

1                   IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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

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Courtroom 4

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Howard T. Markey National Courts Building

15

717 Madison Place, N.W.

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Washington, D.C.

17

Monday, September 29, 2014

18

9:30 a.m.

19

Trial Volume 1

20

21

BEFORE: THE HONORABLE THOMAS C. WHEELER

22

23

24

25   Susanne Bergling, RMR-CRR-CLR, Reporter

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1 I N D E X

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3 OPENING STATEMENTS: PAGE:

4 BY MR. BOIES 10

5 BY MR. DINTZER 41

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7 WITNESS: DIRECT CROSS REDIRECT RECROSS VOIR

8 ALVAREZ 79

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10 EXHIBITS FOR ID IN EVID

11 Plaintiffs'

12 Number65 158

13 Number70 194

14 Number96 140

15 Number122 199

16 Number130 207

17 Number132 178

18 Number148 223

19 Number174 122

20 Number175 122

21 Number373 181

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23 Number638 115

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25 Number2575 88

1	EXHIBITS	FOR ID	IN EVID
2	Defendant 's		
3	None		
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5	Joint		
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22 \*All exhibits premarked for identification prior to  
23 trial.

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

1 P R O C E E D I N G S  
2 - - - - -

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

4 THE COURT: Good morning.

5 ALL COUNSEL: Good morning, Your Honor.

6 THE COURT: Please be seated.

7 We are on the record this morning for the first  
8 day of trial in Starr International Company versus  
9 United States, Docket Number 11-779C. We have a nice  
10 crowd today.

11 Let's begin with the introductions of counsel,  
12 first for the Plaintiffs' side.

13 MR. BOIES: Good morning, Your Honor. My name is  
14 David Boies with Boies Schiller & Flexner. With my at  
15 counsel table, I have Alanna Rutherford, Abby Dennis,  
16 Amy Mauser, and Bob Dwyer, as well as a colleague from  
17 Skadden Arps, Mr. John Gardiner, and the corporate  
18 representative for this trial, Mr. Bertil Lundqvist.

19 THE COURT: Thank you, Mr. Boies. Nice to see  
20 all of you, to have you.

21 For the Defendant's side?

22 MR. MIZOGUCHI: Brian Mizoguchi for the  
23 Defendant, United States, and with me from the  
24 Department of Justice are my colleagues Scott Austin,  
25 Josh Gardner, Kenneth Dintzer, Claudia Burke, Vincent

1 Phillips, and our party representative from the Board of  
2 Governors of the Federal Reserve System, Ms. Katherine  
3 Wheatley.

4 THE COURT: Good morning to all of you, good to  
5 see you.

6 Before we begin with opening statements, I wanted  
7 to mention I received a letter last Thursday, September  
8 25th, from counsel on behalf of Judith Loutit,  
9 L-O-U-T-I-T, that I forwarded to counsel for both sides,  
10 relating to the fact that they wanted to be included in  
11 the September 2008 class in this case. They represented  
12 that Ms. Loutit is a trustee who holds 19,000 AIG shares  
13 during the time in question, and I'm wondering how you  
14 all would like to deal with that matter.

15 MR. BOIES: Your Honor, with the Court's  
16 permission, Mr. Dwyer will deal with that.

17 THE COURT: Okay.

18 MR. DWYER: Your Honor, I know something about  
19 the Loutit family. Their grandfather was in C.V. Starr  
20 before AIG was founded actually, and so they inherited a  
21 lot of shares. They were -- the shares were in trusts  
22 that were administered by a trustee. They had a dispute  
23 with their trustee in litigation in the period after '08  
24 to the present, and the trustee filed claim forms for  
25 three of the trusts, but they had migrated to a new

1 trustee, and although the new trustee didn't file them  
2 because they were -- because the claim period was when  
3 the old trustee was there, it was just a general mix-up.

4 And we think that the Loutit time family -- and  
5 they filed -- after that letter, they have also filed  
6 some other claims on behalf of other of their family  
7 trusts. We think they should be permitted to join.  
8 They have evidenced, before the trial starts, a desire  
9 to be in the class, and they should be allowed to be in  
10 the class, and we can send you a -- we can file a  
11 submission for Your Honor with the particulars of which  
12 trusts and which people are -- have filed claims at this  
13 time.

14 THE COURT: All right, thank you.

15 Has the Defendant had an opportunity to consider  
16 this matter?

17 MS. BURKE: Your Honor, we would like to wait and  
18 see the filing, but as a general matter, as we  
19 articulated in the joint status report that we filed a  
20 couple of weeks ago, we don't have an objection. We do  
21 preserve our original objections, but this all sounds  
22 fine, and we'll confirm that once we see Starr's filing.

23 THE COURT: All right. I suppose it's no problem  
24 that this might take a few days as we progress into the  
25 trial before this is resolved. You can still add these



1 people if that's the way to go.

2 MS. BURKE: Yes.

3 THE COURT: All right.

4 MS. BURKE: Thank you.

5 THE COURT: Very well.

6 Are there any other preliminary matters that need  
7 to be addressed before we have opening statements?

8 MR. BOIES: Not from us, Your Honor.

9 MR. DINTZER: Not from us, Your Honor.

10 THE COURT: All right, let me just inquire. Have  
11 you all been able to resolve the issue of when  
12 Dr. Bernanke will be here testifying?

13 MR. BOIES: Your Honor, I don't think we have  
14 resolved that yet. That's, of course, for the following  
15 week.

16 THE COURT: Yes.

17 MR. BOIES: Perhaps we will have a chance to try  
18 to do that later, at the end of today or tomorrow.

19 THE COURT: Well, there was a motion for  
20 protective order last week and a response and a reply,  
21 and I know that you can't just obtain Dr. Bernanke's  
22 presence on 24 hours' notice. And I just wanted to  
23 remind you all of that and make sure that we get a  
24 resolution of it. You probably received my order Friday  
25 about my view on when witnesses should testify, and that

1 would be my initial inclination in this matter anyway.

2 MR. DINTZER: We're continuing to work with the  
3 Plaintiffs, Your Honor, and we will let the Court know,  
4 if necessary, but we're hoping to work it out with the  
5 Plaintiffs.

6 THE COURT: All right. I guess we're ready for  
7 opening statements.

8 Mr. Boies?

9 MR. BOIES: Thank you, Your Honor. May it please  
10 the Court.

11 There is no principle more basic to our  
12 constitutional democracy or to the rule of law than the  
13 principle that the power and discretion of government  
14 officials and government agencies outlimited the power  
15 and discretion that is granted to them by democratically  
16 enacted legislation. Today, we give government agencies  
17 great, perhaps unprecedented power and significant  
18 discretion, particularly in that context. If we are  
19 going to preserve the rule of law and if we are going to  
20 insure that the laws themselves are grounded in the  
21 democratic legislative process, it is essential that the  
22 power and discretion of administrative agencies be  
23 constrained by the criteria contained in the legislation  
24 that grants that power and discretion.

25 This is true even when government officials act

1 or would like to act because they genuinely believe that  
2 their actions are important to, perhaps even critical to  
3 the national interests, because in our system of  
4 government, that decision rests not with them but with  
5 the democratic legislative process.

6 We're also aware that it is human nature to favor  
7 individuals and institutions who we know or for whom we  
8 feel responsible. The requirement that an agency's  
9 actions be limited to its statutory authority also  
10 protects against this potential favoritism.

11 Two important protections against unconstrained  
12 government action are the prohibition on illegal  
13 exactions and the prohibition on the taking of private  
14 property for public purposes, without compensation,  
15 contained in the Fifth Amendment.

16 As our first chart -- and we have some charts  
17 that we have, and has someone given a copy to the  
18 Court's clerk and the Court?

19 THE COURT: Thank you, Mr. Dwyer.

20 MR. BOIES: And we will display those on the  
21 screen, but I thought it might be easier for the Court  
22 to have a copy as well, and we have given copies to the  
23 other side as well.

24 THE COURT: All right.

25 MR. BOIES: As is shown on the first chart, this

1 case involves two legal claims. First, whether the  
2 conduct at issue constituted an illegal exaction, and an  
3 illegal exaction, of course, exists when the Government,  
4 without authorization, exacts a citizen's money or  
5 property as a condition of taking action or conferring a  
6 benefit. The principle underlying this illegal exaction  
7 doctrine is a simple one. An agency may not require a  
8 citizen to give up property that the agency is not  
9 authorized to demand in exchange for receiving a benefit  
10 that the agency is authorized to bestow. If the rule  
11 were otherwise, agencies would be free to expand their  
12 power, perhaps without limit, and citizens would be  
13 confronted not with general, standardized legislative  
14 criteria but with potentially discriminatory ad hoc  
15 determinations and demands, which because of the  
16 Government's power, they might not be in a position to  
17 practically refuse.

18 More than 80 years ago in the steel seizure  
19 cases, Judge Jackson, Justice Jackson, talked about the  
20 danger of untethering government action from statutory  
21 authorization, and in that context, he said if that  
22 happened, in his words, "such power either has no  
23 beginning or it has no end." And the danger of  
24 permitting what we say happened here and, more  
25 generally, what happens in illegal exaction cases is, as

1 this Court has found not only in this case, but in cases  
2 for more than 50 years, it violates the constitutional  
3 rights of citizens to have their property exacted in  
4 exchange for the conferring of a benefit when the agency  
5 does not have the power to demand the property in  
6 question.

7 The second claim that we make is that the conduct  
8 constituted a Fifth Amendment taking, and it is  
9 important that we focus on both of these two claims.  
10 Counsel for the Defendant in this case generally ignores  
11 our illegal exaction claims, in part I think because  
12 it's harder to obscure this particular claim than it is  
13 perhaps the takings claim, because the illegal exaction  
14 claim is very simple, and it arises directly from the  
15 two statutes that are most important here.

16 And we have a chart, I think it is chart number  
17 3, that shows the Section 13(3) and Section 14 of the  
18 Federal Reserve Act. These are, of course, Sections 343  
19 and 357 of 12 USC. And it's important to focus on both  
20 of these sections, and I will come back to that in a  
21 moment.

22 But first I want to talk about, on chart number  
23 2, two core legal principles that I think it's important  
24 to keep in mind as we talk about the issues in this  
25 case. The first is even where the Government is free to

1 deny a benefit altogether, it cannot tie the granting of  
2 the benefit to the surrender of rights or property the  
3 Government is now authorized to demand. There's an old  
4 case, Frost against Railroad Commission of the State of  
5 California, the United States Supreme Court. The Court  
6 said there, "If the state may compel the surrender of  
7 one constitutional right as a condition of its favor, it  
8 may, in like manner, compel a surrender of all..."

9 Now, the facts there were quite different than  
10 the facts there. In that case, California was saying to  
11 trucking companies, if you want to use our highways,  
12 you've got to fulfill certain common carrier  
13 obligations. The Supreme Court said you can't tie  
14 access to the highways to common carrier obligations,  
15 even though you may think that that is a desirable  
16 public policy.

17 The second core legal principle that I think we  
18 need to keep in mind is that claims of emergency and  
19 crisis do not justify ignoring the requirement for  
20 statutory authorization, and there, I don't think I can  
21 do better than to quote Justice Jackson in the steel  
22 seizure cases, where he said, "In view of the ease,  
23 expedition and safety with which Congress can grant and  
24 has granted large emergency powers, certainly ample to  
25 embrace this crisis, I am quite unimpressed with the

1 argument that we should affirm possession of them  
2 without statute. Such power either has no beginning or  
3 it has no end."

4 Now, we set forth on chart number 4 the basic  
5 principles of our illegal exaction claim, and I want to  
6 begin first with a chart that is actually not my chart.  
7 This is a chart that the Government prepared, but I'm  
8 using it for two purposes: One, to show where we are in  
9 agreement; and two, to show where that agreement ends.

10 First, where we are in agreement, we are in  
11 agreement that each of the four requirements under 13(3)  
12 for an extension of a credit facility under that statute  
13 to AIG were met. There were unusual and exigent  
14 circumstances. AIG was unable to secure adequate credit  
15 accommodations elsewhere. The credit was secured in  
16 satisfaction with the Federal Reserve Bank. And there  
17 was an affirmative vote of not less than five members.  
18 So, all four of the elements were present.

19 However, where this chart stops is not with a  
20 question of when should the loan have been made, when  
21 should the credit facility have been made available, but  
22 what should the terms of that have been? And for the  
23 terms, we have to go back to chart number 3, which shows  
24 Sections 13(3) and 14. And as the Court can see here --  
25 and as I think the Court has already ruled -- under

1 Section 13(3), the only consideration for a 13(3) credit  
2 facility is a rate determined by the Board of Governors,  
3 and that is made particularly clear when you read 13(3)  
4 together with Section 14, because as we see in the third  
5 and fourth lines of Section 13(3), the terms of a 13(3)  
6 credit facility are intended to be at rates established  
7 in accordance with the provisions of Section 357 of that  
8 title.

9 Section 357 is Section 14 of the Federal Reserve  
10 Act, and what Section 357 of 12 USC, Section 14 of the  
11 Federal Reserve Act says, is that those rates, the rates  
12 for a 13(3) credit facility, shall be fixed with a view  
13 of accommodating commerce and business.

14 Now, if we can go to chart number 5, the  
15 Plaintiffs' illegal exaction claim, we say -- and this  
16 is one of the reasons I think that counsel for the  
17 Defendant doesn't focus on this issue as much as they  
18 might -- is that this claim is really established by one  
19 factual finding and two legal conclusions. The first  
20 factual finding, which is undisputed, is the Defendant  
21 required 79.9 percent of Plaintiffs' equity as  
22 compensation for Defendant's 13(3) credit facility to  
23 AIG.

24 The first legal conclusion which Defendant has  
25 not disputed, at least yet, is that it is an illegal



1     exaction for the Government to require a citizen seeking  
2     government action or benefit to provide compensation the  
3     Government is not authorized to demand. So, we have a  
4     demand for equity, we have a principle that says if that  
5     demand is unauthorized, it is an illegal exaction, and  
6     the only remaining question is the legal conclusion,  
7     which we believe is clear from the plain language of the  
8     Federal Reserve Act, this Court's prior rulings, and  
9     Defendant's own statements prior to this litigation, and  
10    that is that Defendant was not authorized to require the  
11    surrender of a private company's equity as compensation  
12    for a 13(3) loan.

13             If those three propositions are true, our illegal  
14    exaction claim is made out. The first is a factual  
15    finding that's undisputed, the second is a legal  
16    conclusion that I think is undisputed -- they'll tell us  
17    in a few minutes -- and the third is a legal conclusion  
18    that we believe the record is and ought to be clear from  
19    this Court's prior rulings, from the plain language of  
20    the Federal Reserve Act, from prior statements by the  
21    Federal Reserve and the Department of Treasury  
22    themselves.

23             Now, I had a chart here in which I talked about  
24    the fact that the Government -- chart number 6 -- that  
25    the Government took Plaintiffs' equity and voting

1 control "as additional compensation for the loan."  
2 That, I think, is no longer in dispute. What I think  
3 is, at least technically, still in dispute, if we go to  
4 chart number 7, is whether the taking of this additional  
5 compensation was or was not authorized.

6 Now, first, there was no precedent for requiring  
7 the surrender of equity and voting control to obtain a  
8 Section 13(3) credit facility. During the financial  
9 crisis, over 200 private companies received Section  
10 13(3) credit, over 200 private companies. No private  
11 company, other than AIG, ever provided equity in  
12 exchange for access to credit under Section 13(3), and  
13 as this Court has previously ruled, the only  
14 consideration for a loan prescribed by 13(3) is an  
15 interest rate subject to the determination of the Board  
16 of Governors.

17 Let's go to the next chart, which is chart number  
18 8. There has been some argument by the Defendant that  
19 there was some implicit or implied authorization of the  
20 Defendant to demand this. That, of course, is  
21 inconsistent with what the Court has already ruled.  
22 It's also inconsistent with what the Supreme Court has  
23 said, for example, in Federal Reserve of Richmond  
24 against Mallory, where the Court emphasized "authority  
25 to do a specific thing carries with it, by implication,

1 the power to do whatever is necessary to effectuate the  
2 thing authorized, not to do another and separate thing,  
3 since that would be not to carry the authority granted  
4 into effect but to add an authority beyond the terms of  
5 the grant."

6 To illustrate that, the law governing national  
7 banks confirms, in a United States Supreme Court case,  
8 that "the power to purchase or deal in stock with  
9 another corporation is not expressly conferred by  
10 national banks, nor is it an act which may be exercised  
11 as incidental to the powers expressly conferred." And,  
12 of course, national banks have broader powers than the  
13 Federal Reserve Bank in terms of engaging in the  
14 business of banking.

15 We also have many statements, as the Court is  
16 somewhat aware from our proposed findings, from Chairman  
17 Bernanke, Secretary Paulson, Secretary Geithner saying  
18 that the Federal Reserve is authorized to extend credit  
19 but is not authorized to purchase equity securities of  
20 financial institutions.

21 In this particular case, there was especially no  
22 justification for the taking of equity. As shown in  
23 chart 9, the evidence is undisputed that, as Secretary  
24 Paulson said in his deposition, with AIG, you were  
25 dealing with a liquidity problem, not a capital problem,

1 and as shown on chart 10, because AIG was solvent, the  
2 13(3) credit facility to AIG could be and was fully  
3 secured. That's not just what we say. That's what the  
4 Federal Reserve Bank of New York's General Counsel  
5 Mr. Baxter said in PTX 598. It's what Chairman Bernanke  
6 said in PTX 561 at 5. It's what Chairman Bernanke said  
7 again in PTX 599 at 37. It's what Federal Reserve  
8 General Counsel Alvarez said in PTX 587 at 25. It's  
9 what Federal Reserve Bank of New York General Counsel  
10 Baxter and that bank's head of AIG monitoring,  
11 Ms. Dahlgren, said at PTX 587 at 55.

12 So, there was no doubt that this loan was fully  
13 secure. So, they had a loan that was fully secured.  
14 They had a loan that they charged an extortionist  
15 interest rate for, an interest rate several times the  
16 interest rate that the Federal Reserve charged any other  
17 recipient of 13(3) credit, and yet at the same time,  
18 they reached out to grab 79.9 percent of the AIG  
19 shareholders' equity.

20 That was, as we think the record is clear,  
21 unauthorized; however, if there had been authorization  
22 for the Federal Reserve to demand equity, as shown on  
23 chart 12, there would be a number of additional issues  
24 that would be raised. First, if the Federal Reserve was  
25 authorized to demand equity and voting control as

1 consideration for a 13(3) credit facility, was the  
2 Federal Reserve authorized to demand that equity and  
3 voting control for the purpose of penalizing AIG  
4 shareholders? The answer to that, we think, is no.  
5 There is simply no authorization in the statute to give  
6 the Federal Reserve the roving permission to try to find  
7 people that they want to penalize and then use its  
8 lending authority to extract those kinds of penalties.

9           Second, even if they could use that power to  
10 penalize, could they do so without any investigation,  
11 analysis, or hearing or findings? That is, could they  
12 just decide that based on whatever was in their head,  
13 without any investigation, without any analysis, without  
14 any attempt to make findings, and without any attempt to  
15 determine what kind of punishment was appropriate,  
16 simply impose whatever punishment occurred to anyone on  
17 any given day? I think the answer to that is no. I  
18 think the answer to that is no both on a statutory basis  
19 and on a constitutional basis.

20           Now, there has been some uncertainty in some of  
21 the Defendant's papers in this case as to whether  
22 Defendant really sought to take this equity for punitive  
23 purposes. In that connection, let me ask the Court to  
24 look at chart number 13, and Secretary Paulson describes  
25 the taking of equity in companies that receive

1 government assistance as a "punitive condition." He  
2 also says the Government "basically killed the  
3 shareholders of AIG." At the time that the Federal  
4 Reserve Board of Governors were discussing the AIG  
5 credit facility, Secretary Geithner, then the president  
6 of the New York Fed Bank, said "Conditions need to be  
7 punitive."

8 Secretary Geithner also said in PTX 648, "We  
9 replaced the management and the boards of directors, we  
10 forced losses on shareholders proportionate to the  
11 mistakes of the firm, and we made it clear in the GSEs  
12 and AIG that they would be dismembered, not allowed to  
13 live on as independent entities with the scope and reach  
14 they had before the crisis."

15 Secretary Paulson, in retrospect, candidly says,  
16 "As a matter of fact, we were too punitive." In fact,  
17 both Secretary Geithner and Secretary Paulson, as shown  
18 on chart 14, have privately characterized what happened  
19 to AIG as nationalization. Secretary Geithner: "We  
20 have effectively nationalized AIG and could decide how  
21 to carve up, dismember, sell or restructure those  
22 institutions." That quote also has some relevance to  
23 the question as to whether or not the Government had  
24 control over AIG.

25 Secretary Paulson was asked: "Do you feel like

1 we've nationalized AIG?" Secretary Paulson says, "Yes."

2 And if we go to chart 15, we see that this was  
3 done without any investigation, analysis, hearing, or  
4 findings. I asked Chairman Bernanke in his  
5 deposition -- and I'm going to ask him here in Court --  
6 "Was any of the consideration that you had in terms of  
7 how much compensation to require for the AIG loan a  
8 function of a conclusion that you or the Fed reached  
9 that AIG had somehow mismanaged its business or taken on  
10 excessive risks?" In his deposition, he said, "No," and  
11 I think he'll say the same thing honestly to this Court.  
12 There simply was no basis for this penalty.

13 Secretary Geithner, in his deposition, similarly  
14 admitted -- and I assume will similarly admit to this  
15 Court when he comes to testify -- "We had no basis of  
16 having any direct knowledge of the nature of the risks  
17 that they were taking," referring to AIG.

18 And what the record will actually show is that  
19 AIG exited this business much sooner than most of the  
20 companies that the Federal Reserve Bank was regulating  
21 and whose actions the Federal Reserve Bank was accepting  
22 and approved. The evidence will show that at the end of  
23 2005, AIG stopped offering credit protection for the  
24 CDOs, despite the fact that, for example, Citibank, in  
25 the next year, increased its origination and

1 distribution of those securities by 85 percent.

2 Citibank, of course, was regulated by the Federal  
3 Reserve. Citibank, of course, received much more in  
4 assistance than AIG did. Citibank received it at a  
5 fraction of the interest rate that AIG received it.  
6 Citibank never paid a fraction of the interest and never  
7 paid any equity to the Federal Reserve for any of the  
8 13(3) loans that Citibank benefited from.

9 Let me go to chart number 19 and talk a little  
10 bit about AIG's role in the financial crisis, because  
11 part of what the Federal Reserve did back in 2008 -- and  
12 I think, in retrospect, they have admitted it was, in  
13 part, for political purposes -- and part of what they  
14 have tried to do in this lawsuit is to demonize AIG, to  
15 suggest that somehow AIG was the poster child of what  
16 was the problem during the financial crisis.

17 First, let's understand that AIG purchased and/or  
18 offered protection for subprime mortgage-backed  
19 securities. The defendant has never accused AIG of any  
20 fraudulent or wrongful conduct in connection with the  
21 marketing or origination of subprime mortgage-backed  
22 securities.

23 Now, by contrast, in other proceedings, Defendant  
24 has accused the financial institutions that marketed  
25 subprime mortgage-backed securities to AIG and others of



1 fraudulently misrepresenting the value and risks of  
2 those securities. Defendant has also accused rating  
3 agencies that AIG relied on of fraudulently  
4 misrepresenting the risks of subprime mortgage-backed  
5 securities. Those are the people that the Defendant has  
6 said in other proceedings are the people responsible for  
7 the financial crisis.

8 Now, as shown on chart 20, the Defendant in other  
9 proceedings has been pretty direct and pretty clear as  
10 to who was responsible for the financial crisis. It has  
11 talked about Citibank. It has talked about a whole  
12 series of other institutions that marketed subprime  
13 backed mortgage securities to AIG, talked about how they  
14 misrepresented them fraudulently. They have sought and  
15 received criminal fines from them.

16 AIG, like other investors, and like the Federal  
17 Reserve itself, has admitted relying on these  
18 representations. AIG, like other investors and like the  
19 Federal Reserve, also relied on the ratings given by the  
20 rating agencies. In retrospect, it clearly was a  
21 mistake for AIG to have had that reliance, just as it  
22 was a mistake for the Federal Reserve to have had that  
23 reliance, but I suggest to the Court that relying on  
24 fraudulent misrepresentations that the Defendant in this  
25 action not only has recognized now as fraudulent but was

1    itself taken in by, at the same time that AIG was taken  
2    in by these fraudulent misrepresentations, does not  
3    provide a basis for punishing AIG unique among all other  
4    participants in the financial crisis.

5            They didn't take Citibank's equity for 13(3)  
6    loans. They say Citibank was the fraudster. AIG maybe  
7    made a mistake in believing the fraudster, but AIG is  
8    the one they single out for punishment, the only company  
9    they single out for this punishment. They give 200  
10   loans, more than 200 loans, more than 200 credit  
11   facilities to private companies, and they single out one  
12   who's not the originator, not the marketer of these  
13   securities that bring down the financial system, but is,  
14   like the Federal Reserve itself, simply somebody that  
15   believed -- perhaps wrongly -- that those  
16   representations were true.

17           Let me go to chart number 22, which compares the  
18   Federal Reserve's treatment of AIG and certain favored  
19   financial institutions. First -- and I've picked  
20   Citibank and Morgan Stanley, and there are a lot of  
21   others, and during the trial, we will go through  
22   probably a lot of them, but just for illustration  
23   purposes, let me take these two. I mean, first, who's  
24   responsible? Who has the Defendant sued for fraud in  
25   the marketing of subprime residential mortgage-backed

1 securities? AIG, no. Citibank, yes. Morgan Stanley,  
2 yes. Who has been fined by Defendant for causing the  
3 financial crisis? AIG, no. Citibank, yes. Morgan  
4 Stanley, yes.

5 Now, let's compare how they were treated. Who  
6 was allowed bank holding company status? AIG, no.  
7 Citibank already had it. Morgan Stanley, yes. Who was  
8 given access to the primary dealer credit facility, a  
9 13(3) credit facility? AIG, no. Citibank, yes. Morgan  
10 Stanley, yes.

11 Now, they were all given 13(3) loans. They all  
12 would have failed without government assistance, no  
13 dispute about that. What were they required to give up?  
14 AIG was initially charged with 14 percent interest rate.  
15 Citibank, for its 13(3) loan, 3 1/2 percent. Morgan  
16 Stanley, for its 13(3) loan, 3.25 percent. Despite the  
17 fact that the loan to AIG was fully secured by AAA-rated  
18 insurance company stock, Citibank and Morgan Stanley,  
19 some of their security ended up being noninvestment  
20 grade securities.

21 So, they didn't have as good a security, they  
22 didn't have as good a collateral from Citibank and  
23 Morgan Stanley, but they charged them an interest rate  
24 that was a fraction of the interest rate that they  
25 charged AIG. And this, of course, is the center of this

1 case, for their 13(3) loan, they required no equity from  
2 Citibank, no equity from Morgan Stanley, no equity from  
3 anybody else, but they took 79.9 percent of the equity  
4 from the AIG shareholders.

5 Now, let me turn to our takings claim, and our  
6 takings claim is a little more complicated than our  
7 legal exaction claim, and let's go to chart 23. The  
8 reason it is a little more complicated is that the board  
9 agreed to the September 22 credit agreement, credit  
10 facility. Now, that agreement is, as a matter of law,  
11 irrelevant to a legal exaction claim, by definition in  
12 Suwanee Steamship and lots of other cases, the Court is  
13 confronted with a situation in which somebody has  
14 suffered an illegal exaction that they have  
15 contractually agreed to.

16 In fact, in Suwanee, the Court expressly rejects  
17 the Government's argument that because Suwanee had  
18 contractually agreed to pay the illegal exaction, that  
19 that somehow is a bar. So, as a matter of law,  
20 agreement -- any agreement is irrelevant to an illegal  
21 exaction claim. And the Court can see why that is so,  
22 because otherwise, that would simply swallow the whole  
23 illegal exaction doctrine if you could, by the exercise  
24 of this power, make them give you what you're seeking,  
25 the agency make you give it what they're seeking, and

1 that was a defense, there never would be an ability to  
2 undo an illegal exaction. So, for an illegal exaction  
3 claim, approval is irrelevant.

4           However, approval is relevant to a takings claim.  
5 Now, it is undisputed that Defendants actually acquired  
6 79.9 percent of Plaintiffs' equity. That makes this  
7 different than a regulatory takings case or some other  
8 case where the issue is are you burdening the use and  
9 enjoyment of property. It's different where the -- the  
10 Penn Central case where the question was not what's the  
11 damage, but the question was whether there had been  
12 sufficient damage to constitute a taking. It's  
13 different from the case that the Court's familiar with  
14 involving interest on the lawyer accounts, where the  
15 issue is they didn't take the money; all they did was  
16 shift the money into an account and take the interest  
17 and apply it to another purpose.

18           So, this is a situation where they've actually  
19 acquired Plaintiffs' property, and our claim is,  
20 therefore, made out by two proposed findings of fact and  
21 one mixed finding of fact and conclusion of law. The  
22 two proposed findings of fact -- and we only need one of  
23 these two -- first, the AIG board's agreement to the  
24 credit agreement was under duress, because the Court  
25 knows if it was under duress, then that agreement is

1     vitiated. Second, at the time of the credit agreement,  
2     Defendant controlled AIG, because if the Defendant was a  
3     controlling lender of AIG at the time, then the test for  
4     this is not agreement, but whether it is strict fairness  
5     or not.

6             Third, there's a mixed finding of fact and  
7     conclusion of law, and that is whether the AIG board's  
8     agreement to the credit agreement does or does not bar  
9     Plaintiffs' direct claims. As the Court is aware, we  
10    believe that the Court should conclude, as a matter of  
11    law, that because these are Plaintiffs' direct claims,  
12    not claims of the corporation, not derivative claims,  
13    that the AIG's board's agreement doesn't bar the  
14    shareholder claims, and we believe that that is  
15    particularly true because of Defendant's efforts to  
16    prevent a shareholder vote.

17            This is not a situation in which either the  
18    shareholders approved it or that the shareholders were  
19    given an opportunity to approve it. This is a situation  
20    that although AIG, on September 18th, two days after the  
21    term sheet, two days after the September 16th AIG board  
22    meeting, AIG announced to the world and the Federal  
23    Reserve announced to the world -- or AIG announced to  
24    the world, the Federal Reserve announced internally, the  
25    Federal Reserve announced to all the Board of Governors

1 and all the presidents of the various banks, and that's  
2 not quite to the world, but it's a pretty big  
3 announcement -- announced that what was going to happen  
4 here was that people were going to get warrants, as the  
5 Court is -- and that this was going to be subject to  
6 shareholder approval.

7           AIG said in an SEC filing that this would be  
8 subject -- the warrant would be subject to shareholder  
9 approval. And what you see in the internal documents  
10 that the Court will see at trial is a recognition that  
11 they could not get shareholder approval, and so they  
12 began to change the deal. They changed the deal several  
13 times, in several different ways, because they knew they  
14 could not get shareholder approval. Under those -- in  
15 those circumstances, in particular, the AIG board's  
16 agreement does not bar these Plaintiffs' claims.

17           Now, let me go first to duress. Chart 24 shows  
18 the legal criteria for duress that the Court is well  
19 aware of. Circumstances must have been that they had no  
20 other alternative, and the circumstances have to be the  
21 result of coercive acts of the other party. Coercive  
22 acts are something that are wrongful, not necessarily  
23 illegal. As this Court has held, it's coercive if it  
24 violates notions of fair dealing, citing the Systems  
25 Tech Associates against the United States case, the

1 Federal Circuit in 1983.

2 We think the evidence will clearly show, as chart  
3 25 demonstrates, that Defendant acted wrongfully. There  
4 are many illustrations of this. We've talked a lot  
5 about them. I don't want to spend too much time on  
6 them, but Defendant acted wrongfully when it exploited  
7 AIG's need for discretionary benefit to obtain the  
8 unauthorized acquisition of equity and voting control.  
9 It acted wrongfully when it discouraged other sources of  
10 liquidity to AIG. What in the world was the Government  
11 doing, saying to Sovereign Wealth Funds, we don't want  
12 your money, when they came forward with 50 to 80 billion  
13 dollars of liquidity? What in the world was the  
14 Government doing when they said, "Don't do that. We  
15 don't want a foreign-led bail-out of AIG."

16 The Defendant acted wrongfully when it increased  
17 pressure on AIG by giving it only an unreasonably short  
18 period to consider the terms of the loan. It acted  
19 wrongfully when it imposed a penalty without authority  
20 to do so and without notice or an opportunity to be  
21 heard. And it acted wrongfully when it discriminated  
22 against AIG compared to financial firms who were much  
23 more culpable than AIG was.

24 It's also worth keeping in mind, as chart 26  
25 notes, that as Defendant's officials and former



1 officials have now admitted, Defendant's regulatory  
2 failures contributed significantly to the financial  
3 crisis and to AIG's duress. As chart 27 demonstrates,  
4 the Defendant also contributed to AIG's duress by  
5 repeatedly telling potential private sources of  
6 liquidity that there would be no government assistance  
7 for AIG, even though Defendant knew that some government  
8 assistance was essential to a solution.

9           They were in a position where they knew -- and we  
10 are going to come to this in a few minutes -- that AIG's  
11 failure or bankruptcy would be a catastrophe. They  
12 knew, under 13(3), as a lender of last resort, that they  
13 had an obligation to try to avert that disaster, and yet  
14 they kept telling potential private investors who might  
15 want to contribute to a solution, "We're never going to  
16 provide any help to AIG. They're never going to get  
17 anything." That was not true. They had to know it was  
18 not true. Why in the world would they say it?

19           Well, I think there were a number of reasons they  
20 would say it. Maybe they were trying to put pressure on  
21 AIG so AIG would ultimately agree to the deal that the  
22 Board approved in negotiation. They will have to  
23 explain what those reasons were, but I think there is no  
24 doubt that that action contributed to AIG's duress.

25           And AIG's CEO had told President Geithner, as

1 early as September 12th, that there was no solution  
2 possible without the Federal Reserve, and yet they  
3 then -- the Defendants then went out and expressed  
4 gratuitously, told everybody that there would be no  
5 assistance, and that just scared away -- particularly  
6 after Lehman failed, that scared away the private  
7 investors in the United States. And then they told the  
8 potential private investors from outside the United  
9 States that we didn't want their money or that they  
10 didn't want their money.

11 If you go to my chart 37, this is a second chart  
12 that I didn't do. It's a very pretty chart, but I can't  
13 take credit for it. This was a chart that was, again,  
14 prepared by counsel for the Defendants, but I use it,  
15 again, to demonstrate where we are in agreement and  
16 where we are not in agreement.

17 First, this asserts that the final agreement for  
18 equity took place on September 16th, 2008, and it also  
19 asserts that there was some term sheet that was used by  
20 the AIG board to reach this final agreement that had  
21 something other than warrants. As the Court knows, one  
22 of the issues in this case is that on September 16th,  
23 they said they were going to take warrants that were  
24 nonvoting, that had to be exercised, had -- unless there  
25 was a separate class vote by the common shareholders,

1 had to be exercised at a price of \$2.50 a share, which  
2 with 2 billion shares would be about \$50 billion of  
3 exercised price, if I'm doing the arithmetic right in my  
4 head, but it was lots of billions of dollars.

5 And then, between then and the 22nd, that got  
6 changed to voting preferred stock that gave them  
7 immediate voting control and, arguably, didn't require  
8 shareholder approval and only required \$500,000 in terms  
9 of purchase price. And if this were the final agreement  
10 for equity, it was not the final agreement for the  
11 equity that they got.

12 The equity that was talked about on September  
13 16th wasn't that voting preferred. It was these  
14 unexercised warrants. So, they can't have it both ways.  
15 They can't have the value of the equity they got and not  
16 confront the problems that they have on September 22nd,  
17 when they were clearly in control, and at the same time,  
18 not recognize that any agreement, if there was any on  
19 September 16th, related to the term sheet of warrants.

