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# Tension Remains High on Third Day of Greenberg's Testimony in Fraud Trial

Jason Grant, New York Law Journal

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Former American International Group Inc. CEO Maurice "Hank" Greenberg found himself again trying to bat away one probing question after the next from the witness stand Thursday, facing a prosecutor's questions about how he dealt with a colleague's warning that AIG may face stepped up regulatory scrutiny after the 2001 Enron accounting scandal.

David Nachman, a senior enforcement lawyer for the New York Attorney General's Office, zeroed in on a May 2002 memo issued to Greenberg by Joseph Umansky, then an AIG senior vice president. In the memo, Umansky allegedly warned Greenberg that the company might need to rethink a financial transaction—known as CAPCO—that was aimed at converting auto-warranty insurance underwriting losses into capital losses considered less harmful by investors.

"The CAPCO structure needs to be revamped in order to put us farther from criticism in today's environment," Umansky wrote to Greenberg, according to Nachman, who read parts of the memo aloud in Manhattan Supreme Court.

Nachman, leaning forward at a lectern just a couple yards from Greenberg, asked the former billionaire chairman what he did in response to Umansky's memo.

"I wanted to talk to the lawyers [at AIG] and find out what their views are" about whether to revamp the transaction's structure, replied Greenberg, 91. The answer echoed a refrain that has become common in the two-week-old civil fraud trial against Greenberg—he has repeatedly stated that he looked to professional advice from lawyers and accountants.

Nachman, who often begins a series of questions in a low-key manner before escalating the pitch and intensity of his voice, did not let up.

"Are you saying you recall consulting with counsel?" he asked.

"I'm not saying that," said Greenberg, who often uses a level, softer voice when responding to questions. "I likely would have wanted to do that."

Nachman came back at him, "Do you recall taking any steps in response to this memo?"

"I can't recall."

"Why it was necessary to revamp this structure?" Nachman continued. "What criticism may AIG have come under?"

Again, Greenberg said, "I can't recall."

The exchange was emblematic of the standoff between Nachman and Greenberg, who spent his third straight day on the witness stand. It was also similar to how their exchanges have unfolded this week.

The more than two hours of testimony on Thursday again focused on a reinsurance transaction at the heart of one of the state's two claims 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.

In addition to the 2002 Umansky memo, Nachman also read from an AIG SEC 10-K filing for the year 2000 that he said included no mention of the auto-warranty loss-conversion transaction. He also attempted to grill Greenberg about a management representation letter sent from AIG to PricewaterhouseCoopers and signed by Greenberg.

Nachman said that letter was intended to give a "complete and accurate" list of "special purpose entities"—such as reinsurance vehicles for converting losses—and that it did not include the auto-warranty-related vehicle. The implication was that AIG had allegedly misled PWC in the run-up to an audit of AIG's 2001 financials.

Early in the day, according to Bloomberg News, it was state Supreme Court Justice Charles Ramos who took over the room amid the bench trial. He reportedly told Greenberg he had lost sleep contemplating why Greenberg would have allowed the CAPCO arrangement to proceed, and he asked Greenberg why.

"I look at this auto-warranty business," Ramos said, according to Bloomberg. "It wasn't going to bring back the losses. It wasn't going to correct the mistakes that were made in the auto-warranty business. Why would AIG go through the CAPCO transaction in the first place? What was the motivation?"

Greenberg said it was done to alleviate certain managers' worries that they would be held to account for a bad program run by a separate division of AIG.

"That was the only reason," said Greenberg, according to Bloomberg. "They wanted this off their back."

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 Howard Smith, a former AIG chief financial officer.

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—not covered in Thursday'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. State Attorney General Eric Schneiderman's office is also asking for injunctive relief that would ban both Greenberg and Smith from both the securities industry and from acting as a public company's officer or director.

On Tuesday, Greenberg's first day on the stand, he 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.

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*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](#).*

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