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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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

Courtroom 4  
Howard T. Markey National Courts Building  
717 Madison Place, N.W.  
Washington, D.C.  
Tuesday, September 30, 2014  
9:30 a.m.  
Trial Volume 2

BEFORE: THE HONORABLE THOMAS C. WHEELER

Josett F. Whalen, RMR-CRR, Reporter

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Starr International Company, Inc. v. USA

|    | I N D E X   |        |         |          |         |
|----|-------------|--------|---------|----------|---------|
|    | WITNESS:    | DIRECT | CROSS   | REDIRECT | RECROSS |
| 1  |             |        |         |          |         |
| 2  |             |        |         |          |         |
| 3  | ALVAREZ     | 256    | 433     |          |         |
| 4  |             |        |         |          |         |
| 5  |             |        |         |          |         |
| 6  |             |        |         |          |         |
| 7  | EXHIBITS    | FOR ID | IN EVID |          |         |
| 8  | Plaintiffs' |        |         |          |         |
| 9  | Number12    |        | 419     |          |         |
| 10 | Number64    |        | 367     |          |         |
| 11 | Number80    |        | 396     |          |         |
| 12 | Number101   |        | 289     |          |         |
| 13 | Number159   |        | 258     |          |         |
| 14 | Number183   |        | 324     |          |         |
| 15 | Number208   |        | 323     |          |         |
| 16 | Number269   |        | 420     |          |         |
| 17 | Number320   |        | 272     |          |         |
| 18 | Number341   |        | 355     |          |         |
| 19 | Number354   |        | 351     |          |         |
| 20 | Number355   |        | 354     |          |         |
| 21 | Number357   |        | 346     |          |         |
| 22 | Number360   |        | 292     |          |         |
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| 24 | Number368   |        | 371     |          |         |
| 25 |             |        |         |          |         |

Starr International Company, Inc. v. USA

|    | EXHIBITS   | FOR ID | IN EVID |
|----|--|--------|---------|
| 1  |  |        |         |
| 2  | Plaintiffs'  |        |         |
| 3  | Number370  |        | 300     |
| 4  | Number370-A  |        | 301     |
| 5  | Number372  |        | 319     |
| 6  | Number443  |        | 303     |
| 7  | Number484  |        | 318     |
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| 10 | Number572  |        | 424     |
| 11 | Number587  |        | 358     |
| 12 | Number598  |        | 429     |
| 13 | Number624  |        | 412     |
| 14 | Number641  |        | 399     |
| 15 | Number706 p. 262                                       |        | 364     |
| 16 | Defendant's  |        |         |
| 17 | Number279  |        | 467     |
| 18 | Number484  |        | 447     |
| 19 | Number962  |        | 457     |
| 20 | Number1436   |        | 461     |
| 21 | Joint  |        |         |
| 22 | (none)   |        |         |
| 23 | *All exhibits premarked prior to trial.                |        |         |
| 24 | *See full attached list of admitted exhibits following |        |         |
| 25 | the transcript.  |        |         |



1 DIRECT EXAMINATION

2 BY MR. BOIES:

3 Q. Mr. Alvarez, at the end of yesterday, I had just  
4 directed your attention to Plaintiffs' Trial Exhibit 159.  
5 Would you get that in front of you.

6 And while you're doing that, I offer that exhibit  
7 in evidence.

8 MR. AUSTIN: Your Honor, we do object to this  
9 exhibit. It contains a newspaper article with multiple  
10 levels of hearsay in it about a reporter who interviewed  
11 somebody who said they saw something that somebody else  
12 said. It's not reliable. There's no evidence that he  
13 authored the e-mail, had any personal knowledge or the  
14 author of the article had any personal knowledge about  
15 it. It's inherently unreliable.

16 THE COURT: Mr. Boies?

17 MR. BOIES: Your Honor, this is a document that  
18 was written from the general counsel of the New York  
19 Federal Reserve Board -- Bank to the general counsel of  
20 the Board of Governors of the Federal Reserve. It has a  
21 variety of attachments.

22 It has first an article that is attached that was  
23 previously sent around by a number of other lawyers,  
24 inside and outside lawyers, because they thought it was  
25 important.

1           There then is an AIG Equity Investment Options.

2           Now, it is true that this document contains  
3 different levels of evidence, but I don't see how we  
4 cannot admit a document from these -- to and from these  
5 two people, and I don't see how we can truncate the  
6 document. This is what they were exchanging among  
7 themselves. This is what they thought was important  
8 contemporaneously.

9           THE COURT: Mr. Austin?

10          MR. AUSTIN: I think with a proper instruction,  
11 with a limited purpose for the document, then we could  
12 remove our objection. As long as it's not admitted for  
13 the truth of the matter concerning all of the --  
14 particularly the substance of the article, just that the  
15 article was there, but the truth of the matter, it's not  
16 admitted for that purpose, then that would solve a lot of  
17 the problem.

18          THE COURT: Yes. I think --

19          MR. BOIES: This is a bench trial.

20          THE COURT: Well, that was going to be my point.

21          I think under the circumstances the exhibit ought  
22 to be admitted, and I think I hopefully will have the  
23 ability to evaluate the news article that goes with this  
24 exhibit.

25          So I'm going to overrule the objection, and I will

1 admit Plaintiffs' Trial Exhibit Number 159.

2 (Plaintiffs' Exhibit Number 159 was admitted into  
3 evidence.)

4 BY MR. BOIES:

5 Q. This is an e-mail with attachments that you  
6 received on or about September 19, 2008 at shortly before  
7 noon Eastern Time; correct, sir?

8 A. Yes, that's correct.

9 Q. And it was sent to you by Mr. Baxter; correct?

10 A. That's right.

11 Q. And I want to direct your attention to the  
12 attachment that begins at page 6, where it says "AIG  
13 Equity Investment Options," and there is an option A and  
14 an option B; correct?

15 A. Yes, that's right.

16 Q. And option A, the economic interest that was  
17 going to be received as compensation for the loan or  
18 credit facility was in the form of preferred shares;  
19 correct?

20 A. Option A, yes, that's right.

21 Q. And with respect to option B, the economic  
22 interest would be contained in what?

23 A. Preferred shares as well.

24 Q. So what is the reference to warrants in option A?

25 A. The reference to warrants in option A is that

1     there would be attached to the preferred shares warrants  
2     that would be convertible into common.

3             Q.   Let me try to see if I can make this clear.

4                     In both option A and option B there would be  
5     super-voting preferred shares; correct?

6             A.   That's what the document says.   Yes.

7             Q.   And that's what you understood at the time;  
8     correct, sir?

9             A.   That's correct.

10            Q.   You knew about these two options at the time back  
11     in September 2008; correct?

12            A.   Yes, sir.

13            Q.   And in option B, those preferred shares not only  
14     had super-voting power, but they were convertible into  
15     common shares; correct?

16            A.   Option B, that's correct.

17            Q.   In option A, the preferred shares were not  
18     themselves convertible into common shares; correct?

19            A.   That's correct.

20            Q.   In option A, there would be warrants that would be  
21     convertible into common shares when they were exercised;  
22     correct?

23            A.   That's correct.

24            Q.   And the exercise of those warrants would require a  
25     shareholder vote on par value and authorized shares;

1 correct?

2 A. That's what the option says.

3 Q. And that's what you understood at the time;  
4 correct, sir?

5 A. That's right.

6 Q. And you preferred option A; correct?

7 A. That's right.

8 Q. One of the differences between warrants which are  
9 limited to exercise on transfer and voting preferred is  
10 that with voting preferred the United States gets both an  
11 economic interest and voting control, whereas with  
12 warrants they would get the economic interest but not  
13 voting control; correct?

14 A. You're not now speaking of these options? You're  
15 speaking in general terms?

16 Q. In general terms.

17 A. In general terms, that could be correct.

18 Q. Well, not only could it be correct, it is  
19 correct.

20 A. Well, it depends of course on how the warrants  
21 and the stock would be structured, but yes, that is a  
22 very -- that is possible.

23 Q. And not only is it possible, but that's right;  
24 correct, sir?

25 A. Could you rephrase the question. I want to make

1 sure I get the answer right.

2 Q. Sure.

3 One of the differences between warrants which are  
4 limited to exercise on transfer and voting preferred is  
5 that with voting preferred the United States gets both an  
6 economic interest and voting control, whereas with  
7 warrants they would get the economic interest but not  
8 voting control.

9 A. If there were only warrants, that would be  
10 correct.

11 Q. And in the term sheet that was sent to you by  
12 Mr. Baxter at about 2:45 p.m. on September 16, there was  
13 a provision only for warrants and not for preferred  
14 shares; correct, sir?

15 A. I don't believe that is correct, sir.

16 Q. Okay. Let me see if I can find that document.

17 A. You're referring to the two options on page 6 and  
18 7; is that correct?

19 Q. No. I was referring -- the two options on page 6  
20 and 7 are options that were being talked about on  
21 September 19, 2008; correct?

22 A. Uh-huh.

23 Q. Is that correct, sir?

24 THE COURT: I think the term sheet is  
25 Joint Exhibit 63 from yesterday?

1 MR. BOIES: I think it's 64, Your Honor.

2 THE COURT: Okay.

3 MR. BOIES: I think 63 is the minutes that  
4 contains it, but it was sent to Mr. Alvarez shortly  
5 before that.

6 BY MR. BOIES:

7 Q. Could you turn to Joint Exhibit 64.

8 A. 64?

9 Q. 64.

10 This is a document that was sent to you by  
11 Mr. Baxter shortly before the second session of the  
12 Board of Governors meeting on September 16; correct?

13 A. Yes.

14 Q. It was sent to you at 2:15 Eastern Time; correct?

15 A. Yes.

16 Q. In the afternoon; correct?

17 A. Yes.

18 THE COURT: Excuse me. We need to get -- stop the  
19 noise in the hallway.

20 (Discussion off the record.)

21 THE COURT: With fingers crossed, let's try to go  
22 ahead.

23 MR. BOIES: Thank you, Your Honor.

24 BY MR. BOIES:

25 Q. Mr. Alvarez, going back to Joint Exhibit 64, this

1 was a document that you received from Mr. Baxter at  
2 2:15 in the afternoon on September 16; correct?

3 A. That's right.

4 Q. And the subject is Revised AIG Term Sheet;  
5 correct?

6 A. Yes, that's correct.

7 Q. And there had been AIG term sheets that had  
8 preceded this term sheet; correct, sir?

9 A. Perhaps.

10 Q. Well, it's not just perhaps --

11 A. I don't -- I don't know.

12 Q. Was this the first AIG term sheet that you had  
13 seen?

14 A. That I had seen, yes.

15 Q. And when you got a term sheet that said  
16 "Revised AIG Term Sheet," you naturally understood that  
17 there had been prior term sheets; correct?

18 A. I didn't pay attention to that part, to the  
19 subject line.

20 Q. This term sheet is a term sheet that was then  
21 incorporated into the minutes, which are  
22 Joint Exhibit 63, of the Board of Governors meeting that  
23 took place that day, September 16; correct?

24 A. I think "incorporated" is a little strong.  
25 Referred to.

1 Q. Well, sir, let's go to Exhibit 63,  
2 Joint Exhibit 63.

3 A. Sure.

4 Q. These are the minutes of the Board of Governors.

5 A. Yes.

6 Q. A meeting on September 16, 2008; correct?

7 A. Uh-huh.

8 Q. And --

9 THE COURT: Sir, you have to give a verbal answer.

10 THE WITNESS: Yes, that's right. I'm sorry, sir.

11 THE COURT: Thank you.

12 BY MR. BOIES:

13 Q. And do you see that pages 5 through 10 of this  
14 12-page exhibit are the term sheet pages that were sent  
15 to you in Joint Exhibit 64?

16 A. I see that.

17 Q. So you see they were actually incorporated into  
18 the minutes.

19 A. So --

20 Q. Correct?

21 A. -- I see that they're the same term sheets.

22 You're now asking if they were incorporated in the  
23 minutes. They were referred to in the minutes. They're  
24 not incorporated in the minutes.

25 Q. Well, the pages are incorporated into the minutes;

1 correct?

2 A. The pages are attached and referenced in the  
3 minutes.

4 Q. And these pages, these two term sheets, one which  
5 was sent to you at 2:15 p.m. on September 16 and the  
6 other that are, in your terms, attached and referred to  
7 in the minutes, those two term sheets only reference  
8 warrants, they do not reference preferred; correct, sir?

9 A. That's correct.

10 Q. Now, by September 19 there were options that  
11 included preferred; correct, sir?

12 A. That's correct.

13 Q. And two of those options are set forth on  
14 Plaintiffs' Exhibit 159; correct?

15 A. That's correct.

16 Q. And the reason that you preferred option A to  
17 option B was that you wanted the stock, the economic  
18 stock, to come only upon exercise of the warrants;  
19 correct, sir?

20 A. That's correct.

21 Q. And there were legal reasons why it was decided  
22 not to have the New York Federal Reserve Bank hold the  
23 equity participation that was required for the extension  
24 of the Federal Reserve Bank credit; correct, sir?

25 A. There were legal considerations, yes.

1 Q. By "legal considerations" do you mean something  
2 different than legal reasons?

3 A. I mean it in the sense that there were the legal  
4 considerations that were still being considered, that  
5 were still being worked through, so concerns to be worked  
6 through.

7 Q. Concerns to be worked through, not legal reasons.

8 A. I consider that to be legal reasons but not legal  
9 conclusions.

10 Q. Let me ask you to look at page 169 of your  
11 deposition, the second deposition.

12 Lines 3 through 7:

13 "QUESTION: And were there legal reasons why it  
14 was decided not to have the New York Federal Reserve Bank  
15 hold the equity participation that was required for the  
16 extension of the Federal Reserve Bank credit?

17 "ANSWER: Yes."

18 Do you see that?

19 A. I see that.

20 Q. And you gave that testimony at your deposition  
21 under oath; correct?

22 A. Yes.

23 Q. And it was true at the time.

24 A. Yes.

25 Q. And it is true today; correct?

1           A.  As I have explained, yes.

2           Q.  Well, is it true without that explanation, or are  
3 you saying that the explanation that you gave today is an  
4 explanation that you believe you should have given at  
5 your deposition?

6           A.  It was the understanding I had from the question  
7 at the time.  It continues to be the understanding I have  
8 with the question today.

9           Q.  Now, is there something that's happened between  
10 your deposition and today that leads you to volunteer  
11 this explanation that you didn't volunteer at your  
12 deposition?

13          A.  No.

14          Q.  You haven't talked about this testimony with  
15 anybody?

16          A.  There's nothing that has -- that is exactly my  
17 mindset at the time the question was asked.

18          Q.  My question is, have you, since your deposition,  
19 had any discussions about this testimony or the subject  
20 matter of it with anyone?

21          A.  I -- I have not -- let's see.  I'm not sure how to  
22 answer that question.

23          Q.  Yes or no or I don't remember.

24          A.  So I don't know.  I have had a variety of  
25 questions asked of me in preparation for today's

1 testimony, some questions asked about my previous  
2 depositions, but nothing that has in any way changed or  
3 shaped my view about what I meant at the time, what I was  
4 thinking at the time and what I'm testifying today about  
5 this question.

6 Q. In terms of these questions that were asked, were  
7 these questions asked about this testimony or the subject  
8 matter of it?

9 MR. AUSTIN: Your Honor, we object on the grounds  
10 of attorney-client privilege and work product privilege.

11 THE COURT: Well, much like the discussion we had  
12 yesterday, I don't want the witness to testify about any  
13 legal advice he may have received or requested in  
14 meetings with counsel. But if we're talking about fact  
15 information and explanations for why his testimony may be  
16 different today than it was in his deposition, I think we  
17 should hear about that.

18 MR. AUSTIN: Thank you, Your Honor.

19 BY MR. BOIES:

20 Q. Mr. Alvarez, and I'm not asking for the content  
21 of anything that counsel told you, but is it fair to say  
22 that prior to your testimony today but after your  
23 testimony at your deposition, you went through a  
24 practice run of your testimony where they asked  
25 questions of you simulating my questions so that you

1 would get a sense of what the examination would be like  
2 and what your answers would sound like? Fair?

3 MR. AUSTIN: Objection, Your Honor.  
4 Attorney-client privilege and work product privilege.

5 THE COURT: I'm going to overrule the objection  
6 and let the witness answer yes or no.

7 THE WITNESS: Yes.

8 BY MR. BOIES:

9 Q. And would you cover the same ground more than  
10 once; that is, would they ask you a series of questions  
11 about something and then come back and ask you questions  
12 about the same subject matter or exhibits either later  
13 that day or on another day?

14 MR. AUSTIN: Objection, Your Honor.  
15 Attorney-client privilege and work product privilege.

16 THE COURT: Overruled.  
17 You can answer yes or no.

18 THE WITNESS: Yes.

19 BY MR. BOIES:

20 Q. Now, let me go back to these options that we were  
21 talking about.

22 When, as you understood it, were option A and  
23 option B developed?

24 A. Sometime before the e-mail was sent to me on the  
25 19th of September 2008.

1 Q. Had you seen these options or heard about these  
2 options prior to this e-mail?

3 A. I had heard about -- there had been a general  
4 discussion of these options before I received this  
5 e-mail.

6 Q. And how did you hear about them?

7 A. They were discussed briefly on the call that you  
8 referred to yesterday.

9 Q. Which call was that?

10 A. The call with attorneys.

11 Q. And what day was that?

12 A. I believe it was the 19th of September, though it  
13 could have been the 18th of September.

14 Q. Let me ask you to look at Plaintiffs' Trial  
15 Exhibit 148.

16 Is this the -- or are these the notes of the --

17 A. Yes.

18 Q. -- conference call?

19 A. Yes.

20 Q. And this indicates, as you indicated, that this  
21 was a conference call on September 18; correct?

22 A. Yes.

23 Q. And that was the first time that you had heard  
24 about the possibility of these kind of options; is that  
25 correct?

1           A. It is possible that I had heard that options were  
2 being developed in a conversation with Tom Baxter in  
3 preparation for setting this call up, but this is the  
4 first time I've heard detail about the options.

5           Q. When was that conversation with Mr. Baxter?

6           A. You know, my memory is very vague about this.  
7 It's -- we were having lots of conversations about  
8 setting up conversations, so if there was such a call,  
9 it would have been in preparation for the call on the  
10 18th.

11          Q. This would have been a call that you would have  
12 had with Mr. Baxter on the 18th of September prior to  
13 the more general lawyers conference call; is that  
14 correct?

15          A. Yes, that's right.

16          Q. Now, you understood in September of 2008 that  
17 there was no power in the Federal Reserve to hold AIG  
18 shares; correct?

19          A. No. That was not my view.

20          Q. Let me ask you to look at Plaintiffs' Trial  
21 Exhibit 320, which I would offer.

22               MR. AUSTIN: No objection to this exhibit,  
23 Your Honor.

24               THE COURT: Plaintiffs' Exhibit, Trial  
25 Exhibit 320 is admitted, such as it is.

1                   (Plaintiffs' Exhibit Number 320 was admitted into  
2 evidence.)

3                   BY MR. BOIES:

4           Q. This is an e-mail from Mr. Baxter to you on  
5 October 23, 2008; correct?

6           A. Yes, it is.

7           Q. And in the portion that has not been redacted,  
8 Mr. Baxter writes, "I asked Joe to do this on the issue  
9 whether there is authority to restructure debt and not on  
10 the issue whether we have power to hold AIG shares (we  
11 agree that there is no power)"; correct?

12          A. I see that in the e-mail.

13          Q. Did you agree that there was no power?

14          A. So I have not -- if I could explain, I have not --

15          Q. Could I ask for you to begin with a yes or no and  
16 then explain?

17          A. No.

18          Q. You did not agree. That's your testimony?

19          A. I'd like to explain.

20          Q. Sure.

21          A. I had not come to ground on the issue -- there  
22 are several issues here. There's the issue of whether  
23 the Federal Reserve could acquire the shares as part of  
24 an extension of credit, how it could deal with those  
25 shares on a short-term basis in connection with the

1 transfer of those shares, and whether the Federal Reserve  
2 had authority to hold the shares in a long-term sort of  
3 way.

4 I had not come to ground on the issue of whether  
5 the Federal Reserve had authority to hold the shares in a  
6 long-term way. I was very certain that the  
7 Federal Reserve had authority to acquire the shares as  
8 part of an extension of credit and to hold the shares for  
9 an interim period while it disposed of those shares.

10 But to the issue of whether it could hold those  
11 shares for a long period of time unrelated to the  
12 extension of credit I had not taken a view.

13 THE COURT: Excuse me. Mr. Alvarez, I'd like to  
14 ask you to step outside in the lobby just for a moment  
15 while I have a conversation with counsel, and then we'll  
16 call you right back.

17 THE WITNESS: Thank you.

18 THE COURT: Yes. It shouldn't take very long.

19 (Whereupon, the witness was not present in open  
20 court.)

21 THE COURT: My question is whether the  
22 attorney-client privilege is waived as to this document,  
23 as we discussed yesterday, by the assertion of this  
24 defense of legality to the government's actions.

25 MR. AUSTIN: Well, Your Honor, we have been

1 proceeding under discovery order 6. And as a result of  
2 that, since the Court's order on discovery order 6, we  
3 have proceeded accordingly, and this information has been  
4 disclosed with the understanding that we have that all  
5 objections are preserved.

6 But that's how we've proceeded really in this case  
7 for the last -- since the time of the -- at least  
8 Mr. Alvarez' second deposition.

9 THE COURT: Well, the reason I raise it now is  
10 that this document appears to be potentially an important  
11 one and yet 98 percent of it is redacted.

12 MR. AUSTIN: Well, the reason for those  
13 redactions, Your Honor -- and I do not know as I sit here  
14 today exactly what's in there -- is that it would be  
15 unrelated to the authority issue. If it were connected  
16 to the authority issue, then we would not have redacted  
17 it. It would be on some other subject or some other  
18 attorney-client communication unrelated to the question  
19 of authority.

20 That's how we did the redaction. Anything  
21 pursuant to your Your Honor's order that was related to  
22 authority we would have disclosed, so it would be  
23 unrelated to that subject.

24 MR. BOIES: Your Honor, this is an issue that I  
25 think is I don't want to say aggravated but increased in

1    significance by some of the things that the witness has  
2    just volunteered.  In response to a question as to  
3    whether he agreed that there was no power to hold  
4    shares, he launched into a discussion about what his  
5    view was as to their ability to acquire shares, to hold  
6    them for short-term, long-term, what he was certain  
7    about.

8            These are areas that we have not had document  
9    production on from the government or from the  
10   government's outside counsel, all of whom dealt with  
11   these issues.  We are in the process of preparing a  
12   document request based on the conversations yesterday,  
13   but if we're going to continue to get assertions of legal  
14   conclusions that have not previously been made in this  
15   case -- he didn't say this at his deposition.  And I'm  
16   not aware of where anywhere in the papers that they  
17   reference Mr. Alvarez' asserted legal opinion that he was  
18   certain that they had the ability to acquire and hold for  
19   the short-term these shares.

20           So I think fortunately this may be the only  
21   advantage of having a seven-week trial, which is that  
22   we'll be able to get some of those documents during the  
23   trial, but we will try to get that to the other side and,  
24   if there's an issue, to the Court promptly.

25           But I would ask that the witness be instructed at

1 least to in attempt to contain the issue to try to be as  
2 responsive to the questions as he can.

3 If they want to explicitly bring it out, they can  
4 have an opportunity to do that. But I don't want to just  
5 inadvertently get into some of these areas. And I didn't  
6 ask him anything about the power to acquire in this  
7 question. I was simply talking about the power to hold.  
8 And when he starts giving his legal opinion about  
9 subjects that I haven't seen asked for, he inevitably  
10 expands the scope of the waiver and the scope of our  
11 necessary discovery.

12 MR. AUSTIN: Your Honor, first of all, it is  
13 incorrect that they have not had this information. Under  
14 discovery order 6, we disclosed everything we have on the  
15 topic of authority.

16 Not only did we disclose all the documents, but  
17 we had a deposition in which Mr. Alvarez was available  
18 and in fact did speak to all the issues of authority,  
19 what his thoughts were at the time, what his impressions  
20 were. He was fully examined in particular on a document  
21 which we will discuss, DX 44, which is a legal  
22 memorandum that was prepared concerning authority. He  
23 was questioned about that in detail and he gave his  
24 opinions.

25 The plaintiffs at no time -- this has been over a

1 year -- said -- complained at all about the discovery  
2 that we had. And everyone was -- everyone who was  
3 deposed after that point in time was entitled to be  
4 asked about any documents that related to that.

5 And in fact, we had an agreement in December of  
6 2013 which dealt directly with this topic and gave them  
7 the opportunity to redepose anybody they wanted to. And  
8 I would defer to my colleague, Mr. Mizoguchi who was  
9 personally involved in that agreement, as to exactly what  
10 happened.

11 MR. MIZOGUCHI: Your Honor, if I could just  
12 amplify my colleague's comments.

13 The order in which this subject was dealt with, as  
14 Your Honor recalls, discovery order 6 was issued. And in  
15 response to that, we complied with Your Honor's order by  
16 unredacting and produced privileged materials within the  
17 scope of the waiver Your Honor ordered pursuant to  
18 discovery order 6.

19 After we produced those documents and in light of  
20 the fact that it took time to examine all of our  
21 documents and produce them, we did enter into the  
22 agreement Mr. Austin has referred to -- and that is  
23 Docket Number 191 in this court -- with the plaintiffs,  
24 in which we agreed that in light of the production of  
25 discovery order 6 and later materials that additional

1 depositions may be taken and that witnesses who had been  
2 deposed could be redeposed.

3 The plaintiffs had that opportunity. They also  
4 received our documents. They have not previously  
5 complained about it.

6 And Your Honor may recall in the pretrial agenda  
7 that we touched upon this subject and agreed with the  
8 plaintiffs that examination of witnesses about documents  
9 that had been produced pursuant to discovery order 6 and  
10 the Federal Rule of Evidence 502 agreement that we had  
11 with the plaintiffs, which the Court also approved, would  
12 not cause a further waiver of the attorney-client  
13 privilege.

14 So it is not appropriate to seek further discovery  
15 or to invade the privilege based on the testimony  
16 elicited in court when we have an agreement that the use  
17 of documents produced pursuant to discovery order 6 and  
18 the Federal Rule of Evidence 502 agreements would not  
19 cause a further waiver.

20 THE COURT: Well, what's troubling to me is that  
21 the witness when shown this exhibit, Plaintiffs' Trial  
22 Exhibit 320, immediately launched into a discussion of  
23 the government's authority to take equity -- I believe  
24 that's what he was talking about -- and yet the document  
25 I have except for one sentence is all blacked out. I'm

1 just wondering if there's more to this than what meets  
2 the eye.

3 MR. MIZOGUCHI: Your Honor, we sought to redact in  
4 accordance with the Court's order. We produced these  
5 documents to plaintiffs long ago.

6 As I said, pursuant to our December agreement,  
7 they had every opportunity to redepose the plaintiffs to  
8 seek further discovery at the time. They did not.

9 And we also reached agreement with the plaintiffs  
10 pursuant to Federal Rule of Evidence 502 -- and this is  
11 in documents that have been filed and orders the Court  
12 issued approving of those agreements -- that the use of  
13 such documents and testimony about them would not cause a  
14 further waiver. And we reiterated that agreement just  
15 prior to this trial in the pretrial conference agenda.  
16 Plaintiffs accepted that arrangement.

17 So there's no basis to seek further discovery or  
18 to prevent anyone from testifying about matters or to  
19 treat that as a waiver about matters that are within the  
20 subject matter of those things we previously produced  
21 pursuant to agreements with counsel for the plaintiffs  
22 and the court orders approving those agreements.

23 MR. BOIES: Your Honor, I agree with that in  
24 part.

25 That is, I agree that to the extent that we are

1     confronted only with a waiver that was pursuant to the  
2     502 agreement and discovery order 6 and they are not  
3     seeking to introduce affirmatively any of the evidence of  
4     attorney-client opinion or advice that counsel is  
5     correct.

6             However, at this deposition that they keep  
7     referring to of Mr. Alvarez, the second deposition, they  
8     made clear that they were only waiving what had already  
9     been waived and at page 169 said, "We're not waiving  
10    anything further other than what we've already waived  
11    pursuant to the 502 agreement."

12            Now, what we are confronted with at trial is not  
13    using the documents and the deposition testimony, but  
14    now we have witnesses coming in and affirmatively  
15    relying on advice and opinions of counsel, indeed,  
16    volunteering it nonresponsively to questions. And that  
17    suggests to me that they probably -- he probably knows  
18    that they intend to try to bring this out affirmatively  
19    when they examine him.

20            Now, if they're going to go beyond the  
21    502 agreement and seek to affirmatively rely on advice of  
22    counsel, then I think as the Court indicated yesterday,  
23    they have waived beyond the 502 agreement. The  
24    502 agreement was a waiver, but when they come into this  
25    court and affirmatively try to rely on attorney-client

1 advice and attorney-client opinions, then they have --  
2 that's a subject matter waiver, and we are entitled to  
3 discovery on that.

4 THE COURT: Well, what I think I would like to  
5 suggest if the parties want to pursue this, I'd be happy  
6 to do an in camera inspection of this document. I don't  
7 mean by that to be opening Pandora's box for you all to  
8 say, well, the judge will look at any document we want,  
9 because I'm not offering to do that. But I think in this  
10 instance, just to get a feel for what's going on, I'd be  
11 happy to perform an in camera inspection on this  
12 Plaintiffs' Trial Exhibit 320.

