IN THE UNITED STATES COURT OF FEDERAL CLAIMS

STARR INTERNATIONAL COMPANY, INC., on its behalf and on behalf of a class of others similarly situated, *Plaintiff,* v. THE UNITED STATES, *Defendant.*	No. 11-00779C (TCW)

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Corrected Findings of Fact

1.0 IN SEPTEMBER 2008 THE UNITED STATES FACED THE MOST SEVERE FINANCIAL CRISIS SINCE (AND PERHAPS INCLUDING) THE GREAT DEPRESSION. CREDIT MARKETS FROZE AND EVEN SOLVENT COMPANIES WERE UNABLE TO BORROW FROM PRIVATE SOURCES TO MEET THEIR LIQUIDITY NEEDS.

1.1 "September and October of 2008 was the worst financial crisis in global history, including the Great Depression" (Bernanke: PTX 548 at 24).

(a) Then FRBNY President Timothy Geithner ("**Geithner**"): The "worst financial crisis since the Great Depression" (PTX 709 at 10).

(b) "The American economy had not faced such a severe economic downturn since the Great Depression" (PTX 680 at 10).

1.2 Of the 13 "most important financial institutions in the United States, 12 were at risk of failure within a period of a week or two" (Bernanke: PTX 548 at 24).

(a) Geithner: "Of the twenty-five largest financial institutions at the start of 2008, thirteen had either failed (Lehman, WaMu), received government help to avoid failure (Fannie, Freddie, AIG, Citi, BofA), merged to avoid failure (Countrywide, Bear, Merrill, Wachovia), or transformed their business structure to avoid failure (Morgan Stanley, Goldman)" (PTX 709 at 271-272).

1.3 From September 6 through September 22, the economy was essentially "in free fall" (Geithner: PTX 563 at 15).

(a) The market conditions in mid-September 2008 were "unprecedented in the recent history of financial markets" (PTX 2161 at 33).

1.4 On September 6, 2008, the Federal Housing Finance Agency ("FHFA") placed the two Government-Sponsored Entities ("GSEs"), Federal Home Loan Mortgage Corporation ("Freddie Mac") and the Federal National Mortgage Association ("Fannie Mae"), into conservatorship (PTX 2097 at 15; PTX 2020 at 26).

1.5 In the two days prior to September 16: "Three major events shook the financial system" (PTX 589 at 60).

(a) "Bank of America announced that it was buying Merrill Lynch amid concerns about Merrill's exposure to securities based on residential mortgages. In addition, at midday on September 16, the assets of a money-market mutual fund that had exposure to Lehman fell below $1 per share, a rare occurrence known as 'breaking the buck,' which further stoked investors' fears; that week, money-market mutual funds were subjected to enormous withdrawals, especially by institutional investors. And finally . . . Lehman

Brothers filed for bankruptcy, in what became the largest bankruptcy case in U.S. history" (PTX 589 at 60).

1.6 In the early hours of September 15, Lehman Brothers announced it would file for bankruptcy, an event Secretary Geithner describes as "the most destabilizing financial event since the bank runs of the Depression" (PTX 709 at 228).

(a) At around 12:30 am on September 15, 2008, Lehman Brothers Holdings Inc. announced its intent to file a Chapter 11 bankruptcy petition. (PTX 69).

(b) After Lehman's bankruptcy: "Key regulators feared that nearly all of the nation's major financial institutions were at risk of failure within a period of a week or two" (PTX 680 at 16).

(c) Geithner: The "fall of Lehman was a serious blow, shattering confidence around the world. It was the most destabilizing financial event since the bank runs of the Depression" (PTX 709 at 228). In the aftermath, regulators "had two death spirals" that they "needed to stop immediately: the run on money market funds, which was killing the market for commercial paper that provided America's top corporations with short-term operating loans, and the run on investment banks, which was threatening to ignite two more Lehman-style explosions" (*Id.* at 218).

(d) Federal Reserve Chairman Ben Bernanke ("**Bernanke**"): The Lehman bankruptcy "was an enormous shock that affected the whole global financial system" (PTX 708 at 88).

(e) The "failure of Lehman Brothers created substantial disruption in the derivatives market" (PTX 680 at 48).

1.7 In the days following Lehman's bankruptcy announcement, a "run on the bank" panic caused investors and depositors to withdraw hundreds of billions of dollars in funds.

1.8 Investors withdrew more than $300 billion from money market funds (PTX 709 at 211).

(a) Bernanke: One effect of the Lehman bankruptcy was that there was "a very intense bank run or, in this case, a money market fund run, in which investors in these funds began to pull out their money just as quickly as they could." In the days immediately following the bankruptcy, "one hundred billion dollars a day was flowing out of these funds" (PTX 708 at 89).

1.9 Morgan Stanley's "liquidity pool had shrunk from $130 billion to $55 billion in a week" (PTX 709 at 219).

1.10 "Goldman Sachs, the strongest of the investment banks, watched helplessly as half its $120 billion in liquidity evaporated in a week" (PTX 709 at 214-215).

1.11 Between September 13 and 15, 2008, Defendant brokered the acquisition of a failing Merrill Lynch by Bank of America (PTX 709 at 201, 204, 292).

1.12 During the day of September 16, the Reserve Primary Fund, a money market fund announced that it was "'breaking the buck,' which meant it could no longer promise investors 100 cents on the dollar" (PTX 709 at 211; *see also* PTX 589 at 60).

1.13 As money market funds "began to face runs, they in turn began to dump commercial paper as quickly as they could. As a result, the commercial paper market went into shock" (PTX 708 at 90).

(a) Geithner: "The Reserve Fund debacle discouraged risk taking by other money funds, which meant even less buying of commercial paper and less lending through repo, which meant an even more intense liquidity crisis for banks and other institutions. Basically, short-term financing—whether secured by collateral or not—was vanishing" (PTX 709 at 211).

1.14 On Friday September 19, Geithner was told that Morgan Stanley "indicated they cannot open on Monday" and, if it did not open, Goldman Sachs was "toast" (PTX 175; Geithner Dep. 119:23-120:25).

2.0 IN SEPTEMBER 2008 THE FREEZING OF CREDIT MARKETS AND PANIC PRICING FOR SUBPRIME RELATED SECURITIES RESULTED IN AN ABSENCE OF RELIABLE MARKET PRICES, THE INABILITY TO RECEIVE FAIR MARKET VALUE FOR THOSE SECURITIES, AND DEMANDS FOR COLLATERAL BASED ON ARTIFICIALLY LOW MARKS.

2.1 As early as March 10, 2008, the Federal Reserve recognized that the prices for subprime backed securities did not reflect underlying values and that: "The prices out there were just being driven by fear" (PTX 1196 at 22).

2.2 During the days after Lehman's collapse, it was virtually impossible to get a price for subprime backed securities, including because of "Lack of liquid quotes from market participants"; the fact that industry standard CDS agreements "didn't consider illiquid markets"; and the "Subjectivity involved in pricing" (PTX 221 at 4).

(a) "In September 2008, the failure of Lehman Brothers created substantial disruption in the derivatives markets" (PTX 680 at 48).

(b) "over the course of the second half of 2008, the OTC derivatives market would undergo an unprecedented contraction, creating serious problems for hedging and price discovery" (PTX 624 at 328).

(c) Ernst & Young: In September 2008 "there was a liquidity crisis globally, and the types of securities that we refer to here, during the collateral call process, were securities that were no longer frequently traded, and so, as a consequence of the lack of a liquid market to sell these types of securities, it was difficult to get current market prices, because there were not many trades. . . . These were CDOs, collateralized debt obligations, and primarily RMBS, residential mortgage-backed securities" (Ernst & Young 30(b)(6) (Symons) Dep. 124:19-125:6 (discussing PTX 221).

(d) "With the Lehman bankruptcy, participants in the market became concerned about the exposures and creditworthiness of their counterparties and the value of their contracts. That uncertainly caused an abrupt retreat from the market. Badly hit was the market for derivatives based on nonprime mortgages. Firms had come to rely on the prices of derivatives contracts reflected in the ABX indices to value their nonprime mortgage assets. The ABX.HE.BBB-06-2, whose decline in 2007 had been an early bellwether for the market crisis, had been trading around 5 cents on the dollar since May. But trading on this index had become so thin, falling from an average of about 70 transactions per week from January 2007 to September 2008 to fewer than 3 transactions per week in October 2008, that index values weren't informative. So, what was a valid price for these assets? Price discovery was a guessing game, even more than it had been under normal market conditions" (PTX 624 at 392).

3.0 ON SEPTEMBER 16, 2008 AIG, LIKE MANY OTHER FINANCIAL INSTITUTIONS, FACED A SEVERE LIQUIDITY CRISIS, AND WAS UNABLE TO MEET ITS LIQUIDITY NEEDS BY BORROWING FROM PRIVATE LENDERS.

3.1 Financial crises such as the financial crisis of 2008 can cause even solvent firms to become illiquid and fail.

(a) Geithner: In "a panic, even the solvent institutions become illiquid, and if they are caught up in the run, even the strongest will not survive" (PTX 663 at 11).

(b) FRBNY President and CEO William Dudley ("**Dudley**"): During "the worst point of the crisis" in 2008, "people weren't willing to lend to institutions they thought were solvent" (Dudley Dep. 63:9-12).

3.2 In September 2008, AIG faced a severe liquidity crisis.

(a) Then Treasury Secretary Henry Paulson ("**Paulson**"): The Federal Reserve believed "it could make a loan to help AIG because, with AIG, you were dealing with a liquidity problem, not a capital problem" (Paulson Dep. 73:10-17).

(b) Michael Gibson, director of the Division of Banking Supervision and Regulation at the Federal Reserve Board on September 14, 2008: "Considering the strength of their core insurance businesses, AIG's current problems appear to be based more on liquidity concerns than solvency concerns" (PTX 52).

(c) A 30(b)(6) representative of Citibank: On September 13, AIG "made it clear they had a need for liquidity … we knew they had ample resources … it was a huge conglomerate with 80, 90 billion of capital subsidiaries. It was more a question of how to get access to funds" (Citibank 30(b)(6) (Bickford), *Brookfield v. AIG*, Dep. 21:16-22, 30:11-16).

3.3 In 2007 and 2008, transactions in the over-the-counter-derivatives market and the markets for residential mortgage-backed securities ("RMBS") and mortgage-backed securities declined significantly. As a result, market participants, including AIG and AIGFP, found it difficult to derive fair market values for the securities.

(a) Financial Crisis Inquiry Commission Report: Over "the course of the second half of 2008, the OTC derivative market would undergo an unprecedented contraction, creating serious problems for hedging and price discovery" (PTX 624 at 328). *See also id.* at 329 ("The market for nonconforming mortgage securitizations (those backed by mortgages that did not meet Fannie Mae's and Freddie Mac's underwriting or mortgage size guidelines) had also vanished in the fourth quarter of 2007").

(b) Ernst & Young's 30(b)(6) representative: "Because of the illiquid markets and the difficulty in having verifiable prices from trades in the open market, there are often disagreements between AIGFP and their counterparty as to what the securities are actually worth" (Ernst & Young 30(b)(6) (Symons) Dep. 125:25-126:3).

3.4 In 2008, CDS counterparties made collateral calls that took advantage of the subjectivity involved in valuing illiquid collateralized debt obligations ("CDOs") in a time of crisis.

(a) Former AIG Chief Financial Officer for Financial Products Elias Habayeb: Following the downgrade in AIG's credit rating, AIG was "concerned that counterparties will take advantage of the ratings downgrade and start posting collateral at lower valuations to try to extract additional liquidity out of the parent, versus a threshold adjustment or an independent amount adjustment" (Habayeb, *Brookfield v. AIG*, Dep. 72:11-23).

(b) AIG Chief Financial Officer David Herzog: "The setup is pretty simple. The more they could squeeze out of us in terms of cash, and the less cash they passed on to their counter-party, the more cash they had, the more cash they could keep" (Herzog Dep. 207:17-23; *see also id*. 201:13-19, 204:14-207:16).

3.5 The Federal Reserve and other Government agencies recognized that because of fear, lack of liquidity, and the resulting "unnaturally strong downward market pressures" reported values for AIG's mortgage-backed securities and CDS did not "reflect the amount of aggregate proceeds . . . from payments on the assets over time" (PTX 393 at 10).

3.6 By September 16, there were essentially no prices for subprime-backed securities and collateral calls could not be met from private sources because of the freezing of the credit markets.

(a) Ernst & Young on September 22, 2008 expressly noted concerning the "Collateral call process" the "Lack of liquid quotes from market participants"; the fact that "Industry CSA's didn't consider illiquid markets"; and the "Subjectivity involved in pricing" (PTX 221 at 4).

(b) Ernst & Young's 30(b)(6) representative, discussing this presentation: "CDOs, collateralized debt obligations, and primarily RMBS, residual mortgage-backed securities" "were securities that were no longer frequently traded, and so, as a consequence of the lack of a market to sell these types of securities, it was difficult to get current market prices, because there were not many trades" (Ernst & Young 30(b)(6) (Symons) Dep. 124:19-125:5).

3.7 AIG's securities lending operations faced the same "run on the bank" pressures as many other financial firms.

(a) Bernanke: On "September 16, AIG, the largest multidimensional insurance company in the world, which had been selling credit insurance, came under enormous attack from people demanding cash either through margin requirements or through short-term funding," (PTX 708 at 80), which was part of a pattern of "Whenever there was doubt about a firm, as in a standard bank run, the investors, the lenders, and the counterparties would all pull back their money quickly for the same reason that depositors would pull their money out of a bank that was thought to be having trouble" (*Id.* at 79).

3.8 The closure of commercial paper markets meant that AIG was not able to roll over its commercial paper as it became due.

(a) Geithner: "The commercial paper market seized up; even General Electric, one of the highest rated firms in the market, struggled to borrow to roll over its massive financial subsidiary's short-term funding" (PTX 709 at 207).

(b) United States 30(b)(6) representative: AIG "had something like $30 billion of commercial paper outstanding going into September -- the weekend of September 14th" and "None of that rolled over" (U.S. 30(b)(6) (Millstein) (Dec. 15, 2013) Dep. 18:19-19:6).

3.9 On September 16 "AIG faced the prospect of default and bankruptcy" (Geithner: PTX 563 at 3; Paulson Dep. 29:1-11).

4.0 ON SEPTEMBER 16, 2008 DEFENDANT CONCLUDED THAT IN THE ABSENCE OF A 13(3) LOAN FROM THE FEDERAL RESERVE AIG WOULD HAVE TO FILE FOR BANKRUPTCY.

(a) Geithner: "Without assistance, AIG would have been forced to file to for bankruptcy" (PTX 563 at 15).

(b) Geithner: On the morning of September 16 "we learned that AIG was preparing to file for bankruptcy" (PTX 709 at 210).

(c) Paulson: "By late morning, we had learned AIG needed cash to avoid bankruptcy by day's end" (PTX 706 at 262).

(d) "Available evidence also indicated that the company faced the imminent prospect of declaring bankruptcy. . . . Board members agreed that the disorderly failure of AIG was likely to have a systemic effect on financial markets . . . and that the best alternative available was to lend to AIG to assist it in meeting its obligations in an orderly manner as they came due" (JX 63 at 2).

5.0 ON SEPTEMBER 16, 2008 AND THROUGH SEPTEMBER 22, DEFENDANT WAS NOT PREPARED TO LET AIG FILE FOR BANKRUPTCY BECAUSE OF THE "CATASTROPHIC" CONSEQUENCES AN AIG BANKRUPTCY WOULD HAVE HAD FOR OTHER FINANCIAL INSTITUTIONS AND THE ECONOMY.

5.1 "The failure of AIG would have been catastrophic for a financial system already in free fall"(Geithner: PTX 563 at 15).

(a) Bernanke: "AIG's demise would be a catastrophe" (PTX 599 at 77) and "could have resulted in a 1930s-style global financial and economic meltdown, with catastrophic implications for production, income, and jobs" (PTX 480 at 16).

(b) Paulson: AIG's collapse "would have buckled our financial system and wrought economic havoc on the lives of millions of our citizens" (PTX 564 at 142).

(c) Federal Reserve Vice Chairman Kohn: The "loan to AIG was meant to serve the public purpose of preventing broader exacerbation of the financial crisis" (Kohn Dep. 250:18-21).

(d) Geithner: when "you gave AIG a loan, you weren't giving AIG a loan to benefit AIG, you were giving AIG a loan to benefit the system" (Geithner Dep. 152:17-20).

5.2 Loaning money to AIG benefited the major financial firms which would have been harmed by an AIG bankruptcy.

(a) FRBNY Executive Vice President Dudley: If "AIG were to fail, money funds have even a broader exposure to them than to Lehman" (PTX 74 at 5).

(b) "The United States admits that, on September 16, 2008, Henry Paulson told President George W. Bush, in substance, that Mr. Paulson believed that, if AIG were to fail, several other financial institutions would likely also fail" (Def. Resp. to Pl. 2nd RFAs No. 228).

(c) Paulson on September 15, 2008: More "than almost any financial firm you could think of, AIG was entwined in every part of the global system, touching businesses and consumers alike in many different and critical ways" (Paulson Dep. 31:24-32:6).

(d) On the morning of September 16, 2008, FRBNY estimated that Goldman Sachs had between $7.54 billion and $14.4 billion economic exposure to AIG – the second largest among selected financial institutions (JX 60 at 3).

5.3 Defendant officials concluded that they did not have the option of letting AIG file for bankruptcy.

(a) Geithner with regard to AIG: "We did not have the option of bankruptcy; we did not have the option of defaults; we did not have the option of selective haircuts. It would have been catastrophic to let the institution fail" (PTX 564 at 139).

(b) FRBNY General Counsel Thomas Baxter: "At no point did we believe we should let AIG file" for bankruptcy (PTX 2211 at 12).

(c) Geithner (PTX 563 at 3) and Paulson (Dep. 29:1-11): "AIG faced the prospect of default and bankruptcy, which would have had catastrophic consequences for the economy."

(d) Geithner on the morning of September 16: We "needed to make this loan to avoid the systemic consequences that would result from an AIG filing" (United States 30(b)(6) (Baxter) Dep. 53:21-53:24).

6.0 DEFENDANT'S REGULATORY FAILINGS AND RELATED POLICIES CONTRIBUTED TO THE 2008 FINANCIAL CRISIS.

6.1 The primary cause of the financial crisis of 2008-2009 was the bursting of a bubble in the housing market.

(a) Paulson: "The crisis in the financial markets that I had anticipated arrived in force on August 9, 2007. It came from an area we hadn't expected—housing—and the damage it caused was much deeper and much longer lasting than any of us could have imagined." (PTX 706 at 78).

(b) Bernanke: "Although a number of developments helped to trigger the crisis, the most prominent was the prospect of significant losses on subprime mortgage loans that became apparently [sic] shortly after house prices began to decline" (PTX 599 at 5).

6.2 Defendant kept interest rates artificially low in the years leading up to the financial crisis, which created a housing bubble that began to burst in 2007.

6.2.1 The Federal Reserve kept the discount and federal funds rates low in part to stimulate the economy by encouraging sales in the housing market.

(a) "At a congressional hearing in November 2002, Greenspan acknowledged—at least implicitly—that after the dot-com bubble burst, the Fed cut interest rates in part to promote housing" (PTX 624 at 116).

(b) "In the view of some, the Fed simply kept rates too low too long. John Taylor, a Stanford economist and former undersecretary of treasury for international affairs, blamed the crisis primarily on this action. If the Fed had followed its usual pattern, he told the FCIC, short-term interest rates would have been much higher,

discouraging excessive investment in mortgages. . . . Others were more blunt: 'Greenspan bailed out the world's largest equity bubble with the world's largest real estate bubble,' wrote William A. Fleckenstein, the president of a Seattle-based money management firm" (PTX 624 at 131).

6.2.2 Even as the Federal Reserve kept interest rates low, it recognized that the boom in the housing market was a potential source of risk to the financial system.

(a) Bernanke: "We always of course knew the housing prices were rising quickly, but as of 2003-2004 there really was quite a bit of disagreement among economists about whether there was a bubble, how big it was, whether it was just a local or a national bubble. So we were certainly aware of that risk factor" (PTX 599 at 52).

6.3 As housing prices soared in the early to mid-2000s, mortgage originators, including commercial banks, and investment banks, began to rely more heavily on the so-called "originate and distribute" business model, whereby originators would transfer mortgages to other entities instead of holding them until maturity (PTX 624 at 117-119, 130-154).

(a) Defendant's Expert Anthony Saunders: "The years preceding the financial crisis that began in 2007 were characterized by a dramatic increase in systemic risk of the financial system, caused in large part by a shift in the banking model from that of 'originate and hold' to 'originate and distribute'" (PTX 2161 at 23).

(b) "'Securitization could be seen as a factory line,' former Citigroup CEO Charles Prince told the FCIC. 'As more and more and more of these subprime mortgages were created as raw material for the securitization process, not surprisingly in hindsight, more and more of it was of lower and lower quality. And at the end of that process, the raw material going into it was actually bad quality, it was toxic quality, and that is what ended up coming out the other end of the pipeline'" (PTX 624 at 130-31).

6.4 Complex forms of securitization became an increasingly popular means by which mortgage originators transferred mortgages to other entities, especially in the market for subprime mortgages.

(a) Bernanke: "Private-sector risk management also failed to keep up with financial innovation in many cases. An important example is the extension of the traditional originate-to-distribute business model to encompass increasingly complex securitized credit products, with wholesale market funding playing a key role" (PTX 650 at 7).

(b) Bernanke: "there was a large international demand from Europe and from Asia for high-quality assets, and always-clever U.S. financial firms figured out that they could take a variety of different kinds of underlying assets, whether subprime mortgages or whatever, and through the miracle of financial engineering they could create from them at least some securities that would be rated triple-A, which they could then sell abroad to other investors" (PTX 708 at 96).

6.4.1 Between 2004 and 2007, "nearly all" of the adjustable rate subprime mortgages written were packaged into residential mortgage-backed securities ("RMBS"), and "a large share of the subprime RMBS were purchased by managers of CDOs of asset-backed securities (ABS), so-called ABS CDOs" (PTX 11 at 10).

6.5 The rating agencies had adopted incentive schemes that effectively rewarded loan originators for the quantity rather than the quality of the mortgages originated.

6.5.1 The credit rating agencies "were subject to conflicts of interest since the rating agencies owed much of their revenues" to their rating of RMBS and ABS CDOs (PTX 2161 at 27; *see also id.* at 22-23, 44).

(a) Bernanke: "Rating agencies' ratings of asset-backed securities were revealed to be subject to conflicts of interest and faulty models" (PTX 650 at 8).

(b) The "rating process involved many conflicts, which would come into focus during the crisis . . . 'the rating agencies were given a blank check'" (PTX 624 at 146-147).

(c) New York Insurance Superintendent Dinallo: "I think there was lack of objectivity, ultimately, because they really kind of got involved in, kind of, the creation of the CDOs, as opposed to just objectively rating the CDOs" (Dinallo Dep. 67:16-19).

6.5.2 These conflicts of interest improperly influenced the rating of subprime RMBS and CDOs.

(a) "S&P's desire for increased revenue and market share in the RMBS and CDO ratings markets led S&P to downplay and disregard the true extent of the credit risks posed by RMBS and CDO tranches in order to favor the interests of large investment banks and others involved in the issuance of RMBS and CDOs who selected S&P to provide credit ratings for those tranches" (PTX 661: Complaint of the *United States v. McGraw-Hill Companies, Inc. and Standard & Poor's Financial Services LLC*, No. cv 13-00779, ¶ 9 (C.D. Cal. Feb. 4, 2013)).

6.6 Between 2004 and 2007, AIG together with many global investors, including other financial institutions and insurance companies, relied on third-party credit ratings in making decisions to invest in the AA and AAA rated tranches of subprime RMBS and ABS CDOs.

(a) "The subprime RMBS and the ABS CDOs were structured in tranches and a very large share of the total value of the securities issued was rated AA or AAA by the credit rating agencies. . . . Many of the global investors in the AA or AAA tranches relied heavily on the ratings in making investment decisions or in communicating risk appetites to their investment managers" (PTX 11 at 10).

(b) "The rating agencies were essential to the smooth functioning of the mortgage-backed securities market. Issuers needed them to approve the structure of their deals; banks needed their ratings to determine the amount of capital to hold; repo markets needed their ratings to determine loan terms; some investors could buy only securities with a triple-A rating; and the rating agencies' judgment was baked into collateral agreements and other financial contracts" (PTX 624 at 146).

(c) Bernanke: "At the end of the chain were investors who often relied mainly on ratings and did not make distinctions among AAA-rated securities" (PTX 650 at 8).

(d) FRBNY Executive Vice-President Dudley: "The presumption was in the market that they were safe assets, obviously they weren't safe. This is a rating agency opinion that they were triple A rated so the presumption of investors were that they were safe" (Dudley Dep. 16:20-25).

6.6.1 These third-party credit ratings later proved to be inaccurate and led to eventual downgrades by the ratings agencies.

(a) Geithner: "The AAA label ended up being very misleading. The rating agencies were not exceedingly competent. Their ratings typically lagged cycles in finance, staying too optimistic too long. Since the issuers rather than the purchasers of securities paid them, they had some incentive to give generous ratings that kept issuers happy. Moody's revenue from rating structured products such as CDOs had risen 800 percent in a decade" (PTX 709 at 152).

(b) "Faulty assumptions underlying rating methodologies and the subsequent re-evaluations by the credit rating agencies (CRAs) led to a significant number of downgrades of subprime RMBS, even of recently issued securities. Downgrades were even more frequent and severe for CDOs of ABS with subprime mortgage loans as the underlying collateral" (PTX 11 at 4).

6.7 Defendant failed to regulate the products and participants in the mortgage market in the years leading up to the financial crisis.

(a) Geithner: "There was plenty of blame to go around, some of it was mine. Citi's many regulators, including the New York Fed, had failed to save Citi from itself during the boom. We had recognized the vulnerabilities too late" (PTX 709 at 268).

(b) Bernanke, when asked by the FCIC whether the "actions of the Federal Reserve" in regulating the mortgage market during the housing boom was "a very significant failure" on the part of the Federal Reserve: "It was, indeed. I think it was the most severe failure of the Fed in this particular episode" (PTX 599 at 27; *see also* PTX 708 at 57-58).

(c) Geithner: "Everyone could see there was 'froth' in some housing markets, as Greenspan put it. We all knew lax lending standards were helping families buy more expensive homes with less money down. Other families were staying put, then using their existing homes as ATMs by borrowing against their soaring home values. I had seen in Japan and Thailand how lavishly financed real estate booms can end in tears. But

I took too much comfort in analyses downplaying the risk of large nationwide declines, which hadn't happened in the United States since the Depression" (PTX 709 at 118).

(d) For three years after AIG had stopped offering CDSs, the Federal Reserve "vastly underestimated the riskiness of . . . AAA-rated mortgage assets" (PTX 709 at 151).

7.0 DEFENDANT TOOK A NUMBER OF ACTIONS AND MADE A NUMBER OF STATEMENTS THAT DIRECTLY DISADVANTAGED AIG COMPARED TO OTHER FINANCIAL INSTITUTIONS AND CONTRIBUTED TO AIG HAVING NO REASONABLE CHOICE OTHER THAN TO ACCEPT A LOAN FROM DEFENDANT.

