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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE
Case No. 08-12229 (MFW)

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In the Matter of:

WASHINGTON MUTUAL, INC., et al.,

Debtors.

- - - - -x

U.S. Bankruptcy Court
824 North Market Street
Wilmington, Delaware

July 14, 2011
1:03 PM

B E F O R E:
HON. MARY F. WALRATH
U.S. BANKRUPTCY JUDGE

ECR OPERATOR: BRANDON MCCARTHY

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HEARING re Modified sixth amended joint plan of affiliated debtors, pursuant to Chapter 11 of the United States Bankruptcy Code.

HEARING re Motion to compel Aurelius Capital Management LP and Centerbridge Partners LP to produce documents.

HEARING re Debtors' motion in limine to exclude portions of the expert reports and testimony of the Equity Committee's expert witnesses Anders J. Maxell and Kevin D. Anderson.

Transcribed by: Penina Wolicki

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P R O C E E D I N G S

THE CLERK: Please be seated.

THE COURT: Good afternoon.

MR. ROSEN: Good afternoon, Your Honor. Brian Rosen; Weil, Gotshal & Manges, on behalf of Washington Mutual, Inc. And as with yesterday, we have several other people here who will be taking different roles in the matter, and they'll introduce themselves at the appropriate time.

THE COURT: Okay.

MR. ROSEN: Your Honor, I believe we're taking up today with Mr. Goulding's direct testimony. Mr. Goulding has been outside the courtroom. If I can ask him to come in now?

THE COURT: You may.

Please remaining so you can be sworn.

(Witness sworn)

THE CLERK: Please state your full name and spell your last name.

THE WITNESS: Jonathan Goulding, G-O-U-L-D-I-N-G.

DIRECT EXAMINATION

BY MR. ROSEN:

Q. Good afternoon, Mr. Goulding. Please briefly describe your educational background?

A. I have a bachelor's degree in chemical engineering from the University of Michigan.

Q. And by whom are you currently employed?

1 A. I work for Alvarez & Marsal.

2 Q. And what is your position with A&M?

3 A. I'm a senior director.

4 Q. Do you currently hold any other positions?

5 A. I'm the treasurer, vice president and assistant secretary
6 for Washington Mutual, Inc. as well as WMI Investment Corp.

7 Q. And do you hold any other positions or have you held any
8 other positions at A&M?

9 A. Yes. When I was originally hired at A&M, I was an
10 associate. And I was promoted from associate to senior
11 associate, senior associate to director, and now I'm a senior
12 director.

13 Q. And what was your professional experience prior to joining
14 Alvarez & Marsal?

15 A. I spent two years in Arthur Andersen's restructuring
16 practice. And prior to that I worked for two other consulting
17 firms.

18 Q. What were they?

19 A. SRI Consulting and Viant Corporation.

20 UNIDENTIFIED SPEAKER: I'm sorry, could you repeat
21 that sir and just slow down a tad?

22 THE WITNESS: Sure. Sorry.

23 A. SRI Consulting and Viant Corporation.

24 Q. And what, if any, professional certifications do you hold?

25 A. I'm a certified insolvency and restructuring advisor, as

1 well as a chartered financial analyst charter holder.

2 Q. How long have you served as the treasurer at WMI?

3 A. Approximately October of 2008.

4 Q. And what are your current duties as the treasurer?

5 A. General corporate treasury responsibilities. I oversee
6 cash, cash management, the investment of cash in T-bills,
7 paying bills, that type of stuff.

8 Q. Have you served as a treasurer of any other companies in
9 the context of a Chapter 11 case?

10 A. Yes. I was the treasurer for Movie Gallery during its
11 first bankruptcy.

12 Q. And besides your treasurer duties, could you briefly
13 describe for the Court your involvement in these Chapter 11
14 cases?

15 A. Sure. I have other restructuring responsibilities. I was
16 involved in the settlement negotiations, recovery analysis,
17 liquidation analysis. I deal with the claims; other elements
18 of the case.

19 Q. Mr. Goulding, was a declaration of yours filed in support
20 of confirmation of the debtors' modified sixth amended plan?

21 A. It was.

22 MR. ROSEN: Your Honor, may I approach?

23 THE COURT: You may. Thank you.

24 Q. Mr. Goulding, generally speaking, what does your
25 declaration address?

1 A. It generally addresses Section 1129 of the Bankruptcy
2 Code, with the exception of feasibility and the best interests
3 test.

4 MR. ROSEN: Your Honor, we'd like to offer Mr.
5 Goulding's affidavit into evidence at this time, subject to,
6 obviously, the right of cross-examination.

7 THE COURT: Any objection?

8 UNIDENTIFIED SPEAKER: No objections.

9 THE COURT: All right. It is so admitted.

10 (Mr. Goulding's affidavit was hereby received into evidence as
11 Debtors' Exhibit, as of this date.)

12 Q. Mr. Goulding you just said that there were some additional
13 topics you were going to discuss today. What again, were
14 those?

15 A. I'll be discussing the PIERS structure as well as
16 feasibility and the liquidation analyses.

17 Q. Let's go to the PIERS first, then. What do the PIERS
18 stand for? What is that?

19 A. It's preferred income equity redeemable securities. It's
20 a structured financing transaction.

21 Q. And how were these PIERS issued, pursuant to what?

22 A. The PIERS were issued from a trust that was created to
23 issue those securities.

24 Q. What is the name of the trust, sir?

25 A. Washington Mutual Capital Trust 2001.

1 Q. Okay. I'd like to ask you to look -- you have three
2 binders over there, sir. I'd like to ask you to look at
3 Debtors' Confirmation Exhibit 295.

4 MR. ROSEN: Your Honor, that is in volume 6.

5 Q. Do you have that, Mr. Goulding?

6 A. I'm sorry, did you say 296?

7 Q. I said 295.

8 A. 295. Yep.

9 Q. Do you recognize this document?

10 A. I do.

11 Q. And what is it?

12 A. It's the amended and restated declaration of trust for the
13 Washington Mutual Capital Trust 2001.

14 Q. And pursuant to this document, could you just briefly
15 explain what occurred?

16 A. This document sets forth the obligations of the trust.

17 Q. Is WMI a separate entity from the trust that you referred
18 to?

19 A. It is, yes.

20 Q. Is the trust still in existence today?

21 A. It is.

22 Q. Are you aware of whether WMI and the trust ever merged
23 with one another?

24 A. No, they never did.

25 Q. I'd like to ask you to look at Debtors' Exhibit 401. It

1 should be the back one in that.

2 MR. ROSEN: Your Honor, that's in volume 13.

3 Q. Do you recognize this document?

4 A. Yes, I do.

5 Q. What is the document?

6 A. It's a certificate of good standing of the trust as of
7 July 12, 2011.

8 Q. And what does this reflect for you, sir?

9 A. It reflects that the trust is still outstanding as of that
10 date.

11 Q. And between July 12th and today, July 14th, has anything
12 occurred that would, in your -- to your knowledge, that would
13 change the certificate of good standing?

14 A. No, none to my knowledge.

15 Q. Mr. Goulding, I'd like you to look at Demonstrative number
16 4, we're going to put up on the screen. Do you recognize this
17 diagram?

18 A. I do.

19 Q. Could you please walk through the diagram for the Court?

20 A. Sure. Beginning in the middle of the chart, you'll see
21 the Washington Mutual Capital Trust 2001 that we've been
22 speaking about. That trust was created and then raised money
23 from two sources: external investors that purchased 23 million
24 PIERS units for an aggregate value of 1.15 billion, as well as
25 35.6 million of capital coming from WMI itself, for 711,000

1 shares of the trust. That aggregate 1.185 -- or 1.186 billion
2 of junior subordinated debentures was then purchased from WMI.

3 MR. SARGENT: Excuse me, Your Honor. Edgar Sargent
4 from the equity committee. Could we get a copy of any
5 demonstratives that the --

6 MR. ROSEN: Absolutely.

7 MR. SARGENT: -- debtor's going to be using. Thank
8 you, Brian.

9 THE COURT: I'll take a copy as well.

10 MR. ROSEN: I'm sorry.

11 THE COURT: Thank you.

12 Q. Mr. Goulding, does the trust have any assets?

13 A. The only assets of the trust are the junior subordinated
14 debentures.

15 Q. Why was the PIERS transaction structured this way?

16 A. The PIERS transaction was structured this way in order for
17 the transaction to count as Tier 1 capital under the regulatory
18 capital guidelines.

19 Q. And do you have an understanding of what Tier 1 capital
20 is?

21 A. I have a general understanding, yes.

22 Q. And what is that?

23 A. Tier 1 capital is comprised principally of equity, but up
24 to twenty-five percent can be comprised of what they refer to
25 as hybrid securities or trust-preferred securities. It's a

1 measure of the bank's safety and stability.

2 Q. What is the basis of your general understanding of Tier 1
3 capital?

4 A. I've had conversations with folks who are in the treasury
5 group, former treasury group of WMB, reviewed the OTS
6 guidelines with respect to Tier 1 capital.

7 Q. And how is Tier 1 capital related to equity?

8 A. All of equity is included within Tier 1 capital, but not
9 all Tier 1 capital is equity.

10 Q. How are the PIERS preferred securities related to the
11 junior subordinated debentures?

12 A. By virtue of their structure, the PIERS hold an undivided
13 interest in the junior subordinated debentures.

14 Q. And when you say the PIERS, you mean the PIERS preferred
15 securities?

16 A. Sorry, the PIERS preferred securities.

17 Q. So let's go back to that. What are the two components of
18 each PIERS unit?

19 A. The PIERS unit's comprised of a preferred security of
20 Washington Mutual Capital Trust 2001, which I'll just call the
21 trust, and a warrant to purchase WMI stock.

22 Q. And what was the initial price of each PIERS unit?

23 A. Each PIERS unit was purchased for \$50 per unit, \$32.33
24 allocable to the preferred securities, and \$17.67 allocable to
25 the detachable warrant.

1 Q. Are you generally familiar with the terms of payment with
2 respect to the PIERS preferred securities?

3 A. I am.

4 Q. And what is your general understanding of those terms?

5 A. The payment structure with respect to the preferred
6 securities is that it mirrors the junior subordinated
7 debentures payments. So an interest payment from the junior
8 subordinated debentures would then correspond to a dividend
9 payment with respect to the PIERS units, the preferred
10 securities.

11 Q. Did the holders of PIERS claims have anywhere else to look
12 for payment of the dividends?

13 A. WMI guaranteed the holders of the PIERS units, the
14 preferred securities.

15 Q. Mr. Goulding, I'd like for you to take a look at Debtors'
16 Exhibits 298 and 299.

17 MR. ROSEN: And for the Court's benefit, Your Honor,
18 we're going to put them up side-by-side on the screen.

19 Q. Do you recognize these documents, Mr. Goulding?

20 THE COURT: What are we referring to?

21 MR. ROSEN: I'm sorry; 298 and 299, Your Honor.
22 They're in volume 7.

23 THE COURT: Thank you.

24 Q. Mr. Goulding, do you recognize these documents?

25 A. I do, yes. They're the guarantee agreement.

1 Q. And what was the purpose of the guarantee agreement?

2 A. It was to guarantee the holders -- the PIERS security
3 holders their return.

4 Q. I'm sorry, and the guarantor on that?

5 A. WMI.

6 Q. I'd also like for you to flip in your book to Debtors'
7 Exhibit 300.

8 MR. ROSEN: Your Honor, that's also in volume 7.

9 Q. Do you recognize this document?

10 A. I do, yes.

11 Q. And what is that document, sir?

12 A. This is the debenture for the junior subordinated
13 debentures.

14 Q. Pursuant to this document, is there a priority payment
15 with respect to the junior subordinated debentures?

16 A. There is. It's -- they are subordinated to all other
17 senior indebtedness.

18 Q. Is the priority of payment reflected in any other
19 document?

20 A. We incorporated that into our Exhibit G to the plan and
21 disclosure statement that outlines the waterfall matrix.

22 Q. Okay. Mr. Goulding, I would also now ask you to flip back
23 in your book to documents 296 and 297.

24 MR. ROSEN: And, Your Honor, I apologize, but the way
25 it broke out, one of yours is in volume 6 and one is in volume

1 7.

2 Q. Mr. Goulding, do you recognize these documents?

3 A. Yes, I do.

4 Q. And what, if anything, is memorialized in these documents
5 with respect to the priority of payment of the junior
6 subordinated debentures?

7 A. It similarly reflects that the junior subordinated
8 debentures are junior to all senior indebtedness.

9 Q. I'd like to turn your attention to section 6.1 of the
10 first supplemental indenture on page 18. And I believe it
11 carries over to the top of 19. Could you just let us know what
12 is reflected in that section 6.1?

13 A. Yeah. As we've been discussing, its debentures are
14 subordinated to senior indebtedness, and this section describes
15 that subordinated nature.

16 Q. How are the junior subordinated debentures being treated
17 pursuant to the modified plan?

18 A. They're treated as debt subordinated to all senior
19 indebtedness.

20 Q. Who are the holders of the junior subordinated debentures?

21 A. The Trust holds the junior subordinated debentures.

22 Q. And again, who holds the interest in the trust?

23 A. The PIERS units hold the preferred securities and WMI
24 holds the common securities of the trust.

25 Q. And again, Mr. Goulding, why are the junior subordinated

1 debentures being treated as debt pursuant to the plan?

2 A. They've always been treated as debt by the company. They
3 were intended to be debt. They were issued as debt. All the
4 company's financials, publicly filed documents, treat them as
5 debt, disclose them as debt, as well as the Court entered an
6 order with respect to this claim that treats them as debt.

7 Q. Why is the holder of the junior sub debt recovering ahead
8 of the preferred and common equity holders?

9 A. Because pursuant to the Bankruptcy Code's priority scheme,
10 debt recovers in front of preferred income and equity.

11 Q. You very quickly rattled off a bunch of reasons as to why
12 you're treating them as debt and what historically has been
13 done. Prior to the formulation of the modified plan, how was
14 WMI historically treating those junior sub debts?

15 A. They've always been treated as debt. Principally, you can
16 see them reflected on the public filings in "Other
17 indebtedness".

18 Q. Has WMI ever taken a position that the junior subordinated
19 debentures should be treated as anything other than debt?

20 A. No, never.

21 Q. As I said, you rattled off a bunch of documents before,
22 and I'd like to just go through those very quickly with you.

23 MR. ROSEN: Your Honor, may we approach the bench as
24 well as the witness?

25 THE COURT: Yes.

1 Q. Mr. Goulding, first what I'd like you to do is look at
2 Debtors' Exhibit 289. And what is this document, sir?

3 A. This is the Form S-3 in connection with the PIERS
4 transaction.

5 Q. When you say "in connection with", you mean in connection
6 with the issuance of it?

7 A. That's correct.

8 Q. And so when is this dated, sir?

9 A. The first one is dated June 27, 2001.

10 Q. Okay. I'd like you to next look at Debtors' Exhibit 290.
11 And if you could tell us what that document is?

12 A. This is an amendment to the earlier Form S-3 that was
13 filed on July 13, 2001.

14 Q. Debtors' Exhibit 291, Mr. Goulding, if I could ask you to
15 look at that and tell us what it is?

16 A. It's an updated Form S-3 in connection with the issuance
17 of the PIERS securities on August 20, 2001.

18 Q. Quickly flipping now -- and I apologize, Mr. Goulding --
19 292?

20 A. Yes, that's another amendment to the Form S-3, August 31,
21 2001.

22 Q. Okay. And now to 293? I think we're changing types of
23 documents, sir. What is this one?

24 A. Yes, this is the first 10-K when the PIERS would have been
25 outstanding. So this is the 10-K for December 31, 2001.

1 Q. And looking at Debtors' Exhibit 294, could you just tell
2 us what that is?

3 A. This is the most recent 10-K that's filed which is through
4 December 31, 2007.

5 Q. Okay. Thank you, Mr. Goulding.

6 MR. ROSEN: Your Honor, we handed up to you and to the
7 witness several demonstratives, and I believe counsel got it as
8 well. What I'd like to do now is go through those.

9 Q. Mr. Goulding, Demonstrative 5A, as we are referring to it,
10 could briefly describe what this is?

11 A. Sure. This is excerpts from the June 27, 2001 Form S-3.
12 There are three sections that are highlighted here that discuss
13 the treatment of the junior subordinated debentures and their
14 treatment as debt.

15 Q. Turning next to 5B?

16 A. Same provisions that are highlighted as before. This is
17 the July 13, 2001 Form S-3. And again, just highlighting the
18 treatment of the debentures as debt.

19 Q. 5C, sir?

20 A. Again, same thing. August 20, 2001 Form S-3, three
21 sections of that S-3 that are describing their treatment as --
22 the junior subordinated debentures' treatment as debt.

23 Q. Demonstrative 5D?

24 A. This is the last one of the S-3s, August 31, 2001. Same
25 three sections highlighted, showing their description as the

1 junior subordinated debentures being treated as debt.

2 Q. And 5E, sir?

3 A. 5E is an excerpt from the 2001 Form 10-K that was filed on
4 March 19, 2002, showing the treatment of them as debt, listed
5 here under "Other indebtedness, trust preferred securities", as
6 well as the treatment of the warrants that were associated with
7 the PIERS units in the section down below, in the equities
8 section.

9 Q. And 5F, sir?

10 A. This is the footnote to the consolidated financial
11 statements that reflects -- in the December 31, 2007 10-K that
12 reflects the junior subordinated notes under "Other
13 indebtedness".

14 Q. And these demonstratives, these were created as excerpts
15 from the documents, the debtors' exhibits that we referred to
16 earlier, sir?

17 A. That's correct.

18 Q. Mr. Goulding, I'd like for you to take a look at document
19 286 in your binder.

20 MR. ROSEN: And, Your Honor, I believe that's in
21 volume 6 of yours.

22 Q. Have you ever seen this document before?

23 A. Yes, I have.

24 Q. And what is it, sir?

25 A. This the order from the Court granting the debtors'

1 objection that set forth the amount of the claim for the junior
2 subordinated debentures.

3 Q. And what does the order generally provide for?

4 A. It provides for the allowance of a claim as debt in a
5 specified amount.

6 Q. Let's turn your attention, sir, to page 2 of the document,
7 and specifically the chart in the middle there?

8 A. Um-hum.

9 Q. In what amount was the claim allowed?

10 A. The total allowed amount is approximately 789 million.

11 Q. And how is this broken down, sir?

12 A. It's broken down between the preferred securities and the
13 common securities of the Trust. The preferred securities are
14 765-, 766 million, and the common securities are 23.7 million.

15 Q. And with respect to the preferred securities, is that
16 broken down into principal and pre-petition interest, sir?

17 A. It is. Yes, that's correct.

18 Q. And just for the Court, what is the breakdown?

19 A. It's 756 million of principal and 9.4 of pre-petition
20 interest.

21 Q. Mr. Goulding, you started out by describing what the
22 structure was and what the outstanding amount of the -- or the
23 issuance amount -- excuse me -- the original issued amount of
24 the junior subordinated debentures was. What's the reason for
25 the reduction from the face amount of the issued amount?

1 A. There's an original issue discount associated with these
2 securities that reduced the face amount, and that amount then
3 accretes over time to the full face amount we discussed before.

4 Q. And does the accretion of the original issue discount from
5 the date of issuance represent a return on account of the
6 warrant that was issued as part of the PIERS unit?

7 A. No, it does not. It's a sep -- that's a separate
8 security. The accretion of original issue discounts is akin to
9 interest.

10 Q. What is the allowed amount with respect to the common
11 securities?

12 A. It's 23.7 million in total.

13 Q. And that's essentially entirely principal. Is that
14 correct?

15 A. That's correct.

16 Q. Okay. Is WMI receiving any recovery on account of the
17 common securities?

18 A. No, it's not.

19 Q. Okay.

20 MR. ROSEN: Your Honor, obviously this is a document
21 that's in the court's records, and we will seek to have it
22 admitted as evidence, but we'll also ask the Court to take
23 judicial notice of the entry of the order.

24 Q. Mr. Goulding, I'd like you to take a look at document
25 255 --

1 MR. ROSEN: Which, Your Honor, is in volume 1.

2 Q. Have you ever seen this document before, Mr. Goulding?

3 A. Yes, I have.

4 Q. What is it, Mr. Goulding?

5 A. It's the modified sixth amended plan.

6 Q. Mr. Goulding, I'd like you to turn your attention to page
7 46 of the document, which I believe is Section 20.1. What is
8 that entitled, sir?

9 A. This section is on the treatment of PIERS claims.

10 Q. Okay. Does the modified plan make any reference to the
11 debtors' interest in the PIERS and the receipt of distributions
12 with respect to that interest in the PIERS?

13 A. It does. About just under halfway down, you'll see the
14 first "Provided further". And that section highlights the
15 treatment and the fact that WMI shall not retain any
16 distribution on account of the PIERS common securities.

17 Q. And what would happen to that if the debtors didn't retain
18 the interest?

19 A. To the extent that there was any value there to be
20 received, it would just continue to flow down the waterfall.

21 Q. It would recycle into the waterfall?

22 A. That's right.

23 Q. Okay. Thank you, Mr. Goulding. Let's turn to your
24 feasibility analysis. What's your understanding of the
25 feasibility requirement under the Bankruptcy Code?

1 A. My understanding is that the plan should not be followed
2 by or anticipated to be followed by a liquidation or a further
3 reorganization.

4 Q. And so do you have an understanding of what this
5 requirement means in connection with the modified plan?

6 A. Yes. In the context of the modified plan, it means
7 establishing the liquidating trust, establishing the
8 liquidating trust interest, funding the liquidating trust,
9 having enough money there set aside to pay those obligations
10 for the liquidating trust as it goes forward, as well as the
11 reorg'ed WMI having the ability to pay its obligations as they
12 become due.

13 Q. And has the debtor reached a conclusion with respect to
14 this feasibility requirement?

15 A. We have. We believe that it meets the feasibility
16 standard.

17 Q. And do you believe that the debtors will be able to meet
18 the conditions precedent to the effective date of the plan?

19 A. We do.

20 Q. What was your role in determining whether the modified
21 plan meets the feasibility requirements?

22 A. I oversaw the financial projections for the reorganized
23 entity.

24 Q. Mr. Goulding, at this time, I'd like for you to turn to
25 253 in your binder.

1 MR. ROSEN: And, Your Honor, that's in volume 1 of
2 yours.

3 Q. Mr. Goulding, do you recognize this document?

4 A. I do, yes.

5 Q. What is it?

6 A. It's the revised supplemental disclosure statement for the
7 modified sixth plan.

8 Q. I'd like to turn your attention to pages 45 through 48 of
9 that.

10 A. Okay.

11 Q. Are these the updated financial projections that were
12 prepared in connection with developing the modified plan?

13 A. They are, yes.

14 Q. Okay. And I'm going to ask you to look at one more. And
15 we may have to do this side-by-side again, and I apologize.
16 Document number 340.

17 MR. ROSEN: Your Honor, now we're skipping around yet
18 again, to volume 7.

19 Q. Do you have it, sir?

20 A. I do, yes.

21 Q. Do you recognize this document?

22 A. I do.

23 Q. And what is it?

24 A. It's the updated financial projections that take into
25 account August through -- sorry, actuals through April of this

1 year, as well as an updated Milliman report as of Q1 2011.

2 Q. I'm sorry, did you say it goes through an effective date
3 also?

4 A. Sorry, it also moves the effective date from June 30, 2011
5 to August 31, 2011.

6 Q. Was this updated financial model provided to Blackstone
7 for purposes of their valuation?

8 A. It was, yes.

9 Q. Directing you to page 1 of the updated financial model,
10 what information is included on that page?

11 A. This is the projected income statement for the reorganized
12 debtors.

13 Q. What are the differences, if any, between this page and
14 the updated financial model, and what we were talking about a
15 few moments ago, pages 45 through 48 of the revised disclosure
16 statement and those financial projections?

17 A. The update is principally a result of adding actuals
18 through April of 2011 and updated Milliman actuarial analysis
19 and pushing out the effective date to 8/31. That results in
20 some small changes, particularly a shift within the 2013/2014
21 cash flow period. But overall, not a significant change.

22 Q. Okay. These are the Milliman reports that have been
23 previously admitted into evidence. Is that correct?

24 A. That's right.

25 Q. Why did you rely on Milliman's actuarial analysis to

1 prepare these updated financial projections?

2 A. The company has been relying on Milliman's actuarial
3 analysis since prior to the filing, and rather than create our
4 own analysis of loss associated with what would happen to the
5 company on a go-forward basis, we relied on an industry expert
6 here who puts forth an actuarial analysis of the losses by book
7 year.

8 Q. And what do these updated financial projections assume
9 with respect to the business of reorganized WMI?

10 A. They assume that the business will continue in the form
11 that it's in, that it will continue in runoff as it has for
12 almost three years, and that over time, the loans outstanding
13 that WMMRC reinsures will come down.

14 Q. Mr. Goulding, you just mentioned that WMMRC is going to
15 continue to operate in runoff capacity. Why do the debtors
16 assume that it will do so?

17 A. Well, in connection with preparation of the plan, we
18 didn't know who the ultimate owners would be, by virtue of the
19 way that the stock election works. There isn't a significant
20 management team at WMMRC or significant capital. And therefore
21 the assumption was that the business would stay as a status
22 quo.

23 Q. What happens to the number of loans that WMMRC reinsures
24 over time, sir?

25 A. It goes down and then ultimately reaches zero in about

1 2019.

2 Q. And what -- I believe you said this but I want to be
3 clear -- what does the updated financial projections assume
4 with respect to the effective date?

