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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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

Courtroom 4  
Howard T. Markey National Courts Building  
717 Madison Place, N.W.  
Washington, D.C.  
Friday, October 3, 2014  
9:30 a.m.  
Trial Volume 5

BEFORE: THE HONORABLE THOMAS C. WHEELER

Susanne Bergling, RMR-CRR-CLR, Reporter

1 APPEARANCES:

2

3 ON BEHALF OF THE PLAINTIFF:

4 DAVID BOIES, II, ESQ.

5 Boies, Schiller & Flexner, LLP

6 333 Main Street

7 Armonk, New York 10504

8 (914) 749-8201

9 dboies@bsfllp.com

10

11 and

12

13 AMY J. MAUSER, ESQ.

14 ABBY L. DENNIS, ESQ.

15 Boies, Schiller & Flexner, LLP

16 5301 Wisconsin Avenue, N.W.

17 Washington, D.C. 20015

18 (202) 237-2727

19 amauser@bsfllp.com

20

21 and

22

23

24

25

Starr International Company, Inc. v. USA

1 ROBERT J. DWYER, ESQ.  
2 ALANNA C. RUTHERFORD, ESQ.  
3 CRAIG WENNER, ESQ.  
4 Boies, Schiller & Flexner, LLP  
5 575 Lexington Avenue, 7th Floor  
6 New York, New York 10022  
7 (212) 446-2300  
8 rdwyer@bsfllp.com

9  
10 and

11  
12 JOHN L. GARDINER, ESQ.  
13 Skadden, Arps, Slate, Meagher & Flom LLP  
14 4 Times Square  
15 New York, New York 10036  
16 (212) 735-2442  
17 john.gardiner@skadden.com

18  
19  
20  
21  
22  
23  
24  
25

1     ON BEHALF OF THE DEFENDANT:  
2             BRIAN A. MIZOGUCHI, ESQ.  
3             KENNETH DINTZER, ESQ.  
4             SCOTT AUSTIN, ESQ.  
5             JOHN TODOR, ESQ.  
6             CLAUDIA BURKE, ESQ.  
7             JOSHUA GARDNER, ESQ.  
8             VINCENT PHILLIPS, ESQ.  
9             MARIANA TERESA ACEVEDA, ESQ.  
10            U.S. Department of Justice - Civil Division  
11            Post Office Box 480  
12            Ben Franklin Station  
13            Washington, D.C. 20044  
14            (202) 305-3319  
15            brian.mizoguchi@usdoj.gov  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

	I N D E X					
	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR
1						
2						
3	BAXTER		964	1041	1156	
4						
5	MOSSER	1158				
6						
7						
8	EXHIBITS	FOR ID		IN EVID		
9	Plaintiff's					
10	Number119				1178	
11	Number138				1180	
12	Number146				966	
13	Number336				1125	
14	Number349				1136	
15	Number376				1132	
16	Number385				1133	
17	Number1166				1100	
18	Number1167				1100	
19	Number1816				1126	
20	Number2737				1122	
21	Number2738				1120	
22						
23	Defendant's					
24	Number528				975	
25	Number529				983	

1	Defendant 's	
2	Number623	991
3	Number630	993
4	Number659	1027
5	Number661	996
6	Number715	1009
7		
8	Defendant 's	
9	NumberDDX 1	1015
10	NumberDDX 2	1040
11		
12	Joint	
13	None	
14		
15		
16		
17		
18		
19		
20		
21		
22	*All exhibits premarked for identification prior to	
23	trial.	
24	*See full attached list of admitted exhibits following	
25	transcript.	

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

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

4                                    THE COURT: Good morning.

5                                    ALL COUNSEL: Good morning, Your Honor.

6                                    THE COURT: We are on the record this morning for  
7 day five of the trial in Starr International Company  
8 versus the United States.

9                                    Before we begin this morning, I have a  
10 preliminary matter to raise. I received a letter this  
11 morning from the law firm of Sullivan & Cromwell, and on  
12 the letter it says that copies were emailed to counsel  
13 of record, although it doesn't specify exactly who they  
14 sent it to. Did you all receive this letter?

15                                    MR. MIZOGUCHI: Yes, Your Honor.

16                                    MR. BOIES: We did this morning, Your Honor.

17                                    THE COURT: Okay, very well. I'd like to solicit  
18 your views about this, but first, my inclination is to  
19 try to provide some procedure where the law firm of  
20 Sullivan & Cromwell -- and I think other lawyers who may  
21 end up testifying -- ought to be represented in a way  
22 that their counsel can assert attorney-client privilege  
23 or work product privilege as they deem appropriate, and  
24 then we can just deal with it. Do you all agree with  
25 that suggestion?

1 MR. BOIES: We do, Your Honor.

2 MR. MIZOGUCHI: Yes, Your Honor.

3 THE COURT: Okay. Well, we'll issue an order in  
4 response to this submission by Sullivan & Cromwell and  
5 hopefully get that out later today, if not on Monday or  
6 over the weekend or something. Okay, very well.

7 I also received your status report about the  
8 Loutit letter we got last week, and we'll also take care  
9 of that matter so that they are added to the appropriate  
10 class.

11 All right, let's go ahead, Mr. Gardner.

12 Good morning, Mr. Baxter. You understand that  
13 you are still under oath, right?

14 THE WITNESS: I do, Your Honor.

15 THE COURT: Okay, let's go.

16 Whereupon --

17 THOMAS BAXTER

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

21 CROSS EXAMINATION (cont.)

22 BY MR. GARDNER:

23 Q. When we left yesterday, I believe we were  
24 discussing the decision regarding whether to use a trust  
25 to hold the equity interests. Do you recall that?

1           A.   Yes.

2           Q.   I'd like to take a look at an exhibit.  This is  
3   PTX 146.  This has already been admitted into evidence.  
4   It's the September 18th, 2008, email.  In this email,  
5   you state (as read):  "This leaves us with control.  We  
6   need to address how to deal with that.  Geithner will  
7   have views, and so do I (I think you know mine)."

8                   What did you mean when you said "I think you know  
9   mine"?

10          A.   The email also attached the form of the equity,  
11   which was going to be participating preferred stock.  
12   So, we had gotten to the point where the actual form the  
13   equity would take had been pretty much resolved.

14                   The issue then is how to deal with the control  
15   rights that are represented in this equity, and in this  
16   email, I'm suggesting to Scott -- to Mr. Alvarez,  
17   rather -- that we have to deal with the issue of  
18   control; that Tim has views, and I believe that Tim's  
19   views were similar to my own, and I'm flagging to Scott  
20   that I have views as well.

21                   And in the parentheses, where I think -- where I  
22   say "I think you know mine," I think Scott, by this  
23   point in time -- I know Scott, by this point in time,  
24   knew that I was advocating for a trust to hold the  
25   equity.

1 Q. And you're saying you believe that to be Mr. --  
2 President Geithner's view as well?

3 A. Yes.

4 Q. And at this point in time, so September 18th,  
5 2008, what was Mr. Alvarez's view, to your  
6 understanding, with respect to a trust?

7 A. I think at this point I wasn't sure exactly what  
8 his view was on the trust.

9 Q. Okay. Now, as I believe you testified yesterday,  
10 did there come a point where Davis Polk provided you  
11 with options for the form of the equity interest?

12 A. Yes.

13 Q. Could we please take a look at PTX 159.

14 MR. BOIES: Your Honor, before we leave PTX 146,  
15 our notes do not show that it's already been admitted.  
16 I don't know what the Court's records show.

17 MR. GARDNER: Oh, okay. I'll stand corrected,  
18 Your Honor. The Government would move for the admission  
19 of PTX 146.

20 MR. BOIES: No objection, Your Honor.

21 MR. GARDNER: Thank you.

22 THE COURT: Plaintiffs' Trial Exhibit 146 is  
23 admitted.

24 (Plaintiff's Exhibit Number 146 was admitted into  
25 evidence.)

1 BY MR. GARDNER:

2 Q. Do you have before you what's been marked as  
3 PTX 159?

4 A. Yes.

5 Q. Do you recognize this document?

6 A. Yes.

7 Q. What is it?

8 A. It's an email from me to Mr. Alvarez at the  
9 Board, the subject of the email is "Equity  
10 alternatives," and it contains an email from Davis Polk  
11 to myself and a number of people. And in that email,  
12 Davis Polk lays out two different options with respect  
13 to control.

14 Q. And what are those two options?

15 A. In sum and substance, one option was warrants and  
16 the other option was the trust that I was advocating.

17 Q. And did you have a view as to which option was  
18 the best option?

19 A. Yes. I preferred the trust.

20 Q. Okay. And why did you prefer the trust?

21 A. Again, I had had prior experience, which was very  
22 favorable, with an independent trustee who sold off the  
23 shares of the subsidiary banks of First American  
24 Corporation, and that experience obviously colored how I  
25 looked at this particular issue.

1           I also thought that there were -- there were  
2 advantages with respect to corporate governance in  
3 having competent, experienced people of integrity who  
4 would be operating the trust and independent of the  
5 Government. So, I saw those as additional advantages  
6 for what I was advocating.

7           Q. Now, after you sent this email to Mr. Alvarez on  
8 Friday, September 19th, did you have a discussion with  
9 him about these two options?

10          A. I don't have a firm recollection of a discussion,  
11 but we were having conversations on a regular basis.  
12 So, if I followed the practice, I would have had  
13 discussions with Mr. Alvarez.

14          Q. And do you have an understanding of what  
15 Mr. Alvarez's initial view was as to preferred shares  
16 with voting rights versus warrants?

17          A. Mr. Alvarez's initial position was he preferred  
18 warrants.

19          Q. And do you know why he initially preferred  
20 warrants?

21          A. I think he liked the fact that with respect to  
22 warrants, there's no voting power until the warrants are  
23 exercised and transferred to -- to a subsequent  
24 purchaser.

25          Q. And why was he concerned about voting rights?

1           A. He had concerns about conflicting interests,  
2 similar to my own.

3           Q. Now, I want to draw your attention to PTX 183.  
4 This is a document Mr. Boies showed you during his  
5 examination. This is a September 21st, 2008, email.

6                   Do you recall reviewing this document with  
7 Mr. Boies?

8           A. Yes.

9           Q. Now, here, Mr. Alvarez says to you, "Thanks.  
10 Just to confirm, ownership of stock along the lines in  
11 this term sheet will not work for the Fed -- trust or no  
12 trust."

13                   What do you understand Mr. Alvarez's concern to  
14 be here?

15           A. As I was testifying yesterday, I think the  
16 concern on the part of Mr. Alvarez is that the Federal  
17 Reserve Bank of New York was going to take the shares,  
18 the equity shares, and then transfer them into the  
19 trust, and I think that his concern was seeing the  
20 Federal Reserve Bank of New York described as a  
21 purchaser and even for a moment in time being in the  
22 position of owning a controlling interest of the largest  
23 insurance company in the world.

24           Q. And, again, why was that a concern to  
25 Mr. Alvarez, about having a controlling interest?

1           MR. BOIES: Your Honor, we're not objecting  
2 because this is a bench trial, but I just want to note  
3 for the record that the reason we're not objecting is  
4 because we assume the Court will take the testimony for  
5 what it's worth. We now have one witness talking about  
6 his impression of the state of mind of a witness who  
7 just testified.

8           So, we will later argue what weight we think it  
9 is entitled to be given. I just want to note that our  
10 reason for not objecting is not acceptance of the real  
11 relevance of the testimony, but the confidence that the  
12 Court will evaluate it.

13           MR. GARDNER: Your Honor, I would just say that  
14 Mr. Baxter just testified that he had conversations with  
15 Mr. Alvarez about this exact topic.

16           THE COURT: I know, but it is pretty rank hearsay  
17 that we are letting into the record. I do have my  
18 limits about this.

19           MR. GARDNER: Fair enough.

20           THE COURT: You're not really advancing your  
21 cause by soliciting hearsay testimony.

22           MR. GARDNER: Fair enough, Your Honor.

23           BY MR. GARDNER:

24           Q. Let me ask you this, Mr. Baxter: In PTX 183, it  
25 states, "It's fine if Treasury takes the stock, which I

1 thought from the discussion last week was foreclosed. I  
2 still haven't gotten an answer to my question about why  
3 we can't have warrants for voting preferred that are  
4 limited to exercise on transfer."

5 What did you understand Mr. Alvarez's concern to  
6 be when you received this email?

7 A. These are two different points. The first point  
8 about Treasury taking the stock, I think I testified  
9 yesterday -- Your Honor, it might have been the day  
10 before, I don't recall exactly when -- that we knew  
11 Treasury was consulting with the Office of Legal Counsel  
12 as to whether it could hold the equity outright, and  
13 that issue was never -- never fully resolved.

14 So, Scott's impression is that that was  
15 foreclosed, probably because he believed the Office of  
16 Legal Counsel would say Treasury can't be the holder,  
17 but, again, I'm speculating as to what might be in his  
18 head.

19 And then continuing on, with respect to the  
20 discussion of warrants, that was Mr. Alvarez's  
21 preference. He wanted warrants, and he's asking why  
22 warrants aren't good enough. That's what he's asking in  
23 that second -- that second thought.

24 Q. So, Mr. Baxter, what, if anything, did you do to  
25 address Mr. Alvarez's concerns?

1           A. Well, I arranged for a conference call where we  
2 could talk through the two different options that were  
3 articulated in the Davis Polk -- in the Davis Polk note.

4           Q. Okay. Why don't we take a look at PTX 190, which  
5 is a September 21st, 2008, email from you to  
6 Mr. Alvarez, which I understand is already in evidence.  
7 Do you recognize this document?

8           A. PTX 190?

9           Q. Yes, PTX 190. And I actually would like you to  
10 focus on the last email in that chain.

11          A. The -- just so I'm clear, Mr. Gardner, the last  
12 email is the email from Mr. Alvarez to me dated  
13 September 21st, 1:37 p.m.?

14          Q. It is the one -- the 12:25 p.m. email, "I  
15 introduced your concerns on the call," which should be  
16 the last page.

17          A. I'm sorry.

18          Q. Let me know when --

19          A. I see it now.

20          Q. So, here, in this email, you tell Scott Alvarez,  
21 "I introduced your concerns on the call, and we have a  
22 placeholder for you. We are churning through the Term  
23 Sheet, but at a minimum, the 'Purchaser' will no longer  
24 be the NY Fed. We will either go 'AIG Credit Facility  
25 Trust' or warrants exercisable after sale. Treasury has

1 agreed that it can be beneficiary of the Trust -- if  
2 this works for you, then we can go with that approach  
3 and you can send me a sign."

4 Do you see that?

5 A. Yes.

6 Q. Now, what were you trying to convey here?

7 A. I was first concerned about the last sentence of  
8 the prior exhibit email about being jammed. So, I was  
9 trying to address what I thought to be Mr. Alvarez's  
10 concern with the term sheet listing the purchaser as the  
11 New York Fed. And in here, I've eliminated that issue.

12 I said the purchaser will not be the New York  
13 Fed, we will either go to AIG credit facility trust or  
14 the warrants, but clearly taking off the table that at  
15 any point in time the Federal Reserve Bank of New York  
16 is going to be a purchaser of the AIG equity.

17 So, eliminating that issue in an effort to get  
18 to -- to yes, and then arranging for the conference call  
19 where Scott -- Mr. Alvarez and myself and outside  
20 counsel could talk through the remaining issues and  
21 hopefully come to a conclusion.

22 Q. Now, I'm going to hand you an exhibit that's  
23 marked DX 528 --

24 A. But if I can, Mr. Gardner -- I'm sorry --

25 Q. Oh, please. Please.

1           A. -- there's also another significant point in this  
2 email, and that is that the -- the sentence, "Treasury  
3 has agreed that it can be beneficiary of the Trust..."

4           So, Treasury is not owning the shares outright as  
5 a purchaser; instead, the trust will be the owner of the  
6 equity, and the beneficiary of the trust will be the  
7 Treasury. So, Treasury is not owning the shares;  
8 Treasury is the beneficiary of a trust that owns the  
9 shares.

10           And that significant legal differentiation  
11 eliminated, as far as I could tell, legal issues that  
12 were of concern to the Treasury and which were the  
13 subject of discussions with the Office of Legal Counsel.

14           Q. I see.

15           Your Honor, may I approach?

16           THE COURT: Sure.

17           BY MR. GARDNER:

18           Q. Mr. Baxter, I have handed you what has been  
19 marked as DX 528, which is an email chain beginning from  
20 you to Rich Ashton, dated Sunday, September 21st, 2008.  
21 Do you recognize this exhibit?

22           A. Just give me a minute to --

23           Q. Please, take your time.

24           A. (Document review.)

25           Q. And what I am really going to ask you questions

1 about is the last page of the exhibit, Mr. Ashton's  
2 email to you.

3 A. (Further document review.) Okay, I'm ready.

4 Q. Do you recognize Defendant's Exhibit 528?

5 A. Yes.

6 Q. What is it?

7 A. It's a series of email between me and Richard  
8 Ashton, who is the deputy general counsel of the Board  
9 of Governors.

10 MR. GARDNER: Your Honor, the Government moves  
11 for the admission of DX 528 into evidence.

12 MR. BOIES: No objection, Your Honor.

13 THE COURT: Defendant's Exhibit 528 is admitted.

14 (Defendant's Exhibit Number 528 was admitted into  
15 evidence.)

16 BY MR. GARDNER:

17 Q. Now, focusing on the last email in the chain --  
18 first of all, who is Rich Ashton?

19 A. He is the deputy general counsel of the Board of  
20 Governors of the Federal Reserve System.

21 Q. Okay. So, in the September 21st, 2008, email, at  
22 4:34 p.m., Rich Ashton writes you and says, "Scott asked  
23 me to get back to you on the AIG contract."

24 First of all, what's your understanding as to who  
25 the "Scott" is here?

1 A. Mr. Alvarez.

2 Q. Okay. And he says, "Based on conversations with  
3 the Chairman and Vice Chairman" -- let me stop there.  
4 Who's the chairman?

5 A. The chairman on September 21st, 2008, was Ben  
6 Bernanke.

7 Q. And who's the vice chairman?

8 A. At that time, it was Donald Kohn.

9 Q. So, it says, "Based on conversations with the  
10 Chairman and Vice Chairman, we are OK if any stock we  
11 get goes to a trust of which Treasury is the sole  
12 beneficiary, as long as we never get any equity  
13 ourselves. We are OK with having a hand in the  
14 selection of the Trustee, provided the Trustee remains  
15 independent of the Fed as to voting the shares, etc."

16 Now, based on this email, did you have an  
17 understanding that the Board of Governors had approved  
18 of the use of a trust with the Treasury as a  
19 beneficiary?

20 A. Yes.

21 Q. And based on this email, did you have an  
22 understanding, Mr. Baxter, that Mr. Alvarez's concerns  
23 about control had been satisfied?

24 A. Because we were -- "we," the New York Fed -- were  
25 no longer a purchaser.

1 Q. Now, in your view, Mr. Baxter, was the New York  
2 Fed -- sorry, strike that.

3 Mr. Baxter, in your view, was the New York Fed's  
4 seeking of preferred stock and placement of that stock  
5 in a trust within the scope of the Board of Governors  
6 authorization on September 16th?

7 A. As long as the Board of Governors agrees that's  
8 one of the conditions that the New York Fed can  
9 establish with respect to the term sheet -- and in this  
10 email, I took the answer to that question to be  
11 affirmative, yes -- then we were fully authorized.

12 Q. Now, I want to make sure the record is clear with  
13 respect to the various term sheets that you discussed  
14 with Mr. Boies and myself yesterday. I want you to take  
15 a look at JX 63. That's the term sheet that you sent to  
16 Scott Alvarez on September 16th, and it's at pages 5  
17 through 10 of JX 63. Let me know when you're there.

18 A. I'm sorry, but JX 63 is not in this binder. Am I  
19 in the wrong binder?

20 Q. You may be. Are you in the Government's binder  
21 or the Plaintiffs' binder?

22 A. I'm in the Government's binder.

23 Q. Well, look, I believe, in the Plaintiffs' binder  
24 from yesterday, the one that they substituted out. I  
25 apologize, there's three sets of binders.

1 A. I'm sorry, Your Honor.

2 Q. Yeah, the --

3 A. I have it.

4 Q. Perfect, good.

5 Now, if you turn to pages 5 through 10 in JX 63,  
6 can you identify that term sheet?

7 A. Yes. The term sheet that is contained within  
8 JX 63 is the term sheet that was sent down to the -- to  
9 the Federal Reserve Board in the afternoon of September  
10 16th, around 2:15, as I recall.

11 Q. And what is the title on that term sheet?

12 A. "Summary of Terms for Senior Bridge Facility."

13 Q. Okay. Now, I want you to take a look at JX 83,  
14 and I believe that is the version of the term sheet that  
15 you described as having been provided to AIG's board.  
16 I'm cautiously optimistic that that's in the  
17 Government's binder.

18 A. I think it is, but the first document is a demand  
19 note. So, if you will bear with me.

20 Q. Yeah. And, in fact, it's on pages 16 through 20,  
21 if I'm not mistaken.

22 A. Yes.

23 Q. Okay. Now, can you identify this term sheet,  
24 which is in JX 83?

25 A. The term sheet in JX 083 is titled "Summary of

1 Terms for Senior Bridge Facility," and this is the term  
2 sheet that I caused to be sent to AIG in the evening of  
3 September 16th, 2008.

4 Q. Now, please take a look at PTX 163. Now, that  
5 should be in the Plaintiffs' binder from yesterday,  
6 which Mr. Boies discussed with you.

7 THE COURT: Mr. Baxter, before we leave Joint  
8 Exhibit 83, do you recall approximately what time you  
9 sent this document to the AIG board?

10 THE WITNESS: I caused Davis Polk to send it to  
11 the board's counsel, Your Honor, and I think it was  
12 around 8:00 in the evening. There's an email which has  
13 a timestamp on it.

14 THE COURT: Okay. Thank you.

15 BY MR. GARDNER:

16 Q. Are you at PTX 1 -- 183? I mean 163, I'm sorry.

17 A. I'm sorry, I must be in the wrong binder.  
18 Which --

19 Q. It should be the Plaintiffs' binder from  
20 yesterday, PTX 163.

21 A. I go from 159 to 170 -- to 173.

22 Q. 163? Your Honor, may I?

23 It might be -- let's see the binder that's right  
24 up there. That's what happens when you have three sets  
25 of binders. Do you not see it in there?

1           I'll tell you what, to expedite this, Your Honor,  
2    can I just put it on the screen?

3           THE COURT:   Sure.

4           MR. GARDNER:  It is a document, I think Mr. Boies  
5    would agree, that was shown to Plaintiff -- was shown to  
6    Mr. Baxter yesterday.

7           BY MR. GARDNER:

8           Q.   So, now, PTX 163, I have it up on the screen.  Do  
9    you recognize having discussed this document with  
10   Mr. Boies yesterday?

11           And if you want, you can scroll to the second  
12   page -- wait, this is -- I am sorry.  I think -- okay,  
13   yeah, I'm sorry.  My note's wrong.  It's 183.  I  
14   apologize for the confusion.  I thought I had it right,  
15   we were doing so well.

16           A.   It's PTX 183?

17           Q.   Do you have PTX 183?

18           THE COURT:  We were just looking at this one a  
19   few moments ago.

20           THE WITNESS:  Yes, I have it.

21           MR. GARDNER:  Yes, exactly.  We were.

22           BY MR. GARDNER:

23           Q.   So, if you will go to the back, you'll see  
24   there's a term sheet there, correct?

25           A.   This term sheet is just for the equity.

1 Q. Okay. And that's exactly the question I had.  
2 How is this term sheet titled?

3 A. "Summary of Terms of Preferred Stock and Related  
4 Issues."

5 Q. Now, is this draft term sheet that is connected  
6 to PTX 163 a different term sheet than the term sheets  
7 reflected in JX 63 and JX 83?

8 A. Yes. This is intended to be an exhibit to the  
9 revolving credit agreement, which was to be executed.

10 Q. And now, just to finally close the loop here, I  
11 want to show you JX 107 -- I'm sorry, so that -- okay,  
12 that's PTX 183, and now -- so -- all right. And then if  
13 you look at JX 107, which should be in, I believe,  
14 Plaintiffs' binder, it is the actual credit agreement.

15 A. Did you say JX 107?

16 Q. I did. Is it there? Of course, it's not, is it?  
17 I'll tell you what, can you put it on the screen? I'll  
18 tell you what, it might be easier if you just want to  
19 look at the screen.

20 A. I've located it.

21 Q. Oh, great. Okay.

22 What is JX 107?

23 A. JX 107 is the revolving credit agreement that was  
24 executed by and between the Federal Reserve Bank of New  
25 York and American International Group on September 22nd,

1 2008.

2 Q. Now, if you would turn to page 137 through 139,  
3 can you identify what this is?

4 A. Yes. In testimony I gave a few minutes ago,  
5 there was a summary of terms of preferred stock and  
6 related issues that became Exhibit D to the revolving  
7 credit agreement, as executed.

8 Q. Now, Mr. Baxter, was the proposed equity term  
9 sheet associated with the credit agreement provided to  
10 AIG and its attorneys before AIG's September 21st, 2008,  
11 board meeting?

12 A. I'm not sure I understand the question,  
13 Mr. Gardner.

14 Q. Let me try to rephrase it.

15 Was a draft of the proposed equity term sheet  
16 associated with the credit agreement provided to AIG's  
17 board or its representatives before the AIG board's  
18 September 21st, 2008, board meeting?

19 A. I believe it was provided to AIG's  
20 representatives. I don't know what was provided to  
21 AIG's board.

22 Q. Let's take a look at DX 529, and that, I will  
23 represent, is definitely in the Government's binder.

24 A. Did you say JX 529?

25 Q. No, DX 529. It might be that binder right over

1     there.  Let me know when you have it.

2             A.  Yes.

3             Q.  Do you recognize what's been marked as  
4     Defendant's Exhibit 529?

5             A.  Yes.

6             Q.  What is it?

7             A.  This is an email from a partner who was then at  
8     Davis Polk & Wardwell to a number of individuals,  
9     including myself, and it is -- it is containing the  
10    equity term sheet.  And attached to that is another  
11    email from someone at Davis Polk to a series of AIG  
12    representatives, also attaching the equity term sheet.

13            MR. GARDNER:  Your Honor, the Government moves  
14    for the admission of DX 529 into evidence.

15            MR. BOIES:  No objection, Your Honor.

16            THE COURT:  Defendant's Exhibit 529 is admitted.

17            (Defendant's Exhibit Number 529 was admitted into  
18    evidence.)

19            BY MR. GARDNER:

20            Q.  Now, Mr. Baxter, on direct examination by  
21    Mr. Boies yesterday, you mentioned that between  
22    September 16th and September 22nd, the form of equity  
23    had changed from warrants to preferred shares in the  
24    various term sheets.  Do you recall that?

25            A.  Yes.

1 Q. Now, when you say the form of equity changed from  
2 warrants to preferred shares, which term sheets are you  
3 comparing?

4 A. The -- the first term sheet that was sent down at  
5 around -- well, to use the chart that you've made, the  
6 one in JX 63.

7 Q. As compared to?

8 A. To the -- the equity term sheet, which is  
9 PTX 183, and what ultimately appeared in the credit  
10 agreement, and that is in JX 107.

11 Q. Now, with respect to the term sheets that were  
12 provided to AIG's board, can you describe how the equity  
13 provision changed between September 16th and September  
14 21st?

15 A. I can't, Mr. Gardner. I don't know what exactly  
16 was provided to AIG's board.

17 Q. Okay. I want to change gears slightly.  
18 Yesterday, you were asked by Mr. Boies about preferred  
19 shares that "had an immediate vote." Do you recall  
20 that?

21 A. Yes.

22 Q. And do you recall agreeing with Mr. Boies'  
23 statement that between September 23rd and January 2009,  
24 the trustees did not have the right to vote the  
25 preferred shares because the trust did not yet exist?

1           A. The trust did not yet exist and the preferred  
2 shares did not yet exist.

3           Q. When were the preferred shares with voting rights  
4 issued by AIG?

5           A. My best recollection is it was in March of 2009.

6           Q. Was anyone able to vote the preferred shares  
7 issued by AIG to the trust before those shares were  
8 issued to the trust?

9           A. No.

10          Q. So, prior to AIG issuing the preferred stock to  
11 the trust in March 2009, what was the status of the  
12 equity participation in the credit agreement?

13          A. It was a -- it was a contract right not yet  
14 performed.

15          Q. Who are the parties to the AIG credit facility  
16 trust agreement?

17          A. The Federal Reserve Bank of New York, which was  
18 the trust settlor, and the three trustees who  
19 represented the trust.

20          Q. Who was the beneficiary of the trust?

21          A. The United States Treasury.

22          Q. Did the trustees have their own attorneys?

23          A. Yes.

24          Q. Who?

25          A. Originally, it was an individual named

1 Mr. Bethill, who worked for a firm, Thacher, Proffitt &  
2 Wood. When Thacher, Proffitt & Wood ceased to function  
3 as a law firm, a new set of lawyers came in from the  
4 firm of Arnold & Porter.

5 Q. Did the trustees have their own financial  
6 advisors?

7 A. Yes.

8 Q. Do you recall who they were?

9 A. I'm blanking on the name.

10 Q. Fair enough.

11 Who chose the trustees?

12 A. The trustees were chosen by the Federal Reserve  
13 Bank of New York, which consulted with the United States  
14 Treasury Department.

15 Q. Were you personally involved in that -- those  
16 efforts?

17 A. I was the most senior officer of the Federal  
18 Reserve Bank of New York responsible for selecting the  
19 trustees.

20 Q. When did the process of selecting trustees begin?

21 A. I don't recall the exact date, but I believe it  
22 was in late October of 2008.

23 Q. As the senior-most officer at the New York Fed  
24 responsible for the identification and selection of the  
25 trustees, what qualities or attributes were you looking

1 for?

2 A. I was looking for individuals who I thought to be  
3 competent to perform the work and their specific risk  
4 management expertise, who had experience in financial  
5 services, so that was another factor, and then, of  
6 course -- and it will be no surprise -- I wanted to make  
7 sure that the trustees I selected were people of  
8 integrity.

9 Q. Who did you select as the first three trustees?

10 A. The first three trustees were Jill Considine,  
11 Chet Feldberg, and the third original trustee -- he  
12 never actually performed -- was an individual named  
13 William Thompson.

14 Q. And then who ultimately took the place of William  
15 Thompson?

16 A. Douglas Foshee took the place of William  
17 Thompson.

18 Q. Now, why did you select Chet Feldberg as a  
19 trustee?

20 A. Chet Feldberg I had worked with for a long period  
21 of time at Federal Reserve. He ultimately became the  
22 head of our supervision function, left the Fed and went  
23 on to be the chief operating officer of Barclays of the  
24 Americas and had specific risk management functions at  
25 Barclays, including serving on their audit and risk

1 committee.

2 He had recently retired after eight years as the  
3 chief operating officer at Barclays, and because I knew  
4 him well, I knew he had time and fit the criteria that I  
5 was looking for.

