Docket #0177 Date Filed: 10/28/2013

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	Chapter 11
Debtors.	Jointly Administered
RESIDENTIAL CAPITAL, LLC; et al., Plaintiffs, v. UMB BANK, N.A., IN ITS CAPACITY AS INDENTURE TRUSTEE FOR THE 9.625% JUNIOR SECURED GUARANTEED NOTES, et al., Defendants.	Adv. Case No. 13-01343 (MG)
OFFICIAL COMMITTEE OF UNSECURED CREDITORS, on behalf of the estate of the Debtors, Plaintiffs, v. UMB BANK, N.A., AS SUCCESSOR INDENTURE TRUSTEE UNDER THAT CERTAIN INDENTURE, dated as of June 6, 2008, et al., Defendants.	Adv. Case No. 13-01277 (MG)

THE DEBTORS' AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS' MEMORANDUM IN RESPONSE TO THE JSNs' DESIGNATION OF DEPOSITION TESTIMONY OF JOSEPH RUHLIN AND JILL HORNER CONCERNING ADMINISTRATIVE EXPENSE ALLOCATION



Plaintiffs Residential Capital, LLC ("ResCap"), GMAC Mortgage LLC ("GMACM"), Residential Funding Company, LLC ("RFC"), and each of their affiliated debtors and debtors-in-possession (collectively, the "Debtors"), together with Plaintiff the Official Committee of Unsecured Creditors (the "Committee" and, collectively with the Debtors, "Plaintiffs") submit this Memorandum in response to the designations of deposition testimony of Joseph Ruhlin and Jill Horner by Defendants UMB Bank, N.A. ("UMB") and the Ad Hoc Group of Junior Secured Noteholders (the "JSNs" and collectively with UMB, "Defendants").

The Defendants have designated eight portions of Ruhlin's deposition testimony and four portions of Horner's deposition testimony that relate only to the issue of administrative expense allocation (the "Expense Allocation Designations"). *See* Exhs. 1-3. Plaintiffs seek to preclude the Expense Allocation Designations on the ground that the only relevance of this testimony is to the expense allocation issue, an issue which this Court has now twice ruled is not relevant to this case.[1]

As summarized below, all topics covered in the twelve designated portions relate exclusively to expense allocation and do not address any other issues relevant to this trial:

Topics Covered in the Ruhlin Transcript Designations

- development of cash flow forecasts and expense allocation methodology. Tr. 264:12 – 276:4, 280: 3-22.
- allocation of expenses to collateral islands. Tr. 281:22 – 282:23.
- administrative expenses charged to the JSN collateral in October 2012 – February 2013; definition of "direct costs" and "maintaining" collateral; restructuring fees, professional fees, costs of monetizing assets. Tr. 288:8 – 298:21.
- Horner expense allocation methodology; weekly cash flow projections; 20-week forecasts; professional expenses; costs to maintain collateral. Tr. 299:13 – 317:25.

[1] *See* Trial Tr., Oct. 16, 2013, at 11:1-4; *see also* Memorandum Opinion Denying Without Prejudice UMB Bank's Motion to Dismiss Counts 3 and 5, and Granting in Part and Denying in Part the Committee's Motion to Dismiss Certain Junior Secured Noteholder Counterclaims, Sept. 20, 2013, Docket No. 5128.

- costs to maintain assets in various collateral pools. Tr. 318:20 – 320:3.
- how risk associated with individual collateral was factored into the allocation methodology. Tr. 324:6 – 326:16.
- whether costs to prevent having to turn assets over to lenders were calculated in the methodology. Tr. 346:13 – 347:4.

Topics Covered in the Horner Transcript Designations

- direct costs of maintaining the JSNs' collateral for the pre- and post-sale periods; operating expenses; expenses relating to Examiner's Report; expense allocation methodology in the Horner Declaration; professional fees; compensation benefits and incentives expenses; cure costs; forecasts attached to the Final Cash Collateral Offer. Tr. 22:25 – 28:24, 29:6 – 47:11.
- methodology to allocate expenses among collateral silos. Tr. 55:15 – 57:12.
- negotiations over budgeting process of Final Cash Collateral Order. Tr. 59: 24 – 60:7.

The Court's two previous rulings on this issue have recognized that expense allocation is not relevant to the JSNs' claims. Moreover, as the Court stated in the decision granting in part Plaintiffs' motion to dismiss, forcing the Debtors to tie expenses directly to the JSNs' collateral "would burden the Debtors' estate with a needless expense aimed at reviewing the Debtors' administration of collateral even though the Cash Collateral Order already establishes the permissible means for the Debtors to administer the collateral. *See* Cash Collateral Order ¶¶ 14–15." Memorandum Opinion Denying Without Prejudice UMB Bank's Motion to Dismiss Counts 3 and 5, and Granting in Part and Denying in Part the Committee's Motion to Dismiss Certain Junior Secured Noteholder Counterclaims, Sept. 20, 2013, Docket No. 5128 at 28-29.

For these reasons, Plaintiffs respectfully request that the Court follow its two previous rulings on this issue and preclude any designated deposition testimony from Ruhlin or Horner concerning the reallocation of expenses.

Dated: October 28, 2013

MORRISON & FOERSTER LLP

/s/ Gary S. Lee
Gary S. Lee
Todd M. Goren
Jamie A. Levitt
Samantha Martin
1290 Avenue of the Americas
New York, New York 10104
Telephone: (212) 468-8000
Facsimile: (212) 468-7900

-and-

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

/s/ Steven J. Reisman
Steven J. Reisman
Theresa A. Foudy
Michael Moscato
101 Park Avenue
New York, New York 10178
Telephone: (212) 696-8860
Facsimile: (212) 697-1559

Counsel to the Debtors and Debtors in Possession

KRAMER LEVIN NAFTALIS & FRANKEL LLP

/s/ Kenneth H. Eckstein
Kenneth H. Eckstein
Gregory A. Horowitz
Douglas H. Mannal
1177 Avenue of the Americas
New York, New York 10036
Telephone: (212) 715-9100
Facsimile: (212) 715-8000

-and-

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Robert J. Feinstein
Robert J. Feinstein
John A. Morris
780 Third Avenue, 36th Floor
New York, New York 10017
Telephone: (212) 561-7700
Facsimile: (212) 561-7777

Counsel to the Official Committee of Unsecured Creditors

Exhibit 1

Plaintiffs' Objections to Defendants' Designations in the Ruhlin and Horner Deposition Transcripts

Designations in Ruhlin transcript

Page 264, Line 12 through Page 276, Line 4
Page 280, Line 3 through Page 280, Line 22
Page 281, Line 22 through Page 282, Line 23
Page 288, Line 8 through Page 298, Line 21
Page 299, Line 13 through Page 317, Line 25
Page 318, Line 20 through Page 320, Line 3
Page 324, Line 6 through Page 326, Line 16
Page 346, Line 13 through Page 347, Line 4

Designations in Horner transcript

Page 22, Line 25 through Page 28, Line 24
Page 29, Line 6 through Page 47, Line 11
Page 55, Line 15 through Page 57, Line 12
Page 59, Line 24 through Page 60, Line 7

Exhibit 2

J. RUHLIN

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter
RESIDENTIAL CAPITAL, LLC, et al.,	:	Case No. 12-12020(MG)
	:	Jointly Administered
Debtors.	:	
RESIDENTIAL CAPITAL, LLC, et al.,	:	
Plaintiffs,	:	
v.	:	Adversary Proceeding
UMB BANK, N.A., as successor indenture trustee under that certain indenture, dated as of June 6, 2008; and WELLS FARGO BANK, N.A., third priority collateral agent and collateral control agent under that certain Amended and Restated Third Priority Pledge and Security Agreement and Irrevocable Proxy, dated as of December 30, 2009,	:	No. 13-01343(MG)
Defendants.	:	
OFFICIAL COMMITTEE OF UNSECURED CREDITORS, on behalf of the estates of the Debtors,	:	
Plaintiff,	:	
v.	:	Adversary Proceeding
UMB BANK, N.A., as successor indenture trustee under that certain Indenture, dated as of June 6, 2008; and WELLS FARGO BANK, N.A. third priority collateral agent and collateral control agent under that certain Amended and Restated Third Priority Pledge and Security Agreement and Irrevocable Proxy, dated as of December 30, 2009,	:	No. 13-01277(MG)
Defendants.	:	

VIDEOTAPED DEPOSITION OF JOSEPH RUHLIN

JOB NO. 65730 New York, New York, September 18, 2013

respect to the meaning of these particular stipulations other than what's said in this document?

A. I'm not aware of those discussions.

Q. Okay. And are you aware of any discussions between ResCap on the one hand and any representative of a Junior Secured Noteholder on the other with respect to any of the stipulations in paragraph 5?