13 MR. AUSTIN: I think that's fine, Your Honor.

14 I just want to make one point clear. At the  
15 deposition of Mr. Alvarez when that comment was made, it  
16 was with respect to the Federal Rule of Evidence 502  
17 agreement, discovery order 6, and any documents that did  
18 not relate to the question of authority, so we were  
19 saying there that we are open completely on this  
20 question.

21 We understood the Court's order to be saying that  
22 we were to disclose all testimony, all documents,  
23 everything concerning the issue of authority, and that's  
24 what we did. The question that counsel is referring to  
25 related to documents and testimony above and beyond the

1 subject of authority.

2 But it was our position at that time and it has  
3 been since that time that anything related to the issue  
4 of authority is subject to discovery and he could be  
5 asked anything since that time.

6 The only reason these redactions would have  
7 occurred -- and we're happy to show them to the Court --  
8 was because we concluded at the time that they were not  
9 related to that subject, to another subject for which we  
10 continue to claim privilege. And that was the caution  
11 that was given at the deposition, and we're not waiving  
12 all attorney-client, just on that subject.

13 Thank you.

14 THE COURT: Well, if the plaintiff would like me  
15 to make an in camera inspection of this document, I  
16 will.

17 MR. BOIES: I think that would be useful,  
18 Your Honor.

19 I also would just ask for clarification from  
20 counsel if I may.

21 Is it the representation of the United States  
22 that they have produced to us in this litigation all  
23 documents, as broadly defined in the federal rules, that  
24 concern the issue of the Federal Reserve or the  
25 Treasury's power to acquire or hold or use equity or

1 stock regardless of where those documents are?

2 That is sort of what I heard counsel say, but I  
3 want to be absolutely certain because that had not been  
4 my understanding up until today, and if that is the  
5 understanding, I think that will help move this along.

6 MR. MIZOGUCHI: Your Honor, we have produced  
7 those documents that were requested of us pursuant to  
8 our agreements with plaintiffs, and we have made every  
9 effort to comply with the Court's discovery order  
10 number 6 in producing those documents that were within  
11 the scope of the authority-related issue.

12 Now, some of the documents that I believe counsel  
13 is discussing were not actually produced by the  
14 United States, they were produced by the Federal Reserve  
15 Bank of New York, which is a third party.

16 So I can speak for the United States, which means  
17 basically the Treasury Department and the  
18 Board of Governors.

19 MR. BOIES: Your Honor, it can't be that this is a  
20 where-is-the-pea game where it's in the hands of the  
21 Treasury or in the hands of the Federal Reserve or it's  
22 in the hands of the outside counsel. United States is  
23 responsible here for document production from everything  
24 that's in its possession, custody or control, which  
25 includes all of those entities.

1           And I think we are entitled to a representation as  
2 to whether all of the documents relating to authority, as  
3 I indicated, have been produced, not just the ones  
4 pursuant to discovery order 6 and the 502 agreement,  
5 because that was something that was drafted at a time  
6 when they were not affirmatively relying on an advice of  
7 counsel or opinion of counsel type evidence.

8           So I think -- I think for the present all we have  
9 to do is find out whether they are prepared to say that  
10 they have produced from whatever source all of the  
11 documents relating to the authority of the  
12 Federal Reserve, the Treasury and the government to  
13 acquire and hold and use shares. Either they have or  
14 they haven't. I think we're entitled to know that.

15           THE COURT: Mr. Dintzer?

16           MR. DINTZER: Yes, Your Honor.

17           So first, I'd like to reiterate what my colleague  
18 Mr. Mizoguchi has said about the scope of our production,  
19 which is completely consistent with this Court's orders  
20 and our agreements with the plaintiffs.

21           Second, I'd like to say that if the Court wants a  
22 representation from the Federal Reserve Bank of New York,  
23 their counsel is here and he's willing to make that  
24 representation.

25           The third -- and this goes to plaintiffs'

1 counsel's broader point about whether we can make  
2 affirmative statements -- once the Court waived the scope  
3 of a certain amount of material in discovery order 6,  
4 which we opposed of course and we continue to oppose, but  
5 once that was produced, anything within that same scope  
6 is citable by us.

7 I mean, the plaintiffs can't use the materials in  
8 that scope as both a sword and a shield. If they -- they  
9 had it deprivileged, they had it put into the court, and  
10 we can cite that material and use that as part of our  
11 defense, and plaintiffs' counsel knows that.

12 And so the only thing really at issue here is the  
13 question of whether -- the Court has asked to see the  
14 rest of this document, and we're willing to provide it to  
15 the Court for in camera review. We have no problem doing  
16 that so the Court can understand -- I don't know what's  
17 behind the black lines, but I know that we were very  
18 careful about our efforts.

19 And that's where we stand, Your Honor.

20 THE COURT: I see Mr. Kiernan standing over by  
21 the doorway. I wasn't confident you'd get a chance to  
22 speak in this trial. Would you like to come forward and  
23 tell us --

24 MR. KIERNAN: Your Honor, I didn't expect to  
25 speak, but I'm happy to make the representation that was

1 sought.

2 We certainly read order number 6 as your finding  
3 that defendants had injected the question of authority  
4 to, as Mr. Boies said, obtain or use or keep equity.  
5 It's legal authority. We produced -- we looked at  
6 thousands -- I think it was about 8,000 documents  
7 withheld as privileged.

8 I believe, my best recollection is, that before  
9 order number 6 this entire document was withheld as  
10 privileged. But while I can't say that I recall this  
11 precise document, my belief is that the reason it's  
12 redacted is that, as you see, the subject matter is debt  
13 restructuring power, and that's a separate legal issue  
14 from the issue on which you found the privilege waived,  
15 and so what we did is in a memo about debt restructuring  
16 we saw a single reference to authority to take equity,  
17 and because we were trying to be exhaustive about every  
18 reference to authority to take equity, even though this  
19 was a memo about something else, we produced the language  
20 that was relevant to the waiver that the Court had found  
21 and imposed in order number 6.

22 So that's my best memory. I can't say that with  
23 the certainty of having read those redactions before --  
24 recently before today, but I look forward to presenting  
25 the matter to the Court for in camera review, in which I

1 believe that you will confirm that every sentence in the  
2 memo that has to do with the issues of authority as to  
3 which the Court held that there was a waiver in order  
4 number 6 was met.

5 THE COURT: And before you sit down, can you tell  
6 our court reporter who you are and whom you represent.

7 MR. KIERNAN: Yes. I'm sorry. I'm John Kiernan  
8 for the Federal Reserve Bank of New York.

9 THE COURT: Thank you.

10 MR. KIERNAN: Thank you, Your Honor.

11 THE COURT: All right. Well, I think to bring  
12 this discussion to a close for the time being, I would  
13 like to have the defendants submit to me for in camera  
14 review an unredacted copy of Plaintiffs' Trial  
15 Exhibit 320.

16 Can you do it by the end of today?

17 MR. MIZOGUCHI: Your Honor, we would have -- this  
18 is actually a document that I believe was produced by the  
19 New York Federal Reserve Bank, but we would -- so we  
20 would need to consult with counsel for the bank and --  
21 but I presume we could do that.

22 THE COURT: All right. Well, let's do it by the  
23 end of today, and if that for some reason is not  
24 possible, you can let me know.

25 MR. MIZOGUCHI: Thank you, Your Honor.

1 THE COURT: Thank you.

2 All right. Will someone tell Mr. Alvarez to come  
3 back in, please. I think we have a security officer out  
4 there who can do that.

5 (Pause in the proceedings.)

6 Please come forward, Mr. Alvarez.

7 (Whereupon, the witness was present in open  
8 court.)

9 THE COURT: While you were in the lobby -- I just  
10 want you not to be wondering what we were discussing --  
11 we were talking about the issue of why this Plaintiffs'  
12 Exhibit 320 is so heavily redacted and whether the  
13 attorney-client privilege may have been waived as to the  
14 question of authority.

15 THE WITNESS: Thank you for that explanation.

16 THE COURT: That's basically the discussion.

17 THE WITNESS: I was afraid you were going to kick  
18 me out altogether.

19 THE COURT: No, no, not at all. Far from it.

20 All right. Let's go ahead.

21 BY MR. BOIES:

22 Q. Let me ask you to look at, Mr. Alvarez,  
23 Plaintiffs' Trial Exhibit 101, which I would offer.

24 MR. AUSTIN: Your Honor, this document contains  
25 hearsay. It has nothing to do with this witness. His

1 name is mentioned at one point, but it's a document  
2 between counsel for an outside law firm. It's not copied  
3 to or sent to Mr. Alvarez. There's no indication at all  
4 nor of course has there been any testimony that he's ever  
5 seen the document.

6 I do see that his name is mentioned at one point  
7 about eight e-mails from the top, but to question him or  
8 to allow the document to be admitted through Mr. Alvarez  
9 would be improper. He's had nothing to do with the  
10 document.

11 THE COURT: I'm going to overrule the objection  
12 based on the fact that I do see his name in the e-mail  
13 string, so your objection is overruled.

14 Plaintiffs' Trial Exhibit 101 is admitted.

15 (Plaintiffs' Exhibit Number 101 was admitted into  
16 evidence.)

17 BY MR. BOIES:

18 Q. Mr. Alvarez, as counsel for the government  
19 indicates, this is an e-mail chain at least primarily  
20 involving lawyers for an outside law firm; correct, sir?

21 A. As best I can tell. I don't know most of the  
22 names on this chain.

23 Q. You do know the law firm of Wachtell Lipton.

24 A. I do know the law firm of Wachtell Lipton.

25 Q. And you do know that Wachtell Lipton was

1 representing the government in connection with the AIG  
2 credit facility; correct?

3 A. Yes, that's right.

4 Q. And indeed, Wachtell Lipton was representing the  
5 government on September 16 in connection with the AIG  
6 credit facility, which is the date of these e-mails;  
7 correct?

8 A. I believe that to be true. Yes.

9 Q. Now, I want to direct your attention to the e-mail  
10 at the bottom of the page that does mention you. And  
11 before doing that, for context, I want you to look at the  
12 immediately preceding e-mail, which is an e-mail from  
13 Richard K. Kim to Lawrence S. Makow, September 16 at  
14 20:49 Eastern Time.

15 Do you see that?

16 A. Yes, I see that.

17 Q. And the subject is "Has the Fed indicated whether  
18 it believes it has the ability to hold AIG's equity?"

19 Do you see that?

20 A. I see that.

21 Q. And then Mr. Makow replies, "Scott Alvarez  
22 apparently nixed that idea shortly before we arrived on  
23 the scene."

24 Do you see that?

25 A. I see that.

1 Q. Now, first, I understand you did not write this  
2 e-mail, but does that accurately reflect what you did or  
3 said?

4 A. I don't know what the -- I don't know.

5 Q. Well, Mr. Kim is saying, "Has the Fed indicated  
6 whether it believes it has the ability to hold AIG's  
7 equity?"

8 You see that; correct? Mr. Alvarez?

9 A. Yes, I see that.

10 Q. And Mr. Makow replies that you had nixed that  
11 idea.

12 Do you see that?

13 A. I see that.

14 Q. And do you understand that what I'm asking you is  
15 whether or not that is an accurate description of what  
16 you said or did?

17 A. And I don't know what he's referring to.

18 Q. Do you have any reason to believe he's referring  
19 to anything other than the question that he was asked in  
20 the immediately preceding e-mail?

21 A. The line you're asking me to interpret apparently  
22 reflects some conversation. I don't know what  
23 conversation it is, what reasons there may have been,  
24 what the -- whether the response is an accurate  
25 reflection of a response of Richard Kim's question. I

1 don't know what the conversation line was with this.

2 Q. Well, sir, you do know whether you personally  
3 nixed the idea of the Fed holding AIG's equity. You know  
4 whether you did that or didn't do that; correct?

5 A. I -- as you've shown, there's been discussions  
6 through this week. I know that I had strong policy  
7 reasons for preferring one option over another option. I  
8 don't know -- I just don't know enough about the context  
9 of this or the conversation to be able to confirm the  
10 statement that was written by Mr. Makow.

11 Q. Let me see if I can approach it this way.

12 Let me ask you to look at Plaintiffs' Trial  
13 Exhibit 360, which I would offer.

14 MR. AUSTIN: No objection to PTX 360, Your Honor.

15 THE COURT: Plaintiffs' Trial Exhibit 360 is  
16 admitted.

17 (Plaintiffs' Exhibit Number 360 was admitted into  
18 evidence.)

19 BY MR. BOIES:

20 Q. This is a memorandum to you as well as to a number  
21 of other people on November 9, 2008; correct, sir?

22 A. That's correct.

23 Q. And it is in response to your earlier e-mail  
24 earlier that day asking, "Any progress on the slides?"  
25 correct?

1 A. Yes. That appears to be the case.

2 Q. And these were slides that were being prepared for  
3 a presentation; correct, sir?

4 A. That appears correct.

5 Q. And in early November of 2008, you were and the  
6 Treasury were preparing for a presentation to the SEC;  
7 correct?

8 A. I believe this actually -- if the subject line is  
9 correct at the top, this would have been a presentation  
10 to the Financial Stability Oversight Board of which the  
11 SEC is -- the chair of the SEC is a member.

12 Q. And the SEC had apparently asked questions, and  
13 you were responding to questions; is that fair?

14 A. That appears that's what the e-mail says.

15 Q. Do you have any recollection of this e-mail at  
16 all?

17 A. I do not.

18 Q. Do you have a recollection, other than reading  
19 this e-mail, of the fact that in November of 2008 there  
20 were presentations being made and responses being  
21 prepared to questions from the SEC?

22 A. I don't have a recollection. Other than seeing  
23 this e-mail, I don't have a recollection.

24 Q. So other than seeing this e-mail, as you sit here  
25 now, you have no recollection of any questions from the

1 SEC or presentation by the Federal Reserve or Treasury in  
2 November of 2008; is that fair?

3 A. Well, that's very broad, no presentations  
4 involving Treasury. I have no recollection of  
5 presentations to the FSOB, this group. I didn't  
6 interact very much with this group, so I have no  
7 recollection of these presentations other than seeing  
8 these e-mails.

9 Q. Other than seeing this presentation, you have no  
10 personal memory of any presentation to FSOB; is that what  
11 you're saying?

12 A. That's what I'm saying.

13 Q. Now, on November 9 at 9:17 a.m., you write, "Neel  
14 and Jim, Any progress on the slides? It would be great  
15 if we could send the paperwork to the other agencies  
16 early."

17 Do you see that?

18 A. I see that.

19 Q. Now, who are Neel and Jim?

20 A. Neel Kashkari and Jim Lambright, two employees of  
21 the Treasury Department.

22 Q. And Mr. Lambright replies, "Here is the FSOB slide  
23 deck with pages 10 to 15 being the TARP portion. Please  
24 comment or distribute as you see fit"; correct?

25 A. Yes, I see that.

1 Q. Now, let me ask you to turn to page 15 of the  
2 exhibit, where it talks about additional deal terms.

3 Do you see that?

4 A. I see that.

5 Q. These were additional deal terms with respect to  
6 AIG; correct?

7 A. That appears to be correct.

8 Q. And now let me ask you to turn to page 12.

9 And the chart that says "Solutions: New Equity"?

10 A. Yes.

11 Q. And the second bullet says, "Federal Reserve Bank  
12 of New York does not have authority to purchase equity  
13 under Federal Reserve Act."

14 Do you see that?

15 A. I see that.

16 Q. And then the next bullet says, "Treasury has  
17 authority to purchase equity under EESA."

18 Do you see that?

19 A. I see that.

20 Q. And what is EESA?

21 A. That was the TARP legislation.

22 Q. And that TARP legislation was passed after  
23 September 22, 2008; correct?

24 A. That's correct.

25 Q. Now, with respect to the statement that the

1 Federal Reserve Bank of New York does not have authority  
2 to purchase equity under Federal Reserve Act, was that  
3 something that you agreed with in November of 2008?

4 A. So as I said, I don't have a recollection of  
5 reviewing -- of these slides.

6 Q. My question, sir -- and this is a simple question,  
7 yes or no or I don't remember --

8 A. Okay.

9 Q. -- is in November of 2008, did you agree that the  
10 Federal Reserve Bank of New York did not have authority  
11 to purchase equity under the Federal Reserve Act?

12 A. In -- of course, it depends on what you mean by  
13 the word "purchase." And so in the -- if your question  
14 is could they purchase equity as the Treasury was  
15 authorized to do, so unconnected to an extension of  
16 credit in any way --

17 Q. Using "purchase" in the ordinary English sense of  
18 the word.

19 A. But I don't think it could be used in that way  
20 because it has multiple meanings, and so if you use it in  
21 the --

22 Q. Sir, I'm asking a simple question. And if you  
23 can't answer it -- if the answer is, I can't answer that  
24 because "purchase" is too ambiguous a term, then tell me  
25 that.

1           A. I can't answer it because "purchase" is too  
2           ambiguous a term.

3           Q. Okay, sir.

4                   By the way, let me go back to Plaintiffs' Trial  
5           Exhibit 320 just for minute.

6           A. I'm sorry. What number?

7           Q. 320. That was the Baxter e-mail to you that was  
8           heavily redacted.

9                   You know, where he says we agree that there is no  
10          power to hold AIG shares.

11                   Did you ever tell Mr. Baxter that you disagreed  
12          with this e-mail?

13          A. I don't know.

14          Q. Did you ever --

15          A. I don't have a recollection.

16          Q. -- respond to this e-mail?

17          A. I don't have a recollection.

18          Q. Had you previously written Mr. Baxter an e-mail  
19          saying that there was no power to hold AIG shares?

20          A. Using those words? I don't have a recollection of  
21          that.

22          Q. Had you previously written an e-mail the substance  
23          of which was that you believed that there was no  
24          authority to hold AIG shares?

25          A. I don't believe so.

1 Q. Do you know where Mr. Baxter got the idea that  
2 there was agreement that there was no power to hold AIG  
3 shares?

4 A. That would be a question for Mr. Baxter.

5 Q. It would be, and I will ask him when he comes, but  
6 I'm just asking you whether you have any idea why he  
7 would come to that conclusion.

8 A. So I had raised a number of policy objections to  
9 various forms --

10 Q. You understand I'm talking about power, not  
11 policy.

12 MR. AUSTIN: Your Honor, he's interrupting the  
13 witness' answer. He's responding directly to the  
14 question he was asked. The witness should be allowed to  
15 answer.

16 THE COURT: Well, we'll start over I think.

17 THE WITNESS: Thank you, Your Honor.

18 BY MR. BOIES:

19 Q. I'm asking whether you have any understanding as  
20 to why Mr. Baxter believed that there was agreement that  
21 there was no power to hold AIG shares, not what the  
22 policies were but whether there was the power to hold the  
23 shares.

24 A. Perhaps he -- he gathered that from the strong  
25 preference I had for various options.

1 Q. And the strong preference you had for various  
2 options was a strong preference for options that did not  
3 involve the government holding AIG shares; is that  
4 correct?

5 A. That did not involve the Federal Reserve holding  
6 AIG shares.

7 Q. Did you believe that Treasury could hold AIG  
8 shares?

9 A. Whether they could or could not was a matter for  
10 Treasury. I didn't try to form a view on whether they  
11 could.

12 Q. Okay. Fair enough.

13 Let me ask you to look next at Plaintiffs' Trial  
14 Exhibit 370, which I would offer.

15 MR. AUSTIN: Your Honor, we would object on  
16 grounds of authenticity in that this is not a final  
17 document. If it is being proffered for -- as a draft,  
18 then we have no objection to it, because it would be an  
19 authentic draft, but if there's some representation that  
20 this is a final, then we would object.

21 THE COURT: Where on here does it say "draft"?

22 MR. AUSTIN: It's in brackets there for Treasury,  
23 Your Honor, so it's simply a draft. It's an authentic  
24 draft, but I don't think it's final.

25 So if the plaintiffs are purporting that it is a

1 draft, then we have no objection to it.

2 THE COURT: I'll overrule the objection.

3 Plaintiffs' Trial Exhibit 370 is admitted.

4 (Plaintiffs' Exhibit Number 370 was admitted into  
5 evidence.)

6 BY MR. BOIES:

7 Q. This is an e-mail from Rich Ashton, dated  
8 November 13, 2008, with an attachment; correct, sir?

9 A. That's correct, yes.

10 Q. And the subject is AIG voting stock issue;  
11 correct?

12 A. Yes.

13 Q. And there is a copy to Stephen Meyer; is that  
14 correct?

15 A. It's actually sent to Stephen Meyer, so it's not  
16 copied.

17 Q. A copy is sent to him, yes.

18 And who is Mr. Ashton?

19 A. Rich Ashton is a deputy general counsel in the  
20 Legal Division at the Board of Governors.

21 Q. Deputy general counsel.

22 A. Yes.

23 Q. Reports to you.

24 A. Yes, he does.

25 Q. And Mr. Meyer, to whom this is sent, who is he?

1           A. He's an attorney in the Legal Division -- he was  
2 at the time, no longer, but was at the time an attorney  
3 in the Legal Division.

4           Q. Is Mr. Ashton still at the Federal Reserve?

5           A. Yes, he is.

6           Q. Is he still deputy general counsel?

7           A. Yes, he is.

8           Q. Somebody who you have a high regard for?

9           A. Yes.

10          Q. And rely on?

11          A. Yes.

12          Q. Mr. Ashton says, "This is a copy of what I gave to  
13 Scott," which would be you; correct, sir?

14          A. That would be correct.

15          Q. And you did in fact get a copy of this; correct?

16          A. Yes, I did.

17          Q. And I want to ask you some questions about this,  
18 but before I do, I want you to look at Plaintiffs' Trial  
19 Exhibit 370-A, which I would also offer.

20                 MR. AUSTIN: No objection to 370-A, Your Honor.

21                 THE COURT: Plaintiffs' Trial Exhibit 370-A is  
22 admitted.

23                         (Plaintiffs' Exhibit Number 370-A was admitted  
24 into evidence.)

25                 BY MR. BOIES:

1 Q. And Exhibit 370-A is your markup of what  
2 Mr. Ashton sent you; correct, sir?

3 A. That's right.

4 Q. Now, the very first sentence of Mr. Ashton's memo  
5 that he gave you says, "The Federal Reserve believes that  
6 the Preferred Shares of AIG that would be issued as a  
7 condition of our loan to AIG cannot have full voting  
8 rights with common shares while this interest is held by  
9 a trust for the benefit of the Treasury."

10 Do you see that?

11 A. I see that.

12 Q. And in your markup, you write Mr. Ashton a note;  
13 correct?

14 A. Yes.

15 Q. And that note says "Rich, Not clear why we should  
16 have the first part. Politically sensitive"; correct, sir?

17 A. That's what the note says.

18 Q. And that note was referring to the sentence that I  
19 just read; correct?

20 A. No. I don't believe so.

21 Q. Well, is that the first part of the --

22 A. So --

23 Q. Is that the first part of the memo, sir?

24 MR. AUSTIN: Objection, Your Honor. Ambiguous  
25 question.

1 THE COURT: Overruled.

2 THE WITNESS: The first part of the memo is the  
3 entire first page, the second page, most of the third  
4 page. And I didn't agree with most of that, which is  
5 why I crossed it out. "Politically sensitive" deals with  
6 different parts in there but not every word in every  
7 sentence in the part that I crossed out.

8 BY MR. BOIES:

9 Q. Now, sir, you have on other occasions when  
10 Mr. Ashton sent you something wrote him back that you  
11 didn't agree with it; correct?

12 A. I have in times.

13 Q. And when Mr. Ashton sent you this, you didn't  
14 write him back that you didn't agree with it, you wrote  
15 back "Not clear why we should have the first part.  
16 Politically sensitive"; correct, sir?

17 A. That is what I wrote here, yes.

18 Q. Now, let me ask you to look at Plaintiffs' Trial  
19 Exhibit 443, which I would offer.

20 MR. AUSTIN: No objection, Your Honor.

21 THE COURT: Plaintiffs' Trial Exhibit 443 is  
22 admitted.

23 (Plaintiffs' Exhibit Number 443 was admitted into  
24 evidence.)

25 BY MR. BOIES:

1 Q. This is an e-mail that you initially wrote to  
2 Mr. Geithner and Mr. Bernanke on March 1, 2009; correct?

3 A. That's -- that's correct.

4 Q. And the first two sentences say, "Nice try on the  
5 preferred stock investments! We still don't have that  
6 authority."

7 Do you see that?

8 A. I see that.

9 Q. Did Mr. Geithner or Mr. Bernanke ever reply to  
10 your e-mail other than the response that is included in  
11 PTX 443 which is from Mr. Geithner saying, "The phrase  
12 'debt equity swap' in the slides was what provoked  
13 this"?

14 A. Not that I'm aware of. Not that I recall.

15 Q. Let me ask you to look next at Plaintiffs' Trial  
16 Exhibit 363, which I would offer.

17 MR. AUSTIN: No objection, Your Honor.

18 THE COURT: Plaintiffs' Trial Exhibit 363 is  
19 admitted.

20 (Plaintiffs' Exhibit Number 363 was admitted into  
21 evidence.)

22 BY MR. BOIES:

23 Q. This is a letter dated November 9, 2008 from  
24 Chairman Bernanke to Secretary Paulson; correct?

25 A. That is correct.

1 Q. Did you consult with Mr. Paulson on this letter?

2 A. With Mr. Paulson?

3 Q. I'm sorry. I misspoke.

4 Did you discuss with Chairman Bernanke this  
5 letter?

6 A. Yes, sir.

7 Q. And you had a chance to review it in draft form  
8 before it was sent; correct?

9 A. I believe so.

10 Q. And was there anything in this letter that you  
11 objected to or suggested to Mr. Bernanke should not be  
12 said or should be said differently?

13 A. I don't recall.

14 Q. The preferred shares that were ultimately acquired  
15 in connection with the Federal Reserve credit facility  
16 were purchased for \$500,000; correct, sir?

17 A. I'm sorry, sir. I thought you were going to ask  
18 me about this exhibit and I was reading that. Could you  
19 re- -- could you repeat the question.

20 Q. Yes.

21 On September 22, 2008, preferred stock, AIG  
22 preferred stock, was purchased; correct?

23 A. It was in a manner of speaking.

24 Q. In a manner of speaking?

25 A. It was --

1 Q. Is "purchased" another word that you find  
2 ambiguous, sir?

3 A. Yes, it is.

4 Q. Did the ambiguity that you find in the word  
5 "purchased" arise sometime between the time you were  
6 deposed and today?

7 A. No.

8 Q. Let me ask you to look at your deposition, the  
9 second deposition, which would be behind the second tab.  
10 And this is your deposition of December 19, 2012.

11 MR. AUSTIN: Your Honor, can I just -- to prevent  
12 any confusion on the record, Mr. Boies has several times  
13 referred to "your second deposition," and because the  
14 witness was deposed twice, the second deposition that  
15 Mr. Boies is referring to was actually his first  
16 deposition. He's stating "second deposition" because  
17 it's the second deposition in the notebook, but I just  
18 want to make sure the record is clear that when he says  
19 "second deposition" he's referring actually to the first  
20 deposition of the witness.

21 MR. BOIES: Which is why I said the deposition --

22 THE COURT: It's the 30(b)(6) deposition.

23 MR. AUSTIN: That's right.

24 MR. BOIES: And which is why I said the deposition  
25 on December 19, 2012, so that there would be no

1 confusion.

2 THE COURT: What page are we going to?

3 MR. BOIES: We're going to page 49, Your Honor.

4 THE WITNESS: Of the December 19 deposition, 2012?

5 BY MR. BOIES:

6 Q. December 19, 2012 deposition.

7 Page 49 line 22:

8 "QUESTION: Let me try to focus on the preferred  
9 stock that the United States purchased from AIG pursuant  
10 to the September 16, 2008 term sheet.

11 "ANSWER: All right.

12 "QUESTION: And that stock was purchased on  
13 September 22, 2008; correct?

14 "ANSWER: Correct."

15 Now, at that time you didn't have any concern  
16 about the ambiguity of the word "purchased," did you,  
17 sir?

18 A. So I certainly didn't state anything at the time.

19 Q. No.

20 And the next question: "And that preferred stock  
21 was purchased for a purchase price of \$500,000; correct?"

22 "ANSWER: That's right."

23 First, on September 22, who paid that  
24 \$500,000 purchase price?

25 A. I do not recall exactly how the purchase -- how

1 the \$500,000 was paid, whether it came from the  
2 Reserve Bank debiting the revolving line of credit or in  
3 some other way. I do not recall.

4 Q. If the \$500,000 had been paid by the Reserve Bank  
5 debiting the line of credit --

6 A. I understand.

7 Q. -- that would be the equivalent of the  
8 Reserve Bank paying; correct?

9 A. So the Reserve Bank received the stock in  
10 consideration for the loan and a payment of \$500,000. I  
11 don't know exactly how the \$500,000 was transferred.

12 Q. All right. Who would have been responsible for  
13 transferring the \$500,000?

14 A. That would have been handled by the New York  
15 Reserve Bank. Tom Baxter would know the details.

16 Q. While we're on the subject of the preferred stock  
17 and the purchase of preferred stock, there has been some  
18 question raised as to when the first binding agreement  
19 existed between AIG and the Federal Reserve.

