

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

STARR INTERNATIONAL COMPANY,)
INC., Individually and on)
Behalf of All Others)
Similarly Situated,)
Plaintiffs,) Case No. 11-779C
vs.)
UNITED STATES OF AMERICA,)
Defendant.)
-----)

Courtroom 4
Howard T. Markey National Courts Building
717 Madison Place, N.W.
Washington, D.C.
Friday, October 24, 2014
9:30 a.m.
Trial Volume 19

BEFORE: THE HONORABLE THOMAS C. WHEELER

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 JOHN H. ROBERSON, ESQ.
13 DAVID D'ALESSANDRIS, ESQ.
14 U.S. Department of Justice - Civil Division
15 Post Office Box 480
16 Ben Franklin Station
17 Washington, D.C. 20044
18 (202) 305-3319
19 brian.mizoguchi@usdoj.gov
20
21
22
23
24
25

	I N D E X					
1						
2						
3	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR
4	FARNAN		4284	4341	4408	4301
5			4301			4314
6			4314			4318
7			4320			
8	WAZZAN	4414	4443	4474	4481	4417
9			4420			
10	STUDZINSKI	4485	4505			
11						
12						
13	EXHIBITS	FOR ID		IN EVID		
14	Plaintiff's					
15	Number56			4505		
16	Number63			4505		
17	NumberPDX 2841			4443		
18	NumberPDX 2842			4443		
19						
20	Defendant's					
21	Number88			4325		
22	Number100			4331		
23	Number757			4291		
24	Number766			4290		
25	Number837			4293		

Starr International Company, Inc. v. USA

10/24/2014

1	EXHIBITS	FOR ID	IN EVID
2	Defendant 's		
3	Number966		4315
4	Number1916		4308
5			
6			
7	Joint		
8	None		
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22	*All exhibits premarked for identification prior to		
23	trial.		
24	*See full attached list of admitted exhibits following		
25	transcript.		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

- - - - -

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

THE COURT: Good morning.

ALL COUNSEL: Good morning, Your Honor.

THE COURT: Please be seated. We are on the record for day 19 of the trial in Starr International Company versus the United States.

Good morning, Mr. Farnan.

THE WITNESS: Good morning.

THE COURT: Do you understand that you are still under oath in these proceedings?

THE WITNESS: I do, Your Honor.

THE COURT: All right.

Mr. Roberson, do you want to go forward?

MR. ROBERSON: Thank you, Your Honor.

Whereupon --

DONALD FARNAN

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

CROSS EXAMINATION (cont.)

BY MR. ROBERSON:

Q. Mr. Farnan, yesterday, we were -- at the end of the day we were discussing DX 756, and just to provide a

Starr International Company, Inc. v. USA

1 little context as we revisit this document for a few
2 more questions, could you just tell me what this
3 document is, what the purpose of it was?

4 A. This is a critical matter on the going concern
5 with respect to the issue, the conclusions the company
6 drew, the conclusions we drew, and the work we performed
7 in coming to our conclusion as part of the finalization
8 of the 12/31/2008 audit.

9 Q. Okay. Now, if you turn to page 5 of the --
10 using the memo's pagination, can you describe what you
11 wrote at the first full paragraph of that page, the
12 paragraph that begins, "We believe that...?"

13 A. Yes. This is -- in a going concern analysis, we
14 need to be sure that we have evidence to support
15 whatever the final position is, and in this case, there
16 was not substantial doubt. So, this paragraph is
17 describing the evidence we had.

18 Normally you would get a commitment letter or
19 something from a bank, for example, if that was a reason
20 for overcoming substantial doubt. In this case, we
21 didn't have that, but we had the commitment of the Fed
22 and the Treasury.

23 Q. Okay. If you would turn to page 8, here there's
24 a summary of the actions that the Government took in
25 connection with the issuance of the third quarter 2008

1 10-Q. Would that be a correct sort of summary of the
2 middle paragraphs here?

3 A. I'm sorry. Could you repeat that?

4 Q. Well, so, I'm at page 8, and at the beginning of
5 the paragraph, the second paragraph, which says "AIG has
6 received significant support from the United States
7 Government."

8 A. Yes, sir.

9 Q. My question here, there is a list of things
10 underneath that, if that is a summary of the actions
11 that the Government took in connection with the issuance
12 of the third quarter 10-Q. And if you can just give me
13 a high-level summary of the second paragraph with the
14 bullet points as to what these actions were.

15 A. Yes. I think we covered a number of these
16 yesterday, and they included the original facility, the
17 TARP -- the original TARP funds, the ML II and ML III,
18 so a number of things that had already taken place by
19 the time we got into the fourth quarter.

20 Q. Okay. And I take it you believe this is an
21 accurate assessment of the third quarter 2008
22 restructuring?

23 A. A summary, yes.

24 Q. Right.

25 Now, if you would turn to page 22, there's a

1 section here -- this is a -- at the top of the page it
2 says "Appendix 1."

3 A. Yes.

4 Q. Can you describe what the purpose of this
5 appendix is?

6 A. The purpose of this is to document the -- a
7 large number of meetings we had with the company and/or
8 with the Fed itself as part of our gathering of evidence
9 to support the final conclusion on going concern.

10 Q. Okay. And then if you -- in the remainder of
11 this appendix, there are meetings that are numbered on
12 certain dates, and a summary of those meetings. Is that
13 a fair characterization?

14 A. Yes, it is.

15 Q. Okay. Now, if you take a look at page 23 under
16 "Meeting Number 2" at the top of the page, can you
17 describe -- first of all, who is "I" in this
18 conversation, in this memo?

19 A. Tim Ryan.

20 Q. Okay, Tim Ryan. And so if you could describe
21 what was going on there in that first sentence as to
22 what's being memorialized.

23 A. So, at this -- I'm sorry, let me just check the
24 date. So, this is February 27th of 2009. The
25 company -- and we had -- we had come to the conclusion

1 that the company was dependent upon the Fed and the
2 Treasury for continued support, and the question was
3 what kind of commitment would we have and the company
4 have from them and what its form would take.

5 So, this is describing our discussions with them
6 on the press release that the Fed and Treasury would
7 make on the day of the -- of the finalization of the
8 10-K.

9 Q. And you were literally reviewing the language of
10 the release?

11 A. That's correct.

12 Q. Okay. And if you look under "Meeting Number 2,"
13 at the top of page 24, is that a continuation of this
14 dynamic on a different date?

15 A. Yes, although this date is earlier.

16 Q. Right.

17 A. I think this is in reverse order of the
18 meetings.

19 Q. Right.

20 A. Yes, we --

21 Q. The same dynamic?

22 A. Yes, that's correct.

23 Q. Reviewing the -- the press release.

24 Now, if you turn to page -- I mean, excuse me,
25 to document 766, DX 766, can you describe what this

1 document is?

2 A. This was a press release by -- a joint press
3 release by the Fed and the Treasury at the time of the
4 filing of the -- AIG's 10-K.

5 Q. Okay. And can you describe what it says? And I
6 guess I'll start off, is this a document that you would
7 have -- obviously you would have -- you would have
8 reviewed the language of in advance? Is that what we
9 were just looking at in the previous document?

10 A. So, I don't -- I don't think I reviewed the top,
11 where it says "Board of Governors of the Federal Reserve
12 System." None of that was concluded.

13 Q. Sure.

14 A. The primary language we were focused on is at
15 the bottom of that first page --

16 Q. Okay.

17 A. -- that begins "The steps announced today..."

18 Q. Okay. And you literally reviewed that language,
19 and what was, again, the significance of this language?

20 A. Well, this was the language that in our minds --
21 in PwC's minds, that the Fed and the Treasury announcing
22 this for themselves was critical as support for or
23 evidence for their continuing support of AIG.

24 Q. And would you have kept a copy of this press
25 release -- not literally this one, but a press -- the

1 press release in your files?

2 A. We certainly -- this last paragraph, absolutely.
3 Whether we had the final copy of this, I'm not sure.

4 MR. ROBERSON: Your Honor, we move to admit
5 PX 766.

6 MR. BOIES: No objection, Your Honor.

7 THE COURT: All right. Defendant's Exhibit 766
8 is admitted.

9 (Defendant's Exhibit Number 766 was admitted
10 into evidence.)

11 BY MR. ROBERSON:

12 Q. I'd ask you to move to DX 757. Can you tell me
13 what this document is?

14 A. This is -- these are Tim Ryan's notes from the
15 March 1st audit committee meeting.

16 Q. Okay. And this is a document that would have
17 been in the AIG files and that you would have reviewed?

18 A. Yes, that's correct.

19 MR. ROBERSON: Your Honor, we move to admit
20 DX 757.

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

23 THE COURT: Sure.

24 MR. BOIES: No objection, Your Honor.

25 THE COURT: All right. Defendant's Exhibit 757

1 is admitted.

2 (Defendant's Exhibit Number 757 was admitted
3 into evidence.)

4 BY MR. ROBERSON:

5 Q. If you look at the description -- the first
6 paragraph -- substantive paragraph begins, "Herzog
7 reviewed" -- is that David Herzog?

8 A. Yes, it is.

9 Q. The CFO?

10 A. The CFO of AIG at the time.

11 Q. Okay. And if you look at the third paragraph,
12 "David," would that be referring to David Herzog?

13 A. Yes, it would.

14 Q. Okay. Can you tell me what the substance of the
15 third paragraph is?

16 A. That Mr. Herzog was concluding, on behalf of
17 management, that with the Government's support, they
18 thought they had overcome the substantial doubt concern.

19 Q. Okay. Let's turn to JX 188 and at page 191.
20 Can you tell me what this page is? It's a -- it's a
21 letter, it appears to be. Could you describe what it is
22 and what its importance is?

23 A. This is -- page 191 is PricewaterhouseCoopers'
24 opinion on the 12/31/2008 financial statements.

25 Q. Okay. And if you look at --

1 THE COURT: Excuse me.

2 (Pause in the proceedings.)

3 BY MR. ROBERSON:

4 Q. Can you look at the third paragraph of this
5 letter from PwC and describe what the content of that
6 communication is?

7 A. So, this -- this third paragraph, which begins,
8 "As discussed," is an emphasis of a matter paragraph,
9 calling the reader's attention to a couple of footnotes,
10 in summary describing that the company remains dependent
11 upon the continued support of the U.S. -- the Fed and
12 the Treasury.

13 Q. Okay. I'm going to turn now -- well, let me ask
14 you this: Did the issue of AIG's status as a going
15 concern continue to exist as of the end of 2009 and
16 early 2010?

17 A. Yes. I believe we issued -- in our opinion, we
18 issued a similar, if not exact, paragraph at the end of
19 12/31/2009.

20 Q. Okay. Let's turn to -- so, I want to turn to
21 DX 837, and can you describe what this document is?

22 A. So, this is -- in connection with the audit of
23 the 12/31/2009 financial statements, this is our summary
24 of the going concern issue, our conclusions drawn, and a
25 summary of the work that we performed in connection with

1 the -- with drawing our conclusion.

2 Q. And I see that you were one of the authors of
3 this memo. Is that right?

4 A. That's correct.

5 Q. And it's February 20th, 2010?

6 A. That's correct.

7 MR. ROBERSON: Your Honor, we move to admit
8 DX 837.

9 MR. BOIES: No objection, Your Honor.

10 THE COURT: Defendant's Exhibit 837 is admitted.

11 (Defendant's Exhibit Number 837 was admitted
12 into evidence.)

13 BY MR. ROBERSON:

14 Q. Now, the first paragraph of the memo describes
15 in more detail the purpose of the memo, which includes
16 to -- in the first paragraph -- "Describe AIG's basis
17 for concluding that there is not substantial doubt about
18 AIG's ability to continue as a going concern and PwC's
19 agreement with such conclusion," correct?

20 A. Yes.

21 Q. Now, turn to page 4, and at the second-to-last
22 paragraph on the page, which begins with, "As discussed
23 in more detail," can you please explain this paragraph?

24 A. The -- AIG had already implemented with the Fed
25 and Treasury a number of different mitigating

1 transactions and other plans to overcome the concern of
2 substantial doubt, but as part of our role and as our
3 request to the company, they needed to stress their
4 original assumption or their base assumptions.

5 So, this is describing that when they stress
6 those base assumptions, that there still is significant
7 risks to the company with respect to its ability to
8 continue as a going concern.

9 Q. Okay. Please look at page 6, and under the
10 first bullet point, there's a list of effects that could
11 be expected if AIG were to face another rating
12 downgrade. Can you explain -- please explain what those
13 are?

14 A. So, based on our -- the work that we had
15 performed in connection with the company, there were
16 several sources. This -- this is the primary potential
17 issues that would, again, drain liquidity from the
18 company, including collateral posting -- as we discussed
19 yesterday, certain derivative transactions could be
20 cancelled by the counterparty and then would have to be
21 replaced and that could be costly -- and other
22 transactions that we thought could drain liquidity from
23 the company.

24 Q. Okay. Now, look at page 7 and the first full
25 paragraph beginning with, "The conditions and events."

1 I take it this paragraph indicates PwC's assessment that
2 without government support, AIG would likely face a
3 rating downgrade. Is that -- is that correct?

4 A. That's correct.

5 Q. Okay. Now, if you look at the middle of this
6 paragraph, there is a reference to Moody's, and could
7 you -- could you look at that and -- and discuss it?
8 Well, it says, "In a Moody's report on the company dated
9 November 9th, 2009, Moody's indicated that the U.S.
10 Government's continuing support is fundamental to AIG's
11 current ratings and that without U.S. Government
12 support, as much as a six-notch downgrade could result."

13 Can you further -- I mean, that sentence sounds
14 fairly significant to me, at least, as a layperson.

15 A. Well, we -- a large concern -- a large --

16 Q. I apologize, Your Honor, if my commentary is out
17 of line there.

18 THE COURT: It may or may not be, I suppose.

19 THE WITNESS: A large concern of ours was the
20 ratings downgrade. We certainly spoke many times to the
21 company and to the Fed, because they were having
22 conversations with the rating agencies, and we would get
23 rating agency decks, but in this case there was, you
24 know, a document out there or a press release -- I don't
25 remember as I sit here today the source of this Moody's

1 information on the potential size of the downgrade, but
2 we thought that was evidence of our concern that if
3 there was a rating agency -- a rating downgrade, there
4 could be these liquidity impacts that we just talked
5 about, which would put pressure on the substantial doubt
6 of the company's ability to continue as a going concern.

7 BY MR. ROBERSON:

8 Q. Okay.

9 A. So, this was just a piece of evidence about --

10 Q. Right.

11 A. -- the potential risk from the ratings
12 downgrades that we understood at the time.

13 Q. Okay. And on the following page, can you
14 describe -- in the paragraph beginning, "After
15 consideration of the PCAOB standards," can you describe
16 what's going on here on this page and then on the
17 following page?

18 A. Give me just a moment, please.

19 So, as I mentioned earlier, normally, to
20 overcome substantial doubt, if there's some sort of
21 financial support, you would get a letter. So, let's
22 say, for example, from a bank, you would get a letter
23 that said they were committed to provide funding or
24 whatever. We did not have that in this case.

25 So, this is summarizing why, what evidence we

1 did have, and its sufficiency under the auditing
2 standards to support that the commitment of the Fed and
3 the Treasury was there to overcome these substantial
4 doubt concerns.

5 Q. Okay. And is there, in fact, on page 9 of the
6 document such evidence?

7 A. Yes. We -- it draws our conclusion there. We
8 included various emails, the conversations you pointed
9 out all were part of the evidence we had.

10 Q. And that includes an email from Thomas Casarella
11 from the Treasury?

12 A. That's correct.

13 Q. And that was to counsel for AIG?

14 A. Yes, I believe so.

15 Q. And that middle paragraph is the expressed
16 affirmation that you were just discussing?

17 A. I'm sorry. Can I -- you asked if Thomas
18 Casarella was from AIG --

19 Q. No. I said he was from Treasury.

20 A. I stand corrected, then.

21 Q. Right.

22 A. He was from Treasury.

23 Q. And just in that middle paragraph, that's the
24 affirmation of the U.S. Treasury. Is that correct?

25 A. That's correct. This is language that we

1 reviewed prior to its finalization.

2 Q. Okay. We are going to switch subjects now.
3 Just to be clear, can you describe your responsibilities
4 at AIG in the period after the initial federal facility
5 agreement through the remainder of 2008 and then through
6 midyear 2009?

7 A. So, I served in the corporate center, so there
8 were -- the events of 2008 created many accounting
9 issues. I was the primary accounting person supporting
10 Tim Ryan as the lead engagement partner. I was
11 responsible for various corporate functions, including
12 the going concern matter, including issues
13 surrounding -- any issues surrounding the various
14 instruments that we have been talking about, Series C
15 and others.

16 Q. Okay.

17 A. And I guess maybe if I could add to that?

18 Q. Yes, absolutely.

19 A. I was also responsible for general issues
20 management. As issues occurred out in the business
21 units, you know, I was responsible for discussing those
22 with Mr. Herzog and Mr. Cook of AIG.

23 Q. Who was Mr. Cook?

24 A. Mr. Cook was the controller of AIG at the time.

25 Q. Okay. Can you please describe how you viewed

1 the working relationship between the Federal Reserve
2 Bank of New York and AIG between the time of the federal
3 facility agreement and midyear 2009?

4 A. Well, I think they appeared to us at the time to
5 very much be working together to solve the various
6 problems that AIG had with respect to its financial
7 position, but the Fed clearly wanted to be repaid their
8 money and, you know, would -- while collaborative, would
9 have many points of view on the types of solutions that
10 would work for them.

11 Q. Okay. And what was your understanding of who
12 was in control of AIG during this period of time?

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

14 THE COURT: Sustained.

15 BY MR. ROBERSON:

16 Q. Did you meet with AIG's management during this
17 period of time between 2008 and 2009?

18 A. Yes.

19 Q. And were you involved from time to time in
20 discussions of the role that the Federal Reserve Bank of
21 New York was playing at that point, during those periods
22 of time?

23 A. Yes.

24 Q. Can you tell me what your understanding was of
25 who was in control of AIG during that period of time?

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

2 THE COURT: Sustained.

3 BY MR. ROBERSON:

4 Q. Did you have discussions with AIG with respect
5 to who was in control of AIG?

6 A. Yes, we did.

7 Q. And can you describe those discussions?

8 MR. BOIES: Objection, Your Honor. Hearsay.

9 THE COURT: Sustained.

10 BY MR. ROBERSON:

11 Q. Was it your role as an auditor to seek evidence
12 with respect to change of control issues?

13 A. Yes, it was.

14 Q. And in seeking that evidence, did you have
15 discussions with AIG concerning the issue of change of
16 control?

17 A. Yes, we did.

18 Q. Can you describe those discussions?

19 MR. BOIES: Your Honor, could I take the witness
20 on voir dire on this issue if he is going to get into
21 change of control, which has not been an issue raised by
22 the Government or in my direct examination or in their
23 description of what he was going to testify about.

24 THE COURT: Sure, we will give you that
25 opportunity.

1 VOIR DIRE EXAMINATION

2 BY MR. BOIES:

3 Q. When did the issue of change of control become
4 relevant to your audit?

5 A. I think at the time of the transfer of 79 -- or
6 the issuance of 79.9 percent interest to someone other
7 than the existing shareholders.

8 Q. And at that point did you make a determination
9 as to whether there had been a change of control?

10 A. I think the company -- well, again, it's not
11 our --

12 Q. Could I just ask you to listen to my question
13 and try to answer it with a yes or no answer?

14 A. Oh, I apologize, sir.

15 Q. At that time, did you make a determination as to
16 whether there had been a change in control?

17 A. I don't recall right now.

18 Q. After the transfer of 79.9 percent, did there
19 come a subsequent time when you investigated whether
20 there had been a change in control?

21 A. We assessed whether the change in control had
22 accounting implications. I don't remember the date,
23 sir.

24 Q. What I'm asking is, you've testified that there
25 was a question of change of control when 79.9 percent of

1 the stock was transferred. Was there ever any
2 subsequent investigation as to whether there had been a
3 change of control?

4 A. I don't remember if we -- we made a
5 determination about a change in control. We, PwC.

6 Q. And just one more question. Did you ever make
7 an investigation of whether there had been a change of
8 control after the events of the 79.9 percent transfer?
9 If you recall.

10 A. As PwC, we would not have made a determination.

11 MR. BOIES: Thank you, Your Honor.

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

13 Okay, you may continue, Mr. Roberson.

14 CROSS EXAMINATION (cont.)

15 BY MR. ROBERSON:

16 Q. It's not the role of the accountant to make that
17 determination in the first instance, is it?

18 A. No, it is not.

19 Q. It is the role of the auditor -- well, you tell
20 me what the role of the auditor is in assessing a
21 company's determination with respect to change of
22 control.

23 A. Well, if there has been a change in control,
24 there could be various financial implications of that,
25 of that conclusion.

1 Q. And which implications might be triggered?

2 A. Many times there are provisions in contracts
3 that provide for some change if there's a change in
4 control. In some instances you can give what we call an
5 accounting -- a push-down accounting that requires a new
6 basis of accounting when there's a change in control.
7 Those are two examples.

8 Q. Do you recall investigating, auditing a
9 determination of whether or not push-down accounting
10 should be applied?

11 A. Yes, I do.

12 Q. And what was your determination and what were
13 the considerations in that matter?

14 A. The company's conclusion -- with which we
15 concurred -- was that push-down accounting was not
16 required.

17 Q. Can you explain the significance of push-down
18 accounting relative to a change of control?

19 A. So, insurance companies have an historical basis
20 of accounting, and they continue with that historical
21 basis of accounting, but if there's push-down, then you
22 fair value all the assets and liabilities as if there
23 was an acquisition, which effectively there is if
24 there's a -- if a change in control determination has
25 been made for accounting purposes.

1 Q. The fact that AIG did not indicate a change of
2 control in its findings is consistent with PwC's
3 understanding of AIG's operations in the post September
4 16th period. Is that correct?

5 A. Could you repeat that?

6 Q. The fact that AIG did not indicate a change of
7 control in its filings is consistent with PwC's
8 understanding of AIG's operations in the post September
9 16th period. Is that correct?

10 MR. BOIES: Objection, Your Honor. Assumes a
11 fact not in evidence.

12 THE COURT: Mr. Roberson, do you want to rebut
13 that or --

14 MR. ROBERSON: Yeah, I'll -- he has just
15 described how he considered Pw -- the push-down
16 accounting, whether it was going to be applied or not.
17 Push-down accounting would be applied if there was a
18 change of control. He said that AIG made a
19 determination that push-down accounting would not apply.
20 That's indicating that there was not an acquisition or
21 change of control.

22 THE COURT: Well, I think you've gone about as
23 far as you can go with this, really. I mean, you've
24 established the situation with regard to push-down
25 accounting. I don't know what more you can do with

1 that.

2 MR. ROBERSON: Well, my question was simply
3 whether the not -- not using push-down accounting is
4 consistent with PwC's understanding of the matter.

5 THE COURT: I'll let him answer.

6 THE WITNESS: Yes, there -- I think you asked me
7 a different question just now than you did originally.
8 I apologize, but --

9 BY MR. ROBERSON:

10 Q. Fair enough. Fair enough.

11 A. -- but, yes, their conclusion that push-down
12 accounting was not required was consistent with ours or
13 ours was consistent with theirs, if I could say it that
14 way.

15 Q. Fair enough.

16 We're going to switch topics now and we're going
17 to turn to some issues that arose in the 2007 through
18 2008 period, and first I'll ask that you turn to -- I
19 think this may be a handup, DX 1916.

20 May I approach?

21 THE COURT: It's in the notebook.

22 MR. ROBERSON: Oh, it's in your notebook, 1916?

23 THE WITNESS: Yes.

24 MR. ROBERSON: Okay, I apologize. It wasn't in
25 mine.

1 BY MR. ROBERSON:

2 Q. Can you tell me what DX 1916 is?

3 MR. BOIES: Your Honor, it's not in mine either.

4 MR. ROBERSON: Well, then, let me...

5 THE COURT: Do you have this, Mr. Farnan?

6 THE WITNESS: Yes, Your Honor, I do.

7 THE COURT: Okay.

8 MR. ROBERSON: I apologize.

9 BY MR. ROBERSON:

10 Q. Can you describe what this document is, sir?

11 A. These are Mr. Daubeney's notes from a meeting
12 with members of AIG.

13 Q. And Mr. Daubeney, again, was who?

14 A. Mr. Daubeney was a partner with
15 PricewaterhouseCoopers in charge of AIGFP -- auditing of
16 the AIGFP operations.

17 Q. Right. And just let's -- this describes a
18 meeting with a number of people that are listed above.
19 Can you identify who some of these important people are
20 here? M. Sullivan? S. Bensinger? Who are they?

21 A. Yes. Martin Sullivan was the CEO, Steve
22 Bensinger the CFO, and Mike Roemer, the head of internal
23 audit of AIG at the time.

24 Q. Okay. And we see David Herzog was there. His
25 role at that time?

1 A. CFO. CFO of AIG.

2 Q. At that time?

3 A. Oh, this would have been -- the controller,
4 excuse me.

5 Q. And it says, "By Phone J. Cassano," can you
6 describe who that is?

7 A. Joe Cassano, he was the head of AIGFP. I'm
8 uncertain of his title.

9 Q. Okay. And then from PwC, it was Tim Ryan.
10 B. Sullivan, who is that?

11 A. Bob Sullivan, who was the concurring partner on
12 AIGFP.

13 Q. So, I have a few questions --

14 Well, I move to admit DX 1916, Your Honor.

15 MR. BOIES: Your Honor, I would object to this
16 document. I don't -- I don't even think the witness was
17 present at the meeting. If he had been present, in
18 light of the broad scope of documents that I have not
19 objected to, I probably wouldn't have objected to this
20 one, but this is -- this is written by somebody else
21 about a meeting he didn't even attend.

22 THE COURT: Were you at this meeting,
23 Mr. Farnan?

24 THE WITNESS: No, Your Honor.

25 THE COURT: Okay.

1 MR. ROBERSON: Your Honor, if you recall
2 yesterday, there were a number of documents -- there
3 were some documents similar to this that I objected to
4 because he -- there was no foundation that he had -- he
5 personally was at the meeting.

6 The point is -- and I'll ask Mr. Farnan -- this
7 was kept in the PwC files. Is that correct?

8 THE WITNESS: That's correct.

9 BY MR. ROBERSON:

10 Q. The AIG files, right?

11 A. Yes.

12 Q. And you had access to those files, correct?

13 A. Yes.

14 MR. ROBERSON: So, I would move to admit the
15 document.

16 MR. BOIES: Your Honor, I'll withdraw the
17 objection.

18 THE COURT: All right. We will let it in
19 evidence. Defendant's Exhibit 1916 is admitted.

20 (Defendant's Exhibit Number 1916 was admitted
21 into evidence.)

22 BY MR. ROBERSON:

23 Q. Sir, I just want to ask you a few questions --

24 THE COURT: Don't ask him what happened at the
25 meeting, though.

1 MR. ROBERSON: No, I won't. I'm going to ask
2 him about the comments here.

3 BY MR. ROBERSON:

4 Q. If you look at the bottom of this page, on page
5 1 -- well, let me do this. No, I'll start there. At
6 the bottom of page 1, the second-to-last paragraph,
7 there is reference to JC, and do you know who that would
8 be? Would that be Joe Cassano?

9 A. Mr. Cassano.

10 Q. Right. That -- the last two sentences of that
11 paragraph, can you state what he apparently said during
12 that meeting?

13 A. Well, the -- this multisector super senior CDS,
14 the company had theories around how they should be
15 valued, and he's trying to explain, you know, one of
16 those theories that AIGFP held at the time.

17 Q. Okay. And the last sentence says,
18 "Theoretically you could lock in a gain by hedging the
19 position by purchasing the cash security at the lower
20 price than the CDS," right?

21 A. That's correct.

22 Q. And if you look at the second page of the
23 document, there was a meeting after -- I guess after the
24 meeting, there was a separate meeting between SB --
25 Steve Bensinger?

1 A. Yes, sir.

2 Q. -- Martin Sullivan, and MR, that would be
3 Mr. Roemer?

4 A. Mike Roemer.

5 Q. Okay. And members of PwC, correct?

6 A. Yes, that's correct.

7 Q. And here they're discussing issues that PwC had
8 identified over the last six months, right --

9 A. Yes.

10 Q. -- with respect to AIG's operations?

11 THE COURT: I mean, how does he know what
12 happened, whether there was another meeting and what
13 happened at that meeting if he's not even there?

14 MR. ROBERSON: Well, Your Honor, the -- the
15 point of the communication here is with respect to
16 issues that PwC identified with AIG, and I'll ask -- I
17 can ask the witness, were you aware at about this time
18 that PwC was identifying issues with AIG's operations?