20 Now, one thing that we do agree on on this chart  
21 is, if you see the arrow going down to the Board of  
22 Governors, that goes down from a term sheet relating to  
23 warrants, and we do agree with that, because as chart 30  
24 indicates, the deal that was approved by the Federal  
25 Reserve Board of Governors, was a deal for warrants, and

1 when it approved -- when the Board of Governors approved  
2 the original warrant structure, the Board of  
3 Governors -- and this is a quote from Vice-Chairman  
4 Kohn -- "knew that shareholder approval was required for  
5 the issuance of enough shares to fulfill the 79.9  
6 percent on a fully diluted basis."

7 Now, the only term sheet the Federal Reserve  
8 Board of Governors -- which we've all agreed is the only  
9 agency that can approve a 13(3) loan -- the only term  
10 sheet that the Board of Governors ever considered or  
11 approved was a term sheet on September 16th that  
12 provided for warrants. I am going to say that again.  
13 The only term sheet, the only deal that the Federal  
14 Reserve Board of Governors, the only agency that we all  
15 agree has the power to approve a 13(3) loan, the only  
16 deal, the only term sheet it ever considered or approved  
17 was a term sheet on September 16th that provided for  
18 warrants. There is no principal basis on which the  
19 Defendant can argue that there was a final agreement on  
20 September 16th, but that agreement was for voting  
21 preferred stock.

22 As chart 31 shows, the Defendant changed its  
23 equity from warrants to preferred stock in an attempt to  
24 get voting control, while avoiding a shareholder vote or  
25 other challenge to its control, and these are some of

1 the documents we're going to show and some of the  
2 deposition testimony, but Treasury counsel Steven  
3 Albrecht in PTX 349 says: "We originally pushed for  
4 voting rights to help fend off the shareholder attempts  
5 to reclaim the company."

6 They knew the shareholders were outraged by this  
7 taking of their property. They knew that there were  
8 dissident directors who were supporting that. They knew  
9 that they faced a challenge to their control. And so  
10 what they did was they changed the deal from warrants to  
11 preferred stock so that they would have the ability to  
12 block any attempt at shareholder democracy.

13 And on September 21, 2008, the Federal Reserve  
14 Bank of New York General Counsel Baxter says: "I am  
15 trying to keep this moving because of a concern that  
16 there will be shareholder action." I want the Court  
17 also to keep that in mind when the Court considers their  
18 argument that somehow the shareholders were bound by  
19 what the Defendant and the AIG board did or did not  
20 agree to. That agreement is shown on chart 36.

21 THE COURT: Mr. Boies, we had talked about 45  
22 minutes. I've let you go over a little bit, but if you  
23 could bring this to a close in the next few minutes.

24 MR. BOIES: I will, Your Honor. I apologize. I  
25 had mistimed this, I guess.

1 THE COURT: That's all right.

2 MR. BOIES: I had timed -- I was counting back  
3 and I probably counted back from the wrong time. I  
4 apologize, Your Honor.

5 THE COURT: That's okay.

6 MR. BOIES: Let me just end with the damages  
7 issue.

8 THE COURT: Okay.

9 MR. BOIES: What they say is that they are  
10 entitled, even if we're right that they stole our  
11 property, not to pay us any damages, because they say we  
12 weren't hurt because we would have gone into bankruptcy  
13 if there hadn't been this loan.

14 Now, that's wrong for all sorts of reasons. From  
15 a legal standpoint, a threshold issue is whether they  
16 could tie the loan to the giving up of equity. If they  
17 couldn't, then they obviously can't offset them. But as  
18 a factual matter, it's absolutely clear that they were  
19 not prepared to let AIG go into bankruptcy, and let me  
20 just put two charts up very quickly.

21 One is chart 43 that talks about how the  
22 hypothetical offset arguments are legally irrelevant.  
23 First, the cases they rely on involve regulatory takings  
24 where the Government does not actually acquire property,  
25 and the question is not the fair market value of the

1 property acquired by the Government, but whether the  
2 Government so burdens a citizen's use or enjoyment of  
3 property that it constitutes a de facto taking.

4 In this case, Defendant actually indirectly  
5 acquired Plaintiffs' equity and voting control. And in  
6 addition, a threshold issue, as I said, is if they could  
7 properly tie, and if not, there is no basis for  
8 offsetting, and in any event, the factual premise of  
9 Defendant's argument is wrong. The evidence is  
10 undisputed that the Defendant would not have forced AIG  
11 to file for bankruptcy even if the board refused the  
12 demand for 79.9 percent of the equity and voting  
13 control.

14 And I will end with this chart, which is chart  
15 44, because what this chart talks about is the  
16 catastrophic consequences that Defendant understood an  
17 AIG bankruptcy would have. Secretary Geithner: "We did  
18 not have the option of bankruptcy." Federal Reserve  
19 Bank of New York General Counsel Baxter: "At no point  
20 did we believe we should let AIG file for bankruptcy."  
21 Secretary Paulson: "It would have been, in my judgment,  
22 unthinkable to have AIG declare bankruptcy."

23 Secretary Paulson again: "AIG's collapse would  
24 have buckled our financial system and wrought economic  
25 havoc on the lives of millions of our citizens."

1 Chairman Bernanke: "AIG's demise would be a  
2 catastrophe."

3 What they ask this Court to believe in this  
4 litigation is that they were so intent on singling out  
5 AIG's shareholders for punishment, that if they had not  
6 been able to exact that punishment, they would have  
7 pushed AIG into bankruptcy. In 2008 and 2009,  
8 100,000 -- a little over 100,000 companies went  
9 bankrupt. I don't want to make too much of that,  
10 because more than 100,000 companies went bankrupt every  
11 two years from 1985 to 1997, but it was still a big jump  
12 from what it had been a couple of years immediately  
13 before '08 and '09 and gives the Court a little sense of  
14 what was happening to business.

15 But more important, we all know that the havoc  
16 that was wrought on the lives of individual citizens  
17 around this country who lost their homes, who lost their  
18 retirement accounts, who lost their jobs and a lot of  
19 other things, was terrible, and for the Government to  
20 come into this Court and say we would have made that  
21 havoc, that disaster, that catastrophe even worse by  
22 letting AIG fail if we were unable to exact this  
23 penalty, because I suggest to this Court, that argument  
24 is not worthy of the Government of the United States.

25 Thank you.



1 THE COURT: Thank you, Mr. Boies.

2 Mr. Mizoguchi?

3 MR. MIZOGUCHI: Your Honor, Kenneth Dintzer will  
4 present our opening.

5 THE COURT: All right, very well.

6 Mr. Dintzer, I allowed Mr. Boies to go a few  
7 minutes beyond his allotted 45, so I'll show you the  
8 same courtesy if you need it.

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

10 May it please the Court. In 2007, an escalating  
11 financial crisis threatened the nation's economy. All  
12 Americans felt the crisis. All American businesses felt  
13 the crisis as well. In 2008, in 2009, the crisis  
14 peaked. 104,383 American businesses filed for  
15 bankruptcy. Some were far from Wall Street, dry  
16 cleaners and restaurants, but many were financial  
17 institutions. Lehman Brothers, the largest bankruptcy  
18 in history, was filed in 2008.

19 Now, Your Honor, the Plaintiffs have insisted  
20 that AIG should have been treated like its peers. Your  
21 Honor, these are its peers. Each of these companies in  
22 one form or another could not pay its bills when they  
23 came due. Now, bankruptcy is painful and complicated.  
24 It means the loss of dreams and the loss of savings, and  
25 despite the very shapes and sizes of these bankruptcies,

1 nearly all had the same thing in common, which is they  
2 did not receive a rescue loan from the American  
3 taxpayers. Instead, they faced the enormous challenge  
4 of trying to stay afloat during the great recession  
5 without taxpayer assistance.

6 Now, this number, over 104,000, did not include  
7 AIG. In September of 2008, AIG ran out of cash. AIG  
8 could not make its payments when they came due, and the  
9 evidence will show that AIG did not file for bankruptcy  
10 like these companies for one and only one reason: an \$85  
11 billion loan by the New York Fed. Now, without that  
12 loan, this bankruptcy count would be one higher, which  
13 begs the question, why would one enterprise receive 85  
14 billion taxpayer dollars when 100,000 others did not?  
15 What set AIG apart from these other companies? Not its  
16 virtue, not its entitlement to public assistance. What  
17 set AIG apart was that as the world's largest insurance  
18 company, it was so big and so entangled in the financial  
19 system that AIG's failure threatened the world's  
20 economy. This danger prompted the rescue loan, and that  
21 has brought us here today.

22 Now, Your Honor, just to be clear, we call this a  
23 rescue loan, but the goal was not to save AIG. The goal  
24 was to save the world from AIG. That effort, however,  
25 did not just protect the economy. That \$85 billion loan

1 was not -- which was not available from private lenders,  
2 raised the value of each share belonging to each  
3 Plaintiff in the class, which, of course, was why AIG  
4 asked for the loan in the first place.

5 This enormous benefit was a benefit that the  
6 shareholders were not entitled to, a benefit they didn't  
7 earn, and a benefit apparently that they don't  
8 appreciate. Plaintiffs quietly accepted this benefit  
9 until AIG had fully recovered, and then they sued,  
10 asking this Court to give them more; asking for a \$40  
11 billion windfall.

12 Plaintiffs contend, by asking for equity, the  
13 rescue loan from the New York Fed and the Board of  
14 Governors violated the Federal Reserve Act and the  
15 Constitution, and, Your Honor, neither the law nor the  
16 facts support that conclusion.

17 Instead, the facts will demonstrate three  
18 dispositive points: First, that the loan was legal  
19 under 13(3), that government officials extended the loan  
20 to AIG after weighing a variety of policy implications.  
21 They made policy judgments during this time of severe  
22 crisis to save the global economy, and they should not  
23 be second-guessed.

24 THE COURT: Excuse me one second, Mr. Dintzer. I  
25 just noticed that the realtime testimony is stopped on

1 my iPad up here. Is that -- I just want to be sure that  
2 you're getting an accurate record.

3 THE REPORTER: I am, Your Honor, but there seems  
4 to be an issue with some of the connections, which I can  
5 address at the next break.

6 THE COURT: Okay, but you are getting all of  
7 this?

8 THE REPORTER: Yes, I am.

9 THE COURT: All right. Go ahead.

10 MR. DINTZER: Second, AIG's board voluntarily  
11 accepted the offered loan, and as Your Honor knows,  
12 voluntariness defeats an exaction claim, even if said  
13 exaction is not authorized, and that's what this Court  
14 concluded and what the Edmondson Court concluded in the  
15 Supreme Court case.

16 Your Honor, the company concluded, AIG concluded,  
17 that the loan was in its best interests and in the best  
18 interests of its stakeholders. Because of that loan,  
19 which was -- and because it was voluntarily accepted,  
20 there was no adverse government action which is  
21 necessary for a constitutional claim.

22 Third, the loan agreement did not injure AIG's  
23 shareholders. Plaintiff cannot show that they would  
24 have been better off without the loan. Your Honor, this  
25 is a rare, if not unique case, where the Plaintiffs

1 claim that the Government took or exacted their  
2 property, but they don't claim they would have been  
3 better off if the Government had just left them alone.  
4 Because the rescue loan benefited the shareholders, they  
5 cannot prove injury. Indeed, an advisor explained to  
6 AIG's board, right before the board took the vote  
7 concerning the loan, what he explained to the board was  
8 this: 20 percent of something is better than 100  
9 percent of nothing.

10 This logic, this math overwhelms the effort of  
11 Plaintiffs to prove the injury. The loan was legal, it  
12 was voluntarily accepted, and Plaintiffs suffered no  
13 injuries. The facts will demonstrate that there was no  
14 constitutional violation and no basis for an award to  
15 the Plaintiffs.

16 Turning to the Plaintiffs' theory, it is one of  
17 entitlement. The Plaintiffs assert that the Government  
18 should have given them more, and they can try to package  
19 this a dozen different ways, but that's what their case  
20 comes down to, that the Government didn't do enough for  
21 them, that the taxpayer assistance was not quick enough,  
22 was not rich enough, and they ask this Court to reform  
23 the contract between AIG and the Government to give them  
24 a richer deal. But the Plaintiffs were only ever  
25 entitled to access to the bankruptcy system like the

1 104,000 businesses that failed.

2 Now, Your Honor, the parties to the loan  
3 agreement were the Federal Reserve and AIG, as the Court  
4 knows, and I would just like to take a moment to  
5 introduce each of those parties to the Court. Congress  
6 created the Federal Reserve System to protect the  
7 country's banking system. The Federal Reserve consists  
8 of a Board of Governors and 12 Reserve Banks in  
9 districts throughout the country.

10 The New York Fed dealt with AIG because it was in  
11 its district. At this time, Timothy Geithner was the  
12 president of the New York Fed. Along with managing  
13 monetary policy, the Federal Reserve regulates banks,  
14 and as part of that relationship, it may assist banks to  
15 protect the banking system.

16 Section 13(3) of the Federal Reserve Act is a  
17 statute in which Congress gave the Federal Reserve  
18 System tools to protect not just banks but the financial  
19 system in general, but it requires extraordinary  
20 circumstances. 13(3) allows assistance to nonbanks only  
21 under those circumstances, and its exercise requires the  
22 Fed's discretion under the statute. It requires a  
23 series of policy judgments as to whether that assistance  
24 can and should be provided.

25 The Fed never, never had responsibility for

1 protecting and saving individual firms. The protection  
2 of individual firms, Your Honor, is the responsibility  
3 of the shareholders, the responsibility of the board of  
4 directors, who is elected by the shareholders and is  
5 their fiduciaries, and it is the responsibility of the  
6 firm's management, who is hired by the board of  
7 directors.

8 Now, turning to AIG, AIG is an insurance company.  
9 The parent corporation was regulated by the Office of  
10 Thrift Supervision, and then state and insurance  
11 regulators regulated and supervised the insurance  
12 subsidiaries, and there were other subsidiaries as well,  
13 including the Financial Products Group, which did many  
14 of the investments which ultimately caused trouble for  
15 AIG.

16 Now, AIG was not a commercial bank and was not  
17 regulated by the Federal Reserve. AIG was free to  
18 invest in ways that commercial banks couldn't. On the  
19 other hand, AIG did not have the financial backstops  
20 that protected those banks. In 2008, AIG owned and  
21 insured billions of dollars in derivatives and mortgage  
22 securities relating to the housing market.  
23 Specifically, AIG had issued credit default swaps, which  
24 were insurance derivatives on -- were insurance on  
25 derivatives. At the same time, AIG took some of the

1 corporate and treasury bonds that were in its insurance  
2 subsidiaries, it took them and it lent them out for  
3 cash. It then took this cash and invested it in complex  
4 mortgage securities.

5           When the housing market crashed, these  
6 investments carried AIG to the brink of failure. The  
7 CDSs became a cash drain on AIG. Everybody who had a  
8 CDS got cash or collateral from AIG whenever the  
9 derivatives market went down or whenever AIG's credit  
10 rating went down. At the same time, people would borrow  
11 securities, they wanted their cash back and they wanted  
12 to give the securities back, but AIG didn't have the  
13 cash because it had invested it in that stack of  
14 mortgage securities whose value was going down.

15           In 2008, AIG needed liquidity, and that, of  
16 course, just means cash, but at that time, liquidity was  
17 a very expensive commodity. Your Honor, we do not, as  
18 Plaintiffs' counsel suggests, demonize or intend to  
19 demonize AIG, but Plaintiffs argue that the loan to AIG  
20 was risk-free. Risk-free, Your Honor. The evidence  
21 will show that it wasn't.

22           Turning now, Your Honor, to the two claims and  
23 two classes in this trial, there, of course, is the  
24 credit agreement class and the reverse stock split  
25 class. The credit agreement class is alleging injury



1 related to the rescue loans, and the reverse stock split  
2 class is alleging injury related to AIG's reverse stock  
3 split. The Court has asked to hear the entire story of  
4 the AIG rescue, and we will begin with the facts related  
5 to the credit agreement class.

6 Your Honor, the credit agreement class, for them,  
7 the important facts arise between September 12th and  
8 September 22nd of 2008. Evidence of other periods and  
9 especially, Your Honor, of other rescues are not  
10 relevant. During the summer of 2008, the Plaintiffs  
11 contend that the Government intentionally put AIG in an  
12 untenable position by delaying assistance, but the  
13 events of that summer undermine Plaintiffs' theory for  
14 two reasons.

15 First, in the summer of 2008, AIG didn't know  
16 that it was months and then weeks away from financial  
17 collapse, and if AIG didn't know, Your Honor, then the  
18 Federal Reserve couldn't have known.

19 The second reason that the summer and the facts  
20 of that summer aren't relevant, Your Honor, is because  
21 at all times AIG should have planned to deal with the  
22 crisis itself, without Fed assistance. In the summer of  
23 2008, the Fed rarely, rarely gave 13(3) assistance to  
24 nonbanks and never provided assistance to insurance  
25 companies under 13(3). Nothing that took place in the

1 summer of 2008 should have given AIG an expectation of  
2 assistance. Indeed, with that history, AIG never, ever  
3 had the right to rely on the American taxpayer as their  
4 emergency ATM.

5 With this backdrop, Your Honor, we turn now to  
6 the days from September 12th to September 16th. Over  
7 those days, government officials, after careful policy  
8 deliberations, will offer a rescue loan to AIG. The  
9 proposed loan would be fully consistent with the Federal  
10 Reserve Act. AIG's board will voluntarily accept the  
11 offer of the loan, including the equity provision, and  
12 the loan will permit AIG to avoid bankruptcy, because --  
13 and provide an immediate benefit to AIG's shareholders.

14 Friday, September 12th, is the first time the Fed  
15 learns that AIG faces near-term downgrades that will  
16 imperil the company. AIG suggests maybe weeks of  
17 liquidity left and is working with private investors to  
18 obtain funding. Over the next two days, in  
19 conversations between President Geithner and the Board  
20 of Governors, there is a great deal of encouragement for  
21 AIG to find a private sector solution, to resolve its  
22 problems on its own without the taxpayer assistance. We  
23 expect the Board of Governors Chairman Ben Bernanke to  
24 explain that a private solution would have been the best  
25 outcome, that the Federal Reserve had no interest in

1 being a part of what was a private problem.

2 Now, the Plaintiffs have said that Sovereign  
3 Wealth Funds would have come in without discouragement  
4 and would have saved AIG. Okay, they have made that  
5 assertion, Your Honor; they have not, however, listed  
6 any Sovereign Wealth Fund witnesses on their witness  
7 list. You will not hear from the Sovereign Wealth Fund  
8 that they would have saved AIG.

9 Between September 13th and September 14th, which  
10 is a weekend called Lehman weekend, the Federal Reserve,  
11 the Treasury, and the Board of Governors worked  
12 tirelessly to prevent Lehman Brothers from collapse.  
13 Meetings are held with possible investors and buyers,  
14 but no solution was found. Lehman Brothers cannot be  
15 saved, and Lehman Brothers files for bankruptcy on  
16 Monday morning, September 15th, wiping out its  
17 shareholders.

18 On the AIG side, the company pursues private  
19 sector solutions, enlisting the world's most  
20 accomplished financiers, but AIG fails to find an  
21 investor during that weekend. Also during that weekend,  
22 the Federal Reserve gets its first direct access into  
23 AIG's internal workings. It is a very complicated  
24 insurance company. The Federal Reserve seeks to  
25 understand both AIG's complex investments but also what

1 impact it would have if AIG failed.

2 Now, one of the stumbling blocks is that even  
3 AIG's executives don't understand the breadth of the  
4 company's challenges. Over the weekend, AIG's  
5 management increases its estimate of the liquidity hole  
6 it faces. Within days, it goes from 20 billion to 40  
7 billion to 50 billion to 75 billion. These changes do  
8 not inspire confidence in AIG's management or increase  
9 their chances for a private solution.

10 As the weekend progresses, some of the New York  
11 Fed conclude that AIG is systemic, Your Honor. With the  
12 fragile state of the economy, AIG's bankruptcy would  
13 undermine confidence in insurance and financial products  
14 and feed a worldwide panic. Ultimately, the New York  
15 Fed and the Board of Governors is satisfied that the  
16 first of four necessary conditions for a 13(3) loan is  
17 met, that unusual and exigent circumstances exist. And  
18 as the Court can see on our slide, that's the first of  
19 the four items.

20 Monday morning, September 16th, the  
21 fear-triggering event becomes a reality. Rating  
22 agencies downgrade AIG, and the company must provide  
23 billions to counterparties based on the existing CDS  
24 contracts. Also Monday morning, after the failure of  
25 AIG's private sector efforts, the New York Fed makes a

1 last attempt in encouraging a private solution for AIG.  
2 AIG agrees with the proposal, and JP Morgan and Goldman  
3 Sachs work to find investors in AIG.

4 The financiers meet in the Fed's New York office,  
5 and during that meeting a sheet is assembled with  
6 possible terms for a private loan for AIG. The private  
7 term sheet reflects a \$75 billion loan, divided up among  
8 15 investors, who would receive 79.9 percent of AIG's  
9 equity.

10 Now, eventually, these bankers report that they  
11 cannot find investors even on these terms, that the hole  
12 in AIG's balance sheet is too big. By the end of  
13 September 15th, AIG satisfies the second condition for a  
14 13(3) loan; it is unable to secure adequate credit  
15 accommodation.

16 Now, Monday, the New York Fed considers, as it  
17 has through the weekend, AIG's collateral that might  
18 support or secure the loan. The Federal Reserve usually  
19 requires collateral of bonds or treasuries, things that  
20 are marketable and easy to sell, but AIG doesn't have  
21 enough marketable securities to secure the loan. AIG  
22 offers instead as collateral equity, equity in its own  
23 insurance subs and other holdings. Now, Your Honor,  
24 these are not publicly traded, so to fund this equity,  
25 to turn this equity into money, a buyer must be found on

1 the private market.

2 Now, this collateral is remarkably different from  
3 other collateral that the Fed accepts for its loans,  
4 including those mentioned by Plaintiffs' counsel in  
5 their nice chart. There is a risk of loss here, Your  
6 Honor, and if AIG fails after receiving this loan, which  
7 is a real possibility, those insurance subs' values may  
8 go down, dragged down by the bankruptcy of the parent.

9 The insurance subs' values may drop or disappear  
10 altogether, and that means when it's time for the  
11 collateral to support the loan, as needed, it might not  
12 be there. This will be the Fed's only loan during the  
13 financial crisis, secured by hard-to-value, hard-to-sell  
14 collateral such as this. Still, late Monday evening,  
15 President Geithner concludes that the loan can be  
16 secured to his satisfaction. We expect he will explain  
17 that he interprets the standard as there being a  
18 reasonable possibility, but not certainty, that the  
19 Government could be paid back over time on the loan.  
20 This, Your Honor, satisfies the third prong, secured to  
21 the satisfaction of the Federal Reserve Bank.

22 Now, the facts that show that these three  
23 elements can be made does not mean that the loan should  
24 be made, and it does not mean that the loan must be  
25 made. Those are policy questions, Your Honor, to be

1 resolved by the Board of Governors in Washington, D.C.,  
2 who must approve the loan and the terms for the loan.  
3 The seven Board of Governors -- there are seven Board of  
4 Governors positions. Congress has required a  
5 supermajority of five members must agree on a 13(3) loan  
6 before it can be authorized. And in September 2008, the  
7 Board of Governors only has five members, which means  
8 that every governor must vote for the loan before it can  
9 be authorized and offered to AIG.

10 As September 15th ends, no decision is reached on  
11 whether the loan should be made. These thoughtful  
12 policy makers are wrestling with decisions of historic  
13 import. One of the policy concerns that they will  
14 consider related to the loan is moral hazard. Every  
15 time the Government offers assistance on better terms  
16 than the market, it creates moral hazard. That is the  
17 risk that the borrower, or others, might expect such  
18 assistance in the future, and then, because of that  
19 expectation, take on evermore risky investments.

20 Another form it might take is that firms will  
21 ignore the fact that they are in a risky situation, will  
22 ignore offers of private assistance, waiting, waiting  
23 for that rescue. The policy trade-offs between making  
24 an emergency loan versus generating moral hazard for the  
25 system are entrusted to the New York Fed and the Board

1 of Governors. Leaders at the New York Fed and the Board  
2 of Governors will explain that the greater the benefit  
3 to the borrower of a government loan, the greater the  
4 moral hazard. Moral hazard is an important  
5 consideration that the Fed weighs in offering a loan and  
6 setting the loan's terms for AIG.

7 On September 20th, Tuesday morning, AIG begins to  
8 prepare for bankruptcy. It knows that later that day it  
9 may be unable to pay its bills as they come due. The  
10 Plaintiffs allege that the Government prevented AIG from  
11 filing bankruptcy somehow, but the facts don't support  
12 this. The facts show that President Geithner called  
13 Mr. Willumstad, responding to AIG's loan request.  
14 President Geithner tells Mr. Willumstad that the loan is  
15 possible, suggests that AIG delay drawing down certain  
16 Reserve Bank lines that might signal that a pending  
17 bankruptcy was inevitable.

18 President Geithner can't say more about the loan  
19 at that point, of course, because it's still subject to  
20 the Board of Governors vote. President Geithner does  
21 not order AIG to take any action or refrain from any  
22 action, because he doesn't have that authority.  
23 Mr. Willumstad, indeed, ignores President Geithner and  
24 orders the bank lines drawn down anyway.

25 Now, the Plaintiffs complain of a deadline, that



1 the offer ultimately will have a deadline. Your Honor,  
2 the deadline was a function of AIG's need. It needed to  
3 pay its creditors by a certain time limit, and if the  
4 Fed was going to make that loan within the time, then  
5 things had to happen quickly.

6 Your Honor, I'd like to take a few minutes to  
7 walk the Court through the evidence regarding the  
8 formation of AIG's term sheet. Now, the Plaintiffs  
9 contend that the New York Fed initially proposed to AIG  
10 a deal involving warrants and later forced AIG's board  
11 to give preferred stock, but the facts show that there's  
12 no difference in the offer presented to AIG and the  
13 final term that AIG's board ultimately accepted.

14 Now, the initial version of the term sheet is  
15 drafted by the New York Fed. It contains two terms that  
16 do not change throughout the drafting process. One of  
17 the terms is an \$85 billion loan to AIG, and the second  
18 equity term is equal to 79.9 percent of AIG's common  
19 stock. That equity term mirrors the term sheet created  
20 by the private investors, that private term sheet, but  
21 the loan is actually larger, a larger loan than even the  
22 private investors were considering.

23 From this initial term sheet, a series of term  
24 sheets will be created, and as the points get resolved,  
25 they will be modified, but all of these term sheets have

1 the same two features, which is an \$85 billion loan and  
2 a 79.9 percent equity equivalent to common stock. The  
3 equity provision will reduce moral hazard by shrinking  
4 the benefits that shareholders get from the public  
5 assistance.

6 Your Honor, it's very important, a very important  
7 concept of this trial, that shrinking a benefit to the  
8 shareholders is not punishing them; it is giving them a  
9 benefit. And it is not an exaction. Your Honor, the  
10 equity provision also provides a return on the loan for  
11 the American taxpayers if the company survives.

12 Now, the equity can take -- equity can take many  
13 forms: common stock, preferred stock, warrants. In that  
14 first term sheet, equity does, in fact, take the form of  
15 warrants, and it is sent to the Board of Governors. The  
16 Board of Governors are meeting right here in Washington,  
17 D.C., to understand the terms of the deal and the  
18 ramifications if AIG fails. Ultimately, the Board of  
19 Governors votes five to nothing to extend the loan to  
20 AIG, and the Board authorizes the New York Fed to make  
21 that \$85 billion loan.

22 The terms include a 79.9 percent equity interest,  
23 but because the Board understands that the terms are in  
24 flux, that these things are moving extraordinarily fast,  
25 the Board gives the New York Fed discretion to refine

1 the details, and this discretion is expressly put into  
2 the Board's resolution. This authority is the only  
3 authority that the New York Fed needs to make the loan  
4 that it ultimately offers to AIG.

5 Now, the Board's vote completes the fourth  
6 requirement for a 13(3) loan, as shown on this screen.  
7 At this point, and only at this point, can a loan be  
8 offered to AIG, and that is done within minutes.  
9 President Geithner calls Mr. Willumstad and tells him to  
10 expect a term sheet. President Geithner explains that  
11 one condition of the loan would be that Mr. Willumstad  
12 resign. We expect President Geithner to explain that  
13 term was necessary to help restore the market's  
14 confidence in AIG.

15 During and after the board meeting, work  
16 continues on the term sheet. AIG needs billions of  
17 dollars within hours, and the New York Fed hasn't come  
18 to rest on what form the equity interest should take.  
19 So, instead of identifying a specific form, the term  
20 sheet will indicate that the form will equal 79.9  
21 percent of common stock but will not identify a specific  
22 type of equity.

23 The term sheet is then given to AIG's lawyers  
24 before AIG's board meeting. The New York Fed never  
25 sends AIG the warrants term sheet, so there is never

1 consideration by AIG of a warrants loan offer. AIG's  
2 board is meeting to choose and consider whether they  
3 will accept the New York Fed's loan or perhaps a  
4 bankruptcy filing. AIG's directors have been selected  
5 months before by completely independent shareholders,  
6 that board members have no reliance or allegiance to the  
7 Government.

8 The loan offer is presented to AIG's board in a  
9 meeting that lasts hours and includes thoughtful  
10 discussion by AIG's advisors and lawyers. During the  
11 meeting, the board stops its deliberation.  
12 Mr. Willumstad calls President Geithner and asks, "Is  
13 there room to negotiate on the equity term?" He's told  
14 no; this offer is the only offer. With that clear  
15 statement, AIG's board completes its deliberations and  
16 votes to accept the loan, including the payment of  
17 equity equal to 79.9 percent of the company's common  
18 stock.

19 Now, Plaintiffs said or perhaps mis-said that  
20 this was Plaintiffs' equity, but, Your Honor, this  
21 equity that's being paid as part of the transaction  
22 doesn't belong to the shareholders. It is the company's  
23 equity. These shareholders, the evidence will show,  
24 each shareholder in each of these classes, they had  
25 shares in their pocket at the beginning of the class

1 periods, and at the end of their class periods, if they  
2 reached into their pocket, they had just as many shares  
3 as they had before, and with the same share value or  
4 their equivalent thereof. They will not give any  
5 property -- no property owned by the shareholders will  
6 ever be transferred to the United States.

7 Mr. Willumstad signs a page agreeing to the  
8 terms. The page is faxed to the New York Fed to show  
9 Mr. Baxter, to show the agreement. AIG has asked for  
10 assistance, the Fed has offered a loan, the terms have  
11 been explained to be nonnegotiable, AIG's independent  
12 board members and Plaintiffs' fiduciaries voluntarily  
13 voted to accept those terms, there is no ambiguity, no  
14 confusion regarding the terms of the agreement, and  
15 indeed, the parties issue press releases showing that  
16 they had the same view of the agreed-upon terms.

17 AIG's September 16th press release states:

18 "The Federal Reserve Bank of New York is  
19 providing a two-year \$85 billion secured revolving  
20 credit facility. In return for providing this essential  
21 support, the American taxpayers will receive a  
22 substantial majority ownership interest in AIG."

23 And it notes that this is the best result for the  
24 shareholders. Your Honor, AIG's equivocal about the  
25 completed deal, and it states that there's an ownership

1 interest and there's no mention of warrants.

2 Now, the Fed issues a similar press release:

3 "The U.S. Government will receive a 79.9% equity  
4 interest in AIG and has the right to veto the payment of  
5 dividends."

6 Your Honor, the parties are agreed upon  
7 unambiguous terms. AIG will provide new equity for  
8 consideration, and the Fed will provide a loan to save  
9 the company from bankruptcy. Within hours, the same  
10 evening, the Fed lends \$14 billion in reliance upon  
11 their deal, staving off AIG's failure. The facts  
12 surrounding this loan offer undermine the Plaintiffs'  
13 efforts to prove entitlement. Plaintiffs argue that  
14 there was no chance that the Fed would let AIG fail, and  
15 the Plaintiffs bootstrap from that an entitlement, an  
16 entitlement to a loan from the U.S. Government and the  
17 U.S. Federal Reserve, but the facts undermine that  
18 assumption. The New York Fed and the Board of Governors  
19 would have let AIG fail.

20 On September 16th, when AIG received the loan  
21 offer, the New York Fed and the Board of Governors  
22 completely agreed that AIG's failure would have been  
23 disastrous for the world economy. They were still fully  
24 prepared to watch AIG file for bankruptcy, first because  
25 they could not -- they had no legal power to stop it,

1 but second, if AIG's board rejected the Fed's terms,  
2 then that was that. Letting AIG fail would have been  
3 bad, but it would have been worse allowing the company  
4 to hold itself hostage until it got the deal it wanted.  
5 If that had happened, every single firm dancing on the  
6 precipice of failure would have demanded funding on  
7 their own terms. That couldn't happen. Absent this  
8 deal, AIG would have faced bankruptcy, absent this deal.

9 Now, the days between September 16th and  
10 September 21st are busy ones. Throughout the week,  
11 AIG's board and management control the company just as  
12 always. The New York Fed, AIG's largest creditor now,  
13 has an interest in how the company is run and how its  
14 funds are being spent. This is neither control, Your  
15 Honor, nor is it coercion; this is responsible lending.  
16 The New York Fed starts gathering information that any  
17 other lender in the world would have required before  
18 making the loan, but there was not time.

19 During the week, in reliance upon the September  
20 16th agreement, the Fed lends AIG \$23 billion more, and  
21 AIG's CEO resigns. Soon after, AIG's board votes Ed  
22 Liddy to the new CEO, as the new CEO. Although the  
23 Treasury Department has identified Mr. Liddy has a  
24 candidate, he has no ties to the Government. He is the  
25 former CEO of Allstate Insurance, an appropriate choice

1 given that AIG's an insurance company. Mr. Liddy's  
2 attendance at board meetings does not and cannot  
3 undermine the independence of this shareholder-chosen  
4 board.

5 Also during that week, the attorneys for AIG and  
6 the Fed hammer out the fine print and specifics that  
7 implement the September 16th agreement. As part of this  
8 process, the Fed and the Board of Governors work through  
9 the equity issue. Now, Plaintiffs hope to establish  
10 that the rescue loan violated 13(3) because it contained  
11 an equity kicker. Your Honor, in September 2008,  
12 whether the Fed could seek an equity kicker or equity  
13 for a consideration of a loan, that was not a new issue  
14 for the Fed.

15 And, Your Honor, DX 161 is a memorandum written  
16 in March of 2008 that addresses just this issue, and it  
17 was sent to President Geithner of the New York Fed. The  
18 memo states: "This memo discusses whether a Reserve  
19 Bank is empowered to take 'equity kickers' in discount  
20 window lending under Sections 10B or 13(3) of the  
21 Federal Reserve Act." It then goes on to state: "We  
22 believe that there are many different permissible routes  
23 to a finding that a Reserve Bank is empowered to take an  
24 equity kicker..."

25 Your Honor, it is concluded that the Fed is



1 empowered to take that kicker, to take that equity. By  
2 September, New York -- by September, the New York Fed  
3 and the Board of Governors agree that equity can be used  
4 as compensation for a loan, but the Federal Reserve --  
5 the Federal Reserve is comfortable with the AIG loan and  
6 that it does not violate the 13(3) by seeking equity.

7 Now, the Federal Reserve will then exert  
8 congressionally delegated authority and condition the  
9 enormous rescue of AIG on the possible return to  
10 taxpayers, but there's a separate question, whether the  
11 Fed can hold equity, and that's a more complicated  
12 question.

13 Two concerns arise in September 2008. On the one  
14 hand, there's a desire that AIG can manage as well as  
15 possible so that it won't fail and so that it can pay  
16 back the Fed's loan. On the other hand, the New York  
17 Fed and the Board of Governors are deeply reluctant to  
18 hold the shares of AIG. The New York Fed and the Board  
19 of Governors have constant access to public -- to  
20 nonpublic information about the market. They regulate  
21 the banks that AIG does business with. Holding the  
22 equity raises real policy concerns.