5 A. They shift the effective date out from June 30, 2011 to
6 August 31, 2011.

7 Q. And based upon these projections, do you believe that the
8 modified plan satisfies the feasibility standard?

9 A. I do.

10 Q. And why do you believe that?

11 A. Because the projection shows that the reorganized debtor
12 will be able to meet its obligations as they come due.

13 Q. Mr. Goulding, earlier we talked about the PIERS and
14 recoveries and distributions pursuant to the plan. Were you
15 also involved in putting together elections or the results of
16 elections that were made pursuant to the plan?

17 A. I was, yes.

18 Q. And who provided you the data associated with that
19 calculation?

20 A. KCC provided us with the election data.

21 Q. And then what happened once you received that raw data?

22 A. We took the raw data and we created a model which we then
23 ran through to identify how the stock elections would work.

24 Q. And based upon those calculations and the distribution of
25 the stock of reorganized WMI pursuant to the plan, what

1 percentage of the stock will be received by the senior
2 noteholders?

3 A. Approximately fifteen percent.

4 Q. And what percentage of the stock will be received by the
5 senior subordinated noteholders?

6 A. Approximately eight percent.

7 Q. What percentage of the stock will be received by the
8 general unsecured creditors?

9 A. Less than one percent.

10 Q. And what percentage of the stock will be received by the
11 LTW holders?

12 A. Less --

13 Q. If their claims are determined to be claims in equity?

14 A. Less than one percent.

15 Q. And what percentage of the stock will be received by the
16 PIERS?

17 A. Approximately seventy-seven percent.

18 Q. In the event that -- well, why would somebody have chosen
19 stock and not cash, especially if it looks like, based upon the
20 waterfall, that cash is going to come to a higher level in the
21 classes?

22 A. You would elect to take stock in lieu of cash if you
23 believe that the company was undervalued. So you believe that
24 making a swap of a dollar of cash for a dollar of stock was a
25 good trade. So people who elected stock believe that they

1 had -- it had more value than the value Blackstone was placing
2 on it.

3 Q. And why did the PIERS receive so much of the stock,
4 pursuant to the elections?

5 A. It essentially stops at the PIERS. There's no -- whatever
6 isn't elected above them ends up at the PIERS.

7 Q. Explain that. Exactly how does the plan work --

8 A. Sure.

9 Q. -- with respect to these classes?

10 A. The senior notes as well as the general unsecured
11 claimants including the Dime warrant holders, get a stock
12 election that's a pro rata initial election. They can
13 substitute cash or liquidating trust interests for electing to
14 take stock instead. And then after that, if there's stock that
15 were to flow below the senior notes, they'd have a pay-over
16 election which would allow them to call that stock back from
17 the senior subs or the PIERS before they are entitled to the
18 election.

19 And then the next election is the senior subordinated
20 notes. And the senior sub notes, they don't have any
21 limitation with the amount of stock that they can elect. They
22 can elect up to their full amount of claim in stock. And they
23 also have the pay-over election. So to the extent that stock
24 is going to the PIERS, they can call it back to take in lieu of
25 LTIs for the remainder of their claim. And the CCBs have a

1 similar election to the senior subs.

2 And then the PIERS really have a three-part election to
3 trade between cash, LTI and stock. But there has to be a match
4 with respect to that.

5 Q. So the PIERS are really receiving this by default. Is
6 that --

7 A. That's right.

8 Q. If, in fact, the Court determines that the value of
9 reorganized WMI is greater than the Peter J. Solomon number, is
10 even greater than the slightly higher valuation that Blackstone
11 attributes, what effect would that have with respect to the
12 percentage allocations or the overall distributions pursuant to
13 the plan?

14 A. To the extent that somebody was receiving a hundred
15 percent of their claim and had taken stock, if the value of
16 that stock increased, then cash would flow to other creditors.
17 To the extent that they're not getting paid a hundred cents, it
18 would increase their recovery.

19 Q. And does the plan have a mechanism or a governor to make
20 sure that creditors do not receive greater than one hundred
21 cent distributions?

22 A. Yes, it does.

23 Q. And as distributions were to reach that level, what would
24 happen next, pursuant to the plan?

25 A. It flows further down the waterfall.

1 Q. Let's turn to the topic of liquidation analyses, Mr.
2 Goulding. You mentioned that you were involved with the
3 preparation of the updated liquidation analyses. What are
4 those?

5 A. They're an analysis that shows the comparison of the
6 Chapter -- recovery under a Chapter 11 plan as compared to a
7 hypothetical Chapter 7 liquidation.

8 Q. And are you familiar with the best interests test under
9 the Bankruptcy Code?

10 A. I am.

11 Q. And what is your general understanding of that?

12 A. That creditors and stakeholders need to do at least as
13 well under a Chapter 11 plan as under the hypothetical Chapter
14 7 liquidation.

15 Q. And what was your role in determining whether the modified
16 plan meets this requirement?

17 A. I oversaw the preparation of the liquidation analyses.

18 Q. Mr. Goulding, I'd like to turn your attention to Debtors'
19 Exhibit 254.

20 MR. ROSEN: Your Honor, that is in your volume 1.

21 Q. And I'd also like to turn your attention, if we could,
22 side-by-side, again, if that's possible, to Debtors' Exhibit
23 375.

24 MR. ROSEN: Your Honor, I apologize. The way it fell
25 out, that is in volume 9.

1 Q. Mr. Goulding, what is the date of Debtors' 254, that
2 liquidation analysis, just so we know?

3 A. Um --

4 Q. On page 2 of that document?

5 A. -- it was filed on May 7, 2011.

6 Q. Okay. And that is a notice of filing of an updated
7 liquidation analysis. Is that correct?

8 A. That's right.

9 Q. And the document 375, what is the date of that one, sir?

10 A. July 6, 2011.

11 Q. Are these the updated liquidation analyses that you
12 referenced before?

13 A. Yes.

14 Q. Okay. I'd like you to turn your attention to page 4 of
15 254, which is the first document we were talking about. And
16 I'd also juxtapose that with the other, 375. What's the
17 difference between the May 7th and the July 6th liquidation
18 analyses?

19 A. Really, there's just -- the only difference is an update
20 for shifting the effective date out from June 30, 2011 to
21 August 31, 2011.

22 Q. Does it reflect any increased expenses or interest that
23 might have accrued --

24 A. Yeah, the --

25 Q. -- as a result?

1 A. -- the shift of two months reflects or gives rise to an
2 additional two months of professional fees and costs of the
3 estate, as well as the continued accrual of post-petition
4 interest for that two-month period.

5 Q. Okay. Now, just focusing on 375, which are the July 6th
6 liquidation analyses. What's the difference between the two
7 sets, Mr. Goulding?

8 A. The two charts -- the first chart reflects interest paid
9 at the contract rate, and the second chart reflects interest at
10 the federal judgment rate.

11 Q. Why did the debtors prepare two different ones?

12 A. The Court had asked us to prepare a chart at the federal
13 judgment rate for comparison purposes.

14 Q. What are the differences in the liquidation analyses
15 between the Chapter 11 reorganization and the hypothetical
16 Chapter 7 liquidation?

17 A. The two differences are the delay associated with the
18 conversion to a Chapter 7 case and the lower value associated
19 with a fire sale of WMMRC as compared to a reorganization of
20 the debtors.

21 Q. Do you know if the Court considered the prior liquidation
22 analysis in its January 7th opinion?

23 A. I do, yes.

24 Q. And do you recall what the Court found?

25 A. I believe that the Court found that the liquidation

1 analysis met the best interests test.

2 Q. Going to these, now, how long would the delay potentially
3 be under a Chapter 7 liquidation?

4 A. We have made the assumption that it would take, given the
5 complexity of the cases, two to four months for a Chapter 7
6 trustee to get up to speed, and another two to four months to
7 effectuate a liquidation. For the purposes of laying it out on
8 the charts, we've assumed a five-month delay for calculating
9 professional fees and the like.

10 Q. Drawing your attention to note E of those liquidation
11 analyses, what does that provide, sir?

12 A. It describes the difference between the bankruptcy
13 expenses, priority claims and convenience claims between a
14 Chapter 11 and a Chapter 7 liquidation. And it highlights,
15 based on the five-month delay, the increased cost, the
16 approximately thirty-seven million of professionals' fees,
17 three million in operational expenses and another thirty-seven
18 million for the trustee fee.

19 Q. Why do you assume that a Chapter 7 liquidation would
20 result in a fifty million dollar fire sale of WMMRC?

21 A. We looked at a variety of pieces of information to
22 determine an estimate for what would happen in a fire sale.
23 But as an initial matter, the sale of WMMRC rather than a
24 reorganization of the debtors, will result in the loss of the
25 tax attributes for the NOL carry-forward, and that has value,

1 at least as contemplated in the Blackstone valuation. So the
2 result would necessarily be lower. And then looking at a
3 forced sale environment where buyers would know that the
4 company has no choice but to sell, it's likely that the bids
5 would be, then, significantly less than that amount.

6 Q. Did you have any opinions from investment banks regarding
7 an assumption with respect to this fire sale?

8 A. We had a number of conversations early on in the case with
9 some investment bankers about trying to sell it, and that their
10 view was that in the existing marketplace, it would be unlikely
11 to get fair value for it.

12 Q. And did the debtors have any conversations with potential
13 bidders for WMMRC?

14 A. We received two unsolicited bids with respect to WMMRC.

15 Q. When was that, sir?

16 A. They were both in early 2009.

17 Q. Were there any casual inquiries as well, or just those two
18 bids?

19 A. I think there were other people who were asking questions
20 about it, but I don't recall the specifics.

21 Q. I'd like to turn your attention to Debtors' Exhibit 391,
22 sir. Do you recognize this document?

23 A. Yes.

24 Q. What is it?

25 A. It was a summary that was prepared by one of the members

1 of our team that described the indicative bids that we'd
2 received.

3 Q. And directing you to the second bullet, "Indicative Bid",
4 what were the amounts of the bids for WMMRC?

5 A. There were two. The first was -- well, one of them was
6 for a hundred million plus or minus fifteen percent. And the
7 other one was for approximately forty-one million.

8 Q. And did these bids include the value of the NOLs?

9 A. They did. They assumed that you would be able to preserve
10 tax attributes to shelter the income of the go-forward entity.

11 Q. Do you recall the level of due diligence that had been
12 performed by the respective bidders?

13 A. The forty-one million dollar bidder had performed
14 significant diligence and we'd spent some -- a good amount of
15 time. The hundred million dollar bidder had not performed what
16 I would consider significant diligence.

17 Q. Is this reflected in this document here, sir?

18 A. Yes. At the bottom of the "Indicative Bid" section you'll
19 see it was apparent -- where the blank is -- that the forty-
20 one -- that the hundred million dollar bidder did not perform
21 the same level of due diligence and analysis that the other
22 bidder had.

23 Q. What do the July 6, 2011 updated liquidation analyses show
24 with respect to creditors' recoveries under the modified plan?

25 A. It shows that the recoveries under the plan are greater

1 than the recoveries would be under a hypothetical Chapter 7
2 liquidation.

3 Q. And so it's your view that that would satisfy the best
4 interests tests?

5 A. That's correct.

6 Q. With respect to the equity interest holders or claims in
7 Classes 17B and 18, what does it show?

8 A. It shows that they would receive zero under either
9 scenario.

10 Q. What does it show with respect to the recoveries for
11 senior notes, senior subordinated and CCBs under both
12 scenarios?

13 A. It shows that they would receive a hundred percent plus
14 post-petition interest.

15 Q. Under both scenarios?

16 A. Yes.

17 Q. With respect to the junior creditors, what does it
18 reflect?

19 A. With the PIERS, it shows that -- and just to correct, I
20 should say the CCBs are slightly impaired under the Chapter 7
21 liquidation. But the PIERS, what's reflected, looking at the
22 contract rate scenario is their recovery goes from 276 million
23 to zero.

24 Q. Under the Chapter 7 scenario.

25 A. Under the Chapter 7 scenario.

1 Q. And why is that, sir?

2 A. The PIERS are subordinated to all other senior
3 indebtedness, and therefore, the brunt of the delay and the
4 change in value is borne almost exclusively by the PIERS.

5 Q. And does this also have to do with their pay-over
6 obligations?

7 A. That's right. Because they're contractually subordinated
8 and having to pay over, it reduces their recovery.

9 Q. What, if any, effect does applying the federal judgment
10 rate to post-petition interest claims have on creditors'
11 recoveries?

12 A. It has a very minimal effect in the range that we're
13 talking about or that we're expecting. You'll note that the
14 PIERS recovery only changes from 276 to 282, and there's a
15 slightly different recovery for the general unsecured
16 claimants. However, there is a cap, effectively, on the
17 recovery of the PIERS as a result of standing in the shoes of
18 interest at the federal judgment rate.

19 Q. Why don't you explain what you mean by a cap on the PIERS?

20 A. Sure. Because of the contractual subordination
21 provisions, there's approximately 800 million dollars of post-
22 petition interest that's ahead of the PIERS that they'll have
23 to pay up. And yet, they'll only stand in the shoes of a
24 little less than 400 million dollars. And therefore, their
25 entire recovery, if you look at the size of their claim, gets

1 turned over to satisfy that 800 million, and they'll then only
2 stand in the shoes of approximately 375 million.

3 Q. What effect, if any, does applying the federal judgment
4 rate have on the best interests test?

5 A. It doesn't have any impact on the best interests test.

6 Q. Is there a situation where the contract rate is less than
7 the federal judgment rate?

8 A. Yes. With respect to some of the floating rate notes in
9 the senior notes class, some of those rates are actually below
10 the federal judgment rate.

11 Q. And what impact, if any, would there be on the senior
12 notes' recovery?

13 A. I believe there would be no impact, because the senior
14 notes receive their post-petition interest by virtue of
15 contractual subordination and not by payment from the debtors.
16 And therefore, their recovery would still be based on their
17 contract rate.

18 MR. ROSEN: Your Honor, at this time, we were going to
19 go into a discussion with Mr. Goulding about one of the
20 objections that had been interposed by the equity committee
21 with regard to feasibility and reporting. But just before we
22 started here, we were informed by the equity committee that
23 they were withdrawing that objection. And I just want to
24 confirm that. Otherwise we would go through another process.

25 MR. SARGENT: That's correct, Your Honor.

1 THE COURT: Okay.

2 MR. ROSEN: Your Honor, at this time -- I believe I've
3 already moved the declaration into evidence, but I'd also like
4 to move each of the exhibits that we referenced into evidence.

5 THE COURT: Any objections?

6 MR. SARGENT: No objections.

7 THE COURT: All right, they're admitted.

8 (Revised supplemental disclosure statement was hereby received
9 into evidence as Debtors' Exhibit D-253, as of this date.)

10 (5/7/11 liquidation analysis was hereby received into evidence
11 as Debtors' Exhibit D-254, as of this date.)

12 (Modified sixth amended plan was hereby received into evidence
13 as Debtors' Exhibit D-255, as of this date.)

14 (Order of the Court re objection to claim was hereby received
15 into evidence as Debtors' Exhibit D-286, as of this date.)

16 (Debtors' 6/27/01 10-K was hereby received into evidence as
17 Debtors' Exhibit D-289, as of this date.)

18 (7/13/01 amendment to Form S-3 was hereby received into
19 evidence as Debtors' Exhibit D-290, as of this date.)

20 (8/20/01 amendment to Form S-3 was hereby received into
21 evidence as Debtors' Exhibit D-291, as of this date.)

22 (8/31/01 amendment to Form S-3 was hereby received into
23 evidence as Debtors' Exhibit D-292, as of this date.)

24 (Debtors' 10-K as of 12/2001 was hereby received into evidence
25 as Debtors' Exhibit D-293, as of this date.)

1 (Debtors' 10-K as of 12/2007 was hereby received into evidence
2 as Debtors' Exhibit D-294, as of this date.)

3 (Amended and restated declaration of trust was hereby received
4 into evidence as Debtors' Exhibit D-295, as of this date.)

5 (Guarantee agreement was hereby received into evidence as
6 Debtors' Exhibit D-298, as of this date.)

7 (Guarantee agreement was hereby received into evidence as
8 Debtors' Exhibit D-299, as of this date.)

9 (Debenture for junior sub debentures was hereby received into
10 evidence as Debtors' Exhibit D-300, as of this date.)

11 (Updated financial projections were hereby received into
12 evidence as Debtors' Exhibit D-340, as of this date.)

13 (7/6/11 liquidation analysis was hereby received as into
14 evidence Debtors' Exhibit D-375, as of this date.)

15 (Summary of WMMRC bids was hereby received into evidence as
16 Debtors' Exhibit D-391, as of this date.)

17 (Certificate of good standing was hereby received into evidence
18 as Debtors' Exhibit D-401, as of this date.)

19 MR. ROSEN: Okay. Excuse me, one moment, Your Honor.
20 Your Honor, at this point, we'd pass the witness.

21 THE COURT: All right.

22 (Pause)

23 MR. SARGENT: Edgar Sargent on behalf of the equity
24 committee. May I proceed, Your Honor?

25 THE COURT: You may.

1 CROSS-EXAMINATION

2 BY MR. SARGENT:

3 Q. Good afternoon, Mr. Goulding.

4 A. Good afternoon.

5 Q. As I said, I'm Edgar Sargent from Susman Godfrey. We
6 represent the equity committee in this action.

7 I'm going to hand you an exhibit, or you can pull it out
8 of one of our binders. It's binder number 1 -- volume 1, EC-42
9 and also EC-43.

10 Okay. Have you had a chance to look at those?

11 A. Yep.

12 Q. EC-42 is a series of e-mails -- a nested series of
13 e-mails. The second one in the chain is one from you to Brad
14 Scheler at Fried Frank. Do you recognize this document?

15 A. Yep.

16 MR. SARGENT: I'd like to move for the admission of
17 EC-42.

18 THE COURT: Any objection?

19 MR. ROSEN: No, Your Honor.

20 THE COURT: It's admitted.

21 (E-mail chain was hereby received into evidence as Equity
22 Committee's Exhibit EC-42, as of this date.)

23 Q. And is EC-43, do you recognize that as the attachment that
24 you had to EC-42?

25 A. I believe so.

1 MR. SARGENT: I'd move for the admission of EC-43.

2 MR. ROSEN: No objection, Your Honor.

3 THE COURT: It's admitted.

4 (Attachment to EC-42 was hereby received into evidence as
5 Equity Committee's Exhibit EC-43, as of this date.)

6 Q. Can you tell us what EC-42 was, Mr. Goulding?

7 A. It was an e-mail from myself to Brad outlining the
8 comparison of two different waterfall -- two different recovery
9 analyses or recoveries.

10 Q. And are these recovery analyses equivalent to the one that
11 you were just discussing with your counsel?

12 A. It's equivalent to the Exhibit G that -- they're lead-ins
13 to that ultimate Exhibit G.

14 Q. And you were providing this to counsel for some of the
15 settlement noteholders in this case. Is that right?

16 A. That's right.

17 Q. And is that -- were you providing information to the
18 settlement noteholders in this case, pretty much from when you
19 were first retained by Washington Mutual?

20 A. I was providing information to the settlement noteholders'
21 counsel pursuant to a confidentiality agreement which I think
22 was signed around November of '08.

23 Q. And so starting about then you were providing information
24 to the settlement noteholders' counsel?

25 A. Yeah, I wasn't -- I didn't provide a lot of information to

1 them, but on occasion.

2 Q. And do you -- the first page of EC-43 is a waterfall that
3 you prepared. Isn't that right?

4 A. Yeah, it looks like a document that I prepared.

5 Q. And if you look at the top, it says, "Proceeds available
6 for distribution, 5.2 billion." Do you know why that number is
7 5.2 and not 7.6, as some of the other waterfalls would show?
8 Is it missing the taxes?

9 A. No, I think the purpose of this waterfall was to show that
10 for a specific outcome, what could happen. So there's sort of
11 unique circumstances associated with the waterfall that can
12 occur based on whether you give people money one dollar at a
13 time, or you give them all of the money at once. And so what
14 we were highlighting is there's a scenario here around the 5.2
15 billion, or 5.2 billion falls within the range that highlights
16 some of the intricacies of that waterfall analysis.

17 Q. Can you explain in a little bit more detail why you end up
18 with a 5.2 billion dollar proceeds number instead of the 7
19 billion dollar number that we see on the other waterfalls?

20 A. I was using it as an illustration of what happens within
21 that range. But it was just an illustration of the recovery at
22 that level.

23 Q. So the fact that the 5.2 billion dollar number happens to
24 be the amount of the cash in the estate less the taxes received
25 is just a coincidence? That wasn't how the number was

1 generated?

2 A. No. I think it was used as -- it may have been used as an
3 approximation for cash at the effective date. But I think what
4 we were talking about is what happens at that range.

5 Q. Okay, thank you. I would like to turn now -- if you have
6 a copy of your declaration, still -- to the liquidation
7 analysis that's attached to that, the most recent liquidation
8 analysis.

9 A. What number was that one?

10 MR. ROSEN: Your declaration.

11 Q. Your declaration. I've got a copy of it for you, if you'd
12 like. Do you need one?

13 A. Hang on.

14 MR. SARGENT: Does the Court have a copy?

15 THE COURT: Do you want --

16 MR. SARGENT: I'm sorry?

17 THE COURT: -- the declaration was what exhibit
18 number?

19 MR. ROSEN: 374, Your Honor.

20 THE COURT: 374.

21 MR. SARGENT: Your Honor, it's actually 375, which is
22 the liquidation analysis that was attached as an exhibit to the
23 declaration --

24 THE COURT: The updated --

25 MR. SARGENT: -- that I wanted to ask him some

1 questions about.

2 THE COURT: All right, thank you. I have it.

3 MR. SARGENT: Could we have the ELMO on, please?

4 Q. As you were just testifying with your counsel, Mr.
5 Goulding, there are two liquidation analyses on two separate
6 pages in this presentation. Isn't that right?

7 A. Yeah, there are two charts within the liquidation
8 analysis. That's correct.

9 Q. And the first one is -- shows recovery at the contract
10 rate, and the second one shows recovery at the federal judgment
11 rate, correct?

12 A. That's correct.

13 Q. And the one that I have up here on the screen is page 5,
14 which is the federal judgment rate. You can see that at the
15 top.

16 A. Okay. Um-hum.

17 Q. Could you turn to that page, please?

18 A. Sure.

19 Q. And this represents the debtors' analysis of recovery by
20 various classes of creditors under a federal judgment rate
21 scenario, where the court has determined that the equitable
22 interest rate applicable in this case is the federal judgment
23 rate, right?

24 A. That's right.

25 Q. And there are two waterfalls of recovery on this chart for

1 the unsecured creditors: one at the top and one at the bottom.

2 And the second one shows -- reflects contractual subordination.

3 Is that right?

4 A. That's right.

5 Q. And it's the contractual subordination chart that shows

6 the recovery that the debtor thinks should flow to these

7 creditors at the end of the day from the estate, correct?

8 A. That's right.

9 Q. Okay. And I want to start with the first chart at the

10 top, which does not reflect contractual subordination, okay?

11 A. Okay.

12 Q. And I want to understand how some of these numbers were

13 calculated. The pre-petition claim, that's 4,132,000,000 for

14 the senior notes, correct?

15 A. That's right.

16 Q. And that's the same as it would be under the contract rate

17 analysis, right? That number never changes, does it?

18 A. No, it doesn't change.

19 Q. Then the number right below that, 241 --

20 A. Right.

21 Q. -- that's an interest rate that you've calculated at the

22 federal judgment rate, correct?

23 A. That's right.

24 Q. And the rate that you used for this was 1.95 percent

25 compounded annually, correct?

1 A. That's right. It's 1.95 percent is the rate. And I
2 believe that it's right that it's compounded annually.

3 Q. And so, if I wanted to calculate that 241, what I would do
4 is just apply -- I could just do a mathematical formula, right?
5 I can apply a compound interest rate formula, compounding
6 annually, 1.95 percent, to the 4.132 billion number, and that's
7 what I'll get?

8 A. That's right.

9 Q. And then if I wanted to determine the full amount of all
10 unsecured pre-petition claims, what I would do here is add up
11 the 4.132, 1.666, 3.75, 70- and 789. Is that right?

12 A. That's right.

13 Q. And then if I wanted to determine the interest rate or
14 determine the interest amount post-petition on those at a
15 certain rate, I could just apply that interest rate to that
16 summed total of pre-petition claims, correct?

17 A. You can do it that way.

18 Q. And I could do that if it was a simple interest rate
19 calculation, and I could do it that way if it was a compound
20 interest rate calculation, correct?

21 A. Right.

22 Q. And that should get me the total amount claimed for post-
23 petition interest under the applicable rate, correct?

24 A. Right.

25 Q. Okay. And in this top scenario here, where you're not

1 reflecting contractual subordination, the amount of the post-
2 petition interest claimed for the senior notes is 241 million.

3 Isn't that right?

4 A. That's correct.

5 Q. And if we go down to the analysis just below, where the
6 waterfall reflects contractual subordination, the amount of
7 that interest claim increases from 241 to 452 million. Isn't
8 that right?

9 A. Right.

10 Q. And then the effect of that, if we follow it over to the
11 recovery -- and this column here, again, the middle column on
12 the second table, is the recovery amount that reflects the
13 waterfall that the debtor believes should be followed if the
14 Court adopts this plan. Isn't that right? With -- adopts this
15 plan with federal judgment rate interest, excuse me. Isn't
16 that right?

17 A. Sure. Yes.

18 Q. And so it shows the senior notes recovering -- it's a
19 little small --

20 A. Yeah.

21 Q. -- I think it's 4,585,000,000, right?

22 A. That's right.

23 Q. And if we go back to the prior page, and you can flip back
24 to it if you like, the contract rate analysis, that shows
25 exactly the same amount recovered by the senior notes. Isn't

1 that right?