A. Not that I was part of, no.

Q. Okay. Now let's go to the -- you were shown Exhibit A. I want to show you Exhibit B, which is a series of spreadsheets with cash flow projections.

A. Yes.

Q. What role, if any, did you personally have in the preparation of any of the schedules that are attached as Exhibit B to Ruhlin No. 16?

A. So, in my role as Treasurer, the cash forecasting fell under the Treasury Group. We had engaged FTI to assist in that task, and they prepared these schedules but in consultation with myself and my group.

Q. Okay. So what role personally did you

play in preparing any of the forecasts that were attached as Exhibit B to Ruhlin No. 16?

A. I mean the whole forecasting process was an established process that we had where we would -- Treasury would get information from other groups within the company to allow us to forecast certain items, cash flows.

So we managed that process. We -- we consolidated. We determined which flows went onto which island. When I say "island," I mean the three different ones that are listed here, the Ally ones. And it was all our group preparing it really with FTI's help.

Q. Okay. And so if you turn to the Weekly Cash Flow Projections, Ally Revolver.

A. Ally revolver. Okay.

MR. MORRIS: One second, please.

Q. And you see there's a line item which is Op Ex Professional Fees?

A. Yes.

Q. See that? So on this particular one, it nets to $172.6 million of expense over the forecast period?

A. Yes.

Q. Okay. And these -- these forecasts were prepared periodically, right?

MR. MORRIS: Objection to the form of the question.

A. Yes, throughout the bankruptcy they were updated on a monthly basis.

Q. And you did that all the way through your departure in February?

MR. MORRIS: Objection to the form of the question.

A. Yes, with my group and with FTI.

Q. What role, if any, did you play in the determination of a methodology to allocate expense?

MR. MORRIS: Objection to the form of the question.

A. I worked with attorneys, our attorneys, and FTI to come up -- and also, you know, mentioned with some lenders the -- that we didn't determine the allocation method, but we discussed it with certain lenders like Barclays, the method by which expenses would be allocated over the course of the bankruptcy.

Q. Okay. Did you have any discussions

with anybody representing Ally with respect to allocations?

A. We had, yes, discussions with Ally's advisors.

Q. Okay. And who was that?

A. It was Elena that I recall, who was Evercore.

Q. Okay. And did you have any discussions with any advisors to JSNs or with any JSNs directly?

A. I don't recall ever discussing with the JSNs the methodology.

Q. And how was the methodology developed?

A. So the methodology was developed by looking -- we tried to determine the best methodology for allocating expenses. We kind of looked at expenses as being, you know, all the expenses that were incurred by the company in this whole process was the goal of this whole process was to get us where -- get the company where we could maximize proceeds from the sale of assets, and in order to get there, that would benefit all of these islands to maximize those proceeds.

J. RUHLIN

So the -- we viewed the expenses of the company as necessary in order to get to that point, and so we allocated those expenses based on the -- the total expenses for the month were allocated based on a pro rata -- each island's pro rata portion of assets that were pledged.

So, in other words, there was a total number of assets pledged, and each island had a certain subset of those assets. Whatever percentage that island had, the expenses were allocated according to that percentage to that island.

Q. When you say assets, which assets? It wasn't all assets, was it?

A. It wasn't necessarily all assets. It was most assets. I don't remember exactly the assets that were included versus not included.

Q. Was cash included as an asset in determining the amount of expense a particular collateral island would bear?

A. If I remember correctly, cash was in certain cases excluded.

Q. Okay. And what was the method of valuing the assets?

A. The method of valuing the assets was, if I recall correctly, based on the book value of the assets.

Q. Okay. Was any part of that methodology of allocating expense tied to the actual direct cost of maintaining any particular asset?

MR. MORRIS: Objection to the form of the question.

A. Well, so I think kind of what I said before, we viewed the maintenance of the entire company as the cost for each island because maintaining everything through bankruptcy benefited every island. So we viewed all of the costs as relating to each island.

Q. Who was -- was primarily responsible within the company for using that method, for coming up with that methodology? Let's start there.

MR. MORRIS: Objection to the form of the question.

A. We discussed that methodology with -- I discussed it with the advisors and with Legal.

Q. Okay.

A. And I don't recall. I mean, Jim Whitlinger would have been also part of those discussions, so -- but I was probably most directly involved.

Q. Okay. And in coming up with the methodology, what was the assumption that all assets were at equal risk of -- of loss if you didn't spend the money?

MR. MORRIS: Objection to the form of the question.

A. That all assets were equal risk of loss?

Q. Of loss.

As I understand your point -- first of all, do you know how much expense was allocated in -- under that methodology up to the time you departed?

A. I don't remember how much expense, no.

Q. Do you even know directionally how much expense?

A. I can't recall how much expense was.

Q. And were there any expenses left out of that methodology?

MR. MORRIS: Objection to form.

A. Yes.

Q. What expenses were left out of the methodology?

A. Interest expense on each individual facility was paid through that facility's cash.

Q. Okay. What other expenses?

A. The, if I recall correctly, the professional fees for the Junior Secured Noteholders were paid out of the revolver bucket island, and I believe there were some expenses related to the DOJ settlement that were paid out of the Ally DIP bucket because I believe, if I remember correctly, the DIP bucket was drawn upon to fund that, the Ally DIP was drawn upon to fund some of those.

Q. Any other expenses you're aware of that were outside the methodology?

A. I can't think of any expenses that were outside the methodology besides those.

Q. Who could definitively answer that question for me?

MR. MORRIS: Objection to the form of the question.

A. I think you could -- I mean, it's all

documented what expenses were allocated, so I think we could go -- you could go back and look at all the documentation.

Q. And how were the expenses allocated on the general ledger, that is, tracked to a legal entity?

A. I don't -- I didn't work on the general ledger.

Q. Okay.

A. So I had -- I don't have knowledge of everything with the general ledger.

Q. Well, when you're talking about the expense allocation methodology, are you saying that expenses -- this was only tied to collateral and not to a particular Debtor then?

A. A particular Debtor entity?

Q. Right.

A. Yes.

Q. Okay. So, for example, GMACM, one of the Debtors in the case, its expenses will be based upon, as far as you know, the general ledger, right?

A. As far as the additional ledger is concerned, if an expense was paid my GMAC

Mortgage and GMAC Mortgage incurred that expense, the general ledger would record that as an expense of GMAC Mortgage.

Q. You're not aware of the general ledger being -- using the methodology that was developed for the collateral islands?

A. No.

Q. Okay. Why did the -- why did your -- can I call it your methodology? Whose methodology should I call it?

A. ResCap's.

Q. All right. Why did ResCap's -- why was ResCap's methodology developed?

A. Why was it developed?

Q. Yes.

A. Because --

Q. If you've got a general ledger that's tracking expenses of particular Debtor entities, why did you need an expense allocation methodology?

MR. MORRIS: Objection to the form of the question.

A. We needed to have a methodology because, on a cash basis, the expenses needed to

be allocated, like all cash had to be allocated to a -- to cash that was on hand within the estate.

Q. Okay.

A. So that was how the cash was moved.

Q. What role did the DIP lenders have in the company's development of the cash -- or, of the expense method -- expense allocation methodology?

MR. MORRIS: Objection to the form of the question.

A. Barclays?

Q. Yes.

A. Other than I think we presented this to them and they probably had questions, but ultimately, you know, this is what we did and we didn't receive any objections.

Q. Was one of the DIP requirements that the company come up with an expense allocation methodology?

A. I don't recall it being like a spelled out requirement, but -- no, I don't remember it being a...

Q. And did you understand this to be a

final expense allocation methodology? In other words, once the expenses were allocated in this manner, there was no revisiting it?

MR. MORRIS: Objection to the form of the question.

A. I don't know that I understood that. I know that this was communicated as to how the -- as how the expenses would be allocated, and in my tenure with the company from bankruptcy to when I left, I'm not aware that anybody objected to it.

Q. Okay, but that's not my question. My question is was your understanding that this was a final expense methodology; that is, once it was listed like this, everybody was foreclosed from questioning how it was being done?

MR. MORRIS: Objection to the form of the question.

A. I guess I'm not aware of whether anybody could or could not object to it at a later date or question it.

Q. Okay. So in your mind was this final?

MR. MORRIS: Objection to the form of the question.

MR. McPHERSON: Objection.

A. We weren't planning to do anything else.

Q. Okay. Well, regardless of whether you were planning on doing -- you said if there was an objection raised?

A. Yes.

Q. Then, okay, so an objection has been raised. You do understand that the JSNs are saying we object to this allocation?

A. Okay.

Q. So did you have an understanding -- you said nobody objected. Okay, someone's objected. So now what, in your mind?

MR. MORRIS: Objection to the form of the question.