19 THE WITNESS: Yes, I --

20 THE COURT: You have the document in evidence
21 for whatever value it may have, but this witness cannot
22 comment upon what happened at these meetings.

23 MR. ROBERSON: I'm not asking him about the --
24 about this meeting. I'm just using this as a -- I mean,
25 I will get off this document and not even ask him

1 about it --

2 THE COURT: All right.

3 MR. ROBERSON: -- but it's the issues that are
4 discussed here that is important.

5 BY MR. ROBERSON:

6 Q. Can you describe whether one of the issues that
7 PwC had with AIG at about this point in time, which is
8 the late fall of 2007, was the super senior CDS
9 valuation?

10 A. Yes, it was.

11 Q. And can you describe that?

12 A. Well, the -- these securities were very hard to
13 value. The company made various assertions to us. As
14 we were doing our work, we -- ultimately we found errors
15 in their calculations, but we had concerns at the time
16 about the access of other parts of AIG oversight to
17 AIG -- sorry, oversight of AIG on AIGFP with respect to
18 their models, their calculations, and their values of
19 these securities.

20 Q. Okay. And was there what was known as an
21 enterprise risk management concern at that point in
22 time?

23 A. Yes. I thought I said ERM, yes.

24 Q. Okay, I'm just trying to --

25 A. Yes, sorry, enterprise risk management.

1 Q. Okay. And what were the -- what were those
2 concerns specifically with enterprise -- with respect to
3 enterprise risk management and operations of FP?

4 A. So, these are very large positions, derivative
5 positions, with, you know, changes in value that had the
6 potential to be very significant, and we would expect
7 that there's a check on -- to the people doing the
8 calculations and designing the models. And in our view,
9 that check, which would come from -- could come from ERM
10 or enterprise risk management and/or from internal
11 audit, was not occurring in this case to our
12 satisfaction.

13 Q. Okay. Another issue was AIG's investment in
14 securities lending. Do you recall what the issues were
15 with the securities lending operations at about this
16 point in time?

17 A. I think there was some mismatch in the term of
18 the securities for the cash that the company received in
19 and where they invested it and, you know, whether the
20 disclosures of those securities was appropriate in the
21 financial statements or the mismatch.

22 Q. Okay. Was that what would be known as a
23 liquidity mismatch?

24 A. Yes.

25 Q. And just to be clear, that's a liquidity

1 mismatch between the duration -- I don't know if I'm
2 using the correct word -- but the duration of the loan
3 that was made and the investment of the cash collateral?

4 A. Yes. If I could clarify?

5 Q. Yes.

6 A. The amounts due to the various cash providers,
7 so banks --

8 Q. Right.

9 A. -- et cetera, and the assets that AIG invested
10 those in, which was generally RMBS securities.

11 Q. And those were longer duration. Is that right?

12 A. They were -- yes, they were longer duration than
13 the bank loans.

14 Q. Right. Now, was there also a concern at about
15 this time with a sort of systemic risk where one part of
16 AIG, namely FP, was reducing its exposure to the
17 residential mortgage sector while at the same time the
18 securities lending portion and other investments --
19 other portions of AIG investing in -- making investments
20 were continuing to invest in the mortgage-related assets
21 at that point in time?

22 MR. BOIES: Your Honor, I am going to object on
23 leading. I -- even though --

24 THE COURT: I'll sustain the objection.

25 BY MR. ROBERSON:

1 Q. Do you recall an issue that PwC identified with
2 respect to the consistency of AIG's overall investment
3 strategies with respect to investments in
4 mortgage-backed securities?

5 A. We -- yes. We did not think that there was one
6 point of view -- clear point of view across the
7 companies, various subsidiaries of AIG with respect to
8 the risk in the mortgage market.

9 Q. And could you describe the differences in tack
10 that were taken by FP versus the securities lending
11 program?

12 A. My recollection is that AIGFP made a
13 determination, -I forget exactly when, but I think in
14 2006 -- to decrease -- they thought there was a lot of
15 risk in that market and had decided to decrease their
16 exposure to their risk or at least not increase it,
17 whereas the securities lending operation continued to
18 buy large amounts of RMBS, residential mortgage-backed
19 securities, during that time.

20 Q. During the 2006 and 2007 periods?

21 A. That's correct.

22 Q. Okay. Let's turn to DX 966. Can you describe
23 what DX 966 is?

24 A. This is a significant matter in -- filed in our
25 audit work papers conclusion with the 12/31/2007 audit.

1 It describes a significant deficiency in -- that we
2 identified in connection with that work.

3 Q. Is this a memo -- a continuation of what we were
4 discussing just a moment ago with respect to some of the
5 risks that PwC was identifying in AIG's operations?

6 A. This is one of them, yes.

7 Q. Okay.

8 Your Honor, we move to admit DX 966.

9 MR. BOIES: May I just make a brief inquiry on
10 voir dire, Your Honor?

11 THE COURT: Sure.

12 FURTHER VOIR DIRE EXAMINATION

13 BY MR. BOIES:

14 Q. Mr. Farnan, is this a document that you would
15 have reviewed at or about February 28th, 2008?

16 A. Yes, sir.

17 MR. BOIES: No objection, Your Honor.

18 THE COURT: All right. Defendant's Exhibit 966
19 is admitted.

20 (Defendant's Exhibit Number 966 was admitted
21 into evidence.)

22 CROSS EXAMINATION (cont.)

23 BY MR. ROBERSON:

24 Q. If you would turn to page 3 of the document,
25 that first paragraph, can you tell me what that is

1 discussing?

2 A. This is describing the mismatch that I alluded
3 to earlier in terms of the securities lending portfolio.

4 Q. And just to clear up the record, there is a
5 reference to, in the bottom of this paragraph, to July
6 31st, 2008. Is that a typo?

7 A. Yes.

8 Q. It should be 2007?

9 A. That's correct.

10 Q. Okay. And just can you -- can you just further
11 explain what a liquidity mismatch is?

12 A. If the term of assets that you have, their
13 maturity, let's say, or ability to monetize those is
14 different from the term of the debt that those assets
15 are supporting.

16 Q. It creates what sort of situation?

17 A. So, if -- if the -- if you have to -- if you
18 cannot liquidate these assets or don't have enough cash
19 to pay the debt when it comes due.

20 Q. Okay. I want to ask about -- well, did there
21 come a time in 2007 when PwC began to have concerns with
22 the operations of FP and AIG's oversight of FP?

23 A. Yes.

24 Q. Can you -- and can you explain what those
25 concerns were? And let's talk first about AIG's

1 oversight of FP.

2 A. Well, certainly by the fourth quarter of 2007,
3 at which time the economic climate was challenging,
4 making valuation of those complex instruments more
5 challenging, we began to have concerns about the
6 oversight of AIGFP. The models were complex, they were
7 challenging, yet only the folks at AIGFP seemed to have
8 the requisite knowledge and insights into those models.

9 We knew that from both discussions and our
10 attempts to get information from AIGFP, as well as from
11 conversations with ERM and those at corporate -- at AIG
12 corporate.

13 Q. And did you reach a determination with respect
14 to the capabilities of the head of FP, Joe Cassano?

15 A. I don't think we reached -- no, I don't think we
16 reached a conclusion with respect to his capabilities.

17 Q. Okay. Did you -- did PwC express any concerns
18 to AIG's board with respect to Mr. Cassano?

19 A. Yes, we did.

20 Q. Can you explain what those were?

21 A. Mr. Cassano was a -- was not as transparent with
22 PricewaterhouseCoopers as we would expect from an audit
23 client.

24 Q. And --

25 A. He was a strong leader to his people, but very

1 challenging to work with for us as an audit firm,
2 including the message that he gave to his people about
3 how to work with us.

4 Q. And what was that message, as you understood it?

5 A. That we had to wait until they were ready to
6 give us information, which wasn't very comforting as an
7 auditor.

8 Q. Okay.

9 A. Can I add to that?

10 Q. Yes, absolutely.

11 A. We expect full access to information and
12 particularly when it's complex and the issue is
13 substantive, as -- like I said before, and that was not
14 happening at AIG -- AIGFP.

15 Q. Okay. I'm going to turn to DX 967, and, again,
16 this might be a handout. I'm not sure. Do you have 967
17 in your binder? No? Okay.

18 May I approach?

19 THE COURT: Yes.

20 BY MR. ROBERSON:

21 Q. Can you describe what DX 967 is?

22 A. So, these are -- these appear to be Tim Ryan's
23 notes from the audit committee meeting in December of
24 2007.

25 Q. Okay.

1 A. I say notes because there's some notations at
2 the top of page 1.

3 Q. And this is a document that would be maintained
4 in PwC's AIG file?

5 A. We're required to include audit committee
6 communications in our file, yes.

7 Q. And this is a document that you would have had
8 access to?

9 A. Yes.

10 MR. ROBERSON: Your Honor, we move to admit
11 DX 967.

12 MR. BOIES: May I just make one inquiry, Your
13 Honor?

14 THE COURT: Sure.

15 FURTHER VOIR DIRE EXAMINATION

16 BY MR. BOIES:

17 Q. Is it your testimony, sir, that what is attached
18 here is an AIG document?

19 A. No. I think this is a PwC document.

20 Q. Who prepared this PwC document?

21 A. Our team would have prepared it.

22 Q. Do you know who on the team?

23 A. Well, it's a collective effort, sir,
24 ultimately -- ultimately the responsibility of Mr. Tim
25 Ryan.

1 Q. Did you participate in that team?

2 A. Yes.

3 Q. What was your participation --

4 A. Well --

5 Q. -- in writing this document?

6 A. -- certain of these particular issues I would
7 have been raising with Mr. Ryan and editing, as
8 appropriate.

9 Q. My question was, what was your participation in
10 the preparation of this document? If you recall.

11 A. Yeah, I'm just perusing it, sir, to -- I've seen
12 a lot of documents. As a reviewer, as an editor, but
13 not the originator.

14 Q. But you would have edited this document, is it
15 your testimony?

16 A. Do you have the complete work paper?

17 MR. ROBERSON: I don't know if we have the
18 complete work paper here.

19 THE WITNESS: I -- I don't know as I sit here
20 today.

21 MR. BOIES: I'd object, Your Honor.

22 MR. ROBERSON: Your Honor, he's -- he's
23 established that it's kept in PwC's file. He's
24 acknowledged that he worked on this matter, and he's
25 said that it's -- it was -- that he is a partner that

1 was -- had a substantial role in AIG during this time.
2 So, the fact that he actually recognized these issues,
3 had it in AIG's file, I think that's a sufficient
4 connection for this to be admitted into evidence, Your
5 Honor.

6 THE COURT: Well, I'm going to overrule the
7 objection, and I will allow the admission of Defendant's
8 Exhibit 967. I have to tell you, I don't know how much
9 weight I'm going to give to sort of the mudslinging of
10 AIG in the years leading up to the Government's rescue.
11 I mean, I'm sure there were many companies in America
12 that didn't see what was coming, and so I don't really
13 see the point of all this.

14 MR. ROBERSON: Understood, Your Honor. We have
15 a few questions, if you'll permit.

16 THE COURT: Sure, go ahead. I'm just telling
17 you, you can maybe streamline it if you want to, because
18 it's not resonating with me.

19 MR. ROBERSON: Certainly.

20 CROSS EXAMINATION (cont.)

21 BY MR. ROBERSON:

22 Q. At page 2 of the document, it says, "The
23 following pages outline key issues which occurred or
24 exist at AIG." Do you see that?

25 A. Yes, I do.

1 Q. And there's mortgage market trends, market risk
2 management, there's securities lending exposure. Do you
3 see that?

4 A. Yes, I do.

5 Q. And it says, "For each issue we have documented
6 our view as to the root causes along with our
7 recommendations of action steps to be performed by AIG
8 and Senior Management," correct?

9 A. Yes.

10 Q. So, just to -- I won't ask much about this, but
11 if you look at page 3, there's mortgage market trends,
12 and does this discuss -- do the first three paragraphs
13 here discuss this issue with respect to the operations
14 of -- or the differences between FP in getting out of
15 the mortgage-related assets versus other aspects of --
16 or subsidiaries of AIG that were increasing their
17 exposure to mortgage-related securities during this
18 period of time?

19 A. This is a summary of what I had mentioned
20 earlier was -- that there was inconsistent approaches to
21 the exposures in the mortgage market at the time.

22 Q. Okay. And if you look at the -- at page 5, at
23 the top of the page, "Market Risk Management," can you
24 explain what that paragraph identifies?

25 A. Well, I would say, first of all, I -- yes, I

1 can, but I was not --

2 Q. Okay.

3 A. -- particularly involved in the market risk
4 management section of this communication to AIG.

5 Q. Okay. Then it goes to the evaluation of FP's
6 securities, right?

7 A. Yes.

8 Q. And that would be Mr. Daubeney who was
9 concentrating in that area for PwC?

10 A. Correct.

11 Q. Okay.

12 A. But it also covered AIG Investments.

13 Mr. Daubeney also covered AIG Investments.

14 Q. Okay. And then the securities -- just so we
15 have it, the documents tied to your testimony earlier,
16 page 7, there's a description of the securities lending
17 exposure and the liquidity mismatch, correct?

18 A. Yes.

19 Q. Do you recall that there came a point in time
20 where PwC made a material weakness or raised the issue
21 of material weakness at AIG?

22 A. Yes, we did.

23 Q. And can you describe what that was and when that
24 was?

25 A. I believe that was in February of 2008.

1 Q. And what were the circumstances regarding that?

2 A. The -- by that time we had discovered errors in
3 the calculations by AIGFP in its super senior credit
4 default swaps, plus we had the concerns I expressed -- I
5 had mentioned earlier about oversight of the models,
6 involvement of ERM and AIG corporate into the
7 amounts being -- the values being generated out of that
8 business, and those concerns led us to raise our
9 concerns with AIG's top management.

10 Q. Okay. Including meeting with the board. Is
11 that correct?

12 A. That -- that -- I believe that's correct, yes.

13 Q. Okay. Can you turn to DX 88? Can you describe
14 what this document is?

15 A. These are Mr. Tim Ryan's notes of a meeting that
16 he and Bob Sullivan had with the company.

17 Q. And it refers to "a meeting with Bob W." Who is
18 that?

19 A. Bob Willumstad.

20 Q. Okay. And in the interests of moving this along
21 quickly, can you just give us a brief summary of what
22 was communicated during that -- well, first, let me move
23 to admit -- you would have seen this document as -- it
24 was in AIG's files. Is that correct?

25 A. Yes.

1 THE COURT: Were you at this meeting?

2 THE WITNESS: No, I was not, Your Honor.

3 MR. ROBERSON: We move to admit DX 88, Your
4 Honor.

5 MR. BOIES: No objection, Your Honor. I'm
6 confident the Court can make its determination as to
7 what this stuff is worth.

8 THE COURT: Defendant's Exhibit 88 is admitted
9 without objection, although I probably would have
10 sustained that one. But go ahead.

11 (Defendant's Exhibit Number 88 was admitted into
12 evidence.)

13 BY MR. ROBERSON:

14 Q. Do you recall -- well, the memo refers to MW.
15 Does that refer to material weakness?

16 A. That's correct.

17 Q. Okay. And can you explain generally what a
18 material weakness finding is and its significance?

19 A. I won't get the technical definition exactly
20 right, but it's a control deficiency or a group of
21 control deficiencies in internal control or financial
22 reporting that won't -- such that a material error can
23 occur in the financial statements and not be caught on a
24 timely basis.

25 The implications are if there's a material

1 weakness determination, that's required to be disclosed
2 by the company, and our internal control opinion would
3 be qualified for that material weakness. It's a very
4 large red flag generally to investors.

5 Q. Okay. And if you turn to JX 188 at page 325,
6 this is the -- again, this is the 10-K for 2008?

7 A. Yes. These are excerpts, I believe.

8 Q. Right, it's excerpts. And at the top of the
9 page, is that a description of the material weakness
10 issue?

11 A. Sir -- which page are you on, sir? I'm sorry.

12 Q. 325.

13 A. This is 12/31/2008? Yes, a summary, except this
14 is the 12/31/2008. So, by this time, they had
15 remediated --

16 Q. Correct.

17 A. -- that material weakness.

18 Q. Right.

19 A. This is describing backwards what had existed at
20 the time.

21 Q. Exactly. That's all I'm asking, if that's what
22 that describes.

23 A. Yes.

24 Q. Okay. Now, let's move on to JX 7. Can you tell
25 me what this document is? It's already been admitted

1 into evidence.

2 A. (Document review.) This is an 8-K filed with --
3 by AIG in February of 2008.

4 Q. And what is it disclosing?

5 A. Various changes -- disclosures they needed to
6 make to their investors about correcting previous ones
7 that they -- previous disclosures they had made.

8 Q. And at page 5, at the bottom paragraph, can you
9 tell me what the significance of that paragraph is?

10 A. So, we -- as we were just covering, we were
11 describing to them we thought there was a material
12 weakness that was going to be unable to be remediated,
13 and they are disclosing that fact to their investors,
14 that we had communicated that.

15 Q. Is there significance to the fact that the
16 language says that AIG had been advised by PwC that
17 the -- that there was a material weakness?

18 A. Well, yes, I think so. Normally a company would
19 make the determination and we would concur. I think in
20 this case we had a strong opinion that caused them to
21 say they had been told there was a material weakness.

22 Q. Okay. Do you recall the effect of the
23 correction of the material weakness with respect to
24 AIG's modeling of its CDS portfolio?

25 A. I'm sorry. Could you repeat that?

1 Q. Do you recall the amount of the correction that
2 was needed to properly set forth the valuations of
3 AIGFP's CDS portfolio?

4 A. In -- at what period?

5 Q. In connection with this re -- with this material
6 weakness finding.

7 A. So, I think we found several errors, several
8 specific errors, totaling more than \$4 billion. I think
9 the charge they took related to this was 7 billion, if
10 I'm not mistaken.

11 Q. Okay. Well, let's just tie that down, and I
12 won't delay, Your Honor, but it's DX 100.

13 THE COURT: While we're finding that, I have a
14 question, Mr. Roberson.

15 MR. ROBERSON: Yes.

16 THE COURT: Many of the documents that are in my
17 binder have been highlighted with yellow highlight.

18 MR. ROBERSON: Then you might have gotten the
19 wrong binder.

20 THE COURT: Well, I'm wondering if others have
21 that same situation.

22 MR. BOIES: Sometimes, but sometimes not. We
23 did not understand that either the Court or the witness
24 was being given highlighted documents.

25 THE COURT: Do you have highlighting,

1 Mr. Farnan?

2 THE WITNESS: I have seen a couple, Your Honor.

3 MR. ROBERSON: Then that was inadvertent error,
4 Your Honor. That was not supposed to be in the binders.
5 It was supposed to be for the --

6 THE COURT: Would you tell me when you hit a
7 situation like that, because that is totally improper.

8 MR. ROBERSON: I agree, Your Honor. I
9 apologize. I had no idea the binders had been
10 highlighted.

11 THE WITNESS: Can I clarify, Your Honor? The
12 next time I see one?

13 THE COURT: Yes. We don't have to go back
14 retroactively, but that's problematic.

15 MR. DINTZER: Your Honor, so we can look into
16 it, if you could give us an example of one of the
17 documents that has the highlighting, we will look into
18 that.

19 THE COURT: Sure. Hang on one second.

20 Well, just as one example, Joint Exhibit 188,
21 the excerpt from page 325.

22 MR. DINTZER: Okay. Thank you.

23 THE COURT: That's one of many.

24 MR. DINTZER: We will take a look at it, Your
25 Honor.

1 THE COURT: All right. There is probably up to
2 25 examples of that that I've seen.

3 MR. ROBERSON: And I apologize, and I can
4 explain what happened -- what must have happened, was
5 that I have highlights on my documents. I asked our
6 paralegals to review the documents -- this -- you know,
7 the highlighted copies so they could be pulling it up on
8 the screen quickly, and somehow the instruction must
9 have been misunderstood and copies were literally put
10 into the binders. And I apologize, Your Honor.

11 THE COURT: Okay.

12 BY MR. ROBERSON:

13 Q. So, at DX 100 -- and I guess you can tell me
14 whether there are any highlights in this document,
15 because mine has a lot.

16 THE COURT: DX 100?

17 MR. ROBERSON: DX 100.

18 BY MR. ROBERSON:

19 Q. Does yours have highlighting, sir?

20 A. No, it does not.

21 Q. Okay. Can you describe what DX 100 is, sir?

22 A. This is our assessment of the multisector super
23 senior credit default swap deficiency at the end of the
24 year.

25 Q. And is this a document that was kept in PwC's

1 files in the normal course?

2 A. Yes, it was.

3 Q. And this is a document that you would have
4 reviewed?

5 A. Reviewed and discussed because of the
6 significance of the material weakness.

7 Q. Okay.

8 Your Honor, we move to admit DX 100.

9 MR. BOIES: No objection, Your Honor.

10 THE COURT: Defendant's Exhibit 100 is admitted.

11 (Defendant's Exhibit Number 100 was admitted
12 into evidence.)

13 BY MR. ROBERSON:

14 Q. And just to -- a couple of things. First, with
15 respect to the amount of the losses on the CDS, if you
16 look at page 3 under "Multisector asset backed CDS
17 process to estimate fair value, December 31, 2007," can
18 you tell us what the mark-to-market losses were as of
19 the fourth quarter of 2007?

20 A. 10.9 billion.

21 Q. Okay. And if you describe -- well, let's look.
22 If you look at the bottom of page 7 of the last
23 paragraph, it says, "In assessing the primary drivers of
24 the deficiency in controls over the fair value estimate
25 of AIGFP's super senior credit default swaps and

1 oversight thereof, we considered the three overarching
2 themes described above."

3 And above would be the next page, right?

4 MR. BOIES: You mean the prior page?

5 MR. ROBERSON: I'm sorry. Well, let me -- it
6 says three overarching themes, but -- and it says
7 described above, but it's got a colon there, and it's
8 actually referring to the next page. Is that correct?

9 THE WITNESS: I believe that's correct.

10 BY MR. ROBERSON:

11 Q. Right. And there are three different kinds of
12 deficiencies there, right?

13 A. I don't know if there were three deficiencies.
14 There were three themes that led us to our conclusion,
15 yes.

16 Q. Okay. And it -- and that was models and
17 process, third party information, and oversight?

18 A. Yes.

19 Q. And if you look at the table here, there is a
20 chart that describes the -- well, you tell me what
21 this -- the chart, look at boxes 2 and 3, and can you
22 describe to me what those are reflecting?

23 A. So, this is a standard template that we follow
24 when there is a deficiency in internal control to assess
25 its significance, to make a determination from our point

1 of view whether it's -- what kind of deficiency it is.
2 So, this helps us gather all the right facts in a
3 consistent way.

4 So, boxes 2 and 3 are just talking about the
5 likelihood of an error. We already had found errors, as
6 I mentioned, but the likelihood that an error could
7 occur in the future and the size of that error.

8 Q. Okay. And is there quantification here of the
9 error that was identified?

10 A. Yes, here as well as previously in the memo.

11 Q. Okay. And, again, how much was that?

12 A. The error -- we had found three errors, I
13 believe. There was a 91 -- a 90 million, a 900 million,
14 and then this \$3.6 billion error.

15 Q. Okay. Any other errors?

16 A. I think the -- those were the three errors that
17 I recall.

18 Q. Okay.

19 A. There was some just change in the fair value
20 generally because of the change in the economic climate.

21 Q. Okay. I'd like to turn now to some of the
22 documents that the Plaintiffs introduced yesterday,
23 quickly. If you could turn to PTX 332 in Plaintiffs'
24 binder.

25 A. Sorry, 332?

1 Q. Yes.

2 Are you there?

3 A. Yes, I am.

4 Q. Can you look at the paragraph that begins, "It
5 would not be appropriate"?

6 A. Sorry. Which page again?

7 Q. It's page 4 of 12.

8 A. Yes, I have it.

9 Q. Okay. If you look at that first sentence, can
10 you describe what your understanding of that sentence
11 is?

12 A. May I add some context?

13 Q. Sure, absolutely.

14 A. So, this memo is -- relates to the valuation of
15 the preferred shares, as we talked about yesterday. So,
16 when you value those, the -- we were trying to -- the
17 company was trying to assess, with our assistance, so
18 with our auditing, of how to value it.

19 So, this particular sentence is talking about
20 what's the date, how do you measure to determine the
21 value of the preferred stock.

22 Q. Okay. And what's the statement here with
23 respect to the appropriateness of using the price prior
24 to the announcement?

25 A. Well, the definition of -- the definition of

1 fair value -- fair value, as we look at it in terms of
2 accounting, implies that there's some transparency of
3 information, and what this sentence is alluding to is
4 before announcements about the Government's or the Fed
5 and the Treasury's assistance, that the market would not
6 have had the information it needed to accurately price
7 the stock.

8 Q. And take a look at the second sentence here,
9 which begins with, "The price movement after September
10 17th..." Do you see that?

11 A. Yes, I do.

12 Q. Is that sentence an assertion by AIG that
13 valuation dates after September 17th, 2008, are not
14 appropriate?

15 A. Yes, it is.

16 Q. Okay. Did PwC concur with AIG's assertion that
17 valuation dates after September 17th, 2008, were not
18 appropriate?

19 A. Our only conclusion needed to be that the --
20 that this -- in the context of the financial statements
21 as a whole, that the preferred stock was appropriately
22 valued, and that the date they chose, which was
23 September 16, using the 17th pricing, was appropriate,
24 and that's what we did.

25 Q. Okay. Let's turn to PTX 444. If you can turn

1 to page 5 of the document, which is page 3 of the memo
2 itself.

3 A. Is this the one that starts, "Accounting
4 Issues/Conclusions"?

5 Q. Yes, at the top of the page.

6 A. Right.

7 Q. And do you recall Mr. Boies asking you some
8 questions about the charter amendment and the text under
9 the "Conclusions/Considerations" heading?

10 A. Yes.

11 Q. Review the -- if you would review the paragraph
12 at the bottom of this page, starting with
13 "Notwithstanding..." Do you see that?

14 A. Yes, I do.

15 Q. Could you review that, continuing over to the
16 next page?

17 A. Yes.

18 Q. Was it PwC's understanding that there were
19 options available that could be used to incentivise
20 shareholders to vote for the charter amendment?

21 A. Well, I think -- yes.

22 Q. Okay. And if you look at the paragraph that
23 starts on page 6 with the word "Economically," could you
24 read that? Page 4 of the document.

25 A. I'm sorry?

1 Q. We're just continuing where we --

2 A. Yes, I'm sorry. Right. Could you point me
3 again to where you are?

4 Q. So, we are at page 6 of 11 if you are using the
5 document -- the lower pagination, we're in the section
6 at the top of the chart, the top box.

7 A. Okay.

8 Q. The paragraph that begins "Economically..."

9 A. Yes.

10 Q. What was PwC's understanding of what the
11 economic effect would be on shareholders if they
12 approved the charter amendment?

13 A. Well, the preferred stock allowed voting rights
14 and dividends and other -- the terms of the preferred
15 stock, you know, were essentially similar to the -- in
16 terms of ownership to the common stock of the company at
17 the time. So, this is merely describing that since the
18 79.9 percent -- there's going to be a 79.9 percent
19 shareholder, that the individuals were in no different
20 position.

21 Q. Okay. At the bottom of page 6 of 11 and
22 trailing over to page 7 of 11, there's the
23 measurement/valuation of the preferred stock, and you
24 see there's -- the first sentence there says, "The
25 fundamental premise applied when valuing the Preferred

1 Stock was that it effectively represented common stock."

2 And do you remember that discussion yesterday
3 with Mr. Boies with respect to that issue?

4 A. I'm sorry, I do not.

5 Q. Okay, that's fine. He says, "Accordingly, when
6 valuing the preferred stock, the Company applied an 'as
7 if converted' approach, only after considering several
8 other approaches and engaging the use of an outside
9 valuation specialist," right?

10 A. Yes.

11 Q. Then there's a description of the effect of that
12 recognition, and can you describe -- take your time and
13 read that paragraph -- what PwC concluded in that
14 regard?

15 A. So, this is a summary of our understanding at
16 the time about the similarities -- with respect to value
17 of the preferred stock, the similarities and differences
18 between the common and the preferred.

19 Q. Okay.

20 A. And we concluded that -- that they were --
21 generally, they were not dissimilar, although there were
22 differences.

23 Q. Okay. And at the bottom there's a conclusion.
24 What was that conclusion? In bold.

25 A. That this was no impact on the conclusion we had

1 had at the original issuance of the preferred.

2 Q. Okay. And if you look at the last sentence in
3 that paragraph above the phrase or statement on no
4 impact, it says, "However, the preferred shares are
5 entitled to certain registration rights to facilitate
6 disposition."

