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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In the Matter of:

WASHINGTON MUTUAL, INC., et al.,
Debtors.

Case No. 08-12229 (MFW)
(Jointly Administered)

- - - - - x

- - - - - x

NANTAHALA CAPITAL PARTNERS, LP,
BLACKWELL CAPITAL PARTNERS, LLC,
AXICON PARTNERS, LLC,
BRENNUS FUND LIMITED,
COSTA BRAVA PARTNERSHIP III, LLP,
SONTERRA CAPITAL MASTER FUND, LTD.

Plaintiffs,

Adv. Proc. 10-50911 (MFW)

v.

WASHINGTON MUTUAL, INC.,
MICHAEL MURPHY,
WILLIAM REED, JR.
THOMAS LEPPERT,
STEPHEN CHAZEN,
STEPHEN FRANK,
REGINA MONTOYA,
PHILLIP MATTEWS,
ORIN SMITH,
MARGARET OSMER MCQUADE,
JAMES STEVER,
FRANCIS BAIER,
DAVID BONDERMAN,
CHARLES LILLIS

Defendants.

- - - - - x

1 - - - - -x
 MICHAEL WILLINGHAM and ESOPUS
 2 CREEK VALUE LP,
 3 Plaintiffs,
 v. Adv. Proc. 10-51297 (MFW)
 4
 WASHINGTON MUTUAL, INC.,
 5 Defendant.
 6 - - - - -x
 - - - - -x
 7 WASHINGTON MUTUAL, INC. and
 WMI INVESTMENT CORP.
 8 Plaintiff,
 9 v. Adv. Proc. 10-53420 (MFW)
 10
 PETER J. AND CANDANCE R. ZAK
 11 LIVING TRUST OF 2001 U/D/O
 AUGUST 31, 2001, ET AL.
 12 Defendant.
 13 - - - - -x
 - - - - -x
 14 OFFICIAL COMMITTEE OF UNSECURED
 CREDITORS OF WASHINGTON MUTUAL,
 15 INC., ET AL., ON BEHALF OF CHAPTER
 11 ESTATES OF WASHINGTON MUTUAL,
 16 INC., ET AL.
 Plaintiff,
 17 v. Adv. Proc. 10-53149 (MFW)
 18 ALEXANDER SASHA KIPKALOV,
 - - - - -x
 19
 AMY DRIVER ANDERSON, Adv. Proc. 10-53135 (MFW)
 20 - - - - -x
 ANTHONY BOZZUTI, Adv. Proc. 10-53131 (MFW)
 21 - - - - -x
 CHANDAN SHARMA, Adv. Proc. 10-53147 (MFW)
 22 - - - - -x
 DAVID M. SCHWARTZ, Adv. Proc. 10-53144 (MFW)
 23 - - - - -x
 EDWARD F. BACH, Adv. Proc. 10-53132 (MFW)
 24 - - - - -x
 GREGORY H. WOOD, Adv. Proc. 10-53137 (MFW)
 25 - - - - -x

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2	2	- - - - -x	
		HENRY J. BERENS,	Adv. Proc. 10-53134 (MFW)
3	3	- - - - -x	
		HOWARD MATTHEWS,	Adv. Proc. 10-53134 (MFW)
4	4	- - - - -x	
		JAMES CORCORAN,	Adv. Proc. 10-53134 (MFW)
5	5	- - - - -x	
		JIANGUO ZHONG,	Adv. Proc. 10-53148 (MFW)
6	6	- - - - -x	
		JOHN M. BROWNING,	Adv. Proc. 10-53156 (MFW)
7	7	- - - - -x	
		JONI WYCKOFF,	Adv. Proc. 10-53151 (MFW)
8	8	- - - - -x	
		KEITH O. FUKUI,	Adv. Proc. 10-53139 (MFW)
9	9	- - - - -x	
		MARC MALONE,	Adv. Proc. 10-53152 (MFW)
10	10	- - - - -x	
		MATTHEW WAJNER,	Adv. Proc. 10-53136 (MFW)
11	11	- - - - -x	
		MICHAEL R. ZARRO,	Adv. Proc. 10-53143 (MFW)
12	12	- - - - -x	
		NIRMAL BAID,	Adv. Proc. 10-53145 (MFW)
13	13	- - - - -x	
		PETER GERRALD,	Adv. Proc. 10-53138 (MFW)
14	14	- - - - -x	
		PETER HELLER,	Adv. Proc. 10-53146 (MFW)
15	15	- - - - -x	
		RACHEL M. MILEUR a/k/a	Adv. Proc. 10-53133 (MFW)
16	16	RACHELLE M. MILEUR,	
		- - - - -x	
17	17	RICHARD BLUNCK,	Adv. Proc. 10-53157 (MFW)
		- - - - -x	
18	18	ROBERT C. HILL,	Adv. Proc. 10-53153 (MFW)
		- - - - -x	
19	19	STEPHEN E. WHITTAKER,	Adv. Proc. 10-53150 (MFW)
		- - - - -x	
20	20	STEVEN HERUTY,	Adv. Proc. 10-53141 (MFW)
		- - - - -x	
21	21	THOMAS E. MORGAN,	Adv. Proc. 10-53154 (MFW)
		- - - - -x	
22	22	WILLIAM K. GLASBY,	Adv. Proc. 10-53142 (MFW)
23	23	Defendants.	
24	24	- - - - -x	
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United States Bankruptcy Court

824 North Market Street

Wilmington, Delaware

July 20, 2011

9:34 AM

B E F O R E:

HON. MARY F. WALRATH

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: BRANDON MCCARTHY

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HEARING re Debtors' Fifth Omnibus (Substantive) Objection to
Claims [Docket No. 1233; filed 6/26/09]

HEARING re Debtors' Sixth Omnibus (Substantive) Objection to
Claims [Docket No. 1234; filed 6/26/09]

HEARING re Debtors' Motion Pursuant to Sections 105 and 363 of
the Bankruptcy Code for Order Approving Procedures for the Sale
of Certain Intellectual Property [Docket No. 1701; filed
10/7/09]

HEARING re Debtors' Twenty-Third Omnibus (Substantive)
Objection to Claims (Claim Nos. 2463, 2470, 2500, and 2505)
[Docket No. 2443; filed 3/1/10]

HEARING re Debtors' Objection to Proof of Claim filed by the
Oregon Department of Revenue (Claim No. 3693) [Docket No. 3196;
filed 4/14/10]

HEARING re Debtors' Objection to Proof of Claim Filed by AT&T
Corp. (Claim No. 3725) [Docket No. 3691; filed 5/10/10]

HEARING re Debtors' Forty-Third Omnibus (Substantive) Objection
to Claims [Docket No. 4749; filed 6/16/10]

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HEARING re Debtors' Forty-Fourth Omnibus (Substantive)
Objection to Claims [Docket No. 4750; filed 6/16/10]

HEARING re Debtors' Forty-Sixth Omnibus (Non-Substantive)
Objection to Claims [Docket No. 5117; filed 7/21/10]

HEARING re Debtors' Fifty-Fifth Omnibus (Substantive) Objection
to Claims [Docket No. 5616; filed 10/17/10]

HEARING re Debtors' Fifty-Sixth Omnibus (Substantive) Objection
to Claims [Docket No. 5618; filed 10/18/10]

HEARING re Michael Willingham Esopus Creek Value, LP v.
Washington Mutual, Inc. et al. (Adv. Pro. No. 10-51297)

HEARING re Nantahala Capital Partners, LP, Blackwell Capital
Partners, LLC, Axicon Partners, LLC, Brennus Fund Limited,
Costa Brava Partnership III, LLP, and Sonterra Capital Master
Fund, Ltd. v. Washington Mutual, Inc., Michael Murphy,
William Reed, Jr., Thomas Leppert, Stephen Chazen, Stephen
Frank, Regina Montoya, Phillip Mattews, Orin Smith, Margaret
Osmer McQuade, James Stever, Francis Baier, David Bonderman and
Charles Lillis (Adversary Proceeding No. 10-50911)

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HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Alexander Sasha
Kipkalov re: Adversary Proceeding No. 10-53149.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Amy Driver
Anderson re: Adversary Proceeding No. 10-53135.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Anthony Bozzuti
Re: Adversary Proceeding No. 10-53131.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. David M.
Schwartz re: Adversary Proceeding No. 10-53144.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Gregory H.
Wood re: Adversary Proceeding No. 10-53137.

1

2 HEARING of Official Committee of Unsecured Creditors of
3 Washington Mutual, Inc., et al., on behalf of Chapter 11
4 estates of Washington Mutual, Inc., et al. v. James Corcoran
5 re: Adversary Proceeding No. 10-53158.

6

7 HEARING of Official Committee of Unsecured Creditors of
8 Washington Mutual, Inc., et al., on behalf of Chapter 11
9 estates of Washington Mutual, Inc., et al. v. Jianguo Zhong re:
10 Adversary Proceeding No. 10-53148.

11

12 HEARING of Official Committee of Unsecured Creditors of
13 Washington Mutual, Inc., et al., on behalf of Chapter 11
14 estates of Washington Mutual, Inc., et al. v. John M.
15 Browning re: Adversary Proceeding No. 10-53156.

16

17 HEARING of Official Committee of Unsecured Creditors of
18 Washington Mutual, Inc., et al., on behalf of Chapter 11
19 estates of Washington Mutual, Inc., et al. v. Joni Wyckoff re:
20 Adversary Proceeding No. 10-53151.

21

22 HEARING of Official Committee of Unsecured Creditors of
23 Washington Mutual, Inc., et al., on behalf of Chapter 11
24 estates of Washington Mutual, Inc., et al. v. Keith O. Fukui
25 re: Adversary Proceeding No. 10-53139.

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HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Marc Malone
Re: Adversary Proceeding No. 10-53152.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Matthew Wajner
Re: Adversary Proceeding No. 10-53136.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Nirmal Baid
Re: Adversary Proceeding No. 10-53145.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Peter Gerrald re:
Adversary Proceeding No. 10-53138.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Peter Heller
Re: Adversary Proceeding No. 10-53146.

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HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Rachel M.
Mileur a/k/a Rachelle M. Mileur re: Adversary Proceeding No.
10-53133.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Richard Blunck
re: Adversary Proceeding No. 10-53157.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Robert C. Hill
re: Adversary Proceeding No. 10-53153.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Stephen E.
Whittaker re: Adversary Proceeding No. 10-53150.

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HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Steven Heruty
re: (Adversary Proceeding No. 10-53141.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Thomas E.
Morgan re: Adversary Proceeding No. 10-53154.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. William K.
Glasby re: Adversary Proceeding No. 10-53142.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Chandan Sharma
Re: Adversary Proceeding No. 10-53147.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Edward F. Bach
re: Adversary Proceeding No. 10-53132.

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HEARING of Official Committee of Unsecured Creditors of Washington Mutual, Inc., et al., on behalf of Chapter 11 estates of Washington Mutual, Inc., et al. v. Henry J. Berens re: Adversary Proceeding No. 10-53134.

HEARING of Official Committee of Unsecured Creditors of Washington Mutual, Inc., et al., on behalf of Chapter 11 estates of Washington Mutual, Inc., et al. v. Howard Matthews re: Adversary Proceeding No. 10-53155.

HEARING of Official Committee of Unsecured Creditors of Washington Mutual, Inc., et al., on behalf of Chapter 11 estates of Washington Mutual, Inc., et al. v. Michael R. Zarro re: Adversary Proceeding No. 10-53143.

HEARING re Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code [Docket No. 6696; filed 2/8/11]

HEARING re Application for an Order Pursuant to 11 U.S.C. §§ 328, 330 and 1103 and Fed. R. Bankr. P. 2014 Authorizing the Retention and Employment of Schwabe, Williamson & Wyatt as Securities Counsel to the Official Committee of Equity

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Security Holders of Washington Mutual, Inc., et al., Nun Pro
Tunc to June 1, 2011 [Docket No. 7981; filed 6/23/11]

HEARING re Motion to Compel Aurelius Capital Management LP and
Centerbridge Partners, LP to Produce Documents [Docket No.
8117; filed 7/8/11]

HEARING re Debtors' Motion In Limine to Exclude Portions of the
Expert Reports and the Testimony of the Equity Committee's
Expert Witnesses Anders J. Maxwell and Kevin D. Anderson
[Docket No. 8159; filed 7/11/11]

Transcribed by: Gershom Benayahu

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VADIM J. RUBENSTEIN, ESQ. (TELEPHONICALLY)

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DANIEL J. WALKER, ESQ.

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JUSTIN NELSON, ESQ. (TELEPHONICALLY)

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

2 THE COURT: Good morning.

3 MR. FOLSE: Your Honor, Parker Folse on behalf of the
4 equity committee. I have about a five-minute matter that I'd
5 like to raise before we resume the testimony.

6 THE COURT: What is it?

7 MR. FOLSE: Yesterday the Court declined to admit into
8 evidence two documents that I used in the cross-examination of
9 Mr. Gropper, and I would like to ask that the Court reconsider
10 those decisions, and if the Court's not inclined to, I have a
11 further request to make.

12 The two documents are in the same binder. They're
13 Exhibits 280 and 281. I also have extra copies if the Court
14 would prefer that I hand them up.

15 THE COURT: I have them.

16 MR. FOLSE: Thank you. I offered both of them because
17 of the e-mails that they include from Brad Scheler of the Fried
18 Frank firm to Mr. Rosen, and I believe they are both admissible
19 as exceptions to the hearsay rule under 801(d)(2)(D). The
20 admission of documents under that rule requires evidence that
21 they contain statements by an agent of a party opponent
22 concerning a matter within the scope of the agency made during
23 the existence of the relationship.

24 And I believe the testimony of Mr. Gropper established
25 that Mr. Scheler represented Aurelius and the other settlement

1 noteholders as their attorney, that his representation included
2 representing the interests of the settlement noteholders in the
3 settlement negotiations, and that he was counsel for that
4 purpose during the time these e-mails were written.

5 Beyond that, of course, in the e-mails themselves, Mr.
6 Scheler writes about what his clients would and wouldn't agree
7 to. And respectfully, Your Honor, I don't think it's necessary
8 that under this exception to the hearsay rule that the
9 evidentiary foundation for admission be provided by a witness
10 who wrote the document or received it. It simply has to be
11 provided by someone who has personal knowledge of the agency
12 relationship of the author, its existence, and what its scope
13 was. And I think that's all been established by the testimony
14 from Mr. Gropper.

15 It's -- I think it's similar to the business records
16 exception, in the sense that the foundation for admission of
17 documents as a business record can be provided by a custodian
18 of record that has no personal knowledge of the documents at
19 all, as long as they do have personal knowledge of the
20 foundation that's necessary for the hearsay exception to apply.

21 I think the only other issue about the documents would
22 be whether they're authentic, but there's no dispute about the
23 authenticity of these documents. They were produced from the
24 files of Weil Gotshal & Manges, I think presumably from Mr.
25 Rosen's files, since he's the person to whom they were

1 addressed. And so I would ask that the Court reconsider its
2 ruling.

3 My alternative request is, is if the Court believes
4 there is some further testimony that's needed from someone who
5 wrote or received the document, then I'd ask permission to call
6 Mr. Scheler as a witness, he's in the courtroom today, for the
7 very limited and extremely brief purpose of establishing
8 whatever else the Court believes would be necessary to admit
9 the documents.

10 THE COURT: Any response?

11 MR. OWENS: Your Honor, Richard Owens on behalf of
12 Centerbridge, Your Honor. I will not quarrel with Mr. Folsie's
13 argument that this would be admissible under the hearsay rule
14 as an admission of a party opponent.

15 I would quarrel with a procedure going forward that
16 deals with authenticity issues inequitably or in a hodge-podge
17 manner. If it is the Court's view that so long as it's shown
18 that an e-mail was produced by the debtor from the debtor's
19 files, or one of the parties-in-interest in this proceeding,
20 that that is sufficient to show foundation and authenticity,
21 apart from other foundational issues for admissibility, then
22 we're happy to live with that as a general rule for all
23 documents that may be offered by any party in these
24 proceedings.

25 But I would not like to end up in a position where Mr.

1 False or any party, on an ad hoc basis, tries to persuade the
2 Court to ignore the basic rules of establishing authenticity
3 for this reason or that reason, without having a clear
4 understanding about what the rules are going to be in terms of
5 who we need to call or don't need to call to admit something
6 and prove the authenticity of a document.

7 MR. TRACHTMAN: Just for the record, Jeffrey Trachtman
8 from Kramer Levin for Aurelius, I would endorse Mr. Owens'
9 views on that.

10 THE COURT: So your --

11 MR. TRACHTMAN: I --

12 THE COURT: -- suggestion is that all documents
13 produced by any of the parties are admissible on foundation
14 grounds?

15 MR. TRACHTMAN: I would think that documents of
16 similar providence, e-mails that are produced in the
17 productions in this way, if we're going to view them as self-
18 authenticating, that's just got to be for everybody, not just
19 for the objectors. But otherwise, I wouldn't have an
20 objection.

21 MR. OWENS: And just to be clear, Your Honor, I was
22 not suggesting that the mere act of production would establish
23 all foundational grounds, merely authenticity as the first of
24 whatever test may be required for the theory under which the
25 document is offered in evidence.

1 So, in other words, if the equity committee is
2 prepared to agree to that, and other parties are agreed -- are
3 prepared to agree to that for these proceedings, then we will
4 have no objection to the authenticity of this document.

5 THE COURT: Or its admission?

6 MR. OWENS: Correct, Your Honor.

7 MR. FOLSE: Your Honor, we have not objected to, I
8 think, any document that's been offered in the case so far on
9 authenticity grounds, as long as a document by Bates number
10 indicates that it was produced from the files of a party, I
11 don't anticipate we will ever have an objection to the
12 authenticity of the document. That is, of course, different as
13 to whether or not it becomes admissible. But if that
14 provides --

15 THE COURT: I think that's what they're suggesting.
16 Do debtors agree?

17 MR. ROSEN: We're fine with that, Your Honor.

18 THE COURT: All right. Then I will change my ruling
19 and admit those two documents, and we can proceed.

20 (Committee of Equity Holders Exhibits 280 and 281, e-mails from
21 Scheler to Rosen, were hereby received into evidence.)

22 MR. SHER: Good morning, Your Honor. Barry Sher and
23 Paul Hastings on behalf of Appaloosa. I think I'm up next, and
24 if the Court wishes I can call Mr. Bolin to the stand on behalf
25 of Appaloosa.

1 THE COURT: Yes, thank you.

2 MR. SHER: Mr. Bolin.

3 THE CLERK: Raise your right hand, place your left
4 hand on the Bible.

5 JAMES BOLIN, WITNESS, SWORN

6 THE CLERK: Please state your full name, spelling your
7 last name.

8 THE WITNESS: James Edward Bolin, spelled B-o-l-i-n.

9 DIRECT EXAMINATION

10 BY MR. SHER:

11 Q. Make sure when we're talking, I'm going to do my best to
12 speak into the mic, you do that and --

13 A. Okay.

14 Q. -- you do the same.

15 Mr. Bolin -- good morning, Mr. Bolin. Where do you work?

16 A. Appaloosa Management LP.

17 Q. Could you describe what Appaloosa Management is briefly?

18 A. Appaloosa Management is a management company that performs
19 advisory rule to four hedge funds that raise money from private
20 investors; it makes the investment decisions for those funds.

21 Q. And how long have you been with Appaloosa?

22 A. A total of about twelve years.

23 Q. What's your current position there?

24 A. I'm the senior partner and portfolio manager.

25 Q. And generally speaking, would you describe for the Court

1 what your responsibilities are at Appaloosa.

2 A. My responsibilities are first and foremost, portfolio
3 management overseeing various positions that are owned by the
4 funds and managed by --

5 Q. I'm going to stop you a minute. I'm going to actually
6 pull the mic over. Are you able to hear what --

7 THE COURT: No.

8 THE WITNESS: Sorry. I'll begin again.

9 Q. Sorry. Yeah, your responsibilities.

10 A. I'm a portfolio manager for the funds. I oversee various
11 investment positions, particularly in distress work-out or
12 private equity situations. I'm also an officer of the general
13 partner of Appaloosa Management LP, and involved in the
14 business decisions affecting the management company.

15 Q. How long have you held that position that you just
16 described?

17 A. Since I've been at Appaloosa.

18 Q. How long have you been in the securities industry, Mr.
19 Bolin?

20 A. Approximately twenty-nine years.

21 Q. How much, I'm sorry, twenty --

22 A. Twenty-nine years.

23 Q. Back to Appaloosa for a minute, how many employees are
24 there at Appaloosa roughly speaking?

25 A. Roughly about thirty-five.

1 Q. And did Appaloosa have the same number of employees back
2 in September of 2008?

3 A. No. We were a little smaller. We've expanded our back
4 office since that time.

5 Q. Roughly how many employees did you have back in September
6 '08?

7 A. Twenty-five to twenty-seven, somewhere in that range.

8 Q. I want to focus on the period starting in September of
9 2008. Who was responsible for making decisions at Appaloosa
10 relating to investments in WMI securities?

11 A. That'd be David Tepper and myself.

12 Q. Who's David Tepper?

13 A. David Tepper is the general partner of Appaloosa or
14 controls the general partner of Appaloosa management.

15 Q. Okay. In what classes of securities of WMI did Appaloosa
16 invest?

17 A. From September of 2008 on, we invested in all securities
18 with the exception of the common equity.

19 Q. Okay. So could you just walk through starting --

20 A. Starting, we --

21 Q. -- the most senior.

22 A. -- invested in senior notes, senior subordinated notes,
23 the junior subordinated of peers securities. We invested in
24 the trust preferred, and we invested in the Series K preferred.

25 Q. I'd like to show you --

1 MR. SHER: I believe the Court has our binder of
2 exhibits.

3 THE COURT: I do.

4 Q. Mr. Bolin, you do as well.

5 A. I do.

6 Q. If you'd turn to tab 1, please.

7 A. Yes.

8 Q. Would you -- and this is Exhibit AOC 62. Do you recognize
9 this document?

10 A. Yes, I do.

11 Q. What is it?

12 A. This is a record of all of our trades in Washington Mutual
13 securities -- WMI securities from September 29th, 2008 until
14 July 8th, 2010. It was prepared by my back office personnel.

15 MR. SHER: Your Honor, I'd offer AOC 62 into evidence.

16 THE COURT: Any objection?

17 MR. ARD: No objection.

18 THE COURT: All right. Admitted.

19 (AOC Exhibit 62, Appaloosa's trades of WMI securities from
20 9/29/08 to 7/8/10, was hereby received into evidence.)

21 MR. SHER: And in accordance with the arrangements
22 that we've had, this one will be kept under seal and not put up
23 on the screen.

24 THE COURT: Okay.

25 BY MR. SHER:

1 Q. Going back to our discussion here, I want to focus on the
2 period from -- of 2009 through the spring of 2010.

3 Did Appaloosa ever restrict its trading, and/or
4 voluntarily refrain from trading in WMI securities during that
5 period, that 2009 through the spring of 2010?

6 A. Yes, we did.

7 Q. Would you describe those periods?

8 A. Sure. The first period began the evening of March 9th,
9 2009, with a signing of a confidential agreement with the
10 debtor, and extended till May 8th of 2009.

11 The next period began sometime in July of 2009, and ended
12 on September 2nd, 2009. That was a voluntary restriction on
13 our part.

14 Q. So before you go on, the first period you described was a
15 restricted period?

16 A. Yes, it was.

17 Q. And the second period in the summer of 2009 was a
18 voluntary refrain from trading period?

19 A. Correct.

20 Q. Okay. And we'll get back to the explanation for that, but
21 keep going.

22 A. Okay. From -- the next period was from November 16th
23 until year end 2009 is when we were in -- under a second
24 confidentiality agreement with the debtor.

25 The following period was some time --

1 Q. I'm sorry, that was a restricted period?

2 A. That was a restricted period.

3 Q. Okay.

4 A. The next period would've been some time beginning in
5 February of 2010 up until just prior to March 4th of 2010 we
6 were voluntarily restricting our trading.

7 From March 4th until March 12th, 2010, we had material
8 nonpublic information and were restricted from trading.

9 And from March 22nd, the evening of March 22nd until the
10 filing of the first disclosure statement on March 26th, we were
11 also restricted from trading.

12 Q. That last one you said, you said it was the evening of
13 March 22 until the filing on March 26th?

14 A. Correct.

15 Q. Okay. During these periods, what did Appaloosa do to
16 ensure that there was no trading in WMI securities during these
17 periods?

18 A. Sure. As soon as we began our restrictions in Washington
19 Mutual, from then on, David Tepper had issued a hard and fast
20 rule to the trading desk that no one including himself, was to
21 trade Washington Mutual securities without authorization from
22 me or our general counsel.

23 Q. Has Appaloosa ever traded in any WMI securities while it
24 was restricted or was in any voluntary refrained-from-trading
25 period?

1 A. No.

2 Q. Does -- can you just explain the difference between the --
3 these periods when you said you were restricted, and the two
4 periods in the summer of 2009, and in February through March,
5 three or four, of 2010 when you said you were voluntarily
6 refraining from trading?

7 A. Right. In the -- under the confi periods in the two
8 periods in March of 2010, we believed we had -- if not
9 materially nonpublic information, potentially materially
10 nonpublic information.

11 During the other two periods, one we were in discussions
12 between us and JPMorgan and felt that it was imprudent to
13 trade. In the February period in 2010 through some meetings
14 and other interactions, we became aware that discussions
15 between JPMorgan and the FDIC and the debtor may have gotten
16 some traction, and for that reason, we thought it prudent not
17 to trade during that time as well.

18 Q. So during those two periods of voluntarily refraining from
19 trading, did you believe you had material nonpublic
20 information?

21 A. I did not believe that.

22 Q. But nonetheless, you thought it prudent not to trade?

23 A. Yes.

24 Q. Does Appaloosa have an insider trading policy?

25 A. Yes, we do.

1 Q. What is the policy?

2 A. Stated simply we don't do it.

3 Q. And is there a written policy as well?

4 A. Yes, there is.

5 Q. Embodying that basic premise?

6 A. That's the underlying premise.

7 Q. And did Appaloosa follow its policy with respect to WMI?

8 A. Yes, we did.

9 Q. And did Appaloosa go beyond its policy at times for WMI?

10 A. At times, we thought for business reasons, it was
11 imprudent to trade. We restricted ourselves irrespective of
12 whether the information we had or thought we may have had was
13 material nonpublic information.

14 Q. And that in particular is the summer of '09 and the
15 February through March of '010 [sic] period?

16 A. Yes.

17 Q. Are you familiar with the objection to the plan of
18 reorganization filed by the equity committee in this case?

19 A. Yes.

20 Q. Does it allege insider trading by Appaloosa?

21 A. No.

22 Q. And let's be clear, did Appaloosa ever trade in WMI while
23 in possession of material nonpublic information?

24 A. No.

25 Q. Let's talk about the first confidentiality period you

1 mentioned. You said that you entered into that policy on the
2 evening of March 9 at 2009. What caused Appaloosa to enter
3 into that and restrict trading?

4 A. We were invited to participate in a session the next day
5 by the debtor, hosted by the debtor -- or sponsored by the
6 debtor with significant parties-in-interest in WMI and
7 JPMorgan.

8 Q. Was there information that you were looking to learn in
9 connection with that meeting?

10 A. It was a negotiating session. One of the pieces of
11 information that would've been necessary in order to have any
12 kind of meaningful negotiations would've been the value of
13 what's referred to as the first tax refund.

14 Q. And did you learn that information during the
15 confidentiality period?

16 A. Yes, I did.

17 Q. Approximately when did you learn it?

18 A. On the morning of March 10th.

19 Q. March 10, two thousand --

20 A. 2009.

21 Q. And what did the -- who told you about it?

22 A. The debtor told us.

23 Q. And what did they tell you?

24 A. They told us, I think, the number at the time was 2.6 to
25 3.0 billion dollars, if I'm not mistaken.

1 Q. 2.6 to three billion?

2 A. I believe so, yes.

3 Q. Did you think that was material information?

4 A. Yes.

5 Q. Was that estimate ever disclosed to the public?

6 A. Yes, it was.

7 Q. When was that?

8 A. That was when the debtor filed its March operating report.

9 I believe it was April 30th if I'm not mistaken.

10 Q. I'd like to turn to tab 2 in the binder.

11 MR. SHER: Make my first foray here. Can we turn on

12 the ELMO?

13 Q. Would you turn to tab 2 in the binder, do you recognize

14 this document? And this is EC-24 for the record.

15 A. Yes, I do.

16 Q. What is it?

17 A. That's the confidentiality agreement that was executed on

18 the evening of March 9th, 2009.

19 Q. This is the confidentiality agreement that Appaloosa

20 entered into?

21 A. Correct.

22 MR. SHER: Your Honor, I offer it into evidence.

23 THE COURT: Any objection?

24 MR. ARD: No objection, Your Honor.

25 THE COURT: It's admitted.

1 (Equity Committee's Exhibit 24, Confidentiality Agreement
2 between Debtor and Appaloosa dated March 9th, 2009, was hereby
3 received into evidence.)

4 MR. SHER: Thank you.

5 BY MR. SHER:

6 Q. If you turn to page -- feel free to look at any part of
7 this, but I want to focus you on Section 13, which is on page 5
8 of the document. There's a provision in there relating to a
9 disclosure by the debtor, do you see that?

10 A. Yes, I do.

11 Q. Okay. Did you have a business understanding of what this
12 provision meant?

13 A. It meant that the debtor was agreeing to disclose publicly
14 any material nonpublic information that Appaloosa had received
15 during the pendency of this confidentiality period.

16 Q. And did the debtor do that?

17 A. Yes.

18 Q. Was that the monthly operating report you referred to?

19 A. That was the monthly operating report.

20 Q. Again, approximately what time of day did you sign the
21 March 9 agreement?

22 A. It was in the evening after trading hours.

23 Q. Okay. You mentioned a meeting that you were invited to.

24 Can you describe the meeting?

25 A. Sure. As I say, it was I think sponsored by the debtors.

1 I believe we held it at Sullivan Cromwell's offices, who was
2 counsel for JPMorgan. It began in the morning with a session
3 between the debtor and all of the various noteholders that were
4 assembled from a group called -- that was calling themselves
5 the WMI noteholder group that was represented by White & Case,
6 and then it was Appaloosa, Centerbridge represented by Fried
7 Frank.

8 Q. Were the creditors committee there?

9 A. I don't believe they were.

10 Q. Okay. And you said JPMorgan was there?

11 A. JPMorgan was not present during that morning session. I
12 believe they were in another room waiting for us to deliberate.

13 Q. Okay. And what happened during the meeting?

14 A. We discussed a proposed term sheet that the debtor had
15 sent out the night -- the evening of March 9th, was not a
16 particularly well received document. There were a lot of
17 different opinions expressed. There was a lot of back and
18 forth. There were delays in getting to JPMorgan.

19 Subsequently, there was a session where the debtor, I
20 believe, left the room and the White & Case group, Appaloosa
21 and Centerbridge, and Fried Frank met to discuss making a
22 different proposal.

23 Q. Were you part of the White & Case group?

24 A. I was not.

25 Q. And neither was Centerbridge, right?

1 A. Centerbridge was not either.

2 Q. How big was the White & Case group at that point?

3 A. I don't know how big it was at that point. It seemed like
4 virtually every other noteholder of any size was in that group
5 that wasn't Appaloosa or Centerbridge.

6 Q. And did a proposal get made at that point?

7 A. Yes.

8 Q. Who made the proposal?

9 A. I don't know who presented the proposal. It was
10 essentially a proposal that was organized by the White & Case
11 counsel. It had input from or commentary from Appaloosa and
12 Centerbridge, and the idea was simply to get a document that
13 everybody could at least support on an initial round, get it in
14 front of JPMorgan and try and get negotiations going.

15 Q. What was your view of the White & Case proposal?

16 A. I thought it was an aggressive proposal, but as I said, we
17 wanted to get something on the table, so we could begin talking
18 rather than sitting in separate rooms.

19 Q. And how did the meeting at Sullivan & Cromwell end?

20 A. After the White & Case noteholders, Appaloosa and
21 Centerbridge met, I believe we informed the debtor of what
22 proposal we thought was appropriate to make. At that point I
23 think there was a break, and meetings resumed without us. I'm
24 not sure exactly who attended, but I believe either White &
25 Case or the debtor presented that proposal to JPMorgan.

1 My understanding is JPMorgan left after five minutes,
2 indicated that the proposal was unsatisfactory, but they
3 nonetheless would like to see it in term sheet form.

4 Q. And did JPMorgan ever respond to this proposal?

5 A. Yes, they did.

6 Q. And how did they respond?

7 A. They gave what was at least an equally, if not more
8 aggressive, term sheet several days later.

9 Q. What were -- what was your view of JPMorgan, you said
10 equally or more aggressive. What was your view of JPMorgan's
11 response to the proposal?

12 A. It was a petulant, if not disingenuous proposal. They
13 clearly were upset at the proposal they received. It was, in
14 effect, a nose thumbing at the bondholders.

15 Q. What happened next?

16 A. Several days later or weeks later JPMorgan sued the debtor
17 seeking to establish ownership on a range of estate assets,
18 including the deposits, tax refunds, and so forth.

19 Q. And how did the debtors respond to that?

20 A. Subsequently the debtors countered with a suit of their
21 own.

22 Q. Against JPMorgan?

23 A. Against JPMorgan.

24 Q. What was your view of the state of settlement discussions
25 at that point in time?

1 A. To the extent they'd ever happened, they were clearly over
2 and dead.

3 Q. When did the March 9, 2009 confidentiality agreement
4 expire?

5 A. May 8th.

6 Q. Did Appaloosa trade in WMI securities during the time
7 period covered by this agreement, the March 2009
8 confidentiality agreement?

9 A. No.

10 Q. Did the debtors make a filing at the end of the
11 confidentiality period?

12 A. As I said, they -- I believe it was April 30th, they filed
13 their March operating report that had detailed the projected
14 value of the first tax refund.

15 Q. The 2.6 to three billion?

16 A. Correct.

17 Q. Okay. Did there come a time when Appaloosa removed its
18 restriction on trading in WMI after the confidentiality
19 agreement expired?

20 A. Yes, there was.

21 Q. And prior to removing the restriction, did you take steps
22 to determine whether Appaloosa was in possession of material
23 nonpublic information?

24 A. Yes, we did. We instructed Fried Frank to seek --

25 Q. Well, I want to ask you, let's leave out consultation with

1 counsel --

2 A. Okay.

3 Q. -- for now.

4 A. All right. We had requested that the debtor confirm in
5 writing that we had -- that, in fact, all material nonpublic
6 information had been disclosed, which they did. I also
7 discussed the matter with my internal counsel, and we made the
8 decision that we were, in fact, unrestricted at that point.

9 Q. And I want to focus on Appaloosa's consultation with the
10 debtors related to their filing. When did that happen?

11 A. That happened shortly before or shortly after the May 8th
12 date.

13 Q. I'm sorry? Shortly before or shortly after May 8?

14 A. Correct.

15 Q. Who on behalf of the debtor -- what was the debtor's
16 determination?

17 A. The debtor indicated that they had disclosed all material
18 nonpublic information.

19 Q. And who on behalf of the debtors communicated this?

20 A. Brian Rosen.

21 Q. And did you rely on the debtor's determination that it had
22 disclosed all material nonpublic information?

23 A. Yes, I did.

24 Q. And you said you made your own determination as well --

25 A. Correct.

1 Q. -- that you had no material nonpublic information, right?

2 A. Correct.

3 Q. Could you describe for the Court what went into your
4 thinking, why it is you thought you had -- you determined that
5 you had no material nonpublic information?

6 A. Sure. The basic status of negotiations was -- it was
7 clear to me that whatever had -- we had attempted to have
8 happen on March 9th -- March 10th was not a negotiating
9 session, and whatever proposals had been made were dead on
10 arrival.

11 I confirmed -- because I had the monthly operating report
12 that the debtor had indeed disclosed the value of the tax
13 refund, which I really thought was the only material nonpublic
14 information I had.

15 The fact that the debtor agreed with that gave me great
16 comfort, because the debtor actually has -- had exposure by
17 being wrong on that issue. So their incentive is to be as
18 conservative as possible, and I also felt comfortable after
19 discussing it with my general counsel.

20 Q. Let's talk about the summer of 2009, particularly the
21 period you talked about being a period of voluntarily
22 refraining from trading.

23 When was the next time you were involved in discussions
24 with respect to potential settlement?

25 A. Began sometime around the middle of July of 2009.

1 Q. Who was involved in these discussions?

2 A. That was Appaloosa, Centerbridge and JPMorgan.

3 Q. Were the debtors involved?

4 A. No.

5 Q. In your view, would it have been possible to have a
6 settlement agreement in this case without the debtors involved?

7 A. No.

8 Q. What was the purpose of talking to JPMorgan without the
9 debtors?

10 A. On the heels of the disaster that the March sessions were,
11 it became apparent that there were a lot of different voices
12 involved with -- competing agendas. It was going to be very
13 difficult, at least initially, to get a consensus agreement
14 under all of the parties. We thought since we had a
15 significant amount of claims in the unimpaired classes, that if
16 we made an approach to JPMorgan and tried to find a common
17 ground, that that ultimately could become the basis for what
18 could be a settlement agreement.

19 Q. And who initiated these discussions with JPMorgan?

20 A. We did.

21 Q. And when did you decide, roughly when to decide that it
22 might be a good idea to try to do that?

23 A. Early July.

24 Q. I want to -- I'd like you to turn tab 3 in the binder,
25 please.

1 MR. SHER: I'll put it on the ELMO. This is EC-215
2 for the record.

3 Q. Do you recognize this document?

4 A. Yes.

5 Q. What is it?

6 A. It's a comparison of terms that was provided by Fried
7 Frank to me at the time. Apparently the debtor after our
8 sessions in March, had gone back and held some brief
9 discussions with JPMorgan in April, and those terms were
10 outlined here.

11 Q. So this is in -- this is on July 1, 2009, right?

12 A. Yes.

13 MR. SHER: Your Honor, I offer this into evidence.

14 THE COURT: Any objection?

15 MR. ARD: No objection, Your Honor.

16 THE COURT: It's admitted.

17 (Equity Committee's Exhibit 215, a Comparison of Terms Provided
18 by Fried Frank dated July 1, 2009, was hereby received into
19 evidence.)

20 MR. SHER: Thank you.

21 BY MR. SHER:

22 Q. Prior to receiving this e-mail that is EC-215, were you
23 aware of the terms of these April 2009 discussions?

24 A. No, I was not.

25 Q. During that April period, nonetheless you were not trading

1 because you were under a confidentiality agreement; is that
2 correct?

3 A. Correct.

4 Q. Okay. Going back to July, when did you make a proposal,
5 you and Centerbridge make a proposal to JPMorgan?

6 A. The initial proposal would've been some time around August
7 1st, the first week of August for the formal proposal.

8 Q. Okay. By the way, was this the first time that Appaloosa
9 made a settlement proposal during these proceedings?

10 A. Yes.

11 Q. And how did you make the proposal to JPMorgan?

12 A. We presented a term sheet to them at a meeting.

13 Q. Who was there?

14 A. That was David Tepper and myself for Appaloosa, Jed Hart
15 and Viv Melwani I believe from Centerbridge, and Don McCree and
16 Travis Epes from JPMorgan.