A. Yeah, I don't know how bankruptcy law works around that.

Q. ResCap's allocation methodology, you said --

A. Yes.

Q. -- no objection was raised. What did you understand the methodology to do if an objection was raised?

A. I'm not aware of that.

Q. In your time in which you were involved in preparing forecasts, are you aware of any expenses being forecasted that weren't necessary?

MR. MORRIS: Objection to the form of the question.

A. Necessary?

Q. Necessary and appropriate. Are you aware of any inappropriate and unnecessary expenses that were forecasting?

A. No.

MR. MORRIS: Objection to the form of the question.

Q. And I take it that if they were necessary and appropriate expenses, they were going to be made irrespective of how they were going to be allocated?

MR. MORRIS: Objection to the form of the question.

A. Yes.

Q. Right. So if somebody had come forward and said we object to having this expense allocated to our silo during this

period, in your view, would that just have meant that you would have had to find somewhere else to put the expense?

MR. MORRIS: Objection to the form of the question.

A. That never came up so I don't know what would have happened at that time.

Q. Well, you were saying -- you raised the concept of somebody objecting, and I'm just wanting to explore further what you meant by "object." If somebody had said --

A. Well --

Q. -- I object to you allocating this particular cost to my silo, is it your view you wouldn't have spent the money, a necessary expense, or you just would have had to reallocate that expense somewhere else if you were going to listen to the objection?

MR. MORRIS: Objection to the form of the question.

A. So you're saying, hypothetically, if somebody had objected to a certain expense --

Q. Yes.

A. -- and we agreed, hypothetically, that

that expense would not be allocated to that particular island, would we have incurred the necessary expense?

Q. Yes.

A. It's very hypothetical, but I would think we would have incurred the necessary expense because it's a necessary expense.

Q. Exactly. So if someone had come forward and said $80 million of examiner fees, I object to having $80 million or 40 percent of the $80 million of examiner's fees being allocated to the revolver and blanket silos, hypothetically that was raised to you as an objection, you still would have paid the examiner, right?

MR. MORRIS: Objection to the form.

Q. Even if it was a valid objection?

MR. MORRIS: Objection to the form of the question.

A. Yes, as long as allowed and as long as I guess not every single island objected and there was no cash left to pay it with.

Q. Right. Fair enough.

MR. CARNEY: All right. I think we

period after the expiry of the 20-week cash flow in Exhibit 16, which I believe was ran out in September of '12?

A. Did I see any yesterday?

Q. Yes.

A. Not that I remember, no.

Q. Okay. And as you sit here today, just -- just so in case this is a -- you're some kind of savant -- maybe you are -- can you tell me what the administrative expense was that was charged to the JSN collateral in October of 2012?

A. Not sitting here today, no.

Q. And/or November or December or January or the period of February up to the sale, right?

A. Right.

Q. Okay. And so on what basis can you testify to the direct costs of maintaining the JSN collateral for the period October through February?

MR. MORRIS: Objection to the form of the question.

A. On what basis the -- I'm not sure I understand your question.

Q. Well, can you testify to any figures in that period?

MR. MORRIS: Objection to the form of the question.

A. Not without looking at a schedule that was prepared and provided and I reviewed at the time, I don't recall those numbers, no.

Q. Okay. So let's -- if you look at topic 9 in 24 -- is it Ruhlin 24? What did you understand "direct costs" to mean?

A. It's -- "direct costs" was not a defined term.

Q. Okay. So what did you take it to mean in preparing for your deposition?

A. Costs that were allocated to the -- the different islands, I guess in this case to the JSNs.

Q. So you took the word --

A. The collateral and --

Q. You took the word "direct" to mean allocated, is that fair to say?

A. Well, I think the method that we used to allocate and the underlying reasons we did that mean that those were direct costs. The way

we did it we viewed as direct costs.

Q. Okay. So you took "direct costs," though, to mean -- mean then it was a synonym for "allocated"?

MR. McPHERSON: Objection.

Q. Is that right?

A. Not necessarily a synonym for "allocated," but I think in this instance --

Q. In context.

A. I think in this instance, we viewed it as the same thing, yes, that the allocated costs were the direct costs.

Q. All right. And what did you take the word "maintaining" to mean?

MR. MORRIS: Objection to the form of the question.

A. "Maintaining" means to me preserving the value of the collateral. As it mentions, the JSNs' collateral, so maintaining and preserving the value.

Q. And preserving it in what sense?

A. Preserving it in the sense that ultimately would maximize proceeds from the disposition.

Q. Okay. So let me -- let's tease that out a bit. In maintaining, you weren't taking that to mean to keep it safe from catastrophic loss but, rather -- but, rather, maintain it in a way in which it its value can be maximized?

MR. McPHERSON: Objection.

A. If it was a catastrophic loss, the value wouldn't be maximized so that's part of maintaining it, right?

Q. Right. Part of maintaining it, but not necessarily the same. So let's focus on -- I'll just give you an example. You have a house and you're trying to maintain the value of the house. All right? There's certain -- you viewed it as all the expenses that are necessary for that house to be sold for the maximum amount of value?

MR. MORRIS: Objection to the form of the question.

Q. Is that right?

A. Yes. I mean, it's a --

Q. Right.

A. I don't know that it correlates exactly to a complicated bankruptcy, but...

Q. No, I hear you, and we're going to come back to that in a bit because we're going to start talking about what the collateral was and what the costs were.

A. Okay.

Q. But you weren't viewing "maintaining" as just the costs of mowing the lawn and paying the taxes and making sure the house had heat and water?

A. No.

MR. BENTLEY: Objection to form.

MR. MORRIS: Objection to the form of the question.

Q. You understand that?

A. Yeah, I don't know exactly how to answer the analogy, but I get --

Q. When you say "maintaining," those are not just the costs that are necessary to keep the collateral in place, even if that means that it's not going to be maximized in value but, rather, it's just going to be protected from loss?

MR. MORRIS: Objection to the form of the question.

A. I guess you could say that.

Q. Okay. So -- so explain to me as best you can what you meant by "maintaining," what you understood to be "maintain" in Section 9 to mean?

A. As I said, the way I understood it was maintain the value of the collateral at optimal -- so that you could obtain optimal amount of proceeds.

Q. Okay. "JSN collateral," what did you take that to mean?

A. JSNs have a second lien, now a second position on all of the revolver in the collateral.

Q. Okay. And what did you understand that to mean in your preparation? What assets are included in the revolver?

A. The primary asset, the primary collateral, as identified in the revolver agreement, and the blanket lien.

Q. Okay. And what are the assets, the actual assets that we're talking about?

A. There are a lot of assets.

Q. Okay.

A. There's --

Q. So let's lay them out.

A. -- loans, servicing advances. There's other receivables. There's some securities. And this is mainly the primary collateral.

Q. Okay.

A. There are also blanket lien collateral. There are loans. There are receivables. There are I think property, plant and equipment. There's a lot of assets.

Q. General and tangible?

A. General and tangible.

Q. For example, software?

MR. BENTLEY: Objection.

A. I'm not sure that I remember exactly where software -- if there was value on the GL for software, I'm not sure.

Q. Okay. But you understood it -- you understood it to be defined then by whatever was in the Revolver Security Agreement and the JSN Pledge Agreement?

A. Yes.

Q. All right. Categories of expense, let's go through that. You listed the

categories of expense that were excluded from the allocation, right? But I want to focus on things that were in it.

So included in the allocation are, let's see, restructuring fees, restructuring professionals?

A. Yes.

Q. Federal Reserve Board review?

A. What do you mean "review"? The review of the --

Q. The costs.

A. The cost to review the loan files?

Q. Yes. Yes.

A. Yes, I believe that was included.

Q. Costs of the examiner's report?

A. Are you asking if that was an included expense?

Q. Yes.

A. Yes. Yes.

Q. The costs of monetizing the assets?

A. Yes.

Q. All the -- all the costs associated with the sale, for example, right?

A. Yes.

Q. Cure costs?

A. Yes.

Q. Servicing fees on maintaining loans?

A. Servicing fees as revenue that we earned or servicing --

Q. Servicing fees you paid to have people service particular loans.

A. So if we had loans that we owned that were sub-serviced by someone else?

Q. Yes.

A. Yes, I believe those would have been included in expenses.

Q. Okay. Explain to me how, for example, the costs of the examiner's report was a cost that was necessary to maximize the value of the JSN collateral.

MR. MORRIS: Objection to the form of the question.

A. So, in totality, the examiner's report was a part of the cost of the bankruptcy process that got us to the point where we were able to sell the assets.

Q. Okay. So, other than it was part of the overall process, do you have any further

testimony as to how there was a direct benefit between the maximization of the JSN collateral and the costs associated with the examiner's report?

