

EXHIBIT D

1 IN THE UNITED STATES COURT OF FEDERAL CLAIMS

2 - - - - - X

3 FAIRHOLME FUNDS, INC, et al., :

4 Plaintiffs, :

5 v. : Case No. 13-465C

6 THE UNITED STATES, :

7 Defendant. :

8 - - - - - X

9 Washington, D.C.

10 Friday, May 15, 2015

11 CONFIDENTIAL - PROTECTED INFORMATION TO BE

12 DISCLOSED ONLY IN ACCORDANCE WITH PROTECTIVE ORDER

13 Videotaped Deposition of MARIO UGOLETTI, a
14 witness herein, called for examination by counsel for
15 Plaintiffs in the above-entitled matter, pursuant to
16 notice, the witness being duly sworn by AMANDA
17 BLOMSTROM, a Notary Public in and for the District of
18 Columbia, taken at the offices of Cooper & Kirk,
19 1523 New Hampshire Avenue NW, Washington, D.C., at
20 9:34 a.m., Friday, May 15, 2015, and the proceedings
21 being taken down by Stenotype by AMANDA BLOMSTROM,
22 CRR/RMR/CLR/CSR, and transcribed under her direction.

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1 first three-quarters of 2012, did you also assume
 2 that FHFA was under a mandate to ensure the companies
 3 were operated in a sound and solvent manner?
 4 A. That's another one of conservatorship,
 5 yes.
 6 Q. And what does that mean to you?
 7 A. Well, a sound manner means that companies,
 8 as I talked about some of the examples earlier, that
 9 they are operating their businesses under a
 10 traditional supervisory regime. Examiners go out
 11 there and look at, you know, their processes.
 12 There's a whole host of issues that a regular
 13 examiner would look at and make sure that they're
 14 doing things in a sound manner.
 15 Q. Okay. And what about capital levels, how
 16 did that relate to soundness?
 17 MS. HOSFORD: Objection; lack of
 18 foundation.
 19 THE WITNESS: Well, the capital levels,
 20 the solvency aspect of that regulation was suspended
 21 shortly after the enterprises were -- or around when
 22 they were put into conservatorship.

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1 BY MR. THOMPSON:
 2 Q. But does capital have to do with soundness
 3 as well?
 4 A. Well, it does. But there was no capital,
 5 so it was suspended.
 6 Q. When you were thinking about the future
 7 profitability of Fannie and Freddie in the first
 8 three-quarters of 2012, did you assume that the
 9 companies were going to be operated consistent with
 10 the -- consistent with the Administration's plans for
 11 them?
 12 MS. HOSFORD: Objection; lack of
 13 foundation.
 14 THE WITNESS: You know, I -- I don't know
 15 what the Administration's plans exactly were for
 16 them. I mean, the Administration had three years to
 17 come up with a plan for them.
 18 And, in my view, I think, in Acting
 19 Director DeMarco's view, that plan needed to be a
 20 legislative solution. I didn't see any legislative
 21 solutions from the Administration. I saw a white
 22 paper that had three options that everybody knew what

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1 those options were. So it was not a -- there was not
 2 a plan for them that I -- that I saw. So consistency
 3 with a plan, no.
 4 MR. THOMPSON: Ms. Hosford, I'm happy to
 5 keep going, but we've kind of got into a natural
 6 break point in my questioning. So I don't know if
 7 you want to take lunch now or ...
 8 MS. HOSFORD: Well, we had talked about
 9 12:45, but if Mr. Ugoletti is fine with lunch now,
 10 then I am fine with lunch now.
 11 THE WITNESS: I'm a little hungry.
 12 MR. THOMPSON: Okay. So we're off the
 13 record.
 14 THE VIDEOGRAPHER: We're off the record.
 15 The time on the video is 12:30 p.m.
 16 (Recess taken.)
 17 THE VIDEOGRAPHER: We're back on the
 18 record. The time on the video is 1:34 p.m.
 19 BY MR. THOMPSON:
 20 Q. Now, sir, welcome back.
 21 A. Thank you.
 22 Q. And wanted to do, to do a little bit of

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1 cleanup before we got to some new topics.
 2 With respect to the periodic commitment
 3 fee, do you know if anyone at FHFA ever tried to
 4 calculate what the value of it would be?
 5 A. No.
 6 Q. Okay. And do you know if anyone at
 7 Treasury ever tried to calculate the value of it?
 8 MS. HOSFORD: Objection; calls for
 9 speculation during a particular time period.
 10 THE WITNESS: Not that I'm aware of.
 11 BY MR. THOMPSON:
 12 Q. Okay. What is the basis for your
 13 statement that it would be incalculably large if no
 14 one calculated it?
 15 A. Right, I think I went through a fair
 16 amount of that at, at the last round, but, I mean, my
 17 basis for that is it is to fully compensate Treasury
 18 for the value of the guarantee they are providing and
 19 a market value. And I do not think that there was
 20 any market value you could have put on, given their
 21 financial condition, the 100 billion that we started
 22 out, I don't even think -- I think it was very