7.1 In the summer of 2008 and early September 2008, Defendant recognized that AIG was facing serious liquidity issues.

(a) On the morning of August 7, 2008, FRBNY examiner Kevin Coffey to Geithner's Deputy Chief of Staff and other FRBNY executives: "AIG's liquidity position has been an issue" (PTX 24).

(b) FRBNY examiner Coffey to Geithner's Deputy Chief of Staff on the evening of August 7, 2008: It "sounds like AIG needs to do an additional large capital raise" (PTX 27 at 2).

(c) On August 8, 2008, FRBNY began checking which major banks had exposure to AIG (PTX 27 at 1).

(d) On August 8, 2008, Paulson asked Treasury contractor Ken Wilson to call AIG CEO Robert Willumstad ("**Willumstad**") at AIG (PTX 714 at 3); Wilson reported he found the conversation with Willumstad "very troubling" (*id.*). *See also* Paulson Dep. 19:20–20:9.

(e) "On August 11, 2008, FRBNY staff met with employees of OTS to discuss AIG" (Def. Resp. to Pl. 2nd RFAs Nos. 135).

(f) On August 14, 2008, FRBNY examiner Kevin Coffey to Geithner's Deputy Chief of Staff and other FRBNY executives again "summarizing some of the key drivers of potential earnings, capital, and liquidity issues at AIG" (PTX 34 at 2).

(g) On August 14, 2008, FRBNY executive Brian Peters to several other FRBNY executives: "Anyone taking bets on AIG?" (PTX 29).

(h) On August 19, 2008, AIG was listed as an institution posing "systemic risk" (PTX 30 at 2-3).

(i) By "late August or early September 2008," Geithner concluded there was "a serious possibility that AIG would face a liquidity crisis" (Geithner Dep. 7:5-12).

(j) Geithner to senior FRBNY executives on September 6: "cld [could] you put someone on AIG" (PTX 38 at 2).

(k) "On September 13, 2008, AIG CEO Robert Willumstad informed Treasury Secretary Henry Paulson that AIG was facing a liquidity crisis and would run out of money within a week" (Def. Resp. to 2nd RFAs No. 180).

7.2 In the summer of 2008 and early September 2008, Defendant recognized that AIG would benefit from financial assistance of the type offered other financial institutions.

(a) On August 23, 2008, FRBNY analyst Elise Liebers to FRBNY executives: "Would an insurer benefit from being able to borrow from the fed? I think for a company like AIG the answer would be YES" (PTX 33 at 1).

(b) FRBNY Vice President Christopher Calabia to FRBNY examiner Kevin Coffey and Senior Vice President Arthur Angulo on August 25, 2008: AIG was an "obvious candidate" for an expanded version of the PDCF (PTX 34 at 1; Calabia Dep. 105:8-106:7).

(c) On September 2, 2008, FRBNY analyst Danielle Vicente wrote to FRBNY Vice President Calabia and others on the subject of "AIG Liquidity Metrics" that giving AIG access to the PDCF "could potentially allow AIG to unwind its positions in an orderly manner while satisfying its immediate liquidity demands" (PTX 35 at 2).

(d) On September 15, 2008, Government officials discussed proposals to use the Exchange Stabilization Fund to provide assistance to AIG (JX 56 at 1, 2; PTX 68 at 4).

7.3 Defendant refused AIG's repeated requests for assistance offered to others.

7.3.1 Defendant refused AIG's requests for access to the 13(3) Primary Dealer Credit Facility ("PDCF") (or comparable facilities) while making such access available to other financial institutions.

(a) On March 16, 2008, the Federal Reserve Board authorized FRBNY to establish the Primary Dealer Credit Facility ("PDCF") to provide a source of liquidity to primary dealers, including Goldman Sachs, Morgan Stanley, Bear Stearns, and Lehman Brothers. The PDCF extended credit to primary dealers at the primary credit rate against a broad range of investment grade securities (Kohn Dep. 338:10-19; PTX 12 at 3-44).

(b) On September 18, 2008, FRBNY lent $92.4695 billion through the PDCF, including $47.942 billion to Barclays Capital, $5 billion to Goldman Sachs, $5.1 billion to Merrill Lynch, and $24 billion to Morgan Stanley (PTX 728).

(c) On September 29, 2008, the Federal Reserve lent $155.7682 billion through the PDCF, including $15 billion to Barclays Capital, $10 billion to Goldman Sachs, $5 billion to Goldman Sachs' London branch, $29.694 billion to Merrill Lynch, $6.589 billion to Merrill Lynch's London branch, $40.0621 billion to Morgan Stanley, and $21.23 billion to Morgan Stanley's London Branch (PTX 728).

(d) On July 29, 2008, Willumstad approached Geithner and asked "if government assistance would be available in a crisis" and discussed "possible access to the discount window" (PTX 715 at 1-2; *see also* PTX 588 at 3; PTX 587 at 96). Geithner told Willumstad that he would not allow AIG to access the discount window (*see* PTX 587 at 96; PTX 588 at 3).

(e) On September 9, 2008, Willumstad met with Geithner and again requested that AIG be allowed to access the PDCF (Willumstad (Oct. 15, 2013) Dep. 95:17-96:10). Willumstad spoke with "much more urgency in his voice" and "emphasized that major Wall Street institutions had hedged their risks through credit default swaps and other insurance contracts with AIG" (PTX 709 at 192). Geithner told Willumstad he would looking into the process of becoming a primary dealer (Willumstad (Oct. 15, 2013) Dep. 97:16-24).

(f) On September 11, 2008, Willumstad called Geithner to follow-up on his request that AIG be permitted access to the PDCF. Geithner did not call Willumstad back (Willumstad (Oct. 15, 2013) Dep. 179:8-16).

7.3.2 Defendant refused AIG's request to become a bank holding company while providing such assistance to others.

(a) On September 21, 2008, the Federal Reserve announced that it had approved the applications of Goldman Sachs and Morgan Stanley to become bank holding companies (PTX 198; PTX 200 at 3; PTX 201 at 3-4). The Federal Reserve waived the usual five-day waiting period to make these approvals (PTX 220; PTX 213).

(b) On November 10, 2008, the Board of Governors approved American Express Company's application to become a bank holding company upon conversion of American Express's subsidiary American Express Centurion Bank, an industrial loan company, into a bank (PTX 1833).

(c) On December 24, 2008, the Federal Reserve approved GMAC LLC's ("GMAC"), General Motors' partially-owned banking subsidiary, application to form a bank holding company. (PTX 554 at 43; PTX 391 at 1, 10, 12).

(d) In August 2008, AIG outside counsel Cohen discussed with Defendant whether AIG converting its thrift into a bank would increase AIG's chances of becoming a bank holding company. Government officials told Cohen such a conversion would not make a difference (Cohen Dep. 113:21-24).

7.3.3 Defendant refused the suggestion that it provide AIG with a guarantee while providing guarantees to others.

(a) During a meeting with representatives from JP Morgan, Goldman Sachs, and FRBNY on September 15 or 16, 2008, Dinallo suggested that Defendant guarantee AIG's liabilities (Dinallo Dep. 161:24-166:6). Dinallo's suggestion was "slapped" down by Government officials (Dinallo Dep. 95:22).

(b) In contrast to Defendant's refusal to provide AIG with a guarantee, the Defendant used the Exchange Stabilization Fund to provide a $50 billion guarantee for the money market fund industry on September 19, 2008 (PTX 709 at 218-219; PTX 171).

(c) In contrast to the Defendant's refusal to provide AIG with a guarantee, the Defendant provided a $306 billion guarantee to Citigroup on November 23, 2008 (*see* PTX 1843; PTX 379).

7.3.4 Defendant refused to facilitate AIG's attempt to raise liquidity from the private sector while providing such facilitative assistance to others.

(a) On September 12, 2008, AIG asked FRBNY about "about how to obtain an IPC 13(3) loan" (PTX 42 at 2, 4).

(b) On a telephone call on September 13, 2008, Federal Reserve General Counsel Scott Alvarez told Willumstad and AIG Vice Chairman Jacob Frenkel that obtaining credit from the Federal Reserve was "extraordinarily difficult" (Def. Resp. to 2nd RFAs No. 303).

(c) In addition to its lending through the PDCF, Defendant twice provided 13(3) credit to assist Bear Stearns in March 2008 (*see* PTX 709 at 168-172; PTX 1201; PTX 12 at 4).

7.4 Defendant discouraged private parties and the public from providing liquidity to AIG by telling private parties that Defendant would not provide any assistance to AIG.

7.4.1 Defendant repeatedly told private parties and the public, including as late as September 15, that there would be no federal assistance for AIG.

(a) Around 11 am on September 15, 2008, Willumstad, New York State Insurance Superintendent Dinallo, Geithner, Treasury contractor Dan Jester, and other Government officials, as well as representatives of Morgan Stanley, JP Morgan, and Goldman Sachs attended a meeting concerning AIG at FRBNY (Dinallo Dep. 86:7-89:23). Geithner stated during the meeting that "just so it's clear, there's no federal government money" or words to that effect (Dinallo Dep. 136:5-17).

(b) When asked about the "Federal Reserve giving AIG a bridge loan" during a September 15, 2008 press conference, Paulson stated, "what is going on right now in New York has got nothing to do with any bridge loan from the government" (PTX 1563).

7.4.2 Defendant knew that asserting that there would be no Government assistance would discourage the private sector from providing liquidity to AIG.

(a) On September 12, 2008, Willumstad spoke to Geithner and informed him about AIG's escalating liquidity problems and about the risk of an imminent downgrade of AIG's ratings. He told Geithner that "efforts to find private financing were underway" but there was "no solution possible without the Federal Reserve" (PTX 715 at 1-2).

(b) On September 13, 2008, Willumstad informed Geithner and Paulson that AIG could raise approximately $30 billion in liquidity, but the raise would require Government assistance. Geithner and Paulson responded "that was not going to happen" (PTX 587 at 114-15).

(c) Late in the day on September 14, 2008, Willumstad informed Geithner that without bridge financing from Defendant, AIG would "be unable to raise the appropriate amount of capital" (Willumstad (Oct. 15, 2013) Dep. 237:5-18; *see also* Def. Resp. to Pl. 1st RFAs Nos. 5.0, 5.1). Geithner stated "there would be no assistance from the Fed or Treasury" (Willumstad (Oct. 15, 2013) Dep. 238:10-12).

(d) KKR's Derrick Maughan provided sworn testimony that if "AIG, the company, or the Fed as lender of last resort, had wished they could have stabilized the company through Government invention support [sic], and then introduced private capital" (Maughan Dep. 73:4-18).

(e) In contrast to Defendant's refusal to facilitate AIG's attempts to raise liquidity from the private sector, Defendant provided assistance under section 13(3) to "facilitate the merger" between JP Morgan and Bear Stearns in March 2008 (PTX 709 at 156).

7.5 Defendant did not allow AIG management or AIG's largest shareholder to participate in the September 15-16, 2008 discussions between the Defendant, JP Morgan, and Goldman Sachs concerning AIG.

(a) On September 15 and 16, 2008, "AIG did not participate in" and "was not invited" to any meetings the Government had with JP Morgan and Goldman Sachs concerning potential financing arrangements for AIG. (PTX 620 at 7; *see also* PTX 587 at 116; Willumstad (Oct. 15, 2013) Dep. 239:12-240:22).

(b) On or before September 16, 2008, FRBNY declined to offer Greenberg a seat at the table. Defendant intentionally excluded Greenberg and Starr – the largest individual shareholder and former CEO of AIG, who was very familiar with all aspects of the company, and the largest institutional shareholders – from the meetings hosted by FRBNY on September 15 and 16, 2008 (*see* PTX 109; Geithner Dep. 213:11-21).

7.6 Defendant directly discouraged sovereign wealth funds from providing liquidity to AIG.

(a) Sovereign wealth funds, including the Government of Singapore Investment Corporation (GIC) and the Chinese Investment Corporation (CIC) expressed interest in investing in AIG (Studzinski Dep. 39:4-40:18, 133:11-19).

(b) Defendant discouraged the CIC and representatives of the Chinese Government from assisting AIG. At 12:25 p.m. on September 16, 2008, Taiya Smith, Paulson's deputy chief of staff and executive secretary, informed Paulson's chief of staff and Treasury Under Secretary for International Affairs David McCormick that the CIC was "prepared to make a big investment in AIG, but would need Hank to call [Chinese Vice Premier] Wang Qishan" (PTX 89 at 1; *see also* PTX 423 at 15-18). The Chinese "were actually willing to put up a little bit more than the total amount of money required for AIG" (PTX 423 at 16).

(c) On September 16, 2008, McCormick spoke to Paulson about the Chinese interest in investing AIG (PTX 423 at 16-17). McCormick then told Smith that Treasury "did not want the Chinese coming in at this point in time on AIG" (PTX 423 at 17).

(d) Later that day, Smith met with Chinese Government officials in California during Joint Commission on Commerce and Trade in Yorba Linda, California (PTX 423 at 16). During that meeting, "all [the Chinese officials] wanted to talk about was AIG" (PTX 423 at 17). Smith spent one or two hours explaining what was happening with AIG (PTX 423 at 18). She conveyed the message that Treasury did not want the Chinese to invest in AIG (PTX 423 at 17).

(e) On September 17, 2008, United States Senator Hillary Clinton called Paulson "on behalf of Mickey Kantor, who had served as Commerce secretary in the Clinton administration and now represented a group of Middle Eastern investors. These investors, Hillary said, wanted to buy AIG. 'Maybe the government doesn't have to do anything,' she said" (PTX 706 at 279). Paulson told Senator Clinton, "this was impossible unless the investors had a big balance sheet and the wherewithal to guarantee all of AIG's liabilities" (PTX 706 at 279).

7.7 On September 16, 2008, Defendant directly discouraged the New York State Government from assisting AIG.

7.7.1 Around noon on September 15, 2008, New York Governor David Paterson announced that he had "directed" the New York State Insurance Department to permit AIG to access approximately $20 billion in liquid assets from certain AIG insurance subsidiaries. He also urged the federal government to be involved in some type of arrangement, whereby AIG would have the necessary resources and bridge loans to tide AIG over until it could resolve its liquidity problems. (PTX 61 at 1; *see also* PTX 67 at 1).

(a) On September 16, 2008, Dinallo reiterated Governor Paterson's offer to allow AIG to upstream $20 billion from its insurance subsidiaries (Dinallo Dep. 214:13-21). Geithner responded, "No, we're good" (*id*. at 215:16-18). As a result, Dinallo was "led to believe definitively that we were no longer part of the fix" (*id*. at 215:25-216:2).

8.0 ON THE AFTERNOON OF SEPTEMBER 16, 2008 THE FEDERAL RESERVE CONCLUDED THAT IT WAS IN THE NATIONAL INTEREST TO PROVIDE AN $85 BILLION 13(3) CREDIT TO AIG, AND AIG WAS OFFERED SUCH A CREDIT LATER THAT DAY.

8.1 On the afternoon of September 16, 2008, the Federal Reserve determined that it was in the national interest to offer an $85 billion 13(3) credit to AIG.

(a) Minutes of the Board of Governors September 16 meeting: "Given the unusual and exigent circumstances, the Board authorized the Federal Reserve Bank of New York under section 13(3) of the Federal Reserve Act to extend credit to AIG or any of its subsidiaries, in an amount up to $85 billion" (JX 63 at 2).

(b) September 17, 2008 "Guidance" distributed to presidents of the Federal Reserve Banks, copying Governors Donald Kohn, Randall Kroszner, Elizabeth Duke, and Kevin Warsh: "The Board, with the full support and engagement of the Treasury Department, decided late in the day yesterday to authorize the FRBNY to lend up to $85 billion to the American International Group (AIG) under Section 13(3) of the Federal Reserve Act" (PTX 122 at 2).

8.2 On September 16 after the Board of Governors meeting, Geithner called Willumstad and offered AIG an $85 billion 13(3) credit.

(a) "I get on the phone with Willumstad and basically said we're going to send you a term sheet, you're not going to like it, but you have an hour to get your Board to approve it, two hours, we gave them a deadline, and you are not going to be running the company" (PTX 673 at 24).

9.0 AS A CONDITION OF AN $85 BILLION 13(3) LOAN, DEFENDANT ON SEPTEMBER 16 DEMANDED WARRANTS EXERCISABLE FOR 79.9% OF AIG'S SHAREHOLDERS' EQUITY.

9.1 The only term sheet approved by the Board of Governors provided that Defendant's 79.9% equity interest in AIG would be in the form of warrants.

9.1.1 The Summary of Terms attached to the minutes of the September 16, 2008 meeting of the Federal Reserve's Board of Governors was the only term sheet reviewed and approved by the Board of Governors in connection with Defendant's loan to AIG (JX 63 at 5-10).

9.1.2 The term sheet approved by the Board of Governors states that the form of equity interest will be: "Warrants for the purchase of common stock of AIG representing 79.9% of the common stock of AIG on a fully-diluted basis" (JX 63 at 6).

9.1.3 The term sheet approved by the Board of Governors includes a "Summary of Terms of Warrants" which states that "Shareholder Approval" was "Required to issue stock above authorized by unissued shares"; provides when "The warrants may be exercised"; and discusses the warrants' "Exercise Price" (JX 63 at 10).

9.1.4 The Board of Governors did not discuss or authorize taking AIG equity in any form other than warrants (JX 63).

9.2 When the Board of Governors approved the terms of the $85 billion loan to AIG, the Federal Reserve understood that Defendant's AIG equity would consist of non-voting warrants.

(a) September 17, 2008 "Guidance" distributed to presidents of the Federal Reserve Banks, copying Governors Donald Kohn, Randall Kroszner, Elizabeth Duke, and Kevin Warsh: "Be mindful/avoid the following: . . . The U.S. government does not 'own' 79 percent of the company – it has warrants as you know" (PTX 122 at 3; *see also* Warsh Dep. 188:6-19).

(b) Bernanke: A couple days after September 16, 2008, Bernanke was informed that "the warrants had been changed to a preferred stock issuance" (Bernanke Dep. 94:15-22).

9.3 As of September 16, 2008, AIG understood that Defendant's AIG equity would be in the form of non-voting warrants.

(a) As of September 16, 2008, AIG expected that Defendant's ownership would be in the form of non-voting warrants (PTX 445 at 17; AIG 30(b)(6) (Reeder) Dep. 76:11-16; Cohen Dep. 139:1-8).

9.3.1 Under New York Stock Exchange ("NYSE") Listed Company Manual Rule 312.03, shareholder approval is required prior to the issuance of warrants exercisable into more than 20 percent of the voting power of a corporation's common stock (JX 75 at 2; JX 240 at 94-95) unless a company invokes an exception to Rule 312.03 that waives the requirement of a shareholder vote when: "(1) the delay in securing shareholder approval would seriously jeopardize the financial viability of the Corporation's enterprise and (2) reliance by the Corporation on such exception is expressly approved by the Audit Committee of the Board" (JX 75 at 2; JX 240 at 96).

9.3.2 On September 16, 2008, the Audit Committee of the AIG Board approved the issuance of warrants without shareholder approval

under Rule 312.05 of the NYSE Listed Company Manual (JX 75 at 3).

9.3.3 On September 17, 2008, AIG's counsel were addressing with FRBNY's counsel "insurance issues relating to the warrant" (PTX 114 at 1).

9.3.4 During a town hall speech to AIG employees on September 18, 2008, AIG's new CEO told employees that AIG would strive to "give the government some sort of a return on its warrants" (PTX 173 at 9).

9.3.5 On September 18, 2008, AIG filed a Form 8-K with the SEC announcing the terms of the proposed Credit Facility, that stated: "In connection with the revolving credit facility, AIG issued a warrant to the Board of Governors of the Federal Reserve ("Federal Reserve") that permits the Federal Reserve, subject to shareholder approval, to obtain up to 79.9% of the outstanding common stock of AIG (after taking into account the exercise of the warrant). AIG anticipates calling a special meeting for such purpose as promptly as practicable" (JX 96 at 2).

9.3.5.1 The "substance" of AIG's September 18 Form 8-K filing "was reviewed" by the AIG Board (Nora Johnson Dep. 93:8-13), and "as of the 18th, it was understood and believed that this 8-K was accurate" (*Id.* 190:21-191:6).

9.4 Published reports stated that AIG would issue warrants to Defendant for 79.9% of the common equity of AIG.

(a) On September 17, 2008, the New York Times reported: "Under the plan, the Fed will make a two-year loan to A.I.G. of up to $85 billion and, in return, will receive warrants that can be converted into common stock giving the government nearly 80 percent ownership of the insurer, if the existing shareholders approve" (PTX 131 at 3).

(b) On September 17, 2008, a Citigroup analyst's report stated: The "government will receive warrants convertible into a 79.9% equity interest in AIG common stock" (PTX 1587 at 1).

(c) On September 23, 2008, before the Credit Agreement had been released, Dow Jones News Service reported: "As part of its bailout deal with the government, AIG will be lent up to $85 billion from the Fed, and the U.S. government will effectively get a 79.9% equity stake in the insurer in the form of warrants called equity participation notes" (PTX 1642 at 1).

(d) On September 24, 2008, Bloomberg reported: "AIG said Sept. 18 it would give the U.S. warrants entitling the government to get common shares equal to a 79.9 percent stake. Some investors surmised that the U.S. might hold onto the warrants for long enough for them to find enough new cash to make the government takeover unnecessary.

Preferred Shares. The company yesterday said the Treasury will instead get preferred shares with voting rights, guaranteeing the U.S. will control the outcome of any shareholder vote" (PTX 1658 at 2).

10.0 ON SEPTEMBER 16, 2008 THROUGH JANUARY 2011, DEFENDANT CONCLUDED THAT AIG HAD SUFFICIENT ASSETS TO FULLY SECURE AN $85 BILLION LOAN.

10.1 AIG was solvent at all times.

(a) Paulson: The Federal Reserve believed "that it could make a loan to help AIG because, with AIG, you were dealing with a liquidity, not a capital problem" (Paulson Dep. 73:10-17; *see also* PTX 706 at 262).

(b) Bernanke: "AIG's problems appeared at the time to be more classical liquidity needs that were quantifiable in amounts and could be covered with borrowing secured by valuable available collateral—the shares of stock of profitable insurance companies and other businesses" (PTX 616 at 15).

(c) OTS Director Scott Polakoff: "It is critically important to note that AIG's crisis was caused by liquidity problems, not capital inadequacy" (PTX 449 at 53).

(d) Federal Reserve Staff: "AIG was an $85 billion revolving line of credit to an institution that was solvent and had lots of assets. They truly had a liquidity crisis. They had value in their subsidiaries, but not cash to pay their bills" (PTX 594 at 63-64).

(e) On September 15, 2008, FRBNY Research Officer Adam Ashcraft reported to McConnell, Geithner's Deputy Chief of Staff concerning AIG: "Problem is that bankruptcy is very attractive for the firm [sic] Very solvent lots of capital but no liquidity" (PTX 60).

10.1.1 AIG management concluded AIG was solvent.

(a) On September 16, 2008, AIG's then-deputy comptroller estimated AIG's total shareholders' equity at $67.6 billion (Cook, *Brookfield v. AIG*, Dep. 95:25-96:9).

(b) On September 16, 2008, AIG management concluded that AIG had a minimum net worth of $50 billion (PTX 642 (Gender, *Brookfield v. AIG*, Dep. 234:13-25)).

10.1.2 Citibank concluded AIG was solvent.

(a) On September 16, 2008, Citibank calculated that AIG had a net worth of at least $50 billion (Citibank 30(b)(6) (Bickford), *Brookfield v. AIG*, Dep. 75:15-76:3).

10.2 At all times, AIG's insurance subsidiaries were solvent.

(a) Bernanke: The "core operations of AIG were viable and profitable insurance companies" (PTX 616 at 15).

(b) Bernanke: AIG, aside from AIGFP, "was an effective sound company with a lot of value, and that was the basis on which we made the loan" (PTX 599 at 61).

(c) Geithner: "AIG had a vast global empire of income-generating insurance businesses, which over time could offset the losses from" AIGFP (PTX 709 at 209).

(d) Paulson: AIG's insurance subsidiaries were "more stable because of the strength of their business and their stand-alone credit ratings, which were separate from the AIG holding company's ratings and troubles" (PTX 706 at 262).

(e) On September 16, 2008, the National Association of Insurance Commissioners issued a press release stating, "We have a very strong message for consumers: If you have a policy with an AIG insurance company, they are solvent and have the capability to pay claims" (PTX 258 at 39).

(f) New York State Superintendent of Insurance Dinallo: Even "if there had been a run on the securities lending program with no Federal rescue, our detailed analysis indicates that the AIG life insurance companies would not have been insolvent" (PTX 449 at 63).

10.3 The Credit Facility was fully secured by AIG's assets.

(a) FRBNY Senior Vice President McLaughlin: "We are actually not allowed to lend on an uncollateralized basis, so if we ever lend, we have to make sure we are lending an amount that we have sufficient lendable value support" (McLaughlin Dep. 76:14-18) and with regard to the AIG Credit Facility "we would not have lent that amount had went had sufficient lendable value of collateral (*id.* at 77:12-14).

(b) Bernanke: "The credit facility was fully secured by assets that AIG was able to pledge under the associated Guarantee and Pledge Agreement and that had an estimated value in excess of the maximum size of the credit facility" (PTX 561 at 5).

(c) Defendant's 30(b)(6) witness:

"Q. Was it the understanding in September of 2008 that the loan referred to in the September 16th term sheet was secured by collateral that had value in excess of the loan amount

"A. Yes." (U.S. 30(b)(6) (Millstein) (Dec. 18, 2012) Dep. 80:21-81:4).

(d) FRBNY General Counsel Baxter and Sarah Dahlgren, head of FRBNY's AIG Monitoring Team: "To be clear, we were not making an investment in AIG; we were making a fully secured loan" (PTX 587 at 55; *see also id.* at 53).

(e) Bernanke: "AIG had a very substantial business, a huge business, more than a trillion dollars in assets and a large insurance business that could be used as collateral to borrow

the cash needed to meet Financial Products' liquidity demands…the Federal Reserve will absolutely be paid back by AIG" (PTX 599 at 37). "And so it was our assessment that they had plenty of collateral to repay our loan—because it was in a separate business that did have a lot of going-concern value and did have a lot of assets" (*Id.* at 60).

(f) Federal Reserve Vice Chairman Kohn: The "loan was secured to the satisfaction of the reserve bank…it was secured by all those assets and those assets were enough to secure the loan" (Kohn Dep. 256:1-13).

(g) Federal Reserve General Counsel Scott Alvarez: The "credits were each fully secured at the time they were made….We expect the Federal Reserve will be fully repaid on each extension of credit involving AIG" (PTX 587 at 25).

10.3.1 FRBNY was "fully repaid" for the money lent under the Credit Agreement

(a) FRBNY was "fully repaid" for the money lent under the Credit Agreement and received $6.7 billion in interest payments and fees in connection with the Credit Facility (PTX 720 at 1).

11.0 ON SEPTEMBER 16, 2008 DEFENDANT TOLD AIG THAT DEFENDANT'S DEMAND FOR 79.9% OF AIG SHAREHOLDERS' EQUITY WAS NON-NEGOTIABLE AND THAT IF AIG DID NOT AGREE, AIG WOULD NOT RECEIVE ANY LOAN OR OTHER ASSISTANCE FROM DEFENDANT AND WOULD HAVE TO FILE FOR BANKRUPTCY.