MR. MORRIS: Objection to the form of the question.

MR. McPHERSON: Objection.

A. No, other than that was part of the overall process to get to the point.

Q. Okay. What about cure costs on the MSRs, how did cure costs on the MSRs maximize the value of any of the JSN collateral?

A. When you say "cure costs on the MSRs," can you be more descriptive?

Q. Yes, the costs that were necessary to be paid when the MSRs were transferred in connection with the Ocwen and Walter sales?

MR. MORRIS: Objection to the form of the question.

A. It was part of the overall process as well.

Q. Okay. What about the costs of having the Unsecured Creditors Committee?

A. Part of the process.

Q. Okay. With respect to any of these line items of costs, can you draw a direct correlation between the costs that are incurred and the maximization of JSN collateral other than saying it's part of the overall costs of the bankruptcy?

MR. McPHERSON: Objection.

A. We haven't tried to correlate any other way.

Q. Okay. So as you sit here today as the corporate representative of the Debtors, you can't tell me whether there's a correlation between the costs that were allocated and the maximization of value of the JSN collateral other than saying it's a fraction of the overall costs of the entire bankruptcy process?

MR. McPHERSON: Objection.

MR. MORRIS: Objection to the form of the question.

A. That sounds accurate.

Q. Okay. And was there anything confusing about my question to you?

A. No, it was just long.

Q. Okay. Do you need me to break it out

for you smaller, or you feel fine with that answer?

A. I feel fine with that answer.

Q. All right.

(Ruhlin Exhibit 25, Declaration of Jill Horner in Support of Debtors' Motion for Entry of Interim and Final Orders to Permit the Debtors to Continue Using Cash Collateral, marked for identification, as of this date.)

BY MR. SHORE:

Q. Can you identify what has been marked as Ruhlin No. 25?

A. Can I identify it?

Q. Yes.

A. I have not seen this document before.

Q. Okay.

A. But I can read what the title of it is.

Q. No, that's all right, if you haven't seen it.

Were you aware there was a time right about when you were leaving when there was a move to a new expense allocation methodology?

MR. BENTLEY: Objection to form.

A. Other than the obvious that some of those islands were no longer around so that that had to -- that would necessitate a change, I'm not aware of specifics of changes to the allocation methodology.

Q. Were you ever -- did you ever have any discussions with Jill Horner about changes to the methodology to move away from a pro rata sharing of all costs versus a -- a methodology that was more tied to specific expenditures being made for specific assets?

MR. McPHERSON: Before you answer, just to clarify --

MR. MORRIS: Objection.

MR. McPHERSON: -- at this point when you say "you," you're speaking about him personally because he's no longer the representative.

MR. SHORE: Yes. Yes. Yes.

MR. McPHERSON: Okay.

THE WITNESS: So repeat the question.

BY MR. SHORE:

Q. Sure. Did you ever have any

discussions with anybody at ResCap about a move from the ResCap allocation methodology, as we have defined it, to a different methodology which tried to track actual expenditures of cash to -- to particular assets on which that cash was being spent?

A. Not other than briefly mentioned in prep yesterday.

Q. Okay. The -- let's go back to Exhibit 16 and Exhibit B to Exhibit 16 and within Exhibit B the weekly cash flow projection for Ally revolver?

A. Yes.

Q. All right. You said that these forecasts were -- were being spent. What authorization did you think you were getting from the secured creditors, if any, to spend that cash?

MR. MORRIS: Objection to the form of the question.

A. From the secured creditors?

Q. Right, which would included the DIP lender, Ally, the JSNs.

A. Well, they were -- it was required

that we prepare them.

Q. All right. And what did you -- what authorization did you understand you were getting under the -- under the Cash Collateral Order with respect to those expenditures?

MR. MORRIS: Objection.

Q. Do you know?

MR. MORRIS: Objection to the form of the question.

A. What do you mean what authorization? Authorization for what? To prepare them or to --

Q. What did you understand -- you prepared a budget?

A. Yes.

Q. Right? And you gave it to people, right? To FTI?

A. I prepared a forecast and gave it to people, yeah.

Q. And FTI you understood was giving that to other people?

A. Yes.

MR. MORRIS: Objection to the form of the question.

Q. Were you involved in any discussions in that process with any lender about any particular forecast that you had prepared?

A. Do you mean if a lender asked a question about the forecast?

Q. Yes.

A. Yes, lenders asked questions.

Q. And who?

A. Not very many. I think Ally asked questions from time to time in their capacity as a lender and I think Barclays as well.

Q. And who at Ally?

A. I don't recall specifically who at Ally asked the questions.

Q. And who at Barclays?

A. Barclays would have been probably Joe O'Doherty.

Q. When you say "probably," are you speculating or you have a specific recollection?

A. I can't remember for sure who the individual at Barclays was.

Q. And did those discussions, were they oral or were they -- were they written?

A. I think it could have been either.

Q. Well, do you have any recollection that any were written?

A. Via e-mail, do you consider that written?

Q. Yes.

A. I don't recall specifically --

Q. Not very many people respond with a pen anymore, but okay.

A. I don't recall specifically. There weren't a lot of questions asked about the forecasts.

Q. Can you turn to -- to paragraph 14 on page 22 of Ruhlin No. 16. So let's go back into the writing of Ruhlin 16.

A. Okay.

Q. All right. And do you understand that this was the paragraph that required you to make the forecasts?

A. Which, 14?

Q. Paragraph 14. I'm not asking for your legal view, but did you ever read this paragraph and understand that this was necessitating the forecast?

A. Well, I think the forecast was also

necessitated by the terms of the Barclays DIP.

Q. Okay. Can you answer with respect to paragraph 14?

MR. MORRIS: Objection to the form of the question.

A. This is, yes, this is one of the things that obligated us to provide a forecast, yes.

Q. Okay. And then can you turn to paragraph 15 and read that to yourself.

(Document review.)

A. Okay.

Q. And I asked you a question before, when you gave the budgets or the forecasts out, what did you understand you were allowed to do once you did that, and did you have an understanding when you were preparing the forecasts that by preparing the forecasts you were getting authorization to spend cash --

MR. MORRIS: Objection.

Q. -- in accordance with the forecasts?

MR. MORRIS: Objection to the form of the question.

A. I understood that the forecast was our

best estimate of the forecasted cash uses and proceeds and that, yeah, we had to spend cash based on what was -- or didn't have to spend cash, but --

Q. No, that's fine. I'm going to pull that apart.

A. The use of cash was to be in lines with the forecast.

Q. Okay. Let's -- let's pick that apart. Did you understand that you weren't allowed to spend cash in excess of the forecasts?

MR. MORRIS: Objection to the form of the question.

Q. Whether or not the order prevented you from that, I'm just -- was that --

A. I don't know that we were -- I don't know if we would have been prevented from doing that, but that didn't arise.

Q. Okay. And you drew a distinction before. Did you understand that you were required to make the expenditures in accordance with the budget; in other words, spend cash that you didn't want to spend at that time just

because the budget said you would be spending the money?

MR. MORRIS: Objection to the form of the question.

A. Well, the budget wasn't perfect in dollars, so we didn't spend extra expenses just to meet the budget.

Q. Okay.

A. We -- we spent what we had to pay, what we had to spend.

Q. And when you say "spend," let's be clear: Were the forecasts on a cash spend basis or on an accrual of expense basis?

A. These were cash forecasts.

Q. Okay.

A. So not accrual.

Q. So all of the cash you were forecasting out on that period you were expecting to spend?

A. We were expecting that there was a reasonable possibility that we would expend it, yes, but it was a forecast.

Q. For example, what did you do with professional fees which were being accrued but

would only get paid in accordance with a Court ordered allowance of fees net of holdbacks?

A. Well, we didn't -- we couldn't predict when those Court orders would come in. We would estimate what the total -- what we thought was a reasonable estimate, which is also difficult to forecast; what we thought was a reasonable estimate of what those fees would be and what we thought at the time was a reasonable estimate of when they might be spent.

And if they weren't spent in the month that we had forecasted it, but we thought there was a likelihood that they would be expended in a future month, the future of the next forecast would reflect it there.

If we thought it wasn't ever going to be expended, then it would come out of the forecast; or if it was expended, then it would come out of the forecast.

Q. So what did you do with -- were any expenses that were accrued not forecast in your tenure in preparing forecasts?

MR. MORRIS: Objection to the form of the question.

A. Were there any expenses that were accrued on the GL?

Q. Yes.

A. I don't know. I don't know what -- what -- I didn't have insight what was accrued on the GL.

Q. Okay. So, for example, there are -- are you aware that there are a large number on the balance sheet right now for the Debtors, or when you left even there was a large number on the balance sheet for accrued but unpaid professional expenses?

