before 2013, you wrote and you believed that
7 the New York Fed and the Federal Reserve should have let
8 AIG fail. Yes or no, sir.

9 A. To be honest, I wrote that I never really
10 understood the AIG restructuring, because I didn't
11 understand why the Government intervened in the way it
12 intervened, what were the goals. So, I think I wrote
13 extensively about other intervention. I just happened
14 not to have written extensively about AIG, precisely
15 because I did not understand the details of -- of
16 intervention.

17 Q. Okay, sir. If you could -- well, actually, we
18 are going to hand it out.

19 May I approach, Your Honor?

20 THE COURT: Yes.

21 MR. DINTZER: Thank you.

22 BY MR. DINTZER:

23 Q. Sir, if you can identify the document you've
24 been handed, which is DX 2106.

25 A. Yes.

Starr International Company, Inc. v. USA

1 Q. What is this?

2 A. This is an article I wrote in 2008 with a
3 colleague of mine, Oliver Hart.

4 Q. Okay. And if you go to -- if you go to the
5 second page, at the top, it says, "From this
6 perspective, one must ask what would have been so bad
7 about letting Bear Stearns, AIG, and Citigroup (and in
8 the future, General Motors) go into receivership or
9 Chapter 11 bankruptcy?"

10 Is that right?

11 A. Yeah.

12 Q. And you believed that, when you wrote that, it
13 may not have been so bad letting AIG go into
14 receivership. Is that right?

15 A. So, the question -- I'm asking a question here,
16 and the question is what -- I'm stating, would it have
17 been so bad doing that?

18 Q. Okay.

19 A. So, I'm -- this must be read in context. I
20 tried to ask the question, then I tried to go through
21 the arguments.

22 Q. And you come to the conclusion, then, it
23 wouldn't have been so bad letting AIG fail.

24 A. Can I -- can you give me a second to --

25 Q. I'll walk you through it, sir.

1 A. Okay.

2 Q. So, then, let's go further down in that
3 paragraph. You write, "AIG had to be saved, the
4 argument goes, because it had trillions of dollars of
5 credit default swaps with JPMorgan." Then you go on and
6 explain that.

7 Do you see that?

8 A. Yeah.

9 Q. And then -- and then in the next paragraph, you
10 write, "This argument has some validity, but it suggests
11 that the best way to proceed is to help third parties
12 rather than the distressed company itself."

13 A. Um-hum.

14 Q. Do you see that? And then you offer a
15 suggestion on how to help basically AIG's
16 counterparties. Is that right?

17 A. Yes.

18 Q. Okay. And then you -- in the middle of that
19 paragraph, you write, "It would also have saved the
20 Government from having to take a position on AIG's
21 viability as a business, which could have been left to a
22 Bankruptcy Court."

23 Do you see that?

24 A. Um-hum.

25 Q. And so you are offering a solution that would

1 have allowed AIG's result to have been left to a
2 Bankruptcy Court. Is that right?

3 A. I --

4 Q. Yes or no, sir, and then you can explain all you
5 want.

6 A. You promise you'll let me explain?

7 Q. I promise.

8 A. So, yes, I am providing a analysis of the
9 argument that was very common at the time, that the
10 disruption of a bankruptcy of AIG or even Lehman or --
11 would have been disastrous for the economy, and I say
12 that there are ways to minimize -- in a bankruptcy to
13 minimize the effects of the counterparties, and that's
14 exactly what the Government did not do.

15 And Lehman, in my view, should have failed,
16 because it wasn't solvent, and -- but the lender of last
17 resort sort of doctrine says that after you let an
18 insolvent company fail, you should also extend abundant
19 loans to all the other companies that are solvent to
20 deal with the aftermath and the financial panic that can
21 trigger -- can be caused by a company failing.

22 So, letting Lehman fail, in my modest view, was
23 the right thing to do. What was not following was
24 the -- following the Bagehot principle after that
25 failure.

1 Q. Okay. And when you wrote that they could have
2 let AIG fail, did you know when you wrote that article
3 whether AIG was solvent or insolvent?

4 A. I was only relying on sort of very indirect
5 documents, so I -- I didn't.

6 Q. Okay. And you're not offering an opinion in
7 this case about -- you haven't done an analysis, a
8 financial workup about whether AIG was solvent or
9 insolvent on September 16.

10 A. I -- personally, I have not done that analysis,
11 but I read documents and even declaration of the
12 Government that says that AIG was solvent.

13 Q. You believe investors who take risks to earn
14 profits must also bear the losses.

15 A. That is correct.

16 Q. You believe that the Government should avoid
17 bailing out investors and institutions whose choices
18 prove unwise.

19 A. With the following qualifications, and number
20 one is we should discuss what "bailing out" means, and
21 if we take the definition of "bailout" I give in my
22 book, which is to provide a subsidy, often in the form
23 of below-market rate, to an insolvent company, I agree
24 with that. And if you can determine the choices were
25 unwise, yes. I think that -- okay, I'll stop there for

1 the moment.

2 Q. Okay. And so you believed that AIG was
3 responsible for its own financial problems. Is that
4 right?

5 A. It depends on what you mean with "financial
6 problem," in the sense that was --

7 Q. Let's go to your article, because that's what
8 you said. I'm just -- did you know what you meant when
9 you wrote -- in the same article, bottom of that
10 paragraph we were looking at, "AIG may be responsible
11 for its financial problems, but the culpability" --

12 A. Can you see that -- where?

13 Q. Sure. It's right there, sir (indicating).

14 A. Okay. Yeah, we say "may be," does not say "is
15 responsible."

16 Q. Okay. So, is it your testimony, sir, that when
17 you wrote that, you weren't saying that you believed
18 that AIG was responsible for its own financial problems?

19 A. Yes, it is my testimony.

20 Q. Okay. Then I've got no further questions on
21 that document, sir.

22 MR. BOIES: Your Honor, is this going to be
23 offered at all, this document?

24 MR. DINTZER: It's just for impeachment, Your
25 Honor. He said -- I had asked him a question about

1 bankruptcy, and he said he couldn't or he was ambiguous
2 about his answer, and so it was strictly for
3 impeachment.

4 THE COURT: All right.

5 BY MR. DINTZER:

6 Q. Sir, instead of letting AIG fail, the Federal
7 Reserve bailed out AIG. Is that right? I mean, you
8 have written it.

9 A. Yeah. I think that, again, in the common sense
10 of the word "bailing out," yes.

11 Q. Okay. And on September 16th, two thousand --
12 so, on September 16th, the Federal Reserve bailed out
13 AIG by lending it \$85 billion.

14 A. Again, if you use the term in the sort of common
15 use, that is very loose, that's saying give something
16 that the market is not providing at that moment, yes,
17 but what is important to stress is there was no market
18 at that moment. So, if you look at vis-à-vis what the
19 Fed policy should be, no, because that rate was way
20 above what rates of 13(3) facilities in the past have
21 been and was not what the Bagehot principle said; is not
22 what the Fed should have done.

23 Q. Yes or no, sir. On September 16th, 2008, by
24 making a loan to AIG, the New York Fed bailed out AIG.

25 A. I say according to my definition of "bailout,"

1 no. According to the common word, yes.

2 Q. Okay, sir. I'm going to hand you --

3 May I approach, Your Honor?

4 THE COURT: Yes.

5 BY MR. DINTZER:

6 Q. Sir, what is this?

7 A. This is a collection of writings that I put
8 together, of my writings.

9 Q. And just to be clear, you had written the things
10 in this before and then you decided to collect them into
11 one book. Is that right?

12 A. I wouldn't characterize it as a book, because
13 it's sort of a -- not printed, is not even sold. It is
14 simply a collection put on the Internet.

15 Q. Fair enough.

16 But these were things that you had done before,
17 and you gathered them together to put them together in
18 one -- under one cover on the Internet. Is that right?

19 A. Yeah. I'm trying to remember when I've done it,
20 if it was, like, sometime in 2009, but it was long ago,
21 yeah.

22 Q. Okay. And when you put -- gathered them
23 together to put them on the Internet, did you go back
24 and reread them to make sure that you still liked them?

25 A. No.

1 Q. Okay.

2 A. All of this -- I think all of this were printed
3 in the newspaper, et cetera, so it would be a bit
4 misleading in my view. Either you rewrite something or
5 you put in a correction. You don't go back and change
6 what you said.

7 Q. Fair enough.

8 If you go to page 53 of this document, sir,
9 under the heading "Lehman and the Financial Crisis," and
10 if you go about six paragraphs down, it says -- to the
11 paragraph that begins, "Two weeks prior..." Just let me
12 know when you're there.

13 A. Yes.

14 Q. Okay. And you wrote this in September of 2009,
15 right?

16 A. Um-hum.

17 Q. It says, "Two weeks prior, on September 7th, the
18 government took over Fannie Mae and Freddie Mac, wiping
19 out much of their shareholder equity. On September
20 16th, the government bailed out AIG, lending it \$85
21 billion."

22 Do you see that?

23 A. Um-hum.

24 Q. In 2009, you believed that on September 16th,
25 the Government bailed out AIG by lending it \$85 billion.

1 Is that right?

2 A. As I said, the definition of "bailout" depends
3 on what is your view, whether AIG was solvent or not.
4 So, at the time, my view is that AIG was not solvent,
5 and so that could be a bailout. If -- but if AIG is
6 solvent, then the 13(3) should apply and that is not a
7 bailout.

8 Q. Did you ever go back and rewrite or issue, you
9 know, a change saying, you know, I got it completely
10 wrong here and -- anything like that, a retraction?

11 A. I don't think I got it completely wrong. This
12 is based on the evidence at the time. This is what --
13 when you write articles, at the time, in -- you proceed
14 with information that you had at the time. So, I -- in
15 my book, I realize I wrote that AIG borrowed 220 billion
16 and then was -- now, I know it's wrong. Unfortunately,
17 when you operate under sort of limited information, you
18 do the best you can.

19 Q. And the Fed not only -- the Federal Reserve not
20 only bailed out AIG, but it also bailed out AIG's
21 shareholders. Is that right?

22 A. Again, it depends. If AIG was insolvent, then
23 that's clearly the case. If AIG was not solvent, it
24 didn't.

25 Q. Before you took this assignment in this case,

1 sir, did you believe that the New York Fed bailed out
2 AIG's shareholders? Yes or no.

3 A. I already, I think, answered that before I took
4 this assignment, I thought that AIG was not solvent and,
5 as such, yes, they did bail out the -- the -- both the
6 creditors and the shareholders.

7 Q. Okay. Now, in 2008 and 2009, you wrote an
8 article called "Paulson's Gift." Is that right?

9 A. That's correct.

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

11 THE COURT: Yes.

12 BY MR. DINTZER:

13 Q. Now, this was an article you wrote in 2008 and
14 2009, and if I read the abstract right, you're
15 discussing the strategy that was used in the financial
16 crisis and sort of -- and the outcome. Is that right?

17 A. I think it's too broad as a characterization. I
18 just analyzed the impact of the announcement of a
19 particular facility under TARP is the -- if I remember
20 correctly, the acronym was the Capital Purchase Program,
21 so the injection done by the Treasury, by TARP, of
22 equity money that was announced at the same time as
23 the -- I think it was called the TL -- basically the
24 guarantee for the existing debt extended by FDIC to
25 banks.

1 Q. Okay. And so if you look at the abstract, it
2 says, "We calculate the costs and benefits of the
3 largest ever U.S. Government intervention in the
4 financial sector." Is that correct? That's the TARP
5 legislation.

6 A. Yes.

7 Q. And --

8 A. But to be fair, we don't analyze the entire
9 TARP. We analyze just that aspect.

10 Q. And if you go to -- if you go to page 363 of the
11 document -- actually, I think -- yes, 363.

12 A. Okay.

13 Q. And at the bottom, under "Redistributive Effects
14 of the Plan," so you're talking about the TARP plan and
15 sort of the pros and the cons here, right?

16 A. Yes.

17 Q. And you write, "Even accepting the idea that the
18 strategy used was the most cost-effective given the
19 existing legal constraints, we need to explain why the
20 government left so much money on the table: Not only
21 did the government not capture any of the value increase
22 it generated, but it also subsidized it with a gift
23 estimated between \$21 and \$44 billion."

24 Do you see that?

25 A. Yes, I do.

1 Q. And when you said the term "left so much money
2 on the table," you meant that the Government failed to
3 capture some of the benefit that it created in the
4 companies that it was assisting.

5 A. That's correct.

6 Q. Okay. And you thought that that was wrong, it
7 shouldn't leave so much money on the table.

8 A. I think when the Government introduced a new
9 facility -- actually, a new law, like TARP, where it's
10 not in the rule of the game, I believe that it is very
11 important to have very clear rule of the game, and this
12 is not something that belonged to the rule of the game.
13 The Government was creating an ex novo facility, and the
14 Government had an opportunity to capture more of the
15 surplus.

16 When the Government is exercising its duty under
17 13(3), where this duty has been disciplined, and the
18 expectation in the marketplace was clear that this
19 facility should be used under the Bagehot Rule, and it's
20 not, this creates uncertainty in the marketplace and is
21 very detrimental to the economy.

22 Q. Okay. And I think I got a yes, but I just want
23 to make sure.

24 You said here that the Government should have
25 made more of an effort not to -- in devising this new

1 program not to leave so much money on the table. Is
2 that right?