17 Q. Travis Epes is the general counsel at JPMorgan?

18 A. I believe he works in the general counsel's office. I
19 don't know his exact position.

20 Q. But he's an in-house lawyer there.

21 A. Correct.

22 Q. What party were you representing during the meeting?

23 A. Appaloosa.

24 Q. Did you make it clear that you were only representing
25 Appaloosa?

1 A. Yes.

2 Q. How did JPMorgan react when you made your proposal?

3 A. They thanked us for the proposal and indicated that they
4 would come back to us.

5 Q. And did they, in fact, come to you?

6 A. Yes, they did.

7 Q. Roughly when did they respond?

8 A. I believe that was August 18th in an e-mail.

9 Q. And what was your reaction to their counter proposal?

10 A. It was -- we were still significant degrees apart, but it
11 was a proposal that we thought we could counter and try and
12 narrow the differences on.

13 Q. What happened next?

14 A. We had a meeting on September 2nd, I believe, the same
15 parties involved.

16 Q. And tell us what happened during that meeting on September
17 2nd.

18 A. We sat down. I went over the term sheet that JPMorgan had
19 sent to us by e-mail, asking questions point-by-point, cleared
20 up a -- they'd mischaracterized some things in our term sheet,
21 or actually it was a -- as I'm thinking about it, it was a
22 verbal -- we'd made a verbal proposal to them the meeting
23 before, and they had misrepresented one or two small items.
24 Clarified that, went over their points, and then made some
25 counter offers on some of the individual points.

1 With that, Mr. McCree thanked me, indicated that he
2 appreciated us countering and looking at the offer, but they
3 felt that at this time, they wanted -- in his words, wanted to
4 let the litigation go a couple of more rounds, and did not want
5 to enter into -- have further discussions.

6 So I wanted to clarify, so I asked him, "Don, I get the
7 impression that if I were to accept your offer today, it would
8 not be there; is that correct?" He said, "Yes."

9 Q. So in other words, he had withdrawn his prior offer?

10 A. He had withdrawn it.

11 Q. What was your view of the state of your and Centerbridge's
12 discussions with JPMorgan at that point?

13 A. They were dead at that point.

14 Q. Nonetheless, you just described this period, did Appaloosa
15 make any trades in WMI securities during July, August through
16 September 2nd?

17 A. We did not.

18 Q. And why not?

19 A. We were in discussions with JPMorgan. We thought it
20 prudent if -- we were hopeful that we could find some means of
21 coming to an agreement that might ultimately develop into a
22 global settlement agreement. If that had been the case, we
23 would've been in a position where people could've made
24 accusations about trades that we made during that period.

25 Q. Did you -- go ahead.

1 A. So we thought it was prudent to avoid -- refrain from
2 trading.

3 Q. Did you feel you had material nonpublic information at
4 that time?

5 A. No, I did not.

6 Q. But nonetheless, you chose voluntarily not to trade during
7 that period?

8 A. Yes, I did.

9 Q. I want to direct your attention to September 14, 2009,
10 what happened on that day?

11 A. There was a meeting, I believe it was at our request with
12 Quinn Emanuel who was representing the debtor in potential
13 litigation against JPMorgan.

14 Q. And what happened at that meeting?

15 A. We indicated from the beginning that we did not want to
16 receive material nonpublic information, nobody was restricted.
17 Quinn said they understood, they handed out a slide deck that
18 was essentially a summary of public documentation of the range
19 of litigation, motions and so forth that had preceded in the
20 case. We didn't spend a lot of time on that slide deck for
21 obvious reasons, and asked questions more along the lines of
22 what Quinn was doing to organize the information they were
23 receiving, pursuant to the 2004 order that the Court had
24 granted, and to make our point that the litigation was very
25 important to the negotiations, it was important to expedite

1 their efforts before the case ran -- had the litigation.

2 Q. I'm going to ask you to turn to tab 4 in the binder. This
3 is EC-31, do you see that document?

4 A. Yes, I do.

5 Q. Can you tell us what it is?

6 A. That's the slide deck I referred to that was handed out by
7 Quinn Emanuel.

8 Q. I'm going to direct you to the title there. Is there
9 anything on the title that relates to what you just told us
10 about the nature of that meeting?

11 A. Yes. It says public information.

12 MR. SHER: Your Honor, I offer this into evidence.

13 MR. ARD: No objection, Your Honor.

14 THE COURT: All right.

15 (Equity Committee's Exhibit 31, Slide Deck handed out by Quinn
16 Emanuel on 9/13/09, was hereby received into evidence.)

17 MR. SHER: Thank you.

18 BY MR. SHER:

19 Q. Was any nonpublic information discussed during this
20 meeting with Quinn Emanuel?

21 A. No.

22 Q. Okay. I'm going to direct your attention to -- moving
23 forward in the timeline here, October 27, 2009, did you attend
24 a meeting that day?

25 A. Yes, I did.

1 Q. Can you describe it?

2 A. That was a meeting at Weil Gotshal's office amongst the
3 creditors in the morning -- in a lunch time session with
4 counsel for the creditor's committee.

5 Q. What was the purpose of the meeting?

6 A. The debtor has asked -- invited Appaloosa and Centerbridge
7 and Owl Creek to participate in an approach to JPMorgan to try
8 and restart negotiations. So that was more or less an
9 organizational meeting to talk about those efforts.

10 And then the session at lunch time was for discussions
11 with the creditor's committee, primarily about a proposal they
12 had seen under a confidentiality agreement that they had
13 entered into with a group that called themselves the WMB
14 noteholders.

15 Q. So this is not the White & Case group or your group, this
16 is another group of creditors called the WMB bondholders?

17 A. These are bond -- holders of bonds that were issued by the
18 bank, which had been a subsidiary of WMI.

19 Q. And you mentioned a prior proposal that you learned about
20 that the WMB bondholders had made, what is that?

21 A. That was -- it was their own version of what they thought
22 settlement should look like. We had had an issue with the
23 creditor's committee, as we had heard earlier, that they had
24 entered into confi with that group. That group was not -- were
25 not direct parties-in-interest in WMI. We felt they had no

1 claim on the estate, and we thought it comprised the estate for
2 them to enter into that agreement, and we objected to that to
3 them in writing. I think ultimately they got relief from that
4 confidentiality agreement, and they presented the proposal to
5 us.

6 Q. Do you know when that WMB bondholder proposal had been
7 made?

8 A. The presentation that counsel for the credit committee
9 handed out was dated October 18th.

10 Q. So when was the first time you learned of the terms of the
11 October 18 WMB bondholder proposal?

12 A. October 27th.

13 Q. I'm going to ask you to turn to tab 5 and ask you what
14 this is, and what you recognize it to be?

15 A. This is that -- this presentation that I guess had
16 originally been made at a meeting of the WMB bondholder group
17 that was given to the creditor committee and the creditor
18 committee was sharing it with us at that point.

19 MR. SHER: And, Your Honor, I offer this into
20 evidence.

21 THE COURT: Any objection?

22 MR. ARD: No objection, Your Honor.

23 THE COURT: It's admitted.

24 (Exhibit ???, WMB Bondholder's Proposal, dated October 18,
25 2009, was hereby received into evidence.)

1 BY MR. SHER:

2 Q. You see that there is an October 18 date, October 18, 2009
3 date on this. what's your understanding of what that date
4 means?

5 A. I believe that was the date that they met and presented
6 it.

7 Q. They being the WMB bondholders?

8 A. WMB bondholders, yeah.

9 Q. And when was the first time you received this?

10 A. October 27th.

11 Q. Thank you.

12 What was your -- do you know what JPMorgan's reaction to
13 the WMB bondholder's proposal had been?

14 A. I don't remember the specific reaction being detailed. I
15 got the impression that they didn't -- JPMorgan didn't take it
16 seriously.

17 Q. Now, after that meeting -- you know who Mr. Kosturos is,
18 right?

19 A. Yes.

20 Q. After this October 27 meeting, did you send anything to
21 Mr. Kosturos?

22 A. Yes, I did.

23 Q. What'd you send him?

24 A. I sent him the term sheet or term sheet comparison that
25 JPMorgan had sent to us earlier that year.

1 Q. Why'd you do that?

2 A. I wanted him to be familiar with the terms that Appaloosa
3 and Centerbridge had been proposing, and I wanted to make sure
4 that we didn't somehow conflict with one another in
5 discussions.

6 Q. You next referred to a November 2009 confidentiality
7 agreement, do you remember -- do you recall testifying about
8 that?

9 A. 2016 [sic], I believe.

10 Q. November --

11 A. November 16th, 2009.

12 Q. 2009, right.

13 What was the term of this second confidentiality period?

14 A. It lasted till the end of the year.

15 Q. I'd ask you to turn to tab 6. This is EC-37. Do you
16 recognize this document?

17 A. Yes, I do.

18 Q. What is it?

19 A. This is the confidentiality agreement that was entered
20 into on November 16th.

21 MR. SHER: I offer this into evidence, Your Honor.

22 MR. ARD: No objection, Your Honor.

23 THE COURT: It's admitted.

24 (Equity Committee's Exhibit 37, Confidentiality Agreement dated
25 November 16, 2009, was hereby received into evidence.)

1 MR. SHER: Thank you.

2 BY MR. SHER:

3 Q. I'd ask you to turn to page 5 of this document as well and
4 ask whether the section regarding the cleansing filing by the
5 debtor that you described from the earlier agreement are in
6 substance the same here as well?

7 A. Yes, it is.

8 Q. And briefly, could you describe what that meant to you
9 from a business standpoint?

10 A. From a business standpoint, it meant that any material
11 nonpublic information that I received during the pendency of
12 this agreement would be disclosed by the debtors, so that I
13 would be free to trade.

14 Q. And you testified that the period lasted from November 16
15 to the end of the year. Did Appaloosa make any trades in WMI
16 from November 16 through the end of 2009?

17 A. No.

18 Q. What prompted you to enter into the confidentiality
19 agreement on November 16, 2009 with the debtors?

20 A. We had again been invited to participate in discussions
21 between the debtor and JPMorgan.

22 Q. And was there information that you were seeking to learn
23 in connection with that?

24 A. In order to conduct those negotiations, it was necessary
25 to know the value of what's referred to as the second tax

1 refund.

2 Q. And did you learn that information during the
3 confidentiality period?

4 A. Yes, I did.

5 Q. Approximately when?

6 A. Approximately November 16th.

7 Q. After entering into the agreement?

8 A. After entering into the agreement.

9 Q. And what did the debtors tell you about that second tax
10 refund?

11 A. I think the number was somewhere in the ballpark of 2.6 to
12 2.8 billion dollars.

13 Q. Did you think that was material information?

14 A. Yes, I did.

15 Q. Was this estimate of a second tax refund ever disclosed to
16 the public?

17 A. Yes, it was.

18 Q. When was that?

19 A. That was on December 30th when the debtors released their
20 November operating report.

21 Q. Did any settlement discussions take place during this
22 second confidentiality period?

23 A. Yes.

24 Q. And who was involved?

25 A. It was one meeting that involved myself and David Tepper

1 for Appaloosa. I believe Viv Melwani and Jed Hart from
2 Centerbridge also attended, Bill Kosturos and Brian Rosen
3 attended for the debtor, and Don McCree and Travis Epes
4 attended for JPMorgan.

5 Q. Did you say where that meeting took place, do you recall?

6 A. I believe it was at Weil's offices.

7 Q. Okay. And was there a proposal made?

8 A. No.

9 Q. Okay. When was this meeting, was this in late November?

10 A. This was roughly November 16th.

11 Q. Okay. Did there come a time when a proposal was made by
12 the debtor?

13 A. Yes. Subsequently, Bill Kosturos after some discussions
14 with us, delivered a term sheet to Don McCree.

15 Q. And how did JPMorgan respond to this proposal?

16 A. They made a counter proposal.

17 Q. When was that?

18 A. I believe it was November 30th.

19 Q. And what was your reaction to JPMorgan's November 30
20 counter proposal?

21 A. I thought JPMorgan was playing a little bit cute again.
22 We had had discussions at our meeting regarding what's called
23 the second tax refund, and that was a function of some
24 legislation that had recently been enacted by Congress. That
25 legislation had specifically carved out TARP recipients from

1 benefiting from those additional tax refunds.

2 It was unclear whether that would also extend to WMI or
3 not, and in some fashion, there was discussion of that
4 uncertainty amongst us, and there was acknowledgement by
5 JPMorgan that they were a TARP recipient, and it would appear
6 that they would not be able to -- they would have difficulty
7 receiving it directly as JPMorgan. So there was a lot of risk
8 attached to that tax refund.

9 So the proposal that Mr. Kosturos conveyed, proposed
10 splitting both the first tax runs (sic), and the second tax
11 refunds, and Mr. McCree came back with a proposal to keep all
12 of the first tax refund for JPMorgan and give all of the tax --
13 second tax refund, which it was arguable, he couldn't receive
14 anyway and certainly had some risk attached to it to the
15 debtor.

16 Q. Have you heard the phrase resetting the bookends?

17 A. Yes, I have.

18 Q. How does that come into play here?

19 A. In the e-mail that Mr. Kosturos forwarded that term sheet,
20 he referred to this proposal as resetting the bookends.

21 Q. What did that mean to you?

22 A. It means that he had switched tracks, and changed the
23 terms that we had been talking about. We had been talking
24 about dividing up both tax refunds. He had now cleverly
25 shifted and tried to reset the discussions.

1 Q. Were there any other proposals made to JPMorgan after this
2 November 30, 2009 counter?

3 A. I think there was some verbal discussions. I don't know
4 of any -- I don't recall whether formal proposals or detailed
5 proposals were given out or not.

6 Q. Do you know when that occurred if they occurred?

7 A. It would've been early in the month. By the second week
8 in December, it was apparent that negotiations had again ended.

9 Q. Do you know whether JPMorgan reacted to this latest go
10 around?

11 A. The November term sheet?

12 Q. No. The -- you said there might have been a further
13 discussion with them?

14 A. I don't -- I never got any concrete feedback.

15 Q. Okay. Were there any further discussions from the time
16 that JPMorgan -- that things were ended as you've described in
17 mid-December, early to mid-December and the end of the year,
18 December 31?

19 A. No.

20 Q. And what was your view of the state of negotiations at
21 that point?

22 A. They were over. The negotiations -- the discussions ended
23 because Mr. McCree had indicated to Mr. Kosturos that he now
24 wanted to go talk to the FDIC. So we were wide and far apart
25 on any kind of an agreement. Now JPMorgan was bringing in

1 another party to the negotiating table, that party was a
2 government agency, which can be particularly unpredictable.
3 And so I had no idea what was going to transpire from that
4 point forward, but our discussions were over with.

5 Q. And did Appaloosa remove its restriction on trading in WMI
6 after the confidentiality agreement expired?

7 A. Yes, we did.

8 Q. When was that?

9 A. Following acknowledgement again from the debtor that all
10 material nonpublic information had been disclosed confirming
11 that ourselves by viewing the December 30th operating report,
12 discussing that -- discussions between myself and my general
13 counsel, we ultimately lifted that restriction in January.

14 Q. Thank you for leaving out the consultation with outside
15 counsel, make sure we leave that out.

16 And what was the debtor's determination with respect to
17 whether there was any material nonpublic information?

18 A. All material nonpublic information had been disclosed with
19 the December operating report -- November operating report,
20 which was filed December 30th.

21 Q. And who on behalf of the debtors communicated this?

22 A. That was Brian Rosen and Simeon Gold.

23 Q. Did you rely on the debtor's determination that it had
24 disclosed all material nonpublic information?

25 A. Yes, I did.

1 Q. And finally you said you made your own determination as to
2 -- that there was no further material nonpublic information,
3 right?

4 A. Correct.

5 Q. And again, can you describe for the Court why you -- how
6 you made -- how you came to that determination? What was the
7 basis for determining that there was no further material
8 nonpublic information?

9 A. Sure. As I said, I confirmed that the tax refund which I
10 viewed, as the only material nonpublic information had been
11 disclosed in their filings. I relied very much on the, or took
12 great comfort in the debtor's view that there was no other
13 material nonpublic information, because again, they had an
14 incentive to be as conservative as possible. I was aware of no
15 other information and discussions were -- had clearly ended, we
16 were far apart. There was no certainty that we would even
17 resume negotiations between Appaloosa and JPMorgan, and I
18 didn't know what the outcome was ultimately going to be in
19 subsequent months.

20 Q. And how does that relate whether the back and forth that
21 had occurred during the confidentiality period, the
22 determination that that wasn't material?

23 A. That was the basis for determining it wasn't material.
24 There was no deal, there were no active terms, and there was no
25 telling exactly what was going to happen subsequently.

1 Q. Had the fact that the FDIC was being brought in at that
2 point relate to that?

3 A. I thought they created a great deal of uncertainty, as I
4 said, it was another party at the negotiating table, and a
5 particularly difficult party to read, to say the least.

6 Q. I want to move forward now and direct your attention to
7 February of 2010. Did there come a time when you got invited
8 to another meeting relating to Washington Mutual?

9 A. Yes.

10 Q. Can you describe it?

11 A. Yes. We were asked to attend a meeting of -- I believe it
12 was at Weil's offices, and it was to meet with the debtor and
13 JPMorgan's counsel.

14 Q. What significance if any did that meeting have for you?

15 A. We came to the meeting, sat down, JPMorgan came in or
16 counsel for JPMorgan came in. We explained -- reiterated again
17 that we wanted to receive no material nonpublic information,
18 nobody was under restrictions. Counsel for JPMorgan indicated
19 that if that was the case, he was not going to talk to us. So
20 we were asked to leave, and I believe the lawyers continued
21 with the meeting.

22 Q. And what significance did that have for you in terms of
23 what it led you to believe?

24 A. I took it as an indication that discussions between the
25 debtor, the FDIC and JPMorgan had gotten some traction and

1 potentially could lead to some type of agreement.

2 Q. And you said you were not restricted at that time, and
3 we'll come back to this in a minute. But was another one of
4 those periods where you voluntarily refrained from trading
5 nonetheless.

6 A. We thought it was prudent not to trade, correct.

7 Q. Did you know what, if any, discussions had been going on
8 in January of 2010 --

9 A. No.

10 Q. -- a month earlier?

11 A. No.

12 Q. Were you involved in any of those, any such discussions?

13 A. No.

14 Q. Back to February, you said you thought that this led you
15 to think that maybe some discussions had gotten some traction.
16 Did there come a time when you learned there was an actual
17 proposed settlement?

18 A. Yes.

19 Q. What was that?

20 A. That was March 4th, 2009.

21 Q. What did you learn then?

22 A. March 4th was a hearing date, the debtors announced in
23 court, I believe, that they were close to an agreement.
24 Sometime during the course of that day, I learned from my
25 counsel -- through my counsel what the terms of that agreement

1 were.

2 Q. Were you involved in negotiating the terms of the March 4
3 settlement in any way, settlement proposal in any way?

4 A. No.

5 Q. I'm sorry, you may have said March 4, 2009. It's March
6 4th --

7 A. Excuse me, it's 2010.

8 Q. Thank you.

9 Again, were you involved in the -- negotiating the terms
10 of the March 4, 2010 settlement proposal in anyway?

11 A. No.

12 Q. Did there come a time when the terms of the settlement
13 proposal became disclosed in public?

14 A. Yes, they were.

15 Q. When was that?

16 A. There was a hearing March 12th where debtor's counsel read
17 the terms of that agreement into the record.

18 Q. Okay. Again, I want to focus -- we talked a little bit
19 about February and March of 2010. During the period from
20 February 1 through just prior to the March 4 hearing of 2010,
21 did Appaloosa make any trades in WMI securities during that
22 period?

23 A. No.

24 Q. And that was one of the voluntarily refraining from
25 trading periods?

1 A. Yes.

2 Q. Once the announcement was made in March 4 through the time
3 and March 12 when you said that the terms of the deal were
4 announced in open court, did Appaloosa make any trades during
5 that period, in WMI securities?

6 A. No.

7 Q. And why not?

8 A. Because we had -- believed we had material nonpublic
9 information.

10 Q. Relating to the settlement?

11 A. Relating to the settlement.

12 Q. So for the entire period of February of 2010 through the
13 announcement in court on March 12, 2010, Appaloosa didn't trade
14 in WMI securities?

15 A. Correct.

16 Q. After the terms of the deal were announced in court on
17 March 12, did Appaloosa unrestrict trading in WMI?

18 A. Yes, we did.

19 Q. And prior to removing the restriction, did Appaloosa take
20 any steps to determine whether it was in possession of material
21 nonpublic information?

22 A. Yes, we did.

23 Q. What'd you do?

24 A. My general counsel and I confirmed that the details of the
25 settlement had been read into the record. We waited until

1 those details appeared on various news wires, I think Dow
2 Jones, maybe Debt Wire and that it was true the trading desks
3 around the markets were aware of those terms.

4 Q. Was there any other period in March when you became
5 restricted in trading in WMI's securities?

6 A. Yes.

7 Q. When was that?

8 A. That was the evening of March 22nd and ending with the
9 filing of the disclosure statement on March 26th.

10 Q. What caused you to be restricted during that period?

11 A. We received an advanced draft of the debtor's disclosure
12 statement, which contained the debtor's view of how the
13 subordination matrix would work on the overall waterfall of
14 claims for the WMI case.

15 Q. And you said you lifted that restriction in -- on March
16 26th?

17 A. After March 26th.

18 Q. Once the disclosure statement and plan were filed in
19 court?

20 A. Correct.

21 Q. And did Appaloosa make any trades during that period of
22 evening of March 22 through the filing on March 26th?

23 A. No.

24 Q. And before removing that restriction, upon the filing on
25 March 26th, did Appaloosa take steps to make sure that it was

1 not in possession of any material nonpublic information?

2 A. Yes.

3 Q. And what'd you do?

4 A. We confirmed that the disclosure statement had been filed.

5 Q. Mr. Bolin, we've heard some testimony in here, you haven't
6 but we have, about some funds using counsel as a screening wall
7 during the course of this case.

8 Did Appaloosa use outside counsel as a screen in these
9 proceedings?

10 A. Yes, we did.

11 Q. Who did you use?

12 A. Fried Frank.

13 Q. Can you just describe for the Court how that worked?

14 A. Sure. When we initially retained Fried Frank they made
15 the approach to the debtor to make them aware of our position
16 and our interest. Subsequent to that, Fried Frank entered into
17 confidentiality with the debtor. Instructions were for all
18 confidential information to run through Fried Frank, and Fried
19 Frank would, if you will, filter it from us.

20 Q. And -- but you mentioned that Fried Frank entered into its
21 own confidentiality agreement with the debtors?

22 A. Yes.

23 Q. Do you know when that occurred?

24 A. Some time during the fourth quarter of 2008.

25 Q. And whenever you received any material confidential

1 information from Fried Frank, did Appaloosa restrict trading --

2 A. Yes.

3 Q. -- with WMI, until it was made public?

4 A. Correct.

5 Q. There also -- there have been some assertions in this case
6 that Appaloosa or others dominated the settlement process in
7 this matter. Have you seen those?

8 A. Yes, I have.

9 Q. What's your reaction to that, Mr. Bolin?

10 A. Frankly I think they're naive. This is a massive
11 bankruptcy case, and it's attracted some of the most
12 sophisticated investors and professionals in bankruptcy. The
13 -- virtually ever distressed debt firm has had a significant
14 position in the claims of WMI. Most of them were represented
15 by White & Case in the WMI noteholders group. That group was
16 certainly capable of advocating for itself, just as we did,
17 they did, neither of us did anything wrong.

18 Bankruptcy counsel and creditor's counsel here are two of
19 the most highly regarded and respected firms not only in
20 bankruptcy but in corporate law. Alvarez & Marsal, who is
21 restructuring advisor for the debtor is highly recognized in
22 that business as well.

23 The notion that those three parties would jeopardize their
24 businesses for lousy hedge funds makes good theater, makes a
25 nice headline, it gets the conspiracy theorists tittering, but

1 there's no basis in it. And if you look at the facts of the
2 case, we were not bashful in expressing our opinions to the
3 debtor. More often than not, fortunately or unfortunately,
4 they did what they wanted.

5 A classic example was the turnover action we were pressing
6 for that action to be brought to judgment, and the debtor kept
7 putting it off over our objection. That was their judgment.
8 The deal that was struck that was -- became the global
9 settlement agreement was struck between the debtor, the FDIC,
10 and JPMorgan, and it was handed to us as a fait accompli. You
11 can talk about it, you can comment on it, you can try to
12 negotiate at the edges, but this is the deal, you can take it
13 or leave it.

14 When the FDIC reneged on that deal and a new deal had to
15 be cut, it was much the same story. Additional money was given
16 to the FDIC over our objection, and then when -- that's the --
17 that agreement expired in September and had to be renewed, the
18 FDIC again asked for more money, and again they received it
19 over our objections.

20 So if we dominated the debtor and controlled the case,
21 frankly we did a lousy job of it.

22 Q. Who controlled this reorganization?

23 A. The debtor and the creditor's committee.

24 Q. You mentioned that you were not bashful about expressing
25 your views. On whose behalf were you advocating?

1 A. Appaloosa.

2 Q. Anybody else?

3 A. No.

4 Q. Did you make that clear?

5 A. Yes.

6 Q. Anyone ever express any confusion to you about which party
7 you were representing?

8 A. No.

9 Q. Just two more quick questions here.

10 With respect to the sixth amended plan filed October 6th,
11 2010, did you participate in the rights offering?

12 A. We did not.

13 Q. And on your ballot for senior or senior subordinated
14 notes, did you elect to receive additional stock in reorganized
15 WMI?

16 A. We did not.

17 MR. SHER: Thank you, Mr. Bolin. Thank you, Your
18 Honor.

19 THE COURT: Thank you. Let's take a --

20 MR. ARD: Good morning, Your --

21 THE COURT: Can we take a five-minute break?

22 MR. ARD: Of course, Your Honor. Thank you.

23 (Recessed at 10:36 a.m.; reconvened at 10:45 a.m.)

24 THE CLERK: All rise. Be seated.

25 THE COURT: All right. You may proceed with cross.

1 MR. ARD: Good morning, Your Honor. Seth Ard, Susman
2 Godfrey on behalf of the equity committee.

3 CROSS-EXAMINATION

4 BY MR. ARD:

5 Q. Good morning, Mr. Bolin.

6 A. Good morning.

7 Q. Did you have knowledge of settlement negotiations between
8 January 1st, 2010 and March 4th, 2010?

9 A. No.

10 Q. Were you given updates on the status of settlement
11 negotiations during that period?

12 A. No.

13 Q. I want to show you Exhibit 41.

14 MR. ARD: Is the computer on?

15 Q. This is a February 9th, 2010 e-mail from your counsel to
16 Brian Rosen, correct? You should have a copy in the binder in
17 front of you, if you want to look at it there, whatever's
18 easiest for you.

19 Is it an e-mail from your counsel Brad Scheler to Brian
20 Rosen; is that correct?

21 A. Yes, it is.

22 THE COURT: What's the exhibit number, I'm sorry?

23 MR. ARD: Excuse me, Your Honor, 41.

24 Q. And Brian Rosen reports that together with his clients,
25 they're -- you're continuing to review and revise a draft; is

1 that correct?

2 A. Where is this? Brian Rosen reports, I thought Brad
3 Scheler was --

4 Q. Yeah, in the second sentence. Excuse me, Brian Scheler
5 (sic) reported to Brian Rosen.

6 A. Brad Scheler reported to Brian Rosen, is that what you
7 said?

8 Q. Yes. Together with his clients, Brad Scheler's clients,
9 they're continuing to review and revise a draft, correct?

10 A. Correct.

11 Q. And you were Brad Scheler's client, correct?

12 A. Yes.

13 Q. And you reviewed and revised this draft, correct?

14 A. I reviewed the draft, yes.

15 Q. Okay. And if you'd turn to page 6 of the attached plan
16 that you reviewed, it says that the tax refunds were being
17 divided up seventy percent to JPMorgan Chase and thirty percent
18 therefore to WMI. Do you see that? Where it says seventy
19 percent to JPMorgan Chase for the first part of the tax refund
20 on page 6.

21 A. Yes.

22 Q. That is a higher division than reflected in the last JPMC
23 offer that you had; is that correct?

24 A. It could be. I don't remember the -- you're talking about
25 the November 9th -- November 30th?

1 Q. Was that the last version of the JPMC offer that you saw?

2 A. Yes.

3 Q. Okay. Was this higher than that?

4 A. Yes.

5 Q. Okay. And you also told your lawyers that -- or your
6 lawyers knew what deal you would accept; is that correct,
7 during this period?

8 A. No, not necessarily.

9 Q. I took your deposition about three-and-a-half weeks ago;
10 is that correct?

11 A. Yes.

12 Q. Your deposition binder is in front of you. Would you
13 please turn to page 334 of your deposition? Do you see at the
14 top of this page, I asked you the question, did your counsel
15 know what deal you'd accept and you answered yes.

16 A. Yes. I thought you were referring to a specific term
17 sheet. Generally, they knew what we would accept.

18 Q. Okay. And what deal was that that you would accept?

19 A. At the time I don't even remember.

20 Q. Okay. Well, in any event, this plan that you reviewed,
21 had a seventy percent taxes going to JPMC and that's higher
22 than the last offer you'd seen from JPMC, correct?

23 A. Yes.

24 Q. And you went through the considerable effort of drafting
25 up an entire plan with your counsel, correct?

1 A. Yes. Oh, excuse me, the seventy percent was higher --
2 well, the last proposal I saw from JPMorgan was them getting a
3 hundred percent of the first tax refund. So actually the
4 seventy percent is lower than the last proposal I saw.

5 Q. Of the first tax refund, they were offering you a hundred
6 percent of the first part of the tax refund?

7 A. No, they were offering us none of the first tax refund.

8 Q. Right. So the seventy percent is a better deal for WMI
9 than any deal you'd ever seen from JPMorgan, is that right, of
10 the first tax refund?

11 A. I couldn't tell -- the first, the November 30 term sheet
12 had JPMorgan getting a hundred percent of the first tax refund.
13 This has seventy, this is a better deal for WMI estate. The
14 seventy percent is not higher than the hundred percent that I
15 saw in the last. Maybe that's we're talking past each other
16 and I'm getting confused.

17 Q. Right. The hundred percent is the second part of the tax
18 refund, correct?

19 A. Hundred percent is the second part -- excuse me, you're
20 right.

21 Q. Right. So the seventy percent here for the first part of
22 the tax refund, that's a better deal for WMI than anything
23 you'd ever seen from JPMorgan in the past; is that correct?

24 A. I believe so, yes.

25 Q. Okay. And so you go through the considerable effort of

1 drafting up an entire plan predicated on this seventy percent
2 offer, right?

3 A. No. This was not predicated on the seventy percent offer.
4 This was predicated on a plan structure, and particularly, it
5 was a plan structure that was intended to preserve the tax loss
6 carry forwards that WMI would -- potentially could have coming
7 out of bankruptcy.

8 Q. Okay. Well, this plan that you went through the
9 considerable effort of drafting includes a seventy percent
10 offer from JPMC for the first part of the tax refund, correct?

11 A. Yes, it does.

12 Q. Okay. So you were aware at this point of the fact that
13 JPMC was offering seventy percent of the tax refund?

14 A. I was not.

15 Q. Okay. So this was just a random number that was picked
16 out of the hat?

17 A. This was a number picked out by counsel.

18 Q. Okay. And that didn't tell you that seventy percent was
19 the offer on the table that you were drafting a plan
20 incorporating?

21 A. No. And at the time, I don't know that I paid much
22 attention to it and I wasn't trading anyway.

23 Q. Okay. So you thought that was just a mere coincidence
24 that this seventy percent number was reflected on this sheet?

25 A. The main focus at the time really was on how to structure

1 a plan of reorganization to try to preserve WMI tax loss carry
2 forwards.

3 Q. All right. EC-275 is an e-mail on February 24th, 2010,
4 and this is talking about a meeting that's going to happen the
5 next day with the debtors and JPNC at this point, correct?

6 A. Yes.

7 Q. Is this the meeting that you're referring to on direct,
8 the February meeting that's being discussed here?

9 A. That's what it looks like, yes.

10 Q. And in this e-mail, it's reported that you had a
11 conversation with Bill Kosturos; is that correct?

12 A. Yes.

13 Q. Okay. And you had a conversation about this meeting; is
14 that correct?

15 A. That's what it says, I don't remember the conversation.

16 Q. Okay. And the meeting was a meeting about the settlement
17 negotiations, correct?

18 A. The meeting was about --

19 MR. SHER: Excuse me. I'm going to -- Your Honor,
20 I've been handed EC-27, is that what this document is?

21 MR. ARD: No, it's 275.

22 MR. SHER: Thank you.

23 BY MR. ARD:

24 Q. You -- the meeting that you were discussing was a meeting
25 about settlement negotiations; is that correct?

1 A. I didn't know what the exact topic of the meeting was. I
2 presumed it was, but I had been asked to attend it.

3 Q. You didn't know what the topic of the meeting was, but you
4 and Bill Kosturos had a discussion about whether the creditor's
5 committee could be present?

6 A. I don't remember the conversation with Bill, so I can't
7 comment.

8 Q. Okay. But then -- okay.

9 Was Matthew Roose your attorney at this time?

10 A. Yes.

11 Q. Was he acting as your attorney in writing this e-mail?

12 A. I presume so, yes.

13 MR. ARD: Okay. Your Honor, we'd like to move EC-275
14 into evidence.

15 MR. SHER: Your Honor, I just want to object on the
16 following grounds, there's no testimony here that Mr. Bolin has
17 ever seen this e-mail before. It is true that he has testified
18 that Fried Frank is his counsel, which is something that is
19 well known to everyone here, but that does not mean that this
20 document -- that there's been a foundation laid to admit this
21 document through this witness. There might be other witnesses
22 through which he can do it, but I don't see how you get it
23 through someone who has never testified that they've seen it
24 before.

25 THE COURT: Didn't we just have a discussion about

1 this that if it's produced by a party, and it appears to be a
2 statement by a party on behalf of another party?

3 MR. SHER: There was a discussion about it. I wasn't
4 -- I didn't take a position on it. My -- I want to preserve an
5 objection relating to this. I don't think it's proper, but I
6 understand that the Court may view it differently.

7 THE COURT: I will overrule it. It appears to be a
8 statement by counsel for a party, and it was produced by Weil
9 in the discovery.

10 (Equity Committee Exhibit 275, E-mail dated February 24th,
11 2010, was hereby received into evidence.)

12 MR. ARD: And I believe EC-41 is already admitted into
13 evidence on this ground? If it wasn't, I would like to do so.

14 THE COURT: Which number?

15 MR. ARD: EC-41 the one we just discussed, which is
16 the e-mail from Brad Scheler to Brian Rosen.

17 MR. SHER: Same objection, I know the outcome.

18 THE COURT: All right. Same ruling, it's admitted.

19 (Equity Committee's Exhibit 41, E-mail from Brad Scheler to
20 Brian Rosen, was hereby received into evidence.)

21 BY MR. ARD:

22 Q. I'd like to show you EC-276. Now, this is an e-mail from
23 Matthew Roose again, Fried Frank and Brian Rosen dated February
24 24th and February 25th, 2010. And you see down below where
25 Matt Roose is talking about the agenda for the meeting.

1 A. Yes.

2 Q. He suggests four topics for the meeting that you'll be
3 attending; communications with FDIC, plan of reorganization,
4 litigation update and claims objection process.

5 A. Yes.

6 Q. Do you see that?

7 So your lawyer this time believed that this meeting was
8 going to be addressing communications of the FDIC and the JPMC,
9 correct?

10 A. That's correct, yes.

11 MR. SHER: Your Honor, I object to questions regarding
12 other parties' state of mind as lacking foundation, calling for
13 speculation.

14 MR. ARD: First, he just answered the question, but
15 second, the lawyer is acting as his agent at this time, and
16 he's allowed to testify as to what his agent is stating on his
17 behalf.

18 MR. SHER: This is a fact witness. Either he knows
19 what someone else was thinking and spoke to him about it or --

20 THE COURT: I don't think it's necessary to get it
21 from him if the document is going to be admitted.

22 MR. ARD: Okay.

23 THE COURT: So.

24 MR. ARD: Well, with that, Your Honor, I'd like to
25 move this exhibit into evidence.

1 THE COURT: Same objection, same ruling?

2 MR. SHER: Same objection, same outcome.

3 (Equity Committee's Exhibit 276, an e-mail from Matthew Roose
4 and Brian Rosen dated February 24th and February 25th, 2010,
5 was hereby received into evidence.)

6 BY MR. ARD:

7 Q. And your lawyers knew you weren't restricted this time,
8 right?

9 A. Yes.

10 Q. Okay. And your lawyers wanted you to have a meeting to
11 discuss the communications with JPMC and FDIC even though you
12 weren't restricted?

13 A. It's not clear to me who requested the meeting and who
14 wanted me to be there. I was told that JPMorgan wanted us
15 there.

16 Q. And does this refresh your memory as to whether the
17 conversation you had with Bill Kosturos the day before about
18 this meeting was predicated on the assumption the meeting would
19 be about settlement negotiations with FDIC and JPMC?

20 A. This agenda? No.

21 Q. Uh-huh. But you stated that from this meeting you got a
22 sense that something was going on with settlement negotiations,
23 correct?

24 A. Yes.

25 Q. All right. Four days later you had a call with Bill

1 Kosturos and Brian Rosen, your counsel to discuss an update on
2 the settlement discussions; is that right?

3 A. I don't remember that call.

4 MR. ARD: If you'd please put on EC-277.

5 Q. This is an e-mail exchange between Brad Scheler and Brian
6 Rosen and other counsel; is that correct?

7 A. That's what it appears to be.

8 Q. If you look at the second page on the bottom, Matt Roose
9 is asking for an update on status of the FDIC negotiations, do
10 you see that?

11 A. Yes.

12 Q. And above, Brian Rosen responds that nothing's happened
13 since you met, the parties continue to jockey, folks are
14 contacting their contacts in D.C., do you see that?

15 THE COURT: I'm sorry, I think I'm on the wrong --

16 MR. ARD: Excuse me, Your Honor, EC-277, the second
17 page going from the bottom up.

18 THE COURT: All right. I'm on the wrong page, go
19 ahead.

20 MR. ARD: I apologize, Your Honor.

21 BY MR. ARD:

22 Q. So we're at February 27th/February 28th, Brian Rosen
23 reports that the parties continue to jockey, nothing's happened
24 since you've met. And then on February 28th, Brad Scheler
25 says, you, Bill, Jim and I can discuss this at noon tomorrow.

1 Do you see that, at the bottom of that page?

2 A. No, I don't see it.

3 Q. Bottom of the page. You can use your exhibit binder if
4 it's easier. But on the very bottom of the first page, it
5 says, you, Bill, Jim and I can discuss at noon tomorrow, is
6 that meeting set.

7 A. I see that.

8 Q. Yeah. So your counsel was certainly expecting that you
9 were going to have a discussion on March 1st, 2010 regarding
10 settlement negotiations; is that right?