(a) On the afternoon of September 16, 2008, Geithner told Willumstad that he was going to send him a term sheet and that Willumstad was "not going to like it, but you have an hour to get your Board to approve it, two hours, we gave them a deadline" (PTX 673 at 24).

(b) Geithner: The AIG Board "had no option" (PTX 673 at 24-25).

(c) 2011 GAO Report: The "terms of the Government's offer were unacceptable, given a high interest rate and the large stake in the company—79.9%—the government would take at the expense of current shareholders. AIG executives telephoned FRBNY officials during the AIG board meeting in an effort to negotiate terms of the Revolving Credit Facility, but the FRBNY officials said the terms were nonnegotiable and that the company had no obligation to accept the offer" (PTX 641 at 42-43).

(d) During the September 16 Board meeting: "The Board as a whole instructed its advisors to go back to the government to negotiate for better terms" (JX 74 at 11) but Defendant refused to negotiate (*id.* at 12).

(e) FRBNY General Counsel Baxter's handwritten notes reflect Defendant refused to reduce the percentage of equity it would take and refused to include a "fiduciary out" provision for AIG in the agreement (JX 52 at 20).

(f) As FRBNY General Counsel Baxter wrote at 6:44 p.m. on September 17: "AIG was told this was 'take it or leave it'. Nothing could be negotiated" (PTX 126 at 1; *see also* Baxter Dep. 142:22-24; Cohen Dep. 120:14-17).

12.0 THE EVENING OF SEPTEMBER 16, 2008 AIG'S BOARD PASSED TWO RESOLUTIONS – A RESOLUTION AUTHORIZING THE NEGOTIATION OF A CREDIT AGREEMENT BETWEEN AIG AND THE FEDERAL RESERVE BASED ON THE TERMS OF DEFENDANT'S OFFER, AND A RESOLUTION AUTHORIZING AIG TO IMMEDIATELY BORROW MONEY FROM THE FEDERAL RESERVE ON A SECURED DEMAND NOTE BASIS.

(a) On September 16, 2008, the AIG Board of Directors approved a resolution that "authorized" AIG "to enter into a transaction with the Federal Reserve Bank of New York (the 'Lender') to provide a revolving credit facility of up to $85 billion on terms consistent with those described at this meeting" (JX 74 at 13).

(b) On September 16, 2008, the AIG Board of Directors approved a resolution that "authorized" AIG "to enter into a $14 billion demand note with the Lender . . . and to enter into such additional demand notes . . . as any Authorized Officer determines is necessary or appropriate to meet the liquidity needs of the Corporation prior to the execution of definitive documentation of the Credit Facility" (JX 74 at 14).

12.1 The AIG Board was never presented with the version of the term sheet Defendant claims was executed.

12.1.1 Willumstad was the only member of the AIG Board of Directors that saw a term sheet on September 16, 2008.

12.1.2 The term sheet Willumstad saw on September 16 has not been produced in this litigation.

(a) At around 3 or 3:30 pm on September 16, 2008, AIG's outside counsel showed Willumstad a term sheet that was "maybe two pages" and that was "mostly bullet points. It wasn't a professional looking document" but rather looked like it "may have been put together by" Willumstad's "grandchildren" who are "ten and twelve" (Willumstad (Oct. 15, 2013) Dep. 269:22-271:8).

(b) Other than the two-page version of a term sheet he reviewed mid-afternoon, Willumstad did not see any other version of the term sheet on September 16, 2008 (Willumstad (Oct. 15, 2013) Dep. 288:25-289:6, 295:14-18).

(c) The version of the term sheet that Willumstad saw around 3 or 3:30 pm on September 16 has not been produced in this litigation (PTX 681; PTX 683).

(d) After the AIG Board of Directors meeting on September 16, 2008, Willumstad signed a single signature page that had nothing attached (JX 76 at 1-2), a copy of which was faxed to Defendant at 8:44 pm (PTX 94 at 1-2) and subsequently appended to a copy of a term sheet Willumstad had not seen.

12.1.3 Aside from Willumstad, no AIG Board member saw a term sheet on September 16, 2008.

(a) During the September 16, 2008 Board meeting, AIG's Board of Directors were not shown a term sheet. Instead, Defendant's terms were orally described to the AIG Board of Directors (*see* Willumstad (Oct. 15, 2013) Dep. 276:2-13; Feldstein Dep. 67:15-69:11, 122:23-123:13; Simpson Thacher 30(b)(6) (Nathan) 73:21-74:21; Kelly Dep. 51:6-13).

12.2 Between September 16 and 22, 2008, Defendant provided liquidity to AIG pursuant to agreements in the form of demand notes.

(a) On September 16, 17, 18 and 19, 2008, Defendant lent to AIG pursuant to fully secured demand notes. These demand notes were separate agreements that were cancelled on September 23, 2008, after the execution of the Credit Agreement (*see* JX 107 at 12, 23, 38-39, 74-75; JX 84).

(b) Under the Demand Notes, AIG had an obligation to pay the principal, fees and interest on the demand of FRBNY or on September 23, 2008, whichever came earlier (*see* JX 84).

(c) "These advances against the demand notes of AIG were entered into between September 16, 2008, and September 19, 2008, in an aggregate amount of $37 billion" (PTX 339 at 4).

13.0 UPON THE AIG BOARD'S PASSING OF ITS SEPTEMBER 16 RESOLUTIONS, DEFENDANT ASSUMED CONTROL OF AIG.

13.1 On September 16, 2008, prior to any discussions with the AIG Board, Defendant fired Willumstad as CEO of AIG and replaced him with a CEO of Defendant's own choosing.

(a) Paulson on the morning of September 16, 2008: "I worked on finding a new CEO for the company. . . . I asked Ken Wilson to drop everything and help. Within three hours he had pinpointed Ed Liddy, the retired CEO of Allstate" and Paulson "offered Ed the position of AIG chief on the spot" (PTX 706 at 263).

(b) Willumstad left on September 16 because "I was terminated by Mr. Paulson" (PTX 617 at 68).

(c) At the September 18, 2008 AIG Board meeting the Board was informed that AIG CEO Edward Liddy ("**Liddy**") understood "the Department of the Treasury and Federal Reserve Bank of New York to expect, that Mr. Liddy would be both Chief Executive Officer and Chairman" (JX 94 at 2).

(d) The Board of Governors of the Federal Reserve System did not vote on whether to remove Willumstad as AIG's CEO or on whether to appoint Liddy as AIG's CEO (Def. Resp. to Pl. 1st RFA Nos. 29.1, 29.2).

(e) AIG Board member Martin Feldstein: AIG Board members thought that Willumstad "was doing a good job" and that his replacement as CEO "was all very much Washington-driven, politically spotlighted….You put your own man in charge" (Feldstein, *Brookfield v. AIG*, Dep. 117:12-22).

(f) AIG Board member Morris Offit: Absent "a demand from the government," he "would have allowed Mr. Willumstad to continue as CEO" (Offit Dep. 243:8-13).

(g) Willumstad and AIG counsel did not know who Liddy was when Paulson told them that Liddy would replace Willumstad as CEO (PTX 705 at 440).

13.2 When Liddy became CEO of AIG he was a member of the Goldman Sachs' Board of Directors and Chairman of the Audit Committee of Goldman Sachs.

(a) Liddy: "Q. Now, at the time of this board meeting, this AIG board meeting on September 21st, you were the chairman of the audit committee of Goldman Sachs. Correct? A. I was" (Liddy Dep. 85:1-6).

(b) "The United States admits that Mr. Liddy resigned from the Goldman Sachs Board of Directors on September 23, 2008" (Def. Resp. to Pl. 2nd RFAs No. 71).

13.3 On September 21, 2008, Liddy knew that Goldman Sachs was going to become a bank holding company but he did not explore this possibility for AIG.

(a) [redacted] (PTX 193 at 1).

(b) Goldman Sachs 30(b)(6) (Vittorelli) Dep. 193:17-194:7: [redacted]

[redacted]

(d) [redacted] (PTX 193 at 1; JX 103 at 1).

(e) Liddy: "Q. Did you ever consider seeking to have AIG become a bank holding company? A. I don't recall ever doing that, no" (Liddy Dep. 111:2-6).

13.4 Defendant controlled its hand-picked CEO of AIG.

13.4.1 Defendant replaced Willumstad with Liddy as CEO of AIG to ensure that AIG had a CEO who would act "as a steward of the taxpayers' capital" (United States 30(b)(6) (Millstein) 102:20-103:4).

(a) On September 16 and 17, 2008, Liddy spoke to representatives of Treasury (Liddy Dep. 15:22-16:17, 25:2-15).

(b) "The United States admits that Ms. Dahlgren and Mr. Jester separately met with Mr. Liddy on September 17, 2008" (Def. Resp. to Pl. 2nd RFAs No. 413; see also Dahlgren Dep. 36:3-23).

(c) Vice President of FRBNY's AIG Relationship Monitoring Team Sarah Dahlgren: On September 17, 2008, prior to meeting with AIG's senior staff, Liddy asked FRBNY "for help in what he should say when he walks into the company", and FRBNY and Treasury "provided talking points to him at his request the night before" (Dahlgren Dep. 302:2-303:3; PTX 112).

(d) FRBNY Vice President Dahlgren: On September 17, 2008, Dahlgren met with Liddy and other AIG senior managers, and Liddy "was clearly the one in charge" (Dahlgren Dep. 37:4-10).

(e) Beginning the week of September 17, 2008, Dahlgren spoke to Liddy "multiple times a day" about such issues as "whether he had the right management team there" and Dahlgren also shared information with Liddy about what FRBNY's "team on the ground was seeing in places like" AIGFP so that Liddy "could then react and figure out what he needed to do within those parts of the company" (Dahlgren Dep. 91:24-92:17).

(f) Beginning the week of September 17, 2008, "Mr. Liddy and FRBNY employees Sarah Dahlgren and Steve Manzari had a standing daily meeting scheduled" (Def. Resp. to Pl. 2nd RFAs No. 431).

13.4.2 Liddy viewed his role as CEO of AIG as a partnership with Defendant.

(a) Liddy: "AIG is a shareholder-owned company and we operate according to that, because the largest single shareholder we have is the American public

through an 80 percent ownership. The Federal Reserve and the U.S. Treasury are our partners. We don't do anything without reviewing it with them, making certain that they are in concurrence with it. So it is very much a partnership in terms of the way we think about making decisions" (PTX 516 at 27-28).

(b) Liddy: "I very much view the relationship as a partnership. We do not do a single thing of strategic import without making certain that we have talked to the Federal Reserve about it and we have given them an opportunity to weigh in on it" (PTX 471 at 75).

13.5 As of September 16, 2008, Defendant began to control AIG's business operations, including by installing a permanent on-site monitoring team at AIG.

(a) Federal Reserve Vice Chairman Kohn: On "September 16, the government in the form of the Federal Reserve, working with the Treasury, became very deeply involved in the overall strategy of the company" (PTX 449 at 15-16).

(b) Vice President in the Markets Group at FRBNY Susan McLaughlin on September 16, 2008: "We will establish an on-site presence at AIG to monitor and protect our interests as lender and equity stakeholder" (PTX 102 at 1).

(c) Vice President of FRBNY's AIG Relationship Monitoring Team Sarah Dahlgren: "Middle of the day on September 16, 2008, I was asked to take on the responsibility for the AIG monitoring team" (Dahlgren Dep. 13:8-14).

(d) FRBNY Vice President Dahlgren to AIG senior managers on September 17, 2008: We "are here, you're going to cooperate. And there was full cooperation with company [sic]. They were terrified, they were on the brink, and then they were dealing with their lender'" (PTX 581 at 2; *see also* Dahlgren Dep. 45:3-47:6).

(e) "On September 17, 2008, FRBNY established an on-site team at AIG led by FRBNY employee Sarah Dahlgren to help FRBNY understand and monitor the company" (Def. Resp. to Pl. 2nd RFAs Nos. 416).

(f) AIG General Counsel Anastasia Kelly: On September 17, 2008 Liddy "got us all into the boardroom and just started, as I said, being CEO" (Kelly Dep. 88:25-89:21). Liddy was not approved as CEO by the AIG Board until September 18 (JX 94 at 3).

(g) On September 18, 2008, FRBNY "instructed" AIG that going forward "all collateral calls that are not contractual" need to be "agreed" to by FRBNY before AIG posts and that AIG "must not post on valuations before going through this process" (PTX 141 at 1).

(h) On September 19, 2008, Defendant began requiring AIG to submit additional daily reporting concerning AIGFP, including daily super senior collateral reports and profit and loss reports (PTX 165 at 2).

13.6 After AIG filed an 8-K on September 18, 2008 stating that "AIG issued a warrant to the Board of Governors of the Federal Reserve ("Federal Reserve") that permits the Federal Reserve, subject to shareholder approval, to obtain up to 79.9% of the outstanding common stock of AIG" (JX 96 at 2), Defendant required AIG to amend its 8-K, and to submit its securities filings and other significant releases to FRBNY's lawyers for review prior to filing.

(a) FRBNY Vice President Dahlgren: On September 19, 2008, AIG General Counsel Anastasia Kelly "agreed going forward that all securities filings, press releases, and any other significant releases or communications would be run past our lawyers (DPW) in advance of anything issued" (PTX 155 at 1; *see also* Def. Resp. to Pl. 2nd RFAs No. 439).

(b) AIG September 19, 2008 Form 8-K/A: "This Form 8-K/A filing corrects certain errors in, and supersedes, yesterday's filing… The summary of terms also provides for a 79.9% equity interest in AIG. The corporate approvals and formalities necessary to create this equity interest will depend upon its form" (JX 99 at 2).

(c) AIG Deputy General Counsel Kathy Shannon: "It was our practice to share drafts before filing or with counsel for the Fed, yes" (Shannon Dep. 110:3-11).

13.7 Starting on September 18 or 19, 2008, FRBNY retained Ernst & Young as an advisor in connection with Defendant's loan to AIG.

(a) On September 19, 2008, Defendant retained Ernst & Young to perform services for Defendant in connection with Defendant's loan to AIG, including: the "quality of collateral posted," "cash flow projections," "divestiture support," "regulatory," "covenant monitoring," "financial reporting," "tax considerations," and "program management" (PTX 169 at 5-10).

(b) Starting on September 18 through September 29, 2008, AIG and its consultant Alix Partners met regularly with Defendant and Ernst & Young (PTX 263 at 2-5).

(c) From around September 20, 2008, there were "around 20" Ernst & Young personnel "full-time" at AIGFP (E&Y 30(b)(6) (Symons) Dep. 43:21-44:22).

(d) Ernst & Young with regard to its work on AIG for Defendant: "EY had about 550 people work on this all over the world" (PTX 626 at 9; E&Y 30(b)(6) (Symons) Dep. 89:23-90:4).

13.8 Starting on September 17, 2008, Defendant began to implement a liquidation plan for AIG.

(a) Senior Federal Reserve officials on or around September 17, 2008: "An eventual liquidation of the company is most likely" (PTX 113 at 1).

(b) Paulson on Meet the Press on September 21, 2008: "what the government did was come in in a senior position, senior to the senior debt, well ahead of the shareholders,

with, as you said, an $85 billion funding facility to allow the government to liquidate this company in a way in which it – we avoided a real catastrophe in our financial markets" (PTX 205 at 4).

(c) The Credit Agreement required AIG to provide: Within "15 days following the Closing Date . . . a briefing paper on the proposed divestiture program, identifying businesses expected to be sold, the anticipated value of those businesses and the expected timing of those sales" (JX 107 at 41, § 5.04(e)(i)(C)).

13.9 Defendant continued to make changes to the Credit Agreement after the AIG Board of Directors approved the terms of the Agreement.

(a) At 9:37 pm on September 22, 2008, Davis Polk, outside counsel to the Defendant, emailed a draft of the Credit Agreement "requesting that all parties review and sign off within the hour" and adding to Section 5.11 "Trust Equity" language providing: "The Borrower shall use best efforts to cause the composition of the board of directors of the Borrower to be, on or prior to the date that is 10 days after the formation of the Trust, satisfactory to the Trust in its sole discretion" (PTX 1645 at 50).

14.0 DURING SEPTEMBER 17 THROUGH SEPTEMBER 22 DEFENDANT DRAFTED A BINDING CREDIT AGREEMENT A SUMMARY OF TERMS OF WHICH WAS PRESENTED TO THE AIG BOARD FOR THE FIRST TIME THE EVENING OF SEPTEMBER 21.

14.1 Defendant drafted the Credit Agreement.

(a) Davis Polk as counsel to FRBNY had "responsibility for the drafting of . . . both the credit agreement and what became Annex D to the credit agreement" (Davis Polk 30(b)(6) (Brandow) Dep. 77:15-77:25).

(b) FRBNY staff, in an interview with GAO: "That's why there was language in the RCF that would allow the Fed to force changes in the support package without AIG consent" (PTX 634 at 4).

14.2 A summary of the Credit Agreement terms was presented to the AIG Board for the first time the evening of September 21.

(a) At 6:31pm on September 21, 2008, Eric Litzky (AIG Special Counsel and Secretary to the Board of Directors) emailed the AIG Board: "Attached is a summary of the terms of the Convertible Participating Serial Preferred Stock, which represents the United States Government equity participation. The terms of the Preferred Stock will be presented to the AIG Board at the Board meeting tonight" (PTX 196 at 1, 3).

14.3 Prior to the evening of September 21, the AIG Board had not been given any indication that Defendant was demanding equity in the form of voting preferred stock (AIG 30(b)(6) (Reeder) Dep. 105:8-13; Miles Dep. 154:9-25).

(a) Minutes of the September 21, 2008 AIG Board meeting: Although "the Board had originally been led to believe that the form of equity participation by the Treasury Department would be warrants, the form of equity participation to be issued in connection with the Credit Agreement is now proposed to be convertible preferred stock, the terms of which were reflected in a term sheet delivered to Board members prior to the meeting" (JX 103 at 3).

14.4 Even at the September 21 Board meeting, the AIG Board was not given a copy of the draft credit agreement.

(a) AIG Director Miles Offit:

"Q. Do you recall seeing a draft of a credit agreement document either during this meeting or sometime afterward?

A. I do not" (Offit Dep. 179:16-19).

15.0 THE TERMS OF THE CREDIT AGREEMENT WERE MATERIALLY WORSE FOR AIG SHAREHOLDERS THAN THE TERMS DEFENDANT HAD OFFERED, AND WHICH THE FEDERAL RESERVE BOARD OF GOVERNORS HAD APPROVED, ON SEPTEMBER 16.

15.1 The form of equity was material to AIG.

(a) AIG General Counsel and Chief Compliance and Regulatory Officer Anastasia Kelly emailed AIG executives and staff on September 21, 2008, at 9:27am regarding the forthcoming Credit Agreement: "We have not yet received the equity piece, which is the most important" (PTX 182 at 1).

(b) At the September 21, 2008 AIG Board meeting: "Members of the Board noted that the change from warrants to preferred stock would give the Bank current voting rights and would not require shareholder approval to the issuance" (JX 103 at 3).

15.2 Defendant changed the form of equity from non-voting warrants to voting convertible preferred stock in order to obtain immediate control of AIG.

(a) "FRBNY considered whether it should seek equity in the form of warrants, but concluded that, among other shortcomings, this approach would not be consistent with all of its objectives because the warrants would not carry voting rights until exercised" (Def. Resp. to Pl. 2nd Interrogatories No. 2).

(b) "If warrants were issued, how would anybody who got the warrants have the power to be the majority shareholder. The difficulty was with warrants, that you couldn't exercise the power to vote, that would be a problem" (Baxter Dep. 212:18-23).

15.3 Defendant wanted immediate control of AIG to prevent AIG's common shareholders from rejecting the terms of the Credit Agreement.

(a) Treasury Counsel Stephen Albrecht to Treasury personnel responsible for "AIG Preferred Stock – Fed Credit Agreement": "We originally pushed for voting rights to help fend off the shareholder attempts to 'reclaim' the company" (PTX 349 at 1).

(b) "Major shareholders are trying to help pay off the federal government's loan to American International Group Inc. in time to avoid having Washington take an 80% stake in the company" (PTX 179 at 1).

(c) "AIG shareholders are seeking to pay off the loan quickly so a government takeover of the company could be averted" (PTX 179 at 1).

(d) "AIG said Sept. 18 it would give the U.S. warrants entitling the government to get common shares equal to a 79.9 percent stake. Some investors surmised that the U.S. might hold onto the warrants for long enough for them to find enough new cash to make the government takeover unnecessary. . . . The company yesterday said the Treasury will instead get preferred shares with voting rights, guaranteeing the U.S. will control the outcome of any shareholder vote" (PTX 1658 at 2).

(e) Davis Polk partner Marshall Huebner on September 19, 2008, to FRBNY and Treasury officials, referencing a September 18 Wall Street Journal article which reported that AIG's directors were "stunned" by Defendant's "'onerous' proposal"; and "bristled at what they considered Washington's heavy-handed treatment" and "felt 'violated'": Preferred shares "may well be critically necessary given the very public winging (pronounced in this case winzhing) going on by certain board members (see below), the annual non-staggered risk of having a known board voted out, and the ability of anyone (and there are several logical candidates) to have/acquire big stock positions and make much trouble for us" (PTX 159 at 1-2).

(f) On September 19, 2008, McConnell, Geithner's Deputy Chief of Staff, sent to Geithner a Bloomberg article reporting that AIG "rose 44 percent in New York trading on speculation that shareholders may try to derail a government takeover by helping to repay a federal loan to the company" (PTX 161 at 1).

(g) On September 21, 2008, FRBNY General Counsel Baxter told Federal Reserve General Counsel Scott Alvarez that he wanted to keep the process of drafting the equity term sheet moving and send it to AIG "because of a concern there will be shareholder action" (PTX 183 at 1).

(h) On September 21, 2008, in an email among FRBNY officials, FRBNY Counsel Charles Gray to FRBNY Vice President Sarah Dahlgren: FRBNY Counsel "Rich Charlton just came up and shared with Tom your concern about whether the terms of the equity investment will adequately protect us against shareholder activism among minority shareholders at AIG" (PTX 184 at 1).

15.4 Defendant changed the form of equity from non-voting warrants to voting convertible preferred stock to avoid the shareholder vote that would be required to issue warrants.

(a) At the September 16, 2008 AIG Board meeting, "Counsel explained that if the equity interest took the form of warrants, then a shareholder vote would be necessary to authorize additional shares of common stock sufficient to meet the requirements of the warrant" (JX 74 at 12).

(b) During a conference call on September 18, 2008, with attorneys from FRBNY, the Federal Reserve Board, Treasury, and Davis Polk, Davis Polk advised that "warrants require s/h because not enough shares authorized" (PTX 148 at 2), and "consider voting preferred w/ 79% voting w/ common" (*Id.*).

(c) During a noon conference call on September 21, 2008, Defendant decided that it was going to take equity in AIG in the form of Convertible Participating Serial Preferred Stock to be issued to an AIG Credit Facility Trust, established for the benefit of Treasury. (JX 101 at 1-3.)

15.5 Defendant required AIG to invoke a waiver to NYSE rules to avoid the shareholder vote that would otherwise have been required for the issuance of preferred stock representing more than 20% of a company's voting control.

15.5.1 Under NYSE Rule 312.03(c)(1), "Shareholder approval is required prior to the issuance . . . of securities convertible into or exercisable for common stock . . . if: (1) the common stock has, or will have upon issuance, voting power equal to or in excess of 20 percent of the voting power outstanding" (JX 240 at 94).

15.5.2 Defendant required AIG to invoke a waiver of the NYSE rule requiring shareholder approval.

(a) On September 21, 2008, Davis Polk attorney Ethan James informed FRBNY and Treasury that "Section 312.03 of the NYSE listed company manual requires shareholder approval for the issuance of securities having more than 20% of the vote" but that "Section 312.05 provides an exception to this limitation" when "'(1) the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and (2) reliance by the company on this exception is expressly approved by the Audit Committee of the Board'" (PTX 207 at 1).

(b) In the Credit Agreement, Defendant required that "AIG will take all actions necessary or expedient for obtaining NYSE approval for the issuance and voting of the Preferred stock, including actions required of the audit committee of the board of AIG" (JX 107 at 139).

(c) "the United States admits that the Credit Agreement executed by AIG and FRBNY obligated AIG to 'take all actions necessary or expedient,' including actions required of the AIG Audit Committee to take advantage of the exemption to NYSE Section 312.03(c)(1) under NYSE Section 312.05" (Def. Resp. to Pl. 2nd RFAs No. 465).

15.5.3 A company is only permitted to invoke a waiver of a shareholder vote if "'the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise'" (PTX 207 at 1).

15.5.4 There was no legitimate basis for waiver required by Defendant since the AIG preferred stock was not issued until March 2009, and there was more than enough time in the interim to have a shareholder vote.

15.6 Defendant required AIG not to comply with NYSE rules that required 10 days notice to shareholders if a company planned to waive the rule requiring a shareholder vote for the issuance of preferred stock representing more than 20% of a company's voting control.

(a) "A company relying on this exception must mail to all shareholders not later than 10 days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval" (JX 240 at 96).

(b) AIG 30(b)(6) (Reeder) Dep. 127:6-9: "Davis Polk was concerned that there could be an action to be brought by somebody within the 10-day period that would create a problem" for Defendant.

(c) John Brandow of Davis Polk to AIG's Deputy General Counsel and Corporate Secretary Kathleen Shannon on September 25 at 5:24pm: "The point of the new language is to track the Credit Agreement provision for when the Preferred Stock will be issued and to avoid any suggestion that the shareholders have a ten day period within which to try to prevent the issuance" (PTX 249 at 1).

(d) AIG Deputy General Counsel Shannon on September 25, 2008 at 8:09 pm: "Counsel for the NY Fed has requested that we not mention the 10 days in the letter or release" (PTX 251 at 9).

(e) On September 26, 2008, Liddy sent a letter to shareholders informing them that the AIG Audit Committee approved an exception to the NYSE requirement of shareholder approval but did not mention the ten-day waiting period prior to issuance of the security (JX 119 at 1).

15.7 Defendant changed the form of equity from non-voting warrants to voting convertible preferred stock in order to avoid payment of a strike price of a minimum of $29.343 billion.

15.7.1 In order to issue warrants for AIG common stock, the exercise price would have to be at least $2.50 per share, unless the AIG common shareholders voted as a class to decrease the par value.

(a) "Shares of stock with par value may be issued for such consideration, having a value not less than the par value thereof" (8 Del. C. § 153(a)).

(b) In September 2008, AIG's common stock had a par value of $2.50 (PwC 30(b)(6) (Farnan) Dep. 167:12-15).

(c) A change in the par value of AIG common stock requires amendment of its certificate of incorporation (8 Del. C. § 242(a)(3)).

(d) "The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences, or special rights of the shares of such class so as to affect them adversely" (8 Del. C. § 242(b)(2)).

15.7.2 In order to receive 79.9% of AIG's common shares, Defendant would be required to exercise warrants for 11.737 billion shares (79.9% of 14.69 billion shares per PTX 375 at 21), which at $2.50 per share would be approximately $29.343 billion.

15.7.3 Defendant wanted to avoid paying more than a "nominal price" for the AIG equity it acquired.

(a) The "United States admits that warrants generally have an exercise price" (Def. Resp. to Pl. 2nd RFAs No. 558).