A. I would have known it, yes, I would have known that that would be on the balance sheet.

Q. So how was that number forecast in the -- in the 20-week budgets, an amount of money that you knew would have to be paid maybe even at the end of the case but wasn't going to be paid within the forecast period?

A. Within the 20-week forecast period?

Q. Yes.

A. So what is your question? How --

Q. I'll just -- we'll come back. In

looking at the 20-week forecast, you had included in those a whole large amount of accrued but unpaid professional expense.

A. Okay.

Q. How are you dealing with that number when you were doing the forecasts?

A. How was it dealt with? Where was it in the forecast, you mean?

Q. Yes.

A. I think a lot of times it was shown -- it was shown in the month that we thought it could reasonably be incurred.

Q. Incurred or paid?

A. Paid. Sorry.

Q. Okay. Now, the -- are you aware of anything else in -- in Ruhlin No. 16 other than paragraphs 14 and 15 that deals with forecasting?

MR. MORRIS: Objection.

A. I haven't looked --

Q. It's not a memory test, but do you recall anything?

A. I haven't looked at this in a long time, but -- so I don't recall anything else.

Q. Do you ever recall discussing -- this is a variant of a question I had before -- discussing with any lender negotiating a term which would provide a drop-dead date by which a lender could object to expenses that were included in the forecasts?

MR. McPHERSON: Objection.

MR. MORRIS: Objection to the form of the question.

A. I don't recall doing that.

Q. Do you know what I mean by a "drop-dead date"?

A. Saying if you don't object by this date, you can no longer object?

Q. That's right.

A. I don't remember that being a part of in this.

Q. Okay.

A. Or a part of -- I don't remember discussing that, no.

Q. Okay. And did you ever conceive of that within ResCap, that you might want to put in a provision into some document that said object now or forever hold your peace?

MR. MORRIS: Object to the form of the question.

A. I don't remember discussing that.

Q. The expense allocation methodology, were you aware that certain collateral that was pledged to one or more of the lenders was more cash-intensive than other forms? In other words, did you understand --

MR. MORRIS: Objection.

Q. Did you understand that certain collateral took a lot of time and effort to maintain and other collateral was fairly static?

MR. MORRIS: Objection to the form of the question.

A. Depends what you mean by "maintain," I guess, but...

Q. Well, you tell me. "Maintain," you gave me a definition, so let's use that definition first.

A. Okay. So --

MR. MORRIS: Objection to the form of the question.

MR. BENTLEY: Objection. That's what he understood you meant by the word.

MR. SHORE: Mr. Bentley, of all the people in the room, as seasoned as you are, you know there's such thing as saying "objection to the form" and then I get a choice to make as to whether I want to rephrase the question.

MR. BENTLEY: I'm sorry, Chris. I couldn't restrain myself.

MR. SHORE: We all slip. We all slip.

BY MR. SHORE:

Q. So do you have in your mind two or more different definitions of "maintain"?

A. You threw out another definition of "maintain."?

Q. Well, you give me -- you define for me "maintain," what "maintain" means to you.

MR. MORRIS: I have an objection to the form of the question.

A. Well, what "maintain" means to me in the way I read the -- the 30(b)(C) or whatever?

Q. 30(b)(6), yes.

A. 30(b)(6).

Q. Topic 9, right.

A. Yes.

Q. Uh-huh.

A. So the way I read -- so what's your question again?

Q. Okay. How did -- just so we're clear on the record, how did you read the word "maintain" in topic 9 in Ruhlin No. 24?

A. Again, it was to go through, as we go through the process, to maximize the cash proceeds from the sale of the assets.

Q. And then do you have a different definition of "maintain" that you might use in normal vernacular, just conversations?

A. There's lots of different definitions of "maintain."

Q. Well, I asked a question before about -- about maintaining collateral, and you came back to me with "depends on what you mean by 'maintain.'" So what other definition did you have in mind when you asked for the clarification from me?

A. Well, you raised another definition of it in your example with the house earlier.

Q. Okay. All right.

A. So that's another definition.

Q. All right. Any others you have in mind?

A. There's probably lots of different definitions of "maintain," right?

Q. Let me -- let me do this. Let me use the word "maintain" as it might appear in the dictionary, which is "to keep safe."

A. Okay.

Q. Did you understand that there was, in coming up with your methodology, that the cost of keeping certain collateral safe was going to be different than the cost of keeping other collateral safe?

MR. MORRIS: Objection to the form of the question.

A. Keeping collateral safe --

Q. So, for example, cash.

A. Yes.

Q. You took cash out. Why would you take cash out?

A. Take cash out of the calculation, the allocation?

Q. Yes.

A. I don't remember exactly why we took

cash out.

Q. Maybe -- could it be, and then let me refresh your recollection, that cash really cost nothing to keep safe, it's in a bank account?

A. Yes, that could be.

Q. Right. And that you don't need to do anything to maximize the value of cash; cash is cash?

A. Correct.

Q. All right.

A. I would agree with that.

Q. Now, in coming up with the methodology, did you think at any time that there might be different costs of keeping one category of assets that were collateral safe versus keeping another category of assets safe?

A. I don't know that we discussed that because that wasn't the approach that we were operating under.

Q. Okay. And as a 30(b)(6) witness, if we used the definition of "maintain" in topic 9 as the direct costs of keeping safe the JSN collateral, are you prepared to testify today to the direct costs of keeping safe the JSN

collateral?

MR. MORRIS: Objection to the form of the question.

A. "Keeping safe" could be a different definition.

Q. Okay. I'm saying using that -- first of all, do you understand that certain collateral might cost more to keep safe than other collateral?

MR. MORRIS: Objection to the form of the question.

A. It could.

Q. And can you think of examples within the collateral pool of things that would cost more to keep safe than other things?

A. Your example of cash.

Q. Okay. What about performing loans versus troubled loans, might it cost more to keep a troubled loan safe than a performing loan?

MR. MORRIS: Objection to the form of the question.

A. Looking at that process outside of the bankruptcy, yes.

Q. Okay. And would it cost more, in your view, to keep safe, based upon your experience as treasurer at ResCap, cost more to keep safe a troubled loan than, for example, a government-insured FHA/VA loan?

MR. MORRIS: Objection to the form of the question.

A. A troubled loan versus a troubled FHA/VA loan?

Q. Or an insured FHA/VA loan.

A. I don't know that that preservation is any different, because if it's a troubled FHA loan, you're most likely going to go through the same processes to bring the borrower current, or whatever the process may be.

Q. Okay.

A. So I don't know if that's a good example.

Q. The -- well, can you think of other examples of items within the collateral pool that was pledged to any lender that would cost more to keep safe than other categories of assets?

MR. MORRIS: Objection to the form of

the question.

A. Well, there's not much to property and equipment to keep safe, I guess.

Q. Okay.

A. When you're saying -- if you're saying safe, keep it from being --

Q. Did you have an understanding of what the riskiest assets were within the collateral pool, that is, the ones that were at most risk of catastrophic loss in the context of the bankruptcy.

A. I think there were a lot of --

MR. MORRIS: Objection to the form of the question.

A. There were a lot of risks to assets in the bankruptcy.

Q. Okay. And which were the assets in your view, if you had a view, were at most risk?

A. I guess it would depend on which way the bankruptcy went and how certain parties acted.

Q. Okay.

A. So...

Q. And what's your answer?

A. I don't know which ones were the riskiest assets.

Q. So you can't testify as to the level of risk between any particular class of assets?

MR. BENTLEY: Objection.

A. The level of risk of what, that we -- that value could be lost?

Q. Yes.

A. I think there's various levels of risk. I don't know that I've quantified which ones are riskier.

Q. Okay. So what would you consider to be the level of risk as it applied to collateral within the collateral pool?

MR. MORRIS: Objection to the form of the question.

A. Within the JSNs' collateral pool?

Q. Within the total collateral pool, everything that was pledged to a lender, either pre- or post-petition?

MR. MORRIS: Objection to the form of the question.

A. I think there was risk that -- you want an example?

discussed, but we didn't -- I don't remember discussing it.

Q. Let me get the question out.

A. Okay.

Q. How was any of the risk associated with individual collateral losses like the pulling of an MSR factored into the allocation methodology you set up?

MR. MORRIS: Objection to the form of the question.

A. That wasn't specifically factored in. Other than that, it was kind of part of the whole process again.

Q. All right. So, for example -- I'll just give a different example. If the only collateral for Citi was gold bullion which was sitting in -- in ResCap's offices, under the allocation methodology, it would have gotten its percentage of the book value of the gold bullion versus all the other assets of the entity?

MR. MORRIS: Objection.

Q. It would have gotten that percentage of the overall costs of the bankruptcy?

MR. MORRIS: Objection to the form of

the question.

