

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-1355-scc

4 Adv. Case No. 08-01420-scc

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6 In the Matter of:

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8 LEHMAN BROTHERS INC.,

9 Debtor.

10 - - - - - x

11 U.S. Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

14

15 April 23, 2015

16 10:08 AM

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20 B E F O R E :

21 HON SHELLY C. CHAPMAN

22 U.S. BANKRUPTCY JUDGE

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1 Hearing re: LBI Bonus Claim Merits Hearing

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

2 THE COURT: All right. Ready when you are, Mr.
3 Baumstein.

4 MR. BAUMSTEIN: Yes, Your Honor. 1EE LLC calls
5 Jonathan Hoffman to the stand. Also, just may I approach?

6 THE COURT: Yes.

7 MR. BAUMSTEIN: So I have some binders. So these
8 are -- we'll get to at some point, as you know, some
9 transcripts.

10 THE COURT: Okay.

11 MR. BAUMSTEIN: We've marked these as for
12 identification.

13 THE COURT: Sure.

14 MR. BAUMSTEIN: Because I helped -- there's a
15 completeness and there's no agreed upon transcript, I don't
16 think anything's official, but it's much easier to follow
17 them all.

18 THE COURT: Sure, okay.

19 MR. BAUMSTEIN: So, yeah.

20 THE COURT: Would you raise your right hand,
21 please? Do you solemnly swear or affirm that all the
22 testimony you're about to give before the Court shall be the
23 truth, the whole truth, and nothing but the truth?

24 MR. HOFFMAN: I do.

25 THE COURT: Great. Have a seat. Make yourself

1 comfortable. If you would like a break at any time, please
2 let us know.

3 MR. HOFFMAN: Thank you.

4 MR. BAUMSTEIN: Good morning, Mr. Hoffman.

5 MR. HOFFMAN: Good morning.

6 MR. BAUMSTEIN: We're going to start with a little
7 bit of a spoiler. We're going to -- I want to talk about
8 your Barclays contract, then we're going to kind of peel
9 back and go back to kind of telling the whole story a little
10 bit more chronologically. Could you turn to exhibit 44,
11 please? You should have -- I'm sorry, a binder that's
12 labeled "Claimant's Trial Exhibits LBI Hoffman."

13 MR. HOFFMAN: Let's make sure I have the right
14 one. I have (indiscernible).

15 MR. BAUMSTEIN: Which one is it? I'm sorry?

16 THE COURT: Why don't we do this? Mr. Baumstein,
17 if you could go over and kind of tidy up the witness box
18 with -- there may be other binders in there that -- you
19 could just put them on the floor or on the windowsill.

20 MR. BAUMSTEIN: Yeah, those -- (indiscernible) on
21 the--

22 THE COURT: Yeah, that's great. Okay. So now,
23 we're in your master hearing binder?

24 MR. BAUMSTEIN: Yes.

25 THE COURT: Okay. And what number was that?

1 MR. BAUMSTEIN: 44.

2 THE COURT: Okay.

3 MR. BAUMSTEIN: Could you identify exhibit 44?

4 MR. HOFFMAN: It is an employment agreement
5 between myself and Barclays.

6 MR. BAUMSTEIN: Okay. And who drafted it?

7 MR. HOFFMAN: Someone at Barclays.

8 MR. BAUMSTEIN: And when did you receive this
9 document?

10 MR. HOFFMAN: October 3rd, 2008.

11 MR. BAUMSTEIN: And under starting date, it says
12 your employment commenced on September 22nd, 2008. Do you
13 see that?

14 MR. HOFFMAN: I do.

15 MR. BAUMSTEIN: Was that accurate?

16 MR. HOFFMAN: No.

17 MR. BAUMSTEIN: Do you know why the agreement was
18 back dated?

19 MR. HOFFMAN: I really don't know.

20 MR. BAUMSTEIN: Had you been paid by Barclays
21 prior to executing this agreement?

22 MR. HOFFMAN: No.

23 MR. BAUMSTEIN: What time period does this
24 agreement cover?

25 MR. HOFFMAN: October 3rd, 2008 through a period

1 in 2011.

2 MR. BAUMSTEIN: Okay. Did you work for LBI during
3 any of that time period?

4 MR. HOFFMAN: No.

5 MR. BAUMSTEIN: And by the way, just to -- did you
6 work at LBI from September 22nd, 2008 through 2011?

7 MR. HOFFMAN: No.

8 MR. BAUMSTEIN: I want to talk about the
9 performance bonus. We'll talk about how it was negotiated
10 later. But, could you just describe how the performance
11 bonus in agreement worked?

12 MR. HOFFMAN: I would be paid a percent of my net
13 profits.

14 MR. BAUMSTEIN: Okay. And in determining your
15 profitability for purposes of paying your performance bonus,
16 what time period would be used?

17 MR. HOFFMAN: October 3rd, 2008. So, I think it
18 says 2009 is 2010, but they included a small part of 2008/

19 MR. BAUMSTEIN: Okay. And did any of that time
20 period include time at which you were employed by LBI?

21 MR. HOFFMAN: No.

22 MR. BAUMSTEIN: If you could turn to exhibit A,
23 there is a reference in there talking about the performance
24 period. It's by romanette ii, "To a bonus percentage of 20
25 percent and an addition -- and \$13 million." Have you seen

1 that?

2 MR. HOFFMAN: I have seen it.

3 MR. BAUMSTEIN: Okay. Were you guaranteed that
4 \$13 million?

5 MR. HOFFMAN: No.

6 MR. BAUMSTEIN: How would you earn it?

7 MR. HOFFMAN: Through trading for Barclays,
8 probably.

9 MR. BAUMSTEIN: Okay. And if you had successfully
10 traded at Barclays, when would you have received that \$13
11 million?

12 MR. HOFFMAN: It would depend if I earned the
13 requisite amounts in 2009 or in 2010, but I would receive it
14 either in 2010 or 2011. It would be awarded then. I
15 wouldn't necessarily receive vested quantities or liquid
16 quantities, but it would be awarded at those time frames.

17 MR. BAUMSTEIN: Okay. And if you had resigned from
18 Barclays prior to any potential payout, what would've
19 happened to your performance bonus?

20 MR. HOFFMAN: I wouldn't get anything.

21 MR. BAUMSTEIN: Okay. Could you go back to the
22 special awards on the first page of the document? What did
23 Barclays promise you, with respect to the amount of special
24 awards?

25 MR. HOFFMAN: As it's indicated here, special

1 award will be in three installments, as indicated here.

2 MR. BAUMSTEIN: Okay. And what did you discuss
3 with Barclays was the rationale for the special awards?

4 MR. HOFFMAN: These were inducements to come to
5 Barclays and to stay at Barclays and to work at Barclays.

6 MR. BAUMSTEIN: And can you explain how these
7 payments were structured to retain you at Barclays?

8 MR. HOFFMAN: If I ain't working at Barclays,
9 because I left Barclays, I didn't get the payments. There
10 were some other ways to lose them as well, but that was the
11 primary tension portion of it.

12 MR. BAUMSTEIN: And how much of the payments did
13 Barclays promise to you in 2009?

14 THE COURT: (indiscernible) figures. Could you--?

15 MR. BAUMSTEIN: I'm sorry. How much of the
16 special awards payments did Barclays promise you to -- in
17 2009?

18 MR. HOFFMAN: So it's \$30 million in February
19 2009.

20 MR. BAUMSTEIN: Okay. And what would the form of
21 those payments be?

22 MR. HOFFMAN: For the purpose of that specific
23 payment, it would be -- it was indicated here, 75 percent
24 cash, 25 percent in a stock equity participation plan.

25 MR. BAUMSTEIN: Okay. And when were the rest of

1 the special awards due under this agreement?

2 MR. HOFFMAN: February 2010 and February 2011.

3 MR. BAUMSTEIN: Was there also a deferred
4 component of those future special awards?

5 MR. HOFFMAN: Yes, they were -- I believe they
6 were -- became paid mostly in equity participation and the -
7 - deferred cash. So they introduced new plans, as this went
8 along.

9 MR. BAUMSTEIN: Okay. And what would've happened
10 if you left before -- if you had resigned from Barclays
11 prior to the payout dates in 2009 and 2010 or 2011?

12 MR. HOFFMAN: I wouldn't get the payments.

13 MR. BAUMSTEIN: And if you had lost money in
14 trading in 2010 or 2000 -- and I'm sorry -- 2009 or 2010,
15 what would've happened to the promised special awards?

16 MR. HOFFMAN: They would be reduced by an amount
17 up to a maximum reduction of \$10 million per special award.

18 MR. BAUMSTEIN: Okay. Do you know, Mr. Hoffman,
19 whether Lehman is mentioned at all in this contract?

20 MR. HOFFMAN: I think they mentioned Lehman in --
21 maybe not -- I thought it was mentioned maybe in vacation
22 dates, something small like that, but maybe it's not
23 mentioned at all.

24 MR. BAUMSTEIN: And if you turn the next page, you
25 can actually see under vacation, there is actually a mention

1 that--

2 MR. HOFFMAN: Oh yes, here it is.

3 MR. BAUMSTEIN: Okay. Any other mention of Lehman
4 in this contract at all?

5 MR. HOFFMAN: No.

6 MR. BAUMSTEIN: Is there anything in this
7 agreement that incorporates or references an asset purchase
8 agreement between Barclays and Lehman?

9 MR. HOFFMAN: No.

10 MR. BAUMSTEIN: Okay. We'll return to this, but
11 did you ever ask Barclays to assume your contracts with
12 Lehman?

13 MR. HOFFMAN: I did.

14 MR. BAUMSTEIN: And what did Barclays say?

15 MR. HOFFMAN: No.

16 MR. BAUMSTEIN: And what does this agreement say
17 about the assumptions of your Lehman contract?

18 MR. HOFFMAN: It's not discussed.

19 MR. BAUMSTEIN: And what does this agreement say
20 about any claims you might have had against Lehman?

21 MR. HOFFMAN: Those are not discussed.

22 MR. BAUMSTEIN: Did Barclays ever ask you to
23 release or waive any claims you had against LBI, in
24 connection with this agreement?

25 MR. HOFFMAN: No.

1 MR. BAUMSTEIN: And what does this agreement say
2 about whether any of the payments contemplated here would be
3 and paid to satisfy LBI's obligations to you?

4 MR. HOFFMAN: The -- that's not mentioned.

5 MR. BAUMSTEIN: Does anything in this agreement
6 state whether Barclays would be a delegatee of Lehman's
7 obligations to you?

8 MR. HOFFMAN: No.

9 MR. BAUMSTEIN: And is there anything in this
10 agreement, where you agreed to release or waive any claims
11 you had against LBI?

12 MR. HOFFMAN: No.

13 MR. BAUMSTEIN: If Barclays had asked you to waive
14 your claim against LBI or otherwise indicated that by
15 entering an agreement with Barclays, you would be
16 compromising your claim with LBI, what would you have done?

17 MR. HOFFMAN: I would not agree to that.

18 MR. BAUMSTEIN: Okay. We'll talk a little bit
19 about why that's so later. Now, I want to take a step back
20 to kind of how we got here. Where did you go to college,
21 Mr. Hoffman?

22 MR. HOFFMAN: The University of Pennsylvania.

23 MR. BAUMSTEIN: And when did you graduate?

24 MR. HOFFMAN: 1994.

25 MR. BAUMSTEIN: And what was your degree in?

1 MR. HOFFMAN: A bachelor of science and economics.

2 MR. BAUMSTEIN: Okay. And were you at the Wharton
3 School at Penn?

4 MR. HOFFMAN: Yes.

5 MR. BAUMSTEIN: Okay. And where did you go to
6 work thereafter?

7 MR. HOFFMAN: I went to Lehman Brothers.

8 MR. BAUMSTEIN: Were you employed at Lehman
9 Brothers continuously, up until the time of the bankruptcy?

10 MR. HOFFMAN: I was.

11 MR. BAUMSTEIN: What did you do for LBI?

12 MR. HOFFMAN: I started in (indiscernible) fund
13 sales and moved on to trading. I made markets for a short
14 period of time in U.S. treasuries, and then I became a
15 proprietary trader in 2000 and -- 2000, I believe.

16 MR. BAUMSTEIN: Okay. And what type of
17 proprietary trading did you perform for Lehman?

18 MR. HOFFMAN: I traded interest rate products,
19 mainly government bonds from, broadly speaking, developed
20 countries.

21 MR. BAUMSTEIN: Okay. Where did you work, over
22 your time period at Lehman?

23 MR. HOFFMAN: I moved around. I started in New
24 York. After September 2001, I temporarily worked in Jersey
25 City, and then I relocated to the Miami office from March --

1 November 2001 through 2008.

2 MR. BAUMSTEIN: Okay. And then, was there -- did
3 there come a time you started to work at home?

4 MR. HOFFMAN: In 2008, I moved from Florida to
5 Pennsylvania. I believe it would be considered my disaster
6 recovery office, meaning, you're supposed to have two
7 offices. It would've been the (indiscernible) office. But,
8 I hadn't formally moved into that, and I had asked for them
9 was allowed to work from home.

10 MR. BAUMSTEIN: Okay.

11 MR. HOFFMAN: But I worked from home fulltime for
12 most of 2008.

13 MR. BAUMSTEIN: Okay. Was there any special
14 reason that you -- it was important for you to work at home?

15 MR. HOFFMAN: I had -- (indiscernible) family
16 issues that required me to be home.

17 MR. BAUMSTEIN: Okay. Did you supervise any
18 employees at LBI?

19 MR. HOFFMAN: No.

20 MR. BAUMSTEIN: Were you part of LBI's senior
21 management?

22 MR. HOFFMAN: No.

23 MR. BAUMSTEIN: Were you in any way involved with
24 running LBI's business on a day to day basis?

25 MR. HOFFMAN: No.

1 MR. BAUMSTEIN: To whom did you report to at LBI -
2 - during, when -- during the time that you were a
3 proprietary trader?

4 MR. HOFFMAN: I started with Mike Gelband, and
5 finished with the combination of Mike Gelband and Kaushik.
6 I mean, Mike Gelband left the firm for maybe a year, during
7 which time I switched to reporting to Kaushik Amin. When he
8 returned in 2008, I de facto started reporting to him again,
9 but I also reported to Kaushik as he maintained that same
10 reporting line.

11 MR. BAUMSTEIN: Okay. So, when did you begin
12 working pursuant to written employment agreements at LBI?

13 MR. HOFFMAN: Well, I had some guaranteed
14 compensation agreements early in my career in the 1990s, but
15 an agreement that was a proprietary trading performance
16 based agreement would be 2001, I believe.

17 MR. BAUMSTEIN: Yeah. Did you have any
18 understanding how common it was for LBI to enter into
19 written employment agreements?

20 MR. HOFFMAN: I think it was pretty uncommon. I
21 don't know if the number was 10 people or 50 people or 100
22 people, but certainly, it wasn't the norm.

23 MR. BAUMSTEIN: Okay. Why don't we turn to your
24 2007 agreement, it's in your binder, at exhibit one? Okay.
25 What was the basic structure of your compensation under the

1 2007 agreement?

2 MR. HOFFMAN: I would receive a salary and a
3 performance bonus calculated on my net profitability.

4 MR. BAUMSTEIN: And when would that -- when would
5 you have received the performance bonus based on your net
6 profitability?

7 MR. HOFFMAN: This is for 2007, I would receive a
8 first installment in early 2008 and a second installment in
9 early 2009.

10 MR. BAUMSTEIN: Okay. I want to direct you to the
11 top of, I guess it's internal page three, where it
12 discusses, "What would happen if your employment ends after
13 being paid your first installment, but before the second
14 payout date." Do you see that?

15 MR. HOFFMAN: I do.

16 MR. BAUMSTEIN: What was your understanding of
17 what would happen if your employment was terminated not for
18 cause, before your second payout date?

19 MR. HOFFMAN: You would receive the second amount
20 entirely in cash --

21 MR. BAUMSTEIN: Okay.

22 MR. HOFFMAN: -- on the second payout date.

23 MR. BAUMSTEIN: Okay. Do you know how much in
24 profits you earned for LBI in 2007?

25 MR. HOFFMAN: In 2007? It would be about \$220

1 million.

2 MR. BAUMSTEIN: Okay. And as a result of those
3 profits, what were you owed by LBI?

4 MR. HOFFMAN: About \$30 million.

5 MR. BAUMSTEIN: And just quickly, we can turn to
6 exhibit two. Can you write -- can you identify what that
7 exhibit is, for the record?

8 MR. HOFFMAN: This is my 2007 compensation
9 statement from Lehman Brothers.

10 MR. BAUMSTEIN: Okay. And what did you receive
11 from LBI for the work you performed in 2007?

12 MR. HOFFMAN: The first installment was paid. The
13 cash payment was paid in early 2008, which would be the
14 \$7.512 million, plus, I received a salary during the year,
15 of \$200,000. I made, in 2007, I received that salary.

16 MR. BAUMSTEIN: Okay. And what were you owed in
17 2009, that the second installment -- ?

18 MR. HOFFMAN: In the first quarter of 2009, the
19 second installment would be \$7.712 million.

20 MR. BAUMSTEIN: Okay. I want to turn now to
21 exhibit -- and it -- I know it's a big document -- exhibit
22 61 at the very end of your binder. What is this agreement -
23 - or what was this document?

24 MR. HOFFMAN: It's a (indiscernible) benefit that
25 I negotiated with Mike Gelband.

1 MR. BAUMSTEIN: Okay. And could you -- what was
2 the benefit that was -- that they provided to you?

3 MR. HOFFMAN: I could leave at any time and
4 continue to get my awards as originally contemplated. In
5 other words, I did not have to work for Lehman Brothers to
6 get any award that was awarded, but hadn't yet vested.

7 MR. BAUMSTEIN: How does that affect -- I know
8 sometimes there's been talk about a clawback. How would
9 that right have affected the clawback in various portions of
10 your agreements?

11 MR. HOFFMAN: The -- that portion would be treated
12 as though it would be paid entirely in cash on the
13 installment date.

14 MR. BAUMSTEIN: Do you know how common agreements
15 like this were at Lehman?

16 MR. HOFFMAN: My guess is that this was the only
17 one that was pretty heavily negotiated.

18 MR. BAUMSTEIN: And why was this important to you?

19 MR. HOFFMAN: My freedom, my ability to leave
20 meant everything to me. And I told the -- it was probably
21 the only time I threatened to leave. I said, "I'm -- if I
22 don't have this specific benefit, I can't work here, because
23 I'm not going to do this forever. And I don't want to be
24 retained here without the ability to leave."

25 MR. BAUMSTEIN: Okay. Did Barclays agree to give

1 you this option in your deal?

2 MR. HOFFMAN: No.

3 MR. BAUMSTEIN: Okay. Could we go back to 1EE
4 exhibit five?

5 THE COURT: Can I ask a background question?

6 MR. BAUMSTEIN: Sure.

7 THE COURT: Please? Mr. Hoffman, so does this May
8 17th special benefit, as it's called on the last paragraph,
9 that means that you could leave and you would get your
10 subsequent installments that were due?

11 MR. HOFFMAN: That's right.

12 THE COURT: Okay. And would those be -- those
13 would still be payable in the form in some equity based
14 form?

15 MR. HOFFMAN: If it was an equity award other than
16 the second installment of the contract we looked at --

17 THE COURT: Right.

18 MR. HOFFMAN: -- that was entirely in cash, if it
19 was supposed to be an equity award, it would not change
20 that.

21 THE COURT: Okay, thank you.

22 MR. BAUMSTEIN: Have you had a chance to turn to
23 exhibit five, which is your 2008 agreement?

24 MR. HOFFMAN: Yes.

25 MR. BAUMSTEIN: Okay. What was the basic

1 structure of -- well, I'm sorry. What was the basic
2 compensation structure under your 2008 agreement?

3 MR. HOFFMAN: I think it was similar to the 2007
4 agreement.

5 MR. BAUMSTEIN: Okay. And by that, do you mean
6 that there were two payment -- two payouts over time?

7 MR. HOFFMAN: Yes.

8 MR. BAUMSTEIN: And it was based on your
9 profitability, that you earned at Lehman for the performance
10 period?

11 MR. HOFFMAN: That's right.

12 MR. BAUMSTEIN: Can you turn to page three from --
13 you know what? Actually, it's -- let me (indiscernible) in
14 the right place. I'm sorry. It's at the bottom of page
15 two, where it discusses what would happen if you were
16 terminated before your first payout date. Do you see that?

17 MR. HOFFMAN: I do.

18 MR. BAUMSTEIN: If your -- if you were terminated
19 without cause prior to the first payout date, what would
20 happen with respect to your bonus?

21 MR. HOFFMAN: I would receive the performance
22 bonus from the first payout date?

23 MR. BAUMSTEIN: Okay. And it -- would it be the
24 whole thing, or would it still come in waves?

25 MR. HOFFMAN: Well, we're talk -- the report

1 you're looking at is relative to the first installment, I
2 think. The (indiscernible) said if it was -- if my
3 employment was terminated between the first installment and
4 second payout date, is that what I'm reading?

5 MR. BAUMSTEIN: No, no, no, it's actually on --
6 for the 2008, it's before the first. So, it's actually on
7 the carryover from two to three, the first full sentence
8 says, "Your estate will then receive."

9 MR. HOFFMAN: The entire performance bonus from
10 the first payout date. So there would be no second payout
11 date. It would all become payable the first payout date.

12 MR. BAUMSTEIN: Right. And that would've been for
13 the work you had performed in the year 2008.

14 MR. HOFFMAN: Up until my last day of the
15 performance year or the last day that I was actively
16 employed by the firm.

17 MR. BAUMSTEIN: Okay. Could you turn to the first
18 page, and it's the bottom paragraph that starts there? And
19 you'll see, it says, "At the firm's discretion, a portion of
20 your total compensation for performance year, including the
21 performance bonus -- including the full performance bonus --
22 will be payable in conditional equity awards, for -- and
23 restricted stock units, options, and/or other equity based
24 awards, pursuant to the firm's equity award program or other
25 firm sponsored programs that may be established by the firm

1 from time to time, and as then generally in effect for
2 employees at your level." What did you understand that to
3 mean?

4 MR. HOFFMAN: The firm has the discretion to pay
5 part of my compensation and -- well, and equity.

6 MR. BAUMSTEIN: And did you understand that there
7 were limits to the firm's discretion?

8 MR. HOFFMAN: Yeah, there's a chart attached to
9 this a few pages later, a (indiscernible) expenditure
10 compensation that could be paid in equity, and there were
11 other limits in the -- that you have to find in the firm's
12 equity award program.

13 MR. BAUMSTEIN: Okay. Turning first to what you
14 were just talking about, the limit on the percentages. That
15 -- there's a page with a Bates stamped 1EE0015. Do you see
16 that?

17 MR. HOFFMAN: Yes.

18 MR. BAUMSTEIN: And am I accurate that as a -- by
19 the way, I don't think I asked you, what was your title at
20 LBI?

21 MR. HOFFMAN: Managing Director.

22 MR. BAUMSTEIN: As a Managing Director with
23 someone with profits of -- or, I'm sorry -- whose equity,
24 whose compensation would have been over \$1.2 million, can
25 you tell me what your -- the maximum amount of awards that

1 could be paid in LBI's discretion were?

2 MR. HOFFMAN: To the max of 50 percent of 2008's
3 total compensation.

4 MR. BAUMSTEIN: Okay. And then, you had mentioned
5 another limitation on the exercise of the discretion. Do
6 you know whether there was a limit on the number of shares
7 that could be awarded to an individual on a given year?

8 MR. HOFFMAN: I think it was four million shares.

9 MR. BAUMSTEIN: Okay.

10 THE COURT: So, can I just clarify, please? So,
11 with respect to this, had things gone differently, part of
12 your compensation for 2008, the performance year 2008 would
13 have been payable 50 percent in equity based awards and 50
14 percent in cash?

15 MR. HOFFMAN: For the 2008, yes.

16 THE COURT: Yes. Thank you.

17 MR. BAUMSTEIN: Right. And that would've been if
18 LBI so elected and was able to deliver the shares.

19 MR. HOFFMAN: Subject to the election of the firm.

20 MR. BAUMSTEIN: Right. And what was your
21 profitability for 2008?

22 MR. HOFFMAN: \$548 million, approximately.

23 MR. BAUMSTEIN: Could I turn you to exhibit 12,
24 for a moment? You see, this is an email here. Can you tell
25 me what this email and the attachments are?

1 MR. HOFFMAN: An email is the P&L associated with
2 September 12th, 2008, which was the last day that -- of my
3 performance period as per the firm.

4 MR. BAUMSTEIN: Okay. And it looks like you're
5 forwarding to Kaushik Amin a spreadsheet that you had
6 received from Melina Hernandez. Who is Melina Hernandez?

7 MR. HOFFMAN: I don't remember. If I remember,
8 she was like, in product control, so they would basically
9 calculate the P&L and manage that for the firm.

10 MR. BAUMSTEIN: And so, product control, you're --
11 you don't control what product control provides as a P&L for
12 you? Do you?

13 MR. HOFFMAN: Not at all.

14 MR. BAUMSTEIN: And if you look at the -- by the
15 way, is this type of P&L maintained by LBI in its ordinary
16 course?

17 MR. HOFFMAN: Yes.

18 MR. BAUMSTEIN: And if you -- can you turn to the
19 first page after this? And I know it's a spreadsheet, so
20 there's a -- the first one is kind of -- it's a kind of a
21 summary page. Do you see that?

22 MR. HOFFMAN: Yes.

23 MR. BAUMSTEIN: Okay. So, can you tell me exactly
24 what your performance year of profits were, as of September
25 12, 2008, according to this document?

1 MR. HOFFMAN: Is that 548471?

2 MR. BAUMSTEIN: Right. And that -- is that in
3 millions of dollars?

4 MR. HOFFMAN: That is.

5 MR. BAUMSTEIN: And there was a line for
6 brokerage. Do you see that?

7 MR. HOFFMAN: Yes.

8 MR. BAUMSTEIN: Should that number be netted
9 against the \$548 million number?

10 MR. HOFFMAN: The first number is already net
11 everything that was subject to be subtracted from my P&L.

12 MR. BAUMSTEIN: Okay. So, do you have an
13 understanding why brokerage was listed separately?

14 MR. HOFFMAN: That number was the brokerage that
15 was already in the price of transaction, so it was already
16 reflected in my P&L. So in other words, if I bought the
17 bond at a price of par, and the broker charged a small
18 amount, the ticket already went in with the increased price
19 in it. So it was already in the priced P&L. The brokerage
20 on over the counter transactions was collected at the time
21 of the transaction, whereas invoiced brokerage would be
22 brokeraged from a futures exchange, which is built in
23 regular cycles.

24 MR. BAUMSTEIN: Okay. And do you know why Lehman
25 chose to break that number out?

1 MR. HOFFMAN: The product control would be
2 concerned that if your brokerage was excessively high, it
3 may indicate irregular activity, maybe you're paying too
4 much brokerage and could do a better job for the firm.
5 Maybe you were receiving benefits from outside brokers that
6 you weren't -- that weren't in the firm's best interests.
7 So, they like to keep track of that sort of thing.

8 MR. BAUMSTEIN: Okay. How did your profitability
9 for 2008 compare to your career profitability?

10 MR. HOFFMAN: It was my best year up until then.

11 MR. BAUMSTEIN: Do you know how your profitability
12 for 2008 compared to the profitability of the entire Lehman
13 enterprise for 2008?

14 MR. HOFFMAN: I don't know that Lehman was
15 reporting a net profit in 2008, but if I were to look at the
16 2007 profit or the 2008 revenue, the firm took a book value
17 deduction in 2008, so it's tough to compare. But, it would
18 be about 10 percent of the revenue and one rate for the
19 firm, or the net profit of the firm in 2007, for example.
20 That net run rate continued until the firm wrote down assets
21 (indiscernible) this business.

22 MR. BAUMSTEIN: Okay. Okay. But, and even so,
23 and, but Lehman actually lost money in 2008, right? You
24 understand that?

25 MR. HOFFMAN: I think that the firm reported a net

1 loss.

2 MR. BAUMSTEIN: Was there anything special about
3 the trading environment in 2008 that -- with respect to your
4 trading performance?

5 MR. HOFFMAN: Well, the markets were more
6 dislocated, more volatile. Certainly, interest rate
7 markets, government bonds, globally, were -- they were
8 challenging markets to trade and make sense of, so if you
9 had experience and knew what to do, it could be very
10 lucrative.

11 MR. BAUMSTEIN: Okay. And based on -- and did you
12 have the experience to know what to do?

13 MR. HOFFMAN: I did.

14 MR. BAUMSTEIN: And so, based on your \$548 million
15 that you generated for LBI in 2008, how much did Lehman owe
16 you, pursuant to your contract?

17 MR. HOFFMAN: For this contract, it would be a --
18 just north of \$76 million.

19 MR. BAUMSTEIN: Okay. And I'm not going to make -
20 - run you through the math, but what did Lehman pay you for
21 the more than half a billion dollars that you generated
22 during the fiscal year of 2008?

23 MR. HOFFMAN: I drew a salary (indiscernible).

24 MR. BAUMSTEIN: And what was the salary that they
25 paid you for that half a billion dollars that you earned?

1 MR. HOFFMAN: Maybe it was \$150,000, approximate,
2 maybe.

3 MR. BAUMSTEIN: Okay. And when you say
4 approximate, it -- was it an annual salary?

5 MR. HOFFMAN: The \$200,000 salary --

6 MR. BAUMSTEIN: Okay, and but --

7 MR. HOFFMAN: It was going to be (indiscernible)
8 from my performance bonus, so it would've come out of the
9 \$76 odd million, presumably.

10 MR. BAUMSTEIN: Okay. So just so everything's
11 clear here, and I -- I'm going to do two hypotheticals that
12 I think should be understandable. Had one, Lehman not gone
13 bankrupt, two, your employment not been terminated as a
14 result, three, Lehman elected to pay you in stock awards
15 that it could deliver, and four, the fiscal year ended with
16 you having generated the same profits you did through
17 September 12, 2008, what would you have received on the
18 first payout date in 2009?

19 MR. HOFFMAN: I would've been awarded 75 percent
20 of the \$76 odd million. Some of that award would be in
21 stock and some would be in cash, if the firm so elected.
22 Plus, I'd received \$7.7 million as the second payout from
23 the 2007 award.

24 MR. BAUMSTEIN: So, and then, you said 75 percent.
25 Typically, did Lehman defer additional -- the cash portion

1 of your bonus to 2010, as part of the clawback?

2 MR. HOFFMAN: That's what they (indiscernible) the
3 prior year, so yes.

4 MR. BAUMSTEIN: So, if it -- you had about \$76
5 million in profits in 2008, that would've been \$19 million
6 in cash that would've been deferred to 2010. Is that right?

7 MR. HOFFMAN: (indiscernible).

8 MR. BAUMSTEIN: And then, you would've received a
9 -- about \$27 million in cash, not -- the 19 plus 7.7 --

10 MR. HOFFMAN: The 19 odd plus 7.7 something, so
11 yes, so about 27.

12 MR. BAUMSTEIN: So, and it would've been about \$38
13 million in equity awards, correct?

14 MR. HOFFMAN: Yes.

15 MR. BAUMSTEIN: Okay. So, the 27 plus the 38 is
16 \$65 million or so, you would've received in 2009, right?
17 Isn't it?

18 MR. HOFFMAN: Yes, \$67.

19 MR. BAUMSTEIN: Okay. And then, just to be clear,
20 what would you have been owed in 2010, under this scenario?

21 MR. HOFFMAN: The \$19 million that was held, the
22 \$19 odd million that was held back in cash --

23 MR. BAUMSTEIN: Okay.

24 MR. HOFFMAN: -- as the second installment.

25 MR. BAUMSTEIN: And would there have been any

1 payments under any of these agreements that would have
2 extended to 2011?

3 MR. HOFFMAN: No.

4 MR. BAUMSTEIN: Under the Barclays agreement, how
5 much of your potential payments could be extended to 2011?

6 MR. HOFFMAN: Well, there was a special award in
7 2011. And then, there was a performance bonus in 2011. I'm
8 not sure specifically what you're asking.

9 MR. BAUMSTEIN: So, just -- so would there have
10 been a \$20 million -- there was a -- not about, there was a
11 \$20 million special award payable in 2011. Do you recall
12 that?

13 MR. HOFFMAN: It would be awarded in 2011.

14 MR. BAUMSTEIN: Right.

15 MR. HOFFMAN: (indiscernible) not awarded. It was
16 not, no.

17 MR. BAUMSTEIN: Okay. And then, if your
18 profitability had -- if you hadn't earned your -- the
19 additional payout for the performance bonus by then, you
20 could've received \$13 million based on your performance
21 bonus in 2011, is that right?

22 MR. HOFFMAN: That's correct.

23 MR. BAUMSTEIN: And then, in 2009, what did you
24 receive total from Barclays?

25 MR. HOFFMAN: In February of 2009, they gave --

1 they paid me \$22 and a half million in cash. And in
2 February of 2009, they awarded me \$7 and a half million in
3 an equity participation plan.

4 MR. BAUMSTEIN: Right. And how does that compare?
5 And by contrast, and just -- that would've been, had you
6 been at Lehman, you would've gotten \$27 million in cash and
7 an additional \$38 in equity? Is that right?

8 MR. HOFFMAN: If I was still -- if the firm was
9 still (indiscernible).

10 MR. BAUMSTEIN: Right. And everything had
11 remained normal, as it had when you were --

12 MR. HOFFMAN: In your hypothetical, yes.

13 MR. BAUMSTEIN: Okay. I want to briefly discuss
14 how stock awards worked when you were at Lehman. When did
15 you typically receive stock awards based on your
16 performance?

17 MR. HOFFMAN: There was a grant date and an award
18 date. I think the award -- the -- you're referring to the
19 award date?

20 MR. BAUMSTEIN: Yeah, when -- yes.

21 MR. HOFFMAN: You would be awarded the RSUs around
22 the time that you would get the cash, so the first quarter
23 of the subsequent year, pretty early in the year. Okay.

24 MR. BAUMSTEIN: And how would it be determined at,
25 you know, what the number of awards would be?

1 MR. HOFFMAN: The compensation owed would be
2 divided by the share price, and that would be the number of
3 awards. The share price would be determined on the grant
4 date, which was in -- after November 30th, 2000 -- of that
5 performance year. Lehman's year ended November 30th, and
6 the strike date or the grant date, I believe, is probably
7 the same term, was determined in December.

8 MR. BAUMSTEIN: Yeah. And so, prior to the grant,
9 how would the value of your award have been affected by
10 fluctuations in LBHI's stock price?

11 MR. HOFFMAN: Prior to the grant, it would not be
12 affected, just the number of shares would change.

13 MR. BAUMSTEIN: Right. So if the value of stock
14 went up, you would get a lower number of shares, is that
15 right?

16 MR. HOFFMAN: That's right.

17 MR. BAUMSTEIN: And obviously, the converse is
18 true.

19 MR. HOFFMAN: That's right.

20 MR. BAUMSTEIN: In the middle of September 2008,
21 did you understand that Lehman was in distress?

22 MR. HOFFMAN: As the year went, it became clearer.

23 MR. BAUMSTEIN: What did you think would happen --
24 and I'm talking a little bit before anyone filed for
25 bankruptcy, but what did you think would happen at that

1 point?

2 MR. HOFFMAN: I thought somebody would inject
3 capital into the firm or that was the most likely scenario.

4 MR. BAUMSTEIN: Did you ever come to understand
5 that Lehman was in negotiations with Barclays to sell the
6 entirety of LBI's business?

7 MR. HOFFMAN: Very late, some time in -- we're
8 talking now about September.

9 MR. BAUMSTEIN: Okay.

10 MR. HOFFMAN: So, I certainly knew if September
11 13th -- I think September 12th, there were rumors that
12 Barclays was a part of the -- was a potential suitor. And
13 then, September 13th, I knew that they were in
14 conversations.

15 MR. BAUMSTEIN: Okay. Did you ever learn that a
16 sale of the entire business was not going to happen?

17 MR. HOFFMAN: I learned that Sunday morning.

18 MR. BAUMSTEIN: So --

19 MR. HOFFMAN: September 14th.

20 MR. BAUMSTEIN: Okay. Do you know of a different
21 transaction was sup -- was reached with Barclays?

22 MR. HOFFMAN: Later, the subsequent week, I don't
23 know if a new deal surfaced.

24 MR. BAUMSTEIN: Okay. What is your understanding
25 of the nature of that new deal that was entered?

1 MR. HOFFMAN: It was an after bankruptcy deal that
2 was purchasing assets, an asset purchase.

3 MR. BAUMSTEIN: Okay. And in connection with the
4 asset purchase, were the assets that were in your portfolio
5 that was -- that were traded for Lehman, were those acquired
6 by Barclays?

7 MR. HOFFMAN: The futures certainly were not, and
8 the bonds probably were not.

9 MR. BAUMSTEIN: Okay.

10 MR. HOFFMAN: They ended up in the Federal
11 Reserve, (indiscernible) system.

12 MR. BAUMSTEIN: And as it related to you, how did
13 the form of the transaction, whether it was a sale -- a sale
14 of the business or an asset and purchase agreement affect
15 you?

16 MR. HOFFMAN: How did the transaction affect me?

17 MR. BAUMSTEIN: Yeah, were -- was there any
18 difference between what a sale of the business would've done
19 for you versus an asset purchase agreement, as you
20 understand it?

21 MR. HOFFMAN: Well, the business was sold or the
22 entity would still exist, and my contract would be -- among
23 those other things, my contract would be honored, as it was.

24 MR. BAUMSTEIN: Okay. So now, I want to take you
25 a bit through the (indiscernible) here. Could you go to

1 exhibit 13, please, in your binder?

2 MR. HOFFMAN: Yes.

3 MR. BAUMSTEIN: Okay. And exhibit 13 is a series
4 of emails you exchanged with Eric Felder on or around -- on
5 September 15th, 2008? Is that -- can you -- is that right?

6 MR. HOFFMAN: Yes.

7 MR. BAUMSTEIN: And who is Eric Felder?

8 MR. HOFFMAN: Eric Felder was a -- I think he ran
9 corporate bonds. At this time, he had a lot of
10 (indiscernible), but this -- he -- for Lehman, he quickly
11 went over to Barclays for a pretty high up job. I think he
12 actually ended up running all of Capital Markets.

13 MR. BAUMSTEIN: And when you say, "Quickly went
14 over to Barclays," did he go over at -- on the first day of
15 the transaction? Do you understand?

16 MR. HOFFMAN: I would say so. I think there were
17 terms that indicated some people had to come over right
18 away, and he was one of them.

19 MR. BAUMSTEIN: At the time you wrote Mr. Felder,
20 what did you understand the status of the negotiations to
21 be?

22 MR. HOFFMAN: They were ongoing. I don't think
23 they were -- a deal was struck to purchase assets yet.

24 MR. BAUMSTEIN: Okay. Could you read the email on
25 the bottom under the subject, "No Joke?"

1 MR. HOFFMAN: "Why don't you have me put a suit on
2 and go tell anyone I will work my butt off for them and make
3 them a half a yard next year if they keep some people
4 employed. The same groups that looked at this place call me
5 aggressively to hire me and rank me as the number one
6 recruit from the division."

7 MR. BAUMSTEIN: What were you offering to do?

8 MR. HOFFMAN: Try and help the transaction along.

9 MR. BAUMSTEIN: And why were you offering to try
10 to help the transaction along?

11 MR. HOFFMAN: Well, I thought it would -- it was
12 an unfortunate situation for a lot of people. It would keep
13 them employed, amongst other things. I would hope that
14 there's a -- that they would assume my contract, possibly,
15 although this isn't part of this conversation.

16 MR. BAUMSTEIN: Why did you believe that you might
17 be able to help the transaction along?

18 MR. HOFFMAN: I think I was 10 percent of more of
19 the profits of the firm. So, if you're buying assets from
20 an entity, I would presumably be a valuable asset to have.

21 MR. BAUMSTEIN: Okay. And what was Mr. Felder's
22 response?

23 MR. HOFFMAN: "Let's chat tonight and strategize.
24 We have a lot of people we can use, but no one as good as
25 you."

1 MR. BAUMSTEIN: Yeah, and when he -- Mr. Felder
2 referred to leverage there, what did you understand he meant
3 by leverage?

4 MR. HOFFMAN: It's (indiscernible) negotiating
5 leverage to try to help the transaction of asset purchase
6 along.

7 MR. BAUMSTEIN: And in the top, where you say, "I
8 will sign up for 10 years at a haircut rate. I do -- I will
9 do what is necessary to salvage any small win for the home
10 team," what did you mean by that?

11 MR. HOFFMAN: I had worked at Lehman for a long
12 time and didn't switch jobs and I was willing to go back to
13 work. To help the home team would be Lehman.

14 MR. BAUMSTEIN: Right. Did Mr. Felder take you up
15 on your offer, to try to help?

16 MR. HOFFMAN: (indiscernible) we chatted that
17 night.

18 MR. BAUMSTEIN: And did -- were you ever a
19 participant in any of the negotiations?

20 MR. HOFFMAN: Definitely not.

21 MR. BAUMSTEIN: So, during this time period, were
22 you doing anything to keep up with the status of
23 negotiations?

24 MR. HOFFMAN: I was in touch with Mike Gelband.

25 MR. BAUMSTEIN: And could you turn to exhibit 18,

1 please? Could you identify for the record what exhibit 18
2 is? And you can have a moment to look at it.

3 MR. HOFFMAN: It's emails between myself and Mike
4 Gelband on Tuesday.

5 MR. BAUMSTEIN: And what was the discussion you
6 were having with Mr. Gelband, at the time, in general terms?

7 MR. HOFFMAN: I think there were emails the night
8 before that he was trying to get them to assume my contract.
9 And he's saying it's still unclear how they're going to deal
10 with it. They have all the optionality.

11 MR. BAUMSTEIN: Okay. And where did you
12 understand Mr. Gelband had to be at the time that this
13 communication was sent?