3 A. I am asking why the Government did that in a
4 situation in which it could legally, and there was no
5 expectation it would have done otherwise.

6 Q. Okay. And what you suggest in the
7 alternative -- and I can walk you through it if you
8 want --

9 A. Um-hum.

10 Q. -- but you suggest that they should have tried
11 to perhaps mirror the private sector and what the
12 private sector was offering. Is that right? And then
13 you cite an example of what Warren Buffett got from
14 Goldman Sachs.

15 A. Yes.

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

17 Now, I think we've -- just so I make sure I
18 captured what you said, you don't read 13(3) and the
19 Bagehot Rule to require the Government to leave money on
20 the table, do you? Require.

21 MR. BOIES: Objection, Your Honor. It's a legal
22 conclusion that's being asked for. I'm not sure what
23 "require" means in this context.

24 THE COURT: I'll take his understanding.

25 THE WITNESS: So, I read the 13(3) as giving a

1 guideline on how the facility should be used in those
2 situations, because as I explained earlier, when the
3 13(3) is triggered, this is unusual and exigent
4 circumstances. These are the situations in which the
5 Fed finds itself in the position of Pierpont Morgan in
6 1907. And so we want -- at least my understanding is
7 that Congress wanted to limit the power to exert that
8 monopoly power by the Fed.

9 Now, does it mean that they are required to
10 leave money on the table? I don't think it's a
11 requirement. What is a requirement in my view is not to
12 abuse of the market position, and that's the reason
13 generally rules designed by the Government are to
14 prevent abuses of market position, and the rule is to
15 follow the Bagehot Rule.

16 BY MR. DINTZER:

17 Q. The Bagehot Rule is not mentioned anywhere in
18 13(3), correct?

19 A. No. 13(3) is saying that you should lend at a
20 penalty rate, and then to extract what the penalty rate
21 is, I think is Section 14, suggests that it should be
22 lent in -- with a view of the need for business and
23 commerce. And on the Fed webpage and in many speeches
24 by Governor Bernanke -- Chairman Bernanke, it was
25 interpreted that the 13(3) was -- this sort of lending

1 at the penalty rate means lending at a rate that is
2 slightly above what the market rate would have been in a
3 normal situation.

4 So, it's not a penalty rate in the sense of a
5 punitive rate, but it is a rate such that as the market
6 conditions come back to normal, people don't want to
7 take advantage of that situation.

8 Q. It's a policy decision for each and every board
9 member of the Board of Governors on how to interpret and
10 apply Bagehot's Rule and other economic policies when
11 casting their votes, correct?

12 A. Are you making a legal question?

13 Q. No. I'm asking you, sir. You said that -- you
14 suggested that Bagehot had some relationship, and
15 Bagehot -- Bagehot was written 150 years ago, right?

16 A. Yeah, but the vice governor of the Bank of
17 England, for example, wrote recently an article
18 illustrating how the Bagehot Rule is still active today
19 and how the Bank of England follow that rule. So, the
20 fact that it has been written 150 years ago does not
21 mean that it is not sort of actual, is not important, is
22 not followed.

23 Q. I'm just saying, it can be interpreted
24 differently by different people, correct?

25 A. Anything can be interpreted differently by

1 different people, but I'm saying that what is important
2 when the Government exercise a monopoly power is not to
3 insert arbitrariness, and I think that what I observe
4 here is an enormous degree of arbitrariness, which is
5 not good economic policy, is not good to characterize
6 the United States as a country that follows the rule of
7 law.

8 Q. Sir, I just want to make sure I've got -- 13(3)
9 does not require, as you understand it, not from a legal
10 perspective, does not require but gives the discretion
11 to the Board of Governors on whether or not to leave
12 money on the table when it's creating a facility or
13 offering assistance. Is that correct? Yes, no, or I
14 don't know, and then you can explain.

15 A. I don't know, because the 13(3) does not specify
16 leaving or not leaving money on the table. That's not
17 the objective here.

18 Q. And so it's left to the discretion of the
19 governors, right?

20 A. I think what is the discretion of the
21 Government --

22 Q. Not the Government, the governors, just so we're
23 clear.

24 A. No, sorry. In my reading of the law -- and,
25 again, I'm not a lawyer -- but my reading is that they

1 have some discretion on when to apply the 13(3), and
2 within the expectation of what a penalty rate is, is to
3 modify or determine what a penalty rate is in that
4 situation. I don't think they have discretion of asking
5 whatever they want.

6 Now, I'm not a lawyer, but I think a good sort
7 of expectation of what to expect from the Government is
8 a good rule in general, from an economic point of view.

9 Q. Now, you wrote -- as I think we said earlier,
10 you wrote many articles between 2008 and on about the
11 financial crisis, right?

12 A. Yeah.

13 Q. And between 2008 and the time that the
14 Plaintiffs hired you, you never said once, in any of
15 your writings, that the Government controlled AIG and
16 took away their ability to make any decisions or
17 anything. Is that right? Yes or no, sir.

18 A. As I said, I didn't understand what happened
19 with AIG, so I didn't comment on it, and I think in an
20 article I purposefully said that I devised plan or
21 alternative plans for every other major intervention of
22 the Government, except for this one, for the reason I
23 did not have all the facts.

24 And I think that part of the problem is that the
25 facts were not fully disclosed, and I think the

1 Government, if I may say, contributed to the not fully
2 disclosing.

3 Q. A credit default swap is an insurance contract.
4 Is that right, sir?

5 A. Technically it's a swap, but if you want to
6 characterize it in substance, yes.

7 Q. And AIG sold enormous numbers of CDS insurance
8 in the years leading up to 2005. Is that right?

9 A. I don't know what you characterize as
10 "enormous," but --

11 Q. More than anybody else.

12 A. I'm not in a position of knowing whether it's
13 more than anybody else, but, yes, I do know that
14 actually they stopped doing that in 2005. So, as the
15 market was getting really hot and as the worst loans
16 were made, AIG was not insuring them anymore.

17 Q. And AIG did not -- they wrote these insurance
18 contracts without setting aside a proper amount of
19 collateral to cover those contracts. Is that right,
20 sir?

21 A. Again, we have to come to an understanding and
22 agreement, what it means, "a proper amount of
23 collateral." So, as the rules at the time were
24 suggesting, AIG could use part of its overall credit
25 rating to post less collateral than normally required

1 from a company with terrible credit rating, but this was
2 the practice at the time. So, when you say "proper,"
3 did they do something that was not appropriate at the
4 time? I don't think so.

5 Q. If you could open your -- that article that we
6 were looking at, the Leviathan article, to page 80 and
7 go to the middle of that page.

8 A. Um-hum. Page 80?

9 Q. The paragraph -- yes, sir. The paragraph that
10 begins, "Credit default swaps..."

11 A. The paragraph beginning -- okay.

12 Q. Okay. The paragraph beginning, "Credit Default
13 swaps," in the middle of that paragraph, you wrote, "But
14 the CDS market before the crisis required no such
15 protections, allowing AIG, for example, to sell enormous
16 amounts of 'insurance' without posting the proper
17 collateral."

18 Do you see that?

19 A. Yes. I also see that "insurance" is in quotes,
20 but yes.

21 Q. But just so that we're clear, do you now
22 understand what I mean by "enormous amounts" and "proper
23 collateral"?

24 A. Yes, I do. Yeah.

25 Q. Okay. And when you wrote that, you believed it

1 was true, right?

2 A. Yes.

3 Q. And the next sentence says, "When the risk
4 increased and buyers asked for the collateral, AIG had
5 to be rescued." Do you see that?

6 A. Yes.

7 Q. And you believed that, too?

8 A. Yes.

9 Q. And the New York Fed rescued AIG. Yes or no,
10 sir.

11 A. Are you asking whether at the time I believed
12 that or now I believe that?

13 Q. Well, let's start at the time. In two
14 thousand -- in 2009, when you wrote it, or 2010, when
15 you released the book, you believed that the New York
16 Fed rescued AIG. Is that right?

17 A. Yes.

18 Q. Okay. And did you continue to believe that up
19 until 2013? I mean, you didn't put out a retraction or
20 change it.

21 A. I never changed these statements since they were
22 published, so I did not issue sort of a retraction on
23 anything I wrote. That is not sort of a -- if asked, I
24 would sort of bring my knowledge, and honestly, I have
25 not analyzed the situation of AIG.

1 But as I repeat here, the "proper" is in the
2 context not of what was accepted at the time as
3 standard. This is from an economic point of view, a
4 general liquidity point of view, that having this rule
5 is a bad rule, because it creates some negative spirals,
6 and that's exactly what happened with AIG; there was a
7 negative spiral, and at the time I felt that this
8 negative spiral led AIG to a situation of insolvency.

9 Now, my understanding is it was not in a
10 situation of insolvency and actually that some of the
11 marks on those CDSs were aggressively sort of low and
12 were aggressively low because were left to
13 counterparties, in particular to Goldman. And in -- I
14 find it interesting that the person in charge of running
15 AIG immediately after the government intervention is the
16 head of the audit committee of Goldman that was setting
17 the mark on the CDSs of AIG until the day before.

18 Q. You didn't write anything about that before 2013
19 either, did you?

20 A. I didn't know that, yeah.

21 Q. Sir, we've used the term "shareholders" and
22 "creditors." Just to be clear, common stock owners have
23 an equity interest in the company. Is that right? Or
24 all stock owners -- well, common stock owners have an
25 equity interest in the company.

1 A. Yeah.

2 Q. Okay. And creditors are owed money by the
3 company?

4 A. Yes.

5 Q. If the company fails, creditors are paid before
6 stockholders?

7 A. That is the general rule, yes.

8 Q. If the company fails, creditors and preferred
9 stockholders get paid before common stockholders. Is
10 that right?

11 A. As a general rule, yes, but there are variations
12 in absolute priority.

13 Q. Had the Government not rescued AIG, it would
14 have defaulted on its obligations. Is that correct?

15 A. Yes.

16 Q. And if AIG defaulted on its obligations, its
17 creditors would have been paid pennies on the dollar.

18 A. I think it depends on two things: Number one,
19 whether you think at the beginning, when this starts,
20 the assets are bigger than the liabilities or not; and
21 two, depending dramatically on the way sort of a
22 bankruptcy is managed. We know that there are
23 situations, Texaco-Pennzoil comes to mind, where Texaco
24 filed for bankruptcy, and at the end of the day, the
25 shareholders got some money out of bankruptcy, were not

1 wiped out. So, while it is common that they are wiped
2 out, it is not a necessary conclusion.

3 Q. Okay.

4 May I approach, Your Honor?

5 THE COURT: Yes.

6 BY MR. DINTZER:

7 Q. Sir, what is this?

8 A. It is an introduction of my book. I am actually
9 very disappointed. Other books have been brought and
10 given to the Judge. Here, you are only copying certain
11 parts.

12 Q. I'm sure it's an excellent book, sir.

13 A. You mean you have not read it?

14 Q. I have read the introduction more than once.

15 If you could -- if you could turn to the last
16 page -- so, this is the introduction that you wrote,
17 and if you go to the top of that page, you tell a story
18 about somebody you know who worked for AIG, but I'm
19 going to direct you to the top of that last page where
20 you write, "After all, had the government not
21 intervened, AIG would have defaulted, and those bonuses,
22 like the claim of other AIG creditors, would have
23 yielded only cents on the dollar."

24 Do you see that?

25 A. Just one second. This is the -- is it the first

1 page of the introduction?

2 Q. It's the last page of the introduction, as I see
3 it.

4 A. I'm sorry, sorry, sorry.

5 Q. I'm sorry, the very last page of the
6 introduction. It's highlighted there on the screen,
7 just so you can see it.

8 A. Yeah, but I would like to see the context for a
9 second.

10 Q. You are welcome to read the whole introduction
11 if you would like, sir.

12 A. No, no, I don't -- would it be too hard for you
13 to point out here where it is? Because I really
14 cannot --

15 Q. At the top of the last page, sir. It says,
16 "After all, had the government" --

17 A. Ah, okay.

18 Q. I'm sorry, that's on me.

19 A. No, no, no.

20 Q. It says, "After all, had the government not
21 intervened, AIG would have defaulted, and those
22 bonuses" -- and you're talking about the bonuses of
23 someone who worked there -- "like the claim of other AIG
24 creditors, would have yielded only cents on the dollar."

25 Do you see that?

1 A. I do see that now.

2 Q. And you wrote this book, and it's copyrighted in
3 2012. Is that right?

4 A. Correct.

5 Q. So, in 2012, you believed had AIG defaulted, its
6 creditors would have only received cents on the dollar.
7 Is that right?

8 A. The reason I was asking to see the context is
9 because, as I remember, you see -- if you see the
10 previous line, it say, "In this context, many people are
11 wondering whether the seeking of contrast is just a fig
12 leaf to protect the interests of the wealthy at the
13 expense of the taxpayer," and then there is that
14 sentence.

15 So, what I am doing here, I'm setting up the
16 enormous backlash that this intervention has created,
17 and the opinion that a lot of people are angry because
18 they see the world this way. So, what I'm saying here
19 is a -- people are wondering if this is the case because
20 they think that.

21 Q. And so, sir, my only question is, is you
22 believed in 2012, when you wrote this, that had the
23 Government not intervened, AIG would have defaulted, and
24 this person's bonuses, like the claims of other AIG
25 creditors, would have yielded only cents on the dollar.

