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.
Wednesday, October 1, 2014
9:30 a.m.
Trial Volume 3

BEFORE: THE HONORABLE THOMAS C. WHEELER

Susanne Bergling, RMR-CRR-CLR, Reporter

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I N D E X

Joint
None

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

P R O C E E D I N G S

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

THE COURT: Good morning.

ALL COUNSEL: Good morning, Your Honor.

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

Good morning, Mr. Alvarez.

THE WITNESS: Good morning, Your Honor.

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

THE WITNESS: I do, Your Honor.

THE COURT: All right. Let's go ahead, Mr. Austin.

MR. AUSTIN: Thank you, Your Honor.

Whereupon --

SCOTT ALVAREZ

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

CROSS EXAMINATION (cont.)

BY MR. AUSTIN:

Q. Mr. Alvarez, just to get us back to our placeholder, we had just finished discussing Saturday, September 13, and you had indicated that you were receiving communications from Vice Chairman Kohn both on Saturday and on the next day, Sunday. Is that right?

A. That's right.

Q. Let's turn to Sunday, and let me ask you if you would turn in your binder to DX 318. This is the Defendant's binder. Could you identify DX 318, please.

A. Yes. This is an email from Donald Kohn, the vice chairman of the Federal Reserve Board, to the chairman, to President Geithner, Brian Madigan, and to myself and Deborah Bailey from our Banking Supervision Division, Sunday, September 14th, 2008.

Q. And just for the record, it shows there edward.quince/board as receiving this. Could you explain who edward.quince is?

A. Edward.quince is the pseudonym for Chairman Ben Bernanke to make sure that he didn't get extraneous emails.

Q. So, whenever we see an email to an edward.quince, we should know that that would be Chairman Bernanke who would be receiving that email?

A. Yes, that's right.

Q. Now, directing your attention to the second and third lines of the email, if you could read those two lines to yourself, and my first question is, what did you understand Mr. Kohn to be relating to you concerning how much funding AIG needed?

A. So, he was relating what he was hearing from AIG about their expected liquidity demands in the next few days and also what liquidity they believed they had on hand or could easily get.

Q. What quantity of liquidity did he believe they needed?

A. They needed about $50 billion in liquidity in the next few days.

Q. And what did Mr. Kohn relate to you concerning the expectations concerning a downgrade that were expected?

A. That AIG expected a downgrade sometime Monday and that would increase the demands for collateral, that is, the pressure on their liquidity.

Q. And we're talking -- when we're talking about downgrade, what are we talking about? A downgrade of what?

A. We're talking about the credit rating agencies that rate the outstanding debt of AIG.

Q. And what was Mr. Kohn relating to you concerning how long AIG's liquidity was expected to last?

A. That AIG believed probably through Wednesday but not much further.

MR. AUSTIN: Your Honor, I would move into evidence DX 318.

MR. BOIES: No objection, Your Honor.

THE COURT: Defendant's Exhibit 318 is admitted.

(Defendant's Exhibit Number 318 was admitted into evidence.)

BY MR. AUSTIN:

Q. Now, directing your attention to the remainder of the first paragraph of the email, what did you understand Mr. Kohn to be communicating to you concerning the status of the possibility of a private sector solution for AIG's financial problems?

A. Well, one particular private sector solution that had been in discussion involved an investor referred to here as Flowers, that would be J.C. Flowers, who ran an investment fund, and he had made a proposal, according to the email, a proposal to AIG which the AIG board had apparently rejected. But there were other solutions that were still under negotiation involving KKR and TPG, according to this email.

Q. Who is KKR and who is TPG?

A. They are two investment funds.

Q. Now, directing your email to the -- directing your attention to the first two sentences of the second paragraph of the email, where it is written, "Still strikes me as a bridge to vague promises. Don't know what needs to happen to get them to consider more serious restructuring/strategic partner."

What did you interpret or what did you understand Mr. Kohn to be conveying to you with that sentence -- those two sentences?

A. That he had been urging through the weekend that they seriously consider private sector offers, and I think this was expressing disappointment that those -- that AIG had not been able to reach a conclusion with the private sector, and he thought that that was disappointing.

Q. And then he indicated that he was completely noncommittal?

A. That would be noncommittal on the Federal Reserve providing assistance in some form.

Q. Had any decision been made as of this time, on September 14, Sunday, 2008, as to whether the Federal Reserve was going to provide a rescue loan to AIG?

A. No. No decision had been made.

Q. And, again, would you have been -- would you have known it if such a decision had been made?

A. Yes.

Q. Okay. Let's turn to the next day, Monday, September 15th, 2008. Did you receive information sometime on Monday suggesting that the prospects or the possibility of a private sector solution for AIG had changed?

A. Yes. I received information on Monday, late in the day, that it appeared there would be no private sector solution.

Q. And do you recall who you received that information from?

A. I believe that also was from Vice Chairman Kohn.

Q. Did you hear any information at all from Governor Warsh?

A. I had information from Governor Warsh. I -- and there may have been others that were receiving updates late at night on Monday, the 15th.

Q. Let me ask you to turn in your notebook to DX 382. Would you please identify DX 382.

A. Yes. It is an email from the vice chair to me and to Pat Parkinson, who was in our Research Division, forwarding on an email the vice chair had received from Kevin Warsh, one of the members of the Board of Governors.

Q. And when did you receive the email from Vice Chairman Kohn?

A. About 9:30 on the night of September 15th -- Monday, September 15th, 2008.

MR. AUSTIN: Your Honor, we would move the admission of DX 382.

MR. BOIES: No objection, Your Honor.

THE COURT: Defendant's Exhibit 382 is admitted.

(Defendant's Exhibit Number 382 was admitted into evidence.)

BY MR. AUSTIN:

Q. What did Mr. Warsh note in his email that was being forwarded to you from Vice Chairman Kohn?

A. Governor Warsh was explaining that he had received a report that the situation at AIG was worse than expected. There appeared to be a capital hole at AIG that two of the potential investment bankers, Goldman Sachs and JPMorgan -- I'm sorry, Morgan Stanley believed was too big to be filled.

Q. And what did Mr. Kohn relate to you in the email when he forwarded Mr. Warsh's email to you?

A. His view that this looked very bad, hard to think of alternatives other than bankruptcy.

Q. What was the significance of this email to you in terms of your view as of this point in time, 9:38 Monday night, as to the possibility of a private sector solution?

A. So, this was very discouraging news about the potential for a private sector solution.

Q. Was anything else happening in the financial world at about 9:00 Monday night, other than with AIG?

A. Well, earlier in the day, Lehman Brothers had announced that it was going to file and had filed for bankruptcy. So, there was that. It was a very difficult day for the financial markets.

Q. And what effect did the Lehman filing have on the financial marketplace?

A. It meant that quite a lot of firms were beginning to hold onto their own liquidity, that they were resisting making loans or investments that appeared to be risky because they were uncertain what kind of pressures would be put on their own liquidity. So, markets began to freeze up, liquidity became scarcer, and potential -- and people became very concerned about their own financial condition.

Q. Let's turn to the next day, Tuesday, September 16 of 2008, and was a Board of Governors meeting held that day to discuss whether to provide a loan to AIG?

A. Yes. On the 16th, there was a regularly scheduled FOMC meeting that all of the governors were attending. FOMC is the body of the Federal Reserve that sets interest rates. It's a very important meeting because of the financial crisis. The FOMC was trying to determine what it should do in the monetary policy front to address the financial crisis, and it was also the day that the board met to discuss a potential loan to AIG.

Q. And I know we discussed some of this in your earlier examination with Mr. Boies, but prior to this board meeting, did you participate in any telephone calls? And by the board meeting, I mean the Board of Governors meeting concerning AIG.

A. Yes.

Q. Okay. And what was the first telephone call, about what time, that you recall participating in?

A. So, the -- the day is a very, very full day, and time is a little distorted for me because it had been a very long weekend and night before. So, I don't remember it precisely, the times of things. I do recall being part of a conversation -- a phone call before the FOMC meeting, but I don't know precisely the time of that call.

Q. And what time did the FOMC meeting start?

A. I believe it started around 9:00.

Q. And for this phone call before the FOMC meeting, do you recall who was in on the telephone call?

A. I recall that there was a call with the chairman, the vice chairman, and Secretary Paulson.

Q. Now, it was your practice to take notes when you were involved in telephone calls that involved both the chairman and the vice chairman?

A. Oftentimes.

Q. And you took those by hand?

A. Yes.

Q. And do you recall if you took notes during this particular call?

A. Yes.

Q. Please turn to JX 81 in your notebook. Take a moment to review that.

A. (Document review.)

Q. First of all, do you recall discussing these notes during your earlier examination with Mr. Boies?

A. Yes.

Q. And these are handwritten notes that you took of the 8:00 a.m. telephone conversation?

A. I don't remember precisely the time, but of the morning -- the morning call, yes.

Q. Now, if you would please turn to the first page of JX 81, if you would just read your handwritten notes by the number 1 that's in a circle, about a third of the way down, and include number 1 and 2.

A. Number 1 is "Bankruptcy," number 2 is "Government support, bridge to sale of assets."

Q. Do you recall what you meant by that note, what you were referring to?

A. So, the discussion was that it appeared that, with no private sector solution for AIG, AIG was faced with two choices from our understanding. One was bankruptcy or the second was government support that would prevent bankruptcy and allow AIG to sell some of its assets in order to address its liquidity problems.

Q. So, the conversation was that they had those two choices as a binary choice?

A. Yes, it appeared to be.

Q. Okay. And do you know who said that or was it a consensus or what does that note reflect about that?

A. So, I believe that that was -- this beginning part was information Secretary Paulson was presenting from his point of view.

Q. If you would turn to page 2 of JX 81, and if you could read the words that you have written by the letters BB.

A. BB, that stands for Ben Bernanke in my notes, "can do liquidity with treasury assurance of support and will go to Congress with legislative framework."

Q. Now, the letters BB written there, what does that signify?

A. Ben Bernanke.

Q. Does this mean that Chairman Bernanke said this at the meeting or the telephone conference?

A. That this is an idea that he expressed. I wasn't keeping a transcript, so these are not meant to be exact words or just even totally complete about his thoughts. These were the ideas he was expressing.

Q. Okay. And what's your understanding of what ideas he was expressing there that you captured in your note?

A. That the Federal Reserve could perhaps provide liquidity with Treasury assurance of support, both publicly for our action and we had received from the Treasury in a previous transaction a letter from the Secretary of the Treasury where he indicated that he understood that when we provided liquidity, there could be losses experienced by the Federal Reserve.

And the way the Treasury would show support is at the end of -- during each year, we provide to the Treasury any earnings we have beyond our expenses, and those earnings are provided to Treasury for its use in managing the debt and managing the budget. And so we wanted an acknowledgment from the Secretary that he was aware that this loan could result in losses which would mean we would not have funds to make available -- that we would be providing to the Treasury for its use.

Q. Why did you think the loan could -- why did you think the Fed loan could result in losses?

A. It was a risky loan. This was a troubled company. It was experiencing severe pressure. There would be -- the loan would be for some extended period of time. This wasn't an overnight credit, as often is the case with our discount window.

So, with the duration, with the situation of -- at the company, with the imperiled economy, there was risk. There would be risk of loss.

Q. And did you receive such a letter -- I'm sorry.

Did the Federal Reserve and the Board of Governors receive such a letter from Secretary Paulson?

A. After the Federal Reserve determined to provide a revolving line of credit to AIG, yes, the Secretary of the Treasury provided such a letter.

Q. Now, in addition to this telephone call that took place prior to the FOMC meeting, were you involved in any additional telephone calls on September 16?

A. Yes, I was, later in the day.

Q. Do you recall one such other telephone call?

A. I remember one other phone call with a similar group of people, yes.

Q. And can you, in your mind, place that timewise?

A. I -- again, as I said, I'm fuzzy about the exact times, because we're in and out of the FOMC meeting, which is going on at the same time. So, I believe it was after this phone call but before the Board made a final decision on AIG, which was later in the afternoon.

Q. Okay. And what's your recollection of that call?

A. My recollection is that the call talked about a little more specifics about the kinds of terms that could be -- could shape a Federal Reserve credit. It also talked about potential legislative efforts that might be considered, talked about the risk associated with the loan and the economic situation, the advantages and disadvantages of extending credit.

Q. Please turn to JX 82. If you could please identify JX 82.

A. JX 82 are notes of a call -- these are my notes of the call I was just referencing with Secretary Paulson, Chairman Bernanke, Tim Geithner, and perhaps others.

Q. And so all four pages of these notes are your handwritten notes?

A. Yes. That's correct.

Q. And do you recall Mr. Boies asking you some questions about the notes from JX 82?

A. I do.

Q. Now, please turn to page 1 of JX 82, and could you --

THE COURT: Mr. Austin, can I inquire here?

MR. AUSTIN: Sure.

THE COURT: I'm wanting to know if most of these people were involved in the FOMC meeting that day, why was it necessary to have a phone call? Why couldn't you just talk in a room?

THE WITNESS: So, two reasons for that, Your Honor. One is Secretary Paulson is not part of the FOMC. He's calling in from somewhere else. Tim Geithner is calling in from New York. He determined not to go to the FOMC meeting.

The second reason is the FOMC includes a different group of people. It's the Board of Governors, but it's also the presidents of the various Reserve Banks. They're not involved in the decision about whether to lend to AIG. So, it was important to keep those two groups separate.

THE COURT: Thank you.

BY MR. AUSTIN:

Q. Let me follow up on Your Honor's question.

With respect to Mr. Geithner, would he normally attend an FOMC meeting in person?

A. Yes. He at the time was the vice chairman of the FOMC.

Q. And why did he not attend this particular FOMC meeting in person?

A. Because he believed it was more important for him to be in New York, to monitor markets and the situation, given the Lehman bankruptcy the day before and the way things were developing with AIG.

Q. Now, turning to page 1 of JX 82, could you please read the second entry under HP.

A. Yes. It says, "Either AIG goes down or Fed helps."

Q. First of all, who are you indicating said this?

A. HP is Secretary Paulson.

Q. Okay. And what did you mean when you wrote "either AIG goes down or Fed helps"?

A. So, Secretary Paulson was relaying conversations he had had with Congresswoman Pelosi and Congressman Boehner, where he outlined very briefly with them the situation at AIG and that the alternatives appeared to be that AIG would be -- go into bankruptcy or the Federal Reserve would have to help AIG.

Q. Now, under the next section, under BB, could you read the one line starting with the word "legal?"

A. Yes. So, after a brief discussion of some of the terms that were being developed, the chair raised the -- Ben Bernanke raised the question, was this transaction permissible? And so "Legal," with a question mark. "Under 13(3), yes," that was my response to his question. I believed that this type of credit was permissible under Section 13(3).

Q. And why did you say it was legal under 13(3)? Why did you say that response to the chairman's question?

A. Well, for the reasons we discussed yesterday, I believed that the extension of credit was authorized by 13(3); I believe the terms, as I was understanding them, including receiving an equity participation as consideration for the extension of credit, was permissible. The term was, you know, 24 months, and that is a permissible -- the credit is at the discretion of the Federal Reserve, so that was a term that would be authorized. And the other terms, as they were developing, appeared to be permissible under 13(3).

Q. Read the next two lines there, please.

A. "Secured to satisfaction, yes, though risk of loss. Treasury will support."

Q. And explain what you meant by those two lines.

A. So, secured to satisfaction, that's the standard in 13(3), must be -- the security for the credit must be to the satisfaction of the Reserve Bank. The response is yes, that the Reserve Bank believed that to be the case. That would be Secretary Geithner, who at the time was the president of the New York Reserve Bank.

Though the comment was made, though there would be risk of loss on this credit, and, again, the issue was raised that the Federal Reserve would be looking for Treasury to provide support in the form that I discussed earlier, through public statements and through a letter.

Q. And who was saying this?

A. These are notes under the chairman, Ben Bernanke.

Q. So, if it's secured to the satisfaction, why is there risk of loss? What was the chairman saying there?

A. Well, a loan can be secured at the time it is made, and over the duration of the extension of credit, the value of the security could increase or decrease. That creates risk of loss.

But also, the -- the idea is to be repaid by the borrower, and the borrower may or may not be able to repay, even though the -- it's a fully secured loan. So, you're looking first to the borrower to repay, and you're looking to the collateral secondly. You've got both the risk that the borrower may not repay, and you have the risk that, over time, the value of the collateral could change and decrease in value.

Q. What was the nature of the collateral, as you understood it, on the 16th?

A. So, the discussion was about taking the shares of stock of the insurance companies that were owned by AIG as collateral and a variety of other assets. The discussion here was still general as those specific terms were being worked out, but that -- the general discussion was we would take as collateral the subsidiaries owned by AIG.

Q. Was that traditional collateral that the Fed was used to having when it made other types of loans?

A. No. That was actually very unusual collateral. Typically, we had taken -- you know, as mentioned earlier, in the PDCF, we were taking marketable securities, equities that are traded on public exchanges; we're taking debt that is rated and traded, U.S. Government securities, other kinds of readily liquid assets.

These were shares of insurance companies that were not readily traded, were not traded on an exchange, were not readily salable. So, it was a different kind of collateral and therein raised the risk.

Q. Going back to the earlier part of the e-mail where it says "Legal? Under 13(3), yes," as of this point in time, when you were having this conversation, what analysis had you done as to whether a transaction like this was, in fact, legal under Section 13(3)?

A. So, I was -- I had thought through the principles that were then committed to writing in the memo that we discussed yesterday.

Q. Please turn to page 2 of JX 82, and if you could go about two-thirds of the way down the page by the initials TG. Could you read the four or five lines under TG there?

A. Yes. So, TG is Tim Geithner. He, too, raised the question was there legal authority for this loan. He responded from his side, yes --

Q. Well, let me ask you, how -- how do you know that he responded from his side, yes?

A. That's what the notes prescribe, and that is my memory.

Q. And compare that to the note you had for Chairman Bernanke when you talked about legal authority. You indicated there that you had answered that question.

A. Yes, and that was typical for the chairman to ask me a question like that, and that's, indeed, what he did.

Q. And you answered that question?

A. And I answered that question. But now it's Timothy Geithner speaking as the president of the New York Reserve Bank. He's having his lawyers also analyze the transaction from their side, because the Reserve Bank has to be satisfied that once it receives board authorization, it has then the choice to go forward.

So, he's answering from his perspective.

Q. Please read the rest of that note there.

A. "Economic security, reasonable, not free from loss."

Q. What does that mean?

A. So, I think here he's discussing -- he was discussing the collateral and whether it was to the satisfaction of the Reserve Bank. So, that's the economic security. He's indicating he thought that was reasonable but that there was risk to the transaction and it wasn't free from potential loss.

Q. And go ahead with the next two lines there.

A. "Get AIG approval, believe so. Reduce risk, believe so, but risk still."

Q. And what does that mean?

A. So, the get AIG approval is would AIG be willing to accept a letter -- credit on these terms, and President Geithner believed that would be the case. Then the question is would this reduce risk in the marketplace, and President Geithner believed it would, but there still would be significant risk in the marketplace and some risk -- I know he was concerned that there was some risk that if this extension of credit didn't actually prevent AIG from going into bankruptcy, that it would undermine the faith in -- the marketplace would have in the Federal Reserve's ability to stop financial disruptions from the failure of firms, and that, itself, increased risk. That could be destabilizing if the market didn't believe the Federal Reserve could provide -- could -- could address financial instability.

Q. Let me ask you to turn to the next page, page 3 of this note. The first line there, TG, that, again, is Tim Geithner speaking?

A. Yes, it is.

Q. And what does that first line say?

A. "Close call, but would do."

Q. What does that mean?

A. That overall, after he's had a bit of a discussion of the matter, he thought the decision to extend credit to AIG was a close call, but it was one he was prepared to support.

Q. And then about halfway down, another TG, it says, "Case against." Could you read those couple lines?

A. Yes.

Q. What does that mean?

A. Tim Geithner again. "Case against: Lots of risk, won't be reassuring given the risk."

Q. What does that mean?

A. The point that I just raised, that there's risk that the market -- that this wouldn't be reassuring to the market, the fact that the Federal Reserve is providing assistance to AIG, if the market believed that we wouldn't be able to stanch the problem at AIG.

It also could be a problem for the market if they began to believe that there was going to be a slew of firms that were failing. There's Lehman, now there's AIG, there's going to be more and more and more. If the Fed providing assistance to AIG suggested there would be a significant number of failures, that could be destabilizing to the market.

Q. And then the last entry under HP, could you read that, please?

A. HP, that stands for Secretary Paulson. "Best alternative of a bad lot; support and willing to explain with BB" -- Ben Bernanke -- "to the President and Congress."

Q. And can you explain what that note means? First of all, who's speaking there?

A. Hank Paulson.

Q. And what did he say?

A. And the idea he's conveying is that the Federal Reserve providing credit to AIG is the best alternative of bad choices, but he would support it, and he was willing to go with the chairman to talk to the President of the United States and the Congress and explain the decision.

Q. And did Chairman Bernanke and Secretary Paulson go to the President and to Congress and explain the deal?

A. Yes, they did.

Q. I would like now to turn to the Board of Governors meeting on September 16, and, you know, you were asked a number of questions, you'll recall, about what the Board of Governors authorized on September 16. Do you recall that?

A. Yes, I do.

Q. Did, in fact, the Board of Governors meet on September 16 of 2008 to discuss whether to approve a loan to AIG?

A. Yes, they did.

Q. And approximately how long was the meeting, and was there one or more than one sessions of the meeting?

A. So, as I mentioned, the FOMC meeting is going on, and my memory is that there were two sessions of the board, one when the FOMC broke for lunch, which was somewhere between 12:00 and 12:30, in that area, and I believe that session lasted for something on the order of 40 minutes or so, perhaps a little more, perhaps a little less. I -- I don't have a precise memory of the time. And then they reconvened the FOMC meeting, and then there was another session -- brief session of the Board after the FOMC meeting.

Q. When you say "the Board," you mean the Board of Governors?

A. The Board of Governors, yes.

Q. And who attended these meetings either in person -- I won't call them meetings, but two different sessions of the Board of Governors meeting -- either in person or by phone?

A. So, the -- at the time we had five members of the Board of Governors. All five of them attended. That's Chairman Ben Bernanke, Vice Chairman Don Kohn, Kevin Warsh, who we mentioned earlier, Randy Kroszner, who was a governor, and Elizabeth Duke, who also was a governor.

There would also have been the secretary of the board, who at the time was Jennifer Johnson. She's responsible for convening the meetings and preparing the minutes; Brian Madigan, who was the -- we discussed earlier, who's the director of Monetary Affairs, which is the division that provides support for lending, among other things; myself and probably other -- a small number of other staff members. I believe Secretary Paulson called in by phone as well.

Q. And who made presentations at the board meeting?

A. So, my memory is that President Geithner made a presentation. Secretary Paulson spoke. I would have made a small presentation. And then the various governors would have talked.

Q. Let me ask you a general question first as to, you know, what you recall about the topics that were discussed at the board meeting, whether it be the first session or the second session. What topics were discussed?

A. So, information about the condition of AIG; what the potential effects might be of making an extension of credit or choosing not to make an extension of credit; a discussion of the terms for extending credit, various points of view about that; and potentially -- possibly, I believe, a brief discussion of some legislative steps that might be appropriate to consider.

Q. Was there any discussion about compliance with Section 13(3)?

A. Yes. So, there would have been a discussion of whether this was authorized or not.

Q. Was there any discussion with respect to the terms of the term sheet as to where those terms were derived from or what the basis for them was or anything of that nature?

A. Yes. So, the discussion of the terms that I mentioned a minute ago would have been based on -- in fact, were based on a draft term sheet available at the time.

Q. You mentioned that the term sheet was one of the things discussed at the meeting, so let's turn directly to that. Was there a term sheet physically at either of the two sessions of the board meeting?

A. So, my recollection is that I had a copy of the draft term sheet for the second session, and I had not gotten it actually until after the completion of the first session.

Q. Who did you receive the term sheet from?

A. I got a copy of the term sheet -- the draft term sheet from Tom Baxter in the New York Reserve Bank.

Q. Was there any discussion about moral hazard at the board meeting?

A. Yes.

Q. What was discussed about moral hazard?

A. So, moral hazard is a concept that the Board talks about quite a lot, that providing credit to the private sector may cause the private sector to not be as attentive to the risks that it's taking and not be responsive to market pressures and, instead, count on the Government for assistance and hope to get easier terms from the Government than would be imposed through the discipline of the marketplace.