23 The solution is a trust established for the  
24 benefit of the American taxpayer. These trusts --  
25 trustees will be chosen that act independent of the Fed

1 and work toward making AIG a well -- providing AIG with  
2 well-chosen board members. How the trust actually  
3 managed the equity has no effect on Plaintiffs' claim.  
4 The trust isn't created until 2009, and it doesn't  
5 receive the shares until that time, long after the  
6 window closes on the creditor being a class.

7 Now, going back to September 2008, on the 21st,  
8 the AIG and the New York Fed combine the final terms  
9 into the credit agreement, and AIG's board gathers again  
10 to consider the credit agreement's terms. Just as on  
11 September 16th, the board has the choice of accepting  
12 the loan terms or filing for bankruptcy, and AIG's board  
13 is considering the credit agreement, and AIG -- and the  
14 manner in which and the information that AIG's board  
15 gets in considering the credit agreement demonstrates  
16 the third of our dispositive points that I identified at  
17 the beginning, that far from harming AIG's shareholders,  
18 the loan conferred enormous benefit.

19 A trusted AIG advisor during that meeting is John  
20 Studzinski, and he's from The Blackstone Group. He has  
21 expertise in global investment, and he's studied AIG and  
22 its prospects in bankruptcy, and he advises the board  
23 that 20 percent of something was better than 100 percent  
24 of nothing. As Mr. Studzinski explained, without the  
25 loan, shareholders were left with 100 percent of

1 nothing. Understanding this, AIG's board votes  
2 unanimously for the credit agreement, and the document  
3 is signed. No AIG director has ever said that the vote  
4 on the 16th or 21st was coerced by the Government or by  
5 the Fed.

6 AIG's board members acted voluntarily and in the  
7 best interests the company and their stakeholders.  
8 Under the credit agreement, AIG accesses 85 billion  
9 taxpayer dollars, borrowed against the potential value  
10 of its insurance subs, and in exchange, AIG pays  
11 interest fees and agrees to issue preferred stock equal  
12 to 79.9 percent common. That's AIG's equity. AIG and  
13 the New York Fed carry out what they agreed to back on  
14 September 16th.

15 Your Honor, I would like to take just a minute to  
16 discuss what happened after the credit agreement was  
17 signed. This chart reflects the total assistance AIG  
18 received between 2008 and 2011. Even without the --  
19 even with the \$85 billion loan, AIG has enormous losses  
20 that required further assistance to avoid bankruptcy.  
21 This additional assistance starts weeks, weeks after the  
22 agreement, and the assistance keeps rising, from \$85  
23 billion to \$122 billion to \$152 billion to \$182 billion.  
24 This chart answers a question that the Plaintiffs pose,  
25 whether it was risky lending AIG money in September

1 2008. These are not the needs of a low-risk borrower.

2 At each step, the Fed and the Treasury have a  
3 choice. They can increase taxpayer assistance or they  
4 can let AIG fail, perhaps losing the prior assistance.  
5 Together, between September 2008 and January 2011, to  
6 avoid bankruptcy, AIG obtained the largest package of  
7 federal assistance in human history.

8 Now, Your Honor, there is a second class, AIG's  
9 reverse stock split class, and they seek compensation  
10 based on alleged taking or exaction associated with the  
11 2009 reverse stock split. Now, Your Honor, that claim  
12 is based on a false premise, that the Government -- that  
13 the reverse stock split was adopted by the Government-  
14 led effort to avoid a shareholder vote, but, in fact,  
15 Your Honor, the facts represent that it was an AIG  
16 initiative to deal with a very specific problem.

17 Beginning in 2008, the company faces delisting  
18 from the New York Stock Exchange because its share price  
19 is just too low. Responding to -- AIG proposes the  
20 reverse stock split, which for every 20 shares before  
21 the split, each owner will have one share after. The  
22 total value of each shareholder's investment is not  
23 affected. No testimony that the Fed or Treasury was  
24 behind the stock split will be heard in this Court.  
25 Starr admits that it itself -- it, itself -- voted for

1 the reverse stock split that it now claims was a taking  
2 or exaction, and the majority of the shareholders voted  
3 for it. The reverse stock split did not violate a  
4 statute or break a rule or break a promise by the United  
5 States. Rather, it was a purely commercial transaction  
6 from which you can conclude there was no taking or  
7 exaction related to it.

8           Eventually, from September -- between September  
9 2010 and 2011, the Government exchanges its preferred  
10 shares for common stock, and eventually those are sold  
11 on the market. The ultimate return to the United States  
12 for its assistance to AIG, including interest payments  
13 and sale of stock, is under 6 percent per year. That is  
14 the return for a loan that no one else would touch for a  
15 company on the edge of bankruptcy.

16           Now, these facts the Court will hear over the  
17 next six weeks will demonstrate three dispositive  
18 reasons why the plaintiffs' claims must fail. The first  
19 is that the parties -- the first is that there was no  
20 illegal exaction. Now, Your Honor, the parties agree  
21 that whether it was legal under 13(3) to seek equity is  
22 a purely legal question. That means that the testimony  
23 of witnesses' views regarding 13(3) should not intrude  
24 on the Court's analysis.

25           Nevertheless, the Court will hear that -- from

1 Scott Alvarez, the general counsel of the Board of  
2 Governors, and Tom Baxter, the general counsel of the  
3 New York Fed, and both lawyers will explain that if they  
4 thought that the AIG loan violated any statute, they  
5 would have not advised their principals to participate  
6 in it. Instead, both of them will testify that they  
7 advised the loan was legal.

8 Moreover, the illegal exaction argument, Your  
9 Honor, it's a red herring. The credit agreement  
10 expressly required that if one form of consideration  
11 under the agreement turns out to be illegal, AIG would  
12 have to provide an equivalent substitute. Therefore,  
13 Plaintiffs' 13(3) argument cannot change the fundamental  
14 terms of the deal.

15 The second dispositive point, Your Honor, regards  
16 voluntariness. The deal was voluntary. Your Honor, as  
17 the Court knows, exaction and takings claims require  
18 coercive government action. The Court noted in its  
19 order on the motion to dismiss that if AIG's board  
20 voluntarily accepted the terms of the deal, the credit  
21 agreement plaintiffs' claims must fail.

22 Months before AIG's tailspin, Your Honor, AIG  
23 selected board members to be their fiduciary  
24 representatives, and those board members were  
25 independent from the Government from September 16th,

1 when the credit agreement class begins, and they  
2 remained independent until September 22nd, when the  
3 class closed. Those board members twice agreed to the  
4 loan, including 79.9 percent of equity. They did it  
5 once on September 16th, and they did it again on  
6 September 21st. The Plaintiffs will fail to establish  
7 that these votes were controlled or coerced by the  
8 Government, and that, Your Honor, should end the credit  
9 agreement claim.

10 It is not necessary, Your Honor, for our defense  
11 that the Court find that a binding contract existed on  
12 September 16, but the facts do make that conclusion  
13 inescapable. AIG was offered terms, both a term sheet  
14 and verbally. It understood there was no room for  
15 negotiation. It responded by providing a signed page  
16 accepting those terms, and based on that agreement, the  
17 Fed loaned AIG \$37 billion, and AIG's CEO stepped down.  
18 Those are the indicia of a contract, Your Honor.

19 Still, even if the Court finds that there was no  
20 binding contract until September 21st, the outcome is  
21 the same. AIG's board members were just as independent  
22 on September 21st, and a unanimous board, on that day,  
23 voted to accept the credit agreement.

24 Now, most importantly, the equity term that AIG's  
25 board agreed to on September 16th was unchanged from the

1 21st. On the 16th, in exchange for the loan, AIG's  
2 board agreed to give "equity equivalent to 79.9 percent  
3 of the common stock." In the credit agreement, AIG's  
4 board gave exactly that in preferred stock. The  
5 evidence of voluntariness, Your Honor, should end  
6 Plaintiffs' claims.

7 Finally, Your Honor, Plaintiffs must show that  
8 they were actually injured by receiving billions of  
9 dollars in assistance from the taxpayers. For an award  
10 on a takings or exaction claim, Plaintiffs must compare  
11 what actually happened to a hypothetical world without  
12 the challenged action, the but-for world.

13 Now, Plaintiffs admit that AIG faced bankruptcy  
14 without the Fed's loan, so the but-for world would be  
15 without billions of dollars of assistance. That would  
16 be a grim existence for AIG and its shareholders.  
17 Absent the Government's assistance, AIG's bankruptcy  
18 would have crashed over its subsidiaries, potentially  
19 undermining their reputations and driving away their  
20 customers.

21 We remind you of the advice that AIG received  
22 before accepting the loan: 20 percent of something was  
23 worth more than 100 percent of nothing. Fundamentally,  
24 this undermines Plaintiffs' effort to show injury. The  
25 20 percent of something was what they got when they



1    accepted the loan. The 100 percent of nothing was what  
2    the Plaintiffs avoided when they accepted the loan.  
3    That is the but-for world.

4           Now, Plaintiffs will try to show instead that  
5    they would have benefited more by a hypothetical richer  
6    rescue. Your Honor, that cannot establish injury, in  
7    fact. The Federal Circuit has been clear that to  
8    establish injury, Plaintiffs must show that, absent the  
9    government assistance, all of the assistance, the  
10   shareholders would have been better off, and no such  
11   evidence will appear at trial.

12           In conclusion, Your Honor, the Government  
13   provided \$182 billion to keep AIG out of bankruptcy.  
14   AIG's board, the company's representatives, chose not to  
15   pursue this lawsuit. AIG appreciated the taxpayers'  
16   assistance. They said, "Thank you, America," in  
17   television ads, but Plaintiffs' shareholders are a bit  
18   less grateful. Their attitude is you brought the life  
19   boats, but they weren't comfortable enough.

20           Your Honor, Plaintiffs received an enormous  
21   benefit from the Fed's 2008 assistance. They received  
22   that benefit solely because the Federal Reserve believed  
23   that if AIG went down, it would harm millions of  
24   bystanders throughout the world. At the end of the  
25   trial, Your Honor, the Court should reject the

1 Plaintiffs' request for another windfall at the  
2 taxpayers' expense.

3 Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Dintzer.

5 Let's take a break at this point, 15 minutes.

6 We'll resume at 11:30 to have the first witness.

7 (Court in recess.)

8 MR. BOIES: Your Honor, before we call our first  
9 witness, I think there are a couple of housekeeping  
10 matters to be addressed, maybe more than housekeeping.

11 Did you want to go first?

12 MR. AUSTIN: Yes. Your Honor, Scott Austin for  
13 the Department of Justice.

14 THE COURT: Yes.

15 MR. AUSTIN: As the Court is aware, the Court has  
16 declined to rule on a number of motions in limine from  
17 both sides, and if I could just object or our colleagues  
18 to object every time a question comes up that is  
19 inconsistent with our position on the motions in limine,  
20 but I'm sure the Court doesn't want that, and it would  
21 interrupt the flow of the examination. So, what I would  
22 suggest, subject to the Court's view, is that we simply  
23 have a continuing objection on the grounds of our  
24 motions in limine, unless the Court would like to  
25 proceed in some other manner.

1           THE COURT: No, I think that's a sensible  
2 approach. As I think both parties are aware, I view  
3 this as a very unique case with lots of documents, as is  
4 evident from the shelves on either side of the  
5 courtroom, and most of the exhibits I have not had an  
6 opportunity to review, and I do want to have the full  
7 story in this case. So, I think it's fine if you want  
8 to lodge your objections and then let the examination go  
9 smoothly.

10           MR. AUSTIN: Thank you, Your Honor.

11           MR. BOIES: The second housekeeping issue, and  
12 this may be a little bit more significant, Your Honor,  
13 is that in the opening statement, counsel said that  
14 Mr. Alvarez and Mr. Baxter are going to testify that  
15 they advised that the demand for equity was legal.

16           Now, during discovery, we were given instructions  
17 not to answer, and there was an assertion of privilege  
18 on those issues, and I don't think it's appropriate for  
19 them now to come in, without our having an opportunity  
20 to take discovery, and have access to all of the actual  
21 underlying documents, and simply give testimony that  
22 they gave this attorney-client advice.

23           I haven't had a chance to go back and look at all  
24 of the instructions not to answer, but I have identified  
25 a number of instructions not to answer from Mr. Alvarez,

1 who is our first witness, which is why I'm raising the  
2 question now. I think that if they wanted to have a  
3 waiver of the attorney-client privilege, they were  
4 entitled to do that. I think they should have done it  
5 earlier.

6 I would be inclined to accept that waiver now as  
7 long as we have an opportunity, without disrupting the  
8 trial, having other people who are not doing the trial,  
9 go back and do the discovery on that that we would have  
10 done had they done it on a timely basis. But I don't  
11 think it's appropriate for them to come in, having  
12 instructed people not to answer on the attorney-client  
13 privilege grounds, and having withheld documents on  
14 attorney-client privilege grounds -- the Court is aware  
15 how hard it was for even us to get certain documents  
16 unredacted. They have fought on attorney-client  
17 privilege grounds fairly vigorously here. I don't fault  
18 them for that, but I do say that, having done that, I  
19 don't think they can come in and offer testimony without  
20 our having an opportunity to go back on and get that.

21 THE COURT: Mr. Austin?

22 MR. AUSTIN: Yes, Your Honor. I understand  
23 Mr. Boies' point with respect to the 30(b)(6) initial  
24 deposition, for example, of Mr. Alvarez, because at that  
25 time, we were claiming attorney-client privilege on

1 those matters, but after the Court ruled on discovery  
2 order six and said that the questions concerning  
3 authority were, in fact, waived subject to the 502  
4 protective order, another deposition of Mr. Alvarez was  
5 taken in his individual capacity, and, in fact, we  
6 proceeded with the waiver at that time, and Starr was  
7 free to ask any questions of him concerning his legal  
8 opinions and, in fact, did so in his deposition.

9 So, I really don't -- I think they have had full  
10 discovery on that, and I think the same is true for  
11 Mr. Baxter, although I'm not quite as certain as I am  
12 with Mr. Alvarez.

13 THE COURT: Well, I think, under the  
14 circumstances, the Defendant's assertion of legality  
15 would waive the attorney-client privilege as to that  
16 issue, and that would be my holding here today, so that  
17 any assertion of an attorney-client privilege would be  
18 out of line.

19 Now, where that leaves you on discovery, I'm not  
20 sure. If you want to discuss the document production  
21 and try to deal with that as the trial progresses, I  
22 have no objection to that.

23 MR. AUSTIN: Thank you, Your Honor.

24 MR. BOIES: Thank you, Your Honor.

25 THE COURT: Yes.

1               MR. BOIES: I think we have one more housekeeping  
2 matter, and that is we would offer at this time Joint  
3 Exhibits 1 through 51, which I believe are all of the  
4 joint exhibits.

5               THE COURT: Is that the correct number, 51 joint  
6 exhibits?

7               MR. AUSTIN: Yes, Your Honor.

8               THE COURT: All right. Based upon the  
9 representations, Joint Exhibits 1 through 15 --

10              MR. BOIES: It's 1 through 351.

11              THE COURT: Oh, 351. I was overly optimistic.

12              Without objection and based upon the  
13 representations, Joint Exhibits 1 through 351 are  
14 admitted.

15              (Joint Exhibit Numbers 1 through 351 were  
16 admitted into evidence.)

17              THE COURT: All right.

18              MR. BOIES: Thank you, Your Honor, and now we  
19 call our first witness, Mr. Scott Alvarez.

20              (Discussion off the record.)

21 Whereupon--

22   SCOTT ALVAREZ  
23 a witness, called for examination, having been first  
24 duly sworn, was examined and testified as follows:

25              THE COURT: You may proceed.

1 MR. BOIES: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. BOIES:

4 Q. Good morning, Mr. Alvarez.

5 A. Good morning.

6 Q. We met before at your deposition?

7 A. That's correct.

8 Q. And you understand that I represent the Plaintiff  
9 shareholders in this litigation?

10 A. Yes, I do.

11 Q. And we have handed you two binders. One is a  
12 binder of some exhibits that we may reference, and the  
13 other is a binder that has your two deposition  
14 transcripts in it that we may reference from time to  
15 time.

16 Now, in the binder of exhibits, the very lengthy  
17 exhibits have been excerpted, and if at any time you  
18 would like to see the entire exhibit, just let me know  
19 and we'll furnish that to you as well.

20 A. Thank you.

21 Q. You are the general counsel of the Federal  
22 Reserve System. Is that correct?

23 A. I am the general counsel of the Federal Reserve  
24 Board.

25 Q. The Federal Reserve Board. And when you talk

1 about the Federal Reserve Board, you're talking about  
2 the Board of Governors of the Federal Reserve System.  
3 Is that correct?

4 A. That is correct.

5 Q. And how long have you held that position?

6 A. Since July 1st, 2004.

7 Q. And do you still hold that position today?

8 A. I do, yes.

9 Q. And in that capacity, you are familiar with  
10 Section 13(3) of the Federal Reserve Act, correct?

11 A. Yes.

12 Q. And is it fair to say that, pursuant to Section  
13 13(3) of the Federal Reserve Act, one of the purposes of  
14 the Federal Reserve System is to serve as a lender of  
15 last resort?

16 A. Yes.

17 Q. And could you explain what a lender of last  
18 resort is?

19 A. The role of the lender of last resort --

20 Q. Yes.

21 A. -- is to provide liquidity at times that the  
22 Central Bank, the Federal Reserve, believes is  
23 appropriate to help markets that are frozen, not acting  
24 appropriately, to allow the liquidity to flow into  
25 markets when the markets are not providing liquidity



1 themselves directly, and it does that in a variety of  
2 ways.

3 Q. And there came a time in 2008 when the Federal  
4 Reserve System concluded that the conditions that you  
5 just described -- frozen markets, lack of liquidity --  
6 existed, correct?

7 A. Yes.

8 Q. And that time happened at least as early as March  
9 of 2008, correct?

10 A. In some circumstances, yes.

11 Q. And just to be clear, when Section 13(3) talks  
12 about unusual and exigent circumstances, that is a  
13 condition of the economy or particular markets in the  
14 economy; it's not related to any particular company,  
15 correct?

16 A. No. It could be related to a particular company,  
17 but it also could be related to markets more generally.

18 Q. Let me ask you about that. If you conclude that  
19 an individual company is in trouble but there are not  
20 unusual and exigent circumstances for markets more  
21 generally, is it your understanding that there is  
22 authority, under 13(3), to loan to that individual  
23 company?

24 A. So, the situations where the Federal Reserve has  
25 used its authority under Section 13(3) have been a

1 combination of circumstances where there's been  
2 disruption in financial markets generally and there have  
3 been needs with individual companies.

4 Q. Is it fair to say that historically, the Federal  
5 Reserve System has used its 13(3) powers when it both  
6 intended to deal with a market or economicwide problem  
7 and to deal with a problem at a particular company?

8 A. So, historically, the Federal Reserve used its  
9 13(3) authority when the financial markets were very  
10 disrupted, though there was one time when the Federal  
11 Reserve was willing to use its authority because it  
12 thought the potential for a series of companies of an  
13 industry to -- the savings and loan industry to exhibit  
14 problems would have had an effect -- an adverse effect  
15 on the economy more generally, though the economy at the  
16 time was not particularly disrupted.

17 Q. When was that?

18 A. So, that was in the 1960s.

19 Q. The 1960s. And did the Federal Reserve System  
20 make 13(3) loans in the 1960s?

21 A. It did not actually make any credit, though it  
22 stood ready to make credit available.

23 Q. All right. The first time that the Federal  
24 Reserve System had made credit available pursuant to  
25 13(3) after the 1930s was in March of 2008, correct?

1           A. Yes. I believe that's right.

2           Q. And at that time, you concluded that the markets  
3 were, in your words, very disrupted and that there were  
4 unusual and exigent circumstances, correct?

5           A. That's correct.

6           Q. And the first credit facility that the Federal  
7 Reserve authorized in 2008, under 13(3), was a credit  
8 facility related to attempting to avoid the disorderly  
9 failure of Bear Stearns, correct?

10          A. So, simultaneously with that -- so, just to be  
11 responding to your question of which was first -- but  
12 simultaneously were developing and I believe did  
13 announce a more general facility under Section 13(3)  
14 that would have been available for primary dealers, but  
15 -- but that was during the same time as the 13(3) loan  
16 to -- involving Bear Stearns.

17          Q. Let's try to keep those separate. Which 13(3)  
18 loan is it your recollection was announced first?

19          A. I don't recall whether we announced the PDCF  
20 before or after we made the Bear Stearns loan. It was  
21 all that same week.

22          Q. And both of those were in a week of March of  
23 2008.

24          A. Yes, yes.

25          Q. All right. Let's just take Bear Stearns first,

1 recognizing that that might have been the first or it  
2 might have been at the same time or it might have been  
3 the second, but they were all very close together.

4 A. They were.

5 Q. With respect to Bear Stearns, the purpose of the  
6 loan or the purpose of the credit facility was to  
7 prevent the disorderly failure of Bear Stearns, correct?

8 A. Well, it was to prevent the disruption that would  
9 go along with the disorderly failure of Bear Stearns.

10 Q. Now, I want to be sure that the question and  
11 answer are meeting. Let me put it this way: The  
12 Federal Reserve System provided assistance to Bear  
13 Stearns to help Bear Stearns avoid bankruptcy, correct?

14 A. Yes, in an indirect sense. It provided emergency  
15 credit to aid the acquisition of Bear Stearns by  
16 JPMorgan, and that would have avoided Bear Stearns from  
17 going into bankruptcy.

18 Q. Not only was that a consequence of the credit  
19 facility, that was one of the purposes of the credit  
20 facility. One of the purposes of the credit facility  
21 was to help Bear Stearns avoid bankruptcy, correct, sir?

22 A. It wasn't to help Bear Stearns avoid bankruptcy  
23 in some absolute sense. It was concern that the failure  
24 of Bear Stearns at that time, if Bear Stearns had gone  
25 into bankruptcy at that time, given the state of the

1 markets and the condition of the economy, that that  
2 would have had a very disruptive effect on the economy  
3 and would have exacerbated a very difficult financial  
4 situation.

5 Q. I understand your testimony that a Bear Stearns  
6 bankruptcy would have exacerbated a very difficult  
7 situation. My question is simpler.

8 In March of 2008, the Federal Reserve System  
9 provided assistance to Bear -- to help Bear Stearns  
10 avoid bankruptcy. Yes or no?

11 A. So, the reason I'm struggling with your question  
12 is it suggests that that -- you want to know if that was  
13 the purpose. I'm saying an effect of the extension of  
14 credit was to prevent Bear Stearns -- allow Bear Stearns  
15 not to go into bankruptcy, but the purpose was to  
16 prevent an exacerbation of the very troubled financial  
17 situation in the economy, a very difficult time in the  
18 economy and making that situation more difficult.

19 THE COURT: Sir, can you answer the question yes  
20 or no?

21 THE WITNESS: I am trying to be as responsive as  
22 I can given the ambiguity in the question. So, if I  
23 could know whether this is about purpose or effect, that  
24 would help me answer the question.

25 BY MR. BOIES:

1 Q. Let me suggest I approach it this way, Your  
2 Honor: Let me ask you to turn to page 166 of your  
3 deposition that is behind the second tab that says  
4 "Alvarez 30(b)(6)."

5 A. I'm sorry. So, what page?

6 Q. Page 166. I am going to begin at line 20, and  
7 I'm beginning here just so that you have got the context  
8 of the question. Do you see where I asked you:

9 "QUESTION: I'm simply asking you, the  
10 representative of the United States, is it your  
11 testimony as the representative for the United States  
12 that the United States did not believe that Bear Stearns  
13 was going to go into bankruptcy if it were not for the  
14 financial assistance provided by the Federal  
15 Government?"

16 And then there are some objections.

17 And then your answer at lines 9 through 11:

18 ANSWER: I -- I will -- I will -- no, my  
19 testimony is that the assistance was provided to help  
20 Bear Stearns avoid bankruptcy."

21 Do you see that, sir?

22 A. Um-hum.

23 Q. And where you say that the assistance was  
24 provided to help Bear Stearns avoid bankruptcy, you're  
25 talking about the 13(3) credit provided in March of

1 2008, right?

2 A. Yes.

3 Q. Now, the credit that was extended to Bear Stearns  
4 in March of 2008 or the credit that was extended in  
5 connection with Bear Stearns in March of 2008 was  
6 extended at the Federal Reserve primary credit rate,  
7 correct?

8 A. The credit that was extended to the Maiden Lane  
9 facility was extended the primary credit rate, yes.

10 Q. When you were talking about, in the paragraph  
11 that we just saw in your testimony, the assistance was  
12 provided to help Bear Stearns to avoid bankruptcy, that  
13 assistance there, that assistance was provided at the  
14 primary credit rate, correct, sir?

15 A. Going back to the earlier part where you phrased  
16 the -- you framed the question, yes. Yes, the answer is  
17 yes.

18 Q. Okay. And what was the primary credit rate that  
19 was charged for the credit facility that the Federal  
20 Reserve made available in March of 2008 to help Bear  
21 Stearns avoid bankruptcy?

22 A. I don't recall what the primary credit rate was  
23 at the time.

24 Q. But it was in the range of 2 to 3 percent. Fair?

25 A. I believe so, though I don't recall.

1 Q. Let me -- I'm going to -- want to show you an  
2 exhibit that is in your book, which has been marked as  
3 Plaintiffs' Exhibit -- Plaintiffs' Trial Exhibit 2575,  
4 which is a printout from the Board of Governors Web  
5 site.

6 I would offer that exhibit.

7 A. I'm sorry, sir? Where is this?

8 Q. This is in your exhibit book.

9 A. The witness binder?

10 Q. You have two binders. One has your deposition in  
11 it and the other has exhibits.

12 A. Um-hum.

13 Q. It is in the binder that has the exhibits, and  
14 they are in numerical order, so that 2575 is right at  
15 the end.

16 So, before asking you questions about it, I have  
17 offered that exhibit, and I am waiting for a response.

18 THE COURT: Any objection on the Government's  
19 side?

20 MR. AUSTIN: No, Your Honor.

21 THE COURT: All right. Plaintiffs' Exhibit 2575  
22 is admitted.

23 (Plaintiffs' Exhibit Number 2575 was admitted  
24 into evidence.)

25 BY MR. BOIES:



1 Q. Now, Mr. Alvarez, would you look at Plaintiffs'  
2 Exhibit 2575.

3 A. PTX 2575?

4 Q. PTX 2575. It's right at the very back of your  
5 binder. They are in there in numerical order, the  
6 exhibits.

7 A. Gotcha, I see it.

8 Q. Do you see that the primary credit rate on March  
9 17th was 3.25 percent?

10 A. Yeah. I don't know where this is from, but I see  
11 that line on the document.

12 Q. You're the general counsel of the Board of  
13 Governors of the Federal Reserve System, right?

14 A. Yes.

15 Q. And you're familiar with the Web site of the  
16 Board of Governors of the Federal Reserve System?

17 A. I am.

18 Q. And does this appear on the Web site of the Board  
19 of Governors of the Federal Reserve System?

20 A. I know that our discount rates, primary,  
21 secondary credit rates appear. I don't know if this is  
22 a picture of that or not.

23 Q. Well, your counsel has not objected to it.

24 A. I don't -- you asked me -- I am just answering.

25 Q. Mr. Alvarez, directing your attention to this

1 exhibit that has been received in evidence without  
2 objection, that indicates that the primary credit rate  
3 of the Federal Reserve on March 17th, 2008, was 3.25  
4 percent, correct?

5 A. Yes.

6 Q. And that the next day, March 18th, 2008, it was  
7 reduced to 2 1/2 percent, correct?

8 A. That's correct. That's what this shows.

9 Q. Do you have any reason to doubt that this is not  
10 accurate?

11 A. No.

12 Q. At the time that the Federal Reserve, in March of  
13 2008, made available a credit facility to help Bear  
14 Stearns avoid bankruptcy at between 3.25 and 2.5  
15 percent, was there any concern about what counsel for  
16 the Defendant sometimes refers to as moral hazard?

17 A. Yes.

18 Q. And did the Federal Reserve System believe that  
19 there was moral hazard in making this loan available at  
20 this interest rate to help Bear Stearns avoid  
21 bankruptcy?

22 A. So, I think the Federal Reserve was concerned  
23 that the extension of credit in its entirety raised  
24 issues of moral hazard.

25 Q. What did the Federal Reserve do in March 2008 to

1 address the moral hazard that you say existed with  
2 respect to the credit facility that was provided to help  
3 Bear Stearns avoid bankruptcy?

4 A. So, it did several things. It extended credit  
5 only after JPMorgan, which was the company that bought  
6 Bear Stearns, agreed to provide a substantial amount of  
7 subordinated debt to the facility, so put -- took on a  
8 first loss position in the facility. The -- it also  
9 arranged so that any residual that might exist from the  
10 sale of assets would be paid to the Federal Reserve.

11 And those two things, I think, indicated to the  
12 market that, in addition to the interest rate, there  
13 would be costs and risks associated with the Federal  
14 Reserve credit, and so the Federal Reserve credit should  
15 not be viewed as simply freely available but that it did  
16 have -- the market should remain disciplined in  
17 addressing its own problems.

18 Q. And did you believe, in March of 2008, that the  
19 steps that you took were sufficient so that the market  
20 would remain disciplined, as you put it?

21 A. So, I think in connection with the type of  
22 situation that the Federal Reserve was dealing with with  
23 Bear Stearns, that was a unique set of circumstances.  
24 But in connection with that, the Board believed so.

25 Q. Did the Board consider imposing a higher interest

1 rate?

2 A. I don't recall.

3 Q. Did the Board consider requiring any equity in  
4 JPMorgan?

5 A. Not that I'm aware.

6 Q. Now, you said at the same time or at about the  
7 same time as the credit facility that was provided to  
8 help Bear Stearns avoid bankruptcy, that there was also  
9 a credit facility for primary dealers, correct?

10 A. That's right.

11 Q. Now, this primary dealer credit facility was  
12 provided pursuant to Section 13(3), correct?

13 A. That's correct.

14 Q. And at what interest rate was this primary dealer  
15 credit facility provided?

16 A. I don't recall.

17 Q. Approximately, sir.

18 A. I just don't recall.

19 Q. Was it at the primary rate?

20 A. It could well have been. I don't -- I don't  
21 recall.

22 Q. Was it in the range of 2 to 3 percent?

23 A. I don't recall.

24 Q. Do you have any reason to doubt that the primary  
25 credit -- the primary dealer credit facility was made

1 available at the Federal Reserve's primary credit rate?

2 A. I don't recall what the interest rate -- I  
3 apologize for that, but I don't recall.

4 Q. Can you give me any range at all as to what that  
5 rate was?

6 A. No, I can't, but it is a public Web site, so it's  
7 easy to determine. I just don't recall.

8 Q. Was there any consideration at the time that the  
9 primary dealer credit facility was offered to charging a  
10 higher rate than was actually charged?

11 A. I do not recall the consideration of various  
12 interest rates on the PDCF.

13 Q. How many firms were able to borrow money pursuant  
14 to the primary dealer credit facility?

15 A. Somewhere between one and two dozen.

16 Q. And were these all United States firms?

17 A. In one sense, they -- some of the firms I think  
18 were U.S. entities that were owned by foreign banks.

19 Q. How many of the companies that were able to  
20 borrow money pursuant to the primary dealer credit  
21 facility were entities that were owned by foreign banks?

22 MR. AUSTIN: Your Honor, I would object as to  
23 vague as to time frame. Are we still talking about the  
24 March 2008 time period or is this a broader question?

25 THE COURT: I think so.

1 MR. BOIES: Yes.

2 THE COURT: That's the way I took it.

3 MR. BOIES: Yes.

4 THE WITNESS: I don't remember the exact number.

5 BY MR. BOIES:

6 Q. Approximately.

7 A. I don't -- they were all primary dealers  
8 registered with the New York Reserve Bank. They are  
9 firms that the New York Reserve Bank does open market  
10 transactions with in effecting monetary policies. I  
11 don't know the list or the names on the list, so I  
12 wouldn't be able to tell you how many were owned by  
13 foreigners and how many were not.

14 Q. Did the Federal Reserve System have any concern  
15 that making this primary dealer credit facility  
16 available at the interest rate that it was made  
17 available at raised so-called moral hazard concerns?

18 MR. AUSTIN: Objection, Your Honor, to the extent  
19 that that calls for Mr. Alvarez to encompass the  
20 viewpoints of a number of different people. He can  
21 express his own viewpoint or those he's aware of.

22 THE COURT: I'll overrule the objection. I'll  
23 take his answer.

24 THE WITNESS: So, the consideration of moral  
25 hazard was always a part of consideration of the various

1 facilities that we -- that the Federal Reserve set.

2 BY MR. BOIES:

3 Q. And what actions did the Federal Reserve System  
4 take to mitigate the moral hazard concern of making the  
5 primary dealer credit facility available?

6 A. So, the primary credit -- the primary dealer  
7 credit facility, as I mentioned, was made available --

8 Q. Do you understand the question I'm asking, sir?

9 A. Perhaps not.

10 Q. Okay. My question is, you've said that in every  
11 case where you're making these kind of loans under  
12 13(3), there's a moral hazard concern, correct?

13 A. Yes.

14 Q. And what I'm asking you is, what steps did the  
15 Federal Reserve system take to mitigate those concerns  
16 with respect to the primary dealer credit facility?

17 A. Yes. Yes, that's what I thought. So -- then I  
18 did understand. So, the steps they took were the  
19 universe of institutions that this facility was open to  
20 were a limited group of institutions that had been  
21 through an exhaustive review by the New York Reserve  
22 Bank. So, they were institutions that were integral to  
23 the implementation of monetary policy. It -- the  
24 Reserve Bank was very familiar with these institutions  
25 in a way that it wouldn't have been familiar with

1 institutions just more generally. So, it knew about the  
2 financial condition of the institutions.

3 In addition, the facility required the posting of  
4 collateral that was very liquid collateral, and it was a  
5 facility that was overnight. So, it could be shut --  
6 shut off at any time on an overnight basis. The Reserve  
7 Bank was monitoring it on a regular basis. It was -- it  
8 actually arranged to have examiners visit each of the  
9 primary dealers to be able to monitor their liquidity  
10 position to make sure that they were in good condition.

11 All of those things mitigate the moral hazard  
12 because they involve a set of limitations and a set of  
13 supervision that is more unusual than ordinarily goes  
14 along with a business extension of credit.

15 THE COURT: Excuse me, Mr. Boies.

16 I see the realtime transcript feed is not working  
17 again, but you are getting a record of this testimony?

18 THE REPORTER: Yes, I am, Your Honor.

19 THE COURT: Please go ahead.

20 BY MR. BOIES:

21 Q. Do I understand you to say that supervision of a  
22 borrower beyond what was ordinarily in place mitigates  
23 moral hazard concerns?

24 A. It could.

25 Q. And do I understand you to say that using



1 examiners to monitor how the borrower is doing, what the  
2 borrower is using the money for, can mitigate moral  
3 hazard concerns?

4 A. Well, a little nuance on that. That is, in part,  
5 correct, but in addition, the examiners are able to  
6 determine if we should stop lending to the -- one of the  
7 primary dealers because we see that they are not going  
8 to have the kind of -- they're in financial difficulties  
9 and may not be able to repay the bank.

10 Q. I want to be clear on what you're saying. Some  
11 of what you're saying seems to be related to whether  
12 you're going to get paid back your money. Am I correct  
13 about that?

14 A. There's an element of that, but on the moral  
15 hazard side, the -- the fact that the credit -- the  
16 source of credit could be turned off at any given time,  
17 that it's only overnight credit, indicates that it is  
18 credit that couldn't be relied on as just a general  
19 source so that the Government would be a general source  
20 of liquidity for a company no matter what risks it  
21 takes, no matter what management decisions it makes, no  
22 matter what actions it might take. So, those -- it  
23 discourages the firm from taking on extra risk, because  
24 it knows that credit that's being available -- that was  
25 made available could be turned off.

1 Q. It discourages the company from taking on  
2 additional risk in the future while you're monitoring  
3 it, correct?