2 A. Right. They have contractual subordination obligations --
3 I mean, the PIERS have contractual subordination with respect
4 to them, so they're not getting that money from the debtors.
5 They're getting that money pursuant to contractual
6 subordination as a pay-up from the PIERS --

7 Q. But the way --

8 A. -- and this gets to the cap argument we were talking about
9 before. But if I could just point you -- if you added the sum
10 of all the recovery amount in the top section of the chart,
11 it's the same as the value for the sum in the bottom section of
12 the chart.

13 Q. That's true. That's true. But the individual recoveries
14 for each class of creditor in the second chart is exactly the
15 same as it is in the first chart. Contract rate and federal
16 judgment rate is exactly the same with the exception of general
17 unsecured creditors and PIERS, correct?

18 A. Right. It just so happens that within the range that
19 you're in, they're -- you don't hit the cap with respect to
20 what the PIERS stand in the shoes of when they turn dollars
21 over, and so there isn't a difference in those classes in terms
22 of what the pay-over is.

23 Q. So the way you analyzed this waterfall, if the Court
24 determines the equitable interest rate applicable to these
25 claims is not the contract rate, it's the federal judgment

1 rate, that impacts only two classes of unsecured creditors, the
2 GUCs and the PIERS, right?

3 A. Right. I -- my understanding is that if the judge says
4 that the federal judgment rate should apply to creditors, that
5 only respects -- that only affects the payment from the debtors
6 to the creditors. What we're reflecting in our waterfall
7 reflects contractual subordination. So as an alternative, I
8 could pay the creditors what is owed from the debtor, and I can
9 let them sue each other to figure out who owes what. But
10 rather than doing that, we've attempted to encapsulate the
11 subordination provisions into our chart and pay them what they
12 would ultimately get pursuant to their contractual
13 subordination.

14 Q. But under your analysis, if let's say there was another
15 hundred million dollars available to distribute, that would not
16 flow down to equity, it would flow to the PIERS?

17 A. It would be very close.

18 Q. If there was 200 million, would that make a difference?

19 A. You would have about 90 million -- between 90 and 100
20 million that would go to the PIERS, and then you would have the
21 next dollar flowing to 510(b) subordinated claims and then down
22 below them as value was available.

23 Q. So under a federal judgment rate scenario, in your
24 analysis, how far out of the money is equity?

25 A. I don't know how big the 510(b) subordinated claim pool

1 is. So it's a little tough to say how far it is in terms of
2 terms of getting to preferred or common. But it's about ninety
3 to a hundred million before you pay off the PIERS under a
4 federal judgment rate scenario by virtue of the cap that the
5 PIERS have.

6 Q. Okay. Thank you. I think I'd like to ask you a few
7 questions about some of the other numbers on the waterfall and
8 get some of the background. Starting at the top, there's a
9 "Cash" line. I'll use the federal judgment rate chart, just
10 because it's already up. But if there's something different
11 about this one on any of these questions, or you want to look
12 at the contract rate one, just let me know, or help me clarify
13 my question that way, if you would?

14 A. Um-hum.

15 Q. The first line is "Cash", and that's showing 7.129
16 billion, correct?

17 A. That's right.

18 Q. And there's a note, note A two pages further along in your
19 presentation that discusses the elements of the cash. Is that
20 right?

21 A. That's right.

22 Q. And as I read that, it breaks into two major groups.
23 There's cash and restricted cash on the one hand, and on the
24 other hand, there are claims for value due from JPMC, right?

25 A. I guess if you're going to group it into classes, there's

1 probably more than that, because there's the American Savings
2 Goodwill Bank -- excuse me -- American Savings Bank goodwill
3 litigation, which is already in the court's registry, and the
4 BOLI/COLI and rabbi trust assets, are assets that we'll
5 monetize on our own, that don't require a payment from
6 JPMorgan. And then there are payments pursuant to the
7 settlement agreement.

8 Q. Okay. So let's go through the JPMC assets really quickly,
9 including the two that you just mentioned. There's a loan from
10 JPMC that's being paid. Is that correct?

11 A. There are four intercompany loans. That's correct.

12 Q. And payment for Visa shares?

13 A. That's right.

14 Q. And then you mentioned BOLI/COLI?

15 A. BOLI/COLI is assets that we'll monetize on our own. I
16 think the settlement agreement clears up who owns the
17 BOLI/COLI, but we're the ones who will be responsible for
18 surrendering that -- those policies in order to get that value.

19 Q. Okay. So what I'm getting at is, in order to determine
20 the value of that asset to the estate, you need to look to the
21 general settlement agreement, right? That determines how much
22 of those policies is going to come to the estate?

23 A. I guess it defines which policies we get.

24 Q. And that's true also with the rabbi trust, right?

25 A. I believe -- I think that the rabbi trust is defined as

1 which one we get, but I don't recall whether we call it out or
2 not.

3 Q. And the Visa shares, also, that payment --

4 A. The Visa shares is clearly within the settlement
5 agreement. That's right.

6 Q. And the same thing with the goodwill litigation?

7 A. The goodwill litigation describes the ownership.

8 Q. Okay. So that's the JPMC piece. All of those elements,
9 the amount that's coming to the estate from the JPMC piece,
10 that's determined by the terms of the GSA?

11 A. I guess there's more to it than that from my perspective.
12 But they are governed by the settlement agreement.

13 Q. Then the -- well, what more to it is there than that?
14 Than the --

15 A. Well, by reading the settlement agreement you don't know
16 what the value is of those individual assets, I don't think. I
17 think what you know is that, for example, we get the HF
18 elements and rabbi trust, or that they give up any interest
19 that they might have in it. But you would have to determine
20 the value, and that we'll have to do other things in order
21 to --

22 Q. Monetize --

23 A. -- get that asset. Get that back.

24 Q. I'm sorry. Okay, so I understand. So the ownership of
25 it, the contours of ownership, are determined by the GSA, but

1 some of the assets aren't strictly liquid, so you might have to
2 value them some other way or liquidate them some other way. Is
3 that fair?

4 A. That's fair.

5 Q. So, and getting back to the cash, there's -- the first
6 piece that we talked about was cash and restricted cash, right?

7 A. Um-hum.

8 Q. What is restrict cash?

9 A. There's a couple of components of restricted cash.
10 There's some restricting cash that's associated with rabbi
11 trust. There's some restricted cash that's one of the accounts
12 with JPMorgan. And I don't recall the other piece off the top
13 of my head.

14 Q. Why are those things described as restricted? What does
15 that mean?

16 A. Well, there's a restricted cash account, for example, that
17 used to collateralize intercompany obligations between WMI and
18 WMB. So that's set up as restricted cash. There's another
19 account, for example, on the rabbi trust, that's a restricted
20 cash account, that's essentially cash associated with that
21 trust. So like, if you had a dividend or an interest payment
22 or something on securities held within that rabbi trust, it
23 would go into a restricted cash account. It doesn't go into a
24 general cash account. You can't just go in and take the cash
25 out and move it someplace else. It would require some other

1 action in order to get the cash out.

2 Q. What's the amount of the cash that's restricted?

3 A. I don't recall off the top of my head, but it's probably
4 less than a hundred million.

5 Q. Okay. And certainly less than 200 million?

6 A. Yeah.

7 Q. Okay. Components of the cash would also include tax
8 refunds that have already been paid. I think it says that in
9 the note. Is that right?

10 A. That's right.

11 Q. And those --

12 A. Our share of those refunds, yep.

13 Q. Yes. You're getting to exactly where I was going with
14 this. Your share of those refunds, that's determined by the
15 GSA again, right?

16 A. That's right.

17 Q. And in addition to the tax refunds there's the deposits,
18 correct?

19 A. Right.

20 Q. What's called the deposit claims; the money that was on
21 deposit in WMB and there was a dispute with JPNC over
22 ownership, right?

23 A. Um-hum.

24 Q. And again, that amount is determined by the terms of the
25 GSA?

1 A. Well, I don't know that the amount is, again, but with
2 respect to where it goes and who gets it, that kind of thing,
3 that's governed by the GSA.

4 Q. Yes, the ownership. Okay. Now, what are the elements of
5 cash and unrestricted cash other than what we've already talked
6 about, other than the elements that are covered by the GSA?

7 A. The other elements of cash?

8 Q. Yes.

9 A. That's pretty much it. I mean, it's whatever we have.
10 There's -- we took a view as to what cash we might be able to
11 get out of the subsidiaries by the effective date. So to the
12 extent that we would dividend cash up from the subsidiaries,
13 you know, we looked at those types of things. We included in
14 cash any dollars we thought we would have or could have,
15 basically, by the effective date.

16 Q. What are the amounts -- what's the total amount of this
17 category you were just describing?

18 A. This is the 7.129.

19 Q. No, no. I mean, excluding the items we've just covered
20 like the taxes and all the GSA elements, what is the total
21 amount of the cash that is going to be dividended up from your
22 subsidiaries or the other estimated amounts that you said?

23 A. Yeah. I don't have all the -- there's a fairly lengthy
24 sources and uses file that builds up to this file. And I don't
25 think I could give you amounts for all twenty-five items that

1 go into here. But, you know, there's not significant dollars,
2 you know, certainly not more than 200 million, coming from that
3 source.

4 Q. And how long has the estate known about the value of that
5 piece?

6 A. I'm sorry, which piece?

7 Q. The piece you were just discussing, the cash --

8 A. The dividends and --

9 Q. -- the miscellaneous items?

10 A. -- the other assets?

11 Q. Yes.

12 A. Well, it's moved around a little bit over time in terms of
13 what we thought we would get from like persistency bonuses.
14 There's a lot of other sort of ins and outs. So it moves a
15 fair amount over time. So I don't -- we update it once a month
16 with new information that we get. You know, things happen in
17 various subsidiaries. We have reserves that we were going to
18 let go, those types of things.

19 Q. Are those estimates published in the MORs?

20 A. No, I don't think so.

21 Q. Are they published anywhere else, publicly?

22 A. No, not for what we think we're going to get out of them.
23 Just in the format that you see them here.

24 Q. Okay. And you say it's varied, and right now it's less
25 than 200 million. Has it varied by a factor of more than two?

1 MR. ROSEN: Your Honor, mischaracterizes his answer
2 previously given.

3 THE COURT: Well, rephrase. Is it what? I missed the
4 end of the question.

5 Q. Well, my question was, you said the amount of this
6 miscellaneous cash had varied. And my question was, has it
7 varied by a factor of more than two over time?

8 A. I don't recall. But there's significant dollars that have
9 moved, for example, on this chart, over time, from investment
10 in subsidiaries to cash. And so, it -- I mean, it has varied
11 as we've filed different versions. We consolidated a number of
12 entities, at one point. We dividended up a bunch of cash at
13 one point. And so that would have then been in the cash number
14 as opposed to being in a different line item.

15 Q. Okay.

16 A. So it does change in probably over that time period. I
17 mean, certainly, if you look at the cash dividend, when we
18 initially received the subsidiary money, that's 292 million, so
19 that's a pretty material variance from the numbers that we're
20 talking about today.

21 Q. Okay. And so when cash moved from -- or when value, say,
22 moved from investment in subsidiaries up to cash, that wouldn't
23 change the total amount of the net proceeds available to the
24 estate, right?

25 A. No, just the shift wouldn't change the total proceeds.

1 Q. Okay. And the second thing you described, the 292
2 million, did that change the net proceeds?

3 A. No, it was cash that was the cash of the subsidiaries. It
4 would have -- I don't recall that we filed anything at that
5 point in time. But it would have previously shown up under the
6 investment in subsidiaries line, because there would have been
7 significantly more cash there. And then when we merged out a
8 bunch of entities, it would flow back up.

9 Q. So were there changes over time in your estimates of any
10 of these amounts that wouldn't have just shifted money between
11 the different categories, but that would have had a material
12 impact on the net proceeds line?

13 A. I'm sure there were things that changed over time. You
14 know, I don't know what the sort of right threshold is in terms
15 of assessing whether it would have varied the amount. I mean,
16 certainly just delays in the case reduce the net proceeds
17 number substantially. So you know, there's a lot of different
18 components that go into this number.

19 Q. Well, that's expenses. That's on a different line, right?

20 A. I'm sorry, you were talking about the net proceeds, I
21 thought.

22 Q. Okay, fair enough. Let's move down. The next item below
23 cash is the reorganized WMI?

24 A. That's right.

25 Q. That's that 160 million that comes from Blackstone, right?

1 A. That's right.

2 Q. That's the number. We heard some testimony about it
3 yesterday. When did the debtor first develop an estimate for
4 the value of reorganized WMI?

5 A. I don't recall the date of Blackstone's first report. But
6 whenever their report was submitted the first time.

7 Q. So before -- I think there was testimony yesterday that
8 they were hired in either March or April of 2010. Is that
9 right?

10 A. That sounds about right.

11 Q. And before that date, the debtor just had nothing to put
12 on this line at all on a waterfall, no estimate for the value
13 of the reorganized WMI?

14 A. Well, previously we maintained a model -- a financial
15 model for WMMRC, which is the principal asset of reorg'ed WMI.
16 And we -- you know, looked at that. As we had received the
17 indicative bids early on, we needed something to compare those
18 to in terms of assessing whether it made any sense to sell the
19 asset, you know, or to keep it. And so there was some early
20 work done in a model that was maintained in connection with
21 that, that then formed the basis for the financial projections
22 that we have.

23 Q. And that was a discounted cash flow model?

24 A. Principally, yeah.

25 Q. And was the value materially different from the value that

1 Blackstone returned to you in March or April? Do you recall?

2 A. I don't -- I mean, the value evolved significantly over
3 time. So I don't -- I don't know what the -- it depends on
4 which point in time you're comparing.

5 Q. Which way did it move? Well, between the model that you
6 were running, and the first, say, six months of the estate, you
7 testified you were hired in October -- oh, this is a year and a
8 half, isn't it? I missed a year, I'm sorry. October '08, and
9 when Blackstone was retained in the spring of 2010, which way
10 was the movement? Do you recall? Did it get higher or lower?

11 A. I think if you look back, there was an initial filing with
12 respect to the value of WMMRC in connection with funding one of
13 the capital trusts. And that valuation was substantially
14 higher than the value that's included here. There are a number
15 of differences in terms of that valuation and how that was put
16 together as compared to what the valuation is that's here
17 today.

18 Once most of those key components had been worked out, you
19 know, that filing was in November of '08, and as you might
20 imagine, we didn't particularly have all of the pieces put
21 together at November of '08, having only been started in
22 October of '08. But we had a capital contribution requirement
23 in one of the trusts. And so we needed to get a motion before
24 the Court in order to fund that so that we didn't lose that,
25 which turned out to be a good business decision, as that trust

1 is still very valuable today.

2 So at the outset, a valuation was put forward before, I
3 think, we really understood exactly how the business worked.
4 And then subsequently, we modified that as we went forward.

5 Q. So I still -- I don't know if I missed it or I didn't get
6 an answer to my question. I was trying a little simpler
7 question, as to whether or not your value on WMMRC --

8 A. Um-hum.

9 Q. -- that you were placing yourself when you were doing this
10 internal discounted cash flow analysis you described, was that
11 higher or lower than the value that Blackstone returned to
12 you -- or was it about the same -- that Blackstone returned to
13 you in the spring of 2010?

14 A. I don't know that we ran a model, for example, right
15 before we hired Blackstone and said, oh, let's see what they
16 come back with and we'll compare the two. We were running one
17 fairly regularly, but more in response to receiving bids. I
18 believe that the valuation that came back was in the same
19 ballpark as what we had more or less at the time.

20 Q. And is that information that you shared or you recall
21 sharing with any of the settlement noteholders?

22 A. I don't recall having conversations with them at that
23 point in time with respect to whatever valuation we had done
24 with WMMRC.

25 Q. How about their attorneys?

1 A. It's not an area that I was overseeing principally with
2 respect to WMMRC and the financial projections at that point in
3 time. I oversaw them later. So I don't know whether there was
4 or wasn't information shared at that point in time. It's
5 possible that there were conversations with respect to WMMRC
6 and what it is and what it looks like at various points in time
7 with counsel to the noteholders.

8 Q. Okay. And how about the estimates of the miscellaneous
9 cash accounts and the investments in subsidiaries you were
10 talking about a few minutes ago? Was that something that you
11 know to have been shared with the settlement noteholders or
12 their counsel?

13 A. I don't think that the underlying details I was referring
14 to before, like the sources and uses, the twenty-five line
15 items -- I don't think that's ever been shared with anybody
16 outside the company.

17 Q. How about an estimate for the total amounts?

18 A. Yeah, I think at various points in time, you know, based
19 on different settlement outcomes, people discussed different
20 items.

21 Q. Before the general settlement was announced in spring of
22 2010?

23 A. In connection with conversation with Fried Frank, I think
24 people probably did discuss various amounts.

25 Q. Okay. And that's the same thing you were saying about the

1 reorganized -- or WMMRC's cash flows. Is that right?

2 A. In terms of discussing it with Fried Frank?

3 Q. Yes.

4 A. I don't know what the conversations were with respect to
5 that.

6 Q. Okay. The next item on here is "Income taxes receivable".
7 That's just a piece of the income tax refund that still had --
8 is yet to be collected, right?

9 A. Right. That's WMI's piece.

10 Q. And that's attributable to the GSA; or the amount of it
11 that's going to WMI is attributable to the GSA, right?

12 A. The allocation of whatever the amount remaining is
13 pursuant to the GSA.

14 Q. And I think this is clear to everybody here. But the
15 bankruptcy expenses line, it's ninety million, that comes out
16 up top out of the proceeds; that includes attorneys' fees,
17 professional fees for the estate. That's right? What else
18 does it include?

19 A. Yeah, it includes some priority tax claims, some
20 convenience claims. It includes, you know, a whole lot of
21 professionals, predominantly.

22 Q. And that's an item that's reported on the MORs? Is that
23 right?

24 A. We report every month what has been paid case-to-date for
25 various professionals.

1 Q. So someone who wants to estimate that amount could look at
2 those MORs and see roughly what it's running every month,
3 right?

4 A. Yeah, I think so. You know, there are other amounts that
5 are included in that number as well, just in terms of pursuant
6 to the plan, payment of certain other professionals that
7 wouldn't be in the run rate that haven't been paid thus far.

8 Q. Okay.

9 A. But I think some of those numbers are public at this
10 point.

11 Q. The majority of it is professional fees that's reported in
12 the MOR, though?

13 A. I believe so.

14 Q. Okay. And --

15 A. But again, these are for bills that wouldn't necessarily
16 show up on -- I mean, we accrue on the MOR, but I believe -- I
17 mean, we accrue within the financials, but I believe the MOR
18 shows what's paid to date. So to the extent that professional
19 fees vary materially, for whatever reason, month to month, then
20 you wouldn't have visibility to that.

21 Q. Is there anything else in that expense line apart from the
22 professional fees -- and you said there were some professional
23 fees that are not reported on the MORs, any other significant
24 item that's included in that line?

25 A. Not other than the priority claims and convenience claims.

1 Q. Well, what are those? What are priority claims?

2 A. Like priority tax claims that we anticipating in cash on
3 day one. That would come out first. Basically, they have
4 priority pursuant to the Bankruptcy Code, so the payment of
5 those, we take as a straight deduction before we get to net
6 proceeds.

7 Q. And what's the amount of those?

8 A. My understanding at this point is that there's only one
9 now remaining priority tax claim which I think is about
10 700,000.

11 Q. And has the amount of the priority tax claims been public?

12 A. I don't think so, but I couldn't say for sure.

13 Q. How about the convenience claims?

14 A. I don't know whether we provided a public estimate for
15 convenience claims.

16 Q. Well, tell us quickly what they are, if you wouldn't mind?

17 A. Well, it's principally claims that are less than 50,000
18 that we've found for -- rather than objecting to, you know, for
19 convenience, we'll -- you know, rather than spending the time
20 or the money to fight any of those that we think could have
21 merit or reduce them by some small amount, we just agree to the
22 amount and pay them.

23 Q. And not material to the estate, because they're so small?

24 A. That's right.

25 Q. Basically. And another item I had a question about is the

1 general unsecured claims. I think there's an estimate on here
2 of 375 million. Is that right?

3 A. That's right.

4 Q. Do you know when the estate first reached that estimate
5 for the amount of the general unsecured claims?

6 A. It's moved around a little bit over time. So I don't -- I
7 don't recall when the first 375 number -- I think it was 375 in
8 the first liquidation analysis that we filed, but I don't know
9 whether -- I don't recall whether we picked a specific number
10 prior to that time.

11 Q. Has it ever been higher than 500 million?

12 A. You know, early on in the case, I'm sure that the number
13 could have been higher than that.

14 Q. Do you remember that it was?

15 A. I don't really remember the specifics of -- it would not
16 have been in this chart ever higher than 500. But at various
17 points in time, there could have been a recovery analysis, for
18 example, where we were trying to assess the size of various
19 claims and whether or not those were our obligations early on
20 when we had limited information, where we may have thrown a
21 whole bunch of stuff into that bucket and were trying to weed
22 through it. So I just don't recall what the numbers might have
23 looked like at various points in time early on.

24 Q. So that gets to another question. In order to run a
25 waterfall, you need to have some estimate for each of those

1 items, right? You need to have an estimate for general
2 unsecured claims if you're going to run a waterfall, right?

3 A. Generally, yeah. I mean, you can run a bunch of different
4 scenarios, which is what I recall doing, you know, a whole
5 bunch of different times, trying to figure out, you know, what
6 the recoveries would like at different -- you know, with
7 different general unsecured assumptions.

8 Q. Were the debtors' estimates of general unsecured claims --
9 and I'm talking about the period now before the general -- the
10 global settlement agreement was announced, so between petition
11 date and March 2010 -- were the debtors' estimates of those
12 claims published publicly?

13 A. I don't recall that we made a pronouncement of what we
14 thought they were going to be, but I could be wrong.

15 Q. Is that the kind of information you recall sharing with
16 settlement noteholders or their counsel?

17 A. We may have discussed the claims at various points with
18 Fried Frank, but I don't know that we discussed the specifics
19 of that number with the settlement noteholders.

20 Q. So you may have discussed it with the settlement
21 noteholders' counsel, but you're not sure if you discussed it
22 with the --

23 A. I don't recall discussing it with any of them directly.

24 Q. Okay. Mr. Goulding, you testified on questions from your
25 counsel that you'd been involved in tabulating the results of

1 the stock election, recently. Is that right?

2 A. Right. I oversaw those calculations.

3 Q. You're aware of who within each class elected to take the
4 stock, are you?

5 A. No, the information that we get is by what they call VOI
6 number. So we know generally that the ballots have been
7 reconciled, that KCC has reconciled them to the -- they get a
8 master ballot, let's say, from Goldman Sachs, and that there's
9 twenty-one holders there that made an election, and then
10 there's twenty-one that correspond to the VOI numbers in
11 Goldman, but I don't know who within each of those -- I can't
12 name a fund or an individual who's made the election.

13 Q. So you don't know one way or the other that the settlement
14 noteholders elected to take stock or cash?

15 A. I do not know whether they did or they didn't.

16 Q. Do you know the total number of creditors? Is there a way
17 to tell that from the information you have -- the total number
18 of creditors who elected stock?

19 A. Yes. I can see the count -- the total count of people who
20 elected stock.

21 Q. So do you know how many owners the reorganized debtor is
22 going to have if the plan is approved and the distribution
23 occurs according to those elections?

24 A. It depends on -- at the outset, it will have I believe
25 between 125 and 175, if I'm not mistaken. No, it's even less

1 than that. It's about 75.

2 Q. Okay. You think it's less than a hundred?

3 A. I think it's less than a hundred.

4 Q. Do you know if the election was delayed for any particular
5 creditors? Were any creditors given the option to file their
6 submission, making their election later than the published
7 deadline?

8 A. I don't know.

9 Q. Okay.

10 MR. SARGENT: That's all the questions I have. Thank
11 you.

12 CROSS-EXAMINATION

13 BY MR. STEINBERG:

14 Q. Good afternoon, Mr. Goulding. I'm Arthur Steinberg,
15 representing the litigation tracking warrant holders. I have a
16 number of questions, but I want to start with some of your
17 testimony today.

18 I think you looked at the chart and remarked that based on
19 your analysis of the ultimate flow of funds, that the PIERS
20 entity would actually be doing better using a federal judgment
21 rate than using a contract rate. Is that correct?

22 A. Yeah, it's slightly better.

23 Q. Yet, in this case, even after you came out with your
24 revised liquidation analysis, the PIERS are urging a contract
25 rate instead of a federal judgment rate. Is that correct?

1 A. I believe that's my understanding, yeah.

2 Q. Including the indenture trustee for the PIERS, right?

3 A. Right.

4 Q. And I think you had remarked that one of the reasons why
5 that might occur is because the PIERS's recovery is capped
6 under the federal judgment rate, so that if the waterfall was
7 greater than what you've actually projected, at some point in
8 time, they would stop getting a recovery, and classes junior
9 would get a recovery. Is that correct?

10 A. That's right.

11 Q. So that anybody who's really objecting to your analysis
12 and urging for something that's contrary to what you've
13 presented, must be assuming that the -- that your analysis is
14 undervaluing what will ultimately flow into this estate.
15 Otherwise it makes no sense. Isn't that correct?

16 A. No, I don't think so. I think that there's probably other
17 arguments, particularly a precedent-setting one, that if, you
18 know, you agree to this type of treatment in one case, that it
19 might hold up for other cases which might have different
20 recoveries. So I wouldn't think of that as the only reason why
21 people might address the issue.

22 Q. So they'll be arguing against their economic interest in
23 this case for the purposes of establishing the legal precedent
24 in other cases?