11 A. Yes.

12 Q. Okay. Did --

13 MR. SHER: You've got to wait for me to interject.

14 MR. ARD: All right.

15 MR. SHER: I'm going to object one more time on the
16 grounds of asking Mr. Bolin for the state of mind of other
17 parties, lawyers or not. If he knows it, that's one thing, but
18 just asking him what the page says, there's no foundation for
19 that and it calls for speculation.

20 MR. ARD: Well, it can't call for speculation if he
21 already answered it, and I'm trying to lay a foundational
22 question for him to --

23 THE COURT: Well, reask the question.

24 BY MR. ARD:

25 Q. Your lawyer certainly understood at this time or certainly

1 expected at this time that you were going to have a discussion
2 regarding settlement negotiations with Bill Kosturos the
3 following day, correct?

4 MR. SHER: I'm going to object on those grounds I just
5 stated.

6 THE COURT: Yeah, I'll sustain. How do we know what
7 his attorney's state of mind is?

8 MR. ARD: Well, because his attorney is saying --

9 THE COURT: Then you've got to ask him how he knows.

10 BY MR. ARD:

11 Q. Okay. Well, how do you know that reading this e-mail?

12 A. Could you repeat, not the long question, but the shorter
13 question that I think that I answered ahead of my counsel?

14 Q. How did you answer the question yes given what's written
15 on this page?

16 A. Could you reread the question, please, so I know what I
17 was answering?

18 Q. The original question was --

19 A. There's a second time you asked in a much more expanded
20 fashion, and I could not have gotten that sense from reading
21 this sentence.

22 Q. Okay. The question was, if you want to go through it
23 again, there's an e-mail exchange on the second page where
24 first Matt Roose, your attorney asked for an update on FDIC
25 settlement negotiations. Brian Rosen responds that nothing's

1 happened since they met, the parties continue to jockey. And
2 then your attorney responds, you, Bill, Jim and I can discuss
3 this at noon tomorrow, is that meeting set.

4 My question is, how do you know from this exchange that
5 your attorney expected you to be having discussions regarding
6 settlement negotiations the next day?

7 MR. SHER: A think a foundational question of whether
8 he knows what his lawyer expected would be in order.

9 MR. ARD: I already asked that and he already said
10 yes, that's what we started this all with five minutes ago.

11 THE WITNESS: I think it was that my attorney was
12 expecting to have a meeting between Bill, me and him the next
13 day.

14 BY MR. ARD:

15 Q. Right.

16 A. I think it says meeting.

17 Q. To discuss this.

18 A. Whatever this is in the e-mail or what he's referring to
19 as this in the e-mail, it's a rather long e-mail.

20 Q. Right. Which are the negotiations between the parties,
21 correct? If you read the second page of the e-mail.

22 A. Is that the -- "Do you Bill, Jim and I can discuss this at
23 noon tomorrow, is this meeting set" is on the first page of the
24 e-mail. I don't know that this refers to the second page of
25 the e-mail. I would think it refers to something further.

1 Q. Do you know how e-mail chains work, where the second page
2 of the e-mail, if you look at a date, it says earlier in time?

3 A. Okay. Fair enough, fair enough.

4 Q. Okay.

5 A. Okay.

6 Q. So what is your understanding as to what you were to
7 discuss the following day?

8 A. That would -- it would not have been a call which I think
9 is what you were asking about; is it not? Didn't you start off
10 by asking --

11 Q. Or in person meeting.

12 A. Okay. There was a meeting on March 1st of -- with the
13 debtor and JPMorgan counsel and myself, based on what had
14 happened previously. As I told you we'd gotten a sense that
15 negotiations might be getting traction. We wanted to get in
16 front of JPMorgan and point out that if there was something
17 happening, it was -- and the FDIC was involved, that was now a
18 three-way deal, not a two-way deal, and we were making our
19 appeal to not bear the burden of adding a third party to the
20 mix.

21 Q. So you're telling me you had that entire discussion, but
22 you didn't have any update on the status of settlement
23 negotiations during this time?

24 A. I had an indication that things were getting traction, I
25 didn't have any details of the negotiations, no.

1 Q. What you --

2 A. And I was not trading.

3 Q. I didn't ask if you were trading.

4 A. Okay.

5 Q. I didn't ask if you were trading, I'm just trying to ask
6 about the -- whether you had any knowledge of settlement
7 negotiations during this time.

8 A. I had -- at that point, I had a good sense negotiations
9 were picking up, yes.

10 Q. Okay. And you knew that somebody was contemplating a tri-
11 part type deal?

12 A. If the FDIC was involved, that was a third party. So now
13 it wasn't a two-way between the debtor and JPMorgan, it was --
14 another party was coming into the mix.

15 MR. ARD: Okay. Before we get to that, Your Honor,
16 I'd like to move into evidence EC-277, the exhibit we just
17 discussed that's on the screen.

18 MR. SHER: Same objections, Your Honor.

19 THE COURT: Overruled for the same reasons.

20 (Equity Committee's Exhibit 277, an E-mail Exchange Between
21 Brad Scheler and Brian Rosen and other counsel, was hereby
22 received into evidence.)

23 BY MR. ARD:

24 Q. EC-279, this is referring to the meeting that you had on
25 March 1st, 2010 at JPMC headquarters; is that correct?

1 A. Appears to be what it says, yes.

2 Q. Did you have a meeting on March 1st, 2010 at JPMC
3 headquarters?

4 A. Yes.

5 Q. Did you attend that meeting with Bill Kosturos?

6 A. Yes.

7 Q. Okay. And that's the meeting you were just referring to?

8 A. Yes.

9 Q. Okay. And you knew that there were discussions involving
10 a tri-part deal at this point?

11 A. I assumed it was three party, because the FDIC had --
12 JPMorgan had said in January that they wanted to talk to the
13 FDIC.

14 Q. Was that assumption confirmed during your meeting at JPMC
15 headquarters that day?

16 A. I don't know that it was explicitly concerned (sic),
17 nobody corrected me.

18 Q. Well, what did you discuss during your meeting at JPMC
19 headquarters?

20 A. Exactly what I told you before. It was a brief meeting,
21 we made the point that in going from a two-party transaction
22 which we had discussed in previous negotiations to a three
23 party, there was obviously going to be more costs involved, and
24 we didn't want to be the party to bear the cost.

25 Q. But you had no update on the status of settlement

1 negotiations?

2 A. I had no update on the status or the details of the
3 negotiations, no.

4 Q. All right. Turning now to --

5 MR. ARD: Your Honor, I'd like to move EC-279 into
6 evidence.

7 MR. SHER: No objection, Your Honor.

8 THE COURT: All right. Admitted.

9 (Equity Committee's Exhibit 279, an E-mail regarding meeting
10 held on March 1st, 2010 at JPMC headquarters, was hereby
11 received into evidence.)

12 BY MR. ARD:

13 Q. Turning now to EC-280. Your -- if you look to the second
14 page, there's draft language from JPMC in an e-mail from Stacy
15 Friedman to Brian Rosen, do you see that?

16 A. Yes.

17 Q. And you see on the next page, "Our clients won't go for
18 this," and the e-mail from Brian -- Brad Scheler to Brian
19 Rosen?

20 A. Yes, I see that.

21 Q. And so you were discussing with Brad Scheler at this time
22 whether you were okay with either this proposal or something
23 regarding the settlement negotiations at JPMC and FDIC,
24 correct?

25 A. No.

1 Q. Was Brad Scheler just making this up in representing your
2 view about -- a view about what his clients would go for?

3 A. I think Brad Scheler was expressing his opinion as to what
4 we would go for.

5 Q. Okay. On the next page, on the next exhibit --

6 MR. ARD: Your Honor, I'd like to move 280 into
7 evidence. Oh, it's been admitted -- excuse me. That was the
8 one that was admitted this morning, I apologize, Your Honor.

9 Q. 281 which was also admitted into evidence this morning,
10 again is an e-mail from Brad Scheler to Brian Rosen on 3/2,
11 2010. And he represents, "Your clients either want a tri-part
12 type deal or want to move forward on Thursday."

13 A. Right.

14 Q. Does that represent your views?

15 A. I don't know what exactly he's referring to at that point.
16 I assume that move forward on Thursday was on the turnover
17 action, but I don't know.

18 Q. Does that represent your views at the time that you wanted
19 Scheler to try --

20 A. I don't know. I didn't write the e-mail, and I don't have
21 the context for what it was given.

22 Q. Didn't you say that on March 1st meeting at JPMC
23 headquarters, you talked about wanting a tri-part type deal?

24 A. No. I talked about it appeared to us that it was likely
25 that they were having discussions with the FDIC, and the FDIC

1 -- those talks were getting traction that there was going to be
2 a three-way deal and not a two-way deal. And if there was
3 going to be a three-way deal, someone was going to have to bear
4 the burden of the additional cost of another participant, and I
5 did not want that to be my interests.

6 Q. Okay. And you were given no update on the status of
7 settlement negotiations?

8 A. No.

9 Q. You knew nothing about settlement negotiations at this
10 time?

11 A. I knew only what I've testified to.

12 Q. Which is nothing?

13 A. Which is nothing, only my assumptions.

14 Q. You discussed during direct that you had certain periods
15 under which you had voluntary restrictions, correct?

16 A. Correct.

17 Q. First, let me ask you, you went through a series of
18 periods where the restrictions in this case, both including the
19 confidentiality agreements that you signed and restricted
20 periods where it was voluntary, is that the full scope of the
21 restrictions that you had in this case? Did you testify to all
22 of them? Were there any other periods that you did not testify
23 to?

24 A. From the time period of March until -- the time period
25 from 2009 until March of 2010, yes.

1 Q. Okay. And after that?

2 A. After that, we were subject to restrictions pursuant to
3 the global settlement agreement.

4 Q. Is that the only restriction --

5 A. Yes.

6 Q. -- after that?

7 Now, the voluntary restrictions as you call them, those
8 fell into two categories; is that right? The first category
9 being periods when you had potentially material nonpublic
10 information?

11 A. Well, the restricted periods is when we had potentially
12 material and nonpublic information. The voluntary periods were
13 periods where we didn't think we had material nonpublic
14 information, but for a variety of reasons we felt it was not
15 prudent to trade.

16 Q. Okay. And to be clear, you're talking about -- when you
17 say restricted periods, you're including periods when you were
18 under no confidentiality agreement with the debtor? This is a
19 self restriction, correct?

20 A. Involuntary periods were a self restriction, and there
21 were no confidentiality agreements with the debtor at that
22 point.

23 Q. In those periods, let's call it a formal restriction, if
24 you will, there was -- you had potentially non-material --
25 potentially material nonpublic information, correct?

1 A. In the non-voluntary, yes.

2 Q. Right. Black-outs as you referred to them.

3 A. Yes.

4 Q. Okay. So in your voluntary periods, you were concerned
5 about trades being characterized to your disadvantage after the
6 fact, right?

7 A. Correct.

8 Q. And one of the ways in which a trade could be
9 characterized to your disadvantage after the fact is through an
10 allegation of insider trading, correct?

11 A. Yes.

12 Q. You and your general -- I'll withdraw that question.

13 The self-imposed restrictions, these voluntary
14 restrictions, they were voluntary and you could reverse the
15 decision at any time; is that right?

16 A. If I thought it appropriate, yes.

17 Q. And at times there was uncertainty at your firm regarding
18 whether you were restricted or not, correct?

19 A. No. There wasn't uncertainty, everyone knew we were
20 restricted. I think what you're referring to is when people
21 would come back to me after the restricted period had been
22 lifted, as I testified in my deposition, and would double-check
23 to make sure that those restrictions were still not in effect.

24 Q. And so sometimes your traders asked you whether they could
25 make a trade, right?

1 A. The traders checked with me to make sure that we -- when
2 they were going to do a trade, make sure that we were
3 unrestricted.

4 Q. And sometimes you told them they could, and sometimes you
5 told them they couldn't make a trade, right?

6 A. Correct. Excuse me, I told them we were either restricted
7 or not restricted.

8 Q. You have an insider trading policy?

9 A. Yes, we do.

10 Q. Could you turn to EC-19 and please don't put it up on the
11 screen. It's in your binder. We're not allowed to put that on
12 the screen.

13 THE COURT: What's the name of it again?

14 MR. ARD: EC-19, excuse me, Your Honor.

15 THE WITNESS: Yes.

16 Q. Is this the insider trading policy that you firm follows?

17 A. Yes.

18 MR. ARD: First, Your Honor, I'd like to move EC-19
19 into evidence.

20 MR. SHER: No objection, Your Honor. This is one of
21 the ones that is to be admitted under seal.

22 THE COURT: All right. It will be admitted under
23 seal.

24 (Equity Committee's Exhibit 19, Insider Trading Policy of
25 Appaloosa, was hereby received into evidence, under seal.)

1 BY MR. ARD:

2 Q. Your policy, if you'd turn to -- you followed this policy,
3 you said that?

4 A. Yes.

5 Q. If you'd turn to the last page of the policy, in the
6 fourth paragraph, the top paragraph that's not a full
7 paragraph, the third to last sentence that starts, "Employees
8 should be particularly sensitive to." Do you see that
9 sentence?

10 A. Yes.

11 Q. The sentence reads in full, "Employees should be
12 particularly sensitive to information they received pursuant to
13 a confidentiality agreement, as such information is likely to
14 be material nonpublic information." Do you see that sentence?

15 A. Yes.

16 Q. And that's a correct description of a part of your policy?

17 A. That's how what our -- how we want our employees to view
18 the information.

19 Q. And you would be very careful with information that you
20 received pursuant to a confidentiality agreement?

21 A. Yes.

22 Q. And you would presume, absent a determination otherwise,
23 that information shared pursuant to a confidentiality agreement
24 was likely to be material nonpublic information?

25 A. Absent determination by myself, our compliance officer,

1 and our general counsel, yes.

2 Q. And the presumption is that it is likely to be material
3 nonpublic information?

4 A. Well, once it goes up to that level, it is -- we're not
5 presuming, we're trying to figure out whether it is or it
6 isn't.

7 Q. Well, would you presume that it's likely to be material
8 nonpublic information or no?

9 A. If it's -- at that point, I'm trying to -- we're past the
10 presumption point, if it's come up to me, we're presuming it's
11 material nonpublic information, and at that point, we're trying
12 to derive a determination.

13 Q. Could you please quickly turn to pages 82 and 83 of your
14 deposition?

15 MR. ARD: Your Honor, did we hand you a copy of the
16 deposition and would you like it?

17 THE COURT: I don't think you did, you may hand it up.
18 Thank you.

19 Q. The bottom on the page it says, "And you would presume" --
20 going to now 83, "unless you determined otherwise, it was
21 likely to be non" -- sorry, "it was likely to be material
22 nonpublic information." Do you see that?

23 A. Unless -- yes.

24 Q. Okay. And that's correct testimony?

25 A. Yes.

1 Q. Appaloosa and Centerbridge hired -- oh, yeah, hired the
2 same counsel Fried Frank in October of 2008; is that right?

3 A. Approximately, yes.

4 Q. And as early as October 7th, 2008, your counsel was
5 discussing Appaloosa/Centerbridge issues with debtor's counsel;
6 is that right?

7 A. Possible, yes.

8 MR. ARD: Let me quickly put Exhibit 22 on the screen.
9 Could I switch to ELMO, please.

10 THE COURT: What exhibit is this?

11 MR. ARD: This is Exhibit 22.

12 THE COURT: Thank you.

13 BY MR. ARD:

14 Q. This is the first monthly application for the debtor's at
15 the time; is that right?

16 A. I see that.

17 MR. ARD: And this is just an excerpt. I can get
18 people the full copy if they like. It's docketed, too, of
19 course.

20 Q. On the third page of this excerpt, attorney for debtors,
21 if you look at the second page, attorney for the debtors at the
22 very bottom, excuse me, is reporting on a telephone call with

23 B. Pfeiffer. Who's B. Pfeiffer?

24 A. Brian Pfeiffer.

25 Q. Who is he?

1 A. At that time, he was an attorney for Fried Frank.

2 Q. Okay. Representing you?

3 A. Yes.

4 Q. Okay. And the call is regarding Appaloosa/Centerbridge
5 issues, do you see that?

6 A. I'm sorry, I don't see the line, can you --

7 Q. At the very top of that page.

8 A. Yes.

9 Q. Okay. And you don't have any doubt that your counsel was
10 discussing with debtor's counsel, Centerbridge and Appaloosa
11 issues at that time?

12 A. I have no reason to believe otherwise.

13 Q. Appaloosa and Centerbridge had substantially the same
14 interest throughout this case; is that right?

15 A. Yes.

16 Q. Appaloosa and Centerbridge had worked together previously
17 in a different bankruptcy with the same counsel; is that right?

18 A. Probably.

19 Q. Yes or probably?

20 A. Appaloosa and Centerbridge worked together -- people from
21 Appaloosa and Centerbridge had worked together in a bankruptcy
22 with Fried Frank as counsel before Centerbridge was
23 Centerbridge and those parties were at other places.

24 Q. Okay. And Appaloosa didn't want to join the creditor's
25 committee in this case, because creditor's committees are

1 cumbersome organizations; is that right?

2 A. Yes.

3 Q. And one of the ways in which the creditor's committees are
4 cumbersome is that they have trading restrictions; is that
5 right?

6 A. Among other ways, yes.

7 Q. You had conversations with Bill Kosturos on 2008 and 2009
8 without attorneys present, right?

9 A. I don't believe that's the case in 2008.

10 Q. Do you know whether it was in 2008, whether you had
11 discussions with Bill Kosturos in 2008 without attorney --
12 without counsel present?

13 A. In 2008, I'm pretty confident that I did not have
14 discussions with Bill Kosturos. I'm not even sure I had
15 conversations with Bill Kosturos in 2008, but I'm confident
16 that they would not have been without counsel. In 2009, I
17 believe I did, yes, telephone conversations.

18 Q. Okay. You discussed with Bill Kosturos how the case was
19 progressing, right?

20 A. In which discussions?

21 Q. Well, early in the case?

22 A. Early in the case, we had a meeting with Weil. I don't
23 remember whether Bill was there or not, and -- I don't
24 remember.

25 Q. You were very interested, particularly early in the case

1 in discussions with Bill Kosturos and the debtors getting its
2 arms around Washington Mutual, because they had no employees;
3 is that right?

4 A. I was concerned with that issue, and I believe I discussed
5 it with debtor's counsel. I don't remember whether Bill was
6 there or whether he wasn't there. He could've been.

7 Q. Okay. And -- well, let me just put up the deposition.

8 MR. ARD: On page 88, please.

9 Q. Do you see in your deposition testimony where you say
10 particularly early in the case you were very interested in the
11 debtor getting its arms around Washington Mutual?

12 A. Yes.

13 Q. And you see in the next part of that where you say that
14 you expressed that interest in Mr. Kosturos?

15 A. I think I said I'm sure I did. If he was at those
16 meetings, I'm sure I did. I don't specifically -- I remember
17 the meetings with Weil and those discussions. I don't remember
18 whether Kosturos was specifically there or not.

19 Q. But you're sure you expressed to Mr. Kosturos that you
20 were interested in the debtors getting its arms around
21 Washington Mutual?

22 A. At some point or another I'm sure I did.

23 Q. Particularly early in the case?

24 A. Early in the case could've been at meetings subsequent, in
25 2009.

1 Q. Okay. You were looking for reassurances from Mr. Kosturos
2 regarding who was going to prosecute the case, who was going to
3 make sure the debtor had adequate information to make whatever
4 claims it needed to make?

5 A. I don't know what you mean by reassurances, but I was
6 looking for that to be the case, yes.

7 Q. Well, did Mr. Kosturos give you those reassurances?

8 A. I remember discussions with Weil in the fourth quarter of
9 2008.

10 Q. Would you please turn to page 89 of the deposition
11 transcript? Do you see your testimony at the top where you say
12 that the debtor had its bank and its employees seized and there
13 was a shell company, who was going to prosecute the case, who
14 was going to make sure the debtor had adequate information to
15 make whatever claims it needed to make.

16 A. Yes.

17 Q. And then you see the next part where I asked you, when you
18 were looking for reassurances from Mr. Kosturos that the debtor
19 was going to be able to do those things, and you answered yes.

20 A. Okay.

21 Q. And then I said, "And did he give you those reassurances?"
22 And you answered "Yes."

23 A. Yes.

24 Q. Is that testimony correct?

25 A. Yes.

1 Q. Okay. Thank you.

2 And you had a meeting towards the end of 2008 with the
3 debtor to discuss these issues, correct?

4 A. Yes.

5 Q. You met with Brian Rosen and Michael Walsh from Weil; is
6 that right?

7 A. Yes.

8 Q. And they knew at this time that you were significant
9 holders of claims because you probably told them; is that
10 right?

11 A. Or counsel did, yes.

12 Q. Okay. And you also may have spoken with Mr. Kosturos
13 about tax refunds in 2008?

14 A. I'm not sure. I'm not sure Mr. Kosturos was at that
15 meeting.

16 Q. Deposition transcript page 96:

17 "Q. Okay. Did you talk to Bill Kosturos about the tax
18 returns, tax refunds?

19 "A. I'm sure I did. I don't know if I did in 2008 or
20 not."

21 A. Correct.

22 Q. Do you see that?

23 A. Yes.

24 Q. So you may have talked with him in 2008 about tax return
25 refunds?

1 A. I said I don't know. I --

2 THE REPORTER: Wait a minute, sir.

3 THE COURT: Please don't over talk. Let him answer
4 the question before you --

5 MR. ARD: I apologize, Your Honor.

6 THE COURT: -- continue.

7 THE WITNESS: I said I don't know if it was in 2008 or
8 later, but I'm sure we had those conversations.

9 BY MR. ARD:

10 Q. And you were under no restrictions in this case until
11 March of 2009; is that correct?

12 A. Yes.

13 Q. Okay. Now, let's walk through quickly the course of
14 settlement negotiations in this case and the confidential
15 information you'd learned.

16 In January 2009, White & Case prepared a term sheet; is
17 that right?

18 A. Yes.

19 Q. And you refer to the White & Case group as the WMI
20 noteholder group?

21 A. I believe that's what they referred to themselves as.

22 Q. Okay. And the WMI noteholder group or there were
23 significant holders of securities in the estate at that time?

24 A. Yes.

25 Q. And they sent you a term sheet on January 22nd, 2008; is

1 that right?

2 A. Yes.

3 Q. I'm going to show you EC-107. Does this reflect the term
4 sheet that they sent you, an e-mail to you? If you'll look at
5 the next pages, it has the term sheet in it.

6 A. I believe so, yes.

7 Q. Okay.

8 MR. ARD: Your Honor, I'd like to move EC-107 into
9 evidence, please.

10 MR. SHER: No objection, Your Honor.

11 THE COURT: It's admitted.

12 (Equity Committee's Exhibit 107, Term Sheet dated January 22nd,
13 2008, was hereby received into evidence.)

14 BY MR. ARD:

15 Q. And you were okay with this term sheet?

16 A. I didn't mind him sending it, and that's what he asked me.

17 Q. Okay. And you'd agree that anybody who's involved in the
18 case would be interested in hearing from holders of a large
19 block of claims, right?

20 A. Yes.

21 Q. And that's because there's going to have to be a
22 settlement with somebody, and it's always more interesting to
23 know what the holders of the larger claims think, and find
24 common ground with them that can get a deal momentum; is that
25 right?

1 A. Yes.

2 Q. And it's true, is it not, that it's not unusual in
3 bankruptcies if agreements between parties with significant
4 holdings take place, that those agreements can gain momentum
5 and ultimately precipitate a settlement?

6 A. Usually when there are parties that are on opposite sides
7 of the table, yes.

8 Q. Well, it's not unusual in bankruptcies that agreements
9 between parties with significant holdings take place, that
10 those agreements can gain momentum and ultimately precipitate a
11 settlement, correct?

12 A. You usually need somebody on the other side of the dispute
13 to get an agreement.

14 Q. Okay. But if you have parties with significant holdings
15 that are in agreement, those agreements can gain momentum, and
16 ultimately precipitate a settlement, correct?

17 A. If you can get someone on the other table to agree with
18 that -- other side of the table to agree with that, yes.

19 Q. Now, after learning that a large block of creditors had
20 found common ground on January 22nd, 2009, you bought 50,000
21 peers on January 23rd, 2009; is that right?

22 A. Well, first of all, could I have my trading records so
23 that I can verify.

24 Q. Of course. That's Exhibit 20.

25 MR. ARD: And please don't put that on the screen.

1 Q. It's in the smaller binder, it may be easier for you
2 there, your counsel admitted into evidence this morning. It's
3 in the large binder, too, that we have in front of you.

4 A. All right. And?

5 Q. So January 23rd, 2009, this is organized by chronological
6 order, right?

7 A. Yes.

8 Q. You bought 50,000 peers; is that right?

9 A. Yes.

10 Q. Okay. And you don't remember learning any information
11 between January 5th, 2009 when you last bought peers and
12 January 23rd, 2009, correct?

13 A. No, I don't.

14 Q. All right. And then on January -- excuse me, on January
15 5th, 2009 when you last bought peers, you bought them at 1.87,
16 that's dollars; is that right --

17 A. Yes.

18 Q. -- on the sheet?

19 And on January 23rd, 2009, after receiving this term
20 sheet, you bought peers at four dollars; is that right?

21 A. Yes.

22 Q. And on January 28th, 2009, you made another purchase of
23 about 160,000 peers, do you see that?

24 A. Yes.

25 Q. And you can't remember learning any new information

1 relating to peers prior to January 28th, 2009, correct?

2 A. No.

3 Q. Correct?

4 A. Correct.

5 Q. On March 9th, 2009 you entered into a confidentiality
6 agreement with the debtors --

7 A. Yes.

8 Q. -- that you testified about earlier?

9 A. Yes.

10 Q. On that day, the debtors sent you a term sheet that they
11 proposed you discuss the following day at a large meeting with
12 creditor groups and JPMC?

13 A. On that evening, yes.

14 Q. And this proposed term sheet was submitted to under the
15 confidentiality agreement?

16 A. Yes.

17 Q. Pursuant to the confidentiality agreement?

18 A. Yes.

19 Q. And on March 10th, 2009, you were in attendance with -- at
20 a meeting with Centerbridge, Aurelius, Owl Creek, and a large
21 number of other White & Case constituents; is that right?

22 A. Yes, I was.

23 Q. And the WMI noteholder group vehemently objected to the
24 term sheet that was distributed by WAMU?

25 A. Yes.

1 Q. And after that meeting, the WMI noteholder group developed
2 a new term sheet --

3 A. Yes.

4 Q. -- is that right?

5 And you received this term sheet on March 13th, 2009; is
6 that right?

7 A. I think the formalized version of that was received during
8 that time, yes.

9 MR. ARD: EC-27. ELMO on please.

10 Q. This is an e-mail March 13th, showing a term sheet being
11 sent to you; is that correct?

12 A. Yes.

13 MR. ARD: I'd like to move EC-27 into evidence.

14 MR. SHER: No objection, Your Honor.

15 THE COURT: It's admitted.

16 (Equity Committee's Exhibit 27, E-mail dated March 13th,
17 attaching a term sheet, was hereby received into evidence.)

18 BY MR. ARD:

19 Q. And EC-28 is the exhibit that's attached to EC-27; is that
20 right? That's the term sheet you received?

21 A. Move it down just so I can see the date, please. Yes.

22 MR. ARD: Okay. I'd like to move EC-28 into evidence.

23 MR. SHER: No objection, Your Honor.

24 THE COURT: It's admitted.

25 (Equity Committee's Exhibit 28, Term Sheet, was received into

1 evidence.)

2 BY MR. ARD:

3 Q. And the schedules to these term sheets here lay out in
4 detail each of the policies, trusts, CCBIs, split-dollar
5 policies that belong to WMI and JPMC; is that correct? You can
6 flip through the term sheet if you like.

7 A. Where is this term sheet?

8 Q. EC-28, it's in that binder I gave you.

9 For example, Schedule 1 talks about the JPMC Rabbi Trust.

10 A. Yes.

11 Q. Schedule 2 talks about BOLI/COLI.

12 A. Yes.

13 Q. And the rest of the schedules if you go through them, talk
14 about CCBI, split-dollar policies, for example, Schedule 6.

15 A. Yes.

16 Q. And you thought that the settlement position laid out in
17 the term sheet was based on the debtor's assessment of the
18 strengths and weaknesses of these claims, right?

19 A. Which term sheet?

20 Q. Well, this term sheet and the term sheet that the debtors
21 sent you earlier?

22 A. Well, this term sheet was a formalization, I believe, of
23 the WMI noteholders/Appaloosa/Centerbridge proposal that
24 started discussions with JPMorgan.

25 Q. Do you know if the rest of this term sheet differed at all

1 from the term sheet that you got from the debtors?

2 A. Which term -- the --

3 Q. The schedules that we just looked at.

4 A. I don't even remember seeing the schedules.

5 Q. In the debtor's term sheet?

6 A. I don't remember them. I don't remember seeing them in
7 this.

8 Q. And to be clear, this term sheet that we just looked at,
9 even though it says it was prepared by WMI, it was, in fact, a
10 proposal that White & Case and their group had come up with?

11 A. Yes. My understanding is that the proposal had been
12 delivered verbally to JPMorgan. JPMorgan although they didn't
13 like the proposal, had asked to see it in term sheet form, and
14 I guess that's what the debtor accommodated them with.

15 Q. And the WMI noteholder group itself had vehemently
16 objected to the term sheet distributed by WAMU, right?

17 A. The March 9th term sheet, yes.

18 Q. Right. And so this new term sheet even though it says
19 that -- even though it says at the top -- excuse me, that it's
20 a WGM draft, in fact, it was written and the terms were
21 proposed by the WMI noteholders, correct?

22 A. Terms were proposed by the WMI noteholders with Appaloosa
23 and Centerbridge also present when those terms were formulated.

24 Q. Okay. And JPMC followed up with their own term sheet
25 within a day or two?

1 A. Yes, they did.

2 Q. And you received their response no later than March 19th?

3 A. I'm not sure when I received it, but I did receive it.

4 Q. I want to show you EC-29, an e-mail from Brian Pfeiffer to
5 you. This WAMUAppaloosa@Friedfrank.com, you're on that e-mail
6 chain; is that right?

7 A. I believe I am.

8 Q. All right. So you received a term sheet here on March
9 19th, 2009?

10 A. Yes, that's what it looks like.

11 Q. And is this the term --

12 MR. ARD: Your Honor, I'd like to move EC-29 into
13 evidence.

14 MR. SHER: No objection, Your Honor.

15 THE COURT: It's admitted.

16 (Equity Committee's Exhibit 29, E-mail from Brian Pfeiffer to
17 James Bolin, was hereby received into evidence.)

18 BY MR. ARD:

19 Q. EC-30, this is a term sheet you received on March 19th?

20 A. That looks like it, yes.

21 Q. And on April 7th, 2009 your counsel sent Weil and Kosturos
22 an e-mail stating Centerbridge's and Appaloosa's combined
23 holdings, right?

24 A. I'm not sure, but it's quite possible.

25 (Pause)

1 MR. ARD: Your Honor, I'd like to EC-30 into evidence,
2 please?

3 THE COURT: Any objection?

4 MR. SHER: No objection, Your Honor.

5 THE COURT: It's admitted.

6 (Equity Committee's Exhibit 30, Term Sheet Received on March
7 19th, was hereby received into evidence.)

8 MR. ARD: 216. I'll put it up on the screen, Your
9 Honor.

10 THE COURT: Which one is this?

11 MR. ARD: 216.

12 BY MR. ARD:

13 Q. This is an e-mail on April 7th, 2009 from your counsel to
14 the debtors and to Bill Kosturos; is that right?

15 A. That's what it says.

16 Q. And is reporting on the combined holdings at Centerbridge
17 and Appaloosa?

18 A. Yes.

19 MR. ARD: I won't put the next page up on the screen
20 because that may be under seal.

21 Q. But it's reporting on the next page, can you pull it out
22 of your binder. Do you have it there, 219? I'm sorry, 216.

23 A. Yes.

24 Q. The second page is reporting that you and Centerbridge --
25 Appaloosa and Centerbridge combined had 45.6 percent of the

1 senior subordinated notes, do you see that?

2 A. I see it.

3 Q. And it's reporting that you had combined over forty-one
4 percent of the peers.

5 A. I see that, too.

6 Q. And it's reporting that you had over twenty-nine percent
7 of the re-preferred?

8 A. And I see that.

9 Q. And it's reporting that you had over fourteen percent of
10 the senior notes?

11 A. Yes.

12 Q. Okay. And you met with the debtors again sometime in
13 April?

14 A. I believe so, yes.

15 MR. ARD: Oh, Your Honor, I'd like to move EC-216 into
16 evidence.

17 THE COURT: Go back because I misunderstood. Which
18 did you own fourteen percent of, the senior or the sub notes?

19 THE WITNESS: The combined ownership for Appaloosa and
20 Centerbridge was fourteen percent, according to this schedule,
21 was fourteen percent of the aggregate senior notes.

22 THE COURT: And what percentage did you hold -- what
23 was your 45.6 percent holding?

24 THE WITNESS: That was the senior subs.

25 THE COURT: The subs, okay.

1 MR. ARD: And -- okay.

2 MR. SHER: Your Honor, I object to the admission of
3 this document on the grounds we discussed earlier. He's not on
4 it, it's just counsel. It's the one you've overruled.

5 THE COURT: Are you asking me to admit it, I missed --

6 MR. ARD: Yes, I'm asking to admit it into evidence.

7 THE COURT: It's overruled and admitted.

8 Q. And you said it was --

9 THE COURT: And do you want it under seal?

10 MR. SHER: Yes, thank you, Your Honor.

11 THE COURT: All right.

12 (Equity Committee's Exhibit 216, an E-mail dated April 7th,
13 2009 from Fried Frank to debtors and Bill Kosturos, was hereby
14 received into evidence, under seal.)

15 BY MR. ARD:

16 Q. And you said your combined peers holding at this time, you
17 said it was over forty-one percent?

18 A. That's what the document says. I have no reason to
19 dispute it, but I'm not representing it.

20 Q. And you met with the debtors again sometime in April?

21 A. Yes.

22 Q. And you wanted to discuss how to restart some process in
23 light of the fact that JPMC had sued for deposit?

24 A. No. In light of the fact that the preceding negotiations
25 had been a disaster.

1 Q. Can you please turn to 234 of the deposition?

2 MR. ARD: Oh, could we have the computer, please?

3 Q. Start on page 233, actually the bottom of the page. Here,
4 you're -- on the very bottom of the page, you're talking about
5 a meeting you had in April, discussing how to get the process
6 started again, do you see that?

7 A. Yes.

8 Q. And the next page you say at the meeting you discussed how
9 to get the process started again, you note that there were a
10 lot of fractured interests, you note that you wanted to get a
11 confluence of agreement, and you note that at that point, JPMC
12 had sued for deposit, the repreferred and all the other claims
13 that they were trying to assert?

14 A. Yes.

15 Q. Okay. So you were trying to restart negotiations in light
16 of that fact?

17 A. In light of all of those facts, and the negotiations had
18 been a disaster, and one of the outcomes of that was the
19 litigation from JPMorgan.

20 Q. And WMI and JPMC exchanged another set of term sheets in
21 April 2009; is that right?

22 A. That's my understanding.

23 Q. And during the deposition, you originally testified that
24 you did not know the terms of the proposals on this term sheet,
25 and didn't believe that you had ever learned of the terms on

1 this proposal; is that correct?

2 A. I was mistaken. I learned of the terms of the proposal in
3 July of that year.

4 Q. But originally, you testified that you didn't know the
5 terms of the proposals and didn't believe you'd ever learn
6 them, correct?

7 A. I just quickly corrected that in the transcript, because I
8 misspoke.

9 Q. Well, you only changed your testimony when you were shown
10 documents that proved that you and your counsel had developed
11 the new term sheet in July, based explicitly on the terms in
12 the April offer, right?

13 A. As I said, I misspoke. At the time I didn't even remember
14 the terms of the term sheet or having seen that document. When
15 I saw the document and reviewed with counsel, I had seen it,
16 and I changed my testimony.

17 Q. Okay. During the confidentiality period, you had to know
18 what the tax refund number was in order to be in a position to
19 negotiate, right?

20 A. Yes.

21 Q. All right. And during this period of the confidentiality
22 period, you discussed the tax refunds quite in depth with the
23 debtors?

24 A. I didn't discuss it in depth with the debtors, it was just
25 the value of the tax refund.

1 Q. Would you turn to page 228 in your deposition? Here we're
2 talking about, if you look at the top, we're talking about the
3 period during the confidentiality agreement. And your answer
4 on the bottom, "We had talked about this tax refunds quite in
5 depth."

6 Do you see that?

7 A. We talked about tax law in depth, yes.

8 Q. And the tax refunds quite in depth?

9 A. Tax refund law and how that played out under current law,
10 yes.

11 Q. Okay. So you talked about the law of tax refunds quite in
12 depth?

13 A. Yeah.

14 Q. Okay.

15 A. And how it related to the tax refunds, yes.

16 Q. And you also discussed the debtor's view of the strengths
17 and weaknesses of the legal dispute to the tax refunds, right?

18 A. We all knew of the tax sharing agreements, and we knew
19 case law related to tax sharing agreements.

20 Q. That's not my question.

21 You also discussed with the debtor -- you also discussed
22 the debtor's view of the strength and weaknesses of the legal
23 dispute to the tax refunds, correct?

24 A. In the context of the tax sharing agreement in case -- in
25 existing case law on tax sharing agreements, yes.

1 Q. And the debtors never asked you to return or destroy any
2 confidentiality agreement distributed pursuant to the
3 confidentiality agreement; is that right?

4 A. Any confidentiality agreement?

5 Q. Excuse me. Any confidential information?

6 A. No.

7 Q. And on May 12th, 2009, the second business day after the
8 confidentiality period ended, you bought two million dollars
9 face of subordinated notes; is that correct? You can look at
10 your trading record if you want.

11 A. Yes.

12 Q. Okay. And this was the second to last purchase that you
13 made in this entire bankruptcy, right?

14 A. Yes, it was.

15 Q. All right.

16 A. I believe so.

17 Q. Now, around the third week of July, you testified on
18 direct that Appaloosa and Centerbridge approached JPMorgan and
19 had some negotiations, right?

20 A. Appaloosa did, yes -- and Centerbridge, I'm sorry.

21 Q. And you approached JPMorgan to see if you could find
22 common ground on a potential settlement and then bring that to
23 the debtor to form the basis for an agreement, right?

24 A. Yes.

25 Q. And you admit now that you received the April term sheets

1 that were distributed between the parties in connection with
2 your effort to restart the settlement process with JPMC at
3 least on or before July 1st, 2009, right?

4 A. I admitted at my deposition that I had seen the April 16th
5 term sheet subsequently, and I think I testified that I saw
6 that in July.