A. I can't answer that question because it didn't exist.

Q. No, but I'm just saying the way the methodology works, if it was just gold bullion that was collateral for someone's loan, you would take the book value of that gold, right?

A. Uh-huh.

Q. You would divide it by the book value of all the assets and come up with a ratio, right?

A. Yes.

Q. And then the lender who had the gold bullion as its collateral would pay that ratio times the overall expense that was forecast as the cost of its preserving its collateral?

MR. McPHERSON: Objection.

A. I mean, it's hard to answer that because it wasn't a factual case, but if that was the asset and that was the way we were dividing it up, I would say that, yes, although I would also, as long as we're speaking hypothetically, I would imagine that whoever had that asset would have objected to that, so...

J. RUHLIN

it's a hypothetical. I don't know how I can positively answer that.

Q. But I'm just trying -- well, you say it's a hypothetical. I'm saying it's an example. Just so I understand how the methodology works, the way the methodology works, that's -- that's how the inputs would work? You would take the book value of the gold divided by the book value of the total assets and multiply that ratio times total bankruptcy expense and you come up with the expense allocated to that gold silo?

MR. MORRIS: Objection to the form of the question.

A. That's what we did.

Q. Okay. The --

MR. MORRIS: Chris, do you have any idea how much longer you're going to go?

MR. SHORE: Why don't we take short a break. I'm going to follow up with some questions. Not much longer.

MR. CARNEY: I'm going to have a few.

THE VIDEOGRAPHER: It's 5:24 P.M. We're going off the record.

without doing further research.

Q. Okay. And I should just clarify the record and say we added the other two columns as well to make this composite exhibit. Okay.

MR. CARNEY: Okay. No more questions from me.

MR. SHORE: Go back -- I've got one, one last question with respect to --

I'll keep my voice up.

(Discussion off the record.)

FURTHER EXAMINATION BY

MR. SHORE:

Q. The -- the word "maintain," at any point when you were coming up with your methodology, did you try to come up with the cost of just what it would take to prevent the -- having to turn assets over to the lenders?

(Continued on the next page to include the jurat.)

J. RUHLIN

MR. MORRIS: Objection to the form of the question.

A. No, I don't recall doing that.

MR. SHORE: Okay. I have no further questions.

THE VIDEOGRAPHER: The time is 5:56 P.M. We're going off the record.

oOo

_____

JOSEPH RUHLIN

Subscribed and sworn to
before me this day
of 2013.

_____

Exhibit 3

J. HORNER

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter
RESIDENTIAL CAPITAL, LLC, et al.,	:	Case No. 12-12020(MG)
	:	Jointly Administered
Debtors.	:	
RESIDENTIAL CAPITAL, LLC, et al.,	:	
Plaintiffs,	:	
v.	:	Adversary Proceeding
UMB BANK, N.A., as successor indenture trustee under that certain indenture, dated as of June 6, 2008; and WELLS FARGO BANK, N.A., third priority collateral agent and collateral control agent under that certain Amended and Restated Third Priority Pledge and Security Agreement and Irrevocable Proxy, dated as of December 30, 2009,	:	No. 13-01343(MG)
Defendants.	:	

(Caption continued on next page)

VIDEOTAPED DEPOSITION OF JILL HORNER

September 20, 2013

New York, New York

Job 65732

Reporter: Kathy Klepfer

as Horner Exhibit 1, which is a copy of the Rule 30(b)(6) notice of Junior Secured Noteholders in this case. Have you seen this document before?

A. I have not.

Q. Do you understand that you have been proffered as a corporate representative with respect to topic number 9, with the following limitation, and why don't I make sure I read that.

So topic number 9 says, "The Debtors' direct costs of maintaining the JSNs' collateral from the petition date through the effective date of the Proposed Plan of Reorganization," and I think the caveat that the -- my understanding is that the caveat put on by the Debtors is that you're just here to testify with respect to those direct costs for the period from the close of the asset sales to the effective date of the plan of reorganization.

Do you understand that you are here as a corporate representative in that capacity?

A. I do.

Q. Okay. Let me just ask one question. Do you have any knowledge of the direct costs of

maintaining the JSN collaterals from the petition date prior to the close of the asset sales?

A. I have limited knowledge with regards to those expenses, yes.

Q. Okay. Have you ever done a -- any calculation of the direct costs of maintaining the JSNs' collateral for the period prior to the asset sales?

MR. McPHERSON: Objection.

A. No, I did not.

Q. Has anyone on your team performed such an analysis?

MR. McPHERSON: Objection.

A. There were people that report to me today that were part of that analysis, yes.

Q. Okay. And have you ever seen or reviewed any such analysis?

A. I have seen it, yes.

Q. Okay. Do you know what the Debtors' view was of the direct costs of maintaining the JSNs' collateral from the petition date through the asset sales?

MR. McPHERSON: Objection.

A. The -- my -- I can't talk from the Debtors' perspective, that's not what I'm here for for the presale, but, you know, I have a personal view as to what it was.

Q. Okay. And what is your personal view of the direct costs of maintaining the JSNs' collateral for the period prior to the asset sales?

A. Well, let me --

MR. BENTLEY: Objection.

A. -- re-clarify that in that, you know, it is my understanding that the view of the organization was is that the -- looked at all of the expenses that were related to completing the business in order to be able to maximize the value of the sale in the 363 sales, to maximize those assets.

Q. Okay. And what do you understand -- what do you mean by "all of the expenses relating to completing the business"?

A. All of the expenses that were incurred through that time that were required for origination, servicing, maintaining the administrations for, you know, working through

our, you know, bankruptcy processes and things like that, so all sales -- or, all expenses incurred.

Q. Okay. Is it -- I'll circle back to that in a moment. Just looking back at Exhibit 1, what did you understand -- first of all, what did you do to prepare with respect to responding to the 30(b)(6) notice topic for which you have been designated?

A. For the, looking at the post-sale expenses and the utilization of cash collateral, at that time period, I reviewed my declaration in accordance with, you know, what we had proposed.

Q. And what did you understand the term "direct costs" to mean in Exhibit 1?

MR. McPHERSON: Objection.

A. Well, "direct costs" can be defined in a lot of different ways. My interpretation of what "direct costs" mean here were all expenses that were incurred.

Q. Is that the definition that you used in connection with the declaration you previously submitted to the Court?

A. No, the definition in my declaration for direct costs, if I recall correctly, were related to the servicing and sub-servicing fees, which is the expenses related to -- we actually outsource our servicing to Ocwen. So I think, as defined in there, those direct costs are the servicing and sub-servicing fees, the custodian fees, as well as any expenses related to the REO properties.

Q. So is it your view that -- you know, why don't we mark the declaration.

While we're doing that, what did you understand the term "maintaining collateral" to mean?

MR. McPHERSON: Objection.

A. My understanding of "maintaining collateral" is to maintain value for the collateral.

Q. And how does one maintain the value of collateral?

A. That I, you know, would be guessing, but my -- my view would be that it would be ensuring that you are protecting the collateral and making sure things are being serviced

properly; that, you know, you're making sure that you are, you know, filing appropriate things, you know, in accordance to, you know, those assets, you know, if they're, you know, through either Ginnie Mae claims or if they were really, you know, REOs, you know, whatever it takes to make sure you don't default.

Q. And let's just even maybe be a little bit more specific. For example, how does one maintain servicer advances?

A. I'm not that close to what it takes to, you know, maintain that from a business perspective, but my understanding is is to ensure that you're collecting properly, that you're working through, you know, making sure that you are able to collect back on those advances and do whatever it takes with those borrowers to, you know, make sure you're collecting back.

Q. And how does one maintain mortgage loans?

A. I don't know what you mean "maintain mortgage loans."

Q. Well, do you understand that there are

mortgage loans that serve as collateral under the revolver?

A. Yes, I do.

Q. How does one maintain the value of the mortgage loans?

A. Properly collecting the principal and interest on the loans; making sure that they don't go delinquent or default.

Q. And you understand that there are -- there's REO or real estate owned assets that are collateral to the JSNs to the revolver; is that right?

A. I believe that there are REO assets, yes.

Q. And how does -- how does one maintain the value of REO assets?

A. Once again, I can't talk to it from a business perspective, but my understanding is is that it would be ensuring that you are making sure you run through the proper processes. Effectively, you are going to maximize potentially the sale of the collateral, you know, as you dispose of it.

Q. Okay.

J. HORNER

(Horner Exhibit 2, Declaration of Jill Horner, marked for identification, as of this date.)

BY MR. BAUMSTEIN:

Q. I've handed you what has been marked as Horner Exhibit 2, which is a copy of an April 9, 2013 declaration signed by you in this case.

Can you -- you've seen this declaration before, right?