6 Q. At the time you had selected Mr. Feldberg as a  
7 trustee, how long ago had he worked at the New York Fed?

8 A. To the best of my recollection, it was eight  
9 years earlier.

10 Q. Why did you select Ms. Considine to serve as a  
11 trustee?

12 A. Earlier I mentioned the First American  
13 Corporation and the trustee there. The trustee who was  
14 so successful in First American was an individual named  
15 Harry Albright, and Mr. Albright had been the CEO of the  
16 Dime Savings Bank and also the Superintendent of Banks  
17 in the State of New York.

18 With respect to Ms. Considine, she had also  
19 served for a period of time as Superintendent of Banks  
20 in New York State, and she had served as the chief  
21 executive officer of the Depository Trust Company, so  
22 had similar qualifications to the qualifications that  
23 Harry had.

24 And in addition, she had chaired the audit and  
25 risk committee of the board of directors of the Federal

1 Reserve Bank. So, I knew from personal experience with  
2 Ms. Considine that not only was she a governance expert,  
3 she was also a risk management expert.

4 Q. And why was that important?

5 A. It was important because of the concerns we had  
6 about the governance of AIG.

7 Q. And why did you select Mr. Foshee to serve as a  
8 trustee?

9 A. First, I should say that my first selection was  
10 Bill Thompson. Bill Thompson had just retired as vice  
11 chairman of PIMCO, and so Bill Thompson had a whole --  
12 decades of experience in managing assets, and so Bill  
13 was my first choice. And we had gotten pretty far along  
14 in Bill becoming one of the three trustees when an  
15 opening appeared on the board of directors of Citigroup.

16 And Mr. Thompson explained to me that his  
17 preference as between being an AIG trustee and being a  
18 member of the board of Citigroup was to go on the board  
19 of Citigroup. So, I lost Bill Thompson, and I had to  
20 find a replacement.

21 And at around that time, the president of the  
22 Federal Reserve Bank of Dallas, Richard Fisher, brought  
23 to my attention Doug Foshee, who had been operating as  
24 the chief executive officer of El Paso Natural Gas and  
25 had some of the criteria we were looking for.

1 Q. Now, under what circumstances, Mr. Baxter, could  
2 the New York Fed remove any of the trustees?

3 A. The New York Fed couldn't remove the trustees.

4 Q. At all?

5 A. Well, for -- for -- if they committed crimes,  
6 then the trustees could be removed.

7 Q. Could the trustees be removed if the New York Fed  
8 disagreed with the decisions they made?

9 A. No. We couldn't, simply because we had a  
10 different judgment than a trustee, remove a trustee.

11 Q. In discussions with the potential trustees, to  
12 what extent did the issue of the trustees' independence  
13 come up?

14 A. The trustees cared greatly about independence,  
15 and there were a number of discussions with the trustees  
16 and their counsel about independence.

17 Q. Let's take a look at DX 623, which will be in the  
18 Government's binder. Let me know when you're there.

19 A. Yes.

20 Q. Mr. Baxter, do you recognize what's been marked  
21 as Defendant's Exhibit 623?

22 A. Yes.

23 Q. What is it?

24 A. It's an email from Jill Considine to me, dated  
25 October 27th of 2008.

1 Q. And what is the subject matter of this email, in  
2 general terms?

3 A. It's a meeting on Thursday.

4 Q. Meeting about what?

5 A. Issues associated with how the trust would  
6 function, because the trust had not yet been -- the  
7 legal documentation for the trust had not yet been  
8 signed.

9 MR. GARDNER: Your Honor, the Government moves  
10 for the admission of DX 623 into evidence.

11 MR. BOIES: No objection, Your Honor.

12 THE COURT: Defendant's Exhibit 623 is admitted.

13 (Defendant's Exhibit Number 623 was admitted into  
14 evidence.)

15 BY MR. GARDNER:

16 Q. Now, in Ms. Considine's email to you, she states,  
17 "The real issue is independence versus mixed messages  
18 coming out." Do you see that?

19 A. Yes.

20 Q. Did you have an understanding or a discussion  
21 with Ms. Considine about this issue?

22 A. Certainly we had discussions about independence.  
23 I, frankly, don't remember what the reference is to  
24 "mixed messages."

25 Q. Now, she says here that -- in the -- one, two,

1 three, four -- the fifth paragraph, "I think we should  
2 have an outside counsel take a look at this agreement on  
3 behalf of the trustees...

4 "I've checked with the others, and they agree.

5 "Chuck Bethill at Thacher Proffitt is someone I  
6 know who could do this and is probably not at a  
7 'conflicted' firm."

8 Now, I believe you referenced this a moment ago,  
9 but did the trustees retain Mr. Bethill?

10 A. In the beginning, Mr. Bethill was the trustees'  
11 lawyer.

12 Q. Could you please describe the role of Mr. Bethill  
13 in the trust?

14 A. I know Mr. Bethill met with the trustees and  
15 after meeting with the trustees came back to counsel for  
16 the New York Fed and proposed a series of changes to the  
17 trust instrument.

18 Q. And then was there an exchange of drafts involved  
19 in terms of the drafting of the trust?

20 A. Yes.

21 Q. Why don't we take a look at DX 630, which is an  
22 October 29th, 2008, email from Mr. Bethill to yourself.  
23 Let me know when you're there.

24 A. I'm ready.

25 Q. Okay. Mr. Baxter, do you recognize what's been

1 marked as Defendant's Exhibit 630?

2 A. Yes.

3 Q. What is it?

4 A. It's an email from Mr. Bethill to me, with a copy  
5 to a lawyer who was working closely with me in the legal  
6 group of the New York Fed, and to the then trustees.  
7 You'll notice that Mr. Thompson is listed in the email  
8 chain. He never actually became a trustee.

9 Q. Yes.

10 Your Honor, the Government moves for the  
11 admission of DX 630 into evidence.

12 MR. BOIES: No objection, Your Honor.

13 THE COURT: Defendant's Exhibit 630 is admitted.

14 (Defendant's Exhibit Number 630 was admitted into  
15 evidence.)

16 BY MR. GARDNER:

17 Q. Now, I want to draw your attention, Mr. Baxter,  
18 to the attached memo that's entitled "Topics for  
19 Discussion at the Meeting on October 30th, 2008." Do  
20 you see that?

21 A. Yes.

22 Q. Now, towards the -- I guess the bottom of the  
23 page -- or the middle of the page, there is a heading  
24 saying "Independence of the Trustees." Do you see that?

25 A. I do.

1 Q. Now, in the first sentence there, it states, "We  
2 would like clarification with respect to the  
3 independence of the Trustees." Do you see that?

4 A. Yes.

5 Q. And I want to draw your attention to about the  
6 middle of the paragraph, just to orient you, that says,  
7 "On the other hand..." Do you see that? And it's  
8 highlighted on the screen if that makes it easier for  
9 you.

10 A. Yes.

11 Q. And here, Mr. Bethill says, "On the other hand,  
12 there is Section 2.04(d) of the Trust Agreement which  
13 sets forth two 'views' of the FRBNY to be taken into  
14 account by the Trustees in exercising their discretion.  
15 First, the view that 'maximizing potential value for all  
16 stockholders of the Company will require managing the  
17 Company so as to maximize its ability to repay advances  
18 under the Credit Agreement'. Second, the view that  
19 'management of the Company in a manner that will not  
20 disrupt financial market conditions is in the best  
21 interests of the stockholders of the Company'.

22 "Is it intended that the Trustees are to be  
23 independent or not? If they are to be independent, we  
24 would respectfully suggest deleting Section 2.04(d)."

25 Mr. Baxter, how was this issue addressed by the

1 New York Fed?

2 A. We felt it was important for the New York Fed and  
3 the Federal Reserve more generally to state its views,  
4 and as I suggested in earlier testimony, the Fed had two  
5 broad objectives with respect to AIG. One broad  
6 objective was to avoid the systemic consequences to the  
7 U.S. economy that would result from an AIG bankruptcy,  
8 and so we felt we should express that view as well to  
9 our trustees, who as majority shareholder might be able  
10 to influence the company to file a petition in  
11 bankruptcy, for example. So, we wanted to articulate  
12 clearly our view on that.

13 Obviously, also, another concern from the part of  
14 the Federal Reserve was the billions and billions of  
15 dollars of taxpayer money that we had invested in the  
16 rescue of AIG, and so we thought it was appropriate to  
17 articulate our view there, that given the risk that the  
18 taxpayer was taking with those billions of dollars, that  
19 the taxpayer should get repaid.

20 All that said, those were the Fed's views, and we  
21 knew we couldn't control the discretion of our  
22 independent trustees. We wanted them to know what our  
23 views were at the outset, but in the end, they were  
24 going to vote their judgment and not necessarily ours.

25 Q. So, how did you ultimately resolve that -- that

1 balance?

2 A. It was resolved in the final version of the trust  
3 agreement in revised language.

4 Q. I want to hand you or show you what's been marked  
5 as DX 661. It's a November 6th, 2008, email, from Davis  
6 Polk attorney Jeffrey Schwartz to yourself.

7 A. Yes.

8 Q. Do you recognize what's been marked as DX 661?

9 A. Just bear with me one minute.

10 Q. Please, take your time.

11 A. Yes.

12 Q. Do you recognize --

13 A. I do.

14 Q. What is it?

15 A. It, at the top of the page, is an email from a  
16 lawyer at Davis Polk who was working with us on the  
17 trust instrument, to me and to Stephanie Heller, who was  
18 one of my deputies working also on the trust agreement.

19 MR. GARDNER: Your Honor, the Government moves  
20 for the admission of DX 661 into evidence.

21 MR. BOIES: No objection, Your Honor.

22 THE COURT: Defendant's Exhibit 661 is admitted.

23 (Defendant's Exhibit Number 661 was admitted into  
24 evidence.)

25 BY MR. GARDNER:

1           Q. Now, Mr. Baxter, on the second page of DX 661, in  
2 the third full paragraph, it states that "In light of  
3 the above, we think there must be sufficient flexibility  
4 in the Trust Agreement for the Trustees to determine how  
5 they will exercise their rights and responsibilities as  
6 holders of the Trust Stock and what level of permanent  
7 administrative support and outside professional support  
8 they will require to perform their duties. We take it  
9 from our discussion that FRBNY is prepared to leave  
10 these matters to the sound discretion of the Trustees."

11                   Do you see that?

12           A. I do.

13           Q. Now, did you ultimately agree with Mr. Bethill on  
14 this issue?

15           A. I did. I also was concerned about the cost that  
16 could be associated with having multiple investment  
17 advisors, and that was a worry as well. So, while I  
18 understood that the trustees had to have their own  
19 advisors, I also recall raising concerns about how much  
20 all of this would cost.

21           Q. Let's take a look now at the trust agreement  
22 itself. It's JX 172. That will be in the Government's  
23 binder.

24           A. Did you say JX 172?

25           Q. Correct. It's the trust agreement.

1           MR. BOIES: I don't seem to have that in my  
2 binder.

3           THE WITNESS: It's not in mine, I don't think,  
4 either.

5           MR. GARDNER: Yikes, hold on. That's  
6 problematic. I'll tell you what, can I get a copy of  
7 JX 172? I'm terribly sorry about that.

8           Your Honor, may I approach? I apologize. We  
9 should have had copies of this in the binders. Do you  
10 have it?

11          MR. BOIES: Yes.

12          MR. GARDNER: Sorry about that.

13          BY MR. GARDNER:

14          Q. Mr. Baxter, I've handed you what's been marked as  
15 JX 172. Can you identify it for the record, please?

16          A. Yes. JX 172 is the agreement forming the AIG  
17 credit facility trust, and that agreement is dated  
18 January 16th of 2009, and it's between the Federal  
19 Reserve Bank of New York and the three trustees, Jill  
20 Considine, Chester Feldberg, and Douglas Foshee.

21          Q. Can you turn to Section 1.02 of the trust  
22 agreement?

23          A. Yes.

24          Q. Did the New York Bank contribute anything to the  
25 corpus of the trust?

1 A. We contributed \$1.

2 Q. How was the corpus of the trust established?

3 A. It was established by the trust agreement.

4 Q. At any point did AIG convey the equity to the New  
5 York Fed?

6 A. No.

7 Q. Was the trust a shareholder of AIG?

8 A. Eventually it was, yes.

9 Q. Now, under what legal authority did the New York  
10 Fed create the trust?

11 A. It would be the authority represented in Section  
12 13, subparagraph (3), of the Federal Reserve Act,  
13 together with Section 4, subparagraph (4), the  
14 incidental powers clause, together with the  
15 authorization issued by the Board of Governors, and  
16 specifically the authorization giving the New York Fed  
17 the power to set conditions so long as those conditions  
18 are of the kind that you see in the term sheet.

19 Q. How is the creation of the trust incidental to  
20 lending under Section 4(4) of the Federal Reserve Act?

21 A. The trust was incidental to lending because part  
22 of the consideration for the \$85 billion loan was the  
23 equity participation, and we needed a vehicle that could  
24 take and hold the equity participation. So, that gave  
25 us the incidental power to establish a trust that would

1 serve that particular purpose.

2 Q. Now, I wanted to focus your attention on page 1  
3 of the trust agreement and some of the whereas clauses.

4 A. Yes.

5 Q. And, in particular, I want you to look at the  
6 fourth whereas clause, and here, in the trust agreement,  
7 it says, "Whereas, the issuance of the Company Preferred  
8 Stock to the Trust is intended to provide compensation  
9 for the assumption of the risks arising from the Credit  
10 Agreement and to reduce those risks."

11 Mr. Baxter, what are the risks that are being  
12 referred to here?

13 A. The risks in making the \$85 billion loan to AIG.

14 Q. And what were those risks?

15 A. Well, the principal risk is that at some point in  
16 time it would not be repaid.

17 Q. How does the issuance of the preferred stock to  
18 the trust reduce those risks?

19 A. Well, it's -- it's first to provide compensation,  
20 and that would be compensation in addition to the  
21 interest compensation we were receiving from the  
22 extension of credit. In addition to being compensation,  
23 one of the things that the trust enabled the trustees to  
24 do is to improve the risk management of the organization  
25 through their voting for board members and help to bring

1     AIG back into a safe and sound operating condition.

2             Q.   Now, I want to draw your attention to Section  
3     2.03(e) of the trust agreement.  That's on page 7 if  
4     that is easier.  It's also up on the screen if that's  
5     easier, too.

6             A.   Yes.

7             Q.   Now, in Section (e) of -- I should say Section  
8     2.03(e), "The Trustees shall Vote to elect (and, if they  
9     shall for any reason be required to nominate, shall  
10    nominate for election) as members of the board of  
11    directors of the Company only persons who are not, and  
12    have not been within one year of their nomination,  
13    officers, directors, or senior employees of the FRBNY or  
14    the Treasury Department."

15            THE COURT:  Mr. Gardner, I think you were  
16    probably here the other day when I mentioned that I  
17    don't think it's necessary to read into the record large  
18    blocks of information like this.  We seem to be falling  
19    into this pattern.

20            MR. GARDNER:  Fair enough, Your Honor.

21            THE COURT:  And we are never going to get  
22    finished if we keep going this way.  Let's try to be  
23    more efficient --

24            MR. GARDNER:  Fair enough.

25            THE COURT:  -- and just refer the witness to the

1 section that you wish to inquire about and just ask him  
2 a question.

3 MR. GARDNER: I was just trying to make sure the  
4 record is clear.

5 BY MR. GARDNER:

6 Q. Who is "the Company" being referred to in Section  
7 2.03(e)?

8 A. The company is AIG.

9 Q. What was the purpose of Section 2.03(e)?

10 A. It was to foster independence of the trustee --  
11 of the trust and the trustees from the Federal Reserve  
12 Bank of New York or the Treasury.

13 Q. Let's turn to Section 2.03(f) of the trust  
14 agreement, which is going to be on page 8. Let me know  
15 when you're there.

16 A. I am.

17 Q. Okay. I'm not going to read it. Can you tell me  
18 what the purpose of Section 2.03(f) is?

19 A. There was concern, when we were drafting the  
20 trust agreement, as to whether the trustees would become  
21 a kind of uber board of directors for AIG, and so there  
22 was a feeling that there should be clarity as to the  
23 separation between the trustees and the actual board of  
24 AIG.

25 So, we inserted this provision to make it clear

1 that trustees were not eligible to become board members,  
2 nor were they expected to function as a type of uber  
3 board; instead, their function was to be the majority  
4 shareholder.

5 Q. Now, let's take a look at Section 2.04(d) of the  
6 trust agreements. It's on page 7. And just to put this  
7 in context, Mr. Baxter, do you recall that Section  
8 2.04(d) was that provision that Mr. Bethill had  
9 expressed concerns about in terms of independence?

10 A. Did you say (b) or (d)?

11 Q. D, as in dog, 2.04(d).

12 A. I don't remember the -- who raised that for the  
13 first time, whether it was Bethill or our counsel.

14 Q. Now, in Section 2.04(d) --

15 A. I'm sorry, I was in the wrong -- I was in  
16 2.03(d).

17 Q. Oh, all right. So, let's start all over again.  
18 Let me know when you're in 2.04(d), as in dog.

19 A. Now I'm on the right subparagraph.

20 Q. Okay. So, let me reask the question again.

21 Do you recall whether Section 2.04(d) was the  
22 provision that Mr. Bethill had expressed concerns about  
23 with respect to independence?

24 A. Yes.

25 Q. Now, in Section 2.04(d), there's a statement that

1 says, "With those nonbinding views in mind..." Why was  
2 that language added?

3 A. Because the trustees didn't want to feel that  
4 they were constrained by the policy position of the  
5 Federal Reserve Bank of New York.

6 Q. There's another reference here that says, "The  
7 Trustees shall have full discretionary power to Vote  
8 Trust Stock." Why was that added?

9 A. That was added to make it clear to reflect our  
10 expectation that the trustees were going to act as the  
11 main shareholder.

12 Q. Please turn to Section 3.01 of the trust  
13 agreements.

14 A. I'm sorry, you asked me to turn to?

15 Q. 3.01. It's on page 10.

16 A. Yes, I have it.

17 Q. And it's entitled "Independence of Trustees." Do  
18 you see that?

19 A. Yes.

20 Q. And if you can read that section to yourself,  
21 what was the purpose of this provision?

22 A. It was to foster the independence of the trustees  
23 with respect to the Federal Reserve, with respect to the  
24 Treasury Department, and with respect to AIG.

25 Q. All right. The last section, can you turn to

1 Section 3.05(a), which is on page 15. It's entitled,  
2 "Additional Rights and Obligations of Trustees." Do you  
3 see that?

4 A. Yes.

5 Q. Now, in the last sentence here, it says that  
6 "Each Trustee shall devote such time as shall be  
7 necessary to carry out his or her duties with respect to  
8 the Trust as determined by such Trustee in accordance  
9 with his or her independent judgment."

10 What was the purpose of including this language?

11 A. Some of the trustees, specifically Mr. Feldberg  
12 and Ms. Considine, having recently retired, were worried  
13 that this would be more than a full-time job, and so  
14 there was much discussion about the expectations with  
15 respect to their personal time. And this provision was  
16 placed in the trust agreement to make it clear that they  
17 were going to be in control of how much time they were  
18 going to have to devote to trust responsibilities.

19 Q. Now, once the trust was established in, I believe  
20 you said, March 2009, did you meet with the trustees?

21 A. Yes.

22 Q. How often did you meet with the trustees?

23 A. I never sat down and counted the number of  
24 meetings, but my best recollection is it was  
25 approximately once a month.

1 Q. Why did you meet with the trustees?

2 A. I wanted them to be successful. I wanted them to  
3 feel comfortable that they were getting all the  
4 information that they needed.

5 Q. To your knowledge, Mr. Baxter, did  
6 representatives of the New York Fed provide the trustees  
7 with information concerning AIG?

8 A. Yes.

9 Q. Did the trustees consult with representatives of  
10 the New York Fed before voting on issues that came  
11 before them?

12 A. As they saw necessary, yes.

13 Q. Did the New York Fed, to your knowledge, ever  
14 direct the trustees as to how to vote on any particular  
15 issue?

16 A. As far as I know, we did not.

17 Q. To what extent did the trustees consult with  
18 representatives of the New York Fed before proposing  
19 directors to serve on AIG's board?

20 A. There were consultations.

21 Q. What ability did the New York Fed have to veto  
22 any directors proposed by the trust?

23 A. We had no veto power.

24 Q. All right. I'm going to change gears a bit.

25 Do you know Hank Greenberg?

1           A.   I do.

2           Q.   In connection with the New York Fed's loan to  
3   AIG, did you meet with Mr. Greenberg?

4           A.   Yes.

5           Q.   Between September of 2008 and June 2009, do you  
6   recall approximately how many times you met with  
7   Mr. Greenberg?

8           A.   It's always a difficult question to answer, and  
9   I -- of course, I knew Mr. Greenberg before AIG. My  
10   best recollection is somewhere between three and ten  
11   times.

12          Q.   Now, in general terms, what was discussed at  
13   these meetings concerning AIG?

14          A.   Mr. Greenberg would make observations as to  
15   things that he thought the Fed might think about  
16   differently, things he thought we were doing wrong. At  
17   a number of times he proposed that we reduce the equity  
18   participation. Mr. Greenberg is formidable, and he --  
19   he is not shy about stating -- stating opinions, and I  
20   heard opinions from Mr. Greenberg.

21          Q.   You said that Mr. Greenberg had proposed things  
22   that could be done differently.

23          A.   Yes.

24          Q.   Do you recall any specific examples of things he  
25   felt the New York Fed could be doing differently?

1           A. I remember a couple of examples. One was that  
2           AIG had sold a building in Tokyo, which Mr. Greenberg  
3           had very strong views on, that it was a mistake to sell  
4           the building for -- for AIG to sell the building, and he  
5           expressed that in very strong terms to me. That was  
6           one.

7                    And I know also he would have preferred if we  
8           reduced the equity participation. That was another  
9           topic I recall.

10          Q. Did Mr. Greenberg ever mention to you concerns  
11         about the level of government monitoring of AIG?

12          A. I don't recall that.

13          Q. Now, you said that Mr. Greenberg had  
14         conversations with you with respect to the reduction of  
15         the equity participation. Is that right?

16          A. Yes.

17          Q. Did Mr. Greenberg ever tell you that there should  
18         be no equity participation?

19          A. Not that I remember.

20          Q. Did Mr. Greenberg ever tell you that it was  
21         unlawful for illegal for the New York Fed to take the  
22         equity as consideration for the loan?

23          A. No. The only -- you remind me that the only time  
24         we really got close to a legal conversation was a  
25         discussion that we should have issued a guarantee.

1 Q. Okay. Now, do you recall receiving a letter from  
2 Mr. Greenberg on December 15th, 2008?

3 A. I don't recall.

4 Q. Okay. Why don't we take a look at DX 715, which  
5 will be in your government binder. Now, Mr. Baxter,  
6 DX 715 purports to be a letter to you from Maurice R.  
7 Greenberg, dated September 15th, 2008. Have you seen  
8 this before?

9 A. Yes.

10 Q. And what is it?

11 A. It's a letter that Mr. Greenberg sent to me after  
12 I had met with him.

13 MR. GARDNER: Your Honor, the Government moves  
14 for the admission of DX 715 into evidence.

15 MR. BOIES: No objection, Your Honor.

16 THE COURT: Defendant's Exhibit 715 is admitted.

17 (Defendant's Exhibit Number 715 was admitted into  
18 evidence.)

19 BY MR. GARDNER:

20 Q. Now, in the beginning of this letter,  
21 Mr. Greenberg states -- I think you just alluded to  
22 this, actually -- it says, "Thank you for meeting with  
23 me last week."

24 Did you, in fact, meet with Mr. Greenberg during  
25 the week of December 7th, 2008, concerning AIG?

1           A. I don't remember when exactly I met with  
2 Mr. Greenberg. I met with him on a number of occasions.  
3 To the best that I can recall, this might be one of  
4 those, but I don't recall the specific time.

5           Q. Now, Mr. Greenberg states, on the fourth  
6 paragraph, that "In October, the government negotiated a  
7 new bailout plan with AIG, replacing the initial  
8 two-year \$85 billion loan with a five-year \$60 billion  
9 loan and \$40 billion in preferred shares. The  
10 government further reduced AIG's interest rate and  
11 lowered the annual commitment fee."

12                   What is Mr. Greenberg referring to here, to your  
13 knowledge?

14           A. I -- I -- of course, it's hard for me to say what  
15 Mr. Greenberg is saying in his letter. What I  
16 interpreted his letter to mean is a reference to the  
17 restructuring that occurred not in October, but in  
18 November of 2008.

19           Q. Now, in DX 715, there's an attached white paper.  
20 Do you see that?

21           A. Yes.

22           Q. And if you look at page 17 --

23           A. Page 17 of the white paper, sir?

24           Q. Correct. And it's just a sentence, so I just  
25 want to orient you to it. It's probably easier if I

1 could just read this one sentence, Your Honor.

2 THE COURT: Sure.

3 BY MR. GARDNER:

4 Q. It says, "More than three years after the AIG  
5 Board of Director's ill-advised and wrongful decision to  
6 issue a Restatement, and more than two years after the  
7 ill-considered decision to settle with government  
8 regulators, additional failures of AIG's Board and  
9 management continue to be revealed."

10 Mr. Baxter, what was your reaction to  
11 Mr. Greenberg's statements concerning AIG's board and  
12 management?

13 A. I know that from my meetings with Mr. Greenberg  
14 he had particular problems with the current management  
15 and board of AIG, and that included the -- the new CEO,  
16 Mr. Liddy.

17 Q. Now, did you understand from this letter that  
18 Mr. Greenberg was asking the New York Fed to replace  
19 AIG's board or management?

20 A. I -- I don't remember whether I thought that at  
21 the time or not.

22 Q. Okay.

23 Your Honor, I am going to turn to a new topic  
24 now. I'm happy to keep going or take a break, whatever  
25 the Court wishes.

1 THE COURT: I'd prefer to go to about 11:00.

2 MR. GARDNER: Perfect.

3 THE COURT: I do have a couple of questions  
4 regarding your chart that you created here.

5 MR. GARDNER: Please.

6 THE COURT: Is now a good time?

7 MR. GARDNER: Now would be a perfect time, Your  
8 Honor.

9 THE COURT: Okay. Mr. Baxter, referring to the  
10 chart that Mr. Gardner created about the term sheet, the  
11 various versions of the term sheet, I'm interested in  
12 knowing when AIG first had the terms that were being  
13 proposed here. Would that be in Joint Exhibit 83, which  
14 you told me that Davis Polk sent to AIG around 8:00?

15 THE WITNESS: Yes, Your Honor. What happened is  
16 I had caused Davis Polk to send the term sheet to AIG,  
17 which is JX 83, and then you'll perhaps remember  
18 yesterday there was some discussion about a signed  
19 document by Mr. Willumstad that was faxed back to my  
20 office.

21 THE COURT: I think that was 8:44.

22 THE WITNESS: Yeah, you -- I don't remember  
23 numbers anymore, but that particular acceptance by  
24 Mr. Willumstad, the way that I understand it -- and  
25 there was that colloquy about was it attached or wasn't

1 it attached -- that acceptance was of JX 83.

2 THE COURT: Now, you also have testified about a  
3 telephone conversation that Mr. Geithner was involved  
4 in, and I think you said that Mr. Geithner said it was a  
5 take-it-or-leave-it offer and it would be the only  
6 offer. Was that late afternoon of the 16th?

7 THE WITNESS: Yes.

8 THE COURT: So, it must be that AIG knew some of  
9 the terms or maybe all of them as of that point. Did  
10 they have the terms earlier than this 8:00 fax?

11 THE WITNESS: I -- I don't believe they got the  
12 terms any earlier than the term sheet, but there was  
13 colloquy with -- with AIG during the course of the day,  
14 obviously colloquy including the immediate need for \$14  
15 billion, and my best recollection is that telephone call  
16 between Mr. Willumstad, Mr. Geithner, and I was also  
17 there, that took place in the very late afternoon. So,  
18 that would have been before we had -- we had  
19 communicated the term sheet to them.

20 THE COURT: So, do you think there was a  
21 discussion of the terms that were being --

22 THE WITNESS: It could have been before, it could  
23 have been later, you know, it's just so hard for me to  
24 place --

25 THE COURT: Right.

1           THE WITNESS: -- the exact time of that phone  
2 call. And if you look at my personal notes, which were  
3 introduced yesterday -- and I regret this -- you'll see  
4 there's no time indicated on my notes. If I were doing  
5 this again today, I would be careful to note the time,  
6 but unfortunately, I didn't in those notes. So, it's  
7 really hard for me to recall exactly when that took  
8 place. It could have been later in the evening. And I  
9 don't know what Mr. Geithner's testimony will be on  
10 that.

11           THE COURT: Sure, I understand.

12           MR. GARDNER: Your Honor, just to clarify -- and  
13 I'm not here to testify -- you will hear from other  
14 witnesses in this case, particularly those from Davis  
15 Polk, who will be testifying about the interactions with  
16 AIG throughout that day on the 16th and the exchange of  
17 term sheets.

18           THE COURT: I understand. I'm interested in  
19 Mr. Baxter's testimony at the moment.

20           MR. GARDNER: I understand. I'm just letting you  
21 know, Your Honor.

22           THE COURT: Okay.

23           THE WITNESS: And I wish I could answer that  
24 question clearly.

25           THE COURT: No. All you can do is tell me the

1 information as best you can. But to summarize, then, I  
2 take it from your recollection, 8:00 p.m. was the first  
3 time that AIG had the written set of terms that were  
4 being proposed.

5 THE WITNESS: That's correct.

6 THE COURT: Okay. Thank you.

7 THE WITNESS: You're welcome.

8 MR. GARDNER: And, Your Honor, since we were  
9 talking about this demonstrative, for purposes of the  
10 record, can I mark it as Defendant's Exhibit  
11 Demonstrative 1 for the record?

12 THE COURT: Sure.

13 MR. GARDNER: I will just call it DDX 001.

14 THE COURT: Okay.

15 (Defendant's Exhibit Number DDX 1 was marked for  
16 identification.)

17 BY MR. GARDNER:

18 Q. Now, changing gears again, Mr. Baxter, you had  
19 alluded a few minutes ago to a restructuring of the AIG  
20 deal in November of 2008. Do you recall that?

21 A. Yes.

22 Q. Now, can you describe in broad terms the  
23 components of that November 2008 restructuring?

24 A. Yes. There was a \$40 billion equity investment  
25 by the Treasury Department, and that was using the new

1 powers that the Congress had conferred in the Emergency  
2 Economic Stabilization Act, which was enacted in October  
3 of 2008. So, that was one piece. That enabled the Fed,  
4 because of that equity infusion by the Government, to  
5 reduce the cap on the revolver, the maximum you could  
6 borrow on the revolver, from \$85 billion to \$60 billion.

7 In addition, we were facing -- when I say "we,"  
8 the Government and AIG was facing a very significant  
9 problem that was coming to a head on November 10th of  
10 2008, and that very significant problem was AIG was  
11 going to announce a quarterly loss -- third quarter loss  
12 of, as I remember it, around \$25 billion.