4 A. That's right.

5 Q. It doesn't have any effect on the company's  
6 behavior before the loan is extended, correct?

7 A. Well, the examination would tell you what the  
8 condition of the company was before.

9 Q. Yes, but it doesn't have any effect on the  
10 company's conduct before, correct, sir?

11 A. What happened in the past before the Federal  
12 Reserve lent is nothing that the Federal Reserve could  
13 do anything about.

14 Q. Yes, right. And it doesn't affect the company's  
15 conduct after the facility's over with, correct?

16 A. Possibly.

17 Q. Well, you talk about moral hazard. You are  
18 talking about the concern that if you provide certain  
19 credit, that will encourage reckless behavior by  
20 companies at some time in the future or reward reckless  
21 behavior by some companies in the past, correct?

22 A. That's generally true.

23 Q. Okay. Now, when you talk about primary dealer  
24 credit facility borrowers being a group that you were  
25 very familiar with, you knew about their business, they

1 had posted the collateral, they had to have examiners  
2 while the credit facility was going on, they were  
3 subject to supervision while the credit facility was  
4 going on, those don't affect the conduct of expectations  
5 of companies either in the past or after the credit  
6 facility is terminated, correct, sir?

7 A. Well, I -- I think you've added an element that  
8 isn't what I said. It does affect the behavior in two  
9 important situations. Other institutions that are not  
10 accessing the facility but may choose -- want to access  
11 the facility, and so want to behave in a poor way in  
12 order to believe they could then get access to this  
13 facility, would see that there are very high costs  
14 associated with access to the facility, and that would  
15 address the potential that they might act poorly as a  
16 way of getting into the facility.

17 And then while they're in the facility, then  
18 their behavior is disciplined because they know that  
19 these various aspects will potentially cause them to  
20 lose access to the facility and that the -- there are  
21 costs associated with their behavior while they're  
22 accessing the facility. So, it does address moral  
23 hazard in both of those ways.

24 Q. And in that connection, is it your understanding  
25 that the companies that took advantage of the primary

1 dealer credit facility very much wanted that facility,  
2 needed that facility?

3 A. I know that a number of those entities used that  
4 facility. What their needs and desires were, you know,  
5 I don't know.

6 Q. Well, you knew, for example, that AIG wanted to  
7 have access to that facility, didn't you, sir?

8 A. I knew that AIG had made some inquiries about  
9 accessing the facility.

10 Q. My question is, did you or did you not know that  
11 AIG wanted access to the primary dealer credit facility?

12 A. I'm only reacting to the word "wanted." I don't  
13 know -- I know that they asked about it. I don't know  
14 if they would have followed up on it. I don't know if  
15 they would have been able to meet the various  
16 requirements to get access to the facility. So, I don't  
17 know if "wanted" is right. They certainly inquired  
18 about it.

19 Q. They did more than inquire about it. They asked  
20 to have access to it, correct, sir?

21 A. They didn't ask me.

22 Q. Were you aware, in your capacity as general  
23 counsel of the Federal Reserve Board of Governors, that  
24 AIG had asked to have access to the primary dealer  
25 credit facility?

1           MR. AUSTIN:  Objection, Your Honor.  Assumes  
2 facts not in evidence.

3           THE COURT:  Overruled.

4           THE WITNESS:  I was aware that they had inquired  
5 about access to the credit -- to the PDCF.  I also was  
6 aware that in connection with that, AIG estimated it  
7 would take them six to twelve months to take the kinds  
8 of actions they might have to take to prepare themselves  
9 to have access.  So, I -- I don't know if that amounts  
10 to wanting to be a part of it or not.

11           BY MR. BOIES:

12           Q.  I'm trying to get away from the word "want."

13           A.  Okay.

14           Q.  Did AIG seek or attempt to become a primary  
15 dealer so that they could have access to the primary  
16 dealer credit facility?

17           A.  I'm not aware of any application they filed to  
18 become a primary dealer or any affirmative steps they  
19 took to become a primary dealer.

20           Q.  My question, sir, is insofar as you know, did AIG  
21 take any action in an attempt to obtain relief by  
22 becoming a primary dealer?

23           A.  If by that you mean did they inquire about --

24           Q.  No.  I'm not meaning inquire.

25           A.  If you mean by that did they file the application

1 with the New York Reserve Bank that's required in order  
2 to become a primary dealer, I believe the answer is no.

3 Q. That wasn't my question, sir.

4 A. Okay.

5 Q. My question is whether, insofar as you know, AIG  
6 took any action in an attempt to obtain relief by  
7 becoming a primary dealer.

8 A. By taking any action to become a primary dealer,  
9 that would require -- there's a formal process for  
10 becoming a primary dealer. I'm not aware of any action  
11 that AIG took to follow that formal process to become a  
12 primary dealer.

13 Q. You do understand that I wasn't asking about a  
14 formal process.

15 A. Sir, I was trying to be responsive.

16 MR. AUSTIN: Objection, Your Honor. Arguing with  
17 the witness.

18 THE COURT: Overruled.

19 THE WITNESS: So, if you would rephrase the  
20 question, perhaps I could answer it.

21 BY MR. BOIES:

22 Q. Sure.

23 Insofar as you're aware, did AIG attempt to  
24 become a primary dealer in order to get some relief  
25 through the primary dealer credit facility?

1           A. So, I -- if you mean by "attempt," take  
2 affirmative steps to become a primary dealer, I'm not  
3 aware of that.

4           Q. Let me ask you to look at page 236 of your  
5 30(b)(6) deposition, sir. I'm particularly interested  
6 in lines 3 through 10. The question is quoting a  
7 report, and it -- the question is:

8                   "QUESTION: The report states, 'On September 9,  
9 AIG's then-chief executive officer met again with the  
10 then-Federal Reserve Bank of New York President in  
11 another attempt to obtain relief, this time by means of  
12 becoming a primary dealer.'

13                   "As the United States understands it, is that an  
14 accurate statement?

15                   "ANSWER: Yes."

16                   Do you see that, sir?

17           A. I see that.

18           Q. And did you give that testimony under oath?

19           A. Yes, I did.

20           Q. And was it true at the time?

21           A. Yes.

22           Q. And you believe it is true now?

23           A. So, I see this is a difference from the question  
24 you asked me a few minutes ago, but I do agree that it  
25 is my testimony.

1 Q. Do you recall my asking you a few minutes ago  
2 whether AIG had made an attempt to obtain relief by  
3 becoming a primary dealer? Do you recall my asking you  
4 that question? Answer that yes or no, please, sir.

5 A. I recall a different question.

6 Q. So, you don't recall me asking you that question?

7 A. Not those precise words.

8 Q. Okay. With respect to the primary dealer credit  
9 facility, you said that the collateral that was required  
10 was very liquid. Do you recall that?

11 A. Yes.

12 Q. And was it investment grade collateral?

13 A. Yes, I believe so.

14 Q. Did there come a time when the Federal Reserve  
15 System eliminated the requirement that the collateral  
16 posted for primary dealer credit facility borrowings had  
17 to be investment grade?

18 A. There was a time when it changed the collateral  
19 requirements to broaden it to include other types of  
20 assets.

21 Q. And were those other types of assets assets that  
22 included noninvestment grade securities?

23 A. They included highly liquid, publicly traded  
24 equities, as well as other investment grade securities.

25 Q. Did they also include noninvestment grade debt



1 securities?

2 A. I'm afraid I don't know the answer to that.

3 Q. You do know that on September 14th, 2008, the  
4 Federal Reserve System broadened the type of collateral  
5 that could be posted for a primary dealer credit  
6 facility loan, right?

7 A. Yes.

8 Q. And you just don't remember exactly what the  
9 parameters of that broadening were. Is that your  
10 testimony?

11 A. I remember that it was tied to the collateral  
12 that was permissible for use in the tri-party repo  
13 market, and I don't recall the exact definition of that.

14 Q. Now, you also said that this facility was for  
15 overnight borrowings and it could be stopped at any  
16 time. Do you recall saying that?

17 A. Yes.

18 Q. If the Federal Reserve, having initiated its  
19 primary dealer credit facility, had one day just stopped  
20 it, that would have had a devastating effect on the  
21 financial markets, correct, sir?

22 A. Well, they did stop the facility.

23 Q. Not in two thousand -- not in this period of  
24 time, did they, sir?

25 A. So, it depended on -- I don't know the answer to

1 that question. That's a specific question that -- it  
2 depends very much on the facts of the time, at the time  
3 the facility would be terminated.

4 Q. At any time from March of 2008, when the facility  
5 was put in place, and the end of September of 2008, if  
6 the Fed had announced that they were stopping it and  
7 that everybody had to pay back their loans and they  
8 weren't going to pay any loans the next day, that would  
9 have had a devastating effect on the markets, right,  
10 sir?

11 A. Well, I think it would depend on whether the  
12 Board instituted another facility. It would have  
13 depended on whether people had been borrowing at the  
14 time. It's a very difficult statement to -- to agree  
15 to.

16 Q. Yes, I take your point that if the Fed, at the  
17 very same time, had substituted another facility people  
18 could use, that might be okay. But in the absence of  
19 the Fed substituting a new facility that served the same  
20 function as the primary dealer credit facility, if the  
21 Fed had stopped that overnight at any time during this  
22 2008 period, that would have had a devastating effect on  
23 the markets, right?

24 A. I don't think I can say that's right.

25 Q. Okay. Do you think that in September -- the

1 first half of September of 2008, the people that were  
2 borrowing from the primary dealer credit facility were  
3 depending on that facility to provide them with a  
4 liquidity that kept them in business?

5 A. I don't think that's correct. I think that's an  
6 overstatement.

7 Q. Do you think that Morgan Stanley, on September  
8 14th, 2008, could have continued to operate if you had  
9 taken away the primary dealer credit facility and not  
10 substituted something equal in its place?

11 A. So, not all of the primary dealers borrowed from  
12 the PDCF on a regular basis; in fact, many of them  
13 borrowed --

14 Q. Do you understand my question --

15 A. -- more on occasion --

16 MR. AUSTIN: Objection, Your Honor. Interrupting  
17 the witness.

18 THE WITNESS: -- and I don't know if Morgan  
19 Stanley was even borrowing on that day.

20 MR. BOIES: Your Honor, with respect, can I ask  
21 the Court to instruct the witness to listen to my  
22 question and try to meet it?

23 THE COURT: Yes.

24 Mr. Alvarez, please listen carefully to the  
25 question and give us your best answer. I know you're

1 trying to do that, but it requires careful listening, I  
2 think.

3 THE WITNESS: Thank you, sir.

4 BY MR. BOIES:

5 Q. Mr. Alvarez, did I hear you say that you didn't  
6 know whether Morgan Stanley was borrowing from the  
7 primary dealer credit facility?

8 A. On September 14th I think was your question.

9 Q. Was it borrowing from the primary dealer credit  
10 facility at any time in September 2008?

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

12 Q. Do you have any estimate at all as to how much  
13 Morgan Stanley borrowed at any one time from the primary  
14 dealer credit facility?

15 A. I do not.

16 Q. Would it surprise you that that number was as  
17 high as \$100 billion?

18 A. I just don't know.

19 Q. While we're on the subject of Morgan Stanley,  
20 there came a time when the Federal Reserve System was  
21 apprised that unless Morgan Stanley got federal  
22 assistance or additional federal assistance to what they  
23 were already getting over a weekend, that Morgan Stanley  
24 would not be able to open the following Monday, correct?

25 A. No, I'm not aware of that ever happening.

1 Q. That never came to your attention?

2 A. Federal assistance? That they would not --  
3 Morgan Stanley?

4 Q. Morgan Stanley.

5 A. I'm not aware that Morgan Stanley -- I'm not  
6 aware of that. I don't know what you're referring to.  
7 Could you be more specific?

8 Q. Let me direct your attention to March -- I  
9 mean -- not March, September 19th, 2008.

10 A. Okay.

11 Q. You were the general counsel of the Federal  
12 Reserve Board at that time?

13 A. Yes, I was.

14 Q. And at that time, was there consideration of  
15 making Morgan Stanley a bank holding company?

16 A. Oh, Morgan Stanley did apply to become a bank  
17 holding company around those dates, September 19th.

18 Q. And when you say Morgan Stanley applied to become  
19 a bank holding company --

20 A. Um-hum.

21 Q. -- whose idea was it that Morgan Stanley apply to  
22 become a bank holding company?

23 A. I believe it was Morgan Stanley's.

24 Q. Didn't that come from the Federal Reserve, sir?

25 A. Not that I'm aware.

1 Q. Didn't the Federal Reserve suggest that Morgan  
2 Stanley apply to become a bank holding company when  
3 Morgan Stanley told the Federal Reserve about its  
4 financial problems?

5 A. I don't know the answer to that. I certainly did  
6 not.

7 Q. Did you participate at all in the decision to  
8 approve Morgan Stanley as a bank holding company?

9 A. I did once Morgan Stanley applied, yes.

10 Q. And did you have any understanding at the time  
11 you participated in the decision to permit Morgan  
12 Stanley to become a bank holding company as to why  
13 Morgan Stanley had applied to become a bank holding  
14 company?

15 A. So, I did.

16 Q. You did?

17 A. I had that understanding, yes.

18 Q. And was that understanding an understanding that  
19 Morgan Stanley was in severe liquidity trouble?

20 A. No, not quite in the way that you've put it.  
21 What my understanding was, was that Morgan Stanley was,  
22 indeed, experiencing pressure from others, but what  
23 Morgan Stanley believed was that in order to become a  
24 bank holding company and, in particular, a financial  
25 holding company, which is what they were applying for,

1 the Federal Reserve had to make a finding by statute  
2 that they were well managed and that they were well  
3 capitalized and they met certain financial standards  
4 that the Board had long applied for this status.

5 And Morgan Stanley believed they already owned a  
6 bank, that it was a limited-purpose bank, but it was one  
7 easily expanded into a full-service bank that would be  
8 subject to the Bank Holding Company Act. They believed  
9 that if they received the Board's approval to become a  
10 financial holding company, that would represent like a  
11 Federal Reserve imprimatur, that the institution was  
12 well-capitalized, was -- met minimum financial  
13 standards. So, that would help restore confidence in  
14 the institution.

15 Q. Do you remember what my question was, sir?

16 A. Yes.

17 Q. What was my question?

18 A. What was my understanding of why Morgan Stanley  
19 sought to become a bank holding company.

20 Q. Did you have an understanding that Morgan Stanley  
21 wanted to become a bank holding company because it was  
22 suffering severe liquidity problems?

23 MR. AUSTIN: Objection. Asked and answered, Your  
24 Honor.

25 THE COURT: Overruled.

1           THE WITNESS: So, I explained my understanding, I  
2 don't have more understanding than that.

3           BY MR. BOIES:

4           Q. Did you understand on September 19th, 2008, that  
5 Morgan Stanley had any liquidity problems?

6           A. I understood the market was -- many folks in the  
7 market were experiencing liquidity difficulties. You  
8 phrased it as "severe liquidity problems." I don't know  
9 if that's the proper characterization.

10          Q. I'm not sure I actually used the word "severe" in  
11 my last question, sir. Let me try to be clear and we'll  
12 work it out very generally to start with.

13          A. Great.

14          Q. On September 19th, 2008, did you understand that  
15 Morgan Stanley was having liquidity problems?

16          A. I understood they had liquidity pressures, yes.

17          Q. And by "liquidity pressures," did you mean  
18 difficulty in raising necessary liquidity?

19          A. So, the --

20          Q. I'm just asking whether that's what you mean.  
21 It's either yes or no.

22          A. I understood that some counterparties were  
23 demanding the repayment of debt that they had extended  
24 to Morgan Stanley. So, that version of a liquidity  
25 pressure.



1 Q. And did you understand that that was causing  
2 Morgan Stanley not to have as much liquidity as Morgan  
3 Stanley thought it needed?

4 A. So, it had much liquidity and it was using its  
5 liquidity to respond to these pressures.

6 Q. Did you understand that Morgan Stanley believed  
7 that it did not have as much liquidity as it needed on  
8 September 19th, 2008?

9 A. My -- my difficulty in responding is that  
10 suggests that it would have run out of liquidity -- that  
11 it knew it would have -- be unable to pay its bills as  
12 they came due. I did not have that understanding.

13 Q. I didn't ask you whether they were going to run  
14 out of liquidity. I'll get to that question, but I  
15 didn't get to that question yet.

16 A. Okay.

17 Q. Right now, my question -- and I'm being  
18 challenged, because I don't have my LiveNote to know  
19 exactly what my question is -- but the question I recall  
20 asking you is whether it was your understanding that on  
21 September 19th, Morgan Stanley did not have as much  
22 liquidity as it thought it needed or as it wanted.

23 A. So, as it thought it needed, I don't know what  
24 that means. That's why I --

25 Q. You don't know what it means to say that they

1 didn't have as much liquidity as they thought they  
2 needed?

3 A. So, if by "needed" you mean enough liquidity to  
4 pay all of their bills as they come due into the  
5 foreseeable future, I don't know. If you mean as much  
6 as they would like to ideally have, comfortably above  
7 anything that they would have to pay in the foreseeable  
8 future, that's a different question. I'm trying to be  
9 responsive. You -- and I don't know exactly what you  
10 mean.

11 Q. Let me try to refine the question.

12 You understood that Morgan Stanley had come to  
13 the Federal Reserve System for some help or assistance,  
14 correct?

15 A. Not help or assistance.

16 Q. Okay.

17 A. They came to the Federal Reserve to seek an  
18 application to become a bank holding company. There was  
19 no assistance that came along with becoming a bank  
20 holding company.

21 Q. Let me ask you to look at Plaintiffs' Trial  
22 Exhibit 638, which I would offer if there is no  
23 objection.

24 THE COURT: Any objection from the United States?

25 MR. AUSTIN: One second, Your Honor.

1           No, Your Honor.

2           THE COURT: All right. Without objection,  
3 Plaintiffs' Trial Exhibit 638 is admitted.

4           (Plaintiffs' Exhibit Number 638 was admitted into  
5 evidence.)

6           BY MR. BOIES:

7           Q. Now, this is a publication of the Federal Reserve  
8 System concerning the primary dealer credit facility,  
9 correct, sir?

10          A. Actually, I'm uncertain from the markings whether  
11 it's part of the GAO report or whether it's straight  
12 from the Federal Reserve.

13          Q. I think it is part of the GAO report, but it  
14 comes from the Federal Reserve System, does it not, sir?

15          A. The information? That's very possible. I don't  
16 know if GAO condensed it or rewrote it.

17          Q. Let me ask you to turn to page 4.

18          A. Page -- I'm sorry?

19          Q. Page 4 of the exhibit, page 4 of 30, Plaintiffs'  
20 Trial Exhibit 638, page 4.

21          A. Yes.

22          Q. And do you see a list there of the largest  
23 primary dealer credit facility borrowers?

24          A. Uh-huh.

25          Q. And do you see number 2 is Morgan Stanley?

- 1           A. I see that.
- 2           Q. And do you see what the total dollar amount of  
3 loans is there for Morgan Stanley?
- 4           A. I see that.
- 5           Q. And that is \$1,364,400,000, correct?
- 6           A. That is the number that they have written down  
7 here.
- 8           Q. You don't have any reason to believe that that  
9 was written down there by mistake, do you?
- 10          A. I do have reason to believe it's inaccurate.
- 11          Q. Inaccurate? You believe it is inaccurate?
- 12          A. Yes, sir.
- 13          Q. What is the accurate number?
- 14          A. I don't know the accurate number.
- 15          Q. Approximately, what is the accurate number?
- 16          A. I don't know approximately the accurate number.
- 17          Q. Is the accurate number above or below a trillion  
18 dollars?
- 19          A. I believe the accurate number is much below.
- 20          Q. Much below a trillion dollars.
- 21                 Do you have any estimate at all as to how much  
22 Morgan Stanley's total borrowing from the primary dealer  
23 credit facility had been as of the end of September  
24 2008?
- 25          A. I do not.

1 Q. Let me ask you a different question. Up to  
2 September 30, 2008, do you have any estimate of what the  
3 largest outstanding primary dealer credit facility loan  
4 to Morgan Stanley was?

5 A. No, I don't.

6 Q. And I'm distinguishing between the total number  
7 of borrowings, which go on over a long period of time,  
8 from the highest amount that's outstanding at any given  
9 time. You understand that?

10 A. I understand that.

11 Q. And you don't know the answer?

12 A. I do not.

13 Q. Was it as much as \$100 billion?

14 A. I do not know.

15 Q. At the time that you were processing the Morgan  
16 Stanley application, as you call it, for bank holding  
17 company status, were you aware at that time of how much  
18 money Morgan Stanley was drawing from the primary dealer  
19 credit facility?

20 A. I was -- I was not aware of that.

21 Q. Did you investigate that?

22 A. I don't recall.

23 Q. You made a recommendation that there be a waiver  
24 of the waiting period for Goldman Sachs and Morgan  
25 Stanley to become bank holding companies, correct?

1           A. Yes, that's correct.

2           Q. And you made that recommendation because you  
3 believed that there was an emergency that could endanger  
4 the health of the companies, correct?

5           A. Actually, I made that recommendation because I  
6 thought that was the proper reading of the statute.

7           Q. Those two are not necessarily mutually exclusive.  
8 Do you understand that, sir?

9           A. I understand that.

10          Q. Okay. And you understand my question was whether  
11 or not you had made the recommendation to waive the  
12 waiting period for Goldman Sachs and Morgan Stanley to  
13 become bank holding companies because you believed that  
14 there was an emergency that could endanger the health of  
15 those companies.

16          A. So, I believed that there was an emergency, but  
17 endangering the health of the companies by the delay, I  
18 think that goes further than I was thinking.

19                 THE COURT: Mr. Boies, would this be a good time  
20 to -- or do you want to do one more?

21                 MR. BOIES: Could I just finish this one line?

22                 THE COURT: Sure.

23                 BY MR. BOIES:

24          Q. Could I just ask you to look at page 258, the  
25 first deposition in your book. You can look at any part

1 of this that you want for context, but the portion of  
2 your answer that I'm interested in is at lines 11  
3 through 13 on page 258 where you say:

4 "ANSWER: And circumstances were truly exigent at  
5 the time, and there was an emergency that could endanger  
6 the health of the companies."

7 Do you see that?

8 A. I see that.

9 Q. And "the companies" there were Goldman Sachs and  
10 Morgan Stanley, correct?

11 A. That appears to be right.

12 MR. BOIES: Thank you, Your Honor.

13 THE COURT: All right. Let's take a lunch break.  
14 We will reconvene at 1:45.

15 (Lunch recess, 12:45 p.m. to 1:45 p.m.)  
16  
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1                                 AFTERNOON SESSION

2   (1:46 p.m.)

3                 THE COURT:   Let's go ahead.

4                 MR. BOIES:   Thank you, Your Honor.   Before we  
5 resume with the examination, one housekeeping matter.  I  
6 think we have worked out the scheduling for this coming  
7 week, the week of the 6th.  What we are going to do is  
8 we are going to still start with Secretary Paulson, but  
9 instead of following him with Chairman Bernanke, we are  
10 going to follow him with Secretary Geithner.  So,  
11 Secretary Geithner will follow Secretary Paulson, and  
12 then we will put on Chairman Bernanke starting on  
13 Wednesday, the 8th.

14                 Now, we anticipate that he will not be completed  
15 in half a day, but what we will do, with the Court's  
16 permission, is interrupt his testimony at the end of the  
17 morning session on the 8th and then continue it on the  
18 morning of the 9th and then fill in someone in between.

19                 THE COURT:   All right.  I'm glad you were able to  
20 work that out.

21                 MR. BOIES:   Thank you, Your Honor.

22                 BY MR. BOIES:

23                 Q.  Mr. Alvarez, let's pick up where we were.  We  
24 were back on September 19th, 2008.  Do you recall that?

25                 A.  September 19th, 2008.



1 Q. And at that time, you were of the belief that  
2 there was an emergency that would endanger the health of  
3 Morgan Stanley and Goldman Sachs, correct?

4 A. Yes.

5 Q. And I want to show you two exhibits that have  
6 been marked as Plaintiffs' Exhibits 174 and 175.

7 May I approach, Your Honor?

8 THE COURT: Yes.

9 MR. BOIES: I would begin by offering these  
10 exhibits in evidence.

11 MR. AUSTIN: Your Honor, I need to object. It  
12 doesn't appear on either of these documents that  
13 Mr. Alvarez was copied on them or that he received them.  
14 So, I don't see what the relevancy could be to his  
15 testimony, if it can be established.

16 MR. BOIES: The first offer is only to admit them  
17 into evidence, then I will try to establish the  
18 relevance with the witness, but these are stipulated to  
19 be authentic documents, and so I don't think there was  
20 an objection to the admissibility of them.

21 MR. AUSTIN: We have stipulated to authenticity  
22 but not admissibility, and the witness has to have  
23 something to say about them, and if he's never seen  
24 them, if he's never been copied on them --

25 THE COURT: Well, we don't know that. We don't

1 know that --

2 MR. AUSTIN: And we don't know that, that's  
3 right, but at this point in time, there is no foundation  
4 for that.

5 THE COURT: Well, I will allow it. We will admit  
6 Plaintiffs' Trial Exhibits 174 and 175.

7 (Plaintiffs' Exhibit Number 174 was admitted into  
8 evidence.)

9 (Plaintiffs' Exhibit Number 175 was admitted into  
10 evidence.)

11 BY MR. BOIES:

12 Q. Now, Mr. Alvarez, looking at first Plaintiffs'  
13 Exhibit 174, is this a document you've ever seen before?

14 A. I don't believe so.

15 Q. It is from Michael Silva. Do you see that?

16 A. I do.

17 Q. Do you know who he is?

18 A. At the time, he was an employee of the Federal  
19 Reserve Bank of New York.

20 Q. Do you know what his position was?

21 A. I do not know what his title or position was at  
22 the time.

23 Q. And it is to a number of people. One of them is  
24 Sandy Krieger. Do you know who that is?

25 A. She also was an employee of the Federal Reserve

1 Bank of New York.

2 Q. Do you know what her position was?

3 A. No, I don't.

4 Q. And William Dudley, who also received a copy.

5 A. Yes.

6 Q. Do you know what his position was?

7 A. I believe at the time he was the manager of the  
8 desk for -- for open market operations at the New York  
9 Reserve Bank.

10 Q. And the next person is William Rutledge. Do you  
11 know what his position was?

12 A. He was in the Banking Supervision and Regulation  
13 Department at the Federal Reserve Bank of New York.

14 Q. Then the next one was Terrence Checki. Do you  
15 know what his position was?

16 A. I don't know his title, but he was also an  
17 employee of the Federal Reserve Bank of New York.

18 Q. Let me ask you next to look at Plaintiffs'  
19 Exhibit Number 175. This is also an email from Michael  
20 Silva, correct?

21 A. It appears to be.

22 Q. And both this one and 174 are dated September 20,  
23 2008, correct?

24 A. That's correct.

25 Q. And Exhibit 174 was sent at 10:18 Eastern

1 Daylight Time, correct?

2 A. That's what it says.

3 Q. And Exhibit 175 was sent about seven minutes  
4 later, correct?

5 A. That's what it says.

6 Q. Now, the Exhibit 174 says that Morgan Stanley  
7 made a call this morning, that is, the morning of  
8 Saturday, September 20. Do you see that?

9 A. I see the first line, yes.

10 Q. And were you aware of any Morgan Stanley call the  
11 morning of September 20?

12 A. I was not.

13 Q. Plaintiffs' Exhibit 175 says Morgan Stanley  
14 called Mr. Geithner late last night. Do you see that?

15 A. That's the first few words of the first line,  
16 yes.

17 Q. And that -- and late last night would have been  
18 on Friday, September 19th, correct?

19 A. That's right.

20 Q. Did anyone ever communicate to you that Morgan  
21 Stanley had called Mr. Geithner late the night of  
22 September 19th?

23 A. Not that I recollect.

24 Q. Both of these emails talk about options under  
25 active discussion that might help Morgan Stanley. Were

1 you aware of any of those options that were being  
2 discussed, other than the bank holding company option  
3 which we have already mentioned?

4 A. Not that I recall.

5 Q. For example, you were not aware of any active  
6 discussions about a Sovereign Wealth injection?

7 A. No.

8 Q. Or regarding possible merger with or acquisition  
9 by another bank?

10 A. No.

11 Q. It's your testimony that no one ever discussed  
12 any of that with you?

13 A. Not that I recall.

14 Q. The recommendation that you proposed about  
15 waiving the waiting period for Morgan Stanley and  
16 Goldman Sachs, when did you work on that?

17 A. I worked on that primarily on Sunday, September  
18 21st.

19 Q. And on Sunday, September 21st, who asked you to  
20 do that?

21 A. I don't recall.

22 Q. Well, was it somebody from the New York bank,  
23 Federal Reserve Bank of New York?

24 A. I have no recollection.

25 Q. But it's your testimony that at the time that you

1 were asked to prepare this recommendation for a waiver  
2 of the waiting period, nobody told you about any of the  
3 discussions that are referenced in these two documents.  
4 Is that your testimony?

5 A. That's correct.

6 Q. Let me, with the Court's permission, ask you to  
7 look at one more document. This is Plaintiffs'  
8 Exhibit -- Plaintiffs' Trial Exhibit 693. It is a  
9 timeline of events, as I understand it, prepared by the  
10 Federal Reserve Bank.

11 I would offer Plaintiffs' Exhibit 693.

12 MR. AUSTIN: No objection, Your Honor.

13 THE COURT: Plaintiffs' Trial Exhibit 693 is  
14 admitted.

15 (Plaintiffs' Exhibit Number 693 was admitted into  
16 evidence.)

17 BY MR. BOIES:

18 Q. Now, I want to just clean up something that we  
19 talked about this morning. You will recall that we were  
20 talking about the question of when the Bear Stearns  
21 credit facility and primary dealer credit facilities  
22 were set up, and you said they were in March, at about  
23 the same time, but you didn't recall which came first.  
24 Do you recall that?

25 A. Yes, I do.

1 Q. Let me ask you to look at the bottom of page 4 of  
2 this exhibit, which is dated March 14th, 2008. Do you  
3 see that?

4 A. I see that.

5 Q. And does that refresh your recollection that it  
6 was on March 14th, 2008, that the Federal Reserve Board  
7 approved the credit facility in connection with Bear  
8 Stearns?

9 A. So, it does say that the announcement date was  
10 March 14th, 2008. That's correct.

11 Q. What it says is on March 14th, 2008, the Federal  
12 Reserve Board approved the financing arrangement. Do  
13 you see that?

14 A. I see that. Um-hum.

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

16 A. No.

17 Q. And then the entry for March 16th, 2008, says,  
18 "The Federal Reserve Board establishes the Primary  
19 Dealer Credit Facility." Do you see that?

20 A. Yes, I see that.

21 Q. Now, also in the March 16th entry, it says, "The  
22 Board also votes to increase the maximum maturity of  
23 primary credit loans to 90 days." Do you see that?

24 A. Yes, I see that.

25 Q. What was the reason for that?

1           A. So, that was a -- so, the primary credit loans  
2 are loans that the Federal Reserve Banks make to insured  
3 depository institutions. Those are typically overnight  
4 loans. So, in order to ease liquidity pressures during  
5 this period, the Board decided to allow those extensions  
6 of credit to be more longer term, up to 90 days.

7           Q. Now, going back to March 14th, it says that the  
8 Federal Reserve Board also announced that it was  
9 "monitoring market developments closely and will  
10 continue to provide liquidity as necessary to promote  
11 the orderly function of the financial system." Do you  
12 see that?

13          A. I see that.

14          Q. And did the Federal Reserve Board, in fact, make  
15 the announcement that is indicated here that it did?

16          A. I have no reason to doubt that it did.

17          Q. Did you participate in deciding to make that  
18 announcement or decision?

19          A. It's not my decision.

20          Q. Did you participate in making that decision or  
21 announcement?

22          A. I'm sorry. I didn't hear the last part of your  
23 question.

24          Q. Did you participate in making this announcement  
25 or the decision that it relates to?



1           A. I attended the meetings where this was  
2 determined. I don't have a vote in the matter, and I  
3 don't draft the press release. I didn't draft the press  
4 release.

5           Q. Who else attended these meetings where this was  
6 decided?

7           A. This would -- so, the decision to extend the  
8 credit would be a board decision, and that would be  
9 determined by the Board of Governors. Then the press  
10 release is prepared by the press office to announce the  
11 Board's decision.

12          Q. There were two actions on March 14th, correct,  
13 sir? One relating to Bear Stearns and the financing  
14 arrangement that had been announced by JPMorgan Chase  
15 and Bear Stearns, and another announcement that the  
16 Federal Reserve was monitoring market developments  
17 closely and would continue to provide liquidity as  
18 necessary to promote the orderly function of the  
19 financial system. Do you see that?

20          A. I see that there's two lines quoted. I'm not  
21 sure I would consider them two separate decisions.  
22 Monitoring markets during extreme times is a very  
23 natural thing to do. It doesn't require a special  
24 decision.

25          Q. When you refer to "extreme times," you're

1 referring to the period around March 14th, 2008?

2 A. I am.

3 Q. Now, it is the case, is it not, that financial  
4 conditions had deteriorated markedly between mid-January  
5 2008 and mid-March 2008?

6 A. That's right.

7 Q. And there had been a rapid escalation in  
8 collateral haircuts, right?

9 A. There had been an escalation in haircuts for a  
10 variety of types of collateral, that's right.

11 Q. Indeed, not only had there been an escalation,  
12 but there had been a rapid escalation, correct?

13 A. For -- in some situations.

14 Q. Well, there had been a rapid escalation in  
15 collateral haircuts in many of the associated  
16 collateralized funding markets, correct?

17 A. In a number of them, yes.

18 Q. I said "many" you said "number." Did you mean to  
19 make a distinction?

20 A. I don't know what "many" means.

21 Q. You don't know what "many" means? Well, let me  
22 ask you to look at Joint Exhibit 13 that's in evidence.  
23 This is a document that you wrote, correct, sir?

24 A. It's something I wrote, yes.

25 Q. And it's dated April 2, 2008, correct?

1 A. Yes.

2 Q. And it's addressed to the Board of Governors of  
3 the Federal Reserve System, correct? Correct, sir?

4 A. Yes.

5 Q. And if you turn to page 7, the first full  
6 paragraph, the last sentence, do you see where you  
7 write, "Rapid escalation in collateral haircuts in many  
8 of the associated term collateralized funding markets  
9 produced a self-reinforcing dynamic in which the higher  
10 haircuts led to missed margin calls, fire sales of  
11 collateral, increased price volatility, and ever-greater  
12 haircuts and more frequent margin calls and fire sales."

13 Do you see that?

14 A. I see that.

15 Q. And you believed that that was true at the time  
16 you wrote it, correct?

17 A. I do. Of course, this refers to many of the  
18 associated funding markets associated with the RMBS,  
19 markets that are the first part of that paragraph.

20 Q. Yes.

21 A. Yes.

22 THE COURT: Excuse me. What do you mean by the  
23 term "haircuts" in this context?

24 THE WITNESS: Certainly. So, haircuts would be  
25 when someone places collateral for a loan with another

1 person, there's typically -- they typically don't -- the  
2 loan would be of a value less than the value of the  
3 collateral. The difference between the value of the  
4 collateral and the amount of the loan would be the  
5 haircut.

6 THE COURT: All right, thank you.

7 BY MR. BOIES:

8 Q. Let me go back to something that you just said a  
9 moment ago. You said that these were associated term  
10 collateral funding markets related to what, sir?

11 A. The -- the market above, including particularly  
12 the RMBS markets and other asset-backed securities  
13 quotes and municipal securities markets. Two sentences  
14 up.

15 Q. Where you're referring to the market for RMBS but  
16 also in the markets for other asset-backed securities,  
17 corporate securities, and municipal securities? That's  
18 what you're referring to?

19 A. Yes. Yes.

20 Q. And you're saying there was a rapid escalation in  
21 collateral haircuts in many of those collateralized  
22 funding markets. Is that correct?