25 A. Well, I think that the recovery difference here is fairly

1 de minimis.

2 Q. Okay. So but that's what you -- did you ever have a
3 discussion with anybody at the -- representing the PIERS who
4 said that I recognize that it's against my economic interests,
5 but I'm arguing for the legal precedent for future cases?

6 A. I don't recall the specifics of that. I think there may
7 have been a conversation about it generally, but I wasn't -- I
8 don't call the PIERS's indenture trustee on a regular basis to
9 understand what it is that he's attempting to do.

10 Q. Okay. But you're confident that your analysis of what the
11 funds flowing into this estate is accurate. And so that no one
12 would think that this cap on the PIERS recovery would come into
13 play. You're confident that what you presented to the Court
14 and to the creditors in the disclosure statement is your best
15 estimate, right?

16 A. It is the best estimate that I can do at this time.

17 Q. Okay. Did your estimate include litigation recoveries for
18 litigations that haven't been brought yet?

19 A. No, it does not.

20 Q. Okay. Do you think that you may have litigation
21 recoveries, you may bring litigation that may increase the
22 recovery here?

23 A. I don't know. That's not an area that I'm charged with.

24 Q. Okay. But you are in charge of the liquidation analysis.
25 And if the litigation trust was going to bring litigation, that

1 would be something that you would know about for purposes of
2 doing your liquidation analysis, wouldn't it?

3 A. I think in conversations that I've had with members of our
4 team with respect to litigations, the viewpoint has been that
5 you don't value litigations for this purpose. I don't know
6 that people have a general view on what the value is of those
7 litigations. We did not include them in this analysis.

8 Q. Oh. So you just took the -- you may have litigations, but
9 you just assumed since it's contingent, you don't need to put
10 anything or say anything about it?

11 A. They're not included here. I think that in conversations
12 that we had with members of our team, we decided not to include
13 them.

14 Q. Okay. Well, let's talk about litigation claims that the
15 litigation trust may bring, because it is obviously relevant to
16 analyzing the recoveries, which are now not reflected on your
17 chart. What are the litigation claims that the litigation
18 trust will bring?

19 A. There's not a litigation trust. There's a liquidating
20 trust.

21 Q. I apologize. Liquidating trust.

22 A. And I don't know what the claims are. It's not an area
23 that I'm charged with.

24 Q. Okay. Are you familiar with the motion that was filed, I
25 guess, in the last couple of weeks, for the estate to retain

1 the Klee Tuchin firm to do an analysis as to whether the
2 directors should be sued by the estate?

3 A. I'm aware that that motion was filed, yes.

4 Q. Were you familiar with the retention of Klee Tuchin?

5 A. Not very, no.

6 Q. Do you know why the debtors' existing array of counsel are
7 not doing this analysis, but a new law firm is doing this
8 analysis?

9 A. Again, it's not an area that I'm charged with, so I'm not
10 really involved.

11 Q. Do you know why this analysis wasn't done in the two and a
12 half years that this case was pending?

13 A. I'm not a lawyer. It wasn't an area I was focused on.

14 Q. Do you know who at Alvarez & Marsal or the debtor was
15 focused on this?

16 A. I believe that most of that falls into the general counsel
17 or, you know, Bill, in terms of valuating those in connection
18 with other members of our legal team.

19 Q. Are you aware of a recent settlement that was announced
20 where shareholders have sued the Washington Mutual board and
21 that the D&O policy was going to be used to pay approximately
22 110 million dollars to a recovery based on what was perceived
23 to be or what was alleged to be improper acts by the Washington
24 Mutual board?

25 A. I'm not that familiar with it. I'm aware that a

1 settlement was reached, but that's about it.

2 Q. Do you know whether the D&O policy is being used to fund
3 some of that settlement?

4 A. I'm not sure.

5 Q. Okay. Are you aware that the FDIC has either sued or
6 threatened to sue the Washington Mutual board?

7 A. I was --

8 Q. That was the Washington Mutual Savings Bank board.

9 A. -- I was only aware that the -- there were certain
10 individuals carved out of the settlement agreement by the FDIC.
11 But I don't really know much about what actions the FDIC is
12 going to take.

13 Q. You've not seen any of the articles that there were
14 settlement discussions and they recently broke down?

15 A. I don't really follow all that. I'm focused on the other
16 things I'm working on.

17 Q. Okay. So there was the shareholder settlement that there
18 was announced, and you didn't see any articles about the FDIC
19 potentially suing the board, but suddenly, on the 7th version
20 of the plan, there's now all of a sudden a motion filed for a
21 new counsel to review whether the board should be sued in this
22 case, right?

23 A. You're really asking me a lot of questions about something
24 I don't know much about.

25 Q. Okay. Maybe you know of an answer to this question.

1 Under the Klee Tuchin motion, they're investigating whether the
2 former board should be sued, but not the current board should
3 be sued. Do you know why no one's looking at the current board
4 and only looking at the former board?

5 A. No, I wasn't -- I'm only vaguely aware that the motion was
6 filed. I certainly didn't review the motion; have never read
7 the motion; nor do I know what it contains.

8 Q. All right. Do you know who was responsible from Al -- was
9 Mr. Kosturos, was he familiar with that? Do you know?

10 A. I'm not sure. I don't know everything that Bill knows.

11 Q. Okay. You never discussed it with him, though, right?

12 A. No.

13 Q. Okay. All right. Let's talk about the bids that were
14 made on WMMRC. I think you said that was in the first quarter
15 of 2009?

16 A. Yeah, early 2009.

17 Q. And you thought that that was a good basis -- for purposes
18 of doing your liquidation analysis, that was a good data point
19 to use something that was received in 2009?

20 A. Well --

21 Q. In first order?

22 A. -- I think we'd been sort of consistent on the point of
23 using a fifty million dollar valuation. For purposes of the
24 best interests test, what's important is that the value is
25 lower than the reorg value. And because selling WMMRC rather

1 than reorganizing it will necessarily cause you to lose certain
2 tax attributes, and as identified in the Blackstone report,
3 those attributes have value, you're going to necessarily be
4 below that value, just on that basis alone. And then our
5 further view is that in a forced sale environment such as a
6 Chapter 7, you probably aren't likely to get what you would
7 constitute as even fair value, excluding those tax attributes.
8 So I'm not so focused on the fifty as that's absolutely the
9 right number as I am that it's considerably less than the
10 reorganized value. And when you're putting numbers on a page,
11 you've got to pick a number, and that seemed to be a good
12 approximation based on the information we had.

13 Q. Okay. But your actual liquidation analysis said that you
14 used the fifty million dollar number based on conversations
15 with potential bidders and investment banks, right?

16 A. Again, it's all the information that we had relative to
17 the possible sale of WMMRC, what we thought we could garner in
18 the marketplace, given all of the hypotheticals associated with
19 a Chapter 7.

20 Q. But you didn't try to market WMMRC at any time, right?

21 A. We did not, no.

22 Q. Okay. So you really never started a process. And the
23 person that you retained to do the process, you never had him
24 talk to your potential bidders. Isn't that correct?

25 A. I'm not following all the pronouns, I guess.

1 Q. All right. You hired Blackstone to potentially sell
2 WMMRC?

3 A. Right. There's a piece of their engagement where they
4 could potentially sell WMMRC.

5 Q. And WMMRC never talked to these potential bidders which
6 formed part of the data points for your liquidation analysis?

7 A. Well --

8 MR. ROSEN: I'm sorry --

9 THE COURT: I think you mean Blackstone ever talked
10 to.

11 Q. I meant -- I'm sorry, Blackstone.

12 A. I don't believe that Blackstone spoke to the people who
13 had given indicative bids. We did talk to others about
14 potentially selling WMMRC early on in the case as well.

15 Q. Okay. And you said you spoke to one who did a lot of work
16 and came up with a forty-one million dollar number, right?

17 A. That's right.

18 Q. Did a lot of due diligence?

19 A. Um-hum.

20 Q. How did they get the information to do the due diligence?

21 A. We signed a confidentiality agreement with them.

22 Q. Okay. Were they an insider?

23 A. Were they an insider?

24 Q. Yes, of Washington Mutual?

25 A. No, it was a third party.

1 Q. Okay. So someone gave you an unsolicited bid, you signed
2 a confidentiality agreement, you gave them due diligence, they
3 came up with a forty-one million dollar number, and you turned
4 it down, right?

5 A. That's right.

6 Q. You turned it down because it was inadequate, right?

7 A. That's right.

8 Q. Right. And what was the valuation that you put on at the
9 time that you turned down a forty-one million dollar offer?

10 A. I don't recall off the top of my head. There was a number
11 of models. But it would have been, you know, something similar
12 to around where Blackstone ended up now; somewhere between, I
13 don't know, 125 and 200 depending on what the time frame is
14 that we're looking at. There's a lot of movement depending on
15 the change in Milliman's report, changes in actuals; and then,
16 as you get closer to the dividend stream which begins to occur
17 in 2013, just the passage of time sort of increases the value
18 of the company.

19 Q. Okay. So you think that for whatever it was worth in
20 2009, it's now worth more, because we're more than two years
21 after the fact, and that passage of time has gotten you closer
22 to the income stream?

23 A. I don't recall whether the valuation was higher or lower
24 at the time. I'm just saying the passage of time is one factor
25 which is included in the valuation.

1 Q. All right. Mr. Sargent talked to you about -- maybe it
2 was Mr. Rosen who talked to you about a motion that was filed
3 early on in the case to fund one of the trusts that are part of
4 WMMRC, and you had a valuation attached to that.

5 A. Yes, I believe I mentioned that.

6 Q. Right. And what was the valuation at the time that the
7 motion was filed?

8 A. I don't recall the specific number, but it was in the
9 upper 300 million range, I believe.

10 Q. So you were valuing WMMRC when you were asking to put
11 money into WMMRC at over 300 million dollars in 2008?

12 A. Yeah. As I was stating before, there were some
13 fundamental components of the business that thirty days into
14 the case or thereabouts, we didn't quite understand. And so we
15 actually -- the way that the valuation methodology was done,
16 was an error which gave rise to a significantly higher
17 valuation. But I think that the end result is the same. The
18 trust still has significant value. The capital contribution
19 made sense. We would have made the contribution regardless.
20 We just weren't as familiar with the operations of the business
21 at the time.

22 Q. All right. But at the time that you were asking for -- to
23 put money into the estate, you had a high valuation, and now
24 though, when you're valuing for purposes of your plan and
25 trying to figure out what it is, you have a much lower

1 valuation. Isn't that right?

2 A. Well, to be clear, I'm not performing the valuation. One
3 of the reasons that we specifically asked them -- asked to
4 retain Blackstone, is because we wanted to get a third-party
5 valuation expert to put a value on this. We didn't think that
6 it was prudent for Alvarez & Marsal to put a valuation on it.

7 Q. Okay. Let's turn to the stock election. I think you said
8 that the seniors took fifteen percent; the senior subs took
9 eight percent; the general unsecured and the LTWs took less
10 than one percent; and the PIERS took seventy-seven percent.
11 That was roughly the numbers that you used, right?

12 A. That sounds right.

13 Q. And Mr. Rosen asked you the question as to why was the
14 PIERS -- Mr. Rosen asked you the question as to why would
15 anybody take a stock election instead of taking the cash. And
16 you said it was probably because they thought that the estimate
17 for the reorganized entity was undervalued, right?

18 A. That's right.

19 Q. Okay. But then he asked you the question about the PIERS,
20 and you said well, that was actually the default?

21 A. That's right.

22 Q. But that's not really true, isn't it? There were PIERS
23 who took an election -- seventy-seven percent may be the
24 subtraction of these numbers from a hundred percent, but there
25 were PIERS entities who actually were solicited to take an

1 election and they took an election to take the stock. They
2 voluntarily took it. It wasn't a default. Isn't that right?

3 A. No. It's a default. There's actually a very small number
4 of PIERS holders that made an election. The PIERS election is
5 very different than the election in the other classes. It's a
6 swap between cash, LTIs and stock. And so the election can be
7 made such that they can take -- they can request to take more
8 or less stock, but they have to have somebody who's taking the
9 other side of that transaction. And as a result of not having
10 any value of priority LTIs, we actually don't have a swap that
11 can be made. So the stock will be distributed pro rata to the
12 PIERS holders.

13 Q. But at the time they're voting, they don't know that. So
14 they have to indicate whether they're prepared to take a stock
15 election, right?

16 A. They do not. They can -- they can make an election to
17 specify or they can take what's available to them on a pro rata
18 basis.

19 Q. So when Mr. Sharp did his chart and had his Exhibit B, and
20 he has Class 16, which is the PIERS, and he has something
21 saying "liquidating trust interest distributed as common stock"
22 and he shows an election of a hundred percent in common stock,
23 he's not showing that people made an election; he's just
24 indicating everybody who's a default?

25 A. That's right. Everybody ends up with the default.

1 Q. So how come some people get zero and some people get a
2 hundred percent of the stock on his chart?

3 A. I don't have his chart, so I'm not sure what you're
4 referring to. But everybody will get a pro rata share of
5 stock, every PIERS holder.

6 Q. So why does -- looking at it, why does he --

7 THE COURT: Can you identify the exhibit number of
8 that just for the record?

9 MR. STEINBERG: It's the -- I don't know the exhibit
10 number, Your Honor. It is what --

11 THE COURT: Is it attached to the declaration?

12 THE WITNESS: It says Exhibit B at the top, and it
13 says Class 16.

14 THE COURT: Okay.

15 MR. STEINBERG: It is what is attached to his
16 declaration.

17 THE WITNESS: Okay.

18 Q. So why does he have zero on some and a hundred percent on
19 others when he's talking about Class 16?

20 A. Well, some people did make elections. They can put
21 whatever they want down here as an election. So people can say
22 oh, I want it or I don't want it. Some people said I'll take a
23 hundred percent in stock. Some people said they'll take a
24 hundred percent in cash. Not everybody made an election. This
25 is just the detail that shows some individuals. The reality of

1 the situation is that none of the elections can be honored by
2 virtue of the fact that there's nothing to trade with, and
3 therefore, everybody will get their pro rata share of stock.

4 Q. But the reality is also that some PIERS people actually
5 made an election to take stock. They took it volitionally and
6 they didn't -- it wasn't given to them on a default basis.

7 Isn't that true?

8 A. No, it's only being given to them because that's what's
9 left over and the stock has to go to somebody. They don't get
10 it by virtue of their election.

11 Q. Well, what were they electing, then?

12 A. They were electing -- assuming that -- let's say that we
13 had resolved all the issues, and that the LTW claim was now a
14 zero or it was equity, and significant other claim issues were
15 resolved, and more cash was available for distribution on day
16 one. You might have had cash and priority LTIs to swap with
17 the stock. They were making the election, should that actually
18 come to pass.

19 Q. That they would want to take the stock?

20 A. That they would want more stock and less LTIs or less
21 cash. And then you would have to find a match within the pool
22 in order to get there.

23 Q. So would it be fair to say that some PIERS people actually
24 wanted stock?

25 A. Based on some of the elections? Yes. Certain of them did

1 seem to elect stock.

2 Q. All right. Let's talk about the PIERS debt, so you can
3 clarify my confusion. Because I've raised the same thing in my
4 objections a number of times. At the time, in 2001, when the
5 PIERS were issued, the initial purchase price for twenty-three
6 million shares was fifty dollars for the preferred piece,
7 right?

8 A. No, it's fifty dollars for a PIERS unit.

9 Q. PIERS unit.

10 A. A PIERS unit is comprised of a preferred security of the
11 trust as well as a warrant to purchase stock in WMI.

12 Q. And the PIERS unit had a preferred securities piece and an
13 equity warrant to purchase Washington Mutual, Inc. stock,
14 right?

15 A. Right.

16 Q. And the preferred securities piece was accounted for as
17 \$32.33 of the \$50, and that the balance, the \$17.67, was deemed
18 to be original issue discount related to the value of the
19 equity warrant given to the PIERS. Isn't that right?

20 A. That's right.

21 Q. Okay. So the OID that was given at its initial -- at the
22 initial issuance, was totally related to the equity warrant,
23 right?

24 A. Well, the way I guess I would look at it is, the PIERS
25 unit is effectively purchasing two securities. So you're

1 purchasing a \$32.33 preferred security in the trust, and you're
2 purchasing a warrant, that at the time was a valuable warrant,
3 for \$17.67.

4 Q. Okay. And --

5 A. And then --

6 Q. -- I'm sorry.

7 A. -- the value then accretes over time, of the preferred
8 security.

9 Q. And when we talk about it accreting over time, it's
10 because the OID is being reduced, right?

11 A. That's correct.

12 Q. Okay. So \$32.33 times 23 million shares, equals what?

13 A. I don't have the number in front of me. I think it's like
14 730 million or thereabouts, 740.

15 Q. 743?

16 A. Sounds about right.

17 Q. Right. And the petition -- the claim resolution order
18 that you had, had the number for a principal amount of 756
19 million dollars, plus around 9 million dollars of accrued pre-
20 petition interest, right?

21 A. That's right.

22 Q. So that over the course of time there was an accretion of
23 the OID from around 743 to 756, right?

24 A. That's right.

25 Q. Okay. And the OID was totally referable to the equity

1 warrant given to the PIERS in 2001, right?

2 A. No, that's not correct.

3 Q. That's not right?

4 A. No.

5 Q. Okay. Let me read you from the disclosure statement on
6 page 9. It says, "The PIERS units were issued at an initial
7 price of \$50, with \$32.33 allocated to the PIERS preferred
8 securities and the balance or \$17.67 attributable to original
9 issue discount related to the value of the aforementioned
10 warrant."

11 A. That's right.

12 Q. That statement's true, though, right?

13 A. Right.

14 Q. So the OID is not related to the equity -- the warrant for
15 the equity securities that was given in 2001?

16 A. The further accretion of OID on a go-forward basis relates
17 to the preferred securities instrument. The initial allocation
18 of value, the split of the fifty, allocates between the two
19 securities, which is why I was trying to frame it up that way
20 earlier.

21 What ends up happening is, the accretion of OID is akin to
22 interest. So if you think of a zero coupon Treasury that's
23 issued at a discount, it has an interest rate. It's the
24 implied yield to maturity to when you get that hundred dollars
25 or thousand dollars, depending on what you're invested in. And

1 the same is true here.

2 If you look at the interest rate associated with the
3 junior subordinated debentures, particularly in relation to
4 what's ahead of them in the capital structure, the subordinated
5 notes, you would expect that that interest rate would be
6 considerably higher as a result of the risk of being
7 subordinated to those folks. It's not at five percent. It's
8 less than the interest rate on the subordinated notes. And so
9 this original issue discount associated with the junior
10 debentures is yield enhancement. It's an additional way to
11 provide interest associated with those junior subordinated
12 debentures.

13 Q. Well, I thought you said the equity warrant issued had
14 value. And wasn't that the reason why the interest rate was
15 low, because they were getting an equity warrant at the same
16 time that had value? And isn't that the \$17.67 that's
17 attributable to the original issue discount related to the
18 value of the equity warrant?

19 A. It's a way to carve up the initial fifty purchase price to
20 say that the 17.67 is the value of the warrant. But from the
21 date of issuance, you can look at them as two separate
22 securities. One is a 32.33 security that accretes to 50 over
23 time, and the other is the value of a warrant.

24 Q. And did the PIERS pay current interest during the course
25 of the seven years prior to the bankruptcy?

1 MR. ROSEN: I'm sorry, are you referring to the PIERS
2 or the junior subordinated debentures themselves?

3 MR. STEINBERG: I'm talking about the PIERS preferred
4 securities.

5 A. Were the PIERS preferred securities paid dividends prior
6 to the filing?

7 Q. Yeah.

8 A. That's my understanding.

9 Q. And did the debenture get paid current interest during the
10 period prior to the filing?

11 A. It was paid quarterly, I believe. And yes, the payments
12 were made current.

13 Q. And what was the rate that they were being paid at?

14 A. They were getting a coupon that was the five and change.

15 Q. So the five and three-eighths interest was being paid on
16 their coupon, and at the same time, the OID was accreting in
17 value; the OID that your disclosure statement says is
18 attributable to the equity warrant, right?

19 A. The OID is increasing in value, so that at the time of the
20 maturity of the instrument, it's worth the full face amount.

21 Q. And the interest during the pre-petition period was paid
22 on this instrument as it was accreting in value; so as the OID
23 was being reduced and there was an increase in the principal
24 sum, that was also accruing interest, right?

25 A. I'm not following you.

1 Q. If it was 743 in 2001 and it became 749 in 2005, then you
2 were paying interest on the 745 (sic) number not a 743 number,
3 right, in 2005?

4 A. You know what, I'd have to go back and look. I think that
5 the interest coupon is associated with the face amount, not the
6 accreted issued amount.

7 Q. Okay. All right. Now, the stipulation -- and there's
8 also post-petition interest under your formula, that's being
9 paid on the accreted OID amount too, right?

10 A. There's post-petition interest which includes OID
11 accretion. It's a component of interest.

12 Q. Okay. All right. And the common securities -- your
13 stipulation that you entered into had a preferred securities
14 piece and a common securities piece, right?

15 A. The order that was entered by the Court does have a chart
16 that breaks down the junior subordinated debentures into
17 preferred and common, yes.

18 Q. And the common securities are owned by Washington Mutual,
19 Inc., right?

20 A. That's correct.

21 Q. So if you look at the chart and just looked at Washington
22 Mutual, Inc., they were paying themselves for the common
23 securities piece, right?

24 A. Well, the challenge in setting up which number to put in
25 the liquidation analysis, for example, is that with respect to

1 making initial distributions, the pro rata is with respect to
2 the amount of the junior subordinated debentures, which is the
3 789. But when the actual recovery occurs, you'd only get a
4 recovery with respect to the amount of the preferred securities
5 before you get to a recovery for the common securities. So to
6 the extent that there's value that flows above the value of the
7 preferred securities in the trust, that money would then come
8 back to WMI and flow further down the waterfall.

9 Q. But the order that was entered didn't say I'm allowing the
10 trust claim, it said I'm allowing the preferred securities
11 piece and I'm allowing the common securities piece, right?

12 A. Actually, I think that the -- that it -- that the order,
13 at least the way I think it's intended, is to set up a claim
14 for the junior subordinated debentures that sets up a claim for
15 789 million. We described, for purposes of disclosure, the
16 amount that's allocable to preferred and common. There's
17 external investors that hold those preferred securities, and we
18 felt it prudent to let them know what their claim amount was.
19 And I think we disclosed who owns the common.

20 Q. What do you care what the internal workings of the trust
21 are as to how they allocat between the preferred and the
22 common, if you think that the only relationship you have is to
23 the trust?

24 MR. ROSEN: Your Honor, counsel is being argumentative
25 and contentious.

1 THE COURT: Sustained.

2 Q. But under your plan, the distributions that's referable to
3 the common securities owned by Washington Mutual, Inc. is
4 ultimately going to the preferred securities holders, right?

5 MR. ROSEN: Your Honor, again, that mischaracterizes
6 what Mr. Goulding's testimony was earlier.

7 MR. STEINBERG: You're not testifying.

8 THE COURT: Overruled. You can answer.

9 MR. ROSEN: I'm sorry?

10 MR. STEINBERG: I said, you're not testifying.

11 THE COURT: Please confine argument to later.

12 MR. ROSEN: I addressed the Court.

13 THE COURT: But please.

14 A. There's a claim for the junior subordinated debentures
15 that's allowed. If the claim were to pay -- my understanding
16 is there's a liquidation preference within the trust to pay the
17 preferred securities and their interest associated with the
18 preferred securities, ahead of the common securities. If there
19 were any value then remaining at the trust, and that value
20 would then be to the common securities, that value would flow
21 further down the waterfall. WMI is not retaining any of that
22 interest, and it would essentially go to the liquidating trust
23 to flow further down the waterfall.

24 Q. Okay. The debtor announced a potential deal with the
25 equity committee that ultimately didn't come to fruition that

1 was supposed to be incorporated into a seventh modified plan.
2 And part of that announced deal was that there was going to be
3 a twenty-five million dollar war chest for people to bring
4 claims for the benefit presumably of the estate. What -- who
5 was going to be sued with that twenty-five million dollar war
6 chest?

7 A. It would be all of the remaining claims that people
8 thought they had.

9 Q. Well, who were they?

10 A. I wasn't involved in that element of the discussion. The
11 equity committee had discussions, counsel to counsel, on what
12 elements that might be. I wasn't involved in those.

13 Q. So you're not aware of anybody who was going to be sued
14 with a twenty-five million dollar war chest?

15 A. I wouldn't want to try to speculate, and I certainly don't
16 think I'm the person to testify on what those might be.

17 Q. I wasn't asking you to speculate. I was just asking you
18 whether you had any --

19 A. Right. I don't recall.

20 Q. Okay. All right. Now, the plan contemplates a
21 liquidation trust, which is like a settlement trust. And there
22 has to be a valuation of the assets that goes into the
23 liquidation trust so that people know what their tax basis is
24 in the interest that they're getting in the liquidation trust,
25 correct?

1 A. That's right. We have to perform a tax basis analysis.

2 That's right.

3 Q. All right. So it's easy to value cash, because cash is
4 cash, right?

5 A. It's generally easy to value cash.

6 Q. Right. So but the more difficult things to value are
7 things like litigation claims or assets that have not been
8 recovered yet?

9 A. That's correct.

10 Q. Okay.

11 A. Future income taxes receivable or the like.

12 Q. All right. So has the -- and there's a tax impact on
13 someone who's a beneficiary of a liquidation trust because you
14 may have an asset that's valued where the cash hasn't been
15 received, and depending on what your basis is, you may have to
16 pay taxes on that. Is that correct?