14 MR. HOFFMAN: In the room of the negotiating room,
15 wherever that was.

16 MR. BAUMSTEIN: Okay. And what did you understand
17 Mr. Gelband to mean by, you know, "Have mentioned your
18 situation 50 times, but they have all the optionality and
19 will decide on a case by case basis?"

20 MR. HOFFMAN: He probably said -- this is an
21 email, this guy's owed money under this contract, what --
22 you know, probably reviewing which assets had been -- and
23 maybe liabilities to take on. And he mentioned me and they
24 would not -- it wasn't up -- it was up to Barclays in the
25 negotiation.

1 MR. BAUMSTEIN: And what were you hoping would
2 happen?

3 MR. HOFFMAN: That Barclays would assume my
4 contract.

5 MR. BAUMSTEIN: And what did you understand would
6 be the consequences of an assumption of your LBI agreements?

7 MR. HOFFMAN: My situation, my 2008 employment
8 contract, the balance (indiscernible) would be honored.

9 MR. BAUMSTEIN: Okay. And would that also include
10 assuming the portion of your -- the special agreement you'd
11 reached with Mary Pat Archer?

12 MR. HOFFMAN: Absolutely.

13 MR. BAUMSTEIN: Did you ever learn what was
14 decided with respect to your contract?

15 MR. HOFFMAN: It was not assumed.

16 MR. BAUMSTEIN: Could you turn to exhibit 37 in
17 the binder, please? And by the way, when I say you learned,
18 did you learn around that time, that it was not going to be
19 assumed, because -- ?

20 MR. HOFFMAN: Yeah.

21 MR. BAUMSTEIN: And why don't we -- ?

22 THE COURT: Let me just ask a question. You're
23 using the word assumed, both of you, back and forth. Is
24 that actually a word that you used in conversations into --
25 in September 2008, where you talked to people at Lehman

1 about this?

2 MR. HOFFMAN: Yes, I think so.

3 THE COURT: You used the word assumed?

4 MR. HOFFMAN: I think so, yes.

5 THE COURT: You think so? I mean, do you know
6 that you did?

7 MR. HOFFMAN: I do, I did use assumed.

8 MR. BAUMSTEIN: You're Honor, you'll hear it later
9 today.

10 THE COURT: I'm just asking a question.

11 MR. BAUMSTEIN: And so, now, I'm sorry, I don't
12 know whether you -- sorry, I was (indiscernible) to exhibit
13 37. And this is an email you sent to Eric Felder at the
14 time. And you wrote to him, "Sorry I missed you. Need to
15 discuss my comp with you and when I can get in front of the
16 new platform. I am thrilled there was a deal, though less
17 than pleased, the employment contracts were entirely
18 disregarded." First of all, why were you thrilled there was
19 a deal?

20 MR. HOFFMAN: Well, I thought it helped other
21 people get jobs or maintain jobs and benefits.

22 MR. BAUMSTEIN: Okay. And what did you mean by
23 saying that you were, "Less than pleased the employment of
24 contracts were entirely disregarded, I did not think that
25 would remotely be the case in a deal like this?"

1 MR. HOFFMAN: That my contract was disregarded, it
2 was not going to be assumed, if I can use that word? And I
3 did not think that would be the case.

4 MR. BAUMSTEIN: Why did you think it wouldn't be
5 the case?

6 MR. HOFFMAN: I thought it was, again, we're back
7 to the 10 percent of profitability, and I thought that I
8 would -- it wouldn't be disregarded.

9 MR. BAUMSTEIN: Okay. I want to talk a little bit
10 about your understanding about your claim and job status
11 that you were at the time. Could you turn to exhibit 23,
12 please? And exhibit 23 is a series of emails that you have
13 with Neil Dubrow. Have you had a moment to look at them?

14 MR. HOFFMAN: Yes.

15 MR. BAUMSTEIN: And we'll kind of take it from the
16 bottom, which will be the first chronologically. But first
17 of all, could you just state for the record, who is Neil
18 Dubrow?

19 MR. HOFFMAN: Neil was a -- an employee of Lehman
20 in Miami.

21 MR. BAUMSTEIN: So on September 16th, 2008, Mr.
22 Dubrow wrote to you, "I assume this is a good outcome for
23 you. The last time Barclays' office was in Philly was
24 probably during the revolution." It's a pretty good line.
25 Can you read your response?

1 MR. HOFFMAN: "It is disastrous. The entity is
2 not being sold, so I have no comp. In fact, the entity is
3 left as a shell with nothing to pay out to the few people it
4 owes money to."

5 MR. BAUMSTEIN: What did you mean by that?

6 MR. HOFFMAN: I was owed money by Lehman.
7 Barclays wasn't going to pay it to me, and the
8 collectability of that money was in serious question.

9 MR. BAUMSTEIN: And then, further up in the
10 communication and reading, the last sentence of the next
11 email from Mr. Dubrow, he wrote, "So Barclays owes no comp
12 or paying no retention packages." Do you see that?

13 MR. HOFFMAN: Yes.

14 MR. BAUMSTEIN: Can you read, for the record, your
15 response?

16 MR. HOFFMAN: "They can pay retention, it will be
17 restricted stock, which has nothing to do with the multi-
18 year (indiscernible) losing. I have much more than tripled
19 this year what I made in the past, and my comp for the last
20 two years combined is well in excess of my career comp, not
21 to mention the RSU damage."

22 MR. BAUMSTEIN: Okay. What was your
23 understanding, at the time, of the nature of any payments
24 Barclays might make to you?

25 MR. HOFFMAN: They could pay retention money.

1 MR. BAUMSTEIN: Okay. Could you turn to exhibit
2 22, please? Are you there, Mr. Hoffman?

3 MR. HOFFMAN: Yes.

4 MR. BAUMSTEIN: Who is Jon Graber?

5 MR. HOFFMAN: A former colleague from Lehman, who
6 is now at RBS.

7 MR. BAUMSTEIN: Okay. And this document looks a
8 little bit different. Can you describe what this document
9 is?

10 MR. HOFFMAN: Similar to an email to Bloomberg,
11 message system.

12 MR. BAUMSTEIN: The bottom communication, is that
13 the one that you wrote, it's the one that says, "I think if
14 it happens, it is structured in a way."

15 MR. HOFFMAN: Yes.

16 MR. BAUMSTEIN: Do you see that? And then, the
17 last sentence says, "I'd like to see it happen. Keep people
18 getting paid longer, but I don't see them taking over the
19 liabilities, so they won't pay bonuses for work done at
20 Lehman." What did you mean in the first part of the
21 sentence, about wanting to see it happen and keeping people
22 getting paid longer?

23 MR. HOFFMAN: Just that.

24 MR. BAUMSTEIN: Which people did you think would
25 be get paid longer?

1 MR. HOFFMAN: I think there was 10,000 employees
2 at the broker dealer, and many of them were -- relied on
3 their paychecks and medical benefits and they were going to
4 continue to receive them.

5 MR. BAUMSTEIN: Were you among the people you were
6 talking about?

7 MR. HOFFMAN: No.

8 MR. BAUMSTEIN: Okay. What did you mean in the
9 second part with, "I don't see them taking over the
10 liabilities, so they won't pay bonuses for work done at
11 Lehman?"

12 MR. HOFFMAN: Lehman had a liability to me for the
13 \$548 million we discussed, plus the \$7.75 million from the
14 prior year, and Barclays was not taking over that liability
15 and they won't pay the bonus. They won't pay that
16 compensation.

17 MR. BAUMSTEIN: Okay. So when you wrote this,
18 what was your understanding concerning whether Barclays
19 would pay your bonus for work you performed at Lehman?

20 MR. HOFFMAN: It wasn't going to happen.

21 MR. BAUMSTEIN: Did you understand the ever
22 change?

23 MR. HOFFMAN: No.

24 MR. BAUMSTEIN: Did Barclays ever tell you it
25 would pay your bonus for work you performed at Lehman?

1 MR. HOFFMAN: No.

2 MR. BAUMSTEIN: Turn to exhibit 24, please. And
3 for the record, can you describe who is Amit Jain?

4 MR. HOFFMAN: He was a trader at Lehman Brothers.

5 MR. BAUMSTEIN: I want to just focus you on the
6 top of page two on -- of this email, where you said, "We got
7 screwed badly, those with liabilities toward LBI." What did
8 you mean by liabilities toward LBI?

9 MR. HOFFMAN: People who LBI contractually owed
10 money to.

11 MR. BAUMSTEIN: Okay.

12 MR. HOFFMAN: Got screwed.

13 MR. BAUMSTEIN: And how did you think that people
14 who LBI contractually owed money to were being screwed?

15 MR. HOFFMAN: That the -- they were not going to
16 get paid those liabilities, they'd become -- they'd be left
17 with the bankrupt entity.

18 MR. BAUMSTEIN: Okay. Turn to exhibit 28. Who is
19 Michael Tobin, for the record?

20 MR. HOFFMAN: A friend.

21 MR. BAUMSTEIN: Okay. And on page two, Mr. Tobin
22 asks whether you would go to Barclays, to which you respond,
23 "Depends, prob is Lehman owes me money," or dollar sign,
24 dollar sign, dollar sign. What did you mean by, that that
25 was a problem?

1 MR. HOFFMAN: The problem is, is that a bankrupt
2 entity owed me money.

3 MR. BAUMSTEIN: And how would that be a problem if
4 -- of you -- if you were to go to Barclays?

5 MR. HOFFMAN: Well, Barclays wasn't assuming my
6 contract, and I also was trying to figure out if I was
7 properly separated from Lehman to preserve that claim.

8 MR. BAUMSTEIN: Okay. He then asked about the
9 chance of collecting, and what did you respond? You can see
10 it's right above that. It says, "Do you -- any chance of
11 collecting?" Do you see that?

12 MR. HOFFMAN: Chapter 11, low chance of money
13 left.

14 MR. BAUMSTEIN: And what did you mean by that?

15 MR. HOFFMAN: Collectability was in question.

16 MR. BAUMSTEIN: At the top of the exchange -- by
17 the way, and do you have an understanding how a legal option
18 to be paid differs from an ability to collect on the claim?

19 MR. HOFFMAN: I think so.

20 MR. BAUMSTEIN: Okay. And what's your
21 understanding?

22 MR. HOFFMAN: A legal obligation to pay would be
23 that I would -- someone would be owed money by the estate,
24 presumably, or the -- and the collectability means, is there
25 money left to pay 100 cents on the dollar, zero cents on the

1 dollar, or somewhere in between?

2 MR. BAUMSTEIN: Could you turn to the top of the
3 exchange? And just before your last response, Mr. Tobin
4 writes to you, "So you're a free agent?" with a question
5 mark.

6 MR. HOFFMAN: Yes.

7 MR. BAUMSTEIN: What was your response?

8 MR. HOFFMAN: "Sure, except I'm losing my career's
9 work. My comp is clawed back at Lehman until I leave, I
10 lost a fortune now on top of the fortune in stock I will
11 have to reinvent. What can you do? At least the phils rook
12 pitcher looks good."

13 MR. BAUMSTEIN: What did you understand it to mean
14 that you were a free agent?

15 MR. HOFFMAN: That this -- that I could -- am --
16 was seeking employment, new employment.

17 MR. BAUMSTEIN: And what was your understanding
18 would happen with your Lehman claim, if you took another job
19 at this point?

20 MR. HOFFMAN: It wouldn't affect my Lehman claim,
21 other than making sure I separated correctly from Lehman.

22 MR. BAUMSTEIN: Okay. And were you concerned with
23 protecting your legal rights, as against Lehman?

24 MR. HOFFMAN: Absolutely.

25 MR. BAUMSTEIN: Why?

1 MR. HOFFMAN: Although the collectability was in
2 question, it was not -- there was definite value to the
3 claim.

4 MR. BAUMSTEIN: And why did you have an
5 understanding that there was value to the claim?

6 MR. HOFFMAN: There were markets for Lehman
7 unsecured debt, and different entities for developing
8 markets. I think maybe prior to this, there weren't --
9 there wasn't a same level of market making and what would be
10 called credit default swaps on these entities. But, it's to
11 take the bigger picture and just look at LBHI. It was a
12 very liquid market before the bankruptcy, over the weekend,
13 after the bankruptcy, it got followed very closely.

14 MR. BAUMSTEIN: Okay. Could you turn to exhibit
15 29, please? Who is James Veale, for the record?

16 MR. HOFFMAN: A proprietary trader,
17 (indiscernible).

18 MR. BAUMSTEIN: And as a proprietary trader, was
19 he at Credit Suisse, though?

20 MR. HOFFMAN: Yes.

21 MR. BAUMSTEIN: Okay. And I just want to --
22 again, is this a Bloomberg communication, not a regular
23 email?

24 MR. HOFFMAN: I think so, yeah.

25 MR. BAUMSTEIN: Okay. And is it you who wrote, "I

1 am pretty bummed, no comp for two years, plus all the lost
2 stock. Never really had years like the last two before.
3 I've probably been two percent for my career -- been paid
4 two percent for my career." What did you mean?

5 MR. HOFFMAN: Well, I lost -- I made a lot of
6 money the prior two years that I did not get compensated
7 for, save the first portion of the 2007 award that I did
8 receive in the first quarter of 2008.

9 MR. BAUMSTEIN: Okay. When did you start looking
10 for a job?

11 MR. HOFFMAN: I think Tuesday the 16th.

12 MR. BAUMSTEIN: Okay. Had you ever looked to
13 change jobs previously?

14 MR. HOFFMAN: People had continuously approached
15 me. Generally, it was not something I pursued.

16 MR. BAUMSTEIN: Okay. Was your search for
17 alternative employment going on contemporaneously with your
18 negotiations with Barclays?

19 MR. HOFFMAN: It was.

20 MR. BAUMSTEIN: Did you discuss with anyone at
21 Barclays that you had been meeting with other firms?

22 MR. HOFFMAN: Yes.

23 MR. BAUMSTEIN: Did Barclays indicate that it had
24 a problem with you meeting with other firms at that time?

25 MR. HOFFMAN: No.

1 MR. BAUMSTEIN: Did you have an understanding of
2 what typically is guaranteed to someone in your industry
3 when they change jobs?

4 MR. HOFFMAN: I think it's not uncommon to get one
5 year's worth of comp. Some, you know, some fixed payouts,
6 certainly a -- more than reasonable.

7 MR. BAUMSTEIN: Okay. Did anyone contact you
8 about trying to help you -- find you a new job?

9 MR. HOFFMAN: A lot of people.

10 MR. BAUMSTEIN: Why don't we turn to exhibit 30,
11 please? Who is Wayne Dovan?

12 MR. HOFFMAN: 38? I'm not on the same exhibit.

13 MR. BAUMSTEIN: I'm sorry. I said 30, or maybe I
14 -- if, or if not, if I said 38, I misspoke. I'm sorry, 30.

15 MR. HOFFMAN: 30. I might've misheard you. Wayne
16 Dovan worked at Merrill Lynch. He was an Institutional
17 Sales Person, I believe, at the time.

18 MR. BAUMSTEIN: And in the middle of the email
19 that he wrote to you on September 18, 2005, he'd write -- he
20 wrote, "I'd be happy to facilitate an intro to any of the
21 funds I cover, and/or our ML/BOA prop effort. I'm sure --
22 paren -- I'm sure we'd love to talk to you." Did you ever
23 meet with Merrill Lynch or Bank of America?

24 MR. HOFFMAN: I did.

25 MR. BAUMSTEIN: And who did you meet?

1 MR. HOFFMAN: J.P. Marra.

2 MR. BAUMSTEIN: Did Merrill Lynch/Bank of America
3 ever express an interest in hiring you?

4 MR. HOFFMAN: Yes, some interest.

5 MR. BAUMSTEIN: What type of terms were they --
6 were you discussing with them?

7 MR. HOFFMAN: We didn't get specific.

8 MR. BAUMSTEIN: Did you tell Merrill Lynch/Bank of
9 America at that time about the amounts of money that LBI
10 owed you?

11 MR. HOFFMAN: I don't know that I told J.P. Marra.

12 MR. BAUMSTEIN: Okay. Did you ever get into
13 further discussions about any signing bonuses or guaranteed
14 payments?

15 MR. HOFFMAN: No.

16 MR. BAUMSTEIN: Okay. And did you ever get a
17 formal offer of employment from Bank of America/Merrill
18 Lynch?

19 MR. HOFFMAN: No.

20 MR. BAUMSTEIN: Okay. Did you ever meet with J.P.
21 Morgan?

22 MR. HOFFMAN: Yes.

23 MR. BAUMSTEIN: Okay. Could you just turn to
24 exhibit 26? I think it's -- there's some communications
25 here. Just -- do you know -- well, let me just ask you

1 without reference to it. Do you know who introduced you to
2 J.P. Morgan?

3 MR. HOFFMAN: I was introduced in several ways. I
4 guess this is (indiscernible) here.

5 MR. BAUMSTEIN: Okay. And who did you meet at
6 J.P. Morgan?

7 MR. HOFFMAN: A few people, but Bill Johnson was
8 the Head of the Proprietary Trading Group.

9 MR. BAUMSTEIN: And did Mr. Johnson express an
10 interest in hiring you?

11 MR. HOFFMAN: He did.

12 MR. BAUMSTEIN: What type of terms was Mr. Johnson
13 offering?

14 MR. HOFFMAN: Some upfront cash and a percent of
15 my P&L.

16 MR. BAUMSTEIN: Okay.

17 MR. HOFFMAN: Profitability.

18 MR. BAUMSTEIN: Do you recall what the amount of
19 upfront cash and/or a percent of the profitability may have
20 been?

21 MR. HOFFMAN: I think the percent of profitability
22 was in the 15 percent area, and the upfront cash was
23 reasonably modest, maybe \$10 million.

24 MR. BAUMSTEIN: Okay. And what did you tell Mr.
25 Johnson about the amounts of money that LBI owed you?

1 MR. HOFFMAN: I told him what I was out, and he
2 said he could elevate a profitability, a payout, possibly,
3 if that was something I was interested in.

4 MR. BAUMSTEIN: What do you mean by, elevate a
5 payout?

6 MR. HOFFMAN: Well, instead of paying me 15
7 percent, maybe paying me something higher to give me an
8 opportunity to earn more money than I was looking for.

9 MR. BAUMSTEIN: Okay. And did you discuss with
10 him the form of consideration that that -- any payment might
11 be?

12 MR. HOFFMAN: I don't know that we discussed
13 equity awards and whatnot, if that's what you mean.

14 MR. BAUMSTEIN: Okay. Did you get a formal offer
15 of employment from Bill Johnson?

16 MR. HOFFMAN: No.

17 MR. BAUMSTEIN: Are you confident that you
18 could've gotten employed by J.P. Morgan, if you wanted to?

19 MR. HOFFMAN: Yes.

20 MR. BAUMSTEIN: Did you ever meet with Millennium
21 Capital?

22 MR. HOFFMAN: Yes.

23 MR. BAUMSTEIN: Who is Millennium Capital?

24 MR. HOFFMAN: It's a large hedge fund located in
25 New York.

1 MR. BAUMSTEIN: And who introduced you to
2 Millennium?

3 MR. HOFFMAN: Mike Gelband.

4 MR. BAUMSTEIN: And that's the same Mike Gelband
5 who had been your boss for many years?

6 MR. HOFFMAN: The same person.

7 MR. BAUMSTEIN: Was Mr. Gelband familiar with your
8 trading record at Lehman?

9 MR. HOFFMAN: Intimately so.

10 MR. BAUMSTEIN: And who did you meet at
11 Millennium?

12 MR. HOFFMAN: It -- Izzy Englander, who owned the
13 fund. I also met with a risk officer, and then, a -- I
14 guess it would be an administrator who would help setup
15 hardware, software, et cetera.

16 MR. BAUMSTEIN: Did Millennium express an interest
17 in hiring you?

18 MR. HOFFMAN: Yes.

19 MR. BAUMSTEIN: And what type of terms was
20 Millennium offering?

21 MR. HOFFMAN: Upfront cash and a 30 percent payout
22 until I could recoup or make money that I was looking for.
23 And then, after that, 20 percent, plus the ability to hire
24 people under me and pay them a lower percent and keep the
25 difference.

1 MR. BAUMSTEIN: Okay. When you say, "Recoup the
2 money you were looking for," what money did you tell
3 Millennium you were looking for?

4 MR. HOFFMAN: Well, I'm looking for \$83 million.

5 MR. BAUMSTEIN: And why did you say that?

6 MR. HOFFMAN: Well, Mike was aware of what I was
7 looking for. And \$83 million seemed like a reasonable thing
8 to ask for, frankly, in light of things we talked about and
9 in light of the fact that it was obviously on the table,
10 because I had just lost \$83 million and that's what I was
11 looking for to go to work.

12 MR. BAUMSTEIN: Are you confident that Millennium
13 would've given you an offer on the terms that you just
14 discussed?

15 MR. HOFFMAN: Absolutely.

16 MR. BAUMSTEIN: Is there anything you've learned
17 subsequent to that time period, that makes you confident
18 about that?

19 MR. HOFFMAN: I'm confident they still would.

20 MR. BAUMSTEIN: And why do you say that?

21 MR. HOFFMAN: I just had the same meeting a few
22 weeks ago.

23 MR. BAUMSTEIN: When you say the same meeting--

24 MR. HOFFMAN: Mike Gelband.

25 MR. BAUMSTEIN: Okay.

1 MR. HOFFMAN: Who's consistently expressed
2 interest in hiring me --

3 MR. BAUMSTEIN: Okay.

4 MR. HOFFMAN: -- since then.

5 MR. BAUMSTEIN: Okay. Did you meet with Citadel?

6 MR. HOFFMAN: I did.

7 MR. BAUMSTEIN: And could you just state for the
8 record who Citadel is?

9 MR. HOFFMAN: Another large hedge fund.

10 MR. BAUMSTEIN: And who did you meet with at
11 Citadel?

12 MR. HOFFMAN: PatRich (indiscernible) and Derek
13 Kaufman.

14 MR. BAUMSTEIN: Okay. Did Citadel express an
15 interest in hiring you, Mr. Hoffman?

16 MR. HOFFMAN: Yes.

17 MR. BAUMSTEIN: And what type of terms was Citadel
18 considering offering you?

19 MR. HOFFMAN: Their percent was more a range.
20 They didn't have a specific number, because it also depended
21 on the profitability of the whole hedge fund. But, it could
22 be pretty high, but you were not guaranteed -- you were only
23 guaranteed a range of the percent.

24 MR. BAUMSTEIN: Okay. Did you discuss with them
25 any particular compensation guarantees?

1 MR. HOFFMAN: We did.

2 MR. BAUMSTEIN: And what did Citadel say about any
3 potential compensation guarantees?

4 MR. HOFFMAN: If you're looking for a particular
5 number, it's probably not -- have much of an issue,
6 depending on what it is.

7 MR. BAUMSTEIN: Okay.

8 MR. HOFFMAN: I don't think they would have a
9 major issue guaranteeing me certain amounts of money.

10 MR. BAUMSTEIN: Okay. When you say certain
11 amounts, can you give a range of what you thought you might
12 have (indiscernible) -- ?

13 MR. HOFFMAN: \$10 million.

14 MR. BAUMSTEIN: Okay. And did you discuss
15 compensation? I know you said the compensation percentages
16 were also tied to the firm's profitability. Do you have any
17 idea overall how it would -- what the pro -- what the
18 percentages were relative to some of the other offers? Or,
19 is it --

20 MR. HOFFMAN: I think it was less than the 20
21 percent, which would've been the ultimate percent of
22 Millennium.

23 MR. BAUMSTEIN: Okay. And were you confident that
24 you could get an offer from Citadel?

25 MR. HOFFMAN: I'm still confident I could get an

1 offer from Citadel.

2 MR. BAUMSTEIN: And why do you say that?

3 MR. HOFFMAN: Derek Hoffman tried to hire me
4 before this period, during this period, and after this
5 period.

6 MR. BAUMSTEIN: Okay. Let's keep going. Did you
7 ever meet with Brevan Howard?

8 MR. HOFFMAN: That was on the phone, I believe.

9 MR. BAUMSTEIN: Okay. And who is Brevan Howard?

10 MR. HOFFMAN: I met with Brevan Howard prior to
11 this, but many years prior. That would be in the 90s. I
12 don't think we're really discussing that.

13 MR. BAUMSTEIN: Oh okay. No, no, no, I'm sorry --
14 I'm --

15 MR. HOFFMAN: (indiscernible) was on the phone.

16 MR. BAUMSTEIN: Okay. And who did you speak with
17 on the phone at Brevan Howard?

18 MR. HOFFMAN: Alan Howard.

19 MR. BAUMSTEIN: And what is Brevan Howard?

20 MR. HOFFMAN: A large hedge fund.

21 MR. BAUMSTEIN: And who is Alan Howard at Brevan
22 Howard?

23 MR. HOFFMAN: He would be the principal owner of a
24 lot of the general partnership or all of it. I don't know
25 what the ownership is.

1 MR. BAUMSTEIN: Did Mr. Howard express an interest
2 in hiring you?

3 MR. HOFFMAN: Yes, although I can't say that he --
4 I'm not 100 percent confident I could've gotten an offer
5 from him right then, because he had another guy named Chris
6 Rokos, who was very talented and had a lot of overlap. So,
7 it would've been challenging.

8 MR. BAUMSTEIN: Okay. And did you ever get to the
9 discussion with -- about terms of any potential employment
10 with the firm?

11 MR. HOFFMAN: They paid 20 percent, but that was
12 not something I could say that he offered me.

13 MR. BAUMSTEIN: Okay. Did you ever meet with
14 Moore Capital Management?

15 MR. HOFFMAN: I did.

16 MR. BAUMSTEIN: What is Moore Capital Management?

17 MR. HOFFMAN: A large hedge fund.

18 MR. BAUMSTEIN: And who introduced you to Moore?

19 MR. HOFFMAN: I knew Moore over the years in a
20 variety of ways. I think this particular introduction may
21 have been from Carl Faker.

22 MR. BAUMSTEIN: Okay. And what were your
23 discussions with Moore Capital Management?

24 MR. HOFFMAN: How much money can you manage? What
25 do you trade? How much money can you manage? Work when you

1 need to trade.

2 MR. BAUMSTEIN: Right. And you said, "How much
3 money can you manage?" How does their -- how would their
4 compensation structure have worked?

5 MR. HOFFMAN: They would pay a percent of the
6 money under management and a percent of profitability, so
7 it's different.

8 MR. BAUMSTEIN: Okay, so it's -- do you know what
9 kind of -- how much money were they talking about you
10 potentially managing?

11 MR. HOFFMAN: A billion plus.

12 MR. BAUMSTEIN: And what percentage of money under
13 management were they discussing? What type of range for
14 you?

15 MR. HOFFMAN: One percent.

16 MR. BAUMSTEIN: So if -- let's say it were \$1.5
17 billion, that would mean irrespective of profits, you could
18 expect at least \$15 million of compensation in addition to a
19 percentage of the profits?

20 MR. HOFFMAN: Yes.

21 MR. BAUMSTEIN: Okay. And what percentages were
22 you discussing, of revenue?

23 MR. HOFFMAN: 12.

24 MR. BAUMSTEIN: (indiscernible) more capital?
25 Okay. Did you ever meet with Black River Asset Management?

1 MR. HOFFMAN: That was on the phone.

2 MR. BAUMSTEIN: Okay. Who introduced you to Black
3 River Asset Management?

4 MR. HOFFMAN: I knew Jeff Drobny over the years
5 because we were occupying a similar space in the markets.

6 MR. BAUMSTEIN: Okay. And just for the record,
7 what is Black River Asset Management?

8 MR. HOFFMAN: A hedge fund.

9 MR. BAUMSTEIN: Okay. Did you ever discuss -- by
10 the way, I don't think I asked this to you, about Moore,
11 were you confident that you could get an offer from Moore?

12 MR. HOFFMAN: Yes.

13 MR. BAUMSTEIN: Talking about now back to Black
14 River Asset Management, what -- did you ever discuss terms
15 of potential employment with Black River Asset Management?

16 MR. HOFFMAN: Yes. Their percentages were lower.

17 MR. BAUMSTEIN: Okay.

18 MR. HOFFMAN: And they were in Minnesota.

19 MR. BAUMSTEIN: Okay. Did I mention SAC Capital?
20 I may have skipped that one, right?

21 MR. HOFFMAN: You did not mention it.

22 MR. BAUMSTEIN: Yeah. It's -- I'm sorry, it's a
23 big list. Did you meet with SAC Capital?

24 MR. HOFFMAN: Yes.

25 MR. BAUMSTEIN: And with whom did you meet?

1 MR. HOFFMAN: Steve Cohen, Evan Sheinberg, two
2 other traders who worked with Evan, their names were Mark
3 and Josh.

4 MR. BAUMSTEIN: Okay. Okay. You met with a bunch
5 of people. Where did you meet?

6 MR. HOFFMAN: Connecticut.

7 MR. BAUMSTEIN: Okay, at SAC's headquarters?

8 MR. HOFFMAN: Yes.

9 MR. BAUMSTEIN: And how long did your meeting go
10 with them?

11 MR. HOFFMAN: All day.

12 MR. BAUMSTEIN: And did SAC express an interest in
13 hiring you?

14 MR. HOFFMAN: I would say not all day, meaning
15 five hours.

16 MR. BAUMSTEIN: Okay. Did SAC express an interest
17 in hiring you?

18 MR. HOFFMAN: Yes.

19 MR. BAUMSTEIN: And did SAC talk to you about what
20 your compensation might be, if you were to take an offer?

21 MR. HOFFMAN: They paid a higher percent. We
22 talked about 30 percent. I think the fund collected 50
23 percent. I don't know if the 30 percent would've stayed for
24 the life of the time I was at the firm, but I definitely
25 also discussed what I was looking for, which is \$83 million.

1 MR. BAUMSTEIN: Okay. And did you talk about
2 compensation guarantees with it -- with SAC?

3 MR. HOFFMAN: I don't know. I'm again confident
4 they would guarantee me compensation, but I'm not going to -
5 - it didn't get that far.

6 MR. BAUMSTEIN: Generally, in your negotiations,
7 what -- is there a relationship between amounts of
8 compensation guarantee and the percentage you were able to -
9 - you thought you might be able to obtain?

10 MR. HOFFMAN: Yes.

11 MR. BAUMSTEIN: Could you just describe that
12 relationship?

13 MR. HOFFMAN: I think the firms are -- you could
14 see what the firms collect. I think at banks, they
15 generally pay out 30 something percent of revenue. So, they
16 can figure out if they want to give percentages or
17 guarantees or some combination. I think if you want a
18 higher guarantee, you're going to end up with a lower
19 percent. I think someone said that yesterday. I think it's
20 very common, it's just logical as well.

21 MR. BAUMSTEIN: Okay. Did each of the places with
22 which you meet have sufficient capital for you to execute
23 your trading strategies?

24 MR. HOFFMAN: They did. Black River, I'm not
25 certain of the asset size of the fund, so I'll pull that one

1 out. I believe they did as well. The other ones,
2 absolutely.

3 MR. BAUMSTEIN: And for your strategies, how much
4 capital did you need from an institution to support you?

5 MR. HOFFMAN: Well, in 2007, we can see from the
6 numbers that I used I think an average of \$200 odd million
7 of capital. In 2008, it was probably higher, maybe \$300 or
8 \$400 million. And the years with Barclays, they never used
9 more than \$600 million in capital on any day.

10 MR. BAUMSTEIN: Okay. Based on your various
11 interviews during this time period, what was your
12 understanding of your market -- marketability at that point?

13 MR. HOFFMAN: Very high.

14 MR. BAUMSTEIN: And based on your interviews, what
15 was your understanding of how your Lehman deal compared to
16 what market deals were?

17 MR. HOFFMAN: Well, my percentage tab was below
18 market.

19 MR. BAUMSTEIN: Okay. Did -- had you known before
20 you started interviewing that your percentage payouts at
21 Lehman were below market?

22 MR. HOFFMAN: I suspected that it was low and
23 people would call me and try to hire me on a regular basis,
24 and I understood that the payouts were higher other places.

25 MR. BAUMSTEIN: Okay. Why hadn't you considered

1 leaving -- or I guess why haven't you left Lehman earlier?

2 MR. HOFFMAN: I liked (indiscernible), it meant
3 everything to me. I also -- I was not one to switch jobs.
4 I tried to keep my head down and do my work, and I was -- if
5 I worked for people I liked, I liked Mike Gelband. I would
6 keep doing it, and with the understanding that he had, over
7 the years, bumped up my percentage without me even asking,
8 because he knew that I was below market and he made it clear
9 I'm not going to -- I'm going to try to treat you fairly,
10 without you having to come here and make demands.

11 MR. BAUMSTEIN: Can you give an example of what
12 you mean?

13 MR. HOFFMAN: I think I was being paid 10 percent
14 originally, and then it went up to 12, and then it became 12
15 to 14. I'd have to look at the interval changes.

16 MR. BAUMSTEIN: Right. And did you have to ask
17 for those raises?

18 MR. HOFFMAN: Never.

19 MR. BAUMSTEIN: Okay. And was that something that
20 you valued in an employer?

21 MR. HOFFMAN: Sure.

22 MR. BAUMSTEIN: Okay. Compared to what you agreed
23 to report --

24 MR. HOFFMAN: My -- sorry to interrupt. Mike made
25 it clear that if he gave somebody else a higher percent, he

1 would -- he was going to do the same for me.

2 MR. BAUMSTEIN: Okay. Compared to what you agreed
3 to with Barclays, what were some of the advantages of the
4 terms you believed you could get from other employers?

5 MR. HOFFMAN: Higher percent payout.

6 MR. BAUMSTEIN: And what were some of the
7 advantages of the Barclays offer that you have -- you
8 subsequently accepted?

9 MR. HOFFMAN: They were special awards in there.
10 The main relevant one was the February 2009 award.

11 MR. BAUMSTEIN: What do you mean by, that was the
12 February 2009 award was the main one that was a -- that for
13 purposes of you deciding what to do?

14 MR. HOFFMAN: They were going to give me \$22
15 million, \$22 and a half million in February 2009, after
16 which point, I could leave. So, I was -- that was freedom,
17 and in fairness to all of the employers we discussed, I
18 don't know that anybody would have paid me in February 2009,
19 when for work to be done in 2009. In other words, they'd
20 pay on a regular pay schedule. It's always at the end of
21 the year. So, likely, any compensation would come at the
22 end of the year, (indiscernible) --

23 MR. BAUMSTEIN: So any guarantee would have been
24 at least, at that point, you're talking 2010--

25 MR. HOFFMAN: (indiscernible). Yes.

1 MR. BAUMSTEIN: Or 2010 or so, right?

2 MR. HOFFMAN: Yes.

3 MR. BAUMSTEIN: Or -- okay. Were there other
4 advantages to working with Barclays, compared to some of the
5 other places you were interested, non-monetary ones?

6 MR. HOFFMAN: I had infrastructure set up in my
7 home that they indicated I could continue to use, meaning I
8 could work from home.

9 MR. BAUMSTEIN: Okay. And was -- why was that
10 important for you?

11 MR. HOFFMAN: I -- and continuing to have family
12 reasons that I'd rather not discuss, but it's
13 (indiscernible).

14 MR. BAUMSTEIN: I'm -- with the benefit of
15 hindsight, what do you wish you had done?

16 MR. HOFFMAN: Worked for Millennium.

17 MR. BAUMSTEIN: Why do you say that?

18 MR. HOFFMAN: I would've made a lot more money. I
19 -- a lot of the people who are on these lists, ended up
20 going to Millennium over time. They have better hardware,
21 software systems, access to more trading products. I can't
22 think of a reason that I wouldn't have been better off.

23 MR. BAUMSTEIN: Yeah. And was the fact -- okay.
24 And was also the fact that Mr. Gelband there part of the
25 reason?

1 MR. HOFFMAN: Absolutely.

2 MR. BAUMSTEIN: Okay. I think you -- we mentioned
3 it before in passing without giving it a name, were you
4 aware, at some point, of an asset purchase agreement, which
5 I can call the APA, between Barclays and Lehman?

6 MR. HOFFMAN: Yes.

7 MR. BAUMSTEIN: Okay. Were you involved in
8 negotiating it?

9 MR. HOFFMAN: No.

10 MR. BAUMSTEIN: Now, you stated before that you
11 understood that your agreement was not assumed or assigned,
12 correct?

13 MR. HOFFMAN: Yes.

14 MR. BAUMSTEIN: Do you know whether Barclays had
15 an option to assume or assign your contract under the APA?

16 MR. HOFFMAN: I think they did have that option.

17 MR. BAUMSTEIN: Okay. And why did you want your
18 contract assumed?

19 MR. HOFFMAN: I wanted to be compensated for the
20 \$548 million I just made.

21 MR. BAUMSTEIN: Okay. And as, like we said, were
22 there other non-economic terms of your agreement that you
23 would -- that you would've wanted to be assumed?

24 MR. HOFFMAN: I wanted the ability to
25 (indiscernible) -- not have retention tools.

1 MR. BAUMSTEIN: Okay. And by that, do you -- are
2 you referring to some of the agreement in the Mary Pat
3 Archer agreement?

4 MR. HOFFMAN: That's what I'm referring to.

5 MR. BAUMSTEIN: Okay. Did there come a time when
6 you and others received an offer from Barclays pursuant to
7 the APA?

8 MR. HOFFMAN: Yes.

9 MR. BAUMSTEIN: Let's start with exhibit 1EE32,
10 please?

11 THE COURT: Mr. Baumstein, let me ask you to pause
12 for a moment, since we've been at it for about an hour and
13 20 minutes. So, can you give me an estimate of how much
14 more (indiscernible)?

15 MR. BAUMSTEIN: I would guess a -- probably I'm 50
16 percent through to -- or so.

17 THE COURT: Okay. Perhaps we should take a little
18 break.

19 MR. BAUMSTEIN: No problem, Your Honor.

20 THE COURT: Mr. Hoffman, a little bit of a break?

21 MR. HOFFMAN: I'm comfortable either way.

22 THE COURT: All right, anyone else? Does everyone
23 want to keep going? All right, I overrule myself. You can
24 keep going.

25 MR. BAUMSTEIN: Okay, yeah.

1 THE COURT: We should take a break after a little
2 while.

3 MR. BAUMSTEIN: Of course, Your Honor. We can go
4 for a little bit. I'll try to find a nice natural breaking
5 spot.

6 THE COURT: Sure, okay.

7 MR. BAUMSTEIN: This would've been one --

8 THE COURT: Okay.

9 MR. BAUMSTEIN: -- so, as I think you intuited.
10 Could you turn to exhibit 32?

11 MR. HOFFMAN: Yes.

12 MR. BAUMSTEIN: Okay. And this is a dear
13 colleague email, and it's from Bob Diamond, Rich Ricci and
14 Bart McDade. Who are Bob Diamond, Rich Ricci and Bart
15 McDade?

16 MR. HOFFMAN: Bob Diamond and Rich Ricci were
17 employees, senior, very senior employees of Barclays
18 Capital. And Bart McDade was a very senior employee of
19 Lehman Brothers, who I think joined Barclays.

20 MR. BAUMSTEIN: Okay. Had you met Bob Diamond and
21 Rich Ricci at the time this email was sent to you?

22 MR. HOFFMAN: No.

23 MR. BAUMSTEIN: If you go to the fourth paragraph
24 down, it says, "You will soon receive an offer to join
25 Barclays Capital." Do you see that?

1 MR. HOFFMAN: Yes.

2 MR. BAUMSTEIN: And the -- it names a whole bunch
3 of groups of people to whom the offer to join Barclays
4 Capital was being sent. Were you among one of those groups,
5 or can you identify which group you were among?

6 MR. HOFFMAN: Fixed income.

7 MR. BAUMSTEIN: Okay. And did you have any
8 understanding how this email came to be sent to you?

9 MR. HOFFMAN: It's a dear colleague email from a
10 Lehman server. My guess is it went to employees of these
11 divisions at Lehman.

12 MR. BAUMSTEIN: Do you know how -- if this related
13 at all to the asset purchase agreement?

14 MR. HOFFMAN: It probably did because I think the
15 asset purchase agreement was formally approved. I think it
16 needed court approval. I wasn't fully aware that it would
17 need such an approval, but apparently, it did, and that was,
18 I think that day, the prior day, the prior business day.

19 MR. BAUMSTEIN: Okay. What does this email say
20 about how bonuses would be treated for those who accepted
21 Barclays' offer of employment?

22 MR. HOFFMAN: There's a discretionary bonus.

23 MR. BAUMSTEIN: And just for the record, can you
24 point where in the document it talks about there -- that
25 there was being -- or maybe I'll read it for the record.

1 That's the top of page, with the Bates stamp 843, where it
2 says, "We also want to provide clarity around the 2008 year
3 end compensation process. It is our intention to create a
4 discretionary bonus pool for those employees joining
5 Barclays Capital." What was your reaction to having
6 received an employment offer from Barclays that would've had
7 a discretionary bonus?

8 MR. HOFFMAN: It was a non-starter.

9 MR. BAUMSTEIN: And why were you not interested in
10 accepting employment with Barclays, if it would've included
11 a discretionary bonus?

12 MR. HOFFMAN: I could easily negotiate the terms
13 that were much more advantageous.

14 MR. BAUMSTEIN: And did you know that at the time
15 you got this?

16 MR. HOFFMAN: Yes.

17 MR. BAUMSTEIN: Could you go to exhibit 33,
18 please? Do you recognize this document at all?

19 MR. HOFFMAN: Yes.

20 MR. BAUMSTEIN: Okay.

21 THE COURT: Can I ask you to go back? When you --
22 Mr. Hoffman, could you turn back to the first page of the
23 document that is exhibit 32, the last paragraph? It says,
24 "Once everyone joins Barclays Capital, we will start a fair
25 and equitable process to review on the final organization

1 and ensure we have the best person in every seat. We expect
2 this process to be completed by year end. For those
3 employees who do not receive a role, we commit to providing
4 severance for -- as well as bonus consideration for their
5 contributions in 2008." Did you have an understanding of
6 what that meant?

