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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.  
Thursday, October 2, 2014  
9:30 a.m.  
Trial Volume 4

BEFORE: THE HONORABLE THOMAS C. WHEELER

Josett F. Whalen, RMR-CRR, Reporter

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I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
BAXTER	714	843		

EXHIBITS FOR ID IN EVID

Plaintiff's

Number94	746
Number114	725
Number116	836
Number136	834
Number143	837
Number154	932
Number184	778
Number190	819
Number279	824
Number580	794
Number598	729
Number1601	787
Number2067	803
Number2211	716

1	EXHIBITS	FOR ID	IN EVID
2	Defendant 's		
3	Number118		872
4	Number161		884
5	Number438		918
6	Number505		946

7

8 Joint

9 (none)

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22 \*All exhibits premarked for identification prior to  
23 trial.

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

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

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

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

7                                    Good morning, Mr. Baxter.

8                                    THE WITNESS: Good morning, Judge Wheeler.

9                                    THE COURT: You understand that you're still under  
10 oath in these proceedings?

11                                    THE WITNESS: I do.

12                                    THE COURT: All right. Very well. Let's proceed.

13                                    MR. BOIES: Thank you, Your Honor.

14                                    -        -        -        -        -

15 Whereupon --

16                                    THOMAS BAXTER

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

20                                    DIRECT EXAMINATION

21                                    BY MR. BOIES:

22                                    Q. Good morning, Mr. Baxter.

23                                    A. Good morning, Mr. Boies.

24                                    Q. Let me begin by asking you -- we're going to  
25 substitute in a binder for today for the -- we're going

1 to use this binder for documents for today rather than  
2 the one we had yesterday.

3 THE COURT: Oh, all right. Okay.

4 MR. BOIES: Everybody other than yourself and your  
5 clerk already has a copy.

6 THE COURT: Okay. All right. That's fine.

7 BY MR. BOIES:

8 Q. Let me begin by directing your attention to  
9 Plaintiffs' Trial Exhibit 2211, which I would offer.

10 MR. GARDNER: Your Honor, we object on the basis  
11 of hearsay. This is a document that includes not just  
12 New York Fed witnesses but witnesses from COP, Treasury  
13 and other folks.

14 THE COURT: I'm sorry, Mr. Gardner. I didn't  
15 quite hear what you were saying.

16 MR. GARDNER: I'm sorry.

17 We object on the basis of hearsay, Your Honor.  
18 This is a document that includes not just New York Fed  
19 folks but other individuals as well, so it is hearsay.

20 THE COURT: Isn't it a government document?

21 MR. GARDNER: It's not a government document,  
22 Your Honor. It's a government e-mail, and attached to  
23 the e-mail is an interview, an interview -- a COP/AIG  
24 interview.

25 It is hearsay, Your Honor. It is an e-mail from



1 and to the New York Fed attaching an interview, and you  
2 can see on the second page of PTX 11 the various  
3 individuals who participated in that interview.

4 Now, if Mr. Boies wants to offer it for the truth  
5 of the matter asserted, our objection is hearsay. If  
6 it's not being offered for the truth of the matter, then  
7 I would withdraw the objection.

8 THE COURT: But it appears to me that Mr. Baxter  
9 is one of the participants?

10 MR. GARDNER: And to the extent that he wants to  
11 ask -- Mr. Boies wants to ask Mr. Baxter about his  
12 statements, I would withdraw the objection. To the  
13 extent the entire document is coming in for the truth of  
14 the matter, it contains a number of other statements from  
15 individuals who would be hearsay.

16 THE COURT: Well, I think once again feeling  
17 confident of my ability to evaluate a document like this,  
18 I will overrule the objection and I will admit  
19 Plaintiffs' Trial Exhibit 2211.

20 (Plaintiffs' Exhibit Number 2211 was admitted into  
21 evidence.)

22 BY MR. BOIES:

23 Q. Mr. Baxter, just for the record, this is an e-mail  
24 that attaches notes of certain interviews that took place  
25 May 11, 2010; correct?

1           A. These are notes that I believe were taken by a  
2 paralegal on that day when the Congressional Oversight  
3 Panel appeared.

4           Q. Yes.

5                   And just to be clear, these were interviews that  
6 were conducted by representatives of the  
7 Congressional Oversight Panel; correct, sir?

8           A. That's as I recall it.

9           Q. And they conducted interviews of people from the  
10 Federal Reserve Bank of New York, from  
11 Davis Polk & Wardwell and from the Treasury Department;  
12 correct?

13          A. That's what the document shows. Yes.

14          Q. And that you were present; correct?

15          A. I was.

16          Q. And that's your recollection as well; correct,  
17 sir?

18          A. I don't -- I don't recall all the participants.  
19 I have a general recollection that the meeting occurred.

20          Q. Now, Davis Polk & Wardwell and Marshall Huebner,  
21 who was interviewed, what was their role?

22          A. Davis Polk & Wardwell and Marshall Huebner were  
23 both outside counsel to the Federal Reserve with respect  
24 to the AIG rescue.

25          Q. So these are interviews of the -- of or by

1 representatives of the Congressional Oversight Panel of  
2 the Federal Reserve Bank of New York, the Treasury, and  
3 counsel to the Federal Reserve; correct?

4 A. Correct.

5 Q. And if you go to the first page, which is the  
6 cover e-mail, this is an e-mail initially from  
7 Stephanie Ruiz to Shari Leventhal; is that correct?

8 A. Yes.

9 Q. And would you identify those people.

10 A. Stephanie Ruiz is a paralegal in the legal group  
11 of the Federal Reserve Bank of New York.

12 Ms. Leventhal is one of the lawyers -- at the  
13 present time she's deputy general counsel. Back on -- in  
14 May of 2010, I believe she was assistant general counsel.

15 Q. Assistant general counsel to what entity?

16 A. To the -- I'm sorry, Mr. Boies. To the  
17 Federal Reserve Bank of New York.

18 Q. And then there is also an indication that this was  
19 forwarded to Michael Nelson?

20 Do you see that?

21 A. Yes.

22 Q. And Michael Nelson then forwarded it on to  
23 James Bergin and Joyce Hansen; correct?

24 A. Correct.

25 Q. And would you identify those people.

1           A. Michael Nelson is a senior lawyer in the legal  
2 group of the Federal Reserve Bank of New York. He has  
3 responsibility for congressional liaison.

4           Back in 2010, James Bergin was a lawyer in the  
5 legal group, and Joyce Hansen was a deputy general  
6 counsel.

7           Q. Now, there is an indication in these e-mails that  
8 these notes have already been sent to you.

9           Do you see that?

10          A. I see that.

11          Q. And is that true?

12          A. I don't -- I don't remember whether that's true or  
13 not.

14          Q. Did you ever suggest to anyone that anything in  
15 these notes needed to be corrected?

16          A. Not as far as I can recall.

17          Q. Let me ask you to look at page 10 and the last  
18 paragraph that is attributed to you on this page.

19                 And this is talking about discussions that  
20 occurred on September 16, 2008; correct?

21          A. I don't know that it's limited to that particular  
22 day, Mr. Boies.

23          Q. It would include that day; is that fair?

24          A. Yes.

25          Q. And these notes indicate that you stated, "I don't

1 remember discussion to mitigants to moral hazards.  
2 Neither the Fed nor the Treasury had authority to hold  
3 the shares. When we saw equity on term sheet - problem  
4 of legal ownership and the conflict. Maybe strike that  
5 and not take equity. But then thought of taxpayer.  
6 Create a trust, put shares in trust. For benefit of  
7 American people. We had to decide that right away. We  
8 will take this private sector term sheet? Interest rate  
9 was not a Fed interest rate. More of a loan shark. If  
10 AIG was ready to do this deal at that rate, why should we  
11 take less? So we stayed with that rate. One  
12 exception - the amount. 75 billion. We did it for 85.  
13 I cannot tell you why we went from 75 to 85. Don't know  
14 why."

15 Did you say that in words or in substance to the  
16 Congressional Oversight Panel?

17 A. Well, I believe that this is a summary of things  
18 that I said, Mr. Boies. I don't think I spoke to the  
19 Congressional Oversight Panel in that clipped a manner,  
20 but -- I hope I didn't. And it contains a number of  
21 concepts that I know were brought up during that  
22 session.

23 Q. Is there anything in this report of what you said  
24 that you believe to be not accurate?

25 A. With respect to authority to hold the shares, I

1 distinguish statutory authority from the authority that  
2 was granted to us by the board. I fully believe then,  
3 now and at all times that we had the statutory authority  
4 to hold the equity.

5 The issue with authority related to the  
6 authorization that section 13 subparagraph (3) requires  
7 the Board of Governors to offer to the lending  
8 Reserve Bank so it could make the loan.

9 And the issue with respect to the authorization  
10 was always, with respect to the equity, who could hold  
11 the equity. And the feeling, at least as I understood  
12 it, from the Board of Governors is that we, the  
13 New York Fed, were not authorized by the authorization  
14 given to us by the Board of Governors to hold the  
15 equity.

16 So authority there to hold shares refers to the  
17 authorization that is a requirement of  
18 section 13 subparagraph (3). It's not a reference to  
19 statutory authority.

20 Q. Now, sir, you understand my question is what you  
21 told the Congressional Oversight Panel.

22 A. And what I'm trying to be clear on, Mr. Boies, is,  
23 when I was talking about authority, I was talking about  
24 the authorization in 13(3).

25 Q. Please listen to my question.

1           Do you understand that I'm not talking about what  
2 your views are, I'm talking about what you told the  
3 Congressional Oversight Panel? Do you understand that?

4           A. I do understand that, Mr. Boies.

5           Q. Okay. Now, did you tell the  
6 Congressional Oversight Panel all of the things that  
7 you've just testified to?

8           A. I don't, as I sit here today, remember the precise  
9 words that I used with the Congressional Oversight Panel.

10          Q. Did you tell --

11          A. And this is clearly a summary, sir.

12          Q. I know it is, and I'm trying to find out the  
13 extent to which you claim that this is an accurate  
14 summary or the extent to which you claim it is an  
15 inaccurate summary. Okay?

16                 And what I'm asking you is, do you contend here  
17 that the substance of everything that you just testified  
18 to you told the Congressional Oversight Panel, but for  
19 some reason the person who was taking it down didn't  
20 summarize it? Is that your testimony?

21          A. I don't know. I can't speak for the person who  
22 took down what I was saying. I just don't know what she  
23 had in her head at the time.

24          Q. This was somebody who worked for the New York  
25 Federal Reserve Bank; correct?

1           A. Yes. And I don't mean in any way to impugn  
2 Ms. Ruiz' notetaking. I just don't know what was in her  
3 head and what was said.

4           Q. You do accept that she was trying to write down,  
5 to the extent that she could, the substance of what was  
6 being said.

7           A. Yes.

8           Q. And do you recall, as you sit here now, what you  
9 actually said at that meeting?

10          A. I don't.

11          Q. Let me ask you to look at the portion that we  
12 read, and there's a reference to "this private sector  
13 term sheet."

14                 Do you see that?

15          A. Yes.

16          Q. Is that the term sheet that was prepared in  
17 connection with JPMorgan and Goldman Sachs'  
18 consideration of providing equity to -- or liquidity,  
19 rather, to AIG?

20          A. It is.

21          Q. Had you seen that private sector term sheet on  
22 September 16, 2008?

23          A. My best recollection is I did.

24          Q. And who gave it to you?

25          A. I can't remember.



1 Q. You also say there "if AIG was ready to do this  
2 deal at that rate."

3 Do you see that?

4 A. I do see that.

5 Q. Did anyone tell you whether or not AIG was ready  
6 to do a deal at that rate?

7 A. No.

8 Q. Did you ever ask anybody?

9 A. Ask anybody at AIG?

10 Q. Let's start with that.

11 A. I did not.

12 Q. Did you ever ask anybody at AIG or anywhere else  
13 whether AIG was ready to do a deal at the private sector  
14 term sheet rate?

15 A. I don't recall.

16 Q. Let me ask you next about JX 63, Joint Exhibit 63.

17 This is the minutes of the Board of Governors  
18 meeting on September 16, 2008 that we talked about  
19 yesterday. Do you recall that?

20 A. Yes.

21 Q. Now, there is attached to these minutes or there's  
22 attached to this document a press release, dated  
23 September 16, 2008; correct?

24 A. Correct.

25 Q. That press release was prepared after the board

1 meeting concluded; correct, sir?

2 A. I don't know exactly when the press release was  
3 prepared.

4 Q. You gave comments on the press release; correct?

5 A. I know I saw the press release late in the evening  
6 on September 16, and I know, Mr. Boies, I sent the final  
7 press release to Mr. Rodgin Cohen, who was representing  
8 AIG, late in the evening on September 16.

9 Q. And were there changes made to the press release  
10 late in the evening on September 16?

11 A. I don't know.

12 Q. Did you suggest any changes to the press release  
13 after 8:00 p.m. on September 16?

14 A. I don't recall.

15 Q. Did anyone else from the New York Federal Reserve  
16 Bank suggest any changes to the press release after  
17 8:00 p.m. on September 16?

18 A. I don't know.

19 Q. Let me ask you to look next at Plaintiffs' Trial  
20 Exhibit 114, which I would offer.

21 MR. GARDNER: No objection, Your Honor.

22 THE COURT: Plaintiffs' Trial Exhibit 114 is  
23 admitted.

24 (Plaintiffs' Exhibit Number 114 was admitted into  
25 evidence.)

1 BY MR. BOIES:

2 Q. These are a series of e-mails that include people  
3 from Davis Polk & Wardwell that you've already  
4 identified.

5 Are there Federal Reserve Bank of New York or  
6 Federal Reserve Board personnel that are authors or  
7 addressees of these e-mails that you recognize?

8 A. Just give me a minute, Mr. Boies, because I don't  
9 think I've seen this before today.

10 Q. Take whatever time you need, and when you are  
11 prepared to respond, let me know.

12 (Pause in the proceedings.)

13 A. I see in the e-mail chain, Mr. Boies, there are  
14 Federal Reserve Bank of New York personnel listed in the  
15 e-mail chain.

16 Q. Would you identify who they are and what their  
17 position was.

18 A. The first e-mail is from a David Suh to  
19 Greg Cavanaugh, Azish Filabi, Marshall Huebner,  
20 Brad Smith and Mark Welshimer.

21 With respect to the -- those individuals,  
22 Greg Cavanaugh is a lawyer who works in the legal group  
23 of the Federal Reserve Bank of New York.

24 Azish Filabi is a lawyer who works in the legal  
25 group of the Federal Reserve Bank of New York.

1 Marshall Huebner is a partner in Davis Polk.

2 Brad Smith was a partner in Davis Polk.

3 And Mr. Welshimer is a partner in

4 Sullivan & Cromwell, who represented AIG.

5 Q. And Laurent Alpert?

6 A. I don't know who that is.

7 And I know Penelope Christophorou is a lawyer at

8 Cleary Gottlieb. I don't know why Cleary Gottlieb is

9 involved in this e-mail chain.

10 Q. Now, with respect to the next e-mail, there is, in

11 addition to the people that you've identified, I believe

12 a Mark Welshimer?

13 A. I believe I did identify Mr. Welshimer as a

14 partner at Sullivan & Cromwell.

15 Q. Okay. Thank you.

16 And did you identify Andrew Rowen?

17 A. I have no idea who that is.

18 Q. Erik Lindauer?

19 A. Erik Lindauer is another partner at

20 Sullivan & Cromwell.

21 Q. And did you identify Ethan James?

22 A. Ethan James was at the time a partner at

23 Davis Polk.

24 Q. Now, if you look at the second e-mail on the first

25 page, the one to Bradley Smith, it talks about discussing

1 insurance issues relating to the warrant.

2 Do you see that?

3 A. I see what the words say. I've never seen this  
4 e-mail chain until this morning, so I don't know what  
5 it's about.

6 Q. Now, a number of people on this e-mail chain work  
7 for you; correct, sir?

8 A. On this particular e-mail chain?

9 Brad Smith was outside counsel working for the  
10 Federal Reserve Bank of New York. That's correct.

11 Q. Now, did Mr. Smith or any other of the lawyers  
12 working for you raise with you any insurance issues  
13 relating to the AIG warrant on or about September 17,  
14 2008?

15 A. First, Mr. Boies, the text says "to the warrant."  
16 It doesn't say "the AIG warrant."

17 Q. Well, sir, just to clarify that, the subject of  
18 that e-mail --

19 MR. GARDNER: Your Honor, I object. He's cutting  
20 the witness off. He was trying to explain his response.

21 THE COURT: I have no trouble with it. It's  
22 overruled.

23 BY MR. BOIES:

24 Q. The subject of this e-mail says "FRBNY/AIG Pledge  
25 Agreement and Blanket Lien."

1 Do you see that?

2 A. I do see that.

3 Q. Now, you don't have any doubt that the warrant  
4 that's referred to here is the AIG warrant, do you, sir?

5 A. I have no idea what that means, Mr. Boies.

6 Q. You have no idea whether the reference to the  
7 warrant here in this e-mail to a Federal Reserve Bank  
8 outside lawyer on the subject of the AIG pledge  
9 agreement and blanket lien relates to; is that your  
10 testimony?

11 A. That is my testimony.

12 Q. All right, sir.

13 Let me go to Plaintiffs' Trial Exhibit 598, which  
14 I would offer.

15 MR. GARDNER: No objection, Your Honor.

16 THE COURT: Plaintiffs' Trial Exhibit 598 is  
17 admitted.

18 (Plaintiffs' Exhibit Number 598 was admitted into  
19 evidence.)

20 BY MR. BOIES:

21 Q. This was a statement that you submitted to the  
22 Financial Crisis Inquiry Commission on September 1, 2010;  
23 correct, sir?

24 A. Yes.

25 Q. And before submitting this testimony, you made

1 sure that it was truthful and accurate; correct, sir?

2 A. To the best of my knowledge.

3 Q. And you knew that one of the things that the  
4 Financial Crisis Inquiry Commission was interested in was  
5 whether and to what extent taxpayers were at risk for the  
6 AIG loan; correct?

7 A. No. My belief at the time is this hearing was  
8 directed toward Lehman Brothers.

9 Q. Let me direct your attention to page 11 of the  
10 exhibit, sir.

11 MR. GARDNER: And Your Honor, I understand from  
12 Mr. Boies that the entire exhibit is being offered, but  
13 since in the binder there's only a few pages, I would ask  
14 if Mr. Boies could furnish the witness with the entire  
15 exhibit so that he can see in context what it is that  
16 he's directing him to.

17 THE COURT: Sure. If that's your wish, we can do  
18 that I'm quite confident.

19 BY MR. BOIES:

20 Q. The page I'm going to be directing your attention  
21 to is page 11. You already have pages 10 and 12 in your  
22 book. If there's any other page that you wish to look at  
23 to --

24 MR. GARDNER: I don't think page 12 is in the  
25 book.

1 BY MR. BOIES:

2 Q. -- put it in context, let me know. And after you  
3 finish whatever examination you wish to make of the  
4 entire document, let me know, and we will continue.

5 THE COURT: In referring to the page numbers of  
6 the exhibit, I take it we're using the large numbers at  
7 the very bottom of the page?

8 MR. BOIES: Yes, Your Honor.

9 MR. GARDNER: Stand corrected, Your Honor.

10 THE COURT: When you say "page 12," it would be  
11 the last page that's in the binder.

12 MR. BOIES: Yes, Your Honor.

13 THE COURT: Okay.

14 THE WITNESS: Just so I'm clear, at the top of the  
15 page, the word "bankruptcy" appears? In the first line,  
16 the first word is "bankruptcy"?

17 BY MR. BOIES:

18 Q. That's the top of page 12 of the exhibit. Yes.

19 A. That's the page you want me to look at,  
20 Mr. Boies?

21 Q. No. It's page 10 -- page 11 actually. I gave you  
22 pages 10, 11 and 12. I'm interested in 11. They've  
23 asked you to look at the rest of the document, which I'm  
24 happy to have you do.

25 A. My confusion is there are two different numbers on



1 the page.

2 Are we looking at the large number?

3 Q. Where it says "PTX" -- that stands for Plaintiffs'  
4 Trial Exhibit -- "598 page 11 of 14."

5 Do you see that?

6 A. Okay. Okay.

7 Q. On the page in big letters it says "Plaintiffs'  
8 Trial Exhibit 598 page 11 of 14."

9 Do you see that?

10 A. I got it.

11 Q. Great. And when you have that page in context,  
12 let me know.

13 (Pause in the proceedings.)

14 A. I'm ready, Mr. Boies.

15 Q. And I'm interested in particular in the second  
16 full paragraph on page 11 of the exhibit, which deals  
17 both with Lehman and with AIG. And since it is in the  
18 record, I don't have to read the entire page, but would  
19 you read that paragraph to yourself. And when you've  
20 finished, let me know.

21 (Pause in the proceedings.)

22 A. I'm ready, Mr. Boies.

23 Q. Now, the very next sentence says -- and I read  
24 this because it has not yet been read into the record --  
25 "Likewise, the Federal Reserve's loan to Maiden Lane LLC,

1 which facilitated the Bear Stearns rescue, was and is  
2 fully secured. The security is important because it is  
3 the taxpayer's protection in the event of a default."

4 Do you see that?

5 A. Yes.

6 Q. And at the time that you submitted this testimony,  
7 you were aware that the Financial Crisis Inquiry  
8 Commission was interested in the extent to which the  
9 taxpayer was protected in the event of a default with  
10 respect not just to AIG but with respect to the  
11 Bear Stearns rescue and with respect to commitments that  
12 had been made generally; correct?

13 A. This statement and the hearing that it was  
14 associated with was directed at why Lehman was not able  
15 to be rescued. That was the -- that was the topic that  
16 the Financial Crisis Inquiry Commission was looking to me  
17 to give testimony.

18 And in addition to me, Mr. Dick Fuld testified  
19 from Lehman Brothers, Harvey Miller, who was Mr. Fuld's  
20 lawyer, testified, and I testified, along with the  
21 chief risk officer of JPMorgan Chase, Barry Zubrow. And  
22 we were all told that the testimony was oriented to why  
23 Lehman Brothers did not get rescued by the government.

24 Q. Mr. Baxter, I'd like you, if you could, to just  
25 listen to my questions because I'm sure you're trying to,

1 and I mean this in no pejorative way. But what I'm  
2 trying to do is ask specific questions.

3 I wasn't asking what this was oriented to. I  
4 wasn't asking what the primary focus was.

5 What I was asking was, at the time you submitted  
6 this testimony, for whatever reason that you submitted  
7 it, you were aware that the Financial Crisis Inquiry  
8 Commission was interested in the extent to which the  
9 taxpayer was protected in the event of a default with  
10 respect to not just AIG but with respect to the  
11 Bear Stearns rescue and with respect to commitments that  
12 had been made generally; correct? That's either yes or  
13 no or I don't know.

14 A. I don't think it's that simple an answer,  
15 Mr. Boies, because I was specifically directed by a  
16 different set of questioners at this particular time to  
17 focus on a very specific issue, and that very specific  
18 issue is why didn't Lehman Brothers get rescued by the  
19 government. That's what I was trying to do in my  
20 statement, that's what I was trying to do in answering  
21 questions from the Financial Crisis Inquiry Commission at  
22 the hearing, and that is what the staff of the FCIC had  
23 told me to expect.

24 Q. Now, first of all, this was not questions that you  
25 were asked at the hearing, this was your prepared

1 statement; correct?

2 A. Addressing what staff had told me the commission  
3 was interested in.

4 Q. Is the answer to my question yes?

5 A. I'll stand by my answer, Mr. Boies.

6 Q. Well, let me ask you the question, sir, because I  
7 think this is a yes-or-no question and I think I'm  
8 entitled to a yes or no answer.

9 What is before you as Plaintiffs' Trial  
10 Exhibit 598 is not questions you were asked at the  
11 hearing, this was your prepared statement; correct?

12 A. This is my prepared statement.

13 Q. Thank you.

14 And it was a statement that you made as accurate  
15 and honest as you were able to; correct, sir?

16 A. That's correct.

17 Q. On or before September 16 in this connection, had  
18 you seen anything in writing that valued the AIG  
19 insurance subsidiaries?

20 A. Before September 16, 2008?

21 Q. On or before.

22 A. On or before?

23 To the best of my recollection, no.

24 Q. On or before September 16, 2008, did you ever ask  
25 to see anything in writing that valued the AIG insurance

1 subsidiaries?

2 A. No.

3 Q. On or before September 16, 2008, did you  
4 participate in any discussions concerning what the value  
5 of the AIG insurance subsidiaries were?

6 A. No.

7 Q. Insofar as you are aware, did anyone at the  
8 Federal Reserve Bank of New York or the Federal Reserve  
9 Board of Governors participate, on or before  
10 September 16, in any discussions concerning what the  
11 value of the AIG insurance subsidiaries were?

12 A. I don't know.

13 Q. On September 16, the Federal Reserve Bank of  
14 New York lent AIG money; correct?

15 A. On September 16 we lent AIG \$14 billion.

16 Q. And that was pursuant to a demand note secured by  
17 all the assets of AIG; correct?

18 A. There were actually three, three specific legal  
19 documents, a demand note, a pledge agreement and a  
20 security agreement.

21 Q. And the pledge agreement and security agreement  
22 gave the Federal Reserve Bank of New York a security  
23 interest in all of the assets of AIG; correct?

24 A. I don't recall as I sit here today exactly how the  
25 security agreement described the assets we were taking a

1 security interest in. I would have to look at the  
2 document to refresh my recollection.

3 Q. Okay. We'll see if we can find that and show it  
4 to you before the examination is over with.

5 Did you ever see or ask to see any valuation of  
6 what AIG assets were in which the Federal Reserve Bank  
7 of New York was getting a security interest on  
8 September 16?

9 A. I know, Mr. Boies, that I was discussing the  
10 valuation issue with staff. I don't know if I actually  
11 looked at specific documents that were pledged or relied  
12 on staff to tell me that the value was there to support  
13 the lending.

14 Q. On or before -- and I'm now going to move from  
15 September 16 to September 22.

16 On or before September 22, did you ever see  
17 anything in writing that valued or estimated the value of  
18 the AIG insurance subsidiaries?

19 A. I don't remember.

20 Q. On or before September 22, did you ever see or ask  
21 to see anything in writing that valued or estimated the  
22 value of the AIG assets in which the Federal Reserve Bank  
23 of New York was going to get a security interest in  
24 connection with the September 22 credit agreement?

25 A. My recollection, Mr. Boies, is that I had been

1 informed by the staff and that I don't remember whether  
2 it was in an e-mail, in a memo with attached  
3 documentation, so I can't remember the form specifically.  
4 But I know that I was receiving communication from  
5 lending staff that the lendable value of the assets that  
6 had been pledged to us during the period of your  
7 question, that is, before September 22 and starting  
8 September 16, the lendable value of the collateral fully  
9 secured us with respect to the amounts that we had  
10 extended.

11 And as I said earlier, it started on  
12 September 16 in and around the -- it was the \$14 billion  
13 figure on the first day. My recollection is by the  
14 weekend it had risen to approximately \$30 billion.

15 So it was a continuous process of looking at the  
16 amount drawn, looking at the lendable value of the  
17 collateral that we had taken, and making sure that the  
18 lendable value was equal to or in excess of the total  
19 amount lent.

20 Q. Let me ask you what "lendable value" means.

21 A. Lendable value -- we do a valuation of the  
22 collateral. Then we haircut the valuation of the  
23 collateral, and that gives us a lendable value. And we  
24 want the lendable value to always equal or exceed the  
25 actual amount of dollars extended to the borrower.

1           So as I said, on the first day of the borrowing,  
2     September 16, the number was \$14 billion, a very sizable  
3     number. By the weekend it had risen to approximately  
4     \$30 billion, as I recall.

5           Q. Did you receive information from your staff on or  
6     before September 22, 2008 that the lendable value, as you  
7     use that term, fully secured the September 22 credit  
8     facility, that is, the \$85 billion credit facility?

9           A. The only quarrel I have with the way you worded  
10    the question is that you suggested they were my staff.  
11    And I'm the chief legal officer. I have staff, but  
12    they're not the loans and credits people. They work for  
13    someone else, not for me.

14           But the information flow was such that the  
15    information they were providing up the chain did, as I  
16    recall it, reach me.

17           Q. And these would be staff of somebody within the  
18    Federal Reserve Bank of New York; is that correct?

19           A. We have a loans and credit area where we have  
20    professional staff whose job it is to value collateral,  
21    to make sure that we're getting good collateral, to raise  
22    questions with the legal staff who do report to me. And  
23    it was that group that was looking into doing the  
24    valuation.

25           Q. So sometime on or before September 22, 2008, the



1 loans and credit staff of the Federal Reserve Bank of  
2 New York would have passed up the chain their conclusion  
3 that the lendable value of the AIG assets would fully  
4 secure the \$85 billion credit facility; is that correct?

5 A. That the lendable value was there. The fully  
6 secured determination calls for a legal conclusion that  
7 would have been the legal opinion of the lawyers based on  
8 the legal documentation that I mentioned, the demand  
9 note, the pledge agreement, the security agreement, and  
10 the collateral that had been valued by loans and credits  
11 staff.

12 Q. Now, do you know how much of a haircut was given  
13 to the value of the assets of AIG?

14 A. And I'm testifying from my memory. Of course,  
15 this would be documented. My best recollection is it was  
16 25 percent.

17 Q. Let me, with the Court's permission, hand you a  
18 copy of Joint Exhibit 83.

19 THE COURT: Sure.

20 THE WITNESS: That's not in my book, Mr. --

21 BY MR. BOIES:

22 Q. No. That's why I handed it to you.

23 A. Okay. I'm sorry.

24 Q. Is this the September 16, 2008 \$14 billion demand  
25 note and related documents that you referred to earlier?

1           A. The Joint Exhibit 83 is the legal documentation  
2 supporting the lending of \$14 billion to AIG on  
3 September 16. As additional draws were required  
4 throughout the week, there would have been similar  
5 documentation executed with respect to each of those  
6 draws. This is just for the September 16, as best I can  
7 recall.

8           Q. Now, I think you've also said that as additional  
9 compensation for the credit facility, that is, in  
10 addition to the interest rate, AIG furnished voting  
11 convertible preferred stock; correct, sir?

12          A. We're talking about two different things,  
13 Mr. Boies.

14                 The term sheet that was signed on September 16 was  
15 the term sheet for the revolving credit agreement that  
16 didn't get executed until September 22, 2008.

17                 So because AIG had an urgent need to borrow  
18 before the revolving credit agreement was executed, we  
19 had to come up with a stopgap measure. And the stopgap  
20 measure was the legal documentation that is JX 83.  
21 That's separate and legal distinct legal documentation  
22 from the legal documentation that was executed on  
23 September 22.

24          Q. Yes, of course. And I don't think my -- I don't  
25 think my question was related to that.

1           A. The equity and the interest, sir, are the  
2           consideration with respect to the \$85 billion revolver.  
3           This is simply a stopgap measure leading up to that  
4           event.

5           Q. When you say "this," you're talking about this --

6           A. JX 83.

7           Q. Yes, I understand that. I'm now asking you  
8           another question. I'm asking you now about the  
9           September 22 credit facility. Okay? I'm now asking you  
10          a question about the September 22 credit facility, and  
11          you're familiar with that credit facility.

12          A. So we're done with JX 83.

13          Q. Well, I'm now not asking you a question about it.  
14          I'm not going to promise never to come back to it.

15                 But my question, as it indicates, relates to the  
16          September 22 credit facility, and you're familiar with  
17          that credit facility.

18          A. Oh, yes.

19          Q. And that credit facility had an interest rate in  
20          it; correct?

21          A. Correct.

22          Q. And in addition to the interest rate, that credit  
23          facility required, as additional compensation for the  
24          facility, the issuance of convertible preferred stock;  
25          correct?

1           A. The consideration for the \$85 billion revolving  
2 credit agreement was the interest compensation, the  
3 borrower's agreement to repay, the equity kicker that was  
4 also extended, and then there was a \$500,000 amount that  
5 the trust had to pay as well.

6           Q. Mr. Baxter, if I could ask you to listen to my  
7 question, and if it's susceptible of a yes, no or I don't  
8 know answer, give me that answer. If you need to explain  
9 it, I want you to go ahead and explain it, so that if  
10 yes, no or I don't know would be in any way misleading, I  
11 want you to explain it.

12           I'd like you to listen to the question and see if  
13 you can give me an answer to my question and not restate  
14 it. Would that be okay?