20 Is that a matter that you have expressed an  
21 opinion on?

22 MR. AUSTIN: Objection, Your Honor. Calls for a  
23 legal conclusion.

24 THE COURT: Mr. Boies?

25 MR. BOIES: What we've been getting from him is a

1 whole series of legal conclusions.

2 THE COURT: I think so. I'm going to overrule the  
3 objection.

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

6 BY MR. BOIES:

7 Q. I don't know whether I can repeat it, but I will  
8 restate it.

9 A. Thank you. That will be fine.

10 THE COURT: Maybe we have it on the realtime iPad  
11 if you like.

12 MR. BOIES: Certainly. Thank you.

13 BY MR. BOIES:

14 Q. There has been some question raised as to when the  
15 first binding agreement existed between AIG and the  
16 Federal Reserve.

17 Is that a matter on which you have expressed an  
18 opinion?

19 A. That is a matter where I know you have asked me a  
20 question during my deposition, but I didn't express an  
21 opinion in the sense of issuing a legal opinion about  
22 this to my client.

23 Q. But you did tell me at your deposition, as you  
24 indicated, that the first time that AIG was under a  
25 contractual obligation was when the actual contract was

1 signed on September 22; correct?

2 A. You can point me to the place in the deposition.  
3 That sounds about what I said in the deposition.

4 Q. I'll be happy to give you the exact question and  
5 answer.

6 And at the bottom of page 20, line 19 --

7 A. And we're in the December 12 --

8 Q. I'm in the 2012 deposition. Both depositions  
9 happen to have been taken in December, one in 2012, one  
10 in 2013.

11 A. Yes.

12 Q. I'm in the 2012 deposition, which is the second  
13 deposition in the binder in front of you.

14 Do you have page 20?

15 A. Page 20, yes.

16 Q. And you say, "Let me make sure I understand the  
17 question. Does this term sheet reflect a contractual  
18 obligation by AIG to abide by the terms of this term  
19 sheet?

20 "QUESTION: I think that's a fair way to put it.

21 "ANSWER: No.

22 "QUESTION: When was the first time that AIG was  
23 under a contractual obligation to abide by the terms of  
24 this term sheet as the United States understood it?

25 "ANSWER: When the actual contract was signed

1 September 22."

2 Do you see that, sir?

3 A. Yes. You left out a couple of words, "so I  
4 believe," but yes, that's -- I see that.

5 Q. And that was what you believed at the time of your  
6 deposition; correct?

7 A. That's right.

8 Q. And that's what you believe today; correct?

9 A. That is my unexpert opinion. Yes.

10 Q. When you say, "That is my unexpert opinion" -- is  
11 that what you said?

12 A. My belief. Yes. Today, as you have phrased the  
13 question.

14 Q. It is your belief as the general counsel of the  
15 Federal Reserve Board of Governors; correct, sir?

16 A. Without having studied the contractual law, the  
17 law on contracts, without any other kind of preparation,  
18 that is my belief, yes.

19 Q. Well, you do understand that that is one of the  
20 issues in this litigation; correct?

21 A. I understand that's one of the issues in the  
22 litigation.

23 Q. And you have prepared, as you've indicated,  
24 entirely properly so, to testify here; correct?

25 A. That's correct.

1 Q. And indeed you also prepared to testify at your  
2 depositions; correct?

3 A. I did.

4 Q. In fact, the 2012 deposition you were a 30(b)(6)  
5 representative; correct, sir?

6 A. That's correct.

7 Q. And that requires you to do extensive preparation  
8 so that you could answer questions as a 30(b)(6)  
9 representative; correct, sir?

10 A. And I did the best I could.

11 Q. Let me ask you to look at Plaintiffs' Trial  
12 Exhibit 548.

13 THE COURT: Maybe this would be a good time for a  
14 short break this morning.

15 MR. BOIES: Yes, Your Honor.

16 THE COURT: Let's take a 15-minute break. We'll  
17 reconvene at 11:15.

18 (Court in recess.)

19 THE COURT: Let's proceed.

20 MR. BOIES: Thank you, Your Honor.

21 BY MR. BOIES:

22 Q. Just before the break, I had directed your  
23 attention to the Plaintiffs' Exhibit 548, which I would  
24 offer.

25 MR. AUSTIN: Your Honor, there's no indication

1 that this has any connection to the witness. It's  
2 incomplete and it's a partial transcript of the testimony  
3 of or statements from Chairman Bernanke before the  
4 Financial Crisis Inquiry Commission in a closed session.  
5 It's not related to this witness. There's no foundation  
6 that he knows anything about it.

7 THE COURT: Well, I'll overrule the objection.  
8 We'll see what he knows.

9 Plaintiffs' Trial Exhibit 548 is admitted.  
10 (Plaintiffs' Exhibit Number 548 was admitted into  
11 evidence.)

12 BY MR. BOIES:

13 Q. You were general counsel to the Federal Reserve  
14 Board of Governors at the time this testimony was made;  
15 correct, sir?

16 A. Yes, that's correct.

17 Q. And this was November 17, 2009?

18 A. November 17, 2009.

19 Q. And did you consult with Chairman Bernanke before  
20 he gave this testimony?

21 A. In a very general way.

22 Q. Did you review this testimony after it was given?

23 A. I don't recall.

24 Q. Was it your general practice when the chairman of  
25 the Federal Reserve System gave testimony in front of

1 Congress for you to review that testimony?

2 A. After he has given the testimony? No.

3 Q. What about before he gave the testimony?

4 A. When it's prepared remarks, if it is something  
5 that is in an area where I could -- I have some  
6 understanding, then yes, but not all of his testimonies.

7 Q. Well, let me ask you to look at page 28. And I'm  
8 going to direct your attention to the second sentence of  
9 the first paragraph that begins, "And so basically."

10 Do you see that?

11 A. I see that.

12 Q. And Chairman Bernanke says "we had only one tool,  
13 and that tool was the ability of the Federal Reserve  
14 under 13(3) authority to lend money against collateral.  
15 Not to put capital into a company but only to lend  
16 against collateral. That, plus our ingenuity in trying  
17 to find merger partners, et cetera, was essentially  
18 all -- that was our tool-kit. That's all we had."

19 First, were you aware that that was  
20 Chairman Bernanke's view?

21 A. That is what this testimony says.

22 Q. But I thought you told me before that you weren't  
23 sure you'd ever read this testimony.

24 A. So you have just read it to me. This was not  
25 prepared remarks. This was an off-the-cuff answering of

1 questions and extemporaneous speaking by the chairman.

2 Q. Now, when you say "off-the-cuff," this was  
3 testimony to the Financial Crisis Inquiry Commission;  
4 correct, sir?

5 A. It was testimony before the Financial Crisis  
6 Inquiry Commission, yes.

7 Q. And this was testimony that Chairman Bernanke had  
8 prepared for before he testified; correct?

9 A. I don't know how much preparation he had done. As  
10 I said, this was not written, prepared testimony. It was  
11 a session he agreed to have to provide some context for  
12 the Financial Crisis Inquiry Commission's report that it  
13 was charged to do.

14 Q. And were you aware of the fact that he was going  
15 to give this testimony prior to the time he gave it?

16 A. Generally I was aware he was going to give  
17 testimony, yes.

18 Q. And you don't have any reason to believe that  
19 Chairman Bernanke was anything other than scrupulously  
20 honest and accurate in his testimony, do you, sir?

21 A. He always did the very best that he could.

22 Q. Now, recognizing that it is your testimony that  
23 you don't recall ever having seen this testimony, my  
24 question is, were you aware from any other source that  
25 Mr. Bernanke's view was: We only had one tool, and

1 that tool was the ability of the Federal Reserve under  
2 13(3) authority to lend money against collateral, not to  
3 put capital into a company but only to lend against  
4 collateral? Were you aware that that was his view?

5 A. I was aware that he believed we had too few tools,  
6 that someone needed to have the tool to inject capital  
7 that was unrelated to an extension of credit that  
8 eventually became the TARP authority. We discussed this  
9 yesterday. He was in support of the TARP legislation.  
10 And he was also in support of resolution authority that  
11 would put large companies into resolution without  
12 bankruptcy.

13 Q. Do you remember what my question was?

14 A. It would be helpful if you repeated it.

15 Q. Sure.

16 Were you aware that it was Chairman Bernanke's  
17 view that we only had one tool, and that tool was the  
18 ability of the Federal Reserve under 13(3) authority to  
19 lend money against collateral, not to put capital into a  
20 company but only to lend against collateral? Were you  
21 aware, in or about November of 2009, that that was  
22 Chairman Bernanke's view?

23 A. In the sense that I just explained, I was aware of  
24 that.

25 Q. The sense in which you just explained it was --

1 you talked about him believing that "we had too few  
2 tools, that someone needed to have the tool to inject  
3 capital that was unrelated to an extension of credit that  
4 eventually became the TARP authority. We discussed this  
5 yesterday. He was in support of the TARP legislation.  
6 And he was also in support of resolution authority that  
7 would put large companies into resolution without  
8 bankruptcy."

9 I'm not asking you what he was in support of. I'm  
10 asking you whether you understood that his view was what  
11 we have stated here, that is: We only had one tool, and  
12 that tool was the ability of the Federal Reserve under  
13 13(3) authority to lend money against collateral. Not to  
14 put capital into a company but only to lend against  
15 collateral.

16 You can say that you thought it was his view, it  
17 wasn't his view or you didn't know, but all I'm asking  
18 you, yes, no or I don't know, was that his view?

19 A. I don't know.

20 Q. Let me turn to the subject of the trust.

21 Were you involved in the drafting of the trust in  
22 any way?

23 A. I was not.

24 Q. Now, you were aware that there were going to be  
25 trustees; correct, sir?

1 A. Yes.

2 Q. And you were aware of how those trustees were  
3 going to be selected; correct?

4 A. Yes.

5 Q. And you were aware that those trustees were going  
6 to be first and foremost Treasury's representatives;  
7 correct?

8 A. That's correct.

9 Q. And in terms of the selection of the trustees, the  
10 Federal Reserve participated in that; correct?

11 A. The Federal Reserve Bank of New York. That's  
12 correct.

13 Q. And let me ask you -- let me ask you to look at  
14 Plaintiffs' Trial Exhibit 484, which is an e-mail to you,  
15 dated March 28, 2009.

16 I offer this exhibit at this time.

17 MR. AUSTIN: No objection, Your Honor.

18 THE COURT: Plaintiffs' Trial Exhibit 484 is  
19 admitted.

20 (Plaintiffs' Exhibit Number 484 was admitted into  
21 evidence.)

22 BY MR. BOIES:

23 Q. And this is an e-mail from you to Donald Kohn,  
24 who's a vice chairman of the Board of Governors; is that  
25 correct?

1           A. That's correct.

2           Q. And you say, "Tom Baxter called on behalf of the  
3 three trustees for the Treasury trust that holds the AIG  
4 stock. They would like to visit someone senior at the  
5 board to discuss their plans and to get guidance."

6                   Do you see that?

7           A. I see that.

8           Q. When -- well, let me just ask, did the trustees in  
9 fact come to the board to discuss their plans and to get  
10 guidance?

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

12          Q. Did you ever meet with the trustees?

13          A. I did not.

14          Q. Let me ask you to go next to Plaintiffs' Trial  
15 Exhibit 372, which I would offer.

16                   MR. AUSTIN: No objection, Your Honor.

17                   THE COURT: Plaintiffs' Trial Exhibit 372 is  
18 admitted.

19                           (Plaintiffs' Exhibit Number 372 was admitted into  
20 evidence.)

21                           BY MR. BOIES:

22          Q. Now, this is an e-mail to you from Mr. Baxter.  
23 The subject is AIG trustees, dated November 16, 2008.

24          A. That's -- that's correct.

25          Q. And this is in response to an e-mail that you had

1 earlier sent that day, asking Mr. Baxter, "Did you end up  
2 selecting a third trustee for the AIG trust? Was it  
3 Fisher's guy?"

4 Do you see that?

5 A. I see that.

6 Q. And who was Fisher in the question "Was it  
7 Fisher's guy?"

8 A. Richard Fisher, who was the president of the  
9 Dallas Reserve Bank.

10 Q. And in response to your questions, Mr. Baxter  
11 refers -- replies, "It looks like 'yes.' His name is  
12 Doug Foshee, and he is chief executive officer of El Paso  
13 Natural Gas. He also sits on the Houston branch board of  
14 directors."

15 Do you see that?

16 A. I see that.

17 Q. And when there's a reference to the Houston  
18 branch board of directors, is that the Houston  
19 Federal Reserve Bank?

20 A. I -- not exactly. That's a branch of the  
21 Federal Reserve Bank of Dallas, so it's an advisory board  
22 for just the branch operation.

23 Q. Thank you.

24 The trustees, when they were selected, had  
25 fiduciary duties to the Treasury Department; correct?

1           A.   That's correct.

2           Q.   Let me ask you to look at Plaintiffs' Trial  
3 Exhibit 373, which I believe is already in evidence.

4                   And we talked about this in connection I think  
5 with advancing funds earlier.

6                   The portion I now want to ask you about is on  
7 page 6, the third sentence on that page, where you write,  
8 "It is also uncertain as to whether the Trust would be  
9 sufficiently independent from the Government to qualify  
10 as a 'partnership' or 'corporation' that can borrow under  
11 section 13(3)."

12           MR. AUSTIN:  Your Honor, objection.  Mr. Alvarez  
13 did not write PTX 373.

14           MR. BOIES:  Excuse me?

15           MR. AUSTIN:  He did not write PTX 373.

16           MR. BOIES:  You're exactly right.  It is to  
17 Mr. Alvarez from Mr. Ashton and Mr. Meyer.  I appreciate  
18 the clarification.

19           BY MR. BOIES:

20           Q.   Mr. Alvarez, let me direct your attention to  
21 page 6, where Mr. Ashton and Mr. Meyer write to you, on  
22 November 17, 2008, "It is also uncertain as to whether  
23 the Trust would be sufficiently independent from the  
24 Government to qualify as a 'partnership' or 'corporation'  
25 that can borrow under section 13(3).  The Trust's entire

1 beneficial interest belongs to the Treasury and the Trust  
2 would be set up by the Reserve Bank, which would select  
3 the trustees, in consultation with the Treasury."

4 First, when there's a reference to partnership or  
5 corporation there, that is because 13(3) is an  
6 authorization to loan to any individual, partnership or  
7 corporation; correct?

8 A. I assume that's what the reference is intended  
9 for.

10 Q. And sometimes this is referred to as IPC  
11 authority; correct?

12 A. Under section 13(3) sometimes it's referred to as  
13 IPC, that's correct.

14 Q. And that's because 13(3) is different from some of  
15 the other sections of the Federal Reserve Act that are  
16 directed specifically to a particular kind of  
17 institutions, like banks; is that correct?

18 A. That's correct.

19 Q. And section 13(3) is not directed to any  
20 particular kind of institution but applies to any  
21 individual, partnership or corporation; correct?

22 A. That's correct.

23 Q. Now, let me ask you to look at Plaintiffs' Trial  
24 Exhibit 208, which I would offer.

25 MR. AUSTIN: Your Honor, objection on the grounds

1 of hearsay.

2 MR. BOIES: Your Honor, this is a -- unless we've  
3 got the wrong document, this is a document that was  
4 written by Mr. Alvarez.

5 MR. AUSTIN: It contains an article, a newspaper  
6 article.

7 MR. BOIES: If it contains a newspaper article,  
8 it's one that Mr. Alvarez was sending around.

9 MR. AUSTIN: As long as it's not for the truth of  
10 the matter asserted with respect to the news article, the  
11 same as the other exhibit, Your Honor.

12 THE COURT: Yes. I'm going to overrule the  
13 objection.

14 Plaintiffs' Trial Exhibit 208 is admitted.

15 (Plaintiffs' Exhibit Number 208 was admitted into  
16 evidence.)

17 BY MR. BOIES:

18 Q. This is an e-mail that you sent to Mr. Baxter at  
19 12:11 a.m. on September 22, 2008; correct?

20 A. An e-mail that I sent to Mr. Baxter on  
21 September 22, 2008, that's correct.

22 Q. And this was in response to an e-mail that  
23 Mr. Baxter had sent to you about twenty minutes earlier,  
24 that is, at 11:51 p.m. on September 21; correct?

25 A. Yes. My e-mail is in response to his, that's

1 right.

2 Q. And you talk about, in your response, arguing  
3 supremacy?

4 Do you see that?

5 A. Yes, I see that.

6 Q. And that is a response to the question that  
7 Mr. Huebner, Marshall Huebner, had earlier posed;  
8 correct, sir?

9 A. It looks like a -- Marshall Huebner is passing on  
10 a question to Mr. Baxter and Mr. Baxter is passing that  
11 on to me.

12 Q. Yes.

13 A. That's correct.

14 Q. And arguing supremacy, you're talking about  
15 arguing under the supremacy clause so that you don't  
16 need a state approval to acquire certain shares;  
17 correct?

18 A. That appears to be the way the question is  
19 phrased.

20 Q. Let me ask you to look next at Plaintiffs' Trial  
21 Exhibit 183, which I would offer.

22 MR. AUSTIN: No objection.

23 THE COURT: Plaintiffs' Trial Exhibit 183 is  
24 admitted.

25 (Plaintiffs' Exhibit Number 183 was admitted into

1 evidence.)

2 BY MR. BOIES:

3 Q. Let me begin by asking you to look at an e-mail  
4 dated September 21, 2008 at 9:57 a.m., to you from  
5 Mr. Baxter, on the subject of the AIG equity term sheet,  
6 which is beginning in the middle of the first page of  
7 this exhibit.

8 Do you see that?

9 A. I see that.

10 Q. And Mr. Baxter says, "I am scheduling a noon call  
11 on this, with the expectation we will forward the term  
12 sheet to AIG. The term sheet preserves my option (trust  
13 to hold legal ownership and vote shares, with beneficial  
14 interest held by Treasury Department) and your option  
15 (voting only on transfer)."

16 Do you see that?

17 A. I see that.

18 Q. And as of the morning of September 21, did that  
19 accurately describe what his preferred option and your  
20 preferred option were?

21 A. Yes.

22 Q. Mr. Baxter goes on, "You should feel free to  
23 articulate your concerns, but we continue to have  
24 optionality as to the ultimate decision. I am trying to  
25 keep this moving because of a concern there will be

1 shareholder action."

2 Do you see that?

3 A. I see that.

4 Q. Prior to this e-mail, had anyone expressed to you  
5 a desire to move things along quickly because of a  
6 concern of shareholder action?

7 A. Not that I recall.

8 Q. Did you ever have any discussions with anyone  
9 concerning a desire to keep things moving because of a  
10 concern there will be shareholder action?

11 A. Not that I recall.

12 Q. Did you ask Mr. Baxter what he meant when he said  
13 that he was trying to keep this moving because of a  
14 concern that there will be shareholder action?

15 A. No.

16 Q. You did read his e-mail.

17 A. I did.

18 Q. And it is your testimony that prior to reading  
19 this e-mail, no one had ever expressed any desire to you  
20 to keep things moving because of a concern that there  
21 would be shareholder action; correct?

22 A. Not that I recall.

23 Q. And it is your testimony that when you read this,  
24 even though nobody mentioned this to you before, you did  
25 not make any inquiry as to why people wanted to keep it

1 moving because of a concern about shareholder action.

2 A. No, I don't recall any conversation and I did  
3 not -- I have no recollection of following up on that  
4 particular line.

5 Q. Were you aware of any concern that if the  
6 government did not get voting control over AIG promptly  
7 that the shareholders would do something to try to undo  
8 the deal with AIG?

9 A. So I was aware that the attorneys that we had  
10 employed to help us devise the documents believed that  
11 in a general sense there was the potential that  
12 shareholders could, if the government did not have  
13 protection, shareholders could decide to take greater  
14 risks with the company and could decide to direct  
15 management to do things that would not be in the  
16 interest of repayment of the loan, and as a result they  
17 recommended that we have some protections to adjust for  
18 that.

19 Q. And the protections that they were recommending  
20 were protections that tried to get voting control of AIG;  
21 correct, sir?

22 A. To have -- so that -- that's why they -- one of  
23 the reasons for supporting the idea of a preferred stock  
24 with voting rights.

25 Q. Now, you reply and you say, "Tom, Thanks." And

1 when you go on to say, "Just to confirm, ownership of  
2 stock along the lines in this term sheet will not work  
3 for the Fed -- trust or no trust."

4 Do you see that?

5 A. I see that.

6 Q. Now, when you referred to "this term sheet," what  
7 term sheet were you referring to?

8 A. The one that is on PTX 183 page 3.

9 Q. And this was a term sheet that provided for  
10 preferred stock; correct?

11 A. Yes, that's correct.

12 Q. All right. Let me ask you one more question along  
13 this line.

14 Under the option that you favored, there wouldn't  
15 have been a trust; correct?

16 A. There could have been a trust.

17 Q. Well, anything could have happened, but under the  
18 option that you favored, there wouldn't have been a  
19 trust; correct, sir?

20 A. No. There could have been a trust.

21 Q. Let me ask you to look at page 183 of your  
22 2013 deposition. That's the one behind the first tab in  
23 your book.

24 And in particular, lines 14 through 16:

25 QUESTION: So your option would not have had a

1 trust involved?

2 ANSWER: Wouldn't have had -- wouldn't have had a  
3 trust.

4 Let me read that again just so that it's clear.

5 Your testimony at page 183 of your 2013

6 deposition:

7 QUESTION: So your option would have had -- I'm  
8 sorry. Let me start over again. It's only three lines.  
9 You'd think I could read it right.

10 From your 2013 deposition page 183:

11 "QUESTION: So your option would have not had a  
12 trust involved?

13 "ANSWER: Wouldn't have had a trust."

14 That was your testimony in December of 2013, that  
15 is, December of last year; correct, sir?

16 A. That's correct.

17 Q. And that was truthful and accurate testimony at  
18 the time you gave it; correct?

19 A. Yes.

20 Q. And it is truthful and accurate testimony today;  
21 correct?

22 A. Yes.

23 Q. Now, let me move to a different subject, and this  
24 has to do with the government's relations with AIG  
25 beginning in September of 2008.

1           First, in September of 2008, AIG agreed to submit  
2 all of its SEC filings and other significant  
3 communications to the Federal Reserve Bank of New York's  
4 counsel, Davis Polk; correct?

5           A. I don't know the answer to that question. You've  
6 put a specific time frame on it. I don't know if the --  
7 if that's correct on the time.

8           Q. Let me ask you to look at Plaintiffs' Trial  
9 Exhibit 562, which I would offer.

10           MR. AUSTIN: Your Honor, we object to  
11 Plaintiffs' Exhibit 562 on the grounds of, first,  
12 relevance. The counterparty is what this deals with. It  
13 has nothing to do with this case. It's also incomplete  
14 exhibit, and there's no indication at all that  
15 Mr. Alvarez has any personal knowledge of this issue,  
16 this whole questioning.

17           MR. BOIES: Let me deal with the incomplete aspect  
18 of it.

19           Counsel may not have focused on this or perhaps  
20 has forgotten, but as I indicated at the beginning, in  
21 order to keep these books manageable, what we've put in  
22 is the beginning pages, the pages that we're citing, and  
23 I said that if the witness or anybody wants to put  
24 additional pages for context, we're happy to do that, or  
25 if anybody wants to have the witness have the entire

1 document -- some of them are quite bulky -- we would want  
2 that.

3 We're offering the entire exhibit. These are  
4 simply the pages that I'm directing the witness'  
5 attention to.

6 So I want to be clear that we're not offering only  
7 excerpts from these documents, we're offering the entire  
8 exhibit as marked.

9 MR. AUSTIN: With that remark, Your Honor, I'll  
10 withdraw that portion of the objection, as long as the  
11 witness has an opportunity to, and with the remainder of  
12 our objection.

13 THE COURT: I'll overrule the objection.  
14 Plaintiffs' Trial Exhibit 562 is admitted.

15 (Plaintiffs' Exhibit Number 562 was admitted into  
16 evidence.)

17 BY MR. BOIES:

18 Q. Now, this is a document that you are familiar  
19 with; correct, sir?

20 A. It's a document that I've read some portions of,  
21 but I have not -- I'm not familiar in a detailed way nor  
22 have I read the entire document.

23 Q. Well, for example, if you go to page 7 of the  
24 document, the paragraph immediately under the heading  
25 that says, "The Federal Reserve Bank of New York and Its

1 Lawyers Edited AIG's SEC Filings to Remove Information  
2 About the Payments to AIG's Counterparties," do you see  
3 that heading?

4 A. I see that heading.

5 Q. And the next sentence says, "In September 2008,  
6 after its first round of bailouts from the  
7 Federal Reserve Bank of New York, AIG agreed to submit  
8 all of its findings to the Securities and Exchange  
9 Commission, press releases, and other 'significant'  
10 communications to the Federal Reserve Bank of New York's  
11 counsel, Davis Polk & Wardwell."

12 Do you see that?

13 A. I see that.

14 Q. Is that an accurate statement, sir?

15 A. So I -- it is an accurate reading of this  
16 statement. I have no independent knowledge of the timing  
17 of this.

18 Q. Sir, let me direct your attention to page 98 of  
19 your 2012 deposition.

20 A. Okay.

21 Q. Beginning at line 2:

22 "QUESTION:" -- and we're referring to this  
23 document, are we not, sir?

24 MR. AUSTIN: Your Honor, I would ask that the  
25 witness be given an opportunity to get some context to

1 the questioning.

2 BY MR. BOIES:

3 Q. Absolutely. Take as much time as you want to look  
4 for context, and when you are prepared to respond, let me  
5 know.

6 A. At page 28 did you say?

7 Q. Page 98.

8 A. Oh, I'm sorry.

9 (Pause in the proceedings.)

10 Okay.

11 Q. When you have sufficient context, let me know.

12 A. I'm prepared.

13 Q. And in this examination, I am showing you portions  
14 of Plaintiffs' Trial Exhibit 562 and asking you about  
15 them; correct?

16 A. Yes.

17 Q. And in the portion that appears at page 98, I show  
18 you the portion that says, "In September 2008, after its  
19 first round of bailouts from the Federal Reserve Bank of  
20 New York, AIG agreed to submit all of its filings to the  
21 Securities and Exchange Commission, press releases, and  
22 other 'significant' communications to the Federal Reserve  
23 Bank's counsel, Davis Polk & Wardwell," and I say, "Do  
24 you see that?"

25 "ANSWER: I do.

1           "QUESTION: Does the United States agree that that  
2 is an accurate statement?

3           "ANSWER: I have no reason to doubt that."

4           MR. AUSTIN: Objection, Your Honor. That is not  
5 inconsistent with the prior testimony, so it's an  
6 improper use of the deposition.

7           THE COURT: I'll overrule that objection. I think  
8 it is a bit different.

9           BY MR. BOIES:

10          Q. You did give that testimony at the time, did you  
11 not, sir?

12          A. I did, yes.

13          Q. And that was accurate testimony at the time;  
14 correct?

15          A. That's right.

16          Q. And it's accurate testimony today; correct?

17          A. Yes.

18          Q. Okay. Now, let me ask you, since we have this  
19 document -- no. I'll come back to this document just so  
20 that we keep things -- we keep things in context.

21                 There were various filings that AIG made  
22 concerning deals that had been done with AIG  
23 counterparties that were done by the Federal Reserve Bank  
24 of New York on behalf of AIG; correct?

25          A. I'm sorry, sir. Could you restate the question.

1 Q. Sure.

2 The Federal Reserve Bank of New York on behalf of  
3 AIG set out to resolve certain matters with certain  
4 counterparties of AIG; correct?

5 If that's unclear, I can rephrase it.

6 A. It would help me if you would rephrase it. That's  
7 a very general question.

8 Q. Okay. I meant to start generally and then ask  
9 you --

10 A. I appreciate that. I want to give you the correct  
11 information.

12 Q. Let me go to some specifics.

13 And in that connection, let me ask you maybe to  
14 look at page 4 of Plaintiffs' Trial Exhibit 362.

15 A. 562?

16 Q. 562.

17 A. Page 4, yes.

18 Q. And for context, this has to do, as you can see  
19 from looking at page 3 I think, with negotiations with  
20 AIG counterparties to resolve issues with respect to  
21 certain CDS contracts; correct?

22 A. Yes.

23 Q. And there was discussion within the  
24 Federal Reserve and its counsel as to what the best way  
25 was to deal with resolving those CDS contracts; correct?

1           A. Do you mean in discussions with the counterparties  
2 or do you mean in discussions with -- resolved with AIG  
3 or who do you -- who do you --

4           Q. Well, my initial question was about discussions  
5 within the Federal Reserve --

6           A. Right.

7           Q. -- and its counsel.

8                   I take your point that there were also discussions  
9 with lots of other people, including AIG and Treasury and  
10 the counterparties, but what I'm starting with is just  
11 discussions within the Federal Reserve.

12          A. About?

13          Q. About resolving the CDS issues in November of  
14 2008.

15          A. Yes.

16          Q. Okay. And did you participate in those  
17 discussions?

18          A. I was briefed at various times about the  
19 discussions, but I wasn't a direct participant in those  
20 discussions.

21          Q. Did you ever discuss this issue with Mr. Baxter or  
22 were you ever present in a meeting where Mr. Baxter  
23 discussed these issues?

24          A. Yes.

25          Q. And there was an issue as to whether or not the

1 Federal Reserve Bank of New York on behalf of AIG should  
2 or should not attempt to get concessions from the  
3 counterparties; correct?