7 MR. HOFFMAN: I would expect they had a lot of
8 overlap and they would figure out who was the best person in
9 every seat, meaning if there was two people who traded the
10 two year note, they'd probably end up with just one of them.

11 THE COURT: Okay.

12 MR. HOFFMAN: That process would take some time to
13 evaluate the people who have identical or overlapping roles.
14 And for those who did not receive a role, because their role
15 was overlapping, will provide a severance and bonus
16 consideration for contributions in 2008.

17 THE COURT: Okay. That's it.

18 MR. BAUMSTEIN: Okay. Turning back to exhibit 33.
19 Do you recall receiving this document or one like it?

20 MR. HOFFMAN: Yes.

21 MR. BAUMSTEIN: Do you have any understanding how
22 this document relates to the APA or the previous email we
23 just discussed?

24 MR. HOFFMAN: It looks like it's the -- all for
25 contemplating the prior email.

1 MR. BAUMSTEIN: Okay. And if you look at the
2 third paragraph, it says, "Your acceptance of employment
3 with Barclays will be indicated by your attendance at work
4 on and after September 22nd, 2008. In addition, in order to
5 accept or decline the offer, it is necessary that you send
6 an email to either acceptbarclaysoffer@lehman.com or
7 declinebarclaysoffer@lehman.com." Did you understand there
8 were two things you needed to do to accept the offer -- this
9 offer you had received from (indiscernible)?

10 MR. HOFFMAN: Yes.

11 MR. BAUMSTEIN: Did you attend work for Barclays
12 on September 22nd?

13 MR. HOFFMAN: No.

14 MR. BAUMSTEIN: When was the first time you began
15 to perform work for Barclays?

16 MR. HOFFMAN: October 6th. I didn't start
17 trading, but I started the work to setup trading.

18 MR. BAUMSTEIN: Did you ever attend Lehman's old
19 headquarters during the period between September 22nd and
20 October 3rd, when you signed your agreement?

21 MR. HOFFMAN: Yes.

22 MR. BAUMSTEIN: And for what purpose?

23 MR. HOFFMAN: To interview and negotiate for
24 employment.

25 MR. BAUMSTEIN: Okay. And when you were

1 interviewing for employment, did you understand you were
2 already employed by Barclays?

3 MR. HOFFMAN: No.

4 MR. BAUMSTEIN: Did anyone tell you you were?

5 MR. HOFFMAN: No.

6 MR. BAUMSTEIN: The other thing it says you need
7 to do was send an email. Did you ever send an email
8 accepting this offer?

9 MR. HOFFMAN: No.

10 MR. BAUMSTEIN: Did you ever respond with a
11 decline to the offer?

12 MR. HOFFMAN: No.

13 MR. BAUMSTEIN: And if you had sent an email, do
14 you have any understanding who would have it?

15 MR. HOFFMAN: Barclays, (indiscernible) the head
16 of human resources for Barclays.

17 MR. BAUMSTEIN: Okay. So now, I -- taking a half
18 a step back here, prior to having received the generic offer
19 from Barclays, had you met with anyone from Barclays
20 concerning your employment or situation?

21 MR. HOFFMAN: Yes.

22 MR. BAUMSTEIN: I just want to turn to exhibit
23 1EE27, so we can get it -- I think it'll help with the
24 timing. And you see it's just an email from you to you with
25 a phone number for Eric Bommensath. Do you know why you

1 sent this email to yourself?

2 MR. HOFFMAN: Somebody emailed me saying Eric
3 Bommensath wants to speak to me, here's his number. And I
4 think I didn't have it on my Blackberry, but it was on
5 something else, so I needed to forward it to have the
6 number.

7 MR. BAUMSTEIN: Okay. And who was Eric
8 Bommensath?

9 MR. HOFFMAN: He ran fixed income for Barclays.

10 MR. BAUMSTEIN: Okay. Do you know whether you
11 spoke to Eric Bommensath around September 17 or 18?

12 MR. HOFFMAN: I met him maybe that afternoon.

13 MR. BAUMSTEIN: Okay. Where did that meeting take
14 place?

15 MR. HOFFMAN: On a street corner.

16 MR. BAUMSTEIN: Why were you on new -- I'm sorry -
17 - why were you in New York on the day that you met Mr.
18 Bommensath on the street corner?

19 MR. HOFFMAN: I was talking to other employers.

20 MR. BAUMSTEIN: Do you recall what Mr. Bommensath
21 said to you? Well, first of all, can you tell me what
22 street -- what corner you were on?

23 MR. HOFFMAN: It was near Grand Central there at
24 the 200 Park Avenue building, it was where Barclays was.
25 And it was just north of there, so maybe it was 45th and

1 Park, if I have my orientation correct.

2 MR. BAUMSTEIN: Okay. Do you recall what Mr.
3 Bommensath said to you?

4 MR. HOFFMAN: He said, "I've heard a tremendous
5 about you. I know you're a great trader. Lehman owes you
6 the money, and we don't owe you that money."

7 MR. BAUMSTEIN: Do you recall what your response
8 was?

9 MR. HOFFMAN: I was upset. I was not shocked
10 because I had already been told such a thing by Mike
11 Gelband, but he was, you know, I would characterize him as
12 maybe brash about it.

13 MR. BAUMSTEIN: Did -- was there anything else
14 that was discussed at the street corner meeting?

15 MR. HOFFMAN: He said, "You're, you know, free to
16 negotiate for employment here."

17 MR. BAUMSTEIN: Okay. And what did you understand
18 that to mean?

19 MR. HOFFMAN: Just that. He wasn't clear if he
20 wanted to hire me. He was clear he didn't owe me anything
21 or the firm didn't owe me anything. He wasn't sure he
22 wanted to hire me, but he felt that it may make sense for me
23 to interview with Barclays, meet with -- now I think he told
24 me to meet with Rich and Jerry, who I didn't even know who
25 Rich and Jerry were. I would -- they -- I probably didn't--

1 MR. BAUMSTEIN: Okay.

2 MR. HOFFMAN: -- know who they were at all.

3 MR. BAUMSTEIN: And, when you had -- did you
4 understand this basically to being -- come interview with us
5 and you can get what you can negotiate for?

6 THE COURT: How about we ask questions in a
7 slightly less leading way?

8 MR. BAUMSTEIN: Sorry, Your Honor.

9 THE COURT: Okay?

10 MR. BAUMSTEIN: Did you (indiscernible) -- ?

11 THE COURT: A lot of silence, (indiscernible) --

12 MR. BAUMSTEIN: Okay.

13 THE COURT: -- and I've been giving you a
14 tremendous amount of leeway in order to move things along,
15 but there are limits.

16 MR. BAUMSTEIN: So, sorry, Your Honor. I'll move
17 on. Did you agree to meet further with Barclays?

18 MR. HOFFMAN: I did.

19 MR. BAUMSTEIN: Okay. We're going to discuss your
20 negotiations in some depth, but before we do, can you
21 explain what the primary monetary issues that were being
22 negotiated with, with Barclays were throughout the process?

23 MR. HOFFMAN: Monetary issues would be
24 compensation, percentages, and any other compensation.

25 MR. BAUMSTEIN: And what was your ask from Bar --

1 of Barclays?

2 MR. HOFFMAN: I said, "I'm looking for \$83 million
3 to come to work here."

4 MR. BAUMSTEIN: And why did you choose that
5 number?

6 MR. HOFFMAN: It's -- it was no secret to them
7 that I had lost \$83 million because I wasn't compensated it
8 -- for it, for my 2008 performance, and some of my 2007
9 performance. And it was about one year's comp, and it
10 seemed like something they could -- a reasonable asking
11 point to see what would happen.

12 MR. BAUMSTEIN: Okay. And had you made a similar
13 ask of other potential employers?

14 MR. HOFFMAN: Some.

15 MR. BAUMSTEIN: And what was Barclays' original
16 bid to you?

17 MR. HOFFMAN: I don't -- well, the original bid,
18 my original ask was that they assume my contract. So I
19 wouldn't -- they immediately declined that, so that really
20 wasn't an ongoing negotiation. But, their original offer
21 after that? I think they offered me the special awards. I
22 don't know if they were in that format. There was -- they
23 didn't total \$83 million. I think they totaled \$70 million.

24 MR. BAUMSTEIN: Okay. And what was your -- what
25 were you trying to accomplish, with respect to the various

1 pay components in your contract, in your negotiations?

2 MR. HOFFMAN: In the absence of having my contract
3 assumed, I wanted to get money as quickly as possible, and
4 as much as possible.

5 MR. BAUMSTEIN: And what was Barclays' position?

6 MR. HOFFMAN: They wanted to pay me as little as
7 possible as slow as possible.

8 MR. BAUMSTEIN: And what -- were there any non-
9 monetary concerns that you were negotiating?

10 MR. HOFFMAN: Sure, what would happen if I wanted
11 to leave the firm, where I would work? I was concerned
12 about Barclays' ability to support this sort of business.

13 MR. BAUMSTEIN: Why were you concerned about
14 Barclays' ability to support this type of business?

15 MR. HOFFMAN: Some -- actually, a few years
16 earlier, I -- someone at Barclays, who I knew personally
17 called me and tried to hire me, and I -- my immediate
18 conversation was, "These guys don't have a presence in this
19 space," meaning they no longer understand the products, even
20 though they seem simple, the strategies are complicated, and
21 it's not going to work.

22 MR. BAUMSTEIN: Okay.

23 MR. HOFFMAN: So I was concerned that these --
24 it's Barclays. I wouldn't have been a non-starter to go
25 work for Barclays with nothing -- no ill intent toward

1 Barclays, just prior to this, I wouldn't have considered
2 Barclays.

3 MR. BAUMSTEIN: Okay. And did you negotiate the
4 percentage payouts with Barclays?

5 MR. HOFFMAN: I asked for a high percentage, and
6 they came back with what ultimately was in the deal. I
7 asked again for a higher percentage, and --

8 MR. BAUMSTEIN: Did you ever discuss taking a --
9 having less guaranteed money in the special awards in
10 exchange for the higher percentage?

11 MR. HOFFMAN: The only negotiation along those
12 lines in terms of the added 20 percent, but no, I don't
13 recall specifically saying, "Raise my percent or lower the
14 fixed payments."

15 MR. BAUMSTEIN: Right. And just for the record,
16 the added 20 percent, is that with respect to the additional
17 \$13 million you might earn --

18 MR. HOFFMAN: Yes.

19 MR. BAUMSTEIN: Okay. We're at kind of a natural
20 breaking point.

21 THE COURT: Okay. All right. And then, you'll
22 have -- and then, the idea is we'll conclude with the direct
23 and then we'll take a lunch break?

24 MR. BAUMSTEIN: Yeah, I think that would be --
25 that's --

1 THE COURT: Is that what everybody wants to do?

2 MR. BAUMSTEIN: That sounds right.

3 THE COURT: Okay. So why don't we take a 10
4 minute break now and we'll resume at 11:45? Mr. Hoffman,
5 you remain under oath during the break. You're not to
6 discuss your testimony or the case with anyone or be in
7 anyone's presence while they're discussing you. All right?

8 MR. HOFFMAN: Yes, Your Honor.

9 THE COURT: All right, thank you. Before I
10 forget, I just want to tell everybody, we've been advised
11 that there's going to be a large military flyover at 1:30.
12 It might seem alarming. There are going to be a lot of big
13 helicopters flying out to the Statue of Liberty and back.
14 So I'm telling you that so that you won't be alarmed when
15 you see it.

16 MR. BAUMSTEIN: Okay.

17 THE COURT: We've gotten more bizarre warnings.
18 Like, they're doing a film, you're going to see it -- what
19 appears to be a sniper on the roof. Don't worry.

20 MR. BAUMSTEIN: Okay. Well, if I see a sniper
21 now, (indiscernible). We're back on the record, or--?

22 THE COURT: Yes, we're back on the record.

23 MR. BAUMSTEIN: Okay. After your meeting with Mr.
24 Bommensath, do you recall the next meeting you had with
25 Barclays?

1 MR. HOFFMAN: It may have been with Rich Ricci.

2 MR. BAUMSTEIN: Do you know who set that meeting
3 up?

4 MR. HOFFMAN: Mike Gelband.

5 MR. BAUMSTEIN: And turn to exhibit 34, very, very
6 quickly, the very bottom of the email, you'll see an email
7 from you -- oh, I'm sorry, from Mike Gelband to you dated
8 Monday September 22nd, 11 a.m. with Rich Ricci. You see
9 that?

10 MR. HOFFMAN: Yes.

11 MR. BAUMSTEIN: And where did your meeting with
12 Rich Ricci take place?

13 MR. HOFFMAN: 745 Seventh Avenue.

14 MR. BAUMSTEIN: Okay, and what was 745 Seventh
15 Avenue?

16 MR. HOFFMAN: It was -- it's now a building that
17 Barclays had acquired from Lehman.

18 MR. BAUMSTEIN: Had you met with Mr. Ricci before
19 meet -- this meeting?

20 MR. HOFFMAN: No.

21 MR. BAUMSTEIN: Did you record that meeting?

22 MR. HOFFMAN: Yes.

23 MR. BAUMSTEIN: And why did you record that
24 meeting?

25 MR. HOFFMAN: I was trying to keep track and take

1 notes as to what was happening with these meetings.

2 MR. BAUMSTEIN: Okay. With what device did you
3 record the meeting?

4 MR. HOFFMAN: A small recording device.

5 MR. BAUMSTEIN: Did you tell Mr. Ricci that you
6 were recording the meeting?

7 MR. HOFFMAN: No.

8 MR. BAUMSTEIN: Why not?

9 MR. HOFFMAN: They were my notes. I didn't think
10 it was necessary.

11 MR. BAUMSTEIN: Had you ever recorded meetings
12 before?

13 MR. HOFFMAN: Not that I recall.

14 MR. BAUMSTEIN: Why did you start with this
15 meeting?

16 MR. HOFFMAN: When I met Eric on the street corner
17 the week before, he was firing off names at me quickly, and
18 I realized it was going to be a confusing situation. A
19 colleague advised that I should -- I could consider
20 recording the meetings to keep track of what was happening.

21 MR. BAUMSTEIN: Okay. And what did you do with
22 the recording after you made it?

23 MR. HOFFMAN: I may have listened to them on the
24 train ride home, but I threw them in a drawer and never gave
25 them much thought.

1 MR. BAUMSTEIN: During your employment with
2 Lehman, were your conversations when you traded recorded
3 often?

4 MR. HOFFMAN: Yeah, I would think so.

5 MR. BAUMSTEIN: Okay. And what was the subject of
6 your meeting with MR. Ricci?

7 MR. HOFFMAN: It was to discuss employment with
8 Barclays.

9 MR. BAUMSTEIN: And what generally did you say to
10 him?

11 MR. HOFFMAN: "I'd like Barclays to assume my
12 contract."

13 MR. BAUMSTEIN: And what did he say to you?

14 MR. HOFFMAN: He said, "No. We can't pay you for
15 work you did at Lehman."

16 MR. BAUMSTEIN: Okay, why don't we go to the tapes
17 right now? Your Honor, I've marked what I'm calling for
18 identification a number of transcripts that have all been
19 prepared -- none of them are official but I think it's a lot
20 easier to go through. Do you have this binder here?
21 Perfect.

22 THE COURT: So these are transcriptions of these
23 recordings that I have on disks that you're going to play?

24 MR. BAUMSTEIN: Exactly.

25 THE COURT: And someone has just made a best

1 attempt to transcribe (indiscernible) here?

2 MR. BAUMSTEIN: That's right. This one, in fact,
3 was made by Trustee's counsel. There's some that are made
4 by us.

5 THE COURT: I see, okay. (indiscernible) Thank
6 you.

7 MR. BAUMSTEIN: Exactly. And the first one I'm
8 going to play is going to be long. But I promise this'll be
9 the longest one I play at one time.

10 THE COURT: No problem.

11 MR. BAUMSTEIN: But why don't we play from 12:49
12 to 19:29?

13 THE COURT: So which is exhibit is this? Is this
14 One?

15 MR. BAUMSTEIN: I believe it's Trustee's -- I'm
16 sorry...

17 THE COURT: This is Exhibit 20 behind Tab Number
18 1?

19 MR. BAUMSTEIN: Yes, it's behind Tab Number 1 and
20 it's from Exhibit -- what is the audio recording?

21 MR. WILLIG: It's 1E0086.

22 THE COURT: Okay, we're all on the same page.

23 MR. BAUMSTEIN: Okay. So, could we start playing
24 from 12:49 and why don't we go all the way to 19:29 and then
25 I'm going to ask a series of questions about this.

1 [RECORDING IS PLAYING]

2 MR. RICCI: [ON RECORDING] That's pretty much it.

3 Ok. We don't have big prop trading operations as you know?

4 Clearly, we wanted to be thoughtful about which ones we were

5 going to pursue. I know, that I can't just, the brief

6 soundbite I had was that there's a lot of respect both at

7 Lehman (for you and the guys that know of you, think highly

8 of you. So that was encouraging. I don't know where your

9 conversation got with Eric other than -- because I haven't

10 caught up with him. Was it just a pleasant conversation?

11 Did he...and he talked about risk, I'm sure, and all the

12 other things and how it all works but...

13 MR. HOFFMAN: [ON RECORDING] He said I need to

14 speak to Jerry.

15 MR. RICCI: [ON RECORDING] Jerry. Yeah. Del

16 Missier.

17 MR. HOFFMAN: [ON RECORDING] (indiscernible) That's

18 right, or yourself or -- somewhere up the ladder to deal

19 with -- is this a business that you want be in? Legacy

20 compensation issues that are substantial. He just felt like

21 this was --and he's -- everyone's got their plate full. So,

22 I think he's trying to figure out what to do in some

23 respect.

24 MR. RICCI: [ON RECORDING] And your legacy comp

25 issue, is that the full, roughly, 14 percent of the 550?

1 MR. HOFFMAN: [ON RECORDING] And there's a claw-
2 back from last year that -- I have a claw-back so I can't
3 make 100 one year, lose 100 the next year and leave with \$14
4 million. So I have a claw-back from '07 which is -- I
5 didn't get paid in '07 either. Well, I got paid stock
6 upfront. That didn't do so well. So I haven't really
7 gotten paid here in a few years for my 800 million in
8 revenue. Been a little upsetting but...

9 MR. RICCI: [ON RECORDING] That's tough.

10 MR. HOFFMAN: [ON RECORDING] It is.

11 MR. RICCI: [ON RECORDING] It sucks.

12 MR. HOFFMAN: [ON RECORDING] It is.

13 MR. RICCI: [ON RECORDING] Right. And where's your
14 head on that?

15 MR. HOFFMAN: [ON RECORDING] I think it's a big
16 morale issue for me, as you can imagine. You know, it's a
17 big morale issue. I have a hard time getting around it,
18 around that -- there is a comp pool. You know, I made a
19 quantitative contribution to that pool. I don't know how I
20 don't... I'll tell you this. If I looked at the whole firm
21 from a financial perspective I probably stand the most to
22 lose in terms of compensation for getting my restricted
23 stock. Again, everybody lost their share there. There's
24 nothing I can do about that. In terms of -- I'm losing the
25 most here, to be perfectly honest with you -- of everybody

1 who's here, and I probably made one of the bigger or the
2 biggest single contribution for many years. And that's --
3 you know, I can't get around that issue of -- in some ways
4 something is owed to me by somebody but I can't -- I'm not a
5 -- I don't want to pull it apart from a legal perspective or
6 this or that. I'm just looking at sort of what's happened
7 here. I don't know. I guess I'm surprised that my contract
8 isn't just made whole, although I can understand from a
9 legal perspective what happens in a situation like this.
10 But in speaking with Bart and Mike over the process, it was
11 -- I was disappointed. I can understand from your
12 organizational perspective why I don't fit into a clean
13 tranche of what Barclays is looking to pick up here. I have
14 a vast understanding of the businesses at Lehman. I have
15 very close relationships with everybody from Eric Felder to
16 -- everybody at Lehman. I've been here my whole career and
17 I think they think of me highly. So I can understand their
18 businesses and what Barclays trying to accomplish here.

19 I'm sort of tertiary to that in some senses,
20 although I think I do integrate with clients and all that
21 stuff quite a bit. But I can see how it happened. It
22 doesn't take away sort of the -- I'm demoralized about it.

23 MR. RICCI: [ON RECORDING] Listen. I'm empathetic.
24 It blows. It's not right but the trade we wanted to make was
25 to take over the whole firm. It didn't happen.

1 MR. HOFFMAN: [ON RECORDING] I understand.

2 MR. RICCI: [ON RECORDING] You generated revenue
3 for an entity that we don't control. That being said, you
4 know we're willing to try to...well let me tell you what I
5 think we need to do. So what's your revenue for 07... What's
6 the comp? So it's 14 percent of 550 in '08, which you've
7 got nothing for?

8 MR. HOFFMAN: [ON RECORDING] That's right.

9 MR. RICCI: [ON RECORDING] '07? What was your
10 situation in '07?

11 MR. HOFFMAN: [ON RECORDING] '07, I'm owed 7.75
12 million.

13 MR. RICCI: [ON RECORDING] You're owed 7.75
14 million.

15 MR. HOFFMAN: [ON RECORDING] I did receive 15
16 million in stock and I did receive 7 in cash in '07. So I
17 didn't get paid nothing in '07. I got 7 million in '07 and
18 nothing in '08.

19 MR. RICCI: [ON RECORDING] Okay. Right. So,
20 here's what we need to do. I need to talk with Bommensath
21 and Jerry, see what they want to do. I think we need to be
22 -- probably need a couple of days. There are a few other
23 things going on, but we've got the system of proprietary
24 trading and we've got to take a view on do we want to be in
25 it? Do we want to be in it? Which one do we want to be in?

1 Do we want to be in 1? Do we want to be in 2? Do we want to
2 be in 3? ... strategies. So we need to get through that.
3 If we get through that, then we can have the right
4 conversation around comp. I hear you on the comp. And I
5 think if we were to move forward we're going to have to
6 figure something out because we want you motivated.

7 But at this point in time, I've got to talk to
8 those guys first. And that's the honest answer. But if
9 we're going to move forward -- yeah, we want a motivated guy
10 working, absolutely.

11 MR. HOFFMAN: [ON RECORDING] I would be happy to
12 tell you I will work here for all eternity and do the same
13 job I would've done for Lehman Brothers, you know, if Lehman
14 had existed. That's what I can offer you. I can offer you
15 -- that's what my platform is. That's what I can offer. I
16 would try to put it together. I don't know what to say.

17 MR. RICCI: [ON RECORDING] Okay.

18 MR. HOFFMAN: [ON RECORDING] I'm sure I can make
19 you that money back. I don't know how you view it. I know
20 it's a big chunk of the would-be bonus pool that I
21 understand is sort of redirected money now. It's really not
22 the old money. But there is money to compensate people. I
23 made a contribution to it although it went to someone else.
24 I would love to get my mind away from it but I can't right
25 now.

1 MR. BAUMSTEIN: First of all, MR. Hoffman, there
2 was a reference earlier on to legacy compensation issues
3 that you mentioned that was discussed in this. What were
4 you guys talking about at the time?

5 MR. HOFFMAN: My 2008 contract and the balance of
6 2007 contract that was took with Lehman Brothers.

7 MR. BAUMSTEIN: You said you were losing the most.
8 What does that refer to?

9 MR. HOFFMAN: Well, I think I had about 800,000
10 units of RSUs and setting those aside, I was owed \$83
11 million by Lehman Brothers and I wasn't getting it.

12 MR. BAUMSTEIN: At one point you state --

13 MR. HOFFMAN: I don't (indiscernible) I think it
14 was.

15 MR. BAUMSTEIN: Yeah. "I don't want to pull it
16 apart from a legal perspective or this or that. I'm just
17 looking at sort of what happened here. I don't know, I
18 guess I'm surprised that I... My contract isn't just made
19 whole, although I can understand what happens from a legal
20 perspective, what happens in a situation like this. But in
21 speaking with Bart and Mike over the last -- you know, over
22 the process, it was, you know, I was disappointed." What did
23 you mean by "I'm surprised that my contract isn't just made
24 whole?"

25 MR. HOFFMAN: I thought that they could assume my

1 contact rather than negotiate new employment.

2 MR. BAUMSTEIN: Okay. And why were you
3 disappointed?

4 MR. HOFFMAN: Because I had made a lot of money
5 for Lehman Brothers that I wasn't getting paid for.

6 MR. BAUMSTEIN: And when you said, "I can
7 understand what happens from a legal perspective," what was
8 your understanding?

9 MR. HOFFMAN: That the liability stayed with
10 Lehman Brothers.

11 MR. BAUMSTEIN: Well, when you said,
12 "Understanding from a legal perspective," you'll see that
13 that follows shortly after your discussion about being
14 disappointed that your contract wasn't made whole did you
15 have an understanding of what having your contract made
16 whole would entail from a legal perspective?

17 MR. HOFFMAN: I think Barclays could choose which
18 contracts it wanted to assume from Lehman Brothers and I was
19 not on the list.

20 MR. BAUMSTEIN: And if they had chosen your
21 contract, what would have happened to your contract or to
22 your compensation under that contract?

23 MR. HOFFMAN: It would've become the liability of
24 Barclays.

25 MR. BAUMSTEIN: And how much would you have been

1 paid and at what time?

2 MR. HOFFMAN: Well, it depends if I was terminated
3 not for cause by Lehman in this process or not, but I
4 would've gotten -- assuming that was not triggered, I
5 would've gotten 27 million in cash in February of '09, but I
6 would've gotten a total of -- they would've owed \$84
7 million. It just would've been over whatever the prescribed
8 payments were.

9 MR. BAUMSTEIN: So, in '09 and 2010?

10 MR. HOFFMAN: Yes.

11 MR. BAUMSTEIN: With that understanding as a legal
12 perspective, did you have any understanding of what
13 Barclays' concerns were from a business perspective?

14 MR. HOFFMAN: They were probably concerned that I
15 would take the award and leave. So they wanted to motivate
16 -- retain me to make money for them.

17 MR. BAUMSTEIN: After you talked about how you
18 were disappointed about Barclays not agreeing to make your
19 contract whole, MR. Ricci responded, "I'm empathetic. It
20 blows. It's not right. But the trade we wanted to make,
21 which was to take over the whole firm, didn't happen." If
22 Barclays had taken over the whole firm at LBI, what was your
23 understanding of what would've happened to your contract?

24 MR. HOFFMAN: It would have been honored, made
25 whole.

1 MR. BAUMSTEIN: And what did you understand MR.
2 Ricci to be communicating when he said, "But the trade we
3 wanted to make didn't happen"?

4 MR. HOFFMAN: Barclays tried to buy Lehman
5 Brothers and the transaction didn't go through. In other
6 words, pre-bankruptcy transaction.

7 MR. BAUMSTEIN: MR. Ricci then said, "Where we are
8 is tough. You generated revenue for an entity that we don't
9 control." What was your understanding of what MR. Ricci was
10 conveying to you?

11 MR. HOFFMAN: That the money I made was for Lehman
12 Brothers and that has nothing to do with what we're looking
13 at.

14 MR. BAUMSTEIN: Okay. A little bit later you say,
15 "I'm sure I could make you that money back. I don't know
16 how you view it. I know it's a big chunk of the would-be
17 bonus pool that I understand is sort of redirected money
18 now." What was your understanding concerning any bonus pool
19 money that may have been redirected?

20 MR. HOFFMAN: I think there was -- that Barclays
21 took on a liability to pay a certain set dollar amount,
22 about \$2 billion to transferred employees, according to what
23 had accrued in the bonus pool. And some people had gotten
24 money and it was redirected. In other words, I made a
25 contribution to the pool and I wasn't getting the money from

1 the pool.

2 MR. BAUMSTEIN: Right. So did you understand
3 whether or not any portions of that pool were reserved for
4 your bonus?

5 MR. HOFFMAN: No. No.

6 MR. BAUMSTEIN: Just so I'm clear, did you have an
7 understanding was your understanding that none of it had to
8 be reserved?

9 MR. HOFFMAN: My understanding became that my
10 bonus was not accrued.

11 THE COURT: Stop. The question is, what was your
12 understanding? This conversation took place on a particular
13 day. The questions are what was your understanding on that
14 particular day -- not what you came to understand
15 subsequently. So what day was this conversation?

16 MR. HOFFMAN: This was, I guess, according to the
17 email and everything, about September 23rd.

18 THE COURT: Okay. So the question is what was
19 your understanding on September 23rd?

20 MR. HOFFMAN: My understanding -- can I ask him to
21 repeat the question?

22 THE COURT: Sure.

23 MR. BAUMSTEIN: What was your understanding
24 concerning any bonus pool that may have been redirected?

25 MR. HOFFMAN: That I was not getting that money.

1 THE COURT: What was the source of your
2 understanding in that regard, MR. Hoffman?

3 MR. HOFFMAN: Because I was told that my contract
4 wasn't being assumed and I could negotiate for new
5 employment.

6 THE COURT: Who told you that?

7 MR. HOFFMAN: Up to this point, Mike Gelband, Eric
8 Bommensath and -- my understanding of this conversation with
9 Rich Ricci was it was in the conversation.

10 MR. BAUMSTEIN: Okay, did MR. Ricci ever correct
11 your understanding that money you had generated in the bonus
12 pool had been redirected?

13 MR. HOFFMAN: He did not correct it.

14 MR. BAUMSTEIN: Did anyone at Barclays ever state
15 that to you?

16 MR. HOFFMAN: No one corrected it.

17 THE COURT: Can I ask one more question? What was
18 the source of your knowing that there was a \$2 billion
19 number around the bonus pool?

20 MR. HOFFMAN: It was in the APA. I think I had
21 read -- or I know I had read parts of the APA. I think it
22 was a large document and someone had circled parts of it and
23 said, "This is what may be relevant for these -- for me."

24 THE COURT: Okay, all right, thank you.

25 MR. BAUMSTEIN: We're just going to play one

1 additional small piece starting at 19:39 to 19:54 of the
2 same tape.

3 [RECORDING IS PLAYING]

4 MR. RICCI: [ON RECORDING] I pride myself on being
5 straight. We need to make a decision. I hear what you're
6 saying. If we're going to move ahead, we want a motivated
7 guy. And you have my commitment that we'll get back to you
8 in a straightforward and honest way and as quickly as we
9 can.

10 MR. HOFFMAN: [ON RECORDING] Okay.

11 MR. BAUMSTEIN: MR. Ricci said, "We need to make a
12 decision. I hear what you're saying." What did you
13 understand the decision to be that MR. Ricci was saying
14 needed to be made?

15 MR. HOFFMAN: If he wanted to hire me.

16 MR. BAUMSTEIN: And when MR. Ricci said, "I hear
17 what you're saying," what did you understand him to be
18 communicating?

19 MR. HOFFMAN: That I had wanted -- what I wanted
20 didn't happen but I want to -- I guess it related to the
21 prior conversation.

22 MR. BAUMSTEIN: Right. And just so you know this
23 is just a couple seconds after the prior conversation. Now,
24 what did you understand MR. Ricci to be saying, "If we're
25 going to move ahead, we want a motivated guy"?

1 MR. HOFFMAN: That they'd have to pay me to work
2 there.

3 MR. BAUMSTEIN: And MR. Ricci then said that he
4 would get back to you in a straightforward and honest way as
5 quickly as he can. During the negotiations did MR. Ricci
6 ever state to you anything concerning whether amounts they
7 were offering were in satisfaction of Lehman's obligations
8 to you?

9 MR. HOFFMAN: No.

10 MR. BAUMSTEIN: Did anyone else at Barclays ever
11 say that to you?

12 MR. HOFFMAN: No.

13 MR. BAUMSTEIN: And did MR. Ricci ever state to
14 you whether Barclays had agreed to a delegation of LBI's
15 obligations through some of it?

16 MR. HOFFMAN: No.

17 MR. BAUMSTEIN: Did anyone at Barclays ever say
18 that to you?

19 MR. HOFFMAN: No.

20 MR. BAUMSTEIN: And did MR. Ricci ever say that
21 "Hey, if you sign up with us you might be waiving or
22 compromising any claims you have against LBI as a result"?

23 MR. HOFFMAN: No.

24 MR. BAUMSTEIN: Did anyone else at Barclays?

25 MR. HOFFMAN: No.

1 MR. BAUMSTEIN: And after meeting with Rich Ricci,
2 did you meet with anyone else at LBI's headquarters that
3 day?

4 MR. HOFFMAN: I met with Mike Gelband. I also
5 briefly met with Kaushik but I don't recall if it was the
6 same day, the meeting with Kaushik.

7 MR. BAUMSTEIN: And for the record, Kaushik is
8 Kaushik Amin?

9 MR. HOFFMAN: Yes.

10 MR. BAUMSTEIN: At the times you met with Mike
11 Gelband did you have an understanding what his status was
12 with respect to the Barclays acquisition?

13 MR. HOFFMAN: I don't know that he ever worked for
14 Barclays. I knew he worked for Lehman, became the senior
15 person perhaps at Lehman, negotiated on behalf of Lehman,
16 but was not staying in the joint entity.

17 MR. BAUMSTEIN: Okay. Do you recall generally
18 what you discussed with MR. Gelband at that time?

19 MR. HOFFMAN: Employment.

20 MR. BAUMSTEIN: Employment with whom?

21 MR. HOFFMAN: Mainly Millennium but Barclays as
22 well.

23 MR. BAUMSTEIN: Okay. Did you record your
24 conversation with MR. Gelband?

25 MR. HOFFMAN: This one I did.

1 MR. BAUMSTEIN: Why did you have a recorder with
2 you?

3 MR. HOFFMAN: I think it was the same day as the
4 prior conversation.

5 MR. BAUMSTEIN: Did you tell MR. Gelband you were
6 recording him?

7 MR. HOFFMAN: I didn't.

8 MR. BAUMSTEIN: I'm going to play a few small
9 parts of that conversation and if you look at Exhibit 3 in
10 the identification booklet we're going to start at 434, I
11 believe this is -- is it Trustee's Exhibit 29?

12 MR. WILLIG: That's right. It's 1EE0087.

13 MR. HOFFMAN: And 1EE0087 is the document.

14 [RECORDING IS PLAYING]

15 MR. GELBAND: [ON RECORDING] It's not rocket
16 science.

17 MR. HOFFMAN: [ON RECORDING] At the same time you
18 could bang your head into the wall if you were trying to get
19 it done with the wrong team. Do you know what I mean?
20 Saying like this is (indiscernible).

21 MR. GELBAND: [ON RECORDING] He's going to give me
22 the whole fixed income (indiscernible) do you know how we
23 want to do it? You know, forgetting about whatever else
24 Izzy can do for you in terms of getting you there from a
25 comp perspective, the deal is 20 percent and so -- do you

1 want to ever hire guys to do something different or
2 whatever? I mean, this is the space you can have and you
3 can create leverage or whatever for yourself.

4 MR. HOFFMAN: [ON RECORDING] Right.

5 MR. BAUMSTEIN: First of all, the voice that's not
6 yours, is that Michael Gelband's?

7 MR. HOFFMAN: Yes.

8 MR. BAUMSTEIN: And do you recognize it? Who is
9 Izzy, who MR. Gelband is referring to?

10 MR. HOFFMAN: Izzy Englander, who we mentioned
11 before. He owned Millennium.

12 MR. BAUMSTEIN: And what was MR. Gelband's
13 relationship with Millennium at this time?

14 MR. HOFFMAN: I don't know if it was a formal one
15 yet but he was in the process of going there.

16 MR. BAUMSTEIN: And what was your understanding of
17 what MR. Gelband was trying to do during these
18 conversations?

19 MR. HOFFMAN: Trying to bring me to Millennium.

20 MR. BAUMSTEIN: MR. Gelband said, "Forgetting
21 about whatever else Izzy can do for you in terms of getting
22 you there from a comp perspective, just thinking if the deal
23 is 20 percent..." What did you understand MR. Gelband to be
24 referring to when he said, "Just thinking if the deal is 20
25 percent"?

1 MR. HOFFMAN: Paying me 20 percent of my
2 profitability.

3 MR. BAUMSTEIN: And what did you understand MR.
4 Gelband to be referring to when he discussed "whatever else
5 Izzy could do in terms of getting you there from a comp
6 perspective"?

7 MR. HOFFMAN: Compensation above that.

8 MR. BAUMSTEIN: Okay. And you subsequently met
9 with Millennium, as we discussed, right?

10 MR. HOFFMAN: Yeah.

11 MR. BAUMSTEIN: And did you ever discuss any
12 compensation above (indiscernible)?

13 MR. HOFFMAN: Yes.

14 MR. BAUMSTEIN: Okay, I'm sorry. And did you ever
15 discuss any additional compensation beyond a 20 percent
16 payout?

17 MR. HOFFMAN: Yes.

18 MR. BAUMSTEIN: I want to play a bit more from the
19 tape and then we can turn to the next exhibit. This starts
20 at 11:37 and ends at 14:21, from the same audiotape.

21 [RECORDING IS PLAYING]

22 MR. HOFFMAN: [ON RECORDING] What time... Let's
23 take an extreme that I separate from this place tomorrow, in
24 extreme land. What do you see as -- I guess, your timing
25 may be different than mine.

1 MR. GELBAND: [ON RECORDING] It's probably not
2 that far. I mean, I think I have to decide here in the next
3 day or two. Definitely by this week. And all I am trying
4 to do is extract myself and if I can get some money I will;
5 if not, I'm going to Izzy tomorrow and try and --

6 MR. HOFFMAN: [ON RECORDING] Do you think I can
7 hit the ground running there in a matter of weeks?

8 MR. GELBAND: [ON RECORDING] Absolutely.

9 MR. HOFFMAN: [ON RECORDING] I have to figure out
10 here --

11 MR. GELBAND: [ON RECORDING] You can probably
12 start on Monday.

13 MR. HOFFMAN: [ON RECORDING] The issues I have to
14 deal with here are mainly legal. You know, like I talk to
15 lawyers and they are click yes, click no. Do you know what
16 I mean? Things that it hurts my brain to... I'm sure you
17 don't enjoy it either. You had to deal with it twice
18 because you've come here, you've left, you're back here,
19 you're leaving...

20 MR. GELBAND: [ON RECORDING] I'm just trying to
21 wrap this whole thing up and...

22 MR. HOFFMAN: [ON RECORDING] You know, my lawyers
23 look at it, whatever you can do to preserve your claim, you
24 have to separate correctly, deal with Barclays correctly --
25 you know, anyone could owe you money at any time. Any good

1 lawyer will tell you, if one entity is bankrupt and one
2 isn't, who do you want...? We could talk about Lehman all
3 day. If Barclays has money, you've got to try to get money
4 from Barclays through negotiation or they may feel in the
5 back of their minds we're not in the clear with this guy
6 although we'll say we are. Do you know what I mean?
7 They'll have legacy issues with something at Lehman. You
8 can't get away from it. That's just... So they may feel
9 like, well, we'll offer him a good deal because it will
10 satisfy any potential down the road that, you know, he tries
11 to make it the legacy issue about what he's owed before.

12 All that does is make it hard for me to -- you
13 know, if I wasn't owed any money it would be easier. I'll
14 say what you can do for me, no thanks, I'm leaving.

15 MR. GELBAND: [ON RECORDING] You're going to be a
16 creditor at Lehman, you're going to get whatever you're
17 going to get out of it. I don't believe these guys are
18 going to do very much, if anything, and they're not
19 committed to it. So you're going to have figure out what's
20 next most likely in the next few days. And wherever --
21 however you make that decision, obviously I'm biased in how
22 I hope it turns out. But you're going to have to figure out
23 one of these places...

24 MR. BAUMSTEIN: Okay, starting with the first part
25 where you ask about hitting the ground running, about which

1 place are you referring?

2 MR. HOFFMAN: Millennium.

3 MR. BAUMSTEIN: Okay. You stated that you were
4 talking to lawyers. Without revealing the advice you were
5 getting, why were you talking to lawyers?

6 MR. HOFFMAN: I was trying to preserve my claim
7 for my compensation for 2008 and 2007.

8 MR. BAUMSTEIN: And what did you mean by "click
9 yes or click no"?

10 MR. HOFFMAN: I think I was referring to an
11 exhibit that we looked at before the break, which is "Click
12 yes or click no to show up for work". (indiscernible)
13 employment from Barclays.

14 MR. BAUMSTEIN: Okay. And what did you mean by
15 "Whatever you can do to preserve your claim, you have to
16 separate correctly, deal with Barclays correctly, you know"?

17 MR. HOFFMAN: I wanted to make sure that I was
18 preserving my claim. My claim against Lehman Brothers.

19 MR. BAUMSTEIN: Okay. And what did you mean by
20 "Any good lawyer will tell you one entity's bankrupt, one
21 isn't -- who do you want, you know? We could talk about
22 Lehman all day. Barclays has money. You've got to try to
23 get money from Barclays."

24 MR. HOFFMAN: I think up until then we talked
25 about Lehman a lot and there really wasn't much left to talk

1 about because there was no cash flow likely to come from
2 Lehman for a while. Whereas Barclays is an active employer
3 in the market and Mike had just set up an employment meeting
4 with me for Barclays, I think, the same day perhaps with
5 Rich Ricci, which we just listened to. So, I'm just saying,
6 "Look, there's nothing to really say about Lehman. Preserve
7 the claim, talk to new employers, move on."

8 MR. BAUMSTEIN: You went on and say, "You may get
9 money," quote, "through negotiations or they may feel in the
10 back of their minds we're not in the clear with this guy,
11 although we'll say we are. But do you know what I mean?
12 They'll have legacy issues with something at Lehman. You
13 can't get away from it. That's just, you know -- I would,
14 you know -- so they may feel like, well, we'll offer him a
15 good deal because it will satisfy any potential down the
16 road that, you know, he tries to make it a legacy issue
17 about what he's owed before". What did you mean by "getting
18 money through negotiations"?