1 You believed that in 2012 when you wrote it. Yes or no,
2 sir.

3 A. No, I -- what I believed in 2012 was that the
4 Government -- sorry, if the Government had not
5 intervened, AIG would have defaulted, yes.

6 Q. Okay. So, even though you wrote that creditors
7 would have only received cents on the dollar, you didn't
8 believe that?

9 A. No.

10 Q. You believed it? I just need an answer, sir.
11 Did you believe it or not when you wrote it?

12 A. If you read the sentence in context, what I'm
13 doing is making an argument -- when you say -- you know,
14 we economists say on the one hand, on the other hand.
15 So, in the same way, I'm saying here is -- people are
16 angry, why? Because they're wondering whether this is
17 the case. After all, this is what they think. So, the
18 reason why they're so angry with this particular case is
19 because that's the general perception.

20 Q. And so the next sentence then would be you
21 saying, "But that's not true. They are not going to
22 just get cents" -- wait, it's not. It's completely
23 separate. You don't mention that at all. So, you do
24 say, like the claim, you say "yielded only cents on the
25 dollar," and then you go on about how unfair that is.

1 You do not say that that's not accurate.

2 Sir, when you wrote this -- when you wrote
3 this --

4 A. I didn't say -- I didn't say that it is accurate
5 or not accurate. I'm just saying, so that we see,
6 why -- "Heads you win, tail we lose, is this what the
7 free-market system is all about?" I'm telling the
8 story, and then since -- so, then I talk about Zuccotti
9 Park, about how people felt in that particular way.

10 Q. So, when you wrote this, just to be clear,
11 sir -- give me a yes, no, I don't know -- you believed
12 that AIG's creditors would only receive cents on the
13 dollar. Yes, no, or I don't know.

14 A. I'm trying to remember, because it was a few
15 years ago. When I read this -- when I wrote this, to be
16 completely honest, at the time, I wasn't doing any
17 analysis of what AIG would have received or not
18 received. What I was stating that I thought was a
19 reasonable possibility was that that was the case and
20 that is the reason why people were angry. Did I say
21 this is correct or not correct? At the time, I didn't
22 have the elements to know.

23 Q. So, you didn't know one way or the other when
24 you wrote it?

25 A. Yeah.

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

2 Now, moral hazard is a significant concern for
3 central bankers. Is that right?

4 A. It should.

5 Q. Identifying a company is too big to fail creates
6 a moral hazard problem, correct?

7 A. Yes.

8 Q. If a company is too big to fail, it can expect
9 assistance that is -- or at least it could -- that is
10 not available to its smaller competitors. That's the
11 concern, right?

12 A. Yes, it is.

13 Q. If a government concludes that a company is too
14 big to fail, the company has an option that its smaller
15 competitors don't have.

16 A. That's correct.

17 Q. By providing assistance not available in the
18 market, the Government risks creating moral hazard.

19 A. If it does that in an arbitrary way, if it does
20 rescue companies that are insolvent, yes.

21 Q. Did you believe, sir, that the bailout of AIG
22 generated genuine concerns about moral hazard? Yes --
23 and I know you -- I understand that your opinion has
24 changed, so I'll put this before 2012.

25 Before 2012, did you believe that the bailout of

Starr International Company, Inc. v. USA

1 AIG created concerns about moral hazard? Yes, no, or I
2 don't know.

3 A. Let me sort of distinguish between two types of
4 moral hazard. Both are important, but I think one is
5 more important than the other. So, one version of moral
6 hazard is that shareholders, knowing that they will be
7 rescued, they take an excessive amount of risk. The
8 other is that because creditors feel protected, they buy
9 into this too big to fail, they don't feel the need to
10 do credit analysis, and they tend to lend to companies
11 too cheaply, and as a result of that, companies take too
12 much debt and all the things that follow, okay?

13 So, in that respect, if you are fully protecting
14 creditors, you are generating moral hazard. So, the --
15 if the company is insolvent. So, if, in the Bear
16 Stearns case, the company was insolvent and the
17 creditors were protected, even if the shareholders
18 initially receive only \$2 a share rather than \$10 a
19 share, that's irrelevant. That still creates a moral
20 hazard on the credit side.

21 And so if AIG was insolvent and the Government
22 rescued the creditors, they generate moral hazard
23 regardless of what it did with the shareholders.

24 Q. Did you believe and did you write, before 2013,
25 that you believed that the bailout of AIG created moral

1 hazard concerns? Yes, no, or I don't know.

2 A. Are you asking whether I wrote or remember?

3 Q. I'm just asking you, did you believe?

4 A. Contingent on AIG being insolvent, so adding the
5 wrong assumption, yes.

6 Q. And that was the assumption that you included in
7 a number of your articles that you wrote back then,
8 right, the wrong assumption?

9 A. I'm sorry. I didn't include a wrong assumption.
10 I included an assumption that at the time was the best I
11 had, yes.

12 Q. And so -- and so I just want to be clear. What
13 you're saying now is that a number of things that you
14 wrote about AIG in 2008 and 2009 were wrong.

15 A. They are contingent on the assumption that AIG
16 was insolvent that turned out to be wrong, yeah.

17 Q. Now, you're not offering an opinion about who
18 had legal control of AIG. Is that right?

19 A. Yes, that's correct.

20 Q. And just so I understand it, if Warren Buffett,
21 a private investor, had offered AIG a loan on similar
22 terms as the Government, so AIG's board had a choice
23 between a private loan or the government loan at the
24 exact same price, you don't think that the Government
25 would have had economic control at that point. Is that

1 right?

2 A. That's correct.

3 Q. And you're aware of Lehman Brothers' efforts to
4 find assistance?

5 A. Am I aware of Lehman Brothers' efforts to find
6 assistance?

7 Q. Yes.

8 A. Yes.

9 Q. And that they were unable to find it. Is that
10 right?

11 A. Actually, that's not my understanding. I think
12 that at some point, I read some -- for different -- for
13 my research, I read some excerpts of the Lucas report,
14 where it stated that there were some offers from the
15 Korean Development Bank to invest some equity, and this
16 was even as late as, I think, mid-August, and they
17 rejected that; in fact, did not even present it to the
18 board.

19 Q. And ultimately Lehman Brothers failed because
20 they couldn't get assistance, is that right, one way --
21 for one reason or another, why they couldn't get it at
22 that time, they couldn't get assistance.

23 A. My understanding is Lehman failed because it
24 wasn't solvent, and so the assistance was not due and
25 was not given.

1 Q. And does -- now, whenever the Government acts as
2 the lender of last resort, that, by definition, means
3 that there's nobody else who wants to make a loan,
4 right?

5 A. Yes. By definition, they -- it should be
6 applied only in those situations, yes.

7 Q. Are you offering that -- the expert opinion that
8 effective economic control arises whenever the
9 Government acts as lender of last resort?

10 A. So, what I can say is that whenever the
11 Government lends under the sort of 13(3) facility, if
12 this facility is used correctly, in unusual and exigent
13 circumstances, then the Government finds itself with
14 some monopoly power over the borrower.

15 Q. That comes with the fact that Congress wrote
16 into the statute that there has to be no other
17 reasonably adequate forms of assistance, right?

18 A. Can you ask the question again?

19 Q. Yeah, I know, that's -- let me try -- I think I
20 got my answer.

21 Now, if AIG was smaller -- let's start with
22 this. So, you understand that only systemically
23 important companies have access to 13(3) or will be
24 considered for 13(3). Is that right?

25 MR. BOIES: Objection, Your Honor, if he's

1 asking for a legal conclusion.

2 MR. DINTZER: I will just stipulate for the rest
3 of this afternoon, I will not ask for a legal
4 conclusion.

5 THE COURT: Okay.

6 MR. BOIES: May we inquire what kind of
7 conclusion is it? If it's an economic conclusion, I
8 have got no objection. If it's a moral conclusion or
9 something else, I think that's also objectionable.

10 MR. DINTZER: I will ask no spiritual questions
11 of you.

12 THE WITNESS: That's good.

13 I can answer from a historical point of view, in
14 that the 13(3) facility was introduced during the Great
15 Depression, at the beginning of --

16 BY MR. DINTZER:

17 Q. And I don't want to go back that far. I'm just
18 asking --

19 A. Why?

20 Q. Because my only real question is, is that is it
21 your understanding that in 2007, 2008, that the
22 application of 13(3) was solely for what were identified
23 as systemically important companies?

24 A. If you're asking if my opinion is that's the way
25 it was used, the answer is yes. If it's the way it

1 should be used from an economic point of view, my answer
2 is absolutely not.

3 Q. Okay. And do you understand that the Board of
4 Governors chose not to assist certain companies because
5 they were not systemically important, basically to say
6 we're not going to give you a loan because you're not
7 systemically important?

8 A. I remember the case of CIT, it was a pretty big
9 lender, and -- but I don't remember the detail of how --
10 what its financial situation was. I know they were
11 trying to claim to the Government that they were
12 systemically important to be helped, and in that
13 particular case, they were not considered so. But I
14 don't remember whether this was before or after TARP. I
15 think it's probably after TARP.

16 So, again, if your question is that's the way it
17 was mostly used, I would say yes, but I don't think it's
18 the way it should be used.

19 Q. If the Board of Governors votes against or
20 decides not to offer a company a loan, just looks at it
21 for whatever reason, systemicness or whatever reason,
22 says -- it's a solvent company, but it's not going to
23 offer it loan, do you believe that there was effective
24 economic control?

25 A. Again, I think that the Fed was created to

1 provide liquidity during time of exigent and unusual
2 circumstances. So, it's not only an option, I think
3 it -- at least, I don't know from a legal point of view,
4 but from an economic point of view, the function -- the
5 primary function of the Fed is the one to provide
6 liquidity during extreme illiquidity moments.

7 Q. But the board -- each member of the board has a
8 vote. Is that right? It operates as a voting entity.

9 A. Yes. As far as I know, yes.

10 Q. Okay. And so sometimes they may disagree, and
11 some people might think, well, we should do this, and
12 other people might think we shouldn't. That's a part of
13 a voting entity, right?

14 A. Yes.

15 Q. Okay. And so if the board, for whatever reason,
16 decides not to give a loan to somebody, okay, not to
17 make a loan under 13(3), my simple question to you is,
18 is could effective economic control, as you've described
19 it, exist?

20 A. So, if it is clear that they are not going to
21 give the loan, from beginning to the end, then I think
22 that they don't have that resource that can be used to
23 control, and so they -- they don't have effective
24 control.

25 Q. Okay.

1 THE COURT: Mr. Dintzer, should we take an
2 afternoon break?

3 MR. DINTZER: Oh, that would be perfect, Your
4 Honor.

5 THE COURT: Okay. Let's come back at 3:30.

6 (Court in recess.)

7 THE COURT: Thank you. Please be seated.

8 Please go ahead, Mr. Dintzer.

9 MR. DINTZER: Thank you, Your Honor.

10 THE COURT: Before you do that, I just wanted to
11 say, I have your joint status report from October 21st
12 regarding additional joint exhibits that you all agreed
13 to have admitted into evidence, and I accept that offer,
14 and based upon the representation, Joint Exhibits 379
15 through 391 are admitted.

16 (Joint Exhibit Numbers 379-391 were admitted
17 into evidence.)

18 THE COURT: Now you can go ahead.

19 MR. DINTZER: Thank you, Your Honor.

20 BY MR. DINTZER:

21 Q. Sir, do you agree that proof of majority
22 ownership of a company does not strip the directors of
23 the presumptions of independence and that their acts
24 have been taken in good faith and in the best interests
25 of the corporation?

1 A. Since I imagine you're not asking legal
2 question, you're saying from an economic point of view,
3 if there is a majority director -- sorry, a majority
4 owner -- if it is a majority owner, then?

5 Q. It doesn't strip the directors of the
6 presumptions of independence and that their acts have
7 been taken in good faith.

8 A. I find it difficult to try this from an economic
9 point of view. It seems like a legal question.

10 Q. Okay. Do you agree with the fact that proof of
11 majority ownership of a corporation does not strip the
12 directors of the presumption that they have been acting
13 in the best interests of the corporation?

14 A. Again, I don't want to --

15 Q. If economics doesn't inform it, that's all you
16 have to say, sir.

17 A. Okay. So, I don't think that it is particularly
18 an economic question. From an economic point of view,
19 if you have a -- 50 percent or more of the stock and you
20 can replace the board -- the board members at will, it's
21 basically such strong veto power that you get your way
22 whether you have the most independent directors or you
23 have Daffy Duck, to use a quote of Bollenbach.

24 So, it doesn't really make a difference, because
25 you can replace the directors who are not in line with

1 what you want, and so is the -- either you vote this way
2 or you're not there anymore. So, I think that from an
3 economic point of view, if you have more than 50
4 percent, you clearly have a -- enough power to control
5 the company.

6 Q. Well, so you have the power to pick or to vote
7 on the directors, but each director has an individual
8 obligation, once they're voted on, to all the
9 shareholders, right? Personal obligation to the
10 shareholders, right?

11 A. They have an obligation -- yeah, they have a
12 duty of loyalty and a duty of care.

13 Q. Okay. So, it's not the case that every time
14 every corporation that has a majority owner, every
15 single board member violates their duty to the
16 shareholders, right?