7 Do you recall what that sentence refers to?

8 A. That was included in the preferred shares, that
9 there were certain rights given to the holder of that
10 instrument.

11 Q. Such as?

12 A. Well, I think -- I don't remember specifically,
13 but rights that would entitle them to push the company
14 to register the securities to facilitate, you know,
15 trading.

16 Q. Okay. And then if you look at the handout,
17 which was PTX 1066, do you recall Mr. Boies asking you
18 questions about the history of credit losses on the
19 super senior portfolio?

20 A. Yes, I do.

21 Q. Okay. And that was as of November of 2007?

22 A. That's correct.

23 Q. And do you recall him asking you about what had
24 been paid on the super senior portfolio?

25 A. Yes, I do.

1 Q. And one thing you mentioned as an example of a
2 payout were collateral postings, correct?

3 A. Yes, that's correct.

4 Q. Now, turn to page 9 of this document, and
5 under -- the first sentence under the heading "Other
6 Factors" reads -- I assume there's a typo here, but it
7 says "There" -- and I assume the word "are" is
8 missing -- "certain other factors that were considered
9 in evaluating these portfolios," right?

10 A. Yes.

11 Q. And one was -- well, just to be clear, the
12 portfolios here is referring to the super senior CDS
13 portfolio, correct?

14 A. That's correct.

15 Q. And what is the first other factor identified in
16 this Section E that should be considered in evaluating
17 those portfolios?

18 A. I'm sorry. Could you repeat that?

19 Q. What is the first -- there's a list of -- E is
20 "Other Factors," right?

21 A. Yes.

22 Q. And it's other factors of valuing the super
23 senior CDS.

24 A. Yes.

25 Q. And there are other factors listed below, and

1 can you tell me what the first factor listed is?

2 A. Well, many of the contracts had collateral
3 provisions requiring AIG to post collateral for changes
4 in fair value and for other factors within those
5 agreements.

6 Q. Okay. Do you recall mentioning ML III when you
7 were discussing this exhibit with Mr. Boies?

8 A. Yes, I do.

9 Q. Okay. And did AIG report valuation losses on
10 its multisector CDS portfolio prior to ML III?

11 A. Valuation losses, yes.

12 Q. Okay. And ML III did not have any effect on the
13 valuation losses already recorded by AIG on its
14 multisector CDS portfolio. Is that correct?

15 A. It did not that I recall.

16 Q. Okay.

17 No further questions, Your Honor.

18 THE COURT: All right. Thank you, Mr. Roberson.
19 Do you have any redirect?

20 MR. BOIES: I do, Your Honor.

21 THE COURT: All right. Let's go ahead with
22 that.

23 REDIRECT EXAMINATION

24 BY MR. BOIES:

25 Q. Good morning, Mr. Farnan.

1 A. Good morning.

2 Q. Let me begin by directing your attention to
3 Plaintiffs' Trial Exhibit 444 that counsel was just
4 asking you about. And do you recall that he directed
5 your attention to pages 6 and 7 of this document?

6 A. Yes.

7 Q. And first he asked you whether you understood
8 that there were options that could be used to
9 incentivise shareholders to vote for the charter
10 amendment. Do you recall that?

11 A. Yes.

12 Q. And you said yes. Do you recall that?

13 A. Yes.

14 Q. What were those options, as you understood it?

15 A. Well, I don't know that I remember a specific
16 option for the company, but --

17 Q. Well, let me -- let me point that out. That's
18 my question.

19 A. I'm sorry.

20 Q. You told counsel for the Defendant that you
21 understood there were options that could be used to
22 incentivise shareholders to vote for the charter
23 amendment, correct?

24 A. Yes.

25 Q. And my question to you is -- and this is just a

1 yes or no question -- do you recall, as you sit here
2 now, what those options were?

3 A. I remember one option was not to continue to
4 help the company.

5 Q. That was one option that the Government had to
6 incentivise the shareholders to vote for the charter
7 amendment? Is that your testimony?

8 A. That's what I --

9 Q. That's a yes or no question. Is that your
10 testimony?

11 A. Yes. That's what I was thinking of when I was
12 asked that question, sir.

13 Q. Did anybody tell you that one of the options
14 that the Government thought it had to incentivise
15 shareholders to vote for the charter amendment was to
16 stop supporting AIG?

17 A. No.

18 Q. Is that something you just thought of yourself?

19 A. Well --

20 Q. Is that something you just thought of yourself?

21 A. I remember at the time thinking how would a
22 shareholder be incentivised to go forward, and one is
23 the company would go forward or not.

24 Q. And all my question is, sir --

25 A. I'm sorry. I'm making it complicated for you.

1 Q. Sir, just listen to my questions, and I'll try
2 to be as clear as I can.

3 A. Thank you.

4 Q. If you don't understand one of my questions,
5 just let me know --

6 A. Okay.

7 Q. -- and I'll rephrase it.

8 Your testimony is no one ever told you anything
9 about any options that could be used to incentivise
10 shareholders to vote for the charter amendment, correct?

11 A. That's correct.

12 Q. But at the time, one option that occurred to you
13 was that the Government might threaten to not continue
14 to support AIG unless the charter amendment was passed,
15 correct?

16 A. Yes. I was concerned about that option.

17 Q. But no one ever suggested to you that that was
18 something the Government was considering, correct?

19 A. No.

20 Q. Now, counsel also directed your attention to
21 page 7 and the first paragraph on page 7 of the exhibit
22 that begins, "Because the Preferred Stockholder held a
23 controlling voting interest in the Company..." Do you
24 see that?

25 A. Yes, sir.

1 Q. And you said this was your understanding at the
2 time. Do you recall that?

3 A. Yes.

4 Q. And the time of this was February or March of
5 2009, correct?

6 A. Yes, although the memo is dated January 19th,
7 but -- but the work paper is dated in -- in February,
8 sir.

9 Q. That's a good point. When you referred to this
10 being the understanding at the time, you were referring
11 to January of 2009?

12 A. I -- I only meant it as opposed to now.

13 Q. Did there come a time when you learned that your
14 understanding was incorrect?

15 A. With regards to -- with respect to the preferred
16 stock, I recall we had an original understanding of --
17 that we -- that was later changed, yes.

18 Q. And --

19 A. It's not described -- it's not described well
20 here, though, I don't think.

21 Q. Here what you're saying -- well, let me ask you.
22 Was it your understanding in January of 2009 that
23 because the preferred stockholders held a voting
24 interest in the company, authorization of the additional
25 shares necessary to effect conversion was viewed as a

1 near certainty?

2 A. Originally, that was our expectation.

3 Q. I understand that that was originally your
4 expectation and that that expectation later changed,
5 correct?

6 A. Yes, sir.

7 Q. What I'm asking you now is, had that expectation
8 changed by January of 2009?

9 A. May I just read a couple parts of the memo to
10 refresh my --

11 Q. Read as much as you like, and when you're
12 finished and you're prepared to proceed, let me know.

13 A. (Document review.) Okay. Could you repeat your
14 question, sir?

15 Q. Certainly. You had identified an original
16 expectation that the preferred stockholders could
17 control the charter amendment. You identified that that
18 understanding changed at some point in time. My
19 question now is, had that understanding, your original
20 understanding, changed by January of 2009?

21 A. Yes, it had.

22 Q. Let me direct your attention to the sentence
23 immediately preceding the sentence counsel for the
24 Defendant directed your attention to. He directed your
25 attention to the sentence that said, "However, the

1 preferred shares are entitled to certain registration
2 rights..." Do you see that?

3 A. Yes.

4 Q. The preceding sentence says, "We acknowledge
5 that because the conversion rights are not guaranteed
6 the preferred shares are dissimilar from the common
7 shares in that there is no available market to dispose
8 of such shares (liquidity)."

9 And was that PwC's understanding in January of
10 2009?

11 A. Yes.

12 Q. Let me turn to the subject of push-down
13 accounting, and do you remember testifying that the
14 company had decided that push-down accounting was not
15 required as a result of the 79.9 percent issuance of the
16 preferred stock?

17 A. Yes, sir.

18 Q. And that Pricewaterhouse confirmed that?

19 A. We concurred with the company's conclusion.

20 Q. Concurred. And let me just make clear, when you
21 say -- as you have a number of times -- that PwC concurs
22 in something, what you're saying is that you are
23 concluding that the company's position is reasonable.
24 Is that fair?

25 A. In the context of the financial statements

1 overall, yes, sir.

2 Q. Yes. That is, you might actually disagree with
3 the company, but if that disagreement does not affect
4 the financial statements overall, you would nevertheless
5 concur, correct?

6 A. Yes. If there's an error, we would, of course,
7 communicate that, but if -- if it doesn't affect the
8 financial statements or our opinion on internal
9 controls, then we would still concur.

10 Q. Now, with respect to push-down accounting, when
11 is push-down accounting appropriate?

12 A. Well, it's only required by the SEC if there's a
13 change in ownership of 95 percent or greater. There may
14 be other circumstances where it's appropriate.

15 Q. It's only permitted for acquisitions of at least
16 80 percent, correct?

17 A. That's the way the rule is written, yes.

18 Q. Okay. So, because the Government took 79.9
19 percent, there would be no push-down accounting,
20 correct?

21 A. I don't think it's that simple.

22 Q. You don't? Let me ask you to look at
23 Plaintiffs' Trial Exhibit 284, which is in evidence.
24 And this is an email to you, dated October 7, 2008,
25 attaching a draft of an AIG policy memorandum. Do you

1 see that?

2 A. Yes.

3 Q. And if you look at page 4 of the exhibit, the
4 middle of the page, you see the letters EITF D-97.

5 A. Yes.

6 Q. What does that refer to?

7 A. The EITF is the emerging issues task force.
8 It's an accounting body that sets certain rules for
9 accountants.

10 Q. Okay.

11 And it says in this accounting memorandum,
12 setting certain rules for accountants, it describes that
13 in determining whether push-down accounting is required,
14 a registrant must distinguish between transactions
15 resulting in only a significant change in
16 (recapitalization of) a company's ownership, and
17 purchase transactions in which push-down accounting is
18 required. In this topic, the SEC staff has also
19 described that acquisitions of greater than 95 percent
20 require push-down accounting; acquisitions of 80-95
21 percent perm push-down accounting; and for acquisitions
22 below 80% push-down accounting is prohibited.

23 Do you see that?

24 A. Yes.

25 Q. And was that your understanding in October of

1 2008?

2 A. That was my understanding of what the company
3 wrote to us, yes.

4 Q. Well, was that also your understanding of what
5 the SEC staff required?

6 A. Yes.

7 Q. And did you ever get back to anybody at AIG and
8 say, "I think that what you have written in this
9 document about when push-down accounting is permitted
10 and when it is prohibited was wrong"?

11 A. No. I don't think I said it was wrong.

12 Q. Let me turn next to the question of material
13 weaknesses.

14 THE COURT: Should we take a break, Mr. Boies,
15 before you get into that?

16 MR. BOIES: Yes, Your Honor.

17 THE COURT: All right. Let's reconvene at
18 11:20.

19 (Court in recess.)

20 THE COURT: Thank you. Please be seated.

21 Mr. Boies, go ahead.

22 MR. BOIES: Thank you, Your Honor.

23 BY MR. BOIES:

24 Q. Just before the break, we were turning to the
25 subject of your testimony concerning material weakness.

1 Do you recall that?

2 A. Yes, sir.

3 Q. Prior to today, did you discuss your testimony,
4 the subject of your testimony concerning material
5 weakness with anyone?

6 A. No. I'm sorry, that's incorrect. The -- I
7 was -- the -- I think the Department of Justice,
8 represented by Mr. Roberson and others, I met with them
9 two or three times during the course of this where they
10 would ask me questions.

11 Q. And they asked you questions including about
12 material weakness?

13 A. Yes.

14 Q. And they would show you documents?

15 A. Yes.

16 Q. Now, in addition to meeting with attorneys for
17 the Justice Department, did you meet with other people
18 in preparation for your testimony?

19 A. Yes.

20 Q. Who else did you meet with in preparation for
21 your testimony?

22 A. I'm sorry. So, Mr. Cravath, who is the
23 attorneys for PricewaterhouseCoopers, and two members
24 of -- sometimes members of PricewaterhouseCoopers were
25 there as well, represented by our Office of General

1 Counsel.

2 Q. And did you meet with other people in
3 preparation for your testimony?

4 A. Not since my deposition that I recall.

5 Q. Did you discuss, for example, your testimony
6 with lawyers from the Debevoise firm?

7 A. Not that I recall.

8 Q. Is it your testimony that you have not met with
9 any of the lawyers from the Debevoise firm in connection
10 with your testimony?

11 A. Could you give me a name, sir? I'm sorry, I've
12 lost track of the attorneys. My apologies on that. But
13 since my deposition, I met with -- three or four times,
14 including -- I don't remember who-all would have been
15 there. If there was a Debevoise lawyer, I don't recall
16 that.

17 Q. But you do recall meeting with lawyers from the
18 Justice Department who are sitting here at the table?

19 A. Yes, sir. Yes.

20 Q. And did they go over with you various questions
21 that they were going to ask you?

22 A. Yes.

23 Q. And did they talk to you about the various
24 answers that you gave to those questions?

25 A. Well, they would ask me questions, and sometimes

1 I would answer, yes.

2 Q. And then did they ask you those questions --

3 A. Follow-on questions as well, yeah.

4 Q. And they would show you documents?

5 A. Yes.

6 Q. Now, with respect to -- oh, before I do that,
7 PwC was auditing AIG, correct?

8 A. Yes.

9 Q. And you considered AIG your client, correct?

10 A. Yes.

11 Q. Did you talk to anyone from AIG as to whether or
12 not it was appropriate for you to be prepared for your
13 testimony by lawyers for the Justice Department?

14 A. No.

15 Q. Why not?

16 MR. ROBERSON: Objection. Argumentative, Your
17 Honor.

18 THE COURT: Overruled.

19 THE WITNESS: I recall -- so, I hope I'm getting
20 this history right. So, before I think my original
21 deposition in this case, I had raised to our Office of
22 General Counsel the fact that I would be testifying, and
23 it -- if there was anything to handle with respect to
24 that, I would expect that they would do it.

25 BY MR. BOIES:

1 Q. Okay. Now, let me turn to the substance of your
2 testimony about material weakness. The first time that
3 PwC identified a material weakness at AIG was when?

4 A. The first -- are we in this time period or do
5 you mean ever, sir?

6 Q. Well, let's begin with ever.

7 A. I think there were material weaknesses at the
8 time of the restatement of the 2004 financial
9 statements.

10 Q. And that would have been in 2004 and 2005?

11 A. I think the financial statements were issued in
12 2005, as I recall.

13 Q. Subsequent to the 2005 period, did PwC identify
14 any material weaknesses at AIG?

15 A. Well, we identified the super senior --
16 multisector super senior valuation, oversight thereof,
17 that we had talked about earlier today. I don't -- but
18 other than -- other new ones, not that I recall.

19 Q. So, the only material weakness after 2005 was
20 this super senior valuation and oversight material
21 weakness that you've identified. Is that correct?

22 A. Yes, but can I clarify that? I don't remember
23 when -- the material weaknesses in 2004, when they were
24 remediated. So, that's why I say there was no new ones
25 that I'm aware of until the super senior.

1 Q. Now, did the material weakness PwC identified
2 have anything to do with the CDS modeling that AIG was
3 doing?

4 A. Yes. I believe we found errors in their models.

5 Q. And were those errors in the CDS modeling errors
6 that you believed were a material weakness?

7 A. Not individually. The material weakness
8 included several things that we found.

9 Q. It did, but when you listed the material
10 weaknesses --

11 A. Um-hum.

12 Q. -- did you list the errors in the CDS modeling?

13 A. Listed where, sir?

14 Q. In the documents that you've looked at and
15 testified about, you listed the material weaknesses or
16 the elements of the material weakness, correct?

17 A. Okay, yes, but elements of a material weakness
18 and a material weakness are different. We only had one
19 material weakness.

20 Q. You had one material weakness.

21 A. We had elements that included models -- the
22 valuation, which included the models and the data, and
23 the oversight thereof.

24 Q. And what I am only trying to ask right now is
25 you had one material weakness.

1 A. Yes, sir.

2 Q. And that was the material weakness that you have
3 just sort of described generally as valuation and
4 oversight, correct?

5 A. Yes.

6 Q. And you, in your papers, listed what the
7 elements and components of that material weakness were,
8 correct?

9 A. Yes.

10 Q. And the -- you have gone over some of those
11 documents with counsel for the Defendant today, correct?

12 A. Yes.

13 Q. And do the documents that you went over with
14 counsel for Defendant today accurately list what the
15 components and elements were of the material weakness
16 that you found?

17 A. Yes, they do.

18 Q. And counsel for the Defendant directed your
19 attention to Joint Exhibit 7 that is in your white
20 binder, and this is the 8-K SEC filing of AIG on
21 February 11th, 2008, correct?

22 A. I apologize. The exhibit number again, sir?

23 Q. JX 7.

24 A. Yes.

25 Q. And this is the February 11th, 2008, AIG 8-K,

1 right?

2 A. Yes.

3 Q. And I'd like to direct your attention to page 5,
4 which was a page that counsel for Defendant directed
5 your attention to, and the last paragraph, the first
6 sentence he directed your attention to, concerning PwC's
7 conclusion of a material weakness. Do you see that?

8 A. Yes.

9 Q. And the description of the material weakness
10 there is "a material weakness in its internal control
11 over financial reporting and oversight relating to the
12 fair value valuation of the AIGFP super senior credit
13 default swap portfolio..." Do you see that?

14 A. Yes.

15 Q. And was that an accurate description of the
16 material weakness that PwC found?

17 A. Yes, I believe it was at the time, and there's a
18 final description of it in their 10-K filing, but I
19 don't remember if it's exactly the same as this.

20 Q. But this you would have reviewed -- PwC would
21 have reviewed before it was submitted, correct?

22 A. Yes, but we didn't -- and as you may not know,
23 we -- we're not responsible for the 8-K, but we would
24 have objected if we thought it was materially
25 inaccurate.

1 Q. That's right. You reviewed it, and you would
2 have objected if you thought it was materially
3 inaccurate.

4 A. Yes.

5 Q. And you did not object to this description, did
6 you?

7 A. The firm did not, no.

8 Q. And you personally did not, correct?

9 A. Right. Yes.

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

18 Do you see that?

19 A. Yes.

20 Q. And that is a statement that, if you had
21 objected to, you would have said something -- PwC would
22 have said something, correct?

23 A. Yes. And I'm not sure if we did or didn't in
24 their final distribution.

25 Q. When you say "final distribution," you're not

1 suggesting that is not the final 8-K, are you?

2 A. No, I meant -- I meant with respect -- our
3 opinion is on the audited financial statements, not on
4 this 8-K.

5 Q. But I am trying to focus on the 8-K right now,
6 and you reviewed this 8-K before it was filed, correct,
7 sir?

8 A. Yes, that's true, but may I say our
9 responsibility is different with respect to an 8-K and
10 an audited financial statement.

11 Q. I understand that. You have said that before.

12 A. Okay.

13 Q. But you reviewed this 8-K statement, correct,
14 sir?

15 A. Yes, we did.

16 Q. And if you had found anything in this 8-K
17 statement that you believed was inaccurate, that is,
18 that PwC believed was inaccurate, you would have told
19 the company.

20 A. Yes, sir.

21 Q. And did you ever tell the company that this
22 statement that I just read was inaccurate?

23 A. I don't recall.

24 Q. And by "you," I mean PwC. You understand that?

25 A. Yes, yes.

1 Q. Counsel for the Defendant also showed you DX 88,
2 and this is also, I think, in your white binder. This
3 is a document that is dated February 6th, 2008. Do you
4 see that?

5 A. Yes, sir.

6 Q. That is five days prior to the 8-K statement
7 that we just saw, correct?

8 A. Yes.

9 Q. And it's -- did PwC ever say to AIG, as a result
10 of what is contained in Defendant's Exhibit 88, that PwC
11 thought that AIG should not file that 8-K with the
12 statement in it that I just quoted?

13 A. I don't recall for certain.

14 Q. All right. You said that in the fourth quarter
15 of 2007, PwC expressed concern with AIG's board that
16 Mr. Cassano was not being sufficiently transparent with
17 PwC. Do you recall that?

18 A. Yes, sir.

19 Q. And that you -- that is, PwC -- was "not
20 comfortable" with Mr. Cassano. Do you recall that?

21 A. With respect to the transparency I believe I
22 said or meant.

23 Q. Did the transparency issue with Mr. Cassano ever
24 get corrected?

25 A. Well, we obtained -- our primary purpose was to

1 obtain information to be able to audit the financial
2 statements, which we did accomplish. Mr. Cassano -- I
3 do not recall. I'm sorry.

4 Q. Let me make sure I understand your last answer.

5 A. Mr. Cassano -- I apologize, that was confusing.

6 Q. I think I understand your last answer, but I
7 just want to be sure. What you're saying is you don't
8 recall whether the transparency problem or cooperation
9 problem with Mr. Cassano was corrected, but whether or
10 not you got the information from Mr. Cassano, you were
11 satisfied you got the information.

12 A. That's correct.

13 Q. Did AIG ever disclose to the public, insofar as
14 you are aware, any transparency problem with respect to
15 Mr. Cassano?

16 A. Not that I recall.

17 Q. Did PwC ever suggest or request or require that
18 AIG disclose any transparency issue with respect to
19 Mr. Cassano?

20 MR. ROBERSON: Objection. Compound.

21 THE COURT: Overruled. If you understand the
22 question, you can answer it.

23 THE WITNESS: Not that I recall, sir. Can I --
24 may I ask -- I assume by "disclose," you meant to the
25 public?

1 BY MR. BOIES:

2 Q. Yes, that's what I meant.

3 In the fourth quarter of 2007 -- indeed, in the
4 third quarter, beginning in the third quarter of 2007,
5 there were severe dislocations in the markets for MBS
6 securities, particularly those with subprime collateral,
7 correct?

8 A. Yes, sir.

9 Q. And those dislocations impacted not just AIG but
10 capital markets as a whole, correct?

11 A. Yes, sir.

12 Q. And those dislocations continued into 2008 and,
13 indeed, even got worse in 2008, correct?

14 A. Yes, sir.

15 Q. And those dislocations affected a wide variety
16 of financial companies, correct?

17 A. That's correct.

18 Q. In addition to auditing AIG, PwC did work for
19 the Federal Reserve Bank of New York, correct?

20 A. Yes. That was my understanding.

21 Q. And with respect to any of the issues that you
22 were dealing with and that you've testified about here
23 today, back in 2008 and 2009, did you have any
24 communications with the PwC people that were working for
25 the Federal Reserve Bank of New York?

1 A. No, I did not.

2 Q. For example, one of the issues that counsel for
3 the United States and I had talked to you about is the
4 issue of the extent to which, if any, the Federal
5 Reserve Bank of New York controlled AIG or was a related
6 party to AIG. Do you recall that?

7 A. Yes, I do.

8 Q. Did you ever have any --

9 A. I should add, I don't remember people asking me
10 about related party, but yes.

11 Q. You do understand that that was one of the
12 issues that was considered.

13 A. Yes.

14 Q. By PwC.

15 A. Yes.

16 Q. The related party issue.

17 A. At -- now, are you speaking of at the Federal
18 Reserve or at AIG?

19 Q. I -- both, actually, but let me take them one by
20 one. The extent to which, if any, AIG and Federal
21 Reserve Bank of New York were related parties was
22 something that was considered by the AIG PwC team,
23 correct?

24 A. Yes.

25 Q. And the extent to which the Federal Reserve Bank

1 of New York and AIG were related parties was also
2 considered by PwC personnel working for the bank,
3 correct?

4 A. I have no knowledge of that.

5 Q. You never tried to find that out?

6 A. No. I do recall somebody showing me, during my
7 deposition, a couple of documents from somebody possibly
8 on the Federal Reserve team, but, no, we never -- I
9 never tried to find that out.

10 Q. This was a document that came from the Federal
11 Reserve Bank of New York team, from PwC? Is that what
12 you're saying?

13 A. As I recall, sir, during my deposition, I
14 believe with your colleagues, I was shown documents
15 that -- with a name, a PwC name that I had never seen
16 before, and I remember seeing two documents or it
17 referenced it twice, that appeared to me to be the PwC
18 Federal Reserve team, not the AIG team.

19 Q. Let me -- let me show you a document and see if
20 this is the document you have in mind.

21 I have handed you Plaintiffs' Trial Exhibit 419,
22 and I would ask you whether this is the document that
23 you are referring to.

24 A. I don't remember if it's the document, but I
25 remember the name, Benjamin Cheng. This person must --

1 I don't believe they were a member of the AIG team.

2 Q. Benjamin Cheng, his name is right at the top of
3 the first page of Plaintiffs' Trial Exhibit 419, is a
4 PwC person, correct?

5 A. According -- I do not know him, but according to
6 his email address, yes.

7 Q. And except for being shown this document at your
8 deposition, it's your testimony that no one ever
9 discussed it with you?

10 A. Yes. That's my testimony.

11 Q. Let me direct your attention, since you have
12 this document, to the second paragraph on the document,
13 the second sentence, and would you read that sentence to
14 yourself.

15 MR. ROBERSON: Your Honor, can I object? This
16 document hasn't been admitted into evidence, and as such
17 it would be improper to ask for substantive testimony
18 from the witness. There is no foundation whatsoever
19 that this witness has any connection with this document;
20 in fact, he's established the opposite, that there is no
21 connection with this witness. So, there is no basis
22 then to introduce this substantive discussion when the
23 document itself can't be or I believe shouldn't be
24 introduced into evidence.

25 THE COURT: Does this go to the issue of

1 control?

2 MR. BOIES: Yes, Your Honor.

3 THE COURT: I'll allow it.

4 THE WITNESS: Could you repeat the question,
5 please?

6 BY MR. BOIES:

7 Q. Yes.

8 If you look at the second sentence of the second
9 paragraph, it says --

10 A. The paragraph begins "I have attached"?

11 Q. Yes, and the sentence begins, "For the AIG
12 related party analysis..." Do you see that?

13 A. Yes, I do.

14 Q. And the document then goes on -- and I
15 understand this is not your document, but I just want to
16 ask whether you agree with it. The document goes on to
17 say, "...we would support the view that AIG is a related
18 party through indirect control or significant influence
19 beyond the bank's normal supervisory capacity."

20 Do you see that?

21 A. Yes, I do.

22 Q. Is that a point that you agreed with during the
23 time you were working at AIG?

24 MR. ROBERSON: Objection, Your Honor. He didn't
25 even see this communication. This calls for speculation

1 as to what somebody else meant when they wrote an email.

2 THE COURT: No, I don't think so. Overruled.
3 I'll allow his answer.

4 THE WITNESS: I don't have enough -- this is
5 talking about how -- their view of AIG as a related
6 party to the Fed, presumably in connection with the work
7 that they're doing for the Fed. I don't have enough
8 information to conclude one way or the other.

9 BY MR. BOIES:

10 Q. And it's your testimony that you never had any
11 communications with them about what their findings were.

12 A. I did not, and I don't -- I'm not aware of
13 anybody on the AIG team that did.

14 Q. Let me ask you to -- do you still have
15 Plaintiffs' Trial Exhibit 1066? This was a document
16 that I had handed you and then counsel had asked you
17 about.

18 A. Yes, I do, sir.

19 Q. Let me direct your attention to the first page
20 of the document, and this is -- this is dated November
21 7th, 2007, correct?

22 A. Yes, sir.

23 Q. And the very first sentence says, "AIGFP as a
24 core part of its business writes credit default swaps on
25 portfolios of reference obligations to a variety of

1 market counterparties on a second loss basis."

2 Do you see that?

3 A. Yes, I do.

4 Q. And was that PwC's understanding as of this
5 time?

6 A. Yes, it was.

7 Q. And the next sentence says, "These transactions
8 have levels of subordination as noted by management that
9 are designed to never suffer economic loss even under
10 recessionary scenarios."

11 Do you see that?

12 A. Yes.

13 Q. And was that PwC's understanding at the time?

14 A. That was our understanding of their assertion,
15 yes.

16 Q. And did you understand that that assertion was a
17 reasonable one?

18 A. We didn't have evidence to the contrary, I don't
19 think, at the time of November 7th, 2007.

20 Q. And had you examined management's assertion to
21 see whether there was evidence to the contrary?

22 A. We would have in the context of valuing these
23 securities at fair value on the financial statements of
24 AIG.

25 Q. The next sentence says (as read): "The

1 rationale for these transactions from the perspective of
2 the counterparty to the transaction may be for two
3 distinct reasons as discussed in management's analysis -
4 to achieve regulatory capital relief under Basel for
5 European banks, or other reasons which may include U.S.
6 regulatory treatment on money market funds, or other
7 reasons."