And that causes -- that degrades the attention that management pays to its responsibilities and to the risks that it's taking. So, there was discussion about moral hazard in the sense of would the terms of the Federal Reserve loan to AIG incent others to believe that easy credit would be available from the Federal Reserve and so they shouldn't worry about -- the private sector shouldn't worry about managing its liquidity or responding to the pressures of the market and instead could count on the Federal Reserve to provide easy credit.

Q. Based on your experience at the board meetings that you've been to, was this an easy decision for the Board?

A. It was a very hard decision for the Board. It was, as we noted, a -- President Geithner, in particular, indicated it was a close call. The -- the board members were hoping that this would be solved by the private sector and they would not be involved. It was a kind of collateral they hadn't extended credit on before. It was a very hard decision for them.

Q. Did the Board of Governors want to provide AIG with a loan?

A. So, in the end, they did provide AIG with a loan, but I think they strongly would have preferred some other alternative. In fact, President -- I mean, Chairman Bernanke indicated several times afterwards that he would have preferred to have had the resolution authority at the time so that large firms like this could be resolved without federal assistance.

Q. Do you recall whether the equity participation was discussed at the meetings?

A. It was discussed in general terms, that the Federal Reserve would receive, as consideration for the credit, equity participation that was equivalent to 79.9 percent of the common stock of AIG.

Q. Was there any discussion about the purpose for having equity participation?

A. Yes. So, the -- remember, the Board was operating with the assumption that there were really two choices here: either the Federal Reserve provided credit or AIG went into bankruptcy. In bankruptcy, the shareholders typically are wiped out entirely and receive no value at all.

The Board of Governors was aware that by providing assistance to AIG, the shareholders of AIG would continue to have value in the company and, indeed, would benefit from the fact that the Federal Reserve had provided liquidity that hadn't been available and would forestall bankruptcy.

And so the idea -- one of the ideas of the equity participation was to lessen the windfall that would go to the shareholders from having received -- from AIG having received assistance, so that all that benefit, instead of being wiped out, they have value that is retained for them, but the amount of that windfall is reduced.

It also provided compensation to the Government for the risk that it was taking in extending this credit to AIG. If, indeed, this did work, as the Board hoped it would work, to forestall the disorderly failure of AIG, then some of the benefit of that would accrue to the taxpayer through the 79.9 percent equity interest.

THE COURT: Mr. Austin, I have a question, if I may.

MR. AUSTIN: Certainly, Your Honor.

THE COURT: Mr. Alvarez, how do we get to a number like 79.9 percent? Why that sort of precision?

THE WITNESS: That's a good question. The -- 80 percent is a -- under some various laws a level of control, deemed to be control that requires certain actions to be taken. So, staying below 80 percent, for various corporate law reasons, becomes important. And so it was -- it was a sizeable equity amount and accomplished the purpose that the Board was seeking to accomplish.

THE COURT: Thank you.

BY MR. AUSTIN:

Q. Did anyone ask you during the board meetings whether conditioning the loan on equity participation would satisfy Section 13(3)?

A. So, they asked generally whether the extension of credit, as structured, including that term, would be permissible under 13(3).

Q. And what -- did you respond to that?

A. I responded, yes.

Q. You responded that --

A. That it was permissible under Section 13(3).

Q. Was there any specific discussion about the interest rate to be charged on the loan?

A. Yes. There was some discussion of the interest rate. Understanding that this was going to permit AIG to continue to operate in business, it -- the question raised was whether this interest rate would bring with it moral hazard.

And so the two aspects of that were the Board wanted to be sure that the interest rate it was charging was not below the interest rate that the private sector was developing when it was developing an aid package for

AIG, and it also wanted to make sure that the interest rate would discourage moral hazard, discourage others from seeking -- from believing that there was easy credit available in these kinds of situations.

So, it would be a high -- maybe -- it would be a higher interest rate than it might be in normal times. It also had to be an interest rate that was adequate to compensate the Government for the very -- the substantial risk it was taking in extending credit.

Q. Yesterday afternoon, Mr. Boies asked you a series of questions about the interest rate being set to accommodate commerce and business. Do you recall those questions?

A. I do.

Q. Now, in your view, did the rate that was set accommodate commerce and business?

A. Yes, because it helped to -- the idea of this entire credit was to help AIG remain in business, and it was also to try to prevent the markets from being further disrupted. So, if the markets were disrupted, that would have imperiled business and commerce.

Q. Now, you mentioned one of the general topics discussed at the board meeting and you mentioned it again in connection with the interest rate, that the term sheet was derived from private sector meetings.

What specifically was discussed in that regard, as best you recall?

A. So, it was my understanding that the term sheet was -- reflected discussions the private sector was having about a form of assistance it could provide to AIG.

Q. In connection with the term sheet or the amount of the loan generally, was there any discussion at the board -- the two sessions of the board meetings about the adequacy of the collateral?

A. Yes. So, the collateral was, as we discussed yesterday, the shares of the AIG insurance subsidiaries, as well as some noninsurance subsidiaries and a small number of other assets. So, the discussion was whether there was value in those entities that would be sufficient, adequate to collateralize the loan.

And the -- there had been some contacts made by folks at the New York Reserve Bank with the Insurance Commissioner for the State of New York who had indicated his belief that the insurance subsidiaries were holding up okay and they were appropriately capitalized and that they had substantial value. And so that was -- that was discussed at the meeting.

Q. And was one of the requirements related to whether the collateral was secured to the satisfaction of the Federal Reserve?

A. Yes. So, Tim Geithner indicated he believed that the collateral was to his satisfaction, the Reserve Bank's satisfaction.

Q. Did that mean that the collateral was risk-free?

A. No. No, it didn't mean that the collateral was risk-free. It was a decision made at the time, based on the information at the time, about the value at the time. And President Geithner actually mentioned that over time, the value of this collateral depended on a variety of factors, including that the management of the insurance companies continue to be adequate and manage the companies appropriately, and there was concern about the effect of the economy on the business generally and on the insurance -- the insurance companies as well.

Q. Let me ask you to turn in your notebook to JX 63. Do you recall Mr. Boies asking you questions about this document?

A. Yes, I do.

Q. Okay. Could you please identify this document, JX 63, as well as its component parts.

A. JX 63 is the minutes of the Board of Governors meeting to consider AIG on September 16th. It includes an attendance list, a brief discussion of -- a brief summary of the discussion at the meeting, the resolution that was adopted by the Board, and the draft term sheet that we referenced earlier, along with another copy of the resolution, and then the press release that the Board issued later that day.

Q. And let me first ask you to turn to page 5 of JX 63. What is page 5?

A. Page 5 is a copy of the draft term sheet that we had discussed before, outlining the basic terms as they were at this point for an extension of credit.

Q. I'm going to return back to JX 63 in just a moment, but let's turn to JX 64, which is an email from Mr. Baxter to you enclosing a term sheet and dated September 16th at 2:15 p.m. Do you see that?

A. Yes. I see the email.

Q. And do you recall that Mr. Boies showed you this during your earlier examination?

A. Yes.

Q. And is, in fact, the term sheet that you received from Mr. Baxter the term sheet that is a part of JX 64?

A. Yes, I believe so.

Q. Let's go back to JX 63. Could you please turn to page 11 of JX 63. And, again, what is page 11?

A. It's a copy of the resolution that was adopted by the Board that day for extending credit to -- authorizing the New York Reserve Bank to extend credit to AIG.

Q. Could you please read the last line of the second paragraph of the resolution on page 11.

A. Sure. "The New York Reserve Bank may, as it deems appropriate, impose conditions, such as those described in its proposed lending facility term sheet, on its extension of credit to AIG."

Q. And do you know what was intended by this sentence in the resolution?

A. Yes, it -- so, you recall in Section 13(3), the Board is specifically authorized in that section to -- when it authorizes a credit under 13(3), to set such limitations, restrictions as the Board deems appropriate. So, the Board is authorizing the New York Reserve Bank to impose conditions as the New York Reserve Bank believes appropriate, such as the conditions that were described in the term sheet.

Q. Do you know whether the Board of Governors had the same interpretation of this -- or understanding, I should say, of that sentence of the resolution as you indicated?

A. Yes. Yes, it did.

Q. Let's go back to JX 63 at page 6. I'm sorry, page 12.

A. Page 12?

Q. Oh, I'm sorry, let's go to 6 first. Do you see the warrants term there?
A. Yes, I do.
Q. Okay. Now, let's go to JX 63 at page 12. You referenced the last line of this press release in your testimony in response to questions from Mr. Boies. Do you recall that?
A. Yes.
Q. Okay. And what does it indicate in that last line?
A. "The U.S. government will receive a 79.9 percent equity interest in AIG and has the right to veto the payment of dividends to common and preferred shareholders."
Q. So, what understanding did the Board of Governors have, at the time that the press release was issued, as to what the form of the equity would be?
A. So, there was a description of -- so, there was a description of the term -- of the -- let me start again.
The Board understood that there were -- that consideration for the loan would include a 79.9 percent equity interest, and it was described -- while it was discussed in terms of the 79.9 percent number, it was described in terms of warrants.
But by the time of the press release, the -- we

understood that there were other options besides warrants for achieving the 79.9 percent equity interest, and that's what's reflected in the press release.

Q. Focusing on this press release and that last sentence on page 12, do you recall whether you had seen an earlier draft of the press release prior to this one?

A. Yes, I had.

Q. And do you recall, based on that earlier draft of the press release, whether there was any difference in the description of the equity participation in that draft compared to the description of the equity participation in this final press release?

A. Yes. The earlier draft indicated the 79.9 percent would be in the form of a warrant.

MR. BOIES: Your Honor, could we have a reference to what draft he's talking about, just so the record is clear, which draft?

THE COURT: Sure. What document are we talking about?

MR. AUSTIN: I don't believe it's an exhibit, Your Honor.

THE COURT: It's not an exhibit?

MR. AUSTIN: I don't believe it is, no. We checked earlier, and it is not.

MR. BOIES: Your Honor, I would object and move to strike the witness' last answer. If he's referring to a document that doesn't exist, I don't think that's appropriate.

MR. AUSTIN: It does exist, Your Honor, but Plaintiffs just elected not to mark it as an exhibit.

THE COURT: Well, I am going to sustain the objection. The last statement about the draft document is stricken from the record.

MR. AUSTIN: Your Honor, we will move at this time to mark the exhibit.

THE COURT: Is it on your exhibit list?

MR. AUSTIN: It is not on our exhibit list, no.

THE COURT: Well, it's too late.

MR. AUSTIN: Okay.

BY MR. AUSTIN:

Q. How did the press release get changed?

A. So, the press release was prepared by our Public Affairs Office, circulated to a variety of staff who made comments, I made comments, and then it was put in final form by the press office.

Q. So, you were involved in the language that appears in the final press release?

A. Yes. Yes, and I reviewed the press release.

Q. As of this point in time, with the language that appears here of 79.9 percent equity interest in AIG, did you know what form the equity would take that would ultimately be used for the revolving -- the RCF?

A. No. I believed -- and the reason that I changed the press release, I believed that the -- at this point, the form of the equity interest was to be determined.

Q. Were warrants still a possibility?

A. Yes, warrants were still a possibility.

Q. Mr. Alvarez, I am going to ask that you be handed a copy of DX 393.

MR. PHILLIPS: May I approach, Your Honor?

THE COURT: Sure.

THE WITNESS: It's not in the book? Okay.

THE COURT: Do you have one for me?

THE WITNESS: Your Honor?

THE COURT: Did you get two?

THE WITNESS: No, I didn't, but they'll give me another, I'm sure. I need a copy.

BY MR. AUSTIN:

Q. If you would take a moment to review DX 393.

A. (Document review.)

Q. Could you identify DX 393 for the record.

A. It is two emails, one from the chairman to Michelle Smith. Michelle Smith is our senior public affairs officer, and the chairman is asking her a question, "Is management out?" He's responding to an email Michelle Smith sent to all of the members of the Board and to me, to Brian Madigan, to President Geithner.

And then Calvin Mitchell, William Dudley are employees of the New York Reserve Bank, and Laricke Blanchard at the time was the head of our Public Affairs Office at the Board of Governors. She's transmitting the press release and indicating that it had been changed and that the press release would be released at 9:00.

Q. And who does she indicate in the email was changing the press release, the language of the press release?

A. So, she -- she refers to changes New York had made and that she and I had agreed to include.

Q. So, you approved the changes to the press release?

A. I did.

MR. AUSTIN: Your Honor, we move into evidence DX 393.

MR. BOIES: No objection, Your Honor.

THE COURT: Defendant's Exhibit 393 is admitted.

(Defendant's Exhibit Number 393 was admitted into evidence.)

BY MR. AUSTIN:

Q. And is one of the changes that's referred to in DX 393 the changes to the -- the change to the equity provision?
A. The -- yes, to the reference -- the reference to equity interest, yes.
Q. And what was the change from and to?
A. It was changed from "will receive a warrant for 79.9 percent," or something like that, a reference to warrants, to the way the press release reads in final.
Q. Let's turn back to the resolution, which is at JX 63 at 11. Do you recall Mr. Boies showing you, during your earlier examination, PTX 80, 8-0? It's in your other notebook.
A. Yes, I do.
Q. And if you could tell us again what PTX 80 is.
A. PTX 80 was the first draft of the resolution prepared by staff before the board meeting to consider whether to extend credit to AIG.
Q. Had you commented on -- now, who did you get -- what draft are we talking about of the resolution?
A. In PTX 80?
Q. Yes.
A. PTX 80 was a draft prepared by staff that was sent to me and I forwarded on -- as is evident from the first page of PTX 80, I forwarded on to Tom Baxter and

Tim Geithner at the New York Reserve Bank for their comments. It was a preliminary draft.

Q. Now, this draft that you received, who prepared that on your staff?

A. I don't know. One of -- it was forwarded to me by Rich Ashton. It has references to Mark Van Der Weide and Sophia Allison. It could be any of those three. I don't know which one.

Q. At the time you forwarded this draft resolution to Mr. Geithner and Mr. Baxter, do you remember where you were at the time?

A. I was sitting in the back of the FOMC meeting and engaged in that.

Q. Had you commented on the draft that Mr. Ashton prepared or that was prepared by your staff prior to the time that you sent it to Mr. Geithner and Mr. Baxter --

A. No. I had not --

Q. -- that is in PTX 80?

A. -- I had not at that time.

Q. Let me ask you to turn in your notebook -- or I'll have to get the draft -- PTX 81. Take a moment to review that.

A. (Document review.) Yes, I see it.

Q. And could you please identify PTX 81.

A. It is an email message from me to Tom Baxter, the general counsel of the New York Reserve Bank, on September 16th, 2008, about 11:59 in the morning, and I'm transmitting -- I'm indicating to him that we'll need an interest rate recommendation on the AIG loan and also telling him that we would consider this after the FOMC meeting.

The reason I'm asking him for an interest rate recommendation on the loan is, as we noted yesterday, 13(3) provides that the interest rate would be set under Section 14 of the Federal Reserve Act, and Section 14 generally provides that the interest rate is determined by the Board -- is established by the Reserve Bank based on a determination by the Board. So, the way the Board has read that is it seeks a recommendation from the Reserve Bank on the appropriate interest rate, and then the Board makes a decision about whether it is the right interest rate or not.

MR. AUSTIN: Your Honor, we would move into evidence PTX 81.

MR. BOIES: No objection, Your Honor.

THE COURT: Plaintiffs' Trial Exhibit 81 is admitted.

(Plaintiff's Exhibit Number 81 was admitted into evidence.)

BY MR. AUSTIN:

Q. Now, Mr. Alvarez, how long after you sent the draft of PTX 80 to Mr. Geithner and Mr. Baxter was it that you sent this email, PTX 81, to Mr. Baxter?
A. So, PTX 80 that we discussed yesterday as forwarding on the draft resolution was at 11:56, according to the email. So, this is about three minutes later.
Q. And if you go back to PTX 80, do you see there that it says that credit would be extended at the primary credit rate, in the bottom line?
A. In the draft resolution?
Q. Yes.
A. Yes.
Q. Okay. And what connection did PTX 81 have to do with respect to that line that's in the draft?
A. So, I knew from the conversations earlier in the day that the extension of credit, if we were going to make it, would not be at the primary credit rate. So, I knew this term -- this part of the resolution would have to be changed, but it depended on a recommendation from the New York Reserve Bank about the appropriate interest rate. So, I was seeking that recommendation from the New York Reserve Bank.
Q. Did you have any discussion with anyone from your staff about changes to the draft resolution that you had

sent originally to Mr. Geithner and to Mr. Baxter?

A. So, at some point in this period of time, after I had sent the emails, I stepped out of the FOMC meeting very briefly and contacted Rich Ashton to let him know that we would be getting more information and that the resolution would be -- would have to be changed. Since I was in the FOMC meeting, I asked him to monitor the changes and information that we would get.

Q. And what changes to the draft resolution that is in PTX 80, the draft sent to Mr. Geithner and Mr. Baxter prior to your email three minutes later, did you discuss with Mr. Ashton that you wanted him to implement to change the final resolution?

A. So, in particular, I recall indicating that the interest rate would be changed and he should watch for some email from Tom Baxter about what they would recommend.

Then there was -- I had a very brief indication -- discussion with Rich about whether the second sentence in the second paragraph on conditions should have some reference to the type of conditions that we were -- the type of terms that were in the -- in the term sheet.

But I didn't give him specific language and I didn't -- we didn't redraft the press release at that time. I only had a couple of seconds before I had to get back to the FOMC meeting. So, it was a brief conversation.

Q. Is there any reference in the board minutes that suggests that the Board of Governors thought that the Reserve Bank would need to pay billions of dollars to exercise warrants?

A. No.

Q. Would you expect it to be noted in the board minutes that the Reserve Bank would need to pay billions of dollars to exercise the warrants if, in fact, they thought that?

A. Yes.

Q. Let me ask you to turn back to Starr's notebook, to PTX 132. Do you have it?

A. I do.

Q. Do you recall being asked a series of questions by Mr. Boies about this exhibit?

A. Yes, I do.

Q. And this is a September 18, 2008, email that you sent to Mr. Geithner. Is that right?

A. That's right.

Q. And I believe you testified in response to the questions from Mr. Boies that you drafted this proposed revision to Section 13(3) at the request of

Mr. Geithner?

A. Right. That's right.

Q. And what was Mr. Geithner's request?

A. So, he wanted to explore the possibility that the Federal Reserve's authority could be broadened to allow more than just extensions of credit, but actually providing funding in the form of actual equity investments in companies where we injected capital into companies that needed capital. And so these were ways to change the existing authority to broaden it beyond what we had done in AIG to allow us a new tool, which would be capital injections.

Q. In addition to the request to inject capital, did Mr. Geithner request anything about providing additional authority to the Federal Reserve Banks to act without Board of Governors approval?

A. So, the -- it does include an addition that would -- let me back up to be responsive to your question. This still required the authorization of the Board of Governors. So, even as modified, it would not authorize the Reserve Banks to make an extension of credit without the authorization of the Board of Governors.

Q. Now, what changes did you propose to PTX 132?

A. So, the way to read this document is, as

Mr. Boies pointed out yesterday, underlines are additions to the existing language, and strike-outs are removing words from the existing statute.

Q. Okay. And what changes did you propose that would allow the Fed to be able to inject capital?

A. So, the main way that is accomplished is by removing references to discounts -- which are, as we discussed yesterday, extensions of credit -- and instead substitute "provide funding." And providing funding could include equity funding as well as debt funding.

Q. Were there any other changes?

A. So, we -- in the Section 4 provision, it broadened the powers granted to the Reserve Bank to include all powers necessary to carry on the business of banking. So, no longer limited to just incidental powers, but any power that is necessary to carry on the business of banking.

Q. Mr. Alvarez, I would like to show you an amended Form 8-K, which is marked as JX 99.

A. Is that in one of the books?

Q. It will be handed to you.

Now, you were asked yesterday about JX 96, which is an SEC Form 8-K that AIG filed on September 18, 2008. Do you recall that testimony?

A. I do.

Q. And do you recall, in responding to a question from Mr. Boies, that contrary to a statement in the Form 8-K, that AIG did not issue a warrant on September 16th? Do you remember that?

A. I do.

Q. Now, I would like to take you back to JX 96, which is in the notebook that was provided to you by Starr, and specifically to the third paragraph that you were asked about.

A. JX 96?

Q. Page 2.

A. Page 2? Yes, I see that.

Q. Do you see it?

Do you see there where it says, "AIG issued a warrant to the Board of Governors of the Federal Reserve System"?

A. I see that.

Q. Did that, in fact, happen?

A. No, it did not.

Q. Now, could you identify what JX 99 is.

A. JX 99 is an 8-K/A filed by AIG. The date of report is September 16th.

Q. And directing your attention -- well, first of all, Your Honor, I would ask -- well, it is already in evidence, JX 99 -- oh, it's already in.

MR. BOIES: No objection, Your Honor. I think it's already in.

THE COURT: It's already in.

BY MR. AUSTIN:

Q. If you would turn to the second sentence under the heading on page 2, beginning with, "This Form 8-K," what does it say there?

A. "This Form 8-K/A filing corrects certain errors in, and supersedes, yesterday's filing."

Q. And do you see where the corrected Form 8-K describes the equity interest provided for in the summary of the terms of the revolving credit facility? Later down on the page.

A. The third paragraph?

Q. Yes.

A. I see the third paragraph.

Q. And do you see the reference to the equity in the --

A. In the fourth paragraph?

Q. -- in the fourth paragraph? Yes.

What does it say there?

A. "The summary of terms also provides for a 79.9% equity interest in AIG. The corporate approvals and formalities necessary to create this equity interest will depend upon its form."

Q. Was that consistent with your understanding of the equity interest?
A. Yes, it was.
Q. What is the statutory standard with respect to collateral in order to make a loan under Section 13(3)?
A. It has to be to the satisfaction of the lending Reserve Bank.
Q. We've heard -- you were asked on questioning from Mr. Boies about the term "fully secured." Do you recall those questions?
A. Yes, I do.
Q. Okay. What does the term "fully secured" mean to you compared to the standard "secured to the satisfaction of the bank"?
A. So, that's one way to describe the satisfaction -- "to the satisfaction of the Reserve Bank."
Q. Is there any fully secured requirement or standard for making a Section 13(3) loan?
A. No. It just has to be to the satisfaction of the Reserve Bank.
Q. Please turn to PTX 269, which is in your binder from yesterday.
A. PTX -- I'm sorry?
Q. 269.

A. 269.
Q. Do you recall Mr. Boies asking you a series of questions about this exhibit?
A. Yes, I do.
Q. And you identified, I believe, PX -- PTX 269 as your handwritten notes of a September 30, 2008, discussion among Federal Reserve staff members?
A. Yes. That's correct.
Q. And do you recall that Mr. Boies' questions focused on the Federal Reserve staff's discussion about possibilities for preempting a downgrade by the rating agencies?
A. Yes, I recall that.
Q. I'd like to focus for a moment on the discussion of AIG's financial troubles that gave rise to concern about a ratings downgrade. Directing your attention to the statement on the first page there of "Many pieces and parts in trouble," is that a correct reading of your line there?
A. Yes. That's the first line.
Q. What was discussed on September 13, 2008, about AIG being in trouble?
A. So, this is the end of September. It's a couple of weeks into or a little over a week into the revolving line of credit, and the economy is struggling, the

financial situation is pretty bad, and AIG is drawing down much more heavily on the revolving line of credit than AIG had forecast when it sought the line of credit and that we had anticipated. In fact, there was an expectation that by the end of the month, AIG might have drawn as much as $60 billion from the revolving line of credit.

There was the potential for a rating agency downgrade of several of its instruments. The rating agency downgrade would intensify the need for collateral by AIG because the amount of collateral it had to post in its transactions with third parties depended on AIG's credit rating. If its credit rating was high, counterparties were willing to accept less collateral. When the rating -- if the rating decreased, then counterparties would be more concerned about whether AIG could meet its obligations, and so it demanded -- the counterparties demanded more collateral. That is a liquidity drain on AIG.

So, there was concern that the rating agencies might downgrade AIG and intensify their -- increase their collateral -- the demands for collateral as a result.