15           A. If I can, I will, Mr. Boies.

16           Q. Okay.

17           A. I promise you that.

18           Q. Okay. Thank you.

19           Now, in addition to the interest rate specified in  
20 the September 22 credit facility, that credit facility  
21 required, as additional compensation for the facility,  
22 the issuance of convertible preferred stock; correct?

23           A. That is true.

24           Q. Was any effort made to determine what the value of  
25 this additional consideration was or additional

1 compensation was?

2 A. The belief at the time is that the equity kicker  
3 didn't have an actual valuation because the company was  
4 on the edge of bankruptcy, and so we assumed that the  
5 equity at that point in time was probably not worth  
6 anything. It had -- it had the potential to be worth  
7 something if our rescue of AIG was successful.

8 Q. Again, sir, please try to listen to my question  
9 and try to answer it -- Your Honor, could I ask the Court  
10 to instruct him. If he can give a yes, no or I don't  
11 know answer to my question, and he can give me any  
12 explanation that he wants, but at least begin with yes,  
13 no, or I don't know.

14 THE COURT: Mr. Baxter, in framing the answers to  
15 Mr. Boies' questions, I think if you will start thinking  
16 about can I answer that question yes, no or I don't know  
17 in the first instance, I think that would be a good  
18 approach. Can you do that?

19 THE WITNESS: I can do that, Your Honor. And I  
20 hope that you appreciate that this is a historical  
21 consequential event that I participated in, and I want to  
22 give the closest I can, in terms of what actually  
23 happened, a fully truthful answer to the question  
24 Mr. Boies is asking me and that may -- that may not  
25 enable me, because this is my testimony, to answer it yes

1 or no.

2 THE COURT: And sir, you will have every  
3 opportunity to explain and give a full answer, but I  
4 think Mr. Boies is right that his questions generally  
5 call for a yes, no or I don't know response, and then you  
6 can explain.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: So let's do it that way.

9 THE WITNESS: Thank you, Your Honor.

10 BY MR. BOIES:

11 Q. With respect to the additional compensation of  
12 convertible preferred stock that you referred to, was any  
13 effort made to determine what the value of this  
14 additional compensation was?

15 A. Yes.

16 Q. Who made that effort?

17 A. I was a part of it.

18 Q. Who else was part of it?

19 A. Mr. Geithner.

20 Q. Anyone else?

21 A. Those are the two I remember.

22 Q. When did this effort take place?

23 A. On or around September 16.

24 Q. And did you report the results of that effort to  
25 anybody?

1           A. I don't recall.

2           Q. Was the result of that effort reported to the  
3 Federal Reserve Board of Governors?

4           A. I don't recall.

5           Q. Was the result of that effort ever reflected in a  
6 writing?

7           A. I don't know.

8           Q. Let me ask you to look at PTX 94, which I will  
9 offer.

10           MR. GARDNER: No objection, Your Honor.

11           THE COURT: Just a second. Let me find it.

12           All right. Plaintiffs' Trial Exhibit 94 is  
13 admitted.

14           (Plaintiffs' Exhibit Number 94 was admitted into  
15 evidence.)

16           BY MR. BOIES:

17           Q. Before going to that exhibit, Mr. Baxter, let me  
18 direct your attention to page 243 on your 30(b)(6)  
19 deposition.

20           MR. GARDNER: Your Honor, I'm going to object.  
21 There's no question pending that would call to refresh  
22 his recollection. There's no answer to be impeached.  
23 It's improper use of the deposition testimony.

24           THE COURT: Mr. Boies?

25           MR. BOIES: This relates to the subject matter

1 that I have just been talking to him about where he  
2 testified that he and Mr. Geithner had made an effort to  
3 determine the value of the additional compensation in the  
4 form of the convertible preferred stock. The Court  
5 recalls that?

6 THE COURT: Sure.

7 MR. BOIES: And this portion of the deposition  
8 relates to that.

9 If the Court looks at page 243 lines 9 through 14,  
10 I think the Court --

11 THE COURT: Which deposition?

12 MR. BOIES: Of the 30(b)(6) deposition -- I think  
13 the Court will see how it relates to these questions.

14 THE COURT: All right. Go ahead.

15 BY MR. BOIES:

16 Q. Now, you recall testifying a moment ago that you  
17 and Mr. Geithner made an effort to determine what the  
18 value of this additional compensation was; correct?

19 A. Yes.

20 Q. And I direct your attention to page 243  
21 lines 9 through 14, where you were asked, "Did anyone  
22 make any effort to make an estimate of the value of the  
23 79.9 percent equity, other than saying that it was  
24 somewhere between zero and a very substantial amount?

25 "ANSWER: No."



1           Do you see that?

2           A. I do.

3           Q. And that was your best recollection at the time of  
4 your deposition, was it not, sir?

5           A. Yes.

6           And Your Honor, this is an example of why yes or  
7 no can sometimes be a hazardous territory.

8           If you look, the immediately preceding answer:  
9 "It was somewhere between zero and a substantial amount,  
10 but I can't quantify it more than that."

11           There was also a colloquy that I had with  
12 Mr. Geithner concerning another experience that I had in  
13 the early '90s with a company called First American  
14 Corporation which was secretly owned by another bank  
15 called Bank of Credit and Commerce International. We had  
16 taken the shares of First American Corporation and put  
17 them into a trust, and at the time, we believed those  
18 shares were valueless, Your Honor, had no value because  
19 the company was experiencing a run and was on the edge of  
20 bankruptcy.

21           A similar discussion took place with AIG, that  
22 the belief was on September 16, given that AIG was on the  
23 edge of bankruptcy, its equity was worthless, but if we  
24 succeeded with the rescue, the equity could be worth a  
25 substantial amount. There was upside potential there,

1 upside potential that, by the way, we realized in the  
2 First American situation and is the subject of a decision  
3 by Joyce Hens Green that talks about this.

4 So we had been there once before and we had a  
5 colloquy about this. That's -- that's why answering  
6 that question yes or no creates a misimpression, because  
7 there was this discussion, this focus on this issue that  
8 shares that are worthless today might be very valuable  
9 in the future if the rescue succeeds. And this rescue of  
10 AIG did in fact succeed, did in fact generate that  
11 premium.

12 But on September 16, 2008, Your Honor, it looked a  
13 very different way. It looked like the equity wasn't  
14 worth anything then.

15 BY MR. BOIES:

16 Q. Have you finished, sir?

17 A. Yes, I think I have.

18 Q. Okay. You didn't say any of that in response to  
19 my question.

20 A. I believe that's what the deposition says,  
21 somewhere between zero and a substantial amount.

22 Q. It doesn't say --

23 A. And that's -- and that's what happened,  
24 Mr. Boies.

25 Q. It doesn't say anything about Financial American

1 or this other trust or how it was worthless then, could  
2 be worth a lot. It doesn't say that in this deposition,  
3 does it, sir?

4 A. I think "between zero and a substantial amount" is  
5 the summary of what I just said.

6 Q. So you think -- you think -- okay.

7 You think that that is a summary of what you just  
8 said.

9 A. Yes.

10 Q. That's your --

11 A. September 16 we thought the shares were valueless;  
12 now they're \$23 million in value.

13 MR. BOIES: Your Honor, could I ask --

14 THE COURT: Back to you, Mr. Boies.

15 BY MR. BOIES:

16 Q. My question, is your testimony here under oath  
17 that you think that saying that it is somewhere between  
18 zero and a very substantial amount is a fair summary of  
19 all the things that you've just said?

20 A. I probably added a few facts. Yes.

21 Q. Okay. Okay.

22 Now, did you or, insofar as you are aware, anybody  
23 tell the Federal Reserve Board of Governors that you  
24 believed or that they believed or that anyone believed  
25 that the 79.9 percent equity was at that time essentially

1 worthless?

2 A. I don't recall that.

3 Q. Did you or, insofar as you are aware, anyone tell  
4 the Federal Reserve Board of Governors that anyone  
5 believed that the 79.9 percent equity could be worth a  
6 substantial amount or, as you put it in your deposition,  
7 a very substantial amount?

8 A. I don't recall.

9 Q. Now let me go to Plaintiffs' Trial Exhibit 94.  
10 This is a fax cover page and a signature page  
11 that was faxed to you at 8:44 p.m. on September 16;  
12 correct?

13 A. What I recall, Mr. Boies, is receiving this page,  
14 which is PTX 0094, but what I recall was appended to it  
15 was the term sheet.

16 So I don't recall receiving it in my office in  
17 this form. The first page and the second page were  
18 there, but what I got also had the term sheet attached.

19 Q. So it's your testimony that when this came to you,  
20 there was a term sheet attached to it?

21 A. That's the way I remember it.

22 Now, I don't -- this is my fax number, and I don't  
23 man the fax machine, so it's possible whoever pulled this  
24 from the fax machine put the two together. I don't know.  
25 But what I remember, Mr. Boies, is getting this fax with

1 the term sheet attached.

2 MR. BOIES: Your Honor, we have asked in document  
3 production for the government to produce what was faxed  
4 to Mr. Baxter. This is what has been produced.

5 Could I ask through the Court that they make a  
6 search to try to determine whether they have a copy of  
7 what Mr. Baxter says he received.

8 THE COURT: Does anybody from the defendant's side  
9 want to speak to this?

10 MR. GARDNER: Well, Your Honor, first of all, let  
11 me be very clear with you. I was not involved in  
12 discovery in this case, so I'm not going to make any  
13 personal representations to you. There are others at the  
14 table who have been.

15 I do understand that JX 83 is a copy of the fax  
16 with the term sheet.

17 MR. BOIES: Your Honor, I want to be very clear  
18 about this, and I don't want counsel who was not involved  
19 in discovery to misspeak to the Court.

20 That document I do not believe anyone has  
21 testified was a document faxed to Mr. Baxter. Now, what  
22 I believe that document to be is something that has been  
23 put together, but -- by somebody, but I don't believe  
24 anybody has testified that document was faxed to  
25 Mr. Baxter at 8:44 p.m. on September 16.

1           MR. GARDNER: And I don't actually think that's  
2 Mr. Baxter's testimony. What I understood Mr. Baxter to  
3 just say is he does not know whether or not the term  
4 sheet was faxed along with the cover page or someone from  
5 his office put them together. That's what I understood  
6 his testimony to be. If I'm mistaken, Mr. Baxter  
7 certainly will correct me.

8           But all I can tell you right now is that JX 83 is  
9 a copy of those three things put together, and  
10 Mr. Baxter's testimony is what it is.

11           MR. BOIES: Let me pursue that with the witness,  
12 Your Honor.

13           BY MR. BOIES:

14           Q. Do you recall testifying a moment ago, a few  
15 moments ago, that when you received this fax cover page  
16 and signature page there was a term sheet attached to  
17 it?

18           Do you recall saying that?

19           A. My best recollection is, when I looked at this  
20 fax, the term sheet was attached.

21           Q. When did you first look at this signature page?

22           A. I was waiting for it, expecting it, so it would  
23 have been shortly after the fax was sent, so I would say  
24 between 8:45 and 9:00 on September 16.

25           Q. And this is your own fax number; right?

1           A. My -- this is the fax office in my suite of  
2 offices. It's not in my personal office. I have two  
3 assistants, a day assistant and a night assistant, and  
4 the fax machine is in the office suite where they're  
5 situated.

6           Q. Is anyone else situated in that suite of office  
7 other than your assistants?

8           A. On the night of September 16, there was probably  
9 a group of lawyers waiting out there. But I don't  
10 remember who they were or -- it was just the environment  
11 that night, Mr. Boies.

12          Q. So if this fax cover sheet and signature page  
13 were attached to a term sheet, you don't know whether  
14 that term sheet was faxed with this signature page or  
15 whether it was attached, if it was, by someone else; is  
16 that correct?

17          A. That's correct.

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

19                 THE COURT: Sure.

20                 (Pause in the proceedings.)

21                 MR. BOIES: I think one of the confusions is I  
22 think the reference to JX 93 was --

23                 MR. GARDNER: JX 83.

24                 MR. BOIES: 83 -- the reference to JX 83, you  
25 didn't mean that, because JX 83 is the demand note.

1           MR. GARDNER: As I understand it, JX 83 is the  
2 complete collection of the fax with the term sheet and  
3 the demand note, the entire document.

4           THE COURT: Mr. Gardner, my problem with what  
5 you're saying is, it's not clear to me that this fax  
6 sheet and the signature page go with the demand note  
7 because there's no fax information at the top of the  
8 demand note. It doesn't look to me like they were sent  
9 at the same time.

10           MR. GARDNER: Well, Your Honor, I think that's  
11 what Mr. Baxter is saying, is that one of the  
12 possibilities is this fax cover sheet was sent  
13 separately and then someone from the New York Fed put it  
14 all together to provide it to him.

15           My understanding of JX 83 -- and I can happily  
16 pull it for you -- is that that is from the  
17 New York Fed's files in chronological Bates order and  
18 that is how it was produced in this litigation.

19           Now, if we get much more deeper than that, I'm  
20 going to start to refer to colleagues because I'm not  
21 going to make any more representations about discovery in  
22 this case. But yeah, I'm --

23           MR. BOIES: Let me put the request this way.

24           MR. GARDNER: Okay. So if you look at JX 83, it  
25 actually, Mr. Boies, goes backwards the way it was



1 produced.

2 May I approach him, Your Honor?

3 THE COURT: Well, we all have copies of this.

4 (Pause in the proceedings.)

5 MR. BOIES: Let me just -- in order to move this  
6 along, Your Honor, we have a fax cover sheet, and it  
7 shows the fax number and the date and time it was faxed.

8 We have been unable to locate in our document  
9 production any term sheet that has that fax designation  
10 on it. And if the government has any such document, we  
11 think it ought to be produced, because there are a couple  
12 of possibilities here.

13 One possibility is that a cover sheet, signature  
14 page and term sheet were all faxed together. Another  
15 possibility is that the signature page was faxed and then  
16 somebody attached it to a term sheet that had not been  
17 faxed with it.

18 And we think it's important that the record show  
19 what the facts are.

20 So if there is a term sheet that was faxed with  
21 this document, I think the government ought to either  
22 produce it or make a representation that they can't find  
23 it.

24 MR. GARDNER: And Your Honor, Mr. Kiernan just  
25 confirmed with me that the New York Fed did a diligent

1 search of its files, they did produce what they had in  
2 their files, and what they had as one compilation is  
3 what's reflected in JX 83. Thank you.

4 There is no other document that has the fax line  
5 on it, the actual term sheet or the credit agreement or  
6 anything like that -- or the demand note I mean. I'm  
7 sorry. But the representation that was made to me, which  
8 I'm making to you, is that New York did a diligent search  
9 and they produced what is in our files -- or the  
10 New York Fed's files.

11 THE COURT: Well, let me ask you all this -- and  
12 I'm not sure we should be doing this all in the presence  
13 of the witness.

14 THE WITNESS: Do you want me to step out,  
15 Your Honor?

16 THE COURT: Yes. Could you step out just for a  
17 moment, Mr. Baxter, and we'll call you back just in a  
18 moment. Thank you.

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

21 THE COURT: You all are familiar with this more  
22 than I am perhaps, but I'm looking at the page that  
23 contains Mr. Willumstad's signature, and he does refer in  
24 his statement when he says, "AIG hereby agrees to and  
25 accepts the summary of terms for the Senior Bridge

1 Facility presented to AIG by the Federal Reserve Bank of  
2 New York," and this is dated September 16. That is the  
3 same title that is used on the document that is a part of  
4 JX 63, the Board of Governors minutes.

5 MR. GARDNER: Well, no, it's a different term  
6 sheet than what's in the Board of Governors minutes. It  
7 is the term sheet that reflects the equity in terms of  
8 preferred stock, the term sheet -- what? I'm sorry --  
9 the form to be determined. I apologize. It is not the  
10 term sheet that went to the Board of Governors that  
11 describes the equity participation warrants.

12 THE COURT: Right.

13 So that's your big question, what in the world is  
14 the term sheet being referred to.

15 MR. GARDNER: I think that's --

16 MR. BOIES: Exactly.

17 MR. GARDNER: -- what Mr. Boies is getting at.

18 And there will be testimony, Your Honor, from  
19 other witnesses about what term sheets were provided to  
20 the AIG board and things of that nature, and Mr. Baxter  
21 has some views on that as well. But I think to get to  
22 the nub of the question here in terms of what, you know,  
23 the New York Fed has produced, as Mr. Kiernan has  
24 represented to me and I will represent to you, the  
25 New York Fed did a diligent search of its files. They

1 produced what is in those files.

2 THE COURT: Well, I'm happy to hear from  
3 Mr. Kiernan on this, so would you like to add anything?

4 MR. KIERNAN: Certainly, Your Honor.

5 As might be expected at the time when this case  
6 was brought, there were no longer, regrettably, fax  
7 records of what was faxed that night. This document came  
8 from the Federal Reserve Bank of New York's files, and it  
9 was produced as is.

10 Mr. Boies is quite right to observe that the fax  
11 cover line for the document attached to the file exists  
12 only with respect to these two pages and not with the  
13 other documents in the files, but that's what -- we've  
14 produced what we have. The -- what exactly came across  
15 the fax lines that night can't be determined because  
16 those fax records don't exist.

17 THE COURT: Well, have you all had an opportunity  
18 to examine AIG files that may have a copy of what was  
19 sent?

20 MR. GARDNER: I can't represent what AIG did or  
21 did not produce. They're a third party, Your Honor.  
22 Mr. Boies may have some more detail on that than I do.

23 I mean, AIG produced a large quantity of  
24 documents, and I would defer to Mr. Mizoguchi on that  
25 issue.

1           THE COURT: I thought, I mean, that would be  
2 another logical source to look to I would think.

3           MR. BOIES: We will pursue that, Your Honor. I  
4 mean, we have asked informally and we've tried to find  
5 this, but we will go back perhaps with a subpoena and  
6 just be absolutely certain that they don't have what was  
7 actually faxed. And they may not either just because of  
8 the passage of time, but if they do, that might solve  
9 it.

10           But I think -- I think we're all saying the same  
11 thing, which is, none of us knows of any document, other  
12 than these two pages, that has the fax designation on  
13 it.

14           MR. GARDNER: I think that's correct, Your Honor.

15           THE COURT: All right. Thank you.

16           Let's have Mr. Baxter return.

17           (Whereupon, the witness was present in  
18 open court.)

19           THE COURT: Mr. Baxter, thank you for your  
20 patience.

21           While you were out of the room, I was discussing  
22 with counsel their searches of various records of what  
23 was actually sent to you on -- by this fax on the  
24 evening of September 16. That's all I'm going to say  
25 about it.

1 THE WITNESS: Thank you, Your Honor.

2 BY MR. BOIES:

3 Q. With respect to the offer that was made to AIG on  
4 September 16, that offer was a take-it-or-leave-it offer  
5 and the Federal Reserve made clear to AIG that nothing  
6 could be negotiated; correct?

7 A. Yes.

8 Q. And at the time that the Fed made the offer to  
9 AIG, it told AIG that that was the only offer AIG was  
10 going to get; correct?

11 A. From the Fed. Yes.

12 Q. And insofar as you are aware, no other agency or  
13 representative of the United States government was making  
14 any offer to AIG on September 16; correct?

15 A. I'm unaware of any other such offers.

16 Q. Now, you've testified that between  
17 September 16 and September 22, the Federal Reserve Bank  
18 extended additional credit to AIG; correct?

19 A. Yes.

20 Q. And those were all extended pursuant to secured  
21 demand notes; correct?

22 A. Demand notes and security pledge agreements,  
23 correct.

24 Q. There came a time when it was decided that the  
25 credit agreement would require voting convertible

1 preferred stock as equity in AIG; correct?

2 A. As consideration for the revolving credit  
3 agreement, in addition to interest, there would be an  
4 equity participation, correct.

5 Q. And that equity participation would in the  
6 September 22 credit agreement be voting convertible  
7 preferred stock; correct?

8 A. Yes.

9 Q. The first time that AIG was under a contractual  
10 obligation to abide by the terms of the term sheet or  
11 the substance of the terms of the term sheet was  
12 September 22 when the credit facility was signed;  
13 correct, sir?

14 MR. GARDNER: Objection. Calls for a legal  
15 conclusion.

16 THE COURT: Overruled. I'll take his answer.  
17 He's the general counsel.

18 THE WITNESS: The signed --

19 BY MR. BOIES:

20 Q. That is a yes, no, or I don't know to begin with,  
21 sir.

22 A. If I answer it that way, it won't be my  
23 testimony.

24 Q. You're telling me that you can't even begin with a  
25 yes, no, or I don't know answer?

1           A. I'm testifying as the general counsel of the  
2 Federal Reserve Bank of New York, and it is a nuanced  
3 answer in answer to the question that I was asked. Yes  
4 or no will not be my testimony.

5           Q. This is a subject that you've discussed before, is  
6 it not, sir?

7           A. The term sheet itself says that it's nonbinding.  
8 There is a doctrine that if you sign a term sheet that  
9 you have a good-faith obligation to try to negotiate the  
10 terms of a binding agreement.

11                   So what existed was a good-faith obligation on the  
12 part of AIG to try to negotiate a binding agreement, but  
13 the term sheet itself did not have the binding -- the  
14 same binding effect as the executed revolving credit  
15 agreement on September 22.

16           Q. The term sheet had, as you say or assert, a  
17 binding agreement to negotiate in good faith; is that  
18 correct?

19           A. The term sheet itself says it's not legally  
20 binding, but the actual signing of the term sheet, in my  
21 view, creates an obligation -- perhaps it's a tort  
22 obligation -- to at least -- at least try to negotiate  
23 in good faith the terms that are represented on the term  
24 sheet.

25                   Now, there are all kinds of reasons why that can't



1    come to fruition, and the term sheet itself is not  
2    legally binding as such as a contract, but there is an  
3    obligation to at least try to turn the term sheet into a  
4    binding legal agreement, at least to try. All kinds of  
5    ways to get out.

6           Q. Let's begin with what you just said.

7           The term sheet itself was not a legally binding  
8    contract; correct?

9           A. That's what it says on its face. Yes, Mr. Boies.

10          Q. And that was your understanding; correct?

11          A. That the term sheet in and of itself was not  
12    legally binding, yes.

13          Q. Okay. And this was a term sheet that was signed  
14    by AIG but not by either the Federal Reserve System, the  
15    Board of Governors or the Federal Reserve Bank of  
16    New York; correct?

17          A. We had sent it to AIG, and the chief executive  
18    officer had accepted it. Yes.

19          Q. Please listen to my question.

20                 My question is whether the term sheet was signed  
21    by the Federal Reserve System, the Board of Governors or  
22    the Federal Reserve Bank of New York. It was not;  
23    correct?

24          A. Only by Mr. Willumstad. That's correct.

25          Q. And ordinarily when you have a binding contract,

1 it's signed by more than one party; fair?

2 A. Fair.

3 Q. The first time that AIG was obligated to provide  
4 equity to the government, broadly defined, was when the  
5 September 22 credit facility was signed; correct?

6 A. Yes.

7 Q. Between September 16 and September 22, the form of  
8 equity that was going to be provided changed from  
9 warrants to convertible voting preferred stock; correct?

10 A. Yes.

11 Q. And one difference between the preferred stock and  
12 the warrants is the warrants had no vote and the  
13 preferred stock did; correct?

14 A. The warrants would have a vote but only upon  
15 sale.

16 Q. Only what?

17 A. After sale.

18 Q. Upon sale.

19 That is, the warrants did not have a vote that  
20 could be used to control AIG; correct?

21 A. That's correct.

22 Q. And one of your objectives was to have voting  
23 control over AIG vested either in the Treasury or the  
24 Federal Reserve or some entity like the trust that would  
25 be protective of the interests of the Federal Reserve and

1 the Treasury; correct?

2 A. No. The concern was the governance of AIG and  
3 specifically the governance related to risk management of  
4 AIG and a concern that this is a company which through  
5 its senior management and its board oversight had come to  
6 the edge of insolvency, and now the federal government  
7 was pouring tens of billions of dollars into that company  
8 and had to do something to make sure the risk management  
9 was better.

10 So there are risk management features in both the  
11 revolving credit agreement and the other aspect of risk  
12 management related to putting the majority shares into  
13 safe and capable hands.

14 Q. Is it your testimony that the only reason that you  
15 were seeking voting equity was because of risk management  
16 concerns?

17 A. It's --

18 Q. That's a yes, no, or I don't know answer to begin  
19 with, sir.

20 A. The only reason. It would have to be no. There  
21 are always many reasons.

22 Q. Okay. Yes.

23 But when I asked you whether one of the objectives  
24 of having voting control was to protect the interests of  
25 the Federal Reserve and the Treasury, you answered no,

1 and then went on to talk about risk management; correct,  
2 sir?

3 A. I think the question was a little -- protect the  
4 interests of the Treasury? We -- they were -- we weren't  
5 solely focused on protecting the interests of the  
6 Treasury and the Fed. We were concerned about having AIG  
7 continue the fundamental risk management mistakes that it  
8 made in the past but do it with taxpayer money.

9 Q. Let me ask you to listen to the question.

10 One of the objectives of seeking voting equity was  
11 to have voting control over AIG vested either in the  
12 Treasury or in the Federal Reserve or in some entity like  
13 the trust that would be protective of the interests of  
14 the Federal Reserve and the Treasury; correct?

15 A. The upside potential for the Treasury and the  
16 Federal Reserve is in owning the equity. Having the  
17 ability to have competent and safe people exercise risk  
18 management discipline is in the interest not just of the  
19 Treasury and the Fed but all AIG shareholders given what  
20 had happened.

21 Q. Is it your testimony that you were seeking voting  
22 preferred to protect all AIG shareholders, including the  
23 Treasury and the Fed, but not particularly the Treasury  
24 and the Fed? Is that your testimony?

25 A. Not exclusively the Treasury and the Fed. All

1 shareholders would benefit from greater risk discipline  
2 at AIG.

3 Q. Now, sir, I ask you again, please listen to my  
4 question, because I wasn't asking about what all of the  
5 objectives were. I said one of the objectives.

6 One of your objectives was to have voting control  
7 over AIG vested either in the Treasury or the  
8 Federal Reserve or some other entity like the trust that  
9 would be protective of the interests of the  
10 Federal Reserve and the Treasury; is that correct?

11 A. No. That's too narrow.

12 Q. That was not even one of your objectives. That's  
13 your testimony?

14 A. No. It's too narrowly phrased.

15 Getting AIG into safe and capable hands benefits  
16 all interested constituents, shareholders, creditors, the  
17 American people. Bringing AIG back from the precipice  
18 avoided the systemic consequences of an AIG insolvency.  
19 That's what the primary objective was.

20 MR. BOIES: Your Honor, could I ask the Court to  
21 instruct him to try to be responsive. That last speech  
22 didn't have anything to do with my question.

23 THE COURT: Let's keep working at this, gentlemen.  
24 I want the witness to listen to the question. And I  
25 think we recognize that Mr. Baxter feels the need to

1 explain at times, and we're going to give him that  
2 opportunity.

3 MR. BOIES: Absolutely. If he could just begin  
4 with a yes or no answer, then the Court can evaluate  
5 whether what follows is relevant or not, but if we don't  
6 get a yes or no answer, then we have a record that I  
7 don't think is helpful to anybody.

8 THE COURT: I understand.

9 BY MR. BOIES:

10 Q. Contrary to your suggestion that you wanted  
11 voting control to protect the AIG shareholder, you  
12 actually wanted voting control because of concern that  
13 there would be shareholder action that would try to undo  
14 your deal; correct, sir?

15 A. No.

16 Q. Let me ask you to look at Plaintiffs' Trial  
17 Exhibit 183, which I would offer -- actually it's already  
18 in evidence.

19 MR. GARDNER: I believe it's already in evidence,  
20 Your Honor.

21 BY MR. BOIES:

22 Q. This is a document that is already in evidence,  
23 and it is a string of e-mails. One of them is an e-mail  
24 from you to Mr. Alvarez, September 21, 2008 at 9:57 a.m.

25 Do you see that?

1 A. I do.

2 Q. And the subject is "AIG equity term sheet."

3 Do you see that?

4 A. I do.

5 Q. And the last line of your e-mail says, "I am  
6 trying to keep this moving because of a concern there  
7 will be shareholder action."

8 Do you see that?

9 A. I do see that.

10 Q. And what shareholder action were you concerned  
11 about at that time?

12 A. And this will not be a yes or no answer,

13 Your Honor. I'm sorry.

14 Q. This one doesn't call for a yes or no answer.

15 A. Then I'm free.

16 Q. Maybe not entirely.

17 THE COURT: You can tell we're almost near a break  
18 when the witness thinks he needs to respond yes or no to  
19 a question not even calling for a yes or no.

20 THE WITNESS: It's not characteristic of me,

21 Your Honor.

22 THE COURT: All right.

23 THE WITNESS: There were three concerns, if I  
24 can.

25 The first is the one about governance. And just

1 to put this in a frame of reference, by this particular  
2 date, September 21, Your Honor, we had extended  
3 approximately \$30 billion of taxpayer money in the form  
4 of a loan to AIG, and it was in a form that I would  
5 characterize as a low-docs loan, a demand note, a  
6 security and pledge agreement. It wasn't the  
7 heavy-covenant document we were in the process of  
8 drafting, which was the revolving credit agreement.

9 So here we were having put in \$30 billion of  
10 shareholder money -- of taxpayer money into AIG on the  
11 basis of these simple documents, and that left me feeling  
12 very uncomfortable.

13 So the concern was to try to build in protections,  
14 which I previously testified about, in terms of the  
15 governance of AIG. And you'll see protections in the  
16 revolving credit agreement, meaning that the lender had  
17 to be satisfied with the corporate governance.

18 And then the other aspect of this were to create  
19 this trust run by sophisticated, experienced  
20 businesspeople, particularly with respect to risk  
21 management, who could improve the risk management at the  
22 board level of AIG. That's what we were trying to  
23 achieve with respect to governance.

24 Now, there's a real --

25 THE COURT: What did you mean by the saying



1 concern about shareholder action?

2 THE WITNESS: And here's the concern.

3 The more credit we put into AIG, the less  
4 bargaining power we had to get the heavy covenants done  
5 in the revolving credit agreement. Because, remember,  
6 AIG is meeting all its liquidity needs as we're pouring  
7 billions of dollars of taxpayer money in on the basis of  
8 these simple documents.

9 So the bargaining power, if you will, of AIG via  
10 the federal government is changing as it's satisfying all  
11 of its liquidity needs with the money it's getting on the  
12 basis of the simple documentation.

13 In addition, the lawyers representing AIG,  
14 specifically Mr. Cohen is a lawyer who I worked closely  
15 with in negotiating the Bear Stearns rescue. He was  
16 representing then Bear Stearns. What Mr. Cohen did very  
17 effectively is to instigate shareholder action in the  
18 Bear Stearns case to renegotiate the deal that was struck  
19 on March 16, 2008 in Bear.

20 So I knew that the bargaining power was changing.  
21 I knew that one of the attorneys representing our  
22 borrower had the capacity to -- because he's a very smart  
23 lawyer, Your Honor -- I don't want to suggest that  
24 there's anything untoward here -- but that he could  
25 renegotiate the deal that was set out in the term sheet.

1 And that was a real risk because I knew he had done that  
2 in the Bear Stearns transaction because I was working  
3 with him at the time.

4 And then the fourth piece of this and maybe even  
5 the most important is, on September 21, we had fires  
6 burning all over the economy. We had Lehman. We had  
7 AIG. As previously testified, we had Morgan Stanley and  
8 we had Goldman Sachs in difficult condition. You had a  
9 hearing before Judge Peck in the bankruptcy court on the  
10 19th of September approving a 363 sale involving Lehman  
11 that was tremendously a focus of market attention, a  
12 very, very sensitive situation.

13 And all of that uncertainty was contributing to  
14 the market conditions at the time. And we had to get one  
15 deal done. We had to get one fire out.

16 And so all of these were factors in my mind at  
17 this particular time, and I wanted to get this deal done.  
18 And I felt that the ability to get this deal done was  
19 eroding and we had to push to try to get it done, and in  
20 fact we did get it done the next day.

21 But the shareholder action I'm referring to is not  
22 specific shareholder action. It's the kind of thing that  
23 a good lawyer representing a borrower can do to get  
24 leverage. And our leverage was dissipating given the  
25 taxpayer money we were putting in.

1           So I hope that is an explanation, and I know it's  
2 more than a yes or no.

3           THE COURT: Is this a good time for a break?

4           MR. BOIES: Yes, Your Honor.

5           THE COURT: Let's reconvene at 11:20.

6           (Court in recess.)