8 Do you see that?

9 A. Yes, I do.

10 Q. And was that consistent with PwC's understanding
11 in November of 2007?

12 A. Yes. Yes.

13 Q. And the next sentence says, "As noted by
14 management, the pricing on these is typically considered
15 to be a negotiated level to reflect sharing of economic
16 benefits obtained by the counterparty and the time and
17 effort involved by AIGFP to determine a reasonable
18 return to AIGFP, rather than a reflection of the
19 economic risk in the portfolios."

20 Do you see that?

21 A. Yes.

22 Q. Was that PwC's understanding in November of
23 2007?

24 A. Yes, it was.

25 THE COURT: Mr. Boies, may I follow up with

1 something that you were mentioning a few minutes ago?

2 MR. BOIES: Yes. Yes, Your Honor.

3 THE COURT: Mr. Farnan, insofar as you're aware,
4 was PwC doing accounting or auditing work for both the
5 Federal Reserve Bank and AIG at the same time?

6 THE WITNESS: Sir, I don't -- Your Honor, I
7 honestly don't know what we were doing for the Federal
8 Reserve. I only became aware, actually, I believe
9 afterwards or maybe at the time that the firm was
10 providing some assistance to the Federal Reserve Bank,
11 but we had separate teams.

12 THE COURT: Well, insofar as you know, did --
13 did PwC, as an entity, view that as a conflict of
14 interest or not?

15 THE WITNESS: I don't -- I don't believe we did.
16 I was not aware that anybody had concluded that was a
17 conflict of interest, but the firm --

18 THE COURT: I'm referring to after the Federal
19 Reserve Bank of New York became heavily involved in AIG
20 through this rescue process. It would seem to me to
21 possibly raise a conflict of interest issue for PwC, but
22 you're saying you never understood that?

23 THE WITNESS: Well, so, may I clarify?

24 THE COURT: Yes.

25 THE WITNESS: So, during this time of crisis and

1 after the Federal Reserve's assistance, we had many,
2 many calls, as you might imagine, with the highest
3 levels of the firm, including what we would call our
4 risk management function, and they would have been more
5 aware of whatever we were performing for the Federal
6 Reserve.

7 I was never told by any of those people that we
8 had any conflicts. So, I was relying upon people
9 several layers above me in terms of --

10 THE COURT: Sure.

11 THE WITNESS: -- making me aware.

12 THE COURT: And I certainly recognize all you
13 can give me is the information you're aware of. So,
14 thank you.

15 BY MR. BOIES:

16 Q. Let me turn to the issue of your going concern
17 testimony, and when did PwC first do a going concern
18 analysis for AIG?

19 A. An extended analysis?

20 Q. Well, let's begin with any analysis, and then
21 we'll get to when you started an extended one.

22 A. I'm sorry. So, as a regular part of a quarterly
23 review, one of the standard steps that we have is to
24 consider whether there is evidence contrary to the
25 presumption of going concern. So, we do that every

1 quarter on every engagement we -- I shouldn't say every,
2 but we should be doing that on every engagement that we
3 have even today.

4 Q. And when was the first time that PwC identified
5 evidence contrary to the assumption of a going concern
6 for AIG?

7 A. The first time we had evidence that caused us to
8 do more extended procedures was in the third quarter of
9 2008.

10 Q. And that third quarter of 2008 would have
11 started in July 2008. Is that correct?

12 A. The third quarter is July 1 through September
13 30th, yes, sir.

14 Q. And when in that quarter did you begin doing
15 what you referred to as an extended analysis of the
16 going concern assumption?

17 A. This was -- would have been subsequent to
18 September 22nd, September 16th.

19 Q. So, it would have been --

20 A. The latter half of September.

21 Q. So, relatively late in the third quarter.

22 A. Yes, sir.

23 Q. So, the first time you began an extended
24 analysis based on evidence contrary to the assumption of
25 a going concern with AIG would have been in the second

1 half of September of 2008?

2 A. That's correct.

3 Q. Did you do audits of the AIG insurance
4 subsidiaries? That is, did PwC do audits of the AIG
5 insurance subsidiaries?

6 A. Of the -- their statutory financial statements,
7 yes.

8 Q. And those subsidiaries were for the most part
9 100 percent owned by AIG, correct?

10 A. To the best of my recollection.

11 Q. Did you do a going concern analysis for the
12 insurance subsidiaries?

13 A. Not that I recall. I was not a signing partner
14 on any of those valuations. It's possible that it was
15 done, but I don't know.

16 Q. Do you know whether PwC ever had any evidence
17 contrary to the assumption of a going concern for any of
18 the AIG insurance subsidiaries?

19 A. I don't recall.

20 Q. You testified -- and this may or may not have
21 related to insurance subsidiaries -- but you testified
22 that some subsidiaries of AIG were struggling at some
23 point. Do you recall that?

24 A. Yes.

25 Q. Which subsidiaries were struggling?

1 A. I -- did I -- I don't remember if I
2 characterized it as struggling, but I think, for
3 example, the life insurance companies -- I forget their
4 names by title, but in Houston, had -- they held a
5 number of the securities lending assets or they had
6 participated in the securities lending pool and so
7 experienced large, other than temporary declines in
8 their investments and required capital.

9 Q. And was that capital put in?

10 A. Yes, it was.

11 Q. Were you responsible for the Houston life
12 insurance company that you refer to?

13 A. No, I was not.

14 Q. Other than the Houston life insurance company --
15 and by the way, do you remember the actual name of that
16 company?

17 A. Now that you said Houston, I may be even more
18 confused, but the Sun America Life Insurance Companies.
19 There were more than one, I believe, statutory entity.

20 Q. But they were all under the Sun name?

21 A. Yes, I believe so. I'm not 100 percent certain
22 of that, sir.

23 Q. Other than the Sun Life Insurance Companies, if
24 we can call them that, were you aware of any other AIG
25 subsidiaries that, in your view, would be struggling?

1 MR. ROBERSON: Objection as to time.

2 BY MR. BOIES:

3 Q. During the period of 2007, '8, '9, and '10.

4 A. I believe during the crisis period, particularly
5 in the latter half of 2008, there was a number of places
6 where the company -- AIG, Inc., you know, put capital
7 into insurance companies, including ones outside of the
8 United States.

9 Q. Other than --

10 A. For example, in Asia, Nan Shan, I believe, was
11 one of those companies.

12 Q. Do you know what the major AIG subsidiaries
13 outside of the United States were?

14 A. So, AIA was a Hong Kong-based company; Nan Shan,
15 which is a Taiwan-based company; there was Starr and
16 Edison for -- I'm probably shortcutting their names, but
17 they were in Japan. Those companies -- I'm sorry, those
18 companies were part of the ALICO operations. ALICO is a
19 Delaware insurance company with global life operations.

20 Q. Was AIA part of ALICO?

21 A. No.

22 Q. So, there was AIA and then there was ALICO.

23 A. Yes.

24 Q. And Nan Shan.

25 A. And then I believe Nan Shan was a separate

1 Taiwan operation.

2 Q. And in the 2007-2010 period, did AIG put any
3 capital into AIA or ALICO?

4 A. I don't recall.

5 Q. Other than your information that AIG, the
6 parent, put capital into various subsidiaries, did you
7 have any information concerning the business or
8 prospects of the AIG subsidiaries?

9 MR. ROBERSON: Objection. Vague.

10 THE COURT: Do you understand the question?

11 THE WITNESS: Could you repeat it?

12 BY MR. BOIES:

13 Q. Sure.

14 Other than your information that AIG, the
15 parent, was putting capital into various subsidiaries,
16 did you have any information concerning the business or
17 prospects of the AIG subsidiaries?

18 MR. ROBERSON: Same objection, Your Honor.

19 THE COURT: Do you understand the --

20 THE WITNESS: So -- yes, Your Honor.

21 THE COURT: Go ahead.

22 THE WITNESS: I believe there were -- as a
23 result of the crisis and concerns, there were slow-downs
24 in new business production, for example, in a number of
25 places. I don't remember which specific ones. So, that

1 was, yes, evidence of challenges companies were facing.

2 In fact, to the best of my recollection, the
3 commercial insurance operations of AIG began to change
4 their name to Chartis as a result of perceived issues
5 with respect to the AIG brand because of those -- its
6 issues.

7 BY MR. BOIES:

8 Q. What were the AIG companies that became Chartis
9 called before they became called Chartis?

10 A. Commercial Insurance Group, I believe, at least
11 that's how we referred to them.

12 Q. Now, did the Commercial Insurance Group actually
13 consist of a number of different insurance companies?

14 A. Yes, it did.

15 Q. And those insurance companies had different
16 names, correct?

17 A. Yes, they did.

18 Q. And how many of those names had the word "AIG"
19 or "American International Group" in there?

20 A. I don't recall as I sit here, but many of them
21 did not.

22 Q. You said that you had represented one company --
23 one insurance company that was in bankruptcy. Do you
24 recall that?

25 A. I believe I said I audited a company that had

1 been in -- that was in bankruptcy.

2 Q. You audited a company that was in bankruptcy.

3 A. That's correct.

4 Q. An insurance company.

5 A. It was a -- okay, so that was in Virginia, and
6 I'm probably forgetting the specific description of its
7 status, but it may have been in liquidation. It had
8 been taken over by the state.

9 Q. This --

10 MR. ROBERSON: Objection. Mischaracterizes
11 prior testimony, Your Honor.

12 THE COURT: Overruled. We're trying to get at
13 that.

14 BY MR. BOIES:

15 Q. You audited a company in Virginia, correct?

16 A. Yes, sir.

17 Q. And that company was either in bankruptcy or
18 liquidation.

19 A. Yes. That's my recollection.

20 Q. Was that company an insurance company?

21 A. Yes, it was.

22 Q. And what was the name?

23 A. Fidelity Bankers Life Insurance Company.

24 Q. Other than auditing Fidelity Bankers, have you
25 ever audited an insurance company?

1 A. You're asking me personally now?

2 Q. Yes.

3 A. No, I have not.

4 Q. With respect to your own personal experience,
5 have you ever had any personal experience where a parent
6 company went into bankruptcy but the subsidiaries did
7 not?

8 A. No, I don't think so or I don't recall.

9 Q. Are you aware of any instances in which a parent
10 company went into bankruptcy and insurance subsidiaries
11 were seized or taken over by state regulators?

12 A. Well, I believe that's happened, yes, but I
13 couldn't name the companies.

14 Q. You never had any familiarity with --

15 A. No personal -- yeah, no personal experience with
16 those.

17 Q. Let me ask you about some testimony that you
18 gave, I think in the going concern context, to counsel
19 for the United States about the dependence of AIG on
20 continuing commitment of the Government.

21 A. Yes, sir.

22 Q. And you talked about how the Government gave
23 commitments, the Federal Reserve, the Treasury gave
24 commitments that they would continue to support AIG. Do
25 you recall that?

1 A. Yes, sir.

2 Q. Without the commitment by the United States
3 Government, would PwC have been able to conclude that it
4 was reasonable for AIG to continue as a going concern?

5 A. I believe we concluded at the time that that was
6 unlikely at the end of '08.

7 Q. Let me ask you to look at your deposition
8 testimony, which is in a binder that's up there. In
9 particular, I direct your attention to page 295. When
10 you have that, would you let me know.

11 MR. ROBERSON: Which page of the deposition
12 itself?

13 MR. BOIES: 295.

14 MR. ROBERSON: What is the date of the
15 deposition?

16 MR. BOIES: It is December 20, 2013.

17 MR. ROBERSON: This is the second deposition,
18 okay.

19 BY MR. BOIES:

20 Q. Do you have that, sir?

21 A. Yes, I do.

22 Q. And I'll direct your attention to the top of the
23 page where you were being asked questions about the
24 commitment of the United States Government to continue
25 to support AIG. Do you see that?

1 A. Yes, I do.

2 Q. And then at line 11:

3 "QUESTION: Without this commitment by the U.S.
4 Government would PwC have been able to conclude that it
5 was reasonable for AIG to continue as a going concern at
6 this time?"

7 Do you see that?

8 A. Yes, I do.

9 Q. And your answer is:

10 "ANSWER: I don't know the answer to that
11 question."

12 Do you see that?

13 A. Yes.

14 Q. And that was --

15 A. But there's additional -- there's additional
16 words --

17 MR. ROBERSON: And I would --

18 THE WITNESS: -- after that --

19 MR. ROBERSON: -- object for completion that the
20 entire answer be put into the record, Your Honor.

21 THE COURT: All right. Mr. Farnan, would you
22 want to read the rest of your answer, there?

23 THE WITNESS: "ANSWER: Ultimately, we got" -- I
24 believe it says there -- "by their actions, but also by,
25 in our view, the evidence by their statement was

1 sufficient at the time to draw the conclusion that we
2 did draw."

3 BY MR. BOIES:

4 Q. And the conclusion that you did draw was that it
5 was reasonable to conclude AIG would continue as a going
6 concern, correct?

7 A. With the continuing support of the Fed and the
8 Treasury, yes.

9 Q. Now, is there any more that you want to read?

10 A. I don't -- I just was asked to read the last
11 part of that sentence, which I -- so, no, there isn't.

12 Q. Okay. Now, going back to the question:

13 "QUESTION: Without this commitment by the U.S.
14 Government, would PwC have been able to conclude that it
15 was reasonable for AIG to continue as a going concern at
16 that time?"

17 And you said:

18 "ANSWER: I don't know the answer to that
19 question."

20 Do you see that?

21 A. Yes.

22 Q. Now, was that accurate and truthful testimony at
23 the time you gave it?

24 A. Yes --

25 MR. ROBERSON: Your Honor, objection. There's a

1 complete answer. He has cut off half it, even though we
2 read the second half, so if he wants to ask the
3 question, he should read the entire answer.

4 THE COURT: Overruled. Answer the question,
5 please.

6 THE WITNESS: Yes, but this is a -- yes, this
7 was true at the time. This is what I believed -- this
8 was a hypothetical question that we never actually had
9 to answer, because the company did obtain the support.

10 BY MR. BOIES:

11 Q. I understand that.

12 A. Okay.

13 Q. And I understand that what you're saying here is
14 that that's a hypothetical question, and you ultimately
15 didn't have to answer that question because you got
16 comfortable.

17 A. Yes, which that was good.

18 Q. Yes, and that was good.

19 But my point goes to the hypothetical question,
20 because of some of the questions that counsel for the
21 Defendant asked you about.

22 A. Okay. I understand.

23 Q. And with respect to the hypothetical of whether
24 you would have been able to conclude that it was
25 reasonable for AIG to be a going concern in the absence

1 of that commitment, that was a hypothetical question
2 that you didn't know the answer to, correct?

3 A. Yes.

4 Q. Let me turn to the question of the valuation
5 date, and there were a number of questions that you were
6 asked about picking September 16th as a valuation date.
7 Do you recall that?

8 A. Yes.

9 Q. And am I correct that what happened was that AIG
10 had picked September 16th as a valuation date, and you
11 concluded -- that is, PwC concluded that that was
12 reasonable?

13 A. Yes, that's correct.

14 Q. And you did not conclude or PwC did not
15 conclude, one way or the other, as to whether there were
16 other reasonable valuation dates, correct?

17 A. That's correct.

18 Q. Now, with respect to September 16th, I want to
19 direct your attention first to Joint Exhibit 137. And
20 these documents, I hope, are all going to be in the
21 white book.

22 A. I think I just realized what the J stands for.

23 Q. Joint.

24 If you look at -- under the "Valuation on
25 Preferred Shares," the second paragraph, it says, "The

1 measurement date is the date that the New York Fed and
2 AIG agreed on a credit facility, which we believe was at
3 the close of market on September 16th, 2008."

4 Do you see that?

5 A. Yes, I do.

6 Q. And that was PwC's belief on October 28th, 2008,
7 correct?

8 A. Yes, it was.

9 Q. And that was a belief that you had received from
10 AIG. Is that correct?

11 A. Yes, and the evidence we looked at.

12 Q. Now, what evidence did you look at?

13 A. I mean, I said looked at; I should have said the
14 evidence we have, just to be really clear. So, we had
15 subsequent -- keep in mind, this is October. So, that
16 included -- our evidence included conversations with the
17 company, conversations with the Fed, the actual credit
18 facility that had been then issued, announcements by the
19 company as to the facility that was to be issued, and
20 this was on or about September 16th, 17th, 18th. That's
21 at least some of the ones to the best I can recall.

22 Q. Now, you understood that on September 16th there
23 was no credit facility that had been executed.

24 MR. ROBERSON: Objection, Your Honor. Vague as
25 to the term.

1 THE COURT: What, term sheet?

2 MR. BOIES: I said credit facility. How could
3 you object to anything about that?

4 THE COURT: Credit facility? What --

5 MR. ROBERSON: Credit -- is he talking about the
6 credit agreement?

7 THE COURT: Oh, okay.

8 BY MR. BOIES:

9 Q. The document, this PwC document here, refers to
10 credit facility, correct?

11 A. Yes.

12 Q. And the credit facility that was referred to
13 here was an \$85 billion revolving credit facility,
14 correct?

15 A. Yes, it was.

16 Q. And you understand that that credit facility was
17 actually executed as of September 22, 2008, correct?

18 A. Yes.

19 MR. ROBERSON: Objection, Your Honor. The
20 credit facility is the credit agreement that was
21 executed on the 22nd.

22 THE COURT: We're working from the document,
23 though, I think, which says "credit facility."

24 MR. ROBERSON: Correct, but -- so that in this
25 case there's no ambiguity about the question, the credit

1 agreement is executed on the 22nd.

2 THE COURT: We will let Mr. Boies and the
3 witness clarify.

4 BY MR. BOIES:

5 Q. And you understand that the revolving credit
6 agreement that you refer to here as a credit facility
7 was actually signed on September 23, as of September 22,
8 correct?

9 MR. ROBERSON: Same objection, Your Honor.

10 THE COURT: Overruled.

11 THE WITNESS: I know the date on it is September
12 22nd. I hadn't remembered until you -- someone showed
13 me a document today or yesterday about the September
14 23rd execution date.

15 BY MR. BOIES:

16 Q. Now, the draft of the written agreement for the
17 credit facility that you refer to here was, as you
18 understand it, first prepared when?

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

20 Q. Or maybe to put a finer point on it, was there
21 any draft of the credit facility as of September 17th,
22 2008?

23 A. I don't know. We had the final agreement by the
24 time we were doing this memo.

25 Q. And I think the document that you saw with

1 counsel for the Government said that it was your
2 understanding that there was an oral agreement as of
3 September 16th. Is that correct?

4 A. Yes.

5 Q. And who did you understand that oral agreement
6 was between?

7 A. AIG and the New York Fed.

8 Q. And what individuals had engaged in this oral
9 agreement, as you understood it?

10 A. I'm not sure I ever heard it described as
11 individuals until I was -- I was shown a term sheet
12 during my deposition signed by Mr. Willumstad. So, I
13 didn't have an individual in mind. The direct answer to
14 your question is I don't know. I didn't associate it
15 with particular individuals.

16 Q. Who showed you a term sheet signed by
17 Mr. Willumstad at your deposition?

18 A. I was shown various documents at my deposition,
19 including a term sheet and a signature of Mr. Bob
20 Willumstad.

21 Q. Was the signature by Mr. Bob Willumstad attached
22 to a term sheet --

23 A. I don't recall.

24 Q. -- or was it simply a separate piece of paper?

25 A. Oh, I think that -- I think now, as I remember

1 my deposition, it was a separate piece of paper.

2 Q. Did you ever investigate what term sheet, if
3 any, was furnished to AIG on September 16th?

4 A. No, I did not.

5 Q. Did you ever investigate what term sheet, if
6 any, was furnished to Mr. Willumstad on September 16th?

7 A. No, I did not.

8 Q. Or the AIG board on September 16th?

9 A. No, I did not.

10 Q. Let me ask you to look at Joint Exhibit 188 and,
11 in particular, at page 293 and 294. Do you see at the
12 bottom of the page --

13 A. By the way, sir -- Your Honor, this is a
14 highlighted page.

15 THE COURT: Yes, so is mine.

16 MR. ROBERSON: Your Honor, if you like, I can
17 provide you with a replacement at this stage if you --

18 THE COURT: No, that's okay.

19 BY MR. BOIES:

20 Q. And at the bottom of page 293, it says, "The \$23
21 billion initial fair value of the Series C Preferred
22 Stock was determined by AIG primarily based on the
23 implied value of the common stock into which the Series
24 C Preferred Stock will be convertible as indicated by
25 AIG's common stock price immediately after the terms of

1 the Fed Credit Agreement were publicly announced."

2 Do you see that?

3 A. Yes, I do.

4 Q. And when, as you understand it, were the terms
5 of the Fed credit agreement publicly announced?

6 A. I believe certain -- I believe certain terms,
7 though not all, were announced on September 16th or
8 17th.

9 Q. That is, there were certain terms announced on
10 September 16th or 17th, and then there were other terms
11 that were announced later, right?

12 A. That's my recollection.

13 Q. And when you say here or when AIG says here in
14 this 10-K that you audited that the valuation date was
15 "immediately after the terms of the Fed Credit Agreement
16 were publicly announced," am I correct that that's
17 referring to the announcement of certain of the terms on
18 September 16th or 17th?

19 A. Yes. Primarily the 79.9 percent equity
20 ownership was, for example, one of those terms.

21 Q. Three lines down, do you see where it says, "The
22 valuation date for the Series C Preferred Stock was
23 September 16th, 2008, the date AIG received the New York
24 Fed's commitment to enter into the Fed Credit
25 Agreement"?

1 A. Yes, I see that.

2 Q. And is the Fed credit agreement the September 22
3 credit agreement?

4 A. That's my understanding.

5 Q. Let me ask you to look next at Joint Exhibit
6 146, and in particular, I'm going to ask you to look at
7 page 12 of this exhibit, and because the second
8 paragraph, which is the one I want to direct your
9 attention to, is a long one, I am going to attempt to
10 count the number of lines.

11 If you go 11 lines up from the bottom of the
12 second paragraph, do you see where a sentence that says,
13 "The Federal Reserve Bank's performance obligation was
14 completed" --

15 A. Yes, I do.

16 Q. -- "(fully performed) on September 16th, 2008,
17 when the Company obtained its first loan, then
18 incorporated into the terms of a Credit Facility
19 established on September 22..." Do you see that?

20 A. Yes, I do.

21 Q. Now, when you say the Federal Reserve Bank's
22 performance obligation was completed and fully performed
23 on September 16th, 2008, are you referring to an
24 obligation to provide \$85 billion of credit?

25 A. Yes, but can I repeat? Yesterday or today I

1 think I said I don't know, as I sit here today, what we
2 meant by "fully performed."

3 Q. Was it your understanding in 2008, at the time
4 of this document, that the Federal Reserve's obligation
5 to make an \$85 billion credit facility available to AIG
6 was completed on September 16th?

7 A. Yes. And by "completed," they had access; they
8 could draw on that.

9 Q. They could draw on \$85 billion was your
10 understanding?

11 A. That was my understanding.

12 Q. Did anyone ever give you any information
13 contrary to that understanding?

14 A. None that changed my point of view.

15 Q. Did they give you some information contrary to
16 your understanding even though it didn't change your
17 point of view?

18 A. Well, I believe your -- your colleagues showed
19 me some demand notes during my deposition.

20 Q. These were demand notes that were issued in
21 connection with loans that were made to AIG on September
22 16th and other days prior to September 22nd, correct?

23 A. I think, as I testified during my deposition, I
24 don't recall having seen those demand notes before I was
25 shown them.

1 Q. Other than seeing those demand notes at your
2 deposition, which took place during this litigation, it
3 was your understanding that the Federal Reserve Bank's
4 obligation to provide \$85 billion of credit to AIG was
5 completed on September 16th, 2008, correct?

6 A. Yes, that's correct.

7 Q. And that was a basis for concluding that the
8 September 16th, 2008, valuation date was a reasonable
9 one, correct?

10 A. Could you repeat -- when you said "that was the
11 basis"? I'm sorry.

12 Q. Your understanding -- PwC's understanding that
13 the Federal Reserve Bank's obligation to make an \$85
14 billion credit facility available to AIG was completed
15 on September 16th was a basis for PwC concluding that
16 selecting September 16th as the valuation date for the
17 preferred stock was a reasonable selection.

18 A. Yes.

19 MR. ROBERSON: Object to the form.

20 THE COURT: Overruled.

21 THE WITNESS: Yes, our understanding based on
22 evidence that we had.

23 BY MR. BOIES:

24 Q. And the evidence that you had that the Federal
25 Reserve Bank's obligation to make an \$85 billion loan to

1 AIG was completed on September 16th, 2008, was what?

2 A. It included, as I think I -- I probably won't
3 get all the same ones that I mentioned a couple hours
4 ago, but it included the -- the actual -- keep in mind,
5 this is October, so I have the actual document,
6 September -- dated September 22nd; we had conversations
7 with the company; we had conversations with the Fed; we
8 had the announcements that were made on September 16th
9 and 17th by AIG with respect to the transaction. I
10 don't recall if there were others.

11 Q. Now, let me go through those. The actual credit
12 agreement, which was dated as of September 22nd, 2008,
13 did not talk about what the Federal Reserve Bank's
14 obligation was or was not prior to that time, correct?

15 A. I don't --

16 MR. ROBERSON: Objection. Mischaracterizes the
17 document, Your Honor.

18 THE COURT: Well, overruled. Go ahead and
19 answer.

20 THE WITNESS: I don't recall.

21 BY MR. BOIES:

22 Q. As you remember it, did any of the announcements
23 on September 16th or 17th by AIG or anyone else say that
24 the Federal Reserve Bank's obligation was completed on
25 September 16th?

1 A. I -- I don't know what it means by -- by your --
2 in your sentence, what you mean by "completed." I said
3 I believe there's access to a line of credit, like
4 that's what we meant by "completed" here, not actually
5 gave 85 billion, but had access. So -- so, in that
6 context, I believe -- I don't recall the -- exactly what
7 the announcement said on the 16th and 17th.

8 Q. But by "access," what you meant was not that
9 they had drawn down \$85 billion but that they had the
10 ability to draw down \$85 billion.

11 A. Yes, sir.

12 Q. You also in the next sentence say, "The
13 agreement signed on September 22, 2008, memorializes the
14 terms of the oral agreement established on September 16,
15 2008." Do you see that?

16 A. Yes, I do.

17 Q. As you understand it, were some of the terms of
18 the September 22 agreement that was in writing different
19 than the terms of what you believed the oral agreement
20 on September 16th were?

21 A. Yes. May I -- may I add to that?

22 Q. Sure.

23 A. Two things come to mind. One is that some of
24 the -- some of the terms were -- I think as I mentioned
25 earlier, were not even -- as I recall, were not

1 announced; for example, what the interest rate would be.
2 And then secondly, I guess I'm not sure if there were
3 different terms, as I sit here now.

4 Q. The oral agreement that you believe was entered
5 into on September 16th, was that an agreement that had
6 an interest rate term?

7 A. Not that I recall.

8 Q. The agreement that was entered into on September
9 22nd obviously did have an interest rate term.

10 A. Yes, it did.

11 Q. When, as you understood it, in 2008 was that
12 interest rate term agreed to?

13 A. No later than September 22nd, 2008.

14 Q. Can you give me any time prior to September 22nd
15 when it was agreed to?

16 A. I don't know.

17 Q. The next sentence says that your conclusion is
18 "supported by the fact that no additional consideration
19 was required upon execution of the definitive
20 agreement." Do you see that?

21 A. Yes, I do.

22 Q. And by "definitive agreement," you're talking
23 about the agreement dated as of September 22?

24 A. Yes, sir.

25 Q. And part of the consideration for that agreement

1 was the issuance of preferred stock. Is that correct?

2 A. Yes.

3 Q. When, as you understood it, was it first agreed
4 that preferred stock would be issued?

5 A. No later than the date of that agreement.

6 Q. Was, as you understand it, an agreement for the
7 issuance of preferred stock reached prior to September
8 21st?

9 A. I don't know. May I explain?

10 Q. May you explain that answer?

11 A. May I add?

12 Q. Sure.

13 A. As an auditor, right, I'm not sitting with the
14 company as this is happening in real time. I just want
15 to make clear that, you know, I'm after the fact,
16 after -- sometime after September 22nd, aware of this
17 agreement. I don't remember -- so, with that
18 background, I don't recall the first date I became aware
19 it was preferred stock.

20 Q. My question may have been unclear.

21 A. I'm sorry.

22 Q. I wasn't really asking you when you first became
23 aware of the preferred stock. What I was asking you is
24 what your understanding was as to when the issuance of
25 preferred stock as consideration for the credit facility

1 had first been agreed to.