23 A. Yes.

24 Q. And that is a statement that you continue to  
25 believe today was accurate at the time, correct?

1 A. Yes.

2 Q. And when you used the word "many" there, what did  
3 you mean?

4 A. So, I think "many" related to a segment of the  
5 markets, so a significant number, but related to the  
6 RMBS market. I took your question to -- and the  
7 asset-backed market. I took your question to be "many"  
8 in relation to all markets for all kinds of  
9 transactions. So, that is a maybe small point but the  
10 distinction I was drawing.

11 Q. You did understand that I was simply asking you  
12 whether in your view it was many markets.

13 A. But you didn't tie it to any particular kind, and  
14 so many of a smaller group as opposed to many of a  
15 larger group could be a small number.

16 Q. I understand that many of a small group is going  
17 to be different than many of a large group.

18 A. Um-hum.

19 Q. But your problem, I thought, was you didn't  
20 understand what the word "many" meant.

21 A. In the context of your question, that's right.

22 Q. Now, this is not just the RMBS markets. It's the  
23 RMBS markets plus the markets for other asset-backed  
24 securities, corporate securities, and municipal  
25 securities, correct, sir?

1 A. That's right.

2 Q. Now, in that same paragraph, the very first  
3 sentence, it says, "Conditions on and around March 16th,  
4 2008, represented unusual and exigent circumstances in  
5 the financial markets." Do you see that?

6 A. I see that.

7 Q. And that's something that you believed to be true  
8 then, correct, sir?

9 A. Yes, it is.

10 Q. And you believe it to be true now. Is that  
11 correct?

12 A. For that time, yes.

13 Q. And at the time that you were looking -- the  
14 Federal Reserve System was looking at the Bear Stearns  
15 13(3) loan and the primary dealer credit facility 13(3)  
16 loans, in order to make those loans, the Federal Reserve  
17 had to conclude that the borrowers were unable to secure  
18 adequate credit accommodations from other banking  
19 institutions, correct?

20 A. That's right.

21 Q. And is it fair to say that --

22 A. Can I -- I'm sorry, can I correct myself there?  
23 The -- the statute actually says they have to collect  
24 evidence, not conclude that no credit is available, but  
25 collect evidence that credit is not -- that adequate

1 credit accommodations are not available.

2 Q. In March of 2008, did the Federal Reserve System  
3 believe that adequate credit accommodations from other  
4 banking institutions were available for the purpose of a  
5 Bear Stearns loan?

6 A. So, I think the Reserve Bank believed that there  
7 was evidence that Bear Stearns was unable to secure  
8 adequate credit accommodations from other banking  
9 institutions.

10 Q. That wasn't my question, sir.

11 A. All right.

12 Q. There was nothing in my question about collecting  
13 evidence.

14 A. I see.

15 Q. What I'm asking you is that on or before March  
16 14th, 2008, did the Federal Reserve believe that there  
17 were adequate credit accommodations from other banking  
18 institutions that could cover the need for the Bear  
19 Stearns credit facility?

20 A. So, the -- that, of course, is not the standard  
21 in the statute --

22 Q. Excuse me, sir?

23 A. That is not the standard in the statute --

24 Q. We'll come to the statute. Can you focus on my  
25 question?

1           A. All right. Could you repeat your question?

2           Q. Yes.

3                    At the time that the Federal Reserve provided  
4 assistance through a 13(3) to help Bear Stearns avoid  
5 bankruptcy, did the Federal Reserve reach a conclusion  
6 one way or the other as to whether the borrower was  
7 unable to secure adequate credit accommodations from  
8 other banking institutions?

9           A. So, I think the Federal Reserve Bank believed  
10 that they were unable to secure credit accommodations  
11 from other banking institutions.

12          Q. Okay. And when the Federal Reserve extended the  
13 primary dealer credit facility under 13(3), did the  
14 Federal Reserve also believe that the primary dealers,  
15 who were borrowers from that PDCF, were unable to secure  
16 adequate credit accommodations from other banking  
17 institutions?

18          A. I think they believed that they were unable to  
19 secure adequate credit accommodations from other banking  
20 institutions.

21          Q. Now, from March until the beginning of September  
22 of 2008, financial markets deteriorated, correct, sir?

23          A. That's right.

24          Q. The credit markets were more generally freezing  
25 up, correct?



1 A. That's right.

2 Q. Liquidity was becoming difficult to get with any  
3 kind of haircut on a secured basis, and unsecured credit  
4 was becoming all but unavailable, correct?

5 A. That's right.

6 Q. There were runs on money market funds, correct?

7 A. You've included in that time frame September?

8 Q. Up through the beginning of September.

9 A. So, I don't recall whether there were runs on  
10 money market funds. There may have been draining. I  
11 just don't recall.

12 Q. All right. And from March to September 1, there  
13 was a loss of confidence in the markets generally, the  
14 financial markets, correct?

15 A. Yes.

16 Q. Now, I had asked you whether on September 14, the  
17 Federal Reserve had announced it would accept collateral  
18 for the primary dealer credit facility that included  
19 noninvestment grade bonds. Do you recall that?

20 A. I do recall you asking that.

21 Q. And I think you said you just didn't recall one  
22 way or the other. Is that correct?

23 A. That's right.

24 Q. Let me ask you to look at Exhibit 638. This is  
25 Plaintiffs' Trial Exhibit 638 that I think we already

1 offered this morning.

2 If you turn to page 3, and it's right at the last  
3 sentence in the first full paragraph, do you see that,  
4 where it says, "New types of collateral that became  
5 eligible for PDCF included noninvestment grade bonds and  
6 equities"?

7 A. I see that sentence.

8 Q. And does that refresh your recollection that on  
9 September 14, the Federal Reserve announced that it  
10 would accept as collateral noninvestment grade bonds and  
11 equities?

12 A. So, if this is in the GAO report, I have no  
13 reason to doubt that.

14 Q. Now, in September, it became apparent that the  
15 financial system had been more fragile than anyone,  
16 including regulators, had realized, correct, sir?

17 A. I'm sorry. You faded away at the end. In  
18 September?

19 Q. In September, it became clear that the financial  
20 system had become more fragile than anyone, including  
21 regulators, had realized, correct, sir?

22 A. Yes, that's correct.

23 Q. And there were a significant number of companies  
24 in September that were facing liquidity problems. Fair?

25 A. That's correct.

1 Q. And those -- those included, of course, AIG.  
2 They also included Citibank, correct?

3 A. In September?

4 Q. Yes.

5 A. That's probably right.

6 Q. And it included Merrill Lynch, correct?

7 A. To some degree.

8 Q. To a degree sufficient that the Federal Reserve  
9 thought it was important to give liquidity support to  
10 Merrill Lynch, correct?

11 A. There was no special facility established for  
12 Merrill Lynch. So, if you're referring to their access  
13 to the PDCF, then that's access that they would have for  
14 some period of time.

15 Q. In March -- in September, September of 2008, did  
16 the Federal Reserve conclude that it was important to  
17 give Merrill Lynch more security, more liquidity than  
18 had been given before?

19 A. Ah, I recall. You must be referring to the  
20 expansion of the PDCF to the London broker-dealer of  
21 several firms, including Merrill Lynch.

22 Q. And did that happen on or about September 14th,  
23 2008?

24 A. I believe that's right.

25 Q. And the purpose of doing that was to provide

1 additional liquidity support for Merrill Lynch, Goldman  
2 Sachs, and Morgan Stanley, correct?

3 A. I'm fuzzy on the dates and the times, but to  
4 provide better liquidity, that's right.

5 Q. Better liquidity support for those companies,  
6 correct, sir?

7 A. For the -- in a general way of speaking, yes.

8 Q. And that general way of speaking was the way the  
9 Federal Reserve spoke about it at the time, correct?

10 A. I don't recall the exact wording that was used.

11 Q. Let me ask you to look at Plaintiffs' Exhibit  
12 696, which I would offer in evidence. Plaintiffs'  
13 Exhibit 696.

14 THE COURT: Any objection?

15 MR. AUSTIN: No objection, Your Honor.

16 THE COURT: All right. Plaintiffs' Trial Exhibit  
17 696 is admitted.

18 (Plaintiffs' Exhibit Number 96 was admitted into  
19 evidence.)

20 BY MR. BOIES:

21 Q. Let me turn to page 6, and at the bottom, do you  
22 see where it says, in bold, Goldman Sachs, Morgan  
23 Stanley, and Merrill Lynch?

24 A. I see that, yes.

25 Q. And it first talks about the Goldman Sachs and

1 Morgan Stanley applications to become bank holding  
2 companies. Do you see that?

3 A. Yes, I see that.

4 Q. And then it talks about "Authorizations to  
5 increase liquidity support for certain securities  
6 subsidiaries of Goldman Sachs, Morgan Stanley, and  
7 Merrill Lynch." Do you see that?

8 A. Yes, I see that.

9 Q. And that -- and those certain securities  
10 subsidiaries were non-U.S. securities subsidiaries of  
11 those three companies, correct?

12 A. Yes. I believe that's right. If I could  
13 mention, you had indicated September 14th. This is  
14 September 21st.

15 Q. This is -- September what did you say?

16 A. 21st.

17 Q. Oh, 21st, yes. Yes, that's when they became bank  
18 holding companies and that's when this additional  
19 liquidity support was provided.

20 A. Right. But you had asked me if it happened on  
21 September 14th. I wasn't certain of the date. I've  
22 just clarified that it's the 21st.

23 Q. It happened on September 21st. Thank you.

24 Now, at the same time that the Federal Reserve  
25 was accepting less good collateral for the PDCF 13(3)

1 credit facility, it was also reducing the interest rates  
2 charged for that credit facility, correct?

3 A. So, you've conflated two things, less good  
4 collateral -- I'm not sure I agree that the collateral  
5 is not good -- and --

6 Q. Let me stop you right there, okay? Let me deal  
7 with that, okay, because probably "less good" was not a  
8 great phraseology. I accept that.

9 A. Okay.

10 Q. In September -- on or about September 14th, the  
11 Federal Reserve agreed to accept noninvestment grade  
12 bonds and equities as collateral for PDCF loans, right?

13 A. You said September 14th. I don't think that is  
14 right.

15 Q. Okay.

16 A. You're still referring to the September 21st?

17 Q. No. I could be -- I could be mistaken on the  
18 dates, but I thought we looked at Plaintiffs' Exhibit  
19 638, Plaintiffs' Trial Exhibit 638.

20 A. 638.

21 Q. And we had been on page 3 before. Do you  
22 remember that?

23 A. I remember that. Yes, I do.

24 Q. And do you see where it says, in the paragraph we  
25 were at before, "On September 14th, 2008, the Federal

1 Reserve Board expanded the types of collateral eligible  
2 for PDCF beyond investment grade securities"?

3 A. Yes, I see that.

4 Q. And the collateral that it was expanded to  
5 include included noninvestment grade bonds and equities,  
6 correct?

7 A. I see that.

8 Q. And is it fair to say that in general,  
9 noninvestment grade bonds are not as desirable  
10 collateral as investment grade bonds?

11 A. I think it depends on the situation. I think  
12 it -- I think it depends on the situation.

13 Q. I said in general, sir. In general.

14 A. It depends on the situation. In general, it  
15 could be; it could not be. It -- ah, I -- yes.

16 Q. Let me -- let me just ask you, are you testifying  
17 that this change in September, on or about September 14,  
18 2008, to include these noninvestment grade bonds, was  
19 not a decision to allow PDCF borrowers to put up  
20 collateral that was less desirable than what they had  
21 had to put up before?

22 A. So, my difficulty is "less desirable." It's not  
23 rated as highly, I think that's correct, but it's still  
24 satisfactory collateral; it's still strong collateral.  
25 So, less desirable might be true for some people, might

1 not be true for other folks. It is certainly a kind of  
2 collateral that the markets were lending against in a  
3 variety of situations. For example, in the tri-party  
4 repo market, they were lending very vigorously against  
5 these kinds of collateral.

6 Q. So, I take it, then, it is your testimony that  
7 you think that the collateral that was being put out  
8 after September 14th for the PDCF was as good and  
9 desirable as the collateral that was put up before  
10 September 14th. Is that your testimony?

11 A. It's actually -- it is a broader range of  
12 collateral that was adequate for the kind of extensions  
13 of credit that we were making.

14 Q. That wasn't my question, sir.

15 A. I understand. I'm trying to keep your  
16 question -- to give you the answer to the question that  
17 you're keeping it in context.

18 MR. BOIES: Your Honor, could I ask that he be  
19 instructed to answer my question, not the question he  
20 would like to answer?

21 THE COURT: Yes. I know you're doing your best,  
22 Mr. Alvarez, but please, again, listen carefully to the  
23 question and try to answer that question.

24 THE WITNESS: I will do my best.

25 BY MR. BOIES:



1 Q. Do you have a judgment, one way or the other, as  
2 to whether the collateral that was being accepted for  
3 the PDCF credit facility after September 14th was less  
4 desirable collateral, in general, than the collateral  
5 that had been accepted prior to September 14th?

6 A. Do I have a judgment? Is that what you first  
7 said?

8 Q. Yes.

9 A. I do not have a judgment.

10 Q. Okay. At the time that Morgan Stanley applied  
11 for bank holding company status, I think I asked you if  
12 you knew what total borrowings under the 13(3) were at  
13 that time, and I think you said you did not. Is that  
14 correct?

15 A. I do not recall, that's right.

16 Q. Now, it is the case that as of September 19th,  
17 Morgan Stanley had borrowed money under more than one  
18 13(3) credit facility, correct?

19 A. I know they had at some point borrowed under the  
20 PDCF. What other credit facility are you referring to?  
21 I don't recall another credit facility at this time --

22 Q. Well --

23 A. -- around September 19th.

24 Q. -- there was a TSLF, correct?

25 A. Okay. There was a TSLF, that's right.

1 Q. And that was another credit facility that the  
2 Federal Reserve made available pursuant to 13(3),  
3 correct?

4 A. That's correct.

5 Q. And who were the permitted borrowers under that  
6 credit facility?

7 A. That was also the primary dealers.

8 Q. So, Morgan Stanley would have been eligible under  
9 both?

10 A. Would have been eligible under both.

11 Q. And do you know whether they, in fact, borrowed  
12 under both 13(3) credit facilities, both the PDCF and  
13 the TSLF?

14 A. I do not know.

15 Q. At the time that you wrote the recommendation  
16 that the waiver period or that the waiting period be  
17 waived for the Morgan Stanley and Goldman Sachs  
18 applications to become bank holding companies, did you  
19 investigate what the financial condition of those two  
20 companies was?

21 A. Yes.

22 Q. And in connection with that investigation, did  
23 you investigate how much money they had already borrowed  
24 under Federal Reserve 13(3) credit facilities?

25 A. So, my investigation was reading memoranda

1 prepared by our bank supervisors about the condition of  
2 the organization. I don't recall if there was reference  
3 to their borrowing under the TSLF or the PDCF in those  
4 memoranda.

5 Q. The day after September 14th, Lehman filed for  
6 bankruptcy, correct?

7 A. That's right.

8 Q. And the Lehman filing for bankruptcy was the most  
9 destabilizing financial event since the bank runs of the  
10 Depression, correct, sir?

11 A. It was certainly a very significant event.

12 Q. It was not only a very significant event, it was  
13 a very significant destabilizing event, correct?

14 A. I think that's fair to say.

15 Q. And, indeed, you cannot think of a financial  
16 event since the back runs of the Depression that was as  
17 destabilizing for the financial markets as the Lehman  
18 bankruptcy, correct?

19 A. So, my memory is not as long as yours, we've  
20 established that before, so I can't go back all the way  
21 to the Depression.

22 Q. But as far as your memory will allow you to go  
23 back, is it fair to say that the Lehman bankruptcy was  
24 the most destabilizing financial event that you can  
25 remember?

1           A. So, it certainly was in the period of 2007, 2008,  
2           which is the crisis I'm most familiar with.

3           Q. But throughout the period of time that you've  
4           been --

5           A. Since I was general counsel?

6           Q. Yes.

7           A. Absolutely.

8           Q. All right. And there were a variety of  
9           consequences of the Lehman bankruptcy, including that  
10          the reserve fund so-called "broke the buck," correct?

11          A. That's right.

12          Q. And that, in turn, spurred a run on money market  
13          funds, correct?

14          A. That's correct.

15          Q. And which, in turn, lessened the liquidity  
16          available to the financial system generally since money  
17          market funds provided a lot of liquidity to the  
18          financial system, correct?

19          A. That's correct.

20          Q. The failure of Lehman also ended any chance of  
21          securing a private sector solution for AIG within the  
22          time needed to address its funding needs, correct?

23          A. Sir, that was my belief.

24          Q. That was your belief then; it's your belief now,  
25          right?

1           A. That's right.

2           Q. On September 15th, the Federal Reserve considered  
3 several options for liquidity relief for AIG, correct?

4           A. On September 15th -- well, if you consider  
5 bankruptcy an option, then yes.

6           Q. Well, I actually did not consider bankruptcy an  
7 option for liquidity relief at that time. I suppose  
8 maybe you could consider it that way.

9           A. It certainly would -- it certainly --

10          Q. But are you saying that the Federal Reserve was  
11 considering bankruptcy as an option for liquidity relief  
12 for AIG on September 15th?

13          A. No, I didn't -- I -- I'm -- perhaps if you  
14 rephrased your question, I'd like to be able to give an  
15 answer that's responsive to you.

16          Q. Sure.

17                 On September 15th, the Federal Reserve was  
18 considering several options for liquidity relief for  
19 AIG.

20          A. So, I'm un -- I'm uncertain what options were  
21 being considered by the Federal Reserve. If you're  
22 speaking broadly, that would include the New York  
23 Reserve Bank, and I'm uncertain about the scope of the  
24 options they may have been considering, if any.

25          Q. On September 15th, did you personally participate

1 in any discussions concerning options for liquidity  
2 relief for AIG?

3 A. I believe on the 15th I was on a call where the  
4 idea of lending to AIG was discussed, the possibility  
5 they might go into bankruptcy, and perhaps various  
6 legislative options as well.

7 Q. And who else was on that call?

8 A. I -- I don't recall right now.

9 Q. Let me ask you to look at Joint Exhibit 56.  
10 These are your handwritten notes of this September 15  
11 conference call, correct?

12 A. Yes.

13 Q. And at the very top, you write, "Prevent  
14 contagion." Do you see that?

15 A. I see that.

16 Q. And what does that refer to?

17 A. So, this is -- this is right after the Lehman  
18 Brothers announcement of the bankruptcy, so we're  
19 dealing with the Lehman -- the after-effects of that  
20 very destabilizing event and talking about options that  
21 would -- we should explore. Tony Ryan, the person who  
22 is speaking here, is an employee of the Treasury  
23 Department.

24 Q. So, this conference call included both people  
25 from the Federal Reserve and people from the Treasury

1 Department?

2 A. That's right. It appears to, at least.

3 Q. And one of the options considered for liquidity  
4 relief for AIG was something that you write here as the  
5 "Exchange Stabilization Fund." Is that correct?

6 A. That's right.

7 Q. And can you explain what the Exchange  
8 Stabilization Fund is?

9 A. So, that's a Treasury fund that is maintained  
10 to -- that is for the purpose of maintaining the value  
11 of the dollar as against other currencies.

12 Q. Now, if you turn to the bottom of the second page  
13 where you have the number 3, do you see that?

14 A. I see that.

15 Q. And it says, "Consortium and Fed/Treasury  
16 backstops." Do you see that?

17 A. Yes.

18 Q. And that was one of the options for liquidity  
19 support for AIG that was being considered, correct?

20 A. So, I think "options" puts it a little too  
21 strongly. These are possible approaches to be explored,  
22 as opposed to options, where I think of as that's  
23 something we actually had in hand and could do.

24 Q. Let me ask you first, this option of something  
25 that could be explored, a consortium with Federal

1 Reserve and Treasury backstops that you refer to here --

2 A. Yes.

3 Q. -- what was that option?

4 A. It -- there is no detail from the notes, and I --  
5 I don't recall any detail to that beyond what's written  
6 here.

7 Q. So, beyond what's written here, you don't have  
8 any recollection of this discussion with respect to this  
9 particular item?

10 A. Correct.

11 Q. Were there other discussions, other than this  
12 conference call, about the Federal Reserve and Treasury  
13 making a backstop or guarantee for liquidity provided by  
14 a private sector consortium?

15 A. So, it's possible that there were.

16 Q. Now, you also have two other options for  
17 providing liquidity support for AIG that you take notes  
18 about on this page, correct?

19 A. Yes.

20 Q. And with respect to the consortium and Federal  
21 Reserve and Treasury backstops, you had some dubiety  
22 about the use of the word "options" to refer to that?  
23 Do you recall that?

24 A. Um-hum.

25 Q. You don't have any such dubiety referring to



1 these other options as options, do you, sir?

2 A. Oh, no. At this time, I did. I think these were  
3 still just ideas for consideration and exploration as  
4 opposed to things that had been decided or that were at  
5 hand.

6 Q. I didn't ask about something that was decided.

7 A. No, I appreciate --

8 Q. I asked about something that was an option.

9 A. And I'm saying I agree it's in the same context  
10 of how I was thinking about number 3.

11 Q. So, you don't think that number 1 and number 2  
12 rise to the level of an option. Is that what you're  
13 saying?

14 A. In the context of an option that is ready to go  
15 or is something that's fleshed out, no, I don't think of  
16 that in that context. I think of it in the context of  
17 let's list all the things we can think of that we should  
18 begin exploring. In that context, that's how I think of  
19 these two options.

20 Q. In terms of the way you normally use "option" in  
21 your normal conversation --

22 A. Yeah.

23 Q. -- would you consider any of these to be options,  
24 in the way you normally use that word?

25 A. So, I normally think of it in the way I just

1 described it.

2 Q. As what?

3 A. And so in that sense, that these are things that  
4 we should explore, that is the sense that I have here.

5 Q. So, you're saying in the normal way you use the  
6 term "option," you would consider these options?

7 A. In that sense, as I just explained it.

8 Q. I know, but -- in that sense, but I'm just saying  
9 the way you use the word -- I'm just trying to find out  
10 if, as you use the word in your normal business  
11 conversations, would you call these three things that  
12 are listed here options?

13 A. Yes, and I was simply providing a definition of  
14 what that -- you asked my -- my definition of "options"  
15 and --

16 Q. No, actually, I didn't ask your definition of  
17 "options," sir. I didn't ask you that.

18 A. Okay.

19 Q. You do recall that I didn't ask you that  
20 question?

21 A. I -- I assume -- I thought you had.

22 Q. Now, using "options" in the way that you normally  
23 use it in everyday business conversation, were there any  
24 other options that were considered for providing  
25 liquidity support for AIG on September 15th, 2008, other

1 than the Exchange Stabilization Fund, a loan secured by  
2 company assets, purchase of bad assets leaving a clean  
3 AIG, and a consortium with Federal Reserve and Treasury  
4 backstop? Anything else?

5 MR. AUSTIN: Your Honor, I object. With respect  
6 to the Exchange Stabilization Fund, there has been no  
7 foundation that the suggestion there is specific or  
8 involves AIG in any way, and I object on that ground.

9 MR. BOIES: With respect, Your Honor, I think the  
10 witness has already answered that question, and I think  
11 the record will show what his answer was.

12 THE WITNESS: I don't believe that statement is  
13 correct, sir. The Exchange Stabilization Fund was not  
14 in the options.

15 THE COURT: Excuse me. I'll take his answer, and  
16 if you wish to clarify, you may.

17 MR. BOIES: Yes.

18 THE WITNESS: Thank you, sir. So, the Exchange  
19 Stabilization Fund is not among the pieces that you have  
20 pointed to on AIG.

21 BY MR. BOIES:

22 Q. No, it's not on the three that are on this page,  
23 but it was one -- that was one of the options that was  
24 being considered to provide liquidity support for AIG,  
25 correct, sir?

1 MR. AUSTIN: Same objection, Your Honor.

2 THE COURT: Overruled.

3 THE WITNESS: No. No, sir. No. The first page  
4 of the notes is, as I mentioned when you asked me about  
5 it, this is about ways we could -- things that would be  
6 happening to address the problems raised from the Lehman  
7 bankruptcy, and the Exchange Stabilization Fund, in  
8 particular, was the way the Treasury was -- eventually  
9 helped to stem the run on money market funds that you  
10 alluded to before that resulted from the reserve fund  
11 breaking the buck, which was the result of Lehman's  
12 failure. So, that was a separate discussion from the  
13 AIG discussion.

14 BY MR. BOIES:

15 Q. Let me ask you whether it is now your testimony  
16 that the Exchange Stabilization Fund was not anything  
17 that was considered in connection with AIG. Is that  
18 your testimony?

19 A. So, I'm making a distinction between the -- you  
20 said that I had testified to this. I was explaining  
21 what my previous testimony was, which was in the context  
22 of the Lehman failure and the reference to the Exchange  
23 Stabilization Fund on the first page.

24 Q. Can I ask you to listen to my present question?

25 A. Yes, sir.

1 Q. Okay? And I'll make it -- I'll try to make it as  
2 simple as I can.

3 Was the Exchange Stabilization Fund considered  
4 one option or part of an option for providing liquidity  
5 support for AIG? That starts as a yes or no answer.

6 A. In this conversation?

7 Q. Yes or no or I don't know, I guess.

8 A. Sir, it -- it may have been.

9 Q. It may have been?

10 A. It may have been.

11 Q. And you just don't recall one way or the other?

12 A. I don't recall.

13 Q. If you look in the middle of the page or just  
14 slightly partially down from the middle of the page  
15 where it says, "\$30 billion hole," do you see that?

16 A. I do.

17 Q. And you are referring to AIG here, are you not,  
18 sir?

19 A. I believe so.

20 Q. And it says, "Can this be split off with someone  
21 else, like ESF?" Do you see that?

22 A. I see that.

23 Q. And ESF there is the Exchange Stabilization Fund.  
24 Is that correct, sir?

25 A. That's probably right.

1 Q. And then you say, "or ESF does whole deal." Do  
2 you see that?

3 A. I see that.

4 Q. And ESF is, again, Exchange Stabilization Fund,  
5 correct?

6 A. It probably is, yes.

7 Q. And this is talking about options for AIG  
8 liquidity support.

9 A. This one is, yes.

10 Q. Now, there was another call concerning AIG that  
11 you participated in on September 15th, correct?

12 A. I believe so.

13 Q. And that took place around 10:15 that evening.  
14 Is that correct?

15 A. I think that's right.

16 Q. And who participated in that call?

17 A. So, I believe Don Kohn and others. I don't  
18 recall the entire list.

19 Q. Let me ask you to turn to Plaintiffs' Trial  
20 Exhibit 65, which I would offer in evidence.

21 MR. AUSTIN: No objection, Your Honor.

22 THE COURT: Plaintiffs' Trial Exhibit 65 is  
23 admitted.

24 (Plaintiffs' Exhibit Number 65 was admitted into  
25 evidence.)

1 BY MR. BOIES:

2 Q. And these are your handwritten notes of this  
3 conference call on September 15th, 2008, at 10:15 p.m.,  
4 correct?

5 A. That's right.

6 Q. And you list at least some of the participants in  
7 this call in the left-hand margin, correct?

8 A. Yes.

9 Q. And could you identify each of the participants  
10 together with their positions.

11 A. TG would have been Tim Geithner, the President of  
12 the New York Reserve Bank at the time; Don Kohn, the  
13 Vice-Chairman of the Federal Reserve Board at the time;  
14 Ken Wilson and Neal Kashkari worked for the Treasury  
15 Department, I don't recall their titles; Kevin Warsh was  
16 a member of the Board of Governors of the Federal  
17 Reserve System; Tony Ryan was also an employee of the  
18 Treasury Department, and I don't recall his title; Pat  
19 Parkinson was an employee of the -- of the Board of  
20 Governors in our Research Division; and Dan Jester and  
21 Jeremiah Norton also were working for the Treasury  
22 Department at the time, and I don't recall their titles.

23 Q. And this call related, at least in part, to AIG.  
24 Is that correct?

25 A. Yes.

1 Q. And you write, "Unlike Lehman, failure of AIG  
2 might cause failure of other institutions."

3 A. Yes.

4 Q. Correct?

5 A. In the middle of the page.

6 Q. Yes.

7 A. I see that.

8 Q. And that included some counterparties, correct?

9 A. Yes.

10 Q. And who were the other institutions that you were  
11 concerned, on September 15, an AIG failure might have an  
12 effect of causing their failure?

13 A. I don't recall the names of the institutions.

14 Q. Do you recall any of them?

15 A. I -- I do not. I -- I recall some general  
16 groupings.

17 Q. What were the general groupings?

18 A. So, for example, there were a large number of  
19 European banks who were exposed to AIG because of some  
20 guarantees AIG had given to assets on the balance sheet  
21 of those banks that allowed them to meet their capital  
22 requirements in Europe. I recall that there were --  
23 there were concerns about counterparties that had credit  
24 default swaps from AIG, and there were counterparties  
25 that were -- had other derivative exposures to AIG just



1 in different types of derivatives. Then there were also  
2 municipalities that had guaranteed contracts that  
3 were -- contracts that were guaranteed by AIG.

4 Q. But you don't, as you sit here now, remember any  
5 of the names of the people or the institutions that fell  
6 under those categories?

7 A. Unfortunately not.

8 Q. On the second page at the top, there's a line  
9 that says, "Powers we would want." Do you see that?

10 A. I see that.

11 Q. What does that refer to?

12 A. So, this was in -- a part of the discussion this  
13 evening was about seeking legislative changes. So,  
14 these would be in that context.

15 Q. And the first legislative change listed here is  
16 "Treasury and Federal Reserve determine" -- what's that  
17 next word?

18 A. "For."

19 Q. -- "for systematic reason."

20 A. "Systemic reason."

21 Q. "Systemic reason." What does that mean?

22 A. That if there was a systemic need, there was some  
23 threat to the financial system, then the Fed and the  
24 Treasury could take certain emergency actions. This  
25 would be one of the potential legislative fixes we would

1 seek.

2 Q. And if Treasury and the Federal Reserve  
3 determined that there were systemic reasons to do so,  
4 then the two legislative fixes that you identify here  
5 are, one, buy any stock, preferred or common, and any  
6 debt; and the second is resolution authority by  
7 conservatorship or receivership. Is that right?

8 A. That's right.

9 Q. And was any request for these powers, for these  
10 legislative powers, actually made in September of 2008?

11 A. Yes.

12 Q. When did that happen?

13 A. So, in September, the -- Secretary Paulson led an  
14 effort to request both of these powers, and one of them  
15 actually became the TARP legislation that allowed the  
16 Treasury Department to inject capital into institutions  
17 in any form that the Treasury Department deemed  
18 appropriate if it was necessary to protect the financial  
19 system.

20 The resolution authority was actually enacted as  
21 part of the Dodd-Frank Act later on, and that empowers  
22 the Treasury, the Federal Reserve, the FDIC to place  
23 financial institutions into resolution, and that is  
24 separate from bankruptcy.

25 Q. So that the resolution authority fix that you

1 wanted was enacted in Dodd-Frank. Is that what you're  
2 saying?

3 A. Yes.

4 Q. And the buy any stock fix that you wanted was  
5 enacted in TARP? Is that correct?

6 A. That's right.

7 Q. And Dodd-Frank was in 2010?

8 A. That's correct.

9 Q. And when was TARP?

10 A. So, I think it was the end of September,  
11 beginning of October. It may have actually failed to  
12 pass at the end of September and then was re-introduced  
13 and passed in early October. I believe that's right.

14 Q. Let me ask you to look next at Plaintiffs' Trial  
15 Exhibit 589, and this is the June 10, 2010, oversight  
16 report entitled, "The AIG Rescue, its Impact on Markets,  
17 and the Government's Exit Strategy," correct?

18 A. I see that, yes.

19 Q. And you were interviewed for this report,  
20 correct?

21 A. I believe so.

22 Q. Let me ask you to look at page 142.

23 MR. AUSTIN: Your Honor, we object to reading  
24 this document. This document contains double hearsay,  
25 and we do not think it's admissible, and because we do

1 not think it's admissible, we do not believe that  
2 counsel should be allowed to proceed with asking  
3 questions at this point.

4 MR. BOIES: Your Honor, I would offer this  
5 exhibit as a government report. The hearsay in it is  
6 hearsay from the agents of the Defendant here. So, I  
7 think it's actually admissible even if it were not a  
8 government report, but it is a government report.

9 THE COURT: Mr. Austin?

10 MR. AUSTIN: It contains numerous instances of  
11 double hearsay, Your Honor. It's not the initial  
12 hearsay that's the problem. It's the double hearsay.

13 THE COURT: I am going to overrule the objection.  
14 Plaintiffs' Trial Exhibit 589 is admitted.

15 (Plaintiffs' Exhibit Number 589 was admitted into  
16 evidence.)

17 BY MR. BOIES:

18 Q. Let me ask you to look at page 142 of the  
19 exhibit, and it's the last full sentence on the page  
20 that begins, "Based on Panel staff conversations with  
21 Scott Alvarez, general counsel at the Federal Reserve  
22 Board..."

23 Do you see that?

24 A. I see that.

25 Q. And the report continues, "...it is clear that

1 the Federal Reserve would not have been able to provide  
2 an open-ended guarantee or blanket assurance to AIG's  
3 creditors that AIG or its insurance subsidiaries would  
4 continue to be viable or to operate as going concerns in  
5 the near or medium term, but it could have done targeted  
6 guarantees or a 'capped' guarantee to a private  
7 consortium loan in September 2008 (assuming adequate  
8 collateral) if it had properly explored that approach."

9 Do you see that?

10 A. I see that sentence.

11 Q. And is that an accurate reflection of what you  
12 told the panel staff?

13 A. I don't believe so.

14 Q. You think that is not accurate?

15 A. That's right.

16 Q. Did the staff ask you about the options of  
17 guarantees, either open-ended or targeted or capped?

18 A. I remember having a general discussion about an  
19 open-ended guarantee with the staff. I don't remember  
20 any conversation about a capped guarantee with the staff  
21 at the COP.

22 Q. Now, there's a footnote to the statement that you  
23 say that you disagree with that refers to Panel staff  
24 conversation with the Federal Reserve, May 28, 2010. Do  
25 you see that?

1 A. I see that.

2 Q. Did you have a conversation with the panel staff  
3 on May 28th, 2010?

4 A. I did. I did have a conversation with them.  
5 That's probably the right date.

6 Q. And did you take notes of that conversation?

7 A. No.

8 Q. Now, we've seen a variety of notes of  
9 conversations that you did take.

10 A. That's correct.

11 Q. And there are a number of other notes that we  
12 haven't marked as exhibits that you have taken during  
13 this same period, correct?

14 A. Yes.

15 Q. Is there any reason that you did not take any  
16 notes of the conversation that you had with the panel  
17 staff for the oversight report?

18 A. Because this was an -- my understanding at the  
19 time was this was an off-the-record, informal,  
20 background discussion to help the staff of the oversight  
21 panel understand some general concepts.

22 Q. And I take it, on an informal background basis,  
23 you were trying to be as accurate as possible in talking  
24 to the congressional oversight panel staff, correct?

25 A. I was.

1 Q. Now, we had looked before at Joint Exhibit 56,  
2 which are your handwritten notes of a conversation on  
3 September 15, 2008. Do you recall that?

4 A. Yes.

5 Q. And at the bottom of page 2, you talk about a  
6 private sector consortium with Federal Reserve and  
7 Treasury backstops. Do you see that?

8 A. You're on page 2?

9 Q. At the bottom.

10 A. Yes.

11 Q. And that's the same concept as a capped guarantee  
12 through a private consortium loan that is referred to in  
13 the oversight panel notes, correct?

14 A. I have no reason to believe that.

15 Q. Well, sir, both your notes that are Joint Exhibit  
16 56 and the oversight panel's report refer to a  
17 consortium loan in September 2008, correct?

18 A. They both use the word "consortium."

19 Q. Sir, both your notes that are marked as Joint  
20 Exhibit 56 and the oversight panel report refer to a  
21 possible private consortium loan to AIG in September  
22 2008, correct?