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1 difficult on that. Doubling it to 200 billion and
 2 then taking on an unlimited commitment, I just don't,
 3 I don't see a market value that corresponds to that,
 4 that anybody would even come up with a price that
 5 anybody would be willing to put that amount of
 6 capital at risk in those situations.
 7 Q. Did you discuss your view that it was an
 8 incalculably large fee or would have been with anyone
 9 at Treasury?
 10 A. Not that I recall.
 11 Q. Anyone at FHFA?
 12 A. Not that I recall. The issue did not --
 13 wasn't coming up.
 14 Q. Yeah. And did you --
 15 A. Nobody was looking to calculate it, so ...
 16 Q. Okay. And at the time of the Net Worth
 17 Sweep, I'm not talking about afterwards but I'm --
 18 A. Yeah.
 19 Q. -- talking about at the time, had you
 20 given any thought to what the value of the periodic
 21 commitment fee would be? I mean, I understand now
 22 you're saying you think it would be incalculably

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1 large, but I'm saying back in August 2012 were you
 2 thinking about the size of the commitment fee?
 3 A. Well, I don't recall any of those
 4 discussions, but I, I think that -- I mean, you may
 5 -- there was a trade-off made in the third amendment,
 6 right? The third amendment traded off a waiver, the
 7 periodic commitment fee for the Net Worth Sweep --
 8 Q. Yep.
 9 A. -- right?
 10 Going back, I mean, the compensation that
 11 Treasury got prior to the third amendment -- we
 12 talked about this before -- was liquidation
 13 preference, 10 percent dividend, periodic commitment
 14 fee, warrants. After the third amendment, they got
 15 Net Worth Sweep, warrants were still out there, and
 16 their liquidation preference was still in place.
 17 So I don't know if anybody shared that
 18 particular view, but, to me, that, the swapping out
 19 of those things, indicates that it was an
 20 incalculably large amount; and the only way that you
 21 could come up with something that approached an
 22 incalculably large amount was the earnings of the

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1 companies.
 2 Q. And I'm sorry if you've answered this --
 3 A. Yeah.
 4 Q. -- and I'm too dense to pick up on it, but
 5 just to be clear on the record, are you -- in August
 6 of 2012, prior to the Net Worth Sweep, were you
 7 thinking along these lines? Were you thinking, You
 8 know, that periodic commitment fee is incalculably
 9 large?
 10 MS. HOSFORD: Objection; vague question.
 11 THE WITNESS: I -- I think that -- that's
 12 how you get from waiving -- waiving the periodic
 13 commitment fee if -- there's two different forms of
 14 compensation, periodic commitment fee that could be
 15 set -- could be set at what it was set in the third
 16 amendment at or the Net Worth Sweep. I mean, so ...
 17 BY MR. THOMPSON:
 18 Q. But was that, in fact, how you were
 19 looking at it? I understand you're saying, you know,
 20 you could look at it that way; but I'm saying, in
 21 fact, did you look -- you have these thoughts in
 22 August of 2012?

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1 A. Well --
 2 MS. HOSFORD: Objection; ask- -- asked and
 3 answered.
 4 THE WITNESS: -- I can't -- I can't sit
 5 here and say what I was thinking in August of 2012.
 6 That's, like, a long time ago, in August of 2012.
 7 But I don't think the view that I am -- that I've
 8 just stated about how you would think about the
 9 periodic commitment fee wasn't something I came up
 10 with after August of 2012.
 11 BY MR. THOMPSON:
 12 Q. When did you come up with it?
 13 A. I don't know, but, I mean, it was
 14 something that was embedded in the whole sort of
 15 nature of the PSPAs and the substantial financial
 16 commitment that Treasury made.
 17 Q. Now, let me ask you -- I also want to make
 18 sure the record is crystal clear on another thing
 19 that we did discuss --
 20 A. Um-hmm.
 21 Q. -- which was the alternatives.
 22 If -- if we're looking at a funding

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1 commitment that could be diminished --
 2 A. Yep.
 3 Q. -- and we're thinking about alternatives,
 4 I want to make sure the record is clear as to what
 5 alternatives were considered to deal with that
 6 situation. One is the Net Worth Sweep --
 7 A. Yep.
 8 Q. -- correct?
 9 Okay. A second that you described was,
 10 well, having a Net Worth Sweep but having it kick in
 11 at, you know, a particular dollar level, whether it's
 12 a hundred billion or something like that, correct?
 13 A. That's correct.
 14 Q. Okay. Were there any other alternatives
 15 that were discussed either internal at FHFA or at
 16 Treasury?
 17 A. Not that I'm aware of.
 18 Q. Okay. Was the PIK, the option of letting
 19 the companies do a payment in kind to preserve the
 20 funding commitment, discussed?
 21 MS. HOSFORD: Objection; vague.
 22 Considered by, discussed by whom? What

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1 PIK are you talking about?
 2 BY MR. THOMPSON:
 3 Q. Do you want me to repeat the question?
 4 A. Yeah, that would be good.
 5 Q. Yeah, yeah.
 6 Was the option of preserving the funding
 7 commitment --
 8 A. Yeah.
 9 Q. -- by having the companies pay a
 10 12 percent payment-in-kind dividend, was that
 11 something that was discussed at FHFA, you know, in
 12 the leadup to the Net Worth Sweep?
 13 A. Not that I recall and for the reasons that
 14 we talked about. I mean, one of them was the basic
 15 10 percent versus 12 percent, that it just -- that
 16 had been -- unless there was some economic aspect
 17 that would make that an economic transaction, it
 18 wasn't even part of the discussion.
 19 So that's -- that's one that I would point
 20 to at FHFA. So it really wasn't -- it just never was
 21 on the table.
 22 Q. Okay. Now, when you -- you've stated