2 A. I don't remember with respect to that
3 specifically. What I understand from the company and
4 from the Fed was that the September 22nd agreement was
5 memorializing the oral agreement from earlier.

6 Q. And that's what they told you, correct?

7 A. Yes. And I didn't have evidence that --
8 contrary to that. And I -- when you say "they," I mean,
9 the Fed told us that. AIG told us that.

10 Q. Now, you also say -- in addition to the
11 memorialization description, you also say that it is a
12 fact that no additional consideration was required upon
13 execution of the definitive agreement. Do you see that?

14 A. Yes.

15 Q. And that was your understanding when you wrote
16 this --

17 A. Yes.

18 Q. -- or when PwC wrote this. And the date of
19 this, as you've indicated, is November of 2008; it's
20 after the fact, correct?

21 A. Yes.

22 Q. Now, my question -- and I've probably spent
23 longer on this than I should have, but my question is
24 simply, you know that the credit agreement provided for
25 preferred stock.

1 A. Yes.

2 Q. And as you understand it, was that preferred
3 stock agreed to on September 16th?

4 A. Not that I am aware of.

5 Q. And if it was not, was the preferred stock
6 consideration that had not been agreed to prior to
7 September 22nd?

8 A. I don't know the answer to that question. 79.9
9 percent was my understanding was part of that agreement.

10 Q. That was -- that was 79.9 percent of either
11 equity or a right to equity, correct?

12 A. I don't remember if -- I don't remember if it
13 was equity or the right to equity, but I thought it was
14 equity, sir.

15 Q. Did anyone ever tell you that the terms of the
16 credit facility approved by the Federal Reserve Board of
17 Governors involved warrants?

18 A. I think during my deposition, I was shown
19 various documents, and including documents we had at the
20 time, that indicated originally there was discussion of
21 warrants and then it was changed later.

22 Q. Okay. Did you consider the change from warrants
23 to preferred stock to be a material change?

24 MR. ROBERSON: Objection, Your Honor.

25 Mischaracterizes the record as suggesting that there was

1 a change from warrants as opposed to warrants or a form
2 to be determined later. So, I think that he's
3 mischaracterized the record in the question.

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

5 MR. BOIES: Your Honor, can we excuse the
6 witness?

7 THE COURT: Sure.

8 Mr. Farnan, would you step out for just a
9 moment, please, and we will have you come back in in
10 just a second.

11 (Witness excused.)

12 THE COURT: Yes?

13 MR. BOIES: Your Honor, in response to my
14 question, which was simply did anyone ever tell you that
15 the terms of the credit facility approved by the Federal
16 Reserve Board of Governors involved warrants, he said
17 that he understood that it had been warrants and that it
18 had been changed. He used the word "changed."

19 I then simply asked him a question, did you
20 consider the change from warrants to preferred to be a
21 material change, using his language. I don't think
22 there was anything wrong about that question.

23 What concerns me are the speaking objections
24 from counsel for the Defendant in the presence of the
25 witness that brings in "form to be determined" that the

1 witness has never mentioned before, and I think that
2 that is simply inappropriate.

3 MR. ROBERSON: Your Honor, may I?

4 THE COURT: Yes. I'll preface your response by
5 saying speaking objections in the presence of the
6 witness is probably one of the more offensive things you
7 can do in my courtroom.

8 MR. ROBERSON: I apologize, Your Honor.

9 THE COURT: And you just did it.

10 MR. ROBERSON: Okay, and I apologize, and what I
11 was trying to do was to point out the ambiguity of the
12 phrase "change from warrants," because I believe, Your
13 Honor, the record has been set up -- it has been shown
14 that the warrants was discussed at the Board of
15 Governors and that -- as Mr. Dintzer was showing, and
16 that the communication to AIG was -- included "form to
17 be determined later," which was the term sheet, and the
18 discussion in the September 16th minutes indicates that
19 it's warrants or form to be determined later.

20 So, to create that ambiguity is what I was
21 trying to protect against, Your Honor, and I apologize,
22 Your Honor, if I made a speaking objection.

23 THE COURT: Yes, I appreciate that. I have
24 careful notes on all of this, and I think the record
25 does not give us a clear-cut answer one way or the other

1 on all of this. It's a -- it's a significant issue in
2 the case, but all Mr. Boies was doing was following up
3 on answers that the witness gave, using his words.
4 There's nothing wrong with that.

5 MR. ROBERSON: I apologize, Your Honor.

6 THE COURT: All right.

7 Let's have the witness return.

8 (Witness present.)

9 THE COURT: Thank you for your patience,
10 Mr. Farnan. We will resume.

11 THE WITNESS: Thank you.

12 BY MR. BOIES:

13 Q. We were talking about warrants and preferred
14 stock.

15 A. Yes, sir.

16 Q. And as a preliminary matter, the form of equity
17 is a material or important issue, correct?

18 A. Yes, it could -- yes.

19 Q. And did you consider the change from warrants to
20 preferred stock to be a material change in the
21 consideration that was being provided?

22 A. I don't think that's a yes or no question. So,
23 we -- at the time we were doing our review, as well as
24 our audit, we knew that the agreement was signed
25 September 22nd. There's no accounting literature that

1 tells you what to record on September 16th. There's
2 judgments involved.

3 And so based on the information we -- we had
4 actual documents, what actually got issued, not what
5 might have been thought of at the time. And so we
6 thought it reasonable to recognize, for accounting
7 purposes, the instruments actually issued.

8 Q. Let me try to focus what I'm asking about. I
9 understand that the documentation, signed on the 23rd,
10 effective the 22nd, was for preferred stock. You
11 understand, do you not, that the preferred stock was not
12 agreed to until at least September 21st?

13 A. I think, as I said before, I'm not aware of
14 before September 22nd, so --

15 Q. Okay. So, the first time you're aware of
16 preferred stock being agreed to is September 22nd?

17 A. The best I recall.

18 Q. And what I'm focusing on is your statement or
19 PwC's statement that no additional consideration was
20 required upon execution of the September 22nd agreement,
21 okay?

22 A. Yes, sir.

23 Q. And PwC considered the form of equity that AIG
24 was to provide to the trust in the credit agreement to
25 be a material term of the credit agreement from an

1 accounting perspective, correct?

2 A. Yes.

3 Q. And that was a term that although you didn't
4 know when it had changed, you knew it had changed
5 between September 16th and September 22nd, correct?

6 A. At least -- so, I've seen personally conflicting
7 information on that, ranging from the form of equity is
8 not determined to, as I mentioned earlier, warrants
9 changed to -- to the preferred shares.

10 Q. Now, when you say you've seen that, you've seen
11 that in connection with this litigation, correct?

12 A. Yes.

13 Q. Had you seen that back in 2008?

14 A. Not that I recall.

15 Q. Let me ask you, just to follow up on a subject
16 we dealt with before, to look at Defendant's Exhibit
17 688, and counsel had directed your attention to the page
18 that ends with the numbers 5836.

19 A. This is the Bates number, Counsel?

20 Q. Yes.

21 A. Yes, sir, I have it.

22 Q. And he directed your attention to the paragraph
23 under the heading "E-Rating Agency Credit Downgrades."
24 Do you see that?

25 A. Yes, sir.

1 Q. And where it says, "AIG is currently rated A-
2 with Credit Watch Negative." Do you see that?

3 A. Yes, I do.

4 Q. That was AIG, the parent, correct?

5 A. Yes, it was.

6 Q. Did you know at this time what the ratings were
7 for the insurance subsidiaries?

8 A. Not that I recall, but we were trying to ask the
9 company to help us understand that.

10 Q. Did there come a time when you understood what
11 the ratings were for the insurance companies?

12 A. Yes, I believe we did.

13 Q. And what were the ratings for the insurance
14 companies?

15 A. I don't recall as I sit here today.

16 Q. And I think only one more brief topic.

17 Did you -- and by "you," I mean PwC, to your
18 knowledge -- become aware of whether or not the terms of
19 the credit facility were jeopardizing the ability of AIG
20 to continue as a going concern?

21 A. I don't recall them being described as
22 jeopardizing. They were changed.

23 Q. Do you recall from 2008 that the terms of the
24 September 22nd credit facility were described as
25 onerous?

1 A. I believe I saw something to that effect in my
2 deposition.

3 Q. Other than what you saw in your deposition, when
4 you were back working at AIG for PwC in 2008, were you
5 aware of a concern on the part of the Federal Reserve
6 Bank that the terms of the credit facility were onerous?

7 A. Not that I recall.

8 Q. In 2008, were you aware of concern by the
9 Federal Reserve Bank that the terms of the credit
10 facility were jeopardizing AIG's ability to continue as
11 a going concern?

12 A. Not that I remember.

13 Q. Were you aware of any evidence that the terms of
14 the credit facility were harmful to AIG's ability to
15 continue as a going concern?

16 A. Not that I recall.

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

18 THE COURT: All right.

19 Mr. Roberson, will you have any recross?

20 MR. ROBERSON: Very short, Your Honor.

21 THE COURT: Well, let's do it after lunch. We
22 will reconvene at 1:45.

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

24

25

1 Wednesday.

2 THE COURT: All right. I appreciate knowing
3 that. Thank you.

4 All right. I think we're ready to go.

5 RECROSS EXAMINATION

6 BY MR. ROBERSON:

7 Q. Mr. Farnan, do you recall Mr. Boies questioning
8 you concerning Sun America and the other than temporary
9 impairment losses created by its participation in the
10 secured lending program?

11 A. I recall that being my answer to his question,
12 whether certain subsidiaries had difficulties.

13 Q. Right. And Sun America required additional
14 capital because of the OTTI losses. Is that correct?

15 A. That's correct.

16 Q. And did AIG, Inc., provide that capital to Sun
17 America?

18 A. Yes, they did.

19 Q. And do you recall a discussion about push-down
20 accounting with Mr. Boies?

21 A. Yes, I do.

22 Q. And at one point Mr. Boies asked you that -- I
23 think the question was because the Government obtained
24 79.9 percent interest, there would be no push-down
25 accounting, correct? That was the question. And your

1 answer was, "I don't think it's that simple."

2 A. I recall that.

3 Q. And you weren't given an opportunity to explain
4 that dynamic. If you would turn to JX 146.

5 THE COURT: Do you think we should get his
6 explanation before we go looking at a document that
7 might be helpful?

8 MR. ROBERSON: It would be -- that's certainly
9 fine, Your Honor. It's your, you know, priority, so --

10 THE COURT: I would really like to do it that
11 way, and then if you want to go to the document after
12 that, that would be fine.

13 MR. ROBERSON: Absolutely, Your Honor.

14 BY MR. ROBERSON:

15 Q. Could you explain why it's not that simple?

16 A. I said that because while I don't remember all
17 the specifics, we as a firm, PricewaterhouseCoopers,
18 spent specific time analyzing that particular issue,
19 including talking with other experts within our firm
20 about whether or not push-down accounting would be
21 necessary or appropriate in these circumstances. We
22 wrote a significant matter on it that would go all the
23 way to Tim Ryan for his agreement, as I recall.

24 Q. Okay.

25 A. Our conclusion was still that push-down

1 accounting was not appropriate, but I don't think --
2 again, it was not the simple 79.9; otherwise, we would
3 not have spent a considerable amount of time analyzing
4 that situation.

5 Q. Okay. And if you look at JX 146, and, again,
6 this is -- the issue is "Accounting for the Company's
7 Series C preferred stock issued in connection with a
8 financing arrangement," that's on the first page. What
9 I would do is ask you to turn to page 23, where PwC
10 specifically addresses this issue.

11 On page 23 at question 12, it says, "Will
12 issuance of the preferred stock trigger a new basis of
13 accounting?" And then there's the conclusion, which I
14 think you just mentioned a moment ago.

15 But what I wanted to alert you to and maybe you
16 could discuss, now that you have this, there's several
17 pages that follow discussing the analysis on the
18 push-down accounting. Is that correct?

19 A. Yes, there is.

20 Q. Okay. And is this the -- are these analyses
21 here the issues that PwC was considering with respect to
22 push-down accounting?

23 A. Yes, it is.

24 Q. Okay. And you wrote this memo -- again, you
25 wrote it as a partner, right?

1 A. Well, coauthored this, yes.

2 Q. Right. Now, if you look at the bottom of page
3 24, it says, "Based purely on the quantitative ownership
4 percentage given to the Federal Reserve Bank in exchange
5 for being given access to the credit facility, we
6 determined," and then it continues on.

7 Can you describe what it is that is being
8 communicated in that paragraph and then continuing on as
9 to the issues that were taken into consideration with
10 respect to push-down accounting above and beyond just
11 merely the quantitative amount of preferred -- of equity
12 interest transferred?

13 A. I'm not sure what level of detail you want me to
14 go into, but this is why I was -- this is exactly why I
15 was explaining it's not simple, because there's a
16 quantitative answer, and maybe we could have stopped
17 there, I don't know, but in our mind, you know, the fact
18 that it was 79.9, so close to an area, 80 percent, that
19 from our standpoint, qualitatively -- qualitatively, we
20 needed to consider whether the answer, i.e., push-down
21 or no, was correct. So, these are the particular items.

22 The role of the Fed, you know, then there's
23 outstanding public debt, you know, how does that play
24 into the quantitative, and this was all based on
25 experience from experts in our national office helping

1 us think through the various potential qualitative
2 matters.

3 Q. Okay. And based on -- we won't go through them,
4 but you list several different headings here as to
5 issues that you considered, correct?

6 A. Yes, that's correct.

7 Q. And then there's a -- basically the
8 conclusion -- well, the paragraph just in the middle of
9 the page on page 28, can you read that paragraph and
10 then tell us what that is communicating, the
11 significance of it?

12 A. "The conclusions presented in this memo are
13 preliminary" --

14 Q. No. No, I'm sorry.

15 A. I'm sorry?

16 Q. I'm sorry. The middle paragraph that says
17 "Based on our consideration," can you describe the
18 significance of that paragraph?

19 A. "Based on" -- oh, I'm sorry. I thought you said
20 read it. I'm sorry.

21 Q. Right. You can read it silently or read it
22 aloud.

23 A. I'm sorry. I apologize. (Document review.)

24 So, we concluded that push-down accounting was
25 not required.

1 Q. Right. And it was a consideration of
2 qualitative factors and not merely quantitative factors.

3 A. That's correct.

4 Q. And if someone were to read this section, they
5 would understand why your response was "I don't think it
6 was that simple."

7 A. I believe so.

8 MR. ROBERSON: I have no further questions, Your
9 Honor.

10 THE COURT: Thank you, Mr. Roberson.

11 And thank you, Mr. Farnan, for your testimony in
12 this matter. You are excused.

13 MR. BOIES: Your Honor, for our next witness, we
14 call Dr. Paul Wazzan, and Mr. Dwyer will examine him.

15 THE COURT: All right. Thank you.

16 Please raise your right hand, sir. You can come
17 up on the witness stand.

18 Whereupon--

19 C. PAUL WAZZAN

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

22 THE COURT: Please be seated.

23 THE WITNESS: Thank you.

24 THE COURT: Good afternoon, Mr. Dwyer.

25 MR. DWYER: Good afternoon, Your Honor. Good to

1 see you again.

2 THE COURT: Good to see you.

3 DIRECT EXAMINATION

4 BY MR. DWYER:

5 Q. Would you please introduce yourself to the
6 Court.

7 A. Yes, Your Honor. My name is Christopher Paul
8 Wazzan.

9 Q. And where do you presently work?

10 A. I work at the Berkeley Research Group, where I'm
11 the head of our Century City office in Los Angeles, and
12 I also run a small venture capital company.

13 Q. And what does the venture capital company
14 specialize in?

15 A. We provide seed-level financing to startups that
16 originate out of the UCLA and UC Irvine Schools of
17 Engineering in semiconductors and biomechanical devices.

18 Q. Have you testified previously as an expert
19 witness?

20 A. Yes, I have. I have testified in state courts,
21 federal courts, bankruptcy courts, the International
22 Trade Commission, legislative bodies.

23 Q. Have you previously been retained as an expert
24 witness on the issue of prejudgment interest in cases
25 before the Court of Federal Claims?

1 A. Yes, I have.

2 Q. What cases were you retained in?

3 A. So, it was two cases. The first one was Biery
4 vs. U.S. and the second was Rogers vs. U.S.

5 Q. Did the Court in Biery adopt the figures you
6 provided in your prejudgment interest model?

7 A. Effectively, yes.

8 Q. Can you provide a brief summary of your
9 educational background?

10 A. Sure. I have an undergraduate degree, a
11 bachelor's degree in economics from Berkeley, and a
12 Ph.D. in finance from UCLA.

13 Q. Do you have any teaching experience?

14 A. Yes, I've been a teacher. I was an adjunct
15 professor at Cal State Los Angeles, and I was a lecturer
16 in the USC Marshall School of Business, where I taught
17 corporate finance and valuation.

18 Q. What is the focus of your work at Berkeley
19 Research Group?

20 A. Essentially Berkeley Research Group is an
21 economics and finance consulting firm, and I provide
22 consulting services in a variety of matters.

23 Q. Are you being compensated for your time working
24 on this case?

25 A. Yes.

1 Q. Is your compensation in any way contingent on
2 your testimony in this case?

3 A. No.

4 Q. Have you been asked to provide certain opinions
5 in this case?

6 A. Yes, I have.

7 MR. DWYER: Your Honor, we offer Dr. Wazzan as
8 an expert in prejudgment interest.

9 THE COURT: All right.

10 MR. PHILLIPS: Your Honor, we would object to
11 the offer on prejudgment interest. That is a legal
12 consideration and is not necessarily an economics or
13 financial consideration. Prejudgment interest is a very
14 specific type of analysis that the Court does. So, I
15 don't believe that a proffer in prejudgment interest is
16 accurate or correct.

17 THE COURT: Mr. Dwyer?

18 MR. DWYER: Well, Your Honor, two things. One,
19 they didn't make a motion in limine to exclude
20 Dr. Wazzan, even though he's obviously provided a
21 report, a rebuttal report, and given a deposition.

22 The second thing is Dr. Wazzan isn't here to say
23 here's what prejudgment interest is. He's providing
24 helpful -- hopefully helpful quantification of various
25 factors that the Court might consider in deciding

1 whether to award prejudgment interest and at what level.
2 You'll hear that his analysis is of various alternatives
3 to what someone who's in the classes would have done
4 with the money had they gotten it at the time under
5 various -- several different ways of analyzing it that
6 are recognized as valid ways of economic analysis.

7 THE COURT: You know, I wrestled with this
8 question in another Fifth Amendment taking case, and I
9 remember that it would have been useful to have some
10 help on this, because it was not an easy question. And
11 I do agree that it's partially, at least, a question of
12 law, but I think it certainly can be a mixed question of
13 fact and law. I think his expertise might be helpful to
14 the Court in dealing with that issue if and when we get
15 to it.

16 MR. PHILLIPS: With that in mind, Your Honor,
17 may I be permitted a few questions on voir?

18 THE COURT: Sure. Tell me your name again.

19 MR. PHILLIPS: I'm sorry, Your Honor. Vincent
20 Phillips.

21 THE COURT: All right.

22 VOIR DIRE EXAMINATION

23 BY MR. PHILLIPS:

24 Q. Good afternoon, sir.

25 A. Hi.

1 Q. You are not an attorney, correct?

2 A. Correct.

3 Q. And in this case, you are not endeavoring to
4 offer any legal opinions?

5 A. Correct.

6 Q. But you do rely in your reports on a number of
7 court cases to support your opinions about the
8 appropriateness of prejudgment interest, correct?

9 A. In part, yes.

10 Q. And the cases you cite in your report are all
11 takings cases, are they not?

12 A. I couldn't say.

13 Q. Do you know if you cite any case in your report
14 that concerns prejudgment interest in an illegal
15 exaction claim?

16 A. I couldn't say.

17 Q. For the purpose of your analysis, do you make
18 any distinction between the appropriateness of
19 prejudgment interest for takings claims as opposed to
20 illegal exaction claims?

21 A. I couldn't say.

22 Q. Sir, you're not offering any opinions on the
23 economic harm that would be appropriate to calculate in
24 any takings case, are you?

25 A. Well, my understanding of prejudgment interest

1 is that, you know, after an asset or a property is
2 taken, you know, a cash payment is made, and then you
3 take that cash payment and it's invested at a certain
4 rate to bring to the present. That's all I've done.

5 Q. In the two cases that you appeared before this
6 Court, I believe it was Biery and Rogers, did you offer
7 any opinions on what the proper analysis or
8 quantification of the economic harm in those takings
9 claims was?

10 A. I guess I don't understand what you mean by
11 "economic harm." I mean, to me, there's -- there's, you
12 know, a finding of liability that leads to an award of
13 damages, and then the damages figure is what you apply
14 the prejudgment interest rate to to bring it current.

15 Q. Fair enough, sir.

16 And my question, then, using your terminology,
17 in those two cases where you appeared in this Court, did
18 you offer any opinion on what the damages should be or
19 the amount of damages?

20 A. No. In those two cases, I was the expert for
21 prejudgment interest, just like here.

22 Q. And am I correct, sir, that in this Court you
23 have never evaluated an illegal exaction claim, in
24 either of the two cases you appeared?

25 A. You know, I'm not sufficiently versed in the law

1 to tell you what the difference is between takings and
2 exaction.

3 MR. PHILLIPS: Nothing further, Your Honor.

4 THE COURT: All right. Thank you, Mr. Phillips.

5 I will accept Mr. or Dr. Wazzan, Professor

6 Wazzan --

7 THE WITNESS: Doctor is great.

8 THE COURT: Okay, Dr. Wazzan as an expert in

9 prejudgment interest.

10 MR. DWYER: Thank you, Your Honor. May I

11 proceed?

12 THE COURT: Yes.

13 DIRECT EXAMINATION (cont.)

14 BY MR. DWYER:

15 Q. Dr. Wazzan, were you asked to offer any opinions

16 relating to the calculation of prejudgment interest in

17 this case?

18 A. Yes, I was.

19 Q. And what materials did you consider in

20 determining an appropriate rate of prejudgment interest?

21 A. I considered materials that were available

22 through the discovery process. I reviewed relevant

23 economic literature. I reviewed third-party materials

24 that I obtained. I reviewed data that I obtained as

25 well.

1 Q. For what purpose are you providing an opinion
2 with respect to prejudgment interest?

3 A. Well, my understanding is that prejudgment
4 interest serves to put the Plaintiff in the same, you
5 know, financial or pecuniary position that he or she
6 would have occupied had a payment coincided with the
7 taking.

8 Q. All right. Are you offering any legal opinions
9 on the appropriate rate of prejudgment interest?

10 A. No.

11 Q. Before we get to the details of your assignment
12 and the results that you reached in your calculations,
13 let me ask you first whether you reached a conclusion as
14 to what opinion you'd render as to the appropriate
15 prejudgment interest rate that, in your professional
16 opinion, should be used in this case.

17 A. Yes, I did.

18 Q. And with respect to each of the two classes,
19 what opinion did you form?

20 A. For the September 2008 class, I determined that
21 7 percent was the right figure; and for the June 2009
22 class, I determined that 20.1 percent was the right
23 figure. These are annualized rates.

24 Q. Are those simple interest rates or compound
25 interest rates?

1 A. Those are compound.

2 Q. Were you asked by counsel to make any
3 assumptions in determining an appropriate rate of
4 prejudgment interest?

5 A. Yes, I was. So, first I was asked to, you know,
6 assume liability; and second, I was asked to assume the
7 dates of the takings.

8 Q. Is the methodology you used to determine
9 prejudgment interest rates independent of the date on
10 which the takings occurred?

11 A. Yes, it is.

12 Q. Does your methodology account for the length of
13 time between the takings and the judgment?

14 A. Yes, it does. As -- you know, my methodology is
15 basically my reference to market rates, so it's
16 particularly well suited to lengthy time periods.

17 Q. Would you provide a general overview of the
18 methodology you used in forming your opinion as to what
19 would be an appropriate prejudgment interest rate?

20 A. Sure. So, first, like I said, I assumed
21 liability. Second, you assume that a taking occurred on
22 a -- at a given date. Third, you assume that a payment
23 is made concurrent with the taking, a payment in cash,
24 simultaneously with the taking.

25 You then assume that the cash is deployed at the

1 same time or invested. One then determines where the
2 cash would have been deployed or invested in. And then
3 lastly, you determine what the rate of return is on that
4 invested cash.

5 Q. When you say "where," do you mean what
6 investment vehicle?

7 A. Yes, yeah, not geography; what type of asset.

8 Q. And you testified that one of the factors you
9 would determine is what investment would have been made
10 with the cash received at the time of the taking. What
11 do you know specifically about the Plaintiffs in this
12 case that has a bearing on that analysis?

13 A. Essentially, we know that they were all invested
14 in AIG common stock.

15 Q. How does that bear on your calculation of
16 prejudgment interest?

17 A. Well, I think it's directly relevant. So, you
18 have a class of Plaintiffs that are all invested in AIG
19 stock, and that asset is taken. It's reasonable to
20 assume that they would have taken the cash and tried to
21 replicate that holding.

22 Q. And in terms of -- when you say "replicate that
23 holding," what do you have in mind as to what they would
24 have done with the cash to replicate their former
25 interest in the common stock of AIG?

1 A. Well, so, portfolio theory tells us that
2 investors hold efficient portfolios, and what this means
3 is for a given level of risk, they attempt to maximize
4 return, and for a given level of expected return, they
5 attempt to minimize the risk, and they do this by
6 holding diversified portfolios of assets.

7 So, someone who holds a portfolio of assets, one
8 of those assets is AIG. If that asset is displaced,
9 it's natural that these investors would try to replace
10 that asset and get back to, you know, an efficient
11 portfolio.

12 Q. Now, you used the term "portfolio theory." Is
13 that a theory of yours or is that a more widely held
14 theory?

15 A. No, this is standard modern finance theory.
16 It's in any textbook, lots of papers. Nobel Prizes were
17 awarded for this.

18 Q. And I believe you used the term "efficient" or
19 "optimal" portfolio. What did you mean by that?

20 A. Yeah, simply, like I said, an efficient
21 portfolio is one that generates the highest expected
22 return for a given level of risk and the lowest risk for
23 an expected rate of return.

24 Q. How did you determine -- how did you go about
25 determining what assets Plaintiffs would have purchased

1 to try to replace their AIG common stock if they had
2 gotten cash at the time of the taking?

3 A. Right. So, I've come up with four ways which I
4 think are appropriate for someone to replicate an AIG
5 asset, and I've created four portfolios.

6 Q. And what are the four portfolios that you've
7 created and why did you create those particular
8 portfolios?

9 A. Sure. So, the first portfolio that I created is
10 based on some standard Dow Jones indices, which I've
11 combined into an average. The second one is a -- is
12 based on AIG's SEC filings. So, in their SEC filings,
13 AIG lists who their competitors are, and I took those
14 firms and combined them into a portfolio and computed
15 the return.

16 The third is -- again, these are based on
17 internal AIG documents that I found in the -- in the
18 production, where AIG identified who their competitors
19 were, and I took those firms, grouped them into a
20 portfolio, and computed the return. And the fourth
21 method was I took the standard SIC code for AIG and
22 found the firms that had the same code and grouped those
23 firms into a portfolio.

24 Q. You said "SIC code." What does "SIC" stand for?

25 A. SIC stands for standard industrial

1 classification, and this is -- this is a code put out by
2 the Office of Management and Budget, so every firm is
3 assigned a code, and any firms that operate in that same
4 business get the same code.

5 Q. Did you calculate a rate of return for each of
6 the four portfolios that you constructed?

7 A. Yes, I did.

8 Q. And have you -- did you prepare an exhibit that
9 describes your calculation?

10 A. Yes, I did.

11 MR. DWYER: I'd ask that the witness be shown,
12 in the book, PTX 2841, which is the demonstrative that
13 the witness has just described.

14 Your Honor, that book also has another
15 demonstrative, as well as the witness' report, with
16 exhibits, and his rebuttal report.

17 THE COURT: I have it. Thank you.

18 BY MR. DWYER:

19 Q. Can you describe briefly how you performed your
20 calculations; specifically, how you converted an index
21 into an annual return?

22 A. Sure. The way you -- the way you convert an
23 index to an annual return or to a return, first of all,
24 is you can just observe the market price at a starting
25 point, and then you can move forward in time and find

1 the market price at an end date, and then you just
2 compute the percentage change between the starting price
3 and the ending price, and that generates a return for
4 the entire period. And then you can take that return
5 and annualize it, which is what I've done here.