19 MR. HOFFMAN: Negotiating with Barclays for
20 employment or along those lines.

21 MR. BAUMSTEIN: And what did you mean by "may feel
22 in the back of their minds we're not in the clear with this
23 guy, although we'll say we are"?

24 MR. HOFFMAN: Barclays had told me they don't owe
25 me any money. I really had no way to know what they were

1 thinking about I doubt that they would probably try to pay
2 people for waivers. I guess indemnify themselves.
3 Something along the lines of making it clear that they don't
4 owe me any further severance or whatnot if I left. Just try
5 to get a waiver, I guess.

6 MR. BAUMSTEIN: And what did you mean by "They'll
7 have legacy issues with something at Lehman. You can't get
8 away from it. That's just, you know -- I would, you know --
9 so they may feel like, well, we'll offer him a good deal
10 because it will satisfy any potential down the road that,
11 you know -- he tries to make it a legacy issue about what
12 he's owed before"?

13 MR. HOFFMAN: I felt that Barclays would likely
14 want to make sure that they dealt with all Lehman employees
15 in a way that would not leave them with any liability. And
16 I think as it turned out they probably did face some legal
17 action. I never had a legal issue and I don't with
18 Barclays, but I think they ended up with some legal action
19 from former Lehman employees. They definitely paid money
20 for waivers, so that's it.

21 MR. BAUMSTEIN: Okay. When you referred to the
22 back of their minds, did you have any personal knowledge of
23 Barclays' thought process in making various offers to you?

24 MR. HOFFMAN: No.

25 MR. BAUMSTEIN: Did Barclays tell you about its

1 thought process?

2 MR. HOFFMAN: Not along these lines.

3 THE COURT: Just to be clear, Barclays doesn't
4 have a thought process, people have a thought process.

5 MR. BAUMSTEIN: Did any of the individuals at
6 Barclays tell you about the thought process behind the
7 offers that were being made for you?

8 MR. HOFFMAN: We did discuss some of the logic as
9 to how we reached numbers.

10 MR. BAUMSTEIN: Okay. Did they also talk about
11 what some of the purpose was of special awards with you or
12 any of the other portions that were offered to you?

13 MR. HOFFMAN: We talked about retention and
14 motivation.

15 MR. BAUMSTEIN: Did Barclays ever say -- I
16 actually want to stop here. Were you intending to tRich
17 Barclays?

18 MR. HOFFMAN: No.

19 MR. BAUMSTEIN: Do you believe that Barclays was
20 able to understand its various legal obligations?

21 MR. FOUKAS: Objection. Just the lack of
22 foundation, Your Honor.

23 THE COURT: Well, the problem is that we've been
24 going for so many hours into so many subject areas that have
25 lacked foundation and there hasn't been an objection. So

1 we've kind of bought the farm at this point. So let's just
2 finish it up. I think that there's a fair amount of clarity
3 and a fair amount of foundation and I'm just going to deal
4 with the testimony and give it the weight that I think is
5 appropriate when the time comes. But I'm not going to
6 suggest more than that about when I think objections are
7 appropriate.

8 MR. BAUMSTEIN: So, let me ask again. Did you
9 believe --

10 THE COURT: So the objection is overruled.

11

12 MR. BAUMSTEIN: Okay.

13 THE COURT: You can't get it read back.

14 MR. BAUMSTEIN: Yeah, I just realized that. Did
15 you believe that Barclays was able to understand its various
16 legal obligations?

17 MR. HOFFMAN: Yes.

18 MR. BAUMSTEIN: Did you think you could trick
19 Barclays into offering you money?

20 MR. HOFFMAN: No.

21 MR. BAUMSTEIN: When you talked about satisfying
22 any potential issues down the road, issues between whom were
23 you talking about?

24 MR. HOFFMAN: Barclays would try to satisfy issues
25 between myself and Barclays.

1 MR. BAUMSTEIN: And have you sued Barclays for
2 your compensation?

3 MR. HOFFMAN: No.

4 MR. BAUMSTEIN: And MR. Gelband responds, "You're
5 going to be a creditor of Lehman, you're going to get
6 whatever you're going to get out of it". What do you
7 understand that to mean?

8 MR. HOFFMAN: That I'm a creditor of Lehman. The
9 collectability is in question.

10 MR. BAUMSTEIN: And what had Mr. Gelband's
11 position been at Lehman at about this time?

12 MR. HOFFMAN: I think he and Bart McDade stepped
13 in for Dick Fuld, who recused himself or was excused from
14 the ongoing negotiations.

15 MR. BAUMSTEIN: Okay. After you met with Rich
16 Ricci did you have any feedback with Eric Felder?

17 MR. HOFFMAN: I think we exchanged emails. He
18 asked me how it went.

19 MR. BAUMSTEIN: Could you look at Exhibit 36 in
20 your binder? So you actually have to turn the page. The
21 first email chronologically is at the end. And you'll see
22 Mr. Felder said, "Spoke to Eric B. today. He said you had a
23 good conversation and things are progressing. Do you
24 agree?" How did you respond to Mr. Felder?

25 MR. HOFFMAN: With this email.

1 MR. BAUMSTEIN: When you say "this email" can you
2 just read what your response is?

3 MR. HOFFMAN: "I believe he is making an effort.
4 I believe Rich is making an effort. I do not think I'll get
5 resolution, though. I'm not even able to click accept offer
6 without invalidating my employment agreement with Lehman,
7 not to mention I'd love to get back in the seat and tell all
8 those wazoos at Gelber and Cargill hope you've had your fun,
9 time for the B team to go back to the bench. How did your
10 Tues AM client call go?"

11 MR. BAUMSTEIN: Okay. Why did you say, "I do not
12 think I will get resolution"?

13 MR. HOFFMAN: Because Eric B. or Bommensath told
14 me that they're not going to assume my contract and that
15 Rich Ricci said, "It blows. I'm sorry. It sucks." And it
16 just didn't seem to me that I would likely get resolution.

17 MR. BAUMSTEIN: Why did you say, "I'm not even
18 able to click accept offer without invalidating my
19 employment agreement with Lehman"?

20 MR. HOFFMAN: I wasn't sure at that point if that
21 would make me having -- if I would've quit Lehman to go to a
22 competitor by doing that.

23 MR. BAUMSTEIN: Okay. At the top you wrote to Mr.
24 Felder -- by the way, at the point when you were with Mr.
25 Felder here, who was he employed at?

1 MR. HOFFMAN: Barclays.

2 MR. BAUMSTEIN: And you wrote to him "I just need
3 my contract assumed in some way". You see that in the
4 second sentence on the top email on September 24th?

5 MR. HOFFMAN: Yes.

6 MR. BAUMSTEIN: Why were you writing that?

7 MR. HOFFMAN: Because I needed my contract
8 assumed.

9 MR. BAUMSTEIN: And in what way did you need your
10 contract assumed?

11 MR. HOFFMAN: Whatever the legal way to assume a
12 contract is.

13 MR. BAUMSTEIN: Can we turn to Exhibit --

14 THE COURT: Is there a difference, Mr. Hoffman, in
15 your mind between being made whole on the contract and
16 having the contract assumed? Because in the prior iteration
17 about a half an hour ago, you had said to somebody you
18 wanted to be made whole on the contract.

19 MR. HOFFMAN: I'm not really differentiating but
20 if I say, "made whole" I'm saying honor the contract as it
21 was written -- not with -- for something entirely different.

22 THE COURT: And when you say assumed here, are you
23 using the word assumed as it's used in the bankruptcy code?

24 MR. HOFFMAN: I'm using it -- I think I saw it in
25 the APA. So that would probably be the same...

1 THE COURT: That's what you mean by the word
2 assume?

3 MR. HOFFMAN: Yes.

4 THE COURT: Okay, thank you.

5 MR. BAUMSTEIN: Okay. If you go to Exhibit 39,
6 it's, again, emails that you exchanged with Mike Keegan.
7 First of all, who is Mike Keegan?

8 MR. HOFFMAN: Mike Keegan worked for Barclays. I
9 think he manages a strategic trading group of some sort. I
10 never fully understood what he did, though.

11 MR. BAUMSTEIN: Okay. What was his involvement in
12 negotiating your deal?

13 MR. HOFFMAN: He was the direct negotiator for
14 Barclays.

15 MR. BAUMSTEIN: Had you spoken to him after your
16 meeting with Rich Ricci?

17 MR. HOFFMAN: Yes.

18 MR. BAUMSTEIN: And on September 30, you wrote to
19 him -- and that's at the second page here -- "Please let me
20 know if it is possible to sit down and finalize in the next
21 couple of days. Whichever direction this goes in, I am
22 looking to move forward this week." What did you mean by
23 "whichever direction this goes in"?

24 MR. HOFFMAN: If we were going to reach an
25 agreement or not.

1 MR. BAUMSTEIN: Did you believe at this time that
2 you were in a position to prod Barclays in the negotiation?

3 MR. HOFFMAN: I think somewhat.

4 MR. BAUMSTEIN: And if Barclays had not responded
5 quickly, what would you have done?

6 MR. HOFFMAN: I was going to go somewhere else.

7 MR. BAUMSTEIN: At the top MR. Keegan wrote to you
8 -- or I guess in the middle toward the top, "Okay. I am
9 hopeful you will find our proposal attractive. We very much
10 do want you to join Barclays Capital." How would you
11 characterize Barclays' interest in hiring you?

12 MR. HOFFMAN: They very much wanted me to join.

13 MR. BAUMSTEIN: And was that expressed to you by
14 any other people other than this email?

15 MR. HOFFMAN: Kaushik Amin told me that it was a
16 good fit and that he felt similarly.

17 MR. BAUMSTEIN: Okay. And at the top it says --
18 you responded, "I have a proposal as well. I am hopeful
19 they intersect. You could try late tomorrow or if you want
20 to do Thursday a.m., could set something up firm." Do you
21 recall what your proposal was?

22 MR. HOFFMAN: I'm not sure which iteration the
23 back and forth this was. Because there was a couple of
24 them. I'm not exactly sure what proposal I'm referring to.

25 MR. BAUMSTEIN: Okay. And now throughout your

1 negotiations did you meet with other people from Barclays to
2 discuss your contract or potential employment, other than
3 Mr. Keegan and MR. Bommensath?

4 MR. HOFFMAN: And Ricci.

5 MR. BAUMSTEIN: And Mr. Ricci?

6 MR. HOFFMAN: Kaushik Amin.

7 MR. BAUMSTEIN: Okay. And what did you discuss
8 with Kaushik Amin?

9 MR. HOFFMAN: Kaushik originally felt that they
10 would assume my contract and quickly found out that was
11 wrong. He felt it would've made business sense for me to do
12 it but he felt that they should do whatever they plan to
13 hire me -- or Barclays should do whatever they can to hire
14 me and he was an intermediary between Barclays and myself
15 because he had my ear more so than other people at Barclays.

16 MR. BAUMSTEIN: Okay. Did you have any meetings
17 with Kaushik and others from Barclays?

18 MR. HOFFMAN: I met with Eric Bommensath and
19 Kaushik.

20 MR. BAUMSTEIN: Okay, and did you have separate
21 meetings with Kaushik as well?

22 MR. HOFFMAN: Kaushik was someone I could -- if I
23 was walking from Mike's office to another office, I could
24 poke my head in. The other people I really wasn't poking my
25 head in their offices.

1 MR. BAUMSTEIN: Okay. Did you have an in person
2 meeting with Mike Keegan subsequent to the email we just
3 discussed?

4 MR. HOFFMAN: I met with him before this and after
5 this.

6 MR. BAUMSTEIN: Okay. The meeting that took place
7 after this, do you know when that took place?

8 MR. HOFFMAN: Toward the end of the week, Thursday
9 or Friday I think.

10 MR. BAUMSTEIN: Okay. And just for the record, I
11 think Thursday would've been October 2nd. Is that right?

12 MR. HOFFMAN: Yes.

13 MR. BAUMSTEIN: Where were you when that meeting
14 took place?

15 MR. HOFFMAN: We were in New York.

16 MR. BAUMSTEIN: Did you record that meeting?

17 MR. HOFFMAN: Yes.

18 MR. BAUMSTEIN: With what device?

19 MR. HOFFMAN: Same device.

20 MR. BAUMSTEIN: Did you tell MR. Keegan you were
21 recording the meeting?

22 MR. HOFFMAN: No.

23 MR. BAUMSTEIN: Why not?

24 MR. HOFFMAN: It was my own personal notes. I
25 didn't think he had to know.

1 MR. BAUMSTEIN: So, let's now turn to that --
2 portions of that audio recording. We're going to go now
3 back to the Marked for Identification binder Number 5 and
4 we're going to pick up that recording, which is 1EE00088 and
5 I believe it's actually marked as Trustee's and our exhibit
6 -- I don't have the number in front of me. I'm sorry. But
7 we're going to play the portion from 8 minutes and 22
8 seconds to 9 minutes and 32 seconds.

9 [RECORDING IS PLAYING]

10 MR. HOFFMAN: [ON RECORDING] I understand that
11 part. I guess my concern would be if someone made a
12 decision to not pay me a day before I'm owed the money and
13 said, "Well, we're letting you go not for cause. You didn't
14 do anything wrong but we can save \$20 million." Do you know
15 what I mean?

16 MR. KEEGAN: [ON RECORDING] Yeah.

17 MR. HOFFMAN: [ON RECORDING] If it's for cause or
18 if I go and compete -- like, I understand that the point is
19 that you don't want me to get a lot of money in year one and
20 then possibly leave. Part of the purpose.

21 MR. KEEGAN: [ON RECORDING] Correct.

22 MR. HOFFMAN: [ON RECORDING] Is that accurate?
23 It's a retention tool, and I can appreciate that. I would
24 have -- I told you this I think the first time we talked --
25 I would have no preconceived notion of someone writing me a

1 massive check in February of '09. It just wouldn't make any
2 sense businesswise for someone to do that. So I can
3 appreciate that. I guess what I can't get my arms around is
4 -- and I may say I trust Eric or I trust you -- you never
5 know who's on the other side of the table in two years. I
6 learned that the hard way sort of when all you end up with
7 is a piece of paper. And certainly your employer needs
8 broad powers to get rid of you if you're -- get rid of for
9 cause or what have you. But otherwise, as long as you're
10 willing to work and whatnot, that's sort of...

11 MR. KEEGAN: [ON RECORDING] Well, a certain amount
12 of this stuff comes down to trust on both sides, right?
13 So...

14 MR. HOFFMAN: [ON RECORDING] Yes.

15 MR. BAUMSTEIN: At the top of this -- or at the
16 first part of this transcript there's a reference to \$20
17 million. What does that refer to?

18 MR. HOFFMAN: Probably one of the special awards.

19 MR. BAUMSTEIN: And then you stated that "You
20 don't want me to get a lot of money in year one and then
21 possibly leave. That is part of the purpose". What were
22 you referring to at that point?

23 MR. HOFFMAN: I think I was asking for more money
24 upfront and they wanted to have it more retention based.

25 MR. BAUMSTEIN: Okay. And then you characterized

1 some of the awards as a retention tool. Did MR. Keegan
2 disagree with your characterization?

3 MR. HOFFMAN: No.

4 MR. BAUMSTEIN: Did anyone at Barclays?

5 MR. HOFFMAN: No.

6 MR. BAUMSTEIN: Did anyone ever tell you that the
7 special awards had a different purpose?

8 MR. HOFFMAN: No.

9 MR. BAUMSTEIN: You then stated, "I would have no
10 preconceived notion that someone would write me a massive
11 check in February of '09. It just wouldn't make any sense
12 businesswise for someone to do that, so I can appreciate
13 that." Why did it not make sense businesswise to write you a
14 big check in February 2009?

15 MR. HOFFMAN: They'd be concerned that I would
16 leave. At this point I was already told that they weren't
17 going to do it, so there was nothing wrong with me conceding
18 the point.

19 MR. BAUMSTEIN: Okay. I'm not sure actually... I
20 just mean by businesswise.

21 MR. HOFFMAN: As far as legally, I suppose.

22 MR. BAUMSTEIN: Okay. And what was your
23 understanding of what would have happened if Barclays had
24 assumed the contract?

25 MR. HOFFMAN: They would have a legal obligation

1 to honor the contract.

2 MR. BAUMSTEIN: Right. And how did that compare
3 to what you were saying at the time?

4 MR. HOFFMAN: That it was not the same thing.

5 MR. BAUMSTEIN: Okay, let's go to 10:10 to 12:19.
6 It's the next transcript there of the same recording.

7 [RECORDING IS PLAYING]

8 MR. HOFFMAN: [ON RECORDING] Right. The other
9 thing -- the thing I'm not happy about is, I don't think it
10 makes sense -- I don't think it's right or makes sense to
11 have a short amount of time where you have elevated
12 compensation. I just -- it doesn't seem to make sense. I
13 think you're...

14 MR. KEEGAN: [ON RECORDING] Well, I think that's
15 kind of where we are so let's talk about that. I mean...

16 MR. HOFFMAN: [ON RECORDING] I think that'd have
17 to be for an extended period. A, need to give me a chance
18 to make up the rest of the money that I seem to be out.
19 And, B, because I don't want to be incentivized to on day
20 one have 90 days to get something done that I think is
21 trading-wise not the right thing...

22 MR. KEEGAN: [ON RECORDING] Fair enough. I mean,
23 I hear you. I don't want to make it a windfall either.

24 MR. HOFFMAN: [ON RECORDING] I understand.

25 MR. KEEGAN: [ON RECORDING] So, I'll say that I can work out

1 something that's basically -- I'm pretty sure I can -- until
2 you get the money back.

3 MR. HOFFMAN: [ON RECORDING] I'm happy to stick to
4 the amount of time.

5 MR. KEEGAN: [ON RECORDING] The other issue is...if
6 you look at it a little bit this way too. We are giving you
7 money before you get money from Lehman on your old contract
8 on an equivalent basis, on what you have now. The way I
9 structure it, the 30 -- I don't know what you got paid last
10 year (so I didn't have much to do with it...but I tried to
11 make sure in how you would have got paid from Lehman that
12 we're giving you that, we're not giving you less money than
13 you would otherwise have from Lehman. And that we're
14 actually giving you...ultimately because our stock vests
15 faster, we're giving you more money, faster, right? So
16 there's a little bit of a ...

17 MR. HOFFMAN: [ON RECORDING] I'm appreciative of
18 the fact that it's, broadly speaking --

19 MR. KEEGAN: [ON RECORDING] There's a little bit
20 of a PV benefit there.

21 MR. HOFFMAN: [ON RECORDING] Just as well at this
22 point.

23 MR. KEEGAN: [ON RECORDING] [LAUGHS]

24 MR. HOFFMAN: [ON RECORDING] I got a range between
25 0 and 25 cents for the foreseeable future.

1 MR. BAUMSTEIN: There's a discussion of a 90-day
2 payout period here. What was that deal point that was being
3 discussed?

4 MR. HOFFMAN: They wanted to give me a 90-day
5 period in which my percentage was elevated.

6 MR. BAUMSTEIN: And when you say your percentage
7 was elevated, what would've happened for that 90-day period?

8 MR. HOFFMAN: My performance bonus would've been
9 based on 25 percent of my profitability, not the 12-14
10 percent.

11 MR. BAUMSTEIN: Okay. Was there any cap on how
12 much money you could've made under those circumstances?

13 MR. HOFFMAN: No.

14 MR. BAUMSTEIN: And how was that issue ultimately
15 resolved in your contract?

16 MR. HOFFMAN: We lowered the percent from 25 to
17 20, we lengthened the amount of time from 90 days to -- I
18 guess it was through 2010. So, two years. But it was
19 capped at 13 million.

20 MR. BAUMSTEIN: Okay. And how would your total
21 compensation from Barclays had differed had you accepted
22 Barclays' offer?

23 MR. HOFFMAN: It would've been higher.

24 MR. BAUMSTEIN: Can you explain how that would've
25 happened?

1 MR. HOFFMAN: My profitability in the first 90
2 days was 200 million, so I've given up the difference
3 between 25 percent and 20 percent of the 200 million,
4 basically. In other words, I would've gotten -- I'm sorry
5 (indiscernible) -- the 12-14 percent range, so it's about 11
6 and a half percent, say, of 200 million is 23 million versus
7 the 13 million that I ended up capping it at.

8 MR. BAUMSTEIN: Okay. You talked a little bit
9 about incentives here. What was your concern with the
10 incentives of Barclays' proposal to you?

11 MR. HOFFMAN: It didn't make sense to have a high
12 percentage payout for your first 90 days. I think it was
13 just incentivizing someone to take a dramatically different
14 amount of risk for a very short amount of time, so that you
15 may devote your resources to trades that would have to work
16 within 90 days only versus really looking at it from a
17 broader portfolio perspective.

18 MR. BAUMSTEIN: Okay. And in terms of the risk
19 whose money would you have had the wrong incentives to...?

20 MR. HOFFMAN: Barclays.

21 MR. BAUMSTEIN: Okay. When you said, "The rest of
22 the money I seem to be out," what was that referring to?

23 MR. HOFFMAN: I had asked for 83 million. At this
24 point there were numerous things negotiated that I could see
25 us hinting toward but one of the points was that they had

1 come back with 70 million of special awards.

2 MR. BAUMSTEIN: Okay. In kind of the bigger
3 paragraph toward the end MR. Keegan starts to explain to you
4 the structure of the payments as Barclays has contemplated
5 them. What was your reaction to that?

6 MR. HOFFMAN: I yessed him along. This was the
7 first time I had heard or thought of anything having to do
8 with structuring it this way. We actually had a
9 conversation that was different from this about the same
10 contract -- just maybe it was in the same conversation,
11 maybe it was in the prior one.

12 MR. BAUMSTEIN: And when you said you "yessed him
13 along" what do you mean?

14 MR. HOFFMAN: I am trying to be polite and saying
15 okay. He started getting into more math around these
16 numbers that I didn't even think made any sense, I didn't
17 think they were accurate. But it didn't really matter,
18 frankly, because I was just looking at what the offer was in
19 writing.

20 MR. BAUMSTEIN: Okay. Why don't we go to the next
21 recording which is at 12 minutes and 22 seconds to 12
22 minutes and 55 seconds from the same exhibit?

23 [RECORDING IS PLAYING]

24 MR. HOFFMAN: [ON RECORDING] I would also say, I
25 think this firm was going to go to 15 percent for the

1 payout, is my understanding. The old firm. It's not the new
2 firm, but I think sort of the going rate, so to speak, of
3 street guys is 15 and hedge fund is higher but you're not
4 going to necessarily complete directly with the hedge fund.
5 Different platform, right?

6 I did think on the backside, if you want to have a
7 business or retain people and build it, in the long run it's
8 always good to align yourself with sort of what other guys
9 are doing.

10 MR. BAUMSTEIN: Okay, so what was being discussed
11 during this part of the negotiations?

12 MR. HOFFMAN: I think I was trying to negotiate a
13 higher percentage payout.

14 MR. BAUMSTEIN: And was there any relation into
15 the amount of special awards you were receiving and the
16 total compensation in terms of the percentage?

17 MR. HOFFMAN: Well, I think I was receiving a
18 lower percentage and higher other payments

19 MR. BAUMSTEIN: When you say a lower percentage,
20 compared to what?

21 MR. HOFFMAN: Competition.

22 MR. BAUMSTEIN: And did Barclays ultimately give
23 on this point?

24 MR. HOFFMAN: No.

25 MR. BAUMSTEIN: Why don't we go onto the next

1 clip? 13 -- which is at 13 minutes and 20 seconds through
2 14 minutes and 26 seconds.

3 [RECORDING IS PLAYED]

4 MR. HOFFMAN: [ON RECORDING] I never speak to
5 people outside of my current employer other than the last
6 month, which was sort of by force because I didn't have
7 anything else to do. So that just sort of highlights to me
8 that, I think, I would say standard payout is closer to 15
9 although it can, it doesn't have to be straight 15, it can
10 sort of ratchet up towards 15. It can sort of ratchet up
11 toward 15. It's a small difference, you know, from 14 to
12 15, but I do think that that's -- you'll be at the right --
13 I think it will be the right number for the long term.
14 Would that make or break me staying here?, To be honest,
15 probably not, for the one percent. It would just make me
16 think in the back, you know, like, if you want to put it to
17 bed and make it seem like this is the right platform. But
18 those are sort of the only two things I could come up with.
19 I think everything upfront is -- I would just, you know, to
20 take my contract and make it assumed would be my first
21 choice. We had a conversation about that, I understand
22 where you're coming in and you need to feel like if you are
23 going to pick up a platform also, people need to sort of
24 stay and earn money, they need to be here.

25 [RECORDING ENDS]

1 MR. BAUMSTEIN: Okay. So, at the end of that --
2 first of all, the beginning of the clip, is that a continued
3 negotiation over the percentage payout?

4 MR. HOFFMAN: Yes.

5 MR. BAUMSTEIN: Okay. At the end of the clip, you
6 said, "I think everything upfront is I would just -- to make
7 my contract and make it assumed would be my first choice."
8 What did you mean by that?

9 MR. HOFFMAN: My first choice and my first -- I
10 had asked -- I would, well, I hoped that they would assume
11 my contract.

12 MR. BAUMSTEIN: Okay. And then, you said, "We had
13 a conversation about that. I understand where you're coming
14 in, and you need to feel like if you are going to pick up a
15 platform also, people to need to sort of stay and earn
16 money, they need to be here." What did you mean by, the
17 portion where you talk about, "I understand where you're
18 coming in?"

19 MR. HOFFMAN: That they needed to retain me at the
20 firm and we had a conversation about not assuming the
21 contract or on what these payments were for and how they
22 were designed.

23 MR. BAUMSTEIN: Okay. And--

24 THE COURT: Can I just interrupt? Your statement
25 here in the recording ending 88 that says, "But those are

1 sort of the only two things that I could come up with. I
2 think everything upfront is I would just -- to take my
3 contract and make it assumed, would be my first choice."
4 And you've repeatedly emphasized the importance to you of
5 having a contract assumed. But if during these
6 negotiations, one of your counterparties at Barclays had
7 pushed a check across the table and said, "You know, that --
8 assuming the contracts, it's a complicated thing, it's tied
9 up in the APA, we don't have to go into that. Here's \$83
10 million on account of your trail in '07 and '08 at Lehman.
11 You take this, and then we'll talk." That would've been
12 okay with you, right, instead of -- you would've forgotten
13 about all that assumption of the contract stuff, right?

14 MR. HOFFMAN: Yes my assumption would be that that
15 would be for the Lehman Brothers contract.

16 THE COURT: Right, but I mean, I'm saying that
17 you've emphasized repeatedly that you wanted the contract
18 assumed. You wanted the contract assumed. But you agree
19 with me that if that check had been pushed across the table
20 at you because someone had said to you, "Now, you know, it's
21 lawyer stuff, assumption's really complicated. Here's the
22 money, John, we're good, right?" You would've -- that
23 would've been fine with you and you would've gotten over
24 (indiscernible)--

25 MR. HOFFMAN: If someone gave me \$83 million, yes.

1 THE COURT: Okay, thank you.

2 MR. BAUMSTEIN: Okay. And did Barclays ever make
3 that offer to you?

4 MR. HOFFMAN: No.

5 MR. BAUMSTEIN: Did Mr. Keegan ever say to you
6 that he did not know what you meant by having your contract
7 assumed?

8 MR. HOFFMAN: No.

9 MR. BAUMSTEIN: And in all your conversations with
10 Barclays, where you stated that you wanted your contract
11 assumed, did anyone ask you what you meant by having your
12 contract assumed?

13 MR. HOFFMAN: No.

14 MR. BAUMSTEIN: And did anyone from Barclays ever
15 say that they were considering assuming your contract?

16 MR. HOFFMAN: No.

17 MR. BAUMSTEIN: Why don't we go to the next clip,
18 which is at 14:31 through 16:45. And just to save a little
19 bit of time, I'm going to pick up the recording at 15:30, I
20 think the first part's (indiscernible).

21 [RECORDING IS PLAYED]

22 MR. KEEGAN: [ON RECORDING] What I thought you
23 told me was that you had been paid, round numbers 30: 15 in
24 stock, seven and a half cash, seven and a half cash held
25 back. Right?

1 MR. HOFFMAN: [ON RECORDING] That's right. You're
2 actually accurate, because I would've gotten a lot of Lehman
3 stock upfront. That goes around -- I know why we're not --
4 yes.

5 MR. KEEGAN: [ON RECORDING] So the way I did it
6 is, say, okay, you should have gotten the 7 1/2 would have
7 vested, now 75... do my math quickly, around 80 so it's
8 easier for me...that was 27 in cash, we're giving you 30 in
9 cash, we're giving you more in cash, that was my whole
10 point...and then next year you're getting a...you're getting
11 another 20 so that's where I get a little bit ahead of you.

12 MR. HOFFMAN: [ON RECORDING] Uh huh.

13 MR. KEEGAN: [ON RECORDING] and then the stock
14 vests a lot sooner and you end up...you end up getting the
15 cash...overall you end up getting the cash earlier than you
16 would have otherwise got the cash. I don't know...

17 MR. HOFFMAN: [ON RECORDING] That's right.

18 MR. KEEGAN: [ON RECORDING] I don't know what
19 Lehman's (indiscernible). So you're ahead of me initially
20 on the deal. I'm ahead of you for about two and a half
21 bucks. Or you're actually caught up I think and then you end
22 up getting the money slightly earlier.

23 MR. HOFFMAN: [ON RECORDING] Right.

24 [RECORDING ENDS]

25 MR. BAUMSTEIN: Was Mr. Keegan accurate that

1 Barclays was offering to pay you more cash upfront than you
2 would've gotten from Lehman had Lehman not gone under?

3 MR. HOFFMAN: No, Barclays gave me 22 and a half
4 in cash.

5 MR. BAUMSTEIN: And what would you have gotten
6 from Lehman?

7 MR. HOFFMAN: If they terminated me
8 (indiscernible)--

9 MR. BAUMSTEIN: And no, even without a
10 termination, I'd (indiscernible)--

11 MR. HOFFMAN: Just (indiscernible)?

12 MR. BAUMSTEIN: Correct.

13 MR. HOFFMAN: It was, as you said in your original
14 hypothetical, (indiscernible) variable--

15 MR. BAUMSTEIN: Yes.

16 MR. HOFFMAN: 27 and a half, 27 odd.

17 MR. BAUMSTEIN: Okay. And as you go through, you
18 say, "That's right," and "Right, okay," in response to Mr.
19 Keegan. Were you agreeing with him?

20 MR. HOFFMAN: I was yessing him. I didn't even --
21 this was the first time we were discussing these -- his --
22 this idea, they actually had framed it differently. I think
23 later in his conversation, I said to him, "I'd never looked
24 at it that way before. I understand that's what you're
25 trying to do."

1 MR. BAUMSTEIN: Okay. At some point during this
2 meeting with Mr. Keegan, do you recall that Eric Bommensath
3 joined by telephone?

4 MR. HOFFMAN: He did.

5 MR. BAUMSTEIN: I'm going to go now to the next
6 clip, and this is -- starts at 25 minutes and 20 seconds.
7 I'm going to just stop at 27 minutes and 32 seconds, and
8 then we'll continue with the rest of it afterwards.

9 [RECORDING IS PLAYED]

10 MR. BOMMENSATH: [ON RECORDING] (indiscernible),
11 okay?

12 MR. HOFFMAN: [ON RECORDING] Yeah.

13 MR. BOMMENSATH: [ON RECORDING] So, listen. What
14 you're trying to do is give you -- respect you, we want you
15 in the firm Johnny, okay? I want to work with you and I
16 want to respect you in a way that you get the money you
17 earn. So I evolved from the first thing I told you.
18 Remember?

19 MR. HOFFMAN: [ON RECORDING] Yes.

20 MR. BOMMENSATH: [ON RECORDING] I evolved from
21 what I told you. And also we put the clawback off. We
22 don't give you the 5-year stock in the comp of this year, we
23 try to get it earlier so you're more secure. You know,
24 we're trying to do everything, okay? On that, that's the
25 spirit, what, you know...while respecting what we can do for

1 the pool of the Lehman employees, okay? So, from what you
2 told me, when you told me it doesn't work, you know, I know
3 we wanted to get details, Johnny, but I'm telling you the
4 spirit is to keep you because we want you in the firm. All
5 right?

6 MR. HOFFMAN: [ON RECORDING] Yes.

7 MR. BOMMENSATH: [ON RECORDING] So I understand
8 you wanted to look at details...for us to be competitive, but
9 if I only have one message to you Johnny is that we want to
10 keep...Mike and I is to go very quickly to change everything
11 here, to calculate everything from pools for everything from
12 the firm going forward, to make something that respects you.
13 Okay?

14 MR. HOFFMAN: [ON RECORDING] Yes.

15 MR. BOMMENSATH: [ON RECORDING] That's my only
16 point.

17 MR. HOFFMAN: [ON RECORDING] I think you've made
18 great strides. I think it's a -- you know, I told Mike, the
19 first thing I told him was that I see that the -- I think
20 we're close. I think you're making a major effort, and
21 that's my honest impression.

22 MR. BOMMENSATH: [ON RECORDING] It's not about
23 effort, you know, Johnny, we're dealing with, you know,
24 we're dealing with like someone who's an exceptional
25 individual that make money all the years for Lehman, that

1 got wiped out, which is not, sorry, is not our fault on that
2 and we want to keep you in the firm. We want you to go back
3 in trading, focus on it, work with Mike Keegan and I, call
4 us on the risk, do the job, get paid. And we restart the
5 trade and want to put what makes...and when you told me Listen
6 Eric I don't want to have to fee to re-earn twice, you know,
7 you know, you know, the 25% sorry is just about, you know,
8 trying to get the math working for everybody. Okay?

9 MR. HOFFMAN: [ON RECORDING] Right.

10 [RECORDING ENDS]

11 MR. BAUMSTEIN: Okay. So at the beginning, Mr.
12 Bommensath says, "What we are trying to do is give you
13 respect you. We want you in the firm, Johnny, okay?" What
14 did you understand him to be meaning by -- and but --
15 meaning by the term, "respect you?"

16 MR. HOFFMAN: Make me a good offer, respect the
17 prospective employer -- employee, that I was.

18 MR. BAUMSTEIN: Okay. And did you think respect
19 was intended to -- did you have an understanding that the
20 term respect was intended to cover a legal obligation that--
21 ?

22 MR. HOFFMAN: No, definitely not.

23 MR. BAUMSTEIN: Okay. And Mr. Bommensath later
24 says, "The spirit is -- what I'm telling, the spirit is to
25 keep you because we want you in the firm." What did you

1 understand "the spirit" to be of what Mr. Bommensath was
2 talking about?

3 MR. HOFFMAN: The spirit was to keep me in the
4 firm, hire me and keep me there.

5 MR. BAUMSTEIN: And was there ever a different
6 spirit of the negotiations that was talked about?

7 MR. HOFFMAN: No.

8 MR. BAUMSTEIN: And he then says, in the middle of
9 the page, "To calculate everything from pools for everything
10 from the firm going forward to make something that respects
11 you," what did you mean Mr. -- what did you understand --
12 I'm sorry -- Mr. Bommensath to mean, "To calculate
13 everything from pools for everything from the firm going
14 forward?"

15 MR. HOFFMAN: I think we had specific
16 conversations about the percentages of compensation I could
17 get from different pools for the years I've earned now, what
18 was normal for Barclays to pay out, and that they would have
19 to line up the compensation I was expecting from the revenue
20 that I would be expected to produce for the firm during
21 those time periods.

22 MR. BAUMSTEIN: Okay. And it talks about pools
23 going forward. Do you have any further understanding what
24 "going forward" meant there?

25 MR. HOFFMAN: I -- going forward means from now,

1 in the future.

2 MR. BAUMSTEIN: Mr. Bommensath said he evolved
3 from what he had told you. What did you understand him to
4 be talking about?

5 MR. HOFFMAN: When I first met him, he was
6 consider -- on the street corner -- he was more brash, I'm
7 not going to call it disrespectful, I don't want to
8 (indiscernible) the word respect here, but he wasn't clear.
9 He said, "I know you're great. I don't even know if we want
10 you in the firm and we don't owe you anything." His
11 evolution was more that, "Hey, we want you in the firm and
12 we want you to be happy and we want to respect you."

13 MR. BAUMSTEIN: Okay. Mr. Bommensath said you
14 made money for Lehman for all those years, but, quote, "that
15 got wiped out, which is not sorry. It's not our fault on
16 that." What did you understand him to be saying?

17 MR. HOFFMAN: That the P&L I had made for '07 and
18 '08 was gone. I was not going to be compensated for it.

19 MR. BAUMSTEIN: And Mr. Bommensath said, "I don't
20 want you to have to feel to be earned twice." Then he says,
21 "Sorry about that." What did you understand him to mean?

22 MR. HOFFMAN: To re-earn it twice.

23 MR. BAUMSTEIN: Can we -- why don't we continue at
24 27:32? This is--

25 THE COURT: Is that -- what -- was that in

1 addition, a reference to the fact that for all the years you
2 had worked for Lehman, part of what you had earned was in
3 the form of equity, and that was wiped out as well? He
4 says, "All the" -- I'm just trying to be clear here, because
5 it says, "It was an exceptional individual that make" -- and
6 I think that's probably a transcription error, which
7 (indiscernible), "make money all the years for Lehman that
8 got wiped out."

9 MR. HOFFMAN: He gave (indiscernible)--

10 THE COURT: Was that a nod to that, as well?
11 That--

12 MR. HOFFMAN: That he was referring to RSUs or
13 something like that?

14 THE COURT: No, that he was acknowledging that
15 you, for you -- it's not just about '08, that it's about all
16 of the years you worked for Lehman, and your comp
17 arrangement was part in equity and part in cash, and that
18 equity was -- is gone. I think there was a prior reference
19 to it. There was a joke about, you know, (indiscernible) 20
20 over 25--

21 MR. HOFFMAN: The RSUs went zero to 25 cents.

22 THE COURT: Exactly.

23 MR. HOFFMAN: Yes.

24 THE COURT: Right? So he was acknowledging to
25 you, in the context of respecting what you had done, that

1 you were also staring down the fact that you just had all of
2 this equity comp wiped out. I -- it -- yes, I mean, I
3 wasn't there, so I don't know. I'm just trying to ask you
4 for a complete view of what he was saying to you here. If
5 you don't know, that's fine. We're not inside his head.

6 MR. HOFFMAN: I'm not certain.

7 THE COURT: That's fine.

8 MR. HOFFMAN: The -- I'm sorry, if I can--

9 THE COURT: Yes.

10 MR. HOFFMAN: The reason is, we really didn't -- I
11 don't know that Eric and I had discussed, or anyone that
12 (indiscernible) had discussed how many RSUs I had from
13 Lehman, what happened to them, so, (indiscernible) that--

14 THE COURT: Sure. But I mean, understanding
15 generally the way the business works, there was no question.
16 He knew you knew you had a huge amount of equity based comp
17 that was, like everyone else at Lehman, like a lot of people
18 at Lehman, unfortunately, it was just gone at that point.
19 Right?

20 MR. HOFFMAN: I did. Yes.

21 THE COURT: Yeah, okay.

22 MR. BAUMSTEIN: All right. And but you
23 understood, at least, that got wiped up to refer -- and --
24 to your bonus as well?

25 MR. HOFFMAN: I think the context here is clearly

1 we're talking about my compensation for the more immediate
2 compensation. So that was my understanding at the time.
3 And hearing from you, Your Honor, I understand what your
4 point is.

5 THE COURT: Well, I don't have a point. I'm only
6 -- I'm just trying to -- you know, I've listened to it and I
7 think about the context, and I was just trying to -- because
8 the works to me, suggest sure, what you're saying, but also,
9 a nod to the greater, you know, unfortunate circumstances
10 that you -- that affected you and some of the others at the
11 firm.

12 MR. HOFFMAN: Yes.

13 MR. BAUMSTEIN: Right. And just for the record,
14 how -- you know, how much in equity had you lost, equity
15 value, had you lost with your RSUs over the course of 2008?

16 MR. HOFFMAN: About \$60 odd million.

17 MR. BAUMSTEIN: As that was happening was -- you
18 know, was there anything else that you were thinking that
19 might counterbalance that?

20 MR. HOFFMAN: Well, I had been accrued liability
21 of Lehman to pay me for it, my profitability that was going
22 the opposite direction. So, I wasn't -- it seemed to
23 balance in my own personal balance sheet.

24 MR. BAUMSTEIN: Okay. Okay. Why don't we
25 continue now with -- from 27:32 to 29:03?

1 [RECORDING IS PLAYED]

2 MR. BOMMENSATH: [ON RECORDING] I know it's not
3 perfect but we try also to kill the clawback, we try to—if
4 you would have had that money at Lehman you would have had 5
5 years we try to accelerate that which has a huge NPV value.
6 There's a lot things we try to do Johnny. If you go and
7 price everything. Okay?

8 MR. HOFFMAN: [ON RECORDING] Yes.

9 MR. BOMMENSATH: [ON RECORDING] Of what is
10 nominal. If you have 5-year cash or stock in 5 years the
11 risk you have with that adjustment is not the same as having
12 that the way we did it. Make sure you get it earlier, you
13 know.

14 MR. HOFFMAN: [ON RECORDING] Yeah.

15 MR. BOMMENSATH: [ON RECORDING] And we did all
16 these things. So please, factor that. On the other side,
17 our problem at it was Johnny, to try to go...So it's very
18 clear on that side that we tried to respect you. Not to have
19 you have the pressure to try to remake it, you earned it
20 Johnny. Okay? You earned it. All right? You earned that
21 money, it's yours. But we try on the other side, because
22 not everything was accrued in the pool, okay? It's not your
23 fault, that's the way it was.

24 MR. HOFFMAN: [ON RECORDING] Yeah.

25 MR. BOMMENSATH: [ON RECORDING] We're trying to

1 make the accounting work in Barclays and in Lehman for you,
2 that's it. And...you know, that's it, you know, there's no
3 more to say, you know from our side. You agree with that
4 Mike? In summary?