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1 under oath that the periodic commitment fee was
 2 incalculably large in your view, right?
 3 A. Um-hmm.
 4 Q. And was that a phrase that you came up
 5 with or a lawyer came up with?
 6 MS. HOSFORD: Objection. Instruct you not
 7 to answer to the extent that it involves discussions
 8 with Counsel about obtaining legal advice.
 9 BY MR. THOMPSON:
 10 Q. So did -- did you come up --
 11 A. Wait, wait. I don't understand. I was
 12 instructed not to answer, right? Or --
 13 Q. So let me -- let me --
 14 A. You're --
 15 Q. -- try to ask the question --
 16 A. I want -- I want to understand the
 17 process.
 18 Q. Sure.
 19 A. When she says not to answer, I don't -- I
 20 don't answer; and you're trying to do another
 21 question on this.
 22 Q. Well, you can answer, but in any event --

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1 MS. HOSFORD: No. I instructed you not to
 2 answer.
 3 THE WITNESS: I've been instructed not to
 4 answer.
 5 BY MR. THOMPSON:
 6 Q. Okay. But -- but just, let me -- was that
 7 a phrase that you came up with, with -- wholly apart
 8 from what the lawyers told you to say, was that a
 9 phrase you came up with?
 10 Now, if you can't answer, you can't
 11 answer.
 12 MS. HOSFORD: Objection; calls for
 13 attorney-client privileged discussions.
 14 I instruct you not to answer.
 15 BY MR. THOMPSON:
 16 Q. So I don't want to know anything about
 17 what the lawyers told you, okay? But did you
 18 independently come up with that?
 19 MS. HOSFORD: You may answer.
 20 THE WITNESS: I may answer?
 21 I had another word that was similar.
 22 BY MR. THOMPSON:

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1 that particular meeting was about.
 2 BY MR. THOMPSON:
 3 Q. Okay. Now, you did not raise the topic of
 4 the Net Worth Sweep with the companies until just a
 5 couple of days before August 17th; is that right?
 6 MS. HOSFORD: Objection; assumes facts not
 7 in evidence.
 8 THE WITNESS: I do not recall ra- -- I did
 9 not raise the topic with them. I'm not sure when
 10 Acting Director -- I can't, on this time line, I
 11 can't recall when Acting Director DeMarco actually --
 12 and I'm pretty sure he called both companies and
 13 talked them through it. They did get a copy of what
 14 became close -- what became the final version to
 15 review. But that's, that's -- in terms of the time
 16 line, that's as far as I can remember.
 17 BY MR. THOMPSON:
 18 Q. But they weren't involved in the
 19 negotiations over the Net Worth Sweep, were they?
 20 A. No. They weren't involved in negotiations
 21 over the PSPAs or any of the amendments to the PSPAs,
 22 or this amendment to the PSPA.

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1 Q. But this amendment to the PSPA was driven
 2 by a perceived problem, right?
 3 MS. HOSFORD: Objection; assumes facts not
 4 in evidence.
 5 BY MR. THOMPSON:
 6 Q. A problem that their funding commitment
 7 might be exhausted, right?
 8 A. Right, and you've showed me enough of
 9 their views on what they thought the base case looked
 10 like, so why -- what -- so I understand what their
 11 views were.
 12 Q. Okay. But my question is: Why not talk
 13 to them and see if they have thoughts on whether
 14 there are different alternatives to solve this
 15 problem?
 16 A. Just not an issue that we would talk to
 17 the companies about.
 18 Q. You didn't value their opinion?
 19 MS. HOSFORD: Objection; argumentative.
 20 THE WITNESS: We valued their opinion and,
 21 their opinion and understand what their opinion is, I
 22 understand it.

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1 BY MR. THOMPSON:
 2 Q. Okay. What was their reaction when they
 3 told all of their income would be swept to the
 4 federal government?
 5 MS. HOSFORD: Objection; misstates the
 6 facts.
 7 THE WITNESS: I don't, I don't recall a
 8 specific reaction that I could sit here and say --
 9 BY MR. THOMPSON:
 10 Q. Well, a --
 11 A. -- this, this CEO said that, that CEO said
 12 that, I don't recall, I don't recall a specific one.
 13 Q. Do you have a recollection of the general
 14 reaction?
 15 A. Well, I think their general reaction was
 16 they probably were not too happy about it.
 17 Q. Why not?
 18 A. Well, in many camps within Fannie Mae and
 19 Freddie Mac, I mean, I think there were people, they,
 20 they certainly never liked the Treasury Department
 21 saying that they were going to be wound down. They
 22 didn't want to be wound down, right. You don't want

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1 to be wound down. You want to be Fannie Mae and
 2 Freddie Mac.
 3 So to the extent that they perceived this
 4 as further somehow taking that possibility away, they
 5 might not have been very happy about it.
 6 Q. And it did make it more remote that they
 7 would be rehabilitated because they'd never be able
 8 to build their capital under the Net Worth Sweep; is
 9 that right?
 10 MS. HOSFORD: Objection; misstates the
 11 testimony.
 12 THE WITNESS: Well, again, I will go back
 13 to, back to 2008 and say that if they, if they
 14 weren't, if they weren't put into conservatorship
 15 with the PSPAs, the employees would be working for
 16 our firms right now, so ...
 17 BY MR. THOMPSON:
 18 Q. I, I understand that, but --
 19 A. Yeah.
 20 Q. -- if we put ourselves and we compare
 21 Fannie Mae and Freddie Mac on August 16th, the day
 22 before the Net Worth Sweep, and August 18th, the day