6 Q. What was the end date you chose for the four
7 portfolios that you've analyzed?

8 A. Well, so, the end date for this analysis was
9 December 31, 2013.

10 Q. And that was -- did you choose that because of
11 when you prepared your reports?

12 A. Yes.

13 Q. Would you -- looking at the first line on
14 PTX 2841, would you explain the return -- how you
15 developed the return that's associated with the first
16 row that's labeled "Dow Jones Industrial Indices
17 Average"?

18 A. Yes. So, that's a weighted average. Dow Jones
19 is the -- you know, the familiar Dow Jones Company who
20 puts indices out. They have several indices that
21 correspond to the lines of business that AIG is in, and
22 so here I've used the Dow Jones Life Index, the Dow
23 Jones Nonlife Index, and the Dow Jones Financial
24 Services Index.

25 And so, for example -- so, I've weighted them by

1 AIG's revenue. So, for example, if AIG generates a
2 third of its revenue from life insurance products, a
3 third of its revenue from nonlife insurance products,
4 and a third from financial services products, I would
5 have assigned weights of a third, a third, a third. I
6 apply those weights to each of the Dow Jones indices to
7 create the average.

8 Q. And what prejudgment interest rate did you
9 calculate using the Dow Jones Industry Indices?

10 A. I computed returns of 7 percent for the 2008
11 taking and 20.1 percent for the 2009 taking.

12 Q. Now, in terms of -- in terms of what that --
13 what that means from your opinion, let's just stay with
14 the 7 percent rate, does that mean that if someone had
15 taken -- had gotten paid for the taking on September
16 22nd, 2008, how would you -- how would you apply the 7
17 percent rate to that?

18 A. So, these are annualized rates. You would take
19 the -- if there was a dollar payment at the time of the
20 taking, it would be a dollar times 1.07 percent for the
21 first year, and then for the second year times 1.07
22 percent again, and then for the third year times 1.07
23 again. So, these are annualized rates, and you can just
24 multiply them through.

25 Q. If you return to PX 2841 and you look at the

1 second line, "Peer Companies -- AIG SEC Filings," would
2 you explain the return that you calculated with respect
3 to that line?

4 A. Yes. So, in AIG's SEC filings, they identify
5 who they think their competitors are, and I take those
6 firms and I group them together into a portfolio, and
7 then, again, taking the starting price to the end price
8 and calculate the percentage change.

9 Q. And why were you looking at the competitors of
10 AIG to try to calculate what the -- what your belief is
11 as to the annual returns on the equity portfolios that
12 you constructed?

13 A. Well, simply because the subject of the taking
14 is AIG stock and I wanted to create portfolios that
15 attempt to replicate such a holding.

16 Q. And what is your theory about what they would
17 have done with the money they got if they had gotten the
18 money at the time of the taking?

19 A. Well, that it would have been invested into, you
20 know, a portfolio such as these.

21 Q. Now, if you can turn to the third line on
22 PTX 2841, "Peer Companies -- AIG Financial Models,"
23 would you describe the calculations that you did there?

24 A. Sure. So, in the production I found internal
25 AIG documents where they -- again, they discuss who

1 their competitors are, who their peers are. So, I
2 grouped those firms together and created a portfolio and
3 then calculated the return. You know, and really, these
4 are all very similar, and the reason I've done it in so
5 many different ways is because I wanted to have a level
6 of confidence that, you know, I wasn't finding some
7 strange result, you know, on a one-off. So, that's why
8 I did multiple -- multiple methods.

9 Q. What was the time period in which you looked at
10 those -- what were the documents dated that you looked
11 at to determine the peers that AIG identified in its
12 internal financial documents?

13 A. I believe the documents -- the various SEC
14 filings, the internal documents were in the 2003, '4,
15 '5, '6 years, 2007 year. I don't remember exactly.

16 Q. Okay. And with regard to the "Peer Companies --
17 AIG Financial Models," approximately how many companies
18 were in the group that you combined to form that
19 portfolio?

20 A. I think there was about 90 firms. And we're
21 talking about the third line, "AIG Financial"?

22 Q. Yes, sir.

23 A. I think it was about 90 firms.

24 Q. Okay. And what result did you get from
25 calculating the portfolio for Peer Companies -- AIG

1 Financial Models?

2 A. So, 6.9 percent for the 2008 taking and 21.5
3 percent for the 2009 taking.

4 THE COURT: Mr. Dwyer, may I interrupt for a
5 moment?

6 MR. DWYER: Yes. Yes, Your Honor.

7 THE COURT: I haven't seen your report until
8 today, so I haven't read it yet, and you may address
9 this, but why is there such a big difference between the
10 9/22/08 column and the 6/30/09 column?

11 THE WITNESS: Sure. So, my methodology depends
12 on market prices, and it depends on the price that you
13 observe at the starting point and the price that you
14 observe at the end point. So, in this instance, the end
15 point is the same, both times it's December 31, 2013.
16 The stock market was lower in June of 2009 than it was
17 in September of 2008. So, you're starting at a lower
18 point.

19 So, you know, just for example's sake, let's say
20 the market, you know, is at \$1 in -- in 2009 and at \$5
21 in 2008, and then at \$10 in December 2013. There's a --
22 it has more room to, you know, go up. So, you get a
23 higher percentage.

24 THE COURT: Okay, I understand. Thank you.

25 THE WITNESS: Okay.

1 BY MR. DWYER:

2 Q. Staying with PTX 2841, would you explain the
3 calculation you did on the "SIC-Based Portfolio" line?

4 A. Yeah. So, the SIC is, like I said, the standard
5 industry classification code, and AIG has several lines
6 of business. Each of those lines has a corresponding
7 SIC code. So, I gathered all the firms in all those
8 different codes and grouped them into a portfolio and
9 then computed the return.

10 Q. Of all the calculations -- and what was the
11 number you got for the SIC portfolio code?

12 A. So, 9 percent for the 2008 taking and 22.2
13 percent for the 2009 taking.

14 Q. Of the four portfolio approach -- calculations
15 you made, was one calculation, in your opinion, a better
16 calculation to use than any of the other three?

17 A. So, again, I think -- I think all four are good
18 in that these are based on sort of standard, accepted
19 methodologies in the finance literature, but what I did
20 to sort of narrow it down is I computed how closely each
21 of these indices tracks to AIG's historical performance.
22 So, how close the historical performance of each of
23 these indices tracks AIG, and it turned out that the Dow
24 Jones indices average most closely tracked AIG.

25 Q. So, is that -- is that the one you would -- you

Starr International Company, Inc. v. USA

1 would favor of the four?

2 A. That's the one I would favor, but only by
3 slightly.

4 Q. Are you familiar with something called the
5 prudent investor rule?

6 A. Yes, I am.

7 Q. And what is the prudent investor rule?

8 A. The prudent investor rule is a -- is a guideline
9 that informs investments, and it asks that one invest in
10 a diversified portfolio, that one minimize risk, you
11 know, for a given level of return, that one protect
12 investment capital.

13 Q. Is your -- in your opinion, is the portfolio
14 approach that's reflected in PTX 2841 consistent with
15 the prudent investor rule?

16 A. Yes.

17 Q. In making a determination of the -- your
18 suggestion for the appropriate prejudgment interest
19 rate, were there any other portfolios you considered
20 that would satisfy the prudent investor rule?

21 A. Yes. So, you know, these -- these four
22 portfolios, the synthetic AIG portfolios are focused on
23 the lines of business that AIG operates in. I also
24 wanted to look at a more broad equity index. So, I
25 looked at the S&P 500 and the Wilshire 5000 indices.

1 Q. Did you prepare a demonstrative exhibit which
2 describes those calculations?

3 A. Yes, I did.

4 MR. DWYER: I ask that PTX 2842 be shown to the
5 witness.

6 THE COURT: Sure.

7 BY MR. DWYER:

8 Q. Preliminarily, what is the S&P 500 index?

9 A. The S&P 500 Index is an index of 500 firms
10 grouped by Standard & Poor's into an index.

11 Q. Are they publicly traded companies or private
12 companies?

13 A. Publicly traded companies. It's a very broad,
14 diverse set of firms.

15 Q. What is the Wilshire 5000 Index?

16 A. It's essentially the same thing. It's put out
17 by a different company, but it's -- I think it's
18 currently about 6500 firms, although it's called the
19 Wilshire 5000 because that's what -- that's how many it
20 originally had.

21 Q. And are those -- is that also publicly traded
22 companies?

23 A. Those are all publicly traded companies, yes.

24 Q. Are those accepted measures of broad market
25 performance?

1 A. Yes, very standard, very accepted.

2 Q. And why did you select those market indices in
3 your assessment of an appropriate prejudgment interest
4 rate?

5 A. Well, because the subject of the taking here is
6 stock, you know, is stock in AIG and equity. So, I
7 wanted to look at equity indices.

8 Q. Are these diversified portfolios?

9 A. Yes, highly diversified.

10 Q. Why was that important to your analysis?

11 A. Well, it -- you know, I think that's consistent
12 with the prudent investor rule, for one, but it's also
13 consistent with, you know, portfolio theory, like I
14 explained earlier. You want to have diversified
15 portfolios to minimize risk.

16 Q. Would you -- would you take us through the
17 results of your calculation as reflected on PTX 2842 for
18 the two indices?

19 A. Sure. So, for the S&P 500 Index, I computed a
20 return -- an annualized return of 10.8 percent for the
21 2008 taking; 19.3 percent for the 2009 taking. And for
22 the Wilshire 5000, 9.2 percent for the 2008 taking and
23 17.8 percent for the 2009 taking.

24 Q. Are those returns consistent with the returns
25 you calculated in your four portfolios?

1 A. Yes. In fact, they're very similar. You know,
2 they're all within, you know, a point or two of each
3 other. So, all six measures are very close.

4 Q. In addition to the portfolios you constructed
5 and the two broad market indices, have you looked at any
6 other measures of prejudgment interest?

7 A. Yes, I have.

8 Q. And what -- what did you look at?

9 A. So, I looked at the Moody's AAA long-term bond
10 rate.

11 Q. And what was that rate? What did you determine
12 that rate revealed for both of the two takings?

13 A. So, that rate is about 5 to 6 percent for both
14 of the takings.

15 Q. What types of securities comprise the Moody's
16 AAA long-term corporate bond index?

17 A. It's comprised of corporate debt that Moody's
18 has rated as AAA, and it's also long-term debt that has
19 maturities greater than 20 years. So, between 20 and 30
20 years.

21 Q. Have you -- are you familiar with any court
22 determination of prejudgment interest that utilized the
23 Moody's AAA long-term corporate bond index?

24 A. Yes, I am. In the -- in the Biery case that I
25 was an expert in, the Court ultimately adopted the

1 Moody's AAA rate, you know, and you guys can look at the
2 court case, but my interpretation of it is I did an
3 analysis where I thought that the diversified -- a
4 diversified fund rate was the appropriate rate, and I
5 calculated that return, and then by -- by way of
6 reference, I computed the Moody's rate as well, and it
7 turned out that both of those rates were almost the
8 same. They were very similar in that instance. And
9 then the Court adopted the Moody's rate.

10 Q. And in your opinion, is the rate of return on
11 Moody's AAA bonds an appropriate measure of the
12 prejudgment interest in the case that you're testifying
13 in today?

14 MR. PHILLIPS: I am going to object to this,
15 Your Honor. I don't believe that the Moody's rate was
16 ever included in Mr. Wazzan's report. So, I think this
17 is a new opinion for which we have not been previously
18 made aware.

19 MR. DWYER: Your Honor, in terms of the witness'
20 testimony, he's provided testimony as to the four
21 portfolios he constructed and the two broad indices, and
22 we've now moved into what other -- what other ways of
23 measuring this have you considered.

24 This isn't -- this isn't part of his -- this
25 isn't what he's recommending in terms of his opinion.

1 This is his -- his trying to be efficient and not
2 have -- and not requiring Dr. Wazzan to come back from
3 California to give a rebuttal expert report on this, and
4 we just have a few more examples of things that he
5 considered to just -- just as testing the -- the --
6 testing his --

7 THE COURT: Is there any mention of Moody's in
8 his expert report or rebuttal report?

9 MR. DWYER: Well, yes, he -- in his -- in his
10 rebuttal report, which is PTX 2855, at page 17 of 22,
11 which is in front of you, he -- he discusses -- he
12 discusses the Moody's AAA long-term bonds because that's
13 what -- that's what the prejudgment interest expert who
14 was offered by the Defendant used or referred to, you
15 know, and so he does express -- in paragraph 36, he
16 does -- he does comment on that.

17 THE COURT: The objection is overruled. I will
18 allow the testimony.

19 MR. PHILLIPS: Thank you, Your Honor.

20 BY MR. DWYER:

21 Q. Is there a difference between -- let me try the
22 question this way. Is there a difference between what
23 was taken in this case and what Moody's is trying to
24 measure that causes you to form an opinion as to whether
25 Moody's -- the Moody's rate would be a rate that would

1 be applicable in this case?

2 A. Sure. So, in this case, the asset in question
3 is AIG stock, which is not a debt instrument. So, in my
4 opinion, the -- if a stock is taken, I think an investor
5 would replicate it with a stock holding, not a debt
6 instrument.

7 Q. Did you consider the rate of return on any other
8 securities in forming your opinions?

9 A. I also considered the TIPS rate.

10 Q. What's the TIPS rate?

11 A. TIPS is the Treasury Investment Rated Security.
12 It's a five-year security that has an inflation
13 protection payment that's made at maturity.

14 Q. Did you observe what the rate of return would be
15 for the shareholder classes using the five-year TIPS
16 rate in this case?

17 A. Yes. It's about 3 percent for both of the
18 dates.

19 Q. In your opinion, is the five-year TIPS rate --
20 withdrawn.

21 In your opinion, is the five-year TIPS rate of
22 return an appropriate rate to use for prejudgment
23 interest in this action?

24 A. No.

25 Q. Why not?

1 A. Well, for one, like I said earlier, the asset in
2 question here is stock. The TIPS rate is a debt
3 instrument. The -- the TIPS rate specifically does not
4 compensate for the opportunity cost that Plaintiffs were
5 forced to bear. It does provide some inflation
6 protection. I think that's it, primarily.

7 Q. Is the use of the five-year TIPS rate consistent
8 with the prudent investor rule?

9 A. No.

10 Q. Other than the corporate bond rate or the
11 five-year TIPS rate, in forming your opinions, did you
12 look at other rates to test the opinions that you formed
13 as to the four portfolios and the broad market indices?

14 A. I also looked at the one-year Treasury rate.

15 Q. And what is the rate of interest that you
16 observed from the one-year Treasury rate bills?

17 A. It's about half a percent for each of the dates.

18 Q. In your opinion, is the rate on a one-year
19 Treasury bill an appropriate rate to use for the
20 calculation of prejudgment interest in this case?

21 A. No.

22 Q. In your opinion, would the rate of return on a
23 one-year Treasury bill adequately compensate Plaintiffs
24 for the lost use of their money?

25 A. No.

1 Q. Why not?

2 A. Primarily for the same reasons that the TIPS
3 rate is not appropriate. It also has additional flaws.
4 One, it doesn't even protect from inflation, and then,
5 two, it's a very -- you know, it's a short -- that's a
6 short time instrument. It's a one-year instrument,
7 whereas the length of the taking here is now stretching
8 into five years. So, no, I don't think it would be
9 appropriate.

10 Q. Do either the five-year TIPS or the one-year
11 Treasury bill rates take into account the liquidity risk
12 of the class?

13 A. No, they don't.

14 Q. Did you give consideration to any other
15 reference rates in forming your opinions of an
16 appropriate prejudgment interest rate?

17 A. You know, I also looked at statutory rates in --

18 Q. You're talking about state statutory rates?

19 A. State statutory rates, yes.

20 Q. And what did you find -- what did you observe
21 there?

22 A. So, my general overview indicated that they
23 ranged between 5 and 10 percent, depending on the state.

24 Q. Are those consistent with the -- withdrawn.

25 Have you also looked at what your portfolio

1 calculations would -- would be if you had extended the
2 end date from December 31st, 2013, to a later date?

3 A. Yes, I did.

4 Q. And what date did you extend those to?

5 A. So, I did some calculations through September
6 2014.

7 Q. How did those calculations compare to the
8 calculations you did through December 31st, 2013?

9 A. So, they're very close. I mean, again, these
10 are market rates, so they did fluctuate a little bit,
11 and some went up, some went down, and you would have to
12 recalculate these as of the date of a judgment, but
13 they're -- it turns out they're essentially the same.

14 Q. Did you use the same methodology for the
15 September 30th, 2014, calculations that you had used for
16 the December 31st, 2013, calculations?

17 A. Yes, I did.

18 Q. And just finally, is -- what is your opinion as
19 to the rate of interest for the creditor taking class?

20 A. So, as of December 31, 2013, I think it's 7
21 percent.

22 Q. And what is your opinion for the stock split
23 taking class?

24 A. Twenty.

25 Q. Twenty percent?

1 A. 20.1 percent.

2 Q. For that same period of time, through the end of
3 last year?

4 A. Yes.

5 MR. DWYER: Your Honor, I would offer the two
6 demonstratives that we marked.

7 THE COURT: Sure. We will admit those as
8 Plaintiffs' demonstrative exhibits.

9 (Plaintiffs' Exhibit Number PDX 2841 was
10 admitted into evidence.)

11 (Plaintiffs' Exhibit Number PDX 2842 was
12 admitted into evidence.)

13 MR. DWYER: And I will pass the witness.

14 THE COURT: Just one further question. In your
15 view, how often should compounding be done? I think you
16 said that there -- the interest rates should be
17 compounded.

18 THE WITNESS: Yes. Well, I would compound
19 continuously I think is the most economically sensible.
20 It may not always be practical, but the market rates are
21 effectively compounding continuously.

22 THE COURT: All right, thank you.

23 CROSS EXAMINATION

24 BY MR. PHILLIPS:

25 Q. Sir, I'd like to start where Mr. Dwyer left off.

1 You said that you had recalculated your interest rates
2 through September 2014, correct?

3 A. Yes.

4 Q. And that was in reference to the slide which is,
5 I believe, PTX 2841? I mean 2842, was the one we were
6 looking at.

7 Now, why did you choose September 2014 as the
8 end date?

9 A. Well, because that was the -- that was when I
10 updated the calculations. That was the most recent
11 date.

12 Q. Did you -- have you since then looked at what
13 those returns would be if you extended it through
14 October of 2014?

15 A. No, I haven't.

16 Q. October 15th, in particular?

17 A. No, I haven't.

18 Q. Do you happen to know what happened on October
19 15th in the stock market?

20 A. Not offhand.

21 Q. Do you -- do you recall whether the stock market
22 had a drop on October 15th, 2014?

23 A. No, I don't.

24 Q. If I told you that the stock market had a drop
25 of 400 points on that day, would you have any reason to

1 disagree with that?

2 A. No.

3 Q. And if, in fact, the stock market had dropped
4 400 points as of October 15th and you chose that as the
5 end date for your calculation, what effect would that
6 have on the returns you've calculated here?

7 A. Well, I can't tell you, because I don't know
8 what it did in the dates leading up to that drop.

9 Q. A 400-point drop or approximately a 2 percent
10 drop in the S&P would have a negative effect on your
11 calculation, wouldn't it?

12 A. In and of itself, yes.

13 Q. Sir, let's step back for a moment and I'd like
14 to discuss some things about prejudgment interest
15 generally. I want to use your terminology.

16 I believe, just so we're clear, when you're
17 talking about prejudgment interest and you're
18 referencing the amount we're looking at, you're looking
19 at it in two pieces. The first piece is the damage
20 award, correct?

21 A. Well, the damage award, I'm not -- it's not my
22 issue here. I'm not -- that's a number that's provided
23 by somebody else.

24 Q. Okay. So, you assume that there is a damage
25 award, and then you're applying an interest rate to that

1 damage award, correct?

2 A. Yes.

3 Q. So, that damage award is something that you're
4 not looking at. That damage award, in a takings case,
5 is what the harm is to the Plaintiff that results from
6 the taking. Do you understand that?

7 A. Generally, yes.

8 Q. So, then, the interest rate that you're applying
9 to that damage award takes the amount of the award and
10 assumes there's a delay. Would you agree with that?

11 A. Yes.

12 Q. And then to account for that delay, you apply an
13 interest rate to make that damage award amount current
14 based on the length of that delay.

15 A. Yes.

16 Q. So, that delay is really an extension of time,
17 and what you're trying to do is compensate the awardee
18 of the damages for having to wait to get the money.

19 A. Well, I'd say that's pretty narrow. I mean, you
20 are going to compensate for the time value of money as
21 well as the foregone opportunity.

22 Q. The foregone opportunity is not related to the
23 time, is it?

24 A. I think it is. I mean, it's an opportunity
25 cost, and so instead of receiving a cash payment at the

1 time of the taking and having the use of those funds,
2 you got nothing. You had to wait until you got cash,
3 you know, five years later. So, absolutely, there's an
4 opportunity cost and there's also, you know, a time
5 value of money. It's two separate things that are
6 related.

7 Q. Fair enough.

8 But you would agree that the opportunity cost
9 goes to the harm of not having the money at the time
10 that you thought you were going to get it.

11 A. Well, yeah, I mean, I think both things go to
12 that. I mean, the -- the time value of money starts at
13 the time of the taking and the opportunity cost starts
14 at the time of the taking.

15 Q. Fair enough.

16 And if we focus on the time value of money, when
17 we're looking at prejudgment interest, the interest rate
18 should increase or increase the amount that the awardee
19 gets the longer the delay goes on.

20 So, if -- so, for a short example, if you have a
21 person who is -- has a delay of six months, they will
22 receive less in prejudgment interest than someone who
23 has a delay of a year.

24 A. All things being equal, I would agree with that.

25 Q. And then prejudgment interest is also supposed

1 to protect the principal amount. So, whatever the
2 damage award is, the purpose of prejudgment interest is
3 to ensure that that damage award has the same buying
4 power when it's actually provided.

5 A. I'm not sure I agree with how you phrased that.
6 Can you -- can I see it -- the question somewhere or can
7 you reread it for me?

8 Q. I can reread the question and I will try to
9 rephrase it for you, sir.

10 So, let's start. You have a damage award, we
11 can agree on that, and you are going to apply
12 prejudgment interest to that damage award because
13 there's a delay between when that award is awarded and
14 when the party actually receives the award.

15 A. Yes.

16 Q. And during the course of that time, the
17 amount -- and let's use a million dollars. Can we agree
18 that we'll use a million dollars as the award?

19 A. How about 10?

20 Q. Okay, 10 million --

21 A. I like smaller numbers.

22 Q. So, an award of \$10 million is made --

23 A. No, \$10.

24 Q. Oh, \$10. I apologize. I like millions. It's
25 sounds a lot better. It's what I'd like to have.

1 So, let's start with \$10, and that award of
2 \$10 --

3 MR. DWYER: Your Honor, this witness is about
4 prejudgment interest, and the questions are about
5 starting out with an award, which I think takes you into
6 postjudgment interest. I just don't want the record to
7 be -- I'm not troubled with the questions, but I think
8 the word "award" is a problem.

9 THE COURT: I had the same thought when the
10 questions were being framed, but you can go ahead with
11 your question.

12 MR. PHILLIPS: And if I may briefly respond,
13 Your Honor, as I understand what Mr. Wazzan has done
14 here, he's using the terminology "damages" and applying
15 prejudgment interest to the damages. So, "award," I
16 agree, is not the same word. If we use "damages," is
17 everyone -- are we fine if we use the word "damages"?

18 THE COURT: Yeah, but do your questions assume
19 money that's added to a judgment after the judgment is
20 entered or before?

21 MR. PHILLIPS: For the purpose of this case,
22 Your Honor, as I understand what Mr. Wazzan has done,
23 he's looking at September 22nd as the date the damages
24 are established and then bringing those figures current.
25 So, that's the context in which I'm using the term.

1 THE COURT: All right, go ahead.

2 MR. PHILLIPS: Okay.

3 BY MR. PHILLIPS:

4 Q. Let me start with a simpler question, sir. You
5 would agree that the damage award and prejudgment
6 interest are not the same thing, correct?

7 A. Yes.

8 Q. Okay. And once you have a damage award, the
9 purpose of prejudgment interest is to make sure that
10 that damage award remains a constant value until the
11 time it's paid out.

12 I see that Mr. Dwyer has an objection.

13 MR. DWYER: Your Honor, we are still back to
14 awards. I mean, I -- you know, I think the record
15 becomes awfully misleading if we start out with a
16 judgment to determine -- to -- and then ask questions
17 about prejudgment interest.

18 THE COURT: I do tend to agree.

19 Can you rephrase, Mr. Phillips?

20 MR. PHILLIPS: Yes. Yes, Your Honor.

21 BY MR. PHILLIPS:

22 Q. In fact, we will -- in fact, I think I'll
23 just -- okay.

24 Okay. Once there has been a harm resulting in
25 damage, prejudgment interest is applied to make that

1 damage current when it's finally paid out.

2 A. I don't know. In my mind, it's not so
3 complicated. A cash payment gets paid at the time of
4 the taking. What do you do with the cash? That's it.
5 So, in my analysis, I've taken -- you know, I'm assuming
6 that a cash payment gets made concurrent with the
7 taking, and then that cash gets used -- gets deployed in
8 an investment, and what return would have obtained.

9 Q. Let's focus on that. When you say that cash
10 would have been deployed in an investment, you mean that
11 the party receiving that cash would have taken it and
12 then bought another stock, in your examples.

13 A. In my methodology, yes. If you get displaced
14 from AIG's stock, you try to get back into something
15 similar.

16 Q. And in this case you have tried to create
17 portfolios showing what the stocks are you believe that
18 the Plaintiffs in this case would have purchased with
19 the cash they were receiving.

20 A. Yes.

21 Q. And you have -- well, have you done any analysis
22 of any of the Plaintiffs in this case?

23 A. What do you mean by that?

24 Q. Have you looked at who any of the investors were
25 that form the Plaintiff classes, either one of those

1 classes?

2 A. As individuals?

3 Q. Yes.

4 A. No.

5 Q. Have you looked at what any of those individuals
6 invested in, other than AIG stock?

7 A. No.

8 Q. Have you looked at what any of those individuals
9 may have invested in after September 2008?

10 A. No.

11 Q. Have you looked at what the risk-return profile
12 was of any of those investors that form the Plaintiff
13 class in either the September 2008 class or the June
14 30th, 2009 class?

15 A. No.

16 Q. Did you assume that all Plaintiffs would act the
17 same?

18 A. Yeah. I mean, this is a class, and essentially
19 I'm doing an analysis on the part of a generic investor
20 in AIG that held stock at the time of the takings.

21 Q. Stepping back for a second, is -- is your
22 opinion that Plaintiffs' stock was taken in this case
23 for either class?

24 A. Well, I think you might more appropriately say
25 the value was taken or some value was taken.

1 Q. What do you mean, "some value was taken"?

2 A. Well, my understanding is that for the first --
3 the first taking, it -- they were essentially diluted.

4 Q. And what is your understanding about the second
5 taking?

6 A. That essentially their voting rights were --
7 were taken so that the preferred could be converted to
8 common.

9 Q. Is the assumption that the first Plaintiff class
10 had economic value taken and the second Plaintiff class
11 had their voting rights taken a central assumption in
12 your opinion?

13 A. Not really, no. I'm not calculating the
14 damages. I'm just giving you the prejudgment figures.
15 So, somebody else is going to calculate the value and
16 put a number to it.

17 Q. But you would agree that central to your --
18 central to your opinion is the assumption that both of
19 these Plaintiffs' classes had their -- the September
20 2008 class had their economic value taken and the June
21 30, 2009, class had their voting power taken.

22 A. Well, again, I think it's economic value in both
23 instances.

24 Q. But you did say previously, for the June 30th,
25 2009, class, you were focusing on the voting aspect as

1 what was taken.

2 A. Yeah, but that voting has an economic value,
3 which somebody's going to determine what that value is.

4 Q. So, and just to be clear -- and I think we're on
5 the same page -- it is a central assumption in your
6 opinion that there was a taking on these two dates.

7 A. Yes.

8 Q. Okay. I'd like to turn and discuss your
9 portfolios a little more in depth. You would agree with
10 me that a stock is considered a risky asset, generally.

11 A. Yes.

12 Q. Okay. And it's a risky asset because there's
13 the possibility that a stock increases or decreases in
14 value.

15 A. Yes.

16 Q. And that risk generates something called a risk
17 premium.

18 A. Yes.

19 Q. And you would agree that a risk premium is a
20 form of compensation to an investor for tolerating risk
21 above a risk-free investment, correct?

22 A. Yes.

23 Q. So, the risk premium rewards an investor for
24 taking on greater risk.

25 A. Yes.

1 Q. And if the investor was not taking on that risk,
2 it wouldn't be a -- it would be inappropriate to award
3 that person the risk premium.