5 MR. KEEGAN: [ON RECORDING] Yeah no, well that's
6 what we tried to do...that's what we tried to do. I also
7 appreciate where you are and we'll figure that piece out.

8 MR. BOMMENSATH: [ON RECORDING] The main thing is
9 that we want to you to be...go back trading, make money, be
10 paid and hopefully we survive and we do that eh? That's what
11 I want.

12 MR. HOFFMAN: [ON RECORDING] Okay.

13 [RECORDING ENDS]

14 MR. BAUMSTEIN: Later, so, Mr. Bommensath said,
15 "So on the other side, our problem at it was Johnny to try
16 to go -- so it's very clear that we tried to respect you,
17 not to have you have the pressure to re-make it. You earned
18 it, Johnny, okay? You earned it, all right. You earned
19 that money. It's yours. But we are trying, on the other
20 side, because not everything was accrued in the pool, okay,
21 it's not your fault, that's the way it was." What did you
22 understand Mr. Bommensath to be saying, that his problem
23 was, or Barclays' problem was?

24 MR. HOFFMAN: I think he's saying like, earn the
25 money, on the other side, which would be Lehman, but on the

1 money wasn't accrued in the bonus pool. I assume that's the
2 pool. It's not your fault, it just wasn't accrued, so we're
3 trying to figure out how we can make you happy here.

4 MR. BAUMSTEIN: Okay. And other than this
5 conversation with Mr. Bommensath, had he ever had any other
6 discussions with you, where it was discussed whether amounts
7 you had earned at Lehman had been accrued in the bonus pools
8 for Barclays?

9 MR. HOFFMAN: Eric had told me several times that
10 it was not accrued in the pool.

11 MR. BAUMSTEIN: And do you have any understanding
12 why it would be significant if portions of your Lehman
13 compensation had not been accrued in the bonus pool?

14 MR. HOFFMAN: My recollection of the APA, and I
15 did not review it prior to this, it's only my recollection
16 from the years ago, was that it discussed certain bonuses
17 that were accrued. Accrued bonuses could be paid from that,
18 and if my bonus wasn't accrued, they didn't have the option
19 to pay me from that.

20 MR. BAUMSTEIN: Okay. And what did you understand
21 Mr. Bommensath to be saying by, "It's not your fault.
22 That's the way it was?"

23 MR. HOFFMAN: I could not affect what was accrued
24 or what was not regardless of what my probability was.

25 MR. BAUMSTEIN: Okay. Why don't we just turn to

1 the -- what will be the last clip here, and we'll hopefully
2 finish very shortly thereafter. At 29:22 to 30:08 on the
3 same--

4 [RECORDING IS PLAYED]

5 MR. HOFFMAN: [ON RECORDING] 15.

6 MR. BOMMENSATH: [ON RECORDING] You've been 15
7 years at that firm. New York, Philadelphia and Miami, and
8 everything collapsed.

9 MR. HOFFMAN: [ON RECORDING] Yes.

10 MR. BOMMENSATH: [ON RECORDING] Traumatic.

11 MR. HOFFMAN: [ON RECORDING] Yes.

12 MR. BOMMENSATH: [ON RECORDING] Okay?

13 MR. HOFFMAN: [ON RECORDING] Yes.

14 MR. BOMMENSATH: [ON RECORDING] We are willing, we
15 want you to join the firm and us together to have the chance
16 to rebuild something new, which respect ... money, which you
17 can be exceptional. That is what we are trying to do.

18 MR. HOFFMAN: [ON RECORDING] Okay.

19 MR. BOMMENSATH: [ON RECORDING] That's the goal,
20 huh? Don't you think so?

21 MR. HOFFMAN: [ON RECORDING] That is the goal.
22 The goal is to get back to work.

23 MR. BOMMENSATH: [ON RECORDING] That's the goal,
24 right?

25 MR. HOFFMAN: [ON RECORDING] That's the goal,

1 absolutely. Okay.

2 MR. BOMMENSATH: [ON RECORDING] Now that's where
3 we are.

4 [RECORDING ENDS]

5 MR. BAUMSTEIN: What did you understand Mr.
6 Bommensath to mean by "rebuilding something new?"

7 MR. HOFFMAN: I think he said it to me a couple of
8 times, restart the trade, rebuild something new, you've got
9 to start over.

10 MR. BAUMSTEIN: Okay. And how does the concept of
11 rebuilding something new relate to the structure of the
12 compensation that Barclays was offering you?

13 MR. HOFFMAN: It was -- I was being compensated to
14 restart the trade, make money for the firm, and get paid, in
15 that order.

16 MR. BAUMSTEIN: You mentioned that your goal was
17 to get back to work. Were you working at the time you had
18 this conversation?

19 MR. HOFFMAN: No.

20 MR. BAUMSTEIN: Okay. You can put that away.
21 After this meeting, did Barclays send you a draft contract?

22 MR. HOFFMAN: Yes.

23 MR. BAUMSTEIN: And if you go to exhibit 43, could
24 you take a look at that for a moment?

25 MR. HOFFMAN: Yes.

1 MR. BAUMSTEIN: First of all, did you sign exhibit
2 43?

3 MR. HOFFMAN: No.

4 MR. BAUMSTEIN: Was this the first proposal you
5 had received?

6 MR. HOFFMAN: No.

7 MR. BAUMSTEIN: Was this the first written
8 proposal you had seen -- received?

9 MR. HOFFMAN: I think there is a prior written
10 proposal. I don't know why we don't -- neither side has it,
11 but I can see from terms we were discussing, my recollection
12 is, there was in fact another proposal, and one specific
13 was, he discussed -- they had the ability to let me know --
14 let me go at any time for any reason and not pay me anything
15 remaining and we'd have to negotiate that point back and
16 forth. And I don't see that change in any of this, but I do
17 remember circling that and having a problem with it and
18 going back and forth.

19 MR. BAUMSTEIN: Okay. And were you working for
20 Barclays when you received this offer?

21 MR. HOFFMAN: No.

22 MR. BAUMSTEIN: So, the first exhibit we started
23 with today was dated October 3rd. Your Barclays agreement
24 was at the date you executed an agreement with Barclays?

25 MR. HOFFMAN: I'm sorry, October 3rd?

1 MR. BAUMSTEIN: Yes.

2 MR. HOFFMAN: Yes.

3 MR. BAUMSTEIN: And could you turn to exhibit 46?
4 I'll just kind of let you read it for yourself here, but you
5 can see that starting at 3:40 in the afternoon of October
6 3rd, you start to receive congratulations and welcome emails
7 from Bob Diamond and Rich Ricci. Do you have an
8 understanding why they were congratulating you on October
9 3rd?

10 MR. HOFFMAN: I joined the firm.

11 MR. BAUMSTEIN: Yeah. And prior to executing the
12 agreement, had you actually performed any work for Barclays?

13 MR. HOFFMAN: No.

14 MR. BAUMSTEIN: When did you start trading for
15 Barclays?

16 MR. HOFFMAN: Some time late in October. It took
17 a couple of weeks from the October -- Monday October 6th to
18 get the list limits in place and the -- get a couple of
19 administrative issues settled.

20 MR. BAUMSTEIN: And by February 10, 2009, the,
21 kind of that first three months you were there, when you
22 receive -- when you had been paid the special awards, how
23 much in profits had you generated for Barclays?

24 MR. HOFFMAN: About \$220 million.

25 MR. BAUMSTEIN: And how long did you stay at

1 Barclays?

2 MR. HOFFMAN: Until December 31st, 2013.

3 MR. BAUMSTEIN: What was your total profitability
4 for Barclays for the approximately five years you stayed
5 there?

6 MR. HOFFMAN: About \$1.25 billion.

7 MR. BAUMSTEIN: Okay. And why did you leave
8 Barclays?

9 MR. HOFFMAN: Regulatory reasons. It was a
10 mutually agreed separation, but -- between Dodd Frank, and
11 the firm was no longer able to compensate people along these
12 lines, it changed pretty quickly actually during this -- the
13 life of this contract. They were no longer able to be in
14 this business, so we reached a mutually agreed separation.

15 MR. BAUMSTEIN: And what are you doing now, Mr.
16 Hoffman?

17 MR. HOFFMAN: I'm not working.

18 MR. BAUMSTEIN: Okay. Can I take one moment, Your
19 Honor?

20 THE COURT: Sure.

21 MR. BAUMSTEIN: I just want to see... I just want
22 to talk about what the differences were in the compensation
23 that you would've had under the LBI contracts and the timing
24 you would've received or -- I guess -- you used terms, the
25 word accrued, and you used the term vested. Can you

1 describe what the difference was -- what did you obtain
2 under the Barclays contract, and what -- with respect to the
3 special awards and any elevated performance bonus? And how
4 does that compare to what you would have received at Lehman,
5 had Lehman stayed in business and continued?

6 MR. HOFFMAN: Well, there is a lot that goes into
7 that. The main thing is that everything at Lehman would
8 have vested if I left the firm at any time. At Barclays, I
9 had to be there.

10 MR. BAUMSTEIN: Okay. And in 2009, what was the
11 total amount you received at Barclays?

12 MR. HOFFMAN: \$22.5 million.

13 MR. BAUMSTEIN: Plus the \$7.5 was in--?

14 MR. HOFFMAN: Yes.

15 MR. BAUMSTEIN: --some sort of -- I'm sorry -- was
16 -- what was the other \$7.5 in?

17 MR. HOFFMAN: Equity participation plan.

18 MR. BAUMSTEIN: And what would you have received
19 from Lehman in 2009 in terms of cash?

20 MR. HOFFMAN: 27 and a half.

21 MR. BAUMSTEIN: And what would you have received
22 in terms of vested -- I guess vested RSUs, but not tradable,
23 I think would have been?

24 MR. HOFFMAN: \$38 million.

25 MR. BAUMSTEIN: And based on the elevated

1 performance and bonus and the RSUs, what did you receive
2 from Barclays -- I'm sorry -- elevated performance and the
3 special awards, what did you receive from Barclays in 2010?

4 MR. HOFFMAN: For the special award, I received --
5 well, it was not -- no longer 25 -- 75 percent cash. They
6 changed it dramatically. It ended up at \$100,000 cash by
7 2011. For 2010, I think it was 40 percent cash.

8 MR. BAUMSTEIN: Okay. So those cash components
9 had changed from your original negotiations?

10 MR. HOFFMAN: Yes.

11 MR. BAUMSTEIN: And what -- with respect to your--
12 ?

13 MR. HOFFMAN: I don't know if they changed it in
14 2010 and '11, or if they changed it in 2009 and '10. It was
15 between 2010 and '11 that they changed it, I'm sorry, I
16 think. There is a change to this contract here that they
17 put in place.

18 MR. BAUMSTEIN: And with respect to your pre-
19 Lehman -- your pre-bankruptcy obligations from Lehman, what
20 would you have received in 2010, with respect to your 2008
21 awards?

22 MR. HOFFMAN: I would've gotten \$19 million in
23 cash and whatever other stock that I had been awarded,
24 would've become free to trade. And I was already vested, so
25 it's a fine -- it's a finer distinction, so there's award,

1 there's vested, and then, there's free to trade. Those are
2 three different categories. I care about vesting for the
3 most part, is what matters to me.

4 MR. BAUMSTEIN: Why does vesting matter the most
5 to you?

6 MR. HOFFMAN: Because then it's mine. I don't
7 have to work for it. I don't have to do anything for it.

8 MR. BAUMSTEIN: Okay. And then, final question,
9 overall, your comp -- the compensation you received from
10 Barclays with respect to your agreement that you signed, how
11 did that compare to your understanding of what the market
12 was, for your services?

13 MR. HOFFMAN: At -- for the performance period in
14 question here, or the life of my time at Barclays?

15 MR. BAUMSTEIN: Well, let's just -- you know,
16 let's talk about for the performance period under the 2008
17 agreement, including the special awards.

18 MR. HOFFMAN: I think the conversation was
19 probably around 20 percent of my profitability.

20 MR. BAUMSTEIN: Okay. And how did that compare to
21 the market for what you could've obtained for yourself?

22 MR. HOFFMAN: I -- that was obtainable. I
23 could've obtained more.

24 MR. BAUMSTEIN: Okay. Nothing further.

25 THE COURT: Good. All right. So, we'll take a

1 lunch break now. Let's resume promptly at two. How long do
2 we think the cross is going to take?

3 MR. FOUKAS: I'd say an hour or so, an hour and a
4 half, maybe.

5 THE COURT: Okay. And then, we'll take a short
6 break and we'll go -- you're going to call another witness?

7 MR. BAUMSTEIN: Yes. That's right, we'll -- and
8 that -- knowing that I guess it's about an hour, that
9 probably is now the time to give him a call as well, and
10 make sure he's on his way.

11 THE COURT: All right, Mr. Hoffman, the same rules
12 pertain to the lunch break.

13 MR. HOFFMAN: Yeah.

14 THE COURT: You say -- you can have lunch with Mr.
15 Baumstein, but you can only talk about things that are
16 unrelated to this, all right?

17 MR. BAUMSTEIN: He's a Phillies fan so
18 (indiscernible)--

19 THE COURT: Well, I've got a daughter in
20 Philadelphia, so I spend a lot of time there, so yay
21 Phillies.

22 MR. BAUMSTEIN: Thank you, Your Honor.

23 (Recess)

24 THE COURT: All right.

25 MR. FOUKAS: Savvas Foukas of Hughes Hubbard &

1 Reed for the Trustee. Good afternoon, Your Honor. Good
2 afternoon, Mr. Hoffman.

3 THE COURT: Should I switch to your binder?

4 MR. FOUKAS: Yeah, I think that would be easiest,
5 although I do think we'll probably use at least one of --
6 LEE LLC's binder. Mr. Hoffman, I want to start by going
7 back a little bit to your deal with LBI, the employment
8 contract and your payment structure under that, okay?

9 MR. HOFFMAN: Yes.

10 MR. FOUKAS: Okay. Your base salary in both 2007
11 and 2008 was 200,000, right?

12 MR. HOFFMAN: Yes.

13 MR. FOUKAS: Yeah. And your performance bonus was
14 going to be calculated on a percentage of net profits, which
15 in both years was 12 percent of your first 25 million and
16 then 14 percent of any profits above that, right?

17 MR. HOFFMAN: Yes.

18 MR. FOUKAS: And then, from that would be deducted
19 your base salary, right?

20 MR. HOFFMAN: The base salary would be deducted.

21 MR. FOUKAS: And, in both years, your deal with
22 LBI was that your performance bonus would be paid in two
23 installments, right?

24 MR. HOFFMAN: Yes.

25 MR. FOUKAS: And the second installment was a

1 clawback, right?

2 MR. HOFFMAN: Yes.

3 MR. FOUKAS: And, by that, that means that the
4 installment wasn't paid until the following year and could
5 be lost depending on your trading performance in that year,
6 right?

7 MR. HOFFMAN: If I was employed and trading, yes.

8 MR. FOUKAS: Right, you couldn't make 100 million
9 one year, lose 100 million the second year, and walk away
10 with the first year's performance bonus whole, right?

11 MR. HOFFMAN: That's right.

12 MR. FOUKAS: And I think, as we talked about
13 before, you talked about it on direct, the way the
14 installments worked for someone at your compensation level,
15 under your contract, was that all of your equity would be
16 paid in the first installment, right?

17 MR. HOFFMAN: Yes.

18 MR. FOUKAS: Half of your cash in the first
19 installment, and then the second installment was all cash,
20 right?

21 MR. HOFFMAN: If there was equity, it would be in
22 the first installment. The second would be all cash.

23 MR. FOUKAS: And every year you were at the firm,
24 there was equity, right?

25 MR. HOFFMAN: The prior years I'd been in the

1 firm, there was always equity.

2 MR. FOUKAS: Okay. 2007, for instance, half your
3 compensation was in equity, right?

4 MR. HOFFMAN: That sounds correct, yes.

5 MR. FOUKAS: 2006, same thing.

6 MR. HOFFMAN: I don't know the percentage, but it
7 was 50 percent, I believe.

8 MR. FOUKAS: Okay. And your 2008 contract with
9 Lehman Brothers provided that, if you were terminated for
10 cause before you received your performance bonus, you'd lose
11 it all, right?

12 THE COURT: Can I interrupt you for one moment?
13 Would you come up? Mr. Baumstein, could you come up for a
14 second? (indiscernible)

15 MR. BAUMSTEIN: (indiscernible)

16 THE COURT: Okay. All right. Mr. Hoffman, that
17 was just a procedural matter. That had nothing whatsoever
18 to do with the (indiscernible) of the testimony.

19 MR. HOFFMAN: Thank you, Your Honor.

20 MR. FOUKAS: And I guess I'm not sure, so I'm just
21 going to ask it again, just because I don't know if we got
22 an answer or not. Under your Lehman contract, your 2008
23 Lehman contract, if you were terminated for cause before
24 either payout date, before any installment was paid, you'd
25 lose your whole bonus, right?

1 MR. HOFFMAN: Yes.

2 MR. FOUKAS: And I guess let's take a look at the
3 2008 bonus, which is going to be -- if you've got the binder
4 in front of you that's Trustee's exhibits, do you see that
5 one?

6 MR. HOFFMAN: I do.

7 MR. FOUKAS: Okay. 2000 -- Trustee's Exhibit Six,
8 so it should be Tab Six. Do you have that, Mr. Hoffman?

9 MR. HOFFMAN: Yes.

10 MR. FOUKAS: Okay. And, if you turn to the second
11 page, you'll see that there is a -- at the bottom of the
12 page, there is a sentence that starts, "If your employment
13 ends before the first payout date"; do you see that?

14 MR. HOFFMAN: Yes.

15 MR. FOUKAS: Okay. And the first bullet talks
16 about not just being terminated with cause, but it also
17 provides that, if you resigned before you received your
18 bonus, you would lose it all, right?

19 MR. HOFFMAN: Yes.

20 MR. FOUKAS: And it goes on to -- there's a second
21 bullet there that also talks about what happens if you're
22 terminated -- your employment ends for any other reason.
23 Do you see that? And I think you went through that with Mr.
24 Baumstein. Do you recall that?

25 MR. HOFFMAN: Yes.

1 MR. FOUKAS: Okay. And what it says is, if your
2 employment ends for any other reason, carrying over to the
3 next page, it says you'll receive the full performance
4 bonus, payable part in cash and part in conditional equity
5 awards, right? I guess I'm on the page three, the sentence
6 -- the first full sentence that starts, "You." Do you see
7 that?

8 MR. HOFFMAN: I will receive a full performance
9 bonus on the first payout date, payable part in cash and
10 part in conditional equity awards.

11 MR. FOUKAS: Okay. So, you understood at the time
12 you entered into this contract that, if your employment
13 ended for any reason other than your resignation or your
14 termination for cause, while you'd receive the bonus, half
15 of it would be payable in conditional equity, right?

16 MR. HOFFMAN: It would be payable in conditional
17 equity, yes.

18 MR. FOUKAS: Now, the conditional equity that
19 we've been talking about in this exchange, and you discussed
20 it a little bit this morning, were restricted stock units,
21 right? That's how you received conditional equity awards at
22 Lehman, at least for 2007 and 2006?

23 MR. HOFFMAN: That was what was described in the
24 equity award program. It's the RSUs.

25 MR. FOUKAS: Okay. And I guess my question is:

1 that is what you received at Lehman in 2007 and 2006, RSUs,
2 right?

3 MR. HOFFMAN: Yes.

4 MR. FOUKAS: Okay. And you had received RSUs for
5 some years before that as well with Lehman, right?

6 MR. HOFFMAN: Yes.

7 MR. FOUKAS: And, at least from 2000 -- I think
8 you told us 2001 or 2000 this morning, you said your
9 employment at Lehman was governed by employment contracts,
10 right?

11 MR. HOFFMAN: Yes.

12 MR. FOUKAS: And, in each of those years, those
13 contracts contemplated that a portion of your compensation
14 would be payable in conditional equity awards, right?

15 MR. HOFFMAN: As determined with the equity award
16 program, yes.

17 MR. FOUKAS: Right. You didn't have the option to
18 receive your compensation in all cash, did you?

19 MR. HOFFMAN: It was not my option, no.

20 MR. FOUKAS: And you understood that would be the
21 case each year, right?

22 MR. HOFFMAN: Each year I signed the contract that
23 state -- that had this in it, this language we're talking
24 about, yes, I understood that.

25 MR. FOUKAS: And nonetheless you signed a contract

1 each year that provided for you to receive a portion of your
2 compensation in conditional equity awards, right?

3 MR. HOFFMAN: If the firm so chose, they were
4 going to -- they could elect to do that.

5 MR. FOUKAS: And my question was, each year, you
6 signed the contract understanding that, right?

7 MR. HOFFMAN: I signed it. I did. Yes.

8 MR. FOUKAS: And you mentioned, I think, the
9 Equity Awards Program a couple of times in response to the
10 answers here. You are familiar with the Equity Awards
11 Program at Lehman?

12 MR. HOFFMAN: I got an email with it, I think,
13 every year. I didn't necessarily study it. But I was
14 familiar with it, yes.

15 MR. FOUKAS: So, in other words, there was a
16 document that you received each year while you were working
17 at LBI?

18 MR. HOFFMAN: I think I did get it each year.

19 MR. FOUKAS: And, in 2008, you are aware that
20 there were changes made to that document, right?

21 MR. HOFFMAN: I'm not sure which changes you're
22 referring to. So, I'm not sure I'm aware. I know that
23 there were changes made each year. I think the schedule,
24 the vestment schedule, changed. Is that what you're
25 referring to?

1 MR. FOUKAS: I think that was one of the changes,
2 right. Do you recall that there was also a change in the, I
3 guess, holding period, if I use that term? Do you know what
4 I'm talking about?

5 MR. HOFFMAN: Yes. I'm aware of it.

6 MR. FOUKAS: Okay. So, in other words,
7 historically, RSUs granted you the right to have an LBHI
8 share after five years, right? That was the historical time
9 period, the holding period at Lehman?

10 MR. HOFFMAN: Yes.

11 MR. FOUKAS: And that changed in 2008, right?

12 MR. HOFFMAN: Yes. I only refreshed my memory of
13 that in the prior couple of months.

14 MR. FOUKAS: Okay. And you also talked about a
15 vesting schedule. Was that what you intended to mean? Or
16 was there a different --

17 MR. HOFFMAN: No, I think that's probably the same
18 schedule.

19 MR. FOUKAS: Okay. And the RSUs -- you understood
20 that, if you had an RSU, that didn't mean you could sell it,
21 right?

22 MR. HOFFMAN: You could not sell your RSUs.

23 MR. FOUKAS: Okay. And you understand that the
24 RSU -- the value of the common stock underlying the RSUs
25 could go up before the end of the holding period, right?

1 MR. HOFFMAN: Yes.

2 MR. FOUKAS: Could go down, right?

3 MR. HOFFMAN: Yes.

4 MR. FOUKAS: And it could go to zero, right?

5 MR. HOFFMAN: It could.

6 MR. FOUKAS: And you understood that at the time
7 you were employed by LBI, right?

8 MR. HOFFMAN: I understood that.

9 MR. FOUKAS: I'd like to ask you to look at
10 Trustee's Exhibit 38. Do you have that in front of you?

11 MR. HOFFMAN: I do.

12 MR. FOUKAS: Okay. And can you tell me, is that
13 an email exchange between you and Eileen Sullivan?

14 MR. HOFFMAN: Yes.

15 MR. FOUKAS: Okay. And turning to the email, I
16 guess the first email in the chain, I guess first meaning
17 oldest, do you see that, that you're asking Ms. Sullivan a
18 question?

19 MR. HOFFMAN: How does the RS -- presumably U --
20 change affect my comp?

21 MR. FOUKAS: Okay. And this is July of 2008,
22 right?

23 MR. HOFFMAN: Yes.

24 MR. FOUKAS: Okay. And you'll see Ms. Sullivan's
25 response.

1 MR. HOFFMAN: Yes.

2 MR. FOUKAS: Okay. And there's a reference to a
3 grid, correct?

4 MR. HOFFMAN: Yes.

5 MR. FOUKAS: And what Ms. Sullivan is telling you
6 is that the change to the grid that happened in July to the
7 Equity Awards Program doesn't apply to you, right?

8 MR. HOFFMAN: She's -- some of the -- she's saying
9 some changes apply and some don't. In terms of the grid, "I
10 have my own grid attached to my letter," she said.

11 MR. FOUKAS: Okay. And that's the one you looked
12 at this morning that calls for the maximum deferral rate of
13 50 percent, right?

14 MR. HOFFMAN: Yes.

15 MR. FOUKAS: Okay. And, turning -- I guess I'd
16 like to now take -- have you take a look at Exhibit Two in
17 the binder, if you could. Are you there, Mr. Hoffman?

18 MR. HOFFMAN: I am.

19 MR. FOUKAS: Okay. That's the 2008 Equity Awards
20 Program, right?

21 MR. HOFFMAN: Yes.

22 MR. FOUKAS: And this is the kind of document that
23 we were talking about that you received at Lehman
24 periodically, right?

25 MR. HOFFMAN: I received this periodically.

1 MR. FOUKAS: Okay. And just turning, inside it,
2 to, I guess, page -- internal page four, you'll see that
3 there's a page entitled, "Overview of 2008 Changes." Do you
4 see that?

5 MR. HOFFMAN: Yes.

6 MR. FOUKAS: And you'll see that there are some
7 bullets that follow, and that, at the bottom of the page,
8 there are some numbers that talk about the three primary
9 changes to the 2008 program. Do you see that?

10 MR. HOFFMAN: Yes.

11 MR. FOUKAS: Okay. And one was the elimination of
12 the equity discount. Do you recall that change being made?

13 MR. HOFFMAN: Yes.

14 MR. FOUKAS: And so, what that meant is that, in
15 2008, there would not be a discount applied to any grant
16 price for RSUs when they were ultimately struck, right?

17 MR. HOFFMAN: Yes.

18 MR. FOUKAS: And, on the vesting schedule, point
19 two indicated that a change was made so that all employees
20 would have a third of their RSUs vest. Do you see that?

21 MR. HOFFMAN: 33 percent per year over three
22 years?

23 MR. FOUKAS: Right, exactly. Yeah. And then the
24 third bullet is the holding period change we talked about
25 before. Is that correct?

1 MR. HOFFMAN: It is, but I'll correct that the
2 vesting and holding schedules are not the same. I gave that
3 they were the same; it looks like they're not the same. I
4 didn't know.

5 MR. FOUKAS: Okay. But, in terms of the holding
6 period, that's the change we discussed before, right?

7 MR. HOFFMAN: Yeah, five years to three years.

8 MR. FOUKAS: Okay. Now, you talked a little bit
9 this morning about how many RSUs you had outstanding at the
10 time Lehman failed. Do you recall that?

11 MR. HOFFMAN: Yes.

12 MR. FOUKAS: And, in fact, you are making a claim
13 in this proceeding to be paid for those RSUs that you had
14 issued, right?

15 MR. HOFFMAN: I think I had about 780,000 RSUs
16 that I didn't receive stock for. It is in the claim.

17 MR. FOUKAS: Okay. And so, you're claiming that
18 you were damaged because those shares weren't delivered to
19 you, right?

20 MR. HOFFMAN: Yes.

21 MR. FOUKAS: Now, you -- I'd like to go into your
22 book now. I want to talk about the memo -- I guess -- I
23 think you called it the Mary Archer Memo -- that there was
24 some testimony about before. That's actually in LEE's book,
25 61. Are you there, Mr. Hoffman?

1 MR. HOFFMAN: I am.

2 MR. FOUKAS: Okay. So, you had some testimony
3 about how you understood this memo to relate to your
4 compensation at Lehman. I guess, just to be clear, this --
5 and you can see, in the second paragraph there, it talks
6 about the firm agreeing to grandfather last year's 2005
7 voluntary termination provision into your 2006 and future
8 years' equity awards under the program. So, what it's
9 talking about is a provision that existed generally for
10 Lehman employees in 2005 related to voluntary termination,
11 right?

12 MR. HOFFMAN: 2005 onward.

13 MR. FOUKAS: What I'm saying is there was a
14 provision in the 2005 Equity Awards Program that was
15 applicable to employees generally, by which, if they
16 voluntarily terminated and didn't compete, they would
17 receive the unvested principal, right?

18 MR. HOFFMAN: My recollection is that the -- what
19 is -- we're talking about, the voluntary termination
20 provision, dictated what it would take to reach full career
21 status. I don't know that they ever defined "full career
22 status" in the equity award programs. Maybe it was in the
23 underlying documents.

24 But they redefined it in 2005 to be a harder -- to
25 be something that I wouldn't reach. Frankly, I was not

1 going to be there nearly long enough. I think I had to be
2 there for 20 years. It was my 14th year. I didn't plan on
3 making it.

4 MR. FOUKAS: Right. So, what this provision
5 provided is that, if you terminated voluntarily -- so, if
6 you resigned and did not go to work for a competitor -- that
7 any unvested RSUs that you had been issued would not be
8 lost. Right?

9 MR. HOFFMAN: That's right.

10 MR. FOUKAS: Okay. So, we talked -- and maybe I
11 just misheard the testimony, but you indicated before that
12 there was some effect that this had on the clawback or the
13 second installment in your bonus compensation at Lehman.
14 That's not correct, right?

15 MR. HOFFMAN: Well, it would -- I could resign
16 from the firm.

17 MR. FOUKAS: Okay.

18 MR. HOFFMAN: And not trade, and the second
19 installment of the two years I wouldn't lose. And the
20 unvested stock I wouldn't lose. I didn't have to trade.
21 I'm not sure it would -- I wouldn't necessarily get it any
22 faster.

23 MR. FOUKAS: This has nothing to do with your
24 second installment at all, right? This is talking about
25 RSUs that had -- you had already been issued, right?

1 MR. HOFFMAN: And for future years, yes.

2 MR. FOUKAS: Well, at the time you terminated, it
3 would be referring to any RSUs that you had been issued
4 previously, right?

5 MR. HOFFMAN: That's right.

6 MR. FOUKAS: Okay. So, it has nothing to do with
7 terminating and then getting a second installment. That's
8 governed by the terms of your contract, right?

9 MR. HOFFMAN: Yes. I'd have to refer back to the
10 contract, but that sounds right.

11 MR. FOUKAS: Okay. And it certainly wasn't
12 something that, if you terminated -- we looked at your 2008
13 contract earlier -- if you terminated -- if you resigned
14 before payment of the first installment, before you received
15 any part of the bonus, you'd lose the whole thing, right?
16 This doesn't advance --

17 MR. HOFFMAN: If I terminate for what reason?

18 MR. FOUKAS: You resign.

19 MR. HOFFMAN: If I resign, no. I have to have
20 worked on the first payout date.

21 MR. FOUKAS: That's -- yes, yes.

22 MR. HOFFMAN: Yes. That's correct. I'm agreeing
23 with you that I have to work on the first payout date.

24 MR. FOUKAS: If you resign before that, you lose
25 everything. Right?

1 MR. HOFFMAN: I would -- yes, I would lose that
2 first installment and the second installment.

3 MR. FOUKAS: Of course. And this doesn't change
4 that at all.

5 MR. HOFFMAN: No.

6 MR. FOUKAS: Okay. And, indeed, this is dated May
7 17th, 2006, right?

8 MR. HOFFMAN: Yes.

9 MR. FOUKAS: Okay. Now, if we go back to look at
10 your contract, you probably have it in there. Maybe it's
11 easier, since you've got that open, and since everyone does,
12 I believe it is -- I'm guessing here -- no, I guessed wrong
13 -- Tab Five.

14 MR. HOFFMAN: Yes.

15 MR. FOUKAS: Okay. That's the 2008 contract,
16 right?

17 MR. HOFFMAN: Yes.

18 MR. FOUKAS: Okay. And the Mary Archer Memo is
19 not referred to here at all, right?

20 MR. HOFFMAN: It's not.

21 MR. FOUKAS: Okay. And, in fact, what it says on
22 the last -- on page four -- do you see page four? It's the
23 place you sign. You see that?

24 MR. HOFFMAN: Yes.

25 MR. FOUKAS: The first full paragraph that starts

1 with, "This letter will be binding," do you see that? That
2 paragraph?

3 MR. HOFFMAN: Yes.

4 MR. FOUKAS: Okay. The second sentence says,
5 "This letter represents the complete agreement of the
6 parties with respect to your compensation, with respect to
7 the proprietary portfolio, and supersedes any prior
8 agreements or understandings." Do you see that?

9 MR. HOFFMAN: I do.

10 MR. FOUKAS: Okay. And that was in the contract
11 you signed, right?

12 MR. HOFFMAN: Yes.

13 MR. FOUKAS: Okay.

14 THE COURT: So, let me understand what your
15 understanding is. How do you connect this document, June 6,
16 2008, with the Archer memo?

17 MR. HOFFMAN: The Archer memo was saying that any
18 unvested stock would vest, whether I worked there or not, if
19 I didn't do detrimental or competitive activity.

20 THE COURT: Right. So --

21 MR. HOFFMAN: I'm not sure this agreement says
22 anything differently about unvested stock being forfeited.

23 THE COURT: Okay. But if I wanted to understand
24 everything, I have to read both of them, right?

25 MR. HOFFMAN: Yes.

1 THE COURT: Thank you.

2 MR. FOUKAS: Now, sticking with the Tab Five --
3 you still have it open, right? I guess this is now 1EE
4 Exhibit Five, just so the record is clear, I believe. Is
5 that correct, your 2008 agreement?

6 MR. HOFFMAN: Yes.

7 MR. FOUKAS: Okay. You talked a little bit this
8 morning about how you came up with the bonus amount that
9 you're claiming and entitled to. And I just want to focus
10 on the 2008 number, okay? And we talked about the
11 performance bonus being 12 percent of the first 25 million
12 and then 14 percent of the rest, right?

13 MR. HOFFMAN: Yes.

14 MR. FOUKAS: And that's described on Exhibit A to
15 your agreement, and that's page five of the letter. Right?

16 MR. HOFFMAN: Yes.

17 MR. FOUKAS: Okay. And so, what it is is the --
18 there's a defined term, "net profit," right? It's 12
19 percent of the first 25 and 14 percent of the rest of the
20 net profit, right?

21 MR. HOFFMAN: Pre-compensation profit?

22 MR. FOUKAS: Right, it's net profit, which is
23 defined as pre-compensation profit.

24 MR. HOFFMAN: Yes.

25 MR. FOUKAS: Right, exactly. And pre-compensation

1 profit means gross revenue less certain items, right?

2 MR. HOFFMAN: Yes.

3 MR. FOUKAS: And one of the items is brokerage and
4 execution charges, right?

5 MR. HOFFMAN: Yes.

6 MR. FOUKAS: Okay. Now, turning to -- I'll ask
7 you to go back to my binder. I know it's in yours too, but
8 I have my numbers here, so it'll be a little easier for me
9 if we go back to the Trustee's exhibit binder, Tab Six --
10 Tab 41, excuse me. Trustee's 41. And you'll see, if you
11 turn to the second and third pages, it's a fuller version of
12 the spreadsheet you and your counsel discussed this morning,
13 laying out your P&L as of September 12th, 2008, correct?

14 MR. HOFFMAN: Yes.

15 MR. FOUKAS: And the number you used to calculate
16 your net profit was the four -- the 548,471. That's on --
17 all the way on the right of the first page, right?

18 MR. HOFFMAN: Yes.

19 MR. FOUKAS: And you went over with your counsel
20 the fact that there's a brokerage column to the immediate
21 right of that. That's negative 5331 for year-to-date,
22 right?

23 MR. HOFFMAN: Yes.

24 MR. FOUKAS: And your testimony was that that
25 shouldn't come out of your -- that shouldn't --

1 notwithstanding the fact that brokerage charges come out of
2 your pre-compensation profit, that these brokerage charges
3 don't, right?

4 MR. HOFFMAN: My testimony was that they're
5 already in the P&L.

6 MR. FOUKAS: So, in other words, they're already
7 in the kind of gross P&L, the 550 number that is the
8 farthest left column?

9 MR. HOFFMAN: Yes.

10 MR. FOUKAS: But, in fact, in prior years, they
11 were taken out for -- this column would be taken out?

12 MR. HOFFMAN: Well, there's an invoice brokerage
13 column specifically that appears in a different P&L that
14 we're not looking at here, and that is -- that does come
15 out.

16 MR. FOUKAS: My question, sir, is: this
17 spreadsheet, this wasn't something unique to 2008, right?
18 This was a spreadsheet that you had seen before. Correct?

19 MR. HOFFMAN: It may have changed slightly. I
20 didn't put it together. But I had seen it before.

21 MR. FOUKAS: Okay. And in the one you've seen
22 before, this brokerage column comes out, right?

23 MR. HOFFMAN: I don't know that.

24 MR. FOUKAS: Okay. I guess can we take a look at
25 Tab 52, Trustee's 52? Trustee's 52, you can see, Mr.

1 Hoffman, is an email dated December 3rd, 2007, to, among
2 other people, you, correct?

3 MR. HOFFMAN: Yes.

4 MR. FOUKAS: And it says, "P&L 11/30/2007," and
5 the attachment is, "Hoffman.xls." You'll see that November
6 30th of 2007 was the end of the 2007 performance year,
7 right?

8 MR. HOFFMAN: Yes.

9 MR. FOUKAS: And, if you turn the page, you'll see
10 that there is a very similar-looking spreadsheet, correct?

11 MR. HOFFMAN: Turn the page?

12 MR. FOUKAS: Well --

13 MR. HOFFMAN: (indiscernible)

14 MR. FOUKAS: You know, the email, and there's an
15 attachment to an email, right?

16 MR. HOFFMAN: Yeah.

17 MR. FOUKAS: Okay. You see the email is -- the
18 attachment to the email is a spreadsheet that looks very
19 similar to the one we saw from the prior year, correct?

20 MR. HOFFMAN: Yes.

21 MR. FOUKAS: Okay. And, in this version, you have
22 the gross P&L number. And then you have brokerage to the
23 right of it. And you'll see that brokerage is taken out,
24 correct?

25 MR. HOFFMAN: This spreadsheet and this

1 spreadsheet are not prepared by the same person, do not have
2 the same columns. I'm not going to say that they're the
3 same thing.

4 MR. FOUKAS: Okay. I guess --

5 MR. HOFFMAN: I can see a lot of differences. But
6 if your question is: does 226 (indiscernible) 85 minus 595
7 equal the next number? If I had a calculator I could be
8 sure, but it looks like it.

9 MR. FOUKAS: Okay. And, in fact, then there's a
10 long-term debt column to the right of that. Do you see
11 that?

12 MR. HOFFMAN: Yes.

13 MR. FOUKAS: And it's got a negative number as
14 well. Do you see that?

15 MR. HOFFMAN: Yes.

16 MR. FOUKAS: Okay. And, in fact, in calculating
17 your total compensation for 2007, both the numbers -- the
18 brokerage and the long-term debt -- were taken out to arrive
19 at your total compensation, right?

20 MR. HOFFMAN: Yes.

21 MR. FOUKAS: Okay. Notwithstanding that, you're
22 saying just the long-term debt on the 2008 spreadsheet
23 should come out, right?

24 MR. HOFFMAN: I'm saying that I don't know if this
25 brokerage number of 595 is comparable to the brokerage

1 number you're identifying as 5,331,000. I don't think my
2 brokerage went up 900 percent. I think there's a separate
3 invoice brokerage. This was prepared by a different person.
4 They simply did it differently.

5 MR. FOUKAS: Okay.

6 MR. HOFFMAN: I wasn't in product control. You
7 could probably get 100-percent explanation by someone who
8 was in product control.

9 MR. FOUKAS: Okay. So, if we turn back to the
10 2008 P&L spreadsheet, which I think we had open at Exhibit
11 41, can you do that?

12 MR. HOFFMAN: Yes.

13 MR. FOUKAS: Okay. So, what I'm going to do --
14 and I'm not going to make anyone do the math, and I just
15 want to do it for the record here -- is we're going to just
16 open up the calculator on the screen so I can just do the
17 math the way the -- and you can tell me if I'm doing
18 something wrong. I want to do the math assuming the 5331
19 comes out. Okay?

20 So, what we would do is we take the 548,471.
21 (indiscernible) 548,741,000. And we'll subtract 533--
22 5,331,000 from that. If brokerage comes out, you'll agree
23 that's what we would do, right?

24 MR. HOFFMAN: I'm not going to argue with the
25 math. You just did (indiscernible).

1 MR. FOUKAS: No. And, yeah, I'm just saying
2 that's the way -- that's what you would do. That's all I'm
3 saying. If it came out, that's what we would do, right?
4 And we would end up with 543,140,000. And what you would do
5 then to calculate your performance bonus would be you'd get
6 12 percent, again, of the first 25, right? And then that's
7 three million, right? You know that.

8 MR. HOFFMAN: Yes.

9 MR. FOUKAS: You got to answer yes. Okay.

10 MR. HOFFMAN: Sorry.

11 MR. FOUKAS: Three million. And you'd subtract
12 the 25 million from the 543,140,000, to figure out what you
13 would then multiply the 14 percent by, right?

14 MR. HOFFMAN: I am not agreeing with the \$543
15 million number, but I'm not arguing with the math of what
16 the calculator's saying. So, I'm not sure what you want me
17 to say.

18 MR. FOUKAS: No, I'm just asking how to do the
19 calculation. I guess -- I'm sorry. I guess I'm -- assume,
20 for purposes of my question, that the five comes out, the
21 brokerage charges. What you would do to calculate the bonus
22 at that point --

23 MR. HOFFMAN: There's another spreadsheet in the
24 book that has invoice brokerage as subtracted already.
25 There's a different number. But if you want to keep working

1 with this, yes.

2 MR. FOUKAS: Okay.

3 MR. HOFFMAN: That's how the math would work.

4 MR. FOUKAS: Good. And what you would end up with
5 is the 72,539,600, right? And you'd add back your three
6 million to that, so you'd end up with 75,539,600. Right?