23 A. That's not accurate, sir.

24 Q. Okay. Let's take them one at a time.

25 A. Sure.

1 Q. You've told me previously that Joint Exhibit 56  
2 refers to a possible private consortium liquidity  
3 support for AIG with a Federal Reserve and Treasury  
4 backstop, correct?

5 A. Sir, I said -- you asked me to read this  
6 consortium and federal and treasury backstop. It  
7 doesn't use the word "loan." It doesn't talk about  
8 private sector. So, you know, the consortium and what  
9 it would do, it could be a consortium that provides  
10 equity; it could be a consortium that does anything.  
11 This is very ambiguous, and certainly it's not connected  
12 in any way to this COP report.

13 Q. Sir, do you remember me asking you whether this  
14 reference to a consortium related to a private sector  
15 consortium? Do you remember my asking you that?

16 A. I don't recall exactly the words you used.

17 Q. Okay. Let's try to get your present testimony.  
18 When you refer to a consortium, you are clearly  
19 referring to a private sector consortium, correct, sir?  
20 In these notes, Joint Exhibit 56.

21 A. Probably.

22 Q. And you are referring to a private sector  
23 consortium that would be a possible source of liquidity  
24 support for AIG, correct?

25 A. Possibly.



1 Q. Well, it's more than possibly, sir. Isn't that  
2 what you were referring to?

3 A. So, your words -- your words -- I don't mean to  
4 be difficult with you. You talk about the private  
5 sector consortium loan --

6 Q. No, I didn't say -- no, sir, please, I haven't  
7 said "loan" in these questions, because I'm trying to  
8 find out what your testimony is, okay?

9 A. Yes, sir.

10 Q. I'd ask you to please just listen to my  
11 questions.

12 A. Yes, sir.

13 Q. And when you refer to a consortium -- and I  
14 realize these are just notes, and they aren't meant to  
15 capture every word --

16 A. Right.

17 Q. -- but when you refer to a consortium here,  
18 you're clearly referring to a private sector consortium,  
19 correct?

20 A. Consortium, referring to a grouping of people who  
21 would provide something.

22 Q. Well, that grouping of people were private sector  
23 people, correct?

24 A. That would include private sector people.

25 Q. Well, all the references that you've ever seen to

1 the term "consortium" in respect to AIG in September of  
2 2008 have referred to a private sector consortium,  
3 correct?

4 A. I don't know if all of them did.

5 Q. Can you think of any that didn't?

6 A. I -- I just haven't studied all of them to know.

7 Q. But can you, without having studied them all, can  
8 you think of any based on your experience as a general  
9 counsel with the Federal Reserve Board, the Board of  
10 Governors?

11 A. I -- I just -- it's a categorical statement that  
12 I can't -- I can't answer.

13 Q. Well, I'm not asking you for a categorical  
14 statement. I'm asking you whether you, as you sit here  
15 now, under oath, can tell me of any time the term  
16 "consortium" was used in terms of providing liquidity  
17 support for AIG in September of 2008 that it did not  
18 refer to a private sector consortium.

19 A. I can't recall.

20 Q. But your best testimony and expectation would be  
21 when you wrote "consortium" here, you meant private  
22 sector consortium. Fair?

23 A. That's fair.

24 Q. Now, you then write that this private sector  
25 consortium would have Federal Reserve and Treasury

1 backstops. Do you see that?

2 A. I see that.

3 Q. Okay. Now, when you referred to Federal Reserve  
4 and Treasury backstops for a private sector consortium,  
5 were you talking about a capped guarantee?

6 A. No.

7 Q. What were you talking about? What kind of  
8 backstop?

9 A. It was, as I mentioned earlier, simply a matter  
10 to be explored, an area to be fleshed out.

11 Q. Okay. When you referred to "backstop," what were  
12 you referring to?

13 A. Nothing in particular. Not to be -- not yet  
14 decided. Something that was to be explored that had not  
15 been fleshed out.

16 Q. Let me -- let me put it this way: A capped  
17 guarantee would be a form of Federal Reserve or Treasury  
18 backstop. Fair?

19 A. Theoretically, those two could be.  
20 Theoretically.

21 Q. In other words, I'm not saying that the only kind  
22 of backstop would be a capped guarantee; I am saying  
23 that one form of backstop could be a capped guarantee.

24 A. But you had asked me to testify about whether  
25 that's what I meant. That isn't what I meant, but it

1     could be -- the words "backstop" and "capped guarantee"  
2     could be.

3             Q.   Do you remember what you had in mind when you  
4     wrote this?

5             A.   We didn't have this in detail.  It was something  
6     to be fleshed out and worked through.

7             Q.   What kind of backstops, as you use that term in  
8     this context, can you think of?

9             A.   There could be loans.

10            Q.   There could be loans.  Loans to whom?

11            A.   Loans to AIG, loans to the consortium.  It could  
12     be a variety of things like that.

13            Q.   Does "backstop" -- and I'm just asking how you  
14     used the term -- does "backstop" generally refer to  
15     something where somebody else is providing the initial  
16     funding and the person doing the backstopping, the  
17     standing behind in case there is a default or something  
18     like that?

19            A.   It doesn't have to be because there's a default.  
20     It could be, for example, the consortium or the other  
21     lenders, whoever they may be, could only go to a certain  
22     level, and they needed to fill the remainder of the  
23     liquidity needs for AIG.  So, in that sense, it's a  
24     backstop as well.

25            Q.   Was that ever considered?  That is, what you just

1 said --

2 A. So --

3 Q. -- that you have a private sector consortium and  
4 then the Federal Reserve or Treasury would fill in the  
5 difference?

6 A. So, that is --

7 Q. Was that ever considered for AIG?

8 A. Ah, I -- I don't recall that there ever was a  
9 private sector group that came forward to provide  
10 that --

11 Q. Sir, please answer --

12 A. -- front part, so I think --

13 MR. AUSTIN: Objection, Your Honor. He is  
14 interrupting the witness.

15 THE COURT: We need a clearer answer, though.  
16 He's not answering the question.

17 BY MR. BOIES:

18 Q. Do you understand my question, sir?

19 A. So, if you would rephrase it, that would help me.

20 Q. Insofar as you're aware, was there ever  
21 consideration at the Federal Reserve or the Treasury of  
22 a liquidity solution for AIG that would have included  
23 contributions from a private sector consortium and  
24 contributions from the Federal Reserve or Treasury?

25 A. So, I think this evidence is that we were willing

1 to consider that option.

2 Q. And when -- when you wrote here "consortium," and  
3 we talked about that it's a private sector consortium,  
4 that was a consortium to provide liquidity support for  
5 AIG, correct?

6 A. It could have been capital support.

7 Q. But liquidity support could come in a variety of  
8 forms, correct?

9 A. It could.

10 Q. Liquidity support could come in the form of  
11 equity or it could come in the form of a loan or some  
12 combination, correct?

13 A. It could.

14 Q. But it -- whatever form it came in, when you were  
15 writing about a private sector consortium, that was a  
16 private sector consortium that was an option for  
17 providing liquidity support for AIG, correct?

18 A. That was the option we were to explore.

19 THE COURT: Mr. Boies, maybe this is a good time  
20 for an afternoon break?

21 MR. BOIES: Yes. Thank you, Your Honor.

22 THE COURT: We will reconvene at 3:30.

23 (Court in recess.)

24 THE COURT: Let's proceed.

25 MR. BOIES: Thank you, Your Honor.

1 BY MR. BOIES:

2 Q. Mr. Alvarez, would you look at Joint Exhibit 81.  
3 It's in your binder. These are notes that you took of a  
4 conference call on September 16th, 2008. Is that  
5 correct?

6 A. That's correct.

7 Q. And who were the participants in the conference  
8 call?

9 A. Secretary Paulson; Chairman Ben Bernanke,  
10 Chairman of the Federal Reserve Bank; Vice-Chairman of  
11 the Federal Reserve Bank, Don Kohn; and Kevin Warsh,  
12 who's a member of the Board of Governors.

13 Q. And one of the things you were talking about was  
14 the possibility of seeking legislation. Is that  
15 correct?

16 A. Yes.

17 Q. And we had looked at notes and materials that you  
18 had previously had about the kinds of things that you  
19 might want from legislation. Do you recall that  
20 generally?

21 A. Yes, I do.

22 Q. And you were realizing that there were gaps in  
23 your authority, correct?

24 A. That's right.

25 Q. And so one of the things that you were discussing

1 both on the 15th and now on the 16th is legislation to  
2 fill those gaps, correct?

3 A. That's right.

4 Q. And there is, at the bottom, the initials "HP"  
5 and then a colon. Do you see that?

6 A. I do.

7 Q. And "HP" refers to Henry Paulson, correct?

8 A. That's right.

9 Q. And can you read what that note says?

10 A. "Shouldn't rush up to Hill screaming emergency.  
11 Instead, Hill asks for legislation broadly needed."

12 Q. And the Hill there is the Congress, correct?

13 A. That's right.

14 Q. And this is something that Mr. Paulson said on  
15 this September 16th, 2008, conference call, correct?

16 A. I believe so.

17 Q. And Mr. Paulson was concerned about rushing up to  
18 Congress and trying to get an emergency solution as  
19 opposed to taking more time. Is that fair?

20 A. Or not -- not so much the emergency, the  
21 immediate need, but being a broader-based legislation  
22 rather than just some emergency, short, quick fix.

23 Q. The emergency that you were facing on September  
24 16th related to AIG, correct?

25 A. So, this -- it's partially AIG but also the



1 aftermath of the Lehman failure.

2 Q. But the materials that you're talking about prior  
3 to this discussion of legislation all relate to AIG,  
4 correct?

5 A. That's -- the notes do relate to AIG, prior to  
6 legislation, that's correct.

7 Q. And the discussion of legislation was in the  
8 context of how you deal with AIG, correct, or how you  
9 might deal with AIG?

10 A. No.

11 Q. Well, sir, everything that precedes this  
12 discussion of legislation deals with AIG, correct?

13 A. That's correct.

14 Q. And immediately after this discussion on  
15 legislation, you're clearly talking about AIG, correct?

16 A. Yes, that's correct.

17 Q. In fact, the entire three pages of notes, leaving  
18 aside for the moment the discussion on legislation,  
19 deals with AIG, correct?

20 A. No, sir. I think that's not correct.

21 Q. Okay. What part does not deal with AIG?

22 A. So, the part about legislation was, I think, a  
23 broader --

24 Q. I said leaving aside the discussion of  
25 legislation. What I'm saying to you is you're saying

1 this legislation did not necessarily deal with AIG, and  
2 I'm trying to test that.

3 A. I understand.

4 Q. And one of the things that I'm saying to you is  
5 that everything else in this three pages of notes --

6 A. I understand.

7 Q. -- relates to AIG. Am I right about that?

8 A. That you are.

9 Q. Okay. I want to obviously come back to September  
10 16th, which is a key date here, but for context, I want  
11 to jump now to September 18th, because I want to follow  
12 the thread of a possible legislation.

13 In that connection, I would like to ask you to  
14 look at Plaintiffs' Trial Exhibit 132, which I would  
15 offer.

16 MR. AUSTIN: No objection, Your Honor.

17 THE COURT: Plaintiffs' Trial Exhibit 132 is  
18 admitted.

19 (Plaintiffs' Exhibit Number 132 was admitted into  
20 evidence.)

21 BY MR. BOIES:

22 Q. This is an email that you sent to Tim Geithner on  
23 September 18th, correct?

24 A. That's correct.

25 Q. And this was your proposal for changing the

1 Federal Reserve Act to give the Federal Reserve powers  
2 to fill in the gaps that you've been talking about  
3 before, correct?

4 A. That would be a little strong, not necessarily my  
5 proposal, and it addressed a particular question that  
6 President Geithner had.

7 Q. And what was that particular question?

8 A. Go ahead.

9 Q. I said, and what was that particular question?

10 A. Whether there was a way to change our authority  
11 to allow the Federal Reserve to actually make equity  
12 investments as opposed to simply making loans with -- in  
13 the way we had been making loans up to then.

14 Q. Now, that question from Mr. Geithner, was that  
15 given to you orally or in writing or both?

16 A. I believe we had a short conversation on the  
17 telephone.

18 Q. And this was your response to that telephone  
19 conversation. Is that correct?

20 A. That's right.

21 Q. And one of the proposals that you made is to add  
22 to Section 4 a reference to "all such powers as shall be  
23 necessary to carry on the business of banking." Do you  
24 see that?

25 A. Yes, I see that.

1 Q. And just so that I'm reading this right, when you  
2 get to Section 13(3), am I right that when you strike  
3 through something, that's something you're proposing to  
4 take out of the existing 13(3), and when you write  
5 something that's underscored, that's something that you  
6 were proposing to add to 13(3)?

7 A. That's right.

8 Q. Let me ask you to look next at Plaintiffs' Trial  
9 Exhibit 373, which I would offer.

10 MR. AUSTIN: One moment, Your Honor.

11 THE COURT: Any objection, Mr. Austin?

12 MR. AUSTIN: Yes, Your Honor. We object to this  
13 document.

14 THE COURT: On what grounds?

15 MR. AUSTIN: On the grounds that if it's offered  
16 only as a draft document, then we have no problem with  
17 it. If it's offered as a final document, then we object  
18 to it on authenticity grounds. It depends on what it's  
19 offered for.

20 THE COURT: Mr. Boies?

21 MR. BOIES: Your Honor, I'm certainly offering it  
22 as an authentic document. It doesn't say "draft" on it.  
23 We see a lot of documents here that say "draft," and we  
24 see a lot of documents where, before they're finalized,  
25 the day of the month is not filled in, and none of those

1 things are true here. I don't think there's a valid  
2 objection to this document.

3 THE COURT: I am going to overrule the objection.  
4 I will allow Plaintiffs' Trial Exhibit 373 in evidence.

5 (Plaintiffs' Exhibit Number 373 was admitted into  
6 evidence.)

7 BY MR. BOIES:

8 Q. Mr. Alvarez, there was a discussion at the  
9 Federal Reserve in November of 2008 as to whether the  
10 Federal Reserve Bank of New York could or could not  
11 advance funds for the expenses of the proposed AIG  
12 credit facility trust, correct?

13 A. There were discussions about that point, yes.

14 Q. And the situation was that the trust had expenses  
15 but didn't have any income to pay those expenses,  
16 correct?

17 A. Until dividends were paid, if ever, right.

18 Q. I'm sorry? Say again?

19 A. Unless dividends were paid on the stock, that's  
20 right.

21 Q. But, first, there weren't any dividends, correct?

22 A. True.

23 Q. And second, even if there had been dividends,  
24 they wouldn't have gone to the trust yet, because the  
25 trust wasn't yet formed, correct?

1 A. True.

2 Q. So, the trustees and people who were working on  
3 this had expenses, but there was no way to reimburse  
4 those expenses, correct?

5 A. No way? There -- we did work out a way.

6 Q. But the way you worked it out was to have AIG pay  
7 them, right?

8 A. That's right.

9 Q. But that wasn't provided for in the credit  
10 agreement as it existed on November 17th, 2008, was it?

11 A. Well, I -- I don't think that's correct.

12 Q. Well, if --

13 A. The expenses related to the extension of credit  
14 paid by AIG.

15 Q. If you thought on November 17th, 2008, that AIG  
16 was going to pay the expenses under the credit  
17 agreement, why would you be having this discussion as to  
18 whether the Bank of New York Fed could pay those  
19 expenses?

20 A. I think staff was exploring various options.

21 Q. Is it your testimony that the staff was simply  
22 exploring options about having the New York Fed pay for  
23 the expenses of the trust when, unbeknownst to them, the  
24 credit agreement already provided for AIG to pay those  
25 expenses?

1           A. Sir, I think they were exploring options all  
2 around the time this was being decided. So, I -- I  
3 don't actually know the state of mind of the staff that  
4 drafted this memo.

5           Q. But you do know -- you did know at the time,  
6 because you just testified to it a minute ago, that  
7 there was an examination in November of 2008, at the  
8 Federal Reserve, about whether the New York Fed could or  
9 could not pay the trust expenses, correct?

10          A. Sir, I testified that there were discussions  
11 about the payment of -- of the expenses of the trust.

12          Q. Let me ask you, were there discussions at the  
13 Federal Reserve in November 2008 about whether the  
14 Federal Reserve Bank of New York could advance funds for  
15 the expenses incurred by the proposed AIG credit  
16 facility trust?

17          A. Yes, um-hum. Yes.

18          Q. And were you aware of those discussions in  
19 November of 2008?

20          A. In a general sense.

21          Q. Okay. Now, did you ever go to anybody and say,  
22 "Stop these silly discussions, because it's already  
23 provided for in the credit agreement"?

24          A. I did say at one point, "Stop the discussions,  
25 AIG is paying the expenses."

1 Q. At some point?

2 A. Yeah.

3 Q. When was that?

4 A. In November of 2008.

5 Q. Before or after November 17th?

6 A. I don't recall.

7 Q. And was that because there was a conclusion that  
8 the New York Fed could not pay the expenses?

9 A. Not that I'm aware of.

10 Q. So, the -- as you understood it, the New York Fed  
11 could have paid the expenses but decided that AIG would  
12 pay the expenses.

13 A. No. The issue was resolved by AIG paying the  
14 expenses. So, there was no need to come to ground on  
15 whether the New York Reserve Bank could or could not pay  
16 the expenses.

17 Q. And was this, as you understood it, just an  
18 eleemosynary gesture from AIG to pay these expenses so  
19 you didn't have to wrestle with this difficult legal  
20 question?

21 A. No.

22 Q. Your view was that they were obligated to pay  
23 those expenses?

24 A. So, this was an issue that I was not deeply  
25 involved with. It was being resolved by the New York



1 Reserve Bank, and they were the ones who were  
2 administering the credit agreement and this particular  
3 aspect of it.

4 Q. Let me see if I can close this down. Is it fair  
5 to say that neither then nor now you personally have any  
6 understanding as to who was or was not obligated to pay  
7 these expenses?

8 A. Oh, I know that AIG was obligated to pay the  
9 expenses.

10 Q. When did you learn that?

11 A. Sometime in November.

12 Q. Who told you that?

13 A. Tom Baxter from New York.

14 Q. So, that was based on what Tom Baxter told you?

15 A. Yes.

16 Q. Did you ever see the agreement itself?

17 A. I -- I'm sure I saw the agreement at some point.

18 Q. My question was clumsy.

19 Did you ever look at the agreement with respect  
20 to the issue of who paid the expenses?

21 A. I did not try to resolve the legal issue about  
22 whether AIG was obligated or not obligated to pay the  
23 expenses.

24 Q. You just took what Mr. Baxter told you.

25 A. Yes.

1 Q. Fair enough.

2 Now, let me turn to September 16th and the  
3 Federal Reserve Board action on that date. On the  
4 afternoon of September 16th, 2008, the Federal Reserve  
5 Board of Governors approved a 13(3) loan to AIG,  
6 correct?

7 A. That's correct.

8 Q. And this was an \$85 billion credit facility,  
9 correct?

10 A. That's right.

11 Q. And let me ask you to look at Joint Exhibit 63.  
12 These are the minutes of the Board of Governors meeting  
13 on September 16th, 2008, correct?

14 A. That's correct.

15 Q. And you were present, correct, sir?

16 A. Yes, I was.

17 Q. And the other people listed here as being present  
18 were also present, correct?

19 A. I believe so.

20 Q. And the board members agreed that the disorderly  
21 failure of AIG was likely to have a systemic effect on  
22 financial markets, correct, sir?

23 A. That's correct.

24 Q. And you agreed with that, did you not, sir?

25 A. Yes, I did.

1 Q. And the Board concluded that those financial  
2 markets were already experiencing a significant level of  
3 fragility. Is that correct?

4 A. That's correct.

5 Q. And you agreed with that as well?

6 A. Yes, I did.

7 Q. And the Board concluded that the best alternative  
8 available was to lend to AIG to assist it in meeting its  
9 obligations in an orderly manner as they came due,  
10 correct?

11 A. Yes, sir.

12 Q. And you agreed with that, too, right?

13 A. Yes.

14 Q. Now, if you turn to page 5 of the exhibit, you  
15 see a term sheet, correct, sir?

16 (Pause in the proceedings.)

17 THE COURT: All right, let's go ahead.

18 MR. BOIES: Thank you, Your Honor.

19 BY MR. BOIES:

20 Q. Page 5 is the first page of the term sheet for  
21 the AIG 13(3) credit facility, correct?

22 A. It's a preliminary draft of a summary of terms,  
23 that's right.

24 Q. And this was the only term sheet that the Board  
25 of Governors ever approved, correct, sir?

1           A. The -- the Federal -- this was the term sheet  
2 that was used to inform the Board's decision on the AIG  
3 credit. The Board didn't actually approve a term sheet.

4           Q. Well, the -- if you look at the resolution page,  
5 which is page 4 --

6           A. Yes.

7           Q. -- of this exhibit, the last paragraph, it says,  
8 "The Board approved the recommendation of the Federal  
9 Reserve Bank of New York that the credit to AIG be  
10 extended at the credit rates in the Reserve Bank's  
11 proposed lending facility term sheet." Do you see that?

12          A. At the current rates. Yes, I see that.

13          Q. And when there's a reference to the Reserve  
14 Bank's proposed lending facility term sheet, they're  
15 referring to the term sheet that begins on page 5 of  
16 this exhibit, correct?

17          A. That's correct.

18          Q. And this was the only AIG credit facility term  
19 sheet that the Federal Reserve Board of Governors ever  
20 reviewed, correct, sir?

21          A. That's correct.

22          Q. And if you turn to page 6 of this exhibit, which  
23 is the second page of the term sheet, opposite the  
24 heading "Warrants," do you see that?

25          A. I do.

1 Q. And it talks about how the Federal Reserve would  
2 receive warrants for the purchase of common stock of  
3 AIG, representing 79.9 percent of the common stock of  
4 AIG, on a fully diluted basis. Do you see that?

5 A. I do.

6 Q. And at the time that the Board considered this  
7 credit facility, that was the form that the equity  
8 was -- or the equity participation was described as  
9 taking, correct, sir?

10 A. That was the form described in this term sheet,  
11 that's correct.

12 Q. And that was the only form that was described at  
13 this meeting on September 16th, 2008, of the Federal  
14 Reserve Board of Governors that you attended, correct,  
15 sir?

16 A. Sir, I think that's an over -- a bit of an  
17 overstatement, so I'll say no.

18 Q. So, it is your testimony -- well, first of all,  
19 there isn't any reference in any of these minutes or in  
20 the resolution or in the term sheet or anything that's  
21 attached to reference a form of equity other than  
22 warrants, correct?

23 A. No, sir. That's not correct.

24 Q. That's not correct?

25 A. No.

1 Q. Okay. Where in the minutes is there a reference  
2 to a form of equity other than warrants?

3 A. So, there is a general description in the second  
4 paragraph, the last line of minutes, which says, "The  
5 discussion of terms included collateralizing the loan  
6 with all the assets of AIG, receiving a 79.9 percent  
7 equity interest in AIG" -- it does not say warrants --  
8 "and reserving the right to veto the payment of  
9 dividends for common or preferred shareholders."

10 Q. It doesn't say warrants, but it doesn't say  
11 anything else, does it, sir? It's just a general  
12 statement.

13 A. But you're -- you're --

14 Q. That's a yes or no question.

15 A. It doesn't say warrants, that's correct.

16 Q. And not only does it not say warrants, it doesn't  
17 say anything about what form the equity -- the equity  
18 will take, correct?

19 A. That's correct.

20 Q. Okay. Now, let me ask my question again. Is  
21 there anything in any of these minutes or in the  
22 resolution or the term sheet that refers to a form of  
23 equity other than warrants?

24 A. Well, I would read the general form, equity  
25 interest, to be referring to a number of things beyond

1 the warrants.

2 Q. Let me -- let me see if I can understand what  
3 you're saying. There's a reference to equity --

4 A. Correct.

5 Q. -- without any specification as to what form that  
6 equity will take, correct?

7 A. Um-hum. That's right.

8 Q. Then, in the term sheet, there is a reference to  
9 a specific kind of equity, and that is warrants,  
10 correct?

11 A. That's right.

12 Q. And nowhere else in any of these materials from  
13 this board meeting, not the minutes, not the term sheet,  
14 not the resolution, is there any reference to any other  
15 specific form of equity other than warrants, correct?

16 A. Not to a specific form, that's correct.

17 Q. Okay. So, what you have here is you have a  
18 general reference to equity and a specific reference to  
19 warrants and no specific reference to any other form of  
20 equity, correct?

21 A. That's right.

22 Q. And the reference that you quoted about the  
23 general reference to equity, what page is that on?

24 A. It's on JX 63, page 2. It's the second  
25 paragraph, the last sentence.

1 Q. Where it says --

2 A. "Their discussion of terms" --

3 Q. -- "Their discussion of terms," and those are the  
4 terms of the credit facility, correct, sir?

5 A. That's -- that's correct.

6 Q. Now, their discussion of terms included their  
7 discussion of the term sheet, correct, sir?

8 A. So, that's a little too specific. Their  
9 discussion of terms -- there was no reading of the term  
10 sheet. There was a discussion of the main points, the  
11 main terms that were reflected in the term sheet.

12 Q. And the main terms that were discussed here --

13 A. Yes.

14 Q. -- included the interest rate, correct?

15 A. Yes.

16 Q. Included the amount of the note?

17 A. Correct.

18 Q. The amount of the facility, not note. The amount  
19 of the facility, correct?

20 A. Correct.

21 Q. Did it include a discussion that there would be  
22 warrants?

23 A. It included a discussion that there would be an  
24 equity interest.

25 Q. No, sir. My question was, was there discussion



1 that there would be warrants?

2 A. That was a form of the equity interest, yes.

3 Q. Okay. Now, prior to the meeting that the AIG  
4 board of directors had, starting around 6:00 p.m. on  
5 September 16th, was any term sheet ever given to members  
6 of the board?

7 A. Of AIG?

8 Q. Yes.

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

10 Q. All right, fair enough. And you never asked  
11 anybody that, I take it?

12 A. I don't recall.

13 Q. Do you know what was told to the AIG board  
14 concerning the form that the equity participation would  
15 take?

16 A. I believe that it was told that it would be  
17 equity to be determined.

18 Q. Who told you that, sir?

19 A. I am uncertain as to who told me, but that is my  
20 recollection of the -- of the day of September 16th.  
21 Most likely it was Tom Baxter --

22 Q. You think Tom Baxter told you that a term -- a  
23 description of the terms that was given to the AIG board  
24 was for equity to be determined? That's what you  
25 think --

1           A.  So, AIG -- again, I don't know if it was actually  
2 given to the board of AIG, but --

3           Q.  Well, I'm asking -- that's what I'm asking about.  
4 I'm asking about the board.

5           A.  I don't know what materials the board of AIG  
6 actually saw.

7           Q.  And no one ever told you what was told to the  
8 board about the form of equity.  Is that correct?

9           A.  I -- I have -- I don't recall.

10          Q.  Okay.  Were you present at any AIG board meetings  
11 in September?

12          A.  No, I was not.

13          Q.  Did you get copies of the minutes of any AIG  
14 board meetings in September?

15          A.  Not that I recall.

16          Q.  The -- let me ask you -- let me withdraw that.  
17 Let me start this way.  Let me ask you to look at  
18 PTX 70, which I would offer.  PTX 70, 7-0.

19                 MR. AUSTIN:  No objection, Your Honor.

20                 THE COURT:  Plaintiffs' Trial Exhibit 70 is  
21 admitted.

22                         (Plaintiffs' Exhibit Number 70 was admitted into  
23 evidence.)

24                         BY MR. BOIES:

25          Q.  This is a document that you received in the very

1 early morning of September 16th, 2008, correct, sir?

2 A. Yes.

3 Q. It was sent between midnight and 1:00 a.m. on the  
4 night of the 15th, the morning of the 16th, correct?

5 A. That's right. There was a lot going on then.

6 Q. Yes. And it talks about various possible options  
7 for the New York Fed to extend credit to AIG, correct?

8 A. So, the first page has a core approach. Is that  
9 what you're referring to? Are you on the second page?

10 Q. What I'm referring to is the document.

11 A. So, the first page explains a core approach to  
12 lending to AIG. The second page also has a core  
13 approach, looks to be the same. Then scenario 1 is  
14 described as a de facto conservatorship, and a scenario  
15 2.

16 Q. And you understood that these were options for  
17 the structure of a Federal Reserve credit facility for  
18 AIG, correct?

19 A. It appears to be options in the sense that I was  
20 speaking about before, things to be considered.

21 Q. Now, one of the things to be considered is a core  
22 approach, correct?

23 A. Yes.

24 Q. And under that approach, there is equity  
25 participation in the form of warrants, correct?

1 A. Yes.

2 Q. And another option is what is called scenario 1,  
3 de facto conservatorship, correct, sir?

4 A. That's what it says.

5 Q. And there is also an equity component of that,  
6 correct?

7 A. Yes, that's also what it says.

8 Q. And that is also in the form of warrants,  
9 correct, sir?

10 A. Yes.

11 Q. And then there is a scenario 2, and that also has  
12 an equity component in the form of warrants, correct?

13 A. That's right.

14 Q. And there is no reference in this document under  
15 any of the alternative options to any form of equity  
16 other than warrants, correct, sir?

17 A. Not in this document, that's correct.

18 Q. Now, after there was a Board of Governors meeting  
19 on the 16th and an AIG board of directors meeting on the  
20 16th, AIG filed an 8-K statement, correct?

21 A. I believe that's correct.

22 Q. And in that 8-K statement, AIG reported that the  
23 Federal Reserve credit facility entailed the issuance of  
24 equity in the form of a warrant, correct?

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

1 Q. Did you know at the time?

2 A. I don't know if I knew at the time.

3 Q. Well, let me --

4 A. I have no recollection of the 8-K.

5 Q. I'm sorry? Say again?

6 A. I have no recollection of the 8-K AIG filing.

7 Q. Well, let me ask you to look at Joint Exhibit 96.

8 And if you go to page 2, the third paragraph, do you see  
9 that?

10 A. Yes.

11 Q. It says, "In connection with the revolving credit  
12 facility" -- and that's the Federal Reserve credit  
13 facility, correct, sir?

14 A. The revolving -- yes.

15 Q. "In connection with the revolving Federal Reserve  
16 credit facility, AIG issued a warrant to the Board of  
17 Governors of the Federal Reserve that permits the  
18 Federal Reserve, subject to shareholder approval, to  
19 obtain up to 79.9% of the outstanding common stock of  
20 AIG (after taking into account the exercise of the  
21 warrant). AIG anticipates calling a special meeting for  
22 such purpose as promptly as practicable."

23 Do you see that?

24 A. I see that.

25 Q. Was this consistent with your understanding on

1 September 18, that is, that the form of equity would be  
2 a warrant subject to shareholder approval?

3 A. I -- it is consistent with my recollection that  
4 that was one of the options being considered, but as we  
5 know, AIG did not, in fact, issue a warrant on September  
6 16th, the date of this statement.

7 Q. There isn't any other option discussed in this  
8 8-K, correct, sir?

9 A. I don't know. I've read only these lines that  
10 you've provided.

11 Q. Well, sir, the 8-K is only ten lines long. Why  
12 don't you take a moment and just see if you see any  
13 other reference to this option in this 8-K.

14 The 8-K starts on page 1, page 2, page 3 -- page  
15 3 is just a signature page, and 1 is just a title, and 2  
16 is two, four, six, eight, nine -- ten lines.

17 A. I was also reviewing the attachment. I don't see  
18 a reference to another.

19 Q. Let me ask you to look at Joint Exhibit 103.  
20 These are minutes of the AIG board meeting of September  
21 21, 2008, and I know that you weren't present, according  
22 to your testimony, at this, but I just want to ask you  
23 about a statement that's in here, and it's in the middle  
24 of the page, on page 3, ten lines down from the top,  
25 where it says, "The Board had originally been led to

1 believe that the form of equity participation by the  
2 Treasury Department would be warrants." Do you see  
3 that?

4 A. I see that.

5 Q. Do you have any reason to doubt that that is what  
6 the AIG board had originally been led to believe?

7 A. I -- I have no information on that.

8 Q. Okay. Let me ask you to look at Plaintiffs'  
9 Exhibit 122, which I offer.

10 MR. AUSTIN: No objection, Your Honor.

11 THE COURT: Plaintiffs' Trial Exhibit 122 is  
12 admitted.

13 (Plaintiffs' Exhibit Number 122 was admitted into  
14 evidence.)

15 BY MR. BOIES:

16 Q. This is a document that was distributed in the  
17 afternoon of September 17th, 2008, more specifically  
18 around 4:20 in the afternoon. Is that correct?

19 A. That looks to be correct.

20 Q. And it was distributed to all the members of the  
21 Federal Reserve Board of Governors and the presidents of  
22 the individual Federal Reserve Banks around the country,  
23 correct?

24 A. Yes, that looks to be accurate.

25 Q. And it was also distributed to you, correct, sir?

1 A. Yes.

2 Q. And if you go to page 2, the last sentence, it  
3 says, "The U.S. Government does not 'own' 79 percent of  
4 the company."

5 A. Page 3 of the exhibit?

6 Q. Page 3 of the exhibit, page 2 of the guidance.  
7 It's page 3 of the exhibit. Do you have that, sir?

8 A. I do. Thank you.

9 Q. So, Plaintiffs' Trial Exhibit 122, this guidance  
10 that is being distributed to all of the members of the  
11 Board of Governors and to you and to all the presidents  
12 of the individual Federal Reserve Banks, it says, "The  
13 U.S. Government does not 'own' 79 percent of the  
14 company -- it has warrants, as you know." Do you see  
15 that?

16 A. I see that.

17 Q. Was that consistent with your understanding of  
18 the form of equity as of 4:20 in the afternoon on  
19 September 17th, 2008?

20 A. No.

21 Q. It was not?

22 A. No.

23 Q. Did you write back to Michelle Smith, who sent  
24 this around, and say, "Why are you sending around this  
25 inaccurate information?"



1           A.  So, I believe I had a conversation with her after  
2  this where I pointed out that as in the press release we  
3  had issued, it was an equity form to be determined.

4           Q.  And you didn't do that in writing?

5           A.  No.

6           Q.  Do you have any notes or a record that  
7  substantiates that you had that oral conversation?

8           A.  No.

9           Q.  Following that oral conversation with Michelle  
10  Smith, did she send around an amended or corrected  
11  guidance to these people?

12          A.  I don't know.

13          Q.  Well, did you ever try to find out?

14          A.  I didn't receive one that I know of.

15          Q.  These are the very top people in the Federal  
16  Reserve System, correct?

17          A.  That's right.

18          Q.  In fact, it's all of the top people in the  
19  Federal Reserve System.

20          A.  Absolutely.

21          Q.  And if you thought that they had gotten some  
22  misinformation, as the general counsel of the Board of  
23  Governors of the Federal Reserve, you would certainly  
24  have tried to make sure they got the corrected  
25  information, would you not, sir?

1           A. So, as we discussed earlier, a warrant is a form  
2 of equity. So, it isn't incorrect that that would be  
3 one of the forms to be -- it could be the form to be  
4 determined, but other options could also be considered.

5           Q. But, of course, that's not what this guidance  
6 says, is it, sir?

7           A. It's -- it's -- the concept is still correct.

8           Q. Well, are you saying that the concept --

9           A. The Federal Reserve is not managing the company  
10 on a day-to-day basis.

11          Q. But that's not the portion I'm asking you about,  
12 sir. I'm talking about where it says it has warrants,  
13 as you know.

14          A. I see, yes.

15          Q. You know that's what I'm focusing on, right?

16          A. I appreciate that.

17          Q. And what I'm doing, as you seem reluctant to  
18 agree that the form of equity was agreed to be warrants,  
19 and I am pointing out to you that that's what all the  
20 top people in the Federal Reserve were shown. You  
21 understand what the implication is. Do you?

22          A. I'm not sure I understand the implication of  
23 this.

24          Q. Okay. As the general counsel of the Federal  
25 Reserve Board of Governors, you would not have permitted

1 the very top people in your organization to be given  
2 inaccurate information, would you?