A. I have.

Q. In fact, you saw it this week, right?

A. I did.

Q. And if you turn to paragraph 3 -- well, first of all, what did you understand -- what did you understand your conclusions to be with respect to direct costs as defined in your declaration, what did you understand your conclusions to be as the direct costs of maintaining the JSNs' collateral for the period post-sale as set forth in your declaration?

MR. McPHERSON: Objection.

A. Can you repeat the question, please?

Q. Sure. Did you reach any conclusions in your declaration as to the direct costs

necessary to maintain the JSNs' collateral in your declaration?

A. I don't know that I would say that I reached conclusions. This was set forth to take a look at what it would take to maintain and monetize the assets.

Q. Okay. And to -- and what was your conclusion about what it would cost to maintain and monetize the remaining assets of the JSNs after the --

A. I think --

MR. McPHERSON: Objection.

Q. -- after the sale?

A. I believe in the -- I think what we had stated here in the last paragraph is that there was approximately $30.4 million that would be paid using the cash collateral.

Q. And you understood that that would be $30.4 million of direct expense necessary to maintain and monetize the remaining assets of the JSNs?

MR. McPHERSON: Objection.

A. Once again, if you look at direct costs were defined as the direct asset-related

costs, that would also have included the operating expenses that we thought were aligned with the asset monetization, the wind-down of the origination pipeline, and the work on the ETS.

Q. By the way, now could you just go back to paragraph 3?

A. Uh-huh.

Q. So, first of all, there's a definition there that says, "The costs are divided into (i) direct asset-related costs," and that's defined as "the direct costs." Do you see that?

A. I do.

Q. What do -- just for the record, could you explain what is a direct asset-related cost?

A. Yes, as I mentioned earlier, these would be expenses that were related to the sub-servicing or the third-party servicing fees that we pay. It would also be inclusive of the custodian fees, and it would also be inclusive of any expenses that were related to the REO properties or the disposition of the REO properties.

Q. And with respect to your deposition

notice that sought testimony concerning the direct costs of maintaining the JSNs' collateral, did you use a different definition of "direct costs"?

MR. McPHERSON: Objection.

A. When I looked at your number 9?

Q. Yes.

A. I interpret that to have been that you were interested in all expenses.

Q. Is there a reason that you defined the term "direct costs" in your declaration with a capital D, capital C?

A. Just to --

MR. BENTLEY: Objection to form.

A. Just for clarification.

Q. Okay. And but your view is that "direct costs" actually means something other than direct costs as you previously defined in the declaration?

MR. McPHERSON: Objection.

A. Direct costs have various meanings depending on the context in which you're using them.

Q. Okay. And you interpreted "direct

costs" for purposes of your deposition to be different than the direct costs you identified and testified to previously on the same subject area; is that correct?

MR. McPHERSON: Objection.

A. Yes, I interpreted that you would be interested in all of the components of expenses that were related to the utilization of cash collateral.

Q. And when you talk about -- using your definition of "direct costs," and this is again now I'm asking in your personal capacity, what is your understanding of what the Debtors' view is of the direct costs incurred to maintain the JSNs' collateral for the period prior to the asset sale?

MR. McPHERSON: Objection.

A. Prior to the asset sale for direct costs, I am not in a position to be able to say how it was defined.

Q. Okay. I had asked earlier, and you seemed to -- I believe you had indicated that you had knowledge and you've seen analyses of this; is that correct?

A. Right, but as far as the definition from like a direct costs, I'm not aware of how they defined "direct costs" to be before the sale.

Q. Okay. Do you know, for example, whether expenses related to the examiner's report were considered direct costs in any of the analyses that you saw for the period prior to the asset sales?

MR. McPHERSON: Objection.

A. Once again, I don't know the definition, if it was defined as direct costs presale.

Q. Okay. And do you know whether anyone ever did an analysis similar to the one you performed in your Horner declaration of direct costs for the period prior to the asset sales?

A. No.

MR. McPHERSON: Objection.

A. I am not aware that they broke it down into the way I structured my post-sale analysis.

Q. Okay. And you've never asked anyone to do such an analysis?

A. Not for presale, no.

Q. Okay. And to the best of your knowledge, you're not aware of anyone at ResCap or any of its advisors performing such analysis; is that right?

A. Not that I'm aware of or can recall.

Q. Okay. Why don't we --

(Horner Exhibit 3, Worksheet, marked for identification, as of this date.)

BY MR. BAUMSTEIN:

Q. Do you recognize -- why don't I make a representation because this has an existing Bates stamp.

This is an exhibit that had been previously used at your only other deposition and had been marked as Horner Exhibit 2 at the time, and now we're remarking it as I guess it's Horner 3.

Could you describe what Horner 3, Exhibit 3 is?

A. This is a worksheet that was put together to identify a cost summary for the Ally revolver Barclays DIP, which are two funding facilities. It takes a look at what was accrued and unpaid as of 4/30 and it looks at the cost

expenses that I had with regards to what's identified in my Horner declaration.

Q. Okay. And the Horner declaration methodology under B, is that fair to call that a, I guess, direct expense and direct operating expense analysis? I'm just trying to use a terminology.

A. That's fine.

Q. And but if I call it just direct expenses, direct expense is actually a subset of this, right?

A. Yes, the direct costs would have been a subset, correct.

Q. Okay. Looking at the figure starting with column B, and I can do this one-by-one but it may be that it's not necessary, but have the Debtors' views of the direct expenses and direct operational expenses of maintaining the JSNs' collateral from the period May 1, 2013 through January 31, 2016 changed in any way from what -- from your previous analysis?

MR. McPHERSON: Objection.

A. Currently, through the various stipulations, since we've ended the use of cash

collateral, we currently do not allocate any expenses to either of these facilities.

Q. Right, and I understand that there's not any allocations. I'm just asking whether your view as to the actual direct expenses has changed during that time period?

MR. McPHERSON: Objection.

A. Not at this point in time, no.

Q. Looking at the accrued and unpaid as of April 30, 2013, do you recall that at your previous deposition my partner, Mr. Shore, asked you if the Debtors had performed an analysis of how much of the $161 million of accrued but unpaid balances as of April 30, 2013 benefited the JSNs that was used to maintain the JSNs' collateral?

A. I briefly remember that, that question.

Q. Have you or anyone else at ResCap performed such analysis?

A. No.

Q. Why not?

MR. McPHERSON: Objection.

A. Just have not.

Q. I just want to go through the line items here on the accrued and unpaid balances --

A. Okay.

Q. -- and ask you how such accrued and unpaid balances, if any, either benefited the JSNs' collateral or helped maintain the JSNs' collateral.

What is your understanding of how the consent order compliance costs benefited the JSNs' collateral or helped maintain the JSNs' collateral?

A. It is my understanding, once again, that these were costs that were incurred presale and that the, just once again, at a high level, presale, everything was required with regards to maintaining, you know, good compliance with what we had to do in order to be able to effectuate and, you know, maximize the, you know, monetization in the asset sales, and that would have been a component of it.

Q. Were the consent order and compliance costs paid specifically with respect to the JSNs' collateral?

A. That I'm not aware of.

MR. McPHERSON: Objection.

Q. Why don't we go to -- there's a line number 10, other restructuring professional fees of $68 million, do you see that?

A. I do.

Q. Do you know generally what restructuring professional fees are encompassed in that $68 million that's identified as accrued and unpaid as of April 30, 2013?

A. Generally, they would be -- they would represent any restructuring professional fees that are related to the Debtors, to the Unsecured Creditors Committee would also be inclusive of examiner's fees as well as any third parties that expenses we paid for RMBS.

Q. In what ways do the Creditors Committee's professional fees benefit or maintain -- help benefit or maintain the JSNs' collateral?

MR. McPHERSON: Objection.

A. You know, indirectly, they, you know, once again, the whole process presale -- presale and us entering into bankruptcy, you know, was able to allow us to actually effectuate the 363

sale and, once again, you know, try to maximize the value of the collateral --

Q. Okay.

A. -- from the sale.

Q. You said indirectly. Is there any direct benefit to the JSNs' collateral of having, for example, the Creditors Committee challenge the JSNs' collateral?

A. And let me clarify --

MR. McPHERSON: Objection.

A. You know, yes, I believe that, you know, everything all worked altogether in order to be able to maximize the asset sales.

Q. Okay. And how did the examiner's report assist the J -- assist in the asset sales of the JSNs' collateral?

MR. McPHERSON: Objection.

A. I'm not in a position to be able to have, you know, thought about that or come to a conclusion about that.

Q. Is it your view that the expenses of the examiner's report and the professionals involved in creating the examiner's report were directly benefited the JSNs' collateral or were

necessary to maintain the value of the JSNs' collateral?

MR. McPHERSON: Objection.