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1 after the Net Worth Sweep, it was less likely they
 2 were going to be rehabilitated because they weren't
 3 going to be able to rebuild capital; isn't that
 4 right?
 5 A. I don't generally believe that because the
 6 solution to this whole issue all along, in my view,
 7 needed to be a legislative solution. So if the
 8 Congress of the United States says, you know, this is
 9 all that's happened, this is all the draws, this is
 10 all the dividends, this is everything that happened,
 11 and we think Fannie Mae and Freddie Mac should be
 12 rehabilitated under this structure, and this is the
 13 housing system that we want for the next 30 years,
 14 you have a good chance to do that.
 15 Q. Well, but, wait a minute, when you -- when
 16 the, when the Net Worth Sweep was entered into, you
 17 knew that because the companies were going to have
 18 the capital taken out of them, that when Congress
 19 eventually turned to this situation, they're going to
 20 be looking at two companies with no capital?
 21 MS. HOSFORD: Objection. Can you tell me
 22 where in the Court's order this type of questioning

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1 is authorized. It seems beyond the scope of the
 2 Court's order. I'm going to direct him not to answer
 3 unless you can find --
 4 MR. THOMPSON: Let me --
 5 MS. HOSFORD: -- you can persuade me.
 6 MR. THOMPSON: Let me try to tie this to
 7 the Court's order.
 8 BY MR. THOMPSON:
 9 Q. Do you know whether Treasury wanted to
 10 ensure that these companies did not reemerge well
 11 capitalized in the form that they had had before
 12 2008?
 13 MS. HOSFORD: Objection; calls for
 14 speculation.
 15 THE WITNESS: Well, I'll speculate on
 16 that. I think Treasury had been pretty clear that
 17 they -- I mean, they were pretty clear all along from
 18 a legislative perspective that they wanted to see a
 19 wind-down and they wanted to see a new housing
 20 finance structure. I think Secretary Paulson was
 21 clear before that.
 22 BY MR. THOMPSON:

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1 Q. And was that an objective that FHFA
 2 shared?
 3 A. FHFA also believed, and I think Director
 4 DeMarco said this many times, the, the strategic
 5 plan, the second strategic plan was the next chapter
 6 in a story that needs an ending, right. The ending
 7 was for Congress to pass legislation. The ending was
 8 not for Fannie and Freddie Mac to emerge from
 9 conservatorship.
 10 Q. And did the Net Worth Sweep further that
 11 goal?
 12 MS. HOSFORD: Objection; calls for
 13 speculation.
 14 THE WITNESS: I'll speculate. And, and
 15 the speculation I will give you is the answer I gave
 16 you not that long ago which was, emerging from
 17 conservatorship under the structure of the PSPAs is
 18 going to be very difficult, right. And we can
 19 recall, and we can go through that whole process
 20 again where, if they were going to emerge from
 21 conservatorship, they would have to go out and raise
 22 private equity of a hundred and 87.5 billion total

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1 and whatever the two were split up, 116 and 75.
 2 Raise private equity. Pay off the liquidation
 3 preference. Raise enough private equity to be able
 4 to dilute the 79,9 warrants from Treasury and raise
 5 enough private equity to do all that and become a
 6 well-capitalized institution under regulatory
 7 standards that, by the way, had changed fundamentally
 8 from when HERA was passed, because I would think in
 9 any corner of the world, if they were going to be in
 10 any corner of the United States, if there was going
 11 to be companies these -- this large, they were likely
 12 going to be systemically important financial
 13 institutions under Dodd-Frank and they were going to
 14 have to hold capital well in excess of anything that
 15 HERA or at least that pre-HERA envisioned, well in
 16 excess in anything of that. So the, the amount would
 17 have been huge.
 18 And the PSPAs also have a provision that,
 19 given that, they don't go away. If you exit
 20 conservatorship under the PSPAs as, as you were
 21 before, the financial commitment from Treasury goes
 22 with you. That's, that's how it works. And so there

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1 was a provision in there that even if, even if they
 2 did all those things I talked about, and FHFA finally
 3 put the stamp of approval on them and said, By God,
 4 you did it, you've made the capital, you raised all
 5 that money, and even if we had the SIFI standard, you
 6 would meet it, and the Federal Reserve won't have to
 7 supervise you, Treasury still has to approve them
 8 coming out of conservatorship because it's still the
 9 financial backing of the PSPAs goes with them.
 10 So did the third amendment change any of
 11 that stuff? No. Very little.
 12 MR. THOMPSON: Now, Ugoletti 29 has a
 13 Bates number of FHFA 103596.
 14 (Exhibit No. 29 marked.)
 15 MS. HOSFORD: Mr. Thompson, would it be
 16 okay if we took a, like a three-minute break?
 17 MR. THOMPSON: Sure.
 18 THE VIDEOGRAPHER: This concludes Disk
 19 No. 3 in the video deposition of Mario Ugoletti. The
 20 time on the video is 4:44 p.m. We are off the
 21 record.
 22 (Recess taken.)