7 MR. HOFFMAN: Yes.

8 MR. FOUKAS: And then from that we'd subtract your
9 \$200,000 salary.

10 MR. HOFFMAN: That's true.

11 MR. FOUKAS: Yeah. And so, that equals at 2008
12 bonus of 75,339,600, right?

13 MR. HOFFMAN: The math is working.

14 MR. FOUKAS: Okay. And what you would do then to
15 figure out what you were unpaid is you'd add your second
16 installment from 2007, correct? You were owed 7,712,500 for
17 that, right?

18 MR. HOFFMAN: It sounds right.

19 MR. FOUKAS: Okay. And that leaves us with
20 83,052,100, right? So, just a little bit over 83 million,
21 right?

22 MR. HOFFMAN: Yes.

23 MR. FOUKAS: Okay. We'll keep that number in
24 mind, and we can close out the calculator and just proceed.

25 THE COURT: But before you move on, I want to try

1 to understand and connect these dots. So, Mr. Hoffman, what
2 you're saying is, on the liquid markets P&L, as of 9/12/08,
3 which is at Exhibit 41, you're looking at the 5331 year-to-
4 date number, right?

5 MR. HOFFMAN: Yes.

6 THE COURT: Which Mr. Foukas has pointed to you.
7 And you said -- you've essentially said, I think, can't be
8 right, way too big, nine times what it was in '07, right?

9 MR. HOFFMAN: That's what I'm saying.

10 THE COURT: That's what you're saying. Okay.

11 MR. HOFFMAN: That's not the only reason why I'm
12 saying, Your Honor, that I don't think it's right.

13 THE COURT: Right. So, bear--

14 MR. HOFFMAN: But that was one of the --

15 THE COURT: So, bear with me. So, even if I'm --
16 and you can totally disagree with me. So, even if you
17 account for the fact that, in 2008, the year-to-date gross,
18 or not net P&L, was 550, right, that was the year that you
19 had had in 2008, right?

20 MR. HOFFMAN: Yes.

21 THE COURT: And, in the prior year, it was 220-
22 something, right?

23 MR. HOFFMAN: Yes.

24 THE COURT: So, the point -- so, this is a
25 question, because I don't know. I mean, I only know what I

1 have and what you all said. So, even if you grossed that
2 up, doubled it, more than doubled it, you're saying there's
3 still a -- that it'd still be a delta, and you're saying
4 that delta, you believe, is attributed -- attributable to
5 this other thing called invoice brokerage?

6 MR. HOFFMAN: I would agree with what you're
7 saying. I don't see a relationship necessarily between the
8 P&L and the invoice brokerage, because invoice brokerage is
9 based on volume. And I don't think my volume, in 2008,
10 certainly through September, was higher than 2007. I think
11 I traded more futures contracts in 2007 than 2008. This is,
12 again, something we could find out. But that's where the
13 real relationship is going to lie.

14 THE COURT: Okay. All right. That's very
15 helpful. Thank you.

16 MR. FOUKAS: I guess you mentioned the other
17 spreadsheet with invoice brokerage, so I guess I don't want
18 to leave that without addressing it. If -- I think we're
19 probably going to have to go back, if I'm not mistaken, to
20 your binder. So, I do apologize for that. But I believe --
21 and correct me if I'm wrong -- that it would be --

22 MR. HOFFMAN: It's Exhibit 12, sir.

23 MR. FOUKAS: 12? Is that where we go? Yes, okay,
24 12. Is that correct?

25 MR. HOFFMAN: Yes.

1 MR. FOUKAS: Okay. And what you're actually
2 talking about there is the, I guess, third page of the
3 exhibit, correct?

4 MR. HOFFMAN: First, second, third -- yes, I think
5 so.

6 MR. FOUKAS: Okay. There's a series of pages here
7 that says it's a consolidated analysis of P&L, correct?

8 MR. HOFFMAN: Yes.

9 MR. FOUKAS: Okay. And I guess what you're
10 referring to is the column kind of toward the middle of the
11 page that says -- I guess it's "invoiced brokerage"? Is
12 that what you're talking about?

13 MR. HOFFMAN: Yes.

14 MR. FOUKAS: Okay, that's what you're talking
15 about, right? So, basically, if we look at -- we're going
16 to try to find a total somewhere. I guess I'm going to look
17 towards the end of the page, since I -- the end of the
18 document, since I guess that's kind of what I'm familiar
19 with. Does that make sense? I think it's actually the
20 second-to-last page of the document.

21 MR. HOFFMAN: Yes.

22 MR. FOUKAS: Okay. That's the total of
23 everything, right?

24 MR. HOFFMAN: For the day. I think you're looking
25 at one day's P&L.

1 MR. FOUKAS: The second-to-last page, the one
2 day's P&L, that has a gross trade of 754 million?

3 MR. HOFFMAN: Oh, I'm sorry, if you're just
4 talking about page -- I'm not sure (indiscernible) --

5 MR. FOUKAS: Okay. I'm sorry. I guess it's bonus
6 claims 80, 8-0, on the bottom.

7 MR. HOFFMAN: Right. Yes.

8 MR. FOUKAS: That's the whole year, right?

9 MR. HOFFMAN: Yes.

10 MR. FOUKAS: Okay. The invoice brokerage has a
11 number of 105,900, right?

12 MR. HOFFMAN: Yes.

13 MR. FOUKAS: Okay. But if you look to the left,
14 you see net trading. You see that?

15 MR. HOFFMAN: Yes.

16 MR. FOUKAS: Okay. That's 550,868, right?

17 MR. HOFFMAN: Yes.

18 MR. FOUKAS: Okay. The invoice brokerage aren't
19 taken out of 550,868, right?

20 MR. HOFFMAN: They are.

21 MR. FOUKAS: They are taken out of 55 --

22 MR. HOFFMAN: Yes. In the net trading after
23 brokerage column, it would be --

24 MR. FOUKAS: After brokerage column, so that's the
25 550,762, right?

1 MR. HOFFMAN: Yes.

2 MR. FOUKAS: Okay. But the number now -- the net
3 -- the P&L number that is on our spreadsheet is the 550,868.
4 I think it's actually, you know -- if we stick with the same
5 exhibit, just go to the front, right? Of a -- now we're
6 looking -- we can't do that, because we've got to go back to
7 my fuller spreadsheet. So, I apologize for this, Trustee's
8 Exhibit 41.

9 MR. HOFFMAN: I'm there.

10 MR. FOUKAS: Okay. The net trading after the
11 invoice brokerage doesn't appear on this spreadsheet, right?

12 MR. HOFFMAN: No.

13 MR. FOUKAS: Right. So, the number that's used is
14 the 550,868. So -- correct? That's the P&L all the way to
15 the left.

16 MR. HOFFMAN: Yes.

17 MR. FOUKAS: Okay. So, in other words, the
18 invoice brokerage isn't out of that number, right?

19 MR. HOFFMAN: It would appear it's not.

20 MR. FOUKAS: Okay.

21 MR. HOFFMAN: And it should probably come out if
22 it was an expense of -- brokerage expense.

23 MR. FOUKAS: Okay.

24 THE COURT: So, summarizing --

25 MR. FOUKAS: You're --

1 THE COURT: It appears that the correct starting
2 point for the math is what's on page ending in 80, the
3 550,762.2? Is that --

4 MR. HOFFMAN: Starting the math?

5 THE COURT: Starting the math that Mr. Foukas was
6 walking through. In other words --

7 MR. HOFFMAN: Well, I think that would be after
8 brokerage. So, I'm not sure if you would then walk out this
9 other five million number. But I wouldn't dispute that, if
10 \$105,000 was invoice brokerage that was not taken out, I
11 wouldn't argue that it should come out.

12 MR. FOUKAS: Okay. That's fine.

13 THE COURT: Okay.

14 MR. FOUKAS: That's fine. Yeah. So, I guess we
15 can put that aside, and we'll step away from the
16 spreadsheets, unless there's more uncertainty there, which
17 there may be. Okay. I guess I want to fast-forward a
18 little bit to September 2008 and when you learned about
19 Lehman's bankruptcy. That was something you weren't happy
20 about, right?

21 MR. HOFFMAN: That's right.

22 MR. FOUKAS: You were concerned that you weren't
23 going to be paid the \$83 million that you were expecting,
24 right?

25 MR. HOFFMAN: I was concerned that I was owed

1 money by an entity that had just filed bankruptcy.

2 MR. FOUKAS: And, in particular, what you were
3 concerned about was that you were looking at not having \$83
4 million that you had been counting on to that point, right?

5 MR. HOFFMAN: Among other things, yes.

6 MR. FOUKAS: And that was probably your primary
7 concern?

8 MR. HOFFMAN: Fair to say.

9 MR. FOUKAS: Fair to say. And so, the transaction
10 with Barclays was a potentially good thing, right?

11 MR. HOFFMAN: If Barclays had purchased Lehman, it
12 would be a good thing. Here it would depend if they had
13 assumed my contract and made me whole or if they left me --
14 excluded me from this purchase.

15 MR. FOUKAS: And if they made you whole but didn't
16 assume your contract, that would have been a good thing,
17 right?

18 MR. HOFFMAN: Depends on what I had to do.

19 MR. FOUKAS: Well, you would have gotten your 83
20 million. That's number one, right? You would have been
21 happy about that.

22 MR. HOFFMAN: If I went to work for Barclays and
23 they paid me to work for Barclays, I would be happy about
24 it? Not as happy as if I worked other places. But we've
25 already discussed this.

1 MR. FOUKAS: We're going to discuss it again.

2 MR. HOFFMAN: Great.

3 MR. FOUKAS: I guess my question, sir, was: if
4 they hadn't assumed your contract but made you whole, gave
5 you \$83 million, and, yes, you had to work there for a
6 little bit, that was something you wouldn't be happy about?

7 MR. HOFFMAN: A little bit meaning by February
8 2009?

9 MR. FOUKAS: February 2009 for some of it,
10 February 2011 for all of it.

11 MR. HOFFMAN: Would I be happy about it? I don't
12 know.

13 MR. FOUKAS: And the reason I guess you don't know
14 is because they didn't assume your contract. That's what
15 you wouldn't be happy about, right? They paid you the 83
16 million, but you wouldn't have your contract assumed, right?

17 MR. HOFFMAN: If they paid me to work there. I
18 didn't necessarily want to stay there or work there, but I
19 was -- I felt that I didn't have -- I wouldn't get paid if I
20 didn't work there, based on the employment contract I had
21 with them.

22 MR. FOUKAS: You understood that, as part of the
23 sale, Barclays was offering employment to all of the Lehman
24 Brothers Inc. employees, right?

25 MR. HOFFMAN: Yes.

1 MR. FOUKAS: You were one of those people, right?

2 MR. HOFFMAN: I worked for Lehman Brothers Inc.

3 MR. FOUKAS: And you were one of the people
4 Barclays agreed to offer employment to, right?

5 MR. HOFFMAN: Yes.

6 MR. FOUKAS: And you therefore -- well, I guess,
7 let me ask you: you understood that the sale to Barclays
8 and Barclays's agreement to offer employment and
9 compensation to LBI employees was an opportunity for people
10 to keep getting paychecks, right?

11 MR. HOFFMAN: Yes.

12 MR. FOUKAS: It was an opportunity for you to keep
13 getting a paycheck, right?

14 MR. HOFFMAN: I was not thinking about my
15 paycheck, if you're referring to the biweekly paychecks that
16 I was getting from Lehman Brothers. No, I really wasn't
17 thinking much of that.

18 MR. FOUKAS: No, it didn't matter much to you,
19 right?

20 MR. HOFFMAN: Well, in relative terms that I had
21 just had this -- these experiences, it didn't matter.

22 MR. FOUKAS: Right. What you were really worried
23 about and concerned about was the \$83 million, right?

24 MR. HOFFMAN: As it related to what I had earned
25 for Lehman, that was my concern.

1 MR. FOUKAS: I'm going to ask you to turn to
2 Trustee's Exhibit 46, if you can. Are you there, sir?

3 MR. HOFFMAN: I am.

4 MR. FOUKAS: Just stepping back from that a bit,
5 you were following the negotiations with Barclays pretty
6 carefully, right?

7 MR. HOFFMAN: I would say I was following them,
8 yes.

9 MR. FOUKAS: Right? And, after the asset purchase
10 agreement was announced, you were still following the
11 developments pretty carefully, right?

12 MR. HOFFMAN: What would those developments be
13 after it was already announced?

14 MR. FOUKAS: Well, there was a sale hearing, as we
15 talked about earlier today, or you talked about earlier
16 today, right? There was a court approval, right?

17 MR. HOFFMAN: Yes.

18 MR. FOUKAS: You were made aware of that almost
19 immediately after it happened, right?

20 MR. HOFFMAN: After the court approval?

21 MR. FOUKAS: Yes.

22 MR. HOFFMAN: I didn't realize at the time it
23 really required a court approval, which is what I think I
24 said today. But probably at the time it seemed to have
25 probably been a known event around the world, if not New

1 York.

2 MR. FOUKAS: Yeah. Well, it certainly was, right?
3 And certainly for people at Lehman it was probably something
4 that was of particular interest, right?

5 MR. HOFFMAN: People who were concerned about
6 their paychecks and their benefits would want to see the
7 deal go through.

8 MR. FOUKAS: Not you, though. You didn't care one
9 way or the other at that point?

10 MR. HOFFMAN: When I was told that -- by Mike
11 Gelband that -- what he told me about my situation and my
12 contract, I became significantly less interested.

13 MR. FOUKAS: Okay. So, this email is a two-page
14 email chain. And, if we turn to the second page, you'll see
15 -- I apologize for the copying. But you'll see the bottom
16 email is a -- from September 20th, Saturday, and the subject
17 is, "Lehman Wins U.S. Court Approval for Sale." Do you see
18 that? "Sale to Barclays."

19 MR. HOFFMAN: Yes.

20 MR. FOUKAS: Okay. And that was forwarded to you
21 by Eric Felder, right?

22 MR. HOFFMAN: Yes.

23 MR. FOUKAS: And you responded to Mr. Felder, "We
24 spent some time with Wade and Deegan last night. Guys will
25 be pumped that it went through." And that was because, as

1 you said, people were going to have the chance to go work
2 for Barclays and get paid for what they had done before,
3 right?

4 MR. HOFFMAN: Well, they had employment, and they
5 were able to work as a -- those guys that I'm referring to,
6 I think, worked together, and they would be happy to have
7 their, you know -- to have an opportunity to have a trading
8 desk together.

9 MR. FOUKAS: And to get paid bonus compensation
10 for 2008, right?

11 MR. HOFFMAN: Yes.

12 MR. FOUKAS: Right. That was important to people
13 at Lehman, right? Bonuses, big part of their compensation
14 generally, right?

15 MR. HOFFMAN: Bonuses were a big part of
16 compensation.

17 MR. FOUKAS: Right. After you observed, "The guys
18 will be pumped that it went through," you say, "I am
19 supposed to meet with Richie and Jerry next week." That's
20 Rich Ricci and Jerry del Missier of Barclays, right?

21 MR. HOFFMAN: Yes.

22 MR. FOUKAS: So, as notwithstanding your lack of
23 interest in the sale, I guess you had already arranged to
24 meet with the two senior Barclays executives immediately
25 after the court approval, right?

1 MR. HOFFMAN: That's right.

2 MR. FOUKAS: And what you said is, "I will do
3 whatever I can to make it work." And what you were trying
4 to make work was to get your \$83 million, right?

5 MR. HOFFMAN: I think I wanted my contract
6 assumed, but we can -- but that's what I'm saying.

7 MR. FOUKAS: So it's not get 83 million; it's get
8 the piece of paper assumed, right?

9 MR. HOFFMAN: That was what I asked for.

10 MR. FOUKAS: Okay. So, I just want to be clear.
11 You didn't care one way or the other about the 83 million;
12 it's the assumption of the contract that was critical in
13 your mind.

14 MR. HOFFMAN: Did I care about \$83 million down
15 the road? It depends on what I had to do, what -- to get
16 it. I wasn't questioning if I could earn \$83 million in the
17 future. I think I could earn multiples of that, to be
18 honest. But right here, that's not what I'm talking about.

19 MR. FOUKAS: What you're talking about is getting
20 paid \$83 million based on the work you had done at Lehman,
21 right? That's what you wanted. You didn't want to have to
22 earn it in the future with some 25 percent that you could
23 have gotten from Millennium. You wanted \$83 million paid to
24 you from what you had done before, right?

25 MR. HOFFMAN: I wanted to get paid for the work,

1 the contracts 2007-2008.

2 MR. FOUKAS: The work you had done at Lehman.
3 That's what you wanted to get paid for, right?

4 MR. HOFFMAN: Yes.

5 MR. FOUKAS: And that was the \$83 million that
6 we've been talking about today. And that was your goal in
7 the discussion, right, with Barclays, was, as you said, to -
8 - was your negotiating strategy. Tell them 83 million.
9 That was the number you picked, right?

10 MR. HOFFMAN: Well, I think you had a segue in
11 there, so I'm going to set that aside. I'll just answer the
12 question.

13 MR. FOUKAS: Leave it aside, yes.

14 MR. HOFFMAN: Okay.

15 MR. FOUKAS: 83 million was the number you picked,
16 right?

17 MR. HOFFMAN: 83 million -- I don't know when I
18 picked it. But it did become the number.

19 MR. FOUKAS: That's right. It was your strategy
20 to get Barclays to pay you the 83 million, right?

21 MR. HOFFMAN: It was a negotiating strategy.

22 MR. FOUKAS: That was your goal, was to get them
23 to pay you 83 million?

24 MR. HOFFMAN: Well, I wanted to earn more than
25 that.

1 MR. FOUKAS: But you wanted them to -- well,
2 that's what you asked for, right? 83 million, not something
3 more.

4 MR. HOFFMAN: Well, 83 million and a percent of my
5 profits, which turned out to be more than 83 million. The
6 83 million was only a part of the compensation.

7 MR. FOUKAS: Oh, that's right, 83 million and then
8 percentage of profits going forward. Right?

9 MR. HOFFMAN: Part of the 83 million was also a
10 percent of profits. But I think we know that, because we've
11 reviewed the contract.

12 MR. FOUKAS: We'll go back to the contract again
13 and we'll talk about it some more. At the end of the
14 negotiations, which I guess here we're basically talking
15 about a week and a half between September 20th and October
16 3rd, Barclays did in fact agree to pay you \$83 million,
17 correct?

18 MR. HOFFMAN: Two weeks later, we entered an
19 agreement. Part of the agreement -- I wasn't sure what I
20 would get paid. But if I worked for Barclays, there were
21 special awards. There were percentages. The number was --
22 ended up more than 83 million.

23 MR. FOUKAS: What the number ended up -- well,
24 let's talk about -- what basically agreed to with Barclays
25 was your core deal with Lehman and 83 million on top of

1 that, right?

2 MR. HOFFMAN: No.

3 MR. FOUKAS: You had a 200,000 base salary at
4 Barclays, right, just like a Lehman.

5 MR. HOFFMAN: Yes.

6 MR. FOUKAS: Your performance bonus percentage was
7 12 percent of your first 25 and 14 percent of the rest.

8 MR. HOFFMAN: That wasn't what I asked for.

9 MR. FOUKAS: I'm not asking what you asked for,
10 sir. Please listen to my question. What you agreed to with
11 Barclays was a performance bonus percentage of 12 percent of
12 the first 25 and 14 percent of the rest, right?

13 MR. HOFFMAN: Yes.

14 MR. FOUKAS: That's same as Lehman, right?

15 MR. HOFFMAN: Yes.

16 MR. FOUKAS: And what the contract provided for
17 was to -- for you to have that same deal, plus 83 million,
18 right?

19 MR. HOFFMAN: Depends on if I did what was
20 required to get the 83 million.

21 MR. FOUKAS: You did, right?

22 MR. HOFFMAN: Did I eventually do it? It
23 happened.

24 MR. FOUKAS: Yes. You got the 83 million, right?

25 MR. HOFFMAN: I got paid for the work I did at

1 Barclays. I didn't get paid 83 million in one year, or as a
2 sum in one year. But there were sums in the contract in
3 addition to the 12 to 14 percent.

4 MR. FOUKAS: Right. And what the contract
5 provided for, as we said, your 12 to 14 percent, you got
6 that money, right? They paid you the 12 to 14 percent
7 profits that you generated, right?

8 MR. HOFFMAN: We're talking about during the two -
9 - this period of the contract, 2009-10?

10 MR. FOUKAS: Yes, I'm just talking about--

11 MR. HOFFMAN: Yes.

12 MR. FOUKAS: The contract that we're talking about
13 here, right? You got that, right?

14 MR. HOFFMAN: Did I get a performance bonus? Yes.

15 MR. FOUKAS: The 12 to 14 percent. You got that,
16 right?

17 MR. HOFFMAN: Yes.

18 MR. FOUKAS: And, on top of that, 83 million.
19 Right?

20 MR. HOFFMAN: On top of 12 to 14 percent, I got 83
21 million, yes.

22 MR. FOUKAS: Okay. Now, you talked a little bit
23 about -- this morning about some discussions that you had
24 with other potential employers at the end of September 2008.
25 Do you recall that testimony?

1 MR. HOFFMAN: Yes.

2 MR. FOUKAS: Okay. You didn't in fact have any
3 written offer from anyone other than Barclays, right?

4 MR. HOFFMAN: No.

5 MR. FOUKAS: And, in fact, the discussions that
6 you had, no one agreed to pay you \$83 million on top of a
7 fixed percentage going forward, right?

8 MR. HOFFMAN: I had those conversations with Mike
9 Gelband.

10 MR. FOUKAS: No one agreed to do that, right?

11 MR. HOFFMAN: Mike said he would do it, but we
12 don't have it in writing, so we can't come up with a record
13 of that.

14 MR. FOUKAS: Well, in fact, you didn't actually
15 have finalized discussions with Millennium about the amount
16 of money that they would pay you up front, right?

17 MR. HOFFMAN: No. Or we didn't finalize the
18 number.

19 MR. FOUKAS: In fact, you deferred those
20 discussions because you were talking with Barclays, right?

21 MR. HOFFMAN: I felt, if I got what I was asking
22 for from Barclays, I was likely to join them, and I didn't
23 want to put Mike Gelband in a situation where he was putting
24 his best foot forward and I was not going to go there.

25 MR. FOUKAS: Right. So, I guess the answer to my

1 question was: because you were working with Barclays to get
2 the \$83 million, you never got to a point with Millennium
3 that you actually needed to talk about any money they'd give
4 you up-front, right?

5 MR. HOFFMAN: Because I was negotiating with
6 Barclays, I didn't get to that point with Millennium.

7 MR. FOUKAS: Right, you wanted to focus on the
8 Barclays negotiation, right?

9 MR. HOFFMAN: That was the focus right then and
10 there, for some period of this two weeks.

11 MR. FOUKAS: Because they were the one -- yeah.
12 Yeah, they were the ones who had just bought Lehman, right?
13 They were the ones who -- right?

14 MR. HOFFMAN: They bought assets from Lehman.

15 MR. FOUKAS: That's right, the business that you
16 were working in, right?

17 MR. HOFFMAN: They bought assets from the
18 business. I'm not sure if that constitutes buying the
19 business. But I agree --

20 MR. FOUKAS: Fair point. Right.

21 MR. HOFFMAN: They moved into the space.

22 MR. FOUKAS: Exactly. And they were the ones that
23 you were trying to get to pay \$83 million for the work you
24 had done at Lehman, right?

25 MR. HOFFMAN: They made it very clear they weren't

1 going to pay me for the work I did at Lehman.

2 MR. FOUKAS: That's what you wanted from them,
3 right?

4 MR. HOFFMAN: No.

5 MR. FOUKAS: You didn't want to get paid for the
6 work you had done at Lehman? Is that correct?

7 MR. HOFFMAN: I wanted them to assume my contract.
8 And the contract was for 2008 and 2007.

9 MR. FOUKAS: And -- well, I guess I do want to
10 understand the assumption of the contract, because I still
11 am a little puzzled by it. But, when you say, "assume the
12 contract," you mean basically would take the 2008 agreement
13 that we just looked at, and we would erase LBI and put
14 Barclays in? Is that basically --

15 MR. HOFFMAN: I don't know the procedure. I would
16 have probably gotten help with that process, legal help from
17 it, if that was -- if they had contacted me and said, "We're
18 going to assume your contract." I would probably handle it
19 at that point.

20 MR. FOUKAS: You --

21 MR. HOFFMAN: But something along those lines.

22 MR. FOUKAS: So, at the time, you didn't know what
23 that actually meant, "assume the contract"?

24 MR. HOFFMAN: Well, I knew it meant that they
25 would step into the liability.

1 MR. FOUKAS: And basically you would be working
2 for them just as you had been working for Lehman?

3 MR. HOFFMAN: Presumably, through February of
4 2009, the first payout date, if my understanding is correct,
5 I would have -- between the Mary Archer and the contract,
6 I'd have to be in working status for the employer.

7 MR. FOUKAS: And, if you lost a bunch of money in
8 those four or five months, you would lose your 83 million,
9 potentially, right?

10 MR. HOFFMAN: Well, first of all, the pay period
11 in the contract would end November 30th, for calculation
12 purposes. I would only really lose the second installment.
13 So, no, I couldn't -- I could lose money and only really --
14 depends on when I lost it. So, if I started trading October
15 20-something, and lost \$700 million in the course of five
16 weeks, some of that would be at risk, because -- or I could
17 have chosen not to trade, and just sort of make sure I got
18 my money.

19 MR. FOUKAS: And, if -- well, do you --

20 MR. HOFFMAN: But I'm not sure, if I lost 700
21 million, if I would have been fired for cause. I really
22 don't know how that would work.

23 MR. FOUKAS: Either way, you wouldn't have gotten
24 the money.

25 MR. HOFFMAN: I've never been in that situation.

1 MR. FOUKAS: Either way, you wouldn't have gotten
2 the money, right?

3 MR. HOFFMAN: If I lost 700 million?

4 MR. FOUKAS: Or got fired for cause.

5 MR. HOFFMAN: So, in this scenario, I lost 700
6 million between October 20th and November 30th, what would
7 happen? I'd have to really look at the contract. But I
8 think it sounds like my P&L for the year would have probably
9 added together the 548 and this new negative 700 million.
10 So, my performance pay would be whatever that would be, -152
11 million. Is that what we're saying?

12 MR. FOUKAS: And even -- sorry. And even after
13 November 30th, as you talked about, if you lost money in the
14 following period, you could potentially lose your second
15 installment, right?

16 MR. HOFFMAN: Let me be clear I'm not sure if my
17 employment wasn't terminated by Lehman prior to this, I
18 really don't know at the time when my -- I think my
19 employment was terminated. But let's assume that the
20 assuming the contract -- they step in as my employer. I'm
21 going to say, if I lost money between November 30th -- after
22 November 30th, my P&L for the following year was negative,
23 it would put the second installment at risk if I so chose to
24 trade. But I was under no obligation to do any of this.

25 MR. FOUKAS: Well, I guess I don't want assume

1 anything. I want to understand what you wanted when you
2 were telling Barclays and telling us that what you wanted
3 was the assumption of your contract. You wanted, I guess it
4 sounds like, to be able to not trade at all, and just get
5 \$83 million paid to you under the terms -- under the
6 schedule that you had with Lehman. That's basically it?
7 Didn't have to trade for Barclays at all?

8 MR. HOFFMAN: No. I didn't have to trade for
9 Barclays at all.

10 MR. FOUKAS: Okay.

11 MR. HOFFMAN: It doesn't mean I may have; I may
12 not have. But I didn't have to.

13 MR. FOUKAS: Okay. That's what you mean by
14 "assume the contract." Right?

15 MR. HOFFMAN: Yes.

16 MR. FOUKAS: Okay. Now, I want to turn to your
17 Barclays contract. We've been talking about it a little
18 bit. This is Trustee's Exhibit Number Seven. Do you have
19 that, sir?

20 MR. HOFFMAN: I do.

21 MR. FOUKAS: Okay. We've already talked about the
22 200,000 base salary. You see that in the compensation,
23 right?

24 MR. HOFFMAN: Yes.

25 MR. FOUKAS: And I think you have talked already

1 about September 22nd, 2008, being the starting date. Do you
2 see that?

3 MR. HOFFMAN: Talk about the -- this is dated
4 October 3rd. But I don't dispute that the starting date
5 listed here is listed here.

6 MR. FOUKAS: And was listed there as the day the
7 sale to Barclays closed, right, September 22nd, 2008?

8 MR. HOFFMAN: I didn't put it in there. I would
9 ask the person who put it in there why they put it in there,
10 because I don't think anyone would say I started working at
11 Barclays September 22nd as a realistic matter.

12 MR. FOUKAS: My question to you, sir, was that the
13 date that's in there, September 22nd, 2008 --

14 MR. HOFFMAN: I see that start date.

15 MR. FOUKAS: Was the day the sale to Barclays
16 closed. Right?

17 MR. HOFFMAN: I don't know what day it closed.

18 MR. FOUKAS: Okay. It's the Monday after the
19 email we saw approving the court approval of the sale,
20 right?

21 MR. HOFFMAN: That's the date.

22 MR. FOUKAS: Okay. Now, there was some discussion
23 with your counsel about the fact -- active working status
24 and the kind of situation that you would have to be in to
25 get the special awards and whatnot. So, I guess I just want

1 to understand the circumstances under which Barclays
2 wouldn't pay you the 70 million. Okay? We'll walk through
3 that a little bit?

4 MR. HOFFMAN: Yes.

5 MR. FOUKAS: Okay. Now, if you turn to the second
6 page, "Termination Other Than for Cause," you see there's a
7 second page? And the first heading there is, "Termination
8 Other Than for Cause," do you see that?

9 MR. HOFFMAN: Yes.

10 MR. FOUKAS: And you can read it to yourself, but
11 I'm going to ask you whether that basically means that
12 Barclays could not get out of paying you the 70 million by
13 terminating you, by laying you off, unless you had done
14 something pretty bad.

15 MR. HOFFMAN: They tried to put other language in,
16 but this was the final language, yeah.

17 MR. FOUKAS: So, you agree with my summary of what
18 that means?

19 MR. HOFFMAN: Yes.

20 MR. FOUKAS: Okay. Now, obviously, if you were
21 terminated for cause and violating the law and whatnot, you
22 wouldn't get it, right? You wouldn't get 70 million?

23 MR. HOFFMAN: Yes.

24 MR. FOUKAS: Okay. And if you left, you resigned,
25 you wouldn't get the 70 million, at least any 70 million

1 that hadn't been paid to you yet, right?

2 MR. HOFFMAN: If I resigned, I wouldn't get any of
3 it.

4 MR. FOUKAS: If you died -- I guess I just want to
5 focus on that because I recall there was some confusion at
6 your deposition, but on the first page, there's a death and
7 disability clause. Do you see that?

8 MR. HOFFMAN: Yes.

9 MR. FOUKAS: Okay. If you died, your estate, I
10 guess, in that unfortunate circumstance, would get the
11 money, right?

12 MR. HOFFMAN: Yes.

13 MR. FOUKAS: Okay. And the same was true with
14 respect to the performance bonus; any unpaid performance
15 amounts you'd receive or your estate would receive if you
16 died, right?

17 MR. HOFFMAN: I think only two of the special
18 awards would be awarded if I died, out of -- and the third
19 one wouldn't, because I recall the conversation was --

20 MR. FOUKAS: I guess we could look at it, sir.

21 MR. HOFFMAN: (indiscernible) two awards, 2009,
22 2010. I remember him saying, "You wouldn't get the third
23 one. Your wife will be fine." That's what he told me.

24 MR. FOUKAS: When it says here, "We confirm that,
25 in the unfortunate event of your death while in active

1 working status, the 2009 and 2010 payments, bonuses, and
2 special awards, both cash and share bonuses, et cetera,
3 outlined." So, I guess your understanding is that that
4 means that only the first two special awards would be paid
5 to you?

6 MR. HOFFMAN: I'm pretty certain that was our
7 conversation.

8 MR. FOUKAS: Okay. So, the reference to the 2009
9 and 2010 payments --

10 MR. HOFFMAN: Those I would get if I died.

11 MR. FOUKAS: Okay. Yeah. Now, the -- unlike your
12 Lehman contract, your Barclays contract provided for 75
13 percent of your compensation to be paid in cash, right?

14 MR. HOFFMAN: This was altered, but that was what
15 was contemplated here.

16 MR. FOUKAS: Right. And when you say it was
17 altered, you're saying that at some point you agreed with
18 Barclays to change the terms of your deal in the future,
19 right?

20 MR. HOFFMAN: They threatened to default on the
21 deal if I didn't sign the new one.

22 MR. FOUKAS: Okay. So, you decided to change the
23 deal, I guess, to answer my question, right?

24 MR. HOFFMAN: It was a negotiation for me to sign
25 that, but yes. We ultimately made a change.

1 MR. FOUKAS: Because, under this contract, 75
2 percent cash, right?

3 MR. HOFFMAN: Yes.

4 MR. FOUKAS: And, you know, in talking about the
5 compensation that you earned for Barclays under the -- what
6 I'll call the core deal, the 12-14 percent performance
7 bonus, for 2009 and 2010, that was roughly \$100 million,
8 right?

9 MR. HOFFMAN: For the period for my -- when --
10 what period? The period I started at Barclays? October '08
11 through December 2010?

12 MR. FOUKAS: Yeah, just talking about --

13 MR. HOFFMAN: If you want to break it down by the
14 year, it's easier, but.

15 MR. FOUKAS: Okay, fair enough. So, let's leave
16 aside the --

17 MR. HOFFMAN: But yes, I'll actually agree with
18 you, because I can lump it pretty easily.

19 MR. FOUKAS: Fair enough. So, you got the \$100
20 million for your core deal, 12 to 14 percent, right?

21 MR. HOFFMAN: Barclays paid me the performance
22 bonus as contemplated in this paragraph, yes.

23 MR. FOUKAS: And that resulted in, under your 12
24 to 14 percent, about \$100 million, right?

25 MR. HOFFMAN: That's an approximation.

1 MR. FOUKAS: And, on top of that, you got 83
2 million, right?

3 MR. HOFFMAN: On top of that, through 2011 -- and,
4 again, it depends on if we're just going to say awards, not
5 necessarily anything that's vested or mine, just notionally
6 awards, by 2011, this had happened. Yes.

7 MR. FOUKAS: And "this" being the 83 million on
8 top of the 100 million, right?

9 MR. HOFFMAN: I got 80 -- I got the special
10 awards. I got the performance bonus. And I got the --
11 there was also the extra percent on up to 13 -- after 20
12 percent, up to 20 percent.

13 MR. FOUKAS: So, I guess the answer to my question
14 is yes, you got the 83 million on top of the 100 million,
15 right?

16 MR. HOFFMAN: If I stayed at Barclay beyond 2011
17 to actually vest those, then yes.

18 MR. FOUKAS: Okay. And you did stay at Barclays
19 until the end of 2013, right?

20 MR. HOFFMAN: I'm still vesting them right now.

21 MR. FOUKAS: Fair enough. You arranged something
22 with Barclays as part of your separation that you told us
23 about, right?

24 MR. HOFFMAN: To vest them? Yes. If I did
25 certain things they asked me to do.

1 MR. FOUKAS: Fair enough. So, having received the
2 \$83 million on top of the 100 million for your trading
3 performance at Barclays, it's fair to say you had a pretty
4 successful negotiation with them, right?

5 MR. HOFFMAN: I'm not going to sit here and say
6 that \$183 million isn't a lot of money. I'm going to put it
7 in relative terms that they had \$1 billion by the end of
8 this period of time. So, I'm not going to say that they
9 didn't do fantastically and I couldn't have done better
10 somewhere else. I'm not -- please don't think I'm saying
11 it's not a lot of money.

12 THE COURT: I'm sorry, did you say you could or
13 could not have done better somewhere else?

14 MR. HOFFMAN: I could have done better.

15 THE COURT: You could have done better somewhere
16 else?

17 MR. HOFFMAN: That's right.

18 THE COURT: So, at the point in time at which you
19 agreed to go with Barclays, did you then believe there was a
20 better deal somewhere else that you could have had?

21 MR. HOFFMAN: We can go through why I took this
22 deal rather than that deal. But yes.

23 THE COURT: I understand. I'm asking you a very
24 specific question, Mr. Hoffman. Was there a better deal
25 that you could have had? Or did you take the best deal that

1 you felt that was on the table at that moment in time?

2 MR. HOFFMAN: I don't think I took the best deal.

3 THE COURT: So, you passed up a better deal.

4 MR. HOFFMAN: In retrospect, definitely, at the
5 time, it was a close call.

6 THE COURT: No, not in retrospect.

7 MR. HOFFMAN: It was a close call, Your Honor.

8 THE COURT: Thank you. Go ahead, Mr. Foukas.

9 MR. FOUKAS: And, just to kind of follow up on
10 that point, Barclays agreed to this layout under which you
11 could get 83 million, on top of your core deal; you didn't
12 then take that and shop it around to these other people you
13 were talking about, did you?

14 MR. HOFFMAN: No.

15 MR. FOUKAS: You signed. You got your 83 million
16 and you signed, right?

17 MR. HOFFMAN: I signed this agreement.

18 MR. FOUKAS: That's right. That was your whole
19 goal, was to get them to get you the \$83 million, on top of
20 your trading performance going forward. Right? That was
21 what this was all about.

22 MR. HOFFMAN: The goal was to get the best deal I
23 could get from Barclays. And if that was agreeable, take
24 it.

25 MR. FOUKAS: But you never asked them for a number

1 above \$83 million, right?

2 MR. HOFFMAN: I asked them for a higher percent.

3 MR. FOUKAS: Never a number above 83, right?

4 MR. HOFFMAN: No.

5 MR. FOUKAS: Now, I just want to circle back. We
6 heard Mr. Baumstein get up and say he represented something
7 called 1EE LLC. That's something you created, right?

8 MR. HOFFMAN: White & Case filed for it. I don't
9 know who actually creates an LLC, but, yes, I --

10 MR. FOUKAS: It's your LLC, right?

11 MR. HOFFMAN: Yeah.

12 MR. FOUKAS: Okay. And you assigned your claim to
13 1EE LLC, right?

14 MR. HOFFMAN: Yes.

15 MR. FOUKAS: And you did that because you didn't
16 want people to know that you had filed this claim, right?

17 MR. HOFFMAN: I didn't want people to see the --
18 prior to this, all of these contracts were highly secretive.
19 Only your spouse and your attorney and whatnot could know
20 them. And it was a big change to all of a sudden have them
21 out there, that this was your compensation. I didn't --
22 maybe I didn't want my brother-in-law and my cousin to know.

23 And putting it in an LLC is certainly not going to
24 hide it from you, or from anyone with any sophistication
25 remotely, but it might sort of make it that much harder to -

1 - for people to start asking me questions about my own
2 personal life and contracts and compensation and whatnot.

3 MR. FOUKAS: Fair enough. Obviously, we have
4 three other claimants here. They haven't assigned their
5 claims to LLCs. Some of them are claiming for some pretty
6 big dollars too, right?

7 MR. HOFFMAN: That's correct.

8 MR. FOUKAS: Okay. But you didn't want people to
9 Google you and find out that you had filed this claim,
10 right?

11 MR. HOFFMAN: If it made it that much harder to
12 Google me, then so be it.

13 MR. FOUKAS: And the reason is because you're
14 claiming for \$83 million that you already got, Mr. Hoffman,
15 right? That's what you didn't want people to find out.

16 MR. HOFFMAN: I created this LLC when -- there's a
17 date on it. At that point I don't know if I'd gotten a
18 dime, first of all. So, no. I completely disagree with the
19 characterization. But yeah, I wanted to make myself, if you
20 will, if it's a term, less Google-able.

21 MR. FOUKAS: Yeah. Yeah. The -- I'd like to play
22 and go over some of the tapes that you went over a little
23 bit this morning. But I just wanted to follow up on some of
24 the testimony you had with Mr. Baumstein about how it is
25 that you decided to create these tapes. I guess, if I

1 understood your testimony correctly, you said it was a --
2 the way that you were taking notes? Is that right?

3 MR. HOFFMAN: Yes.

4 MR. FOUKAS: And is that the way you generally
5 take notes, is to secretly record people without their
6 knowledge?

7 MR. HOFFMAN: This wasn't a general situation.
8 But it could be a way.

9 MR. FOUKAS: Was it the first time you had ever
10 done that?

11 MR. HOFFMAN: I didn't have the recorder prior.
12 So, if I had -- I don't recall having another recorder in
13 the immediate past. If it was 15-20 years ago, it's
14 possible. I don't know.

15 MR. FOUKAS: So it's possible you had previously
16 decided to take notes using a secret recorder; you just
17 don't recall whether or not that's the case?

18 MR. HOFFMAN: That's what I'm saying.

19 MR. FOUKAS: Okay. And if you're just taking
20 notes, Mr. Hoffman, why wouldn't you just tell the people,
21 "Look, hey, do you mind? I'm taking some notes here using
22 my recorder," put it on the table, and do that?

23 MR. HOFFMAN: I didn't think I had to.

24 MR. FOUKAS: Because you didn't want them to know
25 you were doing it, right?

1 MR. HOFFMAN: It was my preference to keep it to
2 myself. They were my notes.

3 MR. FOUKAS: Right, because, in fact, notes, what
4 you could do is you could have a notepad like this and you
5 could take notes, right? That's something you could have
6 done, right?

7 MR. HOFFMAN: I'm not sure I've seen that at an
8 interview for employment. But.

9 MR. FOUKAS: So you've never seen someone have a
10 notepad and write things down when you're meeting with them,
11 I guess? Is that your testimony?

12 MR. HOFFMAN: For an interview for employment?
13 No, I wouldn't say it's normal. But I don't -- I'm not an
14 expert on interviewing.

15 MR. FOUKAS: What would be normal, in your view,
16 would be tape record the conversations without telling the
17 person you're interviewing with, right?