13 At the same time they were going to announce that  
14 quarterly loss, the rating agencies were looking at the  
15 debt load on AIG and talking to both AIG and the  
16 Government about the sustainability of that debt load,  
17 and in the view of the rating agencies, they did not  
18 believe that the debt load was sustainable. And because  
19 of that, the rating agencies were communicating their  
20 intention to downgrade AIG.

21 The downgrade of AIG had -- had a specific  
22 problem with respect to the credit default swaps that  
23 were written by an affiliate of AIG called AIG Financial  
24 Products, and the way that worked is these credit  
25 default swaps, Your Honor, you could think of as a kind

1 of insurance. They're not technically insurance, but  
2 that's their operative effect. They essentially provide  
3 protection on different forms of financial instruments,  
4 and among those forms were a financial instrument called  
5 a collateralized debt obligation.

6 And so AIG had written credit default swap  
7 protection on these collateralized debt obligations, and  
8 in those contracts that were written by this affiliate,  
9 AIG Financial Products, the affiliate had promised, in  
10 the event that there's a lowering of the fair value  
11 assigned by the market to these obligations, the CDOs,  
12 or, alternatively, a downgrade of AIG, in either of  
13 those situations, the counterparty of AIG could ask for  
14 additional margin or collateral to protect on the  
15 insurance contract that AIG had written.

16 Now, Your Honor, when those collateral calls were  
17 made, AIG would need to come up with cash liquidity to  
18 meet them, and, of course, one of the ways AIG was  
19 meeting its liquidity was by drawing on the \$85 billion  
20 revolving credit agreement. So, you see, we had this --  
21 this deadline from the rating agencies, which was  
22 November 10th, and the rating agencies were saying we  
23 have two particular problems. We have the debt load of  
24 AIG, which is going to cause us to downgrade AIG, and  
25 something has to be done. If something is not done,

1 expect to be downgraded. So, those were the  
2 communications from the rating agencies.

3 That's a long background to try to explain what  
4 we were trying to accomplish when we started to  
5 restructure the arrangement, and one significant  
6 component of the restructuring related to our using  
7 another vehicle, called Maiden Lane -- this one was  
8 Maiden Lane III -- and so we established a  
9 special-purpose vehicle.

10 The purpose of that special-purpose vehicle, Your  
11 Honor, was to buy from the counterparties these  
12 collateralized debt obligations, and if you bought from  
13 the counterparties the collateralized debt obligation,  
14 then they no longer needed insurance because they didn't  
15 need to worry about the diminution in value of the  
16 property or, alternatively, a lowering of the credit  
17 rating -- the credit of their obligor, AIG.

18 So, the solution was let's buy those  
19 collateralized debt obligations and enable a tear-up, if  
20 you will, of the insurance contracts, and that had the  
21 salutary effect of preventing additional collateral  
22 calls, which would have increased the debt of the  
23 company, and, of course, if you increase the debt of the  
24 company, now you make it more unsustainable. And so the  
25 solution was buy the assets, tear up the insurance

1 contracts, cut off the collateral calls, and stop the  
2 increase of the debt.

3 Another -- another particular solution was we had  
4 this very high interest rate, which in loose language I  
5 have referred to as a loan sharking rate. We had that  
6 very high interest rate, Your Honor, which was also  
7 contributing to the debt service problem. So, in some  
8 ways we were part of the problem by setting that very  
9 high rate.

10 So, the other aspect of the restructuring -- and  
11 it sounds so simple now -- is reduce the rate and make  
12 it a lower rate, and that lower rate, the lower debt,  
13 will alleviate the debt problems and avoid further  
14 downgrades of AIG.

15 Now, it sounds so simple when I explain it today.  
16 Back at the time, the Fed was being roundly criticized  
17 for actually rescuing AIG. So, a number of my  
18 colleagues were very concerned, if we're being pilloried  
19 for doing this kind of incredibly sweet deal for AIG,  
20 how will it look if we reduce our interest rate and make  
21 it even better?

22 And so the context of the time is there was lots  
23 of worry, and you can see that in some of the email.  
24 What does it -- how are we going to look if we lower the  
25 rate? And my response was we should do the right thing,

1 and the right thing means make a very high rate lower.  
2 So, the rate was lowered, we established the new Maiden  
3 Lane vehicle, Maiden Lane III --

4 THE COURT: Who funded Maiden Lane III?

5 THE WITNESS: Maiden Lane III was funded in two  
6 ways. One was a loan from the Federal Reserve pursuant  
7 to Section 13, subparagraph (3), and the other was  
8 equivalent to an equity contribution from AIG itself.  
9 And together, that's how the vehicle was funded. The  
10 proceeds of both AIG's equity and the Fed's loan were  
11 used to buy the collateralized debt obligations, and  
12 included in the consideration for the collateralized  
13 debt obligations were cash collateral AIG had already  
14 paid to the counterparties.

15 THE COURT: Do you recall the amounts contributed  
16 by each party?

17 THE WITNESS: Oh, you know, I'm going to -- the  
18 record will show what they are specifically. My  
19 recollection is it was \$25 billion from the Fed, \$5  
20 billion from AIG, but I -- I should know those numbers  
21 by heart by now, but it's amazing how the memory fades  
22 over the years, Your Honor.

23 THE COURT: All right. I appreciate the  
24 explanation.

25 BY MR. GARDNER:

1 Q. Now, Mr. Baxter, you mentioned that one of the  
2 aspects of the November 2008 restructuring were changes  
3 to the credit agreement, correct?

4 A. Yes.

5 Q. And you mentioned one was a reduction in the  
6 interest rate?

7 A. Yes.

8 Q. And do you remember what the interest rate was  
9 reduced to?

10 A. I don't remember the exact number.

11 Q. Okay. It's in the documents, that's fine.

12 And you also mentioned you lowered the \$85  
13 billion cap on the credit facility?

14 A. Yes. It was reduced from 85 to 60 billion.

15 Q. To 60.

16 Now, in connection with the changes to the credit  
17 agreement itself, was the maturity of the credit  
18 facility lengthened?

19 A. My recollection is we extended the maturity date.

20 Q. From what to what, if you recall?

21 A. I don't remember the dates.

22 Q. Okay, I'll just put down maturity extension.

23 Now, you also mentioned that one element to the  
24 November 2008 restructuring was an equity investment by  
25 the Department of the Treasury through TARP of \$40

1 billion. Is that correct?

2 A. That's how I remember it.

3 Q. Now, what was the purpose of that equity  
4 injection of \$40 billion into AIG?

5 A. It was to recapitalize AIG.

6 Q. And why did it need to be recapitalized?

7 A. Well, one of the things we had learned from  
8 September 16th on to November is that the problems of  
9 AIG were much greater than we originally understood.  
10 Originally, we were looking at it as a simple liquidity  
11 problem, and as we got in there and started to know the  
12 company, it became clear that the hole, if you will, was  
13 far deeper.

14 Q. I see. Now, you mentioned Maiden Lane III, and  
15 you provided the Court a fairly detailed explanation.  
16 Was there also a Maiden Lane II that was part of this  
17 November 2008 restructuring?

18 A. Yes. The Maiden Lane II vehicle was set up to  
19 address the securities lending problem that existed in  
20 the domestic life subsidiaries.

21 Q. And can you provide a little bit of discussion  
22 about how Maiden Lane II worked?

23 A. Yes. With Maiden Lane II, what had happened is  
24 AIG lent out treasury securities against cash. When I  
25 say AIG, I mean the life subsidiary. It had lent out

1 securities -- high-quality securities, treasuries,  
2 against cash. Then it took the cash and it invested in  
3 mortgage-backed securities. And the problem with an  
4 investment in mortgage-backed securities at around that  
5 particular time is the value for mortgage-backed  
6 securities was plummeting. It was -- it was not a sound  
7 investment.

8           When the securities lending then unwound and  
9 people went back to AIG and said give me the cash, AIG  
10 didn't have the cash. It had mortgage-backed  
11 securities, which were -- were of diminished value. So,  
12 again, it had an obligation that it was having  
13 difficulty satisfying. And what the Maiden Lane II  
14 vehicle did is it bought the mortgage-backed securities  
15 from AIG for cash, put those into the vehicle to be held  
16 over time and held until a point in time when the value  
17 came back into those distressed assets, and gave AIG the  
18 cash that it needed to meet its liquidity requirements.

19           So, if you -- if you look at AIG as having two  
20 fundamental problems, one fundamental problem was AIG's  
21 financial products, writing credit default swaps on  
22 collateralized debt obligations and the liquidity issues  
23 that that generated, that was problem number one. That  
24 was addressed with Maiden Lane III.

25           Problem number two was in the domestic life

1 subsidiaries, and it -- in my view, the way to  
2 characterize that problem was imprudent decisions with  
3 respect to securities lending and taking the cash you  
4 got from the securities lending of a high quality asset  
5 and invest it into a lesser quality asset in the hope  
6 that you're going to make a great return. That turned  
7 out to be completely flawed in terms of strategy. What  
8 Maiden Lane II did is alleviate that problem for AIG by  
9 having those assets move off of AIG's balance sheet and  
10 into the special-purpose vehicle.

11 The net effect of these things was to address the  
12 criticisms from the rating agencies about the debt size  
13 and to make AIG -- and to put AIG into a position where  
14 it wouldn't have to continue to draw on the Fed line.  
15 And in that respect, it was successful, but all of these  
16 things had to be accomplished by a deadline that was  
17 imposed by the rating agencies, and that deadline, Your  
18 Honor, was November 10th of 2008. So, these things had  
19 to be put into effect very quickly, and they were.

20 Q. Now, I believe you testified or explained to  
21 Judge Wheeler that one aspect of Maiden Lane III was  
22 negotiating with counterparties to essentially cancel  
23 the CDSs. Is that right?

24 A. Yes.

25 Q. Okay. Initially, to your knowledge, who was

1 negotiating with AIG's counterparties with respect to  
2 the CDSs?

3 A. AIG.

4 Q. Okay. Did there come a point in time,  
5 Mr. Baxter, to your knowledge, where AIG asked the New  
6 York Fed to assist them in negotiations?

7 A. Yes.

8 Q. And can you please describe to the Court what  
9 happened with respect to that?

10 A. Yes. My recollection of the way this unfolded is  
11 I was having a conversation with Ed Liddy, AIG's CEO,  
12 and we were talking about, first, the lack of success  
13 AIG was having in negotiations with the counterparties  
14 and the idea of whether the Fed would have greater  
15 success if we negotiated with the counterparties  
16 directly. And that sounded like a sensible opportunity  
17 because we were getting nowhere with AIG, but I -- I was  
18 concerned that we couldn't have the Fed just do that  
19 without some written request from AIG.

20 Q. Why don't we take a look at DX 659.

21 THE COURT: Should we take a break here?

22 MR. GARDNER: Yes, Your Honor.

23 THE COURT: All right. Let's reconvene at 11:15.

24 (Court in recess.)

25 THE COURT: Please be seated.

1           Let's go ahead, Mr. Gardner.

2           MR. GARDNER: Thank you, Your Honor.

3           BY MR. GARDNER:

4           Q. Mr. Baxter, I want to turn back, very briefly, to  
5 the colloquy you had with the Court about JX 83, the  
6 equity term sheet that you understood was provided to  
7 AIG's board. Do you have knowledge one way or the  
8 other, Mr. Baxter, as to whether Davis Polk had provided  
9 copies of the equity term sheet reflected in JX 83  
10 before 8:00 p.m. on September 16th?

11          A. I don't know.

12          THE COURT: This is the problem with breaks,  
13 because the lawyers come up with ideas for more  
14 questions.

15          MR. GARDNER: It's only after your questions,  
16 Your Honor.

17          THE WITNESS: Can you make them stop, Your Honor?

18          MR. GARDNER: That's the only question I came up  
19 with on the break, I'll represent.

20          BY MR. GARDNER:

21          Q. Let's take a look at DX 659, which I had  
22 identified right before the break. Do you have that  
23 before you, Mr. Baxter?

24          A. We're talking about DX 159?

25          Q. No, 659. It should be an email chain.

1 A. I have it now.

2 Q. Okay. And what is DX 659?

3 A. It's an email from Ethan James to me and other  
4 Federal Reserve colleagues, and it contains another  
5 email from Stasia Kelly to Ethan James concerning their  
6 request for Federal Reserve assistance.

7 Q. Who is Stasia Kelly?

8 A. Back in -- in November of 2008, Stasia Kelly was  
9 the general counsel of AIG.

10 Q. Okay.

11 Your Honor, the Government moves for the  
12 admission of DX 659 into evidence.

13 MR. BOIES: No objection, Your Honor.

14 THE COURT: Defendant's Exhibit 659 is admitted.

15 (Defendant's Exhibit Number 659 was admitted into  
16 evidence.)

17 BY MR. GARDNER:

18 Q. Now, Mr. Baxter, this email from Stasia Kelly,  
19 what's the date on that email?

20 A. This copy is very faded, but it looks like it  
21 says November 6th, 2008, at 9:16 a.m.

22 Q. That's how I read it as well.

23 And I believe you just said you understood this  
24 to be a request by AIG to assist with negotiations with  
25 counterparties?

1 A. Yes.

2 Q. Now, you had mentioned earlier this November 10th  
3 date. Is that right?

4 A. Correct.

5 Q. And, again, what was the significance of November  
6 10th?

7 A. That was the deadline that was imposed by the  
8 credit rating agencies for addressing -- for AIG  
9 addressing the debt load problem.

10 Q. So, on November 6th, 2008, when you get the  
11 request to start -- or provide assistance with  
12 negotiations with counterparties, what did the New York  
13 Fed do next?

14 A. We assembled a team who could begin the dialogue  
15 with the counterparties.

16 Q. Who was on that team?

17 A. It was headed by a senior colleague of mine named  
18 Terry Checki, and on the team were individuals, Paul  
19 Whynott, Mike Alex, and Alex Latorre.

20 Q. Was the New York Fed ultimately successful in  
21 negotiating any concessions with AIG's CDS  
22 counterparties?

23 A. No concessions were negotiated.

24 Q. Why not?

25 A. Each of the counterparties was asked for

1 concessions. The counterparties from France enlisted  
2 the aid of the French Bank Supervisor, who queried  
3 whether, if a concession was made, it would be the  
4 equivalent of what I think in our law would be waste,  
5 giving away property. The team who spoke to UBS, which  
6 was another one of the counterparties, UBS being a very  
7 large Swiss bank, the answer back from the Swiss was we  
8 might think about a concession of 1 or 2 percent, but  
9 only if every other counterparty agreed to the same  
10 terms. Those are the two responses that I remember.  
11 And, again, not from my personal knowledge, because I  
12 wasn't conducting the negotiation personally. It was  
13 from the team.

14 Q. Now, from your perspective, Mr. Baxter, what  
15 negotiating or bargaining power did the New York Fed  
16 have to try to obtain concessions from AIG's  
17 counterparties?

18 A. I thought we had very little bargaining power.

19 Q. Why?

20 A. And, you know, it's an interesting question. If  
21 you go back to the way I was describing the transaction  
22 in that you had essentially insurance written by  
23 Financial Products on instruments, first, it always  
24 mystifies me that some insurance companies feel they can  
25 collect the premium but never pay the claim, and, of

1 course, that was what we were talking about, is the --  
2 the value of the insurable property. So, that was the  
3 starting point.

4           AIG was having difficulty getting its  
5 counterparties to make any concessions. Of course, one  
6 of the -- one of the issues that people sometimes raise  
7 is, well, threaten bankruptcy, and the issue there for  
8 the Fed team is, first, it was not at all our intention  
9 to put AIG into bankruptcy. We were doing everything we  
10 could to avoid that result. So, the threat would have  
11 been untrue.

12           And second -- and this is a more practical  
13 answer -- it would have been incredible, because the  
14 markets, of course, understood that the Federal  
15 Government was doing its best to rescue AIG.

16           And then the last issue I recall coming to my  
17 attention was should the Government make some kind of --  
18 and I'll use these terms -- promise or threat with  
19 respect to the counterparties, either a promise of some  
20 governmental advantage or a threat of some kind of  
21 governmental retaliation. And from my perspective, that  
22 didn't seem like an appropriate use of government power;  
23 in fact, it seemed to me to be an abuse of government  
24 power.

25           Q. To your understanding, Mr. Baxter, what

1 contractual rights, if any, did AIG's counterparties  
2 have to receive par?

3 A. The -- they had the right from their insurer to  
4 be made whole and particularly made whole if there was a  
5 default on the CDS, and so the way we were approaching  
6 this is essentially it's as if your house was insured by  
7 a property insurer and your house burned down, you'd  
8 have a claim to have a house rebuilt, and that would be  
9 the value of the house.

10 And the way we approached this is that was the  
11 value of the CDOs, and that was what the counterparties  
12 were entitled to, and it was understandable that they  
13 were unwilling to take a concession, just like it would  
14 be for a property owner, if the house has burned down,  
15 to have a new house without a kitchen. That seemed to  
16 be a sensible position for the counterparties to take.

17 Q. Mr. Baxter, are you aware of the insinuation that  
18 the New York Fed's negotiations with counterparties with  
19 respect to Maiden Lane III was a backdoor bailout of  
20 those counterparties?

21 A. Yes.

22 Q. What's your view on that issue?

23 A. It's not true.

24 Q. Why is it not true?

25 A. There was -- there was no intention on our part

1 to be bailing out the counterparties. Our intention  
2 was -- as I testified, our concern was a downgrade by  
3 the rating agencies on November 10th coincident with the  
4 announcement of the third quarter \$25 billion loss, and  
5 we were doing our best to reduce the debt service to  
6 avoid the downgrade. That's what this entire structure  
7 was about. It was about, again, bringing into reality  
8 the rescue of AIG.

9 Q. Now, Mr. Baxter, did there come a point in time  
10 when AIG did not release or disclose the names of the  
11 counterparties associated with the CDSs in their  
12 securities filings?

13 A. Yes.

14 Q. Whose idea was it that the names of the  
15 counterparties would not be disclosed?

16 A. My best recollection, again, is of a conversation  
17 I had with Ed Liddy, and Ed Liddy, then the CEO of AIG,  
18 was concerned about releasing the names of the people  
19 with whom AIG was doing business, and the sense was that  
20 there could be a kind of stigma associated with doing  
21 business with AIG and a feeling that it was  
22 inappropriate to disclose the names of your customers.

23 Q. Was there information that the New York Fed was  
24 concerned with having been publicly disclosed in AIG's  
25 SEC filings?

1           A. The concern on the part of the Fed related to the  
2 CUSIP numbers -- and that's a specific identification of  
3 a security -- the CUSIP numbers of the securities that  
4 we had brought into our vehicles.

5           Q. And that's C-U-S-I-P?

6           A. Yeah. And, again, I want to be clear, this is a  
7 concern on the part of our investment staff. This is  
8 not something that I had a personal concern about, but  
9 the investment staff said if you disclose to the market  
10 the securities you're -- the specific securities you're  
11 holding in portfolio, when you try to sell off some of  
12 those positions, you'll be disadvantaged.

13                   So, the investment staff felt that if you could  
14 not disclose specific securities and CUSIP numbers, that  
15 that would be in the interests of good portfolio  
16 management.

17           Q. Did AIG ultimately disclose the names of the  
18 counterparties publicly?

19           A. They ultimately did.

20           Q. Why, to your knowledge?

21           A. There was -- there was a great controversy at the  
22 time that AIG and the Fed were being nontransparent or  
23 were hiding information, were trying to cover over what  
24 was characterized, to use the terms of your question, as  
25 a backdoor bailout. And as a result of that

1 controversy, public controversy and in Congress and the  
2 media, a decision was made to disclose.

3 Q. I want to change topics again, Mr. Baxter, and  
4 talk a little bit about the Walker litigation. Are you  
5 familiar with the Walker litigation?

6 A. I have the most general recollection of the  
7 Walker litigation, and I don't pretend to be able to  
8 talk about it.

9 Q. Sure. As a very general matter, what is your  
10 understanding of the Walker litigation?

11 A. I knew that early on in the AIG rescue, there was  
12 an action in I believe the Delaware courts against AIG,  
13 not against the Fed or against the Treasury, but against  
14 AIG.

15 Q. And that was actually my question. Was the New  
16 York Fed a party to the Walker litigation?

17 A. No.

18 Q. Okay. What involvement, if any, did the New York  
19 Fed have in providing AIG positions it should take in  
20 the Walker litigation?

21 A. None, to my knowledge.

22 Q. What involvement did the New York Fed have in  
23 providing advice to AIG in connection with the Walker  
24 litigation?

25 A. None, to my knowledge.

1 Q. What involvement did the New York Fed have in  
2 drafting documents for use in the Walker litigation?

3 A. None, to my knowledge.

4 Q. Did the New York Fed ever participate in any  
5 court proceedings concerning the Walker litigation?

6 A. None, to my knowledge.

7 Q. Now, are you aware, Mr. Baxter, that in June  
8 2009, AIG proposed a charter amendment concerning a 20  
9 to 1 reverse stock split?

10 A. Yes.

11 Q. To your knowledge, who proposed the reverse stock  
12 split?

13 A. AIG.

14 Q. What involvement did representatives of the New  
15 York Fed have in proposing the reverse stock split?

16 A. To my knowledge, we did not propose the reverse  
17 stock split.

18 Q. Do you have any knowledge as to why AIG proposed  
19 a reverse stock split?

20 A. Yes.

21 Q. What's that knowledge?

22 A. My recollection is they were trying to avoid  
23 being delisted by the New York Stock Exchange.

24 Q. Why would that have been a problem?

25 A. If your -- if your stock value -- if your stock

1 price falls below a threshold, which I remember is a  
2 dollar a share, then you are subject to delisting.

3 Q. And why is delisting a problem?

4 A. If you're delisted, you can't raise capital in  
5 the -- in the stock exchange market, and that's  
6 considered to be a bad event for a company.

7 Q. To your knowledge, Mr. Baxter, what involvement,  
8 if any, did representatives of the New York Fed have in  
9 drafting the charter amendment concerning the reverse  
10 stock split?

11 A. To my knowledge, we had no involvement with that.

12 Q. Just a few more questions and then, I promise,  
13 I'm done.

14 You were asked a few questions about the Bear  
15 Stearns transaction earlier. Do you recall that?

16 A. Yes.

17 Q. Now, did the Federal Reserve Bank of New York  
18 extend credit to Bear Stearns in March 2008?

19 A. Yes.

20 Q. And can you describe how that was structured, if  
21 you will?

22 A. It began with something I've already testified  
23 about, and that was our announcement of the term  
24 securities lending facility on March 11th of 2008, and  
25 there was a widely followed media commentator who saw

1 that announcement and drew an inference, which was not  
2 correct, but drew the inference that we had announced  
3 that program because Bear Stearns was in trouble.

4 And what happened on Tuesday, March 11th, is, in  
5 addition to our announcing that new program, a run  
6 started on Bear Stearns, and by the evening of Thursday,  
7 March 13th, Bear Stearns had lost all of its liquidity  
8 which it obtained in the wholesale funding markets. And  
9 a telephone call at around 8:30 was made to  
10 Mr. Geithner's office, and his chief of staff  
11 intercepted the call, and the suggestion was we've run  
12 out of liquidity at Bear Stearns, we will need to file  
13 for bankruptcy unless something happens by close of  
14 business on Friday, which was, as I remember it, March  
15 14th.

16 And so the chief of staff called Mr. Geithner,  
17 who had been on his way home, and came to my office and  
18 told me about the problem. Mr. Geithner called me from  
19 his car and told me he was on his way back in. And over  
20 the course of that Thursday evening, we prepared credit  
21 documentation that would enable Bear Stearns to not file  
22 for bankruptcy on that Friday but to continue in  
23 existence over the course of the weekend, the weekend  
24 that I think earlier in my testimony I referred to as  
25 Bear Stearns weekend.

1 Q. Yes. And then can you describe the loan that was  
2 ultimately provided in connection with Bear Stearns?

3 A. This was the -- this was the first time that we  
4 had a problem with an investment bank. We had just  
5 invoked for the first time in many years the power in  
6 Section 13, subparagraph (3), to create the term  
7 securities lending facility, but this was late at night  
8 on Thursday, and, to my knowledge, there was no one at  
9 the Board of Governors still working.

10 So, what we prepared overnight was what I'll  
11 characterize as a back-to-back nonrecourse loan that we  
12 would make to Bear Stearns, and we would make the loan  
13 to Bear Stearns through JPMorgan Chase. JPMorgan Chase  
14 at the time was Bear Stearns' clearing bank. So, to try  
15 to describe this concept, the way it would work is the  
16 Fed would make a loan to Chase -- to JPMorgan Chase of a  
17 particular fixed sum. JPMorgan Chase would make the  
18 mirror image of that loan to Bear Stearns. Bear Stearns  
19 would provide collateral to JPMorgan Chase.

20 That same collateral would be pledged to the New  
21 York Fed to secure the loan to JPMorgan Chase, and the  
22 loan to JPMorgan Chase was going to be designed as a  
23 nonrecourse loan, which means that the creditworthiness  
24 of JPMorgan Chase is not an issue, and instead, the  
25 lender is looking only to the collateral as a source of

1 repayment. That was the way the documentation was done  
2 overnight.

3 When we announced this in the early morning,  
4 that's how the documentation read. The Board of  
5 Governors then had a meeting and determined that this  
6 was, in fact, a loan to Bear Stearns through the conduit  
7 of JPMorgan Chase, and it was authorized, this lending,  
8 under both Section 10(b) of the Federal Reserve Act and  
9 Section 13, subparagraph (3).

10 Q. Was a guarantee of Bear's trading obligations  
11 provided?

12 A. A guarantee of Bear Stearns' trading obligations  
13 was provided. It was not provided by the Fed, but it  
14 was provided by JPMorgan Chase.

15 Q. And what kind of guarantee was provided by  
16 JPMorgan with respect to Bear's trading obligations?

17 A. It was open-ended and unlimited in amount and not  
18 contingent upon an affirmative vote from the Bear  
19 Stearns shareholders in favor of the merger.

20 Q. To your knowledge, was there any private entity  
21 on September 16th that was willing to guarantee AIG's  
22 trading obligations?

23 A. No.

24 Q. Now, to your knowledge, Mr. Baxter, what problem  
25 was Bear experiencing in March 2008 that required

1 assistance?

2 A. The problems that Bear Stearns was experiencing  
3 in March were liquidity problems, and those were  
4 associated with the loss of wholesale funding, and that  
5 wholesale funding was lost in the wholesale equivalent  
6 of a retail bank run. So, there's an announcement by a  
7 well-recognized public commentator, people see that and  
8 fear that Bear Stearns is in trouble, so they stop  
9 funding Bear Stearns, much like depositors will run on a  
10 bank if they fear the bank is going to fail. So, it's a  
11 classic funding problem and a classic liquidity -- loss  
12 of liquidity.

13 Q. Thank you, Mr. Baxter.

14 Before I pass the witness, I just wanted, for  
15 identification purposes, to mark the second  
16 demonstrative that discusses the November 2008  
17 restructuring, as DDX 002, Defense Demonstrative Number  
18 2.

19 THE COURT: All right, that's fine.

20 (Defendant's Exhibit Number DDX 2 was marked for  
21 identification.)

22 MR. GARDNER: And I pass the witness, Your Honor.

23 THE COURT: All right, thank you.

24 Mr. Boies, back to you.

25 MR. BOIES: Thank you, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. BOIES:

3 Q. Good morning.

4 A. Good morning, Mr. Boies.

5 Q. Let me go to this series of charts that counsel  
6 for the Defendant started, and in that connection, I'm  
7 going to ask you some questions about what you have just  
8 been testifying about in connection with the ML III  
9 transaction. And you said that there was a request for  
10 assistance on November 6th, right?

11 A. That was the written request from Stasia Kelly,  
12 yes.

13 Q. And what they wanted was your help in getting the  
14 counterparties to make concessions, correct?

15 A. My recollection is they wanted us to take over  
16 the negotiation that they had been involved in.

17 Q. But the reason they wanted you to take it over  
18 was to try to get concessions, correct?

19 A. I don't remember that it was so narrowly framed,  
20 Mr. Boies.

21 Q. If they were going to pay par value, they didn't  
22 need your help to get the counterparties to agree to par  
23 value, correct?

24 A. I -- I don't know what was in their heads.

25 Q. No, you don't know what was in their heads, but

1 you know what they said, and what they said was that  
2 they were trying to get concessions. You knew that,  
3 didn't you?

4 A. I knew that, from my discussions with Mr. Liddy,  
5 they were trying to tear up the credit default swaps.

6 Q. And they were trying to tear them up at less than  
7 par, correct?

8 A. No. I think you're confusing two things,  
9 Mr. Boies. The credit default swaps are the insurance  
10 contracts. The property that's insured is the  
11 collateralized debt obligation.

12 Q. Of course. That's what we're talking about.

13 A. The reduction in value is the CDO.

14 Q. Can I put my question?

15 You've talked about how you tried to get  
16 concessions from the counterparties below par. Do you  
17 recall that?

18 A. Yes. That wasn't me, but the team, yes.

19 Q. The Fed.

20 Before the Fed tried to do that, AIG had tried to  
21 do that, correct? Yes, no, or I don't know.

22 A. I don't know.

23 Q. Okay. And when AIG requested the Fed's help, did  
24 AIG say they wanted the Fed to help them get  
25 concessions? Again, yes, no, or I don't know.

1 A. I don't recall that.

2 Q. Do you recall that either way?

3 A. No. I recall the conversation with Mr. Liddy,  
4 but I don't recall him ever raising the issue of  
5 concessions.

6 Q. Did he say what help he needed from the Fed?

7 A. Yeah. We needed to be able to terminate the  
8 credit default swaps.

9 Q. Now, could you always, in your judgment, based on  
10 your long experience in this area, always terminate the  
11 credit default swaps if you were prepared to pay the  
12 full par notional value?

13 A. I don't believe so.

14 Q. You don't believe so?

15 A. No.

16 Q. When the Fed offered full par value, full par  
17 notional value to all of the counterparties, did any of  
18 the counterparties have any hesitancy about taking it?

19 A. I wasn't personally negotiating with each of the  
20 counterparties, but I believe there was some hesitation.

21 Q. Who told you that, sir?

22 A. I don't remember.

23 Q. What counterparty?

24 A. I don't remember.

25 Q. When did they tell you that they were having

1 difficulty in November 2008 getting a counterparty with  
2 CDOs to take par?

3 A. If your counterparty believed that there would be  
4 a default --

5 Q. I said when.

6 A. Oh, I misheard you. What's your question, then?

7 Q. When did they tell you that they were having  
8 difficulty in November 2008 getting a counterparty with  
9 CDOs to take par?

10 A. I don't know that I was ever told that.

11 Q. Did someone ever tell you that any of the  
12 counterparties -- any of the AIG counterparties that  
13 were related to ML III had any reluctance to take par in  
14 exchange for the obligation?