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1 THE VIDEOGRAPHER: This begins Disk No. 4
 2 in the video deposition of Mario Ugoletti. The time
 3 on the video is 4:53 p.m. We are on the record.
 4 MS. HOSFORD: Counsel, a question: What
 5 is this document that you've handed us?
 6 MR. THOMPSON: Oh, yeah. So your
 7 colleague had requested something that was verifiable
 8 with a URL. The prior screenshot we gave you, I
 9 believe, was from Bloomberg, and that's not --
 10 there's no URL, you have to be a subscriber; so we
 11 wanted to give you something that had an Internet
 12 source for the same information. We've given you a
 13 CNN.com, we could also give you a Google Finance if
 14 you want.
 15 MS. HOSFORD: But how does this document
 16 relate to this document?
 17 MR. THOMPSON: It's the same information.
 18 MS. HOSFORD: How did this document get
 19 created then? Is this a screenshot from the same
 20 site as this?
 21 MR. THOMPSON: It's, it's -- it's stock
 22 price information, so you could get it from Google

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1 Finance, you could get it from CNN, you can get it
 2 from Bloomberg. So your colleague requested a URL,
 3 there is no URL for Bloomberg, it's a proprietary
 4 service, so what we're instead giving you is the
 5 information.
 6 MS. HOSFORD: All right.
 7 MR. THOMPSON: We're trying to be helpful.
 8 If it's not helpful, I apologize, and you can
 9 disregard it.
 10 MS. HOSFORD: But I don't understand, I
 11 mean, there's different dates, different data, how --
 12 there seems to be no relationship between this and
 13 this except --
 14 MR. THOMPSON: Other than it's the same
 15 stocks, and the one that you have in your right hand
 16 is inclusive of all the information in your left
 17 hand.
 18 MS. HOSFORD: So but why did you not --
 19 why did you not give us a URL for this one?
 20 MR. THOMPSON: It doesn't exist.
 21 MS. HOSFORD: Well, how --
 22 MR. THOMPSON: It's not available on the

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1 Internet. You have to pay Bloomberg, and so I can't
 2 give you a URL for it.
 3 MS. HOSFORD: Oh, so you're trying to --
 4 MR. THOMPSON: I'm trying to be helpful.
 5 Your colleague said, We'd like something we could
 6 verify. So I tried to give you something that was
 7 verifiable.
 8 MS. HOSFORD: So you're trying to give me
 9 something that, that --
 10 MR. THOMPSON: Verifies the information
 11 that we provided to the witness in a way --
 12 MS. HOSFORD: Or this has some of the same
 13 information. It's not verifying this.
 14 MR. THOMPSON: It has all of the same
 15 information. And if it's not helpful, I apologize.
 16 We weren't obligated to do this. We did it in a
 17 spirit to try to be helpful.
 18 Was it helpful to you, Mr. Dintzer?
 19 MR. DINTZER: No, actually, it wasn't.
 20 But, I mean, I -- you hand -- you handed something to
 21 the witness, and you represent it's whatever --
 22 actually, it doesn't even represent, you said it

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1 THE WITNESS: No, not -- not to my
2 knowledge it had anything to do with that. I mean,
3 my -- my take from this is, you know, we had done, as
4 we went through earlier today, a lot of back and
5 forth with negotiation on Treasury on these potential
6 third PSPA amendments back in June.
7 And the Treasury Department has a whole
8 process that they need to go through to try to get
9 something that they're ready to complete. So, I
10 mean, I just had taken it that, you know, they're
11 working their process and, you know, when they get
12 something that's -- they think they're ready to go,
13 they'll let us know.
14 BY MR. THOMPSON:
15 Q. And, I'm sorry, so -- so why were they --
16 why was there a renewed push?
17 MS. HOSFORD: Objection; asked and
18 answered.
19 THE WITNESS: Yeah, I -- I mean, I -- I
20 took this to be that -- you know, we had done a lot
21 of work on this on June. We had worked on the
22 language in June. And, you know, the Treasury

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1 Department, to get a document all the way through to
2 the Secretary and to get all their other ducks lined
3 up in a row, it takes some time. So I figured it's
4 somewhere over there and -- and they're working the
5 process.
6 MR. THOMPSON: Okay. This next one is
7 going to be Ugoletti 30. It has a Bates number of
8 FHFA 102247.
9 (Exhibit No. 30 marked.)
10 BY MR. THOMPSON:
11 Q. So the top email is from Ms. Tagoe to you
12 and to others, August 9th, 2012. And at the bottom
13 is an email from a reporter with the American Banker.
14 And this reporter, Mr. Horwitz, says in the second
15 sentence of his email "It looks like the GSEs are
16 vastly outperforming even the most optimistic outcome
17 listed."
18 Was that true; were they "vastly
19 outperforming even the most optimistic outcome
20 listed"?
21 A. I'm not going to parse adjectives here in
22 terms of "vastly," or whatever, but they were. I

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1 mean, we've talked about this numerous times. These
2 were projections based on various -- various sources;
3 in this case, Moody's opinion on house prices. And
4 if Moody's was, even in the base case, if -- if
5 markets performed better than that, they were likely
6 to have an outperformance.
7 Q. Okay.
8 A. So, I mean, that's ...
9 Q. Now, Treasury had experience with
10 writing --
11 A. Are you done with this?
12 Q. Yes, sir.
13 -- had experience with writing up deferred
14 tax assets insofar as earlier in 2012, were you aware
15 that Treasury had written back up AIG's deferred tax
16 assets?
17 MS. HOSFORD: Objection; lack of
18 foundation, also not within the scope of the Court's
19 discovery order.
20 MR. THOMPSON: The deferred tax assets
21 absolutely are, and I'm entitled to ask him if he
22 knew whether Treasury had written up AIG's.