18 MR. HOFFMAN: In this situation, that's what
19 happened.

20 MR. FOUKAS: You didn't tape record your
21 conversations with Mr. Kaushik Amin, did you?

22 MR. HOFFMAN: No.

23 MR. FOUKAS: Why not?

24 MR. HOFFMAN: I can't tell you, when I recorded
25 and when I didn't, what the reason was. In other words, I

1 felt it -- I could certainly ask Kaushik to clarify what he
2 meant earlier, to send me emails, to -- I could go over it
3 with him repeatedly, and he was a guy who was very easy for
4 me to understand, because I was very familiar with him.

5 I knew as soon as I met Eric Bommensath on the
6 street and he started throwing names at me he was hard to
7 even understand, aside from the accent, what he was -- that,
8 hey, this is complicated. I'm not even sure who he's
9 talking about, who Jerry and Rich are. And there was some
10 assumption that you knew more about corporate structure than
11 you really did. And I decided, you know, I had these
12 conversations with someone else who said, "Hey, just record
13 it."

14 MR. FOUKAS: Yeah, you said there's someone who
15 told you that the way to do this would be to wear a secret
16 recorder, and that's the way you would take notes on these
17 things?

18 MR. HOFFMAN: That's right. And I got the
19 recorder sometime --

20 MR. FOUKAS: Okay.

21 MR. HOFFMAN: After September 16th and before the
22 first recording, over that weekend.

23 MR. FOUKAS: Who was the person who told you that
24 the way to do this would be to secretly record people?

25 MR. HOFFMAN: He was a colleague.

1 MR. FOUKAS: Who?

2 MR. HOFFMAN: Sam?

3 MR. FOUKAS: Who?

4 MR. HOFFMAN: Sam Spielberg.

5 MR. FOUKAS: He's the guy who told you to secretly
6 record?

7 MR. HOFFMAN: He said it's a method to take notes
8 if you want to follow it.

9 MR. FOUKAS: Now, Mr. Amin, was he in any of the
10 meetings that you had with Mr. Mike Keegan?

11 MR. HOFFMAN: Not that I recall. I don't think
12 so.

13 MR. FOUKAS: He wasn't in any of the meetings you
14 had with Rich Ricci, right?

15 MR. HOFFMAN: I had one meeting with Rich and
16 Kaushik certainly wasn't there. Mike offered to be there,
17 but no.

18 MR. FOUKAS: All right. So, I don't want to
19 belabor the tapes and play ones that we've already done, but
20 I would like to go to at least a few of the, I guess we'll
21 call, transcripts if that's okay.

22 So, I guess I think you can get this one out again
23 if you have that in front of you. I think we will play a
24 couple of them. This one I'd like to ask you some questions
25 about. Let me just see if I can get us to the right place.

1 It's possible I will. It's possible I will not. And I
2 think it's possibly one that you all have done separately.

3 Okay, this one I think is at tab four. Do you see
4 that? This is the excerpt of the recording you made of a
5 conversation with Mr. Gelband, right?

6 MR. HOFFMAN: Yes.

7 MR. FOUKAS: Okay. Now, I want to ask you about
8 the -- your statements that begin at the bottom of this page
9 and carry over to the second page. Do you see that, the one
10 that starts, "You know my lawyers look at it"?

11 MR. HOFFMAN: Yup.

12 MR. FOUKAS: Okay. I want to ask you about --
13 well, let's just read a little bit.

14 "You know my lawyers look at it. Whatever you can
15 do to preserve your claim you have to separate correctly,
16 deal with Barclays correctly. You know, anyone could owe
17 you money at any time and you know any good lawyer will tell
18 you one entity's bankrupt, one isn't. Who do you want? You
19 know, we could talk about Lehman all day. Barclays has
20 money. You've got to try to get money from Barclays through
21 negotiations or they may feel in the back of their minds
22 we're not in the clear with this guy although we'll say we
23 are. But, you know what I mean, they'll have legacy issues
24 with something at Lehman. You can't get away from it.
25 That's just, you know, I would, you know, so they may feel

1 like well, we'll offer him a good deal because it will
2 satisfy any potential down the road that, you know, he tries
3 to make it a legacy issue about what he's owed before. All
4 that does is make it hard for me to, you know, if I wasn't
5 owed any money it would be easier. I'll say, 'What can you
6 do for me? No thanks, I'm leaving.'"

7 We heard it before, but was that an accurate
8 transcription when you were listening to your tape of what
9 you said?

10 MR. HOFFMAN: There's one comma that I don't
11 believe belongs there, but I don't know that we want to
12 discuss it or play the tape.

13 MR. FOUKAS: Just a comma, that's okay. Other
14 than that it was fine?

15 MR. HOFFMAN: By and large yes it is accurate.

16 MR. FOUKAS: Okay perfect. So, when you said
17 right at the end of that that if I wasn't owed any money it
18 would be easier, the money that you were owed that you're
19 talking about is the \$83 million that you were owed by LBI,
20 right?

21 MR. HOFFMAN: It's the money I was owed from my
22 2007 and '08 compensation agreements with LBI.

23 MR. FOUKAS: That's what made it hard for you to
24 say no thanks, I'm leaving the Barclays negotiations, right?

25 MR. HOFFMAN: Well, it was that claim, trying to

1 preserve my claim.

2 MR. FOUKAS: You're not preserving the claim, sir.

3 MR. HOFFMAN: (indiscernible) same paragraph.

4 That's the only reason why.

5 MR. FOUKAS: Fair enough. Yeah, no but what you
6 said here is if I wasn't owed any money it would be easier.

7 "I'll say, 'what can you do for me? No thanks, I'm
8 leaving.'" Right? In other words, if you weren't owed \$83
9 million you would ask Barclays what are you going to pay me,
10 you weren't happy about it you'd leave, right?

11 MR. HOFFMAN: It would be easier to separate,
12 leave the building and not feel like I was -- had a concern
13 with clicking yes, clicking no with this whole conversation.
14 So I'm trying to put it in context.

15 MR. FOUKAS: Okay, when you say leave the building
16 I don't know what you're talking -- you work out of your
17 house, right?

18 MR. HOFFMAN: Well, I was sitting at 745 Seventh
19 Avenue, which had been Lehman, now it was Barclays and Mike
20 was saying I can't take it anymore, I'm getting out of here
21 and I was saying I understand. I have a claim. I don't
22 think I had a claim so it was a different situation.

23 MR. FOUKAS: So the issue is when you were saying
24 what would be easier is not walking away from the entity
25 that could potentially pay you the \$83 million. What you're

1 saying is that you're worried about seven years later if
2 there was any money for general creditors in the LBI estate.
3 That's what you were really concerned about. That's what
4 your testimony is, sir.

5 MR. HOFFMAN: Well, I was definitely concerned
6 about the collectability of the claim. I was concerned
7 about preserving the claim. I was concerned about the
8 collectability of the claim, but as I say here, one entity
9 is bankrupt, one isn't. How much can I talk about an entity
10 that isn't going to pay any money right now because it's
11 bankrupt?

12 MR. FOUKAS: And the entity that wasn't bankrupt
13 and that was going to pay the money was Barclays, right?

14 MR. HOFFMAN: I didn't know what Barclays was
15 going to do, but I had a -- I could negotiate with Barclays
16 or they may have in the back of their minds that they want
17 to get a waiver or something from me, which it seemed like
18 they had done with other people who were in this chair.

19 MR. FOUKAS: Yeah. What you were talking about
20 there, and the reason you're talking about legacy issues, is
21 because Barclays had just bought Lehman, right? That was
22 the whole reason for this discussion that you had, right?
23 Barclays had just bought Lehman?

24 MR. HOFFMAN: Mike had just introduced me to Rich
25 Ricci at Barclays so certainly Barclays' employment

1 negotiation was what this conversation was about.

2 MR. FOUKAS: And maybe they'd give you the money
3 because in the back of their minds they think there's some
4 interest arising out of their purchase of Lehman with
5 respect --

6 MR. HOFFMAN: (indiscernible) I'm sorry to
7 interrupt.

8 MR. FOUKAS: -- to your legacy compensation. Go
9 ahead.

10 MR. HOFFMAN: I think I (indiscernible) you can
11 get it through negotiations or they may feel that they owe
12 me something. I don't know if the other thing they may have
13 given me was just for a waiver. I think they gave some
14 people \$1 million or a few million dollars. I don't know
15 what they gave to Kaushik, you can ask him. But some people
16 just got some money to leave. Some people, you know, or I
17 can negotiate employment.

18 So there's two different avenues maybe.

19 MR. FOUKAS: When you say a good deal, they'll
20 give him a good deal because they'll have legacy -- they'll
21 have legacy issues with something at Lehman, you can't get
22 away from it. That's just, you know, how would you know?
23 So they may feel like we'll offer him a good deal because it
24 would satisfy any potential down the road that he tries to
25 make it a legacy issue about what he's owed before. And

1 what you're talking about there is that they're aware that
2 you're going to make it a legacy issue about the \$83 million
3 that you're owed for, right?

4 MR. HOFFMAN: Well, I don't know if they're going
5 to seek a waiver from me, if they want to pay me for that.
6 I'm not really sure what they were going to do, but that's
7 why I'm going to sit there and hear them out.

8 MR. FOUKAS: And the good deal -- well, they did
9 offer you the good deal, right? \$83 million plus your 14
10 percent for deal going forward, right?

11 MR. HOFFMAN: I had already characterized the deal
12 as, I'm not going to say \$183 million if they paid me for
13 the period it was not a large quantum of compensation. I'm
14 not going to say it was the sweetheart deal of the century.
15 I'm not going to say it was a bad deal. I obviously took
16 it.

17 MR. FOUKAS: And Mr. Gelband, in something your
18 counsel read a little bit and responded to you on page two
19 if you're there, he said you're going to be a creditor of
20 Lehman. You're going to get whatever you're going to get
21 out of it. I don't believe these guys are going to do very
22 much if anything and they are not committed to it.

23 What Mr. Gelband was telling you was that he was
24 of the view that Barclays wasn't going to give you much.
25 They weren't committed to your business, right?

1 MR. HOFFMAN: They weren't committed to assuming
2 the contract. I'm not -- you could ask Mike exactly what he
3 meant.

4 MR. FOUKAS: That's what you understood it when he
5 said they're not going to do very much if anything and they
6 are not committed to it. Your understanding was they're not
7 committed to assuming your contract is what Mr. Gelband has
8 said?

9 MR. HOFFMAN: I think that they weren't to being a
10 proprietary trading business.

11 MR. FOUKAS: Exactly.

12 MR. HOFFMAN: Which I think Rich Ricci just told
13 me.

14 MR. FOUKAS: Exactly. Turned out he was wrong.
15 They ended up being committed to your business and paid you
16 the \$183 million you were talking about, right?

17 MR. HOFFMAN: They paid me \$183 million in awards.

18 MR. FOUKAS: To proprietarily trade for them,
19 that's the \$100 million, and then the \$83 million that we've
20 talked about outside of that, right?

21 MR. HOFFMAN: Well, I wouldn't have gotten any of
22 it if I didn't go ahead and proprietary trade for them.

23 MR. FOUKAS: I'd like to turn to -- I'm just going
24 to navigate in this binder here for a second. My apologies,
25 but this is easy. Number one.

1 MR. HOFFMAN: I'm sorry, are we still in the
2 transcript book?

3 MR. FOUKAS: Yes. So this is number one and this
4 is Trustee's Exhibit 20.

5 MR. HOFFMAN: I'm here.

6 MR. FOUKAS: This is the transcript of an excerpt
7 of the conversation you had with Mr. Ricci on that same day,
8 right?

9 THE COURT: What's the exhibit? I'm sorry.

10 MR. FOUKAS: I'm sorry. It's Trustee's Exhibit
11 20, but it is in the excerpt in --

12 THE COURT: That's fine.

13 MR. FOUKAS: Okay.

14 THE COURT: I'm in your book.

15 MR. FOUKAS: Okay.

16 THE COURT: All right, and I will note that it's
17 been almost an hour and a half so I'm concerned for
18 everyone's well-being, but I don't want to interrupt you.

19 MR. FOUKAS: I don't have too much longer, but I'm
20 happy to take a few minutes now.

21 THE COURT: It's up to you, Mr. Hoffman.

22 MR. HOFFMAN: I'm fine.

23 THE COURT: Okay, let's keep going.

24 MR. FOUKAS: This -- well, I don't know if I've
25 got the answer, but this is the excerpt of the transcript of

1 a recording you made of your conversation with Mr. Ricci,
2 right?

3 MR. HOFFMAN: Yes.

4 MR. FOUKAS: Okay. And the beginning of it, just
5 to be clear "Man 1" is Mr. Ricci, right?

6 MR. HOFFMAN: Yes.

7 MR. FOUKAS: And the beginning of the excerpt
8 here, Mr. Ricci is asking you about your conversation with
9 Mr. Bommensath, right?

10 MR. HOFFMAN: Yes.

11 MR. FOUKAS: And that's, I take it, the one where
12 you say you met him on the street corner and that he told
13 you we don't owe you the money, right?

14 MR. HOFFMAN: Among other things that's what he
15 told me. It's the same conversation you're referring to.

16 MR. FOUKAS: And that's actually not what you tell
17 Mr. Ricci, right? You said, "He said I need to speak to
18 Jerry" and then you go on to say, "Is this a business that
19 you want to be in, legacy compensation issues that are
20 substantial?" and then it goes on from there.

21 You didn't tell him Eric told me I'm not getting
22 my money, right?

23 MR. HOFFMAN: I didn't tell him.

24 MR. FOUKAS: Right. What -- instead you told him
25 the legacy compensation issues that are substantial and the

1 legacy compensation issues are the \$83 million, right, that
2 you were owed by LBI?

3 MR. HOFFMAN: The money that I was owed, yes.

4 MR. FOUKAS: And we've -- we listened to the rest
5 of it, but turning to the second page of the transcript in
6 the middle your counsel I think focused you on the statement
7 where Mr. Ricci in the middle said, "Where we are is tough.
8 You generated revenue for an entity that we don't control."
9 Then he went on to say, "That being said" he wanted to ask
10 you what your comp was and what was the revenue you
11 generated.

12 So, in other words, he was trying to figure out
13 how much it was that you were owed, right?

14 MR. HOFFMAN: I think he's saying you --
15 (indiscernible) he's trying to figure out what it was that I
16 generate for an entity that they don't control.

17 MR. FOUKAS: And what your comp was, right, what
18 the legacy comp was?

19 MR. HOFFMAN: Yes.

20 MR. FOUKAS: Right and he's trying to figure out
21 what that is because he's telling you he may be able to get
22 that for you.

23 MR. HOFFMAN: Well, I said there's legacy comp
24 issues and he's looking into it.

25 MR. FOUKAS: Looking into getting you that money.

1 MR. HOFFMAN: I'm not sure where he's going with
2 it, but certainly he's trying to figure out, you know, what
3 it is that I am, you know, I just talked about for the prior
4 20 sentences.

5 MR. FOUKAS: Exactly, the \$83 million or whatever
6 the money is that you were owed by LBI, right?

7 MR. HOFFMAN: Yes.

8 MR. FOUKAS: And in fact you were pretty excited
9 when he brought that up, right? And so on page three you
10 told him I would be happy to tell you I will work here for
11 all eternity and do the same job I would have done for
12 Lehman Brothers, you know, if Lehman had existed.

13 MR. HOFFMAN: I'm offering him my platform and I'm
14 asking what can you offer me?

15 MR. FOUKAS: What they ended up offering you was
16 the \$83 million plus your core deal, right?

17 MR. HOFFMAN: I -- you say the \$83 million.

18 MR. FOUKAS: Well, let's just say the amount you
19 were owed by LBI, the amount.

20 MR. HOFFMAN: Oh, did I get the -- what's in this
21 contract? Yes and I'm not going to dispute that we talked
22 about \$83 million.

23 MR. FOUKAS: It wasn't a coincidence that that was
24 the number you talked about and that ended up in your
25 contract.

1 MR. HOFFMAN: There's a couple of reasons. I
2 thought I could get it, but I won't say it's a coincidence.

3 MR. FOUKAS: All right, your counsel focused you
4 on the questions about the bonus pool. I just want to read
5 it. You said, "I'm sure I could make you that money back."
6 That money you're talking about is, of course, the \$83
7 million, right?

8 MR. HOFFMAN: The money he just talked about, the
9 (indiscernible) which, yes.

10 MR. FOUKAS: "I don't know how you view it. I
11 know it's a big chunk of the would-be bonus pool that I
12 understand is sort of redirected money." It's really not
13 the old money. So what you're saying is your \$83 million is
14 a big chunk of the pool for bonuses for LBI employees who
15 had come over there, right? \$83 million's a big chunk of
16 that.

17 MR. HOFFMAN: I understood it to be redirected and
18 I'm not going to get -- that's -- it's really not that money
19 anymore and I would have to go ahead and earn it. I'm sure
20 I can earn it for you. I'll work here, you know, I'll --
21 I'm sure I can earn you a lot of money in the future if you
22 pay me.

23 MR. FOUKAS: And what you went on to say actually
24 was but there is money to compensate people. That's the
25 bonus pool money you're talking about, right?

1 MR. HOFFMAN: Yes.

2 MR. FOUKAS: "I made a contribution to it,
3 although it went to someone else. I would love to get my
4 mind away from it, but I can't right now."

5 So what you're really telling him here is there's
6 a bonus pool out there that paid the other Lehman employees.
7 Give me the \$83 million out of that, right? I mean, that's
8 basically what you're saying.

9 MR. HOFFMAN: I'm saying I'm conceding that that's
10 not happening.

11 MR. FOUKAS: It did happen, right? You got \$83
12 million.

13 MR. HOFFMAN: I worked there for 2009, '10 and '11
14 as part of this employment agreement to get the money that
15 they paid me.

16 MR. FOUKAS: In addition to the other money we've
17 talked about that they paid you, right?

18 MR. HOFFMAN: They paid me in several different
19 ways for several different things.

20 MR. FOUKAS: If you got your 1EE exhibit binder
21 there if you could go to Exhibit 13 in there I'd like to ask
22 you about that email. So this is --

23 MR. HOFFMAN: I'm in the wrong binder.

24 MR. FOUKAS: Yes, 1EE Exhibit 13.

25 MR. HOFFMAN: Yes.

1 MR. FOUKAS: Do you see that, that you saw this
2 email with your counsel earlier this morning, right?

3 MR. HOFFMAN: Yes.

4 MR. FOUKAS: This is the one that at the top says
5 this is September 15th and you're sending it to Eric Felder.
6 You said, "I will sign up for 10 years at a haircut rate. I
7 will do what is necessary to salvage any small win for the
8 home team." Right?

9 MR. HOFFMAN: Yes.

10 MR. FOUKAS: You didn't end up taking any haircut
11 rate to go to Barclays, right?

12 MR. HOFFMAN: Well, the 12 to 14 percent I
13 consider a haircut rate from the market. But I was probably
14 speaking in hyperbole here.

15 MR. FOUKAS: So, it was a joke. It wasn't a "no
16 joke.". It was a joke, right?

17 MR. HOFFMAN: There's an element here that's a
18 hyperbole.

19 MR. FOUKAS: Yeah.

20 MR. HOFFMAN: So, if a hyperbole is a joke then
21 yes.

22 MR. FOUKAS: Okay. Well, you weren't actually
23 contemplating to take some kind of discount to go work for
24 Barclays to help LBI employees, were you?

25 MR. HOFFMAN: In reality I wouldn't sign up at a

1 discount for 10 years to help LBI employees.

2 MR. FOUKAS: Exactly and you didn't sign up for
3 any discount at all, right? You got every penny of \$83
4 million plus your core deal going forward, right?

5 MR. HOFFMAN: It was an acceptable deal. I took
6 it.

7 MR. FOUKAS: If we go to, and I think if we go
8 back to the transcript binder, let me just see here, it's
9 number six in the transcript binder. If you could do that
10 I'd like to ask you some questions about that. Are you
11 there, sir?

12 MR. HOFFMAN: Yes.

13 MR. FOUKAS: Okay. So this is the -- one of the
14 excerpts from your conversation with Mr. Keegan, right?

15 MR. HOFFMAN: Yes.

16 MR. FOUKAS: Okay. I just want to ask you about
17 the third, I guess we'll call it, block there. It's your
18 statement that starts, "I think that has to be for an
19 extended period." Do you see that?

20 MR. HOFFMAN: Yes.

21 MR. FOUKAS: And I guess now having done that I
22 guess I'd like to just ask you to go back and look at the
23 top statement you made there, right? You said, "I don't
24 think it's right or makes sense to have a short amount of
25 time where you have an elevated compensation." Right? The

1 elevated compensation is what I think you talked about this
2 morning. It's the -- the -- at the time, and this offer was
3 the 25 percent performance bonus percentage for 90 days,
4 right?

5 MR. HOFFMAN: Yeah.

6 MR. FOUKAS: And what you said was in the next
7 statement is, "It has to be for an extended period to give
8 me a chance to make up the rest of the money that I seem to
9 be out." Right?

10 MR. HOFFMAN: Yeah.

11 MR. FOUKAS: And the money that you were out was
12 the \$83 million, right?

13 MR. HOFFMAN: I can tell you what the conversation
14 was.

15 MR. FOUKAS: I want to know what you meant by "The
16 money that I seem to be out."

17 MR. HOFFMAN: The \$83 million I asked for and the
18 \$70 million that he had offered me.

19 MR. FOUKAS: So when you say, "I seem to be out"
20 it's actually not money that you were out, it's just your
21 \$83 million suggestion.

22 MR. HOFFMAN: Yes.

23 MR. FOUKAS: Okay, so you weren't actually out.
24 That was a mistake on your part to say that?

25 MR. HOFFMAN: It depends on how you're looking at

1 it. I wouldn't call it a mistake. I could see in
2 conversation using the same term. I asked for \$83, they're
3 \$70. I'm out \$13, what do you want to do about it. I could
4 see saying that all day.

5 MR. FOUKAS: Yeah. What you could see saying all
6 day, like you said for the rest of the conversation, was you
7 were out \$83 million by Lehman and the \$13 is what you were
8 out was the difference between \$70 million special awards
9 and the \$83 you were owed by Lehman, right? That's what you
10 were out.

11 MR. HOFFMAN: I don't know that I said that in
12 this conversation.

13 MR. FOUKAS: Okay. And I guess let's skip to, I
14 guess this one I do -- I think we need to play because I
15 don't think this one is in the binder, Your Honor.

16 THE COURT: Okay.

17 MR. FOUKAS: So I think Exhibit 25.

18 THE COURT: Is it in your binder?

19 MR. FOUKAS: It is my binder. It's the same
20 conversation. So it's 1EE88. There should be 25 in my
21 binder.

22 THE COURT: Okay.

23 MR. FOUKAS: And I guess if -- when we're hooked
24 up there so then let me just get myself oriented. My
25 apologies. Okay. I think we can play.

1 [RECORDING IS PLAYED]

2 MR. KEEGAN [ON RECORDING]: Hey Eric. Hey Eric.

3 MR. HOFFMAN [ON RECORDING]: (indiscernible)

4 MAN 1 [ON RECORDING]: Okay.

5 MR. BOMMENSATH [ON RECORDING]: So where are we,
6 Jonathan?

7 MR. HOFFMAN [ON RECORDING]: I was telling Mike
8 that I was - we were working on the percentage in terms of
9 the 25 percent and 12 to 14 percent. How the 25 percent
10 could either last longer or be there until I -- I make up
11 the shortfall. That was number one and number two was I
12 felt that in the long run a range that goes up to 15 percent
13 would be more in line with what sort of seemed to be
14 happening out there amongst your real -- your real
15 counterparts. I told Mike just to be honest, the difference
16 between 14 and 15 isn't that big. It's just sort of to put
17 to bed an issue that I think is going to crop up again from
18 a business wide perspective if you're in a proprietary
19 trading business sort of I think --

20 MR. FOUKAS: So the conversation, I guess looking
21 at this now I realize that maybe we've mislabeled it. Where
22 it says "Man 1" there, that's you, right? Mr. Hoffman was
23 talking at the bottom.

24 MR. HOFFMAN: Yes.

25 MR. FOUKAS: Okay. "Man 2" above that where he

1 says, "So where are we Jonathan?" that's Mr. Bommensath,
2 right?

3 MR. HOFFMAN: Mm hmm. Yup.

4 MR. FOUKAS: Okay and -- and you said that you
5 were telling Mike that we were working on the percentage in
6 terms of the 25 percent and 12 to 14, how the 25 percent
7 could either last longer or be there until I make up the
8 shortfall. So again, that's what we were just talking
9 about, right? Rather than have 25 percent for 90 days you
10 wanted to extend it until you made up the shortfall, right?

11 MR. HOFFMAN: Change the percent and extend it,
12 that's right.

13 MR. FOUKAS: Well, all you say here is last longer
14 or be there until I make up the shortfall, right?

15 MR. HOFFMAN: That's right.

16 MR. FOUKAS: Okay. What ended up happening was it
17 changed the percent to 20 and extended it until the end of
18 2010, right?

19 MR. HOFFMAN: That's right.

20 MR. FOUKAS: Okay and the shortfall, again, that's
21 the difference between the \$83 you were owed by Lehman and
22 the \$70 million specialty awards, right?

23 MR. HOFFMAN: The difference between the \$83 I
24 asked for and the \$70 they came back with.

25 MR. FOUKAS: Okay. Again, the 83, coincidence

1 between what you were owed by Lehman and what you asked for?

2 MR. HOFFMAN: I didn't characterize as is a pure
3 coincidence.

4 MR. FOUKAS: Not a pure coincidence. I think
5 another one we're going to have to play from the same clip
6 at Exhibit 27. Yeah, let's play Exhibit 27.

7 [RECORDING IS PLAYED]

8 MAN 1 [ON RECORDING]: I think it sort of --

9 MR. FOUKAS: Let's stop. Is that one there? I
10 guess I'm sorry. We've -- all there?

11 THE COURT: I'm with you.

12 MR. FOUKAS: You too, Mr. Hoffman?

13 MR. HOFFMAN: If you could start from the
14 beginning.

15 MR. FOUKAS: Let's start back to the beginning.

16 [RECORDING IS PLAYED]

17 MAN 1 [ON RECORDING]: I can -- I think it's, you
18 know, but I do think that in general the pieces are probably
19 more thought out than I thought they were in talking to you.
20 You know what I mean? In other words, you structured it
21 trying to be more cognizant of some sort of payout, matching
22 payouts.

23 MAN 2 [ON RECORDING]: Yeah, we tried to give you
24 the benefit of getting cash earlier than you would have got.
25 I didn't give you the Lehman vested --

1 MAN 1 [ON RECORDING]: Right.

2 MAN 2 [ON RECORDING]: -- normal if you would have
3 got (indiscernible).

4 MR. FOUKAS: And in the part where you were
5 talking to -- again, it's Mr. Keegan, right?

6 MR. HOFFMAN: Mm hmm. Yeah.

7 MR. FOUKAS: Okay. You said in other words you
8 structured it trying to be more cognizant of some sort of
9 payout, matching payouts. And what you're talking about
10 there is matching the payouts between what you were going --
11 would have been paid under your LBI contract and what Mr.
12 Keegan and Barclays were proposing to do with the \$83
13 million, right?

14 MR. HOFFMAN: The context is that Mr. Keegan had
15 just gone into a long, what we already established was
16 inaccurate, but an attempt to characterize the payments in a
17 way I haven't heard.

18 The sentence before this and this sentence is me
19 explaining I never looked at it that way before, but now I
20 see that that's how you looked at it. We had characterized
21 the entire structure differently only a few days earlier. I
22 think we have some of that in the excerpts as to how he --
23 why it took three years to get the money and how he
24 structured it that way.

25 I think in retrospect he was trying to sell me on

1 the deal, but I -- this was the first I heard matching
2 payouts what -- where these conversation I think I'm
3 acknowledging that he gave it more thought than I had
4 thought because I never looked at it that way.

5 MR. FOUKAS: And you characterized it matching
6 payouts and just -- and answer my question, what you meant
7 by matching payouts was the payout between what you -- how
8 you would have received the \$83 from LBI and how you were
9 supposed to receive the \$83 from Barclays. That's what you
10 meant by the words "matching payouts".

11 MR. HOFFMAN: He said matching payouts to me just
12 before and I'm trying to say I hear what you're saying.

13 MR. FOUKAS: Okay, so just answer my question.

14 MR. HOFFMAN: I did say matching payouts.

15 MR. FOUKAS: And what you meant when you said it
16 was just as I said, right?

17 MR. HOFFMAN: The first time I heard it was 30
18 seconds before that.

19 MR. FOUKAS: Answer my question, sir. The way you
20 used matching payouts, what you meant when you used those
21 two words, whether you believed it or not, was a matching
22 between the payout you would have had under your \$83 million
23 owed at LBI and what he was proposing to you at Barclays,
24 right? That's what you meant by the words matching payouts.

25 MR. HOFFMAN: I'm simply saying that he thought he

1 was matching payouts.

2 MR. FOUKAS: Okay.

3 MR. HOFFMAN: Yes.

4 MR. FOUKAS: And I guess what you meant to convey
5 by that is he thought he was matching payouts between your
6 LBI \$83 million and the \$83 million he was proposing.

7 MR. HOFFMAN: I don't think he even thought that
8 because I think he just came up with it after the fact
9 because I think during, again, during the coming up with
10 this 30, 20 and 20 he's explaining at different times how he
11 came up with -- if I want \$83 million, here's what you have
12 to do to get it. It's going to take you three years. We
13 typically pay 24 to 30 percent of the bonus pool. You get
14 12 to 14. There's the excess compensation for three years,
15 we can make it up to you and he negotiated the 13. Then all
16 of a sudden he started with this long matching payouts
17 conversation.

18 I'm simply trying to say I appreciate the thought
19 you put into this. I really wasn't -- it was not the
20 approach that I had in the slightest. This was the first
21 time the approach had come to this. I don't know when this
22 was, but it sounds like it's at the end of the negotiation.

23 MR. FOUKAS: And instead of telling him I don't
24 know what the heck you're talking about matching payouts
25 Lehman, why are you talking about Lehman, you said what you

1 said, right? Structured it to be cognizant of some sort of
2 payout matching payouts, right?

3 MR. HOFFMAN: That's what I said.

4 MR. FOUKAS: Yeah. And he went on to say we want
5 -- we tried to give you the benefit of getting cash earlier
6 than you would have got -- I didn't give you a Lehman and he
7 goes on to talk about some kind of (indiscernible) with you.
8 But you understood that's what he was telling you. We're
9 trying to give you the benefit of getting more cash earlier
10 than you would have had under your LBI agreement.

11 MR. HOFFMAN: He did give me that benefit.

12 MR. FOUKAS: That's what he said, right?

13 MR. HOFFMAN: That's what he said.

14 MR. FOUKAS: Okay. And just to be clear about,
15 you know, the LBI payout. You know, you and your counsel
16 talked about this, what you were expecting in early 2009 if
17 the world hadn't ended and in fact you ended up with \$83
18 million owed to you. You said there was going to be
19 essentially half of your 2008 bonus would have been paid in
20 equity in early 2009, right? RSU, so \$37 or so million,
21 right? That's what you --?

22 MR. HOFFMAN: They could not give me \$37 million
23 worth of RSUs on a 20 cent stock price if the cap was four
24 million. So (indiscernible).

25 MR. FOUKAS: (indiscernible). I'm sorry, maybe my

1 question wasn't clear, sir. When you talked earlier about
2 with your counsel what if the world hadn't ended and LBI
3 continued operating and there was no bankruptcy, okay? So
4 that's what I understood you to say was that the way the
5 structure would have been is you would have received about
6 \$26 million or so cash and 30 -- we'll call it seven million
7 of RSUs early '09, right? That was what you expected.

8 MR. HOFFMAN: I think you're rounding them both
9 down, but if the firm could have and elected to issue RSUs I
10 certainly wouldn't deny that if it followed the equity -- if
11 it was in the plan and they had the discretion to do it and
12 they had the shares to float to issue, so many or to do it,
13 it was markedly impractical and they elected to do it they
14 could have done it. That was not my choice.

15 MR. FOUKAS: I guess all that, your discussion
16 just to focus on my question again, sir.

17 MR. HOFFMAN: Sorry.

18 MR. FOUKAS: You said rounding it down, so I take
19 it to mean that somewhere around \$37 I guess. Is that a --
20 between \$37 and \$38 million would have been RSUs.

21 MR. HOFFMAN: Well, I think we're saying \$76
22 something should be \$38 something, although maybe you're
23 trying to bring in the 543 versus 548. I don't mean to
24 imply that that's what you're doing, but I don't want to --
25 we don't have to argue.

1 MR. FOUKAS: No, fair enough.

2 MR. HOFFMAN: So I'll just agree with your numbers
3 with the caveat that I'm not sure if it's a rounding error
4 or you're trying to --

5 MR. FOUKAS: Fair enough.

6 MR. HOFFMAN: -- change the numbers.

7 MR. FOUKAS: Fair enough. Now those RSUs that you
8 would have received, as we discussed, you're not going to
9 get cash for them in early 2009, right? You get the RSU,
10 right?

11 MR. HOFFMAN: It depends if the firm elected and
12 could issue me the RSUs.

13 MR. FOUKAS: If life had continued as it had in
14 every year that you had been at LBI up to that point, right,
15 you would have gotten RSUs, right?

16 MR. HOFFMAN: If the stock was trading at a
17 fraction of book value my guess would be they would try to
18 not issue RSUs. They like to issue RSUs if the stock is
19 above book value. When it's below, which hadn't been the
20 case before, it's not clear to me they would do that. They
21 would probably not try to do that to existing shareholders
22 with an under book stock price by issuing more shares. But
23 if they may try to retain, issue other retention tools if
24 they could do that. I'm not really sure what they would do.

25 This contemporaneously was a conversation I had

1 with numerous people. Are they going to issue stock or not
2 and this is -- the stock was at \$3, \$6, there were other
3 dollar prices, some of which also struck four million share
4 limit, some of which also just didn't seem practical to
5 dilute the stock so heavily at such a low price. So it may
6 be part of the reason why the firm failed in retrospect was
7 that they didn't sell the shares to third parties at that
8 price, but they were looking for a cash injection and I
9 thought if they got a cash injection, like Warren Buffett
10 gave to Goldman Sachs in the same timeframe, the Korean
11 Pension Fund was considering a cash injection, they may turn
12 around and pay some of this in cash or in other methods as
13 to not dilute shareholders.

14 So I really didn't know that and that is -- I
15 couldn't be being more truthful about it.

16 MR. FOUKAS: Okay. You'll be truthful to tell me
17 that in 2007 you got half your compensation in RSUs, right?

18 MR. HOFFMAN: Yes.

19 MR. FOUKAS: Same as 2006, right?

20 MR. HOFFMAN: Yes.

21 MR. FOUKAS: Okay. So if 2008 were the same it
22 would have been, let's use your math, about \$38 million,
23 okay? Is that fair?

24 MR. HOFFMAN: I'm not going to concede what they
25 would have done, but it wasn't by my discretion.

1 MR. FOUKAS: Fair enough. And if they had done as
2 they had done every other year and given you RSUs you
3 wouldn't have actually had tradable shares until November
4 2011, right?

5 MR. HOFFMAN: If they had issued shares, yeah they
6 would be in a three-year lockup.

7 MR. FOUKAS: November 2011, right?

8 MR. HOFFMAN: Yes. I couldn't trade them.

9 MR. FOUKAS: And, I guess I -- I do want to look
10 at Exhibit 24. As I look at this now I actually don't think
11 -- I think this excerpt was shown. I don't think the
12 relevant portion was read, but I think now is probably an
13 appropriate time to read -- to play it. So Trustee's
14 Exhibit 24 if you could.

15 [RECORDING IS PLAYED]

16 MR. HOFFMAN [ON RECORDING]: If I stayed, of the
17 \$83 million, well \$37 would come in Lehman stock and the
18 other, whatever that would be, 40 something, 46 would come
19 in cash in February. So I'm out a lot of cash upfront
20 still.

21 MAN 1 [ON RECORDING]: Well yeah, the 25 percent
22 holdback too.

23 MR. HOFFMAN [ON RECORDING]: I would have of that
24 money --

25 MAN 1 [ON RECORDING]: Okay.

1 MR. HOFFMAN [ON RECORDING]: -- 25 wouldn't be held
2 back, but 25 percent of 75 percent would be held back. Some
3 of it is just old money, frankly, that's unencumbered.

4 MAN 1 [ON RECORDING]: You would have got 7.8.

5 MR. HOFFMAN [ON RECORDING]: Mm hmm.

6 MAN 1 [ON RECORDING]: You'll get --

7 MR. HOFFMAN [ON RECORDING]: 37 of which 25
8 percent of that would be held back. Right, you're correct.

9 MAN 1 [ON RECORDING]: (indiscernible).

10 MR. HOFFMAN [ON RECORDING]: 25.

11 MAN 1 [ON RECORDING]: What I thought you told me
12 was that you had been paid, round numbers, 30: 15 in stock,
13 7.5 cash, 7.5 cash held back.

14 MR. HOFFMAN [ON RECORDING]: That's right. It's
15 actually accurate because I would have gotten a lot of
16 Lehman stock upfront. That -- it goes around -- I know why
17 we're not, yes.

18 MAN 1 [ON RECORDING]: The way I did it is say
19 okay, you should have gotten the 7.5 would have vested. And
20 another 75 now 75... do my math quickly, around 80 so it's
21 easier for me...That was 27 in cash, we're giving you 30.
22 in cash, we're giving you more cash, that was my whole point
23 and then next year you're getting, you're getting another
24 20. So that's where I get a little bit ahead of you.

25 MR. HOFFMAN [ON RECORDING]: Mm hmm.

1 MAN 1 [ON RECORDING]: And then the stock vests a
2 lot sooner and you end up...you end up getting the cash.
3 Overall you end up getting the cash earlier than you would
4 have otherwise got the cash. I don't know --

5 MR. HOFFMAN [ON RECORDING]: That's right.

6 MAN 1 [ON RECORDING]: I don't know what Lehman's
7 (indiscernible). So you're ahead of me initially on the
8 deal. I'm ahead of you for about two and a half bucks -- or
9 you're actually caught up I think -- and then you end up
10 getting the money slightly earlier.

11 MAN 1 [ON RECORDING]: Right. Okay?

12 MAN 2 [ON RECORDING]: All right.

13 MR. FOUKAS: Yeah, so up at the top of this page,
14 Mr. Hoffman, you'll see you say, "If I had stayed, of the
15 \$83 million \$37 would come in Lehman stock." So the
16 discussion we were just having before, you'll agree with me,
17 that at least what you told Mr. Keegan in October of 2008
18 was of the \$83 million, LBI owed you \$37 would have come in
19 Lehman stock in February '09, right?

20 MR. HOFFMAN: I'm not sure what he asked me just
21 before, but that's what I say here.

22 MR. FOUKAS: Okay. And you talked a little bit
23 about that Mr. Bommensath in the street corner conversation
24 that was the first time you had met Mr. Bommensath, right?

25 MR. HOFFMAN: Yes.

1 MR. FOUKAS: And basically the first thing he told
2 you was that they're not paying you that money, right? They
3 don't owe you the money.

4 MR. HOFFMAN: You don't owe me the money. Lehman
5 owes me the money and he's not sure he wants to be in a
6 proprietary business, but he'd like to have a conversation.

7 MR. FOUKAS: And obviously that changed from then
8 until October 3rd, right? They decided they were going to
9 be in the proprietary business, right?

10 MR. HOFFMAN: They decided that they'd like to try
11 to hire me.

12 MR. FOUKAS: And they did hire you, right?

13 MR. HOFFMAN: They did.

14 MR. FOUKAS: And so in other words, Mr.
15 Bommensath's position evolved from that first time you spoke
16 with him, right?

17 MR. HOFFMAN: His position as to whether he wanted
18 to hire me evolved.

19 MR. FOUKAS: And his position as to whether they
20 were going to pay you the money that you were owed by Lehman
21 evolved as well, right?

22 MR. HOFFMAN: Well, he still said later on that he
23 didn't -- that the money was wiped out and he made several
24 references to my bonus wasn't accrued. Sorry, nothing we
25 can do. But he did realize that it was going to be harder

1 to hire me than maybe he had thought.

2 MR. FOUKAS: When I look at Exhibit 26, which is
3 the clip I think you're referring to, this is Trustee's
4 Exhibit 26 -- I won't play it so we'll just ask you some
5 questions.

6 You see Mr. Bommensath told you in the first
7 sentence there. "Man 2" is Mr. Bommensath, right?

8 MR. HOFFMAN: Yes.

9 MR. FOUKAS: Okay. "I evolved from the first
10 thing I told you, remember?" You said yes. I evolved --

11 MR. HOFFMAN: I'm not on the same conversation as
12 you, sorry.

13 MR. FOUKAS: I'm sorry. 26.

14 MR. HOFFMAN: I'm on 25. Go ahead.

15 MR. FOUKAS: 26, I'm sorry. Are you there? Okay,
16 so this is Trustee's 26 and "Man 2" is Mr. Bommensath,
17 right?

18 MR. HOFFMAN: Yes.

19 MR. FOUKAS: Okay. Right there in the first
20 excerpt he talks about, "What we are trying to do is give
21 you, respect you. We want you in the firm, Johnny. I want
22 to work with you and I want to respect you in a way that you
23 get the money you earn so I evolved from the first thing I
24 told you, remember?"

25 You said, "Yes." And the first thing he told you,

1 as we discussed, was that they didn't owe you the money and
2 they weren't going to pay it to you, right?

3 MR. HOFFMAN: Among other things he did tell me
4 that the first time I met him.

5 MR. FOUKAS: Okay. And he went on to say, "I
6 evolved from what I told you and also we put the clawback
7 off." I just want to follow up on that. Under your Lehman
8 contract you had a clawback, right?

9 MR. HOFFMAN: Yes.

10 MR. FOUKAS: 25 percent and with respect to your
11 core deal going forward at Barclays, in other words your 14
12 percent profits for 2009 and 2010, there was no second
13 installment, right, it was all just paid in one installment,
14 right?