A. That I can't talk to.

Q. Under the Compensation Benefits and Incentives line?

A. Uh-huh.

Q. Do you know whether those are compensation benefits and incentives paid solely to employees with respect to who had a role in maintaining or benefiting the JSNs' collateral?

A. This Compensation Benefits and Incentives would be what was to be paid for primarily people within the estate that, you know, generally supported the business in general.

Q. So this was a general allocation of overhead, not specific to the JSNs' collateral?

A. It would have been accrued and unpaid as of 4/30. So it would have been whatever it was due out to employees, you know, and it could include some presale, it could include some post-sale accruals.

Q. What about the Operating Expenses

line, do you know whether the operating expenses of $35.7 million here was specific to the maintaining of the JSNs' collateral?

MR. McPHERSON: Objection.

A. Not specific. However, once again, generically, the operating expenses here were representative of costs incurred presale for the majority, and therefore, would have been necessary in order to once again, you know, ensure that the sales were completed and once again at, you know, appropriate level.

Q. And just to be clear, for example, with operating expenses, you used a methodology to calculate the operating expenses that you directly related to the JSNs' collateral that you anticipated to be incurred from May 1, 2013 to January 13, 2016, correct?

A. If you're talking about the expenses that are under the Horner declaration, I actually calculated what was the expenses related to the monetization of the assets, correct.

Q. And you didn't perform a similar type analysis with respect to the $35.7 million

that's listed under the Accrued and Unpaid as of April 30, 2013; is that correct?

A. No, I did not.

MR. McPHERSON: Objection.

Q. What about the cure costs, was there any analysis whether such cure costs were necessary for the JSNs' collateral, or were those general cure costs for different -- for different or mixtures of collateral --

MR. McPHERSON: Objection.

Q. -- maintained by the Debtors?

A. The definition of the "cure costs" here are the estimate of cure -- doesn't include the cure costs related to any of the deals excluded from the Ocwen sale. I'm not sure what was included in the cure costs without going back and looking at the information.

Q. So, as you sit here today, you have no basis to know whether such cure costs benefited the JSNs' collateral or helped maintain the value of the JSNs' collateral?

MR. McPHERSON: Objection.

A. No, as I'm sitting here today I would have -- I don't have anything in front of me

that would clarify what was in there.

Q. Are you aware of there being a carve-out with respect to certain professional fees that exist under the Cash Collateral Order?

A. Yes, I am aware that there is a carve-out provision.

Q. What's your understanding of the carve-out?

A. My understanding of the carve-out is the professional fees that have been accrued but not yet paid at the time of termination plus $25 million.

Q. How does $25 million of professional fees accrued after April 30, 2013 benefit the JSNs' collateral?

MR. McPHERSON: Objection.

A. I'm not sure what you mean, the $25 million.

Q. Well, is it -- are the Debtors taking the view that the $25 million carve-out should be charged against the JSNs' collateral for purposes of determining the recoveries in this case?

MR. McPHERSON: Objection.

A. Yes, based on my understanding of how it was written in the Cash Collateral Motion, the answer would be yes.

Q. Okay. And I'll put -- I can put it in front of you, but were you involved at all in negotiating the Final Cash Collateral Order?

A. I was not.

Q. Okay. And I also wanted to ask, again -- maybe it takes off a whole line of questioning, it may save a lot of time -- were you involved at all in preparing the financial projections in connection with the Cash Collateral Order?

A. Not the one that was filed in May of 2012, no.

Q. Okay. And just so to close the loop on this, did you ever have any conversations with any of the JSNs' or representatives for the JSNs about the forecasts attached to the Final Cash Collateral Order?

A. No, I have never made any presentations related to the forecast.

Q. Okay. And are you aware of any communications by the Debtors to anyone at the

JSNs that if an item were included in the budget and that -- and the JSNs did not object to it, that any objection was waived thereafter?

A. No, I'm not aware of anything.

Q. Probably saved a lot of time.

Looking at the accrued and unpaid balances as of April 30, 2013, have the Debtors, as far as you know, have the Debtors had any different view -- as far as you know, are each of the numbers here accurate as far as the Debtors' view of the accrued and unpaid balances?

A. As of 4/30, that was what our view was with regards to accrued and unpaid.

Q. Okay. Presumably, have some of them since been paid since April 30?

A. Yes. Absolutely. As you move forward, things have been paid, you know, analysis has been completed to determine, you know, if it should be, you know, certain balances should be up or lower through, you know, when we actually get invoices, so that would have changed.

Q. Are you aware whether the actuals

ended up being any different than the accrued and unpaid with respect to any of the categories here?

A. You know, absolutely they would be different, but as to what was different and by how much, I would not know without going back and actually looking at them.

Q. You're not in a position today to testify about that?

A. Not today, no.

Q. Did you play any role in the auction for the sale of ResCap's assets?

A. Not in the actual auction, no; I was not involved in the actual auction.

Q. And what involvement did you have with respect to the asset sales?

A. I supported the asset sales through working with the portions of the stalking horse bid; worked with the stalking horse bidder in looking at general and administrative costs.

Q. Okay. And what did you do -- what were the communications you had in connection with the stalking horse bid concerning general and administrative costs?

J. HORNER

MR. McPHERSON: Objection.

A. Yeah, I don't know their procedures that they went through to do that.

Q. Okay. Do you know what the procedures were that they used for the purchase price allocations?

MR. McPHERSON: Objection.

A. I would have to confer with them to understand what their process and procedures were.

Q. But as you're sitting here today, you don't know what they did?

A. No, I don't.

Q. It's possible that, again, this may be an area that you weren't involved with because you may have been dealing with different parts of ResCap at the time, but prior to the auction close date, what role, if any, did you play in the determining of a methodology to allocate expenses among the various collateral silos at ResCap?

A. Presale, I was not involved at all with regards to any kind of discussions or meetings to identify the allocation of expenses.

Q. And have you ever learned about how that process was undertaken?

A. You know, the only thing that I know was is that there was a lot of work that was put together with a variety of different constituents to take a look at what the methodology was, and they landed on an allocation based on percentage of assets, and that's what was maintained.

Q. Okay. Do you know who was primarily responsible at ResCap for coming up with an allocation methodology?

A. As part of primarily responsible, I'm not sure. I think it was in collaboration both with Joe Ruhlin, who was the treasurer at the time, and his group.

Q. Are you familiar with the assumptions that were used in reaching that allocation methodology?

MR. McPHERSON: Objection.

A. No, as -- I was not part of any of the meetings or any discussions that led up to that decision.

Q. Had you ever heard of any objections

to the allocation methodology made by the JSNs or any of their representatives?

A. Presale or post-sale?

Q. Let's start with presale.

A. Not to my understanding.

Q. And what about post-sale?

A. Post-sale, I believe that there were some questions asked with regards to the expenses that were being allocated, hence the analysis that we undertook with regards to the Horner declaration.

Q. I know we've been talking a fair amount about the JSNs collateral. What do you understand the JSN collateral to comprise?

A. I believe it includes FHA/VA loans. I believe it includes advances. I believe it includes some non-HF -- or, non-FHA/VA held for sale assets, and cash.

Q. Were you involved in negotiating any of the agreements surrounding -- the pledge agreement or any of the other agreements in connection with the creation of the revolver?

A. No, I was not involved. I had no role or responsibility in that piece of it.

Q. As we go through the next subject here in this is the Debtors' assets sales, I think you testified that your role with respect to the asset sales was fairly minimal; is that correct?

A. That is correct.

Q. And that it only really -- it only encompassed some communications concerning some of the GS&A?

A. G&A expenses, correct.

Q. And that was your entirety of your role with respect to the asset sales?

A. Yes, I did not have a primary role as it related to the asset sales.

Q. And going back to, we talked -- if you now turn to the next heading, Plaintiff's Use of Defendants' Collateral, I think we discussed that you had no involvement with the Final Cash Collateral Order that was entered in 2012; is that right?

A. First of all, can you talk to me where you're pointing?

Q. Page 16.

A. So, to answer what I believe your question was is no, I was not involved in

anything related to the Final Cash Collateral Order.

Q. And that includes the negotiation for the budgeting process that -- in connection with it?

A. That's correct.

Q. Let's talk about the LOC. What role, if any -- what personal knowledge, if any, do you have about the LOC and its terms?

A. As far as what I know, it is the Ally line of credit. As far as the details of what the terms were or, you know, once again, was not part of that or involved in any my prior role.

Q. Do you know who the people who would be who would have the most knowledge of that?

A. From the Ally line of credit perspective, it would have been those involved with Treasury Group at the time.

Q. And who at Treasury?

A. You know, I'd be completely guessing, but it would have been individuals like a Joe Ruhlin or a John Peterson, but I'm not sure the timing of when the line of credit was created.

Q. By the way, are you familiar with who