17 A. Sorry, but you didn't ask me if they violate a
18 duty. You're asking me if I consider that being in
19 control, and I'm saying sort of, yes, a majority owner
20 is in control no matter who are the directors.

21 Q. Now, when did AIG issue the preferred shares
22 under the credit agreement?

23 A. So, the credit facility -- in terms of the
24 credit facility, the preferred shares should have been
25 issued within 45 days of the credit facility, but the

1 Government did not request them to be issued. So, if I
2 remember correctly, it was at the beginning of March
3 2009.

4 Q. Neither the -- and those were issued to the
5 trust when they were issued. Is that right?

6 A. Yes.

7 Q. Neither the trust nor the Fed could vote those
8 shares until they were issued by the company, right?

9 A. Yes.

10 Q. On September 16th, the New York Fed did not have
11 the power to vote any of the AIG shares, right?

12 A. On September 16?

13 Q. 2008.

14 A. Yeah. No.

15 Q. And throughout that week and for the next week,
16 for the -- from September 16th through September 23rd,
17 the New York Fed did not have the power to vote any
18 shares in AIG.

19 A. That's correct.

20 Q. Okay. Now, you talked about the Bank Holding
21 Company Act policy statement, correct?

22 A. Yes, I did.

23 Q. And just to be clear, AIG is not a bank, right?

24 A. Even if -- if I remember correctly, they own a
25 small bank. It is not a bank overall, yes.

1 Q. And I believe that that's a thrift. Is that
2 right?

3 A. Yes.

4 Q. And so just to be clear, the Bank Holding
5 Company Act test never applied to them really. I mean,
6 I understand that you considered it and looked at it,
7 but as a test, it never actually applied to AIG,
8 correct?

9 A. Yes. As a specific piece of legislation, it did
10 not apply to AIG. That's correct.

11 Q. And do you know what the purpose of the Bank
12 Holding Company Act was?

13 A. The purpose of the controlling component or the
14 Act overall?

15 Q. Well, the controlling component was created to
16 inform and operate the rest of the Act, right? I
17 mean --

18 A. Yes.

19 Q. Okay. And do you know what the rest of the Act
20 was for? Why is the -- why are they looking at the term
21 "control" in that circumstance?

22 A. Well, because what they are concerned is that
23 somebody can take over a bank in a maybe covert way and
24 use some of the money of the bank to enhance purposes
25 that are different from the interests of the bank and

1 creating instability to the system.

2 So, what they say in the policy statement is
3 they want to make sure that the responsibility -- the
4 benefit of ownership and the responsibility of ownership
5 go hands in hands, because if you are owner, then you
6 might be required to inject more capital, for example,
7 if you're in control, inject more capital in some
8 situation.

9 Q. Right. And so those concerns were never raised
10 or reflected the possibility of the Government owning a
11 bank or becoming a bank holding company, right? The
12 possibility of owning in a covert way and not having the
13 resources to put money in the bank, those policy
14 concerns of why the Bank Holding Company Act was passed
15 do not address whether the Government actually had
16 control over a bank, right?

17 A. Let me understand. So, you're saying that if
18 the policy concern --

19 Q. Let me try to ask a better question.

20 A. Okay.

21 Q. The Bank Holding Company Act never contemplated,
22 in the language of the Act itself, being applied to an
23 entity of the Federal Government, correct?

24 A. Actually, I'm not so sure about that.

25 Q. Okay. So, are you saying that it -- that the

1 language of the Bank Holding Company Act contemplated
2 applying to the Federal Government, or you just don't
3 know?

4 A. I don't see any specific exclusion, and so I --
5 I'm just trying to make sure. Are you saying that if
6 the Treasury, for example, became a -- the controlling
7 shareholders of a bank, those rules in the policy
8 statement would not apply to Treasury?

9 Q. Do you know?

10 A. I -- I think that they would, but I'm -- I don't
11 know.

12 Q. Okay. And it was not designed to measure
13 economic control of an insurance company. We can agree
14 on that, right?

15 A. Yeah, it was not designed for that. So, but I'm
16 not so sure that -- let me be clear here. In -- I don't
17 think that anything I'm saying in my opinion is specific
18 to banks or insurance companies in the sense that the
19 theoretical framework applies to producers of widgets,
20 as it applies to banks, as it applies to insurance
21 companies, and the elements that I draw are elements of
22 generality.

23 Q. Yeah, but banks are unique in our system, is
24 that right, in their regulation?

25 A. In some dimensions, yes.

1 Q. And that's why there's a Bank Holding Company
2 Act and not a Widget Holding Company Act. Is that
3 right, sir?

4 A. It's definitely right that there are extra
5 concerns for banks that induce the Government to be
6 concerned about who is always not in control; however,
7 there is nothing specific about banks or whether it make
8 somebody in control or not in control. We don't have a
9 Widget Holding Company Act because we don't expect to
10 have sort of the issue of instability with widgets that
11 we have with banks.

12 But my presumption is if we have a Widget
13 Holding Company Act, it would look like the Bank Holding
14 Company Act, because the issue of who's in control or
15 not in control is similar for widget companies and
16 banking companies.

17 Q. Now, have you read the portion of the Bank
18 Holding Company Act that applies to companies that have
19 25 percent or less of --

20 A. Yes.

21 Q. And you understand that the statute -- the bank
22 holding company statute creates a presumption if you
23 don't own or control 25 percent of the stock. Is that
24 right?

25 A. The way I remember it is that what it does is

1 gives to the board a determination whether you are in
2 control or not based on a number of indicia, which is
3 the one I report.

4 Q. Well, there's three -- there's three parts of
5 the Act.

6 A. Yes.

7 Q. The first part and the second part, you have to
8 have stock in the company before they will even consider
9 whether you have control. Is that right?

10 A. My understanding is if you have more than 25,
11 you have control, no other question asked.

12 Q. If you have less than -- if you have less than
13 5, then the presumption is that you don't have control
14 under the Bank Holding Company Act. Is that right, sir?

15 A. I think the presumption is -- the way you use
16 it, it sounds like a legal term, so -- the way I
17 understand it is you have a condition that is
18 sufficient. If you don't have that condition, you need
19 to check other conditions. So, I -- it's easier for me
20 to say this in logical, mathematical terms than to use
21 legal terms.

22 Q. Okay. Let's go to DX 2109. Sir, I am going to
23 hand you up -- may I approach, Your Honor?

24 THE COURT: Yes.

25 THE WITNESS: Thank you.

1 BY MR. DINTZER:

2 Q. Sir, do you recognize this?

3 A. Let me read it for a second.

4 Q. Sure.

5 A. (Document review.)

6 Q. Have you read this before, sir?

7 A. It seems to be a piece of the Bank Holding
8 Company Act, but in this moment, it's so isolated, I
9 cannot recognize it.

10 Q. Okay, you don't remember seeing it. I
11 understand.

12 Okay. My only question is, is that if you'll
13 see that it says "Company means any corporation,
14 partnership, business trust, association, or similar
15 organization." Do you see that?

16 A. I see that.

17 Q. Okay. And would you agree with me that the
18 Government is not a corporation, partnership, business
19 trust, association, or similar organization?

20 A. Now, if --

21 Q. I understand you're not a lawyer. I'm just
22 saying --

23 A. No, but if you think about the Federal Reserve
24 of New York -- now, again, I'm not a lawyer, but it is,
25 as far as I understand it, a corporation, so in the --

1 when you say "government," overall, but I think that we
2 have stipulated for the -- sort of this conversation
3 here that we classify the New York Fed, the Treasury,
4 and everything as "the Government," collectively, but --
5 so, if you're saying all that is a corporation, no, but
6 the Fed is a corporation.

7 Q. So, you read that as being the same as a -- as a
8 corporation or partnership or business trust. You don't
9 read that as being like a business corporation, just so
10 I'm clear on your understanding of the Bank Holding
11 Company Act.

12 A. Yeah.

13 Q. Okay.

14 May I approach, Your Honor?

15 THE COURT: Yes.

16 BY MR. DINTZER:

17 Q. Sir, do you recognize this?

18 A. Yeah, that's --

19 Q. This is the portion that you're actually talking
20 about. Is that right?

21 A. Yeah, yeah.

22 Q. Okay. And it says, "Any company has control
23 over a bank or over any company if -- (A) the company
24 directly or indirectly or acting through one or more,"
25 and it goes on, but basically it says you have to own 25

1 percent of the stock or more, right?

2 A. Yes.

3 Q. And we can agree that from -- during the week of
4 September 16th through the 22nd and after that, that the
5 New York Fed and the Government did not own 25 percent
6 of AIG, correct?

7 A. Not after that.

8 Q. Right. At least through the 23rd, right?

9 A. At least to the moment in which the credit -- it
10 occurs to me that it depends on how you interpret the
11 initial agreement on the 16th. If the agreement on the
12 16th was binding, then the Government own an equity
13 interest. We didn't know the exact specification, there
14 was some different opinion on what it was, but they own
15 an equity interest equal to 79.9 percent. So, as of the
16 16th, the fact that they owned that, if you think that,
17 is binding.

18 Q. Okay. And if it is not, then you'll agree --
19 let's put it this way: Until the Government, one way or
20 another, had a binding agreement with AIG, it did not
21 own shares of AIG.

22 A. Until it had a binding agreement, it did not own
23 shares, yes.

24 Q. So, whenever the vote was for a binding
25 agreement with the Federal Government or with the New

1 York Fed on the 79.9 percent equity, whenever that was,
2 that was taken before the Government owned any -- any
3 interest in AIG.

4 A. Yeah. If -- if you're saying that the interest
5 starts at the moment it gets the binding agreement,
6 before binding agreement, you don't own, yes.

7 Q. Okay. So, under -- under 2(A) of this, there
8 wouldn't have been control over the board when they took
9 the vote to give the Government 79.9 percent in exchange
10 for the loan, right?

11 A. Yes.

12 Q. Okay. Under (B), we can agree that the
13 Government didn't control in the manner of election a
14 majority of the directors or trustees of the bank or
15 company until at least the time when the agreement was
16 binding to get the 79.9 percent, right? So, I'm talking
17 about the 2(B).

18 A. No, I understand it's 2(B). Can you reask the
19 question for a second?

20 Q. Sure.

21 A. Sorry.

22 Q. Let me ask you, when did the New York Fed or the
23 Government control the election of a majority of AIG
24 directors? Will you agree with me that that wasn't
25 until there was a binding agreement on the 79.9 percent?

1 A. This is more, I think, controversial in the
2 sense that we agree that after the agreement is binding,
3 they do. Now, before the agreement is binding, I think
4 it depends on the situation. So, let's assume for the
5 purpose of this argument that the agreement on the 16th
6 was not binding.

7 Then what we have is a situation in which the
8 Government, on the 18, say that they found a way to
9 substitute a majority of directors without a
10 shareholders vote. So, I -- I am not prepared to
11 stipulate that if the 16th agreement was not binding,
12 the Government did not have this power between the 16th
13 and the 22nd.

14 Q. Okay. And do you have an understanding, sir,
15 that 2(B) of this section of the Bank Holding Company
16 Act, that it only applies -- that there's a presumption,
17 a presumption against -- a conclusive presumption that
18 it doesn't apply if the company does not own 5 percent
19 of the stock?

20 A. I don't understand. What I understand is that
21 (A), (B), or (C) are sort of independently --
22 independent conditions, so one of those is enough to
23 determine control.

24 Q. Did you read the rest of the Act after (A), (B),
25 and (C) of this section?

1 A. Yes, yeah.

2 Q. And you didn't see the presumption that takes
3 place for (B)?

4 A. I don't remember the presumption taking place
5 for (B).

6 MR. DINTZER: May I approach, Your Honor?

7 THE COURT: Yes.

8 BY MR. DINTZER:

9 Q. Okay. So, I'm going to draw your attention to
10 number 4 on this. "In any administrative or judicial
11 proceeding under this chapter, other than a proceeding
12 under 2(C)," which we haven't gotten to yet, "a company
13 may not be held to have had control over any bank or
14 company at any given time unless that company directly,"
15 and then it goes on, "5 percent or more of the class of
16 voting securities."

17 Do you see that?

18 A. Yes.

19 Q. Okay. Do you see that that's a presumption that
20 if you don't own at least 5 percent, that (B) doesn't
21 apply?

22 A. Okay.

23 Q. Okay. Did you know that before we started this?

24 A. To be honest, I do not remember it.

25 Q. Okay. So, you'll agree with me that (B) also

1 has this -- because of the 5 percent, it -- (B) doesn't
2 apply until -- until there's a binding agreement, right?

3 A. Yes.

4 Q. So, that leaves us (C), right?

5 A. Yes.

6 Q. Okay. Now, (C) says -- this is the third
7 option, final option about whether, under the Bank
8 Holding Company Act, a company has control over a bank.
9 "The Board determines, after notice and opportunity for
10 hearing, that the company directly or indirectly
11 exercises a controlling influence over the management or
12 policies of..."

13 So, that's basically left for the Board, the
14 Board of Governors' determination, right?

15 A. Yes.

16 Q. Okay. And so just to be clear, this would be an
17 instance where this would be a judgment call, a policy
18 call on the Board of Governors about whether to consider
19 there to be control, right?