3 A. I don't control all the information that the top  
4 people of the Federal Reserve have access to or get.

5 Q. No, but to the extent that you knew that they  
6 were getting inaccurate information, you would have felt  
7 a responsibility to correct it to them, correct, sir?

8 MR. AUSTIN: Objection, Your Honor. Overbroad.

9 THE WITNESS: If I thought it was material --

10 THE COURT: Overruled.

11 THE WITNESS: If I thought it was material and  
12 affected and was important to be corrected.

13 BY MR. BOIES:

14 Q. Is it fair to say that at the time that you  
15 received this at 4:20 in the afternoon on September  
16 17th, 2008, you understood that people within the  
17 Federal Reserve were being told that the form of equity  
18 that had been agreed to was warrants? Is that fair?

19 A. Ah, that some people were being told that  
20 warrants were the form, that's fair.

21 Q. And those "some people" included --

22 A. Yeah.

23 Q. -- all of the top people in the Federal Reserve  
24 System, all the members of the Board of Governors, and  
25 every president of every Federal Reserve Bank, correct?

1           A.  So, I knew also that the Board of Governors had  
2  been informed --

3           Q.  No.  Can I get you to focus on this question?

4           A.  I am trying to focus on this question, because  
5  the Board of Governors, which is a subset of what you  
6  asked, had information that the equity was a form to be  
7  determined.  So, your question is could I have corrected  
8  the information provided to the Reserve Banks.  Is that  
9  right?

10          Q.  No, that was not my question.

11          A.  Okay.

12          Q.  But why don't you answer that question.

13          A.  So --

14          Q.  That's just a yes or no.

15          A.  So, they were -- the Reserve Bank presidents were  
16  informed -- were given this memo, and it says what it  
17  says.

18          Q.  And it says that the form of equity is warrants,  
19  right?

20          A.  It says that it has warrants, as you know.

21          Q.  Yes.  Now, I want to come back to something that  
22  you just said.  You said the Board of Governors was  
23  informed that the form of equity was to be determined.  
24  Do you remember saying that?

25          A.  Yes.

1 Q. Just a minute ago?

2 A. I did.

3 Q. Okay. Now, let me go back to Joint Exhibit 63,  
4 and I want you to point out where in that exhibit, the  
5 minutes of the Board of Governors meeting on September  
6 16th, 2008, it says that the form of equity is to be  
7 determined.

8 A. It does not use the words "to be determined."

9 Q. But those are the words you used.

10 A. I appreciate that, but I am interpreting two  
11 sentences, one in the minutes, the discussion of terms  
12 include the collateralizing the loan, all the assets of  
13 AIG, receiving a 79.9 percent equity interest in AIG,  
14 not specifically; and then the press release, which was  
15 issued right after the board meeting, where the last  
16 line says, "The U.S. Government will receive a 79.9  
17 percent equity interest in AIG and has the right to veto  
18 the payment of dividends."

19 Q. Now, I had hoped to avoid going through  
20 everything we went through before when we talked about  
21 this document, but let me just try to summarize it and  
22 see if you think it's fair.

23 This document refers generally to equity and  
24 refers specifically to a form of equity that is warrants  
25 but does not refer to any other specific form of equity

1 and does not say that the form of equity is to be  
2 determined. Is that fair?

3 A. It does not say that the form of equity is to be  
4 determined, that's correct.

5 Q. And it also talks generally about equity and  
6 talks specifically about a specific form of equity that  
7 is warrants, correct?

8 A. They talk about a general term with one example,  
9 warrants. That's right.

10 Q. And it does not say that this is one example.  
11 The word "example" does not appear in here. That's just  
12 your word, correct?

13 A. That is my word and my understanding.

14 Q. And that understanding came from Mr. Baxter. Is  
15 that correct?

16 A. That -- that's right.

17 Q. Okay. Now, when did you get that understanding  
18 from Mr. Baxter?

19 A. I don't recall the precise time. Sometime on the  
20 16th of September.

21 Q. Sometime on the 16th of September?

22 A. Yes, sir.

23 Q. So, it is your testimony that when you received  
24 the guidance that was sent to all of the Board of  
25 Governors and all of the presidents of the Federal

1 Reserve Banks on September 17th, you had already been  
2 told by Mr. Baxter that it wasn't certain whether the  
3 form of equity would be warrants; it would -- it was  
4 going to be to be determined. Is that your testimony?

5 A. That's correct.

6 Q. Let me ask you to look at Plaintiffs' Trial  
7 Exhibit 130, which I would offer.

8 MR. AUSTIN: No objection, Your Honor.

9 THE COURT: Plaintiffs' Trial Exhibit 130 is  
10 admitted.

11 (Plaintiffs' Exhibit Number 130 was admitted into  
12 evidence.)

13 BY MR. BOIES:

14 Q. Now, on September 17th, you met with Federal  
15 Reserve Board accounting personnel and economists to  
16 determine how the Federal Reserve would report the AIG  
17 transaction on its financial statements, correct, sir?

18 A. That's right.

19 Q. And when you had that conversation, you were as  
20 honest and complete and forthcoming as you could be,  
21 correct?

22 A. Yes, sir.

23 Q. And what you talked to them about was an equity  
24 interest in the form of a warrant, correct, sir?

25 A. I talked to them about an equity participation

1 note with a warrant as a possible example of that.

2 Q. Well, sir -- and I want to give you an  
3 opportunity here, but is it your testimony here that  
4 when you talked to these people, you told them that a  
5 warrant was just a possibility?

6 A. Yes.

7 Q. Now, they didn't write that down in their notes,  
8 did they, sir?

9 A. Oh, but they did.

10 Q. Oh, they did? Where -- show me the word  
11 "possibility."

12 A. They didn't use "possibility" --

13 Q. Okay, that's my first question.

14 A. -- but it's indicated by the final -- in the  
15 second bullet, the fourth hollow bullet down, "an equity  
16 participation note," with "warrant" in parentheses, so  
17 -- and then --

18 Q. Sir, are you --

19 MR. AUSTIN: Your Honor, he wasn't finished with  
20 his answer. We object.

21 BY MR. BOIES:

22 Q. I'm sorry. You were not finished?

23 A. No, I'm finished.

24 Q. I thought you had finished.

25 Are you reading something into the fact that



1 "warrant" appears in parentheses?

2 A. I'm also recalling --

3 Q. I'm just asking the question. Are you reading  
4 something into that, the fact that the word "warrant"  
5 appears in parentheses?

6 A. Yes.

7 Q. Okay. So, let me ask you to look at the --  
8 how -- the bullet that's the second from the bottom  
9 where it says, "At this point, details on the structure  
10 of the warrant (equity participation) is being worked  
11 out."

12 A. Um-hum.

13 Q. Now, there "warrant" doesn't appear in  
14 parentheses, does it?

15 A. No. "Equity participation" does.

16 Q. Appears in parentheses?

17 A. Correct.

18 Q. Okay. And with respect to both the equity  
19 participation note reference and the warrant, the notes  
20 of what you told these people say that this right can  
21 only be exercised when the note is sold, correct, sir?

22 A. Ah, you're referring to the middle of the page.

23 Q. I'm referring to the very next sentence after the  
24 reference that you directed my attention to.

25 A. Yeah, in the middle of the page after, "equity

1 participation note (warrant) this right can only be  
2 exercised when the note is sold"?

3 Q. Yes.

4 A. Yeah, I see that.

5 Q. And you told them that, did you not, sir?

6 A. I think that this is --

7 Q. Did you tell them that?

8 A. I think that's more definitive than what I told  
9 them.

10 Q. What -- do you recall what you told them?

11 A. I recall talking --

12 Q. Do you recall what you told them?

13 A. Yes.

14 Q. What did you tell them?

15 A. I recall telling them that this was a -- that an  
16 equity participation note was under consideration, that  
17 warrant was a possible form, that warrants generally  
18 were exercised when the note is sold, and we  
19 described -- we discussed generally how this could be  
20 accounted for.

21 Q. Now, your deposition has been taken a couple of  
22 times in this case, correct?

23 A. Yes, it has.

24 Q. Has your recollection of what you said at this  
25 meeting on September 17th, 2008, improved since your

1 deposition was taken?

2 A. I recall a lot about this meeting, yes.

3 Q. And so the -- your recollection has been improved  
4 since your deposition. Is that your testimony?

5 A. I don't know what I said in my deposition.

6 Q. Well, let me show you some of the things you said  
7 in your deposition, because one of the things you just  
8 told me was that you had told them that it was an equity  
9 participation note and it was possible that that would  
10 be in the form of a warrant. That's what you told me,  
11 right?

12 A. Yes.

13 Q. And that's your testimony as to what you told  
14 these people on September 17th.

15 A. That's right.

16 Q. And is it is your testimony here that you  
17 actually remember telling them that it was an equity  
18 participation note and it possibly might take the form  
19 of a warrant?

20 A. Right.

21 Q. So, that's not something that you're just  
22 figuring out or speculating about; you're telling the  
23 Court here, under oath, that you've actually got a  
24 memory of saying that, correct?

25 A. Yes.

1 Q. Okay. And -- well, let me take it a piece at a  
2 time. Let me ask you to look at page 160 of your  
3 deposition that is the first tab. And let me ask you to  
4 look at the question and answer that begins at page 12.

5 MR. AUSTIN: Line 12?

6 MR. BOIES: Line 12. Line 12 of page 160.

7 BY MR. BOIES:

8 Q. And the question:

9 "QUESTION: And on September 17th, did you say to  
10 them," and then your attention is directed to the middle  
11 of the page, "'Under the agreement, the FRBNY receives  
12 the right to 80 percent of the equity interest in AIG  
13 through an 'equity participation note' (warrant). This  
14 right can only be exercised when the note is sold'; is  
15 that something that you told them at the time?

16 "ANSWER: I probably did tell them that there was  
17 an equity participation arrangement."

18 You didn't say anything there about having a firm  
19 memory of it; you didn't say anything about you telling  
20 them it possible was a warrant, correct, sir?

21 MR. AUSTIN: Objection, Your Honor. That's  
22 entirely consistent with his testimony. It's an  
23 improper use of the deposition.

24 THE COURT: I'll allow it.

25 THE WITNESS: Could you ask the question again?

1 BY MR. BOIES:

2 Q. Sure.

3 When you answered the question in the deposition,  
4 when you said "I probably did tell them that there was  
5 an equity participation arrangement," you will agree  
6 with me that a reference to "probably tell them" is a  
7 little bit less strong than what you were testifying to  
8 this morning or this afternoon. You agree with that.

9 A. I agree with that.

10 Q. Okay. And then the next question:

11 "QUESTION: And did you tell them that the  
12 warrant right could only be exercised when the note is  
13 sold?

14 "ANSWER: So I'm not sure if I used the word  
15 warrant, and I don't know how much detail I got into  
16 about the exercise. This suggests that I said that it  
17 could only be exercised when sold."

18 MR. AUSTIN: Again, same objection, Your Honor.  
19 It's improper use of the deposition. It's entirely  
20 consistent with his testimony.

21 THE COURT: Overruled.

22 BY MR. BOIES:

23 Q. And that was your testimony at the -- at your  
24 deposition, correct, sir?

25 A. That was my testimony at the deposition.

1 Q. Now, is it fair to say that since your  
2 deposition, your memory of what was said at this meeting  
3 has been enhanced?

4 A. It has -- it has gotten clearer.

5 Q. Okay. And it has gotten clearer in ways that are  
6 not reflected in the contemporaneous notes that are  
7 represented by Plaintiffs' Trial Exhibit 130, correct?

8 A. No, I don't think that's --

9 Q. That is, you are now coming forth with memories  
10 that you could not have gotten simply from reading these  
11 notes.

12 A. No, that's not correct.

13 Q. Okay. So, is it your testimony that everything  
14 that you remember now about this conversation is  
15 contained in these notes?

16 A. No. I just provided you some insight into what I  
17 think the notes meant. So, to that degree, there is an  
18 enhancement of the notes.

19 Q. Let me ask the question this way: Did you  
20 enhance your memory of what was said at the September  
21 17th, 2008, meeting by doing anything other than reading  
22 these notes?

23 A. And thinking about what I said and trying to  
24 remember what I said.

25 Q. Did you have any conversations with anybody --

1           A.  No, I did not.

2           Q.  So, you had no -- it's your testimony that in  
3   between your deposition and this testimony, you have not  
4   had any conversations with anybody about this September  
5   17th meeting.  Is that your testimony?

6           MR. AUSTIN:  Your Honor, I would just ask -- I'm  
7   sure Mr. Boies doesn't intend this, but that he's not  
8   asking for any revelation of attorney-client  
9   information.

10          MR. BOIES:  I am explicitly asking for revelation  
11   of attorney-client conversation if it occurred.  All  
12   I've asked so far is not the substance of it, but I'm  
13   asking whether it occurred, and I am explicitly asking  
14   to include that.

15          THE COURT:  Go ahead.

16          THE WITNESS:  Could you reask -- could you  
17   rephrase the question?

18          BY MR. BOIES:

19          Q.  Sure.

20          Between your deposition and today, have you had  
21   any conversations with anyone about this September 17th  
22   meeting or what you said at that meeting or these notes?

23          MR. AUSTIN:  Objection, Your Honor.  
24   Attorney-client privilege.

25          THE COURT:  Overruled.

1           THE WITNESS: I did not speak with any of the  
2 participants in the meeting. I remembered having --  
3 after having read the notes again and read other emails  
4 from the accountants, and it is a matter that I've been  
5 thinking very much about. So, my memory, as I thought  
6 it through and remembered it -- and I don't recall if I  
7 had seen this at the time of the deposition, these notes  
8 before the deposition -- but I did review those  
9 documents after the deposition and thought about it a  
10 lot, and that helped to improve my memory.

11           BY MR. BOIES:

12           Q. Do you remember my question?

13           A. No.

14           Q. Okay. My question was whether, in between your  
15 deposition and your testimony today, have you spoken to  
16 anyone concerning the September 17th, 2008, meeting or  
17 what you said there or the notes that are represented by  
18 Plaintiffs' Trial Exhibit 130?

19           MR. AUSTIN: Same objection, Your Honor.

20           THE COURT: Overruled.

21           THE WITNESS: So, I did, as part of -- I did have  
22 discussions with counsel as part of preparation for the  
23 questions I would be asked. We did talk about that  
24 document.

25           BY MR. BOIES:



1 Q. Plaintiffs' Trial Exhibit 130?

2 A. Yes.

3 Q. Okay. And what did you say to them and what did  
4 they say to you?

5 And wait to answer, because there is going to be  
6 an objection that the Judge is going to have to rule on,  
7 but I need to ask that question for the record under the  
8 circumstances.

9 MR. AUSTIN: Your Honor, I object on the grounds  
10 of attorney-client privilege. This is clearly  
11 privileged information. It's our client talking to his  
12 lawyers about the situation.

13 THE COURT: Let me hear from Mr. Boies.

14 MR. BOIES: Your Honor, there was no request for  
15 legal advice here. This is a situation in which the  
16 witness' memory has been enhanced since his deposition.  
17 He's had conversations with counsel about this specific  
18 document.

19 I am not asking for any legal advice. I am not  
20 asking for any information he conveyed in confidence to  
21 get legal advice. Those are the two things that are  
22 protected, the giving of legal advice and the  
23 transmission of confidential information to get legal  
24 advice. Neither one of those two things are involved  
25 here.

1 I'm trying to probe what was said that caused him  
2 to focus on this issue and to come up with words like  
3 "possibly" and a certain memory of what he said that's  
4 not reflected in the notes and was not reflected in the  
5 deposition.

6 THE COURT: Mr. Austin?

7 MR. AUSTIN: Your Honor, this is classic  
8 attorney-client privilege.

9 THE COURT: No, it isn't. It's not classic. I  
10 think Mr. Boies is correct, that there's no request or  
11 giving of legal advice here. We're just talking about  
12 the manner in which the witness' recollection may have  
13 been refreshed. So, I'm not sure that the  
14 attorney-client privilege would extend to cover that.

15 MR. AUSTIN: Your Honor, the meeting that we're  
16 having with the witness is to prepare testimony.

17 THE COURT: So what?

18 MR. AUSTIN: It's also the work product doctrine,  
19 Your Honor. I mean, the whole meeting is to prepare for  
20 his testimony, his trial testimony, and what goes on  
21 between the lawyers and the witness during a  
22 conversation like that is privileged information.

23 THE COURT: Well, if this witness' recollection  
24 was refreshed through discussions with counsel, I think  
25 we need to know that.

1 MR. AUSTIN: Respectfully, we object, Your Honor,  
2 but I understand your ruling.

3 THE COURT: All right. You can answer the  
4 question.

5 BY MR. BOIES:

6 Q. What did your counsel tell you about this  
7 document?

8 A. They didn't tell me anything.

9 MR. AUSTIN: Objection again, Your Honor, just  
10 for the record.

11 BY MR. BOIES:

12 Q. They didn't tell you anything?

13 A. They didn't tell me about the document in the  
14 sense of what were -- what was in it or what the facts  
15 were.

16 Q. Let me ask -- clarify the question.

17 What did your counsel tell you about this  
18 document or about this meeting? What did they say to  
19 you?

20 MR. AUSTIN: Objection, Your Honor. Work product  
21 privilege and attorney-client privilege. This is  
22 classic privileged information.

23 THE COURT: No, I don't think it is. We're  
24 talking about how this witness came to his testimony  
25 today through refreshment.

1           MR. AUSTIN: Well, if he comes to it from a way  
2 other than attorney-client meetings or with any  
3 connection to what was discussed, that's protected  
4 information.

5           THE COURT: Overruled.

6           BY MR. BOIES:

7           Q. I'm asking you what the attorneys -- first of  
8 all, what attorneys did you meet with that you had  
9 discussions related to this document or this meeting?

10          A. So, the various counsel for the Government.

11          Q. Could you identify them, please.

12          A. So, the -- I want to be clear -- can I -- I want  
13 to be clear about the question you're asking.

14          Q. I'm asking -- I'll tell you the question if  
15 you --

16          A. Yes, that would help.

17          Q. If you are not clear about the question, then  
18 please ask.

19          A. Yes, please.

20          Q. What I'm asking you is you've said that you had  
21 discussions with counsel concerning these notes and this  
22 meeting, and what I am asking you is what counsel you  
23 had those discussions with first. That's the first  
24 question.

25          A. All right. So, I was queried about this document

1 by counsel -- by various counsel for the Department of  
2 Justice, Scott Austin and Vince Phillips. Kit Wheatley  
3 was also present. Others may have been present at  
4 various times.

5 Q. And was this in one meeting or more than one  
6 meeting?

7 A. So, I had a couple of meetings where I've been  
8 asked questions about that document.

9 THE COURT: Just to be clear, Mr. Alvarez, in  
10 answering this line of questions, I don't want you to  
11 tell me about any legal advice that you may have  
12 requested of counsel or any legal counsel that they may  
13 have conveyed to you, but if there was anything that  
14 they said to you that caused you to enhance your  
15 recollection of this meeting that Mr. Boies is asking  
16 about, that's what we want you to tell us.

17 THE WITNESS: I see. So, Your Honor, there was  
18 nothing that I got from counsel that -- any information  
19 from them that enhanced my recollection. It was the  
20 fact that this document might be one that I'd be  
21 questioned on, and so I thought about the document, I  
22 read the document carefully, thought about the meetings,  
23 and that is what enhanced my recollection. It was not  
24 information in any way that I got from counsel.

25 THE COURT: Well, Mr. Boies may have some

1 additional questions, so please keep those guidelines in  
2 mind as you answer them.

3 THE WITNESS: Thank you.

4 BY MR. BOIES:

5 Q. Now, you said there were a couple of meetings in  
6 which you were asked questions about this document?

7 A. Yes.

8 Q. Where did those meetings take place?

9 A. At the Federal Reserve Board.

10 Q. And when did those meetings take place?

11 A. In the last week.

12 Q. Were the meetings on different days?

13 A. Yes.

14 Q. What days were the meetings on?

15 A. I don't know precisely which day this document  
16 may have been.

17 Q. Now, when they asked you questions, were they  
18 going through and asking you questions, you know, to  
19 give you a sense of how I might be asking questions?

20 A. Yes.

21 MR. AUSTIN: Objection, Your Honor.

22 Attorney-client privilege and work product privilege.

23 THE COURT: I am going to sustain that objection.  
24 I think we are getting pretty close to legal advice  
25 there.

1 MR. BOIES: Okay, Your Honor. I'll move on.

2 THE COURT: Okay.

3 MR. BOIES: Let me -- let me turn to Plaintiffs'  
4 Trial Exhibit 148, which I would offer.

5 THE WITNESS: PTX 148?

6 MR. BOIES: PTX 148.

7 MR. AUSTIN: No objection, Your Honor.

8 THE COURT: All right. Plaintiffs' Trial Exhibit  
9 148 is admitted.

10 (Plaintiffs' Exhibit Number 148 was admitted into  
11 evidence.)

12 BY MR. BOIES:

13 Q. These are notes that you took of a September 18,  
14 2008, conference call among lawyers, correct, sir?

15 A. Yes, that's right.

16 Q. And the lawyers are indicated or at least some of  
17 the lawyers, because there's an et al., are listed in  
18 the left-hand margin, correct?

19 A. Yes.

20 Q. And Tom Baxter participated, correct?

21 A. That's correct.

22 Q. And he had some people with him from the New York  
23 Fed, correct?

24 A. Yes.

25 Q. And three lawyers participated from Treasury?

- 1           A. That's right.
- 2           Q. And would you identify them.
- 3           A. Laurie Schaffer, Steve Albrecht, and John Nepper.
- 4           Q. And three of the lawyers were also participating  
5 from Davis Polk. Is that correct?
- 6           A. That's right.
- 7           Q. Would you identify those.
- 8           A. Ethan James, Randy Gwynn, and Marshall Huebner.
- 9           Q. Now, this was two days after you told me that  
10 Mr. Baxter had told you that the form of equity was to  
11 be determined, correct?
- 12          A. That's right.
- 13          Q. Now, let me start at the -- near the top of the  
14 first page, where Ethan says, "May be issues with  
15 warrants at AIG." Do you see that?
- 16          A. I see that.
- 17          Q. Now, there's no reference there to anybody  
18 saying, "No, it's not necessarily warrants; that's just  
19 a possibility. The equity is really a form to be  
20 determined." Right? Nobody -- you didn't write that  
21 down.
- 22          A. No. That's right.
- 23          Q. And that's because nobody said that, right, sir?
- 24          A. I'm sorry. Could you rephrase that question?
- 25          Q. Yes. Nobody said that.



1 A. Said what?

2 Q. Said that warrants were just a possibility and  
3 the form of equity was to be determined.

4 A. Well, the very next line provides another form of  
5 the equity that was in consideration, convertible  
6 preferred shares.

7 Q. Actually, that is not the next line. The next  
8 line says, "May need shareholder approval." Do you see  
9 that?

10 A. I do.

11 Q. And then it says, as the line says, "convertible  
12 preferred shares." Is that right?

13 A. That's true.

14 Q. And what was being suggested is because warrants  
15 might need shareholder approval, the form of equity  
16 should be convertible preferred shares instead, correct?

17 A. So, that was an option to be considered,  
18 that's --

19 Q. No, no, no, sir. That's what Mr. Ethan was  
20 saying. Mr. Ethan -- Ethan James was saying that there  
21 may be issues with warrants because they may need  
22 shareholder approval, and, therefore, people ought to  
23 consider convertible preferred shares.

24 A. Ought to consider.

25 Q. Correct?

1 A. Consider, yes.

2 Q. Consider convertible preferred shares.

3 A. Right.

4 Q. Okay. Now, down at the bottom, Marshall Huebner  
5 says, "Does the Federal Reserve care who gets the  
6 benefit of warrant? Fed or Treasury?" Do you see that?

7 A. I see that.

8 Q. And, again, what Mr. Marshall Huebner is talking  
9 about is warrants, correct, sir?

10 A. On that line, that's what it says.

11 Q. And then if you go to the next page, at the very  
12 top, it says, "Does Federal Reserve expect warrants to  
13 have voting rights now?" And that, again, was a  
14 question from Mr. Marshall Huebner, correct?

15 A. Yes.

16 Q. And what he's asking is whether the Federal  
17 Reserve expected that the warrants would have voting  
18 rights prior to exercise, correct?

19 A. That appears to be what he's asking.

20 Q. And then there are, on page 2, two numbered  
21 points, and the first numbered point, again, is Davis  
22 Polk, with a colon. Do you see that?

23 A. I see that.

24 Q. And are both of these points points that were  
25 made by Davis Polk lawyers?

1 A. Yes.

2 Q. And one of them, one of those points is that  
3 there should be consideration of voting preferred. Is  
4 that correct?

5 A. That's right.

6 Q. And another one of the points was that the  
7 warrants require shareholder approval, correct, sir?

8 A. In number 2, yes.

9 Q. Yes.

10 A. Yes.

11 Q. Now, if you look up a little bit above the top --  
12 a little bit above the middle of the page, there's a  
13 reference to the Government Corporate Control Act.

14 A. Are we still on page 2, sir?

15 Q. Yes.

16 A. Yes, I see that.

17 Q. The Government Corporate Control Act.

18 A. Yes.

19 Q. What was that Act?

20 A. This -- these are matters being raised by the  
21 Treasury attorneys. I don't know the details of the  
22 Government Corporation Control Act.

23 Q. Did you understand at the time that the  
24 Government Corporate Control Act limited what Treasury  
25 could do with respect to owning and controlling private

1 corporations?

2 A. I -- I only knew that it was an issue that the  
3 Treasury Department was looking into and that it had  
4 consulted -- as the notes say, it had consulted or was  
5 in the process of consulting the Office of Legal  
6 Counsel.

7 Q. But other than that, you have no information  
8 about it?

9 A. That's right.

10 Q. Okay. Let me go on next to Plaintiffs' Trial  
11 Exhibit 159.

12 THE COURT: Mr. Boies, I'm wondering if this is a  
13 good place to break for today.

14 MR. BOIES: It is, Your Honor.

15 MR. DINTZER: Your Honor, one brief housekeeping  
16 question?

17 THE COURT: Yes?

18 MR. DINTZER: Briefly, Your Honor, we understand  
19 615, and the Court has issued the 615 request to not  
20 show any information to the witnesses. There is an  
21 ambiguity we want to make sure we understand.  
22 Apparently there is some case law about whether  
23 witnesses can read newspaper articles, and given the  
24 fact that the press has been here. So, it's our  
25 understanding that it requires an express statement in

1 the order for the witnesses not to be able to read  
2 basically their morning paper, and we just wanted to  
3 make sure that that wasn't the Court's intent so that we  
4 don't accidentally run afoul.

5 THE COURT: What's your pleasure? Do you have  
6 any objection to reading newspapers?

7 MR. BOIES: Can I just have a moment, Your Honor?

8 THE COURT: Sure.

9 (Counsel conferring.)

10 MR. BOIES: Your Honor, we've decided that we  
11 don't want to get on the wrong side of the media, so we  
12 are going to let them read the papers.

13 THE COURT: It's very difficult to control  
14 anyway, I would think, so...

15 MR. DINTZER: We appreciate that, Your Honor.

16 THE COURT: All right.

17 MR. BOIES: Thank you, Your Honor.

18 THE COURT: Tomorrow morning at 9:30.

19 (Whereupon, at 4:56 p.m., the proceedings were  
20 adjourned.)

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CERTIFICATE OF TRANSCRIBER

I, Susanne Bergling, court-approved transcriber,  
certify that the foregoing is a correct transcription  
from the official digital sound recording of the  
proceedings in the above-titled matter.

DATED: 9/30/2014

s/Susanne Bergling

SUSANNE BERGLING, RMR-CRR-CLR

1			ADMITTED EXHIBITS
2	PX	PAGE	DESCRIPTION
3	65	158	Alvarez Handwritten notes (9/15/2008) re: Conf Call AIG
4	70	194	Email (9/16/2008 12:47 am) From: Robert Hoyt To: Dan Jester, Jeremiah Norton, Neel Kashkari, David McCormick, Tony Ryan, Scott Alvarez, Timothy Geithner re: Fw: Use of existing Authority
5			Attaching Use of existing Authority doc
6	96	140	UCC Financing Statement filed by FRBNY with Delaware Department of State providing notice that all of AIG's personal property was collateral for AIG's debt to FRBNY
7			Email (9/17/2008 4:20 pm) From: Michelle Smith To: Eric Rosengren, Charles Plosser, Jeffrey Lacker, Thomas Hoenig, James Bullard, Richard Fisher, Sandra Pinalto, Janet Yellen, Gary, Stern, Dennis Lockhart, Brian Madigan, Scott Alvarez, Donald Kohn, Randall Kroszner, Elizabeth Duke, Kevin Warsh re: Guidance on AIG Announcement . . . Attaching document with heading "Guidance"
8	122	199	Notes on Meeting with Scott Alvarez (September 17, 2008)
9	130	207	Email (9/18/2008) From: Scott Alvarez To: Timothy Geithner re: Simple legislation. And Attached: Simple legislative changes to improve emergency powers (Changes to existing law are highlighted) - redline
10	132	178	Alvarez Handwritten notes (9/18/2008) re: Lawyers Conf Call
11	148	223	Email (9/20/2008 10:18 am) From: Michael Silva To: Sandy Krieger, cc: William Dudley, William Rutledge, Terrence Checki re: Busy
12	174	122	Email (9/20/2008 10:25 am) From: Michael Silva To: Christine Cumming re: Update
13	175	122	Memo (11/17/2008) From: Richard Ashton, Steven Meyer To: Scott Alvarez re: AIG Credit Facility Trust -- Payment or Advance of Trust Expenses
14	373	181	COP June Oversight Report (6/10/2010) Appendix XI: Primary Dealer Credit Facility and Credit Extensions for Affiliates of Primary Dealers
15	589	164	The Financial Crisis: A Timeline of Events and Policy Actions (from Federal Reserve Bank of St. Louis)
16	638	115	
17	693	126	
18			
19			
20			
21			
22			
23			
24			
25			

1			"Historical Discount Rates" (Primary and Secondary Credit Spreadsheet)
2			
3	JX	PAGE	DESCRIPTION
4	1	78	ISDA Master Agreement between AIG-FP and Goldman Sachs
5	2	78	Minutes of the November 15, 2006 Meeting of Directors of AIG Financial Products Corp.
6	3	78	Minutes of Meeting of the AIG Finance Committee (October 10, 2007)
7	4	78	American International Group, Inc. Credit Risk Committee Minutes - Tuesday, October 23, 2007
8	5	78	Minutes of Meeting of the Finance Committee of AIG Held December 13, 2007
9	6	78	2008.01.17 AIG 8-K
10	7	78	2008.02.11 AIG 8-K
11	8	78	2008.02.21 AIG 8-K
12	9	78	2008.02.29 AIG 8-K
13	10	78	Geithner Talk Sheet for March 3 - September 30, 2008
14	11	78	AIG Board of Directors Minutes 3/12/2008
15	12	78	2008.03.17 AIG 8-K
16	13	78	Memo (4/2/2008) From: Scott Alvarez, Rich Ashton, Mark Van Der Weide, H. Allison
17			To: Board of Governors re: The authority of the Federal Reserve to provide an extension of credit in connection with the acquisition by JPMorgan Chase of Bear Stearns
18	14	78	AIG SEC Proxy Filing for 2008 - Notice of Annual Meeting of Shareholders to be Held May 14, 2008 (April 4, 2008)
19	15	78	Minutes of Meeting of the Finance Committee of AIG Held April 17, 2008
20	16	78	AIG Board of Directors Minutes 5/5/2008
21	17	78	AIG Board of Directors Minutes 5/6/2008
22	18	78	AIG Board of Directors Minutes 5/8/2008
23	19	78	2008.05.08 AIG 8-K re AIG Reports First Quarter 2008 Results
24	20	78	2008.05.08 AIG 8-K re Employment Agreement Amendment
25	21	78	AIG Form 10-Q for 1Q 2008
	22	78	2008.05.12 AIG 8-K
	23	78	AIG Board of Directors Minutes 5/14/2008
	24	78	AIG 2008 424B Filing dated May 14, 2008 (to Prospectus dated July 13, 2007)
	25	78	2008.05.16 AIG 8-K
	26	78	2008.05.20 AIG 8-K
	27	78	2008.05.22 AIG 8-K



1	29	78	Minutes of the 2008 Annual Meeting of Directors of AIG Financial Products Corp. (June 11, 2008)
2			
	30	78	AIG Board of Directors Minutes 6/15/2008
3	31	78	2008.06.16 AIG 8-K
	32	78	AIG Board of Directors Minutes 6/30/2008
4	33	78	2008.07.01 AIG 8-K
	34	78	Schedule for Timothy Geithner - July 8, 2008
5	35	78	AIG Board of Directors Minutes 7/16/2008
	36	78	2008.07.17 AIG 8-K
6	37	78	2008.07.18 AIG 8-K
	38	78	2008.07.22 AIG 8-K
7	39	78	Schedule for Timothy Geithner - July 29, 2008
	40	78	2008.08.06 AIG 8-K
8	41	78	AIG 10-Q for 2Q 2008
	42	78	Email (8/31/2008 11:49 am) From: Aaron Katzel
9			To: Alan Pryor, Elias Habayeb, Jeff Swiatek, Jens Berding, Anastasia Kelly, Patricia Skigen, H. Rodgin Cohen, Michael Wiseman, Robert Risoleo, Sanoke Viswanathan, Anthony Santomero, Liou Cao re: Revised Project Green talking points Attaching 20080829 Primary dealer - talking points
10			
11			
12			
	43	78	AIG Board of Directors Minutes 9/5/2008
13	44	78	Email (9/9/2008 1:14 am) From: Nugzari Jakobishvili To: Brian Schrieber, cc: Kevin McGinn, Alan Pryor, Elias Habayeb, Alan Frost, Adam Budnick, Eduardo Diaz-Perez, Tom Fewings, Charles Hallac, Craig Phillips, Mark Paltrowitz, Roland Villacorta, Mark Wiedman, Andrew Krull, Martin Jajow re: Updated Super Senior CDS portfolio analysis Attaching: Presentation on Review of Cash Flow Projections for AIG-FP Super Senior CDS Portfolio (September 9, 2008)
14			
15			
16			
17			
18			
	45	78	Schedule for Timothy Geithner - September 9, 2008
19			
	46	78	Email (9/13/2008 2:52 pm) From: Donald Kohn To: Scott Alvarez, cc: Brian Madigan re: Re: Fw: Material - As per Alex LaTorre
20			
21	47	78	Email (9/14/2008 9:31 am) From: Adam Ashcraft To: Jamie McAndrews; cc: Alejandro LaTorre, Arthur Angulo, Beverly Hirtle, Brian Peters, Catherine Voigts, Chris Burke, Hayley Boesky, Jim Mahoney, Meg McConnell, Patricia Mosser, Simon Potter, Til Schuermann, Tobias Adrian, Warren Hrung re: Re: AIG and the discount window
22			
23			
24			
25	48	78	Cover email (9/14/08 2:10 pm) From: Alejandro