7 Q. But that was only in consultation with documents that you
8 were shown, right, showing that?

9 A. Memory is faulty sometimes.

10 MR. ARD: EC-215.

11 Q. Is this the July --

12 MR. ARD: Oh, great.

13 Q. Is this the July 1st e-mail that you received that's
14 forwarding you the April term sheet?

15 A. Yes. It's forwarding a summary done by Fried Frank.

16 Q. Okay. And if you'd turn to the next page, it begins to
17 summarize the terms that JPMC and WMI exchanged.

18 A. Yes.

19 Q. All right. And this document wasn't produced until after
20 your deposition, right?

21 A. I don't know.

22 Q. And you testified that you refrained from trading --

23 MR. ARD: Oh, excuse me, Your Honor. I'd like to move
24 EC-215 into evidence.

25 MR. SHER: This one's already in evidence, Your Honor.

1 THE COURT: All right.

2 Q. You testified that you refrained from trading from the
3 time you first met JPMorgan until September 2nd, 2009 when you
4 thought negotiations had ended?

5 A. Some time in July 2009, yeah.

6 Q. Well, it was from the time you first met JPMorgan?

7 A. I believe it was, yeah.

8 Q. And you restricted yourself from trading because you
9 wanted to avoid the exposure of having trades executed during
10 that period recharacterized against you?

11 A. Yes.

12 Q. Okay. And you and Centerbridge or Appaloosa and
13 Centerbridge had several meetings with JPMC during this period?

14 A. Yes.

15 Q. And neither Appaloosa nor Centerbridge informed the
16 debtors or the creditor's committee of these negotiations at
17 that time?

18 A. Correct.

19 Q. And at the outset of these negotiations, Appaloosa and
20 Centerbridge made the case to JPMC that between Appaloosa and
21 Centerbridge, you owned a significant amount of claims,
22 particularly in impaired classes, and that your support would
23 be significant, correct?

24 A. Yes.

25 Q. You also made the case that if you could find common

1 ground with JPMC, that could form the basis for something that
2 could precipitate a settlement, correct?

3 A. Possibly, yes.

4 Q. Yes?

5 A. Yes.

6 Q. Appaloosa received JPMC's response to your term sheet on
7 August 18th?

8 A. Yes.

9 Q. And JPMC proposed a split of taxes of seventy-five to
10 twenty-five in favor of JPMC?

11 A. I think that's correct, I don't remember the exact terms.

12 Q. Let me show you EC-13. Is that the e-mail from Don McCree
13 to J. Aronson and David Tepper on August 18th through which
14 Appaloosa received the response to the term sheet?

15 A. Yes.

16 Q. Okay. And --

17 A. Let me correct myself, it was a response to our verbal
18 offer. We didn't have it -- we didn't present a term sheet.

19 Q. Okay. Well, EC-14 is that the attachment to the e-mail we
20 just saw?

21 A. Yes.

22 MR. ARD: Okay. Your Honor, I'd like to move EC-13
23 and EC-14 into evidence.

24 MR. SHER: No objection, Your Honor.

25 THE COURT: They're admitted.

1 (Equity Committee's Exhibit 13, E-mail from Don McCree to J.
2 Aronson and David Tepper on August 18th, was hereby received
3 into evidence.)

4 (Equity Committee's Exhibit 14, Attachment to above e-mail of
5 EC-13, was hereby received into evidence.)

6 BY MR. ARD:

7 Q. JPMC reflected an offer that you'd made here on 7/29; is
8 that right?

9 A. They summarized their perception of our offer, yes.

10 Q. Okay. And if you look here on EC-14, the second column,
11 the future taxes are these -- excuse me. The first line is a
12 tax amount already in deposit, we split seventy-five/twenty-
13 five in favor of JPMC. Do you see that?

14 A. Yes.

15 Q. And the next line it says, "future tax refunds be split
16 seventy-five/twenty-five in favor of JPMC." Do you see that?

17 A. Yes.

18 Q. Does that refresh your recollection that they offered a
19 seventy-five/twenty-five percent split on the first part of the
20 tax refunds?

21 A. Yes.

22 Q. And on the second part of the tax refunds, they're
23 offering a ninety percent split to WMI?

24 A. To the extent that there would be a second tax refund. At
25 that time, it was doubtful.

1 Q. That wasn't my question.

2 My question was, they offered ninety percent of that
3 second tax refund?

4 A. Yes, of hypothetical asset, yes.

5 Q. Okay. Now, if you go back to EC-13, JPMC states in the
6 cover e-mail that "while there's several substantial open
7 areas, there is an agreement on the vast majority of items."
8 Do you see that?

9 A. Yes.

10 Q. On the vast majority of items, you believe you have an
11 agreement, or they believe they have an agreement?

12 A. That's what he's saying. I didn't believe it. I don't
13 know that he believed it.

14 Q. You agree that a reasonable investor would've perhaps
15 wanted to know that JPMC was of the opinion that there was an
16 agreement on the vast majority of items?

17 A. I'm not sure of that. If it had been true, I think I
18 testified that they might.

19 Q. Page 279 of your deposition. I asked you whether a
20 reasonable investor would've wanted to know that JPMC was of
21 the opinion that there was an agreement on the vast majority of
22 items. And you responded "If that was, in fact, true,
23 perhaps."

24 And I asked, "Well, if it was" -- I asked, "Well, it was
25 true that JPMC was of that view, correct?" And your answer

1 was, "For a very brief window of time."

2 A. Yes.

3 Q. Okay. So from August 18th until September 2nd, I believe
4 is when you said the negotiations broke down?

5 A. Yes.

6 Q. Do you agree that you were perhaps in possession of
7 material of nonpublic information, right?

8 A. I don't believe I was, no.

9 Q. Having trouble putting that together. You agree that an
10 investor would've wanted -- a reasonable investor would've
11 wanted to know that JPMC was of the opinion that there was an
12 agreement on the vast majority of items?

13 A. I think I said, it might. I also said if it was true.
14 More importantly, if you look at the term sheets and you look
15 at the letter, this is what we call banker happy talk. I don't
16 think anybody would've -- having both informations would've
17 ascribed a lot of value to it.

18 Q. Well, the tax split was seventy-five/twenty-five percent?

19 A. Versus sixty/forty, yes.

20 Q. That's a pretty big jump.

21 A. It may be a pretty big jump, we were still significant
22 degrees apart.

23 Q. Okay. Well --

24 A. It's not the vast majority of items. Matter of fact
25 that's the biggest item in the pool, and we're not that close.

1 Q. What, the final deal was seventy/thirty; is that right,
2 the March 26th?

3 A. Well, the final deal didn't exist at that time. At that
4 time all we had was the two proposals, and we're still a
5 significant amount apart. So I disagree with the
6 representation.

7 Q. Okay. But you agree, as we just saw, that JPMC was of
8 that opinion at least for a brief window of time.

9 A. That's what he said, I'm not sure that I actually believe
10 that, just looking at the term sheet, I think it's happy talk.
11 Regardless, I don't think it was material nonpublic
12 information.

13 Q. Potentially, though. A reasonable investor would've
14 wanted to know that JPMC was of the opinion that you were on
15 agreement on the vast majority of items, right?

16 A. A reasonable investor may want to know a lot of things,
17 but certainly wouldn't make trading decisions based upon a
18 banker's glib assertion that we were in agreement on the vast
19 majority of items despite being far apart on the split on the
20 tax refund.

21 Q. Far apart. The final deal in March 26, 2010 was
22 seventy/thirty on the first tax split; is that right?

23 A. The final deal did not exist in --

24 Q. That's not my question.

25 A. You know the tax plan -- I don't remember the final deal,

1 but I'll take your word for it. But regardless, at this point,
2 we were still far apart on those two points.

3 Q. Five percentage points?

4 A. No, we were a little further than that, fifteen percentage
5 points.

6 Q. Okay. At least you'll admit that if a settlement was
7 close, a reasonable investor would've wanted to know that,
8 right?

9 A. If a settlement was close, a reasonable investor might've
10 wanted to know that, yes.

11 Q. And let's just turn back to EC-14 real quick, which is the
12 term sheet. So your taxes, you're at seventy-five/twenty-five,
13 the deposits above that, they're giving you the deposits minus
14 seventy-five percent of taxes that have already come in, right?

15 A. Right.

16 Q. And if you go to the second page, you see goodwill
17 litigation? Do you see the right-hand side, it says agreed?

18 A. Yes.

19 Q. Agreed. You don't have to blow it up, but the whole page
20 there, Rabbi Trust, you're in agreement, correct?

21 A. Yes.

22 Q. Split Dollar policies, you're in agreement, correct?

23 A. Yes.

24 Q. BOLI/COLI policies, you're in agreement, correct?

25 A. Proposed to be, yes.

1 Q. Disputed Pac Life policies, you're in agreement there,
2 correct, and same with the VISA shares?

3 A. Proposed to be, yes.

4 Q. You discussed that you had a meeting on -- in September
5 with Quinn Emanuel at which they handed out a slide
6 presentation, right?

7 A. Yes.

8 Q. Among other things, you discussed with Quinn Emanuel the
9 status of discovery for the business tort claim against JPMC;
10 is that right?

11 A. Yes.

12 Q. And you wanted to know that Quinn Emanuel was gathering
13 the discovery information that JPMC was required to turn over,
14 and that they were working diligently to examine that
15 information, and that they were taking the case seriously; is
16 that right?

17 A. Yes.

18 Q. You believe that a reasonable investor would've wanted to
19 know that they were taking the case seriously; is that right?

20 A. A reasonable investor may have wanted to know that, but
21 would not have made a trading decision on that.

22 Q. Okay. That's not my question.

23 You believe that a reasonable investor would've wanted to
24 know that they're taking the case seriously, right?

25 A. Yes.

1 Q. Your meeting confirmed to you that they appeared to be
2 taking the case seriously, correct?

3 A. Yes.

4 Q. Then in the third week in September of 2009, you and Jed
5 Hart from Centerbridge went to DC with Fried Frank to meet with
6 general counsel for FDIC, correct?

7 A. Yes.

8 Q. You told the FDIC that you were significant holders in WMI
9 and that you wanted a settlement, right?

10 A. We thought the case should be settled, yes.

11 Q. That's not my question.

12 You told the FDIC that you were significant holders in
13 WMI, and --

14 A. Yes, we did.

15 Q. -- that you wanted a settlement?

16 A. Yes.

17 Q. It was important for you to tell FDIC that you were
18 significant holders because it gave legitimacy to your position
19 that the case should be settled, right?

20 A. Yes.

21 Q. And again, you did not inform the debtors or creditor's
22 committee that your meeting with FDIC in September 2009, right?

23 A. I don't believe so, no.

24 Q. And then you testified on direct that you attended a
25 meeting on October 27th with the debtors?

1 A. Yes.

2 Q. And the purpose of that meeting was to discuss trying to
3 organize to have a settlement negotiation with JPMC?

4 A. Yes.

5 Q. Is that right?

6 And you attended that meeting with Centerbridge?

7 A. October 22nd -- 27th?

8 Q. Yes.

9 A. Yes.

10 Q. And the next day, on October 28th, 2009, you sent Kosturos
11 the JPMC/Appaloosa term sheet exchange that had occurred in
12 July and August, correct?

13 A. Yes.

14 Q. And you -- well, let me just show you that.

15 MR. ARD: EC-35. Can I have the ELMO, please.

16 Q. EC-35, this is an e-mail from yourself to Mr. Kosturos
17 that you're referring to?

18 A. Yes.

19 Q. And you attached the term sheet exchange?

20 A. Yes.

21 Q. Okay. And you told Kosturos that you thought it would be
22 useful to go over these terms in anticipation of the next round
23 of summit negotiations with JPMC, right?

24 A. Yes.

25 Q. Now, Aurelius and Owl Creek joined your Fried Frank group

1 shortly after this e-mail, right?

2 A. I'm not sure exactly what the timing was. I think Owl
3 Creek joined first and then Aurelius. I'm not sure whether Owl
4 Creek had joined or not at this time, but they may have. I
5 think -- actually, I think they were at the October 27th
6 meeting.

7 Q. At the October 27th meeting?

8 A. Yeah.

9 Q. And did you send this term sheet to them, too?

10 A. I don't remember.

11 Q. Well, do you think it would've been useful for them to go
12 over it, just like it was for Kosturos?

13 A. It was useful to Kosturos because he was going to be at
14 the center of negotiations, in discussions with McCree.

15 Q. And your new co-clients, if you will, the new members of
16 the summit noteholder's group they were also going to be
17 participating in the summit negotiations, right?

18 A. It hadn't been established who was going to be in the
19 discussions at that point, and ultimately they weren't present,
20 the one time we meet with Mr. McCree.

21 Q. But they signed on to the confidentiality agreement?

22 A. They did sign the contract.

23 Q. And they participated in the summit negotiations after
24 November 16th?

25 A. They were part of the group, yes, and they were under

1 contract.

2 Q. And you told them that you had engaged in some discussions
3 with JPMC over the summer, right?

4 A. Yes. There was a meeting where we made that clear to
5 everybody.

6 Q. Okay. You again entered into some negotiations with JPMC
7 in November 2009; is that right?

8 A. November 16th, yes.

9 Q. And these settlement negotiations may have been material
10 while they were ongoing; is that right?

11 A. Possible, yes.

12 Q. I'm sorry?

13 A. Possible.

14 Q. And Appaloosa in conjunction with the settlement
15 noteholder group insisted on a confidentiality agreement that
16 would require the debtors to disclose certain types of
17 information at the end of the period, correct?

18 A. Yes.

19 Q. You guys insisted on that provision, right?

20 A. Our group, yes.

21 Q. Your group did, yeah.

22 And the debtors wanted a longer confidentiality period,
23 but you insisted on a shorter period?

24 A. It could be, I don't remember the back and forth.

25 Q. Okay. And on November 16th, 2009, you had a meeting with

1 Owl Creek, Centerbridge, Appaloosa, the debtors and Quinn to
2 get an update on litigation?

3 A. Excuse me. On November 16th?

4 Q. 16th, 2009?

5 A. No. I don't believe so. I thought that -- I believe the
6 16th was the date we met with JPMorgan, but I could be
7 mistaken.

8 Q. Page 309 of your deposition, please.

9 A. There was a meeting in November on -- with Quinn Emanuel,
10 I don't believe it was the 16th.

11 MR. ARD: Can we have the computer, please?

12 Q. Do you see that?

13 A. Yes.

14 Q. Maybe look at the next page, the purpose of this meeting
15 whether it happened on November 16th or not, was to give you a
16 litigation update?

17 A. Yes.

18 Q. And the debtors thought it would be -- going back to the
19 -- they're requiring the debtors to disclose information, the
20 debtors thought it would be extremely difficult to do the
21 restriction because of the disclosure obligation, right?

22 A. I'm sorry. Say again. To do the restriction?

23 Q. It would be -- you asked for a disclosure -- for the
24 debtors to be obligated to disclose all material nonpublic
25 information at the end of the restricted period --

1 A. Yes.

2 Q. -- correct?

3 And the debtors told you it would be extremely difficult
4 to do that because of the disclosure obligation, right?

5 A. I didn't have the conversations with the debtor directly.

6 Q. This is EC-36. It's an e-mail exchange between your
7 counsel, Matthew Roose, right -- that's your counsel?

8 A. Yes.

9 Q. And Brian Rosen?

10 A. Yes.

11 Q. And at the bottom, you're asking for a confidentiality
12 agreement, right?

13 A. That's what -- yes.

14 Q. And at the top, Mr. Rosen is reporting that it would be
15 extremely difficult to do the restriction because of your
16 request for disclosure, right?

17 A. That's what he's telling the attorneys, yes.

18 Q. But you prevailed in that argument, though, right, you got
19 that provision put into the confidentiality agreement?

20 A. Yes.

21 Q. Okay.

22 MR. ARD: Your Honor, I'd like to move EC-36 into
23 evidence.

24 MR. SHER: Same set of objections, Your Honor, he's
25 not on the document.

- 1 THE COURT: All right. It's admitted.
- 2 (Equity Committee's Exhibit 36, E-mail between Matthew Roose
- 3 and Brian Rosen, was hereby received into evidence.)
- 4 BY MR. ARD:
- 5 Q. And on November 16th, 2009, you do remember having a
- 6 meeting at which you're discussing entering into settlement
- 7 negotiations, right?
- 8 A. I think the 16th was the date we met with JPMorgan. I'm
- 9 not exactly sure, but I think that was the date.
- 10 Q. And the creditor's committee wasn't there, right?
- 11 A. No.
- 12 Q. Okay. And on November 20th, 2009, JPMC confirmed that it
- 13 was ready to engage in substantive negotiations at a
- 14 thirty/seventy split of taxes; is that right?
- 15 A. I guess. I could be -- I don't recall the communication.
- 16 Q. This is EC-118. It's an e-mail from Bill Kosturos to you
- 17 and Vivek Melwani. Who's Vivek Melwani?
- 18 A. Vivek Melwani works for Centerbridge.
- 19 Q. Okay. And the e-mail is confirming, the bottom e-mail in
- 20 the chain that's being forwarded to you from Donald McCree,
- 21 who's Donald McCree again?
- 22 A. He's with JPMorgan.
- 23 Q. Okay. And he's confirming that JPMC was ready to engage
- 24 in substantive negotiations at a thirty/seventy split of taxes?
- 25 A. Yes.

1 Q. And this may have been material?

2 A. May have been.

3 Q. And on November 20th, you were also sent a --

4 MR. ARD: Oh, excuse me, Your Honor. I'd like to move
5 EC-118 into evidence.

6 MR. SHER: No objection, Your Honor.

7 THE COURT: It's admitted.

8 (Equity Committee's Exhibit 118, E-mail from Bill Kosturos to
9 James Bolin and Vivek Melwani, was hereby received into
10 evidence.)

11 BY MR. ARD:

12 Q. And the debtors sent a new term sheet to JPMC -- oh,
13 excuse me, on November 23rd around sometime late November, you
14 sent a term sheet to JPMC; is that right?

15 A. Bill Kosturos does, yes.

16 Q. Yeah. And the debtors sent a new term sheet to JPMC in
17 December; is that right?

18 A. I'm aware of the November 30 term sheet, and there may
19 have been subsequent conversations the early part of December.
20 I don't remember a term sheet following that.

21 Q. Did you and David Tepper have a phone call with Brian
22 Rosen discussing JPMC in December?

23 A. It's possible.

24 Q. You had a one-and-a-half hour phone call with Mr. Rosen
25 December 9th, 2009?

1 A. That doesn't ring a bell.

2 Q. And later in December, Kosturos gave you and Centerbridge
3 an update on where the debtors were; is that right?

4 A. Again, could've been.

5 Q. All right. And you weren't aware of any party to the
6 November 2009 confidentiality agreement requesting that it end
7 a day early, were you?

8 A. No.

9 Q. All the summit information you received during this
10 confidentiality period was shared with Appaloosa pursuant to
11 the confidentiality agreement, right?

12 A. Yes.

13 Q. So we've already talked about the period a little bit
14 between January 1st and March 4th, 2010. And you said on March
15 4th, 2010, you came into possession of material nonpublic
16 information?

17 A. Yes.

18 Q. Okay. And you lifted this restriction on March 12th, 2010
19 when the summit was announced?

20 A. Yes, and appeared on the news wires.

21 Q. And then later in March when you received a copy of the
22 claims waterfall from the debtors, you restricted yourself
23 again?

24 A. Yes. When we saw the draft disclosure statement.

25 Q. And the copy of the waterfall?

1 A. The waterfall was in the disclosure statement, yes.

2 Q. So -- but -- no, that wasn't my question.

3 The question was, later in March, you received a copy of
4 the waterfall from the debtors, I think you said on the evening
5 of March 22nd; is that right?

6 A. Yes. I believe it was the disclosure statement and the
7 waterfall, but.

8 Q. Okay. And this was an advanced draft of the waterfall
9 with the debtor's view of the waterfall on it?

10 A. Or more appropriately the subordination matrix and how the
11 various claims would work from a timing standpoint as money was
12 distributed to the estate.

13 Q. Was an advanced draft of the waterfall with the debtor's
14 view of the waterfall in it, right?

15 A. Yes.

16 Q. Okay. And you'd determined that the information of the
17 waterfall was potentially material nonpublic information?

18 A. Yes.

19 Q. Exhibit 42, do you have that? This has already been
20 admitted into evidence.

21 This is the waterfall that you're referring to that you
22 received; is that right?

23 A. That's a subsequent e-mail and it's a model of that
24 waterfall. The actual waterfall and debtor's view of how
25 claims ranked, I believe was in the disclosure statement that I

1 received previously.

2 Q. Okay. And that's what you received on March 22nd?

3 A. Yes.

4 Q. Okay. And on March -- the attachment to this is EC-43.

5 Oh, excuse me, sorry, one question.

6 I think this is a slightly different e-mail address, but
7 you're a recipient of this e-mail address to you, right,
8 WAMUcreditors@friedfrank.com?

9 A. I believe I am.

10 Q. And EC-43 is the attachment that you got on the 23rd,
11 right?

12 A. Yes.

13 Q. You haven't seen it yet, but I appreciate your candor.
14 That one is, right, that's a copy of the attachment?

15 A. Yes.

16 Q. Okay. And you said the restriction during this period
17 lasted until approximately March -- what was it, until the --

18 A. The disclosure statement was filed.

19 Q. And at the time the claims waterfall was a hot topic
20 amongst the various creditor constituencies?

21 A. Yes, it was.

22 Q. So it was a pretty good bet that the waterfall fell in the
23 category of potentially material nonpublic information?

24 A. More specifically that the debtor's view of how the claims
25 should rank in that waterfall was the material nonpublic

1 information.

2 Q. Okay. And the fifty-two -- the 5.2 billion available for
3 cash and distribution that was the cash that was going to be
4 available, right, that's what Mr. Golden testified to, did you
5 hear him testify to that?

6 A. That was a hypothetical if there were that much cash
7 available, this is how it would flow through the waterfall.

8 Q. Okay. I don't think he testified that was a hypothetical.
9 I think he testified that was the projected cash that the
10 estate was going to have.

11 A. I'm not sure of that.

12 MR. SHER: I'm going to object to the question. It
13 seems to be argument.

14 THE COURT: Yeah, do we care?

15 MR. ARD: I withdraw.

16 Q. And until the waterfall is published, you determined that
17 you couldn't trade because you had potentially material
18 nonpublic information, right?

19 A. Until the disclosure statement was public with the
20 debtor's view of how those various claims would rank in the
21 subordination matrix, yes.

22 Q. Until the -- okay.

23 And it wasn't until the -- if you'd turn to 45 of the
24 deposition. It says -- the question is:

25 "Until the waterfall was published, you determined that

1 you couldn't trade."

2 And your answer was, "We felt that was potentially
3 material nonpublic information."

4 "And that was in March of 2010," is the question.

5 "That was in March 2010."

6 A. Yes.

7 Q. And above that, and the waterfall was in the initial
8 disclosure statement, right?

9 A. The subordination matrix which I'm loosely calling the
10 waterfall here was in the disclosure statement.

11 Q. There's a big binder behind you, 299. Can you turn
12 first --

13 MR. ARD: Oh, sorry, Your Honor.

14 THE COURT: Go ahead.

15 Q. If you'd turn to page -- oh, sorry, on the front page,
16 this is the disclosure statement that was published on March
17 26th, do you see that?

18 A. Yes.

19 Q. Okay. And if you'd turn to page 15. Do you see where it
20 says "estimated percentage recovery"?

21 A. Yes.

22 Q. Do you see how that's blank?

23 A. Yes.

24 Q. If you'd turn to the last page of the entire disclosure
25 statement, Exhibit C.

1 A. Yes.

2 Q. Do you see where it says liquidation analysis to be
3 provided?

4 A. Yes.

5 Q. Okay. So the waterfall wasn't published in the March 26
6 disclosure statement, was it?

7 A. I believe there's an exhibit in this document that lists
8 out the debtor's view of how principal on the senior notes,
9 post-petition on the senior notes, post-petition interest on
10 the senior subs, principal on the senior subs, and so forth
11 ranks in order of priority.

12 Q. Can you turn to Exhibit 300, that's the May 16th, 2010
13 disclosure statement? It's that same binder, excuse me. I
14 believe it is.

15 A. Where is this?

16 Q. Yeah. The second exhibit in that binder is --

17 A. It looks like there's one exhibit in the binder.

18 MR. ARD: Oh, there's two binders.

19 Q. Oh, the second binder's up there. I apologize.

20 THE COURT: 300?

21 MR. ARD: Yeah, 300.

22 Q. The first page of 300, that's the May 16th, 2010
23 disclosure statement.

24 A. Yes.

25 Q. And that's the first amended disclosure statement?

1 A. I believe so, yes.

2 Q. Okay. And you know that the equity committee filed an
3 objection I think the day before, objecting that the waterfall
4 wasn't in the first disclosure statement?

5 A. I don't know.

6 Q. If you'd turn to page -- let's see, 18. Do you see how
7 those percentages are now filled in?

8 A. Yes.

9 Q. And on the following -- 20, 21, 22, all the percentages
10 are filled in?

11 A. Yes.

12 Q. And more important, I guess, can you turn now to Exhibit
13 C?

14 A. Which is where?

15 Q. It's right near the end. This time there's also a new
16 exhibit you'll notice, but C again is right towards the end of
17 the whole thing. It's about, I don't know, seven, eight pages
18 before the end. Exhibit D is the last exhibit, Exhibit C.

19 A. I'm not seeing it.

20 MR. ARD: May I approach the witness, Your Honor, to
21 show him the --

22 THE COURT: You may.

23 Q. Can you find it, Exhibit -- I can show you.

24 (Pause)

25 MR. ARD: Counting from the back, Your Honor, with the

1 double sided pages, it's about five pages from the back, okay?

2 THE COURT: I have it.

3 MR. ARD: Okay.

4 Q. So Exhibit C, this is now liquidation analysis, the same
5 one that was blank before, and you see how it's filled in now?

6 A. Yes.

7 Q. Okay. If you'd turn to the next page, that's the actual
8 waterfall there, right?

9 A. That's a liquidation analysis.

10 Q. Okay. And it's showing which of those unsecured claims --
11 have the unsecured claims being paid out, the senior
12 subordinated notes being paid out, do you see that?

13 A. Well, it shows that one is pursuant to a plan, one is
14 pursuant to liquidation, which I think is the purpose of this
15 schedule. And it broadly groups the claims, but doesn't say
16 anything about how -- it doesn't model out the timing of the,
17 of how the pay out -- how the buckets would fill up within
18 those subgroups.

19 MR. ARD: If you'd put that on the ELMO.

20 Q. Do you see how cash here is listed as 5.2 billion point
21 zero two?

22 A. Yes.

23 Q. And do you notice that on the waterfall you got in March
24 23rd, proceeds developed for distribution is 5.2 billion?

25 A. Yes.

1 Q. Okay. And Mr. Goulding testified that was for cash?

2 A. Okay.

3 Q. And that's the same number within two million of what's
4 represented here?

5 A. Yes.

6 Q. Okay. And reorganized WMI is 140 here. Did you get
7 information about the valuation of reorganized WMI prior to
8 this waterfall?

9 A. I had several discussions on it, and I think I got an e-
10 mail that forwarded some information by Brad Scheler.

11 Q. Okay. If you look at Exhibit D in this plan right here of
12 the next exhibit. Do you see that's a valuation analysis
13 there?

14 A. Yes.

15 Q. And in the middle on D-3, it says that valuation is
16 between approximately 120 to 160?

17 A. I don't see it.

18 Q. Oh, it's --

19 A. First page or second page, I'm sorry?

20 Q. D-3.

21 A. Yes.

22 Q. And if you notice from the prior disclosure statement
23 there was no Exhibit D, right?

24 A. Yes.

25 Q. And you said you got information about the valuation of

1 reorganized WMI in March; is that right?

2 A. Approximately, yeah, end of March.

3 Q. Okay. And the next part is added on is the future income
4 taxes receivable. See that, 2.38 billion?

5 A. Yes.

6 Q. That part was disclosed in the March 16th or March 26th
7 disclosure statement, right?

8 A. I'll take your word for it, I don't remember.

9 Q. Okay. And if you look at the EC-43, you see the GUCs
10 there listed as 400 million?

11 A. I see 375.

12 Q. No, I'm sorry, on EC-43, the one that you were given in
13 March. I can put it up on the screen if you like.

14 A. Yes.

15 Q. See there was a 400 million there.

16 A. Yes.

17 Q. And you see how they're listed as 375 on this one?

18 A. Yes.

19 Q. Okay. You don't have any reason to believe that WMI made
20 public that there'd be 5.2 billion available in cash prior to
21 this first amended disclosure statement, do you?

22 A. I don't recall.

23 Q. And while in possession of this waterfall that you had
24 from March 23rd, that wasn't published in the March 26th
25 disclosure statement, you sold some securities on 3/29 and

1 3/30, 2010; is that right?

2 A. Well, first of all, the model may not have been published,
3 but the matrix, the subordination matrix was in the disclosure
4 statement if I'm not mistaken in the schedule. And the -- my
5 understanding of that exhibit is that was an exercise to model
6 out how that waterfall would work from a timing standpoint.

7 Q. All right. The 5.2 billion in cash, you don't have any
8 reason to believe that was made public you just said, right?

9 A. I don't recall.

10 Q. And you don't have any reason to believe that the 140
11 valuation of Wimrick was made public?

12 A. I don't recall.

13 Q. Okay. So in possession of that information, you sold
14 securities on 3/29 and 3/30, 2010? You can look at your chart.

15 A. Yes.

16 Q. What did you sell on that date?

17 A. Those Series K preferred.

18 Q. Series K preferred stock?

19 A. Stock, yes.

20 Q. Common equity?

21 A. No, it's preferred stock.

22 Q. Okay. Preferred -- is that part of the equity committee's
23 constituency?

24 A. I believe it is, yes.

25 Q. So you sold 800,000 preferred -- Series K stocks to my

1 clients on 3/29 and 3/30, 2010?

2 A. We sold them in the marketplace on that date, and we'd
3 been selling them prior to that date, too.

4 Q. In May 2010, you said that you may have been restricted
5 because the deal had blown apart, and during May you may have
6 had information. I withdraw that question.

7 I thought you said earlier today that you weren't
8 restricted in May except for the period when you got the --
9 when you signed on to the plan and the global settlement
10 agreement?

11 A. Yeah, I may have misspoken. There were times during May
12 where we would've been privy to discussions between the debtor
13 and the FDIC on the reconstituted plan. We were already
14 restricted as a practical matter anyway.

15 Q. As a practical matter?

16 A. Yes. We had signed the agreement, the lock-up agreement
17 with the first global settlement, and we were going to be
18 parties on the second, so we weren't trading from any time
19 during May.

20 Q. When did you sign onto that agreement?

21 A. The signatures were delivered to attorneys shortly after
22 the deal was announced in March. The FDIC never signed -- so
23 our signatures were never delivered.

24 Q. And on May 7th, you met at Weil to discuss the status of
25 the settlement negotiations; is that right?

1 A. Could be.

2 MR. ARD: There's no need to move the disclosure
3 statements into evidence, is there, Your Honor? I mean, I'll
4 move them into evidence.

5 THE COURT: Let's make them part of the record.

6 MR. ARD: Okay.

7 MR. SHER: No objection.

8 THE COURT: All right. They're admitted.

9 (Equity Committee's Exhibit ???, Disclosure Statements, were
10 received into evidence.)

11 BY MR. ARD:

12 Q. The number -- oh. 289, I apologize, the number is a
13 little hard to read on this photocopy. But that's EC-289.
14 That's an e-mail from Brad Scheler to Brian Rosen; is that
15 right, and others?

16 A. Yes.

17 Q. The next page are attendees at the meeting the following
18 day, right?

19 A. Yes.

20 Q. And you're listed on that?

21 A. Yes.

22 Q. Does that refresh your memory as to whether you attended
23 the meeting on May 7th, 2010?

24 A. It doesn't refresh my memory. I don't remember the
25 meeting. But according to this, I did, and as I said it was

1 possible.

2 Q. Do you see on the first page where Mr. Rosen says that
3 "All your attendees will need to be restricted in order to
4 actively participate in the meeting?" Do you see that in the
5 middle? It's at the bottom of your computer screen now.

6 A. Yes, I see it.

7 Q. And do you see how your counsel disagrees with Mr. Rosen's
8 assessment of what the restriction requires?

9 A. Yes.

10 Q. Okay. Do you know if your counsel prevailed in this
11 argument?

12 A. I don't remember.

13 Q. Did you go to this meeting?

14 A. I said I don't remember.

15 Q. I'm going to show you the May timesheets for Weil Gotshal.
16 Those appear to be the --

17 THE COURT: Are these an exhibit, a marked exhibit?

18 MR. ARD: It's not a marked exhibit. I can mark it.
19 What's our number now? EC-310, Your Honor.

20 THE COURT: 310?

21 MR. ARD: Yeah.

22 THE COURT: All right.

23 MR. ARD: Before I move on, Your Honor, I'd like to
24 move EC-289 into evidence, the last one we just discussed.

25 MR. SHER: I have the same objection as previous.

1 THE COURT: And the same result, overruled and
2 admitted.

3 (Equity Committee's Exhibit 289, E-mail from Brad Scheler to
4 Brian Rosen, was hereby received into evidence.)

5 BY MR. ARD:

6 Q. You see here where Mr. Rosen's time is reflecting first
7 meeting with WMI and Alvarez and then a meeting with same and
8 JPMC and creditor's committee, and then meeting with same and
9 Fried Frank group for 1.6 hours? Do you see that?

10 A. I don't see the last one.

11 Q. If you look at -- I'll point with my pen.

12 A. Yes.

13 Q. Okay. Does that refresh your recollection as to whether
14 you had a meeting that day with JPMC, Alvarez & Marsal, and
15 WMI?

16 A. No.

17 Q. And the creditor's committee? Okay.

18 Do you see it below it the time record there for Ms.
19 DiBlasi? Who's that? That's an attorney for Weil?

20 A. I don't know.

21 Q. Okay. You see where it says, "participate in meeting with
22 WGM, WMI, Alvarez & Marsal, creditor's committee, JPMC,
23 Sullivan & Cromwell, and Fried Frank Group re: settlement and
24 plan issues?

25 A. Yes.

1 Q. Okay. Does that refresh your recollection as to whether
2 you had a meeting that day with those parties regarding
3 settlement and plan issues?

4 A. No, it doesn't.

5 Q. Okay.

6 THE COURT: How much longer do you think you'll be?

7 MR. ARD: About twenty minutes, maybe a half hour,
8 something like that.

9 THE COURT: Let's break now, because I have a 1:30
10 conference call, so.

11 MR. ARD: Thank you, Your Honor.

12 THE COURT: The parties want to come back at 2:30?
13 You have another half an hour. Do we have a fourth witness, do
14 we?

15 MR. SHER: We do. I believe there's another witness
16 on this afternoon, I believe for Centerbridge. If he finishes
17 up in a half hour, I think we can be relatively quick.

18 MR. ARD: I will certainly finish within a half hour,
19 Your Honor.

20 THE COURT: Okay. All right. Let's take a break, and
21 you're under cross-examination, so you should not discuss your
22 testimony, Mr. Bolin. Okay. We'll stand in recess.

23 MR. ARD: Thank you, Your Honor.

24 (Recessed at 12:39 p.m.; reconvened at 2:39 p.m.)

25 THE COURT: All right. Where are we?

1 MR. ROSEN: Your Honor, Brian Rosen, Weil Gotshal &
2 Manges, just for a procedural point before we get going, and
3 thank you, Mr. Ard, for allowing me to do this.

4 Your Honor, last week when we started this process, we
5 talked about scheduling and we talked about people's individual
6 schedules, and of course none of that has been -- we haven't
7 been able to keep to the schedules. This thing keeps unfolding
8 and enlarging, Your Honor, but it does raise an issue and I
9 wanted the Court to be aware of it and get the Court's guidance
10 on it.

11 Specifically, Your Honor, as you know, we are still
12 with Mr. Bolin right now, and I know that Mr. Ard has indicated
13 that he thinks perhaps thirty more minutes or so, perhaps a
14 little more, a little less, I don't know, for his cross, and I
15 don't know who else will want to cross Mr. Bolin, and I have no
16 idea how long the redirect is going to be. And that will then
17 take us up to Mr. Melwani.

18 And then when Mr. Melwani is finished, and I have no
19 idea when that will be, whether it'll be today, whether it'll
20 be tomorrow, that gets us to Mr. Kosturos.

21 As I indicated to all the parties last week, Mr.
22 Kosturos must leave at 4:00 p.m. tomorrow. He is the chair of
23 a charitable event taking place in California on Friday, and he
24 must be in attendance, Your Honor. And that is not to say that
25 Mr. Kosturos is going to be on the lamb and not come back, he

1 is perfectly willing to do that, Your Honor, on Monday or
2 Tuesday of next week. And so we wanted everyone to know that,
3 and to see what the Court's preference would be, if the Court
4 were to go late this evening, if the Court -- okay, I saw the
5 head.

6 THE COURT: Oh, gosh.

7 MR. ROSEN: I'll take that into account with the World
8 Series of Poker on television, that was a tell.

9 Your Honor, so checking with the Court's calendar
10 would be for Monday, Tuesday, because I just don't think based
11 upon what I will say the enlargement of what the possible
12 enlargement of the scope of cross-examination for Mr. Kosturos,
13 I just don't think that we're going to finish with him by 4:00
14 p.m. tomorrow. I don't even know if we'll start him by 4:00
15 p.m. tomorrow, based upon the way things are going.

16 THE COURT: What are the other parties' views?
17 Ignoring mine, my preferences.

18 MR. SARGENT: Edgar Sargent on behalf of the equity
19 committee, Your Honor. I think the cross-examination of Mr.
20 Kosturos that I have planned is not going to be more than an
21 hour and a half, probably not more than an hour. So that's the
22 only variable I think this series I can add, but.

23 MR. HODARA: Your Honor, Fred Hodara for the
24 creditor's committee. Your Honor has been very generous of the
25 Court's time. If there's any way to go a little bit later

1 tonight, I think we have a fighting chance of getting Mr.
2 Melwani done and out of the way today, which clears the decks
3 to do Mr. Kosturos tomorrow, and I think gives us a good chance
4 to actually close the record. Because there were also
5 discussions amongst the parties about submissions versus oral
6 argument, those haven't come to conclusion, but they're
7 advanced, and it may be that we can actually close the record
8 tomorrow if we stretch ourselves a bit.

9 MR. COFFEY: Good afternoon, Your Honor. Jeremy
10 Coffey with Brown Rudnick on behalf of the trust preferreds.
11 Following up Mr. Sargent's comments, he and I were actually
12 just speaking before Your Honor took the bench, and I think we
13 can coordinate, we can get our cross-examination of Mr.
14 Kosturos down to maybe forty-five minutes, depending we can
15 discuss what's going to be covered up front, we can cut a lot
16 of what I'm going to cover out of my outline.

17 With respect to the discussions as to written
18 submissions versus oral submissions, Your Honor, we've not been
19 part of any of those discussions. We're happy to be a part,
20 but we've not yet been part. Our strong preference, Your
21 Honor, is to have the opportunity to speak to the Court at the
22 close of the evidence, so we can put a little color on some of
23 these very dry facts, and explain to you how we think the
24 evidence has come in or not come in.