20 A. Yeah.

21 Q. So, that is just -- that's no guidance. That's
22 just a policy concern -- a policy method for considering
23 whether there's control. So, the -- the statute doesn't
24 give you any guidance for a company -- for when the
25 Government doesn't own any stock. It's just -- it's a

1 policy consideration, right?

2 A. I disagree. First of all, as I said in the
3 beginning, I used this as corroborating evidence.
4 That's not the basis of my opinion. It is a
5 corroborating evidence to my opinion.

6 Q. Okay. No further questions on that, sir.

7 Now, you also said that you considered insurance
8 regulations in considering whether to assess control.
9 Is that right?

10 A. Again, as a corroborating evidence, yes.

11 Q. And you also understood that the insurance
12 regulations that you considered also don't apply to AIG,
13 because it's the parent corporation and it's not an
14 insurance company.

15 A. Yes.

16 Q. And did those -- the insurance regulations
17 sometimes define control as as low as 10 percent, right?

18 A. Yes.

19 Q. And you'll agree with me, under insurance
20 regulations, the Government still wouldn't exercise
21 control until it had a binding agreement, right?

22 A. Under that first item, so 10 percent, yes.

23 Q. Okay. And -- but -- and then maybe you do or
24 don't know this, but did you know whether Mr. Greenberg
25 and Starr owned more than 10 percent of AIG's shares in

1 2008?

2 A. Actually, I don't know.

3 Q. Okay. If they did, have you looked at whether
4 they had control of AIG?

5 A. I have not looked at that.

6 Q. Okay. Now -- no further questions on that
7 document, sir.

8 On the morning of September 16th -- and we
9 talked about this earlier, but I'm kind of looping back
10 here -- President Geithner called Mr. Willumstad, right?

11 A. Yes.

12 Q. And on the 16th, he told AIG not -- that they --
13 that they might not want to draw down their lines of
14 credit, right?

15 A. Yes.

16 Q. And -- and do you know what AIG did in response?

17 A. Actually, I'm unsure about that.

18 Q. Okay. Well, let me show you.

19 Have you read Mr. Willumstad's deposition?

20 A. I'm not sure. If I did, I did before the --
21 my -- it could be before my deposition. That was long
22 ago. I can't remember when.

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

24 THE COURT: Yes.

25 THE WITNESS: Thank you.

1 BY MR. DINTZER:

2 Q. Now, I am going to direct you, sir -- this is
3 the deposition of Mr. Willumstad. I am going to direct
4 you to page 260.

5 A. Okay.

6 Q. Okay. And right there (indicating), do you see
7 that?

8 A. Um-hum.

9 Q. "QUESTION: What did he say when you told him
10 you were planning on filing for bankruptcy?"

11 A. So, should I read?

12 Q. No.

13 "ANSWER: I don't remember specifically what he
14 said.

15 "I do remember that I told him I was going to
16 take down the backup lines and he asked that I wait and
17 I said for what and he said, again, we had a couple of
18 exchanges and some point in the morning, we had a
19 conversation where he reluctantly said to me, we might
20 be able to have a solution for you and I said, well,
21 unless you can tell me you have a solution, I'm going to
22 go ahead and take down the bank lines. I was trying to
23 force him -- he said it's being discussed in Washington,
24 there is no guarantees. I said fine, thank you, I
25 appreciate that, but I'm going to go ahead and draw down

1 the bank lines.

2 "QUESTION: What did he say?

3 "ANSWER: He asked me again not to do it.

4 "QUESTION: What did you say?

5 "ANSWER: I said I had a fiduciary

6 responsibility to go ahead and leverage all the capital

7 I could on behalf of the company.

8 "QUESTION: Did you take down the bank lines?

9 "ANSWER: Yes."

10 Do you see that, sir?

11 A. Yes, um-hum.

12 Q. So, wouldn't you agree with me that, based on

13 Mr. Willumstad's testimony, he didn't do what he was

14 encouraged to do by the New York Fed at that time?

15 A. It seems so.

16 Q. Okay. So, at that time, the New York Fed did

17 not have control of AIG. Is that correct?

18 A. It seems so.

19 Q. Okay. Now, you sent us a deck, a slide deck

20 last Wednesday that it's changed some since -- since the

21 ones that you put out. Do you remember that, a

22 different slide deck?

23 A. I do remember a different deck, yeah.

24 MR. DINTZER: May I approach, Your Honor?

25 THE COURT: Yes.

1 BY MR. DINTZER:

2 Q. Now, do you recognize this, sir?

3 A. Yes.

4 Q. And what is this?

5 A. This is the first version or one of the first
6 versions of the things I presented today.

7 Q. Okay. And you sent it to us, so you thought it
8 was good enough to use in court if you had to before
9 some time passed, right?

10 A. Yes.

11 Q. Okay. And the first one -- so, these are
12 examples of Defendant's control over AIG, September 16,
13 2008. Do you see that?

14 A. Yes.

15 Q. And the first one was, "Defendant tells
16 Willumstad not to draw down on credit lines, not to file
17 for bankruptcy, and to wait for an offer." Do you see
18 that?

19 A. Um-hum.

20 Q. And when you put that on this slide, you used --
21 you believed that that was an example of the Fed having
22 control, right?

23 A. Yes.

24 Q. But it actually is the opposite; it shows that
25 the Fed didn't have control at that time, right?

1 A. Let's distinguish. So, the Defendant tells
2 Willumstad not to file for bankruptcy, and he doesn't
3 file for bankruptcy. So, that's one -- one piece.

4 The other, it tells to draw down the line of
5 credit, and he does do it, and maybe that's the reason
6 why he got fired afterwards. So, is that evidence that,
7 in the moment, the Fed did not have full control? Yes.
8 Is it evidence that Defendant did not exercise control?
9 He tried to not do exactly what the Fed said, and he got
10 fired by the end of the day.

11 Q. Can you tell me anywhere on this where it says
12 that he's being told not to file for bankruptcy? Let me
13 just ask you, do you know if he was actually told not to
14 file for bankruptcy?

15 A. So, in here it say, "I told him that I was going
16 to take down the bank lines" -- I'll go back.

17 "QUESTION: What did he say when you told him
18 you were planning on filing for bankruptcy?

19 "ANSWER: I don't remember specifically what he
20 said. I do remember I told him that I was going to take
21 down the bank lines, and he asked me that I wait, and I
22 said for what, he said" --

23 So, it seems to -- I don't know, I --

24 BY MR. DINTZER:

25 Q. You don't -- sir, sitting here, you don't know

1 one way or the other about whether he was told about
2 bankruptcy or not, do you?

3 A. Reading this testimony, I agree. It's not
4 clear.

5 Q. And when you found out that this part of your
6 slide was wrong, you took it off, right? I mean,
7 because this is not on the slides that we got, right?

8 A. I was trying to focus on different points, so I
9 edit this out. I didn't realize it was wrong. I took
10 it out.

11 Q. No further questions on that, sir.

12 Now, you said that the refusal to negotiate
13 shows control, right?

14 A. It's one of the indicia of control, yes.

15 Q. And you used the word "indicia." You'll agree
16 with me that there's all sorts of situations where, if a
17 company doesn't want to negotiate for whatever reason,
18 that that doesn't prove control, right?

19 A. Oh, by itself, alone, no.

20 Q. Okay. And, in fact, the Government all the time
21 in -- and maybe you do or don't know this -- all the
22 time in contracts may make an offer of something without
23 negotiating and just say that this is what we're
24 offering. Do you know if that's the case?

25 A. I don't know it specifically, but I'm not

1 surprised. I think that there are a lot of situations
2 in which you might even bluff on sort of a take-it-
3 or-leave-it offer and that's not true. So, as I said, I
4 think that any single -- I don't know whether "indicium"
5 is a single indicia -- alone is not proof.

6 It is all together that must be seen, and that's
7 why I sort of start from economic theory, and then I
8 look at all these pieces of evidence, I put it together
9 and arrive to -- to a conclusion, which, by the way, is
10 what the Fed does, because when -- the other two
11 conditions are satisfied, those are clear-cut, and there
12 is no sort of nuance, there's no shade of gray. In the
13 third -- in the third one, you need to put together a
14 number of elements to determine whether there is control
15 or not.

16 Q. And just so the record's clear, you're talking
17 about the Bank Holding Company Act which applies to
18 banks, right?

19 A. Yeah.

20 Q. Okay. And so the -- and I'm hoping maybe we can
21 cut short some of this. So, all of your indicia of
22 control, none of them prove or establish that the Fed
23 had control; they are just things that you looked at and
24 considered as part of -- as part of your analysis,
25 right?

1 A. If you're saying that any, by itself, is
2 sufficient to prove -- I'd need to think hard, but
3 probably not. I think that -- remember, there is the
4 input and output. One input are the initial condition
5 that determines whether you have some monopoly power,
6 and those conditions are established, in my view,
7 without any doubt.

8 Then, to corroborate those conditions, I look at
9 the indicia that happen to be also the one that the Fed
10 looks for the things, whether the Fed looks for the bank
11 holding company or the insurance regulators, is simply
12 an indication that those are not what my mind or some
13 economist's crazy mind thought about it. It is
14 something that in business people look at, and I look at
15 that as -- to support the fact that on not only the
16 condition, because there could be the initial condition,
17 but you can not use that. In a sense it's like you have
18 monopoly power, but you don't use it for whatever
19 reason. So, here, it seems that we do have the monopoly
20 power and it was used.

21 Q. Now, I think -- so, the existence of a
22 monitoring team is one of your indicia of control. It
23 doesn't prove control, right?

24 A. Alone, no, because I can think about
25 contra-example, and I think I gave, you know, you --

1 Q. Absolutely. Yeah, you did, and that's why -- I
2 mean, you said that it's not uncommon for a lender to
3 want to monitor the loan, right?

4 A. Yes, but by the way, the fact that it's common
5 for a lender, in a sense, many lenders end up being in
6 control to protect their investment. So, I'm not saying
7 that the Fed had no reason to get -- to get in control.
8 It's as if I was in charge of such a loan, provided this
9 was allowed by the law, which I'm not qualified to
10 testify, but from an economic point of view, do I want
11 to protect my investment, do I try to exercise the
12 maximum amount of control to protect my investment?
13 Absolutely.

14 And that's what a lot of lenders do, and that's
15 the reason why the economic literature has a lot of
16 papers about lenders' control, the fact that lenders end
17 up in control in order to protect their investment.

18 Q. And even if the lender doesn't end up in
19 control, it would not be uncommon for a lender of a
20 significant amount to make some effort to monitor the
21 borrower to make sure that it's not using the money to
22 hold parties, right? Yes or no, sir.

23 A. I think that some level of monitoring is common,
24 at least we hope it's common, but this level of
25 monitoring I think goes beyond what is sort of common.

1 Q. And do you know how many employees AIG had when
2 it sent 150 monitors or however many over to AIG, how
3 many employees it had?

4 A. Who, the Fed or AIG?

5 Q. AIG.

6 A. I don't know, but a lot.

7 Q. Thousands and thousands and thousands, right?

8 A. Probably, yeah.

9 Q. Okay. Now -- and -- so, let's go to PTX 5047.

10 A. Do I have it?

11 Q. Sir, it's one of your slides.

12 A. Ah, okay.

13 Q. And I'm going to draw your attention to the
14 third bullet point there, okay?

15 A. Um-hum.

16 Q. "The Government rejected an offer of liquidity
17 for AIG from the Chinese Investment Corporation." Do
18 you see that?

19 A. Yes.

20 Q. Now, let's see. You're not opining that the
21 Chinese Investment Corporation would have invested \$85
22 billion in AIG if Secretary Paulson had been more
23 accommodating. You're not offering that expert opinion,
24 are you?

25 A. I -- I don't know that that's an expert opinion

1 one way or another. I think that what I -- I'm using
2 here what I consider a fact, which is -- and I take this
3 fact, that CIC approached Paulson saying that they were
4 interested in making investment for a little bit more
5 than was needed, so I think it was \$89 billion, and as a
6 proof of that interest, there was, I think that day, a
7 high-level meeting that day in California with
8 high-level official from China and from the United
9 States, and the Chinese were all over the question of
10 AIG. So, what I simply observed is there was a high
11 level of interest on the part of CIC for that deal.

12 Q. Okay. And so --

13 May I approach, Your Honor?

14 THE COURT: Yes.

15 BY MR. DINTZER:

16 Q. So, if you look at your slides, sir, these are
17 the pages that you cite on your slide. Is that right?
18 Trial pages 1211 and 1212.

19 A. Um-hum.

20 Q. And these are questions being asked to Secretary
21 Paulson, and so if you start at line 10, it says:

22 "QUESTION: Ms. Smith says" --

23 A. Line 10 of the first page?

24 Q. Of the first page, 1211. So, this is something
25 that Ms. Smith says. Is that right?

1 A. Yes.

2 Q. "Ms. Smith says 'I was on the plane'" -- okay,
3 right?

4 A. Okay.

5 Q. She was on a plane, "and got a call from
6 Jeannie," right? "How do you pronounce that last name?"

7 "ANSWER: It's 'Kamski.'"

8 Kamski, okay. So, she got a call from Jeannie
9 Kamski.

10 A. Hopefully the plane was landed; otherwise, she
11 wouldn't get a call.

12 Q. Let's hope that.

13 And then it goes on:

14 "QUESTION: And Ms. Smith says that Ms. Kamski
15 said that CIC and others are interested in investing in
16 AIG?"