15 A. I don't remember a specific conversation, but I  
16 can understand why a counterparty would take that  
17 position.

18 Q. My question is not to get you to try to speculate  
19 as to why you think a counterparty might or might not.  
20 I'm just trying to get your testimony as to what  
21 actually happened.

22 Did anyone tell you that any of the AIG ML III  
23 counterparties were at all reluctant or slow to accept  
24 the Government's offer of par for the obligations?

25 A. I don't remember.

1 Q. Okay. Now, you said you were on a time deadline  
2 of November 10, correct?

3 A. The shot clock was running.

4 Q. Okay. Now, that shot clock was to deal with this  
5 in a time frame that would prevent a downgrade, correct?

6 A. Yes, sir.

7 Q. And if you moved all of these obligations into  
8 ML III, that would prevent the downgrade, correct?

9 A. I'm unsure what you mean by "these obligations."

10 Q. The obligations that are the subject matter of  
11 ML III. ML III took various CDOs and put them into  
12 the -- this special-purpose vehicle, as you describe it,  
13 and then the counterparties were paid off, correct?

14 A. My -- the way I would look at this, Mr. Boies, is  
15 the CDOs weren't obligations; they were assets.

16 Q. They were assets that came with the obligation,  
17 correct, sir?

18 A. What obligation?

19 Q. The obligation to pay in case of a default and  
20 the obligation to post collateral if there was a  
21 reduction in market price or if there was a downgrade of  
22 AIG.

23 A. That obligation was --

24 Q. Yes, no, or I don't know.

25 A. No, I can't answer it yes or no. The obligation

1 was created by the credit default swap, which is a  
2 separate contract.

3 Q. That's what I -- that's exactly what I said, sir.  
4 So, please listen to my questions, okay?

5 The problem that you said was going to cause the  
6 downgrade was a problem that AIG had issued credit  
7 default swaps for CDOs, correct?

8 A. Correct.

9 Q. And those credit default swaps required AIG to  
10 put up collateral if the price -- the market price for  
11 the CDO came down --

12 A. The asset, yes.

13 Q. -- or if AIG was downgraded in terms of ratings.

14 A. Correct.

15 Q. Okay. Now, if the credit default swap  
16 obligations and the underlying CDO rights was put in  
17 ML III -- and that's what ultimately happened, correct?

18 A. No. Only the assets went into ML III.

19 Q. But that's because the credit default swaps were  
20 paid off, correct, sir?

21 A. No. They were terminated, not paid off.

22 Q. Well, they were -- the way they were terminated  
23 is that they -- the counterparties were paid 100 percent  
24 of par value, correct?

25 A. The property owners, the counterparties didn't

1 need insurance once they sold the property to ML III.

2 Q. They sold the property to ML III for \$62.1  
3 billion, right?

4 A. There was an adjusting transaction, but for  
5 purposes of this, let's assume that's the number.

6 Q. Okay.

7 A. I know we had to do an adjustment of the number  
8 finally.

9 Q. This was the number that was in the AIG 10-K,  
10 correct, sir? \$61.1 billion.

11 A. No, I don't remember the number.

12 Q. Your Honor, I would ask the witness to look at  
13 Joint Exhibit 188.

14 THE COURT: I'm sorry, what's the exhibit?

15 MR. BOIES: Joint Exhibit 188.

16 THE COURT: Thank you.

17 THE WITNESS: Thank you, Mr. Boies.

18 BY MR. BOIES:

19 Q. These are excerpts from the AIG 2008 10-K. If  
20 you turn to page 41, where it says "Termination of \$62  
21 billion of CDS," do you see that?

22 A. Yes.

23 Q. And do you see, four lines up from the bottom of  
24 that paragraph, it says, "Through December 31, 2008,  
25 ML III had purchased from counterparties a total of

1 \$62.1 billion in par amount of CDO securities," and the  
2 associated credit default swaps had been terminated."

3 Do you see that?

4 A. Yes.

5 Q. Now, of the \$62 billion, \$5 billion came from an  
6 equity investment from AIG, correct?

7 A. I don't remember the exact numbers, but my best  
8 recollection is it was around that.

9 Q. And there was a loan of \$24.3 billion from the  
10 Fed pursuant to Section 13(3), correct?

11 A. Correct.

12 Q. And the difference between 29.3 and 62.1 was  
13 collateral that AIG had already posted, correct?

14 A. With the counterparties, correct.

15 Q. And my arithmetic may be a little bit off. That  
16 comes out to be 33.8 billion.

17 Now, the contributions towards paying off this  
18 \$62.1 billion were \$38 billion of equity from AIG,  
19 correct?

20 A. I would say it's the cash collateral and the  
21 proceeds from ML III are what comprised the \$62.1  
22 billion.

23 Q. Yes. The \$5 billion from AIG's equity, the \$24.3  
24 billion from the Fed 13(3) loan, the \$33.8 billion cash  
25 collateral that had already been posted by AIG is what

1 comes up to the \$62.1 billion, correct?

2 A. Yes.

3 Q. Now, 24.3 of that came from the loan, and 38.8 of  
4 that came from AIG, correct?

5 A. Yes.

6 Q. Now, once the Fed was willing -- if it was -- to  
7 set up ML III on this basis, with a \$24.3 billion loan  
8 and a \$5 billion AIG equity contribution, and ML III was  
9 prepared to assume the credit -- the swap -- the credit  
10 default swap obligations that related to those CDSs,  
11 there was no danger of a downgrade, correct, sir?

12 A. Who was assuming the CDS contracts?

13 Q. ML III that has in it \$5 billion from AIG's  
14 equity and \$24.3 billion from a loan from the Fed.

15 A. Well, that was -- that was never the proposal.  
16 The proposal was always to come up with a structure that  
17 would enable the termination of the CDS contracts.

18 Q. No, I understand that that's what the New York  
19 Fed wanted to do, but my question to you, sir, is  
20 assuming that the New York Fed was prepared to put up  
21 \$24.3 billion in a 13(3) loan and assuming that AIG put  
22 in \$5 billion of equity into ML III, ML III then had all  
23 the money it needed to be sure that this \$62.1 billion  
24 was secure, correct?

25 A. No, because you're also imposing on ML III the

1 obligation -- the insurance obligations that AIG had  
2 with respect to the CDSs. You would have to value those  
3 obligations, which as far as I know was never done, and  
4 you might have just created a vehicle that was insolvent  
5 on day one.

6 Q. The maximum obligation -- and they weren't  
7 actually insurance obligations, as you've said, correct?

8 A. Correct.

9 Q. But the maximum -- and just for colloquial  
10 purposes, we can call them an insurance obligation --  
11 but the maximum insurance obligation was the \$62.1  
12 billion, correct?

13 A. No, but the value of the CDOs was falling. If it  
14 fell further, it would be higher than that.

15 Q. Sir, this was the notional value. 62.1 billion  
16 was the notional value, correct? It could have --

17 A. It was the par on the day we did the transaction.

18 Q. It was -- it was the par not just on the day you  
19 did the transaction, but it was the par with respect to  
20 what AIG's CDS obligation was, correct, sir?

21 A. Yeah.

22 Q. Okay. So, the maximum -- using insurance the way  
23 you have -- the maximum insurance obligation, the policy  
24 limit, if you will, to use your analogy, was 62.1  
25 billion, correct?

1           A.   Yes.

2           Q.   Now, 33.8 billion had already been given to the  
3 insured.

4           A.   Yes.

5           Q.   So, that meant that the maximum insurance --  
6 continuing to use "insurance" the way you have --  
7 exposure was \$29.3 billion, correct?

8           A.   Well, what you're proposing is a hypothetical  
9 transaction which the counterparties would have to agree  
10 to substitute the credit of a special-purpose vehicle  
11 for the credit that it was already -- it already had  
12 from AIG.

13          Q.   Sir, I wasn't suggesting that at all.  What I was  
14 saying to you is that if ML III had been set up with  
15 \$29.3 billion, which was the maximum insurance exposure,  
16 and ML III had guaranteed AIG's compliance with this  
17 "insurance" obligation, there wouldn't have been any  
18 downgrade because the rating agencies wouldn't have been  
19 concerned about either AIG having to put up more  
20 collateral or there being a default, correct?

21          A.   I don't agree.

22          Q.   You don't agree, okay.

23                Let me just be sure as to where we are agreed.  
24 The maximum "insurance" obligation, the so-called policy  
25 limit, was 62.1 billion, correct?

1           A. I don't agree with -- it's not your arithmetic,  
2 Mr. Boies. It's the problem of taking a guarantee from  
3 a special-purpose vehicle that has no -- no substance to  
4 it --

5           Q. Nobody's suggesting that the counterparties would  
6 be forced to take that guarantee alone.

7           A. Then I misunderstood your hypothetical,  
8 Mr. Boies.

9           Q. Okay. Let me try to be clear, okay?  
10            You said that the rating agencies were concerned  
11 that because of the \$62.1 billion of potential CDS  
12 obligations, that AIG would have to continue to post  
13 collateral or might actually default on some of these,  
14 correct?

15           A. No. That's not what I said.

16           Q. Okay. What was your explanation as to why the  
17 rating agencies you thought were going to downgrade AIG?

18           A. My testimony, I believe, was that the rating  
19 agencies were concerned about the debt load on AIG and  
20 that one part of the problem for the debt load on AIG  
21 related to the collateral calls that the counterparties  
22 were making for additional cash collateral. To meet  
23 those collateral calls, sir, AIG would draw on the  
24 revolver and increase its aggregated indebtedness to the  
25 Federal Reserve. That was the source of the problem.

1 Q. Okay. I'd ask you to listen to my question. If  
2 ML III had been set up with 29 -- with \$29.3 billion,  
3 24.3 from the Fed, 5 from AIG, that represented the  
4 maximum remaining exposure to these CDSs, correct?

5 A. No. The exposure to the CDSs was the exposure of  
6 the asset class to the counterparties.

7 Q. But it couldn't exceed a total of 62.1 billion,  
8 correct?

9 A. Yes.

10 Q. Okay. If it can't exceed 62.1 billion and 38.8  
11 billion has already been given to them, then the maximum  
12 remaining exposure is 29.3 billion, correct?

13 A. And the -- the object of the --

14 Q. Mr. Baxter --

15 A. -- vehicle was pay that and get the asset.

16 MR. BOIES: Your Honor, can we get a yes or no?

17 THE COURT: Can you answer yes or no?

18 THE WITNESS: I'm not sure I'm following the  
19 hypothetical.

20 BY MR. BOIES:

21 Q. Okay. \$61.2 billion was the maximum exposure  
22 under these CDSs, correct?

23 A. Yeah.

24 Q. 38.8 billion had already been given to them,  
25 correct?

1 A. Yeah.

2 Q. So, the maximum remaining exposure was 29.3  
3 billion, correct?

4 A. And that's what we bought that asset at.

5 Q. Is that a yes to my question?

6 A. Well, it -- the tricky word there is "exposure."  
7 An asset doesn't expose you. An asset is worth  
8 something, and that's what we paid for it.

9 Q. I didn't ask you anything about assets. I didn't  
10 ask you anything about what it was worth. All I was  
11 talking about was the exposure on the CDSs, and you told  
12 me, to begin with, that the maximum exposure on the CDSs  
13 was 62.1 billion, correct?

14 A. The exposure on the CDSs is AIG exposure, sir,  
15 not Maiden Lane exposure.

16 Q. I know that. I wasn't suggesting it was Maiden  
17 Lane exposure. Please listen to my question.

18 The maximum AIG exposure -- just to be clear,  
19 it's AIG -- on these CDSs was 62.1 billion, correct?

20 A. Correct.

21 Q. AIG had already given these people 38.8 billion,  
22 correct?

23 A. Cash collateral, not given; plenish.

24 Q. Provided?

25 A. Yes.

1 Q. That meant that the maximum remaining AIG  
2 exposure on the CDSs was 29.3 billion, correct?

3 A. Correct.

4 Q. Okay. Now, if this \$29.3 billion was put into  
5 ML III and ML III said we're going to use this \$29.3  
6 billion to satisfy any remaining collateral calls or  
7 other claims with respect to these CDSs, there would  
8 have been no reason for the rating agencies to downgrade  
9 AIG, correct?

10 A. No.

11 Q. Yes?

12 A. No, wrong.

13 Q. Okay.

14 A. You're wrong.

15 Q. There would be no reason for the rating agencies  
16 to downgrade AIG with respect to these CDSs.

17 A. No. You're wrong.

18 Q. What would AIG's obligation be -- exposure --

19 A. The counterparties would have to agree to take  
20 the guarantee or the promise to pay of Maiden Lane III  
21 before you can release AIG and transfer this obligation  
22 off of AIG's balance sheet into ML III's. That's the  
23 flaw of your hypothetical.

24 Q. Perhaps I'm not being clear with the question.

25 Is it your testimony -- and I understand that the

1 counterparties have to agree before AIG is released. I  
2 understand that if ML III, with its \$29.3 billion,  
3 guaranteed to AIG that it would pay all these collateral  
4 calls, that still doesn't release AIG, as a contractual  
5 matter, unless the counterparties agree, okay?

6           However, it would mean that any time that AIG  
7 needed to post more collateral because they had an  
8 obligation to the counterparties that had not released  
9 AIG, ML III would come up with that collateral, correct?

10          A. Not unless there was a legal obligation on the  
11 part of ML III. Of course, we're adding -- we're adding  
12 variance to a hypothetical question that never arose.

13           MR. GARDNER: Your Honor, and at this junction, I  
14 am going to object. I have tried to give Mr. Boies as  
15 much latitude as possible, but we are engaged in  
16 hypotheticals with a fact witness here, and I think  
17 that's inappropriate. Obviously, that's well read  
18 fodder for experts, but Mr. Baxter is a fact witness.

19           THE COURT: I don't know if that's an objection  
20 or a comment or what.

21           MR. GARDNER: Yes, that is an objection.

22           THE COURT: Overruled.

23           BY MR. BOIES:

24          Q. Maybe I can close this down by just getting an  
25 answer that the Judge can evaluate for what it is.

1 If -- and I understand you say that this is never  
2 anything that you considered -- but if you had simply  
3 formed ML III, put this \$29.3 billion into ML III, and  
4 ML III had said to AIG and to the world, "To the extent  
5 that there are any further collateral calls or other  
6 obligations to pay pursuant to this \$62.1 billion in CDS  
7 obligations, ML III is going to pay them with this \$29.3  
8 billion," do you have an opinion one way or the other,  
9 as you sit here now as the long-term general counsel of  
10 the Federal Reserve Bank of New York, as to whether that  
11 would have satisfied the rating agencies with respect to  
12 their concern about these CDS obligations?

13 MR. GARDNER: Objection. Hypothetical. Calls  
14 for speculation.

15 THE COURT: Overruled.

16 THE WITNESS: I don't believe it would have.

17 BY MR. BOIES:

18 Q. Okay. Now, it is your testimony that you never  
19 considered that as a possibility, correct?

20 A. This is all a very interesting hypothetical, but  
21 it was never considered by anyone at the time we were  
22 contemplating what to do about the problem.

23 Q. So, it would be your testimony that the only  
24 thing that you contemplated was something that would  
25 terminate the CDSs by, in effect, purchasing the

1 underlying CDO obligations.

2 A. No, that's not my testimony.

3 Q. Okay. What other alternatives did you consider?

4 A. There were lots of alternatives considered. I  
5 remember there were people who proposed that the Fed  
6 should be the party that takes over the obligations of  
7 AIG and becomes the insurer. The principal difficulty  
8 with the hypothetical that you outlined relates to the  
9 need for the counterparties to agree, and they would  
10 need to agree to a new -- a new creditor, and my view at  
11 the time is that some of the counterparties were hoping  
12 they'd be able to keep the CDO and the cash collateral  
13 and then ride the value of the CDO up. "Play for  
14 default" is how a market participant might characterize  
15 that strategy.

16 Q. I just want to say, I left my hypothetical and  
17 you went back to it and mischaracterized it, so I just  
18 want to be sure that you understand the hypothetical,  
19 okay?

20 The hypothetical did not involve the  
21 counterparties agreeing to substitute ML III for AIG  
22 with respect to the CDSs. Do you understand that?

23 A. I don't understand that.

24 Q. Okay.

25 A. I think that was part of your hypothetical.

1 Q. Okay. I tried to be as clear as I could on this  
2 before, and I apologize to the Court for going back to  
3 it, but the hypothetical is not that the counterparties  
4 had to agree to release AIG from its CDS obligations.  
5 Do you understand that I'm saying that now?

6 A. Then they're protected by both, Mr. Boies? Is  
7 that it? They are protected by ML III and by the CDS  
8 written by AIG? They have double protection?

9 Q. Well, they have double protection in the  
10 following sense, just as any time there is an obligor  
11 and a guarantor, there is sort of double protection,  
12 correct, sir?

13 A. That's true.

14 Q. Okay. And here there would be double protection  
15 in the sense that the counterparty could contractually  
16 look to AIG, but what ML III is saying to AIG and to the  
17 world is, "If you have a collateral call or if you have  
18 some other obligation to pay pursuant to the \$62.1  
19 billion of CDSs, we, ML III, are going to step up and  
20 use this \$29.3 billion, or part of it, to satisfy it."  
21 That was the hypothetical.

22 A. Or you can look to AIG?

23 Q. They can look to AIG, but if they look to AIG,  
24 ML III is simply going to give the money to AIG.

25 A. Oh, I see.

1 Q. Do you now understand the hypothetical?

2 A. I now understand the hypothetical.

3 Q. I apologize for not having been clear before. I  
4 tried as hard as I could.

5 MR. GARDNER: Your Honor, just so I'm not being  
6 obstreperous, I just want to lodge a continuing  
7 objection to hypothetical questions to a fact witness.  
8 Assumes facts not in evidence.

9 THE COURT: Well, you call it hypothetical, but  
10 it's really not. I think we have the right numbers here  
11 that are being --

12 MR. GARDNER: They're not the right -- I mean,  
13 Mr. Boies and Mr. Baxter have both acknowledged that  
14 this is a hypothetical, Your Honor. These aren't the  
15 right numbers.

16 THE COURT: Whatever.

17 BY MR. BOIES:

18 Q. Now that we've at least understood the question  
19 I'm posing, if ML III had said to AIG and the world, "If  
20 AIG has any collateral call or any other obligation to  
21 pay pursuant to the 62.1 billion in CDS obligations, we,  
22 ML III, will step up and pay it for AIG, and in return  
23 for that, we're going" -- "we," ML III -- "are going to  
24 have the same right to participate in the underlying  
25 CDOs as you actually had in ML III," that would have

1 satisfied the rating agencies with respect to this  
2 issue.

3 A. No.

4 Q. Okay. That's all I needed.

5 A. And, Your Honor, there -- I'm not an accountant,  
6 but as long as you have the credit -- as long as you  
7 have the credit default swaps in operation, I believe --  
8 and here, this lawyer is going to go out on a limb and  
9 suggest an accounting answer --

10 Q. Which I have not asked for, Your Honor.

11 A. -- you would have to -- you would have to account  
12 for that obligation on your balance sheet, and that's  
13 the part of the problem that the rating agencies will  
14 continue to look at.

15 THE COURT: All right. Let's have the next  
16 question.

17 MR. BOIES: Okay. Thank you, Your Honor.

18 BY MR. BOIES:

19 Q. When the counterparties got par, which is what  
20 they were paid when they sold the CDOs, did you  
21 understand that that provided the counterparties with  
22 liquidity that was important to the counterparties in  
23 November of 2008?

24 A. I didn't have any understanding.

25 Q. What was the counterparty that got the largest

1 payment pursuant to this ML III structure?

2 A. I don't remember.

3 Q. Approximately. Give me an example of somebody  
4 who got a big payment.

5 A. I -- I don't remember.

6 Q. You don't remember any of them?

7 A. I remember SocGen; I remember UBS, I already  
8 testified to; I believe Bank of America was a  
9 counterparty, Goldman Sachs. Your Honor, I can't name  
10 the seven dwarfs, so it's hard for me to remember the  
11 names of the nine counterparties.

12 THE COURT: Okay. I think he asked you for one,  
13 though.

14 THE WITNESS: I think I ticked off four, but four  
15 out of nine is not so good in terms of an average.

16 BY MR. BOIES:

17 Q. In November of 2008, taking the companies that  
18 you identified, UBS, Societe Generale, Goldman Sachs,  
19 Bank of America, as you understood it in November of  
20 2008, did they have liquidity needs?

21 A. In November of 2008, I think every financial  
22 institution had liquidity needs.

23 Q. And did you think, as general counsel of the New  
24 York Federal Reserve, that providing the liquidity that  
25 was coming as a result of the ML III transaction was

1 going to be beneficial to those financial institutions  
2 that received payments?

3 A. I wasn't focused on the counterparties, whether  
4 it benefited them or not. I was focused on AIG.

5 Q. Let me just understand that to ensure that we  
6 have your testimony. It is your testimony that in doing  
7 the ML III transaction, you were not focused at all on  
8 whether the transaction benefited the counterparties or  
9 not. Is that your testimony? Yes or no.

10 A. I wasn't focused on benefiting the  
11 counterparties.

12 Q. At all?

13 A. Not that I remember.

14 Q. Insofar as you were aware, at the time of the  
15 ML III transaction, was anybody at the New York Fed  
16 focused at all on benefiting the counterparties?

17 A. I can only speak for myself, Mr. Boies. I can't  
18 speak for everyone at the New York Fed.

19 Q. You may not be able to speak for everybody at the  
20 New York Fed, but you've spoken for a lot of people at  
21 the New York Fed in your testimony to Defendant's  
22 counsel about what they thought and what they believed  
23 and what they said.

24 And what I'm asking is, insofar as you are aware,  
25 did anybody at the New York Fed focus on or was

1 concerned about or interested in the benefit to the  
2 counterparties of the ML III transaction?

3 A. I don't remember anyone articulating that as a  
4 concern.

5 Q. Now, let me compare ML III to ML I. ML I was a  
6 special-purpose vehicle. That was set up for Bear  
7 Stearns, correct?

8 A. And this is a technical point, but we never  
9 called it ML I. It's just Maiden Lane Limited Liability  
10 Company.

11 Q. Okay. You just call it ML?

12 A. Maiden lane, the first of the Maiden Lanes.

13 Q. The first of the Maiden Lanes, which I may slip  
14 up and call it ML I, but you'll understand what I'm  
15 talking about.

16 A. We are both on the same page.

17 Q. Now, with respect to ML or ML I, how much money  
18 was put in there?

19 A. My -- and these are round numbers. Twenty-nine  
20 billion were the proceeds of a loan from the Federal  
21 Reserve Bank of New York, \$1 billion from JPMorgan  
22 Chase.

23 Q. And then to the extent there were proceeds, first  
24 the Fed was going to be paid off its 29 billion, then  
25 JPMorgan was going to be paid its 1 billion, and that

1 was 1 billion below, also?

2 A. Yes, and both of those things have happened.

3 Q. And then to the extent there was money left over,  
4 it was going to be divided between the two parties?

5 A. No.

6 Q. It was all going to go to the Fed?

7 A. Correct.

8 Q. And how much profit have you made so far on this?

9 A. And, again, I didn't look at the financials  
10 before coming here to testify, Mr. Boies, but I am going  
11 to do the best I can.

12 Q. Just approximately.

13 A. I think it's around a billion-five now.

14 Q. Okay. Now, let me go back to --

15 A. And, Mr. Boies, you put "profit." I would  
16 characterize that as residual. Some people would say  
17 that the interest we earned on the \$29 billion, the \$29  
18 billion lending, is also profit. So, the 1.5 billion  
19 that you label as "profit," it may not be -- it may not  
20 be high enough. If you add in interest, it would be  
21 higher.

22 Q. Okay. Then there's also interest.

23 A. On the loan.

24 Q. How much was the interest?

25 A. I don't remember.

1 Q. Okay. Let me go back to ML III. How much profit  
2 has been earned on ML III?

3 A. With respect to the residual, which is how I  
4 would characterize the 1.5 billion in the first Maiden  
5 Lane, with the third Maiden Lane -- and, again, Your  
6 Honor, these are general, I don't have the precise  
7 number -- but my best recollection is it's around 6  
8 billion.

9 Q. And is that profit -- that \$6 billion profit  
10 divided between AIG and the Fed?

11 A. Yes.

12 Q. And how is it divided?

13 A. My recollection is on the third vehicle it's  
14 one-third/two-thirds.

15 Q. Who gets the two-thirds?

16 A. The Federal Reserve Bank of New York.

17 Q. Okay. So, 4 billion of profit for the New York  
18 Fed and 2 billion of profit for AIG, correct?

19 A. And, again, we haven't included the -- we haven't  
20 done anything with interest.

21 Q. Yes.

22 A. That's just the residual.

23 Q. This is just the residual profit. In other  
24 words, in connection with the ML III transaction, the  
25 New York Fed got paid back its loan 100 percent,

1 correct?

2 A. With interest.

3 Q. With interest, and in addition made a \$4 billion  
4 profit.

5 A. Correct. Four billion additional for the  
6 taxpayer.

7 Q. Um-hum. Did AIG ask to invest in the CDOs after  
8 ML III owned them?

9 A. I wouldn't -- I wouldn't say they asked to  
10 invest. When there came a time when we were selling the  
11 CDOs out of the vehicle, I think there was interest on  
12 the part of AIG in purchasing them.

13 Q. And was AIG permitted to purchase them?

14 A. The decision was to have an auction of those  
15 securities. My belief, based on things that I've been  
16 told, is that AIG did purchase, indirectly, some of the  
17 CDOs at auction.

18 Q. When you say "indirectly," what do you mean,  
19 "indirectly"?

20 A. Through a nominee.

21 Q. What was that nominee?

22 A. I don't remember the name. I am speculating, but  
23 I think Credit Suisse. I've heard that.

24 Q. In addition to buying the CDOs for \$62.1 billion,  
25 total, the deal that the Fed negotiated for AIG was a

1 deal that gave the counterparties releases, correct?

2 A. Gave them releases? I think that the lawyers --

3 Q. Provided?

4 A. -- the lawyers negotiated the terms of releases.

5 Q. To the extent that we can get agreement on  
6 language, were the counterparties provided releases?

7 A. There were mutual releases.

8 Q. Yes, but mutual releases didn't really help AIG  
9 very much, because AIG already paid off its maximum  
10 obligation, correct, sir?

11 A. AIG wanted to be released on its credit default  
12 swap obligations.

13 Q. And the maximum exposure was \$62.1 billion,  
14 correct, sir?

15 A. Whatever it was, it was, but the concern about  
16 the release, as I understand it, didn't relate to the  
17 number.

18 Q. But you don't have any doubt that the maximum  
19 exposure that AIG had on these CDSs was \$62.1 billion,  
20 correct? Just yes or no, and then we can move on.

21 A. The contractual obligation was limited at that  
22 amount, but as we know from many forms of litigation,  
23 sometimes the litigation sounds in causes of action  
24 other than contract, tort, securities law. There are  
25 all kinds of reasons for obligations to arise.

1 Q. Did you believe that the counterparties had any  
2 plausible claim against AIG, other than for their \$62.1  
3 billion?

4 A. I didn't have a view.

5 Q. Okay. Did you have a view that AIG had plausible  
6 claims against the counterparties in connection with the  
7 issuance of the CDSs?

8 A. I knew that both sides had concern about  
9 liability to each other.

10 Q. Let me try to be clear. I thought you just told  
11 me that you didn't have any knowledge about any possible  
12 plausible claims of the counterparties against AIG.  
13 Didn't you tell me that?

14 A. No. I didn't know of any claims of the  
15 counterparties against AIG.

16 Q. Did you know of any plausible claims of AIG  
17 against the counterparties?

18 A. I don't remember if I knew that at the time.

19 Q. When did you first become aware that AIG had  
20 plausible claims against the counterparties in  
21 connection with the CDS transaction?

22 A. When a controversy arose over releases.

23 Q. And when was that?

24 A. My best recollection is that was in the middle of  
25 2009; March, April 2009, maybe later.

1 Q. And where did that controversy arise?

2 A. In the Congress.

3 Q. So, it is your testimony that the first time that  
4 you understood that AIG might have claims against the  
5 counterparties was when this was raised in Congress? Is  
6 that your testimony?

7 A. And I'm speaking personally, about me, Tom  
8 Baxter.

9 Q. Okay.

10 A. Yes.

11 Q. Okay. Now, did you, in your capacity as general  
12 counsel of the New York Fed, have any knowledge as to  
13 whether anybody else at the New York Fed knew that AIG  
14 might have counterparties -- claims against  
15 counterparties?

16 A. I'm sorry, Mr. Boies. I didn't follow the  
17 question.

18 Q. Did anyone other than you, insofar as you are  
19 aware, at the New York Fed know that AIG had claims  
20 against counterparties?

21 A. I don't remember.

22 Q. Now, are you aware that with respect to CDS  
23 transactions other than those covered by ML III where  
24 releases were granted, AIG has, in fact, sued CDS  
25 counterparties for misrepresentations in connection with

1 the issuance of those CDS protections?

2 A. Yes.

3 Q. And are you aware that --

4 A. I'm aware of that today, Mr. Boies.

5 Q. Yes, thanks. And just to be clear, those had not  
6 been asserted back then.

7 A. I didn't have a premonition.

8 Q. Yes. And insofar as you are aware, nobody had a  
9 premonition about that.

10 A. To my knowledge, we did not.

11 Q. Is it fair to say that the deal that was done  
12 with counterparties that involved 100 percent par, plus  
13 the releases, was a deal that was negotiated by  
14 representatives of the New York Fed with the  
15 counterparties?

16 A. Yes.

17 Q. And is it fair to say that if you had known then  
18 about these claims on which AIG has recovered hundreds  
19 of millions -- or maybe more, maybe in the billions, I  
20 don't know -- but at least hundreds of millions of  
21 dollars, the New York Fed would not have negotiated  
22 those deals?

23 MR. GARDNER: Objection. Calls for speculation.

24 THE COURT: Overruled. I'll take his answer.

25 THE WITNESS: No.

1 BY MR. BOIES:

2 Q. So that -- and I want to just be sure that I  
3 understand what the "no" means. Am I correct that even  
4 if you had known about the claims that AIG has since  
5 asserted and recovered money on, then the New York Fed  
6 would have still negotiated those deals?

7 A. My understanding of the release issue is the  
8 idea --

9 Q. This is a --

10 A. -- for broad, expanded releases came from Weil  
11 Gotshal, who was representing AIG, Your Honor.

12 Q. Let me try to -- let me try to be clear, sir.  
13 You told me just less than a page ago, I think, in  
14 response to the question, "Is it fair to say that the  
15 deal that was done with counterparties that involved 100  
16 percent par, plus the releases, was a deal that was  
17 negotiated by representatives of the New York Fed with  
18 the counterparties?" And you answered, "Yes."

19 Now, those deals were negotiated over a period of  
20 how many days?

21 A. It was probably not more than seven days. Well,  
22 actually, with legal documentation -- I'm not sure of  
23 the number of days. We did consult with AIG and its  
24 counsel, though, and its counsel was Weil Gotshal, and I  
25 believe Weil Gotshal has admitted that they are

1 responsible for the mutual releases, for the broad,  
2 expanded releases. That is my understanding as I  
3 testify here today.