7           THE COURT: Let's go ahead.

8           MR. BOIES: Thank you, Your Honor.

9           BY MR. BOIES:

10          Q. Before the break, we were talking about the  
11 general subject of why you wanted to have voting stock  
12 rather than warrants that would only be votable upon  
13 sale. Do you recall that generally?

14          A. Yes.

15          Q. Now, one of the reasons was that you were  
16 concerned that in the absence of voting control,  
17 shareholders would vote out the board that was supportive  
18 of the Fed and the Treasury and vote in a new board that  
19 might be less supportive; correct?

20          A. No.

21          Q. Did you ever have any discussions with anyone  
22 about that subject?

23          A. The concern that I was having discussions with  
24 folks about was a concern that the risk management of  
25 AIG would not change, and in fact some might want to

1 double down on bets with the government's billions of  
2 dollars that had been put into the company.

3 So the idea is to restore AIG to a safe and sound  
4 condition and thereby make the rescue effective and  
5 successful.

6 Q. So the answer to my question is yes, you did have  
7 discussions with someone about that subject; correct?

8 A. No. I think your question was much more tailored  
9 than that, Mr. Boies.

10 Q. Sir, my question was, did you ever have any  
11 discussions with anyone about that subject?

12 A. That subject being?

13 Q. That subject being why you wanted to have voting  
14 stock rather than warrants that would be votable only on  
15 or upon sale.

16 A. I think your question was to the effect that it  
17 would protect the governmental interest. And the  
18 concern that I was articulating is we needed to get AIG  
19 back into safe and sound operating condition, not have  
20 the -- not have someone come in and take a bet with the  
21 taxpayers' money.

22 Q. Let me try to ask the question as simply as I  
23 can.

24 Was there a desire to have voting control over  
25 AIG -- was one of the reasons that you wanted to have

1 that to prevent the board from being removed and  
2 replaced by a board that you believed would be less  
3 supportive of your objectives?

4 A. If less supportive of our objectives means that I  
5 was concerned about dissidents coming in and engaging in  
6 very risky behavior with billions of dollars of taxpayer  
7 money, you bet I was concerned about that.

8 Q. Now, when you say "billions of dollars of taxpayer  
9 money," are you talking about before or after the credit  
10 facility has been executed on September 22?

11 A. Well, as of September 21, it was around  
12 \$30 billion, which certainly was more than enough to get  
13 my attention. And after the credit agreement was  
14 executed, the amount rose and I think at its highest  
15 point was about \$180 billion, and clearly that also is of  
16 grave concern to the taxpayer.

17 Q. Is the answer to my question "When you say  
18 'billions of dollars of taxpayer money,' are you talking  
19 about before or after the credit facility has been  
20 executed on September 22?" -- is your answer both?

21 A. Both.

22 Q. And again, I want you to explain anything that  
23 you feel that you have to explain, but if you could begin  
24 with a yes or no answer, yes, no, or I don't know or I  
25 don't recall, it will help move things along, to the

1 extent that you possibly can, because I'm trying to  
2 phrase these things in terms of yes or no.

3 Was one of the shareholder activism issues that  
4 you were worried about an issue of shareholders replacing  
5 the current board?

6 A. At what point in time, Mr. Boies?

7 Q. In the period prior to the execution of the  
8 September 22 credit agreement.

9 A. No.

10 Q. In the period after the execution of the credit  
11 agreement.

12 A. After the execution of the credit agreement, we  
13 thought the board should be changed to add risk  
14 management expertise and that that would help get it to a  
15 safe and sound condition.

16 Q. My question was, was one of the shareholder  
17 activism issues that you were worried about an issue of  
18 shareholders replacing the current board, shareholders,  
19 not --

20 A. It could be.

21 Q. Let me show you Plaintiffs' Trial Exhibit 184,  
22 which I would offer.

23 MR. GARDNER: No objection, Your Honor.

24 THE COURT: Plaintiffs' Trial Exhibit 184 is  
25 admitted.

1           (Plaintiffs' Exhibit Number 184 was admitted into  
2 evidence.)

3           BY MR. BOIES:

4           Q. Have you ever seen this document before, sir?

5           A. I'm on the e-mail from Marshall Huebner. I'm not  
6 on the e-mail from Charles Gray to Sarah Dahlgren.

7           Q. So is the answer that you saw the e-mail that  
8 you're on but not the e-mail that you're not on?

9           A. I have a general recollection of seeing the one  
10 that I'm on. I just don't remember whether I saw the one  
11 from Charles Gray to Sarah Dahlgren.

12          Q. The e-mail to Sarah Dahlgren, the first sentence  
13 says, "Rich Charlton just came up and shared with Tom  
14 your concern about whether the terms of the equity  
15 investment will adequately protect us against shareholder  
16 activism among minority shareholders at AIG."

17           Do you see that?

18          A. Yes.

19          Q. And who is Mr. Rich Charlton?

20          A. Rich Charlton is a lawyer in the legal group of  
21 the Federal Reserve Bank of New York.

22          Q. He works for you?

23          A. He does.

24          Q. And on or about September 21, did he share with  
25 you a concern about whether the terms of the equity

1 investment would adequately protect the New York Fed  
2 against shareholder activism among minority shareholders  
3 at AIG?

4 A. What I don't remember about this particular  
5 sentence is, the way it reads is that he's sharing with  
6 me Sarah Dahlgren's concern about the equity investment.  
7 I don't know -- I don't remember Sarah Dahlgren having  
8 that concern.

9 Q. The next sentence says, "I can say that this issue  
10 has been a key focus of both Tom and the Davis Polk  
11 lawyers drafting the Term Sheet, and the Davis Polk  
12 lawyers think the proposed plan will protect us."

13 Do you see that?

14 A. I see that.

15 Q. And do I interpret your last answer correctly to  
16 say that while you don't remember Sarah Dahlgren having  
17 the concern about whether the terms of the equity  
18 investment would adequately protect the New York Fed  
19 against shareholder activism among minority shareholders  
20 at AIG, you do remember that you had that concern?

21 A. I had that concern based on my experience with a  
22 lawyer who was representing AIG, Mr. Cohen. And in the  
23 Bear Stearns transaction, I saw Mr. Cohen use very  
24 effectively shareholder concerns, if you will, to  
25 essentially renegotiate the deal that was struck on



1 March 16, 2008.

2 Q. And what Mr. Cohen did in that case was  
3 renegotiate the deal from \$2 a share to \$10 a share for  
4 the shareholders; is that right?

5 A. There was another piece, Mr. Boies, and this is  
6 where my personal role becomes important.

7 Yes, the share price changed in the deal between  
8 JPMorgan Chase and Bear Stearns. And in addition,  
9 when -- when the deal was put up for renegotiation, I  
10 took advantage on behalf of the Federal Reserve to  
11 negotiate a billion dollars of loss protection from JPMC  
12 as well.

13 So in that situation, Mr. Cohen very effectively  
14 used a shareholder -- shareholder activism, if you will,  
15 to retrade that deal. And I was concerned, given that  
16 Mr. Cohen was the same lawyer representing AIG, that we  
17 could face that similar risk. And it was that similar  
18 risk in the context that I described earlier in my  
19 testimony, a context of uncertainty, and I was very  
20 worried about that and I was pushing hard to avoid that  
21 from happening to get the deal done.

22 Q. Let me see if I understand what you're saying, and  
23 correct me if I'm wrong.

24 You're saying that you were concerned that  
25 Mr. Cohen, in part because of your past experience with

1 him on Bear Stearns, would try to renegotiate the terms  
2 so that they would be less favorable to the New York Fed  
3 and more favorable to the AIG shareholders; is that  
4 correct?

5 A. Not to the AIG shareholders, to AIG, full stop.

6 Q. To the stock?

7 A. No, no. Full stop after AIG.

8 He represented AIG. If we were renegotiating the  
9 deal, particularly given the change in bargaining power,  
10 because AIG then had about \$30 billion of taxpayer money,  
11 that was a real risk.

12 Q. Now, AIG had \$30 billion of taxpayer money, but  
13 you had secured notes; correct, sir?

14 A. I had low-docs lending, which I wasn't satisfied  
15 with because, in part, they didn't address a fundamental  
16 problem that I thought needed to be solved. That was the  
17 governance of AIG. If you look at those legal  
18 instruments, they do nothing with respect to the  
19 governance.

20 Q. Are you saying that you were concerned that  
21 Mr. Cohen, in part because of your past experience with  
22 him on Bear Stearns, would try to renegotiate the terms  
23 of the deal so that they would be less favorable to the  
24 New York Fed and more favorable to AIG? Is that  
25 correct?

1 A. Yes.

2 Q. And did you believe that the credit agreement  
3 terms that were ultimately put in place protected the  
4 New York Fed against this danger?

5 A. The credit agreement terms protected us against  
6 the -- with respect to the governance concerns that I  
7 articulated. We were not protected with respect to the  
8 governance by the simple lending documentation we had  
9 done to extend the 30 billion to AIG.

10 Q. I'm focusing on the terms of the  
11 September 22 credit agreement.

12 Were you satisfied that the terms of that  
13 agreement satisfied your concern that Mr. Cohen or  
14 someone might try to renegotiate the terms of the deal so  
15 that they would be less favorable to the New York Fed and  
16 more favorable to AIG?

17 A. I'm sorry, Mr. Boies. I don't understand the  
18 question.

19 Q. Were you satisfied that the terms of the  
20 September 22 credit agreement satisfied your concern that  
21 Mr. Cohen or somebody on behalf of AIG might try to  
22 renegotiate the terms of the deal so that they would be  
23 less favorable to the New York Fed and more favorable to  
24 AIG?

25 A. I still don't understand the question.

1 Q. Do you remember telling me a few minutes ago that  
2 in part because of your past experience with Mr. Cohen  
3 on the Bear Stearns deal, you were concerned that he  
4 would try to renegotiate the terms of that deal so that  
5 they would be less favorable to the New York Fed and more  
6 favorable to AIG? Do you recall saying that?

7 A. Yes.

8 Q. Okay. Now, that was a concern that you had prior  
9 to the execution of the September 22 credit agreement;  
10 correct?

11 A. Correct.

12 Q. Once you executed the September 22 credit  
13 agreement, did you continue to have that concern?

14 A. No. I had a binding agreement at that point in  
15 time with the protections that I had been looking for.

16 Q. And one of those protections that you were looking  
17 for came in the form of convertible preferred stock that  
18 had an immediate vote; correct?

19 A. It was convertible preferred stock that would be  
20 in the hands of the competent and experienced people who  
21 would be the trustees of the AIG Credit Facility Trust,  
22 and there was a provision in the revolving credit  
23 agreement about corporate governance that also gave us  
24 protection.

25 Q. My question, sir, was, was one of those

1 protections that you referred to that you were looking  
2 for -- did one of those protections come in the form of  
3 convertible preferred stock that had an immediate vote?

4 A. An immediate vote by the trustees, yes.

5 Q. It wasn't immediate vote by the trustees because  
6 the trustees didn't exist on September 23; correct?

7 A. Correct.

8 And that's my fault. It took me too long to get  
9 that established.

10 Q. The trust was only established when, sir?

11 A. It took till January of 2009 to get the trust  
12 established.

13 Q. And between September 23 and January of 2009, the  
14 trustees did not have the right to vote the preferred  
15 stock because the trustees didn't exist; correct?

16 A. Correct.

17 Q. Now, one of the things that also concerned you  
18 about warrants was that warrants required a shareholder  
19 vote to be exercised; correct?

20 A. I wasn't concerned about warrants for that reason.  
21 I was concerned about not having an ability to affect the  
22 governance.

23 Q. So it's your testimony that you were not concerned  
24 that warrants required a shareholder vote; is that  
25 correct?

1           A. I personally was not.

2           Q. Were you aware of any other representatives of the  
3 Fed that were concerned about the fact that warrants  
4 required a shareholder vote?

5           A. I don't recall.

6           Q. Let me ask you to look at Plaintiffs' Trial  
7 Exhibit 148.

8                   And these are handwritten notes that Mr. Alvarez  
9 has testified were taken of a --

10           MR. GARDNER: Your Honor, I want to object. It's  
11 inappropriate to represent prior testimony. We have a  
12 615 order in this case. I just want to be cautious about  
13 that. We're not supposed to be discussing what one  
14 witness says with another witness.

15           THE COURT: Technically you're correct. I think  
16 we can tell the witness that these are Mr. Alvarez'  
17 handwritten notes.

18           MR. GARDNER: Fine.

19           MR. BOIES: I also think 615, Your Honor, applies  
20 to them telling their witness. It doesn't apply to what  
21 I do on cross-examination.

22           MR. GARDNER: Your Honor, I think we would have a  
23 disagreement about that. Our understanding of 615 is it  
24 prevents any witness from being informed of what has been  
25 said after the opening statements. And we would want

1 some confirmation on that going forward obviously if that  
2 is an incorrect interpretation.

3 THE COURT: No. I think your representation is  
4 correct and generally, but --

5 MR. GARDNER: Thank you, Your Honor.

6 THE COURT: -- I mean -- well, let's go forward.

7 BY MR. BOIES:

8 Q. Let me withdraw the statement and put it this  
9 way.

10 I represent to you that these are handwritten  
11 notes taken by Mr. Alvarez.

12 Did you participate in a lawyers conference call  
13 on September 18, 2008?

14 A. I don't -- I don't remember doing that, but I  
15 participated in legal calls during that time period, and  
16 I don't have any reason to doubt that I was on this  
17 call.

18 Q. And do you recall Davis Polk advising that  
19 warrants required a shareholder vote because there were  
20 not enough shares authorized to permit the exercise of  
21 the warrants?

22 A. I don't recall that.

23 Q. Let me ask you to look at the bottom of page 2 of  
24 this exhibit and the statement that immediately precedes  
25 the number 2 in a circle.

1           Do you see where it says "warrants require  
2 shareholder because not enough shares authorized"? Do  
3 you see that?

4           A. I see the handwriting, yes.

5           Q. Does that refresh your recollection that you were  
6 advised that the warrants would require a shareholder  
7 vote because there were not enough shares authorized to  
8 permit the exercise of warrants?

9           A. No.

10          Q. Let me ask you to look at Plaintiffs' Trial  
11 Exhibit 1601, which I think is not in your book -- oh, it  
12 is in your book.

13           MR. GARDNER: It is.

14           MR. BOIES: It is in the book.

15           Which I would offer.

16           MR. GARDNER: No objection, Your Honor.

17           THE COURT: Plaintiffs' Trial Exhibit 1601 is  
18 admitted.

19           (Plaintiffs' Exhibit Number 1601 was admitted into  
20 evidence.)

21           BY MR. BOIES:

22          Q. Now, this includes exchange of correspondence,  
23 e-mail correspondence, between you, Mr. Alvarez and  
24 Randy G-U-Y-N-N of Davis Polk; correct?

25          A. Yes.



1 Q. And let me look at, direct your attention to the  
2 e-mail at the top of the second page, which is an e-mail  
3 from you to Mr. Guynn, September 18, 2008 at 10:38 a.m.

4 Do you see that?

5 A. I do.

6 Q. And you say there: From the New York Fed  
7 perspective, I could see the New York Fed (a) hold  
8 warrants exercisable on transfer, which has the drawback  
9 of a shareholder vote (any way out of that?)

10 Do you see that?

11 A. I do.

12 Q. And does that refresh your recollection that you  
13 were concerned about the drawback of warrants requiring a  
14 shareholder vote?

15 A. I see the words and I must have had that concern  
16 at the time given it's in my e-mail, but I don't recall  
17 it as I sit here today, Mr. Boies.

18 Q. Let me ask you to look at Plaintiffs' Trial  
19 Exhibit 148, which again are the notes that I've  
20 represented were Mr. Alvarez' notes.

21 Were you advised by anyone --

22 A. Just bear with me. 148?

23 Q. Plaintiffs' Trial Exhibit 148. It's the one we  
24 just looked at a minute ago.

25 A. I've got it now.

1           Q.  Were you advised by anyone that you needed or  
2  there needed to be a shareholder vote to change the par  
3  value of common stock to reduce the strike price if  
4  warrants were going to be exercisable?

5           A.  I don't remember.

6           Q.  If you look at the three lines at the bottom of  
7  page 2 of Plaintiffs' Trial Exhibit 148, where it says  
8  "need to change par value of common stock to reduce  
9  strike price to nominal value," do you see that?

10          A.  I see the handwriting, yes.

11          Q.  Does that refresh your recollection at all that  
12  the -- there were discussions on lawyers conference calls  
13  in which you participated of the need to change par value  
14  of the AIG common stock to reduce the strike price to  
15  nominal value?

16          A.  It does not.

17          Q.  Now, you understood, did you not, that if there  
18  were warrants, when those warrants were exercisable, the  
19  price would have to be at least the par value of the  
20  common stock into which they were being converted?

21          A.  I believe I did know that.

22          Q.  And you understood that the par value of AIG  
23  common stock at this time in September of 2008 was  
24  \$2.50 a share; correct?

25          A.  I don't recall if I knew that then.

1 Q. Do you recall that it was some number like that?

2 A. Yes.

3 Q. And in order to get 79.9 percent of the equity, if  
4 you had that in the form of common shares, you would need  
5 to have outstanding common shares of approximately  
6 15 billion shares; correct?

7 A. I don't remember if I had done that arithmetic at  
8 the time.

9 Q. You understood that there were somewhere between  
10 a billion and two billion AIG common shares outstanding  
11 at the time.

12 A. I just don't remember.

13 Q. Do you recall that if you were to exercise  
14 warrants for AIG common stock, unless you changed the par  
15 value of that stock, it would cost billions of dollars to  
16 exercise those warrants?

17 A. I don't recall that.

18 Q. You do recall that you knew that you couldn't  
19 exercise warrants into common stock at an exercise price  
20 of less than the par value of the stock. You said that;  
21 correct?

22 A. Yes.

23 Q. And you knew that the stock par value was in the  
24 neighborhood of \$2.50 a share; correct?

25 A. Yes.

1 Q. And you knew that in order to get 79.9 percent of  
2 the equity, you would have to issue additional common  
3 shares many times the number of existing common shares.  
4 That's just a matter of arithmetic; correct?

5 A. It is a matter of arithmetic. I don't remember  
6 doing that calculation at the time, though, Mr. Boies.

7 Q. But that's certainly an easy calculation to do.

8 A. It's an easy calculation to do. I was an advocate  
9 of a different proposal of course, and that was to set up  
10 a trust.

11 Q. Now, the idea of setting up a trust was an idea  
12 that you actually came up with; right?

13 A. It's always hard to say who's the father of an  
14 idea. Certainly I think of myself as the father of that  
15 idea.

16 Q. And when did you come up with that idea?

17 A. I think it was around September 17 or 16 even.

18 Q. Did you come up with the idea of the trust  
19 sometime between September 16 and September 22?

20 A. Yes.

21 Q. And when you came up with this idea, who did you  
22 convey this idea to?

23 A. My recollection is I conveyed it to Tim Geithner.

24 And I don't want to give the sense in my testimony  
25 that this was some kind of divine inspiration. It was

1 based on an experience I had earlier in my career with a  
2 trust that had operated very successfully.

3 Q. I did not mean to suggest it was divine  
4 inspiration.

5 A. I'm still looking for divine inspiration.

6 Q. Me, too.

7 All right. At the time that you came up with this  
8 idea of the trust, what were the goals that you were  
9 trying to accomplish?

10 A. The goal was to get AIG -- to improve the risk  
11 management and governance of AIG. And one way to do that  
12 would be to have in safe, capable, experienced hands, the  
13 hands of the trustees, the voting shares of AIG. And  
14 that was 79.9 percent of the equity, which was the  
15 consideration for the revolving credit agreement, partial  
16 consideration.

17 Q. Was there any other goal that you had in  
18 establishing a trust?

19 A. Well, if you put into the trust the ownership of  
20 the shares, leaving aside control, which is a separate  
21 concept, but the ownership represented the upside  
22 potential. In the event that our rescue of AIG was  
23 successful, presumably the shares would go from being  
24 worthless to being valuable, and that upside potential  
25 would flow with ownership.

1           If the trust was owning those shares for the  
2 benefit of the United States taxpayer, then that benefit  
3 would flow to the United States taxpayer.

4           Q. Well, sir, the benefit flows to the United States  
5 taxpayer whether the shares are owned by this trust or  
6 whether it's owned by the Federal Reserve; right?

7           A. That's correct.

8           Q. Because your profits all go to the Treasury  
9 anyway; right?

10          A. Correct.

11          Q. The reason or a material reason why you wanted to  
12 have the trust was because Mr. Alvarez took the position  
13 that the New York Fed could not hold this equity;  
14 correct?

15          A. It wasn't Mr. Alvarez personally. It was the  
16 question whether, under the authorization from the  
17 Board of Governors to the New York Fed, the New York Fed  
18 could create the -- could essentially hold the equity  
19 interest itself, whether that was permitted by the  
20 authorization.

21                 And as I understood the interpretation of the  
22 authorization from Mr. Alvarez, the board didn't feel we  
23 were authorized to hold those shares, so we needed to  
24 search for a different kind of solution to the problem.

25          Q. Let me ask you to look at Plaintiffs' Trial

1 Exhibit 580.

2 A. Did you say 58?

3 Q. 580?

4 A. 580.

5 MR. BOIES: Which I offer.

6 MR. GARDNER: I'm going to object to this  
7 document on hearsay grounds, Your Honor. This is a  
8 handwritten transcript that says "This MFR is a  
9 paraphrasing of the dialogue and should not be quoted as  
10 a transcript" on the very first page. I object on  
11 hearsay grounds.

12 MR. BOIES: This is a document relating to  
13 comments by this witness, Your Honor.

14 THE COURT: The objection is overruled. I will  
15 admit Plaintiffs' Trial Exhibit 580.

16 (Plaintiffs' Exhibit Number 580 was admitted into  
17 evidence.)

18 BY MR. BOIES:

19 Q. This is headed Memorandum for the Record;  
20 correct?

21 A. That's what the words say, yeah.

22 Q. Have you ever seen this document before?

23 A. In preparing to testify here and I believe in  
24 other forms of testimony it was shown to me.

25 Q. When was it first shown to you?

1           A. I don't remember.

2           Q. Approximately.

3           A. I'd be speculating.

4           Q. But just approximately, sir.

5           MR. GARDNER: Objection. Calls for speculation.

6           THE COURT: Well, if he can answer it, I'll take

7 his answer. I don't want him to speculate.

8           THE WITNESS: I am speculating, Your Honor, but I

9 think it was within the last two years.

10          THE COURT: That's fine.

11          BY MR. BOIES:

12          Q. And who showed this document to you?

13          A. I don't remember.

14          Q. And who prepared this document?

15          A. I don't know.

16          Q. This says that it is a summary of an interview or

17 submission that took place on April 30, 2010 at the

18 Federal Reserve Bank of New York.

19           Do you see that?

20          A. I see what the document says.

21          Q. Did you participate in an interview on or about

22 April 30, 2010 at the Federal Reserve Bank of New York?

23          A. I don't remember. I'm not denying, Mr. Boies,

24 that I did participate. I just don't remember.

25          Q. Now, there's a reference here to participants from



1 the commission, Dixie Noonan and Clara Morain.

2 Do you see that?

3 A. I see them.

4 Q. And that commission is the FCIC; correct?

5 A. I don't think they were commissioners. I think  
6 they were staff.

7 Q. That they were staff of the FCIC.

8 A. Yes.

9 Q. And the staff of the FCIC were interviewing you,  
10 Ms. Leventhal and Michael Patrick; correct?

11 A. I don't remember if they were interviewing the  
12 three of us or it was me and those were people who were  
13 attending. I just don't remember.

14 Q. Looking at the first page here, it reminds me that  
15 there was a background question I should have asked you  
16 at the beginning.

17 You have been with the New York Fed as a lawyer  
18 since 1980; correct?

19 A. That's correct.

20 Q. And you have been the general counsel for how  
21 long?

22 A. Nearly twenty years.

23 Q. Now, at any time after you were shown this  
24 document, did you make any corrections or did you note  
25 anything in the document that was not accurate?

1           A. I don't think anybody showed this document to me  
2 for -- for me to correct it. I think it was shown to me  
3 well after it was in final in anticipation of some  
4 testimony I was giving. That's my best recollection.

5           Q. Some testimony you were giving to Congress or some  
6 other governmental body?

7           A. It might have been to FCIC. I'm speculating  
8 again, but I've given a lot of testimony.

9           Q. But in any event, whether you were asked to  
10 correct it or not, you didn't suggest any corrections; is  
11 that correct?

12          A. That's correct.

13          Q. Now, let me ask you to go to page 4, the first  
14 full paragraph, where this document says that you said  
15 that "the EESA has specific provisions about allowing the  
16 Fed to own shares because 'we had learned many things in  
17 September, and one was that we didn't have the ability to  
18 own shares before.'"

19                 Do you see that?

20          A. I see what the document says.

21          Q. Did you say that in words or in substance to  
22 people who interviewed you from the FCIC?

23          A. Well, I don't remember, but I feel quite confident  
24 that I did not say the things that are written here.  
25 They're not true.

1           Q. You did not say -- and here in this report this  
2 particular statement is in quotes; correct?

3                   "We had learned many things in September, and one  
4 was that we didn't have the ability to own shares  
5 before."

6           Do you see that?

7           A. Yes. I am quite confident I did not say that.

8                   The Emergency Economic Stabilization Act gave  
9 authority to the Treasury Department to invest in common  
10 equity, and of course it did in the TARP program, but  
11 that was not authority that the statute extended to the  
12 Federal Reserve.

13                   So this statement is not only wrong, I doubt  
14 strongly that it was made by me.

15           Q. Well, the part that you're talking about is not in  
16 quotes; correct?

17                   The part talking about EESA having specific  
18 provisions allowing the Fed to own shares is not in  
19 quotes; correct?

20           A. Yes. That's how the document reads.

21           Q. What is in quotes and attributed to you is the  
22 statement "we had learned many things in September, and  
23 one was that we didn't have the ability to own shares  
24 before."

25           Do you see that?

1           A.  I do.

2           Q.  That's the thing I'm asking you to focus on.

3                    Did you say that in words or in substance?

4           A.  I certainly don't remember saying that.  I might  
5 have said we -- because it's true, for myself speaking  
6 personally, I learned many things in September of 2008.

7                    What I don't think is true is that -- the  
8 statement that we didn't have the ability to own shares  
9 before, suggesting of course that we did have the  
10 authority at the time I said this, and I don't think I  
11 said either of those things.

12          Q.  So you don't say -- you don't believe that you  
13 said that one of the things you learned was that you  
14 didn't have the ability to own shares; is that your  
15 testimony?

16          A.  Again, to be clear about what my testimony is, I  
17 don't remember what -- what this interview was about.  I  
18 don't remember participating in it.  I did have strong  
19 views on these topics at this particular time.  This is  
20 not consistent with my views.

21          Q.  What is not consistent with your view is that one  
22 of the things that you learned was the Fed did not have  
23 the ability to own shares; that's what you're saying?

24          A.  I don't believe that was my testimony.

25          Q.  Okay.  Let me ask you directly then.

1           Was it consistent with your views in April of  
2   2010 that one of the things that you had learned in  
3   September was that the Fed didn't have the ability to  
4   own shares?

5           A.   No.

6           Q.   Now, this goes on to say that "we've kept the  
7   trust... [because] it still serves a salutary purpose on  
8   conflicts."

9           Do you see that?

10          A.   Yes.

11          Q.   Did you say that in words or in substance?

12          A.   I don't remember saying those words.

13                 I can tell you, Mr. Boies, that after the  
14   Emergency Economic Stabilization Act was enacted, there  
15   was a question as to whether there was still a need to  
16   keep the AIG Credit Facility Trust, particularly after  
17   Treasury established the Office of Financial Stability,  
18   which was to manage its -- its -- equity investments in a  
19   number of financial institutions.

20                 And there was discussion between the Fed and the  
21   Treasury post the enactment of the Economic Emergency  
22   Stabilization Act as to whether we should retain the  
23   trust, and the consensus was it was serving a valuable  
24   purpose and we should leave it alone.

25          Q.   Let me direct your attention to page 3.

1           And eight lines up from the bottom, do you see  
2 where it says that you told the FCIC staff that control  
3 was an area of concern in the deal with AIG? Do you see  
4 that?

5           A. Yes.

6           Q. Did you say that in words or in substance to the  
7 FCIC representatives?

8           A. I don't remember using these words.

9           The issue with conflicting interest was a  
10 significant concern in the creation of the trust. And  
11 the problem was, at the senior levels of the  
12 Federal Reserve Bank of New York we had individuals who  
13 had knowledge of the most sensitive financial information  
14 that is available within the government, information  
15 about the future direction of interest rates, for  
16 example. And to have people who have that sensitive  
17 information also in a position to control the largest  
18 financial institution in the world presented a conflict  
19 that needed to be resolved.

20           MR. BOIES: Your Honor, my question was simply  
21 "Did you say that in words or in substance to the FCIC  
22 representatives?"

23           THE WITNESS: I don't remember what I said, but  
24 certainly if that concept came up, that's something I  
25 would have discussed. I don't as I sit here remember the

1 verbatim exchange with the FCIC representatives, but this  
2 certainly was an issue.

3 BY MR. BOIES:

4 Q. And the reason that I say "words or substance" is  
5 because I know that you may not remember exactly the  
6 words. And if you don't remember the words or substance,  
7 you can just tell me, and I'll move on.

8 Going down a few lines -- and this is in  
9 quotes -- "We didn't have the legal authority to own  
10 shares."

11 Do you see that?

12 A. Yes.

13 Q. Did you say that in words or in substance?

14 A. I don't remember saying those words. It was of  
15 course my view at the time and it is my view now that the  
16 Federal Reserve could not go out for monetary policy  
17 purposes under section 14 and buy common equity. You  
18 can't do that to effect monetary policy. There is  
19 restricted securities we can buy. We can, though,  
20 receive as consideration for a loan, in addition to  
21 interest, equity.

22 Now, with respect to the specific loan to AIG,  
23 there was the issue of the statute, and I was fully,  
24 fully in agreement that we had statutory authority.  
25 Then there was the issue of the authorization from the

1 board to the New York Fed.

2 And in colloquy with Mr. Alvarez, my colleague at  
3 the board, it was his view, as I understood it at the  
4 time, that the authorization from the board to the  
5 New York Fed to set conditions along the lines such as  
6 you see in the term sheet, that that authority was not  
7 clear, and so we had to have a discussion about what the  
8 parameters were on that authority.

9 And as I understood Mr. Alvarez' position, he did  
10 not feel the New York Fed had the authorization of the  
11 Board of Governors to hold the AIG equity, which led us  
12 to search for another solution.

13 Q. Let me try to go back to my question.

14 This document attributes to you the quote, "We  
15 didn't have the legal authority to own shares."

16 Did you say that in words or in substance to the  
17 FCIC people who were interviewing you?

18 A. I do not remember.

19 Q. Let me ask you to look at Plaintiffs' Trial  
20 Exhibit 2067, which I would offer.

21 MR. GARDNER: No objection.

22 THE COURT: Plaintiffs' Trial Exhibit 2067 is  
23 admitted.

24 (Plaintiffs' Exhibit Number 2067 was admitted into  
25 evidence.)



1 BY MR. BOIES:

2 Q. This is a couple of e-mails. One of them is from  
3 Stephanie Heller, with copies to a number of people,  
4 including yourself, on March 19, 2009 at 1:25 p.m.

5 Do you see that?

6 A. Yes.

7 Q. And the subject is "Our discussion on AIG Trust."

8 Did you participate on or about March 19, 2009 in  
9 a discussion on the AIG trust with Stephanie Heller and  
10 others?

11 A. Just give me a minute, Mr. Boies.

12 (Pause in the proceedings.)

13 I don't think that I did.

14 Q. The second sentence of this e-mail, referring back  
15 to September 2008, says, "There were questions at that  
16 time which continue today as to whether the Treasury or  
17 the FRBNY" --

18 A. I'm sorry. I don't know where you are,  
19 Mr. Boies.

20 Q. The second sentence of the March 19, 2009 e-mail  
21 at 1:25 p.m. that went from --

22 A. I see. I'm with you now.

23 Q. Okay. So in this e-mail, PTX 2067 page 1, it  
24 states, "There were questions at that time which continue  
25 today as to whether the Treasury or the FRBNY have

1 authority to 'own' voting shares of a company."

2 Do you see that?

3 A. I do.

4 Q. And did anyone tell you in or about  
5 March 19, 2009 about those questions, other than the  
6 fact that you obviously got a copy of this e-mail?

7 A. In my view, there was no question that the  
8 Federal Reserve Bank of New York had the authority to  
9 receive equity as consideration for a section 13(3)  
10 lending.