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1 MS. HOSFORD: Objection; speculative, and
2 it has nothing to do with this case.
3 You may answer.
4 THE WITNESS: No.
5 BY MR. THOMPSON:
6 Q. Okay. FHFA reviewed Fannie and Freddie's
7 10-Ks and 10-Qs; is that right?
8 A. That is correct.
9 Q. Okay.
10 This next one is going to be Ugoletti 31.
11 It has a Bates number of FHFA 3584 through 3738.
12 (Exhibit No. 31 marked.)
13 BY MR. THOMPSON:
14 Q. We have -- this is the 10-Q -- we have
15 produced select pages. If you or DOJ wants the full
16 400 pages, we can print it out.
17 MS. HOSFORD: I'm just going to object
18 that this is not going to represent the full
19 document; and to the extent that Mr. Ugoletti
20 attempts to interpret any information in this
21 document, it will not be reliable.
22 BY MR. THOMPSON:

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1 Q. Now, sir, if we look at this document and
2 you turn to page -- it's hard to read, but --
3 A. That's why I have my glasses.
4 Q. -- 3737, "Deferred Taxes Asset, Net," it
5 says "Our valuation allowance decreased by
6 \$989 million to \$34.7 billion during the six months
7 ended June 30, 2012 primarily due to a decrease in
8 deferred tax assets. After consideration of the"
9 value "allowance, we had a net deferred tax asset of
10 \$3.1 billion, primarily representing the tax effect
11 of unrealized losses on our available-for-sale
12 securities. We continue to be in a tax loss
13 carryforward position."
14 This reflects the fact that the companies
15 were, in fact, decreasing their valuation allowance
16 right on the eve of the Net Worth Sweep; isn't that
17 right?
18 MS. HOSFORD: Objection; lack of
19 foundation, assumes facts not in evidence.
20 THE WITNESS: I'm not the accounting
21 expert here on -- on how -- how the deferred tax
22 asset is -- how the valuation allowance is

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1 constructed, but there may be, in my recollection,
2 that there are some portions of it that have
3 different rules than other portions of it, but my
4 under- -- my recollection was that when you make a
5 determination, it is closer to an all-or-nothing
6 determination for certain portions of it, for the
7 large portion of it. But that's -- I'm not an
8 accounting expert.
9 BY MR. THOMPSON:
10 Q. But FHFA would have been aware that the
11 valuation allowance was, in fact, being reduced by
12 989 million?
13 A. Yeah, but --
14 MS. HOSFORD: Objection; lack of
15 foundation, calls for speculation.
16 THE WITNESS: Right, and it doesn't say
17 why it was being reduced there. I -- I don't know
18 what portion of the rules in the deferred tax asset
19 world that portion of the valuation allowance was
20 being decreased by.
21 I don't know, maybe some of them expired,
22 couldn't use them anymore. I -- I don't know. I

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1 don't know what the -- what the rationale was.
2 BY MR. THOMPSON:
3 Q. Now, if they had positive inc- -- they had
4 positive income in the second quarter of 2012;
5 Freddie did, right?
6 MS. HOSFORD: Objection; assumes facts not
7 in evidence.
8 THE WITNESS: Yeah, they had positive
9 income, but the general rules, as I understand them,
10 on reversing a valuation allowance of a deferred tax
11 asset require that sometime in the future you've
12 accumulated enough income that you can do a reversal.
13 So whether this was for some portion of
14 that or whether this was from -- from some other
15 aspect of that account, all it says is, We reversed
16 this. It doesn't say why, it doesn't say what
17 portion of it it was, or anything else about it. So
18 I don't know why they did it there.
19 BY MR. THOMPSON:
20 Q. Now, do you know that the Audit Committee
21 of Fannie and Freddie every quarter were looking at
22 the deferred tax assets in assessing whether it

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1 needed to be -- the valuation allowance needed to be
2 reversed --
3 A. I'm generally aware of that, yes.
4 Q. Okay.
5 And the next document is going to be
6 Ugoletti 32.
7 MS. HOSFORD: Thank you.
8 (Exhibit No. 32 marked.)
9 BY MR. THOMPSON:
10 Q. This says "Grant Thornton Questions for
11 Fannie Mae Forecasting Group." It's got a Bates
12 number of FHFA 95951, so it was produced to us out of
13 the FHFA's own files. It's dated July 26, 2012.
14 "Fannie Mae Forecasting Group," do you
15 know what that was?
16 MS. HOSFORD: Objection; lack of
17 foundation.
18 THE WITNESS: Well, again, I think I
19 described this process earlier, right, that, you
20 know, Grant Thornton -- we went through a Grant
21 Thornton document -- Grant Thornton, you know, does
22 the Treasury financial statements, so every year they