25 THE COURT: All right. Anybody else wish to be heard

1 on that? Any of this?

2 MR. ECKSTEIN: Your Honor, Kenneth Eckstein on behalf
3 of Aurelius. With respect to the schedule, I will defer to
4 others and to the Court, and we'll make ourselves available.

5 In terms of the closings, I think it is important, I'm
6 just going to briefly speak. We are discussing with, you know,
7 various parties, and obviously everybody should participate I
8 imagine, and we understood that the Court had indicated some
9 preference toward written submissions, and we would be prepared
10 to proceed with written submissions. And the one thing that we
11 are discussing with the equity committee is, there was a motion
12 that was filed for the authority to proceed with a complaint,
13 and I think what we're trying to do is coordinate how we deal
14 with that motion and how we deal with closing submissions to
15 avoid duplication, and sort of running at cross purposes.

16 So we may ultimately once a decision is made, I think,
17 Your Honor, the suggestion will be that we try to coordinate
18 how we deal with that motion together with how we deal with the
19 closing submissions.

20 MR. ROSEN: Your Honor, again I heard what Mr. Coffey
21 said, and I appreciate that. I still don't even know when he's
22 going to start, though, and that's part of the problem.

23 With respect to closing submissions, Your Honor, we
24 did hear what the equity committee suggested last week, we
25 heard what the Court's preference was. I did speak at that

1 time and I have gone back and I have spoken with my clients,
2 and the debtors are prepared, Your Honor, to submit this on
3 written submissions post trial briefs. And we believe that
4 it's not as dry as some people might think, and we think the
5 Court will be able to distill it without any additional color.

6 MR. COFFEY: Your Honor, again we've not been involved
7 in any of the discussions. Might I suggest we see how -- where
8 we end up today --

9 THE COURT: Okay.

10 MR. COFFEY: -- and defer any decision on whether we
11 do written or oral submissions until later today?

12 THE COURT: Yeah, we can -- or tomorrow.

13 MR. COFFEY: Or tomorrow.

14 THE COURT: Next week does not look good though, so
15 just for the parties --

16 MR. COFFEY: Your Honor, we're at the Court's leisure.
17 If we have to come back the following week, we'll have to do
18 that.

19 THE COURT: I know everybody's preference. I will try
20 and go late tonight, so we're going to be done with this
21 witness hopefully by 2:30? How long do you think the others
22 are going to be done -- take?

23 MR. OWENS: Your Honor, Richard Owens for
24 Centerbridge. I would expect Mr. Melwani's direct to be
25 between an hour and forty-five and two hours.

1 THE COURT: Okay. Can we finish up by 6:00 tonight?

2 MR. OWENS: Certainly with his direct, Your Honor. I
3 don't know how --

4 THE COURT: Well --

5 MR. OWENS: -- long the cross would be.

6 MR. SARGENT: Your Honor, we have at least an hour,
7 perhaps an hour and a half of cross. I think certainly no more
8 than ninety minutes but --

9 MR. KAPLAN: And, Your Honor, we're going to -- Howard
10 Kaplan, we will likely have some cross for this witness, too.
11 And until Mr. Sargent goes, I can't really estimate, but I
12 would estimate at least a half hour, perhaps forty-five
13 minutes.

14 THE COURT: Well, let's see what we can do today then.
15 Let's go ahead with Bolin and --

16 MR. ARD: Thank you, Your Honor. Seth Ard, Susman and
17 Godfrey on behalf of the equity committee. May I continue?

18 THE COURT: You may.

19 MR. ARD: Thank you, Your Honor.

20 BY MR. ARD:

21 Q. Good afternoon, Mr. Bolin.

22 A. Good afternoon.

23 Q. In May of 2010, you and Mr. Kosturos vetted offers from
24 the FDIC; is that right?

25 A. Yes.

1 MR. ARD: I'm going to put EC-309 on the screen. Can
2 we have the computer, please? Do you have a copy, Your Honor?

3 THE COURT: EC-309?

4 MR. ARD: EC-309, I apologize.

5 THE COURT: No, I don't.

6 MR. ARD: I apologize. We're also not getting the
7 transcription over here I'm being told.

8 THE REPORTER: Is anybody?

9 UNIDENTIFIED SPEAKER: We are.

10 UNIDENTIFIED SPEAKER: We are.

11 UNIDENTIFIED SPEAKER: We are.

12 THE REPORTER: Is everybody else getting it?

13 THE COURT: What's the exhibit number you're looking?
14 309?

15 MR. ARD: 309. I can pass up a copy.

16 THE COURT: Yeah, it's not in the binder, so.

17 (Pause)

18 THE COURT: Sorry, I did have it in this binder. Let
19 me get it.

20 MR. ARD: May I approach, Your Honor?

21 THE COURT: You may.

22 (Pause)

23 THE COURT: Okay. Sorry, I did have those in my
24 binder, so even though the binder wasn't marked.

25 MR. ARD: I apologize, Your Honor, thank you.

1 THE COURT: All right.

2 BY MR. ARD:

3 Q. This is an e-mail from Brian Rosen to Shannon Nagle.

4 Shannon Nagle is your counsel; is that right?

5 A. Yes.

6 Q. Okay. If you look below it references the FDIC proposal

7 that Bill Kosturos, Brad Scheler and you were discussing the

8 day before; is that right?

9 A. That's what it says, yes.

10 Q. Okay. And you were discussing the FDIC proposal the day

11 before that; is that correct?

12 A. I believe we were, yes.

13 MR. ARD: Your Honor, I'd like to move 309 into

14 evidence.

15 THE COURT: All right. Any objection?

16 MR. SHER: No objection, Your Honor.

17 THE COURT: It's admitted.

18 (Equity Committee's Exhibit 309, E-mail from Brian Rosen to

19 Shannon Nagle, was hereby received into evidence.)

20 BY MR. ARD:

21 Q. Turning to EC-308. In May 2010, you and Kosturos were the

22 sources of information about this case for your lawyer; is that

23 right?

24 A. Me and Kosturos?

25 Q. Yeah.

1 A. I -- Kosturos was and my lawyer would've been to the
2 extent that I was on the phone at any time with Kosturos
3 without my lawyer.

4 Q. Okay. Can you -- this is an e-mail from Brad Scheler to
5 Bill Kosturos and other people; is that right?

6 A. Yes.

7 Q. And if you'd turn to the third page of this e-mail, May
8 16th. This is an e-mail from Brad Scheler to Bill Kosturos and
9 you, is that right?

10 A. Yes.

11 Q. And Brad Scheler's reporting that you and Bill had had a
12 conversation I guess -- well recently, it doesn't say when,
13 about the FDIC deal; is that right?

14 A. Could you show me where that is, please?

15 Q. I'm sorry?

16 A. Could you show me where you're referring to?

17 Q. Oh, I'm sorry, "Next, Bill and Jim, on Friday the deal was
18 eighty/twenty on first refund plus twenty-five on VISA. You
19 guys told me the trade was 350 to JPMC."

20 A. Yes.

21 Q. Okay. So you were the source of information about what's
22 going on with the negotiations at least in this respect for
23 your lawyer, right?

24 A. It looks like with respect to whatever conversation it's
25 referring to, yes.

1 Q. Okay. And he's imploring you to tell Don that --
2 something about his lawyers having it wrong; is that right?
3 The last sentence of that same paragraph?

4 A. That's what it says, yes.

5 MR. ARD: Okay. Your Honor, I'd like to move in EC-
6 308 into evidence.

7 MR. SHER: No objection, Your Honor.

8 THE COURT: All right. It's admitted.

9 (Equity Committee's Exhibit 308, E-mail from Brad Scheler to
10 Bill Kosturos and others, was hereby received into evidence.)

11 BY MR. ARD:

12 Q. And in September 2010, you and Mr. Kosturos are continuing
13 to have calls and this time the discussions you had may have
14 caused the debtor to want to do a global amend and restate?

15 THE COURT: Give me the date again.

16 MR. ARD: September 29th, 2010.

17 THE COURT: Okay.

18 THE WITNESS: I don't remember.

19 BY MR. ARD:

20 Q. I'm going to show you EC-285. This is an e-mail from --
21 well, the top e-mail is from Shannon Nagle to yourself,
22 correct?

23 A. Yes.

24 Q. And the e-mail below that is an e-mail from Mr. Rosen to
25 Ms. Nagle, do you see that? And it says in there, "Based on

1 the BBH discussions and the Bill Bolin call, I am holding off.

2 It may be a global amend and restate”?

3 A. Yes.

4 MR. ARD: Your Honor, I'd like to move EC-285 into
5 evidence, please.

6 THE COURT: Any objection?

7 MR. SHER: No objection, Your Honor.

8 THE COURT: Okay.

9 (Equity Committee's Exhibit 285, Collection of e-mails between
10 Bolin, Rosen and Nagle, was hereby received into evidence.)

11 BY MR. ARD:

12 Q. I'd like to bring you back quickly to March 2009. You
13 testified earlier that the debtors, when you signed the
14 confidentiality agreement, had sent you a version of the term
15 sheet that the debtors had prepared, correct?

16 A. Yes.

17 Q. And the subsequent meeting, the WMI noteholders didn't
18 like that term sheet, and so drafted their own term sheet,
19 correct?

20 A. Correct.

21 Q. Okay. I'd like to show you EC-26. Is that the e-mail on
22 March 9th, 2009 where the debtors transmit to you -- or excuse
23 me, where your counsel transmits to you the debtor's term
24 sheet?

25 A. Yes.

1 Q. Okay. And EC-26A, that is the term sheet that you
2 received at that time attached to that e-mail?

3 A. If it was attached to that e-mail, yes.

4 Q. Okay. March 5th, 2009, that would've been the right date
5 for the term sheet, correct?

6 A. I believe so, yeah.

7 Q. Okay. And the Bates numbers if you want to just look go
8 from AMLP 410 to AMLP 411 from the e-mail to -- this starts
9 with AMLP 411 and the e-mail EC-26 is AMLP 410?

10 A. Okay.

11 MR. ARD: Can you put up 26 on the --

12 Q. Okay. You see how that's AMLP 410, the bottom right-hand
13 corner?

14 A. Yes.

15 Q. So this is the term sheet that you received on March 9th,
16 2009; is that correct?

17 A. That's what it looks like, yes.

18 MR. ARD: Okay. Your Honor, I'd like to move into
19 evidence EC-26 and 26A please.

20 MR. SHER: No objection.

21 THE COURT: They're admitted.

22 (Equity Committee's Exhibit Nos. 26 and 26A, E-mail from Fried
23 Frank to Bill Bolin, and term sheet attached, was hereby
24 received into evidence.)

25 Q. If you'd turn to EC-26A, if you turn to the page 4, you'll

1 see that the term sheet on the paragraph it says "separation of
2 certain benefits related property" is dividing up assets
3 between WMI and JPMC. Do you see that?

4 A. Yes.

5 Q. And it's dividing up the Rabbi Trust, BOLI/COLI, CCBI,
6 Split Dollar Policies, between WMI and JPMC.

7 A. Yes.

8 Q. And it's doing that according to the schedules that are
9 attached later on in this exhibit.

10 A. Yes.

11 Q. Okay. And you thought that the settlement position laid
12 out in the term sheet was based on the debtor's assessment of
13 the strengths and weaknesses of these claims?

14 A. I think when everyone sets out a term sheet, I think
15 that's what one is doing, yes.

16 Q. Okay. So you thought that the settlement position laid
17 out in this term sheet was based on the debtor's assessment of
18 the strength or weaknesses of these claims, correct?

19 A. Probably, yeah.

20 Q. Yes?

21 A. Probably, yes.

22 Q. Probably or yes?

23 A. Probably, yes.

24 Q. You testified earlier that you'd given Mr. Kosturos
25 exchange of proposals you had with JPMC in July and August

1 2009, so that he could have that in mind when considering what
2 to do with the next settlement proposals.

3 A. Yes.

4 Q. And you testified also this morning that when Aurelius and
5 Owl Creek joined your group, and signed the confidentiality
6 agreement showing that they were going to be made part of the
7 settlement process, there was a meeting where you made it clear
8 to everybody in that group that you'd engaged in settlement
9 discussions with JPMC over the summer, right?

10 A. I believe that meeting was before Aurelius joined the
11 group, but Owl Creek had joined I think.

12 Q. Okay. I believe it was after the confidentiality
13 agreement was signed?

14 A. Yes. No, the meeting with JPMorgan was after the
15 confidentiality agreement was signed. The meeting on the 27th
16 was before that, the 27th of October.

17 Q. Okay. And at that meeting -- when was it when you told
18 everybody in the group that you'd engaged in some discussions
19 over the summer?

20 A. That would've been the 27th of October.

21 Q. Okay. I just want to show you your testimony from earlier
22 today.

23 MR. ARD: If you'd put it on the ELMO please.

24 Q. The question was, we're talking about Aurelius and Owl
25 Creek joining the group on the top, and the question fourth

1 from the bottom is:

2 "They signed the confidentiality agreement, they did sign
3 the confi, and they participated in the settlement negotiations
4 after November 16th, they were part of the group.

5 "Yes.

6 "And you told them that you'd engaged in settlement
7 discussions with JPMC over the summer, right?

8 "Yes. There was a meeting where we made that clear to
9 everybody."

10 A. Yes.

11 Q. Does that refresh your recollection as to what being with
12 everybody discussed here?

13 A. It was everybody that was at the October 27th meeting.

14 Q. Okay. Not after the November 16th meeting?

15 A. No.

16 Q. And in telling them about the settlement discussions you
17 had, you told them the terms of the deal, at least orally?

18 A. I don't remember how deep we got into it, but we
19 acknowledged that we had been in, had discussions and the
20 discussions had not gone anywhere.

21 Q. Okay. You thought that it was important that Mr. Kosturos
22 know about these discussions in order to engage in the next
23 round of settlement discussions; is that right?

24 A. If he was going to have the direct contact with Don
25 McCree, yes.

1 Q. And that's why you thought it was important to share it
2 with other people in your group; is that right?

3 A. I thought it was important to make other people in the
4 group aware that we had had discussions, yes.

5 Q. Okay. And it would've been important to tell them about
6 what those discussions were?

7 A. I thought -- at that meeting, I thought it was more
8 important to just get out on the table that we had discussed --
9 had had discussions, and I don't remember whether we got into
10 the particulars at that meeting in any detail.

11 Q. Okay. And then later on when you're negotiating with Owl
12 Creek, Aurelius, Centerbridge, the four of you negotiating
13 together for the settlement, it was useful at that point to
14 explain to them what the prior terms of the negotiation had
15 been; am I correct?

16 MR. ECKSTEIN: Your Honor, I need to object to this
17 testimony. I believe --

18 THE COURT: You have to speak into a microphone if
19 you're going to be heard.

20 MR. ECKSTEIN: Your Honor, I'm objecting to counsel's
21 question. He is seeking to mischaracterize testimony the
22 witness --

23 MR. ARD: It's a question, Your Honor.

24 MR. ECKSTEIN: -- gave a moment ago that clarified
25 when he --

1 THE COURT: This is on cross-examination and he said
2 later.

3 MR. ECKSTEIN: Your Honor, I still believe he's
4 mischaracterizing.

5 THE COURT: Well, overrule. He can ask that question.

6 THE WITNESS: I'm sorry. Would you ask the question
7 again?

8 BY MR. ARD:

9 Q. Of course. Later after everybody signed the
10 confidentiality agreement and you're negotiating together to
11 reach a settlement with JPMC, at that point it also would've
12 been useful to tell the people what the prior terms of your
13 discussion were, correct?

14 A. I don't remember whether we went into it or not.
15 Kosturos, Centerbridge, and Appaloosa were having the primary
16 discussions with JPMorgan or more specifically, we had one
17 meeting with JPMorgan, and Kosturos actually had direct contact
18 with JPMorgan, and Appaloosa and Centerbridge had direct
19 contact with Owl Creek. I don't remember whether we discussed
20 with Owl Creek and Aurelius the substance of those term sheets
21 or not.

22 Q. And just to be clear, I'm talking about after the
23 confidentiality was signed by all of you.

24 A. I understand.

25 Q. Is there any reason that you wouldn't have shared with

1 them the terms of negotiation when you're under a
2 confidentiality agreement?

3 A. I don't believe so.

4 Q. Okay. Now there was a -- you testified -- well, you
5 testified that you don't remember whether you saw the December
6 term sheet that was sent from the -- from WMI to JPMC in
7 December 2009; is that right?

8 A. I don't believe. I don't recall seeing it. The last term
9 sheet I recall seeing was November 30th.

10 MR. ARD: Can I have EC-305, please. Oh, could we
11 have the computer, please?

12 Q. This e-mail was sent December 8th, 2009, do you see that?

13 A. Yes.

14 Q. And the next page, it's sent from Chad Smith at WMI to Don
15 McCree, do you see that?

16 A. Yes.

17 Q. Don McCree at JPMorgan.

18 A. Yes.

19 Q. And the next page it's attaching a term sheet, do you see
20 that?

21 A. Yes.

22 Q. Okay. Now, leaving aside whether you saw this actual term
23 sheet, did you learn the terms of this term sheet at that time?

24 A. I don't believe I -- I don't remember.

25 Q. I asked you earlier whether you remembered having a 1.5

1 hour, 1.4 hour conversation with Mr. Rosen on -- around that
2 time, and you didn't remember; is that right?

3 A. Yes.

4 Q. Okay. I want to show you EC-230. It'll probably be
5 easier for me to put this on the ELMO because -- well, first
6 looking at EC-230, this is the time records for Weil in
7 December of 2009. Did you get a chance to glimpse that?

8 MR. ARD: Can I have the ELMO, please? EC-230 is the
9 time records for Weil in December 2009.

10 Q. And the pages aren't numbered, so I'm just going to turn
11 to a page. Do you see there on the bottom 12/8/09, Mr. Rosen's
12 reporting that he had a 1.4 hour call with you and Mr. Tepper.

13 A. Yes.

14 Q. Does that refresh your recollection as to whether you had
15 a call that day?

16 A. No, it does not. I don't remember the call.

17 Q. Okay. You also testified on direct about a meeting at WGM
18 in February 2010 with representatives of WMI and JPMC, do you
19 recall that?

20 A. Yes.

21 Q. You testified about that on both direct and during cross.

22 A. Yes.

23 Q. Who was at that meeting?

24 A. I was at the meeting, Fried Frank was there, Centerbridge
25 and Owl Creek, and I believe Aurelius as well.

1 Q. Okay.

2 THE COURT: What was the date of the meeting?

3 MR. ARD: February 25th, 2009.

4 UNIDENTIFIED SPEAKER: 2010.

5 MR. ARD: Excuse me, 2010, Your Honor, I apologize.

6 BY MR. ARD:

7 Q. You ran a waterfall model when you were in negotiations;
8 is that right?

9 A. Yes, I did.

10 Q. The waterfall model was used to keep track of all the
11 settlement ideas that were floating around?

12 A. Yes.

13 Q. In your waterfall model, you tracked the assets that you
14 thought the estate -- excuse me. In your waterfall model, you
15 tracked all the assets that you thought the estate had?

16 A. Yes.

17 Q. This included the deposits, VISA shares, BOLI/COLI
18 policies, short term cash equivalents held by WMI, intercompany
19 note, and run-off value of Wimrick?

20 A. Yes.

21 Q. I want to show you EC-44. Is this an example of one of
22 the waterfalls you ran?

23 A. Yes.

24 Q. Okay. Do you notice there's a lot of black on this page?

25 A. Yes, I do.

1 Q. Do you see in the upper left-hand corner where it says
2 sources?

3 A. Yes.

4 Q. Okay. And the whole page is blank, right?

5 A. Almost.

6 Q. Almost. Can you turn to EC-45, please? Can you just flip
7 through that document very quickly about a second per page?
8 Okay. I think we get the idea.

9 This document, too, is almost fully redacted.

10 A. Yes.

11 Q. It's about, I don't know, thirteen pages long. It goes
12 from AMLP 14989 to AMLP 15001.

13 A. Yes.

14 Q. Okay. And it's also --

15 MR. ARD: I apologize, Your Honor? Oh, I thought I
16 heard something.

17 Q. If you look at AMLP 14990, the second page, the columns
18 here are sources, notional value, proceeds, allowed claim.

19 A. Yes.

20 Q. And these are tracking how much recovery each of the
21 classes would get under different scenarios, correct?

22 A. On the allowed claims, yes.

23 Q. Okay. You also might have included in your waterfall,
24 ideas held by Owl Creek, Centerbridge, Aurelius and share the
25 results with them?

1 A. I don't know if I shared the results or not.

2 Q. But you may have?

3 A. I may have.

4 Q. In the waterfalls you prepared, one of the key items was
5 just plugging in the tax refunds, right?

6 A. Yes. And excuse me, the splits on the tax refunds.

7 Q. Yes. And you maintained the waterfall to keep track of
8 the different proposals people were making.

9 A. Yes.

10 Q. And you had to run that through the waterfall to see what
11 kind of impact it had on the various layers of the capital
12 structure, correct?

13 A. Yes.

14 Q. Okay. You discussed infusing your own capital into
15 Wimrick with Centerbridge?

16 A. Yes, we did.

17 Q. And you thought that one way of harvesting the NOL was to
18 infuse capital pro rata with ownership, so that the ownership
19 level was the same, and use that capital for WMI to acquire
20 other businesses or to use it as capital for new policies under
21 the existing licenses; is that correct?

22 A. Yes, I did.

23 Q. The previous plan, one of the previous plans, I guess the
24 one that was up last fall, we had a confirmation hearing about
25 it last fall, called for releases of claims against you?

1 A. Yes.

2 Q. And the basis for that release was because you had helped
3 negotiate the settlement?

4 A. We were signatories to the global settlement agreement.

5 Q. It was just your signature on the page or was it because
6 you helped negotiate the settlement?

7 A. It was because we were signatures and we were involved in
8 discussing the settlement, and we agreed to lock up our bonds,
9 most importantly.

10 Q. But you weren't getting the releases for locking up your
11 bonds, were you?

12 A. We were getting the releases for participating in the
13 global settlement, and the key rationale for us to participate
14 as signatories in the global settlement was to lock up our
15 bonds and lock up our votes, which would give JPMorgan comfort.

16 Q. You don't think that the WMB bondholders have a claim to
17 estate assets, right?

18 A. Correct.

19 Q. You think their position has no merit, correct?

20 A. Correct.

21 Q. You strenuously objected to both the debtors and the FDIC
22 to their obtaining a recovery, correct?

23 A. Excuse me, I objected to whom?

24 Q. I apologize. You strenuously objected to both the debtor
25 and the FDIC to their obtaining a recovery, correct?

1 A. I strenuously objected to the debtor that the WMB
2 bondholders would be getting a recovery. I don't recall
3 discussing it with the FDIC.

4 Q. Okay. And yet you never tried to negotiate for a
5 settlement that you would give the money that went to the WMB
6 bondholders to equity, correct?

7 A. I tried to negotiate a settlement that excluded the WMB
8 bondholders and put the money in the estate and let it fall
9 down the waterfall.

10 Q. Okay. When you were discussing settlement with JPMorgan
11 Chase and others, you didn't ask JPM to pay only your claims,
12 right?

13 A. Excuse me?

14 Q. You weren't asking JPMorgan to pay only Appaloosa's
15 claims, right?

16 A. No.

17 Q. On the term sheets you said. You were asking them to pay
18 a return to the debtor's estate, right?

19 A. Correct.

20 Q. And you understood those assets would form the basis for
21 distributions to the stakeholders of the debtor's estate,
22 right?

23 A. Yes.

24 Q. And these distributions would be made available to the
25 creditors other than Appaloosa, correct?

1 A. Right. Let me just correct one thing. I don't believe
2 JPMorgan was paying over. I think it was JPMorgan was agreeing
3 to how the tax asset would be divided between the estate,
4 JPMorgan and whoever parties were, you know, on the table at
5 the time.

6 Q. All right. But when you were negotiating with either
7 JPMC, FDIC, the debtors, anybody else, you were never trying to
8 negotiate so that your claims alone, Appaloosa's claims alone
9 would be paid, correct?

10 A. No.

11 Q. Okay. Correct?

12 A. Correct.

13 Q. And during all the negotiations you participated in, you
14 never tried to place any value on the litigation claims that
15 WMI had against JPMorgan, correct?

16 A. Correct.

17 Q. And you had no analyst running numbers on WMI during the
18 course of this bankruptcy, correct?

19 A. Correct.

20 Q. You had no employees at Appaloosa helping you make
21 investment decisions in WAMU post petition besides you and
22 David Tepper?

23 A. Correct.

24 MR. ARD: May I have one minute, Your Honor?

25 THE COURT: Yes.

1 MR. ARD: I believe I neglected to admit EC-44 and 45,
2 which were the redacted waterfall records.

3 MR. SHER: No objection, Your Honor.

4 THE COURT: They're admitted.

5 (Equity Committee's Exhibits 44 and 45, Redacted Waterfall
6 records, were hereby received into evidence.)

7 MR. ARD: And I also believe I neglected to admit EC-
8 35, which was -- I'll just put it up on the ELMO. An e-mail
9 from Bill Kosturos to Brian Rosen in 28 2009 that attaches an
10 e-mail from Mr. Bolin to Mr. Kosturos, I'd like to move to
11 admit that, too.

12 MR. SHER: No objection, Your Honor.

13 THE COURT: It's admitted.

14 (Equity Committee Exhibit 35, E-mails between Bill Kosturos,
15 Brian Rosen and Mr. Bolin, was hereby received into evidence.)

16 MR. ARD: No further questions, Your Honor.

17 THE COURT: Anybody else?

18 Redirect?

19 MR. BERG: Thank you, Your Honor. James Berg, pro se
20 shareholder.

21 CROSS-EXAMINATION

22 BY MR. BERG:

23 Q. Mr. Bolin, in your earlier testimony you stated that
24 Appaloosa owned all classes of WMI securities except commons,
25 correct?

1 A. Correct.

2 Q. These included Series I, correct?

3 A. I'm not sure off the top of my head.

4 Q. Do you know about Series L?

5 A. This far from the filing, I don't refer to the securities
6 as Series, other than the Series K, which I know specifically.
7 I don't refer to Series I, Series L, so if you'll help me and
8 tell me whether those were straight preferred or if they were
9 trust preferred.

10 Q. Series I, L, M and N and K are the repreferred?

11 A. Repreferred, and I believe we owned all.

12 Q. You owned all of them?

13 A. I believe so, yes.

14 Q. Yes. You've stated that you owned Series K?

15 A. Yes. Which was not repreferred, that was separate
16 preferred.

17 Q. What about Series R?

18 A. If memory serves, I believe R was a privately placed
19 preferred stock, and we did not -- I don't believe we owned
20 that.

21 Q. And the peers?

22 A. We did on the peers, yes.

23 Q. Is it your testimony that Appaloosa never owned or ever
24 believed they owned any interest in Series R preferred?

25 A. I can't stand here and tell you today that we never owned

1 or didn't -- I don't believe we did. I believe the Series R
2 was privately placed, and I don't think it was made available
3 to the public. I don't believe we owned it.

4 Q. Are you aware of the trading restrictions that this Court
5 has placed on the ownership of Washington Mutual Incorporated
6 securities?

7 A. Yes.

8 Q. Were those restrictions intended to protect the NOLs?

9 A. Yes.

10 Q. One of the penalties for violation of these restrictions
11 is the transfers of stock, and violations shall be null and
12 avoid ab initio as an act in violation of the automatic stay.
13 Was your firm ever in violation of any of these restrictions?

14 A. I don't believe we were. We had a disagreement on the
15 interpretation of those terms with the debtor, rather than
16 argue about it, we agreed with the debtor that we would dispose
17 of those shares and donate the profits to charity.

18 Q. Were those shares Series R preferred?

19 A. I don't believe they were. They were the GPS preferred.

20 MR. BERG: Thank you, Mr. Bolin, no further questions.

21 THE COURT: All right. Redirect?

22 MR. SHER: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. SHER:

25 Q. How you doing, Mr. Bolin?

1 A. Great.

2 Q. I'd like to first turn back to Exhibit 299, which is the
3 disclosure statement and plan filed March 26th of 2010. Pull
4 that out.

5 If you'd turn to Exhibit H, which is at page H-1.

6 MR. SHER: I'm going to give the Court a minute.

7 THE COURT: I have it.

8 MR. SHER: You have it?

9 THE COURT: Yes.

10 Q. Mr. Ard asked you about this page and said, take a look at
11 Exhibit H, it's all blank, right, remember he showed you that?

12 A. Do I have the right document?

13 MR. SHER: Your Honor, may I approach the witness?

14 THE COURT: Yes.

15 Q. Document 299 --

16 A. EC-299, Volume 2?

17 Q. -- Exhibit H-1, page H-1

18 MR. SHER: It's different. I don't know why that's
19 not in here. It's Exhibit 299. H-1. Does the Court have the
20 page, the blank page that shows -- on page H-1, Exhibit H,
21 waterfall recovery matrix?

22 THE COURT: No, it's not Exhibit H. Exhibit H I have
23 is the stipulation of dismissal of WMI action.

24 MR. ROSEN: Your Honor, I believe you're looking at
25 Exhibit H to the global settlement agreement instead of Exhibit

1 H to the plan, which is an attached exhibit also to the
2 disclosure statement.

3 THE COURT: Well, which is -- what exhibit is the
4 plan?

5 MR. ROSEN: Exhibit A to the disclosure statement is
6 the plan itself.

7 THE COURT: And what is Exhibit H to the plan?

8 MR. ROSEN: Exhibit H to the plan is entitled
9 waterfall recovery --

10 THE COURT: Okay. I do have it.

11 MR. ROSEN: -- matrix.

12 THE COURT: Yeah, and it's blank.

13 BY MR. SHER:

14 Q. And it's blank. Do you recall Mr. Ard --

15 MR. SHER: Thank you, Mr. Rosen. A lot of pages here,
16 sorry.

17 Q. Mr. Ard asked you about the blank page and pointed out
18 that there was nothing under where it said waterfall recovery
19 matrix, right? Remember that?

20 A. I remember --

21 THE REPORTER: I'm sorry.

22 THE COURT: You've got to talk into the microphone,
23 please.

24 MR. SHER: I don't think the mic is working, is it?

25 THE COURT: Well, push the green button. Is there a

1 green light showing?

2 THE WITNESS: Oh, the binder was on it, sorry.

3 THE COURT: That's okay.

4 THE WITNESS: I remember there was several different
5 exhibits, and I think there was an Exhibit C.

6 BY MR. SHER:

7 Q. Yeah. Well, the point Mr. Ard was making was that on
8 March 26th it appeared like the waterfall matrix wasn't filed
9 with the plan and disclosure statement, right?

10 A. Yes.

11 Q. And when you said you believed, I recall your testimony,
12 you said you believed that, in fact, it was filed on March
13 26th, right?

14 A. Yes.

15 Q. Can you turn the page one page? Do you see the chart
16 that's listed here that's called waterfall recovery matrix as
17 of 3/17/10?

18 A. Yes.

19 Q. That was filed with the March 26th plan and disclosure
20 statement?

21 A. Yes.

22 Q. Is that what you were referring to when you said in
23 response to Mr. Ard's questions, that I think actually the
24 waterfall was disclosed on March 26th?

25 A. Yes, it was.

1 Q. And even then when you said that, Mr. Ard didn't say,
2 okay, turn the page, there it is, right? He just --

3 A. Correct.

4 Q. -- asked his questions.

5 Now, the other -- another thing I would like to ask you
6 about in this disclosure statement --

7 MR. ARD: I'm not sure it's appropriate to object, but
8 I never showed him Exhibit H. I'll do it on redirect, that's
9 fine.

10 THE COURT: All right. Thank you.

11 MR. SHER: That will be recross.

12 BY MR. SHER:

13 Q. The -- if you also now turn to -- whatever exhibit it was,
14 whatever exhibit comes back and shows you later, the point is
15 that the waterfall was disclosed on March 26th, right?

16 A. Yes.

17 Q. If you flip back a few pages, you'll see Exhibits A, B, C,
18 D, E. Do you have those?

19 THE COURT: To the plan?

20 MR. SHER: Yeah. Just a few pages back from where we
21 just were.

22 Q. And they talk about the various kinds of claims?

23 A. Yes.

24 Q. What do these disclosures tell you?

25 A. That tells you the principal amount of the claim and the

1 prepetition interest and the post-petition interest.

2 Q. By looking at this, I mean, do you have a recollection by
3 looking at these what the total amount of funded debt that the
4 debtor disclosed was roughly?

5 A. Through the peers layer, it was somewhere in excess of
6 seven billion dollars.

7 Q. I'm sorry?

8 A. Somewhere in excess of seven billion dollars, I believe.

9 Q. And so somewhere -- just literally a couple of pages back
10 from where we were, A through E.

11 So by looking at this disclosure, it has the amounts of
12 the principal and the estimated post-petition interest for each
13 of the types of securities in the capital structure, and adding
14 that up, you get to a little in excess of seven billion, right?

15 A. Yes.

16 Q. If you take a look back at -- back to the very beginning
17 into the disclosure statement, so the plan was an exhibit to
18 the disclosure statement, so the beginning, page 27 of the 299,
19 -- stay with 299.

20 A. Okay.

21 THE COURT: Page 27 of the disclosure statement?

22 MR. SHER: Correct. Now we're back to the disclosure
23 statement.

24 THE WITNESS: Yes.

25 Q. Okay. Do you see --

1 MR. SHER: I'm going to give the Court a second here.

2 THE COURT: I've got it.

3 Q. Okay. You see at the top there, there's something called
4 6A Series K preferred stock?

5 A. Yes, I do.

6 Q. Okay. Do you see the sentence in there that says, "The
7 Series K preferred stock ranks senior to common shares, both as
8 the dividend and liquidation preferences in parity to all
9 series of preferred stock and junior to all senior and
10 subordinated indebtedness of WMI." Do you see that?

11 A. Yes, I do.

12 Q. What's that tell you about where the Series K ranks in
13 capital structure?

14 A. Behind more than seven billion dollars of debt in the
15 capital structure.

16 Q. Now, if you flip back one more page of this document,
17 which is page 1 of the disclosure statement. Going back to
18 page 1 of the disclosure.

19 If you take a look at the second paragraph of the
20 disclosure statement, you see a line that talks about the plan
21 and the proposed global settlement agreement, a copy of which
22 is attached to the plan and described fully below, contemplate
23 that funds in excess of approximately seven billion will be
24 available for distribution to the debtor's creditors on account
25 of their claims. Do you see that?

1 A. I see that.

2 Q. Okay. Putting together all that information that's in the
3 disclosures that were done on March 26th, what can you tell
4 about the Series K at that point?

5 A. They're out of the money.

6 Q. Can you also figure out the value of Wimrick at this point
7 going -- including information that'd previously been
8 disclosed, the monthly operating reports, et cetera?

9 A. The debtors valuation of Wimrick would've been in the
10 seven billion dollars. You have the monthly operating reports,
11 which show the cash deposits, the short-term investments, other
12 assets, which values of which are on the operating report, so
13 you could back into an approximation, I believe.

14 Q. And again, the one thing that we know for sure is back on
15 -- is on March 26th, that that waterfall you actually thought
16 was disclosed was, in fact, disclosed?

17 A. Yes.

18 Q. Thank you.

19 Another question that you were asked was about Mr.
20 Goulding's testimony. I'm going to use the ELMO. This is from
21 Mr. Goulding's testimony earlier in these proceedings. Do you
22 recall you were asked about 5.2 billion and Mr. Ard said to you
23 that Mr. Goulding said that this was not an illustration, that
24 these were actual numbers?

25 A. Yes.

1 Q. I'm showing you from page 57, and you said you thought
2 that it was just an illustration.

3 A. It was a hypothetical.

4 Q. Right. If you look at page 57 from the transcript of
5 these proceedings, this is from July 14. It says -- this is
6 page 57, line 17:

7 "Q. Can you explain in a little bit more detail why you
8 end up with a 5.2 billion proceeds number instead of the seven
9 billion number that we see on the other waterfall?

10 "A. I was using it as an illustration of what happens
11 within that range, but it was just an illustration of the
12 recovery at that level."

13 Do you see that?

14 A. Yes, I do.

15 Q. So, in fact, your recollection was right, this was just an
16 illustration.

17 A. Yes, it was.

18 Q. And any statement to the contrary was just incorrect about
19 Mr. Goulding --

20 THE COURT: Can you save that for --

21 MR. SHER: Sure.

22 THE COURT: -- argument.

23 Q. Just a couple of more questions.

24 The first six or seven exhibits Mr. Ard showed you relate
25 -- and I'll give you the exhibit numbers. It was EC-41, EC-

1 275, EC-276, EC-277, EC-279, EC-280, and 281 all relate, all
2 are dated during the period February and March of 2010. Do you
3 recall being questioned about that period --

4 A. Yes.

5 Q. -- with those documents?

6 A. Yes.

7 Q. Just to make it clear, was Appaloosa doing any trading in
8 WMI securities during that period?

9 A. No.

10 Q. What was the situation in February and early March of 2010
11 with respect to Appaloosa's trading?

12 A. We voluntarily refrained from trading. We didn't feel
13 that we had material nonpublic information because we didn't
14 know the specifics of whatever proposals were being bandied
15 about. We did, based on our meetings and contacts, get a sense
16 that whatever talks were happening, were appearing to coalesce,
17 and for that reason, we elected not to trade.

18 Q. Thank you.

19 You also were asked a bit about the late 2008 and very
20 early 2009 period. Do you recall the --

21 A. Yes.

22 Q. -- question about that?

23 Did you ever receive any material nonpublic information
24 about WMI during this period?

25 A. No.

1 Q. And in particular, you were asked about in January of
2 2009, Exhibits 27 and 28, which were -- which was the White &
3 Case proposal.

4 A. Yes.

5 Q. Did you consider that to be material?

6 A. No, I did not. That was a trial balloon by the WMI Group
7 and the group's counsel had asked me if I objected to them,
8 sending as I testified, it was two parties on the same side of
9 the table, it was a pretty significant ask that was in that
10 term sheet. I think at deposition I stated it was White & Case
11 saying, I'd like to have cake, you'd like to have ice cream, so
12 let's ask for both.

13 Q. Thank you.

14 You were asked on cross about a trade that Appaloosa made
15 in May of 2009, do you remember that?

16 A. Yes.

17 Q. Would you pull out the trading records, please? And I
18 think you were asked in particular about a purchase on May
19 12th, do you remember that, May 12, 2009?

20 A. Yes.

21 Q. Did Appaloosa have any material nonpublic information at
22 that point?

23 A. No.

24 Q. Had all material nonpublic information been cleansed by
25 the debtor at that point?

1 A. And confirmed by the debtor.

2 Q. And the other -- was that the only trade that Appaloosa
3 made around that time?

4 A. No, we made two subsequent trades before our restriction.

5 Q. Were those buys also?

6 A. Those were sales.

7 Q. Okay. So you made a purchase on May 12th, and a sale on
8 May 20th?

9 A. Yes.

10 Q. And can you just explain what the -- if you can recall,
11 what the reason for those was?

12 A. We had just come off of --

13 MR. ARD: Your Honor, excuse me. I would like to
14 object for the same reasons stated and ruled by you yesterday
15 that we were precluded from getting discovery, document
16 discovery from them, e-mail back and forth about the reasons
17 why they may have engaged in trades, so it's improper for him
18 to testify about it now during trial.