11 Q. Did you ever respond to Stephanie Heller's e-mail  
12 and tell her that you thought that she was inaccurate in  
13 any way?

14 A. I don't even know if I read this e-mail,  
15 Mr. Boies, so I don't know.

16 Q. Let me ask you to look at Plaintiffs' Trial  
17 Exhibit 183 that is already in evidence.

18 This is a document that we've already looked at,  
19 and when we looked at it before, we were looking at the  
20 e-mail from you to Mr. Alvarez at 9:57 a.m. on  
21 September 21.

22 Do you recall that?

23 A. Yes.

24 Q. I'd like now to look at the e-mail that is at the  
25 top of page 1 of the exhibit. This is a reply from

1 Mr. Alvarez to you.

2 Do you see that?

3 A. I do.

4 Q. And Mr. Alvarez says, "Just to confirm, ownership  
5 of stock along the lines in this term sheet will not work  
6 for the Fed -- trust or no trust."

7 Do you see that?

8 A. I do.

9 Q. This is an e-mail that you remember receiving;  
10 correct, sir?

11 A. Yes.

12 Q. Now, your understanding is that what Mr. Alvarez  
13 was referring to was his view that the Federal Reserve  
14 Bank of New York couldn't take equity in AIG; correct?

15 A. My belief is, because of a mistake in the  
16 preparation of the term sheet that's established, which  
17 indicates on page 3 of the PTX 183 that the purchaser of  
18 the equity is the Federal Reserve Bank of New York, my  
19 belief is Mr. Alvarez saw that and was very distressed,  
20 that he thought I had gone and changed the term sheet  
21 using the authority that was granted to the New York Fed  
22 to make the Federal Reserve Bank the purchaser, and I  
23 think that that upset him and I understood why it would.

24 Q. Is there anything at all in writing that you have  
25 seen that supports the assertion that you just made?

1           A. Well, if you look at the term sheet --

2           Q. That's a yes, no or I don't know to begin with,  
3           sir.

4           A. Yes. The document that I referred to misdescribes  
5           the purchaser as Federal Reserve Bank of New York.

6           Q. Other than the document that you referred to, is  
7           there any other document or writing or physical recording  
8           of memory of any kind that reflects your testimony that  
9           Mr. Alvarez was very distressed because he thought you  
10          had gone and changed the term sheet using the authority  
11          that was granted to the New York Fed to make the  
12          Federal Reserve Bank the purchaser?

13          A. No. I didn't mean to suggest that I changed the  
14          term sheet. I meant to suggest that my view is  
15          Mr. Alvarez was concerned that the New York Fed was  
16          unilaterally interpreting its authority that was granted  
17          to it under 13(3) by the board to become the purchaser of  
18          the AIG equity. And I believe that Mr. Alvarez thought  
19          that I was pushing that interpretation through, which I  
20          clearly was not.

21                 And we were having -- we were having lots of  
22          discussion, Mr. Alvarez and me, Mr. Boies, about the  
23          scope of what the New York Fed could do in setting  
24          conditions that became the revolving credit agreement,  
25          including the equity participation, so there was that

1 oral discussion on the limits of the authority between  
2 two individuals who knew each other for decades.

3 So there was -- there was a -- there was many  
4 reasons why I believe that that was what was concerning  
5 to Scott, to Mr. Alvarez.

6 Q. Do you understand -- do you remember what my  
7 question was?

8 A. Yes. You asked me about any kind of  
9 communication between me and the board that led me to  
10 this conclusion, whether it was in writing, whether it  
11 was in any form whatsoever, I think is the gist of the  
12 question you asked me.

13 Q. No, sir. What I asked you was whether there was  
14 any document or other writing or physical recording of  
15 any kind that reflects your testimony that Mr. Alvarez  
16 was very distressed because he thought you had gone and  
17 changed the term sheet using the authority that was  
18 granted in the New York Fed to make the  
19 Federal Reserve Bank the purchaser.

20 A. I don't believe he thought I changed the term  
21 sheet. I think my view was he was concerned when he saw  
22 the purchaser listed as Federal Reserve Bank of New York.

23 Q. Mr. Baxter, do you recall telling me in the last  
24 five minutes "my belief is Mr. Alvarez saw that and was  
25 very distressed, that he thought I had gone and changed

1 the term sheet"? Do you recall telling me that?

2 A. If I did say that, I misspoke. The point that I  
3 was trying to make is, the term sheet, which is attached  
4 to this e-mail chain, if I understand the exhibit  
5 correctly, misdescribes the purchaser of the equity as  
6 the Federal Reserve Bank of New York rather than the  
7 AIG Credit Facility Trust.

8 Q. But that's the way it had been from the beginning;  
9 right, sir?

10 A. No. I believe that it was supposed to be changed  
11 so that the purchaser was shown as the trust.

12 And the sentence in the e-mail which caught my  
13 attention then has my attention now, and it reads,  
14 Mr. Boies, "Tom, I won't be jammed on this one."

15 Those are words from a friend, and I reacted when  
16 I read them that obviously Scott was upset at something I  
17 was doing.

18 Q. I'm not talking about your friendship with  
19 Mr. Alvarez.

20 A. I'm talking about what's here in this document.

21 Q. And my question to you, sir, is you've just said  
22 several times that this document that's attached to the  
23 document we're looking at that described the New York Fed  
24 as the purchaser was a change, a mistake. Do you recall  
25 saying that?

1 A. It's a mistake.

2 Q. Well, it wasn't changed, though, was it, sir,  
3 because that's the way it had been from the beginning?

4 A. I don't remember the drafting history of this  
5 document, but I know that's a mistake.

6 Q. Well, sir, it was a mistake that was made at the  
7 time that it was presented to the Board of Governors;  
8 correct?

9 A. No. No. This is later. This is September 21.  
10 The way that document should have read is "Purchaser  
11 AIG Credit Facility Trust." The fact that it doesn't  
12 read that way is a mistake.

13 Q. Sir, my question -- I ask you to please listen to  
14 the question -- you've been talking about the  
15 description of purchaser as the New York Fed or the  
16 New York Fed as the purchaser being a change that  
17 Mr. Alvarez was concerned about. You said that several  
18 times; correct?

19 A. Let me see if I can --

20 Q. No, no, no. Please.

21 A. Let me be clear, Mr. Boies. This is my testimony.  
22 This document contains a mistake.

23 MR. BOIES: Your Honor?

24 THE COURT: Gentlemen, let's start with the  
25 question again.

1 BY MR. BOIES:

2 Q. My question to you, sir, is you have several times  
3 this morning asserted that describing the New York Fed as  
4 the purchaser was a change that Mr. Alvarez was concerned  
5 about. Do you recall that?

6 A. Mr. Alvarez was always concerned that we did not  
7 have the authorization from the board to hold the AIG  
8 equity. When I say "we," I mean the Federal Reserve Bank  
9 of New York. From the outset, Mr. Alvarez was concerned  
10 we did not have that authority from the board which was  
11 required under section 13 subparagraph (3) of the  
12 Federal Reserve Act.

13 Q. My question, sir, is not about all of the beliefs  
14 or concerns that Mr. Alvarez may have had.

15 My question is a simple one. It goes to your  
16 testimony that Mr. Alvarez was unhappy with you because  
17 he believed that you were changing something in making  
18 the New York Fed the purchaser, changing something.

19 You said that several times today; correct?

20 A. Let me be clear.

21 Q. No, no. Please. I'm just --

22 A. This is my testimony, Mr. Boies. Mr. Alvarez from  
23 day one felt we did not have the authorization from the  
24 board to be the purchaser of the equity; that is, the  
25 New York Fed could not hold the AIG equity.



1           On September 21, 2008, he receives an e-mail which  
2     contains an attachment titled Summary of Terms of  
3     Preferred Stock and Related Issues. It lists as  
4     purchaser Federal Reserve Bank of New York, on  
5     September 21 something that he has believed and said to  
6     me from the outset was beyond the authorization granted  
7     by the Board of Governors. And then he writes to me an  
8     e-mail, which you've placed before me, where he's  
9     obviously upset.

10           Now, why is he upset? I believe he's upset  
11    because he looked at that and he thought to himself,  
12    That's not what was understood between me and Baxter, and  
13    that's why he wrote to me, "Tom, I won't be jammed on  
14    this." That's what I believe, Mr. Boies.

15           Q. Are you finished?

16           Are you finished?

17           A. On this answer I am.

18           Q. Okay. Now, let me put a question, and I would ask  
19    you to listen to my question.

20           My question is not asking you to tell us what you  
21    think was in Mr. Alvarez' mind generally.

22           My question goes to the testimony that you've  
23    given today that making the New York Fed the purchaser  
24    was a change, something that was different than what had  
25    originally been considered and approved.

1           Do you understand the question that I'm asking?

2           A. I do understand the question. If I used "change"  
3 in any of my previous answers, what I believe, this  
4 particular reference, Federal Reserve Bank of New York,  
5 on the third page of PTX 183 is a mistake. That is a  
6 mistake. It should not have been read that way. It  
7 shouldn't have been written that way.

8           Q. Now, if it was a mistake to describe the  
9 New York Fed as the purchaser, that was a mistake that  
10 had been made since September 16; correct, sir?

11          A. Yes.

12          Q. And that was a, quote, mistake, as you put it,  
13 that was in the term sheet considered by the  
14 Federal Reserve Board of Governors; correct, sir?

15          A. I don't recall what that term sheet said with  
16 respect to purchaser.

17          Q. Let me show you. If you'd go to Joint Exhibit 63,  
18 page 5, which is the first page of the term sheet, and  
19 there's some language in italics that talks about how  
20 it's not intended to be legally binding, and then the  
21 next lines define the Federal Reserve Bank of New York as  
22 the "New York Fed" or "Purchaser."

23           Do you see that?

24          A. I'm sorry. I'm not following you, Mr. Boies.

25          Q. Okay.

1           May I approach, Your Honor, to show him?

2           THE COURT:   Sure.

3           BY MR. BOIES:

4           Q.   On page 5 of the term sheet here (indicating).

5           Do you see where it says "The Federal Reserve Bank  
6 of New York ('New York Fed' or 'Purchaser')"?

7           A.   Yes.  And of course that appears next to a  
8 subheader that is titled "Lender:"

9           Q.   And you understood that the purchase of the equity  
10 was in consideration for the loan or credit facility that  
11 was going to be made; correct?

12          A.   No.  That's not what this is referring to  
13 because --

14          Q.   That's not my -- I'm not asking what this is --

15          A.   That's not what this is about.  The next page  
16 talks about warrants.

17          MR. BOIES:  Your Honor?

18          THE WITNESS:  You're misreading the document,  
19 Mr. Boies.

20          THE COURT:  Mr. Baxter, you did not answer the  
21 question.  Maybe you can reread the question and we'll  
22 try it again.

23          BY MR. BOIES:

24          Q.   You understood that the purchase of the equity  
25 that AIG was providing was in consideration for the loan

1 or credit facility that was going to be made; correct?

2 A. Later it was consideration, yes.

3 Q. In this term sheet that is part of  
4 Joint Exhibit 63, at the time of this term sheet, did you  
5 understand that the warrants that were provided for were  
6 part of the consideration for the credit facility or loan  
7 that was going to be granted?

8 A. Equity was a part of the consideration. Whether  
9 the form of the equity was going to be warrants or  
10 whether it was going to be preferred shares had not been  
11 decided on September 16. That was one of the conditions  
12 that needed to be worked out by the Federal Reserve Bank  
13 of New York.

14 Q. In order to avoid the issue of warrants or the  
15 form, my question had been whether you understood that  
16 the equity that AIG was providing on September 16 or  
17 pursuant to the September 16 term sheet was in  
18 consideration for the loan or credit facility that was  
19 going to be made.

20 A. The equity and the interest were consideration for  
21 the loan.

22 Q. And that was true at the time of the  
23 Board of Governors meeting as well as at the time of the  
24 September 22 credit agreement; correct?

25 A. Yes.

1 Q. And the warrants that are referred to in the term  
2 sheet that is part of the Board of Governors  
3 September 16 meeting minutes were warrants for the  
4 purchase of 79.9 percent of the common stock; correct?

5 A. The warrants that are the subject of JX 063 are  
6 warrants for 79.9 percent of the common stock of AIG on a  
7 fully diluted basis. Yes.

8 Q. So the answer to my question is yes.

9 A. I think you had left parts out that I added back  
10 in, but yes, the answer was yes.

11 Q. And the term sheet that was considered by the  
12 Board of Governors provided that there would be  
13 shareholder approval of the increase in authorized shares  
14 necessary to permit the exercise of the warrants;  
15 correct?

16 A. Yes.

17 Q. Now, going back to Plaintiffs' Trial  
18 Exhibit 183 and directing your attention again to the  
19 language that you've quoted a number of times by  
20 Mr. Alvarez, "Just to confirm, ownership of stock along  
21 the lines in this term sheet will not work for the  
22 Fed -- trust or no trust," you believe that what he was  
23 referring to when he said that was his view that the  
24 New York Fed couldn't take equity in AIG; correct?

25 A. Couldn't hold the equity of AIG. Could take it

1 pursuant to or as consideration for a section 13(3) loan,  
2 but the authorization granted to us by the  
3 Board of Governors to fix the conditions that you see in  
4 the term sheet and to adjust those conditions didn't  
5 extend to holding equity.

6 Q. Let me ask you to look at your deposition at  
7 page 208. And this is your personal deposition. It's  
8 the first tab.

9 Would you take a moment to familiarize yourself.  
10 The portion I'm interested in is at lines 10 to 18, but I  
11 want you to be comfortable that we're talking about the  
12 same exhibit that we've just been quoting. When you have  
13 familiarized yourself with the context, please let me  
14 know.

15 (Pause in the proceedings.)

16 A. I'm ready.

17 Q. On line 10:

18 "QUESTION: What was he" -- referring to  
19 Mr. Alvarez -- "referring to when he said ownership of  
20 stock along this line in this term sheet will not work  
21 for the Fed, trust or no trust?"

22 "ANSWER: I wasn't in Mr. Alvarez' head. My  
23 understanding of what this is referring to is Scott's  
24 view that we couldn't take equity in AIG, 'we' being the  
25 Federal Reserve Bank of New York."

1 Do you see that?

2 A. Yes.

3 Q. And was that truthful, complete and accurate  
4 testimony at the time you gave it?

5 A. Yes.

6 Q. And is that, in your view, complete, truthful and  
7 accurate testimony today?

8 A. Yes.

9 Q. Let me ask you to look next at Plaintiffs' Trial  
10 Exhibit 372, which is already in evidence, I believe.

11 This is an exchange of e-mails between you and  
12 Mr. Alvarez regarding the AIG trustees.

13 Do you recall receiving Mr. Alvarez' e-mail and  
14 sending your e-mail on or about November 16, 2008?

15 A. Yes.

16 Q. Now, one of the things that Mr. Alvarez was  
17 insisting on is that the Fed not control disposition  
18 decisions with respect to the AIG stock; correct?

19 A. No. I don't think that's correct.

20 Q. Was that one of your concerns, that you did not  
21 want to be responsible for controlling disposition  
22 decisions?

23 A. No. I wanted the trustees to be principally  
24 responsible for the disposition decisions.

25 Q. If you wanted the trustees to be principally

1 responsible for the disposition decisions, I would have  
2 thought the answer to my question is yes rather than no.

3 I asked you whether one of the things first  
4 Mr. Alvarez and then you was insisting on is that the  
5 Fed, the New York Fed, not control disposition decisions  
6 with respect to the AIG stock.

7 Did you understand the question?

8 A. Yes.

9 Q. Is it fair to say that you and Mr. Alvarez wanted  
10 to be sure that the Fed did not control disposition  
11 decisions with respect to the AIG stock?

12 A. Yes.

13 Q. And in that connection I want to ask you to look  
14 at Plaintiffs' Trial Exhibit 190, which I'd offer.

15 MR. GARDNER: No objection.

16 THE COURT: Plaintiffs' Trial Exhibit 190 is  
17 admitted.

18 (Plaintiffs' Exhibit Number 190 was admitted into  
19 evidence.)

20 BY MR. BOIES:

21 Q. There is an e-mail on page 2 from Mr. Huebner to  
22 you and copies to a large number of other people, sent  
23 September 21, 2008 at 2:46 p.m.

24 Do you see that?

25 A. Yes.



1 Q. And do you recall receiving this e-mail?

2 A. No.

3 Q. You don't have any reason to doubt that you  
4 received it?

5 A. No, I have no reason to doubt it.

6 Q. Mr. Huebner says, "Scott's words of the Fed 'not  
7 involved in any way' are not quite met."

8 And he's talking about the structure of the credit  
9 agreement; correct, sir?

10 A. Yes.

11 Q. And he goes on to say, "To recap: the preferred  
12 shares are issued to the trustee for the benefit of the  
13 U.S. Treasury. The trustees decide governance and  
14 voting, and when there are proceeds they go to the  
15 treasury. BUT" -- and he capitalizes the word "but" --  
16 you guys have said on every call that you - not the  
17 trustees - control disposition decisions. This is a  
18 rather big way in which the Fed is 'involved.'"

19 Do you see that?

20 A. I do.

21 Q. Now, had you said on calls that you, not the  
22 trustees, control disposition decisions?

23 A. I don't recall.

24 Q. Now, you do reply to Mr. Huebner's e-mail;  
25 correct?

1           A.  Yes.

2           Q.  And you write, "Understood.  You are authorized to  
3  send."

4                    Do you see that?

5           A.  Yes.

6           Q.  And what you meant there is he was authorized to  
7  send a summary of the credit agreement terms to counsel  
8  for AIG; correct?

9           A.  Yes.

10          Q.  You did not disagree at all with his statements  
11  that you had said on every call that you, not the  
12  trustees, control disposition decisions; correct?

13          A.  I thought he was picking on details, and so -- so  
14  that was -- that was what I remember.  And then I also  
15  remember sending an e-mail -- and I don't see it part of  
16  this chain -- to Scott, just making sure that Scott was  
17  comfortable where we ended up.  And my recollection is he  
18  was.

19          Q.  Let me just be sure I understand what you're  
20  saying.

21                    Mr. Huebner writes, "BUT you guys have said on  
22  every call that you - not the trustees - control  
23  disposition decisions.  This is a rather big which in  
24  which the Fed is 'involved.'"

25                    Did you ever take issue with Mr. Huebner about

1 that assertion?

2 A. The difficulty with that question is Mr. Huebner  
3 worked for me and not vice versa, so I didn't feel I had  
4 an obligation to go back and respond to what he said  
5 here. I was going to address these issues in the trust  
6 agreement and I did. I didn't feel I had to address them  
7 with Mr. Huebner.

8 Q. Mr. Huebner was the Davis Polk partner in charge  
9 of the representation of the Fed; correct?

10 A. And I'm the chief legal officer and all outside  
11 counsel report to me.

12 Q. I wasn't suggesting that they didn't report to  
13 you, sir. I'm just trying to identify Mr. Huebner's  
14 position.

15 A. Yes. He worked for the New York Fed and for me.

16 Q. Let me turn to the interest rate. And in that  
17 connection let me start with Plaintiffs' Trial  
18 Exhibit 279, which I offer.

19 THE COURT: Mr. Boies, should we take a lunch  
20 break before you get into this new subject?

21 MR. BOIES: Yes, Your Honor.

22 THE COURT: All right. Let's break for lunch and  
23 let's reconvene at 1:45.

24 (Whereupon, at 12:42 p.m., a lunch recess was  
25 taken.)

1 A F T E R N O O N S E S S I O N  
2 (1:45 p.m.)  
3 THE COURT: Let's proceed.  
4 MR. BOIES: Thank you, Your Honor.  
5 BY MR. BOIES:  
6 Q. Mr. Baxter -- I'm sorry. You know who you are. I  
7 got confused. You are Mr. Baxter.  
8 A. When I last checked, Mr. Boies.  
9 Q. Yes, exactly. It's only Thursday, but it still  
10 seems like a long week.  
11 Mr. Baxter, you described the term of the credit  
12 agreement as being "loan sharky"; correct?  
13 A. I did that in an e-mail. Yes, that's correct,  
14 Mr. Boies.  
15 Q. And that was an e-mail that you sent and that is  
16 represented by Plaintiffs' Trial Exhibit 279, which was  
17 the document that I had directed your attention to just  
18 before we broke; correct?  
19 A. Just bear with me, Mr. Boies. I'm getting that  
20 out.  
21 MR. BOIES: And I'd offered Plaintiffs' Trial  
22 Exhibit 279.  
23 MR. GARDNER: No objection.  
24 THE COURT: Plaintiffs' Trial Exhibit 279 is  
25 admitted.

1           (Plaintiffs' Exhibit Number 279 was admitted into  
2 evidence.)

3           BY MR. BOIES:

4           Q. Do you have that exhibit, Mr. Baxter?

5           A. I have it in front of me, yes.

6           Q. And this is two e-mails.

7           The first is from Sarah Dahlgren to Mr. Geithner  
8 and you; correct, on October 4, 2008 at 1:37 p.m.?

9           A. Yes.

10          Q. And she writes that Dan -- and that's Dan Jester;  
11 correct?

12          A. Correct.

13          Q. She writes that Dan Jester has "asked us to  
14 consider two things (which I told him are already on our  
15 radar screen)" and number 2 is "rethink the terms of the  
16 deal; deal was onerous."

17                 Do you see that?

18          A. Yes.

19          Q. And you received this e-mail on or about the time  
20 it was sent; correct?

21          A. Yes.

22          Q. And you then reply at 2:17 p.m. on October 4 with  
23 respect to the point number 2, "Yes, the terms are loan  
24 sharky."

25                 Do you see that?

1           A. I do.

2           Q. And among other things, by "loan sharky" you meant  
3 that the interest rate was very high; correct?

4           A. Correct.

5                    Just for the record, Mr. Boies, I don't have any  
6 personal experience with loan sharks.

7           Q. Me either.

8                    Are you aware of people within the government that  
9 took the position that the September 22 credit agreement,  
10 terms of that agreement, were too punitive for AIG and  
11 actually hurt AIG in terms of its place in the  
12 marketplace and its place with rating agencies?

13           A. It wasn't so much hurt AIG. It was hurt our  
14 objectives. And when I say "our objectives," I mean the  
15 government's objectives.

16           Q. Those objectives being what in this context?

17           A. There were always two objectives. One was to  
18 avoid the systemic consequences that would have resulted  
19 from an AIG bankruptcy. And then the secondary objective  
20 was to be good stewards of taxpayer money.

21                    When the original interest rate was calculated, it  
22 was calculated with an eye on the risk of the loan and  
23 trying to recover for the taxpayer a return that was  
24 equal to that risk. But the rate was so high that it was  
25 causing the credit rating agencies to consider a

Starr International Company, Inc. v. USA

1     downgrade of AIG, and that downgrade threatened our  
2     principal objective, which was to avoid the systemic  
3     consequences of an AIG bankruptcy, because the downgrade  
4     by the credit rating agencies because of the debt load  
5     threatened to put AIG into another bankruptcy condition,  
6     which is the -- which is this first topic in  
7     Sarah Dahlgren's e-mail to me.

8             Q.    Let me try to break that down.

9                    Your two objectives were to avoid systemic risk  
10                   and second to be good stewards of the taxpayer's money;  
11                   correct?

12                   A.   Avoid the systemic risk that would result from an  
13                   AIG bankruptcy, yes, and to be good stewards of the  
14                   taxpayer money.

15                   Q.   And the interest rate that was originally charged  
16                   was so high that it threatened to adversely affect that  
17                   first objective; is that correct?

18                   A.   That's correct.

19                   Q.   With respect to that interest rate, you've already  
20                   testified that interest rate came from the so-called  
21                   private sector term sheet; correct?

22                   A.   That's its source.  And for a long -- for a period  
23                   of time I had thought we had used the same rate that was  
24                   in the private sector term sheet, but in fact that was  
25                   mistaken on my part.  We actually raised it.

1           And when I say "we," I mean the government.

2           Q.   The government.  Let me just underscore that.

3           The private sector term sheet that you referenced  
4   had a lower interest rate than the interest rate that was  
5   actually used in the September 22 credit agreement;  
6   correct?

7           A.   That's my recollection.

8           Q.   And I think you may have already testified to  
9   this, but I can't remember.

10          As you understood it, you did not know whether  
11   that private sector term sheet had ever been agreed to by  
12   or shown to AIG; correct?

13          A.   Back at that time, that's -- that was correct,  
14   yeah.  That was my state of mind.

15          Q.   And when you say "back at that time," you are  
16   talking about September of 2008?

17          A.   Yes.

18          Q.   Now let me turn to Plaintiffs' Exhibit 320, which  
19   I would offer.  It is in already I think, Your Honor.  
20   Yes, it is.  I remember this document.

21          THE COURT:  This is the document I looked at the  
22   other day at lunchtime.

23          MR. BOIES:  Exactly.

24          BY MR. BOIES:

25          Q.   I can represent to you, Mr. Baxter, that the



1 portion that is blacked out does not have anything to do  
2 with the portion that you see in front of you.

3 This is an e-mail from you to Mr. Alvarez on the  
4 subject of debt restructuring powers.

5 Do you see that?

6 A. Yes.

7 Q. And you write, "I asked Joe" -- and who is Joe?

8 A. That would be Joe Sommer.

9 Q. You say, "I asked Joe to do this on the issue of  
10 whether there is authority to restructure debt and not on  
11 the issue of whether we have power to hold AIG shares (we  
12 agree that there is no power)."

13 When you wrote that, who was the "we" that you  
14 were referencing?

15 A. The "we" would be the Federal Reserve Bank of  
16 New York.

17 And the power that I'm referring to was a power  
18 to -- on the part of the Federal Reserve Bank, after it's  
19 been authorized by the board, to restructure an  
20 authorized debt.

21 Q. When you write here, you write we agree there is  
22 no power to hold AIG shares; correct?

23 That's what you wrote to Mr. Alvarez?

24 A. Whether we, the New York Fed, have the power to  
25 hold the AIG shares. What I'm saying there is I'm not

1 reopening that issue in a discussion of whether we have  
2 the authorization under section 13(3) to restructure a  
3 debt that we have been -- we have done under the  
4 authority of 13(3).

5 Q. Let me see if I can understand what you're  
6 saying.

7 You knew that Mr. Alvarez took the position that  
8 no entity in the Federal Reserve System could take an  
9 equity interest; correct?

10 A. No.

11 Q. You did not know that?

12 A. No, that that's not a correct statement of what I  
13 understood.

14 Q. You knew that Mr. Alvarez took the position that  
15 no entity in the Federal Reserve System could take an  
16 equity interest in AIG; correct?

17 A. I knew it was Mr. Alvarez' position, or at least  
18 as it had been communicated to me, that under the  
19 authorization for the \$85 billion revolving credit  
20 facility with AIG that, in Mr. Alvarez' view, the  
21 Federal Reserve Bank of New York did not have the  
22 authorization of the board to hold the equity in its  
23 name, that is, the name of the Federal Reserve Bank of  
24 New York.

25 Q. Now, do you know of anything in writing in which

1 Mr. Alvarez says what you have attributed to him, that  
2 is, that it was his view that the Federal Reserve Bank of  
3 New York did not have the authorization of the board to  
4 hold the equity in its name? Do you know of anything  
5 that's in writing that puts it that way?

6 You put it that way a number of times in your  
7 testimony. I haven't seen it that way in the documents,  
8 and I'm just wondering whether you know of any document  
9 that puts it that way.

10 A. Let me try to be responsive to that, Mr. Boies.

11 Q. But could you begin with a yes, no, or I don't  
12 know answer.

13 A. I can't.

14 Q. Okay. Let me try to sharpen the question. Okay?

15 You've said a number of times that it was  
16 Mr. Alvarez' view that the Federal Reserve Bank of  
17 New York did not have the authorization of the  
18 Federal Reserve Board of Governors to hold equity in its  
19 name. Do you recall that?

20 A. Yes.

21 Q. Now, what I'm asking you is, have you ever seen  
22 any writing that said that, that said --

23 A. That said exactly that? No.

24 Q. Okay. Have you ever seen anything in writing that  
25 said that Mr. Alvarez' view as to whether the

1 New York Fed could or could not hold equity in its name  
2 was related to what the authorization was from the  
3 Federal Reserve Board of Governors? Have you seen  
4 anything in writing that said that?

5 A. Stating that precisely, no.

6 Q. Okay. Now, let me go back to my question, which  
7 did not have to do with holding equity.

8 My question was, were you aware that Mr. Alvarez'  
9 view was that no entity in the Federal Reserve System  
10 could take an equity interest in AIG? Were you aware of  
11 that?

12 A. I was not.

13 Q. Let me ask you to look at page 194 of your  
14 personal deposition. That's the first tab in your book.  
15 It is the deposition that was taken November 1, 2013.

16 Beginning on line 22:

17 "QUESTION: Did anyone from the Board of Governors  
18 consider the question of whether an entity in the  
19 Federal Reserve System could take an equity interest in  
20 AIG?

21 "ANSWER: Yes.

22 "QUESTION: And who was that?

23 "ANSWER: Scott Alvarez.

24 "QUESTION: Did he reach a conclusion?

25 "ANSWER: Yes.

1           "QUESTION:  What was that conclusion?

2           "ANSWER:  No."

3           Do you recall giving that testimony under oath at  
4 your deposition, sir?

5           A.  Yes.

6           Q.  And was that truthful, complete and accurate  
7 testimony at the time you gave it?

8           A.  Yes.

9           Q.  And do you stand by that testimony today?

10          A.  Yes.  And my belief was Mr. Alvarez didn't think  
11 we had authorization to take, hold, any equity in AIG.

12          Q.  Now, he doesn't say "take, hold."  He says "take";  
13 correct, sir?

14          A.  Take or hold.  My understanding of the authority  
15 that was granted to us under 13(3) is that we couldn't  
16 take or hold AIG equity.  On the basis of discussions I  
17 had with Mr. Alvarez.

18          Q.  Now, these were oral discussions you say?

19          A.  Concerning the limits of the authorization  
20 granted.  Yes, sir.

21          Q.  And were these questions that you have seen  
22 memorialized in writing anyplace?

23          A.  The writing that we've already talked about  
24 about --

25          Q.  Other than the writing we've talked about.

1           A. But the "jammed" is one of the -- one of them for  
2 sure.

3           Q. Other than the "jammed," have you seen these views  
4 that you ascribe to him memorialized anyplace?

5           A. They were discussions about the language of the  
6 original resolution that allowed the New York Fed to  
7 create conditions such as you see in the term sheet and  
8 what exactly that meant.

9           Q. Let me ask you the question this way because my  
10 question has not been what the discussions were but what  
11 writings exist that we could go back to and look at and  
12 try to confirm contemporaneously what you're saying.

13                   Other than the writings that we've looked at  
14 today, are you familiar with any writings that  
15 memorialized the oral discussions that you say took  
16 place?

17           A. Other than the e-mail exchange over the equity  
18 terms, other than those e-mail, Mr. Boies?

19           Q. Yes.

20           A. I don't recall other, other writings on this  
21 issue. And with the exception of the one you just showed  
22 me on debt restructuring.

23           Q. Yes.

24                   Let me ask you to look at Plaintiffs' Trial  
25 Exhibit 136, which I would offer.

1 MR. GARDNER: No objection.

2 THE COURT: Plaintiffs' Trial Exhibit 136 is  
3 admitted.

4 (Plaintiffs' Exhibit Number 136 was admitted into  
5 evidence.)

6 BY MR. BOIES:

7 Q. The top e-mail is an e-mail from you to Mr. Held  
8 and then there are a variety of other e-mails here,  
9 including an exchange of e-mails between you and  
10 Mr. Geithner; correct?

11 A. Yes.

12 Q. And these e-mails concern proposed legislative  
13 changes that the Federal Reserve was proposing to improve  
14 the Federal Reserve's emergency powers; correct?

15 A. My recollection, Mr. Boies, is it was to clarify  
16 the emergency powers of the Federal Reserve.

17 Q. Now, when you say "clarify," the heading on the  
18 proposed changes are --

19 A. Improve. I see that now.

20 Q. And these were proposed legislative changes that  
21 were being proposed both by the Federal Reserve  
22 Board of Governors and by the New York Fed; is that  
23 fair?

24 A. I don't think they were ever proposed, Mr. Boies,  
25 so that the answer to your question is no because I

1 don't think these were ever proposed. There was a  
2 deliberative process under way to prepare legislation  
3 that we might propose. I don't think it ever in fact was  
4 proposed.