17 Do you see that?

18 A. Yes.

19 Q. Okay. We don't know who the others are, do we?

20 A. No.

21 Q. Well, I can ask, do you know who the others are?

22 A. No.

23 Q. Okay. And it doesn't say that they are going
24 to; it says that they are interested. Is that right?

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

1 Q. Okay. And then it goes onto the next page. So,
2 this is all being reported by someone who heard it from
3 someone who heard it from others. There's no --
4 anything in there about CIC, whether it's, you know, a
5 low-level person, a high-level person; there is no
6 information at all about who at CIC is approaching
7 Jeannie, who's calling Ms. Smith, right?

8 A. Um-hum.

9 Q. Okay. So, then she says -- and on the next
10 page, it goes on:

11 "QUESTION: And then she goes on to say she went
12 back to [David] McCormick."

13 Do you see the next page?

14 A. Yeah.

15 Q. And they talked about it, do you see?

16 A. Yeah.

17 Q. "QUESTION: And that you did not want the
18 Chinese coming in at that point in time on AIG."

19 Do you see that?

20 A. Yes.

21 Q. Do you know what day that was?

22 A. I think this should be the 16th.

23 Q. Right, September 16th, the same day --

24 A. Yeah.

25 Q. -- that all of the other things are happening.

1 A. Yeah.

2 Q. Okay. So, that's when the -- there is this
3 telephone tag of interest.

4 Now, I asked you earlier about whether you were
5 an expert on sovereign wealth funds. Do you have any
6 idea how much due diligence a sovereign wealth fund
7 requires before it will make an investment?

8 A. It definitely requires some due diligence. The
9 extent varies depending on the situation.

10 Q. You would expect at least weeks, right, sir, in
11 AIG?

12 A. I think that in general, that's definitely the
13 case, but it's not unusual that sovereign wealth funds
14 or even Warren Buffett makes decision very fast, and
15 that's part of the reason why they get very good
16 conditions, is because they are able to decide fast.
17 So, Warren Buffett decided very fast for Goldman, and
18 Warren Buffett was asked to invest in Lehman, if I
19 remember, in April of 2008, and very quickly decided he
20 did not want to invest in Lehman, so --

21 Q. Do you know if he was asked to invest in AIG?

22 A. That, I don't remember.

23 Q. Okay. And so -- but we're talking about Warren
24 Buffett, who's one person. This is the Chinese
25 Government. So, my question is -- if you don't know,

1 that's fine, just say you don't know, but do you know
2 how much due diligence CIC or other sovereign wealth
3 funds would have required before actually making any
4 kind of decision whether to invest in AIG?

5 A. I can only speculate.

6 Q. Okay. And do you know how long it would take,
7 on average, for approval to come from CIC's "people" to
8 allow an \$85 billion investment in a potentially failing
9 American firm, how long that approval process would be?
10 If you don't know, sir, just say it.

11 A. I don't know what is the average time. What I'm
12 trying to say is that what I do know is there is an
13 average due diligence and there are great opportunities.
14 For a price, you're willing to take more risk. So, if
15 the price is sort of attractive enough and the situation
16 is very important, you might speed up the process.

17 After all, if you ask me, how long would it
18 take, on average, to admit a bank to become a bank
19 holding company, I would say a month, and the Fed was
20 able to do it over a weekend for Morgan and Goldman.
21 So, under extreme circumstances, people speed up the
22 process.

23 Q. How much extra risk did the Fed take when it
24 made them bank holding companies? How much financial
25 risk?

1 A. I think it took an enormous reputational risk,
2 because they decided to certify that they're solvent and
3 in good standing condition over a weekend. So, I think
4 from the Fed point of view, that's probably more
5 important than financial risk.

6 Q. Okay. And you didn't answer my question, sir.
7 How much financial risk did the Fed take in making
8 Goldman Sachs and Morgan Stanley bank holding companies?

9 A. Actually, I don't have an exact number, but they
10 did take financial risk, because by making them bank
11 holding company, they increased their access to the
12 discount windows, with relaxed amount of collateral.
13 So, as a result, they did take financial risk. I am not
14 exactly sure, can't tell you exact number, but they did
15 take financial risk.

16 Q. So, let me ask you something that I think we can
17 agree on. No matter how --

18 A. So, you don't agree on that?

19 Q. Sir, no matter how fast they might have been
20 able to accelerate it, CIC and these unnamed others were
21 not going to be able to provide money for AIG on
22 September 16th, 2008.

23 A. I think it would be hard to imagine they would
24 do it the same day, yes.

25 Q. Okay. And so when this says they don't want

1 them coming in at this point in time on AIG, that point
2 in time was September 16th, 2008, right? That's what it
3 says, "at this point in time," right? Just yes or no,
4 sir. It's September 16th, 2008.

5 A. So, are you asking me if "this point" means just
6 September 16th or --

7 Q. I --

8 A. -- a broader period? I don't know, we would
9 have to ask them.

10 Q. And actually, that's a very good point, because
11 they haven't been asked to testify.

12 So, one thing we do know is that you haven't
13 read any testimony from CIC or other sovereign wealth
14 funds, have you?

15 A. No, but what I -- what I have read is the fact
16 that the same day, there was a meeting, if I remember
17 correctly, in California, in Loma Linda, where the
18 Chinese official and the U.S. official were together,
19 and there were a lot of questions by the Chinese over
20 this issue. So, it was not just a passing interest; it
21 was something that was high in their mind.

22 Q. Now, did Secretary Paulson, when he was here at
23 trial, did he explain -- do you know if he explained why
24 he wasn't -- why he didn't want CIC to come in on
25 September 16?

1 A. I don't remember that.

2 Q. Okay. And was that something that you probably
3 should have looked at before you put it on a board, that
4 that proved control? I mean, that -- should you have
5 actually looked at his testimony on why he didn't want
6 them to come?

7 A. Actually, no, because the important point from
8 my point of view is that he was able to use his
9 political regulatory power to cut out outside option for
10 AIG. So, what his motive was, whether he is racist and
11 doesn't like the Chinese or whether he is sort of -- I
12 don't know what, I don't think it's particularly
13 relevant as far as -- as long as he -- that his
14 intervention is sufficient to cut out a viable outside
15 option for AIG.

16 Q. Okay. So, let's start with the point that -- is
17 there any reason AI -- CIC or anybody -- any other
18 sovereign wealth fund couldn't have picked up the
19 telephone and called AIG?

20 A. Oh, I have enough experience in business to know
21 that if you are a foreign investor, and in particular a
22 foreign investor from a country that is not particularly
23 friendly with the United States, you don't make
24 investment of \$89 billion without some level of
25 agreement or understanding -- sorry, I used the quote,

1 unquote with my hands -- by the Government.

2 This doesn't happen even for smaller investment.
3 You are foolish -- and remember what happened to the
4 Dubai Port Authority, when they bought here and there
5 wasn't really a -- sort of a -- they weren't really
6 welcome, and it was almost like a revolution here. So,
7 if I am the Chinese, at the moment I get that the
8 Government is not particularly sort of looking with a
9 good eye to the investment, I will stay away, especially
10 because, as you said, it requires taking decision in a
11 short period of time, and it is \$89 billion.

12 Q. There's a lot of geopolitical concerns in any
13 sovereign wealth fund investing that amount of money in
14 the United States, correct?

15 A. Oh, absolutely.

16 Q. Okay.

17 May I approach, Your Honor?

18 THE COURT: Sure.

19 BY MR. DINTZER:

20 Q. Sir, this is the trial transcript from the day
21 that Secretary Paulson testified. I'm going to ask you
22 to direct your attention to page 1217. Please let me
23 know when you're there.

24 A. I am here.

25 Q. Okay. And, sir, you're welcome to read as much

1 as the question and answer is as you like. It starts on
2 1216. I am not going to burden the Court by reading it,
3 because it's already in the record, but it starts on
4 1216, and it says:

5 "QUESTION: Now, with respect to AIG, did anyone
6 ever tell you that China or CIC was looking for any
7 government guarantee or assurances from the United
8 States in order to make an investment?

9 "ANSWER: No, I never talked with the Chinese
10 that I can recall about AIG."

11 Then he goes on for a long ways, and you are
12 welcome to read any of it, but -- but he says, "But I
13 was just a hundred percent certain that the Chinese
14 weren't going to come in and do something of the size
15 that would save this company without getting assurances
16 that I couldn't -- that I couldn't give."

17 Do you see that?

18 A. Yes, I do see that.

19 Q. Okay. Now, I asked you earlier about sovereign
20 wealth fund investing, and you said you weren't an
21 expert. You're not saying he's wrong.

22 A. I have no reason to believe so.

23 Q. Okay. And so you don't know, as you sit here,
24 and you're not offering testimony that CIC or these
25 others would have come in and made AIG an offer without

1 government assurances, correct?

2 A. As I said, it depends what you mean with
3 "government assurance." In the Dubai Port Authority,
4 you want a government assurance that you won't veto the
5 deal. The government assurance you are not as committed
6 against. In geopolitical deals of this type, you want
7 some government assurance that they are not negative
8 about this investment. I think that that's normal in
9 sovereign wealth fund, especially of this magnitude.

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

11 There is no evidence and you haven't seen any
12 evidence that CIC or any other sovereign wealth fund
13 would have offered AIG enough money to avoid bankruptcy
14 without a government guarantee. Is that correct?

15 A. I think that if the Chinese had intervened, was
16 part of the solution to the problem, I think that there
17 was a line of credit, as was seen, that was partly drawn
18 down, that could have been drawn down more. There was
19 the possibility of upstreaming some of the collateral
20 from the assets of the overcapitalized subsidiaries to
21 the parent company. And so as of the 16th, before the
22 market became even worse, et cetera, I think that there
23 could have been an alternate solution with all these
24 pieces together.

25 Q. Okay. And I understand you're saying there

1 could have been, and that's actually not even what I'm
2 asking. I just said, sir, that there is no evidence
3 that the CIC would have offered AIG enough money to
4 avoid bankruptcy without a government guarantee, is
5 there?

6 A. I don't know what -- what you're saying with --
7 are you interpreting your statement of government
8 assurance as government guarantee? Because the two --
9 in my understanding --

10 Q. Yes.

11 A. -- of English and, you know, it's worse than
12 yours because it's not my first language, but
13 "assurance" and "guarantee" are two different things.

14 Q. Right. And I'm using the word "guarantee."

15 A. Right. So, I think that's a different story,
16 and what I read here is --

17 Q. And so that's why I asked you to close that, and
18 my only question to you, sir, is there is no evidence
19 that the CIC or other sovereign wealth fund would have
20 offered AIG enough money to avoid bankruptcy without a
21 government guarantee.

22 A. There is no evidence I know that the Chinese has
23 asked for a government guarantee. So, when you are
24 saying there is no evidence of something --

25 Q. Sir, I guess the question is, is we have this,

1 okay? Have you seen any evidence in the record that
2 someone in absolute authority at the CIC, someone -- a
3 decision-maker at the CIC has made a decision about
4 investing in AIG? Yes, no, or I don't know.

5 A. I don't know.

6 Q. No further questions on that, sir.

7 Now, public companies must report certain
8 material corporate events soon after they occur. Is
9 that right?

10 A. That's correct.

11 Q. That's what the 8-K is for?

12 A. That's correct.

13 Q. And you'll agree with me that if an 8-K is
14 mistakenly filed, that it needs to be corrected.

15 A. Yes.

16 Q. And telling someone, anybody, "Hey, you filed a
17 mistaken 8-K with the SEC, you need to correct it," that
18 that's not control?

19 A. Pointing out a mistake to somebody is not
20 control. To say to someone you can't file anything else
21 without letting me know first, that's one of many
22 indicia of control.

23 Q. Okay. And I can show you, sir, I can show you
24 the 8-K that was filed on September 18th, and I know
25 you're familiar with it, right?

1 A. Um-hum.

2 Q. I need you to answer yes or no, sir, just for
3 the record.

4 A. Yes.

5 Q. And that 8-K said that the Government -- that
6 the Fed received a warrant on September 16th, correct?

7 A. The way I remember it is it said they were
8 issued warrants, and that's -- that's a mistake, because
9 warrants were not issued.

10 Q. All right.

11 A. They were voted for, but they were not issued.

12 Q. So, the 8-K that was filed on September 18th was
13 mistaken, right?

14 A. Yes.

15 Q. And it needed to be corrected, right?

16 A. Yes.

17 Q. Okay. We're going to go back to your slides,
18 sir, and I'd like you to turn to PTX 5053. Do you see
19 this, sir?

20 A. Yes, I do.

21 Q. And so you're comparing the September 16th term
22 sheet with the September 22nd credit agreement. Is that
23 right?

24 A. Yeah. I think that to be clearer, I think the
25 term sheet should be in quotes, because as we discussed,

1 the board didn't see any clear term sheet. So, it's
2 as -- the terms as understood.

3 Q. Okay. And I want to be clear, sir. You say
4 September 16th term sheet. You're talking about the
5 board -- the term sheet that was considered by the Board
6 of Governors, right?

7 A. No. What I'm saying is this -- that's the
8 reason why I said term sheet, as understood, is these
9 are the terms as understood by the AIG board.

10 Q. I see. So, you're comparing -- you're seeking
11 to compare the terms as understood by the AIG board on
12 September 16th with the September 22nd credit agreement.
13 Is that right?