(b) Paulson:

"Q. And one of the differences between warrants and an outright grant is, with warrants, there would be some strike price that the government would have to pay if it exercised the warrants, correct?

A. That's the way a warrant works, right" (Paulson Dep. 152:7-14).

(c) Geithner:

"Q. . . . The revised draft at 2:15 p.m. on the 16th contemplated that there would be warrants and that there would be an exercise price for those warrants, right?

A. Apparently, yes" (Geithner Dep. 234:18-23).

(d) At a September 18, 2008 conference call among attorneys for FRBNY, the Federal Reserve Board, and Treasury, Davis Polk advised: it was possible to "purchase preferred stock for nominal $" but that there was a "need to change par value of common to reduce strike price to nominal value" (PTX 148 at 2).

(e) On September 19, 2008, at 11:50 am, Huebner of Davis Polk sent a memorandum to Treasury and FRBNY officials at the request of Defendant on the pros and cons of warrants or preferred stock noting that an advantage of

convertible preferred shares is the "Ability to realize control premium" (PTX 159 at 1, 7).

16.0 THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE NEVER APPROVED THE CREDIT AGREEMENT NOR THE CHANGES MADE TO THE TERMS OF THE $85 BILLION 13(3) LOAN TO AIG AS APPROVED BY THE BOARD OF GOVERNORS ON SEPTEMBER 16.

16.1 The Board of Governors authorized a 13(3) loan to AIG based on a term sheet that called for warrants and did not mention a Trust.

(a) The only term sheet considered by the Board of Governors provided that Defendant's equity interest would be "Warrants for the purchase of common stock of AIG representing 79.9% of the common stock of AIG on a fully-diluted basis" (JX 63 at 6) and that "shareholder approval" would be required to issue stock above what was then authorized (JX 63 at 10).

(b) The Board of Governors did not discuss or consider requiring AIG to issue voting convertible preferred stock or FRBNY's creating a Trust (JX 63).

(c) Bernanke: "I don't recall really any substantive discussion" about the "formation of the Trust" (Bernanke Dep. 192:1-16).

16.2 After September 16, 2008, none of the individual members of the Board of Governors had any further involvement in how to structure the credit facility, how much to provide, or when to provide it.

(a) United States 30(b)(6) (Greenlee), *Murray v. Geithner*, Dep. 29:17-21:

"Q. So your testimony here today is that the Federal Reserve Board took no decision regarding that particular structure versus any other structure that the Federal Reserve Bank of New York might have used?

A. Yes" (PTX 545 at 29).

(b) United States 30(b)(6) (Greenlee), *Murray v. Geithner*, Dep. 32:15-20:

"Q. So is it your testimony here today, Mr. Greenlee, that after September 16th none of the individual board members – and that includes Chairman Bernanke – had any further involvement in the decision as to how to structure the credit facility, how much to provide, when to provide it?

A. Yes" (PTX 545 at 32).

16.3 The Board of Governors did not vote to approve the Credit Agreement

(a) The "United States admits that the Credit Agreement was not presented to the Board of Governors for a formal vote" (Def. Resp. to Pl. 2nd RFAs No. 550).

(b) The Board of Governors "did not hold a meeting or vote to consider the terms of the Credit Agreement separate and apart from the two-part meeting on September 16, 2008" (Def. Resp. to Pl. 3rd Interrogatories No. 5).

16.4 The Board of Governors did not learn that FRBNY would demand voting convertible preferred stock or that FRBNY would create a Trust until after September 16, 2008.

(a) Bernanke was informed "a couple of days after September 16" that "the warrants had been changed to a preferred stock issuance and that there would be a Trust" (Bernanke Dep. 94:15-22).

17.0 ON SEPTEMBER 21, 2008, DEFENDANT TOLD AIG'S OFFICERS AND DIRECTORS THAT IF THEY DID NOT APPROVE THE CREDIT AGREEMENT AS PROPOSED BY DEFENDANT, INCLUDING WITH THE CHANGES DEFENDANT HAD UNILATERALLY MADE, DEFENDANT WOULD CALL ITS SECURED DEMAND NOTES AND AIG WOULD BE REQUIRED TO FILE FOR BANKRUPTCY.

17.1 AIG Board of Directors September 21, 2008 meeting minutes: "A meeting of the Board of Directors of AMERICAN INTERNATIONAL GROUP, INC., was held by telephone conference call on September 21, 2008 at 8:00 p.m." (JX 103 at 1).

17.2 At the September 21, 2008 meeting, Liddy told the Board: "the Corporation will be required by the Bank and the Treasury Department to finalize the documentation and sign the Credit Agreement before the opening of the market the following day" (JX 103 at 2).

17.3 From September 16 to 19, AIG had given FRBNY several demand notes totaling $37 billion which obligated AIG to repay FRBNY for any principal and interest "on demand" (JX 84 at 1-4).

17.4 Defendant threatened to cut off funding for AIG by calling its secured demand notes if the AIG Board did not approve the Credit Agreement as drafted by Defendant.

(a) The AIG Board of Directors' outside counsel, Michael Wiseman of Sullivan & Cromwell LLP, advised the Board during the September 21, 2008 meeting that "based on his conversations with the General Counsel of the Bank, he believed that if the Board did not approve the transaction that evening, the likely result would be that the Bank would refuse to fund the Corporation the next day" (JX 103 at 4) and that the Bank "would call note" (PTX 195 at 3).

18.0 FACED WITH DEFENDANT'S NON-NEGOTIABLE DEMANDS, ITS THREAT TO CALL ITS SECURED DEMAND NOTES, AND THE OPINION OF AIG COUNSEL THAT A DECISION TO FILE FOR BANKRUPTCY WOULD NO LONGER BE PROTECTED BY THE BUSINESS JUDGMENT RULE, AIG HAD NO CHOICE BUT TO ACCEPT DEFENDANT'S LOAN ON DEFENDANT'S TERMS.

18.1 The AIG Board of Directors' outside counsel, Rodgin Cohen of Sullivan & Cromwell LLP, advised the Board during the September 21, 2008 meeting that "bankruptcy was a considerably worse alternative now than it was previously," (JX 103 at 6), and that "if the Board accepted the Bank transaction, the Board would have properly exercised its business judgment," but that "if the Board chose to file for bankruptcy, he was not prepared to render a similar opinion to the Board" (JX 103 at 5-6). (*See also* Bollenbach (Dec. 4, 2013) Dep. 165:6-25.)

18.1.1 By contrast, during the September 16, 2008 AIG Board meeting, Cohen had advised the Board that it "could accept either option" of accepting the proposed credit facility or filing for bankruptcy "if the Board believed in good faith that that option was in the best interests of the constituencies to whom the Board now owes its duties" (JX 74 at 5).

18.2 AIG's Board had "no choice" except to accept Defendant's offer on Defendant's terms.

(a) Geithner: the AIG Board "had no option" (PTX 673 at 24).

(b) The minutes of the September 21 AIG Board meeting report: "Several of the directors commented that they did not feel as though they had any choice" (JX 103 at 5) and notes of the meeting state "GM [George Miles] doesn't think we had choice" and "VR [Virginia Rometty]: don't have choice" (PTX 195 at 4).

(c) On September 22, 2008, Jacob Frenkel, Vice Chairman of AIG and a former Governor of the Bank of Israel, wrote that the Board's approval of the Credit Agreement "should not be confused with approval of the robbery – the government stole at a gunpoint 80 percent of the company" (PTX 228 at 1).

18.3 The Credit Agreement was signed by Liddy on behalf of AIG (Def. Resp. to Pl. 2nd RFAs No. 457; JX 110 at 66) on the morning of September 23, 2008, with an effective date of September 22, 2008 (JX 110 at 1, 3).

18.4 AIG's obligation to issue to Defendant voting preferred stock representing 79.9% of the shareholders' equity and voting control (JX 107 at 46, § 5.11) was fixed as of the execution of the Credit Agreement even if Defendant later unilaterally substituted a different financing structure.

(a) Section 8.17 provides that "If, following the Closing Date, the Lender identifies to the Borrower an alternative financing structure which provides benefits to the Borrower equivalent to those provided to under this Agreement without material detriment to the Borrower, . . . the Borrower will, and will cause its Subsidiaries to, take such steps as the Lender may reasonably request to implement such alternative structure" (JX 107 at 63, § 8.17).

(b) Section 8.02 of the Credit Agreement, "Survival of Agreement", provides that AIG's obligation to issue the equity under Section 5.11 "shall remain operative and in full force and effect regardless of the expiration of the terms of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the termination of the Commitment, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document or any investigation made by or on behalf of the Lender" (JX 107 at 57, § 8.02).

18.4.1 AIG's outside auditor PwC "concluded the Company's obligation to issue a fixed number of shares of its preferred stock represents a prepaid forward sales contract" which "should be classified as permanent equity" for the third quarter of 2008 (JX 151 at 23-24).

(a) As a November 5, 2008 AIG Accounting Policy Memorandum explained, "The only thing keeping AIG from" issuing the preferred stock "is awaiting the government to establish the Trust that will physically hold the preferred stock" (PTX 347 at 64).

18.5 The Plaintiffs did not participate in, or approve, the decision to provide Defendant with 79.9% of their equity and voting control.

18.5.1 The Credit Agreement became effective without any vote or other expression of approval by the Plaintiffs.

18.5.2 Neither the Plaintiffs nor the public generally were ever informed that AIG was being asked to provide voting preferred stock until after the Credit Agreement was executed.

19.0 AIG WAS THE ONLY 13(3) BORROWER IN HISTORY WHOSE SHAREHOLDERS WERE REQUIRED TO SURRENDER 79.9% OF THEIR EQUITY AND VOTING CONTROL AS CONSIDERATION FOR A 13(3) LOAN.

(a) Def. Resp. to Pl. 1st RFAs No. 18.0: Since "1938 no federal reserve bank has received equity in any company in exchange for providing that company access to credit under Section 13(3)."

20.0 PRIOR TO THE EXECUTION OF THE CREDIT AGREEMENT, NEITHER THE BOARD OF GOVERNORS NOR ANY OTHER GOVERNMENT OFFICIAL UNDERTOOK ANY INVESTIGATION OR ANALYSIS, OR MADE ANY FINDINGS, OR ALLOWED AIG OR PLAINTIFFS ANY MEANINGFUL OPPORTUNITY TO BE HEARD AS TO WHAT PERCENTAGE OF EQUITY OR VOTING CONTROL WAS APPROPRIATE TO DEMAND.

20.1 Government officials neither conducted nor were aware of any analysis concerning the requirement of a 79.9% equity interest as a condition of the 13(3) loan to AIG.

(a) United States 30(b)(6) (Millstein) (Dec. 5, 2013) Dep. 99:3-11:

"A… your last question was asking me to speak to how the Fed determined, from all the other companies that came to its doorstep for financial assistance, why this company, why they determined to condition the loan on the talking of 79 percent of the equity?

Q. Yes.

A. I don't know."

(b) Geithner: "I am not certain I understand the reason why it was not more than that. I don't know why it was not less than that" (Geithner Dep. 133:10-134:25).

(c) Paulson: "I didn't focus on how that number was determined, although I clearly focused on the number and remember discussing it" (Paulson Dep. 131:10-14).

(d) FRBNY "did not conduct an independent analysis regarding the appropriate terms for Government assistance to AIG" (PTX 549 at 15).

21.0 NEITHER THE FEDERAL RESERVE NOR TREASURY HAD THE AUTHORITY TO ACQUIRE EQUITY AND VOTING CONTROL AS A CONDITION OF MAKING A 13(3) LOAN.

21.1 The Federal Reserve had no authority to purchase or hold equity.

(a) Geithner: "Under section 13(3) of the Federal Reserve Act, the Fed is prohibited from taking equity or unsecured debt positions in a firm" (PTX 409 at 177).

(b) Bernanke: "The Federal Reserve is authorized under the Federal Reserve Act to extend credit in various forms, but is not authorized to purchase equity securities of financial institutions" (PTX 363 at 2).

(c) Bernanke: We "had only one tool, and that tool was the ability of the Federal Reserve under 13(3) authority to lend money against collateral. Not to put capital into a company but only to lend against collateral" (PTX 548 at 28).

(d) Paulson, referring to the Federal Reserve: "They legally couldn't do preferred. They legally could only make a loan" (PTX 417 at 11).

(e) "The Federal Reserve is only, by statute only allowed to extend credit to organizations. It is not empowered to make any type of investments or equity injections" (PTX 545 at 82).

(f) "FRBNY does not have authority to purchase equity under the Federal Reserve Act" (PTX 361 at 12).

(g) "Corporate debt and equity instruments are not included among the assets that may be acquired under Section 14" of the Federal Reserve Act (PTX 336 at 1 n.2).

(h) FRBNY General Counsel Thomas Baxter wrote to Federal Reserve General Counsel Scott Alvarez confirming "we agree that there is no power" for the Federal Reserve "to hold AIG shares" (PTX 320 at 1).

(i) FRBNY's independent auditor Deloitte: "FRBNY cannot legally control a commercial company, and therefore it is not appropriate for them to consolidate an entity it cannot legally own" (PTX 448 at 6).

21.2 In September 2008, Treasury had no authority to purchase or hold equity.

(a) Defendant's Rule 30(b)(6) witness: The "Treasury Department as of September of 2008 had no budgetary authority to invest in equities, securities of any financial institution" (US 30(b)(6) (Millstein) (Dec. 18, 2012) Dep. 75:19-76:10).

(b) FRBNY counsel to Federal Reserve Board officials on September 17, 2008, concerning "Issues with regard to the NY Fed/Treasury's equity participation in AIG:" Treasury "consider themselves legally unable to assume ownership. This leaves the NYFed as Treasury's place to house the equity position" (PTX 143 at 2)

(c) September 17, 2008 report of Treasury's external counsel at Wachtell: "Treasury legal is telling, as per doj, that they cannot hold voting shares" (PTX 135 at 1).

(d) TARP Chief Investment Officer Jim Lambright: In "September when the Fed extended the credit facility, the government didn't have an equity tool" (PTX 402 at 7).

(e) Board of Governors Legal Division: "We understand that the Treasury lacks the legal authority to hold directly voting stock of AIG" (PTX 370 at 3). (*See* Alvarez Dep. 86:6-87:8.)

(f) Paulson:

"Q. And prior to TARP's approval, Treasury did not have the authority to purchase equity, either. Right?

A. Correct." (Paulson Dep. 177:17-21). (*See also* PTX 362 at 1; PTX 278 at 20.)

(g) Even though Congress provided Treasury with authority to purchase equity in EESA, 12 U.S.C. § 5223, that authority was still far more limited than the taking and/or illegal exaction provided for by the Credit Agreement. *See* COL ¶¶ 92-94. As FRBNY Assistant General Counsel Stephanie Heller recognized in March 19, 2009: "There were questions at that time which continue today as to whether Treasury or the FRBNY have authority to 'own' voting shares of a company. As I mentioned, the TARP legislation (section 113(d)) suggests that Treasury cannot have voting control" (PTX 2067 at 1).

22.0 THE AIG CREDIT FACILITY TRUST DID NOT CURE DEFENDANT'S LACK OF AUTHORITY.

22.1 Regardless of whether the Trust ultimately held the AIG shares, FRBNY initially acquired the shares.

22.1.1 "FRBNY was the settlor of the Trust" (Def. Resp. to Pl. 2nd RFAs No. 767; JX 172 at 4).

22.1.2 "The corpus of the Trust consisted entirely of the Series C Preferred Stock" (Def. Answer to 2nd Am. Compl. ¶ 85). (See also PTX 515 at 9-19).

22.2 Defendant established the Trust in an attempt to circumvent the limitations on its authority.

(a) On September 21, 2008, Federal Reserve General Counsel Scott Alvarez made clear to FRBNY General Counsel Thomas Baxter: "Just to confirm, ownership of stock along the lines in this term sheet will not work for the Fed -- trust or no trust" (PTX 183 at 1).

(b) A November 10, 2008 version of a legal memorandum from BOG counsel: "The creation of the Trust is necessary … because neither the Reserve Bank nor the Treasury Department has the legal authority to hold the equity in the form of preferred or common stock directly" (PTX 368 at 3).

22.3 The use of a trust to hold equity in AIG for the benefit of the United States was unprecedented.

(a) FRBNY outside counsel Marshall Huebner on September 23, 2008: "This is a very very odd animal. A state law trust where the grantor is the NY Fed and the beneficiary is the US Treasury. We know of no precedent" (PTX 235 at 1).

22.3.1 The Trust Agreement ensured continued Government control of AIG.

(a) The Trust Agreement provides that it is established "for the sole benefit of the Treasury" (JX 172 at 5, § 1.01).

(b) FRBNY had governance rights in AIG through its ability, in consultation with Treasury, to appoint the trustees of the trust (JX 172 at 14, § 3.02; PTX 273 at 14; Deloitte 30(b)(6) (Salz) Dep. 93:21-94:20).

(c) The Standard of Care under which the Trustees were obligated to perform, required them to act "in or not opposed to the best interests of the Treasury" (JX 172 at 15, § 3.03(a)(i)).

(d) "In exercising their discretion hereunder with respect to the Trust Stock, the Trustees are advised that it is the FRBNY's view that (x) maximizing the Company's ability to honor its commitments to, and repay all amounts owed to, the FRBNY or the Treasury Department and (y) the Company being managed in a manner that will not disrupt financial market conditions, are both consistent with maximizing the value of the Trust Stock" (JX 172 at 10, § 2.04(d)).

(e) Defendant had the right to seek specific performance from the Trustees for compliance with their obligations (JX 172 at 23, § 6.07).

(f) Testimony before the Congressional Oversight Panel of J.W. Verret, assistant professor of law at George Mason Law School: The structure of the Trust Agreement generally and section 3.03 in particular, requiring the Trustees to manage the investment in AIG "'in or not opposed to the best interests of the Treasury,'" "threatens the entire purpose of the trust itself, which is to create an independent buffer between the short-term political interests of an administration and the long-term health of the nation's financial system" (PTX 516 at 124).

22.4 FRBNY Selected The Trustees for Their Close Ties to the Federal Reserve System.

22.4.1 FRBNY recruited the individuals who served as Trustees (Def. Resp. to Pl. 2nd Set of RFAs No. 765, 766; JX 172 at 14, § 3.02).

22.4.2 Board of Governors General Counsel: The Trustees "are, first and foremost, Treasury's representatives" (PTX 484 at 1).

(a) The Trust's duties to minority shareholders of AIG were not the main objective of the Trustees (Feldberg Dep. 215:25-216:10).

(b) Prior to serving as a Trustee of the AIG Credit Facility Trust, Jill Considine completed a six-year term as a member of the Board of the Federal Reserve Bank of New York (Def. Resp. to Pl. 2nd Set of RFAs No. 770).

(c) Prior to serving as a Trustee of the AIG Credit Facility Trust, Chester Feldberg had worked for more than 35 years as an employee of the Federal Reserve Bank of New York (Def. Resp. to Pl. 2nd Set of RFAs No. 771).

(d) In addition, Feldberg served as a consultant to FRBNY on Maiden Lane LLC, the special purpose vehicle created in March 2008 for FRBNY's intervention into Bear Stearns (Feldberg Dep. 41:9-43:15; PTX 1773 at 1-3).

(e) Prior to serving as a Trustee of the AIG Credit Facility Trust, Douglas Foshee was chair of the Board of Directors of the Federal Reserve Bank of Dallas, Houston Branch, and Central Houston, Inc. (Def. Resp. to Pl. 2nd Set of RFAs No. 772; Foshee Dep. 12:19-23).

22.5 The Trust was nothing more than a legal shell for Defendant.

22.5.1 Defendant was always the beneficiary of AIG Equity in all its forms.

(a) FRBNY paid $500,000 for the Series C Preferred Stock at the closing of the Credit Agreement, for which it would be reimbursed by the Trust (PTX 1635 at 1).

(b) The Trust ultimately reimbursed FRBNY for the payment of the $500,000 credit given to AIG after the Trust was created (JX 107 at 37-38; PTX 448 at 2; PTX 1635 at 1; PTX 2009 at 1).

(c) The "United States performed the accounting and reporting on its financial statements for its beneficial interest in the Preferred Stock held by the Trust" (Def. Resp. to Pl. 2nd Set of RFAs No. 748).

(d) The 2009, 2010 and 2011 Financial Reports of the United States Government reflect the value of the United States' beneficial interest in the Preferred Stock as of September 30, 2009 and as of September 30, 2010 (Def. Resp. to Pl. 2nd Set of RFAs No. 752).

(e) Although the Trust held the Preferred Shares, it never held the AIG common stock. (Def. Resp. to Pl. 2nd Set of RFAs No. 745). The Trust dissolved on January 14, 2011 without having ever held or sold any AIG Common Stock (*id.* Nos. 745-747).

(f) The Recapitalization Plan resulted in the direct transfer of AIG common stock exchange for the Series C Preferred Stock to Defendant (Def. Resp. to Pl. 2nd Set of RFAs No. 740).

(g) Defendant eventually sold the common stock, holding on to the cash proceeds (Def. Resp. to Pl. 2nd Set of RFAs No. 741-744).

(h) In sum, there is no meaningful distinction between identifying the beneficiary of the Trust as the United States Treasury or the Department of the Treasury (JX 106 at 1-2).

22.5.2 The Trust Agreement gives away AIG rights despite AIG's lack of involvement in the negotiation and drafting of the Agreement.

(a) AIG did not participate in the drafting or negotiation of the Trust and was not a party to the Trust Agreement (U.S. 30(b)(6) (Baxter) Dep. 194:19-195:23).

(b) Yet, as AIG's outside counsel Robert Reeder informed the AIG Board of Directors at their March 1, 2009 meeting: The "Trust Agreement contains a broad waiver of corporate opportunities by AIG with respect to the Trustees and AIG did not expressly agree to be bound by this waiver" (JX 184 at 11).

(c) Among other things, the Trust Agreement contained an Undertaking through which AIG was required to reimburse all Trust expenses (JX 173 at 1; JX 184 at 11).

(d) This occurred after Defendant determined that it had no Section 13(3) authority to pay the Trust's expenses (PTX 368 at 5-7).

22.5.3 Defendant – not the Trustees – managed the Trust and exercised the Trust's ownership rights in AIG.

(a) The Trustees were "basically a staff of three;" they did not retain any staff or advisors (PTX 516 at 139, 84 ("Rather than build our own staff of analysts and advisers at unnecessary cost, we have chosen at least in the first instance to use information gathered by the FRBNY staff, its outside consultants, the Treasury Department, and AIG and its outside consultants. To date, this arrangement has worked well."), 206 (same)). Instead, the Trustees relied on the Monitoring Team and other Government officials for information about AIG. (*See, e.g.,* PTX 429 at 1-3; PTX 441 at 1-2; PTX 453 at 1-2; PTX 515 at 39-45; US 30(b)(6) (Millstein) (Dec. 18, 2012) Dep. 162:9-22.)

(b) The Trustees did not attend AIG board or committee meetings (PTX 516 at 49-50).

(c) Prior to voting on any issues concerning AIG, the Trustees met with Defendant to seek guidance on how to vote (Baxter Dep. 236:6-13).

(d) The Trustees could not recall taking any action over Defendant's objection (Feldberg Dep. 140:10-24, 225:7-21; Foshee Dep. 195:7-25, 211:2-19).

(e) The Trustees attended negotiations over the Recapitalization Plan as "observers" while the Government negotiated the Plan with AIG (Feldberg Dep. 218:12-23).

(f) On October 1, 2008, Sarah Dahlgren, head of FRBNY's Monitoring Team writes to Timothy Geithner and others, that someone at S&P indicated that she "doesn't normally talk with governmental agencies about ratings decisions – and I politely reminded her that I was calling as the largest creditor and 80% equity holder of the company….she responded positively to that" (PTX 270 at 2 (ellipses in original)).

(g) In 2010, Defendant took the position with foreign regulators of AIG that the change in ownership of AIG from the Trust to the Treasury Department resulting from the 2011 Recapitalization described below was no change at all because Treasury has always been the beneficiary of the Trust (PTX 618 at 31).

(h) Indeed, Defendant has represented that with respect to change of control laws, Treasury "and the Fed have always taken the position with the foreign regulators [that it] occurred on September – whenever the Series C stock was issued, not [at the time of the Recapitalization], because Treasury was always the beneficiary of the Series C stock" (U.S. 30(b)(6) (Millstein 2013) Dep. 232:6-233:10).

(i) FRBNY managed the Trust's communications with AIG's regulators, including the process for complying with change-of-control rules under applicable state insurance laws and regulations (PTX 407 at 1; PTX 435 at 1; PTX 408 at 1).

(j) Defendant invoked supremacy clause and sovereign immunity, claiming that the Trust was an instrumentality of the United States not subject to state law regulation (Def. Resp. to Pl. 2nd Set of RFAs Nos. 728, 729; Baxter Dep. 156:3-5; PTX 208 at 1).

(k) When the AIG Credit Facility Trust was dissolved in early 2011, FRBNY received the Trust documents (PTX 657 at 1).

(l) As the Federal Reserve's independent auditor stated: "We observed that a legal shell (the Trust) was inserted into the transaction structure, and concluded that the introduction of this shell does not impact the conclusions reached above" (PTX 273 at 16).

23.0 THE TERMS OF THE CREDIT AGREEMENT, INCLUDING THE REQUIREMENT THAT AIG'S SHAREHOLDERS SURRENDER 79.9% OF THEIR EQUITY HAD THE PURPOSE AND EFFECT OF PENALIZING AIG SHAREHOLDERS.

23.1 The terms of Defendant's loan to AIG were intentionally designed to be punitive

23.1.1 At the time Defendant offered a loan to AIG, Government officials described the proposed terms of the loan as deliberately punitive

(a) Deloitte: The "original terms of the Facility were intentionally designed to be punitive" (PTX 425 at 4).

(b) Paulson: The "taking of equity in companies that receive government assistance" is "'a punitive condition'" (Paulson Dep. 308:5-10).

(c) Paulson: Defendant "basically killed the shareholders" of AIG (PTX 706 at 316).

(d) Treasury's General Counsel Robert Hoyt: The "terms of the loan" were "too onerous to support" AIG's "ongoing business" (PTX 417 at 10).

(e) Millstein: The "FRBNY took nearly 80% of AIG's fully diluted common equity to provide additional compensation to taxpayers for their assistance, and to penalize the shareholders of the Company for the fact that the Company had no alternative but to ask the government for extraordinary assistance" (PTX 587 at 212).

23.1.2 Defendant understood that its terms amounted to nationalization of AIG.

(a) Geithner: Treasury and the Federal Reserve "effectively nationalized" AIG (Geithner Dep. 258:21-260:3; PTX 674 at 77).

(b) Paulson: The Government "nationalized" AIG (PTX 399 at 3).

(c) Congressman Barney Frank: "We own this company in effect" (PTX 473 at 1).

23.1.3 Defendant penalized AIG for political reasons.

(a) Paulson: "AIG was incredibly unpopular. If there was a . . . a political scapegoat, it was AIG" (Paulson Dep. 253:3-6)

23.2 The interest rate charged to AIG did not comport with Bagehot principles.

(a) FRBNY General Counsel Baxter described the interest rate on the AIG Revolving Credit Facility as "loan sharky" (PTX 279 at 1; Baxter Dep. 183:9-21; see also PTX 549 at 10, 15).

