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On Witness Stand, Greenberg Pressed Over Transaction Memo

Jason Grant, New York Law Journal

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The questioning of Maurice "Hank" Greenberg grew more intense at his civil fraud trial on Wednesday, prompting the former CEO to rip off his glasses, lean forward and raise his voice while answering a state prosecutor's questions about an internal memo he received in 2000 that laid out how an alleged sham transaction could be structured.

The memo, sent by Joseph Umansky, a then-senior vice president at American International Group Inc., was the focus of the New York Attorney General Office's nearly three hours of direct examination.

While covering multiple contracts, the memo reportedly included a "schematic" chart of a potential reinsurance transaction at the heart of a major claim against Greenberg: That he orchestrated a transaction that wrongfully converted underwriting losses from the auto-warranty segment of AIG's insurance portfolio into capital losses, giving investors a false picture of the company's health.

"I'd like to review six contracts with you because of their unique nature," the April 2000 memo said, according to David Nachman, a senior enforcement lawyer for the state, who aggressively examined Greenberg for the second straight day. "All of the contracts are beyond the conceptual stage, but a considerable amount of work is needed. … I would like to get your reaction to the structures before I proceed."

Digging into Greenberg's relationship with Umansky and the memo, Nachman prompted long, often tense exchanges. Late in the court session, Manhattan Supreme Court Justice Charles Ramos, who is presiding over the bench trial, chided Greenberg for giving arguably evasive answers.

"If you don't want this trial to last a year, we are going to have to have some direct answers," the judge said.

Greenberg did not back down. He said that his normal practice was not review such a memo word for word, or to necessarily review its attached charts.

"I glanced at the memo, read the front page," he told Nachman.

Greenberg also said that he trusted Umansky, a certified public accountant, along others in senior management in the company, to make sure the proposed transactions would be legally sound and in line with accepted accounting principles. He said the auto warranty transaction, which would involve using an offshore reinsurer controlled by AIG to help convert the losses, was only a notion being proposed by a single employee.

"It had to first pass muster with lawyers and accountants that were working on the project with him," Greenberg testified. "He could not do it himself."

Nachman, growing louder in his questioning, used questions to make several points in response. He asked Greenberg, for instance, why the company's general counsel, at some point during a series of memos between Umanksy and Greenberg in 1999 and 2000, was no longer copied.

He also asked Greenberg if it raised a flag to him that Umansky had called the accounting tied to the proposed transaction "aggressive," and if AIG had hired any outside legal counsel to review the transaction proposed by Umansky, which was effected months later.

"Isn't it the case, sir, that you never asked for a legal opinion about this structure?" Nachman said.

Greenberg shot back, "The lawyers were working on this along with accountants. If they wanted an outside opinion, they would have come and recommended it to me."

Near the end of Wednesday's testimony, Nachman indicated that Greenberg may have recommended that Umansky, who was interviewed by the government for the case but is not a planned witness, talk to the head of a Swiss bank that AIG either still controlled or had in the past, in order to find an investor to help with the transaction.

Greenberg answered, "I was interested generally in this conversion of underwriting loss into investment loss, [but] until it passed muster [with the lawyers and accountants], I wasn't interested in this specific transaction."

Former state Attorney General Eliot Spitzer brought the case in 2005, alleging nine different wrongful financial acts. After several appeals and narrowing by the government, the lawsuit now focuses on just two alleged sham transactions and seeks disgorgement of $52 million in total from Greenberg and co-defendant, former AIG chief financial officer Howard Smith.

David Boies of Boies Schiller & Flexner is representing Greenberg; Vincent Sama, a partner at Kaye Scholer, is leading Smith's defense.

In the second alleged transaction—which was not part of Wednesday's questioning—the government claims Greenberg and Smith helped orchestrate a fraudulent reinsurance deal between AIG and General Reinsurance Corp. The transaction allegedly pumped up AIG's reserves by $500 million in 2000 and 2001.

Under state law, Greenberg and Smith are not afforded a jury trial because the government is not asking for damages, but rather a forfeit of past bonuses from Greenberg and Smith.

Greenberg on Tuesday acknowledged learning from an actuary in 1999 that the auto-warranty insurance line was expected to lose several hundred millions of dollars in the coming years. He also admitted to calling the segment "a debacle" and testified that he focused on it to "teach a lesson" to subordinates not to enter into such a poor business choice again.

Jason Grant is a former practicing lawyer. From 2002 to 2008, he handled legal matters on behalf of AIG as outside counsel. He was not involved with and had no knowledge of the transactions underlying the case. He can be reached via email or on Twitter @JasonBarrGrant.