5 Q. The legislative changes or proposed legislative  
6 changes to improve the Fed's emergency powers that are  
7 set forth here were proposed changes that were drafted by  
8 both the Federal Reserve Board of Governors personnel and  
9 by the New York Fed personnel; correct?

10 A. I don't think that's correct.

11 Q. Who do you think drafted these proposed  
12 legislative changes?

13 A. I think these were drafted by some of my staff at  
14 the New York Fed.

15 Q. Do you know whether personnel from the  
16 Federal Reserve Board of Governors in Washington  
17 participated in that drafting?

18 A. I believe they did not.

19 Q. Do you know whether the Federal Reserve Board of  
20 Governors personnel had drafted any proposed legislative  
21 changes of their own on or around September 18, 2008?

22 A. I don't know.

23 Q. Let me ask you to look at Plaintiffs' Trial  
24 Exhibit 116, which I would offer.

25 MR. GARDNER: No objection.



1 THE COURT: Plaintiffs' Trial Exhibit 116 is  
2 admitted.

3 (Plaintiffs' Exhibit Number 116 was admitted into  
4 evidence.)

5 BY MR. BOIES:

6 Q. Two e-mails here. The first one in terms of time  
7 is a September 17, 2008 e-mail to you at 1:44 p.m. from  
8 Mr. Kim; is that right?

9 A. It's a Ms. Kim.

10 Q. Ms. Kim.

11 And it says, "You mentioned that Treasury will get  
12 warrants."

13 Do you see that?

14 A. Yes.

15 Q. First, who is Ms. Kim?

16 A. Ms. HaeRan Kim is a lawyer who works for me in the  
17 legal group of the Federal Reserve Bank of New York.

18 Q. And did you tell her on September 17, 2008 that  
19 the Treasury was going to get warrants in connection with  
20 the AIG credit facility?

21 A. I don't recall telling her that.

22 Q. Do you have any doubt that you told her that?

23 A. I just don't recall.

24 Q. Let me ask you to look at Plaintiffs' Trial  
25 Exhibit 143, which I would offer.

1           MR. GARDNER: Your Honor, plaintiff --  
2 plaintiff -- Mr. Baxter is not on this document, so  
3 absent laying some foundation I don't see a basis for  
4 this to be moved into evidence. Other than a foundation  
5 objection, no other objections.

6           THE COURT: Well, I'm assuming there's going to be  
7 some connection made here or else he probably wouldn't  
8 bring it up, so --

9           MR. GARDNER: And that's why I'm suggesting,  
10 Your Honor, that Mr. Boies try to lay that foundation  
11 before it gets moved in. And if he can lay it, then  
12 obviously I would withdraw the objection; if he cannot, I  
13 would maintain it.

14           MR. BOIES: Your Honor, this is a Federal Reserve  
15 Bank of New York document. It has been stipulated to be  
16 authentic. It is an e-mail attaching Issues with Regard  
17 to the New York Fed/Treasury's Equity Participation in  
18 AIG.

19           THE COURT: I'm going to allow it, so Plaintiffs'  
20 Trial Exhibit 143 is admitted.

21           (Plaintiffs' Exhibit Number 143 was admitted into  
22 evidence.)

23           BY MR. BOIES:

24           Q. Mr. Baxter, this is authored by somebody who works  
25 for you; correct?

1           A. Just to be clear, Mr. Boies, when you say "this is  
2 authored," the e-mail from Michelle Meertens to  
3 Joe Sommer, both of those individuals back at that time  
4 worked for me.

5           Q. That's what I meant.

6           A. The attachment, which is Issues with Regard to  
7 New York Fed/Treasury's Equity Participation in AIG, I  
8 don't know who the author is of that.

9           Q. As you say, both the author and the addressee of  
10 this e-mail that's on the subject of draft AIG equity  
11 interest worked for you.

12                   Did they ever share this draft with you?

13           A. As best I can recall, this is the first time I've  
14 seen this.

15           Q. Now, in addition to the author and addressee that  
16 you've identified that worked for you, there are two  
17 copyees. Can you identify them?

18           A. Yes. Martin Grant and Charles Gray are also  
19 lawyers who worked in the legal group of the  
20 New York Fed.

21           Q. Now, did any of the four lawyers who received  
22 this document share with you the contents of the  
23 document, even if you don't recall them showing it to  
24 you?

25           A. I don't remember, Mr. Boies.

1           In looking at the contents of page 2 of  
2 Plaintiffs' Trial Exhibit 143, I remember there were  
3 issues associated with Treasury owning or holding the AIG  
4 equity. But I don't remember reading this particular  
5 document.

6           Q. What this document says is that "Until last night,  
7 we had been working under the assumption that Treasury  
8 would take the equity interest in AIG, while the  
9 New York Fed provides the loan."

10           And "last night" would have been Wednesday,  
11 September 17; correct?

12           A. That's correct.

13           Q. And then it says, "Last night, we heard from  
14 Treasury that they consider themselves legally unable to  
15 assume ownership."

16           Do you see that?

17           A. Yes.

18           Q. Were you informed on September 18 by anyone that  
19 the New York Fed had been advised the previous evening  
20 that Treasury considered themselves legally unable to  
21 assume ownership of the AIG equity?

22           A. I had had communications with a Treasury lawyer,  
23 and in those communications the Treasury lawyer had  
24 advised me of problems from the Treasury point of view,  
25 whether they were legal or otherwise, in owning outright

1 the AIG equity.

2 Q. Now, you say "legal or otherwise," and perhaps  
3 there were problems other than legal, but what I'm trying  
4 to focus on is whether anyone had told you on  
5 September 18 that Treasury was taking the position that  
6 they consider themselves legally unable to assume  
7 ownership of the AIG equity.

8 A. I don't know that that was concluded. I do know  
9 that the Treasury was talking to the Office of Legal  
10 Counsel about that issue, and I don't know how it was  
11 resolved.

12 Q. And the discussion that you say you recall having  
13 with Treasury counsel, do you recall who that counsel  
14 was?

15 A. Yes.

16 Q. Who was that?

17 A. Stephen Albrecht.

18 Q. And when did that conversation take place?

19 A. It was around the same time, September 17th and  
20 18th. I can't tell you which day it was, Mr. Boies,  
21 because I was pretty much working 24/7 at that time. The  
22 days were nights; the nights were days.

23 Q. I have some experience with that.

24 A. I suspect you do.

25 Q. When was the trust agreement drafted; that is,

1 when did the drafting begin?

2 A. I don't remember a precise date. I think it was  
3 the end of October, beginning of November.

4 Q. And that would have been in 2008; correct?

5 A. Yes, sir.

6 Q. And the trust agreement was drafted by the  
7 Federal Reserve Bank of New York; correct?

8 A. By lawyers working in the Federal Reserve Bank of  
9 New York and by lawyers working at Davis Polk, our  
10 outside counsel.

11 Q. And it was not reviewed by AIG; correct?

12 A. Let me go back to my last answer and just  
13 supplement it.

14 When the trustees were selected, they engaged  
15 their own counsel, but that happened a little later in  
16 time as I recall it, Mr. Boies. I didn't want to suggest  
17 that we were the only lawyers working on the trust, trust  
18 document.

19 So with respect to my last answer, let me  
20 supplement it by saying there were also counsel  
21 representing the trustees.

22 With respect to your next question about AIG, I  
23 don't recall sharing the trust instrument with AIG.

24 Q. After the credit agreement, the New York Fed and  
25 the Federal Reserve generally believed it was empowered

1 to draft the trust agreement and select the trustees  
2 without consulting AIG; correct?

3 A. Correct.

4 Q. You have taken the position that the trust was an  
5 instrumentality of the United States; correct?

6 A. Yes.

7 Q. And you took that position at least, among others,  
8 with state insurance commissioners; correct?

9 A. Correct.

10 Q. And what was the purpose of taking that position  
11 with the state insurance commissioners?

12 A. My concern at the time both with state insurance  
13 commissioners and foreign regulatory authorities is that  
14 they would assert jurisdiction over the trust as a  
15 controlling person of the regulated insurance  
16 subsidiaries.

17 Q. And by asserting that it was an instrumentality of  
18 the United States, you believed that that freed it from  
19 that potential regulation; correct?

20 A. It freed it of the potential regulation by state  
21 insurance authorities under the supremacy clause and  
22 freed it, at least as I looked at the situation, from  
23 foreign regulation because of sovereign immunity issues.  
24 At least that's what I was prepared to argue.

25 Q. Now, once the trust was drafted and then put into

1 effect and the trustees were in place, the trustees  
2 consulted with the New York Fed prior to voting on  
3 matters and prior to selecting directors for AIG;  
4 correct?

5 A. Yes.

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

7 THE COURT: Sure.

8 (Pause in the proceedings.)

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

10 THE COURT: All right. Thank you.

11 MR. GARDNER: Your Honor, could we have just a  
12 two-minute standing break just to get the binders on?

13 THE COURT: Sure. That will be fine.

14 MR. GARDNER: I appreciate that.

15 THE COURT: I'm going to stay right here and we'll  
16 go off the record until you're ready.

17 (Discussion off the record.)

18 THE COURT: Let's go back on the record.

19 - - - - -

20 CROSS-EXAMINATION

21 BY MR. GARDNER:

22 Q. Good afternoon, Mr. Baxter.

23 A. Good afternoon, Mr. Gardner.

24 Q. You have before you the following binders just to  
25 orient you. You have the binder the government has just



1 passed up, the binder Mr. Boies passed up to you I guess  
2 it was yesterday or maybe this morning, plus the two  
3 binders that I believe Mr. Boies passed up yesterday.  
4 And we may need to use all three, but I will do my best  
5 to orient you, so you got a lot of stuff.

6 Now, as I believe you testified on direct  
7 examination, you've been general counsel of the  
8 New York Fed since 1995; correct?

9 A. Since March of 1995.

10 Q. And when did you begin working at the  
11 New York Fed?

12 A. I began working at the New York Fed in August of  
13 1980 after completing a judicial clerkship at the  
14 Appellate Division of the New York Supreme Court. And I  
15 graduated a year before my clerkship from the  
16 Georgetown Law School in 1979.

17 Q. Can you please describe your job responsibilities  
18 as general counsel for New York Fed.

19 A. As general counsel of the New York Fed, I am the  
20 chief legal officer. I'm responsible for the operations  
21 of the legal function, which is the office within the  
22 New York Fed that provides legal advice to the  
23 Federal Reserve Bank of New York.

24 In addition, I have certain nonlegal  
25 responsibilities as an executive vice president of the

1 Federal Reserve Bank.

2 Q. Now, in the context of your work as general  
3 counsel, what responsibility do you have to provide the  
4 president of the New York Fed with legal interpretations  
5 of the statutes and regulations governing the  
6 New York Fed?

7 A. I am the senior lawyer responsible for advising  
8 the chief executive.

9 Q. Now, I want to talk about mid-September of 2008,  
10 and I believe you mentioned on examination by Mr. Boies  
11 that the New York Fed did not regulate AIG. Is that  
12 correct?

13 A. That's correct.

14 Q. Now, given that the New York Fed did not in  
15 September 2008 regulate AIG, were liquidity problems that  
16 AIG was facing something the New York Fed was interested  
17 in?

18 A. We would be interested in liquidity problems  
19 facing any large, systemically important institution, but  
20 of course we know the institutions that we supervise the  
21 best, and the institutions that we supervise are banks  
22 and bank holding companies.

23 Q. Now, on examination by Mr. Boies, you mentioned  
24 that at some point in I believe it was September 2008 an  
25 inquiry was made to you concerning whether AIG would be

1 eligible for any of the New York Fed's liquidity  
2 facilities. Do you recall that exchange?

3 A. I do.

4 Q. As of, let's say, the summer of 2008 -- and we can  
5 say September is in the summer -- what were the primary  
6 liquidity facilities available from the New York Fed?

7 A. In the summer of 2008, the primary discount  
8 window facilities were what is known as the discount  
9 window, and that is a borrowing facility available to  
10 depository institutions. And then there were some  
11 emergency credit facilities that we established pursuant  
12 to the power conferred in section 13 subparagraph (3),  
13 and those were facilities that provided us a means to  
14 provide liquidity to markets.

15 The principal facilities were the Primary Dealer  
16 Credit Facility and another facility called the  
17 Term Securities Lending Facility.

18 Q. Now, let's break this up a little bit.

19 Could you please describe how the discount window  
20 works.

21 A. Yes. The way the discount window works is, the  
22 authority for that is section 10B of the  
23 Federal Reserve Act. And that provision of the act  
24 enables the Reserve Banks to lend to depository  
25 institutions at a rate of interest called the primary

1 credit rate.

2 And then there's an extension of that program  
3 which enables the Reserve Banks to lend to other  
4 depository institutions that are in less satisfactory  
5 credit condition, and that's called the secondary credit  
6 rate, and that is a different, higher rate for those  
7 institutions.

8 Q. And what is the length of a loan under the  
9 discount window?

10 A. It's overnight.

11 Q. And I believe you mentioned this, but just to be  
12 clear, who's eligible for access to the discount window?

13 A. The access is for depository institutions, and  
14 those are institutions whose deposits are eligible for  
15 insurance by the Federal Deposit Insurance Corporation.

16 Q. As of September 2008, was AIG a depository  
17 institution?

18 A. AIG, the parent, was not. It had a subsidiary  
19 thrift that was eligible to borrow at the discount window  
20 of the Philadelphia Fed.

21 Q. How large was that thrift?

22 A. It was around two billion as I remember it.

23 Q. Now, are you aware of whether the term  
24 "discount window" is sometimes used loosely to refer to  
25 all Federal Reserve lending facilities?

1           A. It is sometimes used to refer to all facilities.

2           Q. Would that be incorrect?

3           A. Well, there's no -- there's no legal definition of  
4 the discount window, so the definition is subject to  
5 interpretation. The way most people use it is the  
6 discount window is the standing facility available to  
7 depository institutions.

8           Q. Now, you've mentioned something called the  
9 Primary Dealer Credit Facility. What's that?

10          A. The Primary Dealer Credit Facility was one of the  
11 facilities we established around the time of  
12 Bear Stearns. And over what some at the Fed, including  
13 myself, would know of as Bear Stearns weekend, so that  
14 starts on March 14 and it ends on March 16, which is a  
15 Sunday, we had two tasks to accomplish. One was to see  
16 whether we'd be able to design a rescue that would save  
17 Bear Stearns from bankruptcy.

18                 And the other was, assuming we could not succeed  
19 with that mission and Bear Stearns was to file for  
20 bankruptcy on the morning of March 17, we thought we  
21 needed to establish a credit facility that would provide  
22 lending to all other primary dealers who we anticipated  
23 would experience a run if Bear Stearns filed.

24                 So over the course of that Bear Stearns weekend,  
25 not only did we fashion a rescue for Bear Stearns, but we

1 also created a new facility to provide credit to primary  
2 dealers. That facility was known as the Primary Dealer  
3 Credit Facility, and it was announced on the 16th and it  
4 was up and operational on March 17, 2008.

5 Q. Now, you've used the term "primary dealer" several  
6 times.

7 What's a primary dealer?

8 A. At the Federal Reserve Bank of New York we  
9 implement monetary policy directives of a distinct  
10 federal agency called the Federal Open Market Committee.  
11 The way we implement monetary policy is by buying and  
12 selling government and agency securities in the open  
13 market either outright or through repurchase agreements.

14 We do those transactions to effect monetary  
15 policy, but we do those transactions with commercial  
16 counterparties who are broker-dealers but are a  
17 particular type of broker-dealer that has been determined  
18 appropriate for dealing with the Federal Reserve's  
19 trading desk.

20 Back in 2008, there were approximately twenty of  
21 those primary dealers, all broker-dealers regulated by  
22 the SEC, but approved to do business with the  
23 Federal Reserve for monetary policy purposes.

24 Q. So what does it mean to be a trading counterparty  
25 of the New York Fed?

1           A. It means that when we want to implement monetary  
2 policy, so we're going to either buy or sell government  
3 securities, that any one of these twenty primary dealers  
4 can bid to deal with us on one of those securities trades  
5 or proposed trades.

6           Q. Now, as of September 2008, who was eligible to  
7 access the Primary Dealer Credit Facility?

8           A. Any one of those twenty approved primary dealers.

9           Q. Was AIG one of those -- was AIG a trading  
10 counterparty of the New York Fed?

11          A. No.

12          Q. Why not?

13          A. It had never applied, and I don't know whether it  
14 would have met our conditions to become a primary  
15 dealer.

16          Q. What are those conditions?

17          A. Well, they changed between 2008 and today.

18          Q. So let's keep it as September 2008.

19                 Do you recall what the conditions were then?

20          A. In 2008, there would first be a review of whether  
21 there were legal actions against the primary dealer that  
22 would affect its integrity. You had to commit to make  
23 markets in Treasury securities. It was expected you  
24 would make markets in Treasury securities.

25                 There was a minimal capital requirement, which I

1 think was around \$200 million, but I might be wrong about  
2 that. And you had to satisfactorily pass our credit --  
3 our credit checks.

4 Q. Now, to your knowledge, Mr. Baxter, how long does  
5 it or did it take an interested party to become a primary  
6 dealer?

7 A. My recollection is it took one to two years.

8 Q. And what was the maturity of loans extended under  
9 the Primary Dealer Credit Facility?

10 A. Overnight.

11 Q. And did that ever change?

12 A. I believe we extended the maturity, but I'm not  
13 positive of that, later in the program.

14 Q. Now, how, if at all, did you respond to the  
15 inquiry about AIG accessing any of the New York Fed's  
16 liquidity facilities?

17 A. I believe the request that I remember was could  
18 they become a primary dealer, and my best recollection is  
19 I didn't have time to do anything with that request.

20 Q. Why is that? What were you busy doing?

21 A. Events overcame us in September of 2008.

22 Q. What events were those?

23 A. Beginning with the conservatorships of the GSEs,  
24 then Lehman's bankruptcy followed by AIG's need for  
25 emergency assistance, the horror show continued after



1 that.

2 Q. To your knowledge, were there any liquidity  
3 facilities that AIG was eligible for accessing as of  
4 September 2008?

5 A. The one that I mentioned. They were eligible to  
6 borrow what would be a small amount from their thrift,  
7 and that would be from the lending Reserve Bank in the  
8 Philadelphia district, the Philadelphia Federal Reserve.

9 THE COURT: Sir, are there limitations on the  
10 amount that an eligible entity can borrow through the  
11 discount window?

12 THE WITNESS: Yes. It would be limited by the  
13 size of your balance sheet, Your Honor.

14 THE COURT: Okay. Thank you.

15 BY MR. GARDNER:

16 Q. And it would be the balance sheet of the thrift  
17 that's doing the borrowing?

18 A. That's right. The eligible entity.

19 Q. Now, you had testified I believe or discussed  
20 with Mr. Boies that you learned information concerning  
21 AIG's liquidity needs on September 12, 2008; is that  
22 correct?

23 A. That's correct.

24 Q. And as I believe you testified earlier, on the  
25 evening of September 12, 2008, you attended a meeting

1 with the CEOs who were the major counterparties of  
2 Lehman Brothers where the issue of AIG was discussed. Do  
3 you recall that?

4 A. Yes.

5 Q. Okay. And can you describe once again what  
6 happened at that meeting?

7 A. Yes. This was an extraordinary meeting. It was a  
8 meeting that was called because of the problems that were  
9 being encountered by Lehman Brothers, and we had a  
10 specific plan for that meeting.

11 The plan for that meeting was to call into a room  
12 at the Fed the largest creditors of Lehman, and we were  
13 going to tell and did tell those creditors that we  
14 expected that if we were to fashion a rescue for  
15 Lehman Brothers, the financing of the vehicle that would  
16 take the bad assets out of Lehman, much like we did with  
17 respect to Bear Stearns, that that vehicle would be  
18 financed not by the Federal Reserve Bank of New York but  
19 by a consortium of the creditors in the room.

20 So the expectation is they were going to finance  
21 a vehicle that would buy troubled assets out of Lehman  
22 and make Lehman more palatable for a merger partner to  
23 buy.

24 So we had called together the CEOs of the largest  
25 financial institutions who were doing business with

1    Lehman, and those were the largest financial institutions  
2    in our country and from some institutions abroad as well.  
3    And that meeting took place at 6:00 in a room at the  
4    Federal Reserve Bank, and it was presided over by the  
5    Treasury secretary, Hank Paulson; by the chairman of the  
6    SEC at the time, Chris Cox; and by my boss, Tim Geithner,  
7    who was then the CEO of the New York Fed. And I was  
8    seated behind the three individuals I've named and  
9    present throughout that meeting.

10       Q. And you had mentioned I think to Mr. Boies that  
11    the topic of AIG was raised at that meeting; is that  
12    correct?

13       A. The principal topic of that meeting was  
14    Lehman Brothers. I don't want anyone to be confused.  
15    This was a meeting intensely focused on Lehman.

16                But in the course of the dialogue with the CEOs,  
17    which continued for approximately two hours, in the  
18    course of that dialogue, AIG came up as another company  
19    experiencing problems. And of course, seated in that  
20    room and focused on Lehman Brothers, I took note of the  
21    fact that AIG was brought up.

22                And I remember specifically that two of the CEOs  
23    responded that we're taking care of that problem, and  
24    those two individuals were Jamie Dimon from  
25    JPMorgan Chase and Lloyd Blankfein from Goldman Sachs.

1 Q. And when Mr. Dimon and Mr. Blankfein said that,  
2 that they would take care of AIG, did you believe them?

3 A. I did. And it mollified some concern I had in  
4 that we didn't have yet another problem.

5 Q. Given that, where did you focus your attention  
6 between, say, September 12 and September 15 of 2008?

7 A. I was focused predominantly, almost obsessively on  
8 trying to fashion a rescue for all of Lehman Brothers.

9 Q. Now, as of September 12, 2008, what was your  
10 understanding of the New York Fed's position regarding  
11 providing financial assistance to AIG, so as of  
12 September 12?

13 A. As of September 12, we had not even considered  
14 that topic.

15 Q. To your knowledge, did AIG continue to pursue  
16 private-sector solutions during that weekend,  
17 September 12 through September 15?

18 A. That is my understanding.

19 And in responding to a question Mr. Boies asked me  
20 I think this morning or yesterday, I mentioned there was  
21 a meeting that took place I think on Saturday, as I  
22 recall it, which would have been September 13, 2008,  
23 where Mr. Willumstad came in with his counsel from  
24 Sullivan & Cromwell. And as I remember that meeting,  
25 there were two individuals also present, one from

1 JPMorgan Chase and another from Goldman Sachs. That's as  
2 I remember it.

3 Q. And what do you recall Mr. Willumstad saying at  
4 that meeting regarding the progress on finding a  
5 private-sector solution to meet AIG's liquidity needs?

6 A. I don't remember any specific words that  
7 Mr. Willumstad said at the meeting. My sense is it was  
8 moving in a positive direction.

9 Q. Now, did Lehman Brothers ultimately declare  
10 bankruptcy?

11 A. Yes. On -- early in the morning hours on Monday,  
12 September 15, Lehman's parent filed for bankruptcy. The  
13 U.S. broker-dealer, however, remained in operation.

14 Q. So let's go to September 16, 2008.

15 Now, during your examination by Mr. Boies, I  
16 believe you testified that you learned that a  
17 private-sector solution wasn't going to happen either  
18 late in the evening on September 15 or early in the  
19 morning on September 16. Is that correct?

20 A. That's correct.

21 Q. Now, did there come a point in time on the 16th  
22 when you came to learn that President Geithner had  
23 decided to ask the Board of Governors for authorization  
24 to provide a loan to AIG?

25 A. Yes.

1 Q. When did you first learn that President Geithner  
2 had decided to ask the Board of Governors for  
3 authorization to provide a loan to AIG?

4 A. I had gone home Monday night to sleep for a while,  
5 and when I left the -- my offices, I had left my deputy  
6 general counsel, Joyce Hansen, to essentially be the  
7 night watch while I was home. When I got in in the  
8 morning, which was around 7:00 in the morning on  
9 September 16, I met with Joyce, and she told me that it  
10 looked like we were going to be lending to AIG.

11 Q. What was your reaction upon hearing from your  
12 deputy that President Geithner had reached a conclusion  
13 that it would be appropriate, assuming the  
14 Board of Governors had authorized it, to lend to AIG?

15 A. I was extremely surprised.

16 Q. Why?

17 A. We had never talked about extending our credit  
18 facilities beyond banks and investment banks to an  
19 entity that was in the insurance business, so this was --  
20 this was a complete surprise to me that we would have  
21 done that in the course of an evening. And -- and I --  
22 it struck me as incredible. And I said to my deputy,  
23 I'll go see Mr. Geithner right now, because I was so  
24 surprised by the decision.

25 Q. And did you in fact do just that?

1           A. I went right to his office. Yes.

2           Q. And what happened next?

3           A. What happened next is he explained to me the  
4 rationale that persuaded him over the course of the  
5 evening and told me that we were going to have a  
6 conference call at 8:00 in the morning with  
7 Chairman Bernanke, with Mr. Paulson, Secretary Paulson,  
8 and other staff, and in that conference call it was his  
9 intention to recommend lending.

10          Q. So what did Mr. Geithner tell you about his  
11 rationale or how he came to reach the conclusion that on  
12 the 16th it would be appropriate, assuming the  
13 Board of Governors authorized it, to extend a loan to  
14 AIG?

15          A. He articulated some of the principal reasons for  
16 his concern about the systemic consequences on the U.S.  
17 economy if we stood by and allowed AIG to file for  
18 bankruptcy or not try to do something to avoid that, that  
19 filing. And Mr. Geithner is a very persuasive individual  
20 and convinced me that my first reaction was the wrong  
21 reaction.

22          Q. So you mentioned that there would be a phone call  
23 at 8:00 on -- 8:00 a.m. on September 16; is that  
24 correct?

25          A. Yes.

1 Q. Did that call in fact happen?

2 A. It did.

3 Q. Who participated in that phone call?

4 A. I was with Mr. Geithner in Mr. Geithner's office.  
5 I don't remember whether anyone else from the  
6 Federal Reserve was there. I know on the phone there was  
7 Chairman Bernanke, Vice Chairman Don Kohn, Scott Alvarez,  
8 the board's general counsel, Secretary Paulson from the  
9 Treasury Department.

10 I don't remember whether -- whether Treasury  
11 staff was with Mr. Paulson. It's possible that some  
12 Treasury staff was also in our room, but I don't recall  
13 that that vividly. And those were the principal  
14 participants.

15 Q. How long did the call last?

16 A. As best I remember it, it took about an hour.

17 Q. What was discussed on that call?

18 A. The discussion on the call was Federal Reserve  
19 lending to AIG and that we -- in the view of  
20 President Geithner, he was certainly convinced we should  
21 lend.

22 There was a focus on the systemic consequences  
23 that would result if AIG filed for bankruptcy. And as I  
24 tried to suggest this morning, my recollection of the  
25 substance of that discussion was the emphasis on the



1 consequences for Main Street rather than Wall Street,  
2 although it had consequences for both.

3 And then there was a discussion about certain  
4 legal aspects of that lending.

5 Q. Now, what was the reaction amongst the  
6 participants to President Geithner's view or suggestion  
7 that, assuming the Board of Governors authorized the  
8 loan, a loan should be provided to AIG?

9 A. My recollection is that everyone was supportive at  
10 the end of the call.

11 Q. What, if anything, was discussed about an AIG  
12 bankruptcy on that 8:00 a.m. call on September 16?

13 A. The -- there was no discussion about the form of  
14 bankruptcy or how it would occur. The general discussion  
15 that I recall is, if AIG files for bankruptcy, here are  
16 the consequences, and these consequences we can avoid  
17 with liquidity assistance from the Federal Reserve, but  
18 the liquidity assistance would be -- would be a sizable  
19 liquidity assistance.

20 Q. And you've mentioned that there was a discussion  
21 about some of the systemic issues concerning AIG, and I  
22 assume what you mean there is if AIG were to go  
23 bankrupt.

24 What were some of those systemic issues that were  
25 discussed, to your recollection?

1           A. Yeah. The impact on 401(k) plans. The impact on  
2 other, other retirement plans that AIG had wrapped, that  
3 was another issue that came up. Stable value funds was  
4 another.

5           I think I mentioned I remember a particular  
6 reference to teachers retirement plans. And the reason  
7 that I remember that is my wife is a New York City public  
8 school teacher, so I would have a much higher authority  
9 to account for -- account to, rather.

10          Q. Understood.

11          A. And those were the kinds of things I remember. It  
12 would have been bad.

13                 And the other aspect of this is the context, is  
14 this would have been the day after Lehman Brothers filed  
15 for bankruptcy and the week after the  
16 government-sponsored enterprises Fannie and Freddie were  
17 put into conservatorship, so everything is accelerating  
18 in a vicious downward spiral with respect to the American  
19 economy.

20          Q. What were the -- sorry.

21                 What were some of the logistical issues concerning  
22 the AIG loan that was discussed at that 8:00 a.m. phone  
23 call?

24          A. Well, some of the logistical issues related to the  
25 fact that it was also September 16, a meeting of the

Starr International Company, Inc. v. USA

1 Federal Open Market Committee, so as we were having our  
2 conversation from 8:00 to 9:00, there was a scheduled  
3 meeting of the Federal Open Market Committee to begin at  
4 9:00, and that was to determine monetary policy.

5 In the ordinary course, both Mr. Geithner and me  
6 would attend Federal Open Market Committee meetings. We  
7 had stayed behind because of the concerns from both  
8 Lehman and AIG, so we were not at that monetary policy  
9 meeting which was going to happen immediately after our  
10 telephone call.

11 And the reason that was significant relates to  
12 the fact that the authorization to lend under 13(3) has  
13 to come from a meeting of the Board of Governors where  
14 no less than five governors vote in favor of the lending.

15 So with respect to logistics, we needed to finish  
16 the FO- -- the Federal Open Market Committee meeting,  
17 call a Federal Reserve Board meeting, and then get the  
18 vote of the governors in favor of this lending, because  
19 on the call we did not have five governors.

20 So the sequencing and the timing was troublesome  
21 given that we had this other meeting going on.

22 Q. Now, in terms of timing, Mr. Baxter, was there a  
23 discussion on that phone call as to the timing of when  
24 AIG would in fact need liquidity from the  
25 Federal Reserve?

1           A. The sense we had had in the morning is that the  
2 need for liquidity wouldn't be that day. It was near  
3 term but not that day. And we had a sense that AIG could  
4 draw on credit lines from private banks that would help  
5 it get over the immediate liquidity needs. That was the  
6 sense in the morning.

7           Q. Now, did that sense change during the course of  
8 the day on September 16?

9           A. It did.

10          Q. How?

11          A. In the afternoon, we learned that there was a  
12 problem that AIG could not draw on its lines and that in  
13 fact AIG would need to borrow from the Federal Reserve a  
14 significant sum of money that day, and that significant  
15 sum of money turned out to be \$14 billion on  
16 September 16, 2008.

17          Q. So at some point on September 16, AIG represented  
18 that they needed \$14 billion by the end of the day?

19          A. Yes.

20          Q. Now, you'd mentioned that there were legal  
21 issues -- I believe you said this -- legal issues  
22 discussed about extending a loan to AIG that was  
23 discussed on the phone call at 8:00 a.m. on September 16,  
24 2008.

25                   What were those legal issues that were discussed?

1           A. Yes. The legal issues related to the words of  
2 section 13 subparagraph (3) of the Federal Reserve Act.  
3 One we've already touched on, and that is the need for  
4 Board of Governors authorization to the lending  
5 Reserve Bank, the New York Fed, to make the loan, so you  
6 needed a vote of the board and specifically five  
7 governors to authorize us to make the lending  
8 contemplated by the statutory authority.

9           So that was one.

10           Another related to the statutory terms that the  
11 lending Reserve Bank needed to be "secured to its  
12 satisfaction." And there was a point in the phone call  
13 where Mr. Geithner turned to me and said, What exactly  
14 does that mean? And I responded to him that it meant  
15 that he needed to be satisfied with respect to the  
16 collateral.

17           There was also a discussion about what it had  
18 meant over time for a Reserve Bank to be secured to its  
19 satisfaction, and I recall observing on the phone call  
20 that what it meant is you would have a perfected  
21 first-priority security interest in the collateral that  
22 was proffered by the putative borrower, that that wasn't  
23 a legal requirement, that was the practice of the  
24 Federal Reserve in interpreting that language for  
25 discount window lending over the years.

1 Q. Now, prior to September 16 and the AIG loan, had  
2 you considered the issue of the legality of conditioning  
3 a 13(3) loan on the provision of equity?

4 A. Yes.

5 Q. In what context had you, Mr. Baxter, previously  
6 considered whether equity could serve as a  
7 consideration for a loan under section 13(3) of the  
8 Federal Reserve Act?