4 A. From a particular group of counterparties, that's  
5 correct.

6 Q. And initially the decision was that concessions  
7 would be obtained; correct?

8 A. Would be sought. That's correct.

9 Q. And when was the decision made that the  
10 concessions would be sought?

11 A. So of course AIG had already been seeking these  
12 concessions. Then the Reserve Bank in sometime in early  
13 November, I believe, began to take over those  
14 discussions.

15 Q. And indeed, the Federal Reserve Bank of New York  
16 told AIG to stop all negotiations with counterparties in  
17 early November of 2008; correct?

18 A. I believe that to be true.

19 Q. And let me direct your attention to -- back to  
20 Plaintiffs' Trial Exhibit 562 at page 4.

21 And this is under the heading "The Federal Reserve  
22 Bank of New York 'Negotiates' with AIG's Counterparties:  
23 'I Don't Know Why We Even Bothered to Ask.'"

24 Do you see that?

25 A. I see that heading.

1 Q. And the first sentence after that says, "After  
2 consulting with the Federal Reserve Board and Treasury,  
3 the Federal Reserve Bank of New York informed AIG of its  
4 decision."

5 Do you see that?

6 A. I see that.

7 Q. And is that a statement that you agree with?

8 A. I have to take a moment to figure out what  
9 decision they're talking about.

10 Q. Absolutely.

11 (Pause in the proceedings.)

12 A. So the decision that's being referenced here,  
13 just to put in context to make sure I answer your  
14 question, is about how the Federal Reserve Bank might  
15 structure a facility, Maiden Lane III facility, to take  
16 over the liquidity problems of the CDS, and that is I  
17 believe the decision that's being referenced there, so  
18 then the sentence -- that is -- then the sentence does  
19 reflect my understanding of this.

20 Q. The decision that's being referred to there is  
21 the decision to purchase the underlying assets insured by  
22 the CDS contracts from AIG's counterparties through  
23 funding provided by the Federal Reserve Bank of New York  
24 into a special-purpose vehicle called Maiden Lane III;  
25 correct?

1           A. That's right.

2           Q. And what this report says and what you agree with  
3 is that after consulting with the Federal Reserve Board  
4 and Treasury, the Federal Reserve Bank of New York  
5 informed AIG of its decision about that issue; correct?

6           A. Its decision that it would be willing to do a  
7 facility like that, that's correct.

8           Q. Now, it doesn't say here that the decision is  
9 that it would be willing to do that, does it, sir? The  
10 word "willing" doesn't appear anywhere in what you're  
11 looking at, and if you look at page 200 of your  
12 deposition of 2012, the word "willing" doesn't appear  
13 anywhere in lines 2 through 19 where you discuss this  
14 issue; correct?

15          A. I'm sorry. I must have gotten the wrong  
16 deposition.

17          Q. It is the 2012 deposition.

18          A. 2012.

19          Q. It is the one behind the second tab.

20          A. 219.

21          Q. It is the so-called rule 30(b)(6) deposition.

22          A. Got you.

23          Q. And do you have page 200?

24          A. 200.

25          Q. And do you see at line 2:

1           "QUESTION: And did the Federal Reserve Bank of  
2 New York ultimately select the option on November 3, 2008  
3 to purchase the underlying assets insured by the CDS  
4 contracts from AIG's counterparties through funding  
5 provided by the Federal Reserve Bank of New York into a  
6 special-purpose vehicle called Maiden Lane III?

7           "ANSWER: Yes, with the idea that 'select' means  
8 that's what they chose to recommend would occur as  
9 opposed to acting on it that afternoon.

10           "QUESTION: If you go to the next page, the first  
11 full sentence, the report says, 'After consulting the  
12 Federal Reserve Board and Treasury, the Federal Reserve  
13 Board of New York informed AIG of its decision.'

14           "Is that a statement that the United States  
15 believes is accurate?

16           "ANSWER: Yes."

17           Do you see that?

18           A. I see that, yes.

19           Q. And I take it both then and now you believe that  
20 is accurate testimony; correct?

21           A. Yes. And the point I was making was perhaps too  
22 small a point, but you referred --

23           Q. As long as you agree that this is accurate.

24           MR. AUSTIN: Objection. I'd ask that the witness  
25 not be cut off.

1 THE WITNESS: I just wanted --

2 THE COURT: Go ahead.

3 THE WITNESS: I just wanted to make sure that the  
4 timing was not misunderstood because the decision to  
5 actually do Maiden Lane III was not made on November 3,  
6 it was made later, and that is consistent with my earlier  
7 testimony.

8 BY MR. BOIES:

9 Q. Yes, indeed.

10 And in fact, what we just read said that's what  
11 they chose to recommend would occur as opposed to acting  
12 on it that afternoon; correct?

13 A. That's right.

14 Q. And then --

15 A. That was the point I was making today as well.

16 Q. And then you would go and consult -- or the  
17 Federal Reserve Bank of New York then consulted with the  
18 Federal Reserve Board and Treasury; correct?

19 A. That's correct.

20 Q. And as is stated here, after consulting with the  
21 Federal Reserve Board and Treasury, the Federal Reserve  
22 Bank of New York informed AIG of its decision; correct,  
23 sir?

24 A. That's correct.

25 Q. Now, it ended up that the Federal Reserve Bank of

1 New York in its negotiations with counterparties  
2 ultimately agreed to pay all of the counterparties a  
3 hundred percent of par; correct?

4 If you know.

5 A. Yeah, no, I -- perhaps I'm too worried about the  
6 phrasing of the question.

7 The counterparties were paid par. You said the  
8 New York Reserve Bank would do the payment. That in fact  
9 was not exactly how it occurred, but in the end result,  
10 they received par.

11 Q. Let me be very clear.

12 The Federal Reserve Bank of New York did the  
13 negotiations with the counterparties, but AIG ultimately  
14 made the payments to counterparties.

15 A. Thank you.

16 Q. And the negotiations that the Federal Reserve Bank  
17 of New York did on behalf of AIG led to AIG paying the  
18 counterparties a hundred percent of par; correct?

19 A. That's correct.

20 Q. And in addition, those negotiations led to AIG  
21 giving the counterparties general releases; correct?

22 A. The counterparties giving AIG a general release,  
23 tearing up the documents.

24 Q. And the thing I'm asking about is, AIG gave the  
25 counterparties a general release. Yes or no or I don't

1 know?

2 A. I don't know.

3 Q. Okay. Do you know of any reason why AIG would be  
4 giving the counterparties that they were paying a hundred  
5 percent on the dollar for a release?

6 A. I don't know.

7 Q. Now, the Federal Reserve did not want to disclose  
8 that the counterparties were going to be paid at par;  
9 correct, sir?

10 A. I think the AIG did not want to disclose the  
11 counterparties. The Federal Reserve did not want to  
12 disclose the terms of the -- the instruments that were  
13 involved that would be taken into Maiden Lane III. I  
14 think in fact the disclosures did give information so  
15 that everyone knew they were being paid at par.

16 Q. Let me try to unpack that answer.

17 In November of 2008, as you understood it, did the  
18 Federal Reserve want to avoid disclosing that the  
19 counterparties were being paid at par?

20 A. I don't recall.

21 Q. Let me ask you to look at your 2012 deposition --  
22 that's the deposition behind the second tab -- page 97,  
23 particularly lines 4 or 5 to 9. And for context, I want  
24 to direct you to page 7 of Plaintiffs' Trial Exhibit 562.

25 And the portion on 562 that I want to direct your

1 attention to is underneath the heading that says,  
2 "Immediately After Geithner Made the Decision to Pay the  
3 Counterparties at Par, the Federal Reserve Bank of  
4 New York Began to Cover Up Details About the  
5 Transactions."

6 Do you see that?

7 A. I see that.

8 Q. And the first sentence there says, "After the  
9 public announcement of the Maiden Lane III transactions,  
10 the Federal Reserve Bank of New York tried to cover up  
11 the fact that AIG's counterparties were receiving par in  
12 exchange for the underlying assets."

13 The next sentence says, "On November 11, 2008,  
14 the Federal Reserve Bank of New York Assistant  
15 Vice President Alejandro Latorre edited a draft  
16 request for proposals for banking services for the  
17 ML3 transactions. The draft request for proposals  
18 included a sentence revealing that the counterparties  
19 had received par. Latorre deleted the sentence and  
20 e-mailed his colleagues: 'As a matter of course, we do  
21 not want to disclose that the concession is at par unless  
22 absolutely necessary.'"

23 Do you see that?

24 A. I see that.

25 Q. And you are aware that Latorre did send that

1 e-mail; correct?

2 A. I have no reason to doubt that.

3 Q. Have you seen that e-mail?

4 A. I believe at some point I probably did, but I  
5 don't recollect it.

6 Q. Now, ultimately it was decided to reveal the names  
7 of the counterparties in March of 2009; correct?

8 A. That's correct.

9 Q. And that was of course a decision in which the  
10 United States participated; correct?

11 A. At least the Federal Reserve, yes.

12 Q. And that decision was only made after a  
13 congressional uproar about keeping the counterparties'  
14 identities confidential; correct?

15 A. That was -- in sequence, that's correct.

16 Q. Incidentally, you said quite correctly that the  
17 formal approval of ML III wasn't done immediately on  
18 November 3 when the decision to recommend it was made.  
19 That was actually done on November 7 of 2008; is that  
20 correct?

21 A. That sounds closer to the right date.

22 Q. Let me ask you to look at Plaintiffs' Trial  
23 Exhibit 357, which I would offer.

24 MR. AUSTIN: No objection, Your Honor.

25 THE COURT: Plaintiffs' Trial Exhibit 357 is

1 admitted.

2 (Plaintiffs' Exhibit Number 357 was admitted into  
3 evidence.)

4 BY MR. BOIES:

5 Q. And is this a document that shows the vote of the  
6 Board of Governors for the ML III transaction?

7 A. I believe it is.

8 Q. And that shows that it was approved on -- by the  
9 final people on the 7th, that Chairman Bernanke approved  
10 it on November 6, but it was finally approved on  
11 November 7; correct?

12 A. Yeah. It looks like the last vote was somewhere  
13 around 9:15 at night on the 7th.

14 Q. Now, there was a question in connection with  
15 revealing the identities about the counterparties as to  
16 whether the SEC would require that to be revealed;  
17 correct?

18 A. Yes. I believe so.

19 Q. And the United States and the Federal Reserve Bank  
20 of New York directly intervened with the SEC to prevent  
21 information about the AIG counterparties becoming public  
22 from the SEC; correct?

23 A. To make it -- so the last part of your question is  
24 very critical, so that to prevent it from becoming public  
25 from the SEC while this -- while the SEC was reviewing

1 the matter, that's correct.

2 Q. Now, you say "while the SEC was reviewing the  
3 matter."

4 The United States and the Federal Reserve Bank  
5 were trying to prevent the SEC from releasing information  
6 about the AIG counterparties whether the SEC was  
7 reviewing the matter or not; correct, sir?

8 A. Not exactly.

9 Q. Let me ask you to look at page 102 of your  
10 deposition, again the --

11 A. Which deposition?

12 Q. -- 2012 deposition behind the second tab.

13 And at page 102 lines 16 through 21:

14 "QUESTION: Is it the understanding of the  
15 United States the Federal Reserve Bank of New York  
16 directly intervened with the SEC to prevent information  
17 about the AIG counterparties becoming public from the  
18 SEC?

19 "ANSWER: That's right."

20 That was the testimony that you gave at your  
21 deposition; correct, sir?

22 A. Yes, it is.

23 Q. And that was complete and truthful and accurate  
24 testimony; correct?

25 A. Truthful is providing some completion to help you

1 understand what I was thinking then and what I'm thinking  
2 now.

3 Q. And this impulse to be more complete to explain  
4 it, did that arise between the time of your deposition  
5 and your testimony now?

6 MR. AUSTIN: Objection, Your Honor. Vague.

7 THE COURT: Overruled.

8 THE WITNESS: No. I tried to be complete as I  
9 could and understanding the situation around the  
10 deposition at the time, and I'm doing the same today.

11 BY MR. BOIES:

12 Q. And at the time of your deposition, you were  
13 trying to be just as complete and forthcoming as you  
14 could be; correct, sir?

15 A. As I could be, yes.

16 Q. And if additional things occur to you now, it is  
17 because of additional thinking and talking to people and  
18 looking at documents.

19 A. Not always, no. This is what I was thinking when  
20 I answered this question. That's all. I -- I am not --  
21 there was no change, no new information in between the  
22 time of the deposition and today on this matter.

23 Q. So your knowledge and state of mind is exactly the  
24 same now as it was with respect to -- at the time of the  
25 deposition with respect to this particular question.

1 That's what your testimony is; right?

2 A. Yes.

3 Q. And it is -- it just happens that in your trial  
4 testimony you now add this explanation and qualification;  
5 is that correct?

6 A. So one thing I've learned is, I don't always get  
7 the opportunity to give a fuller explanation because of  
8 the way the questions go. I have sometimes believed I  
9 would have that opportunity. I wanted to make it as  
10 clear as possible what I was thinking and provide that  
11 most accurate information possible.

12 Q. You're not suggesting, are you, sir, that at your  
13 deposition you didn't have an opportunity to give a  
14 complete answer?

15 A. I'm explaining how I understood the question and  
16 how I understood my answer.

17 The question is vague in many respects. I'm  
18 providing more detail to the question.

19 Q. The question was the same at your deposition as it  
20 is now; correct?

21 A. Yes.

22 Q. If it was precise, it was precise in the same way;  
23 if it was vague, it was vague in the same way; correct,  
24 sir?

25 A. That's right.

1 Q. You gave one answer at your deposition and a more  
2 expanded answer at this trial; correct?

3 A. But the same answer but more information, that's  
4 correct.

5 Q. And did anybody suggest that it would be desirable  
6 to give that additional information?

7 A. No. No.

8 Q. That was something that you just ragged out on  
9 your own.

10 A. Yes, sir.

11 Q. Now, you believed that the Federal Reserve Bank of  
12 New York was actually going to achieve concessions from  
13 counterparties; correct, sir?

14 A. I believed it was going to seek concessions from  
15 counterparties.

16 Q. Well, not only that they were going to seek it but  
17 that what they were going to pay was going to be less  
18 negotiated concessions; correct?

19 A. Less any that could be negotiated. If they were  
20 not negotiated, there would be none, but less whatever  
21 could be negotiated, and I believe they would seek to --  
22 they would negotiate for concessions.

23 Q. Incidentally, how long did the Federal Reserve  
24 Bank of New York seek concessions?

25 A. I'm not certain. Several days. I don't know the

1 number.

2 Q. Several days?

3 A. I don't know how many. I don't know the number of  
4 days.

5 Q. Well, let me ask you to look at Plaintiffs' Trial  
6 Exhibit 354, which I offer.

7 THE COURT: Any objection?

8 MR. AUSTIN: Your Honor, we have a continuing  
9 objection on this line on the grounds of relevancy.  
10 There's also hearsay contained within this exhibit.

11 It reports on the solution from the slide show  
12 from other persons. And it's also incomplete. It  
13 doesn't start until page 9 and it's a slide, so we think  
14 we should have the whole exhibit to get the context if  
15 this is --

16 MR. BOIES: Let's have the entire exhibit put in  
17 front of the witness. As I had said before, I'm always  
18 happy to do that.

19 MR. AUSTIN: I appreciate that.

20 THE COURT: I'm going to overrule the objection  
21 and admit Plaintiffs' Trial Exhibit 354.

22 If the witness wants to see the whole document,  
23 that would be fine.

24 (Plaintiffs' Exhibit Number 354 was admitted into  
25 evidence.)

1 THE WITNESS: Thank you.

2 BY MR. BOIES:

3 Q. Now, Mr. Alvarez, you can look at any portion of  
4 this document that you wish to for context. I'm going to  
5 ask you about page 10 of the exhibit. When you feel that  
6 you have that sufficiently in context to respond to my  
7 questions, please let me know.

8 (Pause in the proceedings.)

9 A. Okay.

10 Q. Now, this is an e-mail with attached charts that  
11 are sent to you and a number of other people on  
12 November 7, 2008; is that correct?

13 A. Yes.

14 Q. And they're sent to you at 9:00 p.m.; correct?

15 A. That's -- that appears to be correct.

16 Q. And this is essentially contemporaneous with the  
17 approval of the ML III transaction by the  
18 Board of Governors; correct?

19 A. That's right.

20 Q. And this comes from Mr. Fallon, who is the  
21 assistant general counsel of the Board of Governors;  
22 correct?

23 A. Yeah. At the time he was, yes.

24 Q. And it says the subject is oversight board  
25 PowerPoint, and this was going to be a presentation to

1 the oversight board; correct?

2 A. Yes.

3 Q. Now, this goes in addition to you to a number of  
4 other people, and would you identify those people for the  
5 record, please, and their titles.

6 A. Mike Gibson. He was an officer in our  
7 Research Division, an economist. I don't know his exact  
8 title.

9 Rich Ashton, who was, as I've mentioned before,  
10 the deputy general counsel in the Legal Division.

11 John Greenlee, who was an officer in our Banking  
12 Supervision and Regulation Division.

13 Bill Treacy, who also is in our banking  
14 supervision and regulation section.

15 And Sophia Allison, who is an attorney in the  
16 Legal Division.

17 Q. And if you now turn to page 10 of the exhibit, it  
18 says "Underlying CDOs purchased by AIG at par, less  
19 negotiated concession and transferred to a newly created  
20 special-purpose vehicle ('Maiden Lane III')."

21 Do you see that?

22 A. I see that.

23 Q. And that was your understanding as of  
24 approximately 9:00 p.m. on November 7, the day that the  
25 ML III transaction was approved; correct?

1 A. That's correct.

2 Q. Now, how long after the approval of ML III  
3 transaction was there an effort by the Federal Reserve  
4 Bank of New York to obtain concessions?

5 A. So I don't know the amount of time, as I've  
6 mentioned before.

7 Q. Approximately, sir.

8 A. I know everything was happening around these  
9 days, so I don't know if it was the 6th, the 7th, the  
10 8th, the 6th, the 7th. I don't know how many days. I  
11 don't know exactly the -- when the contacts were made. I  
12 wasn't involved in actually making the contacts with the  
13 counterparties.

14 Q. But let me ask you this question.

15 Do you know whether any effort at all was really  
16 made to get concessions after 9:00 p.m. on November 7?

17 A. I do not know the timing.

18 Q. Let me see if I can refresh your recollection  
19 about the timing.

20 Let me go to Plaintiffs' Trial Exhibit 355, which  
21 I offer.

22 MR. AUSTIN: No objection, Your Honor.

23 THE COURT: Plaintiffs' Trial Exhibit 355 is  
24 admitted.

25 (Plaintiffs' Exhibit Number 355 was admitted into

1 evidence.)

2 BY MR. BOIES:

3 Q. Now, this is an e-mail that you and a number of  
4 other people received on November 7, 2008 at 9:11 p.m.;  
5 correct, sir?

6 A. Yes. That appears to be right.

7 Q. And in this e-mail it is stated "there will be no  
8 concessions"; correct? That's in the second line?

9 A. Just learned. Yes, that's correct.

10 Q. And that was in fact the case, there was no --  
11 there were no concessions; correct?

12 A. That's correct.

13 Q. Now, just to complete this, let me go to  
14 Plaintiffs' Trial Exhibit 341, which I would offer.

15 MR. AUSTIN: Objection on the grounds of  
16 relevancy, Your Honor.

17 THE COURT: Overruled. Plaintiffs' Trial  
18 Exhibit 341 is admitted.

19 (Plaintiffs' Exhibit Number 341 was admitted into  
20 evidence.)

21 BY MR. BOIES:

22 Q. This is a document that is sent by Michael Gibson  
23 to you and a variety of other people; correct, sir?

24 A. Yes, that's right.

25 Q. And it's sent on November 4, 2008 in the

1 afternoon; correct?

2 A. November 4, that's correct.

3 Q. And the subject is follow-up to Friday's AIG  
4 meeting?

5 A. That's what it says. That's correct.

6 Q. And it says, in the second paragraph, "Last  
7 Friday, the Federal Reserve Bank of New York told AIGFP  
8 to stop all conversations with counterparties about  
9 tear-ups. The process was proceeding too slowly.  
10 New York has decided that the only way to push forward is  
11 to get senior management involved, both at FRBNY and the  
12 counterparties."

13 Do you see that?

14 A. I see that.

15 Q. And where there's a reference to New York, that's  
16 a reference to the Federal Reserve Bank of New York;  
17 correct?

18 A. That's correct.

19 Q. And was that your understanding as of November 4,  
20 2008?

21 A. Yes.

22 Q. All right. Now, would you identify the other  
23 people to whom this memo was sent and what their titles  
24 were.

25 A. Don Kohn is the vice chairman of the board.

1 Kevin Warsh is a member of the Board of Governors.

2 And me.

3 Deborah Bailey is an officer in our Banking  
4 Supervision and Regulation Division, as is John Greenlee.

5 Rich Ashton is in the Legal Division,  
6 Kieran Fallon in the Legal Division, Sophia Allison in  
7 the Legal Division. I identified them all before.

8 Mike Gibson was an officer in our  
9 Research Division.

10 Q. Let me turn to another subject.

11 At the time that the Federal Reserve  
12 Board of Governors considered the 13(3) credit facility  
13 for AIG, the Federal Reserve believed that the only  
14 alternative for AIG other than a 13(3) loan was  
15 bankruptcy; correct?

16 A. That's what it believed, yes.

17 Q. I'm sorry. Say that again, sir?

18 A. Yes.

19 Q. And the Federal Reserve believed that if AIG went  
20 bankrupt, that would have devastating effects on the  
21 economy and the financial system; correct?

22 A. That's correct.

23 Q. Indeed, the Federal Reserve believed that the  
24 failure of AIG would have been catastrophic for a  
25 financial system already in free-fall; correct, sir?

1           A. I don't know about the exact words, but yes,  
2 that's true.

3           Q. The substance of that is true.

4           A. The substance is true.

5           Q. And if I could have you look at Plaintiffs' Trial  
6 Exhibit 587, which I offer.

7           MR. AUSTIN: No objection, Your Honor.

8           THE COURT: Plaintiffs' Trial Exhibit 587 is  
9 admitted.

10                   (Plaintiffs' Exhibit Number 587 was admitted into  
11 evidence.)

12           BY MR. BOIES:

13           Q. And if you would turn to page 25 of this exhibit,  
14 this is a portion of testimony you gave before the  
15 Congressional Oversight Panel on May 26, 2010; correct,  
16 sir?

17           A. Yes. In 2010, that's correct.

18           Q. And if I can direct your attention to the third  
19 full paragraph on page 25, the one that begins "In the  
20 Board's judgment."

21                   Do you see that?

22           A. I see that.

23           Q. And what you said at the time is: "In the Board's  
24 judgment and given the fragile economic conditions at the  
25 time, an AIG default during this period would have posed

1 unacceptable risks for our economy as well as to the  
2 millions of individuals and businesses that were  
3 counterparties to AIG, including individuals who were  
4 insurance policyholders, state and local governments,  
5 workers with 401(k) plans, money market mutual fund  
6 holders, and commercial paper investors, as well as  
7 banks and investment banks in the United States and  
8 worldwide."

9 That was an accurate statement at the time that  
10 you made it, and it is a statement that you believe to be  
11 accurate today; correct, sir?

12 A. It's a statement I believed at the time and I  
13 believe today.

14 Q. The next paragraph says: "With the financial  
15 system already teetering on the brink of collapse, the  
16 disorderly failure of AIG, the world's largest insurance  
17 company, would have undoubtedly led to even greater  
18 financial chaos, further contractions in the flow of  
19 credit to businesses and consumers, and a far deeper  
20 economic slump than the very severe one we are  
21 experiencing today."

22 And that, too, was something that you believed at  
23 the time; correct, sir?

24 A. Yes.

25 Q. And you believe it today; correct?

1           A.   Yes.

2           Q.   Now, the loan or credit facility that was made  
3 available to AIG was a credit facility that was fully  
4 secured; correct, sir?

5           A.   It was -- it was secured by the shares of  
6 insurance companies and many of the nonbanking companies  
7 and a variety of assets of AIG.

8           Q.   Yes.  And I just want to be sure that the  
9 question and the answer are meeting, because I asked  
10 you whether the credit facility for AIG in September of  
11 2008 was fully secured and you answered by telling me  
12 what it was secured by.

13                   What I'm now asking is, did that collateral that  
14 you have described, which I agree is the right  
15 collateral --

16           A.   Thank you.

17           Q.   -- fully secure the credit facility?

18           A.   It did fully secure the credit facility.

19           Q.   Okay.  And the Federal Reserve believed that  
20 because of that security, it did not run the risk of  
21 losing money; correct, sir?

22           A.   No.

23           Q.   All right, sir.  Let me ask you to look at  
24 Plaintiffs' Trial Exhibit 706, which I offer.

25                   And for this purpose, I am offering only -- well,

1 I'll offer the entire document if counsel for the  
2 United States wishes. I have only a particular portion  
3 of the document that I want to offer because it was used  
4 with the witness in his deposition.

5 This is a book by Mr. Paulson. Mr. Paulson will  
6 be here, and I'm happy to delay the introduction of the  
7 entire book until then or I'm happy to offer it now if  
8 they want. All I need to do is be able to use the one  
9 portion that I used with him in his deposition.

10 MR. AUSTIN: Your Honor, we oppose the  
11 introduction of the book on the grounds of hearsay. It's  
12 entirely hearsay. It should not come in now. It should  
13 not come in ever. And it's particularly improper to  
14 question this witness about it.

15 THE COURT: Mr. Boies?

16 MR. BOIES: Let me approach it this way and try  
17 to give the Court a sense of the foundation and why I  
18 think it is not, with respect to this witness,  
19 inappropriate to use it. And by doing that, I would  
20 direct the witness' attention and the Court to his  
21 2012 deposition, his 30(b)(6) deposition, at page 183.

22 BY MR. BOIES:

23 Q. Now, a few moments ago, I asked you, "Question:  
24 And the Federal Reserve believed that because of the  
25 security it had, it did not run the risk of losing money;

1 correct, sir?" And your answer was: "No."

2 Do you remember that?

3 A. I'm sorry.

4 MR. AUSTIN: Where are we?

5 THE WITNESS: I'm -- where are you?

6 BY MR. BOIES:

7 Q. I'm referring back to your testimony just like --

8 A. Oh, just a minute ago.

9 Q. Yes.

10 A. I'm sorry. I thought you were referring to the  
11 deposition. Okay.

12 Q. Just a minute ago.

13 A. Yes. Yes, I recall that.

14 Q. Okay. Now, let me ask you to look at page 183 of  
15 your deposition.

16 And referring to page 229 of Secretary Paulson's  
17 book, which is page 262 of Exhibit 706, I asked:

18 "QUESTION: Mr. Paulson writes, 'Unlike with  
19 Lehman, the Fed felt it could make a loan to help AIG  
20 because we were dealing with a liquidity, not a capital,  
21 problem. The Fed believed that it could secure a loan  
22 with AIG's insurance subsidiaries, which could be sold  
23 off to repay any borrowing, and not run the risk of  
24 losing money.'"

25 MR. AUSTIN: Your Honor, objection. Just because

1 he asked the question at deposition doesn't mean it's  
2 proper, and there's no foundation for him to ask him  
3 right now.

4 THE COURT: I'm going to let it go forward. It  
5 seems to be highly relevant.

6 BY MR. BOIES:

7 Q. I then say, "Do you see that?"

8 "ANSWER: I see that."

9 And then:

10 "QUESTION: Is that a statement that the  
11 United States believes is accurate?"

12 And you say, "Yes."

13 Do you see that, sir?

14 A. I see that.

15 Q. Was that complete, accurate, truthful testimony at  
16 the time you gave it?

17 A. It certainly is very hard for a witness for the  
18 United States to contradict the secretary of the  
19 Treasury, but I -- I -- you know, that is the answer that  
20 I gave.

21 Q. That is the answer that you gave, and you gave  
22 that answer because at the time you gave it, under oath,  
23 you believed it to be truthful, accurate testimony;  
24 correct, sir?

25 A. That -- if that was a quote from the book, yes,

1 absolutely, then that -- that's correct.

2 THE COURT: I'm going to admit at least the  
3 referenced page of the Plaintiffs' Trial Exhibit 706. If  
4 you want to reserve discussion for the remainder of  
5 Mr. Paulson's book until a later time, that's fine.

6 MR. AUSTIN: We will do that, Your Honor.

7 THE COURT: All right. But at least as for now,  
8 the exhibit as it contains page 229 from the book is  
9 admitted.

10 (Plaintiffs' Exhibit Number 706 page 262 was  
11 admitted into evidence.)

12 BY MR. BOIES:

13 Q. Let me ask you to look next --

14 THE COURT: Is this a good place for a lunch  
15 break?

16 MR. BOIES: Yes, it is, Your Honor.

17 THE COURT: Let's do that. We will reconvene at  
18 1:45.

19 (Whereupon, at 12:43 p.m., a lunch recess was  
20 taken.)

21

22

23

24

25



1 and answer that we had about Plaintiffs' Exhibit 706, the  
2 Paulson book that I showed you a quotation from. And  
3 there may be some ambiguity in your response, and I just  
4 want to be sure that the record is absolutely clear.