14 A. That's correct.

15 Q. Okay. And can we -- why don't we start with the
16 trust item. Do you see that?

17 A. Um-hum.

18 Q. Now, can you agree with me that the existence or
19 nonexistence of the trust had no material financial
20 effect on AIG? I mean, whether there was a trust in the
21 agreement or whether there wasn't, it didn't -- it
22 didn't matter to AIG one way or the other financially.

23 A. Actually, I'm very happy to stipulate that,
24 because that proves that the trust was a legal fiction
25 that had no bearing to the control of AIG.

1 Q. I don't think I'm in the position to stipulate
2 it right now, sir. I'm just asking you that whether the
3 shares were going to be put in a trust or to be held by
4 the New York Fed, financially, whoever got the shares,
5 that didn't have a financial impact on AIG, did it?

6 A. I think that's -- I don't want to say more
7 lawyerly than lawyers, but financial impact -- I think
8 voting control is very important. My thesis was about
9 voting control. So, where the voting control is
10 allocated is important to AIG shareholders.

11 Q. I was asking -- well, I was talking about AIG
12 rather than the shareholders, but --

13 A. AIG itself, yeah. Even AIG, it is -- if you are
14 saying that the trust is just an irrelevant veil, then
15 I'm happy to stipulate with you that the trust doesn't
16 matter, but if you think that the trust, at least in
17 principle, could represent some degree of separation
18 between sort of the ownership of control and the Fed,
19 then it does matter whether there exists a trust or not.

20 Q. It matters to AIG?

21 A. It matters to AIG, yes.

22 Q. And have you seen any testimony from any of the
23 board members from AIG saying that they cared one way or
24 the other?

25 A. Actually, in -- in a September 21st board

1 minutes, there is a discussion about the importance of
2 voting control and the fact that by getting the
3 convertible preferred rather than the warrant, the
4 Government was getting control right away. So, there
5 was --

6 Q. I asked about the trust, sir.

7 A. I'm sorry. I understood that you asked whether
8 voting control mattered for board members.

9 Q. No, I'm sorry if I misspoke. I'm just asking,
10 did you see anything that the board of AIG cared if the
11 shares were going into the trust?

12 A. I did not see anything to that effect.

13 Q. Okay. How about this one? Is this comparing
14 the warrants from the Board of Governors term sheet?

15 A. No. Again, this is comparing the terms as
16 understood by the board on the 16th and what was finally
17 agreed on the 21st.

18 Q. Okay. And do you understand that the board --
19 that the term sheet that was considered by the Board of
20 Governors identified that it would look for the lowest
21 possible price per share for the conversion of the
22 warrants?

23 A. Yes.

24 Q. Have you seen any discussion in a single
25 document where anybody contemplates that if warrants

1 were going to be the vehicle, that they would be
2 exercised for \$30 billion, that that was part of the
3 plan? I understand that it's -- that it's --

4 A. It's the law.

5 Q. I understand, but all I'm saying is have you
6 seen a single email, a single document, where anybody --
7 I mean, there's a lot of documents and I know you've
8 seen a lot of them -- where anybody contemplates that
9 the warrants would require -- that it was intended that
10 the New York Fed would pay \$30 billion before being able
11 to execute those warrants, that that was part of the
12 plan? That's all I'm asking.

13 A. I don't understand what you mean, "part of the
14 plan." I'm sure that if I'm the Government, it's not my
15 plan to pay \$30 billion, but if I have by the law, I
16 have to do it. So, I give you for granted that all the
17 board members that were pretty sophisticated people knew
18 what the rules were and knew what the par value of their
19 shares was. So, it doesn't take a genius, just simply
20 sort of multiplication, 2.5 dollars a share multiplied
21 by the 12.-something billion shares, that's the number.

22 Q. Now, I showed you earlier the term sheet that
23 was sent to AIG's attorney about an hour before the
24 board meeting, right?

25 A. Um-hum.

1 Q. I can show it to you again. It's the one that
2 says, you know, 79.9 percent of equity, form to be
3 determined.

4 A. Um-hum.

5 Q. And I just need you to say yes or no for the
6 court reporter.

7 A. Yes.

8 Q. Have you seen a single document that says that a
9 term sheet -- that says attached is this term sheet and
10 it includes a term sheet for warrants to the AIG board?
11 Have you seen it? I'm not asking about supposition or
12 what people thought. I'm asking, have you seen a single
13 document that conveyed a warrants term sheet to AIG or
14 its representatives?

15 A. The Board of Governors minutes that they
16 approved the purchase of warrants.

17 Q. And you'll agree with me that nobody sent the
18 Board of Governors minutes to AIG.

19 A. I have no way to know that, sir.

20 Q. Okay. Other than the Board of Governors minutes
21 that, you're right, reviewed a term sheet that had
22 warrants, other than that, have you seen a single
23 document that was actually sent, either by email or a
24 representation, that says we are sending this term sheet
25 over to AIG that has warrants in it?

1 You've got an enormously long list of documents
2 in your documents reviewed for your reports, and your
3 reports are very long. Have you seen one single
4 document conveying a warrants term sheet to AIG or its
5 attorneys on September 16th?

6 A. The single document that could have resolved
7 this issue was not produced. So, there was a term sheet
8 that was sent to Willumstad. We don't have it.

9 Q. Sir, I'm just asking you, have you seen a single
10 document -- I mean, I get a yes, no, or I don't know on
11 this. Have you seen a single document that actually
12 says it is conveying a term sheet that has warrants in
13 it to AIG or its board, to representatives, its
14 attorneys, or its board? Have you seen that? Yes, no,
15 or I don't know.

16 A. Have I seen a single document from the Fed or
17 somebody else to --

18 Q. The Fed or its attorneys, anyone, that sends to
19 AIG or its representatives a term sheet with warrants
20 for a loan offer from the New York Fed? Have you seen
21 that?

22 A. No, I have not.

23 Q. Now, sir, you testified that the Government was
24 the source of the release with respect to ML III. Do
25 you remember that testimony?

1 A. I testified that I couldn't see any reason for
2 AIG to release the liability with the counterparty.

3 Q. You don't know whether the request for those
4 broad releases came from AIG or from the Fed. Is that
5 right?

6 A. What I said is I don't see any reason -- any
7 economic reason for AIG to make such request.

8 Q. Okay, but -- and I understand you're speaking as
9 an economist, but I'm asking you, you looked at all
10 these documents, you cite a number of documents, a
11 number of exhibits, lots of testimony, all of that in
12 your report and in your charts. And I'm just asking
13 you, do you know, not from an economic thing, but I'm
14 asking, do you actually know from having looked at the
15 documents whether it was AIG that asked for the broad
16 release?

17 A. I certainly do not see anything that says that
18 AIG asked for that broad release.

19 Q. Okay. And you haven't seen anything that says
20 that the New York Fed asked for the broad release.

21 A. I have not seen anything from the New York Fed
22 either, yeah.

23 Q. Okay. Now, Maiden Lane III was done to limit
24 collateral calls from the CDS counterparties. Is that
25 right?

1 A. Maiden Lane III was done to both limit the cash
2 drain from AIG and also to limit the accounting losses
3 they have to report when the CDS were marked down by the
4 counterparties, yes.

5 Q. If ML III or something like it was not done, AIG
6 could have been downgraded, right?

7 A. I think that was a serious possibility, yes.

8 Q. And if AIG had been downgraded in March 2008, it
9 might have gone bankrupt, right?

10 A. I'm sorry, March 2008?

11 Q. I'm -- I'm sorry, sir. If --

12 A. I'm still awake, despite the late hour.

13 Q. Let me try that one again, sir.

14 If AIG had been downgraded in November of 2008,
15 it might have gone bankrupt, right?

16 A. I think -- let's put it this way. It would not
17 be good for AIG.

18 Q. Now, AIG presumably wanted to pay as little as
19 possible to rip up the CDSs on its books.

20 A. Actually, we hope that was their objective.

21 Q. And the New York Fed was AIG's largest creditor
22 in November 2008, right?

23 A. Yes.

24 Q. And eventually, they -- in March 2009, the trust
25 would get the stock of -- 79.9 percent of the stock.

1 So, it was also eventually an equity interest in AIG,
2 right?

3 A. That's correct.

4 Q. And so the New York Fed, as the creditor and
5 potential -- with the potential benefit to the
6 Government for the ownership of the -- of the equity,
7 they had an interest in AIG not paying any more than
8 necessary as well, correct?

9 A. No, because as we know from the trust agreement,
10 the objective of the Fed was not just to maximize the
11 value of its equity stake and its loan, but also to
12 stabilize the economy.

13 Q. The -- have you seen any testimony from any of
14 the trustees that said that they did not work to -- for
15 the benefit of -- so that the company profit-maximized?
16 I'm just asking if you've seen any testimony, sir.

17 A. No.

18 Q. Okay. So -- but you don't describe any but-for
19 world where if there wasn't any conflict, if the -- if
20 the -- if they had the best negotiator in the world
21 sitting, trying to get concessions, you don't describe
22 how much, if any, concessions actually would have been
23 gotten, do you? You don't try to quantify that.

24 A. To quantify -- to quantify the amount of
25 concession or to --

1 Q. Sure, sure.

2 A. No. No, I did not analyze how big the
3 concession could have been obtained.

4 Q. Or even if there would have been one. You don't
5 know -- sitting here, you do not know if any concessions
6 could have been obtained.

7 A. Actually, I -- I do, because I know that there
8 was willingness of Bank of America to take less than
9 par, and I know because BlackRock suggested -- advised
10 alternatives, and one alternative was that had the Fed
11 guarantee the CDS itself -- sorry, had the Fed given a
12 choice between either you take this lower value on the
13 CDO or I guarantee the CDSs and you have to release all
14 the collateral that AIG had put, then in this situation,
15 it would have been very convenient for the counterparty
16 to actually take much below par, because remember, sir,
17 that that collateral was extremely valuable to the
18 counterparty, and, according to some estimates, that
19 collateral was even excessive. So, the counterparties
20 were financing themselves with that collateral.

21 Q. Sir, what you're describing would have
22 required -- I mean, the CDS agreements are contracts,
23 right?

24 A. Yes.

25 Q. Okay. And they're binding contracts.

1 A. I understand all the contracts are binding,
2 yeah.

3 Q. And if the terms were going to be changed with a
4 guarantee or any other change, that would have taken
5 consent from the counterparties, right?

6 A. Actually, if -- I -- if the Fed guaranteed those
7 CDSs, then that would have released immediately the
8 collateral without the consent of the counterparty,
9 because now the counterparty was fully guaranteed under
10 the contract, so they didn't have to post the
11 collateral. So, that didn't require a consent of the
12 counterparty for that.

13 Q. Are you offering an opinion as to whether it
14 would have been legal for the New York Fed to guarantee
15 those agreements?

16 A. You know better than that.

17 Q. I guess not, okay.

18 Let's go to -- let's go to DX -- no, we are
19 going to go to...

20 May I approach, Your Honor?

21 THE COURT: Yes.

22 BY MR. DINTZER:

23 Q. Actually, I am going to ask you a quick question
24 about the guarantee before we get on to this.

25 A. Okay.

1 Q. If there had been a guarantee, you haven't
2 quantified how much it would have cost AIG, how much the
3 Government -- the New York Fed would have charged for
4 the guarantee, right?

5 A. No, I didn't do that.

6 Q. And do you have any reason to doubt that the New
7 York Fed would have charged the exact same for the
8 guarantee as it did for the loan? Do you have any
9 information about that one way or the other?

10 A. In November, we're under TARP, and it seems that
11 the Government was much more in -- with the attitude of
12 being much more generous. So, I don't expect that the
13 guarantee to be as expensive as the initial credit
14 facility.

15 Q. In November 2008?

16 A. Yeah.

17 Q. I see. So, I've handed what you what's been
18 marked as DX 2131.

19 Your Honor, it's my understanding this is very
20 similar to DX 669, which actually has a cut-off on the
21 side, and so this may actually be a better version of
22 that, but I will just use this for right now. But we
23 may want to at some point substitute this for DX 669.

24 Do you have an understanding of what this is,
25 sir? Have you seen this document before?

1 A. I don't remember having seen it, but I do have
2 an understanding of what it is.

3 Q. Okay. So, this is an email, and it's from
4 Mr. Anderson at DPW, which is Davis Polk. Is that
5 correct?

6 A. That's my understanding, yes.

7 Q. And it goes to a bunch of people, one of whom is
8 Anastasia Kelly. Is that right?

9 A. Yes.

10 Q. And she's the general counsel of AIG?

11 A. Yeah.

12 Q. And it's November 8th at -- as best I can tell,
13 at 1:02 Eastern Standard Time. Is that right? I don't
14 know if that's -- I mean, that's what it says.

15 A. Okay.

16 Q. And it says, "Attached is a revised draft of the
17 counterparty term sheet updated and simplified to
18 reflect a combined settlement amount equal to the total
19 notional exposure of the CDS transactions as of the
20 Termination Date (i.e. no concession)."

21 Do you see that?

22 A. Yes.

23 Q. Do you understand that on November 8th,
24 Ms. Kelly, along with others, including Sullivan &
25 Cromwell, who we've talked about representing AIG, was

1 sent the revised draft of the counterparty term sheet,
2 with an indication of no concessions? Do you see that?