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1 have to come in and do their valuation assessments of
 2 Treasury's holding. We went through one of those
 3 documents, so --
 4 BY MR. THOMPSON:
 5 Q. Okay.
 6 A. -- as part of that process, Treasury asked
 7 FHFA if Grant Thornton can come over and talk to, I
 8 believe it was, FHFA and Fannie Mae to get
 9 information so they can help improve their
 10 calculation for Treasury's financial statements.
 11 So I, I don't -- I don't -- I couldn't
 12 tell you now who is on the Forecasting Group, but
 13 that's the general framework. And so it was some
 14 combination, I would think, of those folks for that
 15 purpose.
 16 Q. Okay. And if we look at this document on
 17 the second page under --
 18 A. Let me read the first page first.
 19 Q. Oh, take your time.
 20 You tell me when you're ready.
 21 A. Okay.
 22 Q. All right. By the way, would Ms. Tagoe

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1 have been likely to have been a member of the
 2 Forecasting Group?
 3 A. Either her or someone on her -- her staff,
 4 more likely.
 5 Q. Okay. Do you know who on her staff
 6 would --
 7 A. No, because there's people -- people have
 8 moved around and --
 9 Q. Okay.
 10 A. -- some people have left, so I'm not sure
 11 who -- who at this time would have been --
 12 Q. Fair enough.
 13 A. -- would have been that person.
 14 Q. Okay. Well, if we look at 4, "Other
 15 Items" --
 16 A. Yes.
 17 Q. -- and we look at b, it says "What are the
 18 plans for the DTA?"
 19 So that tells us that on the eve of the
 20 Net Worth Sweep, FHFA was in discussions with Fannie
 21 Mae and Grant Thornton about what -- about the DTA;
 22 is that right?

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1 MS. HOSFORD: Objection; lack of
 2 foundation.
 3 THE WITNESS: Yeah, I wouldn't read it as
 4 that. I mean, you -- you just -- you just said that,
 5 I mean, they go through this process on a regular
 6 basis on evaluating what to do about the DTA. I
 7 think Grant Thornton just wants to know where they're
 8 at in that process and what they're thinking about,
 9 what -- what the -- I mean, this is -- this is a
 10 document -- a lot of these documents are taking --
 11 like if you -- if you go up to 3.a., "What are the
 12 components of 'guaranty fee income' and 'fee and
 13 other income'?"
 14 So Grant Thornton has a line item on
 15 Fannie Mae's balance sheet, these two line items; and
 16 they're trying to figure out, well, what's all in
 17 that line item? You know, so they're just -- they're
 18 trying to take what -- you know, a lot of what Fannie
 19 Mae has in their published information and in other
 20 materials that they have as to how are they
 21 developing things. And so this is an issue, so they
 22 want to know what the process is and what the

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1 thinking is on it.
 2 BY MR. THOMPSON:
 3 Q. And what was the --
 4 A. My -- my --
 5 Q. What was the thinking of Fannie Mae on --
 6 MS. HOSFORD: Objection.
 7 BY MR. THOMPSON:
 8 Q. -- July 26, 2012?
 9 MS. HOSFORD: Lack of foundation, calls
 10 for speculation.
 11 THE WITNESS: I do not know what Fannie
 12 Mae's thinking was on July 26th. I was not part of
 13 this meeting. I did not really hear much about this
 14 issue until January or early February of the next
 15 year when the first quarter results were about to
 16 come out.
 17 BY MR. THOMPSON:
 18 Q. And they wanted to reverse the valuation
 19 allowance?
 20 A. That's right.
 21 Q. You have said that the conservator did not
 22 envision that the deferred tax assets were going to

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1 be written back up in 2013, right?
 2 MS. HOSFORD: Objection; misstates prior
 3 testimony.
 4 THE WITNESS: I think you'd have to, you'd
 5 have to go through --
 6 BY MR. THOMPSON:
 7 Q. Well, let me ask you: Did the
 8 conservator, on the eve of the Net Worth Sweep,
 9 envision that the deferred tax assets would be
 10 written back up in 2013?
 11 A. As I just stated, I did not really think
 12 that this was a possibility anytime in the near
 13 future. And 2013, the early part of 2013 when this
 14 became an issue, it became an issue because, well,
 15 house prices are continuing to go up and we're going
 16 to take -- release more loss reserves, and it looks
 17 like it's more probable than not, which is a very low
 18 standard, more probable than not, that we're going to
 19 have to release the valuation allowance on the
 20 deferred tax asset.
 21 So that is when it really came home that
 22 this was a possibility.

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1 Q. To you?
 2 A. To me.
 3 Q. Okay. But I'm asking: Do you have an
 4 opinion on whether FHFA, as conservator, knew that
 5 the deferred tax assets might be written back up in
 6 2013?
 7 MS. HOSFORD: Object -- objection; vague
 8 as to time period.
 9 BY MR. THOMPSON:
 10 Q. On the eve of the Net Worth Sweep.
 11 MS. HOSFORD: Lack of foundation.
 12 THE WITNESS: I, I don't know who else in
 13 FHFA or what they knew about the potential for that,
 14 but, as we've gone through here, there were -- our
 15 accountants were monitoring this situation, they were
 16 monitoring how they were doing about doing their
 17 potential, whether to revalue, they had to do it all
 18 the time, revalue or not revalue, and I do not recall
 19 knowing about that this was going to be an issue
 20 until really '13 when it became imminent that, oh,
 21 this has to happen now, and I don't know what anybody
 22 else thought about it.