9 A. The question began to arise after the rescue of  
10 Bear Stearns and specifically around the issue of taking  
11 what could be considered equity, and that's the residual  
12 in the vehicle that we established to rescue  
13 Bear Stearns, a vehicle that the New York Fed lent to and  
14 that it used the loan proceeds of to buy troubled assets  
15 out of Bear, thereby facilitating the acquisition of the  
16 residual Bear by JPMorgan Chase. In that structure that  
17 was created, the special-purpose vehicle, there's a  
18 residual that can be likened to equity.

19 So the discussion started with respect to the  
20 Bear Stearns transaction, and our principals were asking  
21 us the question: Is there some way we can structure a  
22 lending that would capture the upside potential in the  
23 equity?

24 And so we had looked at that question and we had  
25 opined that under the incidental powers clause you could

1 take as consideration for a section 13(3) lending a  
2 so-called equity kicker as additional consideration to  
3 interest. And we had concluded that was fully consistent  
4 with the statutory authority.

5 Q. And this is March 2008 time frame you're talking  
6 about?

7 A. It's between March and September of 2008.

8 Q. Why don't we look at the first exhibit. In your  
9 binder that I handed up to you, I want you to look at  
10 DX 108.

11 And let me know when you see it.

12 A. Yes.

13 Q. Mr. Baxter, do you recognize DX 108?

14 A. I do.

15 Q. How do you recognize it?

16 A. It's a memo that was prepared by a lawyer working  
17 for me sent to me.

18 Q. Was it prepared at your direction?

19 A. It was.

20 Q. Did you see it at the time it was prepared?

21 A. Yes.

22 Q. Now, you said it was prepared by a lawyer who  
23 worked for you. Is that Mr. Gray?

24 A. Yes.

25 Q. Okay. And is DX 108 a true and accurate copy?

1           A. I can't see what was redacted.

2           Q. Fair enough.

3           A. So it's difficult for me to say. It appears to be  
4 the memo.

5           Q. A true and accurate redacted copy, how about  
6 that.

7                   Your Honor, the government moves for the admission  
8 of DX 108 into evidence.

9                   MR. BOIES: Objection, Your Honor. We can't tell  
10 what the document is with all these redactions. It's  
11 just impossible to -- it's an incomplete document, and I  
12 don't think they can introduce their own documents that  
13 have been this greatly redacted.

14                   THE COURT: Well, I certainly don't see how we can  
15 possibly tell whether it's a true and accurate copy of  
16 anything.

17                   MR. GARDNER: Well, Your Honor, first of all, the  
18 parties have an agreement that it's authentic, so there's  
19 been no authenticity objection that I'm aware of that  
20 remains.

21                   The only objection that the plaintiffs lodged to  
22 this exhibit that I'm aware of is a hearsay objection, so  
23 notions of completeness or anything like that are -- have  
24 been waived.

25                   And then finally, Your Honor, with respect to the



1 completeness issue, the portions that are redacted are  
2 redacted because they do not relate to discovery order  
3 number 6. This goes to the same issue that we discussed  
4 yesterday. And you know, to the extent the Court has  
5 concerns, you know, I can get you an unredacted copy of  
6 it, but we're not using redactions as sword and shield  
7 here. These relate to other issues that are not covered  
8 by discovery order number 6.

9 THE COURT: Well, then how is it even relevant?

10 MR. GARDNER: How is it relevant, Your Honor?

11 THE COURT: Yes.

12 MR. GARDNER: Well, this goes to the heart of the  
13 issue as to whether or not the New York Fed had reached a  
14 conclusion that it is legally appropriate under  
15 section 13(3) to condition a loan on the provision of  
16 equity.

17 THE COURT: Well, if it's in this document, we  
18 don't even know what it says.

19 MR. GARDNER: Well, we do know what it says  
20 because I'm going to ask him some questions about it.

21 THE COURT: I'm not so sure about that. I'm going  
22 to sustain the objection.

23 MR. GARDNER: And just so I am clear, on what  
24 basis, Your Honor?

25 THE COURT: The memorandum is completely redacted,

1 so to ask this witness questions about the conclusions of  
2 the Federal Reserve Bank of New York on an issue that's  
3 addressed in a totally redacted document, I don't see how  
4 we can possibly do that.

5 MR. GARDNER: Very well, Your Honor.

6 Yeah, I do want to actually -- before we do that,  
7 Your Honor, if you can look at the last page, because  
8 that is the part that is not redacted, and that is the  
9 part I was going to be asking him about. And if we can  
10 put that on the screen.

11 THE COURT: I still don't -- if you want to use  
12 this document in support of your own case, I think you  
13 would have to produce a totally unredacted version of  
14 it.

15 MR. GARDNER: But that would be inconsistent with  
16 discovery order number 6, Your Honor, and we'd be forced  
17 to waive privilege.

18 THE COURT: But it would be totally improper to  
19 go into what the memorandum says when we can't even see  
20 it.

21 MR. GARDNER: I'm not going to ask him about any  
22 parts that are redacted.

23 THE COURT: Even about conclusions. That would be  
24 totally improper.

25 MR. GARDNER: Very well, Your Honor. I'll move

1 on.

2 THE COURT: All right.

3 BY MR. GARDNER:

4 Q. Let's take a look at DX 109.

5 THE COURT: So just to be clear about this, the  
6 objection is sustained.

7 MR. GARDNER: Understood.

8 BY MR. GARDNER:

9 Q. Now, Mr. Baxter, I've handed you what's been  
10 marked or it's in the binder as DX 109.

11 Do you recognize this exhibit?

12 A. I do.

13 Q. What is it?

14 A. It's a memo from President Geithner to  
15 Charles Gray -- an e-mail, rather, dated March 24, 2008.

16 Q. Have you seen this exhibit before?

17 A. I have.

18 MR. GARDNER: Your Honor, the government moves for  
19 the admission of DX 109 into evidence.

20 MR. BOIES: Your Honor, I have the same objection.

21 THE COURT: Same objection and the same ruling. I  
22 don't see a difference.

23 MR. GARDNER: Well, did -- all right. And let me  
24 just proffer, Your Honor, these exhibits go exactly to  
25 the issue of legal authority. It rebuts the notion that

1 this is somehow a contrived view on September 16. It is  
2 completely consistent with discovery order number 6 which  
3 waived privilege for a very limited issue.

4 THE COURT: That was -- you know, discovery order  
5 number 6, I think the portion you're referring to had to  
6 do with discovery. Okay?

7 MR. GARDNER: Correct.

8 THE COURT: If you want to use this document as a  
9 sword to show that things were done properly on  
10 September 16, you have to use a totally unredacted copy  
11 of it and waive the privilege as to that aspect of it.

12 MR. GARDNER: But it relates to a separate issue,  
13 Your Honor. That's what I'm trying to explain.

14 THE COURT: I don't care. We're not going to  
15 have this in the record with the government saying that  
16 things were done legally, properly, and yet the  
17 plaintiff can't see the document and I can't see the  
18 document.

19 MR. GARDNER: Well, to be sure, Your Honor,  
20 everyone can see those aspects of the document that  
21 relate to discovery order number 6, but I take your  
22 point.

23 THE COURT: No, we're not going to do it that way  
24 here.

25 So the objection is sustained.

1 BY MR. GARDNER:

2 Q. Let's take a look at Defendant's Exhibit 118.

3 Do you recognize what has been marked as  
4 Defendant's Exhibit 118?

5 A. Yes.

6 Q. What is it?

7 A. It's a response from me to President Geithner, and  
8 then down below there is an e-mail from  
9 President Geithner to Charles Gray and myself.

10 MR. GARDNER: The government moves for the  
11 admission of Defendant's Exhibit 118, Your Honor.

12 MR. BOIES: No objection, Your Honor.

13 THE COURT: Defendant's Exhibit 118 is admitted.  
14 (Defendant's Exhibit Number 118 was admitted into  
15 evidence.)

16 BY MR. GARDNER:

17 Q. Now, in this e-mail, President Geithner states:  
18 You end by saying a BD -- which I assume is  
19 broker-dealer -- could issue warrants to us. I thought  
20 we couldn't own equities. How would this be permissible?  
21 I recall a sentence in my written testimony saying we do  
22 not have the authority to acquire an equity stake in the  
23 institution we were lending to. And I thought we have  
24 these broad prohibitions on what we can purchase.

25 Now, Mr. Baxter, when you received this question

1 from President Geithner, what did you do?

2 A. I -- I wrote the e-mail that we see back to  
3 President Geithner trying to explain for him the  
4 questions that -- the answers to the questions that he  
5 asked of me.

6 Q. Now, before we get there and your response,  
7 Mr. Gray explained that he, along with you, Mr. Baxter,  
8 and others "concluded that there is no legal impediment  
9 to the FRBNY requiring that a broker-dealer issue its  
10 warrants or other equity interests as inducement for us  
11 to extend discount window credit."

12 Do you see that?

13 A. Yes.

14 Q. What was your reaction to Mr. Gray's analysis and  
15 conclusions?

16 A. I agreed.

17 Q. Now, Mr. Gray reasons in this e-mail that as a  
18 formal matter, the warrants or -- Mr. Gray reasons in the  
19 e-mail that as a formal matter, "the warrants or other  
20 equity interests would be acquired as legal consideration  
21 for our agreement to extend a discount window loan. The  
22 power for us to extend the loan on these terms would come  
23 from section 13(3) of the Federal Reserve Act and the  
24 incidental powers can provide the FRA."

25 Mr. Baxter, did you agree with this aspect of

1 Mr. Gray's analysis and conclusions?

2 A. Yes, I did.

3 Q. Now, in response to Mr. Gray's explanation,  
4 President Geithner asked Mr. Gray and you how this  
5 analysis fits with the statement in his April 3, 2008  
6 written testimony to the Senate Committee on Banking,  
7 Housing and Urban Affairs that, quote, FRBNY did not have  
8 the authority to acquire an equity interest in either  
9 Bear or JPMorgan.

10 Do you see that?

11 A. Yes.

12 Q. And in your response to President Geithner, you  
13 state the context for this quoted part of your statement  
14 was taking an equity interest in Bear that was an  
15 alternative to section 13(3) lending and that, by  
16 contrast, FRBNY had authority to take a kind of equity  
17 kicker incidental to FRBNY section 13(3) lending, which  
18 is within our express authority, and the kicker is  
19 incidental to that express authority.

20 Mr. Baxter, could you please explain what  
21 distinction you were trying to make here.

22 A. Yes.

23 For a long time, principals at the Federal Reserve  
24 have been puzzled by the fact that for monetary policy  
25 purposes, where we're buying and selling in the open

1 market securities on a daily basis for the implementation  
2 of monetary policy, that the securities you could buy or  
3 sell are restricted in the act to either Treasury  
4 securities or fully guaranteed agency securities.

5           So for my entire career, for 35 years, I've been  
6 telling principals, with respect to monetary policy  
7 operations, the only securities you can buy to implement  
8 monetary policy are Treasuries or agency-guaranteed  
9 securities. And you can't buy the equity of GM. You  
10 can't buy the equity of Microsoft. You can only buy  
11 Treasuries. You can only buy agency-guaranteed  
12 securities. That is with respect to monetary policy.

13           With respect to the lending function, if you are  
14 lending and you can take collateral in the form of  
15 equity, which is commonly done in lending, you commonly  
16 take equity as collateral, the loan gets repaid, you  
17 give the equity back. But if the loan goes into default,  
18 you then have to take that collateral to realize on the  
19 loan, take it, hold it, sell it. That is completely  
20 within the authority of a lender. And that is  
21 well-recognized authority under a heading called debt  
22 previously contracted. You can take and realize on  
23 equity in a pledge that you couldn't buy outright. Clear  
24 authority, no question about it.

25           And then there's the question we were addressing



1 in this particular matter, and that is, could you take  
2 not as collateral for a lending but as additional  
3 consideration for a lending not simply the payment of  
4 interest but also other considerations in the form of  
5 equity. And our answer -- and I don't think it was  
6 close -- our answer is yes, you can take that if you're  
7 authorized to take it by the Board of Governors in  
8 consideration of a section 13(3) lending by the  
9 Reserve Bank.

10 Q. Why didn't you think it was close?

11 A. I didn't think it was close because of authority  
12 in dealing with national banks, because of the analysis  
13 done in these memos and because of other case law,  
14 including the Lucas case.

15 Q. Now, in Defendant's Exhibit 118, when you  
16 expressed the view that equity could be part of the  
17 consideration for a rescue loan, you added that some  
18 would see this interpretation as, quote, loophole  
19 lawyering and that the New York Fed's view of the scope  
20 of permissible incidental powers was broader than the  
21 board's view.

22 Do you see that?

23 A. I do.

24 Q. What did you mean by "loophole lawyering"?

25 A. My concern -- and you can see also I reference

1 some media from around that time and including the speech  
2 by Paul Volcker about our Bear Stearns rescue, and so I  
3 was concerned how this might be perceived. And even my  
4 principal, Mr. Geithner, was confused about the authority  
5 we were relying on.

6 So while I was clear about it, I also knew that  
7 there could be criticism of taking an equity kicker in  
8 this context.

9 In Mr. Volcker's speech -- and I need to tell you,  
10 Mr. Gardner, that I worked with Volcker. I revere  
11 Mr. Volcker. And in a speech in April, he characterized  
12 our Bear Stearns rescue as coming right to the line. And  
13 I've made this observation to Mr. Volcker since then that  
14 even in basketball, as long as you're at the line, you're  
15 fine. You don't commit a foul unless you go over the  
16 line.

17 So in my view, this was perfectly consistent with  
18 the statutory authority, although I knew we might be  
19 criticized.

20 Q. And what did you mean when you stated that the  
21 New York Fed's view of the scope of permissible  
22 incidental powers was broader than the board's view?

23 A. The board's traditional view of incidental powers  
24 is that that there needed to be -- it needed to be  
25 reasonably necessary to the express power. And the

1 modern Supreme Court view, which you can see in the  
2 Arnold Tours case, is that it's really convenient or  
3 useful. It's changed over time from a more restrictive  
4 view of incidental powers to what I would call a more  
5 expansive, modern trend view. But my colleagues at the  
6 board hadn't gotten that far.

7 Q. They hadn't gotten that memo.

8 A. Well, you know, a difference of views.

9 Q. Sure.

10 Let's take a look at another exhibit, Defendant's  
11 Exhibit 114.

12 Let me know when you're there.

13 A. Did you say 114?

14 Q. Correct. DX 114.

15 A. Okay. I'm sorry. I have it now.

16 Q. Don't be sorry at all.

17 Do you recognize Defendant's Exhibit 114?

18 A. Yes, I do.

19 Q. What is it?

20 A. It's a memo that Joe Sommer wrote to me on  
21 April 16 -- an e-mail from Joe Sommer to me on April 16,  
22 2008 containing a memorandum.

23 Q. Did you request that Mr. Sommer prepare the  
24 analysis reflected in DX 114?

25 A. Yes.

1           MR. GARDNER: Your Honor, the government moves for  
2 the admission of DX 114.

3           MR. BOIES: Your Honor, same objection.

4           THE COURT: The objection is sustained.

5           MR. GARDNER: And just so we have a clear record,  
6 the objection is that because we have redacted portions  
7 of it because it is privileged, we cannot affirmatively  
8 use it?

9           THE COURT: Yes. The ruling is that if you want  
10 to use a legal memorandum as a sword in this case to  
11 advance your position of legality, you have to produce  
12 the entire document.

13           MR. GARDNER: And to be -- and just so we have a  
14 clear record, Your Honor, those portions that are  
15 redacted do not have anything to do with the issues upon  
16 which I was going to examine Mr. Baxter, just so we have  
17 a clear record about that.

18           THE COURT: Okay. I'm sorry.

19           BY MR. GARDNER:

20           Q. Did there come a point, Mr. Baxter, in July of  
21 2008 when the New York Fed again considered its authority  
22 to require the provision of equity as consideration for a  
23 section 13(3) loan?

24           A. Yes.

25           Q. Can you take a look at Defendant's Exhibit 155.

1           Do you recognize this exhibit?

2           A. Yes.

3           Q. What is it?

4           A. It's an e-mail from Joe Sommer, a lawyer who  
5 reports to me, to Jim Bergin, another lawyer who reports  
6 to me, and it's copied to me.

7           Q. Did you in fact receive Defendant's Exhibit 155?

8           A. Yes.

9           MR. GARDNER: Your Honor, the government moves for  
10 admission of DX 155 in evidence.

11           MR. BOIES: Your Honor, this is not quite as  
12 extreme as the other ones. There are redactions. It's  
13 conceivable to me that we could work this one out with  
14 counsel if he would on a no prejudice basis just show me  
15 what is redacted, and we might be able to let this  
16 document be used because it's not quite as bad as some of  
17 the others.

18           But pending at least having an opportunity to see,  
19 without prejudice and no waiver, what has been redacted,  
20 I don't think they can use their own documents as  
21 evidence without putting in the complete document.

22           MR. GARDNER: And Your Honor, my response to that  
23 would be the exact same response that we went through  
24 with Mr. Austin yesterday. If the Court wishes to review  
25 this in camera, I can establish I believe that these

1 redactions have nothing do with the issues in this case.  
2 They're consistent with defendant's -- I mean, discovery  
3 order number 6 and that there is no basis for a broader  
4 waiver than that.

5 I personally cannot waive the New York Fed's  
6 privilege. It is a privilege they possess. And I could  
7 call up Mr. Kiernan to explain that in more detail, but  
8 if you wish, I'm happy to consult with him to see,  
9 you know, if we can provide you with a copy in camera. I  
10 don't think it's appropriate to provide it to Mr. Boies  
11 on a nonwaiver basis.

12 MR. BOIES: Your Honor, the difference is that  
13 yesterday we were offering one of their documents, and it  
14 was a discovery issue, that is, did they have to give us  
15 the redacted portions. And once it was concluded that as  
16 a discovery matter they didn't have to give us that  
17 underlying document, I could either use it or not use it  
18 in redacted form because it's their document.

19 It's an entirely different situation where they  
20 are trying to introduce as their own evidence their own  
21 documents where they've taken portions out.

22 MR. GARDNER: Your Honor, it's the exact same  
23 issue, is that we have every right to preserve  
24 privileged information, and we shouldn't be penalized  
25 from establishing our case by showing the witness

1 those parts that this Court deemed was a waiver in this  
2 case.

3 So there isn't a sword and a shield issue, but to  
4 the extent there's any concern, Your Honor, obviously I  
5 have to consult with Mr. Kiernan, but I think the  
6 appropriate way to proceed is to show it to this Court  
7 in camera and the Court can reach a conclusion as to  
8 whether or not we are using redacted information that it  
9 is at all germane to the issues that I'm going to be  
10 asking Mr. Baxter about.

11 THE COURT: But my ruling as I've stated is that  
12 I'm not going to permit the defendant to establish its  
13 case of legality by the use of its own documents which  
14 contain redactions. You either produce the whole  
15 document or you don't use it.

16 MR. GARDNER: Even when those portions that are  
17 redacted have nothing to do with the issue of legality.

18 THE COURT: I'm not willing to just accept that  
19 carte blanche.

20 MR. GARDNER: And that's why I'm offering to make  
21 it available to this Court in camera so it can feel  
22 comfortable that what I'm telling the Court is  
23 appropriate.

24 THE COURT: No. It's -- no. The objection is  
25 sustained. It's out.

1 BY MR. GARDNER:

2 Q. Did the New York Fed reach a conclusion about the  
3 legality of conditioning the receipt of equity for the  
4 provision of a loan in the July time frame?

5 A. I'm not sure -- I'm not sure I understand your  
6 question.

7 Q. Well, let me take it back.

8 Did the New York Fed consider the issue of the  
9 legality to condition a 13(3) loan on the provision of  
10 equity in the July 2008 time frame?

11 A. We did believe that there was statutory authority  
12 to take equity as additional consideration for a 13(3)  
13 lending so long as we had appropriate authorization from  
14 the Board of Governors. Yes.

15 Q. Why don't you take a look at DX 161.

16 Do you recognize Defendant's Exhibit 161?

17 A. Yes.

18 Q. What is it?

19 A. It's a legal memorandum in final form from a  
20 lawyer working in the legal group of the Federal Reserve  
21 Bank to our chief executive officer, Tim Geithner, titled  
22 Equity Kickers and Reserve Bank Loans.

23 Q. Was the memo attached to the e-mail in Defendant's  
24 Exhibit 161 made at your direction?

25 A. Yes.



1           MR. GARDNER: Your Honor, the government moves for  
2 the admission of DX 161 into evidence.

3           MR. BOIES: No objection, Your Honor.

4           THE COURT: Defendant's Exhibit 161 is admitted.

5           (Defendant's Exhibit Number 161 was admitted into  
6 evidence.)

7           BY MR. GARDNER:

8           Q. Now, on pages 4397 through 4399 Mr. Sommer  
9 describes that his view that the -- on pages 4397 through  
10 4399 of Defendant's Exhibit 161, Mr. Sommer describes his  
11 view that the "reasonably necessary" test is more  
12 restrictive than the standard actually applied in modern  
13 judicial opinions interpreting the scope of permissible  
14 incidental powers and then reasons that any action  
15 qualifying as a valid exercise of incidental power under  
16 his test would necessarily be valid under the more modern  
17 standard as well.

18           And Mr. Baxter, what was your reaction to this  
19 aspect of Mr. Sommer's memo?

20           A. I believe I suggested he do that.

21           Q. So you agree with it?

22           A. I agree that he was writing the memo from that  
23 perspective, from a narrow incidentality test.

24           Q. Now, Mr. Sommer concludes, in Defendant's  
25 Exhibit 161, that taking an equity interest could be

1 reasonably necessary to justify lending in circumstances  
2 when the New York Fed would not otherwise extend credit,  
3 such as in the case of a law -- such as in the case of a  
4 firm with a huge need for liquidity in a period of  
5 unstable asset prices, even if the loan was nominally  
6 overcollateralized or fully secured.

7           What was your reaction, Mr. Baxter, to this aspect  
8 of Mr. Sommer's analysis?

9           A. I agree with it.

10          Q. Now, in Defendant's Exhibit 161, Mr. Sommer noted  
11 that taking an equity interest in a troubled institution  
12 could help protect the New York Fed's interest in its  
13 emergency lending by ensuring that the New York Fed could  
14 prevent the borrower from continuing to make unsound  
15 decisions that could jeopardize the borrower's ability to  
16 repay that lending.

17           What was your reaction to this aspect of  
18 Mr. Sommer's memo?

19           A. I agree with it. And this is what I was getting  
20 at this morning in the discussion about governance and in  
21 the discussion about improving the risk management.

22          Q. And again, DX 161, when is that dated?

23           A. July 11, 2008.

24          Q. So this is approximately, what, two months before  
25 the AIG rescue?

1           A.   Yes.

2           Q.   Now, I want to turn your attention to PTX 136.  
3           That should be in that singular binder that plaintiffs  
4           provided you with this morning.

5           THE COURT:   Before we get to that document, shall  
6           we take an afternoon break?

7           MR. GARDNER:   That sounds fantastic, Your Honor.

8           THE COURT:   Let's resume at 3:30.

9           (Court in recess.)

10          BY MR. GARDNER:

11          Q.   Before we turn to PTX 136, I have just a couple  
12          quick questions.

13          As general counsel of the New York Fed, what is  
14          your understanding, Mr. Baxter, of the permissible forms  
15          of consideration that may be used for assistance under  
16          section 13(3) of the Federal Reserve Act?

17          A.   The permissible forms are first interest in the  
18          form of consideration for the loan, an equity kicker -- I  
19          think we've established that that is my view -- fees  
20          associated with the loan, and just about any other type  
21          of consideration that modern man could imagine.  All  
22          within the bounds of the law of course.

23          Q.   Of course.

24          Now, in 2008, did any section 13(3) loans include  
25          consideration other than interest?

1 A. Yes.

2 Q. Can you describe some of those types of loans,  
3 either broad-based facilities or otherwise, that included  
4 consideration other than interest?

5 A. There were fees associated with the  
6 Commercial Paper Funding Facility.

7 There were residuals in the vehicles that we  
8 established, the SPVs: Maiden Lane, Maiden Lane II,  
9 Maiden Lane III. And you can think of the residual left  
10 over in those vehicles after payment of the equity and  
11 the debt as additional consideration to the interest on  
12 the loan.

13 Q. So let's break this down a little bit.

14 You mentioned the Commercial Paper Funding  
15 Facility?

16 A. Yes.

17 Q. What's that?

18 A. That was a facility that we set up after  
19 Lehman Brothers failed and after a number of companies  
20 had difficulty rolling that commercial paper to acquire  
21 that commercial paper in the open market. And if you  
22 were going to be eligible for your paper to be acquired  
23 in that facility, you had to pay a fee.

24 Q. A facility fee?

25 A. Yes.

1 Q. Do you know whether AIG took advantage of the  
2 Commercial Paper Funding Facility?

3 A. Yes. They did.

4 Q. Now, you also I believe was alluding to  
5 Maiden Lane I as an example of something that involved  
6 consideration other than interest; is that right?

7 A. Yes.

8 Q. And again, can you just describe the type of  
9 consideration that was provided in connection with  
10 Maiden Lane I.

11 A. Yes.

12 First, we had to establish a special-purpose  
13 vehicle, and that special-purpose vehicle was going to  
14 and did purchase the troubled assets from Bear Stearns  
15 that facilitated JPMorgan Chase to buy the residual of  
16 Bear. And in buying those assets from Bear Stearns, the  
17 first of the Maiden Lane vehicles was capitalized with a  
18 loan from the Federal Reserve Bank of New York and then a  
19 first loss position of \$1 billion from JPMorgan Chase.

20 So the assets were acquired into the vehicle. And  
21 the way the so-called waterfall works that governs the  
22 operation of the vehicle is you have to pay off the  
23 indebtedness of the vehicle, so the first loss position  
24 of JPMC goes away, the Federal Reserve loan gets repaid,  
25 and that leaves you with value which as of today is about

1 a billion five, as I recall, in the vehicle. That  
2 residual, when the vehicle is wound up -- and it hasn't  
3 yet been wound up -- will be paid to the Federal Reserve  
4 Bank of New York.

5 So in addition to the interest consideration we  
6 got on the lending to the vehicle, there will be this  
7 additional form of consideration which is known as a  
8 residual. You can think of it as a type of equity. And  
9 as of today, that's about a billion five.

10 THE COURT: Excuse me. Mr. Baxter, if I may, why  
11 are these entities called Maiden Lane?

12 THE WITNESS: It's a long story, but I'm going to  
13 give it to you, Judge.

14 We first wanted to name the vehicles the Liberty  
15 vehicles after the front door of the Federal Reserve.  
16 And if you come to New York, our front door is on  
17 Liberty Street. The back door of the Fed is on  
18 Maiden Lane.

19 We first tried the name Liberty Street and it was  
20 already taken, so because we're not very creative, we  
21 then turned to the back side of the Federal Reserve,  
22 which is Maiden Lane, and so we started with that name  
23 after we couldn't do Liberty.

24 It has nothing to do with the belief that this is  
25 the back door of the Federal Reserve. It's simply

1 selecting a street because we're not very creative in  
2 terms of vehicles.

3 Now, once we named the first, you could ask, well,  
4 why didn't you name the second and the third something  
5 other than Maiden Lane. And I think that just is a  
6 testament to the lack of creativity.

7 MR. GARDNER: And you certainly should not ask  
8 what the side streets are called, Your Honor.

9 THE WITNESS: William and Nassau if you need to  
10 know.

11 MR. GARDNER: There you go. Mystery solved.

12 BY MR. GARDNER:

13 Q. Now, Mr. Baxter, I think you alluded to this  
14 earlier, but in the March 2008 time frame, did you reach  
15 a conclusion as to the legality of taking the residual  
16 from Maiden Lane I as consideration for the extension of  
17 the loan?

18 A. Yes.

19 Q. And what was that conclusion?

20 A. That it was law.

21 Q. Now, are you familiar with something called the  
22 Term Securities Lending Facility?

23 A. Yes.

24 Q. What's that?

25 A. On the weekend before Bear Stearns weekend, we

1 started to address a problem that we were seeing in the  
2 markets. And the problem we were seeing in the markets  
3 was many broker-dealers were having difficulty financing  
4 collateral other than Treasury securities and  
5 mortgage-backed securities that were backed by the full  
6 faith and credit of the United States.

7 So we thought how can we alleviate that financing  
8 condition, and one of the ways to alleviate that  
9 financing condition were to take Treasury securities we  
10 had in portfolio -- and we have a sizable portfolio of  
11 Treasury securities -- lend those Treasury securities out  
12 against the securities that couldn't be financed.

13 So we would take the securities that  
14 broker-dealers, primary dealers specifically, couldn't  
15 finance in the open market. We would lend them our  
16 Treasuries, get back their less desirable collateral.  
17 They would be able to finance with those Treasury  
18 securities in the open market.

19 That securities lending facility was known as the  
20 Term Securities Lending Facility. We announced that  
21 facility on March 11, 2008.

22 Q. The Term Securities Lending Facility, what was the  
23 consideration received by the New York Fed for that  
24 facility?

25 A. Interest.



1 Q. Were there any lending fees associated with the  
2 Term Securities Lending Facility?

3 A. Yes. There were fees.

4 Q. And were those lending fees also deemed by the  
5 New York Fed to be consideration for the establishment of  
6 the facility?

7 A. For the securities lending facility, yes.

8 Q. Are you familiar with something called the  
9 Money Market Investor Funding Facility?

10 A. Yes.

11 Q. Just rolls off the tongue.

12 What is the Money Market Investor Funding  
13 Facility?

14 A. Again, it was a facility we set up in the wake of  
15 Lehman Brothers because we were concerned about money  
16 markets, money market funds, like the reserve fund,  
17 finding adequate liquidity.

18 Q. And what was the consideration that the  
19 New York Fed received for the establishment of the  
20 Money Market Investor Funding Facility?

21 A. My recollection is it was interest and fees.

22 Q. Did the New York Fed have a right to share in the  
23 value of any excess assets held by certain of the  
24 special-purpose vehicles created pursuant to that  
25 program?

1           A.  Yes.  All of the Maiden -- all of the  
2 Maiden Lanes.

3           Q.  And again, is that consideration for those loans?

4           A.  Yes.

5           Q.  Now, you mentioned earlier in your testimony the  
6 Primary Dealer Credit Facility.  Do you recall that?

7           A.  Yes.

8           Q.  What was the consideration for the extension of  
9 loans under the Primary Dealer Credit Facility?

10          A.  It was interest.

11          Q.  Were there any fees assessed?

12          A.  I don't recall.

13          Q.  Do you recall any fees based on the frequency of  
14 usage?

15          A.  Yes.  There were fees on frequency of use.

16          Q.  And was that deemed to be a form of consideration?

17          A.  Yes.

18          Q.  Now, I mention -- you had mentioned that AIG was a  
19 participant in the Commercial Paper Funding Facility;  
20 correct?

21          A.  I believe that it had a special-purpose vehicle,  
22 and I think the name was Nightingale.

23          Q.  Did AIG also participate in the Term Securities  
24 Lending Facility?

25          A.  I don't recall.

1 Q. Okay. Now, with respect to the AIG loan -- we're  
2 back to AIG again -- what, if anything, did you conclude,  
3 Mr. Baxter, about the legality of conditioning a  
4 section 13(3) loan on the provision of equity?

5 A. On the basis of consideration that included equity  
6 but of course interest as well, it was my -- it was my  
7 legal opinion that that was within the statutory  
8 authority.

9 Q. And how did you reach that conclusion?

10 A. First on the basis of legal analysis done by my  
11 staff, then on the basis of my reading some of these own  
12 authorities myself.

13 Q. Now, on examination by Mr. Boies, he asked you  
14 about proposed legislation concerning the  
15 Federal Reserve Act, which I believe is PTX 136. Do you  
16 have that in front of you?

17 It should be in the binder you received this  
18 morning.

19 A. What was the number again, Mr. Gardner?

20 Q. PTX 136.

21 A. I have it.

22 Q. I'd like to draw your attention to the last page  
23 of the document. It's the page that Mr. Boies did not  
24 show you.

25 And it says, in the second sentence, "It would

1 also clarify that the Reserve Bank may impose any  
2 condition in connection with providing funding to an  
3 IPC."

4 What did you mean by the use of the term  
5 "clarify"?

6 A. First, I didn't write these words, so I can't  
7 really answer what I meant because I didn't write these  
8 words.

9 You also, Mr. Gardner, I think characterized this  
10 as proposed legislation. I don't believe this was ever  
11 proposed to the United States Congress.