4 Q. And where does that understanding come from, sir?

5 A. I have had conversations with my counsel. I have  
6 had conversations with Weil Gotshal.

7 Q. Okay.

8 A. And I think they finally acknowledged it. I  
9 believe it might have also come up at the AIG board  
10 meeting. I think we were both there.

11 Q. I'm just now trying to get the basis of your  
12 information. You say your counsel told you that Weil  
13 Gotshal had acknowledged this?

14 A. I believe I've heard that from Weil Gotshal as  
15 well, and I believe it came up --

16 Q. I --

17 A. -- at the AIG board meeting where we were both  
18 present.

19 Q. When you say "we" were both present, you don't  
20 mean you and me.

21 A. Were you there? I think you were, but I may be  
22 mistaken. There was an AIG board meeting.

23 Q. When was that AIG board meeting?

24 A. It was concerning the class action issues.

25 Q. Oh, you're talking about the --

1           A. I believe you made this point at that board  
2 meeting as well, Mr. Boies --

3           Q. Well, I don't --

4           A. -- if I remember it correctly.

5           Q. -- I don't think you're remembering it correctly  
6 if you think that I made the point that you're making,  
7 but --

8           A. No, I don't think you made the point I make, but  
9 I certainly asked about it at the time, and I think Weil  
10 Gotshal concedes this point.

11          Q. Let me just try to get you to respond to my  
12 questions, okay?

13                    You say that your lawyer told you that Weil  
14 Gotshal had acknowledged that they were responsible for  
15 the releases, correct?

16          A. Yes, and I think that they have also, in  
17 addition -- that's not the only basis for my  
18 information.

19          Q. I didn't suggest that it was your only basis.

20          A. I also said it was a conversation with Weil.

21          Q. I didn't say it was the only basis. I am going  
22 to come to your other basis, okay?

23          A. Okay.

24          Q. Now, you do know -- well, let me ask you, do you  
25 know whether or not Weil Gotshal lawyers have been

1     deposed in this litigation?

2             A.    I don't.

3             Q.    Have you ever seen any testimony by the Weil  
4     Gotshal lawyers about this subject matter?

5             A.    Not that I recall.

6             Q.    When was the conversation that you say you had  
7     with the Weil Gotshal lawyers about the source of the  
8     releases?

9             A.    I've had many conversations along these lines.  
10    In fact, Your Honor, I wrote a letter to the New York  
11    Times --

12            THE COURT:    I think the question was when.

13            THE WITNESS:   Yeah, and it's hard for me to  
14    remember when the first one was.  There have been a  
15    series of them.  Certainly before I wrote my letter to  
16    the editor of the New York Times saying this idea did  
17    not come from me, and as far as I can tell, it came from  
18    Weil Gotshal, and I think after I wrote to the New York  
19    Times, Your Honor, that Weil Gotshal has acknowledged it  
20    did.  But that is -- that is my testimony today.  That  
21    is my belief as to what happened.  It didn't come from  
22    the Fed; it came from AIG's lawyers.

23            BY MR. BOIES:

24            Q.    Now, all I'm trying to do, sir, is get the basis  
25    of this testimony that you've volunteered, okay?

1           A. No, I'm responding to your questions, Mr. Boies.  
2 I'm not here voluntarily.

3           Q. No, but I don't think I asked you anything at all  
4 that called forth your statement about Weil Gotshal. I  
5 think the record will absolutely be clear that that was  
6 a volunteered statement. But since you have volunteered  
7 it, I am going to try and understand the basis of it.

8                   Can you tell me, to the nearest month or year,  
9 when you were first told by your counsel that Weil  
10 Gotshal had acknowledged that it was responsible for  
11 giving a broad release to the counterparties by AIG?

12           A. Yes. It was around the date of my letter to the  
13 editor of the New York Times. I don't remember what  
14 date that was, but the record will show what it was, and  
15 I was responding to an article by Gretchen Morgenson,  
16 which suggested that the idea came from the New York  
17 Fed, which it did not.

18           Q. Now, Weil Gotshal was not negotiating with the  
19 counterparties, correct, sir?

20           A. Certainly not for the counterparties. For AIG,  
21 it was representing AIG.

22           Q. They were not negotiating with the  
23 counterparties.

24           A. Not directly, no.

25           Q. The only people that were negotiating directly

1 with the counterparties over the terms of the ML III  
2 terminations were representatives of the New York Fed,  
3 correct?

4 A. That's my understanding.

5 Q. And did the representatives of the New York Fed  
6 ever have any discussions with the counterparties about  
7 whether there would be releases, whether the releases  
8 would be mutual, or what the scope of the releases would  
9 be?

10 A. My understanding is that discussion took place  
11 between AIG's counsel and counsel representing the  
12 counterparties. I'm not saying that Davis Polk wasn't  
13 involved, I assume they were, but the principal issues  
14 on the scope of the releases related to the interests of  
15 AIG on the one hand and the counterparties on the other,  
16 not the New York Fed.

17 Q. My question is a simple one, sir. The only  
18 people negotiating directly with the counterparties were  
19 the New York Fed representatives, and all I'm asking is,  
20 did the New York Fed representatives ever attempt to  
21 negotiate a deal where the counterparties would get  
22 their \$62.1 billion, AIG would get a release, but that  
23 the counterparties would not get a release for fraud?

24 A. I have no knowledge of any -- any negotiation  
25 like that.

1 Q. Is it fair to say that if you had known in  
2 November of 2008 what you know now about the claims that  
3 AIG has against the counterparties or had or would have  
4 had against the counterparties on the release --

5 MR. GARDNER: Objection. Calls for speculation.

6 THE COURT: Overruled.

7 BY MR. BOIES:

8 Q. -- the New York Fed would have attempted to  
9 negotiate something that did not involve AIG releasing  
10 those claims?

11 A. I just don't know, Mr. Boies.

12 Q. Okay.

13 A. I'd need to know much more information.

14 Q. Okay. Let me -- let me turn to the question of  
15 whether or not the New York Fed wanted to release the  
16 names of counterparties, which was a subject that you  
17 discussed with Mr. Gardner. Do you recall that?

18 A. I do.

19 Q. Now, as I understand your testimony with  
20 Mr. Gardner -- and correct me if I'm wrong -- your  
21 testimony is that the New York Fed didn't care whether  
22 the names of the counterparties were released; they  
23 simply didn't want the CUSIP numbers released. Is that  
24 correct?

25 A. My -- my testimony concerned the names of the

1 counterparties and my personal involvement in that,  
2 Mr. Boies, and the way it started was a conversation  
3 with Ed Liddy, who was concerned about release of the  
4 names. And I know that eventually, in the securities  
5 filings, the names were redacted, and my view is that  
6 was because of concerns from AIG.

7 Q. Let me try to ask the question, okay? I  
8 understood your testimony to be that the New York Fed  
9 didn't care whether the names of the counterparties were  
10 released. Is that fair?

11 A. The substance of my testimony was that we were  
12 concerned about accommodating a view expressed by AIG.  
13 I wouldn't say we didn't care. That makes us sound --  
14 sound completely oblivious to the issues. So, I would  
15 never say we didn't care at all, but my recollection of  
16 the way this proceeded is it was an AIG concern that we,  
17 the Fed, were accommodating.

18 You're right, of course, with respect to CUSIP  
19 numbers. That was a Fed concern about our portfolio and  
20 disclosing the composition of our portfolio.

21 Q. Let me put it this way: Other than your desire  
22 to accommodate AIG, did the Fed have any interest in not  
23 having the names of the counterparties released?

24 A. Well, you asked me about the Fed. I'm trying to  
25 testify as to what I thought at the time. I can't speak

1 for everyone at the Fed. My view at the time is it made  
2 sense to accommodate what I -- what I had understood to  
3 be the AIG concern.

4 Q. My question was, other than your desire to  
5 accommodate AIG, did -- and I will ask you personally  
6 right now -- did you have any interest in not having the  
7 names of the counterparties released?

8 A. No.

9 Q. Other than the desire to accommodate AIG, did  
10 anyone at the Fed, insofar as you are aware, have any  
11 interest in having the names of counterparties not  
12 released?

13 A. Insofar as I'm aware, no.

14 Q. Did you ever have any discussions with anyone  
15 concerning that?

16 A. I -- I don't remember. I had lots of discussions  
17 with people.

18 Q. Well, I'm sure you had lots of discussions with  
19 people, but did you have any discussions with people  
20 with respect to whether or not anyone at the Fed had an  
21 interest in having the names of the counterparties not  
22 released, independent of a simple desire to accommodate  
23 AIG's desires?

24 A. Not that I recall.

25 Q. Now, you said that it was your recollection that

1 Ed Liddy did not want to have the names of the  
2 counterparties released. Do you recall that?

3 A. Yes.

4 Q. Did Mr. Liddy tell you that directly or is that  
5 something you heard from somebody else?

6 A. No. I believe that took place in a conversation  
7 between the two of us.

8 Q. When was that conversation?

9 A. It would have been early in 2009. I don't  
10 remember the exact date.

11 Q. Was it a conversation in person?

12 A. I'm straining to remember whether it was in  
13 person or on the phone. I think it was in person.

14 Q. Where were you?

15 A. I seem to recall he was at the Fed, but, again,  
16 I'm -- I'm straining my recollection to remember exactly  
17 the forum for our conversation.

18 Q. I can only get what you have in your mind.

19 A. You've got what I've got.

20 Q. All right. And I take it I have now totally  
21 exhausted any recollection you have of that  
22 conversation, right?

23 A. Yes, you have, sir.

24 Q. Let me -- let me turn to the emergency credit  
25 facilities that you discussed with Mr. Gardner --

1           THE COURT:  Should we break for lunch here,  
2  Mr. Boies?

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

4           THE COURT:  All right.  We will reconvene at  
5  1:45.

6           (Lunch recess, 12:42 p.m. to 1:45 p.m.)

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AFTERNOON SESSION

(1:45 p.m.)

THE COURT: Thank you. Please be seated.

All right. Let's go ahead.

MR. BOIES: Thank you, Your Honor.

BY MR. BOIES:

Q. Good afternoon, Mr. Baxter.

A. Good afternoon, Mr. Boies.

Q. You talked to Mr. Gardner about the Fed's  
emergency credit facility. Do you recall that?

A. Yes.

Q. And I think you identified as emergency credit  
facilities the PDCF. Is that correct?

A. That's one.

Q. And the TSLF?

A. That's another.

Q. And the money market investor funding facility?

A. That's another.

Q. And commercial paper funding?

A. Facility, that's a fourth.

Q. Were these all of the -- what you referred to as  
general facilities?

A. General facilities to provide liquidity to  
markets.

Q. And then there was -- there were some special

1 facilities that included AIG, Bear Stearns; and then, as  
2 I understand it, proposed facilities or agreed  
3 facilities for Citicorp and Bank of America that were  
4 never drawn on. Is that correct?

5 A. Citigroup and Bank of America, that's correct.

6 Q. Now, all of these emergency credit facilities  
7 were pursuant to 13(3), right?

8 A. That is correct.

9 Q. In 2008, were there any other emergency credit  
10 facilities that the Fed established pursuant to Section  
11 13(3)?

12 A. Yes, there was.

13 Q. And what was that?

14 A. Now you're going to call on my memory on the  
15 alphabet soup of facilities. We had another facility  
16 that was designed to address commercial paper problems;  
17 I forget the exact name of it. We had another facility  
18 that was designed to inject liquidity and help restore  
19 securitization markets. That was known as the TALF,  
20 T-A-L-F.

21 Q. Okay.

22 A. We had another facility for banks, which was  
23 introduced in late December of 2008, called a term  
24 auction facility.

25 Q. And that was also pursuant to 13(3)?

1 A. No. That was a Section 10(b) facility.

2 Q. Right. I'm only asking for emergency credit  
3 facilities pursuant to 13(3).

4 A. Okay. I'm sorry, Mr. Boies.

5 Q. Okay.

6 A. So, strike the -- strike the term auction  
7 facility.

8 Q. But leave TALF?

9 A. Yes, sir.

10 Q. Now, can you think of any others?

11 A. I'm just -- I couldn't see past you, so let me  
12 look at the list. I think you have them, the principal  
13 facilities there.

14 Q. Now, with respect to the PDCF, you've said that  
15 the compensation that the Fed got was interest and fees,  
16 correct?

17 A. Yes.

18 Q. And that was true for the TSLF and the money  
19 market investor funding facility and the commercial  
20 paper funding facility. Was that also true for TALF?

21 A. Yes.

22 Q. So, all of those facilities, you got interest and  
23 fees but no equity, correct?

24 A. Correct.

25 Q. And with respect to the PDCF, that was pursuant

- 1 to your primary credit rate. Is that correct?
- 2 A. That's my recollection.
- 3 Q. Was the same thing true for the TSLF?
- 4 A. That's my recollection.
- 5 Q. Was the same thing true for the money market  
6 investor funding facility?
- 7 A. I don't remember for that one.
- 8 Q. What about the commercial paper funding facility?
- 9 A. I don't remember the rate set on that either.
- 10 Q. And what about the TALF?
- 11 A. And I don't recall on the TALF either.
- 12 Q. Now, the fees, for example, for the PDCF were  
13 very small, correct?
- 14 A. Yes.
- 15 Q. Less than one-half of 1 percent?
- 16 A. I don't remember the quantum of the fees, but I  
17 agree that the fee was small. It was based on usage.
- 18 Q. It was based on usage, and the more usage, the  
19 higher the fee, correct?
- 20 A. That's correct. We were trying to discourage  
21 use.
- 22 Q. Let me ask you to look at Plaintiffs' Trial  
23 Exhibit 638, if I have the right exhibit. This is an  
24 exhibit that --
- 25 A. Did you say 638, Mr. Boies?

1 Q. Yes, 638. I'm handing it up.

2 So, this is an extra copy, and I think the Court  
3 may have it, but rather than try to find it, it may be  
4 easier to use this.

5 THE COURT: All right, thank you.

6 BY MR. BOIES:

7 Q. I just want to use this for the purpose of  
8 identifying the fees. If you go to page 6 where it says  
9 "Frequency-Based Fee," do you see that?

10 A. Yes.

11 Q. And that says if you have 46 to 90 days, it's ten  
12 basis points; 91 to 135 days, it's 20 basis points; and  
13 136 to 180 days, it's 40 basis points. Do you see that?

14 A. I do.

15 Q. And it says that the frequency-based fee is  
16 charged to dealers who accessed the facility on more  
17 than 45 days out of 180 days. Do you see that?

18 A. Yes.

19 Q. So that if you access the facility every day for  
20 six months, you would be charged the 40 basis points.  
21 Is that correct?

22 A. Yes.

23 Q. And 40 basis points is four-tenths of 1 percent,  
24 correct?

25 A. Yes.

1 Q. So, even if you had used the PDCF 180 days in a  
2 row, your total charge, both interest rate and  
3 frequency-based fee, would have been less than 3  
4 percent, correct, on an annualized basis?

5 A. I don't remember what the primary credit rate was  
6 on the day in question, you know, it varies, but it  
7 would be the primary credit rate plus 40 basis points.

8 Q. One of the things that I believe you testified to  
9 was that part of the reason that the interest rate for  
10 broker-dealers accessing the PDCF was known to be low  
11 was because of your confidence in their financial  
12 security and the capabilities of their management. Is  
13 that correct?

14 A. That was certainly one factor in the eligibility  
15 to be a primary dealer, yes.

16 Q. Now, did the Fed constantly reevaluate the  
17 financial stability and capabilities and management  
18 capabilities of broker-dealers who were accessing the  
19 PDCF?

20 A. If, in your question, you mean primary dealers,  
21 yes.

22 Q. And, for example, one of the primary dealers in  
23 2008 was Countrywide Securities Corporation, correct?

24 A. Correct.

25 Q. And presumably there came a time when the Fed

1 concluded that Countrywide Securities was not  
2 financially stable and well managed, correct?

3 A. Your Honor, I'm hesitating because I'm not sure  
4 that I'm free to reveal that confidential information  
5 and that it may be subject to some governmental  
6 privileges.

7 MR. GARDNER: And, Your Honor, if he wishes, we  
8 could take a recess, he could consult with us, and we  
9 could figure out whether or not he can answer. I mean,  
10 I think he's saying that he thinks it's privileged. I'm  
11 happy to work with him to make that determination.

12 THE COURT: Mr. Boies, what's your pleasure?

13 MR. BOIES: Well, I think I'm certainly entitled  
14 to pursue this line of questioning, and if they need to  
15 consult, I have no objection to their consulting on this  
16 issue.

17 THE COURT: All right. Why don't we do that.  
18 Let's go off the record, and you can talk with  
19 Mr. Gardner and counsel.

20 THE WITNESS: And Mr. Kiernan as well.

21 MR. GARDNER: And Mr. Kiernan would be involved  
22 as well.

23 THE COURT: Yes, let's do that. You may go out.  
24 We'll be off the record.

25 (Witness confers with counsel.)

1 THE COURT: All right, we are back on the record.

2 MR. GARDNER: All right, Your Honor. It might  
3 take some baby steps here, but I'm hopeful that this can  
4 be achievable. There has been a waiver of the -- an  
5 authorization for confidential supervisory information  
6 that otherwise would have been protected from  
7 disclosure.

8 Beyond that, there may be some attorney-client  
9 information, but I think, based on Mr. Boies' current  
10 question, we're not there yet. I think when we see the  
11 next couple of questions, we will have to play that one  
12 by ear.

13 THE COURT: All right, thank you.

14 Do you recall the question, Mr. Baxter?

15 THE WITNESS: If you would be so kind as to have  
16 the question read back, Your Honor, I would appreciate  
17 it.

18 THE COURT: Mr. Boies?

19 Do you want the court reporter to read it?

20 MR. BOIES: I can read it back, Your Honor.

21 BY MR. BOIES:

22 Q. Mr. Baxter, did there come a time when the Fed  
23 concluded that Countrywide Securities was not  
24 financially stable and well managed?

25 A. There came a time when the Fed determined that

1 Countrywide's primary dealer was in a condition that  
2 caused us concern.

3 Q. When was that?

4 A. I'm always -- I'm always terrible on dates,  
5 Mr. Boies. I'm going to speculate and say it was in and  
6 around June or even July of 2009, but I may be off by a  
7 year.

8 Q. June or July of 2009? That is, after --

9 A. It was in and around -- here's another way I can  
10 answer it. It was in or around the time that Bank of  
11 America decided to acquire Countrywide, and I don't  
12 recall the date of that.

13 Q. Countrywide was acquired by Bank of America in  
14 '09, as you understand it?

15 A. Again, dates are not my strength, but I seem to  
16 recall it was around then.

17 Q. And --

18 A. Maybe it was 2008. 2008 or 2009, but the record  
19 will show which year it was.

20 Q. We will try to confirm that. My recollection,  
21 which I don't want to rely on until I see a piece of  
22 paper, was that it was at the end of 2008, but I could  
23 be wrong about that.

24 But in any event, there came a time when -- and  
25 we will try to find the date before concluding your

1 cross examination -- there came a time when  
2 Countrywide's primary dealer was dropped from the  
3 primary dealer program, correct?

4 A. No.

5 Q. It was not?

6 A. It was not dropped.

7 Q. Even though you had concluded that they were not  
8 financially stable and well managed?

9 A. Well, the conclusion wasn't that they weren't  
10 financially stable and well managed. We were concerned  
11 about their credit condition.

12 Q. My question was, did there come a time when the  
13 Fed concluded that Countrywide was not financially  
14 stable and well managed?

15 A. The answer to that precise question is no.

16 Q. Okay. And the reason I asked it that way was  
17 because you said that part of the justification for  
18 giving primary dealers a low interest rate was that they  
19 were financially stable and well managed, correct?

20 A. No. I think I said that they had to pass certain  
21 credit tests.

22 Q. Well, let me ask you --

23 A. Financially stable and well managed is a test for  
24 financial holding company status.

25 Q. I understand that, but all I can do is get your

1 testimony. When you say that the primary dealers had to  
2 pass some credit test, does that mean that they had to  
3 pass tests that would lead you to conclude that they  
4 were financially stable?

5 A. That they were creditworthy, yes.

6 Q. Creditworthy. And did you also have to conclude  
7 that a primary dealer was well managed?

8 A. I don't believe so.

9 Q. So, you didn't monitor the way the primary  
10 dealers were managed at all. Is that your testimony?

11 A. That's correct.

12 Q. Did you have to conclude that the primary dealer  
13 was an institution with integrity?

14 A. No. We were treating counter -- we were treating  
15 primary dealers as counterparties, not as their  
16 supervisor.

17 Q. Let me hand you, if I could, the rough transcript  
18 from yesterday, and I am just going to direct your  
19 attention now to -- now, the rough transcript is not an  
20 official transcript and it is not free from possible  
21 corrections, but it may give you a sense of your  
22 testimony again, and I just want to ask you about  
23 something that you said about primary dealers.

24 MR. GARDNER: Your Honor, just so we have some  
25 clarification, is he trying to refresh the witness'

1 recollection? I'm sorry, I'm just not clear for what  
2 purpose we are using the draft transcript from  
3 yesterday.

4 THE COURT: It sounds like it. I think so.

5 MR. BOIES: Yeah, it is on the line between  
6 refreshing recollection and impeachment, Your Honor, but  
7 it's one or the other or both.

8 THE COURT: Okay.

9 BY MR. BOIES:

10 Q. Let me ask you to look at pages 138 and 139, and  
11 the portion I'm particularly interested in is on page  
12 139, beginning at line 4, but I want you to look at the  
13 preceding portion from 138, line 16 on, so that it's  
14 clear that what you're talking about is what are the  
15 conditions for an institution to be eligible for access  
16 to the primary dealer credit facility.

17 A. Yes.

18 Q. And in the portion that is recorded on page 139  
19 at line 4, in response to a question of "What were the  
20 conditions that somebody had to satisfy in order to be  
21 eligible to access the primary dealer credit facility,"  
22 you say:

23 "ANSWER: In 2008 there would first be a review  
24 of whether there were legal actions against a primary  
25 dealer that would affect its integrity."

1 Do you see that?

2 A. Yes.

3 Q. And does that refresh your recollection that one  
4 of the conditions to be eligible for access to the  
5 primary dealer credit facility was an evaluation of the  
6 dealer's integrity?

7 A. Let me -- let me explain this since you've  
8 brought it to my attention, Mr. Boies. Here I'm  
9 speaking about the eligibility criteria to become a  
10 primary dealer. Countrywide Securities was already a  
11 primary dealer. So, it didn't have to -- it didn't have  
12 to satisfy our eligibility criteria for access to get  
13 the designation.

14 Once you have the designation, there's no  
15 continuing test to see if you continue to be well  
16 managed. There's all of the credit determinations, at  
17 least back then, and we wouldn't debar a primary dealer  
18 just because there was a legal action against that  
19 primary dealer, although if we were considering someone  
20 anew, someone could try to get through the door to get  
21 that status of primary dealer, at that point in time,  
22 they would look at these things. So, these are two  
23 different determinations, sir.

24 Q. Let me see if I understand it. In order to  
25 become a primary dealer in the first place, you have to

1 have, in addition to your credit, your integrity and  
2 your management evaluated, but once you become a primary  
3 dealer, then the only thing that would terminate that is  
4 something related to the company's creditworthiness. Is  
5 that fair?

6 A. The creditworthiness. A case in point was  
7 MF Global, which was a primary dealer and then was  
8 terminated. So, there are events that can occur, but  
9 because of the stigmatizing effect of taking away the  
10 designation, it's a higher standard than the standard to  
11 get -- to get the designation to begin with.

12 Q. Was MF Global terminated for credit reasons?

13 A. Yes.

14 Q. Then let me go back to my question. As I  
15 understand it, you evaluate integrity and management as  
16 well as credit in order to get somebody -- determine  
17 whether they can become a primary dealer, but once they  
18 are a primary dealer, the only thing that will terminate  
19 them is a credit question. Is that true?

20 A. Not the only thing. Another case from the past  
21 that you may remember, Mr. Boies, is Salomon Brothers,  
22 which was a primary dealer that was suspended after it  
23 was involved in a trading scandal involving Paul Mozer.

24 It's a high bar. It's very difficult for the Fed  
25 to take away the designation because that could be a

1 death sentence. So, once you become a primary dealer,  
2 the standard for losing that designation is higher than  
3 it is simply to enter.

4 Q. Let me try one more time. Can you think of any  
5 other reasons why primary dealers are terminated, other  
6 than for credit reasons or because they're really bad  
7 actors?

8 A. Connected with criminal conduct, perhaps.

9 Q. Yeah, something like that.

10 A. You know, I have an imaginative mind. There can  
11 always be other things, but it has to be behavior that  
12 involves significant culpability, at least back then.  
13 We've changed the policy between this period of time and  
14 today, and the standard now is a little more relaxed  
15 than it was back then.

16 Q. By "relaxed," you --

17 A. Meaning it's easier, at least in theory, to take  
18 action against a primary dealer.

19 Q. With respect to creditworthiness, am I correct  
20 that the standard for creditworthiness is the same  
21 whether you're looking at eligibility to become a  
22 primary dealer or eligibility to continue to be a  
23 primary dealer? In either case, you've got to meet a  
24 certain standard of creditworthiness?

25 A. Yes.

1           Q. But with respect to the area of management  
2 capabilities and integrity, the standard to become a  
3 primary dealer in the first place is considerably higher  
4 than the standard to continue to be a primary dealer  
5 once you have that designation. Is that correct?

6           A. I think that's a fair characterization.

7           Q. Okay. Thank you for your clarification.

8           Now, focusing on just creditworthiness and --  
9 while we've been talking, Ms. Rutherford and others have  
10 found Plaintiffs' Trial Exhibit 1166, which is a news  
11 article from CNN that I would not offer in evidence, but  
12 I just show you to see if that helps refresh your  
13 recollection.

14           Your Honor, we only have one copy of it. With  
15 the Court's permission, I'll display it on the screen.

16           MR. GARDNER: That's okay. We can get ours in  
17 the binder, too.

18           MR. BOIES: I'm handing this one to the witness.

19           MR. GARDNER: Again, if we're just refreshing  
20 recollection, it would probably inappropriate to publish  
21 it on the screen anyway.

22           MR. BOIES: Well, I just wanted the Court to be  
23 able to see it, too.

24           MR. GARDNER: Well, if we're refreshing  
25 recollection, isn't the issue just whether he has a

1 recollection or not? Show him the document and see if  
2 it does.

3 BY MR. BOIES:

4 Q. Does that news article refresh your recollection  
5 as to when Bank of America acquired Countrywide?

6 A. First --

7 Q. Excuse me. Just one minute. Can I see  
8 Plaintiffs' Trial Exhibit 1167?

9 Let me ask you to look at Plaintiffs' Trial  
10 Exhibit 1167 at the same time. This is a Bloomberg  
11 article, also, and see if the two of them, in  
12 combination, refresh your recollection as to the timing  
13 of the Bank of America acquisition of Countrywide.

14 A. (Document review.)

15 MR. BOIES: Actually, so the Court can see it, I  
16 will offer this document not for the truth of the matter  
17 asserted but for the fact that it's public information  
18 that Bank of America was acquiring Countrywide at or  
19 about the date of these articles.

20 THE COURT: Both of these exhibits or just one of  
21 them?

22 MR. BOIES: I'll offer them both.

23 THE COURT: Both of them, all right.

24 Any objection?

25 MR. GARDNER: Your Honor, frankly, I think it is

1 hearsay. I do hear it to be offered for the truth,  
2 that, you know, this is information that was provided to  
3 the public and it's truthful. If it's not being offered  
4 for the truth, I don't see what the relevance is. So,  
5 objection.

6 MR. BOIES: It's not being offered for the truth.  
7 What it's being offered for is the fact that the  
8 publication was made, and if the publication was made,  
9 the information was out there. It may be truthful, it  
10 may not be truthful, but the fact that the publication  
11 was made indicates that it was public knowledge about  
12 the acquisition.

13 MR. GARDNER: I still would object on relevance  
14 grounds.

15 THE COURT: I am going to allow it in.  
16 Plaintiffs' Trial Exhibits 1166 and 1167 are admitted.

17 (Plaintiff's Exhibit Number 1166 was admitted  
18 into evidence.)

19 (Plaintiff's Exhibit Number 1167 was admitted  
20 into evidence.)

21 BY MR. BOIES:

22 Q. To display this particular article on the screen  
23 is not particularly useful given the size of the type,  
24 but the headlines are there.

25 Have you finished reviewing the documents,

1 Mr. Baxter?

2 A. I have, Mr. Boies.

3 Q. And do these refresh your recollection as to when  
4 the Bank of America acquisition of Countrywide was  
5 announced?

6 A. It was -- certainly I was mistaken in my earlier  
7 testimony that I thought it was in 2009. I think the  
8 acquisition was announced -- and I am basing this on  
9 what I remember, having seen these two articles -- the  
10 acquisition was announced in January of 2008. I think  
11 it was consummated at a later period of time, perhaps as  
12 much as five or six months later.

13 Q. Now, at the time that Bank of America was  
14 announcing the acquisition of Countrywide, Countrywide  
15 was in significant financial trouble, correct, sir?

16 A. That's my understanding.

17 Q. And yet, nevertheless, Countrywide continued to  
18 be a primary dealer at that time, correct?

19 A. It continued to be a primary dealer, yes.

20 Q. And did there -- did there come a time when, as  
21 there obviously did, Lehman Brothers got into serious  
22 financial trouble?

23 A. Yes.

24 Q. And Lehman Brothers continued to be a primary  
25 dealer until after the parent had gone into bankruptcy,

1 correct?

2 A. Correct.

3 Q. And the broker-dealer subsidiary was only saved  
4 from bankruptcy by being acquired by Barclays, correct?

5 A. I don't mean to quarrel with your question. It  
6 was put into SIPC receivership on September 19th of  
7 2008. So, it did ultimately go into -- into an  
8 insolvency proceeding. That's the proceeding before  
9 Judge Peck at the Bankruptcy Court.

10 Q. Thank you.

11 So, on September 19th, Lehman Brothers'  
12 broker-dealer went into an insolvency proceeding. Is  
13 that it?

14 A. What happened on the 19th is Judge Peck approved  
15 a Section 363 sale of most of the assets and an  
16 assumption of a good deal of the liabilities of the U.S.  
17 broker-dealer, and then it was put into a SIPC  
18 receivership.

19 Q. And Lehman Brothers continued to be a  
20 broker-dealer until a few days after that, right?

21 A. I don't know the exact date it terminated its  
22 status as a broker dealer.

23 Q. Would September 22, 2008, sound about right?

24 A. I'd be speculating.

25 Q. You've also testified that there certainly came a

1 time when Bear Stearns began to have severe financial  
2 problems, correct?

3 A. Yes.

4 Q. And Bear Stearns continued to be a broker-dealer  
5 even after those severe financial problems arose,  
6 correct?

7 A. Yes.

8 Q. And did there come a time when the Federal  
9 Reserve concluded that Morgan Stanley had significant  
10 credit problems?