Q. Mr. Alvarez, I may have misspoken earlier. These notes were taken on September 30th of 2008, not

September 13th, correct?

A. September 30th, yes.

Q. Okay. And this was the understanding as to AIG being in trouble as of September 30th?

A. Yes.

Q. Now, who were the participants that were in this meeting?

A. So, this was a phone call. It involved, from the New York Reserve Bank, Tom Baxter, general counsel of the New York Reserve Bank, and Sarah Dahlgren, who at the time was in the Supervision Division of the Reserve Bank and was responsible for monitoring the financial condition of AIG. And she's not a lawyer; she's a financial analyst.

From the board side was myself, Rich Ashton, Kieran Fallen, Mark Van Der Weide, and Sophia Allison, all people in the Legal Division that I had identified earlier.

Q. Now, what basis did the participants in the conversation, particularly Ms. Dahlgren, have for their understanding that AIG was in trouble as of September 30th, 2008?

A. So, Sarah was having regular conversations with a variety of people at AIG about their financial condition, the demands that counterparties were making on them, and she was also reaching out to the credit rating agencies to try to understand how they were thinking about the condition of AIG.

Q. And what role did Ms. Dahlgren have with respect to any monitoring of AIG that was ongoing by the Federal Reserve Bank of New York?

A. She was one of the key employees for monitoring the condition of AIG.

Q. Do you see the line about halfway down the page that -- well, I should have you read it since it's your handwriting, but "Rating agency downgrade possible." Am I reading that correctly?

A. You are reading that correctly, "Rating agency downgrade possible."

Q. Now, directing your attention to what is written directly below that, could you please advise us as to what you recall being discussed regarding the magnitude of the losses that AIG was continuing to incur?

A. So, I was -- this is a description of financial information coming from Sarah Dahlgren, and she's explaining that they believed, from what they were hearing from AIG, that a rating downgrade could happen by the end of the week; that financial products would have approximately a $30 billion additional loss, and there would be some losses on the securities lending portfolio; and those would all impact the decision to -- by the agencies -- credit rating agencies to downgrade the company.

Q. How long after the New York Fed first extended credit to AIG did this discussion for the need for additional assistance to AIG take place?

A. So, the Board considered and approved the extension of credit on September 16th. This is September 30th, so it's just two weeks later.

Q. So, two weeks later, the Federal Reserve already was discussing the need for assistance in addition to the $85 billion revolving credit facility?

A. So, what it was considering was the effect that a ratings downgrade might have on the company and the additional demands for liquidity that the company would have if there was a ratings downgrade and whether there was anything we should do to prepare for that and how -- how we could prepare for that.

Q. Now --

THE COURT: Mr. Austin, should we take a morning break?

MR. AUSTIN: Certainly, Your Honor.

THE COURT: We will come back at 11:15.

(Court in recess.)

THE COURT: Thank you. Please be seated.

Please proceed.

MR. AUSTIN: Thank you, Your Honor.

BY MR. AUSTIN:

Q. Did the Federal Reserve extend any guarantee to AIG, which is the subject of PTX 269?

A. No, it did not.

Q. Now, if you would -- I am going to hand you a document marked as DX 599.

A. (Document review.)

Q. Have you had a chance to look over DX 599, Mr. Alvarez?

A. Yes, I have.

Q. And could you please identify it.

A. It's a press release issued by the Board on October 8th, 2008, and it describes an additional program that we entered into with AIG.

MR. AUSTIN: Your Honor, I move into evidence DX 599.

MR. BOIES: No objection, Your Honor.

THE COURT: Defendant's Exhibit 599 is admitted.

(Defendant's Exhibit Number 599 was admitted into evidence.)

BY MR. AUSTIN:

Q. Now, shortly after your September 30, 2008, discussion regarding AIG's continuing need for assistance, did the Federal Reserve extend additional financial assistance to AIG?

A. At any point or do you --

Q. Well, immediately after.

A. So, in October, the Federal Reserve agreed to -- one of the drains on liquidity to AIG was a securities lending program that it had, and its counterparties were returning securities that had been lent out by AIG. The collateral for those securities is cash.

AIG had invested that cash in various instruments, in particular, residential-backed -- mortgage-backed -- residential mortgage-backed securities, and those assets were illiquid. So, as customers -- counterparties were returning the securities that were borrowed, they were expecting cash back.

AIG didn't have the cash. It was using the revolving line of credit to pay those counterparties. That was draining the line of credit that the Fed had provided, and AIG had a variety of credit needs. So, this program was designed to allow the Federal Reserve to stand in between AIG and other counterparties in the sense that if a counterparty returned securities to AIG, the Federal Reserve would borrow those securities and lend cash to AIG.

AIG would then use that cash, return it to the counterparties, and the Federal Reserve would become the security borrowing counterparty for AIG. So, that took some of the pressure off the use of the revolving line of credit, but it meant that the Federal Reserve stood ready to provide up to another $37 billion worth of liquidity to AIG.

Q. So, just over three weeks after September 16th, 2008, the Federal Reserve extended $37.8 billion in assistance to AIG in addition to the $85 billion the Federal Reserve already had extended to AIG, for a total of $122.8 billion?

A. So, it --

Q. Is that right?

A. -- it's a bit of an overstatement. It had authorized up to $85 billion in a revolving line of credit. Not all of that had yet been drawn down, but it was -- that much was available. And the same with the $37 billion security lending program, not all of that was actually used, but that amount was available for use by AIG.

Q. After September of 2008, was there still risk with respect to the loan to AIG?

A. After September 2008? Yes, absolutely.

Q. And what made you understand that the loan was risky after September 2008?

A. Well, the economy was still in very poor shape. More firms were coming under pressure. There were liquidity pressures on a -- more firms were coming under liquidity pressures. AIG is continually being subjected to review by the credit rating agencies, and each time the credit rating agencies take a look at AIG and consider the position and consider downgrading AIG, that increased risk.

And AIG had not, as of this date, October 8th, they had not yet announced their results from operations for the third quarter of September, and so it became clear in October and November that AIG was going to have to announce a significant loss from its operations. That indicated both that AIG was not -- that AIG was not a pristine borrower, so there was risk to this credit, and it also created worry that that would influence the markets and the credit rating agencies in how they dealt with AIG and put more pressure on the company.

Q. Would you please turn in your notebook to DX 660.

A. Which notebook?

Q. Our notebook, the Government's notebook. Take a moment to review that, please.

A. (Document review.)

Q. Could you please identify DX 660.

A. Yes. This is a memorandum sent to the Board of Governors on November 6th by a variety of staff from the Legal Division, the Monetary Affairs Division, our Division of Banking Supervision, and the Research Division -- excuse me -- about proposed steps to restructure the facilities with AIG to help stabilize AIG.

Q. And were you one of the staff members that prepared this memorandum?

A. Yes, I -- yes, I was.

MR. AUSTIN: Your Honor, we would move into evidence DX 660.

MR. BOIES: No objection, Your Honor.

THE COURT: Defendant's Exhibit 660 is admitted.

(Defendant's Exhibit Number 660 was admitted into evidence.)

BY MR. AUSTIN:

Q. If you would turn to page 5 of the memo, and I draw your attention to the last sentence before "Discussion of Proposed Actions," where it says, "A bankruptcy by AIG also likely would significantly reduce the value of AIG's assets, including the stock of its regulated insurance subsidiaries, which currently serve as collateral for the September facility."

Do you see that?

A. I do.

Q. Could you explain what you meant by that in your memorandum?

A. So, the idea being conveyed is that if AIG, the parent, is unable to -- goes into bankruptcy, then the public perception that goes along with that would -- and by that I mean the perception by counterparties, customers of the insurance companies, you know, including policyholders of the insurance companies -- would be that AIG -- those other companies may be imperiled or not as -- not have a source of strength from their parent, which is now in bankruptcy, and that could cause the business to diminish and the value of those companies to diminish.

Not to mention that in bankruptcy, the general desire is to sell assets as quickly as possible, and in this situation, it was believed that giving AIG some reasonable period of time, like the original credit was two years, to sell the assets would allow obtaining a better value than trying to sell the assets very -- the subsidiaries, the insurance subsidiaries, very quickly.

Q. Thank you, Mr. Alvarez.

Now, if you could please turn to page 7 of the memorandum, of DX 660, and I'd draw your attention to the first sentence in the second paragraph, saying, "The proposed restructuring would improve the likelihood that the Federal Reserve will be fully secured and repaid on the September Facility."

Do you see that?

A. I do.

Q. What does that sentence signify in the context of the proposed additional assistance?

A. So that the proposed restructuring would improve the potential that AIG would repay and the value of the companies would continue to be high so that the collateral would continue to be available to repay the credit.

Q. Does that indicate whether or not it was fully secured as of that point in time?

A. So, it suggests that the value of the companies may have diminished and that there was concern about whether at that point, in November, the value of the subsidiaries was above or equal to the value of the credit extended.

Q. Did the Board approve the recommendation that's set forth in DX 660, the -- the proposed steps to stabilize AIG?

A. Yes. Yes, it did.

Q. Thank you.

Mr. Alvarez, I'd like to just do one little matter, stepping back for a moment, if you would go back to JX 63 and to the language in the resolution on page 11. And do you recall that we looked at the second sentence there, that the New York Reserve Bank may, as it deems appropriate, impose conditions such as those described in the proposed lending facility term sheet, on its extension of credit to AIG? Do you see that?

A. I see that.

Q. Could you explain what those words mean, particularly "impose conditions, such as those described in its proposed lending facility term sheet"? What was meant by that?

A. So, that's authorizing the Reserve Bank to impose conditions on the extension of credit of the type that were discussed in -- or outlined in -- described in the lending facility term sheet.

Q. Was that a draft or a final term sheet?

A. That was a draft.

Q. Had it been finalized?

A. Not at the time of the resolution.

Q. And did the Board of Governors have the same understanding that you just articulated?

A. Yes. It knew that it was a draft.

Q. Now, you were asked on cross examination by -- not cross, but the earlier examination by Mr. Boies about a trust structure to hold the shares. Do you recall that line of questioning?

A. Yes, I do.

Q. Okay. I want to ask you a few questions about that.

At some time after an agreement was reached on September 16 but before the signing of the credit agreement on September 22 of 2008, do you recall whether there were any discussions about the form of the equity to be used in connection with the revolving credit facility and the possible use of a trust?

A. Yes.

Q. And do you recall, during your examination by Mr. Boies, that you were shown an email in which you stated, "Ownership of the trust along the lines in this term sheet will not work for the Fed -- trust or no trust"? Do you remember that discussion?

A. I recall that, yes.

Q. Please turn in your notebook to PTX 183.

A. This is in yesterday's notebook?

Q. Yes. Please take a moment to refamiliarize yourself with that email.

Now, do you recall that this is the email that you discussed with Mr. Boies?

A. Yes, I recall.

Q. Now, looking at that sentence there, "Just to confirm, ownership of stock along the lines in this term sheet will not work for the Fed -- trust or no trust." Do you see that there?

A. I do.

Q. Could you explain to the Court what you meant when you said that to Mr. Baxter in that email?

A. Certainly. First of all, the attached term sheet has as the purchaser of the preferred stock the Federal Reserve Bank of New York. The email goes on -- an important part of the email for understanding this is that it was my impression at this time, when I sent the email, that Treasury taking the stock had been foreclosed. So, I had a --

Q. So, let me back you up or stop you right there for a second.

MR. BOIES: Could we just get that answer finished, Your Honor? I don't normally do this with the other side's witness, but I would like to have it.

THE COURT: Yes, let's let the witness answer that.

MR. BOIES: I would like to have this.

THE WITNESS: So, it was my understanding that the Treasury holding the stock had been foreclosed, and so I had a variety of very strong policy concerns about the Federal Reserve holding the stock, and I was concerned that what would happen -- and I expressed it in the email -- that there would be either the Federal Reserve holding the stock directly or a trust for the Federal Reserve, because the Treasury would not be -- would not hold the stock.

And my concerns were that the Federal Reserve was the lender in this transaction, and I was concerned about the conflicts that would arise if we were viewed as both the lender and as the owner of AIG. The owner and the lender don't always have the same interests, and that can create a conflict internally. You have to make a choice about which is most important. That, I thought, would put us in a difficult position.

I also was concerned that the Federal Reserve has access to substantial amounts of confidential information about a variety of financial institutions and that there would be the perception that AIG would have -- if the Federal Reserve were the owner for an extended period of time, that the -- that AIG would have access to that information or the New York Reserve Bank would use that information to benefit AIG. So, I was concerned about the public perception that AIG was in a privileged place.

I was also concerned about the perception that the Federal Reserve would be running AIG and so responsible for its decisions, and that public perception was already leading to inquiries from folks on the Hill about different aspects -- different decisions the Federal Reserve should force upon AIG.

And another concern I had was I had already had discussions as of this point with our accountants, and I understood that if the accountants believed that the Federal Reserve was the owner of AIG, that they would consolidate the balance sheet of AIG onto the balance sheet of the Federal Reserve.

Now, at the time, we had about a trillion dollars in assets, but AIG also had a trillion dollars, perhaps a little more, and that would double the size of the Federal Reserve's balance sheet. It would also exacerbate all the other concerns, because it would appear then to the public like the Federal Reserve was responsible for all the liabilities, all the operations, all the decisions of AIG, because they were reflected on our balance sheet.

We publish -- unlike every other company, we publish a balance sheet every week. So, this would constantly be showing up in the Federal Reserve's balance sheet. So, I was worried that those policy concerns would not be addressed and I would be forced into a position where the Federal Reserve would be the owner of the shares either through a trust or not through a trust.

BY MR. AUSTIN:

Q. Now, you mentioned early on in your answer that the Treasury -- you understood Treasury was not going to take the equity. What was that -- what was your understanding with regard to that? What was the basis for Treasury's view?

A. So, we had had a conversation earlier in the week, and I believe that was referenced yesterday by Mr. Boies, that included attorneys from the Treasury Department, and they were reviewing a substantial number of matters -- issues and were -- and had indicated on that call a strong reluctance by the Treasury to take the stock. And that's what I reflect in this email. I thought that Treasury taking the stock had been foreclosed. That was the impression I had when I wrote this email.

Q. Did you have an understanding as to whether it was foreclosed on policy reasons or legal reasons?

A. I didn't know. There were a variety of things that -- there were certainly legal issues they had raised that were being considered. I think yesterday I indicated the notes suggested that there were discussions between Treasury and the Office of Legal Counsel, but I didn't know the full range of issues that Treasury was exploring, and they didn't try to describe their full range. They only offered some examples.

Q. Now, just for clarity points, with respect to the legal issue of authority that we've been discussing concerning Section 13(3), does Section 13(3) apply to the Treasury Department?

A. No, it does not.

Q. Now, you mentioned in response to a question earlier from Mr. Boies that there were some legal considerations which also entered into this. All you've listed so far are policy considerations. Were there, in fact, other legal considerations -- were there any legal considerations that entered into your statement, "trust or no trust"?

A. So, as I explained earlier or I explained yesterday, I had no question in my mind that the Federal Reserve could accept the equity interest as consideration for the extension of credit, and I also had no question that for some short period of time, the equity interest could be held in common stock form on its way to being transferred to another source or sold.

So, the question that was left unresolved in my mind was could the Reserve Bank hold the shares of AIG for an extended period of time, unrelated, for example, to the term of the credit, and own and operate the company for an extended period of time? That was an issue I -- that was in my mind unresolved. I had not taken a position on that, but that is a legal issue.

Q. And how did that compare in importance to the policy considerations that you discussed earlier with respect to your comment in the email that it will not work for the trust -- "will not work for the Fed -- trust or no trust"?

A. So, I thought the policy concerns overwhelmed the legal issue. Even if I had gotten to ground and determined, for example, that it was permissible for New York to hold the shares for an extended period of time, I thought the policy reasons against it were so overwhelming and strong that that was not the appropriate course of action. So, I'm interjecting myself into the conversation here with New York to make sure that my concerns are dealt with.

Q. Did you ever reach a final conclusion as to whether the Federal Reserve had authority to hold the equity stock for an extended period of time, which they acquired as a condition of the loan?

A. No, it wasn't necessary because of developments after this email where Treasury indicated that it indeed was willing and able to take the beneficial ownership interest in the shares, and so the shares were transferred by the Reserve Bank to a trust for the benefit of the Treasury. So, I became at that point indifferent about the various approaches.

Q. If you would please turn in your notebook to DX 527.

A. Which notebook?

Q. The Government's notebook. Take a moment to look at that.

A. (Document review.) Yes, sir.

Q. If you could identify DX 527, please.

A. So, these are emails that occurred after the email at PTX 183, but the same day, a couple hours later, between Tom Baxter and myself. So, it's on Sunday, September 21st, 2008. The emails begin at 12:25 in the morning, another one at 1:30, another one around 2:30.

Q. And when you referenced PTX 183, that was the email we just went over, the "trust or no trust" email?

A. That's right.

MR. AUSTIN: Your Honor, we would move to admit into evidence DX 527.

MR. BOIES: No objection, Your Honor.

THE COURT: Defendant's Exhibit 527 is admitted.

(Defendant's Exhibit Number 527 was admitted into evidence.)

BY MR. AUSTIN:

Q. Mr. Alvarez, I would direct your attention to the email in the -- the bottom email from you to Mr. Baxter, and just for the record, there are actually three emails if you go onto the back on this document, correct?

A. Yes.

Q. So, it's the middle email?

A. Yes.

Q. So, the email where you write to Mr. Baxter, in that second line there, you refer to him as a "king among kings." Do you see that?

A. I see that.

Q. Could you explain what you meant when you sent the email to Mr. Baxter indicating that, in your mind, he was a "king among kings"? What did you mean by that?

A. So, I was very happy with Tom at this point. This is a couple hours after the PTX 183 email, and I go on to explain in the email that Tom had had a conversation with the Treasury Department that I was not able to be involved in because I was called away by my chairman for something else, and in that conversation, the Treasury Department indicated that, indeed, contrary to the understanding I had had earlier in the week, the

Treasury Department was willing to be the beneficial owner of the shares in a -- held in a trust.

And so that, for me, moved the ownership interest away from the Reserve Bank. That resolved, in my mind, the -- I knew that would satisfy the accountants, that they would not then consolidate the balance sheet. That provided clear transparency of us as the lender, the Treasury, through the trust and its beneficial ownership as the owner, and us not involved in the operations of AIG. So, that addressed all those policy concerns that I had expressed.

Q. Was having the preferred stock held by a trust with Treasury as the beneficiary an acceptable arrangement, as far as you were concerned?

A. Yes, it was.

Q. Why?

A. Because it addressed all of the policy concerns that -- as I just mentioned, that I was concerned about.

Q. You mentioned earlier that you never reached a final conclusion with respect to the one open question you had with respect to 13(3) authority, whether the Federal Reserve could hold the equity obtained as a condition of a loan for an extended period, and you indicated that you didn't have to reach a conclusion on that. Why didn't you have to reach a final conclusion as to that question?

A. Right. So, the trust was consistent with the legal -- my legal view on the first two questions, that -- as we went through the other day, where the Federal Reserve would receive an equity participation note as consideration for the revolving line of credit, and then it would transfer that to -- so, hold it only for an interim, short period of time, transferring it then to the Treasury Department as the beneficial owner, and the Federal Reserve would not be in any way an owner of that equity interest going forward.

Q. Now, if you look at the email from Mr. Baxter to you, that would be the first email in this chain in DX 527. Mr. Baxter indicates there that there's still an open issue as to whether or not it will be warrants or preferred stock as of this point in time. Is that right?

A. Yes, that's right.

Q. And how was that open issue resolved?

A. It was ultimately resolved by the trust holding preferred stock rather than a warrant.

Q. And now -- so, now you have a trust as the beneficiary, the trust as the beneficiary of the Department of Treasury, with warrants, right?

A. No, with --

Q. Or preferred stock?
A. -- preferred stock.
Q. Was that the final arrangement?
A. That was the final arrangement.
Q. Was that acceptable to you?
A. That was.
Q. Why?
A. That was acceptable to me. As I mentioned, it was consistent with the legal analysis that was reflected in the memo that we had done on the 16th and my view about the interim -- you know, the Reserve Bank having authority to accept the equity interest as a consideration for the loan and then transferring it to the Treasury or selling it.
So, it met the two -- remember, there were three legal questions. It was consistent -- I believed the first two were readily acceptable. The third one I had not come to ground on, whether there could be a long-term holding of the stock by the Reserve Bank. This did not involve the long-term holding, so I didn't believe that issue was joined, and it was consistent with the rest of the analysis. But, importantly, it also addressed the policy concerns that I had been motivated by in this discussion.
Q. Let me go back to PTX 183 for one moment. That's

the "trust or no trust" memo.
A. Yes.
Q. Now, there is a reference there to "along the lines in this term sheet." What term sheet were you referring to?
A. The term sheet that's attached to PTX 183, page 3.
Q. And so when you wrote the email, if there was going to be a trust, who were you assuming would be the beneficiary of that trust?
A. So, as I mention in the email, I believed that Treasury being the beneficiary had been foreclosed earlier in the week, and so I was concerned that the trust -- while the discussion was that there would be a trust for the Treasury, that, in fact, at the last minute, I would be jammed and the trust would be for the benefit of the Federal Reserve Bank of New York.
Q. And that's what you were uncomfortable with?
A. And I was very uncomfortable with that for all the policy reasons that I described.
Q. Now, going back to the preferred verse warrants question and tracing your thinking throughout this time period from after September 16 through September 20, and assuming that the Fed was going to be involved, not a trust for the benefit of the Treasury, which of those

two forms did you personally prefer, preferred stock or the warrants?
A. Preferred stock in a trust or warrants in a trust? Preferred stock in a trust or warrants generally? I -- I was indifferent to those two.
Q. And what about if the Fed was going to own them, would you have preferred warrants or preferred?
A. So, as I -- as we indicated in the memo on the 17th, the -- I was comfortable that the Federal Reserve could own warrants, and I had not come to ground on whether the Federal Reserve could have a long-term holding in a preferred stock interest, an interest that was itself a voting interest.
Q. Okay, but getting away from the legal consideration, from a policy perspective, which did you prefer, warrants or preferred?
A. So, from a policy perspective, as I indicated, I would have had a very strong preference for the -- for warrants or for something that was held by the Treasury Department.
Q. And why is that?
A. Because of the potential that there would be the conflicts of interest as the owner and the lender; because of the potential view that our confidential information might be used for the benefit of AIG;

because of the perception we would be operating AIG as an owner if we, indeed, were the holder of the preferred stock; and because of the accounting issues, which were just tremendously difficult and, I thought, exacerbating.

Q. Let me ask you to turn to PTX 370.

A. Is that in the --

Q. In the binder that you were given from the Plaintiff.

Do you recall being shown this memorandum from -- during your examination by Mr. Boies?

A. Yes.

Q. And is this a final memorandum or a draft memorandum?

A. So, this is a draft memorandum.

Q. Let me direct your attention to the language at the top of page 2, starting with the words, "We understand."

A. Yes.

Q. Page 2.

A. Page 2 or -- page 2 of the memorandum?

Q. Page 2 of the exhibit. I'm sorry.

A. Yes.

Q. Do you see that language there?

A. Yes.

Q. And it says there that "We understand that the Treasury lacks the legal authority to hold directly voting stock of AIG but may have a beneficial interest in the voting stock held by the Trust. However, the Federal Reserve is also subject to the same legal constraints because we also are prohibited from acquiring and holding stock as an equity kicker in connection with a loan made by the Bank, as are commercial banks."

Do you see that?

A. I see that.

Q. Given the discussion we have had here today about your views on authority under Section 13(3), is what's stated there consistent with those views?

A. So, I didn't agree with that part of the memo or whole other parts of the memo, and, indeed, I struck -- once I had an opportunity to read this, I struck whole parts of the memo, including that discussion.

Q. And let me ask you to turn to PX 370-A, which is the next document in the same binder. Do you see that?

A. I do.

Q. Okay. And is this your revisions to the draft that we see in PX 370?

A. Yes.

Q. PTX 370.

Now, if you look at the paragraph I just read, where is that in this memo?

A. So, it's on page 2 of the memo, but it's part that I have stricken out.

Q. Okay. And when you say "stricken out," could you explain, with your handwritten comments, what you mean by "stricken out" on PTX 370-A?