19 MR. SHER: Your Honor, I think the reason that that
20 ruling was made with respect to earlier testimony, was that the
21 witness had said he was not involved in making the decision, he
22 did not make the decision relating to trading, Mr. Bolin has
23 said the opposite.

24 THE COURT: Well, this is not what I ruled yesterday,
25 but I ruled in discovery that e-mails regarding the reasons for

1 the trades was not discoverable, and you didn't produce them,
2 correct?

3 MR. SHER: Internal --

4 THE COURT: The internal communications.

5 MR. SHER: Internal communications, that's right.

6 THE COURT: So I don't think he should be able to
7 testify to it, if you didn't produce documents relating to it.

8 MR. SHER: Okay. Thank you, Your Honor.

9 BY MR. SHER:

10 Q. But again, at this point, you made a buy, you made a sale,
11 you didn't have any material nonpublic information?

12 A. Correct.

13 Q. And you were also asked a bit about the summer, the July
14 and August of 2009 period, and you were shown some documents
15 back and forth relating to your and Centerbridge's proposal to
16 JPMorgan, do you recall that?

17 A. Yes.

18 Q. Again, was Appaloosa trading in WMI securities during that
19 period?

20 A. We were not.

21 Q. And that was one of the voluntary restricted periods?

22 A. Yes.

23 Q. You were also shown on EC-13 and 14, if you could pull
24 those out, actually 14 is the one I'd like to focus you on.

25 A. I don't think I have a 14. I have EC-11, 12 and then it

1 skips to 16.

2 Q. They probably don't believe in the exhibit binder.

3 MR. SHER: Your Honor, can I approach?

4 THE COURT: Yes.

5 Q. This was the exhibit where Mr. Ard showed you boxes on
6 page two that had the word agreed in them?

7 A. Yes.

8 Q. Was there any agreement reached in connection with this
9 term sheet?

10 A. No, there was not, and those agreed statements were
11 conditioned on agreeing to the -- to all items in the term
12 sheet, including the agreement on the tax splits --

13 Q. And how does --

14 A. -- which we did not agree on.

15 Q. And how -- I'm sorry.

16 THE COURT: You've got let him finish the answer.

17 MR. SHER: I apologize.

18 THE WITNESS: I said which we did not agree on.

19 BY MR. SHER:

20 Q. And how do the boxes that Mr. Ard referred to, the
21 goodwill litigation and the Rabbi Trust, et cetera compare to
22 the items you just referred to that were in dispute?

23 A. They are rounding errors.

24 Q. What do you mean by that?

25 A. These are items that are anywhere from fifty to a hundred,

1 150 million dollars and there's billions of dollars at stake in
2 the tax refund.

3 Q. And in addition to that, what happened after that on
4 September 2nd?

5 A. Mr. McCree withdrew this proposal.

6 Q. So is there any agreement as of September 2?

7 A. Absolutely not.

8 Q. I'd like you to turn to EC-118, please.

9 THE COURT: What's the number again?

10 MR. SHER: 118.

11 THE WITNESS: Again I skip from -- this binder skips
12 from 104 to 122.

13 Q. Okay. Hang on a second, I'll find it.

14 THE COURT: Does somebody want to give him a full
15 binder?

16 MR. SHER: Yeah, these were not our exhibits, I'm
17 using the --

18 THE COURT: Anybody, I don't care.

19 THE WITNESS: Is that what I have on the floor here?
20 I'm losing track of binders.

21 BY MR. SHER:

22 Q. Right. Yeah. I bet it's right down there, yeah.

23 This relates to the November period where there was an
24 attempt to negotiate at a seventy/thirty split, do you recall
25 that?

1 A. Yes.

2 Q. And one of the things you said is that at the time might
3 have been material.

4 A. Yes.

5 Q. What happens on November 30 at that point?

6 A. Mr. McCree delivers a proposal to Mr. Kosturos, who
7 forwards it on to -- as Mr. Kosturos had reset the bookends, it
8 wasn't anything about a seventy/thirty split at that point. It
9 was -- completely changed the terms. It was JPMorgan keeping
10 what was perceived as the riskless tax refund, and giving the
11 risky tax fund (sic) that they had tenuous entitlement to,
12 given what -- that they were carved out of the TARP, out of the
13 legislation as a TARP recipient, giving that to the
14 bondholders.

15 Q. So was any of this material at that point?

16 A. I don't believe it was because he changed the deal.

17 Q. And by the way, you were under a confidentiality agreement
18 anyway during this whole period, right?

19 A. Yes.

20 Q. Were you doing any trading?

21 A. No.

22 Q. You were asked a little bit about the May of 2010 period.
23 Do you recall that just in this latest bit of cross-
24 examination? In other words, you were shown some discussions
25 where Brad Scheler was involved and Bill Kosturos and others.

1 Was Appaloosa doing any trading during that period?

2 A. We were not.

3 Q. What was going on in May of 2010, what were you trying to
4 do?

5 A. The FDIC had, to put it politely, withdrawn from the deal
6 that was read into the record on March 12th, wanted more money.
7 JPMorgan wanted our -- all parties wanted to try and find an
8 agreement. JPMorgan still, my understanding, wanted us as
9 signatories on the global settlement agreement as did the
10 debtor. So they were -- Mr. Kosturos was trying to enlist our
11 support for a new and recut deal.

12 Q. Were you trying to get a deal done at that point?

13 A. Yes.

14 Q. Okay. You were asked a couple of questions about a
15 February 9 e-mail with a term sheet, do you recall that?

16 A. Yes.

17 Q. Now, Mr. Ard referred to that as a plan I think a couple
18 of times, was that a plan or a term sheet?

19 A. It was a term sheet for a plan.

20 Q. Okay. Did that, to your knowledge --

21 MR. SHER: Do we have the exhibit number on that?
22 I'll pull that up and put it on the record.

23 Q. But to your knowledge, did that ever get any traction with
24 the debtors when that was transmitted to the debtors?

25 A. I'm not aware of any response.

1 Q. Okay. As far as you know it died at that point?

2 A. As far as I know, yes.

3 Q. Last question, is Appaloosa getting a release under the
4 current plan?

5 A. No.

6 MR. SHER: Thank you, Mr. Bolin.

7 THE COURT: All right. Any recross?

8 MR. ARD: Yes, briefly, Your Honor.

9 RECCROSS-EXAMINATION

10 BY MR. ARD:

11 Q. First, Mr. Bolin, your lawyer was suggesting that I'd show
12 you Exhibit H during direct but -- I mean, during cross, and as
13 you tried to correct him, I think that wasn't right, I was
14 showing you Exhibit C; is that right?

15 A. I believe that's correct, yes. And the response was the
16 same.

17 Q. Right. And Exhibit C is the exhibit that actually has the
18 money flowing down to the different classes, correct?

19 A. In summary form, yes.

20 Q. Yes. It shows -- this is a version of Exhibit C in the
21 May 16th disclosure statement that actually has -- that's
22 actually filled in, right?

23 A. Yes.

24 Q. Okay. Your -- the Exhibit H that your attorney showed you
25 didn't have any numbers on it, right, for money flowing to the

1 classes, right?

2 A. The exhibit just had the priorities of the claims and the
3 numbers -- the claim numbers were known in the marketplace.

4 Q. And the allowed claims that he was showing you in Exhibit
5 A, those are just the face amount of the claims and the face
6 amount of the post-petition interest, that's not showing
7 actually how much money is flowing through each of those
8 classes, right?

9 A. That's showing the computed principal amount and the
10 prepetition and post petition.

11 Q. It's not showing the actual amount that's flowing to those
12 classes?

13 A. No.

14 Q. All right. And he then pointed you to the fact that on
15 page 1 of the disclosure statement, it says that the plan
16 contemplates that funds in excess of approximately seven
17 billion dollars will be available for distribution, do you
18 recall that?

19 A. Yes.

20 Q. When it's actually filled in, do you see what the net
21 proceeds are, 7.711 billion?

22 A. Yes.

23 Q. That's a little more than approximately seven billion,
24 right?

25 A. Yes.

1 Q. Okay. Thank you.

2 He then showed you Mr. Goulding's testimony -- excuse me.
3 Highlighting this answer that Mr. Goulding gave, what wasn't
4 shown to you was the next page where in answer to the next
5 question, Mr. Goulding said,

6 "No, I think it was used as -- it may have been used as an
7 approximation for cash at the effective date."

8 Do you see that part of the testimony by Mr. Goulding?

9 A. Yes.

10 Q. And you recall that the 5.2 billion shown on this page is
11 two million dollars off from the value in the waterfall that
12 you were shown on March 23rd?

13 A. Yes.

14 Q. Okay. And finally, you testified that the January 22nd,
15 2009 exchange was an exchange where the creditors were agreeing
16 to, I think your phrase was, have cake and eat it too is how
17 you put it?

18 A. No. It was, they'll have cake -- they like cake, I like
19 ice cream, so let's ask for both.

20 Q. I gotcha. Okay.

21 Can I turn you to -- I'll go to page 7 of that term sheet.

22 MR. ARD: This is from, Your Honor, Exhibit EC-107
23 already in evidence.

24 Q. Do you see where it's saying "claims in respect of
25 subordinated notes shall be allowed as an unequal to the

1 outstanding principal," so on and so forth, do you see that?

2 A. Yes.

3 Q. And then if you turn to page 8, it talks about the amount
4 -- the allowed amount of the claim respective junior
5 subordinated note, shows the pro rata share, do you see that?

6 A. Yes.

7 Q. And at the bottom on G, it says, "interest in WMI shall be
8 canceled and holders of such interest shall receive no
9 distribution under the plan." Do you see that?

10 A. Yes.

11 Q. So under this plan, equity is not getting any money under
12 this plan, right?

13 A. Yes.

14 Q. So when you guys are asking for your cake and eating it,
15 too, you weren't trying to give any cake to equity, right?

16 A. There was nothing given to equity.

17 MR. ARD: Okay. Thank you. No further questions.

18 MR. DUKE: Your Honor, William Duke, shareholder, pro
19 se.

20 Just a moment ago or approximately 16:40 hours on
21 redirect, there was a question regarding tax refunds, tenuous
22 agreements due to TARP. May I ask two questions regarding
23 that?

24 THE COURT: You may.

25 CROSS-EXAMINATION

1 BY MR. DUKE:

2 Q. Sir, to your knowledge, did Appaloosa or the debtors ever
3 attempt to obtain a private letter ruling from the IRS
4 regarding this issue?

5 A. I'm not aware of it.

6 Q. And why not? Do you know why that was never attempted?

7 A. Well, it wasn't -- I don't know that Appaloosa would've
8 had standing to do that. I don't know whether the debtor did
9 that or not.

10 MR. DUKE: Thank you, sir.

11 RE CROSS-EXAMINATION

12 BY MR. BERG:

13 Q. Mr. Bolin, James Berg again, pro se shareholder.

14 You just discussed the capital structure highlighting
15 Series K within that structure, correct?

16 A. Yes.

17 Q. Is it your understanding that Series K is pari passu with
18 Series R and repreferred, so that they're all at the same
19 payout level with Series K?

20 A. Yes.

21 Q. Despite owning Series K and repreferred, and knowing that
22 all these preferred are at the same level in the capital
23 structure, you still can't remember any Series R purchases?

24 A. I don't remember any Series R purchases. If Series R is
25 the privately placed preferred stock, then I don't know that I

1 would've had the opportunity to purchase it.

2 Q. Series -- it is my understanding that Series R is publicly
3 traded. I personally --

4 THE COURT: Well, don't testify.

5 MR. BERG: I'm sorry, I'm sorry. No further
6 questions. Thank you, Mr. Bolin.

7 THE COURT: All right. Any redirect?

8 MR. SHER: No, Your Honor, thank you.

9 THE COURT: All right. Thank you. You may step down.
10 Let's take a few minutes, and then we'll start with your next
11 one. We'll end at 6:30 today, okay.

12 MR. SHER: Your Honor, may Mr. Bolin be released?

13 MR. ARD: No objection, Your Honor.

14 THE COURT: He may.

15 MR. SHER: Thank you.

16 THE COURT: All right. Let's take five minutes.

17 (Recessed at 3:48 p.m.; reconvened at 3:57 p.m.)

18 THE CLERK: All rise. You may be seated.

19 THE COURT: All right.

20 MR. OWENS: Good afternoon, Your Honor.

21 THE COURT: Good afternoon.

22 MR. OWENS: Richard Owens for Centerbridge. On behalf
23 of Centerbridge I call Vivek Melwani to the stand.

24 THE COURT: All right. Would you remain standing so
25 you can be sworn?

1 MR. MELWANI: Good afternoon.

2 THE CLERK: Good afternoon, sir. Can you please raise
3 you right hand, place your left hand on the Bible?

4 VIVEK MELWANI, WITNESS, SWORN

5 THE CLERK: You can be seated. Can you please state
6 your first and last name and spell it for the record please?

7 THE WITNESS: Vivek Melwani, V-i-v-e-k Melwani, M-e-l-
8 w-a-n-i.

9 MR. OWENS: Your Honor, may I proceed?

10 THE COURT: You may.

11 MR. OWENS: Thank you.

12 DIRECT EXAMINATION

13 BY MR. OWENS:

14 Q. Mr. Melwani, where do you work?

15 A. Centerbridge Partners LP.

16 Q. What is your position at Centerbridge?

17 A. I am a senior managing director.

18 Q. How long have you worked at Centerbridge?

19 A. Three years.

20 Q. When did you start?

21 A. April 2008.

22 Q. And what are your duties and responsibilities at
23 Centerbridge?

24 A. On certain investments I'm involved in analyzing the
25 credit and making buy/sell recommendations. On other

1 investments, I'm more involved in helping the team analyze
2 court pleadings, navigate through the bankruptcy and just give
3 my views on the restructuring process.

4 Q. Mr. Melwani, let me ask you to keep your voice up, and if
5 you could move the microphone perhaps a little close to you we
6 can make sure that everyone hears you.

7 A. Okay.

8 Q. Do you have an ownership interest in Centerbridge?

9 A. I am a partner.

10 Q. How long have you been a partner?

11 A. As of March of this year.

12 Q. And where did you work before Centerbridge?

13 A. Fried Frank Harris Shriver & Jacobson.

14 Q. And what was your position at Fried Frank before you left
15 for Centerbridge?

16 A. I was a partner.

17 Q. Did you specialize in any particular area of law?

18 A. I was a partner in the bankruptcy group.

19 Q. And how long did you work at Fried Frank?

20 A. Thirteen years.

21 Q. Going back to Centerbridge, can you give us a very brief
22 description of Centerbridge's business?

23 A. Centerbridge has two primary businesses or two businesses.
24 One is a private equity business, which is focused on buying
25 companies. There's also a credit business or we call it a

1 credit business, but it's focused on buying securities such as
2 Washington Mutual securities in companies as opposed to buying
3 the entire company.

4 Q. And on whose behalf did Centerbridge make these
5 investments?

6 A. Pension funds, endowments, various institutional
7 investors.

8 Q. And how do its clients, pension funds, et cetera, invest
9 in or through Centerbridge?

10 A. Typically we buy LP interests, interests in our limited
11 partnership -- buy limited partnership interest in our funds.

12 Q. When did Centerbridge first invest in securities issued by
13 Washington Mutual?

14 A. I believe it was in the month before bank -- month before
15 Washington Mutual filed for bankruptcy.

16 Q. When did you first become involved in those investments?

17 A. Around the time of the bankruptcy.

18 Q. Who else at Centerbridge has been involved in managing
19 Centerbridge's investments in the debtor?

20 A. Jed Hart, who is another senior managing director. There
21 was always one associate on the team. At the start, it was
22 Mina Kazanlieva. She left about two years ago. And then she
23 was replaced by Stan Fedorenko. Jeff Aronson, who is a founder
24 of the fund, is also involved.

25 Q. And are you familiar with the phrase in your current line

1 of work of "investment thesis"?

2 A. Yes.

3 Q. What do you understand that to mean?

4 A. It's the basic rationale for why you're buying or selling
5 securities.

6 Q. Was there an investment thesis formulated after the
7 petition was filed with respect to the fund's investments in
8 Washington Mutual --

9 A. Yes.

10 Q. -- securities?

11 A. Yes, there was.

12 Q. What, if any, role did you have in formulating that
13 investment thesis?

14 A. I was pretty involved with Jed Hart in formulating the
15 thesis.

16 Q. What was that thesis?

17 A. The thesis essentially was that by looking at the public
18 filings we were of the view that there was a few billion
19 dollars of cash at the holding company, which we thought the
20 market was underestimating. Also from prior experience, both
21 Jed and my experience, we had seen that companies when they
22 file for bankruptcy often get refunds or typically get refunds
23 for taxes paid in the prior two years.

24 So we were of the view that there would likely be a large
25 tax refund coming to the Washington Mutual estate. We had

1 studied the tax sharing agreement, and we had a view that all
2 of the taxes would run through the holding company. And just
3 by looking at the public filings we had a view that there were
4 a number of other assets at the holding company, including an
5 insurance subsidiary and odds and ends for lack of a better
6 word.

7 So the thesis basically was that the senior notes in
8 Washington Mutual are senior notes of four billion, and they
9 were senior subs of a billion seven, and then there were peers
10 of 750 I believe. And our thesis was that there was likely
11 enough cash and assets to cover the senior notes and give a
12 meaningful recovery to the securities that were more junior.

13 Q. And what was your role after participating in the
14 formulation of this investment thesis going forward over the
15 course of the bankruptcy?

16 A. I wasn't involved in the day-to-days, but to the extent
17 the thesis got supplemented to the extent, for example, when
18 the legislations -- when there was talk about the legislation
19 going from two years to five years, I was very involved in how
20 the thesis would be modified or changed or refined.

21 Q. What, if anything, did you do to monitor Centerbridge's
22 investments in WMI securities over the course of the
23 bankruptcy?

24 A. Every day, partners and managing directors get a position
25 report of all the positions in the portfolio. I can't say I

1 looked at it every single day, but I looked at it very
2 regularly.

3 Q. How does Centerbridge keep track of its purchases and
4 sales of securities?

5 A. I'm not a back office expert, but my understanding is we
6 have a software system called Virtual Portfolio Management,
7 which is a software program which maintains all of our buys and
8 sells in all securities and keeps track of the aggregate
9 positions.

10 Q. I'd like to ask you now to turn in the binder that I've
11 put up before you to Tab 54.

12 MR. OWENS: And I have a copy for the Court.

13 THE COURT: Thank you.

14 MR. OWENS: Your Honor, the exhibits are arranged by
15 tabs that reflect the exhibits in the binder.

16 THE COURT: Thank you.

17 THE WITNESS: I'm sorry, Tab 54?

18 Q. Yes, Tab 54. Do you see that?

19 A. I do.

20 Q. Do you recognize this document?

21 A. Yes.

22 Q. What is it?

23 A. It is a record of our trading history in WMI securities.

24 Q. How was it prepared?

25 A. We asked our back office to get a list of all securities

1 from -- that we've traded in WMI from the start, which was
2 September 11th, 2008 to our last trade which I believe is
3 November 5th, 2010. They produced that chart. We gave it to
4 our counsel, who I believe put it into this format.

5 Q. And does this chart fairly and accurately reflect all of
6 Centerbridge's trading activity in the debtor's securities in
7 the period of time that you mentioned?

8 A. It does.

9 MR. OWENS: Your Honor, we offer what's been marked
10 for identification as AOC 54.

11 MR. SARGENT: No objection, Your Honor.

12 THE COURT: It's admitted.

13 (AOC's Exhibit 54, Centerbridge Trade History, was hereby
14 received into evidence.)

15 MR. OWENS: Thank you, Your Honor.

16 Q. Mr. Melwani, can you tell us how the trades reflected
17 within this chart are organized going from the first to the
18 last page?

19 A. Chronologically.

20 Q. And can you tell us the information, just so we can read
21 the chart, what is reflected in the column with the heading
22 trade date?

23 A. That is the trade and that is the date the trade was
24 placed.

25 Q. And what information is reflected in the transaction

1 column?

2 A. It's just whether it was a buy or a sell of the security.

3 Q. And how should we read the quantity figures in the
4 quantity column?

5 A. For all of the securities other than the peers, it
6 reflects the face amount we purchased. For the peers it's the
7 number of shares we purchased or sold.

8 Q. And how should we understand numbers in the price column?

9 A. For everything other than the peers, it's cents on the
10 dollar. For the peers, it's the price per share.

11 Q. When you say cents on the dollar, you mean cents on the
12 dollar of face value?

13 A. Yes, sir.

14 Q. And what's reflected in the column class?

15 A. That is just taking the various securities and putting
16 them in one of the four categories I mentioned earlier, which
17 is senior notes, senior subs, peers and weak preferreds.

18 Q. So if we could, for example, go down to the first line
19 with the date 9/12/2008 --

20 A. Yes.

21 Q. -- can you tell us what information is reflected on that
22 line of this exhibit?

23 A. That we bought Washington Mutual 6.534s, which were weak
24 preferreds. We bought 628,000 of them for thirteen cents on
25 the dollar.

1 Q. Looking also at the next three trades on 9/12 --

2 A. Uh-huh.

3 Q. -- did those trades settle?

4 A. No. Those four trades were trades that we bought from
5 Lehman Brothers prior to the bankruptcy filing. So while we
6 show them here they never actually got delivered. And but my
7 understanding is Lehman could still try and put them to us.

8 Q. And I think you mentioned your earliest trade was
9 September 11, 2008. When was Centerbridge's last trading
10 activity in the debtor's securities?

11 A. November 5th, 2010.

12 Q. And what was that transaction?

13 A. That was a sale of Washington Mutual senior subs. We sold
14 533,000 at a price of 110.

15 Q. Let me ask you now to turn to Tab 36. Take a look at the
16 document we've marked for identification as CB 36.

17 A. Yes, sir.

18 Q. Do you recognize that document?

19 A. I do.

20 Q. Can you tell us what that is?

21 A. That is a summary chart showing our aggregate positions by
22 class for the end of each month during the period.

23 THE COURT: I'm sorry. Can you give me that number
24 again?

25 MR. OWENS: Yes, Your Honor. It's CB 36, and it's

1 behind Tab 36 in the binder.

2 THE COURT: Thank you.

3 Q. Mr. Melwani, can you tell us how this was prepared?

4 A. We asked our back office, again, to prepare the summary
5 chart. I think they -- well, I know they took the raw data
6 from VPM, which was in the exhibit we just looked at. They put
7 it into this format, which shows month end and the net monthly
8 change. They cross checked it against various sources, and
9 that's how it was put together.

10 Q. And does this chart fairly and accurately summarize
11 Centerbridge's month-end trading activity and the percentage of
12 its holdings as a percentage of the fund's net asset value for
13 the periods reflected here?

14 A. It does except it's a percentage of the fund's -- it
15 reflects the Washington Mutual market value as a percentage of
16 the fund's net asset value and undrawn commitments.

17 Q. Can you explain to us what you mean by undrawn
18 commitments?

19 A. Certain of the funds -- we raised a second fund, special
20 credit -- Centerbridge Special Credit, and that was a fund,
21 which had drawdown capital. So as opposed to someone giving us
22 a hundred dollars on the day the fund closed, they committed to
23 give us a hundred dollars as needed.

24 Q. So those capital commitments, how are they counted in the
25 denominator for the calculation of this percentage?

1 A. They are added into it.

2 Q. And with that understanding, is this chart accurate?

3 A. It is.

4 MR. OWENS: Your Honor, we offer Centerbridge 36.

5 MR. SARGENT: No objection.

6 THE COURT: All right. It's admitted.

7 (Centerbridge Exhibit 36, Centerbridge Summary Chart, was
8 hereby received into evidence.)

9 Q. Can you explain to us so that we read this accurately, Mr.
10 Melwani, what's reflected -- let's take an example, let's take
11 the month of September 2008, can you walk the Court across the
12 chart for that date and explain the numbers that are reflected
13 there and what they mean?

14 A. Yes. So for September 2008, and it's broken down by each
15 category, so for the senior notes it shows at the end of
16 September 2008 we owned face value 196,813,000. The net month
17 in the change is the column next to that, which shows -- if
18 it's a positive number it shows that we purchased that much in
19 that month. So here we would have purchased net 196,813,000,
20 the net reflecting that we could have had buys and sells during
21 the month. But the aggregate amount netted out for the month
22 was 196,813 purchased. And if you go across, it's the same for
23 each category. So our month-end position at the end of
24 September '08 for senior subs was 14,875,000, and we purchased
25 all of that in that month.

1 Q. And just so we're clear, is that face amount or market
2 value?

3 A. That is face amount.

4 Q. And what percentage of Centerbridge's net asset value in
5 undrawn commitments was reflected by all of its positions at
6 the end of the month of September?

7 A. Four percent.

8 Q. Could you explain for us just very briefly how
9 Centerbridge's positions in the senior notes and the senior
10 subordinate notes changed in the year 2008?

11 A. Yes. In -- as I mentioned, in 2008 we had a view that
12 there was a lot of cash and assets at the holding company that
13 the market was underestimating. During 2008 the affidavit got
14 filed. That gave a little bit more color. By the -- but --
15 and we had a lot of confidence that the senior notes would be
16 covered in full and that the senior subs and -- would also do
17 pretty well. So at the end of 2008 we had face amount -- we
18 owned face amount 270,583,000 of senior notes and 65,799,000 of
19 senior subs.

20 Q. And what were your positions at year end in the peers and
21 the weak preferreds?

22 A. The peers we owned 933,277 shares. And in the weak
23 preferreds we owned 160,685,000. The only thing I'd mentioned
24 on the weak preferreds, the numbers are very big but the market
25 value of the entire weak preferred position was never over five

1 million dollars.

2 Q. Was there a separate investment thesis related to the weak
3 preferred acquisitions?

4 A. Yes.

5 Q. What was it?

6 A. The original purchase in September of the weak preferreds
7 was before it filed for bankruptcy. Sorry. And the thesis
8 there had been that Washington Mutual might get acquired, and
9 if it got acquired that those weak preferreds would get
10 acquired.

11 That obviously didn't happen. Washington Mutual didn't
12 get acquired. It filed for bankruptcy. After it filed for
13 bankruptcy we noticed that the weak preferreds that we had
14 purchased in September still were reflected in our brokerage
15 statement as opposed to reflecting the preferred stock that it
16 was supposed to have changed into.

17 So our thesis was a little bit of an option. It was a
18 cheap option that the securities maybe didn't flip into the
19 holding company securities. So that was the thesis essentially
20 in November and December and early '09.

21 MR. SARGENT: Your Honor, I'd like to interpose. I'm
22 not going to object to testimony about the general thesis,
23 particularly at the opening of this investment, but that does
24 start to get into the topic of which we've been objecting
25 because the noteholders, including Centerbridge, refused to

1 produce documents on this topic. And so more specific
2 testimony about why particular investments were made at
3 particular times beyond the initial investment in 2008 we would
4 object to.

5 MR. OWENS: Your Honor, if I may be heard on that,
6 although that objection hasn't been raised, it will help me
7 guide my --

8 THE COURT: Yes.

9 MR. OWENS: -- examination to know the contours of
10 where I can and cannot go going forward and perhaps save a
11 little time.

12 But in any event, I would like to be heard on that
13 issue from the following perspective, we did not say to the
14 equity committee that we would never produce a single piece of
15 paper relating to our trading decisions.

16 It's important I think for the Court to understand that at
17 Mr. Melwani's deposition I interposed no objection to any
18 questions that Mr. Edgar asked, and there were numerous when he
19 reviewed with my client the trading records of Centerbridge,
20 questions about why you bought these securities during this
21 period, why you bought certain securities during this period.

22 If a -- we did, as Your Honor has noted, object to
23 their request for internal e-mails, but we objected to that on
24 a number of grounds, including the fact that they asked for all
25 e-mails not just those that may have related to trades that

1 seemed to be at issue in the equity committee's objection to
2 plan confirmation. I think, Your Honor, the onus should
3 properly have been put at that point in time back on the equity
4 committee to come forward with a --

5 THE COURT: Well --

6 MR. OWENS: -- more limited focused and fashioned
7 request we could have responded too.

8 Now, I don't intend to ask a lot of questions of Mr.
9 Melwani about specific trades or trading decisions.

10 THE COURT: Don't ask any. I don't want to hear the
11 reasons for their trade. I did prevent them from looking into
12 the internal communications that would have revealed the
13 reasons for the trades.

14 MR. OWENS: If Your Honor wouldn't find it helpful I
15 certainly won't go into it.

16 THE COURT: Okay.

17 BY MR. OWENS:

18 Q. Mr. Melwani, what sources of information did you and
19 others at Centerbridge have with respect to Washington Mutual
20 at the time you were investing in its securities?

21 A. There were a number of sources. We had the SEC filings,
22 the exhibits to the SEC filings. We had the statutory filings
23 for the bank, the FDIC website. I believe we got some
24 information from the Freedom of Information Act. There was the
25 debtors. There was the monthly operating reports, the

1 schedules, the statements. We had a legislative consultant
2 that helped us follow the tax legislation. There were research
3 reports, and there were obviously court pleadings.

4 Q. Let me ask you to turn now to Tab 69.

5 A. Yes, sir.

6 Q. It's been marked for identification as AOC 69. It's
7 docket entry 74. Have you seen this before?

8 A. I have.

9 Q. What is it?

10 A. It is the motion the debtors filed seeking to approve a
11 stipulation with JPMorgan to return the deposit in October of
12 '08.

13 Q. Is this an example of a court filing that you gathered
14 information about the debtor from?

15 A. It is.

16 MR. OWENS: Your Honor, we offer AOC 69 into evidence.

17 MR. SARGENT: No objection.

18 THE COURT: It's admitted.

19 (AOC's Exhibit 69, Debtor's Motion Regarding Stipulation, was
20 hereby received into evidence.)

21 Q. What information about the debtor did you gather from this
22 filing?

23 A. I think earlier we had -- we did know the tax number
24 because I think it was in -- I'm sorry, not the tax number, the
25 deposit number because it was in their affidavit. But this

1 gave a lot more detail, including the fact that a lot of the
2 money was held at a subsidiary of Washington Mutual Bank or the
3 bulk of the money was held at WMB FSB, I believe it was. So
4 they were little -- no, they were details like that, and I
5 think it also -- there was the big picture concept that
6 JPMorgan was extremely sophisticated and well advised,
7 voluntarily was willing to give back the money early in the
8 case.

9 Q. Now, did you ever obtain what you understood at the time
10 to be material nonpublic information from any of the sources
11 that you just described?

12 A. Yes, from the debtors.

13 Q. And under what circumstances did you obtain material
14 nonpublic information from the debtors?

15 A. There were two specific periods where we signed
16 confidentiality agreements with the debtors. Outside of those
17 confidentiality agreements, the debtors talked to Fried Frank,
18 who was our counsel. Fried Frank wouldn't provide that
19 information to us unless the debtors said it was okay. And
20 they advised us in advance that the information they would
21 provide us could be restrictive, and we accepted.

22 Q. What do you mean when you say we accepted?

23 A. We agreed to take the information.

24 Q. Were there times when information was offered that you did
25 not agree to take it?

1 A. Yes.

2 Q. And generally, when did you not agree to accept
3 information what was your rationale?

4 A. We didn't want to get restricted.

5 Q. Let me ask you some questions more about the
6 confidentiality agreements. You mentioned two with the debtor.
7 When was the first executed?

8 A. I believe March 9th, 2009.

9 Q. Can you turn to Tab 111 in the binder please?

10 A. Yes.

11 Q. What is this document?

12 A. This is the confidentiality agreement we executed with the
13 debtors on March 9th, 2009.

14 Q. And how do you recognize it?

15 A. I recognize Jed Hart's signature on the last page.

16 Q. And who is Jed Hart?

17 A. He is a senior managing director at Centerbridge.

18 MR. OWENS: Your Honor, we offer Exhibit EC 111.

19 MR. SARGENT: No objection, Your Honor.

20 THE COURT: It's admitted.

21 (EC's Exhibit 111, Confidentiality Agreement, was hereby
22 received into evidence.)

23 Q. Let me ask you now to look at the document behind Tab 17.

24 A. Yes, sir.

25 Q. Do you recognize that document?

1 A. Yes. I'm sorry. It is the second confidentiality
2 agreement we entered into on November 16, 2009.

3 Q. How do you recognize it?

4 A. I recognize my signature on the last page.

5 MR. OWENS: Your Honor, we offer Exhibit 117.

6 THE COURT: It's admitted.

7 (EC's Exhibit 117, Second Confidentiality Agreement, was hereby
8 received into evidence.)

9 MR. OWENS: Thank you, Your Honor.

10 Q. Let's focus for a few minutes on the first confidentiality
11 agreement behind Tab 111. What was Centerbridge's purpose in
12 entering into that agreement?

13 A. To get information regarding the first refund on the carry
14 back so that we could provide the debtors with views and
15 thoughts about possible restructurings, and views on the
16 settlement negotiations that the debtors were looking to enter
17 into with various parties, including creditors and JPMorgan.

18 Q. What was your understanding of Centerbridge's obligations
19 under that agreement?

20 A. To keep information that we received confidential during
21 the period of the agreement.

22 Q. And what, if any, obligations did you understand that the
23 debtors had to Centerbridge under this agreement?

24 A. To the extent they provided us with any material nonpublic
25 information to disclose that information publicly and a monthly

1 operating report.

2 Q. Where is that obligation reflected in the agreement?

3 A. It is on page 5 paragraph 13, the second sentence, which
4 says, sorry, "on the termination of this agreement pursuant
5 hereto the debtors shall make public disclosure within the
6 meaning of Rule 101 of regulation FD, offer a fair summary as
7 reasonably determined by the debtors of any confidential
8 information that constitutes material nonpublic information
9 under U.S. federal securities laws."

10 Q. What was your understanding as to whether or not signing
11 this agreement would restrict your ability to trade in WMI
12 securities?

13 A. I don't believe that there was any contractual restriction
14 of our trading in this agreement.

15 Q. What, if anything, did you believe could trigger
16 Centerbridge to restrict trading?

17 A. The receipt of material nonpublic information.

18 Q. And did Centerbridge restrict trading in connection with
19 this agreement?

20 A. Yes.

21 Q. When?

22 A. The day we signed the agreement.

23 Q. What -- did you later obtain material nonpublic
24 information from the debtor?

25 A. We did.

1 Q. Do you recall when?

2 A. I don't remember exactly the date, but I believe it to be
3 at the start of the period.

4 Q. And what information did you receive that you believed to
5 be material and nonpublic?

6 A. The amount of the first tax refund, which was 2.6 to three
7 billion dollars was the estimate.

8 Q. And what was your understanding of the circumstances under
9 which Centerbridge could become free to resume trading?

10 A. The debtor's disclosure as required by the agreement.

11 Q. Did that happen?

12 A. It did.

13 Q. When?

14 A. April 30th, 2009.

15 Q. In what form was that disclosure made?

16 A. The debtor's monthly operating report for April 30th,
17 2009.

18 Q. Let me ask you to turn to Tab 25.

19 A. Yes.

20 MR. OWENS: I believe this is already admitted, Your
21 Honor, but if not I'll offer EC 25.

22 THE COURT: Okay.

23 Q. Mr. Melwani --

24 THE COURT: It's admitted.

25 Q. -- what is this document?

1 A. This is the debtor's monthly operating report for April
2 30th, 2009.

3 Q. Did Centerbridge resume trading after this document was
4 filed?

5 A. We did.

6 Q. When?

7 A. I believe it was May 13th, 2009.

8 Q. What, if anything, did you do to confirm that you were
9 free to resume trading prior to May 13?

10 A. We confirmed with Fried Frank that the debtors had
11 confirmed that they had disclosed all material nonpublic
12 information in their view. We also made an independent
13 assessment.

14 Q. What did you do to make -- without referring to any
15 consultation with counsel what, if anything, did you do on your
16 own to confirm what you just mentioned?

17 A. We -- it's a bit of a facts, and so we considered the
18 facts and circumstances of what we had received, and we
19 confirmed that what we viewed as material nonpublic information
20 was in the MOR.

21 Q. Let's go back for a minute to Exhibit AOC 54.

22 A. Yes, sir.

23 Q. And if I could ask you to turn to page 15 please.

24 A. Yes.

25 Q. Sorry, page 14. What does this document reflect was your

1 last trade before entering the confidentiality agreement on
2 March 9, 2009?

3 A. On March 6th --

4 Q. Yes.

5 A. I'm sorry.

6 Q. Go ahead, sorry.

7 A. On March 6th we sold Washington Mutual senior subs. We
8 sold 1,841,000 of them at a price of 58.75.

9 Q. Did you have other trades on the 6th of March?

10 A. We did.

11 Q. What were they?

12 A. They were senior subs, Washington Mutual floaters, which
13 were seniors, and those are the two. We had floaters, which
14 were seniors, and 4.625s, which were senior subs.

15 Q. Are there additional trades on the 6th reflected on the
16 prior page?

17 A. Yes, but those are floaters as well.

18 Q. And what was your first -- what does the document reflect
19 was your first trade after the confidentiality period?

20 A. May 13, 2009.

21 Q. What was the trade?

22 A. We bought Washington Mutual four percents, which are
23 seniors.

24 Q. During this first confidentiality period, did you
25 participate in any settlement negotiations or discussions with

1 the debtor or anyone else?

2 A. We provided views to the debtors on a term sheet they were
3 going to provide to JPMorgan or a proposal they were going to
4 make to JPMorgan. I believe there was also one meeting early
5 in the confidentiality period with JPMorgan, the debtors, the
6 creditors committee and the White & Case group.

7 Q. Can you describe what you can recall from the first
8 meeting that you just mentioned?

9 A. I don't recall a lot. It was a long time ago. But I
10 think that the debtors were looking to make a proposal, and
11 they were looking to solicit the views from us as well as the
12 White & Case creditors and the creditors committee in order to
13 make a proposal to JPMorgan, who was at the meeting.

14 Well, actually, I don't remember if JPMorgan itself was at
15 the meeting, but Sullivan & Cromwell, their counsel, certainly
16 was at the meeting.

17 Q. Do you remember where the meeting was held?

18 A. At Sullivan & Cromwell.

19 Q. Do you recall receiving any term sheets either at or prior
20 to that meeting?

21 A. I don't recall receiving anything prior to the meeting. I
22 recall receiving a term sheet after the meeting.

23 Q. Let me ask you to look now at the document behind Tab 221.

24 A. Yes.

25 Q. Do you recognize this document?

1 A. Yes.

2 Q. What is it?

3 A. I believe this is the proposal that was sent by the
4 debtors to JPMorgan on March 11th.

5 Q. Is this the proposal or term sheet you mentioned a moment
6 ago receiving after the meeting at Sullivan & Cromwell's
7 offices?

8 A. It is.

9 MR. OWENS: Your Honor, we offer EC 221 into evidence.

10 MR. SARGENT: No objection, Your Honor.

11 THE COURT: It's admitted.

12 (EC's Exhibit 221, Settlement Proposal/Term Sheet, was hereby
13 received into evidence.)