11 A. I don't recall that. You're referring to Morgan  
12 Stanley's broker-dealers, Mr. Boies, or the company more  
13 generally?

14 Q. Let's talk about both. Did there ever come a  
15 time when the Federal Reserve concluded that either  
16 Morgan Stanley or its broker-dealer, in particular, had  
17 significant credit or financial problems?

18 A. I don't remember a conclusion along those lines  
19 with respect to Morgan Stanley's primary dealer. I do  
20 remember, during the month of September 2008, that  
21 Morgan Stanley was facing significant financial  
22 challenges as a company.

23 Q. And did you believe that the significant  
24 financial challenges that Morgan Stanley was facing as a  
25 company affected its broker-dealer?

1           A. The problems of a parent will always have an  
2 impact on the subsidiary. I don't have a specific  
3 recollection that our primary dealer was in any way  
4 impaired.

5           Q. Did the fact that you recognized that Morgan  
6 Stanley was impaired from a credit or financial  
7 statement lead you to examine the financial stability of  
8 its broker-dealer?

9           A. I don't believe so.

10          Q. During 2008, other than possibly Countrywide and  
11 Bear Stearns and Lehman Brothers, was any broker-dealer  
12 terminated because of credit or financial concerns?

13          A. No broker -- no primary dealer, which is the  
14 designation we assign, lost its primary dealer  
15 designation during that period.

16          Q. The three that I just identified lost their  
17 primary dealer designation, correct? Countrywide,  
18 Lehman Brothers, Bear Stearns?

19          A. No.

20          Q. They did not?

21          A. They were -- they continued with their  
22 designation until the -- until the very end. We did  
23 not -- we did not withdraw the designation of primary  
24 dealer from any of those three broker-dealers.

25          Q. Okay. So, even those three didn't lose their

1 primary dealer --

2 A. That's correct. When a broker-dealer is wound  
3 up, as in the case of Lehman, when you can no longer  
4 function as a primary dealer, the loss of -- the loss of  
5 the status as a broker-dealer will automatically take  
6 away the status of the primary dealer. But we did  
7 not -- using our authority to designate broker-dealers  
8 as primary dealers, we did not revoke that designation  
9 for any of those three.

10 Q. Thank you. That's a helpful clarification.

11 And just to be sure I'm -- the record's clear, at  
12 no time in 2008 did you invoke any primary dealer status  
13 based on credit or financial concerns.

14 A. That's correct.

15 Q. Now, with respect to the TSLF, you said that was  
16 a facility where the Fed pledged treasuries to  
17 institutions in exchange for less desirable securities,  
18 correct? Do you recall that?

19 A. The pledge to us for the lending of Treasury  
20 securities was a pledge of collateral that the  
21 broker-dealers couldn't finance in the market. So, it  
22 was a pledge of collateral for the treasuries we were  
23 lending, and that pledge secured us in the event that  
24 the treasuries weren't returned when the borrowing  
25 matured.

1           Q. The thing that I'm trying to focus on right now  
2 is that I believe that your description of this was that  
3 the Fed was lending treasuries in exchange for less  
4 desirable securities. Do you recall that?

5           A. I don't remember the words I used exactly, but  
6 they were securities that were more difficult to  
7 finance, and that would ordinarily in the market mean  
8 they were less desirable.

9           Q. And what kind of haircut did the Fed give these  
10 less desirable securities that were being exchanged for  
11 treasuries pursuant to the TSLF?

12          A. I don't recall. I don't recall, Mr. Boies.

13          Q. Approximately?

14          A. I don't even have an approximate recollection.

15          Q. Is that something that you were aware of at the  
16 time?

17          A. I'm sure I was aware of it at the time.

18          Q. Now, each of these emergency credit facilities  
19 pursuant to 13(3) had to be approved by at least five  
20 members of the Board of Governors, correct?

21          A. That's what the statute requires.

22          Q. And I think you testified that that was true for  
23 the \$14 million loan that was made to AIG on September  
24 16th, correct?

25          A. It was \$14 billion.

1 Q. \$14 billion.

2 A. It's only a few zeroes, but it can make a big  
3 difference, Mr. Boies.

4 Q. It's three zeroes, and three zeroes can be a lot.

5 But in any event, this \$14 billion loan on  
6 September 16th had to be approved by five governors of  
7 the Federal Reserve, right?

8 A. That's correct.

9 Q. Now, there were, as you testified, additional  
10 extensions of credit prior to the signing of the  
11 September 22nd credit agreement, correct?

12 A. That's correct.

13 Q. And the five governors of the Federal Reserve  
14 have to approve each of those additional extensions of  
15 credit.

16 A. Yes.

17 Q. And were you present at any of the meetings at  
18 which they did so approve those extensions of credit?

19 A. I was present at the first -- and this is by  
20 telephone -- at the first authorization where we were  
21 authorized to lend to AIG. These interim arrangements  
22 were the subject of that first authorization, and all  
23 were eventually folded into the credit agreement that  
24 was signed on September 22nd.

25 Q. Let me see if I understand what you're saying.

1 There was a telephonic meeting of the Board of Governors  
2 at the time you authorized the \$14 billion credit on  
3 September 16th. Is that correct?

4 A. No, the \$85 billion extension of credit, and my  
5 understanding is the stopgap measures, each of these  
6 individual loans that were made to carry us to the day  
7 when we could culminate in the September 22nd agreement,  
8 they were all a part of the initial authorization.

9 Q. So, as you understand it, there was no additional  
10 authorization from the Board of Governors for the \$14  
11 billion extension of credit late on September 16th,  
12 other than the authorization of the \$85 billion  
13 revolving credit facility that had been made that  
14 afternoon. Is that correct?

15 A. That's -- that's my understanding. It may be  
16 incorrect, but that is my understanding.

17 Q. So, if you would look at Joint Exhibit 63, which  
18 is the minutes of a Board of Governors meeting, and that  
19 is the first exhibit in our book. This is a document  
20 we've looked at a number of times, and it is your  
21 testimony that, as far as you understand, this was the  
22 only authorization from the Board of Governors of the  
23 Federal Reserve that was made in connection with any of  
24 the extensions of credit that were provided to AIG  
25 beginning on September 16th and continuing through

1 September 22nd. Is that correct?

2 A. This resolution and the summary of terms for the  
3 senior bridge facility, which have the \$85 billion  
4 number within it, yes.

5 Q. And by the summary of terms, you're referring to  
6 pages 5 through 10 of Joint Exhibit 63, correct?

7 A. Yes. And, of course, those are referenced in the  
8 resolution in the second paragraph.

9 Q. Now, the Board of Governors authorization, or at  
10 least the materials that the Board of Governors had when  
11 it gave the authorization, had some differences in terms  
12 of what was finally included in the credit agreement,  
13 correct?

14 A. The credit agreement was more detailed than the  
15 summary of terms, yes.

16 Q. Well, you say it was more detailed. It was not  
17 just more detailed; it was different, correct, sir?

18 A. There were -- there were differences and there  
19 were lots more details, yes.

20 Q. Right. Now, the Board of Governors term sheet  
21 dealt with warrants, correct?

22 A. That's correct.

23 Q. And there was no mention of trust, right?

24 A. Correct.

25 Q. And the credit facility on 9/22 -- and I'll put

1 that in quotes -- had preferred stock, right?

2 A. Yes.

3 Q. And it had a trust.

4 A. Yes.

5 Q. Are you aware of other differences between what  
6 the Board of Governors considered on September 16th and  
7 what was contained in the credit facility of September  
8 22nd, not just more details, but something that was  
9 different?

10 A. Well, there were many more covenants. Specific  
11 differences, I don't recall.

12 Q. Now, the credit facility or agreement, September  
13 22nd, was never brought back to the Board of Governors  
14 for approval, correct?

15 A. I don't know.

16 Q. Insofar as you know, it was never brought back,  
17 correct?

18 A. I just don't know.

19 Q. Well, if they had brought it back, would you have  
20 expected to know?

21 A. I don't think so.

22 Q. The provision of voting convertible preferred  
23 stock, that term was never brought back to the Board of  
24 Governors, correct?

25 A. I don't know.

1 Q. Insofar as you know, it was never brought back.  
2 Is that fair?

3 A. I don't know one way or the other.

4 Q. Is that something that you would have expected to  
5 know if they had done that?

6 A. No.

7 Q. The trust that you say you were responsible for  
8 drafting, that trust was never brought back to the Board  
9 of Governors for approval, correct?

10 A. I don't know.

11 Q. If it had been brought back to the Board of  
12 Governors for approval, would you have expected to know  
13 about it?

14 A. No.

15 Q. Did anyone ever tell you that they had taken the  
16 trust or the credit agreement or the preferred stock  
17 provision back to the Board of Governors for approval?

18 A. No.

19 Q. Let me turn to the question of authority, and  
20 yesterday, Mr. Gardner directed your attention to  
21 testimony that you had given that the New York Fed could  
22 not hold equity in AIG and asked you what you meant by  
23 that, and you said that you meant the authority of a  
24 principal to an agent, not statutory authority. Do you  
25 recall that?

1           A.  Yes.

2           Q.  First, what did you mean by "the authority of a  
3 principal to an agent"?

4           A.  My -- my interpretation of Section 13,  
5 subparagraph (3), is that the Board of Governors, which  
6 would be the equivalent of a principal, has to authorize  
7 the lender, which would be the equivalent of an agent,  
8 before the lender can -- can have the power to lend.  
9 And so the question, apart from the statutory authority  
10 question, is had the Board of Governors authorized the  
11 lending Reserve Bank to make a loan of a particular  
12 kind.

13          Q.  Okay.

14          A.  If we hadn't -- if we hadn't, Mr. Boies, then we  
15 would have been taking action that was not authorized in  
16 the same sense that a principal authorizes an agent, and  
17 if an agent acts without the authority of the principal,  
18 then the agent could have responsibility or liability  
19 for its action.

20          Q.  Is it fair to say that -- perhaps among other  
21 things -- in order for the New York Fed to be authorized  
22 to make a 13(3) loan, two things have to be true:  
23 First, the loan has to be statutorily authorized, and  
24 second, the principal -- that is, the Board of  
25 Governors -- has to authorize the agent -- that is, the

1 New York Fed -- to make the loan?

2 A. No, and I'm going to give you an example,  
3 Mr. Boies. If the authority from the Board of Governors  
4 said to the lending Reserve Bank, "You are authorized to  
5 the fullest extent permitted by the statute," then you  
6 bring the -- the authorization and the statutory  
7 authority question become one. That wasn't what  
8 happened in this particular instance. The -- we had  
9 statutory authority, and then the authorization from the  
10 Board was more narrow.

11 Q. I understand that the principal may give the  
12 agent broad or narrow authority, but in order to be  
13 authorized to make the loan, you have to be both  
14 authorized by your principal, the Board of Governors,  
15 and that authorization has to be within the statutory  
16 authority, correct?

17 A. Correct, but the -- the authorization -- the  
18 specific authorization could be to do the maximum  
19 allowable by statute. I mean, I have seen those types  
20 of authorizations, not in the context of 13(3) but in  
21 other contexts.

22 Q. But you've never seen an authorization like that  
23 in the context of 13(3), have you?

24 A. Correct. I never have.

25 Q. And whereas it's always possible to conceive of a

1 broad authorization, the authorizations that you had  
2 seen for 13(3) have always been with respect to specific  
3 credit facilities, correct?

4 A. Yes.

5 Q. And in order for the New York Fed to be  
6 authorized to make the loan, you must receive  
7 authorization from your principal, the Board of  
8 Governors, which can be broad or narrow, and that  
9 authorization, broad or narrow, must be within the  
10 statutory authority of the Board of Governors to do,  
11 correct?

12 A. The Board of Governors and the Reserve Bank. We  
13 both have to abide by the statutory limits.

14 Q. Now, you said that you had reached certain  
15 conclusions concerning what I interpreted to be  
16 statutory authority on the basis, in part, of legal  
17 analysis done by your staff and in part based on your  
18 reading of some of the authorities yourself, correct?

19 A. Yes.

20 Q. And one of the -- I think the one authority you  
21 mentioned -- I'm not suggesting that's the only  
22 authority you read, but the one authority you mentioned  
23 was a Supreme Court case called Lucas, correct?

24 A. Yes.

25 Q. And that is a case which you've read?

1           A.   Yes.

2           Q.   And do you agree that to the extent Lucas is  
3 applicable, Lucas, today, continues to represent the  
4 law?

5           A.   Yes.

6           Q.   Now, with respect to the legal analysis done by  
7 your staff, other than documents that you discussed in  
8 your testimony, were there any written analyses done by  
9 your staff --

10           MR. GARDNER:   Your Honor --

11           BY MR. BOIES:

12           Q.   -- relating to statutory authority?

13           MR. GARDNER:   Your Honor, I am going to object  
14 now for the precise reason that we tried to show those  
15 in court yesterday through Mr. Baxter and got the  
16 objection from Mr. Boies that they were improperly  
17 redacted.  So, now it's Mr. Boies who's using this as a  
18 sword and shield.

19           MR. BOIES:   Your Honor, I haven't shown him any  
20 documents at all.  I've asked him a simple question.  
21 The answer can be yes or no.

22           MR. GARDNER:   His question was with respect to  
23 the legal analysis done by your staff, other than  
24 documents you discussed in your testimony, were there  
25 any written analyses done?  Those were the precise

1 analyses that I was trying to get in through Mr. Baxter  
2 yesterday, but Mr. Boies objected.

3 MR. BOIES: Your Honor, I don't think the  
4 objection is well taken, because I'm not offering those  
5 documents. I'm not even referencing those documents.  
6 I've asked a simple yes or no question.

7 But more importantly, I don't think it is  
8 desirable for speaking objections to be made during  
9 cross examination in the presence of the witness.

10 THE COURT: Mr. Gardner, we went through the  
11 redacted documents yesterday, and I gave you the  
12 reasoning behind the sustaining of the objections, and  
13 those documents are not in evidence. So, that's kind of  
14 the end of the discussion as far as I'm concerned on  
15 those documents.

16 And I think Mr. Boies is right, that we should  
17 not be making speaking objections during cross  
18 examination. Now, if you want -- I mean, if you want to  
19 discuss the matter further, we can excuse the witness.  
20 I'm not sure that's necessary, but --

21 MR. GARDNER: I would like to excuse the witness,  
22 Your Honor. I'd like to be heard.

23 THE COURT: All right.

24 THE WITNESS: Shall I go, Judge Wheeler?

25 THE COURT: Yes, I'm sorry to say, but --

1 THE WITNESS: Do I have to come back?

2 THE COURT: That might be a first.

3 (Witness excused.)

4 MR. GARDNER: To be sure, Your Honor --

5 THE COURT: Just wait a second.

6 MR. GARDNER: I am not trying to relitigate Your  
7 Honor's conclusion yesterday about the admissibility of  
8 those exhibits. I understand, that decision is what it  
9 is. What I'm objecting to now is Mr. Boies trying to  
10 use the exclusion of those exhibits as a sword. He has  
11 just asked the question, is there any written analysis  
12 that supports that conclusion? There absolutely is, and  
13 Mr. Baxter was prepared to testify to those exhibits.

14 THE COURT: Well, he can tell us yes or no if  
15 there is any, I suppose.

16 MR. GARDNER: Then don't we get into the whole  
17 best evidence issue that Mr. Boies objected to  
18 yesterday?

19 THE COURT: Look, this all begins with discovery  
20 order number six, which, in fact, had to do only with  
21 discovery; it did not have to do with admissibility.  
22 Then we come to yesterday, and the United States wants  
23 to use these documents as a sword to show the legality  
24 of its position in making the loan advances to AIG. I  
25 will not permit that.

1 MR. GARDNER: And just for the record, Your  
2 Honor, those portions that were redacted have nothing to  
3 do with the issue of legal authority under Section 13(3)  
4 to hold equity. That was the purpose yesterday.

5 Again, I'm not trying to relitigate that issue.  
6 We have made our record, and, you know, I respect the  
7 Court's conclusion, but we object to this line of  
8 questioning for those reasons.

9 THE COURT: You know, we had this same issue in  
10 the Salem Financial case, and I told the parties there  
11 basically what I'm saying here, is that we're not going  
12 to use redactions from documents and then have those  
13 documents become the basis for a contention of legality.  
14 You either use the whole document or none at all.

15 MR. GARDNER: I understand your position, Your  
16 Honor.

17 THE COURT: Okay.

18 (Witness present.)

19 THE COURT: Thank you for your patience,  
20 Mr. Baxter. You can probably guess what we were  
21 discussing.

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: Go ahead, Mr. Boies.

24 BY MR. BOIES:

25 Q. With respect to the legal analysis done by your

1 staff upon which you rely, were there any written  
2 analyses done by your staff, other than documents that  
3 have been shown to you in connection with your  
4 examination here at trial?

5 A. Including the documents that weren't admitted  
6 here?

7 Q. Including the documents that weren't admitted  
8 here.

9 A. Not that I recall.

10 Q. Okay. Now, I'd like to show you a binder of  
11 documents, if I can. This binder includes a number --

12 MR. GARDNER: I'm sorry, Your Honor. I have been  
13 told by Mr. Kiernan that this is confidential, and I am  
14 happy to have Mr. Kiernan speak to this issue.

15 THE COURT: Mr. Kiernan, do you know what this  
16 binder contains? Have you seen it?

17 MR. KIERNAN: Your Honor, I believe it's  
18 something colloquially known as "the Doomsday Book."

19 MR. BOIES: No.

20 MR. KIERNAN: No? I'm very sorry. I'm sorry, my  
21 error.

22 MR. BOIES: The Doomsday Book is coming, but it  
23 is not here yet.

24 MR. KIERNAN: Will you let me know?

25 THE WITNESS: Your Honor, if I can leave before

1 Doomsday, I would very much appreciate it.

2 THE COURT: They'll probably have another witness  
3 talk about Doomsday.

4 BY MR. BOIES:

5 Q. This is a collection of memoranda, some of which  
6 are in evidence, some of which are not -- and the ones  
7 that are not I will offer as we go through them -- that  
8 I want to ask you about, and my first question with  
9 respect to each of them is going to be whether or not  
10 you have seen it before.

11 Now, the first document is Plaintiffs' Trial  
12 Exhibit 2738, which I will offer.

13 A. I'm sorry, Mr. Boies, am I looking at this binder  
14 now or --

15 Q. Yes.

16 MR. GARDNER: No objection.

17 THE COURT: Plaintiffs' Trial Exhibit 2738 is  
18 admitted.

19 (Plaintiff's Exhibit Number 2738 was admitted  
20 into evidence.)

21 BY MR. BOIES:

22 Q. This is a memorandum from the general counsel of  
23 the Federal Open Market Committee of the Federal Reserve  
24 System dated July 10, 1968, and while I recognize this  
25 predates your tenure, this is a document cited in some

1 other more recent memoranda. And my first question to  
2 you is, have you seen this document before?

3 A. Your Honor, I have been a Federal Reserve lawyer  
4 for 35 years, so I'll answer to the best I can, but  
5 you're calling on 35 years of experience. I believe I  
6 have seen this memo before in my 35-year career.

7 Q. When was the last time you saw it? The most  
8 recent, I mean.

9 A. I believe -- and I'm straining on this -- I  
10 believe I looked at this before we constructed the term  
11 securities lending facility.

12 Q. And at the time that you were constructing the  
13 term --

14 A. Constructing.

15 Q. -- constructing, that's the -- what were the  
16 initials for that?

17 A. The TSLF.

18 Q. The TSLF.

19 At the time you were constructing the TSLF and  
20 you looked at this, were you looking at it from the  
21 standpoint of examining the authority to establish the  
22 TSLF?

23 A. Yes.

24 Q. And did you, in part, rely on this memorandum in  
25 terms of reaching your conclusions concerning the

1 authority to establish the TSLF?

2 A. In part.

3 Q. Let me ask you next to look at Plaintiffs'  
4 Exhibit 2737, which I would offer.

5 THE COURT: That's under Tab 2?

6 MR. BOIES: That's under Tab 2.

7 MR. GARDNER: No objection, Your Honor.

8 THE COURT: Plaintiffs' Trial Exhibit 2737 is  
9 admitted.

10 (Plaintiff's Exhibit Number 2737 was admitted  
11 into evidence.)

12 BY MR. BOIES:

13 Q. These are a series of draft documents that I  
14 would represent to you were, at least for the most part,  
15 prepared by the Federal Reserve Board. My first  
16 question is whether you have seen these materials or any  
17 of them.

18 A. (Document review.) I believe the first time that  
19 I've seen any of these documents is today.

20 Q. Let me ask you to go to Tab 3, which is Joint  
21 Exhibit 13, which is already in evidence, and I would  
22 ask you whether you've ever seen that document before.

23 A. I don't have a specific recollection, Mr. Boies,  
24 but I may have seen this before.

25 Q. Is this a document that you relied, in whole or

1 in part, on in reaching any of the conclusions that you  
2 reached concerning the authority of the bank to make any  
3 13(3) loan?

4 A. This -- this document is not.

5 Q. Now, let me ask you to go to Tab 5. This is  
6 Plaintiffs' Trial Exhibit 1300, which I believe is  
7 exactly the same as Defendant's Exhibit 118, so I am not  
8 going to offer this. You've already testified about  
9 Defendant's Exhibit 118, and -- which represents an  
10 email from you to Mr. Geithner. Do you recall that?

11 A. Yes.

12 Q. The next exhibit, Tab 6, is Defendant's Exhibit  
13 155, and that is, I believe, a document that you  
14 previously discussed with Mr. Gardner and which was  
15 admitted into evidence. Do you recall that?

16 A. Yes.

17 MR. GARDNER: Your Honor, I don't believe DX 155  
18 has been admitted into evidence.

19 MR. BOIES: Okay.

20 MR. GARDNER: Actually, I'd have to --

21 MR. BOIES: Then I withdraw that.

22 MR. GARDNER: But we're happy to have it  
23 admitted.

24 MR. BOIES: I will with -- we will check that  
25 letter, whether it's been admitted or not, but I will

1 withdraw it in the meantime.

2 BY MR. BOIES:

3 Q. Let me ask you to look next at Plaintiffs' Trial  
4 Exhibit -- behind Tab 9, Plaintiffs' Trial Exhibit 70,  
5 which I believe is already in evidence. Is this a  
6 document that you have seen before?

7 A. Just give me one minute, Mr. Boies. (Document  
8 review.) The best I can recall, this is the first time  
9 I've seen this particular document.

10 Q. Okay. Now, let me ask you to look at Defendant's  
11 Exhibit 394, which is behind Tab 10. I would ask you,  
12 is that a document you've seen before?

13 A. To the best of my recollection, the first time  
14 I've seen this is now.

15 Q. Okay. Let me ask you to go to Tab 13. This is a  
16 document with handwriting on it. Let me pass that  
17 document.

18 Now, let me ask you to go to Tab 20, Plaintiffs'  
19 Trial Exhibit 336. Is this a document you've seen  
20 before?

21 A. No.

22 Q. I would offer Plaintiffs' Trial Exhibit 336,  
23 which I understand is not in evidence.

24 MR. GARDNER: I am going to object, Your Honor,  
25 on the basis of foundation.

1 THE COURT: I'm sorry?

2 MR. GARDNER: I am objecting on the basis of  
3 foundation, and I have a very specific foundation  
4 objection, that Mr. Alvarez has already testified. He's  
5 identified as one of the authors, and it seems  
6 inappropriate to us to wait until he's off the stand and  
7 to use the document with a witness who isn't on the  
8 document.

9 THE COURT: Overruled.

10 So, you're saying this document is in evidence?

11 MR. GARDNER: I objected to it. Mr. Boies tried  
12 to move it into evidence just now, and I understood you  
13 to be overruling my objection.

14 THE COURT: I did, but you were telling me that  
15 you covered this with Mr. Alvarez?

16 MR. GARDNER: No. I'm saying that Mr. Alvarez,  
17 who is identified on this document, has already  
18 testified.

19 THE COURT: Oh, I see.

20 MR. GARDNER: He would have been the appropriate  
21 witness to lay a foundation with.

22 THE COURT: Okay. I will admit Plaintiffs' Trial  
23 Exhibit 336.

24 (Plaintiff's Exhibit Number 336 was admitted into  
25 evidence.)

1 BY MR. BOIES:

2 Q. Let me ask you to look at Tab 22, Plaintiffs'  
3 Trial Exhibit 1816. Do you see that? Which I would  
4 offer.

5 MR. GARDNER: Same foundation objection, Your  
6 Honor.

7 THE COURT: Overruled. I'll admit Plaintiffs'  
8 Trial Exhibit 1816.

9 (Plaintiff's Exhibit Number 1816 was admitted  
10 into evidence.)

11 BY MR. BOIES:

12 Q. Is this a document you've seen before?

13 A. I don't recall seeing this document.

14 Q. Okay. One of the things that you said about your  
15 legal analysis was that you had concluded that from a  
16 statutory standpoint, the Federal Reserve could take  
17 just about any type of consideration that modern man  
18 could imagine. Do you recall that?

19 A. I do recall that.

20 Q. And --

21 A. I think I also said within the bounds of the law.

22 Q. Well, I --

23 A. I hope I did.

24 Q. That was going to be my next question. Within  
25 the bounds of 13(3), as you understand it, is there any

1 kind of consideration or compensation for a 13(3) loan  
2 that the Federal Reserve System is not authorized to  
3 demand?

4 A. I would think contraband of some sort we would  
5 not be able to accept.

6 Q. Is there any kind of consideration or  
7 compensation, other than contraband, that you believe  
8 the Federal Reserve System is not authorized to demand  
9 for a 13(3) loan?

10 A. What -- I -- I can't imagine something other than  
11 contraband and other than would be precluded by law that  
12 we wouldn't take as consideration for a loan if we felt  
13 it was -- it was appropriate.

14 Q. What I'm asking you is what you think is  
15 precluded by law. You've indicated contraband, and I  
16 would agree that government agencies ought not to be  
17 trafficking in contraband. But is there any kind of  
18 compensation or consideration that you believe the  
19 Federal Reserve System is not authorized to demand for a  
20 13(3) loan, other than contraband?

21 A. One other situation would be to be sure that the  
22 consideration which is being paid by the borrower, the  
23 borrower has good title to, and there are situations  
24 where you get questioned about who owns particular  
25 property and particular property that's being offered as

1 consideration for a loan.

2 Q. That one of the things you want to be sure of is  
3 that the compensation or consideration that the borrower  
4 is offering is actually the borrower's.

5 A. That's correct. And that can arise in situations  
6 where you have a conglomerate where there are parts of  
7 the conglomerate that are in bankruptcy proceedings and  
8 parts that are not.

9 Q. Let me put my question this way: Other than  
10 contraband, is there any kind of property belonging to a  
11 potential borrower that you believe the Federal Reserve  
12 System is not authorized to demand, other than  
13 contraband?

14 A. No.

15 Q. Now, as you look at your statutory limitations,  
16 is there any limit on the amount of consideration or  
17 compensation that the Federal Reserve System is  
18 permitted, under the statute, to demand for a 13(3)  
19 loan?

20 A. No.

21 Q. As you look at your statutory limitations, is  
22 there any purpose that is off limits in terms of setting  
23 compensation or consideration for a 13(3) loan?

24 A. It's possible one could argue that under the  
25 Administrative Procedure Act you could have a review for

1 actions that are arbitrary and capricious or actions  
2 that are considered an abuse of discretion. I say  
3 possible; I know of no successful case along those  
4 lines, but I could envision that someone could contend  
5 that a particular lending was so -- was so  
6 extraordinarily egregious in its terms that -- that  
7 either it's arbitrary and capricious or it abuses the  
8 discretion of either the Board or the lending Reserve  
9 Bank.

10 Q. Focusing for the moment only on the Federal  
11 Reserve Act, as you understand the statutory authority  
12 of the Federal Reserve System, can the Federal Reserve  
13 System demand any kind of consideration and any amount  
14 of consideration for any purpose as compensation for a  
15 13(3) loan?

16 A. And subject to the limitations that we've already  
17 talked about and I've testified about, no.

18 Q. All right. And that had to do with --

19 A. Contraband and --

20 Q. -- contraband and making sure that --

21 A. -- making sure that property is owned by the  
22 borrower.

23 Q. Okay. Let me -- let me turn to the Walker  
24 litigation, which you talked to Mr. Gardner about.

25 A. Yes.

1 Q. And Mr. Walker asked you a number of questions --

2 A. Mr. Gardner, you mean, Mr. Boies? You said  
3 Mr. Walker.

4 Q. Oh, I apologize.

5 Now, Mr. Gardner questioned you about  
6 Mr. Walker's litigation. He asked you a number of  
7 questions about whether there had been any involvement  
8 in advice, drafting, participation in court, and in each  
9 of those cases you said, "None, to my knowledge." Do  
10 you recall that?

11 A. I do.

12 Q. Now, what I want to figure out, again, is what  
13 you meant by "None, to my knowledge." Do you mean that  
14 you're not aware of any or do you believe that -- or are  
15 you saying that you believe that you know that there  
16 were none?

17 A. I -- I can remember no personal involvement  
18 myself, but I also know, Mr. Boies, that there were a  
19 large number of lawyers who were working, both from  
20 outside counsel and from my own staff, on AIG at around  
21 this time. So, I didn't want to speak for everyone,  
22 because I don't know exactly what everyone was doing.  
23 But to the best of my knowledge, we were not involved in  
24 the Walker litigation.

25 Q. Well, first of all, the Fed was monitoring the

1 Walker litigation, correct?

2 A. I can't speak for what the Fed was doing in its  
3 entirety. I don't know what everyone was doing.

4 Q. But insofar as you are aware, was someone  
5 representing the United States monitoring the Walker  
6 litigation?

7 A. I don't know.

8 Q. Let me ask you to look at page 192 of your  
9 30(b)(6) deposition, lines 5 through 12.

10 "QUESTION: Was someone representing the United  
11 States responsible for monitoring the Walker lawsuit? I  
12 understand that you weren't a party, but I'm now simply  
13 asking, did you have a representative that was  
14 monitoring that lawsuit?

15 "ANSWER: My recollection is Davis Polk was  
16 monitoring that litigation."

17 Do you see that?

18 A. Yes.

19 Q. And Davis Polk was outside counsel for the New  
20 York Fed, correct?

21 A. Yes.

22 Q. Now, let me ask you also to look at Plaintiffs'  
23 Trial Exhibit 349, which I would offer. This is one we  
24 need to hand up. Oh, 349 is actually in the book that I  
25 last handed you.

1           MR. GARDNER: Mr. Boies, do you know which tab it  
2 is in the book?

3           MR. BOIES: Well, it's behind -- I think that's  
4 actually not the right exhibit you're looking at. Let  
5 me come back to that.

6           THE COURT: Should we take a short break?

7           MR. BOIES: Yes, Your Honor. That would be  
8 helpful.

9           THE COURT: Let's take our afternoon break. We  
10 will reconvene at 3:30.

11           (Court in recess.)