(b) FRBNY Executive Vice President Terrence Checki: The credit facility made available to AIG involved "punitive pricing" (Checki Dep. 104:11-14).

(c) Before October 2008 FRBNY did not "have a theory at that time of how these 13(3) loans should be priced" (McLaughlin Dep. at 96:17-98:15).

(d) Paulson: Defendant was "too punitive" with respect to AIG; the Government came in with "usurious terms" and "largely wiped out the shareholders" (PTX 506 at 14-15).

(e) Cohen: On September 16, 2008 the AIG Board regarded Defendant's proposed terms as "very onerous," and "very harsh" (Cohen Dep. 98:2-99:4).

(f) AIG Director Feldstein: The terms of Defendant's loan were "pretty harsh" (Feldstein Dep. 157:4-21).

(g) Willumstad: Defendant's proposed terms on September 16, 2008 were "unacceptable," the interest rate was "too high," and the terms were "obviously not in the best interest of shareholders" (PTX 604 at 9).

(h) AIG: Defendant was "overly punitive" and the "Series C Preferred constituted a punitive measure granting the U.S. Government 79.8% of AIG" (PTX 579 at 3).

23.3 The terms of the Credit Agreement were substantially more expensive than the terms contained in an earlier JP Morgan term sheet.

(a) On September 15, 2008 Ruth Porat of Morgan Stanley remarked that she believed that JP Morgan's earlier term sheet amounted to an attempt to "steal the business" (PTX 705 at 424).

(b) The JP Morgan term sheet called for:

(i) Warrants instead of preferred stock, which would have required a shareholder vote and an exercise price;

(ii) An interest rate of LIBOR plus 6.5% for drawn funds that was 200 basis points lower than the interest rate for drawn funds in the Credit Agreement at LIBOR plus 8.5%; and

(iii) No interest on undrawn funds whereas the Credit Agreement called for an interest rate on undrawn funds of 8.5%. (*Compare* JX 65 at 3 *with* JX 107 at 6-7, 9, 15, 17, 26-27, 46-47 and 137-39).

(c) The Government Accountability Office ("GAO") concluded that the Federal Reserve's terms were "substantially more expensive" than the draft private sector term sheet (PTX 715 at 10).

(d) Geithner did not dispute the GAO's assertion that "the Federal Reserve's terms are substantially more expensive" (PTX 715 at 10).

23.4 As the terms of the Credit Agreement became known to the public, third parties characterized the terms as onerous and punitive.

(a) Bloomberg Report: The Credit Agreement was "hugely punitive" (PTX 1658 at 1).

(b) Morgan Stanley analyst report: "The terms of the offering are more punitive than we originally expected" (PTX 246 at 1).

(c) Wells Fargo: The Credit Agreement was "onerous" (PTX 247 at 1).

23.5 The Defendant's punitive terms hurt, rather than stabilized, AIG.

23.5.1 The Defendant understood its loan should be restructured into more stable long-term funding.

(a) On or around October 4, 2008, Treasury contractor Dan Jester asked FRBNY to "rethink the terms of the deal; deal was onerous" (PTX 279 at 2; Dahlgren Dep. 108:11-109:7).

(b) Chief Investment Officer of TARP James Lambright has provided sworn testimony agreeing that the September 2008 loan was "unsustainable" because "AIG would not be able to realize sufficient value through asset sales to satisfy the terms of the loan" (Lambright Dep. 62:2-12).

(c) Paulson agreed that "rating agencies were going to downgrade" AIG "because they had too much of a debt overhang" which would "degrade their ability to continue the insurance business" (PTX 417 at 9-10).

23.5.2 Defendant on March 2, 2009 announced a restructuring of its assistance to AIG (the "March 2009 Restructuring").

(a) When designing the March 2009 Restructuring the Board of Governors told Dahlgren it had a "desire to have the pain shared with the remaining shareholders" (PTX 431 at 1).

(b) Treasury exchanged its Series D Shares for Series E Preferred Stock (PTX 589 at 96).

(c) Unlike the Series D Shares, the Series E Preferred Stock was noncumulative, meaning unpaid dividends did not accumulate for later payments. Noncumulative preferred stock "more closely resembles common stock and is, therefore, more favorably looked upon by the credit rating agencies" (PTX 589 at 96).

23.6 The terms of the TARP assistance provided to AIG were more punitive than the terms of assistance provided to other financial institutions.

(a) The terms of the TARP assistance provided to AIG in November 2008 included that:

(i) AIG preferred stock paid a dividend of 10%;

(ii) AIG was to be held to the "highest standard" under the executive compensation provisions of TARP; and

(iii) AIG was required to "[m]aintain and implement its comprehensive written policy on corporate expenses" and to impose a moratorium on its lobbying (PTX 415 at 6).

(b) These terms were more onerous than those imposed on other TARP recipients.

(i) Preferred stock purchased under the TARP Capital Purchase Program ("CPP") paid a 5% dividend for 5 years, then a 9% dividend;

(ii) Defendant imposed less restrictive executive compensation provisions on participants in the CPP; and

(iii) No other CPP participant was required to maintain corporate expense policies or suspend its lobbying (PTX 415 at 6).

(c) The amended terms of the Credit Agreement remained "equal to, or higher than rates" charged to other entities receiving Government assistance (PTX 452 at 7).

23.6.1 Citigroup received assistance on more favorable terms, despite more culpable conduct.

(a) Citi received Government assistance on terms that were not as tough as the assistance provided to AIG, despite the fact that the taxpayer was "definitely taking more risk with the case of Citi" (Paulson Dep. 331:9-333:23).

(b) Citigroup was not well capitalized, and had structured over $1 trillion in assets off balance sheets in ways that concealed how undercapitalized it was (PTX 709 at 151-52).

(c) Geithner's personal connections to Citi's leadership tempered his reaction to Citi's need for extraordinary governmental assistance (PTX 709 at 53-54, 65, 93, 151).

23.6.2 AIG believed that the terms of AIG's facilities with Defendant were unfavorable compared to terms for other institutions.

(a) AIG Senior Vice President Brian Schreiber wrote in 2010 that "[o]ther institutions were toast as well yet their past, present and future shareholders are not being punished this way" (PTX 601 at 1).

23.6.3 The terms of the Credit Agreement were more expensive than alternative forms of assistance Defendant could have provided – namely a guarantee.

(a) A guarantee from a AAA-rated entity, like the United States, would have halted collateral calls on AIG because it would have eliminated any credit risk to the counterparties (PTX 272 at 5).

(b) Federal Reserve General Counsel Scott Alvarez: "Covering AIG" with a guarantee "would be helpful with the rating agencies" (PTX 313 at 1; Dinallo Dep. 162:18-163:18).

(c) A guarantee from Defendant would have immediately calmed the markets (PTX 611 at 9; Dinallo Dep. 162:25-163:18).

(d) A guarantee from Defendant would have obviated the need for an $85 billion loan from Defendant to AIG (PTX 611 at 9; Dinallo Dep. at 162:25-163:18).

(e) The Congressional Oversight Panel agreed that a guarantee "could have created a period in which markets could have stabilized, and the possibility of a private-sector solution could have increased" (PTX 589 at 83-84).

(f) Defendant guaranteed the obligations of money market mutual funds in September 2008 (PTX 709 at 218-19; PTX 171).

(g) The Federal Reserve guaranteed assets against losses of other firms during the height of the financial crisis (PTX 562 at 3, n.17).

(h) The Federal Reserve guaranteed assets against losses in the loans to Bank of America and Citi (PTX 406 at 4-5; PTX 1845 at 1-2).

24.0 PRIOR TO THE EXECUTION OF THE CREDIT AGREEMENT ON SEPTEMBER 22, 2008, DEFENDANT DID NOT UNDERTAKE ANY INVESTIGATION OR ANALYSIS, MAKE ANY FINDINGS, OR HOLD ANY HEARING CONCERNING WHETHER AIG OR ITS SHAREHOLDERS SHOULD BE PENALIZED AND, IF SO, HOW.

24.1 Prior to the execution of the Credit Agreement, Defendant had no basis to determine whether AIG or its shareholders should be penalized or, if so, how.

(a) Bernanke:

"Q. Was any of the consideration that you had in terms of how much compensation to require for the AIG loan a function of a conclusion that you or the Fed reached that AIG had somehow mismanaged its business or taken on excessive risks?

A. No" (Bernanke Dep. 199:20-200:3).

(b) Geithner: We "had no basis of having any direct knowledge of the nature of the risks they were taking" (Geithner Dep. 108:13-15).

24.2 The Federal reserve Board of Governors in considering and approving the terms of the AIG 13(3) loan was not aware of, and did not consider, any information concerning whether it was appropriate to penalize AIG or its shareholder or, if so, how (JX 63).

25.0 MANY FINANCIAL INSTITUTIONS ENGAGED IN MUCH RISKIER AND MORE CULPABLE CONDUCT THAN AIG.

25.1 Financial institutions that originated and marketed subprime mortgage-backed securities made representations and disclosures that Defendant has concluded were false and misleading.

25.1.1 Defendant has said that Bank of America sold "RMBS certificates to investors by knowingly and willingly making materially false and misleading statements and by failing to disclose important facts about the mortgages collateralizing the RMBS."

25.1.2 On or about July 16, 2014, Bank of America offered $13 billion to settle a U.S. Department of Justice probe related to the bank's misconduct in originating mortgage securities (PTX 2529). By

August 6, 2014, Bank of America reached a tentative $16-17 billion deal to settle the investigation (PTX 690).

25.1.3 The Southern District of New York has held, in a case brought by Defendant, that Countrywide Financial engaged in conduct that "was from start to finish the vehicle for a brazen fraud by the defendants, driven by a hunger for profits and oblivious to the harms thereby visited, not just on the immediate victims but also on the financial system as a whole" (*United States ex rel. O'Donnell v. Countrywide Home Loans, Inc.*, --- F.Supp.2d ----, 2014 WL 3734122, at *1, 6 (S.D.N.Y. July 30, 2014)).

25.1.4 On or about March 26, 2014 Bank of America agreed to pay $9.3 billion to settle claims brought by the Federal Housing Financing Agency under its statutory mandate to recover losses incurred by Fannie Mae and Freddie Mac accusing the bank of misrepresenting the quality of loans underlying residential mortgage-backed securities purchased by the two mortgage finance companies between 2005 and 2007 (PTX 2504).

25.1.5 Defendant said on July 14, 2014 "after collecting nearly 25 million documents relating to every residential mortgage backed security issued or underwritten by Citigroup in 2006 and 2007, our teams found that the misconduct in Citigroup's deals devastated the nation and the world's economies, touching everyone" (PTX 2527 at 2).

25.1.6 On July 15, 2010 the SEC "announced that Goldman, Sachs & Co. will pay $550 million and reform its business practices to settle SEC charges that Goldman misled investors in a subprime mortgage product just as the U.S. housing market was starting to collapse." (PTX 2232 at 1).

25.1.7 On or about November 19, 2013 the Department of Justice announced a $13 billion settlement of claims brought by the United States "in which JPMorgan acknowledge[d] that it regularly represented to RMBS investors that the mortgage loans in various securities complied with underwriting guidelines. Contrary to those representations, as the statement of facts explain[ed], on a number of different occasions, JPMorgan employees knew that the loans in question did not comply with those guidelines and were not otherwise appropriate for securitization, but they allowed the loans to be securitized – and those securities to be sold – without disclosing this information to investors. This conduct, along with similar conduct by other banks that bundled toxic loans into securities and misled investors who purchased those securities, contributed to the financial crisis." (PTX 2473 at 1).

25.1.8 On or about February 4, 2014, Morgan Stanley "agreed to pay $1.25 billion to the Federal Housing Finance Agency to resolve claims that it sold shoddy mortgage securities to Fannie Mae and Freddie Mac. . . . According to the agency's lawsuit, Morgan Stanley sold $10.58 billion in mortgage-backed securities to Fannie and Freddie during the credit boom, while presenting 'a false picture' of the riskiness of the loans. . . . Many of the loans involved were originated by subprime lenders, like New Century and IndyMac, bundled into bonds and sold to Fannie and Freddie. One group of loans had default and delinquency rates as high as 70 percent, according to the lawsuit." (PTX 2485).

25.2 AIG, like other investors and like the Federal Reserve, relied on the representations and disclosures of the financial institutions that originated and sold the subprime mortgage-backed securities for which AIGFP offered protection and in which AIG's securities lending business invested in making its decisions to offer protection for, or invest in, such securities.

25.3 AIG, like other investors and like the Federal Reserve, also relied on the ratings given subprime mortgage-backed securities by ratings agencies.

25.4 The representations and disclosures of financial institutions originating and marketing subprime mortgage-backed securities and the ratings of those securities by ratings agencies resulted in the expectation of the Federal Reserve as well as investors, including AIG, that the market for such securities would be stable and liquid.

25.5 AIG, like other investors and like the Federal Reserve, relied on the expected liquidity of subprime mortgage-backed securities in making decisions.

26.0 MANY FINANCIAL INSTITUTIONS WHO ENGAGED IN MUCH RISKIER AND MORE CULPABLE CONDUCT THAN AIG RECEIVED GOVERNMENT ASSISTANCE WITHOUT THE PUNITIVE EQUITY CONFISCATION TERMS REQUIRED OF AIG.

26.1 From the summer of 2007 through the summer of 2008, AIG faced artificially high liquidity demands, which were caused by the market-wide financial crisis.

(a) AIG 10-Q (filed November 10, 2008): "Through June 30, 2007, AIGFP had not received any collateral calls related to [its] credit default swap portfolio" (JX 150 at 129).

(b) In 2008, transactional activity in the over-the-counter derivatives market and the markets for RMBS and mortgage-backed securities "would undergo an unprecedented contraction, creating serious problems for hedging and price discovery" (PTX 624 at 328). As a result, market participants, including AIG and AIGFP, found it difficult to derive fair market values for the securities (PTX 624 at 300, 380; PTX 221 at 4).

(c) In the second half of 2007 and all of 2008, AIG was concerned that its CDS counterparties were taking advantage of ratings downgrades to "start posting collateral at lower valuations to try to extract additional liquidity out of the parent" (Habayeb, *Brookfield v. AIG*, Dep. 72:11-73:7; Herzog Dep. 201:2-19, 203:24-206:9, 207:17-25). In particular Goldman Sachs' collateral calls to AIG diverged from AIG's valuations of the underlying securities (Herzog Dep. 201:13-19, 204:14-206:9).

(d) Willumstad: "Going back in May of 2008, AIG raised $20 billion of capital which at the time I think was the largest capital raise ever done" (PTX 587 at 113-14).

(e) As of September 2008, the mortgage-backed securities held by AIG were still "performing," and the multi-sector CDOs protected by AIGFP's CDS portfolio had not "sustained an actual loss" (PTX 625 at 4; PTX 449 at 26).

(f) AIG 2008 Form 10-K (filed Mar. 2, 2009): "On August 18, 2008, AIG raised $3.25 billion through the issuance of 8.25% Notes Due 2018" (JX 188 at 3, 56).

26.2 AIG in fact did not take excessive risk from an ex ante standpoint (the only standpoint relevant to fault).

(a) Scott Polakoff, Acting Director, Office of Thrift Supervision: "AIGFP's role was not underwriting, securitizing, or investing in subprime mortgages" (PTX 449 at 58).

(b) As of September 2008, AIGFP's Multi-Sector CDS Portfolio accounted for approximately 3 percent of the notional value of AIGFP's total credit and non-credit derivatives exposure, and less than 20 percent of AIGFP's total credit derivatives portfolio (PTX 589 at 31-32).

(c) Office of Thrift Supervision Acting Director Polakoff: "AIGFP's procedures required modeling based on simulated periods of extended recessionary environments (*i.e.*, ratings downgrade, default, loss, recovery). Up until June 2007, the results of the AIGFP models indicated that the risk of loss was a remote possibility, even under worst-case scenarios. The model used mainstream assumptions that were generally acceptable to the rating agencies, PwC, and AIG" (PTX 449 at 59).

26.3 The collateral calls AIGFP was facing were based on artificially depressed prices driven in part by lack of information, which in turn led to indiscriminate liquidity flight, and market failure.

(a) Geithner: "As the crisis escalated, markets continued to run from mortgage assets that looked toxic, and as investors shunned them, they became toxic" (PTX 709 at 154).

26.3.1 Financial firms such as AIG are "particularly vulnerable" to a "crisis of confidence and panic selling" (PTX 168 at 1).

26.4 Independent estimates of the intrinsic or fair market value of securities protected or acquired by AIG showed that collateral already posted exceeded the reasonable collateral requirements created by these securities.

(a) According to BlackRock, an independent advisor working on behalf of AIG, "Collateral posted to counterparties under the CDS in the portfolio is over $29 billion, far in excess of the projected net cash flows in BlackRock's stress case" (PTX 266 at 3). BlackRock estimated that AIG's projected net cash flows for the life of the CDS contracts, discounted at LIBOR, ranged between negative $7.3 billion in a base case and negative $15.2 billion in a stress case (*id.* at 3).

(b) BlackRock's estimates were not optimistic, with actual cash flows to date approximately equal to BlackRock's base case and substantially lower than BlackRock's stress case (Cragg Rebuttal Report, Appendix B, ¶¶ 111-113; *id*. at Exhibit R-1). For the five-year period following the third quarter of 2008, AIG's actual undiscounted cash flows, had the CDS contracts not been cancelled when Maiden Lane III was established would have for that same period of negative $13.7 billion in a base case and negative $21.6 billion in a stress case (*id*., Exhibit R-1, Table 2; PTX 1513 at 14-17).

(c) Absent the artificially depressed prices evidenced by BlackRock's projections, as a September 2008, the amount AIG would have had to post as collateral would have been lower by $17 billion based on BlackRock's stress case projections (Cragg Rebuttal Report, Appendix B, ¶ 123).

(d) Liquidity pressure from collateral calls was cited by rating agencies as contributing to the decision to downgrade AIG's credit rating (Cragg Rebuttal Report, Appendix B, ¶ 121). If AIG maintained its AA-/Aa1 credit rating, collateral calls as of September 30, 2008 would have been as low as $5.7 billion based on BlackRock's stress case, and lower based on BlackRock's base case projections (Cragg Rebuttal Report, Appendix B, ¶ 123 and Table 7).

26.5 AIGFP stopped making commitments to provide CDS protection by the end of 2005.

(a) Michael Finn, Northeast Region Director, Office of Thrift Supervision: "AIGFP made an internal decision to stop origination of these derivatives [CDS credit protection] in December 2005" (PTX 587 at 76).

(b) Office of Thrift Supervision Acting Director Polakoff: "AIG halted these activities while the housing market was still going strong" (PTX 449 at 12).

(c) New York State Insurance Superintendent Dinallo: "My recollection is that the CDOs that financial products division insured … were of an older vintage. And the original CDOs from, sort of, pre-2005, 2005, they did perform fairly well. They didn't default…." (Dinallo Dep. 164:5-19).

26.6 By contrast, at just that time, major commercial and investment banks – many of which the Federal Reserve regulated – did the precise opposite and increased volume as quality decreased, leading ultimately to indiscriminate liquidity flight and the crash.

(a) Defendant's Expert Anthony Saunders:

"Q. What type of institutions were originating loans, but no longer holding them?

A. Commercial banks, investment banks and brokers.

Q. Not insurance companies?

A. They were not originating.

Q. And who was securitizing the originated mortgages?

A. Again, underwriters and investment banks and commercial banks.

Q. Who was selling the securities?

A. Who was selling the securities? The same parties" (Saunders Dep. 69:15-70:6).

(b) Citigroup increased its origination of subprime mortgages 85% in 2006 compared to 2005 (Cragg Report, App'x 5, Table 13).

(c) Michael Finn, Northeast Region Director, Office of Thrift Supervision: In December 2005, "mortgage underwriting standards were declining for loans packaged for securitization" (PTX 587 at 76).

(d) New York State Insurance Superintendent Dinallo: After 2005, "CDOs became increasingly risky…because they began to be made up of mortgages and derivatives of mortgages that were, you know, as we now know, kind of, harvested and worst – and worse, maybe, you know, like NINJAs and all these kind of poorly obtained mortgages. And so, they became more and more toxic" (Dinallo Dep. 163:25-164:19).

(e) By March 2008, the Federal Reserve recognized that valuations of securities exposed to subprime mortgages involved panic and thus no longer reflected ordinary market activity that would reveal their expected value (a feature of markets known as "price discovery"): The "prices that were out there were just being driven by fear" (PTX 1196 at 22).

(f) FRBNY Executive Vice President William Dudley: The Federal Reserve understood that by September 2008, there was "a breakdown in trust among financial institutions" where "counterparties weren't willing to engage with other counterparties", and "people weren't willing to lend to institutions they thought were solvent" (Dudley Dep. 62:2-63:12).

(g) New York State Insurance Superintendent Dinallo: It "was a widespread practice among financial services institutions by the time you got to September 2008 that they had invested heavily in subprime mortgages" (Dinallo Dep. 112:18-113:4).

(h) FRBNY Executive Vice President William Dudley: "There were other financial institutions that had exposure to these asset classes … I think UBS had a pretty sizable issues; I think Citigroup had sizable issues" (Dudley Dep. 19:16-25).

26.7 AIG's liquidity issues in September 2008 were not unique to AIG.

(a) From September through November 2008, every major financial institution was the recipient of extraordinary financial support from Defendant (PTX 624 at 382, 389-90, 401-04, 414).

(b) Bernanke: "I honestly believe that September and October of 2008 was the worst financial crisis in global history, including the Great Depression. If you look at the firms that came under pressure in that period … only one … was not at serious risk of failure. So out of …13 of the most important financial institutions in the United States, 12 were at risk of failure within a period of a week or two" (PTX 548 at 24).

26.8 In March 2008, the Federal Reserve provided assistance on non-punitive terms to many primary dealers that had contributed to the financial crisis.

(a) Defendant's Expert Anthony Saunders: "The U.S. residential mortgage market continued to worsen in the first quarter of 2008, expanding into the broader U.S. credit markets and resulting in greater volatility, less liquidity, widening of credit spreads, and a lack of price transparency" (Saunders Report, App'x B ¶ 16).

(b) On March 16, 2008, the Federal Reserve Board authorized FRBNY to establish the Primary Dealer Credit Facility ("PDCF") to provide a source of 13(3) liquidity to primary dealers, including Goldman Sachs, Morgan Stanley, Bear Stearns, and Lehman Brothers (PTX 693 at 4-5; Kohn Dep. 338:10-19).

(c) The PDCF extended credit to primary dealers at the primary credit rate against a broad range of investment grade securities (PTX 1202 at 1). The PDCF was created in approximately two days (Mosser Dep. 13:2-14:4).

26.9 The Federal Reserve believed in the first half of 2008 that the 13(3) loans provided investment firms through the PDCF had saved such firms from a "vicious" cycle of deteriorating liquidity that would have resulted in firm failures.

(a) Dudley during a March 10, 2008 FOMC meeting: "That dynamic goes something like this: Asset price declines—say, triggered by deterioration in the outlook—lead to margin calls. Some highly leveraged firms are unable to meet these calls. Dealers respond by liquidating collateral. This puts downward pressure on asset prices and increases price volatility. Dealers raise haircuts further to compensate for the heightened volatility and the reduced liquidity in the market. This, in turn, puts more pressure on other leveraged investors. A vicious circle ensues of higher haircuts, fire sales, lower prices, higher volatility, and still lower prices, and financial intermediaries start to break as a liquidity crisis potentially leads to insolvency when assets are sold at fire sale prices" (PTX 1196 at 4-5).

(b) Dudley during a March 18, 2008 FOMC meeting: The "most pernicious part of this unwinding has been the dynamic of higher haircuts , missed margin calls, forced selling, lower prices, higher volatility, and still higher haircuts, with this dynamic particularly evident in the mortgage-backed securities market" (PTX 1212 at 5).

(c) Dudley during an April 30, 2008 FOMC meeting: "The introduction of the primary dealer credit facility (PDCF) seems to have helped to stabilize the repo markets. That improvement, in turn, has caused the equity prices of the four remaining large investment banks to recover somewhat and their credit default swap spreads to fall sharply (exhibits 7 and 8). The PDCF backstop facility also appears to have helped break the negative dynamic of higher haircuts, forced asset sales, lower prices, higher volatility, and still higher haircuts that was in place in the weeks leading up to the Bear Stearns liquidity crisis. Although the collateral haircuts set by the major dealers for their hedge fund clients in our April 9 survey—shown in exhibit 9—are considerably higher than in the previous month, our contacts indicate that this rise occurred mostly around the time of Bear Stearns's demise. Over the past few weeks, haircuts have stabilized" (PTX 1295 at 5).

(d) Dudley during an July 24, 2008 FOMC meeting: "Greater comfort on the part of the dealers is likely to reduce the risk of a margin spiral in which forced liquidation of illiquid collateral leads to lower prices, higher volatility, and higher haircuts, which, in turn, provoke further liquidation" (PTX 22 at 5).

26.10 In March 2008, Defendant provided non-punitive assistance to the failing investment bank, Bear Stearns.

(a) By Thursday, March 13, 2008, Bear Stearns' liquidity had decreased from $18 billion to $2 billion. That night, Bear Stearns' CEO Alan Schwarz called Geithner to let him know "that Bear planned to file for bankruptcy in the morning" (PTX 709 at 163-65).

(b) On March 14, 2008, the Federal Reserve Board authorized FRBNY under Section 13(3) to lend to JP Morgan so that JP Morgan could provide liquidity to Bear Stearns (PTX 693 at 4; PTX 1201).

(c) On March 16, 2008, the Federal Reserve Board also authorized FRBNY to make a nonrecourse loan of up to $30 billion in connection with the proposed JP Morgan/Bear Stearns merger. The loan would be fully collateralized by a pool of Bear Stearns assets (PTX 12 at 2).

(d) On March 24, 2008, FRBNY announced that it would provide term financing to facilitate JP Morgan's acquisition of Bear Stearns. FRBNY formed a limited liability company called Maiden Lane LLC to acquire $30 billion of Bear Stearns assets. The assets of Maiden Lane were pledged as security for $29 billion in term financing from FRBNY at the primary credit rate (PTX 693 at 5; PTX 1216 at 1).

(e) Beginning on March 18, 2008, the primary credit rate – the rate at which FRBNY provided assistance to Bear Stearns and other non-bank financial institutions – was 2.5% or lower. (PTX 692 at 1).

(f) Between March 16 and March 24, 2008, Geithner and Bernanke persuaded Paulson to withdraw the requirement that the Bear Stearns' shareholders only receive $2 per share. JP Morgan subsequently increased its offer price to $10 per share. (PTX 709 at 173-74; PTX 13).

(g) On May 29, 2008, Bear Stearns shareholders voted to approve the merger with JP Morgan, with shareholders receiving $10 per share (PTX 18).

26.11 In September 2008, Defendant provided emergency assistance to money market funds.

(a) On September 19, 2008, the Federal Reserve Board announced the creation of the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility ("AMLF") to extend non-recourse loans at the primary credit rate to U.S. depository institutions and bank holding companies to finance their purchase of high-quality asset-backed commercial paper from money market mutual funds (PTX 693 at 8). Within two weeks, the AMLF "was financing $152 billion worth of commercial paper, helping financial institutions and some of America's largest companies make payroll and make investments" (PTX 709 at 218).