14 MR. OWENS: Thank you.

15 Q. Do you recall ever learning if JPMorgan responded to this
16 proposal?

17 A. I believe they did respond a week later.

18 Q. And how did you learn of that response?

19 A. I believe they sent a term sheet, which was then forwarded
20 to us by Fried Frank.

21 Q. Let me ask you to look now at the document behind Tab 29.

22 A. Yes.

23 Q. Do you recognize this document?

24 A. Yes.

25 Q. What is it?

1 A. This is the e-mail from Fried Frank to us forwarding
2 JPMorgan's response to the 3/11 proposal that was made by the
3 debtors.

4 Q. And if you could look at the document behind Tab 30, could
5 you tell us what that is and if it bears any relation to the
6 document behind Tab 29?

7 A. That is the term sheet that was attached to the e-mail,
8 the term sheet that reflects JPM's counter proposal to the
9 debtor's proposal made on 3/11.

10 MR. OWENS: Your Honor, I offer Exhibits EC 29 and
11 EC30.

12 MR. SARGENT: They're already in evidence, Your Honor.
13 We have no objection.

14 THE COURT: It's admitted.

15 Q. What was your understanding of the status of settlement
16 discussions between the party after you reviewed the term sheet
17 at EC 30?

18 A. That they were very far apart. They were nowhere close to
19 an agreement or common ground.

20 Q. Do you recall receiving any other term sheets or proposals
21 in written form relating to the disputes between JPMorgan and
22 the debtor after receiving the term sheet reflected in EC 30?

23 A. Not during this confi period.

24 Q. Were the proposals reflected in the term sheets that we've
25 just been looking at ever disclosed publicly by the debtor

1 before you resumed trading?

2 A. I don't believe they were.

3 Q. Well, when you resumed trading did you believe that those
4 proposals were material nonpublic information about the
5 debtor's securities?

6 A. We did not.

7 Q. How did you come to that view?

8 A. We were I believe informed by two factors. One was we had
9 an agreement with the debtors to disclose what they viewed as
10 material nonpublic information, and they hadn't disclosed it.
11 And we also came to our own independent assessment that the
12 term sheets in this negotiation had not been material at this
13 point.

14 Q. Can you explain to the Court what your thinking was in
15 reaching that conclusion when you did your own assessment?

16 A. I think as I mentioned earlier, we looked at the facts and
17 circumstances as to how close the parties were to a deal as
18 well as were all the necessary parties there. I think there's
19 a bit of a spectrum. There's one side, which, you know, no one
20 is close to a deal, typical bankruptcy posturing and
21 negotiation. Everyone always says everything belongs to me.
22 And so that's one side of the spectrum where you're nowhere
23 close to a deal and all the parties aren't even at the table,
24 and I think that's clearly not material.

25 The other side of the spectrum probably is where you're

1 very close to a deal, the necessary parties are at the table,
2 and you either reach the deal or on the cusp of reaching a
3 deal, and that's certainly more material than the other side of
4 the spectrum.

5 And our view of this was we were billions of dollars apart
6 on the first tax refund. People didn't even know what the
7 second tax refund was, but we were billions of dollars apart on
8 that. And the FDIC -- not only were the debtors not close with
9 JPMorgan, the FDIC wasn't even at the table yet.

10 Q. So in your view were you then free to resume trading?

11 A. Once the disclosure was made on April 30th, yes.

12 Q. Did Centerbridge make any effort to restart negotiations
13 with JPMorgan in the summer of 2009?

14 A. Yes, at the end of July.

15 Q. Before we go there, let me go back for a second. Let's go
16 back to CB 36.

17 A. Yes.

18 Q. Following the expiration of the confidentiality agreement
19 and the debtor's disclosure of the second tax refund, how if at
20 all did Centerbridge's position in the debtor's securities
21 change?

22 A. In 2009, disclosure was made at -- I'm sorry, the first
23 confi, so in May of 2009 we bought twenty-three million of
24 seniors. We didn't do anything in the senior subs or the
25 peers, and then we didn't trade really again until the third

1 quarter of '09, which is the time where our new fund came
2 about, Special Credit.

3 Q. When you say your new fund came about, what are you
4 referring to?

5 A. The -- our assets under management grew a lot during this
6 whole process. At the start of the case in September '08, our
7 assets under management were three -- I'm just talking about
8 the credit side of the business -- were 3.1 billion. At the
9 end of the period, November 2010, it was close to 9.5 billion.

10 So the funds, assets under management had tripled. That
11 was in part due to in the third quarter of '09 -- third and
12 fourth quarter of '09 we raised a new fund called Special
13 Credit -- Centerbridge Special Credit.

14 The goal of that fund or the intention of that fund was to
15 invest side-by-side with the other vehicle. So one of the
16 intentions of -- one of the goals of that fund was to, to the
17 extent you invested in securities that you had the same
18 weighting in the new fund as you did in the old fund.

19 So I was inarticulate, but in July of -- at the time the
20 fund got raised Washington Mutual was a seven percent position
21 in our credit fund as you can see on the line, that's -- I
22 think it's the May line. So when Special Credit came about,
23 the goal was to get it to be -- Washington Mutual to be a seven
24 percent position in Special Credit as well. And towards the
25 end of December that actually happened. Most of the purchases

1 in the third quarter and fourth quarter of '09, the vast
2 majority of them went into special credit.

3 Q. Well, if -- what was the net asset value or the percentage
4 of net asset value of WMI holdings at Centerbridge at the time
5 -- at the end of May?

6 A. The end of May was seven percent.

7 Q. And what was the trend from that point forward to the
8 cessation of trading?

9 A. Well, in June it dropped because that's when Special
10 Credit came about, so the denominator increased by two billion.
11 So you saw it drop to 4.85 percent. And then the goal was to
12 get Special Credit up to an equal weighting, so then you see it
13 over December getting back to an equal weighting, which dragged
14 the -- which pulled up, I guess is the right word, pulled up
15 the overall to 6.52 percent at the end of December, and then
16 from that point on it declined.

17 The highest it ever was was at -- in January -- well,
18 actually, I'm sorry, February '09. It was 7.82 percent of the
19 fund's net asset value.

20 Q. Was there any trading in June of 2009?

21 A. There was not.

22 Q. And now we're turning -- what, if anything, did you do
23 after June -- did Centerbridge do after June to try to restart
24 negotiations?

25 A. Centerbridge together with Appaloosa made a proposal to

1 JPMorgan.

2 Q. And how was that proposal prepared?

3 A. Centerbridge and Appaloosa came up with a proposal
4 together with Fried Frank.

5 Q. Let me ask you to take a look at -- I'm sorry, withdrawn.
6 Was that proposal ever delivered to JPMorgan?

7 A. It as.

8 Q. When?

9 A. It was delivered, I believe it was July 28th or July 29th
10 in a meeting.

11 Q. Where was the meeting?

12 A. At JPMorgan.

13 Q. Who was present?

14 A. To the best of my recollection, it was myself, Jed Hart
15 and Jeff Aronson from Centerbridge; David Tepper and Jim Bolin
16 from Appaloosa; Don McCree and Travis Epes from JPMorgan.

17 Q. And what was said during the meeting?

18 A. We made the proposal to them. They asked us a few
19 questions, and they said thank you, we'll get back to you.

20 Q. And did you deliver a proposal in writing?

21 A. We did not.

22 Q. How was the proposal delivered?

23 A. Orally.

24 Q. And between the date of this meeting on July 29th or after
25 the time of this meeting on July 29th, did Centerbridge

1 continue to trade?

2 A. We did.

3 Q. Why did you believe you were free to trade?

4 A. Because the proposal was our information. It was our
5 proposal. We could have asked for part--

6 THE REPORTER: I'm sorry. Could you repeat your --

7 THE WITNESS: Sorry. I apologize. It was our
8 proposal.

9 Q. Did JPMorgan ever respond to your proposal?

10 A. They did on I believe it was August 18th.

11 Q. How did they respond?

12 A. By e-mail from JPMorgan to Jeff Aronson and David Tepper.

13 Q. Let me ask you to turn now to Tab 115.

14 MR. OWENS: I believe this is already in evidence,
15 Your Honor.

16 Q. But Mr. Melwani, can you tell us what this document is?

17 A. Yes. This is the response from JPMorgan to Jeff Aronson
18 and David Tepper.

19 Q. And if you look at the second line on the first page of
20 115, what time was this received?

21 A. 4:43 p.m.

22 Q. Did Centerbridge restrict its trading in any way after
23 receiving this?

24 A. We did.

25 Q. How?

1 A. We didn't -- I don't, we didn't believe we were legally
2 restricted, but we -- until we had a chance to look at it we
3 just stopped trading in Washington Mutual securities.

4 Q. Did you study the proposal?

5 A. We did.

6 Q. What conclusion did you come to with respect to this
7 proposal?

8 A. That it was unacceptable.

9 Q. Why was the proposal unacceptable to Centerbridge?

10 A. We had proposed sixty/fifty on the first tax split. They
11 had changed that to seventy-five -- the main reason, one of the
12 largest reasons was they had changed that to seventy-
13 five/twenty-five and they had made Washington Mutual get the
14 bulk of their recovery from the back end.

15 So where we had proposed fifty/fifty they had proposed
16 ninety percent of the back -- when I say the back end, I mean
17 the second refund going to Washington Mutual. At this point,
18 the legislation, while there was talk about the legislation
19 getting extended, the legislation hadn't even passed yet.

20 So that was one of the reasons. But there were a lot of
21 other reasons. The -- we had wanted the entire deposit coming
22 back. They wanted to take 200 million out of it.

23 I also think that there was a concept that whatever
24 releases needed to be acquired the estate would pay for.

25 Q. Was there a follow-up meeting with JPMorgan?

1 A. There was.

2 Q. When?

3 A. September 2nd.

4 Q. What happened at that meeting?

5 A. My understanding at that meeting was that JPMorgan stated
6 that they had been contacted by a number of other holders and
7 parties, and they wanted to step back. And they didn't think
8 there was anything more to talk about at this point, and they
9 were retracting their proposal from August 18th.

10 Q. So what was the status of your negotiations with JPMorgan
11 after that meeting?

12 A. It had failed. We had made one proposal, they had
13 retracted their counter, and it failed.

14 Q. Did you resume trading after that meeting?

15 A. We did.

16 Q. When?

17 A. I believe it was September 8th, 2009.

18 Q. Did you participate in any other settlement discussions
19 that you can recall from then until November of 2009?

20 A. Not that I recall.

21 Q. And what happened in -- let's now go back to the second
22 confi agreement. What was Centerbridge's purpose in executing
23 that second confi agreement in November of 2009?

24 A. Similar to the reason we filed the -- signed the first
25 one, the legislation had passed now on the extension of the NOL

1 from -- extension of the refund from two years to five years.
2 So we wanted to understand the size of the second refund so
3 that we could productively give the debtors views and thoughts
4 on proposals and settlement negotiations that the debtors were
5 looking to reenter into.

6 Q. And what was your understanding of Centerbridge's
7 obligations under that agreement?

8 A. To keep information we received confidential during the
9 period of the agreement.

10 Q. And what, if any, obligations did the debtors have to you?

11 A. To the extent they provided us with material nonpublic
12 information to disclose that information publicly at the end of
13 the period.

14 Q. How if at all did you restrict your trading after
15 executing that agreement?

16 A. We restricted out trading completely. No one traded in
17 Washington Mutual securities at all.

18 Q. Did the debtor comply with its obligations?

19 A. They did.

20 Q. What material nonpublic information did you receive?

21 A. The estimate of the second tax refund.

22 Q. Do you recall when you received that information?

23 A. I don't again, but I believe it was -- it'd likely have
24 been at the start of the period.

25 Q. And when did the debtor disclose that information

1 publicly?

2 A. November 30th, 2009.

3 Q. Let me ask you to turn to Tab 39 in the binder.

4 A. Yes.

5 Q. I believe this is also admitted, but what do you
6 understand this to be?

7 A. The debtor's monthly operating report for December 30th --
8 that was filed December 30th, 2009.

9 Q. Can you turn to page 12?

10 A. Yes.

11 Q. Do you see note five?

12 A. I do.

13 Q. What disclosure is made there?

14 A. WMI estimates such an election could result in additional
15 refunds of up to approximately 2.6 billion as to which there
16 are competing claims of ownership.

17 Q. When did you believe you were free to resume trading after
18 the execution of the second confi agreement?

19 A. Upon the debtor's filing of this MOR.

20 Q. And when did you in fact resume trading?

21 A. December 31st.

22 Q. Did you participate in any settlement discussions during
23 this second confi period?

24 A. I don't recall any actual meetings. I know we gave the
25 debtors some views on a proposal they were going to make to JP

1 -- that they were going to make to JPM.

2 Q. Let me ask you to look now at Tab 219.

3 A. Yes.

4 Q. Do you recognize that document?

5 A. I do.

6 Q. What is it?

7 A. It is a draft of a proposal that the debtors were going to
8 make to JPM that Bill Kosturos had sent to myself and Jim
9 Bolin.

10 Q. Did you receive this in -- on or about November 20th,
11 2009?

12 A. Yes.

13 MR. OWENS: I'm sorry. Your Honor, Mr. Rosen has
14 corrected me. I erred in thinking that EC 39 was admitted. It
15 is not yet admitted. So if I may offer it now.

16 MR. SARGENT: No objection.

17 THE COURT: It's admitted.

18 (EC's Exhibit 39, Debtor's Monthly Operating Report Filed
19 12/31/2009, was hereby received into evidence.)

20 MR. OWENS: Thank you, Your Honor.

21 And now, Your Honor, I'd like to offer EC 219.

22 MR. SARGENT: No objection.

23 THE COURT: It's admitted.

24 (EC's Exhibit 219, Draft Proposal 11/20/2009, was hereby
25 received into evidence.)

1 Q. If you could turn now, Mr. Melwani, to Tab 220.

2 A. Yes.

3 Q. Do you recognize this document?

4 A. Yes.

5 Q. What is it?

6 A. It's another draft that Bill Kosturos sent to myself and
7 Jim Bolin. It's a draft of a term sheet he was going to send
8 over to JPMorgan.

9 MR. OWENS: Your Honor, we offer EC 220 in evidence.

10 MR. SARGENT: No objection, Your Honor.

11 THE COURT: It's admitted.

12 (EC's Exhibit 220, Draft Proposal, was hereby received into
13 evidence.)

14 Q. And now if I could ask you to turn back to Tab 119.

15 A. Yes. 119? Yes.

16 Q. Yes, 119. Do you recognize this document?

17 A. Yes. I believe this was the final term sheet that was
18 sent from the debtors to JPMorgan.

19 MR. OWENS: Your Honor, we offer EC 119 in evidence.

20 MR. SARGENT: No objection.

21 THE COURT: All right. It's admitted.

22 (EC's Exhibit 119, Debtor's Final Term Sheet 11/23/2009, was
23 hereby received into evidence.)

24 Q. And what was the date on which this final version of the
25 term sheet was sent to JPMorgan?

1 A. November 23rd, 2009.

2 Q. Did you ever come to learn of a response from JPMorgan to
3 this term sheet?

4 A. Yes.

5 Q. When?

6 A. I think it was November 30th, 2009.

7 Q. And what was the response that you learned of?

8 A. JPMorgan sent an e-mail. I believe it was from Don McCree
9 to Bill Kosturos. The gist of it was saying we're still pretty
10 far apart but here is a new proposal.

11 Q. Let me ask you to turn now to Tab 120.

12 A. Yes.

13 Q. What is this document?

14 A. This is the response from Don McCree at JPMorgan to Bill
15 Kosturos that I just mentioned.

16 MR. OWENS: Your Honor, I believe similar versions to
17 this have been admitted as EC 16 and AU 29, but since this has
18 the -- it's from the Centerbridge production, if I could offer
19 it as EC 120.

20 MR. SARGENT: No objection.

21 THE COURT: It's admitted.

22 (EC's Exhibit 120, Response from Don McCree to Bill Kosturos,
23 was hereby received into evidence.)

24 Q. Can you just very briefly, Mr. Melwani, describe for us
25 the difference in positions as of November 30th reflected in

1 this term sheet and the last term sheet we looked at between
2 the debtor and JPMorgan with respect to the tax refunds and
3 other issues?

4 A. Yes. I think where the -- well, I know where the debtors
5 had proposed splitting the tax refund -- the first tax refund
6 thirty-nine percent to Washington Mutual and fifty percent of
7 the second tax refund to Washington Mutual, what JPMorgan was
8 proposing was something completely different structure wise,
9 which said JPMorgan gets a hundred percent of the first refund,
10 which was the larger refund, and WMI gets a hundred percent of
11 the second refund.

12 Q. And just so we're all clear, what were the amounts of the
13 two refunds?

14 A. The first one, the estimate was 2.6 to three billion. The
15 second one was 2.6 billion, an estimate again.

16 Q. In your view what was the status of the negotiations after
17 this exchange?

18 A. I think this e-mail summed it up pretty well. You know,
19 Bill's view that the -- Mr. Kosturos's view that they were
20 resetting the bookends and Don McCree's view that we remain
21 fairly far apart in our views. I think we viewed -- I know we
22 viewed the settlement as having failed, that the gap was
23 getting wider as opposed to narrower.

24 Q. Were you aware of whether additional settlement
25 discussions were going on between the debtor and JPMorgan

1 throughout the remainder of, well, one day of November and the
2 month of December in 2009?

3 A. I don't believe I was aware of it. I don't think it would
4 have surprised me if the debtors continued to talk to JPMorgan
5 during the confi period.

6 Q. Did the debtors share with you or did any other party
7 share with you any subsequent term sheets prepared by any party
8 to these negotiations after November 30th of 2009 until the
9 expiration of the second confidentiality agreement on December
10 30th, 2009?

11 A. They did not.

12 Q. When you resumed trading on December 31st, 2009, did you
13 believe that these proposals that had been exchanged in
14 November were material nonpublic information?

15 A. We did not.

16 Q. What did you do to reach that conclusion?

17 A. Again, we looked to the fact that we had a confidentiality
18 agreement that provided -- that the -- that required the
19 debtors to disclose what they viewed as material nonpublic
20 information. They did not disclose this. We confirmed through
21 Fried Frank that the debtors did not view these as material,
22 and then we also made our own independent assessment that these
23 were not material.

24 Q. Earlier in your testimony you described a spectrum between
25 no deal/deal. Where did you view these proposals from November

1 30th at the time you resumed trading?

2 A. I think after we saw this e-mail we viewed it as jumping
3 back to the no deal side because where the gap -- the gap was
4 just getting bigger and the structure was completely different.

5 Q. Why was the structure significant to you?

6 A. There were a number of reasons because while the
7 legislation had passed on the second NOL, this is a company
8 that had -- for a while had disputes with their -- tax
9 disputes. The first NOL was certainly further along, would
10 come in sooner. And we also believed that it was important to
11 have alignment with JPMorgan because these tax refunds that
12 were getting filed needed to get filed with the assistance of
13 JPMorgan, who now owned most of -- well, didn't own the people,
14 but most of the people that used to work at Washington Mutual
15 now worked for JPMorgan. So we thought that it was important
16 to have alignment that JPMorgan also gets some of its economics
17 from the second tax refund.

18 Q. How did the change in structure that you've just described
19 affect your view of the materiality of these proposals?

20 A. I think it was one of the factors including, you know, all
21 the other things that they had in their e-mail about, number
22 three, they -- you know, cost of releases up to 500 million
23 coming out of the estate, the intercompany debt, 177 million
24 being cancelled without payment, all of that adds up. And we
25 viewed it as not even close to the proposal that the debtors

1 had made and it was unacceptable.

2 Q. Let's go back to the trading records for Centerbridge
3 behind Tab 54.

4 MR. OWENS: Pardon me one moment, Your Honor, while I
5 get the right page.

6 Q. Turn to page 18, Mr. Melwani.

7 A. Yes.

8 Q. When was your last trade before entering the second
9 confidentiality agreement?

10 A. November 4th of 2009.

11 Q. What was the -- what were the transactions on that date?

12 A. We were buying senior subs. We were buying senior notes.
13 We were buying senior subs and senior notes. I'm sorry. On
14 11/4 we were only buying senior subs.

15 Q. And what were your first transactions after the debtor's
16 disclosure of the amount of its estimate of the second net
17 operating loss-related tax return -- tax refunds?

18 A. We bought peers and we continued to buy senior subs on
19 12/31, which we had been doing for the two quarters prior.

20 Q. And if you go down the rest of page 18 and 19, there's a
21 fairly significant number of trades in that first week of
22 January, right?

23 A. Uh-huh.

24 Q. Well, let's go if we can now to Tab 36.

25 A. Yes.

1 Q. And if you could explain for us with reference to Exhibit
2 CB 36, just in summary form what was Centerbridge's trading
3 activity in the month of January following the disclosures that
4 we were talking about?

5 A. Yep. With the -- with respect to senior subs, we bought
6 senior subs in January and we continued to buy them
7 periodically throughout 2010, much as we had, as I mentioned,
8 in the second two quarters of 2009. With respect to the senior
9 notes, we started to sell them in January. They were trading
10 -- after the second disclosure of the refund they were trading
11 at, you know, close to par, ninety-eight/ninety-nine. In
12 February we also had a very large transaction unrelated to
13 Washington Mutual where we made the firm's largest investment.
14 We invested 700 million in another company. So Washington
15 Mutual security senior notes were one of the more liquid
16 positions in our portfolio. We continued to sell senior notes
17 throughout 2010.

18 The peers, we started buying back some of the peers, which
19 we'd sold. We had sold peers in September of '09. We sold
20 them -- we bought them originally at one or two dollars a
21 share. We sold them at eight or nine in the third quarter of
22 '09, which was a bit of a mistake because we ended up buying
23 them back in -- at the start of 2010 in the mid to -- low to
24 mid twenties, and that was a mistake because today they trade
25 in the fifteens area.

1 The weak preferreds we started -- I mentioned the theory.
2 We had come to the conclusion by that point that that was a
3 losing theory, so we decided to start selling the weak
4 preferreds.

5 Q. After January did you make -- did you participate in any
6 subsequent efforts to try to restart settlement discussions or
7 at least to become involved in them?

8 A. In February 2010 we made a proposal with the other
9 settlement noteholders to the debtors.

10 Q. I'm going to ask you to turn to Tab 125.

11 A. Yes.

12 Q. What is this document?

13 A. The e-mail I believe is a transmittal of a term sheet,
14 which sets forth the proposal.

15 Q. This is a proposal that you participated in?

16 A. Yes.

17 Q. Who else participated in putting this proposal together?

18 A. I believe the other settlement noteholders and Fried
19 Frank.

20 Q. And when you use the phrase settlement noteholders, who
21 are you referring to?

22 A. Appaloosa, Aurelius and Owl Creek.

23 MR. OWENS: Your Honor, we offer EC 125 in evidence.

24 MR. SARGENT: No objection.

25 THE COURT: It's admitted.

1 (EC's Exhibit 125, Settlement Proposal February 2010, was
2 hereby received into evidence.)

3 Q. What was your purpose in participating in the preparation
4 of this proposal?

5 A. I think it was -- my recollection of it isn't great. To
6 be honest, we had something else going on in February that was
7 pretty time consuming.

8 So but my best recollection of it was to jumpstart the
9 negotiations again and make a proposal that one of the -- the
10 thing that's most vivid to me, I'm not sure if it was the
11 driving force behind this, but the thing that's most vivid to
12 me was this concept of adding in a DIP, which never went
13 anywhere. But this proposal of making a DIP and the thought
14 behind that had been would it enhance the ability for
15 Washington Mutual to be able to use its go-forward NOLs if the
16 company could do some business while it was in bankruptcy. So
17 we came up with this DIP concept, but it kind of died on the
18 vine.

19 Q. Can you point out for us where the DIP structure proposal
20 can be found in EC 125?

21 A. Yes. I think it's on page 7 in transaction implementation
22 where it talks about the investors providing a DIP facility.

23 Q. Let me also ask you to look on page 6.

24 A. Yes.

25 Q. Do you see the box that refers to JPMC claim?

1 A. I do.

2 Q. Can you explain to us your understanding of what the
3 proposal was that's contained in that box?

4 A. Yes. Again, my recollection's not great on this, but from
5 what I recall and from reading this now, it's -- it was a
6 somewhat new proposal, a new concept. Where before JPMorgan
7 had suggested to us last time you take the backend risk, you
8 take all of the second refund, I think this was a proposal that
9 basically said JPMorgan -- said that the debtors of Washington
10 Mutual, would get A securities and B securities -- certificates
11 -- A certificates and B certificates, and JPMorgan would get a
12 C certificate equal to seventy percent of the first tax refund
13 and a D certificate equal to fifty percent of the second tax
14 refund.

15 But its priority effectively was behind the As and Bs. So
16 if the second refund didn't come in, that was really JPMorgan's
17 risk as opposed to the estate's risk or the estate's creditors
18 risk.

19 Q. Under this proposal who would be the holders of the A and
20 B certificates?

21 A. The A certificates were going to the senior debt and the
22 senior sub debt. The B certificates were going to the CCBs and
23 the peers.

24 Q. Do you know where those percentages, seventy and fifty,
25 came from for this proposal?

1 A. I don't have a specific recollection. I know that the
2 proposal that we had -- if I recall correctly, the proposal
3 that we had made in August I think was sixty/forty. I also
4 think during the -- so it may have just been a progression from
5 the sixty/forty. And also, I believe during the confi period
6 JPMorgan had indicated that they -- before they reset the
7 bookends that they were willing to do something in the
8 seventy/thirty level.

9 But again, this was a different than both our sixty/forty
10 and what I understood JPMorgan to mean by their seventy/thirty
11 split in November because this had a priority concept in it
12 that I don't think -- again, I think it was a new concept,
13 which, again, kind of died on the vine, didn't go anywhere.

14 Q. During January and February what were you aware of with
15 respect to settlement negotiations that might or might not be
16 ongoing between the debtor and JPMorgan?

17 A. I don't have a -- any specific recollection, although I
18 wouldn't be surprised if I knew there were discussions. The
19 market often knew when there was discussions, but I didn't know
20 the substance or how close any negotiations were.

21 Q. When did you learn the terms -- when did you learn that
22 the parties were nearing an agreement?

23 A. I know for certain we learned on September 4th -- I'm
24 sorry, not September 4th, March 4th when Brian Rosen announced
25 in court that they were making progress.

1 Q. Had you known that the parties were close before that?

2 A. I had not.

3 Q. And when did you first learn the terms on which the
4 parties were about to or announced they were prepared to agree?

5 A. My recollection is on March 12th we learned the terms, and
6 that's driven by I have a very vivid recollection of myself and
7 Jed Hart listening very carefully to what was announced and
8 scribbling it down furiously. And at one point, I'm not sure
9 if it was Mr. Rosen or someone else, stated something, which I
10 remember thinking boy, that's a bad deal. I think it turned
11 out to be a mistake and was corrected subsequently on the
12 record. But I remember us listening very intently to see what
13 the deal was.

14 Q. After you learned the terms announced in open court on the
15 12th did Centerbridge become involved in any discussions
16 leading to the finalization of a plan and agreement to
17 implement the principals of the agreement announced in open
18 court on the 12th?

19 A. Yes. Towards the end of March they asked us -- the
20 debtors asked us and the other settlement noteholders to sign
21 plan support agreements. Well, I think they asked a lot of
22 creditors. I know that they asked the four of us. So on March
23 23rd I believe we saw the debtor's plan, which was then filed
24 on the 26th. And we reviewed it and we signed the plan support
25 agreements.

1 Q. Well, after March 12th were there any periods of time that
2 Centerbridge received information that it believed was material
3 nonpublic information?

4 A. Yes. On March 23rd we received the plan, and we
5 restricted from the 23rd to the 26th. We again received the
6 plan on May 15th -- I'm sorry, received the plan on the evening
7 of the 23rd, which was filed on the 26th. On May 15th and
8 16th, again we restricted ourselves, and we received the plan
9 that was filed on the evening of the 16th. And then I believe
10 we restricted ourselves again for an update call, we didn't
11 receive more information, but we restricted ourselves for an
12 update call on May 18th, which we were cleansed on when the
13 debtors filed a plan on the 21st.

14 Q. And can you go back now and tell us for each of these
15 periods what information in your mind was material and
16 nonpublic and what cleansed you to permit you to begin trading
17 again?

18 A. To the best of my recollection, on the 23rd we received
19 the debtor's plan, which we were cleansed by when the plan was
20 filed on the 26th. While we had signed plan support agreements
21 I don't believe the FDIC had signed plan support agreements
22 yet.

23 On the 15th and 16th we saw another version of the plan I
24 think in part because we needed to resign our plan support
25 agreements so the request was to resign plan support

1 agreements. And it was filed the night of the 16th.

2 On the 18th there was an update call. I don't recall
3 specifically what the call was about, but I think it may have
4 been about the FDIC joining the -- signing the plan support
5 agreement. And they signed and their document was filed on the
6 21st.

7 Q. And the filings --

8 A. Cleansed --

9 Q. -- cleansed you by disclosing the information you'd
10 received?

11 A. Yes.

12 MR. OWENS: One moment, Your Honor.

13 Your Honor, if I may approach, I didn't put this in
14 the binder because it's a fairly thick document.

15 Q. Let me show you what we've marked for identification as
16 AOC 60. Do you recognize this?

17 A. Yes.

18 Q. What is it?

19 A. It is data from a service called Market Access, which
20 obtains information from FINRA Trace about all trades, and in
21 this case it was all trades in Washington Mutual debt.

22 Q. And what particular data is reflected in this exhibit?

23 A. I think it reflects every trade that was made in
24 Washington Mutual debt and the date and the price of those
25 trades.

1 Q. For which Washington -- which of the debtor's securities?

2 A. The -- well, you can go through it. I think it's every --
3 it's the senior notes, the senior subs -- the senior notes, the
4 senior subs, the peers. I don't know if the weak preferreds
5 are in here to be honest, but the debt piece of these -- the
6 senior notes, the senior subs and the peers are certainly in
7 here.

8 Q. And is Market Access a pricing service that people in the
9 industry rely upon to provide information about market pricing
10 activity?

11 A. Yes.

12 Q. And to your knowledge do the transactions reflected in
13 here reflect actual market trades?

14 A. Yes, with one qualification on the quantity. My
15 understanding is on the quantity -- this is a report -- my
16 understanding is that brokers are required to report this
17 information to Trace FINRA, which is a regulatory agency.
18 There's a cap on the size, so if it goes over a certain amount,
19 a few million dollars, they don't report -- they just report it
20 at the capped amount as opposed to the actual amount.

21 Q. So with the understanding that the quantity amounts may be
22 understated for certain large trades, is the information
23 otherwise accurate so far as you know?

24 A. Yes.

25 MR. OWENS: Your Honor, we offer AOC 60 as market data

1 for market pricing information.

2 MR. SARGENT: We have no objection, Your Honor.

3 THE COURT: It's admitted.

4 (AOC's Exhibit 60, Market Access report, was hereby received
5 into evidence.)

6 MR. OWENS: And with that, Your Honor, I'll conclude
7 my direct.

8 THE COURT: All right. Let's take five minutes and
9 then we'll start cross.

10 (Recess taken from 5:07 to 5:18 p.m.)

11 THE CLERK: All rise. Please be seated.

12 THE COURT: All right.

13 MR. SARGENT: Good afternoon, Your Honor. Edgar
14 Sargent on behalf of the Equity Committee. May I proceed with
15 the cross-examination?

16 THE COURT: Yes.

17 CROSS-EXAMINATION

18 BY MR. SARGENT:

19 Q. Good afternoon, Mr. Melwani. I'm Edgar Sargent. As I
20 said, we've met before. I represent the equity committee. As
21 you testified on direct with your counsel, Centerbridge entered
22 into a confidentiality agreement with the debtor in this case
23 on March 9th, 2009, do you remember that?

24 A. I do.

25 Q. And we've handed you a binder of exhibits that I may be

1 referring to when I ask you these questions. That's Tab EC 111
2 in that binder. Could you turn to that please?

3 A. Yes.

4 Q. That's a copy of the agreement from March 2009, is it not?

5 A. It is.

6 Q. And the agreement -- you've already testified about this a
7 little bit on your direct examination, but I want to make sure
8 a couple of things are clear.

9 That agreement contained a provision that required the
10 debtor to disclose any material nonpublic information that was
11 shared with you during the pendency of the agreement, and the
12 debtor was required to disclose that when the agreement
13 terminated, wasn't that your understanding?

14 A. It was.

15 Q. And that was a concept that Centerbridge required to be
16 included in this confidentiality agreement, right?

17 A. Yes.

18 Q. And --

19 A. Not necessarily these exact words but the concept, which I
20 think is fairly typical, yes, we required it to be there.

21 Q. And because -- you wanted it included because once the
22 disclosure was made then you could trade, right?

23 A. Yes.

24 Q. Now, there's been some testimony in this case that the day
25 after you entered that agreement, March 10th, 2009, there was a

1 meeting at Sullivan & Cromwell's offices. And I think when I
2 took your deposition you said you couldn't recall if you'd
3 attended that meeting. Is your -- do you recall now that you
4 were there?

5 A. I recall a --

6 THE COURT: Could the parties on the phone please mute
7 your phones? Thank you.

8 Go ahead.

9 THE WITNESS: I honestly don't recall a lot of details
10 about the meeting, but upon thinking about it I recall a
11 meeting where I remember there were a lot of parties, including
12 White & Case and some of their clients. I don't remember a lot
13 of details, but I do remember that meeting. I don't remember
14 if it was at that time, but I think that's the only meeting
15 that it could have been.

16 Q. Do you recall if you or anyone else on behalf of
17 Centerbridge had any input into a settlement proposal that was
18 made to JPMC at that meeting?

19 A. I -- again, I don't remember specifics, but I'm sure that
20 if we were at the meeting and if the debtors asked us, you
21 know, what are your thoughts on this proposal I'm sure we gave
22 them thoughts.

23 Q. In any case, it's your testimony and it's your
24 understanding that there was a meeting on or about March 10th
25 at which a settlement proposal was made to JPMC on behalf of

1 the debtor, correct?

2 A. I'm not positive the proposal was made at that meeting or
3 made subsequent to that meeting. I know JPM's counsel was at
4 that meeting, so it wouldn't surprise me if the proposal was
5 made at that meeting.

6 Q. Let's just skip ahead a little bit to, could you look at
7 EC 29 and EC 30? This is two other exhibits that your attorney
8 questioned you about, and I think they're already both in
9 evidence.

10 A. I'm sorry.

11 THE COURT: What are the numbers again?

12 MR. SARGENT: I'm sorry, EC 29 and EC 30.

13 THE COURT: Okay.

14 THE WITNESS: Yes.

15 Q. And this is an e-mail that your counsel sent to you with
16 its attachment; is that right?

17 A. Yes.

18 Q. And the e-mail -- the attachment is a summary of
19 settlement proposals, one by JPNC and one by the debtor; is
20 that right?

21 A. Yes.

22 Q. And it's your understanding that the settlement proposal
23 here by the debtor was -- is the one that -- it either was made
24 at that meeting or it came shortly thereafter, correct?

25 A. Yes. Yes.

1 Q. And the e-mail from your counsel forwards not just this
2 settlement proposal but also an e-mail from JPMC's counsel, do
3 you see that?

4 A. I do.

5 Q. I'm looking at EC 29. Now, you reviewed the settlement
6 proposals and the attachment at the time you received them,
7 didn't you?

8 A. I believe I did.

9 Q. And you would have reviewed this e-mail from JPMC's
10 counsel explaining its view of the settlement proposals,
11 correct?

12 A. I don't recall specifically doing it but I'm sure I did.

13 Q. And could you -- I'd like to call your attention to the
14 second paragraph in that e-mail that begins "please
15 understand," do you see where I'm reading?

16 A. Yes.

17 Q. And do you see that it says that JPMC is approaching this
18 analysis from the perspective of what they think are our
19 client's respective rights and what we believe you and we are
20 legitimately entitled to claim and likely to prevail upon at
21 the end of the day? Do you see where that's written there?

22 A. I do.

23 Q. And was it your understanding that the settlement proposal
24 from JPMC in the attachment awarded the entire 4.08 billion
25 dollar deposit to the debtor excepting only certain taxes that

1 were claimed under a different portion of the settlement
2 proposal?

3 A. No, that was not my understanding.

4 Q. Why is that incorrect, sir?

5 A. Because I don't think they were offering to make -- do
6 that short of having an agreement on every term in that
7 proposal.

8 Q. But you would agree, would you not, that at least with
9 regard to the provision in the settlement proposal related to
10 the deposit accounts JPMC has agreed that the entire 4.08
11 billion will go to the debtor? Don't you agree with that?

12 A. I agree that's what it says. I -- that is the paragraph.
13 I think that's not the context though.

14 Q. Well, don't you agree then taking these two documents
15 together, the cover e-mail and the attachment, that what JPMC
16 is saying is that their client's respective rights and the
17 debtor's respective rights and what they believe the debtor is
18 legitimately entitled to claim includes the 4.08 billion
19 deposit? Isn't that what those two documents mean taken
20 together, sir?

21 A. Again, I don't view it that way. I view it as a package.
22 I mean, probably a bad analogy, but it's like going in to buy a
23 car and the guy saying if you -- we agree on the car I'll give
24 you a new set of tires. If I don't buy the car I'm not walking
25 out of there with the tires.

1 Q. But again, I call your attention to the cover e-mail, and
2 doesn't this e-mail say that --

3 THE COURT: I think you're getting argumentative now.

4 MR. SARGENT: Okay.

5 THE COURT: You're not going to get --

6 MR. SARGENT: I'll move on. I'll move on, Your Honor.

7 Q. You spoke on direct about a stipulation that was filed
8 related to the deposits, do you recall that?

9 A. I do.

10 Q. And it was filed near the beginning of the case; is that
11 right?

12 A. Yes, I think October '09 I believe.

13 Q. And the stipulation was essentially that the deposits
14 belonged to the debtor, correct?

15 A. Yes.

16 Q. But that stipulation was withdrawn, was it not?

17 A. It was.

18 MR. SARGENT: Could I have the ELMO up please? We
19 didn't have this in our exhibit binder, but it's docket number
20 611.

21 Q. And you see -- do you see, Mr. Melwani, that this is a
22 notice of withdrawal, and it's a notice of withdrawal of that
23 stipulation, is it not?

24 A. It is.

25 Q. And this was docketed on January 26th, 2009, is that

1 consistent with your recollection?

2 A. Yes.

3 Q. So at least -- so as of that date and certainly as of
4 March 2009 when you received the settlement proposal from JPMC
5 there was no effective stipulation on the ownership of the
6 deposits, was there?

7 A. There was no effective stipulation, no.

8 Q. And in fact, in -- later in March 2009 JPMC filed an
9 adversary claim seeking ownership of those deposits, didn't
10 they?