12           THE COURT: All right, let's go ahead.

13           MR. BOIES: Thank you, Your Honor. I have found  
14 the exhibit that I had in mind, which is Plaintiffs'  
15 Trial Exhibit 376, which I hand to the witness and which  
16 I would offer.

17           MR. GARDNER: No objection.

18           THE COURT: Plaintiffs' Trial Exhibit 376 is  
19 admitted.

20           (Plaintiff's Exhibit Number 376 was admitted into  
21 evidence.)

22           BY MR. BOIES:

23           Q. Is this a document that you received on or about  
24 November 20th, 2008, from Marshall Huebner, enclosing a  
25 proposed settlement of the Walker lawsuit?

1 A. I don't remember.

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

4 A. I don't.

5 Q. Let me -- let me turn next to Plaintiffs' Trial  
6 Exhibit 385, which I would offer.

7 A. Thank you.

8 MR. GARDNER: No objection.

9 THE COURT: Plaintiffs' Trial Exhibit 385 is  
10 admitted.

11 (Plaintiff's Exhibit Number 385 was admitted into  
12 evidence.)

13 BY MR. BOIES:

14 Q. This is an agenda and a presentation from a  
15 Federal Reserve Bank of New York investment committee  
16 meeting from December 5, 2008, correct, sir?

17 A. I don't know. I wasn't on the investment  
18 committee.

19 Q. Are you aware of this meeting at all?

20 A. I have no knowledge of this meeting.

21 Q. This is dated December 5, 2008. Do you see that?

22 A. I see what the document says.

23 Q. And that is the day before the email from  
24 Ms. Kelly requesting the Fed's help in negotiating with  
25 counterparties with respect to the CDSs that were the

1 subject of ML III. Do you recall that?

2 A. I don't believe that's right.

3 MR. GARDNER: Objection. Misstates facts in  
4 evidence, Your Honor.

5 MR. BOIES: You don't believe that's right?

6 MR. GARDNER: Misstates facts in evidence, Your  
7 Honor.

8 THE COURT: Well, overruled. I'll let it stand.

9 THE WITNESS: Your Honor, the -- that can't be.  
10 The -- the date of this is well after the email from  
11 Ms. Kelly.

12 THE COURT: All right. Tell Mr. Boies.

13 THE WITNESS: Okay. Mr. Boies, you're wrong.

14 BY MR. BOIES:

15 Q. And as you say it -- and that's the great of  
16 advantage you talking to me. As you say it, I see that  
17 I have the date wrong. This is December 2008, correct?

18 A. I'm glad I'm not alone on that, Mr. Boies.

19 Q. Okay. So, this was something that was about a  
20 month after the ML III transaction. Is that correct?

21 A. This is about two months after the date of the  
22 Stasia Kelly email, and I'm just going by the date on  
23 the document. I don't know anything about this meeting.

24 Q. The Stasia Kelly document -- I could be wrong  
25 again, but is it your recollection that that was in

1 October?

2 A. Between the two of us, we're probably both wrong.  
3 I think it was late October.

4 Q. Okay.

5 A. Early November maybe.

6 Q. Yes, early November, I think. Okay. Let me --  
7 if you haven't seen this document, we'll pass it.

8 Let me ask you to look at Plaintiffs' Trial  
9 Exhibit 349, which is the document I tried to get you to  
10 look at in the wrong context a few minutes ago. That's  
11 in the book that we used yesterday, Plaintiffs' Exhibit  
12 349, which I would offer.

13 MR. GARDNER: Objection on foundation grounds,  
14 Your Honor.

15 MR. BOIES: Your Honor, this is a document from  
16 the Federal Reserve. It includes documents to and from  
17 people working for Mr. Baxter.

18 THE WITNESS: Are we talking about 349,  
19 Mr. Boies?

20 BY MR. BOIES:

21 Q. Yes.

22 A. Because the people I see in what I know of as  
23 Plaintiffs' 349 don't work for me.

24 Q. Are these people that work in the Federal Reserve  
25 Board of Governors Legal Department?

1           A. This is the email from John Knepper to Steve  
2           Albrecht --

3           Q. Yeah.

4           A. -- Tony Ryan, these are all Treasury officials.

5           Q. I thought Rich Ashton was a lawyer who worked for  
6           Mr. Alvarez.

7           A. Looking down to the email below, which is from  
8           Mr. Ashton to Steve Albrecht, that's from a lawyer --  
9           the deputy general counsel of the Board of Governors to  
10          a lawyer at the Treasury Department.

11          Q. And the lawyer at the Treasury Department is  
12          Stephen Albrecht. Is that correct?

13          A. I know him as a lawyer at the Treasury at the  
14          time.

15                 MR. BOIES: Your Honor, I would offer the  
16          document, please.

17                 MR. GARDNER: Objection. There is no foundation.  
18          He's not on the exhibit.

19                 THE COURT: I am going to accept it as a Federal  
20          Reserve document relating to AIG. I think it's okay to  
21          examine on it. So, Plaintiffs' Trial Exhibit 349 is  
22          admitted.

23                         (Plaintiffs' Exhibit Number 349 was admitted into  
24          evidence.)

25                 BY MR. BOIES:

1 Q. Let me direct your attention to the email, which  
2 is the middle email from Stephen Albrecht to Tony Ryan,  
3 James Lambright, Matthew Rutherford, Stafford Via, John  
4 Knepper, dated November 6, 2008, at 5:42 p.m. Do you  
5 see that?

6 A. This is the first time I have seen this document.  
7 Give me a moment, Mr. Boies, to look at it.

8 Q. Take your time, and when you have finished, let  
9 me know.

10 A. (Document review.) I'm ready.

11 Q. If you go to the third sentence, it says, "We" --  
12 and this is from somebody at Treasury, correct?

13 A. To other Treasury officials, yes.

14 Q. It says, "We originally pushed for voting rights  
15 to help fend off the shareholder attempts to 'reclaim'  
16 the company." Do you see that?

17 A. I see what the words say, yes.

18 Q. Was that view of Treasury ever conveyed to you?

19 A. No.

20 Q. The first sentence there says, "FRB" -- and that  
21 stands for the Federal Reserve Board, correct?

22 A. It says, in parentheses -- and I'm just reading  
23 the document -- "not New York," so that's what I would  
24 infer.

25 Q. So, the Federal Reserve Board but not the Federal

1 Reserve Bank of New York "is revisiting the voting terms  
2 of the trust stock, wanting to reduce the voting  
3 rights." Do you see that?

4 A. I see what the words say.

5 Q. And this is dated November 6th, 2008. Do you see  
6 that?

7 A. I see that.

8 Q. Were you aware in or about November of 2008 that  
9 the Federal Reserve Board, or people there, wanted to  
10 reduce the voting rights of the AIG preferred stock?

11 A. No.

12 Q. Let me turn to the reverse stock split that  
13 Mr. Gardner asked you about.

14 A. Yes.

15 Q. And you said the reverse stock split, as you  
16 understand it, was something that was proposed by AIG  
17 that the Federal Reserve didn't have anything to do with  
18 and that the purpose was to try to avoid being delisted.

19 A. Yes.

20 Q. Are you aware of any purpose of the reverse stock  
21 split, other than to avoid delisting?

22 A. No.

23 Q. Are you aware that the reverse stock split was 20  
24 to 1?

25 A. That's the ratio that I remember.

1 Q. And are you aware that the reverse stock split  
2 applied to issued shares but not authorized shares?

3 A. I recall that.

4 Q. Are you aware of any other reverse stock split,  
5 in your long experience, that applied to issued shares  
6 but not authorized shares?

7 MR. GARDNER: Objection. Lack of foundation.

8 THE COURT: Overruled.

9 THE WITNESS: There was another situation that I  
10 was involved in at the time involving Citigroup, which  
11 was also looking to be -- to avoid delisting, and I  
12 don't remember whether there was a difference there  
13 between authorized and issued. So, you know, I could be  
14 confusing these two situations. I don't have a specific  
15 recollection of one or the other.

16 BY MR. BOIES:

17 Q. Do you have a specific recollection that the AIG  
18 reverse stock split applied to issued but not authorized  
19 shares?

20 A. I believe so, if I'm not mistaking it with the  
21 Citigroup situation.

22 Q. If what?

23 A. If I'm not mistaking it with the Citigroup  
24 situation.

25 Q. What was the Citigroup situation?

1           A. It was a similar situation where there was  
2 concern about delisting because of stock price, and a  
3 reverse stock split was done.

4           Q. If you had a reverse stock split that applied to  
5 both authorized and issued shares, you would solve the  
6 delisting problem, correct?

7           A. I don't remember any further details, Mr. Boies.

8           Q. But you know enough just from your knowledge from  
9 all the time you've been at the New York Fed that if you  
10 reverse stock split authorized as well as issued shares,  
11 that would now change the market price of the stock,  
12 which is what is involved in delisting, correct, sir?

13          A. I don't pretend to be an expert on reverse stock  
14 splits.

15          Q. Well, is it your testimony that, as you sit here  
16 now, you can't tell me whether or not applying a reverse  
17 stock split to both authorized and issued shares would  
18 solve the delisting problem?

19          A. I don't know.

20          Q. Do you know that there were not enough common  
21 shares before the reverse stock split to permit the  
22 trust to change their preferred stock into common stock?

23          A. I don't remember. I don't know.

24          Q. Did you ever try to find that out?

25          A. No.

1 Q. Did you ever try to find out whether the  
2 preferred stock could be converted or exchanged into  
3 common stock?

4 A. Not that I recall.

5 Q. You also testified that -- I think, and I don't  
6 remember, I can't tell from my notes whether it was you  
7 or the Fed -- had no involvement in drafting the charter  
8 amendment related to the reverse stock split. Is that  
9 correct?

10 A. Certainly I had no involvement.

11 Q. Do you know whether other people representing the  
12 Federal Reserve did?

13 A. I wouldn't speak for all of the Federal Reserve.

14 Q. Did you ever have any discussions with anyone  
15 representing the Government about who was actually  
16 involved in drafting the charter amendments?

17 A. Not that I recall.

18 Q. Let me turn to Joint Exhibit 107, which is the  
19 revolving credit agreement that Mr. Gardner asked you  
20 about. First --

21 A. Just give me one moment, please. Joint Exhibit  
22 107?

23 Q. Yes.

24 A. I'm sorry. I've got it now.

25 Q. And this is the revolving credit agreement,

1 correct?

2 A. Yes.

3 Q. When, as you understand it, was the AIG board  
4 first given a copy of this agreement, as drafted?

5 A. I don't know.

6 Q. Was it before or after the board meeting the  
7 evening of September 21, 2008?

8 A. I don't know.

9 Q. At the time that the board considered whether to  
10 authorize AIG to enter into the revolving credit  
11 agreement, did a draft of the credit agreement exist?

12 A. I don't know.

13 Q. Who was responsible for drafting the credit  
14 agreement?

15 A. Brad Smith of Davis Polk was the principal lawyer  
16 responsible, working with my staff and staff from --  
17 other staff from Davis Polk, and also lawyers from AIG I  
18 believe saw the versions of the credit agreement.

19 Q. Now, you made quite clear the other day that  
20 Davis Polk was just outside counsel and they worked for  
21 you. Is that correct?

22 A. Yes.

23 Q. So, were you responsible for the credit  
24 agreement?

25 A. I was responsible for the legal terms, yes.

1 Q. So, as the person responsible for the legal  
2 terms, I ask you again, when was the first time that a  
3 draft of the credit agreement was prepared?

4 A. Prepared by the Fed or prepared for use by AIG's  
5 board?

6 Q. Either one. When was the first time that there  
7 was a draft of the credit agreement?

8 A. I don't remember when the first draft was  
9 created.

10 Q. Was it before or after the AIG board meeting on  
11 September 21st?

12 A. It would have been before.

13 Q. And was that draft presented to the AIG board?

14 A. I don't know.

15 Q. Did you make any effort to be sure that whatever  
16 draft of the credit agreement existed as of the time of  
17 the board meeting was given to the AIG board?

18 A. No.

19 Q. Do you know if anyone --

20 A. I assume AIG's lawyers did.

21 Q. Did AIG's lawyers have the most recent draft of  
22 the credit agreement?

23 A. As far as I know, they did.

24 Q. When you say as far as you know, what draft did  
25 they have?

1           A. I believe when they presented it -- and this is a  
2 belief, I don't know -- but I believe they had the final  
3 version that was agreed to by the lawyers, which they  
4 would have presented to the AIG board.

5           Q. Okay. So, you believe that the final version of  
6 the credit agreement, as agreed to by the lawyers,  
7 existed at the time of the AIG board meeting, correct?

8           A. I don't know.

9           Q. That's -- did you just tell me that that was your  
10 belief?

11          A. Yes. I don't know, but that is my belief.

12          Q. Okay. You believe that a final agreement  
13 existed, but you don't know.

14          A. I don't know what the AIG board had before it.

15          Q. No, my question is different. My question is,  
16 other than just a general belief, do you have any basis  
17 for knowing that a final draft of the credit agreement  
18 existed at the time of the AIG board meeting on  
19 September 21?

20          A. I don't know.

21          Q. Were any changes made to the credit agreement  
22 after the AIG board meeting of September 21?

23          A. I don't know.

24          Q. Would any -- would any changes to the credit  
25 agreement after the AIG board meeting have to be changes

1 that were reviewed with you as the person ultimately  
2 responsible?

3 A. I don't have any idea what happened at the AIG  
4 board meeting. I don't know what went on within AIG. I  
5 only control what goes on -- and even then I have  
6 sometimes difficulties -- in my organization.

7 Q. My question doesn't have to do with what went on  
8 at the AIG board meeting.

9 A. Then I don't understand your question.

10 Q. Okay. There was an AIG board meeting on  
11 September 21st. After that board meeting was over, were  
12 there any changes made to the credit agreement?

13 A. I don't know.

14 Q. If there had been any changes made to the credit  
15 agreement after the end of the AIG board meeting, would  
16 those have been changes that would have had to have been  
17 brought to you as the person responsible?

18 A. I had to approve the final document. When the  
19 final document was created, I don't know. I don't know  
20 when that happened, at what point in time.

21 Q. When did you approve the final document?

22 A. Sometime on September 22nd when it was executed.

23 Q. Is it fair to say that you had not approved the  
24 final document, the final credit agreement, prior to the  
25 time of the AIG board meeting on September 21st?

1           A. No, I don't think that's fair at all. I don't  
2 know what happened at the AIG board meeting.

3           Q. I'm not asking you what happened at the AIG board  
4 meeting. I'm just asking you when you did --

5           A. Do you know when it was, sir? Can you tell me  
6 the point in time when the AIG board met?

7           Q. The AIG board met, my recollection is -- and  
8 there are lots of lawyers in here on both sides that can  
9 check me -- but started to meet around 6:30 in the  
10 evening on September 21st.

11          A. And when did it conclude?

12          Q. I don't know when it concluded.

13          A. I don't know either, Mr. Boies.

14          Q. But my recollection is that it was sometime  
15 around 8:00 or something in that neighborhood. Let me  
16 just use an arbitrary time of 9:00 in the evening on  
17 September 21st. Was there a final draft of the credit  
18 agreement that you had approved by 9:00 p.m. on  
19 September 21st?

20          A. I don't know.

21          Q. Where were you when you approved the final draft  
22 of the credit agreement?

23          A. I don't know.

24          Q. Was anybody with you?

25          A. I don't know.

1 Q. To whom did you convey your approval of the final  
2 draft of the credit agreement?

3 A. I would have certainly told the signer, Sarah  
4 Dahlgren, that I approved of the final.

5 Q. When did you tell Sarah Dahlgren that you had  
6 approved the final draft of the credit agreement?

7 A. As best I can recall, it would be sometime on  
8 September 22nd.

9 Q. Prior to the time that you told Sarah Dahlgren  
10 that, had you told anyone else that you had approved the  
11 final draft of the credit agreement?

12 A. I don't remember.

13 Q. When, on the 22nd, did you tell Sarah Dahlgren  
14 that you had approved the final draft of the credit  
15 agreement?

16 A. Before she signed it.

17 Q. Can you get any more specific than that?

18 A. I don't remember.

19 Q. Did she sign it in the afternoon or in the  
20 morning?

21 A. Don't remember.

22 Q. Let me ask you to look at Defendant's Exhibit  
23 528. I just have one question. This is a document that  
24 Mr. Gardner talked to you about.

25 A. I'm sorry, Your Honor. I'm getting lost in my

1 binders here.

2 I'm sorry, Mr. Boies, what number is it?

3 Q. I think this is in their white book.

4 A. Which number again?

5 Q. It's Defendant's Exhibit 528.

6 MR. GARDNER: Your Honor, I believe it might be  
7 one that was handed up and that's why it's not in his  
8 folder. Can I maybe facilitate this?

9 THE COURT: Sure.

10 MR. GARDNER: Thanks.

11 THE WITNESS: I've found it.

12 BY MR. BOIES:

13 Q. Mr. Gardner asked you about the email that's on  
14 the second page of the exhibit at the bottom --

15 A. Yes.

16 Q. -- where I think this is Mr. Ashton writing to  
17 you, correct?

18 A. Yes.

19 Q. And in the -- he says, "Scott asked me to get  
20 back to you on the AIG contract. Based on conversations  
21 with the Chairman and the Vice Chairman, we are OK if  
22 any stock we get goes to a trust of which the Treasury  
23 is the sole beneficiary." Do you see that?

24 A. I do.

25 Q. When Mr. Ashton said "any stock we get goes to a

1 trust," who did you understand the "we" referred to?

2 A. My understanding is that was a use encompassing  
3 the broader Federal Reserve.

4 Q. Let me ask you to look next at Joint Exhibit 172,  
5 which is the AIG credit facility trust agreement dated  
6 as of January 16, 2009.

7 A. Okay. My binder doesn't contain the entire trust  
8 document, but a part of it.

9 Q. This is which binder?

10 A. JX 172, and it's in the Boies Schiller binder.

11 Q. I think if you look in the United States binder,  
12 the white binder --

13 A. Okay.

14 Q. -- because I think Mr. Gardner used this with  
15 you.

16 MR. GARDNER: And I believe I saw it when I went  
17 up there. I believe it is on the far right side of your  
18 desk.

19 THE COURT: It's in the white binder.

20 THE WITNESS: In the white binder or loose?

21 THE COURT: It's in the white binder.

22 MR. BOIES: The white binder.

23 MR. GARDNER: I think I took it out of the binder  
24 and handed it to him. That's why -- I believe he has it  
25 now.

1 THE WITNESS: I can't hear you, Mr. Gardner.

2 MR. GARDNER: I'm sorry. Do you have it now?

3 THE WITNESS: No. I'm searching for it.

4 MR. GARDNER: Oh, I believe it was -- we need  
5 more paper in this case. Here you go, another copy.

6 BY MR. BOIES:

7 Q. Mr. Gardner directed your attention to Section  
8 2.04(d). Do you recall that? It's on page 7 of the  
9 trust agreement, page 10 of the exhibit.

10 A. Yes.

11 Q. And that begins, "In exercising their discretion  
12 hereunder with respect to the Trust Stock, the Trustees  
13 are advised that it is the Federal Reserve Bank of New  
14 York's view that (x) maximizing the Company's ability to  
15 honor its commitments to, and repay all amounts owed to,  
16 the Federal Reserve Bank of New York or the Treasury  
17 Department and (y) the Company being managed in a manner  
18 that will not disrupt financial market conditions, are  
19 both consistent with maximizing the value of the Trust  
20 Stock."

21 Do you see that?

22 A. Yes.

23 Q. And he directed your attention to the next  
24 statement that referred to "those nonbinding views."

25 A. Yes.

1 Q. If those views were intended to be nonbinding,  
2 why were they included?

3 A. Sometimes in agreements you put in terms that  
4 lawyers would characterize are precatory, and they're  
5 suggestive, and it was felt by the Federal Reserve that  
6 we should express our view in the document, and  
7 understanding that our view which we were expressing in  
8 the document wouldn't be binding on the trustees.

9 Q. So, it's your testimony that these views were  
10 intended to be precatory or suggestive. Is that  
11 correct?

12 A. Yes.

13 Q. Now, at the end of this paragraph, it says,  
14 "provided, however, that" -- well, let me focus on that  
15 whole sentence.

16 After the -- what you have described as the  
17 precatory or suggestive views that were described, it  
18 goes on to say, "With those nonbinding views in mind,  
19 with respect to any and all matters...the Trustees will  
20 have full discretionary power to Vote the Trust  
21 Stock..." Do you see that?

22 A. Yes.

23 Q. Then the sentence doesn't end, though. It says  
24 (as read): "Provided, however, that the Trustees shall  
25 exercise all such Voting and other similar right with

1 respect to the Trust Stock in accordance with the  
2 Applicable Standard of Care (as defined in Section  
3 3.03(a) hereof)." Do you see that?

4 A. Yes.

5 Q. And let me go to that section, which is a section  
6 that Mr. Gardner did not direct your attention to. It's  
7 on page 15 of the exhibit, page 12 of the trust  
8 agreement.

9 A. Yes.

10 Q. And the standard of care includes, (as read),  
11 "acting in a good faith manner that the Trustee  
12 reasonably believes to be in accordance with the  
13 provisions of this Trust Agreement and in or not opposed  
14 to the best interests of the Treasury." Do you see  
15 that?

16 A. Yes.

17 Q. And did you understand that that language,  
18 perhaps as well as the fact that the Treasury was the  
19 beneficial owner, created a fiduciary duty of the  
20 trustees to the Treasury?

21 A. No. My understanding of that language is it  
22 created a duty on the part of the trustees to act in a  
23 manner that benefited all shareholders, Treasury and  
24 non-Treasury alike, the Treasury being the beneficiary,  
25 not the shareholder; but this was language that was

1 intended to say to the trustees, if they acted in the  
2 best interests of all shareholders, that satisfied one  
3 little (i), and that left only (ii), which was that the  
4 trustees had no reasonable cause to believe their  
5 conduct was unlawful.

6 Q. Now, you do recognize that the standard of care  
7 talks about acting in or not opposed to the best  
8 interests of the Treasury, correct, sir?

9 A. Right. And in the interests of all shareholders  
10 would not be opposed to the beneficiary of this trust.

11 Q. There is no mention of the shareholders in this  
12 paragraph, is there, sir?

13 A. Well, the corpus of what the -- what the trust  
14 owned was 79.9 percent of the voting shares of AIG.

15 Q. Let me see if I understand what you're saying.  
16 Are you saying that you thought that there was no chance  
17 that the interests of the Treasury and the interests of  
18 the minority shareholders would diverge, so that saying  
19 that the trustees had to act in the interests of the  
20 Treasury was like saying they had to act in the  
21 interests of all the shareholders?

22 A. This was a concern --

23 Q. That's a yes, no, or I don't know.

24 A. I can't answer it in that way. This was put into  
25 the trust agreement to address a concern that the

1 trustees and their counsel had raised, and this language  
2 was thought by, at least as I understood, the trustees  
3 and their counsel to satisfy a concern they might have  
4 for divergent interests between the Treasury and other  
5 shareholders.

6 Q. It is your testimony that this language was put  
7 in to address a concern that the trustees had about  
8 possible divergent interests between the Treasury and  
9 other shareholders?

10 A. My recollection of this language is this language  
11 was -- the standard of care was of great concern to the  
12 trustees and their counsel, and this language ultimately  
13 satisfied the trustees and their counsel.

14 Q. Is it your testimony that this language was put  
15 in to address a concern that the trustees had about  
16 possible diverging interests between the Treasury and  
17 other shareholders?

18 A. I don't know.

19 Q. Did anyone ever tell you, in words or in  
20 substance, that this language was put in to address a  
21 concern that the trustees had about possible diverging  
22 interests between the Treasury and other shareholders?

23 A. I don't remember.

24 Q. Did anyone ever tell you, in words or in  
25 substance, that the trustees were concerned about

1 possible diverging interests between the Treasury and  
2 other shareholders?

3 A. I don't remember.

4 Q. Did you ever believe that there were possible  
5 diverging interests between the Treasury and other  
6 shareholders with respect to how the trustees acted?

7 A. No.

8 Q. As far as you were concerned, would it have been  
9 satisfactory to substitute the word "AIG shareholders"  
10 for the word "Treasury" in Section 3.03(a)?

11 A. I don't remember ever thinking of that in the  
12 course of this discussion of the trust agreement.

13 MR. BOIES: May I have just one moment, Your  
14 Honor?

15 (Pause in the proceedings.)

16 MR. BOIES: I pass the witness, Your Honor.

17 THE COURT: All right.

18 Anything further, Mr. Gardner?

19 MR. GARDNER: Yes, just two very minor things,  
20 Your Honor. One is just a housekeeping matter --  
21 actually, three things, one of which is a housekeeping  
22 matter.

23 And I don't know what the Court's preference is,  
24 but I wanted to move, just to accompany the record  
25 Government's Demonstrative DXX 001 and DXX 002, not as

1 substantive evidence, just to accompany the record, so  
2 when the transcript is finalized, someone knows what we  
3 were talking about.

4 THE COURT: Can you make reduced copies over the  
5 weekend and provide them on Monday?

6 MR. GARDNER: I believe we actually have that  
7 ability, Your Honor.

8 THE COURT: Okay, that would be great.

9 MR. BOIES: And with the Court's permission, we  
10 will do that with respect to our demonstratives, too.

11 THE COURT: Very well.

12 RE CROSS EXAMINATION

13 BY MR. GARDNER:

14 Q. Good afternoon -- almost good evening --  
15 Mr. Baxter. This will be very quick.

16 I just wanted to give you the opportunity, you  
17 were on examination by Mr. Boies, asked a question about  
18 why it is that a counterparty to a CDS transaction might  
19 not accept par, and I believe your answer was cut off,  
20 and I wanted to give you the opportunity for you to be  
21 able to explain why you believe that a counterparty  
22 might not accept par.

23 A. Yes, and, Your Honor, I'm speculating on this. I  
24 don't know any specific piece of information, but if  
25 you -- if you look at the conclusion of how we ended up

1 with the \$6 billion premium and you assume that all of  
2 the counterparties, at exactly the same time, decided to  
3 play for default and then to hold the collateralized  
4 debt obligations until value came back into them, they  
5 would stand in exactly the same position as we did in  
6 Maiden Lane, and they would have the \$6 billion in  
7 premium instead of the taxpayers and AIG.

8 So, there was some speculation among my  
9 colleagues that there may have been one or more  
10 counterparties who were hoping for a default, would keep  
11 the CDO, would keep AIG's cash collateral, and would  
12 play for the market to rise and to benefit from the  
13 premium.

14 Q. Now, this is the one cleanup issue. If you can  
15 look at JX 110, that's the credit agreement, and I  
16 believe you testified that one of the New York -- one of  
17 your New York Fed colleagues, Sarah Dahlgren, signed the  
18 credit agreement.

19 I want you to take a look at page 67 of JX 110,  
20 just so we have a clean record. I'm sorry, 107. I  
21 can't read my own handwriting. It's on the screen. It  
22 might just be easier.

23 Can you tell the Court who actually signed the  
24 credit agreement?

25 A. Yes. I'm sorry, Your Honor, I was mistaken. The

1 credit agreement is signed by a senior vice president  
2 whose name is Richard Dzina, D-Z-I-N-A --

3 Q. And he's a senior --

4 A. -- and not Sarah Dahlgren.

5 Q. I'm sorry. And he's a senior vice president at  
6 the New York Bank?

7 A. Yes.

8 MR. GARDNER: No further questions, Your Honor.

9 THE COURT: All right.

10 Mr. Baxter, thank you very much for your  
11 testimony in this matter. You are excused.

12 THE WITNESS: Thank you, Your Honor.

13 MR. BOIES: Your Honor, we call as our next  
14 witness Patricia Mosser, M-O-S-S-E-R.

15 THE COURT: All right.

16 Ms. Mosser, you may come forward. Please raise  
17 your right hand.

18 Whereupon--

19 PATRICIA MOSSER

20 a witness, called for examination, having been first  
21 duly sworn, was examined and testified as follows:

22 THE COURT: Please be seated.

23 DIRECT EXAMINATION

24 BY MR. BOIES:

25 Q. Good afternoon, Dr. Mosser. We haven't met, but

1 my name is David Boies, and I represent the Plaintiffs  
2 in this case. I assume that that has been explained to  
3 you already.

4 A. It has been.

5 Q. You received your Ph.D. in economics from MIT,  
6 correct?

7 A. Correct.

8 Q. And you were at Columbia University as an  
9 assistant professor of economics before joining the  
10 Federal Reserve. Is that correct?

11 A. Yes, it is.

12 Q. And you've been with the Federal Reserve for a  
13 little over 20 years?

14 A. I'm no longer with the Federal Reserve Board.

15 Q. No longer. When did you stop at the Federal  
16 Reserve?

17 A. In October of last year.

18 Q. And what is your present position?

19 A. I am the deputy director of the Office of  
20 Financial Research at the U.S. Treasury Department.

21 Q. And what was your last position at the Federal  
22 Reserve?

23 A. I was a senior vice president in the markets  
24 group.

25 Q. Did you hold that position in 2008?

1           A. I did. I had somewhat different  
2 responsibilities, but I had that title.

3           Q. The Federal Reserve is what is sometimes referred  
4 to as a Central Bank, correct?

5           A. Correct.

6           Q. And as a Central Bank, it has the responsibility  
7 of acting as a lender of last resort, correct?

8           A. Yes.

9           Q. And could you explain for the record what a  
10 lender of last resort's function is.

11          A. A lender of last resort, as it's known by most  
12 Central Banks, including the Federal Reserve, is to  
13 provide liquidity to -- typically to banking  
14 organizations, commercial banking organizations in the  
15 United States. For commercial banks in the U.S., they  
16 are allowed to borrow from what's officially known as  
17 the primary credit facility but more commonly known as  
18 the discount window. They place collateral there and  
19 can borrow from the Fed. They typically borrow at a  
20 penalty rate.

21          Q. And when you refer to a penalty rate, could you  
22 describe in more detail what you mean by a penalty rate.

23          A. Typically the rate of interest on the primary  
24 credit facility or the discount rate is set above the  
25 target short-term interest rate for monetary policy.

1 So, it's a higher interest rate.

2 Q. So, let me bring back this for a minute. You  
3 used some -- a number of terms, and I want to get them  
4 down. One of them was target short-term interest rate.  
5 Is that right?