17 A. That's right. You'll have to pay taxes on the basis of
18 the liquidating trust interest that you're given.

19 Q. So all the beneficiaries of the liquidation trust may have
20 a tax obligation depending on how you value these assets to be
21 received, right?

22 A. That's right.

23 Q. Okay. And in a Chapter 7, they wouldn't have that -- to
24 pay taxes on assets until there's actually a distribution and
25 the estate actually gets the money, right?

1 A. I guess it would depend. I would think you would probably
2 form a similar trust in a Chapter 7, but I don't know.

3 Q. Do you think you'd form a liquidation trust in a Chapter
4 7?

5 A. Well, I don't know. It depends on how you would want to
6 effectuate the initial payment and what you would do with
7 residual assets that you're three or four years to recover.

8 Q. Okay, let me ask you this question. Do you know whether
9 the tax burden that is related to a liquidation trust structure
10 would be the same in a Chapter 7 with respect to assets not yet
11 collected?

12 A. I don't know. It's not --

13 Q. Okay, you don't know. All right. So let's just talk
14 about the assets that may be subject to this tax burden because
15 this Chapter 11 plan has a liquidation structure. I understand
16 the cash and I'm not going to ask you to go through that again.
17 Tell me what assets -- tell me what valuation you've done to
18 value the assets coming into the liquidation trust.

19 A. We retained an outside firm to perform a valuation, and
20 they're in the middle of the work on that.

21 Q. So even though we're here at confirmation now, you don't
22 know what the answers are to these questions?

23 A. Well, they can conclude their work; to the extent that the
24 judge wants to rule from the bench, we'll be prepared to
25 finalize that valuation and submit that information to people,

1 but it's not completed as of today.

2 Q. Do you think it's relevant to a creditor in this case to
3 know whether if they do the Chapter 11 structure they have a
4 tax burden while in a Chapter 7 structure, they may not have a
5 tax burden, but they have no idea what that tax burden is
6 because the work hasn't been done?

7 A. Well, I guess I would think that given the difference in
8 value associated with a Chapter 7 versus a Chapter 11, whatever
9 the tax burden is that's associated with the Chapter 11
10 structure is going to be considerably smaller than --

11 Q. Okay, we'll talk about that in a second. But let's just
12 talk about what the tax burden could be. Could you give me the
13 list of, let's say, assets above five million dollars that are
14 going into the liquidation trust that have not been collected
15 as of the date that the liquidation -- won't be collected
16 before the end of the year?

17 A. Well, it's just principally going to be cash to fund the
18 trust, the remaining future income tax receivables, the
19 ownership interest in the --

20 Q. Here, I'm going to ask you to go a little slower
21 because --

22 A. Okay.

23 Q. -- I'm going to write that, what you're saying.

24 A. Okay.

25 Q. You said the future income tax --

1 A. Receivables.

2 Q. Right.

3 A. Um-hum.

4 Q. What else?

5 A. The value of the remaining subsidiaries; the equity in the
6 remaining subsidiaries.

7 Q. Um-hum.

8 A. There'll be some -- not sure whether they'll still be
9 outstanding at your end, but there'll be some residual
10 BOLI/COLI policies that will likely still be retained.

11 Q. Okay.

12 A. And that's pretty much it.

13 Q. And what happens if you had a litigation claim. Wouldn't
14 that also have to be valued?

15 A. I'm not sure. I'm not involved in performing the
16 valuation, but we've described to people what all those claims
17 and causes of action are, and so they'll do what they need to
18 do with respect to valuation.

19 Q. Do you know, whoever is doing this work, do you know
20 whether they're actually valuing litigation claims?

21 A. I don't know, no.

22 Q. Who's the person from the debtor who's interfacing with
23 the person who's doing the valuation?

24 A. Rishi Jain.

25 Q. Okay, and do you -- is she someone who works under your

1 supervision?

2 A. He works under my supervision.

3 Q. He -- I apologize to Rishi. Have you had any discussions
4 with Rishi about the valuation tax exercise?

5 A. We've spoken about the tax refunds and some of the
6 BOLI/COLI components, but I haven't spoken to him or the VRC
7 firm that's been retained --

8 Q. All right, so --

9 A. -- about other items.

10 Q. -- the future income tax receivable, is that seventy-five
11 million dollars? At least the liquid -- I thought the
12 liquidation analysis --

13 A. Yeah, it says future income tax receivable; there is an
14 estimate of seventy-five, that's right.

15 Q. Okay, and what about the value of the remaining subs,
16 what's that amount?

17 A. Investment and subsidiaries and other, which includes some
18 of the BOLI/COLI stuff that I was talking about is about
19 seventy-two million.

20 Q. Okay, BOLI/COLI?

21 A. Yeah, there's some BOLI/COLI policies that will get a
22 persistency bonus at various points in the near future, and so
23 we may hold those because of the return that's afforded by that
24 persistency bonus.

25 Q. Approximate amount?

1 A. Of which, the BOLI/COLI? I think it's around fifteen
2 million.

3 Q. Fifteen?

4 A. Um-hum.

5 Q. Okay. Is WMI Citations Holdings (sic), is that part of
6 the remaining subs that you gave the seventy-two million dollar
7 number for?

8 A. Yes, I think Citation's in that number.

9 Q. WMI Rainier?

10 A. Ranier.

11 Q. Ranier, same thing?

12 A. Um-hum, same thing.

13 Q. And are there any notes or debts that are owed to
14 Washington Mutual, Inc. that will also get transferred to the
15 liquidation trust?

16 A. I don't think so.

17 Q. I thought your liquidation analysis referenced a venture
18 capital investment.

19 A. Oh, sorry. It's almost been paid off. It's only -- you
20 said assets above five million.

21 Q. That asset is less than a million dollars?

22 A. Yes, that's correct.

23 Q. Okay, are there any other assets like that that may have a
24 value greater than a million dollars?

25 A. Not that I can think of.

1 Q. Okay. And the WaMu 1031 exchange?

2 A. Um-hum.

3 Q. That's also part of that seventy-two million dollar
4 number?

5 A. That's right.

6 Q. Okay, and you wouldn't know what the litigation claims are
7 because that's not within your purview?

8 A. That's right, um-hum.

9 Q. Okay, but all of these numbers are part of this valuation
10 exercise which may or may not lead to a tax bill that's
11 associated with the liquidation trust structure, right?

12 A. I think it will lead to a tax implication for people who
13 receive liquidating trust interest that have value on the
14 effective date.

15 Q. Wouldn't that be most of the creditors?

16 A. Depends on which definition you want to use for "most".
17 At the current time, we believe that tranche 2 of the waterfall
18 is where the impairment will occur, and that means that you'll
19 have in-the-money value for the senior notes post-petition
20 interest claim, the sub notes claim, and general unsecured
21 claimants.

22 Q. And in addition to the value that they get for getting
23 post-petition interest, they'll have to -- they're getting
24 value on these liquidation trust interests where there's not a
25 match of the actual cash of the value of that asset, right?

1 A. I don't think I followed that question.

2 Q. They're going to also get a value of the liquidation
3 trust, and that value is also going to be part of their tax
4 burden, right?

5 A. That's what I was talking about, yeah.

6 Q. Now, the liquidation trust is going to have four members,
7 right?

8 A. Four board members?

9 Q. Yeah.

10 A. Um-hum.

11 Q. And the members are Jeff Brodsky, Wells Fargo, I don't
12 know who the equity member is, and Mike Embler, is that
13 correct?

14 A. I actually haven't been focused on who the four members
15 are. I think it was filed recently.

16 Q. Okay, do you know what entity Jeff Brodsky's affiliated
17 with?

18 A. Not off the top of my head, sorry.

19 Q. You think it might be Aurelius?

20 A. Could be.

21 Q. Wells Fargo's the indenture trustee for the PIERS?

22 A. That's right.

23 Q. And Mike Embler, do you know who he's affiliated with?

24 A. I don't know, no.

25 Q. Okay. And these members of the trust advisory board,

1 they're going to get paid, right?

2 A. I believe that they get some sort of compensation.

3 Q. Yeah, what do they get?

4 A. I don't know.

5 Q. Has it ever been disclosed what they're going to get?

6 A. I'm not sure.

7 Q. Okay, maybe someone will tell us. With regard to the
8 liquidating trustee, that's going to be Mr. Kosturos, right?

9 A. That's right.

10 Q. And what's he going to get paid for being the trustee?

11 A. He'll continue to get paid based on the same hourly rate
12 that he's been getting paid

13 Q. Okay, now, once the liquidating trust is running and we
14 have an effective date, the expenses of the liquidating trust
15 including the payments to the liquidating trustee and to its
16 counsel are not going to be subject to Court scrutiny unless
17 someone raises the issue with the Court, right?

18 A. I'm not actually that familiar with the payment
19 provisions.

20 Q. Okay. Do you know how much is going to be funded to this
21 liquidating trust prior to its creation? Because it needs,
22 obviously, some seed money to do its work.

23 A. Yeah, we're working through that analysis still. There's
24 a number of different work streams and reserves that we're
25 trying to suss out in terms of how much would be a meaningful

1 enough number. Obviously, the number will be substantially
2 higher than what we anticipate the budget because once you set
3 up the trust, it's very difficult to get money back into the
4 trust if you overrun the budget, so to speak. So we'll want
5 some cushion. But we haven't finalized those numbers yet.

6 Q. Okay, but we're here at confirmation; you don't know what
7 the approximate number is?

8 A. I don't know. We're in the sort of fifty to seventy-five
9 million dollar number to fund the trust on day one.

10 Q. Okay, did you factor that -- whatever that number is that
11 you're working on for purposes of comparing the Chapter 11
12 scenario versus the Chapter 7 scenario where you have a Chapter
13 7 trustee?

14 A. Under both scenarios, we assume that you're basically
15 paying everything out as of the effective date, as of the
16 effective date of the plan, so it's as if you get all the value
17 on day one; there isn't really the establishment of a trust
18 under either scenario. There would likely be significant costs
19 under both post-effective date, but we haven't factored those
20 in. We assume they'd be similar.

21 Q. And under your plan, isn't it the debtor advising the
22 liquidator -- the liquidating trustee advising the debtor how much
23 this reserve should be for the formation of the liquidation
24 trust? Isn't that the structure?

25 A. The structure is that in concert with the debtor, A&M's

1 preparing a budget that will attempt to set forth, so yes.

2 Q. So A&M is going to set a budget for A&M as to what the
3 budget should be, right?

4 A. Well, it's not just for us. I mean, the budget is for
5 what we think is prudent to reserve in order to deal with all
6 the claims and causes of action and to run the trust on a go-
7 forward basis.

8 Q. Now, I think I read in the liquidation analysis that -- I
9 think you said that there was, like, still fifty billion
10 dollars of claims to be resolved?

11 A. Yeah, I think if you looked at the register as of today,
12 that's essentially the amount that's there.

13 Q. And how much goes away after the global settlement is
14 consummated?

15 A. A significant portion, obviously, are FDIC, JPMorgan
16 claims. I think we think that the total allowed and disputed
17 claims, as of the effective date, will be some number like 850
18 million.

19 Q. Okay, so the -- and of that 850 million dollars, 337
20 million dollars is reparable to my client, right?

21 A. That's correct.

22 Q. All right, so if there was a Chapter 7 trustee, he
23 wouldn't be trying to resolve fifty-five billion dollars of
24 claims, assuming the global settlement was in place; he'd have
25 to resolve my claim and something less than 500 million dollars

1 worth of remaining claims.

2 A. That's right, which is the same for the liquidating trust.

3 Um-hum.

4 Q. And what does the debtor think is the delta between this
5 500 million dollars of disputed claims and what it should be
6 ultimately be allowed at? Is it 500 million to zero? Or is
7 there some portion that they recognize, and you're just
8 quibbling as to an amount.

9 A. Well, as you can see from the liquidation analysis that
10 we've put forward, we assume that the ultimate allowed amount
11 is about 375 million.

12 Q. All right, and how much is the allowed amount, as of
13 today?

14 A. It's a very small number that we've agreed to. I don't
15 know the exact number, but it's, I think, less than fifty
16 million.

17 Q. Okay, so you still have that amount to work -- if it's
18 fifty million today, and you think it ultimately will resolve
19 to 375, then this 850 million dollar mass will ultimately, you
20 believe, in your best estimate, settle down to a 375 number,
21 and either the liquidation trust or a Chapter 7 trustee will
22 have to slog through that effort, right?

23 A. That's right.

24 Q. Okay. Now, your liquidation analysis assumed that the
25 ultimate allowed late-filed claims would be zero?

1 A. That's right.

2 Q. And how much are the late-filed claims now that are on
3 file?

4 A. I don't recall the number off the top of my head. I don't
5 think it's -- it's not more than fifty million, but we think
6 that between sort of getting -- becoming allowed as an allowed
7 claim by the excusable neglect standard or what we think is
8 meritless claims, we'll probably get rid of them all.

9 Q. Okay, so do you think that some of the claims would be
10 ultimately allowed because of the excusable neglect standard?

11 A. I think it's possible. I don't know. I haven't gone
12 through them one-by-one. Again, that's not my area.

13 Q. Do you think your definition of late-filed claims
14 contemplates the allowance of excusable neglect claims?

15 A. I would think that a claimant who filed late who thinks
16 they meet that standard could file and become allowed pursuant
17 to -- become allowed in Class 12.

18 Q. Okay. The plan rests on the Court finding that the
19 contract rate, as compared to the federal judgment rate,
20 applies, right?

21 A. That's what the plan provides for, the contract rate.

22 Q. And what happens if the Court determines that it's the
23 federal judgment rate that applies? The plan fails, right?

24 A. I don't know.

25 Q. There's no adjustment mechanism; there's nothing for the

1 Court to sort of do a single-line edit. This is an all-or-
2 nothing plan, right?

3 A. I don't really know how, mechanically, that works. That's
4 maybe better --

5 Q. Someone else? Okay.

6 A. -- for a bankruptcy attorney.

7 Q. All right, I think you may have been asked these questions
8 before, but I just want to make sure. You don't know who were
9 the large holders who elected to be shareholders of the
10 reorganized entity, right?

11 A. That's right.

12 Q. Do you know who the entities were who originally enlisted
13 to do the registration rights agreement under the sixth plan?
14 Do you remember who the large holders were there?

15 A. To do the rights offering?

16 Q. Yeah.

17 A. The settlement noteholders, principally, were going to be
18 part of that, but it was going to be open to a large number of
19 people. There was a discussion there of, I think, making it
20 open to everybody within that cla -- within the PIERS class.

21 Q. Did you ever, in the course of your dealings, work up a
22 presentation as to the size of the net operating loss that may
23 emerge on the effective date of a plan?

24 A. The size of the net operating loss? I didn't work one up,
25 no. I think somebody else is testified on that.

1 Q. I know; I'm just saying that in the course of your
2 dealings over the last two and a half years, is that one of the
3 areas that you worked on?

4 A. No, it wasn't. We were -- let the tax folks do that
5 analysis.

6 Q. Did Alvarez & Marsal, prior to this confirmation hearing,
7 in presentations to, let's say, the creditors' committee, ever
8 put a range on the value of the net operating loss?

9 A. I don't know that I can recall the specific presentation,
10 but I guess that we discussed net operating loss carry-forward
11 with the creditors' committee.

12 Q. Do you remember if you ever put a range on the value to
13 the creditors in a presentation to the creditors' committee?

14 A. A range on the value --

15 Q. Of the NOL?

16 A. Sure, we probably provided them with a calculation that we
17 thought at some point in time.

18 Q. And what would be that calculation?

19 A. It would be similar to the calculation that I assume Mr.
20 Carreon discussed earlier in his testimony. I wasn't
21 responsible for that calculation and the numbers; I don't
22 recall exactly what the number is at this point.

23 Q. So if Mr. Carreon said that the opportunity to utilize the
24 NOL outside of just shielding the WMMRC income was between ten
25 and twenty-five million dollars, it's your testimony that that

1 would be the type of numbers that you used for your
2 presentation to others in this case?

3 MR. ROSEN: Your Honor, I don't believe that's what
4 Mr. Carreon said.

5 THE COURT: Sustained.

6 Q. Well, what would be the numbers that you think you used in
7 your presentation to others?

8 A. I don't really recall the specifics of the presentation.
9 I know that we were talking about billions of dollars of net
10 operating losses on a go-forward basis at various points in
11 time. There's some different calculations at various points in
12 time depending on the additional carry-back and all the rest.

13 Q. Now, Mr. Zelin said yesterday that, when he did his
14 original valuation of the NOL, there was an assumption that you
15 would confirm before year-end, and that would substantially
16 reduce the amount of the unfettered net operating loss, but by
17 the delay of the confirmation hearing and the result pushing
18 into this year, you went from almost a completely restricted
19 NOL to a very, very large, unfettered NOL.

20 A. That's right.

21 Q. Can you tell me why if an asset was going to be
22 substantially increased by a delay of a few days to have an
23 unfettered NOL, why anybody who was trying to push to confirm
24 this plan before year-end?

25 A. Well, I think -- I'm not really a tax expert, but I'll

1 tell you what I think has been discussed, which is that you
2 can't just arbitrarily delay in order to preserve that. That
3 may run afoul of certain tax guidelines. So to the extent that
4 but for that issue, you were prepared for confirmation, I don't
5 think that you can arbitrarily delay the effective date to say
6 January 1st in order to make that work.

7 Q. Do you think that argument holds water when your
8 confirmation hearing started in December and you were briefing
9 the issue in the middle of December that if you had an
10 effective date of January 2, you really think you ran afoul of
11 tax concerns?

12 A. Well, I think that if the IRS found that you were
13 preserving the NOL by artificially adjusting the effective
14 date, then my understanding is that that could result in
15 blowing up the NOL.

16 Q. Okay, let me throw out a theory with you and ask you
17 whether you ever heard this before, that the reason why you
18 wanted to confirm before year-end is that people on the
19 creditors' committee were concerned about the Obama potential
20 rise in taxes, and when that was taken off the table, they were
21 happy to take it into the next year; but otherwise, they wanted
22 their money in this year. Did you ever hear something like
23 that before?

24 MR. ROSEN: Your Honor, lack of foundation.

25 THE COURT: Overruled. I'll allow it. Let him

1 answer.

2 A. I don't recall that conversation, no.

3 Q. Okay.

4 THE COURT: All right, let's take a short break.

5 MR. STEINBERG: Thank you, Judge. I don't have much
6 more.

7 THE COURT: Okay.

8 (Recess from 3:16 p.m. until 3:29 p.m.)

9 THE CLERK: All rise. Be seated.

10 THE COURT: All right, you may finish.

11 BY MR. STEINBERG:

12 Q. Mr. Goulding, I think you stated that you anticipated that
13 there could be as much as seventy-five million dollars put into
14 the liquidation trust to give it its seed money for its
15 operations. Is that correct?

16 A. That's right.

17 Q. Okay, why does it need that much money?

18 A. Well, the trust will be in existence for at least a three-
19 year period, so you're talking about operating for that time
20 period. Like I said, there's a number of work streams for the
21 trust, things like U.S. attorney investigation and what's the
22 ongoing work stream associated with that and providing
23 documents for that. There's the idea of how much money you'll
24 need to hold back to pursue certain claims or causes of action
25 to the extent that those are worth pursuing. There's a number

1 of other components like that. And so it's principally a
2 buildup of those types of items.

3 Q. So most of the seventy-five million dollars is referable
4 to professional fees in the case?

5 A. Yeah, generally speaking, it will be professionals to
6 pursue claims or be responsive to litigation.

7 Q. Has the liquidating trustee selected counsel yet?

8 A. I'm not aware.

9 Q. Has the future members of the trust advisory board
10 selected counsel yet?

11 A. I don't know. I don't think so.

12 Q. Okay, let's turn to your liquidation analysis. I just
13 have a few questions on them. The two variables that separate
14 your Chapter 11 versus your Chapter 7 scenario is the way you
15 value reorganized WMI and the bank expense numbers, is that
16 correct?

17 A. The ongoing administrative expenses from the delay and the
18 change in the value of a sale versus a reorganization.

19 Q. Right, and I'm not going to try to talk through WMMRC and
20 whether that's a fair -- I just want to focus on the second
21 variable --

22 A. Um-hum.

23 Q. -- which is the bank expense priority claims and
24 convenience class, that number that shifts from 90 and 167
25 million, okay?

1 A. That's right.

2 Q. I think one of the first assumptions that you have is that
3 you assume no institutional memory so that there's three
4 million dollars of additional operating expense, and that's
5 because you assume that none of the existing professionals
6 would work for the Chapter 7 trustee?

7 A. No, the three million of operational expenses is
8 essentially the existing run rate of the debtors with respect
9 to operating the business including payroll and rent and the
10 like for a five-month period, which is the delay that we assume
11 before you can get to effectuating a Chapter 7 plan.

12 Q. The cost of running the business is the cost of running
13 WMMRC or the cost of running WMI without regard to WMMRC?

14 A. WMI in total.

15 Q. Inclusive of WMMRC -- well, WMMRC has no employees, right?

16 A. They don't have any employees.

17 Q. Okay, and then you said you assume there was an
18 incremental thirty-seven million dollars in professional fees
19 and you did that based off the current run rate, right?

20 A. That's right, five months of the current run rate.

21 Q. What is the current monthly rate?

22 A. It's -- it had been sort of eight to ten; it's a little
23 less than that now, seven to eight, thereabouts.

24 Q. And so when you did this thirty-seven million dollar
25 number, it was predicated off of what run rate, what number of

1 run rate?

2 A. It's around seven to eight million.

3 Q. Okay, and of this seven to eight million dollars, is that
4 just the debtors' professionals or did that include committee
5 professionals, too?

6 A. No, it's everybody involved.

7 Q. Well, why would you count the committee professional run
8 rate in the Chapter 7?

9 A. We just left it in based on the existing structure and
10 that they'd want to be -- have their interest represented.

11 Q. So you assumed that in a Chapter 7 you'd have a creditors'
12 committee continuing to incur expenses and an equity committee
13 continuing to incur expenses?

14 A. That's right.

15 Q. Okay. And how much was the run rate for the committee,
16 and how much was for the equity committee?

17 A. I don't recall the specific breakdown. I think you could
18 look at any of the MORs and see what the roughly monthly
19 payments are to any of the professionals.

20 Q. And the most recent run rate, I remember a colloquy that
21 took place in May where, I think, Mr. Rosen recited the thirty
22 million dollar run rate and Mr. Hodara stood up and said I
23 think now it's forty million dollars. Which run rate did you
24 use? The thirty million dollar which also includes interest or
25 the forty million dollar number?

1 A. Yeah, I think where people end up getting a little bit
2 hung up, when they talk about post-petition interest, in one
3 instance, you're talking about post-petition interest with
4 respect to funds that would come out of the PIERS, so you don't
5 include the PIERS calculation. So twenty-three million is
6 post-petition interest for all the classes above the PIERS, and
7 then you can add in your sort of seven, eight million, that
8 gives you the thirty million dollar number.

9 To the extent that you include the interest, the post-
10 petition interest on the PIERS, if you're thinking about run
11 rate in front of the more junior classes, the PIERS interest
12 accounts for roughly an additional ten million. So you're over
13 thirty million, and then if you add in the run rate, that gets
14 you about forty million. So they're both correct; they just
15 include different items.

16 Q. Okay, but the diff -- I think you're saying the difference
17 between thirty and forty million dollars is whether an
18 additional interest component was in as compared to a variable
19 on the professional fees?

20 A. That's right. It really relates to whether or not you
21 include the PIERS post-petition interest in that run rate or
22 not.

23 Q. And I think the third variable for liquidation expenses is
24 that you assumed a thirty-seven million dollar trustee fee for
25 what I guess is a good payday. What was the basis upon how you

1 got that number?

2 A. My understanding is that in a Chapter 7 case, it's
3 ordinary that a trustee would get paid with a fee and we looked
4 at a range of fees paid in various cases from a percentage
5 standpoint, and we took what we think was probably the lowest
6 end of that range, given the size of that case.

7 Q. And you looked at that as an incremental amount to what
8 the liquidating trustee, the liquidation trustee advisory board
9 would charge the estate, that the difference between the two
10 would lead to an incremental thirty-seven million dollar
11 additional charge in a Chapter 7 case?

12 A. Right, we're only looking at the time period from if the
13 plan goes effective to the five-month delay associated with
14 making a Chapter 7 plan go effective. So what happens after
15 those two plans go effective, you would have similar types of
16 costs in both cases because you'd be in a similar situation,
17 waiting to collect in refunds and as well as paying costs to
18 continue to pursue those refunds, you know, keeping, whether
19 it's a trust or some other mechanism open for that time period,
20 both would have similar expenses.

21 Q. Right, but I just want to be clear; my recollection is
22 that from reading your footnotes, that there was really a
23 seventy-seven million dollar difference, and you had broken it
24 down into three buckets. One was the three million dollars
25 additional operating expenses, the second was the incremental

1 thirty-seven million dollars of professional fees based on a
2 run rate, and the third was another thirty-seven million
3 dollars of trustee commissions. Is that right?

4 A. That's right.

5 Q. Now, I think in one of your footnotes in your liquidation,
6 you said that post-petition interest accretes on OID -- I'm
7 sorry, post-petition interest on accreted OID takes place for
8 using a contract rate. But if you were using a legal rate, you
9 wouldn't be doing post-petition interest on accreted OID. Why
10 is that?

11 A. No, I think what it -- what it says is that in the
12 contract rate scenario, you would be getting paid -- you would
13 be getting paid post-petition interest at the contract rate.
14 That contract rate includes OID accretion. If you were getting
15 paid just a federal judgment rate, then the federal judgment
16 rate would be applied to the claim outstanding as of the date
17 of the petition.