(b) On September 19, 2008, Paulson announced that Treasury would use up to $50 billion of the Exchange Stabilization Fund to guarantee shares in money market funds. (PTX 171). The announcement, combined with the other Federal Reserve provisions of liquidity to the broader markets, "helped prevent other funds from breaking the buck" (PTX 709 at 218-19).

26.12 In September 2008, Defendant allowed Morgan Stanley and Goldman Sachs to become bank holding companies.

26.12.1 On September 18-19, 2008, Defendant concluded that Morgan Stanley and Goldman Sachs would fail without additional assistance.

(a) By the morning of September 18, 2008, the remaining investment banks "were under siege". Morgan Stanley's clients withdrew $32 billion from the firm. Even Goldman Sachs, the strongest of the investment banks, lost approximately $60 billion in liquidity in a week. As Geithner would later acknowledge, "Goldman was getting killed" (PTX 709 at 214-15).

(b) Geithner: On the morning of September 18, 2008, "I thought the investment banks were doomed, and I was worried about several major commercial banks. As the unprecedented runs on money market funds and commercial paper accelerated, a wave of defaults by major nonfinancial corporations seemed likely as well. My colleagues and I thought we were looking at another global depression that would hurt billions of people" (PTX 709 at 215).

(c) On September 19, 2008, Morgan Stanley and Goldman Sachs expressed concerns to FRBNY that they would not be able to open for business on Monday (PTX 175 at 1; PTX 174 at 1).

(d) On the weekend of September 20-21, 2008, Geithner believed there was a "significant risk" that both Morgan Stanley and Goldman Sachs would fail (Geithner Dep. 118:6-12). It was widely believed on Wall Street that if Morgan Stanley went the way of Lehman, Goldman Sachs would be next (PTX 709 at 220).

26.12.2 After learning that Morgan Stanley and Goldman Sachs were likely to fail, Defendant provided immediate non-punitive assistance by allowing them to become bank holding companies.

(a) On the weekend of September 20-21, 2008, Defendant attempted to find potential acquirers for Morgan Stanley and Goldman Sachs, but could not. (PTX 709 at 220-21).

(b) On the morning of September 20, 2008, Geithner's Chief-of-Staff Michael Silva reported to several senior officials at FRBNY that options being actively discussed for Morgan Stanley and Goldman Sachs included sovereign wealth fund capital injections, mergers with or acquisition by a bank, or becoming a bank holding company (PTX 174 at 1).

(c) On September 21, 2008, FRBNY Executive Vice Presidents William Dudley and Terrence Checki told Geithner that they were unable to find buyers for Goldman Sachs and Morgan Stanley. They proposed the alternative that the Federal Reserve approve the conversion of both investment banks into bank holding companies like Citi and JP Morgan. The conversion "would create the impression that they were under the umbrella of Fed protection" (PTX 709 at 221; see also Geithner Dep. 127:6-12).

(d) Morgan Stanley and Goldman Sachs first applied to be bank holding companies on the weekend of September 20-21, 2008 (Checki Dep. 74:12-75:21, 80:20-23). Morgan Stanley and Goldman Sachs were, "at that point, at the risk of failing" (Geithner Dep. 117:7-19).

(e) Neither Morgan Stanley nor Goldman Sachs were regulated by the Federal Reserve prior to September 21, 2008 (Morgan Stanley 30(b)(6) (Setya) Dep. 12:3-15; PTX 202).

(f) On September 21, 2008, the Federal Reserve announced that it had approved the applications of Goldman Sachs and Morgan Stanley to become bank holding companies (PTX 198). The Federal Reserve waived the usual five-day waiting period to make these approvals (PTX 220).

(g) The approval of Goldman Sachs' and Morgan Stanley's applications to become bank holding companies "benefitted" both firms (Geithner Dep. 152:7-16). Geithner: Morgan Stanley and Goldman Sachs "transformed their business structure to avoid failure" (PTX 709 at 272). Absent their conversion into bank holding companies, there was "significant risk that both would fail" (Geithner Dep. 118:6-14).

(h) By becoming bank holding companies, Goldman Sachs and Morgan Stanley obtained long-term access to the discount window (PTX 213).

26.13 In September 2008, the Federal Reserve continued to provide non-punitive assistance to primary dealers, including Morgan Stanley, Merrill Lynch and Goldman Sachs.

(a) Geithner: On September 19, 2008, "the SEC temporarily banned the short selling of 799 financial stocks….The ban's most immediate beneficiary appeared to be Morgan Stanley…. Its liquidity pool had shrunk from $130 billion to $55 billion in a week; it was borrowing nearly $70 billion from the Fed to make up the difference. Its stock price fell 60 percent before word of the short-selling ban leaked" (PTX 709 at 219-20).

(b) On September 29, 2008, Morgan Stanley's outstanding borrowing from all federal loan facilities was approximately $107 billion (Morgan Stanley 30(b)(6) (Setya) Dep. 22:9-14, 28:5-10, 29:25-30:15).

(c) On September 29, 2008, Morgan Stanley's borrowing from the PDCF exceeded $60 billion (Morgan Stanley 30(b)(6) (Setya) Dep. 17:18-18:4, 29:25-30:15).

(d) PDCF borrowing was a benefit for Morgan Stanley because it was a source of liquidity (Morgan Stanley 30(b)(6) (Setya) Dep. 19:20-23).

26.14 In 2008 and 2009, Defendant provided non-punitive assistance to Citigroup and Bank of America.

(a) On October 3, 2008, the Emergency Economic Stabilization Act ("EESA") was enacted (P.L. 110-342, Oct. 3, 2008, 122 Stat. 3765). EESA authorized Defendant to purchase up to $700 billion in troubled assets (PTX 2156 at 14).

(b) On October 28, 2008, Treasury purchased $125 billion in non-voting preferred stock from nine financial institutions, including $15 billion from Bank of America and $25 billion from Citigroup (PTX 1864 at 8).

(c) On November 23, 2008, Treasury announced the Targeted Investment Program ("TIP") and Asset Guarantee Programs ("AGP") (PTX 554 at 20).

(d) TIP gave Treasury "the necessary flexibility to provide additional or new funding to financial institutions that were critical to the functioning of the financial system" (PTX 554 at 34). Treasury "invested $20 billion in each of Bank of America (BofA) and Citigroup under the TIP" (*Id.*).

(e) The AGP was designed "to provide protection against the risk of significant loss in a pool of assets held by a systemically significant financial institution" (PTX 554 at 36).

(f) On November 23, 2008, the Federal Reserve, Treasury, and the FDIC announced that they would provide a package of guarantees, liquidity access, and capital to Citigroup.

Under the terms of the support package, Defendant guaranteed up to $306 billion in assets (PTX 379 at 1, 3).

(g) The Federal Reserve provided its guarantee to Citi using its Section 13(3) authority (PTX 379 at 1).

(h) On December 31, 2008, under TIP, Treasury purchased another $20 billion in Citigroup perpetual preferred stock and warrants (PTX 1864 at 4).

(i) On January 15, 2009, Treasury, FDIC, and the Federal Reserve agreed to provide Bank of America with assistance, including the purchase of "an additional $20 billion in newly issued senior preferred stock of Bank of America" under TIP (PTX 406 at 1, 3). The Defendant also agreed to provide an "Eligible Asset Guarantee" on a pool of assets up to $118 billion. (*Id.* at 6 (Attached "Summary of Terms")).

26.15 In 2009, Defendant provided non-punitive assistance to a major insurance company.

(a) On June 26, 2009, Treasury purchased $3.4 billion in preferred stock from Hartford Financial Services Group, Inc., a thrift holding company primarily engaged in the business of insurance (PTX 2150 at 13; PTX 2189 at 203).

27.0 DEFENDANT CONTINUED TO CONTROL AIG THROUGH THE TIME OF THE REVERSE STOCK SPLIT, AND THROUGH COMMENCEMENT OF THIS ACTION.

27.1 Senior Government officials acknowledged that Defendant controlled AIG.

(a) Bernanke: "AIG is effectively under our control" (PTX 447 at 50-51).

(b) Federal Reserve Vice Chairman Kohn: We are "definitely acting like we own the company. Will need to consolidate on our balance sheet" (PTX 233).

(c) FRBNY Vice President Dahlgren told S&P that she was speaking on behalf of the "largest creditor and 80% equity holder of the company" (PTX 270 at 2; *see also* Dahlgren Dep. 196:10-23).

(d) AIG's federal regulator the Office of Thrift Supervision told Dahlgren that "they didn't want the responsibility for supervising the company anymore" because "in their words, the government owns the company" (Dahlgren Dep. 88:17-89:2).

27.2 The Defendant continued to prevent AIG from pursuing alternative funding options.

(a) On September 26, 2008, Treasury contractor Dan Jester received a copy of an email sent by Blackstone's John Studzinski to Liddy and AIG executive Brian Schreiber stating that "China. Inc this morning is interested in buying: AIA, ALICO, ILFC and certain Real Estate. They are talking about writing a check of about $50 billion." Studzinski also

wrote that "We need to have Paulson call Vice Premier Wang Qishan. The Chinese will then move ahead quickly" (PTX 253 at 1-2).

(b) Blackstone's John Studzinski testified that it was his understanding that it took about ten days for a conversation to occur between Paulson and Vice Premier Wang Qishan and that Treasury suggested that it was not going to pursue an investment from China in AIG (Studzinski Dep. 210:21-211:1).

27.3 The Defendant attended and participated in AIG Board of Directors meetings.

(a) Defendant's 30(b)(6) (Millstein): Defendant was "consulted in advance on the agendas of items to be brought before the board" (United States 30(b)(6) (Millstein) (Dec. 18, 2012) Dep. 208:7-21).

(b) Liddy: The "Federal Reserve is present at every one of our strategic discussions at all of our board meetings and all of our committee meetings" (PTX 516 at 29)

(c) FRBNY Vice President Dahlgren: "I sit in on all Board and committee meetings" (PTX 581 at 3; Dahlgren Dep. 48:8-21, 49:13-50:16).

(d) AIG Director Bollenbach: "There were representatives of the government that attended the board meetings and, through words or actions, made it fairly clear on what they expected the board to do" (Bollenbach Dep. (Dec. 4, 2013) 125:3-15).

27.3.1 The Defendant recruited directors for AIG.

(a) Defendant admits that "FRBNY employees participated in the recruitment" "of new AIG board members" (Def. Resp. to Pl. 2nd RFAs No. 806).

(b) FRBNY Vice President Dahlgren told Michael Hsu of Treasury that the Board of Governors "wanted FRBNY to have people lined up to replace the board of directors" (PTX 428).

(c) In April 2009, Defendant planned to replace the Board of Directors and appoint two lead directors to serve as the "governmental face of" AIG. Defendant also planned to require the new directors to replace AIG management (PTX 496 at 3).

(d) On April 3, 2009 FRBNY Vice President Dahlgren told Liddy that Treasury "would be recruiting two very high profile directors ('wow factor') in the immediate term" (PTX 2077 at 1).

27.3.2 Defendant decided which directors would stay and which would be replaced.

(a) AIG Director Martin Feldstein left the Board because Treasury "decided that it wanted to have different representation on the Board" (Feldstein Dep. 259:20-260:23).

(b) Defendant asked AIG Director George Miles to "stay on and then, over the course, they'd put new directors on and then we would resign." He agreed to do so (Miles Dep. 183:4-185:25).

(c) AIG Director Bollenbach "chose not to stand for reelection to AIG's board" because Defendant proposed that he "stand for reelection, but then be prepared to resign when someone else was brought on" (Bollenbach Dep. (Dec. 4, 2013) 176:10-25).

(d) With respect to the election of directors to the AIG Board proposed in the 2009 proxy statement, Glass Lewis, a proxy advisory service which provided the AIG Board of Directors with an analysis on June 18, 2009 of the proxy statement for the 2009 annual meeting of AIG shareholder, stated: "Following the resignation of Mr. Bollenbach from the board at the 2009 annual meeting, the Company will not have an independent chairman or an independent lead or presiding director" (PTX 528 at 58).

(e) At the June 30, 2009 annual meeting of AIG shareholders, six new directors were elected to AIG's Board (JX 251 at 22-23). All were selected by Defendant.

(f) In 2010, Treasury appointed Donald H. Layton and Ronald A. Rittenmeyer to AIG's Board of Directors pursuant to its rights under the Series E and F Preferred Stock (JX 256 at 2).

(g) The terms of the Series E and Series F stock did not impose any restrictions on Treasury's discretion in appointing directors (JX 208 at 4).

27.4 The Defendant controlled AIG's CEO and senior management.

(a) Liddy: Representatives "from the Federal Reserve…are observers and overseers at every board meeting, every committee meeting, every strategy meeting, every discussion that we have" (PTX 516 at 50).

(b) "FRBNY has a team of senior officials dedicated to AIG that attends all AIG board meetings and works with AIG management in implementing the company's business and restructuring strategies" (PTX 600 at 5).

(c) FRBNY Vice President Dahlgren: We "just spent two hours with Ed Liddy and his team on the substance of the investor call tomorrow" (PTX 275 at 1).

(d) Dahlgren: Liddy had "no decisionmaking authority" and was "paralyzed at this point by the" Government's position in the company (PTX 485).

27.5 The Defendant recruited and influenced new management for AIG.

(a) Davis Polk, acting as counsel to Defendant, recruited Paula Reynolds to oversee the restructuring and wind down plan required by Defendant (Reynolds, *Brookfield v. AIG*, Dep. 22:24-25:9; PTX 261).

(b) FRBNY Vice President Dahlgren contacted Paula Reynolds and encouraged her to take the job as chief restructuring officer of AIG (Reynolds, *Brookfield v. AIG*, Dep. 33:8-25).

(c) Dahlgren spoke to Reynolds multiple times a day, seven days a week, about "[w]hat were the issues at the company that needed to be addressed how was the disposition process going, what were the plans, what would the company look like at the end, how did they think they would get there, where would the company be in the future" (Dahlgren Dep. 89:13-90:12; Reynolds, *Brookfield v. AIG*, Dep. 37:6-38:5).

(d) FRBNY: "FRBNY holds regular and frequent dialogue regarding the overall direction of AIG with AIG's CEO, senior leaders and general counsel" (PTX 612 at 15-16).

27.6 All outside accountants recognized that Defendant controlled AIG.

(a) For accounting purposes, "control" means that Defendant was able to direct the substantive activities of the company (Valoroso Dep. 158:19-159:12).

(b) AIG understood that the Series C Preferred Stock gave the "Treasury, as sole owner of the preferred shares, control over AIG" (PTX 347 at 62).

(c) Deloitte: FRBNY "has governance rights" in AIG "through its ability to appoint the Trustees of the Trust. However, such rights are required to be exercised in consultation with the Treasury" (PTX 273 at 11-16).

(d) PwC's Tim Ryan on November 6, 2008: The "Fed appears to be functioning in the role of controlling shareholder" (PTX 350; *see also* PwC 30(b)(6) (Farnan) Dep. 191:3-21).

27.7 Defendant controlled AIG's operations.

(a) FRBNY Vice President Dahlgren: "S&P doesn't normally talk with governmental agencies about rating decisions – and I politely reminded her that I was calling as the largest creditor and 80% equity holder of the company" (PTX 270 at 2).

(b) Morgan Stanley (in its role as adviser to the Government) participated in "every rating agency meeting AIG had over the course of 2 years" (PTX 629 at 2).

(c) AIG Director Suzanne Nora Johnson:

"Q. And the Government, in fact, did exercise control and impose restrictions with regard to issues concerning executive compensation, correct….

A. Correct" (Nora Johnson Dep. 223:23-224:9).

(d) FRBNY AIG Monitoring Team Member James Hennessy concerning Geithner and Liddy decision regarding executive compensation: "Tim and Ed have reached agreement on how to deal with the senior partners under the 2008 Bonus Program" (PTX 464).

(e) Congressional Oversight Panel: "FRBNY uses its rights as creditor to work with AIG management to develop and oversee the implementation of the company's business strategy, its strategy for restructuring, and its new compensation policies, monitors the financial condition of AIG, and must approve certain major decisions that might reduce its ability to repay its loan" (PTX 589 at 180-81) (internal quotation marks omitted).

(f) The Credit Agreement provides that FRBNY's agreement to lend money to AIG is conditioned on a requirement that "The Lender shall be reasonably satisfied in all respects with the corporate governance of the Borrower after giving effect to the Transactions then consummated" (JX 107 at 36; PTX 339 at 5).

(g) Article 5.04 of the Credit Agreement sets forth monitoring rights for FRBNY, requiring AIG to furnish Defendant with all board packages and presentations, weekly cash flow reports, daily risk reports, financial statements and reports, an annual budget for 2008, a corporate outlook plan for 2009, a briefing paper on the proposed "divestiture program, identifying businesses expected to be sold," any "management" letters from accountants and related correspondence, and any other information "as the Lender shall request" "to monitor the business, assets, liabilities, operations, condition, results and prospects of" AIG and its subsidiaries (JX 107 at 40-43).

(h) Treasury's Michael Hsu to Lambright: "You will not believe some of the reporting they are required to do under the fed credit agreement" (PTX 475).

(i) Over the duration of the Credit Agreement, to satisfy Defendant's consent rights, AIG and Defendant executed hundreds of letter agreements concerning various AIG business transactions (PTX 573; PTX 574).

(j) Defendant required AIG to obtain Government approval of all AIG regulatory filings and other significant public disclosures. (*See, e.g.*, PTX 463; PTX 458; PTX 459; PTX 460).

(k) Defendant approved press releases and SEC filings related to changes in AIG management (Dahlgren Dep. 208:12-210:15; PTX 1777).

27.8 Defendant's control of the ML III transactions evidences its control over AIG.

27.8.1 Without AIG's knowledge or input, Defendant's and its advisors discussed and created solutions for AIG's CDS portfolio.

(a) Government advisors at Ernst & Young, Davis Polk and Morgan Stanley participated in discussions that led to the transactions that became ML II and ML III, "aimed at creating a structure that first protected the Federal Reserve's interest, but otherwise could eliminate liquidity pressure from collateral calls" (PTX 627 at 2-3; PTX 626 at 4-5).

(b) "Hours and hours of time was spent considering the merits and drawbacks of various options to come up with a broad list of alternatives" (PTX 629 at 7) (internal quotation marks omitted).

(c) Attorneys from Davis Polk, on behalf of the Defendant, prepared the initial draft of the Maiden Lane III master agreement (Def. Resp. to Pl. 2nd RFAs No. 931).

(d) On October 31, 2008, Defendant told AIG to "stand down on all discussions with counterparties on tearing up/unwinding CDS trades on the CDO portfolio" (PTX 333 at 1).

(e) Liddy:

"Q. Did AIG participate in any way in the decision to pay the ML III counterparties a hundred cents on the dollar?

A. We did not" (Liddy Dep. 182:8-12; PTX 620 at 10).

27.9 The disproportionate terms of the ML III transaction evidence Defendant's control over AIG.

27.9.1 Defendant was aware that AIG assets were more valuable than counterparties claimed.

(a) Ernst & Young informed Defendant that, by September 2008, there was a "[l]ack of liquid quotes from market participants" from which the pricing of CDSs could be derived, and that there was "[s]ubjectivity involved in pricing" collateral calls (PTX 221 at 4; E&Y 30(b)(6) (Symons) Dep. 124:14-126:22).

(b) On September 18, 2008 the Federal Reserve "already had copies of the 9/9 materials that [Blackrock] delivered to AIG," which reflected Blackrock's estimate of between $7.3 billion and $15.2 billion loss on the entire life of the CDS portfolio (PTX 144 at 2, 4).

(c) "On February 28, 2012, the FRBNY sold the remaining assets in the ML II portfolio for an approximate net gain of $2.8 billion, which included $580 million in interest" (Saunders Report, Appendix C, ¶ 28).

(d) "On June 14, 2012, the FRBNY announced that the ML III loan had been completely repaid with interest. By July 16, 2012, AIG's equity contribution to ML III had been repaid plus interest. On August 23, 2012, the FRBNY

announced that it had sold the remaining securities in the ML III portfolio, resulting in an overall net gain to the benefit of the public of approximately $6.6 billion, including $737 million in accrued interest" (Saunders Report, Appendix C, ¶ 29).

27.9.2 Despite discussing options that would have had lower costs and may have been more favorable for AIG, Defendant and its advisors chose ML II and ML III (PTX 627 at 4-5).

(a) SIGTARP: BlackRock "presented three options for FRBNY to consider:" "counterparties cancelling their credit default swaps and selling the underlying CDOs to an FRBNY-financed SPV, for total consideration of par, comprised of previously posted collateral, cash, and mezzanine note in the SPV;" "the obligation to perform under the credit default swaps transferred from AIG to an SPV guaranteed by the FRBNY;" and creation of an "SPV to purchase the underlying CDOs from AIGFP's counterparties, in connection with a termination of the related credit default swaps" (PTX 549 at 17-18).

(b) On October 31, 2008, Alejandro Latorre, a member of the FRBNY monitoring team, circulated to other members of the monitoring team and Morgan Stanley an analysis "that quantifies how much upside AIG would be giving up by participating in the Maiden Lane II and III structures" (PTX 334 at 1; Latorre Dep. 219:8-16, 226:5-21). The so-called "Give Up Analysis for AIG" circulated by Latorre forecasted that participation in Maiden Lane II and III would cause AIG to give up approximately $94.6 billion, $70.57 billion, and $57.01 billion in upside in an optimistic, base, and stress case, respectively (PTX 334 at 1-2).

27.9.3 Defendant retained a disproportionate share of the profits from ML III.

(a) FRBNY loaned ML III $24.3 billion while AIG made a $5 billion cash investment in ML III, in addition to the $35 billion in collateral it had previously posted to the CDS counterparties (PTX 589 at 92).

(b) After repayment of FRBNY's loan and AIG's equity investment, any remaining proceeds were split 67% to FRBNY and 33% to AIG (Def. Resp. to Pl.'s 2nd Set RFAs No. 939).

27.9.4 Defendant declined to pursue discounts or concessions from counterparties which Defendant sought to assist through "backdoor bailouts."

(a) FRBNY's Paul Whynott: "Bank of America has expressed interest through BlackRock to have AIG offer them a price to take them out of the one CDS transactions that they have with AIG" (PTX 348 at 1).

(b) UBS offered FRBNY a concession of approximately one to two percent with respect to Maiden Lane III (Latorre Dep. 166:23-167:8).

(c) BlackRock believed that Goldman Sachs would negotiate because it was the "least risk averse counterparty," and had already approached AIG to discuss termination the CDS contracts (PTX 1817 at 13-14).

(d) Even though concessions were possible, Defendant made no meaningful attempt to secure concessions from AIGFP's counterparties; Defendant's Maiden Lane III negotiating script did not ask counterparties to accept a haircut (PTX 718 at 1).

(e) "[O]f the 16 AIGFP counterparties involved in ML III, the FRBNY contacted eight of them regarding concessions or discounts" "on or about November 6, 2008" and "asked the counterparties to agree by the close of business Friday, November 7, 2008" (Def. Answer to Second Amended Complaint ¶ 140).

(f) Kieran Fallon of the Federal Reserve on November 7, 2008: "Here is a revised version of the PowerPoint, reflecting the fact (just learned on an ML III update call) that there will be no concessions on the CDOs, so they will be purchased at par from the counterparties" (PTX 355 at 1).

(g) Representatives of Defendant attended the AIG Board meeting where the board voted on the Maiden Lane III transaction but Defendant did not inform AIG's board that it did not intend to seek or obtain concessions from AIGFP's CDS counterparties; on the contrary, the materials submitted to the Board indicated concessions were expected (JX 144 at 45).

(h) "Irrespective of their stated intent, however, there is no question that the *effect* of FRBNY's decisions – indeed, the very *design* of the federal assistance to AIG – was that tens of billions of dollars of Government money was funneled inexorably and directly to AIG's counterparties" (PTX 549 at 34).

27.9.5 On November 9, 2008, the AIG Board of Directors authorized AIG to terminate AIGFP's CDS transactions on terms and conditions presented to the Board at this meeting as set forth on Annex D to the Board meeting minutes (JX 144 at 11). Annex D provides that counterparties will be paid par value minus "the amount of any concession deducted" from it (JX 144 at 45).

(a) AIG's CFO David Herzog November 10, 2008, after the transaction was announced: "I understood the Fed to be negotiating with the counter parties directly on the buy out of the CDO's directly. The trade was to happen as far below Par as possible" (PTX 366 at 1).

27.9.6 In connection with the ML III transactions, AIG's counterparties received payment equivalent to the par value of the CDOs without any discount (PTX 385 at 11).

27.9.7 In connection with the ML III transactions, AIG's counterparties received complete releases from AIG for all legal action, including

any potential fraud or misrepresentation claims (*see, e.g.*, PTX 1807 at 2-3).

27.9.8 These legal releases had substantial value.

(a) AIG pursued claims against, for example, Bank of America, Merrill Lynch and Countrywide for a "massive fraud" in inducing AIG to invest in securities comparable to the securities that were the subject of ML III backed by "defective mortgages" (Amended Complaint at ¶¶ 1-2, *AIG et al. v. Bank of America et al.*, No. 11-cv-10549 (Aug. 29, 2012); *id.* at ¶ 27 ("AIG reviewed and relied on the misleading representations about loan characteristics, favorable ratings, and embellished underwriting practices. It would not have purchased these securities had it known the truth")).

(b) In July 2014 AIG and Bank of America settled AIG's claims against Bank of America for $650 million and a share of an $8.5 billion settlement of claims alleging "fraud in the bank's packaging and selling of mortgages to investors during the housing bubble" (PTX 2528).

(c) AIG has settled similar claims against other ML III counterparties.

27.10 Defendant's control over AIG is evidenced by its direction to conceal the ML III backdoor payments from the public.

(a) FRBNY Vice President Dahlgren: "That was a set of discussions we had about disclosure and it was our preference going into it that they not be disclosed, correct" (Dahlgren Dep. 220:4-25).

(b) FRBNY Vice President Latorre: If "we can avoid disclosing I agree with [FRBNY Counsel] Jim [Bergin] we should pursue that as we would like to keep the entire schedule confidential" (PTX 405 at 1).

(c) FRBNY's James Bergin: "SEC staff advise that their regulations require that the schedule to the material agreement be produced to them for their review as part of this process. This would mean that it would become an SEC record, subject to FOIA, and we understand that a FOIA request has already been made of them by BusinessWeek. We asked whether an alternative process might work – like SEC staff reviewing the material at the Federal Reserve – but they said it would not" (PTX 404 at 1).

28.0 AIG'S COMMON SHAREHOLDERS WERE NEVER GIVEN AN OPPORTUNITY TO VOTE TO APPROVE OR DISAPPROVE DEFENDANT'S RECEIPT OF AN EQUITY INTEREST IN AIG, AND DEFENDANT ACTED TO AVOID SUCH A VOTE.

28.1 Defendant at all times intended to convert its Series C Preferred Stock into common stock.

(a) "In considering possible structures for the equity participation, FRBNY wished to facilitate the eventual sale of the equity to the general public, which it believed would be most likely if the equity, when it was being marketed, took the form of AIG common stock that could be purchased by any buyer, including general public buyers. The initial issuance of the equity could not be made in the form of AIG common stock because, at the time of the execution of the credit agreement, AIG did not have a sufficient number of authorized but unissued shares to convey 79.9 percent of its equity" (Def. Resp. to Pl. 2nd Interrogatories No. 2).