6 A. Yes, the target short-term interest rate for  
7 monetary policy.

8 Q. And then you also said a penalty rate?

9 A. Yes.

10 Q. And then you also said the primary credit  
11 facility rate.

12 A. Correct.

13 Q. And is there a secondary credit facility rate?

14 A. There is.

15 Q. Is there a tertiary credit facility rate?

16 A. Not to my knowledge.

17 Q. Now, taking us back to September of 2008, what  
18 was the target short-term interest rate?

19 A. I don't remember.

20 Q. Approximately?

21 A. It was in the neighborhood of 1 1/2 to 2 percent.

22 Q. And I'm going to skip penalty rate for a second.  
23 What was the primary credit facility rate?

24 A. To the best of my recollection, it was 25 basis  
25 points above the target short-term interest rate.

- 1 Q. So, it would have been this rate plus --
- 2 A. One-quarter of a percent.
- 3 Q. -- one-quarter of 1 percent.
- 4 And the secondary credit facility rate?
- 5 A. I don't remember.
- 6 Q. Approximately?
- 7 A. I truthfully do not remember. I forget the
- 8 terms, honestly, of the secondary credit facility rate.
- 9 It's used very rarely. It's --
- 10 Q. Is it more than a percentage above the primary
- 11 credit facility rate?
- 12 A. I don't remember.
- 13 Q. And the penalty rate, you say that is the same as
- 14 the primary credit facility rate?
- 15 A. No. I gave the primary credit facility rate as
- 16 an example of a penalty rate.
- 17 Q. Okay. So, the primary credit facility rate is
- 18 one kind of penalty rate. Is that right?
- 19 A. Correct.
- 20 Q. And that suggests to me that there are other
- 21 kinds of penalty rates.
- 22 A. Yes, there are.
- 23 Q. So, in 2008, how many different penalty rates
- 24 were there?
- 25 A. To the best of my recollection, I can remember

1 approximately three.

2 Q. Three. And one of them was the primary credit  
3 facility rate?

4 A. Correct.

5 Q. Okay. And what were the others?

6 A. In -- I believe this is in the -- for the Central  
7 Bank swap line facilities, which were also lender of  
8 last resort to other Central Banks, the penalty rate  
9 varied from 100 basis points above the short-term  
10 interest rate to a penalty rate that was set by an  
11 auction and, therefore, varied from week to week.

12 Q. And in the auction, what was the range?

13 A. They ranged from, I believe, 50 basis points to  
14 at least, in September of 2008, as high as -- I believe  
15 9 percent. It was a wide range.

16 Q. What?

17 A. It was a wide range.

18 Q. And the Central Bank swap facility, who were the  
19 parties to that?

20 A. The Federal Reserve's counterparties in the swap  
21 facility were other Central Banks; for example, the  
22 European Central Bank, the Bank of Japan, the Bank of  
23 England, the Bank of Korea. There were ten different  
24 swap lines that were used by ten different Central  
25 Banks.

1 Q. And then I take it there's one more penalty rate  
2 in 2008.

3 A. The commercial paper funding facility had a  
4 penalty rate of 300 basis points or 300 percent. Three  
5 percent, excuse me; 300 basis points, 3 percent. Pardon  
6 me.

7 Q. What is the purpose of a penalty rate?

8 A. Could you clarify the question for me? A penalty  
9 rate for -- in general or for these particular  
10 facilities?

11 Q. No, I mean from the standpoint of a Central Bank.  
12 Why does a Central Bank impose a penalty rate?

13 A. A Central Bank, as the title lender of last  
14 resort suggests, prefers -- generally speaking, we  
15 prefer not to be the primary lenders to banking  
16 institutions or other financial institutions but prefer  
17 that the financial institutions do their  
18 interinstitution lending amongst themselves and fund  
19 themselves, and, therefore, they want to price at --  
20 their facilities at a rate that is unattractive  
21 economically in normal times but potentially is  
22 attractive during periods of market distress.

23 Q. Is it fair to say that a Central Bank should  
24 price its penalty rates so that it is above market rates  
25 in normal conditions but below market rates in crisis

1 positions or conditions?

2 A. Typically -- typically, yes, that's the intent.

3 Q. Now, you participated in something called the  
4 President's Working Group, correct?

5 A. Yes.

6 Q. And would you explain for the record what the  
7 President's Working Group was?

8 A. The President's Working Group was an interagency  
9 group of regulators and policy institutions that  
10 discussed -- mainly the financial institution and  
11 financial market regulators who discussed regulatory and  
12 other financial policy matters on a regular basis.

13 Q. And who were the participants in the President's  
14 Working Group?

15 A. The Treasury Department -- let me preface this,  
16 that I don't remember all of the participants. I can  
17 give you a few of them.

18 Q. That's fine.

19 A. The Treasury Department, the Federal Reserve, the  
20 Securities and Exchange Commission, the Commodities  
21 Futures Trading Commission. I believe that the FDIC and  
22 the Office of the Comptroller of the Currency were also  
23 members. I could be incorrect on that point.

24 Q. And did the President's Working Group reach  
25 conclusions?

1           A.   Sometimes.

2           Q.   Was one of the conclusions that the President's  
3 Working Group reached was that systemically important  
4 financial institutions should have access to Central  
5 Bank liquidity?

6           MS. ACEVEDO:   Your Honor, I am going to make an  
7 objection to that question on that grounds of the  
8 presidential communications privilege.

9           THE COURT:   Mr. Boies?

10          MR. BOIES:   I don't think that privilege applies  
11 to this particular question and answer, but I think I  
12 can -- I think I may be able to obviate the issue.

13          BY MR. BOIES:

14          Q.   Let me ask that the witness look at Plaintiffs'  
15 Trial Exhibit 2740.  Is that in this book?

16                I'm handing out, which is what we presently have,  
17 excerpts, but I am going to get the entire volume for  
18 you to look at just in case you want to look at  
19 something in context.

20                First, would you identify this document.

21          A.   I'm sorry?

22          Q.   Would you identify this document.

23          A.   One moment.  I want to look through it for a  
24 moment.  (Document review.)

25          MS. ACEVEDO:   Your Honor, I am going to object to

1 her identifying the document. I don't believe this is a  
2 document that was identified as an exhibit by  
3 Plaintiffs, and, again, this was something that was  
4 raised at her deposition, something that was marked at  
5 her deposition, but this is a document, I'm sorry, that  
6 contains presidential communications privilege, and we  
7 are going to object to any testimony on it.

8 THE COURT: Well, first of all, is this document  
9 on your exhibit list?

10 MR. BOIES: It is not, Your Honor. It is being  
11 used right now for refreshing her recollection.

12 THE COURT: Okay.

13 MR. BOIES: The reason I showed it to her was to  
14 try to avoid the privilege issue. I can go back and  
15 just ask her the question and then either use this to  
16 refresh her recollection, as the Court prefers.

17 I don't think that this could possibly be  
18 privileged, but if the Court wants to discuss that issue  
19 outside the presence of the witness, I'd be happy to.

20 THE COURT: Well, my first question is, if you  
21 have the document, how can it be privileged?

22 MR. BOIES: I don't think it can be privileged,  
23 Your Honor, and I don't think this kind of inquiry would  
24 be privileged in any event.

25 THE COURT: Ms. Mosser, can I ask you to please

1 step outside just for one moment while we briefly  
2 discuss this question?

3 THE WITNESS: Sure.

4 THE COURT: Thank you. I appreciate your  
5 patience.

6 (Witness excused.)

7 MR. DINTZER: Your Honor, if we could have a  
8 three-minute break just so we could talk to make sure we  
9 get this right, amongst our counsel, we would sure  
10 appreciate it.

11 THE COURT: Sure, that's fine. I'm going to stay  
12 right here. We will go off the record until you come  
13 back.

14 MR. DINTZER: We appreciate that, Your Honor.

15 (Pause in the proceedings.)

16 MR. DINTZER: Thank you, Your Honor.

17 THE COURT: All right, shall we go back on the  
18 record?

19 The witness, Ms. Mosser, is still out of the  
20 courtroom for this discussion.

21 MS. ACEVEDO: Okay, Your Honor, yes. So, first  
22 of all, we are objecting to the use of this exhibit on  
23 the grounds that it was not marked as an exhibit and it  
24 is now being used, and we feel they shouldn't be allowed  
25 to question her about it.

1           Secondly, we --

2           THE COURT: All right, and Mr. Boies said he's  
3 using this to refresh her recollection.

4           MS. ACEVEDO: Okay. So, we will allow the  
5 questioning to proceed for now, and if we do feel that  
6 there are communications that concern conversations with  
7 the President that we believe are privileged, we will  
8 address the issue then.

9           MR. BOIES: And I will say that I do not believe  
10 THAT I have any questions about what was said to the  
11 President.

12          THE COURT: All right.

13          MS. ACEVEDO: And staff. Just to clarify, Your  
14 Honor, the privilege covers communications with the  
15 President and/or his advisors. So, if Mr. Boies  
16 attempts to elicit that information, we may renew our  
17 objection. But at this time, we will allow him to  
18 proceed.

19          THE COURT: What does the term "his advisors"  
20 refer to?

21          MS. ACEVEDO: I don't have a definition of who  
22 the advisors are, but I do know that the presidential  
23 privilege covers information that was gathered for or  
24 presented to the President and/or his advisors and the  
25 contents of the decisions that were made by the

1 President or his advisors.

2 THE COURT: Okay. Well, I'm not sure what that  
3 means, but if you're willing to proceed and see where  
4 this leads, that's fine with me.

5 MS. ACEVEDO: Actually, Your Honor, if we could  
6 have just a moment to talk to the witness to make sure  
7 she knows not to reveal any communications between the  
8 President and/or his advisors and herself, that would be  
9 appreciated.

10 THE COURT: I know, but what's the scope of the  
11 term "his advisors"?

12 MS. ACEVEDO: I don't have that definition at  
13 this time.

14 THE COURT: It could be broad or narrow, I  
15 suppose, then. If you just tell the witness about that  
16 limitation, I'm not sure if it's going to be very much  
17 help.

18 MR. BOIES: I also think, Your Honor, that if all  
19 they're going to do is instruct the witness as to  
20 definitions, that should be -- since the witness is now  
21 on what is effectively cross examination, that ought to  
22 be done on the record.

23 THE COURT: Yes.

24 MS. ACEVEDO: That's fine, Your Honor. Thank  
25 you.

1 THE COURT: All right. Shall we have her come  
2 back in, please?

3 Somebody will need to tell her that she's --

4 MS. ACEVEDO: She's on her way, Your Honor.

5 THE COURT: All right.

6 (Witness present.)

7 THE COURT: Thank you for your patience,  
8 Ms. Mosser. While you were out of the room, we were  
9 having a discussion amongst counsel having to do with  
10 the presidential privilege issue, but we've decided and  
11 I've instructed Mr. Boies just to go ahead with the  
12 questioning.

13 THE WITNESS: Okay.

14 MR. DINTZER: Your Honor, just to -- we were told  
15 that we could offer her advice and make something clear  
16 on the record.

17 THE COURT: I'm sorry?

18 MR. DINTZER: Not to interrupt, Your Honor, but  
19 just if we could make -- we were under the impression  
20 that we could make a statement on the record for  
21 Ms. Mosser which she could understand to let us know if  
22 her testimony or some of her testimony would involve an  
23 infringement upon the privilege.

24 THE COURT: All right.

25 MR. DINTZER: Ms. Mosser, if any question by

1 Mr. Boies would require you to provide information that  
2 would relay any information that you know of or  
3 participated in that is either to the President or his  
4 advisors, then at that point, you should let us know  
5 before answering the question so that we can assert that  
6 privilege.

7 Thank you, Your Honor.

8 BY MR. BOIES:

9 Q. Dr. Mosser, let me reask my question.

10 Am I correct that one of the conclusions that the  
11 President's Working Group reached was that systemically  
12 important financial institutions should have access to  
13 Central Bank liquidity?

14 A. Not to my knowledge, no.

15 Q. Let me ask you to look at Plaintiffs' Trial  
16 Exhibit 2740.

17 A. Yes.

18 Q. Page 14.

19 A. Yes.

20 Q. At the top of the page, there is a question and  
21 an answer. Do you see that?

22 A. Yes, I do.

23 Q. The question is:

24 "QUESTION: Should systemically important  
25 financial institutions have access to Central Bank

1 liquidity and potentially other forms of extraordinary  
2 government support?

3 "ANSWER: Yes. It is not credible for  
4 policymakers and regulators to claim otherwise."

5 Do you see that?

6 A. Yes, I do.

7 Q. And was that a conclusion of the President's  
8 Working Group?

9 A. No.

10 Q. Would you explain what you --

11 A. Excuse me, let me be -- let me correct that  
12 answer. Not to my knowledge.

13 Q. Let me ask you to explain what this document is.

14 A. This is a staff policy brief produced for the  
15 President's Working Group by staff of several agencies,  
16 including several I mentioned a few moments ago. It was  
17 staff conclusions across several agencies.

18 Q. Are you finished with your answer?

19 A. Yes, I've finished my answer.

20 Q. Let me see if I understand what you're saying.  
21 The conclusion that we just read into the record was,  
22 according to your testimony, a conclusion from a staff  
23 policy brief that had been prepared by staff across  
24 several agencies representing the staff conclusions of  
25 those agencies. Is that correct?

1           A. That's correct. I believe here, from the title  
2 on the document, they were called subgroups, but they  
3 were staff groups.

4           Q. Now, could you identify for me, what were the  
5 agencies whose staffs joined in this conclusion?

6           A. I recall some of them clearly. I may not have  
7 them all clearly, but I can tell you some of them. The  
8 Federal Reserve, the Federal Reserve Bank of New York  
9 here. Other contributors included, to the best of my  
10 recollection, the FDIC, the Office of the Comptroller of  
11 the Currency, and I believe the Securities and Exchange  
12 Commission. There may have been others, but it's been  
13 more than five years.

14          Q. And it is the case, is it not, that you agree  
15 with this conclusion?

16          A. Yes, I do.

17          Q. That is, that systemically important financial  
18 institutions should have access to Central Bank  
19 liquidity and potentially other forms of extraordinary  
20 government support, correct?

21          A. Yes, but I'd like to qualify my answer.

22          Q. Yes, all right.

23          A. Along with that access to extraordinary support  
24 would come ongoing, long-term supervision, regulation,  
25 and oversight. Particularly with respect to lender of

1 last resort, that oversight would need to be done by the  
2 Central Bank, meaning the Federal Reserve.

3 Q. Now, if I could just follow up on that, there  
4 were two parts to this conclusion: One, that  
5 systemically important financial institutions should  
6 have access to Central Bank liquidity and potentially  
7 other forms of extraordinary government support; and  
8 second, that it was not credible for policymakers and  
9 regulators to claim otherwise. Do you see that?

10 A. Yes.

11 Q. And you agree with both of those conclusions,  
12 correct?

13 A. I do, and that is why I mentioned that ongoing  
14 regulation and supervision would be a requirement for  
15 such institutions as well.

16 Q. Now, you were asked at your deposition whether  
17 you agreed with these conclusions, correct?

18 A. I -- I believe so, yes.

19 Q. And you said that you did, correct?

20 A. Yes.

21 Q. And you didn't give any qualification or  
22 explanation at that time, correct?

23 A. Actually, that I don't remember, whether I gave a  
24 qualification or not.

25 Q. Let me show you pages 90 and 91 of your

1 deposition.

2 A. Um-hum.

3 Q. Beginning at line 22 at page 90.

4 "QUESTION: If you turn to page 4 of your memo,  
5 the third question is, Should systemically important  
6 financial institutions have access to central bank  
7 liquidity and potentially other forms of extraordinary  
8 government support?

9 "Do you see that?"

10 A. One moment, please. I'm actually lost. Could  
11 you repeat the page?

12 Q. Certainly. I'll start over. Page 90 --

13 A. Yes.

14 Q. -- line 22. Let me know when you have it.

15 A. Yes, sorry. I've got it, thank you.

16 Q. "QUESTION: If you turn to page 4 of your memo,  
17 the third question is, Should systemically important  
18 financial institutions have access to central bank  
19 liquidity and potentially other forms of extraordinary  
20 government support?

21 "Do you see that?"

22 "ANSWER: Yes, I didn't for a minute, yes.

23 "QUESTION: Then your answer is, Yes, it is not  
24 credible for policymakers and regulators to claim  
25 otherwise.

1 "Do you see that?

2 "ANSWER: Yes.

3 "QUESTION: Do you still agree with that?

4 "ANSWER: Yes."

5 And those were the answers that you gave at your  
6 deposition, correct?

7 A. Yes.

8 Q. In this document that's been marked as  
9 Plaintiffs' Trial Exhibit 2740, which you have described  
10 as a staff policy brief representing staff conclusions  
11 across agencies, is there a recommendation or conclusion  
12 here that systemically important institutions should be  
13 regulated?

14 A. I would have to read the document to refresh my  
15 memory.

16 Q. As you sit here now, what is your best memory?

17 A. I would be very surprised if it didn't have that  
18 qualification, but I truthfully don't remember.

19 Q. Was there any recommendation in this staff policy  
20 brief that has been marked as Plaintiffs' Trial Exhibit  
21 2740 to give additional regulatory powers to the Central  
22 Bank?

23 A. I don't remember. I wouldn't know without  
24 reviewing the document.

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

1 Exhibit 119, which I would offer.

2 MS. ACEVEDO: Counsel, do you have a copy of that  
3 exhibit? It's not in our binder.

4 MR. BOIES: It should be.

5 MS. ACEVEDO: Where is it? 119 you said? I  
6 don't have it. Oh, okay. Oh, I see it. I'm sorry.

7 MR. BOIES: That's okay. No problem.  
8 I've offered the document.

9 THE COURT: I'm sorry?

10 MR. BOIES: I've offered the document.

11 THE COURT: Yes.

12 MS. ACEVEDO: We have no objection, Your Honor.

13 THE COURT: All right. Plaintiffs' Trial Exhibit  
14 119 is admitted.

15 (Plaintiff's Exhibit Number 119 was admitted into  
16 evidence.)

17 BY MR. BOIES:

18 Q. Can you identify the author of the email that is  
19 the email on the first page of this exhibit?

20 A. You're talking about the email on the bottom  
21 three-quarters of the page --

22 Q. Yes.

23 A. -- or the top of the page?

24 Q. The email other than the email that says, "This  
25 is interesting."

1           A. Right, yes. I'm sorry. Yes, I know the  
2 individual.

3           Q. And who is that person?

4           A. His name's Michael Holscher.

5           Q. And what is his position?

6           A. He was a midlevel staffer at the Markets Group at  
7 the Federal Reserve Bank of New York.

8           Q. And this goes to Meg McConnell. And who is she?

9           A. She was a deputy chief of staff to President  
10 Geithner.

11          Q. And it also goes to four other people, and could  
12 you identify them.

13          A. Yes. William Dudley, who at that point was the  
14 head of the markets group; Michael Schetzel, who was  
15 Bill Dudley's chief of staff; myself -- I'm sorry -- and  
16 Alex Latorre.

17          Q. And who is Alex Latorre?

18          A. Alex Latorre was one of the managers who reported  
19 to me.

20          Q. Now, Mr. Holscher writes, "Just wanted to put in  
21 my two cents on the AIG deal and other thoughts." And  
22 he says, "In sum: We are exacerbating distressed market  
23 pricing at a vulnerable time when we should be trying to  
24 stabilize market prices." Do you see that?

25          A. I do.

1 Q. And did you have an understanding of what he  
2 meant by saying that the AIG deal was exacerbating  
3 distressed market pricing?

4 A. In Michael's view, I interpret this -- excuse me,  
5 I interpret this sentence as being Michael's opinion  
6 that the AIG deal was, as he puts it -- and I assume by  
7 that he means the loan -- was pushing asset prices down  
8 and credit spreads wider.

9 Q. And if you read three or four lines down, do you  
10 see he is, in fact, talking about the loan to AIG?

11 A. Yes.

12 Q. Let me ask you to look next to Plaintiffs' Trial  
13 Exhibit 138, which I would offer.

14 MS. ACEVEDO: We have no objections, Your Honor.  
15 I'm sorry.

16 THE COURT: Plaintiffs' Trial Exhibit 138 is  
17 admitted.

18 (Plaintiff's Exhibit Number 138 was admitted into  
19 evidence.)

20 BY MR. BOIES:

21 Q. Dr. Mosser, the latest email in this exhibit is  
22 an email from you forwarding on an email that you had  
23 received from Scott Sherman, correct?

24 A. Correct.

25 Q. And why did you forward Mr. Sherman's email on to

1 these people?

2 A. Scott was reporting information that he had  
3 received -- anecdotal information he had received from,  
4 as he notes, "several market participants." The -- that  
5 the pricing of the AIG loan had impacted -- had  
6 increased uncertainty. I forwarded it -- because this  
7 was an interesting piece of information, I forwarded it  
8 on to the individuals at that time -- to three  
9 individuals at that time that I understood were doing  
10 work on AIG.

11 Q. And who were those three individuals and what  
12 were their positions?

13 A. Susan McLaughlin, she's a senior vice president  
14 in the markets group; Sarah Dahlgren, who was a senior  
15 vice president in the bank supervision group; and Sandy  
16 Krieger, who was a senior vice president I believe in  
17 the payments policy area. I'm not completely sure about  
18 that last part.

19 Q. Let me ask you to look next to Plaintiffs' Trial  
20 Exhibit 232.

21 THE COURT: Mr. Boies, I'm thinking that this  
22 might be a good place to stop for the weekend. I wanted  
23 to reserve a couple of minutes. My sense is we're not  
24 making the progress that we anticipated through the  
25 witness list, and I'm wondering if counsel of record

1 still have a comfort level that we're on schedule or are  
2 you concerned that we're behind and what are we going to  
3 do about it?

4 MR. BOIES: Your Honor, we might want to excuse  
5 the witness for this discussion, because I think it goes  
6 into the substance of the testimony of other witnesses.

7 THE COURT: Well, before we do that, are you  
8 planning to interrupt Ms. Mosser's testimony for other  
9 witnesses next week?

10 MR. BOIES: If she would permit, because we have  
11 scheduled Secretary Paulson, Secretary Geithner, and  
12 Chairman Bernanke to sort of go starting on Monday.  
13 Now, I don't think Dr. Mosser will take probably more  
14 than the morning on Monday. So, it's possible, if the  
15 Court preferred or if it was essential for her schedule,  
16 we could complete her on Monday, but I think just out of  
17 deference to the schedules of the three individuals that  
18 I named, to the extent that it was possible to interrupt  
19 her and complete her after they finished, I think that  
20 would be desirable from their standpoint.

21 THE COURT: Ms. Mosser, are you in the New York  
22 area?

23 THE WITNESS: I am in Washington, D.C.

24 THE COURT: Oh, okay.

25 THE WITNESS: However, I have -- not next week.

1 Next week, for the first four days, I am here in  
2 Washington. Thereafter, though, for the -- Friday and  
3 the entire following week, I actually will be away from  
4 Washington, D.C. on personal business.

5 MR. BOIES: Could I just consult with counsel?

6 THE COURT: Sure.

7 (Counsel conferring.)

8 MR. DINTZER: Your Honor, might I suggest a  
9 five-minute break? I'm thinking it may take a few more  
10 minutes than it might have because we have to work out a  
11 couple of things.

12 THE COURT: All right, try to make it as prompt  
13 as you can.

14 MR. DINTZER: Absolutely, Your Honor. We  
15 appreciate that.

16 THE COURT: Off the record.

17 (Pause in the proceedings.)

18 THE COURT: On the record.

19 MR. BOIES: Your Honor, I think we have a  
20 multifaceted solution if the Court and Dr. Mosser will  
21 agree. One of the witnesses can only go on Wednesday  
22 morning, which would leave us Wednesday afternoon in any  
23 event. So, we would propose to interrupt Dr. Mosser's  
24 examination now, and assuming that we are finished with  
25 Secretary Paulson and Secretary Geithner, Chairman

1 Bernanke can't go in the afternoon on Wednesday, we  
2 would bring her in on Wednesday.

3 Now, if for some reason Secretary Paulson and  
4 Secretary Geithner go longer and so they consume  
5 Wednesday, then we would bring her back after she  
6 returns to Washington, because we wouldn't interfere  
7 with her plans, and we would find a convenient date  
8 after she comes back that we would bring her back for.

9 THE COURT: All right.

10 Is that acceptable to you, Dr. Mosser?

11 THE WITNESS: Yes, thank you.

12 THE COURT: All right, that works. That's fine.

13 You can be excused for the weekend. I want to  
14 talk to counsel just for a moment.

15 (Witness excused.)

16 THE COURT: All right, let me hear your thoughts  
17 and level of concern about scheduling.

18 MR. BOIES: I'll go first, Your Honor. I'm  
19 actually pretty comfortable about the scheduling. We've  
20 covered an enormous amount of ground in this week, in  
21 four days, and there -- I think there was even a sense  
22 that to some extent we may have covered some things more  
23 than once, but I thought it was important to do so given  
24 the positions of the two individuals, and I think we  
25 will to some extent cover some of the same ground again

1 with Secretaries Paulson, Geithner, and Chairman  
2 Bernanke.

3 But once we are through with those people, except  
4 for some expert witnesses and perhaps Mr. Liddy, who I  
5 think will be a significant witness, we are basically  
6 filling in gaps, and I hate to be overly optimistic --  
7 and I usually am in trials, because I usually think  
8 things are going to go faster than they do -- but I  
9 really think we are going to be finished before the  
10 seven weeks, if I were to make an estimate right now.

11 THE COURT: All right.

12 Mr. Mizoguchi? Who's going to talk?

13 MR. MIZOGUCHI: I will, Your Honor.

14 To a large extent, we can only estimate based  
15 upon what counsel for the Plaintiff has listed in the  
16 original witness list for time allocations. So, our  
17 judgment is based, in part, on the fact, for example,  
18 that Mr. Alvarez was listed by Plaintiffs for 2.5 hours,  
19 but he went 8.3 hours.

20 Now, I understand that adjustments may be made to  
21 whether witnesses come and less may come later, and I  
22 can only base our judgment based on what has happened  
23 with Mr. Alvarez and Baxter relative to the witness  
24 lists that were filed.

25 THE COURT: Let me just remind both of you that

1 we don't need -- especially for a bench trial, we don't  
2 need to provide cumulative evidence. If I hear  
3 everything I need to know from one witness, that -- you  
4 know, that's fine. You don't have to keep going over  
5 the same information.

6 Now, I recognize that for some of the issues  
7 we've been discussing, there are gaps here and there  
8 that need to be filled in for sure, and you're entitled  
9 to that opportunity, but just be mindful of always  
10 trying to provide me new information. You don't have to  
11 have three people give me the same testimony. That's  
12 not necessary.

13 And I do agree that I think we've covered a lot  
14 of ground this week, even though it was only with two  
15 witnesses. So, you know, I think that's a plus.

16 MR. BOIES: And if we begin to -- if I begin to  
17 slow down, I may urge the Court to ask the witnesses to  
18 respond more directly, yes or no answers, where that's  
19 possible. I think it -- although I mentioned it a few  
20 times, I didn't mention it very often, because I think  
21 it's important for the Court to get a sense of the  
22 witness, and I think the Court gets a sense of the  
23 witness by listening to how the witness responds to  
24 questions. But if we do need to move along, if we just  
25 had yeses and nos to the questions, the answers, I think

1 we could move better along, probably.

2 THE COURT: Yes. I think it's true that part of  
3 the reason it took so long was not because of your  
4 questions, but it was made difficult by some of the  
5 responses.

6 All right. Anything else?

7 MR. GARDNER: Your Honor, just one quick  
8 housekeeping issue, and this might be an issue for the  
9 Clerk's Office rather than Your Honor, but with  
10 Secretary Paulson, Secretary Geithner, and Chairman  
11 Bernanke going next week, we wanted to see if there was  
12 any way we could get them through the line quickly  
13 rather than have them wait out in what I expect will  
14 probably be a very large line next week.

15 I don't know if that's a Clerk's Office issue or  
16 Your Honor's issue, but I wanted to raise that so we can  
17 make sure that they can actually take their seats in the  
18 courtroom, as appropriate.

19 THE COURT: Why don't you take it up with the  
20 Clerk's Office. They may have a better solution than I  
21 do.

22 MR. GARDNER: Understood, Your Honor.

23 MR. BOIES: I think they have a solution, Your  
24 Honor. They have been kind enough to put a certain  
25 number of people from each of our counsel sides on a

1 list that allows us to come in before 8:30, and I'm sure  
2 we could get the same thing done.

3 THE COURT: Yes, I have been reviewing those  
4 lists every day and authorizing that, and maybe that's  
5 the answer. Do you want to just add them to your list  
6 for Monday?

7 MR. GARDNER: We can do that, Your Honor. Thank  
8 you.

9 THE COURT: All right, very well.  
10 We will stand adjourned. Have a good weekend,  
11 and I will see you all at 9:30 on Monday.

12 ALL COUNSEL: Thank you, Your Honor.

13 (Whereupon, at 5:04 p.m., the proceedings were  
14 adjourned.)

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CERTIFICATE OF TRANSCRIBER

I, Susanne Bergling, court-approved transcriber,  
certify that the foregoing is a correct transcription  
from the official digital sound recording of the  
proceedings in the above-titled matter.

DATED: 10/4/2014

\_\_\_\_\_  
SUSANNE BERGLING, RMR-CRR-CLR

1 ADMITTED EXHIBITS			
2	PX	PAGE	DESCRIPTION
3	119	1178	Email, 9/17/08, Holscher to Mosser, Re: It's too late to protect the taxpayer
4	139	1180	Email, 9/18/08, Young-Anglim to Baxter, et al., Re: Revised working group list
5	146	966	Email, 9/18/08, Baxter to Alvarez, Re: Draft of preferred stock
6	336	1125	Memo, 11/1/08, Legal Division to Board of Directions, Re: Ownership of equity interests in IPCs
7	349	1136	Email, 11/6/08, Knepper to Albrecht, et al, Re: AIG preferred stock - Fed credit agreement
8	376	1132	Email, 11/20/08, Huebner to Baxter, et al., Re: Delaware lawsuit
9	385	1133	12/5/08 FRBNY Investment Committe Meeting Agenda
10	1166	1100	David Ellis, "Countrwide Rescue: \$4 billion," CNN Money, 1/11/08
11	1167	1100	David Mildenberg, "Bank of America to Acquire Countrywide for \$4 Billion (Correct)," Bloomberg, 1/14/08
12	1816	1126	Memo, 11/5/08, Ashton to Alvarez, Re: AIG Credit Facility Trust - Payment of Advancement of Trust Expenses
13	2737	1122	FRB Draft Documents
14	2738	1120	Memorandum from the general counsel of the Federal Open Market Committee of the Federal Reserve System dated July 10, 1968
15			
16			
17			
	DX	PAGE	DESCRIPTION
18	528	975	EMAIL, BAXTER TO ASHTON, RE: AIG CONTRACT
19	529	983	EMAIL, JAMES TO JESTER, ET AL., RE: EQUITY TERMSHEET WITH ATTACHMENTS
20	623	991	EMAIL, CONSIDINE TO BAXTER, RE: OUR MEETING ON THURSDAY
21	630	993	EMAIL, BETHILL TO BAXTER, RE: AIG CREDIT FACILITY TRUST
22	659	1027	EMAIL, JAMES TO BAXTER, ET AL., RE: REQUEST FOR ASSISTANCE
23	661	996	EMAIL, SCHWARTZ TO BAXTER, RE: QUESTIONS FROM TRUSTEES' COUNSEL
24	715	1009	CORRESPONDENCE AND ATTACHMENTS FROM GREENBERG TO BAXTER, RE: AIG SITUATION
25			