A. So, I slashed through the first page. I put a question mark on the second page, brackets around the third with question, and a small bracket on page 3 by the words "These concerns," the second full paragraph, that first sentence.

And you can tell from my redrafting that I -- what I intended and what actually happened is that we kept the -- part of the first sentence on the first page and then deleted everything up until that bracket. And that was my -- that was my intent, and that's what happened.

Q. So, your edits that we see here were to take out that offensive -- the paragraph that you disagreed with that we discussed earlier, the "We understand" paragraph?

A. Along with other paragraphs that I didn't think were either correct or appropriate.

Q. And that's because you disagreed with it?

A. Yes.

Q. Now, I want to show you now a document that Mr. Boies did not show to you, and that is JX 162.

A. Is that in this notebook?

Q. That's in our notebook.

A. Yes.

Q. Could you identify what JX 162 is.

A. So, it's an email from Robert Hoyt, who was at the time the general counsel of the Treasury Department, on December 15th, 2008, so December 15th, and it's to Stephen Albrecht, who was an attorney in the general counsel's office at the Treasury Department.

Q. And what is attached to this email, JX 162?

A. Revision of the memoranda we just looked at at PTX 370 and 370-A.

Q. So, JX 162 is the version of PTX 370 and PTX 370-A that found its way to the Treasury. Is that right?

A. That's right.

Q. And JX 162 is the version that went to Treasury after your edits and changes?

A. That's right.

Q. And does JX 162 contain the "We recommend" paragraph that had the language you disagreed with in it?

A. It does not.
Q. If you would please turn in your notebook to PTX 373, in your notebook from yesterday.
A. Okay.
Q. Do you recall being asked about this document by Mr. Boies?
A. Yes, I do.
Q. And I will direct your attention to the last paragraph on -- well, first of all, you didn't write this document, correct?
A. I did not.
MR. BOIES: Objection. Leading.
MR. AUSTIN: Strike that.
MR. BOIES: This is one area where I would ask him not to lead.
THE COURT: Would you rephrase, please.
MR. AUSTIN: I agree, Your Honor. Mr. Boies had already established it with him.
BY MR. AUSTIN:
Q. Did you or did you not write this memorandum?
A. I did not write this memorandum.
Q. In fact, you are the addressee here. Is that correct?
A. Yes.
Q. So, this was written by your staff members?

A. I suppose so.

Q. And going to the bottom of page 2, the language there says, "The creation of the Trust is necessary to implement the condition on the Board's authorization because neither the Reserve Bank nor the Treasury Department has the legal authority to hold the equity directly. Because the U.S. Treasury is the beneficiary of the Trust that will hold the stock, the Treasury Department would logically be the entity that would assume the expenses of the Trust. However the Treasury Department has no appropriated funds."

Directing your attention to that first line, "The creation of the Trust is necessary to implement the condition on the Board's authorization because neither the Reserve Board nor the Treasury department has a legal authority to hold the stock directly," given what you have told me about your views on Section 13(3), did you agree with that statement?

A. No, I did not. I did not reach a conclusion about whether the Federal Reserve could -- had legal authority to hold the stock directly for an extended period of time.

Q. Now, you indicated in response to Mr. Boies' questions that you've never seen this memo. Is that correct?

A. That's right.
Q. And Mr. Boies asked you a series of questions about how many memos you could identify that had your name on there that you had never seen. Is that right?
A. I remember that.
Q. And he also showed you PTX 368. Do you recall that? Would you look in your notebook.
A. Yes.
Q. And if you look at PTX 368, does it contain the same language that we saw in PTX 373, the document we just looked at?
A. It looks like it does on page 3, the first full paragraph.
Q. And did you agree with the language in -- in that -- the same language that's in PTX 368, did you agree with that?
A. No.
Q. Now, this says at the top that it's from Scott Alvarez to Thomas Baxter and Marshall Huebner. Had you ever seen this document before?
A. Not that I recall, before the preparation for my deposition.
Q. Did you ever send this document to Mr. Huebner or Mr. Baxter?
A. No, I did not.

Q. Do you know whether Mr. Baxter and Mr. Huebner ever received a copy of this document?
A. I do not.
Q. And Mr. Boies asked you questions about, you know, how often is it that you've seen a document with your name on it addressed to somebody else, and what was your answer?
A. I didn't know.
Q. Now, I'd like to give the Court a perspective of your office and how it operates. How many attorneys work under you at the Board of Governors?
A. At this time, in 2008, somewhere around 55 lawyers.
Q. And how many different committees, departments, you know, subdepartments are there within your office?
A. Well, we're generally divided into two large groups: one group that does banking policy matters, applications, regulations, supervisory matters for banking institutions and the legal issues that arise there; and a second group that's about the same size, so, you know, each group about 30 attorneys. The second group does enforcement matters, litigation, contracts, payment systems matters, and internal legal matters.
Q. And how many of these attorneys are drafting memos under your name for various purposes?

A. Oh, probably all of them at some point.
Q. And on occasion, would these attorneys begin a project drafting a memorandum and it never makes it to your desk?
A. Yes, absolutely.
Q. And how would that arise?
A. Well, the issue might be resolved, the memorandum may not be necessary, the events may supersede the need for the event -- the memo, it may be resolved by oral discussions. There are a lot of ways that matters get resolved and memos don't have to proceed.
Q. You were asked on questioning from Mr. Boies whether the Board of Governors held a separate vote to approve the credit agreement. Do you recall that?
A. I -- I don't.
Q. Did the Board of Governors hold a separate vote to vote on the credit agreement?
A. You're talking about the September --
Q. September 22nd.
A. No, it did not.
Q. Why didn't it?
A. Well, it had authorized the Reserve Bank to make the extension of credit, and the Reserve Bank, as part of that authorization, is empowered to enter into the agreement. The Reserve Bank is actually the lender.

So, the typical situation is for the Reserve Bank to draft the contracts and enter into the contracts.

Q. Well, the Board -- the Board of Governors had approved the term sheet on the 16th, correct?

A. That's right.

Q. Why was there a separate --

A. Well, I take that back. They had not approved the term sheet. It had approved the -- it had authorized the extension of credit and authorized the Reserve Bank to impose conditions along the lines of the term sheet, the draft term sheet at the time.

Q. So, the Board had passed a resolution on September 16th that said -- such as the conditions and all set forth in the term sheet.

A. Right, authorizing the Reserve Bank to impose conditions such as those. That's right.

Q. So, why wasn't there a separate vote when the credit agreement was passed?

A. Because there wasn't a need for it. The Reserve Bank did, indeed, adopt an agreement that was in line with the authorization. It included terms such as those in the -- in the draft term sheet, and so there was no need for a special change or a special authorization.

Q. Well, hadn't there been a change to the extent that the term sheet, as you indicated in your response to Mr. Boies, had originally said warrants when the Board of Governors voted on it, but as you just indicated it now, that they had a trust for the benefit -- Treasury being the beneficiary and it involved preferred stock. So, isn't that a change? Why didn't you need a separate credit agreement vote?

A. So, there -- first of all, the primary point of -- that the Board was concerned about in its discussion was a 79.9 percent equity interest for the reasons I discussed earlier about limiting the windfall, being compensated appropriately, and the risk of the loan.

The form of that 79.9 interest -- percent interest was not a focus of the discussion of the Board. I did not believe that the change from a warrant to preferred stock held for the benefit of the Treasury Department was a material change in that term.

And to test that, I consulted with the chairman, Ben Bernanke, and the vice chairman, Don Kohn, to make sure that they also didn't think that was a material change that required a reconsideration by the Board. And they agreed that that was within their understanding and the Board's understanding, and so no further -- that part of it didn't require any further vote.

Q. And when you had this conversation with Vice

Chairman Kohn and Chairman Bernanke, did you advise them of the trust and the existence of the preferred stock?

A. I did.

Q. Do you recall seeing any emails concerning or summarizing your conversation with Chairman Bernanke and Vice Chairman Kohn about this issue?

A. So, again, it was a pretty hectic time, and I recall that after my conversation with the chair and the vice chair, I asked Rich Ashton, who we've talked about before, in the Legal Division, to send a memo -- to send an email, rather, to Tom Baxter in New York, indicating that I had had the consultation and that the -- we were okay at the Board and there was no further action required by us.

Q. Could you please turn in your notebook to JX 102.

A. This is in the white notebook?

Q. The Government's notebook, yes.

A. I'm sorry, I didn't hear the number. JX?

Q. JX 102.

A. 102.

Q. Could you identify the bottom of the email here?

A. Yes. It's an email from Rich Ashton to Tom Baxter on the 21st of September at about 4:30 in the afternoon.

Q. And you were copied on the email?

A. I'm sorry. I was coughing.

Q. And you were copied on this email?

A. I was copied on this email, yes.

Q. And what does the email indicate?

A. So, it indicates what I just said, that I had -- Rich is relaying that I had asked him to get back to Tom on the AIG matter based on conversations with the chairman and the vice chair. We're okay if the stock goes to a trust for which Treasury is the sole beneficiary, as long as we never get any equity ourselves. It goes on. Do you want me to go on?

Q. Go ahead.

A. It also goes on to discuss that the chair and the vice chair were okay with the New York Reserve Bank having a hand in the selection of the trustees as long as they remained independent of the Federal Reserve.

Q. And the concerns that are expressed there, are they policy concerns or are they legal concerns?

A. So, this is -- I guess to the extent that it's about whether we needed additional authorization, I think this is reflecting the view that this was within what the Board understood the parameters of the deal to be. So, there was no further action that had to be taken there.

Q. What about the -- how was the issue resolved with respect to the trustees?

A. So, the trustees were selected through a search done by the New York Reserve Bank, and there was consultation with the Treasury about the names of the trustees before they were finally installed.

Q. Let me ask you about another document that Mr. Boies showed to you, PTX 443, which is in the other notebook.

A. Okay.

Q. And could you identify again what this -- what this document is.

A. This is an exchange of emails between President Geithner and -- the chair, Michelle Smith, who's our public affairs officer, me and Tom Baxter.

Q. And can you explain what you're saying in this email?

A. So, the email on page 1 of PTX 443, I'm explaining that -- this is in March of 2009, so this is some months after the extension of credit, and the relationship with AIG is again being restructured, and what happens in the restructure is we have this revolving line of credit for $85,000 -- $85 billion. It's been slightly reduced to, I believe at this point, something like $60 billion because of a Treasury injection -- an injection of stock -- equity by the

Treasury into AIG, and -- but one of the next restructurings was to accept, in satisfaction of the revolving line -- of a portion of the revolving line of credit, shares of stock that had been pledged to the Federal Reserve in two foreign insurance subsidiaries of AIG.

So, this was accepting securities that were collateralizing the loan in satisfaction of that debt. That's something banks do all the time, and the idea was that those shares would be sold in a public offering, but in order to immediately reduce the debt, they were accepted by the Federal Reserve through a variety of entities in satisfaction of the debt. And then AIG began the process for selling those stocks -- those shares, and it did that over the next few months.

Q. What are you referring to when you say, "In this case, we are exercising a power that comes with lending"? What is that power?

A. So, then -- the power that comes with lending is taking equity in satisfaction of the loan. So, as -- in satisfaction of a debt previously contracted. DPC, it's a term of art used in the banking industry for reducing a debt by taking the underlying collateral. Tim is asking how that -- how we were accomplishing that if we could not purchase directly the stock of AIG, and I'm explaining the difference between those two.

Q. And what is the difference?

A. The difference is the acceptance of stock in satisfaction of the debt that we had previously contracted, the $85 billion credit, was a natural way of paying off the debt and then selling the assets in satisfaction of that debt. That's what we were doing, and that was different than being an investor that invests stock -- invests cash in a company as a way of acquiring an equity interest in the company, which we were not doing.

Q. And was that permissible, that latter function, injecting equity?

A. So, the latter one is -- when you think of the three questions that I was dealing with in early September, the latter one is one that may be the fourth. Could we, just independently of any extension of credit, without regard to an extension of credit, invest money into a company? That was authority that I did not believe that we had.

Q. Okay. Let me ask you to turn to PTX 363. Do you remember that Mr. Boies asked you questions about -- I'm sorry, this is in the -- in Starr's notebook.

A. Yes, I see that.

Q. And do you remember that this is a letter from

Chairman Bernanke to Secretary Paulson, dated November 9, 2008? Do you remember that?

A. Yes.

Q. And Mr. Boies drew your attention to the last full sentence on page 2 of PTX 363. Do you remember that?

A. I'm sorry, the last sentence on the --

Q. The last full sentence, "The Federal Reserve is authorized under the Federal Reserve Act to extend credit in various forms, but is not authorized to purchase equity securities of financial institutions." Do you see that?

A. I see that.

MR. BOIES: Your Honor, my recollection may be wrong, but I think I used a different document with the same point. But I have no objection to his answering the question.

THE COURT: All right. Thank you.

MR. AUSTIN: I apologize if I was incorrect.

BY MR. AUSTIN:

Q. Anyway, directing your attention to that comment, is your understanding that Secretary -- I'm sorry, that Chairman Bernanke is referring to the injection of equity in that sentence or is he referring to conditioning a loan on equity participation?

A. He is referring to injecting equity into AIG, which was exactly the proposal that the Treasury was asking his view on. Should the Treasury inject equity directly into AIG, apart from any extension of credit? And that is what he's referring to.

Q. Let me direct your attention to PTX 148. Again, it's in Starr's notebook.

A. I see that.

Q. And do you recall being asked questions by Mr. Boies about this document?

A. I do.

Q. And these are your handwritten notes from a telephone conference on September 18th. Is that right?

A. That's right.

Q. And this was the -- this was a lawyers call?

A. That's what it says.

Q. What was the underlying purpose for the call?

A. The purpose was to discuss various options on how to structure the equity interest that would be paid in consideration for the credit.

Q. And was that because as of this time, the form of the equity had not yet been determined?

A. That's correct.

Q. Now, do you recall being asked a series of questions about -- from Mr. Boies about Morgan Stanley

and Goldman Sachs becoming bank holding companies?
A. Yes, I recall that.
Q. Okay. Now, how did Morgan Stanley and Goldman Sachs becoming bank holding companies affect their ability to obtain loans from the Federal Reserve?
A. Oh, it -- it -- becoming a bank holding company or becoming a financial holding company provides no greater access to Federal Reserve credit than not being a bank holding company. So, the fact of becoming a financial holding company didn't change in any way the access they would have to emergency credit.
Q. Did Goldman Sachs and Morgan Stanley have access to Federal Reserve credit, irrespective of becoming bank holding companies?
A. They did. They had access through the PDCF, which was available to primary dealers. They were both primary dealers. They each owned banks which had access to the discount window, and they had the same access both before and after becoming a bank holding company.
Q. So --
A. And then if there were other facilities -- we were actually creating other facilities at the time, and they would have access to that in the same way as any other entity.
Q. So, what was your understanding -- as of the time

they became bank holding companies and you were involved in the process of that, becoming authorized, what was your understanding as to why there was a desire on their part to become bank holding companies?

A. So, they were seeking to become both bank holding companies and a particular kind of bank holding company called a financial holding company. By statute, a financial -- in order to become a financial holding company, the Board of Governors has to find that the company is well managed and well capitalized.

And so the -- the thought process, as I understood it, was if the Board were to approve these companies to become financial holding companies, that would be like a Federal Reserve imprimatur about the financial strength of the organizations, and that would hopefully ease some of the market tension about whether those companies were strong enough to be counterparties to other people.

Q. It would help the confidence the markets would have in them?

A. The confidence of the markets in dealing with these companies.

Q. Now, if AIG had been converted into a bank holding company, would that have resolved AIG's financial problems?

A. I don't believe so. AIG had very strong liquidity demands that were based on a variety -- on credit ratings, as we saw earlier, and those credit ratings are not affected by the Federal Reserve's decision to make a company a -- to allow a company to be a bank holding company or not be a bank holding company. And it -- it was suffering from a -- just a much broader lack of confidence in the marketplace, and it was about to announce a very large operating loss.

Q. Was AIG qualified to be a bank holding company?

A. AIG did, at the time, own a savings association that -- you know, so mechanically, it could have converted that to a bank, and mechanically, it could have become a bank holding company, but it would have had to have reached the high standards of a financial holding company in order for that to be -- for the Board to be able to approve that application.

AIG never applied, so I don't know how the Board would have come out on that, but as I mentioned, AIG was about to announce one of the largest losses in history, and so that would have made it very difficult for the Board to find that they, indeed, met the high financial standards to be a financial holding company.

Q. Would access to a discount window have provided AIG enough assistance to resolve their financial problems?

A. Well, the Federal Reserve did extend credit to AIG through the revolving line of credit. It was a substantial line of credit particularly tailored for the AIG situation. So, in that respect, they did receive substantial assistance from the Federal Reserve, and it did, in the end, allow the company to weather the storm, to pay back the Government, and to survive.

Q. Yesterday, Mr. Boies asked you about the Board of Governors March 16, 2008, vote to increase the maximum maturity of primary credit loans to 90 days. Do you recall that question?

A. I do.

Q. And Mr. Boies referred you to PTX 693, which is a document that I don't believe is in the Starr notebook but that they handed out separately. Do you have that still there?

Your Honor, if we could approach the witness and Your Honor.

THE COURT: Sure.

MR. AUSTIN: Does the Court have its copy?

THE WITNESS: It's this document?

MR. AUSTIN: Yes.

THE COURT: Great. Just what I need, more copies of this.

MR. AUSTIN: We would spare you if we could, Your Honor.

BY MR. AUSTIN:

Q. If you could take a look at this exhibit, and I would direct your attention to the bottom of page 4 and the entry for March 16, 2008. Do you see that? Do you see that entry?

A. I do.

Q. Okay. Would you please read the last sentence of that entry, which is on the top of page 5.

A. The entry for March 16, 2008?

Q. Yes.

A. "The Board also votes to increase the maximum maturity of primary credit loans to 90 days."

Q. Did that vote by the Board of Governors have anything to do with the maturity of loans extended under the PDCF?

A. No. That's a separate decision related to extensions of credit to insured depository institutions.

Q. What was the maturity of loans under the PDCF?

A. I believe they were overnight loans.

Q. Please turn in your Starr notebook to PTX 638. Have you had a chance to look at that?

A. Yes, I see this.

Q. Do you recall questions that you were asked about

the chart that appears on the last page of 638?
A. Yes.
Q. And you indicated that you did not think --
MR. BOIES: Excuse me. Just for the clarity of the record, it's page 4, I think, which is the last page of the excerpt. It's not the last page of the exhibit.
MR. AUSTIN: I stand corrected. Page 4 of PTX 638. Thank you, Counsel.
BY MR. AUSTIN:
Q. Do you recall being asked questions about the Morgan Stanley & Company number of loans being $1.364 billion? Do you remember that?
A. I remember that.
Q. And do you recall testifying that you thought that that figure didn't sound right to you; it was inaccurate?
A. Right.
Q. Now, the figure there, if you go to the top of the page, it says, "Table 25 ranks the primary dealers by the total dollar amount of their borrowing through PDCF." Do you see that?
A. I do.
Q. So, is that a total dollar figure?
A. So, I -- I am not sure what that actually means. My understanding of this is that to achieve this number,

what the GAO did was -- it's perhaps best illustrated with an example.

If a particular firm borrowed $10 billion -- remember, these are overnight credits, so $10 billion on Monday, repaid, borrowed it again at the end of Tuesday, repaid, borrowed it again at the end of Wednesday, and did that for the week, most folks would consider that to be a $10 billion loan for five days, but the way the GAO came up with this number was to say that's $50 billion worth of loans. It just added up all the loans over the entire period of time, and that greatly inflates the amount of exposure that the Federal Reserve had, because the exposure was the $10 billion through that week.

Q. So, stated differently, this doesn't indicate that Morgan Stanley at any one point in time had $1.364 trillion of debt, does it?

A. Correct.

MR. AUSTIN: If I could have a couple minutes, Your Honor, to consult with my colleagues?

THE COURT: Sure. We will go off the record for a moment.

MR. AUSTIN: Thank you, Your Honor.

(Pause in the proceedings.)

THE COURT: Back on the record.

MR. AUSTIN: Thank you, Your Honor. I have no further questions.

THE COURT: All right. Mr. Boies, would you like some further examination?

MR. BOIES: I would, Your Honor.

THE COURT: Before you start, I have a couple of questions for the witness, and maybe this would be a good time to cover those so that each of you still has an opportunity to follow up, if you wish.

MR. AUSTIN: Certainly, Your Honor.

THE COURT: Mr. Alvarez, my notes from yesterday reflect your testimony about the entities who contributed funding to the Maiden Lane III entity, and I believe I wrote it down correctly, that there was $29 billion from one source, but then a billion contributed by JPMorgan. Is that right?

THE WITNESS: That's Maiden Lane I.

THE COURT: Oh, Maiden Lane I.

THE WITNESS: That was in connection with Bear Stearns, had nothing to do with AIG.

THE COURT: Oh, okay. Thank you for that clarification.

There was another reference yesterday to a sum of $500,000 paid for the preferred shares that went into this trust.

THE WITNESS: Right.

THE COURT: Where did that $500,000 come from?

THE WITNESS: So, I am uncertain of the exact source of the $500,000. That was part of the consideration for the equity interest, the loan itself being another part of the consideration --

THE COURT: Yes.

THE WITNESS: -- but I -- as we discussed yesterday, I'm uncertain exactly where that fund -- those funds came from.

THE COURT: All right, very well. Thank you.

MR. BOIES: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. BOIES:

Q. Good afternoon, Mr. Alvarez.

A. Good afternoon, Mr. Boies.

Q. Let me just follow up on the issue the Court raised about where the $500,000 came from. The $500,000, regardless of whether it was a credit or whether it was an actual payment, originated with the Federal Reserve, correct?

A. As I said, I don't -- I don't know exactly how it was paid or where it originated.

Q. The Federal Reserve was the purchaser of the preferred stock, correct?

A. As part of the consideration for the loan, that's

correct.
Q. Yes. To put it in your words, as I understand them -- and correct me if I'm wrong -- the Federal Reserve purchased the preferred stock in part by giving $500,000 or in part by somebody giving $500,000 and in part by giving the loan. Is that fair?
A. That's correct.
Q. Now, I think we indicated yesterday that one way that the $500,000 might have been paid would have been a credit against the Federal Reserve credit facility, correct?
A. That's right.
Q. And as you sit here now, you just don't know whether that was what, in fact, happened.
A. That's correct.
Q. And I think -- I think we indicated yesterday that the purchase of that preferred stock by the Federal Reserve was on or about September 22nd, 2008, correct?
A. I -- I -- I don't know the date the payments were made.
Q. Let me just show you, if I can, something that might refresh your recollection. Would you look at your 30(b)(6) deposition at page 49, and in particular, line 22:
"QUESTION: Let me try to focus on the preferred

stock that the United States purchased from AIG pursuant to the September 16th, 2008, term sheet.

"ANSWER: All right.

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

"ANSWER: Correct."

Then the next question is:

"QUESTION: And that preferred stock was purchased for a purchase price of $500,000, correct?

"ANSWER: That's right."

Does that refresh your recollection that the preferred stock of AIG was purchased on September 22, 2008?

A. Well, I apparently said that, yes. I still have a very foggy memory.

Q. I'm sorry, sir?

A. Yes, that's -- I said that. I see that. I -- I still have no real good memory of it.

Q. But that was your memory at the time of your deposition.

A. But that was my memory at the time, yes. I don't disagree with that, sir.

Q. Now, let me turn your attention to the question of the extent to which, if any, there was risk in this credit facility. First, as a general proposition, there is some risk in virtually every loan that is made, correct?

A. That's correct.

Q. And in general, the higher the risk, the higher the interest rate, correct?

A. That's correct.

Q. And there was, for example, a risk in the loans that the Federal Reserve made to Morgan Stanley, correct?

A. That's correct.

Q. And did the Federal Reserve evaluate how much risk there was in the loans that were made to Morgan Stanley?

A. So, Morgan Stanley was accessing credit through the PDCF, and so the structure of the lending, including the term, the kind of collateral, is what helped the Board determine the appropriate interest rate and that -- and the risk it believed it was accepting with those counterparties.

Q. My question is a little bit different. The factors that you indicate would be factors that in your view would affect how much risk there was. Fair?

A. Fair.

Q. My question is, did the Federal Reserve make an effort to determine, with respect to the loans to Morgan

Stanley, how much risk there was after taking into account the factors you identified?