4 A. Yeah. So, in the taking -- in the analysis
5 here, you've taken away their opportunity to take on a
6 risk. I mean, that's the central issue.

7 Q. I'm asking more generally, sir. If someone
8 isn't investing in a stock, a risky stock, is it
9 appropriate for that person to earn the return that's
10 commensurate with the risk premium?

11 A. Just in the abstract?

12 Q. In the abstract.

13 A. Yes.

14 Q. It is appropriate for someone to earn -- and I
15 just want to be clear. Is it your testimony that it's
16 appropriate for a person who does not invest in a risky
17 asset to earn a return commensurate with the risk
18 premium that would have been assigned for actually
19 investing in that asset?

20 A. In the abstract? No.

21 Q. Okay. So, we're -- okay.

22 You have used the term "prudent investor rule,"
23 and I want to understand a little bit more about that.
24 I believe in your report you've discussed modern
25 portfolio theory. What do you understand modern

1 portfolio theory to be?

2 A. Well, I guess I would call it the sort of
3 current state of the art of the literature, but
4 portfolio theory dates back to the early fifties, I
5 believe, with Harry Markowitz, you know, and then sort
6 of moves forward until today.

7 Q. Now, would you agree with me that in modern
8 portfolio theory, the analysis looks at an individual
9 investor and determines their risk-return appetite?

10 A. Yes.

11 Q. Would you also agree that modern portfolio
12 theory does not start from the presumption that an
13 investor buys a stock and then holds onto it
14 indefinitely?

15 A. Yeah, I'm not sure that -- I guess I'd agree
16 with that, yes.

17 Q. Would you also agree that under modern portfolio
18 theory, an investor's optimal portfolio changes over
19 time?

20 A. Yes.

21 Q. And modern portfolio theory focuses on an
22 investor's overall portfolio and not particular stocks
23 within that portfolio, correct?

24 A. Yes.

25 Q. And under modern portfolio theory, we -- the

1 analysis focuses on each individual investor, doesn't
2 it?

3 A. Sort of. I mean, it generally holds that all
4 investors place themselves on an efficient capital
5 market line.

6 Q. But modern portfolio theory looks -- when you're
7 doing an analysis under modern portfolio theory, you're
8 looking at an individual investor, not a generic
9 investor.

10 A. Well, you know, I don't think that Harry
11 Markowitz had in mind class action litigation. So,
12 it's -- you know, in this instance, it's a class, it's
13 not an individual, and I'm considering the generic
14 investor who's holding a share of AIG and is displaced
15 from that position and then takes his cash and puts it
16 in a different position; in this case, tries to get back
17 to the closest thing he can.

18 Q. And as you said, generic investors were not what
19 Harry Markowitz had in mind when he was developing
20 modern portfolio theory, correct?

21 A. Yes.

22 Q. One of the assumptions you made in forming your
23 hypothetical portfolios is that the AIG investors whose
24 stock, either through the economic portion or the voting
25 rights portion, was taken on one of those two dates,

1 would not have continued to invest in AIG after that
2 date, right?

3 A. Yes.

4 Q. Did you do anything to test that assumption?

5 A. No, I didn't test the assumption, but what I did
6 was, you know, I satisfied myself that AIG was not being
7 run as a profit-maximizing firm, and, therefore, I
8 didn't think it was appropriate to put the cash back
9 into AIG in this context.

10 Q. Could the Plaintiffs, once they received the
11 cash, have reinvested in AIG?

12 A. I guess it's possible.

13 Q. But you didn't analyze whether or not any of
14 those investors would have invested that cash in AIG?

15 A. No.

16 Q. If an investor redeployed the cash back into
17 AIG, do you know what return that investor would have
18 earned?

19 A. No.

20 Q. Did you do anything to analyze that?

21 A. No.

22 Q. I'd like to ask you some questions about
23 opportunity cost, and as I understand it, your
24 contention is that prejudgment interest should be
25 measured by looking at the return Plaintiffs would have

1 earned absent the takings, correct?

2 A. Well, I think more precisely it's the return
3 that would have been generated had a cash payment been
4 made concurrent with the taking. Maybe that's the same
5 thing, but that's how I would phrase it.

6 Q. Okay. So, if a cash payment had been made
7 concurrent with the taking, you are measuring
8 prejudgment interest by looking at what Plaintiffs would
9 have reinvested or redeployed that cash in, correct?

10 A. Yes.

11 Q. And your prejudgment interest rate is based on
12 the return that they would have received on the
13 investment they redeployed that cash in.

14 A. Yes.

15 Q. And you contend that this is the most
16 appropriate way to look at prejudgment interest because
17 it focuses on each Plaintiff's opportunity cost,
18 correct?

19 A. Yes.

20 Q. The Plaintiffs' opportunity cost, however, is
21 not a function of the return they would have earned on
22 those investments, is it?

23 A. Yes, it is.

24 Q. But that's not what you said in your report, is
25 it?

1 A. Can you point me to that somewhere?

2 Q. Yes, sir, we can. Let's look at page 9, and I'm
3 specifically referring to -- and this is your original
4 report, and if we can look at footnote 25.

5 And in this footnote, which follows the
6 sentence -- and I'll read it -- "This return is most
7 appropriately determined by the investors' opportunity
8 cost." And in the footnote, you state that,
9 "Opportunity cost," and you cite this Abdala article,
10 "Key Damage Compensation Issues in Oil and Gas
11 International Arbitration."

12 And towards the bottom of that, Mr. Abdala notes
13 that "Opportunity cost, which on average is equal to the
14 cost of capital, of sourcing funds to replace such
15 flows."

16 Do you see that?

17 A. Yes.

18 Q. So, you're citing an article that says
19 opportunity cost is measured based on the cost of
20 capital or sourcing funds to replace such flows,
21 correct?

22 A. Yes.

23 Q. And that is not the return on an investment,
24 correct?

25 A. Those are equivalent.

1 Q. How are they equivalent?

2 A. The opportunity cost and the cost of capital are
3 generally taken to be equivalent.

4 Q. Okay. You're not measuring lost profits in your
5 prejudgment interest analysis, are you?

6 A. No.

7 Q. Or expectancy losses?

8 A. Expectancy losses? I don't know what that is.

9 Q. Losses that -- future earnings, I'll use that
10 phrase.

11 A. No.

12 Q. Maybe I misunderstood you. You said no to my
13 question or no to my use of "future earnings" as a
14 phrase?

15 A. I think no, I'm not calculating expectancy
16 losses.

17 Q. But you would agree, wouldn't you, that
18 opportunity costs are a form of expectancy loss or a
19 lost profits analysis, right?

20 A. No.

21 Q. Why not?

22 A. Opportunity cost is the cost of a foregone
23 opportunity, and so in this instance Plaintiffs did not
24 receive cash at the time of the taking. That has a cost
25 to them. They've been deprived of that use, and the

1 right economic measure to make them whole, to put them
2 in the same position as they would have been had they
3 received cash, is to determine that cost, the value of
4 that opportunity cost.

5 Q. And you've equated that -- that cost with a
6 foregone investment, correct?

7 A. Yes.

8 Q. And that foregone investment is what you're
9 analyzing here as prejudgment interest.

10 A. Yes.

11 Q. Focusing on your hypothetical portfolios -- and
12 you created four of them -- have you identified any
13 particular asset that the Plaintiffs in this case would
14 have invested in?

15 A. I'm not sure I follow the question. I mean,
16 they would have invested -- I calculated the return on
17 four synthetic portfolios, as well as returns on broad
18 indices.

19 Q. Well, let's focus on the indices. A person
20 cannot invest in an index, can they?

21 A. Well, yeah, I mean, they can.

22 Q. How can a person invest in an index? You have
23 to actually invest in a stock, don't you?

24 A. Yeah. These can be easily replicated, right?
25 So, for example, the S&P 500 can be replicated with

1 "spiders," you can just go buy it, or you can
2 essentially recreate it on your own.

3 Q. Was part of your analysis that the Plaintiffs
4 would just go out and purchase the stocks that you're
5 talking about?

6 A. Well, no. I mean, they don't -- they don't do
7 any of these things, right? I mean, these are -- these
8 are calculations that are made in the abstract because
9 the cash was not received. So, we're trying to figure
10 out what the right return would be.

11 Q. But you didn't identify any particular asset
12 that the Plaintiffs in this case would have invested in
13 by deploying the cash they received for the taking,
14 correct?

15 A. Well, not specifically, no.

16 Q. Focusing -- while we're on the topic of the S&P,
17 if the S&P had gone down by 50 percent from September
18 2008 until today, would it be your opinion that the
19 prejudgment interest rates -- rate in this case should
20 be a negative value?

21 A. Well, I think it would probably just be zero.

22 Q. Would a prejudgment interest rate of zero
23 adequately compensate the Plaintiffs in this case for
24 the time value of money?

25 A. Yes.

1 MR. PHILLIPS: Your Honor, I am moving on to a
2 new topic. It's up to you, I can start this or we can
3 take our afternoon break.

4 THE COURT: Let's go a little longer, go until
5 about 3:15. Maybe you'll be done by then.

6 MR. PHILLIPS: I can't promise anything, Your
7 Honor.

8 BY MR. PHILLIPS:

9 Q. Sir, I'd like to focus now on your -- and I want
10 to use the proper terminology. I know -- you stated
11 that once you created these hypothetical portfolios, you
12 came up with a way to compare those hypothetical
13 portfolios versus the historical returns on AIG -- on an
14 AIG stock investment, correct?

15 A. Yes.

16 Q. And to do that you looked at the historical
17 information from AIG, and I believe you referenced AIG's
18 10-Ks.

19 A. I think that's right.

20 Q. Okay. And if you look in your report at Exhibit
21 2, and focusing on this document, what you have here, as
22 I understand it, is a listing of the revenues of AIG
23 broken down by operating segment for five particular
24 years, correct?

25 A. Yes.

1 Q. And those five years are 2003, 2004, 2005, 2006,
2 2007. Is that right?

3 A. Yes.

4 Q. And this list does not include information from
5 2008.

6 A. Correct.

7 Q. You chose not to include information from 2008
8 purposefully, correct?

9 A. Yes.

10 Q. Do you happen to know what AIG's revenues were
11 in 2008?

12 A. Not offhand.

13 Q. Okay. If we can look at -- I am going to show
14 you another document, sir. If we can look at JX 188,
15 and that should be in the binder we gave you. It's page
16 225.

17 A. Okay.

18 Q. And this is AIG's 2008 10-K that was filed on
19 December 31st, 2008.

20 A. Okay.

21 Q. And if you look at page 225, on this page, we
22 see listed AIG's 2008 revenues, 2007 revenues, and 2006
23 total revenues, and I'd like to focus on the column
24 labeled "Total."

25 A. Do you have the page number?

1 Q. The page number is -- at the bottom, sir, it
2 says page 225 of 553.

3 A. Okay.

4 Q. And you'll notice in this column, for 2008, it
5 notes that AIG's total revenue was \$12 billion, and in
6 2007, AIG's total revenue was \$110 billion.

7 A. Hang on, I'm not finding the right --

8 Q. If you're looking at the document, sir, it is
9 the one, two, three, four, five -- the sixth column.

10 A. Okay.

11 Q. And at the top it has 2008 revenues, and then
12 2007 revenues, and then 2006 revenues.

13 A. Okay.

14 Q. And I'd like to focus on the number that
15 corresponds to the total revenues.

16 A. Okay.

17 Q. Now, in 2008, AIG had total revenues of \$12
18 billion, approximately.

19 A. Okay.

20 Q. And in 2007, AIG had revenues of approximately
21 \$110 billion.

22 A. Okay.

23 Q. And in 2006, AIG had revenues of approximately
24 \$112 billion.

25 A. Yes.

1 Q. So, AIG's revenues dropped substantially after
2 2007, before 2008, by about \$100 billion, correct?

3 A. Yes.

4 Q. So, AIG -- so, an investment in AIG, based on
5 return of revenues, would have been different including
6 2008 information, wouldn't it?

7 A. Well, I mean -- so, look, I left out 2008
8 because I didn't have full-year data as of the time of
9 the first taking, but there's a little asterisk here at
10 "Total Revenues," and it says, "To better align
11 financial reporting with the manner in which AIG's chief
12 operating decision-maker manages the business, AIG's own
13 credit risk valuation adjustments on intercompany
14 transactions, the recognition of which began in 2008,
15 are excluded from segment revenues." So, there's
16 something going on there, which, you know, sort of leads
17 me to believe I made the right decision.

18 Q. Well, let's focus on the June 30th, 2009, class.
19 For that period, you would have had full information for
20 the 2008 year, correct?

21 A. Yes.

22 Q. So, it would be appropriate, if you were making
23 a comparison between the return on a hypothetical
24 investment versus return on an AIG, for a taking that
25 occurs on June 30, 2009, to include 2008 data?

1 A. Possibly. I'm not sure it makes much of a
2 difference, really.

3 Q. Well, have you calculated that?

4 A. Well, I can tell you that I've got four
5 portfolios, one of which is unweighted. So, three of
6 them are weighted, one's unweighted, and they're all
7 virtually the same.

8 Q. So, is it your testimony that a \$110 billion
9 drop in revenue wouldn't have any effect on the interest
10 rate you calculated for the June 30th, 2009, class?

11 A. Well, I think what happens is is that the
12 revenues in the weightings are allocated by segment, and
13 here you can see that the losses -- so, in 2008, the
14 losses are from financial services, which was like a 4
15 percent weighting as far as AIG is concerned. So, I
16 don't think it makes much of a difference. I haven't
17 calculated this, but as I sit here, I doubt it matters.

18 Q. So, the fact that AIG had a Financial Services
19 Division was irrelevant in your analysis to an
20 investment that a Plaintiff would have chosen absent
21 AIG.

22 A. It's not that it's irrelevant. It's just that
23 it had a small weight.

24 Q. But it would have -- a \$110 billion drop in the
25 total revenues of AIG, which is what you're calculating

Starr International Company, Inc. v. USA

1 here on Exhibit 2, would have had an effect and would
2 have lowered the amount of revenue that you're comparing
3 AIG to versus these hypothetical portfolios.

4 A. Yeah, but, I mean, something is now -- you know,
5 they've changed the way they're reporting this starting
6 in 2008. So, that would have affected 2009. I think
7 what I did is -- is appropriate. I calculated
8 weightings over kind of a longer period of time. In any
9 given year, the revenues are going to fluctuate, you
10 know, some will go up, some will go down. The takings
11 period has lasted five years. So, I think it's fine.
12 And then if you look at the portfolios, the weighted
13 ones and the unweighted ones give you the same result.
14 So, the whole weighting thing to me is not -- is not an
15 issue.

16 Q. But you didn't include 2008 data in your
17 analysis, did you?

18 A. No.

19 Q. So, you don't know how it would affect your
20 analysis.

21 A. Well, as I sit here, I don't think it would make
22 much of a difference.

23 Q. But you would agree with me that it would make
24 the rates lower.

25 A. Honestly, I don't know.

1 Q. A \$110 billion decrease in revenue would not
2 make the rates lower for a return on AIG?

3 A. But they've changed their accounting
4 methodology. I mean, there's a note. So, I mean, you
5 would have to -- if you -- to go back, you would have to
6 normalize them if you want to include it. So, I don't
7 know how that -- how one would do that.

8 THE COURT: All right, Mr. Phillips, do you want
9 to take that break?

10 MR. PHILLIPS: That would be fine with me, Your
11 Honor.

12 THE COURT: All right. We will reconvene at
13 3:30.

14 (Court in recess.)

15 THE COURT: Thank you. Please be seated.
16 Let's go ahead, Mr. Phillips.

17 MR. PHILLIPS: Thank you, Your Honor.

18 BY MR. PHILLIPS:

19 Q. Sir, I would like to go back to something we
20 discussed a little earlier, and this is the example
21 about the S&P, and I had asked you a question about if
22 the S&P dropped 50 percent, why wouldn't the Plaintiff
23 then, who you're basing this hypothetical portfolio on,
24 the S&P, incur a negative return as opposed to zero.
25 And I don't think you explained to me what the basis was

1 for your argument -- not argument, but your opinion that
2 the Plaintiffs should get zero and not the negative
3 value, because -- I'm going to start over.

4 If you're basing the hypothetical returns that
5 these Plaintiffs would have incurred on the S&P
6 portfolio and that goes negative, shouldn't the
7 Plaintiffs then incur a loss, because they're getting
8 the benefit of the upside if it goes up, but you're
9 stopping it at zero? Why is that?

10 A. Well, I mean, you have given me a hypothetical
11 that is -- I mean, this is really far-fetched. So, my
12 methodology can generate a negative return. That's not
13 the case here. It would be exceedingly rare. And I
14 actually did this calculation going back all the way to,
15 I think, 1980 or 1979 and looking at five-year periods,
16 five-year holding periods, and I think the probability
17 that you get a negative return is, like, 0.07 percent.
18 So, it's very unlikely.

19 Any -- any methodology that's predicated on
20 market values, like my method or the one-year T-bill
21 even, has the possibility of generating negative
22 returns, and the reason I said that it would be zero is
23 the Plaintiffs wouldn't ask for prejudgment interest, so
24 there would be no issue.

25 Q. Well, what's the economic basis for stopping the

1 return at zero?

2 A. Well, none. In my methodology, you could get a
3 negative number.

4 Q. A different subject. You've stated that the
5 June 30th, 2009, class had their voting rights taken
6 away, correct?

7 A. (Witness nods head.)

8 Q. And if you were trying to find a comparable
9 asset to a voting right, why are you looking at stock?

10 A. Well, simply I think my understanding is that
11 the asset AIG stock was impaired, and so I've tried to
12 put them back into a similar asset.

13 Q. But a stock is different from a voting right,
14 correct?

15 A. Yeah, but this is a voting right on a share of
16 stock, and that contributes to the overall value of that
17 share. So, you know, I would agree with you, it's not a
18 perfect match. It's not as good as the first instance,
19 but I think it's still related to AIG stock.

20 Q. If you'll -- and I'd like to go through a short
21 hypothetical here. Assume with me that AIG -- no taking
22 occurred in September 2008 or June 2009. So, there is
23 no taking. Consequently, there is no government
24 intervention, there is no money into AIG.

25 Wouldn't it be most appropriate to compare an

1 investment in AIG to the stock returns on another
2 failing company?

3 A. I don't think I can answer. I mean, we're too
4 far afield. We don't know what would have happened. I
5 haven't really thought about it. I don't know the
6 answer, as I sit here.

7 Q. But assuming that AIG does not survive, does not
8 get an infusion of cash, and there's no taking, it's
9 inappropriate then to compare an investment to AIG to
10 any of your hypothetical investments, which are stocks
11 and companies that are going concerns.

12 A. You know, so, your hypothetical is pretty
13 extreme. I think in the first instance, if there was no
14 taking, then there would be no award and no need for
15 prejudgment interest, but in the limit, if you wanted to
16 say they would invest in something else, I think the
17 next most reasonable alternative would have been the
18 diversified portfolios. So, either the S&P 500 or the
19 Wilshire 5000.

20 Q. So, is it your testimony that an investment in
21 AIG, if it is a failing institution and entering
22 bankruptcy, would be to compare that investment with a
23 stock in the S&P or the Wilshire?

24 A. I don't understand the question, I guess. You
25 know, you're assuming that no taking takes place, in

1 which case there's no need for prejudgment interest.
2 So, then I have no methodology, so I don't -- I don't
3 know what else to tell you.

4 MR. PHILLIPS: Your Honor, may I have a moment?

5 THE COURT: Sure.

6 MR. PHILLIPS: We pass the witness, Your Honor.

7 THE COURT: All right. Thank you, Mr. Phillips.
8 Any redirect?

9 MR. DWYER: Just a few brief things, Your Honor.

10 THE COURT: Okay.

11 REDIRECT EXAMINATION

12 BY MR. DWYER:

13 Q. In your -- if you could look at -- in your
14 fairly recent answer, you asked -- you were asked
15 about -- you talked about a study you did of -- going
16 back from, you know, around 1970 to the present. If
17 you -- just so that the record is clear for the Court,
18 if you would look at your rebuttal report, paragraph 15
19 of your rebuttal report, which in the book I gave you
20 originally is PTX 2855, and paragraph 15 on pages 8 and
21 9.

22 A. I'm with you.

23 Q. Is that -- is that the -- and your report says
24 in there, "By way of example, my analysis of the
25 Wilshire 5000 Index, a broad measure of the U.S. stock

1 market, indicates that the negative rates are extremely
2 unlikely over a period of time similar to the present
3 situation."

4 A. Yes. That's -- that's what I was referring to.

5 Q. And you say, "I calculated the six-year holding
6 period return for every trading day between December 3,
7 1979, and December 31, 2013," and then reading down, you
8 say, "The return is negative in only 51 of 7123 possible
9 holding periods or 0.72 percent."

10 A. That's correct.

11 Q. That's what you were referring to?

12 A. Yeah.

13 Q. Now, before the -- before the break,
14 Mr. Phillips said -- he gave you a hypothetical in which
15 he said -- he was -- and I believe this is at [realtime
16 transcript] page 183, lines 22 to 25. Mr. Phillips
17 says:

18 "QUESTION: Focusing -- while we're on the topic
19 of the S&P, if the S&P had gone down by 50 percent from
20 September of 2008 until today, would it be your opinion
21 that the prejudgment interest rates in this case should
22 be a negative value?"

23 And your answer is:

24 "ANSWER: Well I think it would be -- it
25 probably would just be zero."

1 And then he goes on to ask you the question at
2 lines 3, 4, and 5, on page 184:

3 "QUESTION: Would a prejudgment interest rate of
4 zero adequately compensate the Plaintiffs in this case
5 for the time value of money?"

6 And your answer is:

7 "ANSWER: Yes."

8 Were you -- in answering that question, were you
9 carrying on the hypothetical of the S&P going down 50
10 percent from September of 2008 to the present?

11 A. Yes, I was.

12 Q. And did the S&P 500 go down 50 percent from
13 September 2008 to the present?

14 A. No, it didn't.

15 Q. And has it gone up?

16 A. Yes.

17 Q. Gone up substantially?

18 A. Yes.

19 Q. And so -- so, the -- the answer you gave of
20 "yes" or that -- that prejudgment -- when it says,
21 "Would a prejudgment rate of zero adequately compensate
22 the Plaintiffs in this case for the time value of
23 money," what's your answer to the question in light
24 of -- in light of that actual -- the actual reality of
25 what's happened since 2008?

Starr International Company, Inc. v. USA

1 A. Yeah. Well, and maybe -- let me just clarify.
2 The -- my methodology incorporates both the time value
3 of money and the opportunity cost, and they're not
4 separated out. So, it's possible that the time value of
5 money could -- could be positive in an absolute sense,
6 but the opportunity cost here was negative and caused it
7 to go down, in that hypothetical.

8 Q. And just to be clear, you don't think that --
9 you don't think -- it's not your opinion that the
10 prejudgment interest rate of zero would adequately
11 compensate the Plaintiffs in this case for the time
12 value of money.

13 A. No.

14 Q. You used the phrase in one of your answers
15 "efficient capital market line."

16 A. Yes.

17 Q. What did you mean by that?

18 A. So, that's a basic premise of portfolio theory.
19 Investors attempt to place themselves into efficient
20 portfolios, and then, you know, that forms a universe of
21 possibilities, you know, of different kinds of
22 portfolios that have different risk-return
23 characteristics. And then with the combination of debt,
24 you create a line that is known as the capital market
25 line, and all investors fall on that line.

1 Q. Now, turning to a different subject, you were
2 asked about your correlation analysis, and that was in
3 your rebuttal report, as I recall.

4 A. I think it was in both.

5 Q. Both?

6 A. Yes.

7 Q. Now, did you use -- did you use approaches that
8 you found from the academic literature to do the
9 correlation analysis or did you just make up your own?

10 A. No. Correlation analysis is standard in the
11 literature.

12 Q. Did you use years for which you had a full year
13 of stock data?

14 A. Yes.

15 Q. Is that why you didn't use 2008 originally?

16 A. Yes.

17 Q. Was the -- was 2008 a normal year for the stock
18 market in terms of -- in terms of -- were there any
19 unusual events in 2008 in the stock market?

20 A. Yes.

21 Q. And did that also apply to AIG in 2008?

22 A. Yes.

23 Q. If you had used 2008 data in your correlation,
24 would that have affected the rates in the four
25 portfolios you analyzed?

1 A. Well -- so, no, I don't believe it would have
2 made much of a difference.

3 Q. Now, if you look at your rebuttal report, which
4 is PTX 2855 in the book I originally handed up, and if
5 you -- if you look at Exhibit 3 to that, which is page
6 21 of PTX 2855, is this your correlation summary?

7 A. I'm just going to do this on the screen, because
8 I can't find it in the book.

9 Q. In the blue book, it's the last thing. It's
10 just at the end of the book I handed up to you
11 originally.

12 A. This one. Yeah, that's the correlation
13 analysis.

14 Q. And in your rebuttal report, did you update your
15 correlation summary to do -- to use data in 2008 from --
16 for a period of time?

17 A. Yes.

18 Q. And what's the period of time for which you used
19 the data for 2008 in your updated correlation summary?

20 A. So, in this report -- and I think this chart is
21 from my initial report, and this is correlations with
22 AIG returns from January 2003 through, you know,
23 basically the end of the year 2007, so January 2008.

24 Q. No, you are not in the same place I am. If you
25 look at -- it's PTX 2855.

1 A. Okay.

2 Q. Page 21 of 22. It's the -- it's essentially the
3 last -- it's in the last tab, and it's essentially the
4 last item in the book. Do you have that in front of
5 you, Exhibit 3?

6 A. Yes.

7 Q. And do you see in Exhibit 3, in A, it says, "End
8 date - 1/1/2008?"

9 A. Yes.

10 Q. And then under that, it says "End date -
11 9/22/2008"?

12 A. Yes.

13 Q. Was that an update of your correlation summary
14 to include data from 2008?

15 A. Yes.

16 Q. And did that update to include AIG 2008 data
17 change the -- have any impact on the portfolio rates of
18 return for the four portfolios you calculated?

19 A. So, no, I don't believe it would have much of a
20 return at all -- I mean, much of an impact at all.

21 MR. DWYER: Your Honor, I pass the witness.

22 THE COURT: All right. Thank you, Mr. Dwyer.
23 Anything further, Mr. Phillips?

24 MR. PHILLIPS: One or two questions, with the
25 Court's indulgence.

1 THE COURT: Okay.

2 RECROSS EXAMINATION

3 BY MR. PHILLIPS:

4 Q. Mr. Wazzan, you were asked by Mr. Dwyer about
5 the hypotheticals that I discussed on cross. Would you
6 agree with me that in replacing an investment in AIG
7 that had not been taken, the most appropriate measure
8 would be a stock of a company whose management reported
9 that it would be insolvent the next day?

10 A. You know, that's not something I've thought
11 about.

12 Q. So, you didn't analyze what a comparable
13 investment to AIG would have been if AIG hadn't received
14 funding from the Government?

15 A. That's not something I considered.

16 Q. All right. So, Mr. Dwyer also asked you about
17 the efficient capital markets line. Isn't it true that
18 the efficient capital -- the efficient capital -- the
19 efficient line will differ amongst individuals?

20 A. Well, I think their position on the line will
21 differ, but there's only -- the efficient capital market
22 line is what it is.

23 Q. And that position is dependent on the
24 individual.

25 A. Yes.

1 MR. PHILLIPS: Nothing further, Your Honor.

2 THE COURT: All right. Dr. Wazzan, thank you
3 very much for your testimony. You are excused.

4 THE WITNESS: Thank you, Your Honor.

5 Do I just leave all this stuff here?

6 THE COURT: Yes. It's like changing scenes in a
7 play. Things just magically happen.

8 MR. BOIES: Your Honor, our next witness is the
9 one witness who we have by deposition, Mr. Studzinski,
10 and as we told the Court before, we have both our
11 selections and the Defendant's selections. We will play
12 our selections, and then we will play Defendant's
13 selections.

14 THE COURT: All right.

15 MR. BOIES: If we have done our joint
16 technological work, it will soon appear on the screen.

17 MR. PHILLIPS: Your Honor, may we be heard on
18 that? Regarding the video -- Plaintiffs' counsel has
19 prepared the video, and there are some questions that
20 I'm not sure are resolved on the completeness of the
21 portion that goes to the Government's designations. So,
22 we would ask that if there is any issue with that, we be
23 able to resolve it before we actually play it or at
24 least get a representation from Plaintiffs' counsel
25 that, you know, the issues we informed them of last

1 night are corrected.