12 Q. Thank you for that clarification.

13 Did you have any understanding or any  
14 conversations with those who were responsible for  
15 drafting PTX 136 as to what was meant by the use of the  
16 word "clarify"?

17 A. Yes. My understanding is this was a  
18 clarification, although I do note that in the title it  
19 does suggest that we're trying to improve emergency  
20 powers.

21 Q. Fair enough.

22 Now, let's go back to the 8:00 a.m. call on  
23 September 16, which feels like weeks ago from when we  
24 were talking earlier.

25 What decision, if any, was made on that phone call

1 about the extension of a loan to AIG?

2 A. The decision was made that it was in the interest  
3 of the government to avoid the systemic consequences that  
4 would result from an AIG bankruptcy and that the way to  
5 accomplish that was through liquidity from the  
6 Federal Reserve. But I don't want you to think that the  
7 decision was made, because the decision as a matter of  
8 law had to be made by the Board of Governors.

9 Q. Understood.

10 Now, was a plan of action developed as a result of  
11 that 8:00 a.m. call on September 16?

12 A. Yes.

13 Q. What was that plan?

14 A. The first step in the plan was for me to meet  
15 with the advisors to the private sector consortium that  
16 had been contemplating lending to AIG and essentially to  
17 take over those advisors so that we could pick up on the  
18 work they had been doing to make a very significant  
19 credit extension to AIG.

20 Q. And then was there also activity on the  
21 Board of Governors front? You'd mentioned before that a  
22 loan had to be I believe authorized by the  
23 Board of Governors. What plan of action was I guess  
24 determined with respect to that issue?

25 A. Yes. What was happening in Washington is first

1 the Federal Open Market Committee meeting had to run its  
2 course, and my recollection is that took place from  
3 9:00 to 12:00. And then after the FOMC meeting broke,  
4 then there was a board meeting to be called, at which  
5 point the chairman, Chairman Bernanke, would recommend  
6 that the New York Fed be authorized to lend to AIG.

7 Q. Now, you'd mentioned that one of the items or the  
8 tasks that you were involved in after the 8:00 a.m. call  
9 was getting those advisors who worked on the private  
10 sector term sheet to come over to the New York Fed  
11 basically to step into the shoes of the private sector  
12 consortium; is that correct?

13 A. We, the New York Fed, were stepping into the shoes  
14 of the lender that was doing the consortium, which was  
15 JPMorgan Chase, to effect that, to implement that. The  
16 speediest way would be to take over their advisors. On  
17 the legal side that was Davis Polk, and then on the  
18 financial side it was Morgan Stanley.

19 Q. And now, just to be clear, as of 8:00 a.m. on  
20 September 16, who was Davis Polk representing at that  
21 point?

22 A. At that point JPMorgan Chase.

23 Q. And what about with respect to Morgan Stanley?  
24 Who were they representing as of 8:00 a.m. on  
25 September 16?

1           If you know.

2           A. I don't recall if it was JPMorgan Chase or AIG  
3           itself.

4           Q. Now, to your knowledge, Mr. Baxter, who from  
5           Davis Polk worked on developing the documentation for the  
6           loan?

7           A. For the loan documentation I wanted Brad Smith,  
8           who was a lawyer I knew at Davis Polk, who has an  
9           excellent reputation with respect to lending agreements,  
10          and I wanted specifically for this engagement, for a loan  
11          of this size, which I think was the largest single  
12          extension of credit to a single borrower in the history  
13          of the world, I wanted the best person I knew who could  
14          take on that engagement, and that was Brad Smith.

15          Q. And were there others from Davis Polk whom you  
16          interacted with with respect to the development of the  
17          documentation for the loan?

18          A. Yes. Marshall Huebner.

19          Q. And who from the New York Fed was involved in  
20          drafting the documentation for the loan to AIG?

21          A. I turned to one of my deputies. Joyce Hansen is  
22          her name. And Joyce is also an experienced lending  
23          lawyer. And I asked Joyce to work collectively with  
24          Brad, who she also knew, to develop the legal  
25          documentation.

1 Q. Now, as of the early afternoon on September 16,  
2 Mr. Baxter, what was your involvement in issues related  
3 to AIG?

4 A. With respect to AIG, I knew we had to get a term  
5 sheet down to the Board of Governors because my  
6 colleague, Mr. Alvarez, was organizing the board  
7 meeting, and he had to have something to present in  
8 terms of what the terms were going to be that the board  
9 was expected to be authorizing, so we had to get  
10 something down to the Board of Governors at the earliest  
11 possible time.

12 Q. And what involvement did you have in the  
13 development of the September 16, 2008 term sheet?

14 A. I was organizing the legal team. They got  
15 together and drafted something. At some point I reviewed  
16 what the term sheet that -- the term sheet that they had  
17 drafted, and then I forwarded it to Mr. Alvarez at the  
18 board so that he could present it in connection with the  
19 board authorization.

20 Q. And I believe you testified to this already, but  
21 just to put this in sort of chronology, what is your  
22 understanding as to where the original terms from the  
23 term sheet derived?

24 A. The original terms of the term sheet came from  
25 the private sector term sheet. And when I was told in



1 the morning that we were essentially taking over a deal  
2 that the private sector was organizing, I thought I  
3 needed to get the advisors who were working on that deal  
4 and I also needed to see what the term sheet was to get  
5 us started.

6 Q. Why don't we take a look at an exhibit. It's  
7 Joint Exhibit or JX 65. It should be in the binder I  
8 handed to you just a few minutes ago or about an hour and  
9 a half ago.

10 A. Did you say 165?

11 Q. No. No. 65.

12 And Your Honor, for the record, this is a document  
13 that has some redacted privileged information reflected  
14 on it, but it is a joint exhibit, so I think both sides  
15 agree it is appropriate.

16 MR. BOIES: And as a joint exhibit has been  
17 admitted.

18 MR. GARDNER: Yes. I'm not seeking to admit it.  
19 It's in.

20 BY MR. GARDNER:

21 Q. Do you have that document in front of you,  
22 Mr. Baxter?

23 A. I have the document in front of me, yes.

24 Q. What is JX 65?

25 A. As best I can remember, the term sheet itself,

1 which is attached to an e-mail from James -- an e-mail  
2 from James B. Lee to Marshall Huebner, is the private  
3 sector term sheet that I recollected.

4 Q. I see.

5 Now, if you look at the page 3 of 4, there's a  
6 thing called the "Indicative terms and conditions."

7 Do you see that?

8 A. Yes.

9 Q. Is it your understanding that these indicative  
10 terms and conditions are the terms and conditions that  
11 the private sector consortium had developed?

12 A. Yes.

13 Q. And what was the amount that was considered at  
14 least by the private sector consortium?

15 A. \$75 billion.

16 Q. And what was the interest rate that was being  
17 proposed?

18 A. LIBOR plus 650 basis points with a 3.5 percent  
19 LIBOR floor.

20 Q. And what was -- and there's a thing called warrant  
21 allocation. What's that?

22 A. Any warrants on common shares representing up to  
23 79.9 percent of the company. Again, warrants for shares  
24 of the company and warrants for 79.9 percent of the  
25 common.

1 Q. So this private sector term sheet is contemplating  
2 that the consortium would receive 79.9 percent of the  
3 company?

4 A. Right. As an equity kicker to this loan.

5 Q. As an equity kicker, that's right.

6 Now, at some point -- I think you alluded to  
7 this -- during the afternoon on September 16, did you  
8 provide a term sheet to Scott Alvarez at the  
9 Federal Reserve Board of Governors?

10 A. Yes.

11 Q. And can we take a look at JX 64, which I'm hopeful  
12 is the exhibit right before 65, but I could be wrong.  
13 Thank goodness.

14 Do you recognize Joint Exhibit 64?

15 A. Yes.

16 Q. And what is JX 64?

17 A. It is the term sheet that I sent via e-mail to my  
18 colleague at the Board of Governors, Scott Alvarez.

19 Q. And you sent it at what time, sir?

20 A. At 2:15 in the afternoon on September 16, 2008.

21 Q. Now, before you sent it on to Mr. Alvarez, had you  
22 reviewed JX 64?

23 A. Yes.

24 Q. Now, if you could turn to page 4 of JX 64, can you  
25 describe how the equity provision is described in this

1 term sheet.

2 A. Yes. It's warrants for the purchase of common  
3 stock of AIG representing 79.9 percent of the common  
4 stock of AIG on a fully diluted basis.

5 Q. Now, I want to look at the term that says  
6 "Facility," if we could look at that term. I believe  
7 it's on page 3 of 15.

8 Now, during your discussion with Mr. Boies, I  
9 think there was some back-and-forth as to who the  
10 purchaser would be under this term sheet. Do you recall  
11 that?

12 A. Yes.

13 Q. Looking at this provision that says "Facility,"  
14 can you identify who the -- who the purchaser would have  
15 been?

16 A. Well, with respect to where it says "Facility,"  
17 the second sentence says, "In consideration of the  
18 Commitment, AIG will issue" -- and it's in brackets -- to  
19 [U.S. Treasury] upon entering into the Agreement the  
20 Warrants described below."

21 Q. So at the time that this term sheet, JX 64, was  
22 provided to Mr. Alvarez, what was represented as to who  
23 the purchaser of the warrants would be?

24 A. It states in the document U.S. Treasury. The  
25 reason that's bracketed is because there was no final

1 decision on that as of the time this term sheet was  
2 prepared.

3 Q. Now, after you provided Mr. Alvarez with the  
4 JX 64, how, if at all, did the equity provision change  
5 over the course of that day?

6 A. It changed from a description of warrants to a  
7 description of preferred shares in a form to be  
8 determined.

9 Q. Preferred shares in a form to be determined or  
10 equity?

11 A. Equity participation in a form to be determined.

12 Q. Got it.

13 Now, who was involved in making that change from a  
14 description of warrants to equity in a form to be  
15 determined?

16 A. I was. Davis Polk was involved. And I believe I  
17 also had conversations with Scott Alvarez.

18 Q. Why was the term sheet's description of the equity  
19 provision changed from warrants to equity participation  
20 in a form to be determined?

21 A. For the reasons that I testified about earlier, we  
22 were concerned about the controlling interest in AIG and  
23 getting into safe and capable hands and establishing a  
24 better governance for AIG.

25 Q. Do you have an understanding as to why the

1 79.9 percent equity interest was included in the AIG term  
2 sheet?

3 A. It was also that number in the original private  
4 sector term sheet, and I understand that it is  
5 commonplace to limit equity kickers to 79.9 percent  
6 because of pushdown accounting principles and  
7 consolidation issues, so I'm -- I'm informed that you  
8 can't exceed that threshold without creating accounting  
9 and other types of problems.

10 Q. Now, independent of the private sector term sheet,  
11 Mr. Baxter, did you separately consider the legality of  
12 including the 79.9 percent equity interest in the  
13 New York Fed's term sheet to AIG?

14 A. I had separately already concluded that we could  
15 take equity in consideration of a section 13(3) loan. I  
16 had never focused on the precise amount, 79.9 percent,  
17 until I saw that in the private sector term sheet.

18 Q. Now, you testified with Mr. Boies about attempts  
19 to value the 79.9 percent equity interest. Do you recall  
20 that?

21 A. Yes.

22 Q. And do you recall who was involved in those  
23 assessments?

24 A. I know I spoke with Mr. Geithner about what we  
25 thought this equity interest was worth at that time.

1 Q. To your knowledge, Mr. Baxter, did anyone at the  
2 New York Fed reach a conclusion concerning what the  
3 equity would be worth if AIG had declared bankruptcy  
4 after the New York Fed had extended the loan?

5 A. I don't recall that consideration.

6 Q. Okay. To your knowledge, did representatives of  
7 the New York Fed ever provide representatives of AIG with  
8 a term sheet specifying that the form of equity would be  
9 in warrants rather than form to be determined?

10 A. To my knowledge, that didn't happen.

11 Q. Why don't we take a look at JX 83.

12 THE COURT: Before we leave this document, could  
13 you, Mr. Baxter, compare the interest rate included in  
14 this term sheet with the one that the private sector had  
15 developed. How was it different?

16 THE WITNESS: And for a long time, Your Honor, I  
17 had remembered that we took the interest rate in the  
18 private sector term sheet, and that was the interest rate  
19 that we had sent down in the term sheet communicated to  
20 the board. That was my belief. And at some point I  
21 learned that we had actually raised it.

22 And I cannot tell you the rationale for increasing  
23 the interest rate from what you see in the private sector  
24 term sheet to what you see in the one we communicated to  
25 the board. My own recollection is, they were the same,

1 so my -- I know my recollection is faulty and that it did  
2 in fact change. As I sit here, I can't tell you how or  
3 why.

4 THE COURT: Well, but how do they compare? How is  
5 one different from the other?

6 THE WITNESS: I think that the one that we --  
7 well, let me look.

8 MR. GARDNER: Yes. If we can put them on the  
9 screen, maybe that would be the most useful.

10 THE COURT: I think I understand, but I would like  
11 this witness to tell me.

12 MR. GARDNER: Of course.

13 Charles, could we put up JX 65 and JX 64, and what  
14 we need to look at is the second page of both term  
15 sheets. It would be the first page of the -- yeah, there  
16 we go.

17 THE WITNESS: It's the next -- it's page 4 on the  
18 left side.

19 BY MR. GARDNER:

20 Q. And as you're explaining to the Court, Mr. Baxter,  
21 it might be helpful to explain what LIBOR is.

22 A. LIBOR is the London interbank offering rate, and  
23 that's the base rate.

24 So in the private sector term sheet, the interest  
25 rate is that base rate, Your Honor, LIBOR, plus 650 basis



1 points, and then there's a -- there's a -- there's a  
2 limit on how low LIBOR can go to 3.5 percent.

3 THE COURT: So if it's 3.5 percent LIBOR plus  
4 650 basis points, that would then be a minimum of  
5 10 percent?

6 THE WITNESS: Correct.

7 THE COURT: Okay.

8 THE WITNESS: And in the one that was  
9 communicated to the Federal Reserve Board, it's floating  
10 rate three-month LIBOR plus 850 basis points with a  
11 3.5 percent LIBOR floor per annum payment in kind, so  
12 essentially 200 basis points higher.

13 THE COURT: And so a minimum then of 12 percent  
14 depending upon what the floating rate three-month LIBOR  
15 was.

16 THE WITNESS: Yes.

17 THE COURT: Thank you.

18 THE WITNESS: It was a very high interest rate.

19 THE COURT: Right.

20 Thank you.

21 BY MR. GARDNER:

22 Q. Now, let's take a look at JX 83.

23 And in particular, Mr. Baxter, I want to focus  
24 your attention, if I can get there, on page 16 of 24.

25 And let me know when you're there.

1 A. Yes.

2 Q. Do you recognize what begins on page 16 of 24 of  
3 JX 83?

4 A. Yes.

5 Q. What is it?

6 A. It's the term sheet that was communicated to AIG.

7 Q. Now, if you look at the equity participation on  
8 page 17 of 24, how is the equity participation  
9 described?

10 A. It's described as "equity participation equivalent  
11 to 79.9 percent of the common stock of AIG on a fully  
12 diluted basis. Form to be determined."

13 Q. What is your understanding of what equivalent to  
14 the common stock means?

15 A. That the voting power of this particular equity  
16 would be equal to 79.9 percent of the common.

17 Q. Now, if you go back to page 16 of 24, how is the  
18 lender described?

19 A. It's described as Federal Reserve Bank of New York  
20 ("New York Fed" or "Lender").

21 Q. Now, earlier with Mr. Boies you discussed the  
22 notion I believe that Scott Alvarez was upset when under  
23 Lender the New York Fed was described as "Purchaser"; is  
24 that correct?

25 A. That's correct.

1 Q. Was that changed to "Lender" in JX 83 to meet  
2 Mr. Alvarez' concerns?

3 A. I don't recall.

4 Q. Okay. But you do know that it was changed at some  
5 point from "Purchaser" to "Lender"?

6 A. Yes.

7 Q. Now, I know the Court asked you how the interest  
8 rate changed between the JPMorgan term sheet and the  
9 warrants term sheet that went to the board.

10 Can you describe how the interest rate changed  
11 between the JPMorgan term sheet and what you've described  
12 as the final term sheet, which is JX 83?

13 A. I can't. I don't know.

14 Q. Well, I guess what I'm asking you to do is if you  
15 can look at the interest rate on JX 83 page 17.

16 A. Yes.

17 Q. And we can compare it to JX 65.

18 Can you explain to the Court how the interest rate  
19 changed from the private sector term sheet to the term  
20 sheet that was ultimately provided to AIG's board of  
21 directors?

22 A. The reference rate in the term sheet provided to  
23 AIG established a floating rate of three-month LIBOR, and  
24 in the private sector term sheet it was just listed as  
25 LIBOR, which is less accurate. And then the increase

1 over LIBOR is 850 basis points in the term sheet  
2 delivered to AIG, which is 200 basis points higher than  
3 what you see in the private sector term sheet.

4 Q. Who ultimately made the decision regarding the  
5 interest rate that would be proposed in the term sheet  
6 provided to AIG's board of directors?

7 A. That decision was made by Mr. Geithner.

8 Q. Now, why don't we take a look at PTX 183. That's  
9 an exhibit that would be in the set of binders or the  
10 binder that Mr. Boies provided you this morning. It  
11 should be a term sheet, the equity term sheet.

12 A. Yes.

13 Q. Now, just to clear up any confusion here, PTX 183,  
14 this is a term sheet that would accompany the revolving  
15 credit facility; is that correct?

16 A. Correct.

17 Q. So that's a separate term sheet than what was  
18 provided to AIG's board on September 16, 2008?

19 A. Yes.

20 Q. Okay. Now, do you recall on the evening of  
21 September 16 having a conversation with representatives  
22 of AIG about certain of the loan terms?

23 A. Yes.

24 Q. And can you please describe that conversation.

25 A. It was a conversation between Mr. Willumstad and

1 Mr. Geithner, and I was present with Mr. Geithner for the  
2 conversation. And the conversation turned on whether  
3 there was any give in the equity and whether -- whether  
4 AIG could negotiate a fiduciary out. And the answer to  
5 both of those questions was no.

6 Q. Do you recall his reasons why he said no?

7 A. I don't recall the reasons. I don't know any  
8 reasons were stated, that it was a take-it-or-leave-it  
9 principle that Mr. Geithner was articulating to  
10 Mr. Willumstad.

11 Q. Now, do you recall the concerns expressed by  
12 Mr. Willumstad or his representatives on this  
13 September 16 call being the amount of equity requested or  
14 that any equity was being requested?

15 A. I don't recall.

16 Q. Okay. Why don't we do this then. I don't have it  
17 in the binder, and I apologize about that, but I'd like  
18 to show you JX 52 and see if I can refresh your  
19 recollection on this.

20 And I apologize. I don't have another copy of it,  
21 but we'll see what we can do.

22 I do not think we have a separate copy of this,  
23 but I'm just using it to refresh recollection. I'm not  
24 seeking to admit it, although it's already admitted.

25 THE COURT: Can we put it on the screen?

1 MR. GARDNER: I think we should.

2 Can you, Charles, put up, JX 52.

3 And the page I want to refer you to -- the  
4 Court's indulgence. Sorry. Just one kick second,  
5 Your Honor.

6 (Pause in the proceedings.)

7 I'll tell you what. Let me move on. I'll get  
8 back to it.

9 THE COURT: Okay.

10 MR. GARDNER: Sorry about that.

11 BY MR. GARDNER:

12 Q. You mentioned that one of the issues addressed or  
13 raised on that September 16 call was a question or an  
14 issue about a fiduciary out.

15 What is a fiduciary out?

16 A. It's a contractual term that is sometimes  
17 negotiated between the parties to a commercial  
18 transaction where if another deal comes along that in one  
19 party's exercise of fiduciary duty it believes is more  
20 advantageous to the company that it can break the deal  
21 and go to that other, more valuable deal.

22 Q. And you mentioned that President Geithner rejected  
23 that request?

24 A. Yes.

25 Q. Did President Geithner say that he would be

1 willing, if AIG could find someone who could assume the  
2 entirety of the loan, that that would be appropriate?

3 A. And protect the government position, yes.

4 Q. Now, did you have a view, Mr. Baxter, at the time  
5 as to whether Mr. Geithner was bluffing when he stated  
6 that the terms were nonnegotiable?

7 A. No.

8 Q. Why did you hold that view?

9 A. I had worked with Mr. Geithner for a number of  
10 years and I -- I knew that the man didn't bluff. He said  
11 what he meant and he meant what he said.

12 Q. Were you aware, Mr. Baxter, of any other  
13 alternative offers or plans to provide to AIG in the  
14 event that they rejected the New York Fed's offer?

15 A. On that particular day, September 16, 2008, there  
16 were no other options.

17 Q. What ability did the New York Fed have to prevent  
18 AIG from filing for bankruptcy?

19 A. Legally, we had no authority to prevent them from  
20 filing.

21 Q. Did AIG ultimately accept the New York Fed's offer  
22 to provide an 85 billion lending facility?

23 A. Yes.

24 Q. How was AIG's acceptance of the terms conveyed to  
25 the New York Fed?

1           A. It was communicated back in a document that  
2 Mr. Boies showed me earlier today, a fax with a signature  
3 from Bob Willumstad, the CEO, essentially agreeing to the  
4 terms that had been -- the outline of terms that we had  
5 communicated to AIG.

6           Q. Now, that fax, which I'll represent is PTX 94, was  
7 that a document that you or someone else at the  
8 New York Fed had requested that Mr. Willumstad provide to  
9 you?

10          A. Yes.

11          Q. And why did you request that Mr. Willumstad  
12 provide that signature page to you?

13          A. I had been asked by Mr. Geithner to get some  
14 written manifestation that AIG was accepting the terms  
15 that we were proposing. And I believe it was because  
16 people wanted comfort before issuing a press release that  
17 night from the Federal Reserve Board saying that this  
18 deal had been struck. They wanted something in writing  
19 from AIG to be sure that we could have the confidence to  
20 issue the press release.

21          Q. Now, if you look at PTX 94 and in particular the  
22 second page, is what I'm really interested in, there's a  
23 statement here that says, "American International Group,  
24 Inc. ('AIG') hereby agrees to and accepts the summary of  
25 terms for the Senior Bridge Facility presented to AIG by



1 the Federal Reserve Bank of New York," and then it's  
2 signed Robert B. Willumstad.

3 Do you see that?

4 A. Yes.

5 Q. What was your understanding, Mr. Baxter, of the  
6 significance of Mr. Willumstad's signature on PTX 94?

7 A. Well, in the document that this is associated  
8 with, which is the term sheet, the term sheet itself  
9 states right at the outset that it is not legally  
10 binding, so there's an internal inconsistency between  
11 this statement and the statement at the very top of the  
12 term sheet. And that calls for a reconciliation, how can  
13 you reconcile these two seemingly inconsistent  
14 statements.

15 And the way that I reconcile it is that this  
16 represented an obligation to act in good faith to try to  
17 turn into legally binding terms the outline that is in  
18 the term sheet. But that was what it was, an obligation  
19 to try in good faith to create legally binding terms. It  
20 wasn't the term sheet legal binding in itself. It just  
21 created this good-faith obligation to try to execute a  
22 legal agreement.

23 Q. Now, I think you've already testified to this, but  
24 did the New York Fed in fact extend money to AIG on  
25 September 16?

1 A. Yes. Fourteen billion taxpayer dollars.

2 Q. Did the Federal Reserve Board of Governors provide  
3 a press release on September 16 concerning the loan to  
4 AIG?

5 A. Concerning the outline of terms, yes.

6 Q. Why don't we take a look at DX 438.

7 A. I'm getting lost in my binders, Mr. Gardner.

8 Q. You and me both.

9 A. DX.

10 Q. D as in dog. Defendant's Exhibit 438. And that  
11 should be in the binder --

12 A. I have located it. Yes.

13 Q. Great.

14 Do you recognize what's been marked as Defendant's  
15 Exhibit 438?

16 A. Yes.

17 Q. What is it?

18 A. Mr. Cohen at -- Mr. Cohen was the senior lawyer  
19 at Sullivan & Cromwell representing AIG. He had sent me  
20 an e-mail at 9:05 that night asking, "Any word on the  
21 timing of the press release?"

22 I responded to Mr. Cohen at 9:40 at night with a  
23 copy of the press release that had just been issued by  
24 the Board of Governors.

25 Q. And I'm not sure that we've actually identified

1 who Rodgin Cohen is, so just for the record, who is  
2 Rodgin Cohen?

3 A. Rodgin Cohen is a senior partner at  
4 Sullivan & Cromwell.

5 Q. And who as of September 16 was Sullivan & Cromwell  
6 representing?

7 A. AIG.

8 MR. GARDNER: Okay. Your Honor, the government  
9 moves for the admission of DX 438 into evidence.

10 MR. BOIES: No objection, Your Honor.

11 THE COURT: Defendant's Exhibit 438 is admitted.

12 (Defendant's Exhibit Number 438 was admitted into  
13 evidence.)

14 BY MR. GARDNER:

15 Q. Now, as you've already identified, Mr. Baxter, the  
16 second page of DX 438 is the Board of Governors press  
17 release concerning the AIG deal; is that right?

18 A. Yes.

19 Q. And the press release states that the U.S.  
20 government will receive a 79.9 percent equity interest in  
21 AIG and has the right to veto the payment of dividends to  
22 common and preferred shareholders.

23 How does this description of the rescue terms in  
24 the New York -- sorry -- the Board of Governors press  
25 release comport with your understanding of the loan

1 extended to AIG on September 16?

2 MR. BOIES: Excuse me. Is counsel referring to  
3 DX 438?

4 MR. GARDNER: Yes. The second page, the  
5 Board of Governors press release, and in particular that  
6 highlighted passage that is up on the screen, the one I  
7 have just read.

8 MR. BOIES: Thank you.

9 MR. GARDNER: You're welcome.

10 BY MR. GARDNER:

11 Q. Just so we have a clean record, how about I ask  
12 the question again.

13 How does this description, which I just read from  
14 DX 438, compare with your understanding of the loan  
15 extended to AIG on September 16?

16 A. I can't answer the question in the way you've  
17 worded it, Mr. Gardner.

18 The highlighted language, "The U.S. government  
19 will receive a 79.9 percent equity interest in AIG and  
20 has the right to veto the payment of dividends to common  
21 and preferred shareholders," that language is consistent  
22 with the term sheet that was accepted by Mr. Willumstad  
23 in his fax to me, but no credit had been extended to AIG  
24 on the basis of that documentation. The credit that we  
25 had extended was on the basis of different legal

1 documentation.

2 Q. Thank you very much for clarifying that.

3 Now, in this e-mail that accompanies the press  
4 release, DX 438, Mr. Cohen states the press release was,  
5 quote, to the point.

6 Did Mr. Cohen ever tell you that he believed --

7 A. Is that in this exhibit?

8 Q. Yeah. It's the e-mail. It says, "Thanks. To the  
9 point." The very top passage. And if you look at the  
10 screen, you'll see it's highlighted.

11 It says, "Thanks. To the point."

12 Do you see that?

13 A. I see what it says on the screen. It's not what I  
14 have in my binder.

15 Q. Oh. Yikes. Well, I will definitely correct that.

16 MR. BOIES: It's not what we have either.

17 BY MR. GARDNER:

18 Q. Oh, it's the last page. I'm sorry. I believe  
19 it's the last page of the exhibit?

20 A. Yes. Now I see it.

21 Q. Technology making my life ever more difficult.

22 Where it says "Thanks. To the point," did  
23 Mr. Cohen ever tell you that he believed that the press  
24 release contained errors or misstated any of the terms of  
25 the deal?

1 A. The Federal Reserve press release?

2 Q. Yes. Correct.

3 A. No.

4 Q. Okay. Now, earlier you stated that the  
5 New York Fed provided \$14 billion of taxpayer money to  
6 AIG on the evening of September 16; correct?

7 A. Yes.

8 Q. Could you describe the mechanics of actually  
9 wiring \$14 billion of taxpayer money to AIG on the night  
10 of September 16?

11 A. Yes. Before we could actually wire the money, we  
12 had to first get a perfected security interest in the  
13 collateral that secured us on the demand note. And to do  
14 that, we had to take possession of that collateral.

15 And so I had to detail a group of Federal Reserve  
16 police to go from our offices on Liberty Street to AIG's  
17 offices on Pine Street to take the collateral, bring it  
18 back through the streets of downtown Manhattan, and  
19 secure it in our vaults on Liberty Street and also value  
20 that collateral so that we weren't extending \$14 billion  
21 of taxpayer dollars, \$14 billion worth of credit, against  
22 collateral that had a lendable value which was lower than  
23 that. And I was assured that wasn't the case.

24 So once those steps had taken place, then we had  
25 to arrange for a Fedwire to go to AIG. And to arrange

1 for that, we had to extend the hours of Fedwire beyond  
2 the traditional closing time to effect that wire  
3 transfer.

4 Q. And what are the implications or the issues with  
5 extending the Fedwire?

6 A. Extending the Fedwire hours involves that --  
7 involves all depository institutions that are  
8 participating in Fedwire -- and those are thousands of  
9 depository institutions -- to hold their people over  
10 until Fedwire closes.

11 Q. I see.

12 Now, before we move on, I did find the part of  
13 JX 52 that I wanted to share with you, and what I can do  
14 is I can hand it to you and then I can also put it on the  
15 screen as well. And what I'm interested in is page 20 of  
16 31.

17 I'm sorry. Your Honor, may I approach?

18 THE COURT: Yes.

19 BY MR. GARDNER:

20 Q. Now, Mr. Baxter, there is a discussion in  
21 JX 52 where there's a reference in the middle of the  
22 page -- I believe it's line 15 -- that says "a fiduciary  
23 out if someone else comes along," and then it says  
24 "equity, troubled by 79.9 percent, would like it to be  
25 50 percent."

1           Do you see that?

2           A. Yes.

3           Q. Now, first of all, is that your handwriting,  
4 Mr. Baxter?

5           A. It is.

6           Q. And does that refresh your recollection that on  
7 that phone call by Mr. Willumstad on the night of  
8 September 16, 2008, what they were asking for was a  
9 reduction in the amount of equity?

10          A. Yes.

11          Q. Okay. Now -- you can put that aside or I can take  
12 that back.

13          A. I just should note one other thing. You can see  
14 adjacent to each of those there's a -- there's a  
15 squiggly line and in both cases the word "no" is  
16 circled.

17          Q. Yes.

18          A. And that was my acknowledging that Mr. Geithner  
19 asked those -- answered those questions negatively.

20          Q. Thank you.

21                 Now, Mr. Baxter, there was some discussion earlier  
22 on, I believe with Mr. Boies, about the security that  
23 would be used -- that the New York Fed would accept as  
24 collateral for the \$85 billion loan.

25                 Did you have any of involvement, Mr. Baxter, in



1 determining what securities the New York Fed would accept  
2 as collateral for the \$85 billion loan to AIG?

3 A. Yes. It would have been the collateral that was  
4 identified in the revolving credit agreement.

5 Q. Now, did others at the New York Fed also have the  
6 responsibility for determining what securities the  
7 New York Fed would accept as collateral?

8 A. Yes.

9 Q. And who are those?

10 A. They would be individuals in the loans and credits  
11 function of the New York Fed, and they would work in  
12 conjunction with members of the legal department staff.

13 Q. Now, on direct examination, or I should say the  
14 examination by Mr. Boies, you stated that the  
15 New York Fed's loan was fully secured; is that right?

16 A. That was my understanding.

17 Q. And what does that mean? Well, what did you mean  
18 when you used the term "fully secured"?

19 A. What I always meant is that we had a perfected  
20 first-priority security interest in collateral that had a  
21 lendable value equal to or in excess of the amount  
22 extended.

23 Q. And I think you said that the collateral in the  
24 case of the 85 billion credit facility was the insurance  
25 subs; is that right?

1           A.  Yes.

2           Q.  Now, were there any concerns about pledging the  
3 shares of AIG's insurance subsidiaries as collateral for  
4 the AIG loan?

5           A.  Yes.

6           Q.  What were those concerns?

7           A.  There were concerns that there might be legal  
8 restrictions on the pledge of those shares.

9           Q.  What do you mean?

10          A.  Some shares are restricted and can't be pledged,  
11 so you would rely on your lawyers to make sure that the  
12 collateral you were taking was capable of being pledged  
13 as a matter of law.

14          Q.  Are you familiar with a concept called correlation  
15 risk?

16          A.  Yes.

17          Q.  What's correlation risk?

18          A.  Correlation risk doesn't go so much to the legal  
19 issues associated with the collateral.  It goes to the  
20 valuation.