A. So, as I indicated to you yesterday, we included, in designing the PDCF, a review of the financial condition and stability of the primary dealers, generally, and some of them specifically -- and them specifically, and determined that, as a group, this credit in this form, with this interest rate, was adequate.

Q. After taking into account all the factors that you have identified --

A. Which would include the condition of the entity.

Q. Yes. There was still risk in the loans to Morgan Stanley, correct?

A. Well, that's taken into account in the general design, as I had just mentioned.

Q. But after the general design, there's still risk, right?

A. There's risk in every credit.

Q. Yes. And there was more risk in the loans to Morgan Stanley than there was in the risk of PDCF loans to other participants or at least some other participants.

A. Sir, I'm not prepared to say yes to that.

Q. You don't have a judgment on that one way or the

other?
A. I do not.
Q. Did you ever try to make a judgment?
A. I did not.
Q. Did the Federal Reserve ever try to make a judgment as to whether there was more risk in the loans to Morgan Stanley than other primary dealer credit facility participants?
MR. AUSTIN: Objection. Lack of foundation, Your Honor. There is -- there is no --
THE COURT: Overruled.
MR. AUSTIN: -- there has been no testimony --
THE COURT: Overruled.
THE WITNESS: So, the Federal Reserve, as I indicated yesterday, looked at the financial condition of each of the entities that were -- that had access to the PDCF and took that into account in designing the PDCF and its terms.
BY MR. BOIES:
Q. Let me try to go back to my question, sir. Did the Federal Reserve ever try to make a judgment as to whether there was more risk in the PDCF loans to Morgan Stanley than to other PDCF facility participants?
A. I don't know the answer to that.
Q. Now, counsel showed you a document with respect

to how much the total loans extended to Morgan Stanley was just a moment ago. Do you remember that?
A. Yes, I remember.
Q. And I think what counsel was trying to point out, which is what I had said to you yesterday, which is there is a difference between the total amount of loans and the maximum amount of loan outstanding at any given point in time, and you understand that, correct?
A. I didn't know that was what you were saying yesterday, but thanks for the clarification.
Q. Now, the -- let me ask you the question that I asked you yesterday, which is, what was the maximum amount outstanding at any one time of Fed loans to Morgan Stanley?
A. I don't know.
Q. Do you have an approximation?
A. I do not.
Q. Now, with respect to the term "fully secured" --
A. Yes.
Q. -- this was a way that the Federal Reserve described to Congress and other government agencies the nature of the collateral for the AIG credit facility, correct?
A. That's right.
Q. And the Federal Reserve told Congress and other

federal agencies that the September 22 credit facility was "fully secure," correct?

A. Some folks said that, yes.

Q. Well, some folks. Those folks included Mr. Geithner and included Chairman Bernanke, correct?

A. That's probably right.

Q. Now, when the Federal Reserve told Congress and other agencies that the September 22 AIG credit facility was fully secured, the Federal Reserve understood that what Congress and the other federal agencies were interested in was whether there was a risk to taxpayers, correct?

A. No. I don't think that's right.

Q. You don't? So, you think that when Chairman Bernanke went up to the Hill to testify about whether the AIG credit facility was fully secured, Congress wasn't interested and Chairman Bernanke didn't think Congress was interested in whether there was a risk to the taxpayers?

A. So, I think --

Q. Is that your testimony? Yes, no, or I don't know.

A. Could you rephrase the question?

Q. Sure.

Chairman Bernanke went to Capitol Hill to testify about whether the AIG credit facility was fully secured, correct?

A. Yes.

Q. And when he did that, the Federal Reserve knew that one of the things Congress was interested in was whether or not this credit facility represented a risk to the American taxpayer, correct?

MR. AUSTIN: Your Honor, I object. He's asking for the state of mind of the broad Federal Reserve as to what somebody else thought. I don't know how Mr. Alvarez can shed any insight into that question.

THE COURT: I am going to overrule the objection. I'd like to hear this.

THE WITNESS: Sir, you will have to start over.

BY MR. BOIES:

Q. Sure.

When Chairman Bernanke went to Capitol Hill to testify about whether the AIG credit facility was fully secured, the Federal Reserve knew that one of the things Congress was interested in was whether or not this credit facility represented a risk to the American taxpayer, correct?

A. So, I think you're conflating two thoughts, if I could unpack them.

Q. If you could begin with a yes, no, or I don't know, and I'm not trying to keep you from explaining, but it would help if I could understand where you're coming from if you began with yes, no, or I don't know.

A. I'll start with I don't know.

Q. Did you talk to Chairman Bernanke before he went up to Capitol Hill to testify?

A. At any particular time?

Q. Let me begin, at any time.

A. I have many times talked to Chairman Bernanke.

Q. About his testimony?

A. About various testimonies.

Q. And did that include his testimony about the AIG September 22 credit facility being fully secured?

A. I talked to him about the AIG testimonies that he gave.

Q. And did that include testimony that the AIG credit facility was fully secured?

A. I didn't have specific discussions about whether it was fully secured or what he would mean by "fully secured."

Q. Let me ask you to look at some of your testimony, and in that connection, let me ask you to look at your 30(b)(6) deposition at page 183. And at line 11, you were referred to a quote by Secretary Paulson, and the question is:

"QUESTION: On Page 229, Mr. Paulson writes 'Unlike with Lehman, the Fed felt it could make a loan to help AIG because we were dealing with a liquidity, not a capital, problem. The Fed believed that it could secure a loan with AIG's insurance subsidiaries, which could be sold off to pay any borrowing, and not run the risk of losing money.'

"Do you see that?

"ANSWER: I see that.

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

"ANSWER: Yes."

And that is testimony that you gave under oath, correct, sir?

A. That's correct.

Q. And you didn't at that time say there actually was a risk of losing money; you didn't say that, did you, sir? Yes, no, or I don't remember.

A. That wasn't the question I was asked, so no.

Q. Well, you were asked whether the Fed believed that it could secure the loan with AIG's insurance subsidiaries and not run the risk of losing money. You were asked that question, whether you agreed with that, and you said you agreed with that, correct, sir?

MR. AUSTIN: Your Honor, again, this is a

30(b)(6) deposition. It does not represent the witness' personal viewpoint, and that's what he's asking him now. He was talking as the representative of the United States. It's not something within his personal knowledge. It's a different situation than what he's asking him now, which is what is his personal view.

THE COURT: Mr. Austin, this, in effect, is cross examination, as you know.

MR. AUSTIN: Yes.

THE COURT: And unless you have a really compelling objection, I would prefer that you not interrupt the cross examination.

MR. AUSTIN: I understand.

BY MR. BOIES:

Q. Now, at this 30(b)(6) deposition, you were speaking as the representative of the United States, correct?

A. That's correct.

Q. But as we talked about yesterday, you would not have said something like this that you didn't personally believe without indicating that, would you, sir?

A. Well, it's very hard for me, as a 30(b)(6) witness, to contradict the Secretary of the Treasury, who is the United States. So, it would have been very difficult for me to say anything other than yes in this

situation.
Q. Sir, are you saying -- I just want to be clear.
A. Um-hum.
Q. Are you saying that at this deposition, you personally disagreed with that statement? Yes or no.
A. I believed that there was risk in the loan.
Q. Sir, at this deposition, when you were asked this question under oath and you gave the answer that you did, are you telling me that you believed the answer for the United States was yes, but your personal answer would have been no, and you didn't tell me? Is that your testimony now?
A. You didn't ask me for my personal views. You asked me --
Q. Do you understand the question?
A. -- if the United States believes it's accurate.
Q. Do you understand the question?
A. No, I do not.
Q. Okay. At your deposition, I asked you the question as to whether the United States believed the statement that we've quoted a number of times.
A. Um-hum.
Q. And you said that you, as a 30(b)(6) witness, accepted the accuracy of that statement, correct?
A. That's right.

Q. Now my question is a different one.

A. Um-hum.

Q. At the time that you gave that testimony, did you personally believe that that testimony -- that that statement was not accurate? That's a yes, no, or I don't remember.

A. So, I don't remember what I was thinking at the time.

Q. You just don't remember?

A. No.

Q. All right, sir. Now, let me show you another portion of your testimony. This is at page 203 of your 30(b)(6) deposition, and I want to direct your attention to line 16. Again, I am referring you to something that had been said. (As read):

"QUESTION: The next sentence says 'In fact, before any money was distributed to AIG on September 16, AIG delivered share certificates to the New York Fed that we continue to hold as collateral in our vaults. These shares fully secured every penny we lent to AIG on September 16, 2008.'

"Are those statements correct according to the United States?

"ANSWER: Yes."

And I take it that that was a truthful answer and an accurate and complete answer at the time, correct?

A. Yes.

Q. And my question now is, because you've drawn a distinction between your personal views and the views of the Defendant here, at the time that you gave that answer, did you personally agree with the statement that the United States agreed to? Yes, no, or I don't remember.

A. Yes.

Q. Let me go on to page 2004, lines 3 through 8.

THE COURT: 204?

MR. BOIES: Page 204, the next page. I'm sorry, Your Honor.

BY MR. BOIES:

Q. Line 3:

"QUESTION: And the next sentence says 'today, the credit extended to AIG by the New York Fed remains fully secured.'

"Was that, according to the United States, an accurate statement as of September 1, 2010?

"ANSWER: Yes."

Do you see that?

A. I do.

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

A. Correct.

Q. And at the time you gave it, did you personally agree with the statement that the United States agreed was accurate?

A. Yes.

Q. Thank you.

THE COURT: Mr. Boies, shall we take a lunch break?

MR. BOIES: Yes, Your Honor. Thank you.

THE COURT: All right. Let's reconvene at 2:00 p.m.

(Lunch recess, 12:53 p.m. to 2:00 p.m.)

AFTERNOON SESSION

(2:00 p.m.)

THE COURT: Let's proceed, Mr. Boies.

MR. BOIES: Thank you, Your Honor. One housekeeping matter before we do. We have, with the agreement of counsel for the Defendant, prepared the JX 80-A and JX 82-A versions that we talked about yesterday. These are the versions that he marked and he marked in a way that could be reproduced.

THE COURT: Yes, thank you. That's fine. Can we see the ones that are marked in yellow all right?

MR. BOIES: Yes.

THE COURT: Yes, that's fine.

MR. AUSTIN: Your Honor, I'm sure they're fine, but we haven't had an opportunity to compare these against the originals.

THE COURT: Well, do you want to do that?

MR. AUSTIN: Yes, we would like to.

THE COURT: Okay.

MR. BOIES: I gave them to them this morning, Your Honor. I --

MR. AUSTIN: No, I mean the handwritten one, to make sure the computer markings are accurate. I'm sure they are, but I just want --

MR. BOIES: I'll wait to -- rather than take the time to do that now, I will wait until tomorrow.

THE COURT: Sure. We will hang onto these for the time being, and if there's any concern, you can let me know, Mr. Austin.

MR. AUSTIN: Thank you, Your Honor.

BY MR. BOIES:

Q. Good afternoon, Mr. Alvarez.

A. Good afternoon, Mr. Boies.

Q. During your testimony with Mr. Austin, you talked about the discussions on September 16th, including at the Board of Governors meeting, about the assets of AIG and whether there was any risk in the loan. Do you recall that?

A. Yes, I do.

Q. On September 16th, did the Federal Reserve know the value of the AIG insurance subsidiaries?

A. Not with precision.

Q. Did it have an estimate of the value of the AIG insurance subsidiaries?

A. I don't recall.

Q. You don't recall whether or not they had an estimate?

A. I don't recall. That's correct.

Q. Was any estimate of the value of the AIG subsidiaries discussed on September 16th at any meeting or conference call that you participated in?

A. I believe so.

Q. When was the estimate of the value of the AIG subsidiaries discussed?

A. So, I believe there was a general discussion on some of the -- at least one of the conference calls. I do not recall which one or what the -- what the values might have been.

Q. Let me see if I understand what you're saying. Are you saying that on some conference call on September 16th, somebody came forward with an estimated valuation of the AIG insurance subsidiaries?

A. I believe that's correct.

Q. Was that during a conference call or during the Board of Governors meeting or both?

A. I don't recall. I'm not certain.

Q. After September 16th, is it fair to say that the Federal Reserve continued to try to come up with a better valuation of the AIG insurance companies?

A. I am uncertain.

Q. Did you ever have any inquiry or discussions with anyone after September 16th as to what the value was of the AIG insurance subsidiaries?

A. I don't recall conversations myself.

Q. Did you ever see anything in writing that valued

the AIG insurance subsidiaries?
A. I don't recall.
Q. Did you ever ask to see anything in writing that valued the AIG insurance subsidiaries?
A. I don't recall.
Q. Did you ever see anything in writing that valued all of the assets that the Federal Reserve got a security interest in in connection with the September 22 credit facility?
A. You mean at any time or...
Q. Let's begin with that, at any time.
A. Certainly by the time the loan was repaid, we had a pretty fair estimate.
Q. And at the time that the loan was repaid, what was your best estimate of the value of the AIG insurance subsidiaries?
A. Oh, I don't -- I don't recall.
Q. Approximately?
A. I don't -- I don't know.
Q. Did you ever see anything in writing that valued the AIG insurance subsidiaries at any time?
A. It's possible. I don't recall.
Q. Did you ever see anything in writing that valued all of the assets in which the Federal Reserve had a security interest in connection with the September 22

credit facility?

A. I just don't remember.

Q. Did you ever ask anyone to provide you with an estimate of the value of the AIG insurance subsidiaries at any time?

A. I don't recall.

Q. Did you ever ask anyone to provide you with an estimate of all of the assets, that is, the valuation of all of the assets in which the Federal Reserve had a security interest in connection with the September 22 credit facility?

A. I don't recall.

Q. I think you told Mr. Austin that Mr. Dinallo -- who is the New York State Insurance Commissioner?

A. Yes.

Q. I think you told Mr. Austin that Mr. Dinallo had said that the AIG insurance subsidiaries were appropriately capitalized. Do you recall that?

A. I do recall that.

Q. Now, in fact, Mr. Dinallo said that the insurance subsidiaries were overcapitalized, correct?

A. I don't recall the specifics.

Q. Now, the Federal Reserve earned a profit on the AIG September 16th 13(3) credit facility, correct?

A. We certainly earned interest on the credit facility.

Q. Well, you earned about $6.7 billion of interest and fees on the credit facility, correct, sir?

A. That sounds approximately right, but I don't know the exact number.

Q. And in addition to that, you sold the AIG stock that you had received for value, correct, sir?

A. The stock -- which stock are you referring to?

Q. The AIG common stock that you got as a result of the AIG preferred stock that the Federal Reserve had purchased on September 22, 2008.

A. So, that -- those shares were placed in trust for the Treasury Department, and the Treasury Department disposed of those shares.

Q. Are you saying that you are not including the proceeds from those shares in the Federal Reserve's profit because the Federal Reserve had transferred those shares to this trust?

A. Yes.

Q. How much did the trust to which the Federal Reserve transferred the preferred shares that it had purchased make on those shares?

A. I don't know.

Q. Approximately, sir.

A. I don't know.

Q. $20 billion?
A. I don't know.
Q. Approximately that?
A. I don't know.
Q. Did you ever try to find out?
A. No.
Q. Now, one of the things that you talked about in terms of rationale for taking equity was that -- you said that there was believed to be some risk of loss on the credit facility. Do you recall that?
A. Yes.
Q. Now, the Federal Reserve had a secured interest in all of the assets of AIG, correct?
A. Not all, but a substantial amount of them, that's right.
Q. You had a secured interest in all of the assets of AIG, other than what had already been given as security to somebody else. Is that fair?
A. Pretty much. I think there may have been some foreign subsidiaries that we were limited in what we could take -- we could receive as collateral. But, yes, I think that's generally fair.
Q. And if AIG had not been able to pay back the credit facility, the equity in AIG would not have had any significant value, correct?

A. The equity of AIG, the parent holding company?
Q. Yes.
A. That would likely be the case.
Q. The common shares that were obtained as a result of the preferred shares that the Federal Reserve purchased on September 22, those common shares were in what you refer to as the parent company, correct?
A. Yes.
Q. And if the parent company didn't have the resources to pay back the loan, common shares in that parent company would not have value. Fair?
A. I think that's fair.
Q. Now, the Court asked you why the 79.9 percent number had been come up with. Do you recall that?
A. I do.
Q. And you said you wanted to keep it below 80 percent. Do you recall that?
A. I do.
Q. My question is an expansion of that. Was there any discussion that you are aware of as to the possibility of demanding less than 79.9 percent of the equity?
A. Not that I recall.
Q. Was there any attempt to evaluate whether the objectives that the Federal Reserve had in demanding

equity could be satisfied by taking less than 79.9 percent of the equity?

A. There may have been, but I don't recall.

Q. Is it fair to say that if there were, it was not at a time that you were present?

A. As I say, I don't recall.

Q. You also talked about windfalls or possible windfalls. As you use the term "windfall," was there a windfall to the shareholders of Bear Stearns as a result of the 13(3) loans or credit facilities that the Federal Reserve made available in March of 2008 in connection with Bear Stearns?

A. That was quite a different transaction.

Q. My question, sir, is whether, as you use the term "windfall," there was a windfall to the shareholders of Bear Stearns as a result of a 13(3) loan to credit facilities that the Federal Reserve made available in March of 2008 in connection with the Bear Stearns transaction. That's yes, no, or I don't know.

A. I don't know.

Q. Did you ever try to find out?

A. No, I did not.

Q. Insofar as you are aware, did anyone at the Federal Reserve ever try to find out?

A. I don't know.

Q. As you use the term "windfall," was there a windfall to the shareholders of Morgan Stanley as a result of any of the credit that was made available to Morgan Stanley pursuant to 13(3) by the Federal Reserve?
A. No.
Q. Was there ever any discussion within the Federal Reserve as to whether any of the credit that was made available to Morgan Stanley pursuant to 13(3) by the Federal Reserve created a windfall, as you use that term?
A. I don't know.
Q. Is it fair to say that insofar as you are aware or you were present, there was no such discussion?
A. I don't know.
Q. Was there ever any discussion within the Federal Reserve as to whether the primary dealer credit facility would create a windfall, as you use that term, for any of the participants in that credit facility?
A. I apologize. Could you state that question again?
Q. Was there ever any discussion within the Federal Reserve as to whether the primary dealer credit facility would create a windfall, as you use that term, for any of the participants in that credit facility?
A. I don't know.

Q. Did you ever participate in any such discussion?
A. I don't recall.
Q. You also testified to Mr. Austin that the rationale for demanding equity from AIG was to provide consideration to the Government if the credit facility was successful. Do you recall that?
A. I do.
Q. Was there any discussion within the Federal Reserve as to whether the Federal Reserve should seek compensation or consideration from Bear Stearns or from JPMorgan for the loan that was made on September 14, 2008?
A. I'm afraid I don't understand your question.
Q. On March 14, 2008 -- and I probably confused you by that September date, and I apologize.
On March 14, 2008, a loan was made by the Federal Reserve in connection with the Bear Stearns/JPMorgan transaction, correct?
A. We agreed to make a loan then, that's correct.
Q. And then a few days later a credit facility was put in place in connection with what has been referred to as ML I or Maiden Lane I, correct?
A. That's correct. At some point thereafter, yes.
Q. Okay. Now, I want to take those two transactions. With respect to the March 4th, 2008,

loan, was there ever any consideration given as to whether the Federal Reserve should seek compensation, other than the interest rate, in connection with that loan?

MR. AUSTIN: Your Honor, I'm sure it was inadvertent by counsel, but I think initially he referred to it as the March 14, 2008, and this time the March 4, 2008.

MR. BOIES: And I apologize, Your Honor. It is March 14.

THE COURT: All right.

THE WITNESS: And those loans are the same loans. The loan to Maiden Lane is the loan that we agreed to extend. So, I assume you mean both of those. You said two different loans.

BY MR. BOIES:

Q. Correct me if I'm wrong, I thought before the Maiden Lane loan or credit facility, there had been a loan extended to JPMorgan in connection with the Bear Stearns transaction.

A. Oh, you mean the Friday before, there was a one-day overnight credit?

Q. Yes.

A. Ah, okay. Thank you for clarifying that.

Q. So, if March 14th was a Friday --

A. Right.

Q. -- then on March 14th, a credit was extended to JPMorgan --

A. Right.

Q. -- by the Federal Reserve in connection with the Bear Stearns transaction, correct?

A. That's correct.

Q. And then on either the 16th or the 17th, the Maiden Lane I was put into place. Is that correct?

A. It was agreed to, yes.

Q. Agreed to. Maybe I can speed it up by asking, with respect to any of those transactions, either the initial credit or the Maiden Lane I credit facility, was there ever any consideration within the Federal Reserve about seeking compensation, other than the interest rate charged?

A. So, as I discussed with Maiden Lane, there was also the receipt of the residual value of the assets in Maiden Lane that would be passed on as consideration to the Federal Reserve.

Q. Was there a valuation of what those assets were at the time that the loan was extended?

A. I don't recall.

Q. Was any effort made to value those assets at the time the loan was extended?

A. I don't recall.

Q. In that case, you may not be able to answer the next question, but I want to ask it. At the time that the credit facility for the Maiden Lane I transaction was offered, did you or the Federal Reserve have any basis to believe that the assets that were being put into that facility were less than, more than, or about the same as the amount of the loan?

A. I don't recall.

Q. Was there ever any consideration given to seeking compensation, in addition to an interest rate, for any of the credit made available to Morgan Stanley pursuant to 13(3)?

A. You mean pursuant to the PDCF? I don't -- I don't know.

Q. What about pursuant to other 13(3) credit that was made available to Morgan Stanley?

A. The only other one I even am aware of is the TSLF, but I don't know.

Q. Let me ask you to look at Defendant's Exhibit 318, which was a document that Mr. Austin talked to you about.

A. Is this in your book?

Q. This is in -- I think in --

MR. AUSTIN: It's our book.

BY MR. BOIES:

Q. -- Mr. Austin's book.

And do you recall Mr. Austin asking you some questions about various KKR and TPG and Flowers discussions?

A. I recall that, yes.

Q. Now, in addition to those discussions, there is what we've talked about as a private sector consortium of banks that was meeting to talk about possibly providing liquidity to AIG the weekend of September 13 and 14, correct?

A. Are you talking about this email or something independent of this email?

Q. I'm talking about something independent of this email, because that was not mentioned either in the email or in your discussions with Mr. Austin.

A. Okay.

Q. Do you understand the question?

A. Could you repeat the question?

Q. Sure.

In addition to the discussions that you talked with Mr. Austin about in connection with Defendant's Exhibit 318, am I correct that during the weekend of September 13 and 14, there were also discussions in connection with what has been referred to as a private sector consortium of banks about possibly providing liquidity to AIG?

A. So, I know that there were -- I understood that there were discussions involving banks providing liquidity to AIG. I do not know if they were independent of or in connection with or involved in any -- in some way, Flowers, KKR, or TPG.

Q. Did you ever try to find out?

A. I did not.

Q. The interest rate that the Federal Reserve took and applied to AIG was an interest rate that I believe you testified you thought had come from a private sector bank term sheet. Is that correct?

A. That was my understanding.

Q. Did you ever try to find out who the banks were that had prepared this term sheet that you took the interest rate to be charged AIG from?

A. So, as you mentioned, I had a general understanding that JPMorgan and Goldman were among those banks.

Q. Did you have any understanding as to whether there were any banks, other than JPMorgan and Goldman, that were involved in the private sector consortium discussions from which the term sheet that you understood you were using to fix the AIG interest rate

had come?
A. I don't recall.
Q. Did you ever try to find out?
A. I don't recall.
Q. Did anyone from the Federal Reserve ever try to find out?
A. I don't know.
Q. Now, Mr. Austin asked you why did the interest rate that was charged AIG accommodate commerce and business. Do you recall that?
A. I do.
Q. And you said, well, it helped AIG remain in business and it prevented markets from being further disrupted. Do you recall that?
A. I do.
Q. Now, both of those objectives would have been accomplished if the interest rate were half what was charged AIG, correct, sir?
A. Possibly.
Q. Was there ever any analysis of that done at the Federal Reserve?
A. I don't know.
Q. Did you ever ask to have any analysis done?
A. I don't recall.
Q. Did anyone else, insofar as you're aware, ever

ask to have such an analysis done?
A. I don't know.
Q. Mr. Austin also showed you Plaintiffs' Trial Exhibit 80, which is in the book that we gave you, and he asked you or you testified that this was something that had been prepared by staff and that you had forwarded but did not comment on. Do you recall that?
A. At the time I had forwarded it, that's right.
Q. You not only said you forwarded it, but you said you did not comment on it. Do you recall that?
A. At the time that I forwarded it, that's right.
Q. Now, if you look at Plaintiffs' Trial Exhibit 80, the first line says -- and this is from you to Mr. Geithner and Mr. Baxter, correct?
A. From me to Mr. Baxter and Mr. Geithner, that's correct.
Q. And the first line says, "Here is a draft of the resolution we plan to present to the Board after FOMC." Do you see that?
A. I see that.
Q. And the "we" there included yourself, correct, sir?
A. Yes.
Q. And then you go on to say, "One addition might be the amount." Do you see that?