18 Q. So you wouldn't have the continuing accretion of OID for
19 the two and -- almost three-year period that we've been in
20 bankruptcy?

21 A. Right, that's my understanding.

22 Q. All right, and what does that translate into? What is the
23 amount of accreted OID for this almost three-year period for
24 which you would have a contract rate charge but not a federal
25 judgment rate charge?

1 A. I don't recall the breakdown of the interest between OID
2 accretion and post-petition interest.

3 Q. Do you know the approximate amount?

4 A. I don't.

5 Q. Okay. Alvarez & Marsal has been paid in the context of
6 this case something around sixty million dollars?

7 A. I'm assuming that you're looking at an MOR which would
8 reflect that. I don't know; I don't track that number.

9 Q. All right, do you know whether anybody's ever objected to
10 Alvarez & Marsal's fee from the creditors' committee?

11 A. From the creditors' committee, I don't believe so.

12 Q. Okay, and Weil Gotshal has fees of around fifty million
13 dollars or so. Do you know whether Alvarez & Marsal has ever
14 questioned the Weil Gotshal fees?

15 A. Not that I'm aware of.

16 Q. Do you know whether the creditors' committee's ever
17 questioned the Weil Gotshal fees?

18 A. I don't think so.

19 Q. Okay, and Akin Gump, who's the committee counsel --
20 primary counsel has around twenty million dollars of fees. Do
21 you know whether the debtor has ever questioned Akin Gump's
22 fees?

23 A. Not that I'm aware of.

24 Q. Do you know whether -- does anybody at Alvarez & Marsal
25 review the fee applications in these cases?

1 A. Does anyone at A&M review the fee apps of the other
2 professionals?

3 Q. Yeah.

4 A. They're submitted to us and principally, most of the
5 professionals, I think, are reviewed by folks at the company.
6 So I don't know if we review them specifically, but I don't
7 recall who reviews each of those individuals. Certainly, the
8 general counsel is made aware of the fee apps.

9 Q. Do you recall any circumstance where the general counsel
10 for Washington Mutual did anything to request a reduction in
11 any of the fees of either the debtors' counsel, Alvarez &
12 Marsal, or the creditors' committee?

13 A. I don't know.

14 Q. All right, now, I think the plan provides for a payment of
15 legal fees to nonretained professionals of something like
16 thirty-nine million dollars, right?

17 A. That sounds about right.

18 Q. And those professionals are the settlement noteholders and
19 the indenture trustees who sit on the creditors' committee?

20 A. It's -- I believe it's the professionals who are advising
21 the two ad hoc noteholder groups as well as the fees for legal
22 counsel for the trustees.

23 Q. And did Alvarez & Marsal or anybody else on behalf of the
24 debtor ever question the submissions by those attorneys?

25 A. Well, I think, to date, all that we've seen so far from

1 them is estimates of what they anticipate their fees to be, and
2 then their intent is to file motions, but I'm not up to speed
3 on all the specifics of that.

4 Q. Haven't there been fees paid on account of motions filed
5 in the last couple of months to these people?

6 A. I don't know.

7 Q. Okay.

8 MR. STEINBERG: I don't have any more questions, Your
9 Honor.

10 THE COURT: Thank you.

11 Anybody else?

12 CROSS-EXAMINATION

13 BY MR. COFFEY:

14 Q. Good afternoon, Mr. Goulding. Jeremy Coffey with Brown
15 Rudnick for the trust preferreds.

16 A. Hi.

17 Q. Mr. Goulding, your declaration and the liquidation
18 analysis, Exhibit 375, do you still have those up there? And
19 if you do, could you pull them out?

20 A. Sure. Hang on one sec. Yup.

21 Q. All right, let's focus on your liquidation analysis.
22 Assumption 6, if you would. You assume a Chapter 7 trustee
23 would enter into the same settlement agreement that your team
24 has negotiated, is that correct?

25 A. That's right.

1 Q. All right, but you're not saying that a Chapter 7 trustee
2 would have to enter that settlement?

3 A. No, I think our perspective is that this is the best
4 outcome that could be achieved, and so we assume that the
5 Chapter 7 trustee would attempt to effectuate the same
6 settlement under a Chapter 7.

7 Q. All right, but you're aware in a Chapter 7, there wouldn't
8 be a plan.

9 A. Right, I -- I mean, I understand that.

10 Q. Correct.

11 A. It would evolve differently in some form or fashion.

12 Q. No plan mechanism to force creditors and equityholders to
13 give up claims against third parties to get their estate
14 distributions.

15 A. I don't know what mechanism would have to be employed in
16 order to make it be a sort of similar construct, whether there
17 would be a way to do something under some sort of 9019
18 settlement or some other form or fashion that would give rise
19 to the same result. I think our perspective was that we
20 thought this was the best possible outcome that could be
21 achieved, and therefore, a Chapter 7 trustee would attempt to
22 get as close as he or she could to the settlement. To the
23 extent that there wasn't a way to get that to happen, then
24 there probably would be some sort of degradation in value or
25 changes associated with that that would only be worse than the

1 settlement that's reflected in the plan.

2 Q. But no voting in a Chapter 7, is that correct? Is that
3 your understanding?

4 A. I'm not that familiar with Chapter 7; I don't do a lot of
5 them. So -- but I think that's the case.

6 Q. You're not familiar with Chapter 7, but you've done a c7i
7 liquidation analysis?

8 A. I'm familiar with how to lay it out and have discussed
9 with counsel the various components of it. I'm just saying I'm
10 not familiar with all the nuances, with respect to who votes
11 and who doesn't vote and all the various Bankruptcy Code
12 provisions under Chapter 7.

13 Q. Okay, but if there were no voting, there wouldn't be any
14 ballots where you had to check a box to give a release to third
15 parties to get what you'd be entitled to under the distribution
16 scheme.

17 A. That's my understanding.

18 Q. Okay, so in Chapter 7, creditors and equityholders would
19 just get whatever they're entitled to receive under the
20 Bankruptcy Code's distribution scheme, and they retain whatever
21 rights they had against third parties, correct?

22 A. Yeah, and so I think what we've tried to reflect here is
23 that if there were a way to effectuate a similar result in a
24 Chapter 7, either through a 9019 settlement or some other
25 mechanism, then they would be able to do that. If they're not

1 able to do that, then it's likely that the settlement agreement
2 is worse, and I certainly don't think that JPMorgan and the
3 FDIC are going to go forward with the existing settlement
4 agreement and allow claims to be pursued against them.

5 Q. Mr. Goulding, I'm putting up here one of the liquidation
6 analyses you've done. You've done one dealing with contract
7 rate, one with the federal judgment rate. Is there anywhere on
8 this liquidation analysis that you put a value on the third
9 party rights that creditors in Chapter 7 would retain if they
10 weren't forced to give them up under a plan, under an election,
11 or some sort of voting mechanism?

12 A. Again, what we've put forward here under a Chapter 7 is
13 the same deal as it's laid out, and integral to that deal are
14 the releases. And therefore, if you can't grant them, then all
15 of the claims that are still outstanding would spring back. I
16 believe the Court addressed this issue in its opinion where it
17 talked about fifty-plus billion dollars of claims coming back
18 if you're not willing to grant releases. There's no settlement
19 agreement if that doesn't occur; the result only gets worse.
20 We viewed it as the easiest way to deal with this issue, rather
21 than debate what could happen if the entire thing unraveled,
22 was to provide the best result we thought could be achieved
23 under Chapter 7 with only a few differences.

24 Q. All right, so if you're in Chapter 7, you have no way to
25 bind creditors, the settlement's not really relevant right?

1 A. No, I think that there -- you would try to find a way --
2 the trustee's going to try to find a way to effectuate the same
3 settlement agreement in some form or fashion. I don't know
4 what that entails. It would -- you would find -- we believe
5 that the trustee would find a way to achieve the same result;
6 if not, would get a worse result.

7 Q. All right, looking at the page in front of us up on the
8 screen, here, you have a Chapter 7 liquidation based on the
9 contract rate. You see that?

10 A. Yes.

11 Q. Okay, now, I know it's your contention that under a
12 Chapter 11 plan, the contract rate should be imposed, but
13 you're not saying that the contract rate could be imposed in
14 Chapter 7, are you?

15 A. Yes, for the purposes of this, we're showing that the
16 contract rate would apply in Chapter 7.

17 Q. All right, so your liquidation analysis is based on the
18 possibility that the contract rate could be imposed in Chapter
19 7, notwithstanding 726(a)(5)?

20 A. Right, I'm not -- that's what we purport.

21 Q. Okay. Looking at assumption 6 again, you reference fifty-
22 four billion dollars in claims held by the FDIC and JPMorgan.
23 You see that, that reference?

24 A. That's right.

25 Q. Okay, how much of that fifty-four billion is claims held

1 by the FDIC?

2 A. Well, it's extremely difficult to parse that out. The
3 fifty-four billion really only relates to the liquidated
4 portions of those claims, and there's significant unliquidated
5 portions as well, so it's sort of not -- there's no easy way to
6 get there.

7 Q. Okay, but the estate also has claims against the FDIC, is
8 that correct?

9 A. They do, yes, there are claims that have been filed
10 against the FDIC.

11 Q. What is the face amount of those claims?

12 A. Again, there's a number of unliquidated ones. There's not
13 an easy way to ascribe a face value of those claims.

14 Q. Do you know if it's higher or lower than the FDIC claim
15 amount?

16 A. I don't know how to value an unliquidated claim amount for
17 purposes of what you're asking.

18 Q. Okay, how much of that fifty-four billion is comprised of
19 claims by JPMorgan?

20 A. Again, same answer. They both have large, unliquidated
21 portions of their claims, so it's -- there's no way to discern
22 it. The fifty-four is, I think, comprised roughly fifty-fifty
23 between the two in terms of liquidated amounts that are
24 included. But there's huge unliquidated portions also
25 associated with it, so I don't have a way of giving you an easy

1 number for that

2 Q. All right, and so you don't know the liquidated amount of
3 the claims the estate would have against JPMorgan?

4 A. No, similarly.

5 Q. All right, do you recall earlier in the case, there was a
6 big fight about the estate trying to get discovery so it could
7 investigate claims against JPMorgan. Do you recall that?

8 A. I do.

9 Q. All right, and there was some discovery done, and then the
10 estate went back and tried to get more discovery. Do you
11 recall that?

12 A. I believe so.

13 Q. All right, and so that request was denied; is that your
14 recollection?

15 A. I think so.

16 Q. Okay, so is it fair to say that the investigation of
17 claims against JPMorgan is incomplete?

18 A. I don't know the status of the investigation; I'm not
19 responsible for that investigation.

20 Q. All right, are you aware of the ANICO decision?

21 A. I am.

22 Q. Okay, you're aware that the ANICO decision allowed some
23 claimants to bring claims directly against JPMorgan,
24 notwithstanding the existence of FIRREA, correct?

25 A. That's my understanding.

1 Q. And that decision came down late June?

2 A. I don't recall the date.

3 Q. Okay, but you're aware of it?

4 A. I am, yeah.

5 Q. Okay. What did you do to go back and look at the impact
6 of potential claims that might be assertable directly by the
7 estates against JPMorgan, in light of the ANICO decision?

8 A. What did I do?

9 Q. Correct.

10 A. I didn't do anything; that's not my area of -- I don't
11 oversee that area.

12 Q. All right, so your liquidation analysis doesn't reflect in
13 any way the potential value of those claims?

14 A. We didn't change it from the way that it was before

15 Q. Right you just kept the same numbers.

16 A. I'm not sure that there's any change from the ANICO
17 decision in terms of whether they had a right to pursue those.
18 They were on appeal; they could continue to pursue those
19 actions regardless of whatever happened with respect to our
20 plan.

21 Q. Right, well, for purposes of liquidation analysis, let's
22 focus on the claims the estate might have against JPMorgan.
23 You didn't go back and look at what value they might have?

24 A. I personally did not go back as a result of the ANICO
25 decision and do anything differently with respect to the claims

1 against JPMorgan, no.

2 Q. Okay, does your liquidation analysis factor in in any way
3 the possibility of offsetting claims against JPMorgan with
4 claims JPMorgan asserted against the estates?

5 A. We're only factoring in a settlement agreement in this
6 scenario, so I'm not sure how to answer your question.

7 Q. Well, if you had claims against JPMorgan and they had
8 claims against you --

9 A. Right.

10 Q. -- and you've referenced the fifty-four billion as a big
11 number, was any analysis done as to whether or not that fifty-
12 four billion could be knocked out with setoff claims or offset
13 price?

14 A. As I've said, it's difficult to know. You've got
15 unliquidated amounts on both sides. But again, we think that
16 the result that we got is the best result that you could get,
17 and that's what the Chapter 7 trustee would try to get to.

18 Q. Even though Chapter 7 trustee couldn't do the settlement?

19 A. Well, that's not my understanding. My understanding is
20 that they could find a way to get to the same result, but
21 that's really a legal discussion, I suppose.

22 Q. Okay. Let's look at page 5 of the liquidation analysis.
23 Did you prepare this exhibit?

24 A. Yes.

25 Q. Okay, let's look at the value of reorganized WMI, if you

1 would.

2 A. Um-hum.

3 Q. All right, and we discussed that under a Chapter 11, you
4 assume a 160 million dollar value, right?

5 A. Right.

6 Q. Okay, but you didn't do any independent valuation work
7 yourself; you're relying on Blackstone?

8 A. That's what we retained them for, yup.

9 Q. Okay, good. Of that 160 million, that's comprised of the
10 value of the runoff portfolio.

11 A. Right.

12 Q. Is that your understanding?

13 A. My understanding is it's the value of the runoff portfolio
14 plus the value of what Blackstone has referred to as the
15 corporate opportunity.

16 Q. Okay, and that would account for the NOL value?

17 A. That's right.

18 Q. Okay. Does that 160 million include any other value, any
19 other assets?

20 A. No.

21 Q. Okay, let's talk about your assumption of the value of
22 reorganized WMI in Chapter 7. Now, as an initial matter, even
23 if the plan is confirmed, this is -- essentially, it's a
24 liquidation, correct?

25 A. No, it's a reorganization around WMMRC and a couple of

1 other entities.

2 Q. Okay, WMMRC; what other entities?

3 A. There's two other entities. It's WMI and WMI Investment
4 Corp.

5 Q. Is your phone ringing?

6 A. I thought it was turned off, actually.

7 Q. All right, let's talk about WMMRC. WMMRC's just a shell,
8 correct?

9 A. No, WMMRC's not a shell. WMMRC's a captive insurance
10 company that's continuing in runoff.

11 Q. No employees?

12 A. Well, the employees have always been housed at WMI.

13 Q. No management?

14 A. There are two people who are involved with the day-to-day
15 operations of WMMRC, currently.

16 Q. Who are those two people?

17 A. Peter Struck and Vicky Wu.

18 Q. Okay. There's no financing that's going to be imposed on
19 WMMRC?

20 A. No.

21 Q. There's no business plan for WMMRC?

22 A. That's right; we don't know who the -- we didn't know at
23 that time who the owners would be.

24 Q. No plan to write new reinsurance policies?

25 A. None -- not that I'm aware of.

1 Q. Nothing to do but collect premiums and pay claims; is that
2 correct?

3 A. Well, it's an opportunity to do whatever you want to do.
4 It's a company that will continue in runoff based on the
5 existing structure. It has an ability to use that for whatever
6 the new owners want to do.

7 Q. Okay, but you're not saying a Chapter 7 couldn't
8 administer WMMRC, are you?

9 A. I think a Chapter 7 trustee could find a way to continue
10 to run it off.

11 Q. Okay.

12 A. They would therefore lose the value of the corporate
13 opportunity.

14 Q. All right, let's focus on the portfolio value. If the
15 trustee was able to just run it off, it'd be the same value in
16 his hands as it would be in the new owner's plan?

17 A. I'm not sure whether that's true or not. I would think
18 that the trustee's job is to go in and liquidate things. He or
19 she could run it off.

20 Q. But you don't know?

21 A. I'm sorry?

22 Q. You don't know?

23 A. I don't know whether he or she could run it off? I think
24 they could run it off. I would assume that they would want to
25 monetize the asset and distribute it out to creditors.

1 Q. That assumption's based on your understanding of Chapter
2 7.

3 A. Yeah.

4 Q. Okay, now, there's a -- what's the difference between the
5 value of WMMRC in Chapter 11 versus Chapter 7?

6 A. What's my understanding of the difference between the two?

7 Q. Yeah, what are you assuming? What's the difference in the
8 assumptions?

9 A. There's two principal assumptions between the value of the
10 reorg entity in a Chapter 11 versus a Chapter 7. In Chapter
11 11, we're assuming that they've got a reorg value; there's a
12 corporate opportunity associated with that. There's a go-
13 forward company that has net operating loss carry-forwards. In
14 Chapter 7, we're assuming that you're going to effectively sell
15 that company as soon as practical and, therefore, you're going
16 to not be able to retain the tax attributes associated with
17 that and you're going to be in a forced sale environment where
18 buyers will be aware of that issue.

19 Q. If you had to sell it, but you don't know if you have to
20 sell it?

21 A. Well, I think you would probably want to sell it given the
22 liquidation and the payout to creditors.

23 Q. Okay, and so the difference between what you're assuming
24 under your Chapter 11 versus your Chapter 7 liquidation
25 scenarios is ninety million, is that correct?

1 A. It's 110 million.

2 Q. 110 million; okay. What's the shortfall between -- what
3 would be the additional amount needed to get a distribution to
4 equity in the federal judgment rate scenario, if we had a 1.95
5 rate that you've assumed? What's the shortfall?

6 THE COURT: You talk too fast. If we what?

7 MR. COFFEY: Let me withdraw that question

8 Q. You talked earlier about the shortfall, even if you were
9 to impose the federal judgment rate over the capital structure,
10 the shortfall -- preferred equity would still not be in the
11 money. Is that correct?

12 A. That's right.

13 Q. And how much is that shortfall?

14 A. Under the Chapter 11 plan scenario, it's about ninety to a
15 hundred million.

16 Q. Okay, so about the same amount you're assuming away
17 because we're having to sell it, but you're not sure we have
18 to.

19 A. No, that's under the Chapter 7 scenario that you're
20 talking about, and just to be clear, your 100 million -- ninety
21 to a hundred million away under a Chapter 11 plan. Under a
22 Chapter 7 liquidation, you're substantially further away. So I
23 haven't reduced the value from 160 to 50. So if I just reduced
24 the value from 160 to 50, you're another 110 million further
25 away. So that difference is not giving rise to the preferred

1 equity being out of the money.

2 Q. Mr. Goulding, I think you discussed earlier that you're
3 aware that the debtors have just filed an application to employ
4 special counsel to pursue new litigation or to look at new
5 litigation, is that correct?

6 A. I'm aware that an application was filed.

7 MR. COFFEY: Your Honor, may I approach the witness?

8 THE COURT: You may. You may.

9 Do you know the docket number on this?

10 MR. COFFEY: Your Honor, what I've handed to the
11 witness appears at docket number 8111.

12 THE COURT: Thank you.

13 Q. And Mr. Goulding, this is that application. Have you seen
14 this before?

15 A. No, I have not.

16 Q. Okay, if we could -- let me just ask you a couple
17 questions of what the document says, knowing you haven't seen
18 it before. If you turn to paragraph 12 of the application,
19 there's a statement that "Importantly, Klee Tuchin's services
20 are not duplicative of services provided by other professionals
21 presently retained in these Chapter 11 cases." Is that your
22 understanding, that Klee Tuchin wouldn't be doing something
23 someone else had done already?

24 A. I don't really know what they're doing. I'm just aware
25 that this motion was filed. I'm not really sure what they're

1 doing.

2 Q. All right, if you would, if you'll turn to paragraph 6,
3 talk for a moment about the services that Klee Tuchin is
4 proposing to do. It says, they're going to "investigate,
5 assess, and if requested, potentially prosecute potential
6 claims." Is it your understanding that those tasks have not
7 been done yet?

8 A. Again, I'm not really responsible for investigating or
9 pursuing whatever claims exist there, so I don't know or have a
10 status as to what's been done so far, what the reason is for
11 retaining Klee Tuchin and why they're not duplicative. So I
12 really don't have much to offer here.

13 Q. Okay. I think you told us earlier that nowhere on your
14 liquidation analysis appears the value of these potential
15 claims?

16 A. That's right. They're fairly speculative. We didn't
17 want -- we don't know what they might be; we didn't include
18 them under either scenario, 11 or 7.

19 Q. But you're aware the application had been filed.

20 A. That's right.

21 Q. Okay, but you didn't take it upon yourself to ask what
22 those claims might be for purposes of valuing them?

23 A. We've discussed at length whether to include certain
24 claims and causes of action in the valuation of assets, and
25 given the speculative nature, we've not included those under

1 either scenario. Presumably, the recovery would be similar
2 under an 11 or 7 in the pursuit of those, so --

3 Q. So they could be pursued in a Chapter 7?

4 A. I would assume that they could. I didn't think that I
5 said something different.

6 Q. Okay, would they be worth a billion dollars?

7 A. I don't know; they're very speculative. I don't know what
8 they're --

9 Q. 500 million?

10 A. I don't know.

11 Q. All right, but you're aware that you're looking to seed
12 this liquidation trust with fifty to seventy-five million to
13 pursue claims like this, correct?

14 A. That's one of the things that the money is there for.

15 Q. Right, you wouldn't put seventy-five million in if you
16 thought you were going to get less out, correct?

17 A. I wouldn't spend the seventy-five if I thought I was going
18 to get less than seventy-five. Because of the nature of a
19 liquidating trust, if you don't put the money in up front,
20 you're not going to have money to then pursue those claims, so
21 you could be setting a war chest that you then distribute
22 because they're not worth pursuing or you could continue to
23 pursue them.

24 Q. But you wouldn't spend the money if you thought the claims
25 were less than that, correct?

1 A. I wouldn't, no.

2 Q. Turn, if you would, back to your liquidation analysis,
3 again, page 5.

4 MR. COFFEY: Page 5.

5 Q. And we talked about -- let's focus on Chapter 11 plan
6 context, federal judgment rate. We have a number of pre-
7 petition claim amounts listed there, do you see those? And for
8 simplic -- or, for purposes of conversation, let me focus on
9 the senior note claim.

10 A. Okay.

11 Q. All right, so that's 4 billion, 132 million dollars,
12 correct?

13 A. That's right.

14 Q. All right, and that was the amount that was due as of
15 petition date?

16 A. That's right.

17 Q. Okay, now, you made mention of OID earlier in your
18 testimony, right?

19 A. Um-hum.

20 Q. Now, does that 4 billion, 132 million include any amount
21 of OID?

22 A. It's net of any outstanding OID. There's very small OID
23 with respect to the senior notes.

24 Q. Okay. And how about some of the other tranches of debt;
25 do they include OID?

1 A. Again, they're all netted down for any remaining original
2 issue discount, so they don't include that. But they all have
3 a little bit.

4 Q. Okay, and how did you calculate how much OID should be
5 included?

6 A. There's accretion formulas in the indentures.

7 Q. Mr. Goulding, in note 6 to your liquidation analysis, I
8 believe you assume a federal judgment rate will be 1.95 percent
9 if it's imposed, is that correct?

10 A. That's right.

11 Q. All right, and that was the federal judgment rate on the
12 petition date?

13 A. That's right.

14 Q. All right, but you're aware, are you not, that immediately
15 at the petition date, within a couple of weeks, the federal
16 judgment rate drops significantly, is that correct?

17 A. I've seen that there's been a change in that. I didn't
18 track it specifically. But I was, in connection with
19 discussion with people about setting what the appropriate rate
20 is, we looked at it and we believed that was the rate as of the
21 petition date.

22 Q. Okay, but you're generally aware that after the first
23 couple weeks, after the petition date, it dropped down to about
24 its current level of .2 percent?

25 A. Interest rates, in general, have dropped. I don't know

1 the last time I looked at it specifically but it's somewhere
2 around there, I believe.

3 Q. All right, so the vast majority of this case, it's been
4 around .2?

5 A. Again, I don't recall the specifics of when it dropped,
6 but I believe it follows, generally, interest rates, so that's
7 probably true.

8 Q. Okay. Your liquidation analysis doesn't reflect what
9 would happen if the Court imposed a federal judgment rate other
10 than 1.95 percent, does it?

11 A. No, this doesn't.

12 Q. Okay, so if the Court were to say it's federal judgment
13 rate but it should be the rate that's been in place for the
14 majority of the case, say .2 percent, or the rate on the
15 effective date, on the confirmation date, you don't know how
16 those numbers would work, do you?

17 A. I haven't run those numbers specifically, no.

18 Q. You haven't done the math to see what difference that
19 would make?

20 A. We looked at a couple of other scenarios just to know,
21 sort of, what happens at a half a percent.

22 Q. Okay, so you're generally aware that if you were to use
23 half a percent, that would result in significant value to
24 equity?

25 A. It results in value flowing to more junior stakeholders.

1 Again, it's sort of hard to know what the subordinated claim
2 class looks like and, therefore, what payments would go to the
3 subordinated claim holders before going, then, to preferred or
4 common. But there would be value if the rate was, you know,
5 half a percent.

6 Q. Okay. Or even .2 percent, the current rate.

7 A. Right, there presumably --

8 Q. Be more value.

9 A. -- would be more value.

10 Q. Looking again at your liquidation analysis, we have a line
11 there for bank expenses, priority claims, convenience claims.

12 And in Chapter 11, you have those at ninety million?

13 A. That's right.

14 Q. And in Chapter 7, those bump up to 167 million?

15 A. Um-hum.

16 Q. I don't know if I heard it clearly, but how much of that
17 ninety million accrued in Chapter 11 pertains to professional
18 fees?