1 Brian Peters, Christine Cumming, Christopher  
2 Calabia, Elise Liebers, Hayley Boesky, Jim  
3 Mahoney, Patricia Mosser, Paul Whynott,  
4 Richard Charlton, Tobias Adrian, William  
5 Walsh, Catherine Voigts, Spence Hilton, cc:  
6 Bettyann Griffith, Daniel Boulos, Meg  
7 McConnell, Millie Martinez, Sandy Krieger,  
8 Susan McLaughlin re: Pros and Cons on AIG  
9 Lending Attachment: Pros and Cons of Lending  
10 to AIG  
11 49 78 Email (9/14/2008 6:47 pm) From: Deborah Bailey  
12 To: Ben Bernanke, Donald Kohn, Randall  
13 Kroszner, Elizabeth Duke, Kevin Warsh, Brian  
14 Madigan, Scott Alvarez, cc: Roger Cole re: Fw:  
15 AIG update  
16 50 78 Federal Reserve Board of Governors Press  
17 Release (September 14, 2008)  
18 51 78 Email (9/14/2008 10:55 pm) From: Milton  
19 Berlinski To: Jon Winkelried, Rich Friedman,  
20 Andy Chisholm, David Solomon, Gary Cohn, Lloyd  
21 Blankfein, Chris Cole; Bcc: Jon Winkelried,  
22 Rich Friedman, Andy Chisholm, David Solomon,  
23 Gary Cohn, Lloyd Blankfein, Chris Cole re: Re:  
24 Board meeting concluded  
25 52 78 Thomas Baxter Handwritten Notes  
53 78 Email (9/15/2008) From: John Studzinski  
To: Michele Cooper, cc: Brian Schreiber  
re: AIA  
54 78 Email (9/15/2008) From: Campbell Cole  
To: James Narron, Michael Silva, Michael Held,  
Gregory Farmer, Lola Judge, Richard Prisco,  
cc: Rose Carofalo, Bettyann Griffith, Hortense  
Hope re: Visitors List from this morning  
Attaching FRBNY Visitors List from Sept. 15 -  
am  
55 78 Federal Reserve Bank of New York Visitors  
List: September 15, 2008 7:05 pm  
56 78 Alvarez Handwritten notes (9/15/2008) re: Conf  
Call  
57 78 Bernanke schedule from September 15, 2008 to  
September 30, 2010  
58 78 Email (9/16/2008 6:50 am) From: Campbell Cole  
To: James Narron, Michael Silva, Michael Held,  
Gregory Farmer, Lola Judge, Richard Prisco,  
Charles Duffy, cc: Rose Carofalo, Bettyann  
Griffith, Hortense Hope re: Visitors List for  
9-16-08 6:30 am Attaching Visitors List  
59 78 Federal Reserve Bank of New York Visitors  
List: September 16, 2008 7:00 am

1 Dahlgren To: Brian Peters re: Re: Fw: The  
 Documents From Tonight/Well This Morning  
 2 Attachments: Exposure to AIG\_16 Sept  
 09\_final.doc, AIG Impact Analysis 9-16.xls  
 3 61 78 Email (9/16/2008 9:58 am) From: Kevin Warsh  
 To: Dan Jester re: Re: In fomc mtg  
 4 62 78 Email (9/16/2006 10:39 am) From: Patricia  
 Mosser To: Jeanmarie Davis, Michael Nelson  
 5 re: Fw: FX Settlement Failures  
 6 63 78 Minutes of the Board of Governors of the  
 Federal Reserve System (9/16/2008 12:30 pm)  
 7 64 78 Email (9/16/2008 2:15 pm) From: Thomas Baxter  
 To: Scott Alvarez, Rich Ashton re: Fw: Revised  
 AIG Term Sheet  
 8 65 78 Email (9/16/2008 2:32 pm) From: James Lee  
 To: Marshall Huebner re: Fw: Term Sheet  
 9 Attaching Slides  
 10 66 78 Email (9/16/2008 2:47 pm) From: Christal West  
 To: David McCormick, Sonja Renander re:  
 Steinbrueck  
 11 67 78 Email (9/16/2008 3:01 pm) From:  
 Rbz@worldbank.org To: David McCormick, Jim  
 12 Wilkinson, Taiya Smith, cc: Caroline Anstey  
 re: PM Rudd of Australia  
 13 68 78 Cover email (9/16/08 3:14 pm) From: Julie  
 Dolan To: Dianne Dobbeck, cc: Alejandro  
 14 LaTorre re: Fw: <Documents Requested>  
 Attachments: Proposal to Reinsure Stable Value  
 15 Fund Business for AIG.doc, Systemic Issues in  
 AIG failure.doc, Systemic Impact of AIG  
 16 Bankruptcy.DOC, Pros and Cons of Lending to  
 AIG.doc, Retail nature.doc,  
 17 LEGALDOCS-#283317-v3-One\_Pager\_re\_AIG\_  
 Bankruptcy\_Considerations.DOC, AIG Summary 16  
 18 September 2008.doc  
 19 69 78 Email (9/16/2008) From: Martin Alderson Smith  
 To: Antony Leung, cc: John Studzinski re: Re:  
 20 70 78 CONFIDENTIAL: Phone call from Chairman Lou  
 Email (9/16/2008 3:26 pm) From: Christal West  
 To: David McCormick, Sonja Renander re:  
 21 Largarde  
 22 71 78 Email (9/16/2008 3:28 pm) From: Jeremiah  
 Norton To: E. D. Herlihy re: Fw: Term Sheet  
 Attaching Draft Term Sheet  
 23 72 78 Email (9/16/2008 3:34 pm) From: Larry Nath  
 To: John Studzinski re: Re: Spoke to Fed  
 24 73 78 Email (9/16/2008 3:35 pm) From: Dianne Dobbeck  
 To: Ny banksup bsg senior mgmt team, Steven  
 25 Mirsky, Bard Stermasi, Catherine Voigts, Paul

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1			Tier 1 impact Attaching AIG Impact Analysis
	74	78	AIG Board of Directors Minutes 9/16/2008
2	75	78	Minutes of Meeting of the Audit Committee of
			American International Group, Inc.: Held
3			September 16, 2008
	76	78	Email (9/16/2008) From: Erik Lindauer
4			To: Marshall Huebner, Bradley Smith, Brian
			Resnick, Michael Wiseman, Elizabeth Roff, Mark
5			Welshimer re: RE: Northstar: Heads of
			Agreement
6	77	78	Federal Reserve Bank Visitors List: September
			16, 2008: 7:00 PM
7	78	78	Email (9/16/2008) From: Tagar Olson To: Deryck
			Maughan, George Roberts, cc: Henry Kravis, KKR
8			Investment Committee, Global KKR FIG Team re:
			AIG
9	79	78	Email (9/16/2008 10:23 pm) From: AIG News
			Release re: AIG Statement on Announcement by
10			Federal Reserve Board of \$85 Billion
			Attachments: 9/16/2008 AIG Press Release -
11			AIG Statement on Fed Announcement
	80	78	Alvarez Handwritten notes (9/16/2008) re: Bd
12			Mtg
	81	78	Alvarez Handwritten notes (9/16/2008) re: Conf
13			Call
	82	78	Alvarez Handwritten Notes (9/16/2008)
14	83	78	2008.09.16 Demand Note for \$14,000,000,000 and
			other documents signed by K. Shannon
15	84	78	Cancelled Demand Notes for Sept. 16 - Sept.
			19, 2008
16	85	78	Email (9/17/2008 12:40 am) From: Lawrence
			Makow To: Dan Jester, Jeremiah Norton re: Fyi
17	86	78	Email (9/17/2008 9:23 am) From: Lawrence Makow
			To: Richard Kim, Steven Rosenblum, cc: Joshua
18			Holmes, Stephanie Seligman re: Re: AIG equity
			issues
19	87	78	Email (9/17/2008 11:42 am) From: Stephen
			Albrecht To: Henry Paulson, Jim Wilkinson,
20			Jeremiah Norton, Dan Jester, Steven Shafran,
			Laurie Schaffer, John Knepper, Peter Bieger,
21			Richard Kim, Lawrence Makow, cc: Robert Hoyt
			re: AIG Equity Call Attaching AIG Equity
22			Issues.doc
	88	78	Email (9/17/2008 4:35 pm) From: Marshall
23			Huebner To: Thomas Baxter re: Re: AIG Credit
			Agreement
24	89	78	Email (9/17/2008 5:20 pm) From: Charles Gray
			To: Greg Cavanagh, Joseph Sommer, Catherine
25			Kung, Helen Mucciolo, Azish Filabi, Susan

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1 Michelle Meertens, Denley Chew re: Fw: AIG  
Equity Call Attaching Agenda  
2 90 78 Email (9/17/2008 5:24 pm) From: Marshall  
Huebner To: Thomas Baxter re: AIG Credit  
3 Agreement  
4 91 78 Email (9/17/2008) From: Dennis Ryan  
To: Alejandro Latorre, Anthony Cirillo, Arthur  
5 Angulo, Barbara Yelcich, Caroline Frawley,  
Christopher Calabria, Christopher Hunter,  
6 Clinton Lively, Daniel Muccia, Deborah Lohnau,  
Denise Goodstein, Dianne Dobbeck, Homer Hill,  
7 James Hodgetts, Jan Voigts, Jeanmarie Davis,  
Jill Yellock, Jim Mahoney, John Reynolds, John  
8 Ricketti, John Ruocco, Jonathan Polk, Margaret  
Brush, Mark Scapp, Paul Whynott, Robert  
9 Galletta, Roger Graham, Sandra Galvan, Sarah  
Adelson, Sarah Dahlgren, Steven Manzari, Wendy  
10 Ng, William Brodows, Zahra El-Mekrawy, cc:  
John Ricketti re: Re: SG's \$5.3 billion  
11 collateral call (update) and potential DW  
concern based on collateral - AIG related  
concern.  
12 92 78 Amended and Restated Pledge Agreement signed  
by Kathleen Shannon and Susan McLaughlin  
13 93 78 Email (9/18/2008 7:05 am) From: Thomas Baxter  
To: Stephen Albrecht re: Re: Call tomorrow  
14 morning?  
15 94 78 AIG Board of Directors Minutes 9/18/2008  
16 95 78 Email (9/18/2008) From: Rich Ashton  
To: Joyce Hansen, cc: Catherine Kung, Haeran  
17 Kim, Thomas Baxter re: Re: Fw: Comments on the  
draft credit agreement  
18 96 78 2008.09.18 AIG 8-K  
19 97 78 Email (9/19/2008 8:02 am) From: Marshall  
Huebner To: Richard Charlton, cc: Bradley  
20 Smith, Ethan James, John Brandow re: Re: AIG  
8K  
21 98 78 Email (9/19/2008 10:53 am) From: John  
Studzinski To: Brian Schreiber, Martin  
Alderson Smith, Larry Nath, Thomas Stoddard,  
22 Tolga Kantarci re: CIC and AIA and  
International Businesses  
23 99 78 2008.09.19 AIG 8-K/A  
24 100 78 Email (9/21/2008 5:03 am) From: Marshall  
Huebner To: Dan Jester, Jeremiah Norton,  
Thomas Baxter, Joyce Hansen, Stephen Albrecht,  
25 Charles Gray, Richard Charlton, cc: Ethan  
James, Bradley Smith re: AIG equity termsheet  
Attaching draft termsheet

1			To: Dan Jester, Jeremiah Norton, Thomas
2			Baxter, Joyce Hansen, Stephen Albrecht,
3			Charles Gray, Richard Charlton, Catherine
4	102	78	Kung, Haeran Kim, Helen Mucciolo, Stephen
5			Albrecht, cc: Aco.dpw@dpw.com re: Revised
6	103	78	Equity TS / blacklined
7	104	78	Email (9/21/2008 7:32 pm) From: Rich Ashton
8			To: Thomas Baxter, Stephen Meyer re: Re: AIG
9			contract
10	105	78	AIG Board of Directors Minutes 9/21/2008
11			Minutes of Meeting of the Audit Committee of
12	106	78	American International Group, Inc.: Held
13			September 21, 2008
14	107	78	2008.09.21 E&Y Draft Powerpoint: "Project
15			Maiden Lane II: Preliminary Valuation
16	108	78	Calculations including Windshield Actuarial
17	109	78	Appraisal Value Analysis as of June 30, 2008"
18			Email (9/22/2008 10:28 pm) From: Peter Bieger
19	110	78	To: Stephen Albrecht, John Knepper, Laurie
20			Schaffer re: RE: Issues from Designating
21	111	78	Treasury as Beneficiary of Trust Holding AIG
22			Preferred Stock
23	112	78	9/22/2008 Credit Agreement
24	113	78	Executed Guarantee and Pledge Agreement
25	114	78	Collateral Pledged by AIG Companies under GPA
			dated 09/22/2008
	115	78	Email (9/23/2008 11:17 am) From: Catherine
			Kung To: Susan McLaughlin, Maria Ambrosio,
			William Walsh, Joyce Hansen, Helen Mucciolo,
			Azish Filabi, Greg Cavanagh Fw: Executed
			Credit Agreement - THIS IS THE FINAL EXECUTED
			AGMT Attaching Executed Credit Agreement
	116	78	Email (9/23/2008 5:00 pm) From: Sarah Dahlgren
			To: Julie Dolan re: Fw: Approach to
			collateralizing loans to AIG 9.22.08
	117	78	9/23/2008 AIG 8-K
	118	78	AIG Valuation Summaries
	119	78	Credit Suisse Analyst Report, "American
	120	78	International Group: Deal with the Fed
			Finalized," (September 24, 2008)
	121	78	2008.09.24 E&Y Draft Powerpoint: "Project
			Maiden Lane II: Preliminary Valuation
			Calculations including windshield Actuarial
			Appraisal Valuse Analysis as of June 30, 2008
			for Pledged Entities as of September 23, 2008
			with Ownership Changes Through September 24,
			2008"
	122	78	Executed Pledge Agreement Supplement between
			AIU Holdings LLC and Federal Reserve Bank of

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1	117	78	2008.09.24 AIG 8-K
	118	78	Amendment No. 1 to the Credit Agreement (Sept. 25, 2008)
2			
	119	78	Letter (9/26/2008) From: Edward Liddy To: Shareholders re: Credit Agreement
3			
	120	78	2008.09.26 AIG 8-K re Amended and Restated Executive Severance Plan
4			
	121	78	2008.09.26 AIG 8-K re Credit Agreement & Guarantee and Pledge Agreement
5			
	122	78	Pledge Agreement Supplement between AIG Commercial Equipment Finance, Inc. And Federal Reserve Bank of New York
6			
	123	78	Email (9/28/2008 11:19 am) From: D. Viniar (GS) To: Timothy Geithner re: FW: Aig high level summary at 9/12/08
7			
	124	78	AIG Board of Directors Minutes 9/28/2008
8			
	126	78	2008.10.03 AIG 8-K re AIG to Refocus as Worldwide Property and Casualty Company with Continuing Presence in Foreign Life (with AIG header)
9			
10			
	127	78	AIG Board of Directors Minutes 10/7/2008
11			
	128	78	2008.10.09 AIG 8-K
12			
	129	78	Email (10/13/2008 8:54 am) From: Robert Hoyt To: Scott Alvarez re: By the way Attaching October 8, 2008 Letter from Paulson to Geithner re AIG situation presenting threat to financial markets and October 8, 2008 Letter from Paulson to Geithner re commercial paper funding presenting threat to financial markets
13			
	130	78	Minutes of a Meeting of Directors of AIG: Held May 12, 2009
14			
	131	78	2008.10.16 AIG 8-K
15			
	132	78	2008.10.20 AIG 8-K
16			
	133	78	Email (10/23/2008 4:30 am) From: Sarah Dahlgren re: Discussion Deck for Tomorrow's 11:00 a.m. Conference Call Attachment: Draft slides on Project Independence: Capital Structure Alternatives: October 23, 2008
17			
	134	78	Email (10/24/2008 7:40 pm) From: Kevin Warsh To: Ben Bernanke
18			
	135	78	Draft Slides on Project Independence: Capital Structure Discussion Materials: October 26, 2008
19			
	136	78	Email (10/28/2008 8:53 pm) From: Dan Jester To: Stephen Albrecht re: FW: Materials for 5pm meeting on Capital Structure Attachment: Draft Slides on Project Independence: Capital Structure Discussion Materials: October 26, 2008
20			
21			
22			
23			
24			
25			

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1			Lau, Anthony Valoroso, and Steve Belcher
2			To: Files; cc: Joe Cook, Jesus Zaragoza, David Junius, Don Farnan (PwC), Carolyn Worth (KPMG)
3	138	78	re: Re: Valuation on Preferred Stock
4	139	78	2008.10.30 AIG 8-K
5			Email (10/31/2008 7:28 pm) From: Peter Juhas
6	140	78	To: Eric Bischof, James Head, Ruth Porat, Jared Abbey, Anna Angelova-Makki, Shelley Singh, Kevin Ryan, cc: Sarah Dahlgren, Steven Manzari re: Feedback from Moody's Call
7			PwC Memo (10/31/2008) From: Transaction Services Accounting, Valuation and Financial Reporting Advisory Services - Andrew Pappania, Tanuj Leekha and Anthony Choi To: AIG Inc.
8			Audit Workpaper Files re: Review of the Valuation of AIG Inc.'s Series-A Perpetual, Convertible, Participating Preferred Stock
9	141	78	Email (11/2/2008 9:33 am) From: Alejandro LaTorre To: Steven Manzari, Paul Whynott, Clinton Lively, Jonathan Polk, Jim Mahoney, cc: Sarah Dahlgren re: Re: AIG questions from our meeting with Govs. Kohn and Warsh
10			2008.11.03 AIG 8-K
11	142	78	Transcript of Proceedings (November 7, 2008) in Walker v. AIG Before: Hon. William B. Chandler III, Chancellor
12	143	78	AIG Board of Directors Minutes 11/9/2008
13	144	78	Email (11/9/2008 5:44 pm) From: James Lambright To: Neel Kashkari, Karthik Ramanathan, Phillip Swagel, David Nason, cc: Robert Hoyt, Tony Ryan, Jim Wilkinson, Michele Davis, Brookly McLaughlin, Kevin Fromer, King Mueller, Laurie Schaffer, Stephen Albrecht, Stephen Myrow, Stafford Via, Matthew Rutherford, Donald Hammond, Howard Schweitzer, Jonathan Fiechter, Rawan Abdelrazek, Tom Bloom, David McCormick, John Knepper re: IC Memo with Final Term Sheet Attaching the TARP investment Committee memo (Proposed TARP Transaction Regarding AIG) with minor modifications for clarification and with final term sheet
14	145	78	
15			PwC Formal Consultation Memo Client: AIG Date: November 9, 2008 Partner: Donald Farnan Issue: Accounting for the Company's Series C preferred stock issued in connecting with a financing arrangement
16			
17	147	78	Amendment No. 2 to Credit Agreement
18	148	78	2008.11.10 AIG 8-K
19			
20			
21			
22			
23			
24			
25			



1	150	78	AIG 10-Q for 3Q 2008
	151	78	PwC Report "Credit facility/preferred stock,
2			including push down accounting and \$23 billion
			valuation" for period end 9/30/2008
3	152	78	Minutes of Meeting of the Regulatory,
			Compliance and Legal Committee of American
4			International Group, Inc.: Held November 11,
			2008
5	153	78	AIG Board of Directors Minutes 11/12/2008
	154	78	2008.11.13 AIG 8-K
6	155	78	2008.11.18 AIG 8-K
	156	78	Email (11/19/2008 12:46 am) From: Marshall
7			Huebner To: John Brandow, Sarah Dahlgren,
			James Hennessy, cc: Rafal Nowak, Stephen
8			Albrecht re: Re: Board Recommendation
	157	78	AIG Board of Directors Minutes 11/19/2008
9	158	78	2008.11.26 AIG 8-K Entry into a Material
			Definitive Agreement
10	159	78	2008.11.26 AIG 8-K Departure of Directors or
			Certain Officers; Election of Directors;
11			Appointment of Certain Officers; Compensatory
			Arrangements of Certain Officers
12	160	78	2008.12.02 AIG 8-K
	161	78	FRBNY: AIG CDO LLC Facility: Terms and
13			Conditions (Effective 12/3/2008)
	162	78	Email (12/15/2008 8:06 pm) From: Robert Hoyt
14			To: Stephen Albrecht re: FW: AIG Convertible
			Preferred Voting Stock Memo Attaching Memo
15			from FRBOG to Treasury Department re: Voting
			Rights for AIG Preferred Shares Issued to AIG
16			Credit Facility Trust
	163	78	2008.12.15 AIG 8-K
17	164	78	Email (12/19/2008 4:04 pm) From: Rafal Nowak
			To: Charles Gray re: FW: AIG-Draft Special
18			Meeting Proxy Statement Attaching Draft Proxy
			Statement
19	165	78	2008.12.24 AIG 8-K
	166	78	2008.12.30 AIG 8-K
20	167	78	2009.01.07 AIG 8-K
	168	78	Email (1/9/2009 9:47 am) From: Joseph Cook
21			To: Robert Gender, cc: Ralph Trama, Jesus
			Zaragoza re: RE: Fed Utilization Analysis
22			Attaching Fed Funds 12-18-08 JC thurs 2pm
			update.ppt
23	169	78	AIG Board of Directors Minutes 1/14/2009
	170	78	2009.01.14 AIG 8-K/A
24	171	78	Multistate Form A Statement Regarding the
			Acquisition of Control Of or Merger With a
25			Domestic Insurer: American International

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1			January 16, 2009
	172	78	AIG Credit Facility Trust Agreement dated as
2			of January 16, 2009
	173	78	Undertaking to Advance and Reimburse Expenses
3			(January 16, 2009)
	174	78	2009.01.23 AIG 8-K re Entry Into a Material
4			Definitive Agreement
	175	78	2009.01.23 AIG 8-K re Results of Operations
5			and Financial Condition
	176	78	Walker v. AIG Stipulation and Order of
6			Dismissal (February 5, 2009)
	177	78	Email (2/6/2009 10:41 am) From: Ralph Trama
7			To: Robert Gender re: Temp V - Fed Funds
			Breakdown 12-31-08 (2).ppt Attaching Temp V -
8			Fed Funds Breakdown 12-31-08 (2).ppt
	178	78	Minutes of Meeting of the Finance Committee of
9			American International Group, Inc.: Held
			February 10, 2009
10	179	78	2/12/2009 AIG 8-K
	180	78	AIG Board of Directors Minutes 2/24/2009
11	181	78	Affidavit of Kathleen Shannon in Walker v. AIG
			Attaching redacted Preliminary Proxy Statement
12	182	78	Email (2/27/2009 12:14 pm) From: Sarah
			Dahlgren To: Julie Dolan re: Fw: Latest Draft:
13			Review of Alternatives Attaching Draft of
			Review of Alternatives slides (Project
14			Independence) (February 18, 2009)
	183	78	Letter (2/27/2009 12:35 pm) From: Roger
15			Sevigny (NAIC) To: Thomas Baxter re: Meeting
			between NAIC and FRBNY
16	184	78	AIG Board of Directors Minutes 3/1/2009
	185	78	Executed Series C Perpetual, Convertible,
17			Participating Preferred Stock Purchase
			Agreement (Includes Certificate of
18			Designations)
	186	78	March 2, 2009 FRBOG/Treasury Joint Press
19			Release - "U.S. Treasury and Federal Reserve
			Board Announce Participation in AIG
20			Restructuring Plan"
	187	78	2009.03.02 AIG 8-K
21	188	78	AIG Form 10-K for 2008
	189	78	Evaluation of Series D Preferred Shares and
22			Warrant
	190	78	2009.03.04 AIG Supplemental Listing
23			Application to New York Stock Exchange
	191	78	2009.03.05 AIG 8-K
24	192	78	AIG Board of Directors Minutes 3/10/2009
	193	78	2009.03.13 AIG 8-K/A
25	194	78	2009.03.13 AIG 10-K/A

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1			Entry into a Material Definitive Agreement
	196	78	2009.03.16 AIG 8-K/A (Amendment No. 1) re
2			Shortfall Agreement Between Maiden Lane III
			LLC and AIG Financial Products Corp.
3	197	78	Email (3/17/2009 9:54 pm) From: Kathleen
			Shannon To: Sarah Dahlgren, James Hennessy,
4			Ethan James, Beverly Chase, Martha Cook,
			William Murphy, Nancy Kelly, Kevin Barnard,
5			Lily Lu, Karen Ku, James Gamble, Wendy
			Hilburn, cc: Anastasia Kelly, Andrew Kaslow,
6			Howard Greene, Marc Trevino, Eric Litzky re:
			Current Draft of AIG Proxy Statement Attaching
7			Draft Proxy Statement for 2009
	198	78	AIG Board of Directors Minutes 3/25/2009
8	199	78	2009.03.25 AIG 8-K
	200	78	Email (3/27/2009 11:21 am) From: Michael Hsu
9			To: James Lambright re: Re: Rating agencies
	201	78	Email (3/27/2009 3:09 pm) From: Peter Bazos
10			To: Stephen Albrecht, Ronald Ferlazzo, Sarah
			Dahlgren, James Hennessy, James Bergin,
11			Danielle Vicente, Greg Cavanagh, Nancy Kelly,
			Martha Cook, William Murphy, John Amorosi,
12			John Wright, Jason Kyrwood, Rafal Nowak, Aaron
			Page, cc: Ethan James, Diegor Rotsztain,
13			Michel Beshara, Andrea Stan re: AIG - Proxy
			Statement 2009 Attaching Clean and Marked
14			Versions of the Proxy Statement
	202	78	2009.03.31 AIG 8-K
15	203	78	AIG Board of Directors Minutes 4/8/2009
	204	78	AIG Board of Directors Minutes 4/15/2009
16	205	78	AIG Board of Directors Minutes 4/17/2009
	206	78	Amendment No. 3 to Credit Agreement
17	207	78	2009.04.20 AIG 8-K re Amendment No. 3
	208	78	2009.04.20 AIG 8-K re Series E
18	209	78	2009.04.20 AIG 8-K re Series F
	210	78	2009.04.30 AIG 10-K/A
19	211	78	AIG Board of Directors Minutes 5/4/2009
	212	78	2009.05.07 AIG 8-K
20	213	78	AIG 10-Q for 1Q 2009
	214	78	2009.05.14 AIG 8-K/A
21	215	78	2009.05.15 AIG 8-K/A (Amendment No. 2) re
			2008.12.18 Amended Shortfall Agreement between
22			ML III and AIGFP Corp.
	216	78	2009.05.15 AIG 8-K/A (Amendment No. 3) re
23			Shortfall Agreement Between Maiden Lane LLC
			and AIG Financial Products Corp
24	217	78	AIG Board of Directors Minutes 5/18/2009
	218	78	AIG Board of Directors Minutes 5/20/2009
25	219	78	2009.05.21 AIG 8-K

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1			dated May 21, 2009
2	221	78	Email (6/5/2009 4:46 pm) From: Eric Litzky
3			re: AIG Proxy Statement - As Filed with the
4	222	78	SEC Attachment: June 5, 2009: AIG 2009 Annual
5			Meeting of Shareholders Proxy Statement
6			Email (6/10/2009 1:59 pm) From: James Head
7			To: Brett Phillips, James Hennessy, Sarah
8	223	78	Dahlgren, Martin Grant, Barry Schindler, cc:
9	224	78	Eric Bischof, Peter Juhas, Iris Chiu, Jared
10	225	78	Abbey, Michael Doak re: Summary of MS work to
11	226	78	date Attaching Project Independence: Summary
12	227	78	of Work to Date - Supporting Document (10 June
13	228	78	2009) slides
14	229	78	AIG Board of Directors Minutes 6/24/2009
15	230	78	2009.06.25 AIG 8-K
16	231	78	2009.06.29 AIG 8-K
17	232	78	AIG Board of Directors Minutes 6/30/2009
18	233	78	2009.08.04 AIG 8-K
19	234	78	2009.08.07 AIG 8-K
20	235	78	AIG 10-Q for 2Q 2009
21	236	78	2009.08.14 AIG 8-K
22	237	78	2009.08.17 AIG 8-K
23	238	78	2009.08.31 AIG 8-K
24	239	78	2009.09.03 AIG 10-Q/A
25	240	78	2009.10.15 AIG 8-K
	241	78	2009.10.23 AIG 8-K
	242	78	2009.11.06 AIG 8-K
	243	78	AIG 10-Q for 3Q 2009
	244	78	2009.11.25 AIG 8-K re 2009-2010 Stock Salary
	245	78	Award Agreement and Restrictive Covenant
	246	78	Agreement between AIG and Benmosche
	247	78	2009.11.25 AIG 8-K re Memo of Understanding
	248	78	between AIG, Greenberg, Smith, Starr, and SICO
	249	78	and AIG Press Release "AIG, Greenberg, and
	250	78	Smith Announce Resolution of All Disputes"
			New York Stock Exchange Listed Company Manual
			2009.12.01 AIG 8-K
			Amendment No. 4 to the Credit Agreement (Dec.
			1, 2009)
			2009.12.31 AIG 8-K
			AIG Board of Directors Minutes 1/13/2010
			2010.01.25 AIG 8-K
			2010.01.29 AIG 8-K/A Amendment No. 3 Shortfall
			Agreement
			2010.01.29 AIG 8-K/A Amendment No. 4 Shortfall
			Agreement
			2010.02.05 AIG 8-K
			2010.02.08 AIG 8-K
			2010.02.26 AIG 8-K

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## Starr International Company, Inc. v. USA

1	252	78	2010.03.05 AIG 8-K
	253	78	AIG Board of Directors Minutes 3/10/2010
2	254	78	2010.03.11 AIG 8-K
	255	78	2010.03.31 AIG 10-K/A
3	256	78	2010.04.01 AIG Form 8-K
	257	78	2010.04.02 AIG 8-K
4	258	78	2010.04.08 AIG 8-K
	259	78	2010.04.12 AIG 8-K
5	260	78	2010.04.12 AIG Proxy Statement
	261	78	2010.05.07 AIG 8-K
6	262	78	AIG 10-Q for 1Q 2010
	263	78	2010.05.10 AIG Schedule 14A
7	264	78	2010.05.13 AIG 8-K
	265	78	2010.05.14 AIG 8-K
8	266	78	2010.05.17 AIG 8-K re Entry into a Material
			Definitive Agreement; 5/16/2010 Agreement
9			amending the Share Purchase Agreement dated
10			3/1/2010 between AIG, AIA, Prudential and
			Prudential Group; and Standby Subordinated
			Note Commitment Letter dated 5/16/2010 from
11			AIG and AIA to Prudential
	267	78	2010.05.17 AIG 8-K re Item 7.01 Regulation FD
12			Disclosure
	268	78	2010.05.28 AIG 8-K
13	269	78	Email (6/1/2010 5:52 pm) From: Marshall
			Huebner To: Shari Leventhal re: FW: Term Sheet
14			Attaching 9/16/2008 Term Sheet
	270	78	2010.06.03 AIG 8-K
15	271	78	Email (6/16/2010 11:35 am) From: Eric Litzky
			To: AIG Board of Directors re: AIG Board of
16			Directors Meeting - June 18th, 9:00 a.m.
			(EDT)-Meeting Materials Attaching AIG Draft
17			Slides on Restructuring Plan--Presentation
			(June 9, 2010)
18	272	78	AIG Board of Directors Minutes 6/25/2010
	273	78	2010.07.15 AIG 8-K
19	274	78	2010.07.16 AIG 8-K
	275	78	2010.08.02 AIG 8-K
20	276	78	2010.08.06 AIG 8-K re AIG Reports \$2.7 Billion
			Net Loss Attributable to AIG for the Second
21			Quarter of 2010 Driven By
			Restructuring-Related Charges; Continuing
22			Insurance Operating Income Remains Stable
	277	78	2010.08.06 AIG 8-K re Financial Statements and
23			Exhibits
	278	78	AIG 10-Q for 2Q 2010
24	279	78	2010.08.11 AIG 8-K
	280	78	2010.08.24 AIG 10-K/A
25	281	78	Email (8/25/2010 8:23 am) From: Robert

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1			Brian Schreiber, David Herzog re: Re:
	282	78	Email (8/26/2010 6:05 pm) From: David Herzog
2			To: Antonia Turco re: Fw: RESPONSE REQUESTED -
3			AIG Government Repayment Committee Update Call
			- Friday, August 20th - 8:30 a.m. - 10:00 a.m.
4			(EDT)(New Start Time) Attaching Summary of
			Series C, E and F and Trust
	283	78	2010.09.27 AIG 8-K
5	284	78	2010.09.29 Letter from Citigroup Global Markets
6			Inc. To AIG Board of Directors re: AIG
			transaction with FRBNY, UST and AIG Credit
7	285	78	Facility Trust
			Email (9/30/2010 11:14 am) From: William J.
8			Chudd re: Executed Recapitalization Term Sheet
			Attachment: Executed AIG Recapitalization
			Summary of Terms of September 30, 2010
9	286	78	9/30/2010 AIG 8-K
	287	78	2010.10.04 AIG 8-K
10	288	78	2010.10.08 AIG 8-K
	289	78	2010.10.18 AIG 8-K
11	290	78	2010.10.22 AIG 8-K
	291	78	2010.10.25 AIG 8-K
12	292	78	2010.10.28 AIG 8-K
	293	78	2010.10.29 AIG 8-K
13	294	78	2010.11.04 AIG 8-K
	295	78	2010.11.05 AIG 8-K re AIG Reports \$2.4 Billion
14			Net Loss Attributable to AIG for the Third
			Quarter of 2010 Driven By
15			Restructuring-Related Charges; Continuing
			Insurance Operating Income Remains Stable
16	296	78	2010.11.05 AIG 8-K re Item 8.01 and Item 9.01
	297	78	2010.11.05 AIG 8-K/A
17	298	78	AIG 10-Q for 3Q 2010
	299	78	AIG Board of Directors Minutes 11/10/2010
18	300	78	2010.11.23 AIG 10-Q/A
	301	78	2010.11.24 AIG 8-K
19	302	78	Email (12/3/2010 3:58 pm) From: Robert
			DeLaMater To: Nicholas Kourides, et. Al.
20			re: RE: Weekly Project Independence
			Legal/Regulatory Work Stream Conference Call -
21			Friday, December 3 at 9:30 a.m. With Several
			Attachments
22	303	78	2010.12.06 AIG 8-K
	304	78	2010.12.06 AIG Schedule 14C
23	305	78	2010.12.08 AIG 8-K
	306	78	Execution Copy of Master Transaction Agreement
24			dated as of December 8, 2010 among American
			International Group, Inc., ALICO Holdings LLC,
25			AIA Aurora LLC, FRBNY, US Department of the

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1	307	78	SEC Schedule 14C for AIG
	308	78	2010.12.13 AIG 8-K
2	309	78	2010.12.27 AIG 8-K
	310	78	AIG Board of Directors Minutes 12/22/2010
3	311	78	2011.01.07 AIG 8-K
	312	78	AIG Board of Directors Minutes 1/12/2011
4	313	78	2011.01.12 AIG 8-K
	314	78	2011.01.14 AIG Form 8-K
5	315	78	2011.01.24 AIG 8-K
	316	78	2011.02.09 AIG 8-K
6	317	78	2011.02.14 AIG 8-K
	318	78	2011.02.24 AIG 8-K
7	319	78	AIG 10-K for 2010
	320	78	2011.02.25 AIG 8-K/A
8	321	78	2011.03.02 AIG 8-K
	322	78	2011.03.03 AIG 8-K
9	323	78	2011.03.09 AIG 8-K
	324	78	2011.03.10 AIG 8-K
10	325	78	2011.03.17 AIG Schedule 14A
	326	78	2011.03.31 AIG 8-K
11	327	78	2011.03.31 AIG 10-K/A Amendment 1 for AIG 2010 10-K
12	328	78	2011.04.01 AIG 8-K
	329	78	2011.04.04 AIG Schedule 14A
13	330	78	AIG SEC Proxy Filing for 2011 - Notice of Annual Meeting of Shareholders to be Held May 11, 2011 (April 4, 2011)
14			
	331	78	2011.04.20 AIG 8-K
15	332	78	AIG 10-Q for 1Q 2011
	333	78	2011.05.06 AIG 8-K
16	334	78	2011.05.12 AIG 8-K
	335	78	AIG SEC Prospectus Supplement dated May 24, 2011 (to Prospectus dated April 5, 2011)
17			
	336	78	2011.05.24 AIG 8-K
18	337	78	2011.05.27 AIG 8-K
	338	78	2011.07.13 AIG 8-K
19	339	78	2011.08.04 AIG 8-K
	340	78	AIG 10-Q for 2Q 2011
20	341	78	2011.09.13 AIG 8-K
	342	78	2011.10.13 AIG 8-K
21	343	78	2011.10.24 AIG 8-K
	344	78	AIG 10-Q for 3Q 2011
22	345	78	2011.11.04 AIG 8-K
	346	78	2011.11.07 AIG 8-K
23	347	78	2011.11.09 AIG 8-K
	348	78	AIG 10-K for 2011
24	349	78	AIG SEC Prospectus Supplement dated March 8, 2012 (to Prospectus dated April 5, 2011)
25	350	78	AIG SEC Prospectus Supplement dated May 6,