28.2 Under the original warrant structure approved by the Board of Governors, Defendant understood that a shareholder vote was required in order for Defendant to obtain a 79.9% equity interest in AIG.

(a) The Board of Governors, when approving the loan on September 16, "knew that shareholder approval was required for the issuance of enough shares to fulfill the 79.9 percent on a fully diluted basis" (Kohn Dep. 298:12-14).

(b) Defendant's Rule 30(b)(6) witness in this litigation:

"Q. In September of 2008, did the United States understand that in order to increase authorized common stock shares there had to be a class vote by the common shareholders?

A. I believe so" (U.S. 30(b)(6) (Alvarez) Dep. 24:21-25:12).

(c) Treasury contractor Jester on September 16, 2008: the Government "will need approval of AIG s/h; economic incentive; <u>increase fees</u> to encourage s/h approval" (JX 82 at 2) and the loan terms approved by the Federal Reserve Board of Governors on September 16, 2008, included such a fee (JX 63 at 6).

28.3 AIG also understood that a shareholder vote was required to enable Defendant to obtain common stock.

(a) At the September 16, 2008 AIG Board meeting, "Counsel explained that if the equity interest took the form of warrants, then a shareholder vote would be necessary to authorize additional shares of common stock sufficient to meet the requirements of the warrant" (JX 74 at 12).

(b) At the September 28, 2008 AIG Board meeting: Reeder of Sullivan & Cromwell "added that the new Convertible Preferred Stock should be issued within 45 days to avoid an event of default, and a special shareholders meeting will be required to increase the authorized capitalization to 19 billion shares. . . . Mr. Reeder noted that the Convertible Preferred Stock and the loan are separate and independent obligations, with no tie between them" (JX 124 at 3).

28.4 Defendant changed its equity requirement from warrants to voting convertible preferred stock to give Defendant voting control without a shareholder vote (See Sections 15.2 – 15.6 above).

28.5 After issuance of the voting convertible preferred, Defendant knew the "the only vote the Trust or Treasury doesn't control is the class vote of the common stockholders that's required to permit the convertible preferred to convert into common stock" and noted that "we have an alternative for the sale of the investment if the convertible preferred can't be converted" (JX 156 at 1).

28.6 As a result of the Walker lawsuit (Walker v. AIG, Inc., Case No. 4142-CC, Del. Chancery Court, November 4, 2008), AIG represented with Defendant's agreement that Defendant's preferred stock would not be converted into common stock without a majority vote of the common shareholders voting as a separate class.

28.6.1 Defendant participated with AIG in responding to the *Walker* lawsuit.

(a) "The United States admits that Treasury had received a copy of the Walker complaint by November 5, 2008" (Def. Resp. to Pl. 2nd RFAs No. 1016).

(b) Defendant admits "that there were communications between AIG and representatives of FRBNY concerning the *Walker* Lawsuit" (Def. Resp. to Pl. 1st RFAs No. 30.0).

(c) "FRBNY and the Government received a copy of the complaint in the Walker Lawsuit, and may have had internal discussions about the lawsuit. In addition, outside counsel for FRBNY and Treasury discussed the lawsuit with outside counsel for AIG" (Def. Resp. to Pl. 2nd Interrogatories No. 9).

(d) On November 20, 2008, AIG counsel Weil, Gotshal & Manges LLP forwarded to FRBNY counsel Davis Polk the settlement proposal from the Walker plaintiffs (PTX 376 at 1-2).

(e) AIG counsel Joseph Allerhand of Weil emailed to Huebner of Davis Polk on November 20, 2008, a copy of the correspondence between AIG's local counsel in Delaware and the *Walker* plaintiffs: "As we discussed, attached are relevant pages of an internal draft of the proxy statement . . . . As you will see, it shows that a class vote of the common was contemplated as early as October 2" (PTX 377 at 1; *see also* JX 181 at 2, 6).

28.6.2 The *Walker* lawsuit explicitly sought a ruling that the "conversion feature of the Super Voting Preferred is invalid and unenforceable in the absence of an uncoerced, affirmative vote of the holders of a majority of the common shares, voting as a class, to amend the Restated Certificate of Incorporation to increase the number of authorized common shares and the decrease the par value of the common shares" (PTX 344 at 19).

28.6.3 AIG with Defendant's agreement represented on November 7, 2008, "there's no dispute between the parties" (JX 143 at 7).

(a) On November 7, 2008, Counsel for AIG informed the court in the *Walker* lawsuit that "It is AIG's position that any amendment to its certificate of incorporation to increase the number of authorized shares of common stock or to change the par value of that stock requires a class vote of holders of record of a majority of the shares of common stock outstanding on the record date for that vote. I hope that's clear enough; and I think in view of that representation, there's no dispute between the parties" (JX 143 at 7).

28.6.4 On November 9, 2008 the Credit Agreement was amended to note that "common stockholders voting as a separate class," will vote on "amendments to AIG's certificate of incorporation to (a) reduce the par value of AIG's common stock to $0.000001 per share and (b) increase the number of authorized shares of common stock to 19 billion" (JX 150 at Exhibit 10.4).

28.6.5 AIG understood that the *Walker* lawsuit confirmed the common shareholders' right to a class vote before the conversion of Defendant's preferred stock into common stock.

(a) AIG's November 10, 2008 quarterly report filed with the SEC states: "AIG will be required to hold a special shareholders' meeting to amend its restated certificate of incorporation to increase the number of authorized shares of common stock to 19 billion and to reduce the par value per share" and that "holders of the common stock will be entitled to vote as a class separate from the holders of the Series C Preferred Stock on these changes" (JX 150 at 28).

(b) On January 22, 2009, AIG informed its global regulators: "At and prior to the next annual general meeting of AIG's stockholders following the issuance of the Series C Preferred Stock, the stockholders, with the common stockholders voting as a separate class in the case of the matters in clause (i), will vote on, among other things, (i) amendments to AIG's certificate of incorporation to (a) reduce the par value of AIG's common stock to $0.000001 per share and (b) increase the number of authorized shares of common stock to 19 billion" (PTX 410 at 16).

(c) Following the November 9, 2008 amendment to the Credit Agreement, AIG's in-house accountants concluded that the required separate class vote meant that approval of the necessary charter amendment to increase the number of authorized shares of common stock was no longer a "foregone conclusion" (PTX 358 at 1).

28.6.6 Defendant understood that the *Walker* lawsuit confirmed the common shareholders' right to a class vote before the conversion of Defendant's preferred stock into common stock.

(a) On November 19, 2008, Davis Polk, counsel to both FRBNY and Treasury, advised: The "only vote the Trust or Treasury doesn't control is the class vote of the common stockholders that's required to permit the convertible preferred to convert into common stock" and noted that "we have an alternative for the sale of the investment if the convertible preferred can't be converted" (JX 156 at 1; *see also* JX 179 at 6).

28.7 AIG and the Defendant did not hold a vote because they knew a vote that would dilute the common stock would fail.

(a) AIG believed "it is a reasonable judgment that the amendment to reduce the par value" of the common stock "would not be approved based on the available information and the specific circumstances" (PTX 445 at 38).

(b) As of December 19, 2008, "management of AIG would have believed that the shareholders may not have wanted to permit the government to convert to the common stock. Yes -- that that could have been economic disadvantageous to them because it would cause dilution" (AIG 30(b)(6) (Reeder) Dep. 176:6-13).

(c) The Trust in December 2008 was not prepared to hold a vote: "And one of the reasons that they raised about why they were not going to require a meeting was concern that they would not be able to get the shareholder vote" (AIG 30(b)(6) (Reeder) Dep. 193:25-194:3).

(d) In January 2009, PwC noted in an accounting memorandum to AIG: "We now understand the common stockholders must also approve the amendment in order for it to pass. Accordingly, it is not a foregone conclusion that the amendment will pass and, in fact, it may never pass" (PTX 444 at 1, 3, 5).

(e) During the period between January 1, 2009, and June 30, 2009, Davis Polk acknowledged that there was "a concern that the proposal would not be approved by the shareholders" (DPW 30(b)(6) (Brandow) Dep. 145:20-23).

(f) PwC reported to AIG on April 29, 2009, in connection with a valuation of the warrant price: "Assumes that shareholders will not approve the reduction in par amount of common stock to $0.000001 per share. Management believes that there is an inherent economic disincentive for shareholders to approve the amendment" (PTX 511 at 2).

(g) "The conversion rights accompanying the Series C preferred shares could not be exercised because the par value of the common stock into which the Series C preferred shares converts would have exceeded the aggregate par value of the Series C preferred shares, and therefore conversion was not available under Delaware law" (Def. Resp. to Pl. 2nd Interrogatories No. 8).

29.0 BECAUSE DEFENDANT'S PREFERRED SHARES COULD NOT BE CONVERTED INTO COMMON STOCK WITHOUT A SHAREHOLDER VOTE THAT DEFENDANT KNEW IT WOULD LOSE, DEFENDANT ATTEMPTED TO CIRCUMVENT A SHAREHOLDER VOTE BY HAVING AIG "EXCHANGE" THE PREFERRED STOCK FOR COMMON STOCK.

(a) In March 2009 Defendant exchanged Series D Preferred Shares for Series E Preferred Shares and structured the transaction as an exchange in order to avoid a shareholder vote to amend the charter (AIG 30(b)(6) (Reeder) Dep. 218:2-13, 220:3-11; PTX 2038 at 2).

(b) The March 1, 2009 Series C Stock Purchase Agreement expressly states that the "Company shall prepare (and the Trust will reasonably cooperate with the Company to prepare) and file with the SEC a preliminary proxy statement reasonably acceptable to the Trust." The Purchase Agreement further required that AIG "not file it with the SEC unless so directed by the Trust", "notify the Trust promptly of the receipt of any comments from the SEC", and "supply the Trust with copies of all correspondence" between the SEC and AIG related to its draft proxy statement (JX 185 at 7). "The Company shall consult with the Trust prior to filing any proxy statement, or any amendment or supplement thereto, and provide the Trust with a reasonable opportunity to comment thereon" (*id.* at 8).

29.1 Defendant coerced AIG to amend the Credit Agreement to remove the provision requiring a shareholder vote on conversion.

(a) On January 28, 2009, Ethan James of Davis Polk emailed AIG General Counsel Anastasia Kelly: "Are you comfortable that no vote of any kind at this AGM on the terms of the common won't raise any issues relative to our statements to the court in the context of the earlier SH suit? IE, we told them that we needed a vote to make the pref's convertible – might they run back to court if there isn't any such vote on this proxy?" (PTX 414 at 1).

(b) On February 3, 2009, Davis Polk advised FRBNY and AIG's counsel: "As an additional wrinkle, S&C has informed us that the company has a contractual obligation related to the convertible securities issued in May 2008 to put to SH's a vote to increase the number of authorized common to facilitate the operation of those securities" (PTX 420 at 4).

(c) On February 4, 2009, AIG counsel Joseph Allerhand of Weil provided a "quick recap" to AIG, FRBNY, Davis Polk, and Simpson Thacher (counsel to AIG outside directors) of a conference call held that day: "We all continue to believe that it makes sense for a multitude of good reasons **not** to have a separate class vote on 'conversion' now at the annual meeting. And it also makes sense to amend the relevant agreements to change the provision requiring AIG to call a special meeting to a provision providing the discretion to the Trustees to decide when to ask AIG to call a meeting for the class vote on 'conversion'" (PTX 420 at 1).

29.2 Neither Defendant nor AIG ever told common shareholders or the Court about the decision not to hold a vote.

(a) On April 17, 2009, AIG and FRBNY amended the Credit Agreement for the third time to no longer require the AIG Board to call a meeting of shareholders to vote on an amendment to the AIG Charter to increase the number of authorized shares: "The Trust will have the right to cause AIG's Board of Directors to call a special meeting . . . with the common stockholders voting as a separate class . . . on (i) amendments to AIG's certificate of incorporation to (a) reduce the par value of AIG's common stock to $0.000001 per share and (b) increase the number of authorized shares of common stock to 19 billion" (JX 207 at 17).

(b) AIG's Form 10-K filed in March 2009 does not disclose its agreement not to require a vote and, to the contrary, states "AIG will be required to hold a special shareholders' meeting to amend its Restated Certificate of Incorporation to increase the number of authorized shares of common stock to 19 billion and to reduce the par value per share. The holders of the common stock will be entitled to vote as a class separate from the holders of the Series C Preferred Stock" (JX 188 at 293).

29.3 Defendant developed the Reverse Stock Split as an alternative in order to circumvent the shareholder vote requirement.

(a) A November 19, 2008 e-mail from FRBNY outside counsel James Brandow, Davis Polk & Wardwell LLP: We "have an alternative for the sale of the investment if the convertible preferred can't be converted" (JX 156 at 1).

(b) A December 19, 2008 draft AIG proxy statement received by Defendant includes votes on charter amendments necessary to enable conversion of the Series C Preferred Stock as well as a proposed reverse stock split of outstanding common stock at a ratio of one for ten (JX 164 at 4; Def. Resp. to Pl. 2nd Interrogatories No. 5).

(c) A member of the FRBNY Monitoring Team attended the February 10, 2009 meeting of the Finance Committee of the AIG Board of Directors at which the ratio for the proposed reverse stock split was discussed (JX 178 at 1, 7).

29.3.1 In order to implement Defendant's planned "exchange," it was still necessary to have enough common shares to satisfy Defendant's desire to exchange its AIG preferred stock for AIG common stock.

29.3.2 Defendant caused AIG to engage in a 20 to 1 reverse stock split ("RSS") that applied only to issued shares and not authorized shares (JX 197 at 2; JX 201 at 5).

29.4 The Reverse Stock Split was coercive and deceptive.

(a) Proposal 4 in the final proxy statement AIG sent to shareholders on June 5, 2009 is a proposal to effect a reverse stock split of outstanding shares at a ratio of twenty to one (JX 221 at 4).

(b) AIG's stated purpose in putting forward Proposal 4 was to increase the value of AIG's common stock and thereby avoid delisting from the NYSE (JX 221 at 69-70; Liddy Dep. 342:5-343:5).

(c) AIG was first informed that it was in danger of being delisted from the NYSE based on the trading price of AIG's common stock in October 2008 (PTX 317 at 2-3).

(d) AIG began to prepare proxy statements calling for meetings to amend the charter beginning in October 2008 (JX 181 at 5-6) and had proposed holding a shareholder meeting in February and May 2009 (PTX 401 at 5; JX 197 at 2), but Defendant insisted on delaying the meeting each time (PTX 420 at 1; PTX 503 at 1-2).

(e) The NYSE suspended its stock-price standard for listed companies on February 26, 2009 until June 30, 2009 (PTX 442 at 1). June 30, 2009 was thus the last day by which AIG had to increase the trading price of its common stock in order to avoid delisting.

(f) The shareholder vote to approve the reverse stock split was held on June 30, 2009, the day the NYSE suspension of its stock-price standard expired (JX 221 at 2).

29.5 The only reason for not applying the RSS to authorized shares and the only reason for a ratio as high as 20 to 1, was to avoid a shareholder vote of the common shareholders.

(a) Glass Lewis's analysis of Proposal 4 stated that "we would prefer that the number of authorized shares of the Company's common stock be adjusted in proportion with the reverse stock split" (PTX 528 at 67).

(b) In formulating Proposal 4 a range of ratios could have been used to achieve AIG's purported goal of preventing delisting from the NYSE (Daines Dep. 260:8-13).

(c) Before settling on the 20:1 reverse stock split ratio as proposed in Proposal 4, AIG considered a number of ratios ranging from 5:1 to 25:1 (Shannon Dep. 253:12-23).

(d) A RSS of a 5 to 1 ratio achieved its purported goal of preventing delisting from the New York Stock Exchange but would not have achieved Defendant's goal of implementing its "exchange" of its Series C, E, and F preferred shares.

29.6 The RSS was also deceptive and misleading in that it falsely represented "AIG currently has no plans for these authorized but unissued shares of AIG Common Stock other than those shares previously reserved for issuance under AIG's Equity Units, the Warrants and AIG's employee benefit plans" (JX 221 at 70).

(a) The ratification of Proposal 4 made enough authorized but unissued shares of common stock available to enable Defendant to acquire 79.9% of the outstanding common stock (Def. Resp. to Pl. 1st RFAs No. 32.3).

30.0 THE FAIR VALUE OF THE 79.9% OF AIG SHAREHOLDERS' EQUITY AND VOTING CONTROL DEFENDANT ACQUIRED SEPTEMBER 22, 2008 WAS A MINIMUM OF APPROXIMATELY $35 BILLION.

30.1 Defendant paid only $500,000 for 79.9% of AIG's shareholders' equity.

30.1.1 The only payment made to AIG for AIG's Series C Preferred Stock was $500,000 in loan forgiveness that FRBNY provided to AIG in September 2008 (JX 107 at 37-38 § 4.02(e), 138).

30.1.2 As AIG's Senior Vice President Brian Schreiber on January 13, 2010 told the AIG Board of Directors: The "Treasury Department's priority is the repayment of the Series E and Series F Preferred Stock, as the Series C was essentially received for nothing" (PTX 584 at 17).

(a) A presentation for the AIG Board of Directors by Bank of America and Citi on September 29, 2010: "Series C was received by UST for no financial consideration; merely to obtain governance rights until FRBNY Facility repaid" (PTX 609 at 86).

30.2 Defendant asserts that market-based valuations are the most reliable way to value equity generally and Defendant's 79.9% equity interest in AIG specifically.

(a) Bernanke:

"THE WITNESS: I don't think that economists can do much better than seeing the share price in terms of valuing a company.

Q. So from, from your perspective, the best an economist can do to figure out what the value of the company is is to look at the share price on any given day and multiply it by the number of outstanding shares? . . . Is that what you're saying?

A. That's what I'm saying" (Bernanke Dep. 163:4-16).

(b) Def. Resp. to Pl. 3rd Interrogatories No. 18: Because "the Series C Preferred Stock was economically equivalent to AIG's common stock and AIG's common stock was actively traded on the New York Stock Exchange, the market value per share of AIG's common stock represented the best independent valuation available for valuing the government's beneficial interest in the Trust."

30.3 Defendant, AIG, KPMG and Deloitte all utilized market-based approaches to calculate the value of Defendant's 79.9% equity interest.

(a) "In its annual financial statements for the years ended September 30, 2009 and 2010, Treasury recorded the value of its beneficial interest in the Trust based on the market

value of the Trust's holdings of the AIG Series C Preferred Stock at the date of each such financial statement" (Def. Resp. to Pl. 3rd Interrogatories No. 18).

(b) "The United States admits that its financial statement reported that the value of the Government's beneficial interest in the Trust was $23.5 billion, based on the market value of the Trust's AIG holdings on September 30, 2009" (Def. Resp. to Pl. 2nd RFAs No. 658).

(c) AIG in its 10-Q for the third quarter of 2008 reported that the obligation to issue the Series C Preferred Stock had a "fair value" of $23 billion (JX 150 at 28).

(d) KPMG, AIG's auditor hired to conduct the valuation of the Series C, determined that the fair market value of the Series C Preferred Stock as of September 16, 2008 was $23 billion (PTX 375 at 21).

(e) On September 21, 2008, Deloitte & Touche, the independent auditor of the Federal Reserve System, calculated that Defendant's 79.9% equity interest in AIG had a value approximately $24.478 billion, based on the September 17, 2008 market price for AIG's common stock (PTX 185 at 1-2).

30.4 The appropriate market-based valuation dates for damages for the Credit Agreement Class range from September 22 to 24, 2008.

(a) AIG's independent auditor, PwC:

"Q. Could there ever be more than one appropriate valuation date?

A. Absolutely" (PwC 30(b)(6) (Farnan) Dep. 88:7-9).

30.4.1 September 22, 2008 is an appropriate valuation date for the property taken from the Credit Agreement Class because the Credit Agreement became effective on September 22, 2008 (Kothari Dep. 32:25-33:3).

30.4.2 September 23, 2008 is an appropriate valuation date for the property taken from the Credit Agreement Class because the Credit Agreement was executed and announced on September 23, 2008 (Kothari Dep. 33:3-5).

30.4.3 September 24, 2008 is an appropriate valuation date for the property taken from the Credit Agreement Class because that is the date the market learned all the material terms of the Credit Agreement (Kothari Dep. 33:6-10).

30.5 Using market-based valuations for the dates of September 22 to 24 results in a valuation of 79.9% of AIG's shareholders' equity of between approximately $35.378 billion to approximately $53.442 billion.

30.5.1 Under a market-based valuation approach, the property taken from the AIG common shareholders had a fair market value of $50.449 billion, $53.442 billion and $35.378 billion on September 22, 23, and 24, 2008, respectively (PTX 2494 at 29), and, on a per share basis, the property taken from the Credit Agreement Class had a fair market value of $18.76, $19.88 and $13.16 per share on September 22, 23, and 24, 2008, respectively (PTX 2494 at 34).

30.6 Defendant sold the common stock exchanged for the Series C Preferred for at least $17.6 billion.

30.6.1 From May 24, 2011 through December 14, 2012, Defendant sold 1,655,037,962 shares of AIG common stock at prices ranging from $29 to $32.50 per share for a total of $51,610,497,475 (*see* PTX 2453 at 72).

30.6.2 Assuming that the common shares received in exchange for Series C Preferred are treated as being sold pro rata with common shares received in exchange for Series E and F Preferred (which for the reasons stated in Findings 29.7 to 29.9 understates what the proceeds from the common shares received in exchange for Series C Preferred should be) the amount received for the common shares received in exchange for the Series C Preferred would be $17.6 billion (Kothari Report n.197; PX 2494 at 50).

30.7 The prices received by Defendant for its sales of AIG common shares was artificially reduced by damage done to AIG's business, operations, and assets as the result of Defendant's control over AIG.

30.7.1 Defendant reduced the value of AIG common shares by giving up value to Defendant in ML II and ML III.

(a) Government Accountability Office Interview with AIG Executives: "In general, AIG 'got skinned' on ML III, with terms unfavorable to the company. ML III forced AIG to 'crystallize' a loss, which severely hurt existing shareholders. This is because they then had no chance of recovery, other than through AIG's minor participation in the structure. There was little upside for shareholders if asset values increased, because they had the first loss position, but little equity return; nearly all the upside went to the structure. Also, unrealized market value losses on the CDOs going into ML III became realized losses when the CDS were torn up. Further, collateral that AIG had posted went to the counterparties. 'It was a tough set of terms'" (PTX 620 at 10).

(b) AIG Senior Vice President for Strategic Planning Brian Schreiber: "ML II and ML III, when they were created, transferred the bulk of the upside to the Treasury or to the Fed at the time. The AIG shareholders, as a result, wouldn't be able to participate fully in the recovery" (Schreiber Dep. 260:10-261:2).

(c) Standard & Poor's "expressed concerns" to Morgan Stanley "that AIG was foregoing the upside and was taking a big loss on ML III" (PTX 629 at 7).

30.7.2 Defendant reduced the value of AIG common shares by not negotiating discounts from ML III counterparties and by giving such counterparties 100% par value plus releases of claims that had substantial value to AIG.

30.8 Defendant diluted the value of the common stock it received in exchange for its Series C Preferred Stock by using its control of AIG to exchange its Series E and Series F Preferred Stock for common stock and then selling those additional shares pro rata with the shares exchanged for the Series C Preferred.

30.8.1 "Between fiscal years 2011 and 2013, the Department sold all of its 1.7 billion AIG common shares held by the General Fund and TARP together, on a pro-rata basis, in the open market" (PTX 685 at 89).

30.9 Defendant reduced the value of the common stock it received in exchange for the Series C Preferred Stock by its decision to liquidate when and how it did.

30.9.1 Plaintiffs' Expert S.P. Kothari: "The choice of when to liquidate these securities was an investment decision by the Government" and if the Government had "chosen to continue to hold all its AIG stock until December 31, 2013" the value of the value of the Series C Preferred Stock would have been $28.7 billion (Kothari Report ¶ 94).

31.0 THE FAIR VALUE OF THE RIGHT TO EXCHANGE DEFENDANT'S SERIES C CONVERTIBLE VOTING PREFERRED STOCK FOR COMMON STOCK WAS A MINIMUM OF APPROXIMATELY $340 MILLION.

31.1 The right to approve the conversion, or exchange, of Defendant's preferred shares into, or for, common stock by the right to vote on whether to increase the number of authorized shares was a right which AIG shareholders viewed as important.

(a) On November 4, 2008, an AIG shareholder filed class action complaint seeking "an order declaring that the Super Voting Preferred is not convertible into common stock absent a class vote by the common stock to increase the number of authorized common shares" (PTX 344 at 6 ¶ 6).

31.2 The Stock Split Class's right to prevent Defendant from increasing the number of authorized common shares necessary to exchange the Series C Preferred Stock for AIG common stock had economic value (Kothari Report ¶¶ 104-109).

31.2.1 As a result of the Reverse Stock Split, Defendant was later able to exchange its Series C Preferred Stock for 562,868,096 shares of AIG common stock, which were transferred immediately by the Trust to the Treasury Department as part of the Recapitalization of AIG on January 14, 2011 (JX 314 at 3). Neither AIG nor Defendant received a fairness opinion with regard to the exchange of the Series C Preferred Stock for shares of common stock (US 30(b)(6) (Millstein) (Dec. 18, 2012) Dep. 182:5-18; JX 307 at 6).

31.2.2 The value of the Series C Reverse Stock Split Claim is "based on the payment that the Government would have made to AIG shareholders to increase the number of authorized shares, which is in turn based on the value of the benefit that the Government would receive from converting its illiquid Series C Preferred Stock into more liquid AIG common stock" (Kothari Report ¶ 124).

(a) A September 26, 2010 Morgan Stanley presentation, "Assessment of Proposed Government Repayment Plan," states: "Allows U.S. Treasury to exchange its illiquid preferred stock for common stock" (PTX 608 at 1, 8).

(b) Citigroup 30(b)(6) (Head) Dep. 68:3-12: The "form in which the US Treasury and the FRBNY held its investment were such that they were extremely difficult" to monetize "or to sell."

(c) The Series C Preferred Stock was not "registered under the Securities Act or under any U.S. federal or state securities laws" (JX 185 at 4).

31.2.3 The value of the payment Defendant would have had to make to shareholders to increase the number of authorized shares is at least $340 million or $0.13 per share (Kothari Report ¶¶ 127, 149).

32.0 THE FAIR VALUE OF THE RIGHT TO EXCHANGE DEFENDANT'S NON-CONVERTIBLE, NON-VOTING SERIES E AND SERIES F PREFERRED STOCK FOR COMMON WAS A MINIMUM OF APPROXIMATELY $4.33 BILLION.

32.1 The Stock Split Class's right to prevent Defendant from increasing the number of authorized common shares necessary to exchange the Series E and Series F Preferred Stock for AIG common stock had economic value (Kothari Report ¶¶ 104-109).

32.1.1 As a result of the Reverse Stock Split, Defendant was later able to exchange its Series E Shares for 924,546,133 shares of AIG common stock and some of its Series F Shares for 167,623,733 shares of AIG common stock as part of the Recapitalization of AIG on January 14, 2011 (JX 314 at 3).

32.1.2 The value of the Series E and Series F Stock Split Claims is based on the fact that the "reverse stock split enabled the Government to receive common stock that had a value that was billions of dollars higher than the value of Series E and F Preferred Stock that was exchanged. This exchange directly diluted the common shareholders and reduced the value of their equity interest in AIG" (Kothari Report ¶ 111). The value of this right is a minimum of $4.33 billion or $1.61 per share (Kothari Report ¶¶ 115, 149).