2 MR. BOIES: Your Honor, I thought that had been
3 resolved. We had a conversation about this very thing
4 earlier, and if it has not been resolved, then we do
5 need to do something.

6 MR. PHILLIPS: Your Honor, I'm not sure what the
7 conversation was. I haven't been made privy to it. I
8 know that the 30-minute portion that Plaintiffs intend
9 to show is correct. We have verified that. The issue
10 was with the creation by Plaintiffs of the Government's
11 designations, and that, as far as I know, had not yet
12 been resolved, but we can certainly look into that.

13 MR. DWYER: Your Honor, I had the conversation,
14 so if I could speak?

15 THE COURT: Sure. Who did you talk to?

16 MR. DWYER: I talked to Claudia Burke, with
17 whom -- and Claudia Burke is the person with whom I've
18 been having the dialogue about this, and where she --
19 what -- we had the conversation at the lunch -- at
20 the -- at the break, and she said that they were
21 satisfied with what we have loaded up, and they will --
22 you know, they're fine with our playing that, and that
23 if -- if for some reason, as they're following along,
24 they see something missed, they'll mention it.

25 The -- what -- what has been talked about by

1 Mr. Phillips is we originally gave them a thumb drive,
2 and the original thumb drive had some capacity
3 limitations. They told us about it. We gave them
4 another thumb drive. They told us last night that there
5 were some problems. And so we said, you know, we
6 don't -- we are not going to use the thumb drive. We
7 are going to go with the full version.

8 I've reviewed the full version with the
9 transcript in front of me, and it's -- it is, in my
10 view, based on several hours of sitting there watching
11 it and reading the transcript, it is perfect. I'm not a
12 perfect person, you know, even -- even the great Homer
13 nods, but I think that, you know, the -- the method that
14 Claudia Burke and I discussed at the break is the right
15 one.

16 We play the tape. If for some reason they think
17 there's a problem, the tape is stoppable, and we can
18 ask -- if there's a line dropped, since this is a bench
19 trial, I think we can -- you know, they can read the
20 additional line -- they can read it to you, in fact.
21 So, I think that's the right --

22 THE COURT: Sure.

23 MR. DWYER: I think we should go ahead and do
24 it.

25 THE COURT: That's fine with me.

1 deposition testimony, as follows:

2 MR. BOIES: Your Honor, we also have a small
3 binder, lest we not have a binder. This represents the
4 documents that are referenced in the testimony --

5 THE COURT: All right.

6 MR. BOIES: -- that you are going to be hearing.
7 I believe two of these documents are in evidence, two
8 are not, and when we get to that point, I'll let the
9 Court -- advise the Court, and the Court has its copies
10 of them.

11 (On video.)

12 DIRECT EXAMINATION

13 Q. I'd like to turn to your background. Could you
14 state your educational history for us, starting with
15 college?

16 A. I attended Bowdoin College in Brunswick, Maine.
17 I have a double major in biology and sociology. I
18 graduated in June of 1978, and following that I got an
19 MBA from the University of Chicago, which I completed in
20 June of 1980.

21 Q. And could you list for us your work experience
22 after you received your MBA?

23 A. I started, I believe it was on August 4th, 1980,
24 at -- in the Mergers and Acquisitions Department at
25 Morgan Stanley. I remember because I was the first

1 person who arrived in my class; it was a Monday morning.
2 And I was at Morgan Stanley until, I think, 2003. And
3 then after -- so, I was at Morgan Stanley for
4 approximately 23 years.

5 Then after that I moved to HSBC in London, where
6 I was on -- joined the Management and Executive
7 Committee that was responsible jointly for the corporate
8 investment banking and markets business, which I did for
9 three years until 2006. And then in October of 2006 I
10 joined the Blackstone Group, and here we are in December
11 2013, and I continue to work at the Blackstone Group.

12 Q. Sir, I'd like to move now to your time at
13 Blackstone. Your current position, I believe, is Senior
14 Managing Director and Global Head of Blackstone Advisory
15 Partners, correct?

16 A. That is correct.

17 Q. What do you do in that role?

18 A. I'm -- well, number one, I run, day to day, the
19 advisory practice of Blackstone. And I would say there
20 are three aspects of that.

21 Number one, I sit on the firm's executive
22 committee, which means I have an overview of Blackstone
23 as a whole entity. That requires a couple of hours a
24 week.

25 Number two, I have responsibility from an

1 overall direction, performance and operations of my
2 department, which is -- and I have an operating deputy,
3 Martin Alderson Smith, who deals with the blocking and
4 tackling operationally daily -- but there's a flat
5 culture, and I have approximately 20 partners who report
6 to me.

7 And then, number three, since we have very much
8 a player/coach model, namely that I don't spend all my
9 time in management, I would say I spend two-thirds of my
10 time either working with clients, helping them solve
11 their problems and advising them. And that requires
12 also time and travel, which is not just being based in
13 New York, not just being based in London, but also being
14 based and spending time in cities such as Beijing, Hong
15 Kong, Singapore, Tokyo, and Sao Paulo, just to name
16 cities where --

17 If you look carefully at my travel program, you
18 might also add Istanbul, Paris, and Frankfurt to that
19 list as well.

20 Q. Speaking about these global sources and access
21 to the people, did you personally have any contact with
22 any global sources of investment during the weekend of
23 September 12 through September 16, 2008?

24 A. Yes.

25 Q. With whom did you either talk or communicate

1 that weekend?

2 A. Well, I have -- to the best of my recollection,
3 I think I spoke to more people that weekend than I can
4 recall today. I obviously had specific conversations
5 with people like Kok Song Ng, the Governor of Singapore
6 in Singapore, because they're one of the largest
7 sovereign wealth funds in the world, and I knew that
8 they had a long-standing respect for AIG and I knew that
9 Singapore would be -- has been very focused on the
10 financial stability of Asia, because that's, of
11 course -- that's where they're situated. So I did speak
12 to Kok Song Ng.

13 And of course there are a number of other
14 financial players that we were in dialogue with that
15 weekend who had either put their hand up and approached
16 AIG based on market rumors, whether it was Chris Flowers
17 or Deryck Maughan of KKR or people at financial
18 institutions, such as Axa and Allianz, just to name a
19 few. I cannot recall all the individuals and all the
20 institutions but I would say there was a large number of
21 them.

22 Q. Did you speak with anyone from CIC during that
23 weekend?

24 A. I did not directly speak to anybody from CIC
25 that weekend.

1 Q. Did Blackstone have conversations that weekend
2 with -- did Blackstone have conversations that weekend
3 with the entity CIC?

4 A. I believe there were conversations with one of
5 my partners in Asia and I also believe that, to the best
6 of my recollection, Deutschebank had surfaced as being a
7 possible advisor to CIC and they had contacted a number
8 of my colleagues. I think Larry Nath and Tom Stoddard
9 and Martin Alderson Smith had made their interest known
10 as to being a possible investor.

11 Q. And what was Mr. Ng's position on making any
12 investment in AIG at that time?

13 A. I would say, based on my recollection, that it
14 was open-minded, not unconstructive. I would say that
15 it was obviously caveated on the basis of the
16 investment. So, we tried to identify what I call
17 "tangible assets" (as opposed to flaky or sort of
18 operational assets that were not identifiable, but
19 tangible assets such as real estate) that could be
20 invested in or used as collateral that weekend,
21 basically within 24 hours.

22 Q. Sir, you have been handed what has been marked
23 as Exhibit 6. This is a 9/15/2008 email, 1:30 a.m.,
24 with the Bates stamp BXStarr392, and you sent this email
25 to a number of recipients.

1 Please tell me when you have had a chance to
2 read it.

3 A. Well, I didn't send the email to -- I mean I
4 did -- the top of it, yes.

5 Q. Yes?

6 A. -- but the lead-up starts with Tim Coleman
7 responds --

8 Q. Agreed. Thank you for clarifying that.

9 A. -- Tony James, and then responds to Tony James'
10 copy to me, and then I respond.

11 So this would have been on September 15, which
12 again is --

13 Q. This would have been Monday, just after
14 midnight. So, Sunday night going into Monday.

15 A. Right, if this is correct. I mean, again, with
16 this BlackBerry, it was -- since I had a London
17 BlackBerry I don't know what -- I don't know where --
18 whether -- I would have to look at that, but -- okay.
19 Point taken. Go ahead.

20 Q. Now, just one follow-up question. Do you happen
21 to know if your BlackBerry would have been tied to
22 Greenwich Mean Time or --

23 A. Well, I normally change the time when I travel,
24 so -- but I don't know what the Blackstone server sees.
25 It's normally based on where your original software is.

1 Q. Let me first start, you have been handed Exhibit
2 7, this is a 9/16/2008 email with the Bates stamp
3 BXStarr258. It's an email sent from you to primarily
4 Mr. Nath but also to Mr. Alderson Smith and
5 Mr. Stoddard. The subject line is: "Spoke to Fed."

6 Sir, do you recall this document?

7 A. I don't recall -- I never printed out this
8 email. I don't recall this email. I recall this
9 particular strand of thought.

10 Q. And what do you recall about this particular
11 strand of thought?

12 A. I recall that we made it very clear to -- what's
13 a good term -- "the regulators" that we would need some
14 type of advice on whether they were prepared to provide
15 funding support or not. There was no indication that we
16 would get any type of formal funding support other than
17 the Fed was considering its options and speaking to the
18 Treasury. And I think this email is very clear, that we
19 will hear within an hour and they will call us. But we
20 also had an obligation, because under other laws in the
21 United States you know that if it is your judgment as a
22 firm, whether you are a financial firm or an operating
23 corporate firm or whatever, a manufacturing firm, if you
24 are operating and you have liquidity problems, you're
25 operating fraudulently, that's illegal and you have a

1 legal obligation to declare bankruptcy. That is not
2 something you can, you know, obfuscate. And we were
3 very conscious of that. I mean I was in my high Mountie
4 boy scout mode here and we were under no illusion that
5 we had to. We had no choice.

6 Q. Fair enough.

7 A. And that was it.

8 So, black and white. We were prepared to make
9 it very clear that, you know, if we didn't hear from
10 them we were just going to have to file for bankruptcy.

11 Q. Do you recall when that proposal came into AIG
12 or when you became aware of that proposal?

13 A. Orally or in written form?

14 Q. Whichever came first.

15 A. It was -- well, obviously it was within a very
16 short time frame of the board meeting itself which was
17 supposed to commence at five o'clock on Monday
18 afternoon. The proposal came in within a very short
19 time frame of that, I mean within half an hour.

20 Q. And that was either orally presented or a
21 written proposal?

22 A. It was a -- it was initially orally, but it was
23 cursory, and it was a proposal but it had two or three
24 provisions such as a change in management and things
25 like that, but nothing of any other what I call -- there

1 weren't -- it wasn't an all-singing all-dancing funding
2 proposal that we would normally see for that type of
3 situation.

4 Q. Did you have any conversations with anybody
5 outside of Blackstone on Saturday, September 14, about
6 AIG's capital raising efforts?

7 MR. BROWN: I don't think Saturday was the 14th.

8 Q. Saturday, the 13th, excuse me.

9 A. We've discussed this already, but we'll discuss
10 it again.

11 I believe that I had a conversation that
12 Saturday with certainly one individual, the governor of
13 Singapore, Peter Ng, Kok Song Ng, I believe that
14 conversation took place on Saturday, to the best of my
15 recollection, because I had the benefit on that Saturday
16 of having some clarity from him about his interest in
17 trying to provide some sort of short-term funding of
18 some magnitude subject to the type of asset that might
19 be available to either invest in, purchase, or use as
20 collateral.

21 (Off video.)

22 MR. BOIES: This is a reference to Plaintiffs'
23 Trial Exhibit 56, Your Honor. It is not in evidence.
24 We have agreed with counsel that we will discuss the
25 exhibits not in evidence and see if we can move them in

1 without objection, but for the present purposes, it is
2 for identification only.

3 THE COURT: Okay.

4 MR. PHILLIPS: No objection, Your Honor.

5 (On video.)

6 Q. PX 927 is an email, top email is an email from
7 Mr. Schreiber to you, Mr. Studzinski, dated September
8 14, with the Bates number BXStarr580.

9 Mr. Studzinski, I would like to start on the
10 bottom email, which is from you to Michele Cooper and
11 Mr. Schreiber. Who is Michele Cooper?

12 A. I do not recall who Michele Cooper is.

13 Q. Did somebody at GIC tell you that it was willing
14 to match Mr. Buffett's investment dollar for dollar with
15 little due diligence?

16 A. Well, yes. I only talked to one person at GIC
17 and that was Peter Ng, and Peter was very clear that in
18 his judgment they would certainly be at the same level
19 as Warren Buffett if Warren Buffett was making an
20 investment in ILFC.

21 Q. Do you believe that the bankruptcy of Lehman on
22 September 15th had an impact on AIG?

23 A. The bankruptcy of Lehman was on -- I have to
24 refresh my memory. The bankruptcy of Lehman was on
25 Monday, September 15. Do I believe? That's like the

1 sky is blue question or what?

2 I believe that the bankruptcy of Lehman had such
3 an onerous impact on world financial markets and U.S.
4 financial markets that it had a direct implication on
5 the trading in all securities of AIG.

6 (Off video.)

7 MR. BOIES: Your Honor, the next exhibit that's
8 going to be discussed is Plaintiffs' Trial Exhibit 63,
9 which is Trial Exhibit Number or Deposition Plaintiffs'
10 Exhibit 930, which is how it's referenced in the
11 transcript. This is also not yet in evidence.

12 MR. PHILLIPS: No objection, Your Honor.

13 (On video.)

14 Q. PX 930 is an email from you to Mr. Schreiber,
15 and it has the Bates stamp BXStarr631, dated September
16 15.

17 Have you had a chance to review the email,
18 Mr. Studzinski?

19 A. Yeah. So this is Monday afternoon. Yes.

20 Q. Okay.

21 And you write: "Pete Peterson behind the
22 scenes." And I believe you referred to Mr. Peterson
23 before, but could you tell me who Mr. Peterson is?

24 A. Pete Peterson is the founding -- one of the two
25 founding partners of Blackstone. At the time of this

1 particular matter he was -- his title was senior
2 chairman and co-founder of Blackstone.

3 Q. I'd like to direct you to the second line in
4 this email where you write: "Also Chinese Government
5 moving fast." What did you mean by that sentence?

6 A. Well, I could talk about infrastructure policy
7 of the Chinese Government, but you probably wouldn't
8 believe me. So I would say that the Chinese Government
9 had had conversations with my colleague, Antony Leung,
10 as a separate matter and indicated a willingness to be
11 supportive in any way, shape or form. And I would say,
12 to their credit, they knew that this was an issue and it
13 wasn't just CIC but that the CIC had discussed it with
14 the Chinese Government and the Chinese Finance Ministry
15 and they knew that they had to take this matter
16 seriously.

17 Q. Were you aware prior to the board meeting that
18 AIG had asked for a liquidity window from the Federal
19 Reserve?

20 A. Well, I think Mr. Willumstad and I spoke to Tim
21 Geithner on Sunday evening, September 14, and we said
22 that we thought the company might need a liquidity
23 window as of Tuesday. As early as Tuesday -- actually
24 my exact words were -- I was pretty good actually -- "as
25 early as Tuesday, but no later than Wednesday" based on

1 our modeling of the situation. Again that was a
2 judgment. And that was really not even knowing what was
3 going on in the rest of financial landscape. So we had
4 requested some type of liquidity facility, liquidity
5 window.

6 Q. Mr. Studzinski, before we went off the record,
7 you were discussing how you became aware of the
8 Government's decision to provide assistance to AIG.

9 A. Yes.

10 I believe I've said today in several instances
11 that there were communications between Mr. Geithner and
12 Mr. Willumstad about the willingness of the Government
13 to provide assistance; that there was no clarity on the
14 type of assistance that might be. Mr. Willumstad was
15 very clear that if no assistance was provided,
16 insolvency or bankruptcy would have to be a real option
17 because we were not convinced that we could trade the
18 following day, Wednesday; and we knew that there was a
19 governor's meeting that afternoon at 2:00; and we also
20 knew via my senior chairman and co-founder, Mr. Pete
21 Peterson, who had also spoken to Tim Geithner, that
22 there would be a proposal forthcoming.

23 And only at that point, because I knew of Tim's
24 relationship with Pete and that Tim had enormous respect
25 for Pete and that Pete was very important in Tim's

1 career, that I don't think Tim would mislead Pete
2 Peterson. And I think at that point it was clear in my
3 mind that we would have some proposal.

4 Now, what was most amusing was that we got the
5 proposal at 4:30, and not having had enough time to
6 properly consider it and study it, and it was a cursory
7 proposal and the term sheet, so to speak, doesn't appear
8 for several days, but, of course, it required a change
9 in management, with the resignation of Bob Willumstad
10 and the appointment of Ed Liddy.

11 But what I found most interesting is the fact
12 that the whole proposal and the Government's proposal
13 and bailout was presented in great detail on CNBC almost
14 simultaneously prior to the board even voting on
15 accepting the proposal. So -- and it is very important
16 that you can go back to look at the CNBC record here,
17 but CNBC reported that the board of AIG had accepted a
18 credit agreement with the Fed and the U.S. Government
19 and in fact this was before the board actually had voted
20 on it. And I knew this -- just to answer your next
21 question -- because we had CNBC -- the big screen on in
22 the boardroom and it was there in living color.

23 Q. Do you know --

24 A. And this was before the board finished the
25 discussion and made the decision.

1 Q. Was the proposal that was presented on CNBC more
2 detailed than the proposal that AIG received at 4:30
3 p.m. that day?

4 A. No. It was what I call a banner headline. In
5 my own view it was aimed at stabilizing what was the
6 perception of fragile financial markets, and I'm sure it
7 did that.

8 Q. Mr. Studzinski, did you have any role in AIG's
9 consideration of whether or not to accept the
10 Government's credit facility?

11 A. Did I have any role? Where have you been in the
12 last several years?

13 Q. I have to ask some questions just for the
14 record.

15 A. Blackstone was hired as the Board's advisor -- I
16 just wanted to make sure you were paying attention.

17 Blackstone was hired as the board's advisor that
18 weekend prior on September 12/13 and we remained the
19 board's advisor and we were the sole advisor when the
20 board discussed the credit agreement that was proposed
21 by the New York Fed.

22 Q. We looked at this document" --
23 (Off video.)

24 MR. BOIES: Your Honor, the next exhibit that's
25 going to be referenced is the board minutes of the

1 September 16th AIG board meeting that have been marked
2 and submitted in evidence as Joint Exhibit 74.

3 (On video.)

4 Q. We looked at this document earlier as the
5 minutes of the AIG Board meetings from the 14th, 15th,
6 and 16th. I want to draw your attention to page 12 of
7 the document. I would like to ask a couple of questions
8 about this first complete paragraph that appears on page
9 12. Can you just take a few minutes to read it over?
10 Not a few minutes, but however much time you need.
11 Okay?

12 Do the statements in this paragraph
13 substantially reflect what Mr. Willumstad, Mr. Beattie,
14 Mr. Cohen, and Mr. Wiseman reported to the Board on
15 September 16th after speaking with Mr. Geithner and the
16 General Counsel of the New York Fed?

17 A. Yes. I believe so.

18 Q. And is this the same conversation that you were
19 referring to in the exhibit we were just looking at
20 where you referenced "fiduciary out"?

21 A. Yes.

22 Q. After September 16th of 2008, did AIG implement
23 an asset divestiture process?

24 A. I think, as the record shows -- not this record,
25 but as the broader record shows, the Government

1 acquired -- the Government assigned Sarah Dahlgren from
2 the Fed and a team from Treasury, and we had to come up
3 with a very rigorous, disciplined time scale to try to
4 pay back the Government as quickly as possible.

5 Part of it was to address we had to pay back the
6 Government, we had to pay back the taxpayer. Part of it
7 was to address how long it would take to come out of
8 restructuring, and part of it was also to, you know,
9 really understand the consequences of this in terms of
10 what the different asset values might be, realizing, of
11 course, that we were in a distressed environment and
12 asset values were all artificially low.

13 Q. Mr. Studzinski --

14 (Off video.)

15 MR. BOIES: Your Honor, the next exhibit that's
16 going to be referred to, which is Mr. Studzinski's
17 September 26th, 2008, email at 6:41 a.m. to Mr. Liddy,
18 is part of Plaintiffs' Trial Exhibit 253. It is, in
19 fact, the second page of Plaintiffs' Trial Exhibit 253,
20 which is in evidence.

21 THE COURT: Okay.

22 (On video.)

23 Q. Mr. Studzinski, you are not on the cover email
24 at page 1, but if you flip to page 2, you'll see that
25 this has an email from you to Mr. Liddy and

1 Mr. Schreiber with the subject "Chinese Vice Premier
2 This Morning." Do you recall sending this email?

3 A. Let me read it first.

4 So this is after -- it is two weeks after that
5 Friday, so that's...6:41 a.m., okay. So hard working.

6 "I know you are busy but I need you to focus
7 because this could be a silver bullet solution and
8 afford the Company the strategic and timing flexibility
9 it needs."

10 Q. As of September 19 of 2008, were you aware that
11 the CIC was interested in purchasing AIA?

12 MR. PHILLIPS: You mean September 26?

13 Q. Excuse me, September 26 of 2008.

14 A. This doesn't say that CIC is interested. It
15 says China, Inc.

16 Q. Who does "China, Inc." refer to?

17 A. Well, China Inc. is China, Inc. I'm -- you
18 know, China, Inc. means -- this is the Chinese
19 Government. This is not CIC, this is the Chinese
20 Government. They have studied the whole situation and
21 at the most senior level. The acquisition vehicles
22 would come down to -- it's not just CIC. It could have
23 been China Life, it could have been some of the other
24 entities that are all in the China portfolio.

25 They were -- they saw this as a potential

1 win-win, that they could help stabilize the situation by
2 coming up with -- you know, they really put the number
3 US\$50 billion on the table -- and that was, you know,
4 interesting. It wasn't necessarily a good valuation. I
5 couldn't comment on whether it was good or bad at the
6 time, I can't remember exactly, because there's all
7 these assets have different valuations. But I do recall
8 this.

9 Q. Okay. Do you recall if Mr. Liddy or
10 Mr. Schreiber ever responded to your email?

11 A. I recall it vividly. I spoke to Mr. Liddy and I
12 said that we need to get back to the Chinese Government
13 as a matter of courtesy, we either say yes or no or
14 whatever. And Mr. Liddy, who as you recall was the
15 former chief executive of Farmers --

16 Q. Allstate.

17 A. Allstate. Allstate, that's correct. Was very
18 close to a number of Goldman Sachs people, including
19 Chris Cole, a close personal friend of Chris Cole, and a
20 reasonably close friend of Hank Paulson, because you
21 have to remember the Treasury Secretary comes from
22 Chicago, and Mr. Liddy comes from Chicago, so they have
23 known each other for a long time. So, Ed Liddy took it
24 upon himself to have a conversation with the Treasury
25 Secretary.

1 Q. Did Mr. Liddy tell you about his conversation
2 with Secretary Paulson?

3 A. He basically said that Secretary Paulson would
4 get back to Wang Qishan, but he didn't think that they
5 would want the Chinese Government to undertake something
6 like this.

7 (Off video.)

8 MR. BOIES: That completes the Plaintiffs'
9 designations of this deposition, Your Honor.

10 THE COURT: Okay. Now, are there any exhibits
11 that need to be offered into evidence?

12 MR. BOIES: I believe that counsel has stated
13 that they do not have objections to Plaintiffs' Trial
14 Exhibit 56 and Plaintiffs' Trial Exhibit 63, which were
15 the two exhibits that were not in evidence.

16 MR. PHILLIPS: That's correct, Your Honor.

17 THE COURT: All right. Without objection,
18 Plaintiffs' Trial Exhibits 56 and 63 are admitted.

19 (Plaintiffs' Exhibit Number 56 was admitted into
20 evidence.)

21 (Plaintiffs' Exhibit Number 63 was admitted into
22 evidence.)

23 MR. BOIES: We also have Defendant's
24 counter-designations to what we have just played that we
25 will now play.

1 THE COURT: How long does this -- does this
2 require?

3 MR. BOIES: This is very short, Your Honor.
4 This is, like, 2 1/2 minutes.

5 THE COURT: Oh, okay. All right.

6 (On video.)

7 CROSS EXAMINATION

8 Q. What impact, if any, did the CNBC story have on
9 the Board just before the Board meeting?

10 MR. BROWN: Objection to foundation.

11 A. In my opinion the Board was not that interested
12 in rumors being leaked, the Board was interested in
13 having a serious discussion, as depicted in the Board
14 minutes from that day.

15 Q. Do you know if Mr. Paulson had a conversation
16 with the Chinese vice premier?

17 A. I think he had a conversation -- my
18 understanding, after having asked the question several
19 times, is that he did have a conversation with him but
20 it took about ten days to occur.

21 Q. Was the fact that it took -- was there any
22 significance to the fact that it took ten days to occur?

23 A. I have no idea. I don't know if it was
24 logistics or anything else. I'm sure it was logistics.

25 Q. Do you believe that \$50 billion would have been

1 a significant infusion of cash for AIG around September
2 26, 2008?

3 A. I don't believe that was -- no. I think
4 that's -- I can't really comment on that. I think there
5 was not an issue about it. Your question is infusion of
6 cash; no, it's not about infusion of cash, it's about
7 the whole restructuring. And I don't think it would
8 have -- ultimately the decision was the U.S. Government
9 at that point and terms of protecting shareholder value
10 and protecting the value of the assets. And I'll tell
11 you, the Government was very focused on protecting the
12 value of the assets and we were focused on protecting
13 the value of the assets.

14 You have to remember that this company is one of
15 the great crown jewels on the planet and we were very
16 focused on protecting the value of assets and we were
17 not going to sell things on a distressed basis. I think
18 that there was a judgment made that perhaps 50 billion,
19 although short-term, was probably still not a good
20 price. But who knows at this point in time.

21 (Video off.)

22 MR. BOIES: That completes our designations and
23 their counter-designations, Your Honor.

24 THE COURT: Okay, very well.

25 MR. PHILLIPS: How would the Court like to

1 proceed? The Government's portion of this video, Your
2 Honor, is approximately 2 1/2 hours. We can start it
3 now and continue it at another time or we can reserve
4 the entirety of that video if the Court would so --

5 THE COURT: Well, we are going to adjourn -- I
6 mean, if you want to play it through, like, one time,
7 you are not going to be able to do that today.

8 MR. PHILLIPS: That's fine with us, Your Honor.

9 THE COURT: All right. Let's do it at another
10 time whenever it might fit best.

11 MR. PHILLIPS: Thank you, Your Honor.

12 THE COURT: Yes.

13 MR. BOIES: And the next witness will be
14 Dr. Kothari, followed by --

15 THE COURT: Let me ask this -- pose this
16 question: If you think we're reasonably on schedule, I
17 would not oppose adjourning a little early today and
18 take Dr. Kothari straight through starting Monday
19 morning.

20 MR. BOIES: That would be great, Your Honor.

21 THE COURT: Does that work?

22 MR. MIZOGUCHI: That's fine, Your Honor.

23 THE COURT: All right. It is Friday.

24 All right, thank you. We will stand adjourned
25 then until 9:30 on Monday morning.

1 MR. BOIES: Thank you, Your Honor.
2 (Whereupon, at 4:34 p.m., the proceedings were
3 adjourned.)

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF TRANSCRIBER

I, Susanne Bergling, court-approved transcriber,
certify that the foregoing is a correct transcription
from the official digital sound recording of the
proceedings in the above-titled matter.

DATED: 10/25/2014

SUSANNE BERGLING, RMR-CRR-CLR.

1	ADMITTED EXHIBITS		
2			
3	PX	PAGE	DESCRIPTION
4	56	4505	Email (9/14/2008 6:31 pm)
5			From: Brian Schreiber
6			To: John Studzinski
7			re: Re: When is Our Meeting?
8	63	4505	Email (9/15/2008 3:03 pm)
9			From: John Studzinski
10			To: Brian Schreiber
11			re: News
12	PDX	4443	Dr. Wazzan demonstrative
13	2451		
14	PDX	4443	Dr. Wazzan demonstrative
15	2452		
16			
17			
18	DX	PAGE	DESCRIPTION
19	88	4325	AIG MEETING NOTES ON FEBRUARY 6, 2008
20	100	4331	MEMO FROM PETER MUNTER ET AL TO AIG WORK PAPER
21			FILES RE: AIG SARBANES OXLEY EVALUATION OF THE
22			CONTROL DEFICIENCY RELATING TO THE VALUATION
23			PROCESS AND OVERSIGHT OF THE AIG FINANCIAL
24			PRODUCTS SUPER SENIOR CREDIT DEFAULT SWAP
25			PORTFOLIO