5 And in that connection, I'd like you to look at  
6 both Plaintiffs' Exhibit 706 at page 262, which  
7 represents page 229 of Secretary Paulson's book, and your  
8 testimony in your 2012 deposition, your 30(b)(6)  
9 deposition, that is the second tab in your binder. And  
10 when you have both of those things available to you,  
11 would you let me know.

12 A. Could you remind me the page number in the  
13 deposition.

14 Q. It's 183.

15 A. 183.

16 (Pause in the proceedings.)

17 I see it.

18 Q. In Secretary Paulson's book, he says, "Unlike with  
19 Lehman, the Fed felt it could make a loan to help AIG  
20 because we were dealing with a liquidity, not a capital,  
21 problem. The Fed believed that it could secure a loan  
22 with AIG's insurance subsidiaries, which could be sold  
23 off to repay any borrowing, and not run the risk of  
24 losing money."

25 In your deposition, you said that you agreed that

1 that was an accurate statement; correct, sir?

2 A. That is correct.

3 Q. And that was truthful and accurate testimony at  
4 the time you gave it; correct, sir?

5 A. I believed it to be.

6 Q. And that is truthful and accurate testimony today;  
7 correct, sir?

8 A. So --

9 Q. And I'd again ask you to give me yes, no or I  
10 don't know, and then you can explain if you need to.

11 A. I don't know.

12 Q. Has any information been furnished to you since  
13 your deposition that causes you to doubt the accuracy of  
14 your deposition testimony?

15 A. No.

16 Q. All right. Then let me go on to Plaintiffs' Trial  
17 Exhibit 64, which I would offer.

18 MR. AUSTIN: No objection, Your Honor.

19 THE COURT: Plaintiffs' Trial Exhibit 64 is  
20 admitted.

21 (Plaintiffs' Exhibit Number 64 was admitted into  
22 evidence.)

23 BY MR. BOIES:

24 Q. This is a document that you participated in  
25 authoring; correct, sir?

1 A. I reviewed. That's correct.

2 Q. And the people who participated in authoring this  
3 document are stated in footnote 1 of the document;  
4 correct?

5 A. That's correct.

6 Q. And are all of those personnel personnel of the  
7 Federal Reserve Board of Governors?

8 A. They were at the time.

9 Q. Are all of those lawyers?

10 A. No. I'm the only lawyer.

11 Q. You're the only lawyer.

12 And this is -- the subject is Issues Related to  
13 Possible IPC Lending to American International Group;  
14 correct?

15 A. Correct.

16 Q. And it's dated September 15, 2008; correct?

17 A. That's right.

18 Q. And it has the word "draft" on it.

19 Do you see that?

20 A. Yes.

21 Q. And then at the top there's a handwriting that  
22 says "Final."

23 Do you see that?

24 A. I do.

25 Q. Is that your handwriting, sir?

1           A. Yes, it is.

2           Q. Let me ask you to look next at Joint Exhibit 80.

3                   And these are handwritten notes of yours; correct,

4   sir?

5           A. Yes, that's correct.

6           Q. And --

7           THE COURT: I'm sorry. Did you say 80?

8           MR. BOIES: Joint Exhibit 80.

9           THE COURT: I'm sorry.

10          MR. BOIES: I apologize, Your Honor.

11          THE COURT: That was my fault. Okay.

12          BY MR. BOIES:

13          Q. And I'd like to direct your attention to the

14   second page at the bottom, where three lines up you have

15   written "conditions need to be punitive."

16                   Do you see that?

17          A. I do.

18          Q. Who made that statement in this conversation that

19   you're taking notes of?

20          A. I am uncertain -- I'm uncertain it is -- I'm

21   uncertain. I'd have to speculate.

22          Q. You'd have to what?

23          A. Speculate.

24          Q. Certainly you recall that Mr. Geithner expressed

25   the substance of those views; correct?

1           A. Yes. Mr. Geithner did -- President Geithner did  
2           express the substance of those views at some point.

3           Q. Let me ask you to turn next to Plaintiffs'  
4           Exhibit 368, which I would offer.

5           MR. AUSTIN: Your Honor, this is a document  
6           that -- it's an authentic document. We have no problem  
7           with introducing it, as long as the plaintiffs are not  
8           purporting it to be a document that was in fact  
9           finalized and sent to Mr. Baxter and Mr. Huebner by  
10          Mr. Alvarez.

11                  We learned from Mr. Alvarez' deposition that is in  
12          fact not the case, so as long as the plaintiffs are  
13          purporting to present it only as a draft, we have no  
14          problem with its admission. But if it's purported to be  
15          something else, then we'd have an objection on the  
16          grounds of authenticity.

17           MR. BOIES: Your Honor, we think that this is a  
18          document that was prepared as a final document  
19          representing the witness' views. It has every  
20          indication of that.

21                  The Court has seen many documents where they were  
22          labeled "draft," where, if it wasn't final, the date  
23          wasn't specified or something was in brackets. There's  
24          no indication whatsoever that this is anything other than  
25          a final document.

1 I understand that the defendant will contest that.  
2 That is a question for the Court to decide. But we are  
3 certainly offering this as a final authoritative  
4 document.

5 MR. AUSTIN: And we object on the grounds of  
6 authenticity if that is the purported offer, Your Honor.

7 THE COURT: Well, I'm going to overrule the  
8 objection. I will admit Plaintiffs' Trial Exhibit 368.

9 (Plaintiffs' Exhibit Number 368 was admitted into  
10 evidence.)

11 BY MR. BOIES:

12 Q. Now, Mr. Alvarez, this at least purports to be a  
13 memorandum from you to Mr. Baxter and  
14 Mr. Marshall Huebner at Davis Polk & Wardwell with a copy  
15 to Messrs. Ashton and Meyer; correct, sir?

16 A. It purports to be that.

17 Q. And who was Mr. Marshall Huebner at this time?  
18 What was his role?

19 A. Marshall Huebner was an attorney at Davis Polk  
20 that we were consulting with on a variety of matters  
21 related to the AIG transaction.

22 Q. Was he the lead partner at Davis Polk who was  
23 representing the government?

24 A. That may be the case.

25 Q. And did you deal with Mr. Huebner personally from

1 time to time?

2 A. I was on a phone call or two with him, but not in  
3 person.

4 Q. Now, it is your testimony I think that you never  
5 saw this document? Is that right?

6 A. That's correct.

7 Q. And you never discussed this document with  
8 anybody; is that correct?

9 A. That's correct.

10 Q. Are you aware of any other instances when anybody  
11 has prepared what purports to be a final document in your  
12 name, placed it in your files and never discussed it with  
13 you?

14 MR. AUSTIN: Objection. Compound question,  
15 Your Honor.

16 THE COURT: Overruled.

17 He can answer.

18 THE WITNESS: I don't believe this was placed in  
19 my files. I don't -- I don't believe it was placed in my  
20 files.

21 BY MR. BOIES:

22 Q. Let me try to take it one step at a time.

23 Are you aware of any other instance in the entire  
24 ten-year period that you have been general counsel of the  
25 Federal Reserve Board where anybody has prepared a memo

1 purportedly in final form from you and never gave you a  
2 copy and never discussed it with you?

3 A. I'm sure that's happened.

4 Q. Are you aware of any instance, sir?

5 A. Well, by definition, I wouldn't be aware of all  
6 the situations where people might prepare a document with  
7 my name on it and decide for one reason or another that  
8 the document is no longer appropriate, necessary,  
9 correct, relevant, or to be completed.

10 Q. Sir, in all the documents that you've reviewed in  
11 connection with this litigation, have you ever seen such  
12 a document?

13 A. So this one.

14 Q. Other than this one?

15 In all the documents that you've reviewed, all the  
16 files that have been turned over to us, have you ever  
17 seen another document that purports to be a final  
18 document from you that wasn't in fact something that you  
19 participated in?

20 MR. AUSTIN: Your Honor, can I ask for some  
21 clarification. The first time it was asked it was in  
22 connection with this litigation. This time it appears  
23 to be a much broader question of any documents he's  
24 reviewed in his entire career. I just want to make sure  
25 we understand what this question is referring to.

1           MR. BOIES: I had thought I had said "all the  
2 files that have been turned over to us," but let me just  
3 make clear.

4           BY MR. BOIES:

5           Q. There have been in this litigation a large  
6 quantity of documents produced from the files of the  
7 Federal Reserve; correct?

8           A. Yes.

9           Q. Now, have you seen any document, other than this  
10 one, or has counsel for the United States brought to  
11 your attention any document, other than this one, that  
12 you believe was something that was prepared purporting  
13 to be a final document from you to other people, with a  
14 date and a subject matter and addressees, and yet they  
15 never talked to you about it and never showed it to you?

16           MR. AUSTIN: Objection, Your Honor. Compound  
17 question. Attorney-client privilege and work product  
18 privilege.

19           THE COURT: Overruled. I'm going to take his  
20 answer.

21           BY MR. BOIES:

22           Q. That's a yes, no, or I don't know.

23           A. So you'll have to repeat the question.

24           Q. Sure.

25           Among all of the documents produced from the

1 files of the Federal Reserve in this litigation, have  
2 you seen any document, other than this one, or has  
3 counsel for the United States brought to your attention  
4 any document, other than this one, that you believe that  
5 was something that was prepared purporting to be a final  
6 document from you to other people, with a date and a  
7 subject matter and addressees, and yet they never talked  
8 to you about it and never showed it to you?

9 A. Purporting to be a document from me did you say or  
10 to me?

11 Q. A document purporting to be a final document from  
12 you to other people.

13 A. I don't know the answer to that. I -- I have  
14 not -- I've reviewed many documents but not all the  
15 documents in this case, so I don't know how to answer  
16 that question.

17 Q. All right, sir.

18 Let me turn to the subject of interest rates.

19 Section 13(3) provides that the rates for  
20 13(3) credit facilities are to be set pursuant to  
21 section 14 of the Federal Reserve Act, which is  
22 12 U.S.C. 357; correct, sir?

23 A. That's right.

24 Q. And if we could put section 14 of the  
25 Federal Reserve Act, 12 U.S.C. 357, up, it says that the

1 rates to be charged by the Federal Reserve Bank for each  
2 class of paper -- and let me stop you right there.

3 What is a class of paper?

4 A. It is a type of instrument for which a rate is  
5 being set, so it could be there could be different rates  
6 for different types of transactions, different kinds of  
7 instruments being discounted.

8 Q. When you say "type of instrument," what does  
9 "type of instrument" mean in the context of your answer?

10 A. So, for example, a loan to an insured depository  
11 institution could be one class of paper. A loan to an  
12 IPC could be a different class of paper.

13 Q. What would other class of paper be?

14 A. There are various kinds of -- there are various  
15 kinds of other instruments that Reserve Banks are  
16 authorized under section 13 to discount, evidences of  
17 certain agricultural transactions and other small  
18 business or other commercial transactions.

19 Q. With respect to insured depository institutions,  
20 which was the first class of paper that you identified,  
21 did the Federal Reserve Bank subject to the determination  
22 of the Board of Governors in 2008 set rates for that  
23 class of paper?

24 A. Yes, it did.

25 Q. And did it change those rates from time to time?

1 A. Yes.

2 Q. And were the rates in effect at any one time  
3 applied to all of the class of paper issued in connection  
4 with depository institutions?

5 A. I think actually there were different rates for  
6 even different types of paper with insured depository  
7 institutions.

8 So, for example, long-term paper versus short-term  
9 paper, overnight credit versus longer-term credit might  
10 have different interest rates.

11 Q. Now, we showed you a document yesterday that had  
12 the primary and secondary rates to it?

13 A. Yes.

14 Q. What class of paper did those rates apply to?

15 A. So those were overnight credits to insured  
16 depository institutions that are relatively healthy.  
17 That's the primary credit rate. And then the secondary  
18 credit rate is a higher rate for insured depository  
19 institutions that are not -- that might have some -- some  
20 financial difficulty.

21 Q. Now, other than the primary and the secondary  
22 rates, were there other classes of paper with respect to  
23 insured depository institutions, other than those two  
24 rates?

25 A. Yes. There was a program called the

1 Term Auction Facility, which was an auction that was set  
2 up for longer-term extensions of credit to insured  
3 depository institutions, and the rate was different for  
4 that auction.

5 Q. And with respect to what you refer to as the  
6 Term Auction Facility, when was that facility set up?

7 A. My memory is a little fuzzy, but I believe it was  
8 in the fall of 2007.

9 Q. And I take it that Term Auction Facility was not  
10 set up pursuant to 13(3).

11 A. That's right.

12 Q. What was the rate for the class of paper that  
13 related to Term Auction Facility?

14 A. It was set by auction, so it was different at  
15 different times.

16 Q. During 2008, other than the rates relating to the  
17 class of paper concerning Term Auction Facility and the  
18 primary and secondary rates for insured depository  
19 institution class of paper, were there any other rates  
20 that were charged for any class of paper relating to  
21 insured depository institutions?

22 A. There may have been, but I don't recall offhand.

23 Q. Now, let me turn to the class of paper for IPC  
24 credit facilities.

25 And those credit facilities would be 13(3) credit

1 facilities; correct?

2 A. That's correct.

3 Q. Now, in 2008, what classes of paper for IPC credit  
4 facilities were there?

5 A. So there were the instruments in the PDCF, the  
6 Primary Dealer Credit Facility.

7 There was the extension of credit to Maiden Lane  
8 which was -- you know, had the assets that were part of  
9 the Bear Stearns/JPMorgan transaction.

10 The TSLF, which was another facility with primary  
11 dealers.

12 There was -- there were a variety of other  
13 facilities. There was a commercial paper facility.  
14 There was a money market mutual fund facility. There was  
15 a ring fencing for Citigroup.

16 Speaking just of 2008?

17 Q. Yes.

18 A. Is that right?

19 There was an asset-backed commercial paper  
20 facility, the AMLF.

21 So there were each different facilities with  
22 different types of collateral, different durations.

23 Q. And these were all pursuant to section 13(3).

24 A. Yes, they were.

25 Q. Now, with respect to the PDCF, was that a separate

1 class of paper?

2 A. I believe so.

3 Q. And the credit facility for the  
4 Merrill Lynch/Bear Stearns/JPMorgan transaction -- I mean  
5 Maiden Lane, not Merrill Lynch -- was that a separate  
6 class of paper?

7 A. For this purpose, yes.

8 Q. And you say "for this purpose." What is this  
9 purpose?

10 A. Yes. Yes, it was. Yes. I don't want to argue  
11 with you about that.

12 Q. But I'm just saying, that was something that was  
13 considered a separate class of paper under section 14 of  
14 the Federal Reserve Act?

15 A. It was a -- it was a separate facility  
16 transaction -- set of transactions with a particular kind  
17 of paper for which an interest rate was set under  
18 section 14.

19 Q. That really wasn't my question.

20 Section 14 talks about setting rates for each  
21 class of paper; correct, sir?

22 A. It does.

23 Q. And what I'm saying is, is it your testimony that  
24 the credit facility for Maiden Lane, Bear Stearns and  
25 JPMorgan was a separate class of paper as that term is

1 used in section 14?

2 A. Yes, sir.

3 Q. And the TSLF facility, was that a separate class  
4 of paper, according to your testimony?

5 A. Yes.

6 Q. Now, the PDCF, that class of paper, the rate was  
7 set at the primary credit rate; correct?

8 A. I believe that's correct.

9 Q. And what was the credit rate for the  
10 Maiden Lane/Bear Stearns/JPMorgan transaction?

11 A. I believe that also was the primary credit rate.

12 Q. And what was the credit rate for the TSLF class of  
13 paper that you've described?

14 A. I do not recall. That may have been set by  
15 auction. I do not recall.

16 Q. Was it materially different than the primary  
17 credit rate?

18 A. I -- I do not recall.

19 Q. Now, you said that there was a commercial paper  
20 facility as well.

21 A. Yes.

22 Q. And was that facility again a separate class of  
23 paper under section 14 as you use that term?

24 A. Yes.

25 Q. And what was the credit rate for that class of

1 paper?  
2 A. I do not recall.  
3 Q. Approximately what was it?  
4 A. I just don't recall.  
5 Q. Was it materially different than the primary  
6 credit rate?  
7 A. I don't know.  
8 Q. You also said that there was a money market class  
9 of paper. Do you recall that?  
10 A. Yes, I do.  
11 Q. And what was the rate that was set for the money  
12 market class of paper for IPC for 13(3) loans?  
13 A. I don't recall.  
14 Q. Approximately what was it?  
15 A. I do not recall.  
16 Q. Was it materially different than the primary  
17 credit rate?  
18 A. I don't recall.  
19 Q. Now, you also mentioned the ALMF; correct?  
20 A. Yes.  
21 Q. And was that a separate class of paper as you use  
22 that term?  
23 A. Yes.  
24 Q. And what was the rate that was set for that class  
25 of paper?

- 1           A. I don't recall.
- 2           Q. Approximately.
- 3           A. I do not recall.
- 4           Q. Was it materially different than the primary  
5 credit rate?
- 6           A. I don't recall.
- 7           Q. Now, you also mentioned a ring fencing facility  
8 for Citigroup. Do you recall that?
- 9           A. I do.
- 10          Q. Now, that was a facility that was not drawn on in  
11 2008; correct?
- 12          A. That's correct.
- 13          Q. Was it set up in 2008?
- 14          A. Yes, it was.
- 15          Q. So that there was a potential to be drawn on, but  
16 it wasn't actually drawn on.
- 17          A. That's correct.
- 18          Q. Was the 13(3) ring fencing credit facility ever  
19 drawn on?
- 20          A. Was the Citigroup ring fencing?
- 21          Q. The 13(3) --
- 22          A. You left out -- did you mean the Citigroup  
23 13(3) ring fencing?
- 24          Q. Yes. In other words --
- 25          A. Yes. No. I just want to make sure. You left out

1 whose ring fencing. You're talking about the Citigroup  
2 one?

3 Q. I'm talking about -- how many ring fencing --

4 A. There were two.

5 Q. -- 13(3) credit facilities were there from the  
6 Federal Reserve?

7 A. Two.

8 Q. One for Citicorp?

9 A. Yes.

10 Q. And one for whom?

11 A. Bank of America.

12 Q. And when was the Bank of America 13(3) ring  
13 fencing credit facility set up?

14 A. That was in early 2009.

15 Q. And was that facility actually drawn on?

16 A. No, it was not.

17 Q. And I think you said that the Citicorp 13(3) ring  
18 fencing facility was not drawn on either; is that right?

19 A. That's right.

20 Q. Now, even though they were not drawn on, rates  
21 were set for those facilities; correct?

22 A. That's right.

23 Q. Let me take Citicorp first.

24 What was the rate for the Citicorp ring fencing  
25 facility?

1           A. So my memory is vague, but I believe it was  
2 something on the order of one of the overnight indexes --  
3 I don't remember if it was LIBOR or the overnight index  
4 swap rate -- plus 300 basis points.

5           Q. And in September of 2008, what would that have  
6 come out to be?

7           A. I don't -- I don't recall what the index rate was  
8 at the time.

9           Q. The index rate in the fall of 2008 was very low,  
10 was it not, sir?

11          A. It -- relatively low, but I don't recall what it  
12 was.

13          Q. Was it less than 1.5 percent?

14          A. I don't recall.

15          Q. The rate that was set for what you describe as  
16 the Bank of America ring fencing class of paper for that  
17 13(3) credit facility, what was that rate?

18          A. So again I'm a little fuzzy about it, but I  
19 believe it was the same rate as the Citigroup ring  
20 fencing rate.

21          Q. Now, section 14 of the Federal Reserve Act says  
22 that the rates for each class of paper shall be fixed  
23 with a view of accommodating commerce and business.

24                 Do you see that?

25          A. I see that.

1 Q. Was the Primary Dealer Credit Facility class of  
2 paper rate set with a view of accommodating commerce and  
3 business?

4 A. Yes.

5 Q. Did the Federal Reserve Bank or the  
6 Federal Reserve Board of Governors do any analysis to  
7 determine what rate for the PDCF would best accommodate  
8 commerce and business?

9 A. So they considered the rate that they thought  
10 would make the facility function best and in that -- in  
11 that way accommodate commerce and business.

12 Q. As you understood it as the general counsel of the  
13 Federal Reserve System, what did it mean to set a rate  
14 with a view of accommodating commerce and business?

15 A. Well, these facilities were designed to -- the  
16 facilities, as opposed to the individual IPC loans, were  
17 set to -- with a view towards unfreezing markets and  
18 providing more liquidity for a variety of kind of  
19 transactions and assets in broad markets.

20 Q. Unfreezing markets and providing more liquidity  
21 for a variety of kind of transactions and assets in broad  
22 markets; is that what you said?

23 A. That's right.

24 Q. And was that true for the rates that were set for  
25 Primary Dealer Credit Facility class of paper?

1 A. I believe so.

2 Q. Was that true for the rates that were set for the  
3 TSLF class of paper?

4 A. I believe so.

5 Q. Was that true for the rates that were set for the  
6 Maiden Lane/Bear Stearns/JPMorgan class of paper?

7 A. I believe so.

8 Q. Was that true for the rates that were set for the  
9 money market 13(3) facility class of paper?

10 A. I believe so.

11 Q. And was that true for the rates that were set for  
12 the ALMF 13(3) facility class of paper?

13 A. AMLF. I believe so.

14 Q. And was that true for the ring fencing Citicorp  
15 13(3) class of paper?

16 A. So now for the ring fencing, I believe it is true,  
17 but the logic is a little bit different. Those  
18 transactions would accommodate commerce and business by  
19 allowing those large institutions to continue in business  
20 in a way that didn't disrupt the economy and didn't  
21 disrupt commerce and business more generally.

22 Q. And that would be true for both Citicorp and  
23 Bank of America.

24 A. That's right.

25 Q. Now, let me turn to a 13(3) 2008 credit facility

1 that you did not happen to mention, and that is the  
2 credit facility for AIG.

3 A rate was set for that credit facility as well;  
4 correct, sir?

5 A. That's correct.

6 Q. And was there any written analysis or  
7 investigation that you were aware of that addressed what  
8 rate would accommodate commerce and business with respect  
9 to the AIG credit facility?

10 A. So the --

11 Q. If you need to have the question reread --

12 A. Yes.

13 Q. -- I will.

14 A. Repeat the question, please.

15 Q. And -- because I'd like you to focus on my  
16 question, not your restatement of the question, and if my  
17 question is unclear in any way, let me know, and I'll  
18 rephrase it. Okay?

19 A. Thank you.

20 Q. Was there any written analysis or any written  
21 report of any investigation that you were aware of that  
22 addressed what rate would accommodate commerce and  
23 business with respect to the AIG credit facility?

24 A. So --

25 Q. This is a yes, no, or I don't know, and then you

1 can give an explanation, but I'd like to begin with that  
2 just so I understand where the answer is going. Would  
3 that be okay?

4 A. I was going to ask you to clarify the question.

5 Q. Okay. Then please do.

6 A. You -- you've tied together the analysis of  
7 accommodating commerce and business with a specific  
8 analysis of the rate without -- and though the -- is that  
9 correct? Is that...

10 Q. I don't want to get into a back-and-forth, but I  
11 don't understand that question.

12 A. Okay. So that --

13 Q. And let me try to -- let me try to put it this  
14 way.

15 In order to set a rate for the AIG 13(3) credit  
16 facility, a determination had to be made as to what rate  
17 would accommodate commerce and business; correct?

18 A. Yes.

19 Q. And that determination was made by whom?

20 A. That was made by the Board of Governors.

21 Q. And when did the Board of Governors make that  
22 determination?

23 A. In connection with approving the AIG credit  
24 facility.

25 Q. So on September 16, 2008; is that correct?

1           A. That's right.

2           Q. And was any written material submitted to the  
3 Board of Governors concerning what rate would accommodate  
4 commerce and business?

5           A. So there was a discussion, but was there written  
6 material that specifically tied the rate to the  
7 accommodation of commerce and business, not that I  
8 recall.

9           Q. So that there were no written materials submitted  
10 to the Board of Governors concerning what rate would  
11 accommodate commerce and business; correct?

12                   Yes, no, or I don't know or I can't understand  
13 your question.

14           A. So you've rephrased the question, so perhaps I  
15 don't understand the question.

16           Q. Do you know what written materials are?

17           A. I certainly do.

18           Q. Were any written materials submitted to the  
19 Board of Governors concerning what rate would accommodate  
20 commerce and business for the AIG 13(3) credit facility?

21           A. So not that I recall. Not that I recall.

22           Q. Okay. Was oral information conveyed to the  
23 Board of Governors on September 16 concerning what rate  
24 for the AIG 13(3) credit facility would accommodate  
25 commerce and business?

1           A.  Yes.

2           Q.  Who presented that oral material?

3           A.  So --

4           Q.  These are names.

5           A.  Sorry.

6                 President Geithner.

7           Q.  Anyone else?

8           A.  There was a discussion among others, but as to a

9  presentation, President Geithner.

10          Q.  And when you say "there was a discussion," did

11 anyone in that discussion present information or data to

12 the Board of Governors other than Secretary Geithner?

13          A.  The -- yes.

14          Q.  Okay.  Who?

15          A.  So --

16          Q.  That's a name.

17          A.  Yes, it's a name.

18                 A variety of -- Don Kohn.  Perhaps, though I'm

19 uncertain -- I'm fuzzy about it, but perhaps

20 Secretary Paulson as well.

21          Q.  Were any notes or record, other than the minutes

22 of the Board of Governors meeting, kept or taken of what

23 was said about the subject of what rate would accommodate

24 commerce and business for the AIG 13(3) loan?

25          A.  So I have my notes of the board meeting.

1 Q. And have we covered those today?

2 A. Yes, you have.

3 Q. Let me see if I can find those so that we are sure  
4 that we're talking about the same thing.

5 While we're doing that, would you look at  
6 Joint Exhibit 80 and see if that is the document that you  
7 were referring to.

8 A. Yes.

9 Q. Okay. So Joint Exhibit 80 are your notes of the  
10 September 16 Board of Governors meeting; correct?

11 A. That's right.

12 Q. Would you take a marker and mark on your copy of  
13 this exhibit which of the notes, in your view, relate to  
14 the subject of what would be an appropriate rate for the  
15 AIG 13(3) loan to accommodate commerce and business.  
16 Just circle the portions, if you would.

17 (Pause in the proceedings.)

18 And when you're finished, let me know.

19 A. I believe the portions that I've marked  
20 here (indicating).

21 (Pause in the proceedings.)

22 Q. Are you finished?

23 A. I am.

24 Q. Now, let me ask you to look at Joint Exhibit 82.

25 And if you could give me that, just take that out,

1 and I'll share that with counsel. Thank you.

2 A. Here's your pen (indicating).

3 Q. Oh, you're going to need it still.

4 Now, Joint Exhibit 82 is also notes that you took  
5 on September 16, 2008; correct?

6 A. That's right.

7 Q. Were these also notes that you took of the  
8 Board of Governors meeting on that day?

9 MR. AUSTIN: Your Honor, I don't mean to interrupt  
10 counsel, but I'm wondering if we should mark this as 80-A  
11 since it has some markings on it.

12 MR. BOIES: I think that's a good idea.

13 MR. AUSTIN: Okay.

14 MR. BOIES: With the Court's permission, what we  
15 will do is we will mark a copy jointly to reflect the  
16 marks the witness made. The pen I gave him is a marker  
17 that bleeds through on the other side, so it's a  
18 little -- I think that particular exhibit might be a  
19 little confusing. But we will -- we will do that. The  
20 next time I will use the yellow highlighter.

21 BY MR. BOIES:

22 Q. Now, with respect to Joint Exhibit 82, I was  
23 asking whether these are also notes that you took on  
24 September 16, and I think the answer to that is yes;  
25 correct?

1           A. Notes that I took on September 16, that is  
2 correct, 2008.

3           Q. Were these notes that you took of the  
4 Board of Governors meeting on that day or were these  
5 notes taken of something else?

6           A. So as I believe I testified before, I'm uncertain  
7 of when exactly this conversation -- this -- what  
8 discussion this -- these notes reflect. There may have  
9 been a conversation earlier in the day or part of the  
10 board meeting. I'm not certain.

11          Q. Okay. Is there any portion of these notes that  
12 relates to the question of what rate would accommodate  
13 commerce and business for the AIG 13(3) credit facility?

14          A. I believe in a general way, yes.

15          Q. Would you mark that portion or those portions with  
16 this yellow highlighter (indicating).

17               (Pause in the proceedings.)

18               May I approach, Your Honor?

19               THE COURT: Yes.

20               MR. BOIES: Thank you.

21               BY MR. BOIES:

22          Q. Other than your notes and other than the minutes  
23 of the Board of Governors meeting, are you aware of any  
24 other written or recorded material that relates to any  
25 discussion or information presented with respect to the

1 issue of what rate would accommodate commerce and  
2 business?

3 A. You include in the minutes the resolution adopted  
4 by the board.

5 Q. Yeah.

6 A. Yeah. Then that is -- those are the ones I  
7 recall.

8 Q. I'm including the entirety of Exhibit 63.

9 A. Yeah.

10 Q. And that's what you recall.

11 A. That's what I recall.

12 Q. And that's all that you recall.

13 A. That's all that I recall.

14 Q. Okay. Now, the interest rate that was fixed for  
15 the AIG 13(3) loan was the highest interest rate ever  
16 charged by the Federal Reserve for a 13(3) loan;  
17 correct?

18 A. We're speaking just in my experience?

19 Q. Well, in your experience but also with respect to  
20 your knowledge as the general counsel of the  
21 Federal Reserve Board of Governors for a decade as to  
22 what happened at other times.