19 A. The vast majority of it relates to professional fees that
20 are accrued and would need to be paid.

21 Q. Okay, so it also includes the fees of JPMorgan's counsel?

22 A. No, I don't think so.

23 Q. Okay, are those being paid under the plan?

24 A. I don't believe we're paying JPMorgan's counsel

25 Q. Okay, how about the FDIC's?

1 A. I don't think so, no.

2 Q. The settlement noteholders?

3 A. We are paying -- the estate is paying the settlement
4 noteholders' counsel.

5 Q. Fried Frank?

6 A. Um-hum.

7 Q. How about White & Case. Are you paying their fees?

8 A. Yup.

9 Q. Unless the current settlement was adopted by the Chapter 7
10 trustee, the Chapter 7 trustee wouldn't have any obligation to
11 pay the fees of Fried Frank, White & Case, Kramer Levin, is
12 that correct? Is that your understanding?

13 A. I don't know that they would have an obligation, no.

14 Q. All right. Well, say this, if the case were converted to
15 a Chapter 7, would you expect a Chapter 7 trustee to enter into
16 an agreement where he had to pay the fees of the settlement
17 noteholders?

18 A. I have no idea what the Chapter 7 trustee would do with
19 respect to that issue.

20 Q. But you're assuming he'd have to pay creditors' committee?

21 A. Yeah.

22 Q. And you're assuming he'd pay for this table and those
23 three rows?

24 A. Yeah, I mean, that's what we're assuming. We're assuming
25 that on a go-forward basis, for five months, while they

1 establish the liquidation, if that's what occurs, that you
2 would need to continue to pay those costs.

3 Q. And upon conversion, you're assuming that he continue to
4 pay Alvarez & Marsal?

5 A. That's right, for some period of time, or a replacement
6 professional, more likely, at the same type of rate to do an
7 investigation that would be similar to interface with people to
8 take over things like the accounting of the business,
9 understanding the books and records, understanding what all is
10 going on, understanding the settlement agreement, all of those
11 types of issues.

12 Q. So if the Chapter 7 trustee would have to retain someone
13 to do an investigation, what is it Alvarez & Marsal has been
14 doing through the entire case?

15 A. I'm not saying that we haven't done an investigation. I'm
16 saying they would have to come up to speed on the investigation
17 that has been done. They would presumably want to rely on
18 their professionals, or A&M could be conflicted if it has a
19 claim in a Chapter 7. And therefore, you're in a situation
20 where you would have to retain somebody to replace the interim
21 management and financial advisory work that's being done by A&M
22 currently. In all likelihood, you would have some duplication
23 of effort for some period of time where you made the transition
24 to new professionals, which could be considerably more
25 expensive than what we've laid out.

1 Q. Okay, but despite the investigations that you have done,
2 there's nowhere reflected on your liquidation analysis the
3 value of potential claims you've investigated?

4 A. That's a legal analysis. That's not something that A&M
5 has been tasked to do to look at the various claims and causes
6 of action from a legal perspective.

7 Q. But they're not on your liquidation analysis. And you
8 were tasked to create that, correct?

9 A. I was tasked to create the liquidation analysis, that's
10 correct, and I'm not reflecting recoveries from litigations
11 which are speculative.

12 Q. All right, and as far as A&M personnel, you're saying Mr.
13 Kosturos would be more knowledgeable about the value of those
14 claims?

15 A. Nobody's placed a value on those claims. We've talked
16 about ranges of values for certain of those claims, but I don't
17 think that anybody's attempted to value any of those claims.

18 Q. Would Mr. Kosturos be more familiar with what those claims
19 might be?

20 A. I don't know.

21 MR. COFFEY: No further questions, Your Honor.

22 MR. MASON: Good afternoon, Your Honor. Ben Mason,
23 pro se objector from Texas. Your Honor, could I just ask maybe
24 five, six questions?

25 THE COURT: You may.

1 MR. MASON: All right.

2 CROSS-EXAMINATION

3 BY MR. MASON:

4 Q. Mr. Goulding, you stated that twenty-three million Hs
5 (ph.) were issued in 2001. Were all of those -- I'm sorry, Hs,
6 I shouldn't use that word. PIERS were issued. Were those all
7 actually issued in 2001 or was that over time?

8 A. My understanding was they were all issued within 2001.

9 Q. Okay, thank you. Now, for the interest rate for the
10 deposits --

11 A. Yes, sir.

12 Q. -- did the -- for the four billion (ph.) dollar deposit,
13 did Alvarez & Marsal negotiate that interest rate?

14 A. We had conversations with JPMorgan. I don't know that you
15 could sort of describe it as a negotiation with respect to the
16 interest rate. They were paid -- that's what they paid other
17 corporate -- large corporate depositors.

18 Q. Large corporate depositors typically get around .17, .20
19 percent interest rate under current circumstances?

20 A. Yeah, it's about twenty basis points under the current
21 situation.

22 Q. Okay, is that the same interest rate that the large -- the
23 tax return is sitting at, the tripartite claim where --

24 A. Yeah, the 5.2 billion in taxes, we actually get less.

25 Q. Really? Okay.

1 A. Yeah. We're invested in T-bills. As part of the
2 Bankruptcy Code, there's a requirement to be invested in things
3 that are backed by the full faith of the U.S. government, and
4 the current Treasury bills, particularly on near term, we're
5 probably getting somewhere between eight and ten basis points
6 in that escrow account, and in fact, for the pendency of this
7 case, we have not gotten anything better than the rate that
8 JPMorgan has paid us with respect to the investments that we
9 have the rest of our cash in.

10 Q. Thank you. WMMRC, why, exactly, was WMMRC chosen to be
11 the company around which restructure? There are a number of
12 companies here, some of them small, some of them appear fairly
13 large. Why WMMRC?

14 A. There's actually not any one that's larger than WMMRC that
15 remains. From a pure asset standpoint, I suppose WMI
16 Investment Corp. would be, but that's really just cash. So
17 WMMRC is the only one that has what you could consider ongoing
18 operations on a go-forward basis. The rest of the subsidiaries
19 are all cash that's left there; there's not really any
20 operations. What's been left is a shell to deal with residual
21 business issues, but there's not really any business left.

22 Q. That's the same for the 1031 exchanges? There's no
23 business as well there? Those have all been completely
24 liquidated?

25 A. That's right. The 1031 exchange, we didn't enter into any

1 new exchanges shortly after the petition date, and that
2 business, we entertained a few people who wanted to acquire
3 that business, but it's, you know, it's very small dollars
4 relative to the overall that we're talking about.

5 Q. Okay, right, thank you. Now, WMMRC is in runoff state.
6 So that means that over time, the contracts are going to expire
7 and so income goes down, correct?

8 A. That's right.

9 Q. But also risk goes down, as well.

10 A. That's right.

11 Q. Right. Do you know what the current value is of the trust
12 for WMMRC?

13 A. The --

14 Q. How much money is actually --

15 A. -- total asset value? If I can put my hand on the
16 financial projections, it shows a balance sheet that shows it's
17 high 300s, 400 million of assets in the trust.

18 Q. Right, so it went from 395 to 450 in '09, and now it's
19 back down to the high 300s again?

20 A. I'm not sure that it ever increased. I think the 390 was
21 the valuation that was done with respect to funding into it, so
22 you're talking about two different numbers. One is the
23 valuation of the company that was done when we wanted to fund
24 the trust. The other is the total asset value that's in the
25 trusts. So I think it has always sort of declined over time;

1 as things roll out, losses get paid out, things roll off, the
2 number just declines.

3 Q. That makes sense. Has any money been taken out of those
4 trusts since filing?

5 A. No, we don't expect that we can take a dividend out of any
6 of the trusts until about 2013.

7 Q. Um-hum. That's right, that makes sense. Now, have taxes
8 been filed for 2010?

9 A. Has the tax return, the joint tax return been filed for
10 2010?

11 Q. Um-hum.

12 A. I really don't know; it's not something that I deal with,
13 really.

14 Q. Right. So we don't really know if there have been
15 either -- if there's been any money made or if there's been any
16 further losses due to --

17 A. I suspect that given the overall tax position, there's
18 just going to be a further addition to the loss, but we're not
19 talking about billions of dollars of loss. We're talking about
20 there's an incremental additional loss associated with the time
21 period that we're talking about. So if you're looking at WMMRC
22 on its own basis, that's a little bit different than the
23 consolidated group. We file a tax return as a consolidated
24 group, not on -- WMMRC doesn't file its own return.

25 Q. So maybe an additional 200 or 300 million in losses?

1 A. No, I don't think it's that high. I think we're talking
2 about tens of millions, maybe.

3 Q. Do you know why it hasn't been filed as of yet?

4 A. I didn't say it hasn't been filed. I just said I don't
5 know whether it's been filed or not. It's not an area that I
6 deal with.

7 Q. Well, certainly, but it's not been -- I mean, I don't
8 think it has. I mean, I read the filings here, and -- just for
9 fun. But the --

10 A. The tax -- sorry, the WMI tax return, I'm not sure would
11 be filed with this court.

12 Q. Right, right, right. Okay. Okay, so we have -- so
13 there's no other companies that are going to be retained.
14 Everything else has been more or less liquidated and moved
15 into, more or less, WMI Citation Holdings?

16 A. There's two -- we've merged most of the entities as we
17 consolidated down from thirty-three to eight. Most of those
18 either went to Citation or to Ranier depending on the amount of
19 sort of residual liability or issues that we wanted to focus
20 on, there were certain ones that fell into different buckets,
21 and so we merged them that way. There's no ongoing operations
22 but for WMMRC, and all of them, really, the only asset that
23 they have left is cash, and the aggregate amount of that cash
24 is, you know, fifty million or less.

25 Q. Right, and WMI Citation Holdings, is that a debtor

1 subsidiary or is that a nondebtor subsidiary?

2 A. It's a debtor -- it's a nondebtor subsidiary.

3 Q. Have debtor assets been sold and then moved into -- and
4 then under nondebtor subsidiaries?

5 A. No, we haven't moved any money from the debtors down to
6 the nondebtors. It's only come the other direction. We've
7 received significant dividends up from the nondebtor
8 subsidiaries.

9 Q. Okay, and then one other question. Just a couple other
10 things. You talked about you guys had not really spent a whole
11 lot of time addressing residual claims. Are you familiar at
12 all with the Colonial Bank decision, how that's gone down as of
13 late?

14 A. You know, I haven't had much time to follow that case.

15 Q. Right. Well, just out of curiosity, because I saw that
16 the original GSA settlement noteholders pulled out, but then it
17 was essentially we -- they basically renewed the GSA. Who made
18 that decision? Was that an Alvarez & Marsal decision to renew
19 the GSA?

20 A. To continue forward with the GSA?

21 Q. Um-hum.

22 A. I mean, I think it's a decision that's made by the team,
23 the debtors themselves, as well as the board making an approval
24 of that.

25 Q. So that was a board decision that was voted on?

1 A. You know, I attend some of the board meetings, but I'm not
2 familiar with all the resolutions that are associated with it,
3 so I think that that's what happened, but I really couldn't say
4 for sure.

5 Q. All right, okay. So over time, like, for example, since
6 2009, when originally when you're making decisions regarding
7 whether or not you thought it was viable, it was reasonable, et
8 cetera, in this interim time, we have, for example, the
9 Colonial case, where the FDIC has failed to gain access to the
10 NOLs even though they lost, I believe, over three billion
11 dollars --

12 A. Um-hum.

13 Q. -- we have, just recently, not even discussing the issues
14 with ANICO, but also talking about --

15 THE COURT REPORTER: Sir --

16 MR. MASON: Oh, I'm so sorry.

17 THE COURT: You're talking too fast.

18 MR. MASON: Oh, I'm -- well, I talk fast for a Texan.

19 UNIDENTIFIED SPEAKER: I'm not discussing the issue --

20 MR. MASON: Oh, right.

21 Q. Over time, for example, Meritor, just recently, the FDIC
22 was ruled to be an arm of the government and could be sued.
23 Has this in any way entered into any sort of discussions as far
24 as these are potential claims that we are still giving up, even
25 though we're still in this global settlement agreement?

1 A. Yeah, I think over time, people have -- the legal team has
2 continued to monitor cases that address all of these issues and
3 have taken under advisement whether that would impact at all
4 their view of the settlement agreement, and I think that
5 regardless of those decisions, we still feel it's in the best
6 interest of the estate to push forward.

7 Q. Okay. And I guess my last question is, if, like, going
8 forward, let's say that, for example, this plan is not
9 confirmed, and we're looking at another six months or eight
10 months --

11 A. Um-hum.

12 Q. -- if that's the case. The FDIC continues to lose
13 another -- if they lost another three or four cases, at what
14 point in time does fair and reasonable -- like, at what point
15 in time do you guys come back to the table and say, look, this
16 is no longer good for our constituency? Is there ever a time?
17 Do you know?

18 A. You know, I don't know. It would be difficult for me to
19 speculate on what possible outcomes there would be in any sort
20 of litigation that would give rise to us reconsidering the
21 global settlement agreement. I'm certain that there are some,
22 but I wouldn't want to try to enumerate what those might be,
23 and so I just don't have a way to answer that question.

24 Q. Right, right, right. And this is, I promise, the very,
25 very last one. If -- I guess this is the hardest part for us

1 to kind of -- for us singular objectors to kind of figure out,
2 has there ever been a case, to your knowledge, in which the
3 FDIC has won in which they actually have gone in and gotten
4 either deposits or net operating losses from an estate from a
5 bank that's been seized. Are you familiar with any of that?

6 A. You know, I didn't do the research with respect to the
7 investigation of claims of the FDIC and all those various
8 pieces. It's really more of a legal analysis, so I don't know.

9 Q. And we can't get those. No? Okay.

10 MR. MASON: That's all I have.

11 THE COURT: Thank you.

12 MR. BERG: Just for a brief -- a brief delay. Your
13 Honor, thank you. James Berg again, preferred equity
14 shareholder.

15 CROSS-EXAMINATION

16 BY MR. BERG:

17 Q. Mr. Goulding, have the debtors used discounted cash flow
18 analysis to obtain the 160 million value of reorganized WMI?

19 A. Blackstone did the valuation in connection in that, so the
20 debtors retained Blackstone to perform that valuation.

21 Q. Okay, thank you. But discounted cash flow analysis was
22 used to obtain that valuation?

23 A. I believe that Blackstone included discounted cash flow as
24 one of the ways that they got to the valuation that's in their
25 report.

1 Q. All right, what was the discount rate used in that
2 analysis?

3 A. I think it's thirteen to fifteen percent, but it's really
4 a Blackstone question.

5 Q. Okay, thank you. That was my recollection as well. What
6 is WMI's current weighted average cost of capital?

7 A. I would not even know how to begin to calculate a weighted
8 average cost of capital for WMI.

9 Q. An example might be an average of the interest weights
10 being paid out on the debt which primarily are bonds?

11 A. Right, you can do it that way. I just don't know that
12 that's the appropriate calculation of a weighted average cost
13 of capital in this case. I know you can look at what the bonds
14 are sort of on a blended rate, you know, skewing sort of
15 heavily to the senior noteholders. I suppose that number
16 probably would be, you know, the PIERS is roughly eight percent
17 interest, the subs is six and a half, and the seniors is maybe
18 four-ish. So I don't know that that's an appropriate metric
19 for utilizing it, but you could attempt to create some sort of
20 weighted number for that. I don't think that's an appropriate
21 methodology for determining a discount rate on a go-forward
22 basis for the reorganized company.

23 Q. All right, but using the example you've given, that
24 certainly would result in a weighted cost, if you did it the
25 way you suggested. That certainly would be less than the

1 thirteen percent they used?

2 A. I'm not really an expert in weighted average cost of
3 capital or a valuation expert, but I would think that the
4 weighted average cost of capital you'd likely want to use is
5 something that would be reflective of the go-forward entity.
6 So looking at a discounted cash flow with respect to reorg WMI
7 and what its weighted average cost to capital would be,
8 therefore, what's the value of that entity, I don't think
9 looking at what the original contract rates are on indentures
10 associated with a now -- with a holding company that now
11 doesn't own a bank is a good indicator of the discount rate
12 associated with that enterprise value.

13 Q. Okay, sure. Assuming all other factors remain the same,
14 what would happen to the reorg WMI value if a lower discount
15 rate was used?

16 A. Generally speaking, if a lower discount rate is used, then
17 a higher value is created.

18 Q. Thank you.

19 THE COURT: Who wants to go first?

20 MR. CURCHACK: Good afternoon, Your Honor. Walter
21 Curchack of Loeb & Loeb on behalf of Wells Fargo Bank, the
22 indenture trustee for the PIERS. Before I ask Mr. Goulding two
23 questions, Your Honor, I'd just like to clarify the record very
24 briefly. In formulating one of his questions, Mr. Steinberg
25 misrepresented the position of the indenture trustee with

1 respect to certain issues related to the interest rates here.

2 THE COURT: Speak up, so --

3 MR. CURCHACK: Okay, I'm sorry.

4 Just to clarify the record, Your Honor, in asking --
5 formulating some of his questions for Mr. Goulding, Mr.
6 Steinberg earlier inaccurately stated the position of the PIERS
7 trustee with respect to certain interest rate issues in this
8 case. I certainly don't intend to argue that here, and we
9 filed pleadings on those issues and we'll address them at the
10 appropriate time in argument, which is not during Mr.
11 Goulding's testimony.

12 THE COURT: Okay.

13 MR. CURCHACK: I do, however, have just, like, two
14 questions for Mr. Goulding.

15 Okay, sorry.

16 CROSS-EXAMINATION

17 BY MR. CURCHACK:

18 Q. Mr. Goulding, Mr. Steinberg asked you some questions about
19 the fees of the nonestate-retained professionals in this case.
20 And do you recall in the Court's order, with respect to the
21 prior plan, it was indicated that the fees of the nonretained
22 estate professionals would be subject to the reasonable
23 approval of the Court?

24 A. Yes.

25 Q. And that that was incorporated into this latest version?

1 A. The most recent version, that's correct.

2 Q. Okay, and do you recall that a few months ago, the
3 indenture trustees who serve on the creditors' committee filed
4 motions to liquidate a partial amount -- the amount of those
5 fees in the case to a fixed date?

6 A. I wasn't aware of that, but --

7 Q. Okay, so you don't recall that Mr. Steinberg didn't object
8 to any of those fees at that time?

9 A. I wasn't aware, but I'm not aware of any objections to
10 those fees.

11 Q. Okay, thank you.

12 MR. CURCHACK: No further questions, Your Honor.

13 THE COURT: Okay.

14 MR. HODARA: Good afternoon, Your Honor. Fred Hodara,
15 Akin Gump Strauss Hauer & Feld for the official committee of
16 unsecured creditors.

17 CROSS-EXAMINATION

18 BY MR. HODARA:

19 Q. Good afternoon, Mr. Goulding.

20 A. Good afternoon.

21 Q. Mr. Goulding, I've placed back on the projector the page 4
22 from your liquidation analysis, that's DX-375. Do you recall
23 that during the questioning of Mr. Steinberg, there was some
24 focus on the issue of the recovery of general unsecured
25 creditors under the contract rate analysis, which is this page,

1 page 4, as compared with the recovery under the federal
2 judgment rate scenario, which is page 5?

3 A. Yup.

4 Q. And do you recall that the numbers that were elicited
5 focused on the percent recovery, and on this page, we can see
6 for post-petition interest, it's shown as what percent
7 recovery?

8 A. The post-petition interest recovery for general unsecureds
9 is twenty-nine percent.

10 Q. Let's focus if we can, then, not on the column of percent
11 recovery for the moment but the column immediately to the left
12 of that. What does that column reflect?

13 A. That reflects the actual recovery in dollars.

14 Q. And what is that amount?

15 A. Twenty-four million.

16 Q. Now, I'm going to turn the page over to page 5 which will
17 be the federal judgment scenario. Now, Mr. Goulding, in this
18 scenario, what is the percentage recovery on post-petition
19 interest for the general unsecured creditors?

20 A. It's seventy-six percent.

21 Q. Which would be considerably higher than in the contract
22 rate scenario, just in respect to percentage recovery?

23 A. Right, that percentage number is higher.

24 Q. Okay, but let's look at the actual dollar recovery, and
25 what is the actual dollar recovery in the federal judgment rate

1 scenario to general unsecured creditors?

2 A. Seventeen million.

3 Q. And how does that compare to the actual dollar recovery
4 projected in the contract rate scenario?

5 A. It's about seven million dollars lower.

6 Q. So in terms of actual recoveries to general unsecured
7 creditors, do general unsecured creditors do worse in a federal
8 judgment rate application scenario?

9 A. That's right.

10 Q. Okay, thank you. So let's move on now to certain
11 questions that Mr. Steinberg asked you regarding why it might
12 be that certain representatives of certain unsecured classes,
13 including the PIERS might oppose the application of federal
14 judgment rate if, in certain scenarios, it shows that those
15 parties might do better with a federal judgment rate. Do you
16 remember those questions?

17 A. Yup.

18 Q. Okay, let me ask you to make an assumption for the moment,
19 and that is, if this plan -- if the Court found that contract
20 rate is not appropriate and imposed federal judgment rate, and
21 I if ask you to assume that the way this plan is structured,
22 the plan would actually fail in that scenario, in other words,
23 without contract rate, this plan as solicited and voted on by
24 the classes that were entitled to vote would not be able to go
25 forward if certain of those voting classes do worse.

1 A. Okay.

2 Q. With that assumption, let me ask you, if there then needed
3 to be a new plan, promulgation of that plan and voting on that
4 plan, would there be any delay?

5 A. Yes.

6 Q. Do you have any guesstimate or estimate of how long that
7 delay might be?

8 A. At least three or four months, I would say.

9 Q. Roughly, what would the cost of the estate be over that
10 three or four month period?

11 A. Well, presumably, you would have all of the same
12 operational expenses and professional fees and the like
13 continuing to accrue as against the more junior creditors, you
14 would have post-petition interest at 23 million a month, so
15 you're looking at something like 30 million a month, reducing
16 the PIERS recovery by -- you know, each month for the three or
17 four months, so 90 to 120 million.

18 Q. Now, in your estimate, to the extent that there might be a
19 benefit to, let's say, the junior class of PIERS in the federal
20 judgment rate scenario, based simply on the projection of how
21 many additional dollars would go to the PIERS, would that same
22 analysis, would that same conclusion obtain if there were a
23 three or four or even two-month delay?

24 A. No, certainly, any delay is going to eat up more out of
25 the PIERS recovery than the benefit of the federal judgment

1 rate.

2 Q. So in the scenario that I asked you to assume --

3 A. Um-hum.

4 Q. -- that there would actually have to be a new plan and new
5 solicitation, in that real world scenario that I asked you to
6 assume, would the PIERS in fact do better --

7 A. No, they would --

8 Q. -- under the federal judgment rate scenario?

9 A. -- they would do worse as a result of the delay.

10 Q. Significantly worse?

11 A. Significantly worse.

12 Q. Now let's go back, though, to the scenario that's shown in
13 the liquidation analysis of how the PIERS would do based simply
14 on these numbers that are put forward and there was the
15 supposition that the PIERS might actually do better in the
16 federal judgment rate scenario. Roughly how many dollars does
17 it appear from these projections that they would do better?

18 A. About six million dollars.

19 Q. Six million dollars. And by how many dollars, roughly,
20 did it appear that the general unsecured creditors would do
21 worse?

22 A. It's about seven, so those two essentially trade off.

23 Q. Well, they trade off; is that a coincidence or is it that
24 in the federal judgment rate scenario versus contract rate, the
25 PIERS actually do a little bit better at the direct expense of

1 the general unsecured creditors.

2 A. That's correct. The sharing mechanism, by virtue of the
3 change in the rates, just redistributes the dollars that way.

4 Q. Okay, thank you. Now, if the federal -- you heard the
5 questions put to you a few moments ago regarding what if the
6 federal judgment were applied at the current federal judgment
7 rate of approximately .25 percent --

8 A. Um-hum.

9 Q. -- versus the petition date rate of 1.95 percent.

10 A. That's right.

11 Q. A few questions about that. If federal judgment were
12 applied at .25 percent rather than 1.95 percent, would general
13 unsecured creditors be very badly affected as compared with
14 perhaps only seven million dollars badly affected?

15 A. Yes, their post-petition interest would be significantly
16 reduced.

17 Q. In the .25 percent federal judgment rate scenario, would
18 PIERS holders be very badly affected?

19 A. Yes.

20 Q. Would it be possible that holders of CCBs would be badly
21 affected?

22 A. It's conceivable, given the contractual subordination
23 obligations, that the CCBs may have an impairment in their
24 claim as a result of the federal judgment rate being that low.

25 Q. Thank you. Let me now turn to the questions that were put

1 to you regarding certain of the assumptions of the expenses of
2 the liquidation trust. If for any reason the expenses of the
3 liquidation trust turn out to be less, is this plan structured
4 in away that any additional value that's available will flow
5 through a strict waterfall in strict accordance with the
6 absolute priority rule?

7 A. That's correct. Any residual dollars from the liquidating
8 trust will flow out to holders of LTIs pursuant to that
9 waterfall.

10 Q. Thank you. Now I want to turn to questions that were put
11 to you by Mr. Coffey about this shortfall by which this
12 preferred equity is projected to be out of the money. And when
13 you answered those questions about the shortfall and you
14 indicated -- well, do you recall by how much you indicated the
15 preferred equity would be out of the money?

16 A. Under the federal judgment rate, it's about ninety to a
17 hundred. Under the contract rate, it's considerably more.