A. I see that.

Q. And by "amount," you're referring there to the amount of the credit facility that ended up being $85 billion, correct?

A. That's right.

Q. You do not say anything in here about one change possibly being the interest rate, do you?

A. Not in that email, no.

Q. Now, you say that you left the meeting and contacted Rich Ashton about being prepared for a change in the interest rate. Do you recall that?

A. I do recall that.

Q. And do I take it from your testimony that there is no written record of that conversation that you assert?

A. None that I'm aware of.

Q. Now, you were, while you were in the FOMC meeting, communicating by email or text to people, correct?

A. On occasion.

Q. But you did not email or text Mr. Ashton about this, correct?

A. That's right.

Q. Mr. Austin also asked you about Defendant's Exhibit 393, which I think is in his binder.

I apologize, that's one of the documents he handed up.

A. All right.

Q. And this was a document that you testified was received a little after 9:00 p.m. on the 16th, and it says, "Here is the final press release -- going at 9." Do you see that?

A. I see that.

Q. And you indicated that by then it was apparent, at least to you, that the form of equity might not necessarily be warrants. Do you recall that?

A. Yes, I do.

Q. Now, I want to show you a document that I'm not going to offer in evidence, which we have marked for identification as Plaintiffs' Trial Exhibit 2736, and I think the reason I'm not going to offer it in evidence is apparent from looking at the document.

(Plaintiffs' Exhibit Number 2736 was marked for identification.)

BY MR. BOIES:

Q. This is a New York Times story, correct, sir?

A. That appears to be correct.

Q. The portion that I am interested in is not the opinion discussion that's contained here, but it is the second sentence of the second paragraph.

Do you see where it says, "Fed staffers will brief reporters at 9:15 tonight, don't even want to say the Government will control AIG," and then skip to the last sentence, "It will have a warrant allowing it to take 79.9 percent of the stock whenever it wants, but they contend there is no control until the warrant is exercised."

Do you see that?

A. I see that.

Q. Now, were you one of the Fed staffers who briefed those reporters?

A. I don't believe so.

Q. Do you know who those Fed staffers were?

A. I don't.

Q. Did you know that Fed staffers were going to brief reporters?

A. I don't recall.

Q. Mr. Austin I think also asked you to look at Defendant's Exhibit 527, which I am told is in their binder, Defendant's Exhibit 527. Do you have it?

A. I do.

Q. Now, if you look at page 2 of that exhibit where, in the third sentence, it says, "We will either go 'AIG Credit Facility Trust' or warrants exercisable after sale." Do you see that?

A. I see that.

Q. There's no mention of preferred stock there, correct?

A. That's correct.

Q. And can you tell from this document that this is a September 21, 2008, email from Mr. Baxter to you shortly after noon?

A. Yes.

Q. Now, Mr. Austin also asked you about Joint Exhibits 96 and 99, which are 8-K filings made by AIG, the first on September 18th and the second on September 19th. Do you recall that?

A. I do.

Q. And you gave him testimony about your opinion as to which of those were correct and which was not correct. Is that so?

A. Pretty much.

Q. Now, do you recall telling me, when I was examining you, that you had no recollection of these 8-K filings?

A. That's right.

Q. With respect to Joint Exhibit 99, the 8-K filing that is the second one, that is the September 19th one, did you find out that that was an 8-K filing in the name of AIG that the Government had insisted that AIG make?

A. I don't recall.
Q. Do you know how it came to be that AIG made the 8-K filing that is JX 99?
A. I do not.
Q. Let me turn to your discussions with counsel at about the end of September and November of 2008. At the end of September, you told counsel that AIG was a troubled company. Do you recall that?
A. I don't recall the precise words, but...
Q. You said that they had liquidity problems, correct, or potential --
A. Something like that.
Q. There were a lot of companies with liquidity problems at the end of September of 2008, correct?
A. Yes, there were.
Q. And were some of the liquidity problems and some of the potential -- potential liquidity problems that might be caused by a downgrade related to the very terms of the September 22 credit facility?
If you don't understand the question, I'll rephrase it.
A. Yes. Please rephrase the question.
Q. You had testified that there was a danger that the rating agencies were going to downgrade AIG at the end of September of 2008, correct?

A. Um-hum. Yes, there was concern about that.
Q. And if that had happened, that could have potentially caused liquidity problems for AIG, correct?
A. That's right.
Q. Did you understand that the danger that AIG faced of being downgraded by the rating agencies was related to the market's reaction to the terms that the Federal Reserve had imposed on AIG as a result of the September 22 credit facility?
A. I don't recall that.
Q. Did you ever have any discussions about that?
A. I don't -- I don't recall.
Q. You also talked with counsel about Defendant's Exhibit 660, correct?
A. I recall that.
Q. And this is in November of 2008?
A. Yes.
Q. And this is dealing with TARP. Is that correct?
A. It's dealing with restructuring the AIG facility, as well as TARP.
Q. It is talking about using TARP, in part, to restructure the AIG facility, correct?
A. That's one way to phrase it.
Q. This was talking about making TARP funds available to AIG. Is that fair?

A. This was talking about the steps the Federal Reserve would take in light of the Treasury decision to invest TARP funds. So, this is not about investing TARP -- in deciding to invest TARP. This is about what response, if any, the Federal Reserve should have in restructuring the AIG facility that the Federal Reserve had entered into.

Q. As a result of Treasury's making TARP funds available to AIG, correct?

A. And other problems that AIG was suffering.

Q. Was the Federal Reserve going to increase its 13(3) loan to AIG as part of this proposed restructuring?

A. Not the revolving facility, not that part, no.

Q. A substantial number of companies got TARP funds in November of 2008, correct?

A. I believe that to be true.

Q. And the Federal Reserve continued to make 13(3) funds available to a number of companies, other than AIG, in and after November of 2008, correct?

A. Through the broad-based facilities, that's correct.

Q. And offered to do so with Citibank and Bank of America in what were not broad-based facilities, correct, sir?

A. That's correct.
Q. Let me talk about -- just a minute about the bank holding company testimony that you gave to counsel. You said that making Morgan Stanley and Goldman Sachs bank holding companies did not increase their access to liquidity. Do you recall that?
A. To liquidity facilities from the Federal Reserve. Yes, I recall that.
Q. Did it increase their access to liquidity?
A. The -- the belief of the companies was that it would provide some imprimatur that would help them in their relations with the market. So, it may have increased liquidity generally, but I don't know.
Q. Did you ever try to find out?
A. No, I did not.
Q. Insofar as you're aware, did anybody at the Federal Reserve try to find out?
A. I don't know.
Q. Now, if Morgan Stanley and Goldman Sachs had not already had access to the discount window -- and they did already have access to the discount window, correct?
A. Only through their very small banks.
Q. They had access to the discount window through their banks, correct?
A. Yes.

Q. And they had access to 13(3) lending through the primary dealer credit facility, correct?
A. That's correct.
Q. AIG at that time did not have access to the discount window and did not have access to the primary dealer credit facility, correct?
A. That's not correct.
Q. What was their access, if any, to the primary dealer credit facility?
A. So, they did not have access to the primary dealer credit facility.
Q. What was their access, if any, to the discount window?
A. They had a small savings association which had access to the discount window.
Q. Other than the small savings association which you say had access to the discount window, did AIG have any other access to the discount window?
A. No, but that is the same as Goldman Sachs and Morgan Stanley's access.
Q. It's not quite the same, because they also had access to the primary dealer credit facility, correct, sir?
A. But from the discount window perspective, those three all had the same access.

Q. But in terms of the liquidity that's available to the companies from the Federal Reserve, you're not telling me that AIG had significantly -- much, much less access to liquidity than Goldman Sachs and Morgan Stanley in September of 2008, are you?
A. AIG had very huge access to the Federal Reserve through the $85 billion revolving facility. That is a very major loan from the Federal Reserve to AIG.
Q. Yes, I grant that.
A. Okay.
Q. Perhaps my question is unclear.
We're talking about the time when Goldman Sachs and Morgan Stanley were primary dealers before the AIG credit facility, and I may not have made that clear. But prior to the September 22nd credit facility, it is clear that Goldman Sachs and Morgan Stanley had much, much greater access to Federal Reserve liquidity than AIG did, correct?
A. They had access to the PDCF and the TSLF, those two facilities.
Q. And, in fact, that access was very substantial, was it not, sir?
A. I don't know the amounts.
Q. Well, sir, on September 16th, 2008, after the credit facility -- well, before the credit facility but

after the AIG board meeting, there was a secured demand note given to AIG or AIG gave a secured demand note to the Federal Reserve in exchange for $14 billion, correct?
A. That sounds about right.
Q. So that at the end of September 16th, AIG owed the Fed $14 billion, correct?
A. That sounds about right.
Q. Do you know how much Morgan Stanley owed the Fed under the PDCF that day?
A. No, I don't.
Q. Would it surprise you if it was $13 billion?
A. I just don't know.
Q. Now, on September 22nd, AIG by that time had drawn down about $37 billion, correct?
A. I don't know the exact number.
Q. Is that approximately right?
A. It -- I don't know. I really don't know.
Q. Do you know what Morgan Stanley owed the Fed on September 22nd, 2008, through the PDCF?
A. No, I do not.
Q. Would it surprise you that it was about $38 billion?
A. I don't know.
Q. Now, you said at the end of September, AIG had a

potential liquidity need. At that point, AIG owed the Fed about $55 billion. Is that correct?

A. I don't know. As I testified, I -- I was informed that there was a potential by the end of September that they might borrow as much as $61 billion, but I don't know what actually was borrowed.

Q. Do you know what Morgan Stanley owed, just on the PDCF loan, to the Fed on September 29, 2008?

A. I do not know.

Q. Does $62,290,000,000 sound about right?

A. I don't know.

Q. You do know that it was tens and tens of billions of dollars, right?

A. I don't know what the numbers were.

Q. Did you ever try to find out?

A. I did not.

Q. Do you know if anyone at the Federal Reserve ever tried to compare the amount of liquidity given to AIG with the amount of liquidity given, say, to Morgan Stanley and the relative charges made to each of the companies?

A. I don't know.

Q. It was certainly true that you knew that Morgan Stanley had, as you described it with respect to AIG to counsel, "strong liquidity demands."

A. I don't know about Morgan Stanley specifically.
Q. Now, one of the things that you talked about in connection with Morgan Stanley and Goldman Sachs was becoming financial holding companies. Do you recall that?
A. Yes, I do.
Q. Just to be clear, what the -- what happened over the weekend of September 20th and 21st is that Morgan Stanley and Goldman Sachs became bank holding companies, correct?
A. That's right. Financial holding companies and bank holding companies, yes.
Q. They became both at the same time?
A. Yes.
Q. So, they became both bank holding companies and financial holding companies that weekend?
A. Yeah.
Q. And in that connection, did the Federal Reserve make a finding that Morgan Stanley was, as you put it, well managed?
A. Yes, it did.
Q. And it did that over that weekend?
A. Yes.
Q. And did you participate in that?
A. I was -- I was resolving the legal issues. The

supervisory issues were done by others.

Q. Did the people who were doing the supervisory issues, as you put it, and determined that Morgan Stanley was well managed have access to how much Morgan Stanley's liquidity needs were?

A. I don't recall.

Q. Did the Board of Governors of the Federal Reserve make a finding the weekend of September 20th and 21st that Morgan Stanley was well managed and met all the requirements to become a financial holding company?

A. Yes, it did.

Q. Was anything submitted in writing to the Board of Governors to support that finding?

A. I -- I don't recall. I assume so, but I don't recall.

Q. Did you ever see it?

A. If it was prepared, I would have seen it, but I just don't recall.

Q. Let me -- let me turn to the question of authority, and you talked with counsel about Joint Exhibit 13 and Defendant's Trial Exhibit 484. Do you recall that?

A. Joint Exhibit 13 and what was the other one?

Q. Defendant's Trial Exhibit 484. They're both in the Defendant's book.

With respect to Joint -- let me start with Defendant's Trial Exhibit 484 first. Do you have that?
A. Yes, I do.
Q. Now, with respect to this exhibit, this was an exhibit that, as you described, was never finalized, correct?
A. That's correct.
Q. And you said that the reason or one of the reasons it was never finalized is that there was the press of other things and another reason was that it was not controversial. Do you recall that?
A. I do.
Q. I'd like you to look at a couple of documents that, again, I'm not going to offer at this time, but I just want you to tell me whether they are, in your view, consistent with your testimony that the results and opinions in Defendant's Exhibit 484 were not controversial.
(Plaintiffs' Exhibit Number 2738 was marked for identification.)
BY MR. BOIES:
Q. First, let me ask you to look at Plaintiffs' Trial Exhibit 2738. This is a document dated July 10, 1968, from Mr. Hackley, who was then the general counsel, to the Federal Open Market Committee, correct?

A. Yes.
Q. And this is a document that you actually cite in one of your footnotes, correct?
A. Yes, it is.
Q. And I take it this is a document that you reviewed at the time that you were preparing Joint Exhibit 13 and were participating in the preparation of the draft document that is Defendant's Exhibit 484. Is that correct?
A. Yes.
Q. And is it your testimony that you believe that what is written in Defendant's Exhibit 484, the September 17th, 2008, draft, and Joint Exhibit 13 are consistent with what is in Plaintiffs' Trial Exhibit 2738?
A. Well, in --
MR. AUSTIN: Your Honor, PTX 2738 is a fairly substantial legal memorandum. I would ask that the witness be given an opportunity to review the document before responding to a substantive question like that.
THE COURT: Well, if he needs to do that in answering a question, he can so indicate.
MR. AUSTIN: Thank you, Your Honor.
MR. BOIES: Absolutely.
BY MR. BOIES:

Q. Take as much time as you want to review the document, and when you're ready to proceed, let me know.
A. (Document review.) I've looked at it briefly.
Q. This was a document that you reviewed at the time that you prepared Joint Exhibit 13 and that you worked on a draft of Defendant's Exhibit 484, correct?
A. Yes.
Q. And in connection with your testimony that the conclusions in DX 484 and JX 13 are not controversial, it is your belief that those conclusions are consistent with what Mr. Hackley's views were in this analysis.
A. So, I believe that the sentence for which the Hackley memo is cited is consistent with the Hackley memo, yes.
Q. I was asking a somewhat broader question.
A. He deals only with a very narrow question, not with the question that I'm dealing with in the September 17th memo.
Q. Well, let's test that. Now, let's go to page 13 of Exhibit 2738, where the general counsel of the Federal Reserve says, the last full paragraph:
"There is a reasonable basis for the position that the incidental powers of the Federal Reserve Banks should be construed more strictly," -- and he underscores "more strictly" -- "instead of more

liberally, than the incidental powers of national banks, again on the basis of both textual and institutional differences."

Is that something that you believe is consistent with the analysis that is contained in Defendant's Exhibit 484 and Joint Exhibit 13?

A. Of course, he's going through alternate arguments, sir. So, that isn't a conclusion on his part. There's -- he also takes the argument on the other side, that the incidental power clause should be -- this is on page 14 -- should be construed at least as liberally. So, he's arguing from either perspective to see if his particular transaction would be permissible.

Q. Sir, would you point me to the portion of page 14 that you're talking about when you say that he also takes the argument on the other side, that the incidental power should be construed at least as liberally? Are you referring to where he says, "Granting, for purposes of argument, that the incidental powers of Federal Reserve Banks should be construed at least as liberally as incidental powers of national banks, it is by no means clear that court decisions relating to the incidental power of the national banks," et cetera?

A. Um-hum, yes.

Q. Sir, is there any doubt in your mind that -- I guess it's just a yes or no question, because it -- this is not a point that it makes any sense to argue about, but is there any doubt in your mind that Mr. Hackley is taking the position that the better argument is that the incidental powers of the Federal Reserve should be construed more strictly instead of more liberally than the incidental powers of national banks?

A. I don't know what Mr. Hackley believed.

Q. Okay. Well, in the very next sentence where he says, "Thus, the incidental powers clause in the Federal Reserve Act begins and ends with language not contained in the incidental powers clause in the National Bank Act." Do you see that?

A. I see that.

Q. He goes on to say, "By stating that a Federal Reserve Bank exercise 'all powers specifically granted by the provisions of this Act' and such incidental powers that shall be necessary to carry on the business of banking 'within the limitations prescribed by this Act', the Federal Reserve Act provision suggests a scope more restricted than the comparable National Bank Act provision." Do you see that?

A. I do.

Q. Do you think that is a statement that's consistent with the views that you expressed on your examination by Defendant's counsel? Yes, no, or I don't know.

A. The views expressed -- I'm sorry? With which view?

Q. The view that you expressed in testimony --

A. Yes, I do. Yes, I do.

Q. Okay. Let me go to the next page where it says, "Moreover, it may be persuasively argued that a broad construction of the 'incidental powers' of a private corporation is not likely to have any substantial effect on the public interest, but that particular care should be taken to avoid enlargement of the important governmental powers of a governmental corporation in a manner beyond the intent of Congress."

Do you see that?

A. I do.

Q. And that is something that you would agree with, correct, sir?

A. Yes.

Q. Let me show you one more document, which I am, again, not going to at this time offer into evidence, but I want to just ask you to look at in the context of your testimony and the conclusions in the draft that is in Defendant's Exhibit 484 and Joint Exhibit 13 are not controversial. This is Plaintiffs' Exhibit, for identification, 2737.

(Plaintiffs' Exhibit Number 2737 was marked for identification.)

BY MR. BOIES:

Q. This is a series of drafts and emails that were produced by the GAO, I believe. A number of them refer to you and some of them are from you, but I do not have any basis to know whether or not you have seen this collection of documents before. Have you?

A. Not that -- no, I don't believe so. Some of the documents, of course, I have seen, but -- for example, the memorandum, I've seen the final version of this and various versions of it. I don't know if I saw this one.

Q. All right. Now, these are drafts that relate to Joint Exhibit 13, correct, sir?

A. These look like drafts of Joint Exhibit 13.

Q. And it is the case that Joint Exhibit 13 went through a variety of drafts, correct?

A. Yes.

Q. And it was commented on by a variety of people, correct?

A. That's correct.

Q. The first page of Plaintiffs' Trial Exhibit 2737 is a -- an email to and from a variety of people about a draft of Joint Exhibit 13, correct?

A. It appears to be.

Q. Can you identify the Federal Reserve Board personnel that are participating in this exchange?

A. Heatherun Allison at the time was a staff attorney. Mark Van Der Weide was a more senior attorney in the Legal Division. Those are the two in the first pair of emails. Dave Small -- Dave Small is an economist in the Research Division.

Q. And the addressee of one of these emails -- in fact, the top email -- is something called litigation1@frb.gov. Do you see that?

A. I see that.

Q. What is that?

A. I don't know. It could be an email list from -- that Heatherun has set up.

Q. Let me ask you to look next at page 19, and this is an exchange that includes the people that you've identified before, but also Rich Ashton, correct?

A. Yes.

Q. And the subject is "HSA edits to legal memo." What is HSA?

A. That would be Heatherun Allison, Heatherun Sophia Allison.

Q. Exhibit 2737, page 20, is the first page of another draft of JX 13. This one is a draft dated March 27, marking up a draft dated March 25. Do you see that?

A. I see that.

Q. Now, did you see either the March 25 or the March 27 drafts?

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

Q. Let me go back to the very first page of Plaintiffs' Trial Exhibit 2737, and the first sentence says, "Perhaps the 'incidentality' (is that a word?) of acquiring the non-note collateral would be heightened by adding something in the memo to the effect that 'We tried to limit the non-note collateral to the greatest extent possible but we could not entirely eliminate it from the pool."

She then goes on to say, "I thought I remembered somewhere in the conversations in Scott Alvarez's office that we/FRBNY did in fact try to keep any non-note stuff out."

Do you see that?

A. I see that.

Q. Was there a conversation in your office that you are aware of in which there was a consensus as is described here?

A. I don't recall.

Q. Let me ask you to look at page 35 of Plaintiffs' Trial Exhibit 2737. At the top there is a March 26th, 2008, email from you to Mark Van Der Weide. Is that correct?
A. Yes.
Q. And you are sending on comments that had been submitted by Brian Madigan. Is that right?
A. That's right.
Q. Now, who is Brian Madigan? You may have identified him before, but I don't recall.
A. At the time he was the director of the Monetary Affairs Division, which, as I mentioned, one of the responsibilities of that division is various lending transactions by the Federal Reserve.
Q. And there's also a James A. Clouse.
A. Clouse.
Q. Clouse. Who is that?
A. He is the deputy director in that Monetary Affairs Division.
Q. There is then, starting on page 37, a March 25 draft.
A. Yes. This is all related to the Bear Stearns transaction.
Q. Yes. These are all drafts or comments on drafts related to Joint Exhibit 13, correct?

A. That's correct. That's correct.
Q. And at the time that you were yourself were working on Joint Exhibit 13, were you aware of the comments that had been made in these exchanges?
A. I don't recall.
Q. Let me direct your attention to the first page, the sentence that's right after the sentence that I previously directed your attention to, where it says, "In the case of footnote 24" -- referring to a footnote in the draft -- "it seems we are basically arguing that 'incidental powers' means we can buy a little bit of equities even though the legislative history of the Act says Congress didn't want us to buy equities (hence the non-appearance of such authorization in sections 13 and 14)."
Do you see that?
A. I see that.
Q. Were you aware of that comment at the time that you were --
A. I have no recollection.
Q. -- preparing Joint Exhibit 13?
A. I have no recollection.
MR. BOIES: Your Honor, I pass the witness.
THE COURT: All right. Thank you, Mr. Boies.
Perhaps we can take a break at this point, and we

will reconvene at 3:35.

(Court in recess.)

THE COURT: Please be seated.

Mr. Austin, you're up.

MR. AUSTIN: Thank you, Your Honor.

RECROSS EXAMINATION

BY MR. AUSTIN:

Q. Good afternoon, Mr. Alvarez.

A. Good afternoon.

Q. Do you recall, on redirect examination, Mr. Boies asked you a question about DX 527, which is the email where your "king among kings" comment occurs and asked you whether or not his prior -- the prior email from Mr. Baxter mentioned preferred shares? Do you recall that question and answer?

A. Yes.

Q. Now, when Mr. Baxter was writing his email, he was referring to the term sheet that was previously mentioned and discussed, correct?

A. That's correct.

Q. And if you turn to PX 183 -- PTX 183, I'm sorry --

A. That's in --

Q. -- in Starr's binder.

A. PTX 183?

Q. 83 -- 183.
A. Sorry. Yes.
Q. Do you recognize that as your "trust or no trust" email?
A. Yes, that's right.
Q. Now, if you turn to PTX 183 at page 3 that's attached to that email?
A. Yes.
Q. Is that the term sheet that Mr. Baxter is referring to in DX 527?
A. Yes, it is.
Q. Okay. And if you look under "Securities," could you read what it states there?
A. "[10,000] shares of Convertible Participating Serial Preferred Stock."
Q. So, Mr. Baxter in his email is referring to preferred stock?
A. Yes.
Q. Do you recall that Mr. Boies asked you a series of questions concerning the $50,000 price and its relationship to the purchase of preferred stock?
A. Yes.
THE COURT: $500,000, right?
MR. AUSTIN: $500,000. I'm sorry.
BY MR. AUSTIN:

Q. $500,000?

A. Yes.

Q. And let me ask that my colleagues provide you a copy of JX 185. Could you identify what JX 185 is, Mr. Alvarez?

A. At least the front part of it is the Series C Perpetual, Convertible, Participating Preferred Stock Purchase Agreement.