23 A. I've not researched in any way what happened  
24 during the 1930s when there were a great number of  
25 13(3) loans extended, but in my experience, that was the

1 highest interest rate.

2 Q. Was it three to four times as high as the interest  
3 rate charged any other 13(3) borrower in 2008?

4 A. Well, as I mentioned before, I don't --

5 Q. That's a yes, no, or I don't know.

6 A. I don't know.

7 Q. Is that something that you investigated?

8 A. No.

9 Q. Is that something that insofar as you are aware  
10 anybody at the Federal Reserve investigated?

11 A. I don't know.

12 Q. Let me ask you to look at Plaintiffs' Trial  
13 Exhibit 80. We've looked at Joint Exhibit 80. This is  
14 Plaintiffs' Trial Exhibit 80, which I would offer.

15 MR. AUSTIN: No objection, Your Honor.

16 THE COURT: Plaintiffs' Trial Exhibit 80 is  
17 admitted.

18 (Plaintiffs' Exhibit Number 80 was admitted into  
19 evidence.)

20 BY MR. BOIES:

21 Q. This is an e-mail with an attached draft  
22 resolution that you sent to Mr. Geithner and Mr. Baxter  
23 on September 16 at 11:56 a.m., and the subject is  
24 Latest Resolution.

25 Do you see that?

1           A. I see that.

2           Q. And you write, "Here is a draft of the resolution  
3 we plan to present to the Board after FOMC. One addition  
4 might be the amount."

5                   Do you see that?

6           A. I see that.

7           Q. And you sent this on or about the time indicated  
8 on the day indicated?

9           A. That's right.

10          Q. Now, the interest rate that was set for the  
11 AIG 13(3) loan was an interest rate that you believed at  
12 the time of your deposition was the interest rate that  
13 had been discussed between AIG and certain private-sector  
14 banks; correct?

15          A. That's correct.

16          Q. Now, you had never talked to AIG or any  
17 representative of AIG to find out if that was true;  
18 correct?

19          A. That's correct.

20          Q. And you had never talked to any representative of  
21 the private-sector banks to decide whether that was true;  
22 correct?

23          A. That's correct.

24          Q. And insofar as you are aware, that interest rate  
25 was simply accepted by the Federal Reserve without any

1 analysis or consideration as to whether that interest  
2 rate was a reasonable interest rate; correct, sir?

3 A. No.

4 Q. Let me ask you to look at your 2012 deposition at  
5 page 33, lines 16 through 20:

6 "QUESTION: Was any analysis or consideration done  
7 or given by the United States to the question of whether  
8 the interest rate that the banks were asking for in the  
9 discussions was a reasonable interest rate?

10 "ANSWER: No, not that I'm aware of."

11 You gave that testimony under oath in  
12 2012 December, did you not, sir?

13 A. Yes, I did.

14 Q. And it was truthful and accurate and complete  
15 testimony at the time you gave it; correct, sir?

16 A. About the interest rate the banks were asking,  
17 that's correct.

18 Q. And the banks that are referred to here are the  
19 private-sector banks.

20 A. That's right.

21 Q. And you didn't know whether AIG had or had not  
22 agreed to this interest rate; correct?

23 A. That's correct.

24 Q. And you were aware that unlike the  
25 Federal Reserve, private banks were not instructed by

1 Congress to set their interest rates with a view towards  
2 accommodating commerce and business. You were aware of  
3 that.

4 A. That's correct.

5 Q. Let me turn next to a topic that we touched on  
6 yesterday but didn't complete, and that is AIG's requests  
7 for assistance prior to September 16, 2008. And let me  
8 ask you about several possible instances.

9 First, on September 9, did AIG's chief executive  
10 officer meet with President Geithner in an attempt to  
11 obtain relief by becoming a primary dealer?

12 A. I don't recall.

13 Q. Let me ask you to look at Plaintiffs' Trial  
14 Exhibit 641, which I will offer.

15 MR. AUSTIN: Objection, Your Honor. Hearsay.

16 THE COURT: This is the GAO report?

17 MR. AUSTIN: Yes.

18 THE COURT: Overruled. I will accept Plaintiffs'  
19 Trial Exhibit 641.

20 (Plaintiffs' Exhibit Number 641 was admitted into  
21 evidence.)

22 BY MR. BOIES:

23 Q. Let me begin by directing your attention to  
24 page 26 and the last paragraph on that page.

25 Do you see that?

1 A. I do.

2 Q. It says, "Leading up to the weekend of  
3 September 13-14, 2008, AIG made renewed attempts to  
4 obtain discount window access while also initiating  
5 efforts to identify a private-sector solution."

6 Do you see that?

7 A. Yes.

8 Q. And do you agree with that?

9 A. Yes.

10 Q. The next sentence says, "On September 9,  
11 American International Group's then chief executive  
12 officer met again with the then Federal Reserve Bank of  
13 New York president in another attempt to obtain relief,  
14 this time by means of becoming a primary dealer."

15 Do you see that?

16 A. I see that.

17 Q. And do you agree with that?

18 A. I have no independent knowledge of this, but I --  
19 it's in the GAO report.

20 Q. And you have no reason to doubt that that is true;  
21 is that fair?

22 A. That's fair.

23 Q. Now, at the time of your deposition in 2012, do  
24 you recall that in addition to not having any reason to  
25 doubt the accuracy of this, you affirmatively testified

1 that you believed that that was an accurate statement?

2 A. Are you asking for my recollection of the  
3 deposition?

4 Q. If you -- would you like me to show you the  
5 deposition?

6 A. I have little memory of this part of the  
7 deposition.

8 Q. Let me ask you to look at page 236 of your  
9 30(b)(6) deposition, the 2012 deposition.

10 A. Page 36?

11 Q. Page 236.

12 A. 236.

13 MR. AUSTIN: Objection, Your Honor. The witness  
14 should be given an opportunity to, you know, try to  
15 answer the question directly. If he testifies that he  
16 does not have a recollection, then his recollection can  
17 attempt to be refreshed, but I don't think that  
18 foundation --

19 THE COURT: I think we already have his testimony.

20 MR. BOIES: Exactly, Your Honor.

21 MR. AUSTIN: He said he didn't recall his  
22 deposition testimony I thought, Your Honor.

23 THE COURT: No. But there was a prior question  
24 about his recollection of this.

25 BY MR. BOIES:

1 Q. Starting at line 3:

2 "QUESTION:" -- and this incidentally is relating  
3 to the report that is Plaintiffs' Trial Exhibit 641;  
4 correct, sir?

5 A. It appears -- it -- it appears to be. The page  
6 numbers are not here. You referred to page -- different  
7 page numbers in the deposition. But the words that  
8 you're quoting are the same.

9 Q. Okay.

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

15 "As the United States understands it, is that an  
16 accurate statement?

17 "ANSWER: Yes."

18 Do you see that?

19 A. I see that.

20 Q. And that was truthful and accurate testimony at  
21 the time you gave it?

22 A. That's right.

23 Q. And that, since it was closer in time, would be a  
24 more reliable guide to what happened than whatever memory  
25 you have today; correct?

1           A. A certainly more accurate guide to my memory at  
2 the time than my memory today.

3           Q. In addition, AIG sought federal aid from the  
4 Federal Reserve Board staff; correct, sir?

5           A. It discussed with us the -- the -- the board's  
6 approach to 13(3) lending. That's correct.

7           Q. Let me ask you to look at the first full sentence  
8 on page 27 of Plaintiffs' Trial Exhibit 641 just to see  
9 if I understand what you're saying.

10                   The statement there says, "Meanwhile, AIG also  
11 made an inquiry about federal aid to the Federal Reserve  
12 Board staff."

13                   Do you see that?

14           A. I do.

15           Q. And what you're saying is that's an accurate  
16 statement, and the inquiry was about 13(3) lending; is  
17 that right?

18           A. Yes. This is an accurate statement, yes.

19           Q. And then on Friday, September 12, Mr. Willumstad  
20 again spoke with President Geithner; correct?

21           A. That is what the GAO report says.

22           Q. But in addition, that's something that you believe  
23 to be accurate; correct, sir?

24           A. Again, my memory is very vague. But I believe it  
25 to be true because it's in the GAO report.

1 Q. And one option discussed at that meeting was  
2 whether AIG could borrow from the discount window through  
3 its thrift subsidiary; is that correct?

4 A. I have no recollection.

5 Q. Let me ask you to look at page 237 of your  
6 2012 deposition, line 18.

7 A. Okay.

8 MR. AUSTIN: Your Honor, I need to object at this  
9 point. The witness has testified that he doesn't have  
10 any recollection of the point.

11 In the first deposition, he was testifying as the  
12 government's 30(b)(6) witness, so some of the answers he  
13 gave there were not -- did not -- were not required to be  
14 within his, you know, personal knowledge, so that the  
15 answer there does not -- or he may be giving it as a  
16 representative and not based on his personal  
17 recollection.

18 So it's not an individual deposition like his  
19 second one was, so I think it's unfair to pull the  
20 deposition out to say -- I mean, he can ask if it  
21 refreshes his recollection, but if it doesn't, I think  
22 the answer has to be understood in that context.

23 THE COURT: I'll overrule the objection.

24 BY MR. BOIES:

25 Q. I'd like to direct your attention to line 18:

1           "QUESTION: And it says, 'One option discussed at  
2 that meeting," referring to the September 12 meeting,  
3 "'was whether AIG could borrow from the discount window  
4 through its thrift subsidiary.'

5           "As the United States understands it, was that an  
6 accurate statement?

7           "ANSWER: Yes."

8           Do you see that?

9           A. I see that.

10          Q. And that was your view at the time of your  
11 deposition; correct?

12          A. So as -- speaking as the United States at the  
13 time, it is -- my memory is very faded right now.

14          Q. Right now.

15          A. Yes.

16          Q. I understand that.

17          A. Okay.

18          Q. And as time passes that happens.

19          A. Yes.

20          Q. But the thing I want to be clear on is that when  
21 you gave your deposition, you were giving your deposition  
22 with the best memory and recollection and honesty and  
23 completeness that you could.

24          A. And the information that I had. Yes.

25          Q. And was there anything that you said in that

1 deposition as the United States representative that you  
2 personally didn't agree with?

3 A. So on this question, no.

4 Q. On this question or any question.

5 I mean, in other words, you were under oath -- and  
6 the reason I ask this question is because of counsel's  
7 statement.

8 Was there any time in the deposition when I was  
9 asking you questions under oath and you were giving  
10 answers as the United States representative that you  
11 thought in your personal capacity were not true or not  
12 complete?

13 A. So I was doing the very best I could to answer  
14 your questions at the time given the information, my  
15 memory, and what -- what I understood then.

16 Q. And what you personally understood as well as what  
17 people had told you from the United States; correct?

18 A. And what I personally understood and remembered at  
19 the time, that's right.

20 Q. Okay. On or about September 13, the  
21 Federal Reserve told AIG, in substance, that the  
22 Federal Reserve was not going to provide financial  
23 assistance to AIG; correct, sir?

24 A. I wouldn't use those words, so incorrect.

25 Q. I'm sorry, sir?

1 A. No.

2 Q. Mr. Kohn is the vice chairman of the  
3 Board of Governors; correct, sir?

4 A. That's correct.

5 Q. And do you know who Mr. Frenkel of AIG was?

6 A. He was a member of the board of directors of AIG.

7 Q. And he was the vice chairman of the board, was he  
8 not, sir?

9 A. That may well be.

10 Q. And on or about September 13, did Mr. Kohn tell  
11 Mr. Frenkel, in substance, that the Federal Reserve was  
12 not going to provide financial assistance to AIG?

13 A. I think the word was "reluctant."

14 Q. You think the word was "reluctant"? Is that what  
15 you said?

16 A. Yes.

17 Q. Let me ask you to look at page 128 of your  
18 2012 deposition, lines 9 through 13. And take a moment  
19 to assure yourself from the context that this question  
20 relates to what Mr. Kohn told Mr. Frenkel on  
21 September 13. When you're done that, please let me  
22 know.

23 A. Okay.

24 (Pause in the proceedings.)

25 MR. AUSTIN: Your Honor, in fairness, the witness

1 should be asked to -- counsel should also read the  
2 previous question and answer because it's the same issue,  
3 for purpose of completeness, on the deposition  
4 transcript.

5 Thank you.

6 BY MR. BOIES:

7 Q. Please read the immediately preceding and prior  
8 portions, whatever you need to put in context the  
9 question that I'm going to ask because the question I'm  
10 going to ask is about what was said, and I just want it  
11 to be clear from the record that this -- the question I'm  
12 going to read, which is at lines 9 through 13, is a  
13 question about what Mr. Kohn told Mr. Frenkel.

14 A. So are you going to read page 127 and --

15 Q. No.

16 A. -- which begins the context?

17 Q. For my purposes, I'm not.

18 A. Okay.

19 Q. But if somebody thinks that they want to read  
20 them, I don't have any objection. But I've got a really  
21 short, simple question.

22 Have you looked at this enough to satisfy yourself  
23 that lines 9 through 13 on page 128 is relating to what  
24 Mr. Kohn told Mr. Frenkel?

25 A. In substance, yes.

1 Q. Okay. Now, you'll recall a few minutes ago I  
2 asked you, on or about September 13, did Mr. Kohn tell  
3 Mr. Frenkel, in substance, that the Federal Reserve was  
4 not going to provide financial assistance to AIG? And  
5 you answered, "I think the word was 'reluctant.'"

6 Do you recall that?

7 A. Yes, I do.

8 Q. Now I'd like you to look at page 128 lines 9  
9 through 13, where you were asked, "Did Mr. Kohn say to  
10 Mr. Frenkel, in substance, that the Federal Reserve was  
11 not going to provide financial assistance to AIG?" and  
12 you answered, "That's my understanding."

13 Do you see that?

14 A. I see that.

15 Q. And is it fair to say that that was in fact your  
16 understanding in 2012?

17 A. Yes.

18 Q. And is it fair to say that your memory of these  
19 events was better in 2012 than it is today?

20 A. No. On this one it's the same.

21 Q. This one it's the same?

22 A. Uh-huh. I --

23 Q. So today, if I asked you, did Mr. Kohn say to  
24 Mr. Frenkel on September 13 in substance that the  
25 Federal Reserve was not going to provide financial

1 assistance to AIG, your answer would be "That's my  
2 understanding"?

3 A. With the caveats of the several questions that  
4 come before it, yes.

5 Q. What is that caveat, sir?

6 A. So, for example, the question above, I understand  
7 there's not been a formal request, and I'm asking, when  
8 Mr. Kohn said just the words, I don't know the exact  
9 words that he used.

10 Q. That's why I said in substance.

11 A. I appreciate that. And I just want to make sure  
12 that that is -- that is what I was trying to convey.

13 Q. So let's -- let's just be clear.

14 A. Uh-huh.

15 Q. It is your present understanding that on  
16 September 13 Mr. Kohn said to Mr. Frenkel, in  
17 substance -- and I emphasize the word or phrase  
18 "in substance" -- that the Federal Reserve was not going  
19 to provide financial assistance to AIG; correct?

20 A. Yes.

21 Q. Thank you.

22 Let me turn next just to try to clarify a couple  
23 of things that we've touched on before.

24 When I asked you about the  
25 Merrill Lynch/Bear Stearns/JPMorgan credit facility, you

1 said that you extended credit only after JPMorgan agreed  
2 to provide a substantial amount of subordinated debt to  
3 the facility. Do you recall that generally?

4 A. Yes.

5 Q. Now, how much credit did the Federal Reserve  
6 provide to the Maiden Lane I facility?

7 A. I believe it was -- it was around \$29 billion.

8 Q. And how much subordinated debt did JPMorgan supply  
9 to that facility?

10 A. \$1 billion.

11 Q. And am I correct that the credit that the  
12 Federal Reserve extended in connection with the  
13 Maiden Lane/Bear Stearns/JPMorgan credit facility was  
14 nonrecourse?

15 A. Yes.

16 Q. Okay. That means that you couldn't sue JPMorgan  
17 for any deficit; correct?

18 A. It was with recourse to the assets. Of course,  
19 JPMorgan had put in \$1 billion, and that, we could get.

20 Q. Whatever was in the facility.

21 A. Correct.

22 Q. But you couldn't go after JPMorgan's other  
23 assets.

24 A. That's right.

25 Q. Now, we also talked about the extent to which

1 people who had access to the Primary Dealer Credit  
2 Facility were well-managed and well-capitalized. Do you  
3 recall that?

4 A. Yes.

5 Q. Let me ask you to look at Plaintiffs' Trial  
6 Exhibit 624, which I will offer.

7 Oh, I'm sorry. That is not in the book.

8 Thank you.

9 A. Thank you.

10 MR. AUSTIN: Your Honor, we object on the grounds  
11 of hearsay.

12 THE COURT: Based upon what it appears to be,  
13 namely, The Financial Crisis Inquiry Report prepared by  
14 the Financial Crisis Inquiry Commission of the  
15 United States of America, I will overrule the objection.

16 Plaintiffs' Trial Exhibit 624 is admitted.

17 (Plaintiffs' Exhibit Number 624 was admitted into  
18 evidence.)

19 BY MR. BOIES:

20 Q. Let me direct your attention, Mr. Alvarez, first  
21 to page 19 of this exhibit. And it's under the heading  
22 at the bottom in bold "We conclude a combination of  
23 excessive borrowing, risky investments, and lack of  
24 transparency put the financial system on a collision  
25 course with crisis."

1           Do you see that?

2           A.   I do.

3           Q.   Then the first full paragraph after that begins,  
4    "In the years leading up to the crisis, too many  
5    financial institutions, as well as too many households,  
6    borrowed to the hilt, leaving them vulnerable to  
7    financial distress or ruin if the value of their  
8    investments declined even modestly."

9           You then get to the sentence that I'd like you to  
10   focus on:

11           "For example, as of 2007, the five major  
12   investment banks -- Bear Stearns, Goldman Sachs,  
13   Lehman Brothers, Merrill Lynch, and Morgan Stanley --  
14   were operating with extraordinarily thin capital. By one  
15   measure, their leverage ratios were as high as 40 to 1,  
16   meaning for every \$40 in assets, there was only \$1 in  
17   capital to cover losses. Less than a 3 percent drop in  
18   asset values could wipe out a firm."

19           Do you see that?

20           A.   I see that.

21           Q.   Is that consistent with your understanding, sir?  
22   If you know.

23           A.   I do not know.

24           Q.   Did you ever investigate that or analyze that in  
25   connection with the credit that was extended to any of

1 these companies?

2 A. I did not.

3 Q. Do you know if anyone else at the Federal Reserve  
4 did?

5 A. I believe others did look at the capital and  
6 financial position of the broker-dealers, but I did not.

7 Q. Do you know who would have done that?

8 A. It would have been folks in our  
9 Supervision Division, perhaps also the Reserve Bank.

10 Q. But none of them ever talked to you or insofar as  
11 you are aware when you were present talked to the  
12 Board of Governors of the Federal Reserve about that;  
13 correct?

14 A. No, I didn't say that. I was not -- I am not  
15 aware of these numbers and these -- and I'm not an expert  
16 in the capital of these organizations --

17 Q. My question --

18 A. -- or even informed about the capital of these.

19 Q. Just say that one more time because I started to  
20 interrupt, and I apologize.

21 A. I am not informed on the capital levels of these  
22 organizations.

23 Q. "These organizations" being these five major  
24 investment banks?

25 A. That's right.

1 Q. You were, however, present at Board of Governors  
2 meetings, including Board of Governors meetings that  
3 authorized, for example, the Primary Dealer Credit  
4 Facility; correct?

5 A. I was, yes.

6 Q. And at those meetings, was any of this information  
7 presented?

8 A. I don't recall if these numbers would have been  
9 presented or not.

10 Q. Let me ask you to turn to page 382 of the exhibit.  
11 And let me ask you to look at the second full  
12 paragraph.

13 And it begins, "As it had on the weekend of Bear's  
14 demise, the Federal Reserve announced new measures on  
15 Sunday, September 14, to make more cash available to  
16 investment banks and other firms. Yet again, it lowered  
17 its standards regarding the quality of the collateral  
18 that investment banks and other primary dealers could use  
19 while borrowing under the two programs to support repo  
20 lending, the Primary Dealer Credit Facility (PDCF) and  
21 the Term Securities Lending Facility (TSLF)."

22 Do you see that?

23 A. I see that.

24 Q. And do you remember colloquies that we had  
25 yesterday about whether the Fed was accepting collateral

1 that was not as good, in layman's language, as it had  
2 before?

3 A. I do recall that.

4 Q. Using the language here, would you agree that the  
5 Federal Reserve had lowered its standards regarding the  
6 quality of the collateral that investment banks and other  
7 primary dealers could use while borrowing under the PDCF  
8 and the TSLF?

9 A. No.

10 Q. You would not agree with that.

11 A. Right.

12 Q. On September 14, the Fed had agreed for the first  
13 time to allow primary dealers to use as collateral  
14 non-investment-grade bonds; correct?

15 A. Right.

16 Q. But it's your testimony you would still disagree  
17 with this statement?

18 A. Because of the value judgment "lowered its  
19 standards." As I mentioned yesterday, it -- that is a  
20 kind of collateral that others were lending against and  
21 we felt safe in lending against, so I don't agree with  
22 the value judgment "lowered its standards."

23 Q. You do understand that when they talk about  
24 lowering standards, they're making a comparative  
25 judgment.

1 A. They're making a value judgment.

2 Q. A comparative judgment.

3 A. Correct.

4 Q. That is, they're not saying this is safe or not  
5 safe. They're not saying that this is good or bad. What  
6 they are saying is that it is less good, it is less safe,  
7 it has lowered the quality, not that it is totally  
8 unsafe. You do understand --

9 A. I do not agree that it's less safe.

10 Q. Okay. Would you agree with me that as a  
11 general proposition, the market believes that  
12 non-investment-grade debt securities are less safe than  
13 investment-grade investment securities in terms of debt?

14 A. So there's --

15 Q. Again, yes, no, or I don't know.

16 A. Could you repeat the question, please.

17 Q. Sure.

18 Would you agree as a general proposition that the  
19 market generally considers investment-grade debt  
20 securities safer than non-investment-grade debt  
21 securities?

22 A. I don't know.

23 Q. Okay.

24 THE COURT: Maybe we should take a short break.

25 We'll reconvene at 3:30.

1 (Court in recess.)

2 THE COURT: Let's go ahead.

3 MR. BOIES: Thank you, Your Honor.

4 BY MR. BOIES:

5 Q. Mr. Alvarez, yesterday you told me that you didn't  
6 remember how much Morgan Stanley had borrowed under the  
7 Fed's lending programs. In that connection, I'd like you  
8 to look at the last two sentences of the paragraph on  
9 PTX 624 page 382 that we were looking at before.

10 Do you have that?

11 A. PTX 624 page 382, the last two sentences on the  
12 page?

13 Q. The last two sentences in the paragraph we were  
14 looking at.

15 Do you remember we were just looking at --

16 A. The second full paragraph?

17 Q. Yes.

18 You can look at it on the screen also.

19 Do you see where it says, "The investment banks  
20 drew liberally on the Fed's lending programs. By the end  
21 of September, Morgan Stanley was getting by on  
22 \$96.1 billion of Fed-provided life support; Goldman was  
23 receiving \$31.5 billion"?

24 Do you see that?

25 A. I see that.

1 Q. Does that refresh your recollection as to how  
2 much at the end of September Morgan Stanley was  
3 receiving pursuant to the Federal Reserve's lending  
4 programs?

5 A. I still do not have knowledge of that.

6 Q. Okay. Now, you also had some uncertainty as to  
7 exactly what rates were extended when to the  
8 Primary Dealer Credit Facility participants, and in that  
9 connection I'd like you to look at Plaintiffs' Trial  
10 Exhibit 12, which I would offer.

11 MR. AUSTIN: No objection, Your Honor.

12 THE COURT: All right. Without objection,  
13 Plaintiffs' Trial Exhibit 12 is admitted.

14 (Plaintiffs' Exhibit Number 12 was admitted into  
15 evidence.)

16 BY MR. BOIES:

17 Q. If you'll turn to page 4, the carryover paragraph,  
18 the last sentence at the top of the page.

19 It says, "The Board also approved the New York  
20 Reserve Bank's recommendation that credit extended  
21 through the new facility would be at the primary credit  
22 rate."

23 Do you see that?

24 A. I do.

25 Q. And does that refresh your recollection that the

1 PDCF was at the primary credit rate?

2 A. Yes.

3 Q. And that primary credit rate was given to  
4 Morgan Stanley; correct, sir?

5 A. Under the PDCF.

6 Q. Right.

7 And at the time that Morgan Stanley in September  
8 had the needs that have been described already, was  
9 there any consideration given to increasing the interest  
10 rate that Morgan Stanley was being charged under the  
11 PDCF?

12 A. I don't know.

13 Q. Let me ask you to look at Plaintiffs' Exhibit 269,  
14 which I would offer.

15 MR. AUSTIN: No objection, Your Honor.

16 THE COURT: Plaintiffs' Trial Exhibit 269 is  
17 admitted.

18 (Plaintiffs' Exhibit Number 269 was admitted into  
19 evidence.)

20 BY MR. BOIES:

21 Q. These are handwritten notes that you took of a  
22 conversation on September 30, 2008 about an AIG  
23 guarantee; correct, sir?

24 A. Yes.

25 Q. And would you identify the people who participated

1 in this discussion.

2 A. Tom Baxter from the New York Reserve Bank.

3 Sarah Dahlgren from the Supervision Division of  
4 the New York Reserve Bank, though she may have been in a  
5 different place. She's not a lawyer.

6 Rich Ashton, Kieran Fallon, Mark Van Der Weide and  
7 Sophia Allison, all of whom I identified earlier.

8 They're at the Board of Governors.

9 Q. And at this point you were concerned about a  
10 possible rating agency downgrade; correct?

11 A. We were being briefed on the potential for a  
12 rating agency downgrade.

13 Q. Well, not only were you being briefed on that, but  
14 the Federal Reserve was concerned that there might be a  
15 rating agency downgrade; correct?

16 A. Yes.

17 Q. And there was a desire to try to preempt that  
18 downgrade, including possibly by issuing a guarantee for  
19 AIG; correct?

20 A. I don't know.

21 Q. Let me ask you to look at the second page of your  
22 notes at the top, where it says "guarantee before rating  
23 agency action to preempt downgrade."

24 Do you see that?

25 A. I do.

1 Q. And does that refresh your recollection that on  
2 September 30, you and the others here were talking about  
3 possibly guaranteeing AIG in order to preempt a rating  
4 agency downgrade?

5 A. Yes.

6 Q. And you considered three possible kinds of  
7 guarantees; correct?

8 A. It appears so.

9 Q. One was a guarantee for the company as a whole;  
10 correct?

11 A. That's what the notes say.

12 Q. And these are your notes; correct?

13 A. Correct.

14 Q. And a second kind of guarantee that was being  
15 considered is a guarantee for the financial products CDS  
16 business; correct?

17 A. Yes. That's what it says.

18 Q. And a third kind of guarantee that was being  
19 considered was for financial products as a whole;  
20 correct?

21 A. That appears to be what the notes say.

22 Q. Let me ask you to look next at Plaintiffs'  
23 Exhibit 572, which I would offer.

24 MR. AUSTIN: Your Honor, I'm not sure the extent  
25 to which when PTX 624 was introduced that this is already

1 in it or not.

2 Is this a separate document or is it a subset of  
3 624?

4 MR. BOIES: You mean 572?

5 MR. AUSTIN: Yes.

6 MR. BOIES: We have 572 marked as a separate  
7 exhibit. Whether it is included in 624 or not is  
8 something that I don't know.

9 MR. AUSTIN: Anyway, to the extent, Your Honor, we  
10 would just ask that the witness be given an opportunity  
11 to review further portions of PTX 572. And you know, we  
12 would object on hearsay, but I understand Your Honor's  
13 rule on that.

14 THE COURT: Well, he can always review the  
15 exhibit.

16 MR. AUSTIN: Yeah. No, I understand. Mr. Boies  
17 has made that clear. I just think in this particular  
18 case he should.

19 BY MR. BOIES:

20 Q. The portion that I'm going to be interested in is  
21 on page 9 of Plaintiffs' Trial Exhibit 572. You can  
22 read whatever portion of this that you feel appropriate  
23 to put that page in context, and when you are finished  
24 and are prepared to respond to questions, please let me  
25 know.

1 (Pause in the proceedings.)

2 While he's doing that, Your Honor, I believe I  
3 offered this exhibit. If not, I do offer it now.

4 THE COURT: It was offered and you objected and --

5 MR. AUSTIN: We object on the grounds of hearsay,  
6 Your Honor.

7 THE COURT: Right.

8 And the objection is overruled, and  
9 Plaintiffs' Trial Exhibit 572 is admitted.

10 (Plaintiffs' Exhibit Number 572 was admitted into  
11 evidence.)

12 THE WITNESS: Okay.

13 BY MR. BOIES:

14 Q. And you were interviewed and a transcript taken of  
15 that interview by the Financial Crisis Inquiry  
16 Commission; correct?