18 Q. Now, when you made that statement then, and you just made
19 it again now, were you assuming that there would be zero 510(b)
20 subordinated claims?

21 A. As I think I stated, and I don't think I stated it this
22 time, but I didn't know if there would be a recovery. What I
23 said was there's ninety to a hundred million to satisfy the
24 PIERS in the federal judgment case, and then I don't know how
25 much it would take to satisfy the 510(b) claims before getting

1 any value to the preferreds.

2 Q. Let's approach the question from the perspective of the
3 questions that were put to you regarding the projected recovery
4 to general unsecured creditors. And in those questions, there
5 was an assumption that as per the analysis, there would be a
6 recovery to general unsecured creditors of 375 million dollars,
7 is that correct?

8 A. On their pre-petition claim?

9 Q. Yes.

10 A. Yeah.

11 Q. And it's in that scenario, given the other assumptions
12 that we discussed where the preferred, or for that matter, the
13 510(b)s would be about ninety million dollars out of the money,
14 is that correct?

15 A. That's right.

16 Q. However, what is the actual reserve that the debtor has
17 established for general unsecured creditors?

18 A. We're estimating that the total allowed and disputed
19 claims as of the effective date are about 850 million.

20 Q. If general unsecured claims, in fact, ended up being about
21 850 million dollars, by how much would the 510(b) or preferred
22 equity parties be out of the money?

23 A. It's an additional 475 million.

24 Q. An additional 475 million or approximately 560 million?

25 A. Yes.

1 Q. All right, the last area that I'd like to cover that was
2 brought up by Mr. Steinberg, I believe, you are aware that a
3 plan supplement was filed in this case?

4 A. That's right.

5 Q. And there had been a plan supplement filed, as well, in
6 December, with respect to the prior plan, is that right?

7 A. Right.

8 Q. And then on July 8, just prior to the commencement of this
9 hearing on the modified sixth amended joint plan, a plan
10 supplement was filed specifically with respect to the pending
11 plan?

12 A. Um-hum.

13 Q. Okay.

14 MR. HODARA: Your Honor, may I approach the witness
15 with that plan supplement?

16 THE COURT: You may. For the record, could we have
17 the docket number for that?

18 MR. HODARA: Yes, Your Honor. Thank you. That is DX-
19 405, and that's the plan supplement filed July 8, 2011, and for
20 the record, the prior plan supplement that I references was DX-
21 259. I'm sorry, DX-259 is a version of the plan supplement
22 that was filed in April.

23 Q. Let's focus, however, on DX-405 which is the current
24 relevant plan supplement, and Mr. Goulding, if I can ask you to
25 turn to Exhibit 7, please. Can you find that?

1 A. Yup. Yes.

2 Q. Okay, does Exhibit 7 reflect the prospective directives of
3 the reorganized debtors on the one hand and then the members of
4 the liquidation trust on the other?

5 THE COURT: Exhibit 7 of what?

6 MR. HODARA: Of the plan supplement, Your Honor. If I
7 have my references right, and I've handed up my copy to the
8 witness, but I believe we are looking at Exhibit 7 of DX-405.

9 THE COURT: Okay, I'm sorry, I have it.

10 MR. HODARA: Thank you.

11 Q. All right, so Mr. Goulding, can you have a look at who are
12 the parties mentioned as the prospective members of the
13 liquidating trust?

14 A. The members of the trust advisory board?

15 Q. Yes.

16 A. Yeah, it's Michael Embler, Jeffrey Brodsky, Wells Fargo
17 Bank, and a Tom Korsman and Michael Willingham.

18 Q. Okay, now, do you recall being asked a question about the
19 identities or affiliations of Mr. Embler and Mr. Brodsky?

20 A. I do.

21 Q. So to the extent that this has refreshed your recollection
22 in any way and there are, by the way, as part of Exhibit 7,
23 biographies or resumes or CVs of each of the prospective
24 members of the trust board, let me ask you, with respect to Mr.
25 Embler, does this refresh your recollection of his -- of he

1 being a retired chief investment officer of Franklin Mutual
2 Advisors?

3 A. Yes, it does.

4 Q. Are you aware that Franklin Mutual Advisors is part of the
5 Franklin Templeton Investment Group, a group that manages over
6 fifty billion dollars in assets?

7 A. I am, yes.

8 Q. Are you aware of any affiliation of Mr. Embler with any
9 party in this case?

10 A. I'm not, actually. I'm not familiar with him.

11 Q. Let's turn to Mr. Brodsky. Are you aware that Mr. Brodsky
12 is a member of Quest Turnaround Advisors and that he,
13 personally, is currently serving as the head of the Adelpia
14 liquidation trust?

15 A. Again, this does refresh my recollection that there are
16 more than one Brodsky involved in this case.

17 Q. Well, let's talk specifically about that. So are you
18 aware that there is a Mark Brodsky who is a principal of
19 Aurelius?

20 A. Yes.

21 Q. Which is one of the so-called settlement noteholders.

22 A. That's right.

23 Q. Do you have any basis of believing that there's any
24 relationship, familial or otherwise, between Mark Brodsky of
25 Aurelius and Jeff Brodsky who is the prospective member of the

1 liquidation trust?

2 A. I don't believe there's any relation.

3 Q. Just a coincidence, as far as you know?

4 A. As far as I know, that's right.

5 Q. Okay, and the other two members of the liquidation trust
6 are who?

7 A. Tom Korsman on behalf of Wells Fargo Bank and Michael
8 Willingham.

9 Q. And Michael Willingham serves what other function in this
10 case?

11 A. He's the chair of the equity committee.

12 Q. And Wells Fargo serves what function in this case?

13 A. They're on the creditors' committee.

14 Q. And are you aware that they're also the indenture trustee
15 for the PIERS?

16 A. For the PIERS, that's right.

17 Q. Okay. And are you aware that pursuant to the plan, the
18 official committee of unsecured creditors needed to be
19 consulted with respect to each of the appointments. Are you
20 aware of that?

21 A. I am aware of that, yes.

22 Q. And are you aware that it was the creditors' committee
23 specifically that put forward Mr. Korsman of Wells Fargo for
24 one of these seats?

25 A. I am aware of that, yeah.

1 Q. Okay, and then very briefly, with respect to the other
2 piece that's covered in Exhibit 7, which is the directors of
3 the reorganized debtors, the directors of the WMMRC entity, if
4 you will.

5 A. Yes.

6 Q. Who are those parties?

7 A. It's Arnold Kastenbaum and Charles Edward Smith.

8 Q. Now, Charles Edward Smith, of course, you're very familiar
9 with. He is whom?

10 A. He's the general counsel --

11 Q. Of?

12 A. -- of WMI.

13 Q. Okay, thank you. And Mr. Kastenbaum, do you know how he
14 came to be put forward as a member of this board?

15 A. I believe it came from the creditors' committee.

16 Q. And are you aware that under the plan, the creditors'
17 committee had the right to review any nominees for the board
18 and to approve any of the nominees?

19 A. Yes, I'm aware.

20 Q. Are you aware of any affiliation or connection whatsoever
21 between Mr. Kastenbaum and anybody in this case?

22 A. No, I'm not aware of any.

23 Q. His resume is there, as well

24 A. Um-hum.

25 Q. Are you aware that his affiliation is with an entity

1 called Chodan Advisors?

2 A. I am now, yes.

3 Q. And finally, are you aware that in connection with the
4 prior plan and the plan supplement that was filed in connection
5 with the prior plan, there was the potential or discussion of
6 members of the so-called settlement noteholders actually being
7 appointed to the board of the reorganized debtors?

8 A. I do recall that, yes.

9 Q. Are any of those persons or anyone affiliated with those
10 parties, to your knowledge, named as prospective members of the
11 board under this sixth amended plan?

12 A. No, they're not.

13 Q. Thank you, Mr. Goulding.

14 MR. HODARA: Thank you.

15 MR. BERG: Your Honor, am I allowed a response?

16 THE COURT: No, no. Please.

17 MR. BERG: Thank you.

18 THE COURT: How long will the debtor be on redirect?

19 MR. ROSEN: Well, Your Honor, if I could ask for
20 perhaps just a five-minute recess so that we could make that
21 determination. I don't think that it will be long.

22 THE COURT: Because we're breaking at 5.

23 MR. ROSEN: Then I think we'll take a two-minute
24 recess, Your Honor.

25 THE COURT: All right. We'll take a short recess.

1 UNIDENTIFIED SPEAKER: Thank you.

2 (Recess from 4:44 p.m. until 4:48 p.m.)

3 THE CLERK: All rise. Please be seated.

4 THE COURT: All right.

5 MR. ROSEN: Thank you, Your Honor. We have very, very
6 few questions to ask Mr. Goulding.

7 REDIRECT EXAMINATION

8 BY MR. ROSEN:

9 Q. Mr. Goulding, there was some questions asked of you with
10 regard to what could flow south, if you will, what could flow
11 down through the waterfall, and your answer to one of those was
12 you really didn't know what 510 subordinated class would be. I
13 think in earlier hearings in this case, Mr. Johnson actually
14 referred to that as the cloud because nobody knew what it was.
15 Do you recall that?

16 A. I don't know if I recall his comment specifically, but
17 it's been referred to that way before.

18 Q. Okay, do you remember a claim that was filed in this case,
19 sometimes referred to as the MARTA claim?

20 A. Yeah, that's about a forty billion dollar claim.

21 Q. And do you recall that that claim, pursuant to the Court's
22 order, was withdrawn subject to a distribution hitting the 510
23 subordinated class?

24 A. I do.

25 Q. So if in fact there were to be a distribution that would

1 hit the 510 subordinated class, that claim would need to be
2 refiled and need to be relitigated?

3 A. That's my assumption.

4 Q. Are there other claims in that 510 subordinated class that
5 are significant that the debtors have not addressed due to the
6 fact of projected distributions at this time?

7 A. Yeah, we haven't addressed a lot of those that ended up in
8 that class.

9 Q. Okay, there have been several questions that have come
10 back and forth about did you include litigation, speculative
11 litigation recoveries in your liquidation analyses. Do you
12 recall those questions?

13 A. I do.

14 Q. And you said, I believe, in response, that whatever they
15 are, they are, and they're going into the liquidating trust.
16 Do you recall that?

17 A. Yes.

18 Q. I ask that you take a look at what has been marked, I
19 think, as Debtors' Exhibit 255 --

20 MR. ROSEN: Which is, Your Honor, the modified sixth
21 amended plan.

22 A. Yup.

23 Q. Mr. Goulding, let's just take a look, for a moment, at
24 page 47, section 20.3.

25 A. Okay.

1 Q. What does that section generally provide?

2 A. It provides for a limitation on recovery with respect to
3 the PIERS claims.

4 Q. So if there were, in fact, a distribution that would
5 provide a hundred percent recovery on the PIERS claims
6 available out of, let's say, litigation recoveries, would that
7 section provide that distributions would flow through the lower
8 class?

9 A. Yeah, once the PIERS claims are satisfied in full plus
10 post-petition interest, it would flow down below, then.

11 Q. Let's turn to page 50 of the plan, section 22.2. What
12 does that section provide?

13 A. It's the limitation on recovery for the subordinated
14 claims.

15 Q. So if, hypothetically, you satisfy forty billion dollar
16 MARTA claim out of your litigation recoveries, would that money
17 flow down from the 510s down to the retrust class and the
18 preferred stock classes?

19 A. Those two preferred classes, if the subordinated claims
20 are satisfied in full, correct.

21 Q. Okay, thank you. Also, while we have that plan up there,
22 and I know that Mr. Hodara asked a question or two about this,
23 but I just want to make clear about it --

24 MR. ROSEN: I apologize, Your Honor.

25 Q. Ah, page 92, section 43.18. Payment of fees and expenses

1 of certain creditors, I believe it's entitled. Mr. Goulding,
2 pursuant to this paragraph and consistent with the Court's
3 opinion in January, do the people who are enumerated in there
4 need to file an application with the Court for payment of those
5 expenses or a determination as to the reasonableness of those?

6 A. Yes, it shows that "They shall file with the Bankruptcy
7 Court an application and invoices requesting payment for
8 reasonable fees and expenses."

9 Q. Um-hum. Is there any limitation in the plan or otherwise,
10 say, for Mr. Steinberg to file his application with the Court
11 for payment of his fees?

12 A. I suppose he could file a significant contribution
13 application and seek to get his fees paid.

14 Q. And that would be subject to Court approval as well?

15 A. That's right.

16 Q. Did the debtors try and reach or negotiate with the equity
17 committed and reach an agreement with respect to the terms of a
18 consensual plan?

19 A. We did.

20 Q. And as part of that, was there an acquisition facility for
21 reorganized WMMRC that was going to be used?

22 MR. SARGENT: Objection, Your Honor. He's getting
23 into the content of settlement negotiations. It's protected by
24 Rule 408. It's not --

25 MR. ROSEN: Your Honor, what I'm going to be talking

1 about is what was announced to the Court on May 24th in public.

2 THE COURT: Was it? Well, then why are you asking him
3 it. Why don't you just incorporate that into the record.

4 MR. ROSEN: Okay.

5 Q. Mr. Goulding, the May 24th announcement in court about a
6 deal with the equity committee and other parties-in-interest
7 provided for a hundred million dollar acquisition facility.

8 MR. SARGENT: Objection, Your Honor. The question is
9 not whether or not it's public; it's not admissible evidence.
10 It's a settlement offer, inscrutable under Rule 408.

11 MR. ROSEN: Your Honor, we're only saying what was
12 announced in public court.

13 THE COURT: Well, why? For what purpose?

14 MR. ROSEN: Your Honor, only because there has been
15 discussion about whether or not there would be increased value
16 to reorganized WMMRC if, in fact, there was a facility. We're
17 just trying to show Your Honor that there was a good faith
18 negotiation throughout this case, including in this particular
19 instance, and that unfortunately, that effort and that facility
20 went away.

21 THE COURT: Well, I think you can't go into the
22 details of it because it was settlement discussions. If that's
23 the purpose of your --

24 MR. ROSEN: No, it --

25 THE COURT: -- trying to put it in.

1 MR. ROSEN: -- purely to show that there was an effort
2 to have a facility and that facility, we were not able to
3 reach.

4 THE COURT: You weren't able to reach a settlement.

5 MR. ROSEN: We were not able to document a settlement,
6 that is correct.

7 THE COURT: All right, I will sustain the objection.

8 BY MR. ROSEN:

9 Q. Your Honor -- excuse me -- Mr. Goulding, also, there was
10 some questions before by one of the parties about a rights
11 offering pursuant to the prior plan. Do you recall those
12 questions?

13 A. Yes.

14 Q. Do you remember what the amount of the rights offering was
15 in the sixth amended plan?

16 A. I think it was about a hundred million.

17 Q. Do you remember who it was available to?

18 A. Ultimately, it was available to the PIERS class, I
19 believe.

20 Q. And do you recall how much of that one hundred million
21 dollar rights offering was subscribed?

22 A. Yeah, at the time that we did it, we only got about
23 thirty-three million of the hundred million.

24 Q. And was that money returned when the Court decided that
25 that plan would not be confirmed?

1 A. It was, yeah.

2 Q. This -- I just want to make sure we have this -- the
3 liquidation analyses that we've included in the disclosure
4 statement, the multiple or the alternative forms, those were
5 put in at the request of the Court, is that right?

6 A. That's right.

7 Q. Does the debtor have a viewpoint with respect to the
8 contract rate of interest? It is included in the plan, is that
9 correct?

10 A. That's right.

11 Q. And that is the rate that you believe should be applied in
12 this situation?

13 A. That's right.

14 Q. Okay. Lastly, there was some discussion that was going
15 back and forth about the provision of information to Fried
16 Frank. Was Fried Frank subject to a confidentiality agreement?

17 A. They were from about November 2008.

18 Q. And this was separate and apart from any confidentiality
19 agreement the debtors had with any settlement noteholders or
20 any other party-in-interest in this case, is that correct?

21 A. That's correct.

22 Q. And so to the extent that the debtors provided that
23 information to Fried Frank, it was subject to the terms of that
24 confidentiality agreement, is that correct?

25 A. That's right.

1 MR. ROSEN: Your Honor, no more questions. Thank you.

2 THE COURT: Thank you. Any cross on those limited
3 areas?

4 MR. SARGENT: I do have limited cross, maybe three,
5 four minutes, Your Honor.

6 THE COURT: Good.

7 MR. SARGENT: You want me to go ahead today?

8 THE COURT: Yeah.

9 RE-CROSS-EXAMINATION

10 BY MR. SARGENT:

11 Q. On the last subject, Mr. Goulding, on the communications
12 with Fried Frank, was there a limitation in the confidentiality
13 agreement with Fried Frank that prohibited them from sharing
14 that information with their clients?

15 A. I don't know what Fried Frank was or wasn't able to. I
16 haven't reviewed those agreements.

17 MR. SARGENT: Could I have the ELMO please?

18 Q. You probably already have this memorized, frankly. This
19 is the liquidation analysis from -- it's in the -- the current
20 version. It's an exhibit to your declaration.

21 A. Um-hum.

22 Q. And I'm looking at the page that does the federal judgment
23 rate calculation.

24 A. Okay.

25 Q. And I just want to make it clear that it's the top

1 waterfall that the debtor believes would be applied if, for
2 example, additional value were available for the estate and
3 were to flow through. And here's a hypothetical I'd like to
4 propose to you. Let's assume that the reorganized debtor is
5 worth an additional 500 million, so 660 million. So an
6 additional 500 million dollars in value flowed through. And if
7 you look at the top waterfall, there's about a hundred million
8 dollar shortfall in these interest payments. And then the
9 additional money would flow down to the 501(b) and the
10 preferred equityholders.

11 A. The 510(b), um-hum.

12 Q. 510(b), sorry. And is it that waterfall that you believe
13 the debtors' advocating would be the applicable waterfall,
14 should the Court apply federal judgment rate?

15 A. Just to be clear, they're not different. I realize that
16 on the face of them, the numbers can be confusing, but there's
17 a cap associated with the PIERS on the bottom, so they would
18 only be entitled to receive approximately 375 million of
19 recovery, despite showing what their claims are, here. And so
20 the result is the same, regardless of which chart you're
21 looking at, and the PIERS would be satisfied once you pay
22 ninety to a hundred million more to the PIERS.

23 Q. Okay, and the 510(b) class, what work has the estate done
24 to value the claims in that class?

25 A. Well, there's a large number of claims that are in that

1 class, many of which are unliquidated that we don't really have
2 a great sense of how big that is. And frankly, because of
3 where we think we are in the payout, we haven't expended estate
4 resources to attempt to deal with all of those claims, other
5 than to get folks into that class.

6 Q. Because the estate has not attempted to value those claims
7 because doing so would suggest payment to equity, isn't that
8 right?

9 A. No, not at all. The only reason it -- it didn't seem
10 prudent to expend estate resources to reduce the size of a pool
11 that wasn't otherwise going to get a distribution. To the
12 extent that a distribution would flow down to them, then
13 obviously, the debtor would litigate all of those claims to
14 determine what the appropriate amount of claims would be in
15 that class, which we don't know at this point.

16 Q. And if I were going to -- if I wanted to investigate the
17 different claims that are in that class, would Mr. Kosturos be
18 the person I should ask? Is he aware of that information, as
19 far as you know?

20 A. I don't think that that's something that Mr. Kosturos is
21 tasked with. I think the lawyers who have addressed those
22 510(b) claims and subordinated probably have the most complete
23 list. But the claims oversight from our team is generally Mr.
24 Maciel.

25 MR. SARGENT: Okay, if I can get an agreement from the

1 debtor that Mr. Kosturos will be brought up to speed on at
2 least what the claims that can be identified are, I won't ask
3 this witness any more questions and we'll let him go. Can we
4 do that?

5 MR. STROCHAK: Your Honor, it's Adam Strochak, Weil
6 Gotshal for the debtors. I'm not sure what Mr. Sargent is
7 asking. Is he asking for discovery? It's a little late for
8 that.

9 MR. SARGENT: I just -- I'm sorry. I'm asking for a
10 witness who's informed about the claims. This witness has
11 already testified about a couple of them, but I assume since
12 he's the treasurer, he's less well-informed about what they are
13 than Mr. Kosturos would be. So I would prefer to let him go
14 now and ask Mr. Kosturos those questions, but I don't want to
15 do it if this is the only witness from whom I can get any of
16 that information. And since he's already testified on it, I
17 would have to go through those questions.

18 MR. STROCHAK: Your Honor, the witness has testified
19 as to what he knows about those claims.

20 THE COURT: I'm not sure he knows much more.

21 MR. SARGENT: Well, I --

22 THE COURT: Let's talk about this at the break.

23 MR. SARGENT: Thank you, Your Honor.

24 THE COURT: I mean, he doesn't know much more.

25 Mr. Steinberg, how long will you be?

1 MR. STEINBERG: A few sentences. And not for the
2 witness. Your Honor, like Mr. Curchack, I think I can make all
3 my points on closing arguments, so I have no more questions for
4 this witness.

5 THE COURT: Thank you.

6 MR. COFFEY: Thank you, Your Honor. Just two
7 questions.

8 THE COURT: Okay.

9 MR. COFFEY: And Your Honor, we may want to speak to
10 Mr. Goulding on our case, so I'm asking rather than he be
11 released completely, he be released from cross-exam, but if he
12 can stick around for tomorrow, we may want to speak to him
13 again.

14 MR. ROSEN: Your Honor, there was an understanding.
15 Mr. Goulding's being proffered in connection with the 1129
16 aspects and, as we've talked about, tranche 1 and tranche 2.
17 With respect that he has any issues with respect to his alleged
18 inequitable conduct, that is not what Mr. Goulding is here to
19 testify about.

20 MR. COFFEY: And to be clear, Your Honor, I don't
21 represent anyone in connection with inequitable conduct, so my
22 questions wouldn't have anything to do with that.

23 THE COURT: Well, what are you going to call him for?

24 MR. COFFEY: Your Honor, he's gone into a limited
25 discussion of claims and how they might be valued and how that

1 should be factored in for purposes of the liquidation analysis,
2 how we should take those into consideration, valuation. Your
3 Honor, I think these are things that we may want to explore
4 after we hear what Mr. Kosturos has to say.

5 MR. ROSEN: Your Honor, Mr. Coffey, with all due
6 respect, he hasn't even offered any witnesses here. He hasn't
7 offered us a witness list.

8 THE COURT: Well, whether he does or not, I think he
9 has a right to call him back. I won't release him. Then I --

10 MR. COFFEY: Thank you, Your Honor. And we may not
11 call him, so we'll look for a way not to --

12 THE COURT: All right.

13 MR. COFFEY: -- if we can get him out of here.

14 I have two questions, if I may.

15 THE COURT: All right.

16 RECROSS-EXAMINATION

17 BY MR. COFFEY:

18 Q. Mr. Goulding, Mr. Rosen went through the plan, mentioned
19 section 20.3 which is the limitation on the PIERS recovery, do
20 you recall that?

21 A. That's right.

22 Q. And section 22.2 which is the limitation on subordinated
23 claims recovery.

24 A. Right.

25 Q. And the function, as I understood, is once those classes

1 were paid in full, they'd get no more, and all the value would
2 go down through the absolute priority rule.

3 A. That's right.

4 Q. Okay, so is there any limitation on how much the REIT
5 series can recover?

6 A. I guess I would have to look at the plan specifically.

7 Q. You're not aware of any, are you?

8 A. I don't think so.

9 Q. Okay, so if the value went past the PIERS, past
10 subordinated claims, went down to the REIT and the preferred,
11 those classes could conceivably recover well in excess of their
12 claims, is that correct? Let me clarify; only the parties that
13 accepted the plan, correct? Those are the only parties that
14 would get these residual values?

15 A. Those -- that granted releases that can get value, I guess
16 that's true.

17 Q. All right, so in Class 19, those who voted against the
18 prior plan weren't allowed to vote, right, so they can't get
19 any of that value, correct?

20 A. Right.

21 Q. Okay, so the parties that did vote in favor of the plan in
22 Class 19, they were approximately thirty-three percent, is that
23 your recollection?

24 A. I don't remember.

25 Q. Okay, I'll represent to you it was about thirty-three

1 percent. Do you know how much of that class is held by the
2 settlement noteholders?

3 A. I don't know.

4 Q. About twenty-five percent, does that ring a bell?

5 A. I've never seen their holdings with respect to that.

6 MR. COFFEY: No further questions, Your Honor.

7 THE COURT: Thank you.

8 MR. ROSEN: Your Honor, just two questions, please.

9 THE COURT: All right.

10 FURTHER REDIRECT EXAMINATION

11 BY MR. ROSEN:

12 Q. Mr. Goulding, assuming that a distribution -- well, let me
13 rephrase it. What is the aggregate amount of the preferred
14 stock and the REIT trust?

15 A. The aggregate amount of the preferred -- the two
16 preferred --

17 Q. Two preferred classes.

18 A. -- classes is about seven and a half billion.

19 Q. And so in order for something to pay them in full, there
20 would have to be recovery beyond the 510 subordinated of seven
21 billion dollars, is that correct?

22 A. Right.

23 Q. Okay.

24 MR. ROSEN: Your Honor, no more questions.

25 THE COURT: All right.

1 MR. ROSEN: Although I do have a question, Your Honor,
2 for Mr. Coffey. If he intends to have any witnesses, we would
3 like to know their names because we may want to take discovery
4 of them.

5 THE COURT: All right, you can discuss that after we
6 break. We'll stand adjourned, and I'll see the parties back
7 here tomorrow morning at 9:30.

8 MR. ROSEN: Thank you.

9 THE COURT: Thank you.

10 (Whereupon these proceedings were concluded at 5:05 PM)

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

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