3 A. I do see that.

4 Q. Okay. And then -- so, AIG's general counsel
5 knew that the CDS tear-ups would be with no concessions,
6 is that right, on November 8th?

7 A. I'm not familiar with this email, but given the
8 precedence, given the fact that Rodgin Cohen, before the
9 16th, was sent an email but did not clarify what the
10 term sheet was about because he didn't read it, I have
11 no knowledge, you know, whether they read it and they
12 communicate that to the board.

13 Q. So, I mean, I guess the real thing is you're
14 just assuming that -- you don't know one way or
15 another -- and that's fair -- that if emails are sent to
16 people, you don't have an ability to know one way or
17 another as to whether they are actually read and
18 understood. Is that what you're saying?

19 A. Yeah, because I have evidence of the contrary,
20 so I think it is fair to say I don't know.

21 Q. When you say you have evidence to the contrary,
22 what are you referring to?

23 A. We have the email to Rodgin Cohen that I think
24 you showed me earlier --

25 Q. Oh, I'm not talking -- I apologize. I'm talking

1 about ML III.

2 A. No, no, no, I understand, but it is contrary in
3 a similar situation, not in ML III.

4 Q. Okay. So, because Rodgin Cohen from Sullivan &
5 Cromwell does not remember reading an email that he was
6 sent on the 16th, that calls for you into question about
7 whether Ms. Kelly read an email that was sent to her on
8 November 8th. Is that what you're saying?

9 A. It suggests that at those sort of crucial times,
10 you don't have time to read all the emails, and it
11 certainly happens to me. So, I assume that it happens
12 to other people as well.

13 Q. Okay. And so let's go to PTX 5061 and the third
14 bullet down.

15 A. Um-hum.

16 Q. "When the AIG Board approved the ML3 transaction
17 on November 9, it was led to believe that the Government
18 would seek concessions from AIG's counterparties." Do
19 you see that?

20 A. Yeah.

21 Q. Now, you didn't cite -- you cite JX 144. You
22 didn't cite the email I just sent you, and I think you
23 said that you hadn't seen it. So, you hadn't seen
24 that -- when you're talking about the AIG board
25 believing something, you hadn't been -- you hadn't been

1 exposed to an email where the AIG board's general
2 counsel actually had been sent that document, right?

3 A. I was not personally exposed. As I said, I work
4 in conjunction with a team. So, I cannot speak for
5 them.

6 Q. Okay. And who's on your team?

7 A. People from Charles River. So, mostly Ann
8 Hughes, Mark Zmijewski, and...

9 Q. So, you do cite JX 144, so we are going to go
10 there next. Do you remember what JX 144 is?

11 A. Sorry, I did not memorize all the exhibits.

12 Q. No, no, no, I completely understand. I can't
13 even remember most of them.

14 That is the AIG board minutes. That's going to
15 be in one of your binders.

16 A. Yes, okay.

17 Q. It's also on the screen for your convenience.
18 Are you there?

19 A. Yeah.

20 Q. These are the board minutes for AIG for the
21 board meeting held on November 9th. These are the ones
22 you referred to in your slide.

23 A. Yeah.

24 Q. If you look at the bottom of that page, you can
25 actually see that Ms. Kelly is there.

1 A. Um-hum.

2 Q. So, the day after she gets that email about no
3 concessions, she is actually sitting in the board
4 meeting, right?

5 A. Um-hum.

6 Q. I'd like you to go to page 9 of the document,
7 and I'm looking at the same, and just let me know when
8 you get there. Are you there, sir?

9 A. Page 9, yes.

10 Q. Okay. And above the big block quote, it says,
11 "After further discussion, upon motion duly made,
12 seconded, and unanimously carried, it was resolved," and
13 then it goes on and on. Do you see that?

14 A. Yes.

15 Q. And that's just standard language saying that
16 the board unanimously agreed to the things in this big
17 block.

18 A. Yeah.

19 Q. Now, let's go to page 11, because this big block
20 goes on and on and on, and in the middle of page 11, it
21 says -- this is the thing describing ML III, right?

22 A. Yes.

23 Q. "Further resolved, hereby approves the
24 formation," and this is approving ML III, right?

25 A. Um-hum.

1 Q. Just for the court reporter's benefit, I need a
2 yes or no.

3 A. I'm sorry. Yes.

4 Q. Farther down, it says, "Annex D hereto, the CDO
5 arrangement with such amendments or changes thereto. Do
6 you see that?

7 A. Yes.

8 Q. And it says "as set forth on Annex D," so we are
9 going to go to Annex D now, which is page 43. Are you
10 there, sir?

11 A. Yes.

12 Q. Okay.

13 A. At the beginning was a blank page.

14 Q. Just Annex D.

15 A. Okay, sure.

16 Q. Yes. So, this is where Annex D starts. So,
17 when they approved ML III, they're directing us to Annex
18 D, and if we go into Annex D, we flip some pages and get
19 to page 53 of the document, we get to the Maiden Lane
20 III term sheet.

21 A. Okay.

22 Q. Okay. And this is the term -- did you read all
23 of this?

24 A. If you say I read every single letter of this,
25 no.

1 Q. Okay, fair enough.

2 This is the Maiden Lane III term sheet that
3 they're talking about that will be entered into
4 regarding the -- with the counterparties or with -- that
5 discusses the terms with respect to the counterparties.

6 A. Yes.

7 Q. Do you see that?

8 A. Yes.

9 Q. And the first one says, "Total payment to
10 counterparty." Do you see that? Number 1.

11 A. "Total payment to counterparty," yes.

12 Q. Okay. And it says, "Under the Forward Purchase
13 Agreement and the Termination Agreement described below,
14 for the termination of the CDS transactions and the
15 purchase of the Assets, Counterparty will be paid the
16 notional amount for the CDS Transactions."

17 Do you see that?

18 A. "Subject to certain adjustments described in the
19 Forward Purchase Agreement."

20 Q. Absolutely.

21 A. Yeah.

22 Q. Notional amount, you understand that's par?

23 A. Yes, I do.

24 Q. Okay. And so this actually says that the
25 counterparties will be paid the notional amount, subject

1 to the fees or whatever, and this is being -- this is
2 the thing being voted on by the AIG board on November
3 9th, right?

4 A. Yes.

5 Q. Okay. No further questions on that document,
6 sir.

7 Now, in 2009, AIG faced having its common stock
8 delisted by the New York Stock Exchange, right?

9 A. That's correct.

10 Q. And it -- and that was because its share price
11 had fallen below a dollar, right, or was --

12 A. Was at risk of -- right.

13 Q. Right, was at risk of falling below.

14 A. Yes.

15 Q. And AIG needed a reverse stock split in 2009 to
16 prevent being delisted in the New York Stock Exchange.

17 A. I think it was a safe thing to do, to do a
18 reverse stock split, yes.

19 Q. And AIG's board voted on a proposal -- it's
20 based on a proxy. The way the proxy stuff works is
21 this: A proxy is put together, and the board has to
22 approve it before it goes out the door for people to
23 vote on, right?

24 A. That's correct.

25 Q. Okay. And AIG's board did, in fact, vote on the

1 proxy that contained -- the proxy statement that
2 contained the reverse stock split, right?

3 A. Yes.

4 Q. And they did that on May 20th, 2009? And I can
5 show you a document if you need it, but --

6 A. No, I remember that, yes.

7 Q. Okay. And so, sir, I'm going to take you now
8 back to Exhibit 1 that has the start dates of all the --
9 of all of the directors.

10 A. Yes.

11 Q. And maybe you know this off the top of your
12 head, but on May 20th, when they had that vote --

13 A. There was a couple of substitutions.

14 Q. There were some substitutions, but the majority
15 of the board members were those ones who were elected
16 before the liquidity crisis and before all the other
17 stuff.

18 A. That is correct.

19 Q. Okay. So, the majority of the board members who
20 voted on the proxy that had the reverse stock split were
21 picked by shareholders before the liquidity crisis.

22 A. That's correct.

23 Q. Now, let's go to JX 221. Just let me know when
24 you're there, sir.

25 A. I'm there.

1 Q. Do you know what we're looking at, what this is?

2 A. Yeah. This is the proxy statement for AIG.

3 Q. Okay. And you reviewed this?

4 A. Yeah.

5 Q. Okay. And so this is the proxy statement that
6 is actually being sent out; before it was sent out, it
7 had to be approved by the board members, right?

8 A. Yes.

9 Q. Okay. And if you could go to page 66 of the
10 document -- and I'm looking now at the little page 66.
11 It would be the document page number, that's the big
12 number, at 69.

13 A. Yes, okay.

14 Q. And so this is Proposal 4, "Amendment of AIG's
15 restated," and it goes on. This proposal is the reverse
16 stock split proposal.

17 A. Yes.

18 Q. Okay. And will you agree with me that nothing
19 in this proposal is false? There are no false
20 statements in the proposal.

21 A. Actually, I don't see where it is here, but
22 there is a statement about the fact that AIG has no
23 intended purpose for the extra authorized but nonissued
24 shares, and it's -- it's a little bit strange to believe
25 there was no intended purpose. So, it's not my role to

1 decide whether that's right or wrong, but --

2 Q. You're not testifying about intent, right, sir?

3 A. Yeah, exactly, but you asked me if I know of
4 anything, and I have to say that.

5 Q. Okay. And so have you seen a single document,
6 in all the documents you've reviewed, a single document
7 where AIG's board is saying, "Hey, let's do this so we
8 can, you know, do the swap with the New York Fed or with
9 the trustees or anybody else"? Have you seen a single
10 document, sort of people conniving and thinking up this
11 dastardly plan, a single document before the board's
12 vote, before the reverse stock split vote by the
13 shareholders, that contains this plan?

14 MR. BOIES: I am going to object on compound,
15 Your Honor.

16 MR. DINTZER: Fair enough. I think I got three
17 in there.

18 BY MR. DINTZER:

19 Q. Have you seen any documents that suggest or that
20 say, from AIG or anyone else -- before AIG's board voted
21 to approve the proxy, that said that they had this plan
22 to -- to use the extra shares to swap out the preferred
23 stock?

24 A. I've seen two documents. First, in February,
25 there was an exchange of emails between, if I remember

1 correctly, AIG counselor and the Government where they
2 say that they sort of don't think it's necessary anymore
3 to have a shareholders vote, but they need to talk. So,
4 they go off email, then they resume. It seems that in
5 the between, there's been a phone call where they
6 resolve a way to bypass the shareholders vote, because
7 remember, until the amended credit agreement, there was
8 a requirement to have the shareholders vote with the
9 common voting by class.

10 And so in the -- in the -- the fact that they
11 maintained that assumption for a while, and then all of
12 a sudden, they switch, and they say that this was not
13 necessary anymore, and at exactly the same time, the
14 reverse stock split with this very, very unusual feature
15 of a reverse stock split on one part, not the other,
16 appear, is, in my view, an indication that that's a
17 purpose.

18 MR. DINTZER: If I could try one more question,
19 and I'll make it a yes/no question?

20 THE COURT: Sure, go ahead.

21 MR. DINTZER: I appreciate it.

22 BY MR. DINTZER:

23 Q. Sir, all I'm asking -- I understand that things
24 are -- that you are suspicious about this or that, and
25 I'm not -- this is an -- obviously you're an economic

1 expert, so, I mean, I assume that's not an economic
2 issue, but whatever.

3 I'm just asking you a yes or no question. Have
4 you seen a specific document that says or describes any
5 plan before the board voted, any plan to use the
6 extra -- the extra shares to swap out the preferred
7 stock? Have you seen any documents to that effect?
8 Yes, no, or I don't know.

9 A. I don't know.

10 MR. DINTZER: Okay.

11 THE COURT: All right, let's stop here for
12 today. We will reconvene at 9:30 tomorrow morning.

13 MR. DINTZER: Thank you, Your Honor.

14 (Whereupon, at 5:02 p.m., the proceedings were
15 adjourned.)

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CERTIFICATE OF TRANSCRIBER

I, Susanne Bergling, court-approved transcriber,
certify that the foregoing is a correct transcription
from the official digital sound recording of the
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DATED: 10/23/2014

SUSANNE BERGLING, RMR-CRR-CLR

1 ADMITTED EXHIBITS

2

3	PX	PAGE	DESCRIPTION
4	2579	3810	Federal Reserve Policy Statement, S. 225.144
5			Policy statement on equity investments in
6			banks and bank holding companies
7	2827	3792	Zingales CV
8			
9	DX	PAGE	DESCRIPTION
10	419	3881	FEDERAL RESERVE PRESS RELEASE DATED SEP 16
11			2008 RE: \$85B LOAN TO AIG
12	436	3902	EMAIL AND ATTACHMENT FROM JEREMIAH NORTON TO
13			RODGIN COHEN ET AL RE: REVISED TERM SHEET,
14			ATTACHMENT 2008_09_16 TERM SHEET.DOC
15			
16	JX	PAGE	DESCRIPTION
17	379	3963	Email (9/18/2008) From: Zach Buchwald To:
18			Joseph Chalom re: RE: Fed meeting
19	380	3963	BlackRock slides - Draft: Maiden Lane III
20			(October 28, 2008)
21	381	3963	GAO Record of Interview (1/26/2011) BlackRock
22			Solutions interview on various job topics
23	382	3963	Presentation on Maiden Lane III: Three Options
24			(October 15, 2008)
25			