32.1.3 The value of this right is evidenced by the fact that without it Defendant could not have been able to exchange its Series E and F Preferred Shares worth approximately $26.1 billion for common shares worth at least $41.3 billion (Kothari Report ¶¶ 118, 119).

(a) AIG received fairness opinions from Bank of America and Citi with regard to the exchange of the Series E and Series F Preferred Stock for common stock (JX 307 at 6); however, at AIG's instruction, each fairness opinion assumes that the fair value of each of the Series E Preferred Stock and Series F Preferred Stock is equal to the liquidation value thereof, $41.6 billion and $7.5 billion (JX 307 at 215, 217).

33.0 RELEVANT ENTITIES AND PERSONNEL

33.1 Plaintiff and the Plaintiff Classes

(a) Plaintiff Starr International Company, Inc. ("**Starr International**") is a privately held Panama corporation with its principal place of business in Switzerland.

(b) Maurice R. "Hank" Greenberg ("**Greenberg**") is the Chairman of Starr International (Greenberg Dep. 7:24-8:2).

(c) The **Credit Agreement Class** is the class of persons and entities damaged by the issuance of voting convertible preferred stock under Credit Agreement. The Credit Agreement Class consists of all persons or entities who held shares of AIG Common Stock on or before September 16, 2008 and who owned those shares as of September 22, 2008, excluding Defendant, any directors, officers, political appointees, and affiliates thereof, as well as members of the immediate families of Jill M. Considine, Chester B. Feldberg, Douglas L. Foshee, and Peter A Langerman.

(d) The **Reverse Stock Split Class** is the class of persons and entities damaged by the Reverse Stock Split. The Reverse Stock Split Class consists of all persons or entities who owned shares of AIG Common Stock on June 30, 2009 and were eligible to vote those shares at the annual shareholder meeting held on that date, excluding Defendant, any directors, officers, political appointees, and affiliates thereof, as well as members of the immediate families of Jill M. Considine, Chester B. Feldberg, Douglas L. Foshee, and Peter A. Langerman.

33.2 American International Group ("AIG")

(a) AIG was incorporated as a holding company for various general life and insurance businesses in 1967 (PTX 2 at 1).

(b) At all relevant times, AIG has been a Delaware corporation with its principal executive offices located in New York City (JX 150 at 1).

(c) On June 15, 2008, Robert Willumstad ("**Willumstad**") replaced Martin Sullivan as CEO of AIG. Willumstad served as CEO of AIG until September 16, 2008 (PTX 589 at 59, 72).

(d) From January 2006 until September 16, 2008, Willumstad was a member of AIG's Board of Directors (Willumstad (Oct. 15, 2013) Dep. 8:22-9:5, 10:10-12).

(e) From December 2006 until September 16, 2008 Willumstad was Chairman of the AIG Board of Directors (Willumstad (Oct. 15, 2013) Dep. 8:22-9:5, 10:10-12).

(f) From June 2005 through October 2008, David Herzog ("**Herzog**") served as Senior Vice President and Comptroller of AIG. Since mid-October 2008, Herzog has been the Chief Financial Officer of AIG (Herzog Dep. 34:14-18).

(g) From 2005 until sometime in August 2011, Robert Gender ("**Gender**") served as Treasurer of AIG (Gender Dep. 16:22-17:11).

(h) From 2003 through August 2011, Brian Schreiber ("**Schreiber**") served as Senior Vice President for Strategic Planning at AIG, and was appointed Executive Vice President and Treasurer in August 2011. Schreiber was named AIG Deputy Chief Investment Officer on August 31, 2013.

(i) From 2006 through January 1, 2009, Anastasia Kelly ("**Kelly**") served as General Counsel and Chief Compliance and Regulatory Officer at AIG. Kelly was named Vice Chairman of AIG on January 1, 2009, and left AIG on December 31, 2009 (Kelly Dep. 13:19-14:7).

(j) In 2008 and 2009, Kathleen Shannon ("**Shannon**") served as AIG's Deputy General Counsel and Corporate Secretary for AIG. As Deputy General Counsel, Shannon was the senior securities and corporate finance lawyer at AIG (Shannon Dep. 12:12-14, 13:6-11).

(k) From the fall of 2008 until June 2011, Anthony Valoroso ("**Valoroso**") served as the Chief Accounting Officer of AIG (Valoroso Dep. 7:23-8:9).

(l) From 2004 to 2009, Jacob Frenkel ("**Frenkel**") was AIG's Vice Chairman and Chairman of AIG's Global Economic Strategies Group (Frenkel Dep. 11:16-18).

(m) On September 22, 2008, AIG's Board of Directors was comprised of Stephen F. Bollenbach ("**Bollenbach**"), Dennis Dammerman ("**Dammerman**"), Martin S. Feldstein ("**Feldstein**"), Suzanne Nora Johnson ("**Nora Johnson**"), Fred H. Langhammer ("**Langhammer**"), Edward Liddy, George L. Miles Jr. ("**Miles**"), Morris W. Offit ("**Offit**"), James F. Orr III ("**Orr**"), Virginia M. Rometty ("**Rometty**"), Michael H.

Sutton ("**Sutton**"), and Edmund S.W. Tse ("**Tse**"). Edward Liddy joined AIG's Board of Directors after September 18, 2008, upon being named Chairman and CEO (AIG's Responses to Def. RFAs No. 11).

(n) Sullivan & Cromwell LLP ("**Sullivan & Cromwell**") served as outside counsel to AIG throughout 2008 (Cohen Dep. 35:13-19).

(o) Rodgin Cohen ("**Cohen**"), who was then Chairman of Sullivan & Cromwell LLP, advised AIG between March 2008 and the end of September 2008 (Cohen Dep. 35:13-19). Cohen also advised Bear Stearns' Board of Directors on its merger with JP Morgan Chase in March 2008, Lehman Brothers in the period prior to its bankruptcy in September 2008, and Fannie Mae in September 2008 (Cohen Dep. 6:15-24, 34:3-6, 34:16-35:4; PTX 709 at 163).

(p) Michael Wiseman ("**Wiseman**") of Sullivan & Cromwell advised AIG during the time periods relevant to this case (Cohen Dep. 35:23-36:1).

(q) Robert Reeder ("**Reeder**") of Sullivan & Cromwell advised AIG during the time periods relevant to this case (Cohen Dep. 35:23-36:1).

(r) From sometime in 2008 through the present, Weil, Gotshal & Manges LLP ("**Weil Gotshal**") has served as outside counsel to AIG (AIG 30(b)(6) (Reeder) Dep. 51:23-52:1; 263:13-264:3; Willumstad (Oct. 15, 2013) Dep. 195:7-13).

(s) Joseph Allerhand ("**Allerhand**") of Weil Gotshal advised AIG during the time periods relevant to this case.

(t) Simpson Thacher & Bartlett LLP ("**Simpson Thacher**") served as outside counsel to the AIG Board of Directors beginning no later than 2008 and continuing through at least 2013 (Simpson Thacher 30(b)(6) (Nathan) 14:11-14; PTX 660 at 2).

(u) James Gamble ("**Gamble**") of Simpson Thacher advised AIG's Board of Directors during the time periods relevant to this case (Simpson Thacher 30(b)(6) (Nathan) 187:20-188:2, 230:5-8).

(v) Richard Beattie ("**Beattie**") of Simpson Thacher advised AIG's Board of Directors during the time periods relevant to this case (Simpson Thacher 30(b)(6) (Nathan) 28:9-17).

(w) From September 2008 until early 2011, Blackstone Advisory Partners LLP ("**Blackstone**") served as AIG's outside financial adviser (Studzinksi Dep. 17:23-18:8).

(x) John Studzinski ("**Studzinski**") was the lead partner on Blackstone's work for AIG in September 2008 (Alderson Smith Dep. 17:3-24).

(y) PricewaterhouseCoopers LLC ("**PwC"**) served as AIG's independent auditor from at least 2005 through the present (PwC 30(b)(6) (Farnan) Dep. 9:13-21).

(z) From at least June 2008 until October 2008, BlackRock ("**BlackRock**") served as an outside financial adviser for AIG. In particular, BlackRock provided AIG with estimations concerning the liquidity requirements of AIG's credit default swap portfolio and residential mortgage-backed securities portfolio (PTX 643 (Willumstad, *Brookfield v. AIG*, Dep. 12:10-14, 40:15-25)).

(aa)From October 2008 until September 2009, Paula Reynolds ("**Reynolds**") joined AIG as Vice Chairman and Chief Restructuring Officer.

33.3 Defendant the United States of America (the "Government") and its agents

33.3.1 The Department of the Treasury

(a) The Department of the Treasury ("**Treasury**") is part of Defendant the United States (Def. Answer to Second Amended Complaint ¶ 29).

(b) Treasury is an executive agency of Defendant (Answer ¶ 29; Def. Resp. to 2nd RFAs No. 3). The Secretary of Treasury is appointed by the President of the United States and is an official of the United States Government (Def. Resp. to 2nd RFAs Nos. 1-2).

(c) In 2008, the Office of Thrift Supervision ("**OTS**") was part of the Treasury (Def. Reponses to 2nd RFAs No. 4). In 2007 and 2008, OTS supervised AIG at the holding company level (Def. Resp. to 2nd RFAs No. 5).

(d) From July 10, 2006 to January 20, 2009, Henry "Hank" Paulson ("**Paulson**") was the United States Secretary of Treasury (Def. Resp. to 2nd RFAs Nos. 45).

(e) Prior to becoming Secretary of Treasury, Paulson worked at Goldman Sachs Group Inc. ("**Goldman Sachs**") for more than 20 years, including serving as its CEO from 1999 to May 2006 (Def. Resp. to 2nd RFAs Nos. 47; PTX 706 at 46-49).

(f) From early to-mid 2007 through October 2009, Stephen Albrecht ("**Albrecht**") was Counselor to the General Counsel of Treasury (Albrecht Dep. 12:21-13:7).

(g) From May 2009 through February 2011, James Millstein ("**Millstein**") was Treasury's Chief Restructuring Officer (Def. Resp. to 2nd RFAs No. 52).

(h) In August 2008, Dan Jester ("**Jester**") was hired by Paulson as a contractor for Treasury. Jester and Treasury contractor Ken Wilson ("**Wilson**") had worked for Goldman Sachs during Paulson's tenure as CEO of Goldman Sachs (Def. Resp. to 2nd RFAs Nos. 48-51, 717). At the time, a significant portion of Jester's family's investments were in Goldman Sachs shares (Jester Dep. 39:11-16, 78:11-15, 190:20-191:2). Neither Jester nor Wilson were required to publicly disclose their personal financial holdings (Def. Resp. to 2nd RFAs No. 718).

(i) From January 26, 2009 through January 25, 2013, Timothy F. Geithner ("**Geithner**") was Secretary of Treasury (Def. Resp. to 2nd RFAs No. 46).

(j) James Wilkinson ("**Wilkinson**") was Paulson's Chief of Staff during Paulson's tenure as Treasury Secretary from July 2006 to January 2009 (Wilkinson Dep. 8:17-20).

(k) From October 2008 through June 2009, James Lambright ("**Lambright**") was the Chief Investment Officer of the Troubled Asset Relief Program ("**TARP**") (Lambright Dep. 10:7-17, 11:8-12).

33.3.2 The Federal Reserve System

(a) The Federal Reserve System ("**Federal Reserve**") is the central bank of the United States. It was founded by Congress in 1913 (Def. Resp. to 2nd RFAs Nos. 29, 30).

(b) The Federal Reserve System is composed of a central agency of the United States Government—the Board of Governors—and 12 regional Federal Reserve Banks (PTX 949 at 4; Def. Response 2nd RFAs No. 9; PTX 1865 at 7).

(c) The Federal Open Markets Committee ("**FOMC**") is responsible for conducting open market operations—the purchase and sale of securities by the central bank. The Federal Reserve uses open market operations to adjust the supply of reserve balances to manage the federal funds rate (the rate at which banks lend reserve balances overnight). The FOMC consists of up to 12 members: the seven members of the Board of Governors, the President of the Federal Reserve Bank of New York, and four of the remaining Reserve Bank presidents, who rotate through one-year terms. (PTX 949 at 12, 20-21).

33.3.3 The Federal Reserve Board of Governors

(a) The Board of Governors of the Federal Reserve System ("**Board of Governors**") is an agency of the United States (Def. Resp. to 2nd RFAs No. 9. Among other things, the Board of Governors "supervises and regulates the operations of the Federal Reserve Banks" (PTX 949 at 13).

(b) The Board of Governors is composed of up to seven members, called "Governors." Governors are appointed by the President of the United States and confirmed by the U.S. Senate. Members of the Board of Governors are officials of the United States (*Id.* at 13).

(c) The Governors of the Federal Reserve Board are United States government officials. (Def. Resp. to 2nd RFAs, No. 13).

(d) The Chairman and the Vice Chairman of the Board are Governors are also appointed by the President and confirmed by the Senate. The nominees to these posts must already be members of the Board or must be simultaneously appointed to the Board. The terms for these positions are four years. The Chairman and Vice Chairman are officials of the United States (PTX 949 at 13).

(e) The Board of Governors hires employees known as Board of Governors Staff or, colloquially, BOG staff or Board staff (Def. Resp. to 2nd RFAs Nos. 14-15). As of 2008, the Board of Governors was supported by a staff in Washington, D.C. numbering about 2,000 people (PTX 1865 at 7).

(f) Members of the Board of Governors are in continual contact with other policymakers in government. The Board has regular contact with members of the President's Council of Economic Advisers and other key economic officials. The Chairman also meets from time to time with the President of the United States and has regular meetings with the Secretary of the Treasury (PTX 949 at 14).

(g) From February 1, 2006 through January 31, 2014, Ben Bernanke ("**Bernanke**") was the Chairman of the Federal Reserve (Def. Resp. to 2nd RFAs No. 53).

(h) From August 5, 2002 through June 23, 2010, Donald Kohn ("**Kohn**") was a member of the Board of Governors and from June 23, 2006 through June 23, 2010, and Vice-Chairman of the Federal Reserve (Def. Resp. to 2nd RFAs No. 54).

(i) From February 24, 2006 through March 31, 2011, Kevin Warsh ("**Warsh**") was a member of the Board of Governors (Warsh Dep. 11:19-25).

(j) From March 1, 2006 through January 21, 2009, Randall Kroszner ("**Kroszner**") was a member of the Board of Governors.

(k) From August 5, 2008 through August 31, 2013, Elizabeth Duke ("**Duke**") was a member of the Board of Governors.

(l) Since 2004, Scott Alvarez ("**Alvarez**") has been the General Counsel for the Federal Reserve (Def. Resp. to 2nd RFAs No. 55).

33.3.4 Federal Reserve Bank of New York ("FRBNY")

(a) The Federal Reserve Bank of New York ("**FRBNY**") is one of the twelve regional Federal Reserve Banks. Among other functions, FRBNY performs fiscal agency functions for the U.S. Treasury, certain federal agencies, and other entities (Def. Resp. to 2nd RFAs Nos. 28-29). FRBNY and other Federal Reserve Banks process Federal payments and deposits to Treasury's account and service Treasury securities.

(b) FRBNY is required by the Federal Reserve Act to serve as fiscal agent and depository of the United States Government. By statute, the Department of the Treasury has appropriations to pay for these services (Def. Resp. to 2nd RFAs No. 31).

(c) During the years ended December 31, 2008 and 2007, FRBNY was reimbursed for substantially all services provided to the Department of the Treasury as its fiscal agent (Def. Resp. to 2nd RFAs No. 32).

(d) When FRBNY and other Federal Reserve Banks receive earnings that exceed statutory amounts of surplus, those earnings are paid to Defendant and are recognized as nonexchange revenue. Those earnings totaled $32.0 billion and $33.6 billion for the years ended September 30, 2008, and 2008, respectively (Def. Resp. to 2nd RFAs No. 36).

(e) In responding to the financial crisis of 2007-2009 in general, and with regard to assistance to AIG in particular, FRBNY was acting as the agent of the United States (Discovery Order No. 6 at 12).

(f) PwC, an outside accounting consultant for the Federal Reserve, concluded that Treasury and the Federal Reserve were related parties for accounting purposes. (*See* PTX 419 at 21).

(g) From November 17, 2003 through January 26, 2009, Geithner was President of FRBNY (Def. Resp. to 2nd RFAs No. 56).

(h) From 2006 to 2010, Michael Silva ("**Silva**") was a Senior Vice President at FRBNY and served as Chief of Staff to FRBNY Presidents Geithner (2006-2009) and William Dudley (2009-2010). Since 2010, Silva has been the senior supervisor for a team at FRBNY that oversees Goldman Sachs (Silva Dep. 11:9-19, 13:14-21; Def. Resp. to 2nd RFAs No. 57).

(i) Since 1995, Thomas Baxter ("**Baxter**") has served as General Counsel of FRBNY (Baxter Dep. 6:22-25).

(j) Since 1988, Joseph Sommer ("**Sommer**") has been an attorney at FRBNY and currently holds the titles of Counsel and Assistant Vice President (Sommer Dep. 5:14-6:22).

(k) From September 16, 2008 until August 2010, Sarah Dahlgren ("**Dahlgren**") was the Vice President in charge of FRBNY's AIG Relationship Monitoring Team (Def. Resp. to 2nd of RFAs No. 59; Dahlgren Dep. 74:17-20).

(l) In 2008, William Dudley ("**Dudley**") was Executive Vice President of the Markets Group at FRBNY. Since January 27, 2009, Dudley has been the President of FRBNY (Def. Resp. to 2nd RFAs No. 61, 65).

(m) Dudley worked at Goldman Sachs from 1986 to 2007, rising to positions of chief U.S. economist, partner and partner managing director (Dudley Dep. 6:9-8:2). During Dudley's time at Goldman Sachs, he worked with Paulson, knew of Jester, and interacted with Geithner, who was then in the Clinton administration (Dudley Dep. 8:19-21; 9:7-10:13).

(n) From March 2008 to January 2009, Susan McLaughlin ("**McLaughlin**") was Vice President in the Markets Group at FRBNY. Since January 2009, she has been Senior Vice President and Senior Policy Advisor in that Group (McLaughlin Dep. 4:19-24). McLaughlin had responsibility for, among other things, receiving and processing funding requests and collateral pledge proposals from AIG (McLaughlin Dep. 42:24-43:2).

(o) Since 2006, Terrence Checki ("**Checki**") has been an Executive Vice President in the Emerging Markets and International Affairs Group at FRBNY (Def. Resp. to 2nd RFAs No. 60; Checki Dep. 10:19-11:2).

(p) Since January 2007, Christopher Calabia ("**Calabia**") has been a Vice President in the Credit Risk Department at FRBNY (Calabia Dep. 23:1-8, 25:6-13; Def. Resp. to 2nd RFAs No. 63).

(q) Since December 2006, Patricia Mosser ("**Mosser**") has been a Senior Vice President in the Markets Group at FRBNY (Mosser Dep. 5:13-20; Def. Resp. to 2nd RFAs No. 62).

(r) From September 2008 until March or April of 2011, Alejandro Latorre ("**Latorre**") was a Vice President of FRBNY's AIG Relationship Monitoring Team (Latorre Dep. 16:25-18:5).

(s) From July 2007 to July 2009, Margaret McConnell ("**McConnell**") was Geithner's Deputy Chief of Staff for Policy at FRBNY (McConnell Dep. 18:12-19:6; Def. Resp. to 2nd RFAs No. 58).

(t) On September 17, 2008, Defendant installed a permanent team of FRBNY executives and staff members at AIG's offices to monitor AIG (the "**Monitoring Team**"). The Monitoring Team represented the interests of the Federal Reserve as the lender to AIG, to ensure compliance with the terms of the Credit Agreement, and to supervise the company's decision-making (PTX 516 at 50; PTX 587 at 47-48).

(u) The Monitoring Team kept the Federal Reserve Board of Governors informed of its monitoring of AIG. The Monitoring Team acted under the direction and supervision of the Federal Reserve Board (Def. Resp. to 2nd RFAs No. 420; PTX 581 at 4; United States 30(b)(6) (Millstein) (Dec. 5, 2013) Dep. at 134:21-135:5).

(v) The Monitoring Team included as many as 20 members (Def. Resp. to 2nd RFAs No. 418).

(w) Defendant has identified the following FRBNY officers and employees who were members of the Monitoring Team: Michael Alix, Christina Anzalone, Marilyn Arbuthnott, Susan Ballinger, Sarah Bell, Shannon Bozelli, Jennifer Brett, Nick Brophy, Christina Celi, Ajla Cico, Sarah Dahlgren, Hampton Finer, Amy Flynn, Susan Goldberg, Katherine Ivanova, Bin Lang, Alejandro Latorre, Jeff Levine, Danielle (Vicente) Lima, Clint Lively, Fatima Madhany, Jim Mahoney,

Steve Manzari, Helen Mucciolo, Kay Naraine, Alon Neches, Robert Patalano, Jonathan Polk, Robert Rinaldi, Clay Saylor, Steve Schoen, Roseann Stichnoth, Vivian Sung, Cathy Voigts, Eleanny Wernecke, Tamra Wheeler, Paul Whynott (Def. Res. to 2nd Interrogatories No. 10 & Schedule A).

33.3.5 The AIG Credit Facility Trust

(a) On January 16, 2009, FRBNY, as Settlor, and Jill M. Considine ("**Considine**"), Chester B. Feldberg ("**Feldberg**") and Douglas L. Foshee ("**Foshee**") (collectively the "**Trustees**") as Trustees entered into the AIG Credit Facility Trust Agreement (the "**Trust Agreement**"), which created the AIG Credit Facility Trust (the "**Trust**") (JX 174 at 2).

33.3.6 Defendant's agents and advisors

(a) Wachtell, Lipton, Rosen & Katz ("**Wachtell**") provided legal services to Treasury relating to AIG, including assisting Treasury in drafting the terms of Defendant's loan to AIG, beginning on or around September 14, 2008 through September 19-20, 2008. The United States never memorialized its retention of Wachtell for services rendered to AIG, and Wachtell never sought compensation for such services rendered. *See* Wachtell 30(b)(6) (Murphy) Dep. 7:9-23, 23:7-24:17, 26:2-15; Def. Resp. to 3rd Interrogatories No. 25; PTX 98 at 3; JX 85 at 1; PTX 134 at 1; PTX 167 at 1, 3-7.

(b) In September 2008, Wachtell represented Morgan Stanley in its successful efforts to become approved by the Federal Reserve as a bank holding company (PTX 187 at 1-2).

(c) From 2007 through 2012, Deloitte & Touche LLP ("**Deloitte**") was the independent auditor for the Federal Reserve System as well as the individual Federal Reserve Banks, including FRBNY. The Board of Governors also contracted with Deloitte beginning in 2008 to provide independent audit services to Maiden Lane II and Maiden Lane III, for which those entities reimbursed the Board (Deloitte 30(b)(6) (Salz) Dep. 15:12-16:22; Def. Resp. to 3rd Interrogatories No. 25).

(d) In 2008 and 2009, PricewaterhouseCoopers ("**PwC**") provided accounting expertise and resources to the Board of Governors and the Board of Governors' accounting staff (Def. Resp. to 3rd Interrogatories No. 25; Def. Resp. to 2nd RFAs No. 756).

(e) Beginning on September 16, 2008, Davis, Polk & Wardwell LLP ("**Davis Polk**") served as legal counsel to Defendant in connection with the drafting and execution of the terms of the AIG Credit Agreement and the related agreements, including the AIG Credit Facility Trust Agreement and Stock Purchase Agreement. In addition, Davis Polk provided advice and counsel to FRBNY and Treasury concerning a variety of issues related to AIG. Counsel from Davis Polk who advised Defendant included Marshall Huebner ("**Huebner**"), Ethan James

("**James**"), and John Brandow ("**Brandow**") (Davis Polk 30(b)(6) (Brandow) Dep. 19:22-20:5, 77:15-78:10, Def. Resp. to 3rd Interrogatories No. 25, 256).

(f) On September 19, 2008, FRBNY retained Ernst & Young ("**E&Y**") to perform services for FRBNY in connection with Defendant's loan to AIG (PX 116 at 1; Def. Resp. to 3rd Interrogatories No. 25).

(g) Morgan Stanley served as an agent of FRBNY and Treasury with respect to certain financial advisory services concerning AIG beginning on September 15, 2008, that were subsequently memorialized in an engagement agreement dated October 16, 2008, and amended on June 18, 2009, as set forth in PTX 303 at 1. (*See also* Morgan Stanley 30(b)(6) (Head) Dep. 26:8-28:13, 97:23-98:2; PTX 629 at 1-3).

33.4 Other relevant actors

(a) JP Morgan Chase & Co. ("**JP Morgan**") is a large financial institution that provides commercial and investment banking services, among other services.

(b) From January 2007 to June 2009, Eric Dinallo ("**Dinallo**") was the Superintendent of the New York State Insurance Department ("**NYSID**") (Dinallo Dep. 5:20-6:2). NYSID was one of the lead regulators of AIG's insurance subsidiaries (PTX 628 at 2).

(c) The National Association of Insurance Commissioners ("**NAIC**") is a standard-setting and regulatory support organization comprised of the insurance regulators of the 50 states, Washington, D.C., and U.S. territories.

(d) A credit rating agency ("rating agency") is an entity that assesses the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.

(e) During the relevant time period, Standard & Poor's ("**S&P**"), Moody's, and Fitch were the "primary" rating agencies, and A.M. Best was a rating agency specializing in ratings for the insurance industry (A.M. Best 30(b)(6) (Coliano) Dep. 22:9-19; Fitch 30(b)(6) (Buckley) Dep. 17:19-23).

(f) In October 2008, Congress created a Congressional Oversight Panel to review the current state of financial markets and the regulatory system and to report on Treasury's Troubled Asset Relief Program ("**TARP**") (*See* 12 U.S.C. § 5233).

(g) Congress also established the Special Inspector General for the TARP ("**SIGTARP**"), a law enforcement agency charged with preventing and reporting fraud, waste and abuse in the program (*See* 12 U.S.C. § 5231).

(h) In 2009, Congress established the Financial Crisis Inquiry Commission ("**FCIC**") to "examine the causes, domestic and global, of the current financial and economic crisis in the United States" (PTX 624 at 11; PTX 2606 at 1). After a two year investigation, the

Commission published its findings (the "**FCIC Report**") in January 2011. (PTX 624 at 11).

(i) The Government Accounting Office ("**GAO**") is an investigative agency of Congress. At the request of Congress, the GAO conducted investigations into Defendant's assistance to AIG (*See* PTX 539 at 9).

(j) Goldman Sachs Group, Inc. ("**Goldman Sachs**") is a large financial institution with a significant investment banking business.

(k) Citigroup Inc. ("**Citi**") is a large financial institution with a significant commercial banking business.

(l) **Bank of America** is a large financial institution with a significant commercial banking business.

(m) In 2008, Merrill Lynch & Co., Inc. ("**Merrill Lynch**") was a large financial institution with a significant investment banking business.

(n) The China Investment Corporation ("**CIC**") is the sovereign wealth fund of China.

(o) The Government of Singapore Investment Corporation ("**GIC**") is the sovereign wealth fund of Singapore.

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Respectfully submitted,
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