Q. And who is it indicating that this agreement is between in the first paragraph?

A. Between AIG Credit Facility Trust, a trust established for the sole benefit of the United States Treasury, and American International Group, Inc., a Delaware corporation.

Q. Now, if you would turn to page 2 of the document, under "Purchase of Series C Preferred Stock."

A. Yes.

Q. Who is indicated as the purchaser there? Paragraph 2.1.

A. I don't see a definition of purchaser, but "...the Company shall issue and sell to the Trust, and the Trust shall purchase from the Company..."

Q. And looking at the last clause there, what does it indicate is the consideration that constitutes the purchase price?

A. "...with an understanding that additional and independently sufficient consideration was also furnished by FRBNY in the form of its lending commitment under the Credit Agreement..."

Q. And that's in addition to what?

A. In addition to the purchase price of $500,000.

MR. AUSTIN: I have nothing further, Your Honor.

THE COURT: All right. Mr. Alvarez, thank you very much for your testimony. It's a proven fact that the first witness in a large trial always takes a disproportionate amount of the heat, and so that was you in this case. So, you are excused.

THE WITNESS: Well, thank you for the opportunity, Your Honor.

THE COURT: Thank you again.

MR. BOIES: Thank you, Your Honor. We call as our next witness Mr. Thomas Baxter.

THE COURT: Please come forward, sir. Please raise your right hand.

Whereupon--

THOMAS BAXTER

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

THE COURT: Please be seated.

THE WITNESS: Thank you, Judge Wheeler.

MR. BOIES: Good afternoon again, Mr. Baxter.

THE WITNESS: Good afternoon, Mr. Boies.

MR. BOIES: We have a couple volumes for you. One will be an initial volume of exhibits that we may reference during your testimony, and the other will be a volume of your deposition transcripts. And you were deposed twice, once in a personal capacity and once in a 30(b)(6) capacity.

THE WITNESS: There are some binders up here, Mr. Boies.

MR. BOIES: Those, we will collect.

Now, everybody was more efficient than I thought. What they had done was they had actually placed yours up here already.

THE WITNESS: Thank you, Mr. Boies.

MR. BOIES: All right.

DIRECT EXAMINATION

BY MR. BOIES:

Q. Let me begin with some background. Pursuant to Section 13(3) of the Federal Reserve Act, the Federal Reserve System is the nation's lender of last resort, correct?

A. I would not limit that to Section 13(3), but yes, the Federal Reserve System is the Central Bank of the United States and serves as the lender of last resort.

Q. And as the lender of last resort, the Federal Reserve System has the responsibility to provide liquidity in periods when financial markets are disrupted and private sources of liquidity are inadequate. Is that fair?

A. Again, it's a little narrower than I would draw the responsibility, Mr. Boies, but in --

Q. Why don't you describe it in your words.

A. -- general -- the Federal Reserve provides liquidity during good times and during bad times to the banking sector; and in crisis times sometimes needs to provide liquidity to the markets and also to a broader class of institutions than just depository institutions.

Q. And 13(3), which we've talked about in the trial before, relates to individuals, partnerships, and corporations, sometimes referred to as IPC authority, correct?

A. It does.

Q. And in times of crisis, the Federal Reserve System has responsibility to deal with liquidity, not just for the banking system but for broader financial markets, correct?

A. In what the law would characterize as exigent and unusual circumstances, and I think it's fair, Mr. Boies, to say that those circumstances describe most crisis times.

Q. And the Federal Reserve recognized that those unusual and exigent circumstances existed beginning in March of 2008, correct?

A. The Board of Governors of the Federal Reserve System, which is the governing body in the Federal Reserve, first determined that there were exigent and unusual circumstances in March of 2008.

Q. And this was the first time that the Federal Reserve had made this determination since the 1930s, correct?

A. I don't think that's correct.

Q. Okay. When was the last 13(3) credit facility prior to March of 2008?

A. I think the determination of exigent and unusual circumstances was made in the late sixties, Mr. Boies. I wasn't in the Federal Reserve at the time. Although I have been there for a long time, I wasn't there in the late sixties. I don't think any credit was ever extended, though.

Q. I take your point. Thank you.

And just to be clear, the first time that the Federal Reserve extended credit pursuant to Section 13(3) after the 1930s was in March of 2008, correct?

A. The first time that we had found exigent and unusual circumstances, as I recall it, Mr. Boies, took place on March 11th of 2008. The credit wasn't actually extended until a later time.

Q. Was it extended in March of 2008?

A. Not pursuant to that particular finding. It took some two weeks for what was then known as the term securities lending facility to become operational. In the interim, we did extend credit under Section 13(3), but it was -- it was a different finding of exigent and unusual.

THE COURT: Mr. Baxter, I think if you will back off that microphone just a little bit, we won't get feedback.

THE WITNESS: Okay, Judge Wheeler. I'm sorry if I was creating a problem.

THE COURT: That's okay. Just a suggestion.

BY MR. BOIES:

Q. And I'd ask you to listen to my questions, because I think you may have read something more into my question than was there.

All I asked was that the first time that the Federal Reserve extended credit pursuant to March -- pursuant to Section 13(3) after the 1930s was in March of 2008. That is correct?

A. That is correct.

Q. And other than the 1960s, was the first time that the Federal Reserve had made a finding of unusual and exigent circumstances after the 1930s March of 2008?

A. The first time was when we announced the term securities lending facility, and that was March 11th of 2008.

Q. And every time that the Federal Reserve offered an additional 13(3) credit, did they have to make a separate finding of unusual and exigent circumstances?

A. Yes.

Q. With respect to the PDCF, there would have been a finding of unusual and exigent circumstances at the time that that facility was established, correct?

A. Correct.

Q. If the Federal Reserve had found that unusual and exigent circumstances had ceased to exist, would that have required the termination of that facility?

A. In my view, not immediately.

Q. But would it have required the termination as soon as could practically be done without disruption?

A. You would -- if you had extended credit for a term, you would have to allow the term of that lending to run its course, and if, at the end of the term, the circumstances were no longer exigent and unusual, you could not repeat using that authority.

Q. What was the term for the credit extended pursuant to the PDCF?
A. That was overnight credit.
Q. So, if you had decided that unusual and exigent circumstances no longer existed, that would be a 24-hour period before the term expired, at most, correct?
A. That is correct.
Q. Is it fair to say that the Federal Reserve never concluded that there had been an end to unusual and exigent circumstances from March 11th, 2008, through the end of that year?
A. That's correct.
Q. The financial markets got considerably worse and the difficulty of raising liquidity got considerably worse from March through August of 2008, correct?
A. I remember the "considerably worse" to have occurred in September of 2008, not in August.
Q. Well, comparing August and March, was the liquidity and financial market situation worse in August than it had been in March?
A. I would say the liquidity was still stressed, but it's hard for me to say that it was worse in August than it was in March.
Q. Now, in August, the Federal Reserve began to monitor various companies that they thought might pose

systemic risk to the financial system, correct?

A. I would say it was earlier than August, Mr. Boies.

Q. When did that start?

A. We started with respect to the investment banks immediately after the Bear Stearns rescue, and that would have been in March of 2008, but it went from March of 2008 through September, focusing on the investment banks.

Q. When, if ever, prior to September, did, as you understand it, the Federal Reserve begin to monitor financial institutions other than investment banks for possible systemic risk?

A. Well, we -- we continuously monitor the large depository institutions and depository institution holding companies under our supervision. The special monitoring that we started in March of 2008 was directed at the investment banks, which we do not supervise then and were supervised principally by the Securities and Exchange Commission.

Q. Did there come a time when the Federal Reserve began to monitor any financial institutions, other than investment banks and depository institutions, for systemic risk?

A. After Lehman Brothers filed its petition in bankruptcy, we became concerned about other institutions, such as money market funds and also large participants in the commercial paper market. So, it would be after September 15th of 2008.

Q. And do I understand your answer to mean that the first time that the Federal Reserve began to monitor any financial institutions, other than investment banks and depository institutions, for systemic risk was after September 15th of 2008?

A. I was focusing on classes of institutions other than depository institutions and investment banks. There might have been occasional other institutions that came to our attention and warranted focus earlier than that.

Q. And, again, I'd ask you just to focus on my question, because my question didn't relate to classes of institutions and I don't mean to focus only on classes of institutions.

My question is, prior to when Lehman Brothers filed its petition for bankruptcy, did the Federal Reserve begin to monitor any financial institutions for systemic risk, other than investment banks and depository institutions, if you know?

A. Yes.

Q. What institutions and when?

A. We were certainly focused on the government-sponsored enterprises, Fannie Mae and Freddie Mac, and that had been going on for quite a period of time. I can't give you an exact date, Mr. Boies, but certainly well before they were put into conservatorship, which I think was September 8th of 2008. And there may have been other specific institutions that came to our attention.

Q. Are there any other specific institutions that you are familiar with?

A. I know that the first discussion of AIG took place during the eve of Lehman weekend.

Q. So, that would have been, like, September 11th, September 12th, September 13th of 2008?

A. When I talk about Lehman weekend, I -- it is not an imprecise term -- well, it is an imprecise term, but I focus on September 12th, which is a Friday, the 13th, the 14th, and into the early morning hours of the 15th.

Q. And so that would have been the first time the Federal Reserve would have been focused on AIG as a possible company with systemic risk?

A. Well, I don't think I can speak for the entirety of the Federal Reserve. Certainly, for me personally, I remember that AIG came onto at least my radar screen on or around September 12th, the Friday before Lehman

weekend.
Q. Recognizing that things may be going on that you don't know about, insofar as you were aware, was anyone at the Federal Reserve focusing on AIG as a potential source of systemic risk before the eve of Lehman weekend?
A. Not that I recall.
Q. After Lehman filed for bankruptcy, there were adverse systemic consequences of that filing in the United States financial markets and, indeed, throughout global financial markets, correct?
A. Correct.
Q. It was the day after Lehman that the reserve fund broke the buck?
A. I think it was Wednesday, so two days after the filing.
Q. Two days after the filing?
A. At least as I recall it.
Q. Two days after the filing.
And is it fair to say that in the several days after the Lehman Brothers filing, credit markets began to freeze and even solvent institutions began to be unable to get the liquidity that they needed?
A. Temporally, I think that is true. After the Lehman filing, those conditions occurred. There is

always a question about cause and effect.

Q. To some extent, the causes of freezing up of credit markets and the difficulty in raising liquidity predated the Lehman weekend, but the Lehman filing certainly aggravated that, correct?

A. It surely didn't help.

Q. Financial institutions began to try to protect their own balance sheets and not make credit available that they would have under other circumstances, correct?

A. It was an exacerbating condition to what we were already seeing in the markets.

Q. And the effects of financial institutions being unwilling to make credit available were severe, right, sir?

A. I agree.

Q. In your position at the New York Fed, were you monitoring what was happening following Lehman's bankruptcy with respect to money market funds?

A. Was I personally, Mr. Boies?

Q. Either were you personally or were you aware of that being done?

A. Yes.

Q. And who was responsible for doing that?

A. It was a -- it was a senior team of officers considering the conditions at the time. One of those individuals was Meg McConnell, reporting up to our chief executive officer, who was Timothy Geithner.

Q. And in the seven days after Lehman filed for bankruptcy, how much money, approximately, did investors withdraw from money market funds?

A. I don't recall.

Q. Was it more than $300 billion?

A. In the seven days after September 15th?

Q. Yes.

A. I don't recall the numbers.

Q. Can you give me any approximation?

A. It was a lot.

Q. Yeah. And it was a lot both in terms of absolute dollars and a lot in terms of the effect on money market funds, correct?

A. Yes.

Q. Now, there came a time when the Federal Reserve was told that Morgan Stanley had indicated that it would not be able to open the following Monday, correct?

A. I don't recall that personally happening.

Q. Let me ask you to look at Plaintiffs' Exhibit 174, which is not in your book.

A. That may be why I can't find it.

Q. Yes. So, I will try to get a copy to you, if I can.

If we can't find it quickly, we will move on, Your Honor. We've got it on the screen. It is already in evidence, and with the Court's permission, I will use it on the screen.

THE COURT: Sure.

MR. GARDNER: Just so we have a clear transcript, are we talking about Plaintiffs' Exhibit 175?

MR. BOIES: Plaintiffs' Exhibit 174. I will come to Exhibit 175, since everybody wants me to talk about it, but right now I'm talking about 174.

MR. GARDNER: Just give me one second, Counsel, so we can grab it. Thank you.

MR. BOIES: Thank you.

BY MR. BOIES:

Q. This is an email that is already in evidence, and it's from Michael Silva, and you know who he is, correct?

A. Yes.

Q. Who is he?

A. At the time, September 20th, 2008, Michael Silva was the -- was the chief of staff for Mr. Geithner.

Q. And it is to Sandy Krieger, with copies to William Dudley, William Rutledge, and Terrence Checki, correct?

A. I see that.

Q. Have you ever seen this document before?
A. I'm sure I've seen it before. I don't remember seeing it at the time. When it's not addressed to me, that suggests I didn't.
Q. When was the first time that you became aware of the contents of this email?
A. It was in connection with some congressional testimony, but I don't remember which one, Mr. Boies.
Q. This is dated September 20, 2008, and the first line says (as read): "Morgan Stanley called this morning and indicated that they can not open on Monday." Do you see that?
A. I do.
Q. Were you ever told, in words or in substance, over the weekend, Saturday, September 20th, or Sunday, September 21st, that Morgan Stanley had called and indicated that they would not be open on Monday -- not be able to open on Monday?
A. No, I don't recall that.
Q. Now, let me ask you to look at Plaintiffs' Exhibit 175, which is also in evidence, and this is an email from Mr. Silva a few minutes later, and this is to Christine Cumming, and who is she?
A. She was then and is now our chief operating officer.

Q. The chief operating officer of the New York Fed?
A. Correct.
Q. And this says (as read): "Morgan Stanley called Mr. Geithner late last night and indicated that they can not open Monday." Do you see that?
A. I do.
Q. Where were you this weekend, the weekend of September 20th and 21st?
A. I was at the Federal Reserve Bank of New York.
Q. And did you see Mr. Geithner at that time?
A. Yes.
Q. Did Mr. Geithner mention to you that Morgan Stanley had called him on Friday, September 19, and indicated that they would not be able to open on Monday?
A. I -- I know that we were having discussions at the time about Morgan Stanley being in financial distress. I do not remember a discussion suggesting Morgan Stanley could not open for business Monday morning, which for me would have meant that they were filing for bankruptcy.
Q. This email talks about that we will definitely need to resolve both entities one way or the other this weekend, and the other entity was Goldman Sachs. And it then goes on to say (as read): "Options under active discussion range from sovereign wealth injection to

merger with/acquisition by a bank to becoming a bank holding company themselves to government assistance (unlikely)."

Do you see that?

A. I do.

Q. Were you involved in any of the discussions concerning a possible sovereign wealth injection, merger, acquisition, bank holding company classification, or government assistance with respect to Morgan Stanley and Goldman Sachs that weekend?

A. I was involved in applications by both Morgan Stanley and Goldman Sachs to become bank holding companies.

Q. Did you have an understanding as to when Morgan Stanley or Goldman Sachs made those applications?

A. Yes.

Q. When did they make those applications?

A. During the course of this weekend.

Q. Do you know when during the course of the weekend?

A. I don't recall the exact time.

Q. Do you know whether it was Saturday or Sunday?

A. I believe it was Saturday.

Q. And do you know whether anyone from the Federal Reserve suggested that Morgan Stanley file an application to become a bank holding company?

A. To the best of my recollection, we made no such suggestion.

Q. Were you dealing with the representatives of Morgan Stanley?

A. Was I personally at the time?

Q. Yes.

A. No.

Q. Who was personally dealing with representatives of Morgan Stanley?

A. The individuals who staff our banking applications function, and that function reports up to me as general counsel.

Q. Was anyone dealing with representatives of Morgan Stanley the weekend of September 20th concerning possibly becoming a bank holding company, other than people who reported up to you?

A. I believe so, but I don't have a firm recollection of this in my mind as I testify here today.

Q. Do you have a recollection of any of the people, other than your staff, that were dealing with Morgan Stanley?

A. I believe Mr. Geithner was talking to senior officers of Morgan Stanley. I can't say for certain it was on Saturday or Sunday, Mr. Boies.

Q. And did Mr. Geithner keep you informed of those conversations?
A. Yes.
Q. Do you know who, if anyone, spoke to Morgan Stanley representatives from the Federal Reserve prior to the time that Morgan Stanley made an application to become a bank holding company?
A. There would have been regular communication between Morgan Stanley and Goldman Sachs during this period of time. I just don't know who they were talking to at the Fed.
Q. When you say there would have been regular communication between Morgan Stanley and Goldman Sachs, you are talking about regular communications to each of those two companies from the Fed, correct?
A. That's correct. And, of course, Mr. Boies, we had a monitoring team on-site at both of those investment banks since March of 2008.
Q. Do you know who, if anyone, spoke to representatives of Morgan Stanley about a possible application to become a bank holding company prior to the time that that application was actually submitted?
A. I don't know.
Q. The weekend of September 20th and 21st, was it your understanding, if you had one, whether Morgan

Stanley that weekend faced a severe liquidity crisis?
A. My best recollection is Morgan Stanley faced significant financial challenges during that weekend.
Q. Did you have an understanding of how much Morgan Stanley had borrowed from the Fed pursuant to 13(3) credit facilities as of that weekend?
A. I don't know the number.
Q. Do you know approximately?
A. I don't.
Q. Was that something that was looked at in connection with the application to become a bank holding company?
A. I don't know.
Q. Now, there has been reference in the trial to bank holding companies and to financial holding companies. Is there a difference?
A. Yes. There are bank holding companies that are not -- don't have the additional status of financial holding companies.
Q. And the weekend of September 20th and September 21st, was Morgan Stanley applying to become both a bank holding company and a financial holding company?
A. My recollection is they were.
Q. And were they granted both such status that weekend?

A. As best I can recall, they were.
Q. And in order to find that a company can be granted financial holding company status, you must find that they are in sound financial condition and well managed, correct?
A. Well capitalized and well managed, yes.
Q. And who has to make those findings?
A. The Board of Governors of the Federal Reserve System.
Q. And do you know whether the Board of Governors for the Federal Reserve System made a finding that Morgan Stanley was well capitalized and well managed the weekend of September 20th?
A. My belief is they did.
Q. Were you present when that happened?
A. I was not.
Q. Do you know what information was presented to the Board of Governors that would provide a basis for such a finding?
A. I do not know.
Q. Do you know whether the Board of Governors meeting at which these findings were made was in person or over the telephone?
A. I don't know.
Q. Do you know where the Board of Governors were

that weekend?
A. In Washington, D.C.
Q. Did you have any communications with the Board of Governors or with any of the representatives of the Board of Governors concerning the findings of well capitalization and well managed?
A. I don't recall.
Q. There came a time in September 2008 when you recognized that AIG faced a severe liquidity crisis, correct?
A. When you say "you," Mr. Boies, you're talking about me personally now?
Q. Let me start with that.
A. Yes.
Q. And was your view that AIG faced a severe liquidity crisis a view that was shared by others at the Federal Reserve?
A. Well, I can't speak for everyone at the Federal Reserve, but I do believe certain individuals shared that belief.
Q. What individuals?
A. Mr. Geithner.
Q. In terms of a 13(3) loan for AIG, when was the first time that the Federal Reserve considered a 13(3) loan for AIG?

A. I was not present for the discussion, Mr. Boies, but my understanding is Federal Reserve staff discussed with AIG emergency liquidity assistance on the evening of September 12th, 2008.
Q. Were you aware that AIG, in and around September 12th, was trying to find private sector financing?
A. Yes.
Q. And you believe that had Lehman not filed for bankruptcy, private sector financing for AIG could have been secured, correct?
A. That's my personal belief.
Q. There came a time when the Federal Reserve Bank of New York concluded that there was not going to be private sector liquidity for AIG, correct?
A. Yes.
Q. When was that?
A. It's always unclear, when I think about this particular question, whether I learned that, Mr. Boies, on the evening of September 15th, 2008, or early in the morning on September 16th, 2008, around 7:00 in the morning, when I got to work.
Q. But certainly by the morning of September 16, you would have understood that there was not going to be private sector liquidity available for AIG, correct?
A. Yes.

Q. And at that point you understood that in the absence of credit from the Federal Reserve, AIG would file for bankruptcy, correct?

A. I don't think it's exactly the same time. When I learned in the morning that we were contemplating extending credit to AIG, I heard that from my deputy, and then I went in and spoke to Mr. Geithner.

Q. Is it fair to say that in the morning of September 16th, 2008 -- without trying to define too precisely when in the morning -- you, the chairman of the Federal Reserve Board, the Secretary of the Treasury, and the president of the New York Fed, all concluded that in the absence of credit from the Federal Reserve, AIG would go bankrupt?

A. Yes.

Q. And is it also true that on September 16th, the chairman of the Federal Reserve Board, the Secretary of the Treasury, and the president of the New York Federal Reserve all concluded that if AIG filed for bankruptcy, that would have catastrophic effects for financial markets?

A. Yes.

Q. Among the effects that an AIG bankruptcy would have had on financial markets would have been the effects it had on AIG's counterparties, correct?

A. Counterparties, creditors, employees, yes. There's a whole list of folks who would be adversely affected.

Q. Yes, and I didn't mean to limit it to counterparties. I was just sort of going through them one by one.

The counterparties would have been adversely affected by an AIG bankruptcy. Can you give me some examples of those?

A. I don't recall specific institutional names as I sit here today. They would be people who were transacting -- doing large transactions with AIG. AIG had written stable value wraps on certain pension funds, I remember that. I remember, in particular -- and this is just why some things stick out in your mind -- concern particularly about teachers' pensions. I happen to be married to a New York City Public Schools teacher, so that I recall. There were a whole host of consequences that were articulated in the course of that approximately one-hour discussion.

Q. Was there any attempt to estimate what the exposure to AIG was for companies like Goldman Sachs that -- or a company -- or Morgan Stanley, such as a company that the Fed was already providing liquidity to?

A. I don't remember that, Mr. Boies. What I remember is the discussion that it wouldn't affect just Wall Street; it would affect Main Street.

Q. Focusing on the -- let me ask you to look at Joint Exhibit 60. This is a document that is already in evidence, and it is an email with an attachment. The email is dated September 16th, 2008, at 8:07 p.m., and then it's sent around at 8:09. Have you seen this document before?

A. I don't think I have.

Q. Page 3 of the document is headed, "Selected Financial Institutions' Economic Exposures to AIG." Do you see that?

A. One moment, Mr. Boies. Let me look at it. (Document review.) I do.

Q. And are all of the companies listed here banks or investment banks?

A. We're talking about page 3?

Q. Yes.

A. They are all banks or investment banks.

Q. And do you know what the purpose of preparing this analysis was?

A. I don't know.

Q. Were you aware of analyses that were being prepared on or about September 16th that showed what the economic exposures to AIG were of selected banks and investment banks?

A. I was not aware.

Q. Now, I think that you've already mentioned this, but I just want to be clear. In the period of 2008 and, indeed, up to mid-2010, the Federal Reserve Bank of New York was not what you would think of as AIG's regulator, correct?

A. I'm sorry, Mr. Boies. I didn't get the time period.

Q. In the period of 2008 and up to mid-2010, the Federal Reserve Bank of New York was not what we would ordinarily think of as AIG's regulator.

A. That's correct.

Q. And it got the responsibility for regulating AIG in Dodd-Frank, correct?

A. It was twofold in Dodd-Frank, Mr. Boies. First, the Fed became responsible for thrift holding companies when the OTS was put out of -- the Office of Thrift Supervision was put out of business by Dodd-Frank. And then later, our supervisory responsibility for AIG changed when it was designated as a systemically important financial company supervised by the Federal Reserve.

Q. When was AIG designated as a systemically important financial company supervised by the Federal

Reserve?

A. I don't remember the exact date.

Q. Was it in 2010?

A. I think it was later, Mr. Boies, but I can't testify to what the exact date was.

Q. Were you involved in the decision to designate AIG as a systemically important financial company supervised by the Federal Reserve?

A. The decision is made by a separate federal entity called the Financial Stability Oversight Council. I may have been involved in supervising some data that was sent to the Financial Stability Oversight Council, but it wasn't -- it wasn't in a decision-making role.