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1 BY MR. THOMPSON:
 2 Q. Do you know what Treasury thought about
 3 it?
 4 MS. HOSFORD: Objection; calls for
 5 speculation.
 6 THE WITNESS: I do not.
 7 BY MR. THOMPSON:
 8 Q. Okay. Now, you did know that one of the
 9 factors you look at is whether there's a three-year
 10 cumulative loss, right?
 11 MS. HOSFORD: Objection; mischaracterizes
 12 testimony, assumes facts not in evidence.
 13 THE WITNESS: I just said, I knew there
 14 were some tests that related to how much income, I
 15 can't -- I don't know if it was a three-year, I mean,
 16 but there was some test that you had to meet that you
 17 were going to pass this threshold and that you
 18 expected to continue to generate net income in the
 19 future to be able to use the tax asset. That's the
 20 condition for revaluing it.
 21 BY MR. THOMPSON:
 22 Q. And we looked at the Grant Thornton

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1 September 2011 projections, you recall that, for
 2 Freddie?
 3 A. Yeah.
 4 Q. I know it was a long time ago. Yeah.
 5 A. Yeah.
 6 Q. And it showed projections of roughly
 7 5 1/2 billion out over the next 10 years; you
 8 remember that?
 9 MS. HOSFORD: Objection; lack of
 10 foundation.
 11 THE WITNESS: I would have to go back if
 12 you want the actual numbers, but, I mean, it showed,
 13 it showed net income being positive, I mean.
 14 BY MR. THOMPSON:
 15 Q. Yeah, and if, and if that condition
 16 persisted for some period of time, then -- and, and
 17 Freddie, for example, was making \$5 billion a year,
 18 year after year, then the deferred tax asset would be
 19 written back up; is that right?
 20 A. That's an accounting determination that
 21 the companies have to make.
 22 Q. Yes.

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1 A. Because they have to sign their financial
2 statements, so the companies have to go through the
3 process of evaluating this accounting question on a
4 regular basis, and between the co- -- the companies
5 and their auditors, when they think they are in a
6 place where they've hit the thresholds for reversing
7 a valuation off or putting one on, they are going to
8 follow GAAP because that is what they do.

9 Q. But did you ha- -- I understand you're
10 saying that's an accounting issue for the companies.
11 Did you have an opinion on that, as to whether if
12 Freddie, for example, made \$5 billion year after
13 year, whether the deferred tax asset would be written
14 back up?

15 A. It's not --

16 MS. HOSFORD: Objection; asked and
17 answered.

18 THE WITNESS: Yeah, I'm not an accountant.

19 BY MR. THOMPSON:

20 Q. So you didn't have an opinion on that?

21 A. No, I don't have an accounting opinion on,
22 on the DTA and the finer points of the DTA about when

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1 you would actually hit this trigger and what the
2 triggers are. I generally understand what they are,
3 but I don't have the, I'm not an accountant, I don't
4 have the -- it -- it's not my profession.

5 Q. Yeah, and I don't mean to be difficult, I
6 don't mean to be difficult, but I want to make sure
7 the record's complete. Even if you didn't have a
8 precise understanding of every little test to know
9 exactly what quarter it would be written up, did you
10 have a rough sense as to, you know, if they make
11 5 billion a year, year after year, that yeah, at some
12 point in the next two, three years they're going to
13 write it back up?

14 MS. HOSFORD: Objection; asked and
15 answered, mischaracterizes prior testimony.

16 THE WITNESS: Yeah, and the only thing I
17 would highlight in what you just asked me is, you
18 said "if."

19 BY MR. THOMPSON:

20 Q. Yeah.

21 A. So, if they didn't, they wouldn't write it
22 up.

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1 Q. Okay. But if they did, they would, right?

2 MS. HOSFORD: Objection; asked and
3 answered.

4 THE WITNESS: Asked that -- they're going
5 to follow what the accounting rules say and they're
6 going to make a judgment based on what they think the
7 accounting rules tell them to do in terms of a
8 probability more likely than not to use that asset to
9 write it up.

10 BY MR. THOMPSON:

11 Q. Now, were you aware that there were market
12 commentators after the release of the second quarter
13 profits who were saying that Fed -- Freddie and
14 Fannie had made a convincing return to profitability?

15 MS. HOSFORD: Can you -- objection. Can
16 you please put a time frame of when those statements
17 were made. After the second quarter profits is
18 insufficient to tell whether it's in the scope of the
19 Court's order.

20 MR. THOMPSON: Within the next two or
21 three days.

22 MS. HOSFORD: Within the next two or three

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1 days after what?

2 MR. THOMPSON: The release of the second
3 quarter earnings.

4 MS. HOSFORD: When were the second quarter
5 earnings released?

6 MR. THOMPSON: I believe it was the 6th
7 and 7th; it might have been the 8th and 9th.

8 MS. HOSFORD: Of August?

9 MR. THOMPSON: Yes.

10 MS. HOSFORD: Thank you.

11 THE WITNESS: No, I wasn't following what
12 the market commentators were saying. It was a good
13 quarter. That's, that's good. We were hap- -- we
14 were happy it was a good quarter, their underwriting
15 had improved, they were starting to earn some income.
16 But because the market commentators said they had a
17 good -- good quarter and something else is, is a
18 response. That's nice to know. But, I mean, I'm
19 going to ...

20 MR. THOMPSON: Okay. Let's look at the
21 next one, which will be Ugoletti 32, FHFA --

22 THE WITNESS: 33.