17 A. This is by staff. It wasn't by the commission  
18 itself.

19 Q. You were interviewed by the staff of the  
20 commission on behalf of the commission; is that fair?

21 A. Sure. Yes.

22 Q. And directing your attention to the last full  
23 paragraph on page 9, where you say, "We have a system --  
24 a whole system that I think was much more fragile than we  
25 realized, and I don't mean just the regulators. I mean

1 everybody. The regulators, investors, bank regulators,  
2 securities regulators, you know, the CFTC, others. A  
3 system that was more fragile than we realized."

4 And that was an accurate statement of your belief  
5 at the time, was it not, sir?

6 A. Yes.

7 Q. And that is an accurate statement of the way you  
8 believed the system was back in 2008 as of today;  
9 correct, sir?

10 A. Yes.

11 Q. Let me just ask you a couple of questions about  
12 conversion of either warrants or preferred stock into  
13 common stock.

14 The ability to obtain common stock was important  
15 to the Federal Reserve because that allowed it to be  
16 readily salable in the market at some point; is that  
17 correct?

18 A. That's correct.

19 Q. And in the original term sheet, there had been a  
20 periodic commitment fee provision; correct?

21 A. Yes.

22 Q. And the purpose of the periodic commitment fee  
23 provision was to encourage AIG's management to bring to  
24 the shareholders and the shareholders to approve the  
25 equity participation; correct?

1           A. To -- no.

2           Q. Let me ask you to look at your 2012 deposition  
3 page 24.

4                   And the portion I'm particularly interested in  
5 is -- begins at line 9.

6           A. Uh-huh. I see that.

7           Q. "QUESTION: What was the purpose as the  
8 United States understood it in 2008 for the periodic  
9 commitment fee provision?

10                   "ANSWER: The purpose of the periodic commitment  
11 fee provision was to encourage AIG's management to bring  
12 to the shareholders and the shareholders to approve the  
13 steps that would be necessary to allow the equity  
14 participation provision to be fulfilled."

15                   And that was accurate testimony at the time you  
16 gave it; correct, sir?

17           A. That's correct.

18           Q. Now, I have just a couple more items, each of  
19 which I think will be quite short.

20                   You are familiar with something that's been called  
21 the reverse stock split, are you not, sir?

22           A. Yes.

23           Q. And you discussed the reverse stock split with  
24 Mr. Ashton; correct?

25           A. At some point, yes.

1 Q. And what did you understand the purpose of the  
2 reverse stock split to be or purposes if there was more  
3 than one?

4 A. I understood the effect of the reverse stock split  
5 was to increase the value of the shares in the hands of  
6 the shareholders and also to increase the number of  
7 unissued shares available.

8 Q. I asked you purpose and you answered effect. And  
9 I understand that often people intend the natural  
10 consequences of their actions, but what I'm asking you  
11 about right now is what you understood the purpose of the  
12 reverse stock split or, if there was more than one, the  
13 purposes of the reverse stock split to be.

14 Do you understand that?

15 A. I understand that.

16 I don't know -- I don't recall when I had the  
17 conversation with Mr. Ashton, so I don't recall whether  
18 we discussed purposes or effects, which is why I  
19 responded in -- about effects.

20 Q. Were you at all involved in the preparation of the  
21 proxy that was sent out to shareholders in connection  
22 with the reverse stock split?

23 A. No, I was not.

24 Q. Do you understand that the reverse stock split  
25 affected outstanding shares but not all authorized

1 shares?

2 A. I didn't have a detailed understanding of how it  
3 worked.

4 Q. Did you understand it at least enough to  
5 understand that the reverse stock split did not affect  
6 authorized shares, it simply affected the issued shares?

7 MR. AUSTIN: Your Honor, can we have a  
8 clarification as to what time the witness is being asked  
9 that he had this or didn't have this understanding?

10 MR. BOIES: Sure.

11 MR. AUSTIN: Thank you.

12 BY MR. BOIES:

13 Q. Let me begin, prior to the time that the reverse  
14 stock split was presented to shareholders, did you have  
15 an understanding that the reverse stock split did not  
16 apply to authorized shares but only to issued shares?

17 A. I did not have an understanding.

18 Q. Did you ever come to that understanding?

19 A. I don't think so.

20 Q. And let me last turn to Exhibit 598,  
21 Plaintiffs' Trial Exhibit 598, which I would offer.

22 MR. AUSTIN: Objection. Hearsay. Your Honor,  
23 this appears to be a statement by someone other than  
24 Mr. Alvarez. I'm not sure the basis for asking him about  
25 it.

1 THE COURT: It's a statement by Mr. Baxter;  
2 right?

3 MR. AUSTIN: Yes.

4 MR. BOIES: And Your Honor, as I think has become  
5 apparent, when I offer these documents, I'm offering them  
6 because I have the witness agreeing to portions of them.

7 So while this is authored by somebody else, I  
8 will have the witness' testimony about this subject  
9 matter.

10 THE COURT: Right.

11 I'm going to overrule the objection.

12 Plaintiffs' Trial Exhibit 598 is admitted.

13 (Plaintiffs' Exhibit Number 598 was admitted into  
14 evidence.)

15 BY MR. BOIES:

16 Q. And let me direct your attention to page 11 of  
17 this exhibit.

18 In the middle paragraph, in the third sentence --  
19 well, let me start at the very beginning. Let me start  
20 at the very beginning for context.

21 It says, "Some observers ask why if we were not  
22 able to backstop Lehman, we were able to provide  
23 substantial credit to AIG immediately afterwards. The  
24 answer is that in the case of AIG, there was sufficient  
25 collateral to support the commitment to lend."

1           Do you see that?

2           A. I see that.

3           Q. And I take it you would agree with that.

4           A. That I believe that, too, yes.

5           Q. Then in the next portion is the portion I'm  
6 particularly interested in.

7           It says, "Unlike the naked guarantee needed to  
8 facilitate the merger of Barclays and Lehman, our  
9 committed credit to AIG on September 16, 2008 was fully  
10 secured by good collateral, namely, AIG's sound retail  
11 insurance businesses."

12           And am I correct that you would agree with that  
13 except that you would note that the collateral was not  
14 limited to the retail insurance businesses?

15           A. I generally agree with that.

16           Q. And then it continues, "In fact, before any money  
17 was disbursed to AIG on September 16, AIG delivered share  
18 certificates to the New York Fed that we continue to hold  
19 as collateral in our vaults. These shares fully secured  
20 every penny we lent to AIG on September 16, 2008. And  
21 today, the credit extended to AIG by the New York Fed  
22 remains fully secured."

23           Do you agree with those statements, sir?

24           A. They're statements only Tom could make about where  
25 the collateral is located and what kind of certificates

1 they were, so, you know, with that in mind.

2 And as of 2010 -- this statement is as of 2010 as  
3 well. I generally agree.

4 Q. When you say "this statement is as of 2010" --

5 A. And today.

6 Q. -- it is both as of 2010 and as of 2008; right?

7 A. Yes. And I generally agree.

8 Q. Maybe the fastest way is just to direct you to  
9 your deposition again.

10 Page 203, beginning at line 5:

11 "QUESTION: The next sentence says, 'Unlike the  
12 naked guarantee needed to facilitate the merger of  
13 Barclays and Lehman, our committed credit to AIG on  
14 September 16, 2008 was fully secured by good collateral,  
15 namely, AIG's sound retail insurance businesses.'

16 "Is that a statement that the United States  
17 believes is accurate?

18 "ANSWER: Yes, though I would add that it was more  
19 than just the retail insurance businesses that were the  
20 sound collateral, but yes."

21 And that was complete, accurate and truthful  
22 testimony at the time you gave it; correct, sir?

23 A. Yes.

24 Q. And you would stand by that testimony today;  
25 correct?

1 A. My personal view, yes.

2 Q. Continuing at line 16:

3 "QUESTION: The next sentence says, 'In fact,  
4 before any money was disbursed to AIG on September 16,  
5 AIG delivered share certificates to the New York Fed that  
6 we continue to hold as collateral in our vaults. These  
7 shares fully secured every penny we lent to AIG on  
8 September 16, 2008.'

9 "Are those statements correct according to the  
10 United States?

11 "ANSWER: Yes."

12 And that was also complete, truthful and accurate  
13 testimony at the time it was given; correct, sir?

14 A. Yes.

15 Q. And you would stand by that testimony today?

16 A. Yes.

17 Q. And then on page 204 line 3:

18 "QUESTION: And the next sentence says, 'Today,  
19 the credit extended to AIG by the New York Fed remains  
20 fully secured.'

21 "Was that, according to the United States, an  
22 accurate statement as of September 1, 2010?

23 "ANSWER: Yes."

24 And that was also complete, truthful and accurate  
25 testimony at the time you gave it; correct, sir?

1 A. Yes.

2 Q. And you would stand by that testimony today, would  
3 you not?

4 A. I believe that, yes.

5 MR. AUSTIN: Your Honor --

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

7 MR. AUSTIN: Your Honor, the statements in the  
8 deposition were exactly what he said on the stand. I  
9 don't understand the purpose for the deposition. It  
10 didn't refresh his recollection. It didn't impeach the  
11 witness in any way.

12 THE COURT: Well, I think we're finished now, so  
13 we'll turn the witness over to you.

14 MR. AUSTIN: Okay. Can we take five minutes,  
15 Your Honor?

16 THE COURT: Sure. I'm going to stay right here,  
17 but we'll go off the record and just come back when  
18 you're ready.

19 (Discussion off the record.)

20 THE COURT: Let's go back on the record.

21 - - - - -

22 CROSS-EXAMINATION

23 BY MR. AUSTIN:

24 Q. Good afternoon, Mr. Alvarez.

25 A. Good afternoon.

1 Q. Are you hanging in there?

2 A. It's been a long day.

3 Q. Mr. Alvarez, you were asked questions on  
4 cross-examination about the Fed's consideration and  
5 analysis of whether the AIG rescue was authorized under  
6 section 13(3) both today and yesterday.

7 A. Yes.

8 Q. When, in your personal experience since you've  
9 been at the Fed, did the staff of the Board of Governors  
10 first undertake an analysis of whether the  
11 Federal Reserve Banks were permitted under section 13(3)  
12 to take compensation other than interest as a condition  
13 of a loan?

14 A. We analyzed that question in connection with the  
15 assistance provided when JPMorgan acquired Bear Stearns  
16 and established the Maiden Lane facility.

17 Q. And when was that again?

18 A. I'm sorry. That was in March and April of 2008.

19 Q. And did you or your staff prepare a legal  
20 memorandum in connection with that analysis?

21 A. Yes, we did.

22 Q. And what was the conclusion that you came to at  
23 that time with respect to the Bear Stearns transaction?

24 A. So we concluded that section 13(3) authorized the  
25 Federal Reserve Bank to take, in addition to the

1 interest rate that was charged on an extension of  
2 credit, additional compensation in the form of a  
3 residual value, the residual value of the liquidation of  
4 the collateral.

5 Q. What does that mean, "the residual value of the  
6 liquidation"?

7 A. So if the value of the assets that were the -- in  
8 the Maiden Lane facility after the loan repaid exceeded  
9 the amount necessary to repay the loan, then the -- that  
10 residual value, that extra money from the sale of the  
11 asset, could be paid to the New York Reserve Bank.

12 Q. I'm going to ask my colleague to put section 13(3)  
13 of the Federal Reserve Act on the screen and ask you this  
14 question with reference to section 13(3). And by the  
15 way, this is the version of the statute that was in  
16 effect at that time in 2008.

17 In looking at section 13(3) on the screen, could  
18 you explain your analysis with reference to the  
19 Bear Stearns transaction and section 13(3).

20 A. Yes. It's disappeared from...

21 (Pause in the proceedings.)

22 Q. Sorry for the delay, Mr. Alvarez, but again, in  
23 connection with the Bear Stearns transaction, could you  
24 explain your analysis under section 13(3).

25 A. Yes.

1           So section 13(3) provides, in unusual and exigent  
2 circumstances, the board, by certain vote, may authorize  
3 a Reserve Bank at certain rates to discount for any  
4 individual, partnership or corporation notes, drafts,  
5 bills of exchange.

6           What that means is to discount notes, drafts and  
7 bills of exchange includes purchasing a piece of -- a  
8 loan at a discount from its face value. It also means  
9 providing an advance, so making a direct loan to an  
10 individual, partnership or corporation. That's a view  
11 the Federal Reserve has held since enactment of  
12 section 13(3).

13           So this allows the Federal Reserve Bank with  
14 proper authorization to make a loan to an individual,  
15 partnership or corporation as long as it is endorsed or  
16 authorize secured to the satisfaction of the  
17 Reserve Bank.

18           So you'll see that to begin with -- oh, and  
19 then -- I'm sorry -- one last thing is to provide -- the  
20 Reserve Bank must obtain evidence that the IPC, the  
21 individual, partnership or corporation, is unable to  
22 secure adequate credit accommodations.

23           But you'll see, apart from that limitation, there  
24 is no limitation on the terms that the Reserve Bank could  
25 offer, and there's no requirement that the Reserve Bank

1 actually extend credit. This is a discretionary  
2 provision that authorizes the Federal Reserve Bank to  
3 extend credit if these conditions are met.

4 So that is the first thing, that the Reserve Bank  
5 has the discretion to enter into the credit and to do --  
6 design -- there's no limitation on how it designs that  
7 credit other than the ones that I just mentioned, other  
8 than the limitation on obtaining evidence and the  
9 limitation that the rate -- the rate that's actually  
10 charged be set in a certain way.

11 Q. Now, directing your attention -- I'm sorry. Go  
12 ahead.

13 A. I'm sorry.

14 The second point is that all of these discounts  
15 are subject to the limitations, restrictions and  
16 regulations of the Board of Governors, and so the  
17 Board of Governors, when it authorizes a Reserve Bank to  
18 extend credit, can require that the Reserve Bank set  
19 certain terms, obtain certain kinds of features or any  
20 other limitation or restriction that the board thinks is  
21 appropriate, and there's no limitation on the kind of  
22 conditions the board could set on the Reserve Bank.

23 Q. Okay. Now, directing your sentence -- your  
24 attention to that last sentence, "All such discounts for  
25 individuals, partnerships or corporations shall be

1 subject to such limitations, restrictions and regulations  
2 as the Board of Governors of the Federal Reserve System  
3 may prescribe," which you just referenced, what does the  
4 word "discounts" mean? What is that word?

5 A. So as I mentioned, a discount -- this is an act  
6 that was enacted in the 1930s, so it uses some archaic  
7 language. "Discount" is a term that the Federal Reserve  
8 has long interpreted from the time of the '30s to  
9 include a variety of credit transactions, including  
10 making a direct loan or purchasing a loan from the  
11 potential borrower. That's a way of funding the  
12 borrower.

13 Q. Now, if you would please turn in your witness  
14 notebook to JX 13. You should have the -- a new notebook  
15 there that the government has provided you.

16 Do you have JX 13?

17 A. JX 13.

18 Q. Could you identify JX 13 for us.

19 A. JX 13 is a memorandum to the Board of Governors,  
20 April 2, 2008, from me, from Richard Ashton,  
21 Mark Van Der Weide and Heatherun Allison, all in the  
22 Legal Division, regarding the authority of the  
23 Federal Reserve to provide an extension of credit in  
24 connection with the acquisition of JPMorgan -- by  
25 JPMorgan of Bear Stearns.

1 Q. Now, where time-wise in connection with the  
2 Bear Stearns transaction was this legal memorandum  
3 prepared?

4 A. It was done in -- it was prepared in the couple of  
5 weeks after the transaction, but it reflects the advice  
6 that I provided to the Board of Governors in connection  
7 with the Bear Stearns transaction.

8 Q. If you would please turn to page 12 of the  
9 Bear Stearns legal memorandum, JX 13.

10 And if you could please read the first two  
11 sentences in the third paragraph, the last paragraph on  
12 that page.

13 A. "Section 13(3) allows the Board to authorize any  
14 Federal Reserve Bank to extend credit to any IPC 'during  
15 such periods as the said board may determine' and  
16 'subject to such limitations, restrictions and  
17 regulations as the [Board] may prescribe.'"

18 Q. And the next sentence?

19 A. "The Board, therefore, has complete statutory  
20 discretion to determine the timing and the conditions of  
21 lending under section 13(3)."

22 Q. Now, if you would please turn to page 15 of this  
23 exhibit.

24 And if you would read the second sentence in the  
25 first paragraph on page 15, beginning with the word

1 "accordingly."

2 A. "Accordingly, nothing in section 13(3) prohibits a  
3 Reserve Bank from discounting an IPC's note that provides  
4 for payment of principal and interest by the IPC to the  
5 Reserve Bank on a flexible schedule and for potential  
6 additional payments by the IPC to the Reserve Bank out of  
7 the proceeds of the sale or maturity of the collateral  
8 securing the note, whether or not the aggregate payments  
9 by the IPC to the Reserve Bank are less than or greater  
10 than the amount of credit provided by the Reserve Bank to  
11 the IPC."

12 Q. Now, Mr. Alvarez, based upon the two paragraphs --  
13 I'm sorry -- the two sentences we read from page 12 of  
14 this document and the sentence we read from page 15, what  
15 did you conclude with respect to the Bear Stearns  
16 transaction?

17 A. So section 13(3) authorized the board to impose  
18 conditions the board thought was appropriate in  
19 connection with an extension of credit, and those  
20 conditions could include authorizing the Reserve Bank to  
21 receive, in addition to any interest payments and  
22 principal payments, in addition to setting a flexible  
23 schedule, the ability to accept aggregate payments that  
24 are based on the sale of the proceeds of the assets  
25 securing the note, even if that was greater than the

1 amount of the credit that had been extended.

2 Q. Now, Mr. Alvarez, I'm going to ask to put on the  
3 screen 12 U.S.C.A. Section 341, which has been referred  
4 to in your previous examination as section 4,  
5 particularly the seventh portion of that section.

6 If you could identify what that is.

7 Seventh.

8 A. So this is the introduction to seventh, which I  
9 think is blocked by the quote, is the powers of the  
10 Reserve Bank.

11 So among the powers granted by the act to the  
12 Reserve Bank is to exercise, by its board of directors or  
13 duly authorized officers and agents, all powers  
14 specifically granted by the provisions of this chapter,  
15 that is, the Federal Reserve Act, and such incidental  
16 powers as shall be necessary to carry on the business of  
17 banking -- there should be a little bit more -- within  
18 the limitations prescribed by the chapter.

19 Q. Now, if you would turn in the Bear Stearns  
20 memorandum to -- this is again JX 13 -- to the  
21 footnote 23 on the -- on the page 16 of the memorandum.

22 Do you see that?

23 A. Yes.

24 Q. And I would direct your attention to the second  
25 and third sentences of that footnote beginning with the

1 words "in addition to the express powers." If you'd  
2 please read those two sentences.

3 A. "In addition to the express powers of the  
4 Federal Reserve Banks set forth in the  
5 Federal Reserve Act, the Act provides that each  
6 Federal Reserve Bank has the authority to exercise 'such  
7 incidental powers as shall be necessary to carry on the  
8 business of banking within the limitations prescribed by  
9 this Act.' The Federal Reserve has long held that a  
10 power is incidental to an express power in the  
11 Federal Reserve Act if it is reasonably necessary to  
12 effectuate an express power in the Act."

13 Q. And could you please explain to the Court what you  
14 were concluding in those two sentences in footnote 23 of  
15 the Bear Stearns memo.

16 A. So in addition to the authority that's directly  
17 conferred in section 13(3), there is authority under  
18 section 4 of the Federal Reserve Act to -- to exercise  
19 powers that are reasonably necessary to effectuate an  
20 express power. The express power would be to effectuate  
21 section 13(3) in this case.

22 Q. The Court has heard reference to a phrase  
23 "incidental powers."

24 Is that what we're referring to here in  
25 section 4?

1 A. Yes. This is the incidental powers clause.

2 Q. Now, did you analyze section 13(3) in connection  
3 with the AIG loan?

4 A. Yes.

5 Q. When did you do that?

6 A. Around the time of the extension of credit.

7 Q. Now, in connection with the AIG loan, what  
8 specific questions did you analyze under section 13(3)?

9 A. So there were at least three specific questions  
10 that had arisen.

11 One was whether the Federal Reserve could accept  
12 as a consideration -- as consideration for the extension  
13 of credit, the \$85 billion extension of credit to AIG,  
14 a -- an equity instrument as consideration for the  
15 extension of credit. On that, I had no doubt that the  
16 answer was yes, that was legally authorized.

17 A second question was, when the Reserve Bank  
18 received that, that equity instrument, could the  
19 Reserve Bank hold the underlying stock for some period of  
20 time, some reasonably short period of time, in connection  
21 with the disposition of those -- of that stock. And I  
22 believed the answer to that also was yes and had no doubt  
23 about that.

24 A third question was whether the Federal Reserve  
25 could hold stock that it received in some other --

1 you know, for some long period of time even after an  
2 extension of credit might have been paid or could -- yes.  
3 And on that question, I had not made up my mind and I did  
4 not in fact reach a conclusion because it turned out not  
5 to be necessary in the case.

6 Q. And just so it's clear, Mr. Alvarez, you talked  
7 about the three questions and the three conclusions that  
8 you came to.

9 Could you just amplify a little bit the difference  
10 between the second and third questions. What is the  
11 difference there?

12 A. The difference between the second and the third is  
13 in the second the shares may be acquired for a short  
14 period of time while they're either sold or transferred  
15 to another owner, disposed of in some way. The third is  
16 where the shares might be held for ten years or some  
17 indeterminate period of time and kept as an investment by  
18 the Federal Reserve.

19 Q. Now, I'm going to ask my colleague again to put on  
20 the screen the two provisions of law that we've looked at  
21 so far, section 13(3) and section 4, and ask if you would  
22 explain to the Court what your analysis was in terms of  
23 these two sections in arriving at the conclusions you did  
24 with respect to the AIG memorandum.

25 A. So the analysis was very similar to the analysis I

Starr International Company, Inc. v. USA

1 described in Bear Stearns.

2 First, the section 13(3) is a general  
3 authorization to extend credit under certain  
4 circumstances, unusual and exigent, a certain amount of  
5 vote, rates set in a certain way, evidence of a lack of  
6 accommodative credit elsewhere. Other than that, no  
7 restrictions and a discretionary authorization to lend,  
8 so it's a very broad power granted to the  
9 Federal Reserve.

10 Second, the Board of Governors could in  
11 connection -- must authorize the Reserve Bank to extend  
12 credit and in giving that authorization can set whatever  
13 limits and restrictions and rules the Federal Reserve  
14 Board believes is appropriate. It's -- and there's not a  
15 limit on its discretion to set those limitations,  
16 restrictions or regulations, and so the board could then  
17 require certain terms be included in the extension of  
18 credit.

19 And then -- so it was embedded in I believe the  
20 authority of section 13(3) itself. But then if there was  
21 any doubt, section 4, the incidental powers clause, I  
22 thought certainly provided support for that proposition  
23 as well.

24 It is common for banks in the business of banking  
25 to obtain equity interests in connection with distressed

1 debt and speculative -- in distressed debt situations,  
2 and the comptroller of the currency has authorized this  
3 in a variety of circumstances, so it is within the  
4 business of banking and incidental to the business of  
5 banking.

6 Q. Now, before we turn to the legal memorandum  
7 itself, did your analysis in the AIG case concern a  
8 particular form of equity?

9 A. So the analysis began -- because it began on  
10 September 16, it began by looking at the form of  
11 warrants, but the analysis itself was not limited to  
12 warrants, didn't -- and wasn't restricted to warrants.  
13 It provided this general analysis that I provided.

14 And then indeed I thought of it in terms of  
15 authorizing more than just warrants but also preferred  
16 stock.

17 Q. And let me ask you now to turn to DX 484 in your  
18 binder.

19 And could you please identify DX 484.

20 A. DX 484 is a draft of a memorandum prepared by  
21 myself, Rich Ashton and Mark Van Der Weide on the  
22 authority to take warrants in connection with an  
23 extension of credit under 13(3).

24 Q. And what was your specific role in this draft  
25 memorandum?

1           A. I asked that it be prepared and I reviewed the  
2 memorandum.

3           Q. And the date on the memorandum is September 17,  
4 2008.

5                   To the best of your recollection, when was the  
6 memorandum prepared?

7           A. So I requested it on the 16th and actually got the  
8 draft late at night on the 16th of September.

9           Q. Did you agree with the conclusions set forth in  
10 the draft?

11          A. I agreed with the analysis and the conclusion that  
12 this was permissible under 13(3).

13                   MR. AUSTIN: Your Honor, we would move into  
14 evidence DX 484.

15                   MR. BOIES: No objection, Your Honor.

16                   THE COURT: Defendant's Exhibit 484 is admitted.

17                           (Defendant's Exhibit Number 484 was admitted into  
18 evidence.)

19                   BY MR. AUSTIN:

20          Q. Now, DX 484 says it's a draft memorandum.

21                   Was the memorandum ever finalized?

22          A. I do not believe it was.

23          Q. And why wasn't it finalized?

24          A. Because this was an extremely busy time, we were  
25 dealing with the Lehman situation, the AIG situation, the

1 several applications that we discussed earlier today from  
2 Goldman and Morgan Stanley, as well as preparing a  
3 variety of other lending facilities, so I think it just  
4 didn't get finalized -- and it was also not  
5 controversial -- it didn't get finalized in the press of  
6 business.

7 Q. Now, directing your attention to the second page  
8 of DX 484, the AIG legal staff memorandum concerning the  
9 transaction, could you please describe the analysis  
10 that's set forth in the legal memorandum and explain how  
11 you arrived at your conclusions.

12 A. So this is explained primarily in the first,  
13 second and third paragraphs on page 2.

14 Again, the -- as I described before, the analysis  
15 was that section 13(3) was an authorization. It was --  
16 it didn't impose any requirement for lending. It  
17 provided authority to lend if the board and the  
18 Reserve Bank thought that that was appropriate. Even in  
19 unusual and exigent circumstances there was no  
20 requirement to lend, but that was a condition to  
21 lending.

22 So it allowed a broad authority to structure  
23 loans. In the event the board determined that was -- the  
24 Reserve Bank believed it was appropriate, the board  
25 authorized the loan.

1           Moreover, there were no limits on the  
2 Federal Reserve Bank other than the ones that I  
3 mentioned, which don't go to terms other than the way in  
4 which the interest rate is set. And the board -- there  
5 were no limits on the board's authority to set conditions  
6 in authorizing a loan.

7           Moreover, I refer -- the memo refers to the common  
8 practice in the banking industry and that there is also  
9 the argument that this is incidental to the power to  
10 extend credit under section 4 because it's in connection  
11 with an express power, section 13(3).

12         Q. And what again was your conclusion with respect to  
13 the authority questions that were presented?

14         A. I had no question that on the first question,  
15 could the Federal Reserve obtain an equity interest in as  
16 consideration for an extension of credit, I had no  
17 question in my mind that that was legally permissible.

18           And then the next paragraph goes on to discuss the  
19 second issue, did the Federal Reserve -- could the  
20 Federal Reserve temporarily hold shares that it received  
21 and dispose of those shares in some fashion. And that is  
22 described in the next paragraph.

23           And I -- and it's indicated that that is  
24 permissible, and it reserves -- it indicates a  
25 reservation of the third question, which is whether the

1 Reserve Bank could hold -- exercise and hold shares for  
2 an extended, unlimited period of time.

3 Q. And looking at those -- at the last paragraph  
4 on -- in the memorandum, explain how that led you to your  
5 second conclusion that you just referenced, the  
6 conclusion that in fact it was permissible to condition  
7 equity as part of the loan.

8 A. So I would go to the --

9 Q. And to require it as part of the loan in the  
10 short term.

11 A. So the question is asked in the bottom of page 2  
12 whether the Reserve Bank would be authorized to exercise  
13 the warrants it received as in connection with a loan and  
14 acquire, hold and vote the securities it obtained.

15 And the sentence goes on to say this does not need  
16 to be addressed at this time. It didn't need to be  
17 addressed because what had been proposed in connection  
18 with the AIG transaction was that the New York  
19 Reserve Bank would either transfer any warrants relating  
20 to the AIG shares it may acquire to the  
21 Treasury Department before exercise or would exercise  
22 the warrants -- that would mean get the underlying  
23 stock -- and immediately sell the equity securities.

24 Because those were the two options, those were  
25 two options I believed were permissible under the law,

1 those were the two options that were being considered at  
2 the time, it wasn't necessary to make a decision about  
3 whether the Reserve Bank could hold and vote the  
4 securities over an extended period of time.

5 Q. And why do those two sentences lead to you the  
6 conclusion that the New York Fed could directly hold  
7 equity in the short term?

8 A. Because that would be the -- a natural part of  
9 realizing the consideration for the loan and it would be  
10 also incidental to the business of banking, which is  
11 authorized under section 4.

12 Q. Now, if you turn back to the first page, it  
13 discusses that this subject is authority of the  
14 Reserve Bank to take warrants. And you indicated earlier  
15 that that was the question at that time.

16 But why did it address that and didn't address the  
17 subject of preferred stock?

18 A. So I believe it did address -- so the memo was  
19 written in terms of warrants because the memo was  
20 assigned on September 16, and that was at a time when  
21 warrants were the -- referenced in the term sheet. I had  
22 gotten someone started on this memo early in the day as  
23 soon as I became aware of that issue.

24 And so that's why it's -- that's why it's  
25 nominally phrased in that way. But the analysis is

1 provided -- that's provided is equally applicable and  
2 general in the way it is explained.

3 Q. Now, did you revise the memo to explicitly address  
4 preferred stock?

5 A. We did not. I asked that it be revised, but as I  
6 mentioned, because of all the press of things that were  
7 going on at the time and the comfort level that we had  
8 with these legal conclusions, it was never finalized.

9 Q. Now, if you thought that the --

10 A. However, if I could add, this is the --

11 Q. Sure.

12 A. -- this is the substance of the advice that I gave  
13 to the Board of Governors.

14 Q. Okay. If you thought that the AIG loan as it went  
15 forward with the credit agreement violated any statute,  
16 would you have advised the Board of Governors to  
17 participate in this loan?

18 A. If I thought the transaction was not permissible,  
19 I would have advised them not to do the transaction.

20 Q. And did you advise them to go forward with the  
21 transaction?

22 A. I advised them that it was legally permissible.

23 Q. Now, if you would please turn to page 1 of the  
24 memorandum, could you read what is written there with  
25 respect to the summary.

1           A. "There is a reasonable argument that accepting  
2 warrants to purchase equity securities of a section 13(3)  
3 borrower is incidental to the extension of credit and  
4 therefore authorized by the Federal Reserve Act."

5           Q. And what is meant by the use of the phrase "there  
6 is a reasonable argument" that's used in the summary?  
7 What does that mean?

8           A. That means that, you know, it is not a magic  
9 phrasing, it is -- it reflected my view that this was a  
10 permissible and authorized transaction.

11          Q. If you would please turn to the beginning of the  
12 last incomplete sentence on page 1 of the AIG legal  
13 staff memorandum, DX 484, and read that complete  
14 sentence and then the first complete sentence on  
15 page 2 of the memo.

16           THE COURT: Excuse me, Mr. Austin. This is now  
17 the fourth or fifth time you've asked the witness to read  
18 passages from documents.

19           MR. AUSTIN: Certainly.

20           THE COURT: And to me it can save a lot of time if  
21 you just refer the witness to page 1 paragraph 3 and then  
22 ask him a question, because we can all read what the  
23 document says.

24           MR. AUSTIN: Okay. I'd be happy to do that,  
25 Your Honor.

1 BY MR. AUSTIN:

2 Q. Referring you to that paragraph, to what extent  
3 at all, if at all, was JX 13 of assistance to the  
4 board -- and JX 13 is the Bear Stearns memorandum -- was  
5 of assistance to the Board of Governors legal staff in  
6 preparing this draft memorandum?

7 A. So this was a continuation of the reasoning and  
8 the logic from the Bear Stearns memorandum.

9 Q. Now, I'd like to ask you to turn in the notebook  
10 that you were given, provided, in your earlier  
11 examination from Mr. Boies, and if you would turn to  
12 PTX 548.

13 Do you recall being asked about this document? It  
14 was the testimony of -- or the responses of  
15 Chairman Bernanke to the Financial Crisis Inquiry  
16 Commission.

17 A. Yes.

18 Q. And I direct your attention to page 28.

19 And do you recall being read that sentence  
20 starting with: And so basically, we only had one tool,  
21 and that tool was the ability of the Federal Reserve  
22 under 13(3) authority to lend money against collateral.  
23 Not to put collateral into a company but only to lend  
24 against collateral?

25 A. Not to put capital into a company. Yes, I see

1 that.

2 Q. Now, did the New York Federal Reserve put capital  
3 into AIG?

4 A. No. The Federal Reserve -- the New York  
5 Federal Reserve Bank made an extension of credit to AIG  
6 in a revolving facility.

7 Q. So the New York Fed lent against collateral to  
8 AIG?

9 A. Yes.

10 Q. Could you explain the difference between putting  
11 capital into AIG and lending against collateral to AIG?  
12 What is the difference in those two concepts?

13 A. So an extension of credit, of course, there's the  
14 expectation of being repaid at an interest rate. There's  
15 often fees and other consideration involved, in this case  
16 the receipt of an equity participation as well as a  
17 variety of fees.

18 An injection of capital is typically taking a  
19 direct speculative position in the company where you  
20 provide funds to the company without the expectation of  
21 being repaid for those funds by that company. It is an  
22 injection into the company as a way of sharing in the  
23 profits and sometimes the losses of the company itself.

24 Q. And I'd like to turn to another subject.

25 You were asked some questions about the timing of

1 when AIG requested assistance from the Federal Reserve  
2 and when the Federal Reserve Banks or Board of Governors  
3 knew that it would provide a rescue loan to AIG. Do you  
4 recall those questions?

5 A. I do.

6 Q. To the best of your recollection, when was it  
7 that you first learned that AIG was in financial  
8 distress?

9 A. So I began to be aware of that on September 12,  
10 2008.

11 Q. And what, to the best of your recollection,  
12 happened on Friday, September 12, that brought this to  
13 your attention?

14 A. I was involved in -- I received an e-mail and I  
15 was involved in a conference call where I began to get  
16 some information about AIG and discussions that the  
17 Reserve Bank had had with AIG.

18 Q. Could you please turn in your binder to DX 962.  
19 And could you identify DX 962.

20 A. Yes. This is an e-mail from Deborah Bailey around  
21 6:30 on the 12th of September 2008. It's sent to the  
22 chairman; Don Kohn, who's the vice chairman;  
23 Randy Kroszner, Kevin Warsh and Elizabeth Duke, who are  
24 the other members of the Board of Governors; as well as  
25 to me and Roger Cole. Deborah Bailey is in our

1 Banking Supervision Division, and Roger Cole was the  
2 director of the Banking Supervision Division.

3 Q. And was Ms. Bailey forwarding something to you?

4 A. She was forwarding a message from Patricia Mosser  
5 at the New York Reserve Bank which summarized a meeting  
6 that the staff of the New York Reserve Bank had had with  
7 some folks at AIG.

8 Q. And is this the e-mail you were referring to that  
9 you received that put you on -- when you first learned  
10 that AIG was in financial distress?

11 A. Yes.

12 MR. AUSTIN: Your Honor, I would move to admit  
13 DX 962.

14 MR. BOIES: No objection, Your Honor.

15 THE COURT: Defendant's Exhibit 962 is admitted.

16 (Defendant's Exhibit Number 962 was admitted into  
17 evidence.)

18 BY MR. AUSTIN:

19 Q. Now, were there any discussions held on this  
20 particular day, Friday, September 12, 2008, about the  
21 Federal Reserve providing assistance to AIG?

22 A. So I -- I believe that there were some inquiries  
23 made by AIG in perhaps this -- in this conversation and  
24 in perhaps in others where they were inquiring about how  
25 to obtain a 13(3) loan.

1 Q. Had any decision been made as of this point in  
2 time on Friday night, September 12, 2008, as to whether  
3 or not the Federal Reserve was going to provide a loan to  
4 AIG?

5 A. There had been no formal request and no formal  
6 decision.

7 Q. And would you have known if such a decision had  
8 been made?

9 A. Yes.

10 Q. Why is that?

11 A. I would have likely been in attendance at the --  
12 any board meeting that might have occurred. I would have  
13 been -- as the general counsel, I would have been advised  
14 that that decision was going to be made.

15 Q. When did you next hear information about AIG's  
16 situation after Friday night?

17 A. So I received some e-mails the next morning and  
18 participated in a phone call the next morning with some  
19 people from AIG.

20 Q. Do you recall who those people were?

21 A. I recall that two of them were Mr. Willumstad, who  
22 was the CEO of the company, and Jacob Frenkel, who was on  
23 the board of directors.

24 Q. Did anyone else from the Board of Governors  
25 participate in the call other than you?

1           A. I know that at least Brian Madigan was with me at  
2 the -- on the call. He was the director -- at the time  
3 the director of our Monetary Affairs Division.

4           Q. And were there discussions about providing  
5 assistance to AIG that morning in that call?

6           A. So it was -- the call involved an update by AIG of  
7 their condition, some -- some information about  
8 discussions they were having with the private sector to  
9 address their liquidity needs, and then some general  
10 questions about how to approach the Federal Reserve and  
11 whether the Federal Reserve would -- how the board -- how  
12 the Federal Reserve would consider a request by AIG for  
13 an extension of credit.

14          Q. Do you recall receiving an e-mail following that  
15 telephone conference that summarized the telephone  
16 conference?

17          A. I do.

18          Q. Would you please turn in your binder to DX 1436.

19                 Take a moment to review that document.

20                 (Pause in the proceedings.)

21                 And could you please identify DX 1436.

22          A. DX 1436 is an e-mail message from Patricia Mosser  
23 from the New York Reserve Bank to a variety of New York  
24 Reserve Bank employees and to Brian Madigan at the  
25 Board of Governors and to myself at the board.

1 Q. And is this regarding the telephone conference you  
2 had with AIG that morning?

3 A. Yes. It summarizes a call that took place that  
4 morning between AIG and folks at the Board of Governors  
5 and some people at the Reserve Bank.

6 Q. Now, directing your attention to the very last  
7 sentence in DX 1436, do you recall what you told the AIG  
8 representatives with respect to the Federal Reserve  
9 providing them with a loan?

10 A. Yes. I recall indicating, as the sentence  
11 conveys, that AIG should not be particularly optimistic  
12 because 13(3) was thought of as a last resort, the board  
13 had high hurdles for granting 13(3) credit and had done  
14 very little 13(3) lending.

15 Q. And why did you tell them this? Why did you give  
16 them this message?

17 A. Because they were engaged in discussions -- it was  
18 my understanding that they were engaged in discussions  
19 with a variety of third parties to obtain liquidity in a  
20 variety of forms, and it was important, in our view, that  
21 they continue to seek a resolution of their problems from  
22 the private sector rather than seek an easy credit, as it  
23 were, from the Federal Reserve and not have to deal with  
24 the private sector.

25 MR. AUSTIN: Your Honor, we would move to admit

1 into evidence DX 1436.

2 MR. BOIES: No objection, Your Honor.

3 THE COURT: Defendant's Exhibit 1436 is admitted.

4 (Defendant's Exhibit Number 1436 was admitted into  
5 evidence.)

6 BY MR. AUSTIN:

7 Q. As of this time, had any decision been made as to  
8 whether the Fed was going to provide a rescue loan to  
9 AIG?

10 A. No. No decision had been made at this time.

11 Q. And would you have known if such a decision had  
12 been made?

13 A. Yes.

14 Q. Now, after your phone call with AIG that morning  
15 and your receipt of the e-mail from Ms. Mosser, which is  
16 DX 1436, did you continue to receive information about  
17 AIG for the rest of that day on Saturday, September 13  
18 and the next day, Sunday, the 14th?

19 A. I received sporadic updates and e-mails from a  
20 variety of people. But my main focus -- this was a  
21 weekend when we were all trying to find a solution for  
22 the Lehman Brothers, which was under severe stress and  
23 was thought -- and we were trying to see if there was a  
24 possible private-sector solution for Lehman Brothers,  
25 which had indicated it likely would go into bankruptcy if

1     there was no solution, so my main focus was on  
2     Lehman Brothers, but I was getting information about AIG  
3     as well.

4           Q.   And who was the -- who was the primary source of  
5     the information you were receiving?

6           A.   So I was primarily getting information from  
7     Tom Baxter at the New York Reserve Bank, who was hearing  
8     things from the various private-sector investors in  
9     New York.  I was also getting sporadic e-mails from the  
10    vice chair, Don Kohn, and occasionally from others in the  
11    Supervision Division.

12          Q.   And just so we're clear, we're talking about  
13    information concerning AIG.

14          A.   Yes.  I'm sorry.  Yes.

15          Q.   And what was the essence of the information you  
16    were receiving from Mr. Baxter?

17          A.   Generally that the discussions with the private  
18    sector to solve the problems at AIG seemed to be  
19    relatively positive and progressing.

20          Q.   With respect to what developments?

21          A.   With respect to providing liquidity to AIG so that  
22    there would not need to be consideration of credit  
23    provided by the Federal Reserve.

24          Q.   And do you recall any of the specifics of your  
25    conversation with Mr. Baxter concerning the

1 private-sector developments that were happening?

2 A. I do not. They were just -- they were general  
3 descriptions and words of encouragement.

4 Q. And you mentioned that you were also receiving  
5 correspondence.

6 It was e-mail correspondence from  
7 Vice Chairman Kohn?

8 A. Yes.

9 Q. Concerning AIG.

10 And I'm going to -- we'll discuss those a little  
11 bit, but can you first tell me generally what your  
12 recollection is of the e-mail correspondence you were  
13 receiving from Mr. Kohn on the September 13,  
14 September 14 and Saturday and Sunday time period.

15 MR. BOIES: Objection, Your Honor. I think the  
16 best evidence would be the e-mails themselves.

17 I haven't objected to oral recollections, and  
18 while I think it might be marginal if it were not a  
19 bench trial but I think even in a bench trial, to have  
20 him now start to summarize documents that exist that  
21 aren't even identified in the record probably is not  
22 desirable.

23 THE COURT: Mr. Austin?

24 MR. AUSTIN: Well, Your Honor, I think he can talk  
25 about what his recollection is. I do intend to go to the

1 documents, but you know, this will tell exactly what he  
2 remembers without looking at the documents, his actual  
3 recall as he sits here.

4 THE COURT: I'll take a little bit of this. I'll  
5 overrule the objection.

6 THE WITNESS: I'm sorry. Could you repeat the  
7 question.

8 BY MR. AUSTIN:

9 Q. Yeah.

10 What do you recall generally from your discussions  
11 with Mr. Kohn? What was the essence of the information  
12 that he was relating to you?

13 A. The essence of the information was he had had --  
14 he was having conversations, primarily with Jacob Frenkel  
15 at AIG, about the potential for the Federal Reserve to  
16 extend credit, and the vice chair was generally not --  
17 generally discouraging of granting an extension of credit  
18 because he believed that they should pursue a  
19 private-sector solution, wasn't certain that AIG had a  
20 real plan, and believed that they needed to think more  
21 carefully about describing a plan before -- and  
22 developing a plan -- developing a plan before approaching  
23 the Federal Reserve.

24 Q. Now, let me show you a document that has been  
25 marked as JX 46.

1           Would you please identify JX 46.

2           A. It is an e-mail message from Donald Kohn, the  
3 vice chairman of the Federal Reserve, to me and to  
4 Brian Madigan. And it took place on the 13th of  
5 September 2008 at about almost 3:00 in the afternoon.

6           Q. And I'm directing your attention to the second  
7 sentence, wherein Mr. Kohn states that he was very  
8 reluctant to open up another 13(3) facility for an entity  
9 not even an investment bank.

10           Do you see that?

11           A. I do.

12           Q. What did you understand, receiving this e-mail,  
13 Mr. Kohn to be saying?

14           A. Exactly that, that he was not making a decision  
15 about 13(3) credit but that he was expressing reluctance  
16 to do it in this situation and had passed that  
17 information on to Jacob Frenkel.

18           Q. Now, Mr. Kohn states, in the last sentence, "He  
19 gave me the bridge to asset sales speech."

20           What did you understand that to mean?

21           A. I understood that to mean that an extension of  
22 credit would be for a period of time that would allow  
23 AIG to make asset sales and then solve its liquidity  
24 problem through the sale of assets, perhaps the  
25 insurance companies, perhaps insurance companies and

1 other assets.

2 Q. Let me show you a document marked as DX 279. If  
3 you could take a moment to review that.

4 (Pause in the proceedings.)

5 And could you please identify the two e-mails  
6 that are on DX 279.

7 A. The first e-mail, which is at the bottom, is  
8 from the vice chair, Donald Kohn, to the chairman of the  
9 Federal Reserve and Tim Geithner, the president of the  
10 Reserve Bank, and Kevin Warsh, who's a governor on the --  
11 is a member of the Board of Governors. That message also  
12 went to me and to Brian Madigan.

13 Q. And that was at 3:54 p.m.?

14 A. That was at 3:54.

15 Q. And what's the top e-mail?

16 A. That is an update of a conversation that the  
17 vice chair had with Mr. Willumstad and Mr. Frenkel from  
18 AIG about their situation and the plans they had and were  
19 developing to address their liquidity problems.

20 Q. And these were further correspondence you had with  
21 Mr. Kohn about AIG?

22 A. And then my response was -- so what is embedded  
23 in this is that Kevin Warsh, one of the governors  
24 referred to, was in contact with or had had a  
25 conversation with several of the potential third-party

1 investors, and the question was whether AIG was  
2 seriously considering that proposal by the third-party  
3 investors that Kevin had heard about or was not.

4 MR. AUSTIN: Your Honor, I would move into  
5 evidence DX 279.

6 MR. BOIES: No objection, Your Honor.

7 THE COURT: Defendant's Exhibit 279 is admitted.

8 (Defendant's Exhibit Number 279 was admitted into  
9 evidence.)

10 BY MR. AUSTIN:

11 Q. Now, directing your attention, Mr. Kohn, to the  
12 bottom -- I mean, Mr. Alvarez, to the bottom e-mail, the  
13 next to last sentence where Mr. Kohn states, "I told them  
14 to make plans as if we wouldn't be there for them, but  
15 also to keep in touch," what did you understand Mr. Kohn  
16 to be communicating to AIG in that sentence?

17 A. Again, like in the previous e-mail we looked at,  
18 that he was reluctant to -- he was reluctant to endorse a  
19 13(3) credit, and so they should continue to -- they  
20 should continue to proceed as if we wouldn't make a  
21 13(3) loan, but to also keep in touch, so he was not  
22 saying that it was impossible.

23 Q. Now, in the upper e-mail there's a reference to a  
24 Flowers.

25 Who was Mr. Flowers?

1           A. Mr. Flowers is a private equity investor, has a  
2 large fund that he uses to make private equity  
3 investments.

4           Q. Now, as of this point in time, which is Saturday  
5 at 4:05 when you wrote your e-mail, what had you heard  
6 with respect to private-sector solutions for AIG?

7           A. That they were still in development and being  
8 discussed with AIG.

9           Q. Were other individuals other than you aware of --  
10 at the Board of Governors aware of Mr. Kohn's position  
11 with respect to how he was handling discussions with AIG  
12 concerning a possible loan?

13          A. Yes.

14                 So these e-mails went to, as I mentioned, the  
15 chair; Kevin Warsh, who's a member of the  
16 Board of Governors; Brian Madigan, who's the head of the  
17 Monetary Affairs Division which handles lending; and  
18 myself, and so those folks at a minimum.

19          Q. Now, based on this correspondence and the contact  
20 you were having with Mr. Kohn, did you have any  
21 understanding as to whether he wanted to encourage or  
22 discourage AIG with respect to the Fed would be willing  
23 to make a loan to them?

24          A. I think he was discouraging them from thinking the  
25 Federal Reserve would make a loan and encouraging them to

1 pursue private-sector solutions that were under  
2 discussion that weekend.

3 Q. And did you have any understanding as to why  
4 Mr. Kohn wanted to discourage AIG from believing that the  
5 Federal Reserve would be there to provide them with a  
6 loan?

7 MR. BOIES: Objection, Your Honor, to the extent  
8 he's simply asking what was in Mr. Kohn's mind. Even if  
9 we're going to have him relate what Mr. Kohn said or his  
10 summary of Mr. Kohn's e-mails, I think it goes beyond the  
11 scope of the principal examination to ask what was in  
12 Mr. Kohn's mind.

13 THE COURT: Mr. Austin?

14 MR. AUSTIN: Your Honor, Mr. Boies asked  
15 Mr. Alvarez a number of questions about what his  
16 thinking was, you know, why they were supposedly  
17 shutting AIG out. I think it's relevant. It is  
18 relevant certainly what Mr. Kohn was saying and why he  
19 was doing it, but as to what Mr. Alvarez' understanding  
20 was of what Mr. Kohn was doing and why he was doing it.

21 THE COURT: I'll take his understanding.

22 The objection is overruled.

23 MR. AUSTIN: Thank you, Your Honor.

24 THE WITNESS: Could you repeat the question,  
25 please.

1 BY MR. AUSTIN:

2 Q. Sure.

3 Did you have any understanding as to why Mr. Kohn  
4 wanted to discourage AIG with respect to believing that  
5 the Federal Reserve would be there to provide them with a  
6 loan? What was your understanding at the time?

7 A. So -- and I think he was concerned a lot about  
8 what we talk about at the Federal Reserve of moral  
9 hazard, that if the Federal Reserve is willing to  
10 provide credit very easily to firms, then they don't  
11 pursue private-sector solutions, they don't take the  
12 actions they should to prevent the problems that they are  
13 getting into, they're less disciplined. And when there's  
14 a private-sector solution available or could be  
15 available, that's something that the Federal Reserve  
16 would expect a firm to pursue first.

17 Indeed, the statute, section 13(3), requires that  
18 we collect evidence that appropriate accommodations  
19 and -- from other banking institutions are not available,  
20 and so this would be fully consistent with the  
21 requirements of section 13(3).

22 Q. Did the Federal Reserve want to make this loan to  
23 AIG?

24 A. It was not -- we were telling AIG we were not  
25 interested in making this loan, that they should find

1 another solution to their problem. They seemed to have  
2 other people interested in addressing their liquidity  
3 problems, and we did everything we could to encourage  
4 them to pursue those other options.

5 Q. But did you want to make the loan to them?  
6 Irrespective of what you were telling them, did the  
7 Federal Reserve want to make a loan?

8 A. So it was not my decision.

9 Q. Right. The Board of Governors and the  
10 Federal Reserve.

11 A. And it was a very, very hard decision for the  
12 Federal Reserve to make. I think the Federal Reserve  
13 would just as soon not have made the decision if they  
14 could have avoided it, but...

15 Q. Now, had the Federal Reserve decided as of this  
16 time on September 13, 2008 that it was going to lend to  
17 AIG?

18 A. No, it had not made a decision on September 13.

19 Q. Would you have known if such a decision had been  
20 made?

21 A. Yes.

22 Q. Did you continue to be involved in discussions  
23 concerning AIG on Sunday, September 14?

24 A. Yes.

25 Q. And let me show you a document that has been

1 marked as DX 318.

2 Could you identify this document, please.

3 THE COURT: Mr. Austin, why don't we save that for  
4 tomorrow morning.

5 MR. AUSTIN: Fine. Thank you, Your Honor.

6 THE COURT: We'll adjourn for the day and we'll  
7 reconvene at 9:30 tomorrow morning.

8 (Whereupon, at 4:58 p.m., the proceedings were  
9 adjourned.)

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CERTIFICATE OF TRANSCRIBER

I, Josett F. Whalen, court-approved transcriber,  
certify that the foregoing is a correct transcription  
from the official digital sound recording of the  
proceedings in the above-titled matter.

DATED: OCTOBER 1, 2014

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JOSETT F. WHALEN, COURT REPORTER

| 1  | ADMITTED EXHIBITS |      |  |
|----|-------------------|------|--|
| 2  | PX                | PAGE | DESCRIPTION                              |
| 3  | 12                | 419  | Minutes of the Board of Governors of the |
| 4  |                   |      | Federal Reserve System (March 16, 2008)  |
| 5  | 64                | 367  | Final Draft of Memo (9/15/2008)          |
| 6  |                   |      | From: Staff                              |
| 7  |                   |      | To: Board of Governors                   |
| 8  |                   |      | re: Issues Related to Possible IPC       |
| 9  |                   |      | Lending to [AIG]                         |
| 10 | 80                | 396  | Email (9/16/2008 11:56 am)               |
| 11 |                   |      | From: Scott Alvarez                      |
| 12 |                   |      | To: Timothy Geithner, Thomas Baxter      |
| 13 |                   |      | re: Fw: Latest resolution                |
| 14 |                   |      | Attaching RESOLUTION                     |
| 15 | 101               | 289  | Email (9/16/2008 10:46 pm)               |
| 16 |                   |      | From: David Neill                        |
| 17 |                   |      | To: Nelson Fitts                         |
| 18 |                   |      | re: Re:                                  |
| 19 | 159               | 258  | Email (9/19/2008 11:57 pm)               |
| 20 |                   |      | From: Tom Baxter                         |
| 21 |                   |      | To: Scott Alvarez                        |
| 22 |                   |      | re: Fw: Equity alternatives              |
| 23 | 83                | 324  | Email (9/21/2008 10:05 am)               |
| 24 |                   |      | From: Scott Alvarez                      |
| 25 |                   |      | To: Tom Baxter                           |

1 re: Fw: AIG equity termsheet  
2 208 323 Email (9/22/2008 12:11 am)  
3 From: Scott Alvarez  
4 To: Thomas Baxter  
5 re: Re: Fw: Northstar News  
6 269 420 Alvarez Handwritten Notes (9/30/2008)  
7 re: AIG Guarantee  
8 320 272 Email (10/23/2008)  
9 From: Thomas Baxter  
10 To: Scott Alvarez  
11 re: Debt Restructuring Powers  
12 And attached  
13 MEMO (10/21/2008)  
14 From: Joseph H. Sommer  
15 To: Legal Files  
16 re: AIG Loan Restructuring - Reserve  
17 Bank Powers  
18 341 355 Email (11/4/2008 2:26 pm)  
19 From: Michael Gibson  
20 To: Donald Kohn, Kevin Warsh, cc: Scott  
21 Alvarez, Deborah Bailey, Jon Greenlee,  
22 Ruch Ashton, Kieran Fallon, Sophia  
23 Allison, Michael Gibson  
24 Re: Followup to Friday's AIG meeting  
25 354 351 Email (11/7/2008 9:00 pm)



1 To: Henry Paulson  
2 re: EESA authorization to establish TARP  
3 368 371 Memo (11/10/2008)  
4 From: Scott Alvarez  
5 To: Tom Baxter  
6 re: AIG Credit Facility Trust - Payment  
7 or Advance of Trust Expenses  
8 370 300 Email (11/13/2008 3:17 pm)  
9 From: Rich Ashton  
10 To: Stephen Meyer  
11 re: AIG voting stock issue  
12 Attachment: Memo from Legal Division of  
13 the Board of Governor of the Federal  
14 Reserve System to Treasury Department  
15 re: Voting Rights for AIG Preferred  
16 Shares Issued  
17 370A 301 Alvarez markup of exhibit 370  
18 372 319 Email (11/16/2008 5:21 pm)  
19 From: Thomas Baxter  
20 To: Scott Alvarez  
21 re: Re: AIG trustees  
22 443 303 Email (3/1/2009)  
23 From: Timothy Geithner  
24 To: Scott Alvarez, Ben Bernanke, cc:  
25 Thomas Baxter

|    |     |     |   |
|----|-----|-----|---|
| 1  |     |     | re: Re: Fw:                             |
| 2  | 484 | 318 | Email (3/28/2009 3:41 pm)               |
| 3  |     |     | From: Donald Kohn                       |
| 4  |     |     | To: Scott Alvarez                       |
| 5  |     |     | re: Re: AIG trustees                    |
| 6  | 548 | 313 | FCIC Closed Session with Ben Bernanke   |
| 7  |     |     | (November 17, 2009)                     |
| 8  | 562 | 331 | January 25, 2010 House Committee on     |
| 9  |     |     | Oversight and Government Reform Report: |
| 10 |     |     | Public Disclosure as a Last Resort: How |
| 11 |     |     | the Federal Reserve Fought to Cover Up  |
| 12 |     |     | the Details of the AIG Counterparties   |
| 13 |     |     | Bailout From the American People        |
| 14 | 572 | 424 | 2010.03.23 FCIC Interview of S. Alvarez |
| 15 |     |     | and K. Fallon                           |
| 16 | 587 | 358 | Hearing before the Congressional        |
| 17 |     |     | Oversight Panel: TARP and Other         |
| 18 |     |     | Government Assistance for AIG           |
| 19 |     |     | (5/26/2010)                             |
| 20 | 598 | 429 | FCIC Statement by Thomas C. Baxter      |
| 21 |     |     | (9/1/2010)                              |
| 22 | 624 | 412 | The Financial Crisis Inquiry Report:    |
| 23 |     |     | Final Report of the National Commission |
| 24 |     |     | on the Causes of the Financial and      |
| 25 |     |     | Economic Crisis in the United States    |

|    |      |      |  |
|----|------|------|--|
| 1  |      |      | (January 2011)                           |
| 2  | 641  | 399  | September 2011 GAO Report: Financial     |
| 3  |      |      | Crisis: Review of Federal Reserve System |
| 4  |      |      | Financial Assistance to American         |
| 5  |      |      | International Group, Inc.                |
| 6  | 706  | 364  | On the Brink by Henry M. Paulson, Jr.    |
| 7  |      |      | (Page 262)                               |
| 8  |      |      |  |
| 9  | DX   | PAGE | DESCRIPTION                              |
| 10 | 279  | 467  | EMAIL FROM SCOTT ALVAREZ TO DONALD KOHN  |
| 11 |      |      | RE: AIG                                  |
| 12 | 484  | 447  | SEPTEMBER 17, 2008 - DRAFT MEMO ALVAREZ  |
| 13 |      |      | AND ASHTON TO KOHN REGARDING AUTHORITY   |
| 14 |      |      | TO TAKE WARRANTS                         |
| 15 | 962  | 457  | EMAIL FROM DEBORAH P. BAILEY TO DONALD   |
| 16 |      |      | KOHN ET. AL. RE: FW: AIG MEETING THIS    |
| 17 |      |      | AFTERNOON                                |
| 18 | 1436 | 461  | EMAIL FROM PATRICIA MOSSER TO ALEJANDRO  |
| 19 |      |      | LATORRE, RICHARD CHARLTON, ET AL.        |
| 20 |      |      |  |
| 21 |      |      |  |
| 22 |      |      |  |
| 23 |      |      |  |
| 24 |      |      |  |
| 25 |      |      |  |