11 A. They did.

12 Q. And in April 2009 the debtor filed a counterclaim seeking
13 ownership of the deposits, didn't it?

14 A. They did.

15 Q. And in May the debtor filed a motion for summary judgment
16 seeking ownership of the deposits, didn't it?

17 A. I believe -- I don't remember if that's the exact date but
18 I know that happened.

19 Q. Now, however you understood it, Mr. Melwani, you were free
20 to use the information in EC 29 and EC 30, the e-mail from
21 JPMC's counsel and the attachment with the settlement
22 proposals, you were free to use that information in making
23 trading decisions beginning May 8th, 2009 when the
24 confidentiality agreement expired, weren't you?

25 A. I'm not sure I understand the question. I mean, we didn't

1 use it to -- I don't understand the question.

2 Q. I'm not saying -- I'm not asking you if you did use it. I
3 understand your testimony is that you didn't consider it. But
4 my question is, was your understanding under the terms of the
5 confidentiality agreement and any other legal obligation that
6 you might have that you were perfectly free to consider this
7 information and take it into account in making trading
8 decisions beginning May 8th, 2009; isn't that right, sir?

9 A. May 8th, 2009 -- I think information we got -- I'm still
10 not completely sure I understand it -- but information we got
11 under the confidentiality agreement we agreed to keep
12 confidential during the period. And I think that -- so once
13 the confidentiality period expired I'm not sure there was any
14 restrictions under that confidentiality agreement period.

15 Q. Well, that's a separate question. That's actually a
16 follow-up question I have for you in a moment.

17 But my question is, were you free not to disclose this
18 information but to use it in making your trading decisions?
19 Were you free to use the information in EC 29 and EC 30?

20 A. Honestly, I'm thinking about it now for the first time
21 because I don't think we did use it. I know we didn't use it.
22 But I think, yeah, we probably were free.

23 Q. Yet in your estimation there was nothing that prohibited
24 from you -- you from using this information in making trading
25 decisions in May, correct?

1 A. In my spur of the moment estimation right now, yes.

2 Q. As I understood your testimony on direct, getting back to
3 an answer you gave me just a moment ago, your -- you said your
4 obligation to maintain the confidentiality of certain
5 information lasted as long as the confidentiality agreement
6 lasted. Was that your testimony?

7 A. That's my understanding.

8 Q. Did you have an understanding that you had an obligation
9 to maintain confidentiality after the sixty-day period?

10 A. I think our understanding was that the confidentiality
11 agreement when it terminated it ceased to be effective. That
12 said, you know, I don't -- we never disclosed it to anyone. My
13 understanding is that the confidentiality agreement by its
14 terms expired after sixty days.

15 Q. So it was Centerbridge's understanding that they had no
16 obligation to maintain the confidentiality of JPMC's settlement
17 offer as of May 8th, 2009; is that your testimony?

18 A. I would like to look at it again if I could.

19 Q. Sure. I'm sorry. It's EC 30; 29 is the cover e-mail.

20 A. The confidentiality agreement.

21 Q. Oh, that's 111 I think.

22 A. I -- reading it now -- and again, we never focused on this
23 because it's not like we went out and disclosed it, so we
24 didn't have a reason to focus on, that I recall, the aspect
25 that you are raising with me. But reading it now, and it's not

1 inconsistent with what my belief was before I read it, is that
2 this agreement shall remain in full force and effect until
3 blank, until all of these various things happen.

4 Q. So that's consistent with your testimony a moment ago that
5 your understanding is you had no obligation to maintain the
6 confidentiality of the settlement proposals after the
7 agreements expired.

8 A. That is my understanding now.

9 Q. And let's turn to your trading records for a moment if we
10 could, AOC 54. I just want to follow up on your testimony a
11 moment ago that you thought you could have used --

12 A. I'm sorry. Is this not in your binder?

13 Q. Sure, it is. I think it's towards the back. I think the
14 exhibit --

15 A. Oh, I see it.

16 Q. -- number is --

17 A. I see it. I'm sorry.

18 Q. A moment ago you testified that you were free to use if
19 you'd wanted to JPM -- the information in JPMC's settlement
20 offer to trade in May, correct?

21 A. I think my testimony is that I don't believe the
22 confidentiality agreement, reading it now, remained in force
23 and effect after it expired. That said, we never -- while the
24 confidentiality restrictions weren't in there, we weren't up
25 calling the New York Times the next day either. So your -- I'm

1 sorry, your question again?

2 Q. I'm focusing back on your trades. Let's just take a look
3 at your trades. So turn to page 14. This is a page that you
4 also looked at under direct examination.

5 A. Yep.

6 Q. And this covers trades between March and -- March 6th and
7 July 16th; isn't that correct?

8 A. Yep.

9 Q. And there's a gap between March 6th and May 13th, no
10 trades at all, correct?

11 A. Yep.

12 Q. And that was during the pendency of the confidentiality
13 agreement as you testified earlier, correct?

14 A. Yes, sir.

15 Q. That's why there was no trading in that period?

16 A. Yes, sir.

17 Q. And then there's almost a page full of trading here
18 between May 13th and May 21st, a little over a week; is that
19 right?

20 A. Yes.

21 Q. And then again there's a gap of nearly two months where
22 you didn't do any trading at all between May 21st and July
23 15th; is that right?

24 A. Yes.

25 Q. Let's look at these trades in May. So May 13th, that was

1 a buy, buy. These are almost all acquisitions, correct, 13th,
2 14th, 15th and 19th? Those are all acquisitions, correct?

3 A. Yes.

4 Q. And in fact, they're all acquisitions of senior notes;
5 isn't that right?

6 A. They are.

7 Q. And do you recall testifying at your deposition that the
8 amount of the deposit claim was alone sufficient to make the
9 senior notes whole or very close to it, do you recall that
10 testimony?

11 A. I do.

12 Q. Let's move ahead to the July trades, sir. You testified a
13 little bit about this on direct also. It starts at the bottom
14 of this page. You had some acquisitions on the 15th, a few
15 more towards the end of the month, and many, many acquisitions
16 in August on the next page, page 15.

17 A. Yep.

18 Q. Many more acquisitions running into September on page 16.

19 A. Yes.

20 Q. I think it's probably easier to discuss these trades if we
21 turn to another exhibit where they're summarized, CB 36. This
22 is also an exhibit that was provided by your counsel.

23 A. Yes, sir.

24 Q. And this is the exhibit that summarizes all of your
25 trading activity by month, nets it out buys against sells,

1 correct?

2 A. It does.

3 Q. And if we look in here at July 2009, which is about in the
4 middle of the page, it looks like your net activity was an
5 acquisition of five million senior subs and then a sell of some
6 peers, correct?

7 A. Yes.

8 Q. Then the acquisitions get much more active starting in
9 August; isn't that fair?

10 A. They do. That's when we raised our new fund.

11 Q. You acquired -- well, let's talk about that in a second.

12 You acquired sixty-one million dollars worth of senior
13 notes in August; isn't that right, nearly sixty-one million?

14 A. Yes.

15 Q. And over twenty-six million of sub -- senior sub notes,
16 correct?

17 A. Yes.

18 Q. And then in the next month, September, you acquired over
19 fifty million more senior subs; isn't that right?

20 A. We did.

21 Q. So that's over a hundred million in acquisitions just in
22 that two-month period, correct?

23 A. Yes.

24 Q. And you testified earlier about --

25 A. A hundred million in face amount.

1 Q. Face amount.

2 A. Yes.

3 Q. And you testified earlier about bringing a new fund online
4 in about this period; is that right?

5 A. Yes.

6 Q. And it's one of your policies to have your funds invest
7 pari passu, correct?

8 A. It's the goal where possible.

9 Q. And but the other funds, the existing funds were invested
10 in peers in July and August 2009, were they not?

11 A. Yes.

12 Q. But you didn't acquire any peers for these new funds or
13 for any fund in July or August 2009, did you?

14 A. Yeah. But you don't -- the goal of the fund is not to --
15 if you have an investment which you don't think makes sense
16 it's not like a blind, all right, we think this investment
17 doesn't make sense anymore so let's just go off and buy it. We
18 were selling peers at that point. Wrongfully, actually, we
19 were selling peers. But if we were selling peers in the main
20 fund, for whatever reason it may be, we probably couldn't
21 justify selling it in one fund and buying it in the other fund.
22 Q. So the acquisitions were not driven solely in order to be
23 pari passu with the existing funds. You were making other
24 determinations about which securities to invest in; isn't that
25 correct, sir?

1 A. I mean, there were other reasons. The -- one of the
2 largest reasons is we just put -- we just raised a two billion
3 dollar fund, which we needed to try and get up to parity.

4 Q. And you chose to invest none of that in peers, correct?

5 A. Well, we were selling peers in the main fund.

6 Q. You chose to invest none of that in trust preferred
7 securities, correct?

8 A. Yes.

9 Q. And you chose to invest a hundred million face at least of
10 at least -- from some of your three funds in the senior notes,
11 in the senior sub notes in these two months, correct, sir?

12 A. Yes.

13 Q. Okay. And during those two months, that was also the
14 period when Centerbridge was engaging in the settlement
15 negotiations with JPMC, correct?

16 A. It was during the period where we sent a proposal to JPMC.
17 It was not after we received the response from JPMC.

18 Q. You sent the proposal to JPMC. You provided the proposal
19 to JPMC --

20 A. Or not sent --

21 Q. -- in person, didn't you?

22 A. Yeah, we did.

23 Q. And they reacted to that proposal in person didn't they?

24 A. They -- no, they sent us back a response.

25 Q. Well, they didn't say anything at all when you offered the

1 proposal at the meeting?

2 A. No. They said -- they took it down and they said, and
3 they asked a question or two about how we treat certain things,
4 and they said we'll be back to you.

5 Q. And you didn't restrict your trading during this period,
6 did you?

7 A. We did not.

8 Q. And Appaloosa was the other fund that was making this
9 settlement offer in conjunction with you, weren't they?

10 A. They did.

11 Q. And you were aware at the time that they had decided to
12 restrict their trading, weren't you, sir?

13 A. I was not.

14 Q. You know that now, though, don't you?

15 A. As of a second ago.

16 Q. Okay. You hadn't heard it before I just told you that?

17 A. No.

18 THE COURT: Did you answer?

19 THE WITNESS: I did. I said as of a second ago.

20 THE COURT: You didn't know before then?

21 THE WITNESS: I did not.

22 THE COURT: Okay.

23 THE REPORTER: Could you move the microphone closer
24 towards you?

25 THE WITNESS: Sorry. Better?

1 Q. Could you turn to Exhibit EC 215 in your binder please?

2 This --

3 A. Yes, sir.

4 Q. Do you recognize this e-mail?

5 A. I do.

6 Q. This has already been admitted into evidence, but can you
7 tell us what it is?

8 A. I think it is a e-mail forwarding to us a comparison of
9 certain term sheets that were circulated between the debtors
10 and JPM in April.

11 Q. It's being forwarded to you by your counsel, correct?

12 A. It is.

13 Q. And it's being forwarded on July 1st, 2009, right?

14 A. It is.

15 Q. And it's forwarding a summary of settlement proposals that
16 were exchanged between the debtor and JPMC in April 2009,
17 correct?

18 A. Yes.

19 Q. And it's your -- it was your understanding at the time
20 when you received this that that was a second series of
21 settlement proposals that had been exchanged subsequent to the
22 March proposals, which we looked at a few moments ago in EC 29
23 and 30, correct?

24 A. Yes.

25 Q. And whether or not you received those April term sheets in

1 April, you certainly were aware of them no later than July 1st,
2 2009; isn't that correct?

3 A. That is.

4 Q. And your counsel was sending you this as part of an effort
5 to prepare the settlement proposal that you and Appaloosa
6 eventually presented to JPMC towards the end of July, correct?

7 A. That is my recollection.

8 Q. And you were going to base that settlement proposal on the
9 terms that were -- had been exchanged in this most recent
10 exchange in April, correct?

11 A. I don't know if we were going to base it, but I think we
12 were going to -- we wanted to review it to inform us in making
13 our proposal.

14 Q. Now, turn to the first page, which is the table that
15 summarizes the terms.

16 A. Yes, sir.

17 Q. And this is formatted more or less the same way as the one
18 we looked at from March in that the first row on the table is,
19 again, addresses the deposit claims; isn't that correct?

20 A. Yes.

21 Q. And again, JPMC is saying that they agree to pay over to
22 Washington Mutual the 4.08 billion dollar in deposit claims,
23 correct?

24 A. Less a certain amount, yes.

25 Q. Yeah.

1 A. Less 200 million-ish.

2 Q. Less the taxes, which are claimed under a different
3 portion of the settlement proposal, correct?

4 A. Well, I think this was referring to taxes that had already
5 been received or were in the deposit account, so it was
6 reducing the deposit. So where I think Washington Mutual is
7 looking to get back the entire deposit JPM's proposal was
8 holding some of that back.

9 Q. In any event, this is the same proposal that JPMC had made
10 in March, wasn't it? You can compare it to EC 30 if you want
11 to take a look.

12 A. It's close. I mean, this eighty-five percent of 248
13 versus I think in March it was 250. So there's some
14 differences but the -- it's basically the same.

15 Q. And but one difference between this proposal -- I'm glad
16 you've got the March one in front of you -- is that this
17 proposal includes comments about the FDIC. Do you see that,
18 the July proposal mentions the FDIC?

19 A. I do.

20 Q. And in fact, it mentions it on both sides of this deposit
21 line. It says that the FDIC along with JPMC and along with the
22 debtor will waive all claims including setoff rights with
23 respect to the deposit accounts.

24 A. I see that.

25 Q. Do you see that? And if you look down into the next row

1 on the chart, the trust preferred securities row, here again
2 the proposal is essentially the same as it was in March, isn't
3 that right, that the trust preferred collateral is going to go
4 to JPMC?

5 A. I'm sorry. Let me just check again.

6 Q. And also, when you're taking -- take a look and see if
7 there's any mention of the FDIC in the March proposal when you
8 look at that.

9 A. The FDIC in which column?

10 Q. Trust preferred.

11 A. I'm sorry. So what's the question?

12 Q. It's essentially the same proposal as there was in March,
13 that the collateral for the trust preferred is going to go to
14 JPMC, correct?

15 A. It is.

16 Q. And but the addition here in July is that the FDIC is
17 mentioned.

18 A. The FDIC is mentioned.

19 Q. And the FDIC is going to be released from all claims
20 related to the trust preferred by WMI; isn't that a provision
21 that's on here?

22 A. It does say that, yes.

23 Q. Turn the page in the July term sheet, Exhibit 215 please.

24 Do you see that that gets into the tax issues?

25 A. I'm sorry. That's the next page, page 2?

1 Q. Yes, page 2. And the first row is -- addresses the tax --
2 settlement of the tax disputes, ownership of the tax refunds;
3 is that right?

4 A. Yes. Yes.

5 Q. And you see in this section there's no indication that the
6 FDIC is going to waive any rights or has agreed to anything;
7 isn't that right?

8 A. There is a reference to the FDIC at the end. JPMC has not
9 assumed tax sharing agreement, repudiation of tax sharing
10 agreement by FDIC, to be discussed with FDIC.

11 Q. Right. It suggests that there's still an open dispute
12 with the FDIC over that issue, correct?

13 A. Yeah. But I don't -- just to be clear, I don't read the
14 first two to not necessarily mean -- the FDIC wasn't from what
15 I understand the -- this was a response from JPMorgan not, and
16 you can correct me if I'm wrong, but from the FDIC.

17 Q. Well, that's what I was going to ask you, sir. Is it --
18 was it your understanding that the FDIC had had input into the
19 settlement discussions at this point and that this was
20 reflecting their position on these issues? Isn't that your
21 understanding?

22 A. Not to my recollection, no.

23 Q. Do you recall having any communications with anyone from
24 the FDIC in the period May or June 2009 about their position on
25 any of these disputes?

1 A. I do not.

2 Q. Do you know Mr. Tom Califano, he's counsel for the FDIC?
3 Did he contact you at any point in time about these disputes in
4 the time period May, June, maybe even July 2009?

5 A. Did Mr. Califano contact?

6 Q. Contact Centerbridge.

7 A. I don't believe so.

8 Q. He didn't contact you personally in any case or at least
9 you don't recall that; is that your testimony?

10 A. Not that I recall.

11 Q. And do you recall hearing from your counsel or anyone else
12 that the FDIC was on board with the settlement proposals as
13 reflected in Exhibit 215?

14 A. Not that I recall.

15 Q. Okay. Please turn to EC 115 in your binder.

16 A. Yes.

17 Q. And I think you've already testified about this a little
18 bit. This was a e-mail that was sent from Don McCree at
19 JPMorgan to Jeff Aronson at your firm, Centerbridge, correct?

20 A. Yes.

21 Q. And it includes JPMC's response to the settlement proposal
22 that Centerbridge and Appaloosa made in person to JPMC in late
23 July or early August, correct?

24 A. It does.

25 Q. And it's your testimony, isn't it, that JPMC's response

1 here is not material; is that correct, not material to trading
2 on Washington Mutual securities at this time?

3 A. Well, when you say "at this time," when it was -- when we
4 received it?

5 Q. When you received it.

6 A. I don't know we made -- if we made a decision at that
7 point where we decided to restrict just to be conservative.

8 Q. You see that JPMC is offering to split the first half of
9 the tax refund seventy-five percent twenty-five percent in
10 favor of JPMC, twenty-five percent to the debtor? Do you see
11 that?

12 A. I do see that.

13 Q. And the proposal that Centerbridge and Appaloosa had made
14 was sixty/forty for the same tax refund; is that right?

15 A. Yes.

16 Q. So at this point the parties are twenty-five percentage
17 points apart; is that right?

18 A. Again, it's one line in a larger proposal, so.

19 Q. But --

20 A. But again, I don't think they would have agreed to the
21 seventy-five/twenty-five if we didn't agree to a number of the
22 other things, such as any cost of the refunds would -- any --
23 I'm sorry, any cost of releases would come from them. So I
24 think it was, you know, as I described before, I think it was
25 all a package deal. I don't think JPM would have or we would

1 have ever agreed to a one off, doing any one of these line
2 items individually.

3 Q. Wouldn't you agree with me though, sir, that the
4 resolution of the division of the tax refund was really the
5 primary focus of these settlement negotiations?

6 A. It was a big focus, yes. The only other thing I just note
7 is it's a big number, three billion dollars. So when you talk
8 about twenty percent on three billion dollars, that's a lot of
9 money.

10 Q. That's true.

11 Let's turn to the next round of negotiations. In November
12 2009, Centerbridge entered into a second confi agreement with
13 the debtors. You've already testified about that, right?

14 A. Yes, sir.

15 Q. If you need to look at it, it's EC 117 in your binder.

16 But --

17 A. Okay.

18 Q. -- I don't think I'm going to have any specific questions
19 about the language of the agreement.

20 A. Okay.

21 Q. During this confidentiality period, settlement offers were
22 again exchanged with JPMC; isn't that right? That was your
23 understanding?

24 A. Yes.

25 Q. Could you look at EC 118 please?

1 A. Yes.

2 Q. You recall I asked you about this e-mail at your
3 deposition.

4 A. Yes.

5 Q. And this is an e-mail, the bottom e-mail in the chain is
6 from Don McCree at JPMorgan to Bill Kosturos; do you see that?

7 A. I do.

8 Q. And then Bill Kosturos forwarded this on to you; is that
9 right?

10 A. He did.

11 Q. And was it your understanding when you received that that
12 this was part of Mr. Kosturos's effort to involve you in the
13 settlement negotiation process with JPMC?

14 A. Yes.

15 Q. Because you received this e-mail during the
16 confidentiality period when you were working on those
17 settlement negotiations, correct?

18 A. Yes, sir.

19 Q. And what Mr. McCree is saying in his e-mail is that we,
20 being Morgan, are ready to engage in substantive negotiations
21 on a thirty/seventy split of taxes. Do you see that?

22 A. I do.

23 Q. And you testified at your deposition, did you not, that
24 you didn't know really what that meant anymore? You didn't
25 know if that referred to the first refund or the second refund.

1 Do you recall that testimony?

2 A. I said looking at it right now I didn't -- at the
3 deposition I didn't, but I probably remembered at the time.

4 Q. And sitting here today do you know what that's referring
5 to, sir?

6 A. I think it's referring to a thirty/seventy split of the
7 tax refund. I presume JPMorgan is getting seventy percent of
8 it. I'm still not positive whether it referred to just the
9 first refund or the first and second refund.

10 Q. But a seventy/thirty split of the first tax refund was the
11 basis for a settlement proposal that the debtors made to JPMC
12 in December 2009; isn't that right?

13 A. I don't know that. I know in November they made a
14 proposal that I thought was slightly different. And if I could
15 look at it I can give you the exact numbers, but I thought --
16 well, I don't recall it being seventy/thirty.

17 Q. I'm actually asking about a proposal that was a little bit
18 later. December 8th, 2009 there was a proposal that was made
19 on exactly these terms, seventy/thirty split of the first tax
20 refund.

21 A. I don't believe I saw it.

22 Q. Before we got to that, let's take -- go back just briefly
23 to the last exhibit, the JPMC offer.

24 A. I'm sorry. What tab?

25 Q. It's Tab number 1 -- EC 115.

1 A. Okay.

2 Q. And this was JPMC's last offer before the e-mail we were
3 just looking at November 20th; isn't that right, at least that
4 was your understanding at the time?

5 A. Yes.

6 Q. And here, JPMC is offering to split the tax refunds
7 seventy-five/twenty-five, correct?

8 A. Yes.

9 Q. And so if they're saying seventy/thirty on November 20th,
10 that represents a five percent move in favor of the debtor from
11 where they were in August, correct?

12 A. Yes.

13 Q. And do you recall discussing with Mr. Kosturos or anybody
14 else on behalf of the debtor whether or not Centerbridge would
15 be able to support a settlement proposal on a seventy/thirty
16 split of the first tax refund?

17 A. I don't.

18 Q. You don't recall whether or not you supported such a
19 proposal?

20 A. I don't think we would have said -- it's the same point,
21 without knowing what everything else was, someone just said
22 seventy/thirty, the question is what's happening with
23 everything else.

24 Q. Would --

25 A. If it was seventy/thirty and all of the assets of the

1 Holdco were moving over to JPM the answer would probably be no.

2 Q. Do you recall any discussions with anyone on behalf of the
3 debtor where seventy/thirty split of the first tax refund was
4 one of the components in the November, December timeframe?

5 A. I don't. Again, I think the -- we commented on one
6 proposal, which I know is I think not the one you're referring
7 to, but that is the proposal that I know we commented on and
8 had a discussion about. And my recollection is it wasn't
9 seventy/thirty. It was -- I can look at it if you want.

10 Q. I don't have a copy of that in your binder. I wasn't
11 going to ask you any questions about that.

12 A. Okay.

13 Q. There's already been a lot of testimony about that one.
14 Could you look at Exhibit 305?

15 A. Yes.

16 Q. This has already been admitted into evidence. This is an
17 e-mail from Chad Smith, in-house counsel for Washington Mutual,
18 to Don McCree at JPMorgan from December 8th, do you see that?

19 A. I do.

20 Q. And this attaches a term sheet, do you see that?

21 A. I do.

22 Q. And this was still during the pendency of that November,
23 December confidentiality agreement that you'd entered into with
24 the debtor; isn't that right?

25 A. Yes.

1 Q. And if you look at the second page, you see that this is a
2 proposal that includes a seventy/thirty split of taxes, the
3 first tax refund, between JPMC and Washington Mutual, do you
4 see that?

5 A. Yes, I do.

6 Q. And is it still your testimony looking at this document,
7 sir, that you did not know that the debtor was making such a
8 proposal as of December 8th or in that timeframe?

9 A. Yes. To the best of my recollection, yes, that is my
10 testimony.

11 Q. Okay. Would you please flip to Exhibit 122, EC 122 in
12 your binder?

13 THE COURT: What number again?

14 MR. SARGENT: EC 122, Your Honor.

15 THE COURT: Okay.

16 Q. Do you have that in front of you, Mr. Melwani?

17 A. I do.

18 Q. This is an e-mail chain that starts off with an e-mail
19 from Mr. Kosturos to you, do you see that?

20 A. I do.

21 Q. Do you recall receiving this e-mail?

22 A. I don't recall specifically receiving it, but I can see I
23 did receive it and I remember looking at it in our deposition.

24 MR. SARGENT: Okay. Your Honor, we'd move this into
25 evidence.

1 MR. OWENS: No objection.

2 THE COURT: It's admitted.

3 (EC's Exhibit 122, E-mail chain, was hereby received into
4 evidence.)

5 Q. Do you recall Mr. Kosturos contacting you on or in mid
6 December on or about the 17th for a call for an update, do you
7 recall that?

8 A. I don't recall it. I see it in this e-mail again.

9 Q. Was he updating you at that point in time on settlement
10 negotiations with JPMC?

11 A. Not to the best of my recollection.

12 Q. Well, does it surprise you to know that during the
13 pendency of a confidentiality agreement he was making
14 settlement offers on a basis that he'd already discussed with
15 you in an e-mail two weeks before and wasn't updating you on
16 them? Is that your testimony or do you just not remember?

17 A. No. I'm not sure of the question.

18 I don't remember -- if the question is do I remember this
19 e-mail or this discussion, I don't. I don't think -- based on
20 the chain it seems like I actually didn't take this call. If
21 the question is it's -- I don't know what the word you used, is
22 surprising to me, I think as I said in my deposition, I never
23 assume that debtors are including us in everything. I mean,
24 they are going to do what they are going to do.

25 So I don't think the confi required them and I never

1 expected them to say every meeting we ever have with anyone
2 you're going to be involved in.

3 Q. Had you heard about this time that the debtor was working
4 on a settlement agreement, a draft settlement agreement with
5 JPMC?

6 A. Again, I don't recall. I don't recall knowing that. I
7 don't know if it would have shocked me. I wouldn't be
8 surprised if I knew that they were talking just because I kind
9 of assume that that's what they had to in this case. I mean,
10 it's not a going concern business, it's a liquidation. They
11 need to come to resolution. So just because we're not talking
12 doesn't mean they're not talking.

13 Q. So you didn't have an understanding as of this point in
14 time that settlement negotiations were dead; is that right?

15 A. The settlement negotiations we had seen, the November --
16 again, I forget the dates, but the two proposals we had seen,
17 my understanding was that negotiation had failed, that they had
18 reset the bookends, and I did not know to the best of my
19 recollection that anything else was going on.

20 If the question is -- I forgot what the word you used was.
21 Would I have been surprised? I don't think I would have been
22 surprised because, again, that's what debtors do. They're
23 supposed to talk to people. And just because they're not
24 talking to me, I wouldn't be surprised to find out they were
25 talking to people.

1 Q. Let's look ahead to EC 125. This is also a document that
2 you looked at with your counsel on direct.

3 A. Yes, sir.

4 Q. And I believe you testified that you recognized this as a
5 draft term sheet for a bankruptcy plan that was prepared by
6 your counsel in February 2010; is that right?

7 A. Yeah. I recognize the proposal that was made, yes.

8 Q. And you testified at least at your deposition and I think
9 on direct that you recalled having some involvement with the
10 preparation of this kind of draft plan at about this time; is
11 that right?

12 A. Yeah. It wasn't a great recollection because, I mean, I
13 wish I had a better recollection. We were -- had a lot else
14 going on in February, but I do have some recollection of it.

15 Q. And let's turn to a section that you also discussed with
16 your counsel on the JPMC claim, page 6.

17 A. Yes.

18 Q. And it was your testimony that these numbers, the seventy
19 percent, indicating that seventy percent of the first tax
20 refund was going to JPMC, that you thought those probably were
21 -- came from the August JPMC offer; was that your testimony?

22 A. My -- I thought my testimony was that I don't know -- I
23 don't recall where they came from exactly. I know that the
24 proposal we made in August I think was sixty/forty. I know
25 that we had seen -- and again, I don't know -- I know we saw

1 the seventy/thirty from you showing it to me in my deposition
2 or we knew it, but I know now that there was a seventy/thirty
3 -- the seventy/thirty number had been mentioned in November.
4 So I don't recall exactly where the seventy/thirty came from.
5 And I -- maybe I shouldn't have been speculating, but I was
6 just speculating that, you know, we'd made an offer at
7 sixty/forty and it's a step in direction. But I don't recall
8 specifically where the seventy/thirty came from.

9 Q. And do you see that it also -- the seventy/thirty is
10 talking about splitting the first tax refund, correct, sir?

11 A. Yeah. Again, this is a completely different structure
12 though, which I pointed out. I don't think it's apples to
13 apples at all.

14 Q. It's a different structure in terms of how the bankruptcy
15 plan is structured, but the structure of the settlement with
16 JPMC on economic terms, at least as I read this, is a
17 seventy/thirty split of the first tax refund. Is that fair?

18 A. But again, it's seventy -- I'm sorry. It's seventy -- I
19 don't think it's the same economically because economics
20 include not just number but risk.

21 And what this is saying is you get seventy percent of the
22 first -- you get C certificates equal to -- as I read it, you
23 get C certificates equal to seventy percent of the first
24 refund. And again, I haven't -- maybe I'm reading it wrong but
25 I think it's pretty clear. It's not that when the refund comes

1 in JPMorgan gets seventy percent of it. When the refund comes
2 in to the estate the estate pays various certificates, and the
3 first class of certificates are the As. There's a section in
4 here I know for certain talks about the priority.

5 I think if you look at page 3, trust certificates, the A
6 certificates will be senior in priority and right of payment to
7 the Bs. And then it's very legalese, but I think the basic
8 concept is Bs will be senior to the Cs.

9 So what this proposal, what this was saying is, which I
10 think is a very different thing as a matter of economics
11 because of risk, if the first refund came in it would pay the
12 As and the Bs first. So it would pay the seniors and the
13 senior subs.

14 If for some reason, whatever reason it was, the second
15 refund didn't come in and there wasn't enough money to pay the
16 C certificates in full, JPMorgan would have a claim in C
17 certificates but they wouldn't get paid. So it does -- so
18 that's a very long, drawn out way of saying that I don't agree
19 it was the same economic proposal because I think economics
20 inherently has to factor risk.

21 Q. Fair enough.

22 It at least says, though, that seventy percent of the
23 first tax refund is going to JPNC, correct?

24 A. No.

25 Q. Well, that's the way that the C certificates are

1 allocated. That's the basis for the allocation of the C
2 certificates in that divisional part.

3 A. Yeah. The only distinction I'm making is seventy percent
4 of the first refund does not go to JPMorgan. They get C
5 certificates in an amount equal to seventy percent, but the tax
6 refund would go to pay the A certificates and B certificates
7 before it paid the C certificates.

8 Q. And then let's look at the second tax refund. That's
9 fifty percent to JPMC; isn't that right?

10 A. Yes.

11 Q. And if you go back to Exhibit --

12 A. Well, I'm sorry. Again, it's D certificates equal to
13 fifty percent. So if the A -- if the first refund didn't come
14 in and just the second refund came in or the first refund was
15 not -- I'm forgetting the amounts -- wasn't 2.6 to three and
16 everyone got it wrong and it was a billion and a half, then
17 when the second refund came in that second refund would go to
18 pay the As and Bs. So this was basically a third level or
19 fourth level of priority.

20 Q. Okay.

21 A. So I -- yes.

22 Q. Still, the percentage division is seventy percent on the
23 first, fifty percent on the second, correct?

24 A. No.

25 Q. If you go back to Exhibit 305 --

1 THE COURT: I think you're not going to get a yes
2 answer from him on this, so I think you should move on.

3 MR. SARGENT: I was -- okay, I was moving on to a
4 different document, Your Honor.

5 THE COURT: Okay.

6 MR. SARGENT: Thank you.

7 THE COURT: All right.

8 Q. Exhibit 305, the last settlement proposal that we looked
9 at, December 8th from the debtor to JPMC.

10 A. Yes, sir.

11 Q. Do you see those numbers are thirty/seventy for the first
12 tax refund; isn't that right?

13 A. I do.

14 Q. And they're fifty percent; fifty percent for the second
15 tax refund?

16 A. I do.

17 Q. Okay. That's all I have on that.

18 Mr. Melwani, I'd like to ask you a couple more questions
19 about your trading activity. Could you look at AOC 67, please?
20 It's in your binder.

21 A. Yes, sir.

22 THE COURT: 67?

23 MR. SARGENT: Six seven, yes.

24 THE WITNESS: It's a summary.

25 MR. SARGENT: It's the summary of Centerbridge

1 Partners' position in WMI securities by month, peers.

2 THE COURT: I don't have a 67.

3 MR. SARGENT: I have AOC 67. You don't -- it's in --
4 it's not an equity committee exhibit, Your Honor. It's in a
5 binder AOC, which is --

6 THE COURT: Oh.

7 MR. SARGENT: -- produced by Appaloosa, Owl Creek and
8 Centerbridge. I can get a copy for Your Honor.

9 THE COURT: Yeah. It's not in my Centerbridge
10 confirmation exhibits so I don't know.

11 (Pause)

12 MR. SARGENT: May I approach, Your Honor?

13 THE COURT: Yes.

14 MR. SARGENT: Apologize, Your Honor.

15 Q. Do you have AOC 67 in front of you, Mr. Melwani?

16 A. I do.

17 Q. And this is a summary of Centerbridge Partners' position
18 in the peers by month, correct?

19 A. Yes, except I got -- I'm not sure I've seen this, and I've
20 seen a lot of documents over the last few weeks.

21 Q. Well, I'll represent to you that this is a document
22 provided to us by your counsel.

23 A. Okay.

24 Q. Do you recall being involved in the production of summary
25 documents such as this to be used in this hearing?

1 A. I certainly remember being involved in the checking the
2 summary chart, which we were looking at before, which had every
3 class. I can't say I've checked any of this and --

4 MR. OWENS: Your Honor, if I may, Mr. Melwani hasn't
5 seen this document, hasn't proof checked it. It's as accurate
6 as we can know it to be as far as I'm concerned. And if Mr.
7 Sargent wants to offer it, I have no objection. But this
8 witness can't really add much to it other than in terms of its
9 authenticity. But we have no objection to its admission.

10 MR. SARGENT: It was --

11 THE COURT: You want it admitted?

12 MR. SARGENT: Yes, we would like it admitted, Your
13 Honor. We move its admission.

14 THE COURT: It's admitted.

15 (AOC's Exhibit 67, Summary of Centerbridge's Monthly Positions
16 in Peers, was hereby received into evidence.)

17 Q. And is there anything on this document that you see right
18 now that causes you to think that the summary of trading
19 activity in peers presented here is in any way inaccurate or is
20 inconsistent with your recollection of Centerbridge's trading
21 in these securities?

22 A. Looking at it nothing jumps out at me.

23 Q. And this summarizes transactions in peers by month,
24 correct, sort of like the other summary document that we looked
25 at a few moments ago?

1 A. It appears to.

2 Q. And do you see that for peers acquisitions the change in
3 position per month beginning in February 2009 there are no
4 acquisitions at all until December 2009; is that right?

5 A. Yes.

6 Q. And in fact, there's some -- there's a number of sales in
7 July and in September and in October of 2009, do you see that?

8 A. Yes.

9 Q. And is that consistent with your recollection about
10 Centerbridge's trading history in peers during those months?

11 A. It was.

12 Q. And then December there's a significant acquisition of
13 peers, do you see that? Two hundred and two thousand peers, is
14 that right?

15 A. Yes, sir.

16 Q. And for the peers this is represented -- that's a number
17 of bonds. That's not a price or a face amount. That's the
18 number of bonds acquired, correct?

19 A. Yes.

20 Q. And you also acquired that same month 159,000 peers --
21 well, total change in position was 202,000 bonds, correct? Am
22 I reading this properly?

23 A. I don't know. That's why I'm just hesitating for a
24 second.

25 Q. And then the way I would read the column, Centerbridge

1 Partners Credit LP and Centerbridge Partners Credit Master LP,
2 the center column, that's the total position of that fund in
3 this security at the end of the month, correct?

4 A. I believe that's right, yes.

5 Q. And this shows that Centerbridge Partners Special Credit,
6 that was the new fund that you testified about earlier,
7 correct?

8 A. Yes.

9 Q. And it had no peers at all going into December; isn't that
10 right?

11 A. Yes.

12 Q. And it acquired 159,000 of them in that month; isn't that
13 right?

14 A. Yes.

15 Q. And that was part of your change in position, your total
16 change in position of acquiring 202,000 bonds that month,
17 right?

18 A. Yes.

19 Q. And December 2009, that was the period when Centerbridge
20 was restricted from trading for most of the month; isn't that
21 right?

22 A. Yes.

23 Q. In fact, you were only able to trade for one day that
24 month; isn't that right?

25 A. Yes.

1 Q. So these acquisitions, this 202,000 peers acquired, that's
2 not a month's worth of trading, that's a day's worth of
3 trading; isn't that right?

4 A. I believe so.

5 Q. And that was the one day, that was the day after the
6 confidentiality agreement in November and December expired,
7 isn't it?

8 A. Yes.

9 Q. And then you went on in January if you look to acquire
10 another 612,000 peers units; isn't that right?

11 A. We did at probably the highest price they ever were, but
12 yes.

13 MR. SARGENT: Your Honor, those are all the questions
14 I have.

15 THE COURT: All right. Do you want to redirect or --

16 UNIDENTIFIED SPEAKER: Your Honor, I have cross I can
17 start now. I don't know that I'll finish in twenty minutes
18 though. Shall I?

19 THE COURT: Why don't you start and see what you can
20 do.

21 UNIDENTIFIED SPEAKER: Okay.

22 THE COURT: Well, do we want to break now rather than
23 have him --

24 UNIDENTIFIED SPEAKER: I think, Your Honor, I have
25 maybe thirty to forty-five minutes. And so I could be -- if we

1 get going right on time I could be finished pretty early.

2 THE COURT: Well, if we start at 9:30 you'll finish
3 before my 10:30, and then maybe we'll break and have the rest
4 of the day.

5 MR. ROSEN: Your Honor, just how long will we have?
6 When will you be done with your 10:30 if you know?

7 THE COURT: It should be short, half an hour, and then
8 you'll have the rest of the day. How long is direct for Mr.
9 Kosturos?

10 MR. ROSEN: I would say about an hour and fifteen
11 minutes to an hour and a half, Your Honor.

12 THE COURT: Any idea on cross?

13 MR. SARGENT: An hour to an hour and a half, Your
14 Honor.

15 THE COURT: All right. All right. Well, let's break
16 now. You can leave your material here.

17 And you're still on cross so you should not discuss
18 your testimony --

19 THE WITNESS: Okay.

20 THE COURT: -- with counsel.

21 All right. We'll see you in the morning at 9:30.

22 MR. JOHNSON: Your Honor, Robert Johnson for the
23 creditors committee. Just one clarification question on the
24 schedule. I've had a request as to whether there was any
25 possibility of there being any closings tomorrow, and I would

1 expect given what we've just planned out that would not be any
2 possibility for tomorrow.

3 THE COURT: No possibility.

4 MR. JOHNSON: Okay. Thank you.

5 THE COURT: All right. We'll stand adjourned.

6 MR. SARGENT: Thank you, Your Honor.

7 (Whereupon these proceedings were concluded at 6:12 p.m.)

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C E R T I F I C A T I O N

I, Gershom Benayahu, certify that the foregoing transcript is a true and accurate record of the proceedings.

GERSHOM BENAYAHU

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Date: July 22, 2011