Q. Do you recall -- I know you may have been, but do you recall supplying information to the FSOC in connection with their decision as to whether or not AIG should be classified as a systemically important financial company?

A. I personally would have provided no information to the FSOC.

Q. Now, even though it had not been designated as such, because Dodd-Frank obviously had not been passed, in September of 2008, was AIG a financial firm that was systemically important to the financial markets?

A. In my view, it was.

Q. And was that also the view of others at the Federal Reserve Bank of New York, including Mr. Geithner?
A. At, in or around September 16th?
Q. Yes.
A. At that point in time, yes.
Q. Let me ask you to look next at Plaintiffs' Trial Exhibit 24, which I will offer.
MR. GARDNER: Your Honor, I am going to object on foundation grounds.
THE COURT: I'm sorry?
MR. GARDNER: I'm objecting on foundation grounds. Mr. Boies has not laid a proper foundation that Mr. Baxter is on this exhibit, to the best of my knowledge. This is an email, and he's neither the recipient nor the sender.
MR. BOIES: Your Honor, this is a document that we stipulated to the authenticity of. It is an email to the person that has been identified as the chief operating officer of the New York -- Federal Reserve Bank of New York, I believe. It relates to the subject matter of his testimony.
THE COURT: I am going to overrule the objection. Plaintiffs' Trial Exhibit 24 is admitted.
(Plaintiff's Exhibit Number 24 was admitted into

evidence.)

BY MR. BOIES:

Q. You've identified previously Ms. McConnell. This is directed to her from Kevin Coffey. Who is Kevin Coffey?

A. Kevin Coffey worked in financial institution supervision, I believe, as they were calling it at the time. Mr. Boies, Meg McConnell, I think you characterized her as the chief operating officer. She was not the chief operating officer. She was in the chief of staff's office.

Q. The chief of staff's office. What was her position?

A. I don't remember her title, but she was an advisor to -- to Mr. Geithner.

Q. An advisor to Mr. Geithner?

A. Yeah, in the chief of staff's office.

Q. And she would have reported to whom?

A. She reported to Mr. Geithner. I can't remember if it was through the chief of staff, Mr. Silva.

Q. Earlier in your testimony, you mentioned a McConnell. Is this the same McConnell?

A. I mentioned the chief operating officer, who is another woman named Christine Cumming. I also mentioned Ms. McConnell, and I frankly don't remember how I was characterizing her earlier.

Q. Okay.

A. They're not the same women, though. These are different --

Q. No, no, I know. I wouldn't suggest so.

In the second paragraph, it says (as read): "AIG's liquidity position has been an issue and therefore I want to be sure that we (and OTS as the thrift holding company supervisor) have a good understanding of whether or not there could be a problem."

Do you see that?

A. I do.

Q. Were you aware of concern about AIG's liquidity position at the Federal Reserve Bank of New York in or about August 7th of 2008?

A. Personally, I was not.

Q. Now, let me ask you to look at Plaintiffs' Exhibit 27, which I will offer.

MR. GARDNER: No objection, Your Honor.

THE COURT: Plaintiffs' Trial Exhibit 27 is admitted.

(Plaintiff's Exhibit Number 27 was admitted into evidence.)

BY MR. BOIES:

Q. This is a series of emails. One is from Mr. Coffey to people that include Ms. McConnell, but there are a number of other addressees. I think we've already identified Brian Peters, but can you identify the other people who are included here?

A. Starting with the email at the top of -- and I was not one of the people who received this email, but in response to your question, Mr. Boies, Mr. Peters was in banking supervision. So was Mr. Angulo, Kevin Coffey, and Dianne Dobbeck. Chris Calabia was also in bank supervision. I don't know Steven Mirsky.

And then looking down further on the page, all bank supervision people, with the exception of Terrence Checki, who was an executive vice president in charge of the emerging markets and international affairs group at the New York Fed.

Q. In the email to Mr. Checki and others, Mr. Coffey, on August 7, at 10:53 p.m., writes an email, the subject of which is "AIG Liquidity and Capital. I just wanted to give a quick heads up on AIG's liquidity and capital situation."

Do you see that?

A. I do.

Q. Were you ever given any information on AIG's liquidity and capital situation in August of 2007 --

2008?

A. Not that I recall.

Q. Insofar as you were aware in dealing with Mr. Geithner, was Mr. Geithner ever given any information concerning AIG's liquidity and capital situation in August of 2008?

A. I don't know what -- everything that was sent to Mr. Geithner.

Q. I realize you don't know everything that was sent to Mr. Geithner, but do you know whether he was sent any information concerning AIG's liquidity and capital situation in August of 2008?

A. I do not know.

Q. Let me ask you to look at Plaintiffs' Trial Exhibit 30, which I will offer.

MR. GARDNER: No objection, Your Honor.

THE COURT: Thank you. Plaintiffs' Trial Exhibit 30 is admitted.

(Plaintiff's Exhibit Number 30 was admitted into evidence.)

BY MR. BOIES:

Q. And I understand that you are not shown as a copyee, although there are several people who did get copies of this, but one of the emails in the top email is from Beverly Hirtle, who is listed as a senior vice president, financial intermediation function, Federal Reserve Bank of New York. Do you see that?

A. I don't see a reference to the financial intermediation function. I see the reference to Bev Hirtle's name.

Q. Do you see it has From, Sent, To, CC --

A. I see, under her title. I'm sorry.

Q. Yes. Do you know Beverly Hirtle?

A. I do.

Q. On the second page of this document, it has a heading that says, "FI access to DW for 'systemic risk' purposes." Do you see that?

A. I see what the document says, yes.

Q. And then there are a list of nonbanks and then a series of question marks, with the word "maybe," and then lists some additional nonbanks. Do you see that?

A. I do.

Q. And beneath the "maybe," it includes AIG, GE Capital, and Citadel, correct?

A. I see what the document says, yes.

Q. And recognizing that you have never seen this document before, does this refresh your recollection at all that AIG was being considered as a possible systemic risk as early as August of 2008 by the Federal Reserve?

A. It does not.

Q. Let me ask you to look at Plaintiffs' Trial Exhibit 33, which I will offer.

MR. GARDNER: Subject to the same foundation objection I previously lodged, Your Honor, we have no other objections.

THE COURT: Okay. I will overrule that objection, and Plaintiffs' Trial Exhibit 33 is admitted.

(Plaintiff's Exhibit Number 33 was admitted into evidence.)

BY MR. BOIES:

Q. Let me ask you to look at the last paragraph, the first sentence. "Would an insurer benefit from being able to borrow from the fed? I think for a company like AIG the answer would be YES." Do you see that?

A. I see what the document says, yes.

Q. At any time prior to September 12th of 2008, were you aware of anyone at the New York Fed who believed that AIG would benefit from being able to borrow from the Fed?

A. I think any financial company would benefit from being able to borrow from the Fed. I've never seen this document before -- before today.

Q. In addition to the proposition that any financial company would benefit from being able to borrow from the Fed, are you aware of any reason why people at the New

York Fed would be singling out AIG as one of a more limited group of companies that might particularly benefit from that ability?

A. I don't.

Q. Now, prior to September of 2008, you were personally asked if there was any possibility for AIG to access Federal Reserve liquidity facilities, correct, sir?

A. Was I personally asked that question?

Q. Yes.

A. I don't recall.

Q. Let me ask you to look at your deposition, and this is your personal deposition, and it is the first tab in your book. This is the deposition taken November 1, 2013. I'd like you to go to page 19, and I am going to particularly direct your attention to the question and answer that begins at line 19.

MR. GARDNER: Your Honor, objection. If he's trying to refresh his recollection, his answer was he doesn't know, then the proper thing to do is direct him to the deposition, give him the opportunity to read it, and then re-ask the question to see if it refreshes his recollection. He's simply reading in the deposition. This isn't impeachment.

THE COURT: Well, I am going to give Mr. Boies the freedom to read pieces of this if he wants to.

BY MR. BOIES:

Q. "QUESTION: At any time prior to the meeting that you described on Saturday, the 13th, had AIG asked whether the New York Fed would provide some form of financial assistance to AIG?

"ANSWER: There was an earlier occasion, I believe in the summer of 2008, following a meeting between Mr. Willumstad and Mr. Geithner where I was asked by Mr. Geithner, I believe in an email, if there was any possibility for AIG to access Federal Reserve liquidity facilities."

Do you see that?

A. I see that.

Q. And does that refresh your recollection that you were personally asked in the summer of 2008 to investigate whether there was any possibility for AIG to access Federal Reserve liquidity facilities?

A. No. What this refreshes me on is that Mr. Geithner, I believe in September, in the time between the GSE conservatorship and Lehman weekend, so during that week of September 8th, had asked me whether AIG could become eligible to become a primary dealer.

Q. So, you think this refers to something in September?

A. I think it refers, as best I can recall, to Mr. Geithner asking me to look into AIG's eligibility to become a primary dealer.

Q. And when did he do that?

A. I believe it was sometime during the week of September 8th.

Q. Let me direct your attention to page 20, where at line 9, you were asked:

"QUESTION: Was that in July?

"ANSWER: Again, I would be speculating. My best recollection is it was sometime in the summer.

"QUESTION: By the summer, are you talking about July and August as opposed to some earlier time in September?

"ANSWER: I realize the summer is more than July and August, but I think it was in July or August. I can't remember which."

Does that refresh your recollection that this was before September?

A. Well, I think September -- also a part of September is in the summer. I think it is September. That is my best recollection today as I testify here, and I believe the request was can they become a primary dealer.

Q. Your best recollection at the time of your

deposition was that it was July or August, correct?
A. I said summer, as I read this colloquy, and I -- I obviously can't be specific, exactly what month it was, but I think -- my best recollection today is that it was September.
Q. Sir, I don't mean to spend more time on this than we have to, but in your deposition, at line 16, you said: "I realize the summer is more than July and August, but I think it was in July or August."
That's what you said at your deposition, correct?
A. And today I think it was September.
Q. I understand. But at your deposition, you honestly, truthfully, accurately at that time believed it was July or August.
A. Yes.
Q. Okay. Now, has something happened since then to change your recollection?
A. I've read an awful lot of documents between then and now.
Q. Who gave you those documents?
A. Well, many documents I've read in preparation for various testimonies, but I believe, as my best recollection today, Mr. Boies, is that that request on primary dealer took place in September and not in July or August.

Q. Well, my most recent question was, who gave you the documents that you reviewed to refresh your recollection?
A. My staff has given me lots of documents to read.
Q. Anybody else?
A. Preparing for my testimony today, yes.
Q. And those came from government lawyers?
A. Yes.
Q. Now, you say that your best recollection today is that it was in September that there was consideration given to AIG becoming a primary dealer. Is that correct?
A. That is my best recollection.
Q. In that connection, let me direct your attention to the same deposition, page 27, again at line 25.
A. Just give me one moment, Mr. Boies. Yes.
Q. And just to complete the record, I will read this.
"QUESTION: Was any consideration given in September of 2008 at any time to AIG becoming a primary dealer and, therefore, having access to the primary dealer credit facility?
"ANSWER: Yes.
"QUESTION: When was consideration given to that?
"ANSWER: It would have been during the summer of

2008, when the question was posed by Mr. Geithner."
And I take it your testimony would be that that would be September of 2008, correct?
A. I believe there's an email to that effect.
Q. Did you see that email in preparation for your testimony?
A. I don't remember when I first saw it, Mr. Boies.
Q. Was that an email that was to you, from you, or --
A. It might have been from me to Mr. Dudley, because we were both asked to look at that question at around that time, September of 2008.
Q. I ask just so we can try to find it.
A. Yeah.
Q. What is your best recollection of the email?
A. I think it might have been an assignment to Mr. Dudley and to me.
Q. From Mr. Geithner?
A. I think it was from the chief of staff or from Ms. McConnell. Again, I'm trying to remember one email among literally thousands and thousands.
Q. That, I understand.
A. I'm sure you do.
Q. Incidentally, we were talking about the application to become bank holding companies by Goldman

Sachs and Morgan Stanley. Now, the Federal Reserve waived the usual waiting period for that, correct?

A. That's my recollection.

Q. And in order to make that waiver, there had to be certain findings, correct?

A. That is my recollection.

Q. And are you aware of what those findings were?

A. I cannot articulate what the statutory requirements are for those findings as I sit here.

Q. Did you participate in either making or supporting those findings?

A. I believe so.

Q. Let me turn to September 16. You've testified about what you learned the night of the 15th and the morning of the 16th. You've talked about the conclusions that were reached by you and others at the Federal Reserve and perhaps Treasury during the 16th. There then came a time where there was a Board of Governors meeting, correct?

A. Correct.

Q. And that was a Board of Governors meeting that you participated in by telephone. Is that correct?

A. I know the minutes of the meeting show me as on by telephone. I have no independent recollection of the minutes or of what happened at the meeting.

Q. Okay. In connection with this meeting, did you send to Mr. Alvarez a term sheet?
A. Yes.
Q. And let me ask you to look at Joint Exhibit 64 that's already in evidence and ask you whether this is the term sheet that you sent to Mr. Alvarez.
A. Yes.
Q. And this was a term sheet that was prepared as of 1:44 p.m. on the 16th. Is that correct? In the lower right-hand corner.
A. And I hesitate, Mr. Boies, because there are multiple times indicated on the term sheet. So, I can't say for sure what time the term sheet was actually prepared. I can say, to the best of my knowledge, that I sent it to Scott Alvarez at around 2:15 on September 16th.
Q. And did you send it to Mr. Alvarez shortly after you received it?
A. That's my recollection.
Q. From whom did you receive it?
A. Well, the email chain discloses that Helen Ayala sent it to me. Helen Ayala was one of my personal assistants at the time, and she would have received it I believe from Brad Smith at Davis Polk.
Q. And what was Davis Polk's role at this time?

A. They became our outside counsel for this transaction earlier in the day on September 16th.

Q. And this is headed "Revised AIG Term Sheet." Do you see that?

A. Yes.

Q. Had you seen an earlier version of this term sheet?

A. Yes.

Q. And when did you receive the first version of the term sheet?

A. I can't -- and I've tried multiple times to reconstruct when exactly I got the first term sheet. I believe that the first term sheet I looked at, Mr. Boies, was a term sheet that had been prepared for JPMorgan Chase by its then counsel, Davis Polk, and one of the things that occurred in the late morning and early afternoon on September 16th is I engaged Davis Polk to become the Fed's lawyers and to essentially take over the legal documentation of a deal that was originally going to be done by JPMorgan Chase.

So, in substance, we were stepping into the shoes of another lender, we were taking over their legal counsel and also their advisor, and then formulating our own proposal to lend to AIG.

Q. Now, the legal counsel was Davis Polk?

A. Yes, sir.
Q. The advisor was who?
A. Morgan Stanley.
Q. Now, with respect to the term sheet that you say was prepared for JPMorgan by Davis Polk, who, in addition to JPMorgan, if anyone, was involved in that effort to provide liquidity to AIG?
A. I believe Goldman Sachs was also involved.
Q. Anybody else?
A. I think the intention was to syndicate the lending, but I don't think any syndicate members had actually been enlisted.
Q. So, what you had was a consortium -- because that's a word that some people have used -- essentially of two banks, Goldman Sachs and JPMorgan. Is that correct?
A. That's correct.
Q. And were these two banks dealing with AIG directly?
A. That was my understanding.
Q. From whom did you get that understanding?
A. The -- a number of people. The first time that I heard about JPMorgan Chase and Goldman Sachs putting together a rescue loan for AIG occurred on the evening of September 12th, 2008. And the individuals who I

heard speak about this were Lloyd Blankfein, the CEO of Goldman Sachs, and Jamie Dimon, the CEO of JPMorgan Chase.

Q. Where did you hear them speak about that?

A. It was in a meeting at the Fed on 33 Liberty Street, and it was a meeting chaired by the Treasury Secretary, the SEC Chairman, and Mr. Geithner, and in the room, present, were the 12 to 14 largest creditors of Lehman Brothers, and they were represented in that room by their chief executive officers.

At some point in the discussion, among those senior officers, there was a reference to AIG, and both Mr. Diamond and Mr. Blankfein said, "That's another problem, we're taking care of it." And having been seated in that room, I took careful note of that -- of that colloquy, and it led me to believe that we had another issue with AIG, but it was being addressed by -- by the private sector.

Q. And they said "That's another problem we're taking care of," Mr. Diamond and Mr. Blankfein said that?

A. I don't remember the exact quote. The sum and substance of what was said is, "AIG has problems; we're taking care of them."

Q. Did you have any additional contact with anybody from JPMorgan Chase or Goldman Sachs about providing liquidity to AIG after the evening of September 12th that you just testified to?

A. To the best of my recollection, I personally did not, but I believe there were discussions with other Federal Reserve representatives.

Q. Now, there came a time when Mr. Hank Greenberg of Starr International requested an ability to meet with the people that were working on this private sector solution, right?

A. Mr. Boies, just to -- I'm sorry to interrupt you, but one other thing occurs to me with respect to the prior question. There was a meeting with AIG representatives, and I believe it was Saturday, September 13th, that I attended, and as I recollect that meeting, there was a representative of JPMorgan Chase and perhaps Goldman Sachs in the meeting.

Q. Where was that meeting?

A. It was at the Fed.

Q. And who was present at that meeting?

A. My best recollection is it was led by Bob Willumstad, the CEO of AIG. In attendance was Michael Wiseman, a lawyer from Sullivan & Cromwell, and I believe the representative from JPMorgan Chase was an individual named Bronstein. I don't remember who was there from Goldman Sachs.

Q. Now, back to my question. There came a time when Mr. Greenberg of Starr International asked to be allowed to be present at these meetings that were taking place at the New York Fed, correct?

A. I don't recall.

Q. You don't recall that one way or the other?

A. I don't recall Mr. Greenberg making that request.

Q. Do you recall Mr. Greenberg making any request to participate in discussions prior to September 16th?

A. I personally recall no requests from Mr. Greenberg during that time.

Q. And you say you recall no requests. Do you mean that you recall no requests to you personally or do you also mean that you recall no requests that you were aware of to anybody?

A. I was speaking of my personal knowledge.

Q. Okay. Are you aware of any requests that Mr. Greenberg made to anyone to be permitted to participate in the meetings concerning AIG that were going on at the New York Fed?

A. Prior to September 16th?

Q. Prior to September 16th.

A. I'm unaware of that.

Q. Okay. Let me go to Joint Exhibit 63. These are the minutes that you referred to earlier that show you participating by telephone. Did you get a copy of these minutes?

A. I don't recall the minutes. I do recall getting a copy of the press release.

Q. Do you recall seeing a copy of the resolution?

A. I don't recall seeing a copy of the resolution.

Q. Did you work on the press release?

A. I believe that I had discussions on the press release with Mr. Alvarez, Mr. Alvarez being the Board's general counsel.

Q. Yes. And when did you have those discussions?

A. My best recollection is they were -- there was a series of discussions during the late day on September 16th and probably into the evening hours.

Q. Did you suggest any changes to the press release?

A. I don't recall.

Q. Did anyone suggest any changes to the press release?

A. I don't know.

Q. Do you know who prepared the initial draft of the press release?

A. I don't know.

Q. Did you see any version of the press release, other than the press release that is page 12 of JX 63?

A. I don't remember. I know I saw the final version.

Q. Did you participate in any briefings of the press the evening of September 16th?

A. I don't remember.

Q. Did anyone from the Federal Reserve participate in any briefings of the press the evening of September 16th?

A. My best recollection is that would have been handled by our press office.

Q. We had a document that I would like to use, 2736. This is not in evidence. This is one I used before. I apologize, we don't seem to have a paper copy, but perhaps you can read it on one of the screens.

I am interested in the second paragraph, where it talks about Fed staffers briefing reporters at 9:15 the evening of September 16th. Do you see that?

MR. GARDNER: Your Honor, I am going to object. This isn't impeachment. Mr. Baxter said he does not recall. He's just reading a document into the record that is not tethered to this witness.

THE COURT: Well, it's up on the screen. He can read it.

MR. GARDNER: He can read it. It's just not impeachment, which is what Mr. Boies says he is using it for.

MR. BOIES: No, I did not say that I was using it for impeachment of this witness. I said I was using it for impeachment of the other witness. This witness has not said anything about this. He's simply said he doesn't remember. I am using this to try to refresh his recollection.

MR. GARDNER: All right. If that's the purpose, that's fine.

THE COURT: Overruled.

BY MR. BOIES:

Q. Do you see where it says there were Fed staffers who briefed reporters at 9:15 at night?

A. I see what this says, yes.

Q. And does that refresh your recollection that there were Fed staffers who briefed reporters at 9:15 in the evening on September 16?

A. It does not.

Q. In terms of what they were telling the press, one of the things they were telling the press was that there would be a warrant allowing the Fed to take 79.9 percent of the stock whenever it wants, but they contend there is no control until the warrant is exercised. Do you see that?

A. I see what -- what is said in the exhibit, yes.

Q. And were any representatives of the Federal Reserve telling reporters that the evening of the -- of September 16th?

MR. GARDNER: Objection. Lack of foundation.

THE COURT: Overruled.

THE WITNESS: I don't know, but this is not consistent with what is in the press release.

BY MR. BOIES:

Q. When you say it's not consistent with what's in the press release, what is inconsistent between this and the press release?

A. The final sentence of the press release, that is the last page in JX 63, in evidence, reads, "The U.S. Government will receive a 79.9 percent equity interest in AIG and has the right to veto the payment of dividends to common and preferred shareholders." It says nothing about warrants.

Q. So, you think that the reference in JX 63 that talks about the U.S. Government receiving a 79.9 percent equity interest in AIG is inconsistent with the statement that the Federal Reserve will have a warrant allowing it to take 79.9 percent of the stock?

A. Yes.

MR. BOIES: Is this a convenient time, Your Honor?

THE COURT: Sure. Why don't we break now, and we will reconvene at 9:30 tomorrow morning.

(Whereupon, at 5:05 p.m., the proceedings were adjourned.)

CERTIFICATE OF TRANSCRIBER

I, Susanne Bergling, court-approved transcriber, certify that the foregoing is a correct transcription from the official digital sound recording of the proceedings in the above-titled matter.

DATED: 10/2/2014 ________________________________

SUSANNE BERGLING, RMR-CRR-CLR

ADMITTED EXHIBITS

PX	PAGE	DESCRIPTION
24	681	Email (8/7/2008 11:57 am) From: Kevin Coffey To: Meg McConnell re: Re: AIG
27	683	Email (8/8/2008 7:08 am) From: Brian Peters To: Arthur Angulo, Kevin Coffey, Dianne Dobbeck, cc: Christopher Calabia, Steven Mirsky re: Re: AIG Liquidity and Capital
30	685	Email (8/19/2008 10:25 am) From: Beverly Hirtle To: Patricia Mosser, et al. Re: Re: My list(s) and attached Systemic List.doc
33	687	Email (8/23/08 4:06 pm) From: Elise Liebers To: Christopher Calabia, cc: Danielle Vicente, Lance Auer re: Re: Fw: Fed facilities doc for AIG work
81	529	Email (9/16/2008 11:59 am) From: Scott Alvarez To: Thomas Baxter re: AIG

DX	PAGE	DESCRIPTION
318	489	EMAIL FROM DONALD L KOHN TO BOG CHAIRMAN, TIMOTHY GEITHNER CC BRIAN F MADIGAN, SCOTT ALVAREZ, DEBORAH P BAILEY RE: AIG, DISCUSSING A CALL FROM FRANKEL AND WILLEMSTAD REGARDING RENEWING A REQUEST FOR FR CREDIT
382	492	9/15/08 8:05 PM EMAIL - KOHN RESPOND TO (WARSH - SAME STEM AS 1167) - LIQUIDITY NEED: $30B.
393	526	EMAIL FROM CHAIRMAN TO MICHELLE SMITH RE: HERE IS THE FINAL PRESS RELEASE - - GOING AT 9
527	559	EMAIL FROM THOMAS BAXTER TO SCOTT ALVAREZ SUBJECT RE: EQUITY PARTICIPATION CALL
599	543	FEDERAL RESERVE PRESS RELEASE
660	547	MEMORANDUM FROM STAFF OF FEDERAL RESERVE SYSTEM TO BOARD OF GOVERNORS RE: PROPOSED STEPS TO STABILIZE AMERICAN INTERNATIONAL GROUP