15 MR. HOFFMAN: They put the clawback on the special
16 awards. \$10 million was clawbackable if my performance was
17 negative.

18 MR. FOUKAS: But with respect to the performance
19 bonus 2009, 2010 no clawback, right?

20 MR. HOFFMAN: I can't characterize it as no
21 clawback. I would think anyone who read the contract would
22 say there's no clawback here when I lose money if I lose
23 money. I do understand what you're saying.

24 MR. FOUKAS: What I'm saying is that instead of
25 having two installments you got one, right?

1 MR. HOFFMAN: There was one installment.

2 MR. FOUKAS: Right and so 2009, what do you recall
3 your performance bonus being for that year, the performance
4 bonus for 2009?

5 MR. HOFFMAN: That was paid in 2010?

6 MR. FOUKAS: Yes.

7 MR. HOFFMAN: \$60 something million.

8 MR. FOUKAS: Okay. So now let's say counter to
9 what happened in 2010 had you lost a bunch of money for
10 Barclays, that \$60 something million they couldn't get back,
11 right?

12 MR. HOFFMAN: They could take \$10 million from the
13 special awards.

14 MR. FOUKAS: Which is something different, right?

15 MR. HOFFMAN: So different money here.

16 MR. FOUKAS: Yes.

17 MR. HOFFMAN: \$10 million, even though it would
18 come from different pools, is different money. \$10 million
19 here, \$10 million here and I'll agree with you.

20 MR. FOUKAS: Okay. The \$62 million that you got
21 you couldn't lose, right?

22 MR. HOFFMAN: I -- they could take \$10 million
23 from a different pool. It's the same number, but different
24 lines so I'll agree with you.

25 MR. FOUKAS: No matter how much money you lost,

1 the \$62 million --

2 MR. HOFFMAN: The most I stood to lose versus this
3 comp was \$10 million.

4 MR. FOUKAS: Right. Different under your Lehman
5 deal, right? You could lose up to 25 percent of your prior
6 year's bonus, right?

7 MR. HOFFMAN: One had a clawback of 25 percent. I
8 looked at it one had a clawback of \$10 million, but you can
9 -- I don't think we're arguing over anything really.

10 MR. FOUKAS: Right. What he goes on to say is,
11 "And we don't give you the five-year stock in the comp of
12 this year. We try to get it earlier so you're more secure.
13 You know, we try to do everything, okay? On that that's the
14 spirit. What, you know, respecting what we can do for the
15 pool of the Lehman employees. So from what you told me when
16 you told me it doesn't work, you know, I know we want to
17 look at details, Johnny, but I'm telling the spirit is to
18 keep you because we want you in the firm, all right?" And
19 you told him, "Yes."

20 And we go on and at some point you tell him great
21 strides and focusing on the HIS statement right above the
22 bottom of the page. He says, "It's not about effort, you
23 know, Johnny. We're dealing with, you know, we're dealing
24 with like someone who is an exceptional individual that make
25 money all the years for Lehman that got wiped out, which is

1 not sorry, is not our fault on that and we want to keep you
2 in the firm. We want you to go back in trading, focus on
3 it, work with Mike Keegan and I, call us on the risk, do the
4 job, get paid and we want to -- we restart the trade and we
5 want to put what makes -- and when you told me listen, Eric,
6 I don't want to have to feel to re-earn it twice. You know,
7 you know, you know, the 25 percent is sorry just about, you
8 know, trying to get the math working for everybody, okay?"

9 Now the 25 percent he's talking about there,
10 again, that's the elevated compensation that, at least at
11 this time, was just the 90 days, right?

12 MR. HOFFMAN: Yes.

13 MR. FOUKAS: And that, again, is the difference
14 between the \$83 million that I guess we'll just say you
15 proposed and the \$70 million in special awards, right?

16 MR. HOFFMAN: I think I'm saying I don't -- what
17 they offered me I didn't accept and he says, you know, we've
18 tried putting this 25 percent to see if that would make it
19 acceptable and you said no again. So --

20 MR. FOUKAS: So what you want --

21 MR. HOFFMAN: -- (indiscernible) making up any
22 specific amount of money at the time. We changed it from
23 the first several proposals they made.

24 MR. FOUKAS: So when you called it a shortfall and
25 said make up the money that I'm out it's your testimony that

1 that wasn't intended to make up any money.

2 MR. HOFFMAN: It was between \$83 and \$70.

3 MR. FOUKAS: Exactly. Now, what ultimately
4 happened is you wanted more certainty about getting that \$13
5 million, right? You didn't want to have only 90 days within
6 which to earn it. You wanted more certainty around its
7 receipt.

8 MR. HOFFMAN: I didn't think that they were
9 structuring correctly for either of us. I definitely didn't
10 want an incentive to trade any differently and the longer
11 they stretch it out the less likely I'm going to say this
12 trade will work in this timeframe so let me allocate capital
13 there versus just doing the right thing.

14 MR. FOUKAS: So you were worried about them
15 basically is what your testimony is.

16 MR. HOFFMAN: I was worried about doing the right
17 job and I didn't really -- I felt when I proposed, we talked
18 about higher payout. I thought that they probably hadn't
19 done this very often because I thought the proposal wasn't,
20 you know, I'd just been offered a higher payout. The people
21 are talking about it, nobody would contemplate 90 days, I
22 mean, as an amount of time. It's just -- for what I do it
23 wasn't -- it didn't make much sense. My trades take a lot
24 longer than 90 days to work some of them. Some of them
25 takes period of time and 90 days just wasn't a good amount

1 of time to use.

2 MR. FOUKAS: And they changed that for you, right?

3 MR. HOFFMAN: They changed the 90 days to through
4 2010.

5 MR. FOUKAS: On the next page Mr. Bommensath, and
6 I'm focused on the second to last section from him. So the
7 one that starts, "And we did all these things." Do you see
8 that?

9 MR. HOFFMAN: Yes.

10 MR. FOUKAS: And what he tells you in the middle,
11 you can see it there, "So it's very clear on that side we
12 tried to respect you, not to have you have the pressure to
13 try to remake it. You earned it, Johnny, okay, you earned
14 it. All right? You earned that money, it's yours."

15 That money that you earned is the \$83 million
16 that was owed to you by Lehman, right? That's what he's
17 talking about.

18 MR. HOFFMAN: Lehman owed me \$83 million.

19 MR. FOUKAS: And that's what he's talking about.
20 That's --

21 MR. HOFFMAN: I'm on the other side so I'm looking
22 at two sides here, Lehman's side and a Barclays' side. On
23 the other side it wasn't accrued in the pool so I know you
24 earned it. It's yours. We were not discussing anything
25 else about how to get it. He's just saying you earned it,

1 it's yours. But on the other side, look, it's just not
2 there so you're going to have to work, restart the trade,
3 make money, get paid.

4 MR. FOUKAS: And that's in fact what happened, Mr.
5 Hoffman. You signed a deal. You got paid, right?

6 MR. HOFFMAN: I signed a deal with Barclays and
7 Barclays paid me to work for Barclays.

8 MR. FOUKAS: Right. \$100 million for the 14
9 percent and \$83 million more, right?

10 MR. HOFFMAN: That would be the (indiscernible)
11 during this timeframe.

12 MR. FOUKAS: Thank you. I have no further
13 questions.

14 THE COURT: All right, do you have redirect, Mr.
15 Baumstein?

16 MR. BAUMSTEIN: I have a little bit, Your Honor.

17 THE COURT: Okay. (indiscernible).

18 MR. BAUMSTEIN: Okay, that's fine. I'd ask if we
19 could keep it short because Mr. Amin I understand has --
20 does not have -- may have difficulty staying too late.

21 THE COURT: Well, so do we. We can't stay till --
22 after 6:00.

23 MR. BAUMSTEIN: I think he'll be very short.

24 THE COURT: All right, so it's minutes before
25 4:00. Let's resume at 4:05 promptly.

1 MR. BAUMSTEIN: Okay.

2 THE COURT: All right?

3 MR. BAUMSTEIN: Your Honor, I have just a very
4 quick request and I know it's unusual.

5 THE COURT: Sure.

6 MR. BAUMSTEIN: Mr. Amin has kind of a hard stop
7 at 4:45.

8 THE COURT: Sure.

9 MR. BAUMSTEIN: I'm just asking if I can take him
10 out of order.

11 THE COURT: That's fine with me.

12 MR. BAUMSTEIN: We're collecting him right now.

13 THE COURT: Mr. Foukas, that's okay?

14 MR. FOUKAS: Sure.

15 THE COURT: All right, Mr. Hoffman, if you would
16 step down.

17 MR. BAUMSTEIN: (indiscernible)

18 THE COURT: I think we have to excuse Mr. Hoffman
19 for this portion then, correct?

20 MR. BAUMSTEIN: Oh yeah. Well actually he's
21 technically a client representative, but if you want to
22 excuse him that's fine.

23 THE COURT: It's up to Mr. Foukas.

24 MR. FOUKAS: No, I mean, I think that's fine.

25 THE COURT: To stay?

1 MR. FOUKAS: Yeah.

2 THE COURT: Okay.

3 MR. BAUMSTEIN: That's fine. Let me just get --

4 MR. FOUKAS: In the box.

5 MR. BAUMSTEIN: In the box. I invited to
6 (indiscernible).

7 THE COURT: Thanks. Very good. Thank you very
8 much.

9 MR. AMIN: Thank you.

10 THE COURT: All right. Would you raise your right
11 hand, sir? Stand and raise your right hand. Do you
12 solemnly swear or affirm that all the testimony you're about
13 to give before the Court shall be the truth, the whole truth
14 and nothing but the truth.

15 MR. AMIN: I do.

16 THE COURT: All right, please have a seat.

17 MR. BAUMSTEIN: Hi, Mr. Amin. It's Doug
18 Baumstein. We met briefly the other day. Can you briefly
19 state your work history up until the LBI bankruptcy?

20 MR. AMIN: I was a professor at the University of
21 Michigan from 1989 to roughly the summer of 2000. So summer
22 of 1994 -- from 1994 until the bankruptcy of Lehman I was
23 employed in the fixed income division of Lehman Brothers.

24 MR. BAUMSTEIN: And what was your title with LBI?

25 MR. AMIN: (indiscernible) the bankruptcy my

1 official title was global head of liquid markets.

2 MR. BAUMSTEIN: Okay and what were your
3 responsibilities as global head of liquid markets?

4 MR. AMIN: My responsibilities included
5 supervision of the global rates business, global foreign
6 exchange, global emerging markets and liquid markets
7 proprietary trade.

8 MR. BAUMSTEIN: Did you ever come to supervise
9 Jonathan Hoffman?

10 MR. AMIN: Yes.

11 MR. BAUMSTEIN: What did Mr. Hoffman do?

12 MR. AMIN: He was a proprietary trader in my
13 proprietary trading group.

14 MR. BAUMSTEIN: Okay. Was he difficult to
15 supervise?

16 MR. AMIN: No.

17 MR. BAUMSTEIN: Were you familiar with his
18 profitability at all?

19 MR. AMIN: Yes.

20 MR. BAUMSTEIN: And how did it compare to the
21 profitability of other traders in 2008, I'm sorry, at LBI?

22 MR. AMIN: He was the most profitable trader that
23 worked for me during the period I supervised him.

24 MR. BAUMSTEIN: And do you recall that LBHI
25 declared bankruptcy around September 12th 2008?

1 MR. AMIN: Yes.

2 MR. BAUMSTEIN: And were you aware that an asset
3 purchase agreement was entered between Lehman and Barclays
4 on or around September 16, 2008?

5 MR. AMIN: Yes.

6 MR. BAUMSTEIN: Did you have any involvement in
7 negotiating it?

8 MR. AMIN: No.

9 MR. BAUMSTEIN: Okay. Were you aware that --

10 MR. AMIN: I was aware that it was being
11 negotiated, but no involvement.

12 MR. BAUMSTEIN: Okay. Were you aware that that
13 asset purchase agreement closed on or around September 19th
14 2008?

15 MR. AMIN: Yes roughly.

16 MR. BAUMSTEIN: Did you continue to show up at
17 work after that deal closed?

18 MR. AMIN: Yes.

19 MR. BAUMSTEIN: For approximately how long?

20 MR. AMIN: Roughly a month.

21 MR. BAUMSTEIN: And were you involved during that
22 month at all -- during that one month in any negotiations
23 between Barclays and Mr. Hoffman to hire Mr. Hoffman?

24 MR. AMIN: Yes. I was as an employee of Lehman
25 Brothers, so the stock (indiscernible) a little bit shaky

1 (indiscernible) the bankruptcy, but I was trying to
2 facilitate as much stuff and I possibly could in terms of
3 getting as many Lehman employees employment with Barclays.
4 I had a good relationship from the market with a lot of
5 senior Barclays' executives who I knew from, you know, from
6 the market. We had been on different panels and industry
7 associations together and so because I had a good
8 relationship with a lot of senior executives who were making
9 decisions about which Lehman employees they wanted to retain
10 and which ones did they not want to retain, I was trying to
11 facilitate those conversations as best as I could.

12 MR. BAUMSTEIN: Did you participate in any
13 negotiations with Mr. Hoffman?

14 MR. AMIN: Yes.

15 MR. BAUMSTEIN: And did you -- who from Barclays
16 was present during those meetings?

17 MR. AMIN: Eric Bommensath.

18 MR. BAUMSTEIN: And during any of your meetings
19 did Barclays -- was there ever any discussion concerning the
20 assumption of Hoffman's contract by Barclays?

21 MR. AMIN: No.

22 MR. BAUMSTEIN: Did you have any understanding of
23 Jonathan Hoffman's job prospects if a deal wasn't reached
24 with Barclays at that time?

25 MR. FOUKAS: Objection (indiscernible) lack of

1 foundation for this witness.

2 THE COURT: Yeah, I don't think there's any
3 foundation.

4 MR. BAUMSTEIN: Based on your understanding of the
5 -- the job markets at the time, was Jonathan Hoffman a
6 marketable proprietary trader?

7 MR. FOUKAS: Same objection as leading.

8 THE COURT: It is.

9 MR. BAUMSTEIN: Well, what was your understanding
10 of Jonathan Hoffman's reputation in the industry?

11 MR. FOUKAS: Objection.

12 MR. BAUMSTEIN: Do you have any understanding?

13 THE COURT: Well he -- that one's okay. Third
14 time's a charm. You can answer. Do you have an
15 understanding, a view of Mr. Hoffman's reputation at the
16 time of the Lehman filing?

17 MR. AMIN: He was viewed as one of the best
18 proprietary traders in the market.

19 MR. BAUMSTEIN: Okay. Did you have any
20 discussions with Barclays in which you discussed Mr.
21 Hoffman's reputation?

22 MR. AMIN: Yes.

23 MR. BAUMSTEIN: And what did you tell Barclays
24 about Mr. Hoffman?

25 MR. AMIN: That he was one of the best proprietary

1 traders in the market.

2 THE COURT: Could we have a little more
3 specificity? And I've made this observation before.

4 MR. BAUMSTEIN: I'm sorry. What did you tell Mr.
5 Bommensath? I'm sorry, was the only person you ever met
6 with at Barclays Mr. Bommensath?

7 MR. AMIN: No, I interacted with lots of them, but
8 in --

9 MR. BAUMSTEIN: In connection with Mr. Hoffman.

10 MR. AMIN: I interacted with Eric Bommensath and
11 one other individual whose name I'm -- he was one of the
12 senior decision makers whose name is escaping me right now.

13 MR. BAUMSTEIN: Was it Rich Ricci?

14 MR. AMIN: No, not Rich Ricci. There was another
15 guy.

16 MR. BAUMSTEIN: Was it Michael Keegan?

17 MR. AMIN: Yes.

18 MR. BAUMSTEIN: Okay. And in any of those
19 discussions was there any discussion -- in any of the
20 discussions you had with Mr. Keegan or Mr. Bommensath was
21 there ever any discussions that you participated in in which
22 it was discussed about making any guaranteed payments to Mr.
23 Hoffman?

24 MR. AMIN: So the conversation with Eric, who I
25 knew well, I knew him before -- from before in the market,

1 was around Jonathan was that this is the most talented
2 trader we have. You should do everything that you can to
3 retain him and he's being actively pursued by other hedge
4 funds in the market so you really need to step up and make
5 sure that you get your arms around him and you retain him at
6 the (indiscernible) which is going to involve you making a
7 substantial payment to him upfront and giving him a good
8 contract (indiscernible).

9 MR. BAUMSTEIN: Okay. And when you pro -- when
10 you discussed that did Mr. Bommensath have any reaction to
11 what you discussed?

12 MR. AMIN: He was very amenable to that. He was
13 very keen on retaining John as a part of his continuing
14 business.

15 MR. BAUMSTEIN: Okay and in connection with the
16 retention of him, was there ever -- did you ever participate
17 in any discussions with Mr. Bommensath or Mr. Keegan where
18 it was discussed whether they would just take on his LBI
19 obligations?

20 MR. AMIN: No.

21 MR. BAUMSTEIN: And was it ever discussed what the
22 nature of any of these guaranteed payments would be and what
23 their purpose was?

24 MR. AMIN: The main focus at the time, and
25 (indiscernible) had worked for me to seven or so years, so

1 there was a close relationship. He was one of the biggest
2 proprietary traders, significant amount of risk taking so I
3 had a pretty strong relationship with him over the years.
4 So we had discussed a lot about what are the, you know,
5 opportunities that are available to him in the market. In
6 fact I clearly remember a couple of them.

7 MR. FOUKAS: Objection, Your Honor, and I don't
8 mean to interrupt the witness, but that is hearsay and non-
9 responsive.

10 THE COURT: It's first and foremost completely
11 non-responsive. Let's restate the question and Mr. Amin, if
12 you could answer the question that Mr. Baumstein is asking
13 you I would appreciate it.

14 MR. BAUMSTEIN: Right. And I think the question
15 was did you have any discussions with Barclays concerning
16 the reasons for making any offers of guaranteed payments?

17 MR. AMIN: That -- in my opinion that was what was
18 needed for them to match competitive offers.

19 THE COURT: Mr. Amin, one more time. The question
20 is did you have a discussion. It's not asking for you
21 opinion. It's not asking for your opinion. This is about
22 asking you for facts.

23 MR. BAUMSTEIN: Yes.

24 THE COURT: All right? Go ahead, try again.

25 MR. BAUMSTEIN: Right. And, Mr. Amin, did you

1 have any discussions with Mr. Bommensath about the reasons
2 for any guaranteed payments that might be made to Mr.
3 Hoffman?

4 MR. AMIN: Yes.

5 MR. BAUMSTEIN: Okay and what were your
6 discussions with Mr. Bommensath about that?

7 MR. AMIN: I advised him that if he wanted to hire
8 Jonathan he would have to make a competitive offer because
9 there were lots of other hedge funds that were trying to
10 recruit him which would involve a substantial payment from
11 Barclays to him upfront and a very competitive percentage
12 deal going forward.

13 MR. BAUMSTEIN: Okay. And is it your
14 understanding -- do you have any understanding -- did you
15 ever hire proprietary traders while you were at Lehman?

16 MR. AMIN: Yes.

17 MR. BAUMSTEIN: Did you make upfront payments in
18 connection with the hiring of proprietary traders?

19 MR. AMIN: The proprietary traders, no.

20 MR. BAUMSTEIN: Have you ever made upfront
21 payments in connection with hiring any employees to Lehman?

22 MR. AMIN: Yes.

23 MR. BAUMSTEIN: Is it your understanding that such
24 things happen in the marketplace?

25 MR. AMIN: Yes.

1 MR. BAUMSTEIN: Can you just take a look at
2 Hoffman's executed agreement, and it's in front of you at
3 Exhibit 44 in the binder? I opened it up there.

4 MR. AMIN: Yes.

5 MR. BAUMSTEIN: Can you just look at the section
6 that's entitled --

7 MR. FOUKAS: Does the witness have personal
8 knowledge of this --

9 THE COURT: Yeah.

10 MR. FOUKAS: -- or he's never seen it before?

11 MR. BAUMSTEIN: I --

12 MR. FOUKAS: Before this litigation perhaps.

13 THE COURT: Right. So --

14 MR. BAUMSTEIN: You know what, I'll actually move
15 away from that. Rather than that let me just ask one more
16 question and hopefully that's -- was it ever discussed in
17 any of your conversations with Mr. Bommensath or Mr. Keegan
18 or Mr. Hoffman that any of the payments that you were
19 suggesting that they would need to be -- make to him would
20 be in satisfaction of LBI's obligations to him?

21 MR. AMIN: No.

22 MR. FOUKAS: Object, Your Honor. I will object,
23 Your Honor. I think the question was a compound one to the
24 extent he's asking about a discussion with Mr. Hoffman it is
25 hearsay.

1 THE COURT: Okay. It's not a question about
2 discussions with Mr. Hoffman.

3 MR. FOUKAS: Well, it was in part, Your Honor.

4 THE COURT: Could you say -- state the question?

5 MR. BAUMSTEIN: Did you ever have any discussions
6 concerning Mr. Hoffman with either Mr. Keegan or Mr.
7 Bommensath that any of the payments you were suggesting that
8 they would need to make to Mr. Hoffman would be in
9 satisfaction of LBI's obligations?

10 MR. AMIN: No.

11 MR. BAUMSTEIN: Okay. Did you understand that the
12 offers that Barclays was making -- was going to be making
13 Mr. -- well, did you understand that Barclays eventually
14 made an offer to Mr. Hoffman?

15 MR. AMIN: Yes.

16 MR. BAUMSTEIN: Did you ever discuss that offer
17 with Mr. Hoffman?

18 MR. FOUKAS: Object, Your Honor. That's hearsay.

19 MR. BAUMSTEIN: I'm just trying to understand that
20 he -- I'm just trying to establish foundation that he knows
21 that there was an offer.

22 THE COURT: Okay. Let's take it one step at a
23 time. Did you know there was an offer made by Barclays?

24 MR. AMIN: Yes.

25 THE COURT: Okay. Ask the next question.

1 MR. BAUMSTEIN: Okay. Did you have understanding
2 what the terms were of those offer -- of that offer in
3 general -- in a general sense?

4 MR. AMIN: Very big picture, not specifics.

5 MR. BAUMSTEIN: Did you have understanding what --
6 okay, was your understanding at the general big picture that
7 the offer there was comparable to other --

8 MR. FOUKAS: Objection, leading.

9 THE COURT: Sustained.

10 MR. BAUMSTEIN: How did that offer compare to your
11 understanding of what the market was for Mr. Hoffman?

12 MR. FOUKAS: Objection, Your Honor. This is lack
13 of personal know. It has not been established that Mr. Amin
14 has any non-hearsay personal knowledge of anything related
15 to the market for Mr. Hoffman.

16 THE COURT: I agree. I agree with that and also
17 the witness has already indicated that his knowledge of the
18 offer that was given to Mr. Hoffman was very, very general.
19 So there's not a foundation for the witness to provide an
20 answer to your question that's anything more than
21 speculation.

22 MR. BAUMSTEIN: Okay. Mr. Amin, why did you agree
23 to testify here today?

24 MR. AMIN: I view this as a continuing obligation
25 of my job at Lehman Brothers.

1 MR. BAUMSTEIN: Okay and what do you mean as a
2 continuing obligation?

3 MR. AMIN: I'm professional. You know, Jonathan
4 worked for me. Lots of other employees worked for me that
5 have had -- been involved in disputes. If I'm asked, unless
6 it's a massive inconvenience, I'm going to do it.

7 MR. BAUMSTEIN: And while you were at LBI, did you
8 delegate LBI's obligations to pay Mr. Hoffman's bonuses to
9 Barclays?

10 MR. AMIN: No.

11 MR. BAUMSTEIN: Nothing further.

12 THE COURT: Mr. Foukas.

13 MR. FOUKAS: Good afternoon, Mr. Amin. Savvas
14 Foukas of Hughes Hubbard & Reed for the trustee.

15 You said you were at Barclays for about a month,
16 is that right?

17 MR. AMIN: Roughly.

18 MR. FOUKAS: Okay. You know Mr. Hoffman about
19 seven years at the time by the time in 2008, is that right?

20 MR. AMIN: Approximately.

21 MR. FOUKAS: Okay. You characterize your
22 relationship as a close one, right?

23 MR. AMIN: Yes.

24 MR. FOUKAS: You're friends?

25 MR. AMIN: Professionally.

1 MR. FOUKAS: Okay. You're not here under
2 subpoena, right?

3 MR. AMIN: No.

4 MR. FOUKAS: Did you know Mr. Hoffman was taping
5 the recordings that he had with Barclays witnesses?

6 MR. BAUMSTEIN: Objection. Beyond the scope of
7 (indiscernible).

8 THE COURT: Sustained.

9 MR. FOUKAS: No further questions.

10 THE COURT: Mr. Amin, thank you very much. Thank
11 you for your patience. You're excused.

12 MR. AMIN: Thank you very much.

13 THE COURT: Thank you. Okay, Mr. Hoffman, why
14 don't you rejoin us?

15 MR. BAUMSTEIN: I think earlier in your testimony
16 you were shown your 2008 agreement and you were told that
17 your bonu -- that your -- any bonus compensation would be
18 paid or a portion would be paid in conditional equity
19 awards. When you said it would be, would that -- whose
20 discretion was it whether it would be?

21 MR. HOFFMAN: Pursuant to the Equity Award Program
22 the firm had discretion.

23 MR. BAUMSTEIN: Right and if they couldn't make
24 those payments in such a form would it have -- if they
25 weren't permitted under their own terms would it have

1 actually been in such --?

2 MR. HOFFMAN: If they wouldn't be able to make the
3 election to pay in stock presumably they'd pay cash.

4 MR. BAUMSTEIN: There was a lot of talk about the
5 \$83 million. In front of you there you should have the
6 Exhibit 44, which is the agreement. Is there any mention in
7 that agreement of \$83 million?

8 MR. HOFFMAN: No.

9 MR. BAUMSTEIN: And is there -- of the \$83 million
10 that you were looking for? I know there was some discussion
11 about that.

12 MR. HOFFMAN: In this there's no mention of \$83
13 million.

14 MR. BAUMSTEIN: And when you were negotiating with
15 Barclays was there a "the \$83 million" that you were looking
16 for?

17 MR. HOFFMAN: No. I was looking for \$83 million
18 or the best negotiation I could get.

19 MR. BAUMSTEIN: Okay. At some point there was a
20 discussion about how a lot of people going over to Barclays
21 might be able to get their bonuses. Do you have any
22 understanding with respect to the individuals who would be
23 transferred employees, how their bonuses would have been
24 determined?

25 MR. FOUKAS: We'll object on (indiscernible) lack

1 of foundation, Your Honor.

2 THE COURT: The question asked for knowledge,
3 didn't it?

4 MR. BAUMSTEIN: Yes. What his understanding was.

5 THE COURT: It's overruled.

6 MR. HOFFMAN: Do I answer the question?

7 MR. BAUMSTEIN: Yes.

8 MR. HOFFMAN: Did I have knowledge of how they'd
9 be determined?

10 MR. BAUMSTEIN: Right. For me there -- yes, was
11 it --

12 MR. HOFFMAN: There was an email that I think we
13 looked at earlier that specified it would be -- 2008 bonuses
14 would be 75 percent cash, 25 percent stock. That was from
15 Bob Diamond, maybe from (indiscernible) as well in a way
16 that Barclays saw fit.

17 MR. BAUMSTEIN: Okay. There was a lot of
18 discussion about your core deal at Lehman being recreated.
19 If you were leaving Lehman at the time would you have
20 accepted your core deal from a new employer?

21 MR. HOFFMAN: Not a chance.

22 MR. BAUMSTEIN: And why would -- why was there not
23 a chance that you would have accepted that core deal on a --
24 if you were starting something new?

25 MR. HOFFMAN: Because I could have gotten a much

1 higher percentage and we can see on the numbers the
2 percentage is huge.

3 MR. BAUMSTEIN: Okay. There was some discussion
4 about how you had never got them to the point of having a
5 written offer from some of the other potential employers you
6 met with. Why did you not finalize those negotiations?

7 MR. HOFFMAN: I think the finality of an offer
8 from Mike Gelband would have consisted of about five
9 minutes. These were -- it's not like dealing with 150,000
10 person bank that takes a long time to do anything. So I
11 think I was pretty comfortable that we could have wrapped
12 that up pretty quickly, but I wanted to handle things
13 sequentially and I think I said that -- let me handle the
14 Barclays negotiations first. Make an ask at Barclays. If I
15 get it, go ahead and do that so I left that toward the end.

16 MR. BAUMSTEIN: And did you feel that if Barclays
17 met your ask it was appropriate to then take that and shop
18 it around?

19 MR. HOFFMAN: No, I accepted -- we had gone back
20 and forth and I had a few significant by the last iteration,
21 significant requests and when they met enough of them I
22 maybe signed it on the spot. I'm not really sure, but I did
23 not -- I wanted to wrap it up at that point. I did not want
24 to start shopping.

25 MR. BAUMSTEIN: Earlier when Mr. Foukas was asking

1 you some questions you said that your understanding was that
2 if your contract had been assumed, at least theoretically,
3 you could have not traded anymore and received the \$84
4 million that you were owed from the LBI contracts.
5 Notwithstanding that, why did you think that your contract
6 might be assumed?

7 MR. HOFFMAN: I thought there was a good chance
8 that I would trade and it was a good chance for them to land
9 on the right side of me and, I know it sounds like a lot of
10 money, but the reality was at this level of the business an
11 opportunity to make \$1 billion, it's not a large investment
12 really to try to get on the right side of that sort of
13 transaction.

14 MR. BAUMSTEIN: Okay. And I think you talked
15 about your decision about whether to take the Barclays
16 contract was a close call. What was the reason to take the
17 Barclays agreement rather than what you thought you could
18 finalize with Millennium at that time?

19 MR. HOFFMAN: Barclays was going to give me \$22.5
20 million in three months and that money was unencumbered so
21 my conversation I recall with Kaushik was take the \$22.5
22 million and then reassess. There's really little downside
23 to doing that and just you can take it from there.

24 MR. BAUMSTEIN: Right. And did you reassess after
25 you got your \$22.5 million in cash in February?

1 MR. HOFFMAN: I did.

2 MR. BAUMSTEIN: And what did you decide to do?

3 MR. HOFFMAN: Well, as the contract was designed,
4 retention situation of the contract was designed, I had
5 already accrued a lot of money that I -- from Barclays for
6 trading for Barclays that I couldn't access without staying.
7 So that was really what we were up against because my P&L
8 was already \$200 odd million. There's the elevated portion
9 of that, which is 20 percent on some of it. There's the 12
10 to 14 percent, then it just accelerated from there.

11 MR. BAUMSTEIN: So in other words, by February
12 2009 the way the contract was structured was it your
13 understanding that at that point it no longer made sense to
14 pack up and go somewhere else?

15 MR. HOFFMAN: They owed me a lot of money which
16 isn't necessarily a bad thing, but it is in the context of
17 someone who is looking to reassess while I sort of -- I
18 didn't have the ability to vest the equity portions without
19 staying for the whole period and I didn't have the ability
20 to collect the performance bonus without staying to mention
21 nothing of the special awards. If that was all that was
22 left that probably wouldn't have stuck me around.

23 MR. BAUMSTEIN: There were some discussions -- by
24 the way, I think Mr. Foukas may have asked at one point
25 about Barclays having bought LBI. Is it your understanding

1 that Barclays bought LBI?

2 MR. HOFFMAN: They bought assets from the entity.

3 MR. BAUMSTEIN: And is it your understanding that
4 your contract was among the assets that they bought?

5 MR. HOFFMAN: My understanding was it wasn't.

6 MR. BAUMSTEIN: And was it your understanding that
7 your portfolio was among the things they bought?

8 MR. HOFFMAN: My understanding was it wasn't.

9 MR. BAUMSTEIN: Okay. There was also a discussion
10 about payments made from the bonus pool. Some of the tapes
11 talk about the bonus pool having been redirected elsewhere.
12 When were bonus pool payments to your understanding under --
13 made to the Barclays transferred employees to whom the bonus
14 pool would have been redirected? What was the time period?

15 MR. HOFFMAN: There was a date in the APA, but
16 just to speak on a practical level it would be the first
17 quarter of 2009. I think, again, that email pretty much
18 specifies the payments are going to be in this much stock,
19 this much cash, when they were going to take place and that
20 was 2008 bonuses for transferred employees. I don't know if
21 the email that I'm referring to refers to transferred
22 employees, but the APA certainly does.

23 MR. BAUMSTEIN: Okay and how much of your bonus
24 that you negotiated did you receive by -- in the first
25 quarter of 2009?

1 MR. HOFFMAN: I got \$22.5 million in cash, which
2 again that was a big reason why I went over there. I got
3 \$7.5 million in equity that was -- I didn't have any vesting
4 in that that I had to stay for some years to fully vest it.

5 To answer your question, \$22.5 million or \$30
6 million. Those were the payouts that were in the first
7 quarter of '09 and those were the payouts that were the
8 75/25 that were specifically specified were going to come
9 from -- that were in that timeframe the 2008 bonus would
10 have occurred.

11 MR. BAUMSTEIN: And Mr. Foukas had showed you some
12 of the sections about matching payouts. When Mr. Keegan was
13 explaining the whole matching payout scenario, were you able
14 to follow everything he was talking about?

15 MR. HOFFMAN: I really didn't follow much of it.
16 Although it may sound that we discussed this for a whole
17 day, it may seem like it was easier to follow, I really was
18 not looking at it like -- I'm looking at the quantum of
19 money I'm out. This was all vested to me and so I was
20 counting my chickens slightly before they hatched so to
21 speak during 2008 and I really wasn't worried about the
22 timing of it.

23 I didn't care so much all the time about when the
24 payments were going to take place. I did want the \$22.5
25 million in February of '09. I'm not going to argue that.

1 But in general deferrals weren't always a bad thing. In
2 fact, Barclays had a program you could opt to defer money
3 and it was just a way to grow your money tax deferred.
4 Pretty common.

5 MR. BAUMSTEIN: On one of the transcripts also
6 talked about getting cash earlier from -- Mr. Keegan had
7 talked about getting cash earlier. Did you in fact get cash
8 earlier than you otherwise would have?

9 MR. HOFFMAN: No, I got it -- I got less money at
10 this -- probably around the same time Lehman was schedule to
11 make or had made in the past. So I wouldn't -- timewise
12 (indiscernible) for the first payment was certainly a lesser
13 amount of cash.

14 MR. BAUMSTEIN: Okay.

15 THE COURT: Can I ask you a question about your
16 desire to have your contract assumed? Can you tell me what
17 -- in your mind what that -- what that would have meant?
18 What would that have looked like? In other words you've
19 come here saying a number of times that you wanted your
20 contract assumed. In your mind can you explain to me what
21 do you think that would have looked like? What would have
22 happened? What would you have received and what would you
23 have had to have done?

24 MR. HOFFMAN: My obligations would have been the
25 same and the obligations of the -- whoever assumed the

1 contract, if that's the right term, would have been as
2 designed in the contract so what would have hap --

3 THE COURT: So, what would have then -- if
4 Barclays assumed your contract, what would you then have had
5 to do?

6 MR. HOFFMAN: Stay until February of 2009. Again,
7 I don't know the full legality of it. That would be my
8 guess. Stay until February 2009.

9 THE COURT: So you thought that assuming it meant
10 that you stayed till February 2009 and after that point that
11 would mean that you could walk away and you would get -- and
12 that that means that Barclays would have had to pay you
13 notional amount \$83 million.

14 MR. HOFFMAN: Yes.

15 THE COURT: That's what you thought it meant.

16 MR. HOFFMAN: That's what I thought.

17 THE COURT: Okay.

18 MR. BAUMSTEIN: Were there any non -- there was a
19 lot of focus about the economics comparison. Were there
20 certain non-economic reasons why you took the Barclays deal?

21 MR. HOFFMAN: Barclays gave me -- well, Barclays
22 said that I could work from home because they had already
23 had some infrastructure at my house because they bought that
24 equipment essentially so they indicated I could work from
25 home. Unfortunately that didn't end up happening so that

1 was unfortunate, but I don't think they did it in bad faith.
2 Just they said I could work from home and that obviously, as
3 we discussed, was extremely important to me.

4 MR. BAUMSTEIN: Right. And if the LBI contract
5 had been assumed would you also have been able to work from
6 home? Was that your understanding?

7 MR. HOFFMAN: Presumably I could work from home.

8 MR. BAUMSTEIN: So, looking back at Trustee's
9 Exhibit 26, it was some of Mr. Bommensath's discussion where
10 I believe Mr. Foukas read you the point where he said, "The
11 spirit is to keep you because we want you in the firm." And
12 that is under "Man 2" early on there.

13 Was there any other spirit of the deal that was
14 discussed with Barclays?

15 MR. HOFFMAN: That's the whole spirit, to keep me
16 in the firm.

17 MR. BAUMSTEIN: And as of October 3rd 2008 did you
18 need to do anything more under your -- to your understanding
19 under your Lehman deal did you need to do -- strike that.

20 As of September 19th 2008 did you need to do
21 anything more to have had a right to your \$83 million --
22 your \$84 million that Lehman owed you?

23 MR. HOFFMAN: My thought was that I was let go not
24 for cause. It was a fully accrued vet that I've had under
25 that contract.

1 MR. BAUMSTEIN: By contrast when you signed the
2 deal with Barclays as of October 3rd 2008, did you have to
3 do some more stuff to get the special awards and any of the
4 elevated performance bonus?

5 MR. HOFFMAN: Yes.

6 MR. BAUMSTEIN: And what is it you had to do?

7 MR. HOFFMAN: I had to work for Barclays. I had
8 to make money for Barclays. I had to stay employed by
9 Barclays. I had to work in New York for a while. I had to
10 pay taxes in New York because all of the income was sourced
11 to my work at Barclays, which was in -- which they assigned
12 to New York. I'm not arguing the Court for tax relief, I'm
13 just stating that that's what happened.

14 MR. BAUMSTEIN: Yeah. And you did work for
15 Barclays, right?

16 MR. HOFFMAN: I did.

17 MR. BAUMSTEIN: And did you make a lot of money
18 for Barclays?

19 MR. HOFFMAN: Yes.

20 MR. BAUMSTEIN: Has Barclays ever indicated any
21 dissatisfaction with any work you've ever done?

22 MR. HOFFMAN: On the contrary. But to answer your
23 question, no.

24 MR. BAUMSTEIN: Was there something else you
25 wanted to say further to that?

1 MR. HOFFMAN: I think they were really pleased
2 with the way the deal ended up for them.

3 MR. BAUMSTEIN: Okay. I have nothing further,
4 Your Honor.

5 THE COURT: Mr. Foukas, anything more?

6 MR. FOUKAS: Just Mr. Hoffman, if you had a
7 contract, I think it's 1EE 44, you told Mr. Baumstein that
8 the \$83 million doesn't appear in the contract. Do you
9 recall that testimony?

10 MR. HOFFMAN: Yes.

11 MR. FOUKAS: Okay, open it up. I think you know
12 where we're going. Special awards, do you see that?

13 MR. HOFFMAN: Yes.

14 MR. FOUKAS: That's \$70 million, right?

15 MR. HOFFMAN: Yes.

16 MR. FOUKAS: Okay, now going to Exhibit A.

17 MR. HOFFMAN: Yes.

18 MR. FOUKAS: The bottom of that first paragraph,
19 do you see \$13 million there?

20 MR. HOFFMAN: Yes.

21 MR. FOUKAS: Okay, \$13 million plus \$70, that's
22 \$83, right?

23 MR. HOFFMAN: I agree that 13 plus 70 is 83.

24 MR. FOUKAS: Okay. Thank you.

25 MR. BAUMSTEIN: Very, very quick. Was there any

1 permutation of any money that Lehman owed you that could be
2 broken up into \$70 million and \$13 million by any of your
3 deals?

4 MR. HOFFMAN: No.

5 MR. BAUMSTEIN: Nothing further.

6 THE COURT: Mr. Hoffman, thank you very much.
7 You're excused.

8 MR. HOFFMAN: Thank you, Your Honor.

9 THE COURT: You can leave everything right there.
10 So let's talk about tomorrow or anything else we need to do
11 this evening.

12 MR. FOUKAS: Tomorrow we're down at 12:00 o'clock,
13 right?

14 THE COURT: Tomorrow we're going to start at
15 12:00.

16 MR. FOUKAS: Two witnesses from Barclays. Mark
17 Kurman will start at 12:00. If we could start promptly at
18 12:00, I understand he needs to be uptown not too long
19 thereafter. I don't expect it to be a problem, but to the
20 extent we can do that.

21 THE COURT: Sure.

22 MR. FOUKAS: That would be great.

23 THE COURT: Promptly at 12:00, no problem.

24 MR. FOUKAS: And that after that Mike Keegan.

25 THE COURT: All right. So what time do you think

1 we'll be wrapping up?

2 MR. FOUKAS: My guess is, if we're not taking any
3 breaks, I'm thinking by 3:00 o'clock at the latest.

4 THE COURT: Okay and then we're going to talk
5 about what we're going to do next in terms of the post-trial
6 submissions.

7 MR. BAUMSTEIN: Yes and presumably at that point
8 we'll address exhibits. I think the idea was we were going
9 to hope to at least (indiscernible) meeting and conferring a
10 draft right now right here --

11 THE COURT: Yes (indiscernible).

12 MR. BAUMSTEIN: -- to --

13 THE COURT: Which based on the way things have
14 gone the last two days I don't think it should be much of a
15 problem, but we haven't gotten to tomorrow yet. Okay. All
16 right, anything else for tonight?

17 MR. FOUKAS: I don't think so.

18 THE COURT: Okay. Thank you very much. See you
19 promptly at noon tomorrow.

20 MR. BAUMSTEIN: Can we leave our stuff in the
21 courtroom?

22 THE COURT: Yes, you can leave your stuff again
23 and I'll --

24 (Whereupon these proceedings were concluded at
25 4:44 PM)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya Ledanski
Hyde

Digitally signed by Sonya Ledanski Hyde
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