21                 And the problem with taking shares of a subsidiary  
22 as collateral for a loan made to the parent is that if  
23 the parent files in bankruptcy, that customarily will  
24 have a deleterious effect on the value of the subs,  
25 particularly in a regulated space like insurance and

1 banking.

2 Q. Can you expand upon what? What do you mean? What  
3 is the correlation risk concerned with insured  
4 subsidiaries?

5 A. Well, you can value an insured subsidiary today,  
6 for example, where the parent company is fully operating  
7 and not in bankruptcy. Once the company, the parent,  
8 goes into bankruptcy, you lose all source of parental  
9 support, so with respect to the ability to downstream  
10 equity, for example, that goes away.

11 So a bankruptcy of a parent always has an adverse  
12 effect on the valuation of subsidiary shares. It can't  
13 be good for the subsidiaries. And that is a shorthand  
14 summary of correlation risk.

15 Q. And was correlation risk a concern you had with  
16 respect to the valuation of the security used to perfect  
17 the AIG loan?

18 A. Yes.

19 Q. How, if at all, were those risks or concerns  
20 resolved?

21 A. Well, you couldn't really -- you couldn't really  
22 eliminate the correlation risk when you're taking shares  
23 of the subsidiary. What you could do is try to increase  
24 the consideration for the loan. That could help  
25 compensate for the risk. That's one option. Or you

1 could take other forms of consideration.

2 Q. And with respect to the AIG loan, how, if at all,  
3 was that risk mitigated or resolved? If you know. If it  
4 was resolved.

5 A. Well, there was a very high interest rate that at  
6 some times I've inappropriately characterized. And in  
7 addition to that, we had the upside potential represented  
8 by the AIG equity held by the AIG Credit Facility Trust.

9 Q. How did security for the loan to AIG compare to  
10 the security that the New York Fed required for other  
11 13(3) loans?

12 A. It was certainly different with respect to shares  
13 of subs, and each one of the facilities had different  
14 types of collateral to secure it.

15 Q. To what extent did you believe, Mr. Baxter, that  
16 there was risk in securing the New York Fed's loan with  
17 AIG's equity interest in its insurance subsidiaries?

18 A. I believe that we were fully secured, but that  
19 does not mean the lending is risk-free. And if you look  
20 at the history of lending in the United States, you'll  
21 see many situations where lenders believed they were  
22 fully secured but at the end of the day took large loan  
23 losses.

24 Q. Well, Mr. Baxter, how could a loan be secured in  
25 the satisfaction of the president of the New York Fed on

1 the one hand but still be risky on the other?

2 A. Well, you determine whether you're fully secured  
3 on the first day of the loan, and things happen between  
4 the first day of the loan and the loan matures, the  
5 maturity of the loan, that are adverse to the borrower,  
6 and that's what tends to result in loan losses.

7 Q. I want to change gears.

8 On examination by Mr. Boies, do you recall that  
9 the term "bank holding company" was used?

10 A. Yes.

11 Q. I'm not sure we actually defined that term. Could  
12 you define what a bank holding company actually is?

13 A. Yes. It's a bank holding -- a bank holding  
14 company is a company that owns or controls a commercial  
15 bank.

16 Q. What's the benefit of being a bank holding  
17 company? If any.

18 A. You know, that calls for a subjective answer on my  
19 part. It is said that there is a benefit to being  
20 supervised by the Federal Reserve.

21 Q. Now, as you testified in your early examination by  
22 Mr. Boies, in September 2008, Morgan Stanley and  
23 Goldman Sachs applied to become bank holding companies;  
24 correct?

25 A. They applied and they were approved to be bank

1 holding companies. Yes.

2 Q. Now, did the New York Fed place any conditions  
3 upon Morgan Stanley and Goldman Sachs becoming bank  
4 holding companies?

5 A. I don't recall those conditions.

6 Q. Do you know if Morgan Stanley and Goldman Sachs  
7 had to raise private capital as a condition to becoming  
8 bank holding companies?

9 A. I don't know.

10 Q. Okay. To your knowledge, did the New York Fed  
11 ever give consideration to AIG becoming a bank holding  
12 company?

13 A. No.

14 Q. Why not?

15 A. They never asked.

16 Q. Did it ever occur to you, Mr. Baxter, that AIG  
17 becoming a bank holding company would have been a  
18 solution to its liquidity problems?

19 A. No.

20 Q. Why not?

21 A. I believe that the liquidity problems that AIG was  
22 experiencing wouldn't have been helped by bank holding  
23 company status. The liquidity problems that it was  
24 experiencing in its Financial Products affiliate were  
25 problems that resulted from writing credit default swaps,

1 a kind of insurance contract on assets called  
2 collateralized debt obligations. And the problems that  
3 it was having in its domestic life subsidiary related to  
4 improvident decisions concerning securities lending.

5 Q. Did AIG own a commercial bank, to your knowledge?

6 A. No. It owned a thrift.

7 Q. And I think you mentioned earlier, AIG's thrift  
8 was a small thrift; right?

9 A. Correct.

10 Q. But it had access to the discount window?

11 A. Yes.

12 Q. Could AIG's thrift, even if it had been converted  
13 to a commercial bank, have provided source of borrowing  
14 authority sufficient to cover AIG's liquidity hole in  
15 September 2008?

16 A. It would have been a source of borrowing, but the  
17 borrowing would have been nowhere near sufficient.

18 Q. Let's change gears.

19 Mr. Baxter, shortly after September 16, do you  
20 recall that AIG issued an SEC Form 8-K purporting to  
21 describe the September 16 deal?

22 A. Yes.

23 Q. And did Mr. Huebner from Davis Polk identify any  
24 issues with the September 18, 2008 8-K?

25 A. Yes.

1 Q. Did Mr. Huebner tell you what he believed to be  
2 incorrect about the 8-K?

3 A. I remember him telling me that the 8-K indicated  
4 that a warrant had been issued, which is not correct.  
5 And I believe Mr. Huebner told me that AIG had announced  
6 that its deal with the Federal Reserve included warrants,  
7 which was also not correct.

8 Q. And what was your reaction to the concerns raised  
9 by Mr. Huebner relating to what he believed to be  
10 misstatements in the 8-K?

11 A. My first reaction is that he was a little more  
12 worked up than he needed to be.

13 Q. Why is that?

14 A. We had so many problems that, in my view at the  
15 time, a mistaken filing by AIG seemed to pale in its  
16 comparison to the other problems we were trying to  
17 address. But I became persuaded that it was a problem  
18 that needed to be remedied.

19 Q. And how or why did your decision-making or views  
20 change on that issue?

21 A. I believe I was persuaded that we needed to -- we  
22 needed to be sure that a filing by AIG describing a  
23 transaction that the Federal Reserve was a party to, that  
24 that -- that filing needed to be accurate.

25 Q. Now, I want you to turn in the binder I provided



1 to you to PTX 154.

2 And I believe this is an exhibit that has not been  
3 admitted into evidence yet, but I will be willing to be  
4 corrected on that. And if it hasn't been, Your Honor,  
5 I'd like to introduce PTX 154 into evidence.

6 I assume there won't be an objection since it's on  
7 the plaintiffs' exhibit list.

8 MR. BOIES: No objection, Your Honor.

9 THE COURT: PTX 154 is admitted.

10 (Plaintiffs' Exhibit Number 154 was admitted into  
11 evidence.)

12 BY MR. GARDNER:

13 Q. Mr. Baxter, do you have before you PTX 154?

14 A. Yes.

15 Q. What is it?

16 A. It's Mr. Huebner's e-mail to me and to others,  
17 including individuals.

18 Q. And is this the e-mail that you were referring to  
19 where he identified what he believed to be the  
20 inaccuracies in AIG's September 18 SEC Form 8-K?

21 A. Yes.

22 Q. Now, as a result of the inaccuracies in the 8-K,  
23 did AIG file an amended 8-K?

24 A. Yes.

25 Q. Why don't you take a look at that, and that's at

1 JX 99.

2 Do you have before you what's JX 99, Mr. Baxter?

3 A. I go from JX 88 to 183.

4 Q. I know. I completely apologize. This was one  
5 that we needed to include in.

6 May I approach, Your Honor?

7 THE COURT: Yes.

8 THE WITNESS: Thank you.

9 MR. GARDNER: Apologies.

10 BY MR. GARDNER:

11 Q. Mr. Baxter, sorry to make you hunt for that.

12 Do you recognize what I've handed to you as JX 99?

13 A. Give me one moment, Mr. Gardner.

14 Q. Please.

15 A. Yes.

16 Q. What is it?

17 A. It's the corrected 8-K filed by AIG. In pertinent  
18 part, it reads, "The summary of terms also provides for a  
19 79.9 percent equity interest in AIG."

20 Q. Now, you're referring --

21 A. So it's corrected from warrants.

22 Q. You're referring to page 2 of JX 99?

23 A. Yes.

24 Q. And in your view, does JX 99 properly describe  
25 those aspects of the deal reached between AIG and the

1 New York Fed on September 16, 2008?

2 A. It properly describes the provision of the term  
3 sheet that spoke about equity. Yes.

4 Q. Now, going back just a second to PTX 154 -- that's  
5 Marshall Huebner's e-mail to you -- he also expresses  
6 some concern about the fact that AIG did not share with  
7 the New York Fed in the first instance the 8-K before  
8 they filed it.

9 Do you recall that or do you see that?

10 A. Yes.

11 Q. Okay. And what was your view initially with  
12 respect to that issue?

13 A. Again, my view at the time is that was of greater  
14 concern to Mr. Huebner than it was to me. But I became  
15 persuaded over time that we should look at proposed  
16 filings that AIG was doing concerning transactions with  
17 the Fed.

18 Q. Did you reach the conclusion or have the view that  
19 the New York Fed should review all SEC filings by AIG  
20 regardless of whether they implicated the New York Fed's  
21 deal?

22 A. No. My view was we should look at the filings  
23 that described transactions with AIG and the  
24 New York Fed.

25 Q. And ultimately, on a going-forward basis after

1 September 18, is that how the New York Fed proceeded?

2 A. Yes. And we ultimately established formal  
3 procedures along those lines.

4 Q. Now, you mentioned one of the issues that you were  
5 involved in after September 16 was the development of the  
6 credit agreement; is that correct?

7 A. Yes.

8 Q. Now, in addition to the credit agreement, did the  
9 New York Fed provide an on-site team at AIG?

10 A. We had a team that we sent to AIG to monitor AIG  
11 on a continuous basis. Yes.

12 Q. Why were you monitoring AIG on a continuous  
13 basis?

14 A. We were worried about being repaid.

15 Q. And how does monitoring AIG on a continuous basis  
16 protect against the concern about not being repaid?

17 A. Well, the revolving credit agreement itself is  
18 heavy on different forms of covenants, and so the on-site  
19 team was there to help ensure that AIG was in compliance  
20 with the covenants and restrictions imposed by the  
21 revolving credit agreement.

22 Q. Who was responsible for drafting the credit  
23 agreement?

24 A. Ultimately I was responsible.

25 Q. Who else was involved in drafting the credit

1 agreement?

2 A. Davis Polk and lawyers who work in the legal group  
3 at the New York Fed.

4 Q. What was the form of equity that was ultimately  
5 provided for in the credit agreement?

6 A. Preferred shares.

7 Q. And where were those preferred shares held?

8 A. They were held by the AIG Credit Facility Trust.

9 Q. And who at the New York Fed was responsible for  
10 determining that the preferred voting shares would be the  
11 form used?

12 A. Ultimately that would be me.

13 Q. Now, you mentioned on direct or the examination by  
14 Mr. Boies and I think earlier with me this notion of a  
15 trust.

16 Can you describe this trust structure that was  
17 used to hold the preferred shares?

18 A. Yes.

19 And earlier today I testified about another trust  
20 that the Federal Reserve used with respect to shares of a  
21 bank holding company, First American Corporation, that  
22 had been unlawfully obtained by another financial  
23 institution called the Bank of Credit and Commerce  
24 International. And we created a trust to eliminate the  
25 unlawful ownership. And that trust was operated by a

1 trustee named Harry Albright and who ultimately sold off  
2 the First American Corporation shares at a profit.

3 So we had that prior experience that certainly was  
4 in my mind because I was involved in, and so the idea was  
5 to create a similar legal personality, a similar trust,  
6 and to use that device to hold the AIG credit facility,  
7 the AIG equity. But unlike the earlier experience,  
8 instead of having the trust operated by one trustee, this  
9 time we would use three trustees.

10 Q. Three trustees? Why three trustees?

11 A. It's said that three heads are better than one,  
12 but also more to the point is we knew we were  
13 controlling -- we were putting in the power of control of  
14 the shareholder of AIG, the world's largest insurance  
15 company, into the hands of a trust, and we thought as an  
16 additional safeguard for that power we wouldn't have one  
17 person, we'd have three.

18 Q. Now, why did you believe, Mr. Baxter, that a  
19 trust was a good idea for holding the preferred voting  
20 shares?

21 A. I thought it was a good idea for the governance  
22 reasons that I mentioned earlier. That is, you would  
23 have trustees who would be able to act as the majority  
24 shareholder, who would be able to vote on a board of  
25 directors for AIG, and that board of directors would have

1 on it people with risk management experience, which would  
2 help bring AIG back into safe and sound operating  
3 condition and make our rescue of AIG a success.

4 Q. Let's take a look at JX 88.

5 I believe this is a document that you discussed  
6 with Mr. Boies, although I could stand to be corrected.

7 And let me know when you're there.

8 JX 88 is a September 17, 2008 e-mail chain between  
9 yourself and Mr. Huebner; correct?

10 A. Yes.

11 Q. Now, in the bottom e-mail on this page, you state  
12 "I have been asked to reconsider my position that the  
13 Federal Reserve Bank of New York, which technically is  
14 not a part of the United States government, may hold the  
15 participation. Of course, control is the key issue. We  
16 cannot have control."

17 What did you mean, Mr. Baxter, when you said in  
18 this e-mail that "we cannot have control"?

19 A. I meant the Federal Reserve Bank of New York  
20 cannot have control.

21 Q. Why couldn't they have control?

22 A. Because it wasn't consistent with the  
23 authorization granted to us by the Board of Governors and  
24 because of the conflict issues that I testified about  
25 earlier.

1 Q. And can you just expand upon that a little bit?  
2 What were these conflict issues that you were concerned  
3 about?

4 A. Well, Mr. Geithner, my president at the time, was  
5 also the vice chairman of the Federal Open Market  
6 Committee, so he's one of the individuals who's making  
7 our nation's monetary policy. If you're making monetary  
8 policy, you have an understanding of the future direction  
9 of interest rates, and that's the kind of inside  
10 confidential information you wouldn't want in a person  
11 who was also controlling a publicly traded insurance  
12 company that is a very significant player in the  
13 insurance business. There's a conflict of government  
14 information and commercial information, so you need to  
15 deal with that situation, and one way to deal with it is  
16 through a trust.

17 Q. Now, you've stated on several occasions today  
18 and -- yeah, I guess today -- about this issue of  
19 authorization by the board, and I just want to make sure  
20 I'm clear and the Court is clear.

21 When you're talking about the ability of the  
22 New York Fed to hold the shares, are you saying that  
23 under 13(3) and the terms of the statute the New York Fed  
24 cannot hold shares, or are you saying that based upon the  
25 board's authorization to extend the loan on



1 September 16 you could not hold the shares --

2 MR. BOIES: Objection, Your Honor.

3 BY MR. GARDNER:

4 Q. -- or both?

5 MR. BOIES: I'm sorry. Are you finished?

6 MR. GARDNER: I'm now finished.

7 MR. BOIES: Objection, Your Honor, unless this is  
8 tied to some specific testimony.

9 MR. GARDNER: It's -- he has said multiple times  
10 today, Your Honor, Mr. Baxter has, about this issue of  
11 board authority, and I'm trying to clarify what he's  
12 talking about.

13 THE COURT: Well, I sustain the objection because  
14 the question as stated assumed that the two choices you  
15 presented are the only choices.

16 MR. GARDNER: Fair enough.

17 BY MR. GARDNER:

18 Q. What did you mean by "board authority,"  
19 Mr. Baxter?

20 MR. BOIES: Your Honor, I'm going to object  
21 unless it is tied to some specific testimony because he  
22 talked about this all over the map and said a variety of  
23 different things. And I think that if he wants to ask  
24 the question directly, that's fine, but to try to get him  
25 now to recast what he meant by some of his prior

1 testimony I don't think is proper, at least without  
2 putting it in front of him.

3 MR. GARDNER: I'll rephrase, Your Honor. That's  
4 fine.

5 BY MR. GARDNER:

6 Q. Mr. Baxter, do you recall earlier you had  
7 testified that in your view, the New York Fed could not  
8 hold the equity in AIG because of board -- or  
9 Board of Governors authority? Do you recall that?

10 A. Because the board hadn't authorized us to do that  
11 in the view of -- in what I thought to be the view of  
12 Mr. Alvarez.

13 Q. And when you say that the Board of Governors had  
14 not authorized you, what do you mean by that?

15 A. The resolution that was earlier the subject of  
16 some testimony from September 16, 2008, the resolution  
17 says to the New York Fed that we can set conditions on  
18 the lending to AIG, and those conditions are such as you  
19 see in the term sheet. And the term sheet has all  
20 different types of conditions for the lending in it,  
21 including conditions related to equity.

22 One could read that as meaning that the  
23 Federal Reserve Bank has carte blanche to do whatever it  
24 wants with the equity kicker for the \$85 billion of  
25 taxpayer money that we're extending to AIG.

1           My colleague, Scott Alvarez, didn't agree that it  
2 was a carte blanche granted to us by the  
3 Board of Governors, so we had to iterate, him and I, as  
4 to what exactly were the limits on the authorization  
5 granted. And my understanding is that the limitation on  
6 the authorization granted is that the Federal Reserve  
7 Bank of New York could not take or hold the equity.

8           Q. And by "the authorization granted" you're  
9 referring to the September 16 Board of Governors  
10 resolution?

11          A. The Board of Governors authorization as principal  
12 to an agent, not statutory authority.

13          Q. Okay. Now, going back to JX 88, you also note  
14 "that the Federal Reserve has required foreign  
15 government-owned banks that acquired control of U.S.  
16 banks without obtaining our approval for the change in  
17 control to use the voting trust to resolve the  
18 violation."

19               Do you see that?

20          A. Yes.

21          Q. Now, what were you referring to there?

22          A. I was referring to this prior situation that I  
23 mentioned with BCCI and First American.

24          Q. I see.

25          A. At the time, BCCI was owned by the government of

1 the United Arab Emirates, largely, and it had acquired  
2 control of First American Corporation. And the trust was  
3 used as the device to break First American Corporation  
4 apart from BCCI and then have the independent trustee  
5 sell off First American to the benefit ultimately of the  
6 liquidator of BCCI.

7 Q. Now, also in JX 88, in the middle of this e-mail,  
8 you say, "Someone at Davis Polk might want to think  
9 through (a) warrants that are exercisable upon sale and  
10 (b) holding shares in a voting trust, where the trustee  
11 votes with management."

12 Do you see that?

13 A. Yes.

14 Q. What was the issue that was being addressed here?

15 A. Essentially opt -- these were options we were  
16 thinking about on September 16, the one option being to  
17 use -- to use warrants, the other option being the trust  
18 concept that I've just testified about.

19 The reference to voting shares with management,  
20 that -- that is a mistake. That shouldn't have been in  
21 this e-mail.

22 Q. Now, did Davis Polk in fact provide you with  
23 information on these issues?

24 A. Yes.

25 Q. Beyond the precedent for using a trust that you

1 discussed, were there other reasons that you believed  
2 that a trust was a good vehicle for holding the equity?

3 A. Beyond the precedential reason, the other reason  
4 was, if we could get risk management professionals, who  
5 are the trustees, that they would then be in a position  
6 of acting as the majority shareholder and improving the  
7 risk management competence of the AIG board.

8 Q. Now, putting aside the Board of Governors  
9 resolution on September 16, what was your view about --  
10 under federal -- the Federal Reserve Act section 13(3)  
11 about the legality of the New York Fed holding the  
12 equity?

13 A. I believe that under the Federal Reserve Act we  
14 had full statutory authority to own the equity and hold  
15 it.

16 Q. Now, did others either at the Board of Governors  
17 or elsewhere express concerns about the legality of the  
18 New York Fed holding the equity under section 13(3)?

19 A. Not to my knowledge.

20 Q. Do you know whether Scott Alvarez had any  
21 concerns about the legality of the New York Fed holding  
22 the equity as opposed to receiving it as consideration  
23 for --

24 A. Apart from the concerns about the authorization?

25 Q. Correct.

1           A. I don't know.

2           Q. Okay. How, if at all, did the use of a trust  
3 address any legal concerns that the New York Fed might  
4 have had with holding the equity?

5           A. Well, the owner of the equity is then a separate  
6 personality, a separate legal personality, that is, the  
7 trust, so you don't have to be concerned about those at  
8 all. They simply go off the table.

9                   The other advantage of the trust is it deals with  
10 potential lender liability issues that can be  
11 encountered if the lender is also the majority  
12 shareholder, so those -- those are eliminated by the  
13 formation of the trust.

14                   And then the other advantage of the trust is it  
15 deals with all the conflict issues because the trustees  
16 are making the decision and not senior government  
17 officers who have sensitive financial information in  
18 their heads.

19           Q. I want to turn your attention to Defendant's  
20 Exhibit 505.

21                   And plaintiffs have not lodged any objection to  
22 this exhibit, Your Honor, so the government moves for the  
23 admission of DX 505 into evidence.

24                   MR. BOIES: That's in your book?

25                   MR. GARDNER: It should be. I hope so.

1 MR. BOIES: Okay.

2 MR. GARDNER: Fingers crossed.

3 MR. BOIES: I have no objection, Your Honor.

4 THE COURT: All right. Defendant's Exhibit 505 is  
5 admitted.

6 (Defendant's Exhibit Number 505 was admitted into  
7 evidence.)

8 BY MR. GARDNER:

9 Q. Mr. Baxter, do you have in your binder hopefully  
10 DX 505?

11 A. I do.

12 Q. Fantastic.

13 And do you recognize Defendant's Exhibit 505?

14 A. Yes.

15 Q. What is it?

16 A. It's an e-mail from Richard Ashton to my deputy,  
17 Joyce Hansen.

18 Q. Now, where does Rich Ashton work?

19 A. Rich Ashton is deputy general counsel of the  
20 Board of Governors of the Federal Reserve System.

21 Q. And there's a cc to yourself and others; is that  
22 right?

23 A. Yes.

24 Q. And the issue here concerns the legal authority to  
25 hold equity; is that right?

1           A.   Yes.

2           Q.   Now --

3           MR. BOIES:   Excuse me for interrupting.

4           For the Court's convenience, I think -- is it  
5 JX -- JX 95 is the unredacted version of this. We have  
6 an unredacted version, which is why we don't object to  
7 the redacted version. But for the Court's convenience,  
8 if you want to see the unredacted version of this, it is  
9 a joint exhibit.

10          MR. GARDNER:   I don't know if they're exactly the  
11 same. There may be additional e-mails on the chain. I  
12 don't pretend to have memorized the differences between  
13 the JXs and the DXs. If it is a duplicate, we can  
14 disregard it and look at the JX, but we might as well  
15 move forward since we're here.

16          THE COURT:   Well, if it is a duplicate, it would  
17 be better to use the unredacted version --

18          MR. GARDNER:   I don't disagree --

19          THE COURT:   -- in that case.

20          MR. GARDNER:   -- except I'm not going to ask him  
21 any questions about what's redacted. I can represent  
22 that to you.

23          But I mean, I've got about seven minutes left  
24 before I think it's closing time, Your Honor. I was  
25 hoping we can work through this, if that's okay.



1 THE COURT: Sure.

2 MR. GARDNER: If tomorrow I find out that they're  
3 the exact same, I can on the record just say that, if  
4 that's okay.

5 THE COURT: Go ahead.

6 MR. GARDNER: Let's roll.

7 THE COURT: Thank you for the information,  
8 Mr. Boies.

9 BY MR. GARDNER:

10 Q. Now, Mr. Baxter, in this e-mail, it indicates that  
11 "Charles Gray suggested that we send our technical  
12 comments on the AIG credit facility to you. Our main  
13 comment, which we related to Tom Baxter, is that any  
14 authority we have to acquire equity participation (sic)  
15 in AIG has to be as a condition to the Reserve Bank's  
16 extension of credit that is set out somewhere in the  
17 documentation. I understand that that's the bank's (sic)  
18 view as well."

19 Do you see that?

20 A. I do.

21 Q. Did you agree with Mr. Ashton's characterization?

22 A. I wasn't quite sure what Mr. Ashton was saying  
23 here. If you go back and you look at the original  
24 resolution, the original resolution authorizes the  
25 lending Reserve Bank, the New York Fed, to set

1 conditions such as you see in the term sheet. I wasn't  
2 sure whether he was referring to that, in which case then  
3 we were fine, or was he referring to the conditions that  
4 you would typically see in a commercial lending  
5 agreement, which would have nothing to do with the  
6 authorization.

7 Q. Now, Mr. Ashton further states, in the first  
8 e-mail, going back to the top -- and you're cc'd on  
9 this -- "Our concern is that the Reserve Bank would not  
10 have independent authority to acquire and hold warrants,  
11 stock, or other equity interests in AIG, but the  
12 Reserve Bank presumably could acquire these interests as  
13 a condition for deciding to lending the company. Our  
14 understanding is that any equity interests we would get  
15 would not be collateral for the loan per se, because we  
16 could keep them after the loan is repaid. We believe  
17 this is something that commercial banks do. We think it  
18 would help clarify our authority if this condition is  
19 spelled out somewhere in the credit documentation."

20 Mr. Baxter, what was your reaction to this comment  
21 by Mr. Ashton?

22 A. Okay. And I'll do it sentence by sentence.

23 With respect to the first sentence, "Our concern  
24 is that the Reserve Bank would not have independent  
25 authority to acquire and hold warrants, stock, or other

1 equity interests in AIG, but the Reserve Bank presumably  
2 could acquire these interests as a condition for deciding  
3 to lending the company," my response to that is, I am in  
4 complete agreement. We had no authority under  
5 section 14 of the Federal Reserve Act to go buy equity of  
6 GM or any other company, but we did have authority to  
7 receive an equity kicker in consideration of a  
8 section 13(3) loan.

9 So I agree with the first sentence.

10 Continuing, "Our understanding is that any equity  
11 interests we would get would not be collateral for the  
12 loan per se, because we could keep them after the loan is  
13 repaid." I agree with the that. I would use different  
14 language. I would say that the equity kicker is not  
15 collateral for the loan, it is consideration for the  
16 loan. Collateral you need to give back when the loan is  
17 repaid. Consideration you keep. And that was the  
18 understanding.

19 The next sentence, Mr. Ashton says, "We believe  
20 this is something that commercial banks do." It clearly  
21 is something commercial banks do, and the Office of the  
22 Comptroller of the Currency has recognized that with  
23 respect to national banks.

24 And then, "We think it would help clarify our  
25 authority if this condition is spelled out somewhere in

1 the credit documentation." I'm not sure why it needs to  
2 be spelled out in the revolving credit agreement what our  
3 authority is. I think that's between us and the  
4 Board of Governors.

5 Q. Let's look at -- try to get to one more document  
6 if we can.

7 I want to show you PTX 320, and that's an exhibit  
8 that should be in the book Mr. Boies handed you this  
9 morning that you discussed with him on direct  
10 examination. It is the heavily redacted document.

11 A. 320, Mr. Gardner?

12 Q. PTX 320. And if it's easier, you can look on the  
13 screen. It's a one-pager.

14 A. I'm old-school, so I'd like to look at the  
15 document.

16 Q. I hear you.

17 A. Okay.

18 Q. Now, do you recall that you discussed this  
19 document with Mr. Boies in your direct examination?

20 A. Yes.

21 Q. And in PTX 320, you state that "we agree that  
22 there is no power."

23 What did you mean in this e-mail?

24 A. As best I can recall, I was trying to avoid  
25 opening up the issue of authorization with Mr. Alvarez.

1 I didn't want him to think that I was relitigating  
2 something we had already -- we had already come to  
3 conclusion on.

4 And so I was saying I don't -- I'm not reopening,  
5 in the context of discussing a debt restructuring of the  
6 AIG debt, what the limits are on the New York Fed's  
7 authority. Instead, I wanted to get that off the table  
8 and focus on the restructuring issues themselves.

9 MR. GARDNER: Your Honor, I'm happy to keep  
10 going, but I'm going to start turning to a new document  
11 and hopefully to a new subject, so whatever you prefer.

12 THE COURT: Why don't we break for the day.  
13 How much more time do you need do you think?

14 MR. GARDNER: Probably finish in about an hour or  
15 so.

16 THE COURT: All right.

17 MR. GARDNER: He's not going to finish tonight.

18 THE COURT: Okay.

19 We'll adjourn until 9:30 tomorrow morning.

20 (Whereupon, at 4:58 p.m., the proceedings were  
21 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 3, 2014

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JOSETT F. WHALEN, COURT REPORTER

1			ADMITTED EXHIBITS
2			
3	PX	PAGE	DESCRIPTION
4	94	746	Willumstad Signature Page
5	114	725	Email (9/17/2008 11:55 am) From: Bradley
6			Smith To: Mark Welshimer, cc: Erik
7			Lindauer, Andrew Rowen, Ethan James
8			re: RE: FRBNY/AIG Pledge Agreement and
9			Blanket Lien
10	116	836	Email (9/17/2008) From: Thomas Baxter
11			To: Haeran Kim re: Re:
12	136	834	Email (9/18/2008) From: Thomas Baxter
13			To: Michael Held re: Re: Legislation -
14			New York Fed Amendments. And Attached:
15			Simple legislative changes to improve
16			emergency powers (Changes to existing
17			law are highlighted) - redline
18	143	837	Email (9/18/2008 4:21 pm) From: Michelle
19			Meertens To: Joseph Sommer, cc: Martin
20			Grant, Charles Gray Re: Draft AIG Equity
21			Interest Attaching memo
22	154	932	Email (9/19/2008 5:36 am) From: Maria
23			Garces To: Michelle Meertens re: Fw: AIG
24			8K
25	184	778	Email (9/21/2008 10:23 am) From: Charles

1 Gray To: Sarah Dahlgren, cc: Richard  
2 Charlton, James Hennessy re: Invitation:  
3 Conference call: AIG Equity Termsheet  
4 (Sep 21 12:00 PM)  
5 190 819 Email (9/21/2008 3:49 pm) From: Marshall  
6 Huebner To: Thomas Baxter re: Re: Equity  
7 Participation Call  
8 279 824 Email (10/4/2008 2:17 pm) From: Thomas  
9 Baxter To: Sarah Dahlgren re: Re: Fw:  
10 Can you give me a call  
11 580 794 FCIC Memorandum for the Record: Tom  
12 Baxter (April 30, 2010) - Working Draft  
13 598 729 FCIC Statement by Thomas C. Baxter  
14 (9/1/2010)  
15 1601 787 Email (9/18/2008) From: Helen Ayala  
16 To: Charles Gray re: Fw: AIG  
17 2067 803 Email (3/20/2009) From: Lawranne Stewart  
18 To: Stephanie Heller, cc: Michael  
19 Nelson, Charles Gray, James Hennessy,  
20 David Gross re: RE: Our discussion on  
21 AIG Trust  
22 2211 716 Email (May 20, 2010) From: Michael  
23 Nelson To: James Bergin, Joyce Hansen  
24 re: Fw: COP Notes  
25



1	DX	PAGE	DESCRIPTION
2	118	872	EMAIL FROM THOMAS BAXTER TO TIMOTHY
3			GEITHNER, CHARLES GRAY, MICHAEL NELSON,
4			MICHAEL SILVA RE: AUTHORITY TO ACQUIRE
5			EQUITY INTEREST VS 13(3) LENDING
6	161	884	EMAIL FROM VICTORIA FUSCO-ALLEN TO
7			TIMOTHY GEITHNER ET AL RE: EQUITY
8			KICKERS AND RESERVE BANK LOANS
9	438	918	EMAIL FROM RODGIN COHEN TO THOMAS BAXTER
10			RE: ANY WORD ON TIMING OF THE PRESS
11			RELEASE, ATTACHMENT FR 9-16-2008 PRESS
12			RELEASE
13	505	946	EMAIL FROM RICH ASHTON TO JOYCE HANSEN
14			RE:FW: COMMENTS ON THE DRAFT CREDIT
15